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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 2003 and 3570

RIN 0575–AC10

Community Facilities Grant Program

AGENCIES: Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and Farm Service Agency (FSA), USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), formerly the Rural Housing and Community Development Service, a successor agency to the Farmers Home Administration, amends its regulations for the Community Facilities Grant Program. The intended effect is to finalize the Community Facilities Grant (CFG) program regulations that enable RHS to provide essential community facilities. RHS is also clarifying and revising its processing procedures and requirements in order to provide better service to rural communities.

EFFECTIVE DATE: This rule is effective July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Barton, Senior Loan Specialist, Community Programs Division, Rural Housing Service, U.S. Department of Agriculture, Stop 3222, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3222, telephone (202) 720–1504.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Environmental Impact Statement

This rule has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It has been determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, "Civil Justice Reform." In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0575–0173, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rule does not impose any new information or recordkeeping requirements from those approved by OMB.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.766 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The Agency has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Background

On April 7, 1997, RHS published an interim final rule, 7 CFR part 3570, subpart B, in the **Federal Register** (62 FR 16465–16473) implementing the CFG program. This rule added a grant program to the direct and guaranteed programs the Agency currently offers. As with other RHS programs, the CFG program is available to associations, federally recognized Indian tribes, nonprofit corporations, and public bodies serving rural areas. Authority is under section 306(a) of the Consolidated Farm and Rural Development Act. The CFG program was created to promote rural development in poverty areas because Congress recognized that many rural poverty-stricken communities are not eligible for RHS direct or guaranteed Community Facilities (CF) loan programs and, therefore, have no access to assistance for essential community facilities such as health care, public safety, and fire protection services. Many rural communities have suffered such severe economic constraints for so long that they are unable to provide their residents with the basic services

needed to improve their quality of life. RHS CF programs assist poor rural communities with financial resources to develop or improve health care facilities, child care centers, schools, libraries, fire and rescue buildings and equipment, town halls, street improvements, and so on. When these basic services become available to residents, the community becomes stronger and better equipped to continue its economic and community development efforts.

The interim final rule provided that Federal funds cannot exceed 75 percent of the cost of the project. However, we have determined that CFG funds can be used for up to 75 percent of the cost of developing specific essential community facilities in rural areas despite the amount of other Federal funds participating in the project. Therefore, a limit on the overall Federal Government assistance was removed for the final rule. Additionally, section 735 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, temporarily changed the definition of the terms "rural" and "rural area" back to the definition in effect prior to April 4, 1996, for fiscal year 1999. For fiscal year 1999, any city or town with a population of 20,000 or less inhabitants is considered rural or in a rural area for the CF program. Also, for fiscal year 1999, there is no limitation placed on the population in open rural areas.

When RHS published the interim final rule, the Agency asked for comments on or before June 6, 1997. RHS received five written comments. The commentators were representatives from Rural Development staff and an Indian tribe. These comments were considered and were the basis of several changes in the final regulation.

Many administrative changes were made in the regulation, the grant agreement, and the forms administering the program. Some changes were made based on RHS's experience in operating the program. Major comments and other changes are noted below:

1. Since the objective of this program is to fund the minimum amount sufficient for feasibility, the regulation now requires that an applicant's available excess funds be used to supplement eligible project costs. RHS emphasizes the funding of smaller projects in the minimum amount to ensure feasibility and adequate operating reserves. The "eligible applicant" criteria were expanded to include applicants who do not have the authority to borrow funds, but own, operate, and maintain a facility such as a public body with limited funds and no taxing authority. Additionally, all applicants must own the facility if CFG funds are being used to purchase equipment or obtain or improve real property.

2. Section § 3570.62 has been expanded to delineate eligible purposes for CFG funds. In the interim final rule, applicants were referred to 7 CFR part 1942, subpart A, for eligible purposes. Employees from Federal Agencies requested this information be included in the final rule. For consistency, CF uses the same purposes for all its programs. For the CFG program, RHS has decided to emphasize the funding of smaller projects.

3. A commentator recommended the final rule be revised so that other lenders participating in a CFG project are not restricted to the interest rate they can charge when participating in a project. The Agency does not want CFG funds to subsidize high interest rates. However, the Agency has agreed to change the criteria to state that other lenders participating in the project can charge reasonable rates and terms. Reasonable rates and terms are those customarily charged public and nonprofit borrowers in similar circumstances in the ordinary course of business and are subject to Agency review.

4. Minor changes were made in the population criteria referred to in the grant assistance tiers. This is the result of the reduction in the rural population the Agency can serve in fiscal year 1999 and the Agency's desire to equalize the grant assistance tiers.

5. A number of comments were received requesting clarification on the grant closing process. The regulation was changed to reflect suggestions submitted by employees of Federal Agencies. The regulation was modified to not require loans and grants to close simultaneously. However, loan funds must be advanced before grant funds. The regulation has been changed to reflect these changes.

6. Community Facilities Grant Agreement. Several comments were received stating that this document does not identify or reference property acquired with grant funds or address how it will be disposed. Property acquired with CFG funds are subject to the use and disposition requirements of 7 CFR parts 3015, 3016, or 3019, as appropriate. The "Community Facilities Grant Agreement" was changed to reflect these modifications.

7. A comment from a Native American tribe requested a set-aside be established in this program for Indian Tribes. A set-aside was not established in the final rule because the Agency always prioritizes its funding of projects based on small communities with low median household incomes. By RHS focusing on low income and sparsely populated areas, this program assists Native Americans and other communities with special economic needs without setting aside funds for specific groups of populations.

List of Subjects

7 CFR Part 2003

Organizations and functions (Government agencies).

7 CFR Part 3570

Accounting, Administrative practice and procedure, Conflicts of interests, Environmental impact statements, Fair housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Rural areas, Subsidies.

Therefore, chapters XVIII and XXXV of title 7, Code of Federal Regulations, are amended as follows:

PART 2003—ORGANIZATION

1. The authority citation for part 2003 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 6941; and 7 CFR 2.17.

Subpart A—Functional Organization of the Rural Development Mission Area

§ 2003.18 [Amended]

2. Section 2003.18(b)(5)(i) is amended by adding the words "and grants" after the word "loans."

3. Chapter XXXV, title 7, Code of Federal Regulations is revised to read as follows:

PART 3570—COMMUNITY PROGRAMS

4. The authority citation for part 3570 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

5. Part 3570, subpart B is revised to read as follows:

Subpart B—Community Facilities Grant Program

Sec.

3570.51 General.
3570.52 Purpose.
3570.53 Definitions.
3570.54–3570.60 [Reserved]
3570.61 Eligibility for grant assistance.
3570.62 Use of grant funds.
3570.63 Grant limitations.
3570.64 Applications determined ineligible.
3570.65 Processing preapplications and applications.
3570.66 Determining the maximum grant assistance.
3570.67 Project selection priorities.
3570.68 Selection process.

3570.69 Environmental review, intergovernmental review, and public notification.
3570.70 Other considerations.
3570.71–3570.74 [Reserved]
3570.75 Grantee contracts.
3570.76 Planning, bidding, contracting, and construction.
3570.77–3570.79 [Reserved]
3570.80 Grant closing and delivery of funds.
3570.81–3570.82 [Reserved]
3570.83 Audits.
3570.84 Grant servicing.
3570.85 Programmatic changes.
3570.86 [Reserved]
3570.87 Grant suspension, termination, and cancellation.
3570.88 Management assistance.
3570.89 [Reserved]
3570.90 Exception authority.
3570.91 Regulations.
3570.92 [Reserved]
3570.93 Regional Commission grants.
3570.94–3570.99 [Reserved]
3570.100 OMB control number.

Subpart B—Community Facilities Grant Program

§ 3570.51 General.

(a) This subpart contains Rural Housing Service (RHS) policies and authorizations and establishes procedures for making essential Community Facilities Grants (CFG) authorized under section 306(a)(19) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(19)).

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by federally recognized Indian tribes within a State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indian tribes must have equal opportunity along with other rural residents to participate in the benefits of this program.

(c) Federal statutes provide for extending RHS financial assistance without regard to race, color, religion, sex, national origin, age, disability, and marital or familial status. To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington DC 20250, or call 1–800–245–6340 (voice) or (202) 730–1127 (TDD). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

(d) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, close relatives, or business or close personal associates is subject to the provisions of 7 CFR part 1900, subpart D. Applications for assistance are required to identify any relationship or association with an RHS employee.

(e) Copies of all forms referenced in this subpart are available in the Agency's National Office or any Rural Development field office.

(f) An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. Grant funds may not be used to satisfy the judgment.

(g) Grants made under this subpart will be administered under, and are subject to, 7 CFR parts 3015, 3016, or 3019, as appropriate.

(h) The income data used to determine median household income must be that which accurately reflects the income of the population to be served by the proposed facility. The median household income of the service area and the nonmetropolitan median household income for the State will be determined using income data from the most recent decennial Census of the United States. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, this will be documented and the applicant may furnish, or the Agency may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State, or Federal sources or from a survey conducted by a reliable impartial source.

(i) CFG funds can be used for up to 75 percent of the cost to develop the facility, notwithstanding that other contributions may be from other Federal sources.

§ 3570.52 Purpose.

The purpose of CFG program is to assist in the development of essential community facilities in rural areas. The Agency will authorize grant funds on a graduated basis. Eligible applicants located in smaller communities with lower populations and lower median household incomes may receive a higher percentage of grant funds. The amount of CFG funds provided for a facility shall not exceed 75 percent of the cost of developing the facility.

§ 3570.53 Definitions.

Agency. The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture, or a successor agency.

Approval official. An official who has been delegated loan or grant approval authorities within applicable programs, subject to certain dollar limitations.

CF. Community Facilities.

CFG. Community Facilities Grant.

Essential community facilities. Those public improvements requisite to the beneficial and orderly development of a community that is operated on a nonprofit basis. (See § 3570.62(a)(1)). An essential community facility must:

(1) Serve a function customarily provided by a local unit of government;

(2) Be a public improvement needed for the orderly development of a rural community;

(3) Not include private affairs or commercial or business undertakings (except for limited authority for industrial parks) unless it is a minor part of the total facility;

(4) Be within the area of jurisdiction or operation for the public bodies eligible to receive assistance or a similar local rural service area of a not-for-profit corporation; and

(5) Be located in a rural area.

Facility. The physical structure financed by the Agency or the resulting service provided to rural residents.

Grantee. An entity with whom the Agency has entered into a grant agreement under this program.

Instructions. Agency internal procedures available in any Rural Development office and variously referred to as Rural Development Instructions, RD Instructions.

Minor part. No more than 15 percent of the total floor space of the proposed facility.

Nonprofit Corporations. Any corporation that is not organized or maintained for the making of a profit and that meets the eligibility requirements for RHS financial assistance in accordance with § 3570.61(a)(2).

Processing office. The office designated by the State program official to accept and process applications for CF projects.

Project cost. The cost of completing the proposed facility. (Facilities previously constructed will not be considered in determining project costs.) Total project cost will include only those costs eligible for CFG assistance.

Poverty line. The level of income for a family of four as defined by section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Public body. Any State, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or federally recognized Indian tribe in rural areas.

Reasonable rates and terms. The rates and terms customarily charged public and nonprofit type borrowers in similar circumstances in the ordinary course of business and subject to Agency review.

RHS. The Rural Housing Service, an agency of the United States Department of Agriculture, or a successor agency.

Rural and rural area. For fiscal year 1999, the terms "rural" and "rural area" include a city or town with a population of 20,000 or less inhabitants according to the latest decennial census of the United States. There is no limitation placed on population in open rural areas. After fiscal year 1999, the terms "rural" and "rural area" include a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants.

Rural Development. A mission area within USDA which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service.

RUS. The Rural Utilities Service, an agency of USDA or a successor agency.

Service area. The area reasonably expected to be served by the facility.

State. The term "State" means each of the 50 States, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

State Director. The term "State Director" means, with respect to a State, the Director of the Rural Development State Office.

State nonmetropolitan median household income. The median household income of all rural areas of a State as reported by the U.S. Census Bureau.

State strategic plan. A plan developed by each State for Rural Development initiatives and the type of assistance required. Plans shall identify goals, methods, and benchmarks for measuring success.

§§ 3570.54–3570.60 [Reserved]

§ 3570.61 Eligibility for grant assistance

The essential community facility must primarily serve rural areas, be located in a rural area, and the median household income of the population to be served by the proposed facility must be below the higher of the poverty line or the eligible percentage (60, 70, 80, or 90) of the State nonmetropolitan median household income (see § 3570.63(b)).

(a) *Eligible applicant.* An applicant must be a:

(1) Public body, such as a municipality, county, district, authority, or other political subdivision of a State;

(2) Nonprofit corporation or association. Applicants, other than nonprofit utility applicants, must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies, or broadly based ownership and control by members of the community; or

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources or substantial voluntary community funding, such as would be obtained through a community-wide funding campaign.

(3) Federally recognized Indian tribe in a rural area.

(b) *Eligible facilities.* Essential community facilities must be:

(1) Located in rural areas, except for utility-type services, such as telecommunications or hydroelectric, serving both rural and non-rural areas. In such cases, RHS funds may be used to finance only that portion serving rural areas, regardless of facility location.

(2) Necessary for orderly community development and consistent with the State Strategic Plan.

(c) *Credit elsewhere.* The approval official must determine that the applicant is unable to finance the proposed project from its own resources, or through commercial credit at reasonable rates and terms, or other funding sources without grant assistance under this subpart. The applicant must certify to such status in writing.

(d) *Economic feasibility.* All projects financed under the provisions of this section must be based on satisfactory sources of revenues as outlined in 7 CFR 1942.17(h) and 1942.116. The amount of CFG assistance must be the minimum amount sufficient for feasibility which will provide for facility operation and maintenance, reasonable reserves, and debt repayment. The applicant's available excess funds must be used to supplement eligible project costs.

(e) *Legal authority and responsibility.* Each applicant must have, or will obtain, prior to the grant award, the legal authority necessary to own, construct, operate, and maintain the proposed facility. The applicant shall be responsible for operating, maintaining, and managing the facility and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be the applicant's even though the facility may be operated, maintained, or managed by a third party under contract or management agreement. If an applicant does not have the authority to borrow funds, but owns, operates, and maintains the facility, the applicant is eligible for CFG funds.

(f) *Facilities for public use.* All facilities shall be for the benefit of the public at large without discrimination as to race, color, religion, sex, national origin, disability, and marital or familial status.

§ 3570.62 Use of grant funds.

Grants of up to 75 percent of the cost of developing essential community facilities may be used to supplement financial assistance authorized in accordance with 7 CFR parts 1942, subparts A and C, and 3575, subpart A. Eligible CFG purposes are those listed in paragraphs (a), (b), (c), and (d) of this section. Funding for the balance of the project may consist of other CF financial assistance, applicant contributions, or loans and grants from other sources. CFGs may be used to:

(a) Construct, enlarge, extend, or otherwise improve essential community facilities providing essential service primarily to rural residents and rural businesses. Rural businesses include facilities such as educational and other publicly owned facilities.

(1) "Essential community facilities" are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including, but not limited to:

(i) Fire, rescue, and public safety;

(ii) Health services;

(iii) Community, social, or cultural services;

(iv) Transportation facilities such as streets, roads, and bridges;

(v) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for RUS financing;

(vi) Telecommunications equipment as it relates to medical and educational telecommunications links;

(vii) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for RUS financing;

(viii) Natural gas distribution systems; and

(ix) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(2) "Otherwise improve" includes, but is not limited to, the following:

(i) The purchase of major equipment (such as solid waste collection trucks, telecommunication equipment, necessary maintenance equipment, fire service equipment, X-ray machines) which will in themselves provide an essential service to rural residents; and

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(b) Construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(c) Relocate private buildings, roads, bridges, services, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) Pay the following expenses, but only when such expenses are a necessary part of a project to finance facilities authorized in paragraphs (a), (b), and (c) of this section:

(1) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(2) Costs of acquiring interest in land; rights, such as water rights, leases, permits, and rights-of-way; and other evidence of land or water control necessary for development of the facility.

(3) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(4) Obligations for construction incurred before grant approval. Construction work should not be started and obligations for such work or materials should not be incurred before the grant is approved. However, if there are compelling reasons for proceeding with construction before grant approval, applicants may request Agency approval to pay such obligations. Such requests may be approved if the Agency determines that:

(i) Compelling reasons exist for incurring obligations before grant approval;

(ii) The obligations will be incurred for authorized grant purposes;

(iii) Contract documents have been approved by the Agency;

(iv) All environmental requirements applicable to the Agency and the applicant have been met; and

(v) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic's, material, or other liens that may attach to the security property.

The Agency may authorize payment of such obligations at the time of grant closing. The Agency's authorization to pay such obligations, however, is on the condition that it is not committed to make the grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all grant approval requirements. The applicant's request and the Agency's authorization for paying such obligations shall be in writing.

§ 3570.63 Grant limitations.

(a) Grant funds may not be used to:

(1) Pay initial operating expenses or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses (unless a CF loan is part of the funding package);

(2) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale;

(3) Refinance existing indebtedness;

(4) Pay interest;

(5) Pay for facilities located in nonrural areas, except as noted in § 3570.61(b)(1).

(6) Pay any costs of a project when the median household income of the population to be served by the proposed facility is above the higher of the poverty line or eligible percent (60, 70, 80, or 90) of the State nonmetropolitan median household income (see § 3570.63(b));

(7) Pay project costs when other loan funding for the project is not at reasonable rates and terms;

(8) Pay an amount greater than 75 percent of the cost to develop the facility;

(9) Pay costs to construct facilities to be used for commercial rental unless it is a minor part of the total facility;

(10) Construct facilities primarily for the purpose of housing State, Federal, or quasi-Federal agencies; and

(11) Pay for any purposes restricted by 7 CFR 1942.17(d)(2).

(b) Grant assistance will be provided on a graduated scale with smaller communities with the lowest median household incomes being eligible for projects with a higher proportion of grant funds. Grant assistance is limited to the following percentages of eligible project costs:

(1) 75 percent when the proposed project is:

(i) Located in a rural community having a population of 5,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 60 percent of the State nonmetropolitan median household income.

(2) 55 percent when the proposed project is:

(i) Located in a rural community having a population of 12,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 70 percent of the State nonmetropolitan median household income.

(3) 35 percent when the proposed project is:

(i) Located in a rural community having a population of 20,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 80 percent of the State nonmetropolitan median household income.

(4) 15 percent when the proposed project is:

(i) Located in a rural community having a population

and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the State nonmetropolitan median household income.

(5) Grant assistance cannot exceed the applicable percentages contained in this section and may be further limited due to availability of funds or by the maximum grant assistance allowable determined in accordance with § 3570.66.

§ 3570.64 Applications determined ineligible.

If, at any time, an application is determined ineligible, the processing office will notify the applicant in writing of the reasons. The applicant will be advised that it may appeal the decision. (See 7 CFR part 11.)

§ 3570.65 Processing preapplications and applications.

For combination proposals for loan and grant funds, only one preapplication package and one application package should be prepared

and submitted. Preapplications and applications for grants will be developed in accordance with applicable portions of 7 CFR 1942.2, 1942.104, and 3575.52.

(a) *Preapplications.* Applicants will file an original and one copy of "Application for Federal Assistance (For Construction)," with the appropriate Agency office. This form is available in all Agency offices. The preapplication and supporting documentation are used to determine applicant eligibility and priority for funding.

(1) All preapplications shall be accompanied by:

(i) Evidence of applicant's legal existence and authority; and

(ii) Appropriate clearinghouse agency comments.

(b) *Application processing.* Upon notification on "Notice of Preapplication Review Action" that the applicant is eligible for CFG funding, the applicant will be provided forms and instructions for filing a complete application. The forms required for a complete application, including the following, will be submitted to the processing office by the applicant:

(1) Updated "Application for Federal Assistance (For Construction)."

(2) Financial feasibility report.

(c) *Discontinuing the processing of the application.* If the applicant fails to submit the application and related material by the date shown on "Notice of Preapplication Review Action" (normally 60 days from the date of this form), the Agency will discontinue consideration of the application.

§ 3570.66 Determining the maximum grant assistance.

(a) *Responsibility.* State Directors are responsible for determining the applicant's eligibility for grant assistance.

(b) *Maximum grant assistance.* Grant assistance cannot exceed the lower of:

(1) Qualifying percentage of eligible project cost determined in accordance with § 3570.63(b);

(2) Minimum amount sufficient to provide for economic feasibility as determined in accordance with § 3570.61(d); or

(3) Either 50 percent of the annual State allocation or $50,000, whichever is greater, unless an exception is made by the RHS Administrator in accordance with § 3570.90.

§ 3570.67 Project selection priorities.

Applications are scored on a priority basis. Points will be distributed as follows:

(a) *Population priorities.* The proposed project is located in a rural community having a population of:

(1) 5,000 or less—30 points;

(2) Between 5,001 and 12,000, inclusive—20 points;

(3) Between 12,001 and 20,000, inclusive—10 points; or

(4) Between 20,001 and 50,000, inclusive, when applicable—5 points.

(b) *Income priorities.* The median household income of the population to be served by the proposed project is below the higher of the poverty line or:

(1) 60 percent of the State nonmetropolitan median household income—30 points;

(2) 70 percent of the State nonmetropolitan median household income—20 points;

(3) 80 percent of the State nonmetropolitan median household income—10 points; or

(4) 90 percent of the State nonmetropolitan median household income—5 points.

(c) *Other priorities.* Points will be assigned for one or more of the following initiatives:

(1) Project is consistent with, and is reflected in, the State Strategic Plan—10 points;

(2) Project is for health care—10 points; or

(3) Project is for public safety—10 points.

(d) *Discretionary.* (1) The State Director may assign up to 15 points to a project in addition to those that may be scored under paragraphs (a) through (c) of this section. These points are to address unforeseen exigencies or emergencies, such as the loss of a community facility due to an accident or natural disaster or the loss of joint financing if Agency funds are not committed in a timely fashion. In addition, the points will be awarded to projects benefiting from the leveraging of funds in order to improve compatibility and coordination between the Agency and other agencies' selection systems and for those projects that are the most cost effective.

(2) In selecting projects for funding at the National Office level, additional points will be awarded based on the priority assigned to the project by the State Office. These points will be awarded in the manner shown below. Only the three highest priority projects for a State will be awarded points. The Administrator may assign up to 30 additional points to account for geographic distribution of funds, emergency conditions caused by economic problems, natural disasters, or leveraging of funds.

Priority	Points
1	5
2	3
3	1

§ 3570.68 Selection process.

Each request for grant assistance will be carefully scored and prioritized to determine which projects should be selected for further development and funding.

(a) *Selection of applications for further processing.* The approval official will, subject to paragraph (b) of this section, authorize grants for those eligible preapplications with the highest priority score. When selecting projects, the following circumstances must be considered:

(1) Scoring of project and scores of other applications on hand;

(2) Funds available in the State allocation; and

(3) If other Community Facilities financial assistance is needed for the project, the availability of other funding sources.

(b) *Lower scoring projects.* (1) In cases when preliminary cost estimates indicate that an eligible, high-scoring application is not feasible, or would require grant assistance exceeding 50 percent of a State's current annual allocation, or an amount greater than that remaining in the State's allocation, the approval official may instead select the next lower-scoring application for further processing provided the high-scoring applicant is notified of this action and given an opportunity to review the proposal and resubmit it prior to selection of the next application.

(2) If it is found that there is no effective way to reduce costs, the approval official, after consultation with the applicant, may request an additional allocation of funds from the National office.

§ 3570.69 Environmental review, intergovernmental review, and public notification.

All grants awarded under this subpart, including grant-only awards, are subject to the environmental requirements of 7 CFR part 1940, subpart G, to the intergovernmental review requirements of RD Instruction 1940–J (available in any Rural Development office), and the public information process in 7 CFR 1942.17(j)(9).

§ 3570.70 Other considerations.

Each application must contain the comments, necessary certifications, and recommendations of appropriate Federal or State regulatory or other agency or institution having expertise in the planning, operation, and management of similar facilities as required by 7 CFR parts 1942, subparts A and C, and 3575, subpart A. Proposals for facilities financed in whole or in part with Agency funds will be coordinated with appropriate Federal, State, and local agencies as required by the following:

(a) Grants under this subpart are subject to the provisions of 7 CFR 1942.17(k) which include title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, and the regulations issued thereto. Certain housing-related projects, such as nursing homes, group homes, or assisted-living facilities, must comply with the requirements of the Fair Housing Act.

(b) Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace are applicable to CFG and grantees. See 7 CFR part 3017 and RD Instruction 1940–M (available in any Rural Development office) for further guidance.

(c) Restrictions on lobbying. Grantees must comply with the lobbying restrictions set forth in 7 CFR part 3018.

(d) Civil Rights Impact Analysis, RD Instruction 2006–P (available in any Rural Development office), and "Civil Rights Impact Analysis Certification."

§§ 3570.71–3570.74 [Reserved]

§ 3570.75 Grantee contracts.

The requirements of 7 CFR 1942.4, 1942.17(e), 1942.17(l), 1942.118, and 1942.119 will be applicable when agreements between grantees and third parties are involved.

§ 3570.76 Planning, bidding, contracting, and construction.

Planning, bidding, contracting, and construction will be handled in accordance with 7 CFR 1942.9, 1942.18, and 1942.126.

§§ 3570.77–3570.79 [Reserved]

§ 3570.80 Grant closing and delivery of funds.

(a) "Community Facilities Grant Agreement" will be used as the grant agreement between the Agency and the grantee and will be signed by the grantee before grant funds are advanced.

(b) Approval officials may require applicants to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds and that use and disposition conditions apply to the property as provided by 7 CFR parts 3015, 3016, or 3019, as subsequently modified.

(c) Agency grant funds will be disbursed and monitored in accordance with 7 CFR 1942.17(p), 1942.123, and 1942.127.

(d) Grant funds will not be disbursed until they are actually needed by the applicant and all borrower, Agency, or other funds are expended, except when:

(1) Interim financing of the total estimated amount of loan funds needed during construction is arranged,

(2) All interim funds have been disbursed, and

(3) Agency grant funds are needed before RHS or other loans can be closed.

(e) If grant funds are available from other agencies and are transferred for disbursement by RHS, these grant funds will be disbursed in accordance with the agreement governing such other agencies' participation in the project.

§ 3570.81–3570.82 [Reserved]

§ 3570.83 Audits.

(a) Audits will be conducted in accordance with 7 CFR 1942.17(q)(4), except as provided in this section.

(b) Grantees who are not required to submit an audit report will, within 60 days following the end of the fiscal year in which any grant funds were expended, furnish RHS with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense report signed by an appropriate official of the organization or other documentation as determined appropriate by the approval official.

§ 3570.84 Grant servicing.

Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O.

§ 3570.85 Programmatic changes.

The grantee shall obtain prior Agency approval for any change to the objectives of the approved project. (For construction projects, a material change in approved space utilization or functional layout shall be considered such a change.) Failure to obtain prior approval of changes to the approved project or budget may result in suspension, refund, or termination of grant funds.

§ 3570.86 [Reserved]

§ 3570.87 Grant suspension, termination, and cancellation.

Grants may be suspended or terminated for cause or convenience in accordance with 7 CFR parts 3015, 3016, or 3019, as applicable.

§ 3570.88 Management assistance.

Grant recipients will be supervised to the extent necessary to ensure that facilities are constructed in accordance with approved plans and specifications and to ensure that funds are expended for approved purposes.

§ 3570.89 [Reserved]

§ 3570.90 Exception authority.

An RHS official may request, and the Administrator or designee may make, in individual cases, an exception to any requirement or provision of this subpart or address any omission of this subpart if the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's interest.

§ 3570.91 Regulations.

Grants under this part will be in accordance with 7 CFR parts 3015, 3016, or 3019, as applicable, and any conflicts between those parts and this part will be resolved in favor of applicable 7 CFR parts 3015, 3016, or 3019.

§ 3570.92 [Reserved]

§ 3570.93 Regional Commission grants.

(a) Grants are sometimes made by Federal Regional Commissions (designated under Title V of the Public Works and Economic Development Act of 1965) for projects eligible for RHS assistance. RHS has agreed to administer such funds in a manner similar to administering RHS assistance.

(b) The transfer of funds from a Federal Regional Commission to RHS will be based on specific applications determined to be eligible for an authorized purpose in accordance with the requirements of RHS and the Federal Regional Commission.

(c) The Appalachian Regional Commission (ARC) is authorized under the Appalachian Regional Development Act of 1965 to serve the Appalachian region. ARC grants are handled in accordance with the ARC Agreement which applies to all ARC grants administered by Rural Development. Therefore, a separate Project Management Agreement between RHS and ARC is not needed for each ARC grant.

(d) Grants by other Federal Regional Commissions are handled in accordance with a separate Project Management Agreement between the respective Federal Regional Commission and RHS for each Commission grant or class of grants administered by RHS.

(e) When the Agency has funds in the project, no charge will be made for

administering Federal Regional Commission grant funds.

(f) When RHS has no loan or grant funds in the project, an administrative charge will be made pursuant to the Economy Act (31 U.S.C. 1535).

§§ 3570.94–3570.99 [Reserved]

§ 3570.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0173. You are not required to respond to this collection of information unless it displays a valid OMB control number.

Dated: June 1, 1999.

Inga Smulkstys,

Deputy Under Secretary, Operations & Management, Rural Development.

[FR Doc. 99–15106 Filed 6–16–99; 8:45 am]

BILLING CODE 3410–XV–U

FEDERAL ELECTION COMMISSION

11 CFR Part 9034

[Notice 1999–9]

Matching Credit Card and Debit Card Contributions in Presidential Campaigns

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission has adopted new regulations that allow contributions made by credit or debit card, including contributions made over the Internet, to be matched under the Presidential Primary Matching Payment Account Act. "Matchable contributions" are those which, when received by candidates who qualify for payments under the Presidential Primary Matching Payment Account Act, are matched by the Federal Government. The new rules provide that credit and debit card contributions, including those made over the Internet, are matchable to the extent provided by law, provided that controls and procedures are in place to detect excessive and prohibited contributions. Please note that further documentation requirements may be addressed in the Commission's upcoming final rules governing public financing of presidential primary and general election candidates.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9039(c).

FOR FURTHER INFORMATION CONTACT: N. Bradley Litchfield, Associate General Counsel, or Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530 (toll free).

SUPPLEMENTARY INFORMATION: The Commission is publishing today revisions to its regulations at 11 CFR 9034.2 and 9034.3 to permit the matching of credit card and debit card contributions, including contributions received over the Internet, under the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* ("Matching Payment Act"). Please note that other revisions to the Commission's rules concerning the public financing of presidential primary and general election campaigns will be addressed in a separate document. In addition, the Commission may address further documentation requirements of these new rules in that document.

Debit card contributions are deducted directly from the contributor's checking, savings, or other financial account. Credit card contributions are billed to the contributor and are usually processed by a third-party entity.

Under the Matching Payment Act, if a candidate for the presidential nomination of his or her party agrees to certain conditions and raises in excess of $5,000 in contributions of $250 or less from residents of each of at least 20 States, the first $250 of each eligible contribution is matched by the Federal Government. 26 U.S.C. 9033, 9034. In the past the Commission has declined to match credit card contributions, although it has allowed them in other contexts. The Commission has always held contributions submitted for matching to a higher documentation standard, because the matching fund program involves the disbursement of millions of dollars in taxpayer funds. However, the Commission has now determined that such contributions may be matched under certain circumstances.

On December 16, 1998, the Commission published a Notice of Proposed rulemaking ("NPRM") in which it sought comments on a wide range of issues involved in the public financing of presidential primary and general election campaigns. 63 FR 69524 (Dec. 16, 1998). While the NPRM did not specifically seek comments on credit card and Internet contributions, it stated that the Commission would welcome comments on "other aspects of the public financing process that could be addressed in these regulations." *Id.* at 69532.

In response to the NPRM, several commenters urged the Commission to match qualified contributions made by credit or debit card over the Internet. These commenters included America Online ("AOL"); Aristotle Publishing, Inc.; the Democratic National Committee ("DNC"); the Republican National Committee ("RNC"); and a joint comment by Lyn Utrecht and Eric Kleinfeld of Ryan, Phillips, Utrecht, & MacKinnon, and Patricia Fiori. In addition, the Commission held a public hearing on March 24, 1999, at which representatives of AOL, the DNC, the RNC, and Ms. Utrecht testified on this issue. After considering the comments, testimony and other relevant material, the Commission has decided to authorize the matching of such contributions under the circumstances described below.

It is well established that the Administrative Procedure Act ("APA") requires only that an agency give notice which contains "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b)(3). Under the APA, the final rule must be a "logical outgrowth" of the proposed rule on which it solicited comments. *Chocolate Manufacturers Ass'n* v. *Block*, 755 F.2d 1098 (4th Cir. 1985).

Since these rules are not major rules within the meaning of 5 U.S.C. 804(2), the Matching Payment Act controls the legislative review process. *See* 5 U.S.C. 801(a)(4), Small Business Enforcement Fairness Act, Pubic Law 104–121, section 251, 110 Stat. 857, 869 (1996). Section 9039(c) of Title 26, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Matching Payment Act be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on Friday, June 11, 1999.

Explanation and Justification

A matchable contribution for purposes of the Matching Fund Act is generally defined at 26 U.S.C. 9034(a) as "a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address." The Commission's regulations at 11 CFR 9034.2(b) define the term *written instrument* to mean a check written on a personal, escrow or trust account representing or containing the contributor's personal funds; a money order; or any similar negotiable instrument." The written instrument must contain the full name and signature of the contributor(s), the amount and date of the contribution, and the mailing address of the contributor(s). 11 CFR 9034.2(c). The Commission's rules at 11 CFR 9034.3(c) state that "a contract, promise, or agreement, whether or not legally enforceable, such as a pledge card or credit card transaction" is a non-matchable contribution.

All contributions received in connection with Federal elections are subject to the limitations and prohibitions of the Federal Election Campaign Act ("FECA" or the "Act"), 2 U.S.C. 431 *et seq.* The Act prohibits corporations, labor organizations and national banks from making any contribution in connection with a Federal election, 2 U.S.C. 441b(a). The Act also prohibits contributions by Federal contractors, 2 U.S.C. 441c, and by foreign nationals who are not permanent legal residents, 2 U.S.C. 441e. Contributions by persons whose contributions are not prohibited by the Act are subject to the limits set out in 2 U.S.C. 441a(a), generally $1,000 per candidate per election to Federal office. 2 U.S.C. 441a(a)(1). Individual contributions to candidates and political committees may not aggregate more than $25,000 in any calendar year. 2 U.S.C. 441a(a)(3).

The Commission considered the possibility of matching credit card contributions in 1983 but declined to match such payments "because credit cards present problems for ensuring that the requirements of matchability are met." 48 FR 5224, 5228 (Feb. 4, 1983). The Commission cited as examples of such problems the fact that credit card contributions made by phone would lack the contributor's signature; determining the source of the funds used for the contributions could be complicated, since some accounts that appear to be personal are actually paid for by corporations; and candidates would be requesting more in matching funds than they receive in contributions, since credit card companies deduct varying amounts to pay for their services. *Id.*

The Commission has, however, authorized the use of credit cards for unmatched contributions since 1978. *See* Advisory Opinion ("AO") 1978–68. It has also authorized corporations to reimburse their Political Action Committees ("PAC") for service charges incurred by credit card contributions, AO 1984–45; automatic fund transfers from contributors' bank accounts to committee accounts, AO 1989–26; contributions and membership dues to be paid to a PAC via credit card, AO 1990–4; and campaigns to solicit contributions to be made by advance authorization of credit card charges, AO 1991–1.

In AO 1978–68 the Commission assumed that credit card issuers would follow their usual and normal collection procedures with respect to obtaining payment from persons who used their cards to make political contributions; and that credit card issuers, as well as the companies processing the credit card charges, would render their services in the ordinary course of business and receive the usual and normal charge for their services, i.e., the prevailing charge for the services at the time they were rendered. *See* 11 CFR 100.4(a)(1)(iii)(B). Otherwise, the difference would constitute an in-kind corporate contribution in violation of 2 U.S.C. 441b. The Commission is making the same assumptions for purposes of this rulemaking.

The Commission is making this change for several reasons. The use of credit cards has expanded dramatically since this issue was last considered in 1983. The Commission is convinced that credit and debit card contributions present no greater danger of fraud than do other contributions, if adequate precautions are taken. This approach also allows matching contributions to be made over the Internet, consistent with the Commission's expressed interest in utilizing this evolving medium where appropriate in FECA and public funding contexts.

Contributions Made Over the Internet—Background

The Commission has interpreted its regulations to be consistent with contemporary technological innovations where the use of the technology would not compromise the intent of law. However, the Commission believes that additional precautions must be taken when credit and debit card contributions are made over the Internet, because there is no direct paper transfer involved in such transactions. In contrast, if a credit card contribution is solicited over the telephone, the person taking the information can inform the contributor directly of the Act's limits and prohibitions, and check any potentially troublesome information, such as a foreign residential address. Where contributions are solicited by mail or other printed material, the recipient has a written document setting out the Act's requirements and prohibitions for permanent reference.

In AO 1995–9, the Commission authorized political contributions to be made via credit card over the Internet, provided that safeguards were in place to screen out excessive and prohibited contributions. It subsequently authorized the *solicitation* of matchable contributions over the Internet, in AO 1995–35. However, the requester of that AO sought permission only to solicit funds over the Internet—contributors were asked to mail the resulting contributions to the campaign in the form of personal checks. Those who commented on the current NPRM asked the Commission to match contributions that are both solicited and paid for by credit card over the Internet, thus eliminating this middle step.

On March 18, 1999, the Commission received Advisory Opinion Request 1999–9, which sought to accomplish this same result through the AO process. The Commission approved that request on June 10, 1999, but made its approval contingent on final promulgation of the regulations following the Congressional review period.

The Commission has determined in these advisory opinions that certain conditions and procedures are sufficient to allay concerns over the receipt of prohibited contributions using credit cards, and to meet other FECA requirements. While the Commission is not mandating any particular language or procedures for this purpose, it notes that the following measures constitute "safe harbors" which have already been deemed satisfactory. Additional information on this topic will be included in the Commission's Guideline for Presentation in Good Order ("PIGO"), which is made available to all candidates who qualify for funding under the Matching Payment Act, as well as to other interested parties. *See* 11 CFR 9033.1(b)(9).

Section 9034.2(b) The "Written Instrument" Requirement

The Commission is amending paragraph (b) of section 9034.2 to clarify the meaning of the term *written instrument* in the context of contributions by credit or debit card. Consistent with the *Black's Law Dictionary* definition discussed below, the new rule specifically states that this term covers either a transaction slip or other writing signed by the cardholder, or in the case of such a contribution made over the Internet, an electronic record of the transaction created and transmitted by the cardholder, and including the name of the cardholder and the card number, which can be maintained electronically and reproduced in a written form by the

recipient candidate or candidate's committee.

Black's Law Dictionary defines *written instrument* as "[s]omething reduced to writing as a means of evidence, and as the means of giving formal expression to some act or contract" (6th Ed., 1990, at 1612). Clearly this would cover credit card transactions that were "reduced to writing" at some stage of the process. In fact, there is a small but growing body of case law holding that computer records also constitute written instruments, as long as they can be printed out in paper form. *Clyburn* v. *Allstate Insurance Co.*, 826 F.Supp. 955, 956 (D.S.C. 1993); *People* v. *Perry*, 605 N.Y.S.2d 790, 199 A.D.2d 889 (1993); *Colonial Dodge, Inc.* v. *Chrysler Corporation*, 11 F.Supp.3d 737, 750–51 (D.Md. 1996); *see also People* v. *LeGrand*, 439 N.Y.S.2d 695, 81 A.D.2d 945 (1981) (credit card vouchers and receipts held to be "written instruments" for purposes of state forgery statute).

While the use of the Internet for campaign contributions does not entail a "written instrument" in the traditional sense, this does not foreclose its use for this purpose. The Commission stated in AO 1995–9 that, in order to be valid under the FECA, electronic transactions of this nature must entail the creation and maintenance of a complete and reliable "paper trail" for recordkeeping, disclosure, and audit purposes. The campaign can then print out these forms as required. Please note that the Commission is not requiring campaigns to print out these records at the time they are received, but only that they be kept in a form which will allow them to be printed out as needed.

Section 9034.2(c) Definition of Signature

The Commission is revising paragraph (c) of section 9034.2 to clarify that the term signature means, in the case of a contribution by a credit or debit card, either an actual signature by the cardholder who is the donor on a transaction slip or other writing, or in the case of such a contribution made over the Internet, the full name and card number of the cardholder who is the donor, entered and transmitted by the cardholder.

The Commission does not believe that the term *signature* can be extended to telephone transactions where the only record is being created wholly by the recipient committee. While the use of electronic signatures is becoming increasingly common, it is universally understood that it is the signatory's (in this case, the donor's) act of entering his or her name that represents a legal act. However, if the committee sends out a voucher and receives a contributor-signed return of the voucher, or obtains some other verification of the contribution from the contributor, the credit card contribution initially approved over the telephone could then be matched.

Section 9034.2(c)(8) Credit and Debit Card Contributions, Including Those Made Over the Internet

Section 9034.2(c)(8)(i) General Requirement

This section establishes the requirements for matching credit and debit card contributions; including those received over the Internet. It generally states at paragraph (c)(8)(i) that such contributions are matchable, provided that the requirements of 11 CFR 9034.2(b) concerning a written instrument and of 11 CFR 9034.2(c) concerning a signature are satisfied. As explained above, it excludes telephone transactions where the only record is being created wholly by the recipient committee.

Section 9034.2(c)(8)(ii) Prohibited Contributions

The new rules state at paragraph (c)(8)(ii) that credit card and debit card contributions will be matched, if evidence is submitted by the committee that the contributor has affirmed that the contribution is from personal funds and not from funds otherwise prohibited by law.

In order to comply with this provision, a committee should take steps to insure that controls and procedures are in place to minimize the possibility of contributions by foreign nationals, by Federal Government contractors, and by labor organizations, or by an individual using corporate or other business entity credit accounts. Such controls and procedures should also help the recipient committee identify contributions made by the same individual using different or multiple credit card accounts; and contributions by two or more individuals who are each authorized to use the same account, but where the legal obligation to pay the account only extends to one (or more) of the card holders, and not to all of them.

In Advisory Opinion 1999–9 the requester outlined numerous steps and procedures that campaign intended to take to screen for prohibited and excessive contributions. In Advisory Opinion 1995–9 the Commission approved other specific procedures for this purpose. While these regulations do not mandate all of these procedures, campaigns are still required to make reasonable efforts to prevent receipt of prohibited or excessive contributions. In Advisory Opinion 1999–9, for instance, to screen further for corporate or business entity cards, the committee explained that it intended to take advantage of the fact that corporate or business entity credit cards are generally billed directly to the entity's offices, rather than to an individual's home. If the billing and residential addresses provided by the prospective donor were different, the committee's web site would display a message noting the discrepancy and reminding the donor that it cannot accept contributions made on corporate or business entity credit cards, or on any card that does not represent the contributor's own personal funds. It was noted at the Commission's public hearing that similar action could be taken in an effort to bar prohibited contributions from foreign nationals, if the residence address was outside the United States. However, the rules do not prescribe particular language and procedures to assure that these concerns are met.

If contributions are not rejected for one of the foregoing reasons, soliciting campaigns present them for payment by the credit card company or other servicing entity in the usual manner. That entity will, in turn, ascertain that the name, address and other identifying information provided by the contributor matches that on record. If so, it will forward the amount of the contribution, less applicable fees, to the campaign. In the case of a debit card transaction, the financial institution that administers the account will forward the money to the campaign without this intermediate step. The receipt of the money by the campaign will serve as confirmation that the financial institution or other processing entity considers the transaction to be legal.

Section 9034.3(c) Non-Matchable Contributions

The Commission is revising section 9034.3(c) to delete from the definition of non-matchable contributions the term "credit card transactions," because it has determined that credit card contributions may be matched under the circumstances set forth in this document.

Other Issues

Best Efforts

Treasurers of political committees are required to exercise "best efforts" to report all contributions, 2 U.S.C. 432(i), and to include in these reports the complete identification of each contributor whose contributions aggregate more than $200 per calendar year. 2 U.S.C. 434(b)(3)(A). For an individual, "identification" means the full name, mailing address, occupation and employer. 2 U.S.C. 431(13). A contributor's failure to provide this information does not bar the recipient committee from accepting the contribution, since the FECA requires only that the committee make "best efforts" to obtain it. However, the Commission's rules at 11 CFR 104.7(b)(2) require the recipient to make one oral or written follow-up attempt to obtain the contributor information for any contribution that exceeds $200 per calendar year.

The Commission is not revising its "best efforts" regulations in this rulemaking because those rules apply to all categories of political committees, including presidential campaign committees that qualify for matching Federal payments under 26 U.S.C. 9031 *et seq.* Furthermore, Commission regulations impose additional documentation requirements for matchable contributions whether or not a presidential campaign has exerted "best efforts" to obtain the contributor information that it is required to report under 2 U.S.C. 434(b)(3)(A). *See* 11 CFR 9036.1(b)(1)(i) and (ii) and 9036.2(b)(1)(v). Nevertheless, the Commission notes that the use of computer technology to solicit and receive matchable contributions through the Internet does present new options for a committee's compliance with the "best efforts" rules.

The requesters of both AO 1995–9 and 1999–9 stated that, if a contributor did not provide the required donor information, he or she would immediately receive another message asking again for the information. Some witnesses at the public hearing stated that contributors are more likely to provide information when prompted to do so by a computer than they might in other circumstances. In AO 1995–9, the Commission determined that, in the unique case of a contribution received over the Internet, the request could consist of an electronic message sent to the contributor's e-mail address. Any such request must be made after the committee receives the confirmation discussed above, and must meet the specific "best efforts" requirements set forth in 11 CFR 104.7(b)(2).

Credit Card Costs

The Commission has reconsidered the concern which it expressed in 1983 over the percentage of credit card contributions that could be matched, and determined that the costs of processing credit and debit card contributions should be an allowable fundraising expense. Several commenters and witnesses pointed out that the costs of processing credit card contributions may be a significantly smaller cost to the campaign than the expenses associated with direct mail solicitations, holding a physical fundraising event such as a dinner or a reception, or paying fundraising consultants.

Retroactive Application

These regulations will have retroactive application to otherwise qualified credit and debit card contributions made on January 1, 1999 and thereafter, unless Congress and the President disapprove the regulations. Now that the Commission has determined that credit and debit card contributions may be matched, it believes it is appropriate to retroactively match such contributions, since many presidential campaigns will have engaged in substantial fundraising by the time these rules take effect. Since matching funds will not be disbursed until after the start of the matching payment period on January 1, 2000, 26 U.S.C. 9032(6), 9037, this provides ample notice to those campaigns that wish to utilize this fundraising approach.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that these regulations do not affect a substantial number of entities, and most covered entities are not "small entities" for purposes of the Regulatory Flexibility Act. Therefore the rules would not have a significant economic effect on a substantial number of small entities.

List of Subjects 11 CFR Part 9034

Campaign funds, recordkeeping and reporting requirements.

For the reasons set forth in the preamble, Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations is amended to read as follows:

PART 9034—ENTITLEMENTS

1. The authority citation for Part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

2. Section 9034.2 is amended by revising paragraph (b), by adding a sentence at the end of the introductory text of paragraph (c), and by adding new paragraph (c)(8), to read as follows:

§ 9034.2 Matchable contributions.

* * * * *

(b) For purposes of this section, the term *written instrument* means a check written on a personal, escrow or trust account representing or containing the contributor's personal funds; a money order; any similar negotiable instrument; or, for contributions by credit or debit card, a paper record, or an electronic record that can be reproduced on paper, of the transaction. For purposes of this section, the term *written instrument* also means, in the case of a contribution by a credit card or debit card, either a transaction slip or other writing signed by the cardholder, or in the case of such a contribution made over the Internet, an electronic record of the transaction created and transmitted by the cardholder, and including the name of the cardholder and the card number, which can be maintained electronically and reproduced in a written form by the recipient candidate or candidate's committee.

(c) * * * For purposes of this section, the term *signature* means, in the case of a contribution by a credit card or debit card, either an actual signature by the cardholder who is the donor on a transaction slip or other writing, or in the case of such a contribution made over the Internet, the full name and card number of the cardholder who is the donor, entered and transmitted by the cardholder.

* * * * *

(8) Contributions by credit or debit card are matchable contributions, provided that:

(i) The requirements of paragraph (b) of this section concerning a written instrument and of paragraph (c) of this section concerning a signature are satisfied. Contributions by credit card or debit card where the cardholder's name and card number are given to the recipient candidate or candidate's committee only orally are not matchable.

(ii) Evidence is submitted by the committee that the contributor has affirmed that the contribution is from personal funds and not from funds otherwise prohibited by law.

3. Section 9034.3 is amended by removing the phrase "or credit card transaction" in paragraph (c).

Dated: June 11, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–15253 Filed 6–16–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–66–AD; Amendment 39–11196; AD 99–13–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 206L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to BHTC Model 206L–4 helicopters. This action requires a reduction in the retirement lives of certain collective idler links and collective levers, and re-identifying certain collective idler links and collective levers. This amendment is prompted by the discovery of two types of collective idler links and collective levers—manufactured from different materials—that are identified with the same part numbers but should have substantially different retirement lives. The actions specified in this AD are intended to prevent use of a collective idler link (link) or collective lever (lever) beyond its retirement life, which could lead to failure of the link or lever and subsequent loss of control of the helicopter.

DATES: Effective July 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 2, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–66–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, Fort Worth, Texas 76193, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on BHTC Model 206L–4 helicopters. Transport Canada advises that certain part-numbered links and levers are manufactured from different materials (some from forged material and others from rolled plate stock); however, the links and levers are identified with the same part number. The links and levers manufactured from forged material have a longer retirement life than those manufactured from rolled plate stock.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 206L–98–110, dated May 6, 1998, which provides instructions for differentiating the differently-manufactured links and levers and re-identifying certain links and levers. Transport Canada classified this service bulletin as mandatory and issued AD No. CF–98–20, dated August 5, 1998, in order to assure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 206L–4 helicopters of the same type design registered in the United States, this AD is being issued to prevent use of a link or lever beyond its retirement life, which could lead to failure of the link or lever and subsequent loss of control of the helicopter. This AD requires determining which type of link and lever is installed on the helicopter, a reduction in the service life of certain links and levers, and re-identifying certain links and levers. The actions are required to be accomplished in accordance with the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, determining which types of link and lever are installed on the helicopter and re-identifying certain links and levers; reducing the retirement lives of certain links and levers; and replacing those links and levers that have reached or exceeded these revised retirement lives are required within 25 hours time-in-service, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 78 helicopters will be affected by this AD, that it will take approximately 0.5 work hour to identify and replace a link and lever, if necessary, and 1 work hour to re-identify the link and lever, and that the average labor rate is $60 per work hour. Required parts will cost a maximum of $8,880 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $692,640.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–66–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–13–03 Bell Helicopter Textron Canada: Amendment 39–11196. Docket No. 98–SW–66–AD.

Applicability: Model 206L–4 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 25 hours time-in-service, unless accomplished previously.

To prevent use of a collective idler link (link) or collective lever (lever) beyond its retirement life, which could lead to failure of the link or lever and subsequent loss of control of the helicopter, accomplish the following:

(a) Determine the part numbers and serial numbers of the link and the lever in accordance with Part I of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 206L–98–110, dated May 6, 1998 (ASB).

(b) Revise the Airworthiness Limitations section of the applicable maintenance manual to reflect the retirement lives in hours as stated in step 5, Part I of the Accomplishment Instructions in the ASB.

(c) Remove any link or lever that has reached its retirement life and replace it with an airworthy link or lever.

(d) Re-identify links and levers that do not have a serial number listed in Notes A or B of step 5, Part I of the Accomplishment Instructions in the ASB by marking the links and levers in accordance with Part II of the Accomplishment Instructions in the ASB. Re-identified links, P/N 206–010–446–107FM, and re-identified levers, P/N 206–010–447–109FM, have the same retirement lives as links, P/N 206–010–446–107, and levers, P/N 206–010–447–109, respectively.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The identification, service life determination, and re-identification of the link and lever shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin No. 206L–98–110, dated May 6, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on July 2, 1999.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–98–20, dated August 5, 1998.

Issued in Fort Worth, Texas, on June 8, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–15363 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–17–AD; Amendment 39–11195; AD 99–13–02]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332C, L, L1, and L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters, that currently requires conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. This amendment requires the same corrective actions required by the existing AD; however, the applicability is reduced to encompass only certain part-numbered fuel filters. This amendment is prompted by jammed fuel filter by-pass valves and new

information that justifies a reduction in the applicability of the superseded priority letter AD. The actions specified by this AD are intended to prevent engine power loss due to fuel starvation, which could cause one or both engines to flameout and a subsequent forced landing.

DATES: Effective July 2, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 2, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, Technical Support, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone 800–232–0323, fax 972–641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Southwest Region, 2601 Meacham Blvd, Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On August 20, 1998, the FAA issued Priority Letter AD 98–18–09, applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters, to require, within 25 hours time-in-service (TIS) and any subsequent time the fuel filter clogged caution lights illuminate, conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. That action was prompted by reports of jammed fuel filter by-pass valves discovered during routine maintenance. That condition, if not corrected, could result in engine power loss due to fuel starvation, which could cause one or both engines to flameout and a subsequent forced landing.

Since the issuance of that AD, the Direction Generale De L'Aviation Civile (DGAC) has issued revised AD's which specify that the AD's are only applicable to helicopters with the following part-numbered fuel filters installed:

Vendor part No.	Eurocopter France part No.
–4020P25	(704A44620031)
–4020P25–1	(704A44620034)
–4020P25–2	(704A44620035)
–4020P25–3	(704A44620036)

The DGAC, which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, C1, L, L1, and L2 helicopters. The DGAC advises that jammed valves could result in power loss due to fuel starvation, which could cause one or both engines to flameout. The DGAC issued AD 98–318–071(A)R1 and AD 98–319–012(A)R1, both dated November 4, 1998, applicable to Eurocopter France Model AS 332C, C1, L, L1, and L2 helicopters. (The Model AS 332C1 does not have a United States type certificate.)

The FAA has reviewed Eurocopter France Service Telex 00067, dated July 24, 1998 (Service Bulletin No. 01.00.56), which describes procedures for verifying that the valve is correctly closed in each engine fuel filter, conducting a filter clogging warning test on helicopters with certain part-numbered fuel filters installed and, if necessary, replacing a jammed valve with an airworthy valve.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, L1, and L2 helicopters of the same type design, this AD supersedes Priority Letter AD 98–18–09 to require conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. The actions are required to be accomplished in accordance with the service bulletin described previously.

None of the Model AS 332C, L, L1, and L2 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 3 work hours to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD would be $180 per helicopter, assuming no valve would need to be replaced.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–17–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–11195, to read as follows:

AD 99–13–02 Eurocopter France: Amendment 39–11195. Docket No. 99–SW–17–AD. Supersedes Priority Letter AD 98–18–09, Docket No. 98–SW–38–AD.

Applicability: Eurocopter France Model AS 332C, L, L1, and L2 helicopters, with any of the following part-numbered fuel filters installed, certificated in any category:

Vendor part No.	Eurocopter France part No.
–4020P25	(704A44620031)
–4020P25–1	(704A44620034)
–4020P25–2	(704A44620035)
–4020P25–3	(704A44620036)

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent power loss due to fuel starvation, which could cause one or both engines to flameout and a subsequent forced landing, accomplish the following:

(a) Within 25 hours time-in-service (TIS) and after any subsequent flight during which either or both fuel filter clogged caution lights illuminate:

(1) Verify that the fuel filter by-pass valve (valve) is correctly closed in each engine fuel filter in accordance with paragraph CC.1), Eurocopter France Service Telex 00067 (Service Bulletin No. 01.00.56), dated July 24, 1998 (SB).

(2) If a valve is jammed (open or closed), clean the valve in accordance with paragraph CC.2)B) of the SB or replace the valve with an airworthy valve. Repeat the requirements of paragraph (a)(1) of this AD.

(3) Conduct a "filter" clogging warning test (test) in accordance with paragraphs CC.2), CC.2)A) and CC.2)B) of the SB.

(4) If a jammed valve (open or closed) is detected during the test, clean the valve in accordance with paragraph CC.2)B) of the SB or replace the valve with an airworthy valve. Repeat the requirements of paragraph (a)(3) of this AD.

(5) When the test result is satisfactory, repeat the requirements of paragraph (a)(1) of this AD.

(b) Within 25 hours TIS, insert a copy of this AD into the Rotorcraft Flight Manual (RFM) or make the following pen and ink addition to the RFM Emergency Procedure for fuel filter clogged caution light illumination: "If both fuel filter clogged caution lights illuminate, land as soon as practicable."

(c) If both filter clogged caution lights illuminate, after landing, either:

(1) Accomplish the requirements of paragraph (a) of this AD before further flight, or,

(2) Replace both filter cartridges with airworthy filter cartridges and fly to a location where the requirements of paragraph (a) of this AD must be accomplished before further flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Standards Staff.

(e) Special flight permits will not be issued.

(f) The inspection shall be done in accordance with Eurocopter France Service Telex 00067, dated July 24, 1998, (Service Bulletin No. 01.00.56). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, Technical Support, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone 800–232–0323, fax 972–641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 2, 1999.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 98–318–071(A)R1 and AD 98–319–012(A)R1, both dated November 4, 1998.

Issued in Fort Worth, Texas, on June 8, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–15362 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–05]

Establishment of Class E Airspace; Escobas, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Escobas, TX.

EFFECTIVE DATE: The direct final rule published at 64 FR 15675 is effective 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5793.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 1, 1999, (64 FR 15675). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule

advised the public that no adverse comments were anticipated, and that unless a written adverse comment or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 10, 1999.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–15388 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–06]

Revision of Class E Airspace; Guthrie, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Guthrie, OK.

EFFECTIVE DATE: The direct final rule published at 64 FR 15674 is effective 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5793.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 1, 1999, (64 FR 15674). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 10, 1999.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–15387 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–07]

Revision of Class E Airspace; Shawnee, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Shawnee, OK.

EFFECTIVE DATE: The direct final rule published at 64 FR 15673 is effective 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5793.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 1, 1999, (64 FR 15673). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 10, 1999.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–15386 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–04]

Revision of Class E Airspace; Lake Charles, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Lake Charles, LA.

EFFECTIVE DATE: The direct final rule published at 64 FR 15676 (corrected at 64 FR 19268) is effective 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5793.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 1, 1999, (64 FR 15676) and published correction on April 20, 1999, (64 FR 19268). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 10, 1999.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–15389 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for clothes washers.

EFFECTIVE DATE: September 15, 1999.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION:

The Appliance Labeling Rule ("Rule") was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.[1] The Rule covers eight categories of major household appliances. Clothes washers are among those categories. The Rule also covers pool heaters, 59 FR 49556 (Sept. 28, 1994), and contains requirements that pertain to fluorescent lamp ballasts, 54 FR 28031 (July 5, 1989), certain plumbing products, 58 FR 54955 (Oct. 25, 1993), and certain lighting products, 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specificed DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rules requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under § 305.10 of the Rule the Commission will publish new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

Manufacturers of clothes washers have made the required annual submissions of data for this product category. In analyzing the data, the Commission has found that there has been a significant change of more than 15% in the ranges. Accordingly, the Commission is publishing new ranges of comparability for the clothes washer category. These ranges will supersede the current ranges for clothes washers, which were published originally on April 20, 1998 (63 FR 19398), and which became effective August 12, 1998.

In consideration of the foregoing, the Commission revises Appendix F of its Appliance Labeling Rule by publishing the following ranges of comparability for use in required disclosures (including labeling) for clothes washers manufactured on or after September 15, 1999. In addition, as of this effective date, manufacturers must base the disclosures of estimated annual operating cost required at the bottom of the EnergyGuide for clothes washers on the 1999 Representative Average Unit Costs of Energy for electricity (8.22 cents per kiloWatt-hour) and natural gas (68.8 cents per therm) that were published by DOE on January 5, 1999, 64 FR 487, and by the Commission on February 17, 1999, 64 FR 7785.

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for clothes washers are due March 1.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. Thus, the amendments will not have a "significant economic impact on a substantial number of small entities" (5 U.S.C. 605). The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require "collections of information" (*i.e.*, recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget ("OMB"), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084–0069). The amendment will not impose any new information collection requirements. Instead, it will provide manufacturers with revised ranges of comparability to use on the EnergyGuide labels already required by the Rule.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix F to Part 305 is revised to read as follows:

Appendix F to Part 305—Clothes Washers

Range Information: "Compact" includes all household clothes washers

with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

"Standard" includes all household clothes washers with a tub capacity of 1.6 cu. ft. or 13 gallons of water or more.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
COMPACT	.....	.....
Top Loading	537	607
Front Loading	(*)	(*)
STANDARD	.....	.....
Top Loading	294	1154
Front Loading	156	314

(*) No Data Submitted

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–15340 Filed 6–16–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 900

[Docket No. 99N–1502]

Quality Mammography Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing mammography. The amendments are intended to incorporate changes required by the Mammography Quality Standards Reauthorization Act (MQSRA). Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule under FDA's usual procedures for notice and comment to provide a procedural framework to finalize the rule in the event that the agency withdraws the direct final rule.

DATES: This regulation is effective November 1, 1999. Submit written comments on or before August 31, 1999. If FDA receives no significant adverse comments within the specified comment period, the agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the agency will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

ADDRESSES: Submit written comments on the direct final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Roger L. Burkhart, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20857, 301–594–3332.

SUPPLEMENTARY INFORMATION:

I. Background

The Mammography Quality Standards Act (Pub. L. 102–539) (the MQSA) was passed on October 27, 1992, to establish national quality standards for mammography. The MQSA required that, to lawfully provide mammography services after October 1, 1994, all facilities, except facilities of the Department of Veterans Affairs, shall be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). To become accredited and certified, a facility had to meet national quality standards to be established by the Secretary. The authority to establish these standards, to approve accreditation bodies, and to certify facilities was delegated by the Secretary to FDA.

Facilities were initially accredited and certified if they met the standards contained within the interim rules issued by FDA in the **Federal Register** of December 21, 1993 (58 FR 67558 and 67565), and amended by another interim rule published in the **Federal Register** on September 30, 1994 (59 FR 49808). More comprehensive standards were proposed by FDA in the **Federal Register** of April 3, 1996 (61 FR 14856, 61 FR 14870, 61 FR 14884, 61 FR 14898, and 61 FR 14908). After some revision in response to the approximately 8,000 comments received on the proposed rule, a final rule amending part 900 (21 CFR part 900) was published in the **Federal Register** of October 28, 1997 (62 FR 55852) (hereinafter referred to as the October 1997 final rule). The effective date of most of the new standards contained within the final rule is April 28, 1999, but a few will not become effective until October 28, 2002.

On October 9, 1998, the MQSRA (Pub. L. 105–248) became law. The basic purpose of the MQSRA was to extend the authorities established by the MQSA until September 30, 2002. However, the MQSRA also contained a requirement that was significantly different from the corresponding requirement in the October 1997 final rule (62 FR 55852). Although this MQSRA requirement will become effective on April 28, 1999, with or without the amendment of the final rule, FDA decided to amend the final rule to incorporate the change. The purpose of this amendment is to provide to the mammography facilities the convenience of being able to find all of the quality standards within a single document instead of having to consult both the October 1997 final rule and the MQSRA and to avoid confusion as to the applicable reporting requirement.

Other provisions of the MQSRA clarify the basis for some of the requirements contained within the October 1997 final rule. FDA is also amending the final rule to conform its wording of those requirements to that of the statute.

II. Changes in the Regulations

A. Reporting Requirements

Section 900.12(c)(2) (21 CFR 900.12(c)(2)) of the October 1997 final rule describes the requirements for communicating mammography results to the patients. As published in the October 1997 final rule, these requirements mandated that each mammography facility have a system to ensure that the results of each examination are communicated to the patient in a timely manner. Patients without a referring health care provider were to be sent the report of the examination (as described in § 900.12(c)(1)) directly by the mammography facility, along with a written notification or summary of the results in lay terms. It was further required by the October 1997 final rule that such self-referred patients should be referred to a health care provider when clinically indicated.

In the case of patients with a referring health care provider, § 900.12(c)(3) required that the health care provider receive the report of the examination. The facility's system for ensuring that results reached the patient could utilize the services of that health care provider to achieve that goal. There was no specific requirement that a summary in lay terms be provided to the patient with a referring health care provider.

The MQSRA amended the MQSA to specifically require that all patients, not just self-referred patients, receive directly from the mammography facility, a summary of the written report in terms easily understood by a lay person. As previously noted, this MQSRA requirement will go into effect on April 28, 1999. FDA is amending § 900.12(c)(2) to incorporate this new requirement.

B. Clarifications

The MQSRA at several points clarified the provisions of the MQSA upon which certain requirements of the interim and final rules were based. In contrast to the change in the patient reporting requirements, these clarifications became effective on October 9, 1998, the date on which the MQSRA became law. FDA is amending the regulations to similarly clarify the wording of the October 1997 final rule on these points.

1. Review Physicians

The most important function of the accreditation bodies approved by FDA is to conduct a quality review of clinical images submitted by facilities seeking accreditation. This review is the key factor in determining if the facility should be accredited and then certified. It has been recognized from the start of the MQSA program that the physicians used by the accreditation bodies to review the clinical images submitted by the facilities should meet qualifications beyond those needed to serve as interpreting physicians in mammography facilities. All accreditation bodies applying to FDA for approval must demonstrate that their reviewing physicians have the high qualifications necessary to perform such reviews before approval is given.

In section 4, the MQSRA emphasized these points by defining the physicians reviewing clinical images for the accreditation bodies as "review physicians." In the MQSRA definition, it is further recognized that the accreditation bodies can establish, with FDA approval, additional qualifications for these review physicians beyond the qualifications applicable to inspecting physicians in mammography facilities.

FDA is adding § 900.2(yy) to incorporate the MQSRA definition of "review physician" into the final rule. FDA is further amending § 900.4 in order to use the term review physician at the appropriate points. In addition, because this term could be confused with the term "reviewing interpreting physician," presently used in connection with the requirements for the mammography audit, FDA is changing the term, "reviewing interpreting physician" to "audit interpreting physician" in § 900.12(f).

2. Patient Notification

The October 1997 final rule at § 900.12(j) states that if FDA determines that any activity related to the provision of mammography at a facility presents a sufficiently serious risk to human health, the agency may require the facility to notify the patients, their physicians, and/or the public of actions that may be taken to minimize this risk. This provision was established to aid FDA in fulfilling its general responsibility under the MQSA to inform the public about facilities against which the agency has been required to take action for failure to meet the quality standards. In section 10(a), the MQSRA provided a specific statement of the agency's authority to require patient notification. FDA is amending the wording of § 900.12(j) to bring it into conformance with the wording of the MQSRA on this point.

III. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described when and how it will employ direct final rulemaking. FDA believes that this rule is appropriate for direct final rulemaking because the rule contains direct incorporations of new statutory mandates. The rule incorporates amendments to section 354(a), (e), (f), and (h) of the Public Health Service Act made by the MQSRA. FDA anticipates no significant adverse comment. Consistent with FDA's procedures on direct final rulemaking, FDA is publishing, elsewhere in this issue of the **Federal Register**, a companion proposed rule that is identical to the direct final rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received under the companion proposed rule will be considered as comments regarding the direct final rule.

FDA is providing a comment period on the direct final rule to end on August 31, 1999. If the agency receives any significant adverse comment, FDA intends to withdraw this final rule by publication of a document in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. It should be remembered, however, that the requirements themselves were established by the MQSRA. FDA must implement these statutory provisions.

In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered a significant adverse comment under this procedure. For example, a comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the comment shows how the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

If FDA withdraws the direct final rule, all comments received will be considered under the companion proposed rule in developing a final rule under the usual notice-and-comment procedures under the Administrative Procedure Act (5 U.S.C. 552 *et seq.*). If FDA receives no significant adverse comment during the specified comment period, FDA intends to publish a confirmation document in the **Federal Register** within 30 days after the comment period ends, confirming the effective date.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of these amendments under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze the impact of a rule on small entities. The Unfunded Mandates Reform Act requires (in section 201) that agencies prepare an assessment of

anticipated costs and benefits before enacting any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation).

As previously noted, the amendments explained under section II.B of this document concerning clarifications merely clarifies provisions already contained within the final rule published on October 28, 1997. The impacts of the provisions of that final rule were discussed in the preamble of the final rule (62 FR 55852 at 55961), and are unchanged by the clarifications. Any economic impact of the present amendments is related solely to the change in the patient reporting requirement mandated by the MQSRA. Given the statutory basis for extending the requirement to all mammography facilities effective April 28, 1999, FDA did not consider alternatives to implementing the requirement.

In the October 1997 final rule, FDA estimated that there were 9,800 mammography facilities that would be considered small. Moreover, FDA previously estimated the impact of a requirement for sending a lay summary of results to all patients during the development of its proposed rule of April 3, 1996 (61 FR 14856), although that requirement was removed from the October 1997 final rule in response to public comments (Ref. 1). FDA believes that these estimates remain accurate.

This earlier estimate concerning the impact of required lay summaries was based upon the assumption that an adequate lay summary of results could be provided in the great majority of cases in a brief, standardized format. Using this assumption, it was estimated that the compliance cost per examination would be $0.94, including the labor of the office worker and the cost of postage.

To convert this per examination cost to a national total, it was necessary to make several other assumptions. Using the best data and expert opinion available at the time, it was estimated that approximately 25 million mammography examinations were conducted annually in this country. Of this, it was estimated that 7.7 percent or 1,925,000 were examinations of self-referred patients. Because facilities were already required by the MQSA (and by the interim rule) to provide a lay summary of results to self-referred patients, that portion of the cost of sending lay summaries had already been included in the impact estimates made in association with the development of the interim rule of October 27, 1993.

There remained then approximately 23,075,000 patients for which this was potentially a new requirement. However, it was further estimated that 40 percent of the patients were already receiving a lay summary in some form from the facility at which they received their examinations. Thus, the new requirement would lead to additional lay summaries in only 60 percent of the referred examinations or approximately 13,845,000. At $0.94 a lay summary, the added cost would be slightly over $13 million a year.

Two major changes have occurred since the information upon which these estimates were based was collected in late 1995. Most significantly, through FDA's activities and those of other private and government groups, public awareness of the need for regular mammography examinations and public confidence that a high quality examination will be received have both increased. As a result, the number of examinations given per year has increased to an estimated 40 million. This requires increasing the costs estimated above by 60 percent. Postage rates have also gone up $0.01 per letter thus the cost per lay summary would increase from $0.94 to $0.95. The combined impact of these two changes is to increase the estimate of the annual incremental costs to meet this new requirement to approximately $21 million.

For the great majority of cases, the assumption that the lay summaries can be provided in brief, standardized format is valid. However, in approximately 10 percent of the cases, the overall assessment of the findings is expected to be "Suspicious" or "Highly suggestive of malignancy." In such cases, the facility is required to "make reasonable attempts to ensure that the results are communicated to the patients as soon as possible."

Facilities that accept self-referred patients are already required by the final rule to make such attempts for cases with an overall assessment of "suspicious" or "highly suggestive of malignancy." Based upon the assumption that the attempt would involve a 5 minute telephone conversation of the interpreting physician with the patient, a cost of $8.93 per examination was estimated. This cost would be in addition to the $0.95 estimated cost for the written lay summary, which would still need to be sent. Assuming that this would be a new cost for 10 percent of the 60 percent of the referred patients among the 40 million receiving examinations annually, the incremental cost for these contacts is approximately $21.4 million.

The total annual incremental cost due to this new requirement, therefore, would be approximately $42.4 million. Previously, the annual cost for compliance with the interim and final MQSA rules was estimated at $61.5 million (Ref. 2). Adding the cost of compliance with this new requirement brings the total annual cost of compliance with the final rule as amended to approximately $103.9 million.

Compliance with the new requirement would also be expected to increase the benefits from mammography. Mammography is the most effective technique presently available for the early detection of breast cancer. Early detection of breast cancer followed by prompt treatment can avert mortalities that can result if treatment is delayed until the cancer reaches a more advanced stage. In addition, the cost and severity of the treatment methods will in general be less when the cancer is treated at an early stage. Even in cases where the assessment is negative, there is expected to be a benefit arising from relieving the anxiety of the patient about the possible results of the examination through prompt reporting of results to the patient. But for these benefits to be gained, the patient must be informed of the results of the examination so that necessary followup actions can be promptly taken. Unfortunately, although it is not possible to make a quantitative estimate of the number of such cases, there have been frequent complaints about patients receiving the results of their examinations after an undue delay or not at all. Studies have also shown that direct communication of results to the patient by the mammography facility, as compared to traditional communication procedures where the facility communicates only with the referring provider, produces an improvement in compliance with followup recommendations (Ref. 3). The new requirement should thus add to the benefits expected from interim and final rules, which were previously estimated to range from $284 to $408 million (61 FR 55986), primarily due to a gain in averted mortalities (Ref. 2).

Based on these analyses, FDA has determined that the rule is consistent with the principles set forth in the Executive Order, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act. The wording of the requirement related to sending lay summaries to referred patients directly parallels that of the MQSRA and so, in accordance with the Executive Order, maximizes the net benefits to the extent allowed by that statute. Similarly, in accordance with the Regulatory Flexibility Act, the impact of the rule on small entities has been analyzed. Finally, as noted previously, the incremental annual expenditures (beyond those already incurred from the previous interim and final rules) required by the rule are estimated at $42.4 million and thus do not exceed $100 million in 1 year so the rule does not come under the requirements of the Unfunded Mandates Reform Act.

VI. Paperwork Reduction Act of 1995

This direct final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate are the times for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Lay Summary of Examination Results to Patients.

Description: This regulation merely implements a statutory information collection requirement; there is no additional burden attributable to the regulation. This direct final rule would conform the requirements of this section with the requirement of section 6 of Pub. L. 105–248 states that: "(IV) whether or not such a physician is available or there is no such physician, a summary of the written report shall be sent directly to the patient in terms easily understood by a lay person." To produce the required lay summary, the mammography facilities will review the medical report of each patient's examination and collect from it the necessary information.

Respondent Description: Businesses and other for-profit organizations, nonprofit organizations.

As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection provisions of this direct final rule by August 31, 1999 to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. At the close of the 75-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VII. References

The following references are on display at the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Eastern Research Group, "Cost and Benefit Analysis of Regulations Under the Mammography Quality Standards Act of 1992–Preliminary Final," March 14, 1996.

2. Eastern Research Group, "Economic Impact Analysis of Regulations Under the Mammography Quality Standards Act of 1992–Final," October 7, 1997.

3. Agency for Health Care Policy and Research (AHCPR), "Quality Determinants of Mammography," AHCPR Pub. No. 95–0632, October 1994.

List of Subjects in 21 CFR Part 900

Electronic products, Health facilities, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 900 is amended as follows:

PART 900—MAMMOGRAPHY

1. The authority citation for part 900 continues to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

2. Section 900.2 is amended by adding paragraph (yy) to read as follows:

§ 900.2 Definitions.

* * * * *

(yy) *Review physician* means a physician who, by meeting the requirements set out in § 900.4(c)(5), is qualified to review clinical images on behalf of the accreditation body.

3. Section 900.4 is amended by revising the last sentence of paragraph (a)(4); and by revising paragraphs (c)(3)(ii), (c)(5) introductory text, (c)(5)(i), (c)(5)(ii), and (c)(6)(ii) to read as follows:

§ 900.4 Standards for accreditation bodies.

(a) * * *

(4) * * * Such individuals who review clinical or phantom images under the provisions of paragraphs (c) and (d) of this section or who visit facilities under the provisions of paragraph (f) of this section shall not review clinical or phantom images from or visit a facility with which such individuals maintain a relationship, or when it would otherwise be a conflict of interest for them to do so, or when they have a bias in favor of or against the facility.

* * * * *

(c) * * *

(3) * * *

(ii) All clinical images submitted by a facility to the accreditation body shall be reviewed independently by two or more review physicians.

* * * * *

(5) Review physicians. Accreditation bodies shall ensure that all of their review physicians:

(i) Meet the interpreting physician requirements specified in § 900.12(a)(1) and meet such additional requirements as have been established by the accreditation body and approved by FDA;

(ii) Are trained and evaluated in the clinical image review process, for the types of clinical images to be evaluated by a review physician, by the accreditation body before designation as review physicians and periodically thereafter; and

* * * * *

(6) * * *

(ii) If a review physician identifies a suspicious abnormality on an image submitted for clinical image review, the accreditation body shall ensure that this information is provided to the facility and that the clinical images are returned to the facility. Both shall occur no later than 10-business days after

identification of the suspected abnormality.

* * * * *

4. Section 900.12 is amended by revising paragraphs (c)(2) and (f)(3) and the first sentence of paragraph (j)(2) to read as follows:

§ 900.12 Quality standards.

* * * * *

(c) * * *

(2) *Communication of mammography results to the patients.* Each facility shall send each patient a summary of the mammography report written in lay terms within 30 days of the mammographic examination. If assessments are "Suspicious" or "Highly suggestive of malignancy," the facility shall make reasonable attempts to ensure that the results are communicated to the patient as soon as possible.

(i) Patients who do not name a health care provider to receive the mammography report shall be sent the report described in paragraph (c)(1) of this section within 30 days, in addition to the written notification of results in lay terms.

(ii) Each facility that accepts patients who do not have a health care provider shall maintain a system for referring such patients to a health care provider when clinically indicated.

* * * * *

(f) * * *

(3) *Audit interpreting physician.* Each facility shall designate at least one interpreting physician to review the medical outcomes audit data at least once every 12 months. This individual shall record the dates of the audit period(s) and shall be responsible for analyzing results based on this audit. This individual shall also be responsible for documenting the results and notifying other interpreting physicians of their results and the facility aggregate results. If followup actions are taken, the audit interpreting physician shall also be responsible for documenting the nature of the followup.

* * * * *

(j) * * *

(2) If FDA determines that the quality of mammography performed by a facility, whether or not certified under § 900.11, was so inconsistent with the quality standards established in this section as to present a significant risk to individual or public health, FDA may require such facility to notify patients who received mammograms at such facility, and their referring physicians, of the deficiencies presenting such risk, the potential harm resulting, appropriate remedial measures, and such other relevant information as FDA may require. * * *

Dated: June 9, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15292 Filed 6–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 8822]

RIN 1545–AW28

Federal Employment Tax Deposits—De Minimis Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the deposit of Federal employment taxes. The final regulations adopt the rules of temporary regulations that change the de minimis deposit rule for quarterly and annual return periods from $500 to $1,000. The regulations affect taxpayers required to make deposits of Federal employment taxes.

DATES: *Effective date:* These regulations are effective June 17, 1999.

Applicability date: For dates of applicability, see § 31.6302–1(f)(4).

FOR FURTHER INFORMATION CONTACT: Vincent Surabian, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 31, Employment Taxes and Collection of Income Tax at Source. On June 16, 1998, temporary and final regulations (TD 8771) relating to the deposit of Federal employment taxes under section 6302 of the Internal Revenue Code were published in the **Federal Register** (63 FR 32735). A notice of proposed rulemaking (REG–110403–98) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (63 FR 32774). No comments were received from the public in response to the notice of proposed rulemaking.

Explanation of Provisions

These final regulations adopt the rules of the temporary regulations. Under these rules, a taxpayer that has accumulated Federal employment taxes of less than $1,000 for a return period (quarterly or annual, as the case may be) does not have to make deposits but may remit its full liability with a timely filed return for the return period. The regulations are effective with respect to quarterly return periods beginning on or after July 1, 1998, and annual return periods beginning on or after January 1, 1999.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vincent Surabian, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by removing the entry for Section 31.6302–1T to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 31.6302–1, paragraph (f)(4) is revised to read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(f) * * *

(4) *De Minimis rule.* For quarterly return periods beginning on or after July 1, 1998, and annual return periods beginning on or after January 1, 1999, if the total amount of accumulated employment taxes for the return period is less than $1,000 and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited.

* * * * *

§ 31.6302–1T [Removed]

Par. 3. Section 31.6302–1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 9, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–15182 Filed 6–16–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 100

[CGD08–99–041]

RIN 2115–AE46

Special Local Regulations; 4th of July Celebration Ohio River Mile 469.2–470.5, Cincinnati, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting a temporary final rule for the 4th of July Celebration. This event will be held on July 4, 1999, from 8 p.m. until 11 p.m. at Cincinnati, Ohio. This rule is necessary to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: This temporary final rule is effective from 8 p.m. until 11 p.m. on July 4, 1999.

ADDRESSES: Unless otherwise indicated, all documents referred to in this document are available for review at Marine Safety Office, Louisville; 600 Martin Luther King Jr. Place; Room 360; Louisville, KY 40202–2230.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeff Johnson, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, at (502) 582–5194, ext. 39.

SUPPLEMENTARY INFORMATION:

Drafting Information: The drafters of this document are Lieutenant Jeff Johnson, Project Officer, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, no notice of proposed rulemaking for this temporary final rule has not been published, and good cause exists for making this rule effective less than 30 days after the date of publication. Following normal rulemaking would be impracticable. The details of the event were not finalized in sufficient time for us to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this temporary final rule is a fireworks display. The event is sponsored by JACOR Events. The fireworks will be launched from a deck barge in the Ohio River around mile 469.9, mid-channel. Non-participating vessels will be able to transit the area after the river is reopened.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). the Coast Guard expects the economic impact of this rule to be so minimal, because of the event's short duration, that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial, because of the event's short duration. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act, 5 U.S.. 601 et seq., that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no information-collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism Assessment

The Coast Guard has analyzed this temporary final rule in accordance with the principles and criteria of Executive Order 161 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under section 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35

2. Add a temporary § 100.35–T08–041 to read as follows:

§ 100.35–T08–041 Ohio River at Cincinnati, Ohio.

(a) *Regulated Area:* Ohio River Mile 469.2–470.5.

(b) *Special Local Regulation:* All persons and vessels not registered with the sponsors as participants or official patrol vessels are spectators. "Participants" are those persons and vessels identified by the sponsor as taking part in the event. The "official patrol" consists of any Coast Guard, public, State, or local law-enforcement vessel, or any sponsor-provided vessel, assigned to patrol the event. The Coast Guard "Patrol Commander" is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Marine Safety Office, Louisville, to act as a Patrol Commander.

(1) No vessel may anchor, block, loiter in, or impede the transit of participants or official patrol vessels in the regulated

area during effective dates and times, unless cleared to enter by an official patrol vessel.

(2) When hailed or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels must comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time he or she deems it necessary for the protection of life or property, and is available on VHF–FM Channel 16 by using the call sign "PATCOM".

(c) *Effective Date:* This temporary final rule will be effective from 8 p.m. to 11 p.m. July 4, 1999.

Dated: June 4, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 99–15442 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AH05

Schedule for Rating Disabilities; Fibromyalgia

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule without change an interim final rule adding a diagnostic code and evaluation criteria for fibromyalgia to the Department of Veterans Affairs' (VA's) Schedule for Rating Disabilities. The intended effect of this rule is to insure that veterans diagnosed with this condition meet uniform criteria and receive consistent evaluations.

DATES: *Effective Date:* This final rule is effective June 17, 1999. The interim rule adopted as final by this document was effective May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Policy and Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: On May 7, 1996, VA published in the **Federal Register** an interim final rule with request for comments (61 FR 20438). The rule added a diagnostic code, 5025, and evaluation criteria for fibromyalgia to the section of the VA Schedule for Rating Disabilities (38 CFR part 4) that addresses the musculoskeletal system (38 CFR 4.71a). A 60-day comment period ended July 8, 1996, and we received three comments, one from two physicians in the Department of Medicine at The Oregon Health Sciences University, and two from VA employees.

The evaluation criteria for fibromyalgia under diagnostic code 5025 have one requisite that applies to all levels: "[w]ith widespread musculoskeletal pain and tender points, with or without associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud's-like symptoms." The 40-, 20-, and 10-percent evaluation levels are additionally based on whether these findings are constant, or nearly so, and refractory to therapy; are episodic, but present more than one-third of the time; or require continuous medication for control. One commenter felt that the use of the phrase "with or without" as used in diagnostic code 5025 is confusing and might be interpreted as rendering the symptoms that follow the phrase as superfluous and unnecessary in the evaluation of fibromyalgia.

Some individuals with fibromyalgia have only pain and tender points; others have pain and tender points plus stiffness; still others have pain and tender points plus stiffness and sleep disturbance; etc. As a shorter way of stating this, we have used the phrase "with or without," followed by a list of symptoms, to indicate that any or all of these symptoms may be part of fibromyalgia, but none of them is necessarily present in a particular case. When symptoms in addition to pain and tenderness are present, they may be used as part of the assessment of whether fibromyalgia symptoms are episodic or constant. When none of the symptoms on the list is present, the determination of whether the condition is episodic or constant must be based solely on musculoskeletal pain and tender points. The term "with or without" is also used in § 4.116 (Schedule of ratings—gynecological conditions and disorders of the breast) of the rating schedule under diagnostic code 7619, "Ovary, removal of," where the criterion for a zero-percent evaluation is "removal of one with or without partial removal of the other." We believe that in both cases the phrase "with or without," rather than adding confusion, better defines the potential scope of the condition under evaluation. We therefore make no change based on this comment.

The same commenter questioned whether the intent is to place a ceiling of 40 percent on the evaluation of fibromyalgia despite the presence of one or more of the symptoms following the phrase "with or without."

As the evaluation criteria indicate, there may be multi-system complaints in fibromyalgia. If signs and symptoms due to fibromyalgia are present that are not sufficient to warrant the diagnosis of a separate condition, they are evaluated together with the musculoskeletal pain and tender points under the criteria in diagnostic code 5025 to determine the overall evaluation. The maximum schedular evaluation for fibromyalgia in such cases is 40 percent. If, however, a separate disability is diagnosed, e.g., dysthymic disorder, that is determined to be secondary to fibromyalgia, the secondary condition can be separately evaluated (see 38 CFR 3.310(a)), as long as the same signs and symptoms are not used to evaluate both the primary and the secondary condition (see 38 CFR 4.14 (Avoidance of pyramiding)). In such cases, fibromyalgia and its complications may warrant a combined evaluation greater than 40 percent. Since these rules are for general application, they need not be specifically referred to under diagnostic code 5025.

Another commenter referred to a statement in the supplementary information to the interim final rule that indicated that fibromyalgia is a benign disease that does not result in loss of musculoskeletal function. The commenter said that while it is not a malignant disease which leads to anatomic crippling, the result of persistent chronic pain is often musculoskeletal dysfunction.

The statement regarding the lack of loss of musculoskeletal function is supported by medical texts which state, for example, that objective musculoskeletal function is not impaired in fibromyalgia ("The Manual of Rheumatology and Outpatient Orthopedic Disorders" 349 (Stephen Padgett, Paul Pellicci, John F. Beary, III, eds., 3rd ed. 1993)); that the syndrome is not accompanied by abnormalities that are visible, palpable, or measurable in any traditional sense; and that the patient must recognize the physical benignity of the problem ("Clinical Rheumatology" 315 (Gene V. Ball, M.D. and William J. Koopman, M.D., 1986)). These medical texts confirm that fibromyalgia does not result in objective musculoskeletal pathology. The criteria we have established to evaluate disability due to fibromyalgia are therefore based on the symptoms of fibromyalgia rather than on objective loss of musculoskeletal function.

The same commenter said that more could have been said about the wide clinical spectrum of fibromyalgia and the associated stress response which may lead to clinical problems of psychopathology, inappropriate behavior, deconditioning, hormonal imbalance, and sleep disorder.

The evaluation criteria do include a broad spectrum of possible symptoms, and sleep disturbance is one of them. As discussed above, any disability, including a mental disorder, that is medically determined to be secondary to fibromyalgia, can be separately evaluated. The rating schedule is, however, a guide to the evaluation of disability for compensation, not treatment (see 38 CFR 4.1), and it is unnecessary for that purpose to include a broad discussion of the clinical aspects of fibromyalgia. We therefore make no change based on this comment.

The same commenter said that it is important to stress that fibromyalgia may co-exist with other rheumatic disorders and have an additive effect on disability.

If two conditions affecting similar functions or anatomic areas are present, and one is service-connected and one is not (a situation that is not unique to rheumatic disorders), the effects of each are separately evaluated, if feasible. When it is not possible to separate the effects of the conditions, VA regulations at 38 CFR 3.102, which require that reasonable doubt on any issue be resolved in the claimant's favor, dictate that the effects be attributed to the service-connected condition. Since there is an established method of evaluating co-existing conditions, there is no need to stress the point that other diseases may co-exist with fibromyalgia, resulting in additive effects, and we make no change based on this comment.

The commenter also stated that the correct diagnosis of fibromyalgia and the exclusion of other rheumatic conditions are of paramount importance in ensuring a successful treatment program.

The diagnosis of fibromyalgia and exclusion of other rheumatic disorders are functions of the examiner and outside the scope of the rating schedule, which, as noted earlier, is a guide for the evaluation of disability for purposes of compensation, not treatment. We therefore make no change based on this comment.

One commenter stated that claimants with fibromyalgia will present with limitation of motion of various joints of the body, and the rating agency will have to take into consideration pain on movement and functional loss due to pain (see 38 CFR 4.40 and 4.45). The commenter felt that the proposed scheme invites separate ratings for limitation of motion of each joint.

Fibromyalgia is a "nonarticular" rheumatic disease ("The Merck Manual" (1369, 16th ed. 1992)), and objective impairment of musculoskeletal function, including limitation of motion of the joints, is not present, in contrast to the usual findings in "articular" rheumatic diseases. Joint examinations in fibromyalgia are necessary only to exclude other rheumatic diseases because physical signs other than tender points at specific locations are lacking. The pain of fibromyalgia is not joint pain, but a deep aching, or sometimes burning pain, primarily in muscles, but sometimes in fascia, ligaments, areas of tendon insertions, and other areas of connective tissue (Ball and Koopman, 315). The evaluation criteria require that the pain be widespread, and that the symptoms be assessed based on whether they are constant or episodic, or require continuous medication, but they are not based on evaluations of individual joints or other specific parts of the musculoskeletal system. We believe the evaluation criteria make clear the basis of evaluation, and we therefore make no change based on this comment.

Based on the rationale set forth in the interim final rule document and this document, we are adopting the provisions of the interim final rule as a final rule without change. We also affirm the information in the interim final rule document concerning the Regulatory Flexibility Act.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Accordingly, the interim final rule amending 38 CFR part 4 which was published at 61 FR 20438 on May 7, 1996, is adopted as a final rule without change.

Approved: March 24, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 99–15342 Filed 6–16–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 133–4087c; FRL–6354–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on the latest revision to the Pennsylvania State Implementation Plan (SIP) consisting of the plan the Commonwealth will use to conduct the ongoing evaluation of its enhanced inspection and maintenance (I/M) program. With the submission of this program evaluation plan, Pennsylvania has remedied all conditions that EPA had placed upon approval of the Commonwealth's enhanced I/M program. Therefore, EPA is today converting its conditional approval of Pennsylvania's enhanced I/M program SIP revisions to full approval, in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 2, 1999 without further notice, unless EPA receives adverse written comment by July 19, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. They may also be viewed at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 814–2176, or via e-mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 1997, EPA published in the **Federal Register** a final rulemaking action (62 FR 4004) granting conditional interim approval to Pennsylvania's enhanced I/M program SIP revision submitted by Pennsylvania on March 22, 1996, and formally amended on June 27, 1996 and on July 29, 1996. The interim nature of the approval was granted under authority provided by the National Highway Systems Designation Act of 1995 (NHSDA). At the end of the specified 18-month interim approval period, the Commonwealth was required to make a demonstration of the effectiveness of their I/M program network, per NHSDA requirements, based upon actual program data. The conditional nature of the approval was granted under the Clean Air Act and required Pennsylvania to remedy, within a 12-month period, certain major program deficiencies. EPA's January 28, 1997 approval also required the Commonwealth to remedy certain minor deficiencies within the 18-month interim approval period.

Pennsylvania submitted supplements to its I/M SIP to EPA on November 13, 1997; February 24, 1998; and August 21, 1998. The purpose of these supplemental submittals was to bolster the enhanced I/M SIP to include updated information and to satisfy the conditions imposed by EPA in its January 28, 1998 conditional interim approval.

On September 2, 1998, EPA published a direct final rule in the **Federal Register** (63 FR 46664) approving Pennsylvania's November 13, 1997 and February 24, 1998 SIP revisions. That approval action removed four major conditions and seven minor conditions identified in EPA's January 28, 1997 interim conditional approval of Pennsylvania's I/M SIP.

On September 16, 1998, EPA published a direct final rule in the **Federal Register** (63 FR 49436) approving Pennsylvania's August 21, 1998 SIP revision supplement consisting of the Commonwealth's network effectiveness demonstration (per requirements of section 348 of the NHSDA). However, EPA received adverse comments upon the direct final rule, and withdrew it on October 21, 1998 in accordance with federal rulemaking procedures. EPA has since issued a final rule approving the August 21, 1998 submittal of the Commonwealth's network effectiveness demonstration. In the preamble to that final rule EPA addressed the adverse comments. That final rule also removed the remaining minor conditions identified in EPA's January 28, 1997 interim conditional approval of Pennsylvania's I/M SIP. As a result of these two rulemaking actions, EPA converted its interim conditional approval of the Commonwealth's I/M program to a conditional approval—leaving only a single condition remaining to be addressed. That one remaining condition was the submittal by Pennsylvania of a plan for conducting the required ongoing evaluation of its enhanced I/M program. On November 25, 1998, Pennsylvania submitted the required evaluation plan to fulfill this last condition. The November 25, 1998 submittal, as amended on March 3, 1999, is the subject of this rulemaking.

II. Summary of the Commonwealth's Submittal

On November 25, 1998, the Commonwealth of Pennsylvania submitted a supplement to its enhanced I/M SIP consisting of its plan for conducting the required ongoing program evaluation of its enhanced I/M program. On March 3, 1999, the Commonwealth bolstered the November 25, 1998 submittal to include documentation that public notice and hearing had been conducted on its chosen evaluation plan. The submitted plan reflects the Commonwealth's choice of an EPA-approved method for conducting an ongoing program evaluation. The purpose of the Commonwealth's November 25, 1998 and March 3, 1999 SIP submittals is to address and remedy the final condition set forth in EPA's January 28, 1997 interim conditional approval (62 FR 4004) of Pennsylvania's I/M program SIP, and codified at 40 CFR 52.2026(a)(2).

III. EPA Review of the SIP Revision

EPA conditioned its January 28, 1997 approval of the Commonwealth's SIP upon submission, by November 30 1998, of a final plan for conducting the required enhanced I/M program evaluation, which requires the use of an EPA approved methodology to be performed on 0.1 percent of the I/M subject vehicles in the Pittsburgh and Philadelphia program areas. EPA required the Commonwealth to select a methodology that complies with Federal I/M rule requirements set forth at 40 CFR 51.353(c)(3). On October 30, 1998, EPA's Office of Mobile Sources issued a guidance memorandum entitled "Guidance on Alternative I/M Program Evaluation Methods". This document outlined three EPA accepted alternative I/M program evaluation methodologies available to states to comply with the requirements of 40 CFR 51.353(c). The approved alternatives include: (1) the Sierra Research method; (2) the NYTEST (or VMAS) method; and (3) the RG240 method. The guidance also addressed the need to establish a baseline from which to determine I/M program emissions benefits, in order to fully evaluate enhanced I/M program effectiveness. For areas that had previously existing I/M programs prior to implementation of an enhanced I/M program, the guidance established a methodology for determining a benchmark, since a direct comparison between pre-program and post-program baselines for subsets of such vehicles would not be possible.

For its evaluation methodology, Pennsylvania chose to use the Sierra Research method, utilizing a correlation between another state's IM240 program and its own acceleration simulation mode (ASM) and idle testing programs, per EPA's October 30, 1998 guidance. These correlations will then be used to convert Pennsylvania's idle/ASM measurements to IM240-equivalent measurements for each vehicle. These will then form the basis for a modeled comparison between the Commonwealth's program and the benchmark IM240 program. For its benchmark comparison of estimating a baseline, Pennsylvania intends to correlate its idle/ASM program data to IM240 data from New Jersey's or Maryland's program.

IV. Final Action

EPA is hereby approving Pennsylvania's November 25, 1998 and March 3, 1999 SIP submittals.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment, since the Commonwealth's SIP revision complies with applicable guidance and with the requirements at 40 CFR 51.353(c). The Commonwealth has fully met the requirements of the relevant condition set by EPA in its January 28, 1997 conditional approval of the Pennsylvania I/M program SIP revision.

However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as a proposal to approve the SIP revision in the event adverse comments are filed. This rule will be effective on August 2, 1999 without further notice unless EPA receives adverse comment by July 19, 1999. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

EPA, through previous rulemaking actions, approved Pennsylvania's enhanced I/M program SIP revisions submitted prior to November 25, 1998. Those SIP revisions satisfied all but one of the major and minor conditions set forth by EPA in its January 28, 1997 (62 FR 4004) approval of Pennsylvania's enhanced I/M program. EPA also taken final action to approve the Commonwealth's I/M program network effectiveness demonstration, required under section 348 of the NHSDA. Because the Commonwealth has now addressed all of the deficiencies identified by EPA with respect to its enhanced I/M program SIP, EPA is acting today to incorporate by reference all of Pennsylvania's enhanced I/M SIP revisions into the Code of Federal Regulations, at 40 CFR 52.2020(c)(139).

Since EPA has previously taken final approval actions on all of Pennsylvania's enhanced I/M SIP revisions submitted prior to November 25, 1998, EPA is now providing opportunity for comment only upon today's approval of the Commonwealth's program evaluation plan—submitted on November 25, 1998 and amended on March 3, 1999.

By taking final, full approval upon Pennsylvania's submitted enhanced I/M program SIP revisions, the mandatory sanctions and Federal Implementation Plan obligations under the Clean Air Act have been satisfied. All sanctions and FIP clocks related to approval of Pennsylvania's I/M program are terminated upon the effective date of today's action.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and

is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to fully approve Pennsylvania's enhanced I/M program SIP must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(139) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(139) Revisions to the Pennsylvania State Implementation Plan adopting an enhanced motor vehicle inspection and maintenance (I/M) program, submitted on March 22, 1996, and formal amendments submitted by the Secretary of the Pennsylvania Department of Environmental Protection on June 27, 1996; July 29, 1996; November 1, 1996; October 22, 1997; November 13, 1997; February 24, 1998; August 21, 1998; November 25, 1998; and March 3, 1999.

(i) Incorporation by reference.

(A) Letter of November 13, 1997 from the Secretary of the Pennsylvania Department of Environmental Protection transmitting regulations for an enhanced motor vehicle inspection and maintenance program.

(B) Pennsylvania Department of Transportation Enhanced Motor Vehicle Inspection and Maintenance (I/M) Program regulations (contained in Title 67 of the PA Code), effective September 27, 1997.

(*1*) A definition for "temporary inspection approval indicator", added to section 175.2.

(*2*) Section 175.11

(*3*) Paragraph (f)(4) of section 175.29

(*4*) Paragraphs (a), (b), (c), and (d) of section 175.41. Paragraph (b)(3) of section 175.41. Subparagraphs (d)(2)(ii) and (d)(2)(iii), and paragraphs (e)(5) and (f)(4) of section 175.41.

(*5*) Sections 175.42, 175.43, 175.44, and 175.45.

(*6*) Sections 177.1, 177.2, 177.3, 177.21, 177.22, 177.23, 177.24, 177.51, 177.52, 177.53, 177.101, 177.102, 177.103, 177.104, 177.105, 177.106.

(*7*) Sections 177.201, 177.202, 177.203, 177.204, 177.231, 177.233, 177.251, 177.252, 177.253, 177.271, 177.272, 177.273, 177.274, 177.281, 177.282, 177.291, 177.292, 177.301, 177.302, 177.304, and 177.305.

(*8*) Sections 177.401, 177.402, 177.403, 177.404, 177.405, 177.406, 177.407, 177.408, 177.421, 177.422, 177.423, 177.424, 177.425, 177.426, 177.427, and 177.431.

(*9*) Sections 177.501, 177.502, 177.503, 177.504, and 177.521.

(*10*) Sections 177.602, 177.603, 177.605, 177.606, 177.651, 177.652, 177.671, 177.672, 177.673, and 177.691.

(*11*) Appendix A to Title 67 of the Pennsylvania Code.

(*12*) Appendix B to Title 67 of the Pennsylvania Code.

(ii) Additional Material.—Remainder of Submittals

The Commonwealth submitted materials in support of its enhanced motor vehicle inspection and maintenance (I/M) program regulation. These materials were submitted in formal SIP revisions dated: March 27, 1996; July 29, 1996; November 1, 1996; November 13, 1997; February 24, 1998; August 21, 1998; November 25, 1998; and March 3, 1999, and include:

(A) Submittal submitted under a letter dated March 22, 1996, from the Secretary of the Pennsylvania Department of Environmental Protection.

(B) Materials submitted under a letter dated June 27, 1996, from the Secretary of the Department of Environmental Protection.

(C) Materials submitted under a letter of July 29, 1996, from the Secretary of the Department of Environmental Protection.

(D) Materials submitted under a letter of November 1, 1996, from the Secretary of the Department of Environmental Protection.

(E) Materials submitted under a letter of October 27, 1997, from the Secretary of the Department of Environmental Protection.

(F) Materials submitted under a letter of February 24, 1998, from the Secretary of the Department of Environmental Protection.

(G) Documents submitted by a letter dated August 21, 1998, from the Secretary of the Department of Environmental Protection.

(H) Materials submitted by the Secretary of the Department of Environmental Protection, in a letter dated November 25, 1998, and amended by a letter dated March 3, 1999.

3. In Section 52.2026, the introductory sentence is removed and paragraph (a) and paragraph (b) are removed and reserved.

[FR Doc. 99–15163 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD–3039a; FRL–6357–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From Decorative Surfaces, Brake Shoe Coatings, Structural Steel Coatings, and Digital Imaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Maryland State Implementation Plan (SIP). These revisions establish reasonable available control technology (RACT) to limit volatile organic compound (VOC) emissions from solid resin decorative surfaces, brake shoe coatings, structural steel coatings, and digital imaging. EPA is fully approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 16, 1999 without further notice, unless EPA receives adverse written comment by July 19, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Donahue, (215) 814–2095, or by e-mail at donahue.carolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 10, 1999 and February 12, 1999, the State of Maryland submitted formal revisions to its State Implementation Plan (SIP). These SIP revisions, submitted by the Maryland Department of the Environment (MDE), consist of the control of volatile organic compound (VOC) emissions from solid resin decorative surface manufacturing, brake shoe coating operations, structural steel coating operations, and digital imaging.

II. Summary of SIP Revision

COMAR 26.11.19.07–1: Control of VOC Emissions From Solid Resin Decorative Surface Manufacturing

This new regulation establishes RACT standards to control VOC emissions from solid resin decorative surface (SRDS) operations. These operations do not fall under the requirements for other paper coatings at COMAR 26.11.19.07.

General Provisions

This section establishes definitions for the terms "particle plant operation," "related operations," "shaped goods plant," and "solid resin decorative surface operation." This new regulation applies to a person who owns or operates a solid resin decorative surface operation that is a major VOC source.

Requirements for SRDS Operations

This section establishes that SRDS facility owners or operators must control VOC emissions by venting the curing oven exhaust at each SRDS operation through a VOC control system, which consists of a condenser and carbon adsorber unit, or through another control system that is maintained and operated to reduce VOC emissions from the curing oven exhaust by 75% or more.

SRDS facility owners or operators, as well as owners and operators of shaped goods plants and related operations, must take all reasonable precautions to minimize VOC emissions from SRDS mixing vessels and storage tanks, including the use of covers on mixers except when adding or emptying materials, operator training in procedures to minimize spills and evaporative losses during the mixing and transferring of VOC containing materials, implementing programs to minimize the quantity of VOC-based materials used to clean lines or equipment, storing VOC-contaminated cloth or paper in closed containers, and implementing an effective leak inspection and maintenance program that includes monthly inspections of equipment for leaks.

Requirements for Particle Plant Operations

Particle plant owners or operators must vent the curing oven exhaust at each particle plant operation into a VOC control system consisting of a carbon adsorber unit, or other control system that is maintained and operated to reduce VOC emissions from the curing oven exhaust by 75% or more. Also, the requirements to control VOC emissions from mixing vessels and storage tanks at SRDS operations apply to particle plant operations.

Requirements for VOC Storage Tanks, Reporting and Recordkeeping Requirements

Raw material storage tanks containing VOC materials shall be equipped with vapor balance lines or conservation vents to minimize working and breathing losses. The reporting and recordkeeping requirements for affected sources are established in the source's permit to operate.

Evaluation: This revision, which regulates VOC emissions from solid resin decorative surface manufacturing, will result in significant enforceable VOC emission reductions and is acceptable to EPA.

COMAR 26.11.19.13–2: Control of VOC Emissions From Brake Shoe Coating Operations

This new regulation establishes standards for brake shoe coating operations based on VOC content in the coatings. This revision also amends COMAR 26.11.19.13B to exempt brake shoe coating operations and structural steel coating operations from Maryland's miscellaneous metal coating rule.

General Provisions

This regulation establishes definitions for the terms "brake caliper rust preventive coating (brake caliper coating)," and "brake shoe coating operation," and provides that this rule applies to owners or operators of brake shoe coating operations at a premises that has actual total VOC emissions of 20 or more pounds per day (lbs/day) from all brake shoe coating operations.

Coating Requirements and Equipment Cleanup

An owner or operator of a brake shoe coating operation may not emit VOCs unless the VOC content of the coating is less than 6.3 pounds of VOC per gallon (lbs/gal) of coating applied (0.76 kilograms per liter [kg/l]) for brake shoe coating, and 4.8 lbs/gal (0.58 kg/l) for brake caliper coating. The coatings may be applied by dipping, by spraying with high volume low pressure or electrostatic spray systems, or by other comparable high transfer efficiency methods.

Persons who own or operate a brake shoe coating operation must store all

waste materials containing VOC in closed containers, and must maintain lids or covers on all containers or vessels containing VOC when not in use.

Evaluation: This SIP revision, controlling VOC emissions from brake shoe coating operations, will result in significant enforceable VOC emission reductions. EPA has determined that COMAR 26.11.19.13–1, as well as the administrative revisions to COMAR 26.11.19.13, is approvable as a SIP revision.

COMAR 26.11.19.13–3: Control of VOC Emissions From Structural Steel Coating Operations

This regulation establishes RACT standards for the control of VOC emissions from structural steel coating operations. Structural steel coating operations apply a protective coating to manufactured components such as welded steel joists, steel beams and columns that are used to assemble buildings and other structures.

General Provisions

This regulation establishes definitions for the terms "controlled air spray system," "dip coating operation," "protective coating," and "structural steel coating operation." Owners or operators of a structural steel coating operation that has a potential to emit VOCs of 25 or more tons per year or actual VOC emissions of 20 or more lbs/day are subject to this regulation.

Requirements for Structural Steel Coating Operations

The VOC content in protective coatings is limited to 3.9 lbs/gal for dip coating operations, and 3.5 lbs/gal for any means other than dip coating, which includes controlled air spray systems or other systems approved by MDE. However, a higher VOC content coating may be used if the VOC content does not exceed the standard by more than 20%, and if it is used only between November 1 of one year and March 31 of the next year.

The owner or operator of a structural steel coating operation also must minimize VOC emissions by using detergents, high pressure water, or low VOC cleaning materials to clean lines or equipment; using enclosed containers or VOC recycling equipment to clean spray gun equipment; storing all waste containing VOC in closed containers; and maintaining lids on any VOC-bearing materials when not in use.

Evaluation: This SIP revision, which regulates VOC emissions from structural steel coating operations, will result in VOC emission reductions from coatings of girders and building components that are not covered under Maryland's miscellaneous metal coatings rule. EPA has determined that COMAR 26.11.19.13–2 is approvable as a SIP revision.

COMAR 26.11.19.18: Screen Printing and Digital Imaging

This rule amends the previous regulation .18 by adding RACT standards for digital imaging. The same RACT limits for VOC content are retained from the previous COMAR 26.11.19.18, Control of VOC Emissions from Screen Printing. COMAR 26.11.19.18 is revised to delete the old interim dates for VOC content in screen printing operations.

General Provisions

The definition for the term "digital imaging" is added to this rule. This regulation applies to the same screen printing facilities listed in the previous screen printing rule (62 FR 53544, October 15, 1997), as well as to any person who performs digital imaging at a premise which causes VOC emissions of 20 or more lbs/day from all digital imaging.

Sections B to I from the previous COMAR 26.11.19.18 have been repealed and the new sections B–G are added. This eliminates expired interim dates for limiting VOC content for screen printing and adds RACT for digital imaging. All of the limits in Maryland's screen printing rule are retained in this revision. Digital imaging owners or operators subject to this regulation may not cause VOC emissions of more than 100 lbs/day from all digital imaging on the premises.

Evaluation: Controlling VOC emissions from digital imaging will result in enforceable emissions reductions. The revision also clarifies the screen printing regulation by eliminating passed dates. These amendments to COMAR 26.11.19.18 are approvable to EPA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 16, 1999 without further notice unless EPA receives adverse comment by July 19, 1999. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Final Action

EPA is approving the SIP revisions submitted by MDE on February 10, 1999 and February 12, 1999 to control VOC emissions from solid resin decorative coatings, brake shoe coating operations, structural steel coating operations, and digital imaging.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to revisions to the Maryland SIP establishing VOC control requirements for solid resin decorative surface manufacturing, brake shoe coatings, structural steel coatings, and digital imaging, must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(142) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(142) Revisions to the Maryland State Implementation Plan submitted on February 10, 1999 and February 12, 1999 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Three letters dated February 10, 1998 and one letter dated February 12, 1999 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound (VOC) regulations in

Maryland's air quality regulations, COMAR 26.11.

(B) Regulations:

(*1*) Addition of new COMAR 26.11.19.07–1: Control of VOC Emissions from Solid Resin Decorative Surface Manufacturing, adopted by the Secretary of the Environment on May 20, 1998 and effective on June 15, 1998, including the following:

(*i*) addition of new COMAR 26.11.19.07–1.A Definitions, including definitions for the terms "particle plant operation," "related operations," "shaped goods plant," and "solid resin decorative surface (SRDS) operation."

(*ii*) addition of new COMAR 26.11.19.07–1.B Applicability.

(*iii*) addition of new COMAR 26.11.19.07–1.C General Requirements for SRDS Operations.

(*iv*) addition of new COMAR 26.11.19.07–1.D General Requirements for Particle Plant Operations.

(*v*) addition of new COMAR 26.11.19.07–1.E General Requirements for Shaped Goods Plants.

(*vi*) addition of new COMAR 26.11.19.07–1.F General Requirements for Related Operations.

(*vii*) addition of new COMAR 26.11.19.07–1.G Additional Requirements for VOC Storage Tanks.

(*viii*) addition of new COMAR 26.11.19.07–1.H Reporting and Record-Keeping Requirements.

(*2*) Addition of new COMAR 26.11.19.13–2: Control of VOC Emissions from Brake Shoe Coating Operations, adopted by the Secretary of the Environment on August 4, 1998 and effective on August 24, 1998, including the following:

(*i*) addition of new COMAR 26.11.19.13–2.A Definitions.

(*ii*) addition of new COMAR 26.11.19.13–2.B Terms Defined, including definitions for the terms "brake caliper rust preventive coating," and "brake shoe coating operation."

(*iii*) addition of new COMAR 26.11.19.13–2.C Applicability.

(*iv*) addition of new COMAR 26.11.19.13–2.D General Coating Requirements.

(*v*) addition of new COMAR 26.11.19.18.E Equipment Cleanup.

(*vi*) addition of new COMAR 26.11.19.13.B(3)(e) and (f), exempting brake shoe coating and structural steel coating operations from Miscellaneous Metal Coatings.

(*3*) Addition of new COMAR 26.11.19.13–3: Control of Volatile Organic Compounds from Structural Steel Coating Operations, adopted by the Secretary of the Environment on June 5, 1998, and effective on June 29, 1998, including the following:

(*i*) addition of new COMAR 26.11.19.13–3.A Definitions, including definitions for the terms "controlled air spray system," "dip coating operation," "protective coating," and "structural steel coating operation."

(*ii*) addition of new COMAR 26.11.19.13–3.B Applicability.

(*iii*) addition of new COMAR 26.11.19.13–3.C Coating Requirements.

(*iv*) addition of new COMAR 26.11.19.13–3.D Cleanup Requirements.

(*4*) Revision to COMAR 26.11.19.18: Control of VOC Emissions from Screen Printing and Digital Imaging, adopted by the Secretary of the Environment on August 4, 1998, and effective on August 24, 1998, including the following:

(*i*) addition of new COMAR 26.11.19.18.A(5–1), definition for the term "digital imaging."

(*ii*) deletion of existing COMAR 26.11.19.18.B–I.

(*iii*) addition of new COMAR 26.11.18.21.B Applicability.

(*iv*) addition of new COMAR 26.11.18.21.C General Requirements for Screen Printing.

(*v*) addition of new COMAR 26.11.18.21.D General Requirements for Plywood Sign Coating.

(*vi*) addition of new COMAR 26.11.18.21.E General Requirements for Plastic Card Manufacturing.

(*vii*) addition of new COMAR 26.11.19.18.F General Requirements for Digital Imaging.

(*viii*) addition of new COMAR 26.11.19.18.G Record Keeping.

(ii) Additional Material.

(A) Remainder of February 10, 1999 and February 12, 1999 Maryland State submittals pertaining to COMAR 26.11.19.07–1, .13–2, .13–3, and .18.

[FR Doc. 99–15159 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0027a, CO–001–0028a, & CO–001–0033a; FRL–6358–6]

Clean Air Act Approval and Promulgation of State Implementation Plan; Colorado; Revisions Regarding Negligibly Reactive Volatile Organic Compounds and Other Regulatory Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves three revisions to the Colorado State Implementation Plan (SIP). The SIP revisions being approved include: an update to the State's list of negligibly reactive volatile organic compounds (VOCs) to add acetone. The State also consolidated the list of negligibly reactive VOCs from Regulations No. 3 and 7 into the Common Provisions Regulation. These revisions were submitted for approval on September 16, 1997; a clarification to the definition of "applicable requirement" and corrections of typographical errors in parts A and B of Colorado Regulation No. 3. These revisions were also submitted on September 16, 1997; and an update to the list of negligibly reactive VOCs in the Common Provisions Regulation to add perchloroethylene. The State also repealed its requirements in Regulation No. 7 that required control of VOC emissions from dry cleaning facilities using perchloroethylene as a solvent. These revisions were submitted for approval on August 19, 1998. We approve these revisions because they are consistent with the requirements of the Clean Air Act (Act) and the Federal regulations.

DATES: This rule is effective on August 16, 1999 without further notice, unless we receive adverse comment by July 19, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?

EPA approves three SIP revisions from the State of Colorado. Those SIP revisions include the following:

A. The State updated its list of negligibly reactive VOCs to add acetone, as a result of revisions to the Federal definition of VOC. The State also consolidated the list of negligibly reactive VOCs from Regulations No. 3 and 7 into the Common Provisions Regulation. These regulation revisions were submitted by the Governor for approval on September 16, 1997. EPA approves all of these revisions, except for the deletion of the definition of VOC in part A of Regulation No. 3 which EPA is not acting;

B. The State adopted a clarification of the definition of "applicable requirement" and corrections of typographical errors in the State's new source review (NSR) permitting program in parts A and B of Colorado Regulation No. 3. This regulation revision was also submitted on September 16, 1997; and

C. The State updated its list of negligibly reactive VOCs in the Common Provisions Regulation to add perchloroethylene, as a result of revisions to the Federal definition of VOC. The State also repealed its requirements in section XII. of Regulation No. 7, which required control of VOC emissions from dry cleaning facilities using perchloroethylene as a solvent. These revisions were submitted on August 19, 1998. This submittal also included revisions to the Appendices of Regulation No. 3, which EPA is not acting on.

Note that the State's September 16, 1997 SIP submittal consisted of ten other separate revisions to rules and/or elements of the SIP. The other ten revisions will be, or have already been, acted on in separate **Federal Register** actions.

In addition, the State's August 19, 1998 SIP submittal included four other separate revisions to rules and/or elements of the SIP. Those other four SIP revisions will be, or have already been, acted on in separate **Federal Register** actions.

Part A of Regulation No. 3 is part of both the State's SIP and the State's title V operating permit program. Consequently, EPA will also address the revisions to Part A of Regulation No. 3 as revisions to the State's title V operating permit program in the near future.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective August 16, 1999 without further notice unless we receive adverse comments by July 19, 1999. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. What Specific Changes Were Made to Colorado SIP?

A. September 16, 1997 Submittal Regarding Negligibly Reactive VOCs

The September 16, 1997 SIP revisions regarding negligibly reactive VOCs included the following regulatory revisions:

1. The State added a definition of negligibly reactive VOCs to section I.G. of the Common Provisions Regulation. In section I.G., the State incorporated by reference the Federal list of VOCs with negligible photochemical reactivity from 40 CFR 51.100(s)(1) as revised on June 16, 1995 (61 FR 31633–31637). EPA added acetone to its list of negligibly reactive VOCs in the June 16, 1995 revisions. Section I.G. of the Common Provisions Regulation also includes, for easier reference, a list of the negligibly reactive VOCs identified in 40 CFR 51.100(s)(1).

2. The State deleted the lists of negligibly reactive VOCs in the following provisions: (a) the definition of "net emissions increase" in section I.G. of the Common Provisions Regulation; (b) section I.B.36.h. in part A of Regulation No. 3; (c) section I.D.4. in part B of Regulation No. 3; and (d) section II.B. of Regulation No. 7. These provisions now refer to the definition of negligibly reactive VOCs in the Common Provisions Regulation.

3. Last, the State deleted the definition of VOC in section I.B.67. of part A of Regulation No. 3 and instead referred to the definition of VOC in the Common Provisions Regulation.

The State made these revisions in part so that the next time the State needs to update the definition of negligibly reactive VOCs to reflect changes to the Federal definition, the State only has to revise one regulation.

B. September 16, 1997 Submittal of Clarifications and Corrections in Regulation No. 3

The September 16, 1997 submittal of Regulation No. 3 consisted of the following revisions:

1. A revision to the definition of "applicable requirement" in section I.B.9. of part A of Regulation No. 3 to indicate that permits issued by EPA under part C or D of the Act are also considered to be applicable requirements of the State's operating permit program.

2. Corrections of typographical errors in sections I.B.59(b) and V.C.12. of part A and in section III.D.2. of part B in Regulation No. 3.

C. August 19, 1998 Submittal of Revisions to the Common Provisions Regulation and Regulation No. 7

The State's August 19, 1998 submittal included the following regulatory revisions:

1. The State revised the definition of negligibly reactive VOCs in the Common Provisions Regulation to add perchloroethylene. This change was made pursuant to EPA's listing of perchloroethylene as a negligibly reactive VOC on February 7, 1996 (61 FR 4588).

2. The State also repealed the requirements in section XII. of Regulation No. 7, which required control of VOC emissions from dry cleaning facilities using perchloroethylene as a solvent. Since perchloroethylene is no longer considered to be a precursor to ozone formation, these requirements are no longer needed to protect the national ambient air quality standards (NAAQS) for ozone.

3. In addition, the State revised appendices B, C, and D of Regulation No. 3 to revise its list of hazardous air pollutants, pursuant to changes in the Federal list of hazardous air pollutants. However, these Appendices have not been approved as part of the SIP because they are not related to protection of the NAAQS. Thus, EPA is taking no action on the revisions to the Appendices of Regulation No. 3.

III. Why is EPA Taking This Action?

A. Revisions to Regulations No. 3 and 7 and the Common Provisions Regulation Regarding Negligibly Reactive VOCs

EPA finds the consolidation of the list of negligibly reactive VOCs from provisions in Regulations No. 3 and 7 into the Common Provisions Regulation to be approvable. In addition, EPA approves the revisions to the definition of negligibly reactive VOCs in the

Common Provisions Regulation since they implement revisions made to EPA's list of negligibly reactive VOCs in 40 CFR 51.100(s)(1).

However, the State's list of negligibly reactive VOCs contains some typographical errors and is not entirely consistent with the list in 40 CFR 51.100(s)(1). Because the State has incorporated by reference the Federal definition of negligibly reactive VOCs in 40 CFR 51.100(s)(1), EPA doesn't believe these typographical errors in the State's list pose any approvability concerns. EPA has notified the State of these errors and expects the State to correct these errors the next time it revises its definition of negligibly reactive VOCs. The State's definition of negligibly reactive VOCs is also not current with recent additions to the list of negligibly reactive VOCs in 40 CFR 51.100(s)(1). Specifically, on October 8, 1996, EPA added three compounds to the list of negligibly reactive VOCs (see 61 FR 52848). On August 25, 1997, EPA added sixteen compounds to the list of negligibly reactive VOCs (see 62 FR 44900). Last, on April 9, 1998, EPA added one compound to the list of negligibly reactive VOCs (see 63 FR 17331). States are not obligated to exclude from control as a VOC those compounds which EPA has found to be negligibly reactive. However, States should not include these compounds in their VOC emission inventories for determining reasonable further progress under section 182(b)(1) of the Act and should not take credit for controlling these compounds in their ozone control strategy.

EPA is not acting on the deletion of the definition of VOC in section I.B.67. of part A of Regulation No. 3, which now references the definition of VOC in the Common Provisions Regulation. The definition of VOC in the Common Provisions Regulation allows for the use of alternative or equivalent test methods to measure VOCs, rather than EPA reference test methods, upon approval by the Colorado Air Pollution Control Division. This essentially allows for a variance from the SIP, which is not allowed by section 110(i) of the Act. The same issue exists in the State's definition of VOC in Regulation No. 7. EPA notified the State of these deficiencies in a June 5, 1998 letter and informed the State that the definition of VOC in the Common Provisions Regulation and Regulation No. 7 must be revised to require EPA approval of alternative or equivalent test methods. The definition of VOC in Regulation No. 3 that is currently approved as part of the SIP provides that a source must obtain prior approval from EPA in order to use an equivalent or alternative method. Thus, EPA will not act on the deletion of the definition of VOC in Regulation No. 3 until the State corrects the definition of VOC in the Common Provisions Regulation. This definition in Regulation No. 3, which is consistent with the Act, will remain part of the EPA-approved SIP.

B. Clarifications and Minor Corrections in Regulation No. 3

EPA finds that the State's revision to the definition of "applicable requirement" in part A of Regulation No. 3 is necessary to ensure the State has adequate authority to incorporate into title V operating permits requirements from preconstruction permits issued by EPA. Thus, this revision strengthens the State's permit program, as does the correction of typographical errors in Regulation No. 3.

C. Revisions to Regulation No. 7 Repealing the Requirements for Dry Cleaners That Use Perchloroethylene as a Solvent

As stated above, EPA listed perchloroethylene as a VOC with negligible photochemical reactivity in a February 7, 1996 rulemaking (61 FR 4588). Thus, perchloroethylene is not considered to be a precursor to ozone formation and does not need to be included in SIPs to protect the ozone NAAQS. Consequently, the State repealed the provisions in section XII. of Regulation No. 7, entitled "Control of VOC Emissions from Dry Cleaning Facilities Using Perchloroethylene as a Solvent," which had previously regulated dry-cleaning plants as a source of VOCs contributing to the formation of tropospheric ozone. This is acceptable to EPA as States have the option to exclude from control those VOC compounds that EPA has found to be negligibly reactive. See, e.g., 61 FR 4588, 4590, February 7, 1996.

EPA notes, however, that perchloroethylene is listed as a hazardous air pollutant (HAP) under section 112(b) of the Act. Pursuant to section 112(d) of the Act, EPA issued national emission standards for hazardous air pollutants (NESHAPs) for two major perchloroethylene source categories: perchloroethylene dry cleaning (58 FR 49354, September 22, 1993) and halogenated solvent cleaning (59 FR 61801, December 2, 1994). Currently, the use of perchloroethylene in dry-cleaning plants is regulated as a HAP in Colorado. The provisions to address this HAP are found in 40 CFR part 63, subpart M, "National Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities," which were incorporated by reference by Colorado into its Regulation No. 8 on December 21, 1995.

D. Procedural Requirements for SIP Revisions

We also find that the State met the applicable public participation requirements of sections 110(a)(2) and 110(l) of the Act in the adoption and submittal of these SIP revisions. Sections 110(a)(2) and 110(l) of the Act provide that each revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing.

Specifically, Colorado held a public hearing on December 21, 1995 on the revisions to Regulations No. 3 and 7 and the Common Provisions Regulation regarding the State's definition of negligibly reactive VOCs, after providing thirty days of public notice. On June 20, 1996, Colorado held a public hearing on the clarification to the definition of "applicable requirement" and the correction of typographical errors in Regulation No. 3, after providing thirty days of public notice. Both of these regulatory revisions were submitted by the Governor for approval on September 16, 1997.

On November 21, 1996, Colorado held a public hearing on the revisions to the Common Provisions Regulation and Regulation No. 7 regarding perchloroethylene, after providing thirty days of public notice. This regulation revision was submitted by the Governor for approval on August 19, 1998.

We did not issue a completeness or incompleteness finding for these revisions to the SIP. Thus, pursuant to section 110(k)(1)(B) of the Act, these submittals were deemed complete by operation of law on March 22, 1998 and on January 20, 1999, respectively.

IV. What Are the Administrative Requirements Associated With This Action?

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Colorado's audit privilege and penalty immunity law (sections 13–25–126.5, 13–90–107, and 25–1–114.5 Colorado Revised Statutes (C.R.S.); S.B. 94–139, effective June 1, 1994) or its impact upon any approved provision in the SIP, including the submittal at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Colorado's audit privilege and immunity law. A State audit privilege and immunity law can affect only State

enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 114, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State Plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a State audit privilege or immunity law.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: June 2, 1999.

Carol Rushin,

Acting Regional Administrator, Region VIII.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(87) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(87) On September 16, 1997, the Governor of Colorado submitted revisions to Regulations No. 3 and 7 and the Common Provisions Regulation to update the State's list of negligibly reactive volatile organic compounds (VOCs) and to consolidate the list of negligibly reactive VOCs from Regulations No. 3 and 7 into the Common Provisions Regulation. The Governor also submitted revisions to Parts A and B of Regulation No. 3 on September 16, 1997 to amend the definition of "applicable requirement" and to correct typographical errors. On August 19, 1998, the Governor submitted revisions to the Common Provisions Regulation to update its list of negligibly reactive VOCs. The Governor also submitted revisions to Regulation No. 7 to repeal the requirements for control of VOC emissions from dry cleaning facilities using perchloroethylene as a solvent.

(i) Incorporation by reference.

(A) Common Provisions Regulation, 5 CCR 1001–2, Section I.G., definition of "negligibly reactive VOCs (NRVOCs)" and subsection h. of the definition of "net emissions increase," adopted 12/21/95, effective 3/1/96.

(B) Regulation No. 3, "Air Contaminant Emission Notices," 5 CCR 1001–5, adopted 12/21/95, effective 3/1/96, as follows: Part A, subsection h. of the definition of "net emissions increase" in Section I.B.37.; and Part B, Section IV.D.4.

(C) Regulation No. 7, "Emissions of Volatile Organic Compounds," 5 CCR 1001–9, Section II.B., adopted 12/21/95, effective 3/1/96.

(D) Regulation No. 3, "Air Contaminant Emission Notices," 5 CCR 1001–5, adopted 6/20/96, effective 8/30/96, as follows: Part A, definition of "applicable requirement" in Section I.B.9., definition of "major source (for the purposes of Part C—operating permits)" in Section I.B.59., and Section V.C.12; and Part B, Section III.D.2.

(E) Common Provisions Regulation, 5 CCR 1001–2, Section I.G., definition of "negligibly reactive VOCs (NRVOCs)" adopted 11/21/96, effective 1/30/97.

(F) Regulation No. 7, "Emissions of Volatile Organic Compounds," 5 CCR 1001–9, Section XII., adopted 11/21/96, effective 1/30/97.

[FR Doc. 99–15161 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA121–4088a; FRL–6361–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; 1990 NO_X Base Year Emission Inventory for the Philadelphia Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision request that the Commonwealth of Pennsylvania submitted on July 31, 1998 for the Philadelphia severe ozone nonattainment area. The Commonwealth submitted this SIP revision in response to the Clean Air Act, which requires all ozone nonattainment areas to submit a comprehensive inventory of oxides of nitrogen (NO_X) emissions, from all sources, for the calendar year 1990. This emission inventory is known as the 1990 base year inventory. This SIP revision applies to the Pennsylvania portion of the Philadelphia ozone nonattainment area, which consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. EPA is approving the 1990 NO_X base year inventory as a revision to Pennsylvania's SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 16, 1999, without further notice, unless EPA receives adverse written comment by July 19, 1999. If EPA receives such comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You can inspect copies of the documents relevant to this action during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, at the EPA Region III address above, or via e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

What action is EPA taking today?
What is the effect of this action?
What did Pennsylvania submit?
What is in Pennsylvania's 1990 NO_X inventory?
What does the Clean Air Act require?
Where can I get more information?
What is EPA doing in this action?
How does this document comply with the federal administrative requirements for rulemaking?

What Action Is EPA Taking Today?

EPA is approving the 1990 NO_X base year emission inventory, submitted by the Commonwealth of Pennsylvania for the Pennsylvania portion of the Philadelphia ozone nonattainment area. The inventory revision concerns NO_X emissions from point, area, highway mobile, and non-road mobile biogenic emissions in the five-county Philadelphia area.

What Is the Effect of This Action?

EPA's approval of Pennsylvania's 1990 NO_X base year inventory means that Pennsylvania has met this Clean Air Act requirement for the Philadelphia area. For more information, see the section entitled, "What Does the Clean Air Act Require?"

What Did Pennsylvania Submit?

On July 31, 1998, Pennsylvania submitted a revision to the Pennsylvania State Implementation Plan (SIP) containing the 1990 NO_X base year inventory for the Philadelphia severe ozone nonattainment area and the "Phase I" rate-of-progress plan for the Philadelphia area. The Pennsylvania portion of the Philadelphia ozone nonattainment area includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. Today's action only pertains to the 1990 NO_X base year inventory portion of Pennsylvania's July 31, 1998 submittal. In a separate rulemaking action, EPA will address the remainder of Pennsylvania's July 31, 1998 submittal related to the Philadelphia area Phase I plan.

What Is in Pennsylvania's 1990 NO_X Inventory?

The following table contains a summary of the NO_X emission inventory, broken down by source type and county.

1990 Base Year NO_X Emissions for the Philadelphia Area

[Tons per summer day (tpsd)]

County	Point	Area	Highway	Nonroad	Total
Bucks	15.96	5.36	32.16	13.09	66.57
Chester	26.97	2.84	25.98	11.25	67.04
Delaware	65.51	7.45	18.44	9.23	100.63
Montgomery	7.67	9.13	39.50	20.69	76.99
Philadelphia	45.79	22.34	42.24	17.94	128.31
Five-County Area	161.90	47.12	158.32	72.20	439.54

What Does the Clean Air Act Require?

Under the Clean Air Act (the Act), States have the responsibility to inventory emissions contributing to national ambient air quality standard nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. Section 182(a)(1) of the Act requires states containing ozone nonattainment areas classified as marginal to extreme to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources by November 15, 1992. This inventory is for calendar year 1990, and is denoted as the 1990 base year inventory. It includes both anthropogenic and biogenic sources of VOC, NO_X, and carbon monoxide (CO) emissions. The inventory is to address actual VOC, NO_X, and CO emissions for the area during peak ozone season, which is generally comprised of the summer months. All emissions from stationary point and area sources, as well as highway and non-road mobile sources, and biogenic emissions within the nonattainment area, are to be included in the compilation. The 1990 base year emissions inventory is the primary inventory from which other Clean Air Act requirements, including the periodic inventory, the rate-of-progress (ROP) target level and projection inventories, and the modeling inventory, are derived.

Where Can I Get More Information?

EPA prepared a technical support document (TSD) for this rulemaking. You may request a copy of EPA's TSD from the EPA Regional Office listed in the **ADDRESSES** section, above.

You can find more information about emission inventories in the following documents:

Emission Inventory Requirements for Ozone State Implementation Plans, Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991.

Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for 15 Percent Rate of Progress Plans, Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, October 1992.

Guidance on the Post '96 Rate-of-Progress Plan (RPP) and Attainment Demonstration (Corrected version of February 18, 1994), Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, February 18, 1994.

What Is EPA Doing in This Action?

EPA is approving Pennsylvania's 1990 NO_X emission inventory for the Philadelphia area. Pennsylvania submitted this inventory to EPA as a SIP revision on July 31, 1998.

How Does This Document Comply With the Federal Administrative Requirements for Rulemaking?

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop effective process [illegible] officials and oth[illegible] state, l[illegible]al, a[illegible] provi[illegible] ne[illegible] the [illegible]egulatory proposals

containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to EPA's approval of Pennsylvania's 1990 NOx base year inventory for the five-county Philadelphia area, must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 2, 1999.

Thomas J. Maslany,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN—Pennsylvania

2. Section 52.2036 is amended by adding paragraph (l) to read as follows:

§ 52.2036 1990 Baseyear Emission Inventory.

* * * * *

(l) EPA approves, as a revision to the Pennsylvania State Implementation Plan, the 1990 NOx emission inventory for the Philadelphia area, submitted on July 31, 1998 by the Pennsylvania Department of Environmental Protection. The submittal consists of 1990 base year point, area, highway, and non-road mobile NOx emissions inventories for the five-county Philadelphia area (Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties).

[FR Doc. 99–15267 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IA 070–1070a; FRL–6359–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the state of Iowa's section 111(d) plan for controlling emissions from existing hospital/medical/infectious waste incinerators (HMIWIs). The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act (CAA). The state plan establishes emission limits and controls for sources constructed on or before June 20, 1996.

DATES: This direct final rule is effective on August 16, 1999 without further notice, unless EPA receives adverse comment by July 19, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Information regarding this action is presented in the following order:

What are the requirements of section 129 of the CAA?
What is a section 111(d) state plan?
What is Subpart Ce?
What are the requirements for the HMIWI state plan?
What is contained in the Iowa state plan?
What are the approval criteria for the state plan?

What Are the Requirements of Section 129 of the CAA?

Section 129 of the CAA Amendments of 1990 requires EPA to set air emission standards and emission guidelines (EG) under the authority of section 111 of the CAA to reduce pollution from incinerators that burn solid waste. Incinerators that burn medical waste are classified as solid waste incinerators and therefore must be regulated.

What Is a Section 111(d) State Plan?

Section 111(d) of the CAA, "Standards of Performance For New Stationary Sources," authorizes EPA to set air emissions standards for certain categories of sources. These standards are called new source performance standards (NSPS). Once an NSPS is promulgated, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a state plan to adopt the EG into its body of regulations and submit it to EPA for approval. The state plan is called a 111(d) plan.

What Is Subpart Ce?

EPA issued regulations to reduce air pollution from incinerators that are used to burn hospital waste and/or medical/infectious waste. The NSPS at 40 CFR Part 60, Subpart Ec, and EG, Subpart Ce, were promulgated by EPA on September 15, 1997 (62 FR 48374). These rules apply to new and existing incinerators used by hospitals and health care facilities, as well as to incinerators used by commercial waste disposal companies to burn hospital waste and/or medical/infectious waste. The EG applies to existing HMIWIs that commenced construction on or before June 20, 1996.

The Subpart Ce EG is not a direct Federal regulation but is a "guideline" for states to use in regulating existing HMIWIs. The EG requires states to submit for EPA approval a section 111(d) state plan containing air emission regulations and compliance schedules for existing HMIWI.

What Are the Requirements for the HMIWI State Plan?

A section 111(d) state plan submittal must meet the requirements of 40 CFR Part 60, Subpart B, sections 60.23 through 60.26, and 40 CFR Part Ce. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, and compliance assurance and enforcement requirements. The technical requirements for HMIWI sources are contained in Subpart Ce. A state will generally address the HMIWI technical requirements by adopting by reference Subpart Ce. The section 111(d) state plan is required to be submitted within one year of the EG promulgation date, i.e., by September 15, 1998.

Prior to submittal to EPA, the state must make available to the public the state plan and provide opportunity for public comment. If a state fails to have an approvable plan in place by September 15, 1999, sources will be subject to a Federal plan on that date.

What Is Contained in the Iowa State Plan?

The state of Iowa submitted its section 111(d) state plan to EPA for approval on February 11, 1999. The state adopted the NSPS by reference into state Rule 23.1(2)"ttt" and the EG requirements into Rule 23.1(5)"b" effective December 23, 1998. The section 111(d) state plan contains:

1. A demonstration of the state's legal authority to implement the section 111(d) state plan.
2. State Rule 23.1(5)"b" as the enforceable mechanism.
3. An inventory of sources in Table 1.
4. An emissions inventory in Table 2.
5. Emission limits that are as protective as the EG.
6. A compliance date 36 months after the effective date of the Federal approval of this state plan or a final compliance date not later than September 15, 2002.
7. Testing, monitoring, and inspection requirements.
8. Reporting and recordkeeping requirements for the designated facilities.
9. Operator training and qualification requirements.
10. Requirements for the development of waste management plans.
11. A record of the public notice and hearing requirements.

12. Provisions for progress reports to EPA.

13. Title V permit application due date.

14. A final compliance date not later than three years after approval of the state plan or September 15, 2002, whichever is earlier.

What Are the Approval Criteria for the State Plan?

The state plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, Subpart B, "Adoption and Submittal of State Plans for Designated Facilities," and 40 CFR 60, 60.30e through 60.39e, Subpart Ce, "Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators." A detailed discussion of our evaluation of the state plan is included in our technical support document (TSD) located in the official file for this action and available from the EPA contact listed above. The state plan meets all of the applicable approval criteria.

Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, we are approving Iowa's January 29, 1999, section 111(d) state plan for the control of HMIWI emissions, except for those facilities located in Indian country. Any facilities located in Indian country will be subject to a Federal plan. In Iowa there are no known HMIWIs in Indian country.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 16, 1999 without further notice unless the Agency receives adverse comments by July 19, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 16, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, a summary of the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

Under the RFA, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State plan approvals under section 111 of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal state plan approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 1, 1999.

William Rice,

Acting Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

2. Subpart Q is amended by adding § 62.3914 and an undesignated center heading to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

§ 62.3914 Identification of plan.

(a) Identification of plan. Iowa plan for the control of air emissions from hospital/medical/infectious waste incinerators submitted by the Iowa Department of Natural Resources on January 29, 1999.

(b) Identification of sources. The plan applies to existing hospital/medical/infectious waste incinerators constructed on or before June 20, 1996.

(c) Effective date. The effective date of the plan is August 16, 1999.

[FR Doc. 99–15165 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TX–106–1–7408a; FRL–6361–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving the section 111(d) Plan submitted by the Governor of Texas on November 3, 1998, to implement and enforce the Emissions Guidelines (EG) for existing Municipal Solid Waste (MSW) Landfills. The EG require States to develop plans to collect landfill gas from large MSW landfills.

DATES: This direct final rule is effective on August 16, 1999, without further notice, unless we receive adverse comments by July 19, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Lt. Mick Cote, EPA Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and at the Texas Natural Resource Conservation Commission offices, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote at (214) 665–7219.

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I. What Action Is Being Taken by EPA Today?

We are approving the Texas State Plan to control landfill gas from existing MSW landfills, as submitted to us by Texas on November 3, 1998. This State Plan does not affect those existing MSW landfills located in Indian Country.

We are publishing this action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective August 16, 1999, unless by July 19, 1999, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action is effective August 16, 1999.

II. Why Do We Need To Regulate Landfill Gas?

Landfill gas contains a mixture of volatile organic compounds (VOCs), other hazardous air pollutants (HAPs), and methane. These VOC emissions can contribute to ozone formation, which can cause adverse health effects to humans and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. We presented our concerns with the health and welfare effects of landfill gases in the preamble to our proposed EG (56 FR 24468, May 30, 1991).

III. What Is Being Acted on in This Document?

When we developed our New Source Performance Standard (NSPS) for landfills, we also developed EG to control landfill gas from older landfills (See 61 FR 9905–9944, March 12, 1996). The Texas Natural Resource Conservation Commission (TNRCC) developed a State Plan, as required by section 111(d) of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

IV. What Is a State Plan?

Section 111(d) of the Act requires that "designated" pollutants controlled under the NSPS must also be controlled at existing sources in the same source category. To ensure proper implementation of the requirements of section 111(d), we approved 40 CFR part 60, subpart B (40 FR 53340, November 17, 1975). Subpart B provides that, once an NSPS is promulgated, we then publish an EG applicable to the control of the same pollutant from designated (existing) facilities. Affected States must then adopt the EG into their body of regulations.

V. What Does the Texas State Plan Contain?

The Texas State Plan was reviewed for approval against the following criteria: 40 CFR Part 60, §§ 60.23 through 60.26, subpart B—Adoption and Submittal of State Plans for Designated Facilities; and, 40 CFR part 60, §§ 60.30c through 60.36c, subpart Cc—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.

The evaluation of the Texas State Plan indicates that it contains:

1. a demonstration of the State's legal authority to implement the section 111(d) State Plan, as authorized under the Texas Clean Air Act Sections 382.011, 382.012, and 382.017;
2. an incorporation of the Federal regulations into the Texas Administrative Code (TAC) at 30 TAC Chapter 113, Subchapter D, Sections 113.2060, Definitions; 2061, Standards for Air Emissions; 2067, Exemptions; and 2069, Compliance Schedule;
3. an inventory of approximately 113 known designated facilities, with estimated design capacities, as listed in Tables 4, 5a, and 5b of the State Plan;
4. emission limits that are as stringent as the EG, listed in TAC Section 113.2061;
5. a process to review gas collection system design plans;
6. a final compliance date 30 months after the date a designated facility reaches or exceeds 50 Mg of NMOC emissions annually;
7. testing, monitoring, reporting and recordkeeping requirements for the designated facilities, as listed in TAC Section 113.2061;
8. records from the three public hearings; and,
9. provisions for progress reports to EPA.

The Texas State Plan does deviate from the EG on two issues. The EG defines designated facilities as those that have accepted waste after November 8, 1987. The TNRCC provided a detailed technical analysis which indicates that no designated landfills which closed between November 8, 1987, and October 9, 1993, will have estimated non-methane organic compounds (NMOC) emissions above the 50 megagram (Mg) control threshold by the year 2000. Controlling these closed landfills would not result in a significant reduction in NMOC emissions compared to the cost to install gas collection systems at these sites. Our Code of Federal Regulations (CFR), at 40 CFR § 60.24(f), allows for less stringent regulations if a technical or economic justification supports it. Based on § 60.24(f), the TNRCC adjusted its definition to reflect actual conditions in Texas. The definition of MSW landfills in Texas then includes facilities that have accepted waste since November 8, 1987, and either closed after October 8, 1993, or are currently still accepting waste. We agree with the justification for excluding this group of MSW landfills from the State Plan, and accept the State's use of § 60.24(f) to change its definition of MSW landfills in Texas.

Second, the Texas State Plan does not include specific increments of progress towards the final 30 month compliance date, as discussed in 40 CFR 60.24(e)(1). However, the State can develop separate increments of progress for each designated facility and submit these as revisions to the State Plan within a year of the Federal approval of the Texas State Plan (40 CFR 60.24(e)(2)). For this reason we can approve the State Plan in its current form. We fully expect the TNRCC to submit increments of progress within a year of our approval of this State Plan. Please request a copy of our official file to review our detailed discussion of the requirements of the NSPS and EG, along with our evaluation of the Texas State Plan.

VI. How Can I Determine Whether My Landfill Is Subject to These Regulations?

Any MSW landfill which began construction, reconstruction or modification before May 30, 1991, and has accepted waste at any time since October 9, 1993, is affected by the EG and the Texas State Plan. If your facility meets these two criteria, your landfill is subject to these regulations.

VII. What Steps Do I Need To Take?

- You must report your landfill's design capacity to the TNRCC within 90 days of the effective date of our approval of the Texas State Plan (See Section 113.2069).
- If your landfill has a design capacity above 2.5 million Mg, you must also estimate and report your annual NMOC emission rate to the TNRCC within the same 90-day timeframe (See Section 113.2069).
- If your landfill has a design capacity below 2.5 million Mg, you have met all the requirements of the Texas State Plan. However, if you modify your landfill and increase the design capacity above the 2.5 million Mg threshold, you must submit an amended design capacity report to the TNRCC within 90 days of the modification. You must also estimate and submit your annual NMOC emission rate to the TNRCC within 90 days of the modification (Section 113.2061). Your landfill will then be considered an NSPS source and subject to the requirements listed under 40 CFR part 60, subpart WWW.
- You must have a gas collection system installed and operating within 30 months of the date you project to be at or above the 50 Mg threshold (Section 113.2061).
- You must record and keep accurate records regarding site information and gas collection system operational data (Section 113.2061).

VIII. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because approvals under section 111 of the Federal Clear Air Act (the Act) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take

effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective August 16, 1999.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: June 7, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 62.10850 is amended by adding paragraph (b)(3) to read as follows:

§ 62.10850 Identification of plan.

* * * * *

(b) * * *

(3) Control of landfill gas emissions from existing municipal solid waste landfills, submitted by the Governor on November 3, 1998.

* * * * *

3. Subpart SS is amended by adding a § 62.10880 and a new undesignated center heading to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.10880 Identification of sources.

The plan applies to existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since October 8, 1993, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

[FR Doc. 99–15265 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[LA–51–7413a; FRL–6360–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving the section 111(d) Plan submitted by the Louisiana Department of Environmental Quality (LDEQ) on December 30, 1998, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerators (MWI). The EG requires States to develop plans to reduce toxic air emissions from all MWIs. We are also approving a revision to the Louisiana State Plan as it pertains to existing municipal solid waste landfills. This revision adds certain increments of progress so that we can more effectively track facilities' progress towards compliance.

DATES: This direct final rule is effective on August 16, 1999, without further notice, unless we receive adverse comments by July 19, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Lt. Mick Cote, EPA Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and at the Louisiana Department of Environmental Quality offices, 7290 Bluebonnet Blvd., Baton Rouge, Louisiana 70884–2135.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote at (214) 665–7219.

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VII. Administration Requirements.

I. What Action Is Being Taken by EPA Today?

We are approving the Louisiana State Plan, as submitted on December 30, 1998, for the control of air emissions from MWIs, except for those MWIs located in Indian Country. When we developed our New Source Performance Standard (NSPS) for MWIs, we also developed EG to control air emissions from older MWIs. See 62 FR 48348–48391, September 15, 1997. The LDEQ developed a State Plan, as required by section 111(d) of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We approved Louisiana's section 111(d) State plan for municipal solid waste landfills on August 29, 1997 (62 FR 45730). In accordance with our EG for this category of sources, LDEQ is allowed to develop increments of progress separately and submit them as a revision to the State Plan. Our detailed discussion of this requirements was discussed in 62 FR 45730.

1. Design plans are due on or before January 28, 1999;

2. Awarding of contracts is due on or before June 28, 1999;

3. Initiation of on-site construction is due on or before March 28, 2000;

4. Initial performance tests must be completed on or before March 28, 2000;

5. Final compliance must be met on or before April 28, 2000. These increments of progress satisfy the requirements of the EG for municipal solid waste landfills, and we are approving them today as a revision to the State Plan.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective August 16, 1999, unless by July 19, 1999, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective August 16, 1999.

II. Why Do We Need To Regulate MWI Emissions?

When burned, hospital waste and medical/infectious waste emit various air pollutants, including hydrochloric acid, dioxin/furan, and toxic metals (lead, cadmium, and mercury). Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occurs mainly through the ingestion of fish. When inhaled, mercury vapor attacks the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucination and impair consciousness. Long-term exposure to mercury in certain form can affect the central nervous system and cause kidney damage.

Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also effect the immune system. We estimate that this State Plan will reduce mercury emissions from MWIs in Louisiana by approximately 94 percent, hydrochloric acid emissions by 98 percent, and dioxin/furan emissions by 95 percent.

III. What Is a State Plan?

Section 111(d) of the Act requires that pollutants controlled under the NSPS must also be controlled at older sources in the same source category. Once an NSPS is promulgated, we then publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into their body of regulations. States must also include in this State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate the ability to enforce it.

IV. What Does the Louisiana State Plan Contain?

The LDEQ adopted the Federal NSPS and EG by reference into its State regulations at LAC 33:III.3003.B, Table 2, and LAC 33:III.3003 C5, as State Rule AQ 178. AQ 178 was published in the *Louisiana Register* on December 20, 1998. The Louisiana State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;

2. State Rule AQ 178 as the enforceable mechanism;

3. An inventory of approximately 56 known designated facilities, along with estimates of their toxic air emissions;

4. Emission limits that are as protective as the EG;

5. A compliance date 30 months after the effective date of the Federal approval of this State Plan;

6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

7. Records from the public hearing; and,

8. Provisions for progress reports to EPA.

The Louisiana State Plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR Part 60, 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.* A detailed discussion of our evaluation of the Louisiana State Plan is included in our technical support document, located in the official file for this action.

V. Is My MWI Subject to These Regulations?

The EG for existing MWIs affect any MWI built on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

VI. What Steps Do I Need To Take?

You must meet the requirements incorporated by reference in LAC 33:III.3003.B and C5, and summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity; as an alternative, you can elect to accept a permit restriction to limit the amount of waste you may burn per hour.

2. Each size category of MWI has certain emission limits established which your incinerator must meet. See Table 1 of 40 CFR part 60, subpart Ce to determine the specific emission limits which apply to you. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events. See 40 CFR 60.33e, as listed at 62 FR 48382, September 15, 1997.

3. There are provisions to address small rural incinerators. See 40 CFR 60.33e(b), 60.36e, 60.37e(c)(d), and 60.38e(b), as listed at 62 FR 48380, September 15, 1997.

4. You must meet a 10 percent opacity limit on your discharge, averaged over a six-minute block. See 40 CFR 60.33e(c), as listed at 62 FR 48380, September 15, 1997.

5. You must have a qualified MWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR 60.53c(c). See 40 CFR 60.34e, as listed at 62 FR 48380.

6. Your operator must be certified, as discussed in 4 above, no later than one year after we approve this Louisiana State Plan. See 40 CFR 60.39e(e), as listed at 62 FR 48382. You must develop and submit to LDEQ a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993, and must be submitted to LDEQ no later than one year after we approve this State Plan. See 40 CFR 60.35e, as listed at 62 FR 48380.

7. You must conduct an initial performance test to determine your incinerators compliance with these emission limits. See 40 CFR 60.37e and 60.8, as listed at 62 FR 48380.

8. You must install and maintain devices to monitor the parameters listed under Table 3 to Subpart Ec. See 40 CFR 60.37e(c), as listed at 62 FR 48381.

9. You must document and maintain information concerning pollutant

concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years. See 40 CFR 60.38e, as listed at 62 FR 48381.

10. You must report to LDEQ the results of your initial performance test, the values for your site-specific operating parameters, and your waste management plan. This information must be reported within 60 days following your initial performance test, and must be signed by the facilities manager. See 40 CFR 60.38e, as listed at 62 FR 48381.

11. In general, you must comply with all the requirements of this State Plan within one year after we approve it; however, there are provisions to extend your compliance date. See 40 CFR 60.39e, as listed at 62 FR 48381.

VII. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection in Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Federal Clear Air Act (the Act) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rue and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective August 16, 1999.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 7, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

Subpart T—Louisiana

2. Section 62.4620 is amended by revising paragraph (b)(4) and adding paragraphs (b)(5), (c)(5), and (c)(6) to read as follows:

§ 62.4620 Identification of plan.

* * * * *

(b) * * *

(4) Control of landfill gas emissions from existing municipal solid waste landfills, submitted on December 9, 1996 (LAC 33.III.3003.B, Table 2), and revised on December 20, 1998 (LAC 33.III.3003.C.4).

(5) Control of air emissions from designated hazardous/medical/infectious waste incinerators, submitted by the Louisiana Department of Environmental Quality on December 30, 1998 (LAC 33.III.3003.C.5).

(c) * * *

(5) Municipal solid waste landfills.

(6) Hazardous/medical/infectious waste incinerators.

3. Subpart T is amended by adding a new § 62.4633 and a new undesignated center heading to read as follows:

Air Emissions From Hazardous/ Medical/Infectious Waste Incinerators

§ 62.4633 Identification of sources.

The plan applies to existing hazardous/medical/infectious waste incinerators for which construction, reconstruction, or modification was commenced before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

4. Subpart T is amended by adding anew § 62.4634 and a new undesignated center heading to read as follows:

Effective Date

§ 62.4634 Effective date.

The effective date for the portion of the plan applicable to existing hazardous/medical/infectious waste incinerators is August 16, 1999.

[FR Doc. 99–15263 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[ND–001a; FRL–6360–3]

Clean Air Act Full Approval of Operating Permit Program; State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating full approval of the operating permit program submitted by the State of North Dakota. North Dakota's operating permit program was submitted for the purpose of meeting the federal Clean Air Act directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction.

DATES: This direct final rule is effective on August 16, 1999, without further notice, unless EPA receives adverse comment by July 19, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mail Code 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the North Dakota State Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota 58504–5264.

FOR FURTHER INFORMATION CONTACT: Patricia Reisbeck, EPA, Region 8, (303) 312–6435.

SUPPLEMENTARY INFORMATION:

I. Background

As required under Title V of the Clean Air Act ("the Act") as amended (42 U.S.C. 7401 *et seq.*), EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V directs states to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act directs states to develop and submit operating permit programs to EPA by November 15, 1993, and requires that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act (42 U.S.C. § 7661a) and the part 70 regulations, which together outline criteria for

approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval. If EPA has not fully approved a program by two years after the November 15, 1993 date, or before the expiration of an interim program approval, it must establish and implement a federal program. The State of North Dakota was granted final interim approval of its program on July 7, 1995 (see 60 FR 35335) and the program became effective on August 7, 1995. Interim approval of the North Dakota program expires on June 1, 2000.

II. Final Action

A. Analysis of State Submission

The Governor of North Dakota submitted an administratively complete Title V operating permit program for the State of North Dakota on May 11, 1994. This program, including the operating permit regulations (Chapter 33–15–14–06 of the North Dakota Administrative Code (NDAC)), substantially met the requirements of part 70. EPA deemed the program administratively complete in a letter to the Governor dated June 28, 1994. The program submittal included a legal opinion from the Attorney General of North Dakota stating that the laws of the State provide adequate legal authority to carry out all aspects of the program, and a description of how the State would implement the program. The submittal additionally contained evidence of proper adoption of the program regulations, application and permit forms, and a permit fee demonstration.

EPA's comments noting deficiencies in the North Dakota program were sent to the State in a letter dated December 22, 1994. The deficiencies were segregated into those that require corrective action prior to interim program approval, and those that require corrective action prior to full program approval. The State committed to address the program deficiencies that require corrective action prior to interim program approval in a letter dated January 5, 1995. The State submitted these corrective actions in letters dated February 22, March 20, and June 13, 1995. EPA reviewed these corrective actions and determined them to be adequate to allow for interim program approval.

In letters dated September 28, 1998 from the Governor of North Dakota and October 6, 1998 from the Chief of the Environmental Health Section, North Dakota Department of Health, the State submitted revisions to its Air Pollution Control Rules, including its operating permit program regulations (Chapter 33–15–14–06) that were effective January 1, 1996, September 1, 1997, and September 1, 1998. On March 11, 1999, the State submitted a copy of an amendment to section 23–25–10 of the North Dakota Century Code (NDCC) related to air pollution penalties. The effective date of the March 11, 1999 statutory amendment is August 1, 1999. The revised program regulations and statutory amendment adequately address the problems identified in the July 7, 1995 **Federal Register** notice as requiring corrective action prior to full program approval. The State also submitted evidence of proper adoption of the revisions to its program regulations.

Areas in the North Dakota program that were identified by EPA as deficient and the State's corrective actions for full program approval consist of the following:

(1) EPA required the State to revise NDAC § 33–15–14–06.4.c to lower the insignificant emission unit threshold for criteria pollutants to more reasonable levels. The correction was completed in the revised North Dakota Air Pollution Control Rules, effective January 1, 1996.

(2) EPA advised the State that, in order to implement NDAC § 33–15–14–06.5.a.(1)(c), the State must adopt specific provisions to determine that an alternative emission limit is equivalent to a limit in North Dakota's state implementation plan (SIP), and EPA must approve the provisions as part of the SIP. Until a SIP revision could be accomplished, EPA requested the State to delete the words "or this article" from the first line of NDAC § 33–15–14–06.5.a.(1)(c). This request was met when the State revised the North Dakota Air Pollution Control Rules, effective January 1, 1996.

(3) EPA required the State to revise NDAC § 33–15–14–06.5.a.(11) to allow changes in emissions provided that they are not modifications under Title I of the Act and the changes do not exceed the emissions allowed under the permit. This correction was completed in the revised North Dakota Air Pollution Control Rules, effective January 1, 1996.

(4) EPA required the State to revise NDAC § 33–15–14–06.5.f(1) to read "* * * the department shall include in a title V permit to operate a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance. * * *" This correction was completed in the revised North Dakota Air Pollution Control Rules, effective January 1, 1996.

(5) EPA required the State to delete "or this article" from NDAC § 33–15–14–06.5.a.(8), and "this article" from § 33–15–14–06.5.a.(10) and § 33–15–14–06.6.e.(1)(a)[2], to clarify that, in order to implement those provisions, the State must have an economic incentive, marketable permits, or a generic emissions trading program approved in its SIP. This correction was completed in the revised North Dakota Air Pollution Control Rules, effective January 1, 1996.

(6) EPA required the State to augment the Attorney General's opinion to show that the provisions for judicial review in North Dakota Century Code (NDCC), Sections 28–32–14 and 15 and in NDAC Article 33–22 are the exclusive means for obtaining judicial review of the terms and conditions of permits and that petitions for judicial review must be filed within the 90-day periods discussed in 40 CFR 70.4(b)(3)(xii). Or, if such an opinion could not be rendered, the State was required to change its statutes or regulations to ensure that the requirements of 40 CFR 70.4(b)(3)(xii) are met. This correction was completed in Section 33–15–14–06.8. of the revised North Dakota Air Pollution Control Rules, effective September 1, 1998.

(7) The State was required to augment the Attorney General's opinion to show how, under State law, applicants may obtain judicial review in cases of State inaction, consistent with the requirements of 40 CFR 70.4(b)(3)(xi). Or, if such an opinion could not be rendered, the State was required to change its statutes or regulations to ensure that the requirements of 40 CFR 70.4(b)(3)(xi) are met. This correction was completed in 33–15–14–06.8 of the revised North Dakota Air Pollution Control Rules, effective September 1, 1998.

(8) EPA raised the issue that North Dakota's Title V program did not appear to be consistent in all respects with 40 CFR 70.11, in particular with the requirement of maximum fines of not less than $10,000 per day per violation. Specifically, North Dakota's statutory penalty provision for violation of air pollution control requirements set the penalty at "not more than ten thousand dollars (or imprisonment for not more than six months, or both) for knowingly making a false statement, representation or certification in any application or report required under the state air pollution control statute (chapter 23–25), or for falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method" (NDCC § 23–25–10.3). It was not clear that the penalty was authorized per day of violation. To address this ambiguity, North Dakota enacted amendments to NDCC § 23–25–10 to specifically prohibit the making of false statements or the falsifying of monitoring device or methods required to be maintained under the State statute or under any permit condition, rule, order, limitation, or other applicable requirement implementing the State statute. Section 23–25–10, as amended, states that, upon conviction, a violator is subject to a fine of not more than ten thousand dollars per day per violation or by imprisonment for not more than six months, or both. The amended Section 23–25–10 is effective August 1, 1999.

C. Final Action

The EPA is granting full approval of the North Dakota operating permit program.

In the North Dakota Title V program submittal of May 11, 1994, Section II.B. (Program Description: Organizational Structure) states "At this time, the Department will operate the program for the entire State, excluding Indian Reservations." In this notice, EPA is approving North Dakota's part 70 program for all areas within the State except the following: any sources of air pollution located in "Indian Country" as defined in 18 U.S.C. 1151, including the Fort Berthold, Fort Totten, Standing Rock, Sisseton and Turtle Mountain Indian Reservations, or any other sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the Act; see also 59 FR 43955, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

The EPA is publishing this rule without prior proposal because the State is currently implementing its part 70 program and the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full approval of the operating permit program submitted by the State of North Dakota should adverse comments be filed. This rule will be effective August 16, 1999, without further notice unless the Agency receives adverse comments by July 19, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule must do so at this time.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore,

because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: June 2, 1999.

Carol Rushin,

Acting Regional Administrator, Region VIII.

40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In appendix A to part 70 the entry for North Dakota is amended by adding paragraph (b) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

North Dakota

* * * * *

(b) The North Dakota Department of Health, Environmental Health Section, submitted an operating permits program on May 11, 1994; interim approval effective on August 7, 1995; revised January 1, 1996, September 1, 1997, September 1, 1998, and August 1, 1999; full approval effective on August 16, 1999.

* * * * *

[FR Doc. 99–15269 Filed 6–16–99; 8:45 am]

BILLING CODE 5560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 244

[FRL–6362–4]

Solid Waste Programs; Management Guidelines for Beverage Containers; Removal of Obsolete Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is removing 40 CFR part 244, Solid Waste Management Guidelines for Beverage Containers, from the Code of Federal Regulations (CFR) because it is obsolete. The activities addressed in these 1976 guidelines have been included in numerous state and local statutes and regulations and other federal rules, or have been superseded by such Presidential actions as Executive Order 12873 as amended by Executive Order 13101. Deleting these guidelines from the CFR will have no measurable impact on solid waste management.

EFFECTIVE DATE: This final rule takes effect on July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah Gallman (703) 308–7276, U.S. EPA, Office of Solid Waste and Emergency Response, 401 M Street, SW, (5306W), Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995, the President directed all federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995, to identify those rules that are obsolete or unduly burdensome. The Environmental Protection Agency (EPA) conducted a review of all its rules, including rules issued under the Resource Conservation and Recovery Act (RCRA). Based on the review, EPA is today removing 40 CFR part 244 guidelines from the CFR.

On December 31, 1996, EPA published a direct final rule (61 FR 69032) removing from the CFR two guidelines pertaining to solid waste management which are obsolete, 40 CFR parts 244 and 245. EPA noted at that time that if adverse comments were received, it would withdraw the direct final rule and address the comments received in a subsequent final rule. Because EPA received adverse comments with respect to the removal of 40 CFR part 244, Solid Waste Management Guidelines for Beverage Containers, the direct final rule for part 244 was withdrawn on May 2, 1997 (62 FR 24051). EPA subsequently reviewed all comments and is addressing them in this final rule. No adverse comments were received on the removal of part 245 and that final rule was effective on December 31, 1997 (63 FR 683).

II. Background

On September 21, 1976, EPA issued guidelines, 40 CFR part 244 (Solid Waste Management Guidelines for Beverage Containers), for federal agencies for reducing beverage container waste. The guidelines were mandatory (although not enforceable) for federal facilities and recommended for adoption by state and local governments and private agencies. EPA intended these guidelines to achieve a reduction in beverage container solid waste and litter, resulting in savings in waste collection and disposal costs to the federal government. The Agency also intended these guidelines to achieve the conservation and more efficient use of energy and material resources through the development of effective beverage distribution and container collection systems. EPA hoped that the guidelines would achieve these goals by making all beverage containers on federal facilities returnable and encouraging reuse or recycling of the returned containers. To accomplish the return of a beverage container, a deposit of at least five cents on each returnable beverage container was to be paid upon purchase by the consumer and refunded to the consumer when the beverage container was returned for reuse or recycling. The guidelines allow federal agencies to cease implementation of the provisions in various situations where the requirements are not practical.

EPA believed these guidelines would be important because, when these guidelines were promulgated in 1976, there were few requirements for recycling beverage containers or other materials. In fact, EPA has found no evidence to suggest that federal agencies developed beverage container programs in response to the guidelines. Instead, federal agencies have met the challenge of recycling by implementing, in-house or by contract, programs for collection of a variety of recyclable materials, including beverage containers. Many state and local governments now require or encourage such collection programs. Under RCRA section 6001, federal facilities must meet such municipal or state recycling requirements. Furthermore, in 1993, President Clinton issued Executive Order 12873, "Federal Acquisition, Recycling, and Waste Prevention", which was amended in 1998 by Executive Order 13101, "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition." Section 705 of the Executive Order requires each Executive agency that has not already done so to initiate a program to promote cost effective waste prevention and recycling of reusable materials in all of its facilities. Recycling programs implemented pursuant to section 705 must be compatible with applicable state and local government programs to promote recycling and waste reduction in the community. Agencies must designate a recycling coordinator for each facility or installation. The recycling coordinator must implement or maintain waste prevention and recycling programs in the agencies' action plans. Executive agencies must also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

III. Analysis of and Response to Public Comments on Removal of 40 CFR Part 244

EPA invited public comment on the proposed removal of part 244 during a 60-day period and received 13 comments. Nine of the comments received opposed EPA's action, while four offered support for removing part 244. This section presents the findings of EPA's follow-up research pertinent to each major comment. General comments opposed to EPA's action are discussed first, followed by those in support.

A. Comments Opposed to Removal of Part 244

Most of the comments opposed to removal of 40 CFR part 244 focused on similar issues. In general, commenters felt that the beverage deposit guidelines for federal facilities should be continued and strengthened, rather than withdrawn. A summary of these comments and EPA's findings that address these comments are provided below.

Comment on Deposit Effectiveness: Nine commenters supported beverage deposit programs in general, while three commenters encouraged deposits as the most effective means of collecting beverage containers at federal facilities and encouraged EPA to strengthen, rather than withdraw, the guidelines.

Findings Addressing This Comment: 40 CFR part 244 does not establish beverage deposit programs in general, but focuses on federal facilities. EPA's decision to withdraw the part 244 beverage containers guidelines should not be viewed as reflecting any position on the adoption of beverage deposit programs by State or local governments. Therefore, this discussion will not cover the merits or drawbacks of beverage deposit programs (often called "bottle bills") in general.

EPA, however, has concluded that these specific federal guidelines are obsolete, primarily because they have been supplemented by more comprehensive federal recycling programs and by local and state requirements. When EPA issued part 244 in 1976, there was limited collection of beverage containers for recycling in federal facilities. Since that time, considerable progress has been made to collect and recycle many items, including beverage containers. Recycling collection programs are now required by many state and local governments around the country. Under RCRA Section 6001, federal facilities are required to meet these municipal and state recycling requirements. In addition, in 1993, President Clinton signed Executive Order 12873, "Federal Acquisition, Recycling, and Waste Prevention", which was amended in 1998 by Executive Order 13101, "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition." Section 705 of the Executive Order requires each executive agency to initiate a program to promote cost effective waste prevention and recycling of reusable materials. These programs must be compatible with State and local requirements at all of its facilities. Agencies must designate a recycling coordinator for each facility to implement or maintain programs in the agencies' action plans and must also consider cooperative ventures with State and local governments to promote community programs.

In response to comments, EPA also attempted to gather more complete information on the current extent of collection of beverage containers at federal facilities. While there is no uniform, comprehensive database, there is information on some of the federal collection efforts.

EPA's research shows that, among these federal efforts, both the U.S. General Services Administration (GSA) and Department of Defense (DOD) service branches have active recycling efforts that are providing collection services to a large number of government employees. Facilities owned, operated, and leased by GSA and the military branches comprise the largest portion of federal facilities. In addition, many of these programs include comprehensive and integrated waste reduction and recycling programs, taking an approach that is broader than beverage container recycling alone. With the success of these programs, there is no need for a separate guideline on beverage container collection for federal facilities.

Although DOD does not separately track beverage containers, all military facilities are required to have a solid waste plan and a recycling collection program in place. It is our understanding that the armed services are near 100 percent in compliance with the DOD recycling policy. According to the 1995 DOD Defense Environmental

Quality Program annual report, the armed forces collected approximately 1.7 billion pounds of material for recycling in calender year 1994, exceeding its targeted goal. The report indicates the armed forces surpassed its targeted goal in 1993, as well. In addition, Navy and Marine Corps installations generating more than 1 ton of solid waste per day are required to report every year on the amount of material recycled at each facility. The 1995 Navy and Marine Corps Solid Waste Annual Report documents that the Navy and Marine Corps collected more than 1,800 tons of aluminum cans and more than 3,200 tons of glass for recycling in fiscal year 1995. Overall, the report indicates a steady increase in the amount of materials collected for recycling among the Navy and Marine Corps since fiscal year 1990.

GSA reported an active recycling program that includes each of the agency's 11 regions. More than 530,000 federal employees in more than 1,100 federal buildings nationwide participated in GSA's recycling program in fiscal year 1996. During that year, GSA collected 44,527 tons of recyclables, including beverage containers, mixed paper, plastics, newspaper, and corrugated cardboard. This includes 112 tons of used beverage containers and 359 tons of glass (primarily beverage containers). In addition, GSA received nearly $863,000 from the sale of recovered materials. Employee participation in recycling programs at GSA buildings averaged 60 percent, demonstrating widespread support for recycling.

In the direct final rule, which EPA published on December 31, 1996, the Agency concluded that the part 244 guidelines were obsolete because federal facilities were recycling beverage containers in compliance with E.O. 12873. In addition, EPA determined that the guidelines should be withdrawn because federal facilities were complying with state and local solid waste management statutes and regulations that relate to collection and recycling of beverage containers. 61 FR 69032, 69033. The reports that EPA has obtained from DOD and GSA discussed above verify the conclusions set forth in the direct final and proposed rules.

We have no indication that the beverage container recycling activities at federal facilities as described above are a result of the part 244 guidelines. In fact, after review of agency records described earlier and discussions with federal personnel, we have no information regarding any federal facility which is implementing the full deposit and refund system outlined in part 244.

EPA's research showed a general lack of awareness on the part of key facility personnel regarding the existence of part 244. This is largely the result of the guidelines being over twenty years old and largely superseded by more recent and comprehensive recycling mandates. Some personnel stated they did not feel the provision was necessary because they already have an adequate recycling collection program in place and are making steady progress toward their recycling goals.

EPA's research also found that the logistics of placing a deposit on beverage containers sold within a federal facility and returning that deposit to the consumer would be difficult. DOD recycling officials, for example, noted that implementing a container deposit system would result in complicated and burdensome accounting and management procedures. Returning the deposit may involve additional expenses or oversight on the part of the agency involved, as part 244 requires that the refund be provided at the point of sale whenever possible and, in any event, on the premises of the federal facility. In addition, beverage distributors would be required to place a label or sticker on beverage containers destined exclusively for sale at federal facilities; they might be reluctant to participate in this system without appropriate compensation.

In addition, 40 CFR part 244 exempts federal agencies from implementing the regulation in situations where the requirements are not practical. Therefore, any federal agency that considers the logistical issues mentioned above too difficult and burdensome to implement might consider themselves exempt under this provision given their current successful recycling programs.

For the reasons described above, EPA believes that cost-effective and efficient beverage container recycling programs have now been established at federal facilities. These programs are required by statute and by Executive Order. Thus, we have concluded that rather than seek a means for improving upon or strengthening the pre-existing management guidelines for beverage containers so that federal agencies would implement the guidelines, it is more efficient and will likely be more effective over the long term for federal facilities to seek to improve their current beverage container recycling programs consistent with statutory requirements and Executive Order 13101.

General Comments on Litter Reduction: Several commenters stated that deposits on beverage containers help to reduce litter, and that litter reduction should be a national goal.

Findings Addressing This Comment: EPA considers litter prevention to be a laudable goal and supports programs to educate and inform the public about the benefits of litter reduction and waste prevention. EPA's research shows that voluntary recycling programs at federal facilities have diverted significant quantities of beverage containers and other recyclables from the waste stream. These programs complement the efforts of litter reduction programs. While beverage container deposit systems may also help reduce litter, part 244 focuses on deposit systems at federal facilities, which are principally office buildings. EPA believes that the part 244 deposit requirements are unnecessary for federal facilities for this and the other reasons described in this section.

Comment Regarding Retention and Enforcement of Part 244: According to several commenters, there is a lack of enforcement of 40 CFR part 244.

Findings Addressing This Comment: RCRA section 4005(c)(2)(A) authorizes the Administrator to enforce the prohibition against open dumping in any state that the Administrator has determined has not adopted an adequate program for facilities receiving hazardous household waste ("HHW") or conditionally exempt small quantity generator ("CESQG") waste. However, the part 244 solid waste management guidelines pertaining to beverage containers at issue in this rulemaking are not federal criteria for facilities which may receive HHW or CESQG waste that EPA has issued under RCRA sections 4004 or 4010. Nor were the beverage container guidelines intended to be adopted by states as part of a permit program to ensure compliance with such federal criteria. The Agency issued the part 244 guidelines instead under RCRA sections 1008 and 6004. Thus, EPA has no explicit authority in RCRA subtitle D, RCRA sections 1008 and 6004, or part 244 itself to enforce administratively or judicially the beverage container guidelines against federal facilities.

Comment in Support of Retaining Part 244 and Increased Recycling Rates: A commenter stated that without "bottle bill states," the recycling rate for beverage containers would be much less nationally, and that if part 244 was enforced, recycling rates for beverage containers would double and potentially triple current levels at federal facilities in states without bottle bills.

Findings Addressing This Comment: As noted earlier, part 244 does not address "bottle bill" programs in general. EPA's research did not find data to address the impact of a beverage deposit container system on beverage container recovery rates at federal facilities. Such an analysis would be complicated by the predominance of office building settings in federal agencies (plus some residences in military agencies). Thus, there is no evidence available that would show higher recycling rates for containers in office settings due to deposit systems relative to drop-off systems typically used in federal office buildings. The overall impact of beverage deposit systems in this context is impossible to determine. However, the principal objective of 40 CFR part 244 was to establish the federal government as a leader in the collection of materials for recycling and to provide the impetus for new programs nationwide. As described elsewhere in this preamble, actions taken by the federal government at the direction of the President through Executive Order 12873 and the recently issued Executive Order 13101 demonstrate that agencies have made substantive and sustained progress towards implementing and expanding recycling programs.

B. Comments in Support of Removing Part 244

Comment on Impractical Expenses: Several commenters supported the removal of 40 CFR part 244, citing its impracticality and possible expenses. Commenters also stated that the system is unnecessary, considering that other, more comprehensive recycling collection programs are already in place.

Findings Addressing These Comments: EPA's research was focused on identifying existing recycling collection programs at federal facilities and did not address the economics of deposit programs in general. EPA concurs that the recycling of materials has been successfully accomplished in many federal facilities via more comprehensive solid waste management programs that include a wider range of materials than those addressed by a beverage container deposit system alone. In addition, as described previously in this preamble, EPA's research indicated that personnel at federal facilities consider the provisions of 40 CFR part 244 to be impractical and difficult to implement which could be cited as a basis for not implementing a bottle deposit system. When the requirements of part 244 were explained, facility personnel expressed strong reservations regarding their ability to implement the deposit system, citing logistical issues and lack of personnel to implement the regulation. Facility personnel discussed practical barriers ranging from ensuring the redemption of collected materials to requiring that beverage containers carry a label or stamp indicating the deposit amount.

IV. EPA's Decision Based on Comments Received

With the implementation of federal collection programs, state and local recycling collection mandates and programs, RCRA section 6001 and E.O. 12873, as amended by E.O. 13101, the need for separate guidelines for federal facilities on beverage containers has passed. Therefore, EPA is removing 40 CFR part 244 from the Code of Federal Regulations.

V. Analysis Under Executive Order (E.O.) 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to OMB review and the other provisions of the Executive Order. A significant regulatory action is defined by Executive Order 12866 as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" within the meaning of E.O. 12866.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), the Agency certifies that today's final rule will not have a significant adverse impact on a substantial number of small entities. Today's rule is deregulatory in nature. The effect of today's final rule is to remove obsolete guidelines which are mandatory only for Federal facilities but that, for various reasons, have generally not been implemented. Therefore, EPA certifies that today's rule will not have a significant economic impact on a substantial number of small entities. As a result, no Regulatory Flexibility Analysis is needed.

VII. Paperwork Reduction Act

The removal of these guidelines from the CFR merely reflects their current obsolescence and thus has no significant regulatory impact. There is no affect on requirements under the Paperwork Reduction Act.

VIII. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

IX. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

X. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

"Protection of Children from Environmental Health Risks and Safety Risks" (62 *FR* 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

XI. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

XII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Agency's analysis of compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 found that the proposed action imposes no enforceable duty on any State, local or tribal governments or the private sector; thus today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

XIII. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. The Agency does not believe, however, that today's rule deleting these obsolete solid waste management guidelines for beverage containers will have an adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community.

XIV. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 19, 1999.

List of Subjects in 40 CFR Part 244

Environmental protection, Beverages, Government property, Recycling.

Dated: June 10, 1999.

Carol M. Browner,

Administrator.

Under the authority of 42 U.S.C. sections 6907, 6912, 6961, and 6964, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 244—[REMOVED]

1. Part 244 is removed.

[FR Doc. 99–15436 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–158, RM–8239, RM–8317]

FM Broadcasting Services; Hazlehurst, Utica, and Vicksburg, Mississippi

AGENCY: Federal Communications Commission.

ACTION: Final Rule; application for review.

SUMMARY: In MM Docket No. 93–158, the Chief, Policy and Rules Division, dismissed with prejudice, pursuant to a request for settlement filed jointly by Flinn Broadcasting Corporation and Donald B. Brady, an *Application for Review* filed by Brady. He had requested review of the Memorandum Opinion and Order, 61 FR 7999, published March 1, 1996, on reconsideration of the *Report and Order*, 59 FR 55,593, published November 8, 1994. The *Report and Order* had granted a counterproposal in this proceeding, substituting Channel 265C2 at Utica, Mississippi, and two accommodating channel substitutions. With this action, the proceeding is terminated.

DATES: Effective June 17, 1999.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Order*, MM Docket 93–158, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center (room CY–A257), 445 12th Street, S.W., Washington, DC 20554. The complete text of this decision may be also purchased from the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15335 Filed 6–16–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 116
Thursday, June 17, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 98N–0583]

RIN 0910–AB16

Exports: Notification and Recordkeeping Requirements; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 16, 1999, the comment period for the proposed rule that appeared in the **Federal Register** of April 2, 1999 (64 FR 15944). The proposed rule would establish the notification and recordkeeping requirements for persons exporting human drugs, biologics, devices, animal drugs, food, and cosmetics that may not be marketed or sold in the United States. FDA is taking this action in response to numerous issues raised by the proposed rule thus far.

DATES: Written comments by July 16, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: Enacted and later amended in 1996, the FDA Export Reform and Enhancement Act (Pub. L. 104–134, as amended by Pub. L. 104–180) significantly changed the export requirements for unapproved human drugs, biologics, devices, and animal drugs. For example, before the law was enacted, most exports of unapproved new drug products could only be made to the 21 countries then identified in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382), and these exports were subject to numerous restrictions. The FDA Export Reform and Enhancement Act amended section 802 of the act to allow, among other things, the export of unapproved new human drugs to any country in the world if the drug complies with the laws of the importing country and has valid marketing authorization from any of the following countries: Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, and the countries in the European Union (EU) and the European Economic Area (EEA) and certain other requirements are met (see section 802(b)(1)(A) of the act). Currently, the EU countries are Austria, Belgium, Denmark, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. The EEA countries are the EU countries, Iceland, Liechtenstein, and Norway. The list of countries will expand automatically if any country accedes to the EU or becomes a member of the EEA. This provision of section 802 of the act also applies to the export of certain devices that cannot be sold or marketed in the United States.

The FDA Export Reform and Enhancement Act also modified the export authority in section 801 of the act (21 U.S.C. 381). Before enactment of the FDA Export Reform and Enhancement Act, section 801(e)(1) of the act applied to the exportation of certain foods, drugs, devices, and cosmetics. Products exported under section 801(e) of the act are not considered adulterated or misbranded if the product intended for export: (1) Meets the foreign purchaser's specifications; (2) is not in conflict with the laws of the country to which it is being exported; (3) is labeled on the outside of the shipping package that the product is intended for export; and (4) is not sold or offered for sale in domestic commerce (see section 801(e)(1) of the act). Additional requirements apply to certain devices (see section 801(e)(2) of the act). The FDA Export Reform and Enhancement Act extended these four basic requirements to all exports under sections 801 and 802 of the act, and to exports of partially processed biologics under section 351(h) of the Public Health Service Act (the PHS Act) (42 U.S.C. 262(h)) (see section 801(e) and (f) of the act); section 802(f)(3) of the act; and section 351(h) of the PHS Act, and made section 801(e) of the act the principal export authority for the exportation of unapproved animal drugs other than animal drugs banned in the United States. It also imposed additional labeling requirements on certain exports of approved drugs (see section 801(f) of the act).

The FDA Export Reform and Enhancement Act also established recordkeeping and notification requirements. Products exported under section 802 of the act are subject to certain requirements under section 802(f) and (g) of the act. Section 802(f) of the act prohibits a drug or device from being exported under section 802 of the act if it: (1) Does not conform with current good manufacturing practices; (2) is adulterated under certain provisions in section 501 of the act (21 U.S.C. 351); (3) does not comply with section 801(e)(1) of the act; (4) is the subject of a determination by FDA or the U.S. Department of Agriculture (with respect to veterinary biologics) that the probability of reimportation of the exported drug or device would present an imminent hazard to the public health and safety of the United States; (5) would present an imminent hazard to the public health of the foreign country; (6) fails to comply with labeling requirements in the country receiving the exported drug or device; or (7) is not promoted in accordance with labeling requirements.

Section 802(g) of the act requires an exporter of a drug or device under section 802(b)(1)(A) of the act to provide a "simple notification" to the agency "identifying the drug or device when the exporter first begins to export such drug or device" to any of the 25 countries identified in section 802(b)(1)(A) of the act. For exports to other, nonlisted countries, section 802(g) of the act requires the exporter to provide a simple notification "identifying the drug or device and the country to which such drug or device is being exported." This section also requires persons export under any provision of section 802 of the act to "maintain records of all drugs or devices exported and the countries to which they were exported."

In the **Federal Register** of April 2, 1999 (64 FR 15944), FDA published a proposed rule that would establish the notification and recordkeeping requirements for persons exporting human drugs, biologics, devices, animal drugs, food, and cosmetics that may not be marketed or sold in the United States. Because reactions to the proposed rule thus far have raised numerous issues, the agency wants to ensure that interested persons have an adequate opportunity to examine the rule and to submit comments. Therefore, FDA is extending the comment period until July 16, 1999.

Interested persons may, on or before July 16, 1999, submit to the Dockets Management Branch (address above) written comments on the proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the proposed rule and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. The proposed rule may also be obtained through FDA's web site at "www.FDA.gov".

Dated: June 10, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15395 Filed 6–15–99; 10:04 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 900

[Docket No. 99N–1502]

Quality Mammography Standards; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing mammography. The purpose of the amendments is to incorporate changes required by the Mammography Quality Standards Reauthorization Act (MQSRA). This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Comments on this proposal must be received by August 31, 1999. If FDA receives no significant adverse comment on the provisions of these regulations within the specified comment period, the agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on the direct final rule ends. The direct final rule will be effective November 1, 1999.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Roger L. Burkhart, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20857, 301–594–3332.

SUPPLEMENTARY INFORMATION: This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule is identical to the direct final rule. This proposed rule will provide a procedural framework to finalize the rule in the event the agency receives a significant adverse comment and the direct final rule is withdrawn. FDA is publishing the direct final rule because the rule contains direct incorporations of statutory mandates, and FDA anticipates that it will receive no significant adverse comments. If no significant comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect no later than 135 days after publication. Additional information about FDA's direct final rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

If FDA receives significant adverse comments regarding this rule, the agency will publish a document withdrawing the direct final rule within 30 days after the comment period ends and will proceed to respond to the comments under this rule using usual notice-and-comment procedures. The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. It should be remembered, however, that the requirements themselves were established by the MQSRA. FDA must implement these new statutory provisions.

In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a note-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered a significant adverse comment under this procedure. For example, a comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the comment shows how the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

I. Background

The Mammography Quality Standards Act (the MQSA) (Pub. L. 102–539) was passed on October 27, 1992, to establish national quality standards for mammography. The MQSA required that, to lawfully provide mammography services after October 1, 1994, all facilities, except facilities of the Department of Veterans Affairs, shall be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). To become accredited and certified, a facility had to meet national quality standards to be established by the Secretary. The authority to establish these standards, to approve accreditation bodies, and to certify facilities was delegated by the Secretary to FDA.

Facilities were initially accredited and certified if they met the standards contained within the interim rules issued by FDA in the **Federal Register** of December 21, 1993 (58 FR 67558 and 58 FR 67565), and amended by another interim rule published in the **Federal Register** of September 30, 1994 (59 FR 49808). More comprehensive standards were proposed by FDA in the **Federal Register** of April 3, 1996 (61 FR 14856,

61 FR 14870, 61 FR 14884, 61 FR 14898, and 61 FR 14908). After some revision in response to the approximately 8,000 comments received on the proposed rule, a final rule was published in the **Federal Register** of October 28, 1997 (62 FR 55852) (hereinafter referred to as the October 1997 final rule). The effective date of most of the new standards contained within the October 1997 final rule is April 28, 1999, but a few will not become effective until October 28, 2002.

On October 9, 1998, the MQSRA (Pub. L. 105–248) became law. The basic purpose of the MQSRA was to extend the authorities established by the MQSA until September 30, 2002. However, the MQSRA also contained a requirement that was significantly different from the corresponding requirement in the October 1997 final rule. Although this MQSRA requirement will become effective on April 28, 1999, with or without the amendment of the final rule, FDA is proposing to amend the final rule to incorporate the change. The purpose of this proposed amendment is to provide to the mammography facilities the convenience of being able to find all of the quality standards within a single document instead of having to consult both the October 1997 final rule and the MQSRA and to avoid confusion as to the applicable reporting requirement.

Other provisions of the MQSRA clarify the basis for some of the requirements contained within the October 1997 final rule. FDA is also amending the October 1997 final rule to conform its wording of those requirements to that of the statute.

II. Changes in the Regulations

A. Reporting Requirements

Section 900.12(c)(2) (21 CFR 900.12(c)(2)) of the October 1997 final rule describes the requirements for communicating mammography results to the patients. As published in the October 1997 final rule, these requirements mandated that each mammography facility have a system to ensure that the results of each examination are communicated to the patient in a timely manner. Patients without a referring health care provider were to be sent the report of the examination (as described in § 900.12(c)(1)) directly by the mammography facility, along with a written notification or summary of the results in lay terms. It was further required by the October 1997 final rule that such self-referred patients should be referred to a health care provider when clinically indicated.

In the case of patients with a referring health care provider, § 900.12(c)(3) required that the health care provider receive the report of the examination. The facility's system for ensuring that results reached the patient could utilize the services of that health care provider to achieve that goal. There was no specific requirement that a summary in lay terms be provided to the patient with a referring health care provider.

The MQSRA amended the MQSA to specifically require that all patients, not just self-referred patients, receive directly from the mammography facility, a summary of the written report in terms easily understood by a lay person. As previously noted, this MQSRA requirement will go into effect on April 28, 1999. FDA is proposing to amend § 900.12(c)(2) to incorporate this new requirement.

B. Clarifications

The MQSRA at several points clarified the provisions of the MQSA upon which certain requirements of the interim and final rules were based. In contrast to the change in the patient reporting requirements, these clarifications became effective on October 9, 1998, the date on which the MQSRA became law. FDA is proposing to amend the regulations to similarly clarify the wording of the October 1997 final rule on these points.

1. Review Physicians

The most important function of the accreditation bodies approved by FDA is to conduct a quality review of clinical images submitted by facilities seeking accreditation. This review is the key factor in determining if the facility should be accredited and then certified. It has been recognized from the start of the MQSA program that the physicians used by the accreditation bodies to review the clinical images submitted by the facilities should meet qualifications beyond those needed to serve as interpreting physicians in mammography facilities. All accreditation bodies applying to FDA for approval must demonstrate that their reviewing physicians have the high qualifications necessary to perform such reviews before approval is given.

In section 4, the MQSRA emphasized these points by defining the physicians reviewing clinical images for the accreditation bodies as "review physicians." In the MQSRA definition, it is further recognized that the accreditation bodies can establish, with FDA approval, additional qualifications for these review physicians beyond the qualifications applicable to interpreting physicians in mammography facilities.

FDA is proposing to add § 900.2(yy) to incorporate the MQSRA definition of "review physician" into the final rule. FDA is further proposing to amend § 900.4 in order to use the term review physician at the appropriate points. In addition, since this term could be confused with the term "reviewing interpreting physician," presently used in connection with the requirements for the mammography audit, FDA is proposing to change the term, "reviewing interpreting physician" to "audit interpreting physician" in § 900.12(f).

2. Patient Notification

The October 1997 final rule at § 900.12(j) states that if FDA determines that any activity related to the provision of mammography at a facility presents a sufficiently serious risk to human health, the agency may require the facility to notify the patients, their physicians, and/or the public of actions that may be taken to minimize this risk. This provision was established to aid FDA in fulfilling its general responsibility under the MQSA to inform the public about facilities against which the agency has been required to take action for failure to meet the quality standards. In section 10(a), the MQSRA provided a specific statement of the agency's authority to require patient notification. FDA is proposing to amend the wording of § 900.12(j) to bring it into conformance with the wording of the MQSRA on this point.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of these proposed amendments under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze the impact of a rule on small entities. The Unfunded Mandates Reform Act requires (in section 201) that agencies prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation).

As previously noted, the proposed amendments explained under section II.B of this document merely clarify provisions already contained within the October 1997 final rule. The impacts of the provisions of that final rule were discussed in the preamble of the final rule (62 FR 55852 at 55961), and are unchanged by the clarifications. Any economic impact of the proposed amendments is related solely to the change in the patient reporting requirement mandated by the MQSRA. Given the statutory basis for extending this requirement to all mammography facilities effective April 28, 1999, FDA did not consider alternatives to implementing the requirements.

In the October 1997 final rule, FDA estimated that there were 9,800 mammography facilities that would be considered small. Moreover, FDA previously estimated the impact of a requirement for sending a lay summary of results to all patients during the development of its proposed rule of April 3, 1996 (61 FR 14856), although that requirement was removed from the October 1997 final rule in response to public comments (Ref. 1). FDA believes that these estimates remain accurate.

The earlier estimate concerning the impact of required lay summaries was based upon the assumption that an adequate lay summary of results could be provided in the great majority of cases in a brief, standardized format. Using this assumption, it was estimated that the compliance cost per examination would be $0.94, including the labor of the office worker and the cost of postage.

To convert this per examination cost to a national total, it was necessary to make several other assumptions. Using the best data and expert opinion available at the time, it was estimated that approximately 25 million mammography examinations were conducted annually in this country. Of this, it was estimated that 7.7 percent or 1,925,000 were examinations of self-referred patients. Because facilities were already required by the MQSA (and by the interim rule) to provide a lay summary of results to self-referred patients, that portion of the cost of sending lay summaries had already been included in the impact estimates made in association with the development of the interim rule of October 27, 1993.

There remained then approximately 23,075,000 patients for which this was potentially a new requirement. However, it was further estimated that 40 percent of the patients were already receiving a lay summary in some form from the facility at which they received their examinations. Thus, the new requirement would lead to additional lay summaries in only 60 percent of the referred examinations or approximately 13,845,000. At $0.94 a lay summary, the added cost would be slightly over $13 million a year.

Two major changes have occurred since the information upon which these estimates were based was collected in late 1995. Most significantly, through FDA's activities and those of other private and government groups, public awareness of the need for regular mammography examinations and public confidence that a high quality examination will be received have both increased. As a result, the number of examinations given per year has increased to an estimated 40 million. This requires increasing the costs estimated previously by 60 percent. Postage rates have also gone up $0.01 per letter thus the cost per lay summary would increase from $0.94 to $0.95. The combined impact of these two changes is to increase the estimate of the annual incremental costs to meet this proposed new requirement to approximately $21 million.

For the great majority of cases, the assumption that the lay summaries can be provided in brief, standardized format is valid. However, in approximately 10 percent of the cases, the overall assessment of the findings is expected to be "suspicious" or "highly suggestive of malignancy." In such cases, the facility is required to "make reasonable attempts to ensure that the results are communicated to the patients as soon as possible."

Facilities that accept self-referred patients are already required by the final rule to make such attempts for cases with an overall assessment of "suspicious" or "highly suggestive of malignancy." Based upon the assumption that the attempt would involve a 5 minute telephone conversation of the interpreting physician with the patient, a cost of $8.93 per examination was estimated. This cost would be in addition to the $0.95 estimated cost for the written lay summary which would still need to be sent. Assuming that this would be a new cost for 10 percent of the 60 percent of the referred patients among the 40 million receiving examinations annually, the incremental cost for these contacts is approximately $21.4 million.

The total annual incremental cost due to this proposed new requirement, therefore, would be approximately $42.4 million. Previously, the annual cost for compliance with the interim and final MQSA rules was estimated at $61.5 million (Ref. 2). Adding the cost of compliance with this proposed new requirement brings the total annual cost of compliance with the final rule as amended to approximately $103.9 million.

Compliance with the proposed new requirement would also be expected to increase the benefits from mammography. Mammography is the most effective technique presently available for the early detection of breast cancer. Early detection of breast cancer followed by prompt treatment can avert mortalities that can result if treatment is delayed until the cancer reaches a more advanced stage. In addition, the cost and severity of the treatment methods will in general be less when the cancer is treated at an early stage. Even in cases where the assessment is negative, there will be an expected benefit arising from relieving the anxiety of the patient about the possible results of the examination through prompt reporting of results to her. But for these benefits to be gained, the patient must be informed of the results of her examination so that necessary followup actions can be promptly taken. Unfortunately, although it is not possible to make a quantitative estimate of the number of such cases, there have been frequent complaints about patients receiving the results of their examinations after an undue delay or not at all. Studies have also shown that direct communication of results to the patient by the mammography facility (as compared to traditional communication procedures where the facility communicates only with the referring provider), produces an improvement in compliance with followup recommendations (Ref. 3). The new requirement should thus add to the benefits expected from interim and final rules, which were previously estimated to range from $284 to $408 million (61 FR 55986), primarily due to a gain in averted mortalities (Ref. 2).

Based on these analyses, FDA has determined that the rule is consistent with the principles set forth in the Executive Order, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act. The wording of the requirement related to sending lay summaries to referred patients directly parallels that of the MQSRA and so, in accordance with the Executive Order, maximizes the net benefits to the extent

allowed by that statute. Similarly, in accordance with the Regulatory Flexibility Act, the impact of the rule on small entities has been analyzed. Finally, as noted previously, the incremental annual expenditures (beyond those already incurred from the previous interim and final rules) required by the rule are estimated at $42.4 million and thus do not exceed $100 million in 1 year so the rule does not come under the requirements of the Unfunded Mandates Reform Act.

V. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate are the times for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Lay Summary of Examination Results to Patients

Description: This proposed rule would merely implement a statutory information collection requirement; there is no additional burden attributable to the regulation. The proposed rule would conform the requirements of this section with the requirement of section 6 of Pub. L. 105–248 that states: "(IV) whether or not such a physician is available or there is no such physician, a summary of the written report shall be sent directly to the patient in terms easily understood by a lay person." To produce the required lay summary, the mammography facilities will review the medical report of each patient's examination and collect from it the necessary information.

Respondent Description: Businesses and other for-profit organizations, nonprofit organizations.

For consistency with the direct final rule to which this proposed rule is a companion, FDA is following the PRA comment procedures for direct final rules in this proposed rule. As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection provisions of this proposed rule by August 31, 1999, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. At the close of the 75-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. References

The following references have been placed on display at the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Eastern Research Group, "Cost and Benefit Analysis of Regulations Under the Mammography Quality Standards Act of 1992–Preliminary Final," March 14, 1996.

2. Eastern Research Group, "Economic Impact Analysis of Regulations Under the Mammography Quality Standards Act of 1992–Final," October 7, 1997.

3. Agency for Health Care Policy and Research (AHCPR), "Quality Determinants of Mammography," AHCPR Pub. No. 95–0632, October 1994.

List of Subjects in 21 CFR Part 900

Electronic products, Health facilities, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 900 be amended as follows:

PART 900—MAMMOGRAPHY

1. The authority citation for part 900 continues to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

2. Section 900.2 is amended by adding paragraph (yy) to read as follows:

§ 900.2 Definitions.

* * * * *

(yy) *Review physician* means a physician who, by meeting the requirements set out in § 900.4(c)(5), is qualified to review clinical images on behalf of the accreditation body.

3. Section 900.4 is amended by revising the last sentence of paragraph (a)(4); and by revising paragraphs (c)(3)(ii), (c)(5) introductory text, (c)(5)(i), (c)(5)(ii), and (c)(6)(ii) to read as follows:

§ 900.4 Standards for accreditation bodies.

(a) * * *

(4) * * * Such individuals who review clinical or phantom images under the provisions of paragraphs (c) and (d) of this section or who visit facilities under the provisions of paragraph (f) of this section shall not review clinical or phantom images from or visit a facility with which such individuals maintain a relationship, or when it would otherwise be a conflict of interest for them to do so, or when they have a bias in favor of or against the facility.

* * * * *

(c) * * *

(3) * * *

(ii) All clinical images submitted by a facility to the accreditation body shall be reviewed independently by two or more review physicians.

* * * * *

(5) Review physicians. Accreditation bodies shall ensure that all of their review physicians:

(i) Meet the interpreting physician requirements specified in § 900.12(a)(1) and meet such additional requirements as have been established by the accreditation body and approved by FDA;

(ii) Are trained and evaluated in the clinical image review process, for the types of clinical images to be evaluated by a review physician, by the accreditation body before designation as review physicians and periodically thereafter; and

* * * * *

(6) * * *

(ii) If a review physician identifies a suspicious abnormality on an image submitted for clinical image review, the accreditation body shall ensure that this information is provided to the facility and that the clinical images are returned to the facility. Both shall occur no later than 10-business days after identification of the suspected abnormality.

* * * * *

4. Section 900.12 is amended by revising paragraphs (c)(2) and (f)(3) and the first sentence of paragraph (j)(2) to read as follows:

§ 900.12 Quality standards.

* * * * *

(c) * * *

(2) *Communication of mammography results to the patients.* Each facility shall send each patient a summary of the mammography report written in lay terms within 30 days of the mammographic examination. If assessments are "Suspicious" or "Highly suggestive of malignancy," the facility shall make reasonable attempts to ensure that the results are communicated to the patient as soon as possible.

(i) Patients who do not name a health care provider to receive the mammography report shall be sent the report described in paragraph (c)(1) of this section within 30 days, in addition to the written notification of results in lay terms.

(ii) Each facility that accepts patients who do not have a health care provider shall maintain a system for referring such patients to a health care provider when clinically indicated.

* * * * *

(f) * * *

(3) *Audit interpreting physician.* Each facility shall designate at least one interpreting physician to review the medical outcomes audit data at least once every 12 months. This individual shall record the dates of the audit period(s) and shall be responsible for analyzing results based on this audit. This individual shall also be responsible for documenting the results and notifying other interpreting physicians of their results and the facility aggregate results. If followup actions are taken, the audit interpreting physician shall also be responsible for documenting the nature of the followup.

* * * * *

(j) * * *

(2) If FDA determines that the quality of mammography performed by a facility, whether or not certified under § 900.11, was so inconsistent with the quality standards established in this section as to present a significant risk to individual or public health, FDA may require such facility to notify patients who received mammograms at such facility, and their referring physicians, of the deficiencies presenting such risk, the potential harm resulting, appropriate remedial measures, and such other relevant information as FDA may require. * * *

Dated: June 9, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15293 Filed 6–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of limited reopening of rulemaking record.

SUMMARY: On October 17, 1997, OSHA published its proposed standard to regulate occupational exposure to tuberculosis (TB). Public hearings on the proposal were held in Washington, DC, Los Angeles, CA, New York City, NY, and Chicago, IL between April 7 and June 4, 1998. The post-hearing comment period closed on October 5, 1998. OSHA is now reopening the rulemaking record for 45 days to submit two reports to the docket: OSHA's report on TB control practices in homeless shelter settings (Ex. 179–1); and the National Institute for Occupational Safety and Health's (NIOSH) Health Hazard Evaluation (HHE) of a medical waste treatment facility (Ex. 179–2). OSHA invites public comment on the findings of these reports and the underlying issues of the coverage of homeless shelters and medical waste treatment facilities within the scope of a final TB standard. OSHA also seeks comment on including TB and AIDS clinics and probation and parole officers within the scope of the standard as well as expanding the coverage of the standard to include all social service workers.

In addition, OSHA is submitting to the docket four other documents, previously unavailable, that relate to issues addressed during the public hearings These documents are: The American College of Occupational and Environmental Medicine's (ACOEM) "Guidelines for Protecting Health Care Workers Against Tuberculosis" (Ex. 179–3); "Laboratory Performance Evaluation of N95 Filtering Facepiece Respirators, 1996" (Morbidity and Mortality Weekly Report, December 11, 1998) (Ex. 179–4); "The Costs of Healthcare Worker Respiratory Protection and Fit-Testing Programs" by Scott E. Kellerman et al. (September 1998, Journal of Infection Control and Epidemiology) (Ex. 179–5); and "The Relative Efficacy of Respirators and Room Ventilation in Preventing Occupational Tuberculosis' by Kevin Fennelly and Edward Nardell (October 1998, Journal of Infection Control and Epidemiology)(Ex. 179–6). Public comment on these documents is also invited. Comments should be limited to the issues raised in these documents, and participants do not need to resubmit evidence or comments that are already in the record.

DATES: Comments must be postmarked no later than August 2, 1999.

ADDRESSES: Send two copies of your comments to: Docket Office, Docket H–371, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Comments limited to 10 pages or fewer may also be transmitted by FAX to: 202–693–1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter.

Comments may also be submitted electronically through OSHA's Internet site at URL, *http://www/osha-slc.gov/e-comments/e-comments-tb.html*. Information such as studies and journal articles cannot be attached to electronic submissions and must be submitted in duplicate to the above address. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

The entire record for the TB rulemaking, including the new reports being submitted, is available for inspection and copying in the Docket Office, Docket H–371, telephone 202–693–2350.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone (202) 693–1999, FAX (202) 693–1634.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 1993, the Labor Coalition to Fight TB in the Workplace petitioned OSHA to initiate rulemaking for a permanent standard issued under Section 6(b) of the Occupational Safety and Health (OSH) Act to protect workers from occupational exposure to TB. Citing the recent resurgence of TB and the emergence of new cases of multidrug-resistant TB (MDR–TB), the petitioners stressed the need for a substance-specific standard to address the particular hazards associated with occupational exposures to TB. The petitioners contended that the non-mandatory TB Guidelines published by the Centers for Disease Control and Prevention (CDC) do not provide adequate protection because they are not fully or rigorously implemented in most workplaces.

On October 17, 1997, OSHA published its proposed standard for occupational exposure to TB (62 FR 54160). Based on a review of the data, OSHA made a preliminary determination that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings are at significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures. To reduce this occupational risk, OSHA proposed a standard that would require employers to protect TB-exposed workers by means of infection prevention and control measures that have been demonstrated to be highly effective in reducing or eliminating job-related TB infections. These measures include procedures for the early identification of individuals with suspected or confirmed infectious TB, the isolation of such individuals in rooms designed to protect those in the vicinity of the room from contact with microorganisms causing TB, the use of respirators when performing certain high-hazard procedures, employee training, employee skin testing and, where appropriate, medical management and follow-up after an exposure incident or skin test conversion has occurred.

Homeless Shelters

Throughout the development of the proposal, OSHA has been concerned about the feasibility of implementing a TB standard in homeless shelters because of the unique characteristics of the workforce in such shelters, the unique characteristics of the client population, and the non-profit nature of most homeless shelters. Prior to publication of the proposal, OSHA held stakeholder meetings with homeless shelter representatives and met with the Interagency Council on the Homeless to discuss issues related to the potential impact the standard might have on homeless shelters. In addition, during review under the Small Business Regulatory Enforcement Fairness Act (SBREFA), small business representatives from the homeless shelter sector raised specific concerns about many shelters' ability to implement certain provisions of OSHA's proposed standard. To address issues related to the feasibility of the proposed standard for homeless shelters, OSHA requested information in the proposal and held special sessions at each hearing site to receive testimony from employers, employees, clients and others representing homeless shelters. In addition, OSHA initiated a study to examine these issues further through an on-site survey of a number of homeless shelters. The results of this study (Ex. 179–1) did not become available to OSHA until after the close of the public comment period. This study has now been placed in the docket for this rulemaking and is available for public comment.

Waste Treatment Facilities

During the development of the proposal, OSHA was also concerned about additional types of work settings that might need to be included within the scope of the TB standard because they pose a significant risk of occupational TB exposure to their employees. During the public hearings, testimony was submitted that addressed the potential for significant occupational exposure to TB at medical waste treatment facilities handling medical wastes that had not been decontaminated. Preliminary findings from investigations at a medical waste treatment facility where a TB outbreak had occurred were presented at the hearings and used as supplemental evidence to support the inclusion of medical waste treatment facilities within the scope of the standard. Other commenters suggested that instead of including the waste treatment facilities, laboratories covered under the TB standard should be required to decontaminate their TB wastes prior to sending them offsite for disposal. At the time of the public hearings on the TB rule, NIOSH was in the process of conducting a Health Hazard Evaluation (HHE) to evaluate the potential for occupational exposure to *Mycobacterium tuberculosis* during the processing the medical wastes. The final HHE (Ex. 179–2) was completed after the close of the public comment period, and has now been entered into the docket for public comment.

Other Work Settings

In addition to homeless shelters and medical waste treatment facilities, other work settings were also recommended by various commenters for possible inclusion in the final standard. Several commenters urged OSHA to cover TB and AIDS clinics based on the fact that these types of clinics are likely to have a high percentage of clients at risk for having infectious TB. OSHA is considering including these ambulatory clinics within the scope of the final standard and seeks additional information on whether such inclusion is warranted. In particular, OSHA solicits information on the number of such clinics, the number of employees typically employed by these clinics, and data on the risk of TB to employees of these facilities.

Commenters also urged the Agency to include parole and probation officers within the scope of the final standard. These commenters testified during the public hearings that parole and probation officers must often interact with the same type of high-risk populations as employees in correctional facilities and therefore, they should be included within the scope of the final standard. Therefore, OSHA also solicits additional information on whether the inclusion of parole and probation officers under the final standard is warranted.

Finally, commenters urged the Agency to expand the standard's coverage of social service workers to include all social service workers and not just social service workers providing services to individuals who are in TB isolation or who are otherwise segregated or isolated due to having infectious TB. OSHA solicits information on whether expanding coverage to all social service workers is warranted. In particular, OSHA is concerned about the feasibility of including such a broad spectrum of workers in the final standard. Thus, the Agency is interested in ways to determine the type(s) of social service workers who may reasonably be anticipated to incur occupational exposure to TB and types of provisions that would be most effective to reduce TB risks of such employees.

Additional Submissions to the Record

In addition, four other documents pertinent to issues raised during the rulemaking became available after the close of the rulemaking record. These documents are: (1) the American College of Occupational and Environmental Medicine's (ACOEM) "Guidelines for Protecting Health Care Workers Against Tuberculosis" (Ex. 179–3); (2) "Laboratory Performance Evaluation of N95 Filtering Facepiece Respirators, 1996" (Morbidity and Mortality Weekly Report, December 11, 1998) (Ex. 179–4); (3) "The Costs of Healthcare Worker Respiratory Protection and Fit-Testing Programs" by Scott E. Kellerman et al. (September 1998, Journal of Infection Control and Epidemiology) (Ex. 179–5) and (4) "The Relative Efficacy of Respirators and Room Ventilation in Preventing Occupational Tuberculosis" by Kevin Fennelly and Edward Nardell (October 1998, Journal of Infection Control and Epidemiology) (Ex. 179–6).

Reopening of the Record and Request for Comments

In order to complete the rulemaking record on issues related to the feasibility of the proposed standard for homeless shelters and medical waste treatment facilities, OSHA is now reopening the rulemaking record and placing in the record the final homeless shelter study, "Final Report on Site Visits to Nine Homeless Shelters", (Ex. 179–1) and the NIOSH medical waste facility HHE(Ex. 179–2). OSHA is also submitting four additional documents, listed above, which include three articles related to respiratory protection issues discussed during the hearings and one article by the ACOEM outlining recommendations for controlling the transmission of TB. These exhibits are available in the Docket Office at the address listed above.

OSHA seeks public comment on (1) the homeless shelter report, (2) the NIOSH HHE, and (3) the underlying issues related to the feasibility of the proposed standard for homeless shelters, and whether the standard should cover medical waste treatment facilities, to help OSHA determine whether and, if so, how homeless shelters and medical waste treatment facilities should be regulated under the final TB standard. Comments are also requested on whether OSHA should require laboratories to decontaminate medical wastes containing *Mycobacterium tuberculosis* before these wastes are sent offsite for disposal. In addition, new information on including TB and AIDS clinics as well as social service workers and parole and probation officers within the scope of a final standard is sought.

OSHA also requests comment on four additional documents: the ACOEM TB guidelines and three articles addressing respiratory protection against TB, which are listed above. In particular, the Agency is interested in comments regarding the adequacy of qualitative fit-testing for N95 respirators for determining a face-seal leakage of no greater than 10 percent.

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC, this 9th day of June, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–15240 Filed 6–16–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO–035–FOR]

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of additional information about a previously proposed amendment to the Missouri regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Missouri submitted supporting documentation for the normal husbandry practices proposed in the previous amendment. The practices include applying pesticides and soil amendments; subsoiling; repairing rills and gullies; burning; overseeding; and planting and pruning trees. Missouri intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments until 4:00 p.m., c.d.t., July 19, 1999.

ADDRESSES: You should mail or hand deliver written comments to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Missouri program, the amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (573) 751–4041.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet: jcoleman@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. You can find general background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the November 21, 1980, **Federal Register** (45 FR 77017). You can find later actions on the Missouri program at 30 CFR 925.12, 925.15, and 925.16.

II. Discussion of the Proposed Amendment

By letter dated October 10, 1990, Missouri sent us an amendment to its program under SMCRA (Administrative Record No. MO–519). We announced receipt of the amendment in the November 1, 1990, **Federal Register** (55 FR 46076) and invited public comment on its adequacy. The public comment period closed December 3, 1990. In the September 29, 1992, **Federal Register** (57 FR 44660), we approved the amendment with exceptions. The exceptions included revisions to Missouri's regulation at 10 CSR 40–7.021(1)(B)2 concerning normal husbandry practices. We did not approve this regulation because Missouri had not provided evidence to substantiate the use of each proposed practice as a normal husbandry practice. As codified at 30 CFR 925.16(p)(15), we required Missouri to provide such evidence for the administrative record or to delete the regulation at 10 CSR 40–7.021(1)(B)2.

By letter dated June 4, 1999, Missouri submitted agricultural publications and

guidelines developed by the University of Missouri—Columbia Extension Division (UMC); other cooperative extension services in cooperation with the U.S. Department of Agriculture; the Missouri Department of Conservation (MDOC); and the U.S. Natural Resources Conservation Service (NRCS) as supporting documentation for the normal husbandry practices proposed in its regulation at 10 CSR 40–7.021(1)(B)2.

Missouri's regulation at 10 CSR 40–7.021(1)(B)2 would allow the permittee, on areas under Phase III liability or the five-year responsibility period, to use specified normal husbandry practices. The practices include: mowing; applying pesticides; applying soil amendments equal to or less than that recommended by the high management yield goals of the NRCS; subsoiling which occurs less than two feet below the surface and which does not remove the revegetation from the surface; burning; overseeding to maintain the approved composition of the stand; and planting and pruning trees. Using these practices will not cause the Phase III liability period to be extended if the permittee can demonstrate that: (1) discontinuance of these measures after the liability period expires will not reduce the probability of permanent revegetation success; (2) the practices are normal husbandry practices within the region on unmined lands having land uses similar to the approved postmining land use of the areas; and (3) the practices are necessary to prevent exploitation, destruction or neglect of the resource and to maintain the prescribed level of use or productivity. Repairing rills and gullies will not cause the Phase III liability period to be extended when rills and gullies develop after the initiation of the Phase III liability period and when that repair is restricted to the filling, grading and reseeding of the eroded portion of the rill.

Missouri submitted the following documents to support the husbandry practices proposed in 10 CSR 40–7.021(1)(B)2:

Herbicides for Conservation Tillage Cropping Systems; UMC
1980 Recom. for Chemical Weed Control in Small Grains; UMC
Soil Insect Control in Reduced Tillage Cropping Systems; UMC
Corrective Liming of Missouri Soils; UMC
Using Your Soil Test Results; UMC
Native Warm-Season Grasses; MDOC
Prescribed Burning (Code 338); NRCS
Establishing Forages; UMC
Soil Compaction: The Silent Thief; UMC
Soil Compaction Tips; Cooperative Extension, University of Nebraska
Soil Compaction and Drainage; Ohio State University
Pasture and Hayland Planting (Code 512); NRCS
Tree/Shrub Establishment (Code 612); NRCS
Tree/Shrub Pruning (Code 660); NRCS
Woodland Site Preparation (Code 490); NRCS
Woodland Pruning (Code 660); NRCS
Critical Area Planting (Code 342); NRCS

III. Public Comment Procedures

We are reopening the comment period on the proposed Missouri program amendment at 10 CSR 40–7.021(1)(B)2 to provide you an opportunity to reconsider the adequacy of the amendment in light of the additional materials sent to us. Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Missouri program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Mid-Continent Regional Coordinating Center.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 10, 1999.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–15399 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA50

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Double Coverage

AGENCY: Office of the Secretary, DOD.

ACTION: Proposed rule.

SUMMARY: This proposed rule clarifies our double coverage policy for non-institutional claims for beneficiaries with primary health insurance. TRICARE network, non-network but participating, and non-participating providers are all reimbursed differently under current procedures. This has had the unintended effect of discouraging TRICARE network participation since non-network but participating providers receive the most favorable treatment with respect to double coverage calculations. The Department proposes to revise double coverage reimbursement calculations by reimbursing all providers up to 100 percent of the CHAMPUS Maximum Allowable Charge after the primary health insurance has paid or 115 percent for nonparticipating providers.

DATES: Public comments must be received by August 16, 1999.

ADDRESSES: TRICARE Management Activity (TMA), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Kathleen Larkin, Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity, telephone (703) 681–1745.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate TRICARE/CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

This proposed rule clarifies our double coverage policy for non-institutional claims for beneficiaries with primary health insurance. TRICARE network, non-network but participating, and non-participating providers are all reimbursed differently under current procedures and this has had the unintended effect of discouraging TRICARE network participation since non-network but participating providers receive the most favorable treatment with respect to double coverage calculations. The Department proposes to revise double coverage reimbursement calculations by reimbursing all providers up to 100 percent of the CHAMPUS Maximum Allowable Charge after the primary health insurance has paid or up to 115 percent for nonparticipating providers.

II. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The proposed rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

A discussion of the major issues received by public comments will be included with the issuance of the final rule, anticipated approximately 60 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military Personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.8 is amended by adding a new paragraph (c)(4) to read as follows:

§ 199.8 Double coverage.

* * * * *

(c) *Application of double coverage provisions.* * * *

(4) *Effect of Network Participation.* For non-institutional claims, providers receive TRICARE/CHAMPUS payment up to 100 percent of the CMAC (established under § 199.14(h)(1)(i)(B)) after the primary health insurance has paid. For nonparticipating providers, CHAMPUS will pay the difference between the amount paid by the other health insurance and the 115 percent balance billing limit established in § 199.14(h)(1)(i)(C).

* * * * *

Dated: June 10, 1999.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–15185 Filed 6–16–99; 8:45 am]

BILLING CODE 1001–10–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–1999–5700]

RIN 2115–AF84

Traffic Separation Schemes: Off San Francisco, In the Santa Barbara Channel, In the Approaches to Los Angeles-Long Beach, California

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending the existing Traffic Separation Scheme (TSS) off San Francisco and the TSS in the Santa Barbara Channel. The proposed amendments are adopted by the International Maritime Organization and have been validated by several recent vessel routing studies. Once implemented, the amended TSSs would route commercial vessels farther offshore, providing an extra margin of safety and environmental protection in the Monterey Bay National Marine Sanctuary and adjacent waters. Additionally, this proposed rulemaking would incorporate descriptions of these TSSs, as well as a description of the existing TSS in the approaches to Los Angeles-Long Beach, into the Code of Federal Regulations.

DATES: Comments and related materials must reach the Docket Management Facility on or before August 16, 1999.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–1999–5700), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in this docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call the Project Officer, Lieutenant Commander Brian Tetreault, Vessel Traffic Management Officer, Eleventh Coast Guard District at Building 50–6, Coast Guard Island, Alameda, California 94501, telephone 510–437–2951; Mike Van Houten, Aids to Navigation Section Chief, Eleventh Coast Guard District, telephone 510–437–2968; or Project Manager, Barbara Marx, Coast Guard, Office of Vessel Traffic Management (G–MOV), at 202–267–0574. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–5700), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of the comments.

Public Meeting

We do not now plan to hold a public meeting. But you may request one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

A traffic separation scheme (TSS) is an internationally recognized routing measure used to minimize the risk of collision by separating vessels, by means of traffic lanes, into opposing streams of traffic. The International Maritime Organization (IMO) must adopt a TSS for it to be internationally recognized. IMO adopts TSSs only if a proposed TSS complies with IMO principles and guidelines on ship routing. Vessels are not required to use TSSs; but, if they do so and the TSSs are IMO-adopted, they must comply with Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS). Rule 10 requires vessels using an IMO-adopted TSS to proceed in the appropriate traffic lane and to follow the general traffic flow for that lane. It also prohibits vessels from entering a separation zone or crossing a separation line. Fishing vessels are allowed some latitude to operate in the separation zone, but they must not impede the passage of any vessel following a traffic lane.

The Ports and Waterways Safety Act (33 U.S.C. 1221–1232) (PWSA) authorizes the Coast Guard (by authority delegated from the Secretary of Transportation) to establish TSSs, where necessary, to provide safe access routes for vessels proceeding to or from U.S. ports. Before implementing new TSSs or modifying existing TSSs, we must conduct a port access route study. Through the study process, we consult with affected parties to reconcile the need for safe access routes with the need to accommodate other reasonable uses of the waterway, such as oil and gas exploration, deepwater port construction, establishment of marine sanctuaries, and recreational and commercial fishing. If a study recommends a new or modified TSS, the U.S. requests IMO adoption of the proposed routing measure. After IMO adoption, we must initiate a rulemaking implementing the adopted routing measures. Once a TSS is established, the right of navigation is considered paramount within the TSS.

Existing California TSSs. There are three internationally adopted TSSs off the coast of California. They are reflected on National Oceanic and Atmospheric Administration (NOAA) nautical charts. They are the—

1. TSS off San Francisco—a three-pronged TSS in the approaches to San Francisco Bay adopted by IMO in 1968;

2. TSS in the Santa Barbara Channel—a TSS through the Santa Barbara Channel adopted by IMO in 1969; and

3. TSS in the approaches to Los Angeles-Long Beach—a two-pronged TSS in the approach to Los Angeles-Long Beach adopted by IMO in 1975 that abuts the Santa Barbara Channel TSS.

IMO-adopted Amendments to the TSSs. Consistent with the PWSA, we initiated a port access route study of the California coast in 1979. Study results were published in the early to mid 1980's. The study evaluated potential traffic density patterns, waterways use conflicts, and the need for safe access routes in offshore areas. The study recommended several improvement measures, including amendments to the existing TSSs. Based on these recommendations, the U.S. requested and received IMO adoption of the following amendments, as reflected in "Ships Routeing," Sixth Edition 1991, International Maritime Organization.

1. In 1985, IMO adopted an 18-mile westward extension of the northwest end of the TSS in the Santa Barbara Channel. The extension was designed to increase safety of transit through oil exploration and development zones and encourage coastwise transits at greater distances from shore, reducing the risk of allisions and groundings. One of IMO's conditions of adoption was the installation of a radar beacon (RACON) on Platform Harvest to alert mariners of the structure. We installed the RACON and a white light that flashes once every ten seconds with a nominal range of 17 nautical miles in January of 1991.

2. In 1990, IMO adopted an amendment that rotated the southern approach lane of the TSS off San Francisco westward (seaward) to provide a true north-south alignment. Shifting the southern approach to the west would encourage vessels in this area to transit farther offshore when entering or departing San Francisco Bay from or to the south.

Previous Rulemaking. In 1989, we published a notice of proposed rulemaking (NPRM) entitled "Traffic Separation Schemes and Shipping Safety Fairways Off the Coast of California" (CGD 83–032; 54 FR 18258). The NPRM proposed implementing several IMO-adopted modifications to the existing TSSs and establishing a shipping safety fairway along the California coast. We elected to postpone implementation of the IMO-adopted TSS amendments until the studies on the Monterey Bay National Marine Sanctuary (MBNMS) and on oil tanker routing along the California coast (the "Tanker Free Zone" study mandated by the Oil Pollution Act of 1990) were complete.

Monterey Bay National Marine Sanctuary (MBNMS) Issues. In 1992, Congress established the MBNMS in recognition of the area's environmental importance and its unique, sensitive, and abundant bio-diversity. The MBNMS is also located in an area of critical importance to maritime commerce. Vessel traffic within the MBNMS was a major concern raised during the Sanctuary designation. Although the spill history in the region shows a small number of spills, many consider the environmental risk significant given the number and volume of vessels transiting in the area and the potential size of a spill and the unique resources at risk.

As part of the MBNMS designation, Congress directed the Secretaries of Commerce and Transportation to evaluate potential threats from spills of oil or other hazardous materials to MBNMS resources and identify possible ways to reduce those threats. To help complete this tasking, the Coast Guard and NOAA established the Monterey Bay Panel of the Navigation Safety Advisory Council (NAVSAC). The panel was made up of key stakeholders (industry, non-governmental organizations and government agencies) and was tasked with reviewing existing practices and hazards and recommending improvement strategies. The panel relied on extensive public involvement to help complete its task and held public workshops in June of 1998.

The Coast Guard and NOAA published the panel's final report, "Monterey Bay National Marine Sanctuary Vessel Management," in October 1998. The report recommended implementing the IMO-adopted amendments to the TSSs off San Francisco and in the Santa Barbara Channel. A copy of this report is included in the public docket (See **ADDRESSES**).

Recent Port Access Route Study. From 1993 through 1996, we conducted a port access route study to analyze vessel routing measures in the approaches to California ports. The study considered the results and findings of several related studies. We published the study results in the **Federal Register** on October 25, 1996 (61 FR 55248).

The study recommended shifting the southern approach lanes of the existing TSS off San Francisco westward (seaward) and extending the existing TSS in the Santa Barbara Channel from Point Conception to Point Arguello. These findings validated the IMO-adopted amendments we are proposing in this rulemaking. The study concluded that no changes to the TSS in the approaches to Los Angeles-Long Beach were necessary at the time.

Los Angeles-Long Beach Port Access Route Study. In 1995, the Ports of Los Angeles and Long Beach initiated major port improvement projects. They will complete these projects by early 2000. We are currently conducting a study of port access routes for the approaches to Los Angeles and Long Beach (notice of study published on March 11, 1999, 64 FR 12139). The study will evaluate potential effects of these recent port improvement projects on navigational safety and vessel traffic management efficiency. We may recommend changes to the existing TSS as a result of the study. Any recommended changes would require adoption by IMO before domestic implementation. Since it may take years to implement any changes to the TSS in the approaches to Los Angeles-Long Beach, it is practical to codify the existing TSS now.

Discussion of Proposed Rule

This rulemaking would implement IMO-adopted amendments to the TSSs off San Francisco and in the Santa Barbara Channel (adopted in 1990 and 1985 respectively) reflected in "Ships Routeing," Sixth Edition 1991, International Maritime Organization. These changes have not been implemented domestically because we were awaiting the completion of studies analyzing the effects of oil tanker routing along the California coastline and the risks of vessel transits through the Monterey Bay National Marine Sanctuary. The proposed amendments to the TSSs off San Francisco and in the Santa Barbara Channel would—

a. Shift the southern leg of the TSS off San Francisco westward to provide a true north/south alignment; and

b. Extend the existing TSS in the Santa Barbara Channel 18 nautical miles beyond Point Conception.

The modifications to the existing TSSs off San Francisco and in the Santa Barbara Channel would encourage vessels to transit further offshore when entering or departing the southern approach lanes of the TSS off San Francisco or the northwestern end of the TSS in the Santa Barbara Channel.

Additionally, this proposed rulemaking would incorporate these TSSs, as well as the existing TSS in the approaches to Los Angeles-Long Beach, into Title 33 part 167 of the Code of Federal Regulations. It also proposes adding the IMO definition of "area to be avoided" to the list of definitions in 33 CFR 167.5.

TSS off San Francisco. We propose amending the TSS as currently charted on NOAA nautical charts by rotating the southern approach lanes of the charted TSS westward (seaward) to provide a true north/south alignment.

Currently, vessels entering or departing San Francisco Bay via the southern approach lanes of the TSS pass within 3 nautical miles of the closest point of land (just south of Point Montara). By shifting the approach lanes west (seaward), vessels would transit farther offshore when entering or departing San Francisco Bay, increasing the closest point from land to approximately 6 nautical miles. This increased distance provides an added margin of safety for vessels experiencing a loss of power or steering and provides more time for response vessels to reach a disabled vessel before it drifts ashore.

Furthermore, the shift would help eliminate conflicts between large commercial vessels and the concentrated fleets of fishing vessels operating closer to shore. Finally, the shift would "line up" the southern leg of the TSS with the proposed amended TSS in the Santa Barbara Channel.

TSS in the Santa Barbara Channel. We propose amending the TSS as currently charted on NOAA nautical charts by extending the northwestern leg of the TSS 18 nautical miles westward.

Currently, vessels departing the northwestern end of the TSS in the Santa Barbara Channel near Point Conception come in close proximity to the offshore oil platforms Hidalgo, Harvest, and Hermosa. Extending the TSS westward would route vessels farther away from these oil platforms and Point Conception, decreasing the risk of allisions and groundings. Further, it will provide an increased margin of safety in light of anticipated future development in this area. In January of 1991, we installed a radar beacon (RACON) and a white light that flashes once every ten seconds with a nominal range of 17 nautical miles on Platform Harvest to comply with IMO's conditions outlined in the 1985 adoption for the Santa Barbara Channel extension.

Codification of TSSs off San Francisco, in the Santa Barbara Channel, and in the approaches to Los

Angeles-Long Beach and Precautionary Areas. We propose adopting the TSSs and associated precautionary areas off San Francisco, in the Santa Barbara Channel, and in the approaches to Los Angeles-Long Beach published in "Ships Routeing," Sixth Edition 1991, International Maritime Organization, and incorporating them into 33 CFR part 167. The IMO coordinates for the TSSs and precautionary areas are consistent with current NOAA nautical charts, except for an error in the northern leg of the TSS off San Francisco.

When the NOAA charts are reprinted, they should accurately reflect the coordinates adopted by IMO for the northern leg of the TSS, providing greater clearance from Point Reyes and increasing the safety of navigation.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The costs and benefits of this proposed rulemaking are summarized below.

Costs

The proposed amendments to the TSS in the Santa Barbara Channel and the TSS off San Francisco would result in a slight increase in transit times and operating costs for vessels using the TSSs. Most of the vessels using the TSS are large commercial vessels such as containerships. The northbound transit distance through the TSSs will increase by 2.4 nautical miles (nm) and the southbound transit distance will increase by 4.1 nautical miles (nm). The time per transit would increase by approximately 8 minutes (.14 hours) northbound and 14 minutes (.23 hours) southbound. This corresponds to northbound 219.43 (1 hour/17.5 nm × 2.4 nm × 1600 transits/year) and southbound 374.86 (1 hour/17.5 nm × 4.1 nm × 1600 transits per year) additional hours per year. Assuming a fuel cost of approximately $600 per hour, the estimated increase in costs for industry would be $356,574 per year ((219.43 hours + 374.86 hours) × $600/hour).

Vessel operators would incur the minimal cost of plotting new coordinates on their existing charts or purchasing updated charts, when available.

Benefits

Amendments to the TSS in the Santa Barbara Channel. Currently, vessels departing the northwestern end of the TSS near Point Conception come in close proximity to several oil platforms. The proposed 18-mile extension of the TSS would route vessels farther away from these oil platforms and Point Conception, decreasing the risk of allisions and groundings.

Allisions and groundings could result in injuries, pollution, and property damage. Furthermore, the proposed extension will provide an increased margin of safety in light of anticipated future development in this area.

Amendments to the TSS off San Francisco. Currently, vessels entering or departing San Francisco Bay via the southern approach lane of the TSS pass within 3 nautical miles of the closest point of land. The proposed westward shift of the approach lanes would result in vessels transiting farther offshore when entering or departing San Francisco Bay, increasing the closest point from land to approximately 6 nautical miles. This increased distance provides an added margin of safety for vessels experiencing casualties (e.g. loss of power or steering) and provides more time for response vessels to reach a disabled vessel before it drifts ashore. The proposed shift would also help eliminate conflicts between large commercial vessels and the fleets of fishing vessels operating closer to shore. As a result, the proposed rule should reduce the risk of collisions and groundings and resulting injuries, pollution, and property damage.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule should have a minimal economic impact on vessels operated by small entities. The proposal amends two existing TSSs. This action improves safety for vessels using the TSSs by reducing the risk of collisions, allisions, and groundings. Vessels transiting the TSS in the Santa Barbara Channel will have to transit an additional 2 to 4 nautical miles per trip, depending on the direction traveled. This additional transit distance results in increased vessel operating costs ranging from approximately $80 to $140 per trip. Most of the vessels that will incur these additional costs are large commercial vessels such as containerships. For these vessels, an additional $80 to $140 per trip represents an insignificant increase in voyage expenses.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Ms. Barbara Marx, Coast Guard, Marine Transportation Specialist, at 202–267–0574.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(l) of Commandant Instruction M16475.lC, it is categorically excluded from further environmental documentation. This rule proposes adjusting two existing traffic separation schemes. These adjustments would enhance safety in the Monterey Bay National Marine Sanctuary and adjacent waters by allowing additional response time for a vessel that is adrift thus preventing groundings, and by routing vessels away from sensitive areas. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 167

Harbors, Marine safety, Navigation (water), Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 167 as follows:

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

1. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. In § 167.5, redesignate paragraphs (a) through (e) as paragraphs (b) through (f), respectively, and add new paragraph (a) to read as follows:

§ 167.5 Definitions.

(a) *Area to be avoided* means a routing measure compromising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships or certain classes of ships.

* * * * *

3. Following § 167.350, add the undesignated center heading "Pacific West Coast" and §§ 167.400 through 167.405, 167.450, 167.452, and 167.500 through 167.503 to read as follows:

Pacific West Coast

Sec.
167.400 TSS off San Francisco: General.
167.401 TSS off San Francisco: Precautionary area.
167.402 TSS off San Francisco: Northern approach.
167.403 TSS off San Francisco: Southern approach.
167.404 TSS off San Francisco: Western approach.
167.405 TSS off San Francisco: Main ship channel.
167.450 TSS in the Santa Barbara Channel: General.
167.452 TSS in the Santa Barbara Channel: Between Point Vincente and Point Arguello.
167.500 TSS in the approaches to Los Angeles-Long Beach: General.
167.501 TSS in the approaches to Los Angeles-Long Beach: Precautionary area.
167.502 TSS in the approaches to Los Angeles-Long Beach: Western approach.
167.503 TSS in the approaches to Los Angeles-Long Beach TSS: Southern approach.

Pacific West Coast

§ 167.400 TSS off San Francisco: General.

The Traffic Separation Scheme off San Francisco consists of a precautionary area under § 167.401, a northern approach under § 167.402, a western approach under § 167.403, a southern approach under § 167.404, and a main ship channel under § 167.405. The geographic coordinates in §§ 167.400 through 167.405 are defined using North American Datum 1983 (NAD 83).

§ 167.401 TSS off San Francisco: Precautionary area.

(a) A circular precautionary area is established bounded to the west by an arc of a circle with a radius of six miles centering upon geographical position 37°45.00′ N, 122°41.50′ W and connecting the following geographical positions:

Latitude	*Longitude*
37°42.70′ N	122°34.60′ W.
37°50.30′ N	122°38.00′ W.

(b) The precautionary area is bounded to the east by a line connecting the following geographic positions:

Latitude	*Longitude*
37°42.70′ N	122°34.60′ W.
37°45.90′ N	122°38.00′ W.
37°50.30′ N	122°38.00′ W.

(c) A circular area to be avoided, with a radius of half of a nautical mile, is centered upon the following geographic position:

Latitude	*Longitude*
37°45.00′ N	122°41.50′ W.

(d) A pilot boarding area is located near the center of the precautionary area described in paragraph (b) of this section. Due to heavy vessel traffic, mariners are advised not to anchor or linger in this precautionary area except to pick up or disembark a pilot.

§ 167.402 TSS off San Francisco: Northern approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
37°48.40′ N	122°47.60′ W.
37°56.70′ N	123°03.70′ W.
37°55.20′ N	123°04.90′ W.
37°47.70′ N	122°48.20′ W.

(b) A traffic lane for north-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°49.20′ N	122°46.70′ W.
37°58.00′ N	123°02.70′ W.

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°53.90′ N	123°06.10′ W.
37°46.70′ N	122°48.70′ W.

§ 167.403 TSS off San Francisco: Southern approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
37°39.10′ N	122°40.40′ W.
37°27.00′ N	122°40.40′ W.
37°27.00′ N	122°43.00′ W.
37°39.10′ N	122°43.00′ W.

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°39.30′ N	122°39.20′ W.
37°27.00′ N	122°39.20′ W.

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°27.00′ N	122°44.30′ W.
37°39.40′ N	122°44.30′ W.

§ 167.404 TSS off San Francisco: Western approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
37°41.90′ N	122°48.00′ W.
37°38.10′ N	122°58.10′ W.
37°36.50′ N	122°57.30′ W.
37°41.10′ N	122°47.20′ W.

(b) A traffic lane for south-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°42.80′ N	122°48.50′ W.
37°39.60′ N	122°58.80′ W.

(c) A traffic lane for north-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°35.00′ N	122°56.50′ W.
37°40.40′ N	122°46.30′ W.

§ 167.405 TSS off San Francisco: Main ship channel.

(a) A separation line connects the following geographical positions:

Latitude	*Longitude*
37°45.90′ N	122°38.00′ W.
37°47.00′ N	122°34.30′ W.
37°48.10′ N	122°31.00′ W.

(b) A traffic lane for eastbound traffic is established between the separation line and a line connecting the following geographical positions:

Latitude	*Longitude*
37°45.80′ N	122°37.70′ W.
37°47.80′ N	122°30.80′ W.

(c) A traffic lane for westbound traffic is established between the separation line and a line connecting the following geographical positions:

Latitude	*Longitude*
37°46.20′ N	122°37.90′ W.
37°46.90′ N	122°35.30′ W.
37°48.50′ N	122°31.30′ W.

§ 167.450 TSS in the Santa Barbara Channel: General.

The Traffic Separation Scheme in the Santa Barbara Channel is described in § 167.452. The geographic coordinates in § 167.452 are defined using North American Datum 1983 (NAD 83).

§ 167.452 TSS in the Santa Barbara Channel: Between Point Vicente and Point Arguello.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
33°44.90′ N	118°35.70′ W.
34°04.00′ N	119°15.90′ W.
34°25.70′ N	120°51.75′ W.
34°23.75′ N	120°52.45′ W.
34°02.20′ N	119°17.40′ W.
33°43.20′ N	118°36.90′ W.

(b) A traffic lane for north-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°45.80′ N	118°35.10′ W.
34°04.80′ N	119°15.10′ W.
34°26.60′ N	120°51.45′ W.

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
34°22.80′ N	120°52.70′ W.
34°01.40′ N	119°18.20′ W.
33°42.30′ N	118°37.50′ W.

§ 167.500 TSS in the approaches to Los Angeles-Long Beach: General.

The Traffic Separation Scheme in the approaches to Los Angeles-Long Beach consists of a precautionary area under § 167.501, a western approach under § 167.502, and a southern approach under § 167.503. The geographic coordinates in §§ 167.501 through 167.503 are defined using North American Datum 1983 (NAD 83).

§ 167.501 TSS in the approaches to Los Angeles/Long Beach: Precautionary area.

(a) The precautionary area consists of the water area enclosed by the Los Angeles-Long Beach breakwater and a line connecting Point Fermin Light at 33°–42.30′ N, 118°–17.60′ W, with the following geographical positions:

Latitude	*Longitude*
33°37.70′ N	118°17.50′ W.
33°37.70′ N	118°06.50′ W.
33°43.40′ N	118°10.80′ W.

(b) A pilot boarding area is located near the center of the precautionary area. Due to heavy vessel traffic, mariners are advised not to anchor or linger in this precautionary area except to pick up or disembark a pilot.

§ 167.502 TSS in the approaches to Los Angeles-Long Beach: Western approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
33°39.70′ N	118°17.50′ W.
33°38.70′ N	118°17.50′ W.
33°38.70′ N	118°27.60′ W.
33°43.20′ N	118°36.90′ W.
33°44.90′ N	118°35.70′ W.
33°39.70′ N	118°24.90′ W.

(b) A traffic lane for northbound coastwise traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°40.70′ N	118°17.50′ W.
33°40.70′ N	118°24.60′ W.
33°45.80′ N	118°35.10′ W.

(c) A traffic lane for southbound coastwise traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°37.70′ N	118°17.50′ W.
33°37.70′ N	118°28.00′ W.
33°42.30′ N	118°37.50′ W.

§ 167.503 TSS in the approaches to Los Angeles-Long Beach TSS: Southern approach.

(a) A separation zone, two miles wide, is centered upon the following geographical positions:

Latitude	*Longitude*
33°37.70′ N	118°08.9′ W.
33°19.70′ N	118°03.4′ W.

(b) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°37.70′ N	118°11.30′ W.
33°19.10′ N	118°06.30′ W.

(c) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°37.70′ N	118°06.50′ W.
33°20.30′ N	118°00.50′ W.

Dated: June 8, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–15139 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 133–4087b; FRL–6355–1]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the latest revision to the Pennsylvania State Implementation Plan (SIP) consisting of the plan the Commonwealth will use to conduct the ongoing evaluation of its enhanced inspection and maintenance (I/M) program. With the submission of this program evaluation plan, Pennsylvania has remedied all conditions that EPA had placed upon approval of the Commonwealth's enhanced I/M program. Therefore, EPA is today also proposing to convert its conditional approval of Pennsylvania's enhanced I/M program SIP revisions to full approval, in accordance with the requirements of the Clean Air Act. In the "Rules and Regulations" section of this **Federal Register**, EPA is both approving the SIP submittal and converting its conditional approval to a full approval as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. Details of EPA's evaluation of the Commonwealth's SIP revisions are included in a technical support document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 19, 1999.

ADDRESSES: Written comments must be addressed and sent in hard copy to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies are also available at the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, at the EPA Region III address above, or by e-mail at Rehn.Brian@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–15164 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD–3039b; FRL–6357–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From Decorative Surfaces, Brake Shoe Coatings, Structural Steel Coatings, and Digital Imaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Maryland State Implementation Plan (SIP). The revisions concern the control of organic compou[illegible] from decorative[illegible] brake [illegible]oe steel [illegible]ons, a[illegible] im[illegible]roposing these rev[illegible]te emissions of VOCs in accordance with the requirements of the Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect.

EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 19, 1999.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Donahue, (215) 814–2095, at the EPA Region III address above, or by e-mail at donahue.carolyn@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–15160 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0027b, CO–001–0028b, and CO–001–0033b; FRL–6358–7]

Clean Air Act Approval and Promulgation of State Implementation Plan; Colorado; Revisions Regarding Negligibly Reactive Volatile Organic Compounds and Other Regulatory Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA approves three revisions to the Colorado State Implementation Plan (SIP). The SIP revisions being approved include: an update to the State's list of negligibly reactive volatile organic compounds (VOCs) to add acetone. The State also consolidated the list of negligibly reactive VOCs from Regulations No. 3 and 7 into the Common Provisions Regulation. These revisions were submitted for approval on September 16, 1997; a clarification to the definition of "applicable requirement" and corrections of typographical errors in parts A and B of Colorado Regulation No. 3. These revisions were also submitted on September 16, 1997; and an update to the list of negligibly reactive VOCs in the Common Provisions Regulation to add perchloroethylene. The State also repealed its requirements in Regulation No. 7 that required control of VOC emissions from dry cleaning facilities using perchloroethylene as a solvent. These revisions were submitted for approval on August 19, 1998.

In the "Rules and Regulations" section of this **Federal Register**, we approve the State's submittals as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. A detailed rationale for the approval is set forth in the preamble of the direct final rule. If no adverse comments are submitted, we will not take further action on this proposed rule. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing on or before before July 19, 1999.

ADDRESSES: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 2, 1999.

Carol Rushin,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–15162 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6362–5]

RIN 2060–ZA07

Assessment of Visibility Impairment at the Grand Canyon National Park: Advance Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is providing advance notice of proposed rulemaking regarding visibility impairment at the Grand Canyon National Park (GCNP) and the possibility that the Mohave Generating Station (MGS) in Laughlin, Nevada may contribute to that impairment. The purpose of this advance notice is to explain provisions in the Clean Air Act and EPA regulation for protecting visibility in national parks and wilderness areas. This notice also describes the Department of the Interior (DOI) certification of visibility impairment at the Grand Canyon and the statement made by the Department that it believes the MGS is contributing to this impairment. This notice also presents a summary of the methodologies and results of Project MOHAVE, the study which evaluated the impacts of emissions from the MGS on visibility at the GCNP. In this notice, EPA is also requesting additional information that it should consider in determining whether visibility problems at the GCNP can be reasonably attributed to MGS, and if so, what, if any, pollution control requirements should be applied. EPA is not proposing any specific action regarding the MGS at this time but is providing background information and requesting additional information that the agency should consider.

DATES: Comments on this advanced notice of proposed rulemaking must be submitted no later than August 16, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: EPA Region IX, 75 Hawthorne Street (AIR2), San Francisco, CA 94105, Attn: Regina Spindler (Phone: 415–744–1251).

Docket: EPA has established a docket for this document, Docket Number A2–99–01. Materials related to the development of this notice have been placed in this docket. The docket is available for review at: EPA Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Interested persons may make an appointment with Regina Spindler, (415) 744–1251, to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

Electronic Availability: This document is also available as an electronic file on the EPA Region IX Web Page at http://www.epa.gov/region09.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (415) 744–1251, Planning Office (AIR2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

Outline

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I. Background

A. Statutory and Regulatory Framework

1. Clean Air Act Visibility Requirements

Section 169A of the Clean Air Act (Act or CAA), 42 U.S.C. 7491, provides for a visibility protection program and sets forth as a national goal "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." (The terms "impairment of visibility" and "visibility impairment" are defined in the Act to include reduction in visual range and atmospheric discoloration.) Section 169A requires EPA, after consultation with the Secretary of the Interior, to promulgate a list of "mandatory Class I Federal areas" where visibility is an important value. These areas include international parks, national wilderness areas and national memorial parks greater than five thousand acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) of the Act, 42 U.S.C. 7472(a). Each mandatory Class I Federal area is the responsibility of a Federal Land Manager (FLM), the Secretary of the federal department with authority over such lands. Section 302(i) of the Act, 42 U.S.C. 7602(i). On November 30, 1979, EPA identified 156 such mandatory Class I Federal areas, including the Grand Canyon National Park in Arizona. 44 FR 69122.

Section 169A(a)(1) of the Act states that "Congress declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution." Section 169A(a)(4) requires EPA to promulgate regulations to assure reasonable progress toward meeting these national visibility protection goals. EPA's regulations must require each state with a mandatory Class I Federal area (or states with emissions that may reasonably be anticipated to cause or contribute to visibility impairment in a mandatory Class I Federal area) to revise the applicable implementation plan for that state (SIP) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national visibility protection goal. CAA section 169A(b)(2), 42 U.S.C. 7491(b)(2). The SIP revisions for these subject states must require each existing major stationary source [1] that emits any air pollutant that may reasonably be anticipated to cause or contribute to visibility impairment in a mandatory Class I Federal area to install and operate "best available retrofit technology" (BART) for controlling emissions from such source to eliminate or reduce visibility impairment. CAA section 169A(b)(2)(A), 42 U.S.C. 7491(b)(2)(A). Pursuant to section 169A(b)(2)(B) of the Act, 42 U.S.C. 7491(b)(2)(B), EPA's regulations must further require these states to include long term strategies in their SIP revisions for making reasonable progress toward meeting the national goal. Section 110(a)(2)(J) of the Act, 42 U.S.C. 7410(a)(2)(J), provides a corollary provision that requires SIPs to meet the visibility protection requirements of part C of the Clean Air Act.

2. EPA's Visibility Regulations

On December 2, 1980, EPA promulgated what it described as the first phase of the required visibility regulations, codified at 40 CFR 51.300–307. (45 FR 80084). These visibility regulations apply to 36 states, including Nevada, that contain mandatory Class I Federal areas. The visibility regulations require these 36 states to comply with the requirements set forth above, including (1) coordinating development of SIP requirements with appropriate FLMs; (2) developing a program to assess and remedy visibility impairment from new and existing sources; (3) developing a long-term strategy (10–15 years) to assure reasonable progress toward the national visibility goal; (4) developing a visibility monitoring strategy to collect information on visibility conditions; and (5) considering in all aspects of visibility protection any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area) identified by the FLMs as critical to a visitor's enjoyment of the Class I area. 40 CFR 51.300–307.[2]

An FLM may, at any time, certify to a state that impairment of visibility exists in a mandatory Class I Federal area. 40 CFR 51.302(c). If the FLM certifies such impairment at least 6 months prior to submission of a revised SIP, an affected state must (1) identify each existing stationary facility which may "reasonably be anticipated to cause or contribute" to any impairment which is "reasonably attributable to that existing stationary facility," and (2) analyze and determine what emission limitation represents the "best available retrofit technology" at each such facility. 40 CFR 51.302(c)(4). Visibility impairment is "reasonably attributable" to a facility if it is "attributable by visual observations or any other technique the state deems appropriate." 40 CFR 51.301(s). The state must also include in its plan an assessment of visibility impairment and a discussion of how each element of the plan relates to preventing future or remedying existing impairment in any mandatory Class I Federal area in the state. 40 CFR 51.302(c)(2)(ii). The visibility regulations also provide for periodic review, and revision as appropriate, of the long-term strategy for making reasonable progress toward the visibility goals at a minimum frequency of every three years. 40 CFR 51.306(c). The 36

[1] For purposes of the visibility protection requirements, the term "major stationary source" in the statute generally means any of a list of 26 different categories of stationary sources of air pollutants, which has the potential to emit 250 tons per year or more of any air pollutant. CAA section 169A(g)(7), 42 U.S.C. 7491(g)(7). The statutory provisions apply to such "major stationary sources" which were not in operation prior to August 7, 1962, and were in existence on August 7, 1977 CAA section 169A(b)(2)(A), 42 U.S.C. 7491(b)(2)(A). The term "existing stationary facility" is defined to include these statutory criteria. In addition, the definition of "existing stationary facility" includes any reconstructed source and provides that fugitive emissions are included in determining the potential emissions from a source. 40 CFR 51.301(e).

[2] These visibility regulations only address the type of visibility impairment that is "reasonably attributable" to a single source or small group of sources. In 1980 when EPA promulgated these regulations, EPA deferred setting SIP requirements to address visibility impairment caused by "regional haze" (i.e., a widespread, regionally homogeneous haze from a multitude of sources which impairs visibility in every direction over a large area) due to the complexity and technical limitations inherent in attempting to identify, measure, and control this type of widespread visibility impairment. In 1993, the National Academy of Sciences concluded that "current scientific knowledge is adequate and control technologies are available for taking regulatory action to improve and protect visibility." EPA promulgated regulations to address regional haze on April 22, 1999.

affected states were required to submit revisions to their SIPs to comply with these requirements by September 2, 1981. 40 CFR 51.302(a)(1).

3. Federal Implementation Plans for Visibility Protection

Most states did not meet the September 2, 1981 deadline for submitting a SIP revision to address visibility protection. A number of environmental groups filed a citizen suit seeking to compel EPA to promulgate its own visibility implementation plans for the states that had failed to submit SIPs to EPA, pursuant to section 110(c) of the Act. In the final rule published on November 24, 1987, EPA disapproved the SIPs of 29 states, including Nevada, for failure to comply with the visibility SIP requirements of 40 CFR 51.300–307. In order to implement the visibility protection program, EPA promulgated a federal implementation plan (FIP) for each state that failed to submit a visibility plan, including Nevada. 52 FR 45132 (November 24, 1987) codified at 40 CFR 52.27, 52.29 and 52.1488. *See* also 40 CFR 52.26 and 52.28.

In the preamble to the proposed FIP, EPA addressed certifications of existing visibility impairment (i.e., certifications of impairment that the FLM submitted prior to June 1, 1986) submitted by the FLM. The FLM certified that there was impairment in all Class I areas in the lower 48 states. EPA reviewed the certification for each Class I area, and determined that there was insufficient information or technical support to determine if the impairment existed within certain Class I areas, or to positively attribute impairment to any specific source or sources. In other Class I areas, research was underway but not yet completed to better characterize and identify the sources of impairment. In one other area, EPA had approved the SIP for visibility in that state and assumed that the certification of impairment would be addressed in the periodic report required by the state's visibility SIP. 52 FR 7802, 7805–7807 (March 12, 1987). For these reasons, EPA determined that, as of the final rulemaking (November 24, 1987), states were not required to include Best Available Retrofit Technology (BART) requirements in their implementation plans to address existing impairment. 52 FR 45132, 45133–45134. The EPA, however, acknowledged that information could become available in the future indicating impairment and that the FLM could certify the existence of visibility impairment at any time. Any future certifications of visibility impairment would be addressed by either the state or EPA (if the state SIP remains disapproved for visibility protection). 52 FR 45132, 45136.

In the visibility protection FIP, EPA established requirements for visibility monitoring, new source review (in attainment and nonattainment areas) and a long term strategy to make progress toward the national visibility protection goal. To fulfill these requirements, EPA is authorized to utilize such monitoring techniques that it deems appropriate and to promulgate such measures, including control strategies, that EPA deems necessary to make reasonable progress toward the national visibility goal. 40 CFR 52.26–52.29. As such, if a FLM makes a certification of visibility impairment involving a state that does not have an approved SIP, EPA determines whether visibility impairment in a mandatory Class I Federal area is reasonably attributable to an existing stationary facility (defined in footnote 1, above). As noted above, EPA acknowledged that the FLMs may certify visibility impairment in a Class I Federal area at any time, and provided that future certifications of visibility impairment by the FLMs would be addressed through the general plan requirements and the periodic review requirements set forth in 40 CFR 51.302(c), 51.306(c), 52.26, and 52.29(c). In the preamble to the visibility FIP, EPA noted that it "may need to reassess the need for BART or other control measures" to remedy future certifications of impairment by the FLM. 52 FR 7802, 7808 (March 12, 1987). In the preamble to the final rule, EPA noted that "[A]ny certification of impairment made to a State, or to EPA in lieu of a State, would then be addressed in the periodic review of the visibility SIP or FIP." 52 FR 45132, 45136 (November 24, 1987).

If the state (or EPA) determines that impairment is reasonably attributable to an existing stationary facility, then the applicable plan's strategy for making progress toward the visibility goal would include a determination of BART for that existing stationary facility. 40 CFR 51.302, 52.26 and 52.29. See also 52 FR 7802, 7808 (March 12, 1987) and 52 FR 45132, 45136 (November 24, 1987). BART must be installed and operated as expeditiously as practicable, but in no case later than five years from the date that the state (or EPA) determines visibility impairment in a Class I Federal area is reasonably attributable to the source(s). (*See* discussion of BART in section III.B., infra.)

4. "Reasonable Attribution" Determination for Navajo Generating Station

The threshold for determining whether visibility impairment is reasonably attributable to a stationary facility was reviewed by the U.S. Court of Appeals for the Ninth Circuit in *Central Arizona Water Conservation District, et al.* v. *Environmental Protection Agency*, 990 F.2d 1531, 1541, cert. denied, 114 S. Ct. 94 (1993). In *CAWCD*, the petitioners challenged a final rule by EPA that visibility impairment was reasonably attributable to the Navajo Generating Station (NGS). EPA had found that visibility impairment in the Grand Canyon National Park could in part be reasonably attributed to sulfur dioxide emissions from the NGS and required installation and operation of pollution controls at the plant as part of the long term strategy for addressing visibility impairment. EPA acknowledged that NGS was not the only source of visibility impairment at the Grand Canyon. The petitioners argued, among other things, that EPA was limited to certain techniques for attributing impairment to a particular source, and that EPA overestimated the improvement in visibility expected from installing and operating controls at NGS. The Ninth Circuit denied the petition for review. The Court concluded that the record more than adequately supported EPA's conclusion that visibility impairment was attributable to NGS. The Court noted that the facts showing the existence of other sources of impairment

hardly mean that EPA is without statutory authority to remedy the impairment attributable to NGS. Even if the Final Rule addresses only a small fraction of the visibility impairment at the Grand Canyon, EPA still has the statutory authority to address that portion of the visibility impairment problem which is, in fact, 'reasonably attributable' to NGS. Congress mandated an extremely low triggering threshold, requiring the installment of stringent emission controls when an individual source 'emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility' in a class I Federal area.

CAWCD, 990 F 2d at 1541. The Court further agreed that EPA had broad latitude to determine whether visibility impairment is "reasonably attributable" to a given source, and referred to a report by the National Research Council noting that "Congress has not required ironclad scientific certainty establishing the precise relationship between a source's emissions and resulting visibility impairment." Id.

B. The Department of the Interior Certification of Visibility Impairment

As discussed above, a Federal Land Manager may at any time certify the existence of visibility impairment at a Class I Federal area. On November 14, 1985, the Department of the Interior certified to EPA the existence of visibility impairment in all Class I Federal areas within the Department's jurisdiction in the lower 48 states. On August 19, 1997, DOI sent a letter to EPA that reaffirmed the Department's 1985 certification of visibility impairment at the Grand Canyon National Park and stated DOI's belief that there is sufficient information available to support a "reasonable attribution" finding concerning the Mohave Generating Station (MGS). The DOI provided, as an attachment to its August 1997 letter, a document prepared by the National Park Service which summarizes published studies which DOI believes demonstrate that emissions from MGS contribute to visibility impairment at GCNP. The DOI requested that if EPA agreed with DOI's assessment of "reasonable attribution," EPA comply with its statutory obligation to determine the best available retrofit technology for MGS. The DOI recommended that in doing so, EPA discuss the environmental, energy, and economic factors relevant to MGS with key interested parties and emphasized that the interests of the Navajo and Hopi tribes be fairly represented and protected in the decision-making process. Should EPA find that the MGS is reasonably anticipated to cause or contribute to visibility impairment at the GCNP, it must consider several factors, including available technology, costs of compliance, energy impacts, and non-air quality environmental impacts in determining appropriate pollution control requirements.

C. Mohave Generating Station

The Mohave Generating Station is a 1580 MW coal-fired power plant located in Laughlin, Nevada, approximately 75 miles southwest of the Grand Canyon National Park. It was built between 1967 and 1971. It currently emits over 40,000 tons of sulfur dioxide (SO_2) per year. MGS is operated by Southern California Edison, the majority owner of the plant. The Los Angeles Department of Water and Power, Nevada Power Company, and Salt River Project also own interests in the plant. The coal for the plant comes from the Black Mesa Coal Mine on the Hopi and Navajo Reservations via a 273-mile coal slurry pipeline. The mine, operated by Peabody Western Coal Company, is jointly owned by the Navajo Nation and the Hopi Tribe. Groundwater from an aquifer underlying the Navajo and Hopi reservations provides the water for the slurry pipeline.

II. Information Available for "Reasonable Attribution" Analysis

A. Project MOHAVE

As a result of EPA regulatory action on the Navajo Generating Station, described elsewhere in this notice, Congress directed EPA to conduct a tracer study to ascertain the extent to which the Mohave Generating Station contributes to visibility impairment at the Grand Canyon National Park. Congress created this directive through a budget line item in EPA's fiscal year 1991 budget. The tracer study was developed as a cooperative effort among EPA, the National Park Service, and the majority owners and operators of the MGS, Southern California Edison Company. This cooperative effort was named Project *M*easurement *O*f *H*aze *A*nd *V*isibility *E*ffects, more commonly referred to as Project MOHAVE.

Project MOHAVE was an extensive monitoring, modeling, and data assessment project designed to estimate the contributions of the MGS to haze at the GCNP. The field study component of the project was conducted in 1992 and contained two intensive monitoring periods (approximately 30 days in the winter and approximately 50 days in the summer). Tracer materials were continuously released from the MGS stack during the two intensive periods to enable the tracking of emissions specifically from MGS. Tracer, ambient particulate composition and SO_2 concentrations were measured at about 30 locations in a four-state region. Two of these monitoring sites, Hopi Point near the main visitor center at the south rim of the canyon and Meadview near the far western end of the national park, were used as key receptor sites representative of GCNP.

The process of identifying and quantifying the impact of MGS's emissions on visibility in GCNP used two types of assessment methodologies. The first method, known as receptor modeling, is an empirical assessment of the extensive data collected during the study to estimate the presence of pollutants and tracer emitted from MGS, and to estimate increases in particulate sulfur and light scattering. The advantage of this method is that it provides for modeled predictions to be verified with measured data. The disadvantage of this method is that measurements can only be taken at monitored locations during a limited time period. The second method relies on the application of mathematical models that attempt to estimate the transport and chemistry of MGS's emissions. The advantage of such models is that they can provide predictions at all locations for all times. The disadvantage of these models is that they can provide uncertain results due to the models' inability to accurately replicate the complex atmospheric chemical processes involved in the formation of visibility-impairing aerosols.

From the tracer data and the known ratio of tracer to SO_2 emission rates for MGS, we know that SO_2 emitted by MGS often reaches Meadview in sufficiently high concentrations to have the potential to cause impairment. The magnitude of the impairment that is attributable to MGS depends on how much of the SO_2 from the plant is converted to particulate sulfate. Sulfate particles in the atmosphere cause light to scatter which creates hazy conditions and poor visibility. Conversion of SO_2 to sulfate occurs by two different mechanisms: dry chemistry and wet chemistry. The rate of dry conversion is slow and greatest during the daylight hours. Wet chemistry is relatively fast but its occurrence is harder to predict since it requires interaction of the SO_2 emissions with cloud or fog droplets.

With one exception, the methods used in Project MOHAVE had to explicitly determine or use assumed rates of SO_2 to sulfate conversion for each time period during transport from MGS to GCNP. The models, therefore, relied in part on assumptions regarding how quickly emissions move through the atmosphere and how emissions interact with clouds, and yielded different results in terms of the amount of SO_2 converted to sulfate, which in turn produced different results regarding the magnitude of Mohave's impact on the Grand Canyon.

The conclusions from the various modelling methods were not always consistent as to which time periods during the study were most influenced by emissions from MGS. There is no consensus concerning which of the methods is more likely to be correct for any particular time period. Therefore, EPA intends to use these estimates to define a range for long-term and short-term impacts of the plant on visibility at GCNP.

EPA believes that the results of the Project MOHAVE study indicate that the Mohave Generating Station contributes to visibility impairment at the Grand Canyon National Park. The empirical data from the tracer study show that

emissions from MGS reach the Meadview site at the western end of GCNP in sufficient concentrations to, under certain meteorological conditions, convert to sulfate and cause visibility impairment. EPA notes that the study results show that the Mohave Generating Station is not the major cause of visibility impairment at the GCNP. However, the study indicates that because of the quantity of SO_2 emitted from the Mohave Generating Station and its proximity to the Grand Canyon, no other single point source is likely to have as great an impact on visibility in the Park.

The final Project MOHAVE report is available on the EPA, Region IX Web Page at http://www.epa.gov/region09/air/mohave.html and in Docket Number A2–99–01. Project MOHAVE operated under the joint technical and program management of the EPA and Southern California Edison Company in close partnership with the National Park Service. Numerous other organizations contributed to the operations and assessment work of the project. Since the end of the field study component of the project, data assessment and modeling efforts have been undertaken by the many participants and have lead to numerous papers and reports. By design these efforts have been the products of their respective authors and have not been endorsed as findings of Project MOHAVE.

B. Other Available Information

There are other studies pertaining to the Mohave Generating Station's impact on visibility at the Grand Canyon National Park. In its August 1997 letter to EPA reaffirming visibility impairment at the Grand Canyon and indicating that Mohave Generating Station is suspected of contributing to that impairment, DOI referenced several published papers on this topic as well as the 1993 summary of monitoring data from the IMPROVE network, the inter-agency visibility monitoring system. The papers referenced included "Comparison of Two Back Trajectory Techniques for Source Apportionment" by Gebhart, Malm, and Iyer, June 1993; "Receptor Model Applied to Patterns in Space (RMAPS) Part II—Apportionment of Airborne Particulate Sulfate from Project Mohave" by Henry, 1997; and "Examining the Relationship Among Atmospheric Aerosols and Light Scattering and Extinction in the Grand Canyon Area" by Malm, Molenar, Eldred, and Sisler, August 1996. The general 1993 review of IMPROVE monitoring data and trends showed that sulfur-containing particles are an important component of the human-caused visibility impairment at Grand Canyon National Park (20 to 30 percent on average). The August 1996 paper confirms this by finding that sulfur is responsible for approximately 30 percent of visibility impairment. Finally, the June 1993 paper, which analyzes data collected over a 13-year period, indicates that the majority of impairment at the Grand Canyon is due to transport from the southwest. These papers are available in Docket Number A2–99–01.

III. Request for Public Comment

EPA is requesting public comment on two matters. The Agency is seeking information that it should consider in determining whether visibility impairment at the Grand Canyon National Park is "reasonably attributable" to emissions from the Mohave Generating Station. EPA is also seeking information that it should consider in conducting a "Best Available Retrofit Technology" analysis, should it find that impairment is "reasonably attributable" to the MGS.

Any determination that impairment at the GCNP is "reasonably attributable" to MGS, and any analysis of BART for the facility would occur through a future EPA rulemaking, including an opportunity for the public to comment on EPA's proposed actions.

A. "Reasonable Attribution" Determination

In determining whether to propose that visibility impairment at the Grand Canyon National Park is "reasonably attributable" to the Mohave Generating Station, EPA will consider all available information, including the results of the Project MOHAVE study and the papers referenced in the August 1997 letter from DOI to EPA. With today's notice, EPA is soliciting any additional information to be considered in assessing the MGS impact on visibility at GCNP. This may be additional analyses of Project MOHAVE data, or new information related to assessing impacts over other time periods.

B. "Best Available Retrofit Technology" Analysis

"Best Available Retrofit Technology" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established on a case-by-case basis, taking into consideration (1) the technology available, (2) costs of compliance, (3) the energy and non-air quality environmental impacts of compliance, (4) any pollution control equipment in use or in existence at the source, (5) the remaining useful life of the source, and (6) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. 40 CFR 51.301(c) and 52.26(b)(2), and CAA section 169A(g)(2), 42 U.S.C. 7491(g)(2). Pursuant to section 169A(b) of the Act, 42 U.S.C. 7491(b), and 40 CFR 51.302(c)(4)(iii), the emission limitation representing BART for fossil fuel-fired power plants with a generating capacity in excess of 750 megawatts (MW) must be determined pursuant to guidelines set forth by the Administrator of EPA. The procedures for conducting a BART analysis are set forth in "Guidelines for Determining Best Available Retrofit Technology Analysis for Coal Fired Power Plants and Other Stationary Facilities' ("BART Guidance"), EPA publication EPA–450–3–8–009b.

With today's notice, EPA is soliciting information to be considered in establishing BART for MGS, should EPA determine that visibility impairment at the GCNP is "reasonably attributable" to the facility. Information that EPA is seeking includes analyses of information related to the six factors listed in the paragraph above.

IV. Activities Related to the Mohave Generating Station and Visibility at the Grand Canyon National Park

A. Grand Canyon Visibility Transport Commission

Congress directed EPA to establish the Grand Canyon Visibility Transport Commission to assess information pertaining to adverse impacts on visibility at the GCNP and to make recommendations to EPA on measures that should be taken to remedy such adverse impacts. The Commission, which was established in 1991, conducted an extensive review of the scientific, technical, and other information with assistance from a range of governmental, business, tribal, and environmental interests. On June 10, 1996, the Commission issued a report to EPA containing its recommendations for protecting and improving visibility in Class I areas of the Colorado Plateau, including the GCNP. The recommendations covered a wide range of control strategy approaches, planning and tracking activities, and technical findings. Regarding stationary sources, the Commission recommended that EPA establish SO_2 emissions targets for the year 2000 and the year 2040; with interim targets to ensure steady and continuing emission reductions. The Commission also recommended development of market-based regulatory programs if emission targets are not met. While the Commission report did not make any specific recommendation regarding emission reductions from any specific stationary source, such as the Mohave Generating Station, it did strongly encourage EPA to complete the Project MOHAVE source attribution study and to take action consistent with the results of that study within twelve months of its completion.

B. Public Meeting

The EPA has been working in close partnership with the Secretary's Office of the Department of the Interior and the National Park Service Air Resources Division to address issues concerning the Mohave Generating Station. During the past year and a half, EPA and DOI have met with various parties with an interest in the future of the Mohave Generating Station. On January 8 and 9, 1998, EPA and DOI held a public meeting in Las Vegas, Nevada to present information and seek input on the issues, interests, and concerns related to the Mohave Generating Station and visibility impairment at the Grand Canyon National Park. Several informational panels outlined the issues, provided background on visibility science and EPA's visibility regulations, discussed issues associated with utility restructuring that affect the plant, and outlined options for reducing emissions at the plant.

Approximately 90 people representing a variety of affected groups attended the meeting. Representatives from local governments and businesses stressed the importance of MGS to the local economy and characterized MGS as a good corporate citizen that supported schools and civic projects. One private citizen expressed concern about the health effects of emissions from the plant, noting that a plume of smoke was always visible from the plant. Speakers for environmental groups stated that MGS is a significant contributor to haze at the Grand Canyon National Park, emits pollutants at a higher level than other power plants, and is at a competitive advantage to other plants that have installed pollution controls. The environmental groups believe that there is enough information available currently to show that MGS is affecting visibility at the Grand Canyon National Park and that EPA should act immediately to require pollution controls. The Navajo Nation expressed concerns about air and water quality but highlighted the importance of MGS to the Navajo economy, which depends significantly on revenues from coal sales to the plant. Southern California Edison stated that it wants to protect the environment while maintaining the economic viability of the plant. SCE stated that at the current market price for electricity, the cost of installing control equipment at the plant would make the plant unprofitable. Union representatives, MGS employees, and companies that provide raw materials to MGS highlighted their reliance on MGS and emphasized that continued operation of the plant is important to state, local, and tribal economies and living standards.

In addition to the comments made at the public meeting in Las Vegas, EPA has received hundreds of letters from people expressing concern about visibility impairment at the Grand Canyon and urging EPA to require installation of pollution controls at the Mohave Generating Station.

C. Grand Canyon Trust/Sierra Club Lawsuit

On February 19, 1998, Grand Canyon Trust (GCT) filed a citizen suit in the federal district court for the District of Nevada against the owners of the Mohave Generating Station. GCT alleged that the defendant had violated several SIP provisions that apply to the Mohave Generating Station. GCT included allegations that the Mohave Generating Station had exceeded emission limits in the Nevada and Clark County SIPs for opacity and sulfur dioxide, and had failed to conduct necessary reporting. Sierra Club and the National Parks and Conservation Association subsequently joined GCT as plaintiffs in the citizen suit. The defendants have filed a motion to dismiss the suit and a motion for partial summary judgement. The plaintiffs have filed an opposition to the motion to dismiss and a motion for partial summary judgment. These motions are currently pending before the court.

D. Environmental Defense Fund Letter

The Environmental Defense Fund (EDF) submitted a letter to the Regional Administrator of EPA Region IX in November 1998 noting its concern over EPA's failure to conduct a review of the visibility protection plan for the state of Nevada. As part of the long term strategy to address visibility protection, EPA is required to conduct a review of the visibility protection plan every three years to determine whether the plan is sufficient or if additional measures are necessary for visibility protection. 40 CFR 52.29(c)(4). (Because the state of Nevada does not have an approved SIP for visibility, EPA is required to assume responsibility for visibility protection until such time as the State submits, and EPA approves, a SIP that adequately provides for visibility protection.) Pursuant to 40 CFR 52.29, EPA must include in its triennial report an assessment of the progress made in remedying existing impairment, changes in visibility since the last report, whether additional measures are necessary to assure reasonable progress toward the national visibility goal and any progress achieved in implementing BART. EDF notes that EPA has not updated the visibility protection plan or conducted any of the required reviews, even though the Department of the Interior has notified EPA of visibility impairment at the Grand Canyon National Park and has submitted information indicating that such impairment is attributable to emissions from the Mohave Generating Station. EDF further refers to studies that have been conducted (including Project MOHAVE) which EDF believes indicate that emissions from the Mohave Generating Station contribute to visibility impairment. On April 20, 1999, EDF sent EPA notice of its intent to sue the Agency, pursuant to section 304(b)(1) of the Act, 42 U.S.C. 7604(b)(1), and 40 CFR part 54. EDF's notice of intent to sue made the same claims as contained in its November 1998 letter to EPA.

E. Southern California Edison Proposal

On December 11, 1998, Southern California Edison and the other owners of the Mohave Generating Station announced that by 2008, they would either install emission control equipment at the plant or shut the plant down. The control equipment would include sulfur-dioxide scrubbers and bag houses, devices designed to reduce particulate matter emissions. The MGS owners stated that installations could begin by 2005 and that work would be completed no later than 2008. The owners noted that the plant must be able to operate economically with additional emission control devices; otherwise the plant would not operate beyond 2008. The announcement indicated that the MGS owners would participate in collaborative discussions with interest groups, including the Hopi tribe, the Navajo Nation, environmental organizations, communities near the plant, plant employees, and state and federal agencies to "speed resolution of key environmental issues regarding the Mohave plant."

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Due to potential policy issues this action is considered a significant regulatory action and therefore was reviewed by OMB. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any rule on small entities unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 604 and 605(b). Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This advance notice of proposed rulemaking will not have a significant impact on a substantial number of small entities because it will not create any new requirements for any entity. The notice merely presents background information and requests input from the public. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, this advance notice of proposed rulemaking does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Sulfur oxides.

Dated: June 11, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–15435 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA121–4088b; FRL–6361–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; 1990 NOx Base Year Emission Inventory for the Philadelphia Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a State Implementation Plan (SIP) revision request that the Commonwealth of Pennsylvania submitted on July 31, 1998. The revision concerns the 1990 oxides of nitrogen (NOx) base year inventory for the Pennsylvania portion of the Philadelphia severe ozone nonattainment area. EPA is proposing approval of the Philadelphia area 1990 NOx base year inventory as a revision to Pennsylvania's SIP in accordance with the requirements of the Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because we view this as a noncontroversial submittal and anticipates no adverse comments. We set out our rationale for our approval in the direct final rule. If we do not receive adverse comments, we will not take further action on this proposed rule. However, if we receive adverse comments, we will withdraw the direct final rule, and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 19, 1999.

ADDRESSES: You should mail written comments to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You can inspect copies of the documents relevant to this action during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, at the EPA Region III address above, or via e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION: For more information, please see the direct final rule with the same title, pertaining to Pennsylvania's 1990 NOx base year inventory for the Philadelphia area, located in the "Rules and Regulations" section of this **Federal Register**.

Dated: June 2, 1999.

Thomas J. Maslany,

Acting Regional Administrator, Region III.

[FR Doc. 99–15268 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IA 070–1070b; FRL–6359–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the state of Iowa's section 111(d) plan for controlling emissions from existing hospital/medical/infectious waste incinerators. The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act. The state plan establishes emission limits and controls for sources constructed on or before June 20, 1996.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated, and the direct final rule will become effective. If EPA receives relevant adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 19, 1999.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 1, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99–15166 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TX–108–1–7408b; FRL–6361–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: We propose to approve the section 111(d) Plan submitted by the Texas Natural Resource Conservation Commission on November 3, 1998, to implement and enforce the Emissions Guidelines (EG) for existing municipal solid waste (MSW) landfills. The EG require States to collect landfill gas from large MSW landfills. In the final rules section of this **Federal Register**, we are approving the State Plan as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If we receive adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please see the direct final rule of this action located elsewhere in today's **Federal Register** for a detailed description of the Texas State Plan.

DATES: Comments must be received by July 19, 1999.

ADDRESSES: You should address comments on this action to Lt. Mick Cote, EPA Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and at the Texas Natural Resource Conservation Commission offices, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote at (214) 665–7219.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal solid waste landfills, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 7, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 99–15266 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[LA–51–1–7413b; FRL–6360–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We propose to approve the section 111(d) Plan submitted by the Louisiana Department of Environmental Quality on December 30, 1998, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerators (MWIs). The EG require States to develop plans to reduce air emissions from MWIs. In the final rules section of this **Federal Register**, we are approving the State Plan as a direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If we receive adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please see the direct final rule of this action located elsewhere in today's **Federal Register** for a detailed description of the Texas State Plan.

DATES: Comments must be postmarked by July 19, 1999.

ADDRESSES: You should address comments on this action to Lt. Mick Cote, EPA Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and at the Louisiana Department of Environmental Quality offices, 7290 Bluebonnet Blvd., Baton Rouge, Louisiana 70884–2135.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote at (214) 665–7219.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incinerators, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 7, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 99–15264 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[ND–001b; FRL–6360–4]

Clean Air Act Proposed Full Approval of Operating Permit Program; State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The EPA is taking direct final action to approve the operating permit program submitted by the State of North Dakota. North Dakota's program was submitted for the purpose of meeting the Federal Clean Air Act directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction. In the "Rules and Regulations" section of this **Federal Register**, the EPA is promulgating full approval of the North Dakota program as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If no adverse comments are received in response to that rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

DATES: Comments must be received in writing on or before July 19, 1999.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business at the above address. Copies of the State documents relevant to this action are available for public inspection at the North Dakota Department of Health. Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, ND 58504–5264.

FOR FURTHER INFORMATION CONTACT: Patricia Reisbeck, EPA, Region VIII, (303) 312–6435.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule of the same title which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401, *et seq.*

Dated: June 2, 1999.

Carol Rushin,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–15270 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6359–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Davis Glocester-Smithfield Regional (GSR) Landfill site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region I announces its intent to delete the Davis GSR Landfill site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Rhode Island have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

DATES: Comments concerning this site may be submitted on or before July 19, 1999.

ADDRESSES: Comments may be mailed to: Anna Krasko, Remedial Project Manager, U.S. EPA Region I, 1 Congress Street, Suite 1100 (HBO), Boston, MA 02114–2023.

Comprehensive information on this Site is available through the public docket which is located at EPA's Region I Records Center and is available for viewing by appointment only at 90 Canal Street, 1st Floor, Boston, MA 02114, (617) 918–1440.

A copy of the public docket is also available for viewing at the Davis GSR Landfill site information repository at: E. Smithfield Public Library, 50 Esmond Street, N. Smithfield, RI (401) 231–5150.

FOR FURTHER INFORMATION CONTACT: Anna Krasko, Remedial Project Manager, U.S. EPA Region I, 1 Congress Street, Suite 1100 (HBO), Boston, MA 02114–2023, (617) 918–1232 or Matthew DeStefano, Project Manager, Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767, (401) 222–2797.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region I announces its intent to delete the Davis GSR Landfill site, N. Smithfield, RI, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System (HRS).

The EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Davis GSR Landfill site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(1), sites may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Prior to deciding to delete a site from the NPL, EPA must determine that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment. In the case of this Site, the baseline risk assessment concluded that conditions at the Site pose no unacceptable risk to human health and the environment. Consistent with the September 29, 1997 Record of Decision, EPA and the State will conduct residential well testing in the vicinity of the Site for a period of at least five years. If new information becomes available which indicates a need for further remedial action, EPA may initiate such actions. EPA may also support further response activities which could be initiated by the State in the interest of public health.

III. Deletion Procedures

In the NPL rulemaking published on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice of comment procedures followed for adding sites to the NPL also should be used before sites are deleted. Comments also were received in response to the amendments to the NCP proposed on February 12, 1985 (50 FR 5862). Formal notice and comment procedures for deleting sites from the NPL were subsequently added as a part of the March 8, 1990 amendments to the NCP (55 FR 8666, 8846). Those procedures are set out in 40 CFR 300.425(e)(4) of the NCP. Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

Upon determination that at least one of the criteria described in 40 CFR 300.425(e)(1) has been met, EPA may formally begin deletion procedures. The following procedures were used for the intended deletion of this Site:

(1) EPA Region I issued a Record of Decision which documented that no further remedial action is necessary for the Davis GSR Landfill site and that no statutory five year review will be undertaken. The ROD also called for residential well monitoring for at least five years and the data evaluation by EPA and the State to determine possible need for further monitoring at the site beyond the initial five years;

(2) The State of Rhode Island has concurred with the Record of Decision and the proposed deletion decision;

(3) Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate Federal, State and local officials, and other interested parties; and

(4) The Region has made all relevant documents available for public review in the Regional Office and the local Site information repository.

This **Federal Register** document, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day public comment period and the availability of the Notice of Intent to Delete. The public is asked to comment on EPA's intention to delete the Site from the NPL; all critical documents needed to evaluate EPA's decision are included in the information repository and deletion docket.

Upon completion of the 30-day public comment period, EPA Region I will evaluate these comments before the final decision to delete. The Region will prepare a Responsiveness Summary, which will respond to each significant comment and any significant new data received during the public comment period. This response document will be made available to the public at the information repository. If EPA still determines that deletion from the NPL is appropriate after receiving public comments, a final notice of deletion will be published in the **Federal Register** and the final deletion package will be placed in the information repository.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for deleting the Davis GSR Landfill site from the NPL.

A. Site Background and History

The 58-acre Site includes a 21-acre landfill located in a semi-rural area off Tarkiln Road in the Towns of Glocester and Smithfield, Rhode Island. This Site is not Davis Liquid Waste or Davis Tire Pile Site, which are also located in Smithfield, Rhode Island. The GSR Landfill was first licensed by the State to receive municipal waste in 1974, and acceptance of waste ceased in 1982. In 1978, after the public expressed concern about operation of this privately owned landfill, the State declined to renew the landfill's license citing numerous violations and failure to comply with previous orders. Numerous legal actions to close the landfill ensued, and the State Supreme Court ruled in favor of the State in 1982. At that time the landfill had stopped accepting solid waste, but the engineered cover was never constructed. As a result of several Volatile Organic Compounds being detected in the early 1980s in several on-site monitoring wells and one nearby residential well, the Davis GSR Landfill Site was added to the NPL in 1986.

From 1991 to 1993, after site access had been finally obtained, EPA conducted an extensive Remedial Investigation (RI) to determine the nature and extent of contamination and to assess potential risks to human health and the environment. Results of this investigation concluded that the landfill appeared to be the source of various chemicals, the spread of which was limited to the immediate vicinity of the landfill with no evidence of contamination downgradient. No distinct plume of groundwater contamination was found to be emanating from the landfill. None of the residential well tests conducted periodically since the early 1980s, including the latest post-ROD testing in February of 1999, confirmed the presence of elevated levels of contaminants.

Based on the results of the RI and risk assessment, EPA issued a record of Decision (ROD) for the Site on September 29, 1997. The ROD documented the decision that no further remedial action was necessary at Davis GSR Landfill site because the conditions at the Site pose no unacceptable risks to human health or the environment.

B. Characterization of Risk

Based on the levels of organics and metals that were detected in the groundwater, soil, surface water, sediment and air, and the unlikely future exposure to the groundwater in a limited area in the wetlands immediately adjacent to the landfill, EPA has determined that the potential for adverse ecological and human health risks from site groundwater or other media to be unlikely. Exposure pathways considered for the Davis GSR Landfill Site risk assessment, assuming no remedial actions were taken, included ingestion of groundwater, contact with Site soils, surface water, and sediment, and inhalation of landfill gas.

No current health risks are associated with exposure to groundwater at the Site since the contaminated groundwater is not used for drinking water. Elevated levels of benzene and manganese were detected at the Site in the wetlands between the landfill and the Nine Foot Brook. However, exposure to the groundwater as a drinking water source in this limited area is unlikely due to the steep topography and proximity to wetlands which would preclude development. Although the risk associated with arsenic is at the upper end of the acceptable risk range (i.e., 10^{-4}), the contaminant is at levels below those established as safe in the Safe Drinking Water Act. The cancer

risk is largely attributable to one contaminant, arsenic, although benzene and beryllium also contribute but at lower levels. Manganese is the main contributor to the noncarcinogenic hazard index of 8.4, which may present a level of concern for a human health drinking water scenario, assuming that groundwater at this location is ingested as a sole source of drinking water. This is a very conservative estimate of future exposure, however, as this location is immediately adjacent to the landfill and is not likely to be used for future water supplies due to the existing topographical and wetland considerations.

No adverse health effects associated with the inhalation of landfill gas, and ingestion of, or contact with, the contaminants in surficial soils, surface water and sediments were found, assuming conservative exposure to children who may trespass and wade in the wetlands and have skin contact with contaminants. All current and future risks attributable to these exposures were below the lower end of the acceptable risk range (i.e., 10^{-6}). Thus, even if the Site in the future is used for recreational or residential purposes, the resulting frequency of exposure would not pose unacceptable risk to human health.

EPA also evaluated the potential risk to the environment posed by contamination at the site. Contaminant concentrations in sediments found in the Davis GSR wetlands and surface waters were compared to Sediment Quality Criteria (SQC) as part of the ecological risk assessment. Given the abundance of surrounding water bodies and wetlands, it is unlikely that a reduction in viable wetland habitat, due to sediment contamination associated with the Davis GSR Landfill, would adversely impact any flora and fauna populations. The levels of contaminants found in the landfill surface soils also do not appear likely to pose significant ecological risk. Results of a conservative food chain modeling also indicated no adverse effects, and therefore, did not suggest the need for cleanup.

The Record of Decision (ROD) was signed by the Director of the Office of Site Remediation and Restoration on September 29, 1997. The No Action ROD recommendation includes: No further remedial action. Long-term monitoring will be conducted.

Based on the information currently available, EPA, with the concurrence of the State of Rhode Island, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures at this time is not appropriate.

Dated: May 21, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–15172 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6360–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Old Inland Pit NPL site from the National Priorities List update: request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Old Inland Pit NPL Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology (Ecology) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before July 19, 1999.

ADDRESSES: Comments may be mailed to: Beverly Gaines, Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop, ECL–110, Seattle, Washington 98101.

Comprehensive information on this Site is available through Ecology which is available for viewing at the Old Inland Pit Site information repositories at the following locations:

Washington Department of Ecology, Eastern Regional Office, 4601 North Monroe Street, Suite 202, Spokane, WA 99205–1295.

Spokane Public Library, 12004 E. Main Avenue, Spokane, WA 99205–5193.

The deletion docket for the deletion of the Old Inland Pit Site is available through EPA at the following locations: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Superfund Records Center, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Beverly Gaines, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop, ECL–110, Seattle, Washington 98101, (206) 553–1066.

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I. Introduction

The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Old Inland Pit Site ("Site") at 3500 N. Sullivan Road, Spokane, Washington, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment. The Old Inland Pit Site does not present a significant threat to human health or the environment. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for federal Fund-financed remedial actions or state action under the Model Toxics Control Act (MTCA) in the unlikely event that conditions at the site warrant such actions.

EPA plans to delete the Old Inland Pit Site ("Site") at 3500 N. Sullivan Road, Spokane, Washington, from the NPL. EPA will accept comments on the plan to delete this site for thirty days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Old Inland Pit Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that "releases" (sites) may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall

consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate, or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants or contaminants remain at the site *above* levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of human health and the environment. In the case of the Old Inland Pit Site, a five year review is not required at this site under CERCLA because no hazardous substances remain on site above appropriate cleanup levels, and no conditional points of compliance have been established. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the Hazard Ranking system.

III. Deletion Procedures

The following procedures have been used for the intended deletion of this Site:

(1) Ecology has issued a Final Closeout Report (FCOR) which documented the completion of all appropriate remedial activities; (2) Ecology has issued a letter certifying that no further remedial action is expected and that the remedy is protective of human health and the environment; (3) EPA has concurred with Ecology's finding that the remedy is protective of human health and the environment; (4) Ecology has concurred with the proposed deletion decision; (5) A notice has been published in the local newspaper and distributed to appropriate Federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (6) All relevant documents have been made available for public review in the local site information repositories.

Deletion of the Site from the NPL does not in itself, create, alter or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. As mentioned in Section II of this Notice, 40 CFR 300.425(e) (3) states that deletion of a site from the NPL does not preclude eligibility for future Federal Fund-financed response actions or future actions under the state's MTCA.

EPA's Regional Office will accept and evaluate public comments on the EPA's Notice of Intent to Delete before making a final decision. The Agency will prepare a Responsiveness Summary if any significant public comments are received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be placed in the local repositories and made available to local residents by the Regional Office.

IV. Basis of Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete the Site from the NPL.

A. Site Background

The ten-acre Old Inland Pit was operated by Inland Asphalt as a sand and gravel source from 1969 to 1978. Materials were excavated to a depth of 35 to 50 feet below ground surface. Spokane Steel Foundry Company (SSFC), located just east of the pit, disposed of waste foundry sands and baghouse dust from May 1978 to May 1983. The sands were from metal molding operations, and the baghouse dust was generated from sand sieving, sandblasting operations, and the residue of electric arc furnaces. Approximately 200 tons of baghouse dust was thought to have been disposed of in the pit. Foundry sand disposal continued until 1986. In addition to the foundry dusts, permission was also given to Inland Asphalt and Central Premix to dispose of construction debris, and to Quarry Tile Company for disposal of broken decorative clay tiles. Combined dumping from all sources raised the bottom level of the pit to a uniform 35 feet below ground surface.

Concerns that the baghouse dust was potentially a hazardous waste first arose in 1981. In May 1983, Ecology collected four baghouse dust samples from the SSFC plant baghouses for waste classification. Two samples were from the sandblasting/sand sieving operations, and two were from the electric arc furnaces. All materials passed the EP Toxicity test, but the furnace dusts failed the Static Basic Acute Fish Toxicity test (fish bioassay) and were classified as state-only dangerous waste under the authority of WAC 173–303. The foundry sands from the sieving/abrader operations were not classified as dangerous waste.

In August 1984, Ecology & Environment (E&E) conducted a Preliminary Site Assessment (PSA) for the Environmental Protection Agency (EPA), which consisted of interviews with SSFC personnel, a site visit, and soil sampling. PSAs are done to estimate threats posed by sites to human health and the environment. Samples were analyzed for inorganics, pesticides, and volatile and semi-volatile organics; elevated concentrations of copper, zinc, nickel, and chromium were detected. The results of the PSA were used to complete a Hazard Ranking System (HRS) scoring. The site scored 29.45, high enough to be nominated to the National Priorities List (NPL) in 1986. The nomination was finalized in February of 1990.

In July 1986, Reed Corporation was contracted by CH&E Investments to assess the data gathered during the PSA, collect data to confirm those samples, and provide additional site characteristics. E&E collected additional soil and dust samples for the EPA in late 1988 to assess the distribution and concentration of potential contaminants on the site. Both sample sets were analyzed for inorganics, organics, and pesticides.

E&E, under contract to Ecology, collected additional soil samples and installed four groundwater monitoring wells in May of 1991. Groundwater samples were collected from these wells in May 1991 and April 1993. Those groundwater samples and the splitspoon samples collected during well installation were analyzed for the same groups of analyses as previous samples.

On April 20, 1995, the PLPs entered into an Agreed Order with Ecology after public notice and opportunity to comment. Dames & Moore began site investigation on behalf of the PLPs. Further soil sampling was performed. Groundwater samples were taken in January 1995, March 1996, June 1996, and September 1996. Additional dust samples were also collected from the pit floor in September 1995 for a second fish bioassay test. Those test results indicated the material would no longer be characterized as a state dangerous waste, likely due to the difference in sampling location. The complete history of site investigations and sampling results is presented in the Final Phase I Remedial Investigation (RI) (Dames & Moore, 1998).

B. Conclusions of Studies Conducted at the Site

The RI was completed by Dames & Moore, contractors to CH&E Investments, in August of 1998. The conclusions reached by the studies are summarized below:

- The site is located in an historically industrial area, with current and future use expected to continue as such;
- Approximately 200 tons of furnace baghouse dust was disposed of during a five-year period, mainly in the northeast and south central sections of the pit;
- Fish bioassay testing initially designated the furnace dust as a state-only dangerous waste, but repeat testing has shown that the waste no longer classifies as such;
- Contaminants of potential concern in soils were inorganics, especially arsenic, chromium, zinc, and aluminum. These were all detected at levels below applicable cleanup standards. Groundwater has not been affected by waste disposal practices at the Site.

The site overlies the Spokane Valley-Rathdrum Prairie Aquifer, the sole source of water for the greater Spokane area. Groundwater at the site is about 65 to 70 feet below ground surface, and flows from the northeast to the southwest towards the Spokane River. Materials at depth and near the surface are comprised of native sands and gravels. The surficial soils are a mixture of native deposits and backfilled material, including the foundry sands and baghouse dust.

Method C Industrial Soil Cleanup Levels, specified in the Washington State Model Toxics Control Act (MTCA), were used since the site and the surrounding properties will remain industrial. Method C Industrial cleanup levels are protective of exposures at a cancer risk of $1x10^{-6}$ an a hazard index of 1. The highest possible use of groundwater is drinking water, so Method B Groundwater cleanup levels were applied. Method B cleanup levels are also protective of exposures at a cancer risk of $1x10^{-6}$ and a hazard index of 1. The concentrations of inorganics in both groundwater and soil are below their respective risk-based cleanup levels. Details of cleanup level development are presented in the Cleanup Action Plan issued by Ecology on January 20, 1999.

C. Remedial Construction Activities

Since there are no contaminants exceeding cleanup levels, no contamination of groundwater, and minimal risks from hazardous materials remaining on site, the Cleanup Action Plan required no remedial activities. MTCA requires that where Method C Industrial Soil Cleanup Levels are used, a restrictive convenant must be placed with the deed. A restrictive convenant was placed with this property for that purpose, with the following restrictions: industrial use only, no withdrawal of water, maintenance of fences and locked gates, and no actions that may facilitate a release or create an exposure pathway.

D. Characterization of Risk

The site is located in an industrially-zoned area, surrounded by properties all currently used in an industrial capacity. Future use of the site and the surrounding properties is expected to remain similar to current usage. Therefore, no residential or commercial exposure scenarios are anticipated.

Contaminants of potential concern at the site include metals and non-metallic elements such as aluminum, copper, zinc, iron, arsenic, and magnesium. These elements are present in varying concentrations in the soils on-site. Vegetation in the form of weeds and grasses covers most of the soil surface limiting the potential for windblown soil transport.

A direct contact pathway exists between people and surface soils. Although a fence surrounds the site restricting access, future workers have the potential to be in direct contact with soils down to a depth of 15 feet. WAC 173–340–740(6)(c) specifies that 15 feet is a "reasonable estimate of the depth of soil that could be excavated and distributed at the soil surface as a result of site development activities." A deed restriction will alert future owners on restrictions on land use or development and risks associated with these activities.

Groundwater below the site has the potential to be affected by downward filtration of surface water through contaminated soils. However, sampling indicates that groundwater has not been contaminated and that leaching is not occurring. Therefore, the potential for ingestion of contaminated water due to site materials is unlikely.

Surface water is channeled to the pit floor where it percolates downward. Due to the nature of the soils, precipitation does not pond on or run off the surface. Transport of contaminated soils off-site via surface water is unlikely due to these features. Contact with temporarily ponded surface waters might happen during an extended precipitation event. Surface waters are not a permanent site feature, thus it represents an insignificant pathway.

E. Compliance Monitoring

According to MTCA, compliance monitoring is required for all cleanup actions. Compliance monitoring shall take place at the site to ensure that residual contaminants in site soils do not move or affect other site media. The compliance monitoring plan will consist of one year of groundwater sampling of wells MW–1 and MW–4 to confirm that aquifer remains unaffected by residual metals in site soils. Water samples will be collected quarterly beginning in February 1999 and tested for eight metals that were detected in previous groundwater sampling. Samples will be collected and analyzed using the same standard EPA methods as prior sampling, with similar techniques and QA/QC procedures. After one year, the data will be reviewed by Ecology to determine if compliance monitoring should continue.

F. Five-Year Review

A five-year review is not required at this site under MTCA or CERCLA because no hazardous substances remain on site above appropriate cleanup levels, and no conditional points of compliance have been established. Additional details on the compliance monitoring plan can be found in the Cleanup Action Plan.

G. Public Participation

Community input has been sought by Ecology throughout the cleanup process for the site. Community relations activities have included several public notices in local newspapers and routine publication of progress fact sheets. A copy of the Deletion Docket can be reviewed by the public at the EPA, Region 10 Superfund Records Center. The Deletion Docket includes this document, the CAP, and the Final Closeout Report. Comprehensive Site files are available for review at the Spokane Public Library, 12004 E. Main Avenue, Spokane, WA 99205–5193, and the Washington Department of Ecology, Eastern Regional Office, 4601 North Monroe, Suite 202, Spokane, WA 99205–1295. EPA Region 10 will also announce the availability of the Deletion Docket for public review in a local newspaper and informational fact sheet.

H. Applicable Deletion Criteria

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "responsible parties or other persons have implemented all appropriate response actions required". EPA, with the concurrence of Ecology, has determined that this criteria for deletion has been met. EPA and Ecology believe that no significant threat to human health or the environment remains because pathways of concern for exposure to contaminants no longer exist. If new information comes available that indicates that there is a significant threat to human health or the environment then EPA or Ecology can require or conduct additional remedial action, if appropriate. Subsequently, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available from the docket.

Dated: June 7, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 99–15274 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 99–200; FCC 99–122]

Numbering Resource Optimization

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document examines a variety of measures intended to increase the efficiency with which telecommunications carriers use telephone numbering resources. The purpose of this effort is two-fold: to slow the rate of number exhaust in this country as evidenced by the ever-increasing rate at which new area codes are assigned; and to prolong the life of the North American Numbering Plan (NANP).

DATES: Comments are to be filed on or before July 30, 1999, and reply comments are due on or before August 30, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before August 16, 1999.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW, Room TW–B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 72—17th Street, N.W., Washington, DC 20503 or via the Internet to fain5__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Jared Carlson, (202) 418–2320 or email at jcarlson@fcc.gov or Tejal Mehta at (202) 418–2320 or tmehta@fcc.gov. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted on May 27, 1999, and released on June 2, 1999. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center. The complete text may also be obtained through the world wide web, at http:/www.fcc.gov/Bureaus/CommonCarrier/Orders, or may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control No.: None.

Title: Numbering Resource Optimization, CC Docket No. 99–200.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Proposed number of collections	Estimated time per respondents	Total annual response (hours)	Burden (Annual) (hours)
Verification of Need for Numbers Submissions:			
a. Quarterly Report	3000	48	144,000
b. Initial Codes	3000	1	3000
c. Growth Codes	3000	3	9000

Frequency of Response: Quarterly; on occasion.

Total Annual Burden: 156,000 hours.

Estimated Costs Per Respondent: $0.

Needs and Uses: In CC Docket No. 99–200, the Commission examines a variety of measures intended to increase the efficiency with which telecommunications carriers use numbering resources in order to slow the rate of number exhaust in this country. The Notice examines existing mechanisms for the administration and allocation of numbering resources, which are governed by industry-developed Central Office Code Guidelines. The Notice proposes certain verification measures designed to prevent carriers from obtaining numbering resources that they do not need in the near term. The Notice tentatively concludes that a more extensive, detailed and uniform reporting mechanism should be developed that will improve numbering utilization and forecasting on a nationwide basis. The Notice tentatively concludes that carriers should report utilization and forecast data on a quarterly basis and that the Commission should mandate that all users of numbering resources must supply utilization and forecast data to the NANPA. With respect to an applicant's ability to obtain initial codes, the Notice seeks comment on what type of showing

would be appropriate. The Notice seeks comment on whether applicants should be required to make a particular showing regarding the equipment they intend to use to provide service, the state of readiness of their network or switches, or their progress with their business plans, prior to obtaining initial codes, or whether any other type of showing should be required. Applicants for NXX codes currently are required to complete a Months-to-Exhaust Worksheet prior to applying for growth codes. The Notice seeks comment on whether requiring applicants to submit the Months-to-Exhaust Worksheet with an application for growth codes would be an adequate demonstration of need in order to obtain additional numbering resources. Alternatively, the Notice seeks comment on whether carriers should be required to demonstrate that they have achieved a specified level of numbering utilization (or fill rate) in the area in question before they may receive additional numbering resources. All the proposed collections will be used to prevent the premature exhaustion of numbering resources pursuant to the Commissions plenary authority over numbering set forth at 47 U.S.C. Section 251(e).

Synopsis of Notice of Proposed Rulemaking

1. In 1947, AT&T adopted the current nationwide numbering scheme, under which the ten-digit telephone number serves not only as a network "address," but also conveys information to the network as to how phone calls should be routed and billed. A principal benefit of this system was that it permitted automated routing of long-distance phone calls, obviating the need for operators to assist in routing. Under the allocation system that developed to support this system, numbering resources are allocated to local telephone exchange carriers on the basis of physical geography, rather than on the basis of end-user demand for those numbers. That is, typically a large block of numbers is allocated to a carrier for use in a geographic area, even though there may not be end-users assigned to each individual number available in the area. This system worked smoothly so long as only one entity (the local exchange carrier) offered only one type of service (wireline telephony) to customers.

2. New services using the same numbering system, particularly cellular telephones, began to enter the telecommunications marketplace with increasing frequency beginning in the late 1980's. More recently, the Telecommunications Act of 1996 opened the market for competitive local wireline service, again giving rise to more players entering the market. In addition, many customers are obtaining additional telephone lines to support additional services such as Internet, data, and facsimile services. Because of the relatively recent explosion of market entry and customer demand for new services, as well as the assignment of telephone numbers to multiple service providers in large blocks on a geographic basis, we have witnessed an incredible increase in demand for numbering resources.

3. Although we are only just beginning to see the benefits of competition in the marketplace for local wireline telephone service, the coincident costs in the form of the rapid exhaust of area codes are already all too apparent. The effect on consumers having to undergo, in some cases, multiple area code changes in relatively short time frames is an unacceptable byproduct of burgeoning competition in the telecommunications marketplace. To illustrate the pace of area code exhaust, consider California, which, at the end of 1992, had thirteen area codes in use. The California Public Utilities Commission projects that by the end of 2002, it will have 41 area codes. When the task of splitting the 323 area code from the 213 area code in the Los Angeles area was completed in April 1999, rather than lasting for ten or even five years, the new area code was immediately declared to be in jeopardy of exhausting its numbering resources.

4. The goal of this proceeding is to address the underlying drivers of area code exhaust so that consumers are spared the enormous costs and inconveniences associated with the rapid pace of implementation of new area codes. In addition, clearly, implementing new area codes is not a solution that can continue indefinitely. As of the end of 1998, it was estimated that nearly one-third of the total number of geographic area codes assignable to the United States had been put into service. By some projections, the NANP could exhaust within ten years. Because the estimated cost of expanding the NANP is enormous, and the time to effect such an expansion is estimated to be on the order of ten years, the need to extend the life of the current NANP through effective conservation and efficient utilization of numbering resources is apparent and immediate.

5. This Commission, with input from industry groups, advisory bodies, state public utility commissions and the public, has already begun to examine various numbering conservation and optimization methods. Continuing in these efforts, we issue this Notice to seek public comment on how best to create national standards for numbering resource optimization. In doing so, we seek to: (1) minimize the negative impact on consumers; (2) ensure sufficient access to numbering resources for all service providers that need them to enter into or to compete in telecommunications markets; (3) avoid, or at least delay, exhaust of the NANP and the need to expand the NANP; (4) impose the least societal cost possible, in a competitively neutral manner, while obtaining the highest benefit; (5) ensure that no class of carrier or consumer is unduly favored or disfavored by our optimization efforts; and (6) minimize the incentives for carriers to build and carry excessively large inventories of numbers.

Executive Summary

6. In this Notice, we consider and seek comment on a variety of administrative and technical measures that would promote more efficient allocation and use of NANP resources. In Section III, we seek specific comment on the relative costs and benefits, both financial and societal, of implementing each measure. We also ask that commenters weigh the cost of extending the life of the current NANP through various numbering resource optimization strategies against the projected cost of expansion of the NANP.

7. In Section IV, we examine the existing mechanisms for the administration and allocation of numbering resources, which are governed by industry-developed CO Code Guidelines. We find that the guidelines have not been effective in constraining the ability of carriers to obtain and carry excessively large inventories of numbering resources for which they have no immediate need. We seek comment on whether the guidelines should be modified or replaced, wholly or in part, by enforceable federal rules. Within the section, we outline proposals for a uniform set of numbering status definitions. We also seek comment on measures that would tie the allocation of new numbering resources to a showing of need by the carrier, increase carrier accountability for number utilization through enhanced data reporting and audit requirements, and speed the return of unused numbering resources. We specifically seek comment on the possibility of requiring carriers to meet number utilization thresholds before they can obtain additional numbering resources. These measures would not require implementation of new systems or technologies, and we believe that they could be implemented in a relatively short time period at minimal cost.

8. In Section V, we consider and seek comment on some specific numbering resource optimization solutions that could be implemented in addition to, or in combination with, stricter administrative standards for the administration and allocation of numbering resources. These methods include rate center consolidation, mandatory ten-digit dialing, and number pooling. We consider the likely costs and potential number optimization benefits of each of these solutions. We also seek comment on a host of issues related to the way in which number pooling might be implemented and administered, if we were to make carrier participation mandatory at some level.

9. In light of the potential costs of these numbering resource optimization solutions, we seek comment on whether the magnitude of the number exhaust problem justifies requiring carriers to participate in one or more of these solutions on a mandatory basis, either at the federal level or through delegation of authority to the states. In the alternative, we consider whether optimal use of numbering resources could be accomplished without the need for such mandates, provided that carriers achieved sufficiently high levels of efficiency in their usage of numbers. Under this approach, we would require carriers to meet specific number utilization thresholds, but would leave to each carrier the choice of what numbering optimization method or methods to use to achieve that threshold.

10. In Section VI, we consider whether establishing a pricing mechanism for numbering resources would improve the efficiency of number allocation and use. Although it is probably not feasible in the short-term to replace our existing numbering resource allocation mechanism with a market-based approach, we believe it is important to consider using market-based mechanisms to allocate numbers as a possible long-term alternative to regulatory mandates. We seek comment on whether moving to a market-based system of allocating numbering resources is feasible, and how the transition to such a system could be implemented.

11. In Section VII, we consider area code relief methodologies, including splits, overlays, and boundary realignments, as numbering optimization strategies. We recognize that our consideration of both short-term and long-term numbering resource optimization measures in this Notice does not eliminate the need for states to continue to implement area code relief in those area codes that are approaching depletion. We seek comment on what action the Commission can take to assist states in implementing area code relief in a manner that is consistent with the objectives of this proceeding.

Procedural Matters

A. Ex Parte Presentations

12. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.

B. Initial Regulatory Flexibility Act Analysis

13. The following is a summary of the Initial Regulatory Flexibility Analysis (IRFA) created for the Notice. Pursuant to the Regulatory Flexibility Act (RFA), See 5 U.S.C. section 603. The RFA, See 5 U.S.C. section 601 *et seq.*, was amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission has prepared the following IRFA of the possible significant economic impact on small entities of the policies and rules in this Notice. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

14. *Need for and Objectives of the Proposed Rules.* The Commission is issuing this Notice to seek public comment on how best to create national standards for numbering resource optimization. In doing so, we seek to: (1) ensure sufficient access to numbering resources for all service providers that need them to enter into or to compete in telecommunications markets; (2) avoid, or at least delay, exhaust of the NANP and the need to expand the NANP; (3) minimize the negative impact on consumers; (4) impose the least cost possible, in a competitively neutral manner, while obtaining the highest benefit; (5) ensure that no class of carrier or consumer is unduly favored or disfavored by our numbering resource optimization efforts; and (6) minimize the incentives for building and carrying excessively large inventories of numbers.

15. *Legal Basis.* The proposed action is authorized under sections 1, 4(i) and (j), 201, 208, and 251 of the Communications Act of 1934, as amended. 47 U.S.C. sections 151, 154(i), 154(j), 201, and 251(e).

16. *Description and Estimate of the Number of Small Entities That May Be Affected by this Notice.* The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. section 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." Id. section 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Id. section 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. section 632). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. section 632.

17. In this IRFA, we consider the potential impact of this Notice on all users of telephone numbering resources. The small entities possibly affected by the proposed rules, if adopted, include wireline, wireless, and other entities, as described below. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4,812 (Radiotelephone Communications) and 4,813 (Telephone Communications, Except Radiotelephone) to be small entities having no more than 1,500 employees. 13 CFR section 121.201. In the FRFA to the *Universal Service Order*, we described and estimated in detail the number of small entities that would be affected by the new universal service rules. 12 FCC Rcd 8776, 9227–9243 (1997). Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such

entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns." *See* 13 CFR section 121.201, SIC code 4813. Since the time of the Local Competition decision, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

18. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator: Interstate Service Providers Report (Locator)*. FCC, Carrier Locator: Interstate Service Providers at 1–2. This report lists 3,604 companies that provided interstate telecommunications service as of December 31, 1997 and was compiled using information from Telecommunications Relay Service (TRS) Fund Worksheets filed by carriers (Jan. 1999). These carriers include, *inter alia*, local exchange carriers, competitive local exchange carriers, interexchange carriers, competitive access providers, satellite service providers, wireless telephony providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

19. *Local Service Providers.* There are two principle providers of local telephone service; ILECS and competing local service providers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to data set forth in the *FCC Statistics of Communications Common Carriers (SOCC)*, 34 ILECs have more than 1,500 employees. We do not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of ILECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,376 ILECs are small entities that may be affected by the proposed rules, if adopted.

20. *Competitive Local Service Providers.* This category includes competitive access providers (CAPs), competitive local exchange providers (CLECs), shared tenant service providers, local resellers, and other local service providers. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Locator* data, 145 carriers reported that they were engaged in the provision of competitive local service. We estimate that there are fewer than 145 small entity competitive local service providers that may be affected by the proposed rules, if adopted.

21. *Providers of Toll Service.* The toll industry includes providers of interexchange services (IXCs), satellite service providers and other toll service providers, primarily resellers. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Locator data, 164 carriers reported that they were engaged in the provision of toll services. We estimate that there are fewer than 164 small entity toll providers that may be affected by the proposed rules, if adopted.

22. In addition, an alternative SBA standard may apply to satellite service providers. The applicable definition of small entity generally is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million. The Census report does not provide more precise data.

23. *Resellers.* This category includes toll resellers, operator service providers, pre-paid calling card providers, and other toll service providers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent Locator data, 405 carriers reported that they were engaged in the resale of telephone service. We estimate that there are fewer than 405 small entity resellers that may be affected by the proposed rules, if adopted.

24. *Wireless Telephony and Paging and Messaging.* Wireless telephony includes cellular, personal communications service (PCS) or specialized mobile radio (SMR) service providers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent *Locator* data, 732 carriers reported that they were engaged in the provision of wireless telephony and 137 companies reported that they were engaged in the provision of paging and messaging service. We estimate that fewer than 732 carriers are engaged in the provision of wireless telephony and fewer than 137 companies are engaged in the provision of paging and messaging service.

25. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.

26. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995). 47 U.S.C. section 543(m)(2). 47 CFR section 76.1403(b). Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

27. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

28. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The Notice seeks comment on whether all NXX codeholders should be required to report the status of all telephone numbers within the NXX blocks assigned to them. In the alternative, the Notice seeks comment on whether utilization data reporting on a more aggregated basis (or some more aggregated set of telephone number status categories) would provide sufficient data to accurately track number utilization. The Notice proposes that any utilization reporting obligation that the Commission adopts would be in addition to the demand forecasting requirement that the COCUS currently places on carriers. The Notice seeks comment on whether any modifications should be made to improve the quality and accuracy of carriers' demand forecasts. Alternatively, the Notice seeks comment on several alternative data collection options, including the forecast and utilization reporting process in the current Thousand Block Pooling Guidelines, and the Line Number Use Survey (LINUS) data collection model designed by NANPA staff as a replacement for COCUS. The Notice also seeks comment on other industry proposals for a number utilization and forecasting mechanism to replace COCUS. Finally, it seeks comment on whether to supplement the need verification measures and data collection program with a comprehensive audit program that verifies carrier compliance with federal rules and industry numbering guidelines.

29. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* The rules we propose in this Notice are designed to ensure sufficient access to numbering resources for all service providers that need them. The Notice seeks public comment on how best to create national standards for numbering resource optimization in order to: (1) ensure sufficient access to numbering resources for all service providers that need them to enter into or to compete in telecommunications markets; (2) avoid, or at least delay, exhaust of the NANP and the need to expand the NANP; (3) minimize the negative impact on consumers; (4) impose the least cost possible, in a competitively neutral manner, while obtaining the highest benefit; (5) ensure that no class of carrier or consumer is unduly favored or disfavored by our optimization efforts; and (6) minimize the incentives for carriers to build and carry excessively large inventories of numbers. We seek comment on our tentative conclusions and proposals, and on additional actions we might take in this regard to relieve burdens on users of telephone numbering resources.

30. *Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules.* None.

C. Comment Filing Procedures

31. Interested parties may file comments on or before July 30, 1999 and reply comments on or before August 30, 1999. Parties must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, Room TW–B204F, Washington, DC 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, CC Docket 99–200 or rulemaking number, RM No. 9258.

32. Written comments by the public on the proposed information collections are due by July 30, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before August 16, 1999. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

33. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center. 445 12th Street, SW, Washington, DC 20554.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–15334 Filed 6–16–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 64, No. 116

Thursday, June 17, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Delegation of Authority and Line of Succession

AGENCY: Agency for International Development, Office of Inspector General.

ACTION: Delegation of authority and line of succession.

SUMMARY: This document amends Delegation of Authority No. 14–01; FR Doc. 95–16531, dated June 29, 1995, by removing the Assistant Inspector General for Security from the line of succession to serve as Acting Inspector General. The Security Office was recently realigned out of the Office of Inspector General.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary C. Pleffner, (202) 712–0135.

This rule is hereby issued to effect a delegation of authority and provide a line of succession from the Inspector General as follows:

I. Pursuant to the authority vested in me by the Inspector General Act of 1978, as amended, in the event of death, disability, absence, resignation, or removal of the Inspector General, U.S. Agency of International Development, the officials designated below, in the order indicated, and in the absence of the specific designation of another official in writing by the Inspector General or the Acting Inspector General, are hereby authorized to and shall serve as Acting Inspector General and shall perform the duties and are delegated the full authority and power ascribed to the Inspector General by law and regulation as well as those authorities delegated to the Inspector General by the Administrator, U.S. Agency for International Development.

1. Deputy Inspector General.
2. Assistant Inspector General for Audit.
3. Assistant Inspector General for Investigations.

II. Anyone designated by the Inspector General as acting in one of the positions listed above remains in the line of succession; otherwise, the authority moves to the next position.

III. This delegation is not in derogation of any authority residing in the above officials relating to the operations of their respective programs, nor does it affect the validity of any delegations currently in force and effect and not specifically cited as revoked or revised herein.

IV. The authorities delegated herein may not be redelegated.

Dated: May 28, 1999.

Jeffrey Rush Jr.,

Inspector General.

[FR Doc. 99–15426 Filed 6–16–99; 8:45 am]

BILLING CODE 6115–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; National Woodland Ownership Study

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to reinstate, with change, a previously approved information collection. This information will help the agency evaluate the availability and sustainability of timber resources on private forest lands. Forest Service personnel will collect information from owners of private forest lands.

DATES: Comments must be received in writing on or before August 16, 1999.

ADDRESSES: All comments should be addressed to Thomas Birch, Northeastern Research Station, 5 Radnor Corp. Cntr., Suite 200, Radnor, PA 19087 or email tbirch/ne__fia@fs.fed.us or FAX: 610–975–4200.

FOR FURTHER INFORMATION CONTACT: Thomas Birch, 610–975–4045.

SUPPLEMENTARY INFORMATION:

Background

The Forest and Range Renewable Resources Planning Act of 1974, the Forest and Range Land Renewable Resources Act of 1978, and the Agricultural Research, Extension, and Education Reform Act of 1998, section 253(c), require the Forest Service to collect information on the availability and sustainability of timber resources on private forest lands. Data gathered in this information collection will help the Forest Service evaluate the availability and sustainability of these lands and how well the agency disseminates information about its private forest land assistance programs. The agency will share this data with other government and university scientists, who will use the information to better understand private forest ownerships and the economics of timber production on private forest lands.

Where, in previous years, this information collection had focused on private Forest land parcels, land tenure, forest land owner demographics, and ownership objectives, the new focus will be to identify issues that owners of private forest lands believe to be of importance and to gain knowledge of how owners of private forest lands manage or plan to manage their forested lands. The revised questionnaire also will provide the agency with improved information at the State and local level of government.

Data gathered in this information collection is not available from other sources.

Description of Information Collection

The following describes the information collection to be reinstated with change:

Title: National Woodland Ownership Study.

OMB Number: 0596–0078.

Expiration Date of Approval: October 31, 1997.

Type of Request: Reinstatement, with change, of a previously approved information collection for which Office of Management and Budget approval has expired.

Abstract: The collected information will help the Forest Service evaluate the agency's private forest land programs. These programs focus on opportunities for sustainable management of private forests. Sustainable private forest lands are essential for public recreational use and timber production. There are almost 10 million private forest land ownerships in the United States.

To gain knowledge of issues of importance to owners of private forest lands and of demographic data about owners of private forest lands, as well as to support additional State and local government statistical requirements, the agency has expanded the questionnaire to include questions, such as why trees were or were not harvested, practices used to reforest following harvest, and recreational use of the forest.

Respondents will be asked to answer questions that include how many acres of forest land they own; how many acres of forest land they bought or sold in the last 15 years; how many trees they harvested; the types of products that were produced from the trees that were harvested; the landowner's reforestation practices; if trees were not harvested, the reasons given for not harvesting; if landowners intend to harvest trees in the future; whether they have received any kind of forestry assistance and, if yes, the source of the assistance; if they have a written forest land management plan and, if yes, who prepared the plan; their reasons for owning the forest land; the benefits they expect to receive from owning the forest land; if they use the land used for personal recreational activities; if they allow the public to use the land for recreational purposes; how they receive information about State and Federal forest programs that focus on private forests; and the demographic information of the owners of private forest lands.

Forest Service Forest Inventory and Analysis Staff will mail questionnaires to owners of private forest lands, who will return the completed form to the agency. Forest Service personnel will follow up with face-to-face and telephone interviews.

Respondents will be individuals, business partnerships, corporations, trusts, and Native American corporations, tribes and Nations that own private forest lands.

Data gathered in this information collections is not available from other sources.

Estimate of Burden: 0.5 hours.

Type of Respondents: individuals that own forestland, partnerships, corporations, trusts, and Native American corporations, tribes, and Nations.

Estimated Number of Respondents: 12,292 per year.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,146 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clairity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments received in response to this notice, including name and address when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 11, 1999.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 99–15411 Filed 6–16–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Timber Harvest, Reforestation, and Road Construction Near Trapper Creek, Moonlight Creek, Watkins Creek, Spring Creek, Rumbaugh Creek, Cherry Creek and West Denny Creek Drainages; Gallatin National Forest, Gallatin County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of timber harvest, reforestation, and road construction in the vicinity of Trapper Creek, Moonlight Creek, Watkins Creek, Spring Creek, Rumbaugh Creek, Cherry Creek and West Denny Creek drainages (herein referred to as the West Lake Project), located in the South Madison Mountain range, Gallatin National Forest, Hebgen Lake Ranger District, Gallatin County, Montana. The West Lake project is one of several projects being proposed on the Gallatin National Forest to contribute timber volume to facilitate acquisition of approximately 54,000 acres of lands currently owned by Big Sky Lumber Company (BSL) located within the proclamation boundary of the Gallatin National Forest. These lands are checkerboard inholdings that originate as part of the construction grants given to the Northern Pacific Railway Company by the Federal Government in the late 1800's and early 1900's. In addition, this project will contribute toward providing a flow of wood products from National Forest lands.

The Gallatin National Forest Land and Resource Management Plan (Forest Plan) provides overall guidance for land management activities, including timber and road management, within the area. The proposed actions of timber harvest, reforestation, and road construction are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). This EIS will tier to the Gallatin Forest Plan Final EIS (September, 1987).

DATES: Written comments and suggestions should be received on or before July 19, 1999.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to Stan Benes, District Ranger, Hebgen Lake Ranger District, Gallatin National Forest, P.O. Box 520, West Yellowstone, Montana 59758.

FOR FURTHER INFORMATION CONTACT: Susan LaMont, EIS Team Leader, Hebgen Lake Ranger District, Gallatin National Forest, Phone (406) 646–7369.

SUPPLEMENTARY INFORMATION: Timber harvest and reforestation is proposed on approximately 1325 acres of forested land in the West Lake project area, which has been designated as suitable for timber management by the Gallatin Forest Plan. The timber harvest operations and general administration of National Forest lands will require constructing up to 2.3 miles of new roads.

The Gallatin Forest Plan provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The primary purpose of this project is to utilize available timber volume within the West Fork area as one of several federal exchange assets to be used to facilitate acquisition of approximately 54,000 acres of lands currently owned by BSL located within the proclamation boundary of the Gallatin National Forest. These lands are checkerboard inholdings that originate as part of the construction grants given to the Northern Pacific Railway Company by the Federal

Government in the late 1800's and early 1900's.

Another purpose for the BSL/West Lake Timber Sale proposal is to contribute toward providing a flow of wood products from National Forest lands identified as "suitable" for timber production, as directed in the Gallatin Forest Plan (Forest Plan, pg. II–1). The forested areas being considered for harvest are identified as productive Forest lands available for timber harvest provided grizzly bear habitat objectives are met. The purpose of road construction is to access stands of timber to be harvested. All new roads will be effectively closed to vehicle travel after completion of post-sale activities.

The purpose of closing roads is to minimize future road maintenance costs, reduce sedimentation, and to regulate overall open road density to maintain or improve big game habitat security.

The project area consists of approximately 1325 acres of National Forest land located in T11S, R3E, Sec 26, 35, and 36; T12S, R3E, Sec 1, 2, 11, 12, 13, 14, 23, 24, 25, and 36; T12S, R4E, Sec 18, 19, 20, 29, 30, 31, 32, and 33; and T13S, R4E, Sec 4, 5, 6, 7, 8, 9, 16, 17, 18, and 20; P.M. MT.

The areas of proposed timber harvest and reforestation would occur within Management Area 5 and 13. Timber harvest would occur only on suitable timber land. Road construction would occur in these management areas plus Management Area 7 when crossing streams. Below is a brief description of the applicable management direction.

Management Area 5—This management area contains travel corridors that receive heavy recreation use. Timber harvest is allowed within this area provided that the following goals are met. Management goals for MA 5 include: (1) maintain and improve wildlife habitat values; and (2) maintain the natural attractiveness of these areas to provide opportunities for public enjoyment and safety.

Management Area 13—This management area consists of forested, occupied grizzly bear habitat. The productive Forest lands area available for timber harvest provided grizzly bear habitat objectives are met. Management goals for MA 13 include: (1) managing vegetation to provide habitat necessary to recover the grizzly bear; (2) meet grizzly bear mortality reduction goals as established by the Interagency Grizzly Bear Committee; (3) allow a level of timber harvest compatible with Goal 1; and (4) meet State water quality standards and maintain stream channel stability.

Management Area 7—These are riparian zones or areas where vegetation is present that requires either free or unbounded water or soil moistures in excess of what is normally found in the area. Lands within this management area are suitable for timber harvest as long as soil, water, vegetation, fish, and dependent wildlife species are protected. These suitable lands must also be adjacent to other management areas suitable for timber management.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities in response to issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered, including the effects caused by recent and past harvesting and road construction on private lands. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which will occur during June 1999. In addition to this initial scoping, the public may visit Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify issues to be analyzed in depth.
3. Eliminate insignificant issues or those which have been covered by a relevant previous environmental analysis, such as the Gallatin Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

The following principle issues have been identified so far:

1. The potential effect of proposed timber harvest and associated road development on grizzly bear habitat (primarily security and cover).
2. The potential of proposed timber harvest and associated road development activities to displace grizzly bears use within the sale area.
3. The potential for proposed harvest and associated road development to affect water quality and stream conditions.

Other issues commonly associated with timber harvesting and road construction include: effects on native fisheries, old growth habitat, big game species, sensitive wildlife and plant species, cultural resources, soils, noxious weeds, and scenery in the area. This list will be verified, expanded, or modified based on public scoping for this proposal.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in October of 1999. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the West Lake project area participate at that time. The Final EIS is scheduled to be completed by mid-January, 2000.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives. To assist the Forest Service in identifying and considering issues, comments should be as specific to this proposal as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Gallatin National Forest, P.O. Box 130, Federal Building, Bozeman, MT 59771.

Dated: June 7, 1999.

David P. Garber,

Forest Supervisor.

[FR Doc. 99–15423 Filed 6–16–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee (PAC) will meet on July 7–9, 1999, in Weaverville, California. On Wednesday, July 7, the PAC will meet at the Weaverville Ranger District Office for a field trip from 9:00 A.M. to 5:00 P.M. Non-PAC members will need to arrange their own transportation. On Thursday, July 8, the meeting will be at the Weaverville Fire Hall, 100 Bremer, starting at 9:00 A.M. and adjourn at 5:00 P.M. On Friday, July 9, the meeting again will be at the Fire Hall and will start at 8:00 A.M. and adjourn at 12:30 P.M. Agenda items for the meeting include: (1) Review of the Elk Gulch II Field Trip; (2) Adaptive Management Area Panel Discussion; (3) Trinity River Water Issues Panel Discussion; (4) Subcommittee Reports; and (5) Public Comment Periods. All PAC meeting are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468 (voice), TDD 530–841–4573.

Dated: June 9, 1999.

Nancy J. Gibson,

Administrative Officer.

[FR Doc. 99–15425 Filed 6–16–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Census Bureau

Census 2000 Evaluation of the Facility Questionnaire

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 16, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION: Requests for additional information or copies of the information collection instruments and instructions should be directed to Zakiya Sackor , Bureau of the Census, Mail Stop 9200, Washington, DC 20233; (301) 457–8084.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau must provide everyone in the United States and Outlying Areas the opportunity to be counted in Census 2000 as well as making sure that persons are counted in the appropriate places. The Census 2000 Special Place Facility Questionnaire (FQ) is a Computer Assisted Telephone Interview (CATI) operation in which updated information on group quarters (GQs) and housing units is collected and GQ codes are assigned; cases that cannot be resolved by CATI are sent to the field for personal visit (PV) interviews. The GQ code is a critical component to correctly tabulate the data for different types of GQs. This operation began in October 1998 and will conclude in July 1999.

To evaluate this operation, the Census Bureau is proposing to conduct a follow-up operation to the Census 2000 Special Place Facility Questionnaire. The types of information collected during the interviews will concern the types of services the facility provides, the number of persons that reside within the facility, and what types of GQs are associated with the facility. All information collected will be pertinent to verifying the accuracy of the GQ code.

A personal visit reinterview of 1,000 cases that were initially CATI or PV will be conducted. These 1,000 cases will consist of two strata, large and complex special places with a sample size of 750, (i.e. universities, hospitals) and others with a sample size of 250, (i.e. nursing homes). We will use these data to determine: (1) How well the facility questionnaire performed by assessing the frequency with which the group quarters classification code was different between the production interview and reinterview, (2) whether or not there was a significant difference in the occurrence of group quarters classification code change by special place type, and (3) whether or not CATI versus PV increased data quality by computing item nonresponse rates. The evaluation interviews will be conducted in six regions during January 2000.

II. Method of Collection

The reinterview will be conducted via personal visits administered by specially trained interviewers using a paper questionnaire that has been modified from the production questionnaire. The design of the reinterview questionnaire is based on the results of cognitive tests and research conducted prior to the Census 2000 Dress Rehearsal.

III. Data

OMB Number: Not available.
Form Number: Not available.
Type of Review: Regular Submission.
Affected Public: Individuals, businesses or other for-profit organizations, non-profit institutions and small businesses or organizations.
Estimated Number of Respondents: 1,000.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 250.
Estimated Total Annual Cost: There is no cost to the respondent other than the time to provide the information requested.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c)ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents; including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 14, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer

[FR Doc. 99–15467 Filed 6–16–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–832]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 28, 1999, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary determination of its antidumping duty investigation of dynamic random access memory semiconductors of one megabit and above ("DRAMs") from Taiwan. This investigation covers four respondents: Etron Technology, Inc. ("Etron"), Nan Ya Technology Corporation ("Nanya"), Vanguard International Semiconductor Corp. ("Vanguard"), and Mosel-Vitelic, Inc ("MVI").

On June 1, 1999, Vanguard submitted an allegation of ministerial errors with respect to the preliminary determination. Because these are ministerial errors which rise to the level of a "significant error" pursuant to 19 CFR 351.224(e) and (g), we are amending our preliminary determination.

EFFECTIVE DATE: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Futtner at (202) 482–3814 or Ronald Trentham at (202) 482–6320, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions as of January 1, 1995, the effective date of the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 1998).

Significant Ministerial Error

We are amending the preliminary determination of sales at less than fair value for DRAMs from Taiwan to reflect the correction of a significant ministerial error made in the margin calculation regarding Vanguard in that determination, pursuant to 19 CFR 351.224(g)(1) and (g)(2). A significant ministerial error is defined as a correction which, singly or in combination with other errors, would result in (1) a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or de minimis and a weighted-average dumping margin of greater than de minimis or vice versa. We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e).

Scope of Investigation

The products covered by this investigation are DRAMs of one megabit or above from Taiwan, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers fabricated in Taiwan, but packaged or assembled into finished semiconductors in a third country, are included in the scope. Wafers fabricated in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this investigation includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules ("SIPs"), single in-line memory modules ("SIMMs"), dual in-line memory modules ("DIMMs"), memory cards or other collections of DRAMs whether mounted or unmounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items that alter the function of the module to something other than memory, such as video graphics adapter ("VGA") boards and cards, are not included in the scope. Modules containing DRAMs made from wafers fabricated in Taiwan, but either assembled or packaged into finished semiconductors in a third country, are also included in the scope.

The scope includes, but is not limited to, video RAM ("VRAM"), Windows RAM ("WRAM"), synchronous graphics RAM ("SGRAM"), as well as various types of DRAMs, including fast page-mode ("FPM"), extended data-out ("EDO"), burst extended data-out ("BEDO"), synchronous dynamic RAM ("SDRAMs"), and "Rambus" DRAMs ("RDRAMs"). The scope of this investigation also includes any future density, packaging or assembling of DRAMs. The scope of this investigation does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this investigation are currently classifiable under subheadings 8542.13.80.05 and 8542.13.80.24 through 8542.13.80.34 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Also included in the scope are Taiwanese DRAMs modules, described above, entered into the United States under subheading 8473.30.10 through 8473.30.90 of the HTSUS or possibly other HTSUS numbers. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Ministerial Error Allegations

On June 1, 1999, Vanguard submitted a timely allegation that the Department made ministerial errors which resulted in a miscalculation of the weighted-average constructed export prices ("CEPs") for Vanguard sales and a mistake in the total number of megabits that should be used in establishing the per-megabit cash deposit rate for Vanguard's DRAMs contained in mixed memory modules. See Memorandum on Application of a Per Megabit Cash Deposit Rate on Memory Modules, dated May 21, 1999.

We agree with Vanguard that the Department inadvertently miscalculated the weighted-average CEPs for Vanguard and miscalculated the total number of megabits that should be used in establishing the per-megabit cash deposit for Vanguard. *See* Clerical Error Memorandum, dated June 10, 1999. Because the effect of these ministerial errors on Vanguard's margins is significant, as defined in 19 CFR 351.224(g)(1), we are amending our

preliminary determination for this company. For a detailed analysis of this issue, *see* Clerical Error Memorandum, dated June 10, 1999. Because Vanguard's *ad valorem* and per megabit margins were used to compute the *ad valorem* and per megabit "all others" rates, we are also amending these duty deposit rates as well.

Amended Preliminary Determination

As a result of our correction of ministerial errors, we have determined that the following amended weighted-average dumping margins and weighted-average per megabit rates apply.

Exporter/manufacturer	Weighted-average margin (percent)	Weighted-average per megabit rate
Etron Technology, Inc	4.96	$0.03
Mosel-Vitelic, Inc	30.89	0.11
Nan Ya Technology Corporation	9.03	0.01
Vanguard International Semiconductor Corp	9.56	0.01
All Others	16.41	0.03

International Trade Commission (ITC)

In accordance with section 733(f) of the Act, we have notified the ITC of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

As stated in the Department's preliminary determination in this investigation (64 FR 28983), case briefs in at least ten copies must be filed no later than July 19, 1999, and rebuttal briefs no later than July 26, 1999. A list of authorities used and an executive summary of issues must accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 27, 1999, with the time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time and place of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within thirty days of the publication of the preliminary determination. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We intend to issue our final determination no later than October 10, 1999.

This amended preliminary determination is issued and published in accordance with section 703(d)(2) of the Act and 19 CFR 351.224.

Dated: June 11, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–15444 Filed 6–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Final Results of Expedited Sunset Review: Petroleum Wax Candles from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Petroleum wax candles from the People's Republic of China.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on petroleum wax candles from the People's Republic of China (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: June 17, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*"Sunset Regulations"*). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*"Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Scope

The merchandise subject to this antidumping order is certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: Tapers, spirals and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.[1] This product is currently classified under Harmonized Tariff Schedule (HTS) item number

[1] There have been numerous clarifications to the scope of this order. For a complete listing of these clarifications, *see* Appendix A.

3406.00.00. The HTS item number is provided for convenience and U.S. Customs purposes. The written product description remains dispositive.

This review covers imports from all manufacturers and exporters of petroleum wax candles from the People's Republic of China.

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping order on petroleum wax candles from the People's Republic of China (63 FR 66527), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the National Candle Association ("NCA") on January 15, 1999, within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. The NCA claimed interested party status under section 771(9) of the Act.[2] The NCA stated that it is a trade association comprised of 40 domestic producers of the subject merchandise. In addition, the NCA noted that it was the petitioner in the original investigation. We received a complete substantive response from the NCA on February 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under § 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the NCA's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering guidance on likelihood provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping duty order on petroleum wax candles from People's Republic of China was published in the **Federal Register** on August 28, 1986 (51 FR 30686). The Department has conducted one administrative review of this order.[3] The order remains in effect for all manufacturers and exporters of the subject merchandise.

In its substantive response, the NCA argues that revocation of the order against candles from the People's Republic of China would likely result in the continuation of dumping (*see* February 3, 1999 Substantive Response of the NCA at 10). With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, the NCA states that the dumping margin has remained at 54.21 percent for all exports of the subject merchandise during the entire life of the order (*see* February 3, 1999 Substantive Response of the NCA at 11). Further, with respect to whether imports of the subject merchandise ceased after the issuance of the order, the NCA states that, following the imposition of the order, imports of the candles from the People's Republic of China decreased dramatically and remained relatively low for several years. The NCA argues, however, that there has been an increase in the imports of non-subject candles from the People's Republic of China in recent years. They believe the exclusion of certain types of candles from the order, through means of scope clarifications, has permitted an increase in the imports of candles that can enter the United States without restriction (*see* February 3, 1999 Substantive Response of the NCA at 11).

In conclusion, the domestic interested parties argued that the Department should determine that there is a likelihood that dumping continue if the order were to be revoked because (1) dumping margins have existed for all known exporters of the subject merchandise during the entire life of the order and (2) shipments of subject merchandise decreased significantly following the imposition of the order and have not regained their pre-order levels.

In making its decision, the Department considered the existence of dumping margins and the volume of imports before and after the issuance of the order. As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. In the instant proceeding, a dumping margin of 54.21 percent has existed throughout the life of the order for shipments of the subject merchandise from all Chinese producers/exporters.[4]

[2] In its substantive response of February 3, 1999, the NCA claimed interested party status under section 771(9)(E) of the Act, as a trade association, a majority of whose members manufacture candles in the United States.

[3] *See Petroleum Wax Candles from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 53 FR 47742 (November 25, 1988).

[4] The Department established a dumping margin of 54.21 percent for all producers, manufacturers, and exporters of the subject merchandise in the original investigation of this case (*see Petroleum Wax Candles from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 51 FR 25085 (July 19, 1986)). In the antidumping duty order, the Department published an "all others" rate of 54.21 percent as well as a 54.21 percent rate for China National Native Produce and Animal By-Product Import & Export Corp. (*see Antidumping Duty Order: Petroleum Wax Candles From the People's Republic of China*, 51 FR 30686 (August 28, 1986)). In the only administrative review of this order, the Department also published an "all others" rate of 54.21 percent as well as 54.21 percent rate for P&C Enterprises (Hong Kong) (*see Petroleum Wax Candles from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 53 FR 47742 (November 25, 1988)).

Consistent with section 752(c) of the Act, the Department also considered the volume of imports of the subject merchandise before and after issuance of the order. The statistics on imports of petroleum wax candles between 1983 and 1998, provided by the domestic interested parties and confirmed by U.S. Census Bureau IM146 reports, indicate that annual imports of candles from the People's Republic of China covered under the HTSUS item number decreased sharply the year the order was created but, in recent years, have again increased and even surpassed the levels attained prior to the imposition of the order. The NCA argues that a substantial portion of the increase in import volumes of merchandise covered by the HTSUS item number may be attributed to merchandise determined by the Department to be excluded from the scope of the order and is, therefore, not relevant to this sunset determination.[5] Nonetheless, the Department can confirm, through an examination of U.S. Census Bureau IM146 Reports, that imports of subject merchandise continue in substantial quantities.

We find that the existence of a deposit rate above a *de minimis* level coupled with the continued exportation of subject merchandise is highly probative of the likelihood of continuation or recurrence of dumping. The SAA at 890, and the House Report at 63–64, state that the "(e)xistence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed." A dumping margin continues in effect for exports of the subject merchandise by all known PRC exporters. Therefore, given that dumping has continued over the life of the order and respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that, consistent with Section II.A.3 of the *Sunset Policy Bulletin*, dumping is likely to continue if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published a weighted-average dumping margin for all producers, manufacturers, and exporters of petroleum wax candles from the People's Republic of China (51 FR 25085, July 10, 1986). The Department has not issued any duty absorption findings in this case.

In its substantive response, the NCA states that the dumping margin established in the original investigation is at least as high as the margin likely to prevail if the order were revoked. The NCA, echoing the guidance provided by the *Sunset Policy Bulletin*, argues that this margin best reflects the behavior of the PRC exporters absent the constraints of an antidumping order (*see* February 3, 1999 Substantive Response of the NCA at 12).

The Department agrees with the NCA's argument concerning the choice of the margin rate to report to the Commission. An examination of the margin history of the order as well as an examination of import statistics of the subject merchandise, as provided by U.S. Census Bureau IM146 Reports, confirms that dumping margins have existed throughout the life of the order and that imports of the subject merchandise continue.

The Department finds the margin from the original investigation is the only calculated rate that reflects the behavior of producers and exporters without the discipline of the order. Therefore, consistent with the *Sunset Policy Bulletin*, we determine that the margin calculated in the Department's original investigation is probative of the behavior of PRC producers and exporters of petroleum wax candles if the order were revoked. We will report to the Commission the country-wide rate from the original investigation contained in the *Final Results of Review* section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
All Chinese Manufacturers/Exporters	54.21

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 11, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix A

The following is a list of scope clarifications issued by the Department, the date of the determination, and the party who requested the clarification.

Please note that scope requests received after July 1, 1997 have been analyzed pursuant to the Department's revised scope regulations (19 CFR part 351).

Date	Interested party	Department's determination
6 Jan 99	Meijer	Wax-filled container (rabbit-shaped) within scope.

[5] *See* Appendix A for a list of scope determinations made in this case.

Date	Interested party	Department's determination
24 Dec 98	Endar	"Floating" candle within scope.
18 Dec 98	Boston Warehouse	Citronella outdoor candle not within scope.
18 Dec 98	Ocean State Jobbers	80% beeswax, 20% petroleum wax candles not within scope.
15 Dec 98	Target Stores	Citronella outdoor candles not within scope.
11 Dec 98	Et Al. Imports	80% beeswax, 20% petroleum wax candles not within scope.
10 Dec 98	Costco Wholesale	81% beeswax, 19% petroleum wax candles not within scope.
31 Aug 98	Leader Light	Parffin/palm oil in stearic acid shell in scope wax-filled container.
24 Aug 98	Kohl's	Various; gold rope, angel, and vine decorated in scope; star and tree w.f. containers in scope; container with Xmas scene outside scope.
2 Jul 98	Et Al. Imports	Bamboo-shaped candle outside scope.
11 Jul 98	Meijer, Inc	Various candles and w.f. containers (see scope ruling);
11 Jun 98	Meijer, Inc	Sweetheart tapers and wax-filled glass containers with decorative hearts are within the scope of the order. A wax-filled porcelain bunny, and Easter taper with a chick attached, an Easter bunny head teal light, a Valentine heart teal light, a heart-shaped candle on a heart base, a "candy kiss" candle, and a "bunny long ears" flame are outside the scope of the order.
6 May 98	Polardreams Inc	Granular petroleum wax candle kits are within the scope of the order.
16 Mar 98	American Drug Stores	Spherical "wax veneer" candle outside scope.
15 Dec 97	Meijer, Inc	Gold/green rectangle "Noel" outside scope, gold/green rectangle "Joy", "Peace" candles in scope; flame candle in scope; wax-filled Valentines candle mug outside scope.
Filed Incorrectly	Fimax, Inc	Decorated spherical candles; received 3 Sep 97; contacted about correcting deficiencies but no reply.
25 Sep 97	Russ Berrie	Heart-shaped "trinket box" candle in scope;
8 Sep 97	Meijer, Inc	Four terra cotta containers in scope; jack-o'-lantern out;
2 Sep 97	Russ Berrie	Star-shaped "confetti" pillar is within scope.
15 Sep 97	Indio Products, Inc	Assorted tapers, columns and votives in scope.
25 Sep 97	M.G. Maher	Red spiral candles in scope;
9 Apr 97	Dollar Tree Stores	Holly taper is outside scope.
9 Apr 97	Hallmark Cards	Red/white candle packaged as peppermint candy is within scope.
9 Apr 97	Inst. Financing Services	Red/white candle packaged as peppermint candy is within scope.
Pending	Ocean State Jobbers	80/20 beeswax/petroleum wax tapers and votives; received 3 Sep 96; no deadline.
Withdrawn	Sun-It Corp	Citronella tapers; received 27 Jun 96; no deadline.
Terminated	Cost Plus	Beeswax/petroleum wax tapers; request withdrawn by Cost Plus.
9 Dec 96	Mervyn's	Cube candle with sun face is within scope.
30 Oct 96	Midwest of Cannon Falls	Certain pillars, Easter taper are in; asparagus stalk is outside scope; Cube, oblong within scope.
30 Oct 96	Enesco Corp	Holiday candles, disc-shaped candle are outside scope; Cube, birthday within scope.
28 Oct 96	Russ Berrie Co., Inc	Heart-shaped terra cotta container is within scope.
26 Aug 96	Delightful Dimensions	75/25 beeswax/petroleum wax tapers are within scope "until otherwise notified by the Department." (USCS classification ruling).
Terminated	Kendal King Graphics	Holiday wax-filled tins; terminated 29 Aug 96 at Kendal's request.
25 Sep 96	*Springwater Confection vs. the United States*	Christmas feather candle is within scope, holly feather candle is outside scope (Slip Op. 96–160 CIT; remand of 14 Feb 95 ruling).
24 Jun 96	Morris Friedman & Co	Wax-filled bucket, wax-filled glass containers are within scope.
28 Sep 95	Concept Marketing	"Safe-2-Lite" candle is outside scope because it is a utility candle.
16 May 95	Sun It Corporation	"Flag Lites," "Porch Torch," "Gigantic Fruit," Pumpkin candles are outside scope.
Terminated	Boomster Imports	Cube candle; terminated 6 Jul 95.
Terminated	Kmart Corporation	Holiday pillar candles; terminated 26 Jun 95.
14 Feb 95	Watkins Incorporated	Holiday pillar candle is outside scope.
14 Feb 95	Springwater Confection	"Feather" spiral candles are within scope (remanded by CIT; *see* 13 May 96, above).
13 Jan 95	Two's Company	Taper with holiday figurine is outside scope; pillar candles with decorations are within scope.

Date	Interested party	Department's determination
16 Dec 94	Lew-Mark	Wax-filled "pansy" tins are within scope.
Terminated	Scentex, Inc	Candles containing potpourri; candles produced in Macau; terminated 7 Sep 94.
27 Jul 94	Star Merchandise Co. Inc	Certain citronella candles outside scope; candles in holiday tins outside scope; certain wax-filled containers are within scope.
27 Jul 94	Success Sales Co	Holiday pillar candles are outside scope.
27 Jul 94	West Coast Liquidators	Tapers with holiday figurines and candles molded as identifiable objects are outside scope.
6 Jun 94	Kole Imports	Tapers with holiday figurines are outside scope
6 Jun 94	A J Cohen Co.	Tapers with holiday figurines are outside scope.
30 Sep 93	Cherrydale Farms	Currier & Ives holiday tins are outside scope.
30 Sep 93	Hallmark Cards, Inc	"Party" rounds are within scope; certain wedding candles are outside scope.
10 Jun 93	San Francisco Candle	Certain mushroom, oval/egg, and spherical candles are outside scope.
7 Jun 93	Primark	Certain wax-filled tins with Santa Claus designs are outside scope; other wax-filled tins within scope.
9 Apr 93	Trade Advisory Group	Certain terra cotta candles are within scope.
9 Apr 93	Garrett Hewitt, Int'l	"Giorgio" candles are within scope.
12 Feb 93	Simcha Candle Co	"Household" candles are outside scope; certain tealight candles are within.
17 Mar 92	Wolf D. Barth Co	Van Gogh "sculpture" and Monet spiral are within scope.
11 Dec 91	W.M. Stone & Co	Easter holiday tapers are outside scope (USCS ruling).
4 Nov 91	San Francisco Candle	Moonlite and Candylite candles are within scope.
3 Sep 91	Fabri-Centers, Inc	Certain citronella candles are outside scope.
2 Jul 90	Rite Aid Corp.	Certain holiday tapers are outside scope (USCS ruling).
20 Mar 89	U.S. Customs Service CIE N–212/85; Supp. 8	"Party" candles (6⅝ by ⅛) are outside scope Ruling issued directly to USCS. in ltr to A R Beikirch, USCS, 8 Feb 89.
21 Sep 87	U.S. Customs Service CIE N–212/85; Supp. 6	Certain novelty candles w/scenes or symbols outside scope; numeral and "identifiable object" candles outside scope.
9 Sep 87	West Coast Liquidators	Certain holiday pillars and tapers are outside scope (USCS ruling).
23 Aug 87	Carmichael International	Certain novelty candles are outside scope.
23 Jul 87	Empire Candle Co	Candles with metal-cored wicks are within scope.
13 Jul 87	Giftco, Inc	Candles w/raised holiday motifs are outside scope (*see* CIE N–212/85, Supp. 6, 21 Sep 87).
30 Oct 86	Global Marketing Services	Certain tapers with permanently attached figurines are outside scope.

[FR Doc. 99–15445 Filed 6–16–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan; Antidumping Duty Administrative Review; Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of review.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on roller chain, other than bicycle from Japan. The review covers ten manufacturer/exporters of the subject merchandise to the United States for the period April 1, 1997, through March 31, 1998.

EFFECTIVE DATE: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Dulberger or Wendy Frankel, Office of AD/CVD Enforcement, Group II, Office 4, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–5505, or (202) 482–5849, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete the final results of this review within the initial time limit established by the Uruguay Round Agreements Act (245 days after the last day of the anniversary month for the preliminary results, 120 days after the date on which the preliminary results are published for the final results), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the final results until November 8, 1999. *See* the Memorandum from Bernard Carreau to Robert S. LaRussa, dated June 4, 1999, on file in the Central Records Unit located in room B–099 of the main Department of Commerce building.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: June 8, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–15446 Filed 6–16–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural

Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 99–011. *Applicant:* University of Wisconsin-Madison, 750 University Avenue, Madison, WI 53706. *Instrument:* Micromanipulator, Model MK1. *Manufacturer:* Singer, United Kingdom. *Intended Use:* The instrument is intended to be used for studies of RNA and protein, in microinjected Xenopus Oocytes. The objectives of the investigations are to: (a) Study the mechanisms by which tRNAs are exported and to determine what features of tRNAs are necessary and sufficient for their export; (b) study the mechanisms by which constitutive transport element (CTE) or MPMV is able to promote the release of completely spliced pre-mRNAs from spliceosomes and to relate export of that element to the process of normal mRNA export; and (c) study the structure of a small RNA export element and determine what factors lead to its export or retention. Application accepted by Commissioner of Customs: June 2, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–15447 Filed 6–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Palestinian Business Advisory Group: Membership

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of membership opportunity.

SUMMARY: In February 1999, the U.S.-Palestinian Bilateral Committee agreed to establish the United States-Palestinian Business Advisory Group. This notice announces membership opportunities for American business representatives on the U.S. side of the Group.

DATES: In order to receive full consideration, requests must be received on or before July 19, 1999.

ADDRESSES: Please send your requests for consideration to Paul Thanos, Desk Officer, Office of the Near East, U.S. Department of Commerce, either by fax at (202) 482–0878 or by mail to Room 2029B, U.S. Department of Commerce, 14th and Constitution, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Paul Thanos, Desk Officer, Office of the Near East, U.S. Department of Commerce, Room 2029B, 14th and Constitution Avenue, NW, Washington DC 20230, Phone 202–482–1857.

SUPPLEMENTARY INFORMATION: The U.S.-Palestinian Bilateral Committee agreed at its February 16, 1999 meeting to establish a private sector-led business advisory group to provide input to the subcommittee on Trade and Investment. This advisory group, to be named the United States-Palestinian Business Advisory Group (USPBAG)—will make recommendations that reflect private sector views, needs, and concerns regarding business development in the West Bank and Gaza and commercial ties between Americans and Palestinians. The USPBAG will advise the Trade and Investment Subcommittee on the following areas:

- Initiatives that can be taken to promote economic activity between American and Palestinian
- Palestinian commercial and investment laws
- Palestinian and U.S. trade policies
- Palestinian economic policies and their impact on the business climate

The USPBAG will be comprised of two sections, an American section and a Palestinian section. Each section will have ten members. Members will serve two year terms.

The members of each section will, to the extent possible, represent diverse commercial sectors. Priority sectors include: Agribusiness and food processing; banking communications; engineering and construction; information technology; insurance; manufacturing; power generation; restaurant and hospitality; tourism; and software, music, and video production. The State Department will appoint members in consultation with the Commerce Department.

Private sector members will serve in a representative capacity presenting the views and interests of their particular industry. Private sector members are not special government employees. U.S. members serve at the discretion of the Secretary of State. Members will not receive compensation for their participation in USPBAG activities. Members participating in USPBAG meetings and events will be responsible for their own travel, living, and other personal expenses.

In order to be eligible for membership in the U.S. section, a potential candidate must be:

- A U.S. citizen residing in the United States
- A holder of a significant position in a private sector company or non-profit organization that has a unique technical expertise and outstanding reputation
- Not a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended

In reviewing eligible candidates, the Department of State and Department of Commerce will consider such selection factors as:

- Experience and interest in the West Bank and Gaza markets
- Industry or service sector represented
- Export/investment experience

To be considered for membership, please provide the following: name(s) and title(s) of the individual(s) requesting consideration; name and address of the company or organization sponsoring each individual; company's product, service, or technical expertise; size of the company; export trade, investment, or international program experience and major markets; and a brief statement of why the candidate(s) should be considered for membership in the USPBAG.

Dated: June 14, 1999.

Thomas R. Parker,

Director, Office of the Near East.

[FR Doc. 99–15450 Filed 6–16–99; 8:45 am]

BILLING CODE 3510–25–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

June 11, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 21, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 60308, published on November 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 11, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on June 21, 1999, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
219	1,515,614 square meters.
226/313	2,591,737 square mters
317	41,809,984 square meters.
326	2,446,604 square meters.
334/634	263,062 dozen.
335/635/835	203,419 dozen.
338/339	763,959 dozen of which not more than 458,833 dozen shall be in Categories 338–S/339–S [2].
341/641	414,722 dozen.
342/642	329,472 dozen.
347/348	483,264 dozen of which not more than 255,636 dozen shall be in Categories 347–T/348–T [3].
351/651	202,404 dozen.
352	436,549 dozen.
369–S [4]	113,523 kilograms.
369–O [5]	790,793 kilograms.
638/639	308,877 dozen.
847	277,991 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–15465 Filed 6–16–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is meeting to conduct the final briefing of the Pacific Strategy Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to proposed Navy 21st Century strategy for the Pacific Rim.

DATES: The meeting will be held on June 30, 1999 from 11:00 a.m. to noon.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: May 26, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, Alternate Federal Register Liaison Officer.

[FR Doc. 99–15427 Filed 6–16–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.200]

Office of Postsecondary Education, Graduate Assistance in Areas of National Need Program; Notice of Technical Assistance Workshop for Fiscal Year (FY) 2000 Grant Applications

SUMMARY: The Secretary announces a technical assistance workshop to assist institutions of higher education in preparing grant applications for the Graduate Assistance in Areas of National Need (GAANN) Program for

the FY 2000 grant competition. For further information on the GAANN Program please refer to Title VII, Part A, Subpart 2 of the Higher Education Act of 1965, as amended, and 34 CFR Part 648. This information is also located at the Department of Education's website at: http://www.ed.gov/offices/OPE/HEP/iegps.

DATES: The technical assistance workshop will be held in the Denver metropolitan area from Sunday, July 18, 1999, through Tuesday, July 20, 1999.

ADDRESSES: The workshop will be held at the Doubletree Hotel, 13696 East Iliff Place, Aurora, Colorado.

FOR FURTHER INFORMATION CONTACT: Cosette Ryan, GAANN Program, 400 Maryland Avenue, SW, Portals Building, Suite 600, Washington, DC 20202–5247. Inquiries may be sent by e-mail to cosette__ryan@ed.gov or by Fax to (202) 205–9489. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The workshop is free to the public. If you attend the workshop, you must pay your own travel and hotel accommodations.

The workshop agenda is as follows:

Registration: 9:00 a.m–3:00 p.m., Sunday, July 18, 1999
Orientation: 3:00 p.m.–5:00 p.m., Sunday, July 18, 1999
Workshop sessions: 9:00 a.m.–4:30 p.m., Monday, July 19, 1999
Workshop sessions: 9:00 a.m.–noon, Tuesday, July 20, 1999

To make reservations for either the workshop or hotel accommodations at the Doubletree Hotel, please contact Marta Quintana or Brien Dunlaney via the Internet at *marta@apimeetings.com* or *brien@apimeetings.com*. You may also reach them by telephone at (410) 884–9371 or by FAX at (410) 884–9374.

Assistance to Individuals with Disabilities at the Technical Assistance Workshop: The technical assistance workshop sites are accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the workshop (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled workshop date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1135–1135ee.

Dated: June 14, 1999.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–15448 Filed 6–16–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Office of Science Financial Assistance Program Notice 99–21; Department of Energy Experimental Program To Stimulate Competitive Research (DOE/EPSCoR)

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's scientific research enterprise through the support of science, engineering, and mathematics, announces its interest in receiving applications from eligible States for the support of the DOE/EPSCoR Program. The purpose of the DOE/EPSCoR Program is to enhance the capabilities of designated States to conduct nationally-competitive energy-related research and to develop science and engineering manpower in energy-related areas to meet current and future needs.

DATES: The deadline for receipt of formal applications is 4:30 p.m. E.S.T., December 1, 1999, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2000.

ADDRESSES: Formal applications referencing Program Notice 99–21, must be submitted to U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 99–21. This address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: For general questions concerning this Notice and the DOE/EPSCoR program, contact the following individual: Dr. Matesh N. Varma, DOE/EPSCoR Program Manager, Office of Basic Energy Sciences, SC–132, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–3209, e-mail: (matesh.varma@science.doe.gov).

SUPPLEMENTARY INFORMATION: To continue to enhance the competitiveness of states and territories identified for participation in the Experimental Program to Stimulate Competitive Research (EPSCoR) by the National Science Foundation (NSF), DOE has decided to again restrict eligibility to the following states and territory: Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico.

An appropriate fiscal agent, acting on behalf of a state's EPSCoR Committee, may submit only one application in response to this program notice. It is the DOE/EPSCoR program policy to limit the Research Implementation awards to one active award per state. Therefore, only those EPSCoR states that have: (1) Not received a previous DOE/EPSCoR Research Implementation award, (2) "graduated" their previously supported Research Implementation award research clusters or (3) received final funding for their Research Implementation award in FY 1999, are eligible to apply for FY 2000 funding.

Awards issued under this Notice will provide funding for state program coordination, human resource development activities, and research, including a balanced portfolio of

student research activities spanning from K–12 to postgraduate students. The DOE/EPSCoR Research Implementation award should be used to improve the academic research infrastructure of key science and technology areas identified by the state's EPSCoR governing committee as critical to the development of state and institutional research and development capability. The state's strategy to develop and utilize the scientific and technological resources that reside in its research universities should be described in its DOE/EPSCoR Research Implementation award application. In preparation for submitting an application, the EPSCoR governing committee within each state is expected to have undertaken a comprehensive analysis of the strengths, weaknesses, and opportunities for development of its research institutions in support of overall state research and development objectives. Successful infrastructure improvement plans are likely to be those which are focussed on one or two energy-related research areas and which candidly represent the opportunities for enhanced academic R&D competitiveness, including the acquisition of sustained non-EPSCoR support. Most important, the state's infrastructure improvement strategy must have a high probability of realizing stated goals and objectives as judged by members of a DOE merit review panel. In all instances, performance milestones and a timetable for achieving such milestones are prerequisites for EPSCoR support. Priority will be given to applications that propose to develop new competitive research areas rather than those that propose to enhance or continue research-areas that are already competitive. The DOE/EPSCoR Research Implementation awards are not an appropriate mechanisms to provide support for individual faculty science and technology research projects. Requests for support of such projects should be directed to the DOE's ongoing research grant programs.

Program Funding

Subject to Congressional authorization and approval of funds in FY 2000 DOE anticipates an estimated $3.0 million will be available for awards to fund collaborative research and manpower development in energy-related science and engineering disciplines. Approximately four awards are anticipated in FY 2000 at a maximum award level of $750,000 per year for a period of three years. Continuation funding for the awards will be contingent upon the availability of appropriated funds, progress of the research and continuing program need. Renewal applications beyond the initial three-year period will be considered for an additional two years, subject to continuing meritorious performance and progress in the previous award periods, as well as the value added of the proposed effort and the availability of funds.

As a tangible measure of an applicant's commitment to the objectives of the DOE/EPSCoR Program, cost-sharing on a minimum one-to-one ratio is a requirement of this program. Therefore, each application submitted requesting support from DOE under this Notice must provide, from non-Federal funds, an amount equal to or greater than the amount awarded by DOE; i.e., for every dollar provided by DOE, the recipient must provide a dollar or more from non-Federal sources for the project.

Applications

The DOE/EPSCoR Research Implementation awards are open to the entire range of energy-related disciplines supported by the Department of Energy. Additional information on the DOE Research Programs is available at the following web site addresses:

Department of Energy (General Information): *http://www.doe.gov*
Office of Science (formerly Energy Research): *http://www.er.doe.gov*
Basic Energy Sciences: *http://www.er.doe.gov/production/bes/bes.html*
Biological and Environmental Research: *http://www.er.doe.gov/production/ober/ober__top.html*
Computational and Technology Research: *http://www.er.doe.gov/octr/index.html*
Fusion Energy: *http://www.ofe.er.doe.gov*
High Energy and Nuclear Physics: *http://www.er.doe.gov/production/henp/henp.html*
Office of Defense Programs: *http://www.dp.doe.gov/Public/default.htm*
Office of Energy Efficiency and Renewable Energy: *http://www.eren.doe.gov*
Office of Fossil Energy: *http://www.fe.doe.gov*
Office of Environmental Management: *http://www.em.doe.gov*
Office of Civilian Radioactive Waste Management: *http://www.rw.doe.gov*
Office of Nuclear Energy: *http://www.ne.doe.gov*

Applications will be subjected to formal scientific merit review and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d).

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs.

Note: External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, and nonprofit organizations. All projects will be evaluated using the same criteria, regardless of the submitting institution.

General information about the development and submission of applications, the merit review and evaluation process, and other procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is available via the World Wide Web at: *http://www.er.doe.gov/production/grants/grants.html*.

Specific guidance for the preparation of the DOE/EPSCoR Research Implementation applications may be found in the "Supplemental Information Guidelines" at website: *http://www.er.doe.gov/production/bes/EPSCoR/APPLI.HTM*. Because of program specific information required and the overall complexity of the applications, the format and guidance included in the "Supplemental Information Guidelines" supercedes that of the general instructions for the preparation of an application to the Office of Science.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, D.C. on June 8, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–15438 Filed 6–16–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–10–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 11, 1999.

Take notice that on June 8, 1999, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of July 1, 1999.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules SST and FSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules SST and FSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15366 Filed 6–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–284–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

June 11, 1999.

Take notice that on June 8, 1999, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet No. 92–A to be effective June 1, 1999.

Kern River states that the purpose of this filing is to comply with the Commission's May 28, 1999 letter order in this docket, which pertains to a new fuel reimbursement mechanism proposed by Kern River. In its letter order, the Commission accepted the tariff sheets tendered by Kern River, subject to Kern River filing revised tariff sheets to include a step-by-step description of how the fuel factors are calculated, including the allocation and classification of the fuel use and unaccounted-for natural gas as required by Sections 154.403(c)(5) and (c)(10) of the Commission's regulations.

Kern River requests any waivers necessary to allow Kern River to delay the implementation of its new reimbursement mechanism until August 1999 business.

Kern River states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15365 Filed 6–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–548–000]

Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

June 11, 1999.

Take notice that on June 7, 1999, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–548–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate certain interconnect facilities as a new delivery point (Cordova delivery point) to MidAmerican Energy Company (MidAmerican), all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Northern Border would construct and operate a 16-inch tee and valve and a single 10-inch ultrasonic meter and associated piping, valves, RTU, and buildings to serve as a delivery point to MidAmerican in Rock Island County, Illinois. Northern Border states that the estimated cost of the proposed facilities is $1.4 million.

Northern Border further states the volumes to be delivered at the proposed delivery point are volumes currently being transported by Northern Border. Northern Border will deliver to MidAmerican up to 94,800 Mcf on a peak day and an estimated 23 Bcf annually, it is stated. Northern Border further states that the natural gas volumes delivered at the Cordova delivery point will be used to serve a new power plant. Further, Northern states that there will not be any impact on the peak day capability of Northern Border's existing shippers as a result of the proposed interconnect, and any impact on annual deliveries will be de minimis.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–15364 Filed 6–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC99–75–000 and ER99–3060–000]

Western Massachusetts Electric Company, Northeast Utilities Service Company, Consolidated Edison Energy, Inc., Consolidated Edison Energy, Massachusetts Inc.; Notice of Filing

June 11, 1999.

Take notice that on June 9, 1999, Western Massachusetts Electric Company (WMECO), Northeast Utilities Service Company Consolidated Edison Energy Massachusetts, Inc. (CEEMI) (collectively, Applicants) tendered for filing, under Section 205 of the Federal Power Act, schedules to the Interconnection and Operation Agreement that were inadvertently omitted from their May 25, 1999 filing pursuant to Sections 203 and 205 of the Federal Power Act for approvals and acceptances related to the sale of certain generating facilities by WMECO to CEEMI.

The Applicants state that copies of this filing have been sent to the Connecticut Department of Public Utility Control, the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15404 Filed 6–16–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6362–3]

Agency Information Collection Activities: Continuing Collection; Comment Request; General Hazardous Waste Facility Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): General Hazardous Waste Facility Standards, EPA ICR #1571, OMB Control Number 2050–0120, expires November 30, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 16, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–FSIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, Virginia address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–1999–FSIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA, CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 401 M Street, SW, Washington DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15/page. This notice and the supporting documents that detail the General Hazardous Waste Facility Standards ICR are also available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: David Eberly by phone at (703) 308–8645, by facsimile at (703) 308–8638, by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or by e-mail at eberly.david@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Internet Availability

Today's document and the supporting documents that detail the General Hazardous Waste Facility Standards ICR are available on the Internet. Follow these instructions to access this information electronically:

WWWURL: http://www.epa.gov/epaoswer/hazwaste/tsds/standards/index.htm
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet e-mail address
Path:/pub/epaoswer

Note: The official record for this action will be kept in paper form and maintained at the address in the ADDRESSES section above.

Affected entities: Entities potentially affected by this action are owners and operators of hazardous waste treatment, storage, and disposal facilities.

Title: General Hazardous Waste Facility Standards, EPA ICR #1571, OMB Control Number 2050–0120, expires on November 30, 1999.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the U.S. Environmental Protection Agency (EPA) develop standards for hazardous waste treatment, storage, and disposal facilities (TSDFs) as may be necessary to protect human health and the environment. Subsections

3004(a)(1), (3), (4), (5), and (6) specify that these standards include, but not be limited to, the following requirements:

- Maintaining records of all hazardous wastes identified or listed under subtitle C that are treated, stored, or disposed of, and the manner in which such wastes were treated, stored, or disposed of;
- Operating methods, techniques, and practices for treatment, storage, or disposal of hazardous waste;
- Location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;
- Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and
- Maintaining or operating such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.

The regulations implementing these requirements are codified in the Code of Federal Regulations (CFR) Title 40, parts 264 and 265. The collection of this information enables EPA to properly determine whether owners/operators or hazardous waste treatment, storage, and disposal facilities meet the requirements of section 3004(a) of RCRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: This proposed ICR is an estimate of the total respondent burden for all activities related to general facility operating requirements, record keeping requirements, contingency plan and emergency reporting requirements, releases from solid waste management units, closure/post-closure requirements, financial requirements, corrective action management unit requirements, and conditions applicable to all permits.

The total burden to respondents as estimated in the proposed ICR for "General Facility Standards (#1571)" is 506,787 hours per year, at a cost of $26,703,873 per year. This estimate was based on owners and operators of hazardous waste management facilities complying with the information collection requirements set forth in 40 CFR parts 264 and 265, subparts B–H and by using an average hourly respondent labor cost (including overhead) of $90.00 for legal staff, $69.30 for managerial staff, $54.33 for technical staff, and $24.29 for clerical staff. EPA estimates the total number of respondents per year to be 2,607, which includes both permitted and interim status facilities. The estimate further differentiates facilities that are operating, that have closed, and that are in post-closure. The number of respondents varies depending upon the category of each facility and the required activity.

The respondent universe numbers in this proposed ICR are significantly lower than those estimated for the previously approved 1996 ICR. Some of this decrease is due to the ongoing consolidation and contraction of the hazardous waste treatment, storage, and disposal industry. In addition, EPA removed all federally owned or operated facilities from the respondent universe. Information collections addressed to federal government employees are not subject to the requirements of the Paperwork Reduction Act (PRA) of 1995. OMB's subsequent implementing regulations reiterate that information collections subject to the PRA do not include those addressed to federal government employees when acting within the scope of their employment. Therefore, this ICR should not account for the burden undertaken by federally owned or operated TSDFs in complying with the general facility standard record keeping and reporting requirements that apply to them. In the previously approved 1996 ICR, however, federal facilities were included in the universe of facilities counted as respondents to the general facility standard information collection requirements.

Most of the decrease, however, is due to more accurate RCRIS data. EPA spent considerable time and effort in order to review and validate the existing RCRIS data. In doing so, facilities that are no longer operating or that completed post-closure have been removed. The universe numbers used in this ICR are based on the current (as of March 31, 1999) GPRA workload universe in the Permitting and Post-Closure Program Accomplishment Reports and the FY 1999 Beginning of Year Plan (BYP).

Because of these revisions, the total bottom-line burden to respondents has decreased considerably over the previously approved 1996 ICR. Whereas the previous ICR estimated a total annual respondent burden of 1,927,553 hours, this ICR estimates a total annual bottom-line respondent burden of 506,787 hours. EPA believes that this burden reflects a more accurate portrait of the existing burden on the regulated community.

The annual public reporting burden and record keepingburden for this collection of information is estimated to average 308 hours per respondent.

For general facility operating standards, there is no associated reporting. The recordkeeping burden for general facility operating standards is estimated to average 92 hours per respondent per year. This estimate includes time for reading the regulations, preparing and submitting notices, collecting and documenting waste analysis data, and developing a waste analysis plan, inspection schedule, personnel training schedule, and construction quality assurance plan.

For operating record requirements, the record keeping burden is estimated to average 137 hours per year. This burden includes time to collect and file information in the operating record. There is no associated reporting burden for these requirements.

For contingency plan and emergency procedure requirements, there is no associated reporting burden. The recordkeeping burden is estimated to average one hour per respondent per year.

For requirements covering releases from solid waste management units, the public reporting burden is estimated to average 3 hours per respondent per year. This estimate includes time to read the regulations and prepare and submit demonstrations. There is no associated recordkeeping burden for these requirements.

For closure and post-closure requirements, the public reporting burden is estimated to average 45 hours per respondent per year. This estimate includes time to read the regulations; prepare and submit plans, notices, demonstrations, certifications, and records; and make modifications to plans. The recordkeeping burden is estimated to average one hour per respondent per year.

For financial requirements, the public reporting burden is estimated to average 17 hours per respondent per year. This estimate includes time to read the regulations and prepare and submit financial and liability assurance documentation. There is no associated recordkeeping burden for these requirements.

For permit condition requirements, the public reporting burden is estimated to average 13 hours per respondent per year. This estimate includes time to read the regulations, and prepare and submit information requested by EPA, required by the permit, or required as a result of an incident that occurs at the facility. There is no associated recordkeeping burden for these requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 9, 1999.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–15433 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6362–1]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of availability of the proposed final project XL agreement for the Atlantic Steel Redevelopment.

SUMMARY: EPA is requesting comments on a proposed Final Project XL Agreement for the Atlantic Steel XL Project. The Final Project Agreement is a voluntary agreement developed collaboratively by Atlantis 16th, L.L.C., stakeholders, and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that the alternative strategy will produce greater environmental benefits. EPA has set a goal of implementing a total of fifty XL projects undertaken in full partnership with the states.

DATES: The period for submission of comments ends on July 19, 1999.

ADDRESSES: All comments on the draft Final Project Agreement should be sent to: Michelle Glenn, U.S. EPA, Region IV, 61 Forsyth Street, Atlanta, GA 30303, or Tim Torma, U.S. EPA, Office of Reinvention (1802), 401 M Street, SW, Room 1025WT, Washington, DC 20460. Comments may also be faxed to Ms. Glenn at (404) 562–8628 or Mr. Torma at (202) 401–6637. Comments will also be received via electronic mail sent to: glenn.michelle@epa.gov or torma.tim@epa.gov.

FOR FURTHER INFORMATION CONTACT: The proposed Final Project Agreement and related documents are available via the Internet at the following location: "http://www.epa.gov/ProjectXL". The Agreement and related documents may also be obtained by contacting: Michelle Glenn, U.S. EPA, Region IV, 61 Forsyth Street, Atlanta, GA 30303, or Tim Torma, U.S. EPA, Office of Reinvention (1802), 401 M Street, SW, Room 1025WT, Washington, DC 20460. In addition, public files on the Project are located at EPA's Region IV in Atlanta. Questions to EPA regarding the documents can be directed to Michelle Glenn at (404) 562–8674 or Tim Torma at (202) 260–5180. To be included on the Atlantic Steel Project XL mailing list to receive XL progress reports and other mailings from the project sponsor, contact: Brian Leary, CRB Realty Associates, P.O. Box 2246, Duluth, GA 30096. Mr. Leary can be reached by telephone at (770) 622–7797. For information on all other aspects of Project XL contact Christopher Knopes at the following address: Office of Reinvention (1802), United States Environmental Protection Agency, Room 1029, 401 M Street, SW, Washington, DC 20460. Additional information on Project XL, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at "http://www.epa.gov/ProjectXL".

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency (EPA), with the cooperation of State and local authorities, has initiated Project XL to work with interested companies to develop innovative approaches for addressing environmental issues. Project XL encourages companies and communities to come forward with new approaches that have the potential to advance environmental goals more effectively and efficiently than have been achieved using traditional regulatory tools.

Atlantis 16th, L.L.C. (hereafter referred to as Jacoby), a developer in Atlanta, GA has proposed redevelopment of a 138-acre site currently owned by Atlantic Steel near Atlanta's central business district. The proposed development is a mix of residential and business uses. Project plans include a multi-modal (cars, pedestrians, bicycles, transit linkage) bridge that would cross and provide access ramps to I–75/85 as well as connecting the site to a nearby MARTA (the Metropolitan Atlanta Rapid Transit Authority) rapid rail mass transit station. Jacoby has worked intensively with representatives of EPA, the State of Georgia, the City of Atlanta, other local authorities, and public stakeholders to develop a site-specific Project XL Agreement that will allow implementation of the redevelopment.

What is the Final Project Agreement?

The Final Project Agreement spells out the intentions of Jacoby and EPA related to development and implementation of this project. Due to the complexity of the project and the numerous processes and analyses necessary to implement it, EPA and Jacoby adopted a two-phased approach to the Project XL Agreement. The Phase 1 Project Agreement was made available for public comment on February 24, 1999 and was signed by EPA and Jacoby on April 15, 1999. This Final Project XL Agreement supersedes the Phase 1 Agreement. The Final Agreement incorporates information and agreements from the Phase 1 Agreement to the extent they remain current and in effect. EPA and Jacoby do not anticipate making substantive changes to aspects of the project which were agreed upon in the Phase 1 Agreement. Commentors on the Final Project Agreement are encouraged to focus on new information which was not included in the Phase 1 Agreement.

Like all Project XL Agreements, the Final Project Agreement itself is not legally binding—legally enforceable commitments described in the Agreement will be contained in separate legal documents such as the State

Implementation Plan and approved Remediation Plan.

Why Is Project XL Necessary?

The project site currently suffers from poor accessibility due to the lack of a linkage to and across I–75/85 to midtown and to the existing MARTA transit system in Atlanta. Construction of an interchange and multi-modal bridge across I–75/85 at 17th Street would improve access to the site. The bridge would also serve as a vital linkage between the Atlantic Steel redevelopment and the MARTA Arts Center station. In addition, construction of the 17th Street bridge was one of the City of Atlanta's zoning requirements for the project.

Jacoby is participating in Project XL for the Atlantic Steel redevelopment because neither the 17th Street bridge nor the associated I–75/85 access ramps would be able to proceed without the regulatory flexibility being allowed by EPA under this Project. Atlanta is currently out of compliance with federal air quality conformity requirements because it has failed to demonstrate that its transportation activities will not exacerbate existing air quality problems or create new air quality problems in the region. The Clean Air Act (CAA) generally prohibits construction of new transportation projects that use federal funds or require federal approval in areas where compliance with conformity requirements has lapsed. However, projects which are approved as transportation control measures (TCMs) in a state's air quality plan can proceed—even during a conformity lapse. EPA approves state air quality plans, including TCMs contained in the plans.

What Flexibility Is EPA Granting?

The flexibility Jacoby is seeking through Project XL is to regard the entire brownfield redevelopment project, including the 17th Street bridge, as a TCM. The flexibility under Project XL is necessary because the redevelopment likely would not qualify as a TCM in the traditional sense. Under the Clean Air Act, a "transportation control measure" must actually be a measure—an activity undertaken, a transportation project built, a program implemented. There are two components to the flexibility.

(1) The first part of the flexibility is to consider the entire Atlantic Steel redevelopment to be a TCM. That is, EPA would view Atlantic Steel's location, transit linkage, site design, and other transportation elements (e.g., provisions for bicyclists; participation in a transportation management association) together as the TCM. Under the Clean Air Act, a project must demonstrate an air quality benefit to be considered a TCM. The Clean Air Act lists several types of projects that can be TCMs but its language does not limit TCMs to the measures listed.

(2) The second aspect of the flexibility sought under Project XL concerns use of an innovative approach to measuring the air quality benefit of the Atlantic Steel redevelopment. EPA will measure Atlantic Steel's air quality benefit relative to an equivalent amount of development at other likely sites in the region. This type of comparison is available only to this particular redevelopment through the Project XL process. The entire Atlantic Steel redevelopment would attract new automobile trips and result in new emissions. Therefore, redevelopment of the site when considered in isolation would not qualify as a TCM in the traditional sense. EPA believes, however, that the Atlanta region will continue to grow, and that redevelopment of the Atlantic Steel site will produce fewer air pollution emissions than an equivalent quantity of development at other likely sites in the region.

Why Is This Flexibility Appropriate?

EPA believes the flexibility described above is appropriate for this project because of the combination of unique elements of the site and the redevelopment listed below. In the absence of these elements, EPA would be unlikely to approve new transportation projects during a conformity lapse.

(1) The site is a brownfield. An accelerated clean-up of the site will occur if this XL Project is implemented. The clean-up and redevelopment of the former industrial site aligns with EPA's general efforts to encourage clean-up and reuse of urban brownfields. The likely alternative would be an underdeveloped, underused industrial parcel in the middle of midtown Atlanta.

(2) The site has a regionally central, urban location. Redeveloping this property will result in a shift of growth to midtown Atlanta from the outer reaches of the metropolitan area. Because of the site's central location, people taking trips to and from the site will be driving shorter average distances than those taking trips to and from a development on the edge of the city. Shorter driving distances will result in fewer emissions.

(3) The redevelopment plans include a linkage to MARTA. This linkage would make it possible for those who work at the site to commute without a car and would serve residents of Atlantic Steel as well as residents of surrounding neighborhoods. In addition, the transit link is valuable for those coming to the site for non-work purposes, such as dining, shopping, and entertainment.

(4) The redevelopment plan incorporates many "smart growth" site design principles. These principles include features which promote pedestrian and transit access rather than exclusive reliance on the car. The redevelopment will avoid creating areas that are abandoned and unsafe in the evening, hotels and offices will be within walking distance of shops and restaurants, shops that serve local needs will be within walking distance of both the Atlantic Steel site and the adjacent neighborhoods, and wide sidewalks will encourage walking and retail use. Jacoby has also responded to the adjacent neighborhood's request for public parks, designating public space to central locations rather than relegating it to the edge.

(5) The redevelopment incorporates many elements that could qualify as TCMs by themselves. In addition to the linkage to mass transit, the redevelopment will participate in a transportation management association (TMA). The TMA may participate with the City of Atlanta and Jacoby in monitoring the transportation performance of the redevelopment by collecting travel-related data annually.

With the exception of the site's accelerated clean-up, all of these elements will have an impact on transportation decisions of people who begin and/or end trips in the Atlantic Steel site. The combination of the site's location in a central urban area, connection to the existing transit system, design that promotes pedestrian access, participation in a TMA, and provision of bicycle and pedestrian conveniences are expected to work together to reduce growth in auto traffic in the Atlanta region. The redevelopment could demonstrate that the application of smart growth concepts can make a difference in travel patterns, even in Atlanta—where people drive more per capita than any other city in the country. Therefore, EPA intends to use regulatory flexibility under Project XL to approve the redevelopment and its associated transportation projects as a TCM.

Dated: May 28, 1999.

Lisa Lund,

Deputy Associate Administrator for Reinvention Programs, Office of Reinvention.

[FR Doc. 99–15437 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

June 9, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 16, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0251.

Title: Section 74.833 Temporary authorizations.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 6 low power auxiliary stations.

Estimated Time Per Response: 2 hours.

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 12 hours.

Total Annual Cost: $0.

Needs and Uses: Section 74.833 requires that requests for special temporary authorization be made by informal applications for low power auxiliary station operations which cannot be conducted in accordance with Section 74.24 of the FCC's rules and for operations of a temporary nature. (Section 74.24 states that classes of broadcast auxiliary stations may be operated on a short-term basis under the authority conveyed by a Part 73 licensee without prior authorization from the FCC, subject to certain conditions.) The data is used by FCC staff to insure that the temporary operation of a low power auxiliary station will not cause interference to other existing stations and to assure compliance with current FCC rules and regulations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–15332 Filed 6–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 9, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 16, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0663.

Title: Section 21.934 Assignment or transfer of control of BTA authorization.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 50 hours.

Needs and Uses: Section 21.934 requires a Basic Trading Area (BTA) authorization holder to file a statement indicating that its authorization was obtained through competitive bidding. This filing will be required when seeking approval for a transfer of control or assignment of its authorization within three years of receiving the authorization through competitive bidding procedures. Along with this statement, this applicant must also file copies of documents containing information on the amount of consideration. The data is used by FCC staff to determine whether there has been unjust enrichment to the person selling the station.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–15333 Filed 6–16–99; 8:45 am]
BILLING CODE 4712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 8, 1999

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0600.

Title: Ownership Report for Noncommercial Educational Station.

Form Number: FCC 175.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other profit entities; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 11,000.

Estimate Time Per Response: 45 mins. (0.75 hrs.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 16,500 hours.

Total Annual Costs: $3,300,000.

Needs and Uses: The FCC Form 175 is required to be used by all parties interested in participating in an FCC auction. The data will be used by the Commission to determine whether the applicant is legally, technically, and financially qualified to participate in the auction.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–15331 Filed 6–16–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the second meeting of the Technological Advisory Council ("Council"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: Wednesday, September 22, 1999, at 10:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Contact Stagg Newman at snewman@fcc.gov or 202–418–2478.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, etc., can provide advice to the FCC on innovation in the communications industry.

The purpose of this second meeting will be to hear and discuss the progress of the three focus groups established by the Council to consider the issues the FCC presented to it at its April 30, 1999 meeting. These issues include: (1) The current state of the art for software defined radios, cognitive radios, and similar devices, future developments for these technologies, and ways that the availability of such technologies might affect the FCC's traditional approaches to spectrum management; and the current state of knowledge of electromagnetic noise levels and the effects of such noise on the reliability of existing and future communications systems; (2) the current technical trends in telecommunications services, changes that might decrease, rather than increase, the accessibility of telecommunications services by persons with disabilities and ways the FCC might best communicate to designers of emerging telecommunications network architectures, the requirements for accessibility; and (3) the telecommunications common carrier network interconnection scenarios that are likely to develop, including the technical aspects of cross network (i.e., end-to-end) interconnection, quality of service, network management, reliability, and operations issues, as well as the deployment of new technologies such as dense wave division multiplexing and high speed packet/cell switching. The Council may also consider such other issues as come before the Council at that time.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to Stagg Newman, the Council's Designated Federal Officer, before the meeting.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–15330 Filed 6–16–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 1, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Crawford Family Investments Limited Partnership, Frederick, Oklahoma; to acquire voting shares of First Southwest Corporation, Frederick, Oklahoma, and thereby indirectly acquire voting shares of First Southwest Bank, Frederick, Oklahoma.

Board of Governors of the Federal Reserve System, June 11, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–15344 Filed 6–16–99; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Firstar Corporation, Milwaukee, Wisconsin; to acquire Mercantile Bancorporation, Inc., St. Louis, Missouri, and thereby indirectly acquire Ameribanc, Inc., St. Louis, Missouri; Mercantile Bank Midwest, Des Moines, Iowa; Mercantile Bank National Association, St. Louis, Missouri; Mercantile Bank, Overland Park, Kansas; Mercantile Bank of Trenton, Trenton, Missouri; Mercantile Bank, Paducah, Kentucky; Mercantile Bank of Illinois, Springfield, Illinois; and Mercantile Bank of Arkansas, National Association, North Little Rock, Arkansas.

In connection with this application, Applicant also has applied to acquire FFG Trust, Inc., Springfield, Illinois, and Mercantile Trust Company National Association, St. Louis, Missouri, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y; D.D. Development of Sterling, Sterling, Illinois, and thereby engage in community development financing and investment activities, pursuant to § 225.28(b)(12)(i) of Regulation Y; Mercantile Consumer Loan Company, Rock Island, Illinois, and thereby engage in making and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

2. Mercantile Bancorporation, Inc., St. Louis, Missouri; to acquire up to 9.9 percent of the voting shares of Firstar Corporation, Milwaukee, Wisconsin, and thereby indirectly acquire Firstar Bank Milwaukee, National Association, Milwaukee, Wisconsin; Firstar Bank USA, National Association, Waukegan, Illinois; Firstar Metro Bank & Trust Company, Phoenix, Arizona; Firstar Bank Burlington, National Association, Burlington, Iowa; Firstar Bank, National Association, Cincinnati, Ohio; Firstar Bank Wisconsin, Madison, Wisconsin; Firstar Bank of Minnesota, National Association, Saint Paul, Minnesota; and Firstar Bank Wausau, National Association, Wausau, Wisconsin.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. United Financial Corp., Great Falls, Montana; to acquire an additional 11.3 percent, for a total of 36.3 percent, of the voting shares of Valley Bancorp, Phoenix, Arizona, and thereby indirectly acquire additional voting shares of Valley Bank of Arizona, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, June 11, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–15345 Filed 6–16–99; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—04/26/1999			
19990760	B.F. Goodrich Company, (The)	Coltec Industries Inc	Coltec Industries Inc.

Trans #	Acquiring	Acquired	Entities
19992111	Northside Operating Co	Doctors Community Healthcare Corporation.	Doctors Community Healthcare Corporation.
19992112	ONEOK, Inc	Koch Industries, Inc	Koch Oklahoma Midstream Processing Company, LLC, Koch Oklahoma Midstream Services Company, Koch Oklahoma Midstream Transmission Company, LLC.
19992163	Utilicorp United, Inc	Western Gas Resources, Inc	Western Gas Resources Storage, Inc.
19992173	Steelcase Inc	Lee Pierce	Lee Pierce Holdings, Inc.
19992176	GS Capital Partners II, L.P	H. Peter Claussen and Linda C. Claussen.	Gulf & Ohio Railways, Inc., The Seven Islands Foundation, Inc.
19992199	Kellstrom Industries, Inc	R. Dean Stickler	Certified Aircraft Parts, Inc.
19992200	Kellstrom Industries, Inc	Donald Marshall	Certified Aircraft Parts, Inc.
19992221	BellSouth Corporation	Champion International Corporation	Champion International Corporation.
19992247	J.W. Childs Equity Partners, L.P	Quality Future, Inc	Quality Stores, Inc.
19992248	Quality Future, Inc	J.W. Childs Equity Partners, L.P	CT Holding, Inc.
19992273	Quilvest American Equity Ltd	ATSCO Products, Inc	ATSCO Products, Inc
19992300	Weatherford International, Inc	Clearwater Holdings, Inc	ECD/Northwest, Inc.
19992301	Interim Services Inc	Norrell Corporation	Norrell Corporation.
19992302	Guy W. Millner	Interim Services Inc	Interim Services, Inc.
19992319	The Hain Food Groups, Inc	Frontenac VI Limited Partnership	Natural Nutrition Group, Inc.
19992323	The Atlantic Foundation	Brio Technology, Inc	Brio Technology, Inc.
19992324	Alistar Pilot Fund, LLC	William P. Johnson	Goshen Rubber Companies, Inc.
19992326	mobile mini, inc	The 1997 Jansons Trust	National Security Containers, L.L.C.
19992330	American Agricultural Insurance	Nationwide Mutual Insurance Company	Nationwide Mutual Insurance Company.
19992332	Waccamaw Corporation	HomePlace of America, Inc. (debtor in possession).	HomePlace of America, Inc. (debtor in possession).
19992334	EFTC Corporation	Honeywell Inc	Honeywell Inc.
19992335	James M. Galef	DLJ Merchant Banking Partner II, L.P	Insilco Corporation, Romac Metals Division.
19992338	Robert M. Beavers, Jr	Campbell Soup Company	Fresh Start Bakeries, Inc.
19992339	The Times Mirror Company	Geoffrey A. Robinson	New Mass, Media, Inc.
19992340	The Times Mirror Company	G. Christine Austin	New Mass, Media, Inc.
19992341	Voting Trust dated December 4, 1968 of Hallmark Cards.	The Picture People, Inc	The Picture People, Inc.
19992347	Gerald W. Schwartz	American Buildings Company	American Buildings Company.
19992351	Fremont Partners, L.P	Juno Lighting, Inc	Juno Lighting, Inc.
19992353	Philadelphia Consolidated Holding Corp	The Jerger Company, Inc	The Jerger Company, Inc.
19992355	U.S. Concrete, Inc	Central Concrete Supply Co., Inc	Central Concrete Supply Co., Inc.
19992356	Fluoroware, Inc. Employee Stock Ownership Plan.	Estate of Wayne C. Bongard	Empak, Inc.
19992357	Estate Of Wayne C. Bongard	Fluoroware, Inc. Employee Stock Ownership Plan.	Fluoroware, Inc. Employee Stock Ownership Plan.
19992361	Roger S. Penske	United Auto Group, Inc	United Auto Group, Inc.
19992363	Barry Diller	The Seagram Company Ltd	OFI Holdings, Inc., PloyGram Holdings, Inc.
19992364	Great Lakes Chemical Corporation	Monsanto Company	NSC Technologies Company, LLC.
19992370	B III Capital Partners, L.P	Waste Systems International, Inc	Waste Systems International, Inc.
19992375	First American Financial Corporation	Donald A. Foss	Teletrack, Inc.
	Transactions Granted Early Termination—04/27/1999		
19992298	Banque Nationale de Paris S.A	Societe Generals S.A	Societe Generals S.A.
19992299	Banque Nationale de Paris S.A	Paribas S.A	Paribas S.A.
19992374	Canandaigua Brands, Inc	Bernard Arnault	Moet Hennessy, Inc., Simi Winery, Inc.
19992376	J. Norman Estes	John L. Black, Jr	The Waverley Group, Inc.
19992379	Samir A. Rehani	LeRoy Luther	Triangle Tool Corporation.
19992384	Cisco Systems, Inc	Fibex Systems	Fibex Systems.
19992389	BankBoston Corporation	American Business Products, Inc	BookCrafters, USA, Inc.
19992391	Meiji-Seika Kaisha, Ltd	Howard Perley and Rona Perley Trust- [illegible]	Laguna Cookie Company, Inc.
19992393	CoreComm Limited	MegINet Inc	MegINet Inc.
19992395	Golder, Thoma, Cressey, Rauner Fund V, L.P.	Gary W. Sneed	CNP Solutions, Inc.
19992396	Young & Rubicam Inc	KnowledgeBase Marketing, Inc	KnowledgeBase Marketing, Inc.
19992400	Warburg, Pincus Equity Partners, L.P	Judith C. Inglis	American Show Management, Inc.
19992401	Warburg, Pincus Equity Partners, L.P	John R. Inglis	American Show Management, Inc.
19992404	Group Maintenance America Corp	C.A. Solinger	Cardinal Contracting Corporation.
19992416	Lennox International Inc	Bernard J. Wallis	Livernois Engineering Holding Company.
19992428	Health Management Associates, Inc	Community Hospital of Lancaster Foundation.	Community Hospital of Lancaster.

Trans #	Acquiring	Acquired	Entities
	Transactions Granted Early Termination—04/28/1999		
19992304	MAN aktiengesellschaft	Mannesmann AG	Mannesmann Demag Corporation.
19992305	Siemag Weiss Stiftung & Co. KG	Mannesmann AG	Mannesmann Demag Corporation.
19992321	Clear Channel Communications, Inc	Alvis E. Owens, Jr	Owens Broadcasting Co., L.L.C., OwensMaC Radio, L.L.C.
19992322	Clear Channel Communications, Inc.	MAC America Communications, Inc	OwensMAC Radio, L.L.C.
19992377	Omnicom Group Inc	Jordan Zimmerman	Zimmerman & Partners Advertising, Inc.
19992381	Volex Group p.l.c	Belden Inc.	Belden Wire & Cable Company.
19992390	Solutia Inc	Akzo Nobel NV	CPFilms, Inc.
19992397	Ion Beam Applications S.A	Griffith Laboratories, Inc	Griffith Micro Science.
19992403	Houghton Mifflin Company	G. Warren Schloat, III	Sunburst Communications, Inc.
19992406	Brentwood Associates Buyout Fund II, L.P.	CNF Transportation Inc	Vantage Parts.
19992423	Cisco Systems, Inc	Sentient Networks, Inc	Sentient Networks, Inc.
19992430	Jackson Products, Inc	Morton International, Inc	Morton International, Inc.
	Transactions Granted Early Termination—04/29/1999		
19992179	John J. Rigas	Frontier Vision Partners, L.P	Frontier Vision Partners, L.P.
19992234	HarbourVest Partners V-Direct Fund, L.P.	C. Philip Rainwater	Benchmark Media, Inc.
19992236	Alta Communications VII, L.P	C. Philip Rainwater	Benchmark Media, Inc.
19992242	University Hospitals Health System, Inc	Columbia/HCA Healthcare Corporation	Sisters of Charity/St. Augustine & Columbia/HCA Healthcare.
19992243	Sisters of Charity of St. Augustine	Columbia/HCA Healthcare Corporation	Sisters of Charity/St. Augustine & Columbia/HCA Healthcare.
19992285	John J. Rigas	Entergy Corporation	Entergy Hyperion Telecommunications of Arkansas, LLC, Entergy Hyperion Telecommunications of Louisiana, LLC, Entergy Hyperion Telecommunications of Mississippi, LLC.
19992286	John J. Rigas	John J. Rigas	Entergy Hyperion Telecommunications of Arkansas, LLC, Entergy Hyperion Telecommunications of Louisiana, LLC, Entergy Hyperion Telecommunications of Mississippi, LLC.
19992336	Graham Spencer	AT&T Corp	At Home Corporation.
	Transactions Granted Early Termination—04/30/1999		
19992043	RWE AG	Eagle Pacific Industries, Inc	Eagle Pacific Industries, Inc.
19992251	United Surgical Partners International Inc.	Columbia/HCA Healthcare Corporation	Texas Outpatient Surgical Center, Inc.
19992279	Fiskars Corporation	Fineter S.A	Syroco, Inc.
19992337	George Bell	AT&T Corp	At Home Corporation.
19992352	Magne Tek, Inc	Richard L. Pratt	Electric Motor Systems, Inc., Electromotive Systems, Inc., EMS/Rosa Automation Engineering, Inc.
19992378	EMCOR Group, Inc	Energy Systems Industries, Inc	Energy Systems Industries, Inc.
19992392	Acosta-PMI, Inc	Kelley-Clarke, Inc	Kelley-Clarke, Inc.
19992415	New England Electric System	Eastern Utilities Associates	Eastern Utilities Associates.
19992432	Fortis (B)	American Bankers Insurance Group, Inc	American Bankers Insurance Group, Inc.
19992439	Tekelec	Leslie K. Wagner and Harvey Wagner (spouses).	IEX Corporation.
19992442	Cypress Merchant Banking Partners L.P	Harvey Ball	Liberty Electrical Supply, Co., Inc.
19992445	Barry Diller	Robert Diener	TMF, Inc.
19992446	Barry Diller	David Litman	TMF, Inc.
19992450	Pan American Hospital Corporation	United HealthCare Corporation	CAC Medical Centers, Inc., United HealthCare Services, Inc.
19992451	Welsh, Carson, Anderson & Stowe VII, L.P.	Newco	Newco.
19992453	General Electric Company	Philip A. Belyew	Transit Group, Inc.
19992460	Health Care Capital Partners, L.P	Newco	Newco.
19992471	Quanta Services, Inc	Harold L. Chapman, Jr	H.L. Chapman Leasing Co., H.L. Chapman Pipeline Construction, Inc., Sullivan Welding, Inc.
19992473	Harold L. Chapman, Jr	Quanta Services, Inc	Quanta Services, Inc.
	Transactions Granted Early Termination—05/04/1999		
19992435	PepsiCo, Inc	The Pepsi Bottling Group, Inc	Pepsi-Cola Metropolitan Bottling Company, Inc.

Trans #	Acquiring	Acquired	Entities
19992436	The Pepsi Bottling Group, Inc	PepsiCo, Inc	Bottling Group, LLC.
19992448	Inverness/Phoenix Partners LP	Trico Marine Services, Inc	Trico Marine Services, Inc.
	Transactions Granted Early Termination—05/05/1999		
19992213	Triumphy Group, Inc	Leona M. Scruggs	Ralee Engineering Company.
19992254	Omnicare, Inc	Forrest L. Preston	Life Care Pharmacy Services, Inc.
19992402	SierraPine Limited	Weyerhaeuser Company	Weyerhaeuser Company.
19992418	Anglo American Corporation of South Africa Ltd.	Minorco S.A	Minorco S.A.
19992422	Bell Atlantic Corporation	Bell Atlantic Corporation	Hudson Valley RSA Cellular Partnership.
19992425	FirstEnergy Corp	GPU, Inc	Pennsylvania Electric Company.
19992426	Quanta Services, Inc	Stephen Bauchman	Bonneville Construction Co., Incorporated.
19992427	Niagara Corporation	Glynwed International plc	Glynwed Steels Limited.
19992429	NCO Group, Inc	H.I.G. Investment Group, L.P	DCI Holding, Inc.
19992431	Cablevision Systems Corporation	AT&T Corp	At Home Corporation.
19992443	GTCR Fund VI, L.P	National City Corporation	National Processing Company, NPC Check Services, Inc.
19992452	Welsh, Carson, Anderson & Stowe VIII, L.P.	Concentra Managed Care, Inc	Concentra Managed Care, Inc.
19992456	TeleCorp PCS, Inc	AT&T Corp	AT&T Wireless PCS Inc.
19992462	Doug Greene	Penton Media, Inc.	Penton Media, Inc.
19992463	Penton Media, Inc	Doug Greene	New Hope Communications, Inc.
	Transactions Granted Early Termination—05/07/99		
19991027	Fox Paine Capital Fund, L.P	ATU Communications, Inc.	ATU Communications, Inc.
19992291	BEC Energy	Commonwealth Energy System	Commonwealth Energy System.
19992292	Commonwealth Energy System	BEC Energy	BEC Energy.
19992394	Cadbury Schweppes plc	The Procter & Gamble Company	Hawaiin Punch Assets.
19992417	GS Capital Partners, II, L.P	Niagara Mohawk Holdings, Inc.	Niagara Mohawk Power Corporation.
19992440	PIA Merchandising Services, Inc	Robert G. Brown	SPAR Acquisition, Inc.
19992447	Professionals Group, Inc	Professionals Group, Inc	MEEMIC Holdings, Inc.
19992458	AmericaWest Holdings Corporation	Candant Corporation	National Leisure Group, Inc.
19992467	OCM Fund II	Aureal Semiconductor Inc	Aureal Semiconductor Inc.
19992470	Glencore Holding AG	Columbia Falls Aluminum Company	Columbia Falls Aluminum Company.
19992472	Franco Manufacturing Co. Inc	Sara Lee Corporation	Sara Lee Corporation.
19992474	Wand Equity Portfolio II L.P	Foster & Gallagher, Inc	The Popcorn Factory, Inc.
19992475	D & K Healthcare Resources, Inc	Harvey C. Jewett, IV	Jewett Drug Co., Inc.
19992476	Time Warner Inc	Barry Silverstein	MetroComm AxS, L.P.
19992477	Newbridge Networks Corporation	TeleHub Communications Corporation	TERAbridge Technologies Corporation.
19992480	Harte-Hanks, Inc	Kenneth J. Boone	Direct Marketing Associates, Inc.
19992481	General Electric Company	H.I.G. Investment Group, L.P	H.I.G. Vinyl, Inc.
19992484	Charles H. Bundrant	Nichirei Corporation	Nichirei Foods America, Inc.
19992485	Science Applications International Corporation.	Broadway & Seymour, Inc	Broadway & Seymour, Inc.
19992487	SOFTBANK Corp	E-Loan, Inc	E-Loan, Inc.
19992489	WICOR, Inc	Herbert Lipner	Omni Corporation.
19992490	Toymax International, Inc	Charles D. Burkett, Jr. and Robert M. Burkett.	Monogram International, Inc., Monogram Products (HK) Limited.
19992491	True North Communications Inc	Robert C. and Jo Anne Hacker	The Hacker Group, Ltd.
19992495	Raymond James Financial, Inc	Bank One Corporation	Roney & Co. L.L.C.
19992503	Group 1 Automotive, Inc	Gene Messer Ford of Amarillo, Inc	Gene Messer Ford of Amarillo, Inc.
19992504	Group 1 Automotive, Inc	Gene Messer Ford, Inc	Messer Lubbock Dealership.
19992506	Paul G. Allen	StadiaNet Sports, Inc	StadiaNet Sports, Inc.
19992513	MedQuist, Inc	Harris Corporation	Lanier Professional Services, Inc.
19992519	Plexus Corp	SeaMED Corporation	SeaMed Corporation.
19992521	Amazon.com, Inc	e-Niche Incorporated	e-Niche Incorporation.
19992522	President and Fellows of Harvard College.	The J.H. Heafner Company, Inc	The J.H. Heafner Company, Inc.
19992523	Christropher Goldsbury, Jr	Wal-Mart Stores, Inc	McLane Foods, Inc.
19992525	Ronald W. Burkle	Alliance Entertainment Corp	Alliance Entertainment Corp.
19992528	Becton, Dickinson and Company	Kenneth S. Fong	Clontech Laboratories, Inc.
19992529	Kenneth S. Fong	Becton, Dickinson and Company	Becton, Dickinson and Company.
19992530	Fiserv, Inc	JWGenesis Financial Corp	JWGenesis Clearing Corp.
19992537	Group 1 Automotive, Inc	Robert C. Sansing	Avalon Nissan, Inc., Heritage Advertising, Inc., Sandy Sansing Chevrolet, Inc., Sandy Sansing Imports, Inc., Sandy Sansing Nissan, Inc. Southern Chevrolet-Olds-Geo, Inc.
19992539	J. Baker, Inc	Edison Brothers Stores, Inc (debtor-in-possession).	Edison Brothers Stores, Inc.

Trans #	Acquiring	Acquired	Entities
19992543	E. Thomas Martin	DSI Toys, Inc	DSI Toys, Inc.
19992549	Temple-Inland Inc	Fidelity Funding Financial Group, Inc	Fidelity Funding Acceptance, Fidelity Funding, Inc., Fidelity Funding of California, Inc.
19992567	Windward Capital Partners II. L.P	Anacomp, Inc	Anacomp, Inc/Anacomp Limited.
19992571	Stonington Capital Appreciation 1994 Fund, L.P.	Pasquale J. Santangelo	Lincoln Technical Institute Inc.
19992576	Future Publishing Holdings Limited	Chris Anderson	Imagine Media, Inc.
19992585	Credit Suisse Group	Arch Communications Group, Inc	Arch Communications Group, Inc.
19992588	Citigroup Inc	CORT Business Services Corporation	CORT Business Services Corporation.
	Transactions Granted Early Termination—05/11/1999		
19992420	Minorco S.A	Anglo American Corporation of South Africa Ltd.	Anglo American Corporation of South Africa Ltd.
19992441	Safeguard International Fund, L.P	VIAG AG	NF Holding, Inc.
19992496	Ripplewood Partners, L.P	Charles T. Meyer, III and Carole Meyer	Meyer's Bakeries, Inc.
19992497	Textron Inc	Lincolnshire Equity Fund, L.P	Energy Mfg. Co., Inc, Williams Machine & Tool Co.
19992516	Golder, Thoma, Cressey, Rauner Fund V, LP.	Fluor Corporation	S & R Equipment Co., Inc.
19992534	Global Crossing Ltd	Frontier Corporation	Frontier Corporation.
19992535	Joseph P. Clayton	Global Crossing Ltd.	Global Crossing Ltd.
19992538	Francois Pinault	Elf Aquitaine	Sanofi Group.
19992546	W.R. Grace & Co	Textron Inc	Textron System Corporation.
19992557	Stiftung Hasler Werke	ABB AB	ABB Automation, Inc.
19992558	Stiftung Hasler Werke	ABB AG	ABB Automation, Inc.
19992560	Snyder Communications, Inc	David F. Kirwan	Broadwell Capital Group, Inc., d/b/a/ Broadwell Marketing Group, Inc.
19992565	Apollo Investment Fun IV, L.P	Rare Medium Group, Inc	Rare Medium Group, Inc.
19992577	Atlantic Equity Partners International II, L.P.	CPI Holding Corporation	CPI Holding Corporation.
	Transactions Granted Early Termination—05/12/1999		
19992388	Randy M. Long	Tosco Corporation	Tosco Corporation.
19992493	Jospeh Littlejohn & Levy Fund II, L.P	Lockwood Holmes	Holmes Lumber Company.
19992494	General Electric Company	iXL Enterprises, Inc	Consumer Financial Network, Inc.
19992500	Henkel KGaA	The Dial Corporation	The Dial Corporation.
19992501	The Dial Corporation	Henkel KGaA	Henkel KGaA.
19992508	Lance, Inc	Stolberg Partners, L.P	Cape Cod Holdings, Inc.
19992509	Lance, Inc	Stephen F. Bernard	Cape Cod Holdings, Inc.
19992542	Tom Brown, Inc	Unocal Corporation	Union Oil Company Of California.
19992553	Susan G. Mandl	Lucent Technologies Inc	Lucent Technologies Inc.
	Transactions Granted Early Termination—05/13/1999		
19990822	SNIA BPD S.pA	Gambro AB	COBE Cardiovascular, Inc/COBE Laboraties, Inc.
19991949	First Data Corporation	Bank One Corporation	Paymentech, Inc.
	Transactions Granted Early Termination—05/14/1999		
19990804	Provident Companies, Inc	UNUM Corporation	UNUM Corporation.
19992380	Sprint Corporation	People's Choice TV Corp	People's Choice TV Corp.
19992465	Bull Run Corporation	Universal Sports America, Inc	Universal Sports America, Inc.
19992478	General Motors Corporation	Pacifica Group Limited	PBR Automotive Tennessee, Inc.
19992499	MS Acquisition Corp	Zenith Industrial Corporation	Zenith Industrial Corporation.
19992532	RailWorks Corporation	Douglas Hutchinson	Neosho Incorporated.
19992533	RailWorks Corporation	Steven Hutchinson	Neosho Incorporated.
19992536	Northern Telecom Limited	Net2000 Communications, Inc	Net2000 Communications, Inc.
19992545	Sager Electrical Supply Company, Inc	Sheila Poncher, Trustee	California Switch & Signal, Inc.
19992547	Carlisle Companies Incorporated	J. Charles Peterson	Johnson Welding & Manufacturing Co., Inc.
19992550	LHS Group, Inc	Priority Call Management, Inc	Priority Call Management, Inc.
19992559	CBS Corporation	WinStar Communications, Inc	Office.com Inc.
19992561	Sumner M. Redstone	Video City, Inc	VideoLand, Inc.
19992570	Thomas M. Begel	Joseph A. and Mae Butcko	Crescive Die and Tool, Inc.
19992578	Apache Corporation	N.F. Koninklije Nederlandsche Petroleum Maatshappij.	Shell Oil Company.
19992581	Schneider S.A	Kent J. Holce	Veris Industries, Inc.
19992582	Brewster Kahle	Amazon.com, Inc	Amazon.com, Inc.
19992589	Toys "R" Us, Inc	Genesis Direct, Inc	Genesis Direct Memphis Operations, LL, Genesis Direct Memphis Services, LLC.

Trans #	Acquiring	Acquired	Entities
19992590	Mr. and Mrs. Frank D. Osborn	ML Media Partners, L.P	WICC Associates, WEBE Associates.
19992597	Gaylord Entertainment Company	CBS Corporation	CBS Corporation.
19992598	CBS Corporation	Gaylord Entertainment Company	Gaylord Communications, Inc., Gaylord Television Company.
19992599	Anthem Insurance Companies, Inc	New Hampshire-Vermont Health Service d/b/a BCBS of NH.	Health Initiatives, Inc., Matthew Thornton Health Plan, Inc., Matthew Thornton Insurance, Inc., New Hampshire-Vermont Health Service d/b/a BCBS of NH.
19992609	SLI, Inc	Gary J. Siegal	Supreme Corporation.
19992610	SLI, Inc	Bruce I. Siegal	Supreme Corporation.
19992612	Sutton Place Gourmet, Inc	Andrew & Nina Balducci	Balducci Enterprises, Inc.
19992613	General Motor Corporation	AT&T Corp	Tele-Communicatins, Inc.
Transactions Granted Early Termination—05/17/1999			
19992502	Morgan Stanley Dean Witter & Co	Arm Holdings plc	Arm Holdings plc
19992531	International Business Machines Corporation.	Comdisco, Inc	Comdisco, Inc.
19992591	Wild Oats Markets, Inc	General Nutrition Companies, Inc	Nature's Fresh Northwest, Inc.
19992603	Canandaigua Brands, Inc	Franciscan Vineyards, Inc	Franciscan Vineyards, Inc.
19992614	BG Media Investors, L.P	Equilease Holding Corp	Corn South Telecable, Inc.
19992615	Solectron Corporation	Sequel, Inc	Sequel, Inc.
19992624	Kleiner Perkins Caufield & Byers VIII, L.P.	Amazon.com, Inc	Amazon.com, Inc.
19992625	Greenwich Street Capital Partners II, L.P.	IMC Mortgage Company	IMC Mortgage Company.
19992638	Lehman Brothers Offshore Investment Partners II L.P.	Lehman Brothers Merchant Banking Partners II L.P.	Blount International, Inc.
19992639	Lehman Brothers Capital Partners IV, L.P.	Lehman Brothers Merchant Banking Partners II L.P.	Blount International, Inc.
19992642	Simon Property Group, Inc	Stephen R. Karp	WellsPark Group Limited Partnership.
19992643	URS Corporation	Dames & Moore Group	Dames & Moore Group.
19992652	SCP Private Equity Partners, L.P	Seagram Co. Ltd	Propaganda Films, Inc.
19992664	Willis Stein & Partners II, L.P	Donald L. Sanneman	LISN, Inc./Arion, Inc.
19992671	Ceridian Corporation	ABR Information Services, Inc	ABR Information Service, Inc.
19992676	Employee Stock Ownership Plan of Krause ESOP.	Landmark Communications, Inc	Landmark Specialty Publications, Inc.
19992677	Aegis Group plc	Market Facts, Inc	Market Facts, Inc.
Transactions Granted Early Termination—05/18/1999			
19992548	Carlisle Companies Incorporated	Edmund A. Ricci	Johnson Welding & Manufacturing Co., Inc.
19992579	Royal Dutch Company	Apache Corporation	Apache Corporation.
19992644	RCBA Strategic Partners, L.P	URS Corporation	URS Corporation.
19992645	eBay Inc.*	Bernard A. Osher	Butterfield and Butterfield Auctioneers Corporation, HBJ Partners, LLC, 111 Potrero Partner LLC.
19992646	Bernard A. Osher	eBay Inc.*	eBay Inc.*
19992647	eBay Inc.*	Irving Rabin	HBJ Partners, LLC, 111 Potrero Partner LLC.
19992648	Irving Rabin	eBay Inc.*	eBay Inc.*
19992653	Daniel M. Snyder	Estate of Jack Kent Cooke	Jack Kent Cooke Incorporated.
19992667	The Coca-Cola Company	Jerry Whitlock	Whitlock Packaging Corporation.
19992672	CBS Corporation	W. Don Cornwell	Granite Broadcasting Corporation.
Transactions Granted Early Termination—05/19/1999			
19992507	Providence Healthcare Company	Columbia/HCA Healthcare Corporation	Doctors Hospital of Opelousas Limited Partnership.
19992515	American Tissue Inc	Crown Vantage, Inc	Crown Paper Co.
19992517	Morton Plant Hospital Association	Tenet Healthcare Corporation	RHPC, Inc.
19992551	La-Z-Boy Incorporated	Martin G. and Marlene G. Silver (husband and wife).	Bauhaus USA, Inc.
19992562	Diageo plc	Supervalu Inc	Hazelwood Farms Bakeries, Inc.
19992594	Bernard Ebbers	Compart SpA	Intermarine USA, L.L.C. and Intermarine Yachting, Inc.
19992595	American Water Works Company, Inc	National Enterprises, Inc	National Enterprises, Inc.
19992611	Wolseley plc	Thomas O. Moore, Jr	Summit Structures, Inc.
19992628	Spartech Corporation	Altrista Corporation	Altrista Plastics Corporation.
19992633	Michael W. Lynch	Metro Metals Corporation	Metro Metal Corporation.
19992690	Bell Atlantic Corporation	Mario Gabelli	Rivgam Communicators, L.L.C.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—05/20/1999			
19992584	CHRISTUS Health	Columbia/HCA Healthcare Corporation	Highland Hospital.
Transactions Granted Early Termination—05/21/1999			
19992065	E.I. du Pont de Nemours and Company	Pioneer Hi-Bred International, Inc	Pioneer Hi-Bred International, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, contact representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303 Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–15341 Filed 6–16–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. Baseline Survey of Youth for the Federal Evaluation of Initiatives Funded Under Section 510 of the Maternal and Child Health Block Grant Program—The Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104–193) established Section 510 of the Maternal and Child Health Block Grant Program, the purpose of which is to support state efforts promoting abstinence only education. The Balanced Budget Act of 1997 (P.L. 105–33) established a requirement to "evaluate programs under Section 510." This proposed information collection will gather baseline information for the evaluation—NEW—Respondents: Individuals; Number of Respondents: 7,000; Average Burden per Response: .75 hours; Burden: 5,250 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: June 11, 1999.

William Beldon,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 99–15409 Filed 6–16–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), all authorities vested in the Secretary of Health and Human Services under Public Law 105–369, the Ricky Ray Hemophilia Relief Fund Act of 1998. This delegation excludes the authority to issue regulations and to submit reports to Congress. This authority may be redelegated.

In addition, I hereby ratify and affirm any actions taken by the HRSA Administration or other HRSA officials which involved the exercise of this authority. This delegation is effective upon date of signature.

Dated: June 8, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–15343 Filed 6–16–99; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Robert P. Liburdy, Ph.D., Lawrence Berkeley National Laboratory: Based on an investigation report by the Lawrence Berkeley National Laboratory (LBNL) dated July 7, 1995, and an analysis of the data and information from Dr. Liburdy obtained by ORI during its oversight review, ORI found that Dr. Liburdy, former staff biochemist at LBNL, engaged in scientific misconduct in biomedical research by intentionally falsifying and fabricating data and claims about the purported cellular effects of electric and magnetic fields (EMF) that were reported in two scientific papers: (1) Liburdy, R.P. "Biological interactions of cellular systems with time-varying magnetic fields. Annals of the New York Academy of Sciences 649:74–95, 1992 ("ANYAS paper"); and (2) Liburdy, R.P. "Calcium signaling in lymphocytes and ELF fields." FEBS Letters 301:53–59, 1992 (the "FEBS Letters paper"). The ANYAS and FEBS Letters papers were supported by a National Cancer Institute (NCI), National Institutes of Health (NIH), grant.

The ANYAS and FEBS Letters papers reported data indicating that EMF exert a biological effect by altering the entry of calcium across a cell's surface membrane. EMF, which are ubiquitous forms of radiation that arise from diverse sources such as power lines, home wiring, and household appliances, have been of public concern for potential health effects. Dr. Liburdy's claims were potentially very important when published in 1992 because they purported to link EMF and calcium signaling, a fundamental cell process governing many important cellular functions.

Dr. Liburdy has entered into Voluntary Exclusion Agreement with ORI. As part of this Agreement, Dr. Liburdy neither admits nor denies ORI's finding of scientific misconduct. The settlement is not an admission of liability on the part of the respondent. As part of the Voluntary Exclusion Agreement, Dr. Liburdy has voluntarily agreed:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F. R. Part 76 (Debarment Regulations) for the three (3) year period beginning May 28, 1999;

(2) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for the three (3) year period beginning May 28, 1999; and

(3) To submit letters to the journals ANYAS and FEBS Letters, requesting retraction of Figure 12 of the ANYAS paper and of Figures 6 and 7 of the FEBS Letters paper within 30 days of the date of the agreement.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 99–15416 Filed 6–16–99; 8:45 am]

BILLING CODE 4160–17–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[INFO–99–22]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. Public Health Prevention Service Program—New—Epidemiology Program Office (EPO). In 1995, senior CDC leadership asked for a review of CDC's role in developing public health workers. As a result of the review, the Public Health Prevention Service (PHPS) program was established in 1997, to be carried out by the Epidemiology Program Office (EPO). The purpose of the PHPS program is to improve the nation's public health practice by preparing entry-level public health professionals to conduct prevention programs that improve health and prevent injury and to manage emerging public health problems."

Implicit in the creation of the program is the expectation that the PHPS participants would be a "new breed" of public health professionals who would owe primary allegiance to prevention and public health as disciplines rather than to specific programs, be comfortable working across a variety of programs and in multiple levels of jurisdictions, and be knowledgeable about and prepared to meet future challenges in public health in planning, implementing, managing, and evaluating scientifically sound prevention programs and interventions.

PHPS participants (Prevention Specialists) are selected annually in a national competition. Each year, approximately 25 PHPS participants are chosen from a pool of about 100 applicants. During their 3-year participation in the PHPS program, they undertake formal training, engage in a series of rotations throughout CDC and, finally, are posted to 2-year assignments with health departments at the State, county, or local level. Throughout the off-site portion of the program, they are intended to participate in scheduled training through periodic on-site sessions at CDC as well as through distance learning. At the conclusion of the three years, they are available for employment in any setting.

Data are needed to determine if the PHPS program is meeting its goals, including: (1) Broad exposure to multiple disciplines and levels of government, (2) exposure to important management and leadership skills, and (3) contribution to the creation of a pool of qualified leaders who will remain in and rise rapidly to leadership in public health at Federal, State, and local levels. In addition, data are needed to monitor the implementation of the program and allow for continuous improvement of processes.

While surveys and focus groups are being conducted with the PHPS participants and their CDC supervisors throughout the course of their 3-year participation, these data need to be supplemented with information from others including: (1) "Graduates" of the PHPS program: to determine if they are assuming leadership roles in public health and the aspects of the PHPS program that proved most helpful, (2) local health department staff who supervise PHPS participants during their field assignments: to determine if the PHPS participants are exhibiting the level of skills imparted during their training period and are adding value to State and local public health efforts, and (3) those who are offered PHPS positions but choose not to participate: to determine how to make the program more attractive and to enable the program to improve marketing, application, and selection processes.

Results from this research will be used to help CDC identify ways in which the PHPS program can be enhanced and its processes improved. More importantly, it will allow CDC to assess whether the PHPS program is an effective mechanism for creating a pool of broadly-trained public health leaders.

The PHPS program will track participants, graduates, and their supervisors and employers for a period of 10 years. This request covers the first three years only. The total annualized cost to the respondents is $2,169.50.

Respondents	Number of respondents	Responses/respondent	Avg. burden/response (in hrs.)	Total hour burden (in hrs.)
Year 1				
Candidates:				
Inquiring but not applying	100	1	10/60	17.00
Interviewed but not offered PHPS slots	50	1	10/60	8.50
Offered PHPS slots but not accepting	6	1	10/60	1.00
Supervisors:.				
For first-year field assignment	25	1	15/60	6.25
For second-year field assignment	25	1	15/60	6.25
For permanent employment [1]	0	1	10/60	0
Who requested but were not assigned a PHPS participant	50	1	10/60	8.50
PHPS participants:				
Graduating from the program [1]	0	1	15/60	0
Year 2				
Candidates:				
Inquiring but not applying	100	1	10/60	17.00
Interviewed but not offered PHPS slots	50	1	10/60	8.50
Offered PHPS slots but not accepting	6	1	10/60	1.00
Supervisors:				
For first-year field assignment	25	1	15/60	6.25
For second-year field assignment	25	1	15/60	6.25
For permanent employment [1]	25	1	10/60	4.25
Who requested but were not assigned a PHPS participant	50	1	10/60	8.50
PHPS participants:				
Graduating from the program [1]	25	1	15/60	6.25
Year 3				
Candidates:				
Inquiring but not applying	100	1	10/60	17.00
Interviewed but not offered PHPS slots	50	1	10/60	8.50
Offered PHPS slots but not accepting	6	1	10/60	1.00
Supervisors:				
For first-year field assignment	25	1	15/60	6.25
For second-year field assignment	25	1	15/60	6.25
For permanent employment [1]	50	1	10/60	8.50
Who requested but were not assigned a PHPS participant	50	1	10/60	8.50
PHPS participants:				
Graduating from the program [1]	50	1	15/60	12.50
Total Burden				174.00
Average Annual Burden				58.00

[1] PHPS is a three year program enrolling 25 new participants each year. The first class will graduate in Year 2 of this data collection; 25 new graduates will be added to the pool of graduates each year thereafter.

2. Site-Specific Evaluation—New—Agency for Toxic Substances and Disease Registry (ATSDR). Evaluation is a critical component in ATSDR's site-related public health actions, both to ensure the successful application of site-specific/site-related intervention activities, and the effective management of resources. As ATSDR's divisions and offices assume expanded responsibilities for sites in program areas such as health assessment, health consultations, health studies, research and education, information, and communication, their interest in promoting improvements in evaluating their site-specific and site-related public health actions has grown accordingly.

An ATSDR inter-divisional workgroup has developed an integrated and more focused approach for assessing ATSDR's site-related activities. The site-specific protocol encompasses data collections from three groups:

1. Members of the site community—to determine if knowledge, attitudes, and beliefs (KAB) have changed as a result of ATSDR's intervention on the site and to assess their satisfaction with the process used to obtain their input, provide information to them , and by which ATSDR made recommendations about dealing with hazards in their community;

2. Members of the provider community—to determine if their KAB regarding environmental hazards and appropriate diagnosis, referral, and treatment of those exposed have changed in the appropriate direction as a result of ATSDR's activities on-site; and

3. Members of a larger "contrast" community—to determine if changes in KAB on-site are due to ATSDR activities or other confounding factors and secular trends.

Mainly, these data will be used for management feedback and program improvement. Data will not be used to make statistically generalizable statements or draw national estimates. Instead, results from these data collections will be used by ATSDR to fine-tune its activities at individual sites, to compare outcomes across sites, and to paint an overall picture of the amount and type of impacts ATSDR is having on site.

The evaluation of ATSDR's site activities is intended to be an ongoing

agency activity. This data collection covers only the first three years. The total annualized cost to the respondents is $30,423.

	Respondents	Responses/ respondent *	Avg. burden/ respondent (in hrs.)	Total burden (in hrs.)
New Sites:				
Site community (phone)	100	2 (10)	0.1667	333
Contrast community (phone)	300	2 (10)	0.1667	1000
Health care providers (mail)	50	2 (10)	0.1667	166
Existing Sites:				
Site community (phone)	100	1 (10)	0.1667	167
Contrast community (phone)	300	1 (10)	0.1667	500
Health care providers (mail)	50	1 (10)	0.1667	83
Total Burden				2,249

* Responses per Respondent per Site (10)

3. National Vital Statistics Report Form (0920–0213)—Revision—National Center for Health Statistics (NCHS). The compilation of national vital statistics dates back to the beginning of this century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. The National Vital Statistics Report (renamed from the Monthly Vital Statistics Report in January 1998) provides counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces following the end of each month. Similar data have been published since 1937 and are the sole source of these data at the national level. The data are used by the Department of Health and Human Services and by other government, academic, and private research organizations in tracking changes in trends of vital events.

Respondents for the Monthly Vital Statistics Report Form are registration officials in each State and Territory, the District of Columbia, and New York City. In addition, 60 local (county) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico will use this Form. There are no direct costs to respondents; the data are routinely available in each reporting office as a by-product of ongoing activities. Earlier OMB approvals of this data collection involved four separate forms, all of which are combined into a single multi-purpose form for this current approval request.

Respondents	Number of respondents	Responses/ respondent	Avg. Burden/ response (in hrs.)	Total burden (in hrs.)
State and Territory Registration Officials	57	12	0.2	137
New Mexico County Officials	50	12	0.1	72
Total				209

4. Annual Marriage and Divorce Statistical Report Form (0920–0211)—Reinstatement with Change-National Center for Health Statistics (NCHS). Compilation of national vital statistics dates back to the beginning of this century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. The National Vital Statistics System constitutes a program to provide statistics on births, deaths, fetal deaths, marriages, and divorces. One part of this function is to provide final annual counts of marriages and divorces by month for the United States and for each State. The data are widely used by government, academic, private research, and commercial organizations in tracking changes in trends of family formation and dissolution. The statistical counts requested on this form differ from provisional estimates obtained on the Monthly Vital Statistics Report Form in that they represent complete counts of marriages, divorces, and annulments occurring during the months of the prior year. These final counts are usually available from State or county officials about eight months after the end of the data year.

Respondents for the Annual Marriage and Divorce Statistical Report Form are registration officials in each State, the District of Columbia, New York City, Guam, Puerto Rico, Virgin Islands, Northern Marianas, and American Samoa. In addition, counts of marriages will be collected from individual counties in New Mexico, and counts of divorces will be collected from individual counties in California, Colorado, Indiana, Louisiana, New Mexico, and the boroughs of New York City due to a lack of centralized complete collections in these registration areas. There are no direct costs to respondents; the data are routinely available in each reporting office as a by-product of ongoing activities. Earlier OMB approvals of this data collection involved four separate forms, some of which are combined into a single multi-purpose form for this current approval request. Counts will no longer be requested from all States for all counties in each State.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
State/Territory/City Registration Officials	56	1	0.5	28
County/Borough Officials	348	1	0.5	174
Total				202

Dated: June 10, 1999.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 99–15373 Filed 6–16–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Request for Nominations of Candidates To Serve on the National Vaccine Advisory Committee, Department of Health and Human Services

The Public Health Service (PHS) is soliciting nominations for possible membership on the National Vaccine Advisory Committee (NVAC). This committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the States; recommends research priorities and other measures the Director of the National Vaccine Program should take to enhance the safety and efficacy of vaccines; advises the Director of the Program in the implementation of sections 2102, 2103, and 2104, of the PHS Act; and identifies annually for the Director of the Program the most important areas of government and non-government cooperation that should be considered in implementing sections 2102, 2103, and 2104, of the PHS Act.

Nominations are being sought for individuals engaged in vaccine research or the manufacture of vaccines or who are physicians, members of parent organizations concerned with immunizations, or representatives of State or local health agencies, or public health organizations. Federal employees will not be considered for membership. Members may be invited to serve a four-year term.

Close attention will be given to minority and female representation; therefore nominations from these groups are encouraged.

The following information is requested: name, affiliation, address, telephone number, and a current curriculum vitae. Nominations should be sent, in writing, and postmarked by July 30, 1999, to: Gloria Sagar, Committee Management Specialist, NVAC, National Vaccine Program Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, M/S A–11, Atlanta, Georgia 30333. Telephone and facsimile submission cannot be accepted.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 11, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–15375 Filed 6–16–99; 8:45 am]

BILLING CODE 4165–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.–3 p.m., July 9, 1999.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee advises the Director, CDC, on policy issues and broad strategies that will enable CDC, the Nation's prevention agency, to fulfill its mission of promoting health and quality of life by preventing and controlling disease, injury, and disability. The Committee recommends ways to incorporate prevention activities more fully into health care. It also provides guidance to help CDC work more effectively with its various constituents, in both the private and public sectors, to make prevention a practical reality.

Matters To Be Discussed: Agenda items will include updates from CDC Director, Jeffrey P. Koplan, M.D., followed by committee discussion on the agency's priorities, including strengthening the public health infrastructure, prevention research, and emerging infections. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda Kay McGowan, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333, telephone 404/639–7080.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 11, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–15376 Filed 6–16–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services Task Force; Meeting

Office of the Director, Centers for Disease Control and Prevention (CDC), announces the following meeting:

NAME: Guide to Community Preventive Services (GCPS) Task Force Meeting.

TIMES AND DATES: 8:45 a.m.–5:15 p.m., June 23, 1999. 8:30 a.m.–3:15 p.m., June 24, 1999.

PLACE: The Sheraton Hotel Atlanta, Courtland and International Boulevard, Atlanta, Georgia 30303, telephone 404/659–6500.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 40 people.

PURPOSE: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific

evidence and current expertise regarding essential public health services and what works in the delivery of those services.

MATTERS TO BE DISCUSSED: Agenda items include: an overview of Activity changes and plans; a review of progress on the development of Guide chapters; an update on the dissemination/implementation efforts related to the Guide; an update on the Vaccine Preventable Disease Chapter, dissemination activities related to such as well as the discussion of the "chapter at work" or its impact to date; an update on several chapters including Sociocultural Environment, Diabetes, Alcohol and Prevention of Mental Disorder; an update on the Guide database activities; an update on selected "Healthy Aging" project activities by the Health Care Financing Administration; a discussion about the Economic Evaluation Methods utilized in development of the Guide and a discussion on the conceptualization of the Guide and overall dissemination strategies.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Stephanie Zaza, M.D., M.P.H., Chief, CPS Guide Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 1600 Clifton Road, NE, M/S D–01, Atlanta, Georgia 30333, telephone 404/639–4301.

Persons interested in reserving a space for this meeting should call 404/639–4301 by close of business on June 17, 1999.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of the meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 11, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–15374 Filed 6–16–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 29, 1999, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Goshen Room, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Rhonda W. Stover or John B. Schupp, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss trade secret and/or confidential information relevant to pending investigational new drug applications (IND's) and drug development plans.

Procedure: On July 29, 1999, from 8:30 a.m. to 9:30 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 22, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 22, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On July 29, 1999, from 9:30 a.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information relevant to pending IND's and drug development plans. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 10, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–15401 Filed 6–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0260 and R–0275]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Request:* Extension of a currently approved collection; *Title of Information Collection:* Quality Improvement System for Managed Care (QISMC); *Form Number:* HCFA–R–0260 (OMB approval #: 0938–0745); *Use:* The primary purpose of the QISMC standards and guidelines is to implement regulatory requirements relating to Medicare and Medicaid managed care organizations' operation and performance in the areas of quality measurement and improvement, delivery of health care, and enrollee services. For Medicare, the QISMC document is equivalent to a program manual. For Medicaid, the standards and guidelines are tools for States to use at their discretion in ensuring the quality of managed care organizations with Medicaid contracts. These standards parallel many of the Balanced Budget Act of 1997 quality assurance provisions. *Frequency:*. Annual; *Affected Public:* Business or other for-profit; *Number of Respondents:* 952; *Total Annual Responses:* 952; *Total Annual Hours Requested:* 1 hour.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Peer Review Evaluation of Access to and Quality of Home Oxygen Equipment; *Form No.:* HCFA–R–0275 (OMB# 0938–new); *Use:* The Balanced Budget Act (BBA) of 1997 reduced payment allowances for home oxygen by 25 percent effective January 1, 1998 and an additional five percent effective January 1, 1999. As a result of these fee schedule reductions, the BBA requires a study be made of issues relating to home oxygen equipment. The study's primary objectives are: to evaluate any changes in access to, and quality of, home oxygen equipment provided to Medicare beneficiaries as a result of the fee schedule reduction; and describe current physician practices in ordering and prescribing home oxygen services.; *Frequency:* One time only; *Affected Public:* Individuals or households, Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 2,500; *Total Annual Responses:* 2,500; *Total Annual Hours:* 787.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 10, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–15421 Filed 6–16–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Committee on Nurse Education and Practice

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E., Washington, D.C. Copies may be obtained from: Elaine Cohen, Executive Secretary, National Advisory Committee on Nurse Education and Practice, Room 9–35, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5786.

Dated: June 9, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–15403 Filed 6–16–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Evaluation of Transgenic Rodent Models.

Date: June 16, 1999.

Time: 10:00 AM to 12:00 PM.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: June 10, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15457 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Early indicators of later work levels, disease and death.

Date: June 14–15, 1999.

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Paul Lenz, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, B-Vitamin Atherosclerosis Intervention Trial.

Date: July 1, 1999.

Time: 10:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Gateway Building Rm 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Nekola, Chief, Scientific Review Office, National Institute on Aging, National Institutes of Health, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 11, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–15459 Filed 6–17–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearing unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee, DDK–C.

Date: July 14–15, 1999.

Time: 8:30 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dan Matsumoto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 11, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–15460 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearing unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 11, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–15462 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Role of the Scavenger Receptor Type B1 in HDL Metabolism.

Date: June 28–29, 1999.

Time: June 28, 1999, 7:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Sheraton Suites, 2601 Richmond Road, Lexington, KY 40509.

Contact Person: James P. Harwood, Deputy Chief, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666..

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 11, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–15463 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Mental Retardation Research Subcommittee.

Date: June 24–25, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Norman Chang, Scientific Review Administrator, National Institutes of Child Health and Human Development, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: June 10, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15464 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15, 1999.

Time: 8:00 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.

Contact Person: Marjam G. Behar, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 16–18, 1999.

Time: 8:30 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: Nautilus Motor Inn, 539 Woods Hole Road (Box 147), Woods Hole, MA 02543–0147.

Contact Person: Marjam G. Behar, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 11, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15458 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientifica Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 14, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Camilla E. Day, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7840, Bethesda, MD 20892, (301) 435–1037, dayc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 16, 1999.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Shirley Hilden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 17–18, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Jay Joshi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–RPHB–3(1).

Date: June 23–24, 1999.

Time: 8:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7848, Bethesda, MD 20892, 301–435–0682.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Metabolic Pathology Study Section.

Date: June 23–25, 1999.

Time: 8:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Marcelina B. Powers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 23–24, 1999.

Time: 8:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: Nabeeh Mourad, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 23–25, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Wardman Park Hotel, 2660 Woodley Road, N.W., Washington, DC 20008.

Contact Person: David L. Simpson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Initial Review Group, Immunobiology Study Section.

Date: June 23–24, 1999.

Time: 9:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Betty Hayden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 23, 1999.

Time: 10:00 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 23, 1999.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., NW, Washington, DC 20007.

Contact Person: Joanne T. Fujii, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN–2.

Date: June 24–25, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Carole Jelsema, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1248.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group, Biochemical Endocrinology Study Section.

Date: June 24, 1999.

Time: 8:00 AM to 7:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Michael Knecht, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Alcohol and Toxicology Subcommittee 3.

Date: June 24–25, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Fess Parker's Double Tree Hotel, 633 East Cabrillo Blvd., Santa Barbara, CA 93103.

Contact Person: Christine Melchior, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Virology Study Section.

Date: June 24–25, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada, 8400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rita Anand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Bacteriology and Mycology Subcommittee 1.

Date: June 24–25, 1999.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.

Contact Person: Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Metallobiochemistry Study Section.

Date: June 24–25, 1999.

Time: 8:30 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.

Contact Person: John L. Bowers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Bio-Organic and Natural Products Chemistry Study Section.

Date: June 24–25, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Mike Radtke, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728, radtkem@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 24–25, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20817–7844, (301) 435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 24, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Garrett V. Keefer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, VISA.

Date: June 25, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Luigi Giacometti, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.206, 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 94.846–93.878, 93.892, 93.893, National Institute of Health, HHS)

Dated: June 10, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15461 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in June.

A summary of the meetings may be obtained from: Ms. Coral M. Sweeney, SAMHSA, Division of Extramural Activities Policy and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–2998.

Substantive program information may be obtained from the individual named as Contact for the meetings listed below.

The meetings will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3),(4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: June 21, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Closed: June 21, 1999, 8:30 a.m.—adjournment.

Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: June 23, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Closed: June 23, 1999, 8:30 a.m.—adjournment.

Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: June 28, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Closed: June 28, 1999, 8:30 a.m.–adjournment.

Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

Dated: June 7, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Extramural Activities Team, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–15402 Filed 6–16–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Alligator Adventure, North Myrtle Beach, SC, PRT–010961

The applicant requests a permit to import one captive-bred saltwater crocodile (*Crocodylus porosus*) from Samutprakan Crocodile Farm and Zoo

Co., Ltd., Sumutprakan, Thailand for the purpose of enhancement of the species through education.

Applicant: Duke University Primate Center, NC, PRT–006845

The applicant requests a permit to re-export thirty blood samples at 4ml each sample and twelve tissue samples of mongoose lemur (*Eulemur mongoz*) to Switzerland for the purpose of beneficial management of both wild and captive populations.

Applicant: Kerri A. McCoy, Birmingham, AL, PRT–011869

The applicant requests a permit to export six captive-born scarlet chested parakeets (*Neophema splendida*) to Canada for the purpose of enhancement of the species through captive propagation.

Applicant: Angel A. Rodriguez, Corinth, MS, PRT–012820

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: The Dallas World Aquarium Corporation, Dallas, TX, PRT–013173

The applicant requests a permit to import two red-billed curassows (*Crax blumenbachii*) for the purpose of enhancement of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 et seq.) and the regulations governing marine mammals (50 CFR 18).

Applicant: Richard B. Nilsen, Ft. Lauderdale, FL, PRT–013054

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Phares W. Fry, Auburn, PA, PRT–013056

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358–2281).

Dated: June 11, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–15398 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27), notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry activities have been issued to the following companies:

Company	Activity	Date issued
Western Geophysical	Exploration (seismic)	May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Rosa Meehan or Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammal Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3800.

SUPPLEMENTARY INFORMATION: All Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rule and Regulations "Marine Mammals; Incidental Take During Specified Activities" (64 FR 4328) January 28, 1999.

Dated: May 28, 1999.

Gary Edwards,

Acting Regional Director.

[FR Doc. 99–15210 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Comment on the Proposal To Develop a "Standard for a Universal Grid Reference System for Spatial Addressing"

ACTION: Notice; request for comments.

SUMMARY: The FGDC is soliciting public comments on the proposal to develop a "Standard for a Universal Grid Reference System for Spatial Addressing." If the proposal is approved, the standard will be developed following the FGDC standards development and approval process and will be considered for adoption by the FGDC.

In its assigned federal leadership role in the development of the National Spatial Data Infrastructure (NSDI), the Committee recognizes that FGDC standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review the proposal and comment on the objectives, scope, approach, and usability of the standard; identify existing related standards; and indicate their interest in participating in the development of the standard.

DATES: Comments must be received on or before August 15, 1999.

CONTACT AND ADDRESSES: Comments may be submitted via Internet or by submitting electronic copy on diskette. Send comments via Internet to: gdc-ugrs@www.usgs.gov.

A soft copy version on 3.5-inch diskette in WordPerfect, Microsoft Word, or Rich Text Format (preferred) format and one copy of a hardcopy version may be sent to the FGDC Secretariat (attn: Jennifer Fox) at U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the "Standard for a Universal Grid Reference System for Spatial Addressing."

Project Title

Standard for a Universal Grid Reference System for Spatial Addressing.

Date of Proposal

May 24, 1999.

Type of Standard

A data presentation standard specifying the representation of two-dimensional spatial addresses.

Submitting Organization

The Public X–Y Mapping Project, 8013 Hatteras Lane, Grid: 18SUH06949701 (NAD 83), Springfield, VA 22151.

Point of Contact: N.G. "Tom" Terry, Jr., The Public X–Y Mapping Project, E-mail: neri@erols.com, Pager: 703–457–0451.

Objectives

The objectives of this standard are to provide the community with:

1. A presentation format to enable the use of large-scale paper and digital maps with Global Positioning System (GPS). Persons using different commercial brands or types of maps will be able to communicate with each other because they will all use the same grid reference system.

2. An unambiguous, geodetically referenced, and mathematically uniform system for a two-dimensional address to supplement conventional street addresses. It will also serve as a spatial address away from the road network.

3. A single system which can be taught to all citizens in the school system, and which can be used in any community across the nation.

4. A system that is seamless at political boundaries and can be uniformly truncated at various levels of precision.

5. A basis for building a street and feature index database referenced to the UGRS which can be accessed and used by any member of the community.

Scope

This standard will define a Universal Grid Reference System (UGRS) for use in spatial addressing type applications. It is intended to serve as a preferred system that is easier to use than latitude and longitude by the average citizen. It is intended for use in mapping at scales from approximately 1:5,000 to 1:1,000,000. Technically, it will be the same as the Military Grid Reference System (MGRS), taking advantage of that public domain system's use of the Universal Transverse Mercator (UTM) grid and truncation and variable precision features. The standard will address other issues pertinent to civil mapping, such as recommended grid spacing.

This standard is not intended to change how coordinates are stored in computers. It is not intended to replace the use of latitude and longitude on nautical and aeronautical charts or on maps at scales smaller than approximately 1:1,000,000. It is not intended to replace the State Plane Coordinate System (SPCS). SPCS will continue to be used where jurisdictions prefer it for property descriptions, mapping at scales larger than 1:5,000, or other more technical uses such as manual surveying.

Justification/Benefits

Today Americans have many sources of geographic information to support their day-to-day activities. Commercial street and highway maps are a major source of this information for the community. These commercial products typically carry a system of proprietary zone grids, unique to a particular map or map brand. Zone coordinates consist of an alphanumeric code that locates places within a cell of a given spatial extent.

A Community may have a variety of large-scale maps available that use disparate coordinate systems. In a sample of the Washington, DC area conducted this year, four years after the Global Positioning System (GPS) reached full operational capability, 25 different large-scale street maps were found to be commercially available, and on these maps, there existed 21 different coordinate systems. Of these grids, none worked with readily available, low-cost consumer GPS receivers. Some commercial mapmakers claim their maps (and zone grids) are the de facto standard in some communities, because in some cases, local governments have adopted one of these proprietary zone grids for use as a spatial address system.

Often organizations with a local focus have not recognized problems inherent in the use of disparate grid systems or the need for preferred system that is national in scope. Consumers and businesses that must routinely cross interstate and local government boundaries require a solution national in scope. In an emergency scenario where time is precious and understanding communicated locations or positions in a non-conflicting manner is critical, it is operationally best for all to use a standard reference systems. When a local government accepts the use of a proprietary coordinate system as a "de facto" standard, it grants a monopolistic license to a specific commercial map vendor, thereby inhibiting competition in that community's marketplace. The UGRS will provide commercial map vendors who choose to adopt it a preferred coordinate system that enhances their products by enabling the exchange of spatial address information.

Addressing Schemes

Americans have traditionally used postal or street addresses to locate a destination in their day-to-day activities. In 30 of the 50 States, the Public Land Survey System (PLSS) is another system often used to describe a piece of property. Traditional addressing schemes have served well, and will continue to be used. Nonetheless, these systems are flawed by their lack of mathematical uniformity. Additionally, they often lack the ability to provide an address for any point in the nation.

These different systems do not work with GPS, or are unreliable for work with GPS and digital maps. With the advent of GPS, the average citizen can purchase access to a $10 billion source of precise positioning information for the price of a good watch. In the near future, vehicles will routinely come equipped with GPS driven digital maps. Mobile wireless communications have become pervasive, allowing community members to cheaply communicate with one another from any point on he globe. When people communicate, one of the fundamental pieces of information they need to exchange is location. In view of these technological advances, there

exists a need to support the community in its use and communications of geospatial information with a preferred spatial address system.

Computer Translation Versus a Preferred System

Some have suggested that because high-speed digital computes can easily translate between mathematically uniform transformations, there is no need for a preferred system for spatial addressing. They contend that computer systems will simply translate a provide coordinate value from any one of an infinite number of coordinate systems used by the community into one the operator can understand or use. In the real world, this is a flawed concept. First, it will be some time before every citizen has a lap/palm top computer to use for routine navigation. Secondly, it will not be possible to keep every citizen's computer updated with the infinite number of coordinate systems that can be produced. It is analogous to cartographic anarchy, where there are no recognized conventions.

Some say the day of the paper map is over, but we have not achieved the "paperless environment." Paper will continue to be a critical medium for portraying and using geospatial information. While digital systems information such as GPS. the Internet, and print on demand paper maps will increase the ability of the community to *use* geospatial data, paper maps will continue in widespread use. Maps required a common coordinate system if people are to exchange useful positioning information. A *preferred* spatial addressing convention is required just as a preferred set of street names is used for street addresses. Street addresses simply would not be useable if there were multiple names for each street. Accordingly, a preferred convention is necessary if the community is to have a useable and workable spatial address system.

Truncation and Variable Precision

The Universal Transverse Mercator (UTM) system most closely meets URGR requirements and is:

- A plane coordinate system, which is far easier to use than latitude and longitude for large-scale work.
- A geodetically referenced, mathematically uniform system in the public domain.
- National and international in scope.

However, UTM does not provide a convention for truncating coordinate values, nor does it allow for variations in precision of information. For example, although the UGRS will support 1-meter precision, many users do not need spatial resolutions finer than 10 meters for location and navigation and do not require that coordinates be shown to all the decimal places to which they are stored in computers. In fact, users find it easier to remember fewer digits. This is analogous to memorizing and recalling telephone numbers.

The Military Grid Reference System (MGRS) is a mature, widely used, off-the-shelf system based on the UTM that also provides a method to truncate coordinates and offers various levels of precision. It is proposed that the UGRS use this existing technical standard.

Development Approach

This standards development effort will make use of existing standards and specifications to the greatest possible extent. The MGRS meets the basic requirements for a UGRS. The Public X–Y Mapping Project has nearly completed a draft of the proposed UGRS that will be presented to the FGDC as a starting point for development of this standard. It is proposed that the FGDC form an ad hoc working group or subgroup of the Standards Working Group to review The Public X–Y Mapping Project Draft and prepare it for public review. The need for a more permanent group will be reevaluated based on initial public comment.

Implementation and acceptance of a preferred spatial addressing standard will require demonstration of the usefulness of the standard. Therefore, there is a need to plan and carry out demonstration projects once the technical specification has stabilized.

Development and Completion Schedule

Completion of initial draft: August 1999.

Public Review: September–November 1999.

Final Draft: TBD—dependent on public comment—December 1999.

Demonstration Projects: 2000–2003.

Resources Required

A working draft of the UGRS will be provided by The Public X–Y Mapping Project. No new resources are needed to prepare the working draft. An ad hoc working group of the Standards Working Group will be needed to assist The Public X–Y Mapping Project in preparing the draft for public review according to FGDC directives. The Public X–Y Mapping Project expects this group to assist in the adjudication and resolution of comments received during the public review.

Administrative and financial resources will be required from FGDC members and outside organizations to carry out the demonstration projects.

Potential Participants

- Major Federal land map producers.
- Commercial map producers.
- The GPS industry.
- Representatives of map users such as E–911 service providers (see examples).

Related Standards

- This proposal relates to ANSI X3.61–1986, Representation of Geographic Point Locations for Information Interchange, which standardizes representation of UTM coordinates for computer representation, since the proposed UGRS is based upon the UTM.
- ISO 15046–16, Positioning Services, provides an interface for real-time GPS receiver output (and output from other positioning technologies). The UGRS standards project should follow the progress of ISO/TC 211 Work Item 16 and harmonize with the requirements of ISO 15046–16.
- ISO 15046–11, Spatial Referencing by Coordinates, provides a conceptual schema for the description of coordinate reference systems. The UGRS standards project should follow the progress of ISO/TC 211 Work Item 11 and harmonize with the requirements of ISO 15046–11.
- It is not clear how this proposal relates to the linear referencing standard being proposed by the Intelligent Transportation community in the U.S. and the U.S. representatives to ISO/TC 204, the international road informatics standards committee. This will be investigated during the preparation of the public review draft.
- This proposal may be related to the NSDI Framework Transportation Identification Standard being developed by the FGDC Ground Transportation Subcommittee. Overlaps will be investigated during the preparation of the public review draft.
- The UGRS standard will drawn NIMA Technical Manual (TM) 8358.1, Datums, Ellipsoids, Grids, and Grid Reference Systems, which describes the basic principles of the Military Grid Reference System

Other Targeted Authorization Bodies

If it is determined that this standard could benefit from or would require changes to ANSI X3.61, then NCITS L1 (custodian of ANSI X3.61) would be another target organization.

Although initially targeted for adoption in this country, the UGRS could be applied worldwide. If this is determined to be desirable, ISO/TC 211 would the appropriate standards body to consider it.

Addendum—Example Applications of the UGRS

UGRS is intended to be preferred method for designating point positions for numerous activities, particularly vehicle/land navigation. It will supplement conventional street addresses in the community and will provide a virtual address for any point away from the road network.

1 Enhanced 9–1–1

The spatial address (in the form of UGRS coordinates) will appear along with the caller's street address on the screen of 9–1–1 system operators in Public Safety Access Points (PSAP). The UGRS address can be used by officers on the street, who may be equipped with either paper or digital maps.

2 Disaster Relief Operations

In the aftermath of Hurricane Andrew, the devastation was so great, that street signs were blown away, making it difficult for outside agencies to navigate to places in need of assistance. UGRS will provide a nationally uniform method for describing a position that will allow outside assistance providers to "hit the ground running" with GPS equipment and to make use of commercial street maps that may be readily available.

3 Search and Rescue (SAR)

The advent of technologies such as medical evacuation helicopters and wireless communications (i.e. radios, cellular phones) has increased the need to precisely and unambiguously identify places away from the road network. For example, medical evacuation helicopter crews have cited difficulties (while often flying in dangerous environments, i.e. mountainous terrain at night) in understanding SAR team descriptions of where they are supposed to fly. A preferred spatial address system would eliminate this communication interoperability problem.

4 Digital Maps

Digital maps from sources such as CD ROMs for use on deskp/lap top computers and Internet information vendors are coming into widespread use. The UGRS has greater suitability for these digital mapping systems than conventional street addresses because it affords greater accuracy and ensures confidence that the point indicated is the correct location. Today, it is possible to quickly access a source of maps on the Internet. With a UGRS spatial address, the user precisely designates the point of interest by entering the address as if it were a phone number (This has important implications for future cellular phone operations and GPS/car navigation systems). The information provider can quickly respond with a map of that location. The UGRS also provides a coordinate system that can be portrayed on these maps when they are printed ("print on demand"), thereby ensuring a geodetic reference for later use of the map with GPS when driving to the location.

5 Locating Small Business Features

Quite often, it is necessary to locate a small feature such as an Automated Teller Machine (ATM), the drop off box for a package delivery service such as FedEx or United Parcel Service (UPS), or post office box. Today, automated sources of information provided by the Internet or by telephone indicate the location of the closest ATM or drop-off box, but finding these small features can prove to be a difficult task. UGRS spatial addressing will greatly ease a customer's task by unambiguously communicating a point position of higher resolution than possible with conventional street addresses and will maximize current and future capabilities of GPS.

6 Locating a Street Address Number

Locating a street address number of buildings or homes can be a difficult task that greatly adds to the workload of a vehicle deliver. This is especially true at night during heavy traffic. Many times a driver is confounded that street address numbers are small, poorly placed, or missing altogether. A virtual address defined by UGRS enables the use of GPS or a map with a UGRS grid and greatly eases the workload of a driver trying to located a specific and precise location.

7 Identifying Multiple Businesses Locations

A business with multiple locations in a community can add the spatial address for its establishments in telephone or Internet directories (or other sources of information). This information, coupled with commercial street maps that portray the UGRS grid, will allow potential customers to quickly determine which establishment is closet to them. Customers will easily see the relative location of each store.

8 Outdoors Recreation

A great deal of outdoors recreation, such as backpacking, kayaking, hunting, fishing rock climbing, cross-country skiing, snowmobiling, mountain-biking, and horseback riding, takes place away from the road network and the conventional street address system. The widespread availability of low cost wireless communications (i.e. cellular telephones, Family Radio Service [FRS] transceivers, etc.) has increased the need for a spatial address system that people can use to identify their location in a simple, uniform manner without ambiguity during these activities. For example, in the event of an accident requiring medical assistance, UGRS will provide a standard method for communicating unambiguous location of the accident to responding organizations. Likewise, backpackers and others can report their UGRS spatial address for a pickup point after a long hike, adding flexibility to their plans. The UGRS will provide a universal means for identifying the location of shelters, cabins, trail heads, springs, camping areas, parking areas, and other features in journal entries, magazine articles, guide books, and other source of recreational information. A UGRS will provide a universal coordinate system and grid for outdoor recreation maps which ensures the exchange and compatibility of spatial address information across many different sources to include the use of GPS.

9 Agriculture

There is a need in agriculture to uniformly identify particular parcels of land for various work tasks. For example, a farmer communicating with a mechanic by cellular phone may need to clearly identify in which field a tractor has broken down. Another example is where the farmer has to instruct a deliverer of some commodity about where to stage the material.

10 Tourism

The tourist is one who is new to an area and unfamiliar with its features, but is looking for specific places of interest. A preferred spatial address for a place of interest will be found on brochures and in other others of tourism information to enable tourists to quickly and unambiguously locate a place of interest.

Dated: June 4, 1999.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 99–15420 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–YY–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–963–1020–04–WEED]

Notice of Proposed Supplementary Rules To Require the Use of Certified Noxious Weed-Free Forage on Bureau of Land Management-Administered Lands in North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rules to require the use of certified noxious weed-free forage on Bureau of Land Management-administered lands in North Dakota.

SUMMARY: The Field Manager of the Bureau of Land Management (BLM) in North Dakota is proposing a requirement that public land users, including permittees, and local, state, or federal government agents conducting administrative activities, use certified noxious weed-free hay, straw, cubes, grains, or mulch when visiting BLM administered lands in North Dakota. This requirement will affect those who use the above-named products on BLM administered lands in North Dakota such as: recreationists using pack and saddle stock, and contractors who use straw or other mulch for reseeding purposes. These individuals or groups would be required to use certified noxious weed-free forage products, or other approved products such as pelletized feed while on BLM administered lands in North Dakota.

DATES: Comments concerning the proposal should be received on or before July 19, 1999.

ADDRESSES: Send written comments concerning the North Dakota requirement to: Field Manager, BLM, 2933 3rd Ave. W., Dickinson, ND 58601–2619.

FOR FURTHER INFORMATION CONTACT: BLM—North Dakota Field Office, Don Rufledt, Natural Resource Specialist, 2933 3rd Ave. W., Dickinson, ND 58601–2619, or telephone (701) 225–9148.

SUPPLEMENTARY INFORMATION: Noxious weeds are a serious problem in the western United States. Estimates of the rapid spread of weeds in the west include 2,300 acres per day on BLM public lands and 4,600 acres per day on all federally-administered land. Species such as leafy spurge, Canada thistle, spotted knapweed, musk thistle, purple loosestrife, and many others are alien to the United States and, at least initially, have no natural enemies to keep their populations in balance. Consequently, these weeds invade healthy ecosystems, displace native vegetation, reduce species diversity, and damage wildlife habitat. Widespread infestations can lead to soil erosion and stream sedimentation. Furthermore, noxious weed invasions reduce livestock and wildlife grazing capacity, occasionally affect the health of public land users by aggravating allergies and other ailments, and threaten federally protected or native plants and animals.

To curb the spread of noxious weeds, a growing number of western states have jointly developed noxious weed-free forage certification standards, and, in cooperation with various federal, state, and county agencies, passed weed management laws. Because hay and other forage products containing noxious weed seeds are part of the infestation problem, North Dakota has developed a program to certify weed-free forage. The state encourages forage producers to grow noxious weed-free products and have them certified.

Region One of the United States Forest Service, Department of Agriculture, implemented a similar policy for the National Grasslands in North Dakota in 1998. This proposal will provide a standard regulation for all users of BLM lands in North Dakota and will provide for coordinated management with National Forest Grasslands across jurisdictional lines.

In cooperation with the state of North Dakota and the U.S. Forest Service, the BLM is proposing—for all BLM administered lands within North Dakota—a ban on hay, straw, cubes, grains, or mulch that has not been certified. This proposal will ensure that: (1) this ban is well publicized and understood. The BLM would stress education and awareness in 1999 and 2000 and move to implement enforcement in 2001; and (2) BLM visitors and land users will know where they can purchase state-certified hay or other products.

The principal author of these proposed supplementary rules is Don Rufledt, Natural Resource Specialist, of the North Dakota Field Office, BLM.

For the reasons stated above, under the authority of 43 CFR 8365.1–6, the North Dakota Field Office, BLM, proposes supplementary rules to read as follow:

Supplementary Rules to Require the Use of Certified Noxious Weed-Free Forage on Bureau of Land Management-Administered Lands in North Dakota:

(1) To help prevent the spread of weeds on BLM-administered lands in North Dakota, effective September 1, 1999, all such lands shall be closed to possessing, transporting or storing hay, straw, cubes, grains, or mulch that has not been certified as free of noxious weed seed. Pelletized feed does not require certification.

(2) Certification will comply with North Dakota's Pilot Weed Free Forage Program. North Dakota's pilot program will certify forage as free of only those noxious weeds listed in North Dakota. Forage from other states should be free of all regionally listed noxious weeds.

(3) The following persons are exempt from this order: (a) anyone with a permit signed by BLM's authorized officer at the North Dakota Field Office specifically authorizing the prohibited act or omission on BLM-administered public lands within the state; (b) persons transporting forage products on federal and state highways and county roads that are not BLM-development roads or trails.

(4) Any person who knowingly and willfully violates the provisions of these supplemental rules may be commanded to appear before a designated United States Magistrate and may be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both, as defined in 43 United States Code § 1733(a).

Dated: June 4, 1999.

Douglas J. Burger,

Field Manager, Bureau of Land Management, North Dakota.

[FR Doc. 99–15361 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM–930–1310–01); (NMNM 89815)]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 89815 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from November 1, 1998, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective November 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: June 10, 1999.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 99–15417 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–952–09–1420–00]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of the amended protraction diagrams accepted June 2, 1999, of the following described lands, are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Tps. 1, 2, 3, and 4 N., Rs. 21, 22, 23, and 24 W.

The plat, representing the Amended Protraction Diagram 15 Index of unsurveyed Townships 1, 2, 3, and 4 North, Ranges 21, 22, 23, and 24 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 1 N., R. 22 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 1 North, Range 22 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 1 N., R. 23 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 1 North, Range 23 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 1 N., R. 24 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 1 North, Range 24 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 2 N., R. 22 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 2 North, Range 22 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 2 N., R. 23 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 2 North, Range 23 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 3 N., R. 22 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 3 North, Range 22 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 3 N., R. 23 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 3 North, Range 23 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 4 N., R. 21 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 4 North, Range 21 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 4 N., R. 22 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 4 North, Range 22 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 4 N., R. 23 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 4 North, Range 23 West, Principal Meridian, Montana, was accepted June 2, 1999.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams, accepted June 2, 1999, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted June 2, 1999, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests. These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: June 9, 1999.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 99–15429 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Proposed Audit Delegation for the State of Alaska

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposal.

SUMMARY: The State of Alaska (State) is requesting a delegation of audit and investigation authority from the Minerals Management Service (MMS). This Notice gives members of the public an opportunity to review and comment on the State's proposal.

DATES: Submit written comments on or before July 19, 1999.

ADDRESSES: Mr. Mark Peterson, State and Indian Compliance Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3660, Denver, CO 80225–0165, telephone number (303) 275–7465, fax number (303) 275–7470, e-mail: mark.peterson@mms.gov; or Mr. Matt Rader, Division of Oil and Gas, Department of Natural Resources, State of Alaska, 550 West 7th Avenue, Suite 800, Anchorage, Alaska 99501–3510, telephone number (907) 269–8776, fax number (907) 269–8938, e-mail: matt__rader@dnr.state.ak.us.

SUPPLEMENTARY INFORMATION: Public comments should be submitted to Mr. Mark Peterson, at the address listed in the **ADDRESSES** section.

The State's proposal was received by MMS on May 7, 1999. In accordance with 30 CFR Section 227.101(a)(1) (1998) (30 U.S.C. 1735; 30 U.S.C. 196; Pub. L. 102–154), the State requests that MMS delegate the royalty management functions of conducting audits and investigations. The State requests delegation of these functions for producing Federal oil and gas leases within the State, producing Federal oil and gas leases in the Outer Continental Shelf subject to revenue sharing under 8(g) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337(g), and for other producing solid mineral or geothermal Federal leases within the State. The State does not request delegation of royalty and production reporting functions.

The State requests 100 percent funding of the delegated functions for a 3-year period beginning October 1, 1999, with the option to extend for an additional 3-year period. The State had a previous 205 audit delegation agreement with MMS from January 18, 1985, through September 30, 1987. Therefore, MMS has determined a formal hearing for comments will not be

held under 30 CFR Section 227.105. This Notice serves as the public's opportunity for review and comment on the State's proposal.

The State's proposal can be viewed and printed from the Internet at: http://www.rmp.mms.gov/library/readroom/pubcomm/RMPPubRdg.htm.

A paper copy can be obtained by contacting Mr. Mark Peterson at the address listed above.

Dated: June 11, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–15443 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Official Corps of Discovery II Medal

SUMMARY: This notice establishes the official National Park Service symbol with the incorporating words "Corps of Discovery II: 200 Years to the Future" commemorating the Bicentennial Anniversary of the Lewis and Clark Expedition.

DATES: This action is effective June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Engler, Interim Superintendent, Corps of Discovery II: 200 Years to the Future, Route 3, Box 47, Beatrice, Nebraska 68310, telephone 402–223–3514.

SUPPLEMENTARY INFORMATION: The National Park Service has designated an official National Park Service symbol with the words "Corps of Discovery II: 200 Years to the Future" in honor of the Lewis and Clark Expedition Bicentennial Anniversary, 2003–2006. You may obtain a copy of the image incorporating the words "Corps of Discovery II: 200 Years to the Future" from the Interim Superintendent at the address listed above. Notice is given that whoever manufactures, sells, or possesses this symbol embossed image, or any colorable imitation thereof, or photographs, prints or in any other manner makes or executes any engraving photograph or print, or impression in the likeness of this symbol, or any colorable imitation thereof, without authorization from the United States Department of the Interior is subject to the penalty provisions of Section 701, Title 18 of the United States Code.

Dated: June 4, 1999.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 99–15223 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR Part 778, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, has been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. This information collection was previously approved and assigned clearance number 1029–0034. This notice describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approved or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by July 19, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information for 30 CFR Part 778, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR Part 778, which is 1029–0034.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on January 13, 1999 (64 FR 2231). This notice gave the public 60 days in which to comment on the need for the collection of information, the accuracy of the burden estimate, ways to enhance the information collection, and ways to minimize the burden of respondents.

OSM received one comment from an industry group. Although afforded the opportunity, this commenter did not provide any substantive suggestions regarding the need for the collection, accuracy of the estimated burden, or methods to improve the collection. However, the commenter did state that OMB should disapprove the information collection request. OSM published an Interim Final rule on April 21, 1997 (62 FR 19540), which altered regulatory language at 30 CFR Part 778. The commenter stated that, since OSM did not prepare an information collection package with a notice and comment period "OMB should disapprove the ICs [information collections] contained in the IFR (interim final rule], until such time as OSM publishes the ICs in the **Federal Register** for public comment, as required by the Paperwork Reduction Act (PRA) and OMB regulations."

When it promulgated the IFR on April 21, 1997, OSM explained that the IFR "does not contain collections of information which require approval by [OMB] under [the PRA]. OMB has previously approved the collection activities and assigned clearance numbers. * * *" 62 FR 19450, 19457, 19459 (April 21, 1997). OSM based this statement on the good faith belief that, for PRA purposes, the collections of information contained in the IFR do not represent "material or substantive" modifications to the currently approved collections of information which were associated with the prior ownership and control rules, and therefore, did not require notice and comment from the public, nor OMB approval. (Importantly, the IFR impose no new information requirements on permit applicant's rather, the IFR actually pose less of a burden to applicants, as they require submission of slightly less, though largely the same, information as the prior permit information rule. Indeed, *all* of the information called for in Part 778 of the IFR was covered by the currently valid OMB control number associated with the prior rule.)

Even if the IFR's collections of information were material or substantive, OSM's current renewal effort relative to 30 CFR Part 778 will cure any procedural or technical defects by affording the respondent pool with the same notice and opportunity to comment that would have been provided had OSM submitted the IFR to the PRA's notice and comment procedures; the notice and comment provisions for renews are substantially identical to the provisions for collections for information contained in an interim final rule. 5 CFR 1320.10, 120.12. Furthermore, this renewal package reflects all changes in the IFR from the prior permit information rule, so the respondents will have a full and fair opportunity to comment on the collections of information embodied in the IFR. OSM believes that the collections of information contained in the IFR should in any case remain valid pending OMB's review of the approval package.

As required by the PRA, OSM will seek an additional 30-day comment period regarding this information collection activity upon OSM submission of this clearance request to OMB for review. All interested parties will have another opportunity in which to submit substantive comments on the following information collection activity:

Title: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information—30 CFR 778.

OMB Control Number: 1029–0034.

Summary: Section 507(b) of P.L. 95–87 provides persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property affected, their compliance status and history. This information is used to insure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 420.

Total Annual Burden Hours: 16,261.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to OMB control number 1029–0034 in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240.

Dated: June 14, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–15400 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–811 (Final)]

Drams of One Megabit and Above From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–811 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Taiwan of dynamic random access memory semiconductors (DRAMs) of one megabit and above, provided for in subheadings 8542.13.80 and 8473.30.10 through 8473.30.90 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 28, 1999.

[1] Uncased and cased DRAMs are provided for in subheading 8542.13.80, while DRAM modules are provided for in subheadings 8473.30.10 through 8473.30.90. For Department of Commerce scope language, see 64 FR 28983, May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Carr (202–205–3402), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of DRAMs from Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 22, 1998, by Micron Technology, Inc., Boise, Idaho.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information Under Administrative Protective Order and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested

parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on October 5, 1999, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on October 19, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 8, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 14, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and § 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is October 13, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 26, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 26, 1999. On November 10, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 15, 1999, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § 201.6, § 207.3, and § 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and § 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority

This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 14, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–15439 Filed 6–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–422]

Notice of Investigation

In the Matter of: Certain Two-Handle Centerset Faucets and Escutcheons, and Components Thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 12, 1999, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Moen Incorporated of North Olmsted, Ohio. A supplement to the complaint was filed on May 27, 1999. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain two-handle centerset faucets and escutcheons and components thereof by reason of infringement of U.S. Patent Des. 347,466. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Anne M. Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1998).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 11, 1999, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain two-handle centerset faucets and escutcheons and components thereof by reason of infringement of U.S. Patent Des. 347,466, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Moen Incorporated, 25300 Al Moen Drive, North Olmsted, Ohio 44070.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Foremost International Trading, Inc., 906 Murray Road, East Hanover, NJ. 07936

Hometek International Group, 1755 Park Street, Suite 350, Naperville, Illinois 60563.

Sisco, Inc., 2945 E. Maria Street, Rancho Dominguez, California 90221

Chung Cheng Faucet Co. Ltd., 69 Lane 22 Chang Tin Road, Ting Fan Li, Lu Kang Chang Hua, Hsien, Taiwan

Lota International Co. Ltd., 10/F1 Xiamen Special Economic Zone, Trade Center North Hubin Road, Xiamen, People's Republic of China

(c) Anne M. Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–P, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: June 14, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–15440 Filed 6–16–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Bell Atlantic Corporation et al; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment has been filed with the United States District Court for the District of Columbia in *United States of America* v. *Bell Atlantic Corporation et al.*, Civil Action 99–1119 (LFO). On May 7, 1999, the United States filed a Compliant alleging that the proposed acquisition of GTE Corporation by Bell Atlantic Corporation would lessen competition in the markets for wireless mobile telephone services in 10 major trading areas, and 65 metropolitan statistical areas and rural service areas in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires defendants to divest one of their two wireless telephone businesses in each market where these businesses overlap geographically. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW, and at the Office of the Clerk of the United States District Court for the District of Columbia.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, Department of Justice, 1401 H Street, NW, Room 8000, Washington, DC 20530 (telephone: (202) 514–5621).

Constance K. Robinson,

Director of Operations and Merger Enforcement.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Bell Atlantic Corporation and GTE Corporation, Defendants.

[Civil No.: 1:99CV01119; Filed: 5/7/99]

Judge Louis F. Oberdorfer

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in this Court.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) In the event plaintiff withdraws its consent, as provided in paragraph (2) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this

Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: May 7, 1999.

For Plaintiff United States of America:

Joel I. Klein,

Assistant Attorney General.

Donald J. Russell,

Chief, Telecommunications Task Force.

A. Douglas Melamed,

Principal Deputy Assistant Attorney General.

Constance K. Robinson,

Director of Operations and Merger Enforcement.

Laury Bobbish,

Assistant Chief, Telecommunications Task Force.

Hillary B. Burchuk, D.C. Bar No. 366755,

Lawrence M. Frankel, D.C. Bar No. 441532,

J. Philip Sauntry, Jr., D.C. Bar No. 142828.

Attorneys, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530, (202) 514–5621.

Date Signed: May 6, 1999.

For Bell Atlantic Corporation:

John Thorne, D.C. Bar No. 421351

Bell Atlantic Corporation, 1320 North Courthouse Road, Eighth Floor, Arlington, Virginia 22201, (703) 974–1600.

Date Signed: May 6, 1999.

For GTE Corporation:

Steven G. Bradbury, D.C. Bar No. 416430

Kirkland & Ellis, 655 15th Street, NW., Washington, DC 20005, (202) 879–5000.

Date Signed: May 6, 1999.

Stipulation Approved For Filing Done this ____ day of _____, 1999

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Bell Atlantic Corporation and GTE Corporation, Defendants.

[Civil No.: 1:99CV01119; Filed: 5/7/99]

Judge Louis F. Oberdorfer

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on May 7, 1999;

And Whereas, plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication on any issue of fact or law;

And Whereas, entry of this Final Judgment does not constitute any evidence against or an admission by any party with respect to any issue of law or fact;

And Whereas, defendants have further consented to be bound by the provisions of the Final Judgment pending its approval by the Court;

And Whereas, plaintiff the United States believes that entry of this Final Judgment is necessary to protect competition in markets for mobile wireless telecommunications services in Alabama, Florida, Illinois, Indiana, New Mexico, South Carolina, Texas, Virginia and Wisconsin;

And Whereas, the essence of this Final Judgment is prompt and certain divestiture of certain wireless businesses that would otherwise be commonly owned and in many cases controlled, including their licenses and all relevant assets of the wireless businesses, and the imposition of related injunctive relief to ensure that competition is not substantially lessened;

And Whereas, plaintiff the United States requires that defendants make certain divestitures of such licenses and assets for the purpose of ensuring that competition is not substantially lessened in any relevant market for mobile wireless telecommunications services in Alabama, Florida, Illinois, Indiana, New Mexico, South Carolina, Texas, Virginia or Wisconsin;

And Whereas, defendants have represented to plaintiff that the divestitures ordered herein can and will be made and that defendants will not raise any claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained herein below;

Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended.

II Definitions

A. "Bell Atlantic" means Bell Atlantic Corporation, a corporation with its headquarters in New York City, New York and includes its successors and assigns, its subsidiaries and affiliates, and its directors, officers, managers, agents and employees acting for or on behalf of any of the foregoing entities.

B. "Bell Atlantic/GTE Merger" means the merger of Bell Atlantic and GTE, as detailed in the Agreement and Plan of Merger entered into by Bell Atlantic and GTE on July 28, 1998.

C. "GTE" means GTE Corporation, a corporation with its headquarters in Irving, Texas and includes its successors and assigns, its subsidiaries and affiliates, and its directors, officers, managers, agents and employees acting for or on behalf of any of the foregoing entities.

D. "Overlapping Wireless Markets" means the following Metropolitan Statistical Areas ("MSA"), Major Trading Areas ("MTA"), and Rural Service Areas ("RSA") used to define cellular and PCS license areas by the Federal Communications Commission ("FCC"), in which, as of the date of the filing of the Complaint in this case, Bell Atlantic, by virtue of its partnership interest in PCS PrimeCo, L.P. ("PrimeCo"), held an interest in PCS businesses, and GTE held, or has plans to acquire,[1] an ownership interest in cellular businesses which serve the following MSAs and RSAs that geographically overlap with the applicable PrimeCo MTA, as indicated:

I. PCS/Cellular Overlap Areas

A. Jacksonville MTA
1. Jacksonville MSA
2. Florida 5–Putman RSA

B. Miami-Fort Lauderdale MTA
1. Fort Myers MSA
2. Florida 1—Collier (B1) RSA
3. Florida 2—Glades (B1) RSA
4. Florida 3—Hardee RSA
5. Florida 11—Monroe (B2) RSA

C. Tampa-St. Petersburg-Orlando MTA
1. Tampa-St. Petersburg MSA
2. Lakeland-Winter Haven MSA
3. Sarasota MTA
4. Bradenton MSA
5. Florida 2—Glades (B1) RSA
6. Florida 3—Hardee RSA
7. Florida 4—Citrus (B1) RSA

D. New Orleans-Baton Rouge MTA
1. Mobile, AL MSA
2. Pensacola, FL MSA

E. Chicago MTA
1. Aurora-Elgin, IL MSA
2. Bloomington-Normal, IL MSA
3. Champaign-Urbana-Rantoul, IL MSA

[1] Pursuant to an April 2, 1999 purchase agreement, GTE plans to acquire the following cellular systems from Ameritech Mobile Phone Service of Illinois, Inc., and Ameritech Mobile Phone Service of Chicago, Inc.: Aurora-Elgin, IL MSA, Bloomington-Normal, IL MSA, Champaign-Urbana-Rantoul, IL MSA, Chicago, IL MSA, Decatur, IL MSA, Gary-Hammond-East Chicago, IN MSA, Joliet, IL MSA, Kankakee, IL MSA, Springfield, IL MSA, Illinois 2—Bureau (B3) RSA, Illinois 4—Adams (B1) RSA, Illinois 5—Mason (B2) RSA, Illinois 6—Montgomery RSA, Illinois 7—Vermilion RSA, and Indiana 1—Newton (B2) RSA.

4. Chicago, IL MSA
5. Decatur, IL MSA
6. Fort Wayne, IN MSA
7. Gary-Hammond-East Chicago, IN MSA
8. Joliet, IL MSA
9. Kankakee, IL MSA
10. Rockford, IL MSA
11. Springfield, IL MSA
12. Illinois 1—Jo Daviess RSA
13. Illinois 2—Bureau (b1) RSA
14. Illinois 2—Bureau (B3) RSA
15. Illinois 3—Mercer RSA
16. Illinois 4—Adams (B1) RSA
17. Illinois 5—Mason (B2) RSA
18. Illinois 6—Montgomery RSA
19. Illinois 7—Vermilion RSA
20. Indiana 1—Newton (B1) RSA
21. Indiana 1—Newton (B2) RSA
22. Indiana 3—Huntington RSA

F. Dallas-Fort Worth MTA
1. Dallas-Fort Worth MSA
2. Austin MSA
3. Sherman-Denison MSA
4. Texas 10—Navarro (B3) RSA
5. Texas 11—Cherokee (B1) RSA
6. Texas 16—Burleson RSA

G. Houston MTA
1. Houston MSA
2. Beaumont-Port Arthur MSA
3. Galveston MSA
4. Bryan-College Station MSA
5. Victoria MSA
6. Texas 10—Navarro (B3) RSA
7. Texas 11—Cherokee (B1) RSA
8. Texas 16—Burleson RSA
9. Texas 17—Newton RSA
10. Texas 20—Wilson (B2) RSA
11. Texas 21—Chambers RSA

H. San Antonio MTA
1. San Antonio MSA
2. Texas 16—Burleson RSA
3. Texas 20—Wilson (B2) RSA

I. Richmond-Norfolk MTA
1. Norfolk-Virginia Beach-Portsmouth MSA
2. Richmond MSA
3. Newport News-Hampton MSA
4. Petersburg-Colonial Heights MSA
5. Virginia 7-Buckingham (B1) RSA
6. Virginia 8-Amelia RSA
7. Virginia 9-Greensville RSA
8. Virginia 11-Madison (B1) RSA
9. Virginia 12-Caroline (B1) RSA
10. Virginia 12-Carolina (B2) RSA

J. Milwaukee MTA
1. Wisconsin 8-Vernon RSA

II. Cellular MSA Overlap Areas

A. Greenville, SC MSA
B. Anderson, SC MSA
C. El Paso, TX MSA
D. Las Cruces, NM MSA

E. "Wireless System Assets" means, for each wireless business to be divested under this Final Judgment, all types of assets, tangible an intangible, used by defendants in the operation of each of the wireless businesses to be divested (including the provision of long distance telecommunications services for wireless calls). "Wireless System Assets" shall be construed broadly to accomplish the complete divestitures of the entire business of one of the two wireless systems in each of the Overlapping Wireless Markets required by this Final Judgment and to ensure that the divested wireless businesses remain viable, ongoing businesses. With respect to each overlap in the Overlapping Wireless Markets, the Wireless System Assets to be divested shall be either those in which Bell Atlantic has an interest or those in which GTE has or will acquire an interest, but not both. These divestitures of the Wireless System Assets as defined in this Section II.E shall be accomplished by: (i) Transferring to the purchaser the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of either defendant's overall wireless business that must be retained to continue the existing operations of the wireless properties defendants are not required to divest, and that either are not capable of being divided between the divested wireless businesses and those that are not divested or are assets that the divesting defendant and the purchaser(s) agree shall not be divided); and (ii) granting to the purchaser(s) an option to obtain a non-exclusive, transferable license from defendants for a reasonable period at the election of the purchaser to use any of the divesting defendant's assets used in the operation of the wireless business being divested, so as to enable the purchaser to continue to operate the divested wireless businesses without impairment, where those assets are not subject to complete transfer to the purchaser under (i). Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, inventory, office furniture, fixed assets and furnishing, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, customer support and billing systems, interfaces with other service providers, business and customer records and information, customer lists, credit records, accounts, and historic and current business plans, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendants supply to their own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks (except for trademarks, trade names and service marks containing "Airbridge," "AmericaChoice," "Bell Atlantic Mobile," "Cellular One," Conversation Card," DigitalChoice," "EasternChoice," "GTE," "HomeChoice," "MetroMobile," "Mobilnet," "PCS Now," "PCS Ultra," "PrimeCo," "Welcome to the United State of America," and "WesternChoice") or other intellectual property, including all intellectual property rights under third party licenses that are capable of being transferred to a purchaser either in their entirety, for assets described above under (i), or through a license obtained through or from the divesting defendant, for assets described above under (ii). Defendants shall identify in a schedule submitted to plaintiff and filed with the Court, as expeditiously as possible following the filing of the Complaint in this case and in any event prior to any divestitures and before the approval by the Court of this Final Judgment, any intellectual property rights under third party licenses that are used by the wireless businesses being divested but that defendants could not transfer to a purchaser entirely or by license without third party consent, and the specific reasons why such consent is necessary and how such consent would be obtained for each asset.

1. In the event that defendants elect to divest Bell Atlantic's interest in a PCS business in one of the PCS/Cellular Overlap Areas, defendants may retain up to 10 MHz of broadband PCS spectrum within that PCS/Cellular Overlap Area upon completion of the divestiture of the Wireless System Assets.

2. In the event that defendants elect to divest Bell Atlantic's interest in a PCS business in one of the PCS/Cellular Overlap Areas, defendants, at least 90 calendar days prior to the consummation of the Bell Atlantic/GTE Merger, may request approval from plaintiff to partition the PCS license along basic Trading Area ("BTA") geographic boundaries and retain assets in one or more specified non-overlapping BTAs. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the assets to be sold in the non-overlapping BTAs are not needed to assure the competitive viability of the divested business in the remainder of the MTA, and that the purchaser of the Wireless System Assets in the remainder of the MTA will be able to operate the divested PCS business as a fully competitive entity.

3. In a PCS/Cellular Overlap Area where GTE holds a non-controlling minority interest in an overlapping cellular business, defendants, at least 90 calendar days prior to the consummation of the Bell Atlantic/GTE

Merger, may request approval from plaintiff to retain both the PCS business and GTE's interest in such overlapping cellular business. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the retention of a non-controlling minority interest will be entirely passive and will not significantly diminish competition.

III. Applicability and Effect

A. The provisions of this Final Judgment shall be applicable to each of defendants, its affiliates, subsidiaries, successors, and assigns, and its directors, officers, managers, agents, employees, attorneys, and shall also be applicable to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition to an Interim Party, which shall be defined to mean any person other than a purchaser approved by plaintiff pursuant to Section IV.C, of all or substantially all of their assets, or of a lesser business unit containing the Wireless System Assets required to be divested by this Final Judgment, that the Interim Party agrees to be bound by the provisions of this Final Judgment, and shall also require that any purchaser of the Wireless System Assets agree to be bound by Section X of this Final Judgment.

IV. Divestiture of Wireless Interests

A. Defendants Bell Atlantic and GTE shall divest themselves of the Wireless System Assets in each of the Overlapping Wireless Markets, including both any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control, to a purchaser or purchasers acceptable to plaintiff in its sole discretion, or to a trustee designated pursuant to Section V of this Final Judgment, in accordance with the following schedule:

1. On or before consummation of the Bell Atlantic/GTE Merger, defendants shall divest Wireless System Assets in the Cellular MSA Overlap Areas;

2. If Bell Atlantic has acquired 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas more than ninety (90) calendar days prior to consummation of the Bell Atlantic/GTE Merger, defendants shall divest the Wireless System Assets in the PCS/Cellular Overlap Areas on or before consummation of the Bell Atlantic/GTE Merger;

3. If Bell Atlantic has not acquired, more than ninety (90) calendar days prior to consummation of the Bell Atlantic/GTE Merger, 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas:

(a) defendants will submit to plaintiff, on or before consummation of the Bell Atlantic/GTE Merger, a definitive Divestiture List identifying the specific Wireless System Assets in each of the PCS/Cellular Overlap Areas that will be divested;

(b) the cellular MSA and RSA businesses on the Divestiture List shall be divested within ninety (90) calendar days after consummation of the Bell Atlantic/GTE Merger; except that if Bell Atlantic acquires 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas within the ninety (90) calendar day period prior to consummation of the Bell Atlantic/GTE Merger, the cellular MSA and RSA businesses on the Divestiture List shall be divested on or before consummation of the Bell Atlantic/GTE Merger;

(c) the PCS MTA businesses on the Divestiture List shall be divested within 90 calendar days after Bell Atlantic acquires 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas, but in no event later than one hundred eighty (180) calendar days after consummation of the Bell Atlantic/GTE Merger.

B. Defendants agree to use their best efforts to accomplish the divestitures set forth in this Final Judgment and to seek all necessary regulatory approvals as expeditiously as possible. The divestitures carried out under the terms of this decree shall also be conducted in compliance with the applicable rules of the FCC, including 47 CFR 20.6 (spectrum aggregation) and 47 CFR 22.942 (cellular cross-ownership), or any waiver of such rules or other authorization granted by the FCC. Authorization by the FCC to conduct divestiture of a cellular business in a particular manner will not modify any of the requirements of this decree.

C. Unless plaintiff otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of the Final Judgment, shall be accomplished by (1) divesting all of the Wireless System Assets in any individual Overlapping Wireless Market entirely to a single purchaser (but Wireless System Assets used by GTE in the operation of its cellular business in different Overlapping Wireless Markets may be divested to different purchasers), and (2) selling or otherwise conveying the Wireless System Assets to the purchaser(s) in such a way as to satisfy plaintiff, in its sole discretion, that each wireless business can and will be used by the purchaser(s) as part of a viable, ongoing business engaged in the provision of wireless mobile telephone service. The divestitures pursuant to this Final Judgment shall be made to one or more purchasers for whom it is demonstrated to plaintiff's sole satisfaction that (1) the purchaser has the capability and intent of competing effectively in the provision of wireless mobile telephone service using the Wireless System Assets, (2) the purchaser has the managerial, operational and financial capability to compete effectively in the provision of wireless mobile telephone service using the Wireless System Assets, and (3) none of the terms of any agreement between the purchaser and either of defendants shall give defendants the ability unreasonably (i) To raise the purchaser's costs, (ii) to lower the purchaser's efficiency, (iii) to limit any line of business which a purchaser may choose to pursue using the Wireless System Assets (including, but not limited to, entry into local telecommunications services on a resale of facilities basis or long distance telecommunications services on a resale or facilities basis), or otherwise to interfere with the ability of the purchaser to compete effectively.

D. If they have not already done so, defendants shall make known the availability of the Wireless System Assets in each of the Overlapping Wireless Markets by usual and customary means, sufficiently in advance of the time of consummation of the Bell Atlantic/GTE Merger reasonably to enable the required divestitures to be accomplished according to the schedule outlined herein. Defendants shall inform any person making an inquiry regarding a possible purchase of the Wireless System Assets that the sale is being made pursuant to the requirements of this Final Judgment, as well as the rules of the FCC, and shall provide such person with a copy of the Final Judgment.

E. Defendants shall offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, access to personnel, the ability to inspect the Wireless System Assets, and all information and any financial, operational, or other documents customarily provided as part of a due diligence process, including all

information relevant to the sale and to the areas of business in which the cellular business has been engaged or has considered entering, except documents subject to attorney-client or work product privileges, or third party intellectual property that defendants are precluded by contract from disclosing and that has been identified in a schedule pursuant to Section II.E. Defendants shall make such information available to the plaintiff at the same time that such information is made available to any other person.

F. Defendants shall not interfere with any negotiations by any purchaser to retain any employees who work or have worked since July 29, 1998 (other than solely on a temporary assignment basis from another part of Bell Atlantic or GTE) with, or whose principal responsibility relates to, the divested Wireless System Assets.

G. To the extent that the wireless businesses to be divested use intellectual property, as required to be identified by Section II.E, that cannot be transferred or assigned without the consent of the licensor or other third parties, defendants shall cooperate with the purchaser(s) and trustee to seek to obtain those consents.

H. Defendant shall preserve all records of all efforts made to preserve and divest any or all of the Wireless System Assets required to be divested until the termination of this Final Judgment.

V. Appointment of Trustee

A. If defendants have not divested all of the Wireless System Assets required to be divested in accordance with the schedule in Section IV to a purchaser or purchasers that have been approved by plaintiff pursuant to Section IV.C, then:

1. Defendants shall identify to plaintiff in writing the remaining Wireless System Assets to be divested in the Overlapping Wireless Markets, and this written notification shall also be provided to the trustee promptly upon his or her appointment by the Court.

2. The Court shall, on application of plaintiff, appoint a trustee selected by plaintiff, who will be responsible for (a) Accomplishing a divestiture of all Wireless System Assets transferred to the trustee from defendants, in accordance with the terms of this Final Judgment, to a purchaser or purchasers approved by plaintiff under Section IV.C, and (b) exercising the responsibilities of the licensee and controlling and operating the transferred Wireless System Assets to ensure that the wireless businesses remain ongoing, economically viable competitors in the provision of mobile wireless telecommunications services in the Overlapping Wireless Markets, until they are divested to a purchaser or purchasers, and the trustee shall agree to be bound by this Final Judgment;

3. Defendants shall submit a form of trust agreement ("Trust Agreement") to plaintiff, which must be consistent with the terms of this Final Judgment and which must have received approval by plaintiff, who shall communicate to defendants within ten (10) business days approval or disapproval of that form; and

4. After obtaining any necessary approvals from the FCC for the transfer of control of the licenses of the remaining Wireless System Assets to the trustee, defendants shall irrevocably divest the remaining Wireless System Assets to the trustee, who will own such assets (or own the stock of the entity owning such assets, if divestiture is be effected by creation of such an entity for sale to purchser(s)) and control such assets, subject to the terms of approved Trust Agreement.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the wireless business(es) to be divested, which shall be done within the time periods set forth in this Final Judgment. Those assets shall be the Wireless System Assets as designated by defendants as set forth in Section V.A.1 for the Overlapping Wireless Markets. In addition, notwithstanding any provision to the contrary, plaintiff may, in its sole discretion, require defendants to include additional assets that substantially relate to the wireless mobile telephone business in the Wireless System Assets to be divested if it would facilitate a prompt divestiture to an acceptable purchaser. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment. Subject to Section V.C of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture and in the management of the Wireless System Assets transferred to the trustee, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiff in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by the defendants must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall sever at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the wireless business(es) sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested wireless business(es) and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the wireless business(es) to be divested, and defendants shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. As required and limited by Sections IV.E and F of this Final Judgment, defendants shall permit prospective purchaser(s) of the Wireless System Assets to have reasonable access to personnel and to make such inspection of the Wireless System Assets to be sold and any and all financial, operational, or other documents and other information as may be relevant to the divestiture required by this final Judgment.

E. After being appointed and until the divestiture of the Wireless System Assets is complete, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that, to the extent such reports

contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Wireless System Assets to be sold, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all effects made to divest the Wireless System Assets.

F. The Trustee shall divest the Wireless System Assets in each of the PCS/Cellular Overlap Areas to a purchaser or purchasers acceptable to plaintiff in its sole discretion, as required in Section IV.C of this Final Judgment, no later than one hundred and eighty (180) calendar days after the Wireless Systems Assets are transferred to a trustee in accordance with the schedule outlined in Section IV; provided however, that if applications have been filed with the FCC within the one hundred eighty day period seeking approval to assign or transfer licenses to the purchaser(s) of the Wireless System Assets but approval of such applications has not been granted before the end of the one hundred eighty day period, the period shall be extended with respect to the divestiture of those Wireless System Assets for which final FCC approval has not been granted until five (5) days after such approval is received.

G. If the trustee has not accomplished the divestiture of all of the Wireless System Assets within the time specified for completion of divestiture to a purchaser or purchasers under Section V.F. of this Final Judgment, the trustee thereupon shall file promptly with this Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations; provided, however, that, to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such order as it deems appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period agreed to by plaintiff.

H. After defendants transfer the Wireless System Assets to the trustee, and until those Wireless System Assets have been divested to a purchaser or purchasers approved by plaintiff pursuant to Section IV.C, the trustee shall have sole and complete authority to manage and operate the Wireless System Assets and to exercise the responsibilities of the licensee, and shall not be subject to any control or direction by defendants. Defendants shall not retain any economic interest in the Wireless System Assets transferred to the trustee, apart from the right to receive the proceeds of the sale or other disposition of the Wireless System Assets. The trustee shall operate the wireless business(es) as a separate and independent business entity from Bell Atlantic or GTE, with sole control over operations, marketing and sales. Bell Atlantic and GTE shall not communicate with, or attempt to influence the business decisions of, the trustee concerning the operation and management of the wireless businesses, and shall not communicate with the trustee concerning the divestiture of the Wireless System Assets or take any action to influence, interfere with, or impede the trustee's accomplishment of the divestitures required by this Final Judgment, except that defendants may communicate with the trustee to the extent necessary for defendants to comply with this Final Judgment and to provide the trustee, if requested to do so, with whatever resources or cooperation may be required to complete the divestitures of the Wireless System Assets and to carry out the requirements of this Final Judgment. In no event shall defendants provide to, or receive from, the trustee or the wireless businesses under the trustee's control any non-public or competitively sensitive marketing, sales, or pricing information relating to their respective mobile wireless telecommunications service businesses.

VI. Notification

A. Within two (2) business days following execution of a binding agreement to effect, in whole or in part, any proposed divestiture required by this Final Judgment, whichever defendant is divesting the Wireless System Assets, or the trustee if the trustee is divesting the Wireless System Assets, shall notify plaintiff of the proposed divestiture. If the trustee is responsible for the divestiture, the trustee shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who theretofore offered to, or expressed an interest in or a desire to, acquire any ownership interest in the Wireless System Assets that are the subject of the binding agreement, together with full details of same.

B. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser(s), any other third party, or the trustee (if applicable), additional information concerning the proposed divestiture and the proposed purchaser(s) or any other potential purchaser(s). Defendants and the trustee shall furnish any such additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice, or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed purchaser(s), any third party, or the trustee, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not plaintiff objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated subject only to defendants' limited right to object to the sale under Section V.B of this Final Judgment. Absent written notice that plaintiff does not object to the proposed purchaser(s) or in the event of an objection by plaintiff, a divestiture shall not be consummated. Upon objection by a defendant under the proviso of Section V.B, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until all divestitures have been completed, defendants shall deliver to plaintiff an affidavit as to the fact and manner of defendants' compliance with this Final Judgment. With respect to the period preceding the consummation of the Bell Atlantic/GTE Merger, each such affidavit shall (i) Include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any or all of the Wireless System Assets required to be divested, (ii) describe in detail each contact with any such person during that period, and (iii) include a summary of the efforts that defendants have made to solicit a purchaser(s) for the Wireless System Assets to be divested in the Overlapping Wireless Markets pursuant to this Final Judgment and to provide required information to prospective purchasers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to plaintiff an affidavit which describes in reasonable detail at actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve the Wireless System Assets to be divested pursuant to this Final Judgment. Defendants shall deliver to plaintiff another affidavit describing any changes to the efforts and actions outlines in defendants' earlier affidavit filed pursuant to Section VII.B of this Final Judgment within fifteen (15) calendar days after the change is implemented.

VIII. Financing

Defendants shall not finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

IX. Hold Separate Order

A. Until accomplishment of the divestitures of the Wireless System Assets to purchase(s) approved by plaintiff pursuant to Section IV.C, each defendant shall take all steps necessary to ensure that each of the wireless businesses that it owns or operates in the Overlapping Wireless Markets shall continue to be operated as a separate, independent, ongoing, economically viable and active competitor to the other mobile wireless telecommunications providers operating in the same license area; and that except as necessary to comply with this Final Judgment, the operation of said wireless businesses (including the performance of decision-making functions relating to marketing and pricing) will be kept separate and apart from, and not influenced by, the operation of the other wireless business, and the books, records, and competitively sensitive sales, marketing, and pricing information associated with said wireless businesses will be kept separate and apart from the books, records, and competitively sensitive sales, marketing, and pricing information associated with the other wireless business; provided that defendants may continue to use any trademarks, trade names or service marks used in the operation of such wireless businesses prior to the consummation of the Bell Atlantic/GTE Merger.

B. Until the Wireless System Assets in each Overlapping Wireless Market have been divested to purchaser(s) approved by plaintiff, or transferred to a trustee pursuant to Section V of this Final Judgment, each defendant shall in accordance with past practices, with respect to each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets:

1. Use all reasonable efforts to maintain and increase sales of wireless mobile telephone services, and maintain and increase promotional, advertising, sales, technical assistance, and marketing support for the mobile telephone services sold by the wireless businesses;

2. Take all steps necessary to ensure that each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets is fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules;

3. Provide and maintain sufficient working capital and lines and sources of credit to maintain the Wireless System Assets as viable ongoing businesses;

4. Not remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any asset of each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets, other than in the ordinary course of business, except as approved by plaintiff;

5. Maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of each month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit and loss of each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets;

6. Be prohibited from terminating, transferring, or altering to the detriment of any employees who work with each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets as of the date of consummation of the Bell Atlantic/GTE Merger, any current employment or salary agreements, except (a) in the ordinary course of business, (b) for transfer bids initiated by employees pursuant to defendants' regular, established job posting policies, (c) for an individual who has written offer of employment from a third party for a like position, or (d) as necessary to promote accomplishment of defendants' obligations under this Final Judgment; and

7. Take no action that would impede in any way or jeopardize the sale of each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets.

C. On or before the consummation of the Bell Atlantic/GTE Merger, defendants shall assign complete managerial responsibility over each wireless business that they have an ownership interest in or operate in the Overlapping Wireless Markets to a specified manager who shall not participate, during the period of such responsibility, in the management of any of the defendants' other businesses.

D. Defendants shall, during the period before all Wireless System Assets have been divested to a purchaser(s) or transferred to the trustee pursuant to Section V of this Final Judgment, each appoint a person or persons to oversee the Wireless System Assets owned by that defendant, who will be responsible for defendants' compliance with the requirements of Sections VII and IX of this Final Judgment. Such person(s) shall not be an officer, director, manager, employee, or agent of the other defendant.

X. Compliance Inspection

For the purposes of determining or securing compliance of defendants with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant made to its principal office, shall be permitted without restraint or interference from defendants:

1. To have access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, and to take sworn testimony from the officers, directors, employees, or agents of defendants, who may have counsel present, relating to any matters contained in this Final Judgment.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the

Antitrust Division, made to defendants at their principal offices, defendants shall submit writ ten reports, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this Section X or Sections VI and VII shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, or to the FCC (pursuant to a customary protective order or a waiver of confidentiality by defendants), except in the course of legal proceedings to which the United States is a party (including a grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and mark each pertinent page of such material, "Subject to claim of protection under rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days' notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Further Provisions and Termination

A. The entry of this judgment is in the public interest.

B. Unless this Court grants an extension, this Final Judgment shall expire on the tenth anniversary of the date of its entry.

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Bell Atlantic Corporation and GTE Corporation, Defendants.

[Civil No.: 99–119 (LFO); Filed: May 7, 1999]

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h)("APPA"), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on May 7, 1999, alleging that the proposed acquisition of GTE Corporation ("GTE") by Bell Atlantic Corporation ("Bell Atlantic") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18 by lessening competition in the markets for wireless mobile telephone services in 10 major trading areas ("MTAs"), 65 metropolitan statistical areas ("MSAs") and rural service areas ("RSAs") in Florida, Alabama, Illinois, Indiana, Texas, Virginia, Wisconsin, New Mexico, and South Carolina. In the 10 MTAs, Bell Atlantic has a 50% interest in PCS PrimeCo, L.P. ("PrimeCo"), a firm that provides personal communications services ("PCS") in 61 MSAs and RSAs where cellular mobile telephone services are provided by GTE, or by a firm that GTE has an interest in or will acquire. In addition, this acquisition affects four additional MSAs where competing cellular mobile wireless telephone businesses are owned in whole or in part by Bell Atlantic and GTE. These areas are identified in the Complaint as the "Overlapping Wireless Markets."

Shortly before the Complaint in this matter was filed the United States and defendants reached agreement on the terms of a proposed Final Judgment, which requires Bell Atlantic and GTE to divest one of the wireless telephone businesses in each of the Overlapping Wireless Markets. In each of the Overlapping Wireless Markets, defendants can choose which wireless business to divest. The proposed Final Judgment also contains provisions, explained below, designed to minimize any risk of competitive harm that otherwise might arise pending completion of the divestiture. The proposed Final Judgment and a Stipulation by plaintiff and defendants consenting to its entry were filed simultaneously with the Complaint.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 ("APPA"). Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. The United States and defendants have also stipulated that defendants will comply with the terms of the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the Final Judgment by the Court. Should the Court decline to enter the Final Judgment, defendants have also committed to continue to abide by its requirements until the expiration of time for any appeals of such ruling.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Bell Atlantic is one of the remaining five Regional Bell Operating Companies ("RBOCs") created in 1984 by the consent decree settling the United States' antitrust case against American Telephone & Telegraph Co. GTE is the largest non-RBOC local telephone operating company in the United States. Bell Atlantic and GTE each provide local exchange services in distinct regions, and they also provide wireless mobile telephone services, including cellular mobile telephone services and PCS, both within and outside of their local exchange service regions. Bell Atlantic is a 50% partner in PrimeCo, a firm that provides wireless mobile telephone services in many areas of the country.

Bell Atlantic, with headquarters in New York City, New York, is one of the largest RBOCs in the United States, with approximately 42 million total local telephone access lines. In 1998, Bell Atlantic had revenues in excess of $31 billion. Bell Atlantic provides local telephone services to retail customers in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, as well as cellular mobile telephone services in those states. Bell Atlantic also provides cellular mobile telephone services in some areas outside its local exchange service region, including areas within the states of Arizona, Georgia, North Carolina, New Mexico, South Carolina, and Texas. Through its 50% partnership in PrimeCo, Bell Atlantic provides wireless service in the states of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Mississippi, New Mexico, North Carolina, Ohio, Oklahoma, Texas, Virginia, and Wisconsin. Bell Atlantic is the nation's fourth largest wireless mobile telephone service provider, with about 6.6 million subscribers nationwide.

GTE, with headquarters in Irving, Texas, is the largest non-RBOC local telephone company in the United States, with over 23 million total local telephone access lines. In 1998, GTE had revenues in excess of $25 billion. GTE provides local telephone service to retail customers in Alabama, Alaska, Arizona, Arkansas, California, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin, and it also provides wireless mobile telephone service in most of these states. GTE is a major wireless mobile telephone service provider with about 4.8 million subscribers nationwide. GTE also has entered in to an agreement, dated April 2, 1999, to acquire certain cellular mobile telephone businesses from Ameritech Mobile Phone Service of Illinois, Inc., and Ameritech Mobile Phone Services of Chicago, Inc., ("Ameritech") for $3.27 billion, which would make GTE a provider of cellular mobile telephone services in additional areas in Illinois and Indiana. The acquisition of the Ameritech cellular businesses would add about 1.7 million subscribers to GTE's total number of wireless subscribers nationwide.

On July 28, 1998, Bell Atlantic and GTE entered into a merger agreement whereby the two firms would merge in a transaction valued at approximately $53 billion dollars at the time of the agreement. If this transaction is consummated, the combined total of Bell Atlantic's and GTE's cellular and other wireless mobile telephone service subscribers, absent divestitures, would be 13.1 million, including the number of subscribers GTE would receive from its acquisition of Ameritech cellular business.

B. Wireless Mobile Telephone Services

Wireless mobile telephone services permit users to make and receive telephone calls, using radio transmissions, while traveling by car or by other means. The mobility afforded by this service is a valuable feature to consumers, and cellular and other wireless mobile telephone services are commonly priced at a substantial premium above landline services. In order to provide this capability, wireless carriers must deploy an extensive network of switches and radio transmitters and receivers, and interconnect this network with the networks of local and long distance landline carriers, and with the networks of other wireless carriers. In 1998, revenues from the sale of wireless mobile telephone services totaled approximately $30 billion in the United States.

Initially, wireless mobile telephone services were provided principally by two cellular systems in each MSA and RSA license area. Cellular licenses were awarded by the Federal Communications Commission ("FCC") beginning in the early 1980s, within any given MSA or RSA.[1] Providers of Specialized Mobile Radio ("SMR") services typically were also authorized to operate with some additional spectrum in these areas, including the Overlapping Wireless Markets.

In 1995, the FCC allocated (and subsequently issued licenses for) additional spectrum for the provision of PCS, a type of wireless telephone service that includes wireless mobile telephone services comparable to those offered by cellular carriers. In 1996 one SMR spectrum licensee began to use its SMR spectrum to offer wireless mobile telephone services, comparable to that offered by cellular providers and bundled with dispatch services, in a number of areas including some of the Overlapping Wireless Markets. While the areas for which PCS providers are licensed (MTAs and basic trading areas ("BTAs")) differ somewhat from the cellular MSAs and RSAs, they generally overlap with them. In many areas, including most of the Overlapping Wireless Markets, not all of the PCS license holders have started to offer services or even begun to construct the facilities necessary to begin offering service. The PCS providers have tended to enter in the largest cities first, entering in smaller markets only later and not on as wide a scale. Moreover, even in those areas where one or more PCS providers have constructed their networks and have started to offer service, including the Overlapping Wireless Markets, the incumbent cellular providers, such as Bell Atlantic and GTE, still typically have substantially larger market shares than the new entrants.

[1] 25 MHz of spectrum was allocated to each cellular system in an MSA or RSA. MSAs are the 306 urbanized areas in the United States, defined by the federal government, and used by the FCC to define the license areas for urban cellular systems. RSAs are the 428 areas defined by the FCC used to define the license areas for rural cellular systems outside of MSAs.

C. Anticompetitive Consequences of the Proposed Acquisition

Bell Atlantic and GTE, or firms in which they have an interest, are or will be competing providers of wireless mobile telephone services in 65 cellular license areas in nine states. These areas are referred to in the Complaint as follows:

I. PCS/Cellular Overlap Areas

A. Jacksonville MTA
1. Jacksonville MSA
2. Florida 5—Putnam RSA

B. Miami-Fort Lauderdale MTA
1. Fort Myers MSA
2. Florida 1—Collier (B1) RSA
3. Florida 2—Glades (B1) RSA
4. Florida 3—Hardee RSA
5. Florida 11—Monroe (B2) RSA

C. Tampa-St. Petersburg-Orlando MTA
1. Tampa-St. Petersburg MSA
2. Lakeland-Winter Haven MSA
3. Sarasota MSA
4. Bradenton MSA
5. Florida 2—Glades (B1) RSA
6. Florida 3—Hardee RSA
7. Florida 4—Citrus (B1) RSA

D. New Orleans-Baton Rouge MTA
1. Mobile, AL MSA
2. Pensacola, FL MSA

E. Chicago MTA
1. Aurora-Elgin, IL MSA
2. Bloomington-Normal, IL MSA
3. Champaign-Urbana-Rantoul, IL MSA
4. Chicago, IL MSA
5. Decatur, IL MSA
6. Fort Wayne, IN MSA
7. Gary-Hammond-East Chicago, IN MSA
8. Joliet, IL MSA
9. Kankakee, IL MSA
10. Rockford, IL MSA
11. Springfield, IL MSA
12. Illinois 1—Jo Daviess RSA
13. Illinois 2—Bureau (B1) RSA
14. Illinois 2—Bureau (B3) RSA
15. Illinois 3—Mercer RSA
16. Illinois 4—Adams (B1) RSA
17. Illinois 5—Mason (B2) RSA
18. Illinois 6—Montgomery RSA
19. Illinois 7—Vermilion RSA
20. Indiana 1—Newton (B1) RSA
21. Indiana 1—Newton (B2) RSA
22. Indiana 3—Huntington RSA

F. Dallas-Fort Worth MTA
1. Dallas-Fort Worth MSA
2. Austin MSA
3. Sherman-Denison MSA
4. Texas 10—Navarro (B3) RSA
5. Texas 11—Cherokee (B1) RSA
6. Texas 16—Burleson RSA

G. Houston MTA
1. Houston MSA
2. Beaumont-Port Arthur MSA
3. Galveston MSA
4. Bryan-College Station MSA
5. Victoria MSA
6. Texas 10—Navarro (B3) RSA
7. Texas 11—Cherokee (B1) RSA
8. Texas 16—Burleson RSA
9. Texas 17—Newton RSA
10. Texas 20—Wilson (B2) RSA
11. Texas 21—Chambers RSA

H. San Antonio MTA
1. San Antonio MSA

2. Texas 16—Burleson RSA
3. Texas 20—Wilson (B2) RSA

I. Richmond-Norfolk MTA
1. Norfolk-Virginia Beach-Portsmouth MSA
2. Richmond MSA
3. Newport News-Hampton MSA
4. Petersburg-Colonial Heights MSA
5. Virginia 7—Buckingham (B1) RSA
6. Virginia 8—Amelia RSA
7. Virginia 9—Greensville RSA
8. Virginia 11—Madison (B1) RSA
9. Virginia 12—Caroline (B1) RSA
10. Virginia 12—Caroline (B2) RSA

J. Milwaukee MTA
1. Wisconsin 8—Vernon RSA

II. Cellular MSA Overlap Areas

A. Greenville, SC MSA
B. Anderson, SC MSA
C. El Paso, TX MSA
D. Las Cruces, NM MSA

In the Overlapping Wireless Markets, the population potentially addressable by wireless mobile telephone systems exceeds 25 million.

GTE and Bell Atlantic are direct competitors in wireless mobile telephone services in the Cellular MSA Overlap Areas. The cellular businesses owned in whole or in part by Bell Atlantic and GTE are the only two providers of cellular mobile telephone services, and the two primary providers of all wireless mobile telephone services, in the Cellular MSA Overlap Areas. In addition, GTE and PrimeCo, and Ameritech and PrimeCo, are direct competitors in wireless mobile telephone services in the PCS/Cellular overlap Areas. In each of the Overlapping Wireless Markets, the wireless businesses owned or to be owned in whole or in part by Bell Atlantic and GTE compete to sell the best quality service at the lowest possible rates and are among each other's most significant competitors. In each of the PCS/Cellular Overlap Areas, the cellular business to be acquired or owned in whole or in part by GTE and the PCS business owned by PrimeCo are two of a small number of providers of wireless mobile telephone services.

Therefore, bell Atlantic's acquisition of GTE would cause the level of concentration among firms providing wireless mobile telephone services in each of the Overlapping Wireless Markets to increase significantly. A high level of concentration in the provision of wireless mobile telephone services already exists in each of the Overlapping Wireless Markets. In the Cellular MSA Overlap Areas, Bell Atlantic's and GTE's individual market shares, measured on the basis of the number of subscribers, exceed 35%. The combined market share of GTE and Bell Atlantic in the provision of wireless mobile telephone services, measured by the number of subscribers, is in the range of 75 to 95%, taking into account other operational wireless mobile competitors. As measured by the Herfindahl-Hirschman Index ("HHI"), which is commonly employed by the Department of Justice in merger analysis and is explained in more detail in Appendix A to the Complaint, concentration in these markets is already in excess of 2800, well above the 1800 threshold at which the Department normally considers a market to be highly concentrated. After the merger, the HHI in these markets will be in excess of 5500.

In each of the PCS/Cellular Overlap Areas, the GTE or Ameritech cellular business has one of the two largest market shares in the provision of wireless mobile telephone services, and PrimeCo is one of a small number of new PCS entrants into these markets. In some of these markets, such as Richmond, Houston, and Tampa, PrimeCo was the first new PCS entrant, is the third largest wireless firm in terms of number of subscribers, and has managed to garner a significant share. Competition between PrimeCo and GTE or Ameritech, created by PrimeCo's entry into markets that were previously an effective duopoly, has resulted in lower prices and higher quality in these markets than would otherwise have existed absent such competition. There is already a high level of concentration in the provision of wireless mobile telephone services in the PCS/Cellular Overlap Areas. In virtually all, the individual shares of the two cellular carriers—one of which is GTE or Ameritech—are in the range of 30 to 40% and the HHI exceeds 2000. In the PCS/Cellular Overlap Areas, the combined market share of PrimeCo and the cellular business in question is generally in the 35 to 50% range.

If GTE and Bell Atlantic merge, and GTE completes its acquisition of the Ameritech cellular businesses, the PCS/Cellular Overlap Areas will become significantly more concentrated, and the competition between PrimeCo and GTE or Ameritech in wireless mobile telephone services in these markets will be eliminated. As a result of the loss in competition between the PrimeCo and GTE or Ameritech cellular businesses, there will be an increased likelihood both of unilateral actions by the combined firm in these markets to increase prices, diminish the quality or quantity of service provided, or refrain from making investments in network improvements, and of coordinated interaction among the limited number of remaining competitors that could lead to similar anticompetitive results. Therefore, the likely effect of the merger of Bell Atlantic and GTE is that prices would increase, and the quality or quantity of service together with incentives to improve network facilities would decrease, in the provision of wireless mobile telephone services in the PCS/Cellular Overlap Areas.

It is unlikely that entry within the next two years into wireless mobile telephone services in the Overlapping Wireless Markets would be sufficient to mitigate the competitive harm resulting from this acquisition, if it were to be consummated.

For these reasons, the United States concluded that the merger as proposed may substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of wireless mobile telephone services in the Overlapping Wireless Markets.

III. Explanation of the Proposed Final Judgment

A. The Divestiture Requirement

The proposed Final Judgment will preserve competition in the sale of mobile wireless telephone services in each of the Overlapping Wireless Markets by requiring defendants to divest one of their two wireless telephone businesses in each of the Overlapping Wireless Markets. This divestiture will eliminate the change in market structure caused by the merger.

The divestiture requirements of the proposed Final Judgment, as stated in Sections IV.A and II.E, direct defendants to divest one of their wireless telephone businesses (to be selected by defendants) in each of the Overlapping Wireless Markets. Section IV.C permits different wireless businesses in separate Overlapping Wireless Markets to be divested to different purchasers, but requires that, for any individual wireless business, the Wireless System Assets be divested entirely to a single purchaser, unless the United States otherwise consents in writing.

The proposed Final Judgment's divestiture provisions are intended to accomplish the "complete divestiture of the entire business of one of the two wireless systems in each of the Overlapping Wireless Markets," as Section II.E states. Section II.E also specifies in detail the types of assets to be divested, which collectively are described throughout the consent decree as "Wireless System Assets," and addresses some special circumstances concerning the divestiture of those assets. In all of the Overlapping Wireless Markets, Wireless System Assets means all types of assets, tangible and intangible, used by defendants in the operation of each of the wireless

businesses to be divested, including the provision of long distance telecommunications service for wireless calls. Section II.E enumerates in detail, without limitation, particular types of assets covered by the divestiture requirement.

For the most part, the divesting defendant is required to transfer to the purchaser the complete ownership and/or other rights to the Wireless System Assets. However, the merged firm will retain a number of other wireless businesses in areas that do not overlap, and prior to the merger each defendant may have had certain assets that were used substantially in the operations of its overall wireless business and that must be retained to some extent to continue the existing operations of the wireless businesses not being divested. Section II.E permits special divestiture arrangements for such assets if they are not capable of being divided between the divested and retained wireless businesses, or if the divesting defendant and the purchaser agree not to divide them. For these assets, the divestiture requirement is satisfied if the divesting defendant grants to the purchaser, at the election of the purchaser, an option to obtain a non-exclusive, transferable license for a reasonable period to use the assets in the operation of the wireless business being divested, so as to enable the purchaser to continue to operate the divested wireless businesses without impairment.

The definition of Wireless System Assets in Section II.E contains special provisions relating to intellectual property. One addresses intellectual property rights that defendants may have under third-party licenses that could not be transferred to a purchaser entirely or by license without the consent of the third-party licensor. If any such assets are used by the wireless businesses being divested, defendants must identify them in a schedule submitted to plaintiff and filed with the Court as expeditiously as possible following the filing of the Complaint, in any event, prior to any divestiture and before the Court approves the proposed Final Judgment. Defendants must explain the necessary consents and how a consent would be obtained for each asset. This proviso is not intended to afford defendants any opportunity to withhold intellectual property rights over which they have any control, which could impair the ability of a purchaser to use the divested wireless business to compete effectively. It relates only to intellectual property assets that defendants have no power to transfer themselves, and defendants must do all that is possible to transfer the entire business of the divested wireless businesses. To make this clear, Section IV.G obligates defendants to cooperate with any purchaser as well as a trustee, if any, to seek to obtain the necessary third-party consents, if any assets require such consents before they may be transferred to a purchaser.

Another proviso relates to certain specific trademarks, trade names and service marks. Section II.E, defining the Wireless System Assets to be divested, generally requires the divestiture of trademarks, trade names and service marks, with the sixteen specified exceptions which contain names under which defendants' retained wireless businesses, or their corporate parents or affiliates, do business. Such trademarks, trade names and service marks, like other assets, are either to be divested in their entirety, except for marks and names that must be retained to continue the existing operations of defendants' remaining wireless properties and that are not capable of being divided (or that the divesting defendant and purchaser agree not to divide), which are to be made available to the purchaser through a non-exclusive, transferable license.

Under limited circumstances, defendants are allowed to retain specified portions of the Wireless System Assets in the Overlapping Wireless Markets. First, Section II.E.1 provides that if defendants elect to divest Bell Atlantic's interest in a PCS business in one of the PCS/Cellular Overlap Areas, defendants may retain up to 10 MHz of broadband PCS spectrum within that PCS/Celluar Overlap Area upon completion of the divestiture of the Wireless System Assets. In this instance, defendants will still be required to divest the entire PCS business, including 20 MHz of broadband PCS spectrum, to insure that the market structure does not change as a result of the merger and that the divested business will be able to compete as effectively under new ownership as under its current ownership.

Second, Section II.E.2 of the Final Judgment allows defendants to request approval from plaintiff to partition the PCS license along BTA geographic boundaries and retain assets in one or more specified non-overlapping BTAs, in the event that defendants elect to divest Bell Atlantic's interest in PCS business in one of the PCS/Cellular Overlap Areas. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the assets to be sold in the non-overlapping BTAs are not needed to assure the competitive viability of the divested business in the remainder of the MTA, and that the purchaser of the Wireless System Assets in the remainder of the MTA will be able to operate the divested PCS business as a fully competitive entity. Section II.E.2 requires defendants to seek this approval at least 90 calendar days prior to the consummation of the Bell Atlantic/GTE Merger.

Finally, Section II.E.3 allows, with approval from plaintiff, the merged entity to retain both Bell Atlantic's PCS business and GTE's non-controlling minority interest in an overlapping cellular business in a PCS/Cellular Overlap Area. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the retention of a non-controlling minority interest will be entirely passive and will not significantly diminish competition. GTE has a number of non-controlling minority interests in cellular businesses, ranging from 2% to 40%, in the Overlapping Wireless Markets. To be permitted to retain a minority cellular interest, defendants will be required to demonstrate that the interest they wish to keep is entirely passive, such that they receive no competitively sensitive information about the competing cellular business, and have no input into the business decisions of the competing cellular provider that could have anticompetitive consequences. Plaintiff, in its sole discretion, will determine that the retention of the non-controlling minority interest will not significantly diminish competition before approval will be granted for the merged firm to retain a minority interest. Section II.E.3 requires defendants to seek this approval at least 90 calendar days prior to the consummation of the Bell Atlantic/GTE Merger.

Section IV contains other provisions to facilitate divestiture, including notification of the availability of the Wireless System Assets for purchase in Section IV.D, access to information about the Wireless System Assets in Section IV.E, and preservation of records in Section IV.H. In addition, to ensure that a purchaser will be able to operate the divested wireless businesses without impairment, Section IV.F prohibits defendants from interfering with a purchaser's negotiations to retain any employees who work or have worked with the Wireless System Assets since the date of the announcement of the merger, or whose principal responsibility relates to the Wireless System Assets.

B. Timing of Divestiture

In antitrust cases involving mergers in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. The proposed Final Judgment in this case requires, in Section IV.A, the divestitures of the Wireless System Assets in the Overlapping Wireless Markets on a strict schedule, but provides defendants with some flexibility in recognition of the special circumstances regarding Bell Atlantic's interest in PrimeCo.

Currently, Bell Atlantic has a 50% interest in PrimeCo, and its ability to divest this interest is limited by its partnership agreement. Bell Atlantic has publicly announced plans to dissolve the PrimeCo partnership. If this dissolution does occur, Bell Atlantic may take full ownership of some or all of the PrimeCo PCS businesses, and the other PrimeCo partner, Airtouch, may also take full ownership of some or all of the other PrimeCo PCS businesses. To the extent that Bell Atlantic's interest in one or more of the PrimeCo businesses is transferred to Airtouch, one or more of the wireless overlaps would be eliminated, thereby obviating the need for any further divestiture. To the extent that Bell Atlantic takes full control over one or more PrimeCo properties, it will enhance its ability to completely and satisfactorily divest its interest to an interested purchaser.

Under Section II.A, defendants must divest the Wireless System Assets in the Cellular MSA Overlap Areas to a purchaser or purchasers approved by the United States on or before consummation of Bell Atlantic/GTE merger. Similarly, if Bell Atlantic has acquired 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas more than ninety (90) calendar days prior to consummation of the Bell Atlantic/GTE Merger, defendants will be required to divest the Wireless System Assets in the PCS/Cellular Overlap Areas on or before consummation of the Bell Atlantic/GTE Merger.

If, ninety (90) calendar days prior to consummation of the Bell Atlantic/GTE Merger, the PrimeCo dissolution is not complete and Bell Atlantic has not acquired 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas, defendants will submit to plaintiff, on or before consummation of the Bell Atlantic/GTE Merger, a definitive Divestiture List identifying the specific Wireless System Assets in each of the PCS/Cellular Overlap Areas that will be divested. The cellular MSA and RSA businesses on the Divestiture List are required to be divested within ninety (90) calendar days after consummation of the Bell Atlantic/GTE Merger; except that if Bell Atlantic acquires 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas within the ninety (90) calendar day period prior to consummation of the Bell Atlantic/GTE Merger, the cellular MSA and RSA businesses on the Divestiture List shall be divested on or before consummation of the Bell Atlantic/GTE Merger. Additionally, the PCS MTA businesses on the Divestiture List shall be divested within 90 calendar days after Bell Atlantic acquires 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas, but in no event later than one hundred eighty (180) calendar days after consummation of the Bell Atlantic/GTE Merger. If all Wireless System Assets have not been divested upon consummation of the Bell Atlantic/GTE merger, there will be no adverse impact on competition, because defendants are required to operate the businesses independently, pursuant to the Hold Separate Order contained in Section IX of the Final Judgment. Defendants are also required by Section IV.B to use their best efforts to accomplish the divestitures of the Wireless System Assets in the Overlapping Wireless Markets and to obtain all required regulatory approvals as expeditiously as possible.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time do not burden the parties unnecessarily. Although the proposed Final Judgment, in some circumstances, permits the parties to retain both wireless properties for some period of time after closing, the primary reason for this involves the nature of Bell Atlantic's interest in PrimeCo. The proposed Final Judgment is designed to provide time for the PrimeCo partnership to be dissolved. The additional time period, beyond the closing date of the Bell Atlantic/GTE merger, in which the merged firm can hold both wireless properties pending divestiture applies only to PCS/cellular overlaps and is dependent in part on when Bell Atlantic takes control of one or more PrimeCo properties. However, in no event can the merged firm retain both wireless properties beyond 180 days after closing. Thus, the Final Judgment strikes a balance between allowing the parties time to resolve their special situation and guaranteeing a timely divestiture. The period in which the merged firm will own both entities should not pose any significant competitive risks because the Hold Separate Order, contained in Section IX, will be in place during this time, and the time will be short.

In addition, the proposed Final Judgment requires in Section IV.B that, in carrying out the divestitures, defendants comply with all of the applicable rules of the FCC, or any waiver of such rules or other authorization granted by the FCC. These rules include 47 CFR 20.6 (spectrum aggregation) and 47 CFR 22.942 (cellular cross-ownership).[2] These FCC requirements may add to, but cannot subtract from or impair, the requirements of the proposed Final Judgment, since Section IV.B specifies that authorization by the FCC to conduct divestiture of a wireless business in a particular manner will not modify any of the requirements of the decree. The provisions of the proposed Final Judgment have been designed to avoid any conflict with the FCC's rules. Since the FCC's approval is required for the transfer of the wireless licenses to a purchaser, Section V.F provides one exception to the 180-day divestiture period. If applications for transfer of a wireless license have been filed by the FCC within the 180-day period, but the FCC has not granted approval before the end of that time, the period for divestiture of the specific Wireless System Assets covered by the license that cannot yet be transferred shall be extended until five days after the FCC's approval is received. This extension is to be applied only to the individual wireless license affected by the delay in approval of the license transfer and does not entitle defendant to delay the divestiture of any other Wireless System Assets for which license transfer approval has been granted.

[2] The FCC's spectrum aggregation rules, in 47 CFR 20.6, do not permit a licensee to have an attributable interest in more than 45 MHz of spectrum licensed for cellular, PCS or SMR with significant overlap in any geographic area. The FCC will attribute an interest if it is controlling, or if in most cases it is 20% or more of the equity, outstanding stock or voting stock of the licensee. The FCC's cellular cross-ownership rules, in 47 CFR 22.941, also prohibit a licensee or any person controlling a licensee from having a direct or indirect ownership interest of more than 5% in both cellular systems in an overlapping cellular geographic service area, unless such interests pose "no substantial threat to competition."

C. Use of a Trustee Subsequent to Consummation of the Acquisition

The proposed Final Judgment provides in Section IV.A that Bell Atlantic and GTE must divest the Wireless Assets in each of the Overlapping Wireless Markets in accordance with the schedule contained therein, either to purchasers acceptable to plaintiff in its sole discretion, or to a trustee designated pursuant to Section V of the Final Judgment. As part of this divestiture, Bell Atlantic and GTE must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control. Pursuant to Section V of the proposed Final Judgment, the trustee will own and control the systems until they are sold to a final purchaser, subject to safeguards to prevent Bell Atlantic and GTE from influencing their operation.

Section V details the requirements for the establishment of the trust, the selection and compensation of the trustee, the responsibilities of the trustee in connection with divestiture and operation of the Wireless System Assets, and the termination of the trust. If defendants have not divested all of their Wireless System Assets in the Overlapping Wireless Markets to approved purchasers in accordance with Section IV.A, Section V.A requires: (1) Defendants to identify the Wireless System Assets in each Overlapping Wireless Market to be divested; (2) the Court to appoint a trustee, which shall be selected by the United States; (3) defendants to submit a form of Trust Agreement consistent with the terms of the Final Judgment, and which form agreement must have received approval by the United States; and (4) defendants, after receiving FCC approval for the license transfers, to divest irrevocably the unsold Wireless System Assets to the trustee.

The trustee will have the obligation and the sole responsibility, under Section V.B, for the divestiture of any transferred Wireless System Assets. The trustee has the authority to accomplish divestitures at the earliest possible time and "at the best price then obtainable upon a reasonable effort by the trustee." In addition, notwithstanding any provision to the contrary, plaintiff may, in its sole discretion, require defendants to include additional assets that substantially relate to the wireless mobile telephone business in the Wireless System Assets to be divested if it would facilitate a prompt divestiture to an acceptable purchaser. This provision allows plaintiff, in its discretion, to require defendants to divest additional Wireless System Assets that substantially relate to the wireless mobile telephone business to insure that the trustee can promptly locate and divest to a purchaser acceptable to plaintiff. Defendants are not entitled to object to divestiture based on the adequacy of the price the trustee obtains or any other ground, unless the trustee's conduct amounts to malfeasance. The terms of the trustee's compensation, under Section V.C, will provide incentives based on the price and terms of the divestiture and the speed with which it is accomplished. As provided by Sections V.B and V.C., defendants will pay the compensation and expenses of the trustee, and of any investment bankers, attorneys or other agents that the trustee finds reasonably necessary to assist in the divestiture and the management of the Wireless System Assets.

The trusteeship mechanism has been used by the FCC, in a variety of contexts, to provide a short period of time in which to complete a sale of a spectrum licensee that must be divested, while permitting the broader merger or acquisition that necessitates the divestiture to go forward. In this content, the critical feature of the trusteeship arrangement is that the trustee will not only have responsibility for sale of the Wireless System Assets, but will also be the authorized holder of the wireless license, with full responsibility for the operations, marketing and sales of the wireless business to be divested, and will not be subject to any control or direction by defendants. Defendants will no longer have any role in the ownership, operation or management of the Wireless System Assets to be divested following consummation of their merger, as provided by Section V.H, other than the right to received the proceeds of the sale, and certain obligations to provide cooperation to the trustee in order to complete the divestiture, as indicated in Section V.D. Defendants are precluded under Section V.H. from communicating with the trustee, or seeking to influence the trustee, concerning the divestiture or the operation and management of the wireless businesses transferred, apart from the limited communications necessary to carry out the Final Judgment and to provide the trustee with the necessary resources and cooperation to complete the divestitures. Defendants and the trustee are subject to an absolute prohibition on exchanging any non-public or competitively sensitive marketing, sales or pricing information relating to either of the wireless businesses in the Overlapping Wireless Markets. These safeguards will protect against any competitive harm that could arise from coordinated behavior or information sharing between the two wireless businesses during the limited period while sale of the Wireless System Assets is not yet complete. They ensure that the trusteeship arrangement is consistent with the FCC's rules.

D. Criteria for the United States' Approval of Purchasers

Under the proposed Final Judgment, the United States has an important role in the approval of purchasers for each of the divested wireless businesses, to ensure that the purchasers chosen by defendants or the trustee are adequate from a competitive viewpoint. The United States' approval or rejection of a purchaser is at its sole discretion, as Section IV.A specifies, but the consent decree also embodies certain criteria that the United States will apply in making the approval decision.

In the case of any divestiture, by defendants or the trustee, it is important to ensure that the ongoing wireless businesses go to purchasers with the capability and intent to operate them as effective competitors in the lines of business they already serve, and that there are no conditions restricting competition in the terms of the sale. Specifically, Section IV.G of the proposed Final Judgment requires that the divestitures of Wireless System Assets be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's sole satisfaction that: (1) The purchaser(s) has the capability and intent to compete effectively in the provision of wireless mobile telephone service using the Wireless System Assets; (2) the purchaser(s) has the managerial, operational and financial capability to compete effectively in the provision of wireless mobile telephone service using the Wireless System Assets; and (3) none of the terms of any agreement between the purchaser(s) and either of defendants shall give defendants the ability unreasonably (i) to raise the purchaser(s)'s costs, (ii) to lower the purchaser(s)'s efficiency, (iii) to limit any line of business which a purchaser(s) may choose to pursue using the Wireless System Assets, or otherwise to interfere with the ability of the purchaser(s) to compete effectively. All of these criteria must be satisfied whether the divestiture is accomplished by defendants or the trustee.

E. Other Provisions of the Decree

Section III specifies the persons to whom the Final Judgment is applicable,

and provides for the Final Judgment to be applicable to certain Interim Parties to whom defendants might transfer the Wireless System Assets, other than purchasers approved by the United States.

Section VI obliges defendants, or the trustee if applicable, to notify the United States of any planned divestiture of Wireless System Assets within two business days of executing a binding agreement with a purchaser. It enables the United States to obtain information to evaluate the chosen purchaser as well as other prospective purchasers who expressed interest and establishes a procedure for the United States to notify defendants and the trustee whether it objects to a divestiture. The United States' notification of its lack of objection is necessary for a divestiture to proceed. This section also provides for an objection by defendants to a sale by the trustee under the limited situation of alleged malfeasance, but in that case it is possible for the Court to approve a sale over defendants' objection.

Section VII establishes affidavit requirements for defendants to report to the United states on their compliance with the proposed Final Judgment, their activities in seeking to divest the Wireless System Assets prior to consummating their merger, and their actions to preserve the Wireless System Assets to be divested. Under V.E, the trustee also has monthly reporting obligations concerning the efforts made to divest the Wireless System Assets.

Section VIII prohibits defendants from financing all or any part of a purchase made by an acquirer of the Wireless System Assets, whether the divestiture is carried out by defendants or by the trustee.

Section IX, the Hold Separate Order, contains important requirements concerning the operation of the wireless businesses before divestiture is complete, and the preservation of the Wireless System Assets as a viable, ongoing business. The obligations of Section IX.A fall on both defendants and both wireless businesses in any Overlapping Wireless Market, obliging them to ensure that such wireless businesses continue to be operated as separate, independent, ongoing, economically viable and active competitors to the other wireless mobile telecommunications providers in the same area. Section XI.A requires separation of the operations of the two wireless businesses and their books, records and competitively sensitive information. The requirements of Section IX.A serve to ensure that defendants maintain their two wireless businesses in the Overlapping Wireless Markets as fully separate competitors prior to consummating their merger, notwithstanding their expectations that the merger will take place, and reinforce the provisions of Section V.H concerning the separation of defendants and the trustee after the merger is consummated but while there are still Wireless System Assets awaiting sale.

Section IX.B requires the defendant whose assets will be divested (or both, if it has not yet been decided which system will be divested in a particular market) to take certain specified steps to preserve the assets in accordance with past practices. These steps including maintaining and increasing sales, maintaining the assets in operable condition, providing sufficient credit and working capital, not selling the assets (except with approval of plaintiff), not terminating, transferring or reassigning employees who work with the assets (with certain limited exceptions), and not taking any actions to impede or jeopardize the sale of the assets. Section IX.D obliges each defendant, during the period while they still control Wireless System Assets, to appoint persons not affiliated with the other defendant to oversee the Wireless System Assets to be divested and to be responsible for compliance with the Final Judgment.

In order to ensure compliance with the Final Judgment, Section X gives the United States various rights, including inspection of defendants' records, the ability to conduct interviews and take sworn testimony of defendants' officers, directors, employees and agents, and to require defendants to submit written reports. These rights are subject to legally recognized privileges, and information the United States obtains using these powers is protected by specified confidentiality obligations, which permit sharing of information with the FCC under a customary protective order issued by the agency or a waiver of confidentiality. Under Section III.B, purchasers of the Wireless System Assets must also agree to give the United States similar access to information.

The Court retains jurisdiction under Section XI, and Section XII provides that the proposed Final Judgment will expire on the tenth anniversary of the date of its entry, unless extended by the Court. Although the required divestitures will be accomplished in a considerably shorter time, defendants are also precluded from reacquiring the divested properties within the term of the decree.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 USC 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages that the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to; Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides, in Section XI, that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate to carry out construe the Final Judgment, to modify any if its provisions, to enforce compliance, and to punish any violations of its provisions.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking an injunction to block consummation of the merger and a full trial on the merits. The United States is satisfied, however, that the divestiture of Wireless System Assets and other relief contained in the proposed Final Judgment will preserve competition in the provision of wireless mobile telephone services in the Overlapping Wireless Markets. This proposed Final Judgment will also avoid the substantial costs and uncertainty of a full trial on the merits on the violations alleged in the complaint. Therefore, the United States believes that there is no reason under the antitrust laws to proceed with further litigation if the divestitures of the Wireless System Assets are carried out in the manner required by the proposed Final Judgment.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 USC 16(e) (emphasis added). As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting his inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [3] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660,666 (9th Cir.), *cert denied*, 454 U.S. 1083 (1981)); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict that the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *American Tel & Tel Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom., Maryland* v. *United States*, 460 U.S. 1001 (1983) (quoting *Gillette Co.*, 406 F. Supp. at 716); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Since "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment. Consequently, the United States has not attached any such materials to the proposed Final Judgment.

Dated: June 7, 1999.

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[3] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedure are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93d Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.C.A.N. 6535, 6538.

[4] Bechtel, 648 F.2d at 666 (emphasis added); see BNS, 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716. See also Microsoft, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the reaches of public interest").

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing Plaintiff United States' Competitive Impact Statement, were served via U.S. Mail, first class postage prepaid, on this 7th day of June, 1999 upon each of the parties listed below:

John Thorne, Senior Vice President & Deputy General Counsel, Bell Atlantic Corporation, 1320 North Court House Road, Eighth Floor, Arlington, VA 22201, Counsel for Bell Atlantic Corporation.

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Computer Associates International, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Amended Final Judgment, Hold Separate Stipulation and Order and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Computer Associates, International, Inc. and PLATINUM Technology International, Inc.*, Civil Action No. 1:99CV01318. On May 25, 1999, the United States filed a Complaint and on June 8, 1999, the United States filed amendments to the Complaint. The Complaint, as amended, alleges that the proposed acquisition by Computer Associates International, Inc. (CA) of PLATINUM Technology International, Inc. (Platinum) would violate Section 7 of the Clayton Act, 15 U.S.C. 18, in the markets for the following systems management software products used on IBM and IBM-compatible mainframe computers with the MVS (now renamed OS/390) or VSE operating systems: (1) MVS (OS/390) job scheduling and rerun software; (2) VSE job scheduling and rerun software; (3) MVS (OS/390) tape management software; (4) VSE automated operations software; (5) MVS (OS/390) change management software; (6) MVS (OS/390) job accounting and chargeback software and (7) VSE job accounting and chargeback software. The proposed Amended Final Judgment, filed at the same time as the amendments to the Complaint, requires the appointment of a trustee to divest to a purchaser approved by the United States the software products that Platinum sells in each of these markets, along with certain related tangible and intangible assets. Copies of the Complaint, amendments to the Complaint, proposed Amended Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC, in Room 200, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the District of Columbia, Washington, DC.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Nancy M. Goodman, Chief, Computers & Finance Section, Antitrust Division, U.S. Department of Justice, 600 E Street, NW., Suite 9500, Washington, DC 20530 (telephone: (202) 307–6200).

Constance Robinson,

Director of Operations and Merger Enforcement.

United States of America, Plaintiff, v. Computer Associates International, Inc. and Platinum Technology International, Inc., Defendants.

[Civil Action No. _____; Filed: May 25, 1999]

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Computer Associates" means defendant Computer Associates International, Inc., a Delaware corporation with its headquarters in Islandia, New York, and includes its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. "Platinum" means defendant PLATINUM technology International, inc., a Delaware corporation with its headquarters in Oakbrook Terrace, Illinois, and includes its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. "Defendants" means, collectively or individually as the context requires, Computer Associates and/or Platinum.

D. "Acquirer" means acquirer or acquirers of any of the Platinum Assets ordered to be divested by Section IV.A of the proposed Final Judgment attached hereto.

E. "Divested Product" means each of the following software products supplied by Platinum for use with the OS/390 or MVS mainframe operating system: (a) AutoSys/Zeke (formerly Altai's Zeke), (b) AutoRerun (formerly Altai's Zebb), (c) AutoMedia (formerly Altai's Zara), (d) CCC/Life Cycle Manager; and each of the following software products supplied by Platinum for use with the VSE mainframe operating system, (e) AutoSys/Zeke (formerly Altai's Zeke), and (f) AutoAction (formerly Altai's Zack). With respect to each of the foregoing, a Divested Product includes each predecessor version of the product and each version that has been or is currently under development or that has been developed but has not been sold or distributed.

F. "Platinum Assets" means all tangible and intangible property or property rights owned or licensed by Platinum and reasonably required in developed, testing, producing, marketing, licensing, selling, or distributing any Divested Product, or in supplying any support or maintenance services for any Divested Product. The Platinum Assets include all of Platinum's rights, titles and interests in any asset which Platinum has the right to convey, license, sublicense or assign. If Platinum's rights in any Platinum Asset are licensed under terms that would prevent it from conveying, licensing, sublicensing or assigning

such rights to an Acquirer, defendants shall take no action (such as asserting or enforcing any exclusive rights included in Platinum's license of its rights to the asset) to bar the licensor of such asset from licensing rights in the asset to an Acquirer for use with any Divested Product, and defendants shall take all reasonable steps (including, but not limited to, promptly executing necessary documents or agreements with such licensor) to cooperate with and assist an Acqurier in obtaining such a license, provided, however, that nothing contained herein shall prevent defendants from asserting or enforcing any exclusive rights possessed by Platinum to prevent an Acquirer from using such licensed assets other than with a Divested Product. The Platinum Assets include, but are not limited to:

(1) Each Divested Product;

(2) All source code and object code for the version or versions of a Divested Product currently being sold or distributed anywhere in the world (including patches), all existing source code and object code for all prior versions previously sold or distributed anywhere in the world (including patches), and all other source code and object code for all versions of a Divested Product under development or developed but not yet being sold or distributed (including patches). Defendants shall not retain copies of any of the foregoing code, provided however, that to the extent at the time Computer Associates announced its proposed acquisition of Platinum any such code was also contained in Platinum products other than Divested Products ("retained code") defendants shall retain a perpetual, irrevocable, fully paid-up worldwide license to retain and use such retained code in any products that are not Divested Products, except that defendants shall not use such retained code to develop a product that is substantially identical to a Divested Product or that competes in any market described in the Complaint. The proposed Final Judgment attached hereto imposes no restrictions on defendants with respect to products, or source and object code for such products, owned or controlled by Computer Associates at the time Computer Associates announced its proposed acquisition of Platinum;

(3) All software customizations, optional modules and add-ons for a Divested Product;

(4) All development tools, development environments, proprietary programming languages, know-how, designs, drawings, specifications, research data, trade secrets, copyrights, rights under patents, and all other intellectual property which Platinum has used to develop, upgrade, or maintain a Divested Product;

(5) All software programs, instructions, manuals, know-how, trade secrets, or documentation that Platinum has used or supplied to a user of a Divested Product to facilitate installation or operation of any Divested Product, or to facilitate migration or conversion to the use of any Divested Product from the use of any other product;

(6) All technical or development documentation, and all marketing information, sales training material, sales collateral, customer lists and credit reports and maintenance documentation used for a Divested Product;

(7) Assignment of license or maintenance agreements including a Divested Product. In the event any such license or maintenance agreement includes any products or services other than a Divested Product, defendants or such other persons holding ownership rights to such other products or services shall retain all contractual rights relating to such other products or services;

(8) With respect to all assigned licenses and maintenance agreements identified in Subsection I.F.(7) above, a sum of money equal to the pro rata amount of all maintenance fees for a Divested Product already paid to defendants pursuant to such maintenance agreements to the extent such fees paid relate to service periods after the date of such assignment. With respect to all such assigned licenses and maintenance agreements that include any products or services other than a Divested Product, the maintenance fees to be attributed to a Divested Product shall be calculated on a pro rata basis by apportioning the maintenance fees among the products and services subject to such agreements in a ratio derived from the list price of each product or service as of the date upon which such license and maintenance agreement became effective to the total of such list prices for all the products and services subject to such agreements. For any multi-year agreement assigned, the allocation described herein applies only to that portion of revenues attributable to maintenance fees. Defendants shall not allocate nor shall any Acquirer be entitled to receive any portion of revenues attributable to licensing of a Divested Product. This method of allocation of maintenance fees applies to both the allocation of maintenance fees already paid to defendants and payable in the future relating to service periods after the date of such assignment;

(9) All files and records maintained by Platinum for any customer licensee of any Divested Product, including customer licenses, maintenance agreements, and other agreements, all customer call reports (or portions thereof relating to any Divested Product), pricing information for the Divested Products, support and maintenance logs for the Divested Products; all customer leads, customer pipeline reports, customer proposals or other information maintained by defendants to license and support any Divested Product. Where any such information relates to both a Divested Product and other products and services, defendants shall use their best efforts to segregate the information that relates to the Divested Products and shall provide, and shall not retain, such segregated information to the Acquirer; and

(10) The trademarks "Zeke", "Zebb", "Zara", "Zack", "AutoRerun", and "AutoMedia", and for a period of eighteen (18) months from the time the Acquirer purchases the Divested Product, the Acquirer of AutoSys/Zeke may use the phrase "formerly known as AutoSys/Zeke" in connection with the marketing, sale, or distribution of that Divested Product; the Acquirer of AutoAction for VSE may use the phrase "formerly known as AutoAction for VSE" in connection with the marketing, sale, or distribution of that Divested Product; the Acquirer of CCC/Life Cycle Manager may use the phrases "formerly known as CCC/Life Cycle Manager" and "formerly known as CCC/LCM" in connection with the marketing, sale, or distribution of that Divested Product, and thereafter, defendants will not object to that Acquirer's use of "Life Cycle Manager" or "LCM".

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Platinum Assets for the purpose of preserving and maintaining competition that currently exists between Computer Associates and Platinum in the markets for the development, sale and maintenance of the mainframe software products described in the Complaint and thereby to remedy the anticompetitive effects that plaintiff alleges would otherwise result from Computer Associates' proposed acquisition of Platinum. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Platinum Assets to be divested be maintained as an independent, economically viable, ongoing business concern during the pendency of the divestiture.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall abide by and comply with all provisions of this Hold Separate Stipulation and Order, pending the Order's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the Order, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Hold Separate Stipulation and Order as though the same were in full force and effect as an order of the Court.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event: (1) The United States has withdrawn its consent, as provided in Section IV.A. above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

V. Consent to Amendment

A. Contemporaneously with the acceptance for payment of the tendered shares of Platinum by Computer Associates, Computer Associates shall convey to CIMS Lab, Inc. all of its rights, titles and interests in the CIMS product line, which includes CIMS MVS Resource Accounting Systems; CIMS UNIX/NT; CIMS MVS Capacity Planner; CIMS VSE; CIMS VMS; CIMS Desktop; CIMS Report Writer (Spectrum Writer); and all products related to any of the foregoing (collectively, the "CIMS product line"). Such conveyance shall be pursuant to contracts and licenses executed prior to the filing of the Complaint in this matter and approved by plaintiff, in its sole discretion.

B. If defendants do not effectuate the conveyance of the CIMS product line at the time and in the manner specified in Section V.A. above, defendants consent:

(1) To the filing of an Amended Complaint by the United States in this matter adding allegations relating to the product markets in which the CIMS product line is developed, marketed and sold, and such other allegations relating to the CIMS product line as plaintiff in its sole discretion deems necessary to effectuate full relief as regards the CIMS product line;

(2) To the filing of a proposed Amended Final Judgment in this matter adding the CIMS product line to the definition of "Divested Product" contained in Section II.E., and such other amendments to the proposed Amended Final Judgment as plaintiff in its sole discretion deems necessary to effectuate full relief as regards the CIMS product line;

(3) That the CIMS product line shall be incorporated within the definition of "Divested Product" contained in Section I.E. of this Hold Separate Stipulation and Order; and

(4) To be bound as fully in regards to the CIMS product line as defendants are regarding any other Divested Product presently incorporated in this Hold Separate Stipulation and Order and the proposed Final Judgment attached hereto.

VI. Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendants shall use all reasonable efforts to preserve, maintain, and to the maximum extent feasible operate the Platinum Assets as an independent competitor with management, research, development, and operations of such assets held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the development, production, marketing or sale of Divested Products with defendants' other operations. Within ten (10) calendar days of the filing of the Complaint in this matter, defendants will inform plaintiff of the steps taken to comply with this Hold Separate Stipulation and Order.

B. Within ten (10) days of the filing of the Complaint, defendants shall take all reasonable steps necessary to ensure: (1) That the Platinum Assets will be maintained and operated as an independent, ongoing and economically viable competitor in the development, production, marketing and sale of the Divested Products; (2) that management will be provided for the Platinum Assets that is separate from the management of defendants' other operations; (3) that the management of the Platinum Assets will not be influenced by defendants; and (4) that the books, records, competitively sensitive sales, marketing and pricing information, and decisionmaking associated with the Platinum Assets will to the maximum extent feasible be kept separate and apart from the defendants' other operations. The defendants' influence over the Platinum Assets shall be limited to that necessary to carry out defendants' obligations under this Stipulation and Order and the Final Judgment. Defendants shall receive all historical, aggregate financial information relating to the Platinum Assets only to the extent necessary to allow defendants to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports. Nothing herein shall preclude defendants from examining any and all agreements acquired from Platinum and administering all such agreements.

C. Except as is provided in this Hold Separate Stipulation and Order or is otherwise reasonably necessary to conduct the business of Platinum as it relates to products and services other than the Divested Products, defendants shall not collect or solicit competitively sensitive or other confidential information relating to the operations of the Platinum Assets from: (1) Information that currently is within the possession, custody or control of Platinum, (2) any current Platinum director, officer, manger, employee or other agent or (3) any former Platinum director, officer, manager, employee, or other agent who currently is subject to a nondisclosure agreement with Platinum. All nondisclosure agreements to which Platinum is a party will continue in effect as to any information that relates to the Platinum Assets as if Computer Associates' proposed acquisition of Platinum did not occur, and the defendants will notify all of Platinum's employees as to their continuing obligations under such agreements. Information pertaining to the Platinum Assets that Computer Associates has obtained pursuant to its due diligence of Platinum of the extent feasible shall be segregated from the defendants' other information, kept confidential and not used by the defendants. Any nondisclosure agreements pursuant to which any information was collected during any due diligence review inspection will remain in effect as to any information that relates to the Platinum Assets as if Computer Associates' proposed acquisition of Platinum did not occur, and the defendants will notify all persons who received any due diligence information as to their continuing obligations under such agreements.

D. Defendants shall use all reasonable efforts to: (1) Maintain or increase the current sales of the Divested Products, and (2) maintain at current or previously approved levels, whichever are higher, internal research and development funding (including, but not limited to, any funding or approved funding for obtaining or assuring Year 2000 compliance), promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divested Products.

E. Defendants shall provide and maintain sufficient working capital or other financial resources to maintain the Platinum Assets as an economically viable, ongoing business.

F. Defendants shall maintain in operable condition the development facilities for any of the Divested Products at no lower than the current level of equipment.

G. Defendants shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any of the Platinum Assets.

H. Until such time as the Platinum Assets are divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employee who: (1) As of the date Computer Associates announced its proposed acquisition of Platinum, worked primarily on the Divested Products, or (2) is a member of management to be provided pursuant to Subparagraph VI.B. of this Hold Separate Stipulation and Order.

I. The management for the Platinum Assets to be provided pursuant to Subparagraph VI.B. of this Hold Separate Stipulation and Order shall be appointed by defendants, subject to plaintiff's approval, within two (2) business days following the filing of the Complaint. Until such time as the Platinum Assets are divested, the management for the Platinum Assets to be provided pursuant to Subparagraph VI.B. of this Hold Separate Stipulation and Order shall have complete managerial responsibility for the Platinum Assets, subject to the provisions of this Order and the Final Judgment. In the event that any member of the management is unable to perform his or her duties, defendants shall appoint, subject to plaintiff's approval, a replacement acceptable to plaintiff within ten (10) working days. Should defendants fail to appoint a replacement acceptable to plaintiff within ten (10) working days, plaintiff shall appoint a replacement. Within ten (10) days following the filing of the Complaint, and for thirty (30) consecutive days thereafter, for each of the Divested Products, management of the Platinum Assets shall post on the Platinum web site a notice that includes on the first page of the web site a summary heading with a link to the full notice. The notice must include text to which the plaintiff has agreed and shall explain that the Platinum Assets will be divested to a purchaser approved by the United States, explain how the Platinum Assets will be managed and operated pending consummation of the required divestiture, and assure customers that they will receive continuing maintenance and product support for the Divested Products pending consummation of the required divestiture.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a purchaser acceptable to plaintiff.

K. This Hold Separate Stipulation and Order shall remain in effect until the divestiture required by the Final Judgment is complete, or until further Order of the Court.

Respectfully submitted, For Plaintiff United States of America:

N. Scott Sacks,

DC Bar #913087.

Kent Brown,

VA Bar #18300, Attorneys, Antitrust Division, Computers & Finance Section, U.S. Department of Justice, 600 E. Street, NW, Suite 9500, Washington, DC 20530, (202) 307–6200.

For Defendants, Computer Associates International, Inc.:

Richard L. Rosen,

DC Bar #307231, Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004–1202, (202) 942–5000.

For Defendant, PLATINUM Technology International, Inc.:

Larry S. Freedman,

IL Bar #6198768, Senior Vice President and General Counsel, 1815 South Meyers Road, Oakbrook Terrace, Illinois 60181–5241, (630) 620–5000.

Dated: May 25, 1999.

Order

It is so ordered, this ___ day of _____, 1999.

United States District Court Judge.

Exhibit A

United States of America, Plaintiff, v. Computer Associates International, Inc. and PLATINUM Technology International, Inc., Defendants.

[Civil Action No. 1:99CV01318; Judge: Gladys Kessler, Deck Type: Antitrust, Date Stamp: _____]

Amended Final Judgment

WHEREAS, plaintiff, the United States of America, having filed its Complaint in this action on May 25, 1999, and having filed amendments to the Complaint on June 8, 1999 (hereinafter the Complaint and the amendments to the Complaint are referred to collectively as "Complaint"), and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Amended Final Judgment without trial or adjudication of any issue of fact or law herein, and with this Amended Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein, and that this Amended Final Judgment shall settle all claims made by the plaintiff in its Complaint;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Amended Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Amended Final Judgment is the prompt and certain divestiture of the identified software and associated assets to assure

that competition is not substantially lessened;

AND WHEREAS, defendants have represented to plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

AND WHEREAS, plaintiff currently believes that entry of this Amended Final Judgment is in the public interest;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. Venue is proper in this Court. The Complain states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Amended Final Judgment:

A. "Computer Associates" means defendant Computer Associates International, Inc., a Delaware corporation with its headquarters in Islandia, New York, and includes its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. "Platinum" means defendant PLATINUM technology International, inc., a Delaware corporation with its headquarters in Oakbrook Terrace, Illinois, and includes its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. "Defendants" means, collectively or individually as the context requires, Computer Associates and/or Platinum.

D. "Acquirer" means acquirer of any of the Platinum Assets ordered to be divested by Section IV.A of this Amended Final Judgment.

E. "Divested Product" means each of the following software products supplied by Platinum for use with OS/390 or MVS mainframe operating system: (a) AutoSys/Zeke (formerly Altai's Zeke), (b) AutoRerun (formerly Altai's Zebb), (c) AutoMedia (formerly Altai's Zara), (d) CCC/Life Cycle Manager; each of the following software products supplied by Platinum for use with the VSE mainframe operating system, (e) AutoSys/Zeke (formerly Altai's Zeke), and (f) AutoAction (formerly Altai's Zack); and (g) the "CIMS product line," which includes CIMS MVS Resource Accounting System; CIMS UNIX/NT; CIMS MVS Capacity Planner; CIMS VSE; CIMS VMS; CIMS Desktop; CIMS Report Writer (spectrum Writer); and all products related to any of the foregoing products in the CIMS product line. With respect to each of the foregoing, a Divested Product includes each predecessor version of the product and each version that has been or is currently under development or that has been developed but has not been sold or distributed. Any divestiture of Platinum's rights, titles and interests in the CIMS product line, pursuant to Section IV of this Amended Final Judgment, shall be subject to any rights held by CIMS Inc. as a result of the CIMS Distribution and Licensing Agreement, dated as of February 21, 1999, between PLATINUM technology IP, inc. and CIMS Inc.

F. "Platinum Assets" means all tangible and intangible property or property rights owned or licensed by Platinum and reasonable required in developing, testing, producing, marketing, licensing, selling, or distributing any Divested Product, or in supplying any support or maintenance services for any Divested Product. The Platinum Assets include all of Platinum's rights, titles and interests in any asset which Platinum has the right to convey, license, sublicense or assign. If Platinum's rights in any Platinum Asset are licensed under terms that would prevent it from conveying, licensing, sublicensing or assigning such rights to an Acquirer, defendants shall take no action (such as asserting or enforcing any exclusive rights included in Platinum's license of its rights to the asset) to bar the licensor of such asset from licensing rights in the asset to an Acquirer for use with any Divested Product, and defendants shall take all reasonable steps (including, but not limited to, promptly executing necessary documents or agreements with such licensor) to cooperate with and assist an Acquirer in obtaining such a license, provided, however, that nothing contained herein shall prevent defendants from asserting or enforcing any exclusive rights possessed by Platinum to prevent an Acquirer from using such licensed assets other than with a Divested Product. The Platinum Assets include, but are not limited to:

(1) Each Divested Product;

(2) All source code and object code for the version or versions or a Divested Product currently being sold or distributed anywhere in the world (including patches), all existing source code and object code for all prior versions previously sold or distributed anywhere in the world (including patches), and all other source code and object code for all versions of a Divested Product under development or developed but not yet being sold or distributed (including patches). Defendants shall not retain copies of any of the foregoing code, provided however, that to the extent at the time Computer Associates announced its proposed acquisition of Platinum any such code was also contained in Platinum products other than Divested Products ("retained code") defendants shall retain a perpetual, irrevocable, fully paid-up worldwide license to retain and use such retained code in any products that are not Divested Products, except that defendants shall not use such retained code to develop a product that is substantially identical to a Divested Product or that competes in any market described in the Complaint. This Amended Final Judgment imposes no restrictions on defendants with respect to products, or source and object code for such products, owned or controlled by Computer Associates at the time Computer Associates announced its proposed acquisition of Platinum;

(3) All software customizations, optional modules and add-ons for a Divested Product;

(4) All development tools, development environments, proprietary programming languages, know-how, designs, drawings, specifications, research data, trade secrets, copyrights, rights under patents, and all other intellectual property which Platinum has used to develop, upgrade, or maintain a Divested Product;

(5) All software program, instructions, manuals, know-how, trade secrets, or documentation that Platinum has used or supplied to a user of Divested Product to facilitate installation or operation of any Divested Product, or to facilitate migration or conversion to the use of any Divested Product from the use of any other product;

(6) All technical or development documentation, and all marketing information, sales training materials, sales collateral, customer lists and credit reports and maintenance documentation used for a Divested Product;

(7) Assignment of license or maintenance agreements including a Divested Product. In the event any such license or maintenance agreement includes any products or services other than a Divested Product, defendants or such other persons holding ownership rights to such other products or services shall retain all contractual rights relating to such other products or services;

(8) With respect to all assigned licenses and maintenance agreements identified in Subsection II.F.(7) above, a sum of money equal to the pro rata amount of all maintenance fees for a Divested Product (except the CIMS product line) already paid to defendants pursuant to such maintenance agreements to the extent such fees paid relate to service periods after their date of such assignment. With respect to all such assigned licenses and maintenance agreements that include any products or services other than a Divested Product, the maintenance fees to be attributed to a Divested Product shall be calculated on a pro rata basis by apportioning the maintenance fees among the products and services subjects to such agreements in a ratio derived from the list price of each product or service as of the date upon which such license and maintenance agreement became effective to the total of such list prices for all the products and services subject to such agreements. For any multi-year agreement assigned, the allocation described herein applies only to that portion of revenues attributable to maintenance fees. Defendants shall not allocate nor shall any Acquire be entitled to receive any portion of revenues attributable to licensing of a Divested Product. This method of allocation of maintenance fees applies to both the allocation of maintenances fees already paid to defendants and payable in the future relating to service periods after the date of such assignment;

(9) All files and records maintained by Platinum for any customer licensee of any Divested Product, including customer licenses, maintenance agreements, and other agreements, all customer call reports (or portions thereof relating to any Divested Product), pricing information for the Divested Products, support and maintenance logs for the Divested Products; all customer leads, customer pipeline reports, customer proposals or other formation maintained by defendants to license and support any Divested Product. Where any such information relates to both a Divested Product and other products and services, defendants shall use their best efforts to segregate the information that relates to the Divested Products and shall provide, and shall not retain, such segregated information to the Acquire; and

(10) The trademarks or pending trademarks "Zeke", "Zebb", "Zara", "Zack", "AutoRerun", "AutoMedia", "CIMS Capacity Panner", "CIMS Chargeback", and "CIMS+", and for a period of eighteen (18) months from the time the Acquire purchases the Divested Product, the Acquire of AutoSys/Zeke may use the phrase "formerly known as AutoSys/Zeke" in connection with the marketing, sale, or distribution of the Divested Product; the Acquire of AutoAction for VSE may use the phrase "formerly known as AutoAction for VSE" in connection with the marketing, sale, or distribution of that Divested Product; the Acquire of CCC/Life Cycle Manager may use the phrases "formerly known as CCC/Life Cycle Manager" and "formerly known as CCC/LCM" in connection with the marketing, sale or distribution of that divested Product, and thereafter, defendants will not object to the Acquirer's use of "Life Cycle Manager" or "LCM".

III. Applicability

A. The provisions of this Amended Final Judgment apply to defendants, their successors and assigns, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Amended Final Judgment by personal service or otherwise. Defendants and each person bound by this Amended Final Judgment shall cooperate in ensuring that the provisions of this Amended Final Judgment are carried out.

B. The Trustee appointed pursuant to Section IV of this Amended Final Judgment shall require, as a condition of the divestiture of the Platinum Assets required herein, that each Acquirer agree to be bound by the provisions of this Amended Final Judgment.

IV. Divestiture by Trustee

A. Defendants are hereby ordered to divest the Platinum Assets to an Acquirer approved by the plaintiff in accordance with the terms of this Amended Final Judgment. Divestiture shall be accomplished by a trustee to be selected by plaintiff at its sole discretion. Defendants shall not object to the selection of the trustee on any grounds other than irremediable conflict of interest. Defendants must make any such objection within five (5) business days after plaintiff notifies defendants of the trustee's selection.

B. Only the trustee shall have the right to divest the Platinum Assets. The trustee shall have the power and authority to accomplish any and all divestitures at the best price then obtainable upon all reasonable efforts of the trustee, subject to the provisions of this Amended Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall the Platinum Assets in the manner that is most conducive to preserving and maintaining competition that currently exists between Computer Associates and Platinum in the markets for the development, sale and maintenance of the mainframe software products described in the Complaint. Subject to Section IV.C. of this Amended Final Judgment, the Trustee shall have the power and authority to hire at the cost and expense of Computer Associates any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professional and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, and shall have such other powers as this Court shall deem appropriate.

C. The trustee shall serve at the cost and expense of Computer Associates, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of each asset sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Computer Associates and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price obtained and the speed with which divestiture is accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Platinum Assets, and shall assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities for the Platinum Assets, and to Platinum's overall businesses as is reasonably necessary to effectuate the divestiture. Defendants shall provide financial or other information relevant to the Platinum Assets customarily provided in a due diligence process as

the trust may reasonably request, subject to customary confidentiality assurances. Subject to customary confidentiality assurances, defendants shall permit prospective acquirers of any Platinum Assets to have reasonable access to the information provided to the trustee and to management personnel for the Platinum Assets, and to make inspection of any physical facilities for the Platinum Assets.

E. After the trustee's appointment, the trustee shall confer regularly with designated representatives of the parties and shall file biweekly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Amended Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding period, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the businesses to be divested.

F. Any proposed divestiture of any of the Platinum Assets shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Platinum Assets can and will be used by the Acquirer as part of a viable, ongoing business involving the sale or license of the Divested Products to customers, including a demonstration to plaintiff's satisfaction that: (1) The divestiture is for the purpose of competing effectively in the selling of the Divested Products to customers; (2) the Acquirer has the managerial, operational, technical and financial capability and intent to compete effectively in the selling of the Divested Products to customers; and (3) none of the terms of any divestiture agreement gives defendants the ability artificially to raise the Acquirer's costs, impairs the Acquirer's ability to maintain or innovate with respect to any of the Divested Products, impairs the Acquirer's ability to support customers, or otherwise interferes with the ability of the Acquirer to compete effectively. Plaintiff may object to a proposed divestiture in the manner prescribed in Section VI of this Amended Final Judgment. Defendants shall not object to a divestiture by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants shall be made in the manner prescribed in Section VI of this Amended Final Judgment.

G. If the trustee has not accomplished such divestitures within one hundred and twenty (120) days after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations for completing the required divestiture; provided, however, that to the extent such report contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. No less than three (3) days prior to filing such report with the Court, the trustee shall furnish a copy of such report to the parties. Upon the filing of such report with the Court, each party shall have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by plaintiff, or entering an order divesting any or all of the Platinum Assets to such Acquirer and upon such terms as the Court deems appropriate.

V. Divestiture Agreement

Any agreement for divestiture of the Platinum Assets shall, at minimum, convey the following:

A. All of Platinum's rights, titles and interests in all the Platinum Assets (subject to Subsection V.E. below and subject to any limitations on defendants' ability to convey, license, sublicense or assign any such rights, as described in Subsection II.F. above).

B. The full and complete assignment of rights under all customer licenses and maintenance agreements for the Divested Products, subject to pro-rated allocation of maintenance revenue as specified in Subsection II.F.(8) above; provided however, that in the event any such licenses or maintenance agreements also encompass other products or services, Acquirer shall not be entitled to receive any rights with respect to such other products or services.

C. The right to obtain the interface information relating to the integration of AutoSys/Zeke and AutoSys as it exists as of the date of the filing of the Complaint; and in the event interface information relating to any existing or future version of AutoSys under any name is made available to any software developer or vendor, the right to obtain such information by the same means and on the same terms and to the same extent as it is made available to such other software developer or vendor. No non-competition clause in or ancillary to any provision of such interface information that may impair the Acquirer's ability effectively to compete with defendants shall be enforceable in any court, except defendants may restrict the use of such interface information to establishing an interface between current and future versions of AutoSys/Zeke and current and future versions of AutoSys.

D. The right to negotiate, without interference by defendants, for the employment services of any of Platinum's employees who, prior to the announcement of the subject acquisition, had employment responsibilities relating to the Divested Products. If the Acquirer employs any such person, any employment-related non-competition clause, as it relates to the Divested Products, that runs in favor of defendants shall be unenforceable by defendants in any court, except for the persons identified on Exhibit 1 to the Amended Final Judgment, which is filed under seal.

E. At Acquirer's option, any tangible assets that are used in conjunction with the development, support or maintenance of the Divested Products, excluding defendants' interests in real property, fixtures and leases and shared equipment.

F. Such usual and customary warranties as are necessary to effect the purposes of the trust.

VI. Notification

Two (2) days before proposing any divestiture, the trustee shall notify plaintiff and defendants of the proposed divestiture and proposed terms and conditions thereof. Defendants shall, within two (2) days after receiving such notice, have an opportunity to confer with the trustee and Acquirer, to state their opposition to terms and conditions that they consider to be inconsistent with this Amended Final Judgment, and to make such recommendations as to different or additional terms and conditions that they believe are consistent with this Amended Final Judgment. Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Amended Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to this Amended Final Judgment, the trustee shall notify plaintiff and

defendants of the proposed divestiture. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the definitive agreement, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff in its sole discretion may request from defendants, the proposed Acquirer, or any other third party additional information concerning the proposed divestiture and the proposed Acquirer. Defendants and the trustee shall furnish any additional information requested from them within ten (10) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed Acquirer, and any third party, whichever is later, plaintiff shall provide written notice to defendants and the trustee stating whether or not it objects to the proposed divestiture. Any such notice objecting to a proposed divestiture shall state the reasons therefore. If plaintiff provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section IV.F. of this Amended Final Judgment. Upon objection by plaintiff, the divestiture proposed under Section IV shall not be consummated. Any objection by defendants under Section IV.F. of this Amended Final Judgment must be conveyed in writing to plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice of execution of a definitive agreement required under this Section VI of this Amended Final Judgment. Upon such objection by defendants, the proposed divestiture shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within ten (10) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, defendants shall deliver to plaintiff an affidavit which describes in detail all actions defendants have taken and all steps implemented on an on-going basis to preserve the Platinum Assets pursuant to Section VIII of this Amended Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain the Platinum Assets as an active competitor; to maintain at current levels the management, staffing, sales, marketing and pricing of the Platinum Assets; and to commit resources, development and support to the Platinum Assets at a level not materially less than that committed prior to the announcement of Computer Associates' proposed acquisition of Platinum. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within ten (10) calendar days after such change is implemented.

B. Until one year after such divestiture has been completed, defendants shall preserve all records of all efforts made to preserve the Platinum Assets and to effect the ordered divestitures.

VIII. Hold Separate Order

Until the divestitures required by the Amended Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of the Platinum Assets.

IX. Financing

Computer Associates is ordered and directed not to finance all or any part of any divestiture to any person made pursuant to this Amended Final Judgment, or to enter into any agreement requiring or permitting the reporting to defendants of sales units or revenues of the products included in the Platinum Assets by the Acquirer or the payment of continuing royalties to defendants by the Acquirer.

X. Compliance Inspection

For purposes of determining or securing compliance with the Amended Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Amended Final Judgment and the Hold Separate Stipulation and Order; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview informally or to dispose under oath and on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Amended Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in this Section shall be divulged by a representative of plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grant jury proceedings), or for the purpose of securing compliance with this Amended Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules to Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties of this Amended Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Amended Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Amended Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Amended Final Judgment is in the public interest.

Dated: _____.

United States District Judge.

Documents Under Seal

United States of America, Plaintiff, v. Computer Associates International, Inc. and Platinum Technology International, Inc., Defendants.

[Civil Action No. 1:99CV01318; Judge: Gladys Kessler, Deck Type: Antitrust, Date Stamp: _____]

Exhibit One to Proposed Amended Final Judgment, Pursuant to Order To Place Exhibit One to Final Judgment Under Seal

Order Entered May 27, 1999

Order To Substitute Amended Final Judgment

The Court ORDERS as follows:

The proposed Amended Final Judgment filed by the United States as Exhibit A to the Uncontested Motion to Substitute Amended Final Judgment shall replace and supersede for all purposes the proposed Final Judgment attached as Exhibit A to the Hold Separate Stipulation and Order filed by the parties on May 25, 1999, and entered by the Court on May 26, 1999;

PROVIDED, HOWEVER, THAT the document filed as Exhibit 1 to the aforementioned proposed Final Judgment that was placed under seal by the Clerk of the Court pursuant to the Court's Order to Place Exhibit One to Final Judgment Under Seal, entered on May 27, 1999, shall remain under seal and in effect as Exhibit 1 to the proposed Amended Final Judgment.

Dated: _____.

United States District Judge.

United States of America, Plaintiff, v. Computer Associates International, Inc. and PLATINUM Technology International, Inc., Defendants.

[Civil Action No. 1:99CV01318; Judge Gladys Kessler, Deck Type: Antitrust, Date Stamp: _____]

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16 (b)–(h), files this Competitive Impact Statement relating to the proposed Amended Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On May 25, 1999 the United States filed a civil antitrust Complaint, and on June 8, 1999, the United States filed amendments to the Complaint (hereinafter the Complaint and the amendments to the Complaint will be referred to collectively as "Complaint, as amended"). The Complaint, as amended, alleges that the proposed acquisition by Computer Associates International, Inc. ("CA") of PLATINUM Technology International, Inc. ("Platinum") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. CA is the document competitor with market shares of 70% or more in a number of mainframe systems management software products for the MVS (now named OS/390) and VSE operating systems that run on IBM and IBM-compatible mainframe computers. Platinum is either the only substantial competitor or is among the most significant of a very few competitors attempting to challenge CA's dominance in the sale of these mainframe systems management software products. Platinum has aggressively marketed its products to CA's customers by offering better pricing and more responsive customer service.

The Complaint, as amended, alleges that the acquisition would eliminate substantial competition, and result in higher prices, lower quality product support, and less innovation, in seven product markets for systems management software used with mainframe computers: MVS (OS/390) job scheduling and rerun software; MVS (OS/390) tape management software; MVS (OS/390) change management software, MVS (OS390) job accounting and chargeback software, VSE job scheduling and rerun software; VSE automated operations software, and VSE job accounting and chargeback software. The Complaint, as amended, seeks adjudication that CA's acquisition of Platinum would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and requests that the Court grant preliminary and permanent injunctive relief, and such other relief as the Court deems appropriate.

Simultaneously with the filing of the amendments to the Complaint, the United States filed the proposed Amended Final Judgment. At the time the original Complaint was filed on May 25, 1999, the United States also filed a proposed Final Judgment and a Hold Separate Stipulation and Order ("Hold Separate"); the Court entered the Hold Separate on May 26, 1999. The proposed Amended Final Judgment that is the subject of this Competitive Impact Statement supercedes the initial proposed Final Judgment and provides for relief in all of the markets that are the subject of allegations in the Complaint, as amended.

Prior to the announcement of CA's proposed acquisition of Platinum, Platinum granted to another firm, CIMS Inc., an exclusive license, together with an option to purchase, certain products, collectively known as the "CIMS product line," that Platinum had developed, marketed and sold in the markets for MVS (OS/390) job accounting and chargeback software and VSE job accounting and chargeback software. The defendants proposed to complete the divestiture of the CIMS product line by conveying to CIMS Inc. all of Platinum's remaining rights, titles, and interests in the CIMS product line in a "fix-it-first" transaction to be approved by the United States and to be consummated contemporaneously with CA's acceptance for payment of the tendered shares of Platinum. Because such a conveyance would have resolved any competitive problems that would otherwise arise if CA were to acquire the CIMS product line, the original Complaint did not contain allegations pertaining to the effect of the proposed acquisition in the markets for MVS (OS/390) job accounting and chargeback software and VSE job accounting and chargeback software. However, the United States insisted and defendants agreed in the Hold Separate that the United States could amend the Complaint and file a proposed Amended Final Judgment if the defendants were unable to convey the CIMS product line in the manner described above. The parties agreed that an amended Complaint would add allegations in the product markets in which the CIMS product line is developed, marketed and sold and an Amended Final Judgment would add the CIMS product line to the group of products to be divested and such additional provisions as the United States deems necessary to obtain relief from the additional violations alleged in the amended Complaint.

On May 28, 1999, subsequent to the filing of the original Complaint, CA announced the expiration of its tender offer for Platinum shares and acceptance for payment of all validly tendered shares, but the defendants failed to make the requisite conveyance of the CIMS product line. The United States therefore filed its amendments to the Complaint on June 8, 1999, adding allegations pertaining to the markets for MVS (OS/390) job accounting and chargeback software and VSE job accounting and chargeback software.

The proposed Amended Final Judgment is designed to eliminate the anticompetitive effects of CA's acquisition of Platinum, and requires the defendants to divest, through a trustee to be appointed by the United States, Platinum's products in the seven mainframe systems management software product markets named in the Complaint, as amended ("Divested Products"), together with certain related assets (collectively, the "Platinum Assets"). The defendants are required to assist the trustee in accomplishing the required divestitures and may not impede or interfere with the trustee's work. If the trustee is unable to complete the required divestitures within 120 days after appointment, the Court is authorized to enter such orders as it shall deem appropriate to carry out the purpose of the trust, which may, if necessary, include extending the trustee's appointment by a period requested by the United States, or directly ordering the divestiture of the Platinum Assets on such terms as the Court deems appropriate.

The Hold Separate includes a stipulation by the United States and the defendants that the proposed Amended Final Judgment may be entered after compliance with the APPA. The Hold Separate also obligates the defendants to comply with the terms of the proposed Amended Final Judgment until it is entered by the Court, or until all appeals have been completed stemming from any court ruling declining entry of the proposed Amended Final Judgment. Until all divestitures have been completed, the Hold Separate specifies that the defendants will take certain steps to ensure that the Platinum Assets will be held and operated separate and part from the defendants' and assets and businesses. The defendants must appoint an interim, separate and independent management acceptable to the United States to manage the business operations relating the Platinum Assets until the divestitures have been completed. Confidential business information relating to the Platinum Assets will, to the maximum extent feasible, be screened from the defendants. The defendants must maintain promotional and sales efforts, development funding, and technical support for the Divested Products. In particular, the defendants are required to maintain at current or previously approved levels, whichever are higher, research and development funding for the Divested Products and to continue to serve the needs of existing customers. The purpose of these interim steps is to ensure that the Platinum Assets will continue to be maintained and operated, until the divestitures are completed, as an independent, ongoing and economically viable concern, free from defendants' control and influence.

Entry of the proposed Amended Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Amended Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

CA is a Delaware corporation with its principal place of business in Islandia, New York. In its 1998 fiscal year, CA had revenues in excess of $4.7 billion and net profits of $1.17 billion. CA produces and markets software for a variety of computers and operating systems, including systems management software for mainframe computers running the two most popular operating systems, IBM's MVS (now renamed "OS/390" by IBM), and VSE operating systems. Aside from IBM, which writes the operating system software that runs almost all mainframe computers, CA is the largest vendor of software for IBM and IBM-compatible mainframe computers. CA is also a significant vendor of systems management software and other software for computers and computer networks running UNIX or Windows NT (recently renamed Windows 2000) operating systems.

Platinum is a Delaware corporation with its principal place of business in Oakbrook Terrace, Illinois. Platinum's fiscal year 1998 revenues exceeded $968 million. Platinum sells a variety of computer software and related services for mainframe, UNIX, and Windows NT computer systems and is also a leading vendor of systems management software for IMB and IMB-compatible mainframe computers.

On March 31, 1999, CA filed with the United States a premerger notification stating that it had entered into a definitive agreement with Platinum to purchase all issued and outstanding shares of Platinum's common stock through a $3.5 billion cash tender offer. CA announced on May 28, 1999, that it had accepted for payment all validly tendered shares, which comprise about 98% of Platinum's outstanding common stock. This acquisition forms the basis of the government's suit.

B. Mainframe Systems Management Software

Mainframe computers are the large and powerful computers used by industrial, commercial, educational, and governmental enterprises for large scale data processing applications. Mainframe computers provide unique storage, throughput, and security features and functions that make them superior data processing devices for large corporate and institutional computer users throughout the world.

An operating system is software that controls the operational resources of the computer (including the central processor unit, memory, data storage devices, and other hardware components) and allows "applications" software (programs that perform user-directed tasks requested of the computer, such as programs that perform transactions or maintain payroll, inventory, sales, and other business accounts of a company) to run on the computer. The vast majority of the world's mainframe computers run with operating systems developed by IBM, of which the two most widely used are the MVS (OS/390) and VSE operating systems. MVS (OS/390) is generally used by users of larger mainframes and those needing the highest levels of performance and functionality. VSE is a significantly less costly operating system that has less capability and fewer features. VSE is a significantly less costly operating system that has less capability and fewer features. VSE is generally used with smaller mainframes, with fewer users and smaller data sets.

Systems management software is used to help manage, control, or enhance the performance of mainframe computers. While IBM's mainframe operating systems contain some limited systems management capabilities, separate systems management software programs such as the products offered by CA and Platinum provide additional functionality that is demanded by most mainframe users. Mainframe systems management software generally is designed to function only with a specific operating system. Therefore, users of MVS (OS/390) must purchase systems management software designed specifically for that operating system, while VSE users are limited to buying systems management software designed for the VSE operating system. Users generally cannot switch between the MVS (OS/390) and VSE operating systems without facing very substantial costs. Therefore, customers using one mainframe operating system are unlikely to switch to another to escape

even a very substantial increase in price of the systems management software on their present mainframe operating system platform.

In recent years, some mainframe computer systems users have transferred applications from their mainframes to distributed client/server computing environments. However, most users continue to remain highly dependent on their mainframe computers for other "mission-critical" business applications which cannot be switched at all or in an economically viable manner. Moreover, conversion of applications from mainframe to distributed client/server computing environments entails substantial costs and time, is generally disruptive of business operations and is fraught with risks. The cost of the mainframe systems management software that is the subject of the violation alleged in the Complaint, as amended, constitutes only a small portion of the overall operating costs of a mainframe computer system. Therefore, users would not switch from mainframe computer systems to distributed client/server computing systems to escape even a very substantial increase in the price of these mainframe systems management software products.

CA and Platinum both develop and sell a variety of mainframe computer systems management software products and are direct competitors in the development and sale to mainframe users of each of the products that is the subject of the violation alleged in the Complaint, as amended, and described below. Each specific product or product combination solves particular problems or meets specific needs of mainframe users, and users cannot economically switch to different products to obtain the same functionality.

(1) Job scheduling and rerun software for the MVS (OS/390) operating system. Job scheduling and rerun software directs a mainframe to prioritize and run particular "batch" processing operations (called "jobs") based on user requirements as to time, date, and other parameters, to link jobs together so that they are performed in the correct sequence, and to organize the results of these jobs. Rerun software interfaces with the job scheduler and automatically collects the data on jobs that were not operated successfully and performs the necessary remedial operations and reruns the job or alerts the operator that intervention is necessary. Rerun software is almost always sold to those users who need it for use together with the specific job scheduling software product for which it was designed to inter operate.

(2) Job scheduling and rerun software for VSE operating system. These VSE products perform essentially the same functions as MVS (OS/390) job scheduling software.

(3) Tape management software for the MVS (OS/390) operating system. Tape management software is used to control the cataloguing, loading, formatting, and reading of the magnetic tapes used for archival storage of data processed by mainframes. Many mainframe computer system users store information on hundreds or thousands of tapes, and tape management software specifies which tapes, and which information on the tapes, need to be loaded for particular operations. Tape management software also protects the information on the tape by ensuring that active information is not overwritten or erased.

(4) Change management software for the MVS (OS/390) operating system. Change software tracks, manages, and archives versions of computer programs while those programs are being developed, modified, and tested. It also helps to control the versions of the programs as they are used in normal business activities by the customer, when there may be a need to modify, repair, or update the programs, or to uninstall the programs and reinstall a prior version that is known to work.

(5) Automated operations software for the VSE operating system. Automated operations software is used to automate computer management to reduce human interaction with the system and thereby improve efficiency and minimize errors. Among the functions of automated operations software is automating computer console operations, message and error handling, and enabling systems management from remote locations or computers.

(6) MVS and OS/390 job accounting and chargeback software. Job accounting and chargeback software monitors the use of computer resources so that computer resource costs may be allocated and charged among internal corporate divisions and/or third party client users. The software collects data that shows which computer resources were being by whom, when, and for how long. This data is then used to measure, allocate and charge shared costs to internal corporate divisions and/or third party client users. Job accounting and chargeback software, including such software sold by CA and Platinum, is often combined with a capacity planning software feature, which uses the data compiled by the job accounting and chargeback software to report on measures such as system response performance, system availability, resource utilization, and future utilization projections.

(7) VSE job accounting and chargeback software. These VSE products perform essentially the same functions as MVS and OS/390 job accounting and chargeback software.

Even substantial price increases for the software products described above would not cause users to switch to any other types of mainframe software products or software products for different operating systems. Each of the systems management products for each operating system, therefore, constitutes a separate relevant product market in which to assess the competitive effects of CA's acquisition of Platinum. Vendors sell these products to customers located throughout the United States, and for each of the product markets, the United States constitutes a relevant geographic market in which to assess the competitive effects of the proposed acquisition.

D. Competition Between CA and Platinum

CA and Platinum compete against each other for sales of the above-described MVS (OS/390) and VSE systems management software products throughout the United States. They compete with respect to license royalties they charge users of systems management products and the flexibility of the license terms they offer. Both firms market their products under license that require royalty payments for the right to use the product and payments for maintenance of and upgrades to the products.

Moreover, CA and Platinum compete in providing product support and service to their customers. Due to the "mission-critical" nature of the work done with mainframe computers, users highly value the speed and effectiveness of a vendor's installation, maintenance, and technical support of systems management products. CA and Platinum also compete to improve, upgrade, and enhance their systems management products, both in terms of developing products of greater performance or functionality and in terms of improving operability so that the products become easier to install, use, and maintain.

In addition to competition for new users, substantial competition in the markets for these mainframe systems management software products primarily occurs when current users, and particularly current users of CA's products, consider whether they should convert to a different product. Platinum has aggressively marketed its products in competition with CA by offering better pricing, more responsive customer services, and improved product features. Because conversion from one product to another product is costly, difficult, time-consuming, and potentially disruptive to a firm's ongoing mainframe computer operations and overall business, most users are relevant to incur the costs and risks of switching. In particular, Platinum has invested significant resources in demonstrating that, notwithstanding the costs and risks of conversion, Platinum's products are superior alternatives for current users of CA's products. This competition from Platinum has caused CA to respond with lower prices, better service, and improved product features for its own products.

E. Anticompetitive Consequences of the Acquisition

The Complaint, as amended, alleges that CA's acquisition of Platinum would substantially lessen competition in each of the markets of the systems management software products described above. The combined annual U.S. sales of all competitors in the relevant product markets exceed $590 million. Each of the relevant markets already is highly concentrated, and the acquisition would substantially increase concentration. In each market, CA already has a dominant share of 70% to 90%. Platinum is the only substantial competitor or among the most significant of only a few competitors in these markets.

The Complaint, as amended, alleges that in the markets for each of the products described above, the reduction or elimination of competition from CA's acquisition of Platinum would likely lead to higher prices, lower levels of product service and support, and a lessening of product innovations and development. The Complaint, as amended, further alleges that the competitive harm resulting from the acquisition is not likely to be mitigated by the possibility of new entry. Entry into any of the markets would entail expenditures of substantial costs and time for the development of a competitive product that would be acceptable to mainframe customers. A new entrant would also be required to invest significant time and resources to develop a reputation as a reliable vendor of these products to attract significant sales in what are substantially product replacement markets. Such entry would not be timely, likely, or sufficient in scale to counteract or deter a price increase or a reduction in service or product quality in any of the relevant markets.

III. Explanation of the Proposed Amended Final Judgment

The proposed Amended Final Judgment is designed to preserve competition in each of the mainframe systems management software markets in which CA's acquisition of Platinum would be anticompetitive. The proposed Amended Final Judgment will remain in effect for ten years and requires CA to divest all of the Platinum Assets through a trustee selected by the United States, and imposes obligations on CA to cooperate in the trustee's sale efforts.

The propose Amended Final Judgment provides that the assets must be divested in such a way as to satisfy the United States that the Platinum Assets can and will be operated by the purchaser or purchasers as part of a viable, ongoing business or businesses that can compete effectively in the selling of the Divested Products. The CIMS product line will be sold subject to any rights in those Divested Products held by CIMS Inc. as a result of the licensing agreement and option to purchase that it obtained from Platinum prior to CA's announcement of its proposed acquisition of Platinum. The proposed Amended Final Judgment provides that CA will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After the trustee's appointment becomes effective, the trustee will confer regularly with the parties and file biweekly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture. At the end of 120 days, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment or ordering the divestiture of any or all of the Platinum Assets to such purchasers and on such terms as the Court deems appropriate.

The proposed Amended Final Judgment sets forth the minimum assets and rights that must be conveyed in a divestiture. These include requiring the transfer to the purchaser or purchasers of: all of Platinum's transferrable ownership rights in the Divested Products, as well as Platinum's rights in other assets included in the Platinum Assets that are used in conjunction with the development, support or maintenance of the Divested Products; all customer licenses and maintenance agreements for the Divested Products; broad rights to the information necessary to service customers, to interface Platinum's job scheduling products with the Platinum UNIX/NT job scheduling product to be acquired by CA, and generally to compete with CA and other vendors of software products in the markets described above; and the right to negotiate, without interference from CA, for the employment services of the Platinum employees who have job responsibilities relating to the Divested Products.

The proposed Amended Final Judgment also prohibits CA from financing the purchase of the Platinum Assets or entering into continuing royalty payment arrangements with any purchaser of the Divested Products. This provision prevents CA from having a relationship with its new competitor that might impair competition between the new competitor and CA.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Amended Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Amended Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Amended Final Judgment

A. APPA Procedures

The United States and defendants have stipulated that the proposed Amended Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Amended Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Amended Final Judgment within which any person may submit to the United States written comments regarding the proposed Amended Final Judgment. Any person who wishes to comment should do so

within (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Amended Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Nancy M. Goodman, Chief, Computers and Finance Section, Antitrust Division, United States Department of Justice, 600 E Street, N.W., Suite 9500, Washington, DC 20530.

B. The Court's Continuing Jurisdiction

The proposed Amended Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Amended Final Judgment.

VI. Alternatives to the Proposed Amended Final Judgment

The United States considered, as an alternative to the proposed Amended Final Judgment, litigation against defendants CA and Platinum. The United States could have brought suit and sought preliminary and permanent injunctions against CA's acquisition of Platinum. The United States is satisfied, however, that the complete, and irrevocable divestiture of the Platinum Assets to a suitable purchaser and the other relief outlined in the proposed Amended Final Judgment will preserve competition in the relevant mainframe systems management product markets alleged in the Complaint, as amended, that would otherwise have been impaired by the acquisition. The relief specified in the proposed Amended Final Judgment will achieve all of the competitive benefits that the United States could have obtained through protracted litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint, as amended.

VII. Standard of Review Under the APPA for the Proposed Amended Final Judgment

The APPA requires that proposed final judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed final judgment "is in the public interest." In making that determination:

> [T]he court *may* consider—
> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *United States* v. *Microsoft*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). The courts have recognized that the term "'public interest' take[s] meaning from the purposes of the regulatory legislation." *NAACP* v. *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve "free and unfettered competition as the rule of trade," *Northern Pacific Railway* Co. v. *United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the APPA is whether the proposed Amended Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.* 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is no where compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[1] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. ¶61.508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981). *See also Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *"within the reaches of the public interest."* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

A proposed final judgment is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

> waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. Armour & Co., 402 U.S. 673, 681 (1971).

the proposed Amended Final Judgment therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[3]

VIII. Determinative Documents

In deciding to consent to the proposed Amended Final Judgment, the United States considered no documents that were determinative within the meaning of the APPA. Consequently, no such documents have been filed with this Competitive Impact Statement.

Dated: June 8, 1999.

Respectfully submitted,

Kent Brown, VA Bar #18300; Kenneth W. Gaul, D.C. Bar #415456; Weeun Wang; Sanford M. Adler; Jeremy W. Eisenberg; Richard Koffman; Melinda Foster; Jeremy Feinstein,

Attorneys, Antitrust Division, U.S. Department of Justice, Computers & Finance Section, Suite 9500, 600 E Street, NW., Washington, DC 20530, (202) 307–6200.

Certificate of Service

The undersigned certifies that she is a paralegal employed by the United States Department of Justice, and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that on June 8, 1999, she caused true copies of the

1. Amendments to Complaint (together with attached Exhibit)
2. Uncontested Motion to Substitute Amended Final Judgment (together with the attached Exhibit)
3. Competitive Impact Statement

to be served upon the person in the manner stated below:

Counsel for Computer Associates International, Inc. and PLATINUM technology International, Inc.—Richard L. Rosen, Esq., Arnold & Porter, 555 12th Street, NW., Washington, DC 20004.

(by hand delivery)

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, DC, this 8th day of June 1999.

Joann Maguire.

[FR Doc. 99–15419 Filed 6–16–99; 8:45 am]

BILLING CODE 4410–11–M

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[1] 119 Cong. Rec. 24598 (1973), *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. Bechtel, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. BNS, Inc., 858 F.2d at 463; *United States* v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. Gillette Co., 406 F. Supp. at 716. *See also United States* v. American Cyanamid Co., 719 F.2d at 565.

[3] *United States* v. American Tel. and Tel Co., 552 F. Supp. 131, 150 (D.D.C. 1983), *aff'd sub nom. Maryland* v. United States, 460 U.S. 1001 (1983) *quoting United States* v. Gillette Co., supra, 406 F. Supp. at 716; *United States* v. Alcan Aluminum, Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985).

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1236]

RIN 1121–ZB69

Internet Crimes Against Children Task Force Program

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of extension of the deadline for applying for discretionary competitive assistance for the Internet Crimes Against Children Task Force Program.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is extending the deadline for applications from State and local law enforcement agencies interested in participating in the Internet Crimes Against Children Task Force (ICAC Task Force) Program. The ICAC Task Force Program encourages communities to develop regional multidisciplinary, multijurisdictional task forces to prevent, interdict, and investigate sexual exploitation offenses against children by offenders using online technology.

DATES: The new deadline for applications to be received is Monday, July 19, 1999. (The original deadline was June 21, 1999).

ADDRESSES: Interested applicants must obtain an application kit from the Juvenile Justice Clearinghouse at 800–638–8736. The application kit is also available at OJJDP's Web site at www.ojjdp.ncjrs.org. Copies of the complete program announcement, which appeared in the **Federal Register** on May 7, 1999, 64 FR 24856, are also available from the Juvenile Justice Clearinghouse and on OJJDP's Web site.

FOR FURTHER INFORMATION CONTACT: Michael Medaris, ICAC Task Force Program Manager, Office of Juvenile Justice and Delinquency Prevention, 202–616–8937. [This is not a toll-free number.]

Dated: June 14, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 99–15456 Filed 6–16–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Snyder Coal Company

[Docket No. M–1999–030–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Rattling Run Slope (I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the mandatory standard to permit: (i) An alternative method of examination and evaluation including a visual examination of each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken just inby the intake portal; (ii) an additional air reading and gas test for methane, carbon dioxide and oxygen deficiency to be taken at the intake air split location(s) just off the slope in the gangway portion of the working section; and (iii) the examiner reading the air and gas test to record the date, time, his/her initials, and the results of the readings at these locations prior to anyone entering the mine. The petitioner states that regardless of conditions found at the section evaluation point, the slope will be traveled and physically examined in its entirety on a monthly basis with the dates, times, and initials placed at sufficient locations, the results of the examination will be maintained on the surface, and all hazards will be corrected prior to transporting personnel into the slope. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Snyder Coal Company

[Docket No. M–1999–031–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4)

and (5) (weekly examination) to its Rattling Run Slope (I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner proposes to: (i) Preshift examine the intake haulage slope and primary escapeway areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake gangway level; (ii) travel and thoroughly examine these areas for hazardous conditions once a month; and (iii) have the examiner place the dates, times, and his/her initials at appropriate locations and maintain records of the examination on the surface. The petitioner states that due to significant fall hazards, it would be unsafe to stop at every ventilation control or opening along the steeply pitching intake haulage and primary escapeway to conduct daily or weekly examinations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Snyder Coal Company

[Docket No. M–1999–032–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100–2 (quantity and location of firefighting equipment) to its Rattling Run Slope (I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the mandatory standard to permit the use of portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three 10 quart pails is not practical. The petitioner proposes to have two portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Snyder Coal Company

[Docket No. M–1999–033–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1201–1(a) (temporary notations, revisions, and supplements) to its Rattling Run Slope (I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner proposes to conduct mine surveys and revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that low production and slow rate of advance in anthracite mining make surveying on 6-month intervals impractical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Snyder Coal Company

[Docket No. M–1999–034–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Rattling Run Slope (I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use an increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Sea "B" Mining Company

[Docket No. M–1999–035–C]

Sea "B" Mining Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.1710–1(a) (canopies or cabs; self-propelled diesel-powered and electric face equipment; installation requirements) to its Silver Creek Mine (I.D. No. 44–06895) located in Tazewell County, Virginia. The petitioner requests that the Proposed Decision and Order for its previously granted petition, docket number M–98–033–C, modifying the application of 30 CFR 75.1710(1)(a), be amended to include the following equipment: three center-driven Joy 21SC shuttle cars, Serial Nos. ET10956, ET11195, ET14880; Long Airdox Scoop 482, Serial No. 482–2229; and Fletcher Roof Bolting Machine, Model RRII–15 W/T-Bar ATRS, Serial No. 96053. The petitioner asserts that using canopies on this equipment in mining heights less that 46 inches would result in a diminution of safety to the miners.

7. Mountain Coal Company, L.L.C

[Docket No. M–1999–036–C]

Mountain Coal Company, L.L.C, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.325(g)(1) (air quantity) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner requests a modification of the mandatory standard to allow the minimum ventilating air quantity in the last open crosscut of each set of entries or rooms in a working section or areas where mechanized mining equipment is being installed or removed to be a summation of the air quantity measured in both the last open crosscut and in the ventilation tubing which is periodically located one crosscut outby the last open crosscut. The petitioner proposes to: (i) Have an auxiliary exhaust fan and ventilation tubing in a working section with a large percentage of the section's total air quantity coursed through the fan's tubing thereby routing diesel emissions directly to the return air course; (ii) have the ventilation tubing located one crosscut outby the last open crosscut after connecting the return side crosscut, which then becomes the last open crosscut, and prior to connecting the entire line of the adjacent crosscuts; and (iii) maintain a minimum air quantity of 9,500 CFM through the newly developed last open crosscut to account for minimal diesel usage in the newly developed entry and crosscut. The petitioner states that the total air volume in the newly developed last open crosscut and in the ventilation tubing located one crosscut outby will meet or exceed the sum of the approval plates of all diesel powered equipment operating in the working section; after the entire line of the adjacent crosscuts are developed, the auxiliary fan and associated tubing will be advanced prior to completing the second preparation shift in the section; and that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Mingo Logan Coal Company

[Docket No. M–1999–037–C]

Mingo Logan Coal Company, 1000 Mingo Logan Avenue, Wharncliffe, West Virginia 25651 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Mountaineer Alma A Mine (I.D. No. 46–08730) located in Mingo County, West Virginia. The petitioner proposes to use an automatic fire detection system based on carbon monoxide monitoring of underground conveyor belt entries to allow air coursed through such entries to be used to ventilate working faces. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all conveyor belt entries used to course intake air to a working place. The petitioner has outlined in this petition specific installation, design, and maintenance procedures for using its carbon monoxide monitoring system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Cyprus Emerald Resources Corporation

[Docket No. M–1999–038–C]

Cyprus Emerald Resources Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.351(c) (Atmospheric Monitoring System (AMS)) to its Emerald Mine No. 1 (I.D. No. 36–05466) located in Greene County, Pennsylvania. The petitioner requests a modification of the mandatory standard as it pertains to the location of the CO sensors for power centers and battery charging stations. The petitioner proposes to install sensors in the most appropriate location to detect products of combustion in an area between 0 and 100 feet of the power center or battery charging station where power centers or battery charging stations are located in crosscuts along intake air courses and where CO monitors or smoke sensors are used. The petitioner states that because of the relatively low airflow in crosscuts in the intake air courses, carbon monoxide or smoke would be monitored with sensors and/or smoke detectors operated in accordance with 30 CFR 75.351, and located closer to the power center or battery charging station than required by the standard. The petitioner asserts that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Canyon Fuel Company, LLC

[Docket No. M–1999–039–C]

Canyon Fuel Company, LLC, 397 South 800 West, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its SUFCO Mine (I.D. No.42–00089) located in Sevier County, Utah. The petitioner proposes to use a 420 KW/525 KVA, 480-volt diesel-powered generator system to move equipment in and out of and to perform minor mining activities in the mine. The petitioner has listed in this petition specific terms and conditions for using the generator system. The petitioner states that proper testing procedures training will be conducted for all operators prior to using the generator system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Canyon Fuel Company, LLC

[Docket No. M–1999–040–C]

Canyon Fuel Company, LLC, 397 South 800 West, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its SUFCO Mine (I.D. No.42–00089) located in Sevier County, Utah. The petitioner proposes to use a 420 KW/525 KVA, 480-volt diesel-powered generator system to move equipment in and out of and to perform minor mining activities in the mine. The petitioner has listed in this petition specific terms and conditions that would be implemented when using the generator system. The petitioner states that proper testing procedures training will be conducted for all operators prior to using the generator system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Five Star Mining, Inc.

[Docket No. M–1999–041–C]

Five Star Mining, Inc., 6594 West State Road 56, Petersburg, Indiana 47567 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Prosperity Mine (I.D. No. 12–02249) located in Pike County, Indiana. The petitioner proposes to plug oil and gas wells and then mine through or near the plugged wells whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve under 30 CFR 75.1700. The petitioner has described in this petition the techniques that would be used to plug oil and gas wells, and has listed specific procedures that would be used when mining through or near plugged wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard and will not result in a diminution of safety to the miners.

13. R S & W Coal Company, Inc.

[Docket No. M–1999–042–C]

R S & W Coal Company, Inc., R.D. 1, Box 36, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1312(e)(1) (explosives and detonators in underground magazines) to its R S & W Drift (I.D. No. 36–01818) anthracite mine located in Schuylkill County, Pennsylvania. The petitioner proposes to store explosives and detonators in gangways at least 10 feet from roadways and any source of electrical current rather than the minimum distance of 25 feet required by the standard. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

14. R S & W Coal Company, Inc.

[Docket No. M–1999–043–C]

R S & W Coal Company, Inc., R.D. 1, Box 36, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1310(a) (explosives and blasting equipment) to its R S & W Drift (I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner proposes to use non-permissible primacord in each borehole to ensure detonation of the entire column of powder in the underground long hole method of mining anthracite coal used at the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

15. Energy West Mining Company

[Docket No. M–1999–044–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Deer Creek Mine (I.D. No. 42–00121) located in Emery County, Utah. The petitioner requests that some of the requirements in the Decision and Order (D&O) for it previously granted petition, docket number M–96–01–C, be amended because the requirements have proven to be outdated due to changes in circumstances that originally supported the terms and conditions of the D&O. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the granted D&O and will not result in a diminution of safety provided by the existing standard.

16. B. and B. Coal Company

[Docket No. M–1999–045–C]

B. and B. Coal Company, 225 Main Street, Joliett, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1312(e)(1) (explosives and detonators in underground magazines) to its Rock Ridge No. 1 Slope (I.D. No. 36–07741) anthracite mine located in Schuylkill County, Pennsylvania. The petitioner proposes to store explosives and detonators in gangways at least 10 feet from roadways and any source of electric current rather than the 25 feet required by the standard. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

17. Twentymile Coal Company

[Docket No. M–1999–046–C]

Twentymile Coal Company, One Oxford Centre, 30 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner requests a modification of the mandatory standard to permit use of low voltage or battery operated non-permissible electronic testing and diagnostic equipment inby the last open crosscut and in its continuous miner development sections. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

18. Little Buck Coal Company

[Docket No. M–1999–047–C]

Little Buck Coal Company, R.D. #4, Box 395, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its #3 Slope Buck Mtn. (I.D. No. 36–08568) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the mine illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

19. Little Buck Coal Company

[Docket No. M–1999–048–C]

Little Buck Coal Company, R.D. #4, Box 395, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1202–1(a) (temporary notations, revisions, and supplements) to its #3 Slope Buck Mtn. Mine (I.D. No. 36–08568) located in Schuylkill County, Pennsylvania. The petitioner proposes to survey, revise, and supplement mine maps annually instead of every 6 months, as required, to update maps daily by hand notations, and to conduct additional surveys prior to commencing retreat mining and whenever either a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that the low production and slow rate of advance in anthracite mining make surveying on 6-month intervals impractical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

20. Dally Slate Company and American Bangor Slate & Stone

[Docket No. M–1999–004–C]

Dally Slate Company and American Bangor Slate & Stone, P.O. Box 27, Pen Argyl, Pennsylvania 18072 have filed a petition to modify the application of 30 CFR 57.19007 (overtravel and overspeed devices) to the Dally 2 Pit; Diamond Mine (I.D. No. 36–08597) and the American Bangor Slate & Stone Mine (I.D. No. 36–04864) located in Northampton County, Pennsylvania. The petitioner requests a modification of the mandatory standard to permit the use of a stand-by engineer, instead of a mechanical device, to prevent overtravel or overspeed in the event of a sudden health problem of the operating engineer that impairs his/her ability to operate the hoist. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

21. Williams & Sons Slate & Tile, Inc.

[Docket No. M–1999–005–M]

Williams & Sons Slate & Tile, Inc., 6596 Sullivan Trail, Wind Gap, Pennsylvania 18091–9798 has filed a petition to modify the application of 30 CFR 57.19007 (overtravel and overspeed devices) to its Sreebs Slate 7 Stone Co., Inc. Mine (I.D. No. 36–07156) located in Northampton County, Pennsylvania. The petitioner requests a modification of the mandatory standard to permit the use of a stand-by engineer, instead of a mechanical device, to prevent overtravel or overspeed in the event of a sudden health problem of the operating engineer that impairs his/her ability to operate the hoist. The petitioner asserts that application of the standard would result in a diminution of safety.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 19, 1999. Copies of these petitions are available for inspection at that address.

Dated: June 10, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99–15424 Filed 6–16–99; 8:45 am]

BILLING CODE 4510–43–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–083)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Guy M. Miller, Patent Counsel, Goddard Space Flight Center, Mail Code 750.2, Greenbelt, MD 20771; 301–286–7351.

NASA Case No. GSC 13,817–3: Empirical Mode Decomposition Apparatus, Method, and Article of Manufacture for Analyzing Biological Signals and Performing Curve Fitting;

NASA Case No. GSC 13,966–1: GPS "Compound Eye" Attitude Sensor;

NASA Case No. GSC 14,098–1: Microaltimeter;

NASA Case No. GSC 14,213–1: Estimated Spectrum Adaptive Postfilter (ESAP) and the Iterative Prepost Filtering (IPF) Algorithms.

Dated: June 11, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15468 Filed 6–16–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–085)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (650) 604–5104, fax (650) 604–1592.

NASA Case No. ARC–14236–1GE: Method and Apparatus for Evaluating the Visual Quality of Processed Digital Video Sequences, filed March 12, 1999;

NASA Case No. ARC–15007–1LE: Mars VE The Virtual Exploration Mission CD–ROM, filed April 14, 1999.

Dated: June 11, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15470 Filed 6–16–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–086]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, Kennedy Space Center, Mail Code MM–E, John F. Kennedy Space Center, FL 32899; telephone (407) 867–6225, fax (407) 867–2050.

NASA Case No. KSC–12092: Thermal Insulation System & Method.

Dated: June 11, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15471 Filed 6–16–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–087]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, Marshall Space Flight Center, Mail Code CC01, Marshall Space Flight Center, AL 35812; telephone (256) 544–0021, fax (256) 544–0258.

NASA Case No. MFS–31303–1: Generalized Fluid System Simulation Program;

NASA Case No. MFS–31294–3–CIP: Aluminum-Silicon Alloy Having Properties at Elevated Temperatures;

NASA Case No. MFS–31294–4–CIP: Aluminum-Silicon Having Improved Properties at Elevated Temperatures and Articles Cast Therefrom.

Dated: June 11, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15472 Filed 6–16–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–088)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, Glenn Research Center at Lewis Field, Mail Code 500–118, Cleveland, Ohio 44135–3191; telephone (216) 433–8855.

NASA Case No. LEW 16,771–1: Hybrid Electric/Chemical Propulsion Systems;

NASA Case No. LEW 16,685–1: Actuator Control Using Shape Memory Alloys, Microsystems and Optically Controlled Switches;

NASA Case No. LEW 16,636–1: Non-Toxic Dual-Mode Satellite Fuel;

NASA Case No. LEW 16,681–1: Selective Emitter Pumped Rare Earth Laser.

Dated: June 4, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15473 Filed 6–16–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–084]

Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that CryCle Cryogenic Development NV of The Netherlands has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,730,806 entitled "GAS–LIQUID SUPERSONIC CLEANING AND CLEANING VERIFICATION SPRAY SYSTEM," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to

Program Manager, Dual Use and Licensing, Kennedy Space Center.

DATES: Responses to this notice must be received by August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Chan, Program Manager, Dual Use and Licensing, Kennedy Space Center, Mail Code: MM–E, Kennedy Space Center, FL, 32899; telephone (407) 867–6367.

Dated: June 4, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15469 Filed 6–16–99; 8:45 am]

BILLING CODE 7515–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company; Pilgrim Nuclear Power Station; Consideration of Approval of Application Regarding Proposed Corporate Merger and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR) Section 50.80 approving the indirect transfer of Facility Operating License No. DPR–35 for the Pilgrim Nuclear Power Station (Pilgrim) held by Boston Edison Company (Boston Edison). The indirect transfer would be to the new holding company formed by Commonwealth Energy System (CES) and BEC Energy (BEC), the parent company of Boston Edison.

Pilgrim is owned and operated by Boston Edison, which is a wholly-owned subsidiary of BEC. According to an application by Boston Edison for approval of the indirect transfer, CES and BEC have entered into an Agreement and Plan of Merger under which those entities will become wholly-owned subsidiaries of a new Massachusetts corporation named NSTAR, thereby resulting in an indirect transfer of Boston Edison's interest in Pilgrim's Facility Operating License to NSTAR. No physical changes to Pilgrim or operational changes are being proposed. No direct transfer of the license will result from the proposed transaction.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transfer of control will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the indirect license transfer application, are discussed below.

By July 7, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Douglas S. Huran, BEC Energy, 800 Boylston Street, Boston, Massachusetts 02199, General Counsel for BEC Energy; John A. Ritsher, Ropes & Gray, One International Place, Boston, Massachusetts 02110–2624, attorney for BEC Energy; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by July 19, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated February 3, 1999, submitted under cover of a letter dated February 5, 1999, and supplement dated May 27, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Plymouth Public Library, 132 South Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland this 11th day of June 1999.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15413 Filed 6–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Receipt of Amendment Application to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation; Paducah Gaseous Diffusion Plant; Paducah, Kentucky; Comment Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has received an amendment application from the United States Enrichment Corporation that is considered to be significant pursuant to 10 CFR 76.45. Any interested party may submit written comments on the application for amendment for consideration by the staff. To be certain of consideration, comments must be received by (specify a date that provides for a 30-day comment period). Comments received after the due date will be considered if it is practical to do so. The Commission is able to assure consideration only for comments received on or before this date.

Written comments on the amendment application should be mailed to the Chief, Rules Review and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand delivered to 11545 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments should be legible and reproducible, and include the name, affiliation (if any), and address of the submitter. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room and the Local Public Document Room. In accordance with 10 CFR 76.62 and 76.64, a member of the public must submit written comments to petition the Commission requesting review of the Director's Decision on the amendment request.

For further details with respect to the action, see the application for amendment. The application is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public document Room.

Date of amendment request: January 12, 1999.

Brief description of amendment: The amendment is related to the modifications to upgrade the seismic capability of Buildings C–331 and C–335 at Paducah Gaseous Diffusion Plant. The proposed amendment will change the modification completion date from June 30, 1999, to June 30, 2000.

Certificate of Compliance No. GDP–1: This amendment will revise Compliance Plan Issue 36 to extend the completion date from June 30, 1999, to June 30, 2000.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 10th day of June 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–15412 Filed 6–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–220]

License No. DPR–63, Niagara Mohawk Power Corporation; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated May 24, 1999, Mr. Tim Judson (the Petitioner) on behalf of Citizens Awareness Network, Coalition on West Valley Nuclear Waste, Environmental Advocates, Greens of Greater Syracuse, Nuclear Information and Resource Service, Oswego Valley Peace and Justice, Sierra Club (Iroquois Group), Student Environmental Action Coalition, Syracuse Anti-Nuclear Effort, Syracuse Peace Council, and Dr. Steven Penn, has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Nine Mile Point Nuclear Station, Unit No. 1 (NMP1). The Petitioner requests that the NRC take enforcement action against Niagara Mohawk Power Corporation (NMPC) by suspending its NMP1 operating license until (1) NMPC releases the most recent inspection data on the plant's core shroud; (2) a public meeting can be held in Oswego County, New York, to review this inspection data and the repair design to core shroud vertical welds V9 and V10; and (3) an adequate public review of the safety of the plant's continued operation is accomplished. The Petitioner bases this request upon the following issues and concerns:

1. Petitioner believes that the public cannot rely upon NMPC to accurately perform the data analysis necessary to calculate the extent and rate of cracking in the core shroud because of problems with NMPC's previous testing and analyses that were identified in letters to the NRC from Dr. Penn. Petitioner states that the NRC has not responded to Dr. Penn's letters, and, therefore, Petitioner believes Dr. Penn's expressed concerns constitute unreviewed safety issues.

2. NMPC and NRC reported during the May 1999 inspection that cap screws in the bow spring mechanisms of the shroud tie rod assemblies were found to have suffered intergranular stress-corrosion cracking, resulting in the fracture of one of the cap screws. Petitioner states that this problem, and the tie rod problem corrected during the 1997 outage, indicates that NMPC's designs warrant in-depth review by the public and closer implementation scrutiny. Petitioner believes that NMPC's prior selection of poor cap screw material and the NRC staff's acceptance of it raises questions about the credibility of the NRC's approval of the vertical weld repair design and, thus, necessitates a public review of the level of safety before plant restart.

3. Data from the May 1999 inspection of the NMP1 core shroud are new and the NRC staff's review of the data will not be completed before plant restart. Petitioner states that previous NRC staff safety evaluations required future evaluations. Petitioner believes that subsequent NRC approval of an "unprecedented and unproven" repair design for vertical welds, issued before the inspection, does not preempt the previously determined need to assess the actual extent of cracking in the vertical welds and the structural integrity of the core shroud.

4. NMPC has informed the NRC that supporting a meeting for public review of the core shroud inspection data during this refueling outage would place an undue regulatory burden on NMPC's manpower resources, and this burden could possibly compromise safety at NMP1. Petitioner considers inadequate licensee resources to be new information and an unreviewed safety issue. Petitioner contends that violations and a civil penalty issued against NMPC on November 5, 1997, involving inadequate management oversight and failure to monitor the effectiveness of maintenance activities are "directly pertinent to failure of the tie rod installation (1995), faulty design of the bow spring modification (1997), flawed studies on core shroud boat samples (1998), postponement of mid-cycle inspection (1998), and miscalibration of instruments for vertical weld inspection (May 1999)." Petitioner believes that, because the degree of cracking in the NMP1 shroud is precedent-setting, the question of regulatory burden is not relevant, as the NMP1 shroud requires the strictest regulatory oversight and a full public review. Petitioner states that postponing restart would eliminate this regulatory burden and ensure that outage work is properly reviewed.

The NRC staff has determined that the issues and concerns addressed in the Petition do not warrant deferring restart of NMP1. The NRC staff has also determined that a meeting to provide for public review of the shroud reinspection results need not be held before restart. In reaching this determination, the NRC staff has considered the following:

1. By letter dated May 28, 1999, the NRC staff responded to Dr. Penn's letters dated December 3, 1998; March 25, 1999; and April 15, 1999. In a letter dated April 30, 1999, NMPC has also

responded to relevant concerns in Dr. Penn's letter of March 25, 1999. The responses indicate that testing and evaluations of the core shroud by NMPC and its contractors can be relied upon by the NRC with reasonable assurance as to their accuracy. Therefore, the issues in Dr. Penn's letters do not provide a sufficient basis to warrant suspension of the NMP1 operating license.

2. The bow spring modification to each of the four tie rod assemblies replaces the design function of the failed cap screw and other cap screws that have the potential for future failure. By letter dated May 28, 1999, NMPC confirmed that no additional modifications are needed other than the bow spring modification addressed in the letter of May 21, 1999. The function of the tie rod bow spring does not affect the tie rod's function of maintaining a predetermined compressive force ("preload") on the shroud during power operation. In response to NMPC's letter dated May 21, 1999, the NRC staff reviewed and approved the modifications as an alternative repair pursuant to 10 CFR 50.55a(a)(3)(i) by letter dated June 7, 1999, and NMPC has implemented these modifications. With the NRC staff's review and approval of this modification, the NRC staff finds no basis to consider enforcement action to suspend the operating license.

3. During the current refueling outage, NMPC has implemented preemptive repairs of shroud vertical welds V9 and V10, as approved by the NRC staff in a letter dated April 30, 1999. These repairs mechanically restore the vertical welds. NMPC has also verbally informed the NRC that the 1997 modifications to the tie rod assemblies have performed satisfactorily and that the tie rod assemblies have applied the appropriate preload on the shroud throughout the last operating cycle. Since vertical welds V9 and V10 have been restored and the tie rods are satisfactorily performing their preload function, the need for NRC staff review of reinspection data before restart is obviated.

4. NMPC will provide reinspection results and analyses to disposition these reinspection findings to the NRC within 30 days of completing the reinspection. This schedule is consistent with the guidelines established by the Boiling Water Reactor Vessel and Internals Project in its report BWRVIP–01, "BWR Core Shroud Inspection and Flaw Evaluation Guidelines," which the NRC staff reviewed and accepted by letter dated September 25, 1994. The NRC staff, noting the results of inspections to date and that NMPC has followed the BWRVIP generic criteria for inspection, evaluation, and repair, does not believe a public meeting is warranted prior to restart. Also, during telephone discussions with the NRC, NMPC has indicated that a meeting on reinspection results before restart would require significant participation and preparation by NMPC, involving some of the same key employees and contractors involved in outage activities. The NRC staff recognizes the value of public meetings, and to this end, a routinely scheduled meeting to discuss recent plant performance at the NMP site is planned for August 1999. This meeting will discuss a variety of topics related to licensee performance. A brief discussion on the NMP1 core shroud activities will be one of the agenda topics.

The remaining issues in the Petition are being treated pursuant to 10 CFR 2.206 of the Commission's regulations and have been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time.

By letter dated June 11, 1999, the Director acknowledged receipt of the Petition. A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, D.C. 20555–0001.

Dated at Rockville, Maryland, this 11th day of June 1999.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15414 Filed 6–16–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 9:30 a.m., July 19, 1999.

PLACE: Commission Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commission Budget for FY 2000 and election of a Vice Chairman.

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, (202) 789–6840.

Dated: June 15, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–15528 Filed 6–15–99; 12:57 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection, Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15b6–1; Form BDW	SEC File No. 270–17	OMB Control No. 3235–0018.
Rule 15Ba2–5	SEC File No. 270–91	OMB Control No. 3235–0088.
Rule 15c1–5	SEC File No. 270–422	OMB Control No. 3235–0471.
Rule 15c1–6	SEC File No. 270–423	OMB Control No. 3235–0472.
Rule 15c3–1	SEC File No. 270–197	OMB Control No. 3235–0200.
Rule 17Ad–3(b)	SEC File No. 270–424	OMB Control No. 3235–0473.
Rule 17Ad–17	SEC File No. 270–412	OMB Control No. 3235–0469.
Rule 17a–10	SEC File No. 270–154	OMB Control No. 3235–0122.
Rule 17f–2(c)	SEC File No. 270–35	OMB Control No. 3235–029.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Form BDW is used by broker-dealers to withdraw from registration with the Commission, the self-regulatory organizations, and the states. It is estimated that approximately 900 broker-dealers annually will incur an average burden of 15 minutes, or 0.25 hours, to file for withdrawal on Form BDW via the internet with Web CRD, a computer system operated by the National Association of Securities Dealers, Inc. that maintains information regarding broker-dealers and their registered personnel. The annualized compliance burden per year is 225 hours (900 × 25 = 225 hours). The annualized cost to respondents, utilizing staff at an estimated cost of $35 per hour, would be $7,875 (225 × $35 = $7,875).

Rule 15Ba2–5 permits a duly appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without the rule, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under the rule, the registration of a municipal securities dealer is deemed to be the registration of any executor, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that the fiduciary files with the Commission, within 30 days after entering upon the performance of its duties, a statement setting forth substantially the same information required by Form MSD or Form BD. That statement is necessary to ensure that the Commission and the public have adequate information about the fiduciary.

There is approximately one respondent per year that requires an aggregate total of 4 hours to comply with this rule. This respondent makes an estimated one annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is 4 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondent of $80 (i.e, 4 hours × $20).

Rule 15c1–5 states that any broker-dealer controlled by, controlling, or under common control with the issuer of a security that the broker-dealer is trying to sell to or buy from a customer must give the customer written notification disclosing the control relationship at or before completion of the transaction. The Commission estimates that 390 respondents collect information annually under Rule 15c1–5 and that approximately 3,900 hours would be required annually for these collections. The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $390,000 (3,900 hours @ $100).

Rule 15c1–6 states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that 780 respondents collect information annually under Rule 15c1–6 and that approximately 7,800 hours would be required annually for these collections. The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $780,000 (8,800 hours @ $100).

Rule 15c3–1 requires brokers and dealers to have at all times sufficient liquid assets to meet their current liabilities, particularly the claims of customers. The rule facilitates monitoring the financial condition of brokers and dealers by the Commission and the various self-regulatory organizations. It is estimated that approximately 8,500 active broker-dealer respondents registered with the Commission incur an aggregate burden of 950 hours per year to comply with this rule.

Rule 17Ad–3(b) requires registered transfer agents which for each of two consecutive months have failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) or to process at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) to send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice required under Rule 17Ad–2(c), (d), and (h). The issuer may use the information contained in the notices in several ways: (1) to provide an early warning to the issuer of the transfer agent's and (2) to assure that issuers are aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's securities. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items.

The Commission estimates that the seven transfer agents that filed the Notice of Non-Compliance pursuant to Rule 17Ad–2, only two transfer agents will meet the requirements of Rule 17Ad–3(b) . If a transfer agent fails to meet the minimum requirements under 17Ad–3(b), such transfer agent is simply sending a copy of a form that had already been produced for the Commission. The Commission estimates a requirement will take each respondent approximately one hour to complete, for a total annual estimate burden of two hours at cost of approximately $60.00 for each hour.

Rule 17Ad–17 requires approximately 1,500 registered transfer agents to conduct searches using third party database vendors to attempt to locate lost securityholders. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–17 is five hours annually. The total burden is 7,500 hours annually for all transfer agents. The cost of compliance for each individual transfer agent depends on the number of lost accounts at each transfer agent. Based on information received from transfer agents, we estimate that the annual cost industry wide is $5.2 million.

Rule 17a–10 requires broker-dealers that are exempted from the filing requirements of paragraph (a) of Rule 17a–5 to file with the Commission an annual statement of income (loss) and balance sheet. It is anticipated that approximately 350 broker-dealers will spend 12 hours per year comply with Rule 17a–10. The total burden is estimated to be approximately 4,200 hours. Each broker-dealer will spend approximately $1,200.00 per response for a total annual expense for all broker-dealers of $420,000.

Rule 17f–2(c) allows persons required to be fingerprinted pursuant to Section 17(f)(2) of the Securities Exchange Act of 1934 to submit their fingerprints through a national securities exchange or a national securities association in accordance with a plan submitted to and approved by the Commission. The plan or information is collected from the exchange or national securities association only once.

Because the Federal Bureau of Investigation will not accept fingerprint cards directly from submitting organizations, Commission approval of plans from certain exchanges and

national securities associations is essential to the Congressional goal of fingerprint personnel in the security industry. The filing of these plans for review assures users and their personnel that fingerprint cards will be handled responsibly and with due care for confidentiality.

To date, plans have been approved for seven exchanges and one national securities associations: the American Stock Exchange, the Boston Stock Exchange, the Chicago Stock Exchange, the New York Stock Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, and the Chicago Board Options Exchange, and for the National Association of Securities Dealers (collectively the "SROs"). For the SROs that have already submitted their fingerprint plans to the Commission, there is no requirement for them with approved plans to submit subsequent filings to the Commission and, therefore, there is no continuing annual reporting or recordkeeping burden.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

Dated: June 9, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15346 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 11Ac1–1	SEC File No. 270–404	OMB Control No. 3235–0461.
Rule 12d2–1	SEC File No. 270–98	OMB Control No. 3235–0081.
Rule 12d2–2	SEC File No. 270–86	OMB Control No. 3235–0080.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 USC 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 11Ac1–1, Dissemination of Quotations, contains two related collections of information necessary to disseminate market markers' published quotations to buy and sell securities to the public. The first collection of information is found in Rule 11Ac1–1(c), 17 CFR 240.11Ac1–1(c). This reporting requirement obligates each "responsible broker or dealer," as defined under the rule, to communicate to its exchange or association its best bids, best offers, and quotation sizes for any subject security, as defined under the rule. The second collection of information is found in Rule 11Ac1–1(b), 17 CFR 240.11Ac1–1(b). This reporting requirement obligates each exchange and association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each subject security.[1] Brokers, dealers, other market participants, and members of the public rely on published quotation information to determine the best price and market for execution of customer orders.

It is anticipated that 721 respondents, consisting of 180 exchange specialists and 541 OTC market makers, will make 246,788,000 total annual responses pursuant to Rule 11Ac1–1, resulting in an annual aggregate burden of approximately 205,356 hours.

Rule 12d2–1 provides the procedures by which a national securities exchange may suspend from trading a security that is listed and registered on the exchange. Under Rule 12d2–1, an exchange is permitted to suspend from trading a listed security in accordance with its rules, and must promptly notify the Commission of any such suspension, along with the effective date and the reasons for the suspension.

Any such suspension may be continued until such time as the Commission may determine that the suspension is designed to evade the provisions of Section 12(d) of the Act and Rule 12d2–1 thereunder.[2] During the continuance of such suspension under Rule 12d2–1, the Exchange is required to notify the Commission promptly of any change in the reasons for the suspension. Upon the restoration to trading of any security suspended under Rule 12d2–1, the exchange must notify the Commission promptly of the effective date of such restoration.

Notices of suspension of trading serve a number of purposes. First, they inform the Commission that an exchange has suspended from trading a listed security or reintroduced into trading a previously suspended security. They also provide the Commission with information necessary for it to verify that the suspension has been effected in accordance with the rules of the exchange, and to determine whether the exchange has evaded the requirements of Section 12(d) of the Act and Rule 12d2–2 thereunder by improperly employing a trading suspension. Without Rule 12d2–1, the Commission would be unable to fulfill these statutory responsibilities.

There are eight national securities exchanges which are subject to Rule 12d2–1. The burden of complying with the rule is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange and American Stock Exchange than on the other six exchanges.[3] However, for purposes of estimating the overall burden, the staff has assumed that the number of responses would be evenly distributed among the exchanges. The Commission estimates a total annual burden of 48 hours to comply with Rule 12d2–1. This estimate is based on eight respondents with 12 responses per year for a total of 96 responses requiring on average one-half hour per response.

Based on information acquired in an informal survey of the exchanges and the staff's experience in administering related rules, the Commission staff estimates that the respondents' cost of compliance with Rule 12d2–1 may range from less than $25 to as much as $100 per response. The staff has computed the average related cost per response to be approximately $29, representing one-half reporting hour. The estimated total annual related cost of responding to the requirements of Rule 12d2–1 is approximately $2,748, *i.e.*, eight exchanges filing 12 responses at $29 each.

Rule 12d2–2, Removal from Listing and Registration, 17 CFR 240.12d2–2, and Form 25, 17 CFR 249.25, were adopted in 1935 and 1952, respectively, pursuant to sections 12 and 23 of the Act. Rule 12d2–2 sets forth the conditions and procedures under which a security may be delisted. Rule 12d2–2 also requires, under certain circumstances, that an exchange file with the Commission a Form 25 to remove a security from listing and registration on the exchange and to serve as notification of such delisting. Form 25 provides the Commission with the name of the affected security and issuer, the effective date of the delisting, and the date and type of event predicating the delisting.

Delisting notices and applications for delisting serve a number of purposes. First, the reports and notices required under paragraphs (a) and (b) of Rule 12d2–2 (which do not require Commission action) inform the Commission that a security previously traded on an exchange is no longer traded there. In addition, the applications for delisting required under paragraphs (c) and (d) of the Rule (which require Commission approval) provide the Commission with the information necessary for it to determine that a delisting has been promulgated in accordance with the rules of the exchange, and to determine whether the delisting is subject to any terms or conditions necessary for the protection of investors. Further, notice of a delisting application submitted by an issuer pursuant to subparagraph (d) of Rule 12d2–2 is made available to members of the public who may wish to comment or submit information to the Commission regarding such application. Without Rule 12d2–2 and Form 25, as applicable, the Commission would be unable to fulfill these statutory responsibilities.

There are eight national securities exchanges which are subject to Rule 12d2–2 and Form 25. Additionally, any issuer whose security is listed on a national securities exchange which seeks to remove such security from listing and registration on that exchange would be subject to the requirements of subparagraph (d) of Rule 12d2–2. Since the reporting hour burdens incurred in responding to the various requirements of Rule 12d2–2 and Form 25 are not uniform (it generally takes an exchange less time to complete Form 25, when required by subparagraph (a) of Rule 12d2–2, than it does to prepare an application under subparagraph (c) thereof, for example), the Commission staff has, for purposes of its estimation of overall burden, averaged the various reporting burdens and then weighted reporting hours by respondent group, ascribing proportionately smaller burdens (and related costs) to the exchanges, which prepare and file both Forms 25 and applications under Rule 12d2–2 in the routine course of business, while ascribing greater individual burdens (and related costs) to affected issuers, who are subject only to the application requirements of subparagraph (d) of Rule 12d2–2 (and not Form 25), though issuers becoming so subject would likely only be obligated to respond once.[4] Finally, although the burdens of complying with Rule 12d2–2 and Form 25 are not evenly distributed among the exchanges, since there are many more securities listed on the New York Stock Exchange and the American Stock Exchange than on the other national securities exchanges, the staff has assumed, solely for the purpose of making these estimates, that the number of responses would be evenly distributed among the exchanges.

Based on information acquired in an informal survey of the exchanges and issuers obligated to respond, and based further on the staff's experience in administering related rules, the Commission staff estimates that in complying with Rule 12d2–2 and Form 25 all exchanges would incur an aggregate reporting hour burden of 350 hours. The Commission estimates the costs associated with these burden hours to be $20,300 in the aggregate. For issuers obligated to respond to Rule 12d2–2, the staff estimates it receives approximately 50 responses annually from issuers wishing to remove their securities from listing and registration on exchanges. Assuming an average of two reporting hours per response, the Commission estimates an aggregate annual reporting hour burden for those issuers of 100 burden hours, and a related aggregate cost of approximately $8,300.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including thorough the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: June 8, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15347 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23869; 812–11318]

Strategic Global Income Fund, Inc.; Notice of Application

June 10, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section

[1] A third requirement under the Rule 11Ac1–1, as amended at 17 CFR 11Ac1–1(c)(5), gives electronic communications networks ("ECNs") the option of reporting to an exchange or association for public dissemination, on behalf of their OTC market maker or exchange specialist customers, the best priced orders and the full size for such orders entered by market makers, to satisfy such market makers' reporting obligation under Rule 11Ac1–1(c). Because this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the Paperwork Reduction Act.

[2] Rule 12d2–2 prescribes the circumstances under which a security may be delisted, and sets forth the procedures for taking such action.

[3] In fact, some exchanges do not file any trading suspension reports in a given year.

[4] An issuer is only obliged to file an application under Rule 12d2–2 when it is voluntarily seeking to withdraw its securities from listing and registration on an exchange. Teh most common situation in which this occurs in when an issuer has listed its securities on multiple exchanges and then, in an effort to reduce costs and/or market fragmentation attributable to such multiple listing, elects to confine listing of securities to the exchange it deems to be the primary marketplace.

19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: The Strategic Global Income Fund, Inc. (the "Fund") requests an order to permit it to make up to twelve distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy with respect to its common stock calling for monthly distributions of a fixed percentage of its net asset value ("NAV").

FILING DATES: The application was filed on September 23, 1998 and amended on February 26, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington D.C. 20549–0609. Fund, c/o Dianne E. O'Donnell, Vice President and Secretary, 1285 Avenue of the Americas, 18th floor, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. The Fund is organized as a Maryland corporation and registered under the Act as a closed-end, non-diversified management investment company. The Fund's primary investment objective is to maintain a high level of current income, primarily through investment in income producing securities of issures in at least three different countries. The Fund's shares are listed on the New York Stock Exchange and have historically traded at a discount to NAV. Mitchell Hutchins Asset Management Inc. is the investment adviser to the Fund and is registered under the Investment Advisers Act of 1940.

2. On May 13, 1998, the Fund's board of directors adopted a distribution policy ("Distribution Policy") that calls for regular monthly distributions at an annualized rate of 8% of the Fund's NAV. Any amount paid under the Distribution Policy which exceeds the sum of the Fund's investment income and net realized capital gains will be treated as a return of capital. The Fund states that the Distribution Policy provides a steady cash flow to the Fund's shareholders and, during periods when its per share NAV is increasing, a means for the shareholders to receive, on a periodic basis, some of the appreciation in the value of their shares. The Fund states that a distribution policy can have a moderating effect on market discounts to NAV and is in the best interests of its shareholders.

3. The Fund requests relief to permit it, so long as it maintains in effect the Distribution Policy, to make up to twelve capital gains distributions in any one taxable year.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. The Fund asserts that rule 19b–1, by limiting the number of net long-term capital gains distributions the Fund may make with respect to any one year, would prohibit the Fund from including available net long-term capital gains in certain of its fixed monthly distributions. As a result, the Fund states that it could be required to fund these monthly distributions with returns of capital (to the extent net investment income and net realized short-term capital gains are insufficient to cover a monthly distribution). The Fund further asserts that, in order to distribute all of its long-term capital gains within the limits in rule 19b–1, the Fund may be required to make total distributions in excess of the annual amount called for by the Distribution Policy or retain and pay taxes on the excess amount. The Fund asserts that the application of rule 19b–1 to the Fund's Distribution Policy may create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

3. The Fund submits that the concerns underlying section 19(b) and rule 19b–1 are not present in the Fund's situation. One of the concerns leading to the adoption of section 19(b) and rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. The Fund states that its Distribution Policy has been described in the Fund's periodic communications to its shareholders. The Fund states that, in accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution accompanies each distribution. In addition, a statement showing the amount and source of each monthly distribution during the year will be included with the Fund's IRS Form 1099–DIV report sent to each shareholder who received distributions during the year (including shareholders who have sold shares during the year).

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper distribution practices including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming dividend ("selling the dividend"), when the dividend results in an immediate corresponding reduction in NAV and is, in effect, a return of the investor's capital. The Fund submits that this concern does not arise with regard to closed-end management investment companies, such as the Fund, that do not continuously distribute their shares.

5. The Fund states that increased administrative costs also are a concern underlying section 19(b) and rule 19b–1. The Fund asserts that this concern is not present because the Fund will continue to make fixed distributions regardless of whether the capital gains are included in any particular distribution.

6. Section 6(c) of the Act provides that the SEC may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, the Fund believes that the requested relief satisfies this standard.

Applicant's Condition

The Fund agrees that the order granting the requested relief will terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Fund of its common shares other than: (i) A non-transferable rights offering to shareholders of the Fund, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fee; and (ii) an offering in connection with a merger, consolidation, acquisition or reorganization; unless the Fund has received from the staff of the SEC written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15360 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41503; File No. SR–Amex–99–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Options on the Credit Suisse First Boston Technology Index

June 9, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 1999, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed with the Commission Amendment No. 1 to the proposal on April 15, 1999.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list for trading options on the Credit Suisse First Boston Technology Index ("Index"), a new index developed by Credit Suisse First Boston Corporation ("CSFB")[4] that measures the stock performance of companies primarily engaged in the computer and communications technology industry. In addition, the Exchange seeks to make two conforming changes to its rules. First, the Exchange proposes to amend Commentary .01 of Exchange Rule 901C, "Designation of Stock Index Options," to indicate that 90% of the Index's numerical value will be accounted for by stocks that meet the current criteria and guidelines set forth in Exchange Rule 915.[5] Second, the Exchange proposes to amend Exchange Rule 902C, "Rights and Obligations of Holders and Writers of Stock Index Option Contracts," to include CSFB in the disclaimer provisions of that rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

I. Purpose

The Exchange proposes to list for trading options on the Index. The Index is designed to reflect and measure the performance of companies engaged in the computer and communications technology industry. Each of the companies included in the Index derives more than 50% of its revenues from the computer and communications technology industry.[6] The Exchange believes that options on the Index will provide investors with an investment vehicle to participate in the appreciation of the component securities, and a means to reduce the risk involved in selecting individual securities in the Index.

The Exchange has represented that except for the Index's calculation methodology, which is modified equal-dollar weighted, the proposal meets all the critria set forth in Commentary .02 of Exchange Rule 901C and the Commission's order approving that rule[7] (collectively, the "generic listing criteria").

a. Eligibility Criteria for Index Components

CSFB has established objective criteria to select companies for the Index. Specifically, companies eligible for inclusion in the Index will: (1) Derive more than 50% of their revenues from the computer and communications technology industry; (2) have a minimum market capitalization greater than $500 million; and (3) have a

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange updated the list of component securities for the Credit Suisse First Boston Technology Index ("Index") and provided revised market and trading data for all component securities. In addition, the Exchange clarified the formula used to calculate the value of the Index and identified the sub-sectors that comprise the technology sector. The Exchange also described in greater detail the annual rebalancing process. *See* Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Exchange, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 12, 1999 ("Amendment No. 1").

[4] In its filing, the Exchange characterized CSFB as a "leading global investment banking firm that provides comprehensive financial advisory, capital raising, sales and trading, and financial products for users and suppliers of capital around the world."

[5] Exchange Rule 915, "Criteria for Underlying Securities," contains the criteria that securities underlying options contracts must satisfy. *See infra* note 9 for a description of those criteria.

[6] Exhibit 3B to the Exchange's proposed rule change identifies the 75 companies making up the Index. The component companies are: ADA Telecommunications, Advanced Micro Devices, Altera, Amazon.com, Amdocs, America Online, Analog Devices, Apple Computer, Applied Materials, At Home, BMC Software, Broadcom, Cadence Design, Cisco Systems, Citrix Systems, 3Com, Compaq Computer, Computer Associates, Computer Sciences, Compuware, Dell Computer, Earthlink Network, eBay, Electronic Arts, Electronic Data Systems, EMC, E*TRADE Group, First Data, Gartner Group, Gateway 2000, General Instrument, Hewlett-Packard, i2 Technologies, IBM, Ingram Micro, Inktomi, Intel, Intuit, KLA-Tencor, Lexmark International Group, Linear Technology, Lucent Technologies, Maxim Integrated Products, Microchip Technology, Micron Technology, Microsoft, Motorola, Network Associates, Newbridge Networks, Nokia, Northern Telecom, Novell, Oracle, Parametric Technology, PeopleSoft, QUALCOMM, Rambus, Sanmina, SAP, Sapient, Seagate Technology, Siebel Systems, Solectron, STMicroelectronics, Storage Technology, Sun Microsystems, Tellabs, Teradyne, Texas Instruments, Uniphase, Unisys, Veritas Software, Vitesse Semiconductor, Xilinx, and Yahoo.

[7] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

minimum trading volume of 1,000,000 shares per month for the preceding three mohths. Of these candidate components, the 50 largest eligible companies measured by average market capitalization (determined using the number of shares outstanding on the last day of each December, and the average price per share for the month of December) are automaitcial included in the Index. The remaining 25 Index components are selected by CSFB from the universe of eligible stocks to ensure that the Index provides appropriate representation of the sub-sectors comprising the computer and communications technology sector.[8]

If addition to the selection criteria established by CSFB, the Exchange represents that the Index component securities will substantially comply with the generic listing standards found in Commentary .02 of Exchange Rule 901C. Specifically: (1) Each Index component security will have a minimum market capitalization of at least $75 million and a trading volume in each of the last six months of not less than 1,000,000 shares; (2) at least 90% of the Index's numerical index value and at least 80% of the total number of component securities will meet the current criteria for standardized options trading set forth in Exchange Rule 915;[9] (3) each Index component security will be listed for primary market trading on the Exchange, the New York Stock Exchange, or through the facilities of the Nasdaq Stock Market and will be a reported security; and (4) no component security will represent more than 25% of the weight of the Index, and the five highest weighted component securities in the Index will not in the aggregate account for more than 50% of the weight of the Index.[10]

[8] CSFB has categorized the computer and communications technology sector into the following sub-sectors: computer software, semiconductor, telecommunications equipment, electronic production equipment, electronic data processing peripherals, diversified electronic products, recreational products, electronic components, investment banking, electronic data processing, catalogue, electronic components, and electronic distribution industries.

[9] The Exchange's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 securityholders; (3) trading volume in the U.S. must have been at least 2.4 million shares over the preceding twelve months; (4) the market price per share must have been at least $7.50 for a majority of the business days during the preceding three calendar months; and (5) the issuer must be in compliance with any applicable requirements of the Act. *See* Exchange Rule 915, "Criteria for Underlying Securities," Commentary .01.

[10] In its filing, the Exchange mistakenly stated that the five highest weighted component securities in the Index would not in the aggregate account for more than 60% of the weight of the Index. The Exchange has confirmed that the correct figure is 50%. Telephone conversation between Scott G. Van Hatten, Legal Counsel, Derivative Securities, Exchange, and Michael Loftus, Attorney, Division, Commission (May 27, 1999).

b. Index Calculation

The Exchange will calculate the Index using a modified equal-dollar weighting methodology, which is designed to ensure that no single component or group of components dominates the Index. At the time of the initial balancing and each subsequent rebalancing, each of the 25 largest component securities (measured by unadjusted market capitalization) will be assigned a weighting of approximately 2.4% of the Index's total weight. Thus, in the aggregate, the 25 largest component securities will account for 60% of the Index's total weight. Each of the remaining 50 Index component securities will be assigned a weighting of approximately 0.8% of the Index's total weight, resulting in an aggregate weighting of 40% of the Index's total weight.

The Exchange believes that the modified equal-dollar weighting methodology allows the Index to more accurately reflect the investment performance of computer and communication technology-based securities. The Exchange further believes that although the weighting methodology provides for a higher weighting for the 25 largest capitalized components, the uniformly low percentage level of weighting for each security keeps those components from dominating the Index.

As of the close of trading on December 31, 1998, a portfolio of Index component stocks was established representing an investment of $2.4 million in each of the 25 highest weighted securities in the Index and $800,000 in each of the remaining 50 securities (rounded to the nearest whole share). The value of the Index equals the current market value (based on the U.S. primary market prices) of the sum of the assigned number of shares of each of the securities in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield a benchmark value of 200.00 at the close of trading on December 31, 1998.

c. Maintenance of the Index

The Exchange will maintain the Index consistent with its original purpose to include companies that derive more than 50% of their revenue from the computer and communications technology industry. Further, the Exchange will maintain the Index in accordance with Exchange Rule 901C, Commentary .02 so that: (1) The Index is comprised of not less than 50 component securities and not more than 100 component securities (*i.e.*, the total number of Index component securities will not increase or decrease by more than one-third from the number of component securities in the Index at the time of its initial listing); (2) component securities constituting the top 90% of the Index, by weight, will each have a minimum market capitalization of $75 million, and the component securities constituting the bottom 10% of the Index, by weight, will each have a minimum market capitalization of $50 million; (3) 90% of the Index's numerical Index value and at least 80% of the total number of components will meet the listing criteria for standardized options that appear in Exchange Rule 915; [11] (4) foreign country securities, or American Depositary Receipts ("ADRs") thereon, that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all component securities will be listed on the Exchange, the NYSE, or Nasdaq (as National Market securities); (6) no component security will represent more than 25% of the weight of the Index, and the five highest weighted components will not in the aggregate account for more than 50% of the weight of the Index; and (7) the trading volume for each component security shall be at least 500,000 shares for each of the last six months or, for each of the lowest weighted components that in the aggregate account for no more than 10% of the weight of the Index, the monthly trading volume may be at least 400,000 shares for each of the last months.

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs with that determination, or unless the continued listing of the index option has been approved by the Commission pursuant to Section 19(b)(2) of the Act.[12]

d. Rebalancing

The Exchange and CSFB will review the Index components at the end of each calendar year to ensure that the components continue to meet eligibility requirements and that the Index is representative of the computer and communications technology industry. Following the close of trading on the second Friday of January of each calendar year, the component shares included in the Index portfolio will be rebalanced by adjusting the number of whole shares for each component such that each component security again approximately represents its assigned weighting in the Index: either 2.4% or 0.8% of the Index's total weight.

At the time of the annual rebalancing, the Index components that continue to satisfy the Exchange's and CSFB's eligibility requirements are ranked in descending order by average market capitalization (determined using the shares outstanding on the last day in December and the average share price for the month of December). The 50 largest Index components that continue to meet all eligibility requirements automatically remain in the Index. The remaining Index components securities are evaluated, and removed if necessary, to ensure that the Index continues to accurately represent the sub-sectors of the technology industry and to allow for the addition of new companies that are participating in emerging areas of technology. The Exchange will add new companies to the Index by selecting replacements from a list of replacement candidates prepared semi-annually by CSFB.[13]

As part of the rebalancing, each of the 25 largest component securities (measured by average market capitalization) is assigned a weight of approximately 2.4% of the Index's total weight. The remaining 50 Index components, are assigned a weight of 0.8% of the Index's total weight.

After the fifth trading day of each January, CSFB will make available to the Exchange a list of all components to be included in the Index for the coming year, as well as their respective weightings—either 2.4% or 0.8%. This list will be based on average component trading data for the preceding month of December. Following the close of trading on the second Friday in January, the next Index portfolio will be created by determining the number of whole shares for each component security so that each component represents its assigned weighting in the Index. After the composition of the Index has been determined, and prior to the third Friday in January, information concerning the selected components of the Index and their weighings will be announced by the Exchange. On the first trading day following the January expiration, all option contracts on the Index will trade based upon the newly rebalanced Index. An adjustment to the Index divisor will be made to ensure the continuity of the Index's value.

The number of shares for each component stock included in the Index portfolio will remain fixed between annual rebalancings except in the event of certain types of corporate actions such as: the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. In the case of a merger or the consolidation of an issuer of a component security, if the security remains in the Index, the number of shares for that component security included in the portfolio may be adjusted to the nearest whole share to maintain the component's reletive weight in the Index at the level immediately prior to the corporate action.[14]

e. Component Replacements

The Exchange shall remove and replace an Index component security if: (1) The security no longer trades due to a merger, takeover, or similar extraordinary corporate event; (2) the security fails to satisfy the maintenance and eligibility criteria; or (3) the underlying company no longer represents the computer and communications technology industry.[15] At the time of the annual review in January and after the fifth day of trading in July, CSFB will provide the Exchange with a list of approximately 30 eligible securities from which the Exchange will select replacements. The securities in the replacement list will be selected and ranked by CSFB based on a number of criteria, including conformity with the eligibility standards for Index components. To facilitate the selection of a replacement, the list will be categorized according to the sub-sectors represented in the Index. The Exchange will publicly disseminate the list of replacement securities upon receipt.

The Exchange will select replacement securities from the list based upon market capitalization, liquidity, and sector category. Although CSFB will prepare the list of replacement securities, the Exchange will determine which replacement security will be added to the Index. The Exchange will ensure that replacement securities meet all eligibility criteria at the time they are included in the Index.

If a component security is added or replaced, the Exchange shall: (1) calculate the average dollar value of the remaining Index components that were not among the 25 largest stocks assigned a weighting of 2.4% at the time of the most recent annual rebalancing; and (2) invest that amount in the new component security, to the nearest whole share. In all cases the divisor will be adjusted, if necessary, to ensure continuity in the Index value.

All replacements of component securities and the handling of non-routine corporate actions (*e.g.*, merger or acquisition) will be announced at least ten business days in advance of such effective change, whenever possible. The Exchange will make this information available to the public through dissemination of an information circular.

f. Dissemination of Index

The Exchange will disseminate the value of the Index in a manner similar to the dissemination of values for other stock indexes that underlie Exchange-traded options. Specifically, during standard trading hours, the Exchange will continuously calculate the value of the Index and disseminate such value every 15 seconds over the Consolidated Tape Association's Network B.

g. Capacity

The Exchange has represented that it has the necessary systems capacity to provide for the trading of options on the Index. Furthermore, the Exchange has confirmed with the Options Price Reporting Authority ("OPRA") that OPRA has sufficient capacity to provide for the Exchange's listing and trading of options on the Index.[16]

h. Expiration and Settlement

Options on the Index will be European style options [17] that will be cash settled. Standard option trading hours (9:30 A.M. to 4:02 P.M. Eastern Time) will apply to options on the Index. The Index option will expire on

[1] As part of its rule filing, the Exchange proposes to include this requirement in Commentary .01 of Exchange Rule 901C.

[11] 15 U.S.C. 78s(b)(2).

[13] *See infra* Section II(A)(1)(e), "Components Replacements" for further information regarding the replacement list.

[14] In the case of routine corporate events such as stock splits, the Exchange will adjust the Index divisor without consulting CSFB. However, adjustments to the Index divisor following extraordinary corporate events such as a merger or bankruptcy will be made by the Exchange only after consulting with CSFB.

[15] The Exchange and CSFB may consult from time to time to evaluate Index component securities and determine whether they continue to represent the computer and communications technology industry in the manner intended.

[16] *See* Letter from Joseph P. Corrigan, Executive Director, OPRA, to Richard Strasser, Assistant Director, Division, Commission, dated March 2, 1999.

[17] Exchange Rule 900C(b)(20) defines a European style option as "an option contract that can be exercised only at its expiration pursuant to the rules of The Options Clearing Corporation."

the Saturday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in expiring option series will normally be the second to last business day preceding the Saturday that follows an Expiration Friday (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list options series with expirations in the three near-term calendar months and in two additional calendar months in the January cycle. The Exchange may list and trade flexible Exchange options ("FLEX Options") as well as longer term option series that have up to thirty-six months to expiration. In lieu of long-term options on the full value of the Index, the Exchange may instead list long-term, reduced value options based on one-tenth (1/10th) the full value of the Index. In no case will the interval between expiration months for a full value or reduced value long-term option contract be less than six months.

The trading of options on the Index, including any long-term options, will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and floor trading procedures. Position limits on reduced value long-term Index options will be equivalent to the position limits for regular (full value) Index options and will be aggregated with such options. For example, if the position limit for the full value Index options is 15,000 contracts on the same side of the market, then the position limit for the reduced value Index options will be 150,000 contracts on the same side of the market.

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchanges' regular way opening sale prices for the component securities. In the case of Nasdaq-listed securities, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, the previous trading day's last sale price will be used to calculate the settlement of the Index.

i. Exchange Rules Applicable to Stock Index Options

The Index is deemed to be a "stock index group" under Exchange Rule 901C(a), "Designation of Stock Index Options," and a "stock index industry group" under Exchange Rule 900C(b)(1), "Stock Index Options: Applicability and Definitions." Consequently, Exchange Rules 900C through 980C will apply to the trading of Index option contracts. These rules cover issues such as surveillance, exercise prices, and position limits.

Surveillance procedures currently used to monitor trading in each of the Exchange's other index option contracts will also be used to monitor trading in options on the Index. With respect to Exchange Rule 903C(b), "Series of Stock Index Options," the Exchange proposes to list near-the-money (*i.e.*, within ten points above or below the current Index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. The Exchange believes that under Exchange Rule 904C(c), "Position Limits," it is appropriate for the Exchange to establish a position limit for options on the Index at a level no greater than 15,000 contracts.

j. Disclaimer Provisions of Rule 902C

The Exchange proposes to amend Exchange Rule 902C to include CSFB in the disclaimer provisions of that rule. Because CSFB will have no control over dissemination of the value of the Index, the Exchange believes that CSFB should be included in the disclaimer provisions of Exchange Rule 902C, similar to other such entities whose names are attached to indexes underlying options listed on the Exchange.

k. Regulatory Circular for Member Firms

Prior to the commencement of trading of options on the Index, the Exchange will issue a circular to members with relevant information concerning options on the Index. The circular also will remind Exchange members of their regulatory responsibilities; for example, members must comply with Exchange Rule 9.9, "Suitability of Recommendations."

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5)[19] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–10 and should be submitted by July 8, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has carefully reviewed the Exchange's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of Section 6 of the Act[20] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in

[20] 15 U.S.C. 78f.

facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the trading of options on the Index will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risks associated with the securities issued by companies in the computer and communications technology industry.

The Commission finds that the trading of options on the Index will permit investors to participate in the price movements of the 75 securities on which the Index is based. Further, trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with these securities. Accordingly, the Commission believes that options on the Index will provide investors with an additional trading and hedging mechanism.[21]

Nevertheless, the trading of options on the Index raises several issues related to design of the Index, customer protection, and surveillance. The Commission believes, however, for the reasons discussed below, that the Exchange adequately has addressed these issues.

A. Index Design and Structure

The Commission believes that it is appropriate for the Exchange to apply its rules governing options on stock index industry groups to the trading of options on the Index. The Commission notes that the Index contains 75 securities representing one industry group, and thus reflects a narrow segment of the U.S. equities market.

The Commission notes that the 75 securities comprising the Index are actively-traded. The average daily trading volume among the component securities, calculated over a six month period ending April 9, 1999, ranged from a high of 49.5 million shares per day (Dell Computer) to a low of 220,000 shares per day (Amdocs). In addition, the market capitalizations of the securities in the Index are large, ranging from a high of $475.7 billion (Microsoft) to a low of $888.1 million (Ingram Micro) as of April 9, 1999. Finally, no one component security accounted for more than 3.99% of the Index's total weight, and the percentage weighting of the three largest issues in the Index accounted for 10.68% of the Index's total weight.[22]

With respect to the maintenance of the Index, the Commission believes that the Exchange has implemented several measures to ensure that the Index remains comprised of highly-capitalized, actively-traded securities, thereby ensuring that the Index will remain substantially the same over time. In this regard, the Exchange will maintain the Index so that; (1) the component securities comprising the top 90% of the Index, by weight, each will have market capitalizations of at least $75 million, and the remaining 10% each will have market capitalizations of no less than $50 million; (2) the component securities comprising the top 90% of the Index, by weight, each will have monthly trading volumes of at least 500,000 shares, and the remaining 10% each will have monthly trading volumes no less than 400,000 shares; (3) at least 90% of the components in the Index, by weight, and 80% of the number of components in the Index will be eligible for standardized options trading; (4) the component securities will have primary listings on the Exchange, NYSE, or Nasdaq and will be "reported" securities pursuant to Rule 11Aa3–1 of the Act,[23] and (5) absent approval from the Commission pursuant to Section 19(b)(2) of the Act, the Exchange will not increase the number of components to more than 100 or reduce the number of components to fewer than 50.

The Commission further believes that the maintenance standards governing the Index will help protect against material changes in the composition and design of the Index that might adversely affect the Exchange's obligations to protect investors and to maintain fair and orderly markets in options based on the Index. The Exchange is required to immediately notify the Commission staff if the Index fails at any time to satisfy one or more of the specified maintenance criteria. Further, in such an event, the Exchange will not open for trading any additional series of options on the Index, unless the Exchange determines that such failure is insignificant and the Commission concurs in that determination, or unless the Commission approves the continued listing of options on the Index under Section 19(b)(2) of the Act.[24]

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options based on the Index, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-listed options occurs in an environment that is designed to ensure that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options currently traded on the Exchange, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options.

C. Surveillance

In evaluating new derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the exchange sponsoring the derivative instrument has the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the primary exchange(s) trading the securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements facilitate and ensure the availability of information needed to fully investigate manipulation if it were to occur.[25] In this regard, the Commission notes that the Exchange and the primary markets for the stocks underlying the Index—the NYSE and the NASDR (the self-regulatory

[21] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[22] At the most recent annual rebalancing (*i.e.*, January 1999), each of the 25 largest component securities was assigned a weighting of approximately 2.4% of the total Index weight. This weighting is not static, however, and varies in response to changes in the market price of each component security. Therefore, increases in the market prices of some component securities have caused their weightings to increase above the original 2.4% setting (*e.g.*, America Online had a weighting of 3.99% as of April 9, 1999).

[23] 17 CFR 240.11Aa3–1.

[24] 15 U.S.C. 78s(b)(2).

[25] *See* Securities Exchange Act Release No. 31 (Sept. 28, 1992), Fr 45849 (Oct. 5, 1992), 57 FR 45849 (Oct. 5, 1992).

organization which oversees Nasdaq)—are members of the Intermarket Surveillance Group, which provides for the sharing of all necessary surveillance information among members. The Commission believes that this arrangement will ensure the availability of information necessary to detect potential manipulations and other trading abuses. In addition, the Exchange has represented that foreign country securities, or ADRs thereon, that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index.

The Commission notes that certain concerns are raised when a broker-dealer, such as CSFB, is involved in the development and maintenance of a stock index that underlies an exchange-traded derivative product. For several reasons, however, the Commission believes that the Exchange has adequately addressed this concern with respect to options on the Index.

First, the value of the Index, including the final settlement value, will be calculated and disseminated by the Exchange independently of CSFB. Accordingly, neither CSFB nor any of its affiliates or other persons will be in receipt of the values prior to their public dissemination. Second, CSFB has established informational barriers around the CSFB personnel who have access to information regarding changes and adjustments to the Index.[26] The Commission believes that these barriers will help prevent the improper use of material non-public information concerning the Index and strengthen the proposal by maintaining the integrity of changes made to the Index. In addition, CSFB currently has in place internal review procedures to monitor trading activity in Index component securities and securities included in the replacement list. Finally, the Exchange's existing surveillance procedures for stock index options will apply to the options on the Index and should provide the Exchange with adequate information to detect and deter trading abuses. In sum, the Commission believes that the procedures discussed above will help to ensure that CSFB does not unfairly use any information regarding the Index that it obtained through its role in developing and maintaining the Index.

The Commission also believes that it is appropriate for the Exchange to make conforming changes to Exchange Rules 901C and 902C. The revisions are technical in nature and are designed to ensure that the Exchange's rules remain current. The Commission believes that it is important for the Exchange to update its rules to reflect newly listed derivative products. Pursuant to Section 19(b)(2) of the Act,[27] the Commission finds good cause for approving the proposal, including Amendment No. 1 thereto, prior to the thirtieth day after the date of publication of notice of the filing thereof in the **Federal Register**. The Commission notes that proposed rule changes regarding the listing and trading of options on industry group or narrow-based stock indexes may become effective immediately upon filing provided they satisfy certain generic listing standards.[28] The generic listing standards establish minimum guidelines concerning the design and operation of narrow-based indexes.

The Commission recognizes that the Index, as amended, satisfies all of the generic listing standards save two, the weighting methodology [29] and the frequency of rebalancing.[30] The Commission believes that because these deviations from the generic listing standards are not significant, they should not preclude the Exchange from receiving accelerated approval for its proposal.

Specifically, the modified equal-dollar weighted methodology will ensure that the weighting of the Index does not become concentrated in one or several component securities. Because the weightings assigned to the component securities are low (*i.e.*, 2.4% and 0.8%), it is unlikely that the weighting of a single component or group of component securities would increase to such a level that concentration issues would arise. Furthermore, the Exchange has represented that in no instance will a single component security represent more than 25% of the weight of the Index, nor will the five highest weighted component securities in the aggregate account for more than 50% of the weight of the Index.

For similar reasons, the Commission believes that it is appropriate for the Exchange to rebalance the Index annually rather than quarterly. Quarterly rebalancings were designed as a prophylactic measure against concentration problems. The Commission believes, however, that the low weightings assigned to component securities of the Index at the annual rebalancings addresses the concentration concerns that underlie the need for more frequent rebalancings. Accordingly, because the Index substantially complies with the generic listing standards, and the investor protection concerns have been addressed, the Commission finds good cause exists for granting accelerated approval to the proposed rule change Amendment No. 1 thereto.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change, SR-Amex-99–10, and Amendment No. 1 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

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[26] Details of the CSFB informational barriers have been submitted to the Commission under separate cover. *See* Letter from Robert L. Mazzeo; Solomon, Zauderer, Ellenhorn, Frischer & Sharp; to Richard Strasser, Assistant Director, Division, Commission, dated June 9, 1999.

[27] 15 U.S.C. 78s(b)(2).

[28] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) and Commentary .02 of Exchange Rule 901C. While a proposed rule change filed in accordance with the generic listing standards becomes effective immediately upon filing, trading in the approved options may not commerce until 30 days from the date of filing.

[29] Although the generic listing standards contemplate the calculation of indexes using capitaiization weighted, price weighted, or equal-dollar weighted methods, the standards do not specifically encompass the modified equal-dollar weighted methodology that the Exchange proposes to use for the Index.

[30] Under the generic listing standards, indexes based upon the equal-dollar weighting methodology must be rebalanced at least quarterly.

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41501; File No. SR–CBOE–99–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Governing the Operation of the Retail Automatic Execution System

June 9, 1999

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On May 21, 1999, the CBOE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules governing the operation of its Retail Automatic Execution System ("RAES") to increase the maximum order sizes on certain options and clarify the authority of the appropriate Floor Procedure Committees ("FPCs") of the Exchange to change current procedures governing assignment and price improvement of RAES orders, as described below. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of the proposed rule change is to increase from 20 to 50 contracts the maximum size of orders for equity options and certain classes of index options that are eligible to be executed through RAES. In addition, the proposed rule change clarifies the authority of the appropriate FPCs to change RAES order assignment procedures, and reflects the decision of the appropriate FPCs to implement a new assignment procedure called "Variable RAES." The proposed rule change also eliminates the current "one-tick" limit applicable to the RAES automatic "step-up" procedure, which provides for the automatic improvement of the price at which an order is executed on RAES in order to match a better price in another market. The proposal would allow the appropriate FPCs to authorize automatic RAES step-ups for price differentials greater than the one "tick" differential currently specified in the rules. Finally, the proposed rule change makes a number of editorial revisions to clarify or update the language of current rules governing RAES operations.

Currently, the maximum size of RAES-eligible orders is 20 contracts for all classes of options traded on CBOE for which a greater maximum is not expressly provided in the rules. Options subject to the 20 contract maximum include all classes of equity options, all classes of sector index options and all other classes of index options except options on the S&P 500 Index, the Nasdaq 100 Index, the Dow Jones Industrial Average, and interest rate options.[4] Increasing the RAES eligibility maximum to 50 contracts for these classes of options will not automatically permit orders up to this size to be entered into RAES. Instead, the actual maximum RAES eligibility size will be established by the appropriate FPC of the Exchange, which may maintain the maximum for particular classes at levels below the 50-contract maximum allowable under the proposed rule change.

Under existing Interpretation and Policy .01 under Rule 6.8, the appropriate FPC may increase the size of RAES-eligible orders for multiply-traded equity options to match the size of orders in options of the same class that are eligible for entry into the automated execution system of any other options exchange, subject to filing notice of the increase under Section 19(b)(3)(A) of the Act.[5] The Exchange nonetheless believes the FPC should be able to permit up to 50 contracts to be eligible for RAES in response to the perceived needs of the market, as reflected in member requests, without regard to automatic execution limits on other exchanges. The proposal will also provide greater flexibility to the Exchange in its competition for order flow with other exchanges that already have 50-contract maximum eligibility levels for their own automatic execution systems, since the Exchange will no longer be limited to acting in response to increases in automatic execution eligibility levels initiated by the other exchanges. CBOE represents that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of this proposal.

In addition, the proposed rule change clarifies the authority of the appropriate FPCs to change RAES order assignment procedures, and reflects the decision of the appropriate FPCs to implement a new assignment procedure called "Variable RAES." Under current procedures, RAES orders are randomly assigned to market makers, and each market maker is required to buy or sell the entire order assigned to him or her. By contrast, under Variable RAES, each market maker will be able to designate in advance, at the time of logging on to RAES, a maximum number of contracts he or she is willing to buy or sell each time a RAES order is randomly assigned to that market maker.[6] No market maker, however, will be able to designate a maximum that is less than a stated minimum number of contracts per assignment established by the appropriate FPC. In determining appropriate minimum execution levels,the FPC must take into account whether market makers have sufficient capital to fill an order of that size.

If the number of contracts in a RAES order is less than or equal to the market maker's specified limit, the market maker will be obligated to buy or sell all of the contracts in the order, and the next RAES order will be assigned to the next market maker on the RAES assignment rotation. If the number of contracts in an order exceeds the specified limit, the market maker will be obligated to buy or sell the number of contracts equal to the specified limit. The remainder of the order will be assigned to the next market maker on the RAES assignment rotation, who will likewise be obligated to buy or sell the number of remaining unassigned contracts in the order up to that market maker's specified limit. The assignment rotation will continue in this manner until all of the contracts in the order have been assigned to one or more market makers, even if this requires

[3] In Amendment No. 1, the CBOE clarified issues relating to the implementation of new order assignment procedures for orders entered into the CBOE's Retail Automatic Execution System. *See* letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Gordon Fuller, Special Counsel, Division of Market Regulation, SEC, dated May 20, 1999 ("Amendment No. 1").

[4] The RAES eligibility maximum is currently 99 contracts for options on the S&P 500 Index and the Nasdaq 100 Index, and 100 contracts for options on the DJIA and interest rate options. To simplify the administration of RAES and eliminate confusion, the proposed rule change would make the RAES eligibility maximums 100 contracts for these four classes of options. *See* Rule 6.8(e). One hundred contracts is also the proposed RAES eligibility maximum for options on the Dow Jones High Yield Select 10 Index, described in File No. SR–CBOE–99–06, which is pending with the Commission. Securities Exchange Act Release No. 41357 (April 30, 1999), 64 FR 25091 (May 10, 1999).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] Variable RAES is proposed partly in anticipation of the likelihood that as the maximum size of RAES-eligible orders is increased, individual market makers may seek to limit the size of the RAES orders they are obligated to fill.

more than one assignment to the same market maker as the assignment rotation continues.

Variable RAES will apply to all classes of options eligible for entry into RAES. CBOE represents that the Variable RAES procedure will be implemented following the effectiveness of this proposed rule change, and will be described in a circular to be distributed to the membership prior to that time. To allow for a period of adjustment, CBOE states that the Variable RAES procedure may be implemented across option classes in phases. Finally, if the appropriate FPC decides to implement a different RAES order assignment procedure, it must file a proposed rule change with the Commission pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder.

In addition, the proposed rule change authorizes the appropriate FPC to establish a "step up amount" for purposes of the automatic step-up procedure of Interpretation and Policy .02 under Rule 6.8 that is greater than the current amount, which equals the minimum quote interval ("tick") for that class of option under Rule 6.42. The automatic step-up procedure currently states that in designated classes of multiply-traded options, if the Exchange's best bid or offer is inferior to the bid or offer in another market by no more than one tick, an order in RAES will be automatically executed at the better bid or offer. The proposed rule change will enable the appropriate FPC to establish price differentials greater than one tick at which orders will be automatically executed in RAES in order to match better bids or offers in other markets.

By enhancing the Exchange's ability to provide instantaneous, automatic execution of public customers' orders at the best available prices, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[7] of the Act in general, and furthers the objectives of Section 6(b)(5)[8] of the Act in particular, in that it will promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–17 and should be submitted by July 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15352 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41480; File No. SR–CHX–99–04]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Inc., To Add a New Price Improvement Algorithm, SuperMax Plus

June 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 10, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a new price improvement algorithm, SuperMax Plus, to Rule 37 of Article XX of the Exchange's rules. The text of the proposed rule change is available at the Office of the Secretary, CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 22, 1995, the Commission approved a proposed rule change of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

CHX that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[3] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under this new rule.

SuperMax and Enhanced SuperMax are two existing CHX programs within the MAX System that use computerized algorithms to provide automated price improvement. Both of these programs have been approved by the Commission on a permanent basis.[4] The CHX now proposes to add a new program, SuperMax Plus, as a third program within the MAX System. The Exchange believes that it is important to remain competitive in an ever increasing technologically advanced marketplace. In order to do so, the Exchange is proposing SuperMax Plus, a new, more aggressive price improvement algorithm that increases the likelihood that small investors will receive price improvement for their orders.[5]

Background

The existing SuperMax program is a voluntary program in which a specialist may choose to participate. Participation is on a security-by-security basis and is currently limited to Dual Trading System issues (*i.e.*, issues traded on both the CHX and either the New York Stock Exchange or American Stock Exchange). A specialist can only activate and de-activate the program with respect to a given security once a month.

Under the current SuperMax algorithm, small agency market orders (*i.e.*, orders from 100 shares to 499 shares (or a greater amount chosen by the specialist)) are eligible for price improvement if the market for the security is quoted with a spread of 1/8 of a point or greater. Specifically, the current algorithm provides 3/16ths of a point price improvement from the ITS BBO[6] (the ITS best offer for a buy order, and the ITS best bid for a sell order) if an execution at the ITS BBO would be at least 1/8th of a point higher than (for a buy order) or lower than (for a sell order) the last primary market sale.

The Enhanced SuperMax program is an add-on feature for securities for which the Exchange's SuperMax program has already been activated. Thus, the Enhanced SuperMax program is only available when SuperMax is already enabled for that security.

Under the Enhanced SuperMax algorithm, small agency market orders (*i.e.*, orders for 500 to 2099 shares (or a greater amount chosen by the specialist))[7] are eligible for price improvement if the market for the security is quoted with a spread of 3/16ths of a point. Specifically, the algorithm "stops" an eligible order at the ITS BBO if the execution at the ITS BBO would be at least 1/8th of a point higher than (for a buy order) or lower than (for a sell order) the last primary market sale. Enhanced SuperMax flags an order stopped under this program with a "U." Once stopped, the order receives 1/16th of a point price improvement over the stopped price if the next primary market sale occurs before the end of the time-out period and the sale is at least 1/8th of a point lower than (for a buy order) or higher than (for a sell order) the stopped price.

Proposal

As stated above, the Exchange proposes to create a new price improvement algorithm, to be called SuperMax Plus. SuperMax Plus will become part of the existing voluntary price improvement programs in which specialists may choose to participate. Participation will continue to be on a security-by-security basis and will be limited to Dual Trading System issues. A specialist will only be able to activate and de-activate the program with respect to a given security once a month. The existing SuperMax and Enhanced SuperMax algorithms will then both become add-on features for securities for which the Exchange's new SuperMax Plus program has already been activated. Thus, the existing SuperMax and Enhanced SuperMax programs will only be available when SuperMax Plus is activated for a particular security.

Under the new proposed SuperMax Plus algorithm, small agency market orders (*i.e.*, orders from 100 shares to 199 shares—or a greater amount chosen by the specialist and approved by the Exchange) would be eligible for price improvement if the market for the security is quoted with a spread of 1/8th of a point or greater. The new algorithm would provide 1/16th of a point higher than (for a buy order) or lower than (for a sell order) the last primary market sale.[8]

The Exchange further proposes revising the existing SuperMax algorithm so that it applies to orders between 200 and 499 shares.[9] The existing Enhanced SuperMax algorithm will not change.

As proposed, specialists that choose to engage one or more price improvement algorithms will have to engage the SuperMax Plus for at least up to 199 shares. In addition, once a specialist engages SuperMax Plus for 199 shares, the specialist must either engage SuperMax for orders between 199 shares and 500[10] shares or increase the maximum size order that is eligible for SuperMax Plus to 499 shares. This proposed requirement will ensure that once a specialist decides to offer automated price improvement, one or more price improvement algorithms will be available for orders of up to at least 499 shares.

Finally, the proposed rule change deletes a reference contained in the Enhanced SuperMax rules to orders for 200 shares or less entered by the Odd-Lot Execution Service because Enhanced SuperMax is not eligible for orders that are less than 500 shares.

Timing of Effectiveness of System Changes

The Exchange expects that the addition of SuperMax Plus and the

[3] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (File No. SR–CHX–95–08).

[4] *See* Securities Exchange Act Release Nos. 40017 (May 20, 1998), 63 FR 29277 (May 28, 1998) (File No. SR–CHX–98–09) and 40235 (July 17, 1998), 63 FR 40147 (July 27, 1998) (File No. SR–CHX–98–09) (approving revised SuperMax and Enhanced SuperMax algorithms).

[5] While the Exchange is also proposing conforming changes to the existing MAX rules to accommodate the new program, no substantive changes are being made to SuperMax and Enhanced SuperMax, the existing price improvement algorithms, at this time.

[6] As used in the CHX rules, ITS BBO means the best bid or offer among the American, Boston, Cincinnati, Chicago, New York, Pacific, and Philadelphia exchanges or the Intermarket Trading System/Computer Assisted Execution System quote. *See* CHX Art. XX, Rule 37(a)(2).

[7] Notwithstanding the 500 share minimum order size contained in the rule, the smallest size order eligible for Enhanced SuperMax must always be at least one share greater than the largest size order in such security that is eligible for SuperMax. In other words, if a specialist voluntarily increases the maximum order size for SuperMax, the minimum order size for Enhanced SuperMax must be increased accordingly.

[8] This provides better price improvement than under the current SuperMax algorithm where 1/16th of a point price improvement is provided if an ITS BBO execution would be at least 1/8th of a point away from the last sale.

[9] Notwithstanding the 200 share minimum order size contained in the new proposed rule for SuperMax, the smallest size order eligible for SuperMax must always be at least one share greater than the earliest size order in such security that is eligible for SuperMax Plus. In other words, if a specialist voluntarily increases the maximum order size for SuperMax Plus, the minimum order size for SuperMax must be increased accordingly.

[10] The original filing reflected 499 shares but was changed to 500 as per conversation between Paul O'Kelly, Executive Vice President, Legal/Market Regulation, CHX and Heather Traeger, Attorney, Division of Market Regulation, SEC, on June 4, 1999.

corresponding changes to the other price improvement algorithms will become operative immediately upon approval of this proposed rule change by the Commission; the Exchange expects to implement this change June 15, 1999.[11]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5)[12] of the Act in that is it designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change accomplishes these ends by increasing the number of trades that will receive automated price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and coping at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–04 and be submitted by July 8, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The CHX requests accelerated approval of the proposed rule change. The Commission has reveiwed the CHX's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of Section 6 of the Act[13] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,[14] which requires that the rules of an Exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating trisections in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[15] The Commission believes the new price in improvement contemplated by the new SuperMax Plus will provide investors with enhanced investment opportunities because price improvement from the ITS BBO will be available if an execution at the ITS BBO would be at least 1/16th of a point higher than (for a buy order) or lower than (for a sell order) the last primary market sale, instead of the 1/8th requirement under SuperMax and Enhanced SuperMax. The Commission notes that while SuperMax Plus is a voluntary program that specialists choose to participate in for Dual Trading System issues, providing a greater number of investors an opportunity to achieve price improvement is compatible with the views expressed in the Order Handling release.[16]

Because provision of price improvement should enhance small investors participation in the securities market, without sacrificing investor protection and the public interest, the Commission therefore finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CHX–99–04) is hereby on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15350 Filed 6–16–99; 8:45 am]

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[11] Conversation between David Rusoff, Foley & Lardner and Mandy Cohen, Senior Counsel, Division of Market Regulation, SEC on May 28, 1999.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c)(f).

[16] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (File No S7–30–95).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.3–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–4182; File No. SR–CHX–99–3]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc., Concerning an Increase in the BEST Rule Guarantee and the Minimum Order Acceptance Level in the MAX System

June 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 7, 1999, the Chicago Stock Exchange, Inc. ("CHX") or "the Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The filing was amended on May 26, 1999.[3] The proposed rule change, as amended, has been filed by CHX as a "non-controversial" rule change under Rule 19b–4(f)(6)[4] under the Act.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kirsten M. Carlson, Foley & Lardner, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 25, 1999 ("Amendment No. 1").

[4] 17 CFR 240.19b–4(f)(6).

[5] CHX originally filed this proposal under Rule 19b–4(e)(5). Amendment No. 1 amended this to Rule 19b–4(f)(6). As requested by CHX, the Commission will consider the original filing, dated May 6, 1999, as the pre-filing notice required by Rule 19b–4(f)(6). The Amendment No. 1 filing date (May 26, 1999) will be considered the formal filing date of the rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 37 of Article XX of the Exchange's Rules to increase the size of the guarantee contained in the Best Rule and the minimum order acceptance level in the MAX System for all agency orders in Dual Trading System issues from 2099 to 5099 shares.[6] The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Exchange's Guaranteed Execution System (the "BEST System"), specialists must currently accept and guarantee execution of agency orders in Dual Trading System issues from 100 up to and including 2099 shares. Similarly, the Exchange's Midwest Automatic Execution System (the "MAX system") contains an auto-acceptance threshold parameter that is designated by the specialist on a stock-by-stock basis that must be set for 2099 shares or greater for Dual Trading System issues.

The proposed rule change would increase the Best Rule guarantee and the auto-acceptance threshold. Specifically, the rule change would require specialists to accept all agency orders in Dual Trading System issues from 100 up to and including 5099 shares, and require that the auto-acceptance threshold parameter be set for 5099 shares or greater for all Dual Trading System issues.

The Exchange believes that the larger size guarantees will benefit customers by providing customers with better executions. Further, the Exchange believes the larger size guarantees will enhance the competitiveness of the Exchange by attracting additional order flow.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition.

CHX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Data of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder[9] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) CHX provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission approve acceleration of the operative date of the proposal to June 11, 1999. The Exchange states that the increase of the BEST Rule Guarantee and auto acceptance threshold will benefit customers by providing better executions, and that accelerating the operative date will allow customers to receive this benefit earlier. The Exchange further states that it is technologically prepared to begin operations as soon as permitted by the Commission. The Commission finds that accelerating the operative date of the rule change as proposed is consistent with the protection of investors and the public interest, and thus designates June 11, 1999, as the operative date of the filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–3, and should be submitted by July 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15354 Filed 6–16–99; 8:45 am]

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[6] The increase to 5099 shares will become operative on a date specified in a Notice to Members to be issued in the immediate future.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41506; File No. SR–DTC–99–07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Charges

June 10, 1999.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on March 15, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises the fee schedule for DTC's services.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, DTC is adjusting the fees that it charges for various services so that the fees are aligned with their respective estimated service costs for 1999. The adjusted fees are effective with respect to services provided on and after April 1, 1999. DTC's Board of Directors has completed a review of DTC's estimated unit service costs for 1999, and DTC's service fees have been adjusted to reflect the results of the review.

The revised 1999 fee schedule has been set to yield $7.5 million more in operating revenue on an annual basis than the present fee schedule (which had been based on 1998 unit service costs) would have yielded. Studies of the impact of the new fees on all participants based on their monthly bills from DTC for October, November, and December 1998 shows an average monthly fee increase of 1.4%.

The revised fee schedule includes transaction based fees for DTC's custody service, which has previously been billed as a flat monthly fee that is negotiated with respect to each participant based on its projected overall usage of the service.[4] Since DTC has completed its analysis of the various activities included in the custody service and the respective costs associated with each activity, the flat monthly fee will be replaced with individual transaction fees applied to all participants uniformly and based on the nature of the transaction.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to DTC because fees will be allocated more equitably among DTC participants based on respective estimated 1999 unit service costs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Participants and other users of DTC's services were informed that DTC anticipated that annual service fees would likely increase in 1999 by $7.5 million by an Important Notice dated July 31, 1998, (B#4612) entitled "Preliminary Projections for 1998 and Anticipated 1999 Services Fees." An Executive Important Notice dated February 5, 1999, (B#6063) entitled "1999 Revisions of DTC Service Fees" was then circulated to participants and other users of DTC services on February 5, 1999, advising them of the new fees effective with respect to services provided on and after April 1, 1999, and inviting their questions or comment. Because participants have supported cost based fees in the past and because overall the subject fee changes are modest, a more formal period for participant comment was not considered necessary.

No written comments from participants or others have been received with respect to this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and Rule 19b–4(g)(2)[7] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–07 and should be submitted by July 8, 1999.

[1] 15 U.S.C. 78s(b)(1).

[2] The revised fee schedule is attached as Exhibit 2 to DTC's filing, which is available for inspection and copying in the Commission's public reference room and through DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] Securities Exchange Act Release No. 39761 (March 16, 1998) 63 FR 13893 [File No. SR–DTC–97–09].

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

For the Commission by the Division of Market Regulaton, pursuant to delegated authority.[8]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 99–15353 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41510; File No. SR–NASD–99–21]

Self-Regulatory Organizations Notice of Filing of Proposed Rule Change by the Nation Association of Securities Dealers, Inc. Relating to the Creation of a Dispute Resolution Subsidiary

June 10, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interest persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing to create a dispute resolution subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), to handle dipsute resolution programs; to adopt by-laws for such subsidiary; and to make conforming amendments to the Delegation Plan, the NASD Regulation By-Laws, and the Rules of the Association. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Plan of Allocation and Delegation of Functions by NASD to Subsidiaries

I. NASD, Inc.

A. The NASD, Inc. (referenced as "NASD"), the Registered Section 15A Association, is the parent company of the wholly-owned Subsidiaries NASD Regulation, Inc. (referenced individually as "NASD Regulation"),[22] [and] The Nasdaq Stock Market, Inc. (referenced individually as "Nasdaq"), *and NASD Dispute Resolution, Inc. (referenced individually as "NASD Dispute Resolution")* (referenced collectively as the "Subsidiaries"). The term "Association" shall refer to the NASD and the Subsidiaries collectively.

* * * * *

B. Functions and Authority of the NASD—The NASD shall have ultimate responsibility for the rules and regulations of the Association and its operation and administration. As set forth below in Sections II.A., [and] III.A, *and V.A.*, the NASD has delegated certain authority and functions to its subsidiaries. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the NASD Board in accordance with procedures establish by that Board. Any function or responsibility as a registered securities association under the Securities Exchange Act of 1934 ("Act"), or as set forth in the Certificate of Incorporation or the by-laws is hereby reserved, except as expressly delegated to the subsidiaries. In addition, the NASD expressly retains the following authority and functions:

* * * * *

4. To review the rulemaking and disciplinary decisions of the subsidiaries (See Sections II.B., [and] III.B., *and V.B. below).*

5. No change.

6. To resolve any disputes [between] *among* the Subsidiaries.

* * * * *

11. To take action "*ab inito*" in an area of responsibility delegated to NASD Regulation in Section II, [or] to Nasdaq in Section III, *or to NASD Dispute Resolution in Section V.*

* * * * *

D. Access to and Status of Officers, Directors, Employees, Books, Records, and Premises of Subsidiaries

Notwithstanding the delegation of authority to the Subsidiaries, as set forth in Sections II.A., [and] III.A, *and V.A.* below, the staff, books, records, and premises of the NASD subject to oversight pursuant to the Act, and all officers, directors, employees, and agents of the Subsidiaries are officers, directors, employees and agents of the NASD for purposes of the Act. The books and records of NASDAQ shall be subject at all times to inspection and copying by NASD Regulation.

II. NASD Regulation, Inc.

A. Delegation of Functions and Authority:

1. Subject to Section 1.B.11, the NASD hereby delegates to NASD Regulation and NASD Regulation assumes the following responsibilities and functions as a registered securities association:

a. To establish and interpret rules and regulations and provide exemptions for NASD members including, but not limited to fees[,] *and* membership requirements[, and arbitration procedures].

b. To determine Association policy, including developing and adopting necessary or appropriate rule changes, relating to the business and sales practices of NASD members and associated persons with respect to, but not limited to, (i) [arbitration of disputes among and between NASD members, associated persons and customers, (ii)] public and private sale or distribution of securities including underwriting arrangements and compensation, [(iii)] *(ii)* financial responsibility, [(iv)] *(iii)* qualifications for NASD membership and association with NASD members, [(v)]*(iv)* clearance and settlement of securities transactions and other financial responsibility and operational matters affecting members in general and securities listed on The Nasdaq Stock Market and on other markets operated by the Nasdaq Stock Market, [(vi)] *(v)* NASD member advertising practices, [(vii)] *(vi)* administration, interpretation and enforcement of Association rules, [(viii)] *(vii)* administration and enforcement of Municipal Securities Rulemaking Board ("MSRB") rules, the federal securities laws, and other laws, rules and regulations that the Association has the authority to administer or enforce, and [(ix)] *(viii)* standards of proof for violations and sanctions imposed on NASD members and associated persons in connection with disciplinary actions.

* * * * *

h. [To conduct arbitrations, mediations and other dispute resolution programs.

i.] To conduct qualification examinations and continuing education programs.

j.–t. Remembered as i.–s.

* * * * *

B. NASD Regulation Board Procedures

1. Rule Filings—The NASD Board shall review and ratify a rule change adopted by the NASD Regulation Board before the rule change becomes the final action of the Association if the rule

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change: (a) imposes fees or other charges on persons or entities other than NASD members; (b) raises significant policy issues in the view of the NASD Regulation Board, and the NASD Regulation Board refers the rule change to the NASD Board; or (c) is materially inconsistent with a recommendation of the National Adjudicatory Council. If the NASD Regulation Board does not refer a rule change to the NASD Board for review, the NASD Regulation Board action shall become the final action of the Association unless called for review by any member of the NASD Board not later than the NASD Board meeting next following the NASD Regulation Board's action. During the process of developing rule proposals, NASD Regulation staff shall consult with and seek the advice of Nasdaq *and NASD Dispute Resolution* staff before presenting any rule proposal to the NASD Regulation Board.

C. Supplemental Delegation Regarding Committees

* * * * *

[2. National Arbitration and Mediation Committee

a. The National Arbitration and Mediation Committee shall have the powers and authority pursuant to the Rules of the Association to advise the NASD Regulation Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and Association members, to monitor rules and procedures governing the conduct of dispute resolution, and to have such other powers and authority as is necessary to effectuate the purposes of the Rules of the Association.

b. The NASD Regulation Board shall appoint the National Arbitration and Mediation Committee by resolution. The National Arbitration and Mediation Committee shall consist of no fewer than ten and no more than 25 members. The members of the National Arbitration and Mediation Committee shall be equally balanced between Industry and Non-Industry committee members.

c. At all meetings of the National Arbitration and Mediation Committee, a quorum for the transaction of business shall consist of a majority of the National Arbitration and Mediation Committee, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry Committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.]

[3]*2.* Operations Committee

* * * * *

V. NASD Dispute Resolution, Inc.

A. Delegation of Functions and Authority

1. Subject to Section I.B.11, the NASD hereby delegates to NASD Dispute Resolution and NASD Dispute Resolution assumes the following responsibilities and functions as a registered securities association:

a. To establish and interpret rules and regulations and provide exemptions for NASD members pertaining to dispute resolution programs including, but not limited to, dispute resolution fees and procedures.

b. To determine Association policy, including developing and adopting necessary or appropriate rule changes, relating to the arbitration, mediation, or other resolution of disputes among and between NASD members, associated persons and customers.

c. To conduct arbitrations, mediations, and other dispute resolution programs.

d. To establish the annual budget and business plan for NASD Dispute Resolution.

e. To determine allocation of NASD Dispute Resolution resources.

f. To establish and assess fees and other charges on NASD members, persons associated with NASD members, and others using the services or facilities of NASD Dispute Resolution.

g. To manage external relations on matters related to dispute resolution with Congress, the Commission, state regulators, other self-regulatory organizations, business groups, and the public.

2. All action taken pursuant to authority delegated pursuant to A.1. shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

B. NASD Dispute Resolution Board Procedures

Rule Filings—The NASD Board shall review and ratify a rule change adopted by the NASD Dispute Resolution Board before the rule change becomes the final action of the Association if the rule change: (a) imposes fees or other charges on persons or entities other than NASD members; or (b) raises significant policy issues in the view of the NASD Dispute Resolution Board, and the NASD Dispute Resolution Board refers the rule change to the NASD Board. If the NASD Dispute Resolution Board does not refer a rule change to the NASD Board for review, the NASD Dispute Resolution Board action shall become the final action of the Association unless called for review by any member of the NASD Board not later than the NASD Board meeting next following the NASD Dispute Resolution Board's action. During the process of developing rule proposals, NASD Dispute Resolution staff shall consult with and seek the advice of Nasdaq and NASD Resolution staff before presenting any rule proposal to the NASD Dispute Resolution Board.

C. Supplemental Delegation Regarding Committees

1. National Arbitration and Mediation Committee

a. The National Arbitration and Mediation Committee shall have the powers and authority pursuant to the Rules of the Association to advise NASD Dispute Resolution Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and Association members, to monitor rules and procedures governing the conduct of dispute resolution, and to have such other powers and authority as is necessary to effectuate the purposes of the Rules of the Association.

b. The NASD Dispute Resolution Board shall appoint the National Arbitration and Mediation Committee by resolution. The National Arbitration and Mediation Committee shall consist of no fewer than ten and no more than 25 members. The National Arbitration and Mediation Committee shall have at least 50 percent Non-Industry members.

c. At all meetings of the National Arbitration and Mediation Committee, a quorum for the transaction of business shall consist of a majority of the National Arbitration and Mediation Committee, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are either (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.

* * * * *

By-Laws of NASD Regulation, Inc.

Article I—Definitions

* * * * *

(q) "Industry Director" or "Industry Member" means a Director (excluding the President) or a National Adjudicatory Council or committee member who

* * * * *

(6) has a consulting or employment relationship with or provide professional services to the NASD, NASD Regulation, Nasdaq, *NASD Dispute Resolution,* or Amex (and any predecessor), or has had any such relationship or provided any such services at any time within the prior three years;

* * * * *

(t) "NASD Dispute Resolution" means NASD Dispute Resolution, Inc,;

(t)–(ff) Renumbered as (u) to (gg)

* * * * *

Rules of the Association

* * * * *

0120. Definitions

When used in these Rules, unless the context otherwise requires:

* * * * *

(b) "Association"

The term "Association" means, collectively, the NASD, NASD Regulation, [and] Nasdaq, *and NASD Dispute Resolution.*

* * * * *

Code of Arbitration Procedure

10102. National Arbitration and Mediation Committee

(a) The *NASD Dispute Resolution* Board of [Governors of the Association] *Directors,* following the annual election of *its* members [to] *by* the *NASD* Board *of Governors* shall appoint a National Arbitration and Mediation Committee of such size and composition including representation from the public at large, as it shall deem appropriate and in the public interest. The Chairman of the Committee shall be named by the Chairman of the *NASD Dispute Resolution* Board. The said Committee shall establish and maintain [a pool] *rosters* of [arbitrations] *neutrals* composed of persons from within and without the securities industry.

(b) The Committee shall have the authority to [establish] *recommend to the NASD Dispute Resolution Board* appropriate Rules, regulations, and procedures to govern the conduct of all arbitration, *mediation, and other dispute resolution* matters before the Association. All Rules, regulations, and procedures and amendments thereto [promulgated] *presented* by the Committee must be by a majority vote of all the members of the said Committee. It also shall have such other power and authority as is necessary to effectuate the purposes of this code.

* * * * *

10400. Mediation Rules

10401. Scope and Authority

* * * * *

(b) A Director of Mediation shall be designated by the [Association] *NASD Dispute Resolution Board* to administer mediations under these Procedures. The Director will consult the [Association's] National Arbitration and Mediation Committee on the administration of mediations and the Committee shall, as necessary, make recommendations to the Director *of Arbitration* and recommend to the *NASD Dispute Resolution* Board [of Governors] amendments to the Procedures. The duties and functions of the Director may be delegated by the Director, as appropriate. For purposes of this Rule 10400 Series, the term "Director" refers to the Director of Mediation.

* * * * *

10404. Mediator Selection

* * * * *

(c) No mediator shall be permitted to serve as an arbitrator of any matter pending in [NASD] *Association* arbitration in which he served as a mediator, nor shall the mediator be permitted to represent any party or participant to the mediation in any subsequent [NASD] *Association* arbitration proceeding relating to the subject matter of the mediation.

* * * * *

By-Laws of NASD Dispute Resolution, Inc.

Article I

Definitions

When used in these By-Laws, unless the context otherwise requires, the term:

(a) "Act" means the Securities Exchange Act of 1934, as amended;

(b) "Amex" means American Stock Exchange LLC;

(c) "Board" means the Board of Directors of NASD Dispute Resolution;

(d) "broker" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

(e) "Commission" means the Securities and Exchange Commission;

(f) "day" means calendar day;

(g) "dealer" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual's or entity's own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person's own account, either individually or in some fiduciary capacity, but not as part of a regular business;

(h) "Delaware law" means the General Corporation Law of the State of Delaware;

(i) "Delegation Plan" means the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" as approved by the Commission, and as amended from time to time;

(j) "Director" means a member of the Board, excluding the Chief Executive Officer of the NASD;

(k) "Executive Representative" means the executive representative of an NASD member appointed pursuant to Article IV, Section 3 of the NASD By-Laws;

(l) "Industry Director" or "Industry member" means a Director (excluding the President) or a committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenue received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or

partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, Nasdaq, NASD Dispute Resolution, or Amex (and any predecessor), or has had any such relationship or provided any such services at any time within the prior three years;

(m) "NASD" means the National Association of Securities Dealer, Inc.;

(n) "NASD Board" means the NASD Board of Governors;

(o) "NASD Dispute Resolution" means NASD Dispute Resolution, Inc.;

(p) "NASD member" means any broker or dealer admitted to membership in the NASD;

(q) "NASD Regulation" means NASD Regulation, Inc.;

(r) "Nasdaq" means The Nasdaq Stock Market, Inc.;

(s) "Nasdaq-Amex" means Nasdaq-Amex Market Group, Inc.;

(t) "National Nominating Committee" means the National Nominating Committee appointed pursuant to Article VII, Section 9 of the NASD By-Laws;

(u) "Non-Industry Director" or "Non-Industry member" means a Director (excluding the President) or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;

(v) "person associated with a member" or "associated person of a member" means: (1) a natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association;

(w) "Public Director" or "Public member" means a Director or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, Nasdaq, or NASD Dispute Resolution;

(x) "Rules of the Association" or "Rules" means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as hereafter amended or supplemented.

Article II

Offices

Location

Sec. 2.1 The address of the registered office of NASD Dispute Resolution in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. NASD Dispute Resolution also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of NASD Dispute Resolution may require.

Change of Location

Sec. 2.2 In the manner permitted by law, the Board or the registered agent may change the address of NASD Dispute Resolution's registered office in the State of Delaware and the Board may make, revoke, or change the designation of the registered agent.

Article III

Meetings of the Stockholder

Action by Consent of Stockholder

Sec. 3.1 Any action required or permitted by law to be taken at any meeting of the stockholder of NASD Dispute Resolution may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holder of the outstanding stock.

Article IV

Board of Directors

General Powers

Sec. 4.1 The property, business, and affairs of NASD Dispute Resolution shall be managed by or under the direction of the Board. The Board may exercise all such powers of NASD Dispute Resolution and have the authority to perform all such lawful acts as are permitted by law, the Certificate of Incorporation, these By-Laws, or the Delegation Plan to assist the NASD in fulfilling its self-regulatory responsibilities as set forth in Section 15A of the Act, and to support such other initiatives as the Board may deem appropriate. To the fullest extent permitted by applicable law, the Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.13 or to NASD Dispute Resolution staff in a manner not inconsistent with the Delegation Plan.

Number of Directors

Sec. 4.2 The Board shall consist of no fewer than five and no more than eight Directors, the exact number to be determined by resolution adopted by the stockholder of NASD Dispute Resolution from time to time. Any new Director position created as a result of an increase in the size of the Board shall be filled pursuant to Section 4.4.

Qualifications

Sec. 4.3 (a) Directors need not be stockholders of NASD Dispute Resolution. The number of Non-Industry Directors shall equal or exceed the number of Industry Directors plus the President. The Board shall include the President, at least two Non-Industry Directors who are also Governors of the NASD Board, and at least one Industry Director who is also a Governor of the NASD Board. The Board shall include at least one Public Director, unless the Board consists of eight Directors. In such case, at least two Directors shall be Public Directors. The Chief Executive Officer of the NASD shall be an ex-officio non-voting member of the board.

(b) As soon as practicable, following the annual election of Directors, the Board shall elect from its members a Chair and Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve until the next annual election or until their successors are chosen and qualified. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

Election

Sec. 4.4 Except as otherwise provided by law, these By-Laws, or the Delegation Plan, after the first meeting of NASD Dispute Resolution at which Directors are elected, Directors of NASD Dispute Resolution shall be elected each year at the annual of the stockholder, or at a special meeting called for such purpose in lieu of the annual meeting. If the annual election of Directors is not held on the date designated therefor, the Directors shall cause such election to be held as soon thereafter as convenient.

Resignation

Sec. 4.5 Any Director may resign at any time either upon written notice of resignation to the Chair of the Board, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation,

unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. 4.6 Any or all of the Directors may be removed from office at any time, with or without cause, only by a majority vote of the NASD Board.

Disqualification

Sec. 4.7 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies the classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.

Filling of Vacancies

Sec. 4.8 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the NASD Board shall elect by majority vote, a person satisfying the classification (Industry or Non-Industry Director) for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. 4.9 (a) At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of a majority of the Board, including not less than 50 percent of the Non-Industry Directors. In the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum is present.

(b) Except as provided in Section 4.14(b), the vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

Regulation

Sec. 4.10 The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of NASD Dispute Resolution not inconsistent with the law, the Certificate of Incorporation, these By-Laws, the Delegation Plan, the Rules of the Association, or the By-Laws of the NASD, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected in relying in good faith upon the books of account or reports made to NASD Dispute Resolution by any of its officers, by an independent certified public accountant, by an appraiser selected with reasonable care by the Board or any committee of the Board or by any agent of NASD Dispute Resolution, or in relying in good faith upon other records of NASD Dispute Resolution.

Meetings

Sec. 4.11 (a) An annual meeting of the Board shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of the stockholder, no notice of the annual meeting of the Board need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section 4.12.

(b) Regular meetings of the Board may be held at such time and place, within or without the State of Delaware, as determined from time to time by the Board. After such determination has been made, notice shall be given in accordance with Section 4.12.

(c) Special meetings of the Board may be called by the Chair of the Board, by the President, or by at least one-third of the Directors then in office. Notice of any special meeting of the Board shall be given to each Director in accordance with Section 4.12.

(d) A Director or member of any committee appointed by the Board may participate in a meeting of the Board or of such committee through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Notice of Meetings; Waiver of Notice

Sec. 4.12 (a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if: (i) mailed to the address last made known in writing to NASD Dispute Resolution by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by telegraph, telefax, cable, radio, or wireless, not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing (or by telegram, telefax, cable, radio, or wireless and subsequently confirmed in writing) whether before or after the holding of such meeting, or if such Director is present at such meeting, subject to Article IX, Section 9.3(b).

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat.

Committees

Sec. 4.13 (a) The Board may, by resolution or resolutions adopted by a majority of the whole Board, appoint one or more committees. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board. Any member of a committee may be removed from such committee only after a majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member's duties.

(b) The Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to NASD Dispute Resolution by the NASD under the Delegation Plan. Such delegations shall be in conformance with applicable law, the Certificate of Incorporation, these By-Laws, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the

Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of NASD Dispute Resolution to the extent permitted by law and not inconsistent with the Delegation Plan. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee, may authorize the seal of NASD Dispute Resolution to be affixed to all papers that may require it.

(c) Except as otherwise permitted by applicable law, no committee shall have the power or authority of the Board with regard to: amending the Certificate of Incorporation or the By-Laws of NASD Dispute Resolution; adopting an agreement of merger or consolidation; recommending to the stockholder the sale, lease, or exchange of all or substantially all NASD Dispute Resolution's property and assets; or recommending to the stockholder a dissolution of NASD Dispute Resolution or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.

(d) Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

(e) Unless otherwise provided by these By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(f) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of NASD Dispute Resolution between meetings of the Board, and which may authorize the seal of NASD Dispute Resolution to be affixed to all papers that may require it. The Executive Committee shall consist of three or four Directors, including at least one Public Director. The President of NASD Dispute Resolution shall be a member of the Executive Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members plus the President. An Executive Committee member shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

(g) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of NASD Dispute Resolution, including recommendations for NASD Dispute Resolution's annual operating and capital budgets and proposed changes to the rates and fees charged by NASD Dispute Resolution. The Finance Committee shall consist of two or three Directors. The President of NASD Dispute Resolution shall serve as a member of the Committee. A Finance Committee member shall hold office for a term of one year.

(h) If the Board appoints a non-Director to a committee, upon request of the Secretary of NASD Dispute Resolution, each such prospective committee member shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry or Non-Industry committee member. The Secretary of NASD Dispute Resolution shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this Section at least annually and upon request of the Secretary of NASD Dispute Resolution, and shall report immediately to the Secretary any change in such classification.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. 4.14 (a) A Director or a committee member shall not directly or indirectly participate in any determinations regarding the interests of any party if that Director or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.

(b) No contract or transaction between NASD Dispute Resolution and one or more of its Directors or officers, or between NASD Dispute Resolution and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between NASD Dispute Resolution and the NASD, NASD Regulation, Nasdaq, Nasdaq-Amex, or Amex.

Action Without Meeting

Sec. 4.15 Any action required or permitted to be taken at a meeting of the Board or of a committee may be taken without a meeting if all Directors or all members of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or the committee.

Communication of Views Regarding Contested Election or Nomination

Sec. 4.16 NASD Dispute Resolution, the Board, any committee, and NASD Dispute Resolution staff shall not take any position publicly or with an NASD member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to the NASD By-Laws or the NASD Regulation By-Laws. A Director or committee member may communicate his or her views with respect to a candidate if such individual acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of NASD Dispute Resolution, the Board, or any committee. NASD Dispute Resolution, the Board, any committee, and the NASD Dispute Resolution staff shall not provide any administrative support to any candidate in a contested election or nomination conducted pursuant to the NASD By-Laws or the NASD Regulation By-Laws.

Article V

Officers, Agents, and Employees

Officers

Sec. 5.1 The Board shall elect the officers of NASD Dispute Resolution, which shall include a President, a Secretary, and such other executive or administrative officers as it shall deem necessary or advisable, including, but not limited to: Executive Vice President, Senior Vice President, Vice President, General Counsel, and Treasurer of NASD Dispute Resolution. All such officers shall have such titles, powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board. The terms of office of such officers shall be at the pleasure of the Board, which by affirmative vote of a majority of the Board, may remove any such officer at any time. One person may hold the offices and perform the duties of any two or more of said offices, except the offices and duties of President and Vice President or of President and Secretary. None of the officers except the President, need be Directors of NASD Dispute Resolution.

Absence of the President

Sec. 5.2 In the case of the absence or inability to act of the President of NASD Dispute Resolution, or in the case of a vacancy in such office, the Board may appoint its Chair or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the President.

Agents and Employees

Sec. 5.3 In addition to the officers, NASD Dispute Resolution may employ such agents and employees as the Board may deem necessary or advisable, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, the President, or any officer designated by the Board may from time to time determine. Agents and employees of NASD Dispute Resolution shall be under the supervision and control of the officers of the NASD Dispute Resolution, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

Delegation of Duties of Officers

Sec. 5.4 The Board may delegate the duties and powers of any officer of NASD Dispute Resolution to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

Resignation and Removal of Officers

Sec. 5.5 (a) Any officer may resign at any time upon written notice of resignation to the Board, the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer of NASD Dispute Resolution may be removed, with or without cause, by resolution adopted by a majority of the Directors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Directors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with NASD Dispute Resolution.

Bond

Sec. 5.6 NASD Dispute Resolution may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

Article VI

Compensation

Compensation of Board, Council, and Committee Members

Sec. 6.1 The Board may provide for reasonable compensation of the Chair of the Board, the Directors, and the members of any committee of the Board. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of NASD Dispute Resolution.

Article VII

Indemnification

Indemnification of Directors, Officers, Employees, Agents, and Committee Members

Sec. 7.1 (a) NASD Dispute Resolution shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of NASD Dispute Resolution or a committee member, or is or was a Director, officer, or employee of NASD Dispute Resolution who is or was serving at the request of NASD Dispute Resolution as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of NASD Dispute Resolution) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of NASD Dispute Resolution to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) NASD Dispute Resolution shall advance expenses (including attorneys' fees and disbursements) to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) NASD Dispute Resolution may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of NASD Dispute Resolution or is or was an agent of NASD Dispute Resolution who is or was serving at the request of NASD Dispute Resolution as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) NASD Dispute Resolution may, in its discretion, pay the expenses

(including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by NASD Dispute Resolution to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) the person seeking advancement of expense (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of NASD Dispute Resolution; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to NASD Dispute Resolution.

(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, or committee member, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), NASD Dispute Resolution shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) NASD Dispute Resolution's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the foregoing provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by NASD Dispute Resolution, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, NASD Dispute Resolution shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

Indemnification Insurance

Sec. 7.2 NASD Dispute Resolution shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, committee member, employee, or agent of NASD Dispute Resolution, or is or was serving at the request of NASD Dispute Resolution as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liablity asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not NASD Dispute Resolution would have the power to indemnify such person against such liability hereunder.

Article VIII

Capital Stock

Sole Stockholder

Sec. 8.1 The NASD shall be the sole stockholder of the capital stock of NASD Dispute Resolution.

Certificates

Sec. 8.2 The stockholder shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock in NASD Dispute Resolution owned by the stockholder.

Signatures

Sec. 8.3 (a) Certificates for shares of capital stock of NASD Dispute Resolution shall be signed in the name of NASD Dispute Resolution by two officers with one being the Chair of the Board, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board. Such certificates may be sealed with the corporate seal of NASD Dispute Resolution or a facsimile thereof.

(b) If any such certificates are countersigned by a transfer agent other than NASD Dispute Resolution or its employee, or by a registrar other than NASD Dispute Resolution or its employee, any other signature on the certificate may be a facsimile. In the event that any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall cease to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by NASD Dispute Resolution with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Stock Ledger

Sec. 8.4 (a) A record of all certificates for capital stock issued by NASD Dispute Resolution shall be kept by the Secretary or any other officer, employee, or agent designated by the Board. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates that have been canceled, the date of cancellation thereof.

(b) NASD Dispute Resolution shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. Except as otherwise required by applicable law, NASD Dispute Resolution shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not NASD Dispute Resolution shall have express or other notice thereof.

Transfers of Stock

Sec. 8.5 (a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for shares of capital stock of NASD Dispute Resolution. The Board may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of NASD Dispute Resolution only upon delivery to NASD Dispute Resolution or its transfer agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing; (ii) the certificate for the shares of capital stock being transferred; and (iii) a written assignment of the shares of capital stock evidenced thereby.

Cancellation

Sec. 8.6 Each certificate for capital stock surrendered to NASD Dispute Resolution for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to Section 8.7 until such existing certificate shall have been canceled.

Lost, Stolen, Destroyed, and Mutilated Certificates

Sec. 8.7 In the event that any certificate for shares of capital stock of NASD Dispute Resolution shall be mutilated, NASD Dispute Resolution shall issue a new certificate in place of such mutilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed NASD Dispute Resolution may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or such owner's representatives, to furnish to NASD Dispute Resolution a bond with an acceptable surety or sureties and in such sum as shall be sufficient to indemnify NASD Dispute Resolution against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.

Fixing of Record Date

Sec. 8.8 The Board may fix a record date in accordance with Delaware law.

Article IX

Miscellaneous Provisions

Corporate Seal

Sec. 9.1 The seal of NASD Dispute Resolution shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board, the name of NASD Dispute Resolution, the year of its incorporation, and the words "Corporate Seal" and "Delaware." The seal may be used by causing it to be affixed or impressed, or a facsimile thereof may be reproduced or otherwise used in such manner as the Board may determine.

Fiscal Year

Sec. 9.2 The fiscal year of NASD Dispute Resolution shall begin on the first day of January in each year, or such other month as the Board may determine by resolution.

Waiver of Notice

Sec. 9.3 (a) Whenever notice is required to be given by law, the Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholder, Directors, of members of a committee of directors need be specified in any written waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Execution of Instruments, Contracts, Etc.

Sec 9.4 (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of NASD Dispute Resolution by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board, may authorize any officer, employee, or agent, in the name of and on behalf of NASD Dispute Resolution, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of NASD Dispute Resolution by any principal officer or subordinate officer of NASD Dispute Resolution, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of NASD Dispute Resolution. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Form of Records

Sec. 9.5 Any records maintained by NASD Dispute Resolution in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Article X

Amendments; Emergency by-Laws

By Stockholder

Sec 10.1 These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of the stockholder, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

By Directors

Sec 10.2 To the extent permitted by the Certificate of Incorporation, these By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any regular or special meeting of the Board.

Emergency By-Laws

Sec 10.3 The Board may adopt emergency By-Laws subject to repeal or change by action of the stockholder that shall, notwithstanding any different provision of law, the Certificate of

Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which NASD Dispute Resolution conducts its business or customarily holds meetings of the Board or stockholder, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is intended to create a new subsidiary to handle dispute resolution programs and to make certain related changes.

a. Background

The Association's arbitration and mediation programs were operated by the NASD Arbitration Department until 1996, when those functions were moved to NASD Regulation following a corporate reorganization. This reorganization in part grew out of recommendations of a Select Committee formed by the NASD and made up of individuals with significant experience in the securities industry and NASD governance ("the Rudman Committee"). This review took place from December 1994 through August 1995, and the Rudman Report was issued in September 1995.

Meanwhile, in September 1994, the NASD established the Arbitration Policy Task Force, headed by David S. Ruder, former Chairman of the SEC ("the Ruder Task Force"), to study NASD arbitration and recommend improvements. The Ruder Task Force, composed of eight persons with various backgrounds in the area of securities arbitration, met from the fall of 1994 to January 1996, when its Report was issued.

Both the Rudman Committee and the Ruder Task Force made recommendations that affected the arbitration program. The Rudman Committee recommended that the NASD reorganize as a parent corporation with two relatively autonomous and strong operating subsidiaries, independent of one another. The resulting enterprise would consist of NASD Inc., as parent, The Nasdaq Stock Market, Inc. ("Nasdaq") as one subsidiary to operate the Nasdaq market, and a new subsidiary, NASD Regulation, Inc. to regulate the broker/dealer profession.[3] The Ruder Task Force Report, *Securities Arbitration Reform*, issued in January 1996, recommended that the dispute resolution program be housed either in the parent or in NASD Regulation (Report at 151–52). The Arbitration Department was placed in NASD Regulation in early 1996 based on the recommendation of the Rudman Committee,[4] and the name of the department was changed to the Office of Dispute Resolution (ODR) shortly thereafter, to reflect the broader range of dispute resolution mechanisms.

The NASD believes that ODR has established credibility as a neutral forum that is fair to all parties and has gained acceptance by investor groups. Because there are significant differences between the disciplinary role of NASD Regulation and the sponsorship of a neutral forum for the resolution of disputes between members, associated persons, and customers, however, the NASD believes that creation of a separate dispute resolution entity will further strengthen the independence and credibility of the arbitration and mediation functions. A new dispute resolution subsidiary will benefit from the perception that it is separate and distinct from other NASD entities. The new subsidiary will be subject to the same SEC oversight as other parts of the NASD enterprise, which includes regular inspections by the SEC and the need to file all by-laws and rule changes with the SEC.[5] In addition, the new subsidiary will remain subject to inspections by the General Accounting Office (GAO), which performs audits at the request of Congress.

The NASD proposes to call the new subsidiary NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), and proposes to incorporate and organize it in much the same way as NASD Regulation. Like ODR, the subsidiary would be part of the NASD Regulatory and Dispute Resolution Group.

Staffing for NASD Dispute Resolution will be the same as at present, except for the creation of a President position and the possible creation of certain other executive positions. Certain functions, such as human resources, legal, finance, communications, administrative services, and technology will be shared with the NASD and other subsidiaries to avoid duplication; the new subsidiary will be transfer-priced (charged) for the cost of those functions as it presently is.

Funding for the new subsidiary will be handled in much the same way as at present. Currently, ODR is not self supporting. Fees received from parties who use the arbitration and mediation programs are not sufficient to fund the Office's regular activities. Rather, as a part of NASD Regulation, ODR shares in the revenue stream of the overall NASD enterprise, which includes revenue derived from member assessments, various fees and charges, disciplinary fines, and other sources of income. In return, ODR is charged for services that it receives from the other corporations in the enterprise as described above.

[3] *Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors* ("Rudman Report") at R–8. As described in the Rudman Report, "The new NASDR subsidiary would thus be responsible for the NASD's regulation of the broker-dealer profession, and not for regulating or operating any OTC market, including Nasdaq. NASDR would promulgate and administer Rules of Fair Practice, membership rules, and operational requirements for NASD member firms; oversee the examination and investigation of member firms and registered representatives; administer the district offices; bring enforcement actions for rule violations (including violations of OTC trading rules, whether referred by Nasdaq, another authority or uncovered by the NASDR itself), and administer the adjudicative machinery for all NASD disciplinary actions. NASDR would also assume NASD's other membership regulatory functions, such as advertising reviews, corporate finance reviews, arbitration, and administration of the CRD." Rudman Report at R–8.

[4] Rudman Report at R–8. That Report noted, "Unlike Nasdaq, NASDR would not be responsible for operating any securities market or associated market systems. Rather, NASDR would be the NASD's strong, independent regulatory arm, responsible for oversight of the broker-dealer profession, and the programs (such as licensing, advertising and corporate finance review, and arbitration) that the NASD performs for the industry as a whole. The NASDR Board should thus be constituted to perform effective, independent regulatory oversight, with 50% public representation." Rudman Report at R–12.

[5] In a release approving an NASD rule change, the SEC noted: "The Commission oversees the arbitration programs of the SROs, like the NASD, through inspections of the SRO facilities and the review of SRO arbitration rules. Inspections are conducted to identify areas where procedures should be strengthened, and to encourage remedial steps either through changes in administration or through the development of rule changes." Exchange Act Release No. 40109, n. 53 (June 22, 1998), 63 FR 35299 (June 29, 1998).

Apart from accounting changes to reflect the new subsidiary's status, the current funding process for ODR will be the same for the new subsidiary. ODR employees will continue in the same positions in the new subsidiary, and the physical offices will not move.

The NASD proposes a five-person Board for NASD Dispute Resolution, consisting of three non-industry and two industry directors, as those terms and defined in Article I of the proposed By-Laws. The Chief Executive Officer of the NASD will be an ex-officio non-voting member of the Board. The non-industry directors would include at least two persons who also are members of the NASD Board, and an additional person knowledgeable in the dispute resolution field. At least one of the non-industry directors also will qualify as a public director, as defined in the By-Laws. One industry director would be a member of the NASD Board; the other would be the President of the new subsidiary. The NASD Board would elect the directors, as is done for the members of the other subsidiary boards.

The procedures currently in place for disciplining members and associated persons for noncompliance with arbitration awards will continue much as they are at present. The Code of Arbitration Procedure, in IM–10100, provides that the failure of a member or associated person to comply with an arbitration award obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by the NASD, other self-regulatory organizations, or the American Arbitration Association [6] may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110. This language presently applies to awards obtained in the NASD Regulation forum, since that forum applies rules and procedures that are ultimately approved by the NASD. This will also be the case for NASD Dispute Resolution. Enforcement of the Code will continue to be handled by NASD Regulation.

As is the case with actions by NASD Regulation, actions by the NASD Dispute Resolution Board may be referred by that Board to the NASD Board, or reviewed by the NASD Board, as provided in the proposed amendments to the Delegation Plan.[7] Thus, the rules utilized by NASD Dispute Resolution will be the rules of the Association, just as rules approved currently by the other subsidiaries and subject to NASD Board review are deemed to be NASD rules.

NASD Regulation has formed a working group with representatives from various departments to ensure a smooth transition.

The necessary amendments to create the new subsidiary, and certain technical changes, are described in detail below.

Description of Proposed Amendments

The Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan") is proposed to be amended to add references to the new subsidiary and to move the arbitration and mediation functions from NASD Regulation to NASD Dispute Resolution. Therefore, references to the delegations of authority to the subsidiaries and the rulemaking decisions of the subsidiaries have been amended to include references to NASD Dispute Resolution. As is the case for NASD Regulation and Nasdaq, actions of the new subsidiary Board will be subject to review by the NASD Board, and rule filings will be made by the new subsidiary on behalf of the NASD.

The description of the National Arbitration and Mediation Committee ("NAMC") in the Delegation Plan has been moved from the section concerning NASD Regulation to a new section concerning NASD Dispute Resolution. A change has been made in the NAMC member balancing requirement to provide more flexibility while maintaining at least 50% non-industry membership. The Delegation Plan currently provides that NAMC membership shall be equally between industry and non-industry members. It may be desirable, however, to have an odd number of members of the NAMC to avoid tie votes. Therefore, the provision has been amended to state that the NAMC shall have at least 50% non-industry members. This provides additional flexibility while maintaining a minimum of half non-industry members, in accordance with the spirit of the Delegation Plan.

The NASD Regulation By-Laws are proposed to be amended to add references to NASD Dispute Resolution in the definitions sections.[8]

Rule 0120(b) is proposed to be amended to clarify that the term "Association" collectively means the NASD and its subsidiaries that are considered part of the self-regulatory organization; that is, the NASD, NASD Regulation, Nasdaq, and NASD Dispute Resolution.

Rule 101029a) of the Code of Arbitration Procedure is proposed to be amended to clarify that the new NASD Dispute Resolution Board will appoint members of the NAMC and name its chair. In addition, Rule 10102(a) is proposed to be amended to replace the phrase "a pool of arbitrators" with the more accurate phrase "rosters of neutrals," since the current rosters include both arbitrators and mediators (collectively referred to as "neutrals").

Rule 10102(b) is proposed to be amended to conform to current practice, in which the NAMC recommends to the Board certain rules and procedures to govern the conduct of arbitration and mediation matters, and does not unilaterally make such changes. In addition, the phrase "NASD Dispute Resolution" has been added before "Board" to clarify that recommendations will be made to that Board. As noted above, actions of the new subsidiary Board will be subject to review by the NASD Board.

Rule 10401 is proposed to be amended to replace the phrase "by the Association" with regard to designation of the Director of Mediation and replace it with "by the NASD Dispute Resolution Board," and to delete "Association's" as a modifier of "National Arbitration and Mediation Committee." Although the NASD and its subsidiaries are collectively referred to as the Association for self-regulatory purposes, the use of "Association" in this Rule may cause confusion in light of the new corporate structure and serves no useful purpose in the Rule. The term "of Arbitration" is proposed to be added after one instance of the word "Director" to distinguish it from the Director of Mediation. In addition, the reference to the "Board of Governors" has been changed to "NASD Dispute Resolution Board" to reflect the new structure.

Rule 10404 is proposed to be amended to change the term "NASD" to "Association" to be more inclusive in this instance because, as described above, the term "Association" refers to the entire self-regulatory organization.

[6] The NASD Regulation Board of Directors recently approved an amendment to this Interpretive Material that would add, "or other dispute resolution forum selected by the parties." *See* Exchange Act Release No. 41339 (April 28, 1999), 64 FR 23887 (May 4, 1999). This proposal was filed as a non-controversial filing. The NASD designated May 17, 1999 as the effective date of the proposal.

[7] The Delegation Plan was amended in 1997, together with related By-Laws changes designed to allow the NASD Board to take action on its own initiative rather than waiting for a subsidiary to act on the matter. *See* Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997).

[8] The NASD also intends to review the NASD and Nasdaq By-Laws and consider appropriate amendments to recognize of NASD Dispute Resolution.

The proposed NASD Dispute Resolution By-Laws are modeled on those of NASD Regulation, with modifications, described below, appropriate to the particular functions of NASD Dispute Resolution. For example, NASD Dispute Resolution will not require that a committee other than the NAMC review all rulemaking proposals. Similarly, there is no need for provisions on nominations and elections, as all NASD Dispute Resolution Board members will be selected by the NASD Board of Governors. Standard provisions allowing for the appointment of an Executive Committee and a Finance Committee have been included for flexibility, although it is not immediately expected that such committees will be needed.

Proposed Article IV, Section 4.2 sets the number of Board members at five to eight although, as stated above, the intention initially is to have only five Board members. In addition, the Chief Executive Officer of the NASD will be an ex-officio non-voting member of the Board. Proposed Section 4.3(a) provides that the number of non-industry directors shall equal or exceed the number of industry directors plus the President. This means that the President is treated as an industry director for this purpose. The other industry director and at least two of the non-industry directors also will be sitting members of the NASD Board. This overlapping membership provides stability and uniformity among the corporations. At least one of the non-industry directors also will qualify as a public director. The proposed By-Laws define "Public Director" as a director who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, Nasdaq, or NASD Dispute Resolution. The By-Laws define "Non-Industry Director" as a director (excluding the President) who is (1) a public director or public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an industry director or industry member.

A minor modification was made to the standard terminology in Section 4.13(h) to clarify that the Board may appoint a non-director to a committee, since this power is implied but not specifically stated in the preceding paragraphs of Section 4.13.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will protect the public interest by providing a sharper focus on the dispute resolution process and maintaining Commission oversight of that process.

Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–21 and should be submitted by July 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15348 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78o–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41504; File No. SR–NSCC–98–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Ceasing To Act for a Member

June 9, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 8, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend NSCC's rules to eliminate the distinction between those instances where NSCC ceases to act on behalf of a member as a result of the member's insolvency or for another reason and to permit NSCC to complete certain open receipt versus payment and delivery versus payment transactions ("RVP/DVP transactions").

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed change is to eliminate the distinction between those instances where NSCC declines or ceases to act for a member because the member is insolvent and where NSCC declines or ceases to act for a member for another reason. The proposed rule change also would permit NSCC to complete certain open RVP/DVP transactions of an insolvent broker-dealer that is a member or clears through a member.

Declining or Ceasing To Act

According to NSCC, there is no substantive reason for continuing the distinction in Rule 18 between those instances where NSCC ceases to act because a member has become insolvent and those instances where NSCC ceases to act for another reason. NSCC's procedures for ceasing to act for an insolvent member are set forth in Section 3 of Rule 18 and its procedures for ceasing to act when the member is not insolvent are set forth in Section 2 of Rule 18. Therefore, the proposed rule change merges these two Sections.

Currently, Sections 2(a) and (b) (non-insolvency scenario) and Sections 3(a) and (b) (insolvency scenario), set forth the transactions which may be eliminated by NSCC from its processing when it ceases to act for a member. Generally, these sections provide that if NSCC gives notice that it is ceasing to act for a member before NSCC issues the security balance orders in a pending balance order accounting operation or the consolidated trade summary in a pending continuous net settlement accounting operation for that member's pending trades, NSCC may, in its discretion, exclude that member's trades from the balance order or continuous net settlement accounting operation, as appropriate. This means that any trade not guaranteed by NSCC before NSCC ceases to act could be eliminated from NSCC's clearance and settlement systems. As a result the parties to the trade would have to settle the trade on their own outside of NSCC.

Proposed Sections 2(a) (i) and (ii) would replace Sections 2 (a) and (b) and Sections 3 (a) and (b) and would specifically tie the exclusion of a trade to NSCC's guaranty. Proposed Section 2(a)(iii) would address the elimination of security orders issued with respect to "special trades" and transactions in foreign securities. Currently, the elimination of these trades is only addressed in the insolvency portion of NSCC's rules, Section 3(c)(iii).

Section 2(c) currently sets forth how NSCC would handle envelope transactions when it ceases to act for a solvent member. However, Section 3 of NSCC's rules does not address how Envelope transactions are handled when NSCC ceases to act for an insolvent member. To remedy this situation, proposed Section 4 would mirror current Section 2(c) and would address the completion of envelope transactions of a member for whom NSCC has declined or ceased to act, regardless of the solvency status of the member.

Sections 2(d)(i) and (ii) and Section 3(b)(ii) pertain to the completion of CNS trades. According to NSCC, when it ceases to act for a member, it completes CNS trades through a qualified securities depository regardless of whether the member was solvent or insolvent. However, only Section 2 specifically addresses the completion of these trades through a qualified securities depository. Accordingly, proposed Section 5 clarifies that CNS transactions would be completed through a qualified securities depository regardless of the solvency status of the relevant member, unless, in an insolvency scenario, the rules of the relevant insolvency regime did not allow NSCC to take certain actions with respect to the completion of CNS trades.

Sections 2(d)(iii) and 3(c)(ii) currently address the closing out of any remaining CNS transactions. Under the proposed rule change, these sections would be merged into proposed Section 6(a).

Sections 2(b) and 3(c)(ii) pertain to the completion of balance order transactions after NSCC ceases to act for a member. According to NSCC, when it ceases to act for a solvent or insolvent member, the procedures for completing a balance order transaction are the same. However, only Section 3 details how NSCC would close out balance order transaction and the procedure for members to submit related close-out losses to NSCC. To remedy this deficiency, the proposed rule change proposes new Section 6(b), which is similar to current Sections 3(c) and (d). Proposed Section 6(b) would cover the close-out of balance order transactions regardless of whether an insolvency situation exists. Proposed Section 6(b) also contains new language that requires that a member that desires to submit a loss to NSCC satisfy the terms and conditions, if any, imposed by NSCC on the close out of the relevant balance order transaction.

The language contained in current Section 2(e) technically only applies non-insolvency scenarios. Under the proposed rule change the language would apply to both insolvency and non-insolvency scenarios and appear once, in Section 5. The language set forth in Section 5 is also contained in the proposed rule change appears in Section 5.

The proposed rule change also would add the following terms to NSCC rules: "CNS Position"; "Net Close Out Position"; "RVP/DVP transaction"; and "RVP/DVP customer".

DVP/RVP Transactions

The proposed rule change adds a new Section 3, which pertains to CNS or balance order transactions that are wholly executory, RVP/DVP transactions. The RVP/DVP transactions covered by proposed Section 3 are those in which the customer ("RVP/DVP customer") has executed its purchase and sale transaction with the defaulting broker-dealer (directly, if such defaulting party is a member or through a clearing member if it is not a member) and would have taken delivery of the underlying cash or securities from the defaulting broker-dealer on an RVP/DVP basis at its custodian bank or other depository agent in the absence of the defaulting broker's liquidation.

After NSCC has declined or ceased to act for a member, NSCC would attempt to complete (1) all open RVP/DVP transactions, of which NSCC is aware, to the extent they would not increase the size of the position in any security that NSCC would have to close-out, and (2) any additional open RVP/DVP transactions to the extent deemed appropriate by NSCC's Board of Directors. NSCC's obligation set forth in (1) holds regardless of whether NSCC would gain or lose money by completing such transactions, and any determinations by the NSCC Board to close-out additional RVP/DVP transactions would be made without regard to the potential profit or loss for NSCC in any individual transaction. In

[2] The Commission has modified parts of these statements.

either case, NSCC would have no obligation to complete any open RVP/DVP transaction if: (1) NSCC believe it could not complete all RVP/DVP transactions in the same issue that it would be obligated to attempt to complete under this new provision; (2) there were allegations of fraud with respect to such trades or such trades are otherwise questionable; or (3) NSCC believed such trades could not be completed on a timely basis.

The proposed rule change would require NSCC to provide notice to the trustee or receiver of the member (if, in the case of an insolvent member, one has been appointed) and the relevant RVP/DVP customers or the RVP/DVP customer's depository agent or its depository agent's depository, of the RVP/DVP transactions NSCC intends to attempt to complete. This notice would alert the RVP/DVP customer that completion of any such transaction with NSCC constitutes a presumed waiver by the RVP/DVP customer of any claim arising out of such transactions against the member for whom the NSCC has declined or ceased to act, or in the case of an insolvent member, the receiver or trustee (or any successor trustee) or SIPC. This notice would typically be sent via The Depository Trust Company's electronic message dissemination system.

NSCC believes, that, by allowing it to complete open transactions in an insolvency scenario, the bankrupt estate's market exposure from the open positions would be limited, the potentially large administrative burden of liquidating the open transactions and processing claims by the RVP/DVP customers would be reduced, and the disruptive effect of the liquidation on the affected market participants would be minimized. In addition, any delay in the completion of open RVP/DVP transactions by NSCC during a liquidation, especially in the event of the insolvency of one of NSCC's largest members, would create extremely large and unnecessary short term funding obligations for NSCC.

NSCC believes the proposed rule change is consistent with Section 17A of the Act because the revisions to Rule 18 clarify the actions that NSCC is permitted to take when it declines or ceases to act for a member.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–98–14 and should be submitted by July 8, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

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[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41502; File No. SR–NYSE–99–13]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 Relating to Original Continued Listing Criteria

June 9, 1999.

I. Introduction

On March 31, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to amendments to the NYSE's Listed Company Manual ("Manual") regarding the original and continued listing criteria and procedures of the Exchange. On April 21, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

Notice of the proposal was published in the **Federal Register** on May 3, 1999.[4] The Commission did not receive any comment letters on the proposal. On May 27, 1999, the NYSE submitted Amendment No. 2 to the proposed rule change.[5] On June 8, 1999, the NYSE submitted Amendment No. 3 to the proposed rule change.[6] In this notice

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, dated April 21, 1999. In Amendment No. 1, the NYSE resubmitted the entire filing to clarify several aspects of the proposal.

[4] *See* Securities Exchange Act Release No. 41324 (April 22, 1999), 64 FR 23710.

[5] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, SEC, dated May 27, 1999. In Amendment No. 2, the NYSE proposes to amend the international "cash flow standard" in the original proposal to require $100 million in aggregate earnings for the last three fiscal years instead of $25 million as is currently the case. Companies would also be required to report a minimum of $25 million in earnings for each of the two most recent years, instead of simply reporting a positive amount of earnings for the last three fiscal years.

[6] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, SEC, dated June 8, 1999. In Amendment No. 3, the NYSE proposes to codify the Exchange's policy regarding the use of financial data to grant eligibility clearance to an issuer that has less than three years of operating history and to clarify that real estate investment trusts and closed-end management investment companies listing with a three-year operating

and order, the Commission is seeking comment from interested persons on Amendment Nos. 2 and 3 and is approving the proposed rule change and Amendment No. 1 as well as Amendment Nos. 2 and 3 on an accelerated basis.

II. Description of the Proposal

The proposal clarifies and codifies the Exchange's criteria and procedures for evaluating a company's original and continued listing eligibility.

A. Original Listing Criteria and Procedures

The NYSE proposes to revise the size component of the Exchange's issuer financial eligibility criteria and the general eligibility listing criteria. The proposal also would codify the Exchange staff's authority to analyze the suitability of an applicant company for listing on the Exchange even if the applicant meets the Exchange's quantitative criteria. Currently, this authority is codified only in the suspension and delisting section of the Manual.

The proposal also would raise the minimum requirement for aggregate market value of publicly-held shares from $40 million to $100 million for all listings other than spin-offs and initial public offerings ("IPOs")[7] (including carve-outs[8]). The NYSE proposes to raise the standard for spin-offs and IPOs to $60 million.

In addition, the proposal replaces the existing net tangible assets ("NTAs") test, which is currently the additional measure of a company's size, with a stockholders' equity test ($460 million for IPOs or spin-offs and $100 million for all other domestic listings).[9] The Exchange in determining whether a company satisfies the stockholders' equity test would look to the composition of the stockholders' equity to determine the origination of such equity. The proposal also would clarify that the test is an alternate measure of size to be relied upon where circumstances warrant an alternate measure and where the applicant's public market capitalization is no more than 10 percent below the public market value listing standard. Such circumstances may include situations in which large private holdings drive down the public market capitalization or changing market forces drive down the price of the stock.

Finally, the proposal codifies the NYSE's practice of accepting a written commitment from the underwriter for IPOs (for spin-offs, from the parent company's investment banker or other financial advisor) to demonstrate whether the company satisfies the public market value requirement of $60 million ($100 million worldwide for non-U.S. issuers).

B. Original Financial Listing Criteria and Procedures

The proposal codifies and amends the Exchange's current policies and practices with respect to the financial criteria and policies for domestic companies seeking to list with the Exchange. Currently, a company that seeks to qualify for listing on the Exchange under its domestic standards must meet one of three financial tests. Two of these tests call for an analysis of the company's "demonstrated earning power under competitive conditions." The third test, which only applies to companies with at least $500,000,000 in market capitalization and $200,000,000 in revenues during the most recent fiscal year, analyzes the company's "demonstrated earning power—adjusted net income," as such term is currently defined in the footnotes accompanying the rules.

According to the NYSE, in conducting its review of the financial condition of an applicant company, the Exchange historically has relied upon financial statements presented to it by the company as obtained from SEC filings. If the Exchange relied on the adjustments presented in SEC filings in granting financial clearance to the company, the company would be required to include these adjustments in its original listing application as a condition of eligibility clearance. The proposal codifies the Exchange's financial listing standards and current practices, as well as clarifies and modifies the relevant interpretations.

1. "Pre-Tax Adjusted Earnings" Standard

The proposal replaces the current requirement that applicants "demonstrate * * * earning power under competitive conditions" with a standard intended to provide more specificity.The proposed standard is "pre-tax earnings from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted." The term, "pre-tax earnings" incorporates the current standard of "income before federal income taxes." The phrase, "from continuing operations," focuses the analysis on ongoing operations and excludes any discontinued operations included in the company's historical financial statements.[10]

The clause, "after minority interest" removes the interest of an affiliate of the applicant company accrued to owners other than the applicant company due to its less than 10 percent ownership.[11] The phrase, "after equity in the earnings or losses of investees," arises when an applicant company has an ownership interest in another corporation, the results of which are not consolidated into the applicant company's financial statements due to the application of the governing accounting principles. The results of investments that accrue to the company will be accounted for in the Exchange's analysis to determine

history must satisfy the original listing standards, set forth in paragraph 102.01 of the Manual.

[7] The Exchange proposes to define an IPO as a company that, prior to its original listing, did not have a class of common stock registered under the Act. The Exchange notes that this definition differs from the definition of an IPO in Section 12(f)(1)(G)(i) of the Act, which turns on whether a company has a reporting obligation under the Act prior to a stock offering. Because the Exchange is applying its definition of IPO in the context of the original listing of common stock, the Exchange believes it is more appropriate to focus on the existence of U.S. publicly-traded stock rather than on prior reporting requirements. For example, while a company may have a reporting requirement under the Act if it conducted a public sale of debt securities, that would not be relevant in considering the appropriateness of listing a company's first public class of common stock.

[8] The Exchange proposes to define a carve-out as the initial offering of an equity security to the public by a publicly-traded company for an underlying interest in its existing business (which may be a subsidiary, division, or business unit). In the case of a "target stock," the security is treated in the same way as any other second class of stock of the issuer.

[9] For non-U.S. companies, the $100 million requirement applies to all issuers and will be measured under this proposal in stockholders' equity instead of the current NTA valuation.

[10] The Exchange notes that accounting rules specify that, upon management's commitment to discontinue an operation, financial statements for all relevant periods presented must be restated. If a commitment is made after the period under Exchange review and the historical financial statements have not yet been restated, the Exchange will rely on the company to prepare a presentation of the adjusted data and provide an agreed upon procedures letter provided by the company's outside audit firm. The auditor's letter will state the procedures performed with respect to calculating the pre-tax earnings from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted giving effect to the discontinuance for each period under review.

[11] For example, where a subsidiary that has a 20 percent privately held (minority) interest, only 80 percent of the interest in the subsidiary is reflected in the public stock. In this scenario, although 100 percent of the subsidiary is consolidated into the applicant parent's operations, the Exchange would make the appropriate adjustment in its analysis to include 80 percent of the earnings in the subsidiary by adjusting the pre-tax income for the reported minority interest provided such minority interest is not included as part of the company's pre-tax income on the face of the financial statement.

whether or not the company is eligible for listing.[12]

Finally, the proposal enumerates certain adjustments that applicants will make to the amount computed pursuant to pre-tax earnings. These adjustments would be part of the proposed standard and, as such, would apply to every listing applicant. Applicant companies may only apply those adjustments arising from events specifically identified in the company's SEC filing(s) as to both categorization and amount. Thus, in order for an adjustment to be appropriately applied, it must be specifically identified and the amount applied must be specifically disclosed in the SEC filing, or subject to an agreed upon procedures letter in certain cases.[13]

a. Use of Proceeds for Retiring Debt or Making Acquisitions

The Exchange currently relies on the use of proceeds anticipated from an equity offering in determining the financial eligibility of a company seeking to list its securities on the Exchange. The Exchange evaluates companies under a three-year eligibility review. In reviewing a company's historical results, the Exchange will continue to consider the effect of the offering on that three-year review period where the proceeds are used to pay existing indebtedness or to fund an acquisition. For deleveragings (*i.e.*, using the proceeds of an offering to pay off debt), the Exchange will conduct its review as if the recapitalization occurred on the first day of the first year of its three-year analysis. In applying the standard, the actual historic interest paid each year on the debt to be retired by the application of the proceeds will be removed, and the principal amount of the debt will be retired. The pro forma effects (*i.e.*, the effects "as if" the debt had been retired in an earlier period) of the deleveraging for the latest fiscal year and the interim period will be reflected in the company's SEC filing. If that specific debt was incurred prior to that period, the company would need to prepare adjusted financial statements to account for the relevant preceding periods.[14]

Similarly, with regard to the use of proceeds for acquisitions, the Exchange conducts its review as if the acquisition occurred on the first day of the first year of its analysis, provided the historical financial statements of the acquiree for such period are included in the company's SEC filings. The starting point for this analysis is the company's SEC filing, which will include a pro forma presentation for the latest fiscal year and the subsequent interim period.[15] The Exchange then reviews the historical financials of the company included in the registration statement and treats the acquisition for listing eligibility purposes as if it were consummated on the first day of the earliest fiscal year included in the acquiree's financial statements presented in the filing. The Exchange combines the historical results of the company with the historical results of the acquiree and reflects the purchase accounting of the acquisition for the periods presented. Specifically, the adjustments would be limited to the combination, as well as the allocation of the purchase price including adjusting assets and liabilities of the acquiree to fair value recognizing any intangibles (and associated amortization and depreciation) and the effects of any additional financing to complete the acquisition.[16]

b. Acquisitions and Dispositions

In instances other than those associated with the use of proceeds, the proposal limits the Exchange's analysis to those acquisitions and dispositions that are disclosed as such in a company's financial statements in accordance with Rule 3–05 and Article 11–01(b)(2) of Regulation S–X. Unlike the use of proceeds to fund an acquisition, in this instance, the adjustment for the acquisition or disposition will be limited to those periods for which pro forma financial data are presented in the SEC filing.[17] If no detailed disclosure is provided for a particular acquisition or disposition, and the acquisition or disposition is only a factual, non-material, un-qualified reference, then the acquisition or disposition will not be given effect because it cannot be substantiated within the four corners of the company's SEC filing.

If the event that the applicant company has less than three years of operating history and is acquiring (either completed or committed) an entity with the requisite operating history, the Exchange will consider the combined operating history of the acquiror and acquiree for the preceding period(s) in conducting its financial eligibility review. If it is necessary to combine historical financial statements of the acquiree and acquiror to enable the Exchange to conduct its analysis (*e.g.*, overlapping fiscal years), then the combined data would need to be accompanied by an agreed upon procedures letter provided by the company's outside audit firm at the request of the company.

The NYSE proposes not to require the agreed upon procedures letter if the SEC filing under review makes it self-evident that the company would qualify for listing on the Exchange irrespective of the acquisition or disposition.

c. Merger or Acquisition Related Costs Recorded Under Pooling of Interests

The proposal excludes legal and accounting fees and other costs incurred by a company in effecting a merger or acquiring another entity accounted for as a pooling of interests (whether or not the transaction is consummated).

d. Certain Charges or Income Specifically Disclosed in the Filing

Consistent with the NYSE's past practice, the proposal excludes several items in assessing the applicant company's earnings strength or its cash flow. These items have been excluded either because they are associated with a company's adopted exit plan (as defined in the accounting literature) or, based on the Exchange's experience in assessing ongoing earnings strength, they are not necessarily recurring.

Charges or Income Related to an Adopted Exit Plan

When a company adopts a specified exit plan, the following charges or income, if disclosed in the company's SEC filing, recorded in the company's financial statements in accordance with generally accepted accounting principles ("GAAP"), and associated with the implementation of that plan, would be excluded by the Exchange in its proposed financial analysis: (1) the costs of severance and termination benefits that are incurred as part of an exit plan; (2) costs and associated revenues and expenses associated with the elimination or reduction of product lines for which an exit plan has been adopted; (3) costs incurred to consolidate, close, or re-locate plant or office facilities associated with an exit plan; and (4) loss or gain on disposal of long-lived assets, which, by its definition, relates to assets that will no longer be held by the company.

Environmental Clean-Up Costs

The NYSE proposes to remove environmental clean-up costs incurred in the remediation of environmental problems from the company's historical financial results. However, companies may not make adjustments for annual maintenance or on-going costs of compliance with environmental laws.

Litigation Settlements

Litigation settlement costs, including any settlement amounts, interest payments and penalties so disclosed in a company's filings would be removed from the company's historic financial results. Companies may not make an adjustment for on-going, customary legal fees.

e. Impairment Charges on Long-Lived Assets

Asset write downs that reflect the net realizable value of a long-lived asset would be excluded from historic financial results.

f. Gains or Losses Associated with Sales of a Subsidiary's or Investee's Stock

If a company has an ownership interest in another entity, or has a wholly-owned subsidiary, any gain or loss associated with the sale of all or part of the company's interest would be excluded from the company's historic results.

g. Regulation S–X Article 11 Adjustments

Pro forma adjustments contained in a company's pro forma financial presentation provided in a current filing with the SEC are required to be made in accordance with SEC rules and regulations governing Article 11 "Pro forma Financial Information." The Exchange will review the company's financial statements in the context of any such adjustments, which are subject to SEC review. These adjustments would be limited to the current registration statement as to types of adjustments, amounts and years disclosed (except for use of proceeds as discussed above).

2. "Adjusted Cash Flow" Standard

In addition to the Pre-Tax Adjusted Earnings standard discussed above, a second standard is available to companies with at least $500 million of market capitalization and $200 million of revenues in the most recent 12-month period. Companies that meet the size criteria may currently use an "adjusted net income" test for the last three fiscal years of at least $25 million in the aggregate, with all years being positive.

The proposal codifies the standard applicable to the companies meeting the above-stated $500 million/$200 million threshold by incorporating the fundamental aspects of the footnote in the current Manual into the rule. In addition, the standard will explicitly indicate that the test includes adjustments for two purposes: the use of proceeds and acquisitions, discussed above. The Exchange is proposing to limit the adjustments incorporated into this standard because the remaining adjustments may or may not have cash-flow implications for a particular company. Those that do have a cash flow effect will already have been accounted for in the operating activity section of the company's cash flow statement.

C. Policy Clarifications

The proposal also adopts several policies clarifying the use of the adjustments enumerated above, requiring the issuance of a press release by companies whose adjusted financial data were relied upon by the Exchange in granting eligibility clearance, and delineating the consequences of restated financial statements.

First, all adjustments must be disclosed as such in the SEC filing of the applicant company—the amount must be within the four corners of the SEC filing or subject to an agreed upon procedures letter, as discussed above. Second, except as noted above,[18] as a general rule, the Exchange will only accept the application of an adjustment in the year in which the event giving rise to the adjustment occurred. Thus, no event can give rise to an adjustment in the financial statements for any prior year.

Third, any company for which the Exchange relies on adjustments to historical financial data in granting financial eligibility clearance must take steps to ensure full public disclosure of how it qualified. The Exchange recognizes that, although listing applications are a matter of public record, many investors may not be aware that they are available and may believe that only the most recent publicly available SEC document is relied upon in evaluating a company. Thus, the proposal imposes two requirements on issuers. First, it codifies the Exchange's requirement that any adjusted financial data relied upon by the Exchange in granting financial clearance to the company must be included in the company's listing application. Second, the proposal requires these issuers to issue a press release stating that pro forma financial adjustments were used to qualify the company and all relevant additional information is available to the public upon request.

With respect to companies that restate financial statements due to a change from unacceptable accounting principles and/or correction of errors, the proposal codifies the Exchange's policy of reviewing the company's status at the time of the restatement. Once a company issues a restatement that affects one of the years used by the Exchange to qualify the company for listing, the Exchange will determine whether or not the company would have qualified at the time of its original financial clearance with the restated numbers. If not, the company will be subject to suspension and delisting procedures unless the company meets the original listing standards at the time of the restatement using the most recent three fiscal years of financial statements as restated.

D. Standards for Non-U.S. Issues

The proposal makes several changes to Section 103 of the Manual pertaining to non-U.S. companies to clarify the rules and to carry forward relevant

[12] This will be effected by including these results from the company's income statement provided such results are not included as part of the company's pre-tax income on the face of the financial statement.

[13] The above-referenced adjustments are measured and recognized in accordance with the relevant accounting literature, such as that published by the Financial Accounting Standards Board ("FASB"), the Accounting Principles Board ("APB"), the Emerging Issues Task Force ("EITF"), the American Institute of Certified Public Accountants ("AICPA"), and the SEC.

[14] Adjustments will not be made on any interest or principal payment(s) made on indebtedness other than that specifically being retired. The proposal requires that this adjustment be accompanied by an agreed upon procedures letter provided by the company's outside audit firm. The auditor's letter will state the procedures performed with respect to the existence of the debt and the accuracy of the adjustments applied to the company's historical pre-tax earnings reflecting the retirement of the principal amount of the debt and the actual historic interest payments made.

[15] This pro forma presentation will give effect to those acquisitions that meet the significance test of SEC Rule 3–05 of Regulation S–X ("Rule 3–05"). Generally, the historical financial statements of the acquiree included in the filing also will be limited to the requisite periods disclosed pursuant the Rule 3–05 significance test.

[16] The Exchange proposes to require that these adjustments, if not set forth in the SEC filing, be accompanied by an agreed upon procedures letter provided by the company's outside audit firm at the request of the company. The auditor's letter would state the procedures performed with respect to showing the effect of the relevant acquisition on the applicant company.

[17] If there is a pro forma presentation included in the company's SEC filing that does not specify pre-tax earnings from continuing operations, minority interest, and equity in the earnings or losses of investees, the company must prepare the relevant data. The presentation of the adjusted data will need to be accompanied by an agreed upon procedures letter provided by the company's outside audit firm. The auditor's letter will state the procedures performed with respect to showing the effect of the expansion of the pro forma presentation from the SEC filing into a more comprehensive income statements.

[18] The two exceptions are: (1) The use of proceeds for deleveraging and acquisitions and dispositions (for companies currently in registration for an equity offering) and (2) acquisitions and dispositions.

items from the revisions pertaining to domestic companies. Specifically, the NYSE proposed to make adjustments for foreign currency for non-U.S. companies because their operations are inherently tied to the underlying fundamentals of their respective national economies. For purposes of this adjustment, the Exchange deems a currency devaluation of more than ten percent as against the U.S. dollar to be significant. The proposal also increase the aggregate amount from $25 million to $100 million for its adjusted cash flow standard and narrows to two years the requisite itemized annual financial analysis for non-U.S. companies to the two most recent fiscal years, which would be required to be reported at a minimum of $25 million. Reconciliation to U.S. GAAP of the third year back would only be required if the Exchange determines that it is necessary to demonstrate that the aggregate $100 million threshold is satisfied. In addition, for non-U.S. companies, the definition of IPOs is the same as for domestic issues, but the representation of market value to be received in connection with a spin-off may also come from the parent company's transfer agent.

E. Real Estate Investment Trusts

The proposal also codified a policy the Exchange has applied regarding the original listing criteria for real estate investment trusts ("REITs"). The Exchange generally lists REITs either in connection with IPO or shortly thereafter, when the REIT does not have a three-day operating history, so long as the REIT has at least $60 million is stockholders' equity.[19] REITs listing with a three-year operating history must qualify under the standard equity original listing standards.[20]

F. Continued Listing Procedures

The NYSE proposes to revise its continued listing criteria by codifying existing practice with respect to companies that qualify for listing based, at least in part, upon adjusted historical data. Specifically, under the proposed continued listing criteria a company would be subject to delisting if it had NTAs or an aggregate market value of its common stock of less than $12 million and average net income of less than $600,000 for the past three years. In calculating average net income for a company during the initial three years following its listing, the Exchange takes into consideration those specific adjustments made to the company's historical financial data for the relevant year in the original listing application. This consideration is limited both as to the specific adjustment made during the initial clearance as well as to the year in which the adjusted was made.

The Exchange also proposes to revise and codify the procedures instituted when a company is identified by Exchange staff as being below the continued listing criteria. The proposal imposes specific time frames with respect to the notification, monitoring, and suspension and delisting, where appropriate, of these companies' securities. In addition, the proposal modifies the Exchange's current practice of requiring companies to return to original listing standards within 36 months. Instead, the proposal requires these companies to return to good standing within six quarters of being notified of this status.

III. Discussion

The Commission finds that the proposal is consistent with the Act and in particular with those provisions applicable to a national securities exchange.[21] Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act[22] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Commission believes that the proposal, by codifying, expanding, and clarifying existing listing criteria and procedures, strikes a reasonable balance between the Exchange's obligation to protect investors and investor confidence in the market, and its parallel obligation to perfect the mechanism of a free and open market. The proposal establishes reasonable procedures for issuers, while giving the Exchange the ability to deny, limit, or delist an issuer that has failed to meet the substantive standards outlined in the NYSE's Manual.

Primarily, the proposal codifies the Exchange's present listing practices and procedures. The general system of Exchange review of applicant companies remains essentially unchanged. In the past, many of these procedures were not codified. As a result, it was often unclear to issuers and other market participants how the Exchange's listing procedures were applied in particular cases. As the proposal sets forth more clearly the listing criteria applicable to issuers, the Commission believes that it should enhance transparency in listing decisions, thereby promoting just and equitable principles of trade and removing impediments to a free and open market.

Specifically, the Exchange clarifies and codifies the size component of the financial eligibility and general eligibility listing criteria and establishes the NYSE's authority to investigate the suitability of an applicant company beyond the Exchange's quantitative criteria. The requisite aggregate market value of publicly-held shares would increase from $40 million to $60 million for spin-offs and IPOs (including carve-outs) and $100 million for all other listings. To demonstrate that the company will satisfy the public market value requirement of $60 million, the proposal codifies the practice of accepting a written commitment from the underwriter for IPOs. Lastly, the proposal replaces the NTA test with a stockholders' equity test, retaining the $60 million and $100 million thresholds and clarifying that the stockholders' equity test is an alternative test for measuring a company's size.

The Commission believes the proposed increases to the threshold requirements should ensure that only companies of a certain minimum size are included among those listed on the Exchange, thereby protecting investors by raising the minimum standard for listed companies. The Commission also believes that it is reasonable for the Exchange to accept a written commitment from the underwriter for IPOs, which, by definition, could not satisfy the requisite minimum aggregate market value of publicly-held shares. Additionally, the Commission believes that the proposed stockholders' equity test is simpler than the existing NTA test and could better reflect a company's value in the current economy because it accounts for intangibles and hard assets, which are frequently found on companies' balance sheets.

The NYSE also proposes to codify and revise its financial eligibility standards for original listing. First, the proposal replaces the current requirement that

[19] For those REITs listing in conjunction with an offering, this requirement would need to be evidenced by a written commitment from the underwriter (or, in the case of a spin-off or carved-out, from the parent company's investment banker or other financial advisor). The Exchange, however, retains the discretion to deny listing to a REIT if it determines that, based upon a comprehensive financial analysis, it is unlikely to be able to maintain its financial status.

[20] *See* Amendment No. 3, *supra* note 6 (adding rule language to clarify that both REITs and closed-end funds with a 3 year operating history must meet original financial listing standards set forth in paragraph 102.01 of the Manual).

[21] In approving this rule, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

applicants "demonstrate * * * earnings power under competitive conditions" with a new standard, the "pre-tax earning from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted." The proposal then enumerates the adjustments to be made to the amount computed under the new standard, clarifying that applicant companies may only apply those adjustments arising from events specifically identified in the company's SEC filings as to both categorization and amount. The permissible adjustments include: use of proceeds (for paying off existing debt or funding an acquisition), acquisitions and dispositions, exclusion of merger or acquisition related costs recorded under pooling of interests, exclusion of charges of income specifically disclosed in the applicant's SEC filing for certain enumerated costs, exclusion of impairment charges on long-lived assets, exclusion of gains or losses associated with sales of a subsidiary's or investee's stock, regulation S–X Article 11 adjustments, and exclusion of the cumulative effect of adoption of a New Accounting Standard. These adjustments are measured and recognized in accordance with the relevant accounting literature.

The Commission believes that the new standard more explicitly defines the analysis conducted by the Exchange in evaluating applicant companies. The Commission also believes that by codifying its current practice regarding adjustments, the Exchange increases the transparency of the financial criteria applied to companies seeking to list on the Exchange. The codification of the adjustments also ensures that the financial criteria are applied consistently and are easily auditable, thereby protecting investors and reducing the possibility of unfair discrimination between companies seeking to list on the Exchange.

Second, the proposal clarifies and codifies a second listing standard, available to companies with at least $500 million of market capitalization and $200 million of revenues in the most recent 12-month period. By incorporating the current footnote into the standard itself, the NYSE transforms the "adjusted net income" test into the new "adjusted cash flow" standard. The new standard also specifies that the adjustments included in this standard are limited to the use of proceeds and acquisitions because the remaining adjustments may not have cash-flow implications for a particular company. The Commission believes that codifying these listing standards increases the transparency of the listing criteria for companies seeking to list on the Exchange. Providing an alternative standard for listing also encourages a free and open market by giving companies that are of a sufficient size an opportunity to list that do not meet the "pretax earnings" standard but are otherwise qualified.

The NYSE also proposes several policy clarifications regarding the use of adjustments in the listing process. First, all adjustments must be disclosed as such in the SEC filing of the applicant company, either within the four corners of the SEC filing or subject to an agreed upon procedures letter. Second, adjustments will only be applied in the year in which the event giving rise to the adjustment occurred, except for the use of proceeds for deleveraging and acquisitions and dispositions, and acquisitions and dispositions. Third, companies whose adjusted financial data was relied on by the Exchange in granting eligibility clearance must include all adjusted financial data in the company's listing application and issue a press release to the same effect. The proposal also delineates the Exchange's procedure for reviewing a company's status at the time of a restatement of financial statements, due to a change from unacceptable to acceptable accounting principles and/or correction of efforts, including the consequences of restating financial statements.

The Commission believes that the NYSE's proposal to codify and modify the use of each of these adjustments in the evaluation of applicant companies should provide greater transparency in the listing process. This enhanced transparency should assist all market participants, including prospective companies and investors, in better understanding the significance of the NYSE's decision to list a given issuer on the Exchange.

Specifically, the Commission believes that it is appropriate for the Exchange to limit all adjustments to those disclosed as such in the issuer's filings with the Commission or as subject to an agreed upon procedures letter provided by the issuer's independent outside auditor. Any other adjustments could lack sufficient reliability to be considered by the Exchange in its listing decision. The Commission also believes that it is reasonable to limit the use of adjustments to the year in which the event giving rise to the adjustment occurred, with the two delineated exceptions, because generally, applying such adjustments to prior periods may, to some extent, distort a particular company's financial picture. Finally, the Commission believes that the NYSE's proposal to require companies that were evaluated using adjusted financial data to include all adjusted financial data in their listing applications and to issue press releases about the adjustments is appropriate because such actions should enable potential investors to better understand the companies' financial situation and the manner in which such companies were granted clearance to list on the Exchange.

The NYSE also proposes to revise several aspects of the listing criteria for non-U.S. companies which carry forward relevant items from the revisions pertaining to domestic companies, including: (1) Replacing the NTA test with the stockholder's equity test as an alternative measure of size; (2) using the same definition of IPO's as for domestic issuers, but also allowing the representation of market value required in connection with a spin-off to come from the parent company's transfer agent; and (3) allowing adjustments for foreign currency for a currency devaluation of more than ten percent. With respect to the "adjusted cash flow" standard, the proposal increases the aggregate amount to $100 million in operating cash flow, and narrows to two years the requisite itemized annual financial analysis for non-U.S. companies whereby each of the two most recent fiscal years would be required to be reported at a minimum of $25 million in operating cash flow. Reconciliation to U.S. GAAP of the third year back is required only if the Exchange determines that reconciliation is necessary to demonstrate that the aggregate $100 million threshold is satisfied.

The Commission believes that the proposed changes should provide a better evaluation of a non-U.S. company's financial health, and also simplify the non-U.S. company listing criteria because they parallel the benchmark applied in the pre-tax adjusted earnings standard for non-U.S. companies.[23] The Commission does not believe it is appropriate for the Exchange to impose different listing criteria on non-U.S. issuers given that they may face different financial challenges than those encountered by domestic issuers. The Commission believes that codifying these changes increases transparency for financial criteria applied to non-U.S. companies seeking to list on the Exchange.

The proposal also codifies the Exchange's policy regarding the original listing criteria for REITs. Generally, the Exchange will authorize the listing of a REIT if it has at least $60 million in

[23] *See* Securities Exchange Act Release No. 41459 (May 27, 1999), 64 FR 30088.

stockholders' equity, but will not consider those with less than $60 million in stockholders' equity. For those REITs listing in conjunction with an offering, the requirement must be evidenced by a written commitment from the underwriter. Furthermore, the Exchange may deny listing to a REIT if the Exchange determines, based upon comprehensive financial analysis, but the REIT is unlikely to maintain its financial status. REITs with greater than a three-year operating history are subject to the listing criteria described in this proposal.

The Commission recognizes that in many cases the applicant REIT is not a traditional operating entity and therefore, it may not be appropriate to apply the general earnings standards specified in the Exchange's Manual at the time of listing. Thus, the Commission believes that the Exchange's proposed minimum listing criteria of $60 million in stockholders' equity is an acceptable means for screening out those REITs that the Exchange believes are unsuitable for listing due to insufficient assets. The Commission recognizes that the stockholders' equity test is intended as a minimum standard and supports the Exchange's direction to determine that, with respect to a given REIT, notwithstanding sufficient sharholder's equity, the REIT may be unsuitable for listing.

Finally, the NYSE proposes two amendments to its continued listing criteria. First, in calculating average net income for a company during the initial three years following its listing, the Exchange will consider those specific adjustments made to the company's historical financial data for the relevant year in the original listing application. The consideration will be limited to the specific adjustment made during the initial clearance and to the year in which the adjustment was made.

Second, the proposal revises and codifies the procedures instituted when a company is identified by Exchange staff as being below the continued listing criteria by imposing specific time frames with respect to the notification, monitoring, and suspension and delisting of these companies' securities. The proposal also requires that the companies return to good standing by satisfying the continued listing standards within six quarters of being notified of this status.

The Commission believes that proposed revisions and codification of the continued listing criteria should enhance investor protection by ensuring that companies that fail to satisfy the continued listing criteria are identified, reviewed, and then subjected to specified delisting procedures. Moreover, those companies falling below the NYSE's continued listing criteria are provided with transparent, detailed procedures for addressing their status. The Commission notes that proposed changes to NYSE Rule 499 are intended to confirm that rule to the changes proposed to the continued listing criteria in NYSE Rule 802.

The Commission finds good cause for approving proposed Amendment Nos. 2 and 3 prior to the thirtieth day after the day after the date of publication of notice of filing in the **Federal Register**. Amendment No. 2 addresses the "adjusted cash flow" standard with respect to non-U.S. companies. The proposal increases the aggregate amount to $100 million, narrows to two years the requisite itemized annual financial analysis for non-U.S. companies whereby each of the two most recent fiscal years would be required to be reported at a minimum of $25 million, and requires reconciliation U.S. GAAP of the third year back only if the Exchange determines that reconciliation is necessary to demonstrate that the aggregate $100 million threshold is satisfied.[24] The Commission believes Amendment No. 2 is a reasonable mechanism for addressing the differences between non-U.S. and U.S. companies, helps to ensure that the financial criteria applies to non-U.S. companies seeking to list on the Exchange are fully transparent and applied consistently, and encourages a free and open market by allowing non-U.S. companies to list on the NYSE.

In Amendment No. 3, the NYSE proposes to codify the Exchange's policy regarding the use of financial data to grant eligibility clearance to an issuer that has less than three years of operating history and clarifies that REITs and Funds listing with a three-year operating history must qualify under the original listing standards for equity securities. As noticed, the proposed rule change discussed the Exchange's policy regarding the use of financial data to grant clearance to an issuer with less than three years of operating history but the proposal did not codify this policy. The Commission believes that codifying the policy is consistent with the purpose of the Act because it increases the transparency of the financial criteria applied to companies seeking to list on the exchange and ensures that the financial criteria are applied consistently across applicant companies. For these same reasons, the Commission believes it is appropriate for the Exchange to codify the applicable listing criteria for REITs and Funds listing with a three-year operating history, instead of addressing only those situations where a REIT or Fund has less than a three-year operating history. Accordingly, the Commission believes that it is consistent with Section 6 of the Act[25] to accelerate approval of Amendment Nos. 2 and 3.

[24] *See*, not 11, *supra*.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether those amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–13 and should be submitted by July 8, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19((b)(2) of the Act,[26] that the proposed rule change (SR–NYSE–99–13), as amended, codifying and revising the NYSE's original and continued listing criteria and procedures, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

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[25] 15 U.S.C. 78f.

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41497; File No. SR–NYSE–98–42]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposal Amending MOC/LOC Order Entry and Cancellation Procedures During Regulatory Halts

June 9, 1999.

I. Introduction

On November 25, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend market-on-close ("MOC") and limit-on-close ("LOC") order entry and cancellation procedures during regulatory halts. On March 19, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on April 29, 1999.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange utilizes special order entry and cancellation procedures for MOC/LOC orders.[5] This proposed rule change amends the Exchange's MOC/LOC order entry and cancellation procedures during regulatory halts.[6]

1. Cancellation of MOC/LOC Orders During Regulatory Halts

Current MOC/LOC procedures product Exchange members from canceling MOC and LOC orders after 3:40 p.m., except when a member entering an order has made a legitimate error or a member must cancel an order to comply with NYSE Rule 80A(c).[7] Therefore, if a stock is subject to a regulatory halt at 3:40 p.m. or if a regulatory halt is instituted after that time, market participants are prohobited from canceling their MOC or LOC coders in such stock, regardless of whether the stock reopens at a price substantially different from the last sale.

The proposed rule change amends this policy by allowing market participants to cancel MOC or LOC orders if a regulatory halt[8] is in effect at 3:40 p.m. or later. Exchange members will be permitted to cancel MOC or LOC orders until 3:50 p.m. or the reopening of the stock, whichever occurs first.

2. Entry of MOC/LOC Orders During Regulatory Halts

Currently, Exchange procedures only allow members to enter MOC and LOC orders after 3:40 p.m. to offset a published imbalance. If any type of trading halt is in effect at 3:40 p.m., however, MOC/LOC imbalances are not published.[9] Accordingly, no MOC or LOC orders could be entered after 3:40 p.m. during a trading halt. In addition, if a regulatory halt occurs after an imbalance has been published at 3:40 p.m., market conditions may differ substantially from those that existed at the time the imbalance was published.

The proposed rule change amends the Exchange's MOC/LOC order entry procedures when a regulatory halt is in effect at 3:40 p.m. or later. If a regulatory halt is in effect at 3:40 p.m. or later, market participants would be permitted to enter MOC and LOC orders on either side of the market until 3:50 p.m. or until the stock reopens, whichever occurs first. If an order imbalance is published following a regulatory halt, however, MOC and LOC orders may only be entered to offset any imbalance.

3. Order Imbalance Publication After any Trading Halt

Current Exchange policy requires that if a stock reopens at or before 3:50 p.m. following any type of trading halt, the specialist will publish imbalances of 50,000 shares or more (or less than 50,000 shares with the approval of a Floor Official) as soon as practicable after 3:50 p.m. The proposed rule change amends this policy to provide that a specialist must publish imbalances of 50,000 shares or more (or less than 50,000 with Floor Official approval) for stocks opening after 3:50 p.m., if practicable.[10] If a halt occurs after 3:50 p.m., the stock will not reopen on that day and MOC and LOC orders will not be executed.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[12] which requires, among other thigns, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed changes to the Exchange's MOC/LOC order cancellation procedures should allow market participants to make informed trading decisions in response to information disseminated during regulatory halts. Current Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Donald Seimer, Director, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, dated March 15, 1999 ("Amendment No. 1"). In Amendment No. 1, the Exchange provided information regarding the Exchange's regulatory trading halt policy and clarified that the Exchange does not seek to amend its regulatory trading halt policy in the current proposed rule change.

[4] Securities Exchange Act Release No. 41315 (April 20, 1999), 64 FR 23142.

[5] A description of the Exchange's current procedures can be found in Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 38230 (July 15, 1998); and Exchange Information Memo No. 98–20 (June 22, 1998).

[6] A regulatory condition may exist if news is pending about the stock or if time is needed for news dissemination about a stock. The exchange follows procedures contained in the section on Trading Halt and Suspension Procedures of the Consolidated Tape Association Plan. *See* Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799; and Securities Exchange Act Release No. 16983 (July 16, 1980), 45 FR 49414 (July 24, 1980).

[7] Exchange Rule 80A(c) requires index arbitrage orders in any stock in the Standard & Poor's 500 Stock Price Index entered on the Exchange to be stabilizing (*i.e.*, the order must be marked either buy minus or sell plus) when the Dow Jones Industrial Average advances or declines by the 2% point level determined by the Exchange each quarter. Securities Exchange Act Release No. 41041 (February 11, 1999), 64 FR 8424 (February 19, 1999). When Rule 80A(c) goes into effect, a MOC index arbitrage order without the appropriate tick restriction must be canceled unless it is related to an expiring derivative index product.

[8] The proposed rule change does not amend existing MOC/LOC procedures with respect to *non*-regulatory halts.

[9] Specialists are required to publish tape indications to reopen a stock after a trading halt. Current Exchange policy concerning tape indications requires a minimum of ten minutes to elapse between the first indication and the reopening of a stock, and a minimum of five minutes to elapse between the last indication and the reopening of a stock, provided that a minimum of ten minutes has elapsed since the first indication. *See* Securities Exchange Act Release No. 38225 (January 31, 1997), 62 FR 5875 (February 7, 1997); and Exchange Information Memo No. 97–23 (May 8, 1997).

[10] The decision of whether an imbalance shall be published for a stock opening after 3:50 p.m. will be made by an Exchange Floor Director or other Exchange Floor Official. Telephone call between Betsy Lampert Minkin, Senior Project Specialist, NYSE, and Kelly McCormick, Attorney, Division, SEC, on January 13, 1999.

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

policy prohibits market participants from canceling MOC or LOC orders after 3:40 p.m. unless a legitimate error was made or the member had to comply with Rule 80A(c). This policy, by precluding market participants from canceling MOC/LOC orders based on information generated during a regulatory halt even if the stock reopened at a price substantially different from the last sale could unnecessarily expose market participants' positions to market risk.

The proposed rule change will allow market participants with pending MOC or LOC orders to react to news generated during a regulatory halt put into effect at 3:40 p.m. or later by enabling them to cancel such orders. A member's ability to cancel a MOC/LOC order after a regulatory halt put into effect at 3:40 p.m. or later is limited, however, to only allow cancellations to be made by 3:50 p.m. or when the stock reopens, whichever is first.

The proposed rule change also amends the Exchange's policy concerning MOC/LOC order entry after 3:40 p.m. Currently, market participants are only permitted to enter MOC or LOC orders after 3:40 p.m. to offset a published imbalance. If any type of trading halt is in effect at 3:40 p.m., no MOC or LOC orders could be entered because imbalances are not published. Moreover, market participants are prohibited from entering orders if a regulatory halt occurs after 3:40 p.m. even if an imbalance has been published. Again, these provisions could unnecessarily expose market participants to market risk.

The proposal would allow market participants to enter MOC or LOC orders after 3:40 p.m. if a regulatory halt has been put into effect at 3:40 p.m. or later. Market participants may enter orders on either side of the market until 3:50 p.m. or until the stock reopens, whichever occurs first. If an imbalance is published following a regulatory halt, however, market participants will only be permitted to enter MOC or LOC orders to offset the published imbalance. The imbalance publication procedure also has been amended to provide that if a stock reopens after 3:50 p.m., the specialist must publish an imbalance of 50,000 shares or more (or less than 50,000 shares with approval of a Floor Official), if practicable. This provision recognizes that from a practical standpoint it may not always be feasible for specialist to publish an imbalance late in the trading day after a trading halt. The proposal will provide specialists with the flexibility to consult with Exchange officials to determine whether such a post trading halt imbalance must be published.

The proposed changes to MOC/LOC order entry and cancellation procedures should promote just and equitable principles of trade because they enable market participants to respond to news disseminated during regulatory halts. The proposed policy should enable market participants to make informed order entry and cancellation decisions based on current, disseminated information. The proposed rule changes, however, limit the ability of market participants to enter or cancel MOC or LOC orders to specific times. The Commission believes that these limitations should provide specialists with adequate time to expedite the orderly closing of their stocks.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–98–42), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15355 Filed 6–16–99; 8:45 am]

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[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41500; File No. SR–NYSE–99–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Exchange Rule 97, "Limitation on Members' Trading Because of Block Positioning," To Permit Member Firms to Net Proprietary Positions Within Aggregation Units and To Except Transactions Offsetting Market Risk That Resulted From Facilitating a Customer's Order

June 9, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 1999, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 97, "Limitation on Members' Trading Because of Block Positioning." First, the Exchange proposes to permit member organizations to determine whether they are long for purposes of Rule 97 by netting their long facilitation position with their other stock positions within the same "Aggregation Unit."[3] Second, the proposed rule change would add an exception to Rule 97 for purchases to offset all or part of the market risk of a position, established previously or contemporaneously, that is economically equivalent to a short position in a stock, provided that such position was established as the result of facilitating a customer order. Third, the Exchange proposes to replace the term "trading account" with "proprietary account" to clarify that the restrictions of Rule 97 may apply regardless of where the long facilitation position is placed. Finally, the proposed rule change would delete subparagraph (a)(i), the substance of which is included within the meaning of subparagraph (a)(iii).

The following is the text of Exchange Rule 97 marked to reflect the proposed rule change. Additions to the current text appear in italic and deletions appear in brackets.

Limitation on Members' Trading Because of Block Positioning

Rule 97 (a) When a member organization holds any part of a long position in a stock in [its trading] *a proprietary* account resulting from a block transaction it effected with a customer, such member organization may not effect the following transactions for any account in which it has a direct or indirect interest for the remainder of the trading day on which it acquired such position:

[(i) a purchase on a "plus" tick if such purchase would result in a new daily high;]

(i)[(ii)] a purchase on a "plus" tick within one-half hour of the close;

(ii)[(iii)] a purchase on a "plus" tick at a higher than the lowest price at which any block was acquired in a previous transaction on that day; or

(iii)[(iv)] a purchase on a "zero plus" tick of more than 50% of the stock offered at a price higher than the lowest price at which any block was acquired in a previous transaction on that day.

For purposes of the restrictions in subparagraph *(ii)* [(iii)] and *(iii)*[(iv)] above, in the case where more than one block was acquired during the day, the lowest price of any such block will be the governing price.

(b) The provisions of paragraph (a) shall not apply to transactions made:

(1) for bona fide arbitrage or to engage in the purchase and sale, or sale and purchase of securities of companies involved in publicly announced merger, acquisition, consolidation, tender, etc.;

(2) to offset a transaction made in error;

(3) to facilitate the conversion of options;

(4) by specialists in the stocks in which they are registered;

(5) to facilitate the sale of a block of stock or a basket of stocks by a customer;

(6) to facilitate an existing customer's order for the purchase of a block of stock, or a specific stock within a basket of stocks, or a stock which is being added to or reweighted in an index, at or after the close of trading on the Exchange, provided that the facilitating transactions are recorded as such and the transactions in the aggregate do not exceed the number of shares required to facilitate the customer's order for such stock; [or]

(7) due to a stock's addition to an index or an increase in a stock's weight in an index, provided that the transactions in the aggregate do not exceed the number of shares required to rebalance the index portfolio[.] *or*

(8) to hedge a position that is economically equivalent to a short stock position, provided that (i) the risk to be hedged is the result of a position acquired previously or contemporaneously in the course of facilitating a customer's order, and (ii) the transactions in the aggregate do not exceed the number of shares required to hedge such short position when netted with any long position in the stock as defined in .10 of this Rule.

Supplementary Material

.10 Definitions. A block positioner is a member organization which engages, either regularly or on an intermittent basis, in a course of business of acquiring positions to facilitate the handling of customers' orders on the Floor of the Exchange. For the purposes of this Rule, a block shall mean a quantity of stock having a market value of $500,000 or more which is acquired by a member organization on its own behalf and/or for others from one or more buyers or sellers in a single transaction.

For purposes of this Rule, a "basket of stocks" shall mean a group of 15 or more stocks having a total market value of $1 million or more.

For purposes of this Rule, an "index" shall mean a publicly disseminated statistical composite measure based on the price or market value of the component stocks in a group of stocks.

For purposes of this Rule, a member organization that holds in a proprietary account any part of a long position in a stock resulting from a block transaction with a customer shall aggregate such long position with all other proprietary positions in such stock that are held within the same Aggregation Unit as such long position. An Aggregation Unit is a defined trading unit within a member organization which meets the conditions set forth in TP File No. 97–42, dated November 23, 1998 issued by the staff of the Securities and Exchange Commission ("No-action Letter"). A member organization which has not established defined Aggregation Units that comply with the No-action Letter shall not aggregate such long position with any other position maintained in the member organization's proprietary accounts, except at the end of the trading day.

.20 Block positioners required to be registered. No member organization shall engage in a course of business as a block positioner unless the Exchange has approved of its so acting and has not withdrawn such approval.

.30 Net capital requirement. A member organization which applies to be registered as a block positioner is required to have and maintain a minimum net capital requirement as defined in Rule 325 of the Exchange of $1,000,000.

.40 Reports by block positioners. Upon of the Exchange a member organization registered with the Exchange as a block positioner shall file a report on Form 97 covering transactions effected on the Floor of the Exchange in connection with block positioning during the period specified in the request. This report is to be sent to Market Surveillance Services, 11 Wall Street, 11th Floor, as promptly as possible but no later than the close of business on the date in which the report is requested to be filed.

.50 Basket Transactions. See paragraph (c)(iv) of Rule 800 (Basket Trading: Applicability and Definitions) in respect of the inapplicability of this Rule to long stock positions resulting from basket transactions.

* * * * *

[3] *See* note 6 and accompanying text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

Exchange Rule 97 prohibits a member organization that holds any part of a long position in a stock in its trading account resulting from a block transaction it effected with a customer from purchasing, for an account in which the member organization has a direct or indirect interest, additional shares of such stock on a "plus" or "zero plus" tick under certain conditions for the remainder of the trading day. The Rule defines a "block" as a quantity of stock having a market value of $500,000 or more.

Paragraph (b) provides exceptions to the rule for purchases involving bona fide arbitrage or trading in companies involved in a publicly announced merger, acquisition, consolidation or tender offer; to offset error transactions; to facilitate the conversion of options; for transactions by specialists in their specialty stocks; to facilitate the sale of a block of stock or a basket of stock by a customer; to facilitate an existing customer order for the purchase of a block of stock or a stock in a basket of stocks or a stock being added to or reweighted in an index at or after the close of trading on the Exchange; or to increase a proprietary position in a stock which is being added or increasing its weight in a publicly disseminated index, provided that the transactions in the aggregate do not exceed the number of shares required to facilities the customer's purchase of such stock after the close or exceed the number of shares required to rebalance the portfolios.[4]

The Exchange is proposing an additional exception (proposed new paragraph (b)(8)) for purchases to offset all or part of the market risk of a position, established previously or contemporaneously, that is economically equivalent to a short position in the stock, provided that such position was established as the result of facilitating a customer's order. Examples of positions that would be deemed to be economically equivalent to a short position in the stock include a long put option or a short position in a call option, warrant, right or convertible or exchangeable securities. The number of shares purchased to hedge the short position must not exceed the outstanding market risk when such short position is netted with any long position in the stock as defined in .10 of the Rule.

For example, a member organization has sold short to a customer a security which is convertible into 100,000 shares of common stock. Thereafter, it facilitates a block transaction for another customer by buying 40,000 shares of the common stock for the member organization's proprietary account. It seek to hedge its remaining short exposure in the convertible security by buying 60,000 shares of the common stock. Since the member

[4] *See* Release No. 34–40404 (September 4, 1998), 63 FR 49145 (September 14, 1998) (File No. SR–NYSE–98–11).

organization has acquired a long facilitation position (*i.e.*, the 40,000 share purchase), it must now calculate whether it is long for purposes of Rule 97 as described in section .10 of the supplementary material to the Rule. If the firm determines it is long for purposes of Rule 97, it would be limited in the manner by which it could hedge the remaining short market risk. The proposed exception would permit the member organization to purchase up to the amount of its net short exposure without being subject to the tick restrictions of Rule 97.

Rule 97 was adopted due to concerns that a member organization might engage in manipulative practices by attempting to "mark-up" or "peg" the price of a stock in order to enable the position acquired in the course of block positioning to be liquidated at a profit or to maintain the market at the price at which the position was acquired. A stock purchase which offsets existing short market risk resulting from a facilitation and which does not establish a long position, does not provide an incentive to "mark up" or "peg" the price of a long stock position previously acquired as a block facilitation trade. Therefore, the Exchange believes that the proposed exception should be adopted.

The Exchange also is proposing to amend section .10 of the supplementary material to the Rule to specify how a member organization that has acquired a long position in a stock as the result of facilitating a customer's block transaction shall determine whether it is long for purposes of Rule 97, *i.e.*, under what circumstances the member organization must aggregate such position with other proprietary positions.

The Commission staff has recently issued a no-action letter[5] setting forth conditions for permitting an individual trading unit ("Aggregation Unit") in a member organization to calculate its net position in a particular security for purposes of Rule 10a–1 under the Act[6] independently from other Aggregation Units.[7]

Under the proposed amendment to section .10 of the supplementary material to Rule 97, a member organization that has chosen to calculate its net positions by defined Aggregation Units, which meet the conditions set forth by the Commission staff in the 1998 no-action letter, would determine whether it is long for purposes of Rule 97 by netting its long facilitation position with its other stock positions within the same Aggregation Unit. A member organization that has not established defined Aggregation Units that comply with the no-action letter may not net such long position with any short position maintained in the member organization's proprietary accounts, except at the end of the trading day. For such a member organization, the restrictions would apply as long as it held any part of a long facilitation position resulting from a block transaction on the day the position was acquired.

Thus, the restrictions contained in paragraph (a) of the Rule would be triggered only if three conditions are met: (1) the member organization acquired a long position in a stock as the result of facilitating a block trade by a customer on that trading day; (2) the member organization is long for purposes of Rule 97 as defined in section .10 of the supplementary material; and (3) the member organization's purchase on a plus or zero plus tick does not fall under any exception in paragraph (b).

The requirement in section .10 of the supplementary material to aggregate a long block facilitation position with other proprietary positions within the same Aggregation Unit is proposed to be added to the Rule in recognition of current practices of large multi-service broker-dealers where profit and loss are calculated within defined Aggregation Units and each such unit conducts its trading without regard to the positions or activities of other units.

The Exchange is also proposing to replace the term "trading account" in paragraph (a) of the Rule with "proprietary account" to clarify that the Rule's restrictions may apply regardless of where the long facilitation position is placed, *e.g.*, a facilitation account or a trading account.

In addition, the Exchange is proposing to delete subparagraph (a)(i) (a purchase on a "plus" tick if such purchase would result in a new daily high) as it is included within the meaning of subparagraph (a)(iii) (a purchase on a "plus" tick at a price higher than the lowest price at which any block was acquired in a previous transaction on that day), and renumbering accordingly.

2. Statutory Basis

The basis under the Act for this proposed rule change is Section 6(b)(5)[8] which, in part, calls for exchange rules to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The proposed rule change would define a long position for purposes of Rule 97 in a manner in that the Exchange believes more closely follows industry practice. It would also permit trading by member organizations to offset the risk of the equivalent of a short stock position, and thereby, add depth, liquidity and quality to the market for Exchange securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission,

[5] Letter from Richard R. Lindsey, Director, Division of Market Regulation to Roger D. Blanc, Esq., Wilkie Farr & Gallagher, dated November 23, 1998 (TP File No. 97–42).

[6] 17 CFR 240.10a–1.

[7] These conditions include the following requirements: (1) a written plan that identifies each Aggregation Unit, specifies its trading objective, and supports its independent identity; (2) real-time netting by each Aggregation Unit of its positions; (3) reconciling at least once a day of net positions of all Aggregation Units with the firm's net position; (4) individual traders can be assigned to only one Aggregation Unit at any time; and (5) each trader pursuing a particular trading strategy must be included in one Aggregation Unit.

[8] 15 U.S.C. 78f(b)(5).

all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–18 and should be submitted by July 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15359 Filed 6–16–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41506; File No. SR–OCC–99–7]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending OCC's By-Laws Concerning End-of-Month Foreign Currency Options

June 10, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 10, 1999, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to reconcile a difference between OCC's By-Laws and the Rules of the Philadelphia Stock Exchange ("PHLX").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will reconcile a difference between OCC's By-Laws and PHLX's Rules concerning the expiration date of end-of-month foreign currency options. OCC's By-Laws and PHLX's Rules both provide that end-of-month foreign currency options expire on the last Friday of the expiration month. However, PHLX's Rules provide that if the last Friday of the expiration month is December 31st, the options expire on "the Friday immediately preceding December 24th."[3] OCC's By-Laws provide that if the last Friday of the expiration month is December 31st, the options expire on "the Friday immediately preceding December 25th."[4] OCC's By-Laws also provide that if a foreign currency option expires on a holiday, the expiration date is the business day immediately preceding the holiday.[5]

The respective rules of OCC and PHLX provide for conflicting expiration dates for end-of-month options in 1999. December 31, 1999, is a Friday, so under PHLX's Rules the expiration date would be December 17, 1999, which is the Friday immediately preceding December 24th. Under OCC's By-Laws, the expiration date would ordinarily be December 24th, but this is a holiday, so the date would change to December 23rd. After consultation with PHLX, OCC has agreed that the expiration date for the end-of-month foreign currency options should be December 17, 1999. To implement this change, OCC is amending the definition of "expiration date" in Article XV, Section 1 of its By-Laws to provide that the expiration date for end-of-month foreign currency options be the Friday immediately preceding December 24th, rather than December 25th, if December 31st falls on a Friday. This change will ensure that OCC's By-Laws and PHLX's Rules establish the same December expiration date for these options in 1999 and in future years.

OCC believes that the proposed rule change is consistent with Section 17A of the Act[6] and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of transactions in foreign currency options by ensuring that the expiration date for such options is the same under OCC's By-Laws and PHLX's Rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[7] of the Act and pursuant to Rule 19b–4(f)(4)[8] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1)

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] PHLX Options Rule 1000(b)21.(ii).

[4] Article XV, Section 1.E.2(iv) of OCC's By-Laws.

[5] Article XV, Section 1.E.2(v) of OCC's By-Laws.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–7 and should be submitted by July 8, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority. [9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15356 Filed 6–16–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41507; File No. SR–OCC–99–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Amendments to the Pledge Program

June 10, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 8, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, OCC will permit clearing members to pledge long positions in non-proprietary cross margin accounts through its pledge program. In addition, OCC will update its rules to reflect the way that the pledge program currently operates.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC's market maker pledge program was designed to facilitate the ability of clearing members to finance their positions by permitting them to pledge excess long market maker options as collateral to obtain loans from banks or other clearing members.[3] Current eligible account types include, among others, a combined market-makers' account and a separate market-maker's account.

Market-makers, specialists, and registered traders are categories of market professionals that are eligible to have their positions included in a clearing members' non-proprietary cross margin account, and many such market professionals participate in cross margining. OCC believes that it is an appropriate extension of the purposes of the pledge program to permit long options carried in a non-proprietary cross margin account to be pledged to facilitate clearing member financing needs. As a result, under the rule change OCC will amend Rule 614 to add non-proprietary cross margin accounts to the list of accounts that are eligible for the pledge program.

In addition, OCC will update certain of the terms of Rule 614. Some of the practices described in the rule are no longer used, and OCC will eliminate references to those obsolete practices and revise the rule to reflect the current pledge program operation. For example, OCC's system does not "transfer" pledge cleared securities into a separate "pledge account" as suggested by the rules. Rather, OCC identifies within the "primary" account those long positions in a cleared security that a clearing member has instructed OCC that it desires to pledge. In addition, certain instructions or reports are not submitted or distributed by hard copy form but are electronically inputted or disseminated through OCC's C/MACS system. (Hard copy forms are used as acceptable backups should C/MACS be unavailable.) As such, OCC will eliminate reference to "transfers," "Transfer Day," "Primary Accounts," and certain "forms." Instead, OCC will substitute where appropriate more generic terms like "identifying" cleared securities to be pledged, "Activity Day," "Eligible Account," "pledged and unpledged cleared securities," and "instructions" as being more descriptive of current pledge program processing. In addition, clearing member designations among pledgees can be carried out electronically or through use of the pledgee designation form. The rule will also be amended to reflect this practice.

Further, OCC will eliminate references to lock box distribution of reports. Clearing members receive OCC reports electronically through C/MACS. Other pledges also receive reports by electronic format from OCC or have other arrangements with OCC for purposes of receiving reports. Accordingly, there is no longer any need to refer to lock box report distribution. Instead, report distribution will be accomplished in accordance with the procedures agreed between OCC and each pledgee.

Finally, OCC will change the time at which the release of a pledged cleared security is effective. Currently, the rule provides that the release is deemed to be effective as of 9:00 a.m. (central time) on the transfer day and all rights of a pledgee as to such released cleared security are terminated at that time. However, this effective time comes after OCC nightly processing is completed. During nightly processing, the long positions in cleared securities are released from pledge, included in marginable positions, and used to offset short positions as described in Rules 601 and 602. Pledgee banks have the understanding that when they execute the instructions to release pledged positions they release their rights in the long positions and take appropriate measures to ensure that the loan is repaid or otherwise secured. Accordingly, OCC is proposing to alter the time at which as pledge is deemed to be released. That time will be the cutoff time for submitting the instructions to release pledge positions on the receipt day. OCC believes that this change is consistent with the expectations of clearing members, pledgees, and of OCC as to when each party has rights in the pledged long positions.

In addition to the amendments described above, conforming changes will be made to Rules 601, 602, 1105, and 1106 and to the pledge account agreement.[4]

OCC believes that the proposed rule change is consistent with Section 17A of the Act [5] and the rules and regulations thereunder because it provides for expanded clearing member financing opportunities and updates OCC's pledge program rule to reflect current practices.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–04 and should be submitted by July 8, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15358 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License Nos. 06/76–0317 and 04/74–0263]

TD Origen Capital Fund, L.P. and TD Javelin Capital Fund, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that TD Origen Capital Fund, L.P. ("TD Origen"), 150 Washington Avenue, Suite 201, Santa Fe, New Mexico, 87501, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), and TD Javelin Capital Fund, L.P. ("TD Javelin"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama, 35223, a Federal Licensee under the Act, in connection with the proposed financing of a small concern, are seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. TD Origen and TD Javelin propose to provide equity financing to AmericasDoctor.com, Inc. ("AD.com"), 11403 Cronridge Drive, Suite 200, Owings Mills, Maryland, 21117. The financing is contemplated for product development and working capital.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because Tullis-Dickerson Capital Focus II, L.P., an Associate of TD Origen and TD Javelin, together with TD Origen and TD Javelin, currently own greater than 10 percent of AD.com and therefore AD.com is considered an Associate of each of TD Origen and TD Javelin as defined in section 107.50 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this Notice shall be published, in accordance with section 107.730 (g), in the Owings Mills Times by Tullis-Dickerson Capital Focus II, L.P.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: June 8, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–15336 Filed 6–16–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 3045]

Secretary of State's Arms Control and Nonproliferation Advisory Board

The Charter of the Secretary of State's Arms Control and Nonproliferation Advisory Board is amended and renewed for a period of two years. This Board succeeds and replaces the Arms Control and Disarmament Agency's Director's Advisory Committee, in accordance with the Arms Control and Disarmament Act, as amended (PL 105–277).

The Board advises the Secretary of State on scientific and policy matters relating to arms control and nonproliferation. Operational authority for all activities of the Board, including evaluation and transmission of reports and appointment of members and staff, is delegated to the Under Secretary for Arms Control and International Security and Senior Adviser to the President and the Secretary of State for Arms Control, Nonproliferation, and Disarmament.

The previous Director's Advisory Committee did extensive investigation

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] For a detailed description of the pledge program, refer to Securities Exchange Act Release No. 19956 (July 19, 1983), 48 FR 33956 [File No. SR–OCC–82–25] (order approving proposed rule change).

[4] OCC attached a copy of the amended pledge account agreement as Exhibit A to its filing, which is available for inspection and copying in the Commission's public reference room and through OCC.

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

and analysis of issues including landmine policy, space policy, verification and compliance, and organizational issues relating to the integration of the Arms Control and Disarmament Agency into the Department of State. The Board continues work in these areas, as well as other aspects of arms control and nonproliferation.

Members of the Board provide a wide range of scientific and policy backgrounds and opinion, while in all cases reflecting extensive experience in arms control and/or nonproliferation.

Because of the sensitive national security material with which the Board deals, its meetings are generally held in closed sessions. However, public notice of the time and place of all meetings is provided, and the Board is open to any public comment that is submitted to it.

Robert Sherman,

Executive Director, Secretary of State's, Arms Control and Nonproliferation Advisory Board.

[FR Doc. 99–15455 Filed 6–14–99; 4:11 pm]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Transportation

Amendment of Noise Compatibility Program Baton Rouge Metropolitan Airport Baton Rouge, LA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed amendment to the noise compatibility program for Baton Rouge Metropolitan Airport, Baton Rouge, Louisiana, under the provisions of Title 49, USC, Chapter 475 (hereinafter referred to as "Title 49") and 14 CFR Part 150 by The City of Baton Rouge and Parish Of East Baton Rouge by and through the Greater Baton Rouge Airport District. This proposed amendment was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Baton Rouge Metropolitan Airport were in compliance with applicable requirements effective on September 9, 1992. The proposed amendment to the noise compatibility program will be approved or disapproved on or before December 7, 1999.

EFFECTIVE DATES: The effective date of the start of FAA's review of the proposed amendment to the noise compatibility program is June 10, 1999. The pubic comment period ends August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Saupp, Airports Division, LA/NM Airports Development Office, ASW–640E, Ft. Worth, Texas, 76193, (817) 222–5640. Comments on the proposed amendment should be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed amendment, known as Element 11, to be added to the noise compatibility program for Baton Rouge Metropolitan Airport, Baton Rouge, Louisiana, which will be approved or disapproved on or before December 7, 1999. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted a noise compatibility program that was found by the FAA to be compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title 49, may submit an amendment to the noise compatibility program, after consultation with the concerned public, for FAA approval, which sets forth the measures the airport operator proposes for the reduction of existing noncompatible land uses. Provisions of Title 49 also allow the airport operator, to amend the noise compatibility program to enhance the program.

The FAA has formally received the amendment to the noise compatibility program for Baton Rouge Metropolitan Airport, Baton Rouge, Louisiana. It was requested that the FAA review this material and that the proposed amendment to the noise compatibility plan, to be implemented by the airport within the surrounding communities, be added to the noise compatibility program under Title 49. Preliminary review of the submitted material indicates that it conforms to the requirements for an addition to the noise compatibility program, but that further review will be necessary prior to approval or disapproval of the proposed Element 11. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 7, 1999.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process was whether the proposed measure may reduce the level of aviation safety, create an undue hardship on interstate or foreign commerce, or be reasonably consistent with attaining the goal of reducing existing noncompatible land uses.

Interested persons are invited to comment on the proposed Element 11 with specified reference to these factors. The FAA, to the extent practicable, will consider all comments, other than those properly addressed to local land use authorities. Copies of the proposed Element 11 of the noise compatibility program are available for examination at the following locations;

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137, (817) 222–5640

O'Brien-Krietzberg, 9132 Veterans Memorial Blvd., Baton Rouge, LA 70807, (225) 358–4240

Questions and requests for any further information may be directed to the individuals named above.

Issued in Fort Worth, Texas, June 10, 1999.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 99–15392 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–17]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 8, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 14, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29354
Petitioner: Fairchild Aircraft Incorporated
Section of the FAR Affected: 14 CFR 25.785(b)
Description of Relief Sought: To permit side facing divans on Dornier Model 328–100 airplanes.

Docket No.: 29495
Petitioner: Osprey Air I
Section of the FAR Affected: 14 CFR 43.3(a) and (g) and paragraph c of Appendix A of part 43
Description of Relief Sought: To permit pilots employed by Osprey to perform those preventive maintenance functions listed in paragraph c of Appendix A of part 43 on aircraft operated under 14 CFR part 135.

Docket No.: 29496
Petitioner: Blue Mountain Lodge
Section of the FAR Affected: 14 CFR 43.3(a) and (g) and paragraph c of Appendix A of part 43
Description of Relief Sought: To permit BML's pilot to perform the preventive maintenance functions listed in paragraph c of Appendix A to part 43 on aircraft operated under 14 CFR part 135.

Dispositions of Petitions

Docket No.: 24446
Petitioner: Air Transport Association of America
Section of the FAR Affected: 14 CFR 121.485(b)
Description of Relief Sought/Disposition: To permit ATA-member airlines and other similarly situated part 121 air carriers to conduct flights of less than 12 hours duration with an airplane having a flightcrew of three or more pilots and an additional flight crewmember without requiring the rest period following that flight to be twice the hours flown since the last rest period at each flight crewmember's home base.
GRANT, 4/30/99, Exemption No. 4317G

Docket No.: 25988
Petitioner: Soloy Corporation
Section of the FAR Affected: 14 CFR 21.19(b)(1)
Description of Relief Sought/Disposition: To permit Soloy to apply for a supplemental type certificate (STC) for a design change that would convert the Cessna Caravan from a one-engine aircraft to a two-engine aircraft using the STC process.
GRANT, 4/14/99, Exemption No. 6888

Docket No.: 26599
Petitioner: Regional Airline Association
Section of the FAR Affected: 14 CFR 91.203
Description of Relief Sought/Disposition: To permits RAA-member airlines to temporarily operate certain U.S.-registered aircraft in domestic airline operations without the certificates of airworthiness or registration onboard the aircraft.
GRANT, 4/27/99, Exemption No. 5515D

Docket No.: 28179
Petitioner: Washington Flight Program
Section of the FAR Affected: 14 CFR 121 Appendices I and J, 135.251, and 135.255
Description of Relief Sought/Disposition: To permit FAA Washington Flight Program to use the substance abuse and drug testing program mandated by Department of Transportation Order No. 3910.1C, "The Drug and Alcohol-Free Departmental Workplace," for its management, pilot, and maintenance personnel, in lieu of certain drug and alcohol program requirements contained in part 121 and part 135.
GRANT, 4/20/99, Exemption No. 6074B

Docket No.: 28545
Petitioner: United Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.135(a)93)
Description of Relief Sought/Disposition: To permit United to use electronic digital technology to document the revision of level in lieu of printing the last revision date on each page of the manual
GRANT, 4/21/99, Exemption No. 6612A

Docket No.: 29042
Petitioner: Schwartz Engineering Company
Section of the FAR Affected: 14 CFR 21.183(f) and 25.2(b)
Description of Relief Sought/Disposition: To permit Schwartz Engineering Company type and airworthiness certification of a Boeing Model 757–200 airplane with adjacent exists further than 60 feet apart.
GRANT, 4/29/99, Exemption No. 6710B

Docket No.: 29349
Petitioner: Texas Aero Engine Service, L.L.C.
Section of the FAR Affected: 14 CFR 43.9(a)(4)
Description of Relief Sought/Disposition: To permit TAESL to use computerized personal identification codes in lieu of physical signatures required to issue airworthiness releases and/or approvals for return to services of aeronautical products it maintains for its repair station customers.
GRANT, 4/21/99, Exemption No. 6890

Docket No.: 29383
Petitioner: Ilyushin Aviation Complex
Section of the FAR Affected: 14 CFR 25.562(b)(2)
Description of Relief Sought/Disposition: To exempt Ilyushin Aviation Complex from the floor warpage test requirements of 25.562(b)(2) for flight deck seating.
PARTIAL GRANT, 4/13/99, Exemption No. 6887612A

Docket No.: 29348
Petitioner: Boeing Commercial Airplane Group
Section of the FAR Affected: 14 CFR 25.1435(b)(1)
Description of Relief Sought/Disposition: To permit Boeing to conduct a 3400 psig test of the modified portions of the hydraulic system on the Boeing Model 767–400ER airplane.
GRANT, 4/8/99, Exemption No. 6886

Docket No.: 29427
Petitioner: Boeing Commercial Airplane Group
Section of the FAR Affected: 14 CFR 25.1435(b)(1)
Description of Relief Sought/Disposition: To permit Boeing type certification of Boeing Model 737–700C by testing only the hydraulic tubing added for the 737–700 Main Deck Cargo Door system at just below 3400 psig, the system relief pressure.
GRANT, 4/15/99, Exemption No. 6889

Petition for Exemption

Docket No.: 29354
Petitioner: Fairchild Aircraft Incorporated
Regulations Affected: 25.785(b)
Description of Petition: To permit side-facing divans on Dornier Model 328–100 airplanes.

[FR Doc. 99–15394 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee.

DATES: The meeting will be held July 13–14, 1999, beginning at 9 a.m. on July 13. Arrange for oral presentations by July 6.

ADDRESSES: The meeting will be at the Department of Transportation, Nassif Building, Room 8236–40, 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence

Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of the Aging Transport Systems Rulemaking Advisory Committee at the Department of Transportation, Nassif Building, Room 8236–40, 400 7th Street, SW., Washington, DC.

The agenda will include:

- Opening remarks, introduction of new members.
- Review of March meeting minutes and actions items.
- Presentation on Airplane Design, Certification, and Continuing Surveillance.
- Presentation on Maintenance Plan—Updates on Society of Automotive Engineers and Maintenance Steering Group, Revision 3 Process.
- Presenation on Aging Systems Definition.
- Task 1—Electrical and Nonelectrical Systems Inspections Working Group Report.
- Task 2—Service Data Review Working Group Report.
- Status of Working Group Assignments.
- Review/Validate Tasking Statements and Schedules.
- Review Action Items.
- Additional Issues and Concerns.
- Future Meetings.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by July 6, 1999, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. Public statements will only be considered if time permits. In addition, sign and oral interpretation as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on June 11, 1999.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. 99–15391 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for June 29 and 30, 1999, beginning at 8:30 a.m. on June 29. Arrange for oral presentations by June 22.

ADDRESSES: Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held June 29–30, 1999, at the Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

The agenda will include:

Tuesday, June 29, 1999

- Opening Remarks
- FAA/Joint Aviation Authorities (JAA) Harmonization Meeting Report
- FAA Report
- JAA Report
- Transport Canada Report
- Harmonization Program Plan Update
- Seat Test Harmonization Working Group (HWG) Report
- Flight Test HWG Report and Approval of Work Plan
- Ice Protection HWG Report
- Engine HWG Report and Vote
- Airworthiness Assurance Working Group Report and Vote
- Powerplant Installation HWG
- System Design and Analysis HWG
- Flight Guidance System HWG Report

Wednesday, June 30

- Aging Systems Update
- General Structures HWG Report and Vote
- Electromagnetic Effects HWG Report and Vote
- Loads and Dynamics HWG Report and Approval of Work Plan
- Flight Control HWG Report
- Electrical Systems HWG Report
- Mechanical Systems HWG Report
- Review Action Items

Both the Flight Test HWG and the Load and Dynamics HWG plan to seek approval of work plans. The Airworthiness Assurance Working Group plans to request a vote to submit to the FAA a final report entitled "Recommendations for Regulatory Action to Prevent Widespread Fatigue Damage in the Commercial Airplane Fleet."

Three working groups plan to request a vote for formal FAA legal and economic reviews:

- The Engine HWG plans to present a proposed notice addressing aircraft engine standards overtorque limits;
- The Electromagnetic Effects HWG plans to present a proposed notice and advisory circular addressing lightning protection; and
- The General Structures HWG plans to present proposed notices and advisory circulars addressing casting factors and fuel tank access doors. The working group also plans to present, for legal review only, an advisory circular addressing windshields and windows.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by June 22 to present oral statements at the meeting. Written statements may be presented to the Committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on June 11, 1999.

Brenda D. Courtney,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–15390 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss emergency evacuation issues.

DATES: The meeting is scheduled for July 1, 1999, beginning at 10 a.m.

Arrange for oral presentations by June 24.

ADDRESSES: Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held on July 1, 1999, at the Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

The agenda will include:

- Opening remarks.
- FAA/JAA Harmonization Meeting Report.
- JAA Report.
- FAA Report.
- Performance Standards Working Group (PSWG) Report and Vote.

The PSWG plans to request a vote for formal FAA legal and economic reviews of a proposed notice addressing means of illumination to assist people descending from an airplane to the ground.

Attendance is open to the public, but will be limited to space available. The public must make arrangements by June 24 to present oral statements at the meeting. Written statements may be presented to the committee any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by providing copies at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting. Arrangement may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on June 11, 1999.

Brenda D. Courtney,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–15393 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Program Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions form the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before July 2, 1999.

ADDRESSES: Address comments to: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
6293–M		Dyno Nobel, Inc., Salt Lake City, UT (See Footnote 1)	6293
8495–M		Walter Kidde Aerospace, Wilson, NC (See Footnote 2)	8495
10440–M		MASS Systems, Inc., Baldwin Park, CA (See Footnote 3)	10440
10858–M		Ashland Speciality Chemical Company, Columbus, OH (See Footnote 4)	10858
10962–M		International Compliance Center, Mississauga ON L4Z 1X8, CA (See Footnote 5)	10962
11186–M		Cryenco, Inc., Denver, CO (See Footnote 6)	11186
11344–M		E.I. DuPont de Nemours and Company, Wilmington, DE (See Footnote 7)	11344
11373–M		Independent Chemical Company, Glendale, NY (See Footnote 8)	11373
11458–M		Reckitt & Colman, Inc., Wayne, NJ (See Footnote 9)	11458
11537–M		ROBCHEM, Inc., Los Angeles, CA (See Footnote 10)	11537
11537–M		Milport Enterprises, Inc., Milwaukee, WI (See Footnote 11)	11537
11631–M		Health Care Incinerators, Inc., Fargo, ND (See Footnote 12)	11631
11769–M		Great Western Chemical Company, Portland, OR (See Footnote 13)	11769
12013–M	RSPA–1997–3249	Hawkins Chemical, Inc., Minneapolis, MN (See Footnote 14)	12013
12093–M	RSPA–1998–4003	Dynatherm Corporation, Inc., Hunt Valley, MD (See Footnote 15)	12093
12275–M	RSPA–1999–5834	Medico Environmental Services, Inc., Clearwater, FL (See Footnote 16)	12275

[1] To modify the exemption to allow for DOT–412 cargo tank motor vehicles, equipped for top loading and unloading only, for the transportation in commerce of specific Class 8 materials.

[2] To modify the exemption to include the use of an alternative fire extinguishing agent, pentafluoroethance, in a non-DOT specification cylinder.

[3] To modify the exemption to increase service pressure not to exceed 3100 psig for the welded austenitic stainess steel non-DOT specification cylinder.

[4] To modify the exemption to allow for additional Class 3 materials in DOT specification tank cars.

[5] To modify the exemption to provide for Class 9 as an additional class of material in motor vehicles which are not placarded DANGEROUS WHEN WET.

[6] To modify the exemption to provide for nitogen as an alternative test medium; increase the inner tank design pressure to 350 psig for a non-DOT specification insulated portable tank transportating Divisions 2.1 and 2.2 materials.

[7] To modify the exemption to authorize Divisions 2.1, 2.2, 6.1, and those hazardous materials currently authorized to be shipped in tank cars.

[8] To modify the exemption to update the description for self-heating material, Division 4.2, on the same transport vehicle with Class 8 liquids when the materials are separated.
[9] To modify the exemption to allow for the use of intermodal road railers for the transportation of Classes 2, 3, 8, 9 and Division 5.1 consumer commodities in packages that exceed the 30 kg gross weight limit.
[10] To modify the exemption to provide for additional Class 8 materials in IBCs that are securely mounted to a flatbed trailer, but not removed from the vehicle prior to the unloading of the container.
[11] To modify the exemption to provide for semi-trailers and box trucks securely mounted to a flatbed trailer, but not removed from the vehicle prior to unloading for the transportation of certain Class 8 materials.
[12] To modify the exemption to provide for a design change of the intermediate packaging to allow for a 2.5 mil poly bag, closed to be liquid-tight, for use in transporting medical waste in bulk bins.
[13] To modify the exemption to authorize Division 5.1 and additional Class 8 materials from truck-mounted UN31HH1 IBCs with capacities not exceeding 330 gallons and to allow for UN-marked, compatible IBCs having capacities not exceeding 550 gallons.
[14] To modify the exemption to provide for additional Class 8 materials in IBCs without removing tanks from the vehicles on which they are transported.
[15] To modify the exemption to allow for design changes of the non-DOT specification containers containing certain Divisions 2.1, 2.2 and 2.3 liquefied and compressed gases.
[16] To reissue the exemption originally issued on an emergency basis for the transportation of regulated medical waste in non-DOT specification packaging consisting of a bulk outer container and non-bulk inner packagings.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b).

Issued in Washington, DC on June 10, 1999.

R. Ryan Posten,

Exemptions Programs Officer, Office of Hazardous Materials Exemptions & Approvals.

[FR Doc. 99–15379 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2 —Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 19, 1999.

ADDRESSES: Address comments to: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 10, 1999.

R. Ryan Posten,

Exemption Programs Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12277–N ..	RSPA–1999–5797.	The Indian Sugar & General Engineering Corp. ISGE Haryana, IN.	49 CFR 173.3, 173.304.	To authorize the manufacture, marking and sale of non-DOT specification cylinders (pressure vessel) for use in transporting Chlorine, Division 2.3 material. (modes 1, 2)
12278–N ..	RSPA–1999–5762.	Morton International Chicago, IL.	49 CFR 173.243	To authorize the transportation in commerce of composite intermediate bulk containers meeting UN design type 31HA1 for the shipment of Thioglycol, classed as a Division 6.1, PG II material. (modes 1, 2)
12280–N ..	RSPA–1999–5764.	Combined Tactical Systems, Inc. Jamestown, PA.	49 CFR 172.101 (6, 172.402(e).	To authorize the transportation in commerce of Division 1.4S material with a subsidiary 6.1 hazard to be transported without subsidiary label applied to outer packagings. (mode 1)
12281–N ..	RSPA–1999–5765.	ABS Group Inc. Houston, TX	49 CFR 178.27–5(b)(2).	To authorize the use of an equivalent mild steel thickness of 6.0 mm for IM 101 portable tanks with a diameter greater than 1.8m in relief of the 6.35 mm thickness of the current requirement for use in transporting presently authorized hazardous materials. (modes 1, 2, 3)
12282–N ..	RSPA–1999–5766.	Defense Technology Corp. Casper, WY.	49 CFR 173.302	To authorize the manufacture, marking and sale of compressed gas, Division 2.2, in non-DOT specification cylinders comparable to DOT-Specification 39. (modes 1, 2, 4)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12285–N ..	RSPA–1999–5828.	Biotech Research Laboratories, Inc. Gaithersburg, MD.	49 CFR 173.196, 178.609.	To authorize the transportation in commerce of biological specimens classed as Infectious substance (Etiologic agent) in specifically designed packagings inside mechanical freezers and walk-in-cold boxes. (mode 1)
12286–N ..	RSPA–1999–5827.	FMC Corporation Philadelphia, PA.	49 CFR 180.509	To extend the retest period for DOT–111A60W7 tank cars in dedicated hydrogen peroxide service (Division 5.1). (mode 2)

[FR Doc. 99–15380 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33749 (Sub-No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33749[1] to permit the trackage rights to expire on August 28, 1999.

DATES: This exemption is effective on July 17, 1999. Petitions to reopen must be filed by July 7, 1999.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33749 (Sub-No. 1) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative, Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 9, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–15451 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–01–M

[1] On May 21, 1999, Union Pacific Railroad Company (UP) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead rights to UP over BNSF's rail line known as the Madill Subdivision between Carrollton, TX, BNSF milepost 700.17, and South Joe, TX, BNSF milepost 633.0, a total distance of approximately 67.5 miles. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33749 (STB served June 1, 1999). The trackage rights operations under the exemption became effective on May 28, 1999, 7 days after the verified notice was filed, and are subject to standard labor protective conditions. The exemption is scheduled to be consummated on or shortly after June 21, 1999. The trackage rights agreement is scheduled to expire August 28, 1999.

federal register

Thursday
June 17, 1999

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and Natural Gas Transmission and Storage; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6346–8]

RIN 2060–AE34

National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and National Emission Standards for Hazardous Air Pollutants: Natural Gas Transmission and Storage

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rules.

SUMMARY: These promulgated national emission standards for hazardous air pollutants (NESHAP) limit emissions of hazardous air pollutants (HAP) from oil and natural gas production and natural gas transmission and storage facilities. These final rules implement section 112 of the Clean Air Act (Act) and are based on the Administrator's determination that oil and natural gas production and natural gas transmission and storage facilities emit HAP identified on the EPA's list of 188 HAP.

The EPA estimates that approximately 69,000 megagrams per year (Mg/yr) of HAP are emitted from facilities in these source categories. The primary HAP emitted by the facilities covered by these final standards include benzene, toluene, ethyl benzene, mixed xylenes (collectively referred to as BTEX), and n-hexane. Benzene is carcinogenic and has also been shown to cause various adverse health effects other than cancer (i.e., noncancer effects). The other four HAP are not classified as carcinogens based on available information; however, exposures to these four HAP have been shown to cause various noncancer effects.

The EPA estimates that these promulgated NESHAP will reduce HAP emissions from major sources in the oil and natural gas production source category by 77 percent and from major sources in the natural gas transmission and storage source category by 95.0 percent.

EFFECTIVE DATE: This regulation is effective June 17, 1999. See **SUPPLEMENTARY INFORMATION** concerning judicial review.

ADDRESSES: *Docket.* A docket, No. A–94–04, containing information considered by the EPA in developing the promulgated standards for the oil and natural gas production and natural gas transmission and storage source categories, is available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington DC 20460, telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall. The promulgated regulations, background information document (BID) volumes 1 and 2, and other supporting information are available for inspection and copying. A reasonable fee may be charged for copying.

Responses to Comments Document. The responses to comments document for the promulgated standards may be obtained from the EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777, or from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22151, telephone (703) 605–6000 or (800) 553–6847 or via the Internet at www.fedworld.gov/ntis/ntishome.html. Please refer to "National Emissions Standards for Hazardous Air Pollutants for Source Categories: Oil and Natural Gas Production and Natural Gas Transmission and Storage—Background Information for Final Standards: Summary of Public Comments and Responses" (EPA–453/R–99–004b, May 1999). The document contains the following: (1) a summary of all the public comments made on the proposed standards and the Administrator's responses to the comments and (2) a summary of the changes made to the standards since proposal. This document is also available for downloading from the Technology Transfer Network (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: For information concerning today's action, contact Mr. Greg Nizich, Waste and Chemical Processes Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone: (919) 541–3078; facsimile: (919) 541–0246; or electronically at: nizich.greg@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Condensate tank batteries, glycol dehydration units, natural gas processing plants, and natural gas transmission and storage facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by these actions. This table lists the types of entities that the EPA is now aware could potentially be regulated by these actions. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by these actions, you should carefully examine the applicability criteria in sections 63.760 and 63.1270 of the rules. If you have questions regarding the applicability of these actions to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Technology Transfer Network. This document, the final regulatory texts, and BID volumes 1 and 2 are available in Docket No. A–94–04 from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). They can also be accessed through the EPA's Technology Transfer Network (TTN) Internet web site at: http://www.epa.gov/ttn/oarpg.

Judicial Review. National emission standards for hazardous air pollutants for facilities in the oil and natural gas production and natural gas transmission and storage source categories were proposed in the **Federal Register** on February 6, 1998 (63 FR 6288). This **Federal Register** action announces the EPA's final decisions on the rules. Under section 307(b)(1) of the Act, judicial review of the NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of these final rules. Under section 307(b)(2) of the Act, the requirements that are the subject of today's action may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Preamble Outline. The following outline is provided to aid in reading the preamble to the promulgated oil and natural gas production and natural gas transmission and storage NESHAP.

I. Background
II. Summary of Considerations in Developing the Rules
  A. Purpose of the Regulations
  B. Technical Basis of the Regulations
  C. Stakeholder and Public Participation
III. Summary of Promulgated Standards
  A. Promulgated Standards for Oil and Natural Gas Production for Major Sources
  B. Promulgated Standards for Natural Gas Transmission and Storage for Major Sources
  C. Recordkeeping and Reporting Provisions
IV. Summary of Impacts
  A. HAP Emission Reductions
  B. Secondary Environmental Impacts
  C. Energy Impacts
  D. Cost Impacts

E. Economic Impacts
V. Significant Comments and Changes to the Proposed Standards
  A. Definition of Facility
  B. Definition of "Associated Equipment"
  C. Applicability
  D. Glycol Dehydration Unit Process Vent Standards
  E. Storage Vessel Standards
  F. Standards for Natural Gas Transmission and Storage
  G. Monitoring, Recordkeeping, and Reporting Requirements
  H. Cost and Economic Impacts
VI. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866: A Significant Regulatory Action Determination
  D. Regulatory Flexibility Act
  E. Congressional Review Act
  F. Unfunded Mandates Reform Act
  G. Executive Order 12875: Enhancing the Intergovernmental Partnership
  H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
  J. National Technology Transfer and Advancement Act

The following conversions from metric to English units are provided to aid in reading the preamble to the promulgated oil and natural gas production and natural gas transmission and storage NESHAP.

Metric values	Equivalent English values
0.31 cubic meter per liter (m^3/liter)	1,750 standard cubic feet per barrel (ft^3/barrel).
39,700 liter/day	250 barrels per day (bpd).
79,500 liter/day	500 bpd.
0.90 Megagrams per year (Mg/yr)	1.0 ton per year (tpy).
18.4 thousand cubic meters per day (m^3/day)	650 thousand cubic feet per day (scf/day).
28.3 thousand m^3/day	1 million scf/day (MMscf/day).
85 thousand m^3/day	3 MMscf/day.
283 thousand m^3/day	10 MMscf/day.

I. Background

Section 112(b) of the Act lists 188 HAP and directs the EPA to develop rules to control all major and some area sources emitting HAP. On July 16, 1992 (57 FR 31576), the EPA published a list of major and area sources for which NESHAP are to be published (i.e., the source category list). Oil and natural gas production facilities were listed as a category of major sources.

The EPA included natural gas transmission and storage facilities in the proposed initial listing of source categories that was published in 1991. Comments received on the proposed initial list indicated that this source category did not contain major sources of HAP. As a result, natural gas transmission and storage facilities were not included as a distinct source category in the July 1992 final list of source categories of major sources of HAP.

During the development of the standards for the oil and natural gas production source category, information was obtained on glycol dehydration unit HAP emissions that are representative of both oil and natural gas production facilities and natural gas transmission and storage facilities. The information indicated that natural gas transmission and storage facilities have the potential to be major HAP sources. In addition, representatives of the natural gas transmission and storage source category stated to the EPA that there are major source glycol dehydration units in the source category. Therefore, the EPA amended the source category list on February 12, 1998 (63 FR 7155) to add natural gas transmission and storage as a major source category.

On February 6, 1998, the EPA also gave notice of its intention to add oil and natural gas production as an area source category (63 FR 6291), but did not amend the source category list to include such a category. In order to ensure that regulations applicable to the area source category are consistent with the Urban Air Toxics Strategy, to be implemented under section 112(k) of the Act, the EPA has deferred the regulation of oil and natural gas production facilities which are area sources until the Urban Air Toxics Strategy is finalized. The EPA expects this strategy to be finalized later this year.

II. Summary of Considerations in Developing the Rules

A. Purpose of the Regulations

The Act was developed, in part,

* * * to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population [the Act, section 101(b)(1)].

Oil and natural gas production and natural gas transmission and storage facilities are major and area sources of HAP emissions. The EPA estimates that approximately 67,000 Mg/yr of HAP are emitted from facilities in the oil and natural gas production source category and 2,100 Mg/yr of HAP are emitted from facilities in the natural gas transmission and storage source category. The primary HAP associated with oil and natural gas that have been identified include BTEX and n-hexane. Exposure to these chemicals has been demonstrated to cause adverse health effects. The likelihood of these adverse health effects depends on the range of ambient concentrations and the amount, frequency, and duration of exposures. The ambient concentrations are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Exposure and health impacts due to the ambient concentrations are dependent on multiple factors that affect human variability such as genetics, age, health status (e.g., the presence of pre-existing disease), lifestyle, location of residence, activity patterns, and other factors.

Benzene, one of the HAP associated with these NESHAP, is classified as a known human carcinogen based on convincing human evidence (such as observed increases in the incidence of leukemia in exposed workers), as well as supporting evidence from animal studies. In addition, short-term inhalation of high benzene levels may cause nervous system effects such as drowsiness, dizziness, headaches, and unconsciousness in humans. At even higher concentrations of benzene, exposure may cause death, while lower concentrations may irritate the skin, eyes, and upper respiratory tract. Long-term inhalation exposure to benzene may cause various disorders of the blood, and toxicity to the immune system. Reproductive disorders in women, as well as developmental effects in animals, have also been reported for benzene exposure.

Short-term inhalation of relatively high concentrations of toluene by humans may cause nervous system effects such as fatigue, sleepiness, headaches, and nausea, as well as

irregular heartbeat. Repeated exposure to high concentrations may cause additional nervous system effects, including incoordination, tremors, death of brain cells, involuntary eye movements, and may impair speech, hearing, and vision. Long-term exposure to toluene by humans has also been reported to irritate the skin, eyes, and respiratory tract, and to cause dizziness, headaches, and difficulty with sleep. Children whose mothers have been exposed to high levels of toluene before birth may suffer nervous system dysfunction, attention deficits, and minor face and limb defects. Inhalation of toluene by pregnant women may also increase the risk of spontaneous abortion. Not enough information exists to determine toluene's carcinogenic potential.

Short-term inhalation of high levels of ethyl benzene by humans may cause throat and eye irritation, chest constriction, and dizziness. Long-term inhalation of ethyl benzene by humans may cause blood disorders. Animal studies have reported blood, liver, and kidney effects associated with ethyl benzene inhalation. Birth defects have been reported in animals exposed via inhalation; whether these effects may occur in humans is not known. Not enough information exists concerning ethyl benzene to determine its carcinogenic potential.

Short-term inhalation of high levels of mixed xylenes (a mixture of three closely-related compounds) by humans may cause irritation of the nose and throat, nausea, vomiting, gastric irritation, mild transient eye irritation, and neurological effects. Long-term inhalation of high levels of xylene in humans may result in nervous system effects such as headaches, dizziness, fatigue, tremors, and incoordination. Other reported effects include labored breathing, heart palpitation, severe chest pain, abnormal heart functioning, and possible effects on the blood and kidneys. Developmental effects have been reported in animals from xylene exposure via inhalation. Not enough information exists to determine the carcinogenic potential of mixed xylenes.

Short-term inhalation of high levels of n-hexane by humans may cause mild central nervous system effects (dizziness, giddiness, slight nausea, and headache) and irritation of the skin and mucous membranes. Long-term inhalation exposure to high levels of n-hexane by humans has been reported to cause nerve damage expressed as numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue. Reproductive effects have been reported in animals after inhalation exposure (testicular damage in rats). Not enough information exists concerning n-hexane to determine its carcinogenic potential.

The EPA estimates that the NESHAP will reduce HAP emissions from those impacted HAP emission points in the oil and natural gas production source category by 77 percent and will reduce HAP emissions from impacted glycol dehydration units in the natural gas transmission and storage source category by 95.0 percent.

B. Technical Basis of Regulations

Section 112 of the Act regulates stationary sources of HAP. Section 112(b) of the Act lists 188 chemicals, compounds or groups of chemicals as HAP. The EPA is directed by section 112 to regulate the emission of HAP from stationary sources by establishing national emission standards.

Section 112(a)(1) of the Act defines a major source as:

> * * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit considering controls, in the aggregate 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

An area source is defined as a stationary source that is not a major source.

For major sources, the statute requires the EPA to establish standards that reflect the maximum degree of reduction in HAP emissions through application of maximum achievable control technology (MACT). Further, the EPA is required to establish standards that are no less stringent than the level of control defined under section 112(d)(3) of the Act, often referred to as the MACT floor. The final standards for major sources in the oil and natural gas production and natural gas transmission and storage source categories are based on the MACT floor for these source categories.

Prior to proposal, information on industry processes and operations, HAP emission points, and HAP emission reduction techniques were collected through section 114 questionnaires that were distributed to companies in the oil and natural gas production and natural gas transmission and storage source categories. These companies provided information on their representative facilities.

This information was used, in part, as the technical basis for determining the MACT level of control for the emission points covered under the final standards. In addition to information collected in the questionnaires, the EPA considered information available in the general literature, information submitted by industry on technical issues subsequent to the questionnaire responses, and additional information received during the public comment period for the proposed rules, in developing the final rules.

C. Stakeholder and Public Participation

In the development of these final standards, numerous representatives of the oil and natural gas production industry, the natural gas transmission and storage industry, and other interested parties were consulted. Industry representatives assisted in data gathering, arranging site visits, technical review, and sharing of industry-sponsored data collection activities. A data base comprised of all industry-supplied information was developed for evaluating HAP emissions and air emission controls for the final standards.

The standards for the oil and natural gas production and natural gas transmission and storage source categories were proposed in the **Federal Register** on February 6, 1998 (63 FR 6288). The preamble to the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. To provide interested parties the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered at proposal. However, the public did not request a hearing and, therefore, one was not held. The public comment period was from February 6, 1998 to April 7, 1998. Fifty comment letters were received. Commenters included industry representatives, trade associations, State agencies, and other interested parties.

On January 15, 1999, in response to comments received on the proposal, the EPA also published a supplemental notice announcing the availability of additional data collected from facilities in the natural gas transmission and storage source category (64 FR 2611). Four comment letters were received from industry representatives and trade associations.

All of the comments were carefully considered and changes were made to the proposed standards when determined by the EPA to be appropriate. A detailed discussion of these comments and responses can be found in a document entitled "National Emissions Standards for Hazardous Air Pollutants for Source Categories: Oil and Natural Gas Production and Natural Gas Transmission and Storage—Background Information for Final Standards: Summary of Public Comments and Responses" (BID volume 2), which is referenced in the **ADDRESSES** section of this preamble (EPA–453/R/99–004b, May 1999). The summary of comments and responses in the BID volume 2 serves as the basis for the revisions that have been made to the standards between proposal and promulgation. Section V of this preamble discusses the major changes.

III. Summary of Promulgated Standards

A. Promulgated Standards for Oil and Natural Gas Production for Major Sources

This final action amends title 40, chapter I, part 63 of the Code of Federal Regulations by adding a new Subpart HH—National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities. The standards apply to owners and operators of facilities that process, upgrade, or store (1) hydrocarbon liquids (with the exception of those facilities that exclusively handle black oil) to the point of custody transfer and (2) natural gas from the well up to and including the natural gas processing plant. The standards limit HAP emissions from the following emission points at facilities that are major sources of HAP: (1) process vents on glycol dehydration units, (2) storage vessels with flash emissions, and (3) equipment leaks at natural gas processing plants.

As required by the Act, the determination of a facility's potential to emit HAP and, therefore, its status as a major source, is based on the total of all HAP emissions from all activities at a facility, except that section 112(n)(4) of the Act prohibits aggregating emissions from oil or gas exploration or production wells (and their associated equipment) and emissions from pipeline compressor or pump stations with emissions from other similar units. A definition of associated equipment is contained in the final standards.

To determine potential emissions for determining major source status, the final standards specify that an owner or operator that can document a decline in annual production each year for 5 years prior to the effective date of the rule must calculate the maximum facility throughput as the average of the annual throughput for the 3 years prior to the effective date of the rule, multiplied by 1.2. If any increase in production is observed over the 5 years prior to the effective date of the rule, the owner or operator must calculate the maximum facility throughput as the maximum annual throughput over the 5 years prior to the effective date times 1.2. The owner or operator must recalculate the maximum throughput if actual annual throughput increases to a rate above the calculated values. In addition, for other parameters used to estimate emissions, the owner or operator must use the maximum value measured over the period for which the maximum throughput is calculated and may be determined as an annual average or the highest single measured value.

1. Applicability

The final standards for oil and natural gas production facilities require that the owner or operator of a major source of HAP reduce HAP emissions from glycol dehydration units and storage vessels through the application of air emission control equipment or pollution prevention measures, or a combination of both. In addition, the owner or operator of a natural gas processing plant that is a major source of HAP is required to reduce HAP emissions from equipment leaks by establishing a leak detection and repair (LDAR) program.

The following are exempt from the requirements of subpart HH:

- Owners and operators of facilities that exclusively process, handle, and store black oil are not subject to the final standards. Black oil is defined in the final rule as a hydrocarbon liquid with an initial gas-to-oil ratio (GOR) less than 0.31 cubic meters per liter (m^3/liter) and an American Petroleum Institute (API) gravity less than 40 degrees. For this subpart, a facility that uses natural gas for fuel or generates gas from black oil still qualifies for this exemption.
- Oil and natural gas production facilities prior to the point of custody transfer that have a facilitywide actual annual average natural gas throughput less than 18.4 thousand cubic meters per day (m^3/day), and a facilitywide actual annual average hydrocarbon liquid throughput less than 39,700 liters per day (liter/day.) Oil and natural gas production facilities after the point of custody transfer, including natural gas processing plants, do not qualify for these exemptions.

2. Glycol Dehydration Unit Process Vent Standards

The MACT standard for process vents on new and existing glycol dehydration units was set at the floor level of control. To determine the MACT floor, the EPA divided glycol dehydration units into two sizes: (1) small glycol dehydration units with actual annual average natural gas throughputs less than 85 thousand m^3/day or with actual average benzene emissions less than 0.90 Mg/yr, and (2) large glycol dehydration units with actual annual average natural gas throughputs equal to or greater than 85 thousand m^3/day or with actual average benzene emissions equal to or greater than 0.90 Mg/yr. For small glycol dehydration units, the EPA determined that the MACT floor was no control and that it was not cost effective to select a regulatory alternative beyond the floor.

For large glycol dehydration units, the EPA reviewed the information that was available to develop a MACT floor (a detailed discussion of the development of the MACT floor can be found in the docket, Air Docket A–94–04). This information consisted of data gathered from: (1) industry responses to the EPA's Air Emission Survey Questionnaires, (2) site visits, (3) meetings with stakeholders, and (4) literature.

As required under section 112(d) of the Act, the EPA developed the MACT floor based on "* * * the average limitation achieved by the best performing 12 percent of the existing sources * * *." The EPA obtained information on 200 glycol dehydration units that were considered to be major sources of HAP (prior to control). Of these, 34 percent (67 units) were controlled using a variety of control technologies, including: condensation, combustion, and a combination of condensation and combustion. The types of control technologies used by the industry have been demonstrated, in other applications, to achieve varying levels of emission reduction (ranging from 95.0 to 98 percent or better). The EPA could not identify a technical basis for the variation in the performance levels achieved by the controls reported to be used to control process vents on glycol dehydration units. In order to account for the variability in HAP emission reduction efficiencies, the EPA selected 95.0 percent as the required emission reduction (i.e., the MACT floor) for large glycol dehydration units in the oil and natural gas production source category.

The final standards require that all process vents on new and existing glycol dehydration units that are located at major HAP sources be controlled unless (1) the actual flowrate of natural gas to the glycol dehydration unit is less than 85 thousand m^3/day, on an annual average basis; or (2) the actual average benzene emissions from the glycol dehydration unit are less than 0.90 Mg/yr. Glycol dehydration units that meet these criteria are not subject to the control requirements of subpart HH.

Glycol dehydration units that are subject to the control requirements are required to connect, through a closed-vent system, each process vent on the glycol dehydration unit to an air

emission control system. The control system must reduce emissions: (1) by 95.0 percent or more of HAP, (2) to an outlet concentration of 20 parts per million by volume (ppmv) or less (for combustion devices), or (3) to a benzene emission level of 0.90 Mg/yr or less. Pollution prevention measures, such as process modifications or combinations of process modifications and one or more control devices that reduce the amount of HAP emissions generated, are allowed as an alternative provided they achieve the required emission reductions.

3. Storage Vessel Standards

Final standards are established for existing and new storage vessels with the potential for flash emissions that are located at major HAP sources. Storage vessels with the potential for flash emissions are defined as those that contain a hydrocarbon liquid with a storage tank GOR equal to or greater than 0.31 m^3/liter, an API gravity equal to or greater than 40 degrees, and an actual annual average throughput of hydrocarbon liquids equal to or greater than 79,500 liter/day.

Flash emissions from storage vessels occur when a hydrocarbon liquid with a high vapor pressure flows from a pressurized vessel into a vessel with a lower pressure. Flash emissions typically occur when a hydrocarbon liquid, such as condensate, is transferred from a production separator to a storage vessel. The final standards require that storage vessels with the potential for flash emissions be equipped with an air emission control system.

Under the final standards, a storage vessel with the potential for flash emissions is required to be equipped with a cover vented through a closed-vent system to a control device that (1) recovers or destroys HAP emissions with an efficiency of 95.0 percent or greater, or (2) for combustion devices, reduces HAP emissions to an outlet concentration of 20 ppmv or less.

A pressurized storage vessel that is designed to operate as a closed system is considered in compliance with the promulgated requirements for storage vessels. In addition, owners or operators that are meeting the requirements of 40 CFR part 60, subpart Kb; 40 CFR part 63, subpart G; or 40 CFR part 63, subpart CC, are also considered in compliance.

4. Standards for Equipment Leaks

The final rule requires owners and operators of natural gas processing plants that are major HAP sources to control HAP emissions from leaks from ancillary equipment and compressors that contain or contact a liquid or gas that has a total volatile hazardous air pollutant (VHAP) concentration equal to or greater than 10 percent by weight. The final equipment leak standards do not apply to ancillary equipment and compressors that operate in VHAP service less than 300 hours per year. Also, an owner or operator that is subject to and controlled under the provisions of 40 CFR part 60, subpart KKK; or 40 CFR part 61, subpart V; or 40 CFR part 63, subpart H, is only required to comply with the requirements of that subpart.

For equipment subject to these standards at either an existing or new source, the owner or operator is required to implement a LDAR program and where necessary, perform equipment modifications. Pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service within a process unit that is located (1) at a nonfractionating facility that processes less than 283 thousand m^3/day, or (2) on the Alaskan North Slope, are exempt from some of the routine LDAR monitoring requirements. In addition, reciprocating compressors in wet gas service are exempt from the compressor requirements.

5. Air Emission Control Equipment Requirements

Specific performance and operating requirements are included for each control device installed by the owner or operator. Control devices are required to reduce the mass content of the gases vented to the device (1) by 95.0 percent or greater by weight as total organic compounds (TOC), less methane and ethane, or total HAP; or (2) for combustion devices, to an outlet HAP or TOC concentration of 20 ppmv or less.

Closed vent systems that contain bypass devices that could divert vent streams away from the control device must either install a flow indicator or secure the bypass valve in the nondiverting position to ensure that the control device is not bypassed.

Certain specifications for covers apply based on the type of cover and where the cover is installed. Requirements are specified for vapor leak-tight covers installed on storage vessels.

6. Test Methods and Procedures

An owner or operator must be able to demonstrate that the criteria for exemptions from control requirements are met when controls are not applied or when existing controls are adequate to meet the exemption criteria. For example, owners or operators of glycol dehydration units that do not install air emission controls because the actual average benzene emission rate from the unit is less than 0.90 Mg/yr must be able to demonstrate that the actual average benzene emission rate from the unit is less than 0.90 Mg/yr.

Procedures for demonstrating the HAP emission reduction efficiency of control devices and HAP concentration are consistent with procedures established in previously promulgated NESHAP that apply to emission sources similar to those addressed in the final standards. Engineering calculations, modeling (using EPA-approved models), and previous test results are generally acceptable means of demonstrating compliance, except where such means are not conclusive. Test procedures are specified in the final rule for use when testing is required to demonstrate compliance.

An alternative test procedure is provided to demonstrate control efficiency when a condenser is used for controlling emissions from a glycol dehydration unit reboiler vent. The inclusion of the alternative test procedure is appropriate in this standard because of difficulties associated with testing the inlet to a condenser in this application.

Procedures and test methods are also specified for the detection of leaks from ancillary equipment and compressors and leaks in covers and closed vent systems.

7. Monitoring and Inspection Requirements

The final standards require that the owner or operator periodically inspect and monitor air emission control equipment. Periodic inspections are required for certain types of covers to ensure gaskets and seals are in good condition and for closed-vent systems to ensure all fittings remain leak-tight. An owner or operator is required to periodically perform these inspections to determine and ensure that these equipment operate with no leaks.

For covers, the owner or operator is required to perform initial and semiannual visual inspections. For closed vent systems, the owner or operator is required to perform an initial leak inspection and annual visual inspections to detect leaks. In addition, the owner or operator of closed vent system components that are not permanently or semi-permanently sealed must perform annual leak inspections.

The final standards require continuous monitoring of control device operation through the use of automated instrumentation. Continuous monitoring systems measure and record control device operating parameters to ensure compliance with the standards.

8. Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements associated with the final standards are primarily those specified in the part 63 General Provisions (40 CFR 63, subpart A). Major sources are subject to all of the requirements of the General Provisions with the exception that (1) owners or operators are allowed up to 1 year from the effective date of the standards to submit the initial notification described in § 63.9(b) of subpart A; and (2) owners or operators are allowed to submit Periodic reports and startup, shutdown, and malfunction reports semiannually instead of quarterly. The EPA selected these specific exceptions due to the large number of facilities that need to submit notifications or reports related to the NESHAP. The EPA believes that these exceptions will not adversely affect the implementation of the final regulation or reduce its impact on HAP emissions.

B. Promulgated Standards for Natural Gas Transmission and Storage for Major Sources

The final standards amend title 40, chapter I, part 63 CFR by adding a new Subpart HHH—National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities. The standards apply to owners and operators of facilities that process, upgrade, transport or store natural gas prior to delivery to a local distribution company (LDC) or a final end user if no LDC is present. A compressor station that transports natural gas to a natural gas processing plant is considered a part of the oil and natural gas production source category.

A facility's potential to emit is required to be calculated based on a maximum facility throughput. For storage facilities or facilities that store and transport natural gas, the final rule specifies procedures for calculating this maximum throughput based on the facility's maximum withdrawal and injection rates and the working gas capacity of the storage field. Facilities that only transport natural gas are required to calculate maximum throughput as the highest annual throughput over 5 years prior to the effective date of the rule, multiplied by 1.2. The owner or operator must also establish maximum values of other parameters required to calculate emissions over the same period used to determine maximum throughput.

1. Applicability

The final standards for natural gas transmission and storage facilities require that the owner or operator of a major source of HAP reduce HAP emissions from glycol dehydration units through the application of air emission control equipment or pollution prevention measures, or a combination of both. The owner or operator of a facility that processes less than 28.3 thousand m^3/day of natural gas facilitywide on an actual annual average basis, where glycol dehydration units are the only HAP emission points, is exempt from the requirements of subpart HHH.

2. Glycol Dehydration Unit Process Vent Standards

The MACT standard for process vents on new and existing glycol dehydration units was set at the floor level of control. To determine the MACT floor, the EPA divided glycol dehydration units into two sizes: (1) small glycol dehydration units with actual annual average natural gas throughputs less than 283 thousand m^3/day or with actual average benzene emissions less than 0.90 Mg/yr, and (2) large glycol dehydration units with actual annual average natural gas throughputs equal to or greater than 283 thousand m^3/day or with actual average benzene emissions equal to or greater than 0.90 Mg/yr. As discussed in the January 15, 1999 supplemental notice (64 FR 2611), the EPA determined that the MACT floor for large glycol dehydration units was 95.0 percent control. For small glycol dehydration units, the EPA determined that the MACT floor was no control and that it was not cost effective to select a regulatory alternative beyond the floor.

The final standards require that all process vents on new and existing glycol dehydration units that are located at major HAP sources be controlled unless (1) the actual annual average flowrate of natural gas to the glycol dehydration unit is less than 283 thousand m^3/day, or (2) the actual average benzene emissions from the glycol dehydration unit are less than 0.90 Mg/yr.

Glycol dehydration units that are subject to the control requirements are required to connect, through a closed-vent system, each process vent on the glycol dehydration unit to an air emission control system that reduces emissions: (1) by 95.0 percent or more of HAP, (2) to an outlet HAP concentration of 20 ppmv or less, for combustion devices, or (3) to a benzene emission level of 0.90 Mg/yr or less. As with the final standards for the oil and natural gas production NESHAP, pollution prevention measures, such as process modifications (or combinations of process modifications and control devices) that reduce the amount of HAP emissions generated, are allowed as an alternative provided they achieve the required emission reductions.

3. Air Emission Control Equipment Requirements

Specific performance and operating requirements are included for each control device installed by the owner or operator. Control devices are required to reduce the mass content of the gases vented to the device (1) by 95.0 percent or greater by weight as TOC, less methane and ethane, or total HAP; or (2) for combustion devices, to an outlet HAP or TOC concentration of 20 ppmv or less.

Closed vent systems that contain bypass devices that could divert vent streams away from the control device must either install a flow indicator or secure the bypass valve in the nondiverting position to ensure that the control device is not bypassed.

4. Test Methods and Procedures

An owner or operator must be able to demonstrate that the criteria for exemptions from control requirements are met when controls are not applied or when existing controls are adequate to meet the exemption criteria. For example, owners or operators of glycol dehydration units that do not install air emission controls because the actual average benzene emission rate from the unit is less than 0.90 Mg/yr must be able to demonstrate that the actual average benzene emission rate from the unit is less than 0.90 Mg/yr.

Procedures for demonstrating the HAP emission reduction efficiency of control devices and HAP concentration are consistent with procedures established in previously promulgated NESHAP that apply to emission sources similar to those addressed in the final standards. Engineering calculations, modeling (using EPA-approved models), and previous test results are generally acceptable means of demonstrating compliance, except where such means are not conclusive. Test procedures are specified in the final rule for use when testing is required to demonstrate compliance.

An alternative test procedure is provided to demonstrate control efficiency when a condenser is used for controlling emissions from a glycol dehydration unit reboiler vent. The inclusion of the alternative test procedure is appropriate in this standard because of difficulties

associated with testing the inlet to a condenser in this application. Procedures and test methods are also specified for detection of leaks in closed-vent systems.

5. Monitoring and Inspection Requirements

The monitoring and inspection requirements are (1) periodic control equipment monitoring, (2) initial leak detection inspections for closed-vent systems to ensure all fittings are leak-tight, (3) annual visual inspections of closed-vent systems (closed vent system components that are not permanently or semi-permanently sealed are also required to be annually inspected for leaks), and (4) continuous monitoring of control device operation. Continuous monitoring requires the use of automated instrumentation that measures and records control device compliance operating parameters.

C. Recordkeeping and Reporting Provisions

The recordkeeping and reporting requirements associated with the final standards are primarily those specified in the part 63 General Provisions (40 CFR 63, subpart A). Major sources are subject to all of the requirements of the General Provisions, except that (1) owners or operators are allowed up to 1 year from the effective date of the standards to submit the initial notification required under § 63.9(b) of subpart A and (2) owners or operators are allowed to submit Periodic reports and startup, shutdown, and malfunction reports semiannually instead of quarterly. These exceptions were selected to maintain consistency between the major source provisions of the final regulations for natural gas transmission and storage facilities and oil and natural gas production facilities.

IV. Summary of Impacts

A. HAP Emission Reductions

For major sources, the EPA estimated that the final oil and natural gas production standards for existing sources will result in a reduction of HAP emissions from 39,000 Mg/yr to 9,000 Mg/yr. In addition, HAP emissions would be reduced by 3,000 Mg/yr for new sources over the first 3 years after promulgation of these standards.

Table 1 presents the major source emission reductions, in addition to other environmental, energy, and cost impacts, that the EPA estimates will occur from the implementation of the standards for oil and natural gas production.

TABLE 1.—SUMMARY OF ESTIMATED ENVIRONMENTAL, ENERGY, AND ECONOMIC IMPACTS EXISTING AND NEW MAJOR SOURCES

Impact category	Existing oil and natural gas production	New oil and natural gas production	Existing natural gas transmission and storage *
Estimated number of impacted facilities	440	44	7
Emission reductions (Mg/yr):			
HAP	30,000	3,000	390
VOC	61,000	6,100	610
Methane	7,000	700	230
Secondary environmental emission increases (Mg/yr):			
Sulfur oxides	<1	<1	<1
Nitrogen oxides	<5	<1	<1
Carbon monoxide	<1	<1	<1
Energy (Kilowatt hours per year)	38,000	3,800	None
Implementation costs (Million of July 1993 $):			
Total installed capital	6.5	0.7	0.28
Total annual	4.0	0.4	0.3

*No new major sources are anticipated for this source category after the effective date for new sources and in the first 3 years following promulgation of the rule.

The EPA estimates that the final natural gas transmission and storage standards for existing sources will result in a reduction of HAP emissions from 2,100 Mg/yr to 1,710 Mg/yr. No new major sources are anticipated in the first 3 years after promulgation of this NESHAP. Table 1 also presents the major source emission reductions, in addition to other environmental, energy, and cost impacts, that the EPA estimates will occur from the implementation of the standards for existing natural gas transmission and storage facilities.

The air emission reductions achieved by these standards, when combined with the air emission reductions achieved by other standards mandated by the Act, will accomplish the primary goal of the Act to: * * * enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.

B. Secondary Environmental Impacts

Other environmental impacts are those associated with operation of certain air emission control devices. The EPA's secondary air emissions impact analyses for the oil and natural gas production source category consider a facility's ability to handle collected vapors. Some remotely located facilities may not be able to use collected vapor for fuel or recycle it back into the process. In addition, it may not be technically feasible for some facilities to safely utilize the non-condensable vapor streams from condenser systems as an alternative fuel source. An option for these facilities is to combust these vapors by flaring, rather than installing condensers.

These limitations are reflected in the analyses conducted by the EPA. In the analyses, the EPA estimated that (1) 45 percent of all impacted production facilities will be able to use collected vapors from installed control options as an alternative fuel source for an on-site combustion device such as a process heater or the glycol dehydration unit firebox, (2) 45 percent will be able to recycle collected vapors from installed control options into a low pressure header system for combination with other hydrocarbon streams handled at the facility, and (3) 10 percent will direct all collected vapor to an on-site flare. The secondary air impacts are associated with flare operations.

The adverse secondary air impacts would be minimal in comparison to the primary HAP reduction benefits from the implementation of the control options for major oil and natural gas sources. The estimated national annual increase in secondary air pollutant emissions that would result from the use of a flare to comply with the standards is estimated to be less than 1.0 Mg/yr for both sulfur oxide (SO_X) and carbon monoxide (CO) and less than 5 Mg/yr for nitrogen oxides (NO_X). These estimates are for major oil and natural gas production sources.

The anticipated increases in secondary air pollutant emissions are based on six affected facilities utilizing flares and are estimated to be less than 1.0 Mg/yr for SO_X, CO, and NO_X, each, from the implementation of the control options for major sources at natural gas transmission and storage facilities.

The adverse water impacts anticipated from the implementation of control options for the standards are expected to be minimal. The water impacts associated with the installation of a condenser system for the glycol dehydration unit reboiler vent would be minimal. This is because the condensed water collected with the hydrocarbon condensate can be directed back into the system for reprocessing with the hydrocarbon condensate or, if separated, combined with produced water for disposal by reinjection.

Similarly, the water impacts associated with installation of a vapor control system would be minimal. This is because the water vapor collected along with hydrocarbon vapors in the vapor collection and redirect system can be directed back into the system for reprocessing with the hydrocarbon condensate or, if separated, combined with the produced water for disposal by reinjection.

There are no adverse solid waste impacts anticipated from the implementation of the standards.

C. Energy Impacts

Energy impacts are those energy requirements associated with the operation of emission control devices. The EPA estimated that the operation of add-on control devices (e.g., condensers, flares, etc.) would not require additional energy. Vapor collection and redirect systems used for the control of emissions from a fixed-roof storage vessel require electricity for operation of the primary components of the system, including fans and blowers.

The EPA estimated that the annual energy requirements for each vapor collection/recovery system installed to comply with the oil and natural gas production storage vessel standards are estimated to be 300 kilowatt hours per year (kW-hr/yr). The EPA also estimated that approximately 125 oil and natural gas production major source facilities would install this control option. The national energy demand increase for existing sources was estimated to be 38,000 kW-hr/yr.

Because storage vessels are not regulated under the natural gas transmission and storage NESHAP, the EPA estimated that there would be no national energy demand increase from the operation of any of the control options analyzed under the natural gas transmission and storage standards for major sources.

The standards encourage the use of emission controls that recover hydrocarbon products, such as methane and condensate, that can be used on-site as fuel or reprocessed, within the production process, for sale. Thus, the standards have a positive impact associated with the recovery of non-renewable energy resources.

D. Cost Impacts

The estimated total capital cost to comply with the rule for existing major sources in the oil and natural gas production source category is approximately $6.5 million. The total capital cost for new major sources is estimated to be approximately $700,000.

The total estimated net annual cost to industry to comply with the requirements for existing major sources in the oil and natural gas production source category is approximately $4.0 million per year. The total net annual cost for new major sources is approximately $400,000 per year. These estimated annual costs include (1) the cost of capital; (2) operating and maintenance costs; (3) the cost of monitoring, recordkeeping, and reporting (MRR); and (4) any associated product recovery credits.

The estimated total capital cost to comply with the rule for major sources in the natural gas transmission and storage source category is approximately $280,000.

The total estimated net annual cost to industry to comply with the requirements for major sources in the natural gas transmission and storage source category is approximately $300,000. As with the oil and natural gas production total estimated annual cost to industry, this annual cost estimate includes (1) the cost of capital, (2) operating and maintenance costs, (3) the cost of MRR, and (4) any associated product recovery credits.

E. Economic Impacts

The EPA prepared an economic impact analysis that evaluates the impacts of the regulation on affected producers, consumers, and society. The economic analysis focuses on the regulatory effects on the U.S. natural gas market that is modeled as a national, perfectly competitive market for a homogenous commodity. The analysis does not include a model to assess the regulatory effects on the world crude oil market because the regulation is anticipated to affect less than 5 percent of the total U.S. crude oil production, and thus, it is unlikely to have any influence on the U.S. supply of crude oil or world crude oil prices.

The imposition of regulatory costs on the natural gas market result in negligible changes in natural gas prices, output, employment, foreign trade, and business profitability. Price and output changes as a result of the regulation are less than 0.0005 of 1 percent, which is significantly less than observed market trends. For example, between 1992 and 1993 the average change in wellhead price increased by 14 percent, while domestic production rose by 3 percent.

The total annual social cost of the regulation is $4.6 million, which accounts for the compliance cost imposed on producers, as well as market adjustments that influence the revenues to producers and consumption by end users, plus the associated deadweight loss to society of the reallocation of resources.

V. Significant Comments and Changes to the Proposed Standards

In response to comments received on the proposed standards, several changes have been made to the final rules. While several of these changes are clarifications designed to clarify the Agency's original intent, a number of them are significant changes to the proposed standard requirements. A summary of the substantive comments and/or changes made since proposal are described in the following sections. Detailed Agency responses to public comments and the revised analysis for the final rule are contained in the BID, volume 2 (EPA–453/R–99–004b, May 1999) and docket (see **ADDRESSES** section of this preamble).

A. Definition of Facility

The EPA developed the proposed definition of facility to (1) identify criteria that define a grouping of emission points that meet the intent of the language contained in section 112(a)(1) of the Act: "* * * located within a contiguous area and under

common control, * * *"; and (2) contain terms that are meaningful and easily understood within the regulated industries. The proposed definition was based on individual surface sites and the idea that equipment located on different oil and gas properties (oil and gas lease, mineral fee tract, subsurface unit area, surface fee tract, or surface lease tract) shall not be aggregated. In addition, the proposed definition of a production field facility was limited to glycol dehydration units and storage vessels with the potential for flash emissions. The EPA requested comments on the proposed definition of facility. Specifically, the EPA requested comments on whether the proposed definition appropriately implements the intent of the major source definition in section 112(a)(1) for the oil and natural gas production and natural gas transmission and storage source categories or whether another definition would better implement this intent.

Several commenters responded to the EPA's request for comments on the definition of facility. The commenters requested clarification of, or suggested changes to, the proposed definition of facility. The commenters were primarily concerned that large groupings of equipment would inappropriately be considered a part of the same facility, resulting in a major source determination. In particular, the commenters were concerned about how subparts HH and HHH would treat units, contiguous surface sites, and surface sites with equipment under separate ownership. The commenters requested clarification of the definition of facility to prevent this confusion.

The EPA intended that the facility definition, as it applies to the oil and natural gas production source category, should lead to an aggregation of emissions in a major source determination that is reasonable, consistent with the intent of the Act, and easily implementable.

The EPA believes that it would not be reasonable to aggregate emissions from surface sites that are located on the same lease, but are great distances apart. The definition of facility states that equipment located on different oil and natural gas properties (e.g., leases) are not to be aggregated. Although units (which are made up of more than lease or tract) are under common control, under the definition of facility, the equipment located on different leases contained within each unit would not be aggregated.

Under section 112(a)(1) of the Act, a major source is defined as "* * * any stationary source or group of stationary sources located within a contiguous area and under common control.* * *" The EPA believes that by defining facility based on individual surface sites, the EPA has provided relief for individual surface sites that are located on the same lease, but are far apart, and excluding contiguous surface sites located on the same lease would be contrary to the intent of the Act.

Finally, the terms contained in the definition of facility (e.g., surface site and lease) are well understood within the industry and by enforcement agencies, and the EPA does not believe that additional definitions or clarifications regarding these terms are necessary.

In response to comments regarding specific clarification to the definition of facility, the EPA has made several changes to the definition of facility. The EPA modified the definition of facility to point to the definition of "surface site." In subpart HHH, the EPA has added a definition of "surface site," and modified the definition of facility to point to the new definition of "surface site."

The EPA further modified the definition of facility in subpart HH by: (1) specifying that "upgraded" means "the removal of impurities or other constituents to meet contract specifications"; (2) changing the term "unit areas" to "surface unit areas"; and (3) specifying that separate surface sites, whether or not connected by a road, waterway, power line or pipeline, would not be considered a part of the same facility.

Commenters recommended that the EPA expand its definition of production field facility in subpart HH to include additional HAP emission points beyond glycol dehydration units and storage vessels with flash emission potential. The concern was that several facilities that could otherwise be major sources of HAP would be exempt from subpart HH under the proposed definition of facility.

One of the EPA's objectives was to develop a definition of facility that would comply with section 112(n)(4) of the Act and at the same time, reduce the burden on owners and operators in making a major source determination. The EPA's evaluation of HAP emission sources in production field operations suggested that other potential HAP emission points at these facilities (e.g., equipment leaks) would be inconsequential to the determination of a facility's major source status. The EPA believes that eliminating the need to quantify HAP emissions from small sources at production field facilities would not affect the major source status determination, but would reduce the burden on owners or operators.

Other commenters requested that the EPA clarify, within the definition of facility in subpart HHH, whether the EPA intended to exclude facilities used to store natural gas after the gas enters the local distribution system of a gas utility. The commenter recommended that the EPA clarify that the definition of facility applies all the way to the end user only if there is no local distribution company.

The affected source in the natural gas transmission and storage source category should run all the way to the end user only if there is no local distribution company. Therefore, the EPA modified the definition of facility in subpart HHH to state that if there is not a local distribution company, the facility runs to the end user.

Some commenters were concerned that the definition of facility in subpart HH suggests that a natural gas storage facility could qualify as a production facility, since natural gas storage takes place in depleted gas wells, and liquids are transferred for processing to the plant.

Subpart HH contains a definition of field natural gas which means "* * * natural gas that is extracted from a production well prior to entering the first stage of processing, such as dehydration." In addition, a production well is defined in § 63.761 as a "* * * hole drilled in the earth from which * * * field natural gas is extracted." Since the gas handled by a natural gas storage facility has been dehydrated, the EPA believes that the natural gas handled by a storage facility would not be considered field natural gas. Therefore, given the definitions of production well and field natural gas, a natural gas storage field that uses a depleted gas well for storage would not qualify as a production facility. The EPA does not believe that clarification of the definition of facility is necessary in response to this comment.

B. Definition of "Associated Equipment"

Section 112(n)(4)(A) of the Act states:

> * * * emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

According to the statutory definition of major source in section 112(a)(1) of the Act, HAP emissions from all emission points within a contiguous area and under common control must be counted in a major source determination. By stating that emissions from any oil and gas production and exploration well (with its associated equipment) cannot be aggregated for a major source determination, the provisions of section 112(n)(4)(A) mean HAP emissions from each well and each piece of equipment considered to be associated with the well must be evaluated separately in a major source determination. That is, any well or piece of associated equipment would only be determined to be a major source if HAP emissions from that well or piece of associated equipment were major.

Therefore, to implement this special provision of the Act for the oil and natural gas production source category, a definition of "associated equipment" was necessary. However, a definition for the term "associated equipment" was not provided in the statute. The EPA proposed that "associated equipment" be defined as all equipment associated with a production well up to the point of custody transfer, except that glycol dehydration units and storage vessels with the potential for flash emissions would not be associated equipment. In developing this proposed definition, the Agency identified and evaluated several options. The Agency also sought and received input from industry and other stakeholders.

In the proposal, the EPA specifically requested comments on the proposed definition of "associated equipment." The EPA requested that commenters disagreeing with the proposal provide alternative definition options, along with supporting documentation, that would provide the relief that Congress intended for this industry in section 112(n)(4), while preserving the EPA's ability to regulate HAP emissions from glycol dehydration units and storage vessels with the potential for flash emissions.

Several commenters responded to the EPA's request for comments on the EPA's interpretation of the term "associated equipment" as used in section 112(n)(4) of the Act. Although several commenters did not fully support the EPA's interpretation of section 112(n)(4), they acknowledged that the proposed definition of associated equipment is a workable solution in comparison to other options for this definition. According to the commenters, aggregation of glycol dehydration units and storage vessels with flash emission potential would result in the same major source determination as aggregation of all potential sources, but would reduce the burden on the facility operator. Other commenters argued that section 112(n)(4) mandates no aggregation of emissions from individual sources at oil and gas production fields, and that the EPA exceeded its statutory authority by allowing for the aggregation of emissions from glycol dehydration units and storage vessels with the potential for flash emissions.

After consideration of these comments, the EPA agrees with those commenters who supported the proposed definition as a workable solution, and is promulgating the definition as proposed. The EPA disagrees with those commenters who argued that the Agency exceeded its statutory authority for the reasons discussed below.

Section 112(a)(1) generally requires HAP emission points within a contiguous area and under common control to be aggregated in a major source determination for the purposes of section 112. While this approach is appropriate for facilities in most industries, it may lead to unreasonable aggregations if strictly applied to oil and natural gas field operations. Given that some oil and natural gas operations (e.g., a production field) may cover several square miles or that leases and mineral rights agreements give some companies control over a large area of contiguous property, determination of major source status strictly by the language of section 112(a)(1) could mean in this industry that HAP emissions must be aggregated from emission points separated by large distances.

Congress addressed the unique aspects of the oil and natural gas production industry by providing the special provisions in section 112(n)(4) of the Act referring to the "* * * oil and gas exploration and production well (and its associated equipment) * * *." However, Congress did not provide a definition of the term "associated equipment" in the statutory language, leaving its interpretation to the EPA. A definition of this term is important in determining the major source status of facilities in both the oil and natural gas production and the natural gas transmission and storage source categories.

In the absence of clear guidance in the statute, the EPA evaluated various options for defining "associated equipment" prior to proposal. The EPA's objective was to arrive at a reasonable interpretation that would (1) provide substantive meaning to the term "associated equipment" consistent with congressional intent; (2) prevent the aggregation of small, scattered HAP emission points in major source determinations; (3) be easily implementable; and (4) not preclude the aggregation of significant HAP emission points in the source category. Due to the lack of clarity in the statute and the potential impact on major source determinations, the Agency worked with industry stakeholders to identify and evaluate options prior to proposal. Industry representatives expressed their goals for the interpretation of associated equipment, and provided information on the magnitude of HAP emission points and the potential impacts of various options considered by the EPA.

The EPA considered, but rejected, a definition based on a narrow interpretation that would include only valves and fittings on a well as being associated equipment primarily because this option would not provide any additional relief to industry beyond what would have been provided had Congress only used the term "well" in section 112(n)(4) of the Act. The EPA also rejected a definition, initially recommended by industry, that was based on a broad interpretation that would include equipment far beyond the well as associated equipment.

In discussions with industry stakeholders over an extended period of time prior to proposal, the Agency sought to reach a workable solution on the definition of associated equipment, one that recognized the need to implement relief for this industry as Congress intended, and that also allowed for the appropriate regulation of significant emission points. In a technical evaluation, the EPA identified glycol dehydration units and storage tanks with flash emissions as a substantial contribution to HAP emissions from the source category. This conclusion was supported by industry. Under this approach, associated equipment was defined as all equipment up to the point of custody transfer, excluding glycol dehydration units and storage vessels with the potential for flash emissions. This approach also included a definition of facility in the rule that effectively limited the distance over which all emission points (including glycol dehydration units and storage vessels with the potential for flash emissions) may be aggregated. Based on discussions with industry prior to proposal, as well as comments received supporting the proposed definition of associated equipment, the Agency believes that the proposed approach

best meets both industry and EPA goals for implementation of the language of section 112(n)(4).

Commenters who argued that the Agency exceeded its authority with the definition of associated equipment offered no substantive new information to support their claim. The EPA could not find support in the statute or in the legislative history that indicated that Congress intended to preclude aggregation of all emission points, including such significant ones as glycol dehydration units and storage tanks with flash emission potential through their inclusion as associated equipment. Rather, there are clear indications, in the EPA's judgement, that Congress' primary intent was to preclude the aggregation of small emitting sources over vast distances. The legislative history of the Act, for example, indicates that Congress believed that oil and natural gas production wells and their "associated equipment" generally have low HAP emissions, and are typically located in widely dispersed geographic areas, rather than being concentrated in a single area. The EPA used this background as a guide in developing an interpretation of "associated equipment" along with available data on HAP emissions from emission points within the oil and natural gas production source category. The EPA believes that glycol dehydration units and storage vessels with the potential for flash emissions are not the type of small HAP emission points that Congress intended to be included in the definition of associated equipment.

After the EPA's review and consideration of all comments received on the proposal, the definition of associated equipment promulgated in today's rule is the same as proposed.

C. Applicability

1. Black Oil Definition

In the proposed subpart HH, the EPA provided an exemption from the subpart for facilities that exclusively handle black oil. Black oil was defined in subpart HH as a hydrocarbon liquid with an API gravity less than 40 degrees and a GOR less than 0.31 m^3/liter of liquid.

Several commenters questioned the EPA's basis for the black oil definition. The commenters requested that the EPA revise the GOR and API gravity cutoffs. One commenter stated that it was unclear whether the definition of black oil, with the proposed cutoffs, was a determination related to human health risk.

During the development of the proposal, representatives of the oil and natural gas production industry stressed that their industry was composed of large numbers of facilities that handle black oil, and that black oil was not a significant contributor to overall source category HAP emissions. The EPA reviewed the available information and agreed with the industry representatives that facilities that exclusively handle black oil are not significant contributors to overall HAP emissions from the source category. Furthermore, the EPA did not identify control technologies, designed to reduce HAP, in use at existing facilities that exclusively process, handle, or store black oil. Therefore, the EPA determined that the MACT floor for black oil facilities was no control. This determination was not made based on the health risks associated with black oil.

The EPA developed the proposed definition of black oil based on a series of technical articles that describe five basic hydrocarbon fluids that typically exist in a reservoir: black oil, volatile oil, retrograde gas, wet gas, and dry gas (Air Docket A–94–04). Of these, black oil and volatile oil exist as liquid in the reservoir. Black oil, which is a mixture of chemical species ranging from methane to large, heavy, nonvolatile organic molecules, is in solution with dry gas, which is primarily methane. Volatile oil, which contains fewer heavy molecules, is in solution with retrograde gas, which has fewer of the heavy organic molecules.

According to these articles, reservoir fluid types are determined by rules-of-thumb based on an initial producing GOR, stock-tank liquid gravity, and stock tank liquid color. In particular, fluid type is usually determined by initial producing GOR and confirmed by stock tank gravity values and stock tank color. (Note: The distinction between initial producing GOR and producing GOR is important. As reservoir pressure reduces over time, the producing GOR for black oil increases. Therefore, if any other GOR is used, the facility may not appear to qualify for the exemption.) The rule-of-thumb for volatile oil is an initial producing GOR of 0.31 m^3/liter. Volatile oil is also suspected if the API gravity is equal to or greater than 40 degrees and a color that is brown, reddish, orange, or green. The rule-of-thumb for black oil is an initial producing GOR less than 0.31 m^3/liter, an API gravity of less than 45 degrees, and a color that is dark, usually black (sometimes with a greenish cast) or brown.

Since color determination is subjective, the EPA selected initial producing GOR and API gravity as quantifiable criteria for defining black oil. In addition, since there is a gap between the rule-of-thumb API gravity criteria for black oil and volatile oil, the EPA selected the lower, more conservative value of 40 degrees. The EPA believes that using a higher API gravity to define black oil, such as 45 or 50 degrees as recommended by the commenters, would increase the possibility that the liquid is a volatile oil, thus exempting sources that are likely to have higher HAP emissions. The EPA believes that the criteria for defining a black oil, which were obtained directly from widely recognized definitions of black oil and volatile oil used in the oil and natural gas industry, are technically sound for identifying which sources are included as black oil facilities. Therefore, the EPA has not modified the black oil definition.

2. Potential-to-Emit

Several commenters were concerned with the methods used to determine whether or not a facility was a major source. In particular, the EPA received several comment letters regarding the calculation of a facility's potential-to-emit (PTE) when determining a facility's major source status. The EPA received comments regarding the calculation of PTE on the following issues: (1) potential emissions calculated to determine major source status should consider controls and operational limitations whether or not they are federally enforceable as specified in the *National Mining Congress* v. *EPA* (59 F.3d.1351, D.C. Cir. 1995) court case; (2) potential emissions should not be based on equipment operating capacity because it would result in overregulation, but should consider the inherent operating limitations of the facility (e.g., declining production levels over time); (3) the EPA should provide a simplified approach to calculate PTE, which takes into account design and operational limitations; and (4) the EPA should use the logic in the PTE Transition policy where sources with low emissions may be considered nonmajor if records of actual emissions are maintained.

a. *Use of Limitations in Calculating PTE.* The EPA received comments requesting that potential emissions calculated to determine major source status should consider controls and operational limits whether or not they are federally enforceable.

The EPA believes that by referring to the definition of PTE in § 63.2 of subpart A, subparts HH and HHH contain the provisions for accounting for control devices and federally enforceable operating limitations as requested by the commenters.

With respect to the *National Mining* court case, the court required the EPA to reconsider the Federal enforceability requirement, but did not vacate the requirement. As a result, the requirement for Federal enforceability is still in effect. The definition of PTE for the NESHAP program (40 CFR 63.2) is currently under review, and the EPA is engaged in a rulemaking process to amend the requirements in the General Provisions. The EPA has not modified subparts HH and HHH in response to these comments.

b. *Use of Inherent Design and Operational Limitations in Calculating PTE.* Several commenters were concerned that PTE estimates, as defined in the General Provisions, would be unrealistically high and would subject many small insignificant sources to the NESHAP requirements. The commenters requested that PTE be based on the inherent design and operational limitations of production and transmission and storage facilities, such as throughput rates.

According to commenters, the throughput of oil and natural gas production operations declines over time, and existing equipment is often designed, constructed and operated based on high initial production rates. Therefore, the commenters suggested that the facilities are usually operated at actual throughput rates that are much lower than the design capacities.

The EPA agrees that there are certain inherent throughput limitations associated with the production of oil and natural gas, primarily related to declining production rates. Therefore, the final subpart HH specifies a method for calculating maximum facility throughput to determine major source status and applicability to subpart HH. This method is based on a facility's past production rate and ability to document declining annual operations. However, it is the responsibility of the owner or operator to be aware of changes that could require a facility to recalculate its PTE and to do so in a timely manner. The owner or operator could be found in violation back until the point in time at which an engineering judgement would have shown that the facility was reasonably capable of emitting at major source thresholds. A detailed discussion is presented in section 2.1.1 of the BID volume 2.

The EPA also received comments that the EPA should consider the seasonal operation of natural gas storage facilities in estimating potential emissions, and that the facility's PTE cannot be based on withdrawal for the entire season at maximum capacity. The commenters explained that natural gas storage facilities must spend part of the year injecting gas, and that withdrawal rates decrease as the storage field's pressure drops.

The EPA agrees that natural gas storage facilities have inherent limitations due to the nature of their operations. Therefore, the final rule (subpart HHH) contains a method for calculating maximum facility throughput to determine major source status and applicability of subpart HHH. The method is based on the maximum withdrawal and injection rates and the working gas capacity for a given storage field. A more detailed discussion is presented in section 2.1.1 of BID volume 2.

c. *Simplified Approach to Calculate PTE.* Several commenters recommended a simplified approach to calculating PTE, such as screening equations similar to those developed for other NESHAP, to take into account design and operational limitations.

The EPA evaluated the use of an equation similar in structure to the Gasoline Distribution NESHAP, 40 CFR part 63, subpart R. After extended effort, the EPA found that the number of variables was too extensive to allow development of a manageable equation. The EPA also received supplemental comments from industry and trade associations indicating that their efforts in developing such an equation resulted in the same outcome (Air Docket A–94–04).

Therefore, as an alternative, the EPA developed a simplified major source determination (MSD) for HAP emission sources in the oil and natural gas production and natural gas transmission and storage source categories. The simplified MSD allows the owner or operator of a facility to easily determine (1) if they are major sources and whether NESHAP requirements apply to their facility, and (2) if they are required to obtain a title V operating permit.

Therefore, the final subpart HH states that facilities, prior to the point of custody transfer, that have a facilitywide actual annual average natural gas throughput less than 18.4 thousand m^3/day and a facilitywide actual annual average hydrocarbon liquid throughput less than 39,700 liter/day are exempt from subpart HH. A more detailed discussion on the development of this MSD is presented in section 2.1.1 of the BID volume 2.

Owners and operators of production facilities, after the point of custody transfer (including natural gas processing plants), must aggregate emissions from all HAP emissions units at the facility when determining whether or not the facility is a major source. Production facilities, after the point of custody transfer, are likely to have emission units in addition to glycol dehydration units and storage vessels, such as amine treaters and sulfur recovery units that are typically located at natural gas processing plants. Since these emissions units must be included in the total emissions for the facility, the EPA could not develop a cutoff that would reasonably ensure that sources operating below such a cutoff would not be major sources. Therefore, production facilities located after the point of custody transfer, including natural gas processing plants, do not qualify for the simplified major source determination.

Using the same procedure, the EPA developed an MSD for natural gas transmission and storage facilities where glycol dehydration units are the only HAP emission points. The final subpart HHH states that natural gas transmission and storage facilities operating with an actual annual average natural gas throughput below 28.3 thousand m^3/day are exempt from subpart HHH.

d. *Use of PTE Transition Policy.* Under the EPA's 1995 Potential to Emit Transition Policy, sources with low emissions (e.g., less than 50 percent of major source thresholds) may be deemed nonmajor if records of actual emissions are kept. Several commenters suggested the use of written documentation of physical and operational limitations that would be federally, State, or otherwise practically enforceable.

In the January 25, 1995 policy memorandum entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," the EPA issued a transition policy for section 112 and title V. The transition policy addressed concerns that some sources may face gaps in the ability to acquire federally enforceable PTE limits because of delays in State adoption or EPA approval of programs or in their implementation. In order to ensure that such gaps would not create adverse consequences for States or for sources, the EPA provided that, during a 2-year period extending from January 1995 through January 1997, sources lacking federally enforceable limitations, State and local air regulators had the option of treating the following types of sources as non-major under section 112 and in their title V programs: (1) sources that maintain adequate records to demonstrate that their actual emissions

are less than 50 percent of the applicable major source threshold and have continued to operate at less than 50 percent of the threshold since January 1994, and (2) sources with actual emissions between 50 and 100 percent of the major source threshold but which hold State-enforceable limits that are enforceable as a practical matter. On August 27, 1996, the transition policy was extended until July 31, 1998. On July 10, 1998, in a memorandum entitled "Second Extension of January 25, 1995 Potential to Emit Transition Policy and Clarification of Interim Policy," the EPA announced a second extension of the transition policy. The extensions were provided because the EPA is engaged in a rulemaking process to consider amendments to the current PTE requirements. Currently, the PTE rulemaking, which will address the PTE requirements in the General Provisions (40 CFR part 63, subpart A) and the title V operating permits program, has not been completed. Those rule amendments will affect federal enforceability requirements for PTE limits under these programs. Thus, there will continue to be uncertainty with respect to federally enforceable limits. Therefore, in the July 10, 1998 memorandum, the EPA extended the transition policy until December 31, 1999, or until the effective date of the final rule in the PTE rulemaking, whichever is sooner.

The EPA expects that the rulemaking will be completed before December 31, 1999, and owners and operators will have the option of complying with the PTE rulemaking as well as the procedures specified in subparts HH and HHH.

D. Glycol Dehydration Unit Process Vent Standards

The proposed standards required a 95.0 percent control efficiency for all control devices, but did not specify over which averaging period the 95.0 percent should be determined. By not specifying an averaging period, the proposed rule required continuous compliance for all control devices. The EPA received several comment letters requesting that the EPA specify an averaging period. The commenters were particularly concerned that condensers could not achieve a 95.0 percent control efficiency on a continuous basis and that additional controls would be required to ensure compliance with the 95.0 percent requirement.

The commenters' primary point was that condensers are significantly affected by changes in ambient temperature. According to the commenters, when the ambient temperature is high, the condensers are less efficient. The commenters were concerned that during the warm summer months, condensers would not meet the control requirements. Therefore, the commenters specifically requested either a 30-day or a 12-month averaging period for compliance with the control requirements to balance changes in ambient temperature. In support of this request, the commenters maintained that using a longer averaging period would create no significant change in the emissions to the environment, but would substantially decrease the number of technical violations of the standard and reduce the administrative burden for the industry and the EPA.

The EPA reviewed the control efficiency and averaging period requirements in response to these comments. Based on the Agency's review of the possible options, today's rules require 95.0 percent control as a daily average. As an alternative for owners or operators that install condensers, the EPA has modified subpart HH to allow 95.0 percent condenser control as a 365-day rolling average, based on daily average condenser efficiency as a function of condenser outlet temperature (i.e., at the end of each operating day, the owner or operator calculates the daily average condenser outlet temperature, then calculates the 365-day average control efficiency for the preceding 365 days, including the current operating day).

Based on the information collected under the authority of section 114 of the Act, the comments received during the public comment period, and site visits, the EPA believes that an averaging period shorter than 365 days is appropriate for the natural gas transmission and storage source category. To the Agency's knowledge, glycol dehydration units located at storage facilities do not typically operate throughout the year. Therefore, the EPA was concerned that it would take more than 1 calendar year for a facility to obtain 365 days of data. Additionally, glycol dehydration units located at these sources do not typically operate during the warm summer months when condenser efficiency is lower. Although transmission facilities do operate for most of the year, the EPA believes that the HAP emission units in operation at these facilities are primarily compressors, and that most glycol dehydration units located at these facilities are used for withdrawing natural gas from storage (i.e., not likely to operate year-round). Therefore, for condensers installed on glycol dehydration units subject to control requirements under subpart HHH, the EPA has modified the requirements to specify that owners or operators that install condensers have the option of meeting a 95.0 percent control efficiency as a 30-day rolling average.

Several commenters requested that the EPA allow for combinations of controls and process modifications to achieve the required control efficiency. The commenters provided several suggestions for modifying the language in § 63.765(c)(2) stating that the owner or operator could reduce emissions from the glycol dehydration unit by 95.0 percent through process modifications or process modifications with controls. In addition, one of the suggestions was to include language allowing the owner or operator to complete a one-time compliance demonstration for the process modification.

The EPA agrees that owners or operators should be allowed to achieve a 95.0 percent emission reduction using process modifications or combinations of process modifications and one or more control devices. Therefore, today's rules contain requirements for demonstrating compliance with a 95.0 percent emission reduction using process modifications or a combination of process modifications and one or more control devices. In particular, the final rule requires the owner or operator to demonstrate how emissions have been reduced and to what level, and that the facility continues to be operated such that the 95.0 percent emission reduction is maintained.

The EPA does not believe that a one-time compliance demonstration would ensure future or continuous compliance, and the EPA believes that it is not appropriate. Therefore, the EPA has not included the commenter's suggested language allowing a one-time compliance demonstration for process modification. Instead, the final rules require the owner or operator to document facility operations and to provide this information in the Periodic reports.

E. Storage Vessel Standards

The criteria for an API gravity equal to or greater than 40 degrees or an initial producing GOR equal to or greater than 0.31 m3/liter were used in the proposed rule to define storage vessels with the potential for flash emissions. Prior to proposal, the EPA's analysis of storage vessels that contain hydrocarbon liquids that have an API gravity or an initial producing GOR higher than these criteria indicated the potential for significant flash emissions.

The EPA received comment letters objecting to the proposed cutoffs for storage vessels with the potential for flash emissions. In order to demonstrate their objection to the technical basis for these exemption criteria, the commenters provided emissions estimates for tanks containing hydrocarbon liquids with an API gravity less than 40 degrees and GOR of less than 0.31 m^3/liter. According to the emission estimates, these tanks, which do not meet the criteria for a storage vessel with the potential for flash emissions and would be exempt from the storage vessel control requirements, had significant HAP emissions. The EPA also received emission estimates for a tank containing a hydrocarbon liquid with an API gravity greater than 40 degrees and a GOR greater than 0.31 m^3/liter. According to the analysis provided by the commenter, this tank would be subject to the storage vessel control requirements but had no flash emissions.

The commenters did not provide alternative suggestions for defining storage vessels with the potential for flash emissions, other than recommending that "the proposed storage tank exemption/control criteria be based on credible engineering methods supported by fundamental principles of fluid phase behavior."

The EPA developed the definition for storage vessels with the potential for flash emissions based on criteria (i.e., API gravity and GOR) that were easily recognized by industry personnel and relatively easy to obtain. Furthermore, these criteria are based on hydrocarbon liquid characteristics.

According to section 112(d)(1), the Administrator is required to establish emission standards for each category of major sources. Section 112(d)(1) states that "[T]he Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards * * *." Furthermore, section 112(d)(3) states that emission standards for existing sources in a category may be no less stringent than the MACT floor.

As stated in section V.C.1 of this preamble, the EPA has established that among the class of sources referred to as black oil facilities, the MACT floor is no control. For the class of sources defined as storage vessels with the potential for flash emissions (which includes storage vessels that do not process black oil), the EPA evaluated "* * * the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information) * * *" (section 112(d)(3)(A) of the Act). The EPA determined that the top 12 percent of existing storage vessels with the potential for flash emissions were controlled.

The EPA recognizes that there could be specific situations, such as the ones analyzed by the commenters, where emissions of an exempted stream are higher than those of a non-exempted stream. In addition, there are many factors that affect whether flash emissions occur (e.g., pressure drop between two tanks, liquid vapor pressure, etc.). However, the EPA believes that this approach identifies hydrocarbon liquids that have a potential for significant flash emissions under conditions representative of industry operations.

In today's rule (final subpart HH), the EPA has added the throughput cutoff criterion to the storage vessels with the potential for flash emissions definition. The final rule states that a storage vessel with the potential for flash emissions is defined as a storage vessel that contains a hydrocarbon liquid with a stock tank GOR equal to or greater than 0.31 m3/liter and an API gravity equal to or greater than 40 degrees, and an actual annual average hydrocarbon liquid throughput equal to or greater than 79,500 liter/day. By adding the throughput criterion to the definition of storage vessels with the potential for flash emissions, rather than as a cutoff specified in proposed § 63.764(c)(2), storage vessels that do not meet the criteria for a storage vessel with the potential for flash emissions are not considered affected sources in the final rule and are not included in a facility's PTE calculation for determining major source status. The EPA believes that based on representative industry operations, the 40 degrees, 0.31 m^3/liter and the 79,500-liter/day exemption criteria are appropriate for defining storage vessels with the potential for flash emissions.

F. Standards for Natural Gas Transmission and Storage

The EPA received several comment letters expressing concern for the EPA's proposed standard for the natural gas transmission and storage source category. The commenters stated that the EPA did not have sufficient data to develop standards for the natural gas transmission and storage source category. The commenters requested that the EPA delay the natural gas transmission and storage portion of the proposed rulemaking to properly survey the industry for more meaningful data and assess whether a standard for the natural gas transmission and storage source category is necessary or achievable.

Several commenters explained that a review of the background information for proposed subpart HHH showed that the database consisted of information on the methods used in natural gas transmission from only two companies and no underground storage facilities. The commenters noted that the companies surveyed were predominately oil production facilities that handled gas as a by-product of oil production and that have higher HAP emissions because they handle more liquids with higher concentrations of HAP.

In response to these comments, the EPA collected additional data on glycol dehydration units in the natural gas transmission and storage source category through site visits and requests for information under the authority of section 114 of the Act.

Through these site visits and survey questionnaires, the EPA collected information from 83 facilities in the natural gas transmission and storage source category. The EPA considered this new information, along with the previously collected information on the natural gas transmission and storage source category, in developing a MACT floor for existing and new process vents on glycol dehydration units located at facilities in this source category. The EPA also used this information to better characterize processes and operations at natural gas transmission and storage facilities.

As stated in the January 15, 1999 supplemental notice (64 FR 2611), the additional data supported a MACT floor of 95.0 percent for existing and new natural gas transmission and storage facilities. In addition, the EPA announced that the Agency was considering raising the proposed throughput cutoff of 85 thousand m^3/day to 283 thousand m^3/day on an actual annual average basis. Glycol dehydration units operating below this cutoff would not be required to install controls under subpart HHH. The data did not warrant a change in the benzene emission cutoff of 0.90 Mg/yr.

The public comment period closed on February 16, 1999. The EPA received four comment letters in response to the EPA's request for comments and supporting information on the consideration of a 95.0 percent HAP emission reduction as the floor level of control, on the 283 thousand m^3/day natural gas throughput cutoff and the 0.90-Mg/yr benzene emission cutoff. The commenters agreed that exempting glycol dehydration units with actual annual average natural gas throughputs

less than 283 thousand 78m³/day and with actual average benzene emissions less than 0.90 Mg/yr from the control requirements under subpart HHH was appropriate.

However, the commenters indicated that they did not agree with a MACT floor of 95.0 percent for the transmission and storage source category. The commenters requested that the final rule should either exempt existing sources controlled by condensers, or require that existing sources controlled with condensers be controlled to a different level (i.e., 70 percent) than the combustion technology-based MACT floor. The commenters stated that condensers could consistently achieve a 75 percent emission reduction and that requiring an additional 20 percentage points of emission reduction in HAP would be inconsistent with the cost-to-benefit analysis in the February 6, 1998 proposal.

The EPA does not believe that it is necessary to provide exemptions or alternative levels of control for existing glycol dehydration units that are controlled by condensers. The EPA believes that this would not be consistent with the Act, which specifies in section 112(d)(3) that for a source category with 30 or more sources (such as the transmission and storage source category), the MACT floor for existing sources shall not be less stringent than "* * * the average limitation achieved by the best performing 12 percent of the existing sources * * *." The data collected by the EPA indicated that the average limitation achieved by the top 12 percent of the existing glycol dehydration units located at natural gas transmission and storage facilities was 95.0 percent. Furthermore, the data indicated that the top 12 percent of the existing glycol dehydration units were controlled using combustion or a combination of combustion and condensation. Therefore, in accordance with the statute, the EPA established the MACT floor to be 95.0 percent for glycol dehydration units located at natural gas transmission and storage facilities, which corresponds to combustion.

However, the EPA agrees that the supplemental notice did not address the issue of averaging period for condensers in use at transmission and storage facilities. As stated in this preamble, the final rule allows an owner or operator that installs a condenser for control of HAP from glycol dehydration unit process vents to establish compliance with the 95.0 percent HAP emission reduction on a 30-day rolling average. In addition, the final rule allows the owner or operator to comply with one of the following: (1) 95.0 percent HAP emission reduction, (2) 20 ppmv outlet HAP concentration for combustion devices, or (3) outlet emissions of 0.90 Mg/yr of benzene. The EPA believes that the 0.90 Mg/yr benzene emission limit and the 30-day averaging period for condensers provides sufficient flexibility for owners and operators of existing controlled glycol dehydration units. A more detailed discussion regarding the EPA's responses to the comments received on the supplemental notice are presented in the BID volume 2.

G. Monitoring, Recordkeeping, and Reporting Requirements

The EPA received several comment letters claiming that the recordkeeping and reporting requirements of the proposed rule were extremely burdensome. The commenters requested that the EPA reduce the monitoring, recordkeeping, and reporting burden associated with the proposed rule. In particular, commenters were concerned that remote and unmanned facilities would be overburdened by the proposed monitoring, recordkeeping and reporting requirements. Commenters also requested that provisions be added to the rule to avoid duplicative reporting. Other commenters requested that flexibility to allow alternative monitoring, recordkeeping, and reporting be incorporated into the final rule.

The EPA recognizes that unnecessary monitoring, recordkeeping, and reporting requirements would burden both the source and enforcement agencies. Prior to proposal, the EPA attempted to reduce the amount of monitoring, recordkeeping, and reporting to only that which is necessary to demonstrate compliance.

Although the EPA has not removed the monitoring requirements for unmanned or remote facilities, the EPA did evaluate the possibility of reducing the requirements for unmanned facilities. The EPA concluded, however, that the monitoring requirements are the minimum necessary to ensure that control devices are operating to ensure compliance.

The EPA reevaluated whether monitoring, recordkeeping, and reporting requirements could be further reduced while maintaining the enforceability of the rule. Therefore, the EPA has made the following changes in the promulgated rule to further reduce the monitoring, recordkeeping, and reporting burden.

(1) Almost all reports have been consolidated into the Notification of Compliance Status report and the Periodic reports.

(2) If multiple tests are conducted for the same kind of emission point, using the same test method, only one complete test report is required to be submitted along with the summaries of the results of other tests.

(3) Site-specific test plans describing quality assurance in § 63.7(c) of 40 CFR part 63, subpart A, are not specifically required in the individual subparts because the test methods cited in subparts HH and HHH already contain applicable quality assurance protocols. It should be noted that the Administrator would still have the authority to request a test plan.

(4) Periodic reports are required to be submitted semiannually for all facilities (the proposal required quarterly reports if monitored parameters were out of range more than a specified percentage of time).

(5) A reduction in the record retention requirements for monitored parameters. The proposal required values of monitored parameters to be recorded every 15 minutes and all 15-minute records had to be retained. The final rule requires monitored parameters to be recorded every hour and all hourly records to be retained.

Several commenters were concerned with the provisions specifying the accuracy of the measurement devices used to comply with the subpart and requested that the EPA change or remove the accuracy requirements.

The EPA believes that accuracy requirements are necessary to demonstrate ongoing compliance. Furthermore, if the accuracy requirements were removed, additional recordkeeping and reporting requirements would be necessary to ensure that less accurate monitors were not installed after the performance tests. However, the EPA agrees with the commenters that the accuracy levels could be slightly less restrictive. Therefore, the EPA has changed the accuracy levels from ±1 percent of the temperature being monitored, in °C or ±0.5 °C, to ±2 percent of the temperature being monitored, in °C or ±2.5 °C, whichever is greater.

H. Cost and Economic Impacts

The EPA specifically requested comments on the cost impact and the production recovery credits as discussed in section IV of the preamble to the proposal (63 FR 6297), along with supporting documentation. The EPA received comment letters stating that the EPA had underestimated the costs of controls, had underestimated the cost of treating produced water, and had overstated the quantity of product recovered that could be sold to offset the costs associated with subpart HH. Of specific concern was the closure of smaller facilities due to the rule.

The EPA based its cost estimates for control devices on published installed control system costs from the Ventura County (California) Air Pollution Control District (APCD) (Air Docket A–94–04). These costs were associated with a glycol dehydration unit regulation issued by the Ventura County APCD. According to this information, the cost of installing a condenser control system does not vary significantly based on the size (capacity) of a glycol dehydration system.

Approximately 20 billion barrels per year of produced water are generated by the oil and natural gas production source category (Air Docket A–94–04). Using an emission model developed by the Gas Research Institute (GRI–GLYCalc, version 3.0) to determine the amount of produced water generated by the number of facilities estimated to be affected by subpart HH, the EPA calculated that the oil and natural gas production NESHAP would result in an increase in produced water production of approximately 590,000 barrels per year. A GRI report (GRI Publication Number GRI–96/0049) indicated that produced water would be typically handled along with other produced water streams, either by underground injection control, surface impoundment, or other miscellaneous methods. Thus, the EPA believes that the final NESHAP would have a minimal impact on existing produced water disposal costs and that the estimated NESHAP control costs are, therefore, reasonable.

The EPA based its national cost estimate impacts on the estimated number of facilities that would be impacted by the regulatory provisions of subparts HH and HHH, along with detailed emission control cost estimates per HAP emission point (Air Docket A–94–04). In addition, the monitoring, recordkeeping, and reporting (MRR) costs were based on a detailed analysis of the regulatory requirements of subparts HH and HHH. The EPA currently believes that the MRR cost estimates accurately reflect the estimated effort required to address MRR requirements in the final NESHAP.

Further, the EPA expects that the 85 thousand m³/day size cutoff will prevent the premature closure of a large number of small and often marginal well operations. Not accounting for this size cutoff would contribute to differences in the estimated reduction in natural gas production and employment losses associated with the standards.

As described in Section 4 of the economic impact analysis report, the EPA's economic model determines production and closure decisions on the basis of a producing field (i.e., a group of similar wells) that is consistent with commenters concerns that "production decisions are made on a well-by-well or project basis and if an individual project's profits fall below its break-even point, that the well will be abandoned." The EPA did not estimate losses of economically producible natural gas reserves. The economic analysis conducted by the EPA is unable to address possible impacts on production from future natural gas reserves. However, based on the negligible impact on current natural gas production associated with the EPA's engineering estimate of compliance cost, it is not expected that these impacts would be as great as indicated by the commenter.

VI. Administrative Requirements

A. Docket

The docket for these rulemakings is A–94–04. The docket is an organized and complete file of all the information considered by the EPA in the development of these rulemakings. The principal purposes of the docket are (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A) of the Act]. This docket contains copies of the regulatory texts, BID volumes 1 and 2, references not readily available to the public, and technical memoranda documenting the information considered by the EPA in the development of the rules. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this notice.

B. Paperwork Reduction Act

The information collection requirements in these rules have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Information collection request (ICR) documents have been prepared by the EPA (ICR Nos. 1788.02 and 1789.02) and copies may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

The information requirements are not effective until OMB approves them.

Information is required to ensure compliance with the provisions of the final rules. If the relevant information were collected less frequently, the EPA would not be reasonably assured that a source is in compliance with the final rules. In addition, the EPA's authority to take administrative action would be reduced significantly.

The final rules require that facility owners or operators retain records for a period of 5 years, which exceeds the 3 year retention period contained in the guidelines in 5 CFR 1320.6. The 5 year retention period is consistent with the provisions of the General Provisions of 40 CFR part 63, and with the 5 year records retention requirement in the operating permit program under title V of the Act.

All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in title 40, chapter 1, part 2, subpart B, Confidentiality of Business Information. See 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 3999, September 8, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979. Even where the EPA has determined that data received in response to an ICR are eligible for confidential treatment under 40 CFR part 2, subpart B, the EPA may nonetheless disclose the information if it is "relevant in any proceeding" under the statute (42 U.S.C. 7414(C); 40 CFR 2.301(g)). The information collection complies with the Privacy Act of 1974 and OMB Circular 108.

Information to be reported consists of emission data and other information that are not of a sensitive nature. No sensitive personal or proprietary data are being collected.

The estimated annual average hour burden for the final oil and natural gas production NESHAP is 56 hours per respondent. The estimated annual average cost of this burden is $2,400 for each of the estimated 484 existing and new (projected) respondents.

The estimated annual average hour burden for the final natural gas transmission and storage NESHAP is 30 hours per respondent. The estimated annual average cost of this burden is $1,300 for each of the estimated 7 existing respondents.

Reports are required on a semiannual basis and as required, as in the case of startup, shutdown, and malfunction plans. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or

for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in these final rules.

C. Executive Order 12866: A Significant Regulatory Action Determination

Under Executive Order 12866, "Regulatory Planning and Review," (58 FR 5173 (October 4, 1993)), the EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows: (1) is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) is likely to materially alter the budgetary impact of entitlements, grants, user fees or loan programs, or the rights and obligations of recipients thereof; or (4) is likely to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to Executive Order 12866, OMB has reviewed these rules. Changes made in response to OMB suggestions or recommendations are documented in the public record.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. These final rules will not have a significant economic impact on a substantial number of small entities. According to *Wards Business Directory* (1993), there are 1,152 firms in the seven affected Standard Industrial Classification (SIC) codes and 735 of these firms meet the Small Business Administration (SBA) definition of a small entity.

The number of affected small entities for these rules is likely to be minimal due to several considerations in these rules that minimize the burden on all firms, both small and large. These considerations include exempting from the control requirements of the oil and natural gas production NESHAP those glycol dehydration units located at major sources with (1) an actual flowrate of natural gas to the glycol dehydration unit less than 85 thousand m^3/day, on an annual average basis, or (2) benzene emissions less than 0.90 Mg/yr. Also, these considerations include exempting from the control requirements of the natural gas transmission and storage NESHAP those glycol dehydration units located at major sources with (1) an actual flowrate of natural gas to the glycol dehydration unit less than 283 thousand m^3/day, on an annual average basis; or (2) benzene emissions less than 0.90 Mg/yr.

In a screening of potential impacts on a sample of small entities, the EPA found that there are minimal impacts on these entities. The weighted average of control costs as a percent of sales is 0.09 of 1 percent for the small firms in the sample, while a maximum value of 1.1 percent results for only two of these firms. The analysis also indicates that with the regulations, the change in measures of profitability are minimal (i.e., 0.11 of 1 percent change in the cost-to-sales ratio for small firms), and there are no indications of financial failures or employment losses for both small and large firms. The screening analysis for these rules is detailed in the Economic Impact Analysis (see Docket No. A–94–04).

E. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 17, 1999.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's final rules do not include a Federal mandate that may result in expenditures of $100 million of more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, the requirements of the Unfunded Mandates Reform Act do not apply to today's final rules.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide OMB a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's rules do not create a mandate on the State, local or tribal governments. These rules do not impose any enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of Executive Order 12875 do not apply to these rules. The EPA, nevertheless, involved State and local governments in their development of the final rules.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997) applies to any rule that: (1) the EPA determines is economically significant as defined under Executive Order 12866, (2) concerns an environmental health or safety risks, and (3) the EPA has any reason to believe may disproportionately affect children. If the regulatory action meets these criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5.501 of the Order has the potential to influence the regulation. These rules are not subject to Executive Order 13045 for two reasons: (1) the rule is based solely on technology performance; and (2) no alternative technologies have been identified that would provide greater stringency at a reasonable cost, therefore, an assessment of impacts on children would have no impact on the stringency decision.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rules do not significantly or uniquely affect the communities of Indian tribal governments. The final rules do not create mandates upon tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these rules.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Pub. L. 104–113 (March 7, 1996), directs all Federal agencies to use voluntary consensus standards in regulatory and procurement activities unless doing so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards. This section summarizes the EPA's response to the requirements of the NTTAA for the analytical and test methods required by this final rule.

Consistent with the NTTAA, the EPA conducted a search to identify voluntary consensus standards. The search identified 16 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, the EPA determined that eight of the candidate consensus standards identified for measuring HAP or surrogate pollutant emissions subject to the emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. Seven of the remaining candidate consensus standards are new standards under development that the EPA plans to follow, review, and consider adopting at a later date.

One consensus standard, ASTM Z7420Z, is potentially practical for EPA use in lieu of EPA Method 18 (See 40 CFR part 60, appendix A). At the time of the EPA's search, the ASTM standard was still under development and the EPA had provided comments on the method. The EPA also compared a draft of this ASTM standard to methods previously reviewed as alternatives to EPA Method 18 that were approved with specific applicability limitations. These methods are designated as ALT–017 and CTM–028 and available through EPA's Emission Measurement Center Internet site at www.epa.gov/ttn/emc/tmethods.html. The proposed ASTM Z7420Z standard is very similar to these approved alternative methods. When finalized and adopted by ASTM, the standard may be equally suitable for the same applications as the approved

alternatives. However, this rule does not adopt the ASTM standard since it is not practical to do so until the potential candidate is final and the EPA has review the final standard. The EPA plans to continue to follow the progress of the standard and will consider adopting the ASTM standard at a later date.

Similarly, the Gas Research Institute has developed a sampling method for glycol dehydration units, the "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1). The development of this procedure included a field evaluation program and technical review by the EPA. A report documenting this procedure has been available to the public from the GRI since 1996. This procedure provides a simpler, cheaper, and technically appropriate means of determining HAP emissions from glycol dehydration unit process vents when direct measurement is necessary. Consistent with the Agency's commitment to reduce costs to the private sector where technically feasible and in accordance with Clean Air Act requirements, the EPA has included the "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" as an alternative control device performance test procedure.

This rule requires standard EPA methods known to the industry and States. Approved alternative methods also may be used with prior EPA approval.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Black oil, Associated equipment, Storage vessels with the potential for flash emissions, Glycol dehydration units, Oil and natural gas production, Natural gas transmission and storage, Equipment leaks, Natural gas processing plant, Reporting and recordkeeping requirements.

Dated: May 14, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399.

2. Part 63 is amended by adding subpart HH to read as follows:

Subpart HH—National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

Sec.

63.760 Applicability and designation of affected source.
63.761 Definitions.
63.762 Startups, shutdowns, and malfunctions.
63.763 [Reserved]
63.764 General standards.
63.765 Glycol dehydration unit process vent standards.
63.766 Storage vessel standards.
63.767 [Reserved]
63.768 [Reserved]
63.769 Equipment leak standards.
63.770 [Reserved]
63.771 Control equipment requirements.
63.772 Test methods, compliance procedures, and compliance determinations.
63.773 Inspection and monitoring requirements.
63.774 Recordkeeping requirements.
63.775 Reporting requirements.
63.776 Delegation of authority.
63.777 Alternative means of emission limitation.
63.778 [Reserved]
63.779 [Reserved]
Appendix to Subpart HH—Tables

Subpart HH—National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

§ 63.760 Applicability and designation of affected source.

(a) This subpart applies to the owners and operators of the emission points, specified in paragraph (b) of this section that are located at oil and natural gas production facilities that meet the specified criteria in paragraphs (a)(1) and either (a)(2) or (a)(3) of this section.

(1) Major sources of hazardous air pollutants (HAP) as determined using the maximum natural gas or hydrocarbon liquid throughput, as appropriate, calculated in paragraphs (a)(1)(i) through (a)(1)(iii) of this section. A facility that is determined to be an area source based on emission estimates using the maximum natural gas or hydrocarbon throughput calculated as specified in paragraphs (a)(1)(i) through (iii) of this section, but subsequently increases emissions or potential to emit above the major source levels (without first obtaining and complying with other limitations that keep its potential to emit HAP below major source levels), becomes a major source and must comply thereafter with all applicable provisions of this subpart starting on the applicable compliance date specified in paragraph (f) of this section. Nothing in this paragraph is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

(i) If the owner or operator documents, to the Administrator's satisfaction, a decline in annual natural gas or hydrocarbon liquid throughput, as appropriate, each year for the 5 years prior to June 17, 1999, the owner or operator shall calculate the maximum natural gas or hydrocarbon liquid throughput used to determine maximum potential emissions according to the requirements specified in paragraph (a)(1)(i)(A) of this section. In all other circumstances, the owner or operator shall calculate the maximum throughput used to determine whether a facility is a major source in accordance with the requirements specified in paragraph (a)(1)(i)(B) of this section.

(A) The maximum natural gas or hydrocarbon liquid throughput is the average of the annual natural gas or hydrocarbon liquid throughput for the 3 years prior to June 17, 1999, multiplied by a factor of 1.2.

(B) The maximum natural gas or hydrocarbon liquid throughput is the highest annual natural gas or hydrocarbon liquid throughput over the 5 years prior to June 17, 1999, multiplied by a factor of 1.2.

(ii) The owner or operator shall maintain records of the annual facility natural gas or hydrocarbon liquid throughput each year and upon request submit such records to the Administrator. If the facility annual natural gas or hydrocarbon liquid throughput increases above the maximum natural gas or hydrocarbon liquid throughput calculated in paragraph (a)(1)(i)(A) or (a)(1)(i)(B) of this section, the maximum natural gas or hydrocarbon liquid throughput must be recalculated using the higher throughput multiplied by a factor of 1.2.

(iii) The owner or operator shall determine the maximum values for other parameters used to calculate emissions as the maximum for the period over which the maximum natural gas or hydrocarbon liquid throughput is determined in accordance with paragraph (a)(1)(i)(A) or (B) of this section. Parameters shall be based on either highest measured values or annual average.

(2) Facilities that process, upgrade, or store hydrocarbon liquids prior to the point of custody transfer.

(3) Facilities that process, upgrade, or store natural gas prior to the point at which natural gas enters the natural gas transmission and storage source category or is delivered to a final end user. For the purposes of this subpart, natural gas enters the natural gas transmission and storage source category after the natural gas processing plant, when present. If no natural gas processing plant is present, natural gas enters the natural gas transmission and storage source category after the point of custody transfer.

(b) The affected sources to which the provisions of this subpart apply shall comprise each emission point located at a facility that meets the criteria specified in paragraph (a) of this section and listed in paragraphs (b)(1) through (4) of this section.

(1) Each glycol dehydration unit;

(2) Each storage vessel with the potential for flash emissions;

(3) The group of all ancillary equipment, except compressors, intended to operate in volatile hazardous air pollutant service (as defined in § 63.761), which are located at natural gas processing plants; and

(4) Compressors intended to operate in volatile hazardous air pollutant service (as defined in § 63.761), which are located at natural gas processing plants.

(c) [Reserved]

(d) The owner and operator of a facility that does not contain an affected source as specified in paragraph (b) of this section are not subject to the requirements of this subpart.

(e) *Exemptions.* The facilities listed in paragraphs (e)(1) and (e)(2) of this section are exempt from the requirements of this subpart. Records shall be maintained as required in § 63.10(b)(3).

(1) A facility that exclusively processes, stores, or transfers black oil (as defined in § 63.761) is not subject to the requirements of this subpart. For the purposes of this subpart, a black oil facility that uses natural gas for fuel or generates gas from black oil shall qualify for this exemption.

(2) A facility, prior to the point of custody transfer, with a facilitywide actual annual average natural gas throughput less than 18.4 thousand standard cubic meters per day and a facilitywide actual annual average hydrocarbon liquid throughput less than 39,700 liters per day.

(f) The owner or operator of an affected source shall achieve compliance with the provisions of this subpart by the dates specified in paragraphs (f)(1) and (f)(2) of this section.

(1) The owner or operator of an affected source, the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with provisions of this subpart no later than June 17, 2002 except as provided for in § 63.6(i). The owner or operator of an area source, the construction or reconstruction of which commenced before February 6, 1998, that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject to this subpart shall comply with this subpart 3 years after becoming a major source.

(2) The owner or operator of an affected source, the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the provisions of this subpart immediately upon initial startup or June 17, 1999, whichever date is later. Area sources, the construction or reconstruction of which commences on or after February 6, 1998, that become major sources shall comply with the provisions of this standard immediately upon becoming a major source.

(g) The following provides owners or operators of an affected source with information on overlap of this subpart with other regulations for equipment leaks. The owner or operator shall document that they are complying with other regulations by keeping the records specified in § 63.774(b)(9).

(1) After the compliance dates specified in paragraph (f) of this section, ancillary equipment and compressors that are subject to this subpart and that are also subject to and controlled under the provisions of 40 CFR part 60, subpart KKK, are only required to comply with the requirements of 40 CFR part 60, subpart KKK.

(2) After the compliance dates specified in paragraph (f) of this section, ancillary equipment and compressors that are subject to this subpart and are also subject to and controlled under the provisions of 40 CFR part 61, subpart V, are only required to comply with the requirements of 40 CFR part 61, subpart V.

(3) After the compliance dates specified in paragraph (f) of this section, ancillary equipment and compressors that are subject to this subpart and are also subject to and controlled under the provisions of 40 CFR part 63, subpart H, are only required to comply with the requirements of 40 CFR part 63, subpart H.

(h) An owner or operator of an affected source that is a major source or is located at a major source and is subject to the provisions of this subpart is also subject to 40 CFR part 70 or part 71 operating permit requirements.

§ 63.761 Definitions.

All terms used in this subpart shall have the meaning given them in the Clean Air Act (Act), subpart A of this part (General Provisions), and in this section. If the same term is defined in subpart A and in this section, it shall have the meaning given in this section for purposes of this subpart.

Alaskan North Slope means the approximately 180,000 square kilometer area (69,000 square mile area) extending from the Brooks Range to the Arctic Ocean.

Ancillary equipment means any of the following pieces of equipment: pumps, pressure relief devices, sampling connection systems, open-ended valves, or lines, valves, flanges, or other connectors.

API gravity means the weight per unit volume of hydrocarbon liquids as measured by a system recommended by the American Petroleum Institute (API) and is expressed in degrees.

Associated equipment, as used in this subpart and as referred to in section 112(n)(4) of the Act, means equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the wellbore to the point of custody transfer, except glycol dehydration units and storage vessels with the potential for flash emissions.

Black oil means hydrocarbon (petroleum) liquid with an initial producing gas-to-oil ratio (GOR) less than 0.31 cubic meters per liter and an API gravity less than 40 degrees.

Boiler means an enclosed device using controlled flame combustion and having the primary purpose of recovering and exporting thermal energy in the form of steam or hot water. Boiler also means any industrial furnace as defined in 40 CFR 260.10.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and if necessary, flow inducing devices that transport gas or vapor from an emission point to one or more control devices. If gas or vapor from regulated equipment is routed to a process (e.g., to a fuel gas system), the conveyance system shall not be considered a closed-vent system and is not subject to closed-vent system standards.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic HAP emissions.

Condensate means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature, pressure, or both, and

remains liquid at standard conditions, as specified in § 63.2.

Continuous recorder means a data recording device that either records an instantaneous data value at least once every hour or records hourly or more frequent block average values.

Control device means any equipment used for recovering or oxidizing HAP or volatile organic compound (VOC) vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For the purposes of this subpart, if gas or vapor from regulated equipment is used, reused (i.e., injected into the flame zone of a combustion device), returned back to the process, or sold, then the recovery system used, including piping, connections, and flow inducing devices, is not considered to be control devices or closed-vent systems.

Cover means a device which is placed on top of or over a material such that the entire surface area of the material is enclosed and sealed. A cover may have openings (such as access hatches, sampling ports, and gauge wells) if those openings are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed, provided that each opening is closed and sealed when the opening is not in use. In addition, a cover may have one or more safety devices. Examples of a cover include, but are not limited to, a fixed-roof installed on a tank, an external floating roof installed on a tank, and a lid installed on a drum or other container.

Custody transfer means the transfer of hydrocarbon liquids or natural gas: after processing and/or treatment in the producing operations, or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation. For the purposes of this subpart, the point at which such liquids or natural gas enters a natural gas processing plant is a point of custody transfer.

Equipment leaks means emissions of HAP from ancillary equipment (as defined in this section) and compressors.

Facility means any grouping of equipment where hydrocarbon liquids are processed, upgraded (i.e., remove impurities or other constituents to meet contract specifications), or stored prior to the point of custody transfer; or where natural gas is processed, upgraded, or stored prior to entering the natural gas transmission and storage source category. For the purpose of a major source determination, facility (including a building, structure, or installation) means oil and natural gas production and processing equipment that is located within the boundaries of an individual surface site as defined in this section. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Pieces of production equipment or groupings of equipment located on different oil and gas leases, mineral fee tracts, lease tracts, subsurface or surface unit areas, surface fee tracts, surface lease tracts, or separate surface sites, whether or not connected by a road, waterway, power line or pipeline, shall not be considered part of the same facility. Examples of facilities in the oil and natural gas production source category include, but are not limited to, well sites, satellite tank batteries, central tank batteries, a compressor station that transports natural gas to a natural gas processing plant, and natural gas processing plants.

Field natural gas means natural gas extracted from a production well prior to entering the first stage of processing, such as dehydration.

Fixed-roof means a cover that is mounted on a storage vessel in a stationary manner and that does not move with fluctuations in liquid level.

Flame zone means the portion of the combustion chamber in a combustion device occupied by the flame envelope.

Flash tank. See the definition for gas-condensate-glycol (GCG) separator.

Flow indicator means a device which indicates whether gas flow is present in a line or whether the valve position would allow gas flow to be present in a line.

Gas-condensate-glycol (GCG) separator means a two- or three-phase separator through which the "rich" glycol stream of a glycol dehydration unit is passed to remove entrained gas and hydrocarbon liquid. The GCG separator is commonly referred to as a flash separator or flash tank.

Gas-to-oil ratio (GOR) means the number of standard cubic meters of gas produced per liter of crude oil or other hydrocarbon liquid.

Glycol dehydration unit means a device in which a liquid glycol (including, but not limited to, ethylene glycol, diethylene glycol, or triethylene glycol) absorbent directly contacts a natural gas stream and absorbs water in a contact tower or absorption column (absorber). The glycol contacts and absorbs water vapor and other gas stream constituents from the natural gas and becomes "rich" glycol. This glycol is then regenerated in the glycol dehydration unit reboiler. The "lean" glycol is then recycled.

Glycol dehydration unit baseline operations means operations representative of the glycol dehydration unit operations as of June 17, 1999. For the purposes of this subpart, for determining the percentage of overall HAP emission reduction attributable to process modifications, baseline operations shall be parameter values (including, but not limited to, glycol circulation rate or glycol-HAP absorbency) that represent actual long-term conditions (i.e., at least 1 year). Glycol dehydration units in operation for less than 1 year shall document that the parameter values represent expected long-term operating conditions had process modifications not been made.

Glycol dehydration unit process vent means either the glycol dehydration unit reboiler vent and the vent from the GCG separator (flash tank), if present.

Glycol dehydration unit reboiler vent means the vent through which exhaust from the reboiler of a glycol dehydration unit passes from the reboiler to the atmosphere or to a control device.

Hazardous air pollutants or *HAP* means the chemical compounds listed in section 112(b) of the Clean Air Act. All chemical compounds listed in section 112(b) of the Act need to be considered when making a major source determination. Only the HAP compounds listed in Table 1 of this subpart need to be considered when determining compliance.

Hydrocarbon liquid means any naturally occurring, unrefined petroleum liquid.

In VHAP service means that a piece of ancillary equipment or compressor either contains or contacts a fluid (liquid or gas) which has a total volatile HAP (VHAP) concentration equal to or greater than 10 percent by weight as determined according to the provisions of § 63.772(a).

In wet gas service means that a piece of equipment contains or contacts the field gas before the extraction of natural gas liquids.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. The above energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

Initial producing GOR means the producing standard cubic meters of gas per liter at the time that the reservoir pressure is above the bubble point pressure (or dewpoint pressure for a gas).

Initial startup means the first time a new or reconstructed source begins production. For the purposes of this subpart, initial startup does not include subsequent startups (as defined in this section) of equipment, for example, following malfunctions or shutdowns.

Major source, as used in this subpart, shall have the same meaning as in § 63.2, except that: (1) Emissions from any oil or gas exploration or production well (with its associated equipment (as defined in this section)) and emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units, to determine whether such emission points or stations are major sources, even when emission points are in a contiguous area or under common control; (2) Emissions from processes, operations, or equipment that are not part of the same facility, as defined in this section, shall not be aggregated; and (3) For facilities that are production field facilities, only HAP emissions from glycol dehydration units and storage tanks with flash emission potential shall be aggregated for a major source determination.

Natural gas means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface. The principal hydrocarbon constituent is methane.

Natural gas liquids (NGL) means the liquid hydrocarbons, such as ethane, propane, butane, pentane, natural gasoline, and condensate that are extracted from field natural gas.

Natural gas processing plant (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, or the fractionation of mixed NGL to natural gas products, or a combination of both.

No detectable emissions means no escape of HAP from a device or system to the atmosphere as determined by:

(1) Instrument monitoring results in accordance with the requirements of § 63.772(c); and

(2) The absence of visible openings or defects in the device or system, such as rips, tears, or gaps.

Operating parameter value means a minimum or maximum value established for a control device or process parameter which, if achieved by itself or in combination with one or more other operating parameter values, indicates that an owner or operator has complied with an applicable operating parameter limitation, over the appropriate averaging period as specified in § 63.772(f) or (g).

Operating permit means a permit required by 40 CFR part 70 or part 71.

Organic monitoring device means an instrument used to indicate the concentration level of organic compounds exiting a control device based on a detection principle such as infra-red, photoionization, or thermal conductivity.

Primary fuel means the fuel that provides the principal heat input (i.e., more than 50 percent) to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means an enclosed device using a controlled flame, the primary purpose of which is to transfer heat to a process fluid or process material that is not a fluid, or to a heat transfer material for use in a process (rather than for steam generation).

Produced water means water that is extracted from the earth from an oil or natural gas production well, or that is separated from crude oil, condensate, or natural gas after extraction.

Production field facilities means those facilities located prior to the point of custody transfer.

Production well means any hole drilled in the earth from which crude oil, condensate, or field natural gas is extracted.

Reciprocating compressor means a piece of equipment that increases the pressure of a process gas by positive displacement, employing linear movement of the drive shaft.

Relief device means a device used only to release an unplanned, non-routine discharge in order to avoid safety hazards or equipment damage. A relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Safety device means a device that meets both of the following conditions: it is not used for planned or routine venting of liquids, gases, or fumes from the unit or equipment on which the device is installed; and it remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the unit or equipment on which the device is installed in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. Examples of unplanned events which may require a safety device to open include failure of an essential equipment component or a sudden power outage.

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of a glycol dehydration unit, or other affected source under this subpart, or equipment required or used solely to comply with this subpart.

Startup means the setting into operation of a glycol dehydration unit, or other affected equipment under this subpart, or equipment required or used to comply with this subpart. Startup includes initial startup and operation solely for the purpose of testing equipment.

Storage vessel means a tank or other vessel that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water and that is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

Storage vessel with the potential for flash emissions means any storage vessel that contains a hydrocarbon liquid with a stock tank GOR equal to or greater than 0.31 cubic meters per liter and an API gravity equal to or greater than 40 degrees and an actual annual average hydrocarbon liquid throughput equal to or greater than 79,500 liters per day. Flash emissions occur when dissolved hydrocarbons in the fluid evolve from solution when the fluid pressure is reduced.

Surface site means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

Tank battery means a collection of equipment used to separate, treat, store, and transfer crude oil, condensate, natural gas, and produced water. A tank battery typically receives crude oil, condensate, natural gas, or some combination of these extracted products from several production wells for accumulation and separation prior to transmission to a natural gas plant or petroleum refinery. A tank battery may or may not include a glycol dehydration unit.

Temperature monitoring device means an instrument used to monitor temperature and having a minimum accuracy of ±2 percent of the temperature being monitored expressed in °C, or ±2.5 °C, whichever is greater. The temperature monitoring device may

measure temperature in degrees Fahrenheit or degrees Celsius, or both.

Total organic compounds or *TOC*, as used in this subpart, means those compounds which can be measured according to the procedures of Method 18, 40 CFR part 60, appendix A.

Volatile hazardous air pollutant concentration or *VHAP concentration* means the fraction by weight of all HAP contained in a material as determined in accordance with procedures specified in § 63.772(a).

§ 63.762 Startups, shutdowns, and malfunctions.

(a) The provisions set forth in this subpart shall apply at all times except during startups or shutdowns, during malfunctions, and during periods of non-operation of the affected sources (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. However, during the startup, shutdown, malfunction, or period of non-operation of one portion of an affected source, all emission points which can comply with the specific provisions to which they are subject must do so during the startup, shutdown, malfunction, or period of non-operation.

(b) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the provisions of this subpart during times when emissions are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph does not apply if the item of equipment is malfunctioning, or if the owner or operator must shut down the equipment to avoid damage due to a contemporaneous startup, shutdown, or malfunction of the affected source or a portion thereof.

(c) During startups, shutdowns, and malfunctions when the requirements of this subpart do not apply pursuant to paragraphs (a) and (b) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the maximum extent practical. For purposes of this paragraph, the term "excess emissions" means emissions in excess of those that would have occurred if there were no startup, shutdown, or malfunction, and the owner or operator complied with the relevant provisions of this subpart. The measures to be taken shall be identified in the applicable startup, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the source. Back-up control devices are not required, but may be used if available.

(d) The owner or operator shall prepare a startup, shutdown, or malfunction plan as required in § 63.6(e)(3) except that the plan is not required to be incorporated by reference into the source's title V permit as specified in § 63.6(e)(3)(i). Instead, the owner or operator shall keep the plan on record as required by § 63.6(e)(3)(v). The failure of the plan to adequately minimize emissions during startup, shutdown, or malfunctions does not shield an owner or operator from enforcement actions.

§ 63.763 [Reserved].

§ 63.764 General standards.

(a) Table 1 of this subpart specifies the provisions of subpart A (General Provisions) that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(b) All reports required under this subpart shall be sent to the Administrator at the appropriate address listed in § 63.13. Reports may be submitted on electronic media.

(c) Except as specified in paragraph (e) of this section, the owner or operator of an affected source located at an existing or new major source of HAP emissions shall comply with the standards in this subpart as specified in paragraphs (c)(1) through (3) of this section.

(1) For each glycol dehydration unit process vent subject to this subpart, the owner or operator shall comply with the requirements specified in paragraphs (c)(1)(i) through (iii) of this section.

(i) The owner or operator shall comply with the control requirements for glycol dehydration unit process vents specified in § 63.765;

(ii) The owner or operator shall comply with the monitoring requirements specified in § 63.773; and

(iii) The owner or operator shall comply with the recordkeeping and reporting requirements specified in §§ 63.774 and 63.775.

(2) For each storage vessel with the potential for flash emissions subject to this subpart, the owner or operator shall comply with the requirements specified in paragraphs (c)(2)(i) through (iii) of this section.

(i) The control requirements for storage vessels specified in § 63.766;

(ii) The monitoring requirements specified in § 63.773; and

(iii) The recordkeeping and reporting requirements specified in §§ 63.774 and 63.775.

(3) For ancillary equipment (as defined in § 63.761) and compressors at a natural gas processing plant subject to this subpart, the owner or operator shall comply with the requirements for equipment leaks specified in § 63.769.

(d) [Reserved]

(e) *Exemptions.* (1) The owner or operator is exempt from the requirements of paragraph (c)(1) of this section if the criteria listed in paragraph (e)(1)(i) or (e)(1)(ii) are met. Records of the determination of these criteria must be maintained as required in § 63.774(d)(1) of this subpart.

(i) The actual annual average flowrate of natural gas to the glycol dehydration unit is less than 85 thousand standard cubic meters per day, as determined by the procedures specified in § 63.772(b)(1) of this subpart; or

(ii) The actual average emissions of benzene from the glycol dehydration unit process vent to the atmosphere are less than 0.90 megagram per year, as determined by the procedures specified in § 63.772(b)(2) of this subpart.

(2) The owner or operator is exempt from the requirements of paragraph (c)(3) of this section for ancillary equipment (as defined in § 63.761) and compressors at a natural gas processing plant subject to this subpart, if the criteria listed in paragraphs (e)(2)(i) and (e)(2)(ii) are met. Records of the determination of these criteria must be maintained as required in § 63.774(d)(2) of this subpart.

(i) Any ancillary equipment and compressors that contain or contact a fluid (liquid or gas) must have a total VHAP concentration less than 10 percent by weight, as determined by the procedures specified in § 63.772(a) of this subpart; and

(ii) That ancillary equipment and compressors must operate in VHAP service less than 300 hours per calendar year.

(f) Each owner or operator of a major HAP source subject to this subpart is required to apply for a 40 CFR part 70 or part 71 operating permit from the appropriate permitting authority. If the Administrator has approved a State operating permit program under 40 CFR part 70, the permit shall be obtained from the State authority. If a State operating permit program has not been approved, the owner or operator of a source shall apply to the EPA Regional Office pursuant to 40 CFR part 71.

(g) [Reserved]

(h) [Reserved]

(i) In all cases where the provisions of this subpart require an owner or operator to repair leaks by a specified time after the leak is detected, it is a violation of this standard to fail to take action to repair the leak(s) within the specified time. If action is taken to repair the leak(s) within the specified time, failure of that action to successfully repair the leak(s) is not a violation of this standard. However, if the repairs are unsuccessful, a leak is detected and the owner or operator shall take further action as required by the applicable provisions of this subpart.

§ 63.765 Glycol dehydration unit process vent standards.

(a) This section applies to each glycol dehydration unit subject to this subpart with an actual annual average natural gas flowrate equal to or greater than 85 thousand standard cubic meters per day and with actual average benzene glycol dehydration unit process vent emissions equal to or greater than 0.90 megagrams per year, that must be controlled for HAP emissions as specified in § 63.764(c)(1)(i).

(b) Except as provided in paragraph (c) of this section, an owner or operator of a glycol dehydration unit process vent shall comply with the requirements specified in paragraphs (b)(1) and (b)(2) of this section.

(1) For each glycol dehydration unit process vent, the owner or operator shall control air emissions by either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) The owner or operator shall connect the process vent to a control device or a combination of control devices through a closed-vent system. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.771(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.771(d).

(ii) The owner or operator shall connect the process vent to a control device or combination of control devices through a closed-vent system and the outlet benzene emissions from the control device(s) shall be reduced to a level less than 0.90 megagrams per year. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.771(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.771(d), except that the performance levels specified in § 63.771(d)(1)(i) and (ii) do not apply.

(2) One or more safety devices that vent directly to the atmosphere may be used on the air emission control equipment installed to comply with paragraph (b)(1) of this section.

(c) As an alternative to the requirements of paragraph (b) of this section, the owner or operator may comply with one of the requirements specified in paragraphs (c)(1) through (3) of this section.

(1) The owner or operator shall control air emissions by connecting the process vent to a process natural gas line.

(2) The owner or operator shall demonstrate, to the Administrator's satisfaction, that the total HAP emissions to the atmosphere from the glycol dehydration unit process vent are reduced by 95.0 percent through process modifications, or a combination of process modifications and one or more control devices, in accordance with the requirements specified in § 63.771(e).

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total emissions to the atmosphere from the glycol dehydration unit process vent are reduced by one of the levels specified in paragraphs (c)(3)(i) through (c)(3)(ii) of this section, through the installation and operation of controls as specified in paragraph (b)(1) of this section.

(i) HAP emissions are reduced by 95.0 percent or more.

(ii) Benzene emissions are reduced to a level less than 0.90 megagrams per year.

§ 63.766 Storage vessel standards.

(a) This section applies to each storage vessel with the potential for flash emissions (as defined in § 63.761) subject to this subpart.

(b) The owner or operator of a storage vessel with the potential for flash emissions (as defined in § 63.761) shall comply with one of the control requirements specified in paragraphs (b)(1) and (2) of this section.

(1) The owner or operator shall equip the affected storage vessel with the potential for flash emissions with a cover that is connected, through a closed-vent system that meets the conditions specified in § 63.771(c), to a control device or a combination of control devices that meets any of the conditions specified in § 63.771(d). The cover shall be designed and operated in accordance with the requirements of § 63.771(b).

(2) The owner or operator of a pressure storage vessel that is designed to operate as a closed system shall operate the storage vessel with no detectable emissions at all times that material is in the storage vessel, except as provided for in paragraph (c) of this section.

(c) One or more safety devices that vent directly to the atmosphere may be used on the storage vessel and air emission control equipment complying with paragraphs (b)(1) and (2) of this section.

(d) This section does not apply to storage vessels for which the owner or operator is meeting the requirements specified in 40 CFR part 60, subpart Kb; or is meeting the requirements specified in 40 CFR part 63, subparts G or CC.

§ 63.767 [Reserved].

§ 63.768 [Reserved].

§ 63.769 Equipment leak standards.

(a) This section applies to equipment subject to this subpart, located at natural gas processing plants and specified in paragraphs (a)(1) and (a)(2) of this section, that contains or contacts a fluid (liquid or gas) that has a total VHAP concentration equal to or greater than 10 percent by weight (determined according to the procedures specified in § 63.772(a)) and that operates in VHAP service equal to or greater than 300 hours per calendar year.

(1) Ancillary equipment, as defined in § 63.761; and

(2) Compressors.

(b) This section does not apply to ancillary equipment and compressors for which the owner or operator is meeting the requirements specified in subpart H of this part; or is meeting the requirements specified in 40 CFR part 60, subpart KKK.

(c) For each piece of ancillary equipment and each compressor subject to this section located at an existing or new source, the owner or operator shall meet the requirements specified in 40 CFR part 61, subpart V, §§ 61.241 through 61.247, except as specified in paragraphs (c)(1) through (8) of this section.

(1) Each pressure relief device in gas/vapor service shall be monitored quarterly and within 5 days after each pressure release to detect leaks, except under the following conditions.

(i) The owner or operator has obtained permission from the Administrator to use an alternative means of emission limitation that achieves a reduction in emissions of VHAP at least equivalent to that achieved by the control required in this subpart.

(ii) The pressure relief device is located in a nonfractionating facility that is monitored only by non-facility personnel, it may be monitored after a pressure release the next time the monitoring personnel are on site, instead of within 5 days. Such a pressure relief device shall not be allowed to operate for more than 30 days after a pressure release without monitoring.

(2) For pressure relief devices, if an instrument reading of 10,000 parts per

million or greater is measured, a leak is detected.

(3) For pressure relief devices, when a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after it is detected, unless a delay in repair of equipment is granted under 40 CFR 61.242–10.

(4) Sampling connection systems are exempt from the requirements of 40 CFR 61.242–5.

(5) Pumps in VHAP service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service that are located at a nonfractionating plant that does not have the design capacity to process 283,000 standard cubic meters per day or more of field gas are exempt from the routine monitoring requirements of 40 CFR 61.242–2(a)(1) and 61.242–7(a), and paragraphs (c)(1) through (3) of this section.

(6) Pumps in VHAP service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service located within a natural gas processing plant that is located on the Alaskan North Slope are exempt from the routine monitoring requirements of 40 CFR 61.242–2(a)(1) and 61.242–7(a), and (c)(1) through (3) of this section.

(7) Reciprocating compressors in wet gas service are exempt from the compressor control requirements of 40 CFR 61.242–3.

(8) Flares used to comply with this subpart shall comply with the requirements of § 63.11(b).

§ 63.770 [Reserved].

§ 63.771 Control equipment requirements.

(a) This section applies to each cover, closed-vent system, and control device installed and operated by the owner or operator to control air emissions as required by the provisions of this subpart. Compliance with paragraphs (b), (c), and (d) of this section will be determined by review of the records required by § 63.774 and the reports required by § 63.775, by review of performance test results, and by inspections.

(b) *Cover requirements.* (1) The cover and all openings on the cover (e.g., access hatches, sampling ports, and gauge wells) shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(2) Each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed except during those times when it is necessary to use an opening as follows:

(i) To add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit);

(ii) To inspect or sample the material in the unit;

(iii) To inspect, maintain, repair, or replace equipment located inside the unit; or

(iv) To vent liquids, gases, or fumes from the unit through a closed-vent system to a control device designed and operated in accordance with the requirements of paragraphs (c) and (d) of this section.

(c) *Closed-vent system requirements.* (1) The closed-vent system shall route all gases, vapors, and fumes emitted from the material in a HAP emissions unit to a control device that meets the requirements specified in paragraph (d) of this section.

(2) The closed-vent system shall be designed and operated with no detectable emissions.

(3) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, the owner or operator shall meet the requirements specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this section.

(i) For each bypass device, except as provided for in paragraph (c)(3)(ii) of this section, the owner or operator shall either:

(A) Properly install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that could divert the stream away from the control device to the atmosphere that takes a reading at least once every 15 minutes and sounds an alarm when the bypass device is open such that the stream is being, or could be, diverted away from the control device to the atmosphere; or

(B) Secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass device.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (c)(3)(i) of this section.

(d) *Control device requirements.* (1) The control device used to reduce HAP emissions in accordance with the standards of this subpart shall be one of the control devices specified in paragraphs (d)(1)(i) through (iii) of this section.

(i) An enclosed combustion device (e.g., thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated in accordance with one of the following performance requirements:

(A) Reduces the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 63.772(e); or

(B) Reduces the concentration of either TOC or total HAP in the exhaust gases at the outlet to the device to a level equal to or less than 20 parts per million by volume on a dry basis corrected to 3 percent oxygen as determined in accordance with the requirements of § 63.772(e); or

(C) Operates at a minimum residence time of 0.5 seconds at a minimum temperature of 760°C.

(D) If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(ii) A vapor recovery device (e.g., carbon adsorption system or condenser) or other control device that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 63.772(e).

(iii) A flare that is designed and operated in accordance with the requirements of § 63.11(b).

(2) [Reserved]

(3) The owner or operator shall demonstrate that a control device achieves the performance requirements of paragraph (d)(1) of this section as specified in § 63.772(e).

(4) The owner or operator shall operate each control device in accordance with the requirements specified in paragraphs (d)(4)(i) and (ii) of this section.

(i) Each control device used to comply with this subpart shall be operating at all times when gases, vapors, and fumes are vented from the HAP emissions unit or units through the closed-vent system to the control device, as required under §§ 63.765, 63.766, and 63.769, except when maintenance or repair on a unit cannot be completed without a shutdown of the control device. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

(ii) For each control device monitored in accordance with the requirements of § 63.773(d), the owner or operator shall demonstrate compliance according to

the requirements of § 63.772(f) or (g), as applicable.

(5) For each carbon adsorption system used as a control device to meet the requirements of paragraph (d)(1) of this section, the owner or operator shall manage the carbon as follows:

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(ii) The spent carbon removed from the carbon adsorption system shall be either regenerated, reactivated, or burned in one of the units specified in paragraphs (d)(5)(ii)(A) through (d)(5)(ii)(G) of this section.

(A) Regenerated or reactivated in a thermal treatment unit for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 264, subpart X.

(B) Regenerated or reactivated in a thermal treatment unit equipped with and operating air emission controls in accordance with this section.

(C) Regenerated or reactivated in a thermal treatment unit equipped with and operating organic air emission controls in accordance with a national emissions standard for HAP under another subpart in 40 CFR part 61 or this part.

(D) Burned in a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 264, subpart O.

(E) Burned in a hazardous waste incinerator which the owner or operator has designed and operates in accordance with the requirements of 40 CFR part 265, subpart O.

(F) Burned in a boiler or industrial furnace for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 266, subpart H.

(G) Burned in a boiler or industrial furnace which the owner or operator has designed and operates in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(e) *Process modification requirements.* Each owner or operator that chooses to comply with § 63.765(c)(2) shall meet the requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(1) The owner or operator shall determine glycol dehydration unit baseline operations (as defined in § 63.761). Records of glycol dehydration unit baseline operations shall be retained as required under § 63.774(b)(10).

(2) The owner or operator shall document, to the Administrator's satisfaction, the conditions for which glycol dehydration unit baseline operations shall be modified to achieve the 95.0 percent overall HAP emission reduction, either through process modifications or through a combination of process modifications and one or more control devices. If a combination of process modifications and one or more control devices are used, the owner or operator shall also establish the percent HAP reduction to be achieved by the control device to achieve an overall HAP emission reduction of 95.0 percent for the glycol dehydration unit process vent. Only modifications in glycol dehydration unit operations directly related to process changes, including, but not limited to, changes in glycol circulation rate or glycol-HAP absorbency, shall be allowed. Changes in the inlet gas characteristics or natural gas throughput rate shall not be considered in determining the overall HAP emission reduction.

(3) The owner or operator that achieves a 95.0 percent HAP emission reduction using process modifications alone shall comply with paragraph (e)(3)(i) of this section. The owner or operator that achieves a 95.0 percent HAP emission reduction using a combination of process modifications and one or more control devices shall comply with paragraphs (e)(3)(i) and (e)(3)(ii) of this section.

(i) The owner or operator shall maintain records, as required in § 63.774(b)(11), that the facility continues to operate in accordance with the conditions specified under paragraph (e)(2) of this section.

(ii) The owner or operator shall comply with the control device requirements specified in paragraph (d) of this section, except that the emission reduction achieved shall be the emission reduction specified for the control device(s) in paragraph (e)(2) of this section.

§ 63.772 Test methods, compliance procedures, and compliance demonstrations.

(a) *Determination of material VHAP or HAP concentration to determine the applicability of the equipment leak standards under this subpart (§ 63.769).* Each piece of ancillary equipment and compressors are presumed to be in VHAP service or in wet gas service unless an owner or operator demonstrates that the piece of equipment is not in VHAP service or in wet gas service.

(1) For a piece of ancillary equipment and compressors to be considered not in VHAP service, it must be determined that the percent VHAP content can be reasonably expected never to exceed 10.0 percent by weight. For the purposes of determining the percent VHAP content of the process fluid that is contained in or contacts a piece of ancillary equipment or compressor, Method 18 of 40 CFR part 60, appendix A, shall be used.

(2) For a piece of ancillary equipment and compressors to be considered in wet gas service, it must be determined that it contains or contacts the field gas before the extraction of natural gas liquids.

(b) *Determination of glycol dehydration unit flowrate or benzene emissions.* The procedures of this paragraph shall be used by an owner or operator to determine glycol dehydration unit natural gas flowrate or benzene emissions to meet the criteria for an exemption from control requirements under § 63.764(e)(1).

(1) The determination of actual flowrate of natural gas to a glycol dehydration unit shall be made using the procedures of either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) The owner or operator shall install and operate a monitoring instrument that directly measures natural gas flowrate to the glycol dehydration unit with an accuracy of plus or minus 2 percent or better. The owner or operator shall convert annual natural gas flowrate to a daily average by dividing the annual flowrate by the number of days per year the glycol dehydration unit processed natural gas.

(ii) The owner or operator shall document, to the Administrator's satisfaction, that the actual annual average natural gas flowrate to the glycol dehydration unit is less than 85 thousand standard cubic meters per day.

(2) The determination of actual average benzene emissions from a glycol dehydration unit shall be made using the procedures of either paragraph (b)(2)(i) or (b)(2)(ii) of this section. Emissions shall be determined either uncontrolled, or with federally enforceable controls in place.

(i) The owner or operator shall determine actual average benzene emissions using the model GRI–GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI–GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and may be

determined using the procedures documented in the Gas Research Institute (GRI) report entitled "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1); or

(ii) The owner or operator shall determine an average mass rate of benzene emissions in kilograms per hour through direct measurement by performing three runs of Method 18, 40 CFR Part 60, appendix A (or an equivalent method), and averaging the results of the three runs. Annual emissions in kilograms per year shall be determined by multiplying the mass rate by the number of hours the unit is operated per year. This result shall be converted to megagrams per year.

(c) *No detectable emissions test procedure.* (1) The no detectable emissions test procedure shall be conducted in accordance with Method 21, 40 CFR part 60, appendix A.

(2) The detection instrument shall meet the performance criteria of Method 21, 40 CFR part 60, appendix A, except that the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the fluid and not for each individual organic compound in the stream.

(3) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21, 40 CFR part 60, appendix A.

(4) Calibration gases shall be as follows:

(i) Zero air (less than 10 parts per million by volume hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration less than 10,000 parts per million by volume.

(5) An owner or operator may choose to adjust or not adjust the detection instrument readings to account for the background organic concentration level. If an owner or operator chooses to adjust the instrument readings for the background level, the background level value must be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(6)(i) Except as provided in paragraph (c)(6)(i) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic hazardous air pollutants or volatile organic compounds, the average stream response factor shall be calculated on an inert-free basis.

(ii) If no instrument is available at the facility that will meet the performance criteria specified in paragraph (c)(6)(i) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (c)(6)(i) of this section.

(7) An owner or operator must determine if a potential leak interface operates with no detectable emissions using the applicable procedure specified in paragraph (c)(7)(i) or (c)(7)(ii) of this section.

(i) If an owner or operator chooses not to adjust the detection instrument readings for the background organic concentration level, then the maximum organic concentration value measured by the detection instrument is compared directly to the applicable value for the potential leak interface as specified in paragraph (c)(8) of this section.

(ii) If an owner or operator chooses to adjust the detection instrument readings for the background organic concentration level, the value of the arithmetic difference between the maximum organic concentration value measured by the instrument and the background organic concentration value as determined in paragraph (c)(5) of this section is compared with the applicable value for the potential leak interface as specified in paragraph (c)(8) of this section.

(8) A potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (c)(7) of this section, is less than 500 parts per million by volume.

(d) [Reserved]

(e) *Control device performance test procedures.* This paragraph applies to the performance testing of control devices. The owners or operators shall demonstrate that a control device achieves the performance requirements of § 63.771(d)(1) or (e)(3)(ii) using either a performance test as specified in paragraph (e)(3) of this section or a design analysis as specified in paragraph (e)(4) of this section. The owner or operator may elect to use the alternative procedures in paragraph (e)(5) of this section for performance testing of a condenser used to control emissions from a glycol dehydration unit process vent.

(1) The following control devices are exempt from the requirements to conduct performance tests and design analyses under this section:

(i) A flare that is designed and operated in accordance with § 63.11(b);

(ii) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(iii) A boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel;

(iv) A boiler or process heater burning hazardous waste for which the owner or operator has either been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H;

(v) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O; or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(vi) A control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA and the test was conducted using the same methods specified in this section and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(2) An owner or operator shall design and operate each flare in accordance with the requirements specified in § 63.11(b) and in paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(i) The compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions.

(ii) An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration when a flare is used.

(3) For a performance test conducted to demonstrate that a control device meets the requirements of § 63.771(d)(1) or (e)(3)(ii), the owner or operator shall use the test methods and procedures specified in paragraphs (e)(3)(i) through (e)(3)(iv) of this section. The performance test shall be conducted according to the schedule specified in § 63.7(a)(2) and the results of the performance test shall be submitted in the Notification of Compliance Status Report as required in § 63.775(d)(1)(ii.

(i) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites in paragraphs (e)(3)(i)(A) and (B) of this section. Any references to particulate

mentioned in Methods 1 and 1A do not apply to this section.

(A) To determine compliance with the control device percent reduction requirement specified in § 63.771(d)(1)(i)(A), (d)(1)(ii) or (e)(3)(ii), sampling sites shall be located at the inlet of the first control device, and at the outlet of the final control device.

(B) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.771(d)(1)(i)(B), the sampling site shall be located at the outlet of the combustion device.

(ii) The gas volumetric flowrate shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(iii) To determine compliance with the control device percent reduction performance requirement in § 63.771(d)(1)(i)(A),(d)(1)(ii), and (e)(3)(ii), the owner or operator shall use either Method 18, 40 CFR part 60, appendix A or Method 25A, 40 CFR part 60, appendix A; alternatively, any other method or data that have been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A, may be used. The following procedures shall be used to calculate percent reduction efficiency:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) The mass rate of either TOC (minus methane and ethane) or total HAP (E_i, E_o) shall be computed.

(*1*) The following equations shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij} M_{ij}\right) Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj} M_{oj}\right) Q_o$$

Where:

C_{ij}, C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o = Flowrate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20°C.

(*2*) When the TOC mass rate is calculated, all organic compounds (minus methane and ethane) measured by Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A, shall be summed using the equations in paragraph (e)(3)(iii)(B)(*1*) of this section.

(*3*) When the total HAP mass rate is calculated, only HAP chemicals listed in Table 1 of this subpart shall be summed using the equations in paragraph (e)(3)(iii)(B)(*1*) of this section.

(C) The percent reduction in TOC (minus methane and ethane) or total HAP shall be calculated as follows:

$$R_{cd} = \frac{E_i - E_o}{E_i} \times 100\%$$

Where:

R_{cd} = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet to the control device as calculated under paragraph (e)(3)(iii)(B) of this section, kilograms TOC per hour or kilograms HAP per hour.

E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the outlet of the control device, as calculated under paragraph (e)(3)(iii)(B) of this section, kilograms TOC per hour or kilograms HAP per hour.

(D) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total HAP exiting the device, respectively.

(iv) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.771(d)(1)(i)(B), the owner or operator shall use either Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A, to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that have been validated according to Method 301 of appendix A of this part, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(A) The minimum sampling time for each run shall be 1 hour, in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) The TOC concentration or total HAP concentration shall be calculated according to paragraph (e)(3)(iv)(B)(*1*) or (e)(3)(iv)(B)(*2*) of this section.

(*1*) The TOC concentration is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x}$$

Where:

C_{TOC} = Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.

C_{ji} = Concentration of sample component j of sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(*2*) The total HAP concentration shall be computed according to the equation in paragraph (e)(3)(iv)(B)(*1*) of this section, except that only HAP chemicals listed in Table 1 of this subpart shall be summed.

(C) The TOC concentration or total HAP concentration shall be corrected to 3 percent oxygen as follows:

(*1*) The emission rate correction factor for excess air, integrated sampling and analysis procedures of Method 3B, 40 CFR part 60, appendix A, shall be used to determine the oxygen concentration. The samples shall be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

(*2*) The TOC or HAP concentration shall be corrected for percent oxygen by using the following equation:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right)$$

Where:

C_c = TOC concentration or total HAP concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = TOC concentration or total HAP concentration, dry basis, parts per million by volume.

$\%O_{2d}$ = Concentration of oxygen, dry basis, percent by volume.

(4) For a design analysis conducted to meet the requirements of § 63.771(d)(1) or (e)(3)(ii), the owner or operator shall meet the requirements specified in paragraphs (e)(4)(i) and (e)(4)(ii) of this section. Documentation of the design analysis shall be submitted as a part of the Notification of Compliance Status Report as required in § 63.775(d)(1)(i).

(i) The design analysis shall include analysis of the vent stream characteristics and control device operating parameters for the applicable control device as specified in paragraphs (e)(4)(i)(A) through (F) of this section.

(A) For a thermal vapor incinerator, the design analysis shall include the vent stream composition, constituent concentrations, and flowrate and shall establish the design minimum and average temperatures in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall include the vent stream composition, constituent concentrations, and flowrate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet, and the design service life of the catalyst.

(C) For a boiler or process heater, the design analysis shall include the vent stream composition, constituent concentrations, and flowrate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(D) For a condenser, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. As an alternative to the design analysis, an owner or operator may elect to use the procedures specified in paragraph (e)(5) of this section.

(E) For a regenerable carbon adsorption system, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for the carbon beds, design total regeneration stream flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(F) For a nonregenerable carbon adsorption system, such as a carbon canister, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, capacity of the carbon bed, type and working capacity of activated carbon used for the carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule. In addition, these systems will incorporate dual carbon canisters in case of emission breakthrough occurring in one canister.

(ii) If the owner or operator and the Administrator do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph (e)(3) of this section. The Administrator may choose to have an authorized representative observe the performance test.

(5) As an alternative to the procedures in paragraphs (e)(3) and (e)(4)(i)(D) of this section, an owner or operator may elect to use the procedures documented in the GRI report entitled, "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to determine condenser performance.

(f) *Compliance demonstration for control device performance requirements.* This paragraph applies to the demonstration of compliance with the control device performance requirements specified in §§ 63.771(d)(1)(ii) and 63.765(c)(2). Compliance shall be demonstrated using the requirements in paragraphs (f)(1) through (f)(3) of this section. As an alternative, an owner or operator that installs a condenser as the control device to achieve the requirements specified in § 63.771(d)(1)(ii) or § 63.765(c)(2), may demonstrate compliance according to paragraph (g) of this section. An owner or operator may switch between compliance with paragraph (f) of this section and compliance with paragraph (g) of this section only after at least 1 year of operation in compliance with the selected approach. Notification of such a change in the compliance method shall be reported in the next Periodic Report, as required in § 63.775(e), following the change.

(1) The owner or operator shall establish a site specific maximum or minimum monitoring parameter value (as appropriate) according to the requirements of § 63.773(d)(5)(i).

(2) The owner or operator shall calculate the daily average of the applicable monitored parameter in accordance with § 63.773(d)(4).

(3) Compliance with the operating parameter limit is achieved when the daily average of the monitoring parameter value calculated under paragraph (f)(2) of this section is either equal to or greater than the minimum or equal to or less than the maximum monitoring value established under paragraph (f)(1) of this section.

(g) *Compliance demonstration with percent reduction performance requirements—condensers.* This paragraph applies to the demonstration of compliance with the performance requirements specified in § 63.771(d)(1)(ii) or § 63.765(c)(2) for condensers. Compliance shall be demonstrated using the procedures in paragraphs (g)(1) through (g)(3) of this section.

(1) The owner or operator shall establish a site-specific condenser performance curve according to § 63.773(d)(5)(ii).

(2) Compliance with the percent reduction requirement in § 63.771(d)(1)(ii) or § 63.765(c)(2) shall be demonstrated by the procedures in paragraphs (g)(2)(i) through (g)(2)(iii) of this section.

(i) The owner or operator must calculate the daily average condenser outlet temperature in accordance with § 63.773(d)(4).

(ii) The owner or operator shall determine the condenser efficiency for the current operating day using the daily average condenser outlet temperature calculated under paragraph (g)(2)(i) of this section and the condenser performance curve established under paragraph (g)(1) of this section.

(iii) Except as provided in paragraphs (g)(2)(iii) (A) and (B) of this section, at the end of each operating day, the owner or operator shall calculate the 365-day average HAP emission reduction from the condenser efficiencies determined in paragraph (g)(2)(ii) of this section for the preceding 365 operating days. If the owner or operator uses a combination of process modifications and a condenser in accordance with the requirements of § 63.765(c)(2), the 365-day average HAP emission reduction shall be calculated using the emission reduction achieved through process modifications and the condenser efficiency determined in paragraph (g)(2)(ii) of this section, both for the previous 365 operating days.

(A) After the compliance dates specified in § 63.760(f), an owner or operator with less than 120 days of data for determining average HAP emission reduction, shall calculate the average HAP emission reduction for the first 120 days of operation after the compliance dates. Compliance with the performance requirements is achieved if the 120-day average HAP emission reduction is equal to or greater than 90.0 percent.

(B) After 120 days and no more than 364 days of operation after the compliance dates specified in § 63.760(f), the owner or operator shall calculate the average HAP emission reduction as the HAP emission reduction averaged over the number of days between the current day and the applicable compliance date. Compliance with the performance requirements is achieved if the average HAP emission reduction is equal to or greater than 90.0 percent.

(3) If the owner or operator has data for 365 days or more of operation, compliance is achieved with the emission limitation specified in § 63.771(d)(1)(ii) or § 63.765(c)(2) if the average HAP emission reduction calculated in paragraph (g)(2)(iii) of this section is equal to or greater than 95.0 percent.

§ 63.773 Inspection and monitoring requirements.

(a) This section applies to an owner or operator using air emission controls in accordance with the requirements of §§ 63.765 and 63.766.

(b) [Reserved]

(c) *Cover and closed-vent system inspection and monitoring requirements.* (1) For each closed-vent system or cover required to comply with this section, the owner or operator shall comply with the requirements of paragraphs (c) (2) through (7) of this section.

(2) Except as provided in paragraphs (c) (5) and (6) of this section, each closed-vent system shall be inspected according to the procedures and schedule specified in paragraphs (c)(2)(i) and (ii) of this section, and each cover shall be inspected according to the procedures and schedule specified in paragraph (c)(2)(iii) of this section.

(i) For each closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange), the owner or operator shall:

(A) Conduct an initial inspection according to the procedures specified in § 63.772(c) to demonstrate that the closed-vent system operates with no detectable emissions.

(B) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in piping; loose connections; or broken or missing caps or other closure devices. The owner or operator shall monitor a component or connection using the procedures in § 63.772(c) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced or the connection is unsealed.

(ii) For closed-vent system components other than those specified in paragraph (c)(2)(i) of this section, the owner or operator shall:

(A) Conduct an initial inspection according to the procedures specified in § 63.772(c) to demonstrate that the closed-vent system operates with no detectable emissions.

(B) Conduct annual inspections according to the procedures specified in § 63.772(c) to demonstrate that the components or connections operate with no detectable emissions.

(C) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork; loose connections; or broken or missing caps or other closure devices.

(iii) For each cover, the owner or operator shall:

(A) Conduct visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover, or between the cover and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. In the case where the tank is buried partially or entirely underground, inspection is required only for those portions of the cover that extend to or above the ground surface, and those connections that are on such portions of the cover (e.g., fill ports, access hatches, gauge wells, etc.) and can be opened to the atmosphere.

(B) The inspections shall be conducted initially, following the installation of the cover. Thereafter, the owner or operator shall perform the inspection at least once every calendar year, except as provided in paragraphs (c) (5) and (6) of this section.

(3) In the event that a leak or defect is detected, the owner or operator shall repair the leak or defect as soon as practicable, except as provided in paragraph (c)(4) of this section.

(i) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(ii) Repair shall be completed no later than 15 calendar days after the leak is detected.

(4) Delay of repair of a closed-vent system or cover for which leaks or defects have been detected is allowed if the repair is technically infeasible without a shutdown, as defined in § 63.761, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be complete by the end of the next shutdown.

(5) Any parts of the closed-vent system or cover that are designated, as described in paragraphs (c)(5) (i) and (ii) of this section, as unsafe to inspect are exempt from the inspection requirements of paragraphs (c)(2)(i), (ii), and (iii) of this section if:

(i) The owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraphs (c)(2)(i), (ii), or (iii) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(6) Any parts of the closed-vent system or cover that are designated, as described in paragraphs (c)(6) (i) and (ii) of this section, as difficult to inspect are exempt from the inspection requirements of paragraphs (c)(2)(i), (ii), and (iii) of this section if:

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface; and

(ii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(7) Records shall be maintained as specified in § 63.774(b)(5) through (8).

(d) *Control device monitoring requirements.* (1) For each control device, except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous parameter monitoring system in accordance with the requirements of paragraphs (d)(3) through (9) of this section. The continuous monitoring system shall be designed and operated so that a determination can be made on whether the control device is achieving the applicable performance requirements of § 63.771(d) or § 63.771(e)(3). The continuous parameter monitoring system shall meet the following specifications and requirements:

(i) Each continuous parameter monitoring system shall measure data values at least once every hour and record either:

(A) Each measured data value; or

(B) Each block average value for each 1-hour period or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values.

(ii) The monitoring system must be installed, calibrated, operated, and maintained in accordance with the manufacturer's specifications or other written procedures that provide reasonable assurance that the monitoring equipment is operating properly.

(2) An owner or operator is exempt from the monitoring requirements specified in paragraphs (d)(3) through (9) of this section for the following types of control devices:

(i) A boiler or process heater in which all vent streams are introduced with the primary fuel or is used as the primary fuel; or

(ii) A boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(3) The owner or operator shall install, calibrate, operate, and maintain a device equipped with a continuous recorder to measure the values of operating parameters appropriate for the control device as specified in either paragraph (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section.

(i) A continuous monitoring system that measures the following operating parameters as applicable:

(A) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C ,or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(C) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(D) For a boiler or process heater with a design heat input capacity of less than 44 megawatts, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(E) For a condenser, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser.

(F) For a regenerative-type carbon adsorption system:

(*1*) A continuous parameter monitoring system to measure and record the average total regeneration stream mass flow or volumetric flow during each carbon bed regeneration cycle. The integrating regenerating stream flow monitoring device must have an accuracy of ±10 percent; and

(*2*) A continuous parameter monitoring system to measure and record the average carbon bed temperature for the duration of the carbon bed steaming cycle and to measure the actual carbon bed temperature after regeneration and within 15 minutes of completing the cooling cycle. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater.

(G) For a nonregenerative-type carbon adsorption system, the owner or operator shall monitor the design carbon replacement interval established using a performance test performed in accordance with § 63.772(e)(3) or a design analysis in accordance with § 63.772(e)(4)(i)(F) and shall be based on the total carbon working capacity of the control device and source operating schedule.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder. The monitor must meet the requirements of Performance Specification 8 or 9 of appendix B of 40 CFR part 60 and must be installed, calibrated, and maintained according to the manufacturer's specifications.

(iii) A continuous monitoring system that measures alternative operating parameters other than those specified in paragraph (d)(3)(i) or (d)(3)(ii) of this section upon approval of the Administrator as specified in § 63.8(f)(1) through (5).

(4) Using the data recorded by the monitoring system, the owner or operator must calculate the daily average value for each monitored operating parameter for each operating day. If the HAP emissions unit operation is continuous, the operating day is a 24-hour period. If HAP emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

(5) For each operating parameter monitor installed in accordance with the requirements of paragraph (d)(3) of this section, the owner or operator shall comply with paragraph (d)(5)(i) of this section for all control devices except for condensers, and when condensers are installed, the owner or operator shall also comply with paragraph (d)(5)(ii) of this section.

(i) The owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.771(d)(1) or § 63.771(e)(3)(ii). Each minimum or maximum operating parameter value shall be established as follows:

(A) If the owner or operator conducts performance tests in accordance with the requirements of § 63.772(e)(3) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771(d)(1) or § 63.771(e)(3)(ii), then the minimum operating parameter value or the maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by control device design analysis or control device manufacturer recommendations or a combination of both.

(B) If the owner or operator uses a control device design analysis in accordance with the requirements of § 63.772(e)(4) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771(d)(1) or (e)(3)(ii), then the minimum operating parameter value or the maximum operating parameter value shall be established based on the control device design analysis and may be supplemented by the control device manufacturer's recommendations.

(ii) The owner or operator shall establish a condenser performance curve showing the relationship between condenser outlet temperature and condenser control efficiency. The curve shall be established as follows:

(A) If the owner or operator conducts a performance test in accordance with the requirements of § 63.772(e)(3) to demonstrate that the condenser achieves the applicable performance requirements in § 63.771(d)(1) or (e)(3)(ii), then the condenser performance curve shall be based on values measured during the performance test and supplemented as necessary by control device design analysis, or control device manufacturer's recommendations, or a combination or both.

(B) If the owner or operator uses a control device design analysis in accordance with the requirements of § 63.772(e)(4)(i)(D) to demonstrate that the condenser achieves the applicable performance requirements specified in § 63.771(d)(1) or (e)(3)(ii), then the condenser performance curve shall be based on the condenser design analysis and may be supplemented by the control device manufacturer's recommendations.

(C) As an alternative to paragraphs (d)(5)(ii)(A) and (B) of this section, the owner or operator may elect to use the procedures documented in the GRI report entitled, "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to generate a condenser performance curve.

(6) An excursion for a given control device is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (d)(6)(i) through (d)(6)(v) of this section being met. When multiple operating parameters are monitored for the same control device and during the same operating day and more than one of these operating parameters meets an excursion criterion specified in paragraphs (d)(6)(i) through (d)(6)(v) of this section, then a single excursion is determined to have occurred for the control device for that operating day.

(i) An excursion occurs when the daily average value of a monitored operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit) established for the operating parameter in accordance with the requirements of paragraph (d)(5)(i) of this section.

(ii) An excursion occurs when the 365-day average condenser efficiency calculated according to the requirements specified in § 63.772(g)(2)(iii) is less than 95.0 percent.

(iii) If an owner or operator has less than 365 days of data, an excursion occurs when the average condenser efficiency calculated according to the procedures specified in § 63.772(g)(2)(iii)(A) or (B) is less than 90.0 percent.

(iv) An excursion occurs when the monitoring data are not available for at least 75 percent of the operating hours.

(v) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, an excursion occurs when:

(A) For each bypass line subject to § 63.771(c)(3)(i)(A) the flow indicator indicates that flow has been detected and that the stream has been diverted away from the control device to the atmosphere.

(B) For each bypass line subject to § 63.771(c)(3)(i)(B), if the seal or closure mechanism has been broken, the bypass line valve position has changed, the key for the lock-and-key type lock has been checked out, or the car-seal has broken.

(7) For each excursion, except as provided for in paragraph (d)(8) of this section, the owner or operator shall be deemed to have failed to have applied control in a manner that achieves the required operating parameter limits. Failure to achieve the required operating parameter limits is a violation of this standard.

(8) An excursion is not a violation of the operating parameter limit as specified in paragraphs (d)(8)(i) and (d)(8)(ii) of this section.

(i) An excursion does not count toward the number of excused excursions allowed under paragraph (d)(8)(ii) of this section when the excursion occurs during any one of the following periods:

(A) During a period of startup, shutdown, or malfunction when the affected facility is operated during such period in accordance with the facility's startup, shutdown, and malfunction plan; or

(B) During periods of non-operation of the unit or the process that is vented to the control device (resulting in cessation of HAP emissions to which the monitoring applies).

(ii) For each control device, or combinations of control devices installed on the same HAP emissions unit, one excused excursion is allowed per semiannual period for any reason. The initial semiannual period is the 6-month reporting period addressed by the first Periodic Report submitted by the owner or operator in accordance with § 63.775(e) of this subpart.

(9) Nothing in paragraphs (d)(1) through (d)(8) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this subpart.

§ 63.774 Recordkeeping requirements.

(a) The recordkeeping provisions of 40 CFR part 63, subpart A, that apply and those that do not apply to owners and operators of sources subject to this subpart are listed in Table 2 of this subpart.

(b) Except as specified in paragraphs (c) and (d) of this section, each owner or operator of a facility subject to this subpart shall maintain the records specified in paragraphs (b)(1) through (b)(11) of this section:

(1) The owner or operator of an affected source subject to the provisions of this subpart shall maintain files of all information (including all reports and notifications) required by this subpart. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report or period.

(i) All applicable records shall be maintained in such a manner that they can be readily accessed.

(ii) The most recent 12 months of records shall be retained on site or shall be accessible from a central location by

computer or other means that provides access within 2 hours after a request.

(iii) The remaining 4 years of records may be retained offsite.

(iv) Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, floppy disk, magnetic tape, or microfiche.

(2) Records specified in § 63.10(b)(2);

(3) Records specified in § 63.10(c) for each monitoring system operated by the owner or operator in accordance with the requirements of § 63.773(d). Notwithstanding the requirements of § 63.10(c), monitoring data recorded during periods identified in paragraphs (b)(3)(i) through (b)(3)(iv) of this section shall not be included in any average or percent leak rate computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Startups, shutdowns, or malfunctions events. During startups, shutdowns, or malfunction events, the owner or operator shall maintain records indicating whether or not the startup, shutdown or malfunction plan required under § 63.762(d), was followed.

(iii) Periods of non-operation resulting in cessation of the emissions to which the monitoring applies; and

(iv) Excursions due to invalid data as defined in § 63.773(d)(6)(iv).

(4) Each owner or operator using a control device to comply with § 63.764 of this subpart shall keep the following records up-to-date and readily accessible:

(i) Continuous records of the equipment operating parameters specified to be monitored under § 63.773(d) of this subpart or specified by the Administrator in accordance with § 63.773(d)(3)(iii) of this subpart. For flares, the hourly records and records of pilot flame outages specified in § 63.773(d)(3)(i)(C) of this subpart shall be maintained in place of continuous records.

(ii) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.773(d)(4) of this subpart, except as specified in paragraphs (b)(4)(ii)(A) and (B) of this section.

(A) For flares, records of the times and duration of all periods during which all pilot flames are absent shall be kept rather than daily averages.

(B) For condensers installed to comply with § 63.765, records of the annual 365-day rolling average condenser efficiency determined under § 63.772(g) shall be kept in addition to the daily averages.

(iii) Hourly records of whether the flow indicator specified under § 63.771(c)(3)(i)(A) was operating and whether flow was detected at any time during the hour, as well as records of the times and durations of all periods when the vent stream is diverted from the control device or the monitor is not operating.

(iv) Where a seal or closure mechanism is used to comply with § 63.771(c)(3)(i)(B), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanism has been done, and shall record the duration of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has broken.

(5) Records identifying all parts of the cover or closed-vent system that are designated as unsafe to inspect in accordance with § 63.773(c)(5), an explanation of why the equipment is unsafe to inspect, and the plan for inspecting the equipment.

(6) Records identifying all parts of the cover or closed-vent system that are designated as difficult to inspect in accordance with § 63.773(c)(6), an explanation of why the equipment is difficult to inspect, and the plan for inspecting the equipment.

(7) For each inspection conducted in accordance with § 63.773(c), during which a leak or defect is detected, a record of the information specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this section.

(i) The instrument identification numbers, operator name or initials, and identification of the equipment.

(ii) The date the leak or defect was detected and the date of the first attempt to repair the leak or defect.

(iii) Maximum instrument reading measured by the method specified in § 63.772(c) after the leak or defect is successfully repaired or determined to be nonrepairable.

(iv) "Repair delayed" and the reason for the delay if a leak or defect is not repaired within 15 calendar days after discovery of the leak or defect.

(v) The name, initials, or other form of identification of the owner or operator (or designee) whose decision it was that repair could not be effected without a shutdown.

(vi) The expected date of successful repair of the leak or defect if a leak or defect is not repaired within 15 calendar days.

(vii) Dates of shutdowns that occur while the equipment is unrepaired.

(viii) The date of successful repair of the leak or defect.

(8) For each inspection conducted in accordance with § 63.773(c) during which no leaks or defects are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(9) Records identifying ancillary equipment and compressors that are subject to and controlled under the provisions of 40 CFR part 60, subpart KKK; 40 CFR part 61, subpart V; or 40 CFR part 63, subpart H.

(10) Records of glycol dehydration unit baseline operations calculated as required under § 63.771(e)(1).

(11) Records required in § 63.771(e)(3)(i) documenting that the facility continues to operate under the conditions specified in § 63.771(e)(2).

(c) An owner or operator that elects to comply with the benzene emission limit specified in § 63.765(b)(1)(ii) shall document, to the Administrator's satisfaction, the following items:

(1) The method used for achieving compliance and the basis for using this compliance method; and

(2) The method used for demonstrating compliance with 0.90 megagrams per year of benzene.

(3) Any information necessary to demonstrate compliance as required in the methods specified in paragraphs (c)(1) and (c)(2) of this section.

(d) (1) An owner or operator that is exempt from control requirements under § 63.764(e)(1) shall maintain the records specified in paragraph (d)(1)(i) or (d)(1)(ii) of this section, as appropriate, for each glycol dehydration unit that is not controlled according to the requirements of § 63.764(c)(1)(i).

(i) The actual annual average natural gas throughput (in terms of natural gas flowrate to the glycol dehydration unit per day) as determined in accordance with § 63.772(b)(1), or

(ii) The actual average benzene emissions (in terms of benzene emissions per year) as determined in accordance with § 63.772(b)(2).

(2) An owner or operator that is exempt from the control requirements under § 63.764(e)(2) of this subpart shall maintain the following records:

(i) Information and data used to demonstrate that a piece of equipment is not in VHAP service or not in wet gas service shall be recorded in a log that is kept in a readily accessible location.

(ii) Identification and location of equipment, located at a natural gas processing plant subject to this subpart, that is in VHAP service less than 300 hours per year.

(e) Record the following when using a flare to comply with § 63.771(d):

(1) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(2) All visible emission readings, heat content determinations, flowrate measurements, and exit velocity determinations made during the compliance determination required by § 63.772(e)(2); and

(3) All periods during the compliance determination when the pilot flame is absent.

§ 63.775 Reporting requirements.

(a) The reporting provisions of subpart A of this part, that apply and those that do not apply to owners and operators of sources subject to this subpart are listed in Table 2 of this subpart.

(b) Each owner or operator of a major source subject to this subpart shall submit the information listed in paragraphs (b)(1) through (b)(6) of this section, except as provided in paragraphs (b)(7) and (b)(8) of this section.

(1) The initial notifications required for existing affected sources under § 63.9(b)(2) shall be submitted by 1 year after an affected source becomes subject to the provisions of this subpart or by June 17, 2000, whichever is later. Affected sources that are major sources on or before June 17, 2000 and plan to be area sources by June 17, 2002 shall include in this notification a brief, nonbinding description of a schedule for the action(s) that are planned to achieve area source status.

(2) The date of the performance evaluation as specified in § 63.8(e)(2), required only if the owner or operator is required by the Administrator to conduct a performance evaluation for a continuous monitoring system. A separate notification of the performance evaluation is not required if it is included in the initial notification submitted in accordance with paragraph (b)(1) of this section.

(3) The planned date of a performance test at least 60 days before the test in accordance with § 63.7(b). Unless requested by the Administrator, a site-specific test plan is not required by this subpart. If requested by the Administrator, the owner or operator must also submit the site-specific test plan required by § 63.7(c) with the notification of the performance test. A separate notification of the performance test is not required if it is included in the initial notification submitted in accordance with paragraph (b)(1) of this section.

(4) A Notification of Compliance Status report as described in paragraph (d) of this section;

(5) Periodic Reports as described in paragraph (e) of this section; and

(6) Startup, shutdown, and malfunction reports specified in § 63.10(d)(5) shall be submitted as required. Separate startup, shutdown, and malfunction reports as described in § 63.10(d)(5) are not required if the information is included in the Periodic Report specified in paragraph (e) of this section.

(7) Each owner or operator of a glycol dehydration unit subject to this subpart that is exempt from the control requirements for glycol dehydration unit process vents in § 63.765, is exempt from all reporting requirements for major sources in this subpart, for that unit.

(8) Each owner or operator of ancillary equipment and compressors subject to this subpart that are exempt from the control requirements for equipment leaks in § 63.769, are exempt from all reporting requirements for major sources in this subpart, for that equipment.

(c) [Reserved]

(d) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status Report as required under § 63.9(h) within 180 days after the compliance date specified in § 63.760(f). In addition to the information required under § 63.9(h), the Notification of Compliance Status Report shall include the information specified in paragraphs (d)(1) through (d)(11) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination of the three. If all of the information required under this paragraph has been submitted at any time prior to 180 days after the applicable compliance dates specified in § 63.760(f), a separate Notification of Compliance Status Report is not required. If an owner or operator submits the information specified in paragraphs (d)(1) through (d)(11) of this section at different times, and/or different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the previously submitted information.

(1) If a closed-vent system and a control device other than a flare are used to comply with § 63.764, the owner or operator shall submit:

(i) The design analysis documentation specified in § 63.772(e)(4) of this subpart, if the owner or operator elects to prepare a design analysis; or

(ii) If the owner or operator elects to conduct a performance test, the performance test results including the information specified in paragraphs (d)(1)(ii)(A) and (B) of this section. Results of a performance test conducted prior to the compliance date of this subpart can be used provided that the test was conducted using the methods specified in § 63.772(e)(3) and that the test conditions are representative of current operating conditions.

(A) The percent reduction of HAP or TOC, or the outlet concentration of HAP or TOC (parts per million by volume on a dry basis), determined as specified in § 63.772(e)(3) of this subpart; and

(B) The value of the monitored parameters specified in § 63.773(d) of this subpart, or a site-specific parameter approved by the permitting agency, averaged over the full period of the performance test.

(2) If a closed-vent system and a flare are used to comply with § 63.764, the owner or operator shall submit performance test results including the information in paragraphs (d)(2) (i) and (ii) of this section.

(i) All visible emission readings, heat content determinations, flowrate measurements, and exit velocity determinations made during the compliance determination required by § 63.772(e)(2) of this subpart, and

(ii) A statement of whether a flame was present at the pilot light over the full period of the compliance determination.

(3) For each owner or operator subject to the provisions specified in § 63.769, the owner or operator shall submit the information required by § 61.247(a), except that the initial report required in § 61.247(a) shall be submitted as a part of the Notification of Compliance Status Report required in paragraph (d) of this section. The owner or operator shall also submit the information specified in paragraphs (d)(3) (i) and (ii) of this section.

(i) The number of each equipment (e.g., valves, pumps, etc.) excluding equipment in vacuum service, and

(ii) Any change in the information submitted in this paragraph shall be provided to the Administrator as a part of subsequent Periodic Reports described in paragraph (e)(2)(iv) of this section.

(4) The owner or operator shall submit one complete test report for each test method used for a particular source.

(i) For additional tests performed using the same test method, the results

specified in paragraph (d)(1)(ii) of this section shall be submitted, but a complete test report is not required.

(ii) A complete test report shall include a sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(5) For each control device other than a flare used to meet the requirements of § 63.764, the owner or operator shall submit the information specified in paragraphs (d)(5) (i) through (iii) of this section for each operating parameter required to be monitored in accordance with the requirements of § 63.773(d).

(i) The minimum operating parameter value or maximum operating parameter value, as appropriate for the control device, established by the owner or operator to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.771(d)(1) or (e)(3)(ii).

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in § 63.773(d)(5). This explanation shall include any data and calculations used to develop the value and a description of why the chosen value indicates that the control device is operating in accordance with the applicable requirements of § 63.771(d)(1) or § 63.771(e)(3)(ii).

(iii) A definition of the source's operating day for purposes of determining daily average values of monitored parameters. The definition shall specify the times at which an operating day begins and ends.

(6) Results of any continuous monitoring system performance evaluations shall be included in the Notification of Compliance Status Report.

(7) After a title V permit has been issued to the owner or operator of an affected source, the owner or operator of such source shall comply with all requirements for compliance status reports contained in the source's title V permit, including reports required under this subpart. After a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this subpart, the owner or operator of such source shall submit the notification of compliance status to the appropriate permitting authority following completion of the relevant compliance demonstration activity specified in this subpart.

(8) The owner or operator that elects to comply with the requirements of § 63.765(b)(1)(ii) shall submit the records required under § 63.774(c).

(9) The owner or operator shall submit an analysis demonstrating whether an affected source is a major source using the maximum throughput calculated according to § 63.760(a)(1).

(10) The owner or operator shall submit a statement as to whether the source has complied with the requirements of this subpart.

(11) The owner or operator shall submit the analysis prepared under § 63.771(e)(2) to demonstrate the conditions by which the facility will be operated to achieve an overall HAP emission reduction of 95.0 percent through process modifications or a combination of process modifications and one or more control devices.

(e) *Periodic Reports.* An owner or operator shall prepare Periodic Reports in accordance with paragraphs (e) (1) and (2) of this section and submit them to the Administrator.

(1) An owner or operator shall submit Periodic Reports semiannually, beginning 60 operating days after the end of the applicable reporting period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status Report is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status Report is due.

(2) The owner or operator shall include the information specified in paragraphs (e)(2)(i) through (ix) of this section, as applicable.

(i) The information required under § 63.10(e)(3). For the purposes of this subpart and the information required under § 63.10(e)(3), excursions (as defined in § 63.773(d)(6)) shall be considered excess emissions.

(ii) A description of all excursions as defined in § 63.773(d)(6) of this subpart that have occurred during the 6-month reporting period.

(A) For each excursion caused when the daily average value of a monitored operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit), as specified in § 63.773(d)(6)(i), the report must include the daily average values of the monitored parameter, the applicable operating parameter limit, and the date and duration of the period that the excursion occurred.

(B) For each excursion caused when the 365-day average condenser control efficiency is less than 95.0 percent, as specified in § 63.773(d)(6)(ii), the report must include the 365-day average values of the condenser control efficiency, and the date and duration of the period that the excursion occurred.

(C) For each excursion caused when condenser control efficiency is less than 90.0 percent, as calculated according to the procedures specified in § 63.772(g)(2)(iii) (A) or (B), the report must include the average values of the condenser control efficiency, and the date and duration of the period that the excursion occurred.

(D) For each excursion caused by lack of monitoring data, as specified in § 63.773(d)(6)(iii), the report must include the date and duration of the period when the monitoring data were not collected and the reason why the data were not collected.

(iii) For each inspection conducted in accordance with § 63.773(c) during which a leak or defect is detected, the records specified in § 63.774(b)(7) must be included in the next Periodic Report.

(iv) For each owner or operator subject to the provisions specified in § 63.769, the owner or operator shall comply with the reporting requirements specified in 40 CFR 61.247, except that the Periodic Reports shall be submitted on the schedule specified in paragraph (e)(1) of this section.

(v) For each closed-vent system with a bypass line subject to § 63.771(c)(3)(i)(A), records required under § 63.774(b)(4)(iii) of all periods when the vent stream is diverted from the control device through a bypass line. For each closed-vent system with a bypass line subject to § 63.771(c)(3)(i)(B), records required under § 63.774(b)(4)(iv) of all periods in which the seal mechanism is broken, the bypass valve position has changed, or the key to unlock the bypass line valve was checked out.

(vi) If an owner or operator elects to comply with § 63.765(b)(1)(ii), the records required under § 63.774(c)(3).

(vii) The information in paragraphs (e)(2)(vii) (A) and (B) of this section shall be stated in the Periodic Report, when applicable.

(A) No excursions.

(B) No continuous monitoring system has been inoperative, out of control, repaired, or adjusted.

(viii) Any change in compliance methods as specified in § 63.772(f).

(ix) If the owner or operator elects to comply with § 63.765(c)(2), the records required under § 63.774(b)(11).

(f) *Notification of process change.* Whenever a process change is made, or a change in any of the information submitted in the Notification of Compliance Status Report, the owner or operator shall submit a report within 180 days after the process change is made or as a part of the next Periodic Report as required under paragraph (e) of this section, whichever is sooner. The report shall include:

(1) A brief description of the process change;

(2) A description of any modification to standard procedures or quality assurance procedures;

(3) Revisions to any of the information reported in the original Notification of Compliance Status Report under paragraph (d) of this section; and

(4) Information required by the Notification of Compliance Status Report under paragraph (d) of this section for changes involving the addition of processes or equipment.

§ 63.776 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(l) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities will not be delegated to States for §§ 63.772 and 63.777 of this subpart.

§ 63.777 Alternative means of emission limitation.

(a) If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in HAP emissions from that source achieved under the applicable requirements in §§ 63.764 through 63.771, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a hearing.

(c) Any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information demonstrating that the alternative achieves equivalent emission reductions.

§ 63.778 [Reserved]

§ 63.779 [Reserved]

Appendix to Subpart HH—Tables

TABLE 1 TO SUBPART HH.—LIST OF HAZARDOUS AIR POLLUTANTS FOR SUBPART HH

CAS Number[a]	Chemical name
75070 ...	Acetaldehyde
71432 ...	Benzene (includes benzene in gasoline)
75150 ...	Carbon disulfide
463581	Carbonyl sulfide
100414	Ethyl benzene
107211	Ethylene glycol
50000 ...	Formaldehyde
110543	n-Hexane
91203 ...	Naphthalene
108883	Toluene
540841	2,2,4-Trimethylpentane
1330207	Xylenes (isomers and mixture)
95476 ...	o-Xylene
108383	m-Xylene
106423	p-Xylene

[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

TABLE 2 TO SUBPART HH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applicable to subpart HH	Explanation
§ 63.1(a)(1)	Yes	
§ 63.1(a)(2)	Yes	
§ 63.1(a)(3)	Yes	
§ 63.1(a)(4)	Yes	
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6) through (a)(8)	Yes	
§ 63.1(a)(9)	No	Section reserved.
§ 63.1(a)(10)	Yes	
§ 63.1(a)(11)	Yes	
§ 63.1(a)(12) through (a)(14)	Yes	
§ 63.1(b)(1)	No	Subpart HH specifies applicability.
§ 63.1(b)(2)	Yes	
§ 63.1(b)(3)	No	
§ 63.1(c)(1)	No	Subpart HH specifies applicability.
§ 63.1(c)(2)	No	
§ 63.1(c)(3)	No	Section reserved.
§ 63.1(c)(4)	Yes	
§ 63.1(c)(5)	Yes	
§ 63.1(d)	No	Section reserved.
§ 63.1(e)	Yes	
§ 63.2	Yes	Except definition of major source is unique for this source category and there are additional definitions in subpart HH.
§ 63.3(a) through (c)	Yes	
§ 63.4(a)(1) through (a)(3)	Yes	
§ 63.4(a)(4)	No	Section reserved.
§ 63.4(a)(5)	Yes	
§ 63.4(b)	Yes	
§ 63.4(c)	Yes	
§ 63.5(a)(1)	Yes	
§ 63.5(a)(2)	No	Preconstruction review required only for major sources that commence construction after promulgation of the standard.
§ 63.5(b)(1)	Yes	
§ 63.5(b)(2)	No	Section reserved.
§ 63.5(b)(3)	Yes	

TABLE 2 TO SUBPART HH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Explanation
§ 63.5(b)(4)	Yes	
§ 63.5(b)(5)	Yes	
§ 63.5(b)(6)	Yes	
§ 63.5(c)	No	Section reserved.
§ 63.5(d)(1)	Yes	
§ 63.5(d)(2)	Yes	
§ 63.5(d)(3)	Yes	
§ 63.5(d)(4)	Yes	
§ 63.5(e)	Yes	
§ 63.5(f)(1)	Yes	
§ 63.5(f)(2)	Yes	
§ 63.6(a)	Yes	
§ 63.6(b)(1)	Yes	
§ 63.6(b)(2)	Yes	
§ 63.6(b)(3)	Yes	
§ 63.6(b)(4)	Yes	
§ 63.6(b)(5)	Yes	
§ 63.6(b)(6)	No	Section reserved.
§ 63.6(b)(7)	Yes	
§ 63.6(c)(1)	Yes	
§ 63.6(c)(2)	Yes	
§ 63.6(c)(3) through (c)(4)	No	Section reserved.
§ 63.6(c)(5)	Yes	
§ 63.6(d)	No	Section reserved.
§ 63.6(e)	Yes	Except as otherwise specified.
§ 63.6(e)(1)(i)	No	Addressed in § 63.762.
§ 63.6(e)(1)(ii)	Yes	
§ 63.6(e)(1)(iii)	Yes	
§ 63.6(e)(2)	Yes	
§ 63.6(e)(3)(i)	Yes	Except as otherwise specified.
§ 63.6(e)(3)(i)(A)	No	Addressed by § 63.762(c).
§ 63.6(e)(3)(i)(B)	Yes	
§ 63.6(e)(3)(i)(C)	Yes	
§ 63.6(e)(3)(ii) through (3)(vi)	Yes	
§ 63.6(e)(3)(vii).		
§ 63.6(e)(3)(vii)(A)	Yes	
§ 63.6(e)(3)(vii)(B)	Yes	Except that the plan must provide for operation in compliance with § 63.762(c).
§ 63.6(e)(3)(vii)(C)	Yes	
§ 63.6(e)3)(viii)	Yes	
§ 63.6(f)(1)	Yes	
§ 63.6(f)(2)	Yes	
§ 63.6(f)(3)	Yes	
§ 63.6(g)	Yes	
§ 63.6(h)	No	Subpart HH does not require continuous emissions monitoring systems.
§ 63.6(i)(1) through (i)(14)	Yes	
§ 63.6(i)(15)	No	Section reserved.
§ 63.6(i)(16)	Yes	
§ 63.6(j)	Yes	
§ 63.7(a)(1)	Yes	
§ 63.7(a)(2)	Yes	
§ 63.7(a)(3)	Yes	
§ 63.7(b)	Yes	
§ 63.7(c)	Yes	
§ 63.7(d)	Yes	
§ 63.7(e)(1)	Yes	
§ 63.7(e)(2)	Yes	
§ 63.7(e)(3)	Yes	
§ 63.7(e)(4)	Yes	
§ 63.7(f)	Yes	
§ 63.7(g)	Yes	
§ 63.7(h)	Yes	
§ 63.8(a)(1)	Yes	
§ 63.8(a)(2)	Yes	
§ 63.8(a)(3)	No	Section reserved.
§ 63.8(a)(4)	Yes	
§ 63.8(b)(1)	Yes	
§ 63.8(b)(2)	Yes	
§ 63.8(b)(3)	Yes	
§ 63.8(c)(1)	Yes	
§ 63.8(c)(2)	Yes	
§ 63.8(c)(3)	Yes	

TABLE 2 TO SUBPART HH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Explanation
§ 63.8(c)(4)	No	
§ 63.8(c)(5) through (c)(8)	Yes	
§ 63.8(d)	Yes	
§ 63.8(e)	Yes	Subpart HH does not specifically require continuous emissions monitor performance evaluations, however, the Administrator can request that one be conducted.
§ 63.8(f)(1) through (f)(5)	Yes	
§ 63.8(f)(6)	No	Subpart HH does not require continuous emissions monitoring.
§ 63.8(g)	No	Subpart HH specifies continuous monitoring system data reduction requirements.
§ 63.9(a)	Yes	
§ 63.9(b)(1)	Yes	
§ 63.9(b)(2)	Yes	Sources are given 1 year (rather than 120 days) to submit this notification.
§ 63.9(b)(3)	Yes	
§ 63.9(b)(4)	Yes	
§ 63.9(b)(5)	Yes	
§ 63.9(c)	Yes	
§ 63.9(d)	Yes	
§ 63.9(e)	Yes	
§ 63.9(f)	Yes	
§ 63.9(g)	Yes	
§ 63.9(h)(1) through (h)(3)	Yes	
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5) through (h)(6)	Yes	
§ 63.9(i)	Yes	
§ 63.9(j)	Yes	
§ 63.10(a)	Yes	
§ 63.10(b)(1)	Yes	
§ 63.10(b)(2)	Yes	
§ 63.10(b)(3)	No	
§ 63.10(c)(1)	Yes	
§ 63.10(c)(2) through (c)(4)	No	Sections reserved.
§ 63.10(c)(5) Through (c)(8)	Yes	
§ 63.10(c)(9)	No	Section reserved.
§ 63.10(c)(10) through (c)(15)	Yes	
§ 63.10(d)(1)	Yes	
§ 63.10(d)(2)	Yes	
§ 63.10(d)(3)	Yes	
§ 63.10(d)(4)	Yes	
§ 63.10(d)(5)	Yes	Subpart HH requires major sources to submit a startup, shutdown and malfunction report semi-annually.
§ 63.10(e)(1)	Yes	
§ 63.10(e)(2)	Yes	
§ 63.10(e)(3)(i)	Yes	Subpart HH requires major sources to submit Periodic Reports semi-annually.
§ 63.10(e)(3)(i)(A)	Yes	
§ 63.10(e)(3)(i)(B)	Yes	
§ 63.10(e)(3)(i)(C)	No	Subpart HH does not require quarterly reporting for excess emissions.
§ 63.10(e)(3)(ii) through (viii)	Yes	
§ 63.10(f)	Yes	
§ 63.11(a) and (b)	Yes	
§ 63.12(a) through (c)	Yes	
§ 63.13(a) through (c)	Yes	
§ 63.14(a) and (b)	Yes	
§ 63.15(a) and (b)	Yes	

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

3. Part 63 is amended by adding subpart HHH to read as follows:

Subpart HHH—National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

Sec.

63.1270 Applicability and designation of affected source.
63.1271 Definitions.
63.1272 Startups, shutdowns, and malfunctions.
63.1273 [Reserved]
63.1274 General standards.
63.1275 Glycol dehydration unit process vent standards.
63.1276–63.1280 [Reserved]
63.1281 Control equipment requirements.
63.1282 Test methods, compliance procedures, and compliance demonstrations.
63.1283 Inspection and monitoring requirements.
63.1284 Recordkeeping requirements.
63.1285 Reporting requirements.
63.1286 Delegation of authority.
63.1287 Alternative means of emission limitation.

63.1288 [Reserved]
63.1289 [Reserved]
Appendix to Subpart HHH—Tables

Subpart HHH—National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

§ 63.1270 Applicability and designation of affected source.

(a) This subpart applies to owners and operators of natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there is no local distribution company), and that are major sources of hazardous air pollutants (HAP) emissions as determined using the maximum natural gas throughput calculated in either paragraph (a)(1) or (a)(2) of this section and paragraphs (a)(3) and (a)(4) of this section. A compressor station that transports natural gas prior to the point of custody transfer, or to a natural gas processing plant (if present) is considered a part of the oil and natural gas production source category. A facility that is determined to be an area source, based on emission estimates using the maximum natural gas throughput calculated as specified in paragraph (a)(1) or (a)(2) of this section, but subsequently increases emissions or potential to emit above the major source levels (without first obtaining and complying with other limitations that keep its potential to emit HAP below major source levels, becomes a major source and must comply thereafter with all applicable provisions of this subpart starting on the applicable compliance date specified in paragraph (d) of this section. Nothing in this paragraph is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

(1) Facilities that store natural gas or facilities that transport and store natural gas shall determine major source status using the maximum annual facility natural gas throughput calculated according to paragraphs (a)(1)(i) through (a)(1)(iv) of this section.

(i) The owner or operator shall determine the number of hours to complete the storage cycle for the facility. The storage cycle is the number of hours for the injection cycle, calculated according to the equation in paragraph (a)(1)(i)(A) of this section, plus the number of hours for the withdrawal cycle, calculated according to the equation in paragraph (a)(1)(i)(B) of this section.

(A) The hours for the facility injection cycle are determined according to the following equation:

$$IC = \frac{WGC}{IR_{max}}$$

Where:

IC = Facility injection cycle in hours/cycle.

WGC = Working gas capacity in cubic meters. The working gas capacity is defined as the maximum storage capacity minus the FERC cushion (as defined in § 63.1271).

IR_{max} = Maximum facility injection rate in cubic meters per hour.

(B) The hours for the facility withdrawal cycle are determined according to the following equation:

$$WC = \frac{WGC}{WR_{max}}$$

Where:

WC = Facility withdrawal cycle, hours/cycle.

WGC = Working gas capacity, cubic meters. The working gas capacity is defined as the maximum storage capacity minus the FERC cushion (as defined in § 63.1271) and shall be the same value as used in paragraph (a)(1)(i)(A) of this section.

WR_{max} = Maximum facility withdrawal rate in cubic meters per hour.

(ii) The owner or operator shall calculate the number of storage cycles for the facility per year according to the following equation:

$$Cycle = \frac{8760\ hr/yr}{IC + WC}$$

Where:

Cycle = Number of storage cycles for the facility per year.

IC = Number of hours for a facility injection cycle, hours/cycle, as calculated in paragraph (a)(1)(i)(A) of this section.

WC = Number of hours for a facility withdrawal cycle, hours/cycle, as calculated in paragraph (a)(1)(i)(B) of this section.

(iii) The owner or operator shall calculate the facilitywide maximum annual glycol dehydration unit hours of operation based on the following equation:

Operation = Cycles × WC

Where:

Operation = Facilitywide maximum annual glycol dehydration unit hours of operation (hr/yr).

Cycles = Number of storage cycles for the facility per year, as calculated in paragraph (a)(1)(ii) of this section.

WC = Number of hours for a facility withdrawal cycle, hours/cycle, as calculated in paragraph (a)(1)(i)(B) of this section.

(iv) The owner or operator shall calculate the maximum facilitywide natural gas throughput based on the following equation:

Throughput = Operation × WR_{max}

Where:

Throughput = Maximum facilitywide natural gas throughput in cubic meters per year.

Operation = Maximum facilitywide annual glycol dehydration unit hours of operation in hours per year, as calculated in paragraph (a)(1)(iii) of this section.

WR_{max} = Maximum facility withdrawal rate in cubic meters per hour.

(2) Facilities that only transport natural gas shall calculate the maximum natural gas throughput as the highest annual natural gas throughput over the 5 years prior to June 17, 1999, multiplied by a factor of 1.2.

(3) The owner or operator shall maintain records of the annual facility natural gas throughput each year and upon request, submit such records to the Administrator. If the facility annual natural gas throughput increases above the maximum natural gas throughput calculated in paragraph (a)(1) or (a)(2) of this section, the maximum natural gas throughput must be recalculated using the higher throughput multiplied by a factor of 1.2.

(4) The owner or operator shall determine the maximum values for other parameters used to calculate potential emissions as the maximum over the same period for which maximum throughput is determined as specified in paragraph (a)(1) or (a)(2) of this section. These parameters shall be based on an annual average or the highest single measured value.

(b) The affected source is each glycol dehydration unit.

(c) The owner or operator of a facility that does not contain an affected source, as specified in paragraph (b) of this section, is not subject to the requirements of this subpart.

(d) The owner or operator of each affected source shall achieve compliance with the provisions of this subpart by the following dates:

(1) The owner or operator of an affected source, the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with this provisions of the subpart no later than June 17, 2002 except as provided for in § 63.6(i). The owner or operator of an area source, the construction or reconstruction of which commenced before February 6, 1998, that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject to this subpart shall comply with this subpart 3 years after becoming a major source.

(2) The owner or operator of an affected source, the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the provisions of this subpart immediately upon initial startup or June 17, 1999, whichever date is later. Area sources, the construction or reconstruction of which commences on or after February 6, 1998, that become major sources shall comply with the provisions of this standard immediately upon becoming a major source.

(e) An owner or operator of an affected source that is a major source or is located at a major source and is subject to the provisions of this subpart is also subject to 40 CFR part 70 or part 71 permitting requirements.

(f) *Exemptions.* A facility with a facilitywide actual annual average natural gas throughput less than 28.3 thousand standard cubic meters per day, where glycol dehydration units are the only HAP emission source, is not subject to the requirements of this subpart. Records shall be maintained as required in § 63.10(b)(3).

§ 63.1271 Definitions.

All terms used in this subpart shall have the meaning given to them in the Clean Air Act, subpart A of this part (General Provisions), and in this section. If the same term is defined in subpart A and in this section, it shall have the meaning given in this section for purposes of this subpart.

Boiler means an enclosed device using controlled flame combustion and having the primary purpose of recovering and exporting thermal energy in the form of steam or hot water. Boiler also means any industrial furnace as defined in 40 CFR 260.10.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and if necessary, flow inducing devices that transport gas or vapor from an emission point to one or more control devices. If gas or vapor from regulated equipment is routed to a process (e.g., to a fuel gas system), the conveyance system shall not be considered a closed-vent system and is not subject to closed-vent system standards.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic HAP emissions.

Compressor station means any permanent combination of compressors that move natural gas at increased pressure from fields, in transmission pipelines, or into storage.

Continuous recorder means a data recording device that either records an instantaneous data value at least once every hour or records hourly or more frequent block average values.

Control device means any equipment used for recovering or oxidizing HAP or volatile organic compounds (VOC) vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For the purposes of this subpart, if gas or vapor from regulated equipment is used, reused (i.e., injected into the flame zone of a combustion device), returned back to the process, or sold, then the recovery system used, including piping, connections, and flow inducing devices, is not considered to be control devices or closed-vent systems.

Custody transfer means the transfer of hydrocarbon liquids or natural gas:

(1) After processing and/or treatment in the producing operations; or

(2) From storage vessels or automatic transfer facilities, or other equipment, including product loading racks, to pipelines or any other forms of transportation.

Facility means any grouping of equipment where natural gas is processed, compressed, or stored prior to entering a pipeline to a local distribution company or (if there is no local distribution company) to a final end user. Examples of a facility for this source category are: an underground natural gas storage operation; or a natural gas compressor station that receives natural gas via pipeline, from an underground natural gas storage operation, or from a natural gas processing plant. The emission points associated with these phases include, but are not limited to, process vents. Processes that may have vents include, but are not limited to, dehydration and compressor station engines.

Facility, for the purpose of a major source determination, means natural gas transmission and storage equipment that is located inside the boundaries of an individual surface site (as defined in this section) and is connected by ancillary equipment, such as gas flow lines or power lines. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Natural gas transmission and storage equipment or groupings of equipment located on different gas leases, mineral fee tracts, lease tracts, subsurface unit areas, surface fee tracts, or surface lease tracts shall not be considered part of the same facility.

Federal Energy Regulatory Commission Cushion or *FERC Cushion* means the minimum natural gas capacity of a storage field as determined by the Federal Energy Regulatory Commission.

Flame zone means the portion of the combustion chamber in a combustion device occupied by the flame envelope.

Flash tank. See the definition for gas-condensate-glycol (GCG) separator.

Flow indicator means a device which indicates whether gas flow is present in

a line or whether the valve position would allow gas flow to be present in a line.

Gas-condensate-glycol (GCG) separator means a two-or three-phase separator through which the "rich" glycol stream of a glycol dehydration unit is passed to remove entrained gas and hydrocarbon liquid. The GCG separator is commonly referred to as a flash separator or flash tank.

Glycol dehydration unit means a device in which a liquid glycol (including, but not limited to, ethylene glycol, diethylene glycol, or triethylene glycol) absorbent directly contacts a natural gas stream and absorbs water in a contact tower or absorption column (absorber). The glycol contacts and absorbs water vapor and other gas stream constituents from the natural gas and becomes "rich" glycol. This glycol is then regenerated in the glycol dehydration unit reboiler. The "lean" glycol is then recycled.

Glycol dehydration unit baseline operations means operations representative of the glycol dehydration unit operations as of June 17, 1999. For the purposes of this subpart, for determining the percentage of overall HAP emission reduction attributable to process modifications, glycol dehydration unit baseline operations shall be parameter values (including, but not limited to, glycol circulation rate or glycol-HAP absorbency) that represent actual long-term conditions (i.e., at least 1 year). Glycol dehydration units in operation for less than 1 year shall document that the parameter values represent expected long-term operating conditions had process modifications not been made.

Glycol dehydration unit process vent means either the glycol dehydration unit reboiler vent and the vent from the GCG separator (flash tank), if present.

Glycol dehydration unit reboiler vent means the vent through which exhaust from the reboiler of a glycol dehydration unit passes from the reboiler to the atmosphere or to a control device.

Hazardous air pollutants or *HAP* means the chemical compounds listed in section 112(b) of the Clean Air Act (Act). All chemical compounds listed in section 112(b) of the Act need to be considered when making a major source determination. Only the HAP compounds listed in Table 1 of this subpart need to be considered when determining compliance.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. The above energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

Initial startup means the first time a new or reconstructed source begins production. For the purposes of this subpart, initial startup does not include subsequent startups (as defined in this section) of equipment, for example, following malfunctions or shutdowns.

Major source, as used in this subpart, shall have the same meaning as in § 63.2, except that:

(1) Emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control; and

(2) Emissions from processes, operations, and equipment that are not part of the same facility, as defined in this section, shall not be aggregated.

Natural gas means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface. The principal hydrocarbon constituent is methane.

Natural gas transmission means the pipelines used for the long distance transport of natural gas (excluding processing). Specific equipment used in natural gas transmission includes the land, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors, and their driving units and appurtenances, and equipment used for transporting gas from a production plant, delivery point of purchased gas, gathering system, storage area, or other wholesale source of gas to one or more distribution area(s).

No detectable emissions means no escape of HAP from a device or system to the atmosphere as determined by:

(1) Instrument monitoring results in accordance with the requirements of § 63.1282(b); and

(2) The absence of visible openings or defects in the device or system, such as rips, tears, or gaps.

Operating parameter value means a minimum or maximum value established for a control device or process parameter which, if achieved by itself or in combination with one or more other operating parameter values, indicates that an owner or operator has complied with an applicable operating parameter limitation, over the appropriate averaging period as specified in § 63.1282 (e) and (f).

Operating permit means a permit required by 40 CFR part 70 or part 71.

Organic monitoring device means an instrument used to indicate the concentration level of organic compounds exiting a control device based on a detection principle such as infra-red, photoionization, or thermal conductivity.

Primary fuel means the fuel that provides the principal heat input (i.e., more than 50 percent) to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means an enclosed device using a controlled flame, the primary purpose of which is to transfer heat to a process fluid or process material that is not a fluid, or to a heat transfer material for use in a process (rather than for steam generation) .

Safety device means a device that meets both of the following conditions: the device is not used for planned or routine venting of liquids, gases, or fumes from the unit or equipment on which the device is installed; and the device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the unit or equipment on which the device is installed in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. Examples of unplanned events which may require a safety device to open include failure of an essential equipment component or a sudden power outage.

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of a glycol dehydration unit, or other affected source under this subpart, or equipment required or used solely to comply with this subpart.

Startup means the setting into operation of a glycol dehydration unit, or other affected equipment under this subpart, or equipment required or used to comply with this subpart. Startup includes initial startup and operation solely for the purpose of testing equipment.

Storage vessel means a tank or other vessel that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, produced water, or other liquid, and is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

Surface site means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

Temperature monitoring device means an instrument used to monitor temperature and having a minimum accuracy of ±2 percent of the temperature being monitored expressed in °C, or ±2.5 °C, whichever is greater. The temperature monitoring device may measure temperature in degrees Fahrenheit or degrees Celsius, or both.

Total organic compounds or *TOC*, as used in this subpart, means those compounds which can be measured according to the procedures of Method 18, 40 CFR part 60, appendix A.

Underground storage means the subsurface facilities utilized for storing natural gas that has been transferred from its original location for the primary purpose of load balancing, which is the process of equalizing the receipt and delivery of natural gas. Processes and operations that may be located at an underground storage facility include, but are not limited to, compression and dehydration.

§ 63.1272 Startups, shutdowns, and malfunctions.

(a) The provisions set forth in this subpart shall apply at all times except during startups or shutdowns, during malfunctions, and during periods of non-operation of the affected sources (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. However, during the startup, shutdown, malfunction, or period of non-operation of one portion of an affected source, all emission points which can comply with the specific provisions to which they are subject must do so during the startup, shutdown, malfunction, or period of non-operation.

(b) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the provisions of this subpart during times when emissions are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph does not apply if the item of equipment is malfunctioning, or if the owner or operator must shut down the equipment to avoid damage due to a contemporaneous startup, shutdown, or malfunction of the affected source or a portion thereof.

(c) During startups, shutdowns, and malfunctions when the requirements of this subpart do not apply pursuant to paragraphs (a) and (b) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the maximum extent practical. For purposes of this paragraph, the term "excess emissions" means emissions in excess of those that would have occurred if there were no startup, shutdown, or malfunction, and the owner or operator complied with the relevant provisions of this subpart. The measures to be taken shall be identified in the applicable startup, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the source. Back-up control devices are not required, but may be used if available.

(d) The owner or operator shall prepare a startup, shutdown, or malfunction plan as required in § 63.6(e)(3) except that the plan is not required to be incorporated by reference into the source's title V permit as specified in § 63.6(e)(3)(i). Instead, the owner or operator shall keep the plan on record as required by § 63.6(e)(3)(v). The failure of the plan to adequately minimize emissions during the startup, shutdown, or malfunction does not shield an owner or operator from enforcement actions.

§ 63.1273 [Reserved]

§ 63.1274 General standards.

(a) Table 2 of this subpart specifies the provisions of subpart A (General Provisions) that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(b) All reports required under this subpart shall be sent to the Administrator at the appropriate address listed in § 63.13. Reports may be submitted on electronic media.

(c) Except as specified in paragraph (d) of this section, the owner or operator of an affected source (i.e., glycol dehydration unit) located at an existing or new major source of HAP emissions shall comply with the requirements in this subpart as follows:

(1) The control requirements for glycol dehydration unit process vents specified in § 63.1275;

(2) The monitoring requirements specified in § 63.1283, and

(3) The recordkeeping and reporting requirements specified in §§ 63.1284 and 63.1285.

(d) *Exemptions.* The owner or operator is exempt from the requirements of paragraph (c) of this section if the criteria listed in paragraph (d)(1) or (d)(2) of this section are met. Records of the determination of these criteria must be maintained as required in § 63.1284(d) of this subpart.

(1) The actual annual average flow of gas to the glycol dehydration unit is less than 283 thousand standard cubic meters per day, as determined by the procedures specified in § 63.1282(a)(1) of this subpart; or

(2) The actual average emissions of benzene from the glycol dehydration unit process vents to the atmosphere are less than 0.90 megagram per year as determined by the procedures specified in § 63.1282(a)(2) of this subpart.

(e) Each owner or operator of a major HAP source subject to this subpart is required to apply for a part 70 or part 71 operating permit from the appropriate permitting authority. If the Administrator has approved a State operating permit program under part 70, the permit shall be obtained from the State authority. If a State operating permit program has not been approved, the owner or operator shall apply to the EPA Regional Office pursuant to part 71.

(f) [Reserved]

(g) In all cases where the provisions of this subpart require an owner or operator to repair leaks by a specified time after the leak is detected, it is a violation of this standard to fail to take action to repair the leak(s) within the specified time. If action is taken to repair the leak(s) within the specified time, failure of that action to successfully repair the leak(s) is not a violation of this standard. However, if the repairs are unsuccessful, a leak is detected and the owner or operator shall take further action as required by the applicable provisions of this subpart.

§ 63.1275 Glycol dehydration unit process vent standards.

(a) This section applies to each glycol dehydration unit, subject to this subpart, with an actual annual average natural gas flowrate equal to or greater than 283 thousand standard cubic meters per day and with actual average benzene glycol dehydration unit process vent emissions equal to or greater than 0.90 megagrams per year.

(b) Except as provided in paragraph (c) of this section, an owner or operator of a glycol dehydration unit process vent shall comply with the requirements specified in paragraphs (b)(1) and (b)(2) of this section.

(1) For each glycol dehydration unit process vent, the owner or operator shall control air emissions by either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) The owner or operator shall connect the process vent to a control device or a combination of control devices through a closed-vent system. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.1281(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.1281(d).

(ii) The owner or operator shall connect the process vent to a control device or a combination of control devices through a closed-vent system and the outlet benzene emissions from the control device(s) shall be less than 0.90 megagrams per year. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.1281(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.1281(d), except that the performance requirements specified in § 63.1281(d)(1)(i) and (ii) do not apply.

(2) One or more safety devices that vent directly to the atmosphere may be used on the air emission control equipment installed to comply with paragraph (b)(1) of this section.

(c) As an alternative to the requirements of paragraph (b) of this section, the owner or operator may comply with one of the following:

(1) The owner or operator shall control air emissions by connecting the process vent to a process natural gas line.

(2) The owner or operator shall demonstrate, to the Administrator's satisfaction, that the total HAP emissions to the atmosphere from the glycol dehydration unit process vent are reduced by 95.0 percent through process modifications or a combination of process modifications and one or more control devices, in accordance with the requirements specified in § 63.1281(e).

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total emissions to the atmosphere from the glycol dehydration unit process vent are reduced by one of the levels specified in paragraphs (c)(3)(i) through (c)(3)(ii), through the installation and operation of controls as specified in paragraph (b) (1) of this section.

(i) HAP emissions are reduced by 95.0 percent or more.

(ii) Benzene emissions are reduced to a level less than 0.90 megagrams per year.

§ 63.1276–§ 63.1280 [Reserved]

§ 63.1281 Control equipment requirements.

(a) This section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions as required by the provisions of this subpart. Compliance with paragraphs (c) and (d) of this section will be determined by review of the records required by § 63.1284, the reports required by § 63.1285, by review of performance test results, and by inspections.

(b) [Reserved]

(c) *Closed-vent system requirements.* (1) The closed-vent system shall route all gases, vapors, and fumes emitted from the material in a HAP emissions unit to a control device that meets the requirements specified in paragraph (d) of this section.

(2) The closed-vent system shall be designed and operated with no detectable emissions.

(3) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, the owner or operator shall meet the requirements specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this section.

(i) For each bypass device, except as provided for in paragraph (c)(3)(ii) of this section, the owner or operator shall either:

(A) Properly install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that could divert the stream away from the control device to the atmosphere that takes a reading at least once every 15 minutes, and that sounds an alarm when the bypass device is open such that the stream is being, or could be, diverted away from the control device to the atmosphere; or

(B) Secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass device.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (c)(3)(i) of this section.

(d) *Control device requirements.* (1) The control device used to reduce HAP emissions in accordance with the standards of this subpart shall be one of the control devices specified in paragraphs (d)(1)(i) through (iii) of this section.

(i) An enclosed combustion device (e.g., thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated in accordance with one of the following performance requirements:

(A) Reduces the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater, as determined in accordance with the requirements of § 63.1282(d);

(B) Reduces the concentration of either TOC or total HAP in the exhaust gases at the outlet to the device to a level equal to or less than 20 parts per million by volume on a dry basis corrected to 3 percent oxygen as determined in accordance with the requirements of § 63.1282(d); or

(C) Operates at a minimum residence time of 0.5 second at a minimum temperature of 760 °C.

(D) If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(ii) A vapor recovery device (e.g., carbon adsorption system or condenser) or other control device that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 63.1282(d).

(iii) A flare that is designed and operated in accordance with the requirements of § 63.11(b).

(2) [Reserved]

(3) The owner or operator shall demonstrate that a control device achieves the performance requirements of paragraph (d)(1) of this section by following the procedures specified in § 63.1282(d).

(4) The owner or operator shall operate each control device in accordance with the requirements specified in paragraphs (d)(4)(i) and (ii) of this section.

(i) Each control device used to comply with this subpart shall be operating at all times when gases, vapors, and fumes are vented from the emissions unit or units through the closed-vent system to the control device, as required under § 63.1275, except when maintenance or repair of a unit cannot be completed without a shutdown of the control device. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

(ii) For each control device monitored in accordance with the requirements of

§ 63.1283(d), the owner or operator shall demonstrate compliance according to the requirements of § 63.1282(e), or (f) as applicable.

(5) For each carbon adsorption system used as a control device to meet the requirements of paragraph (d)(1) of this section, the owner or operator shall manage the carbon as follows:

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(ii) The spent carbon removed from the carbon adsorption system shall be either regenerated, reactivated, or burned in one of the units specified in paragraphs (d)(5)(ii)(A) through (d)(5)(ii)(G) of this section.

(A) Regenerated or reactivated in a thermal treatment unit for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 264, subpart X.

(B) Regenerated or reactivated in a thermal treatment unit equipped with and operating organic air emission controls in accordance with this section.

(C) Regenerated or reactivated in a thermal treatment unit equipped with and operating organic air emission controls in accordance with a national emissions standard for HAP under another subpart in 40 CFR part 61 or this part.

(D) Burned in a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 264, subpart O.

(E) Burned in a hazardous waste incinerator which the owner or operator has designed and operates in accordance with the requirements of 40 CFR part 265, subpart O.

(F) Burned in a boiler or industrial furnace for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 266, subpart H.

(G) Burned in a boiler or industrial furnace which the owner or operator has designed and operates in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(e) *Process modification requirements.* Each owner or operator that chooses to comply with § 63.1275(c)(2) shall meet the requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(1) The owner or operator shall determine glycol dehydration unit baseline operations (as defined in § 63.1271). Records of glycol dehydration unit baseline operations shall be retained as required under § 63.1284(b)(9).

(2) The owner or operator shall document, to the Administrator's satisfaction, the conditions for which glycol dehydration unit baseline operations shall be modified to achieve the 95.0 percent overall HAP emission reduction, either through process modifications or through a combination of process modifications and one or more control devices. If a combination of process modifications and one or more control devices are used, the owner or operator shall also establish the percent HAP reduction to be achieved by the control device to achieve an overall HAP emission reduction of 95.0 percent for the glycol dehydration unit process vent. Only modifications in glycol dehydration unit operations directly related to process changes, including, but not limited to, changes in glycol circulation rate or glycol-HAP absorbency, shall be allowed. Changes in the inlet gas characteristics or natural gas throughput rate shall not be considered in determining the overall HAP emission reduction.

(3) The owner or operator that achieves a 95.0 percent HAP emission reduction using process modifications alone shall comply with paragraph (e)(3)(i) of this section. The owner or operator that achieves a 95.0 percent HAP emission reduction using a combination of process modifications and one or more control devices shall comply with paragraphs (e)(3)(i) and (e)(3)(ii) of this section.

(i) The owner or operator shall maintain records, as required in § 63.1284(b)(10), that the facility continues to operate in accordance with the conditions specified under paragraph (e)(2) of this section.

(ii) The owner or operator shall comply with the control device requirements specified in paragraph (d) of this section, except that the emission reduction achieved shall be the emission reduction specified in paragraph (e)(2) of this section.

§ 63.1282 Test methods, compliance procedures, and compliance demonstrations.

(a) *Determination of glycol dehydration unit flowrate or benzene emissions.* The procedures of this paragraph shall be used by an owner or operator to determine glycol dehydration unit natural gas flowrate or benzene emissions to meet the criteria for the exemption from control requirements under § 63.1274(d).

(1) The determination of actual flowrate of natural gas to a glycol dehydration unit shall be made using the procedures of either paragraph (a)(1)(i) or (a)(1)(ii) of this section.

(i) The owner or operator shall install and operate a monitoring instrument that directly measures natural gas flowrate to the glycol dehydration unit with an accuracy of plus or minus 2 percent or better. The owner or operator shall convert the annual natural gas flowrate to a daily average by dividing the annual flowrate by the number of days per year the glycol dehydration unit processed natural gas.

(ii) The owner or operator shall document, to the Administrator's satisfaction, that the actual annual average natural gas flowrate to the glycol dehydration unit is less than 85 thousand standard cubic meters per day.

(2) The determination of actual average benzene emissions from a glycol dehydration unit shall be made using the procedures of either paragraph (a)(2)(i) or (a)(2)(ii) of this section. Emissions shall be determined either uncontrolled or with federally enforceable controls in place.

(i) The owner or operator shall determine actual average benzene emissions using the model GRI–GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI–GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and may be determined using the procedures documented in the Gas Research Institute (GRI) report entitled "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1); or

(ii) The owner or operator shall determine an average mass rate of benzene emissions in kilograms per hour through direct measurement by performing three runs of Method 18 in 40 CFR part 60, appendix A (or an equivalent method), and averaging the results of the three runs. Annual emissions in kilograms per year shall be determined by multiplying the mass rate by the number of hours the unit is operated per year. This result shall be converted to megagrams per year.

(b) *No detectable emissions test procedure.* (1) The procedure shall be conducted in accordance with Method 21, 40 CFR part 60, appendix A.

(2) The detection instrument shall meet the performance criteria of Method 21, 40 CFR part 60, appendix A, except the instrument response factor criteria

in section 3.1.2(a) of Method 21 shall be for the average composition of the fluid, and not for each individual organic compound in the stream.

(3) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21, 40 CFR part 60, appendix A.

(4) Calibration gases shall be as follows:

(i) Zero air (less than 10 parts per million by volume hydrocarbon in air); and

(ii) A mixture of methane in air at a methane concentration of less than 10,000 parts per million by volume.

(5) An owner or operator may choose to adjust or not adjust the detection instrument readings to account for the background organic concentration level. If an owner or operator chooses to adjust the instrument readings for the background level, the background level value must be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(6)(i) Except as provided in paragraph (b)(6)(i) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic hazardous air pollutants or volatile organic compounds, the average stream response factor shall be calculated on an inert-free basis.

(ii) If no instrument is available at the facility that will meet the performance criteria specified in paragraph (b)(6)(i) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (b)(6)(i) of this section.

(7) An owner or operator must determine if a potential leak interface operates with no detectable emissions using the applicable procedure specified in paragraph (b)(7)(i) or (b)(7)(ii) of this section.

(i) If an owner or operator chooses not to adjust the detection instrument readings for the background organic concentration level, then the maximum organic concentration value measured by the detection instrument is compared directly to the applicable value for the potential leak interface as specified in paragraph (b)(8) of this section.

(ii) If an owner or operator chooses to adjust the detection instrument readings for the background organic concentration level, the value of the arithmetic difference between the maximum organic concentration value measured by the instrument and the background organic concentration value as determined in paragraph (b)(5) of this section is compared with the applicable value for the potential leak interface as specified in paragraph (b)(8) of this section.

(8) A potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (b)(7) is less than 500 parts per million by volume.

(c) [Reserved]

(d) *Control device performance test procedures.* This paragraph applies to the performance testing of control devices. The owners or operators shall demonstrate that a control device achieves the performance requirements of § 63.1281(d)(1) or (e)(3)(ii) using either a performance test as specified in paragraph (d)(3) of this section or a design analysis as specified in paragraph (d)(4) of this section. The owner or operator may elect to use the alternative procedures in paragraph (d)(5) of this section for performance testing of a condenser used to control emissions from a glycol dehydration unit process vent.

(1) The following control devices are exempt from the requirements to conduct performance tests and design analyses under this section:

(i) A flare that is designed and operated in accordance with § 63.11(b);

(ii) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(iii) A boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel;

(iv) A boiler or process heater burning hazardous waste for which the owner or operator has either been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H;

(v) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(vi) A control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA, and the test was conducted using the same methods specified in this section, and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(2) An owner or operator shall design and operate each flare in accordance with the requirements specified in § 63.11(b) and in paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(i) The compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions.

(ii) An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration when a flare is used.

(3) For a performance test conducted to demonstrate that a control device meets the requirements of § 63.1281(d)(1) or (e)(3)(ii), the owner or operator shall use the test methods and procedures specified in paragraphs (d)(3)(i) through (d)(3)(iv) of this section. The performance test shall be conducted according to the schedule specified in § 63.7(a)(2), and the results of the performance test shall be submitted in the Notification of Compliance Status Report as required in § 63.1285(d)(1)(ii).

(i) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites specified in paragraphs (d)(3)(i)(A) and (B) of this section. Any references to particulate mentioned in Methods 1 and 1A do not apply to this section.

(A) To determine compliance with the control device percent reduction requirements specified in § 63.1281(d)(1)(i)(A),(d)(1)(ii), or (e)(3)(ii), sampling sites shall be located at the inlet of the first control device and at the outlet of the final control device.

(B) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.1281(d)(1)(i)(B), the sampling site shall be located at the outlet of the device.

(ii) The gas volumetric flowrate shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(iii) To determine compliance with the control device percent reduction performance requirement in § 63.1281(d)(1)(i)(A), 63.1281(d)(1)(ii), or 63.1281(e)(3)(ii), the owner or operator shall use either Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A; alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The following procedures shall be used to calculate the percentage of reduction:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) The mass rate of either TOC (minus methane and ethane) or total HAP (E_i, E_o) shall be computed.

(*1*) The following equations shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

Where:

C_{ij}, C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o = Flowrate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature is 20°C.

(*2*) When the TOC mass rate is calculated, all organic compounds (minus methane and ethane) measured by Method 18, of 40 CFR part 60, appendix A; or Method 25A, 40 CFR part 60, appendix A, shall be summed using the equations in paragraph (d)(3)(iii)(B)(*1*) of this section.

(*3*) When the total HAP mass rate is calculated, only HAP chemicals listed in Table 1 of this subpart shall be summed using the equations in paragraph (d)(3)(iii)(B)(*1*) of this section.

(C) The percentage of reduction in TOC (minus methane and ethane) or total HAP shall be calculated as follows:

$$R_{cd} = \frac{E_i - E_o}{E_i} \times 100\%$$

Where:

R_{cd} = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet to the control device as calculated under paragraph (d)(3)(iii)(B) of this section, kilograms TOC per hour or kilograms HAP per hour.

E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the outlet of the control device, as calculated under paragraph (d)(3)(iii)(B) of this section, kilograms TOC per hour or kilograms HAP per hour.

(D) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percentage of reduction of total HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total HAP exiting the device, respectively.

(iv) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.1281(d)(1)(i)(B), the owner or operator shall use either Method 18, 40 CFR part 60, appendix A; or Method 25A, 40 CFR part 60, appendix A, to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that have been validated according to Method 301 of appendix A of this part, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) The TOC concentration or total HAP concentration shall be calculated according to paragraph (d)(3)(iv)(B)(*1*) or (d)(3)(iv)(B)(*2*) of this section.

(*1*) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x}$$

Where:

C_{TOC} = Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.

C_{ji} = Concentration of sample components j of sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(*2*) The total HAP concentration (C_{HAP}) shall be computed according to the equation in paragraph (d)(3)(iv)(B)(*1*) of this section, except that only HAP chemicals listed in Table 1 of this subpart shall be summed.

(C) The TOC concentration or total HAP concentration shall be corrected to 3 percent oxygen as follows:

(*1*) The emission rate correction factor for excess air, integrated sampling and analysis procedures of Method 3B, 40 CFR part 60, appendix A, shall be used to determine the oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

(*2*) The concentration corrected to 3 percent oxygen (C_c) shall be computed using the following equation:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right)$$

Where:

C_c = TOC concentration of total HAP concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = TOC concentration or total HAP concentration, dry basis, parts per million by volume.

$\%O_{2d}$ = Concentration of oxygen, dry basis, percent by volume.

(4) For a design analysis conducted to meet the requirements of § 63.1281(d)(1) or (e)(3)(ii), the owner or operator shall meet the requirements specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this section. Documentation of the design analysis shall be submitted as a part of the Notification of Compliance Status Report as required in § 63.1285(d)(1)(i).

(i) The design analysis shall include analysis of the vent stream characteristics and control device

operating parameters for the applicable control device as specified in paragraphs (d)(4)(i) (A) through (F) of this section.

(A) For a thermal vapor incinerator, the design analysis shall include the vent stream composition, constituent concentrations, and flowrate and shall establish the design minimum and average temperatures in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall include the vent stream composition, constituent concentrations, and flowrate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet, and the design service life of the catalyst.

(C) For a boiler or process heater, the design analysis shall include the vent stream composition, constituent concentrations, and flowrate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(D) For a condenser, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. As an alternative to the design analysis, an owner or operator may elect to use the procedures specified in paragraph (d)(5) of this section.

(E) For a regenerable carbon adsorption, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for the carbon beds, design total regeneration stream flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(F) For a nonregenerable carbon adsorption system, such as a carbon canister, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, capacity of the carbon bed, type and working capacity of activated carbon used for the carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule. In addition, these systems will incorporate dual carbon canisters in case of emission breakthrough occurring in one canister.

(ii) If the owner or operator and the Administrator do not agree on a demonstration of control device performance using a design analysis, then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph (d)(3) of this section. The Administrator may choose to have an authorized representative observe the performance test.

(5) As an alternative to the procedures in paragraphs (d)(3) and (d)(4)(i)(D) of this section, an owner or operator may elect to use the procedures documented in the GRI report entitled, "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions," (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to determine condenser performance.

(e) *Compliance demonstration for control devices performance requirements.* This paragraph applies to the demonstration of compliance with the control device performance requirements specified in § 63.1281(d)(1) and (e)(3)(ii). Compliance shall be demonstrated using the requirements in paragraphs (e)(1) through (e)(3) of this section. As an alternative, an owner or operator that installs a condenser as the control device to achieve the requirements specified in § 63.1281(d)(2)(ii) or § 63.1275(c)(2), may demonstrate compliance according to paragraph (f) of this section. An owner or operator may switch between compliance with paragraph (e) of this section and compliance with paragraph (f) of this section only after at least 1 year of operation in compliance with the selected approach. Notification of such a change in the compliance method shall be reported in the next Periodic Report, as required in § 63.1285(e), following the change.

(1) The owner or operator shall establish a site specific maximum or minimum monitoring parameter value (as appropriate) according to the requirements of § 63.1283(d)(5)(i).

(2) The owner or operator shall calculate the daily average of the applicable monitored parameter in accordance with § 63.1283(d)(4).

(3) Compliance is achieved when the daily average of the monitoring parameter value calculated under paragraph (e)(2) of this section is either equal to or greater than the minimum or equal to or less than the maximum monitoring value established under paragraph (e)(1) of this section.

(f) *Compliance demonstration with percent reduction performance requirements—condensers.* This paragraph applies to the demonstration of compliance with the performance requirements specified in § 63.1281(d)(1)(ii) for condensers. Compliance shall be demonstrated using the procedures in paragraphs (f)(1) through (f)(3) of this section.

(1) The owner or operator shall establish a site-specific condenser performance curve according to the procedures specified in § 63.1283(d)(5)(ii).

(2) Compliance with the percent reduction requirement in § 63.1281(d)(1)(ii) or § 63.1275(c)(2) shall be demonstrated by the procedures in paragraphs (f)(2)(i) through (f)(2)(iii) of this section.

(i) The owner or operator must calculate the daily average condenser outlet temperature in accordance with § 63.1283(d)(4).

(ii) The owner or operator shall determine the condenser efficiency for the current operating day using the daily average condenser outlet temperature calculated in paragraph (f)(2)(i) of this section and the condenser performance curve established in paragraph (f)(1) of this section.

(iii) Except as provided in paragraphs (f)(2)(iii) (A), (B), and (D) of this section, at the end of each operating day the owner or operator shall calculate the 30-day average HAP emission reduction from the condenser efficiencies determined in paragraph (f)(2)(ii) of this section for the preceding 30 operating days. If the owner or operator uses a combination of process modifications and a condenser in accordance with the requirements of § 63.1275(c)(2), the 30-day average HAP emission reduction shall be calculated using the emission reduction achieved through process modifications and the condenser efficiency determined in paragraph (f)(2)(ii) of this section, both for the preceding 30 operating days.

(A) After the compliance date specified in § 63.1270(f), an owner or operator of a facility that stores natural gas that has less than 30 days of data for determining the average HAP emission reduction, shall calculate the cumulative average at the end of the withdrawal season, each season, until 30 days of condenser operating data are accumulated. For a facility that does not store natural gas, the owner or operator that has less than 30 days of data for determining average HAP emission reduction, shall calculate the cumulative average at the end of the calendar year, each year, until 30 days of condenser operating data are accumulated.

(B) After the compliance date specified in § 63.1270(f), an owner or operator that has less than 30 days of data for determining the average HAP emission reduction, compliance is achieved if the average HAP emission reduction calculated in paragraph (f)(2)(iii)(A) of this section, is equal to or greater than 95.0 percent.

(C) For the purposes of this subpart, a withdrawal season begins the first time gas is withdrawn from the storage field after July 1 of the calendar year and ends on June 30 of the next calendar year.

(D) Glycol dehydration units that are operated continuously have the option of complying with the requirements specified in 40 CFR 63.772(g).

(3) Compliance is achieved with the emission limitation specified in § 63.1281(d)(1)(ii) or § 63.1275(c)(2) if the average HAP emission reduction calculated in paragraph (f)(2)(iii) of this section is equal to or greater than 95.0 percent.

§ 63.1283 Inspection and monitoring requirements.

(a) This section applies to an owner or operator using air emission controls in accordance with the requirements of § 63.1275.

(b) [Reserved]

(c) *Closed-vent system inspection and monitoring requirements.* (1) For each closed-vent system required to comply with this section, the owner or operator shall comply with the requirements of paragraphs (c)(2) through (7) of this section.

(2) Except as provided in paragraphs (c) (5) and (6) of this section, each closed-vent system shall be inspected according to the procedures and schedule specified in paragraphs (c)(2) (i) and (ii) of this section.

(i) For each closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted or gasketed ducting flange), the owner or operator shall:

(A) Conduct an initial inspection according to the procedures specified in § 63.1282(b) to demonstrate that the closed-vent system operates with no detectable emissions.

(B) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in piping; loose connections; or broken or missing caps or other closure devices. The owner or operator shall monitor a component or connection using the procedures specified in § 63.1282(b) to demonstrate that it operates with no detectable emissions following any time the component or connection is repaired or replaced or the connection is unsealed.

(ii) For closed-vent system components other than those specified in paragraph (c)(2)(i) of this section, the owner or operator shall:

(A) Conduct an initial inspection according to the procedures specified in § 63.1282(b) to demonstrate that the closed-vent system operates with no detectable emissions.

(B) Conduct annual inspections according to the procedures specified in § 63.1282(b) to demonstrate that the components or connections operate with no detectable emissions.

(C) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork; loose connections; or broken or missing caps or other closure devices.

(3) In the event that a leak or defect is detected, the owner or operator shall repair the leak or defect as soon as practicable, except as provided in paragraph (c)(4) of this section.

(i) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(ii) Repair shall be completed no later than 15 calendar days after the leak is detected.

(4) Delay of repair of a closed-vent system for which leaks or defects have been detected is allowed if the repair is technically infeasible without a shutdown, as defined in § 63.1271, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next shutdown.

(5) Any parts of the closed-vent system or cover that are designated, as described in paragraphs (c)(5) (i) and (ii) of this section, as unsafe to inspect are exempt from the inspection requirements of paragraphs (c)(2) (i) and (ii) of this section if:

(i) The owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (c)(2) (i) or (ii) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(6) Any parts of the closed-vent system or cover that are designated, as described in paragraphs (c)(6) (i) and (ii) of this section, as difficult to inspect are exempt from the inspection requirements of paragraphs (c)(2) (i) and (ii) of this section if:

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface; and

(ii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(7) Records shall be maintained as specified in § 63.1284(b)(5) through (8).

(d) *Control device monitoring requirements.* (1) For each control device except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous parameter monitoring system in accordance with the requirements of paragraphs (d)(3) through (9) of this section that will allow a determination to be made whether the control device is achieving the applicable performance requirements of § 63.1281(d) or (e)(3). The continuous parameter monitoring system must meet the following specifications and requirements:

(i) Each continuous parameter monitoring system shall measure data values at least once every hour and record either:

(A) Each measured data value; or

(B) Each block average value for each 1-hour period or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values.

(ii) The monitoring system must be installed, calibrated, operated, and maintained in accordance with the manufacturer's specifications or other written procedures that provide reasonable assurance that the monitoring equipment is operating properly.

(2) An owner or operator is exempted from the monitoring requirements specified in paragraphs (d)(3) through (9) of this section for the following types of control devices:

(i) A boiler or process heater in which all vent streams are introduced with the primary fuel or are used as the primary fuel;

(ii) A boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(3) The owner or operator shall install, calibrate, operate, and maintain a device equipped with a continuous recorder to measure the values of operating parameters appropriate for the control device as specified in either paragraph (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section.

(i) A continuous monitoring system that measures the following operating parameters as applicable:

(A) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperatures at two locations and have a minimum accuracy of ±2 percent of the temperatures being monitored in °C, or ±2.5 °C, whichever value is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(C) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(D) For a boiler or process heater with a design heat input capacity of less than 44 megawatts, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(E) For a condenser, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser.

(F) For a regenerative-type carbon adsorption system:

(*1*) A continuous parameter monitoring system to measure and record the average total regeneration stream mass flow or volumetric flow during each carbon bed regeneration cycle. The integrating regenerating stream flow monitoring device must have an accuracy of ±10 percent; and

(*2*) A continuous parameter monitoring system to measure and record the average carbon bed temperature for the duration of the carbon bed steaming cycle and to measure the actual carbon bed temperature after regeneration and within 15 minutes of completing the cooling cycle. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater.

(G) For a nonregenerative-type carbon adsorption system, the owner or operator shall monitor the design carbon replacement interval established using a performance test performed in accordance with § 63.1282(d)(3) or a design analysis in accordance with § 63.1282(d)(4)(i)(F) and shall be based on the total carbon working capacity of the control device and source operating schedule.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder. The monitor must meet the requirements of Performance Specification 8 or 9 of appendix B of 40 CFR part 60 and must be installed, calibrated, and maintained according to the manufacturer's specifications.

(iii) A continuous monitoring system that measures alternative operating parameters other than those specified in paragraph (d)(3)(i) or (d)(3)(ii) of this section upon approval of the Administrator as specified in § 63.8(f)(1) through (5).

(4) Using the data recorded by the monitoring system, the owner or operator must calculate the daily average value for each monitored operating parameter for each operating day. If HAP emissions unit operation is continuous, the operating day is a 24-hour period. If the HAP emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

(5) For each operating parameter monitored in accordance with the requirements of paragraph (d)(3) of this section, the owner or operator shall comply with paragraph (d)(5)(i) of this section for all control devices, and when condensers are installed, the owner or operator shall also comply with paragraph (d)(5)(ii) of this section for condensers.

(i) The owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.1281(d)(1) or (e)(3)(ii). Each minimum or maximum operating parameter value shall be established as follows:

(A) If the owner or operator conducts performance tests in accordance with the requirements of § 63.1282(d)(3) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281(d)(1) or (e)(3)(ii), then the minimum operating parameter value or the maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by control device design analysis or control device manufacturer's recommendations or a combination of both.

(B) If the owner or operator uses a control device design analysis in accordance with the requirements of § 63.1282(d)(4) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281(d)(1) or (e)(3)(ii), then the minimum operating parameter value or the maximum operating parameter value shall be established based on the control device design analysis and may be supplemented by the control device manufacturer's recommendations.

(ii) The owner or operator shall establish a condenser performance curve showing the relationship between condenser outlet temperature and condenser control efficiency. The curve shall be established as follows:

(A) If the owner or operator conducts a performance test in accordance with the requirements of § 63.1282(d)(3) to demonstrate that the condenser achieves the applicable performance requirements in § 63.1281(d)(1) or (e)(3)(ii), then the condenser performance curve shall be based on values measured during the performance test and supplemented as necessary by control device design analysis, or control device manufacturer's recommendations, or a combination or both.

(B) If the owner or operator uses a control device design analysis in accordance with the requirements of § 63.1282(d)(4)(i)(D) to demonstrate that the condenser achieves the applicable performance requirements specified in § 63.1281(d)(1) or (e)(3)(ii), then the condenser performance curve shall be based on the condenser design analysis and may be supplemented by the control device manufacturer's recommendations.

(C) As an alternative to paragraphs (d)(5)(ii)(A) and (B) of this section, the owner or operator may elect to use the procedures documented in the GRI report entitled, "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to generate a condenser performance curve.

(6) An excursion for a given control device is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (d)(6)(i) through (d)(6)(iv) of this section being met. When multiple operating parameters are monitored for the same control device and during the same operating day, and more than one of these operating parameters meets an excursion criterion specified in paragraphs (d)(6)(i) through (d)(6)(iv) of this section, then a single excursion is determined to have occurred for the control device for that operating day.

(i) An excursion occurs when the daily average value of a monitored operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit) established for the operating parameter in accordance with the requirements of paragraph (d)(5)(i) of this section.

(ii) An excursion occurs when average condenser efficiency calculated according to the requirements specified in § 63.1282(f)(2)(iii) is less than 95.0 percent, as specified in § 63:1282(f)(3).

(iii) An excursion occurs when the monitoring data are not available for at least 75 percent of the operating hours.

(iv) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, an excursion occurs when:

(A) For each bypass line subject to § 63.1281(c)(3)(i)(A) the flow indicator indicates that flow has been detected and that the stream has been diverted away from the control device to the atmosphere.

(B) For each bypass line subject to § 63.1281(c)(3)(i)(B), if the seal or closure mechanism has been broken, the bypass line valve position has changed, the key for the lock-and-key type lock has been checked out, or the car-seal has broken.

(7) For each excursion, except as provided for in paragraph (d)(8) of this section, the owner or operator shall be deemed to have failed to have applied control in a manner that achieves the required operating parameter limits. Failure to achieve the required operating parameter limits is a violation of this standard.

(8) An excursion is not a violation of the operating parameter limit as specified in paragraphs (d)(8)(i) and (d)(8)(ii) of this section.

(i) An excursion does not count toward the number of excused excursions allowed under paragraph (d)(8)(ii) of this section when the excursion occurs during any one of the following periods:

(A) During a period of startup, shutdown, or malfunction when the affected facility is operated during such period in accordance with the facility's startup, shutdown, and malfunction plan; or

(B) During periods of non-operation of the unit or the process that is vented to the control device (resulting in cessation of HAP emissions to which the monitoring applies).

(ii) For each control device, or combinations of control devices, installed on the same HAP emissions unit, one excused excursion is allowed per semiannual period for any reason. The initial semiannual period is the 6-month reporting period addressed by the first Periodic Report submitted by the owner or operator in accordance with § 63.1285(e) of this subpart.

(9) Nothing in paragraphs (d)(1) through (d)(8) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this subpart.

§ 63.1284 Recordkeeping requirements.

(a) The recordkeeping provisions of subpart A of this part, that apply and those that do not apply to owners and operators of facilities subject to this subpart are listed in Table 2 of this subpart.

(b) Except as specified in paragraphs (c) and (d) of this section, each owner or operator of a facility subject to this subpart shall maintain the records specified in paragraphs (b)(1) through (b)(10) of this section:

(1) The owner or operator of an affected source subject to the provisions of this subpart shall maintain files of all information (including all reports and notifications) required by this subpart. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report or period.

(i) All applicable records shall be maintained in such a manner that they can be readily accessed.

(ii) The most recent 12 months of records shall be retained on site or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request.

(iii) The remaining 4 years of records may be retained offsite.

(iv) Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, floppy disk, magnetic tape, or microfiche.

(2) Records specified in § 63.10(b)(2);

(3) Records specified in § 63.10(c) for each monitoring system operated by the owner or operator in accordance with the requirements of § 63.1283(d). Notwithstanding the previous sentence, monitoring data recorded during periods identified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section shall not be included in any average or percent leak rate computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Startup, shutdown, and malfunction events. During startup, shutdown and malfunction events, the owner or operator shall maintain records indicating whether or not the startup, shutdown, or malfunction plan, required under § 63.1272(d), was followed.

(iii) Periods of non-operation resulting in cessation of the emissions to which the monitoring applies; and

(iv) Excursions due to invalid data as defined in § 63.1283(d)(6)(iii).

(4) Each owner or operator using a control device to comply with § 63.1274 shall keep the following records up-to-date and readily accessible:

(i) Continuous records of the equipment operating parameters specified to be monitored under § 63.1283(d) or specified by the Administrator in accordance with § 63.1283(d)(3)(iii). For flares, the hourly records and records of pilot flame outages specified in § 63.1283(d)(3)(i)(C) shall be maintained in place of continuous records.

(ii) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.1283(d)(4) of this subpart. For flares, records of the times and duration of all periods during which all pilot flames are absent shall be kept rather than daily averages.

(iii) Hourly records of whether the flow indicator specified under § 63.1281(c)(3)(i)(A) was operating and whether flow was detected at any time during the hour, as well as records of the times and durations of all periods when the vent stream is diverted from the control device or the monitor is not operating.

(iv) Where a seal or closure mechanism is used to comply with § 63.1281(c)(3)(i)(B), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanism has been done, and shall record the duration of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has broken.

(5) Records identifying all parts of the closed-vent system that are designated as unsafe to inspect in accordance with § 63.1283(c)(5), an explanation of why the equipment is unsafe to inspect, and the plan for inspecting the equipment.

(6) Records identifying all parts of the closed-vent system that are designated as difficult to inspect in accordance with § 63.1283(c)(6), an explanation of why the equipment is difficult to inspect, and the plan for inspecting the equipment.

(7) For each inspection conducted in accordance with § 63.1283(c), during which a leak or defect is detected, a record of the information specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this section.

(i) The instrument identification numbers, operator name or initials, and identification of the equipment.

(ii) The date the leak or defect was detected and the date of the first attempt to repair the leak or defect.

(iii) Maximum instrument reading measured by the method specified in § 63.1283(c)(3) after the leak or defect is successfully repaired or determined to be nonrepairable.

(iv) "Repair delayed" and the reason for the delay if a leak or defect is not repaired within 15 calendar days after discovery of the leak or defect.

(v) The name, initials, or other form of identification of the owner or operator (or designee) whose decision it was that repair could not be effected without a shutdown.

(vi) The expected date of successful repair of the leak or defect if a leak or defect is not repaired within 15 calendar days.

(vii) Dates of shutdowns that occur while the equipment is unrepaired.

(viii) The date of successful repair of the leak or defect.

(8) For each inspection conducted in accordance with § 63.1283(c) during which no leaks or defects are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks or defects were detected.

(9) Records of glycol dehydration unit baseline operations calculated as required under § 63.1281(e)(1).

(10) Records required in § 63.1281(e)(3)(i) documenting that the facility continues to operate under the conditions specified in § 63.1281(e)(2).

(c) An owner or operator that elects to comply with the benzene emission limit specified in § 63.1275(b)(1)(ii) shall document, to the Administrator's satisfaction, the following items:

(1) The method used for achieving compliance and the basis for using this compliance method; and

(2) The method used for demonstrating compliance with 0.90 megagrams per year of benzene.

(3) Any information necessary to demonstrate compliance as required in the methods specified in paragraphs (c)(1) and (c)(2) of this section.

(d) An owner or operator that is exempt from control requirements under § 63.1274(d) shall maintain the records specified in paragraph (d)(1) or (d)(2) of this section, as appropriate, for each glycol dehydration unit that is not controlled according to the requirements of § 63.1274(c).

(1) The actual annual average natural gas throughput (in terms of natural gas flowrate to the glycol dehydration unit per day), as determined in accordance with § 63.1282(a)(1); or

(2) The actual average benzene emissions (in terms of benzene emissions per year), as determined in accordance with § 63.1282(a)(2).

(e) Record the following when using a flare to comply with § 63.1281(d):

(1) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(2) All visible emission readings, heat content determinations, flowrate measurements, and exit velocity determinations made during the compliance determination required by § 63.1282(d)(2); and

(3) All periods during the compliance determination when the pilot flame is absent.

§ 63.1285 Reporting requirements.

(a) The reporting provisions of subpart A, of this part that apply and those that do not apply to owners and operators of facilities subject to this subpart are listed in Table 2 of this subpart.

(b) Each owner or operator of a facility subject to this subpart shall submit the information listed in paragraphs (b)(1) through (b)(6) of this section, except as provided in paragraph (b)(7) of this section.

(1) The initial notifications required for existing affected sources under § 63.9(b)(2) shall be submitted by 1 year after an affected source becomes subject to the provisions of this subpart or by June 17, 2000, whichever is later. Affected sources that are major sources on or before June 17, 2000 and plan to be area sources by June 17, 2002 shall include in this notification a brief, nonbinding description of a schedule for the action(s) that are planned to achieve area source status.

(2) The date of the performance evaluation as specified in § 63.8(e)(2), required only if the owner or operator is requested by the Administrator to conduct a performance evaluation for a continuous monitoring system. A separate notification of the performance evaluation is not required if it is included in the initial notification submitted in accordance with paragraph (b)(1) of this section.

(3) The planned date of a performance test at least 60 days before the test in accordance with § 63.7(b). Unless requested by the Administrator, a site-specific test plan is not required by this subpart. If requested by the Administrator, the owner or operator must also submit the site-specific test plan required by § 63.7(c) with the notification of the performance test. A separate notification of the performance test is not required if it is included in the initial notification submitted in accordance with paragraph (b)(1) of this section.

(4) A Notification of Compliance Status Report as described in paragraph (d) of this section;

(5) Periodic Reports as described in paragraph (e) of this section; and

(6) Startup, shutdown, and malfunction reports, as specified in § 63.10(d)(5), shall be submitted as required. Separate startup, shutdown, or malfunction reports as described in § 63.10(d)(5)(i) are not required if the information is included in the Periodic Report specified in paragraph (e) of this section.

(7) Each owner or operator of a glycol dehydration unit subject to this subpart that is exempt from the control requirements for glycol dehydration unit process vents in § 63.1275, is exempt from all reporting requirements for major sources in this subpart for that unit.

(c) [Reserved]

(d) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status Report as required under § 63.9(h) within 180 days after the compliance date specified in § 63.1270(d). In addition to the information required under § 63.9(h), the Notification of Compliance Status Report shall include the information specified in paragraphs (d)(1) through (d)(10) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination of the three. If all of the information required under this paragraph have been submitted at any time prior to 180 days after the applicable compliance dates specified in § 63.1270(d), a separate Notification of Compliance Status Report is not required. If an owner or operator submits the information specified in paragraphs (d)(1) through (d)(9) of this section at different times, and/or different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the previously submitted information.

(1) If a closed-vent system and a control device other than a flare are used to comply with § 63.1274, the owner or operator shall submit:

(i) The design analysis documentation specified in § 63.1282(d)(4) of this subpart if the owner or operator elects to prepare a design analysis; or

(ii) If the owner or operator elects to conduct a performance test, the performance test results including the information specified in paragraphs (d)(1)(ii)(A) and (B) of this section. Results of a performance test conducted prior to the compliance date of this subpart can be used provided that the test was conducted using the methods specified in § 63.1282(d)(3), and that the test conditions are representative of current operating conditions.

(A) The percent reduction of HAP or TOC, or the outlet concentration of HAP or TOC (parts per million by volume on a dry basis), determined as specified in § 63.1282(d)(3) of this subpart; and

(B) The value of the monitored parameters specified in § 63.1283(d) of this subpart, or a site-specific parameter approved by the permitting agency, averaged over the full period of the performance test.

(2) If a closed-vent system and a flare are used to comply with § 63.1274, the owner or operator shall submit performance test results including the information in paragraphs (d)(2)(i) and (ii) of this section.

(i) All visible emission readings, heat content determinations, flowrate measurements, and exit velocity determinations made during the compliance determination required by § 63.1282(d)(2) of this subpart, and

(ii) A statement of whether a flame was present at the pilot light over the full period of the compliance determination.

(3) The owner or operator shall submit one complete test report for each test method used for a particular source.

(i) For additional tests performed using the same test method, the results specified in paragraph (d)(1)(ii) of this section shall be submitted, but a complete test report is not required.

(ii) A complete test report shall include a sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(4) For each control device other than a flare used to meet the requirements of § 63.1274, the owner or operator shall submit the information specified in paragraphs (d)(4)(i) through (iii) of this section for each operating parameter required to be monitored in accordance with the requirements of § 63.1283(d).

(i) The minimum operating parameter value or maximum operating parameter value, as appropriate for the control device, established by the owner or operator to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.1281(d)(1) or (e)(3)(ii).

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in § 63.1283(d)(5) of this subpart. This explanation shall include any data and calculations used to develop the value, and a description of why the chosen value indicates that the control device is operating in accordance with the applicable requirements of § 63.1281(d)(1) or (e)(3)(ii).

(iii) A definition of the source's operating day for purposes of determining daily average values of monitored parameters. The definition shall specify the times at which an operating day begins and ends.

(5) Results of any continuous monitoring system performance evaluations shall be included in the Notification of Compliance Status Report.

(6) After a title V permit has been issued to the owner or operator of an affected source, the owner or operator of such source shall comply with all requirements for compliance status reports contained in the source's title V permit, including reports required under this subpart. After a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this subpart, the owner or operator of such source shall submit the notification of compliance status to the appropriate permitting authority following completion of the relevant compliance demonstration activity specified in this subpart.

(7) The owner or operator that elects to comply with the requirements of § 63.1275(b)(1)(ii) shall submit the records required under § 63.1284(c).

(8) The owner or operator shall submit an analysis demonstrating whether an affected source is a major source using the maximum throughput calculated according to § 63.1270(a).

(9) The owner or operator shall submit a statement as to whether the source has complied with the requirements of this subpart.

(10) The owner or operator shall submit the analysis prepared under § 63.1281(e)(2) to demonstrate that the conditions by which the facility will be operated to achieve an overall HAP emission reduction of 95.0 percent through process modifications or a combination of process modifications and one or more control devices.

(e) *Periodic Reports.* An owner or operator shall prepare Periodic Reports in accordance with paragraphs (e)(1) and (2) of this section and submit them to the Administrator.

(1) An owner or operator shall submit Periodic Reports semiannually, beginning 60 operating days after the end of the applicable reporting period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status Report is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status Report is due.

(2) The owner or operator shall include the information specified in paragraphs (e)(2)(i) through (viii) of this section, as applicable.

(i) The information required under § 63.10(e)(3). For the purposes of this

subpart and the information required under § 63.10(e)(3), excursions (as defined in § 63.1283(d)(6)) shall be considered excess emissions.

(ii) A description of all excursions as defined in § 63.1283(d)(6) of this subpart that have occurred during the 6-month reporting period.

(A) For each excursion caused when the daily average value of a monitored operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit), as specified in § 63.1283(d)(6)(i), the report must include the daily average values of the monitored parameter, the applicable operating parameter limit, and the date and duration of the period that the excursion occurred.

(B) For each excursion caused when the 30-day average condenser control efficiency is less than 95.0 percent, as specified in § 63.1283(d)(6)(ii), the report must include the 30-day average values of the condenser control efficiency, and the date and duration of the period that the excursion occurred.

(C) For each excursion caused by lack of monitoring data, as specified in § 63.1283(d)(6)(iii), the report must include the date and duration of period when the monitoring data were not collected and the reason why the data were not collected.

(iii) For each inspection conducted in accordance with § 63.1283(c) during which a leak or defect is detected, the records specified in § 63.1284(b)(7) must be included in the next Periodic Report.

(iv) For each closed-vent system with a bypass line subject to § 63.1281(c)(3)(i)(A), records required under § 63.1284(b)(4)(iii) of all periods when the vent stream is diverted from the control device through a bypass line. For each closed-vent system with a bypass line subject to § 63.1281(c)(3)(i)(B), records required under § 63.1284(b)(4)(iv) of all periods in which the seal or closure mechanism is broken, the bypass valve position has changed, or the key to unlock the bypass line valve was checked out.

(v) If an owner or operator elects to comply with § 63.1275(b)(1)(ii), the records required under § 63.1284(c)(3).

(vi) The information in paragraphs (e)(2)(vi)(A) and (B) of this section shall be stated in the Periodic Report, when applicable.

(A) No excursions.

(B) No continuous monitoring system has been inoperative, out of control, repaired, or adjusted.

(vii) Any change in compliance methods as specified in § 63.1275(b).

(viii) If the owner or operator elects to comply with § 63.1275(c)(2), the records required under § 63.1284(b)(10).

(f) *Notification of process change.* Whenever a process change is made, or a change in any of the information submitted in the Notification of Compliance Status Report, the owner or operator shall submit a report within 180 days after the process change is made or as a part of the next Periodic Report as required under paragraph (e) of this section, whichever is sooner. The report shall include:

(1) A brief description of the process change;

(2) A description of any modification to standard procedures or quality assurance procedures;

(3) Revisions to any of the information reported in the original Notification of Compliance Status Report under paragraph (d) of this section; and

(4) Information required by the Notification of Compliance Status Report under paragraph (d) of this section for changes involving the addition of processes or equipment.

§ 63.1286 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(l) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities will not be delegated to States for §§ 63.1282 and 63.1287 of this subpart.

§ 63.1287 Alternative means of emission limitation.

(a) If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in HAP emissions from that source achieved under the applicable requirements in §§ 63.1274 through 63.1281, the Administrator will publish a notice in the **Federal Register** permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a hearing.

(c) Any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information showing that this means achieves equivalent emission reductions.

§ 63.1288 [Reserved]

§ 63.1289 [Reserved]

Appendix to Subpart HHH—Tables

TABLE 1.—LIST OF HAZARDOUS AIR POLLUTANTS (HAP) FOR SUBPART HHH

CAS Number[a]	Chemical name
75070 ...	Acetaldehyde
71432 ...	Benzene (includes benzene in gasoline)
75150 ...	Carbon disulfide
463581	Carbonyl sulfide
100414	Ethyl benzene
107211	Ethylene glycol
75050 ...	Acetaldehyde
50000 ...	Formaldehyde
110543	n-Hexane
91203 ...	Naphthalene
108883	Toluene
540841	2,2,4-Trimethylpentane
1330207	Xylenes (isomers and mixture)
95476 ...	o-Xylene
108383	m-Xylene
106423	p-Xylene

[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

TABLE 2 TO SUBPART HHH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH

General provisions reference	Applicable to subpart HHH	Explanation
§ 63.1(a)(1)	Yes	
§ 63.1(a)(2)	Yes	
§ 63.1(a)(3)	Yes	
§ 63.1(a)(4)	Yes	
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6) through (a)(8)	Yes	
§ 63.1(a)(9)	No	Section reserved.
§ 63.1(a)(10)	Yes	

TABLE 2 TO SUBPART HHH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH—Continued

General provisions reference	Applicable to subpart HHH	Explanation
§ 63.1(a)(11)	Yes	
§ 63.1(a)(12) through (a)(14)	Yes	
§ 63.1(b)(1)	No	Subpart HHH specifies applicability.
§ 63.1(b)(2)	Yes	
§ 63.1(b)(3)	No.	
§ 63.1(c)(1)	No	Subpart HHH specifies applicability.
§ 63.1(c)(2)	No	
§ 63.1(c)(3)	No	Section reserved.
§ 63.1(c)(4)	Yes	
§ 63.1(c)(5)	Yes	
§ 63.1(d)	No	Section reserved.
§ 63.1(e)	Yes	
§ 63.2	Yes	Except definition of major source is unique for this source category and there are additional definitions in subpart HHH.
§ 63.3(a) through (c)	Yes	
§ 63.4(a)(1) through (a)(3)	Yes	
§ 63.4(a)(4)	No	Section reserved.
§ 63.4(a)(5)	Yes	
§ 63.4(b)	Yes	
§ 63.4(c)	Yes	
§ 63.5(a)(1)	Yes	
§ 63.5(a)(2)	No	Preconstruction review required only for major sources that commence construction after promulgation of the standard.
§ 63.5(b)(1)	Yes	
§ 63.5(b)(2)	No	Section reserved.
§ 63.5(b)(3)	Yes	
§ 63.5(b)(4)	Yes	
§ 63.5(b)(5)	Yes	
§ 63.5(b)(6)	Yes	
§ 63.5(c)	No	Section reserved.
§ 63.5(d)(1)	Yes	
§ 63.5(d)(2)	Yes	
§ 63.5(d)(3)	Yes	
§ 63.5(d)(4)	Yes	
§ 63.5(e)	Yes	
§ 63.5(f)(1)	Yes	
§ 63.5(f)(2)	Yes	
§ 63.6(a)	Yes	
§ 63.6(b)(1)	Yes	
§ 63.6(b)(2)	Yes	
§ 63.6(b)(3)	Yes	
§ 63.6(b)(4)	Yes	
§ 63.6(b)(5)	Yes	
§ 63.6(b)(6)	No	Section reserved.
§ 63.6(b)(7)	Yes	
§ 63.6(c)(1)	Yes	
§ 63.6(c)(2)	Yes	
§ 63.6(c)(3) and (c)(4)	No	Section reserved.
§ 63.6(c)(5)	Yes	
§ 63.6(d)	No	Section reserved.
§ 63.6(e)	Yes	
§ 63.6(e)	Yes	Except as otherwise specified.
§ 63.6(e)(1)(i)	No	Addressed in § 63.1272.
§ 63.6(e)(1)(ii)	Yes	
§ 63.6(e)(1)(iii)	Yes	
§ 63.6(e)(2)	Yes	
§ 63.6(e)(3)(i)	Yes	Except as otherwise specified.
§ 63.6(e)(3)(i)(A)	No	Addressed by § 63.1272(c).
§ 63.6(e)(3)(i)(B)	Yes	
§ 63.6(e)(3)(i)(C)	Yes	
§ 63.6(e)(3)(ii) through (3)(vi)	Yes	
§ 63.6(e)(3)(vii)		
§ 63.6(e)(3)(vii) (A)	Yes	
§ 63.6(e)(3)(vii) (B)	Yes	Except that the plan must provide for operation in compliance with § 63.1272(c).
§ 63.6(e)(3)(vii) (C)	Yes	
§ 63.6(e)3)(viii)	Yes	
§ 63.7(e)(1)	Yes	
§ 63.7(e)(2)	Yes	
§ 63.7(e)(3)	Yes	
§ 63.7(e)(4)	Yes	
§ 63.7(f)	Yes	
§ 63.7(g)	Yes	
§ 63.7(h)	Yes	
§ 63.8(a)(1)	Yes	
§ 63.8(a)(2)	Yes	
§ 63.8(a)(3)	No	Section reserved.
§ 63.8(a)(4)	Yes	
§ 63.8(b)(1)	Yes	
§ 63.8(b)(2)	Yes	
§ 63.8(b)(3)	Yes	

TABLE 2 TO SUBPART HHH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH—Continued

General provisions reference	Applicable to subpart HHH	Explanation
§ 63.8(c)(1)	Yes	
§ 63.8(c)(2)	Yes	
§ 63.8(c)(3)	Yes	
§ 63.8(c)(4)	No.	
§ 63.8(c)(5) through (c)(8)	Yes	
§ 63.8(d)	Yes	
§ 63.8(e)	Yes	Subpart HHH does not specifically require continuous emissions monitor performance evaluations, however, the Administrator can request that one be conducted.
§ 63.8(f)(1) through (f)(5)	Yes	
§ 63.8(f)(6)	No	Subpart HHH does not require continuous emissions monitoring.
§ 63.8(g)	No	Subpart HHH specifies continuous monitoring system data reduction requirements.
§ 63.9(a)	Yes	
§ 63.9(b)(1)	Yes	
§ 63.9(b)(2)	Yes	Sources are given 1 year (rather than 120 days) to submit this notification.
§ 63.9(b)(3)	Yes	
§ 63.9(b)(4)	Yes	
§ 63.9(b)(5)	Yes	
§ 63.9(c)	Yes	
§ 63.9(d)	Yes	
§ 63.9(e)	Yes	
§ 63.9(f)	No.	
§ 63.9(g)	Yes	
§ 63.9(h)(1) through (h)(3)	Yes	
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5) and (h)(6)	Yes	
§ 63.9(i)	Yes	
§ 63.9(j)	Yes	
§ 63.10(a)	Yes	
§ 63.10(b)(1)	Yes	
§ 63.10(b)(2)	Yes	
§ 63.10(b)(3)	No	
§ 63.10(c)(1)	Yes	
§ 63.10(c)(2) through (c)(4)	No	Sections reserved.
§ 63.10(c)(5) through (c)(8)	Yes	
§ 63.10(c)(9)	No	Section reserved.
§ 63.10(c)(10) through (c)(15)	Yes	
§ 63.10(d)(1)	Yes	
§ 63.10(d)(2)	Yes	
§ 63.10(d)(3)	Yes	
§ 63.10(d)(4)	Yes	
§ 63.10(d)(5)	Yes	Subpart HHH requires major sources to submit a startup, shutdown and malfunction report semi-annually.
§ 63.10(e)(1)	Yes	
§ 63.10(e)(2)	Yes	
§ 63.10(e)(3)(i)	Yes	Subpart HHH requires major sources to submit Periodic Reports semi-annually.
§ 63.10(e)(3)(i)(A)	Yes	
§ 63.10(e)(3)(i)(B)	Yes	
§ 63.10(e)(3)(i)(C)	No	Subpart HHH does not require quarterly reporting for excess emissions.
§ 63.10(e)(3)(ii) through (e)(3)(viii)	Yes	
§ 63.10(f)	Yes	
§ 63.11(a) and (b)	Yes	
§ 63.12(a) through (c)	Yes	
§ 63.13(a) through (c)	Yes	
§ 63.14(a) and (b)	Yes	
§ 63.15(a) and (b)	Yes	

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June 17, 1999

Part III

Department of Agriculture

Agricultural Marketing Service

Grading Standards; Oranges (California and Arizona); Grapefruit (California and Arizona); Tangerines; and Lemons; Notice

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–98–305]

United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to change the United States Standards for Grades of Oranges, United States Standards for Grades of Grapefruit, United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons. Specifically, AMS is proposing to change the standards in order to provide a minimum 25-count sample to be applied to tolerances for defects. These changes are being requested by industry to promote greater uniformity and consistency in the standards. In addition, AMS proposes to further improve the standards and promote consistency by reviewing the standards in their entirety. These standards have not been changed within the last 34 to 50 years, depending on the commodity in question. Revisions are needed to bring them into conformity with current cultural and marketing practices.

DATES: Comments must be submitted on or before August 16, 1999.

ADDRESSES: Written comments may be submitted to Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2065, South Building, STOP 0240, PO Box 96456, Washington, DC 20090–6456; faxed to (202) 720–8871; or e-mailed to fpb.docketclerk@usda.gov.

Comments should reference the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at the above address during regular business hours.

The current U.S. grade standards for these citrus crops, along with proposed changes, are available either through the above addresses or by accessing AMS's Home Page on the Internet at www.ams.usda.gov/standards/frutmrkt.htm.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan at (202) 720–2185.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *". AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and make copies of official standards available upon request. The United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons no longer appear in the Code of Federal Regulations but are maintained by USDA.

AMS is proposing to change the United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons using the procedures it published in the August 13, 1997, **Federal Register** and that appear in part 36 of title 7 of the Code of Federal Regulations (7 CFR part 36).

AMS received a request from Sunkist Growers to change the standards to allow for a minimum 25-count sample. In addition, AMS has recommended other changes to bring the standards into conformity with current cultural and marketing practices. This notice provides for a 60 day comment period which affords sufficient time for interested persons to comment on the revisions to the standards. The following is an outline of these changes.

Current standard	Proposed	Discussion
United States Standards for Grades of Oranges (California and Arizona)		
"U.S. Fancy" consists of oranges of similar varietal characteristics which are mature, well colored, firm, well formed, of smooth texture, and which are free from decay, broken skins which are not healed, hard or dry skins,	No change.	N/A.
exanthema, growth cracks, bruises (except those incident to proper handling and packing), dryness or mushy condition, and free from injury caused by split, rough, wide or protruding navels, creasing, scars, oil spots, scale,	exanthema, growth cracks, dryness or mushy condition, and free from injury caused by bruises, split, rough, wide or protruding navels, creasing, scars, oil spots, scale	We propose to change the phrase "free from bruises" to "free from injury by bruises" to standardize with other fruit and vegetable standards. Typically, bruising is defined under the definitions for injury, damage, and serious damage. The definitions for injury and damage are the same in this standard, therefore, when bruising occurs it will be considered as damage.
sunburn, dirt or other foreign material, disease, insects or mechanical or other means. (See "Tolerances")	skin breakdown, sunburn, dirt or other foreign material disease, insects or mechanical or other means. (See "Tolerances")	We propose to add "free from injury caused by skin breakdown." This defect is currently being scored based on the "general definition" and is not specified in the current standards.
"U.S. No. 1" consists of oranges of similar varietal characteristics which are mature, firm, well formed, of fairly smooth texture, and which are free from decay, broken skins which are not healed, hard or dry skins,	No change.	N/A.

Current standard	Proposed	Discussion
exanthema, growth cracks, bruises (except those incident to proper handling and packing), and free from damage caused by dryness or mushy condition, split, rough, wide or protruding navels, creasing, scars, oil spots, scale,	exanthema, growth cracks, and free from damage caused by bruises, dryness or mushy condition, split, rough, wide or protruding navels, creasing, scars, oil spots, scale,	We propose to change the phrase "free from bruises" to "free from damage by bruises" to standardize with other fruit and vegetable standards. Typically, bruising is defined under the definitions for injury, damage, and serious damage. The definitions for injury and damage are the same in this standard, therefore, when bruising occurs it will be considered as damage.
sunburn, dirt or other foreign material, disease, insects or mechanical or other means.	skin breakdown, sunburn, dirt or other foreign material, disease, insects or mechanical or other means.	We propose to add "free from damage caused by skin breakdown." This defect is currently being scored based on the "general definition" and is not specified in the current standards.
Each fruit shall be well colored except Valencia oranges which shall be at least fairly well colored:	No change.	N/A.
Provided, That navel oranges in any lot which is destined for export and which is certified as meeting the standards for export need be only fairly well colored. (See "Tolerances")	No change.	N/A.
"U.S. Combination" consists of a combination of U.S. No. 1 and U.S. No. 2 oranges: Provided, That at least 40 percent, by count, of the oranges in each container meet the requirements of U.S. No. 1 grade. (See "Tolerances")	"U.S. Combination" consists of a combination of U.S. No. 1 and U.S. No. 2 oranges: Provided, That at least 40 percent, by count, of the oranges in each lot shall meet the requirements of the U.S. No. 1 grade. (See "Tolerances")	We propose to change the word "container" to "lot" to remain consistent with the proposed sampling method. For tolerances on individual samples please refer to the "Tolerances" section on page 7.
"U.S. No. 2" consists of oranges of similar varietal characteristics which are mature, fairly well colored, fairly firm, fairly well formed, which may be of slightly rough texture, and which are free from decay, broken skins which are not healed, hard or dry skins, exanthema, growth cracks, and free from serious damage caused by bruises, dryness or mushy condition, split or protruding navels, creasing, scars, oil spots, scale,	No change.	N/A.
sunburn, dirt or other foreign material, disease, insects or mechanical or other means. (See "Tolerances")	skin breakdown, sunburn, dirt or other foreign material, disease, insects or mechanical or other means. (See "Tolerances")	We propose to add "free from serious damage caused by skin breakdown." This defect is currently being scored based on the "general definition" and is not specified in the current standards.
"Unclassified" consists of oranges which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.	Delete.	When changing or updating standards in recent years, references to "Unclassified" have been removed in an attempt to eliminate the confusion this term creates. People have incorrectly assumed that "Unclassified" is an actual grade name; it is not. To avoid further confusion, it is proposed that all references to this term be eliminated.
"Tolerances." In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the tolerances set forth in the U.S. Fancy, U.S. No. 1, U.S. No. 2, and U.S. Combination grades are provided as specified.	"Tolerances." In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the tolerances, by count, based on a minimum 25 count sample, set forth in the U.S. Fancy, U.S. No. 1, U.S. No. 2, and U.S. Combination grades are provided as specified.	The proposed addition of the phrase "a minimum 25 count sample" establishes a basis for sampling uniformity. Other citrus standards (Florida), at industry's request, have recently been changed to include the minimum 25 count sample. This would make the citrus standards more uniform regarding sampling. This change is also consistent with the industry's request.

Current standard	Proposed	Discussion
"U.S. Fancy, U.S. No. 1, and U.S. No. 2 grades." Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements relating to color. In addition, not more than 10 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the specified grade, but not more than one-twentieth of this amount, or one-half of 1 percent, shall be allowed for decay at shipping point: Provided, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination.	"U.S. Fancy and U.S. No. 1 grades." For defects at shipping point. Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements relating to color. In addition, not more than 10 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the specified grade, included in this amount not more than 5 percent shall be allowed for defects causing serious damage, included in this latter amount not more than 1 percent for decay.	We propose to establish separate "Shipping Point" tolerances to be more consistent with other fruit and vegetable standards. A tolerance for serious damage and a "whole number" decay tolerance are proposed. Separate tolerances for serious damage and the whole number decay tolerance at shipping point are included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of "not more than one-twentieth of (10%), or one-half of 1 percent" may be a confusing concept to an industry which is accustomed to "whole" percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors "round up" percentages ending in .5 or more and "round down" those less than .5. The current citrus standards included in this Notice are an exception to this procedure. Changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards.
	"U.S. Fancy and U.S. No. 1 grades." For defects en route or at destination. Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements relating to color. In addition, not more than 12 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or 7 percent for defects causing serious damage, including therein not more than 5 percent for serious damage by permanent defects and not more than 3 percent for decay.	We propose to establish "En Route or At Destination" tolerances to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing serious damage; and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
"U.S. No. 2 grade." For defects at shipping point. Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements relating to color. In addition, not more than 10 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the specified grade, included in this amount not more than 1 percent for decay.		We propose to establish separate tolerances at "Shipping Point" and "En Route or At Destination" to be more consistent with other fruit and vegetable standards. Also proposed is a 1 percent decay tolerance at shipping point. The decay tolerance en route or at destination would remain at 3 percent.
"U.S. No. 2 grades." For defects en route or at destination. Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements relating to color. In addition, not more than 12 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or not more than 3 percent for decay.		We propose to establish "En Route or At Destination" tolerances to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.

Current standard	Proposed	Discussion
"U.S. Combination grade." Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 10 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade, but not more than one-twentieth of this amount, or one-half of 1 percent, shall be allowed for decay at shipping point: Provided, That an additional tolerance of 2½ percent, or a total of 3 percent, shall be allowed for decay en route or at destination.	"U.S. Combination grade." For defects at shipping point. Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 10 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade, included in this amount not more than 1 percent for decay.	We propose to establish separate "Shipping Point" tolerances to be more consistent with other fruit and vegetable standards. A tolerance for serious damage and a "whole number" decay tolerance are proposed. Separate tolerances for serious damage and the whole number decay tolerance at shipping point are included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of "not more than one-twentieth of (10%), or one-half of 1 percent" may be a confusing concept to an industry which is accustomed to "whole" percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors "round up" percentages ending in .5 or more and "round down" those less than .5. The current citrus standards included in this Notice are an exception to this procedure. Changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards.
	"U.S. Combination grade." For defects en route or at destination. Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 12 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or not more than 3 percent for decay.	We propose to establish "En Route or At Destination" tolerances to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing serious damage; and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
(a) No part of any tolerance shall be allowed to reduce for the lot as a whole the percentage of U.S. No. 1 required in the combination, but individual containers may have not more than a total of 10 percent less than percentage of U.S. No. 1 required: Provided, That the entire lot averages within the percentage required.	"U.S. Combination grade." For defects at shipping point and en route or at destination. No part of any tolerance shall be allowed to reduce for the lot as a whole, the 40 percent of U.S. No. 1 oranges required in the U.S. Combination grade, but individual samples may have not less than 30 percent of U.S. No. 1 required: Provided, That the entire lot averages within the percentage required.	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method for grade determination. We also propose to re-word this section to make it consistent with other fruit and vegetable standards including those listed in this Notice.
"Application of tolerances." (a) Except when applying the tolerances for standards for export, the contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: Provided, That the averages for the entire lot are within the tolerances specified for the grade:	"Application of tolerances." Individual samples, based on a minimum 25 count, are subject to the following limitations, unless otherwise specified. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: Provided, that at least one decayed fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.	We propose to change the standards to include minimum 25 count samples, not "packages." This is consistent with the recently-changed Florida Citrus Standards. Individual sample tolerances are also proposed to reflect the language and tolerances widely used in other fruit and vegetable standards.
(1) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one decayed orange may be permitted in any package.	Delete.	We propose this deletion because the reference to various size package restrictions from the current standard would no longer be valid with a minimum 25 count sample.

Current standard	Proposed	Discussion
(2) For packages which contain 10 pounds or less, individual packages in any lot are not restricted as to the percentage of defects: Provided, That not more than one orange which is seriously damaged by dryness or mushy condition may be permitted in any package and, in addition, en route or at destination not more than 10 percent of the packages may have more than one decayed orange.	Delete.	We propose this deletion because the reference to various size package restrictions listed in the current standard would no longer be valid with a minimum 25 count sample.
"Standard pack." (a) Oranges shall be fairly uniform in size and shall be packed in boxes or cartons and arranged according to the approved and recognized methods. Each wrapped fruit shall be fairly well enclosed by its individual wrapper.	"Standard pack." (a) Oranges shall be fairly uniform in size and shall be packed in boxes or cartons and arranged according to the approved and recognized methods.	We propose to delete the reference to "wrapped fruit" because the industry no longer packs fruit in this manner.
(b) All such containers shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising because of overfilled containers. When oranges are packed in standard nailed boxes, each box shall have a minimum bulge of 1¼ inches; when packed in cartons or in wire-bound boxes, each container shall be at least level full at time of packing.	(b) All such containers shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising because of overfilled containers. When oranges are packed in cartons or in wire-bound boxes, each container shall be at least level full at time of packing.	We propose to delete the reference to "nailed boxes" because they are no longer used by the industry.
(c) "Fairly uniform in size" means that when oranges are packed for 113 carton count or smaller size, or equivalent sizes when packed in other containers, not more than 10 percent, by count, of the oranges in any container may vary more than five-sixteenths inch in diameter; when packed for sizes larger than 113 carton count or equivalent sizes packed in other containers, not more than 10 percent, by count, of the oranges in any container may vary more than seven-sixteenths inch in diameter.	(c) "Fairly uniform in size" means that when oranges are packed for 113 carton count or smaller size, or equivalent sizes when packed in other containers, not more than 10 percent, by count, of the oranges in any sample may vary more than five-sixteenths inch in diameter; when packed for sizes larger than 113 carton count or equivalent sizes packed in other containers, not more than 10 percent, by count, of the oranges in any sample may vary more than seven-sixteenths inch in diameter.	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method for grade determination.
(1) "Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.	No change.	N/A.
(d) In order to allow for variations incident to proper packing, when oranges are wrapped not more than 10 percent of the wrapped fruit in any container may fail to meet the requirements pertaining to wrapping; and, not more than 5 percent of the containers in any lot may fail to meet the requirements for standard pack.	(d) In order to allow for variations incident to proper packing, not more than 5 percent of the samples in any lot may fail to meet the requirements for standard pack.	We propose to delete the reference to "wrapped fruit" because industry no longer packs fruit in this manner; and to change the word "container" to "sample" to be consistent with the proposed sampling method.
"Standard sizing and fill." (a) Boxes or cartons in which oranges are not packed according to a definite pattern do not meet the requirements of standard pack, but may be certified as meeting the requirements of standard sizing and fill: Provided, That the oranges in the containers are fairly uniform in size as defined in the standard pack section: And provided further, That the contents have been properly shaken down and the container is at least level full at time of packing.	"Standard sizing and fill." (a) Boxes or cartons in which oranges are not packed according to a definite pattern do not meet the requirements of standard pack, but may be certified as meeting the requirements of standard sizing and fill: Provided, That the oranges in the samples are fairly uniform in size as defined in the standard pack section: And provided further, That the contents have been properly shaken down and the container is at least level full at time of packing.	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method.
(b) In order to allow for variations incident to proper packing, not more than 5 percent of the containers in any lot may fail to meet the requirements of standard sizing and fill.	(b) In order to allow for variations incident to proper packing, not more than 5 percent of the samples in any lot may fail to meet the requirements of standard sizing and fill.	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method.
"Standards for export." (a) Not more than a total of 10 percent, by count, of the oranges in any container may be soft, affected by decay, have broken skins, which are not healed, growth cracks, or be damaged by creasing or skin breakdown, or seriously damaged by split or protruding navels, or by dryness or mushy condition, except that:	"Standards for export." (a) Not more than a total of 10 percent, by count, of the oranges in any sample may be soft, affected by decay, have broken skins, which are not healed, growth cracks, or be damaged by creasing or skin breakdown, or seriously damaged by split or protruding navels, or by dryness or mushy condition, except that:	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method.

Current standard	Proposed	Discussion
(1) Not more than one-half of 1 percent shall be allowed for oranges affected by decay;	No change.	N/A.
(2) Not more than 3 percent shall have broken skins which are not healed;	No change.	N/A.
(3) Not more than 3 percent shall have growth cracks;	No change.	N/A.
(4) Not more than 5 percent shall be soft;	No change.	N/A.
(5) Not more than 5 percent shall be damaged by creasing;	No change.	N/A.
(6) Not more than 5 percent shall be seriously damaged by split or protruding navels;	No change.	N/A.
(7) Not more than 5 percent shall be seriously damaged by dryness or mushy condition; and,	No change.	N/A.
(8) Not more than 5 percent shall be damaged by skin breakdown.	No change.	N/A.
(b) Any lot of oranges shall be considered as meeting the standards for export if the entire lot averages within the requirements specified: Provided, That no sample from the containers in any lot shall have not more than double the percentage specified for any one defect, and that not more than a total of 10 percent, by count, of the oranges in any container has any of the defects enumerated in the standards for export.	(b) Any lot of oranges shall be considered as meeting the standards for export if the entire lot averages within the requirements specified: Provided, That no sample from the containers in any lot shall have not more than double the percentage specified for any one defect, and that not more than a total of 10 percent, by count, of the oranges in any sample has any of the defects enumerated in the standards for export.	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method.
"Similar varietal characteristics" means that the oranges in any container are similar in color and type.	No change.	N/A.
"Well colored" means that the fruit is at least light orange in color, with not more than a trace of green at the stem end, and not more than 15 percent of the remainder of the surface of the fruit shows green color.	No change.	N/A.
"Firm" means that the fruit does not yield more than slightly to moderate pressure.	No change.	N/A.
"Well formed" means that fruit shows the normal shape characteristic of the variety.	No change.	N/A.
"Smooth texture" means that the skin is of fairly fine grain for the variety, the "pebbling" is not pronounced, and any furrows radiating from the stem end are shallow.	No change.	N/A.
"Injury" means any defect which more than slightly affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as injury:	No change.	N/A.
(a) Split, rough, wide or protruding navels when a split is unhealed or is more than one-eighth inch in length; or when the navel protrudes beyond the general contour of the fruit; or when flush with the contour but with the opening so wide, considering the size of the fruit, or the navel growth so folded and ridged that it detracts noticeably from the appearance of the fruit;	No change.	N/A.
(b) Slight creasing which is more than barely visible, or which extends over more than 20 percent of the fruit surface;	No change.	N/A.
(c) Scars (including sprayburn and fumigation injury) which exceed the following aggregate areas of different types of scars, or a combination of two or more types of scars the seriousness of which exceeds the maximum allowed for any one type:	No change.	N/A.
(1) Scars which are very dark and which have an aggregate area exceeding that of a circle one-eighth inch in diameter;	No change.	N/A.
(2) Scars which are dark, rough or deep and which have an aggregate area exceeding that of a circle one-fourth inch in diameter;	No change.	N/A.

Current standard	Proposed	Discussion
(3) Scars which are fairly light in color, slightly rough, or with slight depth and which have an aggregate area exceeding that of a circle one-half inch in diameter; and,	No change.	N/A.
(4) Scars which are light in color, fairly smooth, with no depth and which have an aggregate area of more than 5 percent of the fruit surface;	No change.	N/A.
(d) Oil spots (oleocellosis or similar injuries) which are depressed or soft, or which have an aggregate area of more than 2½ percent of the fruit surface, or which are green and more than 4 in number;	No change.	N/A.
(e) Scale when medium or large and more than 5 are present; and,	No change.	N/A.
(f) Sunburn which appreciably changes the normal color or shape of the fruit, or which affects more than 10 percent of the fruit surface.	No change.	N/A.
	(g) Skin breakdown when exceeding that of a circle ⅛ inch in diameter.	This defect is currently being scored using the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
	(h) Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored using the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
"Fairly smooth texture" means that the skin does not feel noticeably rough or coarse for the variety. The size of the fruit should be considered in judging texture, as large fruit is not usually as smooth as smaller fruit. It is common for the fruit to show larger and coarser "pebbling" on the stem end portion than on the blossom end. The presence of furrows or grooves on the stem end portion of the fruit is a common condition in certain varieties, and the fruit shall not be considered as slightly rough unless the furrows or grooves are of sufficient depth, length, and number as to materially affect the appearance and smoothness of the orange.	No change.	N/A.
"Damage" means any defect which materially affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:	No change.	N/A.
(a) Dryness or mushy condition when affecting all segments more than one-fourth inch at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit;	No change.	N/A.
(b) Split, rough, wide or protruding navels when there are more than three splits, or when any split is unhealed or is more than one-fourth inch in length; or navels which flare, bulge, or protrude materially beyond the general contour of the fruit; or when the navel opening is so wide, considering the size of the fruit, or the navel growth so folded and ridged that it detracts materially from the appearance of the fruit;	No change.	N/A.
(c) Creasing which materially weakens the skin, or which extends over more than one-third of the fruit surface;	No change.	N/A.
(d) Scars (including sprayburn and fumigation injury) which exceed the following aggregate areas of different types of scars, or a combination of two or more types of scars the seriousness of which exceeds the maximum allowed for any one type:	No change.	N/A.

Current standard	Proposed	Discussion
(1) Scars which are very dark, with slight depth, and which have an aggregate area exceeding that of a circle one-fourth inch in diameter;	No change.	N/A.
(2) Scars which are very dark, with no depth, and which have an aggregate area exceeding that of a circle one-half inch in diameter;	No change.	N/A.
(3) Scars which are dark, and rough or deep, and which have an aggregate area exceeding that of a circle one-half inch in diameter;	No change.	N/A.
(4) Scars which are dark, and slightly rough or with slight depth, and which have an aggregate area exceeding that of a circle three-fourths inch in diameter;	No change.	N/A.
(5) Scars which are fairly light in color, slightly rough or with slight depth, and which have an aggregate area of more than 5 percent of the fruit surface; and,	No change.	N/A.
(6) Scars which are light in color, fairly smooth, with no depth, and which have an aggregate area of more than 10 percent of the fruit surface;	No change.	N/A.
(e) Oil spots (oleocellosis or similar injuries) which are depressed or soft, or which have an aggregate area of more than 5 percent of the fruit surface, or which are green and more than 7 in number;	No change.	N/A.
(f) Scale when medium or large and more than 3 scales are present in each of 3 circular areas 1 inch in diameter, selected as the worst infested areas, or when more than 7 scales are present in one of these areas: Provided, That scale within a circle five-eighths inch in diameter centered at the stem button or button socket shall not be considered in determining whether an orange is damaged; and;	(f) Scale when medium or large and more than 7 are present, or when medium or large scale, outside the stem button area, aggregate more than a circle 5/8 inch in diameter.	We propose to change the scoring criteria of this defect to simplify the scoring of scale and provide uniformity with other citrus standards.
(g) Sunburn which causes appreciable flattening of the fruit, drying or darkening of the skin, or affects more than 25 percent of the fruit surface.	No change.	N/A.
	(h) Skin breakdown when exceeding that of a circle ¼ inch in diameter.	This defect is currently being scored using the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
	(i) Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored using the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
"Fairly well colored" means that the yellow or orange color predominates on the fruit.	No change.	N/A.
"Fairly firm" means that the fruit may yield to moderate pressure but is not soft.	No change.	N/A.
"Fairly well formed" means that the fruit is not of the shape characteristic of the variety but is not decidedly flattened, pointed, extremely elongated, or otherwise badly deformed.	No change.	N/A.
Slightly rough texture" means that the skin is not decidedly rough, badly folded, badly ridged, or decidedly lumpy. Heavily "pebbled" skin shall be considered as slightly rough.	No change.	N/A.
"Serious damage" means any defect which seriously affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:	No change.	N/A.
(a) Dryness or mushy condition when affecting all segments more than one-half inch at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit;	No change.	N/A.

Current standard	Proposed	Discussion
(b) Split or protruding navels when any split is unhealed or is more than one-half inch in length, or when two or more splits aggregate more than 1 inch in length; or navels which protrude seriously beyond the general contour of the fruit; or when the navel opening is so wide, considering the size of the fruit, or the navel growth so badly folded and ridged that it detracts seriously from the appearance of the fruit;	No change.	N/A.
(c) Creasing which seriously weakens the skin, or which is distributed over practically the entire fruit surface;	No change.	N/A.
(d) Scars (including sprayburn and fumigation injury) which exceed the following aggregate areas of different types of scars, or a combination of two or more types of scars the seriousness of which exceeds the maximum allowed for any one type:	No change.	N/A.
(1) Scar which are very dark, very rough or very deep, and which have an aggregate area of more than 5 percent of the fruit surface;	No change.	N/A.
(2) Scars which are dark, rough or deep, and which have an aggregate area of more than 10 percent of the fruit surface;	No change.	N/A.
(3) Scars which are fairly light in color, slightly rough or of slight depth and which have an aggregate area of more than 15 percent of the fruit surface; and,	No change.	N/A.
(4) Scars which are light in color, fairly smooth, with no depth, and which have an aggregate area of more than 25 percent of the fruit surface;	No change.	N/A.
(e) Oil spots (oleocellosis or similar injuries) which are depressed or soft, or which have an aggregate area of more than 10 percent of the fruit surface;	No change.	N/A.
(f) Scale when medium or large and more than 9 scales are present in each of 3 circular areas 1 inch in diameter, selected as the worst infested areas, or if more than 19 scales are present in one of these areas: Provided, That scale within a circle five-eighths inch in diameter centered at the stem button or button socket shall not be considered in determining whether an orange is seriously damaged; and,	(f) Scale when medium or large and when aggregating more than a circle ¾ inch in diameter.	We propose to change the scoring criteria of this defect to simplify the scoring of scale and provide uniformity with other citrus standards.
(g) Sunburn which causes decided flattening of the fruit, drying or dark discoloration of the skin, or which affects more than one-third of the fruit surface.	No change.	N/A.
	(h) Skin breakdown when exceeding that of a circle ⅝ inch in diameter.	This defect is currently being scored using the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
	(i) Bruising when fruit has been split open, peel is badly watersoaked following bruising or albedo and juice sacs are ruptured causing a mushy condition affecting all segments more than ¾ inch at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.	This defect is currently being scored using the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.

Current standard	Proposed	Discussion
	Note: All references in this standard to area, aggregating area, or length are based on an orange 2⅞ inches in diameter, allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.	Currently, the standard does not state whether defects are based on a specific size fruit; or if greater defective areas are allowed on larger fruit and lesser areas on smaller fruit. Many fruit and vegetable standards contain this distinction. To clarify the issue and to standardize with other fruit and vegetable standards, we propose to include this statement.
United States Standards for Grades of Grapefruit (California and Arizona)		
"U.S. Fancy" shall consist of grapefruit of similar varietal characteristics which are mature, well colored, firm, well formed, of smooth texture for the variety, and fairly thin skinned; free from decay, broken skins which are not healed, hard or	No change.	N/A.
dry skins, bruises (except those incident to proper handling and packing), dryness or mushy condition, and from injury caused by sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn,	dry skins, dryness or mushy condition, and free from injury caused by bruises, sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn,	We propose to change the phrase "free from bruises" to "free from injury by bruises" to be more consistent with other fruit and vegetable standards. Typically, bruising is defined under the definitions of injury, damage and serious damage. As proposed, when bruising is encountered in the U.S. Fancy grade, it will be considered injury.
sprouting, dirt or other foreign materials, disease, insects or mechanical or other means. Stems shall be properly clipped. (See "Tolerances")	oil spots, skin breakdown, sprouting, dirt or other foreign materials, disease, insects or mechanical or other means. (See "Tolerances")	We propose to add "free from injury by" to the defects skin breakdown and oil spots to be more consistent with other fruit and vegetable standards. These defects are currently scored based on the "general definition." We also propose to delete the phrase "stems shall be properly clipped." Present harvesting and packing techniques remove all stems from the fruit, making this requirement unnecessary.
"U.S. No. 1" shall consist of grapefruit of similar varietal characteristics which are mature, fairly well colored, firm, well formed, of fairly smooth texture for the variety, and not excessively thick skinned; free from decay, broken skins which are not healed, hard or	No change.	N/A.
dry skins, bruises (except those incident to proper handling and packing), and from damage caused by dryness or mushy condition, sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn	dry skins, and free from damage caused by bruises, dryness or mushy condition, sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn	We propose to change the phrase "free from damage by bruises" to "free from damage by bruises" which is more consistent with other fruit and vegetable standards. Typically, bruising is defined under the definitions of injury, damage and serious damage. As proposed, when bruising is encountered in the U.S. No. 1 grade, it will be considered damage.
sprouting, dirt or other foreign materials, disease, insects, or mechanical or other means. Stems shall be properly clipped. (See "Tolerances")	oil spots, skin breakdown, sprouting, dirt or other foreign materials, disease, insects or mechanical or other means. (See "Tolerances")	We propose to add "free from damage by" to the defects skin breakdown and oil spots to be more consistent with other fruit and vegetable standards. These defects are currently scored based on the "general definition." We also propose to delete the phrase "stems shall be properly clipped." Present harvesting and packing techniques remove all stems from the fruit, making this requirement unnecessary.
"U.S. No. 2" shall consist of grapefruit of similar varietal characteristics which are mature, slightly colored, fairly firm, fairly well formed, and not decidedly rough; free from decay, broken skins which are not healed, hard or dry skins, and from serious damage caused by bruises, dryness or mushy condition, sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn	No change.	N/A.

Current standard	Proposed	Discussion
sprouting, dirt or other foreign materials, disease, insects, or mechanical or other means. Stems shall be properly clipped. (See "Tolerances")	oil spots, skin breakdown, sprouting, dirt or other foreign materials, disease, insects or mechanical or other means. (See "Tolerances")	We propose to add "free from serious damage by" to the defects skin breakdown and oil spots. These defects are currently scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of these defects. We also propose to delete the phrase "stems shall be properly clipped." Present harvesting and packing techniques remove all stems from the fruit, making this requirement unnecessary.
"U.S. Combination grade." Any lot of grapefruit may be designated "U.S. Combination" when not less than 40 percent, by count, of the fruits in each container meet the requirements of U.S. No. 1 grade and the remainder U.S. No. 2 grade. (See "Tolerances")	"U.S. Combination grade" shall consist of a combination of U.S. No. 1 and U.S. No. 2 grapefruit: Provided, That at least 40 percent, by count, of the grapefruit in each lot shall meet the requirements of the U.S. No. 1 grade. (See "Tolerances")	We propose to re-word the requirements of this grade to make it consistent with other commodities containing a Combination grade.
"U.S. No. 3" shall consist of grapefruit of similar varietal characteristics which are mature, slightly colored, which may be slightly spongy, misshapen, and rough but not seriously lumpy; which are free from decay, broken skins which are not healed, hard or dry	No change.	N/A.
skins, and from serious damage caused by bruises, dryness or mushy condition, and from very serious damage caused by sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn	skins, and free from very serious damage caused by bruises, dryness or mushy condition, sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn, oil spots, skin breakdown,	We propose to change the phrases "free from serious damage by bruises" and "free from dryness or mushy condition" to "free from very serious damage by bruises, dryness or mushy condition." In other citrus standards, defects scored against the U.S. No. 3 grade are typically "very serious damage." This revision will make it more consistent with those standards. We also propose to add the phrase "free from very serious damage by skin breakdown and oil spots." These defects are currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of these defects."
sprouting, dirt or other foreign materials, disease, insects or mechanical or other means. Stems shall be properly clipped. (See "Tolerances")	sprouting, dirt or other foreign materials, disease, insects or mechanical or other means. (See "Tolerances")	We propose to delete the phrase "stems shall be properly clipped." Present harvesting and packing techniques remove all stems from the fruit, making this requirement unnecessary.
"Unclassified" shall consist of grapefruit which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no definite grade has been applied to the lot.	Delete.	When changing or updating standards in recent years, references to "Unclassified" have been removed in an attempt to eliminate the confusion this term creates. People have incorrectly assumed that "Unclassified" is an actual grade name; it is not. To avoid further confusion, it is proposed that all references to this term be eliminated.
"Tolerances." In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the tolerances set forth in the U.S. Fancy, U.S. No. 1, U.S. No. 2, U.S. No. 3 and U.S. Combination grades are provided as specified:	"Tolerances." In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the tolerances, by count, based on a minimum 25 count sample, set forth in the U.S. Fancy, U.S. No. 1, U.S. No. 2, U.S. No. 3 and U.S. Combination grades are provided as specified:	The proposed addition of the phrase "a minimum 25 count sample" establishes a basis for uniform sampling. Other citrus standards (Florida), at industry's request, have recently been changed to include the minimum 25 count sample. This would make the citrus standards more uniform regarding sampling. This change also is consistent with the industry's request.

Current standard	Proposed	Discussion
"U.S. Fancy, U.S. No. 1, U.S. No. 2 and U.S. No. 3 grades." Not more than 10 percent, by count, of the fruit in any lot may fail to meet the requirements of the specified grade, other than for color, but not more than one-twentieth of this amount, or one-half of 1 percent, shall be allowed for decay at shipping point: Provided, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. In addition, not more than 10 percent, by count, of the fruit in any lot may not meet the requirements relating to color.	"U.S. Fancy, U.S. No. 1, and U.S. No. 2 grades." For defects at shipping point. Not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the requirements relating to color. In addition, not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the remaining requirements of the specified grade, included in this amount not more than 5 percent shall be allowed for defects causing very serious damage, included in this latter amount not more than 1 percent for decay.	We propose to establish separate "Shipping Point" tolerances to standardize them with other fruit and vegetable standards. A tolerance for very serious damage and a "whole number" decay tolerance are also proposed. Tolerances for very serious damage are part of all other standards that contain a No. 3 grade and a whole number decay tolerance at shipping point is included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of "not more than one-twentieth of (10%), or one-half of 1 percent" may be a confusing concept to an industry which is accustomed to "whole" percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors "round up" percentages ending in .5 or more and "round down" those less than .5. The current citrus standards included in this Notice are an exception to this procedure. Changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards.
	"U.S. Fancy, U.S. No. 1, and U.S. No. 2 grades." For defects en route or at destination. Not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the requirements relating to color. In addition, not more than 12 percent, by count, of the grapefruit in any lot may fail to meet the remaining requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects and not more than 3 percent for decay.	We propose to establish "En Route or At Destination" tolerances to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing very serious damage; and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
	"U.S. No. 3 grade." For defects at shipping point. Not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the requirements relating to color. In addition, not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the remaining requirements of the specified grade, included in this amount not more than 1 percent for decay	We propose to establish separate tolerances at "Shipping Point" to be more consistent with other fruit and vegetable standards. Also included is a 1 percent shipping point decay tolerance which is commonly found in other citrus standards.
	"U.S. No. 3 grade." For defects en route or at destination. Not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the requirements relating to color. In addition, not more than 12 percent, by count, of the grapefruit in any lot may fail to meet the remaining requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or not more than 3 percent for decay.	We propose to establish separate tolerances "En Route or at Destination" to be more consistent with other fruit and vegetable standards. Included is a tolerance for permanent defects and a total defects tolerance. The decay tolerance would remain at 3 percent.

Current standard	Proposed	Discussion
"U.S. Combination grade." Not more than 10 percent, by count, of the fruit in any lot may fail to meet the requirements of this grade, other than for color, but not more than one-twentieth of this amount, or one-half of 1 percent, shall be allowed for decay at shipping point: Provided, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. This 3 percent tolerance may be used to reduce the percentage of U.S. No. 1 grade required in the combination, provided the affected fruits meet the requirements of the U.S. No. 1 grade in other respects. In addition, not more than 10 percent, by count, of the fruit in any lot may not meet the requirements of the U.S. No. 2 grade for color.	"U.S. Combination grade." For defects at shipping point. Not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade, included in this amount not more than 5 percent for very serious damage, included in this latter amount not more than 1 percent for decay.	We propose to establish separate tolerances at "Shipping Point" to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing very serious damage; and for total defects. The decay tolerance is also changed to 1 percent. These tolerances are commonly found in other citrus standards.
	"U.S. Combination grade." For defects en route or at destination. Not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 12 percent, by count, of the grapefruit in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects and not more than 3 percent for decay.	We propose to establish "En Route or At Destination" tolerances to be more consistent with other fruit and vegetable standards. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
No part of any tolerance, other than that for decay, shall be allowed to reduce for the lot as a whole the percentage of U.S. No. 1 in the combination, but individual containers may have not more than a total of 10 percent less than the percentage of U.S. No. 1 specified: Provided, That the entire lot averages within the percentage specified.	"U.S. Combination grade." For defects at shipping point and en route or at destination. No part of any tolerance shall be allowed to reduce for the lot as a whole, the 40 percent of U.S. No. 1 grapefruit required in the U.S. Combination grade, but individual samples may have not less than 30 percent less of U.S. No. 1 required: Provided, That the entire lot averages within the percentage specified.	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method for grade determination. We also propose to re-word this section to make it consistent with other fruit and vegetable standards including those listed in this Notice.
"Application of tolerances to individual packages." (a) The contents of individual packages in the lot, based on sample inspection, are subject to the following limitation: Provided, That the averages for the entire lot are within the tolerances specified for the grade.	"Application of tolerances." Individual samples, based on a minimum 25 count, are subject to the following limitations, unless otherwise specified. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: Provided, that at least one decayed fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.	We propose to change the standards to include minimum 25 count samples, not "packages." This is consistent with the recently-changed Florida Citrus Standards. Individual sample tolerances are also proposed to reflect the language and tolerances widely used in other fruit and vegetable standards.
(1) For packages which contain more than 25 pounds, and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 25 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one decayed or very seriously damaged fruit may be permitted in any package.	Delete.	We propose this deletion because the reference to various size package restrictions from the current standard would no longer be valid with a minimum 25 count sample.

Current standard	Proposed	Discussion
(2) For packages which contain 25 pounds or less, individual packages in any lot are not restricted as to the percentage of defects: Provided, That not more than one grapefruit which is seriously damaged by dryness or mushy condition or very seriously damaged by other means may be permitted in any package and, in addition, en route or at destination not more than 10 percent of the packages may have more than one decayed fruit.	Delete.	We propose this deletion because the reference to various size package restrictions from the current standard would no longer be valid with a minimum 25 count sample.
"Standard pack." (a) Grapefruit shall be fairly uniform in size, and, when packed in boxes, shall be arranged according to the approved and recognized methods. Each wrapped fruit shall be fairly well wrapped.	"Standard pack." (a) Grapefruit shall be fairly uniform in size, and, when packed in boxes, shall be arranged according to the approved and recognized methods.	We propose to delete the reference to "wrapped fruit" because the industry no longer packs fruit in this manner.
(b) All packages shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising because of overfilled packages.	No change.	N/A.
(c) When packed in standard nailed boxes, grapefruit shall show a minimum bulge of 2 inches, except that grapefruit of a size 80 size or smaller need only show a bulge of 1½ inches.	Delete.	We propose to delete the reference to "nailed boxes" as they are no longer used by the industry.
(d) "Fairly uniform in size" means that not more than 5 percent, by count, of the fruit in any container may be more than one standard size larger or smaller than the standard size for the count packed.	(d) "Fairly uniform in size" means that not more than 5 percent, by count, of the fruit in any sample may be more than one standard size larger or smaller than the standard size for the count packed.	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method for grade determination.
(e) Example of standard size grapefruit: The standard size grapefruit for a 64 count is that size grapefruit which will pack tightly 64 grapefruit of uniform size when packed according to the approved and recognized method.	No change.	N/A.
(f) In order to allow for variations, incident to proper packing, not more than 5 percent of the packages in any lot may not meet the requirements of standard pack.	(f) In order to allow for variations, incident to proper packing, not more than 5 percent of the samples in any lot may fail to meet the requirements of standard pack.	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method for grade determination.
"Standards for export." (a) Not more than a total of 10 percent, by count, of the grapefruit in any container may be soft, affected by decay, damaged by skin breakdown, have broken skins which are not healed, or be seriously damaged by dryness or mushy condition, except that:	"Standards for export." (a) Not more than a total of 10 percent, by count, of the grapefruit in any sample may be soft, affected by decay, damaged by skin breakdown, have broken skins which are not healed, or be seriously damaged by dryness or mushy condition, except that:	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method for grade determination.
(1) Not more than one-half of 1 percent shall be allowed for grapefruit affected by decay.	No change.	N/A.
(2) Not more than 3 percent shall have broken skins which are not healed.	No change.	N/A.
(3) Not more than 5 percent shall be soft.	No change.	N/A.
(4) Not more than 5 percent shall be seriously damaged by dryness or mushy condition.	No change.	N/A.
(5) Not more than 5 percent shall be damaged by skin breakdown.	No change.	N/A.
(b) Any lot of grapefruit shall be considered as meeting the standards for export if the entire lot averages within the requirements specified: Provided, That no sample from the containers in any lot shall have more than double the percentage specified for any one defect, and that not more than a total of 10 percent, by count, of the grapefruit in any container has any of the defects enumerated in the standards for export.	(b) Any lot of grapefruit shall be considered as meeting the standards for export if the entire lot averages within the requirements specified: Provided, That no sample from the containers in any lot shall have more than double the percentage specified for any one defect, and that not more than a total of 10 percent, by count, of the grapefruit in any sample has any of the defects enumerated in the standards for export.	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method for grade determination.
"Similar varietal characteristics" means that the fruits in any container are similar in color and type.	No change.	N/A.
"Well colored" means that the fruit is yellow in color, with not more than a trace of green.	No change.	N/A.

Current standard	Proposed	Discussion
"Firm" means that the fruit is not soft or noticeably wilted or flabby. The skin may feel slightly springy or spongy.	No change.	N/A.
"Well formed" means that the fruit shows the normal shape characteristic of the variety.	No change.	N/A.
"Smooth" means that the skin is of fairly fine grain, the "pebbling" is not pronounced, and any furrows radiating from the stem end are short and shallow.	"Smooth texture" means that the skin is of fairly fine grain, the "pebbling" is not pronounced, and any furrows radiating from the stem end are short and shallow.	We propose to change "Smooth" to "Smooth texture" to make it consistent with the other citrus standards.
"Fairly thin skinned" means that the skin thickness does not average more than three-eighths of an inch, on a central cross section, in sizes 100 or smaller, or more than seven-sixteenths of an inch in sizes larger than 100.	"Fairly thin skinned" means that the skin thickness does not average more than ½ of an inch, on a central cross section, on a grapefruit 4⅛ inches in diameter.	We propose to change the size reference from "100 size" to "4⅛ inches" in diameter." This will provide a standard measurement for determining defects.
"Injury" means any defect which more than slightly affects the appearance, or edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as injury:	No change.	N/A.
(a) Sprayburn which changes the color to such an extent that the appearance of the fruit is noticeably injured, or which causes scarring that aggregates more than one-half inch in diameter.	No change.	N/A.
(b) Fumigation injury which noticeably detracts from the appearance of the fruit, or which occurs as small, thinly scattered spots over more than 10 percent of the fruit surface, or as solid or depressed scarring which aggregates more than one-half of an inch in diameter.	No change.	N/A.
(c) Exanthema which noticeably detracts from the appearance of the fruit, or which occurs as small, thinly scattered spots over more than 10 percent of the fruit surface, or as solid scarring which aggregates more than one-half of an inch in diameter.	No change.	N/A.
(d) Scars which are very rough or very deep; or scars which are very dark when more than one-fourth of an inch in diameter.	No change.	N/A.
(e) Scars which are dark, rough, or deep and aggregate more than one-half of an inch in diameter.	No change.	N/A.
(f) Scars which are fairly light in color, slightly rough, or of slight depth and aggregate more than 5 percent of the fruit surface.	No change.	N/A.
(g) Scars which are light in color, fairly smooth, with no depth and aggregate more than 10 percent of the fruit surface.	No change.	N/A.
(i) Scale, when more than 5 medium to large California red or purple scale are adjacent to the "button" at the stem end, or scattered over the fruit, or any scale which affects the appearance of the fruit to a greater extent.	No change.	N/A.
(j) Sunburn which appreciably changes the normal color or shape of the fruit, or affects more than 10 percent of the fruit surface.	No change.	N/A.
	(k) Green spots, oil spots (oleocellosis) or other similar injuries which are depressed or soft, or which have an aggregate area of more than 2½ percent of the fruit surface, or which are green and more than ¼ in number.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
	(l) Skin breakdown when exceeding that of a circle ¼ inch in diameter.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
	(m) Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.

Current standard	Proposed	Discussion
"Fairly well colored" means that yellow color predominates on the fruit and that the fruit is free from distinctly green streaks and distinctly green blotches.	No change.	N/A.
"Fairly smooth" means that the skin does not feel noticeably rough or coarse. The size of the fruit should be considered in judging the texture, as large fruit is not usually as smooth as the small. It is common for the fruit to show larger and coarser "pebbling" on the stem end portion than on the blossom end. Slight furrows or grooves which may be present on the stem end portion of the fruit shall not be considered as slightly rough unless they are of sufficient depth, length, and number to materially affect the appearance and smoothness of the grapefruit.	"Fairly smooth texture" means that the skin does not feel noticeably rough or coarse. The size of the fruit should be considered in judging the texture, as large fruit is not usually as smooth as the small. It is common for the fruit to show larger and coarser "pebbling" on the stem end portion than on the blossom end. Slight furrows or grooves which may be present on the stem end portion of the fruit shall not be considered as slightly rough unless they are of sufficient depth, length, and number to materially affect the appearance and smoothness of the grapefruit.	We propose to change "Fairly smooth" to "Fairly smooth texture" to make it consistent with the other citrus standards.
"Excessively thick skinned" means that the skin thickness averages more than seven-sixteenths of an inch, on a central cross section, in sizes 100 or smaller, or more than one-half of an inch in sizes larger than 100.	"Excessively thick skinned" means that the skin thickness averages more than ⅝ of an inch, on a central cross section, on a grapefruit 4⅛ inches in diameter.	We propose to change the size reference from "100 size" to "4⅛ inches" in diameter. This will provide a standard measurement for determining defects.
"Damage" means any injury which materially affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:	No change.	N/A.
(a) Dryness or mushy condition, when affecting all segments more than one-fourth of an inch at the stem end, or the equivalent of this amount by volume, when occurring in other portions of the fruit.	No change.	N/A.
(b) Sprayburn which changes the color to such an extent that the appearance of the fruit is materially injured, or which causes scarring that aggregates more than three-fourths of an inch in diameter.	No change.	N/A.
(c) Fumigation injury which materially detracts from the appearance of the fruit, or which occurs as small, thinly scattered spots over more than 25 percent of the fruit surface, or as solid scarring or depressions which aggregate more than three-fourths of an inch in diameter.	No change.	N/A.
(d) Exanthema which material detracts from the appearance of the fruit, or which occurs as small, thinly scattered spots over more than 25 percent of the fruit surface, or as solid scarring, that is not cracked, which aggregates more than three-fourths of an inch in diameter.	No change.	N/A.
(e) Scars which are very deep; or scars which are very rough or very dark and aggregate more than one-half of an inch in diameter.	No change.	N/A.
(f) Scars which are dark, rough or deep and aggregate more than three-fourths of an inch in diameter.	No change.	N/A.
(g) Scars which are fairly light in color, slightly rough, or of slight depth and aggregate more than 10 percent of the fruit surface.	No change.	N/A.
(h) Scars which are light colored, fairly smooth, with no depth and aggregate more than 15 percent of the fruit surface.	No change.	N/A.
(i) Green spots which are depressed or soft, or more than seven in number, or which aggregate more than 5 percent of the fruit surface.	(i) Green spots, oil spots (oleocellosis) or other similar injuries which are depressed or soft, or which have an aggregate area of more than 5 percent of the fruit surface, or which are green and more than 7 in number.	We propose to score Green spots and oil spots using the same criteria. These are similar defects and scoring is comparable in other citrus standards.

Current standard	Proposed	Discussion
(j) Scale, when more than 10 medium to large California red or purple scale are adjacent to the "button" at the stem end, or scattered over the fruit, or any scale which affects the appearance of the fruit to a greater extent.	No change.	N/A.
(k) Sunburn which causes appreciable flattening of the fruit, drying or darkening of the skin, or affects more than 25 percent of the fruit surface.	No change.	N/A.
	(l) Skin breakdown when exceeding that of a circle 3/8 inch in diameter.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
	(m) Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
"Slightly colored" means that sufficient yellow color is distributed over the fruit surface and, when blended with the green color present, is equivalent to 25 percent of full yellow color characteristic of the variety.	No change.	N/A.
"Fairly firm" means that the fruit may be slightly soft but is not decidedly flabby. The skin may be thick and slightly puffy.	No change.	N/A.
"Fairly well formed" means that the fruit is not materially flattened, materially pointed, extremely elongated, or otherwise decidedly deformed.	No change.	N/A.
"Decidedly rough" means that the skin is materially rough, materially lumpy, decidedly folded, or decidedly ridged.	No change.	N/A.
"Serious damage" means any injury which seriously affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect; shall be considered as serious damage:	No change.	N/A.
(a) Dryness or mushy condition, when affecting all segments more than one-half of an inch at the stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	No change.	N/A.
(b) Sprayburn which changes the color to such an extent that the appearance of the fruit is seriously injured, or which causes scarring that aggregates more than 10 percent of the fruit surface.	No change.	N/A.
(c) Fumigation injury which occurs as small, thinly scattered spots over more than one-half of the fruit surface, or solid scarring of depressions which aggregate more than 5 percent of the fruit surface.	No change.	N/A.
(d) Exanthema which occurs as small, thinly scattered spots over more than one-half of the fruit surface, or solid scarring that is not cracked, which aggregates more than 5 percent of the fruit surface.	No change.	N/A.
(e) Scars which are very deep; or scars which are very rough or very dark and aggregate more than one inch in diameter.	No change.	N/A.
(f) Scars which are dark, rough, or deep and aggregate more than 5 percent of the fruit surface.	No change.	N/A.
(g) Scars which are fairly light in color, slightly rough or of slight depth and aggregate more than 15 percent of the fruit surface.	No change.	N/A.
(h) Scars which are light colored, fairly smooth, with no depth and aggregate more than 25 percent of the fruit surface.	No change.	N/A..

Current standard	Proposed	Discussion
(i) Green spots which are soft or aggregate more than 2 inches in diameter.	(i) Green spots, oil spots (oleocellosis) or other similar injuries which are soft, or which have an aggregate area of more than 10 percent of the fruit surface.	We propose to score Green spots and oil spots using the same criteria. These are similar defects and scoring is comparable in other citrus standards.
(j) Scale, when California red or purple scale is concentrated as a ring or blotch, or which is more than thinly scattered over the fruit surface, or any scale which affects the appearance of the fruit to a greater extent.	No change.	N/A.
(k) Sunburn which causes decided flattening of the fruit, drying or dark discoloration of the skin, or which affects more than one-third of the fruit surface.	No change.	N/A.
	(l) Skin breakdown when exceeding that of a circle 5/8 inch in diameter	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
	(m) Bruising when segment walls are collapsed, or albedo is ruptured and juice sacs are ruptured.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
"Slightly spongy" means that the fruit is puffy or slightly wilted but not decidedly flabby.	No change.	N/A.
"Misshapen" means that the fruit is materially flattened, materially pointed, extremely elongated or otherwise decidedly deformed.	No change.	N/A.
"Very serious damage" means any injury which very seriously affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as very serious damage:	No change.	N/A.
(a) Sprayburn which seriously affects more than 25 percent of the fruit surface.	No change.	N/A.
(b) Fumigation injury which causes deep, rough, or dark scarring which aggregates more than 25 percent of the fruit surface.	No change.	N/A.
(c) Exanthema which aggregates more than 10 percent of the fruit surface or causes serious cracks.	No change.	N/A.
(d) Scars which are very dark, very rough, or very deep and aggregate more than 10 percent of the fruit surface.	No change.	N/A.
(e) Scars which are dark, rough or deep and aggregate more than 25 percent of the fruit surface.	No change.	N/A.
(f) Green spots which are badly sunken or soft.	(f) Green spots, oil spots (oleocellosis) or other similar injuries which are badly sunken or soft, or which have an aggregate area of more than 25 percent of the fruit surface.	We propose to score Green spots and oil spots using the same criteria. These are similar defects and scoring is comparable in other citrus standards.
(g) Scale so numerous or large that the appearance of the fruit is very seriously affected.	No change.	N/A.
(h) Sunburn which seriously affects more than one-third of the fruit surface.	No change.	N/A.
	(i) Skin breakdown when exceeding that of a circle 1¼ inches in diameter.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
	(j) Bruising when fruit has been split open, peel is badly watersoaked following bruising or albedo is ruptured and juice sacs are ruptured causing a mushy condition affecting all segments more than ¾ inch at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.

Current standard	Proposed	Discussion
	(k) Dryness or mushy condition, when affecting all segments more than three-fourths of an inch at the stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	We propose to change the phrase "free from serious damage by dryness or mushy condition" to "free from very serious damage by dryness or mushy condition." In other citrus standards, defects scored against the U.S. No. 3 grade are typically "very serious damage." This change will make it consistent with those standards.
	Note: All references in this standard to area, aggregating area, or length are based on a grapefruit 4⅛ inches in diameter, allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.	Currently, the standard does not state whether defects are based on a specific size fruit; or if greater defective areas are allowed on larger fruit and lesser areas on smaller fruit. Many fruit and vegetable standards contain this distinction. To clarify the issue and to standardize with other fruit and vegetable standards, we propose to include this statement.
United States Standards for Grades of Tangerines		
"General." (a) The tolerances for the standards are on a container basis. However, individual packages in any lot may vary from the specified tolerances as stated below, provided the averages for the entire lot, based on sample inspection, are within the tolerances specified.	Delete.	We propose to delete this section and add an "Application of Tolerances" section after "Tolerances." This will maintain consistency with other standards.
(b) For packages which contain more than 10 pounds and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified except that at least one decayed or very seriously damaged fruit may be permitted in any package.	Delete.	We propose to delete this section and add an "Application of Tolerances" section after "Tolerances." This will maintain consistency with other standards.
(c) For packages which contain 10 pounds or less, individual packages in any lot are not restricted as to the percentage of defects except that not more than one fruit which is decayed or very seriously damaged shall be allowed in any package.	Delete.	We propose to delete this section and add an "Application of Tolerance" section after "Tolerances." This will maintain consistency with other standards.
"U.S. Fancy" shall consist of tangerines which are mature, firm, and well formed; free from soft bruises, bird pecks, unhealed skin breaks, and decay;	"U.S. Fancy" shall consist of tangerines which are mature, firm, and well formed; free from unhealed skin breaks, dryness or mushy condition, hard or dry skins and decay;	We propose to delete the phrase "free from soft bruises" and add "free from injury by bruises" to the listing of "free from injury" defects. It is consistent with other standards to define bruising separately under the definitions for injury, damage, serious damage, and very serious damage. We also propose to delete "free from bird pecks." Advances in agricultural techniques have virtually eliminated this defect. Also proposed is the addition of the "free from dryness or mushy condition" and "hard or dry skins" requirements. These requirements are consistent with those contained in other citrus standards.
free from damage by ammoniation, creasing, dryness or mushy condition, green spots or oil spots, pitting, scale, sprouting, sprayburn, sunburn, unsightly discoloration, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means.	free from injury caused by ammoniation, bruising, creasing, green spots or oil spots, skin breakdown, scale, sprouting, sprayburn, and sunburn, and free from damage caused by buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means.	We propose to delete the term "pitting" and replace it with the term "skin breakdown." Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including "pitting." We also propose to delete the term "unsightly discoloration" to eliminate the confusion with "discoloration". The defect "discoloration" is defined in Section 51.1785. No definition for "unsightly discoloration" exists in the standards.

Current standard	Proposed	Discussion
(a) Each fruit in this grade shall be highly colored.	(a) Each fruit in this grade shall be well colored.	We propose this change to be more consistent with other citrus standards containing this requirement.
(b) In this grade not more than 1/10 of the surface in the aggregate of each fruit may have a light shade of brown discoloration caused by rust mite, or an equivalent in appearance to this amount when the fruit is discolored by any cause. (See "Tolerances")	No change.	N/A.
"U.S. No. 1" shall consist of tangerines which are mature, firm, and well formed; free from soft bruises, bird pecks, unhealed skin breaks, and decay;	"U.S. No. 1" shall consist of tangerines which are mature, firm, and well formed; free from unhealed skin breaks, hard or dry skins, and decay;	We propose to de soft bruises" ar bruises" tc by" cc st e bruising separately ns for injury, damage, se- ri very serious damage. We also propose to delete the phrase "free from bird pecks." Advances in agricultural techniques have virtually eliminated this defect. Also proposed is the addition of the requirement "free from hard or dry skins." This requirement is consistent with those contained in other citrus standards.
free from damage by ammoniation, creasing, dryness or mushy condition, green spots or oil spots, pitting, scale, sprouting, sprayburn, sunburn, unsightly discoloration, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means.	free from damage by ammoniation, bruising, creasing, dryness or mushy condition, green spots or oil spots, skin breakdown, scale, sprouting, sprayburn, sunburn, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means.	We propose to delete the term "pitting" and replace it with the term "skin breakdown." Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including "pitting." We also propose to delete the term "unsightly discoloration" to eliminate the confusion with "discoloration". The defect "discoloration" is defined in Section 51.1785. No definition for "unsightly discoloration" exists in the standards.
(a) Each fruit of this grade shall be fairly well colored.	No change.	N/A.
(b) In this grade not more than one-third of the surface in the aggregate of each fruit may have a light shade of brown discoloration caused by rust mite, or an equivalent in appearance to this amount when the fruit is discolored by any cause. (See "Tolerances")	No change.	N/A.
"U.S. No. 1 Bronze." The requirements for this grade are the same as for U.S. No. 1 except for discoloration. In this grade at least 75 percent, by count, of the fruit shall show some discoloration, and more than 20 percent, by count, of the fruit shall have more than one-third of the surface of each fruit affected with bronzed russeting: Provided, That no discoloration that exceeds the amount allowed in the U.S. 1 grade shall be permitted unless such discoloration is caused by thrip or wind scars, or rust mite. (See "Tolerances")	No change.	N/A.
	"U.S. Combination" consists of a combination of U.S. No. 1 and U.S. No. 2 tangerines: Provided, That at least 40 percent, by count, of the tangerines in each lot shall meet the requirements of the U.S. No. 1 grade. (See "Tolerances")	We propose the addition of the Combination grade to make it consistent with other standards.

Current standard	Proposed	Discussion
"U.S. No. 2" shall consist of tangerines which are mature, fairly firm, and fairly well formed; free from soft bruises, bird pecks, unhealed skin breaks, and decay;	"U.S. No. 2" shall consist of tangerines which are mature, fairly firm, and fairly well formed; free from unhealed skin breaks, hard or dry skins, and decay;	We propose to delete the phrase "free from soft bruises" and add "free from serious damage by bruises" to the listing of "free from serious damage by" defects. It is consistent with other standards to define bruising separately under the definitions for injury, damage, serious damage, and very serious damage. We also propose to delete the phrase "free from bird pecks." Advances in agricultural techniques have virtually eliminated this defect. Also proposed is the addition of the requirement "free from hard or dry skins." This requirement is consistent with those contained in other citrus standards.
free from serious damage by ammoniation, creasing, dryness or mushy condition, green spots or oil spots, pitting, scale, sprouting, sprayburn, sunburn, unsightly discoloration, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means.	free from serious damage by ammoniation, bruising, creasing, dryness or mushy condition, green spots or oil spots, skin breakdown, scale, sprouting, sprayburn, sunburn, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means.	We propose to delete the term "pitting" and replace it with the term "skin breakdown." Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including "pitting." We also propose to delete the term "unsightly discoloration" to eliminate the confusion with "discoloration". The defect "discoloration" is defined in Section 51.1785. No definition for "unsightly discoloration" exists in the standards.
(a) Each fruit of this grade shall be reasonably well colored.	No change.	N/A.
(b) In this grade not more than two-thirds of the surface in the aggregate of each fruit may be affected with light brown discoloration, or may have the equivalent to this amount in appearance when the fruit has lighter or darker shades of discoloration. (See "Tolerances")	No change.	N/A.
"U.S. No 2. Russet." The requirements for this grade are the same as for U.S. No. 2 except that more than 20 percent, by count, of the fruits shall have in excess of two-thirds of the surface in the aggregate affected with light brown discoloration. (See "Tolerances")	No change.	N/A.
"U.S. No. 3" shall consist of tangerines which are mature, not flabby and not seriously lumpy; which are free from unhealed bird pecks, unhealed skin breaks and decay;	"U.S. No. 3" shall consist of tangerines which are mature, not flabby and not seriously lumpy; which are free from unhealed skin breaks, hard or dry skins, and decay;	We propose to delete the phrase "free from unhealed bird pecks." Advances in agricultural practices have virtually eliminated this defect. We also propose to add the phrase "free from hard or dry skins." This requirement is consistent with those contained in other citrus standards.
free from very serious damage by bruises, ammoniation, creasing, dryness or mushy condition, pitting, scale, sprouting, sprayburn, sunburn, unsightly discoloration, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means. (See "Tolerances")	free from very serious damage by bruises, ammoniation, creasing, dryness or mushy condition, oil spots or green spots, skin breakdown, scale, sprouting, sprayburn, sunburn, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means. (See "Tolerances")	We propose to delete the term "pitting" and replace it with the term "skin breakdown." Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including "pitting." We also propose to delete the term "unsightly discoloration" to eliminate the confusion with "discoloration". The defect "discoloration" is defined in Section 51.1785. No definition for "unsightly discoloration" exists in the standards.
"Tolerances." In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the tolerances set forth in the U.S. Fancy, U.S. No. 1, U.S. No. 1 Bronze, U.S. No. 2, U.S. No. 2 Russet, and U.S. No. 3 are provided as specified.	"Tolerances." In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the tolerances, by count, based on a minimum 25 count sample, set forth in the U.S. Fancy, U.S. No. 1, U.S. No. 1 Bronze, U.S. Combination, U.S. No. 2, U.S. No. 2 Russet, and U.S. No. 3 are provided as specified.	The proposed addition of the phrase "a minimum 25 count sample" establishes a basis for uniform sampling. Other citrus standards (Florida), at industry's request, have recently been changed to include the minimum 25 count sample. This would make the citrus standards more uniform regarding sampling. This change is also consistent with the industry's request.

Current standard	Proposed	Discussion
"U.S. Fancy, U.S. No. 1, U.S. No. 1 Bronze, U.S. No. 2 and U.S. No. 2 Russet." Not more than a total of 10 percent, by count, of the fruit in any container may be below the requirements of the grade other than for discoloration but not more than 5 percent shall be allowed for very serious damage other than by dryness or mushy condition and not more than one-half of 1 percent shall be allowed for decay at shipping point: Provided, That a total tolerance of not more than 3 percent shall be allowed for decay en route or at destination. In addition, not more than a total of 10 percent, by count, of the fruit in any container may not meet the requirements relating to discoloration but not more than 2 percent shall be allowed for serious damage by unsightly discoloration.	"U.S. Fancy, U.S. No. 1, U.S. No. 1 Bronze, U.S. No. 2 and U.S. No. 2 Russet." For defects at shipping point. Not more than 10 percent, by count, of the tangerines in any lot may fail to meet the requirements relating to discoloration. In addition, not more than 10 percent, by count, of the tangerines in any lot may fail to meet the remaining requirements of the specified grade, included in this amount not more than 5 percent shall be allowed for defects causing very serious damage, included in this latter amount not more than 1 percent for decay.	We propose to establish separate "Shipping Point" tolerances to standardize them with other fruit and vegetable standards. A "whole number" decay tolerance is also proposed, which is included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of "not more than one-half of 1 percent may be a confusing concept to an industry which is accustomed to "whole" percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors "round up" percentages ending in .5 or more and "round down" those less than .5. The current citrus standards included in this Notice are an exception to this procedure. Changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards. We have also re-worded the entire section for clarity.
	"U.S. Fancy, U.S. No. 1, U.S. No. 1 Bronze, U.S. No. 2 and U.S. No. 2 Russet." For defects en route or at destination. Not more than 10 percent, by count, of the tangerines in any lot may fail to meet the requirements relating to discoloration. In addition, not more than 12 percent, by count, of the tangerines in any lot may fail to meet the remaining requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects and not more than 3 percent for decay.	We propose to establish "En Route or At Destination" tolerances to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing very serious damage; and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
"U.S. No. 3." Not more than a total of 15 percent, by count, of the fruit in any container may be below the requirements of this grade but not more than 5 percent shall be allowed for defects other than dryness or mushy condition, and not more than 1 percent shall be allowed for decay at shipping point: Provided, That a total tolerance of not more than 3 percent shall be allowed for decay en route or at destination.	"U.S. No. 3." For defects at shipping point. Not more than 10 percent, by count, of the tangerines in any lot may fail to meet the requirements of the specified grade, included in this amount not more than 1 percent for decay.	We propose to establish separate tolerances at "Shipping Point" and "En Route or at Destination" to standardize them with other fruit and vegetable standards. Also proposed is a total defects tolerance of 10 percent at shipping point. A 12 percent total defects tolerance and a 10 percent permanent defects tolerance en route or at destination is also proposed. These tolerances are consistent with other citrus standards. The decay tolerances in this remain unchanged.
	"U.S. No. 3." For defects en route or at destination. Not more than 12 percent, by count, of the tangerines in any lot may fail to meet the remaining requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or not more than 3 percent for decay.	

Current standard	Proposed	Discussion
	"U.S. Combination grade." For defects at shipping point. Not more than 10 percent, by count, of the tangerines in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to discoloration. In addition, not more than 10 percent, by count, of the tangerines in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade, included in this amount not more than 5 percent for very serious damage, included in this latter amount not more than 1 percent for decay.	We propose the addition of this grade to provide industry the option of packing to a certified combination grade. In this "new" grade, the format and percentages are consistent with those found in other citrus standards. Separate tolerances at "Shipping Point" are included as well as a separate tolerance for very serious damage and a 1 percent decay tolerance.
	"U.S. Combination grade." For defects en route or at destination. Not more than 10 percent, by count, of the tangerines in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to discoloration. In addition, not more than 12 percent, by count, of the tangerines in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects, included in the latter amount not more than 3 percent for decay.	We propose the addition of this grade to provide industry the option of packing to a certified combination grade. In this "new" grade, the format and percentages are consistent with those found in other citrus standards. Separate tolerances "En Route or at Destination" are included as well as separate permanent defects tolerances, a tolerance for very serious damage and a 3 percent decay tolerance.
	"U.S. Combination grade." For defects at shipping point and en route or at destination. No part of any tolerance shall be allowed to reduce for the lot as a whole, the 40 percent of U.S. No. 1 tangerines required in the U.S. Combination grade, but individual samples may have not less than 30 percent of U.S. No. 1 required: Provided, That the entire lot averages within the percentage required.	We propose the addition of this section to make it consistent with other fruit and vegetable standards including those listed in this Notice. Use of the term "sample" is continued in this section to reflect the proposed change from "container" as listed throughout this Notice.
	"Application of tolerances." Individual samples, based on a minimum 25 count sample, are subject to the following limitations, unless otherwise specified. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: Provided, that at least one decayed fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.	We propose the addition of this section to be consistent with other fruit and vegetable standards. It contains language and format commonly found in most standards. This is also a change of the "General" section located at the beginning of this standard and includes the phrase "minimum 25 count sample" that is found throughout this Notice.
"Standard pack." (a) The tangerines in each container shall be packed in accordance with recognized methods. Each container shall be well filled and properly marked to indicate the size of the fruit. When the figures used to indicate size of the fruit vary from the actual number of tangerines in the container, as in the case of fractional parts of boxes, the figures indicating size shall be followed by the letter "s" or the word "size," as, for example, "210s," or "210 size." Containers which are not so marked shall not be regarded as meeting requirements of "standard pack."	No Change.	N/A.
(b) Fruit in each container shall be of a size not less than the minimum diameters specified below for the various packs. Packs other than those listed shall have a minimum size not less than specified for the nearest count.	(b) Fruit in each sample shall be of a size not less than the minimum diameters specified below for the various packs. Packs other than those listed shall have a minimum size not less than specified for the nearest count.	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method for grade determination.

Current standard	Proposed	Discussion
Diameter in inches: Pack — Minimum 100 — 2 15/16 120 — 2 11/16 150 — 2 8/16 176 — 2 6/16 210 — 2 4/16 246 — 2 2/16 294 — 2	Diameter in inches: Pack — Minimum 100 — 2 15/16 120 — 2 11/16 150 — 2 8/16 176 — 2 6/16 210 — 2 4/16 246 — 2 2/16 294 — 2	
(c) In order to allow for variations incident to proper sizing, not more than 10 percent, by count, of the fruit in any container may be below the minimum size for the count as specified.	(c) In order to allow for variations incident to proper sizing, not more than 10 percent, by count, of the fruit in any sample may be below the minimum size for the count as specified.	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method for grade determination.
"Firm" means that the flesh is not soft and the fruit is not badly puffy, and that the skin has not become materially separated from the flesh of the tangerine.	No change.	N/A
"Well formed" means that the fruit has the characteristic tangerine shape and is not deformed.	No change	N/A.
	"Injury" means any defect which more than slightly affects the appearance, or edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as injury: (a) Ammoniation which does not occur as light speck type; (b) Creasing which is more than barely visible, or which extends over more than 20 percent of the fruit surface; (c) Green spot or oil spots (oleocellosis or similar injuries) which are depressed or soft, or which have an aggregate area of a circle more than 3/8 inch in diameter, or which are green and more than 4 in number; (d) Skin breakdown when exceeding that of a circle 1/8 inch in diameter; (e) Sprayburn when causing the skin to become hard, or when aggregating more than a circle 3/8 inch in diameter; (f) Sunburn when causing the skin to become hard and affecting more than 10 percent of the fruit surface. (g) Scale when medium or large and more than 4 are present; (h) Bruising when segment walls are collapsed, or albedo is ruptured and juice sacs are ruptured.	We propose to add definitions of injury for the U.S. Fancy grade in an effort to establish an objective scoring base. It is consistent with other fruit and vegetable standards, as well as the citrus standards included in this Notice, to provide objective scoring criteria whenever practicable.
"Damage" means any defect or blemish which more than slightly affects the appearance, or edible or shipping quality of the fruit. Any one of the following defects, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as damage:	No change.	N/A.
(a) Ammoniation, when not occurring as speck-type similar to melanose: Provided, That no ammoniation shall be permitted that detracts from the appearance of the individual fruit to a greater extent than the amount of discoloration allowed for the grade.	(a) Ammoniation, when not occurring as light speck type, or which occurs as small, thinly scattered spots over more than 10 percent of the fruit surface, or as solid scarring which aggregates more than one-fourth of an inch in diameter.	We propose to change this definition to be more consistent with other citrus standards.
(b) Creasing, when it materially affects the appearance or shipping quality of the fruit.	(b) Creasing, when it materially weakens the skin, or extends over more than one-third of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(c) Dryness or mushy condition, when mushy or distinctly dry to a depth of more than one-eighth inch in all segments at the stem end, or the equivalent of this amount, by volume, of mushy condition or dryness when occurring in any portion of the fruit.	(c) Dryness or mushy condition when affecting all segments more than one-eighth inch at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	We propose to change this definition to be more consistent with other citrus standards.

Current standard	Proposed	Discussion
(d) Green spots or oil spots, when the appearance is affected to a greater extent than 10 green spots caused by scale, each of which is approximately one-eighth inch in diameter.	(d) Green spots or oil spots (oleocellosis) or similar injuries which are depressed or soft, or which have an aggregate area of more than 5 percent of the fruit surface, or which are green and more than 10 in number;	We propose to change this definition to be more consistent with other citrus standards.
(e) Pitting when materially affecting the appearance or shipping quality of the individual fruit.	(e) Skin breakdown when aggregating more than a circle ¼ inch in diameter.	We propose to delete the term "pitting" and replace it with "skin breakdown." Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including "pitting." We also propose to include an objective scoring guide for this defect, rather than retain the scoring guide based on the "general definition."
(f) Scale, when occurring as a blotch which averages more than three-eighths inch in diameter or any scale that detracts from the appearance of the individual fruit to a greater extent than a three-eighths inch blotch. "Blotch" refers to actual scale and not the discolored area caused by scale.	No change.	N/A.
(g) Sprayburn, when causing the skin to become hard or when it materially affects the appearance of the fruit.	(g) Sprayburn, when causing the skin to become hard, or when aggregating more than 5 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(h) Sunburn, when causing the skin to become hard or when it materially affects the appearance of the fruit.	(h) Sunburn, when causing the skin to become hard and affecting more than 5 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
	(i) Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
(i) Unsightly discoloration, when the color or the pattern, or a combination of color and pattern, causes the fruit to have an unattractive appearance.	Delete.	We propose to delete the term "unsightly discoloration" to eliminate the confusion with "discoloration". The defect "discoloration" is defined in Section 51.1785. No definition for "unsightly discoloration" exists in the standards.
(j) Buckskin, when it detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade.	(j) Buckskin when aggregating more than 5 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(k) Melanose, when not small smooth speck-type, or any speck-type that detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed in the grade. Melanose that exceeds the amount allowed in the U.S. No. 1 grade is not permitted in the U.S. No. 1 Bronze grade.	No change.	N/A.
(l) Scars, when not smooth, or when causing any noticeable depression or when detracting from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade.	(l) Scars, when deep or rough aggregating more than a circle 1/4 inch in diameter; slightly rough with slight depth aggregating more than a circle 3/4 inch in diameter; smooth or fairly smooth with slight depth aggregating more than a circle 1–1/8 inches in diameter.	We propose to change this definition to be more consistent with other citrus standards.
(m) Scab, when not smooth, or when it affects shape or when it detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade. Scab injury that exceeds the amount allowed in the U.S. No. 1 grade is not permitted in the U.S. No. 1 Bronze grade.	(m) Scab, when it materially detracts from the shape or texture, or aggregates more than 5 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
"Highly colored" means that the ground color of each fruit is a deep tangerine color with practically no trace of yellow color."	"Well colored" means that the ground color of each fruit is a deep tangerine color with practically no trace of yellow color.	We propose to change this definition to be more consistent with other citrus standards.

Current standard	Proposed	Discussion
"Discoloration" includes discoloration caused by rust mite, melanose, scars, scab, or any other means. Shades of discoloration which blend with the ground color of the fruit may be allowed on a larger area than that specified in the grade for light brown discoloration, and shades of discoloration which are more in contrast with the ground color shall be restricted to a lesser area, provided no discoloration may affect the appearance to a greater extent than the amount light brown discoloration specified for the grade. Tangerines which show discoloration caused by melanose, scab, or any cause other than by thrip, or wind scars, or by rust mite shall not be permitted in the U.S: No. 1 Bronze grade when such discoloration exceeds the amount allowed in the U.S. No. 1 grade. (See "Bronzed Russeting")	No change.	N/A.
Fairly well colored" means that each fruit may have not over one inch of green color in the aggregate and the remainder of the surface shall show a good tangerine color with some portion of the surface showing a reddish tangerine blush.	No change.	N/A.
"Bronzed russeting" means russeting caused by thrip, or wind scars, or by rust mite or similar russeting which is not readily distinguishable from that caused by melanose, scab, etc., are not considered as "bronzed russeting" within the meaning of these standards but are regarded as defects when they exceed the amount permitted in the U.S. No. 1 grade and are not permitted in the U.S. No. 1 Bronze grade.	No change.	N/A.
"Fairly firm" means that the flesh may be slightly soft but is not bruised or badly puffy, and that the skin has not become seriously separated from the flesh of the tangerine.	No change.	N/A.
"Fairly well formed" means that the fruit may not have the shape characteristic of the variety but that it is not badly deformed.	No change.	N/A.
"Serious damage" means any defect or blemish which seriously affects the appearance, or edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as serious damage:	No change.	N/A.
(a) Ammoniation, when scars are cracked, or dark and aggregating more than one-half inch in diameter or when light-colored and aggregating more than 1 inch in diameter.	No change.	N/A.
(b) Creasing, when it causes the skin to be seriously weakened.	(b) Creasing, when it seriously weakens the skin, or extends over more than one-half of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
	(c) Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
(c) Dryness or mushy condition, when mushy or distinctly dry to a depth of more than one-quarter inch in all segments at the stem end, or the equivalent of this amount, by volume, of mushy condition or dryness when occurring in any portion of the fruit.	(d) Dryness or mushy condition when affecting all segments more than one-quarter inch at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	We propose to change this definition to be more consistent with other citrus standards. This section is re-designated "(d)" due to the addition of "(c) Bruising."
(d) Green spots or oil spots, when the appearance is affected to a greater extent than 25 green spots, caused by scale, each of which is approximately one-eighth inch in diameter.	(e) Green spots or oil spots (oleocellosis) or similar injuries which are depressed or soft, or which have an aggregate area of more than 10 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards. This section is re-designated "(e)" due to the addition of "(c) Bruising."

Current standard	Proposed	Discussion
(e) Pitting, when seriously affecting the appearance or shipping quality of the fruit.	(f) Skin breakdown, when aggregating more than a circle 5/8 inch in diameter.	We propose to delete the term "pitting" and replace it with "skin breakdown." Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including "pitting." We also propose to include an objective scoring guide for this defect, rather than retain the scoring guide based on the "general definition." This section is re-designated "(f)" due to the addition of "(c) Bruising."
(f) Scale, when occurring as a blotch which averages more than one-half inch in diameter, or any scale that detracts from the appearance of the fruit to a greater extent than a one-half inch blotch. "Blotch" refers to actual scale and not the discoloration caused by scale.	(g) Scale, when occurring as a blotch which averages more than one-half inch in diameter, or any scale that detracts from the appearance of the fruit to a greater extent than a one-half inch blotch. "Blotch" refers to actual scale and not the discoloration caused by scale.	This section is re-designated "(g)" due to the addition of "(c) Bruising."
(g) Sprayburn, when it has caused the skin to become hard, or when it seriously affects the appearance of the fruit.	(h) Sprayburn, when causing the skin to become hard, or when aggregating more than 10 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards. This section is re-designated "(h)" due to the addition of "(c) Bruising."
(h) Sunburn, when it has caused the skin to become hard, or when it seriously affects the appearance of the fruit.	(i) Sunburn, when causing the skin to become hard and affecting more than 10 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards. This section is re-designated "(i)" due to the addition of "(c) Bruising."
(i) Unsightly discoloration when the color or the pattern, or a combination of both, causes the fruit to have a distinctly unattractive appearance.	Delete.	We propose to delete the term "unsightly discoloration" to eliminate the confusion with "discoloration". The defect "discoloration" is defined in Section 51.1785. No definition for "unsightly discoloration" exists in the standards.
(j) Buckskin, when it detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade.	(j) Buckskin when aggregating more than 10 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(k) Melanose, when badly caked and aggregating more than ½ inch in diameter or when lightly caked and aggregating more than 1 inch in diameter, or when unsightly or when it detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade.	No change.	N/A.
(l) Scars, when not fairly smooth, or when causing any materially depressed areas, or when detracting from the appearance to a greater extent than the amount of discoloration allowed for the grade. Scars which are not fairly smooth, or which are materially depressed, are not permitted in either U.S. No. 2 or U.S. No. 2 Russet grades.	(l) Scars, when deep or rough aggregating more than a circle ½ inch in diameter; slightly rough with slight depth aggregating more than a circle 1⅛ inches in diameter; smooth or fairly smooth with slight depth aggregating more than 10 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(m) Scab, when not fairly smooth, or when materially affects the shape of the fruit, or when it detracts from the appearance to a greater extent than the maximum amount of discoloration allowed for the grade.	(m) Scab, when it materially detracts from the shape or texture, or aggregates more than 10 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
"Reasonably well colored" means that a good yellow or reddish tangerine color shall predominate over the green color on at least one-half of the fruit surface in the aggregate, and that each fruit shall show practically no lemon color.	No change.	N/A.
"Very serious damage" means any defect or blemish which very seriously affects the appearance, or edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as very serious damage:	No change.	N/A.

Current standard	Proposed	Discussion
(a) Ammoniation, when scars are badly cracked, or when dark and aggregating more than 1 inch in diameter, or when light-colored and detracting from the appearance of the fruit to a greater extent than 1 inch of dark ammoniation.	No change.	N/A.
(b) Creasing, when causing the skin to be seriously weakened.	(b) Creasing, when it very seriously weakens the skin, or extends over practically entire fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(c) Dryness or mushy condition, when mushy or distinctly dry to a depth of more than one-quarter inch in all segments at the stem end or the equivalent of this amount, by volume, of mushy condition or dryness when occurring in any portion of the fruit.	(c) Dryness or mushy condition when affecting all segments more than one-half inch at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	We propose to change this definition to be more consistent with other citrus standards.
(d) Pitting, when it very seriously affects the appearance or the shipping quality of the fruit.	(d) Skin breakdown, when aggregating more than 25 percent of the fruit surface.	We propose to delete the term "pitting" and replace it with "skin breakdown." Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including "pitting." We also propose to include an objective scoring guide for this defect, rather than retain the scoring guide based on the "general definition."
(e) Scale, when it very seriously affects the appearance of the fruit.	(e) Scale, when aggregating more 25 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(f) Sprayburn, when it very seriously affects the appearance of the fruit.	(f) Sprayburn, when aggregating more than 25 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(g) Sunburn, when it very seriously affects the appearance of the fruit.	(g) Sunburn, when aggregating more than 25 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(h) Unsightly discoloration, when the fruit has a very objectionable appearance caused by any means. The color or the pattern of the discoloration, or a combination of both, or a combination of defects may cause the fruit to have a very unsightly appearance.	Delete.	We propose to delete the term "unsightly discoloration" to eliminate the confusion with "discoloration". The defect "discoloration" is defined in Section 51.1785. No definition for "unsightly discoloration" exists in the standards.
(i) Melanose, when caked to the extent that the appearance of the fruit is very seriously affected.	No change.	N/A.
(j) Scars, when so deep, rough, or so unsightly that the appearance of the fruit is very seriously injured.	No change.	N/A.
	(k) Buckskin, when aggregating more than 25 percent of the fruit surface.	We propose to add this definition to be more consistent with other citrus standards.
	(l) Scab, when aggregating more than 25 percent of fruit surface.	We propose to add this definition to be more consistent with other citrus standards.
	(m) Green spots or oil spots, when the appearance aggregates more than 25 percent of the fruit surface.	We propose to add this definition to be more consistent with other citrus standards.
	(n) Bruising when fruit has been split open, peel is badly watersoaked following bruising or albedo and juice sacs are ruptured causing a mushy condition affecting all segments more than ½ inch at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.	We propose to add this definition to be more consistent with other citrus standards.
§ 51.1793 Cull. A cull is a fruit which does not meet the requirements of U.S. No. 3 grade.	No Change	N/A.
	Note: All references in this standard to area, aggregating area, or length are based on a tangerine 2½ inches in diameter, allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.	In the current standard, it is unclear whether defects are based on a specific size fruit, or if greater areas on larger fruit and lesser areas on smaller fruit are allowed. We propose the addition of this statement to clarify the issue. This procedure is in place in most fruit and vegetable standards.

Current standard	Proposed	Discussion
United States Standards for Grades of Lemons		
"U.S. No. 1" consists of lemons which are firm, fairly well formed (unless specified as well formed), reasonably smooth (unless specified as smooth), which have stems which are properly clipped, and which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, hard or dry skins, exanthema, growth cracks, internal decline (endoxerosis), red blotch, membranous stain or other internal discoloration, and free from damage caused by bruises, dry or mushy condition, scars, oil spots, scale, sunburn, hollow core, peteca, scab, melanose, dirt, or other foreign material, other disease, insects or other means.	"U.S. No. 1" consists of lemons which are mature, firm, fairly well formed, fairly smooth, which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, hard or dry skins, exanthema, growth cracks, internal decline (endoxerosis), red blotch, membranous stain or other internal discoloration, and free from damage caused by bruises, dry or mushy condition, scars, oil spots, scale, sunburn, hollow core, peteca, scab, skin breakdown, melanose, dirt, or other foreign material, other disease, insects or other means.	We propose to add the term "mature" to coincide with the proposed deletion of the juice content requirements. Please refer to the section on Juice Content found on page 104. "Mature" is the accepted term used to describe a stage of development desired by industry. This definition is consistent with other citrus standards. We propose to delete the phrase "unless specified as well formed", and to delete the reference to "stems which are properly clipped." These terms are obsolete and do not reflect what is grown and packed for today's marketplace. We propose to change the term "reasonably smooth (unless specified as smooth)" to "fairly smooth" to be consistent with other standards. Generally speaking, the modifier "fairly" when used in fruit and vegetable standards, denotes a more stringent or higher requirement than "reasonably." We also propose to add "free from damage by skin breakdown." This defect is currently being scored based on the "general definition" and is not specified in the current standards.
(a) Color: The lemons are fairly well colored (unless specified as well colored): Provided, That any lot of lemons which meets all the requirements of this grade except those relating to color may be designated as "U.S. No. 1 Green" if the lemons are of a full green color, or as "U.S. No. 1 Mixed Color" if the lemons fail to meet the color requirements of either "U.S. No. 1" or "U.S. No. 1 Green." (See "Tolerances")	(a) Color: The lemons are fairly well colored. (See "Tolerances")	We propose to delete the term "unless specified as well colored." Current industry practice is to pack at least fairly well colored fruit in all grades. We also propose to delete the reference to "U.S. No. 1 Green" and "U.S. No. 1 Mixed Color." These grades are obsolete and no longer packed by industry.
(b) Lemons have the juice content specified in "Juice Content" section.	Delete.	We propose this deletion because it will no longer be needed due to the proposed addition of "mature." Please refer to the section on Juice Content found on page 104.
"U.S. Export No. 1" consists of lemons which are firm, fairly well formed, reasonably smooth and which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, exanthema, growth cracks, internal discoloration and free from damage caused by bruises and dryness or mushy condition.	"U.S. Export No. 1" consists of lemons which are mature, firm, fairly well formed, fairly smooth and which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, exanthema, growth cracks, internal discoloration and free from damage caused by bruises and dryness or mushy condition.	We propose to add the term "mature" to coincide with the proposed deletion of the juice content requirements. Please refer to the section on Juice Content found on page 104. "Mature" is the accepted term used to describe a stage of development desired by industry. This definition is consistent with other citrus standards. We also propose to change the term "reasonably smooth" to "fairly smooth" to be consistent with other standards. Generally speaking, the modifier "fairly", when used in fruit and vegetable standards, denotes a more stringent or higher requirement than "reasonably."
(a) At least 50 percent of the lemons are free from damage caused by scars, oil spots, scale, sunburn, peteca, scab, melanose, dirt or other foreign material, other disease, insects or other means, and the remainder of the lemons are free from serious damage by any cause.	(a) At least 50 percent of the lemons are free from damage caused by scars, oil spots, scale, sunburn, peteca, scab, skin breakdown, melanose, dirt or other foreign material, other disease, insects or other means, and the remainder of the lemons are free from serious damage by any cause.	We propose to add "free from damage by skin breakdown." This defect is currently being scored based on the "general definition" and is not specified in the current standards.
(b) Color: Lemons are moderately well colored. (See "Tolerances")	No change.	N/A.

Current standard	Proposed	Discussion
(c) Lemons have a juice content of not less than 28 percent by volume.	Delete.	We propose this deletion because it will no longer be needed due to the proposed addition of "mature." Please refer to the section on Juice Content found on page 104.
"U.S. Combination" consists of a combination of U.S. No. 1 and U.S. No. 2 lemons: Provided, That at least 40 percent, by count, of the lemons meet the requirements of U.S. No. 1 grade.	"U.S. Combination" consists of a combination of U.S. No. 1 and U.S. No. 2 lemons: Provided, That at least 40 percent, by count, of the lemons in each lot shall meet the requirements of the U.S. No. 1 grade. (See "Tolerances")	We have re-worded this section to include the phrase "" * * in each lot * * "" to be consistent with other standards in this Notice.
(a) Color: The lemons are fairly well colored (unless specified as well colored): Provided, That any lot of lemons which meets all the requirements of this grade except those relating to color may be designated as "U.S. Combination Green" if the lemons are of a full green color, or as "U.S. Combination Mixed Color" if the lemons fail to meet the color requirements of either "U.S. Combination" or "U.S. Combination Green." (See "Tolerances")	(a) Color: The lemons are fairly well colored. (See "Tolerances")	We propose to delete the term "unless specified as well colored." Current industry practice is to pack at least fairly well colored fruit all grades. We also propose to delete the reference to "U.S. Combination Green" and "U.S. Combination Mixed Color." These grades are obsolete and no longer packed by industry.
(b) Lemons have the juice content specified in "Juice Content" section.	Delete.	We propose this deletion because it will no longer be needed due to the proposed addition of "mature." Please refer to the section on Juice Content found on page 104.
"U.S. No. 2" consists of lemons which are fairly firm, which are reasonably well formed and fairly smooth, which have stems which are properly clipped, and which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, hard or dry skins, exanthema, internal decline (endoxerosis), and red blotch, and free from serious damage caused by bruises, membranous stain or other internal discoloration, dryness or mushy condition, scars, oil spots, scale, sunburn, hollow core, peteca, growth cracks, scab, melanose, dirt or other foreign material, other diseases, insects or other means.	"U.S. No. 2" consists of lemons which are mature, fairly firm, which are reasonably well formed and reasonably smooth, which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, hard or dry skins, exanthema, internal decline (endoxerosis), and red blotch, and free from serious damage caused by bruises, membranous stain or other internal discoloration, dryness or mushy condition, scars, oil spots, scale, sunburn, hollow core, peteca, growth cracks, scab, skin breakdown, melanose, dirt or other foreign material, other diseases, insects or other means.	We propose to add the term "mature" to coincide with the proposed deletion of the juice content requirements. Please refer to the section on Juice Content found on page 104. "Mature" is the accepted term used to describe a stage of development desired by industry. This definition is consistent with other citrus standards. We propose to change the term "fairly smooth" to "reasonably smooth" to be consistent with other standards. Generally speaking, the modifier "fairly" when used in fruit and vegetable standards, denotes a more stringent or higher requirement than "reasonably." It is consistent with other standards to place the less stringent requirement in the lower grade. We propose to delete the reference to "stems which are properly clipped." This reference is obsolete and does not reflect what is packed for today's marketplace. We propose to add "free from serious damage by skin breakdown." This defect is currently being scored based on the "general definition" and is not specified in the current standards.
(a) Color: The lemons are fairly well colored (unless specified as well colored): Provided, That any lot of lemons which meets all of the above requirements of this grade except those relating to color may be designated as "U.S. No. 2 Green" if the lemons are of a full green color, or as "U.S. No. 2 Mixed Color" if the lemons fail to meet the color requirements of either "U.S. No. 2" or "U.S. No. 2 Green." (See "Tolerances")	(a) Color: The lemons are fairly well colored. (See "Tolerances")	We propose to delete the term "unless specified as well colored." Current industry practice is to pack at least fairly well colored fruit in all grades. We also propose to delete the reference to "U.S. No. 2 Green" and "U.S. No. 2 Mixed Color." These grades are obsolete and no longer packed by industry.
(b) Lemons have the juice content specified in"Juice Content" section.	Delete.	We propose this deletion because it will no longer be needed due to the proposed addition of "mature." Please refer to the section on Juice Content found on page 104.

Current standard	Proposed	Discussion
"Unclassified" consists of lemons which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.	Delete.	When changing or updating standards in recent years, references to "Unclassified" have been removed in an attempt to eliminate the confusion this term creates. People have incorrectly assumed that "Unclassified" is an actual grade name; it is not. To avoid further confusion, it is proposed that all references to this term be eliminated.
"Tolerances." In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:	"Tolerances." In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:	The proposed addition of the phrase "a minimum 25 count sample" establishes a basis for uniform sampling. Other citrus standards (Florida), at industry's request, have recently been changed to include the minimum 25 count sample. This would make the citrus standards more uniform regarding sampling. This change is also consistent with the industry's request.
(a) U.S. No. 1 grade—(1) For defects. Not more than 10 percent of the lemons in any lot may fail to meet the requirements of this grade, but not more than one-half of this tolerance, or 5 percent, shall be allowed for decay, contact spot, internal evidence of Alternaria development, internal decline (endoxerosis), unhealed broken skins, growth cracks, and other defects causing serious damage, including not more than one-tenth of this latter amount, or one-half of 1 percent, for lemons affected by decay at shipping point: Provided, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for lemons affected by decay en route or at destination.	(a) U.S. No. 1 grade—(1) For defects at shipping point. Not more than 10 percent, by count, of the lemons in any lot may fail to meet the requirements relating to color. In addition, not more than 10 percent, by count, of the lemons in any lot may fail to meet the remaining requirements of the grade, included in this amount not more than 5 percent shall be allowed for defects causing serious damage, included in this latter amount not more than 1 percent for decay.	We propose to establish separate "Shipping Point" tolerances to be consistent with other fruit and vegetable standards. A "whole number" decay tolerance is also proposed, which is included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of "not more than one-half of 1% may be a confusing concept to an industry which is accustomed to "whole" percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors "round up" percentages ending in .5 or more and "round down" those less than .5. The current citrus standards included in this Notice are an exception to this procedure. changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards. We have also re-worded the entire section for clarity.
(2) For color. Not more than 10 percent of the lemons in any lot may fail to meet the requirements relating to color.	"U.S. No. 1 grade." For defects en route or at destination. Not more than 10 percent, by count, of the lemons in any lot may fail to meet the requirements relating to color. In addition, not more than 12 percent, by count, of the lemons in any lot may fail to meet the remaining requirements of the grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or 7 percent for defects causing serious damage, including therein not more than 5 percent for serious damage by permanent defects and not more than 3 percent for decay.	We propose to establish "En Route or At Destination" tolerances to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing serious damage; and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.

Current standard	Proposed	Discussion
(b) U.S. No. 2 and U.S. Combination grades—(1) For defects. Not more than 10 percent of the lemons in any lot may fail to meet the requirements of the U.S. No. 2 grade, but not more than one-half of this latter amount, or 1 percent, for lemons affected by decay at shipping point: Provided, That an additional tolerance of 2 percent, or a total of not more than 3 percent, shall be allowed for lemons affected by decay en route or at destination.	U.S. No. 2 grade—(1) For defects at shipping point. Not more than 10 percent, by count, of the lemons in any lot may fail to meet the requirements relating to color. in addition, not more than 10 percent, by count, of the lemons in any lot may fail to meet the remaining requirements of the grade, included in this amount not more than 5 percent shall be allowed for decay, contact spot, internal evidence of alternaria development, and internal decline (endoxerosis), included in this latter amount not more than 1 percent for decay.	We propose to establish separate "Shipping Point" tolerances to be consistent with other fruit and vegetable standards A "whole number" decay tolerance is also proposed, which is included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of "not more than one-half of 1% may be a confusing concept to an industry which is accustomed to "whole" percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors "round up" percentages ending in .5 or more and "round down" those less than .5. The current citrus standards included in this Notice are an exception to this procedure. changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards. We have also re-worded the entire section for clarity.
(2) For color. Not more than 10 percent of the lemons in any lot may fail to meet the requirements relating to color.	"U.S. No. 2 grade." For defects en route or at destination. Not more than 10 percent, by count, of the lemons in any lot may fail to meet the requirements relating to color. In addition, not more than 12 percent, by count, of the lemons in any lot may fail to meet the remaining requirements of the grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or not more than 7 percent shall be allowed for decay, contact spot, internal evidence of Alternaria development, and internal decline (endoxerosis), included in this latter amount, not more than 3 percent for decay.	We propose to establish "En Route or At Destination" tolerances to be consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
U.S. Combination grade. For defects at shipping point. Not more than 10 percent, by count, of the lemons in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 10 percent, by count, of the lemons in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade, included in this amount not more than 5 percent shall be allowed for decay, contact spot, internal evidence of Alternaria development, and internal decline (endoxerosis), included in this latter amount not more than 1 percent for decay.		We propose to establish separate "Shipping Point" tolerances to be consistent with other fruit and vegetable standards. A "whole number" decay tolerance is also proposed, which is included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of "not more than one-half of 1% may be a confusing concept to an industry which is accustomed to "whole" percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors "round up" percentages ending in .5 or more and "round down" those less than .5. The current citrus standards included in this Notice are an exception to this procedure. Changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards. We have also re-worded the entire section for clarity.

Current standard	Proposed	Discussion
	"U.S. Combination grade." For defects en route or at destination. Not more than 10 percent, by count, of the lemons in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 12 percent, by count, of the lemons in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or not more than 7 percent shall be allowed for decay, contact spot, internal evidence of Alternaria development, and internal decline (endoxerosis), included in this latter amount, not more than 3 percent for decay.	We propose to establish "En Route or At Destination" tolerances to be consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing serious damage; and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
(3) When applying the tolerance for U.S. Combination grade individual packages may have not more than 10 percent less than the percentage of U.S. No. 1 required: Provided, That the entire lot averages within the required percentage.	"U.S. Combination." For defects at shipping point and en route or at destination. No part of any tolerance shall be allowed to reduce for the lot as a whole, the 40 percent of U.S. No. 1 lemons required in the U.S. Combination grade, but individual samples may have not less than 30 percent of U.S. No. 1 required: Provided, That the entire lot averages within the percentage required.	We propose to re-word this section to make it consistent with other fruit and vegetable standards including those listed in this Notice.
(c) U.S. Export No. 1. (1) For defects: 10 percent for lemons which fail to meet the requirements of the grade: Provided, That not more than the following percentages of the defects enumerated shall be allowed: 1 percent for decay; 3 percent for contact spot; 3 percent for broken skins which are not healed; 3 percent for growth cracks; 3 percent for internal evidence of Alternaria development; 3 percent for internal discoloration; 5 percent for soft; and, 5 percent for damage by dryness or mushy condition.	No change.	N/A.
(2) For color: 10 percent for lemons which fail to meet the requirements relating for color.	No change.	N/A.
(3) The contents of individual containers may have not more than 10 percentage points less than the percentage specified to meet the requirements in "U.S. Export No. 1 grade:" Provided, That no container shall have more than double the percentage specified for any one of the defects enumerated in U.S. Export No. 1 tolerances for defects section above.	(3) The contents of samples may have not more than 10 percentage points less than the percentage specified to meet the requirements in the "U.S. Export No. 1 grade:" Provided, That no sample shall have more than double the percentage specified for any one of the defects enumerated in U.S. Export No. 1 tolerances for defects section above.	Use of the term "sample" is used in this section to reflect the proposed revision from "container" as listed throughout this Notice.
"Juice content." Lemons in the U.S. No. 1, U.S. Combination and U.S. No. 2 grades shall have a juice content of not less than 30 percent, by volume, except when designated as "U.S. No. 1 Green for Export," U.S. Combination Green for Export," or "U.S. No. 2 Green for Export." When so designated, the lemons shall have a juice content not less than 28 percent, by volume.	Delete.	We propose to delete all references to "Juice Content." Due to advances in agricultural practices this is no longer a concern. We propose to substitute the term "Mature" to define a stage of desirable ripeness and marketability. Use of this term is consistent with practically all fruit and vegetable standards.
"Application of tolerances." (a) Except when applying the tolerances for "Condition Standards for Export," and the tolerances set forth in the U.S. Export No. 1 defect tolerances, the contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: Provided, That the averages for the entire lot are within the tolerance specified for the grade:	"Application of tolerances." Individual samples, based on a minimum 25 count sample, are subject to the following limitations, unless otherwise specified. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: Provided, that at least one decayed fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.	We propose to change the standards to include minimum 25 count samples, not "packages." This is consistent with the recently-changed Florida Citrus Standards. Individual sample tolerances are also proposed to reflect the language and tolerances widely used in other fruit and vegetable standards.

Current standard	Proposed	Discussion
(1) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one decayed lemon may be permitted in any package.	Delete.	We propose this deletion because the reference to various size package restrictions from the current standard would no longer be valid with a minimum 25 count sample.
(2) For packages which contain 10 pounds or less, individual packages in the lot are not restricted as to the percentage of defects: Provided, That not more than one lemon which is seriously damaged by dryness or mushy condition may be permitted in any package and, in addition, en route or at destination not more than 10 percent of the packages may have more than one decayed lemon.	Delete.	We propose this deletion because the reference to various size package restrictions from the current standard would no longer be valid with a minimum 25 count sample.
"Standard pack." (a) Lemons shall be fairly uniform in size and shall be packed in boxes or cartons and arranged according to the approved and recognized methods. Each wrapped fruit shall be fairly well enclosed by its individual wrapper.	"Standard pack." (a) Lemons shall be fairly uniform in size and shall be packed in boxes or cartons and arranged according to the approved and recognized methods.	We propose to delete the reference to "wrapped fruit" because the industry no longer packs fruit in this manner.
(b) All such containers shall be tightly packed as well filled but the contents shall not show excessive or unnecessary bruising because of overfilled containers. When lemons are packed in standard nailed boxes, each box shall have a minimum bulge of 1¼ inches; when packed in cartons or in wirebound boxes, each container shall be at least level full at time of packing.	(b) All such containers shall be tightly packed as well filled but the contents shall not show excessive or unnecessary bruising because of overfilled containers. When packed in cartons each container shall be at least level full at time of packing.	We propose to delete the reference to "nailed boxes" because they are no longer used by the industry.
(c) "Fairly uniform in size" means that when lemons are packed for 165 carton count or smaller size, or equivalent sizes when packed in other containers, not less than 90 percent, by count, of the lemons in any container shall be within a diameter range of four-sixteenths inch; when packed for sizes larger than 165 carton count, or equivalent sizes packed in other containers, not less then 90 percent, by count, of the lemons in any container shall be within a diameter range of six-sixteenths inch.	No change.	N/A.
(1) "Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.	No change.	N/A.
(d) In order to allow for variations incident to proper packing the following tolerances are provided:	No change.	N/A.
(1) 10 percent for wrapped fruit in any container which fails to meet the requirement pertaining to wrapping; and,	Delete.	We propose to delete the reference to "wrapped fruit" because the industry no longer packs fruit in this manner.
(2) 5 percent for containers in any lot which fail to meet the requirements for standard pack.	(2) 5 percent for samples in any lot which fail to meet the requirements for standard pack.	We propose to change the word "containers" to "samples" to be consistent with the proposed sampling method for grade determination.
(b) In order to allow for variations incident to proper packing, not more than 5 percent of the containers in any lot may fail to meet the requirements of standard sizing and fill.	(b) In order to allow for variations incident to proper packing, not more than 5 percent of the samples in any lot may fail to meet the requirements of standard sizing and fill.	We propose to change the word "containers" to "samples" to be consistent with the proposed sampling method for grade determination.

Current standard	Proposed	Discussion
"Condition standards for export." (a) Not more than a total of 10 percent, by count, of the lemons in any container may be soft, affected by decay or contact spot, or have broken skins which are not healed, growth cracks, internal evidence of Alternaria development, internal decline (endoxerosis), or serious damage by membranous stain or other internal discoloration, or dryness or mushy condition, except that not more than the following percentages of the defects enumerated shall be allowed:	"Condition standards for export." (a) Not more than a total of 10 percent, by count, of the lemons in any sample may be soft, affected by decay or contact spot, or have broken skins which are not healed, growth cracks, internal evidence of Alternaria development, internal decline (endoxerosis), or serious damage by membranous stain or other internal discoloration, or dryness or mushy condition, except that not more than the following percentages of the defects enumerated shall be allowed:	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method for grade determination.
(1) one-half of 1 percent for decay;	(1) one-half of 1 percent for decay;	
(2) 3 percent for contact spot;	(2) 3 percent for contact spot;	
(3) 3 percent for broken skins which are not healed;	(3) 3 percent for broken skins which are not healed;	
(4) 3 percent for growth cracks;	(4) 3 percent for growth cracks;	
(5) 3 percent for internal evidence of Alternaria development;		
(6) 3 percent for internal decline (endoxerosis);		
(7) 5 percent for soft;		
(8) 5 percent for serious damage by membranous stain or other internal discoloration; and,		
(9) 5 percent for serious damage by dryness or mushy condition.	No change.	N/A.
"(b) Any lot of lemons shall be considered as meeting the condition standards for export if not more than a total of 10 percent, by count, of the lemons in any container have defects enumerated in the condition standards for export: Provided, That no sample shall have more than double the percentage specified for any one of the defects enumerated.	(b) Any lot of lemons shall be considered as meeting the condition standards for export if not more than a total of 10 percent, by count, of the lemons in any sample have defects enumerated in the condition standards for export: Provided, That no sample shall have more than double the percentage specified for any one of the defects enumerated.	We propose to change the word "container" to "sample" to be consistent with the proposed sampling method for grade determination.
"Firm" means that the fruit does not yield more than slightly to moderate pressure.	No change.	N/A.
"Fairly well formed" means that the fruit shows normal characteristic lemon shape and is not materially flattened on one side. Lemons having moderately thickened necks at the stem end shall be considered as fairly well formed unless the appearance is materially affected.	No change.	N/A.
"Well formed" means that the fruit is typically normal in shape with well centered stem and stylar ends.	No change.	N/A.
"Reasonably smooth" means that the appearance of the lemon is not materially affected by protrusions or lumpiness of the skin or by grooves or furrows. Coarse pebbling is an indication of good keeping quality and is not objectionable.	"Fairly smooth" means that the appearance of the lemon is not materially affected by protrusions or lumpiness of the skin or by grooves or furrows. Coarse pebbling is an indication of good keeping quality and is not objectionable.	We propose to change the definition of "Reasonably smooth" to "Fairly smooth" to be consistent with other fruit and vegetable standards. Generally speaking, the modifier "fairly" when used in fruit and vegetable standards, denotes a more stringent or higher requirement than "reasonably."
"Smooth" means that the skin is of fairly fine grain and that there are no more than slight furrows radiating from the stem end.	No change.	N/A.
"Contact spot" means an area on the lemon which bears evidence of having been in contact with decay or mold.	No change.	N/A.
"Internal evidence of Alternaria development" includes red or brown staining of the tissue under the button in the core, or in the fibrovascular bundles.	No change.	N/A.
"Membranous stain" is a brown or dark discoloration of the walls of the fruit segment.	No change.	N/A.

Current standard	Proposed	Discussion
"Damage" means any specific defect described in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or edible or shipping quality of the fruit. The following specific defects shall be considered damage:	No change.	N/A.
"(a) Dryness or mushy condition when affecting all segments of the fruit more than one-fourth inch at the stem end, or more than the equivalent of this amount, by volume, when occurring in other portions of the fruit;	No change.	N/A.
"(b) Scars (including sprayburn and fumigation injury) which exceed the following aggregate areas of different types of scars, or a combination of two or more types of scars the seriousness of which exceeds the maximum allowed for any one type;	No change.	N/A.
"(1) Scars which are very dark and which have an aggregate area exceeding that of a circle one-fourth inch in diameter;	No change.	N/A.
"(2) Scars which are dark, rough or deep and which have an aggregate area exceeding that of a circle one-half inch in diameter;	No change.	N/A.
"(3) Scars which are fairly light in color, slightly rough, or with slight depth and which have an aggregate area exceeding that of a circle 1 inch in diameter; and,	No change.	N/A.
"(4) Scars which are light in color, fairly smooth, with no depth and which have an aggregate area of more than 20 percent of the fruit surface.	No change.	N/A.
"(c) Oil spots (Oleocellosis or similar injuries) which are more than slightly depressed, soft, or which have an aggregate area exceeding that of a circle one-half inch in diameter;	No change.	N/A.
(d) Scale when more than ten medium to large California red or purple scale adjacent to button at stem end or scattered over fruit or any scale which affects the appearance of the fruit to a greater extent;	No change.	N/A.
(e) Sunburn which causes appreciable flattening of the fruit, drying of the skin, material change in color of the skin, appreciable drying of the flesh underneath the affected area or affects more than 25 percent of the fruit surface;	No change.	N/A.
(f) Hollow core which causes the fruit to feel distinctly spongy; and,	No change.	N/A.
(g) Peteca when more than two spots or when having an aggregate area exceeding that of a circle one-fourth inch in diameter.	No change.	N/A.
	Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
	Skin breakdown when exceeding that of a circle ¼ inch in diameter.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
"Fairly well colored" means that the area of yellow color exceeds the area of green color on the fruit.	No change.	N/A.
"Well colored" means that the fruit is yellow in color with not more than a trace of green color. Fruit of a decided bronze color shall not be considered well colored.	No change.	N/A.
"Fairly firm" means that the fruit may yield to moderate pressure but is not soft.	No change.	N/A.

Current standard	Proposed	Discussion
"Reasonably well formed" means that the fruit is not decidedly flattened, does not have a very long or large neck and is not otherwise decidedly misshapen.	No change.	N/A.
"Fairly smooth" means that the skin is not badly folded, badly ridged, or very decidedly lumpy.	"Reasonably smooth" means that the skin is not badly folded, badly ridged, or very decidedly lumpy.	We propose to change the definition of "fairly smooth" to "reasonably smooth" to be consistent with other standards. Generally speaking, the modifier "fairly," when used in fruit and vegetable standards, denotes a more stringent or higher requirement than "reasonably." It is consistent with other standards to place the less stringent requirement in the lower grade.
"Serious damage" means any specific defect described in this section; or an equally objectionable variation of any of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or shipping quality of the fruit. The following specific defects shall be considered as serious damage:	No change.	N/A.
(a) Membranous stain, or other internal discoloration which seriously affects the appearance of the cut fruit;	No change.	N/A.
(b) Dryness or mushy condition when affecting all segments of the fruit more than one-half inch at the stem end or more than the equivalent of the amount, by volume, when occurring in other portions of the fruit;	No change.	N/A.
(c) Scars (including sprayburn and fumigation injury) which exceed the following aggregate area of different types of scars, or a combination of two or more types of scars the seriousness of which exceeds the maximum allowed for any one type:	No change.	N/A.
(1) Scars which are very dark and which have an aggregate area of more than 5 percent of the fruit surface;	No change.	N/A
(2) Scars which are dark, rough or deep, and which have an aggregate area of more than 10 percent of the fruit surface;	No change.	N/A.
(3) Scars which are fairly light in color, slightly rough or of slight depth, and which have an aggregate area of more than 25 percent of the fruit surface; and,	No change.	N/A.
(4) Scars which are light in color, fairly smooth, with no depth, and which have an aggregate area of more than 50 percent of the fruit surface;	No change.	N/A.
(d) Oil spots (Oleocellosis or similar injuries) which are soft, or which have an aggregate area exceeding that of a circle 1 inch in diameter;	No change.	N/A.
(e) Scale when California red or purple scale is concentrated as a ring or blotch, or more than thinly scattered over the fruit surface, or any scale which affects the appearance of the fruit to a greater extent;	No change.	N/A.
(f) Sunburn which causes decided flattening of the fruit, marked drying or dark discoloration of the skin, material drying of the flesh underneath the affected area, or which affects more than one-third of the fruit surface;	No change.	N/A.
(g) Hollow core which causes the fruit to feel excessively spongy;	No change.	N/A.
(h) Peteca when more than five small spots, or when having an aggregate area exceeding that of a circle three-fourths inch in diameter; and,	No change.	N/A.
(i) Growth cracks that are leaking, gummy or not well healed.	No change.	N/A.

Current standard	Proposed	Discussion
	Bruising when fruit has been split open, peel is badly watersoaked following bruising or albedo is ruptured causing a mushy condition affecting all segments more than 1/2 inch at the bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
	Skin breakdown when exceeding that of a circle 5/8 inch in diameter.	This defect is currently being scored based on the "general definition." We propose to add specific scoring criteria for objective treatment of this defect.
"Moderately well colored" means that the area of greenish-yellow or yellow color exceeds the area of green color on the fruit.	No change.	N/A.
	Note: All references in this standard to area, aggregating area, or length are based on a lemon 2 inches in diameter, allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.	In the current standard, it is unclear whether defects are based on a specific size fruit, or if greater areas on larger fruit and lesser areas on smaller fruit are allowed. We propose the addition of this statement to clarify the issue. This procedure is in place in most fruit and vegetable standards.

Authority: 7 U.S.C. 1621–1627.

Dated: June 8, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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federal register

Thursday
June 17, 1999

Part IV

Department of The Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

50 CFR 13 and 17

Safe Harbor Agreements and Candidate Conservation Agreements With Assurances; Announcement of Final Safe Harbor Policy; Announcement of Final Policy for Candidate Conservation Agreements With Assurances; Final Rule and Notices

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR 13 and 17

RIN 1018–AD95

Safe Harbor Agreements and Candidate Conservation Agreements With Assurances

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule contains the U.S. Fish and Wildlife Service's (Service) final regulatory changes to Part 17 of Title 50 of the Code of Federal Regulations (CFR) necessary to implement two final policies developed by the Service and the National Marine Fisheries Service (NMFS) under the Endangered Species Act (Act)—the Safe Harbor and the Candidate Conservation Agreement with Assurances policies published in today's **Federal Register**. NMFS will develop separate regulatory changes to implement these policies.

This rule also contains several amendments to parts 13 and 17 of title 50 of the CFR that alter the applicability of the Service's general permitting regulations in 50 CFR part 13 to permits issued under section 10 of the Act for Habitat Conservation Plans, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances.

DATES: This rule is effective July 19, 1999.

ADDRESSES: To obtain copies of the final rule or for further information, contact Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 452 ARLSQ, Washington, D.C., 20240 (Telephone 703/358–2171, Facsimile 703/358–1735).

FOR FURTHER INFORMATION CONTACT: Richard Hannan, Acting Chief, Division of Endangered Species (Telephone (703/358–2171), Facsimile (703/358–1735)).

SUPPLEMENTARY INFORMATION: These final regulations and the background information regarding the final rule apply to the U.S. Fish and Wildlife Service only. Therefore, the use of the terms Service and "we" in this notice refers exclusively to the U.S. Fish and Wildlife Service. The proposed rule on Safe Harbor Agreements and Candidate Conservation Agreements with Assurances was issued on June 12, 1997 (62 FR 32189). We revised the proposed rule based on public comments we received, because of further consideration of the proposed rule, and to reflect the revisions to the Safe Harbor and Candidate Conservation Agreements with Assurances policies the rule is intended to implement (see Final Safe Harbor and Candidate Conservation Agreements with Assurances policies published in today's **Federal Register**). This rule does not finalize the proposed changes to part 13 that were published on September 5, 1995 (60 FR 46087), which are still pending.

Background

The Service administers a variety of conservation laws that authorize the issuance of certain permits for otherwise prohibited activities. In 1974, we published 50 CFR part 13 to consolidate the administration of its various permitting programs. Part 13 established a uniform framework of general administrative conditions and procedures that would govern the application, processing, and issuance of all Service permits. We intended the general part 13 permitting provisions to be in addition to, and not in lieu of, other more specific permitting requirements of Federal wildlife laws.

Subsequent to the 1974 publication of part 13, we added many wildlife regulatory programs to Title 50 of the CFR. For example, we added part 18 in 1974 to implement the Marine Mammal Protection Act, modified and expanded part 17 in 1975 to implement the Act, and added part 23 in 1977 to implement the Convention on International Trade in Endangered Species of Fauna and Flora (CITES). These parts contained their own specific permitting requirements in addition to the general permitting provisions of part 13.

In most instances, the combination of part 13's general permitting provisions and part 17's specific Act permitting provisions have worked well since 1975. However, in three areas of emerging permitting policy under the Act, the "one size fits all" approach of part 13 is inappropriately constraining and narrow. These three areas involve Habitat Conservation Planning, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances.

Congress amended section 10(a)(1) of the Act in 1982 to authorize incidental take permits associated with Habitat Conservation Plans (HCP). Many HCP permits involve long-term conservation commitments that run with the affected land for the life of the permit or longer. We negotiate such long-term permits recognizing that a succession of owners may purchase or resell the affected property during the term of the permit. The Service does not view this as a problem, where the requirements of such permits run with the land and successive owners agree to the terms of the HCP. Property owners similarly do not view this as a problem so long as we can easily transfer incidental take authorization from one purchaser to another.

In other HCP situations, the HCP permittee may be a State or local agency that intends to sub-permit or blanket the incidental take authorization to hundreds if not thousands of its citizens. We do not view this as a problem so long as the original agency permittee abides by, and ensures compliance with, the terms of the HCP.

The above HCP scenarios are not easily reconcilable with certain sections of part 13. For example, 50 CFR sections 13.24 and 13.25 impose significant restrictions on permit right of succession or transferability. While these restrictions are well justified for most wildlife permitting situations, they impose inappropriate and unnecessary limitations for HCP permits where the term of the permit may be lengthy and the parties to the HCP foresee the desirability of simplifying sub-permitting and permit transference from one property owner to the next, or from a State or local agency to citizens under their jurisdiction.

Similar problems also could arise in attempting to apply the general part 13 permitting requirements to permits issued under part 17 to implement Safe Harbor or Candidate Conservation Agreements with Assurances. A major incentive for property owner participation in the Safe Harbor or Candidate Conservation programs is the long-term certainty the programs provide, including the certainty that the incidental take authorization will run with the land if it changes hands and the new owner agrees to be bound by the terms of the original Agreement. Property owners could view the present limitations in several sections (e.g., sections 13.24 and 13.25) as impediments to the development of these Agreements.

The proposed rule would have addressed these potential problems by revising section 13.3, the Scope of Regulations provision in part 13, to provide that the specific provisions in a particular HCP, Safe Harbor, or Candidate Conservation Agreement permit and associated documents would control whenever they were in conflict with the general provisions of the part 13 regulations. After further consideration, we have determined that it is more appropriate to address these potential conflicts by promulgating revisions to parts 13 and 17 that identify the specific instances in which the permit procedures for HCP, Safe Harbor, and Candidate Conservation Agreement permits will differ from the general part 13 permit procedures. For a fuller discussion of these revisions to parts 13 and 17, see "Description of the Final Rule," below.

It is important to note that we proposed other amendments to section 13.3 on September 5, 1995 (60 FR 46087). Those changes would, among other things, provide an explanation of the term "permit" needed to refer correctly to CITES requirements, state the scope of part 13's requirements clearly, and ensure that the up-to-date titles of several parts of 50 CFR are used. However, the September 5, 1995, proposal did not deal with the potential conflicts between the general provisions included in part 13 and the specific provisions for incidental take and enhancement of survival permits under part 17. This final rule does not amend the language included in the September 5, 1995, proposal which is still pending.

Finally, we also proposed to add four new sub-sections to part 17 that would govern the issuance of endangered or threatened species "enhancement of survival" permits under section 10(a)(1)(A) of the Act for activities conducted under Safe Harbor or Candidate Conservation Agreements with Assurances.

Overview of Safe Harbor Agreement and Candidate Conservation Agreement With Assurances Programs

The information below briefly describes these two programs. For more details on these two programs, see the two final policies also published in today's **Federal Register**.

Much of the nation's current and potential habitat for listed, proposed, and candidate species exists on property owned by private citizens, States, municipalities, Tribal governments, and other non-Federal entities. Conservation efforts on non-Federal lands are critical to the long-term conservation of many declining species. More importantly, a collaborative stewardship approach is critical for the success of such an initiative. Many property owners would be willing to manage their lands voluntarily to benefit fish, wildlife, and plants, especially those that are declining, provided that they are not subjected to additional regulatory restrictions as a result of their conservation efforts. Beneficial management could include actions to maintain habitat or improve habitat (e.g., restoring fire by prescribed burning, restoring properly functioning hydrological conditions). Property owners are particularly concerned about land-use restrictions that might result if listed species colonize their lands or increase in numbers or distribution because of the property owners' conservation efforts, or if species subsequently become listed as a threatened or endangered species. The potential for future restrictions has led many property owners to avoid or limit land or water management practices that could enhance or maintain habitat and benefit or attract fish and wildlife that are listed or may be listed in the future.

The purpose of the Safe Harbor Policy is to ensure consistency in the development of Safe Harbor Agreements. Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting federally listed species. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property-use restrictions if their efforts attract listed species to their properties or increase the numbers or distribution of listed species already present on their properties. We will closely coordinate development of Safe Harbor Agreements with the appropriate State fish and wildlife or other agencies and any affected Native American Tribal governments. Collaborative stewardship with State fish and wildlife agencies is particularly important given the critical partnership between the Service and the States in recovering listed species.

The ultimate goal of Candidate Conservation Agreements with Assurances is, to remove enough threats to the covered species to preclude any need to list them as threatened or endangered under the Act. Proposed and candidate species may be the subject of a Candidate Conservation Agreement. Certain other unlisted species that are likely to become a candidate or proposed species in the near future may also be the subject of a Candidate Conservation Agreement. These Agreements are different from Safe Harbor Agreements (which involve the presence of at least one listed species) in that they provide conservation benefits exclusively to candidate and proposed species of fish, wildlife, and plants. The substantive requirements of activities carried out under Candidate Conservation Agreements with Assurances, if undertaken on a broad enough scale by other property owners similarly situated, should be expected to preclude any need to list species covered by the Agreement as threatened or endangered under the Act.

Summary of Proposed Rule

As discussed above, the proposed rule issued on June 12, 1997 (62 FR 32189), would have revised section 13.3, the Scope of Regulations provision in part 13, to provide that the specific provisions in a particular HCP, Safe Harbor, or Candidate Conservation Agreement permit and associated documents would control whenever they were in conflict with the general provisions of the part 13 regulations. The proposed rule also would have added four new subsections to 50 CFR part 17. These subsections would govern the issuance of "enhancement of survival" permits under section 10(a)(1)(A) of the Act for activities conducted under Safe Harbor Agreements or Candidate Conservation Agreements with Assurances for endangered species (50 CFR 17.22(c) and (d), respectively), and threatened species (50 CFR 17.32(c) and (d), respectively). These sub-sections were designed to ensure consistent application of the Safe Harbor Agreements and Candidate Conservation Agreements with Assurances programs, and are the legal mechanism for us to provide the necessary assurances to non-Federal landowners participating in these programs. Permits issued to provide assurances for activities to be conducted under a Candidate Conservation Agreement with Assurances only become effective upon the effective date of a final rule listing any of the covered species as threatened or endangered.

Summary of Received Comments

We received only two specific comments related to the proposed regulations, although more than 300 letters were received regarding the policies these regulatory changes are intended to implement. This final rule reflects changes needed to implement the final policies, which were revised to address comments received on the proposed policies. We address here only the two comments directly related to these regulations. For detailed discussions of the issues raised by commenters relative to the policies and the Service's responses, please refer to the final policies also published in today's **Federal Register**.

Issue 1. A commenter raised concerns regarding the opportunity for public review of permits issued under 50 CFR part 17. 22(c)(1) [Safe Harbor permits] and 17.22(d)(1) [Candidate Conservation Agreement with Assurances permits] for species listed as endangered.

Response 1. The proposed rule did not reduce the opportunity for public involvement in the issuance of these permits. The commenter apparently was unaware that all applications for permits issued under 50 CFR 17.22 (permits for species listed as endangered) are already required to undergo public review and comment. "Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application" (50 CFR 17.22). Therefore, it is clear that the current regulations governing these permits already require public review and comment on permit applications filed, and to add a specific review requirement for these permits would be redundant. The commenter was probably confused by the inclusion of specific public review requirements for threatened species permits issued under 50 CFR part 17.32 (c)(1) [Safe Harbor permits] and 17.32 (d)(1) [Candidate Conservation Agreement permits]. In contrast to 50 CFR 17.22, 50 CFR 17.32 generally does not require public review and comment on permits, although the specific provisions for threatened species incidental take permits do require such notice and comment (see 50 CFR 17.32 (b)(1)(ii)). To ensure an open and public process for the evaluation and issuance of permits to provide assurances to non-Federal landowners participating under the Safe Harbor and Candidate Species Conservation Agreements with Assurances policies, we have included similar public review requirements for these permits. The inclusion of these new provisions under 50 CFR 17.32 (c)(2) and 50 CFR 17.32 (d)(2) will ensure ample and meaningful public participation in this process.

Issue 2. Several commenters expressed concerns regarding the inability of landowners to terminate both Safe Harbor Agreements and Candidate Conservation Agreements with Assurances/Permits before their expiration dates, especially since these are voluntary Agreements.

Response 2. We agree that it is reasonable to include "early-out" provisions in these Agreements and in this final rule. We acknowledge that in some circumstances, such as family illnesses, financial hardships, and economically profitable ventures, landowners may need to terminate Agreements prior to their expiration dates. The final rule has been revised to provide for such opportunities, while ensuring that the agreed upon baseline conditions are not eroded and that we have an opportunity to translocate affected individuals of covered species.

Revisions to the Proposed Rule

The regulations have been revised to accommodate needs identified during the public review and comment period. This accommodation will facilitate our implementation of these programs and participation by interested non-Federal landowners. The proposed rule provided that the specific provisions in a particular HCP, Safe Harbor, or Candidate Conservation Agreement permit and associated documents would control whenever they were in conflict with the provisions of the general part 13 permit regulations. The final rule instead includes specific revisions to parts 13 and 17 that identify the particular instances in which the permit procedures for HCP, Safe Harbor, and Candidate Conservation Agreement permits will differ from the general part 13 permit procedures. For a fuller discussion of these revisions to parts 13 and 17, see "Description of the Final Rule," below. The final rule also includes a provision to allow for the termination of an Agreement and permit prior to their expiration dates. Because of the voluntary nature of the Safe Harbor Agreements and Candidate Conservation Agreements with Assurances, it is appropriate to provide these "early-out" options to program participants. Based on our past experience with voluntary habitat management programs (e.g., Partners for Fish and Wildlife), we expect that only a minor fraction of all participating landowners will invoke this option. We require "early-out" participants to provide us with prior notification. This will facilitate our ability to translocate any potentially affected individuals of a covered species. In addition, the final rule reflects revisions needed to implement revisions in the final Safe Harbor and Candidate Conservation Agreements with Assurances policies. For a full description of these revisions, see the final Safe Harbor and Candidate Conservation Agreements with Assurances policies published in today's **Federal Register**.

Description/Overview of the Final Rule

The final rule codifies minimum permit requirements and conditions that must be met in order for participating non-Federal landowners to receive the assurances under a Safe Harbor or a Candidate Species Conservation Agreement with Assurances. These permits, issued under 50 CFR part 17, are for activities to be voluntarily conducted under a Safe Harbor Agreement and/or a Candidate Conservation Agreement with Assurances.

As discussed above, the final rule does not adopt the proposal to amend section 13.3 to clarify that the specific provisions of an HCP, Safe Harbor Agreement, or Candidate Conservation Agreement would control wherever they conflict with the general permit provisions of part 13. We did not receive any public comments on this proposal, including any comments objecting to the proposal. However, we decided instead to include in the final rule specific amendments to parts 13 and 17 that will dictate when the permitting requirements for HCP, Safe Harbor, and Candidate Conservation Agreement permits will vary from the general part 13 requirements. We believe these amendments will achieve the proposal's purpose of avoiding potential conflicts between these permits and the general part 13 requirements, while more clearly informing potential applicants and the interested public of the ways in which the requirements for HCP, Safe Harbor, and Candidate Conservation Agreement permits differ from the general permit requirements. The specific changes are as follows:

1. Section 13.21(b)(4) generally prevents the Service from issuing a permit for an activity that "potentially threatens a wildlife or plant population." This is unnecessary and might even be confusing for HCPs, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances, since the HCP and Candidate Conservation Agreement with Assurances permit issuance criteria already incorporate a requirement that the permitted activity cannot be likely to jeopardize the continued existence of a species and since Safe Harbor Agreement permits must meet a net benefit test. The final rule therefore revises the HCP permit issuance criteria in sections 17.22(b)(2) and 17.32(b)(2) to except HCP permits from section 13.21(b)(4) and includes in the final Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permit regulations a similar exception from section 13.21(b)(4).

2. Section 13.23(b)(4) generally reserves to the Service the right to amend permits "for just cause at any time." The final rule revises this provision to clarify that the Service's reserved right to amend HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits must be exercised consistently with the assurances provided to HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permit holders in their permits and in the HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permit regulations.

3. Section 13.24 is revised in the final rule to provide a more streamlined approach to rights of succession for HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits and section 13.25 is revised to provide for greater transferability of these permits. As explained in the proposed rule, the restrictions sections 13.24 and 13.25 impose on permit succession and transferability are justified for most wildlife permitting situations, but they are inappropriate and unnecessary for HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits. These permits may involve substantial long-term conservation commitments, and the Service negotiates such long-term permits recognizing that there may be succession or transfer in ownership during the term of the permit. Revised sections 13.24 and 13.25 allow this as long as the successor or transferor owners meet the general qualifications for holding the permit and agree to the terms of the HCP, Safe Harbor Agreement, or Candidate Conservation Agreement with Assurances. Under revised section 13.25(d), any person under the direct control of a State or local governmental entity that has been issued a permit may carry out the activity authorized by the permit if (1) they are under the jurisdiction of the governmental entity and the permit provides that they may carry out the authorized activity, or (2) they have been issued a permit by the governmental entity or executed a written instrument with the governmental entity pursuant to the terms of an implementing agreement.

4. The final rule adds a new subparagraph (7) to sections 17.22(b) and 17.32(b) to make clear that HCP permittees remain responsible for mitigation required under the terms of their permits even after surrendering their permits. We have required this approach in many HCPs. The general provision in section 13.26 is silent on this issue and could have been interpreted as not requiring any further actions after surrender of an incidental take permit, even if mitigation were owed under the terms of the permit for take that had already occurred.

5. The final rule modifies the permit revocation criteria in section 13.28(a) to provide that the section 13.28(a)(5) criterion shall not apply to HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits. The Service determined that it would be more appropriate to refer instead to the statutory issuance criterion in 16 U.S.C. 1539(a)(2)(B)(iv) that prohibits the issuance of an incidental take permit unless the Service finds the permit is not likely to jeopardize the continued existence of the species. The final rule therefore includes in the specific regulations for HCP permits a provision (sections 17.22(b)(8) and 17.32(b)(8)) that allows a permit to be revoked if continuing the permitted activity would be inconsistent with 16 U.S.C. 1539(a)(2)(B)(iv). The final rule also includes similar provisions in the Safe Harbor Agreement and Candidate Conservation Agreement with Assurances regulations.

In keeping with the "No Surprises" rule (sections 17.22(b)(5)–(6) and 17.32(b)(5)–(6)) these provisions would allow the Service to revoke an HCP permit as a last resort in the narrow and unlikely situation in which an unforeseen circumstance results in likely jeopardy to a species covered by the permit and the Service has not been successful in remedying the situation through other means. The Service is firmly committed, as required by the No Surprises rule, to utilizing its resources to address any such unforeseen circumstances. These principles would also apply to Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permits.

6. The final rule revises section 13.50 to allow more flexibility where the permittee is a State or local governmental entity, and has thus taken a leadership role and assists in implementation of the permit program.

The four new sub-sections under 50 CFR part 17 are designed to ensure consistent application of the Safe Harbor Agreements and Candidate Conservation Agreements with Assurances programs. These regulatory changes are the legal mechanism for the Service to provide the necessary assurances to non-Federal landowners participating in these programs.

Required Determinations

Regulatory Planning and Review, Regulatory Flexibility Act, and Small Business Regulatory Enforcement Fairness Act

The final rule was subject to Office of Management and Budget (OMB) review under Executive Order 12866.

a. The final rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

b. The final rule will not create inconsistencies with other agencies' actions. The final rule establishes completely voluntary programs for non-Federal property owners. These programs are not available to Federal agencies. Because Safe Harbor Agreements and Candidate Conservation Agreements with Assurances are entered into voluntarily, the final rule does not create inconsistencies with the actions of non-Federal agencies.

c. The final rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. The final rule follows the policy direction set forth in the March 1995 Administration's 10-point plan for an effective and efficient implementation of the Act. In that plan the Administration set the precedent and the policy direction for the implementation of the Act. Specifically, various proposals have been published which provides incentives for non-Federal property owners to conserve species. More importantly, these proposals call for removing the disincentives that implementation of some provisions of the Act may have inadvertently imposed on non-Federal property owners.

The Department of the Interior certifies that the final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). E.O. 12866, 5 U.S.C. 601 *et seq.* and 5 U.S.C. 801 *et seq.* require that an agency assess the economic effects of a rule. One way to address this is to determine whether a credible upper bound for the effects of the rule is less than $100 million.

We take that approach below by first determining the maximum number of Candidate Conservation Agreements with Assurances that the Service's budget allows it to process in a year, and then seeing whether this number of agreements could reasonably be expected to generate $100 million of effects annually.

The Service's Candidate Conservation Program budget for FY 1999 is approximately $6.7 million. This funding covers candidate assessment activities, development of traditional Candidate Conservation Agreements (without assurances), development and implementation of other candidate conservation actions, and development of Candidate Conservation Agreements with Assurances. The 1999 funding level for the Candidate Conservation

Program represents an increase of $1 million over the 1998 level. Some of the additional monies were anticipated to be used to increase capabilities for existing functions. However, for purposes of this analysis we will assume that the entire $1 million is available for development of Candidate Conservation Agreements with Assurances.

The average time required for a Service biologist to develop a Candidate Conservation Agreement with Assurances and process a Section 10(a)(1)(A) permit application is estimated to be about one month. Using an average cost index of $10,000 per employee month and adding an additional $5,000 to cover travel, management review, publication in the **Federal Register**, and other associated costs brings the total cost for development of an average Candidate Conservation Agreement with Assurances to $15,000. Therefore, the Service could fund the development of approximately 67 Candidate Conservation Agreements with Assurances per year at the FY 1999 funding level.

For there to be $100 million of effects from the 67 Candidate Conservation Agreements with Assurances, on average a Candidate Conservation Agreement with Assurances would have to generate approximately $1.5 million in benefits. Since we expect the participants in the program to be relatively small entities, this is not a credible number for the effect of the average Candidate Conservation Agreement with Assurances.

The Service's budget for FY 1999 included $5 million for a new activity, the Private Landowner Incentive Program. This funding covers the development of Safe Harbor Agreements. About half of the money will be used to fund Service personnel to work with landowners to develop Safe Harbor Agreements; the remaining funds will serve as financial assistance incentives to participating landowners.

The average time required for a Service biologist to develop a Safe Harbor Agreement and process a Section 10(a)(1)(A) permit application is estimated to be about one month. Using an average cost index of $10,000 per employee month and adding an additional $5,000 to cover travel, management review, publication in the **Federal Register**, and other associated costs brings the total cost for development of an average Safe Harbor Agreement to $15,000. Therefore, the Service could fund the development of approximately 67 Safe Harbor Agreements per year at the FY 1999 funding level.

For there to be $100 million of effects from the 67 Safe Harbor Agreements, on average a Safe Harbor Agreement to generate approximately $1.5 million in benefits. Since we expect the participants in the program to be relatively small entities, this is not a credible number for the effect of the average Safe Harbor Agreement.

The final rule is not a major rule under 5 U.S.C. 801 *et seq.*, the Small Business Regulatory Enforcement Fairness Act.

a. The final rule will not produce an annual economic effect of $100 million.

b. The final rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Because property owners will voluntarily enter into Safe Harbor Agreements and Candidate Conservation Agreements with Assurances only when the effects are positive, the final rule will not increase costs or prices.

c. The final rule will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Because property owners will voluntarily enter into Safe Harbor Agreements and Candidate Conservation Agreements with Assurances only when the effects are positive, the final rule will not result in adverse effects.

All non-Federal entities—individuals, small businesses, large corporations, State and local agencies, and private organizations—are eligible to participate in Safe Harbor Agreements and Candidate Conservation Agreements with Assurances. Although there may be some corporate property owners interested in developing Safe Harbor Agreements and Candidate Conservation Agreements with Assurances, based on prior experience we expect most participating properties will be family-owned farms and ranches. We do not expect that all Candidate Conservation Agreements with Assurances or Safe Harbor Agreements would be geographically concentrated to the degree that small entities in one particular area would be most affected. The impact on small ownerships is expected to be economically insignificant because most of these costs are on a per acre basis. There will also not be enough Safe Harbor Agreements or Candidate Conservation Agreements with Assurances in any given year or in any given area to lead to a substantial impact on a significant number of small entities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. The final rule will not impose a cost of $100 million or more in any given year on State, local or Tribal governments or private entities. No additional information will be required from a non-Federal entity solely as a result of the final rule. Since the final rule establishes a completely voluntary program, there are no incremental costs being imposed on non-Federal landowners.

b. The final rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings Implication Assessment

The Service has determined that this rule has no potential takings of private property implications as defined by Executive Order 12630. The primary reason for this determination is that this rule provides two voluntary programs that do not require individuals to participate unless they volunteer to do so.

Federalism Assessment

This final rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 12612, the Service has determined that this rule does not have sufficient federalism implications to warrant a Federalism Assessment.

Civil Justice Reform

The Department of the Interior has determined that this final rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The Service has examined this final rule under the Paperwork Reduction Act of 1995 and found it to contain no requests for additional information or increase in the collection requirements associated with incidental take permits other than those already approved for incidental take permits with OMB approval #1018–0094, which has an expiration date of February 28, 2001.

National Environmental Policy Act

The Department of the Interior has determined that the issuance of the rule is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1:10.

Section 7 Consultation

The Service does not need to complete a section 7 consultation on this final rule. An intra-Service consultation is completed prior to issuing enhancement of survival permits under 10(a)(1)(A) of the Endangered Species Act associated with individual Safe Harbor Agreements and Candidate Conservation Agreements with Assurances.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

For the reasons set out in the preamble, we amend Title 50, Chapter I, subchapter B of the Code of Federal Regulations, as set forth below:

PART 13—[AMENDED]

The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a; 704, 712; 742j–l; 1382; 1538(d); 1539, 1540(f); 3374; 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 15683; 31 U.S.C. 9701.

2. Section 13.23(b) is revised to read as follows:

§ 13.23 Amendment of permits.

* * * * *

(b) The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity, provided that any such amendment of a permit issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter shall be consistent with the requirements of § 17.22(b)(5), (c)(5) and (d)(5) or § 17.32(b)(5), (c)(5) and (d)(5) of this subchapter, respectively.

* * * * *

3. Section 13.24 is revised to read as follows:

§ 13.24 Right of succession by certain persons.

(a) Certain persons other than the permittee are authorized to carry on a permitted activity for the remainder of the term of a current permit, provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; or

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to qualify for the authorization provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

(c) In the case of permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter B, the successor's authorization under the permit is also subject to a determination by the Service that:

(1) The successor meets all of the qualifications under this part for holding a permit;

(2) The successor has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The successor has provided such other information as the Service determines is relevant to the processing of the request.

4. Section 13.25 is revised to read as follows:

§ 13.25 Transfer of permits and scope of permit authorization.

(a) Except as otherwise provided for in this section, permits issued under this part are not transferable or assignable.

(b) Permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided the Service determines that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The proposed transferee has provided such other information as the Service determines is relevant to the processing of the submission.

(c) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

(d) In the case of permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter to a State or local governmental entity, any person who is under the direct control of the permittee may carry out the activity authorized by the permit where:

(1) The person is under the jurisdiction of the permittee and the permit provides that such person(s) may carry out the authorized activity; or

(2) The person has been issued a permit by the governmental entity or has executed a written instrument with the governmental entity, pursuant to the terms of the implementing agreement.

5. Section 13.28(a)(5) is revised to read as follows:

§ 13.28 Permit revocation.

(a) * * *

(5) Except for permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter, the population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

* * * * *

6. Section 13.50 is revised to read as follows:

§ 13.50 Acceptance of Liability.

Except as otherwise limited in the case of permits described in § 13.25(d), any person holding a permit under this subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.

PART 17—[AMENDED]

7. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

8. Section 17.22 is amended by revising paragraph (b)(2), adding new paragraphs (b)(7) and (b)(8), redesignating paragraph (c) as paragraph (e), and adding new paragraphs (c) and (d) as follows:

§ 17.22 Permits for scientific purposes, enhancements of propagation or survival, or for incidental taking.

* * * * *

(b) * * *

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and shall issue the permit if he or she finds that:

(A) The taking will be incidental;

(B) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings;

(C) The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided;

(D) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(E) The measures, if any, required under paragraph (b)(1)(iii)(D) of this section will be met; and

(F) He or she has received such other assurances as he or she may require that the plan will be implemented.

(ii) In making his or her decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

* * * * *

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for Revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* The applicant must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22), if the applicant wishes to engage in any activity prohibited by § 17.21. The applicant must submit an official Service application form (3–200.54) that includes the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization; and

(iii) A Safe Harbor Agreement that complies with the requirements of the Safe Harbor policy available from the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Safe Harbor Agreement;

(ii) The implementation of the terms of the Safe Harbor Agreement will provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the Safe Harbor Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Safe Harbor Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Safe Harbor Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a Safe Harbor Agreement;

(ii) A requirement for the property owner to notify the Service at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Safe Harbor Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for species covered by the Safe Harbor Agreement.

(5) *Assurances provided to permittee.* (i) The assurances in paragraph (c)(5) (ii) of this section (c)(5) apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(ii) If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, for the affected species and maintain the original terms of the Safe Harbor Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Safe Harbor Agreement without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (c) may not be revoked for any reason except those set forth in § 13.28(a) (1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in § 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* The applicant must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22). When a species covered by a Candidate Conservation Agreement with Assurances is listed as endangered and the applicant wishes to engage in activities identified in the Agreement and otherwise prohibited by § 17.31, the applicant must apply for an enhancement of survival permit for species covered by the Agreement. The permit will become valid if and when covered proposed, candidate or other unlisted species is listed as an endangered species. The applicant must submit an official Service application form (3–200.54) that includes the following information:

(i) The common and scientific names of the species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization; and

(iii) A Candidate Conservation Agreement that complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Candidate Conservation Agreement;

(ii) The Candidate Conservation Agreement complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the Candidate Conservation Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Candidate Conservation Agreement will be in conflict with any ongoing conservation programs for species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Candidate Conservation Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (d) is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a Candidate Conservation Agreement;

(ii) A requirement for the property owner to notify the Service at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Candidate Conservation Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (d) become effective for a species covered by a Candidate Conservation Agreement on the effective date of a final rule that lists a covered species as endangered.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

(i) *Changed circumstances provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the Agreement's operating conservation program, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the Agreement's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the Agreement's operating conservation program for the affected species, and maintain the original terms of the Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional

restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(*1*) Size of the current range of the affected species;

(*2*) Percentage of range adversely affected by the Agreement;

(*3*) Percentage of range conserved by the Agreement;

(*4*) Ecological significance of that portion of the range affected by the Agreement;

(*5*) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and

(*6*) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (d) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in paragraph (d)(2)(iii) of this section and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with those benefits that would be achieved if it is assumed that the conservation measures would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

* * * * *

9. Section 17.32 is amended by revising (b)(2) by adding (b)(7) and (b)(8), and adding new paragraphs (c) and (d) as follows:

§ 17.32 Permits—general.

* * * * *

(b) * * *

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general issuance criteria in 13.21(b) of this subchapter, except for 13.21(b)(4), and shall issue the permit if he or she finds that:

(A) The taking will be incidental;

(B) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings;

(C) The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided;

(D) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(E) The measures, if any, required under paragraph (b)(1)(iii)(D) of this section will be met; and

(F) He or she has received such other assurances as he or she may require that the plan will be implemented.

(ii) In making his or her decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

* * * * *

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* The applicant must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed action is to occur (for appropriate addresses, see 50 CFR 10.22), if the applicant wishes to engage in any activity prohibited by § 17.31. The applicant must submit an official Service application form (3–200.54) that includes the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization;

(iii) A Safe Harbor Agreement that complies with the requirements of the Safe Harbor policy available from the Service; and

(iv) The Director must publish notice in the **Federal Register** of each application for a permit that is made under this paragraph (c). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in § 17.22(e) for permit objection apply to any notice published by the Director under this paragraph (c).

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Safe Harbor Agreement;

(ii) The implementation of the terms of the Safe Harbor Agreement will provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the Safe Harbor Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Safe Harbor Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Safe Harbor Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a Safe Harbor Agreement;

(ii) A requirement for the property owner to notify the Service at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Safe Harbor Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for species covered by the Safe Harbor Agreement.

(5) *Assurances provided to permittee.* (i) The assurances in subparagraph (ii) of this paragraph (c)(5) apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(ii) If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, for the affected species and maintain the original terms of the Safe Harbor Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Safe Harbor Agreement without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (c) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* The applicant must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22). When a species covered by a Candidate Conservation Agreement with Assurances is listed as threatened and the applicant wishes to engage in activities identified in the Agreement and otherwise prohibited by § 17.31, the applicant must apply for an enhancement of survival permit for species covered by the Agreement. The permit will become valid if and when covered proposed, candidate or other unlisted species is listed as a threatened species. The applicant must submit an official Service application form (3–200.54) that includes the following information:

(i) The common and scientific names of the species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization; and

(iii) A Candidate Conservation Agreement that complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service.

(iv) The Director must publish notice in the **Federal Register** of each application for a permit that is made under this paragraph (d). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in § 17.22(e) for permit objection apply to any notice published by the Director under this paragraph (d).

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Candidate Conservation Agreement;

(ii) The Candidate Conservation Agreement complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the Candidate Conservation Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Candidate Conservation Agreement will be in conflict with any ongoing conservation programs for species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Candidate Conservation Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (d) is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a Candidate Conservation Agreement;

(ii) A requirement for the property owner to notify the Service at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Candidate Conservation Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (d) become effective for a species covered by a Candidate Conservation Agreement on the effective date of a final rule that lists a covered species as threatened.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

(i) *Changed circumstances provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the Agreement's operating conservation program, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the Agreement's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the Agreement's operating conservation program for the affected species, and maintain the original terms of the Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(*1*) Size of the current range of the affected species;

(*2*) Percentage of range adversely affected by the Agreement;

(*3*) Percentage of range conserved by the Agreement;

(*4*) Ecological significance of that portion of the range affected by the Agreement;

(*5*) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and

(*6*) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (d) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in paragraph (d)(2)(iii) of this section and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with those benefits that would be achieved if it is assumed that the conservation measures would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

Dated: May 11, 1999.

Donald J. Barry,

Assistant Secretary, Fish, Wildlife, and Parks, Department of the Interior.

[FR Doc. 99–15255 Filed 6–11–99; 5:08 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Final Safe Harbor Policy

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of final policy.

SUMMARY: The Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), (jointly referred to as the "Services") announce a final Safe Harbor policy under the Endangered Species Act of 1973, as amended (Act). This policy provides incentives for private and other non-Federal property owners to restore, enhance, or maintain habitats for listed species. Because many endangered and threatened species occur exclusively, or to a large extent, on non-Federally owned property, the involvement of non-Federal property owners in the conservation and recovery of listed species is critical to the eventual success of these efforts. Under the policy, the Services will provide participating property owners with technical assistance to develop Safe Harbor Agreements (Agreements) that manage habitat for listed species, and provide assurances that additional land, water, and/or natural resource use restrictions will not be imposed as a result of their voluntary conservation actions to benefit covered species. When the property owner meets all the terms of the Agreement, the Services will authorize incidental taking of the covered species at a level that enables the property owner ultimately to return the enrolled property back to agreed upon baseline conditions. The Services will closely coordinate with the appropriate State agencies and any affected Native American Tribal governments before entering into Agreements. The Services considered and evaluated all the comments received on the draft policy in developing this final policy. Additionally, the FWS is publishing elsewhere in this issue of the **Federal Register** a final rule that contains the necessary regulatory changes to implement this policy.

DATES: This policy is effective July 19, 1999.

ADDRESSES: To obtain copies of the final Safe Harbor policy contact the Chief, Division of Endangered Species, Fish and Wildlife Service, 452 ARLSQ, Washington, D.C. 20240 (Telephone 703/358–2171, Facsimile 703/358–1735); or Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD, 20910 (Telephone 301/713–1401, Facsimile 301/713–0376).

FOR FURTHER INFORMATION CONTACT: Richard Hannan, Acting Chief, Division of Endangered Species, Fish and Wildlife Service (Telephone (703)358–2171) or Margaret Lorenz, Policy Coordinator, Endangered Species Division, National Marine Fisheries Service (Telephone (301) 713–1401).

SUPPLEMENTARY INFORMATION:

Background

On June 12, 1997, the Services issued a draft policy (62 FR 32178), and the FWS issued proposed regulations to implement the policy (62 FR 32189). With this policy, the Services intended to facilitate the conservation of listed species through a collaborative approach with non-Federal citizens, States, local governments, Tribes, businesses, organizations, and other non-Federal property owners which are stakeholders in the conservation of these species. With the proposed policy and the related regulations, the Services intended to create incentives for non-Federal property owners to implement conservation measures for certain listed species by providing certainty with regard to possible future land, water, or resource use restrictions should the covered species later become more numerous as a result of the property owners actions. Non-Federal property owners, who through a Safe Harbor Agreement commit to implement voluntary conservation measures for a listed species will receive assurances from the Services that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the covered species become more numerous as a result of the property owners' actions.

Much of the nation's current and potential fish and wildlife habitat is on property owned by private citizens, States, municipalities, Tribal governments, and other non-Federal entities. Conservation efforts on non-Federal property are critical to the survival and recovery of many endangered and threatened species. The Services strongly believe that a collaborative stewardship approach to the proactive management of listed species involving government agencies (Federal, State, and local) and the private sector is critical to achieving the ultimate goal of the Endangered Species Act (Act): recovery of threatened and endangered species. The recovery of certain species can benefit from short-term and mid-term enhancement, restoration, or maintenance of terrestrial and aquatic habitats on non-Federal property. The "Safe Harbor" approach provides an avenue to garner the non-Federal landowners' support for species conservation on non-Federal lands.

Many property owners are willing to voluntarily manage their property to benefit listed fish and wildlife, provided these beneficial actions do not result in new restrictions being placed on the future use of their property. Beneficial management includes actions to enhance, restore, or maintain habitat (e.g., restoring habitat through prescribed burning, restoring hydrological conditions) so that it is suitable for listed species. Because such proactive management actions cannot be mandated or required by the Act, failure to conduct these activities would not violate any of the Act's provisions. Although property owners recognize the benefits of proactive habitat conservation activities to help listed species, some are still concerned that additional land, water, and/or natural resource use restrictions may result if listed species colonize their property or increase in numbers or distribution due to their conservation efforts. Th
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pro ent actions.
Lan e properties support endangered or t eatened species as a result of their positive, voluntary conservation efforts might violate section 9 of the Act if they significantly develop, modify, or manage those properties in a way that subsequently causes incidental take of those species.

Section 9 of the Act prohibits the "take" of listed fish and wildlife species, which is defined in section 3(18) to include, among other things, killing, harming or harassing. The Act's implementing regulations, as promulgated by the FWS (50 CFR 17.3), and proposed by NMFS (63 FR 24148) define "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding and sheltering."

This final Safe Harbor policy encourages property owners to voluntarily conserve threatened and endangered species without the risk of

further restrictions pursuant to section 9 of the Act. Previously, the FWS has provided Safe Harbor type assurances to non-Federal property owners based on various authorities under the Act, including incidental take statements under section 7(a)(2) and incidental take permits under section 10(a)(1)(B). After further consideration of such alternatives and an evaluation of other provisions of the Act, the Services have determined that the section 10(a)(1)(A) "enhancement of survival" permit provisions provide the best mechanism to carry out a permanent Safe Harbor policy that provides the necessary assurances to participating property owners, while also providing conservation benefits to the covered species. For landowners who are participants in other Federal programs (e.g., Farm Bill or Partners for Fish and Wildlife programs), FWS is in the process of developing an appropriate process to provide assurances on a programmatic basis to the landowners as long as a net conservation benefit is achieved for listed species covered by the Agreements. Assurances already provided by FWS under sections 7 or 10(a)(1)(B) would still be valid, and revision of those Agreements is unnecessary. Finalizing this policy provides national consistency in the development of Safe Harbor Agreements (Agreements) and links the policy to an expanded "enhancement of survival" permit program through section 10(a)(1)(A) of the Act.

FWS has also published final regulations to implement this policy in today's **Federal Register**. This final policy and final rule provides the FWS procedures to implement the Safe Harbor policy. NMFS will develop and propose regulatory changes to implement this policy at a later date. These regulations will govern the issuance of "enhancement of survival" permits under section 10(a) (1)(A) of the Act to provide the assurances to participating landowners through Safe Harbor Agreements.

Summary of the Draft Policy

The draft Safe Harbor policy (62 FR 32178) encouraged non-Federal landowners to maintain or enhance existing endangered species habitat, to restore listed species' habitats, or to manage their lands in a manner that benefits listed species that would be covered by an agreement. In return, the Services would provide assurances that future activities would *not* be subject to the Act's restrictions beyond those restrictions applicable to the property at the time of enrollment in the program. The draft policy recognized that many non-Federal landowners are interested in restoring, enhancing, and/or maintaining natural habitats on their lands, thus potentially benefiting listed species. However, non-Federal landowners' willingness may be hindered by a fear that the Services will enforce section 9 due to their beneficial actions, their lands are colonized by listed species, or listed species' numbers increase.

The draft policy contained provisions protecting any listed species covered by an Agreement and occupying a landowner's property at the time of enrollment in the program by including them in the baseline conditions. If species were included in the baseline conditions, an "incidental take" would not be allowed. However, if the numbers or range of those covered species increases because of voluntary conservation measures conducted in accordance with a Safe Harbor Agreement, the landowner would be authorized to incidentally "take" those individuals above the baseline without penalty. These arrangements would be formalized through a streamlined permitting process and an Agreement or similar instrument between the landowner and the Services. The draft policy also considered a streamlined process where the Services would issue a blanket permit to an appropriate agency or organization that would in turn issue "Certificates of Inclusion" or "Participation Certificates" to landowners. The ultimate goal of the draft policy was to encourage non-Federal landowners to voluntarily implement beneficial management actions for those listed species that occur on their lands or would be attracted as a result of the beneficial management actions.

Summary of Comments Received

The Services received more than 70 comment letters on the draft policy from a wide variety of entities, including Federal, State and County agencies, industry, conservation groups, coalitions, and private individuals. The Services considered all relevant information and recommendations received during the public comment period. Some of the commenters addressed issues that were applicable to the implementing regulations as well as the draft policy. Both the final policy and regulations have been amended, where appropriate.

The following is a summary of the comments on the draft policy and the Services' responses.

Issue 1. Many commenters expressed concern regarding the appropriateness of the Services entering into Safe Harbor Agreements and suggested that the Services provide guidance on how to determine whether a Safe Harbor Agreement is appropriate and under what circumstances the Services would enter into such Agreements.

Response 1. The Services agree that Safe Harbor Agreements may not be appropriate for all types of species in all situations. If a property owner is taking a listed species and needs an immediate "incidental take" authorization, application for and development of a Habitat Conservation Plan (HCP) and issuance of an incidental take permit under section 10(a)(1)(B) would be more appropriate. Safe Harbor Agreements also are not appropriate in situations that do not meet the net conservation benefit standards of this policy. The Services will determine on a case-by-case basis whether or not a particular proposed Agreement actually meets the standards of the Safe Harbor policy and its implementing regulations and whether a Safe Harbor Agreement would be an appropriate means of enhancing the survival of the species covered by an agreement. For example, translocating individuals from a habitat preserved in perpetuity to a site with zero baseline condition may not achieve a net conservation benefit for the species. This is because the habitat the species is using could be altered or destroyed, which would put the species at risk. Each Agreement will have an appropriate public review and comment period, and after considering all available information, the Services will determine if the permit can be issued.

Issue 2. Commenters stated that the concept of baseline and how baseline conditions will be determined needs to be clarified. Some commenters also provided recommendations on how to determine baseline conditions.

Response 2. The Services acknowledge that the concept of baseline determination needs further clarification, and because of its crucial importance to the overall implementation and success of this policy, the discussion of this concept is expanded. The Services also further clarify how baseline conditions should be determined, the intent of the Services in determining baseline conditions, and the implications of these determinations. The intent of the Services in determining baseline conditions is to ensure that the protection provided to covered listed species is not eroded below current levels. The intent is to provide participating landowners with a clear understanding of their assured rights to return enrolled lands to conditions existing prior to the Agreement (i.e., baseline conditions) and what expectations exist for all participants in terms of performance under the Agreement.

Issue 3. Numerous commenters raised concerns regarding the determination of baseline conditions based on the number of individuals of a listed species occupying or using the enrolled lands. These concerns are based on the fact that population numbers of a species in the wild often fluctuate naturally (e.g., between years and between seasons). If, for example, the baseline was established as the number of individual animals present during a period of naturally high abundance, a participating landowner could be interpreted to be in non-compliance with the Agreement if they returned the enrolled lands to baseline when population numbers were naturally low, when in fact the available habitat area remained unchanged and the landowner took no action that violated the Agreement.

Response 3. The Services intend to provide flexibility during implementation of the policy by providing that baseline conditions will be mutually agreed upon by the participating landowner and the Services, and will be determined by using either population numbers of listed species or occupied habitat acreage, or both. The known or expected seasonal or natural variation of population numbers should be described in the Agreement and will help form the baseline determination of the enrolled lands. Similarly, if occupied habitat is used to determine baseline, the quality, acreage, and characteristics of the habitat sustaining individuals of the covered species within the enrolled lands will be described and evaluated. The policy has been amended to address these concerns and to further clarify the section discussing baseline.

Issue 4. A number of commenters expressed concern regarding the land, water, and/or natural resource use that the enrolled lands would be returned to after the Agreement expires. Commenters were concerned whether such use would be compatible with maintaining the baseline conditions.

Response 4. Landowners who have complied with the terms of the Agreements and wish to use their lands in a manner different from their original use certainly retain the right to do so without any additional restrictions under the Act as long as the baseline is maintained. However, if the proposed use of the enrolled lands would result in incidental take of the species and is inconsistent with maintaining the baseline conditions, then separate authorization for such take would be required and is not covered by the Safe Harbor Agreement. In other words, the same land, water, and/or natural resource use restrictions that applied to the property prior to the Safe Harbor Agreement would still apply and the landowner would have to obtain the appropriate incidental take authorization under the appropriate provisions of the Act. If the baseline conditions were zero, based on the existence of unoccupied habitat, and these habitat areas became occupied as a result of the activities undertaken under the Agreement, no further authorization would be required. However, the Services would work with the landowner to relocate the species, if appropriate, before any habitat modification back to the baseline occurs, or extend the Agreement if the landowner so desires.

Issue 5. Numerous commenters supported the "net conservation benefit" standard in the policy. Commenters had significantly different interpretations of the meaning of "net conservation benefit," however, and many requested further clarification of the concept.

Response 5. This crucial and fundamental principle of the Safe Harbor policy caused confusion and a number of different interpretations. Therefore, this section of the policy has been revised to clarify the Services' intent and the "net conservation benefit" concept. These net conservation benefits may result from reducing fragmentation and increasing the connectivity of habitats, maintaining or increasing populations, insuring against catastrophic events, enhancing and restoring habitats, buffering protected areas, and creating areas for testing and implementing new conservation strategies.

Issue 6. Several commenters requested clarification on how the Agreements can be terminated and what were the rights and responsibilities of the participating landowner.

Response 6. The length of Safe Harbor Agreements must be of sufficient duration to reasonably allow enough time to achieve the expected "net conservation benefit" for the listed species covered by the Safe Harbor Agreement. For example, if restoring suitable habitat for a species normally takes five years of active management, and the proposed Agreement is limited to providing suitable habitat for only three years, it would not be appropriate to enter into this Agreement. However, since these Agreements are voluntary, the Services recognize and respect the landowners' right to request early termination of their Agreements. The final Safe Harbor policy provides a mechanism to allow landowners to terminate their voluntary Agreements before the expiration date. The Services expect the number of landowners requesting early termination to be minimal based on the FWS's experience with the Partners for Fish and Wildlife Program.

Issue 7. Many commenters expressed concern that the proposed process for developing Agreements and issuing the necessary permit to provide the Safe Harbor assurances would be too cumbersome. Some commenters also suggested the Services should consider a "blanket," "master," or "programmatic" permitting process to further streamline the development of Safe Harbor Agreements.

Response 7. The process established in the draft Safe Harbor policy and implementing regulations was basically intended to address situations where a single landowner approaches the Services and is willing to conduct beneficial management actions on behalf of listed species, but is concerned regarding potential future section 9 limitations that could result from these voluntary actions. The draft Safe Harbor policy did not explicitly discuss the potential for using "blanket," "master," or "programmatic" permits to provide assurances to landowners interested in managing habitat for listed species on their property. However, the FWS has used a section 10(a)(1)(B) "programmatic" permit very successfully in the last few years. Clarifying language has been added to the final Safe Harbor policy and implementing regulations to allow for the possibility of using "programmatic" permits whenever appropriate. For example, the development of Statewide Safe Harbor programs, where a State agency or an appropriate entity acts as a permit holder and has the authority to include individual landowners through the issuance of "Certificates of Inclusion" or "Participation Certificates," provides the perfect circumstance for the use of "programmatic" Safe Harbor Agreements and associated enhancement of survival permits. In the final policy, the Services recognize that significant conservation benefits on a landscape scale can be provided through these "programmatic" Safe Harbor Agreements and associated permits.

Issue 8. Several commenters expressed concern about the effects actions taken on enrolled lands may

have on neighboring non-enrolled lands and expressed the need for clarification.

Response 8. The Services recognize the implications to neighboring landowners of the successful implementation of management actions on enrolled lands. Further, the Services recognize and acknowledge that some landowners may be reluctant to initiate management actions that may have land, water, and/or natural resource use implications to neighboring landowners. The implications to neighboring landowners with non-enrolled lands will be assessed on a case-by-case basis. For example, when the Services believe that occupation of non-enrolled neighboring lands is likely, the Services will make every effort to include the neighboring landowner as a signatory party to the Agreement and to be included in the Safe Harbor Agreement and associated permit, thus extending the Safe Harbor assurances. For example, neighboring landowners of aplomado falcon (*Falco femoralis*) release sites in Texas were included in the permit for the Safe Harbor Agreement, in case that, as a result of the cooperators' actions, falcons inhabit their lands.

Issue 9. A number of commenters requested further clarification of the applicability of future section 7 consultations for Federal actions affecting the enrolled properties.

Response 9. Section 7 would continue to apply to Federal actions affecting the enrolled properties. However, if a participating landowner subsequently proposed an activity that required Federal approval (e.g., CWA section 404 permit) within the enrolled lands and such activity would not alter the status of the covered listed species below the original baseline conditions, as long as the activity does not diminish the baseline conditions, it is not likely that the species will be jeopardized. The "no-jeopardy" conclusion would be reached because the affected individuals of the species covered by the Agreement would be the same authorized to be taken under the Safe Harbor Agreement which the Services would already have found were "takes" that would not result in jeopardy under the issued section 10(a)(1)(A) permit. Furthermore, it will be the policy of the Services to include in the Biological Opinion "reasonable and prudent measures" necessary to minimize the expected incidental take which are identical to the terms and conditions included in the Safe Harbor Agreement and associated enhancement of survival permit issued to the participating landowner. Some commenters expressed concern regarding proposed Federal actions within the enrolled lands that are not initiated by the participating landowner (e.g., highway construction through condemnation of enrolled lands). Under these circumstances, normal section 7 compliance and procedures would apply and the necessary alternatives or measures to comply with section 7 may not be the same as those included in the Safe Harbor Agreement, regardless of whether take of covered species moves them below baseline.

Issue 10. Many commenters expressed concerns regarding the confidentiality of the information generated as a result of entering into these Agreements and the standards that this information will be subjected to before making decisions. Most commenters requested a commitment from the Services to keep all information regarding the development of Safe Harbor Agreements confidential.

Response 10. The Services recognize the landowners' concerns regarding privacy related to management actions they plan to implement on their lands and their desires to guard information regarding occupancy of listed species on their lands. However, the Act and its implementing regulations require an open and public process whenever permits are issued. Furthermore, the Services' implementation guidance and policy are to encourage an open process. Information used to make determinations for section 10 (a)(1)(A) permit issuance must be available for public review and comment. The Services are committed to ensuring an open and public approach to the implementation of this program.

Issue 11. A number of commenters felt that the draft policy should address how enrolled lands will be counted toward achieving recovery and the appropriateness of counting individuals covered under Safe Harbor Agreements toward recovery goals.

Response 11. Before entering into any Safe Harbor Agreement, the Services must make a written finding that all covered species would receive a net conservation benefit from management actions undertaken pursuant to the Agreement. Net conservation benefits contribute, directly or indirectly, to the recovery of the covered species, but this contribution toward recovery may be of varying duration and not permanent in nature, and the Services will not rely on these benefits by themselves as the basis to delist any species. Cumulatively, conservation benefits from Safe Harbor Agreements are likely to contribute to the recovery of a species over time by providing incentives to improve habitat or increase population numbers; reduce the effects of catastrophic events; provide buffers for protected areas; and establish areas for testing and developing new and innovative conservation strategies. Nevertheless, it would not be prudent to base delisting decisions solely on conservation benefits provided through Safe Harbor Agreements because of the ultimate right of a participating landowner to return their property to its original baseline condition.

Issue 12. Many commenters requested clarification and expressed concerns regarding the appropriateness of including unlisted species in these Agreements.

Response 12. Concurrently with this policy, the Services are publishing in the **Federal Register** of June 17, 1999, the final policy on Candidate Conservation Agreements with Assurances, which provides the opportunity to take action on behalf of declining species before listing becomes necessary. The Services acknowledge that situations may arise where a property owner may want to conserve numerous species, both listed and unlisted, on their property, and may want to enter into both a Safe Harbor and Candidate Conservation Agreement. The Services are considering methods to streamline and combine these two processes.

Issue 13. Many commenters stated that there was a need for monitoring standards and that the Services must ensure monitoring of Agreements.

Response 13. The Services recognize the need to develop and implement appropriate monitoring programs for the Safe Harbor Agreement to ensure that the "net conservation benefits" are being achieved. The monitoring of the implementation of the Safe Harbor Agreement will be part of the process to learn about the effectiveness of various conservation techniques and to ensure that the status of the species is not reduced below the original baseline condition. The scale and complexity of the Agreement may determine what additional monitoring is needed. However, monitoring standards are more appropriately generated in implementation guidance, which the Services are committed to developing in the near future with public review and comment. However, it is appropriate to include in the Safe Harbor policy certain guiding principles on the issue of monitoring and to provide general interim guidelines and the conceptual basis for the development of monitoring provisions.

Issue 14. Several commenters suggested that tax and financial incentives should be offered as part of the regulatory assurances included in the draft policy.

Response 14. The Services agree that tax incentives or financial payments would also be effective in furthering voluntary actions by non-Federal landowners and would help defray the costs of implementing some of the necessary management activities. However, the Services do not have the authority to provide tax incentives without an express authorization from Congress. The Services' Ten Point-Plan for the fair implementation of the Act included a recommendation to Congress on these types of incentives as a way to garner additional support for voluntary management actions to benefit listed species. In addition, in fiscal year 1999, the FWS will initiate a pilot grant program to help provide some limited funding to participating landowners for the implementation of management activities under the auspices of signed Safe Harbor Agreements.

Issue 15. A few commenters requested further clarification regarding the need for National Environmental Policy Act (NEPA) compliance in terms of implementing the Safe Harbor program.

Response 15. The Services agree that NEPA compliance is necessary for the implementation of the Safe Harbor program. However, the Services expect that Safe Harbor Agreements/permits will provide benefits to covered listed species and their habitats and would have minor or no effects on other environmental values or resources. Because these permits can result in incidental take of individuals and/or habitats that would not exist but for these Agreements, and because current baseline conditions will be maintained under these Agreements, the Services expect that activities conducted within the Safe Harbor program would qualify for a categorical exclusion. Regardless of NEPA public review provisions, the Act's regulations to implement Safe Harbor Agreements and permits impose specific public review and comment requirements. For large-scale agreements that may encompass an entire State or a significant portion of the covered listed species' range, the Services are committed to preparing the necessary NEPA documentation.

Issue 16. A number of commenters inquired about the status of the necessary implementing regulations for the National Marine Fisheries Service.

Response 16. NMFS expects to amend its section 10(a)(1)(A) regulations to accommodate Safe Harbor Agreements in the next few months. Currently, NMFS does not have any approved Safe Harbor agreements and none are under consideration. However, we welcome inquiries on possible Agreements which would further the protection of listed species under NMFS' jurisdiction. The lack of revised 10(a)(1)(A) regulations should not discourage landowners from seeking an agreement with NMFS.

Issue 17. A number of commenters inquired about the interrelation, if any, between the Safe Harbor program and other Federal habitat restoration efforts and programs (e.g., Farm Bill related programs).

Response 17. The Services recognize that it would be beneficial if other Federal wildlife habitat restoration and/or enhancement programs also were able to provide Safe Harbor type assurances. Currently, the Services are exploring streamlined processes to provide Safe Harbor type assurances to non-Federal participants of these programs, some of which are implemented by other agencies of the Federal government (e.g., Farm Bill programs run by the Natural Resources Conservation Service). The Services are exploring potential possibilities to provide these Safe Harbor type assurances to the private landowners that participate in the Federal programs as long as the affirmative conservation mandates of Federal agencies are met.

Issue 18. Several commenters requested further clarification as to the duration of the assurances provided under the Safe Harbor program.

Response 18. In general, the assurances provided under the Safe Harbor program "run with the land" as long as the permit is effective and as long as the participating landowner is implementing the agreed upon terms of the Agreement and permit. The Services intend that the assurances will continue even after the "net conservation benefit" standard has been achieved, thus encouraging the landowner to maintain the benefits of the management actions and refrain from returning the land to baseline conditions at the end of the Agreement. If subsequent owners of the land are willing to sign a new Agreement, continue necessary management actions, and maintain the baseline once the net conservation benefit has been achieved, the assurances will continue. A permit that "runs with the land" provides the participating landowner (or subsequent landowner) with the option of not immediately returning his or her property back to its original baseline conditions. Clarifying language has been included in the final policy.

However, the Services are prepared as a last resort to revoke a permit implementing a Safe Harbor Agreement where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit, although the Services would first have to exercise all possible means to remedy such a situation prior to taking such a step.

Revisions to the Draft Policy

The following represents a summary of the revisions to the proposed policy as a result of the consideration of the public comments.

(1) The Services clarified how baseline should be determined and the implications of these determinations.

(2) The Services clarified the "net conservation benefit" language to indicate that the benefits should be reasonably expected to occur during the Agreement.

(3) The final Safe Harbor policy provides a mechanism to allow landowners to terminate their voluntary Agreements before the expiration date.

(4) The final Safe Harbor policy and implementing regulations establishes specific public review periods.

(5) The Services have clarified in the final policy how Safe Harbor Agreements are to be treated in determining the recovery of a listed species covered by such Agreements.

(6) The Services included in the final policy general interim guidelines regarding monitoring provisions for Safe Harbor Agreements.

(7) The Services clarified how they will address neighboring property owners who receive Safe Harbor assurances.

Final Safe Harbor Policy

Part 1. What Is the Purpose of the Policy?

Because many endangered and threatened species occur exclusively, or to a large extent, upon privately owned property, the involvement of the private sector in the conservation and recovery of species is critical to the eventual success of these efforts. Private property owners are often willing to be partners in the conservation and recovery of listed fish, wildlife, and plant species and their habitats. However, they often may be reluctant to undertake proactive activities that increase the likelihood of use of their properties by endangered and threatened species due to their fear of future additional property-use restrictions. Safe Harbor Agreements are a means of providing incentives to property owners to restore, enhance, or maintain habitats and/or populations of listed species that result in a net conservation benefit to these species. Although such Agreements may not permanently conserve or recover such populations or their habitats, they

nevertheless offer important short-term, mid-term, and, in some cases, long-term net conservation benefits. These net conservation benefits may result from reducing fragmentation of habitats, increasing the connectivity of habitats, maintaining or increasing populations, insuring against catastrophic events, enhancing and restoring habitats, buffering protected areas, and creating areas for testing and implementing new conservation strategies.

The purpose of this policy is to ensure consistency in the development of Safe Harbor Agreements. Safe Harbor Agreements encourage proactive species' conservation efforts by private and other non-Federal property owners while providing certainty relative to future property-use restrictions, even if these efforts attract listed species onto enrolled properties or increase the numbers or distribution of listed species already present on their properties. These voluntary Agreements will be developed between either Service, or the Services jointly, and private and other non-Federal property owners. The Services will closely coordinate development of these Agreements with the appropriate State fish and wildlife or other agencies and any affected Tribal governments. Collaborative stewardship with State fish and wildlife agencies is particularly important given the partnerships that exist between the States and the Services in recovering listed species. Approved Safe Harbor Agreements will be covered under a new category of "enhancement of survival" permits issued under section 10(a)(1)(A) of the Act.

Safe Harbor Agreements may be initiated by property owners, or the Services may take the initiative on their own or in concert with other Federal or State agencies to encourage property owners to voluntarily enter into Safe Harbor Agreements for a given area, particularly when many non-Federal parcels of property are involved. The Services will work with the participating landowner to develop an "enhancement of survival" permit application and the Safe Harbor Agreement. The Services will assist landowners in identifying actions that the landowners will voluntarily undertake or forego to provide a net conservation benefit to the listed species to be covered by the Agreement.

Development of an "enhancement of survival" section 10(a)(1)(A) permit application and an adequate Safe Harbor Agreement are intricately linked. All parties to the Agreement will coordinate the development of the Agreement to ensure that the measures included in the Agreement and permit are consistent.

The Services recognize that Safe Harbor Agreements are not appropriate under all circumstances. In particular, where the land or water is occupied by a listed species and the property owner seeks immediate "incidental take" authorization, application for and development of a Habitat Conservation Plan (HCP) and issuance of an incidental take permit under section 10(a)(1)(B) is the appropriate tool. Also, an Agreement is not appropriate in situations that do not meet the net conservation benefit standards of this policy. For example, if the Services can reasonably anticipate that a proposed Agreement would only redistribute the existing population of a listed species or attract a species away from a habitat that has provided long-term protection to a habitat without such protection, the Services would not enter into an Agreement. Also, if a species is so depleted or its habitat so degraded that considerable improvement over baseline conditions is necessary to result in a net conservation benefit, an Agreement may not be appropriate. For certain aquatic, riverine, and/or riparian species it may be too difficult to reach a net conservation benefit since returning to the baseline conditions could have serious negative effects that would negate or outweigh the benefits achieved through the Agreement.

Availability of resources will also be a governing factor for the Services. While the Services expect the interest in Safe Harbor Agreements and the demand for technical assistance to property owners to increase, Safe Harbor Agreements are developed by FWS using limited funds appropriated for recovery activities. Therefore, the Services will focus on potential Agreements that provide the greatest contribution to the recovery of multiple listed species. Another factor will be whether there is sufficient information to develop sound conservation measures. The Services will work with State, Tribal, and other interested parties to develop information on species' conservation requirements that have not been adequately documented in the scientific literature.

Part 2. What Definitions Apply to This Policy?

The following definitions apply for the purposes of this policy.

"Baseline conditions" means population estimates and distribution and/or habitat characteristics and determined area of the enrolled property that sustain seasonal or permanent use by the covered species at the time the Safe Harbor Agreement is executed between the Services and the property owner.

"Covered species" means a species of fish or wildlife that is the subject of a Safe Harbor Agreement. Covered species are limited to species that are Federally listed as endangered or threatened and are included in the Safe Harbor Agreement and accompanying enhancement of survival permit.

"Enhancement of survival permit" means a permit issued under the authority of section 10(a)(1)(A) of the Act.

"Enrolled property" means all private or non-Federal property, waters, or natural resources to which the assurances in a Safe Harbor Agreement apply and on which incidental taking is authorized under the enhancement of survival permit.

"Management activities" are voluntary conservation actions to be undertaken by a property owner that the Services believe will benefit the covered species.

"Net conservation benefit" means the cumulative benefits of the management activities identified in a Safe Harbor Agreement that provide for an increase in a species' population and/or the enhancement, restoration, or maintenance of covered species' suitable habitat within the enrolled property, taking into account the length of the Agreement and any off-setting adverse effects attributable to the incidental taking allowed by the enhancement of survival permit. Net conservation benefits must be sufficient to contribute, either directly or indirectly, to the recovery of the covered species.

"Non-Federal property owner" includes, but is not limited to, private individuals, organizations, businesses, State, local, and Tribal governments, and other non-Federal entities who own the enrolled property. Federal agencies can be involved in the development of Safe Harbor Agreements, but will not receive the same assurances provided through these Agreements as non-Federal property owners.

"Safe Harbor Agreement" means an Agreement signed by the Services and a property owner and any other cooperator, such as the holder of a "programmatic" permit, if appropriate, that (a) sets forth specific management activities that the private or non-Federal property owner will voluntarily undertake or forgo that will provide a net conservation benefit to covered species and (b) provides the property owner with the Safe Harbor assurances described within the Agreement and authorized in the enhancement of survival permit.

"Safe Harbor Assurances" are assurances provided by the Services to a non-Federal property owner in the Agreement and authorized in the enhancement of survival permit for covered species. These assurances allow the property owner to alter or modify enrolled property, even if such alteration or modification results in the incidental take of a listed species to such an extent that it returned the species back to the originally agreed upon baseline conditions. Such assurances may apply to whole parcels or portions of the owner's property as designated in the Agreement. These assurances depend on the property owner complying with obligations in the Agreement and in the enhancement of survival permit.

Part 3. How Is the Cooperation and Coordination With the States and Tribes Described in the Policy?

Coordination with the appropriate State agencies and any affected Tribal governments is important to the success of Safe Harbor Agreements. Coordination allows the special local knowledge of all affected entities to be considered in the development of the Agreements. The Services will work closely with State agencies on matters involving the distribution of materials describing the Safe Harbor Agreement policies and programs, the determination of acceptable baseline conditions, and development of appropriate monitoring efforts. Because of the Services' trust responsibilities, the Services will also closely coordinate and consult with any affected Tribal government that has a treaty right to any fish or wildlife resources covered by a Safe Harbor Agreement.

Part 4. What Is Species Net Conservation Benefit From Safe Harbor Agreements?

Before entering into any Safe Harbor Agreement, the Services must make a written finding that all covered species will receive a net conservation benefit from management actions undertaken pursuant to the Agreement. The finding must clearly describe the expected net conservation benefits and how the Services reached that conclusion. Net conservation benefits must contribute, directly or indirectly, to the recovery of the covered species. This contribution toward recovery will vary and may not be permanent. The Services will not rely solely on these benefits as the basis to delist any species. A Safe Harbor Agreement does not have to provide permanent conservation for enrolled property; however, Agreements must be sufficient to provide a net conservation benefit to all covered listed species, thereby contributing to the recovery of such species over time.

Conservation benefits from Safe Harbor Agreements include, but are not limited to, reduction of habitat fragmentation rates; the maintenance, restoration, or enhancement of habitats; increase in habitat connectivity; maintenance or increase of population numbers or distribution; reduction of the effects of catastrophic events; establishment of buffers for protected areas; and establishment of areas to test and develop new and innovative conservation strategies. The Services believe a "net conservation benefit" test is necessary to justify the issuance of an enhancement of survival permit under section 10(a)(1)(A) of the Act. The contribution to the recovery of listed species by Safe Harbor Agreements must be evaluated carefully, since realized benefits from these Agreements will be affected by the duration of the Agreement, among other things.

Part 5. What Are the Standards and Development of a Safe Harbor Agreement and Permit Issuance Under Section 10(a)(1)(A) of the Act?

A non-Federal property owner may obtain an enhancement of survival permit under section 10 (a)(1()A) of the Act to incidentally take a covered species above the agreed upon baseline conditions of the Safe Harbor Agreement, if the Agreement satisfies the following requirements:

The Agreement must—

(1) Specify the species and/or habitats covered, including the habitat conditions, and identify the enrolled property covered by the Agreement;

(2) Include a full description of the agreed upon baseline conditions for each of the covered species within the enrolled property;

(3) Identify management actions that would be undertaken to accomplish the expected net conservation benefits to the species, where and when the benefits would be achieved, and the agreed upon time frames these management actions will remain in effect to achieve the anticipated net conservation benefits;

(4) Describe any incidental take associated with the management actions during the term of the Agreement;

(5) If appropriate, incorporate a notification requirement to provide the Services or appropriate State agencies with a reasonable opportunity to rescue individuals of a covered species before any authorized incidental taking occurs;

(6) Describe what activities would be expected to return the enrolled property to baseline conditions and the extent of incidental take that would likely result from such activities;

(7) Satisfy other requirements of section 10 of the Act; and

(8) Identify a schedule for monitoring and the responsible parties who will monitor maintenance of baseline conditions, implementation of terms and conditions of the Agreement, and any incidental take as authorized in the permit.

The Services will consult under section 7 of the Act on proposed issuance of the enhancement of survival permit.

Part 6. What Are Baseline Conditions?

The Services, the property owner, and any other cooperator(s) must accurately describe the baseline conditions of the property and species covered by the Safe Harbor Agreement. The baseline conditions must reflect the known biological and habitat characteristics that support existing levels of use of the property by species covered in the Agreement. However, for circumstances beyond the control of the property owner (e.g., loss of nest trees due to storm damage), the parties to the Agreement may revise the baseline conditions to reflect the new circumstances and may develop a new baseline upon which all parties agree.

(A) *How do you Determine Baseline Conditions?* This policy requires a full description of baseline conditions for any species covered in an Agreement (see Part 5 above). The Services, or appropriate cooperators, with the concurrence of the participating property owner, will describe the baseline conditions for the enrolled property in terms appropriate for the covered species such as number and location of individual animals, if determinable, existing habitat areas or characteristics that support the species covered at the time of the Agreement, and other appropriate attributes. On-site inspections, maps, aerial photographs, remote sensing, or other similar means can help determine baseline conditions. To the extent determinable, the parties to the Agreement must identify and agree on the degree to which the enrolled property is inhabited, permanently or seasonally, by the covered species. When either Service does not directly determine the baseline conditions, they must review and concur with the determination before entering into an Agreement, and, if necessary, conduct on-site visits. Formulation of baseline conditions can incorporate information provided by the

property owner and any other appropriate agency or species experts, as appropriate. For species that are extremely difficult to survey and quantify, an estimate and an indirect measure (e.g., number of suitable acres of habitat of the species) is acceptable and should be based on the best available techniques and information. The Services will develop the estimate, and hence baseline conditions, following a protocol agreed upon by all parties to the Agreement. The Services will use population estimates, where available, to determine the degree of occupancy of the enrolled lands by covered species. However, in most cases, the baseline conditions will be described as the amount and condition of habitat in the enrolled lands and not the number of individuals of covered species, since the number of individuals could fluctuate over time. For example, if population numbers did vary naturally during the term of an Agreement, and the baseline was described as number of individual animals, the landowner could be found to be in non-compliance with an Agreement when a return to baseline is desired simply because of natural population fluctuations and not as a result of his or her own actions. In cases where no seasonal or permanent occupation by covered listed species is documented, the Services will determine baseline conditions to be zero, unless the participating landowner agrees to a higher baseline.

(B) *Are Plants Covered by the Safe Harbor Policy?* The Act's "take" prohibitions generally do not apply to listed plant species on private property. Therefore, the incidental take assurances provided in this policy are legally not necessary for listed plant species. However, the FWS strongly encourages and often enters into Agreements with non-Federal property owners to restore and enhance habitats for listed plants.

In addition, the Services must review the effects of the Safe Harbor permit on listed plants under section 7 of the Act, even when those plants are found on private property. In approving an enhancement of survival permit and entering into a Safe Harbor Agreement, the Services must confirm under section 7 that the Agreement is not likely to "jeopardize the continued existence" of any listed plants. In the interest of conserving listed plants and complying with their responsibilities under section 7, the Services will encourage a property owner to voluntarily assist the Services in restoring or enhancing listed plant habitats present within the enrolled property.

(C) *What are the Considerations for Future Section 7 and Assurances?* In reviewing a proposed Safe Harbor Agreement under section 7, the Services must determine whether anticipated future property use changes within the enrolled property and incidental take consistent with the established baseline conditions will jeopardize listed species of fish and wildlife or plants, or destroy or adversely modify designated critical habitat. If a future action on the enrolled property with a Federal nexus prompts the need for additional section 7 review, and take of the listed species that does not move them below baseline conditions is likely, the Services will issue a non-jeopardy biological opinion and incidental take statement that is consistent with the Safe Harbor Agreement as long as the activity was initiated by the participating landowner (e.g., the need for a Clean Water Act section 404 permit). In particular, the Services will provide the Federal agency with reasonable and prudent measures to minimize incidental take that require only implementation of the terms and conditions provided to the participating landowner in the Safe Harbor Agreement and associated 10(a)(1)(A) permit. This approach is warranted because the effects of any incidental take consistent with the established baseline conditions would previously have been considered during the Services' intra-agency section 7 review of the proposed Agreement. However, if the future action was not initiated by the participating landowner's, (e.g., condemnation of lands for a highway project), the action agency may receive a Biological Opinion with reasonable and prudent alternatives or measures that are different from those included in the affected landowner's Safe Harbor Agreement/permit.

Part 7. What Are Assurances to Property Owners?

A property owner who enters into an Agreement and later wishes to return enrolled property to the baseline conditions needs to demonstrate that the agreed upon baseline conditions were maintained and that activities identified in the Agreement as necessary to achieve the net conservation benefit were carried out for the duration of the Agreement. If the property owner carried out the management actions and complied with the permit and the Agreement conditions, the property owner would be authorized to use the property in any manner that does not result in moving the enrolled property to below baseline conditions. These assurances run with the enrolled lands and are valid for as long as the participating landowner is complying with the Safe Harbor Agreement and associated permit. An Agreement may be of a relatively short duration if the management actions and net conservation benefits can be achieved within, for example, 10 years. However, a 10(a)(1)(A) permit may extend beyond the life of an Agreement since the assurances will run with the land, not just the length of the Agreement. Because the assurances run with the enrolled lands for as long as the permit is valid, the participating landowner has the opportunity to sustain covered species within the enrolled lands even after the expiration of the Safe Harbor Agreement and defer take, thus extending the temporal extent of the "net conservation benefits" achieved under the Agreement. When land subject to a Safe Harbor Agreement is transferred, the new landowners will, at their option, be able to receive assurances by signing a new Agreement and receiving a new permit.

The Services are prepared as a last resort to revoke a permit implementing a Safe Harbor Agreement where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit. Prior to taking such a step, however, the Services would first have to exercise all possible means to remedy such a situation.

Part 8. How Does the Services Manage Occupation by Non-Covered or Newly Listed Species?

The possibility exists that after an Agreement is signed and an enhancement of survival permit is issued, a listed species not addressed in the Agreement may occupy enrolled property. If the Services conclude that the species is present as a direct result of the property owner's conservation actions taken under the Agreement, the Services will:

(1) At the request of the property owner, amend the Agreement to reflect the changed circumstances and describe the baseline conditions for the added species, as appropriate; and

(2) Review and revise the permit, as applicable, to address the presence of additional listed species on enrolled property.

The Services will not extend assurances in the permit to a non-covered listed species if the species was specifically excluded from the original Agreement at the participating property owner's request, or if its presence is a result of activities not directly attributable to the property owner's management activities. However, if the parties to the Safe Harbor Agreement agree that a listed species that was not in the original Agreement should be included, then addenda to the Agreement and permit are necessary. If it is appropriate to add species to the Agreement, the Services must determine enhancement or maintenance actions that are specific to the newly covered species, baseline conditions, and a net conservation benefit to that species.

Any change to a Safe Harbor Agreement or amendment to a section 10 (a)(1)(A) permit to include a non-covered species would be subject to the same review process (e.g., section 7 and NEPA review) and issuance criteria (standards) as the original Safe Harbor Agreement and permit.

Part 9. Is Monitoring Required?

The Services will ensure that adequate monitoring is included in each Safe Harbor Agreement/permit. The Services are committed to providing as much technical assistance as possible in the development of acceptable monitoring programs. In addition, the public will have an opportunity to review the monitoring plan during the public comment period on the issuance of the permit. Monitoring programs must be agreed upon before finalization of the Agreements and issuance of the permits. The monitoring component of these Agreements ensure that the participating landowner is implementing the provisions of these Agreements. Additionally, these monitoring programs will provide valuable program implementation information for the Services to evaluate the overall program and ensure its continued evolution toward a more effective and efficient program. Larger scale or complex Safe Harbor Agreements will require more in depth and thorough monitoring programs.

Part 10. How Does the Services Comply With National Environmental Policy Act?

The National Environmental Policy Act of 1969 (NEPA), as amended, and the regulations of the Council on Environmental Quality (CEQ) require all Federal agencies to examine the environmental impact of their actions, to analyze a full range of alternatives, and to use public participation in the planning and implementation of their actions. The purpose of the NEPA process is to help Federal agencies make better decisions and to ensure that those decisions are based on an understanding of environmental consequences. Federal agencies can satisfy NEPA requirements by either a Categorical Exclusion, Environmental Assessment (EA), or Environmental Impact Statement (EIS), depending on the effects of their proposed action.

The Services will review each Safe Harbor Agreement and associated permit action for any significant environmental, economic, social, historical, or cultural impact, or for significant controversy (516 Departmental Manual 2, Appendix 2 for FWS and NOAA's Environmental Review Procedures and NOAA Administrative Order Series 216–6). If the Services conclude that a significant impact could occur, the issuance of a permit would require preparation of an EA or EIS, although the Services believe that the need for an EIS will be rare. General guidance on when the Services exclude an action categorically and when and how to prepare an EA or EIS is found in the FWS's Administrative Manual (30 AM 3) and NOAA Administrative Order Series 216–6. If a Safe Harbor Agreement and associated permit are not expected to individually or cumulatively have a significant impact on the quality of the human environment or other natural resources, the Agreement/permit may be categorically excluded. The Services are committed to develop NEPA documentation for complex or large scale (e.g., statewide) Safe Harbor Agreement/permits to ensure effective environmental review of such significant actions.

Part 11. Can Agreements Be Transferred?

If a property owner who is party to a Safe Harbor Agreement transfers ownership of the enrolled property to a non-Federal entity, the Services will regard the new owner as having the same rights and obligations with respect to the enrolled property as the original property owner, if the new property owner agrees to become a party to the original Agreement and enhancement of survival permit. Actions taken by the new participating property owner that result in the incidental take of species covered by the Agreement would be authorized, so long as the new property owner complies with the management actions identified in the Agreement and maintains the baseline conditions. However, the new property owner would not be responsible for any provisions of the Agreement and would not receive any assurances relative to section 9 restrictions, unless the new owner agrees to become party to the Agreement and permit.

All Safe Harbor Agreements will commit the participating property owner to notify the Services before any transfer of ownership of any property subject to the Agreement. This will allow the Services to contact the new property owner to explain the prior Safe Harbor Agreement and to determine whether the new property owner agrees to continue the original Agreement or desires to enter a new Agreement. If the new property owner agrees to continue an existing Safe Harbor Agreement, the Services will honor the original baseline conditions for the enrolled property under consideration.

Part 12. Do Property Owners Retain Their Discretion?

Nothing in this policy prevents a participating property owner from implementing management actions not described in the Agreement as long as such actions maintain the original baseline conditions and do not affect the beneficial actions set forth in the Agreement. The Services will provide technical advice, to the maximum extent practicable, to the property owner, when requested. Additionally, a participating landowner that, for circumstances out of the landowner's control, needs to terminate the voluntary management actions that he or she agreed upon under the Safe Harbor Agreement, can terminate the Agreement prior to its expiration date and return the land to baseline conditions even if the expected "net conservation benefits" have not been realized. For example, if, due to unanticipated circumstances, the participating landowner needs to generate income to deal with a family emergency, the landowner has the option of terminating the Agreement with the Services to use his or her land, water, and/or natural resources to deal with the emergency.

Part 13. What Is the Discretion of All Parties?

Nothing in this policy compels any party to enter into a Safe Harbor Agreement. Entering a Safe Harbor Agreement is purely voluntary for non-Federal entities and the Services, and presumes that the Agreement will serve the interests of all affected parties. An Agreement does not otherwise create or waive any legal rights of any party to the Agreement.

Part 14. How Do the Services Manage Neighboring Landowners?

The potential effects and/or implications of a Safe Harbor Agreement on neighboring properties may be an important consideration in deciding whether to enter into a Safe Harbor Agreement. In some cases, actions carried out voluntarily by a landowner under a Safe Harbor Agreement may

result in listed species occupying adjacent properties.

The Services will use the maximum flexibility allowed under the Act in addressing neighboring properties under Safe Harbor Agreements and associated take authorizations, including, but not limited to, granting of incidental take authority to the owners of neighboring lands, where occupation of neighboring lands is expected as a result of the Agreement. Neighboring landowners would only be required to agree to such conditions as would be necessary to ensure that the Agreement does not circumvent those obligations or requirements, if any, under section 9 of the Act that were applicable at the time the Agreement was signed. Implications to neighboring landowners with non-enrolled lands will be determined on a case-by-case-basis, and the Services will make every effort to include them as a signatory party to the Agreement and enhancement of survival permit when the occupation of their lands by covered species is expected. For neighbors to receive the Safe Harbor Assurances, they would sign an Agreement with the following requirements: (1) Allow an assessment/establishment of the baseline on their properties with concurrence by all parties, (2) notify the Services prior to significantly modifying the habitat, and (3) allow the Services access to capture and translocate individuals of the covered species on their property that would be expected to be adversely affected by those habitat modifications. To facilitate neighboring landowner's participation, the Services will encourage them to become signatory parties to these Agreements, where appropriate.

Part 15. Will There Be Public Review?

The Services will encourage property owners to involve the public in the development of an Agreement. However, public participation must be agreed to by the property owner. The Services will make every Safe Harbor Agreement available for public review and comment as part of the evaluation process for issuance of the associated enhancement of survival permit. This comment period will generally be 30 days; with the comment period for large or programmatic Agreements 60 days.

Part 16. What Is the Scope of the Policy?

This policy applies to all Federally-listed species of fish and wildlife administered by the Services, as provided in the Act and its implementing regulations.

Dated: March 22, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

Dated June 10, 1999.

Penelope D. Dalton,

Assistant Administrator of Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

Announcement of Final Policy for Candidate Conservation Agreements with Assurances

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of final policy.

SUMMARY: The Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (jointly the Services) announce a joint final Policy for Candidate Conservation Agreements (Agreements) with Assurances under the Endangered Species Act of 1973, as amended (Act). This policy offers assurances as an incentive for non-Federal property owners to implement conservation measures for species that are proposed for listing under the Act as threatened or endangered, species that are candidates for listing, and species that are likely to become candidates or proposed in the near future. Published concurrently in this **Federal Register** are the FWS's regulations necessary to implement this policy.

DATES: This policy is effective July 19, 1999.

ADDRESSES: Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Washington, D.C. 20240 (Telephone 703/358–2171, Facsimile 703/358–1735); or Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910 (Telephone 301/713–1401, Facsimile 301/713–0376).

FOR FURTHER INFORMATION CONTACT: Richard Hannan, Acting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (Telephone 703/358–2171) or Marta Nammack, Endangered Species Division, National Marine Fisheries Service (Telephone 301/713–1401).

SUPPLEMENTARY INFORMATION:

Background

On June 12, 1997, the Services issued a draft policy (62 FR 32183), and the FWS issued proposed regulations to implement the policy (62 FR 32189). This policy is intended to facilitate the conservation of proposed and candidate species, and species likely to become candidates in the near future by giving citizens, States, local governments, Tribes, businesses, organizations, and other non-Federal property owners incentives to implement conservation measures for declining species by providing certainty with regard to land, water, or resource use restrictions that might be imposed should the species later become listed as threatened or endangered under the Act. Under the policy, non-Federal property owners, who enter into a Candidate Conservation Agreement with assurances that commit them to implement voluntary conservation measures for proposed or candidate species, or species likely to become candidates or proposed in the near future, will receive assurances from the Services that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the species become listed in the future.

Much of the land containing the nation's existing and potential fish and wildlife habitat is owned by private citizens, States, local governments, Native American Tribal governments, businesses, organizations, and other non-Federal entities. The future of many declining species is dependent, wholly or in part, on conservation efforts on these non-Federal lands. Such conservation efforts are most effective and efficient when initiated early. Early conservation efforts for proposed and candidate species, and species likely to become candidates or proposed in the near future can, in some cases, preclude or remove any need to list these species as threatened or endangered under the Act.

By precluding or removing any need to list a species through early conservation efforts, property owners can maintain land use and development flexibility. In addition, initiating or expanding conservation efforts before a species and its habitat are critically imperiled increases the likelihood that simpler, more cost-effective conservation options will still be available and that conservation will ultimately be successful.

Early conservation efforts for declining species can be greatly expanded through a collaborative stewardship approach. A collaborative approach fosters cooperation and facilitates the exchange of ideas among private citizens, Federal agencies, States, local governments, Tribes, businesses, and organizations by involving all stakeholders in the conservation planning process.

Candidate Conservation Agreements without assurances have been effective mechanisms for conserving declining species, particularly candidate species, and have, in some instances, precluded or removed any need to list some species. Development of Agreements without assurances will continue to be a high priority. However, most of these Agreements have been between the Services and other Federal agencies since non-Federal property owners have had little incentive to enter such Agreements. Many non-Federal property owners are willing to manage their lands to benefit fish, wildlife, and plants, especially these species that are declining. However, some of these property owners are reluctant to implement conservation measures for declining species because of possible future land, water, or resource use restrictions that may result from the Act's section 9 "take" prohibitions if their conservation efforts cause a species to colonize their lands or increase in numbers and the species is subsequently listed as threatened or endangered. This policy is designed to provide these property owners with the necessary assurances to remove these concerns and encourage them to implement conservation measures for these species.

Non-Federal property owners, who through a Candidate Conservation Agreement with assurances commit to implement conservation measures for a proposed or candidate species or a species likely to become a candidate or proposed in the near future, will receive assurances from the Services that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the species become listed in the future. These assurances will be provided in the property owner's Agreement and in an associated enhancement of survival permit issued under section 10(a)(1)(A) of the Act.

The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. "Other necessary properties" are other properties on which conservation measures would have to be implemented in order to preclude or remove any need to list the covered species.

The kinds of conservation measures specified in an Agreement with assurances will depend on the types, amounts, and conditions of, and need for, the habitats existing on the property and on other biological factors. Different kinds of conservation measures may benefit different life stages or serve to fulfill different life history requirements of the covered species. The amount of benefit provided by an Agreement with assurances will depend on many factors, particularly the size of the area on which conservation measures are implemented and the degree of conservation benefit possible (e.g., through habitat restoration or reduction of take). For example, an Agreement with assurances for a property with a small area of severely degraded habitat could be designed to achieve greater benefits than one for a property with a large amount of slightly degraded habitat.

Because Candidate Conservation Agreements with assurances will be designed with the goal of precluding or removing any need to list the covered species, these Agreements can have significance in the Services' listing decisions. However, the determination of whether these Agreements do in fact preclude or remove any need to list the covered species will be made on a case-by-case basis in accordance with the listing criteria and procedures under section 4 of the Act.

Collaborative stewardship with State and Tribal fish and wildlife agencies is particularly important in the development of Candidate Conservation Agreements, given the statutory role of these entities under the Act and their traditional conservation responsibilities and authorities for resident species. The Services recognize that, under some circumstances, a State, Tribal, or local agency or other entity may be able to work more promptly, effectively, and efficiently with individual property owners toward conservation of declining species. Under this policy, the Services can enter into an "umbrella" or programmatic Agreement with an appropriate State, Tribal, or local agency or other entity. Such an Agreement and its associated enhancement of survival permit would specify the assurances and take allowances that could be distributed by the participating State, Tribal, or local agency or other entity to individual property owners who choose to participate under the umbrella Agreement. Appropriate agencies for such programmatic Agreements include State or Tribal fish and wildlife agencies and State, Tribal, or local land management agencies. The State, Tribal, or local agency or other entity would be the permittee and would issue Certificates of Inclusion (also called Participation Certificates) to private property owners who satisfy the terms and conditions of the State, Tribal, or local agency's or other entity's programmatic Agreement and its associated "enhancement of survival" permit.

The Services have a long history of developing Candidate Conservation Agreements with Federal agencies, and these efforts will continue to be a high priority. However, because subsections 7(a)(1) and (a)(2) of the Act obligate Federal agencies to affirmatively conserve listed species, an obligation not imposed upon non-Federal property owners, the Services will not provide assurances to other Federal agencies through these Agreements.

In 1994, the FWS prepared Draft Candidate Species Guidance, which underwent public review and comment (59 FR 65780, December 21, 1994). However, it did not address the development of Candidate Conservation Agreements with assurances for non-Federal property owners. This final policy will be incorporated into the FWS's final guidance on candidate species conservation.

A final rule of the FWS's regulations necessary to implement this policy is published concurrently in this issue of the **Federal Register**. That final rule also includes the FWS's regulations necessary to implement the Safe Harbor policy (also published concurrently in this issue of the **Federal Register**). The NMFS will publish proposed regulations to implement these policies at a later time.

Summary of Comments Received

The Services received more than 280 letters of comment on the draft policy from Federal and State agencies, businesses and corporations, conservation groups, religious organizations, trade associations, private organizations, and individuals. The Services considered all of the information and recommendations received from all interested parties and made changes to the draft policy where appropriate. A few commenters raised issues related to the FWS's draft implementing regulations, and the FWS

has addressed these issues where appropriate in its final implementing regulations also published in today's **Federal Register**. The following is a summary of the comments on the draft policy and the Services' responses.

Issue 1. Many commenters stated that the policy is inconsistent with provisions of section 7(a)(1) of the Act that requires all Federal agencies to use their authorities to conserve endangered and threatened species.

Response 1. The Services believe that the policy is consistent with provisions of section 7(a)(1) of the Act and enables the Services to further satisfy the intent of this section of the Act. Entering into an Agreement with assurances is completely voluntary for the Services, as it is for property owners. The Services will enter into an Agreement with assurances only if we have determined that the conservation needs for covered species on the participating property owner's property are adequately addressed in the Agreement.

By entering into a Candidate Conservation Agreement with assurances, a property owner can obtain certainty that no additional conservation measures will be required and no additional land, water, and resource use restrictions will be imposed if the species is listed in the future. If they cannot obtain such certainty, some property owners might choose to eliminate or reduce the species' habitat before listing occurs. An Agreement with assurances thus can further the conservation of the covered species because it can prevent such losses of existing habitat.

Issue 2. Many commenters believed that the policy is inconsistent with provisions of section 7(a)(2) of the Act because it precludes reinitiation of section 7 consultation on issuance of an enhancement of survival permit. Also, many commenters believed that the Services cannot guarantee that funding will be available to pay for additional conservation measures needed to address unanticipated changes in circumstances.

Response 2. The Services believe that the policy is consistent with section 7(a)(2) of the Act. As applied to implementation of this policy, section 7(a)(2) requires the Services to conduct a formal intra-Service consultation on the issuance of an enhancement of survival permit. The purpose of any consultation is to ensure that any action authorized, funded, or carried out by a Federal agency, including the issuance of an enhancement of survival permit by the Services, is not likely to jeopardize the continued existence of any listed or proposed species or result in the destruction or adverse modification of designated or proposed critical habitat of such species. Since the standard for Candidate Conservation Agreements with assurances is the preclusion or removal of the need to list, the Services believe that it is highly unlikely that the conservation measures prescribed in an Agreement or any incidental take authorized by the associated enhancement of survival permit would later be discovered to adversely affect the covered species or any listed species causing a need to reinitiate intra-Service consultation.

If unanticipated changes in circumstances occur that might warrant modifications to the agreed upon conservation measures, the Services would work with the property owner to seek mutually agreed upon adjustments to those conservation measures that enhance their effectiveness for the covered species. Thus, the Services and property owners could agree to substitute the original agreed upon conservation measures for new ones that would be no more costly but more effective in addressing the changed circumstances. In this fashion, the conservation goal for that property owner's property could still be maintained.

The Services will not enter into an Agreement unless (1) the threats to and the requirements of the covered species are adequately understood so that the Services can determine that the agreed upon conservation measures will be beneficial to the covered species; and the effects of the agreed upon conservation measures are adequately understood so that the Services can determine that they will not adversely affect listed species or adversely modify critical habitat or (2) any information gaps relating to the requirements of the covered species or the effects of the conservation measures on the covered species or listed species can be adequately addressed by incorporating adaptive management principles into the Agreement. The Services believe that, in many Agreements, the conservation measures prescribed for the covered species will also benefit other species, including listed ones.

Moreover, the Services have significant resources and conservation authorities that can be used to address the needs of species covered by Agreements with assurances when unanticipated changes in circumstances cause a need for additional conservation measures. Some funding for additional conservation measures may come from existing appropriations for either candidate conservation or recovery, depending on whether the species is listed. When necessary, the Services will work with other Federal, State, and local agencies, Tribal governments, conservation groups, and private entities to implement additional conservation measures for the species.

Finally, the Services are prepared as a last resort to revoke a permit implementing a Candidate Conservation Agreement with assurances where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit. Prior to taking such a step, however, the Services would first have to exercise all possible means to remedy such a situation.

Issue 3. Many commenters believed that the policy precludes adaptive management.

Response 3. The Services encourage the inclusion of the principles of adaptive management into Candidate Conservation Agreements with assurances and associated enhancement of survival permits when necessary, especially when new management techniques are being tested. Adaptive management is a process of monitoring the implementation of conservation measures, then adjusting future conservation measures according to what was learned. Adaptive management can also include testing of alternative conservation measures, monitoring the results, and then choosing the most effective and efficient measures for long-term implementation. Inclusion of adaptive management in Agreements allows for up-front, mutually agreed upon changes to conservation measures in response to changing conditions or new information.

By incorporating adaptive management into Agreements with assurances and associated enhancement of survival permits, the Services believe that these Agreements will have sufficient flexibility to enable the Services and property owners to address reasonably foreseeable changes in circumstances or new information.

Issue 4. Many commenters stated that Candidate Conservation Agreements with assurances will undermine recovery of the covered species once it is listed.

Response 4. The Services believe that this comment reflects confusion regarding the standard required by the policy in all Agreements with assurances. The policy requires the Services to determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. Since this is essentially a recovery standard, each property owner with an Agreement with assurances would contribute to precluding or removing any need to list the covered species. Therefore, if the covered species became listed, these property owners would already be implementing conservation measures that address the covered species' conservation needs on their properties.

Issue 5. Many commenters believed that the draft policy limited public participation. Some stated that the draft policy was unclear as to when the Services will solicit comments on Candidate Conservation Agreements with assurances, and some commenters felt that the public should be allowed to participate in the development of all Agreements. In addition, many commenters said that Agreements should be subject to citizen enforcement.

Response 5. The Services have changed the policy to clarify when the public will have the opportunity to review and comment on Agreements with assurances. The Services will make every Agreement with assurances available for public review and comment as part of the evaluation process for issuance of the enhancement of survival permit associated with these Agreements. This comment period will generally be 30 days; the comment period for large-scale or programmatic Agreements that may affect other natural resources will be at least 60 days.

The development of an Agreement with assurances consists primarily of the preparation of a proposal by a non-Federal property owner to modify voluntarily their current land management practices so as to restore, enhance, or preserve habitat or to implement voluntarily other conservation measures for declining species. Because development of such a proposal is purely voluntary and involves private land use decisions, public participation in the development of an Agreement with assurances will only be provided when agreed to by the property owner.

However, the Services will encourage property owners to allow for public participation during the development of an Agreement with assurances, particularly if non-Federal public agencies (e.g., State fish and wildlife agencies) are involved. The Services also will encourage State or local agencies or other entities developing "umbrella" or programmatic Agreements, which would specify the assurances and take allowances that could be further delegated by the State or local agency or other entity to individual participating non-Federal property owners, to provide extensive opportunities for public involvement during the development process.

The public will also be given other opportunities to comment on Agreements in cases that are related to a listing determination. When one or more additional Agreements are completed after the covered species is proposed for listing, and the Services determine, based upon a preliminary evaluation, that all completed Agreements could potentially justify withdrawal of the proposed listing, the comment period for the proposed listing will be extended or reopened to allow for public comments on the Agreements' adequacy in removing threats to the species. The Services believe a preliminary evaluation of the likelihood that the completed Agreements remove the need to list is necessary in order to justify constricting the available time to reach a final determination by extending or reopening the comment period on a proposed rule.

The provisions of the Act providing for citizen suits will be neither enhanced nor diminished in any way by the issuance of this policy because it will be implemented through the enhancement of survival permitting process recognized under the Act. To the extent that the current Act allows for citizen lawsuits to challenge the issuance of a given section 10(a) permit, nothing in this policy would modify or alter that opportunity for possible judicial review.

Issue 6. Many commenters stated that all Candidate Conservation Agreements with assurances should undergo independent scientific review.

Response 6. In determining the need for independent scientific review, the Services will consider the complexity of the Agreement, the size of the geographic area covered, the number of species covered, the presence of data gaps or scientific uncertainties, and other factors. Scientific experts will often be asked to assist with development of conservation measures and/or to review a draft Agreement. When scientific experts are not specifically solicited to provide comments, such individuals can submit comments during the general public review and comment periods (see Response 5 above). In developing Agreements with assurances, the Services may use existing State conservation plans or strategies that have undergone scientific review, or the Services may use other scientific information published in peer reviewed journals.

Issue 7. Many commenters questioned the authority for and the availability of adequate funding for the implementation of this policy.

Response 7. The Services believe that sections 2, 7, and 10 of the Act allow the implementation of this policy. For example, section 2 states that "encouraging the States and other interested parties through Federal financial assistance and a system of incentives, to develop and maintain conservation programs * * * is a key * * * to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants." The Services believe that establishing a program for the development of Candidate Conservation Agreements with assurances provides an excellent incentive to encourage conservation of the Nation's fish and wildlife. Section 7 requires the Services to review programs they administer and to "utilize such programs in furtherance of the purposes of this Act." The Services believe that, in establishing this policy, they are utilizing their Candidate Conservation Programs to further the conservation of the Nation's fish and wildlife. Of particular relevance is section 10(a)(1) which authorizes the issuance of permits to "enhance the survival" of a listed species. From the perspective of the Services, a well designed voluntary Candidate Conservation Agreement is the epitome of conservation efforts designed to "enhance the survival" of the covered species.

Funding is available to implement this policy through annual appropriations. The Services are currently working on Candidate Conservation Agreements without assurances, and with finalization of this policy the Services will use available resources to develop Agreements with assurances as well. The FWS is currently implementing over 40 conservation agreements (without assurances) and actions benefitting over 200 species. Several of these conservation agreements and actions have successfully precluded or removed threats so that listing by the Services was avoided.

The Services will prioritize the development of Agreements with assurances because resources to develop Agreements are limited. Prioritization will help the Services focus on those Agreements that are expected to provide the greatest conservation benefits.

Issue 8. Many commenters stated that the policy should require that all

Candidate Conservation Agreements with assurances include monitoring provisions.

Response 8. The Services agree that monitoring is necessary to ensure that the conservation measures specified in an Agreement with assurances are being implemented and to learn about the effectiveness of the agreed upon conservation measures. In particular, when adaptive management principles are included in an Agreement, monitoring is especially helpful for obtaining the information needed to measure the effectiveness of the conservation program and detect changes in conditions. For these reasons, monitoring will be a component of most Agreements with assurances. For many of these Agreements, monitoring can be conducted by the Services or the State and, in many cases, may involve only a brief site inspection and appropriate documentation.

Issue 9. Many commenters believed that Candidate Conservation Agreements with assurances will wrongly be used to replace recovery plans or warranted listing determinations or to delay the listing process.

Response 9. The Services do not intend for Agreements with assurances to replace recovery plans. In fact, in order to facilitate the development of Agreements with individual property owners, the Services may develop a conservation outline, strategy, or plan to determine the measures needed to address the conservation needs of the covered species. If the covered species is later listed, the conservation strategy or plan may form the basis for part or all of a recovery plan.

The Services also do not intend to use Agreements with assurances to justify a determination not to list the covered species when listing is in fact warranted. As described in Response 5, when an Agreement with assurances is completed after the covered species is proposed for listing, and when the Services determine, based upon a preliminary evaluation, that the Agreement could potentially justify withdrawal of the proposed rule, the comment period for the proposed rule will be extended or reopened to allow for public comments on the Agreement's adequacy in removing threats to the species.

However, the Act requires the Services to issue a final determination within 1 year of issuing a proposed rule to list. The FWS is working diligently to remove the backlog of listing actions that accrued following the listing moratorium in 1995 and 1996, and the FWS expects to soon be able to again make final listing determinations within the 1-year time frame. The Services will not extend this time frame in order to allow for the completion and/or consideration of an Agreement with assurances. The Services believe a preliminary evaluation of an Agreement is necessary in order to justify constricting the available time to reach a final determination by extending or reopening the comment period on a proposed rule.

Issue 10. Several commenters stated that the policy should require incorporation of avoidance and minimization of take in all Candidate Conservation Agreements with assurances.

Response 10. The Services believe that avoidance and minimization of take is an inherent consideration in the development of any Agreement with assurances. Property owners whose current land, water, or resource use results in take of proposed or candidate species, or species likely to become candidates or proposed in the near future, are a primary focus of this policy. For some Agreements, avoidance and/or minimization of take may be the primary objective. A property owner entering into an Agreement with assurances can be assured that, if the covered species is listed in the future, no additional land, water, or resource use restrictions will be imposed above and beyond the conservation measures set forth in the Agreement. After take is eliminated or reduced, land, water, or resource uses can often provide significant benefits to the covered species. For example, a property owner could eliminate or reduce take of a declining grassland bird species that nests on his property by agreeing to delay mowing until after the nesting season. The species would benefit from successful reproduction, and the property owner would benefit from being able to maintain his current land use even if the species is later listed.

If a property owner exceeds the conservation goal established for his property as specified in an Agreement with assurances, the property owner may choose to reduce the level of conservation benefits he/she has provided to the covered species to a lower level, but one that is still at or above the conservation goal specified in the Agreement. The property owner's enhancement of survival permit would authorize incidental take associated with this reduction of conservation benefits back to the agreed upon level. Prior to issuing the enhancement of survival permit, the Services must determine that the conservation goal for the property can be maintained with the level of take authorized by the permit. The policy also requires that the Agreement include a notification requirement, if appropriate, to provide the Services or State agencies with a reasonable opportunity to rescue and translocate individuals of a covered species before any authorized take occurs. The Services believe that these provisions will ensure that any authorized take will not prevent a property owner from achieving the conservation goal established for his property and will minimize the amount of authorized take that occurs.

Issue 11. Several commenters believed that the policy should list the minimum conditions that must be satisfied before any Candidate Conservation Agreements with assurances are pursued.

Response 11. The Services agree with this comment, and the final policy lists the general requirements that all Agreements with assurances and associated enhancement of survival permits should satisfy. In addition, FWS's implementing regulations, which are published in today's **Federal Register**, also list the requirements that must be met before the Services will issue an enhancement of survival permit.

In addition, the FWS's draft Candidate Conservation Handbook includes a list of conditions under which Candidate Conservation Agreements would most likely be successful in eliminating threats and precluding or removing any need to list the covered species. This list would also apply to Agreements with assurances. The Services believe that such a list is more appropriately included in implementation guidance such as the FWS's Candidate Conservation Handbook.

Issue 12. Several commenters stated that the policy should not apply to candidate and proposed species because determinations have already been made that these species should be listed, and efforts to develop Candidate Conservation Agreements with assurances would only delay or forego the necessary protection that could be afforded by listing.

Response 12. The Services do not believe that Agreements with assurances will delay or forego any actions necessary to achieve conservation of the covered species. In fact, these Agreements will help to garner the necessary support from non-Federal property owners in achieving conservation through voluntary implementation of conservation measures. Additionally, the Services believe that, for some candidate and proposed species, it is possible to complete the Agreements with assurances necessary to remove the need to list before a final listing determination could be made. These candidate and proposed species may include (1) species for which relatively few, non-complex Agreements are necessary, (2) species for which development of Agreements begins prior to the species becoming a candidate or proposed species, and (3) candidate species that have a low listing priority. Therefore, the Services believe that including candidate and proposed species in this policy is appropriate. However, for the Services to justify withdrawal of a proposed rule to list, the parties to all Agreements with assurances for the covered species must have the authority, funding, and commitment to implement the Agreements.

As of April 30, 1999, there were 154 FWS candidate species awaiting preparation of proposed rules and 69 FWS proposed species awaiting preparation of final rules. Final listing of many of these species, as well as many of the species that will be added as candidates or proposed species in the future, will require considerable time. The FWS believes that initiating early conservation efforts, including the development of Agreements with assurances, for some of these species will significantly increase the likelihood that conservation will be successful.

Issue 13. Several commenters asked how the conservation goal for each property owner's property can be determined without preparing a recovery plan.

Response 13. The Services believe it may be appropriate in some cases to prepare a conservation outline, strategy, or plan for a species before an Agreement with assurances is developed. In some cases, a conservation strategy or plan may already have been developed by the Services, another Federal agency, and/or a State agency. These strategies or plans may already have identified measures that should be implemented to conserve the covered species. In these cases, development of Agreements with assurances can be initiated right away.

Issue 14. Some commenters argued that a property owner could destroy habitat for candidate or proposed species, and then request a Candidate Conservation Agreement with assurances based on a lower starting baseline. Also, some commenters suggested that property owners may threaten to destroy habitat unless Agreements are written their way.

Response 14. The Services will not enter into any Agreement with assurances that does not meet the minimum standards established by this policy and its implementing regulations. Entering into an Agreement with assurances is voluntary for the Services and property owners; the Services will refuse to enter into an Agreement that does not meet the minimum established standards. Also, because the conservation goal for a property owner's property is not based solely on the amount of currently suitable habitat present, destroying habitat will likely only make it more difficult for the property owner to achieve the conservation goal for his property. Removing threats and taking actions consistent with the goal of precluding or removing any need to list would only be made more arduous by an initial destruction of habitat. Finally, the Services do not believe that it is credible to suggest that a property owner who is otherwise interested enough in declining species conservation to consider entering into an Agreement is likely to go in and first destroy portions of the species' habitat before entering into an Agreement.

Issue 15. Some commenters stated that the standard for Candidate Conservation Agreements with assurances should be to increase the likelihood that the species will survive rather than to preclude or remove any need to list.

Response 15. The Services believe that the overall goal for Agreements with assurances developed under this policy should be to remove threats to the covered species so as to preclude or remove any need to list the species. The Services believe that the policy must incorporate this standard in order to justify the expenditure of resources to develop and evaluate Agreements with assurances, process associated enhancement of survival permits, and allow the Services to provide assurances to the property owner.

Issue 16. Some commenters stated that the Services must conduct National Environmental Policy Act (NEPA) analyses for all Candidate Conservation Agreements with assurances and enhancement of survival permits.

Response 16. The Services believe that implementation of this policy must comply with NEPA. The Services have determined that most of these Agreements will be categorically excluded under the Department of Interior Departmental Manual (DM) NEPA procedures in 516 DM 2, Appendix 1.10 and under NOAA Administrative Series 216–6, Sections 602b.3 and 602c.3. The Services expect that most Agreements with assurances and associated enhancement of survival permits will result in minor or negligible effects on the environment including federally listed species and their habitats. Complex, large-scale, or programmatic Agreements and their associated permits will require individual NEPA analysis.

Issue 17. Many commenters were confused by the term "umbrella agreements" in the draft policy.

Response 17. The Services may enter into an "umbrella" or programmatic Agreement with an appropriate State or local agency or other entity, and through such an Agreement and associated enhancement of survival permit, specify the assurances and take allowances that could be further delegated by the State or local agency or other entity to individual participating non-Federal property owners. In such a case, the State or local agency or other entity would be the permittee and would issue Certificates of Inclusion (also sometimes called Participation Certificates) to non-Federal property owners who satisfy the terms and conditions of the State or local agency's or other entity's "umbrella" or programmatic Agreement and associated permit. To avoid confusion in this final policy, the term "Agreements with non-Federal property owners" is used to refer to Agreements between the Services and individual property owners as well as "umbrella" or programmatic Agreements with State or local agencies or other entities through which assurances are further delegated to individual participating non-Federal property owners.

Issue 18. The statement "These assurances will only be provided to the participating property owners or State or local land management agencies but not to State regulatory agencies" confused many commenters who recognized that many State or local land management agencies also have regulatory responsibilities.

Response 18. The Services agree that this statement was confusing and have clarified it in the final policy. In making the statement, the Services overlooked the dual role of many State and local land management agencies. The Services intended to emphasize that only non-Federal property owners, whether they are State or local agencies, private individuals, Tribes, or other non-Federal entities, can receive assurances. However, as discussed previously, the Services can enter into an "umbrella" or programmatic Agreement with a State or local agency, including a State or local regulatory agency if appropriate, or other entity, and through such an Agreement and its

associated enhancement of survival permit, specify the assurances and take allowances that can be delegated by the State or local agency or other entity to individual participating non-Federal property owners through Certificates of Inclusion, Participation Certificates, or other similar vehicles.

Issue 19. Many commenters questioned the meaning of, or were confused by, the phrase "similarly situated property owners," which was used in describing the standard to which every Candidate Conservation Agreement with assurances will be held. Some commenters asked what the standard would be if there are no other similarly situated property owners within the range of the species. Some commenters asked what non-similarly situated property owners would be required to do. In addition, some commenters asked what property owners outside the current range of the species would be required to do if expansion of the current range of the species is necessary to preclude or remove any need to list.

Response 19. The Services agree that the draft policy did not clearly explain the standard that all Agreements with assurances must meet and have revised the description of the standard in the final policy as follows:

"The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. Other necessary properties are other properties on which conservation measures would have to be implemented in order to preclude or remove any need to list the covered species. The kinds of conservation measures specified in an Agreement with assurances will depend on the types, amounts, and conditions of, and need for, the habitats existing on the property and on other biological factors. Different kinds of conservation measures may benefit different life stages or serve to fulfill different life history requirements of the covered species. The amount of benefit provided by an Agreement with assurances will depend on many factors, particularly the size of the area on which conservation measures are implemented and the degree of conservation benefit possible (e.g., through habitat restoration or reduction of take). For example, an Agreement with assurances for a property with a small area of severely degraded habitat could be designed to achieve greater benefits than one for a property with a large amount of slightly degraded habitat."

The Services believe this description of the standard more clearly explains the contribution an individual property owner entering into an Agreement with assurances would need to make toward precluding or removing any need to list the covered species. This description addresses the fact that properties differ and that, consequently, different conservation measures could be specified for different properties. In addition, this description takes into account the fact that the Services may need to expand the species' current range in order to preclude or remove any need to list.

Issue 20. Several commenters asked for clarification of the phrase "species which will likely become candidates in the near future."

Response 20. The objective of this policy is to provide incentives to encourage non-Federal property owners to implement early conservation for declining species with the goal of precluding or removing any need to list. The Services did not want to exclude those species that are declining and/or are becoming subject to increasing threats and may soon be considered for candidate status. Including these species is particularly important considering that the rates of decline can sometimes increase abruptly, that the development of a Candidate Conservation Agreement with assurances might take longer than expected, and that conservation options may be more numerous the earlier a species is addressed. Because the circumstances surrounding each species are unique, the Services have chosen not to adopt a strict regulatory definition of the term "species that will likely become candidates in the near future." Instead, the Services will review species that are not candidates or proposed species on a case-by-case basis when determining whether they may be covered by an Agreement with assurances.

Issue 21. Several commenters were confused by the phrase "above those levels agreed upon and specified in the Agreement," which was used in describing the assurances provided through Candidate Conservation Agreements with assurances and associated enhancement of survival permits.

Response 21. The Services agree that this phrase is confusing and have clarified the meaning in the final policy. The draft policy stated that "* * * take authorization would be provided to allow the property owner or State or local land management agency to implement management activities that may result in take of individuals or modification of habitat above those levels agreed upon and described in the Agreement." The Services did not intend this statement to mean that the amount of take authorized by an enhancement of survival permit could exceed the amount specified in the associated Agreement or could allow for more habitat modification than specified in the Agreement. Rather, the statement was an attempt to explain that the enhancement of survival permit accompanying an Agreement with assurances would authorize a property owner who exceeds the conservation goal specified in the Agreement (e.g., through additional habitat improvement or the implementation of conservation measures that are more effective or beneficial than anticipated and described in the Agreement) to take the additional or enhanced number of individuals of the species that is consistent with the conservation goal specified in the Agreement. That is, a property owner can still avoid the imposition of additional restrictions above those agreed to in the Agreement where the property owner surpassed the conservation goals established under the Agreement.

Issue 22. Some commenters were confused by Part 3A of the draft policy that stated that a Candidate Conservation Agreement with assurances will identify habitat characteristics that support use by the covered species on lands or waters under the property owner's control or that support populations of the covered species in waters that may not be under the property owner's control. These commenters questioned the meaning of the phrase "waters that may not be under the property owner's control."

Response 22. In using this phrase, the Services intended to address the fact that, in some cases, characteristics of a particular property owner's property may sustain (or land, water, or resource uses on that property may affect) individuals of a species located on other lands or waters adjacent to or some distance away from the property owner's property. For example, riparian habitat enhancement measures upstream may benefit candidate species that are downstream from the participating property owner's property. An Agreement with assurances can describe this relationship and can include conservation measures to improve the characteristics of the property that help sustain (or to reduce the impacts of the land, water, or resource uses that may affect) the individuals of the species found off the property owner's property.

Issue 23. Several commenters asked if there was any difference between the meanings of the terms "conservation actions," "management actions," "conservation activities," "management activities," and "conservation management activities."

Response 23. The Services did not intend for these terms to have different meanings and, in the final policy, have used a single term, "conservation measures," in place of the terms listed above. The term "conservation measures" clearly describes the range of practices which could be included in a Candidate Conservation Agreement with assurances. Not all conservation measures involve "management" that is continued into the future; conservation measures may include removal of a hazard to the species, construction of a habitat feature (such as placement of boulders in a stream to create fish resting habitat), or other practices.

Issue 24. Several commenters were confused by the sentence in the "Definitions" section of the draft policy under "Covered species" that read "Those species covered in the Agreement must be treated as if they were listed."

Response 24. The Services agree that this sentence may have caused some confusion and the sentence has been deleted from the final policy. The Services have also clarified the definition in the final policy.

Issue 25. Some commenters questioned why the Services used the term "incidental take" to describe take authorized by an enhancement of survival permit under section 10(a)(1)(A) of the Act when "incidental take" normally applies to take authorized by an Incidental Take permit under section 10(a)(1)(B).

Response 25. The Services have decided to use the term "incidental take" to refer to the take authorized by an enhancement of survival permit associated with a Candidate Conservation Agreement with assurances because this "take" is incidental to enhancing the survival of the species through compliance with the Agreement. Similarly, take resulting from research authorized by an enhancement of survival permit under section 10(a)(1)(A) is "incidental take" in that it is typically a consequence of and not the purpose of the research. The Services believe using the term "incidental take" in this policy will be less confusing than coining a new term to differentiate take authorized under section 10(a)(1)(A) from that authorized under section 10(a)(1)(B).

Issue 26. Some commenters questioned the use of the term "net benefit" in the draft policy.

Response 26. The term "net benefit" was erroneously included in the draft policy and has been eliminated in the final policy. "Net benefit" is a concept more appropriately used in "Safe Harbor" Agreements for listed species conservation.

Revisions to the Proposed Policy

The following represents a summary of the revisions made to the proposed Candidate Conservation Agreements with Assurances policy following consideration of public comments.

(1) The final policy describes the mechanism for property owners to terminate their voluntary Candidate Conservation Agreements with assurances before the expiration date.

(2) Specific public review periods for proposed Candidate Conservation Agreements with assurances and their associated proposed enhancement of survival permits have been established in the final policy and implementing regulations.

(3) The final policy includes general guidelines for the development of monitoring provisions of Candidate Conservation Agreements with assurances.

(4) Several definitions and terms have been clarified in the final policy.

Final Candidate Conservation Agreements With Assurances Policy

Part 1. What Is the Purpose of the Policy?

This policy, is intended to facilitate the conservation of proposed and candidate species, and species likely to become candidates or proposed in the near future, by giving non-Federal citizens, States, local governments, Tribes, businesses, organizations, and other non-Federal property owners incentives to implement conservation measures for declining species by providing regulatory certainty with regard to land, water, or resource use restrictions that might otherwise apply should the species later become listed as threatened or endangered under the Act. Under the policy, non-Federal property owners who commit in a Candidate Conservation Agreement with assurances to implement mutually agreed upon conservation measures for a proposed or candidate species, or a species likely to become a candidate or proposed in the near future, will receive assurances from the Services that additional conservation measures above and beyond those contained in the Agreement will not be required, and that additional land, water, or resource use restrictions will not be imposed upon them should the species become listed in the future.

In determining whether to enter into a Candidate Conservation Agreement with assurances, the Services will consider the extent to which the Agreement reduces threats to proposed and candidate species and species likely to become candidates or proposed in the near future so as to preclude or remove any need to list these species as threatened or endangered under the Act. While the Services realize that the actions of a single property owner usually will not preclude or remove any need to list a species, they also realize the collective effect of the actions of many property owners may be to preclude or remove any need to list. Accordingly, the Services will enter into an Agreement with assurances when they determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species.

While some property owners are willing to manage their lands to benefit proposed and candidate species, or species likely to become candidates or proposed in the near future, most desire some degree of regulatory certainty and assurances with regard to possible future land, water, or resource use restrictions that may be imposed if the species is listed in the future. The Services will provide regulatory certainty to a non-Federal property owner who enters into a Candidate Conservation Agreement with assurances by authorizing, through issuance of an enhancement of survival permit under section 10(a)(1)(A) of the Act, a specified level of incidental take of the species covered in the Agreement. Incidental take authorization benefits non-Federal property owners in two ways. First, incidental take authorization provides assurances to property owners that any extra, either intentional or unintentional, benefits they achieve for the species beyond those agreed upon will not result in additional land, water, or resource use restrictions that would otherwise be imposed should the species become listed in the future. Second, in the event the species is listed in the future, incidental take authorization enables

property owners to continue current land uses that have traditionally caused take, provided take is at or reduced to a level consistent with the overall goal of precluding or removing any need to list the species.

Candidate Conservation Agreements with assurances will be developed in close coordination and cooperation with the appropriate State fish and wildlife agencies and other affected State agencies and Tribes, as appropriate. Close coordination with State fish and wildlife agencies is particularly important given their primary responsibilities and authorities for the management of unlisted resident species. Agreements with assurances are to be consistent with applicable State laws and regulations governing the management of these species.

The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. Pursuant to section 7 of the Act, the Services must also ensure that the conservation measures included in any Agreement with assurances do not jeopardize any listed or proposed species and do not destroy or adversely modify any proposed or designated critical habitats that may occur in the area.

Some non-Federal property owners may not have the necessary resources or expertise to develop Candidate Conservation Agreements with assurances. Therefore, the Services are committed to providing, to the maximum extent practicable given available resources, the necessary technical assistance to develop Agreements with assurances and prepare enhancement of survival permit applications. Furthermore, the Services may assist or train property owners to implement conservation measures.

Development of a biologically sound Agreement and enhancement of survival permit application are intricately linked. The Services will process the participating non-Federal property owner's enhancement of survival permit application following the procedures described in 50 CFR Parts 17.22(d)(1) and 17.32(d)(1) or 50 CFR Part 222. All terms and conditions of the enhancement of survival permit must be consistent with the conservation measures included in the associated Agreement with assurances.

Part 2. What Definitions Apply to this Policy?

The following definitions apply for the purposes of this policy.

"Candidate Conservation Agreement" means an Agreement signed by either Service, or both Services jointly, and other Federal or State agencies, local governments, Tribes, businesses, organizations, or non-Federal citizens, that identifies specific conservation measures that the participants will voluntarily undertake to conserve the covered species.

"Candidate Conservation Agreements with assurances" means a Candidate Conservation Agreement with a non-Federal property owner that meets the standards described in this policy and provides the non-Federal property owner with the assurances described in this policy.

"Candidate Conservation Assurances" are assurances provided to a non-Federal property owner in a Candidate Conservation Agreement with assurances that conservation measures and land, water, or resource use restrictions in addition to the measures and restrictions described in the Agreement will not be imposed should the covered species become listed in the future. Candidate Conservation Assurances will be authorized by an enhancement of survival permit. Such assurances may apply to a whole parcel of land, or a portion, as identified in the Agreement.

"Candidate species" are defined differently by the Services. FWS defines candidate species as species for which FWS has sufficient information on file relative to status and threats to support issuance of proposed listing rules. NMFS defines candidate species as species for which NMFS has information indicating that listing may be warranted but for which sufficient information to support actual proposed listing rules may be lacking. The term "candidate species" used in this policy refers to those species designated as candidates by either of the Services.

"Conservation measures" are actions that a non-Federal property owner voluntarily agrees to undertake when entering into a Candidate Conservation Agreement with assurances.

"Covered species" means those species that are the subject of a Candidate Conservation Agreement with assurances and associated enhancement of survival permit. Covered species are limited to species that are candidates or proposed for listing and species that are likely to become candidates or proposed in the near future.

"Enhancement of survival permit" means a permit issued under section 10(a)(1)(A) of the Act that, as related to this policy, authorizes the permittee to incidentally take species covered in a Candidate Conservation Agreement with assurances.

"Non-Federal property owner" includes, but is not limited to, States, local governments, Tribes, businesses, organizations, and private individuals, and includes owners of land as well as owners of water or other natural resources.

"Other necessary properties" are properties in addition to the property that is the subject of a Candidate Conservation Agreement with assurances on which conservation measures would have to be implemented in order to preclude or remove any need to list the covered species.

"Proposed species" is a species for which the Services have published a proposed rule to list as threatened or endangered under section 4 of the Act.

Part 3. What Are Candidate Conservation Agreements With Assurances?

Candidate Conservation Agreements with assurances will identify or include:

A. The population levels (if available or determinable) of the covered species existing at the time the parties negotiate the Agreement; the existing habitat characteristics that sustain any current, permanent, or seasonal use by the covered species on lands or waters owned by the participating non-Federal property owner; and/or the existing characteristics of the property owner's lands or waters included in the Agreement that support populations of covered species on lands or waters not on the participating property owner's property;

B. The conservation measures the participating non-Federal property owner is willing to undertake to conserve the species included in the Agreement;

C. The benefits expected to result from the conservation measures described in B above (e.g., increase in population numbers; enhancement, restoration, or preservation of habitat; removal of threat) and the conditions that the participating non-Federal property owner agrees to maintain. The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species;

D. Assurances provided by the Services that no additional conservation measures will be required and no additional land, water, or resource use restrictions will be imposed beyond those described in B above should the covered species be listed in the future. Assurances related to take of the covered species will be authorized by the Services through a section 10(a)(1)(A) enhancement of survival permit (see Part 5);

E. A monitoring provision that may include measuring and reporting progress in implementation of the conservation measures described in B above and changes in habitat conditions and the species' status resulting from these measures; and,

F. A notification requirement to provide the Services or appropriate State agencies with a reasonable opportunity to rescue individuals of the covered species before any authorized incidental take occurs.

Part 4. What Are the Benefits to the Species?

Before entering into a Candidate Conservation Agreement with assurances, the Services must make a written finding that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. If the Services and the participating property owner cannot agree to an adequate set of conservation measures that satisfy this requirement, the Services will not enter into the Agreement. Expected benefits of the conservation measures could include, but are not limited to: restoration, enhancement, or preservation of habitat; maintenance or increase of population numbers; and reduction or elimination of incidental take.

Part 5. What Are Assurances to Property Owners?

In a Candidate Conservation Agreement with assurances, the Services will provide that if any species covered by the Agreement is listed, and the Agreement has been implemented in good faith by the participating non-Federal property owner, the Services will not require additional conservation measures nor impose additional land, water, or resource use restrictions beyond those the property owner voluntarily committed to under the terms of the original Agreement. Assurances involving incidental take will be authorized through issuance of a section 10(a)(1)(A) enhancement of survival permit, which will allow the property owner to take individuals of the covered species so long as the level of take is consistent with those levels agreed upon and identified in the Agreement.

The Services will issue an enhancement of survival permit at the time of entering into the Agreement with assurances. This permit will have a delayed effective date tied to the date of any future listing of the covered species. The Services believe that an enhancement of survival permit is particularly well suited for Candidate Conservation Agreements with assurances because the main purpose of such Agreements is to enhance the survival of declining species.

The Services are prepared as a last resort to revoke a permit implementing a Candidate Conservation Agreement with assurances where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit. Prior to taking such a step, however, the Services would first have to exercise all possible means to remedy such a situation.

Part 6. How Do the Services Comply With National Environmental Policy Act?

The National Environmental Policy Act of 1969 (NEPA), as amended, and the regulations of the Council on Environmental Quality (CEQ) require all Federal agencies to examine the environmental impact of their actions, to analyze a full range of alternatives, and to use public participation in the planning and implementation of their actions. The purpose of the NEPA process is to help Federal agencies make better decisions and to ensure that those decisions are based on an understanding of environmental consequences. Federal agencies can satisfy NEPA requirements either by preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) or by showing that the proposed action is categorically excluded from individual NEPA analysis.

The Services will review each Candidate Conservation Agreement with assurances and associated enhancement of survival permit application for other significant environmental, economic, social, historical or cultural impact, or for significant controversy (516 DM 2, Appendix 2 for FWS and NOAA's Environmental Review Procedures and NOAA Administrative Order Series 216–6). If the Services determine that the Agreement and permit will likely result in any of the above effects, preparation of an EA or EIS will be required. General guidance on when the Services exclude an action categorically and when and how to prepare an EA or EIS is found in the FWS's Administrative Manual (30 AM 3) and NOAA Administrative Order Series 216–6.

The Services expect that most Candidate Conservation Agreements with assurances and associated enhancement of survival permits will result in minor or negligible effects on the environment and will be categorically excluded from individual NEPA analysis. When the impacts to the environment are expected to be more than minor, individual NEPA analysis will be required. Complex, large-scale, or programmatic Agreements and their associated permits will typically be subject to individual NEPA analysis.

Part 7. Will There Be Public Review?

Public participation in the development of a proposed Candidate Conservation Agreement with assurances will only be provided when agreed to by the participating property owner. However, the Services will make every proposed Agreement available for public review and comment as part of the public evaluation process that is statutorily required for issuance of the enhancement of survival permit associated with the Agreement. This comment period will generally be 30 days but may be longer for very large or programmatic Agreements. The public will also be given other opportunities to review Agreements in certain cases. For example, when the Services receive an Agreement covering a proposed species, and when the Services determine, based upon a preliminary evaluation, that the Agreement could potentially justify withdrawal of the proposed rule, the comment period for the proposed rule will be extended or reopened to allow for public comments on the Agreement's adequacy in removing or reducing threats to the species. However, the Act requires the Services to issue a final determination within 1 year of issuing a proposed rule to list; the Services will not extend this time frame in order to allow for the completion and/or consideration of an Agreement with assurances. Therefore, the Services may not be able to consider in their final determination Agreements that are not received within a reasonable period of time after issuance of the proposed rule.

Part 8. Do Property Owners Retain Their Discretion?

Nothing in this policy prevents a participating property owner from implementing conservation measures not described in the Agreement, provided such measures are consistent with the conservation measures and conservation goal described in the Agreement. The Services will provide technical advice, to the maximum extent practicable, to the property owner when requested. Additionally, a participating property owner, with good cause, can terminate the Agreement prior to its expiration date, even if the terms and conditions of the Agreement have not been realized. However, the enhancement of survival permit would also be terminated at the same time.

Part 9. What Is the Discretion of All Parties?

Nothing in this policy compels any party to enter a Candidate Conservation Agreement with assurances at any time. Entering an Agreement is voluntary for non-Federal property owners and the Services. Unless specifically noted, an Agreement does not otherwise create or waive any legal rights of any party to the Agreement.

Part 10. Can Agreements Be Transferred?

If a property owner who is a party to a Candidate Conservation Agreement with assurances transfers ownership of the enrolled property, the Services will regard the new property owner as having the same rights and obligations as the original property owner if the new property owner agrees to become a party to the original Agreement. Actions taken by the new participating property owner that result in the incidental take of species covered by the Agreement would be authorized if the new property owner maintains the terms and conditions of the original Agreement. If the new property owner does not become a party to the Agreement, the new owner would neither incur responsibilities under the Agreement nor receive any assurances relative to section 9 restrictions resulting from listing of the covered species.

An Agreement must commit the participating property owner to notify the Services of any transfer of ownership at the time of the transfer of any property subject to the Agreement. This will allow the Services the opportunity to contact the new property owner to explain the prior Agreement and to determine whether the new property owner would like to continue the original Agreement or enter a new Agreement. When a new property owner continues an existing Agreement, the Services will honor the terms and conditions of the original Agreement.

Part 11. Is Monitoring Required?

The Services will ensure that necessary monitoring provisions are included in Candidate Conservation Agreements with assurances and associated enhancement of survival permits. Monitoring is necessary to ensure that the conservation measures specified in an Agreement and permit are being implemented and to learn about the effectiveness of the agreed upon conservation measures. In particular, when adaptive management principles are included in an Agreement, monitoring is especially helpful for obtaining the information needed to measure the effectiveness of the conservation program and detect changes in conditions. However, the level of effort and expense required for monitoring can vary substantially among Agreements depending on the circumstances. For many Agreements, monitoring can be conducted by the Services or a State agency and may involve only a brief site inspection and appropriate documentation.

Large-scale or complex Candidate Conservation Agreements with assurances may require more in-depth and comprehensive monitoring. Monitoring programs must be agreed upon and included in the Agreement prior to public review and comment on the Agreement. The Services are committed to providing as much technical assistance as possible in the development of acceptable monitoring programs. Additionally, these monitoring programs will provide valuable information that the Services can use to evaluate program implementation and success.

Part 12. How Are Cooperation and Coordination With the States and Tribes Described in the Policy?

Coordination between the Services, the appropriate State fish and wildlife agencies, affected Tribal governments, and property owners is important to the successful development and implementation of Candidate Conservation Agreements. The Services will closely coordinate and consult with the affected State fish and wildlife agency and any affected Tribal government that has a treaty right to any fish or wildlife resources covered by an Agreement.

Dated: March 22, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

Dated: June 10, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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federal register

Thursday
June 17, 1999

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52

Federal Acquisition Regulation; Nondisplacement of Qualified Workers—Commercial Items; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

National Aeronautics and Space Administration

48 CFR Part 52

[FAR Case 99–600]

RIN 9000–AI35

Federal Acquisition Regulation; Nondisplacement of Qualified Workers—Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to add the clause title, Nondisplacement of Qualified Workers, to the clause concerning Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. This addition would permit inclusion of the clause, by reference, in solicitations and contracts for commercial services, when determined appropriate by the contracting officer.

DATES: Comments should be submitted on or before August 16, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.99–600@gsa.gov.

Please cite FAR case 99–600 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAR case 99–600.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12933 was signed October 20, 1994, by President Clinton and published in the **Federal Register** on October 24, 1994. To obtain public comment and assist in development of implementing regulations, the Department of Labor (DOL) invited comment through a notice of proposed rulemaking in the **Federal Register** on July 18, 1995 (60 FR 36756). The final DOL rule was published in the **Federal Register** on May 22, 1997 (62 FR 28175). An interim FAR rule implementing DOL's rule was published under FAR case 94–610 (FAC 97–01, 62 FR 44802, August 22, 1997). During consideration of the public comments submitted in response to the interim rule, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council identified this additional issue and proposed change. The councils consider this additional change significant enough to warrant additional public comments.

This rule proposes to add the clause title, 52.222–50, Nondisplacement of Qualified Workers, at 52.212–5(c).

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only identifies the FAR clause at 52.222–50, Nondisplacement of Qualified Workers as appropriate for incorporation by reference in certain service contracts when determined so by the contracting officer. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 99–600), in correspondence.

C. Paperwork Reduction Act

This proposed rule will not impose any additional paperwork burdens beyond the information collection and recordkeeping requirements under sections 9.6(c), 9.9(b), and 9.11 of the Department of Labor regulations, 29 CFR part 9, and approved under Office of Management and Budget Control No. 1215–0190.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.212–5 is amended by revising the date of the clause to read "(DATE)"; at the parenthetical following the introductory text of paragraphs (b) and (c) of the clause by removing the parentheses and adding brackets in their place; and by adding paragraph (c)(6) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(c) * * *

(6) 52.222–50, Nondisplacement of Qualified Workers (Executive Order 12933).

* * * * *

[FR Doc. 99–15144 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Thursday
June 17, 1999

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter I, et al.
Federal Acquisition Circular 97–12 Introduction; Federal Acquisition Regulation; Taxpayer Identification Numbers; Use of Brand Name Item Descriptions, et al.; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–12; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–12. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–12 and specific FAR case number(s). Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Taxpayer Identification Numbers	97–003	Olson.
II	Use of Brand Name Item Descriptions	96–018	Moss.
III	SBA's 8(a) Business Development Program (Interim)	98–011	Moss.
IV	Competition Under Multiple Award Task and Delivery Order Contracts	98–007	DeStefano.
V	Application of the Brooks Act	98–023	O'Neill.
VI	Restrictions on the Acquisition of Information Technology	98–306	Nelson.
VII	Technical Amendments		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–12 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Taxpayer Identification Numbers (FAR Case 97–003)

The interim rule published as Item I of the FAC 97–09 is converted to a final rule without change. The rule amends FAR Parts 1, 4, 13, 14, 15, and 52 to implement Subsection (i) of the Debt Collection Improvement Act of 1996 and Section 1022 of the Taxpayer Relief Act of 1997; and to clarify the Government requirements for reporting contract and payment information to the Internal Revenue Service (IRS).

Item II—Use of Brand Name Item Descriptions (FAR Case 96–018)

This final rule amends FAR Parts 11, 37, and 52 to clarify guidance for the use of brand name purchase descriptions.

Item III—SBA's 8(a) Business Development Program (FAR Case 98–011)

This interim rule amends FAR Parts 12, 19, and 52 to implement changes made in the Small Business Administration's 8(a) Business Development (8(a)BD) Program regulation contained in 13 CFR parts 121, 124, and 134 regarding the eligibility procedures for admission to the 8(a)BD and contractual assistance programs.

Item IV—Competition Under Multiple Award Task and Delivery Order Contracts (FAR Case 98–007)

This final rule amends the procedures for placing orders under multiple award contracts at FAR 16.505(b). The amendment emphasizes that agencies shall use only fair methods when placing orders. For example, the contracting officer shall not employ allocation or designation of any preferred awardee(s) that would result in less than fair consideration being given to all awardees prior to placing each order.

Item V—Application of the Brooks Act (FAR Case 98–023)

This final rule amends FAR Part 36 to remove the reference to the National Imagery and Mapping Agency (NIMA) at FAR 36.601–4(a)(4).

Item VI—Restrictions on the Acquisition of Information Technology (FAR Case 98–306)

This final rule revises FAR 39.101 to implement Division A, Section 101(h), Title VI, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999. Section 622 provides that no appropriated funds may be used to acquire information technology that does not comply with FAR 39.106, unless the agency's Chief Information Officer (CIO) determines that noncompliance with 39.106 is necessary to the function and operation of the agency or the acquisition is required by a contract in effect before October 21, 1998.

Item VII—Technical Amendments

Amendments are being made at 1.106, 9.505, 12.301, 19.803, 19.806, 22.609, 31.205–6, 42.203, 52.204–6, 52.212–1, 52.212–3, 52.213–4, 52.215–2, 52.219–1, 52.219–8, 52.219–14, 52.219–22, 53.214 and 53.215–1 in order to update references and make editorial changes.

FAR Index

The FAR Index is revised and a copy is provided in the looseleaf version of the FAR.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–12 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97–12 are effective August 16, 1999, except for Items I, III, VI, and VII which are effective June 17, 1999.

Dated: June 8, 1999.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: June 7, 1999.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy General Services Administration.

Dated: May 27, 1999.

Tom Luedtke,

Acting Associate Administrator for Procurement National Aeronautics and Space Administration.

[FR Doc. 99–15145 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 13, 14, 15, and 52

[FAC 97–12; FAR Case 97–003; Item I]

RIN 9000–AI14

Federal Acquisition Regulation; Taxpayer Identification Numbers

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final without change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt the interim rule published in the **Federal Register** at 63 FR 58587, October 30, 1998, as a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to implement Subsection (i) of the Debt Collection Improvement Act of 1996 and Section 1022 of the Taxpayer Relief Act of 1997, and to clarify the Government requirements for reporting contract and payment information to the Internal Revenue Service (IRS).

EFFECTIVE DATE: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy F. Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 97–12, FAR case 97–003.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim FAR rule in the **Federal Register** on October 30, 1998 (63 FR 58587), and received no public comments. Therefore, we converted the interim rule to a final rule without change.

The interim rule implemented Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105–32). Subsection (i) amended 31 U.S.C. 7701 by requiring each contractor doing business with the Government to furnish its Taxpayer Identification Number (TIN) and by requiring the Government to disclose its intent to use such number for purposes of collecting and reporting on any delinquent amounts. Section 1022 amended 26 U.S.C. 6041A(d) to add payments for services provided by corporations to the list of payments that the Government is required to report to the IRS using Form 1099.

In addition, the interim rule clarified the requirement for Government agencies to obtain contract information and payment information to facilitate issuance of Forms 1099 and other reports to the IRS. The rule deleted the FAR clauses at 52.214–2, Type of Business Organization—Sealed Bidding, and 52.215–4, Type of Business Organization, since the information requested in these clauses duplicates the information requested in FAR 8.405–2(q), Taxpayer Identification Number, and FAR clauses 52.204–3, Taxpayer Identification, and 52.212–3, Offeror Representations and Certifications Commercial Items.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies an existing requirement for contractors to submit TINs, and requires the Government to advise contractors of the potential debt collection usage of the TIN.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 4, 13, 14, 15, and 52

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 1, 4, 13, 14, 15, and 52, which was published at 63 FR 58587, October 30, 1998, as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 99–15146 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11, 37, and 52

[FAC 97–12; FAR Case 96–018; Item II]

RIN 9000–AH85

Federal Acquisition Regulation; Use of Brand Name Item Descriptions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify guidance for the use of brand name purchase descriptions.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–12, FAR case 96–018.

SUPPLEMENTARY INFORMATION:

A. Background

While indicating that performance specifications are the preferred method for describing the Government's needs, this final rule permits the use of brand name or equal purchase descriptions. The rule clarifies how brand name or equal purchase descriptions are structured, *i.e.*, salient functional, physical, or performance characteristics must be part of the description.

The Councils published a proposed rule in the **Federal Register** at 63 FR 63778, November 16, 1998, and considered all comments in the development of this final rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule affects how purchase descriptions may be written for competitive procurements. The Final Regulatory Flexibility Analysis (FRFA) for this rule is summarized as follows:

The objective of the final rule is to provide more comprehensive, uniform FAR guidance on the appropriate use of brand name purchase descriptions. Application of the guidance supports consistent use of such purchase descriptions in Federal acquisitions. The rule will apply to all large and small entities that offer supplies to the Government that are brand name items or are comparable to such items. We anticipate that the selected approach will be the most advantageous to small entities, while achieving the objective of the rule because this approach best enables the Government to express its requirements clearly and describe the degree of flexibility with which offered supplies or services will be evaluated as "equal."

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the FRFA from the FAR Secretariat. We invite comments. The Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–12, FAR case 96–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 11 and 52

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 11 and 52 as set forth below:

1. The authority citation for 48 CFR parts 11 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 11—DESCRIBING AGENCY NEEDS

2. Redesignate sections 11.104 and 11.105 as sections 11.105 and 11.106, respectively; and add new sections 11.104 and 11.107 to read as follows:

11.104 Use of brand name or equal purchase descriptions.

(a) While the use of performance specifications is preferred to encourage offerors to propose innovative solutions, the use of brand name or equal purchase descriptions may be advantageous under certain circumstances.

(b) Brand name or equal purchase descriptions must include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an "equal" item must meet to be acceptable for award. Use brand name or equal descriptions when the salient characteristics are firm requirements.

11.107 Solicitation provision.

The contracting officer must insert the provision at 52.211–6, Brand Name or Equal, when brand name or equal purchase descriptions are included in a solicitation.

11.105 [Amended]

2a. Amend the introductory paragraph and paragraph (a) of newly redesignated section 11.105 by removing "brand-name" and adding "brand name" in its place.

PART 37—SERVICE CONTRACTING

37.602–1 [Amended]

3. Amend section 37.602–1 in the second sentence of paragraph (a) by removing "(see 11.105)" and adding "(see 11.106)" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add section 52.211–6 to read as follows:

52.211–6 Brand Name or Equal.

As prescribed in 11.107, insert the following provision:

Brand Name or Equal (Aug 1999)

(a) If an item in this solicitation is identified as "brand name or equal," the purchase description reflects the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, or performance characteristics that "equal" products must meet are specified in the solicitation.

(b) To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must—

(1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate "equal" products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an "equal" product, the offeror shall provide the brand name product referenced in the solicitation.

(End of provision)

[FR Doc. 99–15147 Filed 6–16–99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 19, and 52

[FAC 97–12; FAR Case 98–011; Item III]

RIN 9000–AI33

Federal Acquisition Regulation; SBA's 8(a) Business Development Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement revisions made to Small Business Administration (SBA) regulations pertaining to its 8(a) Business Development (8(a)BD) Program.

DATES: Effective June 17, 1999.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before August 16, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. Address e-mail comments submitted via the Internet to: farcase.98–011@gsa.gov. Please cite FAC 97–12, FAR case 98–011 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–12, FAR case 98–011.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR parts 12, 19, and 52 to conform to recent amendments made by the Small Business Administration (SBA) to their regulations pertaining to the 8(a)BD Program. The SBA published a final rule in the **Federal Register** on June 30, 1998 (63 FR 35726). The SBA rule amended the eligibility procedures for admission to the 8(a)BD and contractual assistance programs. These changes involve administrative matters concerning requirement offerings, contract execution, contract administration, and SBA appeals.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect the interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely addresses changes made by the Small Business Administration (SBA) to 13 CFR parts 121, 124, and 134. The SBA has certified that the changes set forth in its rule will not have a significant economic impact on a substantial number of small entities because the changes do not increase the net number of current 8(a) certified small businesses or the net number of current 8(a) participants by more than 500 to 800 businesses, or less than 1 percent of all small businesses seeking Government contracts. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAR case 98–011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to conform the Federal Acquisition Regulation to revisions made in 13 CFR parts 121, 124, and 134 pertaining to the Small Business Administration (SBA) 8(a)BD Program. The SBA final rule became effective on June 30, 1998. However, pursuant to Pub. L. 98–577 and FAR 1.501, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 12, 19, and 52

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 19, and 52 as set forth below:

1. The authority citation for 48 CFR parts 12, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. In section 12.102, amend paragraph (d)(3) by removing "or"; in (d)(4) by removing the period and adding "; or"; and add (d)(5) to read as follows:

12.102 Applicability.

* * * * *

(d) * * *

(5) Directly from another Federal agency.

PART 19—SMALL BUSINESS PROGRAMS

3. In section 19.101, amend paragraph (g)(2) by revising the paragraph heading and the first sentence, and adding a sentence to the end of the paragraph to read as follows:

19.101 Explanation of terms.

* * * * *

(g) * * *

(2) *Joint venture—acquisition and property sale assistance.* Concerns bidding on a particular acquisition or property sale as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. * * * The rules governing 8(a) Program joint ventures are described in 13 CFR 124.513.

* * * * *

4. Revise section 19.302(a) to read as follows:

19.302 Protesting a small business representation.

(a) An offeror, the SBA, or another interested party may protest the small business representation of an offeror in a specific offer. However, for competitive 8(a) contracts, the filing of a protest is limited to an offeror, the contracting officer, or the SBA.

* * * * *

5. In section 19.800, redesignate paragraph (d) as (e); and add new paragraphs (d) and (f) to read as follows:

19.800 General.

* * * * *

(d) The SBA refers to this program as the 8(a) Business Development (BD) Program.

* * * * *

(f) When SBA has delegated its 8(a) Program contract execution authority to an agency, the contracting officer must refer to its agency supplement or other policy directives for appropriate guidance.

19.802 [Amended]

6. Amend section 19.802 by revising the citation "13 CFR 124.101–113" to read "13 CFR 124.101–112".

7. In section 19.804–2, revise paragraphs (a)(5), (a)(8), (a)(9), and (a)(12) through (a)(14); redesignate paragraph (a)(15) as (a)(16), and add a new paragraph (a)(15) to read as follows:

19.804–2 Agency offering.

(a) * * *

(5) Any special restrictions or geographical limitations on the requirement (for construction, include the location of the work to be performed).

* * * * *

(8) The acquisition history, if any, of the requirement, including the names and addresses of any small business contractors that have performed this requirement during the previous 24 months.

(9) A statement that prior to the offering no solicitation for the specific acquisition has been issued as a small business or HUBZone set-aside and that no other public communication (such as a notice in the Commerce Business Daily) has been made showing the contracting agency's clear intention to set-aside the acquisition for small business or HUBZone small business concerns.

* * * * *

(12) Identification of all known 8(a) concerns, including HUBZone 8(a) concerns, that have expressed an interest in being considered for the specific requirement.

(13) Identification of all SBA field offices that have asked for the acquisition for the 8(a) Program.

(14) A request, if appropriate, that a requirement with an estimated contract value under the applicable competitive threshold be awarded as an 8(a) competitive contract (see 19.805–1(d)).

(15) A request, if appropriate, that a requirement with a contract value over the applicable competitive threshold be awarded as a sole source contract (see 19.805–1(b)).

* * * * *

8. Amend section 19.804–3 by revising paragraph (a); and adding paragraphs (c) and (d) to read as follows:

19.804–3 SBA acceptance.

(a) Upon receipt of the contracting agency's offer, the SBA will determine whether to accept the requirement for the 8(a) Program. The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 10 working days of receipt of the offer if the contract is likely to exceed the simplified acquisition threshold and within 2 days of receipt if the contract is at or below the simplified acquisition threshold. The contracting agency may grant an extension of these time periods. If SBA does not respond to an offering letter within 10 days, the contracting activity may seek SBA's acceptance through the Associate Administrator (AA)/8(a)BD.

* * * * *

(c) For acquisitions not exceeding the simplified acquisition threshold, when the contracting activity makes an offer to the 8(a) Program on behalf of a specific 8(a) firm and does not receive a reply to its offer within 2 days, the contracting activity may assume the offer is accepted and proceed with award of an 8(a) contract.

(d) As part of the acceptance process, SBA will review the appropriateness of the SIC code designation assigned to the requirement by the contracting activity.

(1) SBA will not challenge the SIC code assigned to the requirement by the contracting activity if it is reasonable, even though other SIC codes may also be reasonable.

(2) If SBA and the contracting activity are unable to agree on a SIC code designation for the requirement, SBA may refuse to accept the requirement for the 8(a) Program, appeal the contracting officer's determination to the head of the agency pursuant to 19.810, or appeal the SIC code designation to the SBA Office of Hearings and Appeals under subpart C of 13 CFR part 134.

9. Revise section 19.804–4 to read as follows:

19.804–4 Repetitive acquisitions.

In order for repetitive acquisitions to be awarded through the 8(a) Program, there must be separate offers and acceptances. This allows the SBA to determine—

(a) Whether the requirement should be a competitive 8(a) award;

(b) A nominated firm's eligibility, whether or not it is the same firm that performed the previous contract;

(c) The effect that contract award would have on the equitable distribution of 8(a) contracts; and

(d) Whether the requirement should continue under the 8(a) Program.

10. Add sections 19.804–5 and 19.804–6 to read as follows:

19.804–5 Basic ordering agreements.

(a) The contracting activity must offer, and SBA must accept, each order under a basic ordering agreement (BOA) in addition to offering and accepting the BOA itself.

(b) SBA will not accept for award on a sole-source basis any order that would cause the total dollar amount of orders issued under a specific BOA to exceed the competitive threshold amount in 19.805–1.

(c) Once an 8(a) concern's program term expires, the concern otherwise exits the 8(a) Program, or becomes other than small for the SIC code assigned under the BOA, SBA will not accept new orders for the concern.

19.804–6 Multiple award and Federal Supply Schedule contracts.

(a) Separate offers and acceptances must not be made for individual orders under multiple award or Federal Supply Schedule (FSS) contracts. SBA's acceptance of the original multiple award or FSS contract is valid for the term of the contract.

(b) The requirements of 19.805–1 do not apply to individual orders that exceed the competitive threshold as long as the original contract was competed.

(c) An 8(a) concern may continue to accept new orders under a multiple award or FSS contract even after a concern's program term expires, the concern otherwise exits the 8(a) Program, or the concern becomes other than small for the SIC code assigned under the contract.

11. Amend section 19.805–1 in paragraph (a)(2) by removing "award price" and adding "total value" in its place; and revise paragraphs (b)(2) and (d) to read as follows:

19.805–1 General.

* * * * *

(b) * * *

(2) SBA accepts the requirement on behalf of a concern owned by an Indian tribe or an Alaska Native Corporation.

* * * * *

(d) The SBA Associate Administrator for 8(a) Business Development (AA/8(a)BD) may approve an agency request for a competitive 8(a) award below the competitive thresholds. Such requests will be approved only on a limited basis and will be primarily granted where technical competitions are appropriate or where a large number of responsible 8(a) firms are available for competition. In determining whether a request to compete below the threshold will be approved, the AA/8(a)BD will, in part, consider the extent to which the requesting agency is supporting the 8(a) Program on a noncompetitive basis. The agency may include recommendations for competition below the threshold in the offering letter or by separate correspondence to the AA/8(a)BD.

19.805–2 [Amended]

12. Amend section 19.805–2 as follows:

a. Remove paragraph (a);

b. Redesignate paragraphs (b) through (e) as (a) through (d), respectively;

c. In new redesignated paragraph (a), remove the words "the SBA instructions provided under"; and

d. In new redesignated paragraph (d), revise "13 CFR 124.111(c)" to read "13 CFR 124.517".

19.806 [Amended]

13. In section 19.806, amend paragraph (c) by adding "within 10 working days" after the word "price."

14. Revise section 19.808–2 to read as follows:

19.808–2 Competitive.

In competitive 8(a) acquisitions subject to part 15, the contracting officer conducts negotiations directly with the competing 8(a) firms. Conducting competitive negotiations among 8(a) firms prior to SBA's formal acceptance of the acquisition for the 8(a) Program may be grounds for SBA's not accepting the acquisition for the 8(a) Program.

15. Revise section 19.809 to read as follows:

19.809 Preaward considerations.

The contracting officer should request a preaward survey of the 8(a) contractor whenever considered useful. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the firm's ability to perform, the contracting officer must refer the matter to SBA for Certificate of Competency consideration under subpart 19.6.

16. Amend section 19.810 by revising paragraphs (a) and (b) to read as follows:

19.810 SBA appeals.

(a) The SBA Administrator may submit the following matters for determination to the agency head if the SBA and the contracting officer fail to agree on them:

(1) The decision not to make a particular acquisition available for award under the 8(a) Program.

(2) A contracting officer's decision to reject a specific 8(a) firm for award of an 8(a) contract after SBA's acceptance of the requirement for the 8(a) Program.

(3) The terms and conditions of a proposed 8(a) contract, including the contracting activity's SIC code designation and estimate of the fair market price.

(b) Notification of a proposed appeal to the agency head by the SBA must be received by the contracting officer within 5 working days after the SBA is formally notified of the contracting officer's decision. The SBA will provide the agency Director for Small and Disadvantaged Business Utilization a copy of this notification of the intent to appeal. The SBA must send the written appeal to the head of the contracting activity within 15 working days of SBA's notification of intent to appeal or the contracting activity may consider the appeal withdrawn. Pending issuance of a decision by the agency head, the contracting officer must suspend action on the acquisition. The contracting officer need not suspend action on the acquisition if the contracting officer makes a written determination that urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision.

* * * * *

17. In section 19.811–1, revise the last sentence in the introductory text of paragraph (c); and add paragraph (d) to read as follows:

19.811–1 Sole source.

* * * * *

(c) * * * Appropriate blocks on the Standard Form (SF) 26 or 1442 will be asterisked and a continuation sheet appended as a tripartite agreement which includes the following:

* * * * *

(d) For acquisitions not exceeding the simplified acquisition threshold, the contracting officer may use the alternative procedures in paragraph (c) of this subsection with the appropriate simplified acquisition forms.

19.811–2 [Amended]

18. Amend the introductory text of section 19.811–2(a) by adding "as a tripartite agreement" after the word "appended".

19. Amend section 19.812 by revising paragraph (d) to read as follows:

19.812 Contract administration.

* * * * *

(d) An 8(a) contract, whether in the base or an option year, must be terminated for convenience if the 8(a) concern to which it was awarded transfers ownership or control of the firm or if the contract is transferred or novated for any reason to another firm, unless the Administrator of the SBA waives the requirement for contract termination (13 CFR 124.515). The Administrator may waive the termination requirement only if certain conditions exist. Moreover, a waiver of the requirement for termination is permitted only if the 8(a) firm's request for waiver is made to the SBA prior to the actual relinquishment of ownership or control, except in the case of death or incapacity where the waiver must be submitted within 60 days after such an occurrence. The clauses in the contract entitled "Special 8(a) Contract Conditions" and "Special 8(a) Subcontract Conditions" require the SBA and the 8(a) subcontractor to notify the contracting officer when ownership of the firm is being transferred. When the contracting officer receives information that an 8(a) contractor is planning to transfer ownership or control to another firm, the contracting officer must take action immediately to preserve the option of waiving the termination requirement. The contracting officer should determine the timing of the proposed transfer and its effect on contract performance and mission support. If the contracting officer determines that the SBA does not intend to waive the termination requirement, and termination of the contract would severely impair attainment of the agency's program objectives or mission, the contracting officer should immediately notify the SBA in writing that the agency is requesting a waiver. Within 15 business days thereafter, or such longer period as agreed to by the agency and the SBA, the agency head must either confirm or withdraw the request for waiver. Unless a waiver is approved by the SBA, the contracting officer must terminate the contract for convenience upon receipt of a written request by the SBA. This requirement for a convenience termination does not affect the Government's right to terminate for default if the cause for termination of an 8(a) contract is other than the transfer of ownership or control.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.219–18 [Amended]

20. Amend section 52.219–18 by revising the date of the clause to read "(JUNE 1999)"; by removing paragraph (a)(1) of the clause; and redesignating paragraphs (a)(2) and (a)(3) as (a)(1) and (a)(2), respectively.

[FR Doc. 99–15148 Filed 6–16–99; 8:45 am]

BILLING CODE 8820–27–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[FAC 97–12; FAR Case 98–007; Item IV]

RIN 9000–AI06

Federal Acquisition Regulation; Competition Under Multiple Award Task and Delivery Order Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed on a final rule. The final rule amends the Federal Acquisition Regulation (FAR) to clarify the procedures governing placement of orders under multiple award indefinite-delivery contracts.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–12, FAR case 98–007.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the procedures for placing orders under multiple award contracts at FAR 16.505(b). The rule emphasizes that agencies must use only fair methods when placing orders. For example, the contracting officer must not employ allocation or designation of any preferred awardee(s) that would result in less than fair consideration being given to all awardees prior to placing each order.

The Councils published a proposed rule in the **Federal Register** at 63 FR 48416, September 9, 1998.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule merely amends the FAR to clarify the existing prohibition against allocation of orders placed under multiple award contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 16 as set forth below:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR part 16 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 16.505 by revising paragraph (b)(1); by redesignating paragraphs (b)(2), (b)(3), and (b)(4) as (b)(4), (b)(5), and (b)(6), respectively and adding new paragraphs (b)(2) and (b)(3); and by revising newly designated paragraphs (b)(4)(i) and (b)(4)(ii) to read as follows:

16.505 Ordering.

* * * * *

(b) *Orders under multiple award contracts.* (1) Except as provided in paragraph (b)(4) of this section, for orders issued under multiple delivery order contracts or multiple task order contracts, each awardee must be provided a fair opportunity to be considered for each order in excess of $2,500. In determining the procedures for providing awardees a fair opportunity to be considered for each order, contracting officers must exercise broad discretion. The contracting officer, in making decisions on the award of any individual task order, should consider factors such as—

(i) Past performance on earlier tasks under the multiple award contract;

(ii) Quality of deliverables;

(iii) Cost control;

(iv) Price;

(v) Cost; or

(vi) Other factors that the contracting officer believes are relevant.

(2) In evaluating past performance on individual orders, the procedural requirements in subpart 42.15 are not mandatory.

(3) The contracting officer must set forth in the solicitation and contract the procedures and selection criteria that will be used to provide multiple awardees a fair opportunity to be considered for each order. The procedures for selecting awardees for the placement of particular orders need not comply with the competition requirements of part 6. However, methods, such as allocation or designation in any way of any preferred awardee(s), that would result in less than fair consideration being given to all awardees prior to placing each order, are prohibited. Formal evaluation plans or scoring of quotes or offers is not required. Agencies may use oral proposals and streamlined procedures when selecting an order awardee. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order.

(4) * * *

(i) The agency need for the supplies or services is so urgent that providing the opportunity would result in unacceptable delays;

(ii) Only one contractor is capable of providing the supplies or services at the level of quality required because the supplies or services are unique or highly specialized;

* * * * * *

[FR Doc. 99–15149 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 36

[FAC 97–12; FAR Case 98–023; Item V]

RIN 9000–AI34

Federal Acquisition Regulation; Application of the Brooks Act

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove a reference to the National Imagery and Mapping Agency (NIMA).

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–12, FAR case 98–023.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Part 36 to remove the reference to the National Imagery and Mapping Agency (NIMA) at FAR 36.601–4(a)(4). In accordance with Section 8101 of the National Defense Appropriations Act for Fiscal Year 1999 (Pub. L. 262), except for services critical to national security, NIMA must use the procedures in FAR Subpart 36.6 when using fiscal year 1999 funds to award contracts for mapping, charting, and geodesy activities, rather than the provisions in FAR Parts 13, 14, and 15. Therefore, although this is an annual appropriations requirement which affects NIMA only when using fiscal year 1999 funds, it is appropriate to remove the reference to NIMA as exemplifying the type of mapping services that must not be procured pursuant to FAR Subpart 36.6.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–12, FAR case 98–023), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 36

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 36 as set forth below:

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1. The authority citation for 48 CFR part 36 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

36.601–4 [Amended]

2. Amend the fourth sentence of section 36.601–4(a)(4) by removing the words "such as those typically performed by the National Imagery and Mapping Agency".

[FR Doc. 99–15150 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 97–12; FAR Case 98–306; Item VI]

RIN 9000–AI37

Federal Acquisition Regulation; Restrictions on the Acquisition of Information Technology

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Division A, Section 101(h), Title VI, section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999.

EFFECTIVE DATE: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–12, FAR case 98–306.

SUPPLEMENTARY INFORMATION:

A. Background

Division A, Section 101(h), Title VI, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999 (Pub. L. 105–277) was effective upon its enactment on October 21, 1998. Section 622 provides that agencies may not use appropriated funds to acquire information technology that does not comply with FAR 39.106, unless the agency's Chief Information Officer (CIO) determines that noncompliance with 39.106 is necessary to the function and operation of the agency or the acquisition is required by a contract in effect before October 21, 1998. The CIO must send to the Office of Management and Budget any waivers granted.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–12, FAR case 98–306), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 39

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 39 as set forth below:

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

1. The authority citation for 48 CFR part 39 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 39.101 by designating the existing paragraph as "(b)", and adding paragraph (a) to read as follows:

39.101 Policy.

(a) Division A, Section 101(h), Title VI, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999 (Pub. L. 105–277) requires that agencies may not use appropriated funds to acquire information technology that does not comply with 39.106, unless the agency's Chief Information Officer determines that noncompliance with 39.106 is necessary to the function and operation of the agency or the acquisition is required by a contract in effect before October 21, 1998. The Chief Information Officer must send to the Office of Management and Budget a copy of all waivers for forwarding to Congress.

* * * * *

[FR Doc. 99–15151 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 9, 12, 19, 22, 31, 42, 52, and 53

[FAC 97–12; Item VII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 1, 9, 12, 19, 22, 31, 42, 52, and 53

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 9, 12, 19, 22, 31, 42, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 1, 9, 12, 19, 22, 31, 42, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.106 in the table following the introductory paragraph by—

a. Removing the FAR segment entries at 28.106–1(e) and 28.106–1(n) and their corresponding OMB Control Numbers;

b. Revising the FAR segment entry "52.223–8" to read "52.223–9";

c. At entry 52.228–2 by removing "and 9000–0119";

e. At entry 52.228–16 by removing "and 9000–0119"; and

f. Adding entry 52.228–12 to read as follows:;

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB Control No.
. . .	
52.228–12	9000–0135
. . .	

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

9.505 [Amended]

3. Amend section 9.505 in paragraph (b)(1) by removing "(as defined in 3.104–3)".

PART 12—ACQUISITION OF COMMERCIAL ITEMS 12.301 [Amended]

4. Amend section 12.301 in the first sentence of paragraph (b)(3) by revising the parenthetical to read "(see Block 27, SF 1449)".

PART 19—SMALL BUSINESS PROGRAMS

19.803 [Amended]

5. Amend section 19.803 by revising the parenthetical at the end of paragraph (c) to read "(but see 19.800(e))."

19.806 [Amended]

6. Amend section 19.806 in the second sentence of paragraph (a) by removing the word "certified".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

7. Revise section 22.609 to read as follows:

22.609 Regional jurisdictions of the Department of Labor, Wage and Hour Division.

Geographic jurisdictions of the following regional offices of the DoL, Wage and Hour Division, are shown here, and contracting officers should contact them in all situations required by this subpart, unless otherwise specified:

(a) The Region I and Region II office located in New York, New York, has jurisdiction for Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands.

(b) The Region III office located in Philadelphia, Pennsylvania, has jurisdiction for Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

(c) The Region IV office located in Atlanta, Georgia, has jurisdiction for Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(d) The Region V and Region VII office located in Chicago, Illinois, has jurisdiction for Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin.

(e) The Region VI and Region VIII office located in Dallas, Texas, has jurisdiction for Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.

(f) The Region IX and Region X office located in San Francisco, California, has jurisdiction for Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–6 [Amended]

8. Amend section 31.205–6 in the second sentence of paragraph (o)(6) by removing the word "certified".

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.203 [Amended]

9. Amend section 42.203 in the third sentence by removing "DCMC–AQBF" and adding "DCMCC–F", and revising the ZIP code to read "22060–6221".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–6 [Amended]

10. Amend section 52.204–6 by revising the provision date to read "(JUNE 1999)"; and by removing from the first sentence of paragraph (c) of the provision "http://www.dnb.com/" and adding "http://www.customerservice@dnb.com" in its place.

52.212–1 [Amended]

11. Amend section 52.212–1 by revising the provision date to read "(JUNE 1999)"; and by removing from the next-to-the-last sentence in paragraph (j) of the provision "http://www.dnb.com/" and adding "http://www.customerservice@dnb.com" in its place.

52.212–3 [Amended]

12. Amend section 52.212–3 by revising the provision date to read "(JUNE 1999)"; and by removing ", □ is not" from paragraph (c)(4) of the provision.

52.213–4 [Amended]

13. Amend section 52.213–4 by—

a. Revising the clause date to read "(JUNE 1999)";

b. In paragraph (a)(2)(vi) of the clause by revising "(OCT 1995)" to read "(DEC 1998)";

c. In paragraph (a)(2)(vii) of the clause by revising "(OCT 1995)" to read "(OCT 1998)";

d. In paragraph (b)(1)(ii) of the clause by revising "(APR 1984)" to read "(FEB 1999)"; and

e. In (b)(1)(v) of the clause by revising "(APR 1998)" to read "(JAN 1999)".

14. Amend section 52.215–2 by revising the date of the clause, to read "(June 1999)", revising paragraphs (f)(1) and (f)(2) of the clause, and Alternate III to read as follows:

52.215–2 Audit and Records—Negotiation.

* * * * *

Audit and Records—Negotiation (June 1999)

* * * * *

(f) * * *

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

* * * * *

Alternate III (June 1999). As prescribed in 15.209(b)(4), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly, and substitute the following paragraph (e) for the redesignated paragraph (e) of the basic clause:

(e) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), and (d) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

52.219–1 [Amended]

15. Amend section 52.219–1 in the introductory text of Alternate I by revising "19.307(a)(1)" to read "19.307(a)(2)".

52.219–8 [Amended]

16. Amend section 52.219–8 by revising the date of the clause to read "(JUNE 1999)"; and by removing from paragraph (c)(4)(ii) of the clause "women; and" and adding "women." in its place.

17. Amend section 52.219–14 by revising the introductory paragraph to read as follows:

52.219–14 Limitations on Subcontracting.

As prescribed in 19.508(e) or 19.811–3(e), insert the following clause:

* * * * *

52.219–22 [Amended]

18. Amend section 52.219–22 in the introductory text of Alternate I by revising "19.306(b)" to read "19.307(b)".

PART 53—FORMS

53.214 [Amended]

19. Amend section 53.214 in paragraph (c) by removing the last sentence.

53.215–1 [Amended]

20. Amend section 53.215–1 in paragraph (c) by removing the last sentence.

[FR Doc. 99–15152 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–12 which amend the FAR. The rule marked with an asterisk (*) indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–12 which precedes this document. These documents are also available via the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225.

LIST OF RULES IN FAC 97–12

Item	Subject	FAR case	
I	Taxpayer Identification Numbers		
II	* Use of Brand Name Item Descriptions		
III	SBA's 8(a) Business Development Program (Interim)	8–	
IV	Competition Under Multiple Award Task and Delivery Order Contracts	98–007	Desiefano.
V	Application of the Brooks Act	98–023	O'Neill

LIST OF RULES IN FAC 97–12—Continued

Item	Subject	FAR case	Analyst
VI	Restrictions on the Acquisition of Information Technology	98–306	Nelson.

Item I—Taxpayer Identification Numbers (FAR Case 97–003)

The interim rule published as Item I of the FAC 97–09 is converted to a final rule without change. The rule amends FAR Parts 1, 4, 13, 14, 15, and 52 to implement Subsection (i) of the Debt Collection Improvement Act of 1996 and Section 1022 of the Taxpayer Relief Act of 1997; and to clarify the Government requirements for reporting contract and payment information to the Internal Revenue Service (IRS).

Item II—Use of Brand Name Item Descriptions (FAR Case 96–018)

This final rule amends FAR Parts 11, 37, and 52 to clarify guidance for the use of brand name purchase descriptions.

Item III—SBA's 8(a) Business Development Program (FAR Case 98–011)

This interim rule amends FAR Parts 12, 19, and 52 to implement changes made in the Small Business Administration's 8(a) Business Development (8(a)BD) Program regulation contained in 13 CFR parts 121, 124, and 134 regarding the eligibility procedures for admission to the 8(a)BD and contractual assistance programs.

Item IV—Competition Under Multiple Award Task and Delivery Order Contracts (FAR Case 98–007)

This final rule amends the procedures for placing orders under multiple award contracts at FAR 16.505(b). The amendment emphasizes that agencies shall use only fair methods when placing orders. For example, the contracting officer shall not employ allocation or designation of any preferred awardee(s) that would result in less than fair consideration being given to all awardees prior to placing each order.

Item V—Application of the Brooks Act (FAR Case 98–023)

This final rule amends FAR Part 36 to remove the reference to the National Imagery and Mapping Agency (NIMA) at FAR 36.601–4(a)(4).

Item VI—Restrictions on the Acquisition of Information Technology (FAR Case 98–306)

This final rule revises FAR 39.101 to implement Division A, Section 101(h), Title VI, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999. Section 622 provides that no appropriated funds may be used to acquire information technology that does not comply with FAR 39.106, unless the agency's Chief Information Officer (CIO) determines that noncompliance with 39.106 is necessary to the function and operation of the agency or the acquisition is required by a contract in effect before October 21, 1998.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Approval of Tungsten-Iron and Tungsten-Polymer Shots and Temporary Approval of Tungsten-Matrix and Tin Shots as Nontoxic for Hunting Waterfowl and Coots; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF65

Migratory Bird Hunting; Final Approval of Tungsten-Iron and Tungsten-Polymer Shots and Temporary Approval of Tungsten-Matrix and Tin Shots as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes to grant final approval of tungsten-iron and tungsten-polymer shots as nontoxic for hunting waterfowl and coots. We also propose to grant temporary approval of tungsten-matrix and tin shots as nontoxic for hunting waterfowl and coots during the 1999–2000 hunting season only. Acute toxicity studies reveal no adverse effects over a 30-day period on mallards (*Anas platyrhynchos*) dosed with either tungsten-iron, tungsten-polymer, tungsten-matrix, or tin shot. Reproductive/chronic toxicity testing over a 150-day period indicated that tungsten-iron and tungsten-polymer administered to adult mallards did not adversely affect them or the offspring they produced. We will not consider final approval of tungsten-matrix and tin shots until all required reproductive/chronic toxicity tests are successfully completed and the results are received and approved by the Director. Tungsten-iron and tungsten-polymer shots are produced by Federal Cartridge Company (Federal) of Anoka, Minnesota. Tungsten-matrix shot is produced by Kent Cartridge Company (Kent) of Kearneysville, West Virginia. Tin shot is produced by the International Tin Research Institute (ITRI) of Uxbridge, Middlesex, Great Britain.

DATES: Comments on the proposed rule must be received no later than July 19, 1999.

ADDRESSES: Comments may be sent to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 634-ARLSQ, Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Office of Migratory Bird Management, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, we have sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel and bismuth-tin shot are approved as nontoxic. We previously granted temporary approval for tungsten-iron shot during the 1997–98 (August 13, 1997; 62 FR 43444) and 1998–99 (October 7, 1998; 63 FR 54016) migratory bird hunting seasons. We also granted temporary approval for tungsten-polymer (October 7, 1998; 63 FR 54022) and tungsten-matrix (December 8, 1998; 63 FR 67619) shots during the 1998–99 migratory bird hunting season. Compliance with the use of nontoxic shot has increased over the last few years. We believe that compliance will continue to increase with the approval and availability of other nontoxic shot types.

Federal Cartridge Company's (Federal) tungsten-iron shot is an alloy of approximately 55 percent tungsten and 45 percent iron, by weight, and has a density of approximately 10.3 g/cm^3. Tungsten-polymer shot is a matrix of Nylon 6 or 11 polymer surrounding particles of elemental tungsten. Shot made from this material has a density of approximately 11.2 g/cm^3 or approximately the density of lead. The shot will contain approximately 95.5 percent tungsten and 4.5 percent Nylon 6 or 11 by weight.

Kent's original candidate shot was fabricated from what is described in their application as a mixture of powdered metals in a plastic matrix whose density is comparable to that of lead. All component metals are present as elements, not compounds. The tungsten-matrix material from which pellets are formulated has a specific gravity of 9.8 g/cm^3 and is composed of 88 percent tungsten, 4 percent nickel, 2 percent iron, 1 percent copper, and 5 percent polymers by mass. After consultation with us, Kent has subsequently changed the composition of their shot and removed nickel and copper. The new shot material being considered has a density of 10.7 g/cm^3 and is composed of approximately 95.9 percent tungsten and 4.1 percent polymers.

ITRI's candidate shot is made from commercially pure tin; no alloying or other alterations are intentionally made to the chemical composition of the shot. This shot material has a density of approximately 7.29 g/cm^3, and is 99.9 percent tin, with a low level of iron pickup due to the steel production equipment.

Each of Federal's applications for tungsten-iron and tungsten-polymer include a description of the shot, a toxicological report (Barr 1996), results of a 30-day dosing study of the toxicity of the shot in game-farm mallards (Bursian *et al.* 1996a, Bursian *et al.* 1996b), and results of a 150-day reproductive/chronic toxicity study (Bursian *et al.* 1999). Kent's application for tungsten-matrix includes a description of the shot, a toxicological report (Thomas 1997a), and results of a 30-day toxicity study (Wildlife International, Ltd. 1998a). The tin shot application from ITRI contains a description of the shot, a toxicological report (Thomas 1997b), and results of a 30-day toxicity study (Wildlife International, Ltd. 1998b). Toxicological reports for each shot type incorporates toxicity information (a synopsis of acute and chronic toxicity data for mammals and birds, potential for environmental concern, and toxicity to aquatic and terrestrial invertebrates, amphibians and reptiles) and information on environmental fate and transport (shot alteration, environmental half-life, and environmental concentration).

Toxicity Information: There is considerable difference in the toxicity of soluble and insoluble compounds of tungsten and iron. Elemental tungsten and iron are virtually insoluble and are therefore expected to be relatively nontoxic. Even though most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten, there appears to be no basis for concern of toxicity to wildlife for either candidate shot via ingestion by fish or mammals (Bursian *et al.* 1996b, Gigiena 1983, Karantassis 1924, Patty 1982, Industrial Medicine 1946). Detailed reviews of the toxicological impacts of different tin compounds have been conducted by Eisler (1989) and Cooney (1988). Both reviews indicate that elemental tin is non-toxic to animals. Tin shot designed for waterfowl hunting is utilized in several European countries and no reports exist that suggest that tin shot is causing toxicity problems for wildlife in those countries.

The potential toxicity of nylon compounds due to degradation is primarily associated with the stabilizers, antioxidants, plasticizers, and unreacted prepolymers. Residual caprolactum has been found in some commercial Nylon 6 products, but little concern regarding this compound has been developed (Patty, 1982). The toxicity of Nylon 6 and 11 are negligible due to their insolubilities.

Environmental Fate and Transport: Tungsten is insoluble in water and therefore not mobile in hypergenic environments. Tungsten is very stable with acids and does not easily complex. Preferential uptake by plants in acid soil suggests uptake of tungsten in the anionic form associated with tungsten minerals rather than elemental tungsten (Kabata and Pendias 1984). Tin pellets will undergo slow surface oxidation to form hydrated tin oxide, which is extremely insoluble in water (Lide 1990). Therefore dissolution will be slow, and highly localized aqueous concentrations will not arise. This means that elemental tin will over time remain largely in the same inorganic form as when it is discharged. Tin pellets discharged into wetlands where sulphur ions are released during organic decomposition would become coated with tin sulphide, which is highly insoluble in water and resistant to aquatic hydrolysis (Hoiland 1995).

Environmental Concentration: The effective environmental concentration (EEC) for a terrestrial ecosystem was calculated based on 69,000 shot per hectare (Pain 1990), assuming complete erosion of material in 5 cm of soil. For tungsten-iron shot, the EEC for tungsten in soil was calculated at 32.9 mg/kg. For tungsten-polymer shot, the EECs for tungsten and Nylon (6 and 11) in soil are 58.3 mg/kg and 2.7 mg/kg, respectively. The EECs for tungsten and the 2 polymers found in tungsten-matrix are 25.7 mg/kg, 4.2 mg/kg, and 0.14 mg/kg, respectively. The EEC for tin in soil is 19.3 g/m^3.

The environmental concentration (EEC) for an aquatic ecosystem was calculated assuming complete erosion of the shot in one cubic foot of water. For tungsten-iron shot, the EEC in water for tungsten was 10.5 mg/L. For tungsten-polymer shot, the EECs in water for tungsten and Nylon (6 and 11) are 18.7 mg/L and 0.9 mg/L, respectively. The EECs in water for tungsten and the 2 polymers found in tungsten-matrix are 4.2 mg/L, 0.2 mg/L, and 0.02 mg/L, respectively. The EEC in water for tin is 19.3 mg/L.

Effects on Birds: An extensive literature review in each application provided information on the toxicity of elemental tungsten and tin to waterfowl and other birds. Ringelman et al. (1993) orally dosed 20 8-week-old game-farm mallards with 12–17 (1.03 g average weight) tungsten-bismuth-tin (TBT) pellets and monitored them for 32 days for evidence of intoxication. No birds died during the trial, gross lesions were not observed during the postmortem examinations, histopathological examinations did not reveal any evidence of toxicity or tissue damage, and tungsten was not detectable in kidney or liver samples. The authors concluded that TBT shot presented virtually no potential for acute intoxication in mallards.

Kraabel *et al.* (1996) assessed the effects of embedded TBT shot on mallards and concluded that TBT was not acutely toxic when implanted in muscle tissue. Inflammatory reactions to TBT shot were localized and had no detectable systemic effects on mallard health.

Nell (1981) fed laying hens (*Gallus domesticus*) 0.4 or 1.0 g/kg tungsten in a commercial mash for five months to assess reproductive performance. Weekly egg production was normal and hatchability of fertile eggs was not affected. Exposure of chickens to large doses of tungsten either through injection or by feeding resulted in an increased tissue concentration of tungsten and a decreased concentration of molybdenum (Nell 1981). The loss of tungsten from the liver occurred in an exponential manner with a half-life of 27 hours. The alterations in molybdenum metabolism seemed to be associated with tungsten intake rather than molybdenum deficiency. Death due to tungsten occurred when tissue concentrations increased to 25 mg/g liver. At that concentration, xanthine dehydrogenase activity was zero.

Ringelman *et al.* (1992) conducted a 32-day acute toxicity study which involved dosing game-farm mallards with a shot alloy of tungsten-bismuth-tin (TBT), which was 39, 44.5 and 16.5 percent by weight, respectively. No dosed birds died during the trial, and behavior was normal. Examination of tissues post-euthanization revealed no toxicity or damage related to shot exposure. This study concluded that "* * * TBT shot presents virtually no potential for acute intoxication in mallards under the conditions of this study."

Several studies have been conducted in which pellets made of tin or tin alloys have been placed inside the digestive tract or tissues of ducks to determine if toxic effects occur. Grandy *et al.* (1968) and the Huntingdon Research Centre (1987) conducted 30- and 28-day, respectively, acute toxicity tests on mallard ducks and reported that all treatment ducks survived with insignificant weight loss or development of pathological lesions. The potential for bismuth-tin (BT) shot to produce toxicological effects in ducks during reproduction has been investigated under both acute and chronic testing conditions. Tin as a 2% component of the tested shot, did not pose a toxic risk to ducks when fed a nutritionally-imbalanced, corn-based diet. Neither has BT shot been shown to pose an adverse risk to the health of ducks, the reproduction by male and female birds, nor the survival of ducklings over the long term (Sanderson *et al.* 1997a, b).

Nylon 6 is the commercially important homopolymer of caprolactum. Most completely polymerized nylon materials are physiologically inert, regardless of the toxicity of the monomer from which they are made (Peterson 1977). Few data exist on the toxicity of Nylon 6 in animals. Most toxicity studies are related to thermal degradation products and so are not relevant to the exposure of wildlife to shot containing nylon. Montgomery (1982) reported that feeding Nylon 6 to rats at a level of 25 percent of the diet for 2 weeks caused a slower rate of weight gain, presumably due to a decrease in food consumption and feed efficiency. However, the rats suffered no anatomic injuries due to the consumption of nylon.

The two plastic polymers used in tungsten-matrix shot act as a physical matrix in which the tungsten is distributed as ionically-bound fine particles. Most completely polymerized nylon materials are physiologically inert, regardless of the toxicity of the monomer from which they are made (Peterson 1977). A literature review did not reveal studies in which either of the two polymers were evaluated for toxicity in birds.

Acute Toxicity Studies: Federal contracted with Michigan State University—Department of Animal Science, to conduct an acute toxicity study of tungsten-iron and tungsten-polymer. Both Kent and ITRI contracted with Wildlife International Ltd. to conduct an acute toxicity study of tungsten-matrix and tin shots, respectively. The acute toxicity test is a short-term (30-day) study where ducks are dosed with shot and fed commercially available duck food. Survival, body weight, blood hematocrit, and organ analysis are recorded.

Tungsten-iron and tungsten-polymer: The 30-day dosing study revealed no adverse effects when mallards were dosed with either 8 BB size tungsten-iron shot or 8 BB size tungsten-polymer shot and monitored over a 30-day period (Bursian *et al.* 1996a, Bursian *et al.* 1996b). Eight male and 8 female adult mallards were dosed with either 8 No. 4 steel shot, 8 No. 4 lead shot, 8 BB size tungsten-iron shot, or 8 BB size tungsten-polyer shot and observed over a 30-day period. An additional 8 males and 8 females received no shot. Fifty percent of the lead-dosed birds (5 males and 3 females) died during the 30-day test while there were no mortalities in

the other groups. Lead-dosed birds were the only ones to display green excreta, lethargy, and ataxia. Body weights were not significantly altered by any of the treatments, although lead-dosed birds which died during the trial lost an average of 30 percent of their body weight. Hematocrit, hemoglobin concentrations, and ALAD activity were significantly depressed at day 15 in the lead-dosed females, while lead-dosed males had significantly depressed hematocrit and hemoglobin concentration compared with the other four groups. There were no significant differences in these whole-blood parameters at day 30. Three tungsten-polymer-dosed males developed mild biliary stasis. The authors attributed this to the intubating of mallards with 8 BBs of tungsen-polymer shot inducing a pathological condition—however slight—that was not found in the control birds. No other histopathological lesions were found. Tungsten was detected in the femur of two tungsten-polymer-dosed females and the kidneys of two tungsten-polymer-dosed birds; in both tissues, concentrations were only slightly above detection limits. In general, no adverse effects were seen in mallards given 8 BB-size tungsten-polymer shot and monitored over a 30-day period.

Tungsten-matrix: Kent's 30-day dosing study (Wildlife International Ltd. 1998a) included 4 treatment and 1 control group of game-farm mallards. Treatment groups were exposed to 1 of 3 different types of shot: 8 #4 steel, 8 #4 lead, or 8 #4 tungsten-matrix; whereas the control group received no shot. The 2 tungsten-matrix treatment groups (1 group deficient diet, 1 group balanced diet) each consisted of 16 birds (8 males and 8 females); whereas remaining treatment and control groups consisted of 6 birds each (3 males and 3 females). All tungsten-matrix-dosed birds survived the test and showed no overt signs of toxicity or treatment-related effects on body weight. There were no differences in hematocrit or hemoglobin concentration between the tungsten-matrix treatment group and either the steel shot or control groups. No histopathological lesions were found during gross necropsy. In general, no adverse effects were seen in mallards given 8 #4 size tungsten-matrix shot and monitored over a 30-day period. Tungsten was found to be below the limit of detection in all samples of femur, gonad, liver, and kidney from treatment groups.

Tin: ITRI's 30-day dosing study (Wildlife International Ltd. 1998b) included 4 treatment and 1 control group of game-farm mallards. Treatment groups were exposed to 1 of 3 different types of shot: 8 #4 steel, 8 #4 lead, or 8 #4 tin shot; whereas the control group received no shot. The 2 tin treatment groups (1 group deficient diet, 1 group balanced diet) each consisted of 16 birds (8 males and 8 females); whereas remaining treatment and control groups consisted of 6 birds each (3 males and 3 females). All tin-dosed birds survived the test and showed no overt signs of toxicity or treatment-related effects on body weight. There were no differences in hematocrit or hemoglobin concentration between the tin treatment group and either the steel shot or control groups. No histopathological lesions were found during gross necropsy. In general, no adverse effects were seen in mallards given 8 #4 size tin shot and monitored over a 30-day period. No levels of tin above the limit of detection were observed in any tissues collected from either tin treatment group.

Reproductive/chronic Toxicity Study: Federal contracted with Michigan State University—Department of Animal Science, to conduct an a reproductive/chronic toxicity studies for both tungsten-iron and tungsten-polymer shot types. The reproductive/chronic toxicity study is a long-term (150-day) study where ducks are dosed with shot and fed commercially available duck food. Survival, body weight, blood hematocrit, organ analysis, and reproductive performance are recorded.

Tungsten-iron and Tungsten-polymer: The reproductive/chronic toxicity study revealed no adverse effects when mallards were dosed with either 8 No. 4 size tungsten-iron shot, or 8 No. 4 size tungsten-polymer shot, and monitored over a 150-day period (Bursian et al. 1999). Sixteen male and 16 female adult mallards were orally dosed with either 8 No. 4 steel shot, 8 No. 4 tungsten-iron shot, or 8 No. 4 tungsten-polymer shot. An additional 6 male and 6 female mallards were dosed with 8 No. 4 lead shot. All lead-dosed birds died by day 25 of the study, whereas no mortalities occurred in the other test groups. Lead-dosed birds had significantly decreased hematocrit, hemoglobin concentration and whole-blood delta aminolevulinic dehydratase activity on day 7 of the study. Mallards dosed with tungsten-iron or tungsten-polymer shot had occasional significant differences in hematocrit and plasma chemistry values when compared to steel-dosed mallards over the 150-day period, but these changes were within the normal range reported for mallards and were not considered to be deleterious. Relative kidney, heart, brain and gizzard weights of lead-dosed birds were significantly greater in comparison to relative weights of those organs in the other 3 treatment groups. Marked liver hemosiderosis was present in all steel and tungsten-dosed males, in 5 of 8 steel- and 3 of 8 tungsten-iron-dosed females, and in 1 tungsten-polymer-dosed male examined. Small amounts of tungsten were detected in gonad and kidney samples from males and females, in femur samples of males, and in liver samples from females dosed with tungsten-polymer shot. Higher concentrations of tungsten were detected in femur, gonad, kidney, and liver samples from tungsten-iron-dosed ducks. The rate of shot erosion was 99% for tungsten-polymer, 72% for tungsten-iron, 55% for steel, and 37% for lead. There were no significant differences in percent egg production, and percent fertility and hatchability of eggs from tungsten-iron- and tungsten-polymer-dosed ducks when compared to steel-dosed ducks. There were no biological differences in percent survivability and body weight of ducklings from tungsten-iron- or tungsten-polymer-dosed ducks when compared to ducklings from steel-dosed ducks. The hematocrit of ducklings from tungsten-iron-dosed ducks was slightly but significantly lower when compared to ducklings from steel-dosed ducks. Histological examination of duckling kidneys and liver indicated no abnormalities. Tungsten was detected in 25%, 9%, and 13% of the femur, kidneys, and liver samples, respectively, from ducklings of the tungsten-iron and tungsten-polymer groups. Overall, results of this study indicated that tungsten-iron and tungsten-polymer shot repeatedly administered to adult mallards did not adversely affect them or the offspring they produced during the 150-day trial.

Nontoxic Shot Approval

The first condition for nontoxic shot approval is toxicity testing. Based on the results of the toxicological report and the toxicity tests (Tiers 1, 2, and 3) discussed above, we conclude that tungsten-iron and tungsten-polymer shot does not pose a significant danger to migratory birds or other wildlife and their habitats. Based on the results of toxicological reports and acute toxicity tests (Tier 1 and 2), we conclude that tungsten-matrix and tin shots do not appear to pose a significant danger to migratory birds or other wildlife and their habitats. However, final approval of either shot type will not be considered until all required reproductive/chronic toxicity tests have been successfully completed and our Director has reviewed and approved the results.

The second condition for approval is testing for residual lead levels. Any shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. We have determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent, and incorporated this requirement in the nontoxic shot approval process that was published on December 1, 1997 (62 FR 63608). Federal has documented that tungsten-iron and tungsten-polymer shots meet this requirement. Kent and ITRI have documented that tungsten-matrix and tin shot, respectively, meet this requirement.

The third condition for approval involves enforcement. In the August 18, 1995, **Federal Register** (60 FR 43314), we indicated that approval of any nontoxic shot would be contingent upon the development and availability of a noninvasive field testing device. This requirement was incorporated in the nontoxic shot approval process that was published on December 1, 1997 (62 FR 63608). Tungsten-iron shotshells can be drawn to a magnet as a simple field detection method. Electronic field testing devices can distinguish shells containing tungsten-polymer and tungsten-matrix from shells containing lead. At the present time, we are not aware of any noninvasive field testing devices for distinguishing shells containing tin shot from those containing lead. We will not consider final approval of tin shot until such a device, or other noninvasive field testing method, has been developed for identifying tin shot.

This proposed rule would amend 50 CFR 20.21(j) by approving tungsten-iron and tungsten-polymer shots as nontoxic for migratory bird hunting. It is based on the toxicological reports, acute toxicity studies, and reproductive/chronic toxicity studies submitted by Federal. Results of these studies indicate the absence of any deleterious effects of tungsten-iron or tungsten-polymer shot when ingested by captive-reared mallards or to the ecosystem. We also propose to grant temporary approval to tungsten-matrix and tin shots for the 1999–2000 hunting season only. Temporary approval would be based on the toxicological reports and acute toxicity studies submitted by Kent and ITRI. We have reduced the public comment period from 60 days to 30 days in order to complete the rulemaking process prior to the start of the hunting season. This will facilitate planning efforts by vendors and State wildlife agencies.

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NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared draft Environmental Assessments (EA) in May, 1999. The EAs are available to the public at the location indicated under the **ADDRESSES** caption.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *" We are completing a Section 7 consultation under the ESA for this proposed rule. The result of our consultation under Section 7 of the ESA will be available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. This rule would approve additional types of nontoxic shot that may be sold and used to hunt migratory birds; this rule would provide 4 types of shot in addition to the existing 2 that are approved. We have determined, however, that this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Executive Order 12866

This rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand? Section 20.21 may be written in plain language format in the final rule.

Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and found it to contain no information collection requirements. However, we do have OMB approval (1018–0067; expires 06/30/2000) for information collection relating to what manufacturers of shot are required to provide to us for the nontoxic shot approval process. For further information see 50 CFR 20.134.

Unfunded Mandates Reform

We have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502, *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

We, in promulgating this rule, have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Authorship

The primary author of this proposed rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we propose to amend part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

2. Section 20.21 is amended by revising the section title, revising paragraph (j) introductory text, revising paragraphs (j)(2) and (j)(3), and removing paragraph (j)(4) to read as follows:

20.21 What hunting methods are illegal?

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron (55 parts tungsten: 45 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or tin (99.9 percent tin with <1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, provided that:

(1) * * *

(2) Tungsten-matrix shot (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 1999–2000 hunting season only, and

(3) Tin shot (99.9 percent tin with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 1999–2000 hunting season only.

Dated: June 8, 1999.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–15339 Filed 6–16–99; 8:45 am]

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federal register

Thursday
June 17, 1999

Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF24

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 1999–2000 hunting season. This supplement to the proposed rule provides the regulatory schedule; announces the Service Migratory Bird Regulations Committee and Flyway Council meetings; and describes the proposed regulatory alternatives for the 1999–2000 duck hunting seasons and other proposed changes from the 1998–99 hunting regulations.

DATES: The Service Migratory Bird Regulations Committee will consider and develop proposed regulations for early-season migratory bird hunting on June 22 and 23, and for late-season migratory bird hunting on August 3 and 4. All meetings will commence at approximately 8:30 a.m. To comment on the proposed regulatory alternatives for the 1999–2000 duck hunting seasons, you must submit your comments by July 2, 1999. To comment on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons, you must do so by July 27, 1999. To comment on the proposed late-season frameworks, you must do so by September 7, 1999.

ADDRESSES: The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Send your comments on the proposals to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1999

On May 3, 1999, we published in the **Federal Register** (64 FR 23742) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under § 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. We will publish early-season frameworks and final regulatory alternatives for the 1999–2000 duck hunting seasons in mid-July and late-season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 20, 1999, and those for late seasons on or about September 27, 1999.

Service Migratory Bird Regulations Committee Meetings

The June 22–23 meetings will review information on the current status of migratory shore and upland game birds and develop 1999–2000 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we will review and discuss preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 1999–2000 regular waterfowl seasons.

The August 3–4 meetings will review information on the current status of waterfowl and develop 1999–2000 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early season meetings.

In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Director on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the following meetings of the Flyway Councils:

Atlantic Flyway, July 29–30, Key West, Florida, (Hilton Resort and Marina)
Mississippi Flyway, July 27–29, Merrillville, Indiana (Radisson)
Central Flyway, July 29–30, Bartlesville, Oklahoma (hotel to be announced)
Pacific Flyway, July 30, Reno, Nevada (Peppermill Hotel)

Although agendas are not yet available, these meetings usually commence at 8:30 a.m. on the days indicated.

Review of Public Comments

This supplemental rulemaking contains the proposed regulatory alternatives for the 1999–2000 duck hunting seasons. We have included and addressed all comments and recommendations received through May 24, 1999, relating to the development of these alternatives.

This supplemental rulemaking also describes other recommended changes based on the preliminary proposals published in the May 3, 1999, **Federal Register**. We have included only those recommendations requiring either new proposals or substantial modification of the preliminary proposals.

This supplement does not include recommendations or comments that simply support or oppose preliminary proposals and provide no recommended alternatives. We will consider these comments later in the regulations-development process. We will publish responses to all proposals and written comments when we develop final frameworks.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the May 3, 1999, **Federal Register**.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. The categories correspond to previous published issues/discussion and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic Flyway Council recommended continued use of the 1998–99 duck hunting packages for the 1999–2000 season. They further recommended the Service not allow framework date extensions in any States during the 1999–2000 season.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended the Service use the 1997–98 regulations packages for the 1999–2000 duck season, including frameworks dates from the Saturday nearest October 1 to the Sunday nearest January 20.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the Service continue use of the 1998–99 regulatory packages for the 1999–2000 season and further recommended deletion of the "very restrictive" alternative and modification of the framework opening and closing dates to the Saturday closest to September 23 to January 31 for all alternatives with no offsets (see further discussion in B. Framework Dates).

The Central Flyway Council recommended the Service continue use of the 1998–99 regulatory packages for the 1999–2000 season with several modifications. The Council recommended opening framework dates of the Saturday closest to September 24 in the "liberal" and "moderate" regulatory alternatives with no offsets. The framework closing date would remain the Sunday closest to January 20. Additionally, the Council recommended that no additional changes be allowed to the packages for a five-year period (see further discussion in B. Framework Dates).

The Pacific Flyway Council recommended framework dates of the Saturday closest to September 23 to January 31 without offsets in the "liberal" alternative and with offsets in the "moderate" alternative (as long as the offset does not exceed 7 days with a season of not less that 79 days in the Pacific Flyway). For the "restrictive" and "very restrictive" alternatives, the Council recommended maintaining current framework dates (see further discussion in B. Framework Dates). The Council also recommended maintaining the current mallard bag limits and preserving the traditional differences in harvest opportunity both within and between Flyways.

Service Response: For the 1999–2000 regular duck hunting season, we propose the four regulatory alternatives detailed in the accompanying table. Alternatives are specified for each Flyway and are designated as "VERY RES" for the very restrictive, "RES" for the restrictive, "MOD" for the moderate, and "LIB" for the liberal alternative. We will announce final regulatory alternatives and propose a specific regulatory alternative at the conclusion of the early-season regulations meetings in late June when survey data on waterfowl population and habitat status are available. Public comments will be accepted until July 2, 1999, and should be sent to the address under the caption **ADDRESSES.**

B. Framework Dates

Council Recommendations: The Atlantic Flyway Council recommended that the Service not allow framework date extensions in any States during the 1999–2000 season.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended no change in the framework dates from the 1997–98 regulatory alternatives.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended modification of the framework opening and closing dates to the Saturday closest to September 23 to January 31 for all regulatory alternatives with no offsets.

The Central Flyway Council recommended an opening framework date of the Saturday closest to September 24 in the "liberal" and "moderate" regulatory alternatives with no offsets. The framework closing date would remain the Sunday closest to January 20.

The Pacific Flyway Council recommended framework dates of the Saturday closest to September 23 to January 31 without offsets in the "liberal" alternative and with offsets in the "moderate" alternative (as long as the offset does not exceed 7 days with a season of not less that 79 days in the Pacific Flyway). For the "restrictive" and "very restrictive" alternatives, the Council recommended maintaining current framework dates.

Service Response: After considerable public debate concerning framework dates for the 1998–99 hunting season, in an August 5, 1998, **Federal Register** (63 FR 41926), we chose not to extend the framework closing date beyond January 20 in the Atlantic Flyway and the Sunday nearest January 20 in the Mississippi, Central, and Pacific Flyways. That decision reflected public concerns that framework-date extensions could re-distribute hunting opportunities in unknown or undesirable ways; that there could be adverse biological impacts; and that the four Flyway Councils had not had sufficient opportunity to design an approach that could be supported by a majority of States. In recognition of these concerns, we expressed an interest in working with the International Association of Fish and Wildlife Agencies, the National Flyway Council, and the four Flyway Councils to explore common goals, potential conflicts, and possible solutions in the debate over framework-date extensions. However, we also recognized the inherent difficulty in finding a consensus solution, principally because the issue involves highly subjective assessments of what constitutes the fair and equitable distribution of hunting opportunity among States.

On September 29, 1998 (63 FR 51998), we published the final late-season frameworks for migratory bird hunting regulations that States used to select their hunting seasons. On October 19, 1998, Congress directed us to offer a framework-date extension from the Sunday nearest January 20 to January 31 in the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee, provided the affected States agreed to reduce season length to offset the predicted increase in duck harvest. No public comment was accepted on this action because: (1) the framework dates were revised based on a directive from Congress; (2) public comment could not change the Congressional action; (3) there was insufficient time before the onset of hunting seasons in southern States; and (4) we had already received extensive public comment on the issue. Ultimately, the States of Alabama, Mississippi, and Tennessee selected the framework-date extension, and the length of their hunting seasons was reduced from 60 to 51 days.

In evaluating proposals for framework dates for the 1999–2000 hunting season, we will continue to focus on several key issues, including: (1) the potential for biological impacts on the waterfowl resource, particularly on those species currently at depressed levels; (2) the technical difficulties associated with applying framework dates at a State, rather than Flyway, level; (3) the need to maintain framework dates as a viable tool, along with season length and bag limit, for regulating duck harvests; and (4) the acceptability of proposals to a broad range of stakeholders. In addition, we are particularly concerned about any modification to framework dates that would disrupt the functioning of Adaptive Harvest Management (AHM), which is intended to reduce long-standing uncertainties about the impacts of hunting regulations on waterfowl populations. An essential feature of the AHM process is a set of regulatory alternatives (including framework dates, season lengths, and bag limits) that is sufficiently stable over time to permit a reliable investigation of the relationships between regulations and harvest, and between harvest and subsequent duck population size.

Proposals for framework extensions also will be evaluated based on our most recent biological assessment, which was conducted in response to a directive contained in the Senate Committee on Appropriations Report 105–227. Our assessment confirmed that extensions of opening and closing framework dates tend to increase the harvest of many duck species. Therefore, large-scale extensions, which are not accompanied by reductions in season length and/or bag limits, likely would increase the frequency of restrictive hunting regulations and the frequency of annual regulatory changes. Moreover, the assessment confirms that additional uncertainty about harvest levels, arising from novel changes to regulatory alternatives, will precipitate more conservative harvest strategies, at least in the short term.

Last August, and again last November, we publicly endorsed the National Flyway Council's (NFC) overall review of the framework-dates issue. We commend the NFC for their continuing efforts to resolve this contentious issue and seek consensus among the Flyways. However, in reviewing the recent framework-date proposals from the four Flyway Councils, it is readily apparent that a consistent approach among or, in one case, within Flyways is still lacking. Apparently, there remains a diversity of opinions: (1) about the desirability of framework-date extensions at this time; (2) about the need for corresponding reductions in season length; (3) about whether extensions should be applied to opening dates, closing dates, or both; and (4) about the inclusion of framework-date extensions in some or all of the regulatory alternatives.

We hope the Flyway Councils will continue to seek agreement on clear, definitive statements about harvest-management objectives, which include not only the overall desired level of hunting opportunity, but how that opportunity should be shared among States. Otherwise, we believe that tacit disagreement over the objectives of modifying framework dates will continue to undermine the biological and administrative foundations of the regulatory process. Therefore, we strongly believe that the debate over framework-date extensions could benefit from a more structured dialogue, in which Flyway Councils explore the sociological issues of fairness and equity underlying the framework-date issue. We acknowledge the difficulties associated with such a dialogue, but broad-based agreement on a regulatory approach to framework dates is unlikely in its absence.

In the absence of consensus among the Flyways and with a recognition of the need for stable regulatory alternatives for AHM, for the 1999–2000 hunting season, we are proposing the continued use of the 1998–99 regulatory alternatives published in the August 5, 1998, **Federal Register**, with one exception. For the States of Alabama, Mississippi, and Tennessee, we propose a 51-day season with a January 31 framework closing date in the "liberal" alternative. Of the six States that were offered the framework extension in the 1998–99 season, only these three States availed themselves of this option. We believe that a reduction in season length is needed to offset the expected increase in duck harvest (about 18% for mallards), and that 9 days is a commensurate offset for this region of the country. The framework-date extension would be limited to the "liberal" regulatory alternative to avoid the introduction of additional uncertainty about harvest impacts at other regulatory levels, and to avoid the potential for late-season physiological or behavioral impacts on ducks when population levels are insufficient to support liberal seasons. Framework opening and closing dates for all other States would remain unchanged from those published in the August 5, 1998, **Federal Register**. Finally, we intend to maintain these framework-date specifications through the 2002–03 hunting season. This stability is necessary to assess the appropriateness of the 9-day offset for the extended framework closing date in the southern Mississippi Flyway, and to ensure that the AHM process can continue to increase our understanding of the effects of hunting on waterfowl populations. This understanding is essential to providing maximum levels of biologically sustainable hunting opportunity.

F. Zones and Split Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service add "3 zones with 2-way splits permitted in one or more zones" as an additional option beginning in 2001. Further, because of the public input process many States undertake, the Committee recommended that States have up to one year to choose this option and provide the Service with its proposal (prior to the 2001 regular duck season regulations process).

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service consider offering all States the option of choosing 3 zones with a split season in each zone in the year 2001.

The Pacific Flyway Council recommended the Service engage the Flyway Councils in an evaluation of the guidelines for zoning and split seasons, prior to the 2001 "open season" on regulation changes.

G. Special Seasons/Species Management

i. Scaup

We indicated our growing concern for the status and trends of North American scaup in September of last year (63 FR 51998) and May of this year (64 FR 23742). Additionally, scaup population status was a topic of discussion at the January 27, 1999, Service Regulations Committee meeting. We have also distributed a status report on scaup and provided some initial guidelines concerning a scaup harvest strategy to the Flyway Councils and others for consideration in the development of recommendations for the 1999–2000 hunting season. In response to this information, all four Flyways discussed the issue at their winter meetings.

Council Recommendations: The Atlantic Flyway Council recommended that the Service monitor and manage the harvest of greater and lesser scaup populations separately. They recommended that differences in harvest management, when required, be achieved through different daily bag limits applied on a regional basis. In the Atlantic Flyway, they recommended that in those regions harvesting primarily greater scaup, 1999–2000 scaup harvest regulations be based on the status of greater scaup, while the remaining portions of the Flyway be based on the status of lesser scaup. They further recommended that population objectives and regulatory triggering levels be finalized at the summer Flyway Council meetings.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the scaup daily bag limit be reduced from 6 to 3 for 1999.

The Central Flyway Council believes that the North American Waterfowl Management Plan's scaup population objective (6.3 million) is too high and that a more appropriate objective is 5.4 million (1955–1998 average). This new objective would consist of 4.9 million lesser scaup and 462,000 greater scaup. The Council recommended a prescription for scaup bag limits based on the status of lesser scaup as follows: < 2 million, bag limit of 1; 2–4.2 million, bag limit of 2; and > 4.2, the bag limit for scaup should equal the regular daily duck limit as determined by the AHM process.

Service Response: We remain concerned about the long-term status and trends in North American scaup populations. Further, we appreciate the efforts of all four Flyway Councils to constructively address the issue of a harvest strategy for scaup and will continue to work with the Councils to finalize a harvest strategy for scaup for the 1999–2000 season.

iv. September Teal/Wood Duck Seasons

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service clarify the linkage between the Flyway-wide wood duck harvest strategy, September teal seasons, and regional (reference area) September wood duck seasons. They further recommended the continuation of the experimental September teal/wood duck seasons in Kentucky and Tennessee in 1999 with no changes from the 1998 season.

v. Youth Hunt

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a special 2-day youth waterfowl season.

The Central Flyway Council recommended expansion of the special youth waterfowl hunt to 2 consecutive days.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council made several recommendations concerning September goose seasons. They recommended the approval of operational status for a September 1 to 25 framework in Crawford County, Pennsylvania, and a September 1 to 30 framework in New Jersey beginning in 1999. They further recommended the expansion of the September goose season framework closing date around Montezuma National Wildlife Refuge, New York from September 15 to 20.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that Minnesota be allowed to have an experimental extension of their September special season from September 16 to 22, except in the Northwest Goose Zone, for the 1999, 2000, and 2001 hunting seasons.

The Lower-Region Regulations Committee of the Mississippi Flyway Council urged the Service to use caution in changing or expanding special goose seasons.

The Pacific Flyway Council recommended the addition of the Bridger Valley hunt unit to the existing September RMP Canada goose seasons in western Wyoming, with frameworks of September 1 to 7.

B. Regular Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the 1999 regular goose season opening date be as early as September 18 in Michigan and Wisconsin.

7. Snow and Ross's (Light) Geese

Council Recommendations: The Atlantic Flyway Council requested that the Service begin preparation of the NEPA documentation necessary for regulation changes needed to stabilize the greater snow goose population at 1.0 million by 2002. Their recommended changes include extension of the shooting hours to one-half hour after sunset, the use of electronic callers, unplugged shotguns, and conservation hunts. They requested initiation of these changes by the 1999–2000 season.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended removal of the "float" portion (10 percent of the total allowable harvest) of the Rocky Mountain Population (RMP) greater sandhill crane annual harvest allocation for the 1999–2000 and 2000–2001 seasons. The Council recommended removal of this harvest portion to allow a research study.

The Pacific Flyway Council recommended several changes in sandhill crane seasons. For greater sandhill cranes, the Council recommended the establishment of a new experimental crane hunt in Box Elder County, Utah, between September 1 and September 30. For RMP cranes, the Council recommended that the frameworks be modified to include Bear Lake and Fremont Counties in Idaho, and that the current requirement for hunter check stations in these counties be waived. The Council further recommended that the annual check station requirement for the Arizona RMP Greater Sandhill Crane hunt be modified to a required check station every 3 years.

18. Alaska

Council Recommendations: The Pacific Flyway Council made several recommendations concerning Alaska. For sea ducks, the Council recommended reducing the separate sea duck bag and possession limits from 15/30 to 10/20 king and common eiders, scoters, and mergansers in the aggregate. Long-tailed ducks (oldsquaws) and harlequins would be included in general duck limits and seasons would remain closed for spectacled and Steller's eiders. For Canada geese, the Council recommended removal of Canada goose bag limit restrictions within dark goose bag limits (4/8) in Alaska Game Management Subunit 9E (Alaska Peninsula) and Unit 18 (Y-K Delta). Further, for tundra swans, the Council recommended that tundra swan permits issued for swan hunts in Alaska allow the take of up to 3 swans per permit, with no change in reporting requirements or other framework conditions.

Public Comment Invited

We intend that adopted final rules be as responsive as possible to all concerned interests, and therefore desire to obtain the comments and suggestions of the public, other concerned governmental agencies, non-governmental organizations, and other private interests on these proposals. However, special circumstances are involved in the establishment of these regulations which limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the

address indicated under the caption **ADDRESSES**.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Prior to issuance of the 1999–2000 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and a Small Entity Flexibility Analysis (Analysis) was issued by the Service in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the Office of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1) .

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 09/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 09/30/2000). The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion its constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1999–2000 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: June 9, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310–55–P

PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 1999-2000 SEASON

	ATLANTIC FLYWAY				CENTRAL FLYWAY (b)				MISSISSIPPI FLYWAY (a)				PACIFIC FLYWAY (c)(d)			
	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB
Beginning Shooting Time	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1
Closing Date	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20
Season Length	20	30	45	60	25	39	60	74	20	30	45	60	38	60	86	107
Daily Bag/ Possession	3 / 6	3 / 6	6 / 12	6 / 12	3 / 6	3 / 6	6 / 12	6 / 12	3 / 6	3 / 6	6 / 12	6 / 12	4 / 8	4 / 8	7 / 14	7 / 14
Species/Sex Limits within the Overall Daily Bag Limit:																
Mallard (Total/Female)	3/1	3/1	4/2	4/2	3/1	3/1	5/1	5/2	2/1	2/1	4/1		3/1	3/1	5/2	7/2
Pintail	<---ACCORDING TO THE FINTAIL INTERIM HARVEST STRATEGY--->															
Black Duck	1	1	1	1	1	1	1	1	1	1	1		.	.	.	.
H Merganser	1	1	1	1	1	1	1	1	1	1	1		.	.	.	.
Scaup	<---ACCORDING TO THE SCAUP INTERIM HARVEST STRATEGY--->															
Canvasback	<---ACCORDING TO THE SERVICE'S INTERIM CANVASBACK HARVEST MANAGEMENT STRATEGY--->															
Redhead	2	2	2	2	2	2	2	2	1	1	2		2	2	2	2
Wood Duck	2	2	2	2	2	2	2	2	2	2	2		.	.	.	.
Whistling Ducks	1	1	1	1	.	.	.	.	.	.	.		.	.	.	.
Harlequin	Closed	Closed	Closed	Closed	.	.	.	.	.	.	.		.	.	.	.
Mottled Duck	1	1	1	1	1	1	1	1	3	3	3		.	.	.	.

(a) In the States of Alabama, Mississippi, and Tennessee, the season length in the liberal alternative is 51 days and the framework closing date is January 31
(b) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various options as follows.
very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all options, additional days must be on or after the Saturday nearest December 10.
(c) In the Columbia Basin Mallard Mangement Unit, all regulations would be the same as the remainder of the Pacific Flyway. Under all options except the liberal option, an additional 7 days would be allowed.
(d) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive options, and 8-10 under the moderate and liberal options.
There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all options, season length would be 107 days and framework dates would be Sep 1 - Jan 26

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federal register

Thursday
June 17, 1999

Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 21

Migratory Bird Special Canada Goose Permit; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AE46

Migratory Bird Special Canada Goose Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The United States Fish and Wildlife Service (Service) establishes, in cooperation with State wildlife agencies, a Canada goose damage management program. This program is designed to provide a biologically sound and more cost-effective and efficient method for the control of locally-breeding Canada geese that pose a threat to health and human safety and damage personal and public property.

DATES: The rule becomes effective June 17, 1999.

ADDRESSES: You may request copies of the EA and comments received on the proposed rule by writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street NW., Washington, D.C. 20240. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background

Numbers of Canada geese that nest and reside predominantly within the conterminous United States have increased exponentially in recent years (Rusch *et al.*, 1995; Ankney, 1996). These increasing populations of locally-breeding geese are resulting in increasing numbers of conflicts with human activities and property, and concerns related to human health and safety are increasing (Ankney, 1996). To date, the U.S. Fish and Wildlife Service (We) has attempted to address this growing problem through existing annual hunting season frameworks and the issuance of control permits on a case-by-case basis. While this approach has provided relief in some areas, we realize that sport harvest will not completely address the problem and that the current permit-issuance system is a time-consuming and burdensome process for both applicants and us. Therefore, we are changing the way we issue permits under the Migratory Bird Treaty Act for control and management of resident Canada geese that either pose a threat to health and human safety or cause damage to personal and public property.

Which Canada Geese Are Affected by This Rule?

The geographic scope of this rule is restricted to the conterminous United States and to Canada geese (Branta canadensis) that nest and/or reside predominately within the conterminous United States. Primarily, these geese consist mainly of *B. c. maxima* and *B.c. moffitti*, the "giant" and "western" Canada goose, respectively. Nesting geese within the conterminous United States are usually considered members of these two subspecies or hybrids between the various subspecies originating in captivity and introduced into numerous areas throughout the conterminous United States. No evidence presently exists documenting breeding between Canada geese nesting within the conterminous United States and those subspecies nesting in northern Canada and Alaska. For the purposes of this rule, we will collectively refer to all Canada geese nesting in the conterminous United States and/or Canada geese residing within the conterminous United States in the months of June, July, and August as "resident" Canada geese.

For the most part, the remaining subspecies of Canada geese recognized in North America nest in arctic and sub-arctic regions of Canada and Alaska (Lack 1974). These subspecies are usually encountered in the conterminous United States only during the fall, winter and spring of the year, or as a result of human placement.

How Does This New Program Avoid Conflicts With the Management of Other Migratory Canada Goose Populations?

Generally, we have stressed the need to manage all geese on a population basis, guided by cooperatively-developed management plans. However, resident Canada goose populations and the development of a resident Canada goose damage management program presented several potential problems with this approach. Because resident goose populations interact and overlap with other Canada goose populations during the fall and winter, any management action or program targeted at resident Canada geese during the fall and winter could potentially affect these other goose populations. Therefore, to avoid potential conflicts with existing management plans for other goose populations, this new program is further restricted to March 11 through August 31 of each year. These dates encompass the period when sport hunting is prohibited throughout the conterminous United States by the Migratory Bird Treaty (1916) and resulting regulations promulgated under the Migratory Bird Treaty Act (1918). Any injury and damage complaints occurring during September 1 to March 10, the period open to sport hunting, will continue to be addressed through either migratory bird hunting regulations or the existing migratory bird permit process.

What Authority Does the Service Have To Establish This New Program?

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are authorized by the Migratory Bird Treaty Act and are promulgated in 50 CFR parts 13 and 21.

How Are These Resident Canada Geese Different Than Other Canada Geese Populations? Other Than Location, Do They Behave Differently or Have Different Biological Characteristics?

Canada geese, like other geese, are long-lived birds with relatively low reproduction rates and high survival rates. However, of all the Canada goose subspecies, the subspecies comprising most resident geese have higher reproductive and adult survival rates. Resident geese live in more temperate climates with relatively stable breeding habitat conditions and low numbers of predators. Arctic and subarctic Canada goose survival and reproduction are greatly influenced by weather conditions. Additionally, nesting resident geese are very tolerant of human disturbance and willing to nest in close proximity to other geese (Gosser and Conover, 1999; Zenner and LaGrange, 1998). Urban and suburban landscaping in the conterminous United States also offers resident geese a relative abundance of their preferred habitat (park-like open areas with short grass adjacent to small bodies of water). Also, resident geese fly relatively short distances to winter compared with other Canada goose populations. All of these factors result in consistently high annual reproduction and survival for the resident Canada goose population.

What Is the Current Status of These Resident Populations?

In recent years, the numbers of Canada geese that nest predominantly within the conterminous United States have increased tremendously. Recent surveys in the Atlantic, Mississippi, and Central Flyways (Wood *et al.*, 1994; Kelley *et al.*, 1998; Nelson and Oetting, 1998; Sheaffer and Malecki, 1998) suggest that the resident breeding population now exceeds 1 million individuals in both the Atlantic and Mississippi Flyways and is increasing exponentially.

Information from the 1998 Waterfowl Status Report (Kelley *et al.*, 1998) shows that in the Atlantic Flyway, the resident population has increased an average of 14 percent per year since 1989. Last spring, the population estimate was 970,055 geese in the northeastern U.S., a number which is, however, similar to 1997. In the Mississippi Flyway, the resident population of Canada geese has increased at a rate of about 6 percent per year during the last 10 years. The 1998 spring population estimate was 1,167,085 geese, an increase of 21 percent from 1997. In the Central and Pacific Flyways, populations of resident Canada geese have similarly increased over the last few years. In some areas, numbers of resident Canada geese have increased to record high levels. We remain concerned about the rapid growth rate exhibited by these already large populations, especially in parts of the Atlantic and Mississippi Flyways.

What Interests Are Being Injured by These Large Populations (i.e., What Are Some of the Problems and Conflicts)?

Urban and suburban resident Canada goose populations are increasingly coming into conflict with human activities in many parts of the country, especially at public parks, airports, public beaches and swimming facilities, water-treatment reservoirs, corporate business areas, golf courses, schools, college campuses, private lawns, amusement parks, cemeteries, hospitals and residential subdivisions, and along or between highways. In parks and other open areas near water, large goose flocks create a nuisance with their abundant droppings and feather litter (Conover and Chasko, 1985). Surveys have found that while most landowners like seeing some geese on their property, eventually, increasing numbers of geese and the associated accumulation of goose droppings on lawns cause many landowners to view geese as a nuisance and thus reduce the aesthetic value and recreational use of these areas (Conover and Chasko, 1985). Additionally, goose droppings in heavy concentrations can overfertilize lawns and degrade water quality resulting in eutrophication of lakes with excessive algae growth (Manny *et al.*, 1994). Overall, complaints related to personal and public property damage, agricultural damage and other public conflicts are increasing as resident Canada goose populations increase.

How Has the Service Dealt With These Problems in the Past?

To date, we have tried to address injurious resident Canada goose problems through existing hunting seasons, the creation of new special Canada goose seasons designed to target resident populations, and issuance of permits allowing specific control activities.

Have Special Hunting Seasons Been Adequate To Solve the Problems?

Special Canada goose seasons are hunting seasons specifically designed to target resident populations through either time or area restrictions. We first initiated special seasons targeting resident Canada geese in 1977 in the Mississippi Flyway with an experimental late season in Michigan. Following this and other early experiments in Michigan and several other Midwestern States, we gave notice of pending criteria for special Canada goose seasons in the June 6, 1986, **Federal Register** (51 FR 20681). We finalized criteria for special early seasons in the August 9, 1988, **Federal Register** (53 FR 29905) and later expanded them to include special late seasons in the September 26, 1991, **Federal Register** (56 FR 49111). The original intent of these special seasons was to provide additional harvest opportunities on resident Canada geese while minimizing impacts to migrant geese. The criteria were necessary to control harvests of non-target populations and required States to conduct annual evaluations. Initially, we considered all such seasons experimental, pending a thorough review of the data gathered by the participating State. Early seasons are generally held during early September, with late seasons occurring only after the regular season, but no later than February 15.

We presently offer special seasons for resident Canada geese in all four Flyways, with 31 States participating. They are most popular among States when regular Canada goose seasons are restricted to protect migrant populations of Canada geese. Currently, restrictive harvest regimes are in place for the Atlantic, Southern James Bay, Dusky, Cackling and Aleutian Canada goose populations.

Harvest of Canada geese during these special seasons has increased substantially over the last 10 years. In the Atlantic Flyway, 16 of 17 States hold special Canada goose seasons, with harvest rising from about 2,300 in 1988 to almost 124,000 in 1995 (MBMO, 1997). In the Mississippi Flyway, 10 of 14 States hold special Canada goose seasons, and harvest has increased from less than 10,000 birds in 1986 to almost 150,000 in 1995. Michigan currently harvests in excess of 50,000 locally-breeding Canada geese per year. While the opportunities are not as significant in the Central and Pacific Flyways, as areas and seasons have expanded, harvest has increased from approximately 1,300 in 1989 to over 20,000 in 1995.

Creation of these special harvest opportunities has helped to limit the problems and conflicts between geese and people in some areas. However, many resident Canada geese remain in urban and suburban areas throughout the fall and winter where these areas afford them almost complete protection from sport harvest. Thus, while the creation of these special hunting seasons is our first and preferred alternative for dealing with most conflicts, we realize that harvest management will never completely address this growing problem and permits to conduct otherwise prohibited control activities will continue to be necessary to balance human needs with expanding resident Canada goose populations.

Have Control Measures Under the Existing Permit System Been Adequate?

Complex Federal and State responsibilities are involved with all migratory bird control activities, including the control of resident Canada geese. All State and private control activities, except techniques intended to either scare geese out of or preclude them from a specific area, such as harassment, habitat management, or repellents, require us to issue a Federal permit. Additionally, we issue permits to alleviate migratory bird depredations in coordination with the Wildlife Services program of the Animal and Plant Health Inspection Service (APHIS/WS). APHIS/WS is the Federal Agency with lead responsibility for dealing with wildlife damage complaints. In most instances, State permits are required as well.

However, APHIS/WS has limited personnel and resources to respond to requests for assistance. Likewise, as the number of complaints and conflicts continue to increase, the public will place greater demand on us and the States to assist in goose damage-management programs. This increased need for assistance places greater demand on the current permit-issuance system. Unfortunately, administrative

procedures involved in the issuance of permits many times cause a lag time of several weeks between our receipt of a permit request, our evaluation and decision on issuing the permit, and the ultimate issuance of a site-specific permit authorizing a control action. In the interim, even small numbers of geese can cause significant damage to personal property and result in economic, recreational, and aesthetic losses. Thus, with the increase in complaints, the current permit issuance system has become time-consuming, cumbersome and inefficient for us and the States.

How Have the Number of Complaints and Requests for Assistance and Permits Increased?

A brief summary of the complaints/requests for control permits placed with APHIS/WS indicates the increasing number of public conflicts. In 1997, APHIS/WS received 3,295 complaints of injurious Canada goose activity (APHIS/WS, 1997). In response to those complaints, APHIS/WS recommended we issue 354 permits. The vast majority of these complaints concerned agricultural, human health and safety, and property issues and came primarily from the Northeastern/New England area (50%) and the Upper Midwest/Great Lakes area (29%). In 1996 and 1995, APHIS/WS received 3,265 and 2,884 complaints, respectively, of injurious goose activity (APHIS/WS, 1996; APHIS/WS, 1995). In response to those complaints, APHIS/WS recommended we issue 321 permits in 1996 and 250 permits in 1995.

Comparing these figures with previous years' data shows a steady increase in complaints since 1991. For example, in 1993 and 1991 APHIS/WS received 2,802 and 1,698 complaints, respectively, of injurious Canada goose activity (APHIS/WS, 1993; APHIS/WS, 1991). In response to those complaints, APHIS/WS recommended we issue 192 and 92 permits, respectively.

Has the Number of Permits Issued Increased Correspondingly?

Yes. Our permit issuance has also increased tremendously in recent years. For example, Region 5 (the Northeastern/New England area) issued 26 site-specific permits to kill resident Canada geese and 54 permits to addle eggs in 1994. Two years later in 1996, Region 5 issued 70 site-specific permits to kill resident Canada geese, 1 permit to relocate geese, and 151 permits to addle eggs. In addition, the Region issued Statewide permits to relocate birds and addle eggs to agencies in certain States. Over 3 years, these permits resulted in the relocation of over 2,600 geese, the addling of eggs in over 2,300 nests, and the take of over 1,000 birds.

In Region 3, the Upper Midwest/Great Lakes area, the number and extent of permits issued to manage and control resident Canada geese has also increased significantly in the past few years. In 1994, the Region issued 149 permits authorizing resident Canada goose control activities, including trapping and relocation, destruction of nests/eggs, and take of adults. In 1998, Region 3 issued 225 permits authorizing resident Canada goose control activities. In total, permit holders, including APHIS/WS, airports, and state wildlife agencies, reported taking in excess of 27,000 eggs and 6,800 geese, and trapped and relocated over 70,000 resident Canada geese (complete reports through 1997, partial reports for 1998). States in which control activities were conducted included Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Since 1995, Region 3 has also issued permits to the Michigan Department of Natural Resources and the Minnesota Department of Natural Resources authorizing the capture and processing of resident Canada geese as food for local food-shelf programs. Minnesota's permit was a part of the their Urban Goose Management Program for the Minneapolis-St. Paul Metropolitan Area (initiated in 1982). In 1995, the first year under these permits, Michigan and Minnesota were authorized to take up to 2,000 and 325 geese, respectively. Michigan reported taking 24 birds with Minnesota taking its full allotment of 325 birds. Since then, Minnesota has been authorized to annually take up to 2,500 resident Canada geese for its food-shelf program. In the three years under the program since 1995, Minnesota has reported taking 5,399 birds. Likewise, Michigan was also issued permits for 1996–1998 authorizing the take up to 1,000 resident Canada geese for its food-shelf programs. Michigan subsequently reported taking 490 birds in 1996 and 952 birds in 1997. Michigan vacated their 1998 permit.

In Region 1, the Pacific Northwest/West Coast area, we have primarily limited permits for the control of resident Canada geese to the addling of eggs. In 1995, the Region issued permits authorizing the take of 900 eggs in the Puget Sound Area of Washington. In 1996, this number was increased to 2,000 eggs and 200 adult birds. APHIS/WS subsequently reported taking 911 and 1,570 eggs in 1995 and 1996, respectively, and 6 geese in 1996. For 1997, the Region authorized the take of 2,000 eggs in the Puget Sound Area and another 500 eggs in the City of Fremont, California.

What Exactly Are the New Permits Authorized By This Rule and How Will They Work?

We, with our State and other Federal partners, believe development of an alternative method of issuing permits to control problem resident Canada geese, beyond those presently employed, is needed so that agencies can provide responsible, cost-effective, and efficient assistance. The special Canada goose permit authorized by this rule provide the States that opportunity while maintaining protection of our migratory bird resources. The new special Canada goose permits will allow States and their designated agents to conduct management activities as soon as it becomes apparent that resident Canada geese are a problem. The new permits would also rely on a greater application of community standards and preferences by allowing judgments determining appropriate levels of control to be made at a more local level.

The new permits are specifically for the management and control of resident Canada geese (as defined in the rule). We will issue permits to State conservation or wildlife management agencies on a State-specific basis, so States and their designated agents can initiate resident goose damage management and control injury problems within the conditions/restrictions of the permit program. The permits will be restricted to the period between March 11 and August 31. This new special permit will increase the use and availability of control measures, decrease the number of injurious resident Canada geese in localized areas, have little impact on hunting or other recreation dependent on the availability of resident Canada geese, and allow injury/damage problems to be dealt with on the State/local level, thereby resulting in more responsive and timely control activities. The new special permits will further result in biologically sound and more cost-effective and efficient resident Canada goose damage management. Those States not wishing to obtain these new permits would continue to operate under the current permitting process.

What Do States Need To Do To Apply for the New Permits?

Applications for the new special permit would require several items from the State:

1. A detailed statement estimating the size of the resident Canada goose breeding population in the State;

2. A request for the number of resident Canada geese, including eggs and nests, to be taken;

3. A statement showing that such damage-control actions will either provide for human health and safety or protect personal property, or compelling justification that the permit is needed to allow resolution of other conflicts between people and resident Canada geese; and

4. A statement indicating that the State will inform all designated agents of the permit conditions applying to the implementation of resident Canada goose damage management activities.

What Are the Conditions and Restrictions of the New Permit Program?

The special resident Canada goose damage-management permits are subject to the following conditions and restrictions:

1. State wildlife agencies (States) may take injurious resident Canada geese as a management tool. States should utilize non-lethal management tools to the extent they consider appropriate in an effort to minimize lethal take.

2. Control activities should not adversely affect other migratory birds or any species designated under the Endangered Species Act as threatened or endangered.

3. States may conduct control activities March 11 through August 31. States should make a concerted effort to limit the take of adult birds to June, July, and August in order to minimize the potential impact on other migrant populations. In areas where the threatened Aleutian Canada goose (*B. c. leucoperia*) has been present during the previous 10 years in California, Oregon and Washington, lethal control activities are restricted to May 1 through August 31. If this subspecies is delisted, we will review this provision.

4. States must conduct control activities clearly as such (e.g., they cannot be set up to provide a hunting opportunity).

5. States cannot use the permits to limit or initiate management actions on Federal land without concurrence of the Federal Agency with jurisdiction.

6. States must properly dispose of or utilize Canada geese killed in control programs. States may donate Canada geese killed under these permits to public museums or public scientific and educational institutions for exhibition, scientific, or educational purposes, or charities for human consumption. States may also bury or incinerate geese. States may not allow for Canada geese taken under these permits, nor their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

7. States may use their own discretion for methods of take but utilized methods should be consistent with accepted wildlife-damage management programs.

8. States may designate agents who must operate under the conditions of the State's permit.

9. Any employee/designated agent authorized by the State to carry out control measures under a special permit must have in their possession a copy of the State's permit, and designation, in the case of an agent, while carrying out any control activity.

10. States must keep records of all activities, including those of designated agents, carried out under the special permits. We will require an annual report detailing activities conducted under a permit.

11. We will annually review States' reports and will periodically assess the overall impact of this program to ensure compatibility with the long-term conservation of this resource.

12. States should not construe anything in the permits to authorize the killing of Canada geese contrary to any State law or regulation or on any Federal land without written authorization by the appropriate management authority. Further, States are not authorized to conduct control activities authorized by the permits without any required State permit.

13. We reserve the authority to immediately suspend or revoke any permit if we find that the State has not adhered to the terms and conditions specified in 50 CFR 13.27 and 13.28 or if we determine that the State's population of resident Canada geese no longer poses a threat to human health or safety, to personal property, or of injury to other interests.

How Will This New Permit Actually Affect "On-the-Ground" Resident Canada Goose Control and Management Activities? Will We See a Dramatic Increase In The Use of Control Activities?

Under the new permits, we expect that the use of resident Canada goose control and management activities, particularly lethal control methods such as egg and nest destruction, will increase. We also expect an initial increase in the lethal control methods associated with hazing techniques of adult birds. However, following this initial increase in control activities, we expect the hazing methods to become more effective and probably result in fewer overall lethal control activities.

Won't This Large-Scale Increased Use of Control Activities Result in Harm to the Population?

No. We expect these lethal and non-lethal activities to decrease the number of injurious resident Canada geese in localized areas, especially urban and suburban areas. Regionally, we expect little overall impact on the resident Canada goose population because many goose populations have demonstrated the ability to sustain harvest rates in excess of 20 percent. We anticipate the magnitude of any lethal control activities will be well below 20 percent of any State's resident Canada goose breeding population.

Will These New Permits Impact Existing Sport Hunting Opportunities?

We expect little impact on sport hunting under the new special permits. Resident Canada goose populations in areas targeted for management/control activities are generally those that provide little or no sport hunting opportunities due to restricted access within urban and suburban areas. As such, hunting in these areas is either precluded or severely restricted. We would expect areas and resident Canada goose populations already open to sport hunting to remain open, as special Canada goose season frameworks and guidelines would not change.

What Are Some of the Other Benefits of These New Permits?

By allowing States and local jurisdictions to deal with injurious resident Canada goose problems, instead of having the Service do so at a regional level, we expect control activities will be more responsive and timely to the problem(s) than is currently the case. Consequently, we expect that with reduced injurious populations and more effective hazing programs, fewer complaints are likely to occur and less resident Canada goose damage is likely.

With State fish and wildlife agencies responding to individual resident Canada goose problems within their respective jurisdictions, our administrative responsibilities for each individual control activity that currently necessitate the determination or issuance of a permit is expected to decrease significantly. Currently, in most instances, we must decide on a case-by-case basis whether a permit should be issued. This new permit would greatly lessen the number of these permits and the associated administrative procedures.

Public Comment

On September 3, 1996, we issued in the **Federal Register** (61 FR 46431) a

notice of availability of a Draft Environmental Assessment (DEA) on Permits for Control of Injurious Canada Geese and Request for Comments on Potential Regulations. The notice advised the public that we had prepared a DEA. The notice also announced our intent to consider regulatory changes to the process for issuance of permits to control injurious resident Canada geese. We subsequently extended the public comment period on November 12, 1996 (61 FR 58084).

As a result of this invitation for public comment, we received 101 comments including two from Federal agencies, 28 from State wildlife agencies, 24 from private organizations and 47 from private citizens. After consideration of the comments, we revised our DEA.

On March 31, 1998, we published in the **Federal Register** (63 FR 15698) a proposal to establish a Canada goose damage management program (i.e., Special Canada Goose Permit). In response to our proposed rule, we received 465 comments from Federal, State and local agencies, non-governmental organizations, and individuals. In addition, we received several petitions containing 1,674 signatures. We summarize the issues and provide our responses below. We also believe it is important to note that some of the comments we received on the proposed rule were very similar to comments received on the DEA. While we previously responded to these issues in our March 31, 1998 proposed rule, we respond here again as a convenience to the reader.

Issue: Many private individuals and several private organizations commented that our Environmental Assessment was insufficient to comply with NEPA requirements, and that we should prepare a full Environmental Impact Statement before taking any action on the program.

Service Response: We conducted an Environmental Assessment of alternative regulatory strategies to control and manage resident Canada geese that either pose a threat to health and human safety or cause damage to personal and public property. We considered four alternatives to the way permits for control and management of injurious resident Canada geese are issued:

Alternative 1. Continue current permitting procedures as described in 50 CFR part 21. This would be the No Action Alternative.

Alternative 2. Add a new permit option specifically for the management of injurious resident Canada geese. The permits would be available to State conservation or wildlife management agencies on a State-specific basis. Under the permits, States and their designated agents could initiate resident goose damage management and control injury problems within the conditions/restrictions of the program. Such permits would be restricted to the period between March 11 and August 31.

Alternative 3. Issue a depredation order allowing State conservation agencies to control resident Canada goose damage. The depredation order would allow States to control injury from resident Canada geese within the conditions/restrictions of the depredation order. Such a depredation order would be restricted to the period between March 11 and August 31.

Alternative 4. More restrictive use of permits to control resident Canada goose damage, limited to situations where geese pose a direct threat to human life or safety.

We selected Alternative 2, the addition of a new permit option specifically for resident Canada goose control and management available to State conservation agencies on a State-specific basis. This alternative would increase the use and availability of control measures, decrease the number of injurious resident Canada geese in localized areas, have little impact on hunting or other recreation dependent on the availability of resident Canada geese, and allow injury and damage problems to be dealt with on the State or local level, thereby resulting in more responsive and timely control activities. This alternative would further result in biologically sound and more cost-effective and efficient resident Canada goose damage management.

Based on review and evaluation of comments by the public and information contained in the EA, we determined that the action to amend 50 CFR Part 21 to establish a special Canada goose permit program for the control and management of resident Canada geese would not be a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, we made a Finding of No Significant Impact on this action and determined that preparation of an Environmental Impact Statement was not required. This determination was based on consideration of the following factors which were addressed in the Finding of No Significant Impact and provided below:

1. While the program is State-wide in application, resident Canada goose damage management activities conducted under the program will likely occur in localized areas only. The control activities resulting from this program would likely occur under individual special permits issued under the current permit regulations contained in 50 CFR part 21.

2. On balance, the impact of the new program will be beneficial in that reducing the number and frequency of injury to human interests will be beneficial to the human environment. However, because of the limited numbers of geese likely to be taken under the program, the benefits will not be significant. Likewise, due to the large and expanding population of resident Canada geese, adverse impacts (taking of individual geese) will not be significant in the context of the human environment.

3. The activities conducted under the program will not significantly affect public health and safety. While we believe that any impacts to public health and safety will be beneficial, impacts will not be significantly beneficial. The program will likely have a beneficial impact on human health and safety through a reduction in the likelihood of bird aircraft strikes, conflicts with people and property, and potential concerns over the transmission of disease to humans.

4. Although there is controversy over the program, it primarily has to do with objections by some groups opposed to any take of Canada geese rather than over the analysis or scientific basis for determining the impacts of our action. While some of these groups are opposed to all goose or other wildlife damage management activities and dispute the actual context of damage, the methods and impacts are generally not controversial among wildlife managers and wildlife damage management experts, nor the general public. All relevant concerns have been addressed in the Environmental Consequences chapter in the Environmental Assessment.

5. The possible effects of the program on the quality of the human environment are not highly uncertain and do not involve unique or unknown risks. The effects and potential risks were determined in the process of development of the Environmental Assessment.

6. The program does not establish a precedent for actions with future significant effects or represent a decision in principle about a future consideration. We have issued similar permits for goose control activities on a case-by-case or State-wide basis and States are currently conducting Canada goose damage management activities under these permits. Likewise, we have issued similar regulations, in the form of depredation orders, for other species, such as the double-crested cormorant, blackbirds, cowbirds, grackles, crows, and magpies. Any future similar actions, either for Canada geese, or any other migratory bird species, would be analyzed under NEPA, with public involvement, on their own merits.

7. There are no significant cumulative effects identified by this assessment. Under this program, we expect that the use of resident Canada goose control and management activities, particularly lethal control methods such as egg and nest destruction, would increase. Lethal control methods associated with hazing techniques of adult birds would also be expected to initially increase. However, following this initial increase, continual use of hazing methods should become more effective and may result in fewer overall lethal control activities. Such lethal and nonlethal activities would be expected to decrease the number of injurious resident Canada geese in specific localized areas, especially urban and suburban areas. Regionally and nationally, we expect little overall population impact because many Canada goose populations have demonstrated the ability to sustain harvest rates in excess of 20 percent. We anticipate that the magnitude of any lethal control activities will be well below 20 percent of any State's resident Canada goose breeding population. As discussed in the Environmental Assessment, we expect the program to slow the overall population growth rate and address specific localized injurious population, but not significantly impact the overall population.

8. The program will fully comply with the Endangered Species Act of 1973, as amended. The Service determined that the program is not likely to adversely affect the Aleutian Canada goose, a Federally listed threatened species.

9. The program will not threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The EA and Finding of No Significant Impact are available to the public at the location indicated under the **ADDRESSES** caption.

Issue: Some commenters expressed concern that we did not have the authority under the Migratory Bird Treaty Act (MBTA) and subsequent regulations to allow non-Service entities (i.e., States) to issue permits. Many saw this as an attempt to abrogate our goose-management responsibility.

Service Response: As we indicated in the proposed rule, we will utilize a process whereby permits are only issued to State conservation or wildlife management agencies responsible for migratory bird management. State conservation agency employees or their designated agents could then carry out resident Canada goose damage management and control injurious problems within the conditions/restrictions of the permit program. This process is essentially no different than the current permitting process contained in 50 CFR part 21.

Issue: A large number of comments challenged the notion that there are in fact "injurious" Canada geese and that the entire concept and definition of "resident" Canada geese is invalid. Some commenters saw the new permit program as a mechanism to remove Canada geese from the protection afforded them under the Migratory Bird Treaty (Treaty).

Service Response: We strongly disagree with these assertions and have included data in the EA that demonstrate the impact of resident Canada goose populations on personal property, agricultural commodities, and health and human safety. In addition, data is presented that clearly points out that Canada goose populations do nest in parts of the conterminous United States during the spring and summer and that these birds are increasingly causing injury to people and property. Furthermore, we are not redefining what is or is not a migratory bird under the Treaty. Canada geese are clearly protected by the Treaty and will continue to be. We are using the term "resident" to identify those commonly injurious Canada geese that will be the subject of permitted control activities within the scope of the Treaty. Additionally, in response to comments, we have clarified the definition of "resident geese" to read: Resident Canada geese means Canada geese that nest within the conterminous United States and/or Canada geese which reside within the conterminous United States during the months of June, July, or August.

Issue: Several commenters believed the Treaty only authorizes the killing of migratory birds if they are seriously injurious to commercial interests, not personal property.

Service Response: Article VII of the Treaty states, "Permits to kill any of the above named birds, which under extraordinary conditions may become seriously injurious to the agricultural or other interests in any particular community (emphasis added), may be issued by the proper authorities * * *". We believe that resident Canada goose populations have reached this level. The information available to us as discussed in the **SUPPLEMENTARY INFORMATION**, and in the Environmental Assessment accompanying this action, demonstrates that the current population levels are causing serious injury to increasing numbers of people and property. The Treaty does not limit the "interests" to be protected to those that are commercial. Rather, it provides the High Contracting Parties broad authority to address any affected interests. Therefore, we believe that establishment and implementation of this permit program is in accordance with the terms of the Treaty.

Issue: Some commenters questioned the actual risks posed by Canada geese on human health and safety.

Service Response: Although the human health and safety risks associated with resident Canada geese are difficult to quantify, we believe that the available data clearly indicate the potential negative impacts on health and safety issues (APHIS/WS, 1999). While we agree that the risk to human health from pathogens originating from geese is currently believed to be low, we are only beginning to understand these risks. Additional research is needed to assist in the quantification and understanding of these processes. Further, it is clear from bird-aircraft strike data that resident Canada geese can cause significant aircraft safety concerns. We believe that increasingly large populations of geese, especially in localized areas, only serve to increase the uncertainty associated with these risks.

Issue: A large number of commenters questioned the validity of resident Canada goose damage estimates supplied by APHIS/WS.

Service Response: According to APHIS/WS (1999), each damage report received is questioned for both scope and magnitude in order to determine reasonable and practical solutions to reduce damage. Preference is given to non-lethal alternatives. However, if capture and euthanasia are ultimately requested or recommended, APHIS/WS makes a site visit to verify damage and ensure some non-lethal methods have been tried and were ineffective to adequately reduce the damage. We believe APHIS/WS's approach is appropriate.

Issue: Several commenters believed the permit process does not allow adequate Federal oversight.

Service Response: We disagree. State applications for the special permits require several detailed statements regarding the size of the resident Canada goose breeding population in the State and the number of resident Canada geese, including eggs and nests, to be

taken. In addition, the State must show that such damage-control actions will either provide for human health and safety or protect personal property, or compelling justification that the permit is needed to allow resolution of other conflicts between people and resident Canada geese. Any failure to follow these application procedures results in a rejected application. Further, after issuance of a permit, the State and its designated agents must follow the permit restrictions and report all activities conducted under the permit. As always, we retain the right to immediately revoke any permit violated. This process is essentially no different than the current permit-issuance system contained in 50 CFR part 21.

Issue: Some commenters stated that the time period associated with damage management control is too restrictive.

Service Response: We acknowledge that complaints about injurious geese are increasing outside the time frame covered by the special permit. The permit program is designed to specifically address problems caused by resident geese during the time period when hunting seasons cannot be opened. We will continue to address injurious goose problems not covered within the permit time frame on a case-by-case basis.

Issue: Several commenters recommended the issuance of permits for a period of 5 years rather than 3 years.

Service Response: We concur that permits could reasonably be issued for a period of 5 years given timely submission of annual reports documenting the actions taken under authority of the permit. However, failure to submit complete annual reports may result in suspension or revocation of the permit.

Issue: Several commenters recommended elimination of the paperwork and reporting requirements.

Service Response: Information specific to the applicant State's population of resident Canada geese and the take requested is vital to the application and ultimate decision on a permit. The reporting requirement is essential for us to be able to monitor the action and assess possible impacts to the population. Additionally, we will utilize this information and other pertinent biological and population-specific data as the basis for determining the permitted take.

Issue: Several commenters stated that the special permit was unacceptable because it merely shifts costs and workload from the Federal level to the State level without providing additional funds to the States.

Service Response: We are not obligating States to apply for this new permit. States may continue to handle injurious goose situations with the current permitting system on a case-by-case basis.

Issue: Several commenters suggested that conditioning the permit whereby taking Canada geese could occur ". . . only after applicable non-lethal alternatives means . . . have proven to be unsuccessful or not feasible" is too restrictive.

Service Response: We never intended that a State would need to prove the need for lethal control at each site before implementation of lethal control techniques. We believe this decision should be based on the experience and judgement of professional wildlife managers on-site. Thus, we have amended the wording of 21.26(c)(1)(I) to read as follows: "Take of resident Canada geese as a management tool pursuant to this section may not exceed the number authorized by the permit. States should utilize non-lethal goose management tools to the extent they deem appropriate in an effort to minimize lethal take."

Issue: Several commenters requested clarification that research activities are not included as a part of the proposed permit program.

Service Response: Because the permit program is for the purpose of resolving injurious behavior of resident Canada geese, it is clear that scientific research is not covered. All researchers who are not Federal employees must have a scientific collecting permit to take any migratory birds. We believe additional wording to clarify this point is unnecessary.

Issue: Several commenters requested clarification of designated agents and use of APHIS/WS as designated agents.

Service Response: "Designated agents" means individuals or organizations and their employees who have written authority from the State wildlife management agency (permit holder) to implement State-approved resident Canada goose control measures. Thus, States could utilize APHIS/WS as a designated agent.

Issue: Some commenters were concerned that the new permit process does not allow more hunting opportunity.

Service Response: The purpose of the new special permit program is to resolve injurious resident Canada goose problems, not create more hunting opportunity. More specifically, the permit program is designed to address problems caused by resident geese during the time period when hunting seasons cannot be opened. For those States wishing to primarily handle injurious resident populations through sport hunting, sufficient hunting opportunities designed to target resident Canada goose populations, while protecting migrant populations, exist in the current hunting season frameworks.

Issue: Several commenters believed that the size of the resident goose population in the State has little to do with the population causing a problem in a localized area.

Service Response: We designed the new special permit program to allow those States with widespread injurious goose problems the latitude to deal with those problems on a broader management basis than the current case-by-case basis. We believe the State wildlife agency is the logical authority, within the context of the new special permit's guidelines, to determine the proper goose management control activities for the State's resident Canada goose population, including those smaller, more localized populations. However, the new permit program does not preclude a State from applying for a depredation permit under the current permit regulations to deal with a specific localized injurious goose problem. In fact, we realize that injurious situations will continue to occur outside of the March 11 to August 31 time period allowed under the new permit program. We will continue to deal with these situations on a case-by-case basis. Furthermore, as we stated earlier, information on the State's goose population is an essential part of the basis for our permit decisions and our long-term monitoring of the population.

Issue: Several commenters were concerned that this action establishes a precedent for future actions.

Service Response: We reiterate that this program does not establish a precedent for actions with future significant effects or represent a decision in principle about a future consideration. As we stated earlier, in the past, we have issued similar permits for goose control activities on a case-by-case or State-wide basis. States are currently conducting Canada goose damage management activities under these permits. Likewise, we have issued similar regulations, in the form of either depredation orders or permits, for other species, such as the double-crested cormorant, blackbirds, cowbirds, grackles, crows, and magpies. Any future similar actions, either for Canada geese, or any other migratory bird species, would be analyzed under NEPA, with public involvement, on their own merits.

Issue: A large number of commenters indicated that they are philosophically opposed to the killing of Canada geese and any other "inhumane" treatments of these birds. They expressed preferences for non-lethal solutions to all resident Canada goose/human conflicts and pointed out that people need to be more tolerant of wildlife. Some commenters also opposed the removal of geese on the grounds that these management actions were only short-term solutions.

Service Response: We are also opposed to the inhumane treatment of any birds, but do not believe the capture and relocation, or processing for human consumption, of resident Canada geese from human conflict areas is by definition "inhumane." Over the past few years, States have rounded up thousands of problem resident Canada geese and relocated them to unoccupied sites. However, few such unoccupied sites remain. Therefore, we believe that humane lethal control of some geese is an appropriate part of an integrated resident Canada goose damage and control management program.

We also prefer non-lethal control activities, such as habitat modification, as the first means of eliminating resident Canada goose conflict and damage problems and have specified language to this effect in the final regulations. However, habitat modification and other harassment tactics do not always work satisfactorily and lethal methods are sometimes necessary to increase the effectiveness of non-lethal management methods.

There are many situations where resident Canada geese have created injurious situations and damage problems that few people would accept if they had to deal directly with the problem situation. We continue to encourage state wildlife management agencies to work with not only the local citizens impacted by the management actions but all citizens. While it is unlikely that all resident Canada goose/human conflicts can be eliminated in all urban settings, implementation of broad-scale resident Canada goose management activities may result in an overall reduced need for other management actions, such as large-scale goose round-ups and lethal control.

Issue: Some commenters indicated that they were concerned about the potential loss of aesthetic value if Canada geese were removed from areas.

Service Response: While we attempted to consider the views of all those concerned, we admit that this was difficult given the highly variable values people place on geese and other wildlife. Some commenters conveyed their pleasure and appreciation for being able to see geese locally in their neighborhood. However, we must weigh these benefits with the views of other commenters who wanted to see fewer geese because of the damage, including loss in the aesthetic value, being caused by excessive numbers of geese on personal and public property .

Issue: Several commenters believed that the special permit fell far short of providing the States with more authority and less burdensome regulations. Further, it does not provide States with enough management flexibility. They believed a depredation order approach would be a more cost-effective/efficient means to manage injurious resident Canada Geese.

Service Response: As we indicated in the proposed rule, we included the depredation order alternative in the EA. However, while we agree that depredation orders in other circumstances have proven to be valuable tools in wildlife damage management, we believe that management of resident Canada geese deserves special attention and consideration which, at this time, is best provided by the special Canada goose permit program. We believe that the special Canada goose permit program will provide the management flexibility needed to address this serious problem and at the same time simplify the procedures needed to administer this program. The special Canada goose permit program will satisfy the need for an efficient and cost-effective program while allowing us to maintain management control.

However, in the long-term, we realize that more management flexibility will likely be necessary. Because of the unique locations where large numbers of these geese nest, feed, and reside, we believe that new and innovative approaches to dealing with bird/human conflicts will be needed. In order to best deal with this problem, we have begun to develop a short-term and long-term strategy. In the short-term, these regulations to create and issue a new special permit specifically for resident Canada goose control and damage management will significantly reduce Service administrative costs for this activity, provide quicker response to injurious situation and more effectively control resident Canada goose populations throughout the conterminous United States. In the long-term, we have recently begun the initial groundwork, with the full assistance and cooperation of the Flyway Councils and APHIS/WS, to integrate our management of these birds into a larger Flyway management plan system. We believe the end result of this approach should provide States with more management flexibility and authority to deal with resident Canada geese within their State while increasing the commitment to establish population goals and objectives, management planning, and population monitoring.

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Effective Date

Under the Administrative Procedures Act (5 U.S.C. 553 (d)) we waive the 30-day period before the rule becomes effective and find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the APA, and so this rule will take effect immediately upon publication. It is not in the public interest to delay the effective date of this rule. In many parts of the country, especially the northeastern and mid-Western States, locally-breeding Canada geese have already nested and produced broods. Molting will soon take place (typically mid-June to mid-July) and any delay in the effective date of this rule could reduce the effectiveness of potential damage management actions for this year. It is in the best interest of the public to establish this new special permit program to allow State wildlife agencies the ability to reduce the number and frequency of injurious resident Canada geese. It is also in the best interest of the public to provide alternative regulatory options to address the problem of overabundant resident Canada geese that may affect the public's health and safety.

NEPA Considerations

We prepared an Environmental Assessment (EA), as defined under the authority of the National Environmental Policy Act of 1969, in connection with this regulation. Based on review and evaluation of the information contained in the EA, we determined that the proposed action to amend 50 CFR Part 21 to establish a special Canada goose permit for the control and management of resident Canada geese would not be a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, we made a Finding of No Significant Impact on this action and determined that preparation of an Environmental Impact Statement was not required. The EA is available to the public at the location indicated under the **ADDRESSES** caption.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "ensure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *" Consequently, we initiated Section 7 consultation under the ESA for this rulemaking. You may inspect completed results of our consultation under Section 7 of the ESA at the location indicated under the **ADDRESSES** caption.

Paperwork Reduction Act and Information Collection

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted the necessary paperwork to the Office of Management and Budget (OMB) for approval to collect the information required by the applicant and permittee. Under the Act, OMB must approve information collections. After review, OMB approved the information collection requirements of the Special Canada Goose Permit and assigned clearance number 1018–0099. We will use the information collection requirement to administer this program and in the issuance and monitoring of these special permits. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities. We determined that this rulemaking would not have a significant effect on a substantial number of small entities, which include small businesses, organizations and small governmental jurisdiction. This rule will only effect State wildlife agencies responsible for migratory bird management that wish to initiate a resident Canada goose control and damage management program within our guidelines. We anticipate that less than 45 applicants will annually apply. Therefore, this rule will have minimal effect on small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

Executive Order 12866

We determined that this rule is not significant under the definition in Executive Order 12866, and therefore, not subject to OMB review.

Unfunded Mandates

We determined and certify in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we hereby amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—[AMENDED]

1. The authority for part 21 continues to read as follows:

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Amend § 21.3 by adding alphabetically definitions for "Resident Canada geese" and "Service."

§ 21.3 Definitions.

* * * * *

Resident Canada geese means Canada geese that nest within the conterminous United States and/or Canada geese which reside within the conterminous United States during the months of June, July, or August.

Service or *we* means the U.S. Fish and Wildlife Service, Department of the Interior.

3. Add a new § 21.26 to read as follows:

§ 21.26. Special Canada goose permit.

(a) *What is the special Canada goose permit and what is its purpose?* The special Canada goose permit is a permit issued by us to a State wildlife agency authorizing certain resident Canada goose management and control activities that are normally prohibited. We will only issue such a permit when it will contribute to human health and safety, protect personal property, or allow resolution or prevention of injury to people or property. The management and control activities conducted under the permit are intended to relieve or prevent injurious situations only. No person should construe the permit as opening, reopening, or extending any hunting season contrary to any regulations established under Section 3 of the Migratory Bird Treaty Act.

(b) *Who may receive a permit?* Only State wildlife agencies (State) are eligible to receive a permit to undertake the various goose management and control activities. Additionally, only employees or designated agents of a permitted State wildlife agency may undertake activities for injurious resident Canada geese in accordance with the conditions specified in the permit, conditions contained in 50 CFR part 13, and conditions specified in paragraph (d) of this section.

(c) *How does a State apply for a permit?* Any State wildlife agency wishing to obtain a permit must submit an application to the appropriate Regional Director (see § 13.11(b) of this subchapter) containing the general information and certification required by § 13.12(a) of this subchapter plus the following information:

(1) A detailed statement showing that the goose management and control activities will either provide for human health and safety, protect personal property, or allow resolution of other injury to people or property;

(2) An estimate of the size of the resident Canada goose breeding population in the State;

(3) The requested annual take of resident Canada geese, including eggs and nests;

(4) A statement indicating that the State will inform and brief all employees and designated agents of the requirements of these regulations and permit conditions.

(d) *What are the conditions of the permit?* The special Canada goose permits are subject to the general conditions in 50 CFR part 13, the conditions elsewhere in this section, and, unless otherwise specifically authorized on the permit, the conditions outlined below:

(1) *What are the limitations on management and control activities?* (i) Take of resident Canada geese as a management tool under this section may not exceed the number authorized by the permit. States should utilize non-lethal goose management tools to the extent they deem appropriate in an effort to minimize lethal take.

(ii) Methods of take for the control of injurious resident Canada geese are at the State's discretion. Methods include, but are not limited to, firearms, alpha-chloralose, traps, egg and nest manipulation and other damage control techniques consistent with accepted wildlife damage-management programs.

(2) *When may a State conduct management and control activities?* States and their employees and agents may conduct management and control activities, including the take of resident Canada geese, under this section between March 11 and August 31. In California, Oregon and Washington, in areas where the threatened Aleutian Canada goose (*B. c. leucoperia*) has been present during the previous 10 years, lethal control activities are restricted to May 1 through August 31, inclusive.

(3) *How must the States dispose or utilize geese taken under this permit?* States and their employees and agents may possess, transport, and otherwise dispose of Canada geese taken under this section. States must utilize such birds by donation to public museums or public institutions for scientific or educational purposes, by processing them for human consumption and distributing them free of charge to charitable organizations, or by burying or incinerating them. States, their employees, and designated agents may not sell, offer for sale, barter, or ship for the purpose of sale or barter any Canada geese taken under this section, nor their plumage or eggs.

(4) *How does the permit relate to existing State law?* No person conducting management and control activities under this section should construe the permit to authorize the killing of injurious resident Canada geese contrary to any State law or regulation, nor on any Federal land without specific authorization by the responsible management agency. No person may exercise the privileges granted under this section unless they possess any permits required for such activities by any State or Federal land manager.

(5) *When conducting management and control activities, are there any special inspection requirements?* Any State employee or designated agent authorized to carry out management and control activities must have a copy of the permit and designation in their possession when carrying out any activities. The State must also require the property owner or occupant on whose premises the State is conducting activities to allow, at all reasonable times, including during actual operations, free and unrestricted access to any Service special agent or refuge officer, State wildlife or deputy wildlife agent, warden, protector, or other wildlife law enforcement officer (wildlife officer) on the premises where they are, or were, conducting activities. Furthermore, any State employee or designated agent conducting such activities must promptly furnish whatever information is required concerning such activities to any such wildlife officer.

(6) *What are the reporting requirements of the permit?* Any State employee or designated agent exercising the privileges granted by this section must keep records of all activities carried out under the authority of this permit, including the number of Canada geese killed and their disposition. The State must submit an annual report detailing activities, including the time, numbers and location of birds, eggs, and nests taken and non-lethal techniques utilized, before December 31 of each year. The State should submit the annual report to the appropriate Assistant Regional Director—Refuges and Wildlife (see § 10.22 of this subchapter).

(7) *What are the limitations of the special permit?* The following limitations apply:

(i) Nothing in this section applies to any Federal land within a State's boundaries without written permission of the Federal Agency with jurisdiction.

(ii) States may not undertake any actions under any permit issued under this section if the activities adversely affect other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act.

(iii) We will only issue permits to State wildlife agencies in the conterminous United States.

(iv) States may designate agents who must operate under the conditions of the permit.

(v) *How long is the special permit valid?* A special Canada goose permit issued or renewed under this section expires on the date designated on the face of the permit unless it is amended or revoked or such time that we determine that the State's population of resident Canada geese no longer poses a threat to human health or safety, personal property, or injury to other interests. In all cases, the term of the permit may not exceed five (5) years from the date of issuance or renewal.

(vi) *Can we revoke the special permit?* We reserve the right to suspend or revoke any permit, as specified in § 13.27 and § 13.28 of this subchapter.

(e) *What are the OMB information collection requirements of the permit program?* OMB has approved the information collection requirements of the permit and assigned clearance number 1018–0099. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We will use the information collection requirements to administer this program and in the issuance and monitoring of these special permits. We will require the information from State wildlife agencies responsible for migratory bird management in order to obtain a special Canada goose permit, and to determine if the applicant meets all the permit issuance criteria, and to protect migratory birds. We estimate the public reporting burden for this collection of information to average 8 hours per response for 45 respondents (States), including the time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and record-keeping for this collection to be 360 hours. States may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Officer, Fish and Wildlife Service, ms 224–ARLSQ, 1849 C Street N.W., Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0099, Washington, DC 20503.

Dated: June 9, 1999

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–15408 Filed 6–16–99; 8:45 am]

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federal register

Thursday
June 17, 1999

Part X

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 20 and 21

Migratory Bird Hunting: Withdrawal of Regulations Designed To Reduce the Mid-Continent Light Goose Population; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AF05

Migratory Bird Hunting; Withdrawal of Regulations Designed To Reduce the Mid-Continent Light Goose Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or "we") is withdrawing the regulations that authorized the use of additional hunting methods (electronic calls and unplugged shotguns) to increase take of mid-continent light geese. We are also withdrawing the regulation that established a conservation order for the reduction of mid-continent light goose populations.

DATES: This rule takes effect immediately upon publication on June 17, 1999.

ADDRESSES: Copies of the EA are available by writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Because high populations of Mid-continent light geese (MCLG), are leading to the habitat destruction described below, we believe that management action is necessary. In fact, we promulgated regulations on February 16, 1999, (64 FR 7507; 64 FR 7517) that authorized additional methods of take of light geese and established a conservation order for the reduction of the MLGP. In issuing those regulations, we indicated that we would initiate preparation of an Environmental Impact Statement (EIS) beginning in 2000 to consider the effects on the human environment of a range of long-term resolutions for the MCLG population problem. Those regulations were subsequently challenged in a United States District Court by the Humane Society of the United States (HSUS) and other groups. Though the judge refused to preliminarily enjoin the program, he did indicate a likelihood that the plaintiffs might prevail on the EIS issue when the lawsuit proceeded. In light of our earlier commitment to prepare an EIS on the larger, long-term program and to preclude further litigation on the issue, we have decided to withdraw the regulations and to begin preparation of the EIS now.

Background

Lesser snow (*Anser caerulescens caerulescens*) and Ross' (*Anser rossii*) geese that primarily migrate through the Mississippi and Central Flyways are collectively referred to as Mid-continent light geese (MCLG). They are referred to as "light" geese due to the light coloration of the white-phase plumage form, as opposed to "dark" geese such as the white-fronted or Canada goose. We include both plumage forms of lesser snow geese (white, or "snow" and dark, or "blue") under the designation light geese. MCLG breed in the central and eastern arctic and subarctic regions of northern Canada. The total MCLG population is experiencing a high population growth rate and has become seriously injurious to its arctic and subarctic breeding grounds through the feeding actions of geese. Our management goal is to reduce the MCLG population by 50% by the year 2005 in order to prevent further habitat degradation.

We have attempted to curb the growth of the total MCLG population by increasing bag and possession limits and extending the open hunting season length for light geese to 107 days, the maximum allowed by the Migratory Bird Treaty. However, due to the rapid rise in the MCLG population, low hunter success, and low hunter interest, harvest rate (the percentage of the population that is harvested) has declined despite evidence that the actual number of geese harvested has increased (USFWS 1997b). The decline in harvest rate indicates that the current management strategies are not sufficient to stabilize or reduce the population growth rate.

On February 16, 1999, we published rules that: (1) authorized additional methods of take of MCLG (electronic calls and unplugged shotguns; 64 FR 7507); and (2) created a conservation order for the reduction of the MCLG population (64 FR 7517). These actions were designed to reduce the population of MCLG over a period of several years in order to bring the population to a level that their breeding habitat can support. We prepared an Environmental Assessment (EA) in support of this program, which resulted in a Finding of No Significant Impact.

On February 25, 1999, the HSUS and other groups filed a complaint in the District Court for the District of Columbia seeking an injunction against these regulations. On March 2, 1999, the plaintiffs filed a motion for a preliminary injunction against the two rules cited above. The lawsuit alleged that we had implemented the rules without adequate scientific evidence that MCLG were causing habitat destruction, that we did not have the authority under the Migratory Bird Treaty to allow take of MCLG after March 10, and that an Environmental Impact Statement (EIS) should have been prepared prior to implementation of the rules. Although the judge refused to issue an injunction, he did indicate a likelihood that plaintiffs might succeed on their argument that an EIS should have been prepared. In order to avoid further litigation, and because we had earlier indicated we would begin preparing in the year 2000 an EIS on the larger, long-term program, we have decided to withdraw the regulations and begin preparation of that EIS now.

Effective Date

Under 5 U.S.C. 553 (b)(3)(B), we find that the notice required by § 553 (b) does not apply to this rule withdrawal because, for the following reasons, it is unnecessary and not in the public interest. We are reinstating rules with regard to light geese that have been in place and implemented for many years and which were adopted after notice and opportunity for public comment. In addition, the Service is preparing an EIS that will address all of the larger, long-term issues for light goose management, including take regulations, which will involve significant opportunities for public involvement and comment. Any regulations that may result from the EIS process would be adopted only after notice and opportunity for public comment. Finally, it is in the public interest because withdrawal of the regulations will allow us to conclude the litigation initiated by the HSUS and avoid in-season problems. Although the judge in that case did not preliminarily enjoin the new regulations, he did indicate that a decision on the merits might find them procedurally deficient. If that were to occur during the 1999–2000 hunting season, States and their licensed hunters would experience significant confusion and enforcement and administrative problems. In addition, under 5 U.S.C. 553 (d), for the above reasons, we find that good cause exists to put this rule into effect immediately upon publication.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared an Environmental Assessment in January 1999. This EA is available to the public at the location indicated under the **ADDRESSES** caption. We will initiate the preparation of an EIS to consider the effects on the human environment of a range of alternatives for management of the MCLG population. A Notice of Intent to prepare the EIS was published in the **Federal Register** on May 13, 1999 (64 FR 26268).

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that "Each Federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of (critical) habitat . . ." We completed a Section 7 consultation under the ESA for the rules that are being withdrawn. Withdrawal of the rules will not affect any threatened, endangered, proposed or candidate species. The result of our consultation under Section 7 of the ESA is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The economic impacts of this rulemaking will fall primarily on small businesses because of the structure of the waterfowl hunting related industries. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities. Data are not available to estimate the number of small entities affected, but it is unlikely to be a substantial number on a national scale. We estimated that implementation of these regulations would have reduced the risk of light-goose season closures in the Central and Mississippi Flyways, subsequently avoiding a $70 million loss in output and reducing the possibility of increased agricultural loss. We estimated that special MCLG population control efforts would have created additional take opportunities that were expected to add $18 million in output to local economies. We have determined that a Regulatory Flexibility Act Analysis is not required.

Executive Order 12866

This rule was not subject to review by the Office of Management and Budget under E.O. 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. The Service invites comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand?

Congressional Review

This is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), this rule has been submitted to Congress. Because this rule deals with our migratory bird hunting program, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Paperwork Reduction Act and Information Collection

This regulation does not require any information collection for which OMB approval is required under the Paperwork Reduction Act. Information collection for any light goose harvest that occurred prior to the withdrawal of these regulations is covered by an existing OMB approval number. Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB approved the information collection of the conservation order prior to withdrawal of the regulation and assigned clearance number 1018–0103 (expires 01/31/2002).

Unfunded Mandates

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act (2 U.S.C. 1502 et seq.), that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. This rule will not "significantly or uniquely" affect small governments. No governments below the State level will be affected by this rule. A Small Government Agency Plan is not required. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under Unfunded Mandates.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. This rule has been reviewed by the Office of the Solicitor. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. We do not anticipate that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. The rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian Tribes and have determined that there are no effects.

Authorship

The primary author of this final rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we hereby amend parts 20 and 21, of the subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; and 16 U.S.C 742a–j.

2. Revise paragraphs (b) and (g) of § 20.21 *Hunting methods* to read as follows:

§ 20.21 Hunting methods

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds;

* * * * *

3. Revise § 20.22 *Closed seasons* to read as follows:

§ 20.22 Closed seasons

No person shall take migratory game birds during the closed season.

PART 21—[AMENDED]

1. The authority citation for part 21 continues to read as follows:

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

SUBPART E—[REMOVED]

2. Remove Subpart E, consisting of § 21.60.

Dated: June 3, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–15338 Filed 6–16–99; 8:45 am]

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federal register

Thursday
June 17, 1999

Part XI

Department of Housing and Urban Development

24 CFR Part 245

Tenant Participation in Multifamily Housing Projects; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 245

[Docket No. FR–4403–P–01]

RIN 2502–AH32

Tenant Participation in Multifamily Housing Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations for tenant participation in multifamily housing projects. Specifically, the proposed rule would expand the number of categories of multifamily housing projects in which tenants have the right to establish and operate tenant organizations. The proposed rule would clarify the reasonable activities that the owner of a multifamily housing project, covered under this proposed rule, must allow tenants and tenant organizers to engage in while organizing their co-tenants and operating a tenant organization. The proposed rule would also clarify the requirements for establishing and operating a tenant organization.

DATES: *Comments Due Date:* August 16, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Business Products, Multifamily Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–3000 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

a. Tenant Participation in Multifamily Housing Projects

HUD supports the active involvement of tenants in creating and maintaining a suitable living environment and in contributing to the successful operation of their multifamily housing projects. This proposed rule would amend HUD's regulations at 24 CFR part 245 (entitled "Tenant Participation in Multifamily Housing Projects") to increase the number of categories of multifamily housing projects covered by part 245. The rule would also clarify the reasonable activities that tenants and tenant organizations may engage in and the requirements for establishing and operating a tenant organization. The amendments proposed by this rule are discussed below.

b. Increased Number of Categories of Multifamily Housing Projects Covered

The statutory authority for part 245 is section 202 of the Housing and Community Development Amendments of 1978 (Pub. L. 95–557, 92 Stat. 2080, 12 U.S.C. 1715z–1b) (1978 HCD Amendments Act). The coverage of section 202 was expanded by section 183 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, 101 Stat. 1815) (1987 HCD Act). This amendment added multifamily housing projects "eligible for assistance as described in * * * section 202 of the Housing Act of 1959" (1959 Housing Act).

The coverage of section 202 of the 1978 HCD Amendments Act was expanded again in 1998 by section 599 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, 112 Stat. 2461). This amendment added multifamily housing projects that receive:

project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) or enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997.

The proposed rule would revise § 245.10 (entitled "Applicability of part") to reflect these various statutory amendments to section 202 of the 1978 HCD Amendments Act. The proposed rule would make the following changes to § 245.10:

1. Paragraph (a)(2) (entitled "Section 202 project") would be removed along with the accompanying definition of "Section 202 Loans for the Elderly or Handicapped BMIR Program" from paragraph (c). These paragraphs limited the type of Section 202 project covered by part 245. They are no longer applicable because of section 183 of the 1987 HCD Act, which amended section 202 of the 1978 HCD Amendments Act to include coverage of all Section 202 projects (note: the term "Section 202 projects" refers to section 202 of the 1959 Housing Act).

2. Paragraphs (a)(4)–(a)(7) would be added. Each paragraph would add a new category of multifamily housing project as follows:

Paragraph	Would add multifamily housing projects receiving
(a)(4)	Project-based assistance under section 8 of the United States Housing Act of 1937.
(a)(5)	Enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997.
(a)(6)	Section 202 Direct Loan program or the Section 202 Supportive Housing for the Elderly program.
(a)(7)	Section 811 Supportive Housing for Persons with Disabilities program.

Section 245.10(a)(7) of this proposed rule would add Section 811 multifamily housing projects even though these projects are not explicitly mentioned in section 202 of the 1978 HCD Amendments Act. As noted, section 183 of the 1987 HCD Act expanded the scope of section 202 of the 1978 HCD Amendments Act to include multifamily housing projects described in section 202 of the 1959 Housing Act. At the time of the 1987 amendments, section 202 of the 1959 Housing Act included multifamily housing projects that are currently part of the Section 811 program. The Section 811 program was split out of section 202 of the 1959 Housing Act in 1990 by the Cranston-Gonzalez National Affordable Housing Act (Public Law 101–625, 104 Stat. 4079). HUD does not believe that Congress intended to narrow the coverage of section 202 of the 1978 HCD Amendments Act to limit the ability of Section 811 residents to participate in tenant organization activities. HUD, therefore, is proposing to revise part 245 to reflect the coverage of section 202 of the 1959 Housing Act before its amendment in 1990.

c. Protected Activities

The role of the tenant organization is, among other things, to increase tenant participation and awareness in creating and maintaining a positive living environment. In order to achieve this goal, the proposed rule would require that owners of multifamily housing projects, covered under this proposed rule, allow tenants and tenant organizers to conduct reasonable activities related to the establishment and operation of a tenant organization.

The existing regulations preclude owners of multifamily housing projects from impeding the reasonable efforts of tenants to organize, but they are not specific with respect to what actions may constitute reasonable efforts. This lack of specificity, in a number of cases, has led to confusion. This confusion has contributed to disputes between owners and tenants and between owners and those attempting to organize tenants.

In an attempt to avoid this confusion, the proposed rule would retain the current reasonableness standard while listing specific activities that are protected. The list of activities is not exhaustive, but provides specific examples that would assist tenants, owners, and tenant organizers to determine what constitutes a protected activity under the part 245 regulations. The proposed rule would still require that owners of multifamily housing projects allow tenants and tenant organizers to conduct reasonable activities related to the establishment and operation of a tenant organization, in addition to the specific activities listed in the proposed rule.

Protected activities listed in the proposed rule include the distribution or posting of information regarding tenant organizations, initiating contact with tenants, assisting tenants to participate in tenant organization activities, convening regularly scheduled meetings on site, and formulating responses to various owner proposals such as rent increases, conversion from project-based paid utilities to tenant-paid utilities, tenant utility allowance reductions, conversion of residential units to non-residential use, cooperative housing, or condominiums, and major capital additions.

d. Tenant Organizers

Under the proposed rule, a tenant organization must consist of the tenants of a multifamily housing project covered under this proposed rule. However, tenants may have the assistance of tenant organizers who need not be tenants of the housing project. Where a tenant organizer is not a tenant of the housing project and the owner of the housing project has a consistently enforced policy against door-to-door solicitation, the tenant organizer must be accompanied by a tenant while conducting tenant organization related activities on the housing project property.

Where the tenant organizer is not a tenant of the housing project and the owner of the housing project has a policy favoring solicitation, the non-tenant tenant organizer must likewise be afforded the same privileges and rights of access as other uninvited outside parties would have in the normal course of operations. If the owner of the housing project does not have a consistently enforced policy against solicitation, the housing project shall, for purposes of the tenant organizer's right to access, be treated as if it has a policy favoring solicitation.

e. Properly Established Tenant Organizations

The proposed rule would require owners of multifamily housing projects, covered under the proposed rule, to give reasonable consideration to concerns raised by a properly established tenant organization. Further, the owner must recognize the right of tenants to establish or replace a tenant organization. Under the proposed rule, a tenant organization has been properly established, if it has been established by the tenants of a multifamily housing project covered under 24 CFR 245.10 for the purpose of addressing the terms and conditions of their tenancy, has adopted written procedures in compliance with the proposed rule, and has elected a governing board in compliance with the proposed rule.

f. Additional Tenant Organizations

While HUD believes that, generally, one established tenant organization, elected by the tenants, presents the most effective means of providing a voice for tenants in relations with multifamily housing project owners, management agents, and HUD, HUD recognizes the fact that the established organization may not always adequately represent the concerns and opinions of all of the tenants.

To address this issue, the proposed rule requires owners and management agents to recognize the rights of tenants to organize to replace the leadership of an existing tenant organization through recall elections, to establish issue-based organizations in response to specific tenants' issues, or to establish additional tenant organizations. A tenant organizer may assist tenants in organizing a recall election or establishing additional tenant organizations.

g. Enforcement Of Regulatory Agreements

If a project owner does not comply with the provisions of the regulatory agreement with HUD, HUD has the right to declare a breach of the agreement. Regulatory agreements for most current insured mortgages mandate that owners adhere to HUD management requirements. The right of tenants to organize is such a requirement.

Notwithstanding this existing general enforcement authority, in order to provide greater clarity to owners, upon publication of a final rule, HUD intends to revise regulatory agreements to include the right of tenants to organize explicitly in the agreement itself. HUD will have the opportunity to revise the regulatory agreements during the development of new housing projects or whenever an owner seeks assistance or relief that requires an amendment to an existing regulatory agreement. For example, this might occur in a partial payment of claim, a bond refunding, or transfer of physical assets (sale of property). In addition to revising the regulatory agreements, HUD expects to take other appropriate actions (such as updating its handbooks and providing instructions to field office staff) to assist tenants and owners in implementing this rule.

h. Public Comments on This Proposed Rule

In order to reach consensus on the issue of the rights of tenants to organize multiple tenant organizations, and in the spirit of partnership and cooperation, HUD invites comments on this proposed rule from the public, particularly representatives of housing project owners, management agents, tenants and tenant groups, and all other interested parties. HUD will consider all of the comments in the development of the final rule.

II. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities.

The proposed rule is exclusively concerned with the procedures governing tenant participation in multifamily housing projects and would have minimal economic impact on the owners of covered projects. Although the rule would require that owners permit tenants and tenant organizers to conduct reasonable activities related to the establishment or operation of tenant organizations, it would not impose any affirmative obligations on owners to assist tenant organizations in the conduct of these activities. For example, the owners of covered projects would not be required to contribute, economically or otherwise, to the preparation or distribution of leaflets and other informational materials developed by a tenant organization.

The proposed rule would permit tenant organizations to develop responses to economic proposals made by owners, such as rent increases and major capital additions. While HUD encourages owners to take these responses into consideration, the proposed rule would not require that owners modify or abandon their proposals based on the recommendations made by the tenant organization.

Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism Impact

The General Counsel, as the Designated Official for HUD under Section 6(a) of Executive Order 12612 (entitled "Federalism"), has determined that this rule would not have federalism implications concerning the division of local, State, and Federal responsibilities. The rule is exclusively concerned with the procedures governing tenant participation in multifamily housing projects. Specifically, this proposed rule would expand the categories of multifamily housing projects in which tenants have the right to establish and operate tenant organizations. The proposed rule would also clarify the requirements for establishing and operating a tenant organization and the activities that owners of multifamily housing projects must allow tenant organizations to engage in. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal government and State and local governments.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 245

Condominiums, Cooperatives, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

For the reasons discussed in this preamble, HUD proposes to amend 24 CFR part 245 as follows:

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR part 245 continues to read as follows:

Authority: 12 U.S.C. 1715z–1b; 42 U.S.C. 3535(d).

2. Amend § 245.10 as follows:

a. Remove paragraph (a)(2);

b. Remove from paragraph (c) the definition of "Section 202 Loans for the Elderly or Handicapped BMIR Program";

c. Redesignate paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3), respectively;

d. Revise redesignated paragraphs (a)(2)(ii) and (a)(3); and

e. Add paragraphs (a)(4)–(7) to read as follows:

§ 245.10 Applicability of part.

(a) * * *

(2) * * *

(ii) Was sold by the Secretary subject to a mortgage insured or held by the Secretary and an agreement to maintain the low-and moderate-income character of the project;

(3) *State or local housing finance agency project.* The project receives assistance under section 236 of the National Housing Act (12 U.S.C. 1715z–1) or the Rent Supplement Program administered through a State or local housing finance agency, but does not have a mortgage insured under the National Housing Act or held by the Secretary. Subject to the further limitation in paragraph (b) of this section, only the provisions of subparts A and C of this part and of subpart D of this part for requests for approval of a conversion of a project from project-paid utilities to tenant-paid utilities or of a reduction in tenant utility allowances, apply to a mortgagor of such a project;

(4) The project receives project-based assistance under section 8 of the United States Housing Act of 1937;

(5) The project receives enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997;

(6) The project receives assistance under the Section 202 Direct Loan program or the Section 202 Supportive Housing for the Elderly program; or

(7) The project receives assistance under the Section 811 Supportive Housing for Persons with Disabilities program.

* * * * *

Subpart B—Tenant Organizations

3. Add § 245.100 to read as follows:

§ 245.100 Right of tenants to organize.

The tenants of a multifamily housing project covered under § 245.10 have the right to establish and operate a tenant organization for the purpose of addressing the terms and conditions of their tenancy.

4. Revise §§ 245.105 and 245.110 to read as follows:

§ 245.105 Recognition of tenant organizations.

Owners of multifamily housing projects covered under § 245.10, and their agents, must:

(a) Recognize properly established tenant organizations; and

(b) Give reasonable consideration to concerns raised by properly established tenant organizations.

§ 245.110 Properly established tenant organizations.

A tenant organization has been properly established if it has:

(a) Been established by the tenants of a multifamily housing project covered under § 245.10 for the purpose of addressing the terms and conditions of their tenancy;

(b) Adopted written procedures in compliance with § 245.115; and

(c) Elected a governing board in compliance with § 245.120.

5. Add §§ 245.115, 245.120, 245.125, 245.130, 245.135, 245.140, 245.145, 245.150, 245.155, and 245.160 to read as follows:

§ 245.115 Constitution or by-laws.

A tenant organization must adopt written procedures either in the form of a constitution or in the form of by-laws. A tenant organization may determine the contents and structure of its constitution or by-laws, however, the constitution or by-laws must, at a minimum, contain:

(a) Procedures for the election of a governing board, which assure fair elections;

(b) Procedures for instituting a recall election to remove a governing board or board member;

(c) The percentage of qualified voting members needed to hold a recall election, which may not be less than ten percent;

(d) The frequency of elections;

(e) The qualifications needed to run for a seat on the governing board; and

(f) The structure of the governing board.

§ 245.120 Governing board.

(a) *Structure.* A tenant organization may determine the structure of its governing board, however, the governing board must, at a minimum:

(1) Be democratically elected; and

(2) Consist of at least five members whose terms are staggered.

(b) *Qualification to serve on governing board.* A tenant organization may determine the qualifications required to serve on its governing board, however, a candidate for a seat on the governing board must, at a minimum be:

(1) A qualified voting member; and

(2) In compliance with the lease.

(c) *Term length and term limits.* A tenant organization may determine the length of a term for seats on the governing board, however, a seat on a governing board may not be held for more than three consecutive years. A tenant organization may determine whether a person serving on the governing board may be limited in the number of terms served.

§ 245.125 Qualified voting member.

(a) A person is a qualified voting member and may vote in any election involving the activities of a tenant organization, if the person is:

(1) Eighteen years of age or older; and

(2) Named in the lease for an apartment unit in the multifamily housing project represented by the tenant organization.

(b) A qualified voting member may designate another person to vote in an election, if that person is:

(1) Eighteen years of age or older; and

(2) Resides in the same apartment unit as the qualified voting member.

§ 245.130 Number of votes.

Each apartment unit in a multifamily housing project receives one vote per election, regardless of the number of occupants of that apartment unit.

§ 245.135 Election notices.

All qualified voting members of a tenant organization must be given at least thirty days notice of any elections relating to the activities of the tenant organization. This notice must include:

(a) A description of the tenant organization's election procedures;

(b) A description of the election eligibility requirements; and

(c) The dates of nominations and elections.

§ 245.140 Protected activities.

(a) Owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenants and tenant organizers to conduct the following activities related to the establishment or operation of a tenant organization:

(1) Distributing leaflets in lobby areas;

(2) Placing leaflets at or under tenants' doors;

(3) Distributing leaflets in common areas;

(4) Initiating contact with tenants;

(5) Conducting an initial door-to-door survey of tenants to solicit interest in establishing a tenant organization and to offer information about tenant organizations;

(6) Posting information on bulletin boards;

(7) Assisting tenants to participate in tenant organization activities;

(8) Convening regularly scheduled tenant organization meetings in a space on site and accessible to tenants; and

(9) Formulating responses to owner's requests for:

(i) Rent increases;

(ii) Partial payment of claims;

(iii) The conversion from project-based paid utilities to tenant-paid utilities;

(iv) A reduction in tenant utility allowances;

(v) Converting residential units to non-residential use, cooperative housing, or condominiums;

(vi) Major capital additions; and

(vii) Prepayment of loans.

(b) In addition to the activities listed in paragraph (a) of this section, owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenants and tenant organizers to conduct other reasonable activities related to the establishment or operation of a tenant organization.

§ 245.145 Meeting space.

(a) Owners of multifamily housing projects covered under § 245.10, and their agents, must reasonably make available the use of any community room or other available space appropriate for meetings that is part of the multifamily housing project when requested by:

(1) Tenants or a tenant organization and used for activities related to the operation of the tenant organization; or

(2) Tenants seeking to establish a tenant organization or collectively address the terms and conditions of their tenancy.

(b) Tenant and tenant organization meetings must be accessible to persons with disabilities.

(c) *Fees.* An owner of a multifamily housing project covered under § 245.10 may charge a fee, approved by the Secretary as may normally be imposed for the use of such facilities in accordance with procedures prescribed by the Secretary, for the use of meeting space. An owner may waive this fee.

§ 245.150 Tenant organizers.

(a) A tenant organizer is a tenant or non-tenant who assists tenants in establishing and operating a tenant organization.

(b) Owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenant

organizers to assist tenants in establishing and operating tenant organizations.

(c) Non-tenant tenant organizers. (1) If a multifamily housing project covered under § 245.10 has a consistently enforced policy against solicitation, then a non-tenant tenant organizer must be accompanied by a tenant while on the property of the multifamily housing project.

(2) If a multifamily housing project covered under § 245.10 has a policy favoring solicitation, any non-tenant tenant organizer must be afforded the same privileges and rights of access as other uninvited outside parties in the normal course of operations. If the project does not have a consistently enforced policy against solicitation, the project shall be treated as if it has a policy favoring solicitation.

§ 245.155 Tenant's right not to be re-solicited.

A tenant has the right to not be re-solicited regarding participation in a tenant organization.

§ 245.160 Additional tenant organizations.

(a) There may be more than one tenant organization for each multifamily housing project covered under § 245.10.

(b) Owners of multifamily housing projects covered under § 245.10, and their agents, must recognize the rights of tenants to organize to replace the leadership of an existing tenant organization through recall elections, to establish issue-based organizations in response to specific tenants' issues, and to establish additional tenant organizations. A tenant organizer may assist tenants in organizing a recall election or establishing additional tenant organizations.

Dated: March 25, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–15430 Filed 6–16–99; 8:45 am]

BILLING CODE 4210–27–P

federal register

Thursday
June 17, 1999

Part XII

Department of Agriculture
Food Safety and Inspection Service
Department of Health and Human Services
Centers for Disease Control and Prevention
Food and Drug Administration
Environmental Protection Agency

President's Council on Food Safety; Notice of Meeting; Notice

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98-045N]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Food and Drug Administration

[Docket No. 97N-0074]

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. OPP-00550B; FRL-6087-7]

President's Council on Food Safety; Notice of Meeting

AGENCY: Food Safety and Inspection Service, USDA; Research, Education, and Economics, USDA; Centers for Disease Control and Prevention, HHS; Food and Drug Administration, HHS; Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The President's Council on Food Safety was established in August 1998 under Executive Order 13100 to strengthen and focus our efforts to coordinate food safety policy and resources. The Council was directed to develop a comprehensive national food safety strategic plan. The United States Department of Agriculture (USDA), the Department of Health and Human Services (HHS), and the Environmental Protection Agency (EPA) are announcing a public meeting to discuss development of the plan. The purpose of the strategic plan is to reduce the annual incidence of acute and chronic foodborne and waterborne illness by further enhancing the safety of the nation's food supply. USDA, the Food and Drug Administration (FDA), and EPA have established public dockets to receive comments about the President's Council on Food Safety strategic planning process and the plan.

DATES: The meeting will be held on July 15, 1999, from 8:30 a.m. to 5 p.m. Comments should be submitted by September 1, 1999.

ADDRESSES: The meeting will be held at: The Washington Plaza Hotel, 10 Thomas Circle, Massachusetts Avenue and 14th Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: To register for this meeting, call Ms. Sheila Johnson on (202) 501-7305. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Johnson by July 7, 1999.

For further information about the meeting, call Mr. Robert Tynan, of USDA, on (202) 205-7393 or e-mail: robert.tynan@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, 1997, the President issued a directive to the Secretaries of USDA and HHS and the Administrator of EPA to work with consumers, producers, industry, States, Tribes, universities, and the public to identify ways to further improve the safety of our food supply, and report back to him in 90 days. The Federal food safety agencies, working with their colleagues in the States, in the food industries, in academia, and with consumers, initially focused on the goal of reducing illness caused by microbial contamination of food and water. This goal was to be reached through systematic improvements in six key components of the food safety system: Foodborne outbreak response coordination, surveillance, inspections, research, risk assessment, and education. The plan for meeting this goal was presented to the President in May 1997, in "Food Safety from Farm to Table: A National Food Safety Initiative."

In less than 2 years, the agencies have taken significant strides forward in building a strengthened national food safety system. Building blocks for the infrastructure are in place: Increased targeted surveillance through FoodNet and PulseNet; coordination of Federal, State, and local responses to outbreaks by the Foodborne Outbreak Response Coordinating Group (FORCG); expanded reliance on preventive controls (such as the Hazard Analysis and Critical Control Point (HACCP) based inspection systems for meat, poultry, and seafood, and Good Agricultural and Good Manufacturing Practices guidance for produce); coordination of Federal food safety research; cooperation on risk assessment through the interagency Risk Assessment Consortium; leveraging inspection resources; and innovative public and private partnerships. These efforts provide a common ground for moving forward.

In the May 1997 report, the food safety agencies made a commitment to prepare a 5-year comprehensive strategic plan, with the participation of all concerned parties. By Executive Order 13100, the President established the President's Council on Food Safety that will be responsible for development of a comprehensive strategic Federal food safety plan. A coordinated food safety strategic planning effort is needed to tackle some of the difficult public health, resource, and management questions facing Federal food safety agencies. Although microbial contamination will remain an area of emphasis, the strategic plan will address the full range of issues (e.g., chemical contamination, pesticides, food additives, and physical hazards) and actions necessary to ensure the safety of the food and water Americans use and consume. The charge is to develop a strategic long-range plan that can be used to help set priorities, improve coordination and efficiency, identify gaps in the current system and how to fill those gaps, enhance and strengthen prevention and intervention strategies and identify measures to show progress. In developing the plan, the agencies will consider the conclusions and recommendations of the National Academy of Sciences Report on "Ensuring Safe Food from Production to Consumption" and the review of Federal food safety research and the research plan currently being developed by an interagency working group under the auspices of the National Science and Technology Council.

The food safety agencies, as part of their work on the President's Council on Food Safety, have already taken the first steps to lay the groundwork for the development of the strategic plan by participating in interagency strategic planning sessions. The agencies also engaged consumers, producers, industry, food service providers, retailers, health professionals, State and local governments, Tribes, academia, and the public in the strategic planning process through a series of public meetings beginning in October 1998. The purpose of those meetings was to obtain the public's view on a long-term vision for food safety in the U.S. and to identify a strategic planning process that involves interested parties, addresses the important food safety challenges, and makes the best use of agency resources. As a result of those public meetings, a vision statement is currently being revised. The revised vision statement will be available at the July meeting.

The Council has also developed a series of five draft food safety goals that create the framework for the food safety strategic plan. Each draft goal is accompanied by broad objectives designed to achieve that goal. The Council has chosen a twofold process using internal agency resources and external public comment involving all interested parties to review and refine the goals and objectives as well as to add more specific action items to the objectives.

First, the Council has designated five government agency planning workgroups to assist in the development of a final strategic plan. Each workgroup will be responsible for the further development of one of the goals and its objectives within the plan. Under the guidance and direction of the Council, each workgroup will perform the following tasks for its assigned goal statement and objectives:

- Refine the goals and objectives provided by the Council.
- Develop the next level of action items for the plan.
- Assist in the preparation and presentation of public and stakeholder meetings related to the planning process by: Developing appropriate discussion questions related to the goal; participating in breakout sessions concerning the goal; and reviewing and incorporating appropriate public comments into the plan.

Second, the Council wants to engage all interested stakeholders in the development of the actual plan as it did in the earlier dialogue surrounding the agencies' vision for the U.S. food safety system and the roles of all those involved. The Council is planning two public meetings during the summer and fall of 1999 to share the draft plan and obtain public input. In addition, the Council is considering engaging in a series of three to five stakeholder meetings to take place in conjunction with scientific or professional conferences scheduled over the next 6 to 9 months.

The first public meeting is scheduled for July 15, 1999, at the Washington Plaza Hotel in Washington, DC. The purpose of the July 15th meeting is to obtain the public's input on the draft goals and objectives, as well as to provide comments and suggestions on specific action items for inclusion in the plan. The meeting is intended to be a working meeting; therefore, the agenda will follow almost exclusively a breakout session format. The breakout sessions will be organized around the goals and objectives and include members of the agency planning workgroups to lead and facilitate discussions. The workgroups are currently developing several illustrative action items and questions concerning the goals and objectives to encourage and focus participant comments during the breakout sessions. The agenda will be designed to obtain the maximum input from the participants with a minimum of reporting during the meeting from the breakout groups. Summaries of all discussions will be available within 30 days from the end of the public meeting. The second fall public meeting will be announced in the **Federal Register** prior to the date of the meeting. This meeting will obtain public input on a more refined draft of the strategic plan.

The draft goals and objectives to be discussed at the meeting are as follows:

Draft Inter-Agency Food Safety Strategic Plan—Goals and Objectives

Overarching Goal: To protect public health by significantly reducing the number of foodborne illnesses through science-based and coordinated regulation, inspection, enforcement, research, and education programs.

Goal 1: Ensure the development and use of a comprehensive scientific and technological food safety knowledge base to support prevention, regulation, inspection, surveillance, and education programs.

Objectives:

- Develop a national food safety research and technology infrastructure.
- Develop and improve data, methods, models, and measures to assess health effects, including a better understanding of the factors that affect sensitivity to foodborne illness (e.g., age and health status).
- Develop new and improve existing data, methods, models, and measures to assess exposure, including improved analytical and surveillance methods.
- Develop better, integrated (uniform) national and international risk assessment capability and conduct risk assessments.
- Develop and improve prevention/control methods and risk management practices through better integration of research.
- Coordinate and evaluate research on the highest priority food safety issues and efficiently leverage Federal agencies' research resources.
- Develop adequate technological support, including advanced modeling technology, for risk assessment and risk management.

Goal 2: Improve the effectiveness of surveillance, outbreak investigation, and response.

Objectives:

- Enhance and expand foodborne disease and hazard monitoring and surveillance systems.
- Identify, investigate, and track the causes of foodborne infections to determine sources and exposed populations.
- Provide better information to health professionals and physicians about the causes and effects of foodborne illness to more effectively detect and treat these illnesses.
- Improve outbreak coordination and investigation amongst Federal, State, and local agencies for more efficient, effective responses to foodborne contamination and illness.
- Strengthen and expand traceback, intervention, and recall capability; improve coordination on tracebacks and recalls.

Goal 3: Identify and manage food safety risks through protective standards, inspection, and enforcement from farm to table.

Objectives:

- Improve the safety of the nation's food supply to protect public health to the greatest extent possible through priority- and science-based standards, guidance, and other measures, including effective food safety management strategies by processors and providers.
- Develop and implement preventive techniques and controls.
- Ensure priority-based effective and efficient monitoring and inspection of the food supply.
- Protect our food supply in accordance with U.S. statutes and where appropriate internationally recognized science-based standards.
- Ensure contaminated water will not contaminate food during its production, processing, or reconstitution.

Goal 4: Ensure that all people who come into contact with food from farm to table are fully informed of the risks and measures to prevent or reduce foodborne illnesses.

Objectives:

- Foster basic understanding of food safety principles.
- Enhance the public's timely accessibility to accurate information that will help them make informed decisions about their food and the risks.
- Provide education and information to eliminate unsafe food handling practices at each point in the food chain (producers, processors, transporters, preparers, retailers, and consumers).
- Improve communication and information to the public so that they are informed about foodborne illness incidences, but are not unduly alarmed.

Goal 5: Create a national and to the extent possible an international seamless food safety system from farm to table.

Objectives:

- Ensure a complete set of Federal statutory authorities for an effective, prevention-based food safety system, including authorities for information collection and dissemination, rulemaking, inspection, enforcement, and expedited review of food safety technologies.
- Develop and implement a seamless Federal food safety system that supports effective regulation and administration of food safety programs.
- Coordinate and integrate Federal, State, and local actions to provide efficient, effective, and timely

protection of the food supply and eliminate gaps by focusing and delivering resources where they are needed.

• Optimize use of available food safety resources at all levels of government to carry out the monitoring, inspections, outbreak response, traceback, and training necessary for an appropriate level of public protection nationwide.

• Enhance international understanding and acceptance of food safety standards that are in accordance with U.S. statutes and international trade agreements.

The workgroups are continuing to refine these goals, objectives, and action items in preparation for the July 15th meeting. Therefore, the material distributed at the meeting may differ slightly from the information provided in this Notice.

II. Public Dockets and Submission of Comments

The Agencies have established public dockets for the President's Council on Food Safety Strategic Plan. Comments submitted to the dockets are to be identified with the appropriate docket number. For those comments directed to USDA, use Docket No. 98–045N, and for comments directed to FDA, use Docket No. 97N–0074. Commenters are encouraged to submit a disk with their written comments in WordPerfect 5.1/6.1 or ASCII file format. Submit written comments (in triplicate) to:

USDA/FSIS

USDA/FSIS Hearing Clerk, 300 12th Street, SW., Rm. 102 Cotton Annex, Washington, DC 20250–3700.

FDA

FDA/Dockets Management Branch (HFA–305), 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Electronic Comments

Comments may also be submitted electronically to: oppts.homepage@epa.gov. All comments and data in an electronic format must be identified by the docket number OPP–00550. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Meeting Summaries

Summaries of the public meeting will be posted on the Internet at: www.foodsafety.gov. This website is a joint FDA, USDA, and EPA food safety homepage. It is linked to each agency for persons seeking additional food safety information. Summaries of the public meeting may also be requested in writing from the Dockets Management Branch (HFA–305), FDA, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, approximately 15 business days after the meeting at a cost of 10 cents per page. The summaries of the public meeting will be available for public examination at the above-mentioned office between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays.

The public docket in its entirety will be available on the Internet at: http://www.epa.gov/opptsfrs/home/rules.htm#docket.

List of Subjects

Environmental protection, Food safety.

Dated: June 14, 1999.

Catherine E. Woteki,

Undersecretary for Food Safety, United States Department of Agriculture.

Dated: June 14, 1999.

James A. O'Hara,

Deputy Assistant Secretary for Health, Department of Health and Human Services.

Dated: June 14, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances, Environmental Protection Agency.

[FR Doc. 99–15533 Filed 6–15–99; 2:20 pm]

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federal register

Thursday
June 17, 1999

Part XIII

The President

Executive Order 13127—Amendment to Executive Order 13073, Year 2000 Conversion

Federal Register
Vol. 64, No. 116
Thursday, June 17, 1999

Presidential Documents

Title 3—

The President

Executive Order 13127 of June 14, 1999

Amendment to Executive Order 13073, Year 2000 Conversion

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to create the Information Coordination Center to assist the Chair of the President's Council on Year 2000 Conversion in addressing year 2000 conversion problems both domestically and internationally, it is hereby ordered that Executive Order 13073 is amended as follows:

Section 1. A new section 5 is added to the order and shall read "**Sec. 5.** *Information Coordination Center.* (a) To assist the Chair in the Y2K response duties included under section 2(c) of this order, there shall be established the Information Coordination Center (ICC) in the General Services Administration.

(b) At the direction of the Chair, the ICC will assist in making preparations for information sharing and coordination within the Federal Government and key components of the public and private sectors, coordinating agency assessments of Y2K emergencies that could have an adverse affect on U.S. interests at home and abroad, and, if necessary, assisting Federal agencies and the Chair in reconstitution processes where appropriate.

(c) The ICC will:

(1) consist of officials from executive agencies, designated by agency heads under subsection 3(a)(2) of this order, who have expertise in important management and technical areas, computer hardware, software or security systems, reconstitution and recovery, and of additional personnel hired directly or by contract, as required, to carry out the duties described under section 5 of this order;

(2) work with the Council and the Office of Management and Budget to assure that Federal efforts to restore critical systems are coordinated with efforts managed by Federal agencies acting under existing emergency response authorities."

(d) The Chair of the President's Council on Year 2000 Conversion shall designate a Director of the ICC.

Sec. 2. The preexisting section 5 of Executive Order 13073 shall be renumbered as section 6.

William J. Clinton

THE WHITE HOUSE,
June 14, 1999.

[FR Doc. 99–15623
Filed 6–16–99; 9:02 am]
Billing code 3195–01–P

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- Taxpayer identification numbers; published 6-17-99
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H.R. 1379/P.L. 106–35

Western Hemisphere Drug Elimination Technical Corrections Act (June 15, 1999; 113 Stat. 126)

Last List June 10, 1999

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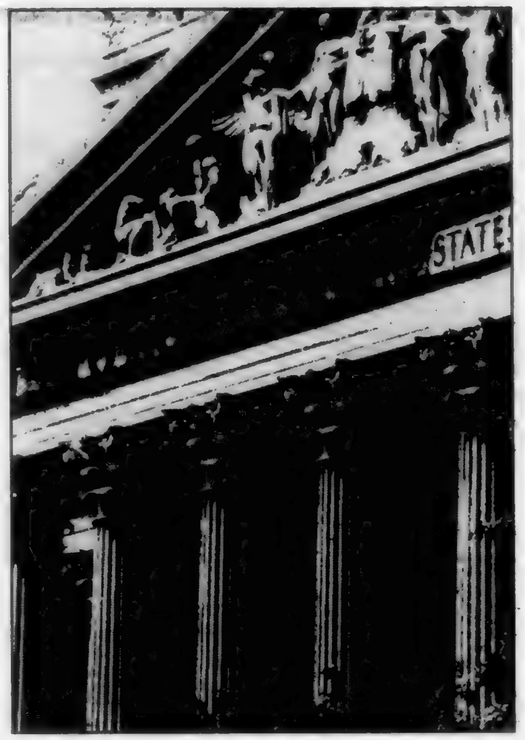
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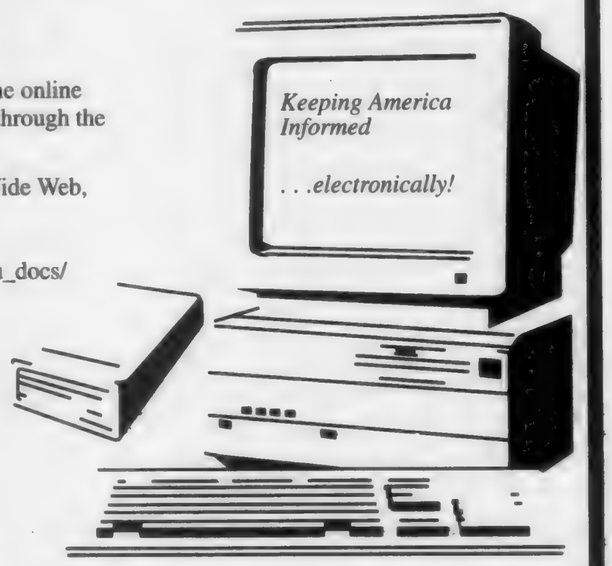
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Presidential Documents

Title 3—

The President

Memorandum of June 10, 1999

Delegation of Responsibility Under the Senate Resolution of Advice and Consent to Ratification of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and laws of the United States of America, I hereby delegate to the Secretary of State the responsibility of the President, under the July 31, 1998, Senate resolution of advice and consent to ratification of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, to submit annual reports to the Congress relating to enforcement and monitoring of that Convention.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 10, 1999.

[FR Doc. 99–15666
Filed 6–17–99; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
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Friday, June 18, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to delegate to the Under Secretary for Natural Resources and Environment, to be exercised only with the concurrence of the General Counsel, the authority vested in the Secretary pursuant to Executive Order No. 12580, as amended by Executive Order No. 13016, to take enforcement action, including the issuance of administrative orders, under sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9606(a), 9622.

EFFECTIVE DATE: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Harwood, Executive Director, Hazardous Materials Policy Council, United States Department of Agriculture, 324 25th Street, Ogden, Utah 84401, telephone (801) 625–5196.

SUPPLEMENTARY INFORMATION: Pursuant to section 106(a) of CERCLA, 42 U.S.C. 9606(a), when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substance, the President, after notice to the affected State, may take such action as may be necessary, including issuance of administrative orders, to protect public health and welfare and the environment. Pursuant to section 122 of CERCLA, 42 U.S.C. 9622, the President may enter into an agreement with any person to perform any response action if the President determines that such action will be done properly by such person. Executive Order No. 12580, as amended by Executive Order 13016 (61 FR 45871, Aug. 30, 1996), delegated the functions vested in the President by sections 106(a) and 122 (except subsection (b)(1)) of CERCLA to the Secretary of Agriculture with respect to any release or threatened release affecting natural resources under the Secretary's trusteeship or a vessel or facility subject to the Secretary's custody, jurisdiction, or control. This document amends the formal delegations of authority by the Secretary of Agriculture and General Officers of the Department to reflect the previous internal delegation by the Secretary to the Under Secretary for Natural Resources and Environment, to be exercised only with the concurrence of the General Counsel, of the authority to take enforcement action, including the issuance of administrative orders, under sections 106(a) and 122 of CERCLA.

This rule relates to internal agency management. Therefore pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and, thus, is exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Flexibility Act of 1996, Public Law 104–121, this rule may be made effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows;

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953; 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. In § 2.20, paragraph (a)(1)(vii) is added to read as follows:

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) * * *

(1) * * *

(vii) Take such action as may be necessary, including issuance of administrative orders, and enter into agreements with any person to perform any response action under sections 106(a) and 122 (except subsection (b)(1)) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a), 9622), pursuant to sections 4(c)(3) and 4(d)(3) of Executive Order No. 12580, as amended by Executive Order No. 13016, to be exercised only with the concurrence of the General Counsel.

* * * * *

Dated: June 11, 1999.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–15368 Filed 6–17–99; 8:45 am]

BILLING CODE 3410–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–23–AD; Amendment 39–11197; AD 99–13–04]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 206H and T206H Airplanes

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Models 206H and T206H airplanes. This AD requires inspecting the left and right wing aileron control bellcrank stop bolts and lock nuts for flush and tight contact with the surface of the threaded boss on each end of the yoke assemblies, and accomplishing follow-on and corrective actions, as applicable. This AD is the result of an inspection on one of the

affected airplanes that showed that the aileron control bellcrank stop bolt had partially backed out of the threaded boss. The actions specified by this AD are intended to detect and correct loose aileron control bellcrank stop bolts, which could result in restricted movement of the ailerons with possible partial or complete loss of aileron control.

DATES: Effective July 13, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277–7706; telephone: (316) 517–5800; facsimile: (316) 942–9066. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Shane Bertish, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209, telephone: (316) 946–4156; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received information from an inspection of a Cessna Model 206H airplane that reveals that the aileron control bellcrank stop bolt had partially backed out of the threaded boss on one end of a yoke assembly. This restricted the movement of both ailerons, which could result in partial or complete loss of aileron control.

Both the Cessna Models 206H and T206H airplanes with the following serial numbers have aileron system designs where the above-referenced situation could exist:

Models	Serial numbers
206H ...	20608002 through 20608026.
T206H	T20608002 through T20608015; T20608017 through T20608023; and T20608025 through T20608028

Relevant Service Information

Cessna has issued Special Service Project SSP99–27–02, which specifies procedures for inspecting the left and right wing aileron control bellcrank stop bolts and lock nuts for flush and tight contact with the surface of the threaded boss on each end of the yoke assemblies, and accomplishing follow-on and corrective actions, as applicable.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that:

—the actions referenced in the service information should be accomplished on the Cessna Models 206H and T206H airplanes; and

—AD action should be taken to detect and correct loose aileron control bellcrank stop bolts, which could result in restricted movement of the aileron with possible partial or complete loss of aileron control.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Models 206H and T206H airplanes of the same type design, the FAA is taking AD action. This AD requires inspecting the left and right wing aileron control bellcrank stop bolts and lock nuts for flush and tight contact with the surface of the threaded boss on each end of the yoke assemblies, and accomplishing follow-on and corrective actions, as applicable.

Accomplishment of the actions specified in this AD are required in accordance with the instructions in Cessna Special Service Project SSP99–27–02, dated May 18, 1999.

Compliance Time of This AD

Although the aileron control bellcrank stop bolts and lock nuts not being flush and in tight contact with the surface of the threaded boss on each end of the yoke assemblies is only unsafe while the airplane is in flight, this condition is not a result of the number of times the airplane is operated. The chance of this situation existing is the same for an airplane with 200 hours time-in-service (TIS) as it is for an airplane with 3,000 hours TIS. In addition, the usage levels of the affected airplane vary immensely. Some operators may accumulate 25 hours TIS in a matter of days, where other operators may only utilize their airplanes a few hours in a month.

For these reasons, the FAA has determined that a compliance based on calendar time and hours TIS (with the prevalent one being that which occurs first) should be utilized in this AD in order to assure that the unsafe condition is addressed on all affected airplanes in a reasonable time period without inadvertently grounding certain airplanes. The compliance time of the inspection required by this AD will be as follows:

"Within the next 10 hours TIS after the effective date of this AD or within the next 60 calendar days after the effective date of this AD, whichever occurs first."

Determination of the Effective Date of the AD

Since a situation exists (possible partial or complete loss of aileron control) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–23–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–13–04 Cessna Aircraft Company: Amendment 39–11197; Docket No. 99–CE–23–AD.

Applicability: The following airplane model and serial number airplanes, certificated in any category:

Models	Serial numbers
206H ...	20608002 through 20608026.
T206H	T20608002 through T20608015; T20608017 through T20608023; and T20608025 through T20608028.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct loose aileron control bellcrank stop bolts, which could result in restricted movement of the aileron with possible partial or complete loss of aileron control, accomplish the following:

(a) Within the next 10 hours time-in-service after the effective date of this AD or within the next 60 calendar days after the effective date of this AD, whichever occurs first, inspect the left and right wing aileron control bellcrank stop bolts and lock nuts for flush and tight contact with the surface of the threaded boss on each end of the yoke assemblies. Accomplish this inspection in accordance with the INSPECTION/MODIFICATION INSTRUCTIONS section of Cessna Special Service Project SSP99–27–02, dated May 18, 1999.

(b) If the bolts and nuts are flush and tight, or loose but flush after tightening, prior to further flight, accomplish the following actions in accordance with the INSPECTION/MODIFICATION INSTRUCTIONS section of Cessna Special Service Project SSP99–27–02, dated May 18, 1999:

(1) Loosen nuts;
(2) Clean threads (bolt and nut);
(3) Wick Loctite 290 into threads; and
(4) Torque nut.

(c) If the bolts and nuts are not flush, prior to further flight, accomplish the following actions in accordance with the INSPECTION/MODIFICATION INSTRUCTIONS section of Cessna Special Service Project SSP99–27–02, dated May 18, 1999:

(1) Remove nut and stop bolt;
(2) Spotface boss;
(3) Clean threads (boss, bolt, and nut);
(4) Apply Loctite 242;
(5) Adjust stop bolt; and
(6) Torque bolt.

Note 2: Paragraphs (b) and (c) of this AD present a basic outline of the follow-on work to be accomplished. The detailed procedures to accomplish these actions are included in the INSPECTION/MODIFICATION INSTRUCTIONS section of Cessna Special Service Project SSP99–27–02, dated May 18, 1999.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) The inspections and follow-on actions required by this AD shall be done in accordance with Cessna Special Service Project SSP99–27–02, dated May 18, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277–7706. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on July 13, 1999.

Issued in Kansas City, Missouri, on June 10, 1999.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15220 Filed 6–17–99; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Final Rule: Requirements for Child-Resistant Packaging; Household Products Containing Methacrylic Acid

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a rule to require child-resistant ("CR") packaging for liquid household products containing more than 5 percent methacrylic acid (weight-to-volume) in a single package. The Commission has determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from handling or ingesting a toxic amount of methacrylic acid. The Commission is specifically concerned about nail care products containing methacrylic acid, the only household product the Commission has confirmed contains methacrylic acid. The Commission takes this action under the Poison Prevention Packaging Act of 1970.

DATES: This rule will become effective on June 19, 2000 and applies to methacrylic acid preparations packaged on or after that date.

FOR FURTHER INFORMATION CONTACT: Laura E. W. Noble, Directorate for Compliance, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400 ext. 1452.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act of 1970 ("PPPA"), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging, also referred to as "child-resistant" ("CR") packaging, is (1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for "normal adults" to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics that are "customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household." 15 U.S.C. 1471(2). The Commission has performance requirements for special packaging. 16 CFR 1700.15, 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a), 16 CFR 1700.5.

2. Methacrylic Acid

Methacrylic acid ("MAA") is used as a primer before applying artificial fingernails. Nail products containing MAA are cosmetics under the Food Drug and Cosmetic Act ("FDCA"). Although MAA is also used as a chemical intermediate in making some other products, the Commission does not believe that the rule would affect these products.

Nail primers help acrylic overlays adhere to the nail surface. Primers may contain MAA exclusively, but some may have other ingredients. Of the primers that the staff examined, those that do contain MAA have at least 50 percent MAA. Most of the nail primers that contain MAA are labeled "For Professional Use Only." They are generally distributed through wholesale distributors directly to nail salons and to retail beauty supply stores. Some of these retail stores sell to both professionals and consumers. According to industry sources, there may be as many as 50 nail primer suppliers. Approximately 90 percent of nail primers marketed to professionals contain MAA. The Commission knows of 13 companies that market or have marketed MAA-containing nail primers. Based on industry estimates, the CPSC staff estimates annual unit sales of MAA-containing nail primers at about 1.0 to 1.3 million units in ¼ oz., ½ oz. and larger sizes. These units have a retail value of $4–6.5 million. Their wholesale value is about $2.9 to $4.6 million, based on a 40 percent mark-up typical of the industry.

The industry could not estimate the number of consumers using MAA-containing primers at home. It is clear, however, from the incident data discussed below that these products are used in homes, and children are obtaining access to them. The CPSC staff purchased these primers at retail stores and by mail. This also shows that these products are readily available to consumers.

3. The Proposed Rule

On December 30, 1998, the Commission issued a notice of proposed rulemaking ("NPR") requiring CR packaging for liquid household products containing more than 5 percent MAA (weight-to-volume) in a single package. 63 FR 71800.

The Commission also mailed copies of the NPR to 150 firms and trade associations that might have an interest in the rulemaking. The Commission received 5 comments in response to the proposed rule. No commenters objected to the proposed rule; three expressed support, and two expressed concern for the professionals applying the primers.

The American Academy of Pediatrics ("AAP"), the American Beauty Association ("ABA") and the Methacrylate Producers Association ("MPA") all wrote in support of the rule. The AAP noted the potential harm to children exposed to MAA and its common use in the home. The ABA, a non-profit trade association representing manufacturers selling more than 80 percent of professional-use beauty salon products, stated that the Commission had fairly weighed the hazards to children and conducted a "fair analysis of the practicality and feasibility of protecting children against the hazards." The MPA, an association of manufacturers of MAA and MAA esters, noted that with the corrosive properties of MAA and the widespread use of primers in the home, the Commission's special packaging proposal is appropriate.

No Lift Nails, a manufacturer of MAA-containing nail primers, expressed concern that no available CR caps would fit a 15 mm bottle finish, and larger bottles would expose more cosmetologists to MAA because of spills. The commenter suggested that the Commission require that bottles be both no larger than ½ ounce, and that they have a small orifice. The commenter also suggested that the Commission require a restricted flow feature in addition to the small orifice. Under the PPPA, the Commission cannot prescribe a particular packaging design or size. 15 U.S.C. 1472(d). The Commission can require restricted flow. The Commission is not doing so here because of the small volume applied in a single use and because applicators are commonly inserted into the containers.

Beatrice Kaye Cosmetics commented that MAA poses a serious health problem for professional cosmetologists and their patrons. The PPPA provides the Commission with authority to require CR packaging for substances that pose a hazard to children in the home. It does not give the Commission jurisdiction over hazards unique to professionals in the workplace.

B. Toxicity of Methacrylic Acid

MAA is readily absorbed through mucous membranes of the lungs and gastrointestinal ("GI") tract as well as through the skin. It is rapidly distributed to all major tissues, with the highest concentrations in the liver and kidneys. It destroys tissue by chemical action. This makes it a "corrosive" substance as defined in the Federal Hazardous Substances Act. 15 U.S.C. 1261(i).

MAA's effects are similar to those of other acids. As discussed in the NPR, dermal burns, inhalation of acid vapors, ingestion, and eye exposure all can be harmful.

C. Incident Data

The staff reviewed several sources for information of adverse health effects from nail products containing MAA. These sources are published reports in the medical literature, the American Association of Poison Control Centers ("AAPCC"), the FDA Cosmetic Voluntary Registration Program ("CVRP"), and reports from the injury surveillance databases maintained by the Commission. The NPR discusses incident data from those sources in detail.

1. Medical Literature

As discussed in the NPR, two recent articles in the medical literature reviewed relevant data. The first analyzed data from the Toxic Exposure Surveillance System ("TESS"), a database that AAPCC maintains, for 1993 through 1995. Of the 759 reports of exposures to MAA-containing nail products, 564 exposures involved children less than 6 years old. Most of these occurred at home. Approximately 10 percent of young children suffered moderate to major injuries.

The second article reviewed the hazard of nail care products, among them nail primers containing MAA, and reported the medical consequences of ingestion of and/or dermal exposure to primers in two children less than 5 years old and one adult. The NPR provides details of these incidents.

2. CPSC Databases

The staff reviewed CPSC's databases for poison incidents involving nail primers. As recounted in the NPR, between 1988 and September 30, 1998, the staff identified 85 cases as exposures to nail products specifically identified as primers or as containing MAA. Five of these involved serious injuries resulting from ingestion or dermal exposure to MAA in nail primers. Since publication of the NPR, three additional injuries were reported to CPSC. None of the three children was hospitalized. One incident involved a nail primer that was not confirmed to contain MAA. The other two children suffered burns on their legs after spilling bottles of nail primers known to contain MAA.

3. AAPCC Data

The staff obtained AAPCC data isolating nail products containing MAA for the years 1996 and 1997. The data include 467 exposures, including 341 poisonings (ingestion, ingestion/dermal), 11 ocular exposures, and 115 dermal exposures to children less than 5 years old. No deaths were reported. One poisoning with major medical consequences was reported in 1997. There were 32 poisoning outcomes coded as moderate (10.7 percent) and 137 poisonings (39.3 percent) coded as having minor outcomes. Approximately 90 percent of poisonings occurred in the home.

4. FDA Database

The FDA's CVRP data base contains four reports of injuries from nail primers. One of these reports indicates that a 2-year-old male was brought to the ER after a nail primer splashed in his face and caused burns to the cornea of the eye and the face (1988).

D. Level for Regulation

The Commission is issuing a rule that requires special packaging for household products containing more than 5 percent methacrylic acid in a single package.

At this time, there is no evidence establishing the lowest concentration or amount of MAA capable of causing severe personal injury or illness to young children. Burn severity from corrosive chemicals depends on exposure duration, contact site and product volume, concentration, and chemical characteristics. These chemical characteristics include pH, physical nature, viscosity, titratable acidity or alkalinity, molarity, oxidation-reduction potential, and complexing affinity for bivalent ions. MAA is a weak organic acid closely resembling acetic acid; acetic acid is 1.3-fold more acidic than MAA when concentration is expressed in percent units. As discussed in detail in the NPR, the Commission arrived at a level for regulation based on mutually supportive evidence derived from a report of concentration-related skin injury in mice due to MAA, the calculated pH of various concentrations of MAA, and the effects of acetic acid on humans at various concentrations.

The actual degree of irritancy or corrosion at 1 to 20 percent concentrations would probably depend on the volume of acid in contact with tissues, the surface area and site affected, and duration of the contact. A concentration of approximately 5 percent MAA does not cause serious injury to mouse skin. It is not likely to be more than a moderate irritant to the eyes of humans, or a mild irritant to the skin of humans. It is equivalent to a 4 percent concentration of acetic acid (about the same as vinegar). That concentration is not associated with serious personal injury or illness in young children. However, concentrations of approximately 10 percent MAA are, at the very least, severe skin irritants in a mouse model and, judging from calculated pH values, are capable of serious eye injury. Because the Commission is not aware of data defining the precise point between 5 and 10 percent at which injury becomes serious, the Commission is requiring child-resistant packaging for products containing more than 5 percent MAA to protect children from potential serious injury. The Commission received no comments on this level.

E. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data demonstrate that MAA can cause serious illness and injury to children when ingested. Moreover, it is available to children in the form of nail primers that are accessible in the home. These packages are not CR.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds that the degree and nature of the hazard to children from handling and ingesting household products containing MAA requires special packaging to protect children from serious illness. The Commission bases this finding on the toxic nature of MAA-containing products and their accessibility to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

To issue a standard for special packaging under the PPPA, the Commission must find that the special packaging is "technically feasible, practicable, and appropriate." 15 U.S.C. 1472(a)(2). The Commission may find technical feasibility when technology exists or can be readily developed and implemented to produce packaging that conforms to the standards. Practicability

means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use.

Packaging for MAA-containing nail primers that is senior friendly ("SF") and CR is technically feasible. There are currently available 20 millimeter ("mm") continuous-threaded ("CT") caps without built-in applicator brushes that are SF and CR. The manufacturer of this cap also manufactures a 28 mm CT closure that is CR and SF and has a built in applicator brush. This manufacturer told staff that it could develop a 20 mm CR and SF cap with a built-in applicator brush suitable for use with MAA within one year. Manufacturers of bottles with smaller finishes (the part of a bottle that receives the cap) may have to change to bottles with 20 mm finishes. Some of the smallest sizes of bottles used for MAA-containing primers (0.25 ounces) already have a 20 mm finish. Alternatively, manufacturers could use a restrictive insert to decrease the inside diameter of the bottle opening in conjunction with CR 20 mm finishes.

Special packaging for MAA-containing household products is practicable. CT caps that meet the senior friendly and CR testing requirements have been mass-produced for many years. A 20 mm continuous threaded closure that is CR and SF but lacks an insert for a brush is now mass-produced. Similarly, a 28 mm continuous threaded closure that is CR and SF and does have an insert for a brush is mass-produced. The mass production and assembly line techniques used for the 28 mm CR and SF closure with insert can be adapted to those used for the 20 mm non-CR closure with an insert and brush.

Special packaging is appropriate when it will protect the integrity of the substance and not interfere with intended storage or use. Nail primers containing MAA are currently packaged in both glass and plastic bottles. Thus, both glass and plastic containers are suitable for MAA-containing products. One packaging manufacturer uses identical materials to produce a 28 mm continuous threaded CR and SF closure (equipped with an insert for attaching a brush) and a 20 mm continuous threaded non-CR closure that is currently used for MAA-containing primers and is equipped with an insert and attached brush. Plastic bottle neck restriction devices should also be compatible with MAA since at least one is already in use. Therefore, the same materials used for non-CR packages of MAA-containing products, with or without brushes or inserts, are used or can be used for CR-packages.

3. Other Considerations

In establishing a special packaging standard under the PPPA, the Commission must consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of affected industries; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to this rule, and finds no reason to conclude that the rule is unreasonable or otherwise inappropriate.

F. Exemption

The Commission is aware of one MAA-containing primer that is packaged in a tube with a fiber applicator tip. The container looks like a plastic marker pen. The fiber strand holds the MAA so that no free liquid flows through the device. A cap covers the applicator tip. Several manufacturers market this type of device for applying nail primer. Some of these primers contain MAA.

As stated in the NPR, the Commission believes that MAA-containing primers packaged this way do not pose a risk of serious injury. For this type of package not to pose a risk to children, the Commission believes that two conditions must be met: (1) the absorbent material must hold the MAA so that no free liquid is in the device, and (2) through reasonably foreseeable use the MAA will be released only through the tip of the device. Reasonably foreseeable use would include reasonably foreseeable abuse by children. These conditions are grounded in an existing exemption from FHSA labeling for porous-tip ink-marking devices. 16 CFR 1500.83(a)(9).

The volume of MAA available and accessible is extremely small (total amount of material in the devices is reportedly less than ½ gram). The only possible route of serious injury would be from direct contact of the felt tip with the eye. The staff has not identified any incidents involving these types of devices. Thus, the Commission is exempting MAA-containing primers contained in these marker-like devices if they meet the conditions discussed above.

G. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

As proposed, the Commission is providing a one-year effective date. Currently, 20 mm CT caps that are CR and senior friendly are available. However, these caps are not available with a built-in applicator brush. Thus, manufacturers will need to make some modifications to provide a CR cap with a built-in applicator. Such closures should be available within one year. The Commission received no comments respecting the effective date.

Thus, the rule will take effect 12 months after publication and will apply to products that are packaged on or after the effective date.

H. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared an assessment of the impact of a rule to require special packaging for household products containing more than 5 percent methacrylic acid. As discussed in the NPR, based on this assessment the Commission certified that the rule is not likely to have a substantial effect on a significant number of small businesses. The Commission requested suppliers, particularly small businesses, to provide information on the impact the proposed rule would have on them, but did not receive any such comments.

I. Environmental Considerations

As noted in the NPR, the Commission assessed the possible environmental effects associated with the proposed PPPA requirements for MAA-containing products and found that the rule would have little or no potential for affecting the human environment. The Commission concluded that neither an environmental assessment nor an environmental impact statement is required.

J. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. As explained in the NPR, the rule requiring CR packaging for household products containing more than 5 percent MAA would preempt non-identical state or local special packaging standards for such MAA-containing products.

In accordance with Executive Order 12612 (October 26, 1987), the Commission certifies that the rule does not have sufficient implications for federalism to warrant a Federalism Assessment.

List of Subjects in 16 CFR Part 1700

Consumer protection, Cosmetics, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission amends 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231. 15 U.S.C. 2079(a).

2. In § 1700.14 the introductory text of paragraph (a) is republished and paragraph (a)(29) is added to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) Substances. The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging meeting the requirements of § 1700.20(a) is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(29) *Methacrylic acid.* Except as provided in the following sentence, liquid household products containing more than 5 percent methacrylic acid (weight-to-volume) in a single retail package shall be packaged in accordance with the provisions of § 1700.15(a),(b) and (c). Methacrylic acid products applied by an absorbent material contained inside a dispenser (such as a pen-like marker) are exempt from this requirement provided that: (i) the methacrylic acid is contained by the absorbent material so that no free liquid is within the device, and (ii) under any reasonably foreseeable conditions of use the methacrylic acid will emerge only through the tip of the device.

Dated: June 15, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Note: The following list will not appear in the Code of Federal Regulations.

List of Relevant Documents

1. Briefing memorandum from Susan Aitken, Ph.D., EH, to the Commission, "Proposed Special Packaging Standard for Household Products Containing Methacrylic Acid," November 23, 1998.

2. Memorandum from Susan Aitken, Ph.D., EH, to Mary Ann Danello, Ph.D., Associate Executive Director, EH, "Toxicity of Methacrylic Acid" August 12, 1998.

3. Memorandum from Susan C. Aitken, Ph.D., EH, to Mary Ann Danello, Ph.D., EH, "Human Injuries from Nail Products Containing Methacrylic Acid," August 12, 1998.

4. Memorandum from Marcia P. Robins, EC, to Susan Aitken, Ph.D., EH, "Economic Considerations: Proposal to Require Child-Resistant Packaging for Household Products Containing Methacrylic Acid," August 17, 1998.

5. Memorandum from Tewabe A. Asebe, EH, to Susan Aitken, Ph.D., EH, "Technical Feasibility, Practicability, and Appropriateness Determination for Proposed Rule to Require Special Packaging for Methacrylic Acid-Containing Products," August 17, 1998.

6. Memorandum from Bhooshan Bharat, Ph.D., LS, and Bhavi K. Jain, MS, LS, "Report on the Testing of Nail Products for Titratable Acid Reserve ("TAR"), Quantification of Methacrylic Acid, and pH," August 20, 1998.

7. Briefing memorandum from Susan Aitken, Ph.D., EH, to the Commission, "Final Rule to Require Child-Resistant Packaging for Household Products Containing More Than 5 Percent Methacrylic Acid in a Single Package," May 21, 1999.

8. Memorandum from Marcia P. Robins, EC, to Susan Aitken, Ph.D., EH, "Final Rule for Child-Resistant Packaging for Household Products Containing Methacrylic Acid: Regulatory Flexibility Issues," April 8, 1999.

9. Memorandum from Tewabe A. Asebe, EH, to Susan Aitken, Ph.D., EH, "Assessment of Technical Feasibility, Practicability, and Appropriateness for the Final Rule to Require Child-Resistant Packaging for Methacrylic Acid Products," April 23, 1999.

[FR Doc. 99–15580 Filed 6–17–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 98C–0158]

Listing of Color Additives For Coloring Meniscal Tacks; D&C Violet No. 2

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Violet No. 2 to color absorbable meniscal tacks made from poly(L-lactic acid). This action responds to a petition filed by Linvatec Corp.

DATES: This regulation is effective July 20, 1999; except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by July 19, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of March 13, 1998 (63 FR 12473), FDA announced that a color additive petition (CAP 8C0255) had been filed by Linvatec Corp., P.O. Box 2917, Largo, FL 33779–2917. The petition proposed to amend the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 to color absorbable meniscal tacks made from poly(L-lactic acid). The petition was filed under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(d)(1)).

II. Regulatory History

The regulatory history of D&C Violet No. 2 was summarized in a final rule published in the **Federal Register** of May 7, 1990 (55 FR 18865). Since the publication of the May 7, 1990, final rule, other uses of D&C Violet No. 2 have been approved by the agency. For example, in a final rule published in the **Federal Register** on April 23, 1998 (63 FR 20096), FDA amended § 74.3602 to list D&C Violet No. 2 as a color additive in glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures for use in general surgery.

III. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive in the device comes into direct contact with the body for a significant period of time (section 721(a) of the act). D&C Violet No. 2 is added to absorbable meniscal tacks made from poly(L-lactic acid) in such a way that at least some of the color additive will come into contact with the body when the tacks are in place. In addition, the meniscal tacks are intended to be absorbed by the body, and during the absorption, the color additive will be deposited in body tissue. Thus, the color additive will be in direct contact with the body for a significant period of time.
Consequently, the petitioned use of the color additive is subject to the statutory listing requirement.

IV. The Color Additive

D&C Violet No. 2 is principally 1-hydroxy-4-[(4-methylphenyl)amino]-9,10-anthracenedione (CAS Reg. No. 81–48–1). It is manufactured by either condensation of quinizarin with *p*-toluidine or by condensation of 1-hydroxy-halogenoanthroquinone with *p*-toluidine. Because no chemical reaction consumes all the starting materials and yields only the desired product, both the resulting reaction mixture and commercial product will contain residual amounts of the starting materials, including *p*-toluidine. This fact is significant because Weisburger et al., have demonstrated that *p*-toluidine is a carcinogen in the mouse (Ref. 1).

Residual amounts of reactants, such as *p*-toluidine, and manufacturing aids are commonly found as impurities in chemical products, including color additives.

V. Determination of Safety

Under the general safety standard of the act (section 721(b)(4)) for color additives, a color additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the color additive is safe for that use. FDA's color additive regulations (21 CFR 70.3(i)) define "safe" as "reasonable certainty that no harm will result from the intended use of the color additive."

The color additives anticancer, or Delaney, clause of the color additive amendments (section 721(b)(5)(B)) provides that no noningested color additive shall be deemed safe and shall be listed if, after tests that are appropriate for evaluating the safety of the additive for such use, it is found to induce cancer in man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

VI. Safety of The Petitioned Use of The Additive

FDA estimates that the petitioned use of the additive, D&C Violet No. 2, will result in exposure to no greater than 105 microgram (µg) per person over a 70-year lifetime or an estimated daily intake (EDI) of 4 nanograms per person per day (ng/p/d) (Ref. 2).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 3), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small daily exposure resulting from the proposed use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by *p*-toluidine, the carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of *p*-toluidine has two aspects: (1) Assessment of exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassay to the conditions of exposure to humans.

A. p-Toluidine

FDA has estimated the lifetime exposure to *p*-toluidine from the petitioned use of D&C Violet No. 2 in absorbable meniscal tacks made from poly(L-lactic acid) to be no more than 0.008 ng/p/d (Ref. 4). The agency used data from a long-term rodent bioassay on *p*-toluidine conducted by Weisburger et al. (Ref. 1), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the additive. The authors reported that the rodent bioassay showed that the test material caused an increased incidence of hepatomas (liver tumors).

Based on the agency's estimate that exposure to *p*-toluidine will not exceed 0.008 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 5.3×10^{-13} or 5.3 in 10 trillion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to *p*-toluidine is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to *p*-toluidine would result from the proposed use of the additive.

B. Specifications

The agency also has considered whether specifications are necessary to control the amount of *p*-toluidine present as an impurity in D&C Violet No. 2. The additive is currently produced as a certified color additive for use in externally applied drugs and cosmetics, in sutures, and in contact lenses in accordance with 21 CFR part 80. Based upon the low level of exposure to *p*-toluidine that results under the current specifications for D&C Violet No. 2 in § 74.1602 (21 CFR 74.1602), the agency concludes that the specifications listed in § 74.1602 are adequate to ensure the safe use of this color additive and to control the amount of *p*-toluidine that may exist as an impurity in the color additive when used in absorbable meniscal tacks made from poly(L-lactic acid).

VII. Conclusions on Safety

FDA has evaluated the data and information in the petition and other relevant material. Based on this information the agency concludes that: (1) The proposed use of D&C Violet No. 2, at a level not to exceed 0.15 percent by weight of the tack material, for coloring absorbable meniscal tacks made from poly(L-lactic acid) is safe; and (2) the color additive will achieve its intended coloring effect, and thus, is suitable for this use. Further, the agency concludes that the color additive regulations in § 74.3602 should be amended as set forth below.

VIII. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IX. Environmental Impact

The agency has previously considered the potential environmental effects of this rule as announced in the notice of filing for the petition (63 FR 12473, March 13, 1998). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

X. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XI. Objections

Any person who will be adversely affected by this regulation may at any time on or before July 19, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

XII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Weisburger, E. K. et al., "Testing of Twenty-one Environmental Aromatic Amines or Derivatives for Long-Term Toxicology or Carcinogenicity," *Journal of Environmental Pathology and Toxicology*, 2:325–356, 1978.

2. Memorandum from the Division of Product Manufacture and Use, Chemistry Review Team (FDA), to the Division of Product Policy (FDA), concerning "CAP 8C0255 (MATS M2.0 & 2.1): Linvatec, Inc. (Submission of 28 January, 1998). Petition for the Safe Use of of [sic] D&C Violet #2 to Tint Poly(L-lactic acid) Meniscal Taks." dated April 13, 1998.

3. Kokoski, C. J., "Regulatory Food Additive Toxicology" in *Chemical Safety Regulation and Compliance*, edited by F. Homburger and J. K. Marquis, published by S. Karger, New York, NY, pp. 24–33, 1985.

4. Memorandum from Division of Petition Control (FDA), to Executive Secretary, Quantitative Risk Assessment Committee (FDA), concerning "Estimate of the Upper Bound Lifetime Risk From *p*-toluidine in D&C Violet No. 2 Used as a Color Additive for Meniscal Tacks Made from Poly(L-lactic acid): CAP 8C0255," dated September 28, 1998.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. Section 74.3602 is amended by redesignating paragraph (b)(4) as paragraph (b)(5) and by adding new paragraph (b)(4) to read as follows:

§ 74.3602 D&C Violet No. 2.

* * * * *

(b) * * *

(4) The color additive, D&C Violet No. 2, may be safely used for coloring absorbable meniscal tacks made from poly (L-lactic acid) at a level not to exceed 0.15 percent by weight of the tack material.

* * * * *

Dated: June 3, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15512 Filed 6–17–99; 8:45 am]

BILLING CODE 4160–01–F

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Chapter VII

Abolishment of the U.S. International Development Cooperation Agency and Revision of Code of Federal Regulations Chapter Heading

AGENCY: Overseas Private Investment Corporation.

ACTION: Final rule.

SUMMARY: The Overseas Private Investment Corporation ("OPIC") is amending its chapter in the Code of Federal Regulations ("CFR") to delete the reference to the U.S. International Development Cooperation Agency ("IDCA"). Under the provisions of the Foreign Affairs Reform and Restructuring Act of 1998, IDCA was abolished, effective April 1, 1999.

DATES: Effective June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Eli Landy, Legal Affairs Department, 202–336–8418, eland@opic.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in Public Law 105–277, IDCA was abolished, effective April 1, 1999.

The abolition of IDCA does not affect the status and validity of OPIC regulations, directives, rulings, policies; they continue in effect.

This is a procedural rule exempt from notice and comment under 5 U.S.C. 533(b)(3)(a). This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. This rule does not have a significant impact on small business entities under the Regulatory Flexibility Act.

For the reasons set forth in the preamble and under the authority of 22 U.S.C. 2191, revise the heading of

chapter VII of title 22 of the Code of Federal Regulations to read as follows:

CHAPTER VII—OVERSEAS PRIVATE INVESTMENT CORPORATION

Charles D. Toy,

Vice President and General Counsel.

[FR Doc. 99–15502 Filed 6–17–99; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 92

RIN 1105–AA58

FY 1998 Police Recruitment Program

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change an interim rule published by the Office of Community Oriented Policing Services, U.S. Department of Justice, in the **Federal Register** on September 21, 1998, which established a framework for the Police Recruitment Project, authorized by the Police Recruitment Act, Subtitle H of the Violent Crime Control and Law Enforcement Act of 1994. No comments were received before the comment period expired on October 21, 1998.

DATES: Final rule is effective on June 18, 1999.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center at 1–800–421–6770 or (202) 307–1480, or Rob Chapman, Office of Community Oriented Policing Services, at (202) 633–1295.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to provide guidance to the non-profit community groups interested in applying to participate in the Police Recruitment Program. The rule addresses program purposes and goals, and project and eligibility requirements. The rule is not intended to be a comprehensive compilation of the administrative requirements of the Police Recruitment Program. Other program requirements and procedures will be formulated by the participating community organizations and police departments in light of their circumstances and needs.

The rule amends 28 CFR part 92 by designating existing §§ 92.1 through 92.6 as subpart A to read as follows: "Police Corps Eligibility and Selection Criteria." The rule further amends 28 CFR part 92 by adding subpart B to read as follows: "Police Recruitment Program Guidelines."

Overview

The Office of Community Oriented Policing Services, U.S. Department of Justice, administers the Police Recruitment Program. This program is designed to develop pilot projects to meet the ongoing need for additional improvement in recruiting, selecting and retaining police officer applicants. The Police Recruitment program will make grants to a limited number of qualified community organizations to assist in meeting the cost of qualified programs designed to recruit and retain applicants to police departments.

To do this, applicants under this program are expected to utilize innovative and effective methods in meeting the program guidelines. Successful applicants will be funded for a total of up to $500,000 for a one-year grant period only, though two additional years of no-cost extensions will be permitted.

The successful applicants funded under the Police Recruiment program will ultimately design programs to enhance opportunities and increase inroads for individuals within their local police agencies. These advances will be accomplished through a variety of methods, including, but not limited to, targeted recruitment efforts; tutorial programs to enable individuals to meet police force academic requirements and pass entrance examinations; counseling for those applicants who may encounter problems throughout the application process; and programs to aid in the retention of these applicants throughout the application and hiring process.

Regulatory Flexibility Act

The Director of the Office of Community Oriented Policing Services, in accordance with the Regulatory Flexibility Act, codified at 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This Final Rule builds upon the statutory outline of a program providing federal grant assistance to programs sponsored by non-profit organizations providing recruiting and retention services to police department applicants. The award of such grants imposes no significant economic impacts on substantial numbers of small businesses or other entities.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Community Oriented Policing Services has determined that this Final Rule is not a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule ha not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

The interim rule is not subject to the Paperwork Reduction Act requirements because the information collected as part of the grant application process will be collected from fewer than ten respondents.

List of Subjects in 28 CFR Part 92

Law enforcement officers, Scholarships and fellowships.

Accordingly, the interim rule amending 28 CFR part 92 by redesignating existing §§ 92.1 through 92.6 as subpart A and adding subpart B, which was published in the **Federal Register** on September 21, 1998, at 63 FR 50145, is adopted as a final rule without change.

Dated: June 1, 1999.

John Hart,

Principal Deputy Director.

[FR Doc. 99–15203 Filed 6–17–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ50

Pension Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to reflect statutory provisions extending the date through which VA will limit the pension benefits of certain veterans and surviving spouses receiving Medicaid-covered nursing home care to $90 per month.

DATES: *Effective Date:* August 5, 1997.

FOR FURTHER INFORMATION CONTACT: Donald England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 8003 of Pub. L. 101–508 required VA to limit the pension benefits of any veteran having neither spouse nor child and who receives Medicaid-covered nursing home care to no more than $90 per month. This statutory provision expired September 30, 1992. Section 601 of Pub. L. 102–568 extended the expiration date of that statutory provision until September 30, 1997. In addition, it imposed a similar limitation on payment of death pension to surviving spouses who receive Medicaid-covered nursing home care and have no children. Section 12005 of Pub. L. 103–66 further extended the expiration date until September 30, 1998, for these limitations on payment of pension benefits to veterans and surviving spouses. Section 8015 of the Balanced Budget Act of 1997, Pub. L. 105–33, extends the expiration date until September 30, 2002. This document amends 38 CFR 3.551(i) to reflect this statutory change, which is effective August 5, 1997, the date of enactment of Pub. L. 105–33.

This final rule reflects statutory requirements. Accordingly, there is a basis for dispensing with the prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: May 11, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.551 [Amended]

2. Section 3.551(i) is amended by removing "September 30, 1998" and adding, in its place, "September 30, 2002".

[FR Doc. 99–15521 Filed 6–17–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI97

Direct Service Connection (Post-Traumatic Stress Disorder)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning the type of evidence required to establish service connection for post-traumatic stress disorder (PTSD). This amendment implements a decision by the United States Court of Veterans Appeals (the Court) which stated that current regulations do not adequately reflect the governing statute.

DATES: *Effective Date:* March 7, 1997.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: PTSD is classified by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM–IV) as an anxiety disorder resulting from exposure to an extreme traumatic stressor involving direct personal experience of an event that involved actual or threatened death or serious injury or other threat to one's physical integrity; witnessing an event that involved death, injury, or a threat to the physical integrity of another person; or learning about unexpected or violent death, serious harm, or threat of death or injury experienced by a family member or other close associate. The person's response to the event must involve intense fear, helplessness, or horror. PTSD is characterized by persistent reexperiencing of the traumatic event, persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness, and persistent symptoms of increased arousal.

VA regulations at 38 CFR 3.304(f) provide that service connection for PTSD requires medical evidence establishing a clear diagnosis of the condition, credible supporting evidence that the claimed in-service stressor actually occurred, and a link, established by medical evidence, between current symptomatology and the claimed in-service stressor. If the claimed stressor is related to combat, service department evidence that the veteran engaged in combat or that the veteran was awarded the Purple Heart, Combat Infantryman Badge, or similar combat citation will be accepted, in the absence of evidence to the contrary, as conclusive evidence of the claimed in-service stressor.

Section 1154(b) of title 38, United States Code, which is the statutory authority for § 3.304(f), provides that, where a veteran engaged in combat with the enemy, VA must accept as sufficient proof of service-connection for a claimed disease or injury satisfactory lay or other evidence of service incurrence or aggravation of such disease or injury, if consistent with the

circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of the incurrence or aggravation of the claimed disease or injury. In *Cohen* v. *Brown*, 10 Vet. App. 128 (1997), the Court of Veterans Appeals found a deficiency in § 3.304(f) in that it does not adequately reflect, for the purposes of establishing an in-service stressor, the relaxed adjudicative evidentiary requirements provided by 38 U.S.C. 1154(b) for establishing service incurrence of an event. The Court noted that, although § 3.304(f) states that proof of an in-service stressor that is claimed to be related to combat may be shown by service department evidence that the veteran engaged in combat, or that the veteran received a particular decoration or award, § 3.304(f) does not expressly provide that a combat veteran's lay testimony alone may establish an in-service stressor pursuant to 38 U.S.C. 1154(b). The Court reiterated its conclusion in *Zarycki* v. *Brown*, 6 Vet. App. 91, 98 (1993), that, under 38 U.S.C. 1154(b), where it is determined that the veteran engaged in combat with the enemy and the claimed stressor is related to such combat, the veteran's lay testimony regarding the claimed stressor must be accepted as conclusive as to its occurrence and that no further development for corroborative evidence is required, provided that the testimony is "satisfactory" and consistent with the circumstances, conditions, or hardships of the veteran's service. VA has amended § 3.304(f) accordingly to provide that, if a veteran engaged in combat and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, occurrence of the claimed stressor may be established by the veteran's lay testimony alone.

Previously 38 CFR 3.304(f) provided that "service department evidence that the veteran engaged in combat or that the veteran was awarded the Purple Heart, Combat Infantryman Badge, or similar combat citation" was conclusive evidence of "the claimed in-service stressor." In fact, service department evidence that the veteran engaged in combat or received combat citations serves to establish that the veteran engaged in combat rather than that the claimed stressor occurred. We have therefore removed the references to service department evidence of combat or receipt of specific combat citations and revised the regulation to state that if evidence establishes that the veteran engaged in combat, the veteran's lay testimony, subject to the restrictions cited above, is sufficient to establish that the claimed combat-related stressor actually occurred.

Additionally, we have amended that portion of § 3.304(f) regarding prisoner-of-war-related stressors in a similar manner. 38 U.S.C. 1154(a) requires that the Secretary include in regulations pertaining to service-connection for disabilities provisions requiring that due consideration be given to the places, types, and circumstances of the veteran's military service. Prisoner-of-War (POW) experience is another type of situation where events often can never be fully documented and therefore warrants the same relaxed adjudication requirements for service connection of PTSD as for those veterans who engaged in combat.

The Court in *Cohen* v. *Brown* also pointed out that, although on October 8, 1996, VA issued a final rule amending the Schedule for Rating Disabilities (38 CFR Part 4) pertaining to mental disorders which adopted the nomenclature of DSM–IV (See 61 FR 52695–702), no amendment to § 3.304(f) was made. The Court noted that § 3.304(f) does not specifically set forth any requirements regarding the sufficiency of a stressor and the adequacy of symptomatology to support a diagnosis of PTSD. We have therefore amended § 3.304(f) to require that the medical evidence diagnosing PTSD comply with 38 CFR 4.125(a), which requires that diagnoses of mental disorders conform to DSM–IV.

VA is issuing a final rule, effective March 7, 1997, the date of the *Cohen* v. *Brown* decision, to make the above described amendments. Because these amendments reflect a decision of the Court, publication as a proposal for public comment is unnecessary.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: November 20, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.304, paragraph (f) is revised to read as follows:

§ 3.304 Direct service connection; wartime and peacetime.

* * * * *

(f) *Post-traumatic stress disorder.* Service connection for post-traumatic stress disorder requires medical evidence diagnosing the condition in accordance with § 4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. If the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor. If the evidence establishes that the veteran was a prisoner-of-war under the provisions of § 3.1(y) of this part and the claimed stressor is related to that prisoner-of-war experience, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(Authority: 38 U.S.C. 1154(b))

[FR Doc. 99–15522 Filed 6–17–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 078–1078; FRL–6361–6]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the amendatory instruction in a final rule pertaining to the 1998 revisions to the Kansas State Implementation Plan (SIP).

EFFECTIVE DATE: June 28, 1999.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter, Environmental Protection Agency, 901 North 5th Street, Air Planning and Development Branch, Kansas City, Kansas 66101, (913) 551–7609.

SUPPLEMENTARY INFORMATION: On May 27, 1999, EPA published a document (64 FR 28757), adding § 52.869. The intent of the rule was to conditionally approve elements of the maintenance plan revision to the SIP submitted by the Governor's designee on May 21, 1998, which address contingency measures for the Kansas City ozone maintenance area. In addition, the rule intended to establish a window of one year from the effective date of the final rule under which Kansas must submit additional air pollution control measures to receive full approval of the revised SIP. The rule incorrectly established a window of 30 days rather than one year. This action corrects the erroneous date. The date is being amended from June 28, 1999, to June 28, 2000.

Administrative Requirements

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with state officials as specified by E.O. 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by E.O. 12898 (59 FR 7629, February 16, 1994).

Because this corrective rulemaking action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule for the Kansas City ozone maintenance plan is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: June 7, 1999.

William Rice,

Acting Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

2. Section 52.869 is corrected by revising the date "June 28, 1999", to read "June 28, 2000".

[FR Doc. 99–15431 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 077–1077; FRL–6361–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the amendatory instruction in a final rule pertaining to the 1998 revisions to the Missouri State Implementation Plan (SIP).

EFFECTIVE DATE: June 28, 1999.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7609.

SUPPLEMENTARY INFORMATION: On May 27, 1999, EPA published a document (64 FR 28753), adding § 52.1319. The intent of the rule was to conditionally approve elements of the maintenance plan revision to the SIP submitted by the Governor's designee on March 23, 1998, which address contingency measures for the Kansas City ozone maintenance area. In addition, the rule intended to establish a window of one year from the effective date of the final rule under which Missouri must submit additional air pollution control measures to receive full approval of the revised SIP. The rule incorrectly established a window of 30 days rather than one year. This action corrects the erroneous date. The date is being amended from June 28, 1999, to June 28, 2000.

Administrative Requirements

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with state officials as specified by E.O. 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by E.O. 12898 (59 FR 7629, February 16, 1994).

Because this corrective rulemaking action is not subject to notice-and-comment requirements under the

Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule for the Kansas City ozone maintenance plan is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: June 7, 1999.

William Rice,

Acting Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

§ 52.1319 [Corrected]

2. Section 52.1319 is corrected by revising the date in paragraph (b) from "June 28, 1999", to "June 28, 2000".

[FR Doc. 99–15432 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL183–1a; FRL–6360–1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving a site specific revision to the Illinois State Implementation Plan (SIP) for volatile organic materials (VOM). This revision is an exemption from the otherwise applicable SIP requirements for W.R. Grace, a manufacturer of container sealants, lubricant fluids, and concrete additives at 6050 West 51st Street, Chicago, Cook County, Illinois. The State's requested revision was submitted to USEPA on September 17, 1998. In the proposed rules section of this **Federal Register**, the USEPA is proposing approval of, and soliciting comments on, this approval. If adverse written comments are received on this action, the USEPA will withdraw this direct final rule and address the comments received in response to this action in a final rule on the related proposed rule. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes the State's rule federally enforceable.

DATES: This rule is effective on August 17, 1999, unless USEPA receives adverse written comments by July 19, 1999. If adverse comment is received, USEPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the plan and USEPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Fayette Bright at (312) 886–6069 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, Chicago, Illinois 60604, (312) 886–6069.

SUPPLEMENTARY INFORMATION:

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I. What Action Is USEPA Taking?

USEPA is approving a SIP revision for the W.R. Grace and Company facility at 6050 West 51st Street, Chicago, Illinois. This SIP revision approves new Section 218.940(h), which has been added to Subpart QQ of Part 218. Section 218.940(h) waives the control requirements that would otherwise apply to the solvation mixers at W.R. Grace.

II. What Is a SIP?

Section 110 of the CAA requires states to develop regulations and control strategies to address air pollution within their jurisdictions. They must submit these to USEPA for approval and incorporation into the Federally enforceable SIP. To be approved they must meet Federal requirements and not adversely impact attainment of the National Ambient Air Quality Standards (NAAQS) established by USEPA.

III. Why Is USEPA Taking This Action?

a. USEPA is approving this action because W.R. Grace Company has demonstrated the infeasibility of complying with the control regulations of Subpart QQ, which call for an overall VOM reduction of at least 81 percent.

b. As required by Section 182 of the Clean Air Act (42 U.S.C. 7511a), sources in ozone nonattainment areas classified as severe must have reasonably available control technology (RACT) if they have the potential to emit 25 tons of VOM annually (VOM is the same as volatile organic compounds).

c. The information gathered from an explosion investigation, and current state of the art technology that detects solvent emission peaks, suggests no catalytic oxidizer may be designed for control of emissions from W.R. Grace's mixer loading operations that will be free from risk of another explosion.

d. W.R. Grace's consultant, Versar, determined through the control device investigations that there is no reasonably available control technology for the solvent mixers at Grace's facility. No add-on control was found to be technically and economically feasible.

IV. What Are the CAA RACT Requirements?

a. Section 172 of the CAA contains general requirements for States to implement RACT in areas that do not meet the NAAQS.

b. Section 182(b)(2) of the CAA contains more specific requirements for moderate and above ozone nonattainment areas.

c. Chicago is classified as a severe nonattainment area for ozone, VOM is an ozone precursor.

V. Does This Source Comply With CAA RACT Requirements?

Yes, due to the possibility of another explosion and other economic infeasibility issues, RACT for W.R. Grace's solvent mixers does not require additional emission control equipment.

VI. Summary of SIP Revision

This SIP revision adds the following exemption, in Section 218.940(h), to Subpart QQ of Part 218 for W.R. Grace's solvation mixers.

Section 218.940(h)—The control requirements of this Subpart shall not apply to the solvation mixers at the container sealant manufacturing facility located at 6050 West 51st Street in Chicago, Illinois.

Grace's Chicago facility was established in 1940, and currently employs approximately 100 people. The facility manufactures container sealants, lubricant fluids, and concrete additives. The container sealants are a rubbery coating material used by beverage, food, and other can coaters to form a seal between the ends of cans to the can body within the area where the two pieces are crimped together. Grace's Chicago plant produces both solvent-based and water-based container sealants.

a. Regulatory Background

In 1994, the Illinois Pollution Control Board promulgated certain amendments to 35 Ill. Adm. Code Part 218 that require RACT, for sources in the Chicago ozone nonattainment area, with the potential to emit 25 tons of VOM annually, as mandated by Section 182 of the Clean Air Act.

Emissions from W.R. Grace's mixers occur in a complex and variable manner due to the batch nature of the process. On June 14, 1996, W.R. Grace's incinerator exploded resulting in a fire in the solvent mixing area of the facility. The explosion significantly damaged the oxidizer and the associated ventilation system. Information gathered in the investigation of the explosion suggests that no catalytic oxidizer is currently available that will control the emissions from W.R. Grace's mixer loading operations and that will be free from the risk of another explosion.

b. USEPA's Review of This Site Specific SIP Revision Request

This exemption was reviewed on the merits of W.R. Grace's RACT analysis, primarily based upon the uncertainties involved in the chance of another explosion. This site specific SIP revision request is technically justified.

VII. What Changes Will This Federal Action Make?

It exempts W.R. Grace's solvation mixers from the control requirements of Subpart QQ of Part 218.

USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective without further notice unless USEPA receives relevant adverse written comment by July 19, 1999. Should USEPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 17, 1999.

VIII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment

rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this rulemaking action under section 801 because this is a rule of particular applicability.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 17, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 7, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(149) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(149) On September 17, 1998, the Illinois Environmental Protection Agency submitted a site specific State Implementation Plan revision request for W.R. Grace and Company's facility, which manufactures container sealants, lubricant fluids, and concrete additives, and is located at 6050 West 51st Street in Chicago, Illinois (Cook County). This rule revision is contained in R98–16, the July 8, 1998, Opinion and Order of the Illinois Pollution Control Board, and consists of new Section 218.940(h), which exempts W.R. Grace's facility from the control requirements in 35 Illinois Administrative Code Part 218 Subpart QQ.

(i) Incorporation by reference.

Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 218 Organic Material Emission Standards and Limitations for the Chicago Area, Subpart QQ: Miscellaneous Formulation Manufacturing Processes, Section 218.940 Applicability, paragraph (h) which was amended in R98–16 at 22 Ill. Reg. 14282, effective July 16, 1998.

[FR Doc. 99–15531 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–11

[FTR Interim Rule 7]

RIN 3090–AG95

Federal Travel Regulation; Income Tax Reimbursement Allowance (ITRA)

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Interim rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Travel Regulation (FTR) to add authority to implement sections of the Travel and Transportation Reform Act of 1998, which authorize Federal agencies to reimburse Federal, State and local income taxes incurred as a result of long term official travel. It also allows for the reimbursement of penalty and interest payments due to incorrect withholdings by the employee's agency for tax years 1993 and 1994.

DATES: *Effective Date:* This interim rule is effective January 1, 1993 and applies to all employees on a long term temporary duty assignment who incurred income taxes on money received for travel expenses.

Comment Date: Comments must be received by August 17, 1999.

ADDRESSES: Written comments should be sent to Ms. Sharon Kiser, Regulatory Secretariat (MVR), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW, Washington, DC 20405. E-mail comments may be sent to *RIN.3090–AG99@gsa.gov*.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Travel Team Leader, Travel and Transportation Management Policy Division (MTT), telephone 202–501–0483.

SUPPLEMENTARY INFORMATION:

A. Background

In 1992, the Congress eliminated the travel expense deduction for travel assignments lasting more than one year, which caused travel expense reimbursements to become taxable income. On October 19, 1998, the President signed into law the Travel and Transportation Reform Act of 1998 (the Act) (Pub. L. 105–264). This interim rule implements the provisions of the Act authorizing the reimbursement of taxes incurred due to a temporary duty travel assignment.

B. Executive Order 12866

GSA has determined that this interim rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This interim rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This interim rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR part 301–11

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR part 301–11 is amended to read as follows:

PART 301–11—PER DIEM EXPENSES

1. The authority citation for part 301–11 is revised to read as follows:

Authority: 5 U.S.C. 5707.

2. Part 301–11 is amended by adding Subparts E and F to read as follows:

Subpart E—Income Tax Reimbursement Allowance (ITRA), Tax Years 1993 and 1994

General

Sec.

301–11.501 What is the Income Tax Reimbursement Allowance (ITRA)?
301–11.502 Who is eligible to receive the ITRA?
301–11.503 Are Federal Insurance Contribution Act (FICA) and Medicare deductions included in any reimbursement under this part?

Employee Responsibilities

301–11.521 Must I file a claim to be reimbursed for the additional income taxes incurred?
301–11.522 If I was assessed an income tax penalty and/or interest payment due to incorrect income tax withholdings, are those payments reimbursable?
301–11.523 What documentation must I submit to substantiate my claim?
301–11.524 What steps must my agency take to determine my ITRA?
301–11.525 Is the ITRA I receive taxable income?
301–11.526 May I receive a lump sum payment of the additional tax liability on the covered ITRA in lieu of submitting another claim?
301–11.527 If I elect a lump sum payment, how is the ITRA paid?
301–11.528 If I do not elect lump sum payment is there any additional reimbursement?

Agency Responsibilities

301–11.531 What documentation must the employee submit to substantiate a claim?
301–11.532 How should we compute the employee's ITRA?
301–11.533 Are tax penalty and interest payments reimbursable?
301–11.534 What tax tables should we use to calculate the amount of allowable reimbursement?
301–11.535 How should we calculate the ITRA?
301–11.536 Is the ITRA reimbursement considered to be income to the employee?
301–11.537 Are income taxes to be withheld from the ITRA?
301–11.538 May we offer a lump sum payment to cover the income tax liability on the covered ITRA?
301–11.539 If the employee does not elect a lump sum payment, how is the tax on the ITRA calculated?
301–11.540 How do we handle any excess payment?

General

§ 301–11.501 What is the Income Tax Reimbursement Allowance (ITRA)?

The ITRA is an allowance designed to reimburse Federal, State and local income taxes incurred incident to an extended TDY assignment at one location.

§ 301–11.502 Who is eligible to receive the ITRA?

An employee (and spouse, if filing jointly) who was in a TDY status for an extended period at one location, and who incurred Federal, State, or local income taxes on amounts received as reimbursement for official travel expenses.

§ 301–11.503 Are Federal Insurance Contribution Act (FICA) and Medicare deductions included in any reimbursement under this part?

No. Reimbursement is limited to income taxes.

Employee Responsibilities

§ 301–11.521 Must I file a claim to be reimbursed for the additional income taxes incurred?

Yes. A claim must be submitted in accordance with your agency's policy.

§ 301–11.522 If I was assessed an income tax penalty and/or interest payment due to incorrect income tax withholdings, are those payments reimbursable?

Yes, for the total amount of the income tax penalty and/or interest assessed by the IRS for tax years 1993 and 1994 only.

§ 301–11.523 What documentation must I submit to substantiate my claim?

Your agency will determine what documentation is sufficient. (See § 301–11.531.)

§ 301–11.524 What steps must my agency take to determine my ITRA?

Your agency should:

(a) Determine Federal, State and local marginal tax rates by using the procedures and the marginal tax tables established for the relocation income tax allowance in § 302–11.7, § 302–11.8, and Appendices A, B, C and D to part 302–11 of this title; or

(b) Determine reimbursement as calculated in the illustration shown in § 301–11.535.

§ 301–11.525 Is the ITRA I receive taxable income?

Yes. The amount received must be reported as taxable income in the year in which received, but you are eligible to receive an allowance to cover the taxes assessed on the ITRA under § 301-11.528.

§ 301–11.526 May I receive a lump sum payment of the additional tax liability on the covered ITRA in lieu of submitting another claim?

Yes, if agreed to in writing by your agency and with the understanding that you will be responsible for any income taxes due without further reimbursement.

§ 301–11.527 If I elect a lump sum payment, how is the ITRA paid?

(a) Reimbursement is as illustrated:

LUMP SUM ITRA TAX PAID TO EMPLOYEE

ITRA reimbursement for tax year 1993	$14,435
Federal Tax liability on ITRA Reimbursement (@ 28%)	4,042
VA State tax liability (@ 5.75%)	830
Local tax liability	0
Total reimbursement	19,307

(b) Reimbursement of the ITRA and the tax on the ITRA is a final lump sum payment with no further reimbursement. You will be responsible for any income taxes due on $19,307.

§ 301–11.528 If I do not elect lump sum payment is there any additional reimbursement?

Yes. You are reimbursed for the tax on the tax reimbursement received. Your agency will calculate the tax on the tax reimbursement using the formulas developed for the Year 2 reimbursements of the relocation income tax allowance (see § 302–11.8 of this title).

Agency Responsibilities

§ 301–11.531 What documentation must the employee submit to substantiate a claim?

You must determine what documentation you require to be submitted with the employee's claim. It can include:

(a) A certified statement as prescribed in § 302–11.10 of this title or copies of completed Federal, State and local tax return for the tax year in which the taxes were withheld and paid.

(b) Copies of W–2's and Form 1099's.

(c) Any documentation received from the IRS identifying any interest or penalty payment (tax years 1993 and 1994 only).

(d) Any other documentation necessary to substantiate the claim.

§ 301–11.532 How should we compute the employee's ITRA?

You should follow the procedures prescribed for the relocation income tax allowance, see § 302–11.7, § 302–11.8 and Appendices A, B, C, and D to part 302–11 of this title or as illustrated in § 301–11.535.

§ 301–11.533 Are tax penalty and interest payments reimbursable?

Yes, the total amount of any penalty and interest assessed by the IRS (for tax years 1993 and 1994 only) due to the failure of the Government to withhold the appropriate income taxes are reimbursable.

§ 301–11.534 What tax tables should we use to calculate the amount of allowable reimbursement?

The tax tables for the year the tax was incurred are to be used.

§ 301–11.535 How should we calculate the ITRA?

(a) Use the documents prescribed in § 301–11.531 to calculate the ITRA as follows:

(1) Determine Federal, State and local marginal tax rates by using the procedures and the marginal tax tables established for the relocation income tax allowance in § 302–11.7, § 302–11.8 and Appendices A, B, C and D to part 302–11 of this title; and

(2) Add any penalty or interest for tax years 1993 or 1994 only to determine the full ITRA payment; or

(b) As calculated in the following illustration.

Example of calculating an employee's tax return using the marginal tax rate schedules in Appendix B to part 302–11 of this title:

FOR TAX YEARS 1993 OR 1994 (MARRIED FILING JOINT RETURN)

	Original	Recalculated
1. Adjusted Gross Income (w/ travel reimbursement)	$75,246	$75,246
2. Subtract travel reimbursement		(15,482)
3. Subtract personal exemptions and itemized or standard deductions	(12,689)	(12,689)
4. Adjusted taxable income	62,557	47,075
5. Tax liability on adjusted taxable income:		
a. Federal	17,516	$7,061*
	(28%)	(15%)
b. State, VA (5.75% tax bracket)	3,597	2,707
c. Local: Not applicable	0	0
d. Total	21,113	9,768
6. Difference of total of column 1 minus total of column 2:		
Additional Taxes Incurred due to travel reimbursement—$11,345		
7. Add to the tax difference:		
a. Penalty Payment imposed by IRS tax year 1993—1,500		
b. Interest Payment imposed by IRS tax year 1993—1,500		
Total 6 and 7a and b = ITRA—$14,345**		

*Adjusted taxable income places employee in lower tax bracket.
**The ITRA reimbursement is taxable income for the year in which paid at the appropriate Federal, State and local income tax rates.

§ 301–11.536 Is the ITRA reimbursement considered to be income to the employee?

Yes. The ITRA reimbursement is considered taxable income in the year paid and is subject to tax withholding as any other income.

§ 301–11.537 Are income taxes to be withheld from the ITRA?

Yes, as determined by your internal tax withholding procedures established for your agency pursuant to IRS procedures.

§ 301–11.538 May we offer a lump sum payment to cover the income tax liability on the covered ITRA?

Yes, if the employee mutually agrees in writing to the lump sum payment and understands that he/she is responsible for any income taxes without further reimbursement. (See the illustration in § 301–11.527.)

§ 301–11.539 If the employee does not elect a lump sum payment, how is the tax on the ITRA calculated?

The tax on the ITRA reimbursement should be calculated using the Year 2 formulas developed for the relocation income tax allowance. (See § 302–11.8.)

§ 301–11.540 How do we handle any excess payment?

You must collect any excess payments, which includes issuing corrected W–2's or 1099's.

Subpart F—Income Tax Reimbursement Allowance (ITRA), Tax Years 1995 and Thereafter

General

Sec.

301–11.601 What is the Income Tax Reimbursement Allowance (ITRA)?
301–11.602 Who is eligible to receive the ITRA?
301–11.603 Are Federal Insurance Contribution Act (FICA) and Medicare deductions included in any reimbursement under this part?

Employee Responsibilities

301–11.621 Must I file a claim to be reimbursed for the additional income taxes incurred?
301–11.622 If I was assessed an income tax penalty and/or interest payment due to incorrect income tax withholdings, are those payments reimbursable?
301–11.623 What documentation must I submit to substantiate my claim?
301–11.624 What steps must my agency take to determine my ITRA?
301–11.625 Is the ITRA I receive taxable income?
301–11.626 May I receive a lump sum payment of the additional tax liability on the covered ITRA in lieu of submitting another claim?
301–11.627 If I elect a lump sum payment, how is the ITRA paid?
301–11.628 If I do not elect lump sum payment is there any additional reimbursement?

Agency Responsibilities

301–11.631 What documentation must the employee submit to substantiate a claim?
301–11.632 How should we compute the employee's ITRA?
301–11.633 Are tax penalty and interest payments reimbursable?
301–11.634 What tax tables should we use to calculate the amount of allowable reimbursement?
301–11.635 How should we calculate the ITRA?
301–11.636 Is the ITRA reimbursement considered to be income to the employee?
301–11.637 Are income taxes to be withheld from the ITRA?
301–11.638 May we offer a lump sum payment to cover the income tax liability on the covered ITRA?
301–11.639 If the employee does not elect a lump sum payment, how is the tax on the ITRA reimbursement calculated?
301–11.640 How do we handle any excess payment?

Subpart F—Income Tax Reimbursement Allowance (ITRA), Tax Years 1995 and Thereafter

General

§ 301–11.601 What is the Income Tax Reimbursement Allowance (ITRA)?

The ITRA is an allowance designed to reimburse Federal, State and local income taxes incurred incident to an extended TDY assignment at one location.

§ 301–11.602 Who is eligible to receive the ITRA?

An employee (and spouse, if filing jointly) who was in a TDY status for an extended period at one location and who incurred Federal, State, or local income taxes on amounts received as reimbursement for official travel expenses.

§ 301–11.603 Are Federal Insurance Contribution Act (FICA) and Medicare deductions included in any reimbursement under this part?

No. Reimbursement is limited to income taxes.

Employee Responsibilities

§ 301–11.621 Must I file a claim to be reimbursed for the additional income taxes incurred?

Yes, a claim must be submitted in accordance with your agency's policy.

§ 301–11.622 If I was assessed an income tax penalty and/or interest payment due to incorrect income tax withholdings, are those payments reimbursable?

No. The reimbursement of tax penalty and/or interest payment assessed by the IRS is limited by law to tax years 1993 and 1994 only.

§ 301–11.623 What documentation must I submit to substantiate my claim?

Your agency will determine what documentation is sufficient. (See § 301–11.631.)

§ 301–11.624 What steps must my agency take to determine my ITRA?

Your agency should:

(a) Determine Federal, State and local marginal tax rates by using the procedures and the marginal tax tables established for the relocation income tax allowance in § 302–11.7, § 302–11.8 and Appendices A, B, C and D to part 302–11 of this title; or

(b) Determine reimbursement as calculated in the illustration shown in § 301–11.535.

§ 301–11.625 Is the ITRA I receive taxable income?

Yes. The amount received must be reported as taxable income in the year in which received, but you are eligible to receive an allowance to cover the taxes assessed on the ITRA under § 301-11.628.

§ 301–11.626 May I receive a lump sum payment of the additional tax liability on the covered ITRA in lieu of submitting another claim?

Yes, if agreed to in writing by your agency and with the understanding that you will be responsible for any income taxes due without further reimbursement.

§ 301–11.627 If I elect a lump sum payment, how is the ITRA paid?

(a) Reimbursement is as illustrated:

LUMP SUM ITRA TAX PAID TO EMPLOYEE

ITRA reimbursement for tax year 1995	$14,435
Federal Tax liability on ITRA Reimbursement (@ 28%)	4,042
VA State tax liability (@ 5.75%)	830
Local tax liability	0
Total reimbursement	19,307

(b) Reimbursement of the ITRA and tax on the ITRA is a final lump sum payment with no further reimbursement. You will be responsible for any income taxes due on $19,307.

§ 301–11.628 If I do not elect lump sum payment is there any additional reimbursement?

Yes. You are reimbursed for the tax on the tax reimbursement received. Your agency will calculate the tax on the tax reimbursement using the formulas developed for the Year 2 reimbursements of the relocation income tax allowance (see § 302–11.8 of this title).

Agency Responsibilities

§ 301–11.631 What documentation must the employee submit to substantiate a claim?

You must determine what documentation you require to be submitted with the employee's claim. It may include:

(a) A certified statement as prescribed in § 302–11.10 of this title or a copy of the employee's completed Federal, State and local tax return for the tax year in which the taxes were withheld and paid.

(b) Copies of W–2's and Form 1099's; and

(c) Any other documentation necessary to substantiate your claim.

§ 301–11.632 How should we compute the employee's ITRA?

You should follow the procedures prescribed for the relocation income tax allowance, see § 302–11.7, § 302–11.8 and Appendices A, B, C, and D to part 302–11 of this title or as illustrated in § 301–11.535.

§ 301–11.633 Are tax penalty and interest payments reimbursable?

No. The reimbursement of penalty and/or interest payments assessed by the IRS is limited by law to tax years 1993 and 1994 only.

§ 301–11.634 What tax tables should we use to calculate the amount of allowable reimbursement?

The tax tables for the year the tax was incurred are to be used.

§ 301–11.635 How should we calculate the ITRA?

Use the documents prescribed in § 301–11.631 to calculate the ITRA as follows:

(a) Determine Federal, State and local marginal tax rates by using the procedures and the marginal tax tables established for the relocation income tax allowance in § 302–11.7, § 302–11.8 and Appendices A, B, C and D to part 302–11 of this title, or

(b) As calculated in the following illustration.

Example of calculating an employee's tax return using the marginal tax rate schedules in Appendix B to part 302–11 of this title:

FOR TAX YEAR 1995 AND THEREAFTER

[MARRIED FILING JOINT RETURN]

	Original	Recalculated
1. Adjusted Gross Income (w/ travel reimbursement):	$75,246	$75,246
2. Subtract travel reimbursement:	.....	(15,482)
3. Subtract personal exemptions and itemized or standard deductions	(12,689)	(12,689)
4. Adjusted taxable income	62,557	47,075
5. Tax liability on adjusted taxable income:		
a. Federal (28%)	17,516	*7,061
		(15%)
b. State, VA (5.75% tax bracket)	3,597	2,707
c. Local: Not applicable	0	0
d. Total	21,113	9,768
6. Difference of total of column 1 minus total of column 2: Additional Taxes Incurred due to travel reimbursement—$11,345		
Total = ITRA—$11,345**		

*Adjusted taxable income places employee in lower tax bracket.
**The ITRA reimbursement is taxable income for the year in which paid at the appropriate Federal, State and local income tax rates.

§ 301–11.636 Is the ITRA reimbursement considered to be income to the employee?

Yes. The ITRA reimbursement is considered taxable income in the year paid and is subject to tax withholding as any other income.

§ 301–11.637 Are income taxes to be withheld from the ITRA?

Yes, as determined by your internal tax withholding procedures established for your agency pursuant to IRS procedures.

§ 301–11.638 May we offer a lump sum payment to cover the income tax liability on the covered ITRA?

Yes, if the employee mutually agrees in writing to the lump sum payment and understands that he/she is responsible for any income taxes without further reimbursement. See the illustration in § 301–11.627.

§ 301–11.639 If the employee does not elect a lump sum payment, how is the tax on the ITRA reimbursement calculated?

The tax on the tax reimbursement should be calculated using the Year 2 formulas developed for the relocation income tax allowance. (See § 302–11.8.)

§ 301–11.640 How do we handle any excess payment?

You must collect any excess payments, which includes issuing corrected W–2's or 1099's.

Dated: June 10, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–15540 Filed 6–17–99; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7289]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Ohio:					
Franklin	City of Columbus	January 12, 1999, January 19, 1999, *The Columbus Dispatch.*	The Honorable Gregory Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	April 19, 1999	390170 G
Franklin	City of Reynoldsburg.	January 12, 1999, January 19, 1999, *The Columbus Dispatch.*	The Honorable Robert McPherson, Mayor of the City of Reynoldsburg, 7232 East Main Street, Reynoldsburg, Ohio 43068–2080.	April 19, 1999	390177 G

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 9, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–15559 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps

are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA	
Dallas (City), Paulding County (FEMA Docket No. 7283)	
Griffin Creek:	
Approximately 40 feet downstream of Sara Babb Road	*899
Upstream side Atlanta Highway (Business State Route 6)	*986
Weaver Creek:	
Approximately 2,300 feet downstream of West Memorial Drive (State Route 120)	*942
Approximately 0.7 mile upstream of Seaboard Drive	*991
Maps available for inspection at the Dallas City Hall, 120 Main Street, Dallas, Georgia.	
Georgia Hiram (City), Paulding County (FEMA Docket No. 7283)	
Lick Log Creek:	
Approximately 1.1 miles downstream of Dallas Nebo Road	*957
Approximately 0.53 mile downstream of Dallas Nebo Road	*961
Davis Mill Creek:	
Approximately 950 feet upstream of Nebo Road	*941
Approximately 1 mile upstream of Lake Swan Outfall	*990
Mill Creek:	
Approximately 0.78 mile upstream of Pool Road	*920
Approximately 0.79 mile upstream of State Route 92	*937
Maps available for inspection at the Hiram City Hall, 186 Oak Street, Hiram, Georgia.	
Lowndes County (Unincorporated Areas) (FEMA Docket No. 7267)	
Three Mile Branch:	
Approximately 0.50 mile downstream of Country Club Drive	*138
Approximately 0.72 mile upstream of Country Club Drive	*195
Maps available for inspection at the Lowndes County Board of Commissioners, Administrative Building, Engineering Department, 325 West Savannah Avenue, Valdosta, Georgia.	
Paulding County (Unincorporated Areas) (FEMA Docket No. 7283)	
Davis Mill Creek:	
At confluence with Mill Creek (formerly Lick Log Creek)	*920
Approximately 1.3 miles upstream of Lake Swan Outfall	*1,003
Griffin Creek:	
At confluence with Lawrence Creek	*857
Approximately 710 feet upstream of Atlanta Highway (State Business Route 6)	*988
Lawrence Creek:	
Approximately 60 feet upstream of Old Cartersville Road	*852
Approximately 1,300 feet upstream of Dallas Acworth Highway (State Route 92)	*895
Lick Log Creek:	
At confluence with Davis Mill Creek	*941
Approximately 200 feet downstream of Dallas Nebo Road	*967
McClendon Creek:	
At confluence with Mud Creek	*1,132
Approximately 1.54 miles upstream of McGarity Road	*1,153

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Mill Creek:	
At confluence with Sweetwater Creek	*907
Approximately 1.0 mile upstream of Davis Mill Road	*1,027
Tallapoosa River and Mud Creek:	
Approximately 200 feet downstream of Goodman Road	*1,123
Approximately 1.0 mile upstream of Honey Suckle Lane	*1,159
Possum Creek:	
Confluence with Picketts Mill Creek	*827
Approximately 825 feet upstream of Due West Road	*980
Powder Springs Creek:	
Upstream side Lost Mountain Road (formerly County Line Road)	*947
Approximately 0.51 mile upstream of Mark Drive	*1,136
Pumpkinvine Creek:	
Approximately 1,700 feet downstream of Dabbs Bridge Road	*742
Approximately 2.7 miles upstream of confluence of Little Pumpkinvine Creek	*933
Rakestraw Creek:	
Approximately 50 feet downstream of county boundary	*929
Approximately 20 feet upstream of Macland Road	*1,156
Weaver Creek:	
Approximately 1,500 feet upstream of confluence with Pumpkinvine Creek	*870
Approximately 125 feet upstream of State Route 120 (West Memorial Drive)	*954
West Fork:	
Confluence with Pumpkinvine Creek	*777
Approximately 0.52 mile upstream of confluence with Pumpkinvine Creek	*777
Lawrence Creek:	
Approximately 60 feet upstream of Old Cartersville Road	*852
At confluence of Griffin Creek	*857
Dewberry Creek (formerly Lawrence Creek):	
At confluence of Griffin Creek	*857
Approximately 1,300 feet upstream of Dallas Acworth Highway (State Route 92)	*895
Little Pumpkinvine Creek 1 (formerly Picketts Mill Creek):	
At confluence with Pumpkinvine Creek	*759
At confluence of Possum Creek	*827
Picketts Mill Creek:	
At confluence of Possum Creek	*827
Approximately 720 feet upstream of Holland Road	*969
Maps available for inspection at the Paulding County Engineering Department, 25 Courthouse Square, Dallas, Georgia.	
MASSACHUSETTS	
Millbury (Town), Worchester County (FEMA Docket No. 7279)	
Ramshorn Brook:	
Approximately 1,300 feet downstream of Dolan Road and Dam	*610
Approximately 0.5 mile upstream of Dolan Road and Dam (upstream corporate limits)	*633
Dorothy Pond:	
Upstream side of Riverlin Street	*393
Approximately 700 feet upstream of Wheelock Avenue	*399
Maps available for inspection at the Town Hall, Planner's Office, 127 Elm Street, Millbury, Massachusetts.	
MICHIGAN	
Farmington Hills (City), Oakland County (FEMA Docket No. 7259)	
Main Ravines Drain:	
At Inkster Road	*633
Approximately 70 feet upstream of Tenmile Road	*691
Tributary A:	
At confluence with Main Ravines Drain	*641
Approximately 100 feet upstream of Cora Street	*697
Tributary B:	
At confluence with Main Ravines Drain	*667
Approximately 980 feet upstream of Brookplace Court	*704
Tributary C:	
At confluence with Main Ravines Drain	*633
At Middlebelt Road	*727
Minnow Pond Drain:	
Approximately 500 feet upstream of confluence with Upper River Rouge	*764
At Fourteen Mile Road	*880
Pebble Creek:	
At downstream corporate limits	*694
At downstream side of Fourteen Mile Road	*893
Seeley Drain:	
At confluence with Upper River Rouge	*761
At upstream side of Thirteen Mile Road	*893
Tarabusi Creek:	
At Eight Mile Road	*695
Approximately 150 feet downstream of upstream corporate limits	*748
West Bell Branch Creek:	
At Eight Mile Road	*753
Approximately 570 feet upstream of Rutgers Road	*826
North Branch of Main Ravines Drain:	
At downstream corporate limits	*660
Approximately 100 feet upstream of Eleven Mile Road	*720
Maps available for inspection at the Farmington Hills City Engineering Department, 31555 Eleven Mile Road, Farmington Hills, Michigan.	
Owosso (Township), Shiawassee County (FEMA Docket No. 7255)	
Owasso Drain:	
At the downstream corporate limits	*740
Approximately 1,500 feet upstream of Delaney Road	*743
Maps available for inspection at the Owosso Township Hall, 2998 West M21, Owosso, Michigan.	
MISSISSIPPI	
Lee County (Unincorporated Areas) (FEMA Docket No. 7271)	
Little Coonewah Creek:	
Approximately 1,250 feet upstream of Natchez Trace Parkway	*292
Approximately 0.6 mile upstream of Endville Road	*362
Tributary to Little Coonewah Creek:	
At confluence with Little Coonewah Creek	*336
Approximately 1,950 feet upstream of Dogwood Hills Circle	*359
Mud Creek:	
Approximately 0.8 mile upstream of U.S. Route 78	*271
Approximately 0.6 mile upstream of Barnes Crossing Road	*278
Tributary No. 1 to Mud Creek:	
Approximately 125 feet upstream of North Veteran's Boulevard	*279
Approximately 200 feet upstream of Fern Ridge Road upstream crossing	*316
Town Creek:	
Approximately 100 feet downstream of confluence of Tulip Creek	*250
Approximately 0.5 mile upstream of confluence of Tulip Creek	*252
Tulip Creek:	
At confluence with Town Creek	*250
Approximately 100 feet upstream of U.S. Route 78	*290
West Tulip Creek:	
At confluence with Tulip Creek	*279
Upstream of Elvis Presley Lake Dam	*346
Maps available for inspection at the Lee County Courthouse, 201 West Jefferson, Suite A, Tupelo, Mississippi.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Plantersville (Town), Lee County (FEMA Docket No. 7271)	
Tulip Creek:	
Approximately 400 feet upstream of railroad	*257
Just downstream of State Route 6	*266
Maps available for inspection at the Plantersville Town Hall, 2587 Main Street, Plantersville, Mississippi.	
Saltillo (Town), Lee County (FEMA Docket No. 7271)	
Sand Creek:	
At Lake Lamar Bruce Road	*307
Approximately 250 feet upstream of Pea Ridge Road	*313
Maps available for inspection at the Saltillo Town Hall, 205 Second Street, Saltillo, Mississippi.	
Tupelo (City), Lee County (FEMA Docket No. 7271)	
Tributary No. 2 to Coonewah Creek:	
Approximately 1,400 feet downstream of Brooks Street	*279
At upstream side of Cliff Gookin Boulevard	*307
Kings Creek:	
At confluence with Town Creek	*258
Upstream of Walsh Road	*338
Little Coonewah Creek:	
Just upstream of Natchez Trace Parkway	*292
Approximately 1,500 feet downstream of Old Chesterville Road	*336
Mud Creek:	
At confluence with Town Creek	*259
Approximately 0.5 mile upstream of Barnes Crossing Road	*278
Tributary No. 1 to Mud Creek:	
At confluence with Mud Creek	*268
Approximately 1,300 feet upstream of North Veteran's Boulevard	*289
Tributary No. 2 to Mud Creek:	
At confluence with Mud Creek	*270
Approximately 110 feet upstream of U.S. Route 45 on-ramp	*273
Russell Creek:	
At confluence with Little Coonewah Creek	*300
Approximately 75 feet upstream of Butler Road	*341
Town Creek:	
Approximately 0.5 mile upstream of confluence of Tulip Creek	*252
Approximately 100 feet upstream of Natchez Trace Parkway	*275
Tulip Creek:	
Approximately 0.6 mile upstream of confluence with Town Creek	*253
At State Route 178	*279
West Tulip Creek:	
Approximately 350 feet upstream of confluence with Tulip Creek	*279
Approximately 0.54 mile downstream of Elvis Presley Lake Road	*300
Maps available for inspection at the Tupelo City Hall, Department of Planning and Community Development, 117 North Broadway, 2nd Floor, Tupelo, Mississippi.	
Verona (Town), Lee County (FEMA Docket No. 7271)	
Town Creek:	
Approximately 600 feet upstream of the confluence of Tulip Creek	*251
Approximately 1,300 feet upstream of the confluence of Tulip Creek	*251
Maps available for inspection at the Verona City Hall, 194 Main Street, Verona, Mississippi.	
NEW JERSEY	
Lavallette (Borough), Ocean County (FEMA Docket No. 7279)	
Atlantic Ocean:	
Approximately 100 feet east of the intersection of Guyer Avenue and Grand Central Avenue 35N	#1
Approximately 1,050 feet east of the intersection of Brown Avenue and Grand Central Avenue 35N	*13
At the intersection of Brooklyn Avenue and West Central	*5
Barnegat Bay:	
At the intersection of Pershing Boulevard and Bullard Drive	*5
Maps available for inspection at the Lavallette Borough Hall, 1306 Grand Central Avenue, Lavallette, New Jersey.	
NEW YORK	
Deerpark (Town), Orange County (FEMA Docket No. 7251)	
Basher Kill:	
Approximately 450 feet upstream of confluence with Neversink River	*485
At upstream county boundary	*507
Pine Kill:	
At confluence with Basher Kill	*507
At upstream county boundary	*517
Maps available for inspection at the Town of Deerpark Offices, Route 209, Huguenot, New York.	
Oswego (Town), Oswego County (FEMA Docket No. 7275)	
Gardenier Creek:	
Upstream corporate limits	*317
Downstream corporate limits	*317
Maps available for inspection at the Oswego Town Hall, 2320 County Route 7, Oswego, New York.	
Verona (Town), Oneida County (FEMA Docket No. 7279)	
Fish Creek:	
Approximately 8,800 feet downstream of Cook Road	*377
Approximately 1.60 miles upstream of Higginsville Road	*383
Maps available for inspection at the Verona Town Office Building, 6600 Germany Road, Durhamville, New York.	
Vienna (Town), Oneida County (FEMA Docket No. 7275)	
Fish Creek:	
Approximately 8,970 feet downstream of Cook Road	*377
Approximately 1.6 miles upstream of Higginsville Road	*383
Maps available for inspection at the Town of Vienna Planning Board Office, 2091 Route 49, North Bay, New York.	
NORTH CAROLINA	
Ashe County (Unincorporated Areas) (FEMA Docket No. 7275)	
South Fork New River:	
Approximately 3,000 feet upstream of SR 1100 bridge	*2,922
At upstream county boundary	*2,955
Maps available for inspection at the Old Jefferson School, Building Inspector's Office, 118 William J. B. Blevins Drive, Jefferson, North Carolina.	
TENNESSEE	
Murfreesboro (City), Rutherford County (FEMA Docket No. 7271)	
Bushman Creek:	
Approximately 1,100 feet upstream of Osborne Lane	*560
Approximately 250 feet downstream of New Lascassas Road	*583
Sinking Creek:	
Approximately 0.88 mile upstream of confluence with West Fork Stones River	*548
At downstream side of Ewing Boulevard	*610
Unnamed Tributary of West Fork Stones River:	
At confluence with West Fork Stones River	*589
Approximately 0.6 mile upstream of confluence	*589
West Fork Stones River:	
Approximately 0.5 mile upstream of Mason Drive	*576
Approximately 0.5 mile upstream of State Route 99	*596
Lytle Creek:	
Approximately 1,200 feet downstream of Old Fort Parkway	*579
Approximately 100 feet upstream of Old Fort Parkway	*580
Maps available for inspection at the Murfreesboro City Hall, Planning Department, 111 West Vine Street, Murfreesboro, Tennessee.	
Rutherford County (Unincorporated Areas) (FEMA Docket No. 7271)	
Bushman Creek:	
Approximately 1,750 feet upstream of Compton Road	*546
Approximately 1,400 feet upstream of New Lascassas Road	*589
Unnamed Tributary of West Fork Stones River:	
Approximately 1,000 feet downstream of State Route 99	*589
Approximately 370 feet downstream of Cason Lane	*591
West Fork Stones River:	
Approximately 0.5 mile upstream of Mason Drive	*576
Approximately 0.5 mile upstream of State Route 99	*596
Maps available for inspection at the Rutherford County Engineering Department, 1 Public Square South, Room 204, Murfreesboro, Tennessee.	
VERMONT	
Royalton (Town), Windsor County (FEMA Docket No. 7279)	
First Branch White River:	
At confluence with White River	*471
Approximately 900 feet downstream of the county boundary	*510
Second Branch White River:	
At confluence with White River	*503
Approximately 160 feet upstream of the furthest upstream corporate limits	*527
White River:	
Approximately 550 feet upstream of corporate limits with Sharon, Vermont	*457
Approximately 150 feet upstream of corporate limits with Bethel, Vermont	*531
Maps available for inspection at the Royalton Town Office Building, Safford Street, South Royalton, Vermont.	
VIRGINIA	
Rocky Mount (Town), Franklin County (FEMA Docket No. 7279)	
Furnace Creek:	
Approximately 25 feet downstream of Scuffling Hill Road	*991
Approximately 75 feet downstream of Route 40/Franklin Street	*1,035
Furnace Creek Tributary:	
Approximately 75 feet downstream of Route 40/Franklin Street	*1,035
Approximately 1,900 feet upstream of Franklin Street	*1,046
Maps available for inspection at the Rocky Mount Town Hall, 345 Donald Avenue, Rocky Mount, Virginia.	
WEST VIRGINIA	
Mineral County (Unincorporated Areas) (FEMA Docket No. 7275)	
Cabin Run:	
Approximately 1,200 feet upstream of confluence with Patterson Creek	*645
Approximately 1,950 feet upstream of State Route 16	*814
Maps available for inspection at the Mineral County Courthouse, County Planner's Office, 150 Armstrong Street, Keyser, West Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 9, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–15561 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–17; RM–9409]

Radio Broadcasting Services; Belt, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 269A to Belt, Montana, in response to a petition filed by Belt Broadcasting Company. *See* 64 FR 5739, February 5, 1999. The coordinates for Channel 269A at Belt are 47–23–12 NL and 110–55–18 WL. The channel can be allotted to Belt without a site restriction. Since Belt is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government has been obtained for this allotment. With this action, this proceeding is terminated. A filing window for Channel 269A at Belt will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–17, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Belt, Channel 269A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15513 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–22; RM–9426]

Radio Broadcasting Services; Ashland, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel *275A to Ashland, Wisconsin, and reserves the channel for noncommercial educational use in response to a petition filed by The State of Wisconsin Educational Communications Board. See 64 FR 6020, February 5, 1999. The coordinates for Channel *275A at Ashland are 46–35–24 NL and 90–53–00 WL. The channel can be allotted to Ashland without a site restriction. With this action, this proceeding is terminated. A filing window for Channel *275A at Ashland will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–22, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel *275A at Ashland.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15514 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–21; RM–9389]

Radio Broadcasting Services; Perry, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 299C3 to Perry, Florida, in response to a petition filed by Albert L. Brooks. See 64 FR 5738, February 5, 1999. The coordinates for Channel 299C3 at Perry Are 29–59–47 NL and 83–39–33 WL. The channel can be allotted to Perry with a site restriction 14.9 kilometers (9.3 miles) southwest of the community. With this action, this proceeding is terminated. A filing window for Channel 299C3 at Perry will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–21, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 299C3 at Perry.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15515 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–20; RM–9413]

Radio Broadcasting Services; Florence, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 278A to Florence, Montana, in response to a petition filed by Florence Broadcasting Company. See 64 FR 5738, February 5, 1999. The coordinates for Channel 278A at Florence are 46–37–42 NL and 114–04–48 WL. The channel can be allotted to Florence without a site restriction. Since Florence is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government has been obtained for this allotment. With this action, this proceeding is terminated. A filing window for Channel 278A at Florence will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–20, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Florence, Channel 278A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15516 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–19; RM–9397]

Radio Broadcasting Services; Lockwood, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 294A to Lockwood, Montana, in response to a petition filed by Lockwood Broadcasting Company. See 64 FR 5738, February 5, 1999. The coordinates for Channel 294A at Lockwood are 45–49–09 NL and 108–24–51 WL. The channel can be allotted to Lockwood without a site restriction. With this action, this proceeding is terminated. A filing window for Channel 294A at Lockwood will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–19, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Lockwood, Channel 294A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15517 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–16; RM–9403]

Radio Broadcasting Services; Eden, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283A to Eden, Texas, in response to a petition filed by Kent S. Foster. See 64 FR 5739, February 5, 1999. The coordinates for Channel 283A at Eden are 31–13–06 NL and 99–50–36 WL. The channel can be allotted to Eden without a site restriction. Since Eden is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican Government has been obtained for this allotment. With this action, this proceeding is terminated. A filing window for Channel 283A at Eden will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–16, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Eden, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15518 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–12; RM–9441]

Radio Broadcasting Services; Joliet, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 259C3 to Joliet, Montana, in response to a petition filed by Mountain West Broadcasting. See 64 FR 5738, February 5, 1999. The coordinates for Channel 259C3 at Joliet are 45–29–06 NL and 108–58–18 WL. The channel can be allotted to Joliet without a site restriction. With this action, this proceeding is terminated. A filing window for Channel 259C3 at Joliet will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report

and Order, MM Docket No. 99–12, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Joliet, Channel 259C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15519 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 060999B]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 2 Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest for Quarter 2 period.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the Quarter 2 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in the northeast region for the remainder of the 1999 Quarter 2 quota period (through June 30, 1999). Regulations governing the black sea bass fishery require publication of this notice to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3′ N. lat.

DATES: Effective June 18, 1999, 0001 hrs, local time through June 30, 1999, 2400 hrs, local time.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, at (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Regulations governing the black sea bass fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into four quota periods, based upon percentages of the annual quota. The Quarter 2 commercial quota (April through June) is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.140.

The initial total commercial quota for black sea bass for the 1999 calendar year was set equal to 3,025,000 lb (1,372,117 kg)(63 FR 72203, December 31, 1998). The Quarter 2 period quota, which is equal to 29.26 percent of the annual commercial quota, was set at 885,115 lb (401,481 kg).

Section 648.141 requires the Regional Administrator to monitor the commercial black sea bass quota for each quota period and, based upon dealer reports, state data and other available information to determine when the commercial quota has been harvested. The Regional Administrator is further required to publish a notice in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the black sea bass commercial quota has been harvested and no commercial quota is available for landing black sea bass for the remainder of the Quarter 2 period, north of 35°15.3′ N. lat. The Regional Administrator has determined, based upon dealer reports and other available information, that the black sea bass commercial quota for the 1999 Quarter 2 period has been harvested.

The regulations at § 648.4(b) provide that Federal black sea bass moratorium permit holders agree as a condition of the permit not to land black sea bass in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the black sea bass is available. The Regional Administrator has determined that the Quarter 2 period for black sea bass no longer has commercial quota available. Therefore, effective 0001 hrs local time, June 18, 1999, further landings of black sea bass in coastal states from Maine through North Carolina, north of 35°15.5′ N. lat. by vessels holding commercial Federal fisheries permits are prohibited through June 30, 1999, 2400 hrs local time. The Quarter 3 period for commercial black sea bass harvest will open on July 1, 1999. Effective June 18, 1999, federally permitted dealers are also advised that they may not purchase black sea bass from federally permitted black sea bass moratorium permit holders that land in coastal states from Maine through North Carolina for the remainder of the Quarter 2 period (through June 30, 1999).

The regulations at § 648.4(b) also provide that, if the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.5′ N. lat., any vessel owners that hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their moratorium Black Sea Bass permit by certified mail addressed to the Regional Administrator (see Table to § 600.502) and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 14, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15527 Filed 6–15–99; 3:33 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 011399A]

Fisheries of the Northeastern United States; Northeast Monkfish Fishery; Amendment 1 to the Monkfish Fishery Management Plan (FMP) to Designate Essential Fish Habitat (EFH) for Monkfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Approval of Amendment 1 to the Monkfish FMP.

SUMMARY: NMFS announces that the Secretary of Commerce (Secretary) has approved Amendment 1 to the Monkfish FMP. This amendment was prepared jointly by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC). This amendment implements the requirements of section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The amendment describes and identifies EFH for the monkfish fishery, discusses measures to address the effects of fishing on EFH, and identifies other actions for the conservation and enhancement of EFH.

DATES: Amendment 1 to the Monkfish FMP was approved on April 22, 1999.

ADDRESSES: Copies of the amendment and the Environmental Assessment (EA) are available from the Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Peter Colosi, Chief, Habitat Conservation Division, 978–281–9332 or Peter.Colosi@NOAA.gov.

SUPPLEMENTARY INFORMATION:

Background

Amendment 1 to the Monkfish FMP is part of an omnibus amendment for EFH, which also includes Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP. Because of the additional time required for coordination with MAFMC, the monkfish FMP amendment was considered for Secretarial approval in an action separate from these other amendments, which were approved on March 3, 1999. The omnibus amendment also includes the EFH components of the Atlantic Herring FMP that is being developed by the NEFMC. The EFH information for Atlantic herring will be incorporated by reference into the Atlantic Herring FMP when that FMP is submitted for Secretarial approval. An EA is also included with the Monkfish Amendment 1.

Monkfish Amendment 1 was prepared by the NEFMC and MAFMC to satisfy the EFH mandates of the Magnuson-Stevens Act. The amendment designates EFH in waters of the United States for monkfish. Public comments were invited on Monkfish Amendment 1 from January 22, 1999 (64 FR 3480), through March 23, 1999. NMFS has determined that the amendment is consistent with the Magnuson-Stevens Act and other applicable laws, and approved it on April 22, 1999. Additional information on this action is contained in the January 22, 1999, Notice of Availability (64 FR 3480).

Upon initial consideration, it appeared that regulations to implement the amendment were not required. However, further consideration identified that implementing regulations are required to codify the framework specifications for designating EFH and Habitat Area of Particular Concern for the Monkfish FMP. A rulemaking to promulgate these regulations will be initiated in the near future.

Comments and Responses

Two letters were received during the comment period.

Comment 1: One commenter provided extensive comments on technical aspects of the amendment's discussion of potential impacts to EFH from oil, gas, and mineral extraction, and the recommended conservation and enhancement measures dealing with these activities.

Response: NMFS appreciates the detailed comments that were provided, and has forwarded them to the Councils for future reference.

Comment 2: Another commenter considered the amendment to be overly broad and exceeding the intent of Congress. The commenter specifically cited the breadth of EFH designation, noting that EFH appeared to be designated over the range of the species, and in estuarine waters. The commenter stated that the Councils' methodology for designating EFH based on the highest relative density of monkfish was arbitrary.

Response: The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Therefore, the geographic scope of EFH must be sufficiently broad to encompass the biological requirements of the species. The information that the Councils used for EFH designation was primarily species distribution and relative abundance data, which would be classified as "level 2" information under the EFH regulations (50 CFR 600.815). Since the information available was not more specific (e.g., did not show species production by habitat type), the approach prescribed by the regulations led to fairly broad EFH designations. The EFH regulations at 50 CFR 600.10 interpret the statutory definition of EFH to include aquatic areas that are used by fish, including historically used areas, where appropriate, to support a sustainable fishery and the managed species' contribution to a healthy ecosystem, provided that restoration is technologically and economically feasible. The Councils' EFH designation is consistent with these requirements. EFH for monkfish was not designated in estuarine waters.

The specific methodology used by the Councils for designating EFH was based on the highest relative density of monkfish. This methodology was developed by scientists at the NMFS Northeast Fisheries Science Center, and is supported by scientific research and ecological concepts that show that the distribution and abundance of a species or stock are determined by physical and biological variables. The abundance of a species is higher where conditions are more favorable, and this tends to occur near the center of a species' range. As population abundance fluctuates, the area occupied changes. At low levels of abundance, populations are expected to occupy the habitat that maximizes their survival, growth, and reproduction. As population abundance increases, individuals move into other available habitats. NMFS and the Council have developed a management regime designed to increase the population of monkfish. The broad EFH designation for monkfish is intended to include habitat essential for the species' long-term well-being.

Comment 3: A commenter stated that the conservation and enhancement recommendations for non-fishing impacts to EFH that are provided in the amendment are not based on the best available science, nor sufficiently supported. The commenter contends that the recommended measures do not take into consideration current practices, and are likely to be in conflict with measures being pursued under

other regulatory programs. The commenter also stated that the Magnuson-Stevens Act did not empower the Councils to address non-fishing activities.

Response: NMFS disagrees that the conservation and enhancement recommendations for non-fishing impacts to EFH are not based on the best available science. The information presented in this section of the amendment is well researched and substantiated by the best available information. Moreover, the commenter did not provide examples of specific information not considered by the Councils.

Conservation and enhancement recommendations for non-fishing industries were included to satisfy the requirements of section 303(a)(7) of the Magnuson-Stevens Act to "identify other actions to encourage the conservation and enhancement of [EFH]." This information is provided to assist non-fishing industries in avoiding impacts to EFH. The recommendations are neither posed as, nor meant to be, binding in nature. It is up to the discretion of the non-fishing industries and relevant regulatory agencies whether these recommendations are implemented.

Additionally, under section 305(b) of the Magnuson-Stevens Act, NMFS is required and the Councils are authorized to make conservation recommendations to any Federal or state agency regarding any activity that would adversely affect EFH. Moreover, Federal agencies are required to respond to these recommendations in writing.

Comment 4: A commenter stated that the amendment contains no meaningful threshold of significance or likelihood of adverse effect on habitat for non-fishing impacts. The commenter suggested that the consultation and conservation recommendation provisions of the Magnuson-Stevens Act will be burdensome and unworkable. The commenter also contended that the consultation procedures will be redundant with the National Environmental Policy Act (NEPA), costly, and time consuming.

Response: The Magnuson-Stevens Act requires Federal action agencies to consult with NMFS on activities that may adversely affect EFH. Adverse effects, as defined at 50 CFR 600.810(a), means any impact that reduces the quality and/or quantity of EFH. Adverse effects may include, for example, direct effects through contamination or physical disruption, indirect effects such as loss of prey or reduction in species fecundity, and site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. Only actions that have a reasonably foreseeable adverse effect require consultation.

Consultations are not likely to be redundant or inefficient. The EFH regulations provide for streamlined consultation procedures, such as general concurrences and abbreviated consultations, that may be used when the activities at issue do not have the potential to cause substantial adverse effects on EFH. The EFH consultation requirements will be consolidated with other existing consultation and environmental review procedures wherever appropriate. This approach will ensure that EFH consultations do not duplicate other environmental reviews, yet still fulfill the statutory requirement for Federal actions to consider potential effects on EFH.

Comment 5: A commenter stated that the amendment generally failed to address the potential for significant adverse impacts of this amendment on non-fishing entities, specifically citing the requirements of NEPA and the Regulatory Flexibility Act (RFA).

Response: The conservation and enhancement recommendations outlined in the amendment include a review of suggested measures for municipal, state, and Federal agencies and other organizations for the conservation and enhancement of EFH. As stated earlier, these recommendations are non-binding. Any regulatory action that may reflect these recommendations will be subject to the analysis and public review required by state or Federal law, which will be the appropriate vehicle for consideration of impacts to both fishing and non-fishing entities.

In the EA included with the amendment, the Council found, and NMFS concurs, that there will be no significant impacts on the human environment as a result of this amendment. The EFH regulations and NOAA policy require that NMFS coordinate EFH consultations with other consultation and commenting requirements under environmental review procedures currently in place. This will eliminate duplication and ensure a workable review process. The analytical requirements of the RFA apply only to regulatory actions for which notice and comment rulemaking is required under the Administrative Procedure Act or another statute. The requirements of the RFA do not apply to the approval of this amendment, since a proposed rule has not been developed.

Comment 6: A commenter charged that the amendment does not address Magnuson-Stevens Act national standards 1 (overfishing), 2 (best available scientific information), and 7 (unnecessary duplication).

Response: As a part of the Council's omnibus EFH amendment, Monkfish Amendment 1 was intended to address only habitat issues, including the EFH mandate of the Magnuson-Stevens Act. The recently approved (March 3, 1999) Monkfish FMP includes the necessary provisions to satisfy national standard 1. Since Amendment 1 does not detract from nor negate the overfishing discussion and measures implemented in the Monkfish FMP, it is consistent with national standard 1.

The amendment was developed with significant input from scientists of the NMFS Northeast Fisheries Science Center and is based upon the best scientific information available. In the strategic plan portion of the amendment, the Councils have clearly stated their commitment to updating the amendment as new information becomes available. NMFS finds the amendment consistent with national standard 2.

The commenter does not elaborate upon its assertion that the amendment violates national standard 7, so NMFS assumes, for the purpose of responding to this comment, that the commenter is alleging that the EFH consultation process is duplicative of other federally required consultation processes. NMFS has determined that the EFH amendment is consistent with the Magnuson-Stevens Act, including national standard 7. Inter-agency consultations on Federal activities that may adversely affect EFH are required by the Magnuson-Stevens Act; they are not optional. Section 305(b)(2) of the Magnuson-Stevens Act states: "Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act."

Existing Federal statutes such as the Fish and Wildlife Coordination Act, the Endangered Species Act, and NEPA already require consultation or coordination between NMFS and other Federal agencies. As explained above, EFH consultations will be conducted to the greatest extent possible under existing review processes and within existing process time frames. NMFS is committed to a consultation process that will be effective, efficient, and non-duplicative. The EFH regulations at 50 CFR Part 600.920 suggest that NMFS be consulted as early as possible in project planning so that appropriate conservation measures can minimize the potential for adverse effects to EFH. The amendment contains conservation recommendations that are appropriate for many Federal actions, and they can also serve as guidelines that should be considered during project planning.

Comment 7: A commenter stated that the amendment avoided discussion of fishing impacts to EFH.

Response: The Councils approached the evaluation of impacts from fishing gears methodically. It identified the major gears used in the region based on landings; described the major gears; identified that otter trawls and scallop dredges were the most likely to have adverse impacts on habitat; appended a summary of the literature on fishing gear impacts to habitat; and described other impacts from fishing activities such as the impacts of fishing-related marine debris and lost gear, impacts of aquaculture, and impacts of at-sea fish processing. The Councils also evaluated fisheries management measures currently in place and assessed their impact on EFH. Finally, the Councils identified a number of areas that required further research in order to provide a better basis for determining fishing gear impacts, such as the spatial distribution and extent of fishing effort for gear types; the effects of specific gear types along a gradient of effort on specific habitat types; and recovery rates of various habitat types following fishing activity. Although the commenter may disagree with the manner in which the information was presented, NMFS concludes that the Councils satisfied the requirements of the Magnuson-Stevens Act and the EFH regulations (50 CFR 600.815(a)(3)) regarding the assessment of fishing gear impacts.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 11, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15535 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 117
Friday, June 18, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA02

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) published a second notice of proposed rulemaking on risk-based capital in the **Federal Register**, 64 FR 18083, April 13, 1999. The proposed rule described the risk-based capital stress test used to determine the risk-based capital requirement for the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae). OFHEO is making available supplemental information regarding this proposed rule. This supplemental information is available electronically through the OFHEO website or by requesting a copy from OFHEO. This announcement addresses the availability of this information.

ADDRESSES: Requests regarding information may be addressed to Kathleen K. McLees, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Information is also available on the OFHEO website at: http://www.ofheo.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen K. McLees, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3836 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

Dated: June 8, 1999.

Mark A. Kinsey,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 99–15564 Filed 6–17–99; 8:45 am]

BILLING CODE 4220–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–44]

Proposed Establishment of Class E Airspace; Montague, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM), reopening of comment period.

SUMMARY: On January 9, 1996, the FAA proposed to amend Class E Airspace at Siskiyou County Airport, Montague, CA. This action intended to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations. The proposed airspace amendment was published incorrectly. This Supplementary Notice of Proposed Rulemaking (SNPRM) corrects those errors and provides an additional comment period.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch AWP–520, Docket No. 95–AWP–4, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of Assistance Chief Counsel. Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the address listed above.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520.10, Air Traffic Division, Federal Aviation Administration, 1500 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWP–44." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposed contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of SNPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Siskiyou County Airport, Montague, CA. The original Notice of Proposed Rulemaking (NPRM) proposed an amendment to the aforementioned airspace. The existing Class E airspace does not require an amendment. The establishment of additional Class E airspace 1,200 feet or more above ground level (AGL) is necessary to provide controlled airspace or IFR operations, specifically the departure procedure from runway 35 for Siskiyou County Airport. The original proposal is being modified to accurately describe the required Class E airspace. The FAA published an NPRM on this proposal on January 8, 1996, (61 FR 550). Since issuance of the NPRM, the FAA has discovered errors in the proposal. Changes to the proposal to correct these errors are significant enough to warrant issuance of a SNPRM and reopening of the comment period.

Comments received in response to the original NPRM and this SNPRM would be addressed in the final disposition of the rule. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9F dated September 4, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 4, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP CA E5 Montague, CA [New]

Montague, Siskiyou County, Airport, CA
(Lat. 41°46′54″ N, long. 122°28′05″ W)
Montague NDB
(Lat. 41°43′38″ N, long. 122°28′55″ W)
Klamath Fall VORTAC
(Lat. 42°09′12″ N, long. 121°43′39″ W)

That airspace extending upward from 700 feet above the surface within a 6.1 mile radius of Siskiyou County Airport. That airspace extending upward from 1,200 feet above the surface within 8.3 miles east and 5.2 miles west of the 356° and 176° bearings from the Montague NDB, extending from 7 miles north to 1 mile south of the NDB and within 8.3 miles east and 5.2 miles west of the 180° bearing from the Montague NDB, extending from the NDB to 16.5 miles south of the NDB, and from lat. 41°52′23″ N, long. 122°24′32″ W, thence clockwise along the 34.8 mile radius of Klamath Falls VORTAC to lat. 42°13′00″ N, long. 122°30′00″ W, to lat. 42°11′00″ N, long. 122°16′30″ W, to lat. 41°51′20″ N, long. 122°22′00″ W and thence counterclockwise along the 6.1 mile radius of the Siskiyou County Airport to the point of beginning.

* * * * *

Issued in Los Angeles, California on June 4, 1999.

John Clancy,

Manager, Air Traffic Division, Western Pacific Region.

[FR Doc. 99–15385 Filed 6–17–99; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 30

Access to Automated Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules; withdrawal.

SUMMARY: On March 24, 1999, the Commission issued proposed rules to permit the use in the United States of automated trading systems providing access to foreign electronic boards of trade. The Commission has decided to withdraw these proposed rules.

FOR FURTHER INFORMATION CONTACT: David M. Battan, Chief Counsel, Lawrence B. Patent, Associate Chief Counsel, or Charles T. O'Brien, Attorney Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418–5450.

SUPPLEMENTARY INFORMATION: The Commission had first sought public comment on these matters in a concept release published July 24, 1998, followed by the proposed rules published in March. After an extension was granted at the request of a number of industry participants, the comment period on the proposed rules closed on April 30, 1999. During the comment period, the Commission held a Public Roundtable as well as a meeting of its Global Markets Advisory Committee ("GMAC") to discuss these matter.

On June 2, 1999, the Commission issued an order withdrawing the proposed rules and instructing the staff "to begin immediately processing no-action requests from foreign boards of trade seeking to place terminals in the United States, and to issue responses where appropriate, pursuant to general guidelines included in the Eurex (DTB) no-action process,[1] or other guidelines issued by the Commission, to be reviewed and applied as appropriate on a case-by-case basis." See Order of the Commission (June 2, 1999). In the same order, the Commission determined to "commit to simultaneously initiate processes to address the comparative regulatory levels between U.S. and foreign electronic systems so as not to

[1] In February 1996, the Commission's Division of Trading and Markets ("Division") issued a no-action letter to the Deutsche Terminborse ("DTB" or "Eurex"), an all-electronic futures and option exchange headquartered in Frankfurt, Germany, in which the Division agreed, subject to certain conditions, not to recommend enforcement action to the Commission if Eurex placed computer terminals in the U.S. offices of its members.

provide one with a competitive advantage." *Id.*

As with the rapid developments in technology overtaking other industries, the growth of electronic exchanges and the placement of cross-border futures and option trading systems in the United States raise some of the most basic and fundamental issues facing the Commission and the futures industry. Among the critically important questions that need to be addressed are what role intermediation will play when technological developments make access to global markets far easier than before; what the future relationships will be between and among customers, futures commission merchants, exchanges, technology providers, and regulators; and how to provide a level-playing field and foster fair competition in the context of electronic trading systems between domestic and foreign market participants and between exchanges and FCMs while maintaining the protection of customers and the safety and soundness of larger and faster global markets.

The Commission's July 1998 concept release was by necessity of a general nature, and the resulting comments were not able to address with specificity all of these difficult issues. Only with the release of the proposed rules have all of the interested parties focused fully on all of the specific questions at hand. Moreover, even in just the past few months, the technology and the business relationships among the various constituents in the futures industry have changed substantially, and continue to do so. In any event, the result of all this, as evidenced by the comments received on the proposed rules, and by the wide-ranging positions outlined at the recent Roundtable and GMAC meetings on these issues, is that further consensus among the various affected parties must be sought before rules or guidelines may be finalized in this area. In this environment, the Commission determined to withdraw its proposed rules and defer adoption of final rules or guidelines pending further consideration of these issues by the Commission.

Issued in Washington, D.C. on June 11, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

U.S. Commodity Futures Trading Commission

Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581

June 2, 1999.

Order of the Commission

It is hereby ordered that the Commodity Futures Trading Commission shall, effective immediately:

Lift the moratorium and instruct the staff to begin immediately processing no-action requests from foreign boards of trade seeking to place trading terminals in the United States, and to issue responses where appropriate, pursuant to the general guidelines included in the Eurex (DTB) no-action process, or other guidelines established by the Commission, to be reviewed and applied as appropriate on a case-by-case basis;

Commit to simultaneously initiate processes to address the comparative regulatory levels between U.S. and foreign electronic trading systems so as not to provide one with a competitive advantage; and

Withdraw the proposed rules regarding access to automated boards of trade and proceed expeditiously toward adoption of rules and/or guidelines.

Dated: June 2, 1999.

Commissioner Barbara P. Holum.

Dated: June 2, 1999.

Commissioner David D. Spears.

Dated: June 2, 1999.

Commissioner James E. Newsome.

[FR Doc. 99–15441 Filed 6–17–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 96N–0417]

Dietary Supplements; Center for Food Safety and Applied Nutrition; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit comments that will assist the Center for Food Safety and Applied Nutrition (CFSAN) to understand the economic impact that any proposal to establish current good manufacturing practices (CGMP's) regulations for dietary supplements may have on small businesses in the dietary supplement industry. This meeting is intended to give interested persons, including small businesses, an opportunity to comment on the economic impact that such a proposal may have on small businesses.

DATES: The public meeting will be held on Monday, July 12, 1999, from 7 p.m. to 9 p.m. You must register by July 7, 1999. You may submit written comments until August 12, 1999.

ADDRESSES: The public meeting will be held at the Flamingo Hotel, The Carson City II Room, 3555 Las Vegas Blvd., Las Vegas, NV. Submit written comments to the Dockets Management Branch (HFA–305), Docket No. 96N–0417, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy.

FOR FURTHER INFORMATION CONTACT: Peter J. Vardon, Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 330 C St. SW., Washington, DC 20204, 202–205–5329, FAX 202–260–0794, or e-mail pvardon@bangate.fda.gov.

If you would like to attend the public meeting, you should register by July 7, 1999, by faxing or e-mailing your name, title, firm name, address, and telephone number to Peter Vardon (address above).

There is no registration fee for this public meeting, but early registration is suggested because space may be limited.

SUPPLEMENTARY INFORMATION: This public meeting will provide an opportunity for an open discussion of the manufacturing practices of small businesses in the dietary supplement industry. The meeting is intended to be one of a series intended to give all interested parties an opportunity to comment on the economic effects of a possible proposed regulation on CGMP's in the dietary supplement industry. This public meeting is also intended to fulfill part of the outreach requirement of Small Business Regulatory Enforcement Fairness Act of 1996. The agenda will include topics regarding the small business entities' manufacturing practices and standard operating procedures for: (1) Personnel, (2) buildings and facilities, (3) equipment, (4) lab operations, (5) production and process controls, and (6) warehousing, distribution and post-distribution of raw, intermediate and final products. The meeting will also include a discussion about the verification of the identity, purity, and composition of dietary supplements and dietary supplement ingredients.

FDA encourages individuals or firms with relevant data or information to present such information at the meeting or in written comments to the record.

You may request a transcript of the public meeting from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting. The transcript of the public meeting and submitted comments will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 11, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15475 Filed 6–17–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL183–1b; FRL–6360–2]

Approval and Promulgation of State Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a site specific revision to the Illinois State Implementation Plan (SIP) for volatile organic materials (VOM). This revision is an exemption from the otherwise applicable SIP requirements for W.R. Grace, a manufacturer of container sealants, lubricant fluids, and concrete additives at 6050 West 51st Street, Chicago, Cook County, Illinois. In the final rules section of this **Federal Register**, the USEPA is approving the State's request as a direct final rule without prior proposal because USEPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. USEPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 19, 1999.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6069.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: June 7, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–15532 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7287]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood

Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Bay County (Unincorporated Areas).	Gulf of Mexico	Approximately 500 feet southwest of the intersection of Paridiso Place and Miracle Strip Parkway.	*9	*16
			Approximately 1,100 feet southwest of Salt Creek crossing of U.S. Route 98.	None	*8
		East Bay	At Farndale Bayou shoreline crossing	*5	*6
			Approximately 500 feet west of the Hamilton Road extended.	*6	*11
		St. Andrew Bay	Approximately 500 feet east of the intersection of Delwood Beach Road and Delwood Drive.	*4	*12
			Approximately 500 feet west of the intersection of Sabre Drive and Delta Avenue.	None	*8
		North Bay	Approximately 500 feet west of the intersection of 27th Street and Mound Avenue.	*4	*11
			Approximately 750 feet north of the intersection of North Shore Road and Goose Bayou Road.	None	*7
		Callaway Creek	At State Route 22	*4	*7
			Approximately 0.8 mile upstream of State Route 22.	*6	*7
		Callaway Bayou	Approximately 200 feet south of intersection of Colonial Road and Coleridge Drive.	*4	*7
			Approximately 1,600 feet south of intersection of Colonial Road and Coleridge Drive.	*6	*10
		Watson Bayou Tributary	Approximately 200 feet southwest of intersection of Cherry Street and Everitt Avenue.	None	*8
		St. Andrew Sound	Approximately 4,000 feet south of intersection of Interstate 98 and Unnamed Road.	*3	*11
			Approximately 2,000 feet south of intersection of Interstate 98 and Unnamed Road.	*8	*13
Maps available for inspection at the Bay County Builders Services Division, 640 Mulberry Avenue, Panama City, Florida.					
Send comments to Mr. Jonathon A. Mantay, Bay County Manager, P.O. Box 1818, Panama City, Florida 32402.					
Florida	Green Cove Springs (City), Clay County.	Governors Creek	At confluence with St. Johns River	*6	*5
			Immediately downstream of Idlewild Avenue.	*9	*8
		Buckeys Creek	Approximately 1,200 feet upstream of confluence with Governors Creek.	None	*5
			Approximately 1.2 miles upstream of confluence with Governors Creek.	None	*19
		St. Johns River	For its entire reach within the community	*6	*5

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Planning and Zoning Office, 229 Walnut Street, City Hall, Green Cove Springs, Florida.					
Send comments to Mr. Earl Meserve, City Manager, 229 Walnut Street, Green Cove Springs, Florida 32043.					
Illinois	Arlington Heights (Village), Cook County.	Salt Creek, Arlington Heights Branch.	Upstream side of Euclid Avenue	None	*707
			Downstream face of Chicago and Northwestern Railway.	*713	*710
Maps available for inspection at the Village of Arlington Heights Engineering Department, 33 South Arlington Heights Road, Arlington Heights, Illinois.					
Send comments to The Honorable Arlene J. Mulder, Mayor of the Village of Schaumburg, 33 South Arlington Heights Road, Arlington Heights, Illinois 60005–1499.					
Illinois	Cook County (Unincorporated Areas).	Salt Creek Tributary D	Approximately 750 feet upstream of Hammond Drive.	None	*732
			Approximately 800 feet upstream of Roselle Road.	None	*752
		Salt Creek, Arlington Heights Branch.	At downstream face of Chicago and Northwestern Railway.	None	*710
			At downstream face of Forest Preserve Access Road.	None	*778
		Salt Creek West Branch	Approximately 250 feet downstream of Interstate Route 290.	None	*693
			Approximately 1,700 feet downstream of Basswood Road.	*739	*736
		Salt Creek West Branch Tributary A.	At confluence with Salt Creek West Branch.	*726	*725
			Approximately 1,375 feet upstream of confluence with Salt Creek West Branch.	None	*730
		Salt Creek (Upper Reach)	Approximately 400 feet upstream Evanston-Elgin Road.	None	*693
			Approximately 75 feet downstream of Meacham Road.	*716	*715
		Salt Creek Arlington Heights Branch, Anderson Drive Tributary.	Approximately 2,750 feet downstream of Evergreen Drive.	None	*717
			Approximately 500 feet downstream of Evergreen Drive.	None	*717
		Buffalo Creek Tributary A	Just upstream of Hicks Road	*741	*740
			Downstream face of Dundee Road	*742	*743
		Unnamed Tributary to Salt Creek Tributary D.	At confluence with Salt Creek Tributary D	None	*735
			Approximately 3,400 feet upstream of the confluence with Salt Creek Tributary D.	None	*750
		North Creek	Upstream face of Cottage Grove Avenue	*607	*608
			Approximately 1,000 feet upstream of Oakwood Drive.	*612	*611
		Lansing Ditch, Lynwood Tributary.	Approximately 500 feet upstream of confluence of North Creek.	None	*610
			At Burnham Avenue		
		Tributary	At Burnham Avenue	None	*616
		Lansing Ditch	Southwest corner of intersection of 204th Street and Burnham Avenue.	None	*616
			Approximately 0.96 mile upstream of 223rd Street.	None	*653
		Lansing Ditch, Tributary A	Confluence with Lansing Ditch	*628	*631
			Just downstream of Katz Corner Road	None	*632
		Lansing Ditch, East Tributary.	Approximately 500 feet upstream of confluence with Lansing Ditch.	*632	*636
			Just downstream of Steger Road	None	*654
		Lansing Ditch, West Tributary.	At confluence with Lansing Ditch	*628	*631
			Approximately 1,860 feet upstream of Torrence Avenue.	None	*632
		Lansing Ditch, Torrence Tributary.	At confluence with Lansing Ditch, just downstream of CONRAIL railroad tracks.	*628	*627

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1.26 miles upstream of confluence with Lansing Ditch.	None	*630
		Skokie River	Just upstream of Willow Road	None	*626
			Just downstream of Lake-Cook Road	None	*633
		Skokie River, Botanical Garden Division.	At confluence with Skokie River	None	*628
			At divergence from Skokie River	None	*633
		Skokie River, Western Ditch.	At confluence with Skokie River	None	*626
			Approximately 0.35 mile upstream of confluence with Skokie River.	None	*626

Maps available for inspection at the Cook County Building and Zoning Department, 69 West Washington, Suite 2830, Chicago, Illinois.
Send comments to Mr. Donald Wlodarski, Cook County Commissioner, 69 West Washington, Suite 2840, Chicago, Illinois 60602.

Illinois	Elk Grove (Village), Cook County.	Salt Creek, West Branch Tributary 6.	At confluence with Salt Creek West Branch.	*709	*708
			Approximately 75 feet downstream of Plum Grove Road.	None	*724
		Salt Creek West Branch Tributary 7.	At confluence with Salt Creek West Branch Tributary 6.	*713	*715
			Approximately 1,450 feet upstream of Baltimore Drive.	*728	*726
		Salt Creek West Branch	Just upstream of Meacham Road	None	*706
			Approximately 850 feet downstream of confluence of Salt Creek West Branch Tributary 3.	*713	*714

Maps available for inspection at the Village of Elk Grove Engineering and Community Development, Charles Zeitek Municipal Center, 901 Wellington Avenue, Elk Grove, Illinois.
Send comments to Mr. Craig Johnson, Village of Elk Grove President, 901 Wellington Avenue, Elk Grove, Illinois 60007.

Illinois	Flossmoor (Village), Cook County.	Butterfield Creek Tributary No. 3.	Just upstream of Illinois Central Railway	None	*669
			Approximately 105 feet upstream of Kedzie Avenue.	None	*687
		Butterfield Creek Tributary No. 4.	Just upstream of Illinois Central Railway	None	*665
			Approximately 130 feet upstream of Governors Highway.	None	*698

Maps available for inspection at the Flossmoor Public Works Department, Service Center, 1700 Central Park Avenue, Flossmoor, Illinois.
Send comments to The Honorable Roger G. Molski, Mayor of the Village of Flossmoor, 2800 Flossmoor Road, Flossmoor, Illinois 60422.

Illinois	Glencoe (Village), Cook County.	Skokie River	Approximately 250 feet upstream of Tower Road.	*625	*628
			Approximately 450 feet upstream of Dundee Road (State Route 68).	*626	*628
		Skokie River Botanical Gardens Diversion.	Approximately 600 feet upstream of Botanical Gardens Dam.	None	*630
			Approximately 0.38 mile upstream of Botanical Gardens Dam.	None	*630

Maps available for inspection at the Village of Glencoe Engineering Department, 675 Village Court, Glencoe, Illinois.
Send comments to Mr. James O. Webb, President of the Village of Glencoe, 675 Village Court, Glencoe, Illinois 60022.

Illinois	Hoffman Estates (Village), Cook County.	Salt Creek (Upper Reach)	Approximately 400 feet upstream of Poteet Avenue.	*817	*815
		Salt Creek, West Branch Tributary A.	Approximately 700 feet downstream of Basswood Road.	*741	*740
			Approximately 125 feet upstream of Apple Street.	None	*759

Maps available for inspection at the Village of Hoffman Estates Community Development Department, 1400 Hassell Road, Hoffman Estates, Illinois.
Send comments to Mr. Michael O'Malley, President of the Village of Hoffman Estates, 1900 Hassell Road, Hoffman Estates, Illinois 60195.

Illinois	Inverness (Village), Cook County.	Salt Creek Tributary C	At upstream side of Roselle Road	None	*766
			Approximately 200 feet upstream of Roselle Road.	None	*767

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Salt Creek Tributary B	Approximately 75 feet upstream of the confluence with Salt Creek.	*788	*787
			Approximately 450 feet upstream of Palatine Road.	None	*819
		Salt Creek Tributary A	Confluence with Salt Creek	*762	*761
			Just downstream of Ela Road	None	*838
		Salt Creek (Upper Reach)	Downstream side of Harrison Avenue At Roberts Road.	*820	*815

Maps available for inspection at the Inverness Village Hall, 1400 Baldwin Road, Inverness, Illinois.
Send comments to Mr. Jack Tatooles, President of the Village of Inverness, 1400 Baldwin Road, Inverness, Illinois 60067.

Illinois	Lansing (Village), Cook County.	Lansing Ditch	Approximately 100 feet downstream of 189th Street.	*613	*612
			Approximately 0.73 mile upstream of Burham Avenue.	*616	*615
		North Creek	Approximately 925 feet upstream of Torrence Avenue.	None	*610
			Approximately 350 feet downstream of confluence of Lansing Ditch.	*612	*611

Maps available for inspection at the Village of Lansing Building Department, 18200 Chicago Avenue, Lansing, Illinois.
Send comments to The Honorable Robert West, Mayor of the Village of Lansing, 18200 Chicago Avenue, Lansing, Illinois 60436.

Illinois	Lynwood (Village), Cook County.	Lansing Ditch	Approximately 0.57 mile downstream of 202nd Street.	*616	*615
			Approximately 350 feet upstream of Glenwood Dyer Road.	*627	*626
		Lansing Ditch, Lynwood Tributary.	Downstream side of Glenwood Lansing Road.	*614	*611
			Approximately 600 feet downstream of subdivision entrance.	*614	*615

Maps available for inspection at the Village Hall, 21460 Lincoln Highway, Lynwood, Illinois.
Send comments to The Honorable Russell R. Mettby, Mayor of the Village of Lynwood, 21460 Lincoln Highway, Lynwood, Illinois 60411.

Illinois	McLean County (Unincorporated Areas).	Sugar Creek	Approximately 230 feet downstream of Stringtown Road.	None	*697
			At downstream side of Airport Road	*808	*810
		East Tributary Skunk Creek.	At confluence with Skunk Creek	*757	*756
			At Norfolk and Western Railway	None	*757
		Skunk Creek	At confluence with Sugar Creek	*745	*744
			Appoximately 625 feet downstream of Interstate Routes 55 and 74.	None	*780
		North Branch Sugar Creek Tributary.	Approximately 625 feet upstream of confluence with North Branch Sugar Creek.	None	*781
			At downstream side of Koerner Street	None	*812
		North Branch Sugar Creek	Approximately 125 feet upstream of Fort Jesse Road.	None	*790
			Approximately 225 feet upstream of Raab Road.	None	*814
		Brookridge Branch	At confluence with Little Kickapoo Creek	*821	*819
			Approximately 2,020 feet upstream of Hershey Road.	None	*827
		Little Kickapoo Creek	Approximately 250 feet downstream of County Road 800.	None	*739
			Just downstream of Lincoln Street	*822	*820
		Butcher's Lane Tributary	Approximately 240 feet downstream of Butchers Lane.	None	*761
			At upstream side of Butchers Lane	None	*765
		Goose Creek	Approximately 325 feet upstream of West Oakland County Road.	*743	*740
			Just upstream of Morris Avenue	*779	*771
		Short Point Creek Tributary A.	1,120 feet upstream from U.S. Route 51	None	*739
			1,960 feet upstream from U.S. Route 51	None	*744
		West Branch Sugar Creek	Upstream of Raab Road	None	*817

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the McLean County Law and Justice Center, 104 West Front Street, Bloomington, Illinois. Send comments to Mr. Gary Riss, McLean County Chairperson, 104 West Front Street, Box 2400, Room 701, Bloomington, Illinois 61702–2400.					
Illinois	Northbrook (Village), Cook County.	Skokie River	Approximately 0.4 mile upstream of Dundee Road.	None	*628
			Approximately 500 feet downstream of Lake-Cook Road.	None	*632
		Botanical Garden Diversion.	Approximately 0.41 mile upstream of confluence with Skokie River.	None	*630
			Approximately 0.44 mile upstream of confluence with Skokie River.	None	*630
Maps available for inspection at the Northbrook Village Hall, Village Engineering Department, 1225 Cedar Lane, Northbrook, Illinois. Send comments to Mr. Mark W. Damisch, President of the Village of Northbrook, 1225 Cedar Lane, Northbrook, Illinois 60062.					
Illinois	Northfield (Village), Cook County.	Skokie River, West Ditch	Just upstream of Willow Road	*625	*626
			Approximately 0.5 mile upstream of confluence with Skokie River.	*625	*626
Maps available for inspection at the Village of Northfield Community Development Department, 361 Happ Road, Northfield, Illinois. Send comments to Mr. Mark Morien, Village of Northfield Administrator, 361 Happ Avenue, Northfield, Illinois 60093.					
Illinois	Olympia Fields (Village), Cook County.	Butterfield Creek Tributary No. 4.	Approximately 50 feet downstream from intersection of Kedzie Avenue with Vollmer Road.	None	*683
			Approximately 100 feet downstream from Governors Highway.	None	*698
Maps available for inspection at the Olympia Fields Village Hall, 20701 Governors Highway, Olympia Fields, Illinois. Send comments to Mr. Lindzey Jones, President of the Village of Olympia Fields, 20701 Governors Highway, Olympia Fields, Illinois 60461.					
Illinois	Rolling Meadows (City), Cook County.	Salt Creek Tributary	At confluence with Salt Creek (Upper Reach).	*727	723
		Salt Creek, Arlington Heights Branch.	At confluence with Salt Creek	*701	*700
			Downstream side of Euclid Avenue	*708	706
		Salt Creek (Upper Reach)	At Evanston-Elgin Road	*691	*693
			Aproximately 75 feet upstream of Euclid Avenue.	*728	*693
Maps available for inspection at the City of Rolling Meadows Building and Zoning Department, 3600 Kirchoff Road, Rolling Meadows, Illinois. Send comments to The Honorable Thomas F. Menzel, Mayor of the City of Rolling Meadows, 3600 Kirchoff Road, Rolling Meadows, Illinois 60008.					
Illinois	Sauk Village (Village), Cook County.	Lansing Ditch	Approximately 750 feet downstream of Sauk Trail Road.	*630	*631
			Approximately 0.96 mile upstream of 223rd Street.	None	*653
		Lansing Ditch East Tributary.	At confluence with Lansing Ditch	*632	*635
			Approximately 0.6 mile upstream of Katz Corner Road.	None	*646
		Lansing Ditch West Tributary.	Approximately 1,250 feet upstream of the confluence with Lansing Ditch.	*628	*631
			Approximately 50 feet upstream of Torrence Avneue.	*628	*631
		Lansing Ditch Torrence Tributary.	Approximately 0.78 mile upstream of confluence with Lansing Ditch.	None	*629
			Approximately 1.28 miles upstream of confluence with Lansing Ditch.	None	*630
Maps available for inspection at the Village of Sauk Village Building Department, 21701 Torrence Avenue, Sauk Village, Illinois. Send comments to The Honorable Roger Peckham, Mayor of the Village of Sauk Village, 21701 Torrence Avenue, Sauk Village, Illinois 60411.					
Illinois	Schaumburg (Village), Cook County.	Salt Creek, West Branch Tributary 5.	At confluence with Salt Creek West Branch Tributary 3.	None	*729

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 250 feet upstream of Summit Drive.	None	*746
		Salt Creek, West Branch Tributary 4.	Approximately 210 feet upstream of confluence with Salt Creek West Branch Tributary 3.	*738	*737
			Approximately 200 feet upstream of Roselle Road.	None	*788
		Salt Creek, West Branch Tributary 3.	Approximately 280 feet upstream of confluence with Salt Creek West Branch.	*716	*715
			Approximately 350 feet upstream of Roselle Road.	None	*777
		Salt Creek, West Branch Tributary 6.	At upstream side of Plum Grove Road	None	*724
			Approximately 100 feet upstream of Summit Drive.	None	*744
		Salt Creek, West Branch Tributary 7.	Approximately 200 feet upstream of Baltimore Drive.	*723	*722
			Approximately 125 feet downstream of Plum Grove Road.	None	*738
		Salt Creek West Branch	Approximately 150 feet downstream of Interstate Route 290.	None	*693
			Approximately 100 feet upstream of Roselle Road.	None	*748
		Salt Creek West Branch Tributary A.	Approximately 1,375 feet upstream of confluence with Salt Creek West Branch.	None	*730
			Approximately 650 feet downstream of Basswood Road.	None	*740
		Salt Creek Tributary D	At confluence with Salt Creek (Upper Reach).	(722	*718
			Approximately 1,000 feet upstream of Hammond Drive.	*735	*732
		Salt Creek (Upper Reach)	Approximately 60 feet downstream Meacham Road.	*715	*716
			Approximately 75 feet upstream Hartung Road.	*726	*721
	Salt Creek Tributary C.	Approximately 1,000 feet northwest of the intersection of Algonquin Road and College Drive.	None	*750	
Maps available for inspection at the Village of Schaumburg Engineering Department, 101 Schaumburg Court, Schaumburg, Illinois. Send comments to Mr. Al Larson, President of the Village of Schaumburg, 101 Schaumburg Court, Schaumburg, Illinois 60193–1899.					
Illinois	Wheeling (Village), Cook County.	McDonald Creek	Downstream side of Wheeling Road	*651	*650
			Approximately 1,300 feet downstream of Wheeling Road.	*650	*649
		Wheeling Drainage Ditch	At confluence with Des Plaines River	*639	*641
			Approximately 1,000 feet downstream of Hintz Road.	*640	*641
		Des Plaines River	Approximately 450 feet downstream of confluence of Wheeling Drainage Ditch.	None	*641
			Approximately 50 feet downstream of County Line Road.	None	*644
Maps available for inspection at the Village of Wheeling Engineering Office, 255 West Dundee Road, Wheeling, Illinois. Send comments to Mr. Greg Klatecki, President of the Village of Wheeling, 255 West Dundee Road, Wheeling, Illinois 60090.					
Maine	Dallas Plantation (Town), Franklin County.	Haley Pond	For the entire shoreline within the community.	None	*1,528
Maps available for inspection at the Dallas Plantation Town Office, Dallas Hill Road, Dallas Plantation, Maine. Send comments to Mr. Dean Morrison, Dallas Plantation First Assessor, P.O. Box 460, Rangeley, Maine 04970.					
Maine	Starks (Town), Somerset County.	Sandy River	Approximately 2,500 feet downstream of Sandy River Dam Road.	*193	*194
			At upstream corporate limits	None	*235
		Lemon Stream	Approximately 1.1 miles downstream of State Route 43.	None	*247

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 100 feet upstream of State Route 43.	None	*270
Maps available for inspection at the Starks Town Office, Lockhill Road, Starks, Maine.					
Send comments to Ms. Barbara Heultner, Town of Starks First Selectman, R.R. #1, Box 950, Starks, Maine 04911.					
Minnesota	New Ulm (City), Brown County.	Minnesota River	Approximately 1,050 feet upstream of 20th S. Street.	*809	*808
			At U.S. Highway #14	*810	*809
		Cottonwood River	Approximately 2,200 feet upstream of Dam.	None	*831
			Approximately 500 feet downstream of County Highway 13.	None	*832
Maps available for inspection at the New Ulm City Engineer's Office, 100 North Broadway, New Ulm Minnesota.					
Send comments to Mr. Richard D. Salvati, New Ulm City Manager, 100 North Broadway, New Ulm, Minnesota 56073.					
New Hampshire	Brentwood (Town), Rockingham County.	Exeter River	At downstream corporate limits	None	*50
			At upstream corporate limits	*135	*134
		Dudley Brook	At downstream corporate limits	None	*80
			At North Road	None	*108
Maps available for inspection at the Selectmen's Office, 1 Dalton Road, Brentwood Town Hall, Brentwood, New Hampshire.					
Send comments to Mr. Irving Cross, Chairman of the Board of Selectmen, 1 Dalton Road, Brentwood Town Hall, Brentwood, New Hampshire 03833.					
North Carolina	Leggett (Town), Edgecomb County.	Swift Creek	Approximately 1.4 miles downstream of State Route 97.	None	*53
			Approximately 2.1 miles upstream of State Route 97.	None	*61
Maps available for inspection at the Leggett Town Hall, Intersection of Highway 33 and 97, Edgecomb, North Carolina.					
Send comments to The Honorable Jim Wood, Mayor of the Town of Leggett, Route 2, Box 211, Tarboro, North Carolina 27886.					
Puerto Rico	Commonwealth	Quebrada Berrenchin	Area within floodwall, approximately 366 meters west of intersection of new Puerto Rico Route 2 and Puerto Rico Route 335.	None	*30.5
Maps available for inspection at the Puerto Rico Planning Board, 12th floor, North Building, Minillas Governmental Center, De Diego Avenue, Parada 22, Santurce, Puerto Rico.					
Send comments to Mr. Jose R. Caballero Mercado, President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
South Carolina	Hollywood (Town), Charleston County.	Mellichamp Branch	Approximately 600 feet from the upstream side of a breached dam.	None	*8
			Approximately 0.63 mile upstream of Towles Road bridge.	None	*811
Maps available for inspection at the Hollywood Town Hall, 6316 Highway 162, Hollywood, South Carolina.					
Send comments to The Honorable Herbert Gadson, Mayor of the Town of Hollywood, P.O. Box 519, Hollywood, South Carolina 29449.					
South Carolina	Ravenel (Town), Charleston County.	Mellichamp Branch	At downstream side of New Road	None	*27
			Approximately 1.3 miles downstream of State Route 165.	None	*11
Maps available for inspection at the Ravenel Town Hall, 5962 Highway 165, Suite 100, Ravenel, South Carolina.					
Send comments to The Honorable Opal Baldwin, Mayor of the Town of Ravenel, 5962 Highway 165, Suite 100, P.O. Box 126, Ravenel, South Carolina 29470.					
Tennessee	Fayetteville (City), Lincoln County.	Wells Creek	At the confluence of the Elk River	None	*673
			Approximately 2,000 feet upstream of confluence with the Elk River.	None	*673
		Elk River	Approximately 350 feet downstream of confluence of Wells Creek.	None	*673
			Approximately 4.73 miles upstream of confluence of Stuart Creek.	*680	*673

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Fayetteville City Hall, 110 South Elk Avenue, Fayetteville, Tennessee.					
Send comments to The Honorable Mark Clark, Mayor of the City of Fayetteville, P.O. Box 13, 110 South Elk Avenue, Fayetteville, Tennessee 37334.					
Tennessee	Lincoln County (Unincorporated Areas).	Norris Creek	Approximately 1,450 feet downstream of Old Marrs Road.	None	*680
			Approximately 40 feet upstream of Old Marrs Road.	None	*682
		Cotton Mill Branch	Approximately 600 feet downstream of Brookside Drive.	None	*681
			Approximately 0.71 mile upstream of Cedarwood Street.	None	*711
		Boonshill Road Branch	At confluence with the Elk River	None	*665
			At Old Boonshill Road	None	*674
		Wells Creek	At confluence with Elk River	None	*673
			Approximately 898 feet upstream of Private Road.	None	*693
		Elk River	Approximately 1.1 miles downstream of the confluence with Boonshill Road Branch.	None	*663
			Approximately 5.0 miles upstream of the confluence of Stuart Creek.	None	*686
Maps available for inspection at the Lincoln County Courthouse, County Executive's Office, 112 Main Avenue, South, Fayetteville, Tennessee.					
Send comments to Mr. Stephen Graham, Chairman of the Lincoln County Board of Commissioners, 112 Main Avenue, South, Room 101, Fayetteville, Tennessee 37334.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 9, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–15560 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–04–P

Notices

Federal Register
Vol. 64, No. 117
Friday, June 18, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Cannon Gulch Project, Boise National Forest, ID

AGENCY: Forest Service, USDA.
ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Mountain Home Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for a timber salvage project in the Cannon Gulch project area, located immediately southwest of Pine, Idaho. Access is via Forest Highway 61. The project area encompasses approximately 1,100 acres of National Forest System land and is located 60 road miles northeast of Mountain Home and about 100 road miles east of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

Proposed Action

The proposed action would commercial thin and salvage harvest approximately 500 acres. Prescribed fire would be used on approximately 240 acres (40 acres of site preparation for tree planting, an additional 100 acres to take advantage of natural fuel breaks, and 100 acres to rejuvenate aspen). Logs would be yarded with a helicopter using one helicopter landing south of the Pine schoolhouse. Conifer seedlings would be planted on 40 acres. The activities would occur from 2000 to 2001.

Preliminary Issues

One significant issue has been identified with the proposed action which is that timber harvest would develop a portion of the Rainbow Inventoried Roadless Area (IRA), changing the wilderness attributes on that portion. The developed portion would not be given future consideration for wilderness designation under current Forest Service guidelines.

Possible Alternatives to the Proposed Action

One alternative to the proposed action identified is the no action alternative. Other alternatives may be developed as issues are raised and information is received.

Decisions To Be Made

The Boise National Forest Supervisor will decide whether to conduct timber management and harvest activities now or to defer them until a later time. If he chooses to conduct timber management and harvest activities now, he will decide which acres to treat and which logging systems to use; what, if any, acres to treat with prescribed fire; and what mitigation and/or monitoring measures to implement to meet Forest standards and minimize resource conflicts.

Schedule

Draft Environmental Impact Statement (DEIS), August 1999. Final, November 1999.

Public Involvement

Scoping was initiated in January 1998. A scoping letter was sent to over 60 individuals, groups, organizations, and agencies. Comments received from these public involvement efforts will be incorporated into the analysis process.

Comments

Written comments concerning the proposed project and analysis are encouraged and should be postmarked within 30 days following publication of this announcement in the **Federal Register**. Mail comments to Jane Beaulieu, Mountain Home Ranger District, 2180 American Legion Boulevard, Mountain Home, ID 83647; telephone 208–587–7961. Further information can be obtained at the same location.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

David D. Rittenhouse, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709.

Dated: June 10, 1999.

Jack E. Williams,

Deputy Forest Supervisor.

[FR Doc. 99–15371 Filed 6–17–99; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Northwest Region Douglas-Fir Tussock Moth Project, Colville, Okanogan, and Wenatchee National Forests in Washington; and Malheur, Fremont, Ochoco, Umatilla, Wallowa-Whitman, and Winema National Forests in Oregon

AGENCY: Forest Service, USDA.
ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of proposed activities in forested sands infested with Douglas-fir tussock moth. Activities include no-action and short-term treatments with a biological insecticide to maintain existing desired stand structure and tree condition.

DATES: Commetns concerning the scope of this analysis should be received no later than July 19, 1999.

ADDRESSES: Submit written comments to National Resource Staff; Air Management, Forest Insects and Diseases Group; Pacific Northwest Regional Office, PO Box 3623, Portland, OR 97208–3623.

FOR FURTHER INFORMATION CONTACT: Bill Funk, Team Leader, Douglas-fir Tussock Moth Project, Pacific Northwest Regional Office, PO Box 3623, Portland, OR 97208–3623 by calling (503) 808–2984.

SUPPLEMENTARY INFORMATION:

A. Need for the Proposal

The Douglas-fir tussock moth (DFTM) is a native insect, occurring in the Douglas-fir and true fir hosts throughout the west. Outbreaks of this insect are short and cyclic in nature, occurring approximately every 7 to 10 years. Sometimes outbreaks are widespread, and other times they are more localized. In Washington and Oregon, outbreaks of this insect occur east of the Cascades and most notably in northeastern Oregon, and north central and northeastern Washington. The last widespread outbreak, which caused significant damage, occurred in the early 1970s causing defoliation and tree mortality throughout about 700,000 acres in Oregon, Washington, and Idaho. More localized, less dramatic outbreaks occurred in the early 1980s and 1990s. By the time noticeable defoliation occurs, it is too late to implement a management strategy if needed. As a result, following the outbreak in the early 1970s, a DFTM early warning trapping system was put in place throughout eastern Washington and Oregon. This trapping system is used to monitor changes in the populations and give an advance indication of a potential outbreak, thus allowing land managers to do analysis and implement possible actions, as necessary, prior to severe visible defoliation. Data from the 1997 and 1998 trapping program indicate that there has been a significant increase in populations, particularly in northeastern Oregon and northcentral and northeastern Washington. Based on this information, a fairly widespread DFTM outbreak is anticipated involving several Forests, as well as other land ownerships, in 2000 and 2001; and this outbreak will be similar to the one experienced in 1972–1974.

Since the outbreak is anticipated to be widespread, we recognize that it is not realistic nor desirable to try to control or stop it. There is, however, opportunity to evaluate its impacts on specific areas where foliage protection and tree protection may be critical, and to evaluate effects of short-term management strategies.

DFTM larvae emerge in the spring and begin feeding on new needles of Douglas-firs and true firs. As the larvae get older they begin to feed on older needles, and in high populations, whole trees will be defoliated in a single year. Complete defoliation often results in tree mortality. The female moth has vestigial wings, and therefore, does not fly and disperse her eggs throughout the forest canopy as other forest defoliators might do. AS a result, a DFTM outbreak has a patchy appearance, with pockets of heavy defoliation scattered throughout a larger area of light or moderate defoliation. The areas of heavy defoliation and mortality vary in size, but can often be 500–1000 acres.

This insect has a short-term outbreak cycle of four phases or years. This makes the timing of any short-term management options critical. During the first two phases, populations begin to increase. Widespread, significant defoliation occurs in the third phase when populations are very high. Significant defoliation also occurs during the fourth phase, but due to competition for available food and a natural virus, the population collapses naturally. For any short term treatment to be effective and provide foliage protection, it should be applied at, or before, the beginning of the third phase. The short-term cycle of the outbreak, and the immobility of the female make it possible to treat localized areas without concern about spread and re-invasion from adjacent untreated areas.

In addition to the impacts of defoliation and tree mortality, there is also the consideration of additional tree mortality from bark beetles attracted to trees weakened from defoliation. A current outbreak of Douglas-fir bark beetle in parts of the area under consideration makes this a particular concern.

The hairs on the bodies of the larvae and the cocoon cases of this insect are irritating hairs that cause welts, rashes and reactions in many people when they are exposed to this insect. This reaction is called tussockosis. The level of reaction is dependent on individual sensitivity.

The purpose of this EIS is to identify those areas where foliage and stand structure must be protected to maintain the integrity of existing conditions, such as critical habitat for threatened, endangered and sensitive species, and late and successional old-growth reserves; or to reduce impacts of the insect and defoliation on the human environment, such as campgrounds, administrative sites, or foreground aesthetics. It will evaluate the impacts of short-term management options, should treatment be necessary. There are two insecticides that are currently registered and will be considered in the analysis. Both are biological insecticides. One insecticide uses *Bacillus thuringiensis var. kurstaki*, which is bacterium-based, and affects some of the lepidopteran (moth and butterfly) species. The second insecticide employs a nucleopolyhedrosis virus specific to DFTM, and which affects a few other closely related species, such as the rusty tussock moth.

B. Proposed Action

The Pacific Northwest Region will be preparing an EIS to evaluate short-term suppression of a potential DFTM outbreak using a biological insecticide, to protect specific areas and habitats, such as riparian habitats of isolated bull trout populations, high value recreation sites and administrative sites. The intent is only to look at short-term strategies. Long-term strategies are addressed in longer term management plans.

C. Proposed Scoping

Public participation is an important part of the analysis. The scoping period associated with this Notice of Intent will be thirty (30) days in length, beginning the day after publication of this notice. In addition to this scoping, the public may visit Forest Service officials at any time during the analysis and prior to the decision.

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposed action. Comments submitted during the scoping process should be in writing. They should be specific to the action being proposed and should describe as clearly and completely as possible any issues the commentor has with the proposal. This input will be used in preparation of the draft EIS.

D. Preliminary Issues Identified to Date

Preliminary issues that have been identified are:

- The impacts of the DFTM outbreak and subsequent defoliation and tree mortality, and the proposed treatment options, on habitats for threatened, endangered or sensitive species.
- The impacts of defoliation on remaining stands of limited late and old growth structure in many of the Forests.
- The impacts of the DFTM on the human environment such as recreation areas, and residential and administrative sites, along with the issues of tussockosis, aesthetics and water quality.
- The response and concerns of the proposed insecticide treatments which will be considered, and the impacts and risk of these treatments to humans and the environment.
- The significant concern over the impact of numerous forest health related problems that have already been occurring, especially in the Blue Mountain forests, such as the past western spruce budworm outbreak, and an ongoing Douglas-fir bark beetle outbreak, and high amounts of existing fuels, and loss of timber.

E. Alternatives Considered

The No Action alternative will serve as a baseline for comparison of alternatives. This alternative will be no change from current management of the Forests and will be fully developed and analyzed. The proposed action, as described above will be consider and other alternatives developed around the proposed action to address issues identified in the scoping and public involvement process.

F. Estimated Dates for Draft and Final EIS

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by October 1999. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC. 435 U.S. 519.553 (1978).* Also, environmental objectives that could be raised at the draft EIS stage but that are not raised until after the completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritage, Inc.* v. *Harris,* 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if the comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provision of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR Part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Comments on the draft EIS will be analyzed, considered, and responded to by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed in February 2000. The Regional Forester is the responsible official and as such will consider comments, responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies in making a decision regarding this proposed action. The responsible official will document the decision and reasons for the Pacific Northwest Region Douglas-fir Tussock Moth Project in the Record of Decision. That will be subject Forest Service Appeal Regulations (36 CFR Part 215).

Dated: June 11, 1999.

Nancy Graybeal,

Acting Regional Forester, Pacific Northwest Region.

[FR Doc. 99–15504 Filed 6–17–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: July 19, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 26 and May 7, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 9470 and 24570) of proposed additions to and deletions from the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center and Operation of Individual Equipment Element Store Minot Air Force Base, North Dakota

Cleaning Services

Crane Division, Naval Surface Warfare Center, Crane, Indiana

Janitorial/Custodial

Statue of Liberty National Monument & Ellis Island, New Jersey/New York

Support Activities for Forestry (Timber Stand Improvement)

Crane Division, Naval Surface Warfare Center, Crane, Indiana

Trash Pick-up

Crane Division, Naval Surface Warfare Center, Crane, Indiana

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Enamel

8010–00–159–4519
8010–00–159–4520
8010–00–159–4521
8010–00–159–4522
8010–00–067–5436
8010–00–067–5437
8010–00–079–2750
8010–00–079–2752
8010–01–203–7803
8010–01–203–7804
8010–00–079–3750
8010–00–079–3752
8010–00–079–3754
8010–00–079–3756
8010–00–079–3762
8010–00–079–3764

Enamel, Primer Coating

8010–00–159–4518
8010–00–584–2426

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–15537 Filed 6–17–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 19, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commissary Shelf Stocking, Custodial and Warehousing

Kaneohe Bay, Hawaii, NPA: Lanakila Rehabilitation Center, Honolulu, Hawaii

Grounds Maintenance

Manchester AFRC, 64 Harvey Road, Londonderry, New Hampshire, NPA: Goodwill Industries of Northern New England, Portland, Maine

Grounds Maintenance

Naval and Marine Corps Reserve Center, 5101 North Assembly Street, Spokane, Washington, NPA: Career Connections, Spokane, Washington

Laundry Service

Bangor Naval Subase, USS Lincoln and Miscelleaneous Sites to include ships in port, FISC/Puget Sound, Bremerton, Washington, NPA: Northwest Center for the Retarded, Seattle, Washington

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Floorboard, Vehicular

2510–01–063–3892

Floorboard, Wood

2510–01–063–3893
2510–01–067–2630

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–15538 Filed 6–17–99; 8:45 am]

BILLING CODE 8353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Monthly Wholesale Trade Survey.

Form Number(s): B–310.

Agency Approval Number: 0607–0190.

Type of Request: Revision of a currently approved collection.

Burden: 5,320 hours.

Number of Respondents: 3,800.

Avg Hours Per Response: 7 minutes.

Needs and Uses: The Monthly Wholesale Trade Survey (MWTS) provides the only continuous measure of monthly sales, end-of-month inventories, method of inventory valuation, and inventory/sales ratios in the United States by selected kinds of business for merchant wholesalers. The Bureau of Economic Analysis uses this information to improve the inventory valuation adjustments applied to estimates of the Gross Domestic Product (GDP). The Bureau of Labor Statistics uses the data as input to its Producer Price Indexes and in developing productivity measurements.

We currently publish wholesale sales and inventory estimates on the Standard Industrial Classification (SIC) basis. Starting in the spring of 2001, we will publish on the North American Industry Classification System (NAICS) basis. The SIC definition of wholesale trade and the NAICS definition of wholesale trade are substantially different. The SIC defines wholesalers as establishments engaged in selling merchandise to other businesses. NAICS distinguishes wholesalers from retailers based on what the establishment does rather than to whom the establishment sells. Wholesalers are defined as those establishments that sell from offices or warehouses, usually in large quantities, advertise to businesses rather than to the general public, and generally have no walk-in traffic or formal displays. Businesses, formerly classified in wholesale trade, that sell to the general public are now classified as retail.

NAICS provides a better way to classify individual businesses, and will be widely adopted throughout both the public and private sectors. NAICS will change the information that is currently available with reclassifications, definitional changes, and movement of activities in or out of wholesale trade. NAICS is more relevant as it identifies more industries that contribute to today's growing economy. NAICS was developed by the United States, Canada, and Mexico to produce comparable data among the NAFTA partners.

In addition, the MWTS will convert its monthly report form to a print-on demand system. This new system allows us to tailor the survey instrument to a specific industry. For example, it will print an additional instruction for a particular NAICS code. This system also reduces the time and cost of preparing mail-out packages that contain unique variable data, while improving the look and quality of the products being produced.

Affected Public: Businesses or other for-profit organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–15570 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1039]

Grant of Authority for Subzone Status Kvaerner Philadelphia Shipyard, Inc. (Shipbuilding), Philadelphia, PA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities

cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, an application from the Philadelphia Regional Port Authority, grantee of FTZ 35, for authority to establish special-purpose subzone status for the shipbuilding facility of Kvaerner Philadelphia Shipyard, Inc., in Philadelphia, Pennsylvania, was filed by the Board on December 10, 1998, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 56–98, 63 FR 69261, 12–16–98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were given subject to the standard shipyard restriction on foreign steel mill products;

Now, Therefore, the Board hereby grants authority for subzone status at the shipbuilding facility of Kvaerner Philadelphia Shipyard, Inc., in Philadelphia, Pennsylvania (Subzone 35E), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following special conditions:

1. Any foreign steel mill products admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill; and,

2. In addition to the annual report, Kvaerner Philadelphia Shipyard, Inc., shall advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

Signed at Washington, DC, this 3rd day of June 1999.

Richard W. Moreland,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 99–15566 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1038]

Grant of Authority for Subzone Status, Borg-Warner Automotive Powertrain Systems Corporation (Automotive Transfer Cases), Seneca, SC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "the establishment * * * of * * * foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, has made application for authority to establish special-purpose subzone status at the automotive transfer case manufacturing plant of Borg-Warner Automotive Powertrain Systems Corporation (Inc.) located in Seneca, South Carolina (FTZ Docket 33–98, filed 6–23–99);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 36213, 7–2–98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the Borg-Warner Automotive Powertrain Systems Corporation (Inc.) located in Seneca, South Carolina (Subzone 38B), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 3rd day of June 1999.

Richard W. Moreland,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 99–15565 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Postponement of Final Results of First Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of the time limit for the final results in the first antidumping duty administrative review and new shipper review of the antidumping duty order on brake rotors from the People's Republic of China.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the first antidumping duty administrative review and new shipper review of the antidumping duty order on brake rotors from the People's Republic of China. This review covers the period October 10, 1996, through March 31, 1998.

EFFECTIVE DATE: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Barbara Wojcik-Betancourt, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–0629, respectively.

Postponement of Final Results of Review

The Department of Commerce ("the Department") published the preliminary results of the first antidumping administrative review and new shipper review on brake rotors from the People's Republic of China ("PRC") on May 6, 1999 (64 FR 24322). The current deadline for the final results in these reviews is September 3, 1999. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930 ("the Act"), as amended, we determine that it is not practicable to complete this review within the original time frame. Because of travel restrictions imposed by the U.S. Embassy in Beijing, we are

currently unable to conduct verification and allow sufficient opportunity for the submission of interested party comments, prior to the current final results deadline, as originally planned. Thus, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for completion of the final results of these reviews until November 2, 1999, which is 180 days after the date on which the notice of the preliminary results was published in the **Federal Register**.

Dated: June 14, 1999.

Laurie Parkhill,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–15569 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On February 22, 1999, the Department of Commerce (the Department) initiated an administrative review of the antidumping finding on potassium permanganate from the People's Republic of China (PRC) covering Guizhou Provincial Chemical I/E Corp. (GPC), an exporter/reseller of subject merchandise, and Zunyi Chemical Factory (Zunyi), a manufacturer of subject merchandise. This review was requested by GPC and Zunyi and covers the period January 1, 1998, through December 31, 1998. The Department is rescinding the review after receiving a withdrawal of the requests for review from GPC and Zunyi.

EFFECTIVE DATE: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or James Terpstra, Office of AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–4474 and (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR Part 351 (April, 1998).

Background

On January 27, 1999, GPC and Zunyi requested that the Department conduct an administrative review of the order on potassium permanganate from the People's Republic of China for the period January 1, 1998, through December 31, 1998. No other interested party requested that the Department conduct an administrative review.

On February 22, 1999, the Department published in the **Federal Register** (64 FR 8542) a notice of initiation of administrative review with respect to GPC, an exporter/reseller of subject merchandise, and Zunyi, a manufacturer of subject merchandise. On April 6, 1999, GPC and Zunyi filed letters with the Department withdrawing the requests that the Department conduct an administrative review. This withdrawal complies with section 351.213(d) of the Department's regulations, which grants parties 90 days from the publication of the notice of initiation of review to withdraw a request for review. *See* 19 CFR 351.213(d). Therefore, the Department is rescinding this administrative review.

This notice is in accordance with section 751 of the Act and section 351.213(d) of the Department's regulations.

Dated: June 11, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–15568 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 89–00001.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Illinois World Trade Center Association doing business as EXILL Trading Company ("EXILL"). Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to EXILL.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1999). Pursuant to this authority, a certificate of review was issued on April 28, 1988 to EXILL.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, § 325.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (§ 325.10(a)(3) and 325.14(c) of the regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On April 18, 1998, the Department of Commerce sent to EXILL a letter containing annual report questions with a reminder that its annual report was due on June 12, 1998. Additional reminders were sent on July 9, 1998 and on September 30, 1998. The Department has received no written response from EXILL to any of these letters.

On March 16, 1999, and in accordance with § 325.10(c)(1) of the regulations, (15 CFR 325.10(c)(1)), the Department of Commerce sent a letter by certified mail to notify EXILL that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing EXILL thirty days to respond was published in the **Federal Register** on March 22, 1999 at 64 FR 13777. Pursuant to § 325.10(c)(2) of the regulations (15 CFR 325.10(c)(2)), the Department considers the failure of EXILL to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to EXILL for its failure to file an annual report. The Department has sent a letter, dated June 14, 1999, to notify EXILL of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c)(4) and 325.11 of the regulations, 15 CFR 324.10(c)(4) and 325.11 of the regulations, 15 CFR 325.10(c)(4) and 325.11).

Dated: June 14, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–15494 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061499B]

Submission for OMB Review: Comment Request

The Department of Commence (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This request is submitted under the emergency processing procedures of the Paperwork Reduction Act.

Agency: National Oceanic and Atmospheric Administration.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection—Emergency Collection Request.

Burden: 750 hours.

Number of Respondents: 500.

Avg. Hours Per Response: 1.5 hours.

Needs and Uses: The National Marine Fisheries Service will provide disaster assistance for persons or entities in the Northeast Multispecies Fishery who have incurred losses from a commercial fishing failure under section 308(b) of the Interjurisdictional Fisheries Act. In exchange for the disaster assistance the recipients will commit to assisting fishing-related research through a cooperative program in which fishermen provide vessels and support and government or academic institutions provide scientific staff and equipment. The collection of information is needed to identify individuals wishing to participate in the program and to confirm their acceptance of the conditions of receiving the disaster assistance.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: One-time collection.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at Lengelm@doc.gov).

Written comments and recommendations for the proposed information collection should be sent by no later June 23, 1999, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–15536 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: Office of the Under Secretary and Administrator, National Oceanic and Atmospheric Administration.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997 and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education and application of science to resource management. SAB activities and advice will provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

TIME AND PLACE: Wednesday, July 7, 1999 from 10 a.m. to 5:30 p.m.; Thursday, July 8, 1999 from 8:30 a.m. to 5 p.m.; and Friday, July 9, 1999 from 1:30 p.m. to 5:30 p.m. The meeting will take place in the Cascade Room at the Hotel Edgewater, Pier 67, 2411 Alaskan Way, Seattle, WA, 98121.

Agenda

1. Overview of NOAA-University/State of Washington Partnership activities.
2. Overview and discussion of NOAA science as it is related to the Endangered Species Act (ESA) and potentials for future ESA-oriented science.
3. Public input session with SAB discussion.
4. Discussion on NOAA Strategic Planning Process related to science priorities.
5. Presentation of options, with discussion by SAB, for potential SAB participation/oversight in NOAA Science Program and Panel Reviews.
6. SAB Sub-Committee and Issue Group reports.
7. Concluding SAB discussion on priority science-related issues for NOAA, with Sub-Committee action items, next steps and/or preliminary recommendations identified for any of the subjects discussed during the course of the meeting.

PUBLIC PARTICIPATION: The meeting will be open to public participation with at least 45 minutes set aside during the meeting for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by June 21, 1999, in order to provide sufficient time for SAB review prior to meeting date. Written comments received by the SAB Executive Director after June 21 will be distributed to the SAB, but may possibly not be reviewed prior to the meeting date. Approximately twenty (20) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come first-served bases.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Crosby, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Hwy, Silver Spring, MD, 20910 (Phone: 301–713–9121, Fax: 301–713–3515, E-mail: MICHAEL.CROSBY@NOAA.GOV).

Dated: June 10, 1999.

D. James Baker,

Under Secretary for Oceans and Atmosphere and Administrator for NOAA.

[FR Doc. 99–15501 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–08–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052199A]

Marine Mammals; Permit No. 928 (File No. P351E)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 928, issued to Ms. Olga von Ziegesar, North Gulf Oceanic Society, P.O. Box 15191, Homer, AK 99603, was amended.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, 709 W. 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907–586–7235).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak or Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 928 authorizes Ms. von Ziegesar to harass humpback whales (*Megaptera novaeangliae*) during photo-identification studies and biopsy sampling activities in Alaska waters. This amendment authorizes the extension of the expiration date through December 31, 1999.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 10, 1999.

Ann Terbush,

Chief, Permits and Documentation Division, National Marine Fisheries Service.

[FR Doc. 99–15534 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

June 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 22, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryover, carryforward, special swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59945, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 1999

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the period beginning on January 1, 1999 and extending through December 31, 1999.

Effective on , you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels within Fabric Group	
338/339	1,471,338 dozen.
341/641	1,610,116 dozen of which not more than 704,485 dozen shall be in Category 341.
347/348	706,710 dozen.
645/646	352,503 dozen.
647/648	2,085,995 dozen of which not more than 1,367,930 dozen shall be in Category 647–K [2] and not more than 1,367,930 dozen shall be in Category 648–K [3].
Group II 201, 222–224, 239pt. [4], 332, 352, 359pt. [5], 360–362, 369pt. [6], 400–431, 433, 434, 436, 438–O [7], 440, 443, 444, 447, 448, 459pt. [8], 464, 469pt. [9], 600–603, 606, 607, 618, 621, 622, 624–629, 633, 643, 644, 649, 652, 659pt. [10], 666, 669pt. [11], 670, 831, 833, 834, 836, 838, 840, 843–858 and 859pt. [12], as a group..	51,176,834 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.9044.

[3] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 359pt.: all HTS numbers except 6406.99.1550.

[6] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[7] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[8] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[9] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[10] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[11] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[12] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–15466 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3178–000]

MidAmerican Energy Company; Filing

June 10, 1999.

Take notice that on June 8, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission Firm Transmission Service Agreements with Central Minnesota Municipal Power Agency (Central Minnesota), dated June 3, 1999, and Ames Municipal Electric System (Ames Municipal), dated June 3, 1999, and a Non-Firm Transmission Service Agreement with Central Minnesota, dated June 3, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of June 3, 1999, for the Agreements with Central Minnesota, and June 3, 1999, for the Agreement with Ames Municipal, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Central Minnesota, Ames Municipal, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 28, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15510 Filed 6–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–161–000, et al.]

NRG Northeast Generating LLC, et al. Electric Rate and Corporate Regulation Filings

June 11, 1999.

Take notice that the following filings have been made with the Commission:

1. NRG Northeast Generating LLC

[Docket No. EG99–161–000]

Take notice that on June 9, 1999, NRG Northeast Generating LLC (Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). On June 9, 1999, Applicant filed an amendment to its Application, consisting of an order of the New York Public Service Commission (PSC) dated June 8, 1999, in which the PSC made the findings required by section 32(c) of PUHCA as to two of the generating facilities being acquired by Applicant.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limits its consideration of comments to those that concern the adequacy or accuracy of the application.

2. LIC Funding, Limited Partnership

[Docket No. EG99–164–000]

Take notice that on June 9, 1999, LIC Funding, Limited Partnership (LIC Funding) filed with the Federal Energy Regulatory Commission (FERC or the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

LIC Funding is a Delaware limited partnership that will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities located in Queens, New York. The eligible facilities will consist of approximately 1,742 MW of gas and/or oil fired steam electric generation facilities and related interconnection facilities. The output of the eligible facilities will be sold exclusively at wholesale.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Arthur Kill Power LLC

[Docket No. EG99–165–000]

Take notice that on June 9, 1999, Arthur Kill Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Arthur Kill Generating Station in Staten Island, New York (Facility) and selling electric energy at wholesale. The Facility consists of two steam generating units of 335 MW and 491 MW, one black start gas turbine of 16 MW, and associated interconnection components. The applicant intends to purchase the Facility from Consolidated Edison Company of New York.

Comment date: July 2, 1999, in accordance with Standard Paragraph E

at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Astoria Gas Turbine Power LLC

[Docket No. EG99–167–000]

Take notice that on June 9, 1999, Astoria Gas Turbine Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Astoria Gas Turbine Site in Astoria, New York (Facility) and selling electric energy at wholesale. The Facility consists of twenty small combustion turbines with a total capacity of 614 MW and associated interconnection facilities. The applicant intends to purchase the Facility from Consolidated Edison Company of New York.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. United Power, Inc.

[Docket No. EL99–70–000]

Take notice that on June 8, 1999, United Power, Inc. tendered for filing a request for a waiver of the requirements of Order Nos. 888 and 889 and certain regulations.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER99–3149–000]

Take notice that on June 4, 1999, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies) submitted for filing a service agreement under which the CSW Operating Companies will provide ancillary services to Ingleside Cogeneration Limited Partnership (Ingleside) in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of the filing has been served on Ingleside.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company, Commonwealth Edison Company of Indiana

[Docket No. ER99–3150–000]

Take notice that on June 4, 1999, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd) filed amendments to ComEd's Open Access Transmission Tariff (OATT) to deter customers from exceeding their firm reserved capacity at a point of receipt or point of delivery through a penalty, to require schedules for point-to-point transmission service to comply with NERC Policy No. 3 and to revise the information that must be submitted for a completed application. ComEd is also filing to allow requests for daily service to be submitted on the prior Friday when service is to commence on a Monday or Tuesday after a National Holiday as defined in Schedule 7 of the OATT.

ComEd requests an effective date of August 3, 1999 for the above-described amendments. Copies of the filing were served upon ComEd's jurisdictional customers and interested state commissions.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Light Company

[Docket No. ER99–3152–000]

Take notice that on June 4, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements with one new customer, Cleco Corporation.

CILCO requested an effective date of May 28, 1999.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. FirstEnergy Corp. and Pennsylvania Power Company

[Docket No. ER99–3153–000]

Take notice that on June 4, 1999, FirstEnergy Corp. tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service and an Operating Agreement for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with DTE Energy Trading, Inc. pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is June 1, 1999.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Carolina Power & Light Company

[Docket No. ER99–3155–000]

Take notice that on June 4, 1999, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement with Southern Company Services, Inc. under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Sunflower Electric Power Corporation

[Docket No. NJ99–2–001]

Take notice that on June 9, 1999, Sunflower Electric Power Corporation (Sunflower) submitted revised transmission tariff pages in order to comply with the Commission's June 1, 1999, order in the above-captioned proceeding finding Sunflower's tariff to be an acceptable reciprocity tariff.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Salt River Project Agricultural Improvement and Power District

[Docket No. NJ99–3–000]

Take notice that on June 8, 1999, the Salt River Project Agricultural Improvement and Power District (SRP), a non-public utility operating in Arizona submitted for filing typographical corrections to schedule and tariff section numbers referenced in SRP's revised voluntary Open Access Transmission Tariff (OATT) and the Attachments to SRP's OATT. SRP requests that the Federal Energy Regulatory Commission (Commission) accept its corrected tariff sheets and substitute such sheets in SRP's clean and redlined version of its OATT which was filed previously on May 10, 1999.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15480 Filed 6–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–76–000, et al.]

Phibro Inc., et al.; Electric Rate and Corporate Regulation Filings

June 9, 1999.

Take notice that the following filings have been made with the Commission:

1. Phibro Inc.

[Docket No. EC99–76–000]

Take notice that on June 3, 1999, Phibro Inc. tendered for filing with the Federal Energy Regulatory Commission, exhibits to the "Application for Authorization under Section 203 of the Federal Power Act" filed by Phibro Inc. on May 28, 1999 in the above-referenced proceeding.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company; Consumers Energy Company, The Detroit Edison Company, FirstEnergy Corp. on behalf of: The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company, and Virginia Electric and Power Company

[Docket No. EC99–80–000]

Take notice that on June 3, 1999, American Electric Power Service Corporation on behalf of the public utility operating company subsidiaries of the AEP system (Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Ohio Power Company, and Wheeling Power Company), Consumers Energy Company, Detroit Edison Company, FirstEnergy Corp. on behalf of the transmission-owning FirstEnergy Operating Companies (The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company), and Virginia Electric and Power Company (collectively, the Alliance Companies) filed an application under Section 203 of the Federal Power Act for approval of the transactions necessary to create the Alliance Regional Transmission Organization (Alliance RTO).

The Alliance Companies state that their application is a companion filing to, and a necessary part of, their concurrent application under Section 205 of the Federal Power Act to establish the Alliance RTO.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Dominion Resources, Inc., and Consolidated Natural Gas Company

[Docket No. EC99–81–000]

Take notice that on June 7, 1999, Dominion Resources, Inc. (Dominion), and Consolidated Natural Gas Company (CNG), on behalf of their public utility subsidiaries (collectively, the Applicants), filed a Joint Application under Section 203 of the Federal Power Act (FPA) and Part 33 of the Commission's regulations to request authorization and approval for the proposed merger between Dominion and CNG.

The Applicants state that copies of the filing have been served upon the state utility commissions of Virginia, North Carolina, West Virginia, Pennsylvania and Ohio and wholesale customers of Dominion and CNG.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc. and Astoria Generating Company, L.P.

[Docket Nos. EC99–82–000 ER99–3164–000]

Take notice that on June 7, 1999, Consolidated Edison Company of New York, Inc. and Astoria Generating Company, L.P. (collectively, the Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval to transfer certain jurisdictional facilities associated with the sale of three oil-and gas-fired steam electric generating units and one gas turbine unit at the Astoria Generating Station located in Queens, New York, and a number of gas turbines located on floating barges at the Gowanus Gas Turbine site and Narrows Gas Turbine site in Brooklyn, New York. The Applicants also tendered for filing pursuant to Section 205 of the Federal Power Act certain agreements providing for services related to the transfer of facilities.

The Applicants have served a copy of this filing on the New York Public Service Commission.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Duquesne Light Company and FirstEnergy Operating Companies, The Cleveland Electric Illuminating Company, Ohio Edison Company, and Pennsylvania Power Company

[Docket No. EC99–83–000]

Take notice that on June 8, 1999, Duquesne Light Company and the First Energy Operating Companies (The Cleveland Electric Illuminating Company, Ohio Edison Company and Pennsylvania Power Company) (collectively Applicants) submitted for filing a joint application (Application) requesting authorization under Section 203 of the Federal Power Act to transfer certain jurisdictional transmission facilities between Duquesne and FirstEnergy and to assign rights under certain FERC-jurisdictional agreements.

The Applicants request expeditious action on the Application in order that there be no delay in the transaction.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Fulton Cogeneration Associates, L.P.

[Docket No. EG99–159–000]

Take notice that on June 4, 1999, Fulton Cogeneration Associates, L.P. (Applicant), Nine Greenway Plaza, Houston, Texas filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, a New York limited partnership owns power generating facilities in Rensselaer New York. These facilities will consist of a 79 MW (net) topping cycle cogeneration facility, and facilities necessary to interconnect with Niagara Mohawk Power Corporation.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Tenaska Georgia Partners, L.P.

[Docket No. EG99–160–000]

Take notice that on June 7, 1999, Tenaska Georgia Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Georgia), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Tenaska Georgia, a Delaware limited partnership, will construct and operate a natural gas-fired generating facility (the Facility) to be located near the town of Franklin in Heard County, Georgia. The Facility will consist of six generating units which will use natural gas as the primary fuel and fuel oil as backup fuel. The Facility will also include natural gas receipt and delivery facilities, fuel oil storage facilities, fuel oil unloading facilities, and certain fuel control systems and water facilities. The maximum electric power production capacity of the facility will be 1,100 MW. The Facility will also include related transmission interconnection components necessary to interconnect the Facility with Georgia Transmission Corporation. The Facility will be used exclusively for the generation of electric energy for sale at wholesale.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. NRG Northeast Generating LLC

[Docket No. EG99–161–000]

Take notice that on June 8, 1999, NRG Northeast Generating LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged indirectly and exclusively in owning and operating eligible facilities and selling electric energy at wholesale. The facilities will consist initially of: (a) the Arthur Kill Generating Station in Staten Island, New York constituting two steam generating units of 335 MW and 491 MW, one black start gas turbine of 16 MW, and associated interconnection facilities; (b) the Astoria Gas Turbine Site in Astoria, New York, constituting twenty small combustion turbines with a total capacity of 614 MW and associated interconnection facilities; (c) the Dunkirk Generating Station in Dunkirk, New York, constituting two coal-fired 100 MW units, two coal-fired 200 MW units, and associated interconnection facilities; (d) the Huntley Generating Station located three miles north of Buffalo, New York, constituting four 90 MW coal-fired units, two 200 MW coal-fired units, and associated interconnection facilities; and (e) the Somerset Generating Station located in Somerset, Massachusetts, constituting a 112 MW coal-fired unit, a 69 MW coal-fired unit that is on deactivated reserve status, two combustion turbine units power by jet fuel with a combined capability of 24 MW, and associated interconnection facilities.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Dunkirk Power LLC

[Docket No. EG99–162–000]

Take notice that on June 8, 1999, Dunkirk Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Dunkirk generating station in Dunkirk, New York (Facility) and selling electric energy at wholesale. The Facility consists of two coal-fired 100 MW units, two coal-fired 200 MW units, and associated interconnection components. The applicant intends to purchase the Facility from Niagara Mohawk Power Corporation.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. Huntley Power LLC

[Docket No. EG99–163–000]

Take notice that on June 8, 1999, Huntley Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Huntley generating station located three miles north of Buffalo, New York (Facility) and selling electric energy at wholesale. The Facility consists of four 90 MW coal-fired units, two 200 MW coal-fired units, and associated interconnection facilities. The applicant intends to purchase the Facility from Niagara Mohawk Power Corporation.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

11. Appalachian Power Company

[Docket Nos. ER92–323–000 and ER92–324–000]

Take notice that on June 7, 1999, Appalachian Power Company, tendered for filing a compliance filing pursuant to a June 29, 1998 order issued in the above-referenced docket.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corporation

[Docket Nos. ER95–469–004 and ER95–457–006]

Take notice that on June 7, 1999, Florida Power Corporation tendered for filing a refund report for calendar year 1997 related to the recovery of "Qualifying Facility Energy Payments" from Florida Power Corporation's wholesale full and partial requirements customers in accordance with the Settlement Agreements approved in Docket Nos. ER95–469–000 and ER95–457–000.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Sunoco Power Marketing, L.L.C.

[Docket No. ER97–870–001]

Take notice that on June 7, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

14. Advantage Energy, Inc.

[Docket No. ER97–2758–006]

Take notice that on June 4, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

15. The Montana Power Company

[Docket No. ER99–2370–000]

Take notice that on June 4, 1999, Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission an amendment to its original filing in the above referenced docket. The original filing, and this amendment, pertain to unexecuted Network Integration Transmission Service Agreements and Network Operating Agreements with Golden Sunlight Mines, Inc. (Golden Sunlight), Cenex Harvest States Cooperatives (Cenex), Illinova Energy Partners, Inc. (Illinova), and Energy West Resources, Inc. (Energy West), Ash Grove Cement Company (Ash Grove), and Montana Refining Company (Montana Refining) under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Golden Sunlight, Cenex, Illinova, Energy West, Ash Grove and Montana Refining.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Sunlaw Cogeneration Partners I, L.P.

[Docket No. ER99–2685–000]

Take notice that on June 2, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

17. Cinergy Services, Inc.

[Docket No. ER99–3154–000]

Take notice that on June 4, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Illinova Energy Partners, Inc., (IEP).

Cinergy and IEP are requesting an effective date of May 7, 1999.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Electric and Gas Company

[Docket No. ER99–3159–000]

Take notice that on June 4, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the long-term sale of electric capacity and energy to meet the full requirements of the Borough of Milltown, New Jersey, less any New York Power Authority hydroelectric allocation, and the procurement of associated transmission service under the prevailing PJM Open Access Transmission Tariff, or its successor pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be make effective as of June 14, 1999.

Copies of the filing have been served upon the Borough of Milltown and the New Jersey Board of Public Utilities.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER99–3160–000]

Take notice that on June 7, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with FPL Energy Power Marketing, Inc. (FPL), under the NU System Companies' System Sale For Resale Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to FPL.

NUSCO requests that the Service Agreement become effective on June 1, 1999.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER99–3161–000]

Take notice that on June 7, 1999, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Alliant Energy Corp. Services, Inc., under its Market-Based Rate Tariff.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Orange and Rockland Utilities, Inc.

[Docket No. ER99–3162–000]

Take notice that on June 7, 1999, Orange and Rockland Utilities, Inc. (O&R), tendered for filing amendments to its Continuing Site/Interconnection Agreements with Southern Energy Lovett, L.L.C., Southern Energy Bowline, L.L.C., and Southern Energy NY–GEN, L.L.C. (the Southern Energy Parties). The Southern Energy Parties concur in this filing.

O&R has requested an effective date of June 30, 1999.

Copies of this filing have been served upon the utility regulatory commissions of the states of New York, New Jersey and Pennsylvania.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. UtiliCorp United Inc.

[Docket No. ER99–3163–000]

Take notice that on June 7, 1999, UtiliCorp United Inc. (UtiliCorp), tendered for filing amendments to the open access transmission tariffs for its Missouri Public Service, WestPlains Energy-Kansas, and WestPlains Energy-Colorado operating divisions. The amendments include changes to the rates for transmission and ancillary services under each of the three tariffs.

UtiliCorp requests that the amendments become effective on August 6, 1999.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Tenaska Georgia Partners, L.P.

[Docket No. ER99–3165–000]

Take notice that on June 7, 1999, Tenaska Georgia Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Georgia), which will own and operate a natural gas-fired electric generating facility to be constructed in Heard County, Georgia, tendered for filing with the Federal

Energy Regulatory Commission its initial FERC Electric Rate Schedule No. 1, which will enable Tenaska Georgia to engage in the sale of electric energy and capacity at market-based rates.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Southern California Edison Co.

[Docket No. ER99–3166–000]

Take notice that on June 7, 1999, Southern California Edison Company (SCE), tendered for filing the Transmission Owner Tariff Expedited Service and Interconnection Agreement (Agreement) between SCE and Wintec Energy, LTD (Wintec).

The Agreement specifies the terms and conditions under which SCE will interconnect Wintec's 3.705 MW of generation at Buckwind Substation pursuant to SCE's Transmission Owner Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Rochester Gas and Electric Corporation

[Docket No. ER99–3167–000]

Take notice that on June 7, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and Cargill-Alliant LLC., Customer. This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of June 1, 1999 Cargill-Alliant's Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Astoria Generating Company, L.P.

[Docket No. ER99–3168–000]

Take notice that on June 7, 1999, Astoria Generating Company, L.P. (Applicant), with its principal office at c/o Orion Power Holdings, Inc., 111 Market Place, Suite 520, Baltimore, Maryland 21202, tendered for filing with the Federal Energy Regulatory Commission (Commission) an application seeking waivers and granting blanket approvals under various Commission regulations and for an order accepting Astoria Generating Company's initial rate schedule, FERC Electric Rate Schedule No. 1.

Astoria Generating Company's acquisition of the Astoria Bundle generating plants in New York State will not close before July 30, 1999. Astoria Generating Company intends to sell energy and capacity, and certain ancillary services from the Astoria Bundle facilities at market-based rates. In transactions where Astoria Generating Company sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Harbor Cogeneration Company

[Docket No. ER99–3169–000]

Take notice that on June 9, 1999, Harbor Cogeneration Company filed amendments to its rate schedule and code of conduct in the above-referenced docket.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Niagara Mohawk Power Corporation

[Docket No. ER99–3170–000]

Take notice that on June 7, 1999, Niagara Mohawk Corporation tendered for filing an Interconnection Agreement with the Village of Solvay, New York, a municipal electric utility. The Interconnection Agreement governs a new interconnection between Niagara Mohawk's transmission system and a new substation being constructed by the Village of Solvay, New York. Niagara Mohawk currently provides transmission services to the Village of Solvay, interconnection with the Village of Solvay at the Village's Matthews Avenue Substation.

The Village of Solvay, New York's new substation is being constructed to allow it to take power deliveries from the New York Power Authority for use in providing electric service to the Village of Solvay's electric customers.

Copies of the filing were served upon the Village of Solvay, New York and the New York Public Service Commission.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Charles W. Pryor, Jr.

[Docket No. ID–3370–000]

Take notice that on June 3, 1999, Charles W. Pryor, Jr. tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

President and Chief Executive Officer, Westinghouse Electric Company.

Director, The Detroit Edison Company.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Bucksport Energy LLC

[Docket No. QF99–54–000]

Take notice that on June 4, 1999, Bucksport Energy LLC (Applicant), tendered for filing an amendment to the above filing of February 25, 1999, in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides certain technical clarifications and additional information pertaining to the ownership of the cogeneration facility.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15481 Filed 6–17–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–870–009, *et al.*]

Sunoco Power Marketing, L.L.C., *et al.*; Electric Rate and Corporate Regulation Filings

June 10, 1999.

Take notice that the following filings have been made with the Commission:

1. Sunoco Power Marketing, L.L.C.

[Docket No. ER97–870–009].

Take notice that on June 7, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/ online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

2. Public Service Electric and Gas Company; PSEG Fossil LLC; PSEG Nuclear LLC; PSEG Energy Resources & Trade LLC

[Docket Nos. EC99–79–000 and ER99–3151–000]

Take notice that on June 4, 1999, Public Service Electric and Gas Company (PSE&G), PSEG Fossil LLC, PSEG Nuclear LLC, and PSEG Energy Resources & Trade LLC (collectively, Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval of the transfer of certain jurisdictional facilities and rate schedules in connection with the sale of PSE&G's generating facilities. The Applicants also tendered for filing under Section 205 of the Federal Power Act certain related service agreements.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Central Maine Power Company

[Docket No. ER99–1413–002]

Take notice that on June 7, 1999, Central Maine Power Company tendered for filing a report of compliance in response to the Commission's order issued in the above referenced docket on May 28, 1999.

Copies of said filing have been served upon all parties to this proceeding.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool and ISO New England Inc.

[Docket No. ER99–1414–001]

Take notice that on June 7, 1999, New England Power Pool and ISO New England Inc., filed a Report of Compliance in response to the Commission order in the above referenced docket of May 28, 1999.

Copies of said filing have been served upon all parties to this proceeding.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Mid-Continent Area Power Pool

[Docket No. ER99–1525–001]

Take notice that on June 4, 1999, the Mid-Continent Area Power Pool tendered for filing its compliance filing in the above-reference docket.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Electric Power Company

[Docket No. ER99–1690–002]

Take notice that on June 7, 1999, Maine Electric Power Company filed a Report of Compliance in response to the Commission Order in the above referenced docket of May 28, 1999.

Copies of said filing have been served upon all parties to this proceeding.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER99–2019–001]

Take notice that on June 7, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an amendment in the above-referenced filing. The amendment revises the terminology "firm load curtailment" to "firm transmission curtailment" to be consistent with language used by the North American Electric Reliability Council (NERC) in Docket No. EL98–52–000.

Copies of the filing have been served on all members of the Mid America Interconnected Network (MAIN), the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Cambridge Electric Light Company; Commonwealth Electric Company

[Docket No. ER99–2239–001]

Take notice that on June 7, 1999, Cambridge Electric Light Company and Commonwealth Electric Company tendered for filing a compliance report in response to the Commission order in the above-captioned docket of May 28, 1999.

Copies of said report have been served upon all parties to this proceeding.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Montana Power Company

[Docket No. ER99–3136–000]

Take notice that on June 2, 1999, Montana Power Company tendered for filing an amendment to its 1982 agreement for Purchase of Power between Montana Power Company and Big Horn County Electric Cooperative, Inc.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Dighton Power Associates Limited Partnership

[Docket No. ER99–3146–000]

Take notice that on May 27, 1999, the above-mentioned public utility filed their quarterly report for the quarter ending March 31, 1999.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Complete Energy Services, Inc.

[Docket No. ER99–3147–000]

Take notice that on June 4, 1999, Complete Energy Services, Inc. (Complete), petitioned the Comm for acceptance of Cc Schedule FERC N certain b ket authorit ity a based waiver of certain Comm ions.

Complete intends to engage in wholesale electric power and energy purchases and sales as a marketer. Complete is not in the business of generating or transmitting electric power.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. California Power Exchange Corporation

[Docket No. ER99–3148–000]

Take notice that on June 4, 1999, the California Power Exchange Corporation (PX), tendered for filing proposed tariff changes collectively comprising the PX's Tariff Amendment No. 11. The main purpose of Amendment No. 11 is to modify the PX Tariff and Protocols to reflect changes made by the California Independent System Operator Corporation (ISO) in its Amendment No. 14, which was recently accepted by the

Commission. Amendment 14 effected a substantial redesign of the ISO's Ancillary Services Markets, and the PX's Amendment No. 11 modifies the PX Tariff and Protocols to adapt to Amendment No. 14.

In addition to the changes to adapt to the ISO's Amendment No. 14, the PX also proposed relatively modest changes to its Tariff and Protocols, including provisions related to losses and to the settlement and payment time lines.

The PX requests an effective date to coincide with the effective date of the ISO's Amendment No. 14.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER99–3158–000]

Take notice that on June 4, 1999, the California Independent System Operator Corporation (ISO), tendered for filing with the Federal Energy Regulatory Commission its "Annual Report on Market Issues and Performance" prepared by the Market Surveillance Unit of the ISO. This report is the first Annual Report assessing the activities of the ISO and the state of competition in the California electricity market.

The ISO states that copies of the Annual Report have been served upon the Public Utilities Commission of California, the California Energy Commission, and the California Electricity Oversight Board. The ISO is also posting the Annual Report on its Home Page, www.caiso.com.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Geysers Power Company, LLC

[Docket No. ER99–3177–000]

Take notice that on June 7, 1999, Geysers Power Company, LLC (Geysers), tendered for filing an Offtake Agreement dated May 7, 1999 between Geysers and Calpine Power Services Company. The agreement was filed as a long-term transaction pursuant to paragraph 7(a) of Appendix B of the Letter Order issued April 28, 1999 in Docket No. ER99–1983–000.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ES99–40–000]

Take notice that on June 8, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) filed an application for an order, pursuant to Section 204 of the Federal Power Act, authorizing Con Edison during the period from July 1, 1999 through June 30, 2001 to issue and sell unsecured evidences of indebtedness maturing not more than twelve months after their date of issue up to an amount not to exceed $650 million outstanding at any one time. The requested authorization would supersede the order issued under Docket No. ES98–16–000.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or . protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15479 Filed 6–17–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6362–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Volatile Organic Compound Emission Standards for Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), this document announces that EPA is planning to submit for renewal the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): "Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Consumer Products," EPA No. 1764.01, OMB No. 2060–0348, expires June 30, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 17, 1999.

ADDRESSES: *Information concerning the ICR and the rule.* Information on the ICR and the Consumer Products Rule can be obtained from the docket (below) and is also available for downloading from EPA's internet website for this rule at "http://www.epa.gov/ttn/uatw/183e/cp/cppg.html."

Docket: Docket Number A–95–40, containing the ICR and supporting statement, is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore at (919) 541–5460, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, e-mail (moore.bruce@epa.gov).

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which manufacture, distribute, or import consumer products for sale or distribution in the United States, including the District of Columbia and all United States territories.

Title: National Volatile Organic Compound Emission Standards for Consumer Products, OMB Control No. 2060–0348; EPA ICR No. 1764.01; expires June 30, 1999.

Abstract: The information collection includes initial reports and periodic recordkeeping necessary for EPA to ensure compliance with Federal standards for volatile organic compounds in consumer products. Respondents are manufacturers, distributors, and importers of consumer products. Responses to the collection are mandatory under 40 CFR part 59, subpart C—National Volatile Organic Compound Emission Standards for Consumer Products. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Total industry burden is estimated to be 29,550 hours per year, at a total labor cost of $970,500 per year. Labor costs were estimated based on Table 2 of the Bureau of Labor Statistics (BLS) Employment Cost Trends. After adding overhead costs of 100 percent to the BLS figures, the resulting hourly labor rates for management, technical, and clerical labor are $69, $48, and $32, respectively. There are no capital costs associated with this collection. Burden was calculated based on the following assumptions:

(i) Initial Notification Reports will have been submitted by nearly all regulated entities (approximately 3000) prior to expiration of the existing ICR. Therefore, the burden calculation is based on 30 notifications per year beginning in 1999.

(ii) Reading the rule to obtain the recordkeeping and reporting instructions would require 2 hours.

(iii) Completion of the Initial Notification Report would involve 1 hour for data gathering and 1 hour for preparation of the initial notification report.

(iv) Notification of change in date code would require 1 hour preparation time.

(v) Annual planning for recordkeeping activities would require 2 hours.

(vi) Implementation of recordkeeping would require 8 hours per month.

Dated: June 9, 1999.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 99–15549 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6362–6]

Review of Clean Water Act Continuing Planning Process in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency, Region 9, is announcing that the Clean Water Act Continuing Planning Process for California is available for public review, and that EPA is reviewing the State's Continuing Planning Process with respect to the listing of impaired waters and establishment of total maximum daily loads.

FOR FURTHER INFORMATION CONTACT: David W. Smith, Water Division (WTR–2), U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, 415–744–2012.

SUPPLEMENTARY INFORMATION: Section 303(e) of the Clean Water Act requires that each State establish and maintain a continuing planning process (CPP) consistent with the Act. EPA reviews the State's CPP from time to time. Section 303(d) of the Act requires that each State identify waters within its boundaries not meeting water quality standards, and establish total maximum daily loads for such waters. EPA is reviewing that portion of California's CPP related to section 303(d) to determine whether it is consistent with section 303(e) and EPA's implementing regulations at 40 CFR 130.5. EPA is providing notice that California's CPP is available for public review. By September 22, 1999, EPA will prepare and make available to interested parties upon request for their review and comment EPA's preliminary written summary of its review. Interested persons may request copies of the CPP and EPA's preliminary written summary of its review when available. EPA will consider any comments on the preliminary written summary submitted not later than forty-five (45) days after the summary becomes available. By December 22, 1999, EPA will determine whether that portion of the CPP related to the section 303(d) program is consistent with the Act and its implementing regulations. EPA will also provide to interested persons upon request a final written summary of EPA's review of the CPP that will include any recommendations for improvement.

Dated: June 9, 1999.

Janet Y. Hashimoto,

Acting Director, Water Division.

[FR Doc. 99–15550 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6243–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed June 07, 1999 Through June 11, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990190, DRAFT EIS, COE, TN, KY, Reelfoot lake Project, Implemention of Wetland Preservation, Waterfowl Habitat Restoration, Fishery Improvement, Lake and Obion Counties, TN and Fulton County, KY, Due: August 02, 1999, Contact: Richard Hite (901) 544–0706.

EIS No. 990191, DRAFT SUPPLEMENT, AFS, SD, Veteran/Boulder Area Project, Updated Information on Additional Analysis for the Forbes Gulch Portion within the Beaver Park Roadless Area, Implementation, Black Hills National Forest, Spearfish and Nemo Ranger District, Lawrence and Meade Counties, SD, Due: August 02, 1999, Contact: Joy Trowbridge (605) 642–4622.

EIS No. 990192, FINAL EIS, FHW, MO, MO–13 AND M0–7 Highway/Freeway

Improvements, MO–13 from US 24 in Lexington to Truman Reservoir south of Clinton and MO–7 in the immediate area of Clinton, Funding, Lafayette, Johnson and Henry Counties, MO, Due: July 19, 1999, Contact: Don Neumann, (573) 636–7104.

EIS No. 990193, DRAFT EIS, FHW, WA, Cross-Base Highway, To Develop a new arterial Roadway between I–5 and WA–7 (Pacific Avenue), Between McChard Air Force Base and Ft. Lewis, Genetic Analysis of Western Gray Squirrels, Major Investment Study, Pierce County, WA, Due: August 31, 1999, Contact: Jim Leonard (360) 753–9408.

EIS No. 990194, DRAFT EIS, UAF, NV, Nellis Air Force Base, Proposal to Base or Beddown F–22 Aircraft Force Development Evaluation and Weapons School, Clark County, NV , Due: August 02, 1999, Contact: Don Kellogg (703) 652–6552.

Amended Notices

EIS No. 990145, DRAFT EIS, AFS, UT, South Manti Timber Salvage, To address Ecological and Economic Values affected by Spruce Beetle Activity in the South Manti Project, Manti-La National Forest, Ferron-Price and Sanpete Ranger Districts, Sanpete and Sevier Counties, UT, Due: July 21, 1999, Contact: Don Fullmer (435) 637–2817.

Published FR 06–18–99—Review Period extended.

Dated: June 15, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–15562 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6243–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 24, 1999 through May 28, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–USN–K11097–GU Rating LO, Agana Naval Air Station Disposal and Reuse, Implementation, Guam.

Summary: EPA expressed a lack of objection to the project.

ERP No. D–USN–K11098–CA Rating EC2, Alameda Naval Air Station and Fleet and Industrial Supply Center, Disposal and Reuse, Alameda Annex and Facility, City of Alameda and Alameda County, CA.

Summary: EPA expressed environmental concerns, because the Environmental Impact Report and the DEIS were prepared as separate documents with potentially different mitigation proposals, and due to specific concerns with hazardous materials and wastes.

Final EISs

ERP No. F–AFS–J65291–MT Ash and Iron Mountain Grazing Permit Reissuance, Allotment Gallatin National Forest, Park County, MT.

Summary: EPA review did not identify any potential environmental impacts requiring substantive changes in the proposal, therefore EPA has no objection to the action.

ERP No. F–DOE–K08022–AZ Griffith Energy Project, Construction and Operation, 520-Megawatt (MW) Natural Gas-Fired and Combined Cycle Power Plant, Right-of-Way Grant, Operating Permit and COE Section 404 Permit, Kingman, AZ.

Summary: EPA's previous objections have been resolved, therefore EPA has no objection to the action as proposed.

ERP No. F–FTA–J40143–UT University-Downtown-Airport Transportation Corridor, Major Investment Study, Construction and Operation of the East-West Corridor Light Rail Transit (LRT), Transportation System Management (TSM) and Central Business District (CBD), Funding, Salt Lake County, UT.

Summary: EPA's review has not identified any potential impacts, when combined with proposed mitigation measures, that require substantive changes to implementation of preferred alternative.

ERP No. FB–COE–K36009–CA Napa River and Napa Creek Flood Protection Project, New and Refined Information, City of Napa, Napa County, CA.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

Dated: June 15, 1999.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 99–15563 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6363–7]

Support of Small Watershed Programs; Request for Proposals and Federal Grant Applications FY 99, U.S. EPA, Region III, Chesapeake Bay Program Office

EPA seeks to award financial assistance to support communities undertaking small-scale watershed projects for the benefit of the Chesapeake Bay and its rivers. Congressional appropriation of $750,000 has been designated for the Small Watershed Grant Program for fiscal year 1999. Funding will be provided to an intermediary organization under the authority of Section 104(b)(3) of the Clean Water Act (CWA) to make subawards to local governments and communities that are eligible to apply and are engaged in watershed protection. Intermediary organizations that are eligible for financial assistance awards include non-profits, interstate agencies, and educational institutions that have experience with federal grant procedures. Subawards administered by the intermediary organization may support investigations, experiments, surveys, studies, training, and demonstrations (as allowed by Section 104(b)(3) of the CWA) to work towards the protection and restoration of the Chesapeake Bay and its rivers.

Electronic versions of the full Request for Proposals (RFP), links to background information and links to federal grant information are provided at the EPA Region III home page at: http://www.epa.gov/r3chespk/smallwater/.

All applicants will be required to provide a full federal grant application. A grant application kit and RFPs are available by calling Kim Scalia at 215–814–5421, by E-mail at : Scalia.Kimberly@EPA.GOV or by visiting: http://www.epa.gov/ogdunix1/grants.htm

Send signed original and five copies of complete grant application to: Ms. Kim Scalia (3CB00), Chesapeake Bay Program Office, US EPA Region 3, 1650 Arch St., Philadelphia, PA 19103–2029.

All Applications must be Postmarked by July 15, 1999.

EPA Contacts

Mindy Lemoine, Chesapeake Bay Program Office, US EPA Region III, 1650 Arc Street, Philadelphia, PA 19103–2029, 215–814–2736—Lemoine.Mindy@epa.gov

Amanda Bassow, Chesapeake Bay Program Office, US EPA Region III, 410 Severn Ave., Suite 109, Annaplis, MD 21403, 410–267–5723—Bassow.Amanda@epa.gov

William Matuszeski,

Director, Chesapeake Bay Program Office.

[FR Doc. 99–15541 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6363–8]

RIN 2050–AE50

Office of Solid Waste Burden Reduction Project

AGENCY: Environmental Protection Agency

ACTION: Notice of data availability and request for comment.

SUMMARY: To meet the goals of the Paperwork Reduction Act of 1995, the Office of Solid Waste (OSW) plans to reduce the recordkeeping and reporting burden on states, the public and regulated community associated with the Resource Conservation and Recovery Act (RCRA). The Paperwork Reduction Act establishes a federal government-wide goal to reduce the recordkeeping and reporting burden on the states, the public and regulated community by 40% from a starting date of 1995 to September 2001. We are working to reduce burden while protecting human health and the environment.

For this Notice of Data Availability (NODA), we reviewed our recordkeeping and reporting requirements and their burden on the states, public, and regulated community; reviewed burden reduction ideas developed by other EPA offices and the regulated community; developed additional burden reduction ideas; and sought input from EPA offices and states. In today's NODA, we are soliciting comment on our ideas and our background documents. These background documents are available on the Internet and in the RCRA Information Center. We plan to issue a proposed rulemaking to implement many of these ideas.

DATES: Written comments must be received by September 20, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–IBRA–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Hand deliveries should be made to the RCRA Information Center at the Arlington, VA address below. Comments also may be submitted electronically via the Internet to: rcra-docket@epamail.epa.gov.

Comments in an electronic format also should reference docket number F–1999–IBRA–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. Commenters must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Public comments and technical background information are available for viewing in the RCRA Information Center (RIC), located on the first floor of Crystal Gateway I, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that an appointment be made by calling (703) 603–9230. The public may copy a maximum of 100 pages from the docket at no charge. Additional copies are $0.15 per page. The docket index and some technical background information materials are also available electronically.

FOR FURTHER INFORMATION ON THIS NOTICE CALL: The RCRA Hotline. Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). Long-distance callers may call 1–800–424–9346 or TDD 1–800–553–7672. The RCRA Hotline operates weekdays, 9:00 a.m. to 6:00 p.m. eastern time. Send written requests to: RCRA Information Center (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Electronic Access

Background information materials for this Notice are available on the Internet. Follow the instructions below to access these materials electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/data/burdenreduction

FTP: ftp.epa.gov

Login: anonymous

Password: your Internet address

Files are located in /pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, we will transfer all comments received electronically to paper form and place them in the official record. The official record also will include all comments submitted in writing.

Acronyms

ICR: Information Collection Request
LDR: Land Disposal Restrictions
LQG: Large Quantity Generator
NODA: Notice of Data Availability
OSHA: Occupational Safety and Health Administration
OSW: Office of Solid Waste
PRA: Paperwork Reduction Act
RCRA: Resource Conservation and Recovery Act
TRI: Toxics Release Inventory
TSDF: Treatment, Storage and Disposal Facility

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Glossary of Terms:

Boilers/industrial furnaces: An enclosed device using controlled flame combustion to accomplish recovery of materials or energy.

Characteristic waste: A solid waste that is a hazardous waste because it exhibits one or more of the following hazardous characteristics: ignitability, corrosivity, reactivity, or toxicity.

EPA identification number: A number assigned by EPA to each generator; transporter; and treatment, storage, or disposal facility. Identification numbers are facility-specific, except for the transporter who has one for all his/her operations.

Facility: All land and structures used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal units.

Generator: Any person whose process produces a hazardous waste in excess of 100 kg/month or acutely hazardous waste in excess of 1 kg/month, or whose actions cause a hazardous waste to become subject to regulation.

Groundwater: Water below the land surface.

Hazardous waste: Includes solid wastes that have not been excluded from the definition of hazardous waste; have been listed as hazardous wastes by EPA; exhibit one or more characteristics of hazardous waste; or have been mixed with a hazardous waste.

Inspections: Owner/operators of facilities must inspect their facilities for malfunctions and deterioration, operator errors, and discharges which may cause of lead to releases of hazardous constituents to the environment or a threat to human health.

Land disposal: Includes placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or concrete vault or bunker intended for disposal purposed.

Land Disposal Restrictions: Also known as the land ban, these restrictions prohibit any land disposal of untreated hazardous wastes. Land Disposal Restrictions establish treatment standards that must be met prior to any land application of hazardous wastes.

Listed waste: A waste is a listed as hazardous based on the process from which the waste was generated and/or the constituents found in the waste.

Manifest: The paperwork that must accompany a shipment of hazardous waste as it moves from the generator to the transporter and eventually to the treatment, storage, or disposal facility.

Notification form: A form that notifies regulators of hazardous waste management activities at a facility.

Operator: The person responsible for the overall operation of a facility.

Owner: The person who owns a facility.

RCRA: The Resource Conservation and Recovery Act (RCRA) was enacted to protect human health and the environment, and to conserve valuable material and energy resources. The most important aspect of RCRA is the establishment of standards for the management and tracking of waste from generator to transporter to treatment, storage, and disposal.

Permit: Lays out the legally enforceable requirements that owners and operators of hazardous waste treatment, storage, and disposal facilities must comply with.

Recordkeeping and reporting requirements: A generator, transporter, or treatment, storage and disposal facility must keep all data relating to hazardous waste management units. They must also file reports to EPA, which become part of their operating record.

Solid waste: Any garbage, refuse, sludge, or other waste materials not excluded by definition. Hazardous waste is a subset of solid waste.

Treatment, Storage and Disposal Facility: A facility that treats, stores, and/or disposes of hazardous waste.

Treatment: Any method, technique, or process designed to change the physical, chemical, or biological character or composition of a hazardous waste to neutralize it or recover energy or material resources from the waste, or to render the waste nonhazardous or less hazardous.

Treatment standards: Standards that hazardous wastes must meet prior to land disposal.

I. Background and Purpose of Today's NODA

A. What Is RCRA?

The Resource Conservation and Recovery Act (RCRA) establishes a program for controlling hazardous waste from the time it is generated, through its treatment and storage, until its ultimate disposal. RCRA also establishes a program for controlling nonhazardous industrial solid waste and municipal solid waste by encouraging states to develop comprehensive plans to manage these wastes, setting criteria for municipal solid waste landfills and other solid waste disposal facilities, and prohibiting the open dumping of solid waste. RCRA is implemented by EPA and the states.

EPA's regulations implementing RCRA are listed in Title 40 of the Code of Federal Regulations (CFR). Within Title 40, the hazardous waste regulations are listed in Parts 260 through 279. The solid waste regulations are listed in Title 40, Parts 240 through 258. In this NODA, we often give the location of where you can find specific regulations as 40 CFR, with the specific part or parts listed afterward (e.g., 40 CFR Part 264).

B. What Is Recordkeeping and Reporting Burden?

Recordkeeping and reporting burden includes information that EPA requires or requests of you (the public, states, and regulated community), and then is reported to us and/or kept as records by you.

C. Why Do We Ask You To Recordkeep and Report?

We need information to ensure that human health and the environment are protected as required by RCRA. We can require that you provide us with information and/or that you keep records of information under the authority of RCRA. In addition, we sometimes ask you to submit information through voluntary surveys, focus groups, and studies.

D. What Are Our Goals for Reducing Recordkeeping and Reporting Burden?

To meet the federal government-wide goal established by the Paperwork Reduction Act (PRA), we are taking steps to reduce recordkeeping and reporting burden by 40 percent. Recordkeeping and reporting burden includes not only the time spent submitting information to us (writing a letter and putting it in the mail) or keeping records (creating and maintaining a filing system), but also the time it takes to develop the information (collecting data; organizing, analyzing, and summarizing data; writing reports; or filling out forms). Burden covers information that we require by regulation and the information that we request you give us voluntarily.

The PRA establishes a government-wide goal of reducing the paperwork burden to the public by 40 percent from the total amount of paperwork required or requested from the public annually as of September 30, 1995. The PRA allows us to reduce paperwork burden in stages: 25 percent by September 30, 1998, an additional 5 percent by September 30, 1999, another 5 percent by September 30, 2000, and a final 5 percent by September 30, 2001.

E. How Is Burden Estimated?

We estimate the amount of time it takes you to respond to our information requests as follows: First, we list all of the activities you as state employees, members of the regulated community, or private citizens undertake to collect, organize, or otherwise develop the information; report the information; or keep it in your records. For each activity, we then estimate the time it takes an average respondent to complete the information request, taking into account differences such as facility size or level of data complexity. Next, we verify these estimates through consultations with a small number of respondents. Finally, these hour estimates are multiplied by the number of people or entities expected to complete the information collection. The results of these analyses are published in Information Collection Requests (ICRs).

F. What Is an ICR?

An Information Collection Request (ICR) is a document summarizing our estimates of paperwork burden for an information collection. We have to obtain approval from the Office of Management and Budget (OMB) of the ICR before we can collect any information. Under the Paperwork Reduction Act, you (state employees, members of the regulated community, or private citizens) have an opportunity to comment on the estimates in our ICRs prior to our submitting them to OMB for approval. After a 60-day public comment period, we review and incorporate, where appropriate, your comments into our estimates.

OMB generally approves ICRs for a three-year period. In order to continue an information collection after this period, we must renew the ICR with OMB. ICR renewals follow the procedures outlined above, including consultations and public comment.

G. What Is the Baseline for OSW Paperwork Requirements and What Progress Has Been Made to Date in Reducing It ?

On September 30, 1995, the paperwork burden baseline for the regulations OSW implements was 12,600,000 hours. To meet the government-wide goal, we would have to reduce this burden baseline by 5,040,000 hours to an annual total of 7,560,000 hours by September 30, 2001. As of October 1, 1998, we achieved burden reductions totaling nearly 2,000,000 hours or 16 percent. A chart of all OSW burden hours is available in the RCRA docket or on the Internet.

H. What Is the OSW Burden Reduction Initiative and What Have We Done to Date?

The OSW Burden Reduction Initiative grew out of workshops and round tables for reinventing the RCRA regulations, such as the Land Disposal Roundtable we sponsored in July 1998. Over the last two years, we reviewed all of the OSW reporting and recordkeeping requirements and developed ideas for eliminating or streamlining them. After obtaining input from within EPA and a limited number of state experts, we developed today's NODA to seek broader input on the ideas. The goal of the Burden Reduction Initiative is to reduce paperwork while maintaining a protective OSW program.

I. What Is in Today's NODA?

In today's NODA, we present our major burden reduction ideas. We also reference other smaller ideas, which are available in the RCRA Docket and on the Internet. And, we mention other ongoing burden reduction efforts so you can gain an understanding of our overall burden reduction strategy.

If all of the burden reductions ideas presented in today's NODA and the background documents were implemented, we would achieve burden reductions that would allow us to meet our 40 percent goal. We estimate these ideas add up to 3.3 million hours, which is about a 40% overall reduction in burden. Note that this figure does not include savings from accounting changes, which are discussed at the end of the NODA. Also, in calculating this figure, we made sure that we were not double-counting any burden reduction savings from the multiple ideas.

Some of the ideas presented today are controversial, and we may not necessarily go forward with each idea in a rulemaking. However, we do expect to go forward with many of them. As discussed throughout today's NODA, your input will help us decide which areas are the best candidates to pursue in a later rulemaking. Please note that today's Notice does not change any existing recordkeeping and reporting requirements—they remain effective and are enforceable.

J. What We Would Like You To Do

After reviewing today's NODA and the background information, we would like you to comment on: the positive and negative impacts of the burden reduction ideas; whether they would reduce burden as we have estimated; and other ideas for reducing RCRA burden, both in areas covered by this NODA and any others.

K. Information on Burden Reduction Ideas Not in the NODA

You can find on the Internet at: http://www.epa.gov/epaoswer/hazwaste/data/burdenreduction a document entitled "Burden Reduction Ideas" which lists some additional burden reduction ideas not in the NODA. This document is a chart that lists each idea, its ICR number(s) and regulatory citation(s), its baseline burden hour estimate, and an estimate of the burden savings that might be achieved if it were implemented.

L. What Happens After We Receive Your Comments?

After reviewing comments received, we will issue a proposed rulemaking to implement a number of these burden reduction ideas. We will consider your comments and suggestions, and will probably do supplemental analyses on some of the ideas. The proposed rulemaking that follows this NODA will present more complete rationales for changes we are considering to existing requirements.

II. Our Major Burden Reduction Ideas

For the ideas presented below, we summarize our existing policies on the issue, discuss possible changes, and highlight areas you might want to comment on. Comments are of course welcome on any and all aspects of the discussion below.

A. Should We Allow Facilities To Submit All Information and Keep All Records of Information Electronically?

Existing Policies for Electronic Reporting and Recordkeeping

EPA has been working to introduce electronic reporting and recordkeeping into our programs. In the short term, our goal is to eliminate the cost to industry and government of using paper to transfer data and eliminate the errors and delays involved in keystroking reports into databases. Our longer term goal is to use electronic reporting as a tool for streamlining and automating the exchanges of data among industry, environmental agencies, and the public. To accomplish these goals, we are developing guidelines and have convened workgroups to ensure that we develop consistent and effective electronic reporting and recordkeeping programs across all program offices.

In the RCRA program, we are exploring ways to increase electronic reporting and recordkeeping. While we have no RCRA-wide policy on this subject, we have made strides in some

areas. For example, on November 2, 1996, we wrote an interpretive letter to the company Safety-Kleen saying that they can store electronic image files of manifests instead of keeping paper copies. We also recently initiated a pilot project to test the feasibility of using Electronic Data Interchange and the Internet to automate manifesting activities. In this pilot, users will prepare, transmit and keep copies of a digitally signed electronic manifest. The pilot is scheduled to be completed by September 1999 and will be evaluated by EPA as part of a manifest revisions proposed rule. We are also heavily promoting electronic reporting for the Biennial Report.

Possible Changes to Our Policies for Electronic Reporting and Recordkeeping

We are evaluating whether to develop an across-the-board policy whereby you could electronically report and keep records of RCRA-required documents so long as you meet some conditions, such as ensuring data integrity in storage and that the documents are readily available during inspections. This would mean that you would not have to keep paper copies of any RCRA records, unless you prefer to do so. In some cases, this policy would mean that we would have to upgrade our data management systems. We will not be able to do this immediately, but over time we could move to a primarily electronic system for RCRA, while maintaining paper capability for those parties who cannot or will not go to electronic reporting.

Questions/Comments

We want comment on whether electronic reporting and recordkeeping should be allowed across-the-board, or whether it should be limited to specific areas. In addition, please comment on the enforceability of electronic signatures (we especially want comment from state agencies who would be implementing the requirements), the accessibility of electronic records during inspections, and how easy it would be for companies to submit electronically. Also comment on whether you would see any burden or cost savings from electronic reporting and recordkeeping.

In addition, please comment on whether the costs of automation such as obtaining a computer, software, and on-line provider outweigh these cost savings. Even though the electronic submissions would be voluntary, we need to understand how many parties are likely to pursue electronic submissions to help us decide what resources we should be committing to this area.

B. Should EPA Reduce Reporting Requirements for Generators and Treatment, Storage and Disposal Facilities (TSDFs)?

Existing Reporting Requirements

We receive more than 300 notifications, reports, certifications, demonstrations, and plans from generators and TSDFs in order to show compliance with the RCRA regulations, as well as applications for extensions, permits, variances, and exemptions. Generators and TSDFs must notify us of their regulated waste activities and TSDFs must submit information such as ground-water quality reports, closure and post-closure certifications, and Part A permit applications. These reporting requirements are in 40 CFR Parts 262, 264, 265, 266, 268, 270.

Possible Changes to Reporting Requirements/Agency Analyses and Data

We are evaluating whether we should continue to require facilities to submit all this information. We would still require facilities to develop and maintain the required information. Rather than submitting the required information to EPA, however, it would be kept on-site.

We believe that not requiring facilities to submit this information will save them time and money. Receiving less information would also reduce our data management and administrative burden. We have developed a list of all of the reporting requirements that apply to generators and TSDFs, and the burden for each of these activities. This list is available in the RCRA Information Center and on the Internet at: http://www.epa.gov/epaoswer/hazwaste/data/burdenreduction.

Please be aware that we believe some notices to be high priority (to ensure compliance with regulations), and do not plan on eliminating the requirement that they be sent to EPA. Below are some of the notices we will keep:

- 40 CFR Parts 264.143, 145 and 265.143, 145 requirements that facilities submit financial assurance information or updates of financial assurance information. Allowing facilities to maintain this information on site only rather than sending it to EPA will increase the likelihood that facilities will not obtain adequate financial assurance for closure or corrective action.
- 40 CFR Parts 262.12; 263.11; 264.11; 265.11; and 266.70 requirements that facilities notify us of their legal owner. This information is needed to identify responsible parties in enforcement cases.
- 40 CFR Part 264.12 requirement that TSDFs notify generators that they have appropriate permits. Eliminating this requirement would shift the burden of proof to the Agency when we attempt to bring an action against a generator that ships waste to an unpermitted TSDF.
- 40 CFR Parts 264.12; 265.12 transfer of ownership requirements. These requirements help ensure that the buyer is fully aware of its RCRA obligations and increases the likelihood that the new owner will be in compliance with RCRA.
- 40 CFR Part 268.7(a) generator notification requirements. This tracking requirement is essential for federal regulators to ensure that the correct information is placed on file at the waste generating facility and is provided to the receiving facility, and allows us to monitor what happens to hazardous waste from generation to treatment.
- 40 CFR Part 268.7(b)(3)–(b)(4) treatment facility notifications. This tracking requirement is essential for federal regulators to ensure that the correct information is placed on file at the facility and is provided to the waste disposal facility, and to allow us to monitor what happens to hazardous waste.
- 40 CFR Part 268.9 characteristic waste notifications. Maintaining this notice and supporting information is important because once the waste has been decharacterized it can be land disposed in a nonhazardous landfill. An inspector will not know where this waste was sent for treatment or disposal without this notice because the receiving facility is out of RCRA jurisdiction. Therefore, this information is critical to maintain the RCRA cradle-to-grave tracking process.
- 40 CFR part 264.1036—RCRA air regulations subpart AA reporting requirements are used to determine compliance.
- 40 CFR part 264.1065—RCRA air regulations subpart BB reporting requirements are used to determine compliance.
- 40 CFR part 264.1090—RCRA air regulations subpart CC reporting requirements are used to determine compliance.
- 40 CFR Parts 262.12, 263.11, 264.11 notification of regulated waste activity. This is a basic requirement to inform us of who is generating and managing hazardous waste.

Questions/Comments

By identifying these high priority notices, we are asking whether the remaining paperwork imposed by existing regulations has to be sent to us.

The notices highlighted above are, in our opinion, necessary to properly ensure compliance. The other nearly 300 notices, however, may not be absolutely necessary, and simple recordkeeping onsite may suffice. We recognize that opinions will vary on how we should decide which notices to keep and thus welcome comments on a methodology for deciding what to drop and what to keep.

We are also interested in learning what impact there may be on the environment, human health, and worker health and safety if this information were not required to be submitted to EPA. In addition, we would like to know if this proposal would relieve the public and regulated community of significant burden.

To help you evaluate which of these notices and other documents are necessary to be submitted to us, we have developed some criteria, such as notices necessary for:

- Hazardous Waste Program Evaluation: These are items collected to measure the success of programs in protecting human health and the environment. They could include corrective action reports.
- Hazardous Waste Program Implementation: This is information collected to help us develop regulations and policies. This could include the biennial report and assurances of financial responsibility for corrective action.
- Enforcement: These items are necessary for the enforcement of environmental regulations. For example, the requirement that hazardous waste generators and transporters notify us of their legal owner provides us with information needed to identify responsible parties in enforcement cases.
- Required by statute: These are information items we must collect according to the RCRA statute, such as the hazardous waste reports under RCRA Section 3002.

C. Should We Lengthen the Periods Between Facility Self-Inspections?

Existing Self-Inspection Requirements

RCRA regulations require large quantity generators and treatment, storage and disposal facilities to inspect their facilities to ensure that they are operating in compliance with RCRA requirements. The regulations include both facility-wide and specific types of unit and equipment inspection standards. Some of RCRA's inspection requirements specify a frequency with which inspections must be conducted. For example, an owner of a container storage area must inspect it at least weekly, while an owner of a tank must inspect it daily. You can find RCRA's inspection requirements throughout the regulations, but mostly in 40 CFR Parts 264 and 265.

Inspections are a vital component of an effective regulatory system. We also recognize that some facilities may have very good facility management practices and might be able to inspect less frequently without sacrificing human health and environmental protection.

Possible Changes to the Inspection Requirements

We are evaluating whether to revise RCRA's inspection requirements by lengthening the time between inspections. We believe that some facilities might have controls in place that could let us reduce the frequency of inspections; this could possibly be established on a case-by-case basis. These special inspection schedules might be worked out during facility permitting, and/or we might put a special variance in the regulations under which we could allow less frequent inspections. We are also considering a variable implementation schedule, where for example, larger tank inspection frequency would remain the same, while smaller tanks would be inspected less frequently. And, we are considering a phased schedule where facility inspection might go from daily to weekly to biweekly, if no problems arise.

Questions/Comments

We would like comment on whether we should lengthen any of RCRA's inspection frequencies, on the extent to which such an action would reduce burden, and whether this would impact human health and the environment. Also, you might suggest mechanisms such as variances and waivers that we could use to allow a less frequent schedule, and what should be involved in such mechanisms, such as public input. If you are opposed to the idea of lengthening inspection frequencies, please explain your concerns.

D. Should We Change RCRA Personnel Training Requirements?

Existing RCRA Requirements for Personnel Training

RCRA regulations require large quantity generators (LQGs) and treatment, storage, and disposal facilities (TSDFs) to train their employees on how to perform their jobs in a way that ensures the facility's compliance with RCRA requirements (see 40 CFR 262.34(a)(4) for LQGs and 40 CFR 264.16 for TSDFs).

The training program must ensure that employees are able to respond to emergencies by familiarizing them with emergency procedures, equipment, and systems, and must include introductory and refresher courses and be taught by a qualified trainer. Employees must complete the program within six months after being hired or assigned to a new position at the facility. LQGs and TSDFs must keep updated information on employees, job descriptions, and the type of training that facility personnel have received. Training records on current personnel must be kept until closure of the facility.

Possible Changes to RCRA Personnel Training Requirements

We are evaluating two alternatives for changing the RCRA personnel training requirements. Alternative 1 would keep the requirements for personnel training under RCRA the same. However, we would eliminate all associated recordkeeping. Alternative 2 would eliminate the RCRA personnel training requirements that we believe overlap with Occupational Safety and Health Administration (OSHA) training requirements.

Alternative 1: Eliminate Recordkeeping for RCRA Personnel Training.

We are evaluating eliminating all recordkeeping associated with RCRA personnel training and replacing it with a one-time certification that all employees have been properly trained. Under this approach, we would maintain the Section 264.16(a)–(c) requirements and eliminate paragraph (d), replacing it with the certification. We would like comment on whether a certification would be sufficient to verify that employees have received proper training.

Alternative 2: Replace RCRA Personnel Training Requirements that overlap OSHA Training Requirements.

We believe that some RCRA personnel training requirements overlap with OSHA's requirements for health and safety training (see 29 CFR 1910.120 for some of OSHA's training requirements). For example, both regulatory programs require that facility personnel be trained in emergency response.

We are evaluating whether to eliminate RCRA requirements that may duplicate OSHA's. For requirements that overlap, we could just reference the OSHA requirements, or simply eliminate the entire set of RCRA requirements. We would work closely with OSHA if we did this. We have prepared a document that is in the

RCRA Information Center and on the Internet which provides information on what we believe to be overlapping requirements.

Questions/Comments

We would like comment on whether we should eliminate all recordkeeping for RCRA personnel training, or all training and recordkeeping that duplicates OSHA's. Please let us know if and where you believe the RCRA and OSHA training programs are duplicative for LQGs and TSDFs. In addition, please comment on whether the RCRA regulations require training beyond the scope of OSHA's training and whether their elimination would impact human health or the environment.

E. Should We Streamline the LDR Paperwork Requirements?

Existing LDR Paperwork Requirements

The Land Disposal Restrictions (LDR) are a major component of the RCRA program. In addition to establishing treatment standards for hazardous waste prior to land disposal, Part 268 requires generators and TSDFs to determine if their waste needs to be treated before land disposal, and requires notices and/or certifications to be sent with the waste shipments to TSDFs. Generators and TSDFs must keep records of their waste determinations, notifications, certifications, and other paperwork for three years.

The LDR paperwork requirements account for nearly one-third of all the burden for the RCRA program. Since the passage of the Paperwork Reduction Act, we have reduced LDR paperwork substantially—particularly with the May 12, 1997 Land Disposal Restrictions rule. Before this rule, generators and treaters that sent their hazardous waste offsite had to send a notification with each shipment of waste. This rule changed these requirements so that the notification need only be sent with the initial waste shipment, so long as the waste and the receiving facility remained unchanged. This paperwork change resulted in a savings of 1,630,000 burden hours annually. We are now evaluating the LDR paperwork requirements for even more burden reduction.

Based on our review of the LDR paperwork requirements, as well as conversations with the regulated community, we believe that some of the Part 268 requirements for waste determinations, notifications, and certifications could be reduced or eliminated altogether. We have summarized these requirements as they currently exist in the following paragraphs:

Section 268.7(a) Generator Paperwork Requirements.

Hazardous waste generators must determine if their waste meets the applicable LDR treatment standards. They may either test the waste or use their knowledge of it to make the determination (268.7(a)(1)). If the waste does not meet the applicable standards, the generator must send a one-time notification to the treatment facility indicating this. And, when the waste does meets the treatment standards, the generator must also send a one-time certification with the initial shipment. These one-time notifications and certifications must be placed in the generator's files. No further notification is required, except if the waste or receiving facility changes, in which case a new notification must be sent and a copy placed in the generator's files (268.7(a)(2)–(3)). Generators must keep copies of all waste determinations, notifications and certifications for at least three years (268.7(a)(8)).

Section 268.7(b) Treatment Facility Paperwork Requirements.

Treatment facilities must test their waste according to the frequencies established in their waste analysis plans to determine whether their waste complies with applicable LDR treatment standards (268.7(b)(1)–(2)). In addition, treatment facilities must send a one-time notice to the disposal facility that provides specified information on the waste. The treatment facility must also send a one-time certification to the disposal facility that the treatment technology used was operated properly. No further notification or certification is required, except if the waste or receiving facility changes, in which case a new notification and certification must be sent and a copy placed in the treatment facility's files (268.7(b)(3)–(4)). Where a waste is a recyclable material used in a manner constituting disposal (and meets other criteria), the treatment facility/recycler need not notify the receiving facility. It still must send a notice and certification with each shipment to EPA. It must also keep records of who received the hazardous waste-derived product (268.7(b)(6)).

Section 268.7(d) Paperwork Requirements for Hazardous Debris.

Generators or treatment facilities who claim that their hazardous debris is excluded from the definition of a hazardous waste, such as debris treated by a specified extraction or destruction technology, must send a one-time notification to EPA and keep a copy in their files. The notification must be updated under specified circumstances such as if the waste is shipped to a different facility. In addition, treatment facilities must certify compliance with the treatment standards by keeping specified records such as inspections and, for each shipment of treated debris, place a signed certification of compliance in their files.

Section 268.9 Paperwork Requirements for Characteristic Waste.

Generators of characteristic hazardous wastes must determine the underlying hazardous constituents (268.2(i)) in their characteristic waste. They may either test the waste or use knowledge of it to make the determination. (268.7(a)(1)). Generators or treatment facilities who treat their characteristic hazardous wastes to meet the treatment standards at 40 CFR Section 268.48 and render the waste non-hazardous must place a one-time notification and certification in their files. They must also send a copy to EPA. The generator or treatment facility must update the notification and certification in their files if the operation generating the waste changes and/or if the facility receiving the waste changes. The generator or treatment facility must update EPA on an annual basis if such changes occur.

Possible Changes to LDR Paperwork Requirements

We are evaluating the following changes to the LDR program:

Change 1: Eliminate 268.7(a)(1) Generator Waste Determinations.

We are assessing whether a separate waste determination under 268.7(a) is needed. Currently, generators are required to determine whether they have a hazardous waste under section 262.11. And, treaters are required to obtain a detailed chemical and physical analysis under section 264.13, which provides all the information required to comply with Part 268. Under section 268.40, hazardous waste is prohibited from land disposal unless it meets the requirements in the Table of Treatment Standards (which requires knowledge of EPA hazardous waste code, waste constituents, wastewater and nonwastewater classification, and treatability group).

We believe that the section 262.11 waste determination, along with the determinations required under sections 264.13 and 268.40, would be sufficient to assure that a waste is properly characterized for achieving compliance with the LDRs. In addition, we believe that a TSDF may continue to use generator-supplied information, if available, to meet 264.13 and 269.40 obligations, even if the waste determination requirement under 268.7 is removed. Therefore, we are considering whether the 268.7(a) waste determination should be eliminated.

Change 2: Eliminate 268.7(b)(6) Recycler Notifications and Certifications.

We believe it may be unnecessary for treatment facilities or recyclers to send these notifications and certifications to EPA, as long as the information contained in them is kept in facility records. We note that this kind of reporting relief is not new to the RCRA program. RCRA regulations currently allow waste handlers making a claim (or taking other action) to keep records on site and not submit them. For example, under 261.2(f), a person can accumulate materials before recycling without being subject to RCRA if it can be proved that the materials are potentially recyclable and have a feasible means of being recycled. Submittal of this proof is not required.

Change 3: Eliminate 268.7(d) Hazardous Debris Notifications.

We believe it may be unnecessary for generators and treaters of excluded debris to send these notifications to EPA, as long as the information contained in them is kept in facility records. Our reasoning is set out in Change 2 above.

Change 4: Eliminate 268.9(a) Characteristic Waste Determinations and Streamline 268.9(d) Notification Procedures.

We are reconsidering whether a separate waste determination under 268.9(a) is needed. Generators are required to determine whether they have a hazardous waste under section 262.11. Treaters are required to obtain a detailed chemical and physical analysis under section 264.13 which provides all information required to comply with Part 268 (among other requirements). And under section 268.40, hazardous waste is prohibited from land disposal unless it meets the requirements in the Table of Treatment Standards (which requires knowledge of the EPA hazardous characteristic waste code, underlying hazardous constituents, wastewater and nonwastewater classification, and treatability group).

We believe that the section 262.11 waste determination, along with the determinations required under sections 264.13 and 268.40, would be sufficient to assure that a waste is properly characterized for achieving compliance with the LDRs. Therefore, we are considering whether the 268.9(a) waste determination should be eliminated.

Under section 268.9(d), once a characteristic waste is treated so it is no longer characteristic, a one-time notification and certification must be placed in the generators' or treaters' files and sent to EPA. We are reevaluating whether these records need to be sent to EPA when they are required to be kept on site in the facility's files. Our reasoning is set out in Change 2 above.

Comments/Questions

We are soliciting comment on whether we should modify any of these LDR requirements for waste determinations or notifications. Please let us know if the contemplated modifications would eliminate information waste handlers need to manage wastes properly. And, please let us know if the reduced tracking requirements would weaken waste handlers' accountability.

F. Should We Reduce Amount of Data Collected by the Biennial Report?

Existing Reporting Requirements for the Biennial Report

RCRA requires hazardous waste generators and TSDFs to submit a report every other year on the quantity, composition, and disposition of hazardous wastes they generate or receive for treatment, storage, or disposal. Congress required that these reports be submitted to EPA or an authorized state.

To implement these provisions, we issued the Biennial Report regulations for large quantity generators and TSDFs, which are found in 40 CFR 262.41, 264.75, and 265.75. Generators and TSDFs must submit the Biennial Report forms by March 1 of every even numbered year for their hazardous waste activities in the previous (odd numbered) year. Through these forms and their instructions, we tell generators and TSDFs what information they should provide.

Over the years, we have changed the Biennial Report forms and instructions. For example, in the 1997 Biennial Report, we eliminated the entire Waste Treatment, Disposal, or Recycling Process System (PS) form and the waste minimization questions. In doing so, we decreased the amount of burden associated with the Biennial Report.

Possible Changes to the Biennial Report

We are evaluating whether we should revise the Biennial Report forms and instructions to further reduce burden. Potentially, these changes could be implemented for the 2001 Biennial Report cycle.

Change 1: Remove Optional Data Elements from the Current BRS Forms.

The current Biennial Report forms include data elements required by EPA and those that are optionally reported by respondents. These optional elements include state hazardous waste code, SIC code, origin code, source code, point of measurement, and form code. We are evaluating whether to remove some or all of these optional data elements from the Biennial Report forms. Since not all respondents complete the optional elements, we have incomplete information in our national database for these elements. We have proposed eliminating these elements before, and have received mixed feedback from states and the regulated community.

Change 2: Eliminate Reporting of RCRA Hazardous Wastes That Are Managed in Units Exempt From RCRA Permitting.

Currently, the Biennial Report covers all hazardous wastes that are generated by LQGs and managed by TSDFs. However, many RCRA hazardous wastestreams are managed in units that are subject to other environmental laws, such as the Clean Water Act and the Safe Drinking Water Act. These particular waste streams are typically high volume industrial wastewaters. We are considering whether to continue asking for the reporting of any wastewater or nonwastewater wastestream managed in exempt units in future Biennial Reports. We have also proposed this idea before, and received mixed feedback.

Questions/Comments

We would like to know how you use Biennial Report data. We would also like comments on these and other possible changes to the Biennial Report. We want to know what impacts these changes might have on how your facility would be characterized, as well as the characterization of your waste streams. Would hazardous waste generation and management data collected through a data set that excluded hazardous wastes managed in units exempt from RCRA permitting meet the needs of Biennial Report users? Would Biennial Report data that does not have optional data elements be useful? Conversely, if optional data elements are retained, how will that affect the usefulness and quality of the data for analysis? As with other sections in today's NODA, do you have additional ideas for reducing burden associated with the Biennial Report?

III. What Other Burden Reduction Efforts Are Taking Place in RCRA

In addition to the proposals listed in today's NODA, there are other efforts in EPA to identify and streamline RCRA paperwork requirements. Because these projects are being conducted as separate

efforts from this particular burden reduction project, we are not seeking detailed comments on them in this Notice, except for the BRS/TRI integration idea.

A. Changes to the Hazardous Waste Manifest

Existing Manifest Requirements

RCRA directs us to develop a manifest system to ensure that offsite shipments of hazardous waste arrive at a designated treatment, storage, or disposal facility. The manifest system requirements are in 40 CFR Parts 262, 263, 264, and 265. Under Part 262, hazardous waste generators generally must complete a manifest for each shipment of hazardous waste offsite. The manifest consists of a minimum of four copies to facilitate recordkeeping by multiple parties. Generators must keep a copy of the manifest signed by the transporter and, subsequently, by the designated TSDF who must return a copy to the generator. Part 263 requires hazardous waste transporters to sign and date the manifest at pickup, carry it to the designated TSDF, and keep a copy. Parts 264 and 265 require designated TSDFs to sign and date the manifest, note any significant discrepancies, return a copy to the generator, and keep a copy.

Proposed Changes to Manifest System

Based on recent analyses, we estimate that waste handlers take about 4.2 million hours each year to comply with EPA and State manifesting requirements. We are evaluating modifications to the manifest system which could substantially reduce this burden, including:

Modifying the manifest form.

We are considering further standardizing the manifest form and allowing generators to obtain the form from multiple sources. We are also thinking about ways to reduce the burden associated with a generator's waste minimization certification requirements.

Providing manifesting relief to utilities.

Electric and gas utilities have told us they have difficulty complying with some of the manifest procedures at their remote sites (such as substations and manholes). We are evaluating whether to streamline manifesting procedures for these sites.

Allowing automation of manifesting activities.

We are considering standards to enable industry to automate their manifesting. To study this, we developed the Hazardous Waste Manifest Automation Pilot Project, which is looking at both Electronic Data Interchange (EDI) and the Internet as mechanisms for automation. We have tested EDI with waste handlers and hazardous waste agencies in three states. Generators initiated the EDI manifests from their personal computers and transmitted them through a network to transporters, waste management facilities, and state agencies. Each facility signed their manifests with a unique identification number. Plans for the rest of 1999 include testing a digital signature in an EDI system and testing use of the Internet to transmit manifests.

Addressing other technical concerns.

We are also evaluating improvements to other areas of the manifest system. These include reducing inconsistencies between EPA and DOT shipping requirements and improving the tracking of problem shipments such as rejected loads and container residues.

If adopted, these changes could result in 600,000 hours of burden reduction. These changes are scheduled to be published in a proposed rule in June 2000.

B. Is There a Way To Decrease Burden Reduction of Biennial Reporting System (BRS) Through Integration With the Toxics Release Inventory (TRI)?

An area for potential burden reduction that comes up frequently is minimizing the overlap of reporting requirements for facilities that file both the Biennial Report and the Toxic Release Inventory. EPA is aware of the differences between these two information systems, including the universe covered, the frequency of reporting, what is reported, and the definition of facilities. However, a 1995 study of facilities showed that 43% of facilities reporting under BRS also reported to TRI and these facilities produced over 90% of the hazardous waste volumes reported to BRS. With recent changes to TRI, the percentage of BRS facilities that also report to TRI are expected to be even higher. Given this overlap, EPA believes it should assess burden reduction opportunities in this area. Comment is requested on the following ideas:

Change 1: Pre-population of electronic forms with redundant data elements.

Some burden reduction may be achieved by ensuring that similar data elements are uniformly defined so that an electronic reporting format for pre-populating a facility's TRI report with similar data elements from that facility's BRS submission (or a BRS submission with TRI data) could be implemented. These include the name of the facility, street and mailing addresses of the facility, contact names and telephone numbers, SIC Code, and EPA ID Number.

Change 2: Eliminate Biennial Reporting for wastes covered under TRI.

Studies have shown that facilities which report under the Biennial Report and also report to the Toxics Release Inventory are likely generating 90% of the wastes that are reported to BRS. Although BRS collects data on hazardous waste quantities and not the toxic chemical quantities reported to TRI, we are studying ways to match hazardous waste streams with the chemicals reporting in TRI . To the extent these matches can be made clearly and accurately, we could potentially eliminate whole categories of hazardous waste from being reported in the Biennial Report.

Change 3: Limit the Biennial Report to 100 top generators; rely on TRI for other RCRA facilities.

A small number of facilities are responsible for the majority of the waste reported in BRS. This option would require the top 100 (or some other number) facilities as measured by waste volume reported to BRS to continue reporting under BRS. No other facilities would have to report to BRS. All of these other facilities who reported to TRI in the past would still report to TRI in this option.

Note that only facilities in certain North American Industrial Classification System (NAICS—the . replacement for SIC) codes are required to report under TRI. Under this option, many generators who now report under BRS would not be required to report under TRI. This would include business services (NAICS 5414), automotive repair and services (NAICS 8111), health services (NAICS 621), national security (NAICS 928), and wholesale/retail trade sectors. Furthermore, under this option, we would no longer obtain information on off-site waste shipments, since this is not covered in TRI.

Change 4: Collect all information under TRI.

Under this option, the TRI form would be modified to take data elements currently only collected in BRS, such as waste code description, waste code number, RCRA permitting information and put them on the TRI form. There would be no more Biennial Report. The TRI reporting universe would remain the same under this option.

EPA is aware that these options could pose concerns to both states and the regulated community, especially given the investments that have been made in BRS. We welcome comment on impacts should any of these options be implemented, and whether they would reduce the paperwork burden on the public and regulated community.

C. Other RCRA Initiatives

We are not taking comments on the following initiatives. They are being presented for informational purposes.

• EPA and the States have recognized the need to reassess the information collected and managed to implement the RCRA hazardous waste program. To meet this need, the Waste Information Needs (WIN) Initiative was established to plan for and implement necessary information management changes. One of the key principles of the WIN Initiative is to identifying opportunities for reducing reporting burden.

The Initiative is evaluating what information is needed to implement and manage the hazardous waste program. Once these needs have been identified, the Initiative will determine what information should be available in a national database. The project has five phases: Planning, analysis, design, construction, and implementation. Currently the project is in the analysis and design phases.

For the analysis phase we divided the hazardous waste program into five areas, which are called Program Area Analyses (PAA). Three PAAs are active:

—Program Evaluation: The information needed to plan and evaluate the hazardous waste program against its goals and objectives.
—Universe Identification: Who is regulated and what we need to know to categorize and track them.
—Waste Activity Monitoring: The information needed on characterization, generation, movement, and management of hazardous wastes.

More information on the WIN/INFORMED Initiative is available on the Internet at: http://www.eps.gov/epaoswer/hazwaste/data.

• EPA is drafting streamlined permitting procedures for facilities that generate hazardous waste and manage it on-site in tanks, containers, or containment buildings. We expect a proposed rule on this subject to be published this summer.

• EPA proposed in a rulemaking in February of this year to allow generators of the RCRA hazardous waste F006 (wastewater treatment sludges from electroplating) up to 180 days (or 270 days, if applicable) accumulation time without obtaining a hazardous waste storage permit or interim status if certain conditions are met. This is an extension by 90 days of the time period to store hazardous waste without a permit.

• EPA is working to streamline RCRA Appendix VIII of 40 CFR 261. This is a list of over 480 chemicals used to define hazardous waste as well as the constituents which must be monitored during waste treatment. To reduce the burden to Appendix VIII users, EPA is reconfiguring and modifying Appendix VIII entries based on the probability of occurrence of certain constituents in particular types of waste.

• A number of years ago, we reexamined the regulatory standards for used oil handlers. We decided to remove used oil handlers entirely from the hazardous waste regulatory realm. They are now covered under their own regulatory authority, which provides hazardous waste regulatory-level environmental protection with a much lower level of reporting and record keeping. At the time these standards were established, EPA learned that most of the recordkeeping requirements established in the new regulatory scheme were already standard industry practices. Because substantial changes have already been implemented by this program, we have not included any used oil ideas in today's Notice.

• Likewise, a number of years ago we reexamined the regulations governing the collection and management of universal waste—batteries, thermostats, and certain pesticides. We decided to reduce the reporting requirements for these wastes at that time. For example, Biennial Report requirements do not apply to large quantity and small quantity handlers of universal waste, and a manifest is not required to accompany off-site shipments.

• The Office of Air Quality Planning and Standards has enacted burden reduction for the RCRA air regulations (40 CFR Parts 264 and 265 subparts AA: Process vents, BB:Equipment leaks, and CC: Tanks, surface impoundments, containers, and miscellaneous units). This eliminated much of the overlap between the RCRA air regulations and the Clean Air Act standards. Now TSDFs and large quantity generators can demonstrate compliance with the RCRA air regulations by simply documenting that affected units are operating with air emission controls that are in accordance with applicable Clean Air Act standards under 40 CFR 60, 61, or 63.

For any RCRA unit in compliance with such Clean Air Act regulations, these provisions would reduce the reporting and record keeping burden of the RCRA air regulations by nearly 100%. EPA is currently in the process of quantifying the burden reduction savings of these provisions. We expect that the majority of large-quantity generators and TSDFs are subject to one or more regulations under 40 CFR 60, 61 or 63. In addition to these compliance exemptions, EPA has also published other amendments to the Subparts AA, BB and CC air regulations that significantly reduce reporting and record keeping.

IV. What Are Other Agency Burden Reduction Initiatives?

We are not taking comments on the following initiatives. They are being presented for informational purposes.

• The Agency's The Next Generation in Permitting Plan, which was announced in February of this year, combines permitting system improvements underway in the individual program offices (such as hazardous waste, air, and water) with improvements developed by an Agency workgroup. The goal is to increase flexibility, encourage pollution reduction, improve public participation in permitting decisions, and reduce paperwork burden.

• The different designs of Agency information collection systems have caused facilities to be identified inconsistently across program offices. This makes it difficult to link and analyze all the information collected by EPA. The Agency's Facility Identification Initiative hopes to standardize identification information for all facilities subject to federal environmental reporting requirements.

• The One Stop Reporting Program's mission is to reinvent environmental reporting to: reduce industry reporting burden, foster multimedia and place-based (a specific area of contamination, an ecological area, or a political jurisdiction) approaches to environmental problem solving, and provide the public with easy access to environmental information. Recognizing the importance of states as primary collectors of environmental data, One-Stop is working with them to implement data reporting and management reforms. To date, the One Stop Program has awarded demonstration grants to 21 states to work towards achieving these goals.

• The Common Sense Initiative (CSI), which began in1994, has tested the possibilities of replacing a single-media approach to regulation and reporting with a multimedia approach focusing on industrial sectors. One of the industries that has been looked at is the metal finishing industry. From this examination, several recommendations were made: We should promote electronic reporting (one of the recommendations in today's NODA), replace RCRA IDs with a common identification that could be used across

multi-media programs, and eliminate redundancy in the Toxics Release Inventory, the Hazardous Waste Manifest, and the Biennial Report.

The CSI CURE (Consolidated Uniform Report for the Environment) project was developed for the computer and electronics industry sector between 1995–99 by the state of Texas. CSI CURE examined consolidating environmental reporting at the facility level and eliminating redundancies.

• In February 1998, the EPA Administrator issued the Reinventing Environmental Information Action Plan. The Plan commits EPA, in partnership with the states, to implement core data standards and make electronic reporting available in the Agency's major national systems within five years.

• Finally, in partnership with industry associations, environmental groups, universities, and other government agencies, EPA has created nine Compliance Assistance Centers. The Centers help small and medium sized businesses and local governments better understand and comply with federal environmental requirements. Each center is targeted to a specific industry sector and explains relevant federal environmental regulations.

V. Technical Background Information Containing Specific Burden Reduction Ideas

A. Is There a Description of Burden Reduction Ideas Not in Today's NODA?

We have put a document entitled "Burden Reduction Ideas" in the RCRA Information Center and on the Internet: http://*www.epa.oswer/hazwaste/data/burdenreduction*. In it, we describe some sections of the RCRA regulations that require paperwork and propose ideas for reducing this burden.

We seek your comments on the merits or disadvantages of any of these ideas and our estimates of burden savings. As with other sections of this NODA, if you have additional ideas, we welcome them.

B. What Are the RCRA Hazardous Waste Reporting Requirements?

We have put a document entitled "RCRA Hazardous Waste Reporting Requirements" in the RCRA Docket and on the Internet. In this document, we list all the RCRA hazardous waste reporting requirements. For each reporting requirement, we provide specific information on each requirement, including a description of the requirement, its regulatory citation(s), the approved EPA ICR that covers the reporting requirement, the current baseline burden estimate, frequency of its reporting, and whether the requirement applies to generators, TSDFs, or both. We organize and display the reporting requirements in six categories: Notifications; reports; certifications; variances, exemptions, demonstrations, and extensions; permits; and plans. Within these categories, we sorted the requirements by regulatory citation.

As noted earlier in the NODA, we are evaluating whether we should turn some of the RCRA hazardous waste reporting requirements into recordkeeping requirements. We recognize that some of this information will still need to be reported to EPA or a state. We seek your comments on this concept, what criteria should be used in determining whether reporting requirements can be turned into recordkeeping requirements, any potential impacts there would be if this information is not submitted, and whether this will result in burden reduction.

C. What Are the Accounting Changes for OSW ICRs?

We have put a document entitled "Accounting Changes" in the RCRA Docket and on the Internet. In this document, we list accounting changes for some OSW ICRs that could be implemented through ICR renewals. Accounting changes are not changes to paperwork requirements but rather changes to the way we measure burden in our ICRs. They are our efforts to better estimate the actual burden to the public and regulated community. For example, we could make it a rule throughout all ICRs that we only assign burden for reading regulations to new facilities. The presumption here is that existing facilities know the regulations and do not have to read them each time they do an activity. While not regulatory changes, these accounting changes reduce the amount of paperwork burden OSW has in its individual ICRs.

In this document, we list proposed accounting changes for reducing burden associated with specific paperwork requirements and ICRs. Each idea includes a brief summary, the affected regulatory citations, comments on implementing these ideas, the ICR in which the paperwork requirement can be found, an estimate of the burden savings that might be achieved if it were implemented, and a description of the assumptions used in calculating the potential burden hour savings. In most cases, we used our best judgment to estimate the savings, while in others, we were able to make specific calculations.

In reviewing this document, we ask you to comment on whether these are realistic assumptions and the accuracy of our estimates of burden savings.

D. What Are OSW's Burden Hours ?

We have put a document in the RCRA docket and on the Internet which lists OSW's ICRs and their burden hours as of 1995 and today.

Dated: June 8, 1999.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–15544 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34188; FRL 6084–6]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: The Agency will approve these use deletions and the deletions will become effective on or soon after the date of publication.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Office of Pesticide Programs (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5404; e-mail: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in three (3) chlorpyrifos

pesticide registrations listed in Table 1 below. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Although the food use site being deleted has been a registered site for chlorpyrifos products, a tolerance has not been established for this commodity under the Federal Food, Drug, and Cosmetic Act (FFDCA). Therefore, under FIFRA section 2(b), this uses represent an unreasonable adverse effect on the environment, as it would result in human dietary risk from residues resulting from use of a pesticide in or on food inconsistent with the standard under section 408 of FFDCA. As such, the Agency is hereby waiving the 180–day comment period normally given for the deletion of a minor use, in accordance with FIFRA section 6(f)(1)(c). The Agency has determined that, while these actions require publication for the purpose of announcement, a comment period is not warranted.

TABLE 1——REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
51036–291	Chlorpyrifos 4# AG	Chlorpyrifos	Use on popcorn
51036–300	Chlorpyrifos 15G	Chlorpyrifos	Use on popcorn
067760–14	Nufos 15G	Chlorpyrifos	Use on popcorn

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2——REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
51036	MICROFLO Company, P.O. Box 772099, Memphis, TN 38117
067760	Cheminova, Inc., Oak Hill Park, 1700 Route 23, Suite 210, Wayne, New Jersey 07470

III. Existing Stocks Provisions

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after the effective date of use deletions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: June 7, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–15551 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6363–3]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Elizabethtown Landfill De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liability under CERCLA of one *de minimis* party for response costs incurred by the United States Environmental Protection Agency at the Elizabethtown Landfill Superfund Site, West Donegal Township, Lancaster County, Pennsylvania.

DATES: Comments must be provided on or before July 19, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and should refer to: In Re: Elizabethtown Landfill Superfund Site, West Donegal Township, Lancaster County, Pennsylvania, U.S. EPA Docket No. III–99–013–DC.

FOR ADDITIONAL INFORMATION CONTACT: Margaret Cardamone, Associate Regional Counsel, (215) 814–2477, United States Environmental Protection Agency, Office of Regional Counsel, (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103.

Notice of De Minimis Settlement: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Elizabethtown Landfill Superfund Site in West Donegal Township, Lancaster County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on April 7, 1999, and is subject to review by the public pursuant to this document. The agreement has been approved by Attorney General, United States Department of Justice or her designee. Listed below, is the party who has executed binding certifications of its consent to participate in the settlement:

National Standard Company

This party agreed to pay $549,316.23 to the United States Environmental Protection Agency subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this document.

EPA is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, section 107 of

CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. Under this authority the Environmental Protection Agency proposes to settle with potentially responsible parties at the Elizabethtown Landfill Superfund Site who are responsible for less than one percent of the volume of identified hazardous substances at the Site.

The *de minimis* party listed above will be required to pay its volumetric share of the Government's past response costs and the estimated future response costs at the Elizabethtown Landfill Superfund Site.

The Environmental Protection Agency will receive written comments to this proposed administrative settlement for thirty (30) days from the date of publication of this document. A copy of the Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103 by contacting Margaret Cardamone, Associate Regional Counsel, at (215) 814–2477.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 99–15545 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6363–4]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Elizabethtown Landfill De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The United States Environmental Protection Agency is proposing to amend a *de minimis* settlement which was entered on June 27, 1996, pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed amendment is intended to resolve the liability under CERCLA of one additional *de minimis* party for response costs incurred by the United States Environmental Protection Agency at the Elizabethtown Landfill Superfund Site, West Donegal Township, Lancaster County, Pennsylvania.

DATES: Comments must be provided on or before July 19, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and should refer to: In Re: Elizabethtown Landfill Superfund Site, West Donegal Township, Lancaster County, Pennsylvania, U.S. EPA Docket No. III–96–10–DC.

FOR ADDITIONAL INFORMATION CONTACT: Margaret Cardamone, Associate Regional Counsel, (215) 814–2477, United States Environmental Protection Agency, Office of Regional Counsel, (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103.

Notice of De Minimis Settlement: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed amendment to an administrative settlement concerning the Elizabethtown Landfill Superfund Site in West Donegal Township, Lancaster County, Pennsylvania. The amendment to the administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on October 26, 1998, and is subject to review by the public pursuant to this Notice. The agreement has been approved by the Attorney General, United States Department of Justice or her designee. Listed below, is the party who was added to this agreement under the amendment and has executed binding certifications of its consent to participate in the settlement:

Pennsylvania Department of Health

This party agreed to pay $117,062 to the United States Environmental Protection Agency subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this document.

EPA is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. Under this authority the Environmental Protection Agency proposes to settle with potentially responsible parties at the Elizabethtown Landfill Superfund Site who are responsible for less than .39 percent of the volume of identified hazardous substances at the Site.

The *de minimis* party listed above will be required to pay its volumetric share of the Government's past response costs and the estimated future response costs at the Elizabethtown Landfill Superfund Site.

The Environmental Protection Agency will receive written comments to this proposed administrative settlement for thirty (30) days from the date of publication of this document. A copy of the proposed amendment to the Administrative Order on Consent, as well as the Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103 by contacting Margaret Cardamone, Associate Regional Counsel, at (215) 814–2477.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 99–15547 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6362–7]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act; Havertown PCP Superfund Site; CERCLA § 122(g) Administrative Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of two proposed administrative *de minimis* settlements concerning the Havertown PCP Superfund Site (the Site), Haverford Township, Delaware County, Pennsylvania (Proposed Settlements). The Proposed Settlements with the Philadelphia Chewing Gum Corporation and R&E Investments, Inc. (Settling Parties) has been approved by the Attorney General, or her designee, of the United States Department of Justice. The Proposed Settlements were signed by the Regional Administrator of the United States Environmental Protection Agency (EPA), Region III, on February 9, 1999, pursuant to section 122(g) of CERCLA, 42 U.S.C. 9622 (g), and is subject to review by the public pursuant to this notice.

The Proposed Settlements resolve any potential claims that EPA may have had against the settling parties, who own property located above the plume of contaminated groundwater originating at the former National Wood Preservers, Inc. facility. The properties owned by the Settling Parties are located across the street from the former National Wood Preservers, Inc. Property. As part of the settlement, the Settling Parties have granted to EPA access rights and easements onto their properties so that EPA can implement its groundwater remedial action at the Site. The settlements do not require the payment of any money by the Settling Parties.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Settlement. EPA will consider all comments received and may withdraw or withhold consent to the Proposed Settlements if such comments disclose facts or considerations which indicate the Proposed Settlement are inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1605 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be provided on or before July 19, 1999.

ADDRESSES: The proposed Settlement agreements are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Proposed Settlement agreements may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; telephone number (215) 814–2476. Comments should reference the "Havertown PCP Superfund Site" and EPA Docket Nos. III–98–095 and III–98–096 and should be forwarded to Suzanne Canning at the address above.

FOR FURTHER INFORMATION CONTACT: Andrew Duchovnay (3RC42), (215) 814–2484, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

Dated: June 3, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–15548 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Evaluation of Performance as Required Under the Government Performance and Results Act

AGENCY: Office of Science and Technology Policy.

ACTION: Request for comments.

SUMMARY: This notice describes a survey that will be conducted by the President's Committee of Advisors on Science and Technology (PCAST) to evaluate the performance of the Office of Science and Technology Policy (OSTP) as required under the Government Performance Results Act (GPRA). Because the survey will be sent to more than nine non-governmental employees, the Office of Management and Budget must approve the survey instrument and thus notification to the public is required.

DATES: Comments must be received on or before August 17, 1999.

ADDRESSES: Submit written comments by mail to: GPRA/PCAST Review Committee, Office of Science and Technology Policy, Room 435, OEOB, Washington, DC 20502 or by fax to 202–456–6026.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Kahin or Dr. Joan Porter, GPRA/PCAST Review Committee, Office of Science and Technology Policy, Room 435, OEOB, Washington, DC 20502 or by phone 202–456–6035 (Kahin) or 202–456–6101 (Porter).

SUPPLEMENTARY INFORMATION: PCAST will conduct a survey of approximately 200 individuals to determine how well OSTP is performing its mission as outlined in Public Law 94–282.

OSTP's continuing mission is set out in the National Science and Technology Policy, Organization, and Priorities Act of 1976 (Pub. L. 94–282). It calls for OSTP to:

Serve as a source of scientific and technological analysis and judgment for the President with respect to major policies, plans, and programs of the Federal Government.

The Act authorizes OSTP to:

- Advise the President and others within the Executive Office of the President on the impacts of science and technology (S&T) on domestic and international affairs;
- Lead an interagency effort to develop and implement sound S&T policies and budgets;
- Work with the private sector to ensure Federal investments in S&T contribute to economic prosperity, environmental quality, and national security;
- Build strong partnerships among Federal, State, and local governments, other countries, and the scientific community;
- Evaluate the scale, quality, and effectiveness of the Federal effort in S&T. OSTP's Senate-confirmed Director also serves as Assistant to the President for Science and Technology. In this role, he co-chairs the President's Committee of Advisors on Science and Technology (PCAST) and supports the President's National Science and Technology Council (NSTC).

A Senate-confirmed Associate Director leads each of OSTP's four divisions covering the areas of Environment, National Security and International Affairs, Science, and Technology. OSTP's four general goals flow directly from Public Law 94–282.

Goal 1: Advise

Provide sound, timely, clear, and accurate advice to the President and others within the Executive Office of the President on topics where S&T can have an impact on domestic and international affairs, and in areas where Federal action has the potential to advance or impede scientific or technological progress.

Performance on This Goal Will be Evaluated According to the Following Criteria

- OSTP is successful in achieving this goal if it delivers timely advice on topics of great importance to the Nation, and its efforts have a favorable effect on associated national policies and on Federal research and development (R&D) program priorities and budgets.
- OSTP is minimally effective in achieving this goal if it delivers advice on topics that are important to the Nation, and its efforts have a discernable effect on associated national policies and on Federal R&D program priorities and budgets.

Goal 2: Coordinate

Coordinate the development and implementation of the Administration's domestic and international S&T policies, programs, and budgets.

Performance on This Goal Will be Evaluated According to the Following Criteria

• OSTP is successful in achieving this goal if coordination of the key R&D policies, programs, and budgets of the Federal S&T agencies is improved, appropriate agencies work together to implement cross-cutting priorities and programs, and international aspects (e.g., domestic and international implications of domestic and international programs) are suitably addressed.

• OSTP is minimally effective in achieving this goal if some R&D policies, programs, and budgets of the Federal S&T agencies are coordinated, some agencies work together to implement some cross-cutting priorities and programs, and international aspects are recognized.

Goal 3: Promote Partnerships

Catalyze and promote effective partnerships among Federal, State, and local governments, other countries, the private sector, and the academic and scientific communities.

Performance on This Goal Will be Evaluated According to the Following Criteria:

• OSTP is successful in achieving this goal if the partnerships it catalyzes and promotes are grounded in S&T, have the potential to contribute substantially to achieving national goals, involve the appropriate parties, including Federal government involvement in partnership implementation, and are tracked to their successful conclusion.

• OSTP is minimally effective in achieving this goal if the partnerships it catalyzes are grounded in S&T, have the potential to contribute to achieving national goals, and involve most appropriate parties, including Federal government involvement in partnership implementation.

Goal 4: Assess and Report

Evaluate and report on the scale, quality, and effectiveness of the Federal effort in S&T.

Performance on This Goal Will be Evaluated According to the Following Criteria

• OSTP is successful in achieving this goal if the assessments and reports it prepares or participates in are factually accurate, cover the full range of relevant scientific, technical, and policy issues, and are written to be understood by decisionmakers who may not have scientific or technical training.

• OSTP is minimally effective in achieving this goal if the assessments and reports it prepares or participates in are factually accurate and cover the full range of relevant scientific, technical, and policy issues.

Verification and Validation

OSTP has asked PCAST to assess OSTP's performance.

The President appoints members to PCAST, which provides independent advice to the President on the Federal government's S&T policies and programs. PCAST will have complete discretion in formulating its assessment, and PCAST's independent views on how well OSTP has achieved or made progress toward the performance goal will be made available to the public.

Dated: June 14, 1999.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 99–15495 Filed 6–15–99; 9:21 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Submitted to OMB for Review and Approval

June 10, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Broadcast Auction Form Exhibits.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 1,380.

Estimated Time Per Response: 0.5 hours to 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 690 hours.

Total Annual Cost: $138,000.

Needs and Uses: Commission rules require that auction participants submit exhibits disclosing ownership, bidding agreements and engineering data. These data are used by Commission staff to ensure that applicnats are qualified to participate in Commission auctions and to ensure that license winners are entitled to receive the new entrant bidding credit, if possible. Exhibits regarding joint bidding agreements are designed to prevent collusion. Submission of engineering data for non-table services enables the Commission to determine which applications are mutually exclusive.

OMB Control Number: 3060–XXXX.

Title: MDS and ITFS Two-Way Transmissions—Report and Order.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 115,953.

Estimated Time Per Response: 1 hour to 41 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, third party disclosure requirement.

Total Annual Burden: 214,892 hours.

Total Annual Cost: $3,619,032.

Needs and Uses: The rules adoped in the Report and Order in MM Docket 97–217, allow two-way operations for MDS and ITFS will simplify two-way licensing and provide greater flexibility in the use of the allotted spectrum to licensees. These changes will eliminate market entry barriers for small entities. The Commission will use this information to ensure that MDS and ITFS applicants, conditional licensees and licensees have considered properly the potential for harmful interference from their facilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–15520 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning FEMA Form 85–3, National Defense Executive Reserve Personal Qualifications Statement. The form is used by Federal departments and agencies to recruit members for the National Defense Executive Reserve (NDER) program.

SUPPLEMENTARY INFORMATION. The NDER program was established by the Defense Production Act of 1950, as amended. Under Executive Order 12919, National Defense Industrial Resources Preparedness, June 3, 1994, Part VI, Section 601, the Director of the Federal Emergency Management Agency coordinates the NDER program activities of departments and agencies that have NDER units. The NDER is composed of persons of recognized expertise from industry, organized labor, professional groups, and academia to serve in executive positions in the Federal Government during the event of an national emergency. FEMA may activate an NDER unit in whole or in part, upon the written determination that an national emergency affecting the national security or defense preparedness of the United States exists, and that the activation of the units is necessary to carry out the emergency program functions of departments or agencies.

Collection of Information

Title: The National Defense Executive Reserve Personal Qualifications Statement.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0001.

Form Numbers: FEMA Form 85–3, National Defense Executive Reserve Personal Qualification Statement.

Abstract: The NDER is a Federal government program coordinated by FEMA. To become a member of the NDER, individuals with the requisite qualifications must complete an FEMA Form 85–3, National Defense Executive Reserve Personal Qualification Statement. FEMA Form 85–3 is an application form that is used by Federal departments and agencies to fill NDER vacancies and to ensure that individuals are qualified to perform in the assigned emergency positions. FEMA reviews the application forms to ensure that the candidate meets all basic membership qualifications for the Executive Reservist; ensures that applicants are not already serving in a Federal department or agency sponsored unit; and in some cases, determines the Federal department or agency best suited for the applicant.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 25 hours.

Estimated Cost: None.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or e:mail muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Margaret B. Roberts, Program Manager, Preparedness, Training and Exercises Directorate, (202) 646–3564 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: June 7, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–15555 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the Capability Assessment for Readiness (CAR) which collects data on the capabilities of States to effectively respond to major disasters and emergencies.

SUPPLEMENTARY INFORMATION: The CAR program was established based on the requirement recognized by both the U.S. Congress and FEMA that an assessment of State capabilities was needed to determine the States' readiness to effectively respond to major disasters, and secondarily that FEMA financial assistance to the States is being effectively utilized. The answers to these questions are provided in the CAR assessment that involves detailed programmatic questions on mitigation, preparedness, response, and recovery activities.

Section 313 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288, as amended) requires the President to "conduct annual review of activities of Federal agencies and State and local governments in major disaster and

emergency assistance, in order to assure maximum coordination and effectiveness of such programs."

Section 613 of the Stafford Act concerning financial contributions to States for necessary and essential State and local emergency preparedness personnel and administrative expenses provides that the State "shall make such reports in such form and content as the Director may require."

Collection of Information:

Title: Capability Assessment for Readiness (CAR).

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0272.

Form Numbers: Not Applicable.

Abstract. The CAR is needed by FEMA to determine that current capabilities of the States to respond to major disasters and emergencies. It is also an essential means of reporting to the United States Congress and the President on the degree to which States, as primary recipients of FEMA grants, are capable of performing their emergency management responsibilities. It provides a mechanism to evaluate the effectiveness of FEMA programs that are designed to help States attain a high level of achievement in mitigation, preparedness response and recovery programs. It can be used by States for: (1) developing strategic planning initiatives; (2) producing annual work plans for Federal grants based on areas requiring improvement that are identified in the CAR; (3) providing a basis for budget submissions to State legislatures; and (4) modifying CAR to establish an instrument to assess the capabilities of local jurisdictions.

Affected Public: State, Local, or Tribal Government (U.S. States and Territories).

Estimated Total Annual Burden Hours: 1,680 annually; 3,360 biennially.

FEMA forms	Number of Respondents (A)	Frequency of Response (B)	Hours per response (C)	Annual burden hours (A × B × C)
	56	Biennial	60	3,360.
Total	56	Biennial	60	3,360. 1,680 on an annual basis.

Estimated Cost. Cost to Federal Government is $470,500. The cost to the States is $87,360.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) determine an estimated cost of the proposed data collections to respondents; (d) enhance the quality, utility, and clarity of the information to be collected; and (e) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received on or before August 17, 1999.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524, e-mail: muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: For additional information contact Alfred J. Ranno, Preparedness, Training, and Exercises Directorate, at (202) 646–3137. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: June 7, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–15556 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of an expired information collection. The request is submitted under the emergency processing procedures in the Office of Management and Budget (OMB) regulations 5 CFR 1320.13. FEMA is requesting that this collection be approved by June 8, 1999, for use through December 1999.

FEMA plans to follow this emergency request with a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation CFR 1320.10. To help us with the timely processing of both the emergency and normal paperwork clearance submissions to OMB, FEMA invites State and local governments to comment on the proposed collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 (c)(2)(A)). It seeks comments concerning the collection of information associated with financial and administrative reporting and recordkeeping requirements that enable State and local governments to request from FEMA Federal financial and technical assistance through Performance Partnership Agreements/Cooperative Agreements.

SUPPLEMENTARY INFORMATION: Cooperative Agreements under Performance Partnership Agreements are the vehicle for achieving the Federal Emergency Management Agency's strategic goal of establishing in concert with its partners, a national emergency management system that is comprehensive, risk-based and all hazards in approach. It focuses on integrating and achieving Federal and State goals and objectives for the four broad emergency management functions: Mitigtion (risk reduction), preparedness (operational readiness), response (emergency operations), and recovery. This collection of information is in accordance with the requirements of Title 44 of the Code of Federal Regulations (CFR) Part 13, Uniform Administrative Requirements for Grants and Cooperative agreements to State and Local Governments, Subpart B, section 13.10; Subpart C, sections 13.32, 13.33, 13.40, 13.41; and Subpart D, section 13.50. Under the Performance Partnership Agreements, Federal funding is provided through Cooperative Agreements.

Collection of Information: This collection of information includes standard and FEMA forms and other reporting and recordkeeping requirements that enable State and local governments to request from FEMA Federal financial and technical assistance through Cooperatives Agreements.

Title: Financial and Technical Assistance under the Performance Partnership Agreements.

Type of Information Collection: Reinstatement, with change, of a previously approved collection.

OMB Number: 3067–0206.

Form Numbers: Standard Form 424, Application for Federal Assistance, hour burden—2 hours per response and recordkeeping hour burden—.2 hour per response;

Indirect Cost Agreement hour burden—50 hours per response and recordkeeping hour burden—.2 hour per response;

Budget Deviations, hour burden—5.8 hours per response and recordkeeping hour burden—.2 hour per response;

SF–SAC, Data Collection Form for Reporting Audits, hour burden—30 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–10, Financial Status Report, hour burden—9.8 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–15, Budget Information—Construction Projects, hour burden—17 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–16, Assurances, hour burden—1.5 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–17, Outlay Report and Request for Reimbursement for Construction Programs, hour burden—17 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–18, Report of Government Property; hour burden—6 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–19, Report of Unobligated Balance of Federal Funds, Drawdowns, and Undrawn funds, 5 minutes per line, total 2 hours per sheet and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–20, Budget Information—Nonconstruction, hour burden—9.8 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–22, Program Narrative—Nonconstruction, hour burden—8 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–22, Program Narrative—Construction, hour burden—8 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–22, Performance Report—Nonconstruction, hour burden—8 hours per response and recordkeeping burden—.2 hour per response;

FEMA Form 20–22, Performance Report—Construction, hour burden—8 hours per response and recordkeeping burden—.2 hour per response;

FF 76–10a, Obligating Document for Awards/Amendments, hour burden—1.5 hours per response and recordkeeping .2 hour per response; and,

Reading, Understanding and Using the Performance Partnership Agreements/Cooperative Agreements Application; Awards/Amendments; Outlays, Performance Reporting, Budget Deviations, Property Management, and Close-out; and Audit Modules—hour burden—12 hours per response and recordkeeping hour burden—.2 hour per response.

Abstract: Performance partnerships are joint efforts by Federal, State and local governments and providers to design programs and measure results. The Federal Emergency Management Agency and the Governor or his/her authorized representative sign performance Partnership Agreements. Performance partnerships strive to streamline the traditional Federal government grant system by providing increased flexibility on how a program is run in exchange for increased accountability for results. The flexibility and accountability of performance partnerships contain several general objectives that are relevant to the development of a strong national emergency management partnership. The objectives of increased flexibility include consolidation of programs and funding streams, elimination of micro-management, devolved decision-making, and reduced wasteful paperwork and barriers to success. The objectives of increased accountability for results mean partners will develop agreed upon performance measures that use outcomes and outputs to measure progress toward national goals, create funding and other incentives to reward progress towards achievement of desirable results and create disincentives (such as flexibility and the reduction or termination of Federal funding) if efforts are not made to achieve the desired outcomes. The collection of information focuses on Standard and FEMA forms and other reporting and recordkeeping requirements that enable State and local governments to request from FEMA Federal financial and technical assistance through Performance Partnership Agreements/Cooperative Agreements. The burden hours for this collection only reflect the burden for Cooperative Agreement funding, reporting, and recordkeeping under Performance Partnership Agreements. As other FEMA functions and program activities funded by Federal grants and cooperative agreements re reviewed, the span of coverage for this collection will include burden for those programs as well.

Affected Public: State, Local, and Tribal Governments.

Number of Respondents: 56.

Estimated Burden Hours: 67,878.

Estimated Recordkeeping Burden Hours: 1,400.

Estimated Total Annual Burden Hours: 69,278.

Estimated Cost to the Federal Government: $400,000.00.

Comments: Written comments are solicited to:

(a) Evaluate whether the proposed data collections and reporting requirements are necessary for the proper performance of FEMA's functions and program activities, including whether the date have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed data collections and reporting requirements;

(c) Determine an estimated cost of the proposed data collections and reporting requirements to the respondents;

(d) Enhance the quality, utility, and clarity of the information to be collected; and,

(e) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB should receive comments concerning the approval of this collection of information under OMB's emergency processing procedures within 30 days of the date of this notice. FEMA will, however, continue to accept comments concerning this collection of information through August 17, 1999.

ADDRESSES: Interested persons should submit written comments to the Office

of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for FEMA, 725 17th Street, NW, Room 10102, Washington, DC 20503, or to the Federal Emergency Management Agency, Attn: Information Collections Officer, 500 C Street, SW, Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: For additional information contact Charles McNulty, Office of Financial Management, Room 350, Washington, D.C., at (202) 646–2976. For copies of the proposed collection of information contact Muriel B. Anderson at (202) 646–2625, FAX (202) 646–3524, or e-mail: muriel.anderson@fema.gov.

Dated: June 7, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–15553 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Post Construction Elevation Certificate/Floodproofing Certification.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0077.

Abstract: The Elevation Certificate and Floodproofing Certificate are adjuncts to the application for flood insurance. The certificates are required for proper rating of post-Flood Insurance Rate Map (FIRM) structures, which are buildings constructed after publication of the FIRM, for flood insurance in Special Flood Hazard Areas. In addition, the Elevation Certificate is needed for pre-FIRM structures being rated under post-FIRM flood insurance rules. The certificates provide community officials and others, with standardized documents that are readily needed.

The certificates are supplied to insurance agents, community officials, surveyors, engineers, architects, and NFIP policyholders/applicants. The community officials or other professionals provide the elevation data required to document conformance with floodplain management regulations and for the applicants, so that actuarial insurance rates can be charged. The elevation data is transmitted to the NFIP by the insurance applicant or agent with the appropriate NFIP policy forms.

The data is also used to assist FEMA in measuring the effectiveness of the NFIP regulations in eliminating or decreasing damage caused by flooding and the appropriateness of the NFIP premium charge for insuring property against the flood hazard.

Affected Public: Individuals and households, businesses or other For-profit, not-for-profit institutions, Farms, and state, Local or Tribal Governments.

Number of Respondents: 73,650.

Estimated Time per Respondent: FEMA Form 81,31, Elevation Certificate-2.25 hours; FEMA Form 81–65, Floodproofing Certificate for Non-Residential Structures-3.25 hours.

Estimated Total Annual Burden Hours: 166,362.

Frequency of Response: One per Building.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: June 4, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–15554 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Reimbursement for Cost of Firefighting on Federal Property.

Type of Information Collection: Reinstatement with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0141.

Abstract. Under Section 11 of the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93–498, 88 Stat. 1535, 15 U.S.C. 2201 *et seq.*), fire services in any state may file claims for reimbursement for direct expenses and losses which are additional firefighting costs over and above normal operating costs incurred while fighting a fire on property which is under the jurisdiction of the United States.

Affected Public: State, local, or tribal government.

Number of Respondents: 4.

Frequency of Response: 4 times a year.

Estimated Time per Respondent: 1.5 Hours.

Estimated Total Annual Burden Hours: 24.

COMMENTS: Interested persons are invited to submit written comments on the proposed collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for FEMA, 725 17th Street, NW, Room 10102, Washington, DC 20503. Comments should be submitted on or before July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524, e-mail: muriel.anderson@fema.gov.

Dated: June 7, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–15557 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Request for Fire Suppression Assistance.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0066.

Abstract: FEMA provides assistance for fire suppression of forest or grassland fires, which threatens destruction to life/and improve property as would constitute a major disaster under Fire Suppression Assistance (FSA). In order for FEMA to provide the necessary assistance to States for the fire suppression program activities, the following forms are used to collect information: FEMA Form 90–58, Request for Fire Suppression Assistance, used by the State to provide information to support the need for Federal assistance. FEMA Form 90–91, Project Worksheet, prepared by the Principal Advisor, State Forester, and a FEMA representative upon termination of eligible fire suppression assistance. Standard Form 269A, Final Status Report, used by the State to submit the State's final claim for fire suppression assistance. Standard Form 270, Request for Advance or Reimbursement used by the State as an option to receive funds. In addition, under Section 420 of the Stafford Act there must be a FEMA-State Agreement. Also, a State Administrative Plan must be developed by the State for the Administration of a Fire Suppression Assistance Grant. The plan must designate the State agency that will be responsible for the administration of the program and ensure compliance with the law and regulation applicable to (FSA) grants and ensure the administrative plan is incorporated into the State Emergency Plan.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 27.

Estimated Time per Respondent: FEMA-Statement Agreement—5 minutes;

Standard Form 90–58, Request for Fire Suppression Assistance, hour burden—1 hour;

Standard Form 424, Application for Federal Assistance, hour burden—1 hour;

FEMA Form 90–91, Project Worksheet, hour burden—30 minutes;

Standard Form 269A, Final Status Report, hour burden—1 hour;

Standard Form 270, Request for Advance or Reimbursement (or Letter of Credit) hour burden—30 minutes; and,

State Administrative Plan—1 hour.

Estimated Total Annual Burden Hours: 137.5 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for FEMA, Room 10102, Washington, DC 20503 within July 19, 1999.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the collection of information contact Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: June 7, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–15558 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC Offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 224–201052–001.

Title: Port of Oakland–MTC Marine Terminal Agreement.

Parties:

City of Oakland, Board of Port Commissioners Marine Terminals Corporation.

Synopsis: The proposed amendment revises the monthly compensation for the month-to-month holdover period of the agreement.

Agreement No.: 224–201079.

Title: SSA–Matson Cooperative Working Agreement.

Parties:

Stevedoring Services of America, Inc.
Matson Terminals, Inc.

Synopsis: Under the proposed agreement, the parties will establish SSA Terminals, LLC to provide container stevedore, terminal, and related services in ports on the U.S. West Coast. The parties agree, with certain exceptions, not to compete with the new entity, and Matson Terminals will cease its operations in the affected ports. The parties request expedited review.

Dated: June 14, 1999.

By Order of Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–15478 Filed 6–17–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 2, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. James M. Seneff, Winter Park, Florida; Robert A. Bourne, Winter Park, Florida; Phillip M. Anderson, Jr., Orlando, Florida; Brian H. Fluck, Maitland, Florida; James W. Kersey, Orlando, Florida; Edgar James McDougall, Maitland, Florida; Curtis B. McWilliams, Winter Park, Florida; Kelley P. Mossburg, Orlando, Florida; Jack L. Parker, Orlando, Florida; Lynn E. Rose, Orlando, Florida; Michael T.

Shepardson, Orlando, Florida; John T. Walker, Orlando, Florida; Beverly S. Walker, Orlando, Florida; and Jean A. Wall, Winter Park, Florida; all to acquire voting shares of Alliance Bancshares, Inc., Orlando, Florida, and thereby indirectly acquire voting shares of Alliance Bank, Orlando, Florida.

Board of Governors of the Federal Reserve System, June 14, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15493 Filed 6–17–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *HaleCo Bancshares, Inc.*, Plainview, Texas, and Commerce Bancshares, Inc., Dover, Delaware; to acquire approximately 55 percent of the voting shares of La Plata Bancshares, Inc., Hereford, Texas, and thereby indirectly acquire La Plata Delaware Bancshares, Inc., Dover, Delaware, and The First National Bank of Hereford, Hereford, Texas.

In connection with this application, La Plata Bancshares, Inc., Hereford, Texas, and La Plata Delaware Bancshares, Inc., Dover, Delaware, also have applied to become bank holding companies by acquiring 100 percent of the voting shares of The First National Bank of Hereford, Hereford, Texas.

Board of Governors of the Federal Reserve System, June 14, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15492 Filed 6–17–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, June 23, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Publication for comment of proposed amendments to Regulation B (Equal Credit Opportunity) (Advanced Notice of Proposed Rulemaking on Regulation B published earlier for public comment; Docket No. R–1008).

2. Proposed 2000 Federal Reserve Bank budget objective.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: June 16, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15664 Filed 6–16–99; 12:35 pm]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 11:15 a.m., Wednesday, June 23, 1999, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 16, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15665 Filed 6–16–99; 12:35 pm]

BILLING CODE 6210–01–P

OFFICE OF GOVERNMENT ETHICS

Submission for OMB Review; Comment Request: Proposed Slightly Modified Form for Requesting Access to Executive Branch Public Financial Disclosure Reports and Other Covered Records

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted to the Office of Management and Budget (OMB) a slightly modified OGE Form 201 used by persons for requesting access to executive branch public financial reports and other covered records for three-year approval under the Paperwork Reduction Act. This proposed modified version of the form will replace the existing one.

DATES: Comments by the agencies and the public on this proposal are invited and should be received by July 19, 1999.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: William E. Gressman or Michael J. Lewandowski at the Office of Government Ethics; telephone: 202–208–8000, ext. 1110; TDD: 202–208–8025; FAX: 202–523–6325. A copy of the proposed slightly revised OGE Form 201 may be obtained, without charge, by contacting Mr. Gressman or Mr. Lewandowski.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics has submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), a proposed slightly modified OGE Form 201 "Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Report or Other Covered Records" (OMB control # 3209–0002). On February 4, 1999, OGE published a "first round" paperwork notice of the proposed modified OGE Form 201 (see 64 FR 5657–5658). No public comments were received on that advance notice. Therefore, OGE has determined to proceed with submission of the proposed modified form without any additional changes. Once finally approved by OMB and adopted by OGE, the modified version of OGE Form 201 will replace the existing version of the form.

As noted in the first round **Federal Register** notice, OGE, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act (the Ethics Act), 5 U.S.C. appendix, is proposing to slightly modify and update the existing access form. That form, the OGE Form 201, collects information from, and provides certain information to, persons who seek access to SF 278 reports and other covered records. The form reflects the requirements of the Ethics Act and OGE's implementing regulations that must be met by a person before access can be granted. These requirements relate to information about the identity of the requester, as well as any other person on whose behalf a record is sought, and a notification of prohibited uses of SF 278 reports. See section 105(b) and (c) of the Ethics Act, 5 U.S.C. appendix, section 105(b) and (c), and 5 CFR 2634.603(c) and (f). For many years, OGE has disseminated to executive branch departments and agencies a locally reproducible uniform form to serve as the statutorily required written application to inspect or receive copies of SF 278 reports and other covered records. Departments and agencies are encouraged to utilize the OGE Form 201, but they can, if they so choose, continue to use or develop their own forms. See the discussion below.

This proposed slightly modified version of the OGE Form 201 will add express mention (in part III of the form) in the reference to those Ethics Act-qualified blind trust and diversified trust materials that are publicly available to any trust dissolution report (and the list of trust assets at that time) and the qualification that any trust instrument provisions relating to testamentary disposition of trust assets are not publicly available. See 5 CFR 2634.408(a)(1)(i), (a)(3) and (d). Also, OGE proposes to clarify somewhat the wording regarding the sixth numbered routine use under the Privacy Act statement on the reverse side of the form. The modified wording would more closely track the wording of the underlying routine use h. in the OGE/GOVT–1 executive branchwide system of records. See 55 FR 6327–6331 (February 22, 1990). Further, in the form's public burden statement, OGE proposes to drop the reference to OMB as a further point of contact for information collection comments on the OGE Form 201. Pursuant to current procedures, OGE will be indicated from now on as the sole contact point for such comments for the form, on which OGE will coordinate with OMB if necessary.

Moreover, as noted on the mark-up copy of the form as proposed to be revised, OGE will in the future adjust the referenced civil monetary penalty at the bottom of the first page for prohibited uses of an SF 278 to which access has been gained. The penalty, under section 105(c)(2) of the Ethics Act, 5 U.S.C. appendix, section 105(c)(2), will be raised from $10,000 to $11,000 once OGE and the Department of Justice issue their respective inflation adjustment rulemakings under the 1996 Debt Collection Improvement Act revisions to the 1990 Federal Civil Penalties Inflation Adjustment Act. See 28 U.S.C. 2461 note. The OGE rulemaking will, in pertinent part, revise 5 CFR 2634.703 of the executive branch financial disclosure regulation. The Office of Government Ethics has requested permission from OMB to adjust the OGE Form 201 reference once that adjustment takes effect without further paperwork clearance, even if the adjustment occurs after reclearance of the slightly revised form (with notice to OMB and the agencies at that time). The so revised version of the form will be distributed to OMB and the agencies once that change takes effect. In addition, any periodic future adjustments to that civil monetary penalty (every three years or so), pursuant to further rulemakings by OGE and the Justice Department under the inflation adjustment laws, will also be reflected in future editions of the form.

Finally, OGE would also make a couple of minor stylistic changes to the form and show the 1999 edition date. The mark-up copy of the OGE Form 201 as proposed for slight revision, which is available from OGE (see the **FOR FURTHER INFORMATION CONTACT** section above), shows all the changes that would be made.

In light of OGE's experience over the past three years (1996–1998, with a total of 517 non-Federal access requests received), the estimate of the average number of access forms expected to be filed annually at OGE by members of the public (primarily by news media, public interest groups and private citizens) is proposed to be adjusted down from the current estimate of 275 to 172 (not counting access requests by other Federal agencies or Federal employees). The estimated average amount of time to complete the form, including review of the instructions, remains at ten minutes. Thus, the overall estimated annual public burden for the OGE Form 201 for forms filed at the Office of Government Ethics will decrease from 46 hours in the current OMB paperwork inventory listing (275 forms × 10 minutes per form—number rounded off) to 29 hours (172 forms × 10 minutes per form—number rounded off). Moreover, although OGE no longer asks executive branch departments and agencies on its annual ethics program questionnaire for their numbers of access requests, OGE estimates that the annual branchwide total is probably around 1,500 as in years past.

The Office of Government Ethics expects that the slightly revised form should be ready, after OMB clearance, for dissemination to executive branch departments and agencies this summer. The OGE Form 201 as revised will be made available free-of-charge to departments and agencies in paper

form, as well as in a Portable Document Format (PDF) viewable and downloadable electronic image on OGE's Internet Web site (Uniform Resource Locator address: *http://www.usoge.gov*, under the Ethics Resource Library section) and in future editions of The Ethics CD–ROM. The Office of Government Ethics also will permit departments and agencies to photocopy or have copies printed of the form as well as to develop or utilize, on their own, electronic versions of the form, provided that they precisely duplicate the paper original to the extent possible. As noted above, agencies can also develop their own access forms, provided all the information required by the Ethics Act and OGE regulations is placed on the form, along with the appropriate Privacy Act and paperwork notices with any attendant clearances being obtained therefor.

Public comment is invited on each aspect of the proposed slightly modified OGE Form 201 as set forth in this notice, including specifically views on the need for and practical utility of this proposed modified collection of information, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: June 14, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 99–15526 Filed 6–17–99; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0791]

Agency Information Collection Activities; Announcement of OMB Approval; Survey of Medical Device Manufacturers for Year 2000 Compliance of Manufacturing Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Survey of Medical Device Manufacturers for Year 2000 Compliance of Manufacturing Systems" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 10, 1999 (64 FR 25045), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0405. The approval expires on November 30, 1999. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: June 11, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–15477 Filed 6–17–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1174]

Dietary Supplements; Center for Food Safety and Applied Nutrition Strategy; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a second public meeting to solicit comments that will assist the Center for Food Safety and Applied Nutrition (CFSAN) to develop an overall strategy for achieving effective regulation of dietary supplements under the Dietary Supplement Health and Education Act (DSHEA). This meeting is intended to give the public an opportunity to comment on the development of the strategy.

DATES: The public meeting will be held on July 20, 1999, from 9 a.m. to 5 p.m. Submit written comments by August 20, 1999.

ADDRESSES: The public meeting will be held at the Oakland Federal Bldg., third fl. auditorium, north tower, 1301 Clay St., Oakland, CA.

FOR FURTHER INFORMATION CONTACT: Janet B. McDonald, Office of Regulatory Affairs (HFR–PA–145), Food and Drug Administration, 1431 Harbor Bay Pkwy., Alameda, CA 94502–7070, 510–337–6845, FAX 510–337–6708, "e-mail jmcdonal@ora.fda.gov."

SUPPLEMENTARY INFORMATION:

I. Introduction

This public meeting is the second of two meetings to seek stakeholder comments on the development of an overall strategy for achieving effective regulation of dietary supplements under the Federal Food, Drug, and Cosmetic Act, as amended by DSHEA. The first meeting was held on June 8, 1999, in Washington, DC. These two meetings build upon themes that emerged from a broader stakeholder meeting sponsored by CFSAN in June 1998. That meeting addressed the nonfood safety initiative programs that are managed by CFSAN and identified some basic themes including: (1) The need to maintain a credible FDA program, including compliance, enforcement, and consumer outreach activities that will help ensure consumer confidence in FDA regulated products; (2) the need to maintain a solid, science based program staffed with highly qualified scientists; and (3) the recognition that FDA's assistance to consumers and the regulated industry is important.

II. Registration and Requests for Oral Presentations

If you would like to attend the public meeting, you must register with the contact person (address above) by July 9, 1999, by providing your: Name, title, business affiliation, address, telephone, and fax number. To expedite processing, registration information may also be faxed to 510–337–6708. If you need special accommodations due to disability, please inform the contact person when you register.

If you wish to make an oral presentation during the meeting, you must inform the contact person of that desire when you register to attend and submit: (1) A brief written statement of the general nature of the evidence or arguments that you wish to present, (2) the names and addresses of the persons who will give the presentation, and (3) the approximate length of time that you are requesting for your presentation. Depending on the number of people who register to make presentations, we may have to limit the time allotted for each presentation.

III. CFSAN's 1999 Program Priorities Document

The meeting announced in this notice, as well as the meeting that took place on June 8, 1999, in Washington, DC, are in response to CFSAN's 1999 Program Priorities document that calls for the development of an overall dietary supplement strategy in conjunction with other agency units and stakeholders. A copy of the priorities document is available on the Internet on FDA's Website at "http://vm.cfsan.fda.gov/~dms/cfsan199.html".

The priorities document states that the overall strategy should address all elements of the dietary supplement program including: (1) Boundaries between dietary supplements and conventional foods, between dietary supplements and drugs, and between dietary supplements and cosmetic products; (2) claims; (3) good manufacturing practices; (4) adverse event reporting; (5) laboratory capability; (6) research needs; (7) enforcement; and (8) resource needs. FDA's objective in developing this strategy is to ensure consumer access to safe dietary supplements that are truthfully and not misleadingly labeled. FDA intends to develop this strategy by following a process of openness, flexibility, efficiency, and commitment to public health.

FDA has identified four criteria for priority ranking the tasks encompassed in the strategy. These criteria are: (1) Enhancement of consumer safety, (2) development of health-related product labeling regulation, (3) improvement in efficiency of operation, and (4) closure on unresolved regulatory issues.

This meeting also addresses activity undertaken by the agency to solicit comments in accordance with section 406(b) of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) (21 U.S.C. 393(b)).

IV. Agenda and Goals

To help focus comments for the July 20, 1999, meeting, FDA requests that oral and written input regarding an overall strategy for achieving effective regulation of dietary supplements address the following questions:

1. In addition to ensuring consumer access to safe dietary supplements that are truthfully and not misleadingly labeled, are there other objectives that an overall dietary supplement strategy should include?

2. Are the criteria for prioritizing the tasks within the supplement strategy appropriate? Which specific tasks should FDA undertake first?

3. What factors should FDA consider in determining how best to implement a task (i.e., use of regulations, guidance, etc.)?

4. What tasks should be included under the various dietary supplement program elements in the CFSAN 1999 Program Priorities document?

5. Are there current safety, labeling, or other marketplace issues that FDA should address quickly through enforcement actions to ensure, for example, that consumers have confidence that the products on the market are safe, truthfull, and not misleadingly labeled?

6. Toward what type or area of research on dietary supplements should FDA allocate its research resources?

7. Given FDA's limited resources, what mechanisms are available, or should be developed, to leverage FDA's resources to meet effectively the objective of the strategy?

V. Comments

Interested persons may, on or before August 20, 1999, submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. You may also send comments to the Dockets Management Branch via e-mail to "FDA Dockets@bangate.fda.gov" or via the FDA Website "http://www.fda.gov". You should annotate and organize your comments to identify the specific issues to which they refer. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. Transcripts

You may request transcripts of the meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. You may also examine the transcript of the meeting at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA Website "http://www.fda.gov"."http://vm.cfsan.fda.gov/dms/cfsan199.html".

Dated: June 11, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15476 Filed 6–17–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2039–FN]

RIN 0938–AJ41

Medicare Program; Recognition of the Joint Commission for Accreditation of Healthcare Organizations (JCAHO) for Hospices

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice recognizes the Joint Commission for Accreditation of Healthcare Organizations (JCAHO) as a national accreditation organization for hospices that request participation in the Medicare program. We believe that accreditation of hospices by JCAHO demonstrates that all Medicare hospice conditions of participation are met or exceeded. Thus, we grant deemed status to those hospices accredited by JCAHO. The proposed notice included the application from the Community Health Accreditation Program, Inc. (CHAP). The final notice recognizing CHAP as a national accreditation organization for hospices was published on April 20, 1999 at 64 FR 19376.

EFFECTIVE DATE: This final notice is effective June 18, 1999, through June 18, 2003.

FOR FURTHER INFORMATION CONTACT: Joan C. Berry, (410) 786–7233.

SUPPLEMENTARY INFORMATION:

I. Background

A. Laws and Regulations

Under the Medicare program, eligible beneficiaries may receive covered palliative services in a hospice provided certain requirements are met. The regulations specifying the Medicare conditions of participation for hospice care are located in 42 CFR part 418. These conditions implement section 1861(dd) of the Social Security Act (the Act), which specifies services covered as hospice care and the conditions that a hospice program must meet in order to participate in the Medicare program.

Generally, in order to enter into an agreement with Medicare, a hospice must first be certified by a State survey

agency as complying with the conditions or standards set forth in part 418 of the regulations. Then, the hospice is subject to routine surveys by a State survey agency to determine whether it continues to meet Medicare requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act permits "accredited" hospices to be exempt from routine surveys by State survey agencies to determine compliance with Medicare conditions of participation. Accreditation by an accreditation organization is voluntary and is not required for Medicare certification. Section 1865(b)(1) of the Act provides that, if a provider is accredited by a national accreditation body that has standards that meet or exceed the Medicare conditions, the Secretary can "deem" that hospice as having met the Medicare requirements.

We have rules at 42 CFR part 488 that set forth the procedures we use to review applications submitted by national accreditation organizations requesting our approval. A national accreditation organization applying for approval must furnish to us information and materials listed in the regulations at § 488.4. The regulations at § 488.8 ("Federal review of accreditation organizations") detail the Federal review and approval process of applications for recognition as an accrediting organization. On April 26, 1996, however, new legislation entitled "Omnibus Consolidated Rescissions and Appropriations Act of 1996" (Pub. L. 104–134) was enacted.

Section 1865(b)(3)(A) of the Act, as amended by section 516 of Public Law 104–134, requires us to publish a notice in the **Federal Register** within 60 days after receiving an accreditation organization's written request that we make a determination regarding whether its accreditation requirements meet or exceed Medicare requirements. Section 1865(b)(3)(A) of the Act also requires that we identify in the notice the organization and the nature of the request and allow a 30-day comment period. This section further requires that we publish a notice of our approval or disapproval within 210 days after we receive a complete package of information and the organization's application.

B. Proposed Notice

On September 11, 1998, we published a proposed notice (63 FR 48735) announcing the requests of CHAP and JCAHO for our approval as national accreditation organizations for hospices. In the notice, we detailed the factors on which we would base our evaluation. (We inadvertently gave the citation for the regulations governing our evaluation as § 488.8, "Federal review of accreditation organizations," rather than as § 488.4, "Application and reapplication procedures for accreditation organizations.") Under section 1865(b)(2) of the Act and our regulations at § 488.4, our review and evaluation of the JCAHO application were conducted in accordance with the following factors:

- A determination that JCAHO is a national accreditation body, as required by the Act.
- A determination of the equivalency of JCAHO's requirements for a hospice to our comparable hospice requirements.
- A review of JCAHO's survey processes to determine the following:

—The comparability of JCAHO's processes to those of State agencies, including survey frequency; its ability to investigate and respond appropriately to complaints against accredited facilities; whether surveys are announced or unannounced; and the survey review and decision-making process for accreditation.
—The adequacy of the guidance and instructions and survey forms JCAHO provides to surveyors.
—JCAHO's procedures for monitoring providers or suppliers found to be out of compliance with program requirements. (These procedures are used only when JCAHO identifies noncompliance.)

- The composition of JCAHO's survey team, surveyor qualifications, the content and frequency of the in-service training provided, the evaluation systems used to assess the performance of surveyors, and potential conflict-of-interest policies and procedures.
- JCAHO's data management system and reports used to assess its surveys and accreditation decisions, and its ability to provide us with electronic data.
- JCAHO's procedures for responding to complaints and for coordinating these activities with appropriate licensing bodies and ombudsmen programs.
- JCAHO's policies and procedures for withholding or removing accreditation from a facility that fails to meet its standards or requirements.
- A review of all types of accreditation status that JCAHO requests HCFA accept for deeming of hospices.
- A review of the pattern of JCAHO's deemed facilities (that is, types and duration of accreditation and its schedule of all planned full and partial surveys).
- The adequacy of JCAHO's staff and other resources to perform the surveys, and its financial viability.
- JCAHO's written agreement to—

—Meet our requirements to provide to all relevant parties timely notifications of changes to accreditation status or ownership, to report to all relevant parties remedial actions or immediate jeopardy, and to conform the organization's requirements to changes in Medicare requirements; and
—Permit the organization's surveyors to serve as witnesses for us in adverse actions against its accredited facilities.

We received no comments on our proposed notice.

II. Review and Evaluation

Our review and evaluation of the JCAHO application, which were conducted as detailed above, yielded the following information.

Differences between the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) and Medicare Conditions and Survey Requirements

We compared Medicare requirements with (1) the standards contained in the JCAHO 1997–98 "Comprehensive Accreditation Manual for Home Care" (CAMHC); (2) the survey process outlined in JCAHO's guide entitled "The Complete Guide to the 1997–98 Home Care Survey Process: Home Health, Personal Care, Support and Hospice"; and (3) JCAHO's training materials. We also evaluated the accuracy of JCAHO's cross walk [relational table] between JCAHO standards and Medicare standards. In 16 areas JCAHO has made the following revisions or clarifications:

- *Unannounced surveys.* Our policy requires that all deemed status surveys in Medicare-certified hospices be unannounced (that is, conducted with no advance notice). This policy includes initial accreditation surveys, re-surveys of any kind (regardless of the accreditation category for the deemed hospice service), focused surveys, and complaint surveys. The JCAHO policy for a routine announced, triennial survey of a home care company, including its hospice service, does not meet our requirement; a concurrent survey of the hospice service conducted at the same time as an announced triennial home care survey does not meet our requirement; and any survey with 24-hours advance notice, or any advance notice, does not meet our requirement. Thus, we requested written revision and acceptance of an unannounced survey process. JCAHO, in response, has agreed that all deemed status hospice surveys will be unannounced:

> No advanced notice of any survey will be provided to any hospice electing to use the Joint Commission's accreditation survey to meet Medicare provider requirements as a hospice. This includes all follow-up surveys and surveys to evaluate complaints. If a hospice seeking deemed status is part of a hospital, the hospice survey will be conducted unannounced and not in conjunction with the hospital survey. Specifically, the hospital survey will be announced, but the hospice survey unannounced and definitely not conducted on the dates of the hospital survey.
>
> If a hospice seeking deemed status has other home care services within the hospice organization that are not seeking deemed status, the hospice survey will be unannounced and conducted first. The other home care services will be surveyed for Joint Commission accreditation following the completion of the survey.

- *Core services.* Medicare requires that substantially all core services (nursing care, medical social services, and counseling) be provided directly by hospice employees. Regulations allow for exceptions during times of peak patient loads or under extreme circumstances, and the Balanced Budget Act of 1997 provides exceptions for physicians' services. JCAHO clarified that CAMHC standards LD 2.2 and CC2 include this Medicare standard through cross reference and evaluation against § 418.202, which contains those provisions.
- *Notification issues.* JCAHO failed to clearly indicate in three instances when it would provide us with information regarding the failure of a hospice to meet or maintain Medicare conditions of participation:

—Violations of the Medicare conditions of participation, including routine core services (nursing care, medical social services, and counseling), as required by section 1861(dd)(1) of the Act.
—Changes in accreditation status, such as a decision to preliminarily non-accredit a facility, or any other accreditation status not recognized under this agreement.
—Changes in sites, corporate status, or services not in violation of the Medicare conditions of participation; withdrawal of a provider either voluntarily or involuntarily; and changes of ownership, hospice mergers, or hospice site expansions.

JCAHO clarified its required notification in these three instances, as well as its subsequent notification of us, as follows:

—Accredited organizations must notify JCAHO in writing within 30 days of any changes involving a violation of Medicare conditions of participation, including core services. JCAHO will forward this information in writing to us and to the relevant State agency within 10 days of receiving it.
—We will be notified within 30 days of a decision regarding changes in any accreditation status not accepted under this agreement.
—Accredited organizations must notify JCAHO in writing within 30 days of any changes to sites, corporate status, or services not in violation of the conditions of participation. JCAHO will immediately forward this information to us and to the State agency. JCAHO also stipulates that "the Joint Commission would survey the organization for the changes reported within 30 days. HCFA would be notified within 10 days, and also receive the report of the surveyed changes within 30 days of the completion of the survey."

- *No surveys prior to enrollment form verification.* State survey agencies do not conduct health and safety inspections until a hospice has submitted a "Medicare and Other Federal Health Care Program General Enrollment Health Care Provider/Supplier Application" (HCFA 855) that the servicing fiscal intermediary has reviewed and approved. JCAHO has specified that it will not conduct a deemed status survey for a hospice until it has received from the applicant either the Medicare provider number or written verification from the fiscal intermediary of submission and approval of HCFA 855.
- *Change of ownership.* Because of our recent experience with changes of ownership and the difficulty in recovering overpayments from facilities not transferring a provider ID from previous owners, we questioned when (that is, before or after making an accreditation award to the new owner of a home care company) JCAHO would survey a Medicare-certified hospice that is undergoing a change of ownership and that has not accepted assignment of the former owner's provider agreement (including Medicare-certified hospices that are part of an accredited home care company). Medicare providers that change ownership and do not accept assignment of the former owner's provider agreement are treated by us as new applicants to the Medicare program. JCAHO has stipulated in writing that "when a new provider number is being issued, the Joint Commission would not transfer its accreditation of the old organization to the new. A complete new survey would have to be conducted."
- *Survey process.* JCAHO's hospice program standards are a subset of the CAMHC, containing requirements for both home health agencies and hospices. These two facility types are often part of the same organization. It is possible that one facility would be under a deeming program and the other would not, resulting in one announced and one unannounced survey. Because of this combined presentation, we initially had some difficulty in understanding how JCAHO would conduct a hospice survey separate from a related home care organization. Therefore, we recommended that JCAHO develop a deemed status survey protocol for Medicare-certified hospices in the near future and indicate if and when this process would be completed. In the meantime, we held discussions with JCAHO to ensure that our expectations of hospice programs were verified by JCAHO's interpretation of its standards and procedures.

JCAHO provided us with written verification that its hospice survey process encompasses all sites of care, including inpatient and respite care, where hospice services are provided. JCAHO specified that it evaluates contracted organizations, including those providing pharmaceutical and home medical equipment services, during the hospice survey. If the contracted organization is already accredited by JCAHO, some standards that have already been evaluated during the facility's own JCAHO survey, such as performance improvement activities or environmental safety plan, may not be assessed during the on-site survey of the facility. The survey of the non-accredited organizations, as well as those accredited by another accreditor, consists of on-site evaluation of all applicable JCAHO standards and corresponding Medicare conditions of participation, including the Life Safety Codes.

JCAHO would conduct the deemed status survey of a Medicare-certified hospice separately and provide a separate report. If home care services other than hospice are part of the JCAHO survey, JCAHO would survey those other services for its purposes on separate days and would not conduct the survey concurrently with the hospice deemed status survey. JCAHO would conduct the hospice deemed status survey first, followed by a survey of the other home care services. The deemed status survey would remain unannounced. This is the current method used to conduct the JCAHO

deemed status process for home health agencies when the same organization also provides services that are not Medicare-certified.

For example, if a Medicare-certified hospice also had within its business a licensed home health organization that is not Medicare-certified, JCAHO would survey both for accreditation. According to JCAHO procedures, the survey provided might total 5 days, and the survey would be conducted as follows. The survey conducted for the entire organization would be unannounced. JCAHO would survey the hospice first, at the end of which time (in this scenario, let us assume 3 days), JCAHO would issue a report for only the hospice Medicare deemed status compliance. On the subsequent days, JCAHO would survey the licensed home health agency, and on the final survey day, JCAHO would present its report, comprising both the hospice and licensed agency, to the organization. JCAHO's detailed survey process can be found in its application under tab 3ii, and in Exhibit 5, "The Complete Guide to the 1997–98 Home Care Survey Process: Home Health, Personal Care, Support and Hospice."

• *Data systems.* We recommended that JCAHO provide assurance that it can and will produce a plan indicating when and how they will be able to produce validation data such as outcome trends, especially deficiency types for regions and States; resolution time frames for deficiencies; and complaints for comparative Medicare purposes. JCAHO provided the detail for all the data described in our recommendation, including outcome trends (deficiency types for regions and States) and time frames. These reports, tables, and other displays indicate that JCAHO has the capability of producing resolution time frames for deficiencies and complaints.

• *Conditional accreditation.* We were concerned about the JCAHO request to consider the category called Conditional Accreditation as acceptable for deemed status and certification of facilities under Medicare. To clarify how conditional accreditation might be applied to a Medicare-certified hospice, we asked the following questions:

—What is the meaning (with examples, if necessary) of the first part of the category's definition, which states that "an organization is not in substantial compliance with Joint Commission standards?"

—What criteria would JCAHO use to determine that a Medicare-certified hospice would not be in "substantial compliance" with JCAHO standards and would be placed in this category called Conditional Accreditation?

—What is the meaning (with examples, if necessary) of the rest of the definition, which states that "one or more adverse clinical events that potentially reflect underlying systems issues?"

—What are some "worst case" scenarios in which a Medicare-certified hospice could have had "one or more adverse clinical events that potentially affect underlying systems issues," and would be placed in this category?

In response to these questions, JCAHO has indicated that it will not accept, for deeming purposes, hospices with a decision of conditional accreditation, with one exception: those cases in which the hospice was not found to be the cause of the conditional decision. JCAHO awards the lowest score given when an organization bridges more than one facility type. Thus, a provider-based hospice may receive a conditional accreditation based on a deficiency outside the scope of its survey. A specific example would be a hospice organization that also includes a home health agency that is not Medicare-certified. In this case, if the home health agency's compliance with the JCAHO standards creates the conditional decision, but the hospice is found in compliance with all Medicare conditions of participation, HCFA would determine that the hospice is eligible for deemed status. JCAHO has agreed to provide us with a letter explaining any conditional accreditation decision, in addition to a copy of the deemed status hospice report, so that "HCFA may validate the status of compliance." JCAHO has also agreed to supply us with quarterly lists of all its home care customers and companies that include a deemed hospice service for validation to assure that all non-deemed hospices in these settings are subject to State agency survey.

• *Information sharing.* It is important that we be able to differentiate between JCAHO's regular home care customers and those that include a deemed hospice service, since regular home care customers with hospice services that have not elected the deemed status option still require the State agency survey. JCAHO has agreed that we should receive complete and timely lists of all deemed hospice services in an unambiguous format.

• *Electronic data exchange.*

—We requested a single contact who would have the authority to comply with requests for any new data and format revisions for validation submissions. JCAHO has supplied the names of contacts with the authority to make decisions regarding the release of validation information.

—Additionally, we requested JCAHO's plan to ensure that electronic exchanges and internal data collection can proceed uninterrupted into the Year 2000 (Y2K). JCAHO has appointed a corporate-wide task force of key staff and has assigned this task force the responsibility for monitoring the implementation of JCAHO's plans for Y2K compliance. A major national consulting firm is assisting the task force in this effort. To date, JCAHO's implementation plans are proceeding as scheduled.

—We required assurances from JCAHO that it has the ability to provide us with timely electronic survey data and requested validation of survey findings for all Medicare-certified hospices that have elected the deemed status option. JCAHO has provided a description of its data systems and has stipulated that it has the ability to provide us electronically with survey findings for validation.

• *Millennium updates.* We requested that JCAHO indicate how it plans to assure that deemed hospices maintain equipment and systems to sustain the quality of patient care through the millennium updates. JCAHO stipulates that in 1998 and 1999, initial and resurveys conducted for HCFA's hospice applicants include in the "Management of Information" chapter of the 1997–98 CAMHC several standards that are used to address Y2K issues: CAMHC IM 1, "The organization plans and designs information-management processes to meet its internal and external information needs"; IM 2, "Confidentiality, security and integrity of data and information are maintained"; and IM 3.1, "The organization takes steps to ensure that the data are complete, reliable, valid, and accurate on an ongoing basis." Surveyors request information from the hospice to determine the organization's awareness of the Y2K issue and the steps being taken to assure compliance. In the year 2000, the compliance with these standards will be validated during the on-site survey process. Non-compliance that affects the quality of patient care would be addressed in other standards and could potentially lead to loss of accreditation.

• *JCAHO scoring of its standards.* We were concerned that JCAHO puts limits or "caps" on scores given to new requirements or standards for providers; that is, according to JCAHO policy, new requirements cannot be cited from level 3 (partial compliance) to level 5 (noncompliance). This practice often prevents new standards from being cited as deficiencies within JCAHO's system, which is computer-driven and aggregates scores within an area of performance. Scores from 3 to 5, as explained in the following table, are likely to result in the citing of a deficiency or type I recommendation, defined by JCAHO as "a recommendation or group of recommendations that addresses insufficient or unsatisfactory standards compliance in a specific performance area."

JCAHO SCORING SCALE/LEVELS OF COMPLIANCE

Score	Level of compliance	Definition
1	Substantial compliance.	The organization consistently meets all major provisions of the standard and its intent.
2	Significant compliance.	The organization meets most provisions of the standard and its intent.
3	Partial compliance.	The organization meets some provisions of the standard and its intent.
4	Minimal compliance.	The organization meets few provisions of the standard and its intent.
5	Noncompliance	The organization fails to meet the provisions of the standard and its intent.

HCFA requires that scoring of all standards for hospices wishing to participate in Medicare, including any new standards that may be added to meet Medicare conditions of participation in this notice, be allowed through level 5. JCAHO has agreed that "No hospice standards will be 'capped' and therefore all may be cited through all levels." JCAHO has also agreed to notify all currently accredited hospices through individual letters, and to notify the public through JCAHO's periodicals, website, and the next issuance of its manual, that the scoring of hospice standards will not be limited or capped.

• *Hospice medical director.* Medicare's conditions of participation require that the hospice medical director be a doctor of medicine or osteopathy. As written, the JCAHO standard reads only that qualified individuals be responsible for directing patient care and services. It was not clear to us that this standard met Medicare conditions of participation for hospices. JCAHO has assured us, however, that its deemed hospice standard cross references the Medicare requirement and that "the Medicare condition would be evaluated as acceptable only if the medical director were a director of medicine or osteopathy."

• *Interdisciplinary Group.*

—Medicare's standards require that the Interdisciplinary Group (IDG) provide or supervise the provision of care and participate in the establishment and periodic review of the patient's plan of care. JCAHO's standards include the appropriate composition of the IDG and the appropriate process for care planning, but do not appear to link the IDG with the care planning processes. JCAHO standards simply require the "organization" to be responsible for care planning. JCAHO clarified that its CAMHC standard TX 1 includes the requirement consistent with the Medicare standard that the IDG establishes and is responsible for the plan of care. TX–1.3 specifically requires the IDG to participate in the review and updating of this plan.

—We questioned whether JCAHO standards clearly indicate that the IDG is responsible for designating a registered nurse to coordinate the implementation of the plan of care, and thus meet Medicare standards. JCAHO demonstrated that CAMHC standard CC 4, which assigns "appropriately qualified staff member(s) to coordinate patient care services," addresses and repeats this Medicare standard verbatim.

• *Volunteer staff.* The Medicare standard requires that hospices maintain a volunteer staff sufficient to provide administrative or direct patient care in an amount that, at a minimum, equals 5 percent of the total patient care hours of all paid hospice employees and contract staff. JCAHO stipulates that the intent of its standard at CAMHC HR 3.1 is that Medicare-certified providers must maintain and document that volunteer staff hours are equal to at least 5 percent of patient care hours.

• *Inpatient care.*

—The Medicare standard requires, at § 418.98(c), that inpatient care days may not exceed 20 percent of the total number of hospice days for this group of beneficiaries in any 12-month period preceding a certification survey. JCAHO clarified that this standard is met through CAMHC standard LD 5, which discusses patient care and services appropriate to the care plan, and standard LD 8, which, under 8.2, discusses the organization's compliance with the applicable law and regulation. JCAHO has specified that they—

have specifically listed 418.98(c) as a cross walked standard for deemed purposes. Instructions in the application indicate that in all circumstances for deemed surveys, the cross walked standards and conditions are utilized as an adjunct to the Joint Commission standard and intents. In other words, the Joint Commission surveyor evaluates compliance with all listed cross walked Medicare conditions of participation and standards when evaluating the referenced Joint Commission standard. Therefore, the requirement that any 12 month period preceding a certification survey for hospices may not exceed 20% of the total number of hospice days would be evaluated as the surveyor was surveying compliance with LD 5 and LD 8.

—Another Medicare standard requires at § 418.100(a) that hospices providing inpatient care directly provide 24-hour nursing services that are sufficient to meet total nursing needs and that are in accordance with the patient's plan of skilled care. JCAHO provided evidence that this standard was included in its requirements at CAMHC TX 1.2, which implements interventions identified in the care plan; at CC2, which provides for 24-hours-a-day, 7-days-a week registered nursing; and at LD 2.2, which discusses the use of systematic planning consistent with the patient's needs.

III. Results of Evaluation

We completed a standard-by-standard comparison of JCAHO's conditions or requirements for hospices to determine whether they met or exceeded Medicare requirements. We found that, after requested revisions were made, JCAHO's requirements for hospices did meet or exceed our requirements. In addition, we visited the corporate headquarters of JCAHO to validate the information it submitted and to verify that its administrative systems could adequately monitor compliance with its standards and survey processes and that its decision-making documentation and processes met our standards. We also observed a survey in real time to see that it met or exceeded our standards. As a result of our review of the documents and observations, we requested certain clarifications to JCAHO's survey and communications processes. These clarifications were provided as indicated above, and changes were made to the documentation in the applications. Therefore, we recognize JCAHO as a

national accreditation organization for hospices that request participation in the Medicare program, effective June 18, 1999, through June 18, 2003.

IV. Paperwork Reduction Act

This document does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation, codified in part 488, "Survey, Certification, and Enforcement Procedures," are currently approved by OMB under OMB approval number 0938–0690, with an expiration date of August 31, 1999.

V. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice merely recognizes JCAHO as a national accreditation organization for hospices that request participation in the Medicare program. As evidenced by the following data for the cost of surveys, there are neither significant costs nor savings for the program and administrative budgets of Medicare. Therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Therefore, we have determined, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In fiscal year 1996, there were 2,148 certified hospices participating in the Medicare program. We conducted 258 initial surveys, 322 recertification surveys (both at a cost of $634,904), and 145 complaint surveys.

In fiscal year 1997, there were 2,270 certified hospices. This was an increase of 122 facilities. We conducted 180 initial surveys, 354 recertification surveys (both at a cost of $330,686), and 237 complaint surveys. The increase in the number of facilities is less than the number of initial surveys because of mergers, withdrawals, and closures during the year.

In fiscal year 1998, there were 2,290 certified hospices. This was an increase of 20 facilities. We conducted 126 initial surveys, 196 recertification surveys (both at a cost of $360,783), and 201 complaint surveys. The increase in the number of facilities is less than the number of initial surveys because of mergers, withdrawals, and closures during the year.

As the data above indicate, the number of hospices and the cost for conducting hospice surveys by State agencies are increasing. There was a 6.6 percent increase in hospices within 3 years (fiscal years 1996 through 1998). Hospices accredited by JCAHO would be surveyed every 3 years. The numbers of participating providers continue to increase. In an effort to better assure the health, safety, and services of beneficiaries in hospices already certified, as well as to provide relief to State budgets in this time of tight fiscal constraints, we deem hospices accredited by JCAHO as meeting our Medicare requirements. Thus, we continue our focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost-effective manner.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by OMB.

Authority: Sec. 1865(b)(3)(A) of the Social Security Act (42 U.S.C. 1395bb(b)(3)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: May 3, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–15500 Filed 6–17–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–24]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 11, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–15221 Filed 6–17–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Technical/Agency Draft Revised Puerto Rican Parrot (*Amazona vittata*) Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: We, the Fish and Wildlife Service, announce the availability for public review of the technical/agency draft revised Puerto Rican parrot recovery plan. As the common name implies, the Puerto Rican parrot is a bird species endemic to the commonwealth of Puerto Rico. We solicit review and comment from the public on this draft plan.

DATES: We must receive comments on the draft recovery plan on or before a August 17, 1999 to receive consideration by us.

ADDRESSES: You may obtain a copy of the draft recovery plan by contacting Pablo Torres-Báez, Río Grande Field Office, U.S. Fish and Wildlife Service, P.O. Box 1600, Río Grande, Puerto Rico 00745 (telephone 787/887–8769). Send written comments and materials regarding the plan to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Pablo Torres-Báez at the above address and telephone number (extension 226).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Despite intensive research and management efforts for more than 30 years, the survival of the Puerto Rican parrot is still perilous. Based upon available information concerning the range, biology, and threats to its continued survival, it is not yet possible to determine if or when full recovery of the Puerto Rican parrot is possible. This draft recovery plan outlines a mechanism that provides for the protection, maintenance, and enhancement of the only known wild population and the establishment of new wild populations in the future. We officially listed the Puerto Rican parrot as an endangered species in 1967 (32 FR 4001). The wild population reached an all time low of about 13 individuals in 1973. The same year, anticipating the possibility of losing the wild population to a catastrophic event, we initiated a captive breeding program to ensure survival of the species. Historically, the once abundant and widespread Puerto Rican parrot suffered from the negative effects of habitat loss, hunting, deleterious biological interactions, and the impact of hurricanes. We will use comments and information provided during this review in preparing the final recovery plan.

Public Comments Solicited

We solicit written comments on the recovery plan described. We will consider all comments received by the date specified above prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 14, 1999.

Pablo Torres-Báez,

Acting Field Supervisor.

[FR Doc. 99–15505 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–00]

Notice of Meeting

AGENCY: Bureau of Land Management, (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Eastern Montana Resource Advisory Council will have a meeting July 15, 1999 in Lame Deer, Montana at the Northern Cheyenne Tribal Headquarters starting at 8:00 a.m. Agenda topics include tribal concerns plus updates on access, travel management, and grazing permit renewals.

The meeting is open to the public and the public comment period is set for 10:00 a.m. on July 15. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59031, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: June 9, 1999.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 99–15422 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–98–1420–00]

Colorado: Filing of Plats of Survey

June 10, 1999.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215–7093, effective 10 am, June 10, 1999. All inquiries should be sent to this address.

Township	Range	Meridian	Group No.	Approval
T. 1 N.	R. 103 W.	6th PM	116	
T. 1 N.	R. 104 W.	6th PM		

Township	Range	Meridian	Group No.	Approval date
T. 8 S.	R. 97 W.	6th PM	1185	September 17, 1998.
T. 7 S.	R. 72 W.	6th PM	1200	September 29, 1998.
T. 8 S.	R. 72 W.	6th PM	1200	September 29, 1998.
T. 2 S.	R. 75 W.	6th PM	1149	September 29, 1998.

Donald W. Ashbaugh,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 99–15496 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–98–1420–00]

Colorado: Filing of Plats of Survey

June 10, 1999.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215–7093, effective 10 a.m., June 10, 1999. All inquiries should be sent to this address.

Township	Range	Meridian	Group No.	Approval date
T. 7 N.,	R. 76 W.,	6th PM	1214	January 26, 1999.
T. 49 N.,	R. 8 W.,	NMPM	1201	February 23, 1999.
T. 4 S.,	R. 73 W.,	6th PM	690	February 25, 1999.
T. 35 N.,	R. 7 E.,	NMPM	1154	April 21, 1999.
T. 36 N.,	R. 7 E.,	NMPM	1154	April 21, 1999.
T. 35 N.,	R. 11 E.,	NMPM	1072	May 11, 1999.
T. 35 N.,	R. 10 E.,	NMPM	1072	May 11, 1999.
T. 1 N.,	R. 76 W.,	6th PM	1172	May 12, 1999.
T. 50 N.,	R. 8 W.,	NMPM	1205	June 8, 1999.
Supplemental Plats				
T. 13 S.,	R. 85 W.,	6th PM		January 7, 1999.
T. 1 N.,	R. 72 W.,	6th PM		March 8, 1999.
T. 1 S.,	R. 73 W.,	6th PM		March 24, 1999.
T. 1 S.,	R. 71 W.,	6th PM		April 1, 1999.
T. 36 N.,	R. 6 E.,	NMPM		April 21, 1999.
T. 49 N.,	R. 1 E.,	NMPM		May 6, 1999.

Donald W. Ashbaugh,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 99–15497 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Glacier Bay National Park, Alaska; Dungeness Crab Commercial Fishery Compensation Program Application Procedures

AGENCY: National Park Service, Interior.

ACTION: Glacier Bay National Park Dungeness crab commercial fishery compensation program application procedures; extension of application deadline.

SUMMARY: Section 123 (b) (1)–(3) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999Act ("the Act"), as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act, Public Law 106–31 (05/21/99), authorizes compensation for qualifying fishermen with a history of commercial Dungeness crab fishing in designated wilderness waters of the Beardslee Islands or Dundas Bay in at least six of the years during the period of 1987 through 1998. This **Federal Register** notice serves to provide application instructions for individuals who believe they qualify for compensation as outlined by the Act. Applications must be provided to the Superintendent, Glacier Bay National Park and Preserve, on or before August 1, 1999.

DATES: Applications for the Dungeness crab commercial fishery compensation program will be accepted on or before August 1, 1999.

ADDRESSES: Applications for the Dungeness crab commercial fishery compensation program should be submitted to the Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826. A delivery address is located at 1 Park Road, in Gustavus.

FOR FURTHER INFORMATION CONTACT: For information regarding the Dungeness crab commercial fishery compensation program, please contact Chuck Young, Glacier Bay National Park and Preserve, P. O. Box 140, Gustavus, Alaska 99826. Phone: (907) 697–2230.

SUPPLEMENTARY INFORMATION: The Act requires fishermen to provide certain information sufficient to determine their eligibility for compensation. Fishermen making application to NPS for compensation, as outlined by the Act, must provide the following information to the superintendent: (1) Full name, mailing address, and a contact phone number. (2) A sworn and notarized personal affidavit attesting to the applicant's history of participation in the Beardslee Island or Dundas Bay wilderness water commercial fisheries for Dungeness crab as a permit holder for at least 6 of 12 years during the period of 1987 through 1998. (3) A copy of the fisherman's current state of Alaska Dungeness crab commercial fishing permit. (4) Any available corroborating information—including sworn and notarized affidavits of witnesses or documentation of commercial Dungeness crab landings from the Alaska Department of Fish and Game shellfish statistical units that include wilderness areas in the Beardslee Islands or Dundas Bay—that can assist in a determination of eligibility for compensation.

The superintendent will make a written determination on eligibility for compensation based on the information provided by the applicant. The superintendent will also make a written determination on the amount of compensation to be paid to an eligible applicant. The amount of compensation will depend on the compensation formula and options selected by the applicant and—as appropriate—the fair market values of the Dungeness crab commercial fishing permit and the fishing vessel and gear used in the fishery. The Act requires payment within six months from the date of application. If an application for compensation is denied, the superintendent will provide the applicant the reasons for the denial in writing. Any applicant adversely affected by the superintendent's determination may appeal to the regional director, Alaska region, within 60 days. Applicants must substantiate the basis of their disagreement with the superintendent's determination. The regional director will provide an opportunity for an informal oral hearing. After consideration of written materials and oral hearing, if any, and within a reasonable time, the regional director will affirm, reverse, or modify the superintendent's determination and set forth in writing the basis for the decision. A copy of the decision will be forwarded promptly to the applicant and will constitute final agency action.

Dated: June 8, 1999.

Robert D. Barbee,

Regional Director, Alaska.

[FR Doc. 99–15498 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Placer County Water Agency American River Pump Station Project, Placer County, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/environmental impact report (EIS/EIR) and notice of scoping meeting.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the California Environmental Quality Act (CEQA) of 1970, as amended, the Bureau of Reclamation (Reclamation) and Placer County Water Agency (PCWA) intend to prepare a joint EIS/EIR for development of a year-round water supply diversion of up to 35,000 acre-feet annually (AFA) from PCWA's Middle Fork Project on the American River (MFP) with water entitlements from the North Fork of the American River. The proposed project, which is subject to review during the EIS/EIR process, consists of constructing a diversion and intake structure, pump station and associated facilities including: pipelines, access roads, power lines, and safety features. The proposed location of the diversion structure is approximately 150 feet upstream of the Auburn Dam bypass tunnel.

Reclamation and PCWA are negotiating a contract that will define the terms and conditions upon which ownership of the facilities would be transferred to PCWA, including responsibilities for operation, maintenance, and related activities for the project.

DATES: A public scoping meeting to help identify environmental concerns to be addressed in the EIS/EIR will be held on July 8, 1999, at 7:00pm at the Placer County Water Agency (see address below). Written comments on the scope of the EIS/EIR should be sent to Reclamation at the address below by July 30, 1999. Requests for special services at the meeting must be received no later than July 2, 1999 (see special services section for more details).

ADDRESSES: The scoping meeting will be held at Placer County Water Agency, American River Room, 144 Ferguson Road, Auburn, California.

Please send written comments on the scope of the EIS/EIR to Mr. Rod Hall, Environmental Specialist, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, California 95630–1799, by July 30, 1999. Please include your name and address so that Reclamation can contact you directly if clarification is needed.

FOR FURTHER INFORMATION CONTACT: Mr. Rod Hall, telephone: (916) 989–7279.

SUPPLEMENTARY INFORMATION:

Background

PCWA provides municipal and agricultural water to cities and landowners in western Placer County. PCWA holds appropriative rights to divert 120,000 AFA from the MFP under water right permit numbers 13856 and 13858, as authorized by the State Water Resources Control Board. In the late 1960's, PCWA built a 50 cubic feet per second (cfs) pump station on the North Fork of the American River to convey its MFP water supplies to the Auburn Ravine Tunnel for delivery to PCWA's service area. However, before pump station operations began, PCWA's pump station was removed by Reclamation, under a Land Purchase Contract as supplemented (Contract). Under certain terms and conditions, the Contract requires Reclamation to make water deliveries to PCWA. Reclamation has met these water delivery obligations through installation and removal of a seasonal pump station on an as-needed basis since 1977. Also, during initial construction of Auburn Dam, the river was diverted through a bypass tunnel away from the previous pump station site.

PCWA also has a contractual entitlement of Yuba/Bear River water supplies, under an agreement with Pacific Gas and Electric Company (PG&E). PCWA uses MFP supplies from the American River to supplement Yuba/Bear supplies and to provide backup supplies when PG&E's Yuba/Bear system is not operating.

Beginning in 1990, PCWA has required access to its American River supply every year to meet its system demands, and Reclamation has responded with the seasonal re-installation and removal of the pump station. In addition, PCWA's service area needs for water have exceeded the 100,000 AFA supply of the PG&E Yuba/Bear system, and the demand is projected to increase. By the early 2000's, PCWA will require access to its American River supply beyond the seasonal (July through October) operating period of the pumps. The seasonal pumps, however, have become increasingly expensive to install and maintain, and are limited in use to the summer and fall. High winter and spring riverflows sometimes inundate the site of the seasonal pump station and pipeline, rendering them unreliable for water diversions. Further, because of pumping capacity limitations (50 cfs), timing of seasonal diversions, demand patterns, and applicable permits and other requirements, the maximum diversion capacity for the seasonal pumps is approximately 20,000 AFA. As a result, Reclamation can no longer provide PCWA with a reliable water supply to meet PCWA's system demands in accordance with the Contract.

Alternatives Being Considered

In addition to the upstream diversion alternative described above, the EIS/EIR will include evaluation of a "no project" alternative of continuing the present seasonal pump station operation. Also evaluated will be a flood-proofing alternative, which involves raising the existing pump station to a higher elevation to reduce flooding risks and

allow Reclamation to meet its obligations under the Contract. In addition, an evaluation will be made of a mid-channel alternative of setting a permanent diversion intake structure within the currently de-watered portion of the river channel. The mid-channel alternative includes restoration of the de-watered river channel and closure of the bypass tunnel. The other alternatives do not include closure of the bypass tunnel, but would not preclude its possible closure in the future.

Environmental Issues

The EIS/EIR will address potential impacts to the environment that may result from construction, operation and maintenance of the project. PCWA and Reclamation have identified standard best management practices as part of the project, thereby minimizing potential construction-related impacts. These will also be discussed in the EIS/EIR.

In addition, the EIS/EIR will address potential impacts to the area watercourses associated with PCWA's exercise of its American River water entitlement. Historically, only a portion of PCWA's current entitlements have been diverted from the American River. Hydrologic impact analyses will consider the effects of PCWA's increasing its entitlement diversion under varying hydrologic conditions and the impacts of the diversions on the potentially affected hydrologic system, including the North Fork of the American River, Folsom Reservoir, lower American River, and other Central Valley Project (CVP) system components.

Potential impacts to water supplies, fisheries and other aquatic resources, wetland and riparian communities, special-status species, recreational activities, and flood control will be assessed. Also addressed will be growth inducement as a potential secondary impact associated with PCWA's exercise of its existing entitlements within the service area. The cumulative impacts of the proposed project and other ongoing and anticipated future projects on the environment, specifically upstream and downstream American River resources, will be examined in the EIS/EIR.

No adverse impacts to Indian Trust Assets are anticipated with this project. No disproportionately high or adverse human health or environmental impacts to minority or low-income communities are anticipated with this project.

Environmental Process

The lead agencies began evaluation of the environmental effects of the proposed project with an Environmental Assessment/Initial Study (EA/IS). They also held several public meetings for the EA/IS. Evaluation of this and other proposals within the CVP raised concerns of significant cumulative impacts on resources of the lower American River and other portions of the hydrologic system. In response to these concerns and potential significant impacts, the lead agencies decided to prepare an EIS/EIR. A draft version of the EIS/EIR is expected to be available for review and comment in the fall of 1999.

Special Services

If special services are required at the meeting, please contact Ms. Gay Howe at (530) 823–4889. Please notify Ms. Howe as far in advance of the meeting as possible, but no later than July 2, 1999, so that she will have time to secure the needed services. If a request cannot be honored, the requestor will be notified.

Dated: June 11, 1999.

Kirk C. Rodgers,

Acting Regional Director.

[FR Doc. 99–15378 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–94–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Abolishment of the U.S. International Development Cooperation Agency

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice.

SUMMARY: The Overseas Private Investment Corporation ("OPIC") gives notice of the abolition of the U.S. International Development Cooperation Agency ("IDCA"). Under the provisions of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in Public Law 105–277, IDCA was abolished, effective April 1, 1999.

DATES: Effective June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Eli Landy, Department of Legal Affairs, 202–336–8418, eland@opic.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in Public Law 105–277, IDCA was abolished, effective April 1, 1999.

Elsewhere in this issue of the **Federal Register** OPIC has amended chapter VII of title 22 of the Code of Federal Regulations to delete the reference to IDCA. The abolition of IDCA does not affect the status and validity of OPIC regulations, directives, rulings, policies; they continue in effect.

Charles D. Toy,

Vice President and General Counsel.

[FR Doc. 99–15503 Filed 6–17–99; 8:45 am]

BILLING CODE 3210–0–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1961–98]

Important Announcement for Class Members of American Baptist Churches v. Thornburgh (ABC) Regarding Change of Address Notification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice Regarding Change of Address Notifications for *ABC* Class Members.

SUMMARY: This notice informs class members of *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (*ABC*) of a change in procedures for notifying the Immigration and Naturalization Service (Service) of an address change. It requests *ABC* class members to submit change of address notifications directly to the Asylum Offices that have jurisdiction over their asylum applications, rather than to the *ABC* Project Post Office Box in Washington, DC. This action will allow the Service to expedite action in response to a change in address and will be more convenient for the Service and *ABC* class members. However, the Service will continue to process change of address notifications sent to the *ABC* Project Post Office Box to ensure that Service records are updated for those class members who are unaware of this change in procedure.

DATES: This notice is effective June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Joanna Ruppel, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, ULLICO Bldg., third floor, Washington, DC 20536, telephone number (202) 305–2663.

SUPPLEMENTARY INFORMATION:

Why Is the Service Requesting That Address Notifications No Longer Be Sent to the ABC Post Office Box?

The *ABC* Project Post Office Box in Washington, DC, has provided a centralized location for *ABC* class members to submit change of address forms. This was necessary in the past because not all *ABC* class members who were eligible to seek benefits of the settlement agreement had applied for asylum or any other benefit with the Service. However, the deadlines by which *ABC* class members were required to apply for asylum in order to retain benefits of the settlement agreement have now passed. Guatemalan class members were required to apply for asylum on or before January 3, 1995. Salvadoran class members were required to apply for asylum on or before January 31, 1996 (with an administrative grace period to February 16, 1996). Because all *ABC* class members who are eligible for benefits of the settlement agreement have applied for asylum, a centralized location for change of address notification by *ABC* class members is no longer necessary or efficient.

Currently, the Service Office of International Affairs, based in Washington, DC, receives change of address notifications submitted to the *ABC* Project Post Office Box. The Office of International Affairs enters the change of address in the computer system when there is sufficient information in the notice to identify the correct record and make the change, or when necessary, asks the sender for additional information. The Office of International Affairs then forwards the notification to the appropriate Asylum Office for filing with the applicant's records. Many of the change of address notifications sent to the *ABC* Project Post Office Box are duplicates of notifications that *ABC* class members or their representatives have sent directly to the appropriate Asylum Offices, which have already updated the address in the computer system, thus creating duplicative efforts. Additionally, the Asylum Offices, which maintain the asylum application files, are in the best position to seek additional information or clarification from an applicant who submits a change of address notification that may require further action. For example, the Asylum Office may need to request or transfer the file when an applicant has moved to another jurisdiction. The unnecessary and additional step of first processing the change of address notification in Washington, DC, before it is sent to the appropriate Asylum Office delays such action. For these reasons, the Service believes that submission of change of address notifications directly to the Asylum Office that has jurisdiction over the asylum application will enhance efficiency, expedite action that needs to be taken in response to the address change, and generally be more convenient for both the Service and *ABC* class members.

How Should ABC Class Members Notify the Service of a Change of Address?

As it requires for all aliens within the United States, Section 265 of the Immigration and Nationality Act requires *ABC* class members to notify the Service within 10 days of any change of address. The change of address notification required from *ABC* class members should be sent to the Asylum Office that has jurisdiction over the class member's asylum application. Notification may be made on the Form I–855, *ABC* Change of Address Form, or a plain piece of paper containing the information requested in the Form I–855. The Form I–855 requests the class member's full printed name, date of birth, nationality, Alien Registration Number (A–Number), and the class member's previous address. The information should be clearly printed. Alternatively, *ABC* class members may use a Form AR–11 to notify the Service of a change of address and may send the form to the address specified on the card or to the Asylum Office that has jurisdiction over the class member's asylum application.

The Form I–855, Change of Address Form, directs individuals to send the completed form to the *ABC* Project Post Office Box. The form is being amended to instruct that the form be sent to the Asylum Office that has jurisdiction over the class member's asylum application, rather than to the *ABC* Project Post Office Box. Individuals who continue to use old copies of the Form I–855 should disregard the instruction to sent the notice to the *ABC* Project Post Office Box and should instead sent the form to the Asylum Office that has jurisdiction over the asylum application.

It is important that a class member notify the Service of address changes to ensure that the class member receives notice to his or her asylum interview. An *ABC* class member may lose the right to an *ABC* asylum interview, and the Service may deny his or her asylum application if the class member fails to appear for an interview and that failure to appear has not been excused for good cause.

What Will Happen to Change of Address Notifications That Are Sent to the ABC Project Post Office Box?

The Service will continue to process change of address notification sent to the *ABC* Project Post Office Box. However, for expediency and efficiency, the Service strongly encourages each *ABC* class member to send any change of address notification directly to the Asylum Office that has jurisdiction over the class member's asylum application.

Dated: May 28, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0197

ABC Change of Address Form

AVISO 18

AMERICAN BAPTIST CHURCHES

FORMULARIO PARA CAMBIO DE DIRECCIÓN
(Inglés y Español)

Yo he solicitado la Protección Provisional "TPS" o las disposiciones de *American Baptist Churches*, y mi dirección actual es distinta de la que puse en la solicitud.

Nombre y apellido _____

_____

Número de Archivo A- _____

Mi direcciòn ACTUAL de domicilio es:

_____

_____

Mi país de nacimiento es: _____

Fecha de nacimiento: _____

La última dirección que informé a INS es:

_____

_____

Firma _____ Fecha _____

Favor de llenar este formulario y enviarlo a la Oficina de Asilo donde su solicitud de asilo pende. Si usted no está seguro de cuál es la oficina donde su solicitud de asilo está pendiente, para obtener esta información por favor contacte la oficina de inmigración mas cercana a su residencia.

GUARDE COPIA DE ESTE FORMULARIO.

RECUERDE: SI SE CAMBIE DE DIRECCIÓN DE NUEVO, DEBE DE INFORMAR AL SERVICIO DE INMIGRACIÓN ("INS"). PUEDE USAR ESTE FORMULARIO. SI NO INFORMA AL INS SU CAMBIO DE DIRECCIÓN, PODRÍA PERDER SU DERECHO DE UNA NUEVA ENTREVISTA Y DECISIÓN DE ASILO.

NOTICE 18

AMERICAN BAPTIST CHURCHES

CHANGE OF ADDRESS FORM
(English and Spanish)

I have applied for TPS or for benefits under *American Baptist Churches* and have a different address from the address on my registration application.

Name _____

_____

A-Number A- _____

My NEW address is:

_____

_____

My country of birth is: _____

Date of birth: _____

The last address I reported to INS is:

_____

_____

Signature _____ Date _____

Fill out this form and send it to the INS Asylum Office where your asylum application is pending. If you are unsure where your asylum application is pending, please contact your local INS District Office to obtain that information.

KEEP A COPY OF THIS FORM.

REMINDER: IF YOUR ADDRESS CHANGES AGAIN YOU MUST INFORM INS. YOU MAY USE AN ABC CHANGE OF ADDRESS FORM. YOU CAN LOSE YOUR RIGHT TO A NEW ASYLUM INTERVIEW AND DECISION IF YOU DO NOT INFORM INS OF YOUR CHANGE OF ADDRESS.

Form I-855 (Rev. 11-10-98) N

[FR Doc. 99–15523 Filed 6–17–99; 8:45 am]
BILLING CODE 4410–10–C

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 1999 for a cooperative agreement to fund the "Development of Management Information Systems to Support Prison Classification" project.

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. An award is made to an organization that will, in concert with the Institute, provide assistance to correctional agencies making enhancements in their management information systems to provide data for analysis and improve the operation of the classification systems. No funds are transferred to state or local governments.

The Institute's Prisons Division will provide financial assistance in the form of a cooperative agreement to facilitate the development of a resource manual that will provide information for state correctional agencies to use in assessing their management information systems related to the essential and desirable elements that will enhance the analysis and operation of the classification system; provide descriptive information on MIS systems in 8 to 12 states that have developed leading classification and MIS systems, including advancements toward integrated justice information systems; tools, such as checklists, for agencies to use in conducting self-assessments; and resources that are available for funding produced in compliance with publication guidelines included in the application packet.

Assistance will be provided under this cooperative agreement to 6 to 8 agencies requesting technical assistance in assessing their management information systems pertaining to classification decision-making and in the operation of their classification systems. The recipient of the cooperative agreement will conduct onsite assessments of the information management and classification systems at participating agencies; provide assistance and oversight in revising the management information system and, as necessary, the classification instruments and operations; and provide technical assistance and training during implementation. Prison systems selected for participation will have the resources necessary to make management information system enhancements to provide data for classification system analysis and ensure the capacity to measure outcomes and impacts of the classifications systems implemented. A steering committee will be appointed by each agency to coordinate activities related to the project.

Background

Most state corrections systems use objective classification to assign inmates to appropriate prisons, and some have internal classification systems to guide housing, work, and program assignments. However, many systems lack the reliable data needed to fully assess and redesign their classification systems to adapt to increased demands and a changing environment. Management of offender data is a critical issue for every correctional agency's overall operations. With advances in the use of automated computer systems to manage data, management information system (MIS systems) have become a necessary component for prison management.

Classification systems need to become an integral part of the department's MIS system and the hub for the information system design. Data generated through the automated classification system can provide correctional managers with accurate, timely, and relevant information to plan and manage the offender population; better utilize resources; and assess risks and needs. Automation will reduce errors in scoring offenders for custody or security level and improve the system's ability to monitor the housing of offenders according to the classification system. It will also allow evaluations to be conducted on a regular basis to increase the system's performance.

Classification systems should to be monitored and periodically evaluated. This is done to ensure the system is working as designated. Classification systems should also be validated to determine what impact the system has had on inmate operations and overall performance. Automation of the classification system is required to conduct evaluations efficiently. Furthermore, there are operational issues in the daily management of offenders and the classification process that also depend on automation of classification data. These issues include: transfers and bed space management, housing decisions within facilities, disciplinary actions, scheduling and documenting classification reviews, calculating release and eligibility dates, and much more.

Planning for automation is an on-going process that should incorporate incremental improvements to increase the system's utility through innovative technological changes. These improvements should include integration of information within the agency to operate more effectively and eliminate redundancy. Improvements must also anticipate the need to plan for the automation to involve the integration of criminal justice information with other agencies.

Currently, the NIC Prisons Division through the NIC Information Center is conducting a survey of prison MIS systems to assess the MIS capabilities in correctional agencies. Survey questions are directed to issues that relate to prison classification systems. The results of the survey will be published later this year. This survey will provide information to guide the work under this project by identifying correctional agencies that have developed MIS systems that enhance the classification process, as well as correctional agencies that have the potential to benefit from technical assistance and/or resource material developed through this funding.

NIC has announced the availability of technical assistance through the annual Program Plan and will send letters to agency directors advising them that their agencies can apply for assistance through this project. A selection of states will be made by MIC and the cooperative agreement awardee. The selections will be based on criteria that will be established to find correctional agencies with the interest, need and resources for this type of assistance.

Purpose

The National Institute of Corrections is seeking applications for a cooperative agreement to do the project management to assist correctional agencies making enhancements in their management information systems to provide data for analysis of classification systems and improving the operation of the classification system; develop a resource manual that will guide agencies through planning and assessment of their MIS systems; and produce advancements in the development of comprehensive classification systems.

Authority: Public Law 93–415.

Funds Available

The award will be limited to a maximum total of $75,000 (direct and indirect costs) and project activity must be completed within 12 months of the date of the award. Funds may only be used for the activities that are linked to the desired outcomes of the project.

This project will be a collaborative venture with the NIC Prisons Division.

All products from this funding effort will be in public domain and available to interested agencies through the National Institute of Corrections.

Deadline for Receipt of Applications

Applications must be postmarked by Friday July 30, 1999. They should be addressed to: National Institute of Corrections, 320 First Street, N.W., Room 5007, Washington, D.C. 20534, Attention: Administrative Officer. Hand delivered applications can be brought to 500 First Street, N.W., Washington, D.C. 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

ADDRESSES AND FURTHER INFORMATION: Requests for the application kit, which will include the survey form, should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, N.W., Room 5007, Washington, D.C. 20534 or by calling (800) 995–6423, extension 159 or (202) 307–3106, extension 159. She can also be contacted by E-mail via *jevens@bop.gov*. All technical and/or programmatic questions concerning this announcement should be directed to Sammie D. Brown at the above address or by calling (800) 995–6423, or (202) 307–3106, extension 126, or by E-mail via *sbrown@bop.gov*. Information may also be obtained through the NIC website: *http://www.nicic.org*.

Eligible Applicants: An eligible applicant is any private or non-profit organization, institution, or individual.

Review Considerations: Applications received under this announcement will be subjected to an NIC three to five member Peer Review Process.

Number of Awards: One (1).

NIC Applications Number: 99P10. This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424.

Executive Order 12372

This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit, along with further instructions on proposed projects serving more than one State.

The Catalog of Federal Domestic Assistance number is: 16.603.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 99–15511 Filed 6–17–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,634A]

Gould Electronics, Inc. Now Known as Ga-Tek, Inc./Gould Electronics, Inc. Circuit Protection Group El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on September 17, 1998 applicable to all workers of Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas. The notice was published in the **Federal Register** on September 28, 1998 (63 FR 51607).

At the request of the State agency, the Department reviewed the amended certification for workers of the subject firm. The workers are engaged in the production of electrical fuses. New information shows that Ga-Tek, Inc. is the parent firm of Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas and is "now known as GA-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group", El Paso, Texas. The company reports that some workers separated from employment at Gould Electronics, Inc., Circuit Protection Group had their wages reported under a separate unemployment insurance (UI) tax account for Ga-Tek, Inc., now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas.

Accordingly, the Department is amending the certification determination to correctly identify the new title name to read "Gould Electronics, Inc., Circuit Protection Group, now known as Ga-Tek, Inc./ Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas.

The intent of the Department's certification is to include all workers of Gould Electronics, Inc., Circuit Protection Group, now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas who were adversely affected by increased imports of electrical fuses.

The amended notice applicable to TA–W–34,634A is hereby issued as follows:

All workers of Gould Electronics, Inc., Circuit Protection Group, now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas who became totally or partially separated from employment on or after June 12, 1997 through July 7, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15578 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Ithaca Industries, Incorporated; TA–W–35,525B, Vidalia, Georgia; TA–W–35,525C, Swainsboro, GA Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 12, 1999, applicable to workers of Ithaca Industries, Inc., Vidalia, Georgia. The notice was published in the **Federal Register** on May 21, 1999 (64 FR 27811).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of ladies and men's undergarments, and provides raw materials, distribution center and apparel management center. New information shows that worker separations will occur at Ithaca's Swainsboro, Georgia facility when it closes in July, 1999. The workers are engaged in the production of men's and boys' undergarments. Based on these new findings, the Department is amending the certification to cover workers at the Swainsboro, Georgia facility.

The intent of the Department's certification is to include all workers of Ithaca Industries, Inc. adversely affected by increased imports.

The amended notice applicable to TA–W–35,525 is hereby issued as follows:

All workers of Ithaca Industries, Inc., Vidalia, Georgia (TA–W–35,525B), and Swainsboro, Georgia (TA–W–35,525C) who became totally or partially separated from employment on or after January 11, 1998, through April 12, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15575 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Omimex Energy, Inc. TA–W–35,889 Mason, MI etc; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 1, 1999, applicable to all workers of Omimex Energy, Inc., located in Mason, Michigan. The notice was published in the **Federal Register** on May 21, 1998 (64 FR 27811).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at the Forth Worth, Post and Placedo, Texas locations of Omimex Energy, Inc. The workers are engaged in activities related to the production and sale of crude oil and natural gas.

The intent of the Department's certification is to include all workers of Omimex Energy, Inc. adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover workers of Omimex Energy, Inc., Fort Worth, Post and Placedo, Texas.

The amended notice applicable to TA–W–35,889 is hereby issued as follows:

All workers of Omimex Energy, Inc., Mason, Michigan (TA–W–35,880), Forth Worth, Texas (TA–W–35,889B), Post Texas (TA–W–35,889C) and Placedo, Texas (TA–W–35,889D) who became totally or partially separated from employment on or after March 8, 1998 through April 1, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15577 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,599]

Perfection Pad Co., Inc. a/k/a Consolidated Contractors a/k/a New York Pad; Buffalo, New York; Revised Determination on Reopening

On June 1, 1999, the Department, on its own motion, reopened its investigation for the former workers of the subject firm. The workers were engaged in employment related to the production of shoulder pads and sleeveheads used by clothing manufacturers.

The initial investigation resulted in a negative determination issued on May 7, 1999, because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The denial notice will soon be published in the **Federal Register**.

Further analysis of the customer survey conducted by the Department revealed that a customer of the subject firm increased import purchases of shoulders pads while discontinuing purchases from the subject firm.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with those produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Perfection Pad Co., Inc., also known as Consolidated Contractors, also known as New York Pad, Buffalo, New York, who became totally or partially separated from employment on or after January 7, 1998 through two years from the date of this issuance, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 3rd day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15576 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,220]

Wyeth-Ayerst Laboratories Div. of American Home Products Corp. Bound Brook, NJ Including Leased Workers of Decco Engineering Co., Inc. Middlesex, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 10, 1998, applicable to all workers of Wyeth-Ayerst Laboratories, Div. of American Home Products Corp., Bound Brook, New Jersey. The notice was published in the **Federal Register** on April 3, 1998 (63 FR 16574).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of Wyeth-Ayerst Laboratories, Div. of American Home Products Corp. were leased from Decco Engineering Co., Inc., to provide engineering and nursing function services for the production of bulk intermediate chemicals; Methazolamide and Acetazolamide at the Bound Brook, New Jersey facility. Worker separations occurred at Decco Engineering Co., Inc. as a result of worker separations at Wyeth-Ayerst Laboratories, Div. of American Home Products Corp.

Based on these findings, the Department is amending the certification to include workers of Decco Engineering Co., Inc., Middlesex, New Jersey leased to Wyeth-Ayerst Laboratories, Div. of American Home Products Corp, Bound Brook, New Jersey.

The intent of the Department's certification is to include all workers of Wyeth-Ayerst Laboratories, Div. of American Home Products Corp. adversely affected by imports.

The amended notice applicable to TA–W–34,220 is hereby issued as follows:

All workers of Wyeth-Ayerst Laboratories, Div. of American Home Products Corp., Bound Brook, New Jersey and leased workers of Decco Engineering Co., Inc., Middlesex, New Jersey engaged in employment related to providing engineering and nursing function services for the production of bulk intermediate chemicals; Methazolamide and Acetazolamide at Wyeth-Ayerst Laboratories, Div. of American Home Products Corp., Bound Brook, New Jersey who became totally

or partially separated from employment on or after January 21, 1997 through March 10, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15579 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request if filed in writing with the Acting Director of OTAA not later than June 28, 1999.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than June 28, 1999.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 3rd day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Jahmpasa (Wkrs)	Vass, NC	04/28/1999	NAFTA–3,140	Shirts.
Fina Oil and Chemical (Wkrs)	Midland, TX	05/03/1999	NAFTA–3,141	Oil Refinery.
Gerber Childrenswear (Wkrs)	Ballinger, TX	05/03/1999	NAFTA–3,142	Babies blanket sleepers.
Briggs (GMP)	Robinson, IL	05/03/1999	NAFTA–3,143	Toilets.
ADC Solitra (Wkrs)	Hutchinson, MN	05/03/1999	NAFTA–3,144	Communication equipment.
Consolidated Paper (Co.)	Niagara, WI	05/03/1999	NAFTA–3,145	Coated groundwood printing papers.
Cooper Industries (IUE)	Elizabethtown, KY	04/29/1999	NAFTA–3,146	Circuit protection products (fuses).
Armenian American Exploration (Co.).	Irving, TX	05/06/1999	NAFTA–3,147	Oil and gas.
Hamilton Beach-Proctor Silex (Co.).	Southern Pines, NC	05/04/1999	NAFTA–3,148	China.
Lighthouse Electric (Co.)	Middlesex, NC	05/05/1999	NAFTA–3,149	Electric transformers.
Acorn Products (Co.)	Hampden, NE	05/04/1999	NAFTA–3,150	Slippers, boots, socks and footwear.
Homemaker Industries (Co.)	North Charleston, SC	05/06/1999	NAFTA–3,151	Braided rugs.
Johansen Brothers (UNITE)	Harrisburg, AR	05/07/1999	NAFTA–3,152	Shoes.
Waterford Irish Stoves (Wkrs)	West Lebanon, NH	04/26/1999	NAFTA–3,153	Gas fireplaces.
Applied Molded Products ()	Watertown, WI	05/06/1999	NAFTA–3,154	Components.
B.J. Service Co (Wkrs)	Houston, TX	05/10/1999	NAFTA–3,155	Oilfield Services.
Chippen Hook Corp (Wkrs)	McAllen, TX	05/10/1999	NAFTA–3,156	Jewelry Boxes.
St. Paul Companies (The) (Comp)	St. Paul, MN	05/07/1999	NAFTA–3,157	Property and Casualty Insurances.
Jahmpasa, USA (Wkrs)	Vass, NC	04/28/1999	NAFTA–3,158	Shirts.
Holiday Products, Inc (Comp)	El Paso, TX	05/11/1999	NAFTA–3,159	Christmas Products.
Livingston Rebuild Center (Co.)	Livingston, MT	05/07/1999	NAFTA–3,160	Rebuilds locomotives.
Levi Strauss and Co (Comp)	Morrilton, AR	05/11/1999	NAFTA–3,161	Dockers, Jeans, Distribution.
Stroh Brewery Company (The) (Co.).	Seattle, WA	05/05/1999	NAFTA–3,162	Beer beverages.
Tarkett (PACE)	Whitehall, PA	05/13/1999	NAFTA–3,163	Vinyl flooring.
Richbar Processing	Bethlehem, PA	05/14/1999	NAFTA–3,164	
SMS Textiles—Fab Industries (Wkrs).	Allentown, PA	05/14/1999	NAFTA–3,165	
Reef Chemical (Co.)	Midland, TX	05/18/1999	NAFTA–3,166	Oilfield chemicals.
Oxford Automotive (Co.)	Hamilton, IN	04/26/1999	NAFTA–3,167	Leaf springs.
Continental Apparel Sales (Co.)	Defuniak Spings, FL	05/06/1999	NAFTA–3,168	Childrens denim jeans and shorts.
Minnesota Mining & Manufacturing (3M) (Wkrs).	Chico, CA	05/13/1999	NAFTA–3,169	Electronic parts.
C and D Technologies-L.H. Research (Co.).	Costa Mesa, CA	05/10/1999	NAFTA–3,170	Standard AC to DC power supplies.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Rosemount Analytical (Co.)	Anaheim, CA	05/10/1999	NAFTA–3,171	Analytical and measurement equipment.
California Webbing Industrial (Wkrs).	Los Angeles, CA	05/12/1999	NAFTA–3,172	Nylon, polyester, cotton webbing.
Mitel (Co.)	Ogdensburg, NY	05/10/1999	NAFTA–3,173	Telecommunication dialers.
Under and Fabric (Wkrs)	Los Angeles, CA	05/12/1999	NAFTA–3,174	Brand name clothing.
White Knight Healthcare (Wkrs)	Douglas, AL	05/13/1999	NAFTA–3,175	Gowns, drapes.
Actown Electro Coil (Wkrs)	Spring Grove, IL	05/10/1999	NAFTA–3,176	Neon sign and lighting.
C and J Manufacturing (Co.)	Blytheville, AR	05/12/1999	NAFTA–3,177	Women's dresses and skirts.
Southern Glove-Banner Elk Glove (Co.).	Conover, NC	05/17/1999	NAFTA–3,178	Cotton work gloves.
Bend Wood (Wkrs)	Bend, OR	05/14/1999	NAFTA–3,179	Wood products.
Federal Mogul (Wkrs)	Manila, AR	05/18/1999	NAFTA–3,180	Brake system components.
Fasco Motors Group (Co.)	Russellville, AR	05/18/1999	NAFTA–3,181	Electric Motors.
Bariod Drilling (PACE)	Potosi, MO	05/18/1999	NAFTA–3,182	Ore barium sulfate.
Russell Corporation (Co.)	Wetumpka, AL	05/12/1999	NAFTA–3,183	Yarn.
McCulloch Corporation (Co.)	Tucson, AZ	05/24/1999	NAFTA–3,184	Chain saw, blowers, trimmers.
3M (Co.)	Winadale, IL	05/20/1999	NAFTA–3,185	Heart monitoring electrodes.
Smurfit Stone (Wkrs)	Laporte, IN	05/24/1999	NAFTA–3,186	Corrugated containers.
Master Lock (UAW)	Milwaukee, WI	05/24/1999	NAFTA–3,187	Laminated padlocks.
Philips Components (Co.)	Saugerties, NY	05/24/1999	NAFTA–3,188	Electronic transformers.
Allergan (Co.)	Lenoir, NC	05/20/1999	NAFTA–3,189	Surgical kits.
Beltex Corporation (Co.)	Belmont, NC	05/21/1999	NAFTA–3,190	T-shirts.
Medtronic (Co.)	Parker, CO	05/21/1999	NAFTA–3,191	Therapeutic disposable products.
Perfection Pad Consolidated Contractors (UNITE).	Buffalo, NY	05/20/1999	NAFTA–3,192	Shoulder pads.
OXY USA—Permian Asset Group (Wkrs).	Midland, TX	05/20/1999	NAFTA–3,193	Crude oil.
Tubby's Auto Service (Co.)	Houston, TX	05/20/1999	NAFTA–3,194	Rebuildable car's and parts.
Acutus Gladwin (Co.)	Blytheville, AR	05/18/1999	NAFTA–3,195	Molds, ladles, tundish car.
Sunset Time (Co.)	Pacomia, CA	05/17/1999	NAFTA–3,196	Clock assembly.
Royce Hoisery Mills (Wkrs)	Conover, NC	05/18/1999	NAFTA–3,197	Socks.
General Motors Locomotive Group—Delco (Co.).	Goleta, CA	05/13/1999	NAFTA–3,198	Turret system.
Thomas and Betts (Co.)	Lyons, GA	05/25/1999	NAFTA–3,199	Safety switches, meter center, etc.
Anderson Brothers and Johnson (Wkrs).	Wausau, WI	05/25/1999	NAFTA–3,200	Rough blocks, slabs, finished granite.
Lockheed Martin (Wkrs)	Ft. Worth, TX	05/25/1999	NAFTA–3,201	Harnesses.
Robertshaw Controls Company (Co.).	Ft. Collins, Co	05/25/1999	NAFTA–3,202	Gas controls, fire place controls.
Cominco American (Co.)	Spokane, WA	05/24/1999	NAFTA–3,203	Accounting functions.
Amp (Wkrs)	Harrisburg, PA	05/20/1999	NAFTA–3,204	Electrical connectors.
Wyman Gordon (Wkrs)	Albany, OR	05/27/1999	NAFTA–3,205	Castings, aircraft parts.
Federal Mogul (Wkrs)	Manila, AR	05/18/1999	NAFTA–3,206	Brake system components.
Bombardier Motor Corp. of America (Wkrs).	Wausau, WI	05/26/1999	NAFTA–3,207	Snowmobile and watercraft.
Alta Gold (Wkrs)	Ely, NV	05/27/1999	NAFTA–3,208	Gold.
GMI Super Steel Schenectady (Wkrs).	Glenville, NY	05/24/1999	NAFTA–3,209	Cab locomotive equipping, cab finishing.
ABB Daimler Benz Transportation (Co.).	Elmira Heights, NY	05/28/1999	NAFTA–3,210	Mass transit rail vehicles.
Ayers Manufacturing (Co.)	Coward, SC	05/26/1999	NAFTA–3,211	Knit shirts.
Crouzet Corporation (Co.)	Carrollton, TX	05/26/1999	NAFTA–3,212	Industrial electronics.
Associated Spring (Wkrs)	Arden, NC	05/24/1999	NAFTA–3,213	Compression springs.
Wheaton Glass (GMPPA)	Millville, NJ	05/27/1999	NAFTA–3,214	Glass containers.
Ingersoll Dresser (Wkrs)	Phillipsburg, NJ	05/25/1999	NAFTA–3,215	Pumps for oil gas refining industry.
Burlington Industries Unifi Joint (Wkrs).	Greensboro, NC	05/26/1999	NAFTA–3,216	Textured polyester.

[FR Doc. 99–15574 Filed 6–17–99; 8:45 am]
BILLING CODE 4510–35–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedure to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. RI990004 dated March 12, 1999.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision No. RI990002. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA990001 (Mar. 12, 1999)
MA990002 (Mar. 12, 1999)
MA990003 (Mar. 12, 1999)
MA990008 (Mar. 12, 1999)
MA990018 (Mar. 12, 1999)
MA990019 (Mar. 12, 1999)
MA990020 (Mar. 12, 1999)
Rhode Island
RI990001 (Mar. 12, 1999)
RI990002 (Mar. 12, 1999)
RI990003 (Mar. 12, 1999)

Volume II

District of Columbia
DC990001 (Mar. 12, 1999)
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Maryland
MD990034 (Mar. 12, 1999)
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MD990036 (Mar. 12, 1999)
MD990046 (Mar. 12, 1999)
MD990047 (Mar. 12, 1999)
MD990048 (Mar. 12, 1999)
MD990056 (Mar. 12, 1999)
MD990057 (Mar. 12, 1999)
Virginia
VA990022 (Mar. 12, 1999)
VA990025 (Mar. 12, 1999)
VA990039 (Mar. 12, 1999)
VA990048 (Mar. 12, 1999)
VA990052 (Mar. 12, 1999)
VA990058 (Mar. 12, 1999)
VA990063 (Mar. 12, 1999)
VA990078 (Mar. 12, 1999)
VA990092 (Mar. 12, 1999)
VA990099 (Mar. 12, 1999)

Volume III

Georgia
GA990032 (Mar. 12, 1999)
GA990039 (Mar. 12, 1999)
GA990050 (Mar. 12, 1999)
GA990053 (Mar. 12, 1999)
GA990065 (Mar. 12, 1999)
GA990087 (Mar. 12, 1999)
GA990093 (Mar. 12, 1999)
GA990094 (Mar. 12, 1999)

Volume IV

Illinois
IL990003 (Mar. 12, 1999)
Michigan
MI990001 (Mar. 12, 1999)
MI990002 (Mar. 12, 1999)
MI990003 (Mar. 12, 1999)
MI990004 (Mar. 12, 1999)
MI990005 (Mar. 12, 1999)
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MI990081 (Mar. 12, 1999)
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MI990084 (Mar. 12, 1999)

Volume V

Iowa
IA990005 (Mar. 12, 1999)
IA990009 (Mar. 12, 1999)
IA990012 (Mar. 12, 1999)
IA990016 (Mar. 12, 1999)
IA990024 (Mar. 12, 1999)
IA990080 (Mar. 12, 1999)
Kansas
KS990002 (Mar. 12, 1999)
KS990004 (Mar. 12, 1999)
KS990005 (Mar. 12, 1999)
KS990043 (Mar. 12, 1999)
KS990056 (Mar. 12, 1999)
KS990067 (Mar. 12, 1999)

Volume VI

Oregon
OR990001 (Mar. 12, 1999)
OR990017 (Mar. 12, 1999)
Washington
WA990001 (Mar. 12, 1999)
WA990003 (Mar. 12, 1999)
WA990005 (Mar. 12, 1999)
WA990006 (Mar. 12, 1999)
WA990023 (Mar. 12, 1999)

Volume VII

California
CA990001 (Mar. 12, 1999)
CA990028 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 11th day of June 1999.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–15241 Filed 6–17–99; 8:45 am]
BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 3 of Regulatory Guide 8.13, "Instruction Concerning Prenatal Radiation Exposure," has been revised to provide information to pregnant women, and other licensee personnel, to help make decisions regarding radiation exposure during pregnancy.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax at (301) 415–2289. Recently published regulatory guides are also on the NRC's web site at <*WWW.NRC.GOV*> in the Reference Library under Regulatory Guides. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 4th day of June 1999.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 99–15509 Filed 6–17–99; 8:45 am]
BILLING CODE 7590–01–M

PRESIDIO TRUST

Letterman Complex, The Presidio of San Francisco, CA; Identification of the Preferred Alternative for the Draft Supplemental Environmental Impact Statement and Extension of the Public Comment Period

AGENCY: The Presidio Trust.

ACTION: Identification of the "Digital Arts Center" (Alternative 5) as the Presidio Trust's (Trust) preferred alternative for the purposes of the draft supplemental environmental impact statement (SEIS) for new development and uses within the Letterman Complex, The Presidio of San Francisco (Presidio) (EIS No. 990143). The draft SEIS is a supplement to the 1994 Final General Management Plan Amendment (GMPA) EIS for the Presidio. The Trust is extending the public comment period to 45 days after the publication of this notice to provide full opportunity for the public to make their views known on the action.

SUMMARY: The Trust has prepared and circulated for review a draft SEIS for the development and occupancy of approximately 900,000 square feet of new, low- to mid-rise mixed-use space within 23 acres of the 60-acre Letterman Complex, located in the northeast corner of the Presidio (64 FR 22662–63 (April 27, 1999)). For the purposes of the draft SEIS, six alternatives were evaluated at a comparable level of analysis for development and occupancy of the site: a "Science and Education Center" (the Updated Presidio GMPA Alternative, or Alternative 1); a "Sustainable Urban Village" (Alternative 2); a "Mixed Use Development" (Alternative 3); a "Live/Work Village" (Alternative 4); a "Digital

Arts Center" (Alternative 5) and "Minimum Management" (the No Action Alternative, or Alternative 6). Of the six alternatives discussed in the draft SEIS, the Trust has preliminarily determined that the "Digital Arts Center" (Alternative 5) would best fulfill its statutory mission and responsibilities under the Presidio Trust Act (Pub. L. 104–333), giving consideration to economic, environmental, technical and other factors.

Identification of a preferred alternative at this time does not imply that the Trust has made a final determination regarding the viability of Alternatives 1, 2, 3, 4 and 6. The Trust invites public comment on all of the alternatives described in the draft SEIS, including the Trust's preferred alternative.

Media coverage of the preferred alternative selection process conducted by the Trust may have resulted in public confusion regarding the continuing viability of Alternatives 1, 2, 3, 4 and 6. For this reason, the Trust has chosen to extend the public comment period to April 27–August 2, 1999 to accommodate a full 45-day comment period for the draft SEIS, as updated by this **Federal Register** notice, which will also enable the public to review and comment on the Trust's selection of Alternative 5 as the Trust's preferred alternative.

Public Meeting

The Trust will receive additional oral comment on the draft SEIS at the July 20, 1999 meeting of the Citizens' Advisory Commission of the Golden Gate National Recreation Area. The meeting will be held at Park Headquarters, Building 201, Fort Mason, San Francisco, California at 7:30 p.m.

Comments

Comments on the draft SEIS must be received by August 2, 1999. Written comments on the draft SEIS must be sent to: NEPA Compliance Coordinator—Attn: Letterman Complex, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052, Fax: 415–561–5315, E-mail: planning@presidiotrust.gov.

FOR FURTHER INFORMATION CONTACT: John Pelka, NEPA Compliance Coordinator, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Reference: 40 CFR 1502.14(e)

Dated: June 14, 1999.

Karen A. Cook,

General Counsel.

[FR Doc. 99–15507 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–23870; 813–182]

Monitor Investors, L.P., et al.; Application

June 11, 1999.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act except section 9, sections 17 (other than provisions of paragraphs (a), (d), (f), (g), and (j)) and 30 (other than certain provisions of paragraphs (a), (b), (e) and (h)), sections 36 through 53, and the rules and regulations under the Act.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnerships and other pooled investment vehicles formed for the benefit of key employees of The Monitor Company, Inc. (the "Company") from certain provisions of the Act. Each partnership will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act.

Applicants: Monitor Investors, L.P. (the "Investor Partnership"), Monitor Coinvestors, L.P. (the "Coinvestor Partnership" and together with the Investor Partnership, the "Initial Partnerships"), and subsequent pooled investment vehicles identical in all material respects (other than investment objective and strategy) that may be offered in the future to the same class of investors, or a subset of the same class of investors, to whom interests in the Initial Partnerships will be offered (the "Subsequent Investment Partnerships" and together with the Initial Partnerships, the "Investment Partnerships"), and the Company.

FILING DATES: The application was filed on December 18, 1997, and amended on November 10, 1998 and June 11, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 16, 1999 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the Request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 25 First Street, Cambridge, Massachusetts 02141.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Company is an international strategy and business consulting firm which provides customized analysis, advice and implementation assistance to major corporations.

2. The Initial Partnership are Delaware limited partnerships created by the Company. Each Investment Partnership will be formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act, and will operate as a non-diversified, closed-end investment. The Investment Partnerships will be established for the benefit of certain key employees of the Company to reward and retain these employees and to facilitate the Company's recruitment efforts.

3. Each Investment Partnership will have at least one general partner (the "General Partner"), which will be owned and controlled by the chief executive officer and another senior officer of the Company. The General Partner will manage and control each of the Investment Partnerships. Monitor GP, Inc., a Delaware corporation, is the General Partner of the Initial Partnerships. The General Partner will have a capital commitment to each Initial Partnership equal to at least 1% of the Initial Partnership's aggregate capital commitments. The General Partner will not charge the Initial Partnerships a management fee, nor will it be entitled to a performance-based fee or "carried interest." The General Partner will register as an investment adviser if it is required to do so under the Investment Advisers Act of 1940 ("Advisers Act").

4. Limited partner ("Limited Partner") interests in the Investment Partnerships ("Interests") will be offered and sold by the Investment Partnerships to Eligible Participants (as defined below) in reliance on section 4(2) of the Securities Act of 1933 ("Securities Act") or Regulation D under the Securities Act, and will be sold without a sales load or any similar fee. Eligible Participants consist of: (a) Eligible Employees (as defined below), (b) trusts and other investment vehicles of which the trustees, grantors and/or beneficiaries are Eligible Employees or of which the beneficiaries are immediate family members (including only spouses, parents, children, spouses of children, brothers, sisters, and grandchildren) of Eligible Employees, including self-directed retirements plan vehicles (including individual retirement accounts) ("Eligible Trust"), (c) partnerships, corporations or other entities the voting power of which is controlled by Eligible Employees, and (d) the Company. Interests will be offered directly to Eligible Participants described in (b) and (c) above only if they are accredited investors for purposes of Regulation D under the Securities Act.

5. "Eligible Employees" include (a) members of the professional staff of the Company who are accredited investors meeting the income requirements of rule 501(a)(6) of Regulation D under the Securities Act, including director, global account managers, and case team leaders, (b) former members of the professional staff of the Company who are accredited investors meeting the income requirements of Rule 501(a)(6) of Regulation D and who provide to the Company more than thirty hours per week, on average, for services as sub-contractors, and (c) members of the administrative staff of the Company who are accredited investors meeting the income requirements of Rule 501(a)(6) of Regulation D. Eligible Employees will be experienced professional in the leveraged buyout, venture capital, investment banking or management consulting business, or in related administrative, financial, accounting or operational activities. Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that the Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risk of participating in the Investment Partnership without the benefit of regulatory safeguards. No Eligible Employee will be required to invest in an Investment Partnership.

6. Monitor Clipper Partners, Inc. ("MCP"), a Delaware corporation, was formed in 1997 by certain senior employees of the Company and certain members of the Clipper Group, a private equity investment firm. MCP has established, and will establish from time to time, private equity investment funds in reliance on section 3(c)(1) of the Act (collectively, the "Initial Investment Funds") which will be involved in different types of investments, including leveraged buyout and venture capital transactions, and which will invest in a variety of securities. MCP, as the manager of the Initial Investment Funds, will perform the day-to-day investment and administrative operations for the Initial Investment Funds. Each Initial Investment Fund will pay MCP a management fee based on the total capital subscriptions to such Initial Investment Fund. Monitor Clipper Partners, L.P. ("MCP, L.P.") will serve as general partner of the Initial Investment Funds and will receive a "carried interest" on the profits of the Initial Investment Funds.[1] MCP, L.P. is exempt from registration under the Act in reliance on section 3(c)(1) of the Act.

7. The Company has formed the Investor Partnership to invest as a limited partner in MCP, L.P., and has formed the Coinvestor Partnership to invest as a limited partner in the Initial Investment Funds. The General Partner has the sole discretion to determine which Eligible Employees may participate in either the Investor Partnership or the Coinvestor Partnership. All of the Limited Partners of the Investor Partnership also are Limited Partners of the Coinvestor Partnership, but not all of the Limited Partners of the Coinvestor Partnership are Limited Partners of the Investor Partnership. Subsequent Partnerships may be established by the Company to make private equity and other investments, both directly and through investments in limited partnerships and other pooled investment vehicles, including investments in public companies and investments in registered investment companies. No Investment Partnership, however, will acquire any security issued by a registered investment company if, immediately after such acquisition, the Investment Partnership would own more than 3% of the outstanding voting stock of the registered investment company. The specific investment objective and strategies of an Investment Partnership will be set forth in the organizational documents with respect to the Investment Partnership, and each Eligible Participant will receive a copy prior to investment in the Investment Partnership.

8. Management of the Investor Partnership will be vested in the General Partner. The Investor Partnership, as a limited partner of MCP, L.P., will participate in the carried interest paid by the limited partners of the Initial Investment Funds to MCP, L.P. The term of the Investor Partnership terminates on the same day as the term of MCP, L.P. The Investor Partnership will make allocations and distributions on an investment-by-investment basis in proportion to each partner's distributive share with respect to that investment (the "Investment Distributive Share"). A Limited Partner's Investment Distributive Share with respect to a particular investment will be 50% vested when that investment is made, and will be 100% vested when that investment is sold. No Limited Partner will have the right to withdraw from the Investor Partnership. A Limited Partner whose employment with the Company or any of its affiliates is terminated for any reason, however, shall be deemed to have withdrawn from the Investor Partnership as of the date of termination and the unvested portion of such Limited Partner's Interest will be automatically forfeited. A Limited Partner's vested Interest in the Investor Partnership is not subject to forfeiture and can only be repurchased if the Limited Partner's employment is terminated for cause. The purchase price for such vested Interest will not be less than the lower of (a) the actual capital contributions made by the Limited Partner to acquire the vested Interest, and (b) the fair market value, determined at the time of repurchase in good faith by the General Partner, of such vested Interest. The vesting and forfeiture provisions, and the events that trigger such provisions, will be fully disclosed to Eligible Participants prior to investment in the Investor Partnership.

9. The Coinvestor Partnership's investment strategy will be primarily to invest as a limited partner in the Initial Investment Funds. The term of the Coinvestor Partnership terminates on the same day as the Initial Investment Fund of which it is a limited partner. The Coinvestor Partnership generally does not have to pay the carried interest which the other limited partners of the Initial Investment Funds are required to

[1] A "carried interest" is an allocation to the general partner based on the net gains of an investment program and is in addition to the amount that is allocable to the general partner with respect to its capital contributions. Any "carried interest" charged by a registered investment adviser will be structured to comply with section 205 of the Advisers Act.

pay.[2] Allocations of net income or net loss attributable to investments in the Coinvestor Partnership will be proportionate to capital contributions with respect to each investment. Limited Partners in the Coinvestor Partnership are fully vested in each investment when it is made. A Limited Partner of the Coinvestor Partnership whose employment with the Company or one of its affiliates terminates is not automatically required to withdraw from the Coinvestor Partnership. In general, a departed employee will continue as a Limited Partner of the Coinvestor Partnership and will be required to fund such Limited Partner's capital commitment to the Partnership. However, the General Partner will have the right, but not the obligation, to terminate the unfunded portion of the limited Partner's capital subscription, on such terms as set forth in the partnership agreement. If the General Partner exercises this right, the Limited Partner would retain his Interest in the Coinvestor Partnership to the extent of the capital contributions that the Limited Partner has made prior to the termination of the Limited Partner's employment with the Company, but would not be permitted to make any future capital contributions to the Coinvestor Partnership.

10. A Limited Partner's Interest in an Investment Partnership is nontransferable, except that a Limited Partner may: (a) with the consent of the General Partner, which may be granted or withheld in the General Partner's sole discretion, transfer all or a portion of his Interest in the Partnership to another Eligible Participant; or (b) with the prior written consent of the General Partner, which shall be based on criteria specified in the partnership agreement of the Partnership, transfer all or a portion of his Interest to certain Eligible Participants.

11. Each Investment Partnership will send its Limited Partners an annual report regarding its operations, which will contain audited financial statements. Within 90 days after the end of each fiscal year of an Investment Partnership or as soon as practicable thereafter, the Investment Partnership will send to each Limited Partner a report indicating his share of the income or losses of the Investment Partnership for federal income tax purposes.

12. The Company may perform consulting services for the Initial Investment Funds and the portfolio companies of the Initial Investment Funds, and may be paid by these entities for its services and for related disbursements and charges. The Initial Investment Funds (or the portfolio companies of the Initial Investment Funds) in which the Investment Partnership invests will pay the Company in cash or in the form of securities of a portfolio company. The Company may retain such securities or transfer them to Monitor Consulting, P.L., a limited partnership whose limited partners are certain employees of the Company, and whose general partner is Monitor G.P., Inc. Monitor Consulting, L.P. will dispose of the securities that it owns in accordance with the "lock-step" procedures described in condition 3 below.

[2] The Coinvestor Partnership is required to pay a carried interest with respect to the portion of the coinvestment of each of its Limited Partners that exceeds either (a) if such Limited Partner is also a Limited Partner of the Investor Partnership, the lesser of (i) $1,500,000 less the commitment, if any, of such Limited Partner to the Investor Partnership, or (ii) the commitment of such Limited Partner to the Coinvestor Partnership; or (b) if such Limited Partner is not a Limited Partner of the Investor Partnership, the lesser of (i) $1,250,000, or (ii) the commitment of such Limited Partner to the Coinvestor Partnership. Any Eligible Employee that does not wish to be subject to a carried interest can choose to make a commitment below the applicable threshold. As of the date of the application, only one Eligible Employee that is not a Limited Partner of the Investor Partnership has made a commitment to the Coinvestor Partnership that is large enough to be subject to a carried interest.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned by (a) current or former employees, or persons on retainer, of one or more affiliated employers, (b) immediate family members of those persons, or (c) the employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from section 7 of the Act, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Investment Partnerships from all provisions of the Act, except section 9, certain provisions of sections 17 and 30, sections 36 through 53, and the rules and regulations under those sections.

3. Section 17(a) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the registered investment company. Applicants request an exemption from section 17(a) to permit: (a) the Investment Partnerships to make their initial purchase of partnerships interests in MCP, L.P. and the Initial Investment Fund; (b) a purchase by an Investment Partnership, directly or indirectly, from any affiliated person (as defined in section 2(a)(3) of the Act) ("affiliated person") of an Investment Partnership or of the Company of securities or other property previously acquired for the account of the affiliated person; (c) a sale by an Investment Partnership to another Investment Partnership, the Company, or any affiliated person of an Investment Partnership of securities or other property previously acquired by the Investment Partnership; (d) a direct or indirect investment by an Investment Partnership in securities of issuers for which the Company, another Investment Partnership or any affiliated person of the Company or of an Investment Partnership have performed services and from which they may have received fees, including portfolio companies of the Initial Investment Funds; (e) a direct or indirect investment in or a transaction with any individual, company, or other investment vehicle in which the Company, its officers, directors or employees, or any other affiliated person of the Company (including MCP or the Initial Investment Funds) own 5% or more of the voting securities; and (f) a sale by an Investment Partnership as a selling security holder in public offering in which the Company, MCP, or any affiliated person of the Company or MCP acts as member of the selling group.

4. Applicants assert that the community of interest among the partners of the Investment Partnerships and the Company will serve to reduce the risk of abuse in transactions involving an Investment Partnership and the Company or any affiliated persons of the Investment Partnership or the Company. Applicants also acknowledge that any transactions subject to section 17(a) for which exemptive relief has not been requested would require specific approval by the SEC.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request exemptive relief to permit: (a) portfolio investments made by the Initial Investment Funds that might result, in certain limited circumstances, in the Investor Partnership earning a carried interest on the profits attributable to the Coinvestor Partnership; (b) an investment by one or more Investment Partnerships in a security (i) in which another Initial Investment Fund, the Company, MCP, another Investment Partnership or an affiliated person of any of the Initial Investment Funds, the Company, MCP, or an Investment Partnership, or a transferee of one of these is a participant or becomes a participant, or (ii) with respect to which MCP or any affiliated person of MCP is entitled to receive fees or compensation of any kind, including, but not limited to, transaction fees, consulting fees, or other economic benefits or interests; and (c) an investment by one or more Investment Partnerships in an investment vehicle sponsored, offered, or managed by MCP, the Company, another Investment Partnership, or any affiliated person of the Company or an Investment Partnership.

6. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that, in light of the Company's purpose of establishing the Investment Partnerships so as to reward Eligible Participants and to attract highly-qualified personnel to the Company, the possibility is minimal that an affiliated-party investor will enter into a transaction with an Investment Partnership with the intent of disadvantaging the Investment Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause an Investment Partnership to forego investment opportunities simply because a partner of the Investment Partnerships, the Company, MCP, or another affiliated person of the Investment Partnership made a similar investment.

7. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. Rule 17f–2 under the Act specifies the requirements that must be satisfied for a registered management investment company to act as a custodian of its own investments. Applicants request an exemption from section 17(f) of the Act and rule 17f–2 under the Act to permit the following exceptions from the requirements of rule 17f–2: (a) compliance with paragraph (b) of the rule may be achieved through safekeeping in the locked files of the Company; (b) for purposes of paragraph (d) of the rule, (i) employees of the Company will be deemed employees of the Investment Partnerships, (ii) officers and directors of an Investment Partnership will be deemed to be officers of such Investment Partnership, and (iii) the directors of an Investment Partnership will be deemed to be the board of directors of such Investment Partnership; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Company. Applicants expect that almost all of the Investment Partnership's investments will be evidenced only by partnership agreements or similar documents, rather than by negotiable certificates which could be misappropriated. Applicants assert that these instruments are most suitably kept in the Company's files, where they can be referred to as necessary.

8. Section 17(g) of the Act and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit each Investment Partnership to comply with rule 17g–1 without the necessity of having a majority of the members of the board of directors of the General Partner who are not interested persons take such actions and make such approvals and request instead that the actions and approvals be take by the directors, regardless of whether they are interested persons. Applicants state that, because it is likely that all directors would be considered interested persons in the Investment Partnerships, the Investment Partnerships could not comply with rule 17g–1 without the request relief. Applicants state that they will comply with all other requirements of rule 17g–1.

9. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent, deceitful, or manipulative practices in connection with the purchase or sale of security held or to be acquired by a registered investment company. Rule 17j–1 also requires every registered investment company to adopt a written code of ethics and every access person of a registered investment company to report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1, except for the anti-fraud provisions of paragraph (a), because they are burdensome and unnecessary as applied to the Investment Partnerships. Applicants state that requiring the Investment Partnerships to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time-consuming and expensive and would serve little purpose of light of the community of interests among the partners of the Investment Partnerships by virtue of their common association with the Company.

10. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under these sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Investment Partnerships and would entail administrative and legal costs that outweigh any benefit to the partners of the Investment Partnerships. Applicants request exemptive relief to the extent necessary to permit each Investment Partnership to report annually to its partners. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the directors and any other persons who may be deemed to be members of an advisory board of an Investment Partnership from filing Forms 3, 4, and 5 under section 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") with respect to their ownership of interests in the Investment Partnerships. Applicants assert that, because there is no trading market for the interests of the Investment Partnerships and the transfers will be severely restricted, these filings are unnecessary for the

protection of investors and burdensome to those required to make them.

Applicant's Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction described in the application otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 under the Act (the "Section 17 Transactions") will be effected only if the board of directors of the General Partner determines that: (a) The terms of the transaction, including the consideration to paid or received, are fair and reasonable to the Limited Partners and do not involve overreaching with respect to the Investment Partnership or its Limited Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Limited Partners, the Investment Partnership's organizational documents, and the Investment Partnership's reports to its Limited Partners.

In addition, the board of directors of the General Partner will record and preserve a description of the Section 17 Transactions, their findings, the information or materials upon which their findings are based and the basis thereof. All such records will be maintained for the life of the Investment Partnerships and at least two years thereafter, and will be subject to examination by the SEC and its staff. Each Investment Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

2. In connection with the Section 17 Transactions, the board of directors of the General Partners will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Investment Partnerships, or any affiliated person or such person, promoter, or principal underwriter.

3. A General Partner will not invest the funds of any Investment Partnership in any investment in which an "Affiliated Co-Investor," as defined below, has or proposes or acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1, in which the Investment Partnership and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Investment Partnership has the opportunity to dispose of the Investment Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Affiliated Co-Investor. The term "Affiliated Co-Investor" means the Company, and any person who is (a) an "affiliated person" (as such term is defined in section 2(a)(3) of the Act) of the Investment Partnership; (b) a shareholder of the Company, or other entity controlled by a shareholder of the Company; or (c) any entity with respect to which a General Partner of such Investment Partnership or another shareholder of the Company acts as a general partner or in a similar capacity or has a similar capacity to control the sale or other disposition of such entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Affiliated Co-Investor or a trust established for any Affiliated Co-Investor or any such family members; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act.

4. Each Investment Partnership and its General Partner will maintain and preserve, for the life of each such Investment Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements that are to be provided to the partners, and each annual report of such Investment Partnership required by the terms of the applicable Investment Partnership agreement to be sent to the partners, and agree that all such records will be subject to examination by the SEC and its staff. Each Investment Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

5. In any case where purchases or sales are made from or to an entity affiliated with an Investment Partnership by reason of a 5% or more investment in such entity by a director, officer, or shareholder of the Company or any of its affiliates, such individual will not participate in the applicable General Partner's determination of whether or not to effect the purchase or sale.

6. The General Partner of each Investment Partnership will send audited financial statements for that Investment Partnership to each of the partners of the Investment Partnership who had an interest in that Investment Partnership at any time during the fiscal year then ended. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Investment Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Investment Partnership. In addition, within 90 days after the end of fiscal year of each of the Investment Partnerships or as soon as practicable thereafter, the General Partner shall send a report to each person that was a partner of such Investment Partnership at any time during such fiscal year, setting forth such tax information as shall be necessary for the preparation by such partner of his federal and state income tax returns and a report of the investment activities of the Investment Partnership during such year.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15483 Filed 6–17–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27036]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 11, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. all interested persons are referred to the application(s) and/or declaration(s) for

complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by July 6, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 6, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

AES Corporation (70–9465)

The AES Corporation ("AES"), Arlington, Virginia, a Delaware corporation not currently subject to the Act, has filed an application under section 3(a)(5) of the Act. AES requests an order exempting it from all provisions of the Act except section 9(a)(2) upon consummation of the transaction described below.

AES is a United States-based multinational electric power generation and energy distribution company with operations in 16 countries worldwide. AES is engaged principally in the development, ownership and operation of electric generating plants and electric and gas distribution companies, all of which are, or are owned by, exempt wholesale generators as defined in section 32 of the Act, foreign utility companies as defined in section 33 of the Act, or qualifying facilities under the Public Utility Regulatory Policies Act. Revenues from electric generation and distribution activities accounted for over 95% of revenues in 1997 and in 1998. Other activities include the sale of steam and other commodities related to AES' cogeneration operations, as well as operational, construction and project development services, and gas and power marketing.[1] AES does not currently have any public-utility subsidiary or affiliate.

Since AES was founded in 1981, it has grown to become one of the largest, if not the largest, global electricity suppliers. AES currently owns and/or operates, entirely or in part, a diverse international portfolio of electric power plants with a total project capacity of 26,466 megawatts ("MW"), including plants that are part of distribution companies in which AES has an interest. On a total project basis, 20,017 MW of this generating capacity is located outside the United States. On a net equity basis, *i.e.*, pro-rated to reflect AES' actual ownership interests, AES has 17,618 of capacity, of which 11,194 is foreign-based.

AES also owns partial interests (both majority and minority) in companies that distribute and sell electricity directly to commercial, industrial, governmental and residential customers. AES has majority ownership in three distribution companies in Argentina, one in Brazil, one in the country of Georgia, one in Kazakhstan and one in El Salvador; and less than majority ownership in three additional distribution companies in Brazil. AES also recently acquired the right to purchase a 50% interest in a distribution company in the Dominican Republic and expects to close on the purchase soon. These eleven companies serve a total of approximately 13.6 million foreign customers with sales of nearly 107,000 gigawatt hours. On a net equity basis, AES' ownership in these companies will represent approximately 3.6 million foreign customers following the closing of the Dominican Republic acquisition and sales of approximately 29,000 gigawatt hours by the end of 1999.

The application states that AES has grown rapidly throughout this decade.[2] In 1990, the year before it went public, AES had total assets of $1.1 billion, operating revenues of $190.2 million and net income of $15.5 million, all determined in accordance with Generally Accepted Accounting Principles ("GAAP"). By the end of 1998, AES' total assets, gross revenues and net income, determined in accordance with GAAP, were $10.8 billion, $2.4 billion and $311 million, respectively.

AES has continued its fast-paced growth in 1999. Combining 101 power plants currently in operation or projected to begin operations and plants to be acquired, AES expects to have a minimum of 27,798 MW of total project generating capacity by the end of 1999, of which 20,017 MW will be foreign. On a net equity basis, AES is expected to have a generating capacity of 18,950 MW by year end 1999, of which 11,194 MW will be foreign. As a result, the power generation capacity of companies in which AES has an interest will have grown by 3,027% on a total project basis and 2,093% on a net equity basis in the eight years from 1991 to 1999.

The growth of AES' distribution business in 1999 also has been fast-paced. In 1996, AES purchased its first interests in a distribution company. By the end of 1998, companies in which AES had an interest served approximately 13 million customers and sold over 102,000 gigawatt-hours of power (approximately 3.1 million customers and 25,000 gigawatt-hours on a net equity basis). Thus far in 1999, AES has acquired the interests or rights to acquire interests in distribution companies in Georgia and the Dominican Republic, mentioned above, and the right to increase its ownership interests in two Brazilian distribution companies.

AES' market capitalization has mirrored its growth over the decade. AES' public offering in 1991 valued the company at $750 million. At present, AES' market capitalization has risen to approximately $10 billion, an increase of 1,233% in approximately eight years.

As part of this growth, AES intends to acquire CILCORP Inc. ("CILCORP"), an Illinois public-utility holding company exempt from registration under section 3(a)(1) of the Act by rule 2. Through the acquisition, AES would acquire CILCORP's Illinois public-utility subsidiary, Central Illinois Light Company ("CILCO").[3]

CILCORP had consolidated assets, revenues and net income for the year ending December 31, 1997 of $1.335 billion, $558 million and $16.4 million, respectively. For 1998, CILCORP's consolidated assets, revenues and net income were $1.313 billion, $559 million and $16.3 million, respectively.

CILCO is engaged in the generation, transmission, distribution and sale of electric energy in an area of approximately 3,700 square miles in central and east-central Illinois, and the

[1] AES Power, a wholly owned subsidiary that engages in power marketing, generated less than 1% of AES' 1998 net income.

[2] In the eight-year period between year end 1990 and 1998, AES' growth in total assets, revenues and net income was 882%, 1,162% and 1,906%, respectively.

[3] CILCORP is also the parent of three first-tier nonutility subsidiaries: QST Enterprises Inc., a company formed to facilitate CILCORP's expansion into nonregulated energy and related services businesses; CILCORP Investment Management Inc., which invests in leveraged leases, energy-related projects and affordable residential housing; and CILCORP Ventures Inc., which primarily invests in energy-related products and services.

purchase, distribution, transportation and retail sale of natural gas in an area of approximately 4,500 square miles in central and east-central Illinois. As of December 31, 1998, CILCO served approximately 253,000 customers: 189,000 retail electric customers and 197,000 gas customers, including 837 industrial, commercial and residential gas transportation customers.[4] CILCO is subject to regulation by the Illinois Commerce Commission ("Illinois Commission").

For the year ended December 31, 1997, CILCO had total assets, operating revenues and net income of $1.023 billion, $546.9 million and $50.3 million, respectively. Electric utility assets were $723.8 and gas utility assets were $290.5. In 1997, electric utility revenues were $338.1 million (625% of total operating revenues) and gas utility revenues were $208.8 million (38% of total operating revenues).

At the end of 1998, CILCO had total assets, operating revenues and net income of $1.024 billion, $532.3 million and $41 million, respectively. Electric utility assets were $729.1 million and gas utility assets were $286.2 million. In 1998, CILCO earned $360 million in electric utility revenues (68% of total operating revenues) and $172.3 million in gas utility revenues (32% of total operating revenues).

Under a Merger Agreement dated November 22, 1998 between AES and CILCORP, Midwest Energy, Inc. ("Midwest Energy"), a wholly owned Illinois subsidiary of AES, will be merged with and into CILCORP, with CILCORP as the surviving corporation (the "Transaction"). Following the Transaction, CILCORP will be a direct subsidiary of AES and CILCORP's subsidiaries will maintain their current structure as direct or indirect subsidiaries, as the case may be, of CILCORP.

CILCORP's shareholders approved the Merger Agreement at a special meeting held on May 20, 1999. The merger also requires approval by the Federal Energy Regulatory Commission and is subject to the notification and reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The Transaction does not require approval under section 9(a)(2) of the Act, because AES will acquire only one public-utility company through the Transaction.[5]

The Illinois Commission approved the reorganization with respect to the gas utility operations of CILCO by order dated March 10, 1999.[6] As contemplated by section 33(a)(2) of the Act, the Illinois Commission has informed the Commission, by letter dated March 10, 1999, that it has the authority and resources to protect Illinois consumers in accordance with Illinois law, and intends to exercise its authority.

AES request an exemption from registration under section 3(a)(5) of the Act following the Transaction. AES states that it will be a holding company that "is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company." The application further states that CILCORP will continue to qualify for exemption under section 3(a)(1) of the Act following the Transaction because both it and CILCO will be "predominantly intrastate in character" and will "carry on their business substantially in" Illinois, the state in which both are organized.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15482 Filed 6–17–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41509; File No. SR–CBOE–99–06]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Increasing the Maximum Order Size on the Dow Jones High Yield Select 10 Index Eligible for Automatic Execution

June 10, 1999.

I. Introduction

On February 10, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the maximum size of orders on the Dow Jones High Yield Select 10 Index eligible for automatic execution. Notice of the proposed rule change appeared in the **Federal Register** on May 10, 1999.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to add an interpretation to CBOE Rule 6.8 allowing the appropriate Floor Procedure Committee ("FPC") to increase the maximum size of orders on the Dow Jones High Yield Select 10 Index ("Index")[4] eligible for execution through the CBOE's Retail Automated Execution System ("RAES") from 20 to 100 contracts.

The Exchange believes that the proposal will enhance the depth and liquidity of the market for options on the Index.[5] Additionally, the Exchange believes that the proposal will increase the number of timely and cost-effective executions, enhance information gathering through the audit trail, enhance fill reporting and price reporting, increase customer confidence, and increase the efficiency in handling non-RAES orders by reducing the number of transactions executed manually on the trading floor.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5),[7] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Commission finds that the proposal will facilitate transactions in securities and protect investors and the public interest. The Commission believes that increasing to up to 100 the maximum number of options contracts on the Index executable through RAES should enable the Exchange to more effectively and efficiently manage order flow in options on the Index consistent with its obligations under the Act. Further, the Commission believes that the RAES order size limit of 100 contracts for the Index should result in the efficient and timely execution of customer orders. The Commission notes that it has approved similar proposals by the Exchange increasing the number of option contracts eligible for automatic execution to a maximum of 100 contracts.[8]

Based on representations from the CBOE, the Commission believes that increasing the size of orders on the Index eligible for execution through RAES will not expose the CBOE's options markets to risk of failure or operational breakdown. Specifically, the CBOE represents that the proposal will not impose any significant burden on the operation, security, integrity, or capacity of RAES.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–99–06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15487 Filed 6–17–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41519; File No. SR–NASD–99–02]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Application of Certain NASD Rules to Limited Offerings Under SEC Rule 504, Securities Exempted Under the Securities Exchange Act of 1934, and Intra-State-Only Offerings

June 11, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation amended the proposed rule change on May 24, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Conduct Rules IM–2110–1, 2710, and 2720 to clarify their application to offerings of securities made in reliance on the SEC's limited offering exemption provided by Rule 504 of Regulation D.[4] The proposed amendments also would modify Rules 2710 and 2720 in other ways, and will affect the interpretation of several other NASD Rules. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

IM–2110–1. "Free-Riding and Withholding"

* * * * *

(I) Explanation of Terms

The following explanation of terms is provided for the assistance of members. Other words which are defined in the By-Laws and Rules shall, unless the context otherwise requires, have the meaning as defined therein.

(1) Public Offering

The term public offering shall mean any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings, *offerings pursuant to SEC Rule 504,* and all other securities distributions of any kind whatsoever, except any offering made pursuant to an exemption *from registration* under Sections 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended, or pursuant to Rule 504 *if the securities are "restricted securities" under SEC Rule 144(a)(3)* [(unless considered a public offering in the states where offered)], Rule 505, or Rule 506 adopted under the Securities Act of 1933, as amended. The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Act, and debt securities (other than debt securities convertible to common or preferred stock) and financing instrument-backed securities that are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. The term public offering shall exclude secondary offerings by an issuer, or any security holder of the issuer, of actively-traded securities

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[4] Of the 253,000 individual customers served by CILCO, some take electric service only, some take gas service only, and some take both.

[5] *See Coral Petroleum, Inc.,* Holding Co. Act Release No. 21632 (June 19, 1980).

[6] *Central Illinois Light Co.,* order approving petition pursuant to section 16–111(g) of the Public Utilities Act, Dkt. No. 98–0882 (Mar. 10, 1999). Under the Illinois Public Utilities Act, the Illinois Commission does not have pre-approval jurisdiction over the Transaction with respect to CILCO's electric operations. Illinois restructuring legislation removed the state commission's authority over the sale or other transfer of electric assets to affiliated or unaffiliated entities until January 1, 2005.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41357 (April 30, 1999), 64 FR 25091.

[4] The Index is comprised of the ten highest yielding stocks from the Dow Jones Industrial Average. *See* Securities Exchange Act Release No. 39453 (December 8, 1997), 62 FR 67101 (December 23, 1997).

[5] The Exchange expects that increasing the order size limit to up to 100 contracts for Index options will enhance liquidity by accommodating through RAES larger institutional and public customer orders for Index options. Telephone conversation between Debora E. Barnes, Senior Attorney, CBOE, and John G. Roeser, Attorney, Division of Market Regulation, Commission, on March 16, 1999.

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 38169 (January 14, 1997), 62 FR 3547 (January 23, 1997) (order approving an increase to the maximum size of interest rate option orders eligible for automatic execution to up to 100 contracts); Securities Exchange Act Release No. 39202 (October 3, 1997), 62 FR 53358 (October 14, 1997) (order approving proposal to allow the Exchange discretion to set the eligible order size for RAES orders to up to 100 contracts for options on the Dow Jones Industrial Average).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Suzanne Rothwell, Chief Counsel, Corporate Financing Department, NASD Regulation, to Joshua Kans, Attorney, Division of Market Regulation ("Division"), Commission, dated May 21, 1999 ("Amendment No. 1"). Amendment No. 1 modified the proposed rule change to in response to the Commission's recent amendment of Securities Act Rule 504, *See* Securities Act Release No. 7644 (February 25, 1999), 64 FR 11090 (March 8, 1999) (adopting amendment to Rule 504 under Regulation D, 17 CFR 230.504).

The NASD and the Commission clarified the purpose of this proposed rule change, the scope of the rules impacted by the proposed rule change, and the NASD's response to the Commission's amendment of Securities Act Rule 504 during telephone conversations between Suzanne Rothwell, NASD Regulation, and Joshua Kans, Commission, on February 1, February 8, May 12 and June 10, 1999.

[4] 17 CFR 230.504.

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No change.
(b) Filing Requirements
(1)–(7) No change.
(8) Exempt Offerings
Notwithstanding the provisions of subparagraph (1) above, the following offerings are exempt from this Rule, Rule 2720, and Rule 2810. Documents and information relating to the following offerings need not be filed for review:
(A) securities exempt from registration with the Commission pursuant to the provisions of Sections 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended, or pursuant to Rule 504 [(unless considered a public offering in the states where offered)] *if the securities are "restricted securities" under SEC Rule 144(a)(3),* Rule 505, or Rule 506 adopted under the Securities Act of 1933, as amended;
* * * * *
(9) Offerings Required to be Filed
Documents and information relating to all other public offerings including, but not limited to, the following must be filed with the Association for review:
(A)–(C) No change.
(D) securities exempt from registration with the Commission pursuant to Section 3(a)(11) of the Securities Act of 1933, as amended[, which is considered a public offering in the state where offered];
(E) securities exempt from registration with the Commission pursuant to Rule 504 adopted under the Securities Act of 1933, as amended, [which is considered a public offering in the states where offered] *unless the securities are "restricted securities" under SEC rule 144(a)(3);*
* * * * *

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

(a) General No change.
(b) Definitions
For purposes of this Rule, the following words shall have the stated meanings:
(1)–(13) No change.
(14) Public offering—any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings, *offerings pursuant to SEC rule 504,* and all other securities distributions of any kind whatsoever, except any offerings made pursuant to an exemption *from registration* under Sections 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended, or pursuant to SEC Rule 504 [(unless considered a public offering in the states where offered)] *if the securities are "restricted securities" under SEC Rule 144(a)(3),* SEC Rule 505, or SEC Rule 506 adopted under the Securities Act of 1933, as amended. *The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Act.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background: The term "public offering" is expressly defined in two NASD Rules: the Free-Riding and Withholding Interpretation, Rule IM–2110–1, and the Conflicts-of-Interest Rule, Rule 2720.[5] The definition of "public offering" found in Rule 2720 not only determines which offerings are subject to that rule, but also in part determines which offerings must be filed with the NASD for pre-offering review under the Corporate Financing Rule, Rule 2710, and the Direct Participation Programs Rule, Rule 2810.[6] In addition, the NASD generally relies upon the definition in Rule 2720 to interpret the scope of other provisions of its rules that reference the term "public offering" or "public offering price."[7]

Currently, the definitions of "public offering" in IM–2110–1 and Rule 2720 include only offerings made in reliance on Securities Act Rule 504 if the offering is "considered a public offering in the states where offered." Moreover, paragraphs (b)(8) and (9) of Rule 2710 require the filing of Rule 504 offerings only under such circumstances. Also, because the scope of Rule 2810 is based on the scope of Rule 2710, Rule 2810 applies to Rule 504 offerings only under such circumstances.

Proposed Rule Change: NASD Regulation proposes to amend the definition of "public offering" in IM–2110–1 and Rule 2720 to clarify that the definition encompasses all offerings of securities exempt from SEC registration under Securities Act Rule 504, except for Rule 504 offerings of securities that would be deemed "restricted securities" under Securities Act Rule 144(a)(3).[8] NASD Regulation further proposes that

proposed underwriting and other terms and arrangements. Rule 2710 also prevents NASD members and associated persons from participating in the public offering of subject securities if the underwriting or other terms or arrangements are unfair or unreasonable.

The Direct Participation Programs Rule, Rule 2810, governs the ability of NASD members and associated persons to participate in the public offering of a direct participation program (a program which provides for flow-through tax consequences, such as a partnership).

Rule 2710 explicitly incorporates the definitions contained in Rule 2720. *See* Rule 2710(a). Although Rule 2810 does not explicitly adopt those definitions, its scope is based on the scope of Rule 2710.

The definition of the term "public offering" included in the Free-Riding and Withholding Interpretation, Rule IM–2110–1, is limited to the application of that Interpretation. *See* Endnote 1 in NASD Notice to Members 98–48 (July 1998).

[7] *See* NASD Rules 0120(h) (general definition of "fixed price offering"), 0120(p) (general definition of "selling group"), 0120(q) (general definition of "selling syndicate"), 2750 (transactions with related persons), 2830 (investment company securities), 3350 (short sale rule), 3370 (prompt receipt and delivery of securities) and 6410(e) (definition of "initial public offering" in NASD systems and programs rules). As a matter of policy, the NASD interprets those provisions in the context of Rule 2720's definition of "public offering." Those provisions do not specifically reference Rule 2720, however.

[8] Securities Act Rule 144(a)(3), 17 CFR 230.144(a)(3), defines the term "restricted securities" to include, *inter alia,* securities that are subject to resale restrictions under 17 CFR 230.502(d) of Regulation D.

The filing requirements of Rule 2720 are broader than and take precedence over those of Rule 2710. *See* NASD Rule 2710(b)(7) (describing offerings exempt from filing requirements "unless subject to the provisions of Rule 2720"); 2720(n) (discussing "predominance" of Rule 2720 provisions over any other provisions or interpretations of NASD by-laws or rules).

[5] The Free-Riding and Withholding Interpretation, Rule IM–2110–1, requires NASD members and associated persons to make a bona fide public distribution, at the public offering price, of any securities of a public offering which trade at a premium in the secondary market when the secondary market begins.

The Conflicts-of-Interest Rule, Rule 2720, governs the ability of NASD members and associated persons to participate in distributing a public offering of the securities of an NASD member, or to participate in distributing a public offering of the securities of a company with which the member and/or its associated persons, parent or affiliates has a conflict of interest.

[6] The Corporate Financing Rule, Rule 2710, prevents NASD members and associated persons from participating in the public offering of certain securities subject to Rules 2710, 2720 and 2810 unless documents relating to the public offering are filed with the NASD for review, and the NASD provides an opinion that it has no objection to the

Rules 2710(b)(8) and (9), which specify which offerings are exempt from Rule 2710 and which offerings are required to be filed under that rule, be amended to clarify that the Rule 2710 filing requirement applies to all Rule 504 offerings, except for offerings of securities that would be deemed Rule 144(a)(3) "restricted securities." Accordingly, all Rule 504 offerings, other than offerings of securities that would be deemed Rule 144(a)(3) "restricted securities," are to be subject to the requirements in Rules 2710, 2720, and 2810, as applicable. In addition, other provisions of NASD rules that refer to "public offerings" would be interpreted to include Rule 504 offerings, except for Rule 504 offerings of securities that would be deemed to be Section 144(a)(3) "restricted securities."

The Commission recently amended Rule 504.[9] As amended, all Rule 504 offerings are now subject to Rule 502(c) limitations on the manner of offering[10] and to Rule 502(d) limitations on resale,[11] unless the Rule 504 offering satisfies certain state law registration requirements or state law exemptions.[12] Because Securities Act Rule 144(a)(3) defines "restricted securities" to include securities subject to Rule 502(d) resale limitations, the scope of the term "restricted securities" therefore would encompass all Rule 504 offerings that do not satisfy the state law registration requirements or exemptions.

The purpose of the proposed rule change is to apply IM–2110–1 and Rules 2710, 2720 and 2810 to those Rule 504 offerings that lack limitations on the manner of offering or limitations on resale, in a way that is consistent with the treatment of other types of "exempt" offerings, such as Regulation A offerings (which lack limitations on the manner of offering or limitations on resale, and are subject to IM–2110–1 and Rules 2710, 2720 and 2810). NASD Regulation believes that it is appropriate to treat as "public offerings" all Rule 504 offerings that are not subject to limitations on the manner of offering or limitations on resale because those offerings share the characteristics of other public offerings.

NASD Regulation also proposes other amendments to the definitions of "public offering" in Rules IM–2110–1 and 2720 to make them consistent and easier to read. Moreover, the proposed rule change would amend the definition of "public offering" in Rule 2720 to exempt securities that fall within Section 3(a)(12) of the Act's[13] definition of "exempted securities." Offerings of those securities already are exempt from Rule 2720, as well as Rules 2710 and 2810, pursuant to the language of Rule 2710(b)(8)(B).

Finally, the proposed rule change would amend the provision in Rule 2710(b)(9) to delete the language stating that an offering relying on Section 3(a)(11) of the Securities Act of 1933[14] (the "intra-state exemption") must be filed only when it is "considered a public offering in the state where offered." The Association is proposing to eliminate this language so that Rule 2710(b)(9) is consistent with the definitions of "public offering" in IM–2110–1 and Rule 2720, which encompass all intra-state offerings exempt from SEC registration.[15] Consequently, all Section 3(a)(11) securities offerings would be filed with the Corporate Financing Department for review.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[16] in that clarification of whether offerings relying on Securities Act Rule 504 are subject to Rule IM–2110–1, Rule 2710, Rule 2720, and Rule 2810 (and are interpreted to be within the concept of "public offering" in other rules of the Association) will promote just and equitable principles of trade and will protect investors and the public. NASD Regulation further believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act[17] in that the proposed rule change will promote compliance by members with the rules of the NASD that are applicable to, or reference, public offerings of securities. Moreover, amendments that make the filing requirement consistent for offerings exempt from filing under Section 3(a)(11) of the Securities Act and make the definitions in Rule 2720 more consistent with IM–2110–1 will promote just and equitable principles of trade, protect investors and the public, and enforce compliance by members with the rules of the NASD as required by Sections 15A(b)(2) and 15A(b)(6) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Chance Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–02 and should be submitted by July 9, 1999.

[9] *See* Securities Act Release No. 7644 (February 25, 1999), 64 FR 11090 (March 8, 1999).

[10] 17 CFR 230.502(c). Rule 502(c) prevents Regulation D offerings from being offered by any form of general solicitation or general advertising.

[11] 17 CFR 230.502(d). Rule 502(d) prevents securities acquired in Regulation D offerings from being resold without being registered under the Securities Act or being exempted from registration.

[12] *See* 17 CFR 230.504(b)(1).

[13] 15 U.S.C. 78c(a)(12).

[14] 15 U.S.C. 77c(a)(11).

[15] The definitions of "public offering" in IM–2110–1 and Rule 2720 include "all securities distributions of any kind whatsoever" and do not exclude any type of intra-state offering.

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] 15 U.S.C. 78*o*–3(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15484 Filed 6–17–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41499; File No. SR–NASD–99–25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Level 1 Market Data Fees

June 9, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 1999,[3] the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On May 28m, 1999 Nasdaq submitted Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On May 3, 1999, Nasdaq filed a similar proposed rule change, SR–NASD–99–24. On May 14, 1999, Nasdaq withdrew this filing because of procedural issues. *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated May 3, 1999.

[4] In Amendment No. 1, Nasdaq amended the proposed rule change to remove a provision conditioning participation in the pilot program on a participant guaranteeing to pay, at a minimum, 75% of that participant's fee assessment associated with its December 1998 per level query usage and non-professional population. *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Thomas P. Moran, Assistant General Counsel, Office of General Counsel, Nasdaq, dated May 27, 1999.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq filed a proposed rule change to amend Rule 7010 of the National Association of Securities Dealers, Inc. Under the proposal, Nasdaq will establish a 1 year pilot program, commencing with the April 1, 1999 billing period,, to reduce by 50% the fees for Nasdaq Level 1 market data delivered to non-professional users o9n either a per query or monthly basis.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq has consistently supported the broadest, most effective dissemination of market information to public investors To that end, Nasdaq is proposing a 1 year pilot program to reduce by 50% the fees for Level 1 market data delivered to non-professional users on either a per query or monthly basis. Under the proposed pilot, the per query fee would be reduced from $.01 to $0.005 per query and the non-professional per user fee would be reduced from $4 to $2 per month.

Reducing these market data fees unequivocally demonstrates Nasdaq's commitment to individual investors and responds to the dramatic increase in the demand for real-time market data by non-professional market participants. In addition, reduced Nasdaq rates will lessen the costs to NASD member firms of supplying real-time market data to their customers through automated means and is also likely to encourage current delayed-data vendors to offer increased access to real-time Level 1 data to their subscribers.

[5] The pilot expires April 1, 2000. If, after assessing the pilot's viability, the NASD decides to make those fees a permanent part of its fee structure, the Commission expects that the NASD will file the proposal for approval. *See NASD Manual*, charges for services and equipment, Rule 7100(b).

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[6] of the Act in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to File No. SR–NASD–99–25 and should be submitted by July 9, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act[7] and the rules and regulations thereunder applicable to the NASD.[8] Specifically, the proposed rule change is consistent with Section 15A(b)(5)[9] in that the proposal should provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

Recent technological developments have allowed vendors to provide their customers with more efficient and cost effective methods of executing securities transactions. The Commission expects that by reducing market data access fees the investor will further benefit by a reduction in costs of executing these transactions. For the investor to make sound, financial decisions, efficient and inexpensive access to market data information is vital. Thus, the Commission believes that reducing the market data fees by 50% should enhance investor access and may encourage increased investor participation in the securities markets.

Pursuant to Section 19(b)(2),[10] the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal will allow the NASD to expeditiously implement the pilot program to reduce market data fees without any unnecessary delay and should confer a benefit upon those firms that provide real-time data to their customers and subscribers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended, (SR–NASD–99–25) is hereby approved on an accelerated basis, for the pilot period ending April 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15488 Filed 6–17–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78o–3(b)(5).

[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41515; File No. SR–NYSE–99–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Examination Specifications and Content Outline for the Front Line Specialist Clerk Qualification Examination (Series 21)

June 10, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 14, 1999, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has file the Content Outline and Examination Specifications for the Front Line Specialist Clerk Qualification Examination ("Series 21").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 35 requires that employees of members and member organizations must be registered with, qualified by, and approved by the Exchange prior to admittance to the Trading Floor. Currently, the registration process for Floor employees functioning as Front Line Specialist Clerks ("FLS Clerks") primarily consists of submission of a completed Form U–4 ("Uniform Application for Securities Industry Registration or Transfer") and Fingerprints. Under a proposed interpretation to Rule 35, which has been filed separately with the Commission as a proposed rule change (SR–NYSE–99–19), these FLS Clerks will also have to be qualified by taking and passing an appropriate qualification examination and by meeting appropriate training requirements.

The Front Line Specialist Clerk Qualification Examination ("Series 21") and Content Outline were developed by the Exchange, in conjunction with a Committee of Floor representatives (members, Specialists, and FLS Clerks) in order to qualify FLS Clerks pursuant to proposed amendments to Rule 35. The Series 21 examination will ensure that FLS Clerks have the basis knowledge, skills, and abilities necessary to perform their duties, which include assisting Floor Specialists. The Series 21 examination is the second step in a program to ensure that Floor employees are appropriately qualified. The first step was implementation of the Series 25 Trading Assistant Qualification Examination.[1]

The Content Outline, which may be examined at the places specified in Item IV below, details the coverage of the Series 21 examination. The Series 21 examination is a 90-minute test consisting of 65 questions. A fee of $200 will be imposed per exam administration. This fee will be the subject of a separate rule filing at a later date. Implementation of the examination is scheduled to take place 90 days after its approval by the Commission.

The requirement to take and pass the Series 21 examination in order to qualify as an FLS Clerk will apply to both current and prospective FLS Clerks. The separately-filed, proposed new interpretation to Rule 35 (SR–NYSE–99–19) will establish that individuals who are currently functioning as FLS Clerks will be required to pass the Series 21 examination within one year of its implementation. The Series 25 qualification examination is a prerequisite, but no training program will be required for these individuals since they are already acting in the capacity of FLS Clerks. Prospective FLS Clerks will be required to complete, at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[1] *See* Securities Exchange Act Release No. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999) (SR–NYSE–98–36); Securities Exchange Act Release No. 40944 (January 13, 1999), 64 FR 3329 (January 21, 1999) (SR–NYSE–98–35).

a minimum, a six month training program upon passing the Series 25 examination in order to become eligible for the Series 21 examination. The training program will consist of "on-the-job" experience with a Specialist under a supervisory program to be determined by the Specialist. All candidates must pass the Series 21 examination before functioning as an "unsupervised" FLF Clerk, *i.e.*, functioning without the specialized supervision required during the training period.

2. Statutory Basis

The statutory basis for Series 21 Examination is Section 6(c)(3)(B) of the Act.[3] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge. In addition, under Section 6(c)(3)(B), the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed an examination that will be administered to establish that Front Line Specialist Clerks have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–20 and should be submitted by July 9, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15485 Filed 6–17–99; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 U.S.C. 78f(c)(3)(B).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41514; File No. SR–NYSE–99–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt a New Interpretation to Rule 35 ("Floor Employees To Be Registered")

June 10, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 14, 1999, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a new interpretation with respect to the administration of Exchange Rule 35 ("Floor Employees to be Registered"). The new interpretation prescribes the requirements for Front Line Specialist Clerks ("FLS Clerks"), which include a qualifying examination ("Series 21") for all current and prospective FLS Clerk and a supervised training period requirement which will apply only to prospective FLS Clerks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed new interpretation to Rule 35 is to prescribe the qualification requirements (*i.e.*, training and examination) for Front Line Specialist Clerks. In addition to dictating the terms under which employees of members or member organizations may be admitted to the Exchange Trading Floor, Rule 35 mandates compliance by both employer and employee with such requirements as the Exchange may determine. The proposed interpretation to Rule 35 will require FLS Clerks to pass a new examination, developed by the Exchange in cooperation with a committee of Floor representatives (members, Specialists, and FLS Clerks) called the Front Line Specialist Clerk Qualification Examination ("Series 21"). The examination will ensure that FLS Clerks have the basic knowledge and skills necessary to perform their duties, which include assisting Floor Specialists. The Series 21 examination is the second step in a program to ensure that Floor employees are appropriately qualified. The first step was implementation of the Series 25 Trading Assistant Qualification Examination.[1]

The Series 21 examination is a 90-minute test consisting of 65 questions. Implementation of the examination is scheduled to take place 90 days after its approval by the SEC. The examination specifications, content and fee (*i.e.*, $200 per exam administration) will be more specifically addressed in separate filings. Though the requirements to take and pass the proposed Series 21 examination will apply to all prospective and current FLS Clerks, qualification requirements will differ as follows:

Current FLS Clerks

Individuals who are currently functioning as FLS Clerks will be required to pass the Series 21 examination within one year of its implementation. The Series 25 qualification examination is a prerequisite, but no training program will be required for these individuals since they are already acting in the capacity of FLS Clerks.

Prospective FLS Clerks

Individuals not currently functioning as FLS Clerks will also be required to pass the Series 25 qualifying examination as a Series 21 prerequisite. Upon passing the Series 25, the prospective FLS Clerk must complete a training program to become eligible for the Series 21 examination. The training program shall consist of a minimum of six months "on-the-job" experience with a Specialist under a supervisory program to be determined by the Specialist. All candidates must pass the Series 21 examination before functioning as an "unsupervised" FLS Clerk, *i.e.*, functioning without the specialized supervision required during the training period.

2. Statutory Basis

The proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act.[3] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. In addition, under Section 6(c)(3)(B), the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed an examination that will be administered to establish that Front Line Specialist Clerks have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–19 and should be submitted by July 9, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15486 Filed 6–17–99; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999) (SR–NYSE–98–36); Securities Exchange Act Release No. 40944 (January 13, 1999), 64 FR 3329 (January 21, 1999) (SR–NYSE–98–35).

[3] 15 U.S.C. 78f(c)(3)(B).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of SSA's notices. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of these notices.

1. *Report on Individual with Mental Impairment—0960–0058.* Form SSA–824 is used by the Social Security Administration to determine the claimant's medical status prior to making a disability determination. The respondents are physicians, medical

[4] 17 CFR 200.30–3(a)(12).

directors, medical record librarians and other health professionals.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 36 minutes.

Estimated Annual Burden: 30,000 hours.

2. *Report of Student Beneficiary at End of School Year—0960–0089.* The information collected on Form SSA–1388 is used by SSA to verify a student's full-time attendance at an approved educational institution. The respondents are secondary school student beneficiaries or claimants who are enrolled full time.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 33,333 hours.

3. *Request for Claimant Conference—0960–NEW.* As part of SSA's disability redesign effort, SSA is testing modifications to the disability determination procedures. One aspect of the tests includes notifying claimants when the initial determination of disability by the State agency will be less than fully favorable. The State agency making the determination must send a written notice to the claimant offering him or her the opportunity to have a conference with the Disability Adjudicator and to provide an opportunity to submit additional evidence. The claimant can respond by either completing and returning the form (SSA–378) enclosed with the notice or by telephoning the Disability Adjudicator. Based on the reply, the Disability Adjudicator can schedule a conference, request additional medical evidence, and/or await the receipt of additional evidence or complete the processing of the claim. The respondents are claimants for title II and title XVI disability benefits whose claims will receive a less than fully favorable determination.

Number of Respondents: 163,000.

Frequency of Response: 1.

Average Burden Per Response: 1.5 minutes.

Estimated Annual Burden: 4,075 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collection would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. *Application for Mother's or Father's Insurance Benefit-0960–0003.* The information collected on Form SSA–5 is used by the Social Security Administration (SSA) to determine an applicant's eligibility for mother's or father's insurance benefits. The respondents are individuals who wish to file an application for such benefits.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 12,500 hours.

2. *Missing and Discrepant Wage Reports Letter and Questionnaire—0960–0432.* SSA uses the information on Forms SSA–L93, SSA–95 and SSA–97 to secure the employer information missing from its records (or discrepant with Internal Revenue Service (IRS) records) by contacting the involved employers. When secured, SSA is able to properly post the employee's earnings records. Compliance by employers with SSA requests facilitates proper posting of employees' wage records. SSA makes two efforts to obtain wage information from the employer before the case is turned over to the IRS for penalty assessments. The respondents are employers with missing or discrepant wage reports.

Number of Respondents: 360,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 180,000 hours.

3. *Medical Report on Adult with Allegation of Human Immune Deficiency Virus Infection and Medical Report on Child with Allegation of Human Immune Deficiency Virus Infection—0960–0500.* SSA uses Forms SSA–4814–F5 and SSA–4815–F6 to obtain information from a medical source concerning an individual who has filed for Supplemental Security Income (SSI) disability benefits with an allegation of Human Immune Deficiency Virus (HIV) infection. The information is necessary for SSA field office personnel to determine whether the individual meets the requirements for a presumptive disability payment. The respondents are medical sources of individuals who apply for SSI disability benefits.

	SSA–4814–F5	SSA–4815–F6
Number of Respondents	46,200	12,900
Frequency of Response	1	1
Average Burden Per Response (minutes)	10	10
Estimated Annual Burden (hours)	7,700	2,150

4. *Self-Employment—Corporate Officer Questionnaire—0960–0487.* Form SSA–4184 is used by SSA to develop earnings and to corroborate the claimant's allegations of retirement when the claimant is self-employed or a corporate officer. The respondents are self-employed individuals and corporate officers.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 16,667 hours.

5. *Coverage of Employees of State and Local Governments—0960–0425.* This current rule contains reporting and recordkeeping requirements in 20 CFR Part 404 (see table below). The regulation sections cited require State and/or interstate instrumentalities to provide certain information to SSA that is needed to extend Social Security coverage to public sector workers for pre-1987 tax years, and to maintain accurate records of social security agreements. SSA would not be able to provide coverage to these workers and would be in violation of the statute requiring coverage if the information were not collected. This rule applies to 52 State agencies who could submit modifications to their Social Security coverage agreements and 3 interstate instrumentalities who could submit agreements for coverage, and one or two potential annual responses for each. In actuality, SSA may receive any number of reports from a few States and no reports from the remainder. From experience, SSA anticipates that no error modifications will be filed for tax years prior to 1987, nor wage reports and contributions payments for an error situation where wages have never been reported for those years. In addition, the reporting requirements in sections 404.1242, .1251 and .1271(a) and (c) no longer exist so we are showing no public reporting burden for these sections. SSA plans to publish a Notice of Proposed Rulemaking to eliminate the obsolete reporting requirements from these sections. For the remaining sections, SSA is basing the public burden estimates on the total number of respondents that could potentially report to us, although we anticipate the actual number will be less.

Section	Number of States	Frequency of response	Individual burden	Annual burden (hours)
404.1203(a)	52	1	1 hour	52
404.1204(a) & (b)	52	1	30 minutes	26
404.1214(d)	13	1	1 hour	3
404.1215	52	1	1 hour	52
404.1216(a) & (b)	52	1	1 hour	52
404.1220(b) & (c)	52	1	5 minutes	4
404.1225(a) & (b)	52	1	1 hour	52
404.1237(a), (b) & (c); .1239; .1243(a), (b), (c)	52	1	1 hour	52
404.1242	0	0	0	0
404.1247	52	1	1 hour	52
404.1249(a), (b) & (c)	52	1	1 hour	52
404.1251	0	0	0	0
404.1265	3	1	1 hour	3
404.1271(a) & (c)	0	0	0 hour	0
404.1271(b)	2	2	4 hours	16
404.1272	3	1	1	3
404.1292	3	1	5	15
Total				434

[1] Interstate Instrumentalities.

(SSA Address) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address) Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

Dated: June 11, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–15539 Filed 6–17–99; 8:45 am]

BILLING CODE 4190–29–F

DEPARTMENT OF STATE

[Public Notice 3063]

International Joint Commission; Boundary Waters Treaty of 1909

The International Joint Commission (IJC) will hold a public hearing to receive comment on the review of its Orders for the management of dams on Rainy and Namakan lakes prior to deciding on whether to amend the Orders.

The public hearing will be held at the following time and place: 6:00 p.m.–10:00 p.m., Wednesday, July 7, 1999, La Place Rendez-Vous Hotel, 1201 Idylwild Dr., Fort Frances, Ontario.

A draft final report from the IJC's International Rainy Lake Board of Control making recommendations on the management of Rainy and Namakan Lake water levels is available at the following address on the Internet: http://www.mvp-wc.usace.army.mil/ijc/rainylake/reports.html.

Written comments may also be submitted by July 30, 1999 to either of the following addresses:

Secretary, Canadian Section, 100 Metcalfe Street, 18th Floor, Ottawa, Ontario K1P 5M1, Fax 613.993.5583, Email Commission@ottawa.ijc.org

Secretary, United States Section, 1250 23rd Street NW, Suite 100, Washington, DC 20440, Fax 202.736.9015, Email Commission@washington.ijc.org

The International Joint Commission is an independent international organization established under the Boundary Waters Treaty of 1909. Three members are appointed by the President of the United States and three by the Canadian Governor General in Council. The IJC's Orders for Rainy and Namakan Lakes were issued pursuant to the 1938 Rainy Lake Convention.

Dated: June 14, 1999.

James G. Chandler,

Legal Advisor, United States Section.

[FR Doc. 99–15552 Filed 6–17–99; 8:45 am]

BILLING CODE 4710–14–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Technical corrections to the Harmonized Tariff Schedule of the United States.

SUMMARY: The United States Trade Representative (the USTR) is modifying the Harmonized Tariff Schedule of the united States (HTS) as set forth in the annex to this notice, pursuant to authority granted by Congress to the President in section 604 of the Trade Act of 1974 (Trade Act) and delegated to the USTR in Presidential Proclamation No. 6969 of January 27, 1997 (62 FR 4415). These modifications will correct errors resulting from various proclamations, make conforming changes that were inadvertently omitted from prior actions, correct typographical errors and make technical rectifications to the HTS to ensure that the intended tariff treatment is accorded to the products at issue.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Barbara Chattin, Director for Tariff Affairs, (202) 395–5097, or William Busis, Associate General Counsel, (202) 395–3150.

Explanation of Technical Corrections

This notice makes several technical corrections to and rectifications of the HTS to remedy omissions, misspellings, or other errors included in previously issued proclamations, or to make conforming changes in HTS provisions to reflect previously proclaimed modifications to the HTS and to otherwise rectify the HTS to ensure that the previously proclaimed tariff treatment is accorded. The modification made in each provision of the annex is explained in turn.

The action designated as section A modifies the HTS effective on 1/1/89 to correct a typographical error.

The action designated as section B modifies the HTS effective on 6/7/91 by deleting obsolete provisions proclaimed pursuant to an action under section 201 of the Trade Act (on wood shakes and shingles) set forth in Proclamation 5498 of June 6, 1986. The date of the termination of the temporary duty increases was June 6, 1991.

The action designated as section C modifies the HTS effective on 1/1/94 to correct an omission in a **Federal Register** notice of December 29, 1997. The notice redesignated subparagraph (d) of U.S. note 3 to subchapter II of chapter 98 as subparagraph (e), but it failed to modify the article description of subheading 9802.00.60 which refers to "U.S. note 3(d)".

The action designated as section D modifies the HTS effective on 1/1/95 (to correct actions originally proclaimed in Proclamation 6763 of December 23, 1994 (Uruguay Round Proclamation)) as follows: The action in subparagraph (1) deletes the sugar quota quantities set forth in additional U.S. note 7(a)(i) of chapter 17, as the quantities do not accurately reflect the quotas, which are established and published in the **Federal Register** by USDA and USTR for each fiscal year.

The action in subparagraph (2) deletes the chemical name "4,4-Benzidine-2,2'-disulfonic acid" from subheading 2921.42.36. The current provision is both an erroneous spelling and inappropriate tariff classification of that chemical. The correct spelling for the chemical is "4,4'-Benzidine-2,2'-disulfonic acid." This chemical is already provided for in the appropriate subheading 2921.59.17 with no change in duty rate.

The action in subparagraph (3) corrects the nomenclature of the HTS to properly provide for the classification of a chemical "dl-Hydroxy analog of dl-methionine". The chemical is currently provided for in subheading 2930.90.70, which provides duty-free treatment for this chemical and other chemical that in the hierarchal system of the HTS are defined as not being acids. However, "dl-Hydroxy * * *" is an acid and should be classified in subheading 2930.90.45. To continue to provide for duty-free treatment for this chemical, subheadings 2930.90.45 and subheading 2930.90.70 are modified to properly classify this chemical.

The action in subparagraph (4) corrects a typographical error.

The action in section E modifies the HTS effective on 1/1/96 (to correct actions originally proclaimed in Proclamation 6857 of December 11, 1995) as follows: The action in subparagraph (1) corrects a typographical error.

The action in subparagraph (2) corrects an omission of a conforming change in the article description of subheading 8540.99.40. The proclamation renumbered subheadings 8540.41 through 8540.49 as 8540.71 through 8540.79, but failed to modify the article description of subheading 8540.99.40, which refers to "subheadings 8540.41 through 8540.49".

The action designated as section F modifies the HTS effective on 7/15/96 by deleting provisions of an action under section 301 of the Trade Act (concerning an EC meat hormone directive) set forth in Proclamation 5759 of December 24, 1987. The USTR terminated these actions effective July 15, 1996 when the United States initiated proceedings in the World Trade Organization (WTO) to pursue the issue.

The action designated as section G modifies the HTS effective on 10/31/96 to correct an omission of a conforming change in the language of general note 15(e). Proclamation 6948 of October 29, 1996 modified the HTS by providing for six additional subheadings 9903.52.21 through 9903.52.26 following 9903.52.20 but failed to modify general note 15(e), which refers to "subheadings 9903.52.00 through 9903.52.20, inclusive.".

The action designated as section H modifies the HTS effective on 5/31/97 to provide for Generalized System of Preference (GSP) status for Least Developed Beneficiary Developing Countries (LDBDC) in the Rates of Duty-1 Special subcolumn for subheading 2930.90.49. Section D(3) of this annex, effective January 1, 1995, renumbers subheading 2930.90.45 as 2930.90.49. Subheading 2930.90.45 was granted GSP LDBDC preferential status on May 31, 1997. This section continues the same preferential treatment to subheading 2930.90.49.

The action designated as section I modifies the HTS effective on 7/1/97 to correct an error in the Rates of Duty-1 Special subcolumn for subheading 8507.90.75. Proclamation 7011 of June 30, 1997 modified the HTS by subdividing subheading 8504.90.70 into subheadings 8504.90.65 and 8504.90.75. Subheading 8504.90.75 was indicated incorrectly as being eligible for duty-free treatment under the Agreement on Trade in Civil Aircraft. Subheading 8504.90 is not covered by that Agreement.

The action designated as section J modifies the HTS effective on 1/1/98 to delete obsolete provisions in subchapter VI of chapter 99. These provisions provided for temporary duty-free treatment for Mexican NAFTA goods for subheadings in chapters 1 through 97 which were subject to Mexican NAFTA staging. On 1/1/98 the appropriate subheadings in chapter 1 through 97 became free of duty for Mexico under NAFTA.

The action designated as section K modifies the HTS effective on 8/1/98 to correct an omission of a conforming change. Proclamation 7113 of July 1, 1998 deleted subheadings 9906.55.02 and 9906.56.01, which made U.S. notes 26 to 27 to subchapter VI of chapter 99 unnecessary.

The action designated as section L modifies the HTS effective on 12/3/98 to correct an omission of a conforming change in the Rates of Duty-1 Special subcolumn for subheadings 9603.10.50 and 9603.10.60. Proclamation 7154 of December 3, 1998 terminated the temporary duties on imports of broom corn brooms and restored Normal Trade Relations (NTR) and NAFTA treatment, but failed to restore explicitly the duty-free treatment under CBERA, Andean Trade Preference Act and for the LDBDC's under GSP.

The action designated as section M modifies the HTS effective on 1/1/99 as follows: The action in subparagraph (1) deletes provisions and countries in general note 4(d) which are no longer valid as country exclusions under the GSP because the provisions became NTR free on 1/1/99. All special program preferences for such provisions pursuant to general note 3(c)(iv) of the HTS have been deleted.

The action in subparagraph (2) modifies additional U.S. note 3 to chapter 2 to reflect the status of Argentina and Uruguay as being eligible to import certain quota amounts of beef.

The action in subparagraph (3) corrects an omission of a conforming change. Proclamation 7011 of June 30, 1997 modified the nomenclature of the HTS for certain subheadings, but failed to modify additional U.S. note 1 to chapter 84 to reflect the modifications.

The action in subparagraph (4) deletes obsolete provisions in subchapter VI of Chapter 99. These provisions provided for temporary duty-free treatment for Mexican NAFTA goods for subheadings in chapters 1 through 97 which were subject to Mexican NAFTA staging. On 1/1/99 the appropriate subheadings in chapter 1 through 97 became free of duty for Mexico under NAFTA.

The action in subparagraph (5) deletes obsolete provisions in subchapter VII of chapter 99. These provisions provided for temporary duty-free or reductions of the NTR rate for subheadings in chapters 1 through 97 which were subject to Uruguay Round staging. On 1/1/99 the NTR rate for the appropriate subheadings in chapter 1 through 97 became equivalent to the provision in subchapter VII of chapter 99, thereby making the provisions in chapter 99 unnecessary.

The action designated as section N modifies the HTS, effective upon publication of this notice, to reclassify and continue to provide duty-free treatment to certain PC/TV printed circuit boards. Proclamation 7011 of June 30, 1997 provided duty-free treatment for the subject PC/TV printed circuit boards (cards). Pursuant to previous rulings, Customs has classified the subject PC/TV cards in subheading 8473.30.40 (now subheading 8473.30.10) as accessories of automatic data processing machines. It has since been concluded, however, that the PC/TV cards should instead be classified in subheading 8528.12.96. This action will continue the duty-free treatment currently provided these products.

Ambassador Charlene Barshefsky,

United States Trade Representative.

Annex—Technical Rectifications to the Harmonized Tariff Schedule of the United States ("HTS")

Effective on the dates as listed in this Annex, the HTS is modified as provided for in the sections of this Annex.

Section A. Effective January 1, 1989, the article description of heading 7314.00 is modified by deleting "Stranded wire cables, plaited bands" and inserting "Stranded wire, cables, plaited bands" in lieu thereof.

Section B. Effective June 7, 1991, subchapter III to chapter 99 is modified by deleting subheadings 9903.44.10, 9903.44.24, 9903.44.28 and 9903.44.32 and the superior text to subheading 9903.44.10 which reads "Wood shingles and shakes of western red cedar provided for in subheading 4418.50:".

Section C. Effective January 1, 1994, the article description of subheading 9802.00.60 is modified by deleting "defined in note 3(d) of this subchapter" and inserting "defined in note 3(e) of this subchapter" in lieu thereof.

Section D. Effective January 1, 1995:

(1) Additional U.S. note 7(a)(i) to chapter 17 of the HTS is modified by deleting ", not less than 1,117,195 metric tons," and by deleting ", not less than 22,000 metric tons,".

(2) The article description of subheading 2921.42.36 is modified by deleting the chemical name "4,4-Benzidine-2,2'-disulfonic acid".

(3) The HTS is modified by deleting subheadings 2930.90.45 and 2930.90.70 and inserting the following as provided in this paragraph. These provisions supersede matter now in the HTS. Bracketed matter is included to assist in the understanding of proclaimed modifications. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designed "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

	[Orange-sulfur compounds:]			
	[Other:]			
	[Other:]			
	[Other:]			
	"Acids:			
2930.90.46	*dl*-Hydroxy analog of *dl*-methionine	Free		25%
2930.90.49	Other	4.2%	Free (CA, E, IL, J, K, MX)	25%"
	[Other:]			
"2930.90.71	Dibutylthiourea	Free		25%"

(4) The Intermediate Chemicals For Dyes Appendix to the HTS is modified by deleting "Benzeneamine, 2-(trifluoromethyl)-" and inserting "Benezeneamine, 2-(trifluoromethyl)-" in lieu thereof.

Section E. Effective January 1, 1996:

(1). Note 7(A) to chapter 48 of the HTS is modified by deleting "Headings 4801, 4802, 4804 to 4808 and 4811" and inserting "Headings 4801, 4802, 4804 to 4808, 4810 and 4811" in lieu thereof.

(2) The article description of subheading 8540.99.40 is modified by deleting "of subheadings 8540.41 through 8540.49" and inserting "of subheadings 8540.71 through 8540.79" in lieu thereof.

Section F. Effective July 15, 1996, subchapter III of chapter 99 is modified by:

(1) Deleting "subheadings 9903.23.10, 9903.23.14, and 9903.23.18," from the language of U.S. note 5; and

(2) Deleting subheadings 9903.23.00 through 9903.23.35, inclusive, including the superior text to subheading 9903.23.00 and the superior to subheading 9903.23.17.

Section G. Effective October 31, 1996, general note 15(e) to the HTS is modified by deleting "9903.52.20" and inserting "9903.52.26" in lieu thereof.

Section H. Effective May 31, 1997, the Rates of Duty 1-Special subcolumn for subheading 2930.90.49 is modified by inserting the symbol "A+,", in alphabetical order, in the parentheses following the "Free" rate of duty in such subcolumn.

Section I. Effective July 1, 1997, the Rates of Duty 1-Special subcolumn for subheading 8504.90.75 is modified by deleting the symbol "C," in the parentheses following the "Free" rate of duty in such subcolumn.

Section J. Effective January 1, 1998, subchapter VI to chapter 99 is modified by:

(1) Deleting the following subheadings:

9906.29.03
9906.29.21
9906.29.22
9906.29.23
9906.29.33
9906.64.01
9906.87.03
9906.87.04

(2) Deleting the superior text to subheading 9906.87.01 which reads "Provided for in subheading 8704.10.50, 8704.22.50, 8704.23.00, 8704.32.00 or 8704.90.00:" and inserting "Provided for in subheading 8704.22.50, 8704.23.00, 8704.32.00 or 8704.90.00:" in lieu thereof.

(3) Deleting the superior text to subheading 9906.87.03 which reads "Provided for in subheading 8704.21.00 or 8704.31.00:".

Section K. Effective August 1, 1998, subchapter VI to chapter 99 is modified by deleting U.S. notes 26 and 27.

Section L. Effective December 3, 1998, the Rates of Duty 1-Special subcolumn for subheadings 9603.10.50 and 9603.10.60 is modified by inserting, in alphabetical order, the symbols "A+", "E" and "J" in the parentheses following the "Free" rate of duty in such subcolumn.

Section M. Effective January 1, 1999:

(1) General note 4(d) to the HTS is modified, by deleting the following provisions and the countries set out opposite such provisions:

0303.77.00	Argentina
0304.20.50	Argentina
1604.16.10	Argentina
1605.10.20	Thailand
2608.00.00	Peru
2811.19.30	India
2825.90.75	India
2829.90.05	India
2829.90.25	India
2901.10.30	India
2901.29.50	India; South Africa
2902.50.00	India
2906.13.10	India
3302.10.10	Argentina; India
3302.10.20	Argentina; India
3302.90.10	Argentina; India

3302.90.20	India
3303.00.20	India
3303.00.30	Argentina; India
3304.10.00	India
3304.20.00	Argentina; India
3304.30.00	India
3304.91.00	India
3304.99.50	Argentina; India
3305.10.00	Argentina; India
3305.20.00	India
3305.30.00	India
3305.90.00	Argentina; India
3306.10.00	India
3306.20.00	India
3306.90.00	India
3401.11.10	Argentina; India
3401.11.50	India
3401.19.00	India
3401.20.00	India
3405.10.00	India
3405.20.00	India
3405.30.00	India
3405.40.00	India
3405.90.00	India
3406.00.00	India
3507.90.70	India
3822.00.50	Argentina; India
4015.11.00	Thailand
4016.99.30	Thailand
4016.99.35	Thailand
4107.29.30	Argentina
4107.29.60	Argentina
4303.90.00	Argentina
4409.10.40	Chile
4410.11.00	Argentina
4410.19.00	Argentina
4411.11.00	Argentina; Brazil
4411.19.20	Brazil
4411.21.00	Brazil
4411.29.60	Brazil
4412.13.05	Indonesia
4412.22.50	Indonesia
4421.90.50	Brazil
6406.10.65	Brazil; Dominican Republic
6406.99.60	Argentina
7206.90.00	Trinidad and Tobago
7401.10.00	India
7402.00.00	Chile
7419.99.50	Argentina
8413.91.90	Argentina
8414.30.80	Brazil
8419.90.20	Brazil
8422.30.90	Argentina
8429.11.00	Brazil
8429.20.00	Brazil
8429.30.00	Brazil
8431.49.10	Argentina
8431.49.90	Brazil
8471.49.29	Thailand
8471.60.35	Indonesia
8471.60.45	Thailand
8479.20.00	Argentina
8521.10.60	Thailand
8524.31.00	Argentina
8524.32.00	Argentina
8524.60.00	Argentina
8524.91.00	Argentina
8528.12.04	Indonesia
8802.30.00	Brazil
9006.62.00	Thailand
9018.11.60	Argentina
9018.90.10	Argentina
9018.90.80	Dominican Republic; Pakistan
9025.11.20	India
9401.30.40	Croatia; Slovenia
9401.61.40	Croatia; Slovenia

Section M. Effective January 1, 1999 (con.):

(1) General note 4(d) to the HTS is modified, by deleting the following provisions and the countries set out opposite such provisions (con.):

9401.69.40	Indonesia
9401.69.60	Croatia; Slovenia
9401.90.40	Croatia; Slovenia
9403.20.00	Argentina
9403.50.90	Argentina
9403.60.80	Argentina; Indonesia
9506.61.00	Philippines

(2) Additional U.S. note 3 to chapter 2 is modified by:

(a) Deleting the "*" symbol following the quantity for Argentina and the quantity for Uruguay.

(b) Deleting the last paragraph in this note beginning with an "*" symbol.

(3) Additional U.S. note 1 to chapter 84 is modified by:

(a) Deleting "subheadings 8479.89.10, 8479.89.65, 8479.97, 8479.90.40 and 8479.90.95," and inserting "subheadings 8479.89.65 and 8479.89.97," in lieu thereof.

(b) Deleting "the following articles and parts:" and inserting "the following articles:" in lieu thereof.

(c) Deleting "thrust reversers; air humidifiers and dehumidifies." and inserting "thrust reversers." in lieu thereof.

(4) Subchapter VI to chapter 99 is modified by:

(a) Deleting the following subheadings:

9906.61.01	
9906.61.05	
9906.61.09	
9906.61.19	
9906.61.21	
9906.61.22	
9906.61.23	
9906.61.24	
9906.61.25	
9906.61.26	
9906.61.27	
9906.62.02	
9906.62.03	
9906.62.05	
9906.62.07	
9906.62.08	
9906.62.10	
9906.62.12	
9906.62.13	
9906.62.14	
9906.62.15	
9906.62.16	
9906.62.17	
9906.62.18	

(b) Deleting the superior texts to subheading 9906.61.22 which read "Other garments, knitted or crocheted:" and "Of cotton (provided for in subheading 6114.20.00):".

(c) Deleting the superior texts to subheading 9906.61.24 which read "Of man-made fibers:" and "Garments other than tops, body suits or body shirts (provided for in subheading 6114.30.3):".

(d) Deleting the superior texts to subheading 9906.62.07 which read "Women's or girls' singlets and other undershirts, briefs, panties, negligees, bathrobes, dressing gowns and similar articles:" and "Of man-made fibers (provided for in subheading 6208.92):".

(e) Deleting the superior texts to subheading 9906.62.12 which read "Women's or girls' track suits and other garments, of cotton (provided for in subheading 6211.42.00):" and "Coveralls, jumpsuits and similar apparel:".

(f) Deleting the superior text to subheading 9906.62.14 which reads "Other:".

Section M. Effective January 1, 1999 (con.):

(5) Subchapter VII to chapter 99 is modified by:

(a) Deleting U.S. note 2;

(b) Deleting "or 3811.29" from the article description for heading 9907.38.01; and

(c) Deleting the following headings:

9907.40.01	
9907.56.01	
9907.66.01	
9907.71.01	
9907.73.01	
9907.84.01	
9907.84.02	
9907.84.03	
9907.84.04	
9907.84.05	
9907.84.06	
9907.84.07	
9907.84.08	
9907.84.09	
9907.84.10	
9907.84.11	
9907.84.12	
9907.84.13	
9907.84.14	
9907.84.01	
9907.85.02	
9907.87.01	
9907.87.02	
9907.90.01	
9907.95.01	

Section N. Effective upon publication of this notice, the HTS is modified as provided below, with bracketed matter included to assist in understanding. The following supersedes matter now in the HTS. Subheading 8528.12.96 is deleted from the HTS and the following new provisions are inserted in numerical sequence in lieu thereof:

"8528.12.93	Printed circuit assemblies incorporating a tuner, of a kind used with data processing machines of heading 8471	Free		35%
8528.12.97	Other	5%	Free (A+, B, CA, E, IL, J, MX)	35%"

[Reception...:].
[Reception...:].
[Color:].
[Other:].
[Other:].
[Other:].

[FR Doc. 99–15453 Filed 6–17–99; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–162 and WTO/DS–136]

WTO Dispute Settlement Proceeding Regarding the Antidumping Act of 1916

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of the request by the Government of Japan for the establishment of dispute settlement panels under the Marrakesh Agreement Establishing the World Trade Organization ("WTO") to examine the Antidumping Act of 1916 ("the 1916 Act"). On February 1, 1999, a separate WTO dispute settlement panel was established at the request of the European Communities ("EC") to examine the same matter. Japan and the EC both allege that this statute is inconsistent with obligations of the United States under the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the Agreement on Implementation of Article VI of GATT 1994 ("the Antidumping Agreement"). The USTR invites written comments from the public concerning the issues raised in these disputes.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by July 15, 1999, to be assured of timely consideration by the USTR.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: DS162 and DS 136 Disputes, Office of the United States Trade Representative, 600 17th Street NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Rhona Schnare, Assistant General Counsel, 202–395–3582.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the USTR is providing notice that on February 1, 1999, a WTO dispute settlement panel was established at the request of the European Communities to examine the Antidumping Act of 1916 and that, on June 3, 1999, the Government of Japan submitted a separate request for the establishment of a dispute settlement panel to examine the same matter.

Major Issues Raised and Legal Basis of the Complaint

Both the EC and Japan allege that the 1916 Act is inconsistent with Article III:4 of GATT 1994 which requires that imported products shall be accorded treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, etc. The EC and Japan also assert that the 1916 Act is inconsistent with Article VI of GATT 1994 and various provisions of the Antidumping Agreement. Specifically, Japan alleges that the 1916 Act is inconsistent with Article VI:2 and 18.1 of the Antidumping Agreement, which Japan asserts permits the imposition of antidumping duties as the only possible remedy for dumping. Japan also alleges that the 1916 Act is inconsistent with Articles 1, 2, 3, 4, 5, 9 and 11 of the Antidumping Agreement and Article XI of GATT 1994.

The EC alleges that the 1916 Act is inconsistent with Article VI:2 of GATT 1994, which the EC asserts provides the sole remedy for dumping. The EC also asserts that the 1916 Act is inconsistent with Articles 1, 2, 3, 4, 5 of the Antidumping Agreement and Article VI:1 of GATT 1994.

Finally, both the EC and Japan assert that the United States has failed to comply with Article XVI:4 of the Marrakesh Agreement establishing the World Trade Organization ("WTO") which requires that Members bring their laws into compliance with their obligations under the WTO agreements.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in these disputes. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by the USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), the USTR will maintain a file on these dispute settlement proceedings, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. The public file will include a listing of any comments received by the USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–162 or WTO/DS–136 United States—Antidumping Act of 1916) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon

and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 99–15454 Filed 6–17–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Proposed Commuter Rail Project Between Tacoma and Lakewood, Washington

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and the Central Puget Sound Regional Transit Authority (Sound Transit) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA). Sound Transit will ensure that the EIS also satisfies the requirements of the Washington State Environmental Policy Act (SEPA). The FTA will be the NEPA lead agency. Sound Transit will be the SEPA lead agency.

The EIS will evaluate the Tacoma-Lakewood Commuter Rail Project, including station locations, a light maintenance and layover facility location, park-and-ride facility alternatives, and track design variations along an approximately 11-mile long corridor between Tacoma and just south of Lakewood, Washington. The project will generally be located in existing Burlington Northern Santa FE Railway (BNSF) and Tacoma Eastern (TE) rights-of-way. A short new rail connection will be needed to connect the BNSF and TE lines proposed to the used for the project. The EIS will evaluate route alternatives for this new at-grade track, which will be approximately 0.8 miles long. The EIS will evaluate the no-build alternative and any new reasonable alternatives within the corridor generated through the scoping process. Corridor alternatives were evaluated in a SEPA plan-level EIS (1993) and in a federally required Major Investment Study (1997).

The proposed Commuter Rail Project is intended to provide peak-hour commuter rail service between Tacoma and Lakewood, key activity centers along the corridor. The commuter rail line will extend the proposed Tacoma-Seattle commuter rail service. It will connect to the Tacoma Light Rail Transit line. It will also connect ultimately, with the proposed Central Light Rail Transit line between SeaTac and Seattle, Washington.

The project was originally the subject of a proposed environmental assessment (EA) under NEPA. FTA and Sound Transit determined that preparation of a NEPA EIS is appropriate after reviewing information developed through the public involvement and preliminary environmental review processes. The Commuter Rail facility at the Tacoma Dome Station was evaluated in a separate EA for which a Finding of No Significant Impact was issued on April 6, 1999. The EIS also will evaluate alternatives and impacts for a related Sound Transit project to provide additional parking capacity in the vicinity of, or at the existing, SR512 Park-and-Ride Lot in Lakewood.

Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state, regional and local agencies. A public scoping meeting will be held. See **DATES** below for details.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to Sound Transit by August 10, 1999. See **ADDRESSES** below. Oral comments should be made at the public scoping meeting scheduled below.

Scoping Meeting Dates: Public scoping meetings will be held on the following days and locations:

Monday, July 26, 1999 South Park Community Center, 4851 South Tacoma Way, Tacoma, 5:00 p.m.–8:00 p.m.

Tuesday, July 27, 1999 Pierce Transit Lakewood Training Center, Colonial Center, 6132 Motor Avenue, Lakewood, 5:00 p.m.–8:00 p.m.

The locations for the scoping meetings are accessible to people with disabilities. People with special needs (such as individuals needing a language translator) should contact Sound Transit at the address below or by calling (206) 398–5000. A TDD number is also available: (206) 398–5086.

The scoping meetings will be held in an "open-house" format. Project representatives will be available to discuss the project throughout the entire meeting. Informational displays and written materials will also be available throughout the entire meeting. In addition to written comments, which may be made at the meeting or as described below, individual oral comments will be recorded at the meeting.

ADDRESSES: *Written comments on the project scope should be sent to:* Desmond Brown, SEPA Responsible Official, Sound Transit, 1100 Second Avenue, Suite 500, Seattle, WA 98101–3423; fax number (206) 398–5222.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Morse, Federal Transit Administration, Region X, 915 Second Avenue, Room 3142, Seattle, WA 98174; phone number: (206) 220–7964.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and Sound Transit invite interested individuals, organizations, and federal, state, regional, and local agencies and tribal governments to participate in defining the alternatives relating to the track alignment and corridor improvements, commuter rail parking, expanded park-and-ride lot capacity for Sound Transit Express, Pierce Transit and Intercity Transit bus services, and light maintenance and layover facility and in identifying any significant, social, economic, or environmental issues related to the alternatives. Scoping comments may be made orally at the public scoping meeting or in writing. See **DATES** above for location and time, and see the **ADDRESSES** section above for written comments. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives that are more cost-effective or have fewer environmental impacts while achieving similar transportation objectives.

Scoping materials will be available at the scoping meetings or in advance of the meetings by contacting Sound Transit at (206) 398–5000. If you wish to be placed on the mailing list to receive further information as the project proceeds, please contact the following at Sound Transit: John L. Hubbard, AICP at (253) 581–8137.

II. Description of Study Area and Project Need

The Tacoma-Lakewood Commuter Rail Project consists of an approximately 11 mile long rail corridor between Tacoma and just south of Lakewood, Washington. The project will include a group of physical and operational improvements to existing tracks and rights-of-way, along with station facilities and systems in order to provide commuter rail service. Service is expected to operate during peak commute periods, with a total of 9 train trips in each direction. Trains will consist of 4 to 10 passenger cars pulled by a diesel locomotive.

The commuter rail facility at the Tacoma Dome station is proposed to serve the project. Proposed improvements to that facility are the subject of separate environmental review. Two additional commuter rail stations will be developed as part of this project to serve the South Tacoma and Lakewood communities and the surrounding areas. Stations are proposed at the following locations: South Tacoma and Lakewood.

Station improvements will generally consist of a platform(s) that conforms to Americans with Disabilities Act (ADA) train boarding and deboarding requirements. The platforms will have overhead canopies, wind screens, and pedestrian railings. Bus access will be provided at all stations. In addition, parking facilities will be provided. The proposed South Tacoma station will include park-and-ride facilities for 200 to 250 vehicles. The proposed Lakewood station will include park-and-ride facilities for up to 2,000 vehicles, which could include both commuter rail parking and expanded park-and-ride capacity for Sound Transit Express, Pierce Transit and Intercity Transit (Olympia Express) bus services.

Track and other right-of-way improvements will be made to allow commuter rail to operate along the corridor, all of which is used for freight operations. In addition, a new 0.8 mile rail connection will be constructed in order to connect the BNSF and TE rights-of-way for commuter rail use. A new siding will also be constructed to connect the mainline to the light maintenance and layover facility. The EIS will analyze alternative locations and designs for such facilities to minimize or a avoid adverse environmental impacts.

The proposed commuter rail project will provide an alternative to the automobile in the congested Interstate 5 (I–5) corridor. Project need is described in the Documentation of Major Investment Study, Sound Transit, March 12, 1997. This document is available from Sound Transit by calling (206) 398–5000.

III. Alternatives

The proposed Tacoma-Lakewood Commuter Rail Project would largely be implemented in existing BNSF and TE railroad rights-of-way, except for new trackage needed to connect the existing rail lines and the proposed station and parking facilities. Alternatives relating to alignment location and mode were previously considered and documented in the state environmental review (1993) and Major Investment Study (1997). The prior planning history and plan-level screening of alternatives will be summarized. This EIS will be project-specific and will focus on alternative station and associated parking facility locations, and alternative locations and/or designs for improved and new track facilities that minimize or avoid adverse environmental impacts.

Station locations and alternatives proposed for study in the EIS are located in South Tacoma and Lakewood. The South Tacoma and Lakewood station locations will each include the development of associated park-and-ride facilities. Space for approximately 200 to 250 vehicles will be developed in conjunction with the South Tacoma station. Space for up to 2,000 vehicles may be developed as part of the Lakewood station.

In addition to stations, other track improvements will be made to allow operation of commuter rail in a freight corridor. These railroad track improvements may also be used in the future by state-funded high speed passenger rail service, which is separate from Sound Transit commuter rail service.

The No-Build alternative, which involves no change to transportation services or facilities in the corridor beyond those currently programmed, will also be evaluated in the EIS.

IV. Probable Effects/Potential Impacts for Analysis

The FTA and Sound Transit plan to evaluate in the EIS all significant, social, economic and environmental impacts of the alternatives. The EIS is being prepared largely to evaluate the potential environmental impacts on natural resources associated with track improvements and the construction of new stations and associated park-and-ride facilities, and the new rail right-of-way that will be used to connect the BNSF and TE lines. Other environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, traffic circulation, visual impacts, contaminated soils, health and safety impacts, impacts on historic, cultural and archaeological resources, impacts on utilities, and noise and vibration impacts. The impacts on natural areas, rare and endangered species, and earth, air and water quality, will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operations. Reasonable measures to mitigate adverse impacts will be identified.

V. FTA Procedures

The EIS process will assess the [illegible] economic, and envir[illegible] of alternative stati[illegible] associate[illegible] parl[illegible] light me[illegible]ay[illegible] the de[illegible]ew railroad right-of-wa[illegible]ect the existing BNSF and TE lines and track designs to minimize and mitigate adverse impacts. A draft EIS will be published and made available for public and agency review and comment, and public hearing(s) will be held. On the basis of the draft EIS and the comments received, Sound Transit will complete the final EIS.

Issued on: June 15, 1999.

Linda M. Gehrke,

Deputy Regional Administrator.

[FR Doc. 99–15508 Filed 6–17–99; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Vesta Fire Insurance Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 63 FR 36112, July 1, 1998.

With respect to any bonds currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone

(202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00516–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 8, 1999.

Michael C. Salapka,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–15449 Filed 6–17–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990-EZ, Short Form Return of Organization Exempt From Income Tax.

DATES: Written comments should be received on or before August 17, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Short Form Return of Organization Exempt From Income Tax.

OMB Number: 1545–1150.

Form Number: 990–EZ.

Abstract: An annual return is required by Internal Revenue Code section 6033 for organizations exempt from income tax under Code section 501(a). Form 990–EZ is used by tax-exempt organizations and nonexempt charitable trusts whose gross receipts are less than $100,000 and whose total assets at the end of the year are less than $250,000 to provide the IRS with the information required by Code section 6033. IRS uses the information from Form 990–EZ to ensure that tax-exempt organizations are operating within the limitations of their tax exemption.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 124,184.

Estimated Time Per Respondent: 57 hours, 4 minutes.

Estimated Total Annual Burden Hours: 7,087,181.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–15572 Filed 6–17–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–F

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120-F, U.S. Income Tax Return of a Foreign Corporation.

DATES: Written comments should be received on or before August 17, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return of a Foreign Corporation.

OMB Number: 1545–0126.

Form Number: 1120-F.

Abstract: Form 1120-F is used by foreign corporations that have investments, or a business, or a branch in the U.S. The IRS uses Form 1120-F to determine if the foreign corporation has correctly reported its income, deductions, and tax, and to determine if it has paid the correct amount of tax.

Current Actions: On page 1 of Form 1120-F, a checkbox was added to Item D. The change was made to aid in determining when a foreign corporation should file Form 1120-F. The time for filing the return depends on whether the foreign corporation has an office or place of business in the U.S. (IRC Section 6072).

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 21,618.

Estimated Time Per Respondent: 224 hours, 37 minutes.

Estimated Total Annual Burden Hours: 4,855,619.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–15573 Filed 6–17–99; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 64, No. 117
Friday, June 18, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–011–0071; FRL–6229–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; North Coast Unified Air Quality Management District and Northern Sonoma County Air Pollution Control District

Correction

In rule document 99–2793 beginning on page 6223, in the issue of Tuesday, February 9, 1999, make the following correction:

§ 52.220 [Corrected]

On page 6226, in the first column, in § 52.220(c)(254)(i)(B)(*1*), "130" should be added after "Rule".

[FR Doc. C9–2793 Filed 6–17–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–99–1430–01; AZA 25991]

Arizona: Notice of Realty Action; Bureau Motion Recreation and Public Purposes Classification; La Paz County, AZ

Correction

In notice document 99–12445, beginning on page 27006 in the issue of Tuesday, May 18, 1999, make the following corrections:

1. On page 27006, in the second column, under **Gila and Salt River Meridian, Arizona**, in "Sec. 15", in the fourth line, "N½SW¼SW,¼," should read "N½SW¼SW¼,".

2. On the same page, in the same column, under **Gila and Salt River Meridian, Arizona**, in "Sec. 20", in the second line, "N½SE¼SE,¼, SW¼SE¼SE,¼," should read "N½SE¼SE¼, SW¼SE¼SE¼,".

3. On the same page, in the third column, under **Gila and Salt River Meridian, Arizona**, in "Sec. 23", in the third line, "SE¼SW¼SW¼SE,¼," should read "SE¼SW¼SW¼SE¼,".

4. On the same page, in the same column, under **Gila and Salt River Meridian, Arizona**, in "Sec. 26", in the tenth line, "S¼NW¼NW¼NE¼," should read "S½NW¼NW¼NE¼,".

[FR Doc. C9–12445 Filed 6–17–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41453A, International Series Release No. 1198A, File No. S7–4–99]

RIN 3235–AH60

Exemption of the Securities of the Kingdom of Sweden Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities; Correction

Correction

In rule document 99–14866, appearing on page 31493, in the issue of Friday, June 11, 1999, make the following correction:

PART 240 [CORRECTED]

On page 31493, in the second column, in amendment 2., in the sixth line, "(a)(1)(xix)" should read "(a)(1)(xxi)".

[FR Doc. C9–14866 Filed 6-17-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ACE-26]

Amendment to Class E Airspace; Rolla/Vichy, MO

Correction

In rule document 99–14605, beginning on page 31118, in the issue of Thursday, June 10, 1999, make the following correction:

§ 71.1 [Corrected]

On page 31119, in the first column, under the heading **ACE MO E5 Rolla/Vichy, MO [Revised]**, in the 10th line, "the 6.6-mile" should read "the 6.6-mile radius".

[FR Doc. C9–14605 Filed 6–17–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (99-02-U-00-CBE) to Use the Revenue From a Passenger Facility Charge (PFC) at Greater Cumberland Regional Airport, Wiley Ford, West Virginia

Correction

In notice document 99–12142 appearing on page 25952 in the issue of Thursday, May 13, 1999, make the following correction(s):

On page 25952, in the third column, in the 14th line, "1994" should read "1999".

[FR Doc. C9–12142 Filed 6–17–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Friday
June 18, 1999

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 14 and 17

Procedures for Protests and Contract Disputes; Amendment of Equal Access to Justice Act Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 14 and 17

[Docket No. FAA–1998–4379; Amendment No. 14–0317–01]

RIN 2120–AG19

Procedures for Protests and Contract Disputes; Amendment of Equal Access to Justice Act Regulations

ACTION: Final rule.

SUMMARY: This document provides regulations for the conduct of protests and contract disputes under the Federal Aviation Administration Acquisition Management System (AMS). Also, the Federal Aviation Administration (FAA) regulations governing the application for, and award of, Equal Access to Justice Act (EAJA) fees are amended to include procedures applicable to the resolution of protests and contract disputes under the AMS, and to conform to the current EAJA statute.

EFFECTIVE DATE: June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, Staff Attorney, and Dispute Resolution Officer, FAA Office of Dispute Resolution for Acquisition, AGC–70, Room 8332, Federal Aviation Administration, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–6400.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Government Printing Office's electronic bulletin board service (telephone: 703–321–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on and advice about compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If your organization is a small entity and you have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking ARM–27, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (888) 551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following internet address: 9–AWA–SBREF@faa.gov.

Background

Statement of the Problem

In accordance with Congressional mandate, the FAA procures, acquires, and develops services as well as material in support of its mission of safety in civil aviation. Prior to April 1, 1996, several major FAA acquisitions under the Government-wide acquisition system were substantially behind schedule and experienced large cost over runs. Both the Administration and the Congress became concerned that the safety mission of the FAA might suffer from the inefficiency of the then existing acquisition system, including its dispute resolution system.

In the Fiscal Year 1996 Department of Transportation Appropriations Act, Public Law 104–50, 109 Stat. 436 (November 15, 1995), the Congress directed the FAA "to develop and implement, not late than April 1, 1996, an acquisition management system that addressed the unique needs of the agency and, at a minimum, provided for more timely and cost effective acquisitions of equipment and materials." In that Act, the Congress gave the FAA authority to create a new acquisition system, "notwithstanding provisions of Federal Acquisition law." In addition, Congress specifically instructed the FAA not to use certain provisions of federal acquisition law. In response, the FAA developed the AMS for the management of FAA procurement. The AMS is a system of policy guidance that maximizes the use of agency discretion in the interest of best business practice.

As part of the AMS, the FAA created the Office of Dispute Resolution for Acquisition (ODRA) to facilitate the Administrator's review of procurement protests and contract disputes. Notice of establishment of the ODRA was published on May 14, 1996, in the **Federal Register** (61 FR 24348). In that notice, the FAA stated it would promulgate rules of procedure governing the dispute resolution process. Currently, procedures and other provisions related to dispute resolution are negotiated and included or referenced in all FAA Screening Information Requests (SIRs) and contracts. The FAA has determined that it will be more effective and efficient to establish by rulemaking the dispute resolution procedures that apply to protests concerning SIRs and contract awards, and to disputes arising from established contracts. The rule is designed to contain the minimum procedures necessary for efficient and orderly resolution of protests and contract disputes arising under the AMS.

The FAA Dispute Resolution Process, and the procedures implementing that process, are based upon the powers Congress delegated to the Administrator of the FAA under Title 49, United States Code, Subtitle VII (49 U.S.C. 40101, *et seq.*). These delegated powers include the administrator's power to procure goods and services, and to investigate and hold hearings regarding any matter placed under the Administrator's authority. In the Federal Aviation Reauthorization Act of 1996, Pub. L. 104–264 (October 9, 1996), the Congress amended 49 U.S.C. 106(f) to make the Administrator of the FAA the final authority over the FAA acquisition process and FAA acquisitions.

These FAA dispute resolution procedures encourage the parties to protests and contract disputes to use Alternative Dispute Resolution (ADR) as the primary means to resolve protests and contracts disputes, in consonance with Department of Transportation and FAA policies to utilize ADR to the maximum extent practicable. Under these procedures, the ODRA actively encourages parties to consider ADR techniques such as case evaluation, mediation, arbitration, or other types of ADR.

The procedures for protests and contract disputes anticipate that, for a variety of reasons, certain disputes are not amenable to resolution through ADR. In other cases, ADR may not result in full resolution of a dispute. Thus, there is provision for a Default Adjudicative Process. The EAJA, 5 U.S.C. 504, can apply in instances where an eligible protester or contractor prevails over the FAA in the Default Adjudicative Process. Title 14 of the Code of Federal Regulations (CFR), Part 14 is amended to provide guidance for the conduct of EAJA applications under the dispute resolution regulations promulgated in 14 CFR part 17.

Discussion of Comments

Two comments were received on the proposed rule from the American Bar Association Section of Public Contract Law (ABA) and the Associated General Contractors of American (AGC). The ABA submitted both draft and final comments.

The comments of both the ABA and AGC generally supported the goals of the proposed rule and endorsed its emphasis on ADR techniques. The comments of the AGC raised only two points and, with respect to those two points, indicated general agreement with the comments filed by the ABA. The two points raised by the AGC pertain to sections of the proposed rule that had dealt with matters of contract administration—the obligation to continue work pending resolution of a contract claim, and the accrual of interest on a contract claim. The ABA, in addition to addressing those points, sets forth a variety of comments outlining concerns with the proposed rule. These pertain to, among other things: (1) Whether the ODRA has exclusive jurisdiction over protests and contract disputes under the AMS, and the continued applicability of both the Tucker Act and the Contract Disputes Act (CDA); (2) procurement suspensions in the context of a bid protest; (3) discovery; (4) the opportunity for a hearing; (5) time limitations for the filing of contract disputes; and (6) basic definitions. The ABA comments are discussed in detail below. Some of the ABA comments seek within the rule further elaboration and guidance regarding the ODRA's practices. The FAA agrees that further guidance as to ODRA practices would foster predictability in the FAA's protest and contract dispute procedures. Additional guidance to the public on ODRA procedures will be published on the Internet or otherwise, and may be revised by the ODRA as it deems necessary, to conform to and more accurately describe current dispute resolution practices employed by the ODRA. The ODRA publishes a guide on its Website, which is accessible through the FAA Homepage (http://www.faa.gov).

Applicability of the Tucker Act and the Contract Disputes Act

The ABA urges that the ODRA dispute resolution process is not exempt from either the Tucker Act (28 U.S.C. 1491) or the Contract Disputes Act (41 U.S.C. 601–613), and suggests that the rule limit its applicability to protests and disputes brought before the ODRA, without implying any jurisdictional exclusivity.

FAA Response: The FAA disagrees. Section 348 of the FY 1996 Department of Transportation Appropriation Act, Public Law 104–50, 109 Stat. 436 (November 15, 1995) (the "1996 Act") did not merely list specific statutes that were not to apply to the FAA AMS. Rather, in calling for the establishment of the new AMS, Congress, in the 1996 Act, called more generally for the Administrator of the FAA to "develop and implement" the new AMS "notwithstanding provisions of Federal acquisition law." Congress established the FAA Administrator as the final authority for all acquisition activity necessary to carry out the Agency's functions (49 U.S.C. 106(f)(2), 49 U.S.C. 46101, *et.seq.*, and Pub. L. 104–50). For dispute resolution purposes, the Administrator's authority was expressly delegated to the ODRA on July 29, 1998, with the exception of final decision-making authority, other than for dismissals arising from settlements or voluntary withdrawals; or final authority to stay awards or contract performance (63 FR 49151).

The FAA views the CDA as falling into the general category of "Federal acquisition law". Indeed, like the Competition in Contracting Act (CICA), the CDA is widely regarded as one of the basic elements of the current system of "Federal acquisition law." The 1996 Act specifically requires that the Federal Acquisition Streamlining Act (FASA) not apply. Several sections of the CDA were amended under the FASA in 1994. For example, Section 605 of the CDA was amended by the FASA to include for the first time a six (6) year statute of limitation on the submission of contract claims under the CDA. The FASA also raised the CDA claim certification threshold from $50,000 to $100,000. In addition, it added to Section 605 of the CDA a provision regarding termination of ADR efforts to resolve CDA claims. Given the express inapplicability of the FASA to FAA procurements, the ABA position would require the FAA either to conform the AMS dispute resolution process the pre-1994 (pre-FASA) version of the CDA or to disregard the express direction of Congress regarding non-applicability of FASA.

Furthermore, the Congress clearly intended the AMS to be free of more than just those statutes enumerated in section 348. Section 348(a)(8) contains a "catch all" for any other unnamed acquisition related statutes, exempting the AMS from "(t)he Federal Acquisition Regulation and any laws not listed (above in) this section providing authority to promulgate regulations in the Federal Acquisition Regulation." The CDA authorizes implementation through the promulgation of regulations in the Federal Acquisition Regulation (FAR), in that it authorizes guidelines to be promulgated by the Office of Federal Procurement Policy (OFPP). The OFPP promulgates such guidelines as part of the FAR under the authority of the OFPP Act. The OFPP Act also was expressly made inapplicable to the AMS by the 1996 Act.

As previously discussed, in 1996 Congress made the FAA Administrator the final authority for all matters related to "the acquisition and maintenance of property and equipment of the Administration." 49 U.S.C. 106. Further, under 49 U.S.C. 46110, any person with a substantial interest in an order issued by the Administrator may appeal exclusively to the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals for the circuit in which the person resides or has its principal place of business. The FAA believes, based on all of the above, that the only reasonable reading of the 1996 Act is that it rendered the CDA inapplicable to the FAA's new AMS.

The same statutory provisions, 49 U.S.C. 106 and 46110, resolve the question of Tucker Act jurisdiction. For purposes of judicial review of final acquisition-related decisions of the FAA Administrator, the specific, exclusive jurisdictional authority granted to the United States Court of Appeal in 49 U.S.C. 46110 controls and takes precedence over the non-exclusive, general authority over a variety of disputes afforded the United States Court of Federal Claims and Federal District Courts under the Tucker Act. *See* 28 U.S.C. 1491. In order to clarify when judicial review may be had, § 17.43 has been modified to expressly recognize the availability of such review, only after exhaustion of

administrative remedies through the FAA dispute resolution process.

Definition of "Compensated Neutral"

The ABA recommends that § 17.3(f), the definition of "Compensated Neutral," provide for the possibility of alternative sharing formulas regarding the costs associated with engaging a Compensated Neutral. The proposed rule had called for equal sharing of such costs.

FAA Response: The FAA agrees. Additional language has been incorporated in § 17.3(f) of the final rule, to allow for the possibility that the costs associated with a Compensated Neutral be shared between the parties.

Definition of "Discovery"

The ABA recommends striking the definition or removing the permissive language "may, when allowed" in § 17.3(i). It notes further that "due process required sufficient discovery in each case to permit a party to prove its case and challenge the other party's evidence."

FAA Response: The FAA agrees in principle that discovery should be allowed in order to provide an adequate record for the finder of fact. However, in order to maintain the efficient resolution timeframes established by the rules, the management of discovery must be left to the discretion of the ODRA. To indicate that discovery is voluntary in the first instance and to clarify that an appropriate level of discovery is an integral component of the ODRA dispute resolution process, § 17.3(i) has been revised to read "may, either voluntarily or to the extent directed by the ODRA."

Definition of "Office of Dispute Resolution for Acquisition"

The ABA recommends that the definition in § 17.3(n) either be struck or, in the alternative, defined "solely in terms of (the ODRA's) authority with respect to bid protests or disputes filed with it." The comment relates back to the ABA's stated position regarding the continued applicability of both the Tucker Act and the CDA.

FAA Response: The FAA disagrees. As indicated above, the FAA believes that the ODRA has exclusive jurisdiction over all AMS protests and contract disputes.

Filing and Computation of Time

The ABA notes that proposed § 17.7(b) would be "unworkable given the short time frames for resolving protest," by reason of its permitting submissions after initial filings to be made by regular mail.

FAA Response: The FAA agrees that the use of regular mail after initial filings would not be consistent with a prompt, efficient bid protest process. Therefore, the final rule provides for delivery of such subsequent filings only by overnight delivery, hand delivery, or by facsimile.

Protective Orders

The ABA suggests that the rule provide for the ODRA to develop and publish a standard protective order along the lines of the model order contained in the GAO Guide to GAO Protective Orders.

FAA Response: The FAA disagrees that such a rule is necessary. The ODRA has already developed and published such a standard order as part of its Website. That order was based, in great measure, on the wording of the GAO's model order.

Simultaneous Pursuit of ADR

The ABA observes that proposed §§ 17.13, 17.27 and 17.31(c) contemplate a sequential process, whereby adjudication is done only after completion of ADR efforts. The ABA also notes that the current practice of the ODRA frequently includes the use of ADR techniques concurrently with an on-going adjudication, and that this practice has produced favorable results in many instances. Accordingly, the ABA suggests that the proposed rule be modified to conform to the current practice.

FAA Response: The FAA agrees. Section 17.31(c) has been modified to add language which allows for informal ADR techniques (neutral evaluation and mediation efforts) to be undertaken simultaneously with adjudication under the Default Adjudicative Process. Section 17.13(d) has been revised to conform to this change. Likewise, a new § 17.27(d) has been added to clarify that the submission of statements indicating that ADR will not be utilized will not in any way preclude the parties from engaging in informal ADR techniques during the course of adjudication.

Binding Arbitration

The ABA takes issue with the language of § 17.33(f), which permits the FAA Administrator a limited amount of time within which to "opt-out" of an arbitrator's decision in binding arbitration, arguing that such a provision conflicts with the policies enunciated in the Administrative Dispute Resolution Act of 1996. Accordingly, the ABA recommends deletion of such language.

FAA Response: The FAA disagrees. Under 5 U.S.C. 575(c), any binding arbitration undertaken by a Federal agency must be in accordance with guidance issued by the head of the agency in consultation with the Attorney General, i.e, the Department of Justice (DoJ). As of this time, DoJ has advised that federal agencies, including the FAA, may not engage in any form of binding arbitration without the kind of "opt-out" provision described in proposed § 17.33(f). The language with which the ABA takes issue does not mandate this form of binding arbitration, but merely makes it a permissible form. Since any form of ADR will require the concurrence of both parties, the FAA does not see any necessity for eliminating this alternative and has not done so in the final rule. The language of the first sentence of § 17.33(f) would allow for binding arbitration without such an "opt out" provision, pursuant to 5 U.S.C. 575 (a), (b), and (c), so long as the arbitration process is consistent with current DoJ guidance and "applicable law." Thus, if DoJ modifies its guidance to the agencies so as to allow such binding arbitration, the FAA would not need to revise § 17.33 in order to pursue such a dispute resolution option.

Proposed Appendix A to Part 17

The ABA states that it endorses the proposed Appendix A to Part 17 and suggests that it be enhanced with additional information concerning ADR experience at the ODRA.

FAA Response: The FAA disagrees that additional information concerning ODRA's ADR experiences should be contained in the rule. The FAA believes information of this type should be published in the ODRA Website Guide, rather than as part of a procedural regulation.

Distribution of Decisions

The ABA proposes that the rule contain language requiring the distribution of final decisions and suggests that language in 4 CFR 21.12, pertaining to the distribution of GAO decisions, be used for that purpose.

FAA Response: The FAA concurs with the ABA's comment, and has incorporated language concerning the public dissemination of ODRA findings and recommendations relating to both protests and contract disputes, as part of §§ 17.37(l) and 17.39(l), respectively. Currently, ODRA findings and recommendations and final orders of the Administrator regarding protests and contract disputes are promptly published on the ODRA Website.

Retroactivity

The ABA points out that the proposed rules are silent on the issue of retroactive applicability and recommends that the final rule identify the contracts to which the new regulations will apply.

FAA Response: The FAA agrees. Section 17.1, Applicability, has been modified to indicate that the rule will apply to all protests and contract disputes on or after the effective date of these regulations, with the exception of contract disputes relating to pre-AMS contracts.

Definition of "Interested Party"

The ABA recommends that § 17.3(k) incorporate the same definition of "interested party" as is contained in the GAO bid protest regulations.

FAA Response: The FAA agrees. The definition of "interested party" in § 17.3(k) has been modified to incorporate language based upon the definition of "protester" in Appendix C to the AMS. That language was patterned after the GAO's definition of "interested party."

Intervention

The ABA suggests that the definition of "intervenor" in § 17.3(l) should state that the awardee of a contract be given "intervenor" status as a matter of right, that the definition include a deadline for requests for intervention, and that a five-day period be used.

FAA Response: The FAA agrees that the awardee of a contract should be given "intervenor" status as a matter of right but disagrees that a five-day period be used as a deadline for requesting intervenor status. Section 17.3(l) has been modified to mandate that contract awardees be allowed intervention as a matter of right. The definition has also been clarified to state that for post-award protests, other than the awardees, no other interested parties will be allowed to participate as intervenors. This conforms to an ODRA interlocutory decision in the Protests of *Camber Corp. and Information Systems of Networks Corp.*, 98–ODRA–00079 and 98–ODRA–00080 (Consolidated) and is consistent with GAO procedures regarding intervention in protests.

Proposed § 17.15(f) had already established a deadline of two business days for requests of intervenor status. The two day period has not been increased to five days, in light of the ODRA's policy of providing expedited adjudication and dispute resolution.

Parties

The ABA notes that the definition of "Parties" under § 17.3(o) uses the word "protester" in the singular, implying that only one protester may be involved in a protest before the ODRA. The ABA suggests the use of the plural.

FAA Response: The FAA agrees with the ABA's comment and has modified the definition under § 17.3(o) accordingly.

Screening Information Request

The ABA finds the current definition of "Screening Information Request" in § 17.3(q) to be vague, and suggests alternative language along the lines found in the AMS definition of that term.

FAA Response: The FAA agrees and has incorporated AMS language into § 17.3(q) similar to that offered by the ABA.

Matters Not Subject to Protest

The ABA finds proposed § 17.11, which identifies matters that are not subject to protest, to be overly broad. The ABA contends that this section prevents parties from protesting such matters in any other alternative forum.

FAA Response: The FAA disagrees that this section is overly broad. The AMS does not contemplate such matters to be protestable in any forum.

Commencement of the Protest

The ABA questions the use of the word "cannot" in Proposed §§ 17.13(d) and 17.17(d) when those sections refer to the use of ADR, stating that it implies that the parties can only resort to the Default Adjudicative Process where ADR is not possible. The ABA suggests that the phrase "will not" be substituted for "cannot", so as to allow the parties more flexibility for the use of adjudication under the Default Adjudicative Process.

FAA Response: The FAA agrees. It was not the FAA's intent to limit the Default Adjudicative Process to cases where ADR is not possible. ADR, in all instances, must be voluntary, in order to be successful. By the same token, the ODRA's procedures are structured so as to assure that ADR techniques are given adequate consideration. The FAA has modified the language of the two sections as recommended by the ABA.

Suspension of Procurement

AMS § 3.9.3.2.1.6 contains a presumption that procurement activities will not be suspended during the pendency of a protest, unless there is a compelling reasons to do so. The AMS authorizes the ODRA to recommend to the Administrator that all or part of such activities be suspended when a protest is filed. The proposed rule at § 17.13(g) contains similar provisions. The ABA urges that the "regulatory presumption" against suspension be dropped, arguing that permitting performance to proceed during the pendency of a protest precludes an effective remedy.

In the alternative, the ABA suggests that protesters be allowed to respond to the agency's position regarding a requested suspension. It further recommends that the rule contain authority for the ODRA to "tailor the suspension to the specific exigencies of the protest by providing for consideration of limited or partial suspensions." Finally, the ABA questions the effectiveness of the authority for suspension being lodged at the Administrator's level and suggests that such authority be provided at the ODRA, so as to assure expeditious handling of suspension requests.

FAA Response: The FAA agrees in part and disagrees in part. One of the major features of the Competition in Contracting Act (CICA) is its automatic procurement stay provision pertaining to bid protests filed with the General Accounting Office. Section 348 of Public Law 104–50 mandated the creation of the AMS to provide for the "unique needs" of the FAA. By enacting this law, Congress sought in part to remedy unacceptable delays that had been encountered with FAA procurement. In Public Law 104–50, the Congress expressly exempts the FAA and its new AMS from the provision of statutes governing procurements at other Federal agencies, including notably with CICA. Thus, it was the intent of Congress that the CICA's automatic procurement should not be made part of the process for resolution of bid protests under the AMS. The presumption that contract performance be permitted to proceed, absent compelling reasons, gives effect to the intent of Congress that the FAA implement a system under which acquisitions are accomplished expeditiously. For this reason, the FAA will not adopt the ABA's suggestion that the presumption be dropped.

However, the final rule does adopt other ABA suggestions regarding suspension. It permits a protester to provide a response to the agency position, prior to the ODRA deciding on whether or not it will recommend suspension to the Administrator. Also, the final rule makes clear that suspensions may be tailored such that they are limited or partial suspension. As to the suggestion that suspension authority be delegated by the Administrator to the ODRA, it should be noted that, by delegation of July 29, 1998, the Administrator delegated to the ODRA Director the authority to issue

temporary stays for up to ten (10) business days, pending any Administrator's decision on a more permanent stay. That delegation was published in the **Federal Register** on September 14, 1998 (**Federal Register** Vol. 63, No. 177, at pp. 49151–49152). A copy may be found on the ODRA Website. The FAA believes that this delegation is sufficient to provide expeditious treatment of suspension requests.

Product Team Response

The ABA raises several issues regarding the Product Team Response required by § 17.17(f) of the proposed rule. (It should be noted that the term "Product Team" has been substituted for the term "Program Office" throughout the final rule, so as to be more consistent with terminology used in the FAA's AMS, and has been defined so as to conform to the AMS). First, the ABA objects to the language which requires the Response to include all documents which the Product Team "deem(s) relevant," urging that an "objective" standard for relevance should be applied. Second, the ABA suggests that, to assure that all relevant documents are provided, the Product Team be required to furnish, in advance of the Response submission, a list of documents to be included with the Response. Third, the ABA points out that the proposed rule fails to require the submission of a Product Team Response in the event the matter proceeds to ADR and the ADR is unsuccessful.

FAA Response: The FAA agrees that an objective standard of relevance is needed and that the rule needs to require the submission of a Product Team Response in the event ADR is unsuccessful. The language of § 17.17(f) has been modified to require simply the provision of "all relevant documents"—thus invoking an "objective" standard of relevance. As to the matter of requiring submission of a Product Team Response in the event ADR is unsuccessful, the new § 17.17(h) satisfies this concern.

As to the ABA suggestion regarding the furnishing of a list of documents in advance of the Product Team Response, the FAA does not concur with this suggestion. Such a requirement would mean one more written submission in a process that is to be focused on expediting dispute resolution and eliminating unnecessary paperwork.

Dismissal or Summary Decision of Protests—Opportunity to Respond

The ABA suggests that a new section be inserted into the rule to permit parties against whom a dismissal or summary decision is to be entered the opportunity of submitting to the ODRA a response, before the ODRA acts to recommend dismissal or summary decision.

FAA Response: The FAA agrees. A new § 17.19(e) has been included, which contains the suggested language.

Default Adjudicative Process for Protests—Discovery

The ABA finds absent from the proposed language of § 17.37(f) guidance regarding the standard to be employed by the Dispute Resolution Officer (DRO) or Special Master when considering the necessity for and scope of discovery in conjunction with protests. The proposed rule is criticized for lack of "predictability." The ABA suggests substitute language for § 17.37(f).

FAA Response: The FAA has adopted most, but no all of the suggested language for § 17.37(f). Although "predictability" is certainly a laudable goal, to achieve the major FAA goal of expeditious dispute resolution, significant flexibility in the process must also be maintained. What may be an appropriate level of discovery in one case may be wholly unwarranted in another. Accordingly, the language of the final rule, while providing additional guidance as to the types of discovery that may be allowed, continues to authorize the DRO or Special Master to exercise broad discretion in terms of managing discovery in each case.

Comments on Product Team Response

The ABA points out that the proposed rule omits any procedure for allowing comments by protesters and intervenors on the Product Team Response.

FAA Response: The FAA agrees. This omission was inadvertent and contrary to current ODRA practice. Section 17.37(c) of the final rule requires the submission of such comments within five (5) business days of the filing of the Product Team Response.

Hearings

The ABA notes that proposed § 17.37(g) speaks of "oral presentation" and does not distinguish between hearings and oral argument. The ABA suggests language that would provide additional guidance on when hearings would be conducted. Such language, the ABA urges, is needed to establish "predictability" regarding the ODRA process.

FAA Response: The FAA agrees. The final rule has been modified regarding ODRA hearings. More specifically, the final rule states that they are to be held "where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on an assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts." In addition, the final rule permits any party to a protest to request the ODRA to conduct a hearing and, in connection with any such request, provides that the ODRA shall conduct a hearing whenever one is requested, unless it finds that one is not necessary and that neither party will be prejudiced by limiting the record in the adjudication to the parties' written submissions. The final rule makes clear that all witnesses at such hearings will be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

Commencement of Default Adjudicative Process

The ABA takes issue with the provisions of proposed § 17.37(a) calling for the Default Adjudicative Process to commence on the later of (1) the filing of the Product Team Response, or (2) the submission to the ODRA of a joint notification that the ADR process has not resolved all outstanding issues, or that the 20 business day ADR period has or will expire with no reasonable probability of the parties achieving a resolution. The ABA states that this formulation creates a "significant disincentive for any protester to elect to proceed with the ADR process," since, once ADR is elected, the Default Adjudicative Process cannot start for at least 20 business days. The ABA urges that either party be permitted to "trigger" the Default Adjudicative Process at any time during ADR and recommends that the commencement of the Default Adjudicative Process be measured from the filing of a Product Team Response in all instances.

FAA Response: The FAA concurs that ADR is not intended to be and should not be an obstacle to efficient case resolution. Therefore, under new § 17.17(g), any party will be able to "trigger" the Default Adjudicative Process by notifying the ODRA that the parties have failed to achieve a complete resolution of the protest via ADR. Joint notification is no longer being required. Under § 17.37(a) of the final rule, the commencement of the Default Adjudicative Process is marked in all cases by the filing of the Product Team Response. The language regarding expiration of the 20 business day period has been deleted entirely.

Use and Definition of the Term "Contract Dispute"

The ABA suggests that the term "contract dispute" be changed to "contract claim" in various sections of the proposed rule and that separate definitions be provided for both "contract claim" and "contract dispute."

FAA Response: The FAA agrees. The definition of "contract dispute" has been clarified in the final rule. The term "claim" has now been incorporated within that definition. Additional language has been inserted into the definition of "contract dispute" in order to clarify that the term includes situations where (1) parties to contracts pre-dating the AMS elect generally to make such contracts "subject to the AMS," including the ODRA dispute resolution process; and (2) parties to such contracts, even where they do not make such a general election, agree to permit the ODRA to employ ADR techniques to resolve disputes under those contracts.

"Accrual" of a Contract Dispute

The ABA believes that the definition of "accrual of a contract dispute" is ambiguous and recommends that the FAA adopt a definition used by the Court of Federal Claims under the Tucker Act, or alternatively, adopt the definition of accrual that is incorporated into FAR § 33.201.

FAA Response: The FAA agrees. The FAA has adopted the Court of Federal Claims definition of "accrual of a contract claim" and has included it in § 17.3(b) of the final rule. Minor changes have been made to the ABA's proposed language so as to clarify that the determination as to whether there has been "active concealment or fraud" or facts "inherently unknowable" will rest with the ODRA (and, ultimately, with the Administrator).

Informal Resolution

The ABA finds confusing the provision in § 17.23(d) regarding an extension of the time under § 17.27 for the filing of a joint statements, in particular, whether the parties are entitled to only one extension.

FAA Response: The FAA agrees that the provision is confusing. The FAA has clarified the provision in proposed § 17.23(d) making plain that extensions for up to twenty (20) business days will be allowed by the ODRA, if informal resolution of the contract disputes appears probable.

Continued Performance

The ABA and AGC seek clarification as to the provision of proposed § 17.23(f) regarding the requirement for continued performance, pending resolution of a contract dispute. They also suggest that the FAA consider providing financing for such continued performance.

FAA Response: The FAA has decided to eliminate the provision in question from the final rule, since it relates to a matter of contract administration, rather than to procedures before the ODRA. The issues involved will be governed by the express terms of the pertinent FAA contract.

Filing Contract Disputes

The ABA suggests that FAA-initiated contract disputes not be considered as having been "filed" until they are received by the contractor from the contracting officer. The ABA perceives § 17.25(a) and (b) as pertaining only to contractor initiated disputes.

FAA Response: The FAA disagrees. The sections, as drafted, were intended to cover both contractor-initiated and FAA-initiated disputes. In order for the ODRA to manage the dispute resolution process properly, the time for commencement in either case must be measured by the ODRA's receipt of the contract dispute. Just as there need not be an initial submittal of a claim to an FAA contracting officer (CO) and the issuance of a CO final decision as prerequisites to the contractor filing a contract dispute with the ODRA, the same must be true for claims against contractors by FAA product teams. Any concern regarding the contractor having adequate notice of the FAA's claim is satisfied by the provision of § 17.25(d), which requires service if a copy of the contract dispute by means reasonably calculated to be received on the same day as the contract dispute is filed with the ODRA.

Six Months' Time Limit

The ABA questions the six month time limitation specified by § 17.25(c) for the filing of contract disputes and suggests that the limitation be extended to six years, so as to conform to that established by the Federal Acquisition Streamlining Act of 1994, Public Law 103–355, 108 Stat. 3243 (1994)("FASA") for claims under the CDA. The ABA further suggests that the time limitation be identical for both contractor and FAA claims. Proposed § 17.25(c) concerns the possibility of different time limitations established by contract provision, and the requirement that such provisions govern over the limitation period set forth in the rule. The ABA proposes that, if the contract specified period is less than six years, it will only be enforced on the contractor if agreed to, and if the failure to agree does not constitute grounds for denying contract award. The ABA suggests language for § 17.25(c) to address this modification. Finally, with regard to the exception of the time limitation for FAA-initiated claims relating to warranty, fraud, or latent defects, the ABA suggests that that exception be conditioned on there being a limitation imposed on the FAA for filing of such claims. Specifically, the ABA would bar any such claims if filed more than six years after the FAA knows or should have known of the "warranty issues, fraud or latent defects."

FAA Response: The FAA agrees that the limitation period should be identical for both contractor and government claims. However, the FAA does not accept the suggestion that that period should be six years. The FASA, which amended the CDA to implement a six year time limitation, is a statute which is expressly excluded from applicability to the AMS. The FAA believes that the two (2) year limitation period incorporated in the final rule (subject only to different periods specified in contracts entered into prior to the effective date of this rule) would be less disruptive to the operations of the FAA's product teams. Such a time limitation would allow adequate opportunity for resolution of contract claims at the contracting officer level and would not necessitate the filing of protective litigation.

The FAA does agrees that there should be some limitation on contract disputes before the ODRA relating to FAA claims against contractors for gross defects amounting to fraud and/or latent defects. Accordingly, the final rule provides for the same two (2) year time limitation to apply to such contract disputes, the two (2) year period to begin from the point when the FAA knew or should have known of the fraud or latent defects. Regarding warranty claims, the time limitation for asserting such claims would be that specified in any contract warranty provision. As for any potential variations in time limitations established by contract provision, the final rule allows such variances only in terms of longer time limitations. The two (2) year period thus is established as a minimum.

Right to an Adjudicative Hearing

The ABA urges that a hearing be provided as a matter of right in all contract disputes under the Default Adjudicative Process and opines that such a hearing would be essential to ensure due process of law.

FAA Response: The FAA disagrees that a hearing must be provided

automatically as a matter of right in every case. Even so, the FAA is committed to providing fair and complete consideration of all relevant evidence pertaining to the contract disputes before the ODRA. Accordingly, the final rule, while emphasizing that the ODRA DRO or Special Master will have discretion as to whether a hearing will be conducted in any given case, provides guidance as to when hearings will be conducted. More specifically, § 17.39(h) now calls for hearings "where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts." The final rule also permits any party to a contract dispute to request the ODRA to conduct a hearing and calls for the ODRA to conduct a hearing and calls for the ODRA to conduct hearings whenever requested, unless it finds specifically that the lack of a hearing will not result in prejudice to either party. The final rule makes clear that all witnesses at such hearings will be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

Discovery

The ABA suggests that the Default Adjudicative Process for contract disputes fails to afford participants the opportunity for "full discovery" and takes issue with the language of proposed § 17.39(e)(1), which calls for DRO or Special Master to determine the "minimum amount of discovery required to resolve the dispute." Further, the ABA asserts that the matter of discovery should be left to the control of each party, "subject only to the long-established rules of reasonableness and relevance."

FAA Response: The FAA agrees. The final rule at § 17.39(e)(1) was revised to speak of the "appropriate amount of discovery required to resolve the dispute." This language addresses the ABA's concern regarding the sue of the term "minimum." As to the matter of who controls the discovery process, the definition of discovery in the final rule, § 17.34(i), in addition to contemplating ODRA management and direction as to discovery, was revised to provide for voluntary discovery by the parties.

Interest

The ABA and AGC take issue with the proposed § 17.34(m), which deals with the recovery of interest on contractor claims, and suggests that the FAA would be subject to the payment of interest under the CDA. They recommend, "at a minimum, the FAA provide, by regulation, entitlement to interest."

FAA Response: The FAA disagrees that the CDA has applicability to contract claims under the AMS. In any event, because the payment of interest would be a matter of contract administration, rather than ODRA procedure, the provision in question has been eliminated from the final rule. The issue of interest is to be governed by the terms of FAA contract documents.

Procedural Predictability and Efficiency

The ABA generally raised concerns regarding the rule's "clarity and predictability", claiming that the rule should strive to minimize litigation over procedural issues. The ABA asserts that the rules must afford "adequate administrative and judicial processes and remedies that provide for the independent, impartial, efficient and just resolution of controversies."

FAA Response: The FAA agrees. To promote the goal of minimizing litigation over procedural issues, and to provide clarity and predictability, several sections of the rule were revised. Section 17.13(d) now calls for status conference for protests to be mandatory (using the work "shall" rather than "may"), in order to satisfy process predictability concerns. Likewise, § 17.5(b) has been clarified so as to indicate that the ODRA has authority, within its delegation from the Administrator, to "impose sanctions or [take] other disciplinary actions" in furtherance of the "efficient resolution of disputes."

For the sake of clarity, § 17.13(c) was revised to include additional language, making clear that the ODRA may extend for good cause specified time limitations other than for the initial protest filing. Proposed § 17.13(e), which seemed to allow the ODRA to waive the limitation regarding initial protest filings, has been deleted to eliminate an apparent ambiguity regarding such waiver.

A new § 17.13(e) has been inserted to state what had initially been contained in proposed § 17.17(a), that the ODRA Director will designate either Dispute Resolution Officers (DROs) or Special Masters for protests. Inclusion of this new section is consistent with the ABA's goal of process predictability. The additional reference to "Special Masters" in § 17.17 (e) and (f) was to clarify that DROs are not used in every case.

New § 17.17(a) (former § 17.17(b)) includes the words "as part of protest" to clarify that the request for a suspension is to be part of the protest document itself. Section 17.17(b)(50 of the final rule (formerly § 17.17(c)(5)) adds the clarifying language "or arrange for';' to the word "conduct" to cover situations where an outside neutral has been agreed upon to handle ADR proceedings, including the provision of early neutral evaluation. This section likewise has been revised by inserting for that purpose the words "or other Neutral or Compensated Neutral, at the discretion of the ODRA, and/or based upon the agreement of the parties or request of any party(ies) seeking such evaluation." This clarifying language foster process predictability.

Section 17.17(c)(1) has been clarified to call for a joint statement where the parties have decided to "pursue ADR proceedings in lieu of adjudication in order to resolve the protest" (instead of merely referring to their decision to "pursue ADR to resolve the protest"). The phrase "A joint written explanation" in § 17.17(c)(2) has been clarified to read "Joint or separate written explanations," to recognize the possibility that the parties may not agree to a joint submission. The balance of that paragraph has been revised to eliminate reference to the term "parties," since intervenors (included within the definition of "parties") do not participate in the decision to pursue ADR. Sections 17.17 (d) and (e) of the final rule use the phrases "Product Team and protester" and "Product Team or protester" for this same reason.

Section 17.17(d) has been clarified to explicitly state that "Agreement of any intervenor(s) to the use of ADR or the resolution of a dispute through ADR shall not be required." Section 17.17(e) has also been clarified to state that the ODRA may alter the schedule for filing of the Product Team response, in order to accommodate requirements of a particular protest. These clarifying revision support the goal of minimizing litigation over procedural issues.

Section 17.17(f) clarifies the time for circulating to other parties copies of the Product Team Response and requires a more specific format for the information to be provided as part of the Product Team Response. The timing for provision of copies of the Product Team response to the protester and intervenor has been clarified to require that such copies be furnished on the same date as it is filed with the ODRA, if practicable, but in any event no later than one (1) business day after such filing. Similarly, § 17.25(a) specifies more explicitly the format to be used for contract dispute filings for those reasons. Section 17.19(a)(2) clarifies the basis for

possible dismissal or summary dismissal of a protest to state that such dismissal may be done if the protest is "frivolous, without basis in factor law, or (fails) to state a claim upon which relief may be had."

Two potential protest remedies previously grouped (recompetition and termination for convenience) are stated separately in § 17.21(a) of the final rule, to clarify an ambiguity as to whether the ODRA may recommend one or both of these remedies in any given case. Section 17.23(a) of the final rule has been clarified to include the phrase "subject to the AMS, "rather than "entered into pursuant to the AMS," in order to cover situations where parties to a pre-AMS contract opt to subject the contract to the AMS and its ODRA dispute resolution process. Again, these changes foster process predictability.

A substitute § 17.23(f) has been inserted (in lieu of the deleted § 17.23(f), which had dealt with the obligation to continue performance pending resolution of a dispute). The substitute section provides a remedies section for contract disputes. This section parallels the remedies section for bid protests and serves to make the provisions of the rule consistent.

Section 17.27(a) is revised to allow the parties twenty (20) business days to submit a joint statement in order to promote expeditious resolution. It also uses the phrases "joint or separate statements" and "written explanation(s,)" in recognition of the possibility that parties may not be willing to agree to a joint submission section information 17.27(d) has been revised by deleting the word "joint" for the same reason. However, when speaking of a request for ADR, § 17.27(b)(1) specifies that such request must be "joint." This is in recognition that ADR is a voluntary process that must be mutually entered into by the parties.

To foster predictability of the process, § 17.31(b) was revised to insert language clarifying that in all cases the parties will be expected to explore ADR. Additional clarifying language was included in that section to address the assignment by the ODRA of a DRO to explore ADR options with the parties and to arrange for early neutral evaluation of the merits of a case, at a party's request. The final rule has been revised to delete § 17.359c), which had provided for the automatic appointment of a DRO for small dollar value matters or matters involving simplified acquisitions, so long as such appointment was not objected to by the parties. Specifying the automatic use of ADR in this context was inconsistent with the balance of the ADR section of the rule and was considered contrary to the basis concept that ADR is to be a completely voluntary process.

Section 17.37(b) clarifies that it is the Director of the ODRA who selects the DRO or Special Master to conduct fact findings; thus serving the interest of process predictability. Section 17.37(j) has been clarified to state only that, in arriving at findings and recommendations relating to protests, DROs and Special Masters are to "consider" whether or not the Product Team actions in question had a rational basis, and whether or not the Product Team decision under question was arbitrary, capricious or an abuse of discretion.

Finally, a new § 17.45 has been added to address concerns regarding predictability in the relationship of this rule to changes in future FAA policy. This section requires all amendments to the AMS, standard contract forms and clauses,and any guidance to FAA contracting officials, to conform with the provisions of the final rule.

Additional Clarifying Changes in the Final Rule

In addition to the revisions of the proposed rule made in response to comments received, the FAA has made a number of revisions in order to clarify the language of the rule and to correct awkward language without substantive changes. More specifically, 14 CFR Part 14, § 14.05(b) was modified to add the language "or such rate as prescribed by 5 U.S.C. 504,"in order to include any subsequent rate adjustments that might be permitted for attorneys' fees and other costs under revisions to the EAJA. Section 14.05(e) was modified to provide EAJA recovery for attorneys' fees and costs incurred in the Default Adjudicative Process under 14 CFR part 17 and the AMS.

Section 17.7(d) was deleted and its language combined with similar language in § 17.43. Section 17.11, which had previously made non-protestable "FAA purchased from or through federal * * * governments" now reads "FAA purchases from or through other federal agencies." Section 17.13(c) was revised to add the word "protest" in describing filing time limitations, for the sake of clarity. Section 17.13(c) was revised to correct a mistaken reference to § 17.17 (now referring to § 17.15). Section 17.13(d) has been modified to eliminate redundancy with other sections and now merely makes cross-reference to those sections.

The words "for adjudication" were included in § 17.17(f) for the sake of clarity. Section 17.15(a)(3) has been revised to clarify ambiguities in the language regarding protest filing timeliness. The wording of § 17.15(f) has been rearranged and the language "if known" added to the requirement for notifying other interested parties of the existence of a protest, so as to clarify the obligation of the FAA Contracting Officer. Former § 17.17(a) has been eliminated, since its content had been inserted as new § 17.13(e).

The word "part" in § 17.23(a) has been revised to read "subpart," to clarify that the covered contract disputes are to be resolved under subpart C of the rule, entitled "Contract Disputes." Rather than have a redundant provision for the ODRA's granting of time extensions, § 17.27(a) of the final rule merely contains a cross-reference to § 17.23(d). In § 17.29(d) of the final rule, the words "or the Administrator's delegee" have been added to conform to other references to Administrator's orders within the rule. To avoid confusion, the words "Associate Chief Counsel and" were deleted from both §§ 17.37(l) and 17.39(l).

Former § 17.37(m) was eliminated as redundant to Subpart F regarding final orders. In its stead, the final rule contains a clarifying provision with respect to ODRA time extensions. This same substitution was made for former § 17.39(m) as well. Besides eliminating redundancies in the rule, these substitutions also satisfy the ABA's concern for predictability of the process. A new § 17.39(k) was inserted to allow the ODRA Director to confer with the DRO or Special Master during the pendency of adjudication of contract disputes. This insertion was to make the process for contract disputes consistent with that specified for protests. The new § 17.39(k) is virtually identical to the language regarding adjudication of protests and the role of the ODRA Director contained in § 17.37(h). Finally, in § 17.43, the words "FAA Chief Counsel" were substituted for "Product Team attorney" so as to provide consistency with other FAA regulations.

Paperwork Reduction Act

Information collection requirements in the amendment of 14 part 14 and the addition of part 17 to the Code of Federal Regulations (14 CFR parts 14 and 17) have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0632.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is not a comparable rule under ICAO standards.

Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Evaluation Summary

Four principal requirements pertain to the economic impacts of changes to the Federal Regulations. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify an existing regulation after consideration of the expected benefits to society and the expected costs. The order also requires Federal agencies to assess whether a final rule is considered a "significant regulatory action." Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4, Department of Transportation Appropriations Act (November 15, 1995), requires Federal agencies to assess the impact of any Federal mandates on State, Local, Tribal governments, and the private sector.

In conducting these analyses, the FAA has determined that this rule will generate cost-savings that will exceed any costs, and is not "significant" as defined under section 3(f) of Executive Order 12866 and Department of Transportation's (DOT) policies and procedures (44 FR 11034, February 26, 1979). In addition, under the Regulatory Flexibility Determination, the FAA certifies that this proposal will not have a significant impact on a substantial number of small entities. Furthermore, this proposal will not impose restraints on international trade. Finally, the FAA has determined that the proposal will not impose a Federal mandate on state, local, or tribal governments, or the private sector of $100 million per year. These analyses, available in the docket, are summarized below.

Executive Order 12866 and DOT's Policies and Procedures

Under Executive Order 12866, each Federal agency shall assess both the costs and the benefits of final regulations while recognizing that some costs and benefits are difficult to quantify. A final rule is promulgated only upon a reasoned determination that the benefits of the final rule justify its costs.

In this final rule, the establishment of procedures for protests and contract disputes by the Office of Dispute Resolution for Acquisition (ODRA), under the FAA's new Acquisition Management System, will provide a cost savings to the private sector (protesters and contractors). To resolve protests and contract disputes with the FAA, offerors and contractors will realize a cost savings of $1,000 to $1 million per case, and the FAA will realize an average cost savings of $2,300 per protest case and $4,400 per contract dispute. Costs for this final rule are estimated to be about $500 or less per case for the private sector to abide by the procedures of the ODRA, and no additional costs will be attributed to the FAA for implementing such procedures. Therefore, the FAA concludes that not only do the benefits justify the costs, but that benefits actually exceed the costs.

The final rule will also not be considered a significant regulatory action because (1) it does not have an annual effect of $100 million or more or adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local or Tribal governments or communities; (2) it does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) it does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; and (4) it does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or principles set forth in the Executive Order. Because the final rule is not considered significant under these criteria, it was not reviewed by the Office of Management and Budget (OMB) for consistency with applicable law, the President's priorities, and the principles set forth in this Executive Order nor was OMB involved in deconflicting this final rule with ones from other agencies.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (the Act) establishes "as principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that and to explain the rationale for their actions, the Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a Regulatory Flexibility Analysis (RFA) as described in the Act.

However, if an agency determines that a final rule is not expected to have a significant economic impact on a substantial number of entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this final rule and determined that it will not have a significant economic impact on a substantial number of small entities (protesters and contractors). Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities for the following reason: the final rule will provide an estimated cost savings of $1,000 to $1 million per case in resolving protests and disputes with the FAA, while requiring about 4500 or less per case per entity to resolve the issue. For small entities, the FAA estimates that cost savings per case will be closer to $1,000 than $1 million and concludes there will be no significant economic impact on small entities. The FAA solicited comments from affected entities with respect to this finding and determination in the Notice of Proposed Rulemaking, and no comments were received.

Final International Trade Impact Assessment

The FAA has determined that the final rule will neither affect the sale of aviation products and services in the United States nor the sale of U.S. products and services in foreign countries.

Final Unfunded Mandates Reform Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Reform Act) enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a final agency rule that may result in the expenditure by State, Local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

Section 204(a) of the Reform Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, Local, and Tribal governments on a final "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Reform Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, Local, and Tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year.

Section 203 of the Reform Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year, therefore the requirements of the Reform Act do not apply.

List of Subjects

14 CFR Part 14

Claims, Equal access to justice, Lawyers, Reporting and recordkeeping requirements.

14 CFR Part 17

Administrative practice and procedure, Alternative Dispute Resolution (ADR), Protests, Authority delegations (Government agencies), Government contracts, Government procurement.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 14 and adds part 17 of Title 14, Chapter I, Code of Federal Regulations as follows:

PART 14—RULES IMPLEMENTING THE EQUAL ACCESS TO JUSTICE ACT OF 1980

1. The authority citation for part 14 is revised to read as follows:

Authority: 5 U.S.C. 504; 49 U.S.C. 106(f), 40113, 46104 and 47122.

2. Amend § 14.02 by revising paragraph (a) as follows:

§ 14.02 Proceedings covered.

(a) The Act applies to certain adversary adjudications conducted by the FAA under 49 CFR part 17 and the Acquisition Management System (AMS). These are adjudications under 5 U.S.C. 554, in which the position of the FAA is represented by an attorney or other representative who enters an appearance and participates in the proceeding. This subpart applies to proceedings under 49 U.S.C. 46301, 46302, and 46303 and to the Default Adjudicative Process under part 17 of this chapter and the AMS.

* * * * *

3. Amend § 14.03 by revising paragraph (a) and (f) to read as follows:

§ 14.03 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 504(b)(1)(B) and 5 U.S.C. 551(3). The applicant must show that it meets all conditions or eligibility set out in this subpart.

* * * * *

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the ALJ or adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the ALJ or adjudicative officer may determine that financial relationships of the applicant, other than those described in this paragraph, constitute special circumstances that would make an award unjust.

* * * * *

4. Amend § 14.05 by revising paragraphs (b), (c), and (e) to read as follows:

§ 14.05 Allowance of fees and expenses.

* * * * *

(b) No award for the fee of an attorney or agent under this part may exceed $125 per hour, or such rate as prescribed by 5 U.S.C. 504. No award to compensate an expert witness may exceed the highest rate at which the agency pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the ALJ or adjudicative officer shall consider the following:

(1) If the attorney, agent, or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

* * * * *

(e) Fees may be awarded only for work performed after the issuance of a complaint, or in the Default Adjudicative Process for a protest or contract dispute under part 17 of this chapter and the AMS.

5. Amend § 14.11 by revising paragraph (c) to read as follows:

§ 14.11 Net worth exhibit.

* * * * *

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of the net worth exhibit, or any part of it, may submit that portion of the exhibit directly to the ALJ or adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information.

(1) The motion shall describe the information sought to be withheld and explain, in detail, why it should be exempt under applicable law or regulation, why public disclosure would adversely affect the applicant, and why

disclosure is not required in the public interest.

(2) The net worth exhibit shall be served on the FAA counsel, but need not be served on any other party to the proceeding.

(3) If the ALJ or adjudicative officer finds that the net worth exhibit, or any part of it, should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the FAA's established procedures.

6. Amend § 14.20 by revising paragraphs (a) and (c) to read as follows:

§ 14.20 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding, but in no case later than 30 days after the FAA Decisionmaker's final disposition of the proceeding, or service of the order of the Administrator in a proceeding under the AMS.

* * * * *

(c) For purposes of this part, final disposition means the later of:

(1) Under part 17 of this chapter and the AMS, the date on which the order of the Administrator is served;

(2) The date on which an unappealed initial decision becomes administratively final;

(3) Issuance of an order disposing of any petitions for reconsideration of the FAA Decisionmaker's final order in the proceeding;

(4) If no petition for reconsideration is filed, the last date on which such a petition could have been filed; or

(5) Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

7. Revise § 14.21 to read as follows:

§ 14.21 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 14.11(b) for confidential financial information. Where the proceeding was held under part 17 of this chapter and the AMS, the application shall be filed with the FAA's attorney and with the Office of Dispute Resolution for Acquisition.

8. Amend § 14.22 by revising paragraph (b) to read as follows:

§ 14.22 Answer to application.

* * * * *

(b) If the FAA's counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the ALJ or adjudicative officer upon request by the FAA's counsel and the applicant.

* * * * *

9. Revise § 14.24 to read as follows:

§ 14.24 Comments by other parties.

Any party to a proceeding other than the applicant and the FAA's counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the ALJ or adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

10. Amend § 14.26 by revising paragraph (a) to read as follows:

§ 14.26 Further proceedings.

(a) Ordinarily the determination of an award will be made on the basis of the written record; however, on request of either the applicant or agency counsel, or on his or her own initiative, the ALJ or adjudicative officer assigned to the matter may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted as promptly as possible.

* * * * *

11. Revise § 14.27 to read as follows:

§ 14.27 Decision.

(a) The ALJ shall issue an initial decision on the application within 60 days after completion of proceedings on the application.

(b) An adjudicative officer in a proceeding under part 17 of this chapter and the AMS shall prepare a findings and recommendations for the Office of Dispute Resolution for Acquisition.

(c) A decision under paragraph (a) or (b) of this section shall include written findings and conclusions on the applicant's eligibility and status as prevailing party and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the FAA's position was substantially justified, or whether special circumstances make an award unjust.

12. Revise § 14.28 to read as follows:

§ 14.28 Review by FAA decisionmaker.

(a) In proceedings other than those under part 17 of this chapter and the AMS, either the applicant or the FAA counsel may seek review of the initial decision on the fee application. Additionally, the FAA Decisionmaker may decide to review the decision on his/her own initiative. If neither the applicant nor the FAA's counsel seeks review within 30 days after the decision is issued, it shall become final. Whether to review a decision is a matter within the discretion of the FAA Decisionmaker. If review is taken, the FAA Decisionmaker will issue a final decision on the application or remand the application to the ALJ who issue the initial fee award determination for further proceedings.

(b) In proceedings under part 17 of this chapter and the AMS, the adjudicative officer shall prepare findings and recommendations for the Office of Dispute Resolution for Acquisition with recommendations as to whether or not an award should be made, the amount of the award, and the reasons therefor. The Office of Dispute Resolution for Acquisition shall submit a recommended order to the Administrator after the completion of all submissions related to the EAJA application. Upon the Administrator's action, the order shall become final, and may be reviewed under 49 U.S.C. 46110.

13. Add new part 17 to 14 CFR Chapter I, Subchapter B, to read as follows:

PART 17—PROCEDURES FOR PROTESTS AND CONTRACTS DISPUTES

Subpart A—General

Sec.
17.1 Applicability.
17.3 Definitions.
17.5 Delegation of authority.
17.7 Filing and computation of time.
17.9 Protective orders.

Subpart B—Protests

17.11 Matters not subject to protest.
17.13 Dispute resolution process for protests.
17.15 Filing a protest.
17.17 Initial protest procedures.
17.19 Dismissal or summary decision of protest.
17.21 Protest remedies.

Subpart C—Contract Disputes

17.23 Dispute resolution process for contract disputes.
17.25 Filing a contract dispute.
17.27 Submission of joint or separate statements.
17.29 Dismissal or summary decision of contract disputes.

Subpart D—Alternative Dispute Resolution

17.31 Use of alternative dispute resolution.
17.33 Election of alternative dispute resolution process.
17.35 Selection of neutrals for the alternative dispute resolution process.

Subpart E—Default Adjudicative Process

17.37 Default adjudicative process for protests.
17.39 Default adjudicative process for contract disputes.

Subpart F—Finality and Review

17.41 Final orders.
17.43 Judicial review.
17.45 Conforming amendments.

Appendix A to Part 17—Alternative Dispute Resolution (ADR)

Authority: 5 U.S.C. 570–581, 49 U.S.C. 106(f)(2), 40110, 40111, 40112, 46102, 46014, 46105, 46109, and 46110.

Subpart A—General

§ 17.1 Applicability.

This part applies to all protests or contract disputes against the FAA that are brought on or after June 28, 1999, with the exception of those contract disputes arising under or related to FAA contracts entered into prior to April 1, 1996.

§ 17.3 Definitions.

(a) *Accrual* mean to come into existence as a legally enforceable claim.

(b) *Accrual of a contract claim* means that all events relating to a claim have occurred which fix liability of either the government or the contractor and permit assertion of the claim, regardless of when the claimant actually discovered those events. For liability to be fixed, some injury must have occurred. Monetary damages need not have been incurred, but if the claim is for money, such damages must be capable of reasonable estimation. The accrual of a claim or the running of the limitations period may be tolled on such equitable grounds as where the office of Dispute Resolution for Acquisition determines that there has been active concealment or fraud or where it finds that the facts were inherently unknowable.

(c) *Acquisition Management System* (AMS) establishes the policies, guiding principles, and internal procedures for the FAA's acquisition system.

(d) *Administrator* means the Administrator of the Federal Aviation Administration.

(e) *Alternative Dispute Resolution* (ADR) is the primary means of dispute resolution that would be employed by the FAA's Office of Dispute Resolution for Acquisition. See Appendix A of this part.

(f) *Compensated Neutral* refers to an impartial third party chosen by the parties to act as a facilitator, mediator, or arbitrator functioning to resolve the protest or contract dispute under the auspices of the Office of Dispute Resolution for Acquisition. The parties pay equally for the services of a Compensated Neutral, unless otherwise agreed to by the parties. A Dispute Resolution Officer (DRO) or Neutral cannot be a Compensated Neutral.

(g) *Contract Dispute*, as used in this part, means a written request to the Office of Dispute Resolution for Acquisition seeking resolution, under an existing FAA contract subject to the AMS, of a claim for the payment of money in a sum certain, the adjustment or interpretation of contract terms, or for other relief arising under, relating to or involving an alleged breach of that contract. A contract dispute does not require, as a prerequisite, the issuance of a Contracting Officer final decision. Contract disputes for purposes of ADR only may also involve contracts not subject to the AMS.

(h) *Default Adjudicative Process* is an adjudicative process used to resolve protests or contract disputes where the parties cannot achieve resolution through informal communication or the use of ADR. The Default Adjudicative Process is conducted by a DRO or Special Master selected by the Office of Dispute Resolution for Acquisition to serve as "adjudicative officers," as that term is used in part 14 of this chapter.

(i) *Discovery* is the procedure where opposing parties in a protest or contract dispute may, either voluntarily or to the extent directed by the Office of Dispute Resolution for Acquisition, obtain testimony from, or documents and information held by, other parties or non-parties.

(j) *Dispute Resolution Officer* (DRO) is a licensed attorney reporting to the Office of Dispute Resolution for Acquisition. The term DRO can include the Director of the Office of Dispute Resolution for Acquisition, Office of Dispute Resolution for Acquisition staff attorneys or other FAA attorneys assigned to the Office of Dispute Resolution for Acquisition.

(k) *An interested party*, in the context of a bid protest, is one whose direct economic interest has been or would be affected by the award or failure to award an FAA contract. Proposed subcontractors are not "interested parties" within this definition and are not eligible to submit protests to the Office of Dispute Resolution for Acquisition.

(l) An *intervenor* is an interested party other than the protester whose participation in a protest is allowed by the Office of Dispute Resolution for Acquisition. For a post-award protest, the awardee of the contract that is the subject of the protest shall be allowed, upon request, to participate as an intervenor in the protest. In such a protest, no other interested parties shall be allowed to participate as intervenors.

(m) *Neutral* refers to an impartial third party in the ADR process chosen by the Office of Dispute Resolution for Acquisition to act as a facilitator, mediator, arbitrator, or otherwise to resolve a protest or contract dispute. A Neutral can be a DRO or a person not an employee of the FAA who serves on behalf of the Office of Dispute Resolution for Acquisition.

(n) The *Office of Dispute Resolution for Acquisition* (ODRA), under the direction of the Director, acts on behalf of the Administrator to manage the FAA Dispute Resolution Process, and to recommend action to be the Administrator on matters concerning protests or contract disputes.

(o) *Parties* include the protester(s) or (in the case of a contract dispute) the contractor, the FAA, and any intervenor(s).

(p) *Product Team*, as used in these rules, refers to the FAA organization(s) responsible for the procurement activity, without regard to funding source, and includes the Contracting Officer (CO) and assigned FAA legal counsel, when the FAA organization(s) represent(s) the FAA as a party to a protest or contract dispute before the Office of Dispute Resolution for Acquisition. The CO is responsible for all Product Team communications with and submissions to the Office of Dispute Resolution for Acquisition through assigned FAA counsel.

(q) *Screening Information Request* (SIR) means a request by the FAA for documentation, information, presentations, proposals, or binding offers concerning an approach to meeting potential acquisition requirements established by the FAA. The purpose of a SIR is for the FAA to obtain information needed for it to proceed with a source selection decision and contract award.

(r) A *Special Master* is an attorney, usually with extensive adjudicative experience, who has been assigned by the Office of Dispute Resolution for Acquisition to act as its finder of fact, and to make findings and recommendations based upon AMS policy and applicable law and authorities in the Default Adjudicative Process.

§ 17.5 Delegation of authority.

(a) The authority of the Administrator to conduct dispute resolution proceedings concerning acquisition matters, is delegated to the Director of the Office of Dispute Resolution for Acquisition.

(b) The Director of the Office of Dispute Resolution for Acquisition may redelegate to Special Masters and DROs such delegated authority in paragraph (a) of this section as is deemed necessary by the Director for efficient resolution of an assigned protest or contract dispute, including the imposition of sanctions or other disciplinary actions.

§ 17.7 Filing and computation of time.

(a) Filing of a protest or contract dispute may be accomplished by mail, overnight delivery, hand delivery, or by facsimile. A protest or contract dispute is considered to be filed on the date it is received by the Office of Dispute Resolution for Acquisition during normal business hours. The Office of Dispute Resolution for Acquisition's normal business hours are from 8:30 a.m. to 5 p.m. est or edt, whichever is in use. A protest or contract dispute received via mail, after the time period prescribed for filing, shall not be considered timely filed even though it may be postmarked within the time period prescribed for filing.

(b) Submissions to the Office of Dispute Resolution for Acquisition after the initial filing of a contract dispute may be accomplished by any means available in paragraph (a) of this section. Submissions to the Office of Dispute Resolution for Acquisition after the initial filing of a protest may only be accomplished by overnight delivery, hand delivery or facsimile.

(c) The time limits stated in this part are calculated in business days, which exclude weekends and Federal holidays. In computing time, the day of the event beginning a period of time shall not be included. If the last day of a period falls on a weekend or a Federal holiday, the first business day following the weekend or holiday shall be considered the last day of the period.

§ 17.9 Protective orders.

(a) The Office of Dispute Resolution for Acquisition may issue protective orders addressing the treatment of protected information, either at the request of a party or upon its own initiative. Such information may include proprietary, confidential, or source-selection-sensitive material, or other information the release of which could result in a competitive advantage to one or more firms.

(b) The terms of the Office of Dispute Resolution for Acquisition's standard protective order may be altered to suit particular circumstances, by negotiation of the parties, subject to the approval of the Office of Dispute Resolution for Acquisition. The protective order establishes procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information.

(c) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for access to the material under the order by submitting an application to the Office of Dispute Resolution for Acquisition, with copies furnished simultaneously to all parties. The application shall establish that the applicant is not involved in competitive decisionmaking for any firm that could gain a competitive advantage from access to the protected information and that the applicant will diligently protect any protected information received from inadvertent disclosure. Objections to an applicant's admission shall be raised within two (2) days of the application, although the Office of Dispute Resolution for Acquisition may consider objections raised after that time for good cause.

(d) Any violation of the terms of a protective order may result in the imposition of sanctions or the taking of the actions as the Office of Dispute Resolution for Acquisition deems appropriate.

(e) The parties are permitted to agree upon what material is to be covered by a protective order, subject to approval by the Office of Dispute Resolution for Acquisition.

Subpart B—Protests

§ 17.11 Matters not subject to protest.

The following matters may not be protested before the Office of Dispute Resolution for Acquisition:

(a) FAA purchases from or through, state, local, and tribal governments and public authorities;

(b) FAA purchases from or through other federal agencies;

(c) Grants;

(d) Cooperative agreements;

(e) Other transactions which do not fall into the category of procurement contracts subject to the AMS.

§ 17.13 Dispute resolution process for protests.

(a) Protests concerning FAA SIRs or contract awards shall be resolved pursuant to this part.

(b) The offeror initially should attempt to resolve any issues concerning potential protests with the CO. The CO, in coordination with FAA legal counsel, will make reasonable efforts to answer questions promptly and completely, and, where possible, to resolve concerns or controversies.

(c) Offerors or prospective offerors shall file a protest with the Office of Dispute Resolution for Acquisition in accordance with § 17.15. The protest time limitations set forth in § 17.15 will not be extended by attempts to resolve a potential protest with the CO. Other than the time limitations specified in § 17.15 for the filing of protests, the Office of Dispute Resolution for Acquisition retains the discretion to modify any time constraints imposed in connection with protests.

(d) In accordance with § 17.17, the Office of Dispute Resolution for Acquisition shall convene a status conference for the protest. Under the procedures set forth in that section, the parties generally will either decide to utilize Alternative Dispute Resolution (ADR) techniques to resolve the protest, pursuant to subpart D of this part, or they will proceed under the Default Adjudicative Process set forth in subpart E of this part. However, as provided in § 17.31(c), informal ADR techniques may be utilized simultaneously with ongoing adjudication.

(e) The Office of Dispute Resolution for Acquisition Director shall designate Dispute Resolution Officers (DROs) or Special Masters for protests.

(f) Multiple protests concerning the same SIR, solicitation, or contract award may be consolidated at the discretion of the Office of Dispute Resolution for Acquisition, and assigned to a single DRO or Special Master for adjudication.

(g) Procurement activities, and, where applicable, contractor performance pending resolution of a protest shall continue during the pendency of a protest, unless there is a compelling reason to suspend or delay all or part of the procurement activities. Pursuant to §§ 17.15(d) and 17.17(b), the Office of Dispute Resolution for Acquisition may recommend suspension of award or delay of contract performance, in whole or in part, for a compelling reason. A decision to suspend or delay procurement activities or contractor performance would be made in writing by the FAA Administrator or the Administrator's delegee.

§ 17.15 Filing a protest.

(a) Only an interested party may file a protest, and shall initiate a protest by filing a written protest with the Office of Dispute Resolution for Acquisition within the times set forth below, or the protest shall be dismissed as untimely:

(1) Protests based upon alleged improprieties in a solicitation or a SIR that are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for the receipt of initial proposals.

(2) In procurements where proposals are requested, alleged improprieties that do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation;

(3) For protests other than those related to alleged solicitation improprieties, the protest must be filed on the later of the following two dates:

(i) Not later than seven (7) business days after the date the protester knew or should have known of the grounds for the protest; or

(ii) If the protester has requested a post-award debriefing from the FAA Product Team, not later than five (5) business days after the date on which the Product Team holds that debriefing.

(b) Protest shall be filed at:

(1) Office of Dispute Resolution for Acquisition, AGC–70, Federal Aviation Administration, 400 7th Street, SW, Room 8332, Washington, DC 20590, Telephone: (202) 366–6400, Facsimile: (202) 366–7400; or

(2) Other address as shall be published from time to time in the **Federal Register**.

(c) A Protest shall be in writing, and set forth:

(1) The protester's name, address, telephone number, and facsimile (FAX) number;

(2) The name, address, telephone number, and FAX number of a person designated by the protester (Protester Designee), and who shall be duly authorized to represent the protester, to be the point of contact;

(3) The SIR number or, if available, the contract number and the name of the CO;

(4) The basis for the protester's status as an interested party;

(5) The facts supporting the timeliness of the protest;

(6) Whether the protester requests a protective order, the material to be protected, and attach a redacted copy of that material;

(7) A detailed statement of both the legal and factual grounds of the protest, and attach one (1) copy of each relevant document;

(8) The remedy or remedies sought by the protester, as set forth in § 17.21;

(9) The signature of the Protester Designee, or another person duly authorized to represent the protester.

(d) If the protester wishes to request a suspension or delay of the procurement, in whole or in part, and believes there are compelling reasons that, if known to the FAA, would cause the FAA to suspend or delay the procurement because of the protested action, the protester shall:

(1) Set forth each such compelling reason, supply all facts supporting the protester's position, identify each person with knowledge of the facts supporting each compelling reason, and identify all documents that support each compelling reason.

(2) Clearly identify any adverse consequences to the protester, the FAA, or any interested party, should the FAA not suspend or delay the procurement.

(e) At the same time as filing the protest with the Office of Dispute Resolution for Acquisition, the protester shall serve a copy of the protest on the CO and any other official designated in the SIR for receipt of protests by means reasonably calculated to be received by the CO on the same day as it is to be received by the Office of Dispute Resolution for Acquisition. The protest shall include a signed statement from the protester, certifying to the Office of Dispute Resolution for Acquisition the manner of service, date, and time when a copy of the protest was served on the CO and other designated official(s).

(f) Upon receipt of the protest, the CO shall inform the Office of Dispute Resolution for Acquisition of the names, addresses, and telephone and facsimile numbers of the awardee and/or other interested parties, if known, and shall, in such notice, designate a person as the point of contact for the Office of Dispute Resolution for Acquisition by facsimile. The CO shall also notify the awardee and/or interested parties in writing of the existence of the protest the same day as the CO provides the foregoing information to the Office of Dispute Resolution for Acquisition.

(g) The Office of Dispute Resolution for Acquisition has discretion to designate the parties who shall participate in the protest as intervenors. For awarded contracts, only the awardee may participate as an intervenor.

§ 17.17 Initial protest procedures.

(a) If, as part of a protest, the protester requests a suspension or delay of procurement, in whole or in part, pursuant to § 17.15(d), the Product Team shall submit a response to the request to the Office of Dispute Resolution for Acquisition within two (2) business days of receipt of the protest. Copies of the response shall be furnished to the protester and any intervenor(s) so as to be received within the same two (2) business days. The protester and any intervenor(s) shall have the opportunity of providing additional comments on the response within an additional period of two (2) business days. Based on its review of such submissions, the Office of Dispute Resolution for Acquisition, in its discretion, may recommend such suspension or delay to the Administrator or the Administrator's designee.

(b) Within five (5) business days of the filing of a protest, or as soon thereafter as practicable, the Office of Dispute Resolution for Acquisition shall convene a status conference to—

(1) Review procedures;

(2) Identify and develop issues related to summary dismissal and suspension recommendations;

(3) Handle issues related to protected information and the issuance of any needed protective order;

(4) Encourage the parties to use ADR;

(5) Conduct or arrange for early neutral evaluation of the protest by a DRO or Neutral or Compensated Neutral, at the discretion of the Office of Dispute Resolution for Acquisition and/or based upon the agreement or request of any party(ies) seeking such evaluation; and

(6) For any other reason deemed appropriate by the DRO or by the Office of Dispute Resolution for Acquisition.

(c) On the fifth business day following the status conference, the Product Team and protester will file with the Office of Dispute Resolution for Acquisition—

(1) A joint statement that they have decided to pursue ADR proceedings in lieu of adjudication in order to resolve the protest; or

(2) Joint or separate written explanations as to why ADR proceedings will not be used and why the Default Adjudicative Process will be needed..

(d) Should the Product Team and protester elect to utilize ADR proceedings to resolve the protest, they will agree upon the neutral to conduct the ADR proceedings (either an Office of Dispute Resolution for Acquisition-designated Neutral or a Compensated Neutral of their own choosing) pursuant to § 17.33(c), and shall execute and file with the Office of Dispute Resolution for Acquisition a written ADR agreement within five (5) business days after the status conference. Agreement of any intervenor(s) to the use of ADR or the resolution of a dispute through ADR shall not be required.

(e) Should the Product Team or protester indicate at the status conference that ADR proceedings will not be used, then within ten (10) business days following the status conference, the Product Team will file with the Office of Dispute Resolution for Acquisition a Product Team Response to the protest. The Office of Dispute Resolution for Acquisition may alter the schedule for filing of the Product Team Response to accommodate the requirements of a particular protest.

(f) The Product Team Response shall consist of a written chronological statement of pertinent facts, and a written presentation of applicable legal or other defenses. The Product Team Response shall cite to and be accompanied by all relevant documents, which shall be chronologically indexed and tabbed. A copy of the response shall be furnished so as to be received by the protester and any intervenor(s) on the same date it is filed with the Office of Dispute Resolution for Acquisition, if practicable, but in any event no later than one (1) business day after the date if it is filed with the Office of Dispute Resolution for Acquisition. In all cases, the Product Team shall indicate the method of service used.

(g) Should the parties pursue ADR proceedings under subpart D of this part and fail to achieve a complete resolution of the protest via ADR, the Office of Dispute Resolution for Acquisition, upon notification of that fact by any of the parties, shall designate a DRO or Special Master for purposes of adjudication under subpart E of this part, and the DRO or Special Master shall convene a status conference, wherein he/she shall establish a schedule for the filing of the Product Team Response and further submissions.

(h) Upon submission of the Product Team Response, the protest will proceed under the Default Adjudicative Process pursuant to § 17.37.

(i) The time limitations of this section maybe extended by the Office of Dispute Resolution for Acquisition for good cause.

§ 17.19 Dismissal or summary decision of protests.

(a) At any time during the protest, any party may request, by motion to the Office of Dispute Resolution for Acquisition, that—

(1) The protest, or any count or portion of a protest, be dismissed for lack of jurisdiction, if the protester fails to establish that the protest is timely, or that the protester has no standing to pursue the protest;

(2) The protest, or any count or portion of a protest, be dismissed, if frivolous or without basis in fact or law, or for failure to state a claim upon which relief may be had;

(3) A summary decision be issued with respect to the protest, or any count or portion of a protest, if:

(i) The undisputed material facts demonstrate a rational basis for the Product Team action or inaction in question, and there are no other material facts in dispute that would overcome a finding of such a rational basis; or

(ii) The undisputed material facts demonstrate, that no rational basis exists for the Product Team action or inaction in question, and there are no material facts in dispute that would overcome a finding of the lack of such a rational basis.

(b) In connection with any request for dismissal or summary decision, the Office of Dispute Resolution for Acquisition shall consider any material facts in dispute, in a light most favorable to the party against whom the request is made.

(c) Either upon motion by a party or on its own initiative, the Office of Dispute Resolution for Acquisition may, at any time, exercise its discretion to:

(1) Recommend to the Administrator dismissal or the issuance of a summary decision with respect to the entire protest;

(2) Dismiss the entire protest or issue a summary decision with respect to the entire protest, if delegated that authority by the Administrator; or

(3) Dismiss or issue a summary decision with respect to any count or portion of a protest.

(d) A dismissal or summary decision regarding the entire protest by either the Administrator, or the Office of Dispute Resolution for Acquisition by delegation, shall be construed as a final agency order. A dismissal or summary decision that does not resolve all counts or portions of a protest shall not constitute a final agency order, unless and until such dismissal or decision is incorporated or otherwise adopted in a decision by the Administrator (or the Office of Dispute Resolution for Acquisition, by delegation) regarding the entire protest.

(e) Prior to recommending or entering either a dismissal or a summary decision, either in whole or in part, the Office of Dispute Resolution for Acquisition shall afford all parties against whom the dismissal or summary decision is to be entered the opportunity to respond to the proposed dismissal or summary decision.

§ 17.21 Protest remedies.

(a) The Office of Dispute Resolution for Acquisition has broad discretion to recommend remedies for a successful protest that are consistent with the AMS and applicable statutes. Such remedies may include, but are not limited to one or more, or a combination of, the following—

(1) Amend the SIR;

(2) Refrain from exercising options under the contract;

(3) Issue a new SIR;

(4) Require recompetition;

(5) Terminate an existing contract for the FAA's convenience;

(6) Direct an award to the protester;

(7) Award bid and proposal costs; or

(8) Any combination of the above remedies, or any other action consistent with the AMS that is appropriate under the circumstances.

(b) In determining the appropriate recommendation, the Office of Dispute Resolution for Acquisition should consider the circumstances surrounding the procurement or proposed procurement including, but not limited to: the nature of the procurement deficiency; the degree of prejudice to other parties or to the integrity of the acquisition system; the good faith of the parties; the extent of performance completed; the cost of any proposed remedy to the FAA; the urgency of the procurement; and the impact of the recommendation on the FAA.

(c) Attorney's fees of a prevailing protester are allowable to the extent permitted by the Equal Access to Justice Act, 5 U.S.C. 504(a)(1)(EAJA).

Subpart C—Contract Disputes

§ 17.23 Dispute resolution process for contract disputes.

(a) All contract disputes arising under contracts subject to the AMS shall be resolved under this subpart.

(b) Contractors shall file contract disputes with the Office of Dispute Resolution for Acquisition and the CO pursuant to § 17.25.

(c) After filing the contract dispute, the contractor should seek informal resolution with the CO:

(1) The CO, with the advice of FAA legal counsel, has full discretion to settle contract disputes, except where the matter involves fraud;

(2) The parties shall have up to twenty (20) business days within which to resolve the dispute informally, and may contact the Office of Dispute Resolution for Acquisition for assistance in facilitating such a resolution; and

(3) If no informal resolution is achieved during the twenty (20) business day period, the parties shall file joint or separate statements with the Office of Dispute Resolution for Acquisition pursuant to § 17.27.

(d) If informal resolution of the contract dispute appears probable, the Office of Dispute Resolution for Acquisition shall extend the time for the filing of the joint statement under § 17.27 for up to an additional twenty (20) business days, upon joint request of the CO and contractor.

(e) The Office of Dispute Resolution for Acquisition shall hold a status conference with the parties within ten (10) business days after receipt of the joint statement required by § 17.27, or as soon thereafter as is practicable, in order to establish the procedures to be utilized to resolve the contract dispute.

(f) The Office of Dispute Resolution for Acquisition has broad discretion to recommend remedies for a successful contract dispute, that are consistent with the AMS and applicable law.

§ 17.25 Filing a contract dispute.

(a) Contract disputes are to be in writing and shall contain:

(1) The contractor's name, address, telephone and fax numbers and the name, address, telephone and fax numbers of the contractor's legal representative(s) (if any) for the contract dispute;

(2) The contract number and the name of the Contracting Officer;

(3) A detailed chronological statement of the facts and of the legal grounds for the contractor's positions regarding each element or count of the contract dispute (i.e., broken down by individual claim item), citing to relevant contract provisions and documents and attaching copies of those provisions and documents;

(4) All information establishing that the contract dispute was timely filed;

(5) A request for a specific remedy, and if a monetary remedy is requested, a sum certain must be specified and pertinent cost information and documentation (e.g., invoices and cancelled checks) attached, broken down by individual claim item and summarized; and

(6) The signature of a duly authorized representative of the initiating party.

(b) Contract disputes shall be filed by mail, in person, by overnight delivery or by facsimile at the following address:

(1) Office of Dispute Resolution for Acquisition, AGC–70, Federal Aviation Administration, 400 7th Street, SW, Room 8332, Washington, DC 20590, Telephone: (202) 366–6400, Facsimile: (202) 366–7400;

or

(2) Other address as shall be published from time to time in the **Federal Register**.

(c) A contract dispute against the FAA shall be filed with the Office of Dispute Resolution for Acquisition within two (2) years of the accrual of the contract claim involved. A contract dispute by the FAA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed within two (2) years after the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with The Office of Dispute Resolution for Acquisition which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the Office of Dispute Resolution for Acquisition a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of FAA claims related to warranty issues, gross mistakes amounting to fraud or latent defects. FAA claims against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any FAA claims against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the Office of Dispute Resolution for Acquisition within two (2) years of the date on which the FAA knew or should have known of the presence of the fraud or latent defect.

(d) A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is to be received by the Office of Dispute Resolution for Acquisition.

§ 17.27 Submission of joint or separate statements.

(a) If the matter has not been resolved informally, the parties shall file joint or separate statements with the Office of Dispute Resolution for Acquisition no later than twenty (20) business days after the filing of the contract dispute. The Office of Dispute Resolution for Acquisition may extend this time, pursuant to § 17.23(d).

(b) The statement(s) shall include either—

(1) A joint request for ADR, and an executed ADR agreement, pursuant to § 17.33(d), specifying which ADR techniques will be employed; or

(2) Written explanation(s) as to why ADR proceedings will not be used and why the Default Adjudicative Process will be needed.

(c) Such statements shall be directed to the following address:

(1) Office of Dispute Resolution for Acquisition, AGC–70, Federal Aviation Administration, 400 7th Street, SW., Room 8332, Washington, DC 20590, Telephone: (202) 366–6400, Facsimile: (202) 366–7400;

or

(2) Other address as shall be published from time to time in the **Federal Register**.

(d) The submission of a statement which indicates that ADR will not be utilized will not in any way preclude the parties from engaging in informal ADR techniques with the Office of Dispute Resolution for Acquisition (neutral evaluation and/or informal mediation) concurrently with ongoing adjudication under the Default Adjudicative Process, pursuant to § 17.31(c).

§ 17.29 Dismissal or summary decision of contract disputes.

(a) Any party may request, by motion to the Office of Dispute Resolution for Acquisition, that a contract dispute be dismissed, or that a count or portion of a contract dispute be stricken, if:

(1) It was not timely filed with the Office of Dispute Resolution for Acquisition;

(2) It was filed by a subcontractor;

(3) It fails to state a matter upon which relief may be had; or

(4) It involves a matter not subject to the jurisdiction of the Office of Dispute Resolution for Acquisition.

(b) In connection with any request for dismissal of a contract dispute, or to strike a count or portion thereof, the Office of Dispute Resolution for Acquisition should consider any material facts in dispute in a light most favorable to the party against whom the request for dismissal is made.

(c) At any time, whether pursuant to a motion or request or on its own initiative and at its discretion, the Office of Dispute Resolution for Acquisition may—

(1) Dismiss or strike a count or portion of a contract dispute;

(2) Recommend to the Administrator that the entire contract dispute be dismissed; or

(3) With delegation from the Administrator, dismiss the entire contract dispute.

(d) An order of dismissal of the entire contract dispute, issued either by the Administrator or by the Office of Dispute Resolution for Acquisition where delegation exists, on the grounds set forth in this section, shall constitute

a final agency order. An Office of Dispute Resolution for Acquisition order dismissing or striking a count or portion of a contract dispute shall not constitute a final agency order, unless and until such Office of Dispute Resolution for Acquisition order is incorporated or otherwise adopted in a decision of the Administrator or the Administrator's delegee.

(e) Prior to recommending or entering either a dismissal or a summary decision, either in whole or in part, the Office of Dispute Resolution for Acquisition shall afford all parties against whom the dismissal or summary decision is to be entered the opportunity to respond to a proposed dismissal or summary decision.

Subpart D—Alternative Dispute Resolution

§ 17.31 Use of alternative dispute resolution.

(a) The Office of Dispute Resolution for Acquisition shall encourage the parties to utilize ADR as their primary means to resolve protests and contract disputes.

(b) The parties shall make a good faith effort to explore ADR possibilities in all cases and to employ ADR in every appropriate case. The Office of Dispute Resolution for Acquisition will encourage use of ADR techniques such as mediation, neutral evaluation, or minitrials, or variations of these techniques as agreed by the parties and approved by the Office of Dispute Resolution for Acquisition. The Office of Dispute Resolution for Acquisition shall assign a DRO to explore ADR options with the parties and to arrange for an early neutral evaluation of the merits of a case, if requested by any party.

(c) The Default Adjudicative Process will be used where the parties cannot achieve agreement on the use of ADR; or where ADR has been employed but has not resolved all pending issues in dispute; or where the Office of Dispute Resolution for Acquisition concludes that ADR will not provide an expeditious means of resolving a particular dispute. Even where the Default Adjudicative Process is to be used, the Office of Dispute Resolution for Acquisition, with the parties consent, may employ informal ADR techniques concurrently with and in parallel to adjudication.

§ 17.33 Election of alternative dispute resolution process.

(a) The Office of Dispute Resolution for Acquisition will make its personnel available to serve as Neutrals in ADR proceedings and, upon request by the parties, will attempt to make qualified non-FAA personnel available to serve as Neutrals through neutral-sharing programs and other similar arrangements. The parties may elect to employ a mutually Compensated Neutral, if the parties agree as to how the costs of any such Compensated Neutral are to be shared.

(b) The parties using an ADR process to resolve a protest shall submit an executed ADR agreement containing the information outlined in paragraph (d) of this section to the Office of Dispute Resolution for Acquisition within five (5) business days after the Office of Dispute Resolution for Acquisition conducts a status conference pursuant to § 17.17(c). The Office of Dispute Resolution for Acquisition may extend this time for good cause.

(c) The parties using an ADR process to resolve a contract dispute shall submit an executed ADR agreement containing the information outlined in paragraph (d) of this section to the Office of Dispute Resolution for Acquisition as part of the joint statement specified under § 17.27.

(d) The parties to a protest or contract dispute who elect to use ADR must submit to the Office of Dispute Resolution for Acquisition an ADR agreement setting forth:

(1) The type of ADR technique(s) to be used;

(2) The agreed-upon manner of using the ADR process; and

(3) Whether the parties agree to use a Neutral through The Office of Dispute Resolution for Acquisition or to use a Compensated Neutral of their choosing, and, if a Compensated Neutral is to be used, how the cost of the Compensated Neutral's services will be shared.

(e) Non-binding ADR techniques are not mutually exclusive, and may be used in combination if the parties agree that a combination is most appropriate to the dispute. The techniques to be employed must be determined in advance by the parties and shall be expressly described in their ADR agreement. The agreement may provide for the use of any fair and reasonable ADR technique that is designed to achieve a prompt resolution of the matter. An ADR agreement for non-binding ADR shall provide for a termination of ADR proceedings and the commencement of adjudication under the Default Adjudicative Process, upon the election of any party. Notwithstanding such termination, the parties may still engage with the Office of Dispute Resolution for Acquisition in informal ADR techniques (neutral evaluation and/or informal mediation) concurrently with adjudication, pursuant to § 17.31(c).

(f) Binding arbitration may be permitted by the Office of Dispute Resolution for Acquisition on a case-by-case basis; and shall be subject to the provisions of 5 U.S.C. 575(a), (b), and (c), and any other applicable law. Arbitration that is binding on the parties, subject to the Administrator's right to approve or disapprove the arbitrator's decision, may also be permitted.

(g) For protests, the ADR process shall be completed within twenty (20) business days from the filing of an executed ADR agreement with the Office of Dispute Resolution for Acquisition unless the parties request, and are granted an extension of time from the Office of Dispute Resolution for Acquisition.

(h) For contract disputes, the ADR process shall be completed within forty (40) business days from the filing of an executed ADR agreement with the Office of Dispute Resolution for Acquisition, unless the parties request, and are granted an extension of time from the Office of Dispute Resolution for Acquisition.

(i) The parties shall submit to the Office of Dispute Resolution for Acquisition an agreed-upon protective order, if necessary, in accordance with the requirements of § 17.9.

§ 17.35 Selection of neutrals for the alternative dispute resolution process.

(a) In connection with the ADR process, the parties may select a Compensated Neutral acceptable to both, or may request the Office of Dispute Resolution for Acquisition to provide the services of a DRO or other Neutral.

(b) In cases where the parties select a Compensated Neutral who is not familiar with Office of Dispute Resolution for Acquisition procedural matters, the parties or Compensated Neutral may request the Office of Dispute Resolution for Acquisition for the services of a DRO to advise on such matters.

Subpart E—Default Adjudicative Process

§ 17.37 Default adjudicative process for protests.

(a) Other than for the resolution of preliminary or dispositive matters, the Default Adjudicative Process for protests will commence upon the submission of the Product Team Response to the Office of Dispute Resolution for Acquisition, pursuant to § 17.17.

(b) The Director of the Office of Dispute Resolution for Acquisition shall select a DRO or a Special Master to conduct fact-finding proceedings and to provide findings and recommendations concerning some or all of the matters in controversy.

(c) The DRO or Special Master may prepare procedural orders for the proceedings as deemed appropriate; and may require additional submissions from the parties. As a minimum, the protester and any intervenor(s) must submit to the Office of Dispute Resolution for Acquisition written comments with respect to the Product Team Response within five (5) business days of the Response having been filed with the Office of Dispute Resolution for Acquisition or within five (5) business days of their receipt of the Response, whichever is later. Copies of such comments shall be provided to the other participating parties by the same means and on the same date as they are furnished to the Office of Dispute Resolution for Acquisition.

(d) The DRO or Special Master may convene the parties and/or their representatives, as needed, to pursue the Default Adjudicative Process.

(e) If, in the sole judgment of the DRO or Special Master, the parties have presented written material sufficient to allow the protest to be decided on the record presented, the DRO or Special Master shall have the discretion to decide the protest on that basis.

(f) The parties may engage in voluntary discovery with one another and, if justified, with non-parties, so as to obtain information relevant to the allegations of the protest. The DRO or Special Master may also direct the parties to exchange, in an expedited manner, relevant, non-privileged documents. Where justified, the DRO or Special Master may direct the taking of deposition testimony, however, the FAA dispute resolution process does not contemplate extensive discovery. The DRO or Special Master shall manage the discovery process, including limiting its length and availability, and shall establish schedules and deadlines for discovery, which are consistent with time frames established in this part and with the FAA policy of providing fair and expeditious dispute resolution.

(g) The DRO or Special Master may conduct hearings, and may limit the hearings to the testimony of specific witnesses and/or presentations regarding specific issues. The DRO or Special Master shall control the nature and conduct of all hearings, including the sequence and extent of any testimony. Hearings will be conducted:

(1) Where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts; or

(2) Upon request of any party to the protest, unless the DRO or Special Master finds specifically that a hearing is unnecessary and that no party will be prejudiced by limiting the record in the adjudication to the parties' written submissions. All witnesses at any such hearing shall be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

(h) The Director of the Office of Dispute Resolution for Acquisition may review the status of any protest in the Default Adjudicative Process with the DRO or Special Master during the pendency of the process.

(i) Within thirty (30) business days of the commencement of the Default Adjudicative Process, or at the discretion of the Office of Dispute Resolution for Acquisition, the DRO or Special Master will submit findings and recommendations to the Office of Dispute Resolution for Acquisition that shall contain the following:

(1) Findings of fact;

(2) Application of the principles of the AMS, and any applicable law or authority to the findings of fact;

(3) A recommendation for a final FAA order; and

(4) If appropriate, suggestions for future FAA action.

(j) In arriving at findings and recommendations relating to protests, the DRO or Special Master shall consider whether or not the Product Team actions in question had a rational basis, and whether or not the Product Team decision under question was arbitrary, capricious or an abuse of discretion. Findings of fact underlying the recommendations must be supported by substantial evidence.

(k) The DRO or Special Master has broad discretion to recommend a remedy that is consistent with § 17.21.

(l) A DRO or Special Master shall submit findings and recommendations only to the Director of the Office of Dispute Resolution for Acquisition. The findings and recommendations will be released to the parties and to the public, only upon issuance of the final FAA order in the case. Should an Office of Dispute Resolution for Acquisition protective order be issued in connection with the protest, a redacted version of the findings and recommendations, omitting any protected information, shall be prepared wherever possible and released to the public along with a copy of the final FAA order. Only persons admitted by the Office of Dispute Resolution for Acquisition under the protective order and Government personnel shall be provided copies of the unredacted findings and recommendations.

(m) The time limitations set forth in this section may be extended by the Office of Dispute Resolution for Acquisition for good cause.

§ 17.39 Default adjudicative process for contract disputes.

(a) The Default Adjudicative Process for contract disputes will commence on the latter of:

(1) The parties' submission to the Office of Dispute Resolution for Acquisition of a joint statement pursuant to § 17.27 which indicates that ADR will not be utilized; or

(2) The parties' submission to the Office of Dispute Resolution for Acquisition of notification by any party that the parties have not settled some or all of the dispute issues via ADR, and it is unlikely that they can do so within the time period allotted and/or any reasonable extension.

(b) Within twenty (2) business days of the commencement of the Default Adjudicative Process, the Product Team shall prepare and submit to the Office of Dispute Resolution for Acquisition, with a copy to the contractor, a chronologically arranged and indexed Dispute File, containing all documents which are relevant to the facts and issues in dispute. The contractor will be entitled to supplement such a Dispute File with additional documents.

(c) The Director of the Office of Dispute Resolution for Acquisition shall assign a DRO or a Special Master to conduct fact-finding proceedings and provide findings and recommendations concerning the issues in dispute.

(d) The Director of the Office of Dispute Resolution for Acquisition may delegate authority to the DRO or Special Master to conduct a Status Conference within ten (10) business days of the commencement of the Default Adjudicative Process, and, may further delegate to the DRO or Special Master the authority to issue such orders or decisions to promote the efficient resolution of the contract dispute.

(e) At any such Status Conference, or as necessary during the Default Adjudicative Process, the DRO or Special Master will:

(1) Determine the appropriate amount of discovery required to resolve the dispute;

(2) Review the need for a protective order, and if one is needed, prepare a protective order pursuant to § 17.9;

(3) Determine whether any issue can be stricken; and

(4) Prepare necessary procedural orders for the proceedings.

(f) At a time or at times determined by the DRO or Special Master, and in advance of the decision of the case, the parties shall make final submissions to the Office of Dispute Resolution for Acquisition and to the DRO or Special Master, which submissions shall include the following:

(1) A joint statement of the issues;

(2) A joint statement of undisputed facts related to each issue;

(3) Separate statements of disputed facts related to each issue, with appropriate citations to documents in the Dispute File, to pages of transcripts of any hearing or deposition, or to any affidavit or exhibit which a party may wish to submit with its statement;

(4) Separate legal analyses in support of the parties' respective positions on disputed issues.

(g) Each party shall serve a copy of its final submission on the other party by means reasonable calculated so that the other party receives such submissions on the same day it is received by the Office of Dispute Resolution for Acquisition.

(h) The DRO or Special Master may decide the contract dispute on the basis of the record and the submissions referenced in this section, or may, in the DRO or Special Master's discretion, allow the parties to make additional presentations in writing. The DRO or Special Master may conduct hearings, and may limit the hearings to the testimony of specific witnesses and/or presentations regarding specific issues. The DRO or Special Master shall control the nature and conduct of all hearings, including the sequence and extent of any testimony. Hearings on the record shall be conducted by the ODRA:

(1) Where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts; or

(2) Upon request of any party to the contract dispute, unless the DRO or Special Master finds specifically that a hearing is unnecessary and that no party will be prejudiced by limiting the record in the adjudication to the parties written submissions. All witnesses at any such hearing shall be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

(i) The DRO or Special Master shall prepare findings and recommendations within thirty (30) business days from receipt of the final submissions of the parties, unless that time is extended by the Officer of Dispute Resolution for Acquisition for good cause. The findings and recommendations shall contain findings of fact, application of the principles of the AMS and other law or authority applicable to the findings of fact, a recommendation for a final FAA order, and, if appropriate, suggestions for future FAA action.

(j) As a party of the findings and recommendations, the DRO or Special Master shall review the disputed issue or issues in the context of the contract, any applicable law and the AMS. Any finding of fact set forth in the fundings and recommendation must be supported by substantial evidence.

(k) The Director of the Office of Dispute Resolution for Acquisition may review the status of any contract dispute in the Default Adjudicative Process with the DRO or Special Master during the pendency of the process.

(l) A DRO or Special Master shall submit findings and recommendations only to the Director of the Office of Dispute Resolution for Acquisition. The findings and recommendations will be released to the parties and to the public, upon issuance of the final FAA order in the case. Should an Office of Dispute Resolution for Acquisition protective order be issued in connection with the contract dispute, a redacted version of the findings and recommendations omitting any protected information, shall be prepared wherever possible and released to the public along with a copy of the final FAA order. Only persons admitted by the Office of Dispute Resolution for Acquisition under the protective order and Government personal shall be provided copies of the unredacted findings and recommendation.

(m) The time limitations set forth in this section may be extended by the Office of Dispute Resolution for Acquisition for good cause.

Subpart F—Finality and Review

§ 17.41 Final orders.

All final FAA orders regarding protests or connect disputes under this part are to be issued by the FAA Administrator or by a delegee of the Administrator.

§ 17.43 Judicial review.

(a) A protestor or contractor may seek of a final FAA order, pursuant to 49 U.S.C. 46110, only after the administrative remedies of this part have been exhausted.

(b) A copy of the petition for review shall be filed with the Office of Dispute Resolution for Acquisition and the FAA Chief Counsel on the date that the petition for review is filed with the appropriate circuit court of appeals.

§ 17.45 Conforming amendments.

The FAA shall amend pertinent provisions of the AMS, standard contract forms and clauses, and any guidance to contracting officials, so as to conform to the provisions of this part.

Appendix A to Part 17—Alternative Dispute Resolution (ADR)

A. The FAA dispute resolution procedures encourage the parties to protests and contract disputes to use ADR as the primary means to resolve protests and contract disputes, pursuant to the Administrative Dispute Resolution Act of 1996, Pub. L. 104–320, 5 U.S.C. 570–579, and Department of Transportation and FAA policies to utilize ADR to the maximum extent practicable. Under the procedures presented in this part, the Office of Dispute Resolution for Acquisition would encourage parties to consider ADR techniques such as case evaluation, mediation, or arbitration.

B. ADR encompasses a number of processes and techniques for resolving protests or contract disputes. The most commonly used types include:

(1) *Mediation.* The Neutral or Compensated Neutral ascertains the needs and interests of both parties and facilitates discussions between or among the parties and an amicable resolution of their differences, seeking approaches to bridge the gaps between the parties' respective positions. The Neutral or Compensated Neutral can meet with the parties separately, conduct joint meetings with the parties' representatives, or employ both methods in appropriate cases.

(2) *Neutral Evaluation.* At any stage during the ADR process, as the parties may agree, the Neutral or Compensated Neutral will provide a candid assessment and opinion of the strengths and weaknesses of the parties' positions as to the facts and law, so as to facilitate further discussion and resolution.

(3) *Minitrial.* The minitrial resembles adjudication, but is less formal. It is used to provide an efficient process for airing and resolving more complex, fact-intensive disputes. The parties select principal representatives who should be senior officials of their respective organizations, having authority to negotiate a complete settlement. It is preferable that the principals be individuals who were not directly involved in the events leading to the dispute and who, thus, may be able to maintain a degree of impartiality during the proceeding. In order to maintain such impartiality, the principals typically serve as "judges" over the mini-trial proceeding together with the Neutral or Compensated Neutral. The proceeding is aimed at informing the principal representatives and the Neutral or Compensated Neutral of the underlying bases of the parties' positions. Each party is given the opportunity and responsibility to present its position. The presentations may be made through the parties' counsel and/or through some limited testimony of fact witnesses or experts, which may be subject to cross-examination or rebuttal. Normally, witnesses are not sworn in and transcripts are not made of the proceedings. Similarly, rules of evidence are not directly applicable, though it is recommended that the Neutral or Compensated Neutral be provided authority by the parties' ADR agreement to exclude evidence which is not relevant to the issues in dispute, for the sake of an efficient proceeding. Frequently, minitrials are followed either by direct one-on-one negotiations by the parties' principals or by meetings between the Neutral/Compensated Neutral and the parties' principals, at which the Neutral/Compensated Neutral may offer his or her views on the parties' positions (*i.e.*, Neutral Evaluation) and/or facilitate negotiations and ultimate resolution via Mediation.

Issued in Washington, DC, on June 10, 1999.

Jane F. Garvey,

Administrator.

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Part III

Environmental Protection Agency

Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6361–7]

Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed action, response to comment, and request for additional comment.

SUMMARY: In a **Federal Register** Notice on October 9, 1996, the Environmental Protection Agency ("EPA") requested comment on how it calculates the economic benefit that regulated entities obtain as a result of violating environmental requirements; EPA makes this calculation to establish an appropriate penalty for settlement purposes. This Notice provides both responses to the public comments and advance notice of the changes EPA proposes to make to its benefit recapture approach and to its BEN computer model (which is used by EPA to calculate economic benefit for purposes of settlement). EPA also requests comment on these proposed changes. After the comment period closes, the Agency plans to review all of the comments and revise its benefit recapture approach as appropriate.

DATES: EPA urges interested parties to comment in writing on its proposed changes to the BEN model and to the Agency's benefit recapture approach. Comments must be received by EPA at the address below by July 30, 1999.

ADDRESSES: Written comments should be submitted in triplicate to: U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Economic Benefit Docket Clerk, Mail Code 2248–A, 401 M Street, SW., Washington, DC 20460, and should reference this docket. EPA will maintain a record of all written comments submitted pursuant to this Notice. Copies of the comments may be reviewed at the Ariel Rios Federal Building, 1200 Pennsylvania Avenue, Washington, DC 20004. Persons interested in reviewing the comments must make advance arrangements to do so by calling (202) 564–2235.

FOR FURTHER INFORMATION CONTACT: Copies of the BEN computer model and the BEN User's Manual may be obtained from the National Technical Information Service by calling (800) 553–6847. Callers should request order number PB98–500382GEI. Electronic copies of these items are also downloadable through the Office of Enforcement and Compliance Assurance's World Wide Web site on the Internet (http://www.epa.gov/oeca/datasys/dsm2.html). Government users (federal, state, or local) can also obtain copies of the model and manual through the Agency's toll-free enforcement economics helpline at (888) ECONSPT. For further information, contact Jonathan Libber, Office of Regulatory Enforcement, Multimedia Enforcement Division, at (202) 564–6102, or through electronic mail at libber.jonathan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This Notice is organized as follows:

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I. Background

A. Overview

One of EPA's most important responsibilities is to ensure that regulated entities comply with federal environmental laws. These laws—and their implementing regulations—set minimum standards for protecting human health and welfare and for achieving environmental protection goals, such as clean air and clean water. EPA upholds these laws through vigorous enforcement actions that correct the violations and appropriately penalize violators.

A cornerstone of the EPA's civil penalty program is recapturing the economic benefit that a violator may have gained from illegal activity. Recapture helps level the economic playing field by preventing violators from obtaining an unfair financial advantage over their competitors who made the necessary expenditures for environmental compliance. Penalties also serve as incentives to protect the environment and public health by encouraging the prompt compliance with environmental requirements and the adoption of pollution prevention and recycling practices. Finally, appropriate penalties help deter future violations by both the penalized entity and by similarly situated regulatees.

EPA has promulgated a generic civil penalty policy, as well as specific penalty policies tailored to suit the needs of particular regulatory programs. For example, one civil penalty policy specifically addresses violations of the Clean Water Act. There are usually two components to the civil penalties sought by EPA: gravity and economic benefit. The gravity component reflects the seriousness of the violation and is generally determined through the application of the appropriate EPA civil penalty policy.

The economic benefit component, on the other hand, focuses on the violator's economic gain from noncompliance, which may occur in three basic ways. The violator can: (1) Delay necessary pollution control expenditures; (2) avoid necessary pollution control expenditures; or (3) gain an illegal competitive advantage during the period of noncompliance. This competitive advantage may occur, for example, if a company sells banned products or captures additional market share by selling its products at a lower cost than its complying competitors.

The Agency designed the BEN computer model to calculate—primarily for settlement purposes—the economic benefit from these first two types of economic gain. BEN may not be appropriate for all cases. The EPA's regional offices can use an alternative approach that can produce reasonably accurate benefit calculations; however, the Agency believes that BEN is by far the best approach available for calculating economic benefit derived from delayed and avoided costs. The Agency does not have a computer model for calculating the benefit gained from an illegal competitive advantage. EPA considers such gains on a case-by-case basis.

B. EPA Policy and Guidance on Recapturing the Economic Benefit of Noncompliance

Since the BEN computer model's development in 1984, EPA staff have used BEN extensively in generating penalty figures for settlement purposes that reflect the economic benefit a violator derived from delaying or avoiding compliance with environmental statutes.

1. Policy Background

Calculating a violator's economic benefit using the BEN computer model is usually the first step in developing a civil settlement penalty figure under the Agency's Policy on Civil Penalties (PT.1–1) February 16, 1984, and A Framework for Statute-Specific Approaches to Penalty Assessments (PT.1–2) February 16, 1984. The Agency developed the BEN computer model to assist in fulfilling one of the main goals of the Policy on Civil Penalties: recovery—at a minimum—of the economic benefit derived from noncompliance.

The BEN computer model is a tool that is primarily intended to be used in calculating economic benefit for purposes of developing a settlement penalty. In presenting economic benefit testimony at judicial trial or in an administrative hearing, the Agency relies on an expert to provide an independent financial analysis of the economic benefit the violator obtained as a result of its violations. This independent financial assessment reflects the expert's own analytical approach as applied to the particular facts of that case. Use of an expert in a trial or hearing allows the parties the opportunity to examine more closely the analysis applied to the facts at issue than would be possible through reliance solely on a computer model. [1]

[1] EPA designed the BEN model as a flexible tool for use in settlement negotiations; it is not used, nor was it ever intended to function, as a rule. An expert witness testifying for the government may use the new Windows version of BEN in court, but the responsibility to determine the economic benefit still resides with the expert. That expert may choose to use whatever analytical tool (*e.g.*, customized computer spreadsheets, the BEN model, or even a calculator) he or she deems appropriate for the particular calculations necessary in the case.

2. BEN Calculates the Economic Benefit From Delayed and Avoided Pollution Control Expenditures

The BEN model is designed to calculate two types of economic benefit: those gained from delaying and those gained from avoiding required environmental expenditures. Delayed costs can include capital investments in pollution control equipment, remediation of environmental damages (e.g., removal of unpermitted fill material and restore wetlands), or one-time expenditures required to comply with environmental regulations (e.g., the cost of setting up a reporting system, or purchasing land). Avoided costs include operation and maintenance costs and/or other annually recurring costs (e.g., off-site disposal of fluids from injection wells). BEN does not calculate the third type of economic benefit: that gained from a violator's competitive advantage associated with noncompliance.

3. Current Model Usage and Applicability

The BEN model can be used in all cases that have delayed or avoided compliance costs. (The only exception is Clean Air Act Section 120 enforcement actions, which require the application of a specific computer model.) EPA designed BEN to be easy to use for people with little or no background in economics, financial analysis, or computers. Because the program contains standard values for many of the variables needed to calculate the economic benefit, BEN can be run with only a small number of inputs from the user. The program also allows the user to replace those standard values with user-specific information. Table 1 below lists the inputs to the BEN model. The optional inputs listed in Table 1 are those for which the model has standard default values.

The BEN model can estimate economic benefit for many types of organizations: corporations, partnerships, sole proprietorships, not-for-profit organizations, and municipalities. The BEN model has two sets of standard values: one applies to for-profit business violators, and the other applies to not-for-profit organizations. The BEN inputs listed in Table 1 are discussed in detail in Chapter 4 of the BEN User's Manual for both for-profit and not-for-profit organizations.

Table 1.—Inputs for BEN

Required Inputs
(1) Case Name, Profit Status, and Filing Status.
(2) Capital Investment.
(3) One-Time Nondepreciable Expenditure.
(4) Annual Expenses.
(5) Date of Noncompliance.
(6) Date of Compliance.
(7) Date of Penalty Payment.

Optional Inputs (Standard Values That May Be Modified):
(8) Useful Life of Pollution Control Equipment.
(9) Marginal Income Tax Rate for 1986 and Before.
(10) Marginal Income Tax Rate for 1987 to 1992.
(11) Marginal Income Tax Rate for 1993 and Beyond.
(12) Inflation Rate.
(13) Discount Rate.

C. How a Firm Obtains an Economic Benefit From Delaying or Avoiding Compliance Costs

An organization's compliance with environmental regulations usually entails a commitment of financial resources, both initially (in the form of a capital investment or one-time expenditure) and over time (in the form of continuing, annually recurring costs). These expenditures should result in better protection of public health or environmental quality, but they are unlikely to yield any direct economic benefit (*i.e.*, net gain) to the organization. If these financial resources are not used for compliance, then they presumably are invested in projects with an expected direct economic benefit to the organization. This concept of alternative investment—that is, the amount the violator would normally expect to make by not investing in pollution control—is the basis for calculating the economic benefit of noncompliance.

As part of the Civil Penalty Policy, the Agency uses its penalty authority to remove or neutralize the economic incentive to violate environmental regulations. In the absence of enforcement and appropriate penalties, it is usually in an organization's best economic interest to delay the commitment of funds for compliance with environmental regulations and to avoid certain associated costs, such as operation and maintenance expenses.

1. The Components of Economic Benefit Measured by the BEN Model

A violator may gain economic benefit from either delaying or avoiding compliance costs. By delaying

compliance, the violator can earn a return on the delayed capital investment or one-time expenditures required for pollution control compliance. In other words, violators have the opportunity to invest their funds in projects other than those required to comply with environmental regulations. These other investments are ordinarily expected to yield a monetary return at the violator's marginal rate of return on capital. But environmental expenditures typically yield no direct economic benefit. Thus, by delaying compliance, the violator benefits by the amount of earnings that could be expected from alternative investments.

A violator can also gain an economic benefit from avoiding pollution control costs. Avoided costs typically include the continuing, annually recurring costs that a violator would have incurred if it had complied with environmental regulations on time (*e.g.*, the costs of labor, raw materials, energy, lease payments and any other expenditures directly associated with the operation and maintenance of the pollution control equipment). Unlike capital investments and one-time expenditures that are only postponed, annual expenditures are avoided altogether. The resulting benefits to the violator are the total avoided annual costs as well as the return that could be expected on these avoided costs.

2. Taking Additional Factors Into Account

EPA's BEN model evaluates economic benefit in terms of the effect that delayed or avoided pollution control costs have on an entity's cash flows. Cash flow analysis is a standard and widely accepted technique for evaluating costs and investments. In essence, cash flow calculations focus on the real, "out-of-pocket" cash effects resulting from an expenditure. Thus, noncash expenditures, such as depreciation, are considered only to the extent that they affect cash income or expenses. The three additional factors the model considers are taxation, inflation, and the time value of money.

a. After-Tax Cash Flows. The BEN model computes economic benefit in after-tax terms to account for certain financial impacts associated with environmental expenditures. For example, one important impact of these expenditures is a reduction in income tax liability. Depreciation, one-time expenditures, and annual costs all effectively reduce taxable income and thereby reduce income tax payments. Also, depending upon the tax year, the original purchase of equipment might have resulted in an investment tax credit. To account for these tax effects, BEN calculates the economic benefit using after-tax cash flows.

b. Inflation. Inflation is another factor for which BEN accounts. The BEN model initially converts all costs to dollars of the noncompliance year and then compares the cost of complying on time with the cost of complying late. The model uses the inflation rate to adjust the current or future cost of compliance into dollars from the year noncompliance began. The BEN User's Manual (see pages 4–27 to 4–29 and Appendix A of the manual) contains a more detailed discussion of the inflation adjustment.

c. Time Value of Money. A third factor relates to the timing of the cash flows, because cash flows occurring in different years are not directly comparable. A basic concept of financial theory is "present value." This concept is based on the principle that "A dollar today is worth more than a dollar a year from now," because today's dollar can be invested immediately to earn a return over the coming year. (Alternatively, a dollar last year is worth more than a dollar today because investment opportunities existed for last year's dollar.) Therefore, the earlier a cost (or benefit) is incurred, the greater its economic impact. BEN accounts for this "time value of money" effect by adjusting all estimated cash flows to their "present value" equivalents. To accomplish this, BEN first "discounts" all cash flows back to the noncompliance date, then calculates an initial economic benefit as of this date, and finally "compounds" the economic benefit forward to the penalty payment date. BEN uses a rate that reflects the time value of money (known as a discount rate or compounding rate) to adjust the cash flows for both discounting and compounding.[2] The selection of the appropriate discounting methodology is a significant issue in the BEN model. The *BEN User's Manual* (see pages 4–30 to 4–35 and Appendix A of the manual) contains a more detailed discussion of the discounting and compounding that BEN performs for its present value calculations.

II. Proposed Changes

In its October 9, 1996, **Federal Register** Notice, the Agency sought comment on three categories of issues: (1) Broad economic benefit recapture questions, (2) the BEN model's calculation methodology and assumptions, and (3) the model's user-friendliness.

First, we invited comment on some fundamental questions that the benefit recapture approach has raised: Can an approach both more simple and more accurate than BEN measure the economic benefit of delayed and avoided pollution control expenditures? How should EPA evaluate the economic benefit that companies receive as a result of any illegal competitive advantage stemming from noncompliance?

Second, we invited comment on the BEN model's calculation methodology. While the Agency is confident that the BEN model's overall approach is theoretically sound, we welcomed constructive and documented comment on alternative approaches. In addition, EPA is aware of substantial differences of opinion with respect to the basis of some of the model's assumptions, particularly with respect to the discount rate and inflation rate. EPA requested comment on the BEN model's calculation methodology, or any other aspect of the model's assumptions or methodology.

Third, we requested comment on the model's user-friendliness. The Agency had heard concerns that the model is too difficult to use, particularly regarding BEN's ease of operation and the difficulty of obtaining the necessary data. Because EPA had never been presented with any concrete evidence in support of these assertions, the Agency wanted either to substantiate the problems and address them or to put these issues to rest.

In the following sections, we address the changes that EPA proposes to make in each of the areas on which we requested comment.

A. Broad Economic Benefit Recapture Issues

1. Alternatives to BEN

a. Background. EPA requested comment on whether an approach both more simple and more accurate than BEN could measure the economic benefit of delayed and avoided pollution control expenditures. EPA designed the BEN model to calculate the economic benefit of noncompliance in settlement of the vast majority of its civil penalty enforcement cases. Although BEN has effectively served this purpose, the Agency recognizes that it should be improved or even replaced if a better alternative exists or could be developed easily. This concern is particularly relevant because an increasing number of state and local government enforcement personnel use the BEN model regularly. Any alternative approach must meet EPA's policy objective of ensuring that violators are put on an even financial footing with those regulated entities that comply on time. Alternatives must also be reasonably accurate, simple to use, and readily understandable to the vast majority of the BEN model's users, as these federal, state and local government enforcement officials usually have limited knowledge of financial economics or accounting.

b. Proposed Changes. Many commenters expressed various criticisms on different aspects of the BEN model. These criticisms, however, focused on suggestions for improving BEN. No commenter proposed an alternative approach to a stand-alone computer model that performs net present value calculations. Therefore, the Agency plans to continue its use of BEN, although it does propose significant revisions (see following sections).

2. Illegal Competitive Advantage

a. Background. Since 1984, EPA's civil penalty policy has maintained that any given penalty should be structured, at a minimum, to recover the economic benefit a violator has enjoyed as a result of its noncompliance. In addition to this economic benefit component, EPA assesses a gravity component that reflects the seriousness of the violation. This gravity component is designed to ensure that the penalty puts the violator in a worse position than those in the regulated community who complied with the law. The economic benefit component of EPA's civil penalty policy focuses specifically on identifying and recovering the gain to a violator in order to remove any economic incentive to violate environmental regulations. The policy does not address incidental and/or indirect losses or gains to society that might result from a violation. For example, consumers may enjoy an economic gain if a violator is able to reduce product prices.

The BEN model calculates the savings from the delayed and avoided costs that the violator realizes through its noncompliance and uses this measure as a proxy for the total economic gain it accrued. This approach represents the lower bound of the total economic gain associated with noncompliance. For example, given a new environmental standard, if all firms in the market except the violator comply by investing in pollution abatement technology, the market price for the product will rise to reflect the higher marginal costs borne by the producers. The violator has a cost advantage and could (a) charge the market price and pocket the avoided costs, (b) charge a lower price than its competitors in order to gain market share, or (c) combine strategies (a) and (b). BEN is designed to calculate only the delayed and avoided costs of noncompliance regardless of which strategy the company pursues. BEN, therefore, implicitly assumes that the violator follows strategy (a), and does not address the potential market impacts associated with the violator's lower marginal costs (*i.e.*, strategy (b) or (c)).

Illegal competitive advantage is an estimate of the total economic gain that the violator enjoys in the market as a result of the violation. Illegal competitive advantage focuses on how delaying and avoiding compliance allows violators to manufacture and sell products in the marketplace more cost-effectively, and also examines violators' short-term and long-term economic advantages associated with improved market position. Note that marginal cost differences are key to illegal competitive advantage: if a company's violation affects only fixed costs, then BEN can generally capture the entire economic benefit from noncompliance. A violator need not demonstrate an intent to improve its market position in order for it to enjoy an illegal competitive advantage.

Illegal competitive advantage can occur in a number of different ways, including:

Violator Sells Products at Below Market Price: A violator might be able to sell its products at a lower price than its complying competitors because it does not incur environmental compliance costs. Depending on market conditions (*i.e.*, elasticity of market demand) the violator may then secure a bigger share in that particular market, with the profit from the extra market share constituting the economic benefit. Some key questions are: how do we assess and prove what share of the market resulted from underpricing, and how do we determine the value of that market share?

Example: A metal finishing company fails to install pollution abatement equipment that would insure compliance with its wastewater discharge permit in order to keep costs low. A competitor producing the same product for the same market cannot compete with the price charged by the metal finisher in noncompliance and, as a result, exits the market. The violator now gains market share. BEN will capture the violator's delayed and avoided costs while in noncompliance, but will not calculate the added profits that the violator realizes from its increased market share.

Example: An auto shop using illegal disposal methods charges the same prices as its competitors and spends its avoided costs on advertising. It builds a larger customer base than it otherwise would have. BEN does not capture the full dimension of economic benefit from the auto shop's expanded customer base.

- *Violator Sells Products that Were Prohibited by Law:* Many EPA regulations prohibit the sale of certain products, either permanently or until EPA reviews and approves them.[3] If the violator produces and sells the prohibited product, the violator will achieve an economic benefit by: (1) making money directly from the sale of the product; and (2) capturing the market for the product, particularly if the product is new.

Example: A company mixes overstock of a restricted agricultural chemical into one of its "improved" popular lawn care products. Sales of the product are strong and customer brand identification and approval is high. BEN does not calculate the economic benefit the company has obtained through its illegal sales of the product nor the benefit that will accrue in the future from customer brand loyalty.

- *Violator Initiates Construction or Operation Prior to Government Approval:* Some regulatory requirements prohibit construction or operation until EPA or another government agency grants a permit. When a violator initiates construction or operation prior to this approval, it can begin operating earlier than it would have been able to had it complied with the law (*e.g.*, if operation begins nine months earlier than it should have, the violator can generate sales it should not have made and thereby gain a head start in developing its market). The violator may be partly motivated by the desire to gain an "early mover" advantage in a new market. (Note that in many of these cases, the violator will obtain governmental approval anyway. In such cases, no environmental damage has occurred. A penalty is nevertheless necessary, as EPA's policy is designed to maintain incentives to comply promptly with regulations.)

If the violator is operating in a new or rapidly evolving market, it may benefit

[2] For the sake of simplicity, the Agency generally refers to present value adjustments in either direction as "discounting," although we acknowledge that a more precise term for adjusting the initial economic benefit forward is "compounding."

[3] Note that this differs from a company that produces an approved product through a prohibited process when the final product possesses all the same characteristics from the consumer's point of view, regardless of the production process (*e.g.*, oil sold from a noncompliant underground storage tank, or a metal part finished with an illegal coating). The economic benefit in such cases would be based on the pollution control costs that the violator delayed and/or avoided by producing the approved product through the prohibited process (*e.g.*, the delayed costs of proper tank inspection or the avoided incremental costs of a legal—and presumably more expensive—coating).

from an "early mover advantage." For example, by signing long-term supply contracts with buyers at prices lower than from other potential entrants (who plan to comply with environmental regulations), the violator may forestall competition in the market. An "early mover" may also benefit by building a customer base before other entrants. If decreasing costs are associated with the size or scale of production, the "early mover" could also enjoy a long-term cost advantage over its competitors. Presumably an "early mover" could then parlay relatively thin profits (or even losses) in the early periods with higher profits in later periods.

One key issue in determining economic benefit is that new businesses often expect to lose money in the first few years of operation. Thus, if a firm starts operating one year earlier than it should have, and EPA examines gross income minus expenses only for that first year, then the violator might argue that its economic benefit is zero even though this was part of the violator's plan. A more appropriate measure of the violator's economic benefit may be the difference in the present value of expected cash flow over the life cycle of the facility from operating under compliance (*i.e.*, delayed opening) and in violation (*i.e.*, actual opening date).

Example: A telephone cable company needed to obtain a dredging permit to lay cable between the mainland and an island. Because of competitive pressures to be the first to offer fiber optics cable services on the island, the company proceeded on an accelerated schedule. Had the company gone through the permitting process, it would have been delayed by eight months. A competitor in the same market is within eight months of being permitted. One of two scenarios is possible here:

The violating company lays the cable and gains the first mover advantage, preventing the other company from being able to enter the market profitably. In this case, illegal competitive advantage includes both the profits the company receives during its eight months of operation that were the result of noncompliance, and also any monopoly profits the company enjoys after this time.

The violating company lays the cable and enters the market with other competitors selling the same service. In this case, illegal competitive advantage includes the profits the company receives during its eight months of operation that were the result of noncompliance. In the absence of this company's entrance, the remaining companies would have expanded to meet demand and would have earned the profits.

In both of these cases, BEN will not estimate the current and future benefits that the company realized from being the first to market.

• *Violator Operates at Higher Capacity:* A firm may be able to comply with applicable environmental regulations by maintaining its output or throughput below a given threshold level. A violator might produce above this threshold level in order to take advantage of high product prices. Alternatively, a violator might realize its lowest unit production costs at an output level that exceeds the level at which it can maintain environmental compliance.

Example: A paper mill can comply with the terms of its wastewater permit as long as its daily output does not exceed 200 tons per day. In order to reap the benefits of a market surge in paper prices, the mill produces an average of 240 tons per day over a six-month period. BEN does not capture the profits realized by the violator from the additional 40 tons per day produced on average over the period of noncompliance.

Example: A cheese manufacturer is committed to purchase the total output of 55 dairy farms through long-term "take or pay" contracts. Milk production from the farms exceeds the level that the manufacturer can process while staying within the regulatory limits of its wastewater permit for a three month period. Rather than pay for milk that it does not process, the manufacturer chooses to operate at a level that causes it to exceed its permit levels. The manufacturer enjoyed economies of scale due to noncompliance. That is, the manufacturer's production costs of the additional units are lower while it is in noncompliance because there is no additional cost associated with pollution control.

In summary, EPA is examining the recovery of illegal competitive advantage in cases where the BEN model fails to assess adequately the total economic benefit that the violator enjoys as a result of the violation. The proper evaluation of illegal competitive advantage in EPA policy will involve either identifying the incremental benefit enjoyed by the violator and not addressed by the BEN model, or applying a different analytic tool than BEN for the entire economic benefit calculation.

b. Proposed Changes. The Agency does not believe that a stand-alone computer model analogous to BEN (or an add-on module to BEN) could easily and reliably determine the economic benefit from the widely varying examples of illegal competitive advantage described above. To examine the potential market repercussions of noncompliance clearly involves a significantly greater effort than calculating the benefit from delayed and avoided costs. Tracing the probable use of the avoided cost savings by the violator, investigating the specific conditions of the market or markets in which the violator operates, and determining the resulting impacts of noncompliance on the market dynamics are all usually time-intensive tasks. The Agency proposes to assist enforcement staff in measuring economic benefit in such cases by developing a module for the BEN model that alerts the user to situations in which illegal competitive advantage may be significant and to develop guidance to assist enforcement staff in their calculation of illegal competitive advantage.

EPA proposes to have the BEN model query users regarding a series of conditions that might characterize situations where significant economic benefit from illegal competitive advantage could exist. Whenever the user creates a case, the model would prompt the user to provide answers to a series of questions. Depending on the user's answers to these questions, the model would advise the user to seek assistance in assessing the possible existence and magnitude of the economic benefit gained from illegal competitive advantage. The following questions target certain types of violations that may result in illegal competitive advantage. They are designed to require only a basic knowledge of the company's products and markets. An example of the types of questions to be included in this module (with interpretations of positive responses in parentheses) are as follows:

1. Violator Initiates Construction or Operation Prior to Government Approval

a. Did violator's failure to obtain the appropriate review/permits allow it to begin production or sales sooner than it should have? (If "yes," then the violator may have received early mover advantage.)

2. Violator Sells Products Prohibited by Law

a. Did violator sell prohibited products? (If "yes," then go to next question. If "no," then this is not an issue.)

b. Does the violator plan to continue selling similar products in same market after coming into compliance? (If "yes," then possible lasting market share effects may result from the illegal action.)

3. Violator Sells Products Below Market Price

a. Are the required compliance costs significant enough for the violator to have been able to undercut its competitors during the noncompliance period? (If "yes," then the violator may have benefitted from market share gains, as it may have been able to undercut its competitors through its price advantage from noncompliance.)

b. Does violator market products that can develop "brand loyalty" or high switching costs? (*e.g.*, computer software, service such as auto maintenance.) (If "yes," then price advantage could have long-term market distribution effects that benefit the violator.)

c. Has violator developed or marketed new products while in noncompliance? (If "yes," than violator may gain "early mover" market share and discourage competitors by keeping prices low.)

4. Violator Operated at Higher Output

a. Could the violator have operated within the law cost-effectively by reducing its output/throughput to a certain level? (If it could have done so, but did not, the violator's gain from the incremental output above the level at which it would have been in compliance should be examined.)

EPA seeks comment on these questions and suggestions for other questions that would be necessary to assess sufficiently whether the economic benefit beyond avoided or delayed costs a violator gains from noncompliance are likely to be significant.

For situations where the model advises the user to assess the possible existence and magnitude of the economic benefit gained from illegal competitive advantage, EPA proposes to develop a guidance document to assist enforcement staff in evaluating illegal competitive advantage. The goal of this document is not to provide a fixed approach to calculating the economic benefit from illegal competitive advantage. Rather, the goal is to educate enforcement staff on the types of illegal competitive advantage that may arise in enforcement actions, as well as to provide a framework for EPA analysts and outside experts who perform the actual calculations. This guidance will eventually be incorporated into a revision of the 1984 "Guidance for Calculating the Economic Benefit of Noncompliance for a Civil Penalty Assessment." EPA proposes the following general outline for the content of the illegal competitive advantage guidance document:

1. Definition of Illegal Competitive Advantage

2. Situations in Which Competitive Advantage May Be Significant

a. The violator has an early mover potential in a changing industry (*i.e.*, has opened facility early).

b. The violator is one of a few members in an industry that dominate that particular industry.

c. The violator has been the low-price producer and gained market share during non-compliance.

d. The violator could have operated within the law cost-effectively by reducing its output/throughput to a certain level, but instead operated above that level and that conduct made the violator more profitable.

3. Situations Where It Is Reasonable To Assess

What is the appropriate threshold value for use by EPA? (*E.g.*, how large does the potential economic benefit beyond avoided or delayed cost need to be to warrant EPA's closer scrutiny?)

4. Guidance Principles

EPA needs to keep information collection and analysis as simple and quick as possible.

5. Avoiding Potential Double Counting

a. Use of an integrated approach that constructs compliance on time and delay compliance scenarios, incorporating the relevant cash flows from delayed/avoided compliance costs and illegal competitive advantage.

b. Potential for recapture of both the benefits from savings and illegal competitive advantage in cases where the economic benefit from illegal competitive advantage is additive to the traditional BEN analysis.

c. Cases in which either the traditional BEN analysis or the illegal competitive advantage analysis drops out of the economic benefit calculation.

EPA seeks comment on the suggested approach and outline for this guidance document.

B. The BEN Model's Calculation Methodology

Over the years, the BEN model has received criticism for alleged flaws in its calculation methodology. The two issues with the greatest potential impact on economic benefit estimates involve the model's discount rate and its inflation rate. The Agency requested substantive and constructive comments on how the BEN model handles these two issues. In addition, EPA invited comment on all aspects of BEN's calculation methodology. The Agency asked commenters to address whether their proposed changes would add any complexity to the computer model, and if so, why the benefit of the change justified the added complexity.

1. Investment Tax Credit and Low-Interest Financing

a. Background. Economic benefit calculations for cases with noncompliance dates prior to the mid-1980s must account for two important tax-code effects: the investment tax credit (ITC) and low-interest financing (LIF).

Prior to 1986, the Federal government allowed companies an ITC on capital investments.[4] The ITC effectively reduced the after-tax cost of a capital investment. Complicated—and changing—rules governed the depreciation basis for a capital investment with an associated ITC.

BEN accounts for the ITC that was available on projects completed before January 1, 1986, but does not do so for the transition years of 1986 and 1987. The transitional rules allowed companies to obtain an ITC for projects completed after December 31, 1985, if the project met one of three criteria regarding the level of planning and construction that had occurred by that date.[5] Because the allowance of the ITC in these years was far from automatic (although still possible), BEN warns the user about this issue if the noncompliance date is between January 1, 1986, and June 30, 1987. If further research and analysis shows that the granting of an ITC was likely in particular case, the can adjust the "off-line

Prior is available in business in pollution control ersion of the BEN model included a variable that accounted for LIF. The 1993 version removed this variable because it was relevant only for cases with noncompliance dates before 1987. BEN issues a warning to the user about LIF if the noncompliance date is before January 1, 1987. If further research and analysis show that LIF was probably available in a particular case, then a financial analyst can adjust the BEN result through an off-line calculation.

b. Proposed Changes. As a few commenters suggested, EPA could revise the BEN model to allow an option for ITCs during the 1986–87 transition years, as well as to account for LIF in years prior to 1987. These revisions

[4] Note that this and other tax-related adjustments are irrelevant for municipalities and other not-for-profit entities because their marginal tax rate is equal to zero.

[5] The criteria are: "1. It is constructed, reconstructed, or acquired under a written contract binding on December 31, 1985; 2. it is constructed or reconstructed by the taxpayer, construction was begun by December 31, 1985, and the lesser of $1 million or five percent of the cost was incurred or committed by December 31, 1985; or 3. it is an equipped building or plant facility, construction was begun by December 31, 1985, under a written specific plan, and more than one-half of its cost was incurred or committed by December 31, 1985." (Commerce Clearing House, Inc., *Explanation of Tax Reform Act of 1986*, page 328.)

would, however, add considerable complexity to the model. Furthermore, the Agency did not receive any comments documenting recent instances in which an off-line calculation was necessary to account for ITCs or LIF. This is not surprising—EPA Headquarters has received only one call in the last two years in response to the BEN model's current warning about LIF. Furthermore, the already low likelihood of the need to account for ITCs or LIF continues to decline with the passage of time, as EPA is not likely to see many enforcement actions now in the late-1990s for violations that began in the early to mid-1980s.

EPA instead proposes that the revised BEN model not accept noncompliance dates before July 1, 1987. This will ensure that BEN's omission of ITCs and LIF is not leading to incorrect economic benefit estimates in instances where users do not heed the current model's current warning. EPA will provide assistance in performing the necessary calculations for cases that actually involve noncompliance dates before July 1, 1987.

The Agency welcomes comment on this proposed change. We are particularly interested in how often BEN users have recently analyzed cases with noncompliance dates before July 1, 1987, and how often they anticipate doing so after June of 1999, the expected introduction of the revised BEN model.

2. Depreciation Method

a. Background. The BEN model calculates depreciation for capital investments, as the tax deduction for accounting depreciation charges provides a real after-tax positive cash flow to businesses.[6] BEN calculates depreciation using a five-year straight-line methodology for capital investments made before January 1, 1987, and a seven-year Modified Accelerated Cost Recovery System for capital investments made after January 1, 1987. These assumptions represent the most rapid depreciation periods available for typical pollution control investments, thereby producing the positive depreciation cash flow effects as early as possible. These particular depreciation methods generally result in a conservative economic benefit calculation (*i.e.*, lower than would otherwise be calculated) because they minimize out-of-pocket costs to the violator. Therefore, BEN is often producing economic benefit figures that are very conservative.[7]

For capital equipment that has a very short useful life, the selection of alternative depreciation schedules might be available and also more beneficial to a business. In unusual cases where the violator can demonstrate that an alternative depreciation schedule would be both available and beneficial, then more detailed calculations by a financial analyst in lieu of the BEN model are necessary.

b. Proposed Changes. A revised BEN model could conceivably allow users the option of assuming an alternative depreciation schedule, but we believe the drawbacks of the added complexity and potential user confusion outweigh the gains from addressing a rare circumstance. The Agency welcomes feedback from BEN users on how often violators have asserted that a different depreciation schedule would be both available and beneficial, and how often off-line calculations have been necessary.

3. Tax Rates

a. Background. BEN uses three marginal tax rates: a rate for 1986 and before, one for 1987 through 1992, and one for 1993 and beyond. Users can accept the standard values—which incorporate national averages of state tax rates—or modify the inputs to reflect specific state values.[8]

b. Proposed Changes. EPA proposes that the revised BEN model require the user to enter the state in which the violator is located. The model will then automatically reference an internal database of state tax rates and perform the necessary calculations for the violator's combined federal and state tax rate.[9] EPA also proposes that BEN calculate the tax rate for each separate year of noncompliance, to allow for annual changes in the relevant state tax rate (even when the federal rate remains constant). Users will have the additional option of entering year-by-year combined federal and state rates in a spreadsheet-like format.[10]

Although these options may sound complex, the only data required of the user would be the violator's state. The other screens for additional data entry and modification would appear only to those users who selected such advanced options. The Agency welcomes comments on the added flexibility and applicability that would result from these proposed changes.

4. Differences in On-Time and Delay Scenarios

a. Background. The BEN model assumes that the violator would have used the same technology and approach in the hypothetical on-time compliance as it did in the actual delayed compliance scenario. The only allowed differences are in the two scenarios' exact costs of compliance, which BEN's inflation rate adjusts automatically. But technological, legal, or other relevant changes between the on-time and delay scenarios can conceivably alter the components of the compliance scenarios, increasing or decreasing the compliance costs by a rate other than general price inflation. Where the delay case costs are substantially less than the on-time case costs (*e.g.*, a technological breakthrough in control equipment), BEN will understate the benefit. Where the delay costs are substantially higher (*e.g.*, regulations become more strict, but with "grandfather" clauses for already-compliant firms), BEN will overstate the benefit.

Where the on-time and delay compliance scenarios are significantly different, BEN's normal assumption of two identical scenarios is inappropriate. More sophisticated calculations are necessary.[11]

b. Proposed Changes. Modifying BEN to accommodate such circumstances is possible, and we believe the gains from the model's consequently enhanced applicability outweigh the drawbacks of the added complexity and potential user confusion. EPA, therefore, proposes to change the BEN model to allow users to enter separate on-time and delayed compliance costs.

It should be noted that the standard operation of the model would still entail only a single compliance scenario, and the other screens for additional data entry and modification would appear only to those users who select such advanced options. The availability of more advanced options would also enhance the model's ability to account for such atypical situations such as valid pre-compliance expenditures and credits for salvaged capital equipment, thus decreasing the need for off-line calculations. The Agency welcomes comments on this proposed change and how significantly it will enhance the model's flexibility and applicability.

5. Replacement Cycles for Capital Equipment

a. Background. One of the three types of compliance costs BEN analyzes is the capital investment, which represents depreciable pollution control equipment. As the name implies, depreciable equipment wears out with usage and the passage of time. BEN, therefore, asks the user if the violator will need to replace the equipment at some point in the future. If the user specifies that the investment in capital equipment is recurring, then the user can accept the standard value of 15 years for the useful life of the capital equipment, or enter another value.

If the cost of capital equipment is recurring, then a violator receives more than one benefit from delaying the purchase of capital equipment. The violator first receives a benefit from delaying the purchase of the initial capital equipment, and then receives further benefits from delaying the purchase of the replacement capital equipment for each future recurring cycle.

b. Proposed Changes. Some commenters stated that BEN's option of recurring capital equipment replacement cycles is "speculative," as these cycles have yet to occur in the typical case. Although BEN makes an assumption about the future, this assumption is essentially a baseline one: BEN assumes that future pollution control requirements will be neither more stringent nor more lax than current requirements, and that the cost of the replacement equipment will increase by no more and no less than the projected rate of inflation. Therefore, the Agency proposes to keep the option of replacement cycles.

Some commenters argued that BEN should not offer infinitely recurring replacement cycles. The modeling of infinite cycles might at first seem excessive, but all future costs are "discounted" back to their present values (see following sections for an explanation of discounting). The result is that any cycle after the first one typically has a negligible impact upon the economic benefit estimate. Therefore, the Agency proposes that the revised BEN model use a default value of one replacement cycle, and offer users a choice of anywhere from zero to five replacement cycles. This approach is in contrast to the current choice of zero or infinite replacement cycles, with no intermediate option.

6. Inflation Treatment

a. Background. The first step in the economic benefit calculation is to determine the compliance costs—for both the on-time and delay scenarios—as of the year in which they were actually incurred (or should have been incurred). Therefore, BEN adjusts the compliance costs from the date they were estimated to the date the costs will be incurred to account for the effects of inflation.

To adjust for inflation, BEN currently uses a standard-value rate calculated from the appropriate ten years of monthly inflation data from the Plant Cost Index (PCI) in the magazine Chemical Engineering. This simple inflation rate adjusts the initial compliance cost estimates, both back in time into noncompliance- and compliance-year dollars, and then forward in time into future-year dollars (typically for capital equipment replacement cycles). The PCI is particularly appropriate for adjusting the costs for inflation that are typically associated with pollution control technology.

b. Proposed Changes. Despite the Agency's specific request for comment on BEN's inflation adjustment, we received almost none. The issues that the few commenters did raise were:

(1) The use of a single inflation rate for both actual and projected inflation,

(2) The basis for the actual inflation rate, and

(3) The basis for the projected inflation rate.

The Agency proposes to change the BEN model to allow two separate inflation adjustments. One adjustment would be for cash flows incurred during the period of historical noncompliance, and then a separate rate for projected inflation which would adjust for future replacement cycles (and other future compliance costs in cases where the violator has not yet come into compliance).

For actual historical inflation, the Agency proposes that BEN adjust each cash flow from the date of the cost estimate to the date on which it is incurred by referencing a look-up table of cost index values.[12] The default cost index would be the PCI. This particular index may not be appropriate for every single case, but we have yet to encounter any other cost index that would form a better basis for a standard value. EPA also proposes that the revised BEN model allow the user to select from multiple look-up tables representing different cost indices—including the Building Cost Index, Construction Cost Index, Consumer Price Index, and the Employment Cost Index—and the option of selecting different indices for different compliance components.[13] The user would also be able to override BEN's inflation adjustments for the capital investment and one-time nondepreciable expenditure, and instead enter separate estimates for these compliance costs as of the noncompliance date, compliance date, and the initial recurring cycle start dates. This customized data entry could represent another alternative cost index; case-specific inflation assumptions, or entirely different actions for on-time and delayed compliance.

[6] The IRS does not allow companies to write off completely a capital investment in the year of purchase. Companies must spread the expense of the investment over several years using the appropriate depreciation schedule.

[7] The IRS requires that many types of pollution control equipment be depreciated over a longer period than assumed in the BEN model. Were EPA to tailor the depreciation to account for that longer period, the result would be a higher economic benefit calculation.

[8] Users might also wish to modify the tax rates to reflect a business whose low net income entails a tax bracket other than the highest one assumed in the standard values. Note though that BEN's assumption of the *highest* marginal tax rate produces a *lower* economic benefit estimate (because a higher tax rate decreases the after-tax value of the compliance costs).

[9] The model will also offer the option of the national average of all the state tax rates for cases in which it is unclear to what state the violator pays taxes.

[10] This option would allow users to account for—among other situations—a company whose profitability (and hence tax bracket) was highly variable over different years. (As noted before, BEN's assumption of the highest marginal tax rate throughout the noncompliance period results in a lower economic benefit estimate.) This option could allow users to account for the 1987 transition year in the federal tax rate change, but this is a moot point if the BEN model is changed (as proposed in a previous section) to require noncompliance dates after June 30, 1987.

[11] A similar problem arises when no technologically feasible method of compliance is available. In that case, the only possible compliance method is to cease all production, with the economic benefit calculation requiring a lost-profits approach, which is beyond the scope of the BEN model.

[12] The model would not apply an explicit inflation *rate*, although an annualized rate could be imputed from the model's data. For example, suppose a $200 cost estimate from 1991 must be adjusted for inflation to the same day in 1992. The 1991 cost index value is 100, whereas the 1992 index value is 103. The calculation the model performs is $200 × 103/100 = $206 (*i.e.*, multiplying the original cost estimate by the ratio of the cost index values from the date on which the cost is actually incurred, and the date on which the estimate is made). The index change from 1991 to 1992 does represent an annual inflation rate of three percent (*i.e.*, 103/100 = 1.03 − 1 = 0.03), although the model would not directly apply this rate. The calculation that uses the ratio of the index values is both more precise and more simple than calculating multiple annual inflation rates over different periods for historical costs.

[13] See the following table, Different Cost Indicies.

DIFFERENT COST INDICIES

Abbreviation and full name	Description	Typical applications
BCI—Building Cost Index	Building costs; based on 1.128 tons Portland cement, 1,088 bd. ft. 2x4 lumber, 68.38 hrs. skilled labor.	General construction costs, especially structures.
BEN—Current BEN model's constant inflation rate.	Average of PCI's last 10 years; *i.e.*, a *constant* 1.8% increase each year.	Replication of results from current BEN model.
CCI—Construction Cost Index	Construction costs; same as BCI, except 200 hrs. common labor.	General construction projects, especially where labor costs are a high proportion of total costs.
CPI—Consumer Price Index	Representative consumer goods	Compliance involves use of consumer goods.
ECIM—Employment Cost Index: Manufacturing	Employment costs for the manufacturing industry.	One-time nondepreciable expenditures or annual costs; mainly labor costs.
ECI—Employment Cost W—Index: White Collar	Employment costs for white collar labor	Same as ECIM, except pro-fessional labor (*e.g.*, permits).
PCI—Plant Cost Index	Plant equipment costs	Standard value.

The Agency welcomes suggestions for other cost indices that the BEN model should offer. Commenters' suggestions should not merely list various indices, but also provide a sufficient rationale for the inclusion of each index, including its components, relevance to pollution control costs, and both historical and future availability.

For projected future inflation, the Agency proposes that the model use a simple, uniform rate. The model will provide a separate standard value for each cost index. (As explained above, users will be able to override the entire inflation adjustments for the capital investment and one-time nondepreciable expenditures as of the initial recurring cycle start date, as well as any compliance dates that are expected to occur in the near future.) The model will also use a separate projected inflation rate for additional recurring cycles, and allow the user to specify an alternative value for this rate.

The Agency proposes using a projected value for each index. (This is a more sophisticated approach than the DOS version of BEN.) However, because published forecasts are generally not available for specialized cost indices, we propose to start with an average of published forecasts for the Consumer Price Index (CPI) because such forecasts are widely available. We would then multiply the average CPI projection by the ratio of the CPIs to the relevant cost index's respective ten-year historical averages. Each of the alternative indices would have its own default future inflation rate, calculated in a similar manner. (Note that the user would not perform this calculation, nor would the model; instead, the Agency would perform the calculations each year to update the standard value, and the model would contain a single, simple projected inflation rate.) We welcome suggestions for other methods of calculating a projected future inflation rate.

The standard operation of the model would still entail absolutely no input whatsoever from the user who is satisfied with BEN's default values. The other screens for additional data entry and modification would appear only to those users who selected more advanced options. EPA welcomes comment from BEN users on whether the proposed changes will enhance the model's accuracy, flexibility, and adaptability.

7. Discount Rate

a. Background. Once the compliance cost estimates are adjusted for inflation, and then for taxation, the BEN model must adjust these after-tax cash flows to a common present value as of the date of noncompliance. The difference between the two present values (of the on-time and delay scenarios) is the initial economic benefit as of the noncompliance date. BEN then compounds this initial economic benefit forward from the noncompliance date to the penalty payment date to determine the final economic benefit. A single rate to adjust all present values both backward and forward in time.[14] This section addresses only the calculation of BEN's standard value for this single discount rate, which is currently based upon a ten-year after-tax weighted average cost of capital (WACC), with the inputs representing averages across all industries.[15]

The WACC is the average of the cost of debt and the cost of equity, weighted by the portions of debt and equity out of total financing. The WACC is first calculated for each year, and then these annual values are averaged over the most recent ten-year period. The (after-tax) cost of debt is the average return on corporate bonds averaged across all industries, and then multiplied by one minus the average corporate tax rate (state and federal combined). The cost of equity is based upon the widely used Capital Asset Pricing Model (CAPM), and is equal to a risk-free rate component plus the expected equity risk premium (*i.e.*, the difference of the arithmetic means of stock market returns and risk-free rates since 1926).

b. Proposed Changes. We propose that the BEN model automatically tailor the standard value discount rate to the period from the noncompliance date to the penalty payment date.[16] The standard value will reference a look-up table, averaging the annual values over the relevant years. Each individual annual calculation will be similar to the standard value's current methodology, as displayed in Exhibit 4–7 of the *BEN User's Manual*.[17]

[14] The Agency received many comments on the use of a single rate as opposed to two different rates. The Notice addresses this issue in section B(8), Discounting Methodology.

[15] The discount rate standard value for not-for-profits is based upon municipal bond yields, averaged across the four investment-quality ratings of Aaa, Aa, A, and Baa. The only comment EPA received on the not-for-profit discount rate was a suggestion that municipal economic benefit be calculated using a discount rate for private entities that perform similar functions (*e.g.*, on a municipal Clean Water Act case, the discount rate would be the average WACC for privately owned wastewater treatment plants). However, because the Agency is trying to calculate the economic benefit that the municipality and its residents or rate payers have actually gained, the Agency prefers to use an estimation of the municipal government's opportunity cost of financing projects, which is equal to the interest rate on the municipality's bonds. This debt rate—which forms the basis for the BEN model's not-for-profit standard value discount rate—will almost always be substantially lower than the private-sector-equivalent cost of capital.

[16] Although the following discussion focuses on the for-profit discount rate, the tailoring of the discount rate to the relevant time period would also apply to not-for-profit cases.

[17] We propose two minor changes to the annual calculation of the WACC. First, we propose replacing the standard value that currently applies the most recent figure for the expected equity risk premium to all prior years' calculations. Instead, each year's calculation will employ the figure that was actually available in that year.

Second, we propose altering the horizon for the equity risk premium. The standard value currently combines the long-term Treasury security rate with the long-horizon equity risk premium, the latter being equal to the difference of the arithmetic means of stock market returns and the corresponding-maturity risk-free rate. Because the WACC calculation combines the equity risk premium with the risk-free rate of the same maturity that is used initially to calculate the premium, the issue of which horizon premium to use is largely moot. (The expected deviations of the resulting WACC will thereby be both small and nonsystematic.) We propose to switch to the intermediate-horizon risk premium (and the corresponding risk-free rate) as a simple compromise between the long-horizon and short-horizon.

The model will also perform additional customizing automatically, or with minimal input from the user. Because we have already proposed that BEN have an input for the violator's state (thereby customizing the tax rate for compliance costs), we propose using that same customized tax rate for the after-tax debt cost component of the WACC. The model will even select the individual tax rate if the company is not organized as a C-corporation (as profits and losses from S-corporations, partnerships, and sole proprietorships flow through the owners' individual tax returns).

The standard operation of the model would still entail absolutely no input whatsoever from the user who is satisfied with BEN's default values. The other screens for additional data entry and modification would appear only to those users who selected such advanced options. EPA welcomes comment from BEN users on how the proposed changes will enhance the model's accuracy, flexibility, and adaptability.

8. Discounting Methodology

a. Background. As stated in the previous section, once the compliance cost estimates are adjusted for inflation, and then for taxation, the BEN model must adjust these after-tax cash flows to a common present value as of the noncompliance date. The difference between the two present values (of the on-time and delay scenarios) is the initial economic benefit as of the noncompliance date. BEN then compounds this initial economic benefit forward from the noncompliance date to the penalty payment date in order to determine the final economic benefit. BEN uses a single interest rate to adjust all present values both backward and forward in time. Because BEN uses the same rate for going both backward and forward, this calculation is computationally equivalent to bringing all cash flows—both past and future—directly to the penalty payment date at the WACC rate.

The comments fell into three categories. Some thought the WACC rate was too high and especially that the compounding part of the calculation should be based on a risk-free rate. Some agreed with EPA's approach. Others commented that EPA's discount rate was too low and should instead be based on financing pollution control investments with 100% equity.

Several commenters claimed that BEN's use of a WACC-based rate in all parts of the benefit calculation yielded inappropriately high economic benefit calculations. They claimed that future cash flows represent uncertainty and risk, while past cash flows are known, certain and riskless. Thus, they generally agreed that discounting future cash flows should be done with a WACC-based rate or some other risk-free rate, but felt that compounding past cash flows forward should be done with a riskless rate. They cited selected academic literature from economic and financial analysis of commercial damages in torts cases, proposing two alternative methodologies:

- (A) Use BEN's intermediate figure for the economic benefit as of the noncompliance date (*i.e.*, bring all cash flows, irrespective of when they occur, back to the noncompliance date at a rate reflecting risk), but then bring this intermediate economic benefit figure forward to the penalty payment date at a risk-free rate.
- (B) From the perspective of the *penalty payment date*, bring all future cash flows back in time at a rate reflecting risk (*e.g.*, the WACC) and bring all past cash flows forward in time at a risk-free rate (*e.g.*, the after-tax return on short-term U.S. Treasury securities).

Both of these methodologies produce significantly lower economic benefit estimates than the BEN model. A range for the magnitude of the typical differences is difficult to provide because of the many different types of cases, but alternative B will often produce negative economic benefit estimates for the capital investment portion of the compliance scenario.

The second group of commenters agreed that the WACC was appropriate for discounting all future costs back to the noncompliance date, and then compounding the initial economic benefit forward to the penalty payment date.[18] The third group commented that BEN's use of the WACC is incorrect and leads to economic benefit estimates that are too low. These commenters instead favored a company's higher cost of equity capital, rather than the weighted average of the relatively higher-cost equity capital and the relatively lower-cost debt capital. Their rationale was that excess returns flow to a company's equity holders, not to a mixture of its debt and equity owners.

b. Proposed Changes. Although both the conceptual bases and results of the two risk-free rate methodologies contradict each other, they share a similar rationale: cash flows that have yet to occur in the future are uncertain and risky, whereas cash flows that have occurred in the past are certain and riskless. These methodologies, therefore, apply to future cash flows a rate that includes a risk premium (*e.g.*, a company's WACC or some other risk-adjusted rate) and apply to past cash flows a risk-free rate (*e.g.*, the return on short-term Treasury securities). As discussed below, the Agency believes that even if this approach were justified in the context of calculating damages owed to plaintiffs in certain types of tort cases, it is entirely inappropriate in economic benefit calculations for enforcement actions. The goal in the tort damages approach is to make the plaintiff whole by compensating him for his losses. The fundamentally different goal in enforcement actions is to deter future violations by both the defendant we are suing and by other similar situated defendants.

By contrast, the third approach to calculating interest rates advocates the use of an equity-based discount rate. This approach is more reasonable than the risk-free rate alternatives. Not only is it more persuasive, but there have been several court decisions that adopted an equity-based discount rate and rejected a risk free rate approach. Nevertheless, the Agency still believes that using the WACC throughout all aspects of the calculation is the most reasonable and preferable approach.

(i) Risk-Free Rate Forward: Theoretical Issues. The goal in a tort action is to make the plaintiff "whole." The settlement or court determination ultimately should place the plaintiff in the same financial position as if the wrong had not occurred. The first step in such a case is to calculate the necessary compensation at the time of the actual wrong. The next step is to adjust the compensation calculated at the time of the actual wrong to the time

[18] One commenter agreed with compounding the initial benefit forward at the WACC rate, but only to the compliance date, after which a lower compounding rate would be appropriate. His rationale was that a company then must set aside specific funds to pay a penalty; therefore, the economic benefit estimate should be compounded either at the actual interest rate on an escrow account or at the company's debt rate (which reflects its risk of going out of business, resulting in an inability to pay a penalty).

at which such compensation is to be made. Certain authors writing about tort damages have advocated bringing such compensation forward at a risk-free rate.[19] Otherwise, the plaintiff would be "having-its-cake-and-eating-it-too": the initial compensation has essentially been invested at the time of the actual wrong at a rate reflecting risk taking, yet the plaintiff is now granted the compensation which grew at that rate, without ever bearing the accompanying risk. (In contrast, the regular investor would have made the investment and then had to stand by nervously as the investment's value either grew or fell). Some commenters thought BEN should employ such a risk-free rate approach.

While the appropriate focus in a tort damage action is on compensating the victim (*i.e.*, plaintiff), this is not appropriate in an enforcement action. The enforcement agency is not suing for damages it has suffered. The goal is not to make the plaintiff whole (*i.e.*, to restore to it the amount by which it was damaged). The goal of the economic portion of a civil penalty is to return the defendant to the position it would have been in had it complied, and thus disgorge from it the amount it wrongfully gained. If civil penalties, composed of the economic benefit and gravity components, effectively allow the violator to gain an economic advantage from its violations, other companies will see an advantage in similar noncompliance. This is a fundamentally different perspective from a tort case, and demands a fundamentally different view of discounting.

The appropriate discount rate for economic benefit calculations is a company's opportunity cost of capital, reflecting the financing costs for pollution control investments or the value of investment opportunities foregone because of pollution control purchases. The opportunity cost of capital is the incremental expected rate of return a company must earn to pay back its lenders (*i.e.*, bond holders) and owners (*i.e.*, stockholders), which is the weighted-average cost of capital (WACC).

The risk-free rate methodologies use short-term U.S. Treasury bill rates that are unrelated to a company's opportunity cost of capital. Only the Treasury of the United States of America is able to borrow at the U.S. Treasury bill rate.[20] Companies lack the advantage of such low financing rates. To finance additional projects, they must either issue debt at higher interest rates, and/or issue equity, which requires returns of even higher rates.

Applying the risk-free rate to a company's cash flows presumes an unattainably low borrowing rate and an insufficient return on investments. (With the exception of mutual funds, a company whose main business was investing in T-bills would not be in business for very long.) The true opportunity cost of capital for a company far exceeds the T-bill rate. The risk-free rate will therefore systematically understate the economic benefit of pollution control noncompliance. Penalties based solely on economic benefit calculated with a T-bill rate would allow a defendant to retain a potentially substantial gain. Because of the precedent of this retained gain, other regulated companies might see an economic advantage in similar noncompliance, and the penalties based on a risk-free rate approach will fail to deter potential violators.

(ii) Risk-Free Rate Forward: Practical Implications. Not only are the theoretical underpinnings of the risk-free rate forward methodologies flawed, but their practical implications are also troubling. Specifically, the use of the risk-free rate fails to achieve the overriding goal of economic benefit recapture: to make the violator financially indifferent between compliance and noncompliance, which in turn constitutes a critically important element of deterrence.[21] An example helps to illustrate this point.

Suppose a company is deciding whether to purchase pollution control equipment this year (*i.e.*, 1999), or to wait until the same month in the next year (*i.e.*, 2000). The company is not necessarily contemplating a willful violation of the law—perhaps the law's interpretation is unclear, and the company would like to know the financial consequences of not purchasing the equipment, and then later being found to be in noncompliance. The company, therefore, wants to know how much better or worse off it will be by delaying the purchase one year.

The company performs three sets of economic benefit calculations. First, it calculates the economic benefit as of the present time (*e.g.*, June 1999). This lets the company know how much better off it will be by delaying the purchase (*i.e.*, until June 2000), in the absence of any penalty. Second, it calculates the economic benefit as of one year later (*i.e.*, June 2000, when it would otherwise purchase the equipment, and also pay any penalty), and then discounts the calculated economic benefit back to the present (*i.e.*, June 1999). This lets the company know the present value of any economic benefit based penalty that is calculated and paid the following year in 2000. Third, it subtracts the second result from the first result to determine the net amount by which it is better or worse off (*i.e.*, the economic benefit of its noncompliance, minus the present discounted value of the economic-benefit-based penalty it can expect to pay in 2000).

The first economic benefit calculation yields the same result regardless of which economic benefit methodology is used, because all the cash flows occur in the future.[22] In this example, the only compliance measure is a one-time capital investment of $10 million.[23] The company calculates that it is financially better off now in 1999 by $494,314 from a projected one-year compliance delay.

The company also needs to know how much better off it will be on net should the enforcement agency assess a penalty in 2000 equal to the calculated economic benefit from its delayed compliance. Assuming that the agency uses BEN, the economic benefit is brought forward one year by an estimate of the company's WACC (in this case 10 percent), so the economic-benefit-based portion of the penalty the company will pay is $543,745.[24] But because the company will pay the penalty a year in the future, it must discount that amount back to the present. If it discounts the penalty at the same rate that BEN used to compound the penalty forward to the penalty payment date, the present discounted value of the future penalty will always be equal to the economic benefit the company calculates for itself (in this case, $494,314). The company can therefore expect to have any economic benefit disgorged from itself, which makes the company financially indifferent between compliance and noncompliance. The column in the exhibit below labeled "BEN" summarizes these calculations.

Economic benefit	BEN	Alternative A	Alternative B
1. Penalty Payment Date of 6/1/1999	$494,314	$494,314	$494,314
2a. Penalty Payment Date of 6/1/2000	543,745	507,166	(175,797)
2b. Result 2a discounted back to 6/1/1999	494,314	461,060	[illegible]
3. Net Result (*i.e.*, 1 – 2b)	[illegible]	33,254	494,314

Perhaps, however, the enforcement agency uses one of the alternative methodologies. Under alternative A, as described in Section II B(8)(a), above, the initial economic benefit as of the noncompliance date is calculated with BEN, but is then compounded forward at the after-tax risk-free rate. In this case, compounding the initial economic benefit forward from 1999 to 2000 at an illustrative risk-free rate of 2.6 percent yields $507,166. The company discounts this future penalty back to the present (*i.e.*, 1999) at its WACC, and arrives at $461,060.[25] Because this is less than the current economic benefit of $494,314, the company realizes a net gain of $33,254. This approach fails to make the company indifferent between compliance and noncompliance and, in the absence of any additional gravity-based penalty components, the company will have an incentive to delay compliance.

If the enforcement agency instead uses alternative B, as described in Section II B(8)(a), the economic benefit as expected to be calculated a year from now in 2000 is a negative $175,797.[26] The company realizes that an enforcement agency using this approach will conclude a year from now in 2000 that no economic benefit has been gained, and therefore the economic benefit-based portion of the penalty will be zero. But the company currently calculates its economic benefit in 1999 to be a positive $494,314. At the time of initial noncompliance in 1999, the company concludes that delaying the equipment purchase will result in an economic gain, but that it will never have to pay any economic-benefit-based portion of the penalty. Once again, a risk-free approach fails to make the company indifferent between compliance and noncompliance and, therefore, in the absence of any additional gravity-based penalty components, the company will have a significant incentive to delay compliance.

(iii) Equity Rate Approach. By contrast, an approach that employs a company's equity rate focuses solely on the company's equity owners, as opposed to its other stakeholders (who hold the company's debt). Because the company's cost of equity capital will always exceed or at least be equal to a company's WACC, the economic benefit estimate—with all other assumptions held constant—will be higher or at least the same.[27] While the Agency believes that a reasonable argument supports the use of equity, we nevertheless prefer the WACC, because it better represents firms' total capital structures and their own typical business decision-making practices.

(iv) Proposed Change: Use WACC, Except for a Possible Early Penalty Payment. For the above reasons, the Agency believes that the current basic discounting methodology is appropriate and should not be changed, with one exception: If a company pays to the United States the benefit portion of the penalty while the case is still in litigation, EPA will cut off the compounding rate at the date of payment. Thus, there will no longer be any dispute in that case over the appropriate compounding rate from the date of payment into the future. In appropriate cases, the United States may consider allowing the violator to escrow funds for the economic benefit portion of the penalty demand (whether at the compliance date or at any other time). Then, when EPA runs the BEN model, it will use the date the funds were escrowed as the penalty payment date. The violator would have to furnish proof that it established the escrow account, as well as placed on the account appropriate restrictions (*e.g.*, all accrued interest would go to the Agency).[28] In cases where the period from the initial noncompliance date to the escrow date is short, this will eliminate much of the deviation in results between the competing economic benefit methodologies. We propose that BEN incorporate this guidance into its on-line help system and user's manual.

C. Improving the BEN Model's User Friendliness

EPA understands that some users find the BEN model difficult to use. While that has not been EPA's experience, the Agency expressed its interest in learning of any difficulties users encountered when running the model. The Agency particularly requested suggestions for realistic alternatives that would preserve the model's degree of precision.

[19] No consensus exists, however, and many other authors have advocated other approaches. Judges in tort cases have arrived at rulings that mandate many different rates, with many different values and rationales.

[20] This is a very favorable rate, because of the U.S. Treasury's over two-century default-free record, its ability to create money, and also the state tax-free status of its debt instruments.

[21] Because benefit recapture by itself merely makes the violator indifferent between compliance and noncompliance, only a total penalty amount that exceeds the economic benefit (by incorporating a gravity component) can achieve actual deterrence. Therefore, a civil penalty should always be at least equal to the economic benefit calculation plus some non-trivial gravity component.

[22] The results might be slightly different depending on what "risk-adjusted rate" the risk-free rate forward methodologies use for the future cash flows in their calculations. Different practitioners have used different "risk-adjusted rates" in different cases, including the same WACC-based discount rate that the BEN model uses. Therefore, for the purposes of the examples that follow, we assume that the alternative methodologies also use the WACC for future cash flows. If, instead, they were to use a different rate, the exact figures for the results would be slightly different, but the overall implications would remain the same.

[23] Other inputs include a 40-percent tax rate, 2.2-percent inflation rate, and 10-percent discount rate.

[24] Because the time between the noncompliance date and the penalty payment is only one year, the compounding takes the form of simply multiplying the initial economic benefit by the sum of one plus the discount/compound rate (*i.e.*, $494,314 × (1 + 0.10) = $543,745).

[25] Even if the company were to discount the future penalty back at a rate lower than its WACC, this rate would still exceed the risk-free rate that alternative A uses to compound the economic benefit forward, and therefore the discounted future penalty would still exceed the currently calculated economic benefit.

[26] A negative economic benefit result for the capital investment portion of compliance is typical for alternative B. In many recent cases, practitioners implementing this approach have arrived at negative economic benefit results for delayed capital investments, despite no changes in technological or legal requirements over time between the dates of noncompliance and compliance. Applying the combination of an extremely low risk-free rate for past cash flows and a higher risk-adjusted rate for future cash flows to delayed capital investments (with their past cash outflows for the actual investment and their future cash inflows for depreciation tax shields) can produce aberrant results that defy common sense. These perverse negative economic benefit estimates do not reflect any real economic losses because of the expenditure delay. Furthermore, even if the parameters in this example were different, the economic benefit—although perhaps positive—would still be much smaller than even under alternative A, and would similarly fail to make the company indifferent between compliance and noncompliance.

[27] The WACC will equal the equity cost of capital if the company has no long-term debt. Note also that an economic benefit calculation using the equity rate should first net out any cash flows attributable to debt financing, as the focus in such a calculation is on the returns to the company's equity holders only.

[28] Should the escrowed amount exceed the benefit component, then the interest on the amount that exceeded the economic benefit component would accrue to the violator.

1. Is BEN Too Complex To Operate?

a. Background. EPA invited comments on whether any aspect of BEN's operation or the BEN User's Manual is too complex. Although the Agency designed BEN to be straightforward and easy to use, we welcomed any suggestions to make the model and manual easier to use without compromising BEN's degree of precision.

b. Proposed Changes. Many commenters thought that although the BEN model is generally easy to use, certain aspects of its operation are cumbersome. These concerns largely stem from the model's original programming for a mainframe computer environment and its current existence in the DOS operating environment. Because nearly all computer users are now accustomed to the Windows™ operating environment, the Agency proposes to reprogram the model for Windows™. The switch to the Windows™ operating environment should make basic data entry and runs much easier to perform, as well as allow the addition of various advanced features without burdening the user with additional complexity.

Furthermore, EPA has now established a toll-free helpline for federal, state, and local government enforcement staff who need additional assistance in using the BEN model. The helpline provides federal, state, and local environmental enforcement agencies with advice regarding financial issues that impact enforcement cases. The main types of inquiries EPA is addressing with this helpline are:

- The calculation of a violator's economic benefit from noncompliance;
- The evaluation of a violator's claim that it cannot afford to comply, clean up, or pay a civil penalty, and the application of the three computer models—ABEL, INDIPAY, and MUNIPAY [29]—that address these issues; and
- The calculation of the after-tax net present value of a supplemental environmental project, and the application of the computer model—PROJECT [30]—that addresses this issue.

Callers can obtain copies of the BEN model and BEN User's Manual, copies of the previously mentioned other key models, as well as relevant policies and guidance documents. In addition, callers can obtain advice on how to access training courses on the models and related subjects. Inquiries regarding the interpretation of federal statutes and EPA policies will be referred to the EPA, as will inquiries from non-governmental employees.

The toll-free helpline phone number is 888-ECONSPT (326–6778), and is staffed by a contractor, Industrial Economics, Incorporated, located in Cambridge, Massachusetts. The helpline is in operation from 8:00 AM to 6:00 PM Eastern time and will accept voice mail messages when it is not in operation. In addition, the contractor is providing a companion e-mail address: benabel@indecon.com. When requesting help, enforcement staff should identify the government entity for which they are working.

2. Is the Information BEN Needs Difficult or Expensive To Obtain?

a. Background. One of the main breakthroughs BEN achieved over its predecessor model was its streamlining of the data needed to operate the model. While the model requires a minimum of seven and a maximum of only eighteen pieces of data, some users apparently feel the data is difficult to obtain. This has not been EPA's experience, as most (if not all) of the required data inputs are based on facts that are already or should be known to the litigation team as the data are important to other parts of the settlement. Nevertheless, the Agency welcomed any suggestions on how to make this data easier to obtain as long as we can still preserve the model's degree of precision.

b. Proposed Changes.—The Agency received a wide range of responses on this issue. Most users thought the necessary data was easy to obtain; others thought it was prohibitively difficult to obtain. EPA did not receive any specific suggestions on how to streamline the model's data requirements even further. The Agency did receive suggestions that the BEN model incorporate some basic, generic compliance data.

The Agency is in the process of developing a computerized data base for RCRA compliance costs, based on the current RCRA compliance cost handbook. This data base should enable the user to look up the appropriate RCRA compliance costs easily, and then use them in the BEN model to calculate an economic benefit figure. Although this database will not be a substitute for case-specific data, it will at least provide a starting point and a reasonably accurate estimate when a violator refuses to provide any detailed cost information. The Agency welcomes comment on which statutes would benefit the most from similar databases, and what specific compliance components most often need cost estimates.

Also, as noted at end of Section II C (1) (b), above, EPA has established a toll-free helpline to provide assistance to government enforcement personnel regarding financial economics issues in environmental enforcement cases. Helpline staff can provide suggestions on how to obtain the necessary data to run the BEN model.

III. Response to Comments

A. Broad Economic Benefit Recapture Issues

1. Alternatives to BEN

Comment: One commenter stated that the BEN result should be adjusted for the violator's probability of detection and prosecution.

Response: The commenter's suggestion that the penalty should be multiplied by the inverse of the chance of detection and prosecution finds solid support in the literature on deterrence and economics. In brief, the theory underlying the comment is that a reasonable economic actor will weigh its willingness to violate against the size of the penalty that will be assessed, multiplied by the inverse chance of getting caught. For instance, if preventing a violation would cost a person $100, and the penalty that would be assessed if the person is prosecuted is $200, then the person will elect to violate, all other things being equal, unless the chance of getting caught is at least 50%. Nonetheless, despite the validity of the commenter's premise, the comment is beyond the scope of the current public notice. The Agency has asked for comments only on the method for calculating economic benefit, not on the broader deterrent effect of penalties generally.

Comment: One commenter thought BEN understates the economic benefit of noncompliance because the model defines benefit as the income earned from investing the funds that otherwise would have been used to pay compliance costs. The real economic benefit, according to the commenter, is the producer's surplus obtained during the noncompliance period. The commenter proposed that EPA obtain estimates of how people value pollution reductions to estimate a demand curve from which to determine the supply-demand framework facing the violator.

Response: This comment misunderstands the Agency's task, which is to calculate the economic benefit that an individual firm has gained (whether from mere delay of compliance costs or larger issues of market share gains), not the benefit the society gains from pollution level changes. The commenter might also be confusing the economic benefit to the violator (which the Agency is trying to measure) with the monetized value of environmental damages that result from noncompliance (which in this context the Agency is not trying to measure).

2. Illegal Competitive Advantage

Comment: One commenter maintained that if EPA decides to pursue illegal competitive advantage (that is, focusing on issues such as illegal profits or market share), then it must establish the appropriate analytic tools that conform to both mainstream financial and economic theory (considering items such as price effects, elasticities, and economies of scale), while keeping BEN relatively user-friendly.

Response: The Agency generally agrees with these sentiments. Nevertheless, keeping BEN relatively user friendly is a nonissue as the model cannot be modified to calculate a benefit based upon illegal competitive advantage.

Comment: Several commenters thought that revenues from the sale of prohibited products were too complicated to include in the BEN model.

Response: The Agency believes that the concept of capturing the revenues or profits from the sale of prohibited products is relatively uncomplicated. Nevertheless, the Agency agrees that it could not modify the BEN model to perform this calculation and remain sufficiently user-friendly for its intended audience. Therefore, the Agency is proposing guidance to address this question as well as the other illegal competitive advantage questions. In addition, the Agency is proposing adding some questions to the BEN model to alert users to these issues.

Comment: One commenter stated that if the prohibited product is the only product produced by a company, then the after-tax net profit is the best measure of the economic benefit of noncompliance. If the prohibited product is one of several produced, then one should allocate the costs and revenues among the products to determine the profit per product. In this case, the commenter concluded, the after-tax profit on only those products that are prohibited should be included in the economic benefit of noncompliance.

Response: The Agency agrees that one factor which it should consider is whether the company is a single-product company or a multi-product company in recapturing any benefit from producing a prohibited product. However, a clear distinction does not always exist between products, product lines, or even companies and divisions within corporations. Where possible in such cases, the analyst may have to evaluate several similar products and make a reasonable judgment regarding the per-unit or per-division after-tax profits that were unlawfully gained.

Comment: One commenter thought that to calculate the benefit a violator gains from selling illegal products, one should calculate the net profit gained by sales of that product, augmented by interest and discounted over time. According to this commenter, net profit equals gross profit less the proportion of gross expenses and overhead attributed to sales of that product, which BEN can already calculate.

Response: The Agency is in agreement that this is a conceptually valid method for calculating the economic benefit from the sale of an illegal product. But the correct allocation of incremental overhead to a specific product is a difficult task, and one for which the BEN model is irrelevant.

Comment: Several commenters thought that the benefit of noncompliance in cases in which losses are reported in the first year of the business's operation is too complicated for the BEN model to address. Another commenter thought that the benefit in such cases equals the future tax benefit received from these net operating losses. However, because the business may choose not to apply these losses for some time, it is difficult to calculate.

Response: The Agency agrees that the BEN model is unable to address the situation in which start-up costs lead to initial losses, even though future profits may be significant.

Comment: One commenter thought another kind of benefit that EPA does not recognize is "advantage of risk," which is the benefit a company gains by putting off expenses in the hopes that future events will render the expenses unnecessary.

Response: EPA already addresses this advantage: the economic benefit calculation can reflect whether events after the noncompliance date (NCD) have rendered the expenses unnecessary. In such a situation, it is necessary to analyze the expenses the company has not merely delayed, but instead has avoided entirely (which increases the resulting benefit). The current BEN model requires an off-line calculation to arrive at the correct result, although the revised BEN model may be able to add flexibility to perform such a calculation internally.

Comment: Several commenters thought that the issue of competitive advantage cannot be adequately calculated in terms of an economic benefit penalty. For example, one person noted that a given market edge may grow over the years, or may be the deciding factor determining whether the violator could stay in business, making it difficult to calculate a benefit figure. Others noted that BEN is inapplicable to cases involving illegal market share gains from violating concentration limits or cap limits in permits. Another suggested that EPA should develop a protocol or give more guidance for illegal competitive advantage cases, including source-specific factors agencies could use to calculate illegal profits or market share gained.

Response: The Agency agrees that there are a number of complex factors to consider in many analyses of illegal competitive advantage. The Agency plans to issue guidance that will aid analysts in such situations.

Comment: One commenter noted that EPA should develop a punitive penalty to discourage violators from achieving a competitive advantage, instead of trying to determine the economic benefit from competitive advantage. Similarly, one person thought that the profit associated with illegal competitive advantage should be a non-negotiable portion of the gravity component of a penalty. Another person thought that when illegal competitive advantage has been proven, companies should be financially punished to a point at which they are worse off (not equal to) their industrial counterparts.

Response: The total penalty comprises two components: economic benefit and the gravity (of the violation). The recapture of economic benefit is designed to place all firms on a "level playing field" so that no firm can benefit by avoiding or delaying the necessary compliance expenditures. It is not punitive in nature, but rather is "no-fault." Competitive advantage is a component of economic benefit, and, therefore, should be analyzed in a "no-fault" framework. But the presence of competitive advantage could indicate the existence of certain other factors (*e.g.*, recalcitrance) that can enter into the gravity calculation. Once the full economic benefit is recaptured, the Agency then imposes a significant gravity component to ensure that the violator will be worse off than its competitors.

Comment: A few commenters asserted that the competitive advantage gained by delaying or avoiding compliance

[29] ABEL, INDIPAY and MUNIPAY evaluate inability to pay claims from for-profit entities, individuals and municipalities, respectively.

[30] As most supplemental environmental projects (SEP's) are tax deductible and completed long after the cases are settled, any stated SEP cost is usually far above the actual cost to the violator. PROJECT determines a violator's actual out-of-pocket costs for a SEP.

costs does not exist after collecting a penalty equal to the BEN-calculated economic benefit. For example, the disadvantages of "predatory" underpricing by a company of its products may outweigh the temporarily enhanced market share. Therefore, pursuing illegal competitive advantage would be a form of double recovery. Another commenter stated that "lost profits" and "illegal competitive advantage" measure the same thing (*i.e.*, the economic benefit from noncompliance), and that EPA is not authorized to collect both.

Response: The apparent disagreement would again appear to stem from wording issues. EPA does not intend to "double count" economic benefit, but instead seeks different conceptual terms to approach economic benefit calculations in different situations. As stated previously, EPA's intention is to determine fairly what economic benefit is, and then recapture it as part of an overall penalty, including a significant gravity component reflecting the seriousness of the violation. Alternative approaches such as calculating illegal competitive advantage are meant to add flexibility and are not necessarily additive. Nevertheless, should EPA determine that it needs to consider both types of economic benefit in a particular case, it will do so. Predatory pricing may sometimes be counterproductive, but in certain situations the enhanced market share may constitute an addition to the economic benefit.

Comment: One commenter stated that any marginally increased deterrent effect from trying to capture any illegal competitive advantage would be more than offset by the complications and controversy involved in performing such a calculation. Similarly, some commenters asserted that because evidence suggests that the BEN model is meeting its goal of deterring noncompliance, adding new complications to the model is not justified. Others warned that adding another dimension of economic benefit to measure would make BEN less attractive for states to use, decreasing the usage of BEN in even simpler cases.

Response: Measuring illegal competitive advantage may add complexity to the economic benefit calculation. In some cases it may be worth dealing with the additional complexity if there is only a small increase in economic benefit. In other cases, however, the presence of significant illegal competitive advantage will cause the BEN model to miss most of the economic benefit, and therefore the additional efforts are necessary.

Comment: One commenter contended that EPA's "illegal competitive advantage" proposal is driven at least in part by a desire to avoid any possible reductions in fines resulting from proposed changes to the BEN model.

Response: EPA's goal since the establishment of the benefit recapture requirement has been to determine accurately—within reason—the violator's economic benefit of noncompliance from all sources, including illegal competitive advantage. In pursuing that goal, EPA has never reached its various decisions on modifying the BEN model based on keeping annual penalty assessments at a certain level. If that were the case, EPA would never have changed its discount rate assumptions from the equity cost of capital to the weighted average cost of capital (WACC), which—all else being equal—would lower penalty assessments. With regard to illegal competitive advantage, EPA is concerned that its penalty assessments are missing a major component of economic benefit by ignoring illegal competitive advantage. Therefore, EPA is committed to calculating the benefit from illegal competitive advantage in appropriate cases regardless of what other modifications are made to the BEN model.

Comment: One commenter expressed the view that all illegal competitive advantage situations cannot be grouped under the heading of "illegal competitive advantage," and noted that removing such an advantage is only one reason for the economic benefit component of the penalty. The commenter further noted that a violator can receive an economic benefit even without competitive advantage; *i.e.*, when all the firms in an industry are simultaneously out of compliance.

Response: The Agency believes that any apparent disagreement on this issue stems mainly from wording issues. The Agency agrees that many different types of economic benefit exist outside of avoided and delayed pollution control expenditures, but uses the term "illegal competitive advantage" as a convenient catch-all. The Agency also agrees that economic benefit can exist even if all firms in an industry are not in compliance.

B. The BEN Model's Calculation Methodology

1. Discount Rate

Comment: Several commenters stated that the discount rate for future cash flows and the compounding rate for past cash flows (*i.e.*, the rate at which the initial economic benefit as of the noncompliance date (NCD) is brought forward to the penalty payment date (PPD)) should continue to be the same. One person noted that using a discount rate that is larger than the compounding rate would underestimate economic benefit. One commenter stated that the reason the weighted average cost of capital (WACC) is the appropriate rate to use as the for-profit entity discount rate is that it represents the fairest and most realistic rate available. Several commenters similarly stated that the WACC should be used for both compounding and discounting, if the EPA wants to ensure that companies do not profit from the additional funds available through noncompliance, as the WACC accurately reflects the opportunity return of alternative investments.

Response: EPA agrees with these positions, as the WACC is the minimum rate that one would expect companies to return to their investors in order for those companies to continue to operate in their current lines of business.

Comment: Some of the commenters expressed concern that the BEN model is essentially flawed by using only one rate—the WACC—for both discounting future cash flows (back to the NCD) and compounding the initial economic benefit (from the NCD to the PPD). These commenters contended that a proper calculation should use two different rates.

Response: The Agency believes that using one rate for compounding and discounting cash flows is soundly based in financial and economic theory. (See Section II.B(8) above.) The use of one rate also maintains an internal consistency within each cash flow that using two different rates could not achieve. For example, assume that a $100 after-tax cash flow was incurred a year after NCD. These commenters would advocate discounting the $100 back to the NCD at a rate of, for example, 10 percent, which would give the cash flow a present value of approximately $91 as of the NCD. But the commenters would then compound the $91 forward to the PPD at a lower rate of, for example, 4 percent. The resulting cash flow would have a present value of approximately $95 as of one year after the NCD (as it is brought forward to the PPD), even though the actual cash flow as of that time was really $100. This result is clearly inconsistent with reality and common sense. (This is an entirely different situation than one in which the violator is already in compliance and has either paid the benefit portion to the United States or escrowed (at the discretion of the government) funds for the economic benefit portion of the penalty demand. If the benefit portion is paid, then the benefit portion will immediately cease accruing any interest. In the escrow situation, the economic benefit portion will accrue interest at the escrow fund's interest rate, but all the interest will accrue to the United States. In either situation, when EPA runs the BEN model it should use the date the funds were paid or escrowed as the penalty payment date.)

Comment: Several commenters stated that the compounding rate should account only for the "time value of money," and that the after-tax risk-free rate is the correct rate to use. They further contended that since no risk is borne by shifting the net economic benefit forward in time, BEN's use of the company's WACC is wrong because it reflects a risk premium. Another commenter similarly stated that noncompliance, while representing a benefit to the firm, is essentially a new project deserving its own project-specific cost of capital, which is equal to the risk-free rate or the company's debt rate (which reflects its risk of going out of business and hence its inability to pay a penalty).

Response: The process of recapturing the economic benefit of noncompliance is not merely an exercise in moving disembodied cash flows through time to account for the time value of money. Bringing cash flows forward in time (compounding) at a risk-free rate fails to capture the reasonable benefit the company could earn from alternative internal or external investments. The Agency believes that using a risk-free rate would fail to make the violator indifferent to noncompliance.

Comment: One commenter stated that using the equity cost of capital to determine the correct compounding rate lacks support within the mainstream of modern financial theory. Several commenters alternatively argued that the cost of equity was the best rate for bringing the economic benefit forward in time, because excess funds available from noncompliance have a very wide investment opportunity horizon that is best reflected in the equity market rates. Another commenter stated that using equity was preferable because it is simple, fair, easily calculated, and not as prone to a "battle of the experts" as is the WACC.

Response: The Agency believes that the use of WACC best captures a violator's benefit. Nevertheless, the Agency also believes that a reasonable argument supports the use of equity, as the equity rate reflects the economic benefit earned by the company's equity owners. The Agency disagrees that using equity would significantly diminish the contentiousness surrounding expert witness analysis in negotiation. If anything, it would probably make it even greater.

Comment: Several commenters asserted that future cash flows should be discounted at an after-tax risk-adjusted rate that is less than a company's WACC, because capital investment in pollution control equipment usually involves a lower degree of risk than in other capital investment projects.

Response: Because investments in pollution control equipment allow a company to remain in business, they are essentially investments in the company as a whole. Therefore, these types of investments have the same degree of risk as other capital investment projects and are financed at the company's overall cost of capital (*i.e.*, the WACC).

Comment: One commenter thought the default discount rate is too general and results in incorrect economic benefit results. The commenter thought that EPA should instead require a case-specific input for the discount rate. Another commenter thought that while default values are sufficiently accurate for most cases, BEN could be improved by adding an option that allows the user inputting current and historical data to calculate a discount rate specific to the time period during which noncompliance occurred.

Response: The model's default rates (for the discount rate and certain other inputs) allow enforcement staff with little knowledge of financial economics to perform reasonably accurate analyses. This is one of BEN's significant improvements upon its predecessor (CIVPEN), whose many required inputs limited its applicability and utility. In the vast majority of cases, the default rates do not differ significantly from case-specific inputs, and EPA is always open to good-faith efforts by a violator to supply case-specific inputs. Furthermore, the revised BEN model for the Windows operating environment will incorporate look-up data tables that will be able to provide more tailored default rates without any input from users.

Comment: One commenter stated that the initial economic benefit should be brought forward from NCD to the compliance date (CD) at the WACC, and then from the CD to the PPD at the debt cost of capital. Another commenter proposed a lower compounding rate based on the violator's actual after-tax rate of return on funds in a dedicated escrow account—if the violator has actually set aside such funds for a penalty payment.

Response: The Agency fully agrees with using the lower rate, but only if the violator has actually escrowed such funds. Because such instances seem to be extremely rare, the Agency does not believe the economic benefit should automatically be brought forward from the compliance date at the lower rate. Instead, if a company escrows funds for the economic benefit portion of the penalty demand (whether at the compliance date or at any other time), then when EPA runs the BEN model, it will use the date the funds were escrowed as the penalty payment date. Once the government approved of the arrangement, the violator would have to furnish proof that it established the escrow account, as well as placed on the account appropriate restrictions (*e.g.*, all accrued interest would go to the Agency, except for any interest that is attributable to escrowed amounts in excess of the benefit component). In cases where the period from the initial noncompliance date to the escrow date is short, this approach will eliminate much of the deviation in results between the competing economic benefit methodologies. We propose that BEN incorporate this guidance into its on-line help system and user's manual.

Comment: One commenter made the point that choosing an appropriate "interest rate" was very important, and it was not clear from the **Federal Register** notice that EPA was soliciting comments specifically on this issue.

Response: This seems to be a misunderstanding caused by word choice, as the Agency's request for comment on the "discount rate" issue is intended to encompass both the rate used to bring future cash flows back in time, and the "compounding" or "interest" rate used to go forward from the NCD to the PPD.

Comment: A few commenters stated that the tort law literature suggests rates for bringing the initial economic benefit forward in time from the NCD to the PPD.

Response: The goal in a tort action is to make the plaintiff "whole." In a tort action, the settlement or court determination should place the plaintiff in the same position as if the "wrong" had not occurred. The first step in such a case is to calculate the necessary compensation at the time of the actual wrong. The next step is to adjust the compensation calculated at the time of the actual wrong to the time at which such compensation is to be made. This requires compounding and the issue then becomes: what is the appropriate compounding rate to use to make the plaintiff "whole"? This is sometimes a risk-free rate or a corporate debt rate. On

the other hand, in an environmental enforcement action the Agency is not suing for damages it has suffered. The goal is not to make the plaintiff whole, restoring to it the amount by which it was damaged. Rather, the goal is to return the defendant to the position it would have been in had it complied, and thus disgorge from it the amount it wrongfully gained. This is a fundamentally different perspective from a tort case and demands a fundamentally different view of compounding the initial economic benefit forward to the penalty payment date. The literature from tort law is not relevant.

Comment: Another commenter stated that moving all cash flows directly to the PPD—as opposed to first moving them back to the NCD and then forward to the PPD—was a way of avoiding moving the same funds through time at two different rates.

Response: This approach would eliminate the advantage of being able to see the initial economic benefit as of the NCD, which can provide insight into the violator's decision making. In any event, the BEN model itself uses the same rate to move cash flows back to the NCD and to move the initial economic benefit forward to the PPD. Adopting this approach would not change the end result.

Comment: A commenter stated that the theoretically correct discounting method would be first to discount back to the NCD the expected cash flows for the on-time compliance case (including the depreciation tax shields that occur after the NCD, as well as the annual costs that are avoided under the delayed-compliance scenario), and then to compound these cash flows forward to the PPD. The commenter further stated that cash flows for the delayed compliance case should be discounted back to the compliance date (*i.e.*, the beginning date of that delayed-case set of cash flows), before similarly compounding them forward to the PPD. The difference between the two present values as of the PPD would be the economic benefit.

Response: The Agency believes the BEN model's current approach is theoretically correct; *i.e.*, the cash flows for both the on-time and delay scenarios should be discounted back to the NCD to calculate the initial benefit as of the NCD, and then brought forward to the PPD. The calculation for the initial economic benefit as of the NCD can be thought of from the violator's viewpoint at the time of the NCD, weighing the options of on-time compliance and delayed compliance. Therefore, the violator is looking forward at the two sets of cash flows, implicitly discounting both sets back to the "present" (*i.e.*, the NCD). Nevertheless, with identical discounting and compounding rates, this approach yields exactly the same result as the BEN model.

Comment: One commenter advocated calculating the economic benefit for municipalities by using a discount rate for private entities that perform similar functions (*e.g.*, on a municipal Clean Water Act case, the discount rate would be the average WACC for privately owned wastewater treatment plants).

Response: In municipal cases, the Agency is trying to calculate the economic benefit that the municipality and its residents or rate payers have actually gained. Therefore, the Agency prefers to use an estimation of the municipal government's opportunity cost of financing projects, which is equal to the interest rate on the municipality's bonds. This debt rate—which forms the basis for the BEN model's not-for-profit standard value discount rate—will almost always be substantially lower than the private-sector-equivalent cost of capital.

Comment: One commenter argued that smaller firms have higher capital costs and as a result should reflect a higher economic benefit.

Response: The BEN standard value discount rate is based upon the typical large firm's WACC. Although this rate is reasonable for most cases, BEN allows the user to enter a different value for cases in which the specific values may differ significantly, whether because a small firm has a higher cost of capital or for some other reason. Significant evidence exists that small companies on average have higher returns than larger ones, but EPA has conservatively decided to base its standard value discount rate on large companies, instead of on small firms' higher (by about two percentage points) discount rate. For small firms, application of this generic WACC rate yields a benefit number that is smaller than it would otherwise be and thus is particularly conservative in regard to small firms. (For a detailed discussion of this issue, see the Ibbotson Associates *Stocks, Bonds, Bills, and Inflation* annual yearbooks, in particular Chapter 7, "Firm Size and Return.")

2. Inflation Rate

Comment: One commenter thought BEN suffers from three inflation rate defects: (1) it uses the same rate for past and future time periods; (2) it uses a 10-year average rather than the actual rate during noncompliance; and (3) it relies on the McGraw-Hill *Chemical Engineering* Plant Cost Index (PCI) to the exclusion of all other relevant inflation indices. A few commenters similarly thought that BEN could be improved by establishing subroutines or look-up tables that allow inputting current and historical inflation rate data to calculate a rate specific to the time period during which noncompliance occurred.

Response: The Agency proposes to address these three concerns in the revised BEN model. First, the model will use a separate projected inflation rate for compliance costs occurring in the future. Second, BEN will use look-up tables (without requiring any input from the user) of cost indices for actual historical inflation. Third, users will have the option to reference cost indices other than the default PCI for cases in which compliance costs merit a different index.

3. Other Technical Aspects

Comment: One commenter thought BEN incorrectly changes the tax rates on July 1 instead of on January 1. This individual felt that if this is not changed, the BEN manual should explain why this convention is used.

Response: This is not in fact what BEN does. The Agency believes that the commenter's attempt to replicate BEN's calculations may have been thrown off by BEN's use of the mid-point of each year to calculate the present value of annual costs and depreciation tax shields (with each year starting at month of the NCD).

Comment: One person commented that BEN does not account for investment tax credits (ITCs) for capital investments after 1985, even though ITCs were still available for certain types of projects in 1986 and 1987.

Response: Given how rare these circumstances are, the Agency believes that the BEN model's current warning about this issue (and the consequent need to consult a financial analyst for the necessary off-line calculations) is sufficient. Nevertheless, the Agency proposes that the revised BEN model not accept noncompliance dates before July 1, 1987. This will ensure that BEN's omission of ITCs—and also low-interest financing (LIF)—is not leading to incorrect economic benefit estimates in instances where users do not heed the current model's current warning. EPA will provide assistance in performing the necessary calculations for cases that involve noncompliance dates before July 1, 1987.

Comment: One person thought that EPA had not adjusted the standard values in BEN for more than two years, even though they should be updated regularly.

Response: The Agency updates the standard values every year and encourages users to download the most current model version from its Internet site, at http://es.epa.gov/oeca.

Comment: One commenter stated that using BEN is inappropriate in instances in which the violator achieves compliance by using a different production method or by simply submitting the proper paperwork. Similarly, another commenter noted that BEN should have the flexibility to incorporate changes in technology between the on-time and delayed compliance scenarios, taking into account the lowest total cost of compliance as of the compliance date, rather than the actual cost incurred. One commenter stated that changing pollution technologies are inconsistent with the recapture of economic benefit based solely on the BEN model (regardless of the discount or inflation rate used). Another commenter stressed that more of the structure of the model and circumstances of the noncompliance scenario need to be taken into account, which cannot be addressed by just changing input values.

Response: If the violator eventually came into compliance using significantly different methods than would have been required had it complied on-time (*i.e.*, if the compliance components and costs for the on-time scenario differ from those for the delay scenario by more than just the inflation rate), then the current BEN model lacks the flexibility to analyze such a situation without assistance from a financial analyst, who would perform the necessary off-line calculations. The Agency hopes that the revised BEN model for the Windows™ operating environment will be able to offer such flexibility without additional complexity.

Comment: One commenter thought that BEN is not applicable to not-for-profit entities.

Response: This commenter appears to be misinformed, as BEN offers the user the option of selecting not-for-profit status, which then sets the tax rate to zero and the discount rate to the cost of municipal debt.

Comment: One commenter argued that minor infractions should not be considered when determining the dates of noncompliance and compliance—only significant violations should signal the noncompliance date. Similarly, as soon as the facility has remedied the vast majority of its violations, the period of noncompliance should be considered over.

Response: The Agency disagrees. The appropriate noncompliance and compliance dates for an economic benefit analysis are usually the same as their legal counterparts. The noncompliance date is when the violator should have incurred the costs necessary for compliance, and the compliance date is when the violator actually incurred such costs (typically, when compliance is achieved). The significance of the violations is irrelevant: what matters is when the company should have spent the money necessary for compliance, and when—by contrast—it actually did spend such money. There are some situations in which the noncompliance date may have different legal and economic meanings, such as when the first instance of noncompliance occurred prior to the statute of limitations cutoff. For purposes of settlement, the enforcement team may choose to use the statute of limitations date as the noncompliance date even though this means the actual economic benefit that has accrued to the violator may substantially exceed the economic benefit that the enforcement team calculates. Nevertheless, EPA believes that a very strong argument can be and should be made for using the actual noncompliance date and not the statute of limitations date. Economic benefit is a factor for consideration in imposing a civil penalty, and a trier of fact should not be precluded from considering the violator's entire economic gain from its violations. In these situations, the statute of limitations would serve to limit the maximum size of the civil penalty.

Comment: One person stated that unless the penalty is paid over a long period of time through several installments, no additional charges should accrue if the penalty is paid within 90 days of the date when the parties agree to the payment. The commenter also noted that the regulator should act quickly to propose an amount and immediately make the violator aware of the possibility of further compounding the penalty if the payment date is pushed back.

Response: Once final settlement is reached, the payment date and the rate at which the penalty should be compounded if not paid on time are debt collection issues and not relevant to the economic benefit analysis. In contrast, the payment date selected for a benefit analysis is a relevant consideration. Here, the Agency agrees and encourages enforcement staff to make violators aware early in negotiations that the later the penalty payment date, the higher the benefit number. Nevertheless, there is no legal obligation on the enforcement staff to do so.

Comment: One person felt that because BEN, by design, can only calculate an "estimate," it cannot create values that should be used as hard and fast penalties.

Response: Any calculation of economic benefit is by necessity an estimate, as one can never determine economic benefit as precisely as, say, determining the money a bank robber stole (*i.e.*, a violator's financial statements have no line item for "economic benefit from pollution control noncompliance.") The Agency believes that BEN is sufficiently accurate for its intended purpose. Furthermore, the economic benefit is only one component of the penalty, to which is added the gravity component.

Comment: One person suggested that a list of common environmental expenditures that are known to be tax-deductible (*e.g.*, engineering costs for permits) would be helpful to those with little or no knowledge of this area.

Response: While the EPA does not give tax advice, the Agency understands that virtually all environmental compliance expenditures are tax-deductible, except for land.[31] Enforcement staff using BEN can always check with the IRS for confirmation of case-specific items.

Comment: One state agency thought it could not use BEN to evaluate a company that failed to install a piece of control equipment that was required for only a three-year period. (The equipment in this particular case was a condenser.) Thus, the company avoided the equipment cost entirely, but if the company had incurred the cost, then the equipment would have commanded a resale value after three years.

Response: In the vast majority of cases, the equipment is installed and operated by the firm for its entire useful life. BEN assumes there is no resale value since the equipment has no useful life left and/or is not worth moving to a new site. In a temporary use situation, off-line calculations are necessary. A user in this situation should consult Appendix B in the BEN User's Manual to determine the economic benefit from an avoided capital investment, and then subtract from that the resale value (or salvage value) of the condenser once it no longer would have been needed. Alternatively, the equipment's lease cost (if such a lease is feasible, and the data

[31] Penalties are almost never deductible. (The only area where they are deductible is where the "penalty" is compensating the government entity harmed by the violation, but this is rarely an issue in the benefit context.)

is available) could be entered as an annual cost.

Comment: One commenter stated that BEN should stress "incremental" operating and maintenance (O & M) costs (*i.e.*, the additional costs necessary for compliance, over and above the costs the company would otherwise incur in the absence of compliance).

Response: BEN already stresses this; for example, the "help" statement option that is available when entering annual costs states, "The annual expense is an estimate of average annual incremental costs of operating or maintaining required environmental control measures."

Comment: One group of commenters stated that the analysis of the on-time case must be based on the compliance alternative that would have been chosen from a rational business decision perspective, meaning the compliance option with the lowest *ex ante* net present value of total cost to the company. They further stated that no rational business would spend more than this amount to achieve compliance. Another group argued that the economic benefit calculation should be adjusted for compliance costs that go beyond the regulatory effort, and that companies should not be penalized for implementing "Cadillac" remedies when trying to be good environmental stewards. They commented that companies will have no incentive to move "beyond compliance" if the BEN model continues to calculate economic benefit based on the more expensive control option chosen by the company.

Response: The Agency agrees that regulatees will generally select the compliance option that has the lowest cost. However, this assumption is only a starting point and does not always hold true; therefore, case-specific information must be examined. Regulatees may choose more expensive compliance options because they will ultimately work better with existing equipment and, consequently, a seemingly more expensive outlay will ultimately entail lower total costs. Alternatively, a lower quote from one vendor may not be as reliable or realistic as a higher quote from another vendor. The Agency generally agrees, nevertheless, that the compliance costs for the BEN inputs should not include additional costs expended in an effort to go beyond minimum compliance. The Agency also cautions enforcement staff to scrutinize such claims closely as the more expensive approach is often undertaken because that was the minimum that a rational business would take for the regulatory requirements at issue.

Comment: A few individuals thought that in cases where a violator ineffectively spends significant resources trying to achieve compliance, or where funds are spent on other unprofitable ventures, the company's economic benefit of noncompliance is smaller than that estimated by BEN. This result occurs because BEN assumes that all resources not spent on achieving compliance are spent on alternative profitable ventures. One commenter noted that not allowing credits for unsuccessful compliance implementation is not an economic decision, but simply a bad policy decision by EPA. Similarly, one group stated that denial of credit for failed precompliance expenditures "sends a clear message" that mitigation of pollution problems has no value. Some commenters stated that a way should exist to account for "good faith" yet unsuccessful attempts at compliance. In contrast, other commenters argued that no adjustment or credit for costs of compliance efforts that eventually fail should be given. One reason given was that the entire regulated community faced a similar set of challenges in achieving compliance by the required date; another reason given was that ineffective compliance methods should be treated as delaying tactics.

Response: The current BEN User's Manual (1993 edition) provides an explanation of the Agency viewpoint, which is that credit may be given for unsuccessful yet good-faith efforts to comply, as opposed to purported compliance actions that in fact had other motives. Nevertheless, the decision as to what constitutes such a good-faith efforts can be made only on a case-specific basis.

Comment: One commenter stated that the EPA could provide more guidance on the subject of compliance credits. The commenter suggested that to provide the correct incentives, EPA should not grant credit unless "compelling evidence" was present that the noncompliant firm had reason to believe that its effort and costs would actually bring it into compliance. Another commenter echoed the sentiment that a case-by-case determination is required.

Response: The Agency will try to elaborate more on its guidance in future versions of the BEN User's Manual, but the determination in each case still requires the judgment of the enforcement staff.

Comment: One commenter provided reports from actual cases in which he had calculated a negative economic benefit, typically because the violator's avoidance and/or delay of pollution control expenditures had ramifications that resulted in economic losses.

Response: The Agency recognizes that economic benefit can be negative—in both theory and practice. Enforcement staff must scrutinize such claims very carefully because violators generally do not avoid or delay pollution control expenditures when making such expenditures are in the violators' best financial interests. Critical factors in such a case may be the various assumptions for hypothetical transactions, the postulated sequence of events, and the relevance of claimed environmental expenditures to the statute at issue. Furthermore, there are limits as to what the Agency will consider in this regard.

Comment: A few commenters made the point that BEN does not take into account different types of compliance credits, such as those for increased production, reduced operating costs, or recycling in the production process.

Response: The Agency's position is that the economic benefit component of the penalty should not be adjusted for any supplemental environmental projects that the violator elects to undertake, which can instead mitigate the gravity portion of a proposed penalty. If the commenter is referring to the cost savings from compliance expenditures, then BEN will accept negative entries for annual costs. For example, suppose a $1 million capital investment will require annual operation and maintenance costs of $100,000, but at the same time will entail annual savings of $200,000. In that case, the BEN user can enter $1 million for the capital cost estimate, but a negative $100,000 for the annual cost estimate. The *BEN User's Manual* provides further guidance and examples for this issue.

Comment: One commenter expressed the idea that BEN could be adjusted to take into account market-based pollution control strategies, such as a permit system or pollution taxes.

Response: For atypical cases that involve noncompliance under an incentive-based pollution control system, a relatively simple computer model such as BEN is generally not sufficient, and the assistance of a financial analyst is necessary.

Comment: Several commenters noted that the BEN model uses inputs that are a mixture of both *ex ante (i.e.*, known only at the time of initial noncompliance) and *ex post (i.e.*, known only now that the calculation is being performed). Several of the commenters stated that BEN should use an *ex ante* view for the cost inputs, although others felt an *ex post* view was appropriate. Still another commenter saw little value in the *ex ante/ex post* distinction, and felt that virtually all models use a combination of *ex ante* and *ex post* data.

Response: A pure *ex ante* approach is generally impractical because it would require ignoring all information (*e.g.*, tax rate changes, inflation data) that has become known since the date of initial noncompliance. Therefore, BEN uses *ex post* data as an approximation of *ex ante* expectations. The Agency also agrees that the entire *ex ante/ex* post distinction is not very important.

Comment: One commenter stated that the EPA should "affirmatively indicate" that specific input values are preferred over the BEN default values. He also stated that BEN needs to reflect the plant-specific financial information within the context of complex corporations. This idea was echoed by another commenter who stated that if a firm has two specific lines of business, then each line will have its own cost of capital and, therefore, the discount rate should be division-specific. However, another commenter stated that the use of the WACC to discount future cash flows was in most cases appropriate and constituted a harmless approximation.

Response: Specific input values are generally preferred, although the basis for their calculation must be in accordance with the general principles of the BEN standard values (e.g., WACC for discount rate with for-profit entities, marginal tax rates, etc.). However, the effort required for their calculation may not always be worth the additional accuracy gained. The Agency agrees that, where practical, discount rates should ideally be tailored to specific lines of businesses, although often these separate lines are sufficiently similar so that a company-wide rate can be used, especially if calculating a line-specific discount rate will entail further complications and inaccuracies.

Comment: One commenter stated that the BEN model should use a 20-year pollution control capital replacement cycle with a finite facility or process lifetime, instead of infinitely recurring future replacement cycles. One commenter thought the use of an infinite number of cycles was speculative.

Response: BEN uses a 15-year capital replacement cycle default value, but the user has the option to enter another value, such as 20. The user must also specify whether the capital investment is one-time, or whether future replacement cycles will occur. Even if the user chooses an infinite number of replacement cycles, the discounting of future cycles means that only the first several replacement cycles typically have any noticeable effect upon the economic benefit result. Furthermore, although BEN is making an assumption about the future, this assumption is essentially a baseline one and hardly speculative: BEN assumes that future pollution control requirements will be neither more stringent nor more lax than current requirements, and that the cost of the replacement equipment will increase by no more and no less than the projected rate of inflation. But because the additional cycles after the first several have almost no impact upon the economic benefit result, the Agency plans to modify the BEN model to incorporate a default value of two replacement cycles, with the option for the user to specify anywhere from zero to five replacement cycles.

Comment: One commenter expressed the opinion that BEN should use an average marginal corporate tax rate in lieu of the highest marginal corporate tax rate. By contrast, a few commenters asserted that EPA appears to have picked the rates for the BEN model that will produce the highest economic benefit. Another commenter felt the inputs and structure of BEN do not capture the "real world."

Response: The BEN model, like any other financial economics model, is designed to capture the essence of the "real world" by use of simplifying assumptions that produce a reasonable approximation of the violator's economic benefit. The Agency believes that its default rates are reasonable approximations and are appropriate to use in most cases. The BEN standard values are nevertheless only a default, and the user is free to enter any value. Regarding the tax rate, in most cases the highest marginal rate applies, which is why such a rate is the basis for the default value. Note that the use of the highest marginal rate is highly conservative in that it lowers the after-tax cost of compliance to the greatest extent possible, and as a result produces a lower economic benefit estimate than would a lower marginal tax rate.

Comment: One commenter stated that BEN's replacement cycle assumptions should be consistent with those of the PROJECT model (which calculates the after-tax net present value of a supplemental environmental project).

Response: The replacement cycle assumptions used in BEN and PROJECT are based on different conditions. BEN assumes that the violator will have to replace the capital equipment in the future, because the equipment's operation is mandated by law. PROJECT, by contrast, gives no credit for future replacement cycles because the capital equipment purchased as part of the supplemental project is by definition not required by law; it has been put in place for penalty mitigation, with no law or agreement mandating future replacement. Investment in SEP equipment carries no guarantee that the violator will be replace it after its useful life.

Comment: One commenter noted that EPA should recognize that in some situations no technologically feasible means of compliance may exist.

Response: One means of compliance always exists: shutdown. The economic benefit in this situation is the illegal profits the violator gained during the period of noncompliance (*i.e.*, when operations should not have occurred).

Comment: One commenter maintained that the EPA should recognize that when it changes the interpretation of a rule, newly noncompliant companies have gained no past economic benefit. Similarly, another commenter stated that there should be no recovery of economic benefit when an entire industry misinterprets EPA's rule.

Response: Economic benefit is "no fault" in nature: a company need not have deliberately violated the law, or even have been aware of its violation, to gain economic benefit. If a company should have been in compliance, but was not, then it is better off economically for not having complied—whether determined prospectively or retroactively. Furthermore, if any entire industry has been in noncompliance, then all of the firms in that industry have gained an economic benefit.

Comment: One commenter claimed that BEN should not be applied to regulated utilities.

Response: The Agency disagrees with this comment and believes that the BEN model applies to regulated utilities without regard to arguments that they would have received higher rates from their ratepayers had they complied on time. Whether and how a business recoups its pollution control expenditures is not part of the benefit calculation for for-profit entities and generally should not be considered in benefit calculations for regulated utilities.

Comment: One commenter noted that alternative depreciation schedules should be allowed when pollution control costs can be verified.

Response: If a company has in fact used a depreciation schedule other than the depreciation schedule that BEN uses, then a financial analyst can perform the necessary off-line calculations to supplement or substitute for the BEN model's results.

C. Improving the BEN Model's User-Friendliness

1. Is BEN Too Complex To Operate?

Comment: Several commenters thought that the BEN model is easy to use and understand, and that it should be kept that way.

Response: The Agency believes that BEN represents a proper balance between ease of operation and accuracy in calculation, and will try to ensure that any future enhancements preserve this balance.

Comment: One commenter suggested that to improve user friendliness, EPA should make the model and manual readily available to the public. Another commenter expressed the difficulty he had in downloading the BEN model and user's manual from the electronic bulletin board system. He also had a difficult time obtaining these materials from the EPA regional library. Another commenter noted that both the model and manual were available from the National Technical Information Service (NTIS).

Response: The Agency is aware of the difficulty of downloading large documents such as the BEN User's Manual and will try to rectify this in the future, as well as to improve the printed quality of the downloaded document. The easiest way to obtain the model is through the Office of Enforcement and Compliance Assurance's World Wide Web site on the Internet (http://www.epa.gov/oeca/datasys/dsm2.html).

Government users can also obtain the model and manual (for BEN and other applications) via the newly created enforcement economics helpline: 888–ECON–SPT (326–6778), which is staffed by a contractor, Industrial Economics, Incorporated, located in Cambridge, Massachusetts. The helpline is in operation from 8:00 AM to 6:00 PM Eastern time and will accept voice-mail messages when it is not in operation. In addition, the contractor is providing a companion e-mail address for this helpline: benabel@indecon.com. The helpline is strictly limited to providing advice to federal, state, and local environmental enforcement agencies regarding financial issues that impact enforcement cases. Callers will also be able to obtain advice on how to access training courses on the models and related subjects. EPA feels that many of the public comments it received from state and local government enforcement agencies could have been addressed easily and quickly with a call to the helpline. Inquiries regarding the interpretation of federal statutes and EPA polices, will be referred to EPA, as will inquiries from non-governmental employees. Non-government users can obtain the models and user's manuals from NTIS at 800–553–6847. (NTIS packages each model and its user's manual together; requesters will also need the following publication numbers—BEN: PB 98–500382GEI; ABEL: PB 99–500357GEI; CASHOUT: PB 98–500390GEI; PROJECT: PB 98–500408GEI; INDIPAY: PB 99–500407GEI; and MUNIPAY: PB 99–500415GEI.)

Comment: One commenter stated that BEN could be used without the manual, although this made the application more difficult.

Response: The Agency agrees, and also reminds users that the model provides significant on-line help, both in the introductory statement and by allowing the user to enter "HELP" at each prompt.

Comment: One commenter thought that increasing the flexibility of BEN could result in a less accurate measure of the economic benefit (*i.e.*, too wide a dispersion of many economic benefit values). Another commenter expressed the view that increasing the flexibility of BEN would also increase the complexity of using BEN, which in turn would preclude some states from calculating economic benefit.

Response: The Agency does not feel that the added flexibility will make BEN any less accurate, although it does agree that the potential for added complexity must be considered when adding flexibility to the BEN model.

Comment: Many commenters suggested that in order to improve user-friendliness, EPA should use a Windows-type format. One commenter suggested that an interactive format for BEN could be based on some commercially published financial or tax programs, which have a "Wizard"-type guidance feature; another suggested that BEN should use a format for common spreadsheet software. Although, one commenter stated that although point-and-click Windows-type features and the ability to move between data entry fields freely would improve the model, it might not be worthwhile to scrap all the original code. Various commenters also suggested that the model should:

- Allow users to add headings and explanatory text to the BEN output;
- Calculate avoided costs without the need for a hand-held calculator;
- Allow printing of individual BEN runs, make printing more straightforward, and print each result on its own sheet of paper;
- Accept data in a table format for cases in which each month must be entered in a separate run;
- Prompt the user about whether to use the standard [default] or state-specific values;
- Accept other than the capital letters "Y" and "N" for yes and no answers;
- Save model inputs electronically for future use;
- Modify instructions for printing the output— "positioning the paper" seems irrelevant; and
- Allow the user to exit the model in the middle of a run.

Response: The Agency plans to reprogram the model for the Windows operating environment, which should address most of these concerns. (The Agency will still maintain the current DOS-based version for a time.) An actual spreadsheet may confuse many users, although the Windows-based model will incorporate many spreadsheet-type features.

2. Is the Information BEN Needs Difficult or Expensive To Obtain?

Comment: One commenter thought that although BEN is a very effective tool for cases in which the violator must install pollution control equipment or perform similar actions to achieve compliance, it is less effective when compliance comprises administrative activities. The commenter explained that this is primarily because of the difficulty of obtaining cost figures for such activities, and suggested that BEN have a subroutine for such cases that provides default cost values.

Response: The Agency understands that cost data can be difficult to obtain for certain cases. But if the violator has already come into compliance, then an estimate of its actual costs should be available. The Agency has begun developing a computerized RCRA compliance cost database which will complement the revised version of the BEN model.

Comment: While some users felt that inputs for BEN are readily available, others found that inputs are difficult to obtain when violators are uncooperative.

Response: In such situations, enforcement staff should use the discovery process to obtain the necessary information, whether through interrogatories, depositions, requests for production, or other legal processes. Another approach is to contact state or federal experts familiar with the regulatory requirement at issue for advice on cost estimates. Finally, retaining an outside consulting expert may occasionally be necessary to develop the compliance cost estimates.

Comment: One commenter wanted the Agency to develop a set of standardized rules or a protocol to be followed when applying case-specific information to an economic benefit calculation.

Response: The Agency strives to provide sufficient guidance to enforcement staff, but does not feel that a strict protocol is feasible. Therefore, enforcement staff will always have to exercise case-specific judgment.

Comment: One commenter suggested that users should perform a cost-benefit analysis when contemplating the use of case-specific inputs in lieu of BEN default values. The commenter further stated that the Agency should consider allowing enforcement staff more flexibility with respect to the use of investment tax credits, depreciation schedules, tax rate choices, different inflation options, and low-interest financing. Another commenter stressed the increased workload and questionable reliability associated with case-specific data. Similarly, another commenter noted that BEN is intended to serve as only a gross indicator of the economic benefit, rather than as a precise calculation, and that more specific information should be used only if such information will improve the result significantly. This commenter further asserted that the occasional use of more specific data than BEN's default values will lead to skewed results in the aggregate, because only firms that will benefit from the precise information will make it available.

Response: The Agency agrees that the pursuit of case-specific inputs takes place within a resource-constrained environment and should be measured against the expected gains in accuracy. The Agency adopts the same approach to adding flexibility to the model, where such flexibility may make the model more difficult to use for less advanced users. The Agency also agrees that, theoretically, a firm will dispute standard values such as the discount rate only when a more accurate value is in its best interests. But it is the Agency's policy that if it the violator urges the use of a particular company-specific value in place of standard value, the Agency will insist on using company-specific values in place of all the standard values. The Agency believes this approach will limit the aggregate impact of adopting regulatee-specific values instead of standard values.

3. Other Issues Affecting Use of BEN

Comment: One person stated that Appendix A of the BEN User's Manual should be expanded to include the model's entire mathematical algorithm, and should be written with more focus on economic theory, like a textbook. Another stated that Appendix A should include a thorough development of equations 15a and 15b.

Response: The Agency is pleased that at least some members have taken the time and effort to familiarize themselves with the details of the BEN User's Manual. A user's manual for any computer model, however, can not take the place of a textbook on mathematics or financial economics. To answer some of the specific concerns, Equation 15a is the sum of an infinite geometric series, which can be found in most calculus texts. Equation 15b is a simple discount formula similar to the one given on page A–4 in Appendix A. Equation 15c is the sum of the present value of the first replacement cycle plus all the additional replacement cycles to infinity. The Agency encourages enforcement staff who have further questions along these lines to contact its enforcement economics helpline at 888-ECONSPT. As mentioned above, this helpline is strictly limited to employees of federal, state and local government enforcement agencies.

Comment: One person thought the model departs from the formulae in Appendix A for depreciation, and instead appears to use a simplified formula that calculates each year's depreciation as a percentage of the previous year's. This commenter felt that any simplifications or departures from theory made for the sake of simplifying the model's programming should be detailed in the manual.

Response: BEN uses no such simplifying formula, and instead uses a seven-year depreciation life (for capital investments after 1987). The first four years use a double-declining balance with a half-year convention switching to a straight-line depreciation for the rest, corresponding to the revised tax law's Modified Accelerated Cost Recovery System (MACRS). The model adjusts the depreciation deduction to occur once a year at midyear.

Comment: One person stated that the manual should answer questions such as: What is the difference between a C Corporation and an S Corporation? What, other than land, constitutes a one-time nondepreciable expense? What happens when you choose a useful life that is shorter than the depreciation schedule?

Response: Between the BEN User's Manual and the "Help" prompts within the model, BEN attempts to provide as much guidance as is feasible in answering these frequently asked questions. For example, the difference between a C Corporation and an S Corporation can be found by selecting "3" of input number 1C—BEN will show information about both types of corporations. On page 4–10 of the user's manual, "nondepreciable expenditures" are defined as items that "do not wear out;" the manual proceeds to list several examples, such as a record-keeping system, employee training, waste removal, etc. For questions such as how to account for a useful life shorter than BEN's depreciation schedule (which requires off-line calculations by a financial analyst), the Agency encourages enforcement staff to contact its enforcement economics helpline at 888–ECONSPT. As mentioned above, this helpline is strictly limited to employees of federal, state and local government enforcement agencies.

Comment: Several commenters agreed that BEN is a useful tool for calculating the economic benefit of noncompliance, and encouraged EPA to retain the model. But other commenters asserted that the regulator's discretion should be used in lieu of BEN's calculation to determine economic benefit; these commenters felt that EPA should not mandate the use of BEN. From the defense bar's viewpoint, one commenter thought that the plaintiff's failure to accept anything other than a BEN calculation can lead to "unprincipled negotiations."

Response: Although computer spreadsheets or even programmable calculators can calculate economic benefit accurately, the Agency suspects that leaving economic benefit determination up to the regulator's discretion will result in either no calculations at all or fundamentally flawed calculations. (For example, the Agency examined one state's "alternative" to BEN and found it unreliable and even more difficult to use than BEN.) The Agency is convinced that BEN is a reasonably accurate, relatively simple way to calculate the economic benefit from noncompliance, and it continues to promote the use of BEN. The Agency does not require state enforcement agencies to use BEN, but the Agency strongly encourages them to employ it. State enforcement personnel who want to employ a valid alternative to BEN are welcome to do. For example, one state enforcement staff member's spreadsheet version of BEN was perfectly adequate. Nevertheless, EPA strongly believes that the "risk-free rate" approaches are seriously flawed and discourages their use as alternatives.

Comment: Some commenters noted that BEN is reasonable and provides results that are fair to the violator. Others thought that estimates of economic benefit obtained from BEN are at times so high that they are useful only

for their shock value. Some commenters noted that BEN gives penalty amounts that are so high that many Agency resources are spent negotiating or pursuing legal judgments with violators who are not confident of the accuracy of BEN's assumptions and methodology. One commenter felt that BEN was designed to produce the maximum possible penalty.

Response: The Agency strives to provide enforcement staff with a model that makes reasonable estimates of economic benefit. If the model produces numbers so high that they are shocking to either the enforcement staff or the violator, then that is generally because the violator has gained a high economic benefit and not because the model is designed to produce the maximum possible penalty. The compliance cost inputs to the BEN model are always open to discussion, but the methodology, by contrast, is not open to compromise. The Agency is comfortable defending its benefit calculations based on the BEN approach.

Comment: One commenter noted that BEN is an inexpensive method of determining economic benefit, making it an economical option for case work, although others thought that BEN is resource-intensive and not cost-effective. Several others felt that attempting to use BEN in "small" enforcement activities was a waste of resources, with one commenter noting that in many small cases, the cost associated with using BEN would exceed that of the penalty itself.

Response: The Agency disagrees that BEN is "resource-intensive and not cost-effective." A typical analysis takes about five minutes. The only potential issue is the user's need to determine the compliance costs, which normally should not take much time, particularly for small enforcement actions. In addition, the Agency is not confident that enforcement staff are always able to determine beforehand that a case is too small to merit the use of BEN. Often, it is only after running BEN that the magnitude of the economic benefit becomes apparent.

Comment: Some commenters thought BEN was difficult to understand and explain for enforcement staff, who are often engineers untrained in and unfamiliar with financial economics. While BEN may be designed for people with little background in financial economics, many commenters felt that determining actual numerical inputs, and whether to use BEN's standard values, requires the judgment of a financial expert. Another commenter similarly noted that the EPA needs sufficiently trained staff to handle a variety of "real world" circumstances which presumably may require calculations in addition the BEN model.

Response: The Agency strives to make BEN as easy to understand for non-experts as is possible. Interestingly, BEN's compliance cost inputs typically require engineering expertise, not knowledge of financial economics. Once such cost inputs have been obtained—either based on the violator's actual purchases or through the discovery process—then the BEN model can be run with no knowledge of financial economics. The Agency also encourages enforcement staff who have questions to contact its enforcement economics helpline at 888–ECONSPT, from which staff can receive copies of training videos, training materials, and user's manuals. The helpline can also assist users in performing off-line calculations for circumstances that the BEN model cannot accurately calculate by itself. As mentioned above, this helpline is strictly limited to employees of federal, state and local government enforcement agencies. Finally, in the coming years training courses for the new, revised BEN model will be conducted in each EPA Region and at the national headquarters, to which state and local government enforcement staff will be invited.

Comment: One commenter felt that EPA should not "oversell" the idea that BEN can be used by people with no knowledge of economics, as that may invite misuse. According to this commenter, users of BEN must at least be willing to learn what the model is doing.

Response: Our experience with the model over the last thirteen years is that users can be very effective in the settlement context without thoroughly understanding the theory behind the model. We do include an extensive presentation of the theory in the BEN training course, although the model is sufficiently simple that users need not possess an intricate knowledge of economic theory to calculate accurate and reliable results.

Comment: One commenter noted that it is not feasible to expect states to hire financial experts and, therefore, that the BEN model should be made easier to understand for non-expert users. Several other commenters thought that EPA should provide the expert assistance to states.

Response: EPA believes that the model is easy to understand and operate as is. Most of our users have taken the four-hour BEN training course, which we have found covers almost every situation our enforcement professionals will encounter. While we are working on ways to improve BEN's simplicity and yet make it more flexible, the current model was designed for use by enforcement professionals with little or no background in finance. The model is used effectively across the country by such personnel. With respect to providing expert assistance to the states, EPA has established the helpline, mentioned above, to address this need.

Comment: One commenter suggested that EPA develop a program to provide investigative and analytical assistance to state and local agencies.

Response: The provision of analytical assistance is being addressed by the helpline mentioned above. The provision of investigative assistance is clearly beyond the scope of this effort to review and revise the Agency's benefit recapture approach.

Comment: In addition, many commenters felt that EPA should provide more training for users of the BEN model.

Response: The EPA has presented over forty BEN courses since 1988. The Agency has conducted over thirty "live" BEN training courses at EPA facilities, and EPA invited state enforcement staff to nearly all of them. In addition, EPA has conducted fourteen BEN training courses primarily for state and local government personnel in Hartford, Connecticut (twice); Indianapolis, Indiana (twice); Little Rock, Arkansas; Baton Rouge, Louisiana; Trenton, New Jersey; Boise, Idaho; Ft. Lauderdale, Florida; El Monte, California; Baltimore, Maryland; Richmond, Virginia, Phoenix, Arizona; and Anchorage, Alaska. (Other state and local governments that are interesting in at least sharing the delivery costs with the EPA can also arrange for such a course.) EPA also presented a BEN course via satellite in 1994, and has made videotapes of that broadcast available to government enforcement staff on request.

Comment: One commenter argued that EPA should put pressure on individual states to account for the economic benefit component of noncompliance in their enforcement programs; another stated that EPA should help states incorporate the concept of economic benefit in penalties or assessments.

Response: The issues the Agency is addressing in this Notice are related to the determination of the economic benefit of noncompliance. Whether states are adequately accounting for the economic benefit component is beyond the scope of this effort. The EPA is ready and willing to provide support to states in using the model. Not only has the Agency provided such support to states in the past, but it has even provided it to the governments of Indonesia, China, Taiwan, Brazil, United Kingdom and Mexico.

Comment: Several commenters noted that short, in-depth, case-specific reviews by experts should replace BEN analyses, as they yield more credible, defensible results than BEN.

Response: The Agency is convinced that the BEN model produces reasonably accurate calculations of economic benefit. It has proven to be an effective enforcement tool over the past 14 years. Furthermore, the new BEN model may often be a sufficiently accurate analytical tool for experts to use in such case-specific reviews. By contrast, to adopt an in-depth review of every case would require costs—either in contractor support and/or full-time in-house staff—that would be prohibitive, as well as add little value.

Comment: Several commenters noted that defending the BEN model's results in court is difficult, for a variety of reasons. While EPA's earlier guidance explains that BEN should be used only in settlement discussions, and that the regulator should never be put in the position of having to defend BEN in court, one commenter felt that most state users cannot follow EPA's advice. According to this commenter, a state's negotiations or settlements occur after a document has already been mailed to the violator with a penalty amount on it; therefore, if the case goes to court, the state must defend the amount.

Response: The suggested protocol is to hire an expert witness to perform an economic benefit calculation for presentation in court, as an expert is necessary to explain the methodology (either that of BEN or of some other analytical tool). If the result of this more customized analysis differs significantly from the initial BEN result, then the penalty demand can be changed.

Comment: One commenter noted that although BEN is not appropriate for all cases, if BEN is not used in every case, then the regulator is subject to criticism for inconsistency.

Response: BEN is appropriate in every case in which compliance costs were avoided or significantly delayed. BEN is not appropriate when the benefit comes from an illegal competitive advantage. As long as the regulator applies the BEN model to all the cases for which it was designed, then the regulator will be consistent.

Comment: Several commenters thought that small businesses and sources which are genuinely ignorant of their violations should be treated differently than large companies which have many resources and who commit egregious violations. One commenter suggested that small communities and businesses should be helped by small business assistance programs to achieve compliance, rather than be penalized for what may well be a genuine mistake. This commenter also suggested that if EPA continues to support the use of the BEN model in these cases, BEN should at least allow the regulator to account for the size of the community or business in question. A few commenters noted that sometimes, even when BEN calculates a positive economic benefit, it may be inappropriate to ask the violator to pay that amount; similarly, some commenters suggested that the regulator should run the ABEL model in conjunction with the BEN model to determine the effects of payment on the entity.

Response: Economic benefit is no-fault in nature and as a result accrues regardless of genuine mistakes. If a small business delays a required pollution control expenditure—for whatever reason—then it obtains an economic benefit. The regulatory agency must recover this benefit, otherwise the business will have an unfair advantage over those businesses that complied. If violations are especially egregious, then this should be reflected in the gravity component of the penalty or in criminal sanctions. The size of the violator is relevant only to the ability to pay a civil penalty. The Agency maintains the ABEL, INDIPAY, and MUNIPAY models (for corporations, individuals, and municipalities, respectively) to guide its enforcement personnel in determining ability to pay. BEN already favors small businesses in that the standard value discount rate is based upon the typical large company's WACC. Significant evidence exists that small companies on average have higher costs of financing than larger ones, but EPA has conservatively decided to base its standard value discount rate on large companies, instead of small firms' higher (by about two percentage points) discount rate. (For a detailed discussion of this issue, see the Ibbotson Associates *Stocks, Bonds, Bills, and Inflation* annual yearbooks, in particular Chapter 7, "Firm Size and Return.") Similarly, many small communities have higher debt costs on average than large communities, but the not-for-profit standard value discount rate is nevertheless based upon the average interest rate for communities that have access to the municipal bond market and are able to obtain ratings for the debt issues. If the discount rate were tailored to such small businesses and communities, then the discount rate, economic benefit result, and hence the penalty demand, would be higher. In order to maintain simplicity, BEN actually favors small businesses and communities in this regard.

Comment: One commenter stated that the BEN model should be used more as a tool for promoting environmental compliance than merely for recapturing the economic benefit of noncompliance. Another commenter noted that the EPA should de-emphasize penalty assessment and instead encourage self-compliance. One commenter noted that EPA's goal should be to prevent future noncompliance, which could in some circumstances be accomplished with a fine smaller than the economic benefit.

Response: The Agency is always in favor of promoting compliance and encouraging self-compliance. One means of promotion and encouragement is penalty assessment based upon full economic benefit recapture, which ensures that any gain potential violators reap from noncompliance will be fully taken away from them in the form of a civil penalty. Any penalty assessment short of this creates an incentive among regulatees to wait until they are caught before complying.

Comment: One commenter suggested that the EPA has been secretive regarding the BEN methodology.

Response: The BEN model and its user's manual are freely available, and the calculations are easily replicable.

Comment: One commenter noted that a supplemental environmental project (SEP) would in some cases be better than a "disgorge" of economic benefit.

Response: The Agency's policy is that a SEP can be performed for mitigation of only the gravity component of the civil penalty, not for the economic benefit component. Otherwise, given the additional motivations a violator may have for performing a SEP, the Agency could never ensure that the violator was really financially indifferent with respect to noncompliance. Therefore, the civil penalty must always, at a minimum, recapture economic benefit.

Comment: One commenter noted that the EPA should address the issue that competing regulatory requirements may force firms into noncompliance under one set of regulations when these firms comply with another.

Response: This is outside the scope of the issue of economic benefit recapture.

Comment: One commenter noted that it would be helpful if some type of "gravity" component could be incorporated into BEN for noncompliance prevention and/or a compliance incentive.

Response: The Agency feels that gravity component calculations in the various penalty policies are sufficiently

simple and straightforward so that a module in BEN is not necessary.

Comment: One commenter stated that BEN has historically been available only through a mainframe, making it useless to staff without such access.

Response: BEN now runs on the EPA LAN or on a personal computer. Copies for the latter are available through the Internet (http://es.epa.gov/oeca) or, for enforcement staff, through EPA's enforcement economics helpline at 888–ECONSPT or, for non-government employees, through National Technical Information Service (NTIS) at 800–553–6847.

D. General Comments on the Public Comment Process

Comment: Several commenters made the point that EPA does not need to go through a formal rulemaking process with the BEN model.

Response: The Agency recognizes the distinct advantages of public input on its benefit recapture approach which is why it is seeking comment at this time.

Comment: Some of the commenters expressed the need for the formation of one or more "blue ribbon" panels of outside experts in financial economics (similar to the National Oceanic and Atomospheric Administration panel on the use of contingent valuation in natural resource damage assessment). Along these lines, one commenter thought EPA's goal should be to find a solution with the broadest possible support in the financial field. By contrast, one commenter strongly opposed the "weight of opinion" process for adopting changes in BEN. Another commenter felt that although such expert panels might be beneficial, the financial and economic principles BEN uses are simple enough that any finance professor could discover whether the model held to the mainstream of modern finance and economics.

Response: Given that both academicians and practitioners in the field of financial economics disagree significantly (both on economic benefit analysis and a myriad of other issues), the Agency does not feel that the formation of an expert panel would be a productive exercise. For instance, tenured professors from business schools have reached diametrically opposed conclusions in the written comments they have submitted on the BEN model.

Comment: Some commenters expressed doubts about the nature of and manner for this public comment process and recommended a more open policy. To do otherwise, they state, would only continue the controversy and would not be in either EPA's or the regulated community's best interest. Similarly, one commenter stated that the adoption of the procedures for the public comment session should be subject to administrative due process.

Response: The Agency has made every effort to make the public comment process as open as possible.

Comment: A few commenters criticized the limited time for interested parties to respond to the request for comment as listed in the **Federal Register** notice of October 9, 1996.

Response: In response to such concerns, the Agency extended the deadline for public comments from the originally stated January 1, 1997, to a significantly later March 3, 1997, (see **Federal Register** notice on December 12, 1996, at page 65391).

Comment: Some commenters expressed concern that EPA has yet to release earlier statements made by several prominent professors in the field of finance that allegedly criticized the BEN model. These commenters asserted that the professors' prior remarks, if relevant, should also become part of the public record and be incorporated into any forthcoming decision.

Response: The Agency released these statements in April of 1997. The Agency recognized the merit of those comments long before they were released, but some of the statements were the subject of a three-year Freedom of Information Act case. That case was eventually resolved, and the Agency has since released the analyses sought in that case. In addition, the Agency released three other similar analyses which were not sought. Some of the statements were critical of the BEN model as it then existed, and the Agency adopted many of the changes they suggested. In any event, all of the analyses were of the prior BEN model version, not the current version. Copies of these statements are available by calling 202–564–2235.

Comment: Several commenters felt that the EPA should follow up on the public comment period by first drafting the findings, then requesting and evaluating further public comment, and finally publishing a formal draft on the final decision.

Response: The Agency agrees, and is taking that approach.

IV. Request for Comments

The Agency is interested in comments relating to its proposed changes to its benefit recapture approach as discussed in Section II of this Notice. After the comment period closes, the Agency plans to review all the comments and revise its benefit recapture approach and the BEN computer model as appropriate. EPA encourages parties of all interests, including state and local government, industry, not-for-profit organizations, municipalities, public interest groups and private citizens to comment so that we can have as broad a spectrum as possible.

Dated: June 8, 1999.

Sylvia K. Lowrance,

Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 99–15271 Filed 6–17–99; 8:45 am]

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federal register

Friday
June 18, 1999

Part IV

Department of Commerce

Economic Development Administration

13 CFR Part 301

Revision to Implement Economic Development Reform Act of 1998—Grant Rate Eligibility; Disaster Assistance Based on High Unemployment; Final Rule

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 301

[Docket No. 990106003–9157–02]

RIN 0610–AA56

Revision to Implement Economic Development Reform Act of 1998—Grant Rate Eligibility: Disaster Assistance Based on High Unemployment

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Interim rule.

SUMMARY: The purpose of this interim-final rule is to further amend regulations of the Economic Development Administration (EDA) to implement the amendment to and replacement of the Public Works and Economic Development Act of 1965, as amended, by the Economic Development Reform Act of 1998 (PWEDA). This rule amends disaster grant rate eligibility requirements to correct currently listed grant rates and to add a new category of disaster grant rate eligibility. These changes are intended to more closely track the statutory language in PWEDA concerning supplemental appropriations, and to continue EDA's mission in providing disaster assistance under its regular program authorities. Changes are also being made so that grant rate eligibility for high unemployment is based on a stated percentage of the unemployment rate, similar to the grant rate eligibility based upon per capita income.

DATES: Effective date: June 18, 1999.

Comment date: Comments are due on or before July 19, 1999. EDA intends to publish a final rule in the summer of 1999 and will consider comments received on this interim-final rule as well as those received in response to the interim-final rule, 64 FR 5347, February 3, 1999.

ADDRESSES: Send comments to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Edward M. Levin, Chief Counsel, Telephone Number 202–482–4687, fax 202–482–5671, e-mail elevin@doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Economic Development Administration (EDA) was reauthorized for a five year period by legislation enacted on November 13, 1998. Congress had not authorized the agency since 1982. This is a major legislative accomplishment, which will create stability and growth opportunities for EDA to better serve economically distressed communities across the country.

EDA continues to take steps towards improving its program delivery, policies and procedures, and to be more responsive to those whom it serves. In step with the National Performance Review and Paperwork Reduction Act, EDA completely revised its regulations, (see 64 FR 5347, February 3, 1999) thereby creating fewer burdens on and making them more accessible to the public. This interim-final rule continues EDA's efforts in this regard by announcing an immediate response to comments received on EDA's disaster and unemployment grant rate eligibility requirements, prior to publication of EDA's final rule in the summer of 1999.

Comments on the Interim-Final Rule

Comments were requested on EDA's interim-final rule published at 64 FR 5347, February 3, 1999. The sixty (60) day comment period ended on April 5, 1999. EDA inadvertently overlooked certain matters concerning grant rate eligibility criteria for disasters. EDA received public comments suggesting that relative distress, like that presented in the table for per capita income, should likewise be the criteria for unemployment distress.

Description of Major Changes

EDA is amending its rules by revising 13 CFR 301.4(b) *Grant Rates,* by clarifying and modifying the paragraphs describing the maximum Federal grant rate eligibility of projects located in Federally-declared disaster areas and for areas suffering from high unemployment distress.

The current regulations purport to permit a 100 percent maximum grant rate for all projects located in Federally-declared disaster areas for which EDA receives an application for assistance within one year of the date of declaration, and for which the President established a rate of Federal participation, based on the public assistance grant rate of the Federal Emergency Management Agency (FEMA) for the disaster, of greater than 80 percent. That language is too broad, because the legislative authorization for 100 percent Federal grant rates is limited to (1) projects under part 308 (i.e., Economic Adjustment projects authorized by section 209 of PWEDA, (2) for which funds have been appropriated as authorized by section 703 of PWEDA, i.e., a supplemental appropriation. Moreover, while the result may be the same because the President establishes the FEMA grant rate, it would be more accurate to refer to "Presidentially-declared" rather than "Federally-declared" as the authority is limited to the Stafford Act, where the President makes the disaster declaration.

The current regulations also provide for an 80 percent maximum grant rate for other projects located in Federally-declared disaster areas for which EDA receives an application for assistance within one year of the date of declaration. That language is also overbroad, because it does not limit grant rates in excess of 50 percent to situations (other than those authorized by section 703 of PWEDA) where the applicant cannot provide the required non-Federal share, as is required by section 205 of PWEDA.

EDA is correcting the respective paragraphs, the second and fifth boxes of the table in § 301.4(b), to reflect the statutory requirements.

EDA has determined to modify the regulations by adding an additional paragraph to permit a maximum Federal grant rate of 80 percent for projects in other Federally-declared disaster areas, when the Assistant Secretary determines that the applicant cannot provide the required non-Federal share because of the disaster's impact on the economic situation.

In addition, EDA has determined that in some situations one year is an insufficient length of time after the declaration of disaster, for the receipt of an application for assistance. For instance, following the Midwest Floods of 1993, in many areas the floodwaters did not recede for many months. Therefore, in all three disaster grant rate paragraphs, an 18 month period is established for the filing of an application after the disaster declaration.

The current regulations provide a two-part test for areas seeking a grant rate greater than 50 percent, based upon high unemployment; the area must meet both a relative standard—a percentage of the national average—and an absolute standard, a set unemployment rate. EDA received public comments suggesting that relative distress, like that presented in the table for per capita income, should likewise be the criteria for unemployment distress for fairness in determining distress factors. Therefore, we have deleted references to unemployment rates of at least 11, 9 or 7.5 percent so that unemployment distress will be based upon absolute percentages of the 24 month unemployment rate of at least 225, 180 or 150 percent of the national average.

The maximum grant rates themselves remain the same with the addition of new item (6).

Executive Order 12866 and 12875

This interim-final rule in itself is not significant for purposes of E.O. 12866, Regulatory Planning and Review, though the underlying full regulation has been determined to be significant. In addition, it has been determined that, consistent with the requirements of E.O. 12875, Enhancing Intergovernmental Partnership, this interim-final rule will not impose any unfunded mandates upon State, local, and tribal governments.

Regulatory Flexibility Act

Since notice and an opportunity for comment are not required to be given for the rule under 5 U.S.C. 553 or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) no initial or final Regulatory Flexibility Analysis is required, and none has been prepared.

Paperwork Reduction Act

This interim-final rule modifying the maximum grant rate eligibility in 13 CFR 301.4(b) does not in itself affect information collection or recordkeeping requirements. Nevertheless, the underlying full regulation imposes new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), as amended, and has been cleared under OMB's Emergency Clearances process under OMB approval numbers: 0610–0093; 0610–0094; 0610–0095; 0610–0096 and will expire on July 31, 1999. To remain effective after such expiration date, EDA must receive OMB's final clearance and display a currently valid OMB control number. If such final clearance is not obtained after the expiration date of the Emergency Clearance so that a currently valid OMB control number is not displayed, applicants and recipients will not thereafter be required to submit information requested pursuant to this rule.

The information is needed to determine eligibility of applicants and projects and to monitor projects for compliance with EDA's construction or Revolving Loan Fund requirements, as applicable. EDA then uses information obtained in these collections to help carry out its mission to aid economically distressed areas of the Nation. Responses to requests for information are necessary under Pub. Law 105–393 for obtaining and for keeping benefits. The reporting burden for this collection is estimated to be approximately 7 burden hours for the Proposal; approximately 50 burden hours for the Application; approximately 18 burden hours for Requirements for Approved Construction Projects; approximately 240 burden hours for the CED Strategy Guidelines; and approximately 76 burden hours for the series of Guidelines for the Revolving Loan program, including the time for gathering and maintaining the data needed for completing and reviewing the collection of information. Comments were invited in 64 FR 5347, but no public comments were received on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Though the comment period has ended, comments regarding these burden estimates or any other aspects of the collection of information, including suggestions for reducing the burdens, should be forwarded to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230. Such comments, if any, will be reviewed and considered to the extent they are received before EDA begins the clearance and review process on the final rule.

Administrative Procedure Act and Regulatory Flexibility Act

Executive Order 12612 (Federalism Assessment)

This action has been reviewed in accordance with the principles and criteria contained in E.O. 12612. It has been determined that this interim-final rule does not have significant Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in E.O. 12612.

List of Subjects in 13 CFR Part 301

Community development; Grant programs; Indians.

For the reasons set forth in the preamble, part 301 of 13 CFR Chapter III is amended to read as follows:

PART 301—GENERAL ELIGIBILITY AND GRANT RATE REQUIREMENTS

1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

2. Section 301.4(b) is revised to read as follows:

§ 301.4 Grant rates.

* * * * *

(b) EDA may supplement the Federal share of a grant project where the applicant is able to demonstrate that the non-Federal share that would otherwise be required cannot be provided because of the overall economic situation. It is not necessary for an applicant to prove that it would be impossible to provide a full 50 percent non-Federal share, but it must show circumstances warranting any reduction. In determining whether to provide a Federal share greater than 50 percent for a project, EDA will give due consideration to the applicant's economic situation and the relative needs of the area. In the case of Indian tribes, EDA may reduce or waive the non-Federal share, and in other cases EDA may reduce the non-Federal share of the cost of the project below 50 percent, in accordance with the following table, showing the maximum Federal grant rate, including the supplement:

Projects	Maximum grant rates (percentage)
(1) Projects of Indian tribes where EDA has made a determination to waive the non-Federal share of the cost of the project ...	100.

Projects	Maximum grant rates (percentage)
(2) Projects under Part 308 located in Presidentially-declared disaster areas for which EDA receives an application for assistance under a supplemental appropriation, within 18 months of the date of declaration, and for which the President established a rate of Federal participation, based on the public assistance grant rate of the Federal Emergency Management Agency (FEMA) for the disaster, of greater than 80 percent.	100.
(3) Projects of Indian tribes where EDA has made a determination to reduce the non-Federal share of the cost of the project	Less than 100.
(4) Projects of States or political subdivisions of States that have exhausted their effective taxing and/or borrowing capacity, or nonprofit organizations that have exhausted their borrowing capacity.	Less than 100
(5) Projects under Part 308 located in Presidentially-declared disaster areas for which EDA receives an application for assistance under a supplemental appropriation, within 18 months of the date of declaration.	80.
(6) Projects located in Federally-declared disaster areas, for which EDA receives an application for assistance within 18 months of the date of declaration, when the Assistant Secretary determines that the applicant cannot provide the required non-Federal share because of the disaster's impact on the economic situation.	80.
(7) Projects located in eligible areas where:	
(i) The 24-month unemployment rate is at least 225% of the national average or	
(ii) The per capita income (PCI) is not more than 50% of the national average	80
(8) Projects located in eligible areas that are not eligible for a higher rate, where:	
(i) The 24-month unemployment rate is at least 180% of the national average or	
(ii) The PCI is not more than 60% of the national average	70.
(9) Projects located in eligible areas that are not eligible for a higher rate, where:	
(1) The 24-month unemployment rate is at least 150% of the national average or	
(2) The PCI is not more than 70% of the national average	60.
(10) Projects in all other eligible areas	50.

* * * * *

Dated: June 11, 1999.

Phillip A. Singerman,

Assistant Secretary, Economic Development Administration.

[FR Doc. 99–15499 Filed 6–17–99; 8:45 am]

BILLING CODE 3510-34-P

federal register

Friday
June 18, 1999

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Revised Landing Gear Shock Absorption Test Requirements and Proposed Advisory Circular 25.723–1, Shock Absorption Test; Proposed Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–1999–5835; Notice No. 99–08]

RIN 2120–AG72

Revised Landing Gear Shock Absorption Test Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise the landing gear shock absorption test requirements for transport category airplanes by incorporating changes developed in cooperation with the Joint Aviation Authorities (JAA) of Europe and the U.S. and European aviation industry through the Aviation Rulemaking Advisory Committee (ARAC). This action is necessary because the increasing complexity of landing gear shock absorption systems and the improvements in other requirements concerning landing loads have rendered the current requirements inconsistent and outdated. In addition, differences between the current United States and European requirements impose unnecessary costs on airplane manufacturers. These proposals are intended to update the landing gear requirements to be consistent with other requirements, to reflect modern technology, and to achieve common requirements and language between the Federal Aviation Regulations and the European Joint Aviation Requirements (JAR) without reducing the level of safety provided by the regulations and industry practices.

DATES: Comments must be received on or before October 18, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: U.S. Department of Transportation, Dockets, Docket No. FAA–1999–5835, 400 Seventh Street SW., Room Plaza 401, Washington, D.C. 20590. Comments may also be submitted electronically to the following address: 9–NPRM–CMTS@faa.gov. Comments may be examined in Room Place 401 between 10 a.m. and 5 p.m., weekdays, except Federal holidays. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments in the information docket may be examined weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: James Haynes, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2131.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to any environmental, energy, or economic impact that might result from adopting the proposals contained in this action are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in duplicate to the Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. Late filed comments will be considered to the extent practicable. The proposals contained in this action may be changed in light of comments received. All comments received will be available in the Docket, both before and after the comment period closing date, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–1999–5835." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm.htm or the Government Printing Office's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267–9680. Communications must identify the docket or notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The manufacturing, marketing and certification of transport airplanes is increasingly an international endeavor. In order for U.S. manufacturers to export transport airplanes to other countries the airplane must be designed to comply, not only with the U.S. airworthiness requirements for transport airplanes (14 CFR part 25), but also with the transport airworthiness requirements of the countries to which the airplane is to be exported.

The European countries have developed a common airworthiness code for transport airplanes that is administered by the Joint Aviation Authorities (JAA) of Europe. This code is the result of a European effort to harmonize the various airworthiness codes of the European countries and is called the Joint Aviation Requirements (JAR)–25. It was developed in a format similar to part 25. Many other countries have airworthiness codes that are aligned closely to part 25 or to JAR–25, or they use these codes directly for their own certification purposes.

The Aviation Rulemaking Advisory Committee (ARAC) was established by the FAA on February 15, 1991, with the purpose of providing information, advice, and recommendations to be considered in rulemaking activities. By notice in the **Federal Register** (59 FR 30081, June 10, 1994), the FAA assigned several new tasks to an ARAC working group of industry and government structural loads specialists from Europe, the United States, and Canada. Task 6 of the working group charter concerned the shock absorption test requirements for landing gear. The ARAC working group has completed its work for this task and the ARAC has made recommendations to the FAA by letter dated October 29, 1997.

Although the requirements for landing gear shock absorption tests are essentially the same between the Federal Aviation Regulations and JAR, the requirements do not address the capabilities of modern technology and do not take into account other related changes in the requirements for landing gear load conditions that have already been incorporated into other sections of the Federal Aviation Regulations. When the landing loads requirements for transport airplanes were originally developed, they required the landing load factors to be determined and applied to the airplane. The airplane was treated as a rigid body and the landing loads were applied to this rigid representation of the airplane for the purpose of structural analysis. For the early landing gear systems, analysis alone was considered sufficient for determining the landing load factor that would be applied to the rigid airplane. It was only necessary to determine the landing load factor (by analysis or tests) and this load factor would then be used to design and substantiate the airplane for the landing load conditions.

The development of more complex landing gear systems, for which analysis alone was unreliable, led to the adoption of a requirement to verify the landing load factor by actual shock absorption tests. This requirement was added to the Civil Air Regulations (CAR) part 4b, which was the predecessor to part 25. These shock absorption tests were allowed by § 4b.200 of the CAR to be free drop tests in which the gear alone, could be dropped in free fall to impact the ground. In these tests, mass is added to represent the proportion of the airplane weight on the landing gear unit, and the mass may be reduced to account for the effects of airplane lift acting during the landing impact. Later, the corresponding requirement in § 25.723(a), was modified to allow the substantiation of some changes to the landing gear shock absorption systems by analysis alone without verification by tests.

Part 25 currently requires the landing loads to be determined by accounting for the dynamic flexible airplane. In addition, the landing gear shock absorption systems have become even more sophisticated. At the same time, the ability to develop highly sophisticated computer models of landing gear and airplane structures has also improved. In order to determine the airplane loads from the landing load conditions, it is no longer sufficient to determine just the load factor from a drop test of a landing gear unit. A comprehensive analysis of the combined dynamic systems for the landing gear and airplane are essential in order to determine the structural design loads for the airplane. In developing this dynamic model, it is necessary to provide an accurate representation of all the landing gear dynamic characteristics. This includes the energy absorption characteristics and the time histories of force and displacement during a landing impact. The current §§ 25.473(d) and 25.723(a) for shock absorption tests require just the determination of the limit landing load factor from the drop test.

Discussion

The proposed revisions to § § 25.473(d) and 25.723(a) would provide for the new objective of the landing gear energy absorption tests which would be to validate the landing gear dynamic characteristics rather than to directly determine landing gear load factors. These revisions would require that these characteristics be substantiated over the range of landing conditions and airplane configurations expected in service. The manufacturer would be expected to substantiate the landing gear dynamic characteristics over the full range of weight conditions and configurations. As a minimum, the energy absorption characteristics would be confirmed by an energy absorption test at the weight condition for landing (maximum takeoff weight or maximum landing weight) which provides the maximum impact energy. This is in contrast to the current § § 25.473(d) and 25.723(a) which specifically require energy absorption tests at both the maximum landing weight condition and the maximum takeoff weight condition. The proposed rule would continue to provide for the substantiation of minor changes by analyses. To provide guidance in complying with the new proposed rule, a new advisory circular, AC 25.723–1, Shock Absorption Tests, is proposed.

The proposals for the revised § § 25.473(d) and 25.723(a) take into account the potential for sophisticated computer simulations that accurately represent the dynamic characteristics. These are also consistent with improvements in the landing load requirements that necessitate an accurate representation of the landing gear shock absorption characteristics. These proposals also provide more flexibility for the airplane manufacturer to determine the range of conditions and configurations over which to validate the analytical model for the landing conditions. The extent to which this analytical model could be extrapolated to include future design changes would depend on the range of conditions and configurations originally selected by the manufacturer for validation of the model.

The current § § 25.725 and 25.727 are proposed to be deleted as regulatory requirements and would be set forth in the new proposed AC 25.723–1. These criteria would be modified to reflect the advisory nature of the material as well as the revised objective of determining landing gear dynamic characteristics instead of landing gear limit inertia load factors. For the most part, these rules currently provide acceptable means of conducting energy absorption tests by means of a drop test. Section 25.725 provides an acceptable means of conducting a limit drop test for compliance with § 25.723(a), and § 25.727 provides an acceptable means of conducting a reserve energy drop test in compliance with § 25.723(b). Most of the guidance is limited to a "free" drop test in which a reduced effective weight is used to represent lift during the landing impact. The only item in these two sections that is considered to be regulatory in nature is the current § 25.725(c) concerning the attitude of the landing gear and the representation of drag loads during the tests. Therefore this paragraph has been modified to apply to all types of landing gear energy absorption tests (not just drop tests) and it is now set forth in § 25.723(a)(2) of the proposed rule. It is expected that these revisions will have no effect on the level of safety provided by the requirement.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this proposed rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities regulations, where they exist, and has identified no differences in these proposed amendments and the foreign regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed

rule is not "a significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This proposed rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation.

The proposed requirements, applicable to future type certificated transport category airplanes, would result in two regulatory changes: (1) Utilizing landing gear energy absorption tests to validate the landing gear dynamic characteristics rather than the limit load factor value, and (2) confirming energy absorption characteristics by requiring tests at either the maximum landing weight or maximum takeoff weight condition, whichever provides the maximum landing impact energy. This is in contrast to current requirements which require tests at both weight conditions.

The test results would be used to develop the analytical modeling of the landing gear dynamic characteristics. These regulatory changes would not result in any physical change in the way landing gears are tested: the attitude of the gear being usually simulated directly by orienting the gear on the rig and drag loads being applied by spinning the wheel up to the ground speed. Therefore, it would not impose additional costs on manufacturers. This was confirmed by two manufacturers.

Significant cost savings may result from not having to test both at maximum landing weight and maximum takeoff weight, but instead, conducting shock absorption tests only for the conditions associated with maximum energy. One manufacturer estimates that these tests would result in 15 fewer test conditions per airplane certification. At a cost of $5,000 per condition, the total cost savings would reach $75,000 per airplane certification. Another manufacturer estimates a cost savings of approximately $190,000 for a ten-year period. Additionally, by harmonizing the standards of the Federal Aviation Regulations and JAR, the proposed rule would yield cost savings by eliminating duplicate certification activities.

Based on the finding of regulatory cost-savings, coupled with the cost-savings realizable from harmonization, and the expectation that these revisions will have no effect on the level of safety provided by the test requirements, the FAA has determined that the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule would affect manufacturers of transport category airplanes produced under future new airplane type certifications. For manufacturers, a small entity has 1,500 or fewer employees. Since no part 25 airplane manufacturer has 1,500 or fewer employees, FAA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The provisions of this proposed rule would have no adverse impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. By making U.S. landing gear test requirements conform with JAR requirements, international trade in aircraft would be enhanced by eliminating redundant testing costs for part 25 airplane manufacturers, possibly resulting in some cost savings for users of aircraft.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect interstate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently in interstate operations in Alaska.

Environmental Analysis

Federal Aviation Administration Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking, which if implemented may cause a significant impact on the human environment, qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. Section 25.473 is amended by revising paragraph (d) to read as follows:

§ 25.473 Landing load conditions and assumptions.

* * * * *

(d) The landing gear dynamic characteristics must be validated by tests as defined in § 25.723(a).

* * * * *

3. Section 25.723 is amended by revising paragraph (a) to read as follows:

§ 25.723 Shock absorption tests.

(a) Except as provided in paragraph (a)(3) of this section, the landing gear dynamic characteristics used for design must be validated by energy absorption tests. The dynamic characteristics must be substantiated for the range of landing conditions, airplane configurations, and service variations expected in operation.

(1) The configurations subjected to energy absorption tests must include at least the maximum landing weight or the maximum takeoff weight, whichever produces the greater value of landing impact energy.

(2) The test attitude of the landing gear unit and the application of appropriate drag loads during the test must simulate the airplane landing conditions in a manner consistent with the development of rational or conservative limit loads.

(3) Changes in previously approved design weights and minor changes in design may be substantiated by analyses based on previous tests conducted on the same basic landing gear system that has similar energy absorption characteristics.

* * * * *

§ 25.725 [Removed and Reserved]

4. Remove and reserve § 25.725.

§ 25.727 [Removed and Reserved]

5. Remove and reserve § 25.727.

* * * * *

Issued in Washington D.C. on June 10, 1999.

Frank Paskiewicz,

Acting Director, Aircraft Certification Service.

[FR Doc. 99–15381 Filed 6–17–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.723–1, Shock Absorption Tests

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25.723–1 and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides a method of compliance with the requirements of § 25.723 of the Federal Aviation Regulations (FAR). Section 25.723 contains the certification requirements for shock absorption tests. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate document published elsewhere in this issue of the **Federal Register**. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before October 18, 1999.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, Attention: James Haynes, Airframe/Airworthiness Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katherine Burks, Transport Standards Staff, at the address above, telephone (425) 227–2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify proposed AC 25.723–1 and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

This proposed AC sets forth acceptable means, but not the only means, of demonstrating compliance with the provisions of part 25 of the FAR related to the use of landing gear shock absorption tests and analyses to determine landing loads for transport category airplanes, and relates to the part 27 revisions proposed in Notice No. 99–08 entitled "Revised Landing Gear Shock Absorption Test Requirements," published elsewhere in this same issue of the **Federal Register**. Issuance of proposed AC 25.723–1 is contingent on final adoption of the proposed revisions to part 25.

Issued in Renton, Washington, on September 28, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–15382 Filed 6–17–99; 8:45 am]

BILLING CODE 4910–13–M

federal register

Friday
June 18, 1999

Part VI

Department of Health and Human Services

Health Care Financing Administration

Medicare and Medicaid Programs; Mandatory Use, Collection, Encoding, and Transmission of Outcome and Assessment Set (OASIS) for Home Health Agencies and Privacy Act of 1974; Report of New System; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3020–N]

RIN 0938–AJ64

Medicare and Medicaid Programs; Mandatory Use, Collection, Encoding, and Transmission of Outcome and Assessment Information Set (OASIS) for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces to home health agencies (HHAs), State survey agencies, Medicare and Medicaid beneficiaries, software vendors, and the general public changes to and effective dates for OASIS implementation. This notice announces the effective dates for the mandatory use, collection, encoding, and transmission of OASIS data for all Medicare/Medicaid patients receiving skilled services. For non-Medicare/non-Medicaid patients receiving skilled services, there will be no encoding and transmission until further notice, but HHAs must conduct comprehensive assessments and updates at the required time points. For patients receiving personal care only services, regardless of payor source, we are delaying the requirements regarding OASIS use, collection, encoding, and transmission until further notice. We expect to begin implementation of OASIS for non-Medicare/non-Medicaid patients receiving skilled care and for patients receiving personal care only services in the Spring of 2000. A separate **Federal Register** notice will be published with instructions at that time. In addition, software changes described at the end of this notice are of interest to software vendors and HHAs. Also, a companion notice concerning the OASIS System of Records (SOR) is published elsewhere in this **Federal Register** and is available via the HCFA Internet site (http://www.hcfa.gov).

EFFECTIVE DATES: This notice is effective on July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Tracey Mummert, (410) 786–3398, Mary Weakland, (410) 786–6835.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, we published a final regulation concerning the collection of OASIS data as part of the comprehensive assessment (64 FR 3764), and an interim final regulation concerning transmission of OASIS data (64 FR 3748). On April 7, 1999, we notified home health agencies (HHAs), State survey agencies, Medicare and Medicaid beneficiaries, software vendors, and the general public through the OASIS website that we delayed the effective date of the OASIS data transmission requirement. On April 27, 1999, we notified HHAs, State survey agencies, Medicare and Medicaid beneficiaries, software vendors, and the general public through the OASIS website, that the mandatory use, collection, and encoding of OASIS were also delayed, due to lack of Paperwork Reduction Act (PRA) clearances. A notice to this effect was published in the **Federal Register** on May 4, 1999 (64 FR 23846).

The appropriate PRA clearances have now been obtained and privacy procedures followed. Specifically, the PRA clearances for the final rule establishing OASIS collection and use, and the interim final rule for encoding and transmission have been obtained from the Office of Management and Budget (OMB) and approval numbers assigned. The respective OMB control numbers for these collections are 0938–0760 and 0938–0761 and the expiration dates are December 31, 1999. The Privacy Act System of Records (SOR) Notice has been carefully drafted in consultation with OMB and is published elsewhere in this **Federal Register**.

II. OASIS Effective Dates

Effective July 19, 1999, all HHAs participating in the Medicare/Medicaid programs are required to initiate the use of the standardized assessment data set, OASIS, as summarized in the following chart:

SUMMARY OF MANDANTORY COLLECTION, ENCODING, AND TRANSMISSION DATES FOR OASIS

Patient classification	Collection effective date	Encoding effective date	Transmission effective date
Medicare [1]/Medicaid [2]—Skilled	July 19, 1999	July 19, 1999	August 24, 1999.
Non-Medicare/Non-Medicaid [3]—Skilled	July 19, 1999	Spring 2000	Spring 2000 [4].
Medicaid [5]—Personal Care Only	Spring 2000	Spring 2000	Spring 2000.
Non-Medicaid [3]—Personal Care Only	Spring 2000	Spring 2000	Spring 2000 [4].
• Patients under age 18; • Patients receiving pre & post partum maternity services; • Patients receiving only chore and housekeeping services.	Excluded	Excluded	Excluded.

[1] OASIS item (M0150) Current Payment Sources for Home Care: response 1 or 2.
[2] OASIS item (M0150) Current Payment Sources for Home Care: response 3 or 4.
[3] OASIS item (M0150) Current Payment Sources for Home Care: response 0, 5, 6, 7, 8, 9, 10, 11, or UK.
[4] Data transmitted with masked identifiers
[5] OASIS item (M0150) Current Payment Sources for Home Care: response 3.

III. Major Changes to OASIS

We are initiating OASIS activities as outlined in this notice which include the following changes:

• Administration of a standard notification to patients of their privacy rights on admission to the HHA.

• The addition of language in the SOR explaining limitations on "routine uses" of data under the Privacy Act, so that personally identifiable data will only be used where statistical information is not sufficient. While this is usual practice, this language has not traditionally been included in SOR notices. Among other changes, personally identifiable data will no longer go to accrediting organizations such as the Joint Commission on Accreditation of Healthcare Organizations.

• Limiting the "routine uses" of data to other Federal and State agencies. Only those Federal and State agencies that (1) contribute to the accuracy of HCFA's health insurance operations including payment, treatment, and coverage, and/or (2) support State agencies in the evaluations and monitoring of care provided by HHAs will have access to OASIS data.

• Major changes to the application of OASIS to private-pay patients under OASIS. We have decided that information on non-Medicare and non-Medicaid patients will not be transmitted to the States or HCFA in personally identifiable form.

• After careful attention to each question in OASIS, all questions but one were retained on the grounds of assuring quality of care and appropriate reimbursement. We did identify a sensitive question on patient financial factors that we consider less critical to achieving program goals, and this information will not be reported to HCFA or the States.

• Acceleration of efforts to encrypt data during transmission, to provide yet another level of protection. We expect to complete these efforts within a year.

• Delay and phase-in the requirement to collect, encode, and transmit OASIS data on patients receiving personal care only services until further notice. This allows States and associations to adjust to this requirement and allows us to evaluate issues pertaining to the content and frequency of OASIS data collection relative to other reporting requirements.

IV. OASIS Effective Dates in Detail

A. Medicare/Medicaid—Skilled

Effective July 19, 1999, for Medicare/Medicaid patients receiving skilled services, HHAs must collect OASIS data as described in the final regulation published on January 25, 1999 (64 FR 3764) concerning use of the OASIS as part of the comprehensive assessment. This means that for all Medicare/Medicaid patients receiving skilled services, currently under the care of the agency or admitted to the agency on or after July 19, 1999, HHAs must conduct comprehensive assessments and updates at the required time points, and incorporate the OASIS data set. The exception to this requirement are those patients receiving prepartum and postpartum services, patients under age 18, and patients receiving only housekeeping/chore services. OASIS data collection for patients receiving only personal care services is delayed. HHAs must collect start of care OASIS data and updates at the required time points on new admissions to the HHA on or after July 19, 1999. In addition, HHAs must collect OASIS data on patients already in service. At the next appropriate time point, that is, resumption of care, follow-up (that is, every 2 calendar months), transfer to an inpatient facility (with or without agency discharge) and death at home, on or after July 19, 1999, HHAs must collect OASIS data on all Medicare/Medicaid patients receiving skilled services.

Effective July 19, 1999, for Medicare/Medicaid patients receiving skilled services, HHAs must encode and lock their OASIS data (that is, enter it into a computer), according to the requirements outlined in the interim final rule published January 25, 1999 (64 FR 3748) concerning transmission of OASIS data. This means that HHAs will encode and lock start of care OASIS data and updates at the required time points on new admissions to the HHA on or after July 19, 1999. In addition, HHAs must encode and lock OASIS data on patients already in service. At the next appropriate time point, that is, resumption of care, follow-up (i.e., every 2 calendar months), transfer to an inpatient facility (with or without agency discharge) and death at home, on or after July 19, 1999, HHAs must encode and lock OASIS data on all Medicare/Medicaid patients receiving skilled services. If the HHA patient's services are to be paid for by Medicare or Medicaid, the OASIS must be reported. There are no exceptions.

Effective August 18, 1999, HHAs must have completed a successful transmission of test OASIS data. HHAs must successfully transmit test OASIS data to the State agency for the purpose of determining connectivity with the State OASIS system and receive a feedback report on the test data. On August 19, 1999, States will begin to purge all data on the State OASIS systems to allow for acceptance of production data. Beginning August 24, 1999, HHAs must begin the transmission of production OASIS data, that is, OASIS assessments completed, encoded and locked the previous month.

EXAMPLE:

June 18, 1999—Publication of **Federal Register** Notice

July 19—August 18, 1999—Collection, encoding, and test transmission begins

August 19–24, 1999—States purge test data

August 25, 1999—Production transmission begins

At least monthly thereafter, HHA transmissions must include all OASIS data collected, encoded, and locked in the previous month.

B. Non-Medicare/Non-Medicaid—Skilled

Effective July 19, 1999, for non-Medicare/non-Medicaid patients receiving skilled services, HHAs must conduct comprehensive assessments and updates at the required time points as described in the final regulation concerning use of the OASIS as part of the comprehensive assessment published on January 25, 1999 (64 FR 3764), incorporating the OASIS data set. HHAs must collect start of care OASIS data and updates at the required time points on new admissions to the HHA on or after July 19, 1999. In addition, HHAs must collect OASIS data on patients already in service. At the next appropriate time point, that is, resumption of care, follow-up (that is, every 2 calendar months), transfer to an inpatient facility (with or without agency discharge) and death at home, on or after July 19, 1999, HHAs must collect OASIS data on all non-Medicare/non-Medicaid patients receiving skilled services. However, we are not requiring encoding and transmission of OASIS data at this time. These assessments must be retained as part of the patient's clinical record in the HHA.

We expect the effective date for encoding and transmission of OASIS data to begin in the Spring of 2000 for these patients. We will publish a notice in the **Federal Register** with instructions at that time. In the Spring of 2000, we will not expect HHAs to retroactively encode and transmit OASIS data collected between July 19, 1999 and the Spring of 2000. If a HHA mistakenly transmits identifiable non-Medicare/non-Medicaid data, we will reject this data at the State level. Rejection at this point ensures that the data will not get into the Federal data base until masking can be accomplished.

When the requirement to encode and transmit non-Medicare/non-Medicaid patient data begins, HHAs must submit non-identifiable OASIS data on these patients to the State agency. In this way, care provided by the HHA can be evaluated for all patients of the agency, and not just Medicare/Medicaid patients. However, these data will be not be individually identifiable, but will be masked, as discussed below.

C. Medicaid/Non-Medicaid—Personal Care Only

For patients receiving *only* personal care services, regardless of payor source, the effective date for OASIS implementation will be in the Spring of 2000. We will publish a notice in the **Federal Register** with instructions at that time. This is a delay in the implementation of OASIS for these patients, which was published in the Federal Register on January 25, 1999 concerning the use of the OASIS as part of the comprehensive assessment.

At this time, HHAs are not required to collect, encode and transmit OASIS data on patients receiving personal care or chore services unless skilled care is also provided. HHAs are required to collect, encode and transmit OASIS data

on patients who receive personal care and/or chore services only if they also receive skilled care as described above, in addition to the personal care services.

We are delaying the requirement to allow States and associations to adjust to this requirement and allow us to evaluate issues pertaining to the content and frequency of OASIS reporting relative to other reporting requirements. In addition, this phase-in will allow HHAs more time to prepare, upgrade their systems and integrate the OASIS data set into their HHA and State specific instrument(s).

D. Masking

Masking refers to the concealing of individual data elements by the provider. Patient identifiable information is not known to HCFA or the OASIS State system. In OASIS terms, the data elements to be masked are patient's name, social security number, Medicare number, and Medicaid number. HHAs will keep the masked identifiers and the original data in their records. For non-Medicare/non-Medicaid patients, HCFA and other users will only be able to access data that does not contain any unique identifiers, including, no name, social security number, Medicare number and Medicaid number. With a consistent set of masked identifiers, we are still able to do the longitudinal data linking across patient care settings that is necessary for outcome measurement and targeting patients for sampling during the State survey agency certification review. At a minimum, we will follow the Federal Government FIPS 46–2 Data Encryption Standard (DES).

Implementation of a masking system for non-Medicare/non-Medicaid OASIS data is expected to occur in the Spring of 2000. The steps required to accomplish this task include acquiring and evaluating tools that follow the FIPS 46–2 DES, developing system specifications required to incorporate the data masking tool, making the necessary program changes to the HCFA-provided HAVEN data entry software, as well as making other necessary changes to the OASIS State system and HCFA data specifications. For HHAs not using HAVEN, we are providing the opportunity for software vendors to make the required changes and properly test their software by posting these data specifications on the OASIS website in the near future. In addition, Year 2000 testing must take place after all program changes have been incorporated, to ensure that all systems are millennium compliant.

Until such time as a system of masking patient identifiers is implemented, HHAs must assess and collect OASIS information from all patients as required by the regulation but only encode and transmit assessments with a Medicare/Medicaid payment source. To ensure only assessments with a Medicare/Medicaid payment source are received by the OASIS State system, the OASIS State system will reject all assessments with a non-Medicare/non-Medicaid payment source.

E. Encryption

HHAs are required to send OASIS assessment data for patients who have a Medicare or Medicaid payor source. Currently, these data are sent to the respective State via a private telephone line that connects directly into the OASIS State system. Although this is a relatively secure method, additional protection may be provided by using encryption. The use of 128-bit server certificates will provide strong encryption for all users who use either the domestic or export version of the latest leading browsers. HCFA plans to require this method in the near future. Several Federal agencies such as the U.S. Department of Commerce and the United States Postal Services have an expanded license to issue 128-bit serve digital certificates.

A 128-bit encryption is standard for Netscape and Microsoft Internet Explorer, the two major web browsers. Both products are available free off the Internet or by mail for a nominal fee (less than $20.00). There are some system requirements to run these browsers. This includes a 32-bit operating system, that is, a computer that runs Windows 95, 98, or NT. HCFA's Y2K compliance requirements also require computers to have a 32-bit operating system. HHAs using the recommended computer system requirements described in the interim final regulations published on January 25, 1999 (64 FR 3738), concerning transmission of OASIS data will not require additional changes. The projected date for full 128-bit encryption transmission by HHAs is July 2000.

V. More Background on Changes to OASIS

A. Patient Rights

Existing regulations at 42 CFR 484.10, Conditions of Participation: Home Health Agencies, specify that the patient has the right to be informed of his or her rights with respect to care provided by the HHA. Under the terms of this condition, HHA patients whose data will be collected and used by the Federal government must receive a notice of their privacy rights. These rights include: (1) the right to be informed that OASIS information will be collected and the purpose of collection; (2) the right to have the information kept confidential and secure; (3) the right to be informed that OASIS information will not be disclosed except for legitimate purposes allowed by the Federal Privacy Act; (4) the right to refuse to answer questions; and (5) the right to see, review, and request changes on their assessment. The statements of patient privacy rights with regard to the OASIS collection (one for Medicare/Medicaid patients, one for all other patients served by the HHA) are included in this notice. They will also be available via the HCFA Internet site (http://www.hcfa.gov). These statements may be revised in accordance with the OMB Paperwork Reduction Act reapproval process. Future revisions to these statements will be available via the HCFA Internet site (http://www.hcfa.gov) and in other instructional materials issued by HCFA.

Consumer testing was undertaken to determine whether Medicare beneficiaries understood the overall message of the proposed Medicare notice. The findings indicated that beneficiaries understood that the notice was informing them about their rights relating to their personal health care information and that these protections were good. In addition, the majority of the beneficiaries found the notice's language to be clear and easy to understand. For Medicare/Medicaid patients, transmission of the assessment data to HCFA will be a condition for payment and an essential tool in ensuring that both programs are paying for quality health care services. As such, we are providing HHAs with a copy of the notice that HHAs must incorporate into their admission process.

- *Notice to Medicare/Medicaid Patients*

HHAs must incorporate into their admission process for Medicare/Medicaid patients Attachments A and B. Please refer to Attachment A—Statement of Patient Privacy Rights (front), and Attachment B—Privacy Act Statement—Health Care Records (back) of this notice for this document.

- *Notice to Non-Medicare/Non-Medicaid Patients*

Attachment C—Notice About Privacy for Patients Who Do Not Have Medicare or Medicaid Coverage. This is the notice that HHAs must incorporate into their admission process for non-Medicare/non-Medicaid patients.

B. Administering the Assessment

The OASIS items should be answered as a result of the clinician's total assessment process, not completed as a checklist during an interview. Conducting a patient assessment involves both interview and observation. Many times the two processes complement each other. Information gained through interview is verified through observation. Many clinicians begin the assessment process with an interview, sequencing the questions to build rapport and gain trust and then proceed with observation. Others choose to start the assessment process with a familiar procedure such as taking vital signs to demonstrate clinical competence to the patient before proceeding to the interview. Very few OASIS data items rely solely on patient interview. In the rare instance that an assessment cannot be made due to lack of patient information, agencies must report the most appropriate response, based on their professional judgement. Patients should not be forced to cooperate with the assessment process.

If patients refuse to answer some questions that are part of the OASIS assessment, the HHA may still deliver care to the patient as long as it completes and submits the OASIS assessment to the best of its ability.

Some changes have been made to the OASIS User's manual with regard to the conventions involved in collecting and recording OASIS data in the context of the comprehensive assessment process, particularly for mental health assessments. These changes are available via the HCFA Internet site (http://www.hcfa.gov). Alternately, these changes can be accessed directly at www.hcfa.gov/medicare/hsqb/oasis/hhedtrng.htm which is where the entire OASIS User's manual is available for downloading free of charge. The purpose of these changes is to clarify the definitions, instructions, and assessment strategies for selected OASIS items, as follows:

- Pages 8.2 and 8.3 of the OASIS User's Manual have been modified to clarify the means of administering the OASIS items in the context of the comprehensive assessment.
- An introductory page (8.82) has been inserted into the Item-by-Item Tips section regarding the assessment of mental and emotional status, to provide further clarification concerning observational and interview techniques that are effective in eliciting the needed information while minimizing burden and intrusion on the patient.
- Item-by-item tips have been changed for item M0540 and items M0560 through M0620. The purpose of these changes is to emphasize observational techniques and to provide further guidance for clinicians in assessing these characteristics especially in situations where patients refuse to answer direct questions.

C. Financial Factors Limiting the Ability of the Patient/Family to Meet Basic Health Needs (M0160)

HCFA is not requiring the transmission of OASIS data item M0160 to the OASIS State system at this time. Because this data item assesses the patient's ability to meet basic health needs, the HHA may need this information to provide appropriate care. Therefore, HCFA requires the collection, assessment and encoding of this item. HCFA's data entry software (HAVEN Version 2.0) will blank out this encoded item as it is prepared for transmission to the OASIS State system. Additionally, the State system will reject this data item if it is inadvertently transmitted to the OASIS State system from software that does not meet HCFA specifications. Vendor software must be changed to accommodate this and other changes. This is discussed elsewhere in this notice.

VI. Technical Information for HHAs and Vendors

A. Medicare/Medicaid Patients

At this time, HCFA requires the encoding and transmission of OASIS information on patients who are receiving Medicare/Medicaid benefits. This means that for patients who have selected a payor source of (1) Medicare (traditional fee-for-service), (2) Medicare (HMO/managed care), (3) Medicaid (traditional fee-for-service), or (4) Medicaid (HMO/managed care) on OASIS item M0150, the HHA must collect, encode and transmit all required OASIS information to the State agency. The payor source for services provided as part of a Medicaid waiver or home and community-based waiver (HCBW) program by a Medicare-approved HHA are coded as (3) Medicaid (traditional fee-for-service) at item M0150.

B. Non-Medicare/Non-Medicaid Patients

For non-Medicare/non-Medicaid patients, the HHA will only assess and collect OASIS as part of the comprehensive assessment and agency medical record. Until such time as we develop and implement a system to mask individual-level identifying data, encoding and transmission of OASIS data items is not required for patients with payor sources other than Medicare/Medicaid. Non-Medicare/non-Medicaid payor sources include private insurance, private HMO/managed care, self pay programs funded under the Social Security Act: for example, Title III, V, XX or other Government programs.

C. Automation Information

Software Changes Made

The following section is of interest to software vendors and includes the changes that *have been made* to accommodate requirement changes for the OASIS:

1. *HAVEN Software:* HAVEN has changed the export function to allow the user to select Medicare/Medicaid only assessments, non-Medicare/non-Medicaid assessments only, or all assessments. The HAVEN export function produces an ASCII text file from the HAVEN database. This file meets the OASIS data specifications that must be transmitted to the State agency. If a user selects Medicare/Medicaid only, as defined earlier, all assessments with a reason for assessment (M0100) value of 1, 2, 3, 4, 5, and 9 *and* a payment source (M0150) value of 1, 2, 3, or 4, as well as, all assessments with a reason for assessment (M0100) with a value of 6, 7, 8, and 10 will be selected for export. If a user selects non-Medicare/non-Medicaid only, as previously defined, all assessments with a reason for assessment (M0100) value of 1, 2, 3, 4, 5, and 9 *and* a payment source (M0150) value other than 1, 2, 3, or 4 will be selected for export. Therefore, the HHA controls assessments to be sent to the State agency. As stated previously in this notice, these procedures ensure that only assessments with a Medicare/Medicaid payment source are received by the OASIS State system as the OASIS State system will reject all assessments with a non-Medicare/non-Medicaid payment source.

In addition to this change, HAVEN will blank out responses and move spaces to the Financial Factors data item (M0160) on *all* assessments prior to creating the export file. This data will remain in the original format in the HHA database but will exist as spaces at the State database. No data is collected at the State system on this item.

2. *OASIS State System:* The OASIS State system has been changed to reject any assessment with a reason for assessment (M0100) value of 1, 2, 3, 4, 5, and 9 *and* a payment source (M0150) value other than 1, 2, 3, or 4. The validation report will reflect that an

assessment meeting the above criteria has been rejected.

In addition to this change, the OASIS State system will blank out and move spaces to the Financial Factors data (M0160) on *all* assessments prior to editing a file submitted by a HHA. This data will remain in the original format in the HHA database but as spaces at the State database. These changes in the HAVEN software are available via the HCFA Internet site (http://www.hcfa.gov) in our revised HAVEN software, version 2.0. Registered HAVEN users will be mailed a copy of the revised HAVEN software, version 2.0 by July.

The following changes *still need to be made* to accommodate requirement changes for the OASIS data base:

Software Changes Pending

1. *HAVEN Software:* The HAVEN software will need to incorporate all requirements to mask designated identifiers for any assessment with a reason for assessment (M0100) value of 1, 2, 3, 4, 5, and 9 *and* a payment source (M0150) value other than 1, 2, 3, or 4. Specifications for this are scheduled to be available via the HCFA Internet site (http://www.hcfa.gov) by July 1, 1999, and scheduled to become effective in April 2000.

2. *OASIS State System:* The OASIS State system will make the necessary edits to reject any assessment with a reason for assessment (M0100) value of 1, 2, 3, 4, 5, *and* 9 *and* a payment source (M0150) value other than 1, 2, 3, or 4 that does not have the designated identifiers masked. This edit is scheduled to be effective in April 2000.

HCFA Websites

Revisions and updates to OASIS implementation will be available via the HCFA Internet site (http://www.hcfa.gov). Alternatively, the OASIS Internet site is accessible directly at the following address: www.hcfa.gov/medicare/hsqb/oasis/oasishmp.htm. This is the OASIS home page. A summary of OASIS website content is available at this site.

OMB Review

In accordance with the provisions of Executive Order 12866 this document was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program)

Dated: June 11, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

BILLING CODE 4120–03–P

Attachment A

Home Health Agency
Outcome and Assessment Information Set (OASIS)
STATEMENT OF PATIENT PRIVACY RIGHTS

As a home health patient, you have the privacy rights listed below.

- **You have the right to know why we need to ask you questions.**
  We are required by law to collect health information to make sure:
  1) you get quality health care, and
  2) payment for Medicare and Medicaid patients is correct.
- **You have the right to have your personal health care information kept confidential.**
  You may be asked to tell us information about yourself so that we will know which home health services will be best for you.
  We keep anything we learn about you confidential.
  This means, only those who are legally authorized to know, or who have a medical need to know, will see your personal health information.
- **You have the right to refuse to answer questions.**
  We may need your help in collecting your health information.
  If you choose not to answer, we will fill in the information as best we can.
  You do not have to answer every question to get services.
- **You have the right to look at your personal health information.**
  - We know how important it is that the information we collect about you is correct. If you think we made a mistake, ask us to correct it.
  - If you are not satisfied with our response, you can ask the Health Care Financing Administration, the federal Medicare and Medicaid agency, to correct your information.

You can ask the Health Care Financing Administration to see, review, copy, or correct your personal health information which that Federal agency maintains in its HHA OASIS System of Records. See the back of this Notice for CONTACT INFORMATION. If you want a more detailed description of your privacy rights, see the back of this Notice: PRIVACY ACT STATEMENT - HEALTH CARE RECORDS.

This is a Medicare & Medicaid Approved Notice.

HCFA
MEDICARE • MEDICAID
Health Care Financing Administration

Attachment B

PRIVACY ACT STATEMENT - HEALTH CARE RECORDS

THIS STATEMENT GIVES YOU ADVICE REQUIRED BY LAW (the Privacy Act of 1974).
THIS STATEMENT IS NOT A CONSENT FORM. IT WILL NOT BE USED TO RELEASE OR TO USE YOUR HEALTH CARE INFORMATION.

I. AUTHORITY FOR COLLECTION OF YOUR INFORMATION, INCLUDING YOUR SOCIAL SECURITY NUMBER, AND WHETHER OR NOT YOU ARE REQUIRED TO PROVIDE INFORMATION FOR THIS ASSESSMENT.

Sections 1102(a), 1154, 1861(o), 1861(z), 1863, 1864, 1865, 1866, 1871, 1891(b) of the Social Security Act.

Medicare and Medicaid participating home health agencies must do a complete assessment that accurately reflects your current health and includes information that can be used to show your progress toward your health goals. The home health agency must use the "Outcome and Assessment Information Set" (OASIS) when evaluating your health. To do this, the agency must get information from every patient. This information is used by the Health Care Financing Administration (HCFA, the federal Medicare & Medicaid agency) to be sure that the home health agency meets quality standards and gives appropriate health care to its patients. You have the right to refuse to provide information for the assessment to the home health agency. If your information is included in an assessment, it is protected under the federal Privacy Act of 1974 and the "Home Health Agency Outcome and Assessment Information Set" (HHA OASIS) System of Records. You have the right to see, copy, review, and request correction of your information in the HHA OASIS System of Records.

II. PRINCIPAL PURPOSES FOR WHICH YOUR INFORMATION IS INTENDED TO BE USED

The information collected will be entered into the Home Health Agency Outcome and Assessment Information Set (HHA OASIS) System No. 09-70-9002. Your health care information in the HHA OASIS System of Records will be used for the following purposes:

- support litigation involving the Health Care Financing Administration;
- support regulatory, reimbursement, and policy functions performed within the Health Care Financing Administration or by a contractor or consultant;
- study the effectiveness and quality of care provided by those home health agencies;
- survey and certification of Medicare and Medicaid home health agencies;
- provide for development, validation, and refinement of a Medicare prospective payment system;
- enable regulators to provide home health agencies with data for their internal quality improvement activities;
- support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health,

  and for health care payment related projects; and
- support constituent requests made to a Congressional representative.

III. ROUTINE USES

These "routine uses" specify the circumstances when the Health Care Financing Administration may release your information from the HHA OASIS System of Records without your consent. Each prospective recipient must agree in writing to ensure the continuing confidentiality and security of your information. Disclosures of the information may be to:

1. the federal Department of Justice for litigation involving the Health Care Financing Administration;
2. contractors or consultants working for the Health Care Financing Administration to assist in the performance of a service related to this system of records and who need to access these records to perform the activity;
3. an agency of a State government for purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or quality of health care services provided in the State; for developing and operating Medicaid reimbursement systems; or for the administration of Federal/State home health agency programs within the State;
4. another Federal or State agency to contribute to the accuracy of the Health Care Financing Administration's health insurance operations (payment, treatment and coverage) and/or to support State agencies in the evaluations and monitoring of care provided by HHAs;
5. Peer Review Organizations, to perform Title XI or Title XVIII functions relating to assessing and improving home health agency quality of care;
6. an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects;
7. a congressional office in response to a constituent inquiry made at the written request of the constituent about whom the record is maintained.

IV. EFFECT ON YOU, IF YOU DO NOT PROVIDE INFORMATION

The home health agency needs the information contained in the Outcome and Assessment Information Set in order to give you quality care. It is important that the information be correct. Incorrect information could result in payment errors. Incorrect information also could make it hard to be sure that the agency is giving you quality services. If you choose not to provide information, there is no federal requirement for the home health agency to refuse you services.

NOTE: This statement may be included in the admission packet for all new home health agency admissions. Home health agencies may request you or your representative to sign this statement to document that this statement was given to you. **Your signature is NOT required.** If you or your representative sign the statement, the signature merely indicates that you received this statement. You or your representative must be supplied with a copy of this statement.

CONTACT INFORMATION

If you want to ask the Health Care Financing Administration to see, review, copy, or correct your personal health information which that Federal agency maintains in its HHA OASIS System of Records:

Call 1-800-638-6833, toll free, for assistance in contacting the HHA OASIS System Manager.
TTY for the hearing and speech impaired: 1-800-820-1202.

Attachment C

Home Health Agency
Outcome and Assessment Information Set (OASIS)

NOTICE ABOUT PRIVACY
For Patients Who Do Not Have Medicare or Medicaid Coverage

- As a home health patient, there are a few things that you need to know about our collection of your personal health care information.
  - Federal and State governments oversee home health care to be sure that we furnish quality home health care services, and that you, in particular, get quality home health care services.
  - We need to ask you questions because we are required by law to collect health information to make sure that you get quality health care services.
  - We will make your information anonymous. That way, the Health Care Financing Administration, the federal agency that oversees this home health agency, cannot know that the information is about you.
- We keep anything we learn about you confidential.

This is a Medicare & Medicaid Approved Notice.

HCFA
MEDICARE - MEDICAID
Health Care Financing Administration

[FR Doc. 99–15529 Filed 6–16–99; 9:00 am]
BILLING CODE 4120–03–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of new system of records.

The provisions in this system of records are unique to the OASIS data set, and therefore, are not necessarily representative of current or future HCFA system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records. The proposed system is titled "Home Health Agency Outcome and Assessment Information Set (HHA OASIS), HHS/HCFA/CMSO, 09–70–9002." HCFA proposes to establish a new system of records containing data on the physical, mental, functional, and psychosocial status of all patients receiving the services of Home Health Agencies (HHAs) that are approved to participate in the Medicare and/or Medicaid programs. Information retained in this system for those individuals who have only non-Medicare and non-Medicaid payment sources will be in a non-patient identifiable format.

The primary purposes of the system of records are to provide for the development, validation, and refinements of the Medicare Prospective Payment System and to study and help ensure the quality of care provided by HHAs. Information retrieved from this system of records will be used to aid in administration of the survey and certification of Medicare/Medicaid HHAs; enable regulators to provide HHAs with data for their internal quality improvement activities; support agencies of the State government to determine, evaluate and assess overall effectiveness and quality of HHA services provided in the State; aid in the administration of Federal and State HHA programs within the State; monitor the continuity of care for patients who reside temporarily outside of the State; support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; support litigation involving the agency; and support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, HCFA invites comments on all portions of this notice. See "Effective Dates" section for comment period.

EFFECTIVE DATES: HCFA filed a new system of records report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 15, 1999. We have requested a waiver of the OMB 40-day advance notice period for this system of records. If OMB grants the waiver, the system of records is effective on June 18, 1999. If OMB does not grant the waiver, we will implement the system on July 28, 1999. In any event, we will not disclose any information under a routine use until 40 days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 pm., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Helene Fredeking, Director, Division of Outcomes and Improvements, Center for Medicaid and State Operations, HCFA, 7500 Security Boulevard, S2–14–26, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–7304.

SUPPLEMENTARY INFORMATION:

Description of the Proposed System of Records.

A. Glossary of OASIS Terms

OASIS Data Set

The OASIS data set is the sum of the identifiers and information.

Identifiers

Identifiers are the data elements that can be used to determine a patient's identity.

These are: patient's name, social security number, Medicare number and Medicaid number.

OASIS Information

OASIS information includes the clinical items listed below and case mix adjusters (e.g. age, sex, race, residence, etc.).

Patient History
Living Arrangements
Supportive Assistance
Sensory Status
Integumentary Status
Respiratory Status
Elimination Status
Neuro/Emotional/Behavioral Status
Activities of Daily Living/Instrumental Activities of Daily Living (ADL/IADLs)
Medications
Equipment Management
Emergent Care
Discharge

Masked Identifiers

A masked identifier is created when an encrypted value is substituted for an identifier prior to transmission of data. Thus the government receives non-identifiable data (see below). Only the HHA has identifiable data.

Identifiable Data

Identifiable data includes individual records with OASIS information and identifiers.

Non-Identifiable Data

Non-identifiable data includes individual records with OASIS information and masked identifiers or OASIS information without identifiers.

B. Statutory and Regulatory Basis for System of Records

Sections 1102(a), 1871, 1861(o), 1861(z), and 1891(b) of the Social Security Act authorize the Administrator of HCFA to require HHAs participating in the Medicare and Medicaid programs to complete a standard, valid, patient assessment data set; i.e., the OASIS, as part of their comprehensive assessments and updates when evaluating adult, non-maternity patients as required by § 484.55 of the Conditions of Participation. On March 10, 1997, we published in the **Federal Register**, at 62 FR 11035, a proposed rule with an opportunity for public comment, titled "Medicare and Medicaid Programs: Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies." On January 25, 1999, some provisions of this rule were published as a Final Rule in the **Federal Register**, titled "Medicare and Medicaid Program: Comprehensive Assessment and Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies." The rule required that all HHAs participating in the Medicare and Medicaid programs be required to complete a standard, valid, patient assessment data set; i.e., the OASIS, as part of their comprehensive assessments and updates when evaluating adult, non-maternity patients as required by § 484.55 of the Conditions of Participation. Also published in the **Federal Register**, was an interim final rule with comment titled "Medicare and Medicaid: Reporting Outcome and Assessment Information Set." This interim rule established an additional requirement of the Conditions of Participation for HHAs approved to participate in Medicare and/or Medicaid, to encode and report OASIS electronically into a national database. Information retained in this system for those individuals who have only non-Medicare and non-Medicaid payment sources will be in a non-patient identifiable format and will be used only for statistical purposes and to ensure quality of care for all patients. Information on Medicare and Medicaid patients will be identified for quality of care and reimbursement purposes.

OASIS also serves as the backbone of the home health prospective payment system. The Balanced Budget Act of 1997 requires Medicare to implement a prospective payment system for HHAs by October 1, 2000. OASIS not only contains data items that indicate quality, but information necessary to develop a reliable prospective payment system that pays HHAs appropriately according to the different level of services patients need. If HCFA opted not to use OASIS for the prospective payment system, HCFA would have had to collect another set of data items from HHAs.

The system of records will contain clinical assessment information (OASIS records) for all Medicare and Medicaid patients receiving the services of a Medicare and/or Medicaid approved HHA, except pre-partum and post-partum patients, patients under 18 years of age, and patients receiving other than personal care or health care services; i.e., housekeeping services and chore services. The OASIS data set contains statistically proven valid and reliable items which have been shown to be effective in measuring outcomes for patients receiving home health services.

C. Purpose for System of Records

In 1987, Congress changed the Social Security Act to require HCFA to survey the quality of care and services furnished by HHAs using a "standardized, reproducible assessment instrument." The next year, HCFA entered into a contract with the University of Colorado to develop an assessment instrument that would help oversee the quality of care patients receive in HHAs and improve HHA performance. University of Colorado researchers, doctors, and clinicians developed the Outcome Assessment Instrument Set (OASIS) as the standardized, reproducible assessment instrument.

OASIS is not an interview or a survey. Rather, it is part of an assessment of the patient that is conducted by a registered nurse or therapist. To determine the type of care a patient needs, HHAs already do an assessment of each patient's physical and emotional condition. HHAs will continue to do these comprehensive assessments, but now they will report a portion of that assessment to HCFA so that we can perform several critical functions, such as calculating the appropriate amount for the government to pay for home health services or ensuring HHAs are providing the highest quality of care for the entire agency and for each individual patient.

Home health patients are one of the most vulnerable populations because services are provided in the homes where it is difficult to oversee the quality of services provided. For the first time, OASIS will allow HCFA to measure how well HHAs care for their patients. HHAs caring for Medicare beneficiaries will submit OASIS data through secure communications to HCFA, which will analyze the information to develop performance profiles for each agency. This process is similar to what we now do for managed-care plans—a system that has been widely praised by consumers and health-care professionals.

These "performance reports" can serve several important purposes: (1) HHAs can use them to identify their own weaknesses and improve the quality of care they provide; (2) HCFA can use them to identify HHAs that provide substandard care and then require such agencies to correct problem areas or risk losing Medicare funding; and (3) patients may be able to use this information in the form of "report cards" as a means of comparing HHAs in their area. All patient-specific information will be kept confidential with access carefully limited to ensure that privacy remains protected.

OASIS represents a significant advancement in home health care. It will ensure accurate payments to HHAs under the new prospective payment system, improve quality of patient care and allow HCFA to monitor the quality of care it purchases for its beneficiaries.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The OASIS will be completed on all patients, except those in a category exempted by administrative policies and procedures, who receive services from an HHA certified for Medicare and Medicaid payments. The OASIS data set includes identifiers. It also includes information on:

Patient History
Living Arrangements
Supportive Assistance
Sensory Status
Integumentary Status
Respiratory Status
Elimination Status
Neuro/Emotional/Behavioral Status
Activities of Daily Living/Instrumental Activities of Daily Living (ADL/IADLs)
Medications
Equipment Management
Emergent Care
Discharge

Identifiers are patient name, social security number, Medicare number and Medicaid number. A masked identifier is one in which an encrypted value is substituted for an identifier so that recipients of the information cannot identify the individual.

The OASIS information will be submitted by the HHA to the government for all patients, except prepartum and postpartum patients, patients under 18 years of age, and patients receiving personal care or health care services; i.e., housekeeping services and chore services. Identifiers will be included for all patients receiving services paid for by Medicare traditional fee-for-service, Medicaid traditional fee-for-service, Medicare HMO/managed care or Medicaid HMO/managed care. For patients with only a non-Medicare or non-Medicaid payment source, the HHA will submit OASIS information with masked identifiers and will retain the identifier and masked identifier at the HHA. In other words, the patient identifier for non-Medicare and non-Medicaid patients will only be known and retained by the HHA and not by the government.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose which is compatible with the purpose(s) for which the

information was collected. Any such disclosure of data is known as a "routine use." The government will only release OASIS information that can be associated with an individual HHA patient as provided for under "Section III.A. Entities Who May Receive Disclosures Under Routine Use." Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with OASIS information and identifiers. Non-identifiable data includes individual records with OASIS information and masked identifiers or OASIS information with identifiers stripped out of the file.

We will only disclose the minimum personal data necessary to achieve the purpose of OASIS. HCFA has the following policies and procedures concerning disclosures of information which will be maintained in the system. In general, disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after HCFA:

(a) Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., developing and refining payment systems and monitoring the quality of care provided to patients.

(b) Determines:

(1) That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

(2) That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

(c) Requires the information recipient to:

(1) Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

(2) Remove or destroy at the earliest time all patient-identifiable information; and

(3) Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

(d) Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

The routine use disclosures in this system may occur only to the following seven (7) categories of entities (i.e., the entities which can get identifiable data only if we apply the policies and procedures in Section II.B. above). In addition, our policy will be to prohibit release even of non-identifiable data, beyond the seven listed categories, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the home health agency enrollees could, because of the small size, use this information to deduce the patient identity).

1. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(d) The United States Government;

is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

Whenever HCFA is involved in litigation, or occasionally when another party is involved in litigation and HCFA's policies or operations could be affected by the outcome of the litigation, HCFA would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which HCFA collects the information.

2. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contractual or similar agreement with a third party to assist in accomplishing HCFA functions relating to purposes for this system of records.

HCFA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. HCFA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards (like ensuring that the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring and those stated in II.B. above), are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

3. To the agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing overall or aggregate cost, effectiveness, and/or the quality of HHA services provided in the State; for developing and operating Medicaid reimbursement systems; or for the purpose of administration of Federal/State HHA programs within the State. Data will be released to the State only on those individuals who are either patients under the services of a HHA within the State, or are legal residents of the State, regardless of the location of the HHA in which the patient is receiving services.

State government components in partnership with HCFA will use OASIS information to enhance the monitoring of HHAs' performance in providing patient care. States will also use this information to study the cost effectiveness and quality of Medicaid programs. In addition some States will use OASIS information for case mix Medicaid reimbursement systems. States will use OASIS data to monitor the continuity of care delivered to patients who, for whatever reason, temporarily reside in another State and receive HHA services during that stay.

4. To another Federal or State agency (e.g. State survey agencies and State Medicaid agencies) to contribute to the accuracy of HCFA's health insurance operations (payment, treatment and coverage) and/or to support State agencies in the evaluations and monitoring of care provided by HHAs.

Other State agencies in their administration of a Federal health program may require OASIS information in order to support evaluations and monitoring of quality of care for special populations or special care area, including proper reimbursement for services provided. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which HCFA collects the information.

5. To a Peer Review Organization (PRO) in order to assist the PRO to perform Title XI and Title XVIII functions relating to assessing and improving HHA quality of care. PROs will work with HHAs to implement quality improvement programs, provide consultation to HCFA, its contractors, and to State agencies. The PROs will provide a supportive role to HHAs in their endeavors to comply with Medicare Conditions of Participation; will assist the State agencies in related monitoring and enforcement efforts; assist HCFA and help regional home health intermediaries in home health program integrity assessment; and prepare summary information about the nation's home health care for release to beneficiaries.

6. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The OASIS data will provide the research, evaluations and epidemiological projects a broader, longitudinal, national perspective of the status of HHA patients. HCFA anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to HHA patients and the policy that governs the care.

7. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving some issue relating to a matter before HCFA. The Member of Congress then writes HCFA, and HCFA must be able to give sufficient information to be responsive to the inquiry.

IV. Compatibility of the Proposed Routine Uses

The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. Our disclosure regulation allows us to disclose information under a routine use when the disclosure will be used to administer one of our programs or a similar program of another government agency, or when disclosure is required by law.

In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of HCFA's programs; e.g., disclosures related to the administration of the survey and certification of Medicare/Medicaid HHAs, disclosures to contractors assisting HCFA with an administrative function, or disclosure in connection with litigation relating to, or affecting, a program administered by HCFA.

V. Safeguards

The HHS OASIS system will conform with applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, "Security of Federal Automated Information Resources." HCFA has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A–C of this section highlight some of the specific methods that HCFA is using to ensure the security of this system and the information within it.

A. *Authorized users:* Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, HCFA is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or work station and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the State agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- QI Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges. This class is used by the OASIS data submission applications to receive and validate HHA file uploads.

B. *Physical Safeguards:* All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the HHA OASIS system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and adequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the State agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the State agency level.

• Inactivity Lockout—Access to the NT workstation is automatically locked after a specified period of inactivity.

• Warnings—Legal notices and security warnings display on all servers and when servers are accessed by workstations.

• Remote Access Security—Windows NT Remote Access Service (RAS) security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the HHA OASIS system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28-STD, December 1985). Netscape Enterprise Server is the security mechanism for all HHA transmission connections to the system. As a result, Netscape controls all HHA information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server are maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

C. *Procedural Safeguards:* All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

VI. Effect of the Proposed System of Records on Individual Rights.

HCFA proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

HCFA will monitor the collection and reporting of OASIS data. OASIS information on patients is completed by the HHA and submitted to HCFA through standard systems located at the State agencies. Accuracy of the data is important since incorrect information could result in the wrong reimbursement for services and a less effective process for assuring quality of services. HCFA will utilize a variety of onsite and offsite edits and audits to increase the accuracy of OASIS data.

HCFA will take precautionary measures (see item V. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights including not collecting patient identifiable data for non-Medicare and non-Medicaid patients. Therefore, HCFA anticipates no adverse effect on any of these rights. HCFA will collect only that information necessary to perform the system's functions. In addition, HCFA will make disclosure of identifiable data from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

To secure data that resides in a HCFA Privacy Act System of Records; to ensure the integrity, security, and confidentiality of information maintained by HCFA; and to permit appropriate disclosure and use of such data as permitted by law, HCFA and the non-HCFA recipient of the data, hereafter termed "User," enter into an agreement to comply with the following specific requirements. The agreement addresses the conditions under which HCFA will disclose and the user will obtain and use the information contained in the system of records. The parties mutually agree that HCFA retains ownership rights to the data and that the user does not obtain any right, title, or interest in any of the data furnished by HCFA. The user represents and warrants further that the facts and statements made in any study or research protocol or project plan submitted to HCFA for each purpose are complete and accurate. The user shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data disclosed from the system of records to any person. The user agrees that access to the data shall be limited to the minimum number of individuals necessary to achieve the purpose stated in the protocol and to those individuals on a need to know basis only. If HCFA determines or has reasonable belief that the user has made an unauthorized disclosure of the data, HCFA in its sole discretion may require the user to: (a) Promptly investigate and report to HCFA any alleged or actual unauthorized disclosures; (b) promptly resolve any problems identified by the investigation; (c) submit a formal response to any allegation of unauthorized disclosures; (d) submit a corrective action plan with steps to prevent any future unauthorized disclosures; and (e) return data files to HCFA. If HCFA determines or has reasonable belief that unauthorized disclosures have taken place, HCFA may refuse to release further HCFA data to the user for a period of time to be determined by HCFA.

The Privacy Act provides criminal penalties for certain violations. The Act provides that "Any officer or employee of an agency, who by virtue of his [or her] employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific materials is so prohibited, willfully discloses the material in any manner to a person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000." (5 U.S.C. 552a(i)(1). The Act also provides that "Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000." (5 U.S.C. 552a(i)(3). The agency's contractor and any contractors' employees who are covered by 5 U.S.C. 552a(m)(1) are considered employees of the agency for the purposes of these criminal penalties.

HCFA, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: June 11, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

09–70–9002

SYSTEM NAME:

Home Health Agency Outcome and Assessment Information Set (HHA OASIS).

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. HCFA contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will contain clinical assessment information (OASIS records) for all patients receiving the services of a Medicare and/or Medicaid approved Home Health Agency (HHA), except prepartum and postpartum patients, patients under 18 years of age, and patients receiving other than personal care or health care services; i.e., housekeeping services and chore services. Identifiable information will be retained in the system of records only for those individuals whose payments come from Medicare or Medicaid.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records will contain individual-level demographic and identifying data, as well as clinical status data for patients with the payment sources of Medicare traditional fee for service, Medicaid traditional fee for service, Medicare HMO/managed care or Medicaid HMO/managed care.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secs. 1102(a), 1154, 1861(o), 1861(z), 1863, 1864, 1865, 1866, 1871, 1891(b) of the Social Security Act.

PURPOSE(S):

In 1987, Congress changed the Social Security Act to require HCFA to survey the quality of care furnished by HHAs using a "standardized, reproducible assessment instrument." Through a contract with the University of Colorado, the OASIS was developed by researchers, doctors, and clinicians as the standardized, reliable assessment instrument. OASIS represents a significant advancement in home health care. Home health patients are one of the more vulnerable populations because services are provided in the homes where it is difficult to oversee the quality of services provided. OASIS will ensure accurate payments to HHAs under the prospective payment system, improve quality of patient care, and allow HCFA to monitor the quality of care that it purchases for its beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which HCFA may release information from the HHA OASIS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. Also, HCFA will require each prospective recipient of such information, except those otherwise covered by the Privacy Act, to agree in writing to certain conditions to ensure the continuing confidentiality and security, including physical safeguards of the information.

Disclosures may be made:

1. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(d) The United States Government;

is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

2. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

3. To the agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing overall or aggregate cost, effectiveness, and/or the quality of HHA services provided in the State; for developing and operating Medicaid reimbursement systems; or for the purpose of administration of Federal/State HHA programs within the State. Data will be released to the State only on those individuals who are either patients under the services of a HHA within the State, or are legal residents of the State, regardless of the location of the HHA in which the patient is receiving services.

4. To another Federal or State agency (e.g. Department of Defense, Veterans Administration, state survey agencies and state Medicaid agencies) to contribute to the accuracy of HCFA's health insurance operations (payment, treatment and coverage) and/or to support state agencies in the evaluations and monitoring of care provided by HHAs.

Other Federal or State agencies in their administration of a Federal health program may require OASIS information in order to support payment evaluations, and monitoring quality of care for special populations or special care area, including proper reimbursement for services provided. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which HCFA collects the information.

5. To a Peer Review Organization (PRO) in order to assist the PRO to perform Title XI and Title XVIII functions relating to assessing and improving HHA quality of care.

6. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

7. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

The Medicare and Medicaid records are retrieved by health insurance claim number, social security number or by State assigned Medicaid number.

SAFEGUARDS:

HCFA has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, HCFA has physical safeguards in place to reduce the

exposure of computer equipment and thus achieve an optimum level of protection and security for the HHA OASIS system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines; e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; HCFA Automated Information Systems (AIS) Guide, Systems Securities Policies; and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

HCFA and the repository of the National Archive and Records Administration (NARA) will retain identifiable OASIS assessment data for a total period not to exceed fifteen (15) years.

SSYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Medicaid and State Operations, HCFA, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay), address, date of birth, and sex.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

The Outcome and Assessment Information Set.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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federal register

Friday
June 18, 1999

Part VII

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2509
Interpretive Bulletin 99–1; Payroll Deduction Programs for Individual Retirement Accounts

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2509

RIN 1210–AA70

Interpretive Bulletin 99–1; Payroll Deduction Programs for Individual Retirement Accounts

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Interpretive bulletin.

SUMMARY: In 1975, the Department of Labor (the Department) issued a regulation describing circumstances under which the use of an employer payroll deduction program for forwarding employee monies to an individual retirement account (IRA) will not constitute an employee pension benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Since the issuance of that regulation, the Department has issued several advisory opinions answering common questions arising under the regulation. This interpretive bulletin codifies the views of the Department provided in those advisory opinions and, by restating those views in one, more readily available document, is intended to assist employers in their efforts to provide retirement savings opportunities to employees by means of payroll deduction programs that do not fall within the reach of Title I of ERISA.

DATES: Effective January 1, 1975.

FOR FURTHER INFORMATION CONTACT: John Keene at (202) 219–8521, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Ave., NW, Room N–5669, Washington, DC 20210. This telephone number is not a toll-free number.

SUPPLEMENTARY INFORMATION: In order to provide a concise and ready reference to its interpretations of ERISA, the Department publishes its interpretive bulletins in the Rules and Regulations section of the **Federal Register**. Published in this issue of the **Federal Register** is ERISA Interpretive Bulletin 99–1, which interprets ERISA section 3(2)(A), 29 U.S.C. 1002(2)(A), and the Department's regulation issued thereunder at 29 CFR 2510.3–2(d), and which codifies the advisory opinions previously issued by the Department interpreting these provisions. The Department is publishing this interpretive bulletin in an effort to facilitate the use by employers of payroll withholding as a vehicle for encouraging employee savings through individual retirement accounts.

The Department has a strong interest in promoting retirement savings by employees. The Department recognizes that some employers currently do not provide pension plans for their employees. Although retirement savings vehicles like the SIMPLE and the SEP, which impose little in the way of administrative burdens or costs on employers, are readily available, some employers are reluctant to assume even those costs for a variety of reasons. The Department believes that it is important that employees of such employers be encouraged to save independently for retirement, and it is in the interest of the public that employers be encouraged to provide opportunities for employee retirement savings. One relatively inexpensive method that employers may use to provide employees the opportunity to save for retirement is making available to employees the possibility of regular payroll deductions that are transmitted directly by the employer to individual retirement accounts established by the employees. At present, there are relatively few such programs in operation, and some employers have indicated that they are reluctant to create payroll withholding programs for individual retirement accounts because they are concerned that such programs would be considered pension plans covered by ERISA and therefore subject to the requirements of Title I of ERISA. The Department is concerned that employers may not be aware of or understand the long-established views of the Department with respect to the ability of employers to establish and maintain employer payroll withholding programs without such programs being considered pension plans under ERISA. This guidance summarizes and restates those views in order to provide employers the Department's views in one convenient, easily accessible document.

Background

Section 3(2)(A) of Title I of ERISA provides that "any plan, fund, or program * * * established or maintained by an employer or by an employee organization, or by both," shall be a pension plan "to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program * * * provides retirement income to employees, or * * * results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan."

Under provisions of the Internal Revenue Code of 1986, as amended (Code),[1] individual taxpayers may establish individual retirement accounts or individual retirement annuities (IRAs) that are tax-favored if operated within the requirements of the Code. With respect to Title I coverage of such IRAs, the Department has published a regulation at 29 CFR 2510.3–2(d), establishing a safe harbor under which an IRA established by employees and funded through payroll deductions will not be considered to be a "pension plan" within the meaning of section 3(2) of Title I when the conditions of the regulation are satisfied. The regulation specifies that an IRA will not be considered a "pension plan" when there are no contributions made by an employer; employees participate in the IRA on a completely voluntary basis; and the employer's activities with respect to the IRA must be limited solely to permitting, without endorsement, the IRA sponsor to publicize its program to employees; collecting contributions through payroll deductions or dues checkoffs; and remitting those contributions to the IRA sponsor. Finally, the regulation provides that the employer may receive no consideration in any form, other than reasonable compensation for services actually rendered in connection with the payroll deduction or dues checkoff system. If one or more of the conditions of the regulation are not met, the employer may be considered to have established or maintained a pension plan. If an IRA program is a pension plan under Title I of ERISA, it is subject to Parts 1, 4, and 5 of Title I of ERISA, dealing with reporting and disclosure requirements, fiduciary duties, and enforcement rights. Pursuant to ERISA sections 201(6) and 301(a)(7), 29 U.S.C. 1051(6) and 1081 (a) (7), IRAs are exempt from Parts 2 and 3 of Title I, relating to participation, vesting, and funding.[2]

As part of the Conference Report on the Taxpayer Relief Act of 1997, Congress expressed its view that "employers that choose not to sponsor a retirement plan should be encouraged to set up a payroll deduction system to help employees save for retirement by making payroll deduction contributions to their IRAs." H.R. Rep. No. 220, 105th Cong., 1st Sess. at 755 (1997). The Department is aware that some employers that would permit payroll deduction contributions to IRAs are reluctant to do so if ERISA would require employers to permit employees an unlimited choice of IRA sponsors for the payroll deduction IRAs in order not to be considered to have established an ERISA plan. Similarly, some employers desire to limit the choice of IRA sponsors to one entity, but are concerned that doing so might make their payroll deduction arrangements ERISA plans. Employers also have raised issues concerning the extent to which they may encourage employee savings for retirement without being viewed as endorsing an arrangement contrary to the limitations in the Department's regulation.

In response to these specific concerns, and as part of the Department's ongoing efforts to encourage retirement savings, the Department is hereby summarizing and restating its views on employer involvement in providing voluntary payroll deduction systems for contributions to IRAs. This bulletin is intended to supplement 29 CFR 2510.3–2(d) by summarizing and restating the interpretive views of the Department, as expressed in advisory opinions since promulgation of the regulation, on various aspects of an employer's involvement in IRA programs.[3] This interpretive bulletin clarifies the circumstances under which an employer may facilitate employees' voluntary contributions to IRAs by providing an IRA payroll deduction program without thereby inadvertently establishing or maintaining an employee benefit pension plan within the scope of section 3(2) of ERISA.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f)(4), the order defines a "significant regulatory action" as an action that is likely to result in, among other things, a rule raising novel policy issues arising out of the President's priorities.

Pursuant to the terms of the Executive Order, the Department has determined that this regulation, which encourages employers to provide the opportunity for employees to save for retirement by clarifying the applicability of certain regulatory compliance issues, is consistent with the President's priorities in encouraging retirement savings, and as such is a "significant regulatory action" subject to OMB review under Executive Order section 3(f)(4).

According to the Employee Benefits Supplement to the 1993 Current Population Survey, over half of the private wage and salary workforce does not have employment-based retirement coverage. Employment-based retirement coverage arises from three separate components: access to coverage made available through employer sponsorship of plans, eligibility for coverage through satisfaction of age and service requirements, and acceptance of coverage, where employee participation in the employer's plan is voluntary.

Access to coverage is currently shown to differ significantly by employer size. Approximately 82% of private wage and salary workers employed by employers with 100 or more employees have access to coverage. However, only 18% of employers of fewer than 25 employees, and 45% of employers of 25 to 99 employees sponsor retirement plans. As a result, about 30 million employees of small business do not have access to employment-based retirement coverage. Furthermore, only about 12% of these employees choose to close this gap in retirement coverage with an individual retirement account.

Small employers who do not sponsor retirement plans typically offer a few principal reasons for their decision, including the administrative complexity and burden associated with retirement plans, and the risk of commitment to an ongoing expense in the face of the financial uncertainties of the small business environment. Although this interpretive bulletin is not expected to impact access to employer-provided retirement coverage, it may benefit both employers and employees. First, it offers improved access to the Department's views concerning the regulatory requirements for payroll deduction programs for individual retirement accounts. This may ease concerns about the administrative complexity of offering access to individual retirement savings vehicles, which normally requires only a very limited financial commitment on the part of an employer in the form of affording payroll deductions.

The interpretive bulletin may also facilitate individual savings for retirement by those employees whose access to employer-sponsored retirement coverage is most limited, by encouraging employers to make individual retirement saving programs available in a manner convenient to the employees. Although many employees without access to employer-sponsored coverage are currently permitted to make use of an IRA as an alternative method to save for retirement, the Department believes that employees may be more likely to make use of an individual retirement savings vehicle that is offered in an employment setting and features regular withholding, than one which requires making individual arrangements with an IRA sponsor.

Small Business Regulatory Enforcement Fairness Act

The interpretive bulletin being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review.

Paperwork Reduction Act

The interpretive bulletin being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an "information collection request" as defined in 44 U.S.C. 3502(3).

List of Subjects in 29 CFR Part 2509

Employee Benefit Plans, Pensions.

For the reasons set forth above, Part 2509 of Title 29 of The Code of Federal Regulations is amended as follows:

Part 2509—Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974

1. The authority citation for part 2509 continues to read as follows:

Authority: 29 U.S.C. 1135. Sections 2509.75–10 and 2509.75–2 issued under 29 U.S.C. 1052, 1053, 1054. Secretary of Labor's Order No. 1–87 (52 FR 13139).

2. Add a new § 2509.99–1 to read as follows:

§ 2509.99–1 Interpretive Bulletin Relating to Payroll Deduction IRAs.

(a) Scope. This interpretive bulletin sets forth the Department of Labor's (the Department's) interpretation of section 3(2)(A) of the Employee Retirement Income Security Act of 1974, as amended, (ERISA) and 29 CFR 2510.3–2(d), as applied to payroll deduction programs established by employers[1] for the purpose of enabling employees to make voluntary contributions to individual retirement accounts or individual retirement annuities (IRAs)

[1] *See generally* Code sections 408, 408A.

[2] Whether or not an IRA is part of a "pension plan," the prohibited transaction provisions of section 4975 of the Internal Revenue Code are applicable to transactions by the IRA.

[3] *See* Advisory Opinions 77–29A (March 16, 1977), 81–80A (Dec. 18, 1981), 82–13A (Feb. 17, 1982), 82–18A (March 22, 1982), 82–27A (June 16, 1982), 82–53A (Oct. 4, 1982), 83–1A (Jan. 13, 1983), 83–2A (Jan. 13, 1983), 83–9A (February 9, 1983), 83–10A (February 9, 1983), 83–25A (May 24, 1983), 90–20A (June 15, 1990).

[1] The views expressed in this Interpretive Bulletin with respect to payroll deduction programs of employers are also generally applicable to dues checkoff programs of employee organizations.

described in section 408(a) or (b) or section 408A of the Internal Revenue Code (the Code).

(b) General. It has been the Department's long-held view that an employer who simply provides employees with the opportunity for making contributions to an IRA through payroll deductions does not thereby establish a "pension plan" within the meaning of section 3 (2) (A) of ERISA. In this regard, 29 CFR 2510.3–2 (d) sets forth a safe harbor under which IRAs will not be considered to be pension plans when the conditions of the regulation are satisfied. Thus, an employer may, with few constraints, provide to its employees an opportunity for saving for retirement, under terms and conditions similar to those of certain other optional payroll deduction programs, such as for automatic savings deposits or purchases of United States savings bonds, without thereby creating a pension plan under Title I of ERISA. The guidance provided herein is intended to clarify the application of the IRA safe harbor set forth at 29 CFR 2510.3–2 (d) and, thereby, facilitate the establishment of payroll deduction IRAs.

(c) Employee Communications. (1) It is the Department's view that, so long as an employer maintains neutrality with respect to an IRA sponsor in its communications with its employees, the employer will not be considered to "endorse" an IRA payroll deduction program for purposes of 29 CFR 2510.3–2(d).[2] An employer may encourage its employees to save for retirement by providing general information on the IRA payroll deduction program and other educational materials that explain the advisability of retirement savings, including the advantages of contributing to an IRA, without thereby converting the program under which the employees' wages are withheld for contribution into the IRAs into an ERISA covered plan. However, the employer must make clear that its involvement in the program is limited to collecting the deducted amounts and remitting them promptly to the IRA sponsor and that it does not provide any additional benefit or promise any particular investment return on the employee's savings.

(2)The employer may also do the following without converting a payroll deduction IRA program into an ERISA plan: An employer may answer employees' specific inquiries about the mechanics of the IRA payroll deduction program and may refer other inquiries to the appropriate IRA sponsor. An employer may provide to employees informational materials written by the IRA sponsor describing the sponsor's IRA programs or addressing topics of general interest regarding investments and retirement savings, provided that the material does not itself suggest that the employer is other than neutral with respect to the IRA sponsor and its products; the employer may request that the IRA sponsor prepare such informational materials and it may review such materials for appropriateness and completeness. The fact that the employer's name or logo is displayed in the informational materials in connection with describing the payroll deduction program would not in and of itself, in the Department's view, suggest that the employer has "endorsed" the IRA sponsor or its products, provided that the specific context and surrounding facts and circumstances make clear to the employees that the employer's involvement is limited to facilitating employee contributions through payroll deductions.[3]

(d) Employer Limitations on the number of IRA sponsors offered under the program. The Department recognizes that the cost of permitting employees to make IRA contributions through payroll deductions may be significantly affected by the number of IRA sponsors to which the employer must remit contributions. It is the view of the Department that an employer may limit the number of IRA sponsors to which employees may make payroll deduction contributions without exceeding the limitations of 29 CFR 2510.3–2(d), provided that any limitations on, or costs or assessments associated with an employee's ability to transfer or roll over IRA contributions to another IRA sponsor is fully disclosed in advance of the employee's decision to participate in the program. The employer may select one IRA sponsor as the designated recipient for payroll deduction contributions, or it may establish criteria by which to select IRA sponsors, e.g., standards relating to the sponsor's provision of investment education, forms, availability to answer employees' questions, etc., and may periodically review its selectees to determine whether to continue to designate them. However, an employer may be considered to be involved in the program beyond the limitations set forth in 29 CFR 2510.3–2(d) if the employer negotiates with an IRA sponsor and thereby obtains special terms and conditions for its employees that are not generally available to similar purchasers of the IRA. The employer's involvement in the IRA program would also be in excess of the limitations of the regulation if the employer exercises any influence over the investments made or permitted by the IRA sponsor.

(e) Administrative fees. The employer may pay any fee the IRA sponsor imposes on employers for services the sponsor provides in connection with the establishment and maintenance of the payroll deduction process itself, without exceeding the limitations of 29 CFR 2510.3–2(d). Further, the employer may assume the internal costs (such as for overhead, bookkeeping, etc) of implementing and maintaining the payroll deduction program without reimbursement from either employees or the IRA sponsor without exceeding the limits of the regulation. However, if an employer pays, in connection with operating an IRA payroll deduction program, any administrative, investment management, or other fee that the IRA sponsor would require employees to pay for establishing or maintaining the IRA, the employer would, in the view of the Department, fall outside the safe harbor and, as a result, may be considered to have established a "pension plan" for its employees.

(f) Reasonable Compensation for Services. 29 CFR 2510.3–2(d) provides that an employer may not receive any consideration in connection with operating an IRA payroll deduction program, but may be paid "reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs." Employers have asked whether "reasonable compensation" under section 2510.3–2(d) includes payments from an IRA sponsor to an employer for the employer's cost of operating the IRA payroll deduction program. It is the Department's view that the IRA sponsor may make such payments, to the extent that they constitute compensation for the actual costs of the program to the employer. However, "reasonable compensation" does not include any profit to the employer. *See* 29 CFR 2510.3–1(j), relating to group or group-type insurance programs. For example, if an IRA sponsor offers to pay an employer an amount equal to a percentage of the assets contributed by employees to IRAs through payroll deduction, such an arrangement might exceed "reasonable compensation" for the services actually rendered by the employer in connection with the IRA payroll deduction program. An employer will also be considered to have received consideration that is not "reasonable compensation" if the IRA sponsor agrees to make or to permit particular investments of IRA contributions in consideration for the employer's agreement to make a payroll deduction program available to its employees, or if the IRA sponsor agrees to extend credit to or for the benefit of the employer in return for the employer's making payroll deduction available to the employees.

(g) Additional rules when employer is IRA sponsor or affiliate of IRA sponsor. Under certain circumstances, an employer that offers IRAs in the normal course of its business to the general public or that is an affiliate[4] of an IRA sponsor may provide its employees with the opportunity to make contributions to IRAs sponsored by the employer or the affiliate through a payroll deduction program, without exceeding the limitations of § 2510.3–2(d). If the IRA products offered to the employees for investment of the payroll deduction contributions are identical to IRA products the sponsor offers the general public in the ordinary course of its business, and any management fees, sales commissions, and the like charged by the IRA sponsor to employees participating in the payroll deduction program are the same as those charged by the sponsor to employees of non-affiliated employers that establish an IRA payroll deduction program, the Department has generally taken the position that this alone will not cause the employer to be sufficiently involved in the IRA program as an employer or to have received consideration of the type prohibited under § 2510.2(d)(iv) to warrant the program being considered outside the safe harbor of the regulation.[5] Under such circumstances, the employer, in offering payroll deduction contribution opportunities to its employees, would appear to be acting generally as an IRA sponsor, rather than as the employer of the individuals who make the contributions.[6]

Signed at Washington, DC, this 14th day of June, 1999.

Richard M. McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–15410 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–29–P

[2] The Department has specifically stated, in its Advisory Opinions, that an employer may demonstrate its neutrality with respect to an IRA sponsor in a variety of ways, including (but not limited to) by ensuring that any materials distributed to employees in connection with an IRA payroll deduction program clearly and prominently state, in language reasonably calculated to be understood by the average employee, that the IRA payroll deduction program is completely voluntary; that the employer does not endorse or recommend either the sponsor or the funding media; that other IRA funding media are available to employees outside the payroll deduction program; that an IRA may not be appropriate for all individuals; and that the tax consequences of contributing to an IRA through the payroll deduction program are generally the same as the consequences of contributing to an IRA outside the program. The employer would not be considered neutral, in the Department's view, to the extent that the materials distributed to employees identified the funding medium as having as one of its purposes investing in securities of the employer or its affiliates or the funding medium in fact has any significant investments in such securities. If the IRA program were a result of an agreement between the employer and an employee organization, the Department would view informational materials that identified the funding medium as having as one of its purposes investing in an investment vehicle that is designed to benefit an employee organization by providing more jobs for its members, loans to its members, or similar direct benefits (or the funding medium's actual investments in any such investment vehicles) as indicating the employee organization's involvement in the program in excess of the limitations of 29 CFR 2510.3–2(d).

[3] For example, if the employer whose logo appeared on the promotional materials provided a statement along the lines of in the first sentence of footnote 5, the employer would not be considered to have endorsed the IRA product.

[4] For purposes of this interpretive bulletin, the definition of "affiliate" in ERISA section 407(d)(7) applies.

[5] While the funding medium offered by an employer that is an IRA sponsor or an affiliate of an IRA sponsor might be considered an employer security when offered to its own employees, the fact that informational materials provided to employees identify the funding medium as having as one of its purposes investing in securities of the employer would not, in the Department's view, involve the employer beyond the limits of 29 CFR 2510.3–2(d). Neither would the fact that the funding medium may actually be so invested. However, the Department would consider that an employer may have exceeded the limitation of 2510.3–2(d) if the informational materials the employer provides to employees suggest that the employer, in providing the IRA payroll deduction program for purposes of investing in employer securities, is acting as an employer in relation to persons who participate in the program, rather than as an IRA sponsor acting in the course of its ordinary business of making IRA products available to the public.

[6] However, if an employer that is an IRA sponsor waives enrollment and management fees for its employees' IRAs, and it normally charges those fees to members of the public who purchase IRAs, the employer would be considered to be so involved in the program as to be outside the safe harbor of the regulation.

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Western Hemisphere Drug Elimination Technical Corrections Act (June 15, 1999; 113 Stat. 126)

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Federal Register
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Monday, June 21, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV99–930–1 FIR]

Tart Cherries Grown in the States of Michigan, et al.; Additional Option for Handler Diversion and Receipt of Diversion Credits

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with a change, the provisions of an interim final rule adding a method of handler diversion to the regulations under the Federal tart cherry marketing order (order). Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement when volume regulation is in effect by diverting cherries or cherry products rather than by placing them in an inventory reserve. Under this additional method, handlers are allowed to obtain diversion certificates when marketable finished tart cherry products owned by them are accidentally destroyed. In addition, this rule continues in effect the removal of a paragraph in the regulations which limited diversion credit for exempted products to one million pounds each crop year. The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is administered locally by the Cherry Industry Administrative Board (Board).

EFFECTIVE DATE: June 22, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–2491. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following website: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department or USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule continues to allow handlers to obtain diversion credit for finished marketable tart cherry products owned by them which are accidentally destroyed during the 1998–99 crop year (July 1, 1998, through June 30, 1999), and subsequent crop years. It also continues the removal of a provision from the regulation which limited diversion credit for exempted products to one million pounds for each crop year. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect an additional method of handler diversion involving marketable finished tart cherry products which are accidentally destroyed. Handler diversion is authorized under section 930.59 of the order and, when volume regulation is in effect, handlers may fulfill restricted percentage requirements by diverting cherries or cherry products. Volume regulation is intended to help the tart cherry industry stabilize supplies and prices in years of excess production. The volume regulation provisions of the order provide for a combination of processor owned inventory reserves and grower or handler diversion of excess tart cherries. Reserve cherries may be released for sale into commercial outlets when the current crop is not expected to fill demand. Under certain circumstances, such cherries may also be used for charity, experimental purposes, nonhuman use, and other approved purposes.

Section 930.59(b) of the order provides for the designation of allowable forms of handler diversion. These include: Uses exempt under section 930.62; contributions to a Board approved food bank or other approved charitable organization; acquisitions of grower diversion certificates that have been issued in accordance with section 930.58; or other uses, including diversion by destruction of the cherries at the handler's facilities as provided for in section 930.59(c).

Section 930.159 of the rules and regulations under the order allows handlers to divert cherries by destruction of the cherries at the handler's facility. At-plant diversion of cherries takes place at the handler's facility prior to placing cherries into the processing line. This is to ensure that the cherries diverted were not simply an undesirable or unmarketable product of processing. The additional method for

handler diversion for finished tart cherry products accidentally destroyed should not be confused with at-plant diversion.

The Board unanimously recommended that handlers should receive diversion credit when marketable, finished cherry products are accidentally destroyed. For the purposes of this rule, products will be considered destroyed if they sustain damage which renders them unacceptable for use in normal market channels. For example, finished, marketable cherry products could be accidentally destroyed in a fire, explosion, or through freezer malfunction. To receive diversion credit under this added option, the Board recommended that the cherry products must: (1) Be owned by the handler at the time of accidental destruction; (2) be a marketable product at the time of processing; (3) be included in the handler's end of the year handler plan; and (4) have been assigned a Raw Product Equivalent (RPE) by the handler to determine the volume of cherries. In addition, the accidental destruction, as well as the disposition of the now unmarketable cherry product, must be verified by either a USDA inspector or Board agent or employee. For the purpose of proper control and oversight, the measures recommended by the Board are considered appropriate.

At the Board meeting, there was a discussion that accidents may occur at a handler's facility after the processing of cherries has taken place. Freezers have collapsed and malfunctioned rendering the finished product unmarketable. The Board noted that one of the goals of the volume regulation program is to control the flow of marketable fruit in the marketplace. Therefore, it was the Board's recommendation that finished marketable products accidentally destroyed should be allowed diversion credit.

Handlers wishing to obtain diversion certificates for finished tart cherry products owned by them which are accidentally destroyed must allow the disposition of the destroyed product to take place under the supervision of USDA's Processed Products Branch inspectors or a Board agent or employee. This will allow the Board to verify that the accidentally destroyed finished product was unmarketable and that it was disposed of properly.

Once diversion is satisfactorily accomplished, handlers receive diversion certificates from the Board stating the weight of cherries diverted. Such diversion certificates can be used to satisfy handlers' restricted percentage obligations.

In addition, this rule continues in effect the removal of a paragraph in the regulations which limited diversion credit for exempted products to one million pounds each crop year. Prior to the issuance of the interim final rule, section 930.159 provided for diversion credit of up to one million pounds of exempted products each crop year. Exempted products include products used in new product development and new market development. Exempted products also include those that were used to expand the use of new or different products or the sales of existing products, or those that are exported to countries other than Canada, Mexico, and Japan, but such cherry products do not include juice or juice concentrate.

The supplementary information in the rulemaking which implemented section 930.159 on January 6, 1998, (63 FR 399; interim final rule) and April 22, 1998, (63 FR 20012; final rule), stated that during its deliberations, the Board discussed its view that allowing diversion credit for exempt uses would provide adequate flexibility for individual handlers to ship cherries. The Board, however, recommended providing some restriction on the absolute volume of such allowable diversions until more experience with the program had been obtained, and that restriction was set at one million pounds. The one million pound limit for exempted product did not apply to those products receiving export diversions for the 1997–98 season. The Board continued reviewing the issue of what limits, if any, to impose on exempted products.

During the 1997 season, 2.7 million pounds of exempted products for new market and product development received diversion credit. In recent seasons, sales to export markets have risen dramatically. In 1997, export sales of 61.1 million pounds represented 379 percent of 1994 sales (16.1 million pounds). There was also an increase in export sales to those destinations exempt from volume regulation (countries other than Canada, Japan, and Mexico), rising from 12.2 million pounds to 48.7 million pounds. In view of the dynamics taking place in the cherry industry, and particularly the expanding markets and opportunities, the Board did not believe that the one million pound exemption should be continued. The removal of the one million pound limitation on exempted products should continue to encourage the further development of new markets and new tart cherry products. Therefore, the removal of section 930.159(f) continues in effect.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of tart cherries may be classified as small entities.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1993/94 through 1997/98, approximately 89 percent of the U.S. tart cherry crop, or 281.1 million pounds, was processed annually. Of the 281.1 million pounds of tart cherries processed, 63 percent were frozen, 25 percent were canned, and 4 percent were utilized for juice. The remaining 8 percent were dried or assembled into juice packs.

The Board reported that for the 1997–98 crop year handlers received export diversion certificates for 48.7 million pounds of cherries and 7.1 million pounds were diverted at handlers' facilities.

Section 930.59 of the tart cherry marketing order provides authority for handler diversion. Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part through diversion of cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Handlers can divert by destruction of the cherries at the handler's facility, making charitable donations and selling cherry products in exempt outlets or by redeeming grower diversion certificates obtained from growers who have diverted cherries by non-harvest, and who have been issued diversion certificates by the Board. This rule continues to provide for handler diversion certificates in cases where marketable, finished tart cherry products are accidentally destroyed, and thus, rendered unacceptable for the marketplace. Such diversion certificates can be used to satisfy the handler's restricted percentage obligation.

Handler diversion options enable handlers to either place cherries into an inventory reserve or select the diversion option most advantageous to their particular business operation. The diversion options allow handlers to minimize processing and storage costs associated with meeting restricted percentage obligations. Such cost savings may also be passed on to growers and consumers. Thus, this action continues to accomplish the purposes of the order and the Act by providing a means of increasing grower returns and stabilizing supplies with demand.

The impact of this rule will be beneficial to growers and handlers regardless of size. Continuing the additional diversion option will prevent financial hardships when marketable finished tart cherry products are destroyed by accident. An alternative to this rule would be to not grant diversion credit for such products. However, this is not in the best interest of the industry. The marketing order's volume regulation feature was designed to increase grower returns by stabilizing supplies with demand. Providing for handler diversion is one of the mechanisms employed to accomplish this goal, and this action broadens handler diversion options. Moreover, handlers may divert cherries by destroying them at their plants/facilities. Therefore, allowing diversion credit for products which are accidentally destroyed, is consistent with the overall regulatory scheme established by the marketing order.

In addition, this rule continues in effect the removal of a paragraph in the regulations which limited diversion credit for exempted products to one million pounds each crop year. Previously, section 930.159 provided for diversion credit of up to one million pounds of exempted products each crop year, with the exception of exported products for the 1997 season. The Board had recommended providing some restriction on the absolute volume of exempted product diversions until more experience with the program had been obtained. The one million pound limitation for exempted products did not apply to diversion credit for exports for the 1997–98 season. The Board continued reviewing the issue of what limits, if any, to impose on exempted products.

During the 1997 season, 2.7 million pounds of exempted products for new market and product development received diversion credit. In recent seasons, sales to export markets have risen dramatically. In 1997, export sales of 61.1 million pounds represented 379 percent of 1994 sales (16.1 million pounds). There was also an increase in export sales to those destinations exempt from volume regulation (countries other than Canada, Japan, and Mexico), rising from 12.2 million pounds to 48.7 million pounds. In view of the dynamics taking place in the cherry industry, and particularly the expanding markets and opportunities, the Board does not believe that the one million pound exemption should be continued. The removal of the one million pound limitation on exempted products should continue to encourage the further development of new markets and new tart cherry products. Therefore, continuing the removal of the limitation will provide more flexibility to handlers by allowing them to expand markets and new product opportunities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177. Included in the OMB approval is the Handler Reserve Plan and Final Pack Report which handlers must submit to utilize at-plant and exempt use diversion and the requirements for other reports related to handler diversion and handlers meeting their restricted percentage obligations. Handlers applying for diversion credit for marketable finished tart cherry products accidentally destroyed do not have to submit an additional Handler Plan and Pack Report to the Board. Handlers can make changes in their previously submitted Handler Plan and Final Pack Report to account for product accidentally destroyed.

Accordingly, this rule will not impose any additional recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend them and participate in Board deliberations. Like all Board meetings, the September 1998 meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review marketing order issues and make recommendations.

The Board considered alternatives to its recommendations. These included not granting diversion credit and continuing to impose limitations on the volume of exempted product receiving diversion credit. However, these alternatives were determined as not being in the best interest of the industry.

An interim final rule concerning this action was published in the **Federal Register** on February 25, 1999 (64 FR 9265). Copies of the rule were mailed by the Board's staff to all Board members and cherry handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided a 60-day comment period which ended April 26, 1999. One comment was received from a tart cherry association representing tart cherry growers and processors in the State of Oregon.

The commenter asked several questions about the additional handler diversion option, and expressed the view that Board meetings are not well publicized. These comments are addressed below.

The commenter first asked whether the additional diversion option concerning accidentally destroyed tart cherry products applied to cherries harvested during the Summer of 1998

and whether such application is equitable.

The regulation applies to finished products accidentally destroyed during the 1998–99 crop year (July 1, 1998, through June 30, 1999), and thereafter. The interim final rule was effective February 6, 1999, and making the rule applicable to the whole crop year is not inequitable.

Only handlers in volume regulated districts are eligible to receive diversion credit. Allowing a handler to receive diversion credit for accidentally destroyed product satisfies part, or all, of the handler's restricted obligation and is consistent with the concept of volume regulation. The goal of volume regulation is to bring supplies in line with market needs, strengthen market conditions, and to increase grower returns.

The commenter also asked whether handlers with insurance who were compensated for their accidental loss would be eligible for diversion credit. Under this regulation, an insurance settlement received by a handler for product loss or damage does not prevent the handler from obtaining diversion credit.

Another issue raised by the commenter concerns the term "handler's facility" as it relates to obtaining diversion credit for product which is accidentally destroyed at a handler's facility. In this regard, the commenter raised questions about product accidentally destroyed while in a facility leased by a handler or in storage at a public cold storage warehouse. The commenter also asked whether the diversion credit applies to accidentally destroyed cherries before processing on the handler's premises, or to cherries or product destroyed while en route to a handler's facility. The diversion option in this regulation is intended to apply to finished marketable cherry products that are owned by a handler and are accidentally destroyed. It does not apply to cherries before processing which are accidentally destroyed.

The interim final rule published February 25, 1999 (64 FR 9265), stated that finished marketable product accidentally destroyed at a handler's facility may be granted diversion credit. It was the Board's intent that diversion credit be granted for finished marketable product, when the product is owned by the handler at time of accidental destruction. The physical location of the finished product at the time of accidental destruction is not a determining factor. Because of the commenter's questions, the Department has modified the regulatory provisions to clarify the Board's intent. That is, handlers can receive diversion credit for accidentally destroyed finished marketable product as long as the product is owned by the handler at the time of destruction.

Finally, the commenter disagreed with the statement that Board meetings are widely publicized throughout the tart cherry industry and all interested persons are invited to attend them and participate in Board deliberations. The commenter stated that the Board office seems to communicate only through the "The Fruit Growers News" in the Michigan area or through direct mail to Board participants. The commenter mentioned that he was a member of the Board, and did not know if many of the things he received from the Board office go to all growers or handlers or just to the Board members and alternates.

The Board has and will continue to take appropriate action to provide broad notice of upcoming meetings to all handlers and Board members and alternate members. The Board sends meeting notices to all Board members and several tart cherry organizations throughout the production area. In fact, the Board sends a newsletter to all growers and handlers of record in the production area which further publicizes, among other things, upcoming Board meetings.

The commenter also mentioned that participation in Board meetings is challenging to all growers because a majority of them are held in Michigan, and that travel is extremely expensive from the west coast and very time consuming. The commenter also stated that the Board has not considered holding meetings at major hub city airports that are more accessible, and less expensive. According to the commenter, this situation limits the level of involvement by, and consideration for, smaller industry participants, such as the small, remote, and the independent members of the tart cherry industry.

On the matter of Board meeting location, the Board has to consider the cost of travel for all Board members because it pays travel expenses for all of its members. It is a considerable expense to the Board to hold the meetings outside of Michigan since 16 members and alternates of the 18 member Board are from the State of Michigan. The Board realizes the time spent in travel by Board members and producers and handlers throughout the production area. To make attendance at Board meetings easier while properly managing travel costs, the Board has made a commitment to hold the June 1999 marketing policy meeting in Michigan and the September 1999 marketing policy meeting in Washington. The Board is also considering holding meetings outside the Michigan districts to allow producers and handlers to attend the meetings and cut down on travel time for those not located in Michigan. Recently, producer meetings were held in Pasco, Washington and Rochester, New York, to inform growers about proposed amendments to the order and the activities of the Board.

Based on the comments and the questions received, the limitation on the location of the accidental destruction is being removed. In the first sentence of paragraph (a), the phrase "at a handlers' facility" following the words "by diverting cherry products accidentally destroyed" is removed from this regulation. Also, removed in the first sentence of paragraph (d), is the phrase "at a handler's facility" following the words "Handlers may be granted diversion credit for diverting finished tart cherry products accidentally destroyed". The removal of the these phrases is intended to clarify the intent of the regulation. In addition, to clarify the period of applicability, wording has been added to the regulation indicating that it applies to finished products accidentally destroyed during the 1998–99 crop year (July 1, 1998, through June 30, 1999), and thereafter.

After consideration of all relevant material presented, including the Board's recommendation, the comment received, and other information, it is found that finalizing this interim final rule, with modifications, as published in the **Federal Register** (64 FR 9265), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule continues to relax requirements by providing an additional opportunity for handlers to receive diversion credit and meet their restricted obligations; and (2) the clarifications made to the provisions should be effective promptly to effectively carry out this program.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 64 FR 9265 on February 25, 1999, is adopted as a final rule with the following change:

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 930.159 paragraphs (a) and (d) are revised to read as follows:

§ 930.159 Handler diversion.

(a) *Methods of diversion.* Handlers may divert cherries by redeeming grower diversion certificates, by destroying cherries at handlers' facilities (at-plant), by diverting cherry products accidentally destroyed, by donating cherries or cherry products to charitable organizations or by using cherries or cherry products for exempt purposes under § 930.162, including export to countries other than Canada, Mexico and Japan. Once diversion has taken place, handlers will receive diversion certificates stating the weight of cherries diverted. Diversion credit may be used to fulfill any restricted percentage requirement in full or in part. Any information of a confidential and/or proprietary nature included in this application would be held in confidence pursuant to § 930.73 of the order.

* * * * *

(d) *Diversion of finished products.* Handlers may be granted diversion credit for finished tart cherry products that are accidentally destroyed during the 1998–1999 crop year (July 1, 1998, through June 30, 1999), and thereafter. To receive diversion credit under this option the cherry products must be owned by the handler at the time of accidental destruction, be a marketable product at the time of processing, be included in the handler's end of the year handler plan, and have been assigned a Raw Product Equivalent (RPE) by the handler to determine the volume of cherries. In addition, the accidental destruction, and disposition of the product must be verified by either a USDA inspector or Board agent or employee who witnesses the disposition of the accidentally destroyed product. Products will be considered destroyed if they sustain damage which renders them unacceptable in normal market channels.

* * * * *

Dated: June 14, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–15625 Filed 6–18–99; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA is adopting as a final rule without change the interim final amendments to part 707 issued by NCUA on December 29, 1998. Those amendments implemented certain statutory changes to the Truth in Savings Act (TISA). Specifically, they modified the rules governing indoor lobby signs, eliminated subsequent disclosure requirements for automatically renewable term share accounts with terms of one month or less, repealed TISA's civil liability provisions as of September 30, 2001, and permitted disclosure of an annual percentage yield (APY) equal to the contract dividend rate for term share accounts with maturities greater than one year that do not compound but require dividend distributions at least annually.

DATES: This rule is effective July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1998, the NCUA Board issued an interim final rule with request for comments amending part 707 of NCUA's regulations regarding truth in savings. 63 FR 71573 (December 29, 1998). Part 707 implements TISA. 12 CFR part 707. The purpose of part 707 and TISA is to assist members in making meaningful comparisons among share accounts offered by credit unions. Part 707 requires disclosure of fees, dividend rates, APY, and other terms concerning share accounts to members at account opening or whenever a member requests this information. Fees and other information also must be provided on any periodic statement credit unions send to their members.

TISA requires NCUA to promulgate regulations substantially similar to those promulgated by the Board of Governors of the Federal Reserve System (Federal Reserve). 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

The Federal Reserve issued final rules to implement certain statutory changes to TISA. One of these rules expanded an exemption from certain advertising provisions for signs on the interior of depository institutions, eliminated the requirement that depository institutions provide disclosures in advance of maturity for automatically renewable (rollover) accounts with a term of one month or less, and repealed TISA's civil liability provisions, effective September 30, 2001. 63 FR 52105 (September 29, 1998). The Federal Reserve also promulgated a final rule to permit depository institutions to disclose an APY equal to the contract interest rate for time accounts with maturities greater than one year that do not compound but require interest distributions at least annually. 63 FR 40635 (July 30, 1998). The interim final rule issued by NCUA on December 29, 1998 is substantially similar to the above rules issued by the Federal Reserve.

Summary of Comments

The NCUA Board received two comment letters regarding the interim final rule from credit union trade associations. Both commenters generally supported the interim final rule as drafted.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule has no net effect on the reporting requirements in part 707.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: "Federal action limiting the policy-

making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope." This final rule will not have a direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a significant regulatory action for purposes of the executive order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 this is not a major rule.

List of Subjects in 12 CFR Part 707

Advertising, Consumer protection, Credit unions, Reporting and recordkeeping requirements, Truth in savings.

By the National Credit Union Administration Board on June 14, 1999.

Becky Baker,

Secretary of the Board.

PART 707—TRUTH IN SAVINGS

Accordingly, the interim final rule amending 12 CFR part 707 which was published at 63 FR 71573 on December 29, 1998, is adopted as a final rule without change.

[FR Doc. 99–15649 Filed 6–18–99; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–25–AD; Amendment 39–11149; AD 95–11–15 R1]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASK 21 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of Airworthiness Directive (AD) 95–11–15 R1, which applies to Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASK 21 gliders. AD 95–11–15 R1 requires replacing the parallel rocker with a part of improved design and incorporating flight manual revisions, but only for those gliders with the automatic elevator connection incorporated. AD 95–11–15 was the result of two incidents of the parallel rocker breaking at the elevator connection on the affected gliders. Since that time, the FAA has determined that the AD should only affect those Model ASK 21 gliders equipped with the automatic elevator connection. The actions specified in this AD are intended to continue to prevent possible loss of elevator control that could result from a broken parallel rocker.

EFFECTIVE DATE: July 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with request for comments in the **Federal Register** on April 26, 1999 (64 FR 20142). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA anticipates that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on July 25, 1999. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, Missouri, on June 11, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15619 Filed 6–18–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–6]

Revision of Class E Airspace, Santa Catalina, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: In May 1999, the U.S. Navy reduced the size of Warning Area 290 (W–290). This action will amend the lateral boundaries of the Class E airspace for Santa Catalina, CA, to include the area west of the island.

EFFECTIVE DATE: 0901 UTC November 4, 1999. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before July 21, 1999.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–6, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Richard V. Coffin Jr., Air Traffic Division, Airspace Specialist, AWP–520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION: This action will amend the airspace legal description to reflect the new lateral boundaries of the Class E airspace for Santa Catalina, CA. The reduction of W–290 has made this action necessary. The intended effect of this action is to modify the lateral boundaries of the Santa Catalina Class E airspace area in the legal description of the controlled airspace. Class E airspace is published in Paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–AWP–6." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth

* * * * *

AWP CA E5 Santa Catalina, CA [Revised]

Santa Catalina VORTAC
(Lat. 33°22′30″ N, long. 118°25′12″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Santa Catalina VORTAC and within 4.3 miles each side of the Santa Catalina VORTAC 229° radial extending from the 6-mile radius to 10.4 miles southwest of the Santa Catalina VORTAC. That airspace extending upward from 1,200 feet above the surface bounded on the east by long. 117°30′03″ W, on the south by a line extending from lat. 33°15′00″ N, long. 117°30′03″ W; to lat. 33°12′30″ N, long. 117°58′48″ W; to lat. 33°18′00″ N, long. 118°34′03″ W; to lat. 33°19′30″ N, 118°37′03″ W, on the west by a line extending to lat. 33°28′30″ N, long. 118°47′00″ W, and on the north by a line extending to lat. 33°28′30″ N, long. 118°34′03″ W; to lat. 33°30′00″ N, long. 118°34′03″ W, thence east along lat. 33°30′00″ N, to long. 117°30′03″ W, excluding the portion within Control Area 1177L.

Issued in Los Angeles, California, on June 8, 1999.

R.E. Cusic,

Acting Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 99–15593 Filed 6–18–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–20]

Amendment to Class E Airspace; Macon, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Macon, MO.

DATES: The direct final rule published at 64 FR 19267 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a

request for comments in the **Federal Register** on April 20, 1999 (64 FR 19267). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 25, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–15710 Filed 6–18–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–24]

Amendment to Class E Airspace; Emporia, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace areas at Emporia Municipal Airport, Emporia, KS. The FAA has developed Global Positioning System (GPS) Runway (RWY) 1, GPS RWY 19, VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Area Navigation (RNAV) RWY 19, and amended the VOR or GPS–A Standard Instrument Approach Procedures (SIAPs) to serve Emporia Municipal Airport, KS. The Development of these SIAPs has resulted in a slight reduction in the Class E surface area. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs, however the extensions to the north and southeast have been eliminated. The enlarged Class E area will contain the new GPS RWY 1, GPS RWY 19, VOR/DME RNAV RWY 19, and VOR or GPS–A SIAPs in controlled airspace.

In addition, a minor revision to the Airport Reference Point (ARP) geographic coordinates for the Emporia Municipal Airport is included in this document. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 1, GPS RWY 19, VOR/DME RNAV RWY 19, and VOR or GPS–A SIAPs, revise the ARP coordinates for the Emporia Municipal Airport, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, September 9, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 26, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–24, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 1, GPS RWY 19, VOR/DME RNAV RWY19, and VOR or GPS–A SIAPs to serve the Emporia Municipal Airport, Emporia, KS. In addition, the Class E airspace includes a minor revision to the geographic coordinates for the Emporia Municipal Airport ARP. The Class E surface area is slightly reduced. The amendment to Class E airspace at Emporia, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, eliminate the extensions to the north and southeast, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The areas will be depicted on appropriate aeronautical charts. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–24." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1997); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area airport.

* * * * *

ACE KS E2 Emporia, KS [Revised]

Emporia Municipal Airport, KS
(Lat. 38°19'56" N., long. 96°11'28" W.)

Within a 4-mile radius of Emporia Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Emporia, KS [Revised]

Emporia Municipal Airport, KS
(Lat. 38°19'56" N., long. 96°11'28" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Emporia Municipal Airport.

* * * * *

Issued in Kansas City, MO, on May 21, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–15709 Filed 6–18–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–25]

Amendment to Class E Airspace; York, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at York Municipal Airport, York, NE. The FAA has revised the Nondirectional Radio Beacon (NDB) Runway (RWY) 17 Standard Instrument Approach Procedure (SIAP) to serve York Municipal Airport, York, NE. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the revised NDB RWY 17 SIAP in controlled airspace.

In addition, a minor revision to the Airport Reference Point (ARP) geographic coordinates for the York Municipal Airport is included in this document. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the NDB RWY 17 SIAP, revise the ARP coordinates for the York Municipal Airport, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 15, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–25, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has revised the NDB RWY 17 SIAP to serve the York Municipal Airport, York, NE. In addition, the Class E airspace includes a minor revision to the geographic coordinates for the York Municipal Airport ARP. The amendment to Class E airspace at York, NE, will provide additional controlled airspace at and above 700 feet AGL in order to contain the revised SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14

CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–25." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 York, NE [Revised]

York Municipal Airport, NE
(Lat. 40°53′48″ N., long. 97°37′22″ W.)
York NDB
(Lat. 40°53′51″ N., long. 97°37′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of York Municipal Airport and within 2.6 miles each side of the 202° bearing from the York NDB extending from the 6.6-mile radius to 7.4 miles southwest of the airport and within 2.5 miles each side of the 337° bearing from the York NDB extending from the 6.6-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on June 2, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–15708 Filed 6–18–99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–2]

Establishment of Class E Airspace; Taylor, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Taylor, AZ. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 21 at Taylor Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 21 SIAP to Taylor Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Taylor Municipal Airport, Taylor, AZ.

EFFECTIVE DATE: 0901 UTC September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On April 13, 1999, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area at Taylor, AZ (64 FR 17984). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain airspace executing the GPS RWY 21 SIAP at Taylor Municipal Airport. This action will provide adequate controlled airspace for aircraft executing the GPS RWY 21 SIAP at Taylor Municipal Airport, Taylor, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area at Taylor, AZ. The development of a GPS RWY 21 SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 21 SIAP at Taylor Municipal Airport, Taylor, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Taylor, AZ [New]

Taylor Municipal Airport, AZ
(Lat. 34°27′17″N, long. 110°06′89″W)
Show Low Municipal Airport, AZ
(Lat. 34°15′56″N, long. 110°00′17″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Taylor Municipal Airport, excluding the portion within the Show Low, AZ, Class E airspace area. That airspace extending upward from 1200 feet above the surface within 5 miles southeast and 8 miles northwest of the 041° radial from the Taylor Municipal Airport, extending from the Taylor Municipal Airport to the southern boundary of V–264.

* * * * *

Issued in Los Angeles, California, on June 9, 1999.

R. E. Cusic,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–15592 Filed 6–18–99; 8:45 am]

BILLING CODE 4910-13-M

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 422

[Regulations Nos. 4 and 22]

RIN 0960–AE84

Federal Old-Age, Survivors, and Disability Insurance; Employer Identification Numbers for State and Local Government Employment

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are amending our rules dealing with the special identification numbers we issue to States that submit modifications to their voluntary social security coverage group agreements. Under this revision, we will issue special identification numbers only in cases where a modification extends coverage to periods prior to 1987. This revision will permit SSA to divert scarce SSA resources to other priority workloads without adversely affecting State recordkeeping operations.

EFFECTIVE DATE: This regulation is effective July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Augustine, Social Insurance Specialist, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410)966–5121 or TTY (410) 966–5609 for information about this rule. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: Section 205(c)(2)(A) of the Social Security Act (the Act) requires SSA to maintain a record of the wages and self-employment income of each individual. The record is identified by the individual's social security number. Wages posted to an individual's record are based on wage reports submitted to SSA and the Internal Revenue Service (IRS) by employers. IRS regulations at 26 CFR 31.6011(a)–1 require an employer to file returns required under the Federal Insurance Contributions Act (FICA) with IRS each year and IRS regulations at 26 CFR 31.6051–2 and 31.6091–1(d) require an employer to file wage reports with SSA each year. These requirements are also explained on wage reporting forms and in related instructions issued by SSA and IRS. To help account for these returns and reports, IRS assigns an employer identification number (EIN) to most employers. Additionally, SSA assigns a special identification number to each political subdivision of a State which is

included in a modification to the State's coverage agreement under section 218 of the Act. These special identification numbers must currently be issued to any State that requests a modification of its coverage agreement, and to interstate instrumentalities if pre-1987 coverage is obtained. However, for SSA program purposes, such numbers are necessary only if the modification covers wages for years prior to 1987. In cases where the modification does not cover pre-1987 wages, the number is assigned solely for State bookkeeping purposes.

Regulatory Provisions

We are modifying paragraph (a) of § 404.1220 and paragraph (b) of § 422.112 of our regulations to indicate that we will issue a special identification number to each political subdivision of a State included in a modification to the State's voluntary coverage agreement under section 218 of the Act only if the modification extends coverage to periods prior to 1987. States are free to assign their own identification numbers to employers covered under modifications that do not cover pre-1987 earnings, so that these final rules will have no adverse impact on State recordkeeping operations. This revision will permit SSA to divert scarce resources to other priority workloads.

On December 24, 1998, we published proposed rules in the **Federal Register** at 63 FR 71237 and provided a 60-day period for interested parties to comment. We received no comments. We are, therefore, publishing these rules unchanged.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and have determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Thus, they are not subject to OMB review.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security Disability Insurance; 96.002 Social Security Retirement Insurance; 96.004 Social Security Survivors Insurance.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 422

Administrative practice and procedure, Freedom of information, Organization and functions (Government agencies), Social Security.

Dated: June 10, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are amending subpart M of part 404 and subpart B of part 422 of Chapter III of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart M—[Amended]

1. The authority citation for subpart M of part 404 continues to read as follows:

Authority: Secs. 205, 210, 218 and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 410, 418 and 902(a)(5)); sec. 12110, Pub. L. 99–272, 100 Stat. 287 (42 U.S.C. 418 note); sec. 9002, Pub. L. 99–509, 100 Stat. 1970.

2. Section 404.1220 is amended by revising paragraph (a) to read as follows:

§ 404.1220 Identification numbers.

(a) *State and local governments.* When a State submits a modification to its agreement under section 218 of the Act, which extends coverage to periods prior to 1987, SSA will assign a special identification number to each political subdivision included in that modification. SSA will send the State a Form SSA–214–CD, "Notice of Identifying Number," to inform the State of the special identification number(s). The special number will be used for reporting the pre-1987 wages to SSA. The special number will also be assigned to an interstate instrumentality if pre-1987 coverage is obtained and SSA will send a Form SSA–214–CD to the interstate instrumentality to notify it of the number assigned.

* * * * *

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

3. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13).

4. Section 422.112 is amended by revising paragraph (b) to read as follows:

§ 422.112 Employer identification numbers.

* * * * *

(b) *State and local governments.* When a State submits a modification to its agreement under section 218 of the Act, which extends coverage to periods prior to 1987, SSA will assign a special identification number to each political subdivision included in that modification. SSA will send the State a Form SSA–214–CD, "Notice of Identifying Number," to inform the State of the special identification number(s). The special number will be used for reporting the pre-1987 wages to SSA. The special number will also be assigned to an interstate instrumentality if pre-1987 coverage is obtained and SSA will send a Form SSA–214–CD to the interstate instrumentality to notify it of the number assigned.

[FR Doc. 99–15585 Filed 6–18–99; 8:45 am]
BILLING CODE 4190–25–P

DEPARTMENT OF JUSTICE

28 CFR Part 92

[OJP(OJP)–1205]

RIN 1121–AA50

Timing of Police Corps Reimbursements of Educational Expenses

AGENCY: Office of Justice Programs, Office of the Police Corps and Law Enforcement Education, Justice.

ACTION: Interim final rule.

SUMMARY: This interim final rule concerns the timing of Police Corps reimbursements of educational expenses. The Police Corps Act (42 U.S.C. 14091 *et seq.*) provides that participants who complete one or more years of college study before being accepted into the Police Corps program are to be reimbursed for eligible educational expenses incurred during those years. The Police Corps Act does not specify the timing of these reimbursements. This rule provides that reimbursements will be made through two equal payments at the start and conclusion of a participant's first year of service as a police officer or sheriff's deputy. This rule also permits the Director of the Office of the Police Corps and Law Enforcement Education, on a showing of good cause, to advance the date of a participant's first reimbursement payment to precede the start of required service.

DATES: This Interim Final Rule is effective on June 21, 1999. Comments on this rule must be received on or before September 20, 1999.

ADDRESSES: Comments should be sent to: Police Corps Reimbursement Schedule, Office of the Police Corps and Law Enforcement Education, Office of Justice Programs, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Robert Cole, Program Coordinator, Office of the Police Corps and Law Enforcement Education at 202–353–8953. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14091 *et seq.* ("Police Corps Act").

Background

The Office of Justice Programs, Office of the Police Corps and Law Enforcement Education ("Office of the Police Corps") offers, pursuant to the Police Corps Act, 42 U.S.C. 14091 *et seq.*, and through the Police Corps program, financial aid on a competitive basis to college students who agree to undergo rigorous training and serve as police officers in specially designated areas for at least four years.

Once a college student is accepted into the Police Corps, he or she receives financial aid on a prospective basis through scholarship payments. 42 U.S.C. 14095(a). If a college student completes one or more years of college study before being accepted into the Police Corps, he or she is entitled to be reimbursed for educational expenses incurred during the years prior to his or her acceptance into the program. 42 U.S.C. 14095(b). The Police Corps Act does not specify the timing of these reimbursements, and the reimbursements do not include interest.

The relevant implementing regulation pertaining to the Police Corps Act at 28 CFR 92.5(b)(7) currently provides that reimbursements are made through four equal payments, one upon completion of each of the four years of required service. This interim final rule changes the current regulatory provision to accelerate reimbursements. Under this new rule, participants will be reimbursed in full for all eligible educational expenses once they successfully complete their first year of required service.

The change will enable participants to promptly repay student loans and, by allowing the Director flexibility in dealing with special individual circumstances, enable participants to have funds available to make loan payments and meet other ongoing financial obligations during the 16 to 24 weeks of required residential training. By reducing the number of payments per participant, the change also will ease the administrative burden on both the Office of the Police Corps and state lead agencies.

Executive Order 12866

This interim final regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This interim final regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons:

(1) This interim final rule provides the schedule under which eligible applicants receive reimbursements for educational expenses under the Act; and

(2) Such reimbursements impose no requirements on small business or on small entities.

Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

Paperwork Reduction Act

There are no collection of information requirements contained in this regulation that would require review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Good Cause Exception

This regulation is being published as an interim final rule, without prior publication of notice and comment, and is made effective immediately, for good cause. 5 U.S.C. 553(d)(3). Good cause can be demonstrated because advance notice of this interim final rule would be impractical, unnecessary, and contrary to the legislative intent, as well as the public interest, in making the Police Corps program available to men and women of all races and ethnicities without regard to individual economic circumstances or financial need. Indeed, the Police Corps Act requires that all participants be selected on a fully competitive basis and that states make special efforts to solicit applications from among members of all racial, ethnic, and gender groups. 42 U.S.C. 14096(a),(c). Economic need and financial circumstances are not a factor in the selection process. 42 U.S.C. 14096(b).

In order to achieve these ends, and in light of the substantial financial demands on many participants during training and/or during the first year of required service in the Police Corps program, a minor revision of the

reimbursement schedule is necessary. In particular, both the Police Corps Act and the contract that each participant must sign upon acceptance into the Police Corps require that the participant complete a baccalaureate degree and also complete 16 to 24 weeks (approximately four to six months) of intense residential training before beginning his or her required four years of service as a police officer or sheriff's deputy. 42 U.S.C. 14095(d); 14097(b),(d). During Police Corps training, participants are not employed by a law enforcement agency and receive no salary. Instead, participants receive a statutory stipend of $250 per week. 42 U.S.C. 14097(f); 14098(a).

The vast majority of Police Corps participants are accepted into the program as college sophomores, juniors, or seniors. Such participants frequently have student loans that they must begin to repay shortly after graduation from college and that, if not repaid in full shortly after graduation, accrue interest. In addition, some participants, because they have children or other significant support responsibilities, have ongoing financial obligations (child support, child care, mortgages, etc.) that cannot be satisfied through the training stipend. Reimbursement of participants in full during the first year of service, as provided for in this rule, will enable all participants—regardless of their personal or family economic circumstances—to repay student loans and similar obligations on a timely basis. Moreover, the flexibility to advance the first reimbursement payment will enable the Director to address special circumstances such as child support obligations. Together, these changes will make participation in the Police Corps feasible and practical across all economic groups, as contemplated by the Police Corps Act.

Further demonstration that such a revision of the reimbursement schedule is necessary and practical is evident by the activities in recent months of states that participate in the Police Corps program. States have requested an accelerated reimbursement schedule to address situations such as those outlined above. In addition, at least one state has expressed concern to the Office of the Police Corps and Law Enforcement Education that the current rule inhibits qualified men and women with dependents from applying to the program.

Finally, to publish a notice of a proposed rulemaking and await receipt of comments would significantly delay an appropriate response to the unintended financial hardships that the current rule poses to participants and prospective participants whose financial circumstances do not permit them to pay student loan expenses and dependent support while they await reimbursements owed under the statute and contract. Such delay would be contrary to the public interest and would be in contravention of the Congressional intent set forth in the Police Corps Act that the Police Corps be available to qualified applicants without regard to economic circumstances.

The Office of the Police Corps is, however, interested in receiving public comment on the interim final rule and will consider fully all such comments. Therefore, comments to be considered in preparing a final rule must be submitted on or before September 20, 1999.

List of Subjects in 28 CFR Part 92

Colleges and universities, Education, Educational facilities, Educational study programs, Law enforcement officers, Schools, Student aid.

For the reasons set forth in the preamble, 28 CFR part 92 is amended as follows:

PART 92—[AMENDED]

1. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 13811–13812; 42 U.S.C. 14091–14102.

2. Section 92.5 is amended by revising paragraph (b)(7) to read as follows:

§ 92.5 What educational expenses does the Police Corps cover, and how will they be paid?

* * * * *

(b) * * *

(7) Reimbursements for past expenses will be made directly to the Police Corps participant. One half of the reimbursement will be paid after the participant is sworn in and starts the first year of required service. The remainder will be paid upon successful completion of the first year of required service. The Director may, upon a showing of good cause, advance the date of the first reimbursement payment to an individual participant.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 99–15622 Filed 6–18–99; 8:45 am]

BILLING CODE 4410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 187–150; FRL–6358–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on June 18, 1998. The revision concerns a rule from the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from architectural coatings. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on July 21, 1999.

ADDRESSES: Copies of the rule revision and EPA's evaluation report for this rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199

SUPPLEMENTARY INFORMATION:

I. Applicability

This **Federal Register** action for the SCAQMD excludes the Los Angeles County portion of the Southeast Desert Air Quality Management District, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997. The rule being approved into the California SIP is SCAQMD, Rule 1113, Architectural Coatings. This rule was submitted by the California Air Resources Board (CARB) to EPA on November 26, 1996.

II. Background

On June 18, 1998, in 63 FR 33312, EPA proposed to approve SCAQMD Rule 1113, Architectural Coatings into the California SIP. Rule 1113 was adopted by SCAQMD on November 8, 1996, and was submitted by the CARB to EPA on November 26, 1996. This rule was submitted in response to EPA's 1988 SIP-Call and the CAA section 110(a)(2)(A) requirement that plans which are submitted to the EPA in order to achieve the National Ambient Air Quality Standards (NAAQS) contain enforceable emission limitations. A detailed discussion of the background for this rule and nonattainment area is provided in the proposed rulemaking cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rulemaking cited above. EPA has found that the rule meets the applicable EPA requirements. The rule is enforceable and strengthens the applicable SIP. However, as noted in the proposed rulemaking cited above, it does not fulfill the SCAQMD's SIP-approved commitment in CTS–07 to reduce VOCs from architectural coatings by 75%. A detailed discussion of the rule provisions and evaluation has been provided in 63 FR 33312 and in a technical support document (TSD) dated May 1, 1998 available at EPA's Region IX office.

III. Response to Public Comments

EPA provided for a 30-day public comment period in 63 FR 33312. EPA received two comments on the proposed rulemaking prior to the closing of the comment period on July 20, 1998. We received comments from the main trade association representing the paint industry, and from an attorney representing a major paint manufacturer.

Comments: The trade association representing some 500 paint and coatings manufacturers, raw materials suppliers and distributors, submitted comments stating that while it supports EPA's national architectural coatings rule, it does not support VOC content limits for two categories of coatings contained in submitted Rule 1113. The association asserted that the VOC limits for lacquers and flats are not technologically or economically feasible and noted that it was involved in litigation over this issue. This commenter suggested that EPA must not approve the revisions to Rule 1113 because of the alleged technological and economical infeasibility.

The attorney representing a major paint manufacturer submitted similar comments. This commenter indicated that his client contested the VOC limit for flats and a small manufacturers exemption in submitted Rule 1113. Citing *Sierra Club* v. *Indiana-Kentucky Electric Corp.*, 716 F.2d 1145 (7th Cir. 1983), the commenter argued that EPA approval of the revised Rule 1113 prior to resolution of the litigation could result in confusion if the Court invalidated the revisions to Rule 1113. This commenter explicitly requested that EPA postpone approval of at least portions of submitted Rule 1113 until resolution of the litigation.

Response: Both commenters asserted that SCAQMD Rule 1113 as revised is technologically and economically infeasible. For this reason, each commenter requested that EPA either reconsider or delay approval of all or portions of Rule 1113. Under CAA section 110(a)(2), EPA may not consider the economic or technological feasibility of the provisions of the SCAQMD Rule in approval of the SIP revision. *Union Electric Co.* v. *EPA*, 427 U.S. 246, 265–66 (1976). As noted by the Supreme Court, it is the province of State and local authorities to determine whether or not to impose more stringent limits that may require technology forcing. EPA must assess the SIP revision on the basis of the factors set forth in CAA section 110(a)(2) which do not provide for the disapproval of a rule in a SIP based upon economic or technological infeasibility.

Both commenters also argued that the pendency of litigation by them against the SCAQMD Rule should preclude EPA approval of the revisions to Rule 1113. To the extent that such litigation concerned the economic and technological feasibility of the Rule, such litigation is not relevant to EPA's SIP approval for the reasons discussed above. One commenter further stated, however, that SCAQMD may have violated state procedural law in the adoption of Rule 1113, thereby implying that EPA should disapprove or delay approval of the SIP revision because SCAQMD might not have authority under State or local law to carry out the SIP as required by CAA section 110(a)(2)(E)(i).

EPA believes that it is inappropriate to disapprove or delay approval of a SIP revision merely on the basis of pending State court challenges to SCAQMD's regulation. To do so would allow parties to impede SIP development merely by initiating litigation. Alternatively, were EPA required to assess the validity of a litigant's State law claims in the SIP approval process, EPA would have to act like a State court, in effect weighing the competing claims of a State and a litigant. Therefore, EPA does not interpret CAA section 110(a)(2) to require the Agency to make such judgments in the SIP approval process, especially where the validity of those challenges turns upon issues of State procedural law. The Agency may, however, consider disapproval of a SIP revision because of pending challenges where it deems appropriate because of the facts and circumstances of the underlying challenge, as in the case of allegations of violation of Federal law administered by the Agency. Moreover, EPA believes that the structure of the CAA provides appropriate mechanisms for litigants to pursue their claims and appropriate remedies in the event that they are ultimately successful, as discussed in the case cited by a commenter. See, *Sierra Club* v. *Indiana-Kentucky Electric Corp.*, 716 F.2d 1145, 1153 (7th Cir. 1983) (State court invalidation of a SIP provision resulted in an unenforceable SIP provision which the State had to reenact or which EPA may use as the basis for a SIP call).

In any case, EPA notes that the State trial court has now ruled against those parties who challenged Rule 1113, including the commenters. See, *Sherwin-Williams Co. et al.* v. *SCAQMD*, [Superior Court of Cal., County of Los Angeles, No. BC162162, Order dated Feb. 3, 1999]. The outcome of that litigation confirms EPA's conclusion that SCAQMD has provided the necessary assurances contemplated in CAA section 110(a)(2). EPA acknowledges that the ruling of the trial court against the litigants may not be the final disposition of their claims, but the Agency believes in this instance that until a court rules against SCAQMD on the commenters' State law claims, the Agency cannot disapprove the SIP revision on the basis of those claims.

For the reasons discussed above, if the litigants appeal the order of the trial court, the mere pendency of an appeal by the commenters likewise does not provide a basis for the Agency to delay or disapprove the SIP revision.

Finally, one commenter also suggested that EPA should disapprove the revision of Rule 1113 because its VOC content limits differed from those of EPA's proposed national rule for architectural coatings under CAA section 183(e). As stated in the preamble to the final rule for architectural coatings, Congress did not intend section 183(e) to preempt any existing or future State rules governing VOC emissions from consumer and commercial products. See, *e.g.*, 63 FR 48,848, 48,857 (Sept. 11, 1998). Section 59.410 of the final architectural coatings regulations explicitly provides that States and their political subdivisions retain authority to adopt and enforce their own additional regulations affecting these products. See, 63 FR 48,848, 48,884 (Sept. 11, 1998). Accordingly, SCAQMD retains authority to impose more stringent limits for architectural coatings as part of its SIP, and its election to do so is not a basis for EPA to disapprove the SIP. See, *Union Electric Co.* v. *EPA*, 427 U.S. 246, 265–66 (1976). EPA favors national uniformity in consumer and commercial product regulation, but recognizes that some localities may need more stringent regulation to combat more serious and more intransigent ozone nonattainment problems.

IV. EPA Action

EPA is finalizing action to approve the above rule for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA and in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 20, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: May 28, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(242) introductory text, (c)(242)(i) introductory text, and (c)(242)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(242) New and amended regulations for the following APCDs were submitted on November 26, 1996, by the Governor's designee.

(i) Incorporation by reference.

* * * * *

(B) South Coast Air Quality Management District.

(*1*) Rule 1113, adopted on September 2, 1977 and amended on November 8, 1996.

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[FR Doc. 99–15167 Filed 6–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6363–6]

Technical Amendments to Approval and Promulgation of Implementation Plans: Oregon; Correction of Effective Date Under CRA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On July 24, 1998 (63 FR 39743), the Environmental Protection Agency published in the **Federal Register** a direct final rule approving revisions to the Oregon State Implementation Plan, which established an effective date of September 22, 1998. EPA promulgated that revision to satisfy the requirements of section 110 of the Clean Air Act (CAA) and 40 CFR part 51. In this document, EPA is correcting the effective date of the July 24, 1998 rule to June 21, 1999 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801, 808.

EFFECTIVE DATE: June 21, 1999.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos (206) 553–6510

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States (GAO). In the July 24, 1998 direct final rule, EPA erroneously concluded that the rule was a rule of particular applicability, and thus, was not subject to the CRA. EPA now has determined that the July 24, 1998 rule is subject to the CRA because it is a rule of general applicability; thus, although the rule was promulgated on July 24, 1998, the action did not take effect on September 22, 1998 as originally stated. After we discovered our error, we submitted the rule to both Houses of Congress and the GAO on April 28, 1999. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable,

unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 24, 1998, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 21, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

This action only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of the action must be filed in the United States Court of Appeals for the appropriate circuit by August 20, 1999.

Dated: June 14, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–15542 Filed 6–18–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300872; FRL–6083–9]

RIN 2070–AB78

Hydrogen Peroxide; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the biochemical hydrogen peroxide on all food commodities when applied/used as an algaecide, fungicide, and bactericide at the rate of ≤ 1% hydrogen peroxide per application on growing crops (all food commodities) and postharvest potatoes. Biosafe Systems submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of hydrogen peroxide.

DATES: This regulation is effective June 21, 1999. Objections and requests for hearings must be received by EPA on or before August 20, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300872], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300872], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300872]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Anne Ball, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location, telephone number, and e-mail address: 9th fl., Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–8717; e-mail address: ball.anne@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 1998 (63 FR 50901) (FRL–6028–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition by Biosafe Systems, at that date at 45 E. Woodthrush Trail, East Medford, NJ 08055, at present at 80 Commerce St., Glastonbury, CT 06033. The notice included a summary of the petition prepared by the petitioner Biosafe Systems, the registrant. There were no comments received in response to the notice of filing. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of hydrogen peroxide. By this final rule, EPA is granting the petition. EPA is amending the existing exemption for hydrogen peroxide in accordance with the petition. Based on this action, EPA considers the existing exemption to be reassessed.

I. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." Additionally, section 408(b)(2)(D) requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Hydrogen peroxide at a concentration of 27.17% has a pH of 1.05 at which concentration EPA assumes a toxicity category I for skin and eye irritation. Biosafe has submitted toxicology information from open literature for aqueous solutions containing 6% hydrogen peroxide and for aqueous solutions containing 50% hydrogen peroxide. The concentrate (27.17% hydrogen peroxide) will be diluted with water at the rate of 1:50 or 1:100 or 1:300 and thus, the concentration of hydrogen peroxide in the product at the time of application will range from 0.09% to 0.54%. The information from open literature demonstrated that solutions containing 6% hydrogen peroxide have an acute oral $LD_{50} \geq 5,000$ milligram/kilogram (mg/kg) in rats (toxicity category III), an acute dermal $LD_{50} \geq 10,000$ mg/kg in rabbits (toxicity category IV), and an inhalation LC_{50} of 4 milligram/liter (mg/l) (toxicity category IV). The 6% hydrogen peroxide solutions are mild irritants to rabbit skin and cause severe irreversible corneal injury in half of the exposed rabbits (toxicity category I). Toxicology information from open literature demonstrated that solutions which contained 50% hydrogen peroxide have an acute oral $LD_{50} \leq 500$ mg/kg in rats (toxicity category II), and an acute dermal $LD_{50} \leq 1,000$ mg/kg in rabbits(toxicity category II). No deaths resulted after an 8–hour exposure of rats to saturated vapors of 90% hydrogen peroxide, $LC_{50} = 4$ mg/l (2,000 ppm). Solutions which contain 50% hydrogen peroxide also are extremely irritating (corrosive) to rabbit eyes (toxicity category I).

EPA has concluded that for food use at an application rate of ≤ 1% hydrogen peroxide no apparent acute toxicity and subchronic toxicity end points exist to suggest a significant toxicity. An RfD (chronic toxicity) for hydrogen peroxide has not been estimated because of its short half-life in the environment and lack of any residues of toxicological concern. For similar reasons, an additional safety factor was not judged necessary to protect the safety of infants and children. Additionally, hydrogen peroxide is listed by the Food and Drug Administration as Generally Recognized As Safe (GRAS). Additionally hydrogen peroxide is used to treat food at a maximum level of 0.05% in milk used in cheesemaking, 0.04% in whey, 0.15% in starch and corn syrup, and 1.25% in emulsifiers containing fatty acid esters as bleaching agents (21 CFR 184.1366). As a GRAS substance hydrogen peroxide may be used in washing or to assist in the lye peeling of fruits and vegetables (21 CFR 173.315).

III. Aggregate Exposures

In examining aggregate exposure,, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* For the proposed uses the concentrate of hydrogen peroxide will be diluted with water at the rate of 1:50, 1:100 or 1:300 corresponding to a low concentration of hydrogen peroxide in the product at the time of application (0.09–0.54%). The solution, having a low concentration of hydrogen peroxide, reacts on contact with the surface on which it is sprayed and degrades rapidly to oxygen and water. Therefore residues in or on treated food commodities of the algaecide/fungicide/bactericide hydrogen peroxide are expected to be negligible. Additional sources of the GRAS substance hydrogen peroxide in concentrations range from 0.04% to 1.25% in various foods as cited above (21 CFR 184.1366).

2. *Drinking water exposure.* At the proposed application rates, the use of hydrogen peroxide as an algaecide, fungicide, and bactericide to treat food commodities could result in a minimal transfer of residues to potential drinking water sources. This is due to the low application rate and the rapid chemical degradation of hydrogen peroxide into oxygen and water neither of which is of toxicological concern.

B. Other Non-Occupational Exposure

There may be minimal amounts of non-dietary exposure to hydrogen peroxide in homes through the infrequent and short topical use of the substance in treating minor skin injuries and in its use in oral mouthwashes. Exposure is expected to be minimal also because of the rapid chemical degradation of hydrogen peroxide into oxygen and water.

IV. Cumulative Effects

Because of the low use rates of hydrogen peroxide, its low toxicity and rapid degradation, EPA does not believe that there is any concern regarding the potential for cumulative effects of hydrogen peroxide with other substances due to a common mechanism of action. Because hydrogen peroxide is not known to have a common toxic metabolite with other substances, EPA has not assumed that hydrogen peroxide has a common mechanism of toxicity with other substances.

V. Determination of Safety for U.S. Population, Infants and Children

Because hydrogen peroxide is of low toxicity, the proposed uses employ low concentrations of hydrogen peroxide, and hydrogen peroxide degrades rapidly following application, EPA concludes that this exemption from the requirement of a tolerance in or on all food commodities for hydrogen peroxide when applied at ≤ 1% will not pose a dietary risk under reasonably foreseeable circumstances. Further, the EPA Office of Water has stated that it has seen no new data that contradict the assessment previously given, which is that low concentrations of hydrogen peroxide do not typically persist in drinking water at levels that pose a health risk. Accordingly, EPA concludes that there is a reasonable certainty of no harm to consumers, including infants and children, from aggregate exposure to hydrogen peroxide.

VI. Other Considerations

A. Endocrine Disruptors

There is no evidence to suggest that hydrogen peroxide in the proposed concentrations will adversely affect the endocrine system.

B. Analytical Method(s)

An analytical method for the detection of residues of hydrogen peroxide is not applicable to this tolerance exemption because of the low concentration of hydrogen peroxide in the product at the time of application at the time of application (≤ 1%) and its rapid degradation to water and oxygen on contact with crops.

C. Codex Maximum Residue Level

There are no Codex Maximum Residue Levels (MRLs) established for residues of hydrogen peroxide.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) and as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 20, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300872] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 3, 1999.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.1197 is revised to read as follows:

§180.1197 Hydrogen peroxide; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of hydrogen peroxide in or on all food commodities at the rate of ≤ 1% hydrogen peroxide per application on growing crops and postharvest potatoes when applied as an algaecide, fungicide and bactericide.

[FR Doc. 99–15718 Filed 6–18–99; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

Fisheries off West Coast States and in the Western Pacific

CFR Correction

In Title 50 of the Code of Federal Regulations, part 600 to end, revised as of Oct. 1, 1998, § 660.333 is corrected by revising paragraph (f)(2) as follows:

§ 660.333 Limited entry fishery—general.

* * * * *

(f) * * *

(2) Limited entry permits may not be transferred to a different holder or registered for use with a different vessel more than once every 12 months, except in cases of death of the permit holder or if the permitted vessel is totally lost, as defined at § 660.302. The exception for death of a permit holder applies for a permit held by a partnership or a corporation if the person or persons holding at least 50 percent of the ownership interest in the entity dies. When a permit transferred from one holder to another holder is initially "unidentified" with regard to vessel registration, or when a permit's vessel registration is otherwise "unidentified", the transaction is not considered a "transfer" for purposes of this restriction until the permit is registered for use with a specific vessel.

* * * * *

[FR Doc. 99–55520 Filed 6–18–99; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 64, No. 118
Monday, June 21, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1306, 1307, 1309 and 1310

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Supplemental proposed rule; reopening of comment period; notice of hearings.

SUMMARY: The Northeast Dairy Compact Commission is continuing to consider whether to amend the over-order price regulation to establish a supply management program. The Commission previously proposed an assessment/refund program and is slightly modifying that proposed program. As an alternative to the assessment/refund program, the Commission is now also proposing a base/excess program. The Commission is reopening the comment period and is requesting additional comment and testimony on each of these proposed programs.

DATES: Written comments and exhibits may be submitted until 5:00 p.m., August 18, 1999. See **SUPPLEMENTARY INFORMATION** section for public hearing dates and filing dates for pre-filed testimony.

ADDRESSES: Mail, or deliver, sworn and notarized testimony, comments and exhibits to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602. See **SUPPLEMENTARY INFORMATION** section for public hearing locations.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Public Hearing Dates, Times and Locations; Filing Dates for Written Comments

The public hearing dates and locations are:

1. July 7, 1999, 7:00 p.m. at the Storrowton Village White Church Meeting House, Eastern States Exposition, 1305 Memorial Avenue, on MA 147, Gate 2, West Springfield, MA.

2. August 4, 1999, 7:00 p.m. at the North Stage Opera House, Exit 11, I–91, White River Junction, VT.

3. Pre-filed testimony is encouraged and may be submitted to the Northeast Dairy Compact Commission at the address in the **ADDRESSES** section by 12:00 p.m. June 30, 1999 for the July 7 hearing and by 12:00 p.m. July 28, 1999 for the August 4 hearing.

II. Background

The Northeast Dairy Compact Commission ("Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII. The Commission published additional regulatory background information in the original notice of the proposed supply management plan at 64 FR 19084 (April 19, 1999). A public hearing on the proposed supply management plan was held on May 5, 1999 and comments were received until May 19, 1999. Following review of the public testimony and comments received, the Commission is requesting additional comments, extending the comment period, holding two additional public hearings and is also proposing an alternative supply management program.

III. Proposed Supply Management Programs

The proposed supply management programs are designed to meet the Commission's responsibilities under Article IV, Section 9(f) of the Compact. That provision provides that "[w]hen establishing a compact over-order price, the commission shall take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk." The Commission is proposing to implement one of two distinct programs to address its responsibilities under Section 9(f) of the Compact. One is an assessment/refund program and the other is a base/excess program. The two programs are presented separately below.

It is the intention and judgment of the Commission that the combination of a supply management program and the recently promulgated rules limiting compact payments on diverted and transferred milk[4] will operate in coordination to regulate the supply of milk in New England relative to the consumer demand and to ensure that the compact payments do not create an incentive to generate supplies of milk in excess of the tolerance levels prescribed for diverted and transferred milk and deemed to be necessary to assure New England "consumers of an adequate, local supply of pure and wholesome milk."[5]

Assessment/Refund Program

The Commission initially proposed an assessment/refund program at 64 FR 19084 (April 19, 1999). The Commission proposes slight modifications to that program and requests comments on that program, as modified. The modified proposed program would require the Commission to reduce the producer pay price by five cents per hundredweight in months when there are compact producer payments. No obligation

[1] 62 FR 29626 (May 30, 1997).
[2] 62 FR 62810 (Nov. 25, 1997).
[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).
[4] 63 FR 65517 (No[illegible]
[5] Compac[illegible] Art. I

would accrue if there is no compact producer payment in a particular month. These funds would be accumulated in an escrow account throughout the calendar year in a supply management-settlement fund.

At the conclusion of the calendar year, producers would have 45 days to submit an application to the Commission for a refund from the supply management-settlement fund. There would be two categories of producers eligible for the refund: (1) Producers who reduced their production as compared to their prior year's production level; and (2) producers who maintained their milk production level at a rate of increase not more than 1% compared to the prior year's production. All eligible producers would receive a refund based on a flat rate per producer. One-half of the supply management-settlement fund would be distributed to eligible producers on a per producer basis. The amount of the flat rate refund would be determined by dividing the total number of eligible producers into one-half the value of the supply management-settlement fund.

In addition, producers who reduced their milk production, compared to the prior year's production, would receive a refund amount based on a price per hundredweight of reduced milk production. There would be a maximum refund per producer of $12,000 for the per hundredweight payment. The maximum would only apply to the per hundredweight portion of the refund and the producer would still be eligible for the per producer portion of the refund.

The assessment/refund program would be intended to assure that compact payments do not create an incentive for producers to generate additional supplies of milk by creating an incentive for all producers to maintain a stable, local supply of milk for the New England milk market. All producers would share equally in the burden of funding this program through a reduction in the producer pay price. Only those producers who reduce or maintain their production level would be eligible for a refund. However, the program would not otherwise restrict the milk production of those producers who, for business reasons unrelated to the compact payments, chose to increase their milk production at a rate greater than 1% per year.

The Commission would also change the regulation regarding any balance left in an account established to meet a potential liability to the Commodity Credit Corporation. The supply management program would be designed to meet the Commission's responsibilities under section 9(f) of the Compact, and therefore, any balance in a CCC escrow account would be returned to the producer-settlement fund for distribution to all producers in the next producer pool.

The Commission offers the following examples to assist interested persons in evaluating the modified proposed assessment/refund program. In calendar year 1998, there was a compact producer price for eight months and there was no compact payment for four months. Applying the proposed program to the actual circumstances of 1998 would result in an accumulated supply management-settlement fund balance of $2,201,700. The proposed program would withhold five cents per hundredweight in the eight months there was a compact payment and there would be no withholding in the four months with no compact payment. This would result in an overall assessment of $.0336 per hundredweight for all producers for the calendar year.

Table 1 shows the cost per producer of a reduction in the producer pay price of $.0336 per hundredweight on a monthly and annual basis. As discussed above, the $.0336 reduction in the producer pay price is the proposed cost of funding the supply management-settlement fund, averaged over the twelve months in 1998.

TABLE 1.—COST OF SUPPLY MANAGEMENT ASSESSMENT TO SELECTED SIZE FARMS

Number of cows	Pounds	Reduced rate/cwt	Cost per month	Cost per year
40	700,000	$.0336	$20	$235
57	1,000,000	.0336	28	335
86	1,500,000	.0336	42	504
286	5,000,000	.0336	140	1,680
1,144	20,000,000	.0336	560	6,720

The examples in Tables 2 and 3 assume that each size farm reduces production by five percent compared to the prior year's production. The proposed supply management program would pay one-half of the supply management-settlement fund on a per producer, flat rate basis, and the other half on a rate per hundredweight of the producer's reduced milk production. The values used in the examples are determined by assuming that 1,000 producers are eligible for the supply management refund, and eligible producers reduced milk production by 91 million pounds. These assumptions result in a per producer refund payment of $1,100 and a per hundredweight rate of $1.20.

Table 2 shows the yearly refund different size farms would receive under the proposed assessment/refund program. The table also reflects the effect of the proposed $12,000 per hundredweight refund maximum.

TABLE 2.—YEARLY REFUND FROM SUPPLY MANAGEMENT PROGRAM: SELECTED SIZE FARMS

Number of cows	Pounds	Reduced pounds	Reduced rate/cwt	Rate/cwt refund	Per farm refund	Total refund
40	700,000	35,000	$1.20	$420	$1,100	$1,520
57	1,000,000	50,000	1.20	600	1,100	1,700
86	1,500,000	75,000	1.20	900	1,100	2,000
286	5,000,000	250,000	1.20	3,000	1,100	4,100
1,144	20,000,000	1,000,000	1.20	12,000	1,100	13,100

Table 3 shows the yearly financial benefit to different size farms of the proposed assessment/refund program, up to the proposed $12,000 per hundredweight maximum refund. Based on the assumptions used in the example, the cost of the program is about one-half of the total refund at the point when the $12,000 per hundredweight maximum would apply. This point would vary based on other assumptions such as a higher or lower percentage of reduced milk production, the per hundredweight payment rate and the yearly cost of the program.

TABLE 3.—YEARLY BENEFITS FROM SUPPLY MANAGEMENT PROGRAM: SELECTED SIZE FARMS

Number of cows	Total refund	Less cost	Net refund
40	$1,520	$235	$1,285
57	1,700	336	1,364
86	2,000	504	1,496
286	4,100	1,680	2,420
1,144	13,100	6,720	6,380

Table 4 shows the increased income a producer would have received in 1998, on only the volume of milk produced in excess of the prior year's production. The table uses the assumption that the rate of increased production was 1.8%. This is the rate of increased production in the compact region the Commodity Credit Corporation used to set the amount due from the Compact Commission in 1998. The table also applies the average compact over-order producer price for 1998 of $.286. The last column shows the compact payment to the producer for the increased milk production.

TABLE 4.—YEARLY INCREASED INCOME ON AVERAGE PERCENTAGE INCREASED PRODUCTION

Number of cows	Pounds	% increase	Increase lbs.	Av. price	Increase $
40	700,000	1.8	12,600	$.286	$36
57	1,000,000	1.8	18,000	.286	51
86	1,500,000	1.8	27,000	.286	77
286	5,000,000	1.8	90,000	.286	257
1,144	20,000,000	1.8	360,000	.286	1,029

Table 5 shows the comparison between the compact income (reduced income) a producer would not receive due to decreasing production by five (5) percent, and the financial benefit for that production decrease under the proposed supply management program. The table applies the average compact producer price of $.286 for 1998 to compute the value of reduced income and applies the same assumptions as used in Table 3 to show the effect, including the cost to the producer, of the proposed supply management program (SMP).

TABLE 5.—COMPARISON OF REDUCED COMPACT INCOME TO SUPPLY MANAGEMENT BENEFITS FOR 5% PRODUCTION DECREASE

Number of cows	Reduced pounds	Average price	Reduced income	Net SMP refund	Net income increase
40	35,000	$.286	$100	$1,285	$1,185
57	50,000	.286	143	1,364	1,221
86	75,000	.286	214	1,496	1,282
286	250,000	.286	715	2,420	1,705
1,144	1,000,000	.286	2,860	6,380	3,520

Base/Excess Program

The Commission also requests comments on a proposed base/excess program, as an alternative to the proposed assessment/refund program. Under the proposed base/excess program, all compact qualified producers would be assigned a base production level for each month. The base would be the equivalent of the volume of milk produced in the same month in the prior calendar year. Producers would be required to have been qualified to receive compact payments in each month that is used as a base month. Producers who were not qualified to receive compact payments in the same month in the prior calendar year, would be assigned a base of 90% of their current monthly milk production in the months of January, February, July, August, September, October, November and December and 80% of their current monthly milk production in the months of March, April, May and June. Producers would then receive compact payments on only their base production volume, or actual production volume, whichever is less. Any amount of milk produced in excess of the base would not receive compact payments.

Under the proposed program, a base could be transferred from one producer to another only under very limited circumstances. For example, a partnership of two producers could dissolve and each producer take as his individual base the same percent of the partnership base as he had percent ownership in the partnership, or two or more producers may combine their bases if they form a partnership operating one farm. If a producer operates more than one farm, then each

farm would have a separate base, unless the farms and herds are combined into one dairy farm, in which case the separate bases may be combined into one base, if approved by the Commission. In addition, the name of the baseholder could be changed to another member of the baseholder's immediate family if the milk produced is from the same herd and on the same farm and the change is approved by the Compact Commission.

Handlers who operate pool plants and receive milk from producers, and cooperative associations, in their capacity as a handler, would be required to provide the necessary documentation to the Commission on each producer's monthly milk production. The documentation would be required two times a year. The Commission would use this data to notify each producer, and the handler or cooperative association receiving the producer's milk, of the monthly base. The Commission would notify producer s of the base for the months of January through June by January and the base for the months of July through December by July of each calendar year.

If the estimated rate of milk production in the compact region exceeds the national rate of increase for the period October through September of the current year, then the Commission would not adjust the producer base for the following calendar year and the producer base would be frozen at the monthly base then in effect. After the conclusion of a period from October 1 through September 30 when the estimated rate of milk production in the compact region does not exceed the national rate of increase, then the monthly producer base would be adjusted in the next calendar year to the volume of milk produced in the same month in the prior calendar year.

The base/excess program would be intended to assure that compact payments do not create an incentive for producers to generate additional supplies of milk by creating an incentive for all producers to maintain a stable, local supply of milk for the New England milk market.

The Commission offers the following examples to assist interested persons in evaluating the proposed base/excess program. The tables show the impact of the proposed program on different size farms. The actual pool values for April 1999 milk were used to develop the rate per hundredweight for the tables, with the assumption that 96.5% of the milk volume would be "base" milk and 3.5% of the milk volume would be "excess" milk for which no compact payment would be made.

Table 6 shows the comparison of the monthly compact value for selected size farms to the compact value without the base/excess program. The table assumes that each farm produces milk at the same volume as its base. With the assumptions used in Table 6, the effective compact rate (which is the amount of the compact payment the producer receives divided by the volume of all milk produced, including the excess when applicable) is $1.48 per hundredweight.

TABLE 6.—Monthly Benefits From Base/Excess Program for Selected Size Farms: No Increase in Milk Production

Number of cows	Base lbs	$/cwt	Value	Actual lbs	$/cwt	Value	Difference
40	58,000	1.48	$858	58,000	1.43	829	29
57	83,000	1.48	1,228	83,000	1.43	1,187	41
86	125,000	1.48	1,850	125,000	1.43	1,787	63
286	417,000	1.48	6,172	417,000	1.43	5,963	209
1144	1,667,000	1.48	24,672	1,667,000	1.43	23,838	834

Table 7 is based on all the same assumptions as Table 6, except it shows the impact on the monthly compact value to the producer if milk production is reduced by 5% as compared to the producer's base for the month. The compact payments would be made on the lesser of the base production level or the actual production level. With the assumptions used in Table 7, the effective compact rate (which is the amount of the compact payment the producer receives divided by the volume of all milk produced, including the excess when applicable) is 1.48 per hundredweight.

TABLE 7.—Monthly Benefits From Base/Excess Program for Selected Size Farms: 5% Reduction in Milk Production

Number of cows	Base lbs	Actual lbs	Value @ $1.48/cwt	Actual lbs	Value @ $1.43/cwt	Difference
40	58,000	55,000	$814	55,000	$787	$27
57	83,000	79,000	1,169	79,000	1,129	40
86	125,000	119,000	1,761	119,000	1,702	59
286	417,000	396,000	5,861	396,000	5,663	198
1144	1,667,000	1,584,000	23,443	1,584,000	22,651	792

Table 8 also uses the same assumptions as Table 6, but shows the impact on the monthly compact value to the producer of a 5% increase in milk production over the base. As the table demonstrates, the compact value becomes a negative, because no compact payment is made on the 5% excess of milk produced over the base, even though the rate per hundredweight paid on the base is increased by five cents when "excess" milk is excluded from the pool. With the assumptions used in Table 8, the effective compact rate (which is the amount of the compact payment the producer receives divided by the volume of all milk produced, including the excess when applicable) is $1.41 per hundredweight.

TABLE 8.—Monthly Benefits From Base/Excess Program for Selected Size Farms: 5% Increase in Milk Production

Number of cows	Base lbs	Value @ $1.48/cwt	Actual lbs	Value @ $1.43/cwt	Difference
40	58,000	$858	61,000	$872	−$14
57	83,000	1,228	87,000	1,244	−$16
86	125,000	1,850	131,000	1,873	−$23
286	417,000	6,172	438,000	6,263	−$91
1144	1,667,000	24,672	1,750,000	25,025	−$353

IV. Proposed Technical Amendments to the Over-Order Price Regulation

In conjunction with implementing a supply management program, either the proposed assessment/refund plan or the base/excess plan, the Commission proposes to amend section 1306.3(c) to delete subsections (1) and (2) and to specify that any surplus remaining in an escrow account established to meet a potential obligation to the Commodity Credit Corporation (CCC) would be returned to the producer-settlement fund for distribution to all producers. These changes eliminate the current provisions for returning the surplus funds to only those producers who did not increase production in the federal fiscal year. The Commission proposes this change because, with the implementation of a specific supply management program, the limitation on the CCC refund of a surplus to only those producers who did not increase production would no longer be appropriate.

Assessment Refund Program

The Commission proposes to amend sections 1306.3(c) and (e) and to add a new Part 1309 to provide the necessary regulations to implement the proposed supply management assessment/refund program. The Commission also proposes to make corresponding technical changes required by the specific amendments and additions to the current regulations.

The Commission proposes to amend section 1306.3, by first redesignating existing paragraphs (e) through (g) as paragraphs (f) through (h) and adding a new paragraph (e). The new paragraph will allow the Commission to withhold five cents per hundredweight from the producer pool to fund the supply management-settlement fund.

A new Part 1309 is proposed to provide the regulations to implement the supply management program. Section 1309.1 defines producer qualifications for the refund program. Section 1309.2 defines the procedure for computing the refund prices to be paid to qualified producers. Section 1309.3 would provide the authority for the establishment of a supply management-settlement fund. Finally, section 1309.4 would describe the procedure for issuing payments to producers eligible for a refund under the supply management program and establishing a maximum per hundredweight payment of $12,000.

If these proposed amendments are adopted corresponding technical amendments to referencing redesignated paragraphs in section 1306.3 will also be necessary.

Base/Excess Program

The Commission proposes to add a new Part 1310 to provide the regulations to implement the base/excess supply management program. Section 1310.1 would define *base milk* and section 1310.2 would define *excess milk*.

Section 1310.3 would provide the method for computing the base for each producer, including new producers, and also would specify the circumstances under which the base period would not automatically be updated from one calendar year to the next. As proposed in section 1310.3(c), if the estimated rate of milk production in the compact region exceeds the national rate of increase for the period October through September of the current year, then the Commission would not adjust the producer base for the following calendar year and the producer base would be frozen at the monthly base then in effect. After the conclusion of a period from October 1 through September 30 when the estimated rate of milk production in the compact region does not exceed the national rate of increase, then the monthly producer base would be adjusted in the next calendar year to the volume of milk produced in the same month in the prior calendar year.

Section 1310.4 specifies the limited circumstances under which a producer base could be transferred. Section 1310.5 would require the Commission to notify each producer, the handler receiving the producer's milk and the producer's cooperative association, of the monthly base. This notice would be provided twice a year, on or before January and July, with each notice providing the base for the next six-month period.

Section 1310.6 would establish the responsibility of handlers who operate a pool plant and receive milk from producers and cooperative associations in their capacity as a handler to provide the documentation to the Commission of each producer's monthly milk production. The documentation would be required every six months. This section would also specify that if the handler failed to provide the documentation, then the Commission would establish the producer base according to the method used to establish the base of new producers.

If these proposed amendments are adopted, the Commission also proposes to make corresponding technical changes required by the specific amendments and additions to the current regulations.

V. Specific Requests for Comments, Data and Testimony

The Commission is considering implementing one of the two proposed programs and encourages all interested persons to provide comments and testimony on each proposal. In addition, the Commission is specifically requesting comments, data and testimony on the following issues:

Assessment/Refund Program

1. The level of refund payment that would best meet the purposes of the supply management program and the level of assessment necessary to accomplish this purpose.

2. The level of assessment necessary to accomplish the purpose of the program to ensure that the compact payments do not create an incentive to generate additional supplies of milk.

3. Whether the assessment should be a flat rate, or whether it should fluctuate with the amount of the monthly compact producer price.

4. Whether a refund payment per hundredweight should be paid on the amount of reduced milk production or the total milk production for the period.

5. Whether the refund should be paid only on a flat per producer basis or only

on a per hundredweight basis to all eligible producers.

Base/Excess Program

1. What percent of production should be used to establish the base for new producers.

2. Whether the base should be established according to the average production of the two preceding calendar years.

Official Notice of Technical, Scientific or Other Matters

Pursuant to the Commission regulations, 7 CFR 1361.5(g)(5), the Commission hereby gives public notice that it may take official notice, at the public hearings on July 7, 1999 and August 4, or afterward, of relevant facts, statistics, data, conclusions, and other information provided by or through the United States Department of Agriculture, including, but not limited to, matters reported by the National Agricultural Statistics Service, the Market Administrators, the Economic Research Service, the Agricultural Marketing Service and information, data and statistics developed and maintained by the Departments of Agriculture of the States or Commonwealth within the Compact regulated area.

Public Participation in Rulemaking Proceedings

The Commission seeks and encourages oral and written testimony and comments from all interested persons regarding these proposed rules. The Commission continues to benefit from the valuable insights and active participation of all segments of the affected community including consumers, processors and producers in the development and administration of the Over-order Price Regulation.

Request for Pre-Filed Testimony and Written Comments

Pursuant to the Commission rules, 7 CFR 1361.4, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments or exhibits to the Commission. Comments and exhibits may be submitted at any time before 5:00 p.m. on August 18, 1999.

Please note: Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn and notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 p.m. deadline, but the original must then be sent by ordinary mail.

The Commission is requesting pre-filed testimony from any interested person. Pre-filed testimony must include the name, address and occupation of the witness and a sworn notarized statement indicating that the testimony is presented based upon the author's personal knowledge and belief. Pre-filed testimony must be received in the Commission office no later than 12:00 p.m., June 30, 1999 for the July 7 hearing and by 12:00 p.m., July 28, 1999 for the August 4 hearing.

List of Subjects in 7 CFR Parts 1306, 1307, 1309 and 1310

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission proposes to amend 7 CFR part 1306, to make corresponding technical amendments to part 1307 and to add a new part 1309 or part 1310 as follows:

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

1. The authority citation for part 1306 continues to read as follows:

Authority: 7 U.S.C. 7256

2. In § 1306.3 revise paragraph (c) and redesignate paragraphs (e) through (g) as paragraphs (f) through (h) and add a new paragraph (e) to read as follows:

§ 1306.3 Computation of basic over-order producer price.

* * * * *

(c) In any month when the average percentage increase in production in the regulated area comes within 0.25 of the average percentage increase in production for the nation, subtract from the total value computed pursuant to paragraph (a) of this section, for the purpose of retaining a reserve, an amount estimated by the commission in consultation with the USDA for anticipated cost to reimburse the Commodity Credit Corporation (CCC) at the end of its fiscal year for any surplus milk purchases. Should those funds not be needed because no surplus purchases were made by the CCC at the end of its fiscal year or there is a surplus in the fund, it is to be returned to the producer-settlement fund.

* * * * *

(e) Subtract .05 cents per hundredweight from the basic over-order producer price computed pursuant to this section and deposit that amount in the supply management-settlement fund;

* * * * *

PART 1307—PAYMENTS FOR MILK

3. The authority citation for part 1307 continues to read as follows:

Authority: 7 U.S.C. 7256.

4. Section 1307.1 is amended in paragraphs (a), (b) and (c) by removing "1306.3(f)" and adding "1306.3(g)" in its place.

Option One

5. A new part 1309 is added to read as follows:

PART 1309—SUPPLY MANAGEMENT REFUND PROGRAM

Sec.

1309.1 Producer qualification for supply management refund program.
1309.2 Computation of supply management refund prices.
1309.3 Supply management-settlement fund.
1309.4 Payment to producers of supply management refund.

Authority: 7 U.S.C. 7256.

§ 1309.1 Producer qualification for supply management refund program.

A dairy farmer who is a qualified producer pursuant to § 1301.11 of this chapter for the entire refund year and the dairy farmer's milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year.

§ 1309.2 Computation of supply management refund prices.

The compact commission shall compute the supply management refund prices applicable to all qualified milk as follows:

(a) Combine into one total the values, including all interest earned, deducted pursuant to section 1306.3(e) of this chapter for the refund year;

(b) Subtract 50% from the total value computed pursuant to paragraph (a) of this section to be used for the per farm payments to producers who submitted documentation pursuant to § 1309.4(a);

(c) Add the unobligated balance of the supply management-settlement fund;

(d) Divide the resulting amount by the sum of all milk production reduction reported by producers qualified pursuant to § 1309.1 and who submitted documentation pursuant to § 1309.4(a); and

(e) Subtract not less than one (1) cent nor more than two (2) cents for the purpose of retaining a cash balance in the supply management-settlement fund. The result shall be the supply management refund price for the year.

§ 1309.3 Supply management-settlement fund.

(a) The compact commission shall establish and maintain a separate fund known as the supply management-settlement fund. It shall deposit into the fund all amounts deducted pursuant to § 1306.3(e) of this chapter and the amount subtracted under § 1309.2(e). It shall pay from the fund all amounts due producers pursuant to § 1309.4 and the amount added pursuant to § 1309.2(c);

(b) All amounts subtracted under § 1309.2(e), including interest earned thereon, shall remain in the supply management-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1309.2(c);

(c) The compact commission shall place all monies subtracted under § 1306.3(e) of this chapter and § 1309.2(e) in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities.

§ 1309.4 Payment to producers of supply management refund.

(a) All producers who are qualified pursuant to § 1309.1 shall become eligible to receive payment of the supply management refund computed pursuant to § 1309.2 by submitting to the compact commission documentation that the producer milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year. Such documentation shall be filed with the commission not later than 45 days after the end of the calendar year.

(b) The commission will make payment to all producers qualified pursuant to § 1309.1 and eligible pursuant to paragraph (a) of this section in the following manner:

(1) A per farm payment computed by dividing the amount subtracted pursuant to § 1309.2(b) by the total eligible producers; and

(2) The value determined by multiplying the supply management refund price computed pursuant to § 1309.2(e) by the producer's reduced milk pounds, not to exceed $12,000.

Option Two

6. A new part 1310 is added to read as follows:

PART 1310—BASE-EXCESS PROGRAM

Sec.

1310.1 Base milk.
1310.2 Excess milk.
1310.3 Computation of base for each producer.
1310.4 Base rules.
1310.5 Announcement of base.
1310.6 Responsibility for establishment of producer base.

Authority: 7 U.S.C. 7256.

§ 1310.1 Base milk.

Base milk means milk means milk received from a qualified compact producer by a pool handler which is not in excess of such producer's monthly base computed pursuant to § 1310.3 of this part.

§ 1310.2 Excess milk.

Excess milk means milk received from a qualified compact producer by a pool handler which is in excess of base milk received from such producer during the current month.

§ 1310.3 Computation of base for each producer.

For each month of the year, the Compact Commission shall announce, subject to the rules set forth in § 1310.4 of this part, a base for each producer described in paragraphs (a) and (b) of this section. Each producer's base in the current month is based upon their milk production in the same month of the preceding calendar year, except as provided in paragraph (c) of this section.

(a) For any producer, except as provided in paragraph (b) of this section, the quantity of milk receipts shall be the total pounds of producer milk received by all pool handlers from such producer.

(b)(1) Any producer who made no qualifying milk deliveries during the base-forming period shall have a base reflecting the percentage of the producer's monthly deliveries or producer milk each month as set forth in the following table:

Month	Percentage of production as base
January, February, July, August, September, October, November and December ...	90
March, April, May and June ...	80

(2) A new monthly base is earned on the basis of the producer's milk deliveries during the current calendar year.

(c) On or before the 31st of October of each calendar year, the Commission will announce the base year to be used for the following calendar year. If the rate of milk production in the compact region for the preceding federal fiscal year (October through September of the current year) exceeds the national rate of increase for the same period, then the Commission shall apply the same base currently in effect to the following calendar year. If the rate of milk production in the compact region for the preceding federal fiscal year (October through September of the current year) is less than or equal to the national rate of increase for the same period, then the Commission shall apply the current year production volumes as the base for the following year. Provided that, a base established pursuant to paragraph (b) of this section shall not be subject to the freezing provisions of this section.

§ 1310.4 Base rules.

The following shall apply in connection with the establishment of bases:

(a) A base computed pursuant to paragraph (a) of § 1310.3 of this part shall be effective January 1, 2000.

(b) A base computed pursuant to paragraph (a) through (e) of this section may be transferred only in its entirety to another dairy farmer and only upon discontinuance of milk production because of the entry into military service of the baseholder.

(c) Base transfer shall be accomplished only through written application to the Compact Commission on forms prescribed by the Compact Commission and shall be signed by the baseholder and by the person to whom such base is to be transferred: Provided, that if a base is held jointly, except as provided in paragraph (e) of this section, the entire base only is transferable and only upon receipt of such application by all joint baseholders.

(d) If a producer operates more than one farm and milk is received from each at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1301.9(d) of this chapter, the producer shall establish a separate base with respect to producer milk delivered from such farm; Provided, that if such farm and herds are combined into one dairy farm, the separate bases may be combined into one base subject to approval of the Compact Commission.

(e) Only one base shall be allocated with respect to milk produced by one or more persons where dairy farm is jointly owned or operated; Provided, that in the case of a base established jointly, if a copy of the partnership agreement setting forth as a percentage of the total interest of the partners in the base is filed with the Compact commission before the end of the base-forming period, then upon termination of the partnership agreement each partner will be entitled to the partner's statod share of the base to hold in the partner's own right or to transfer in conformity with

the provisions of paragraph (b) or (c) of this section (including transfer to a partnership of which the partner is a member). Such termination of a partnership shall become effective as of the end of any month during which an application for such division of base signed by each member of such partnership is received by the Compact Commission.

(f) Two or more producers with bases may combine such bases upon the formation of a bona/fide partnership operating from one farm. Such a combination shall be considered a joint base under paragraph (c) of this section.

(g) Subject to the approval by the Compact Commission, the name of the baseholder may be changed to that of another member of the baseholder's immediate family, but only under circumstances where the base would be applicable to milk production from the same herd and on the same farm.

§ 1310.5 Announcement of base.

On or before January and July the Compact Commission shall notify each producer, the handler receiving the producer's milk and the cooperative association of which the producer is a member of the monthly base established by such producer.

§ 1310.6 Responsibility for establishment of producer base.

Handlers who operate a pool plant and receive milk from producers and a cooperative association in its capacity as a handler pursuant to § 1301.9(d) of this chapter must submit to the Commission documentation on each producer's monthly milk production of the preceding calendar year. Such documentation shall be filed with the Commission not later than 60 days before January and July of the current year. Failure to comply with this section will result in producer bases be established pursuant to § 1310.3(b) of this part.

Dated: June 14, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–15506 Filed 6–18–99; 8:45 am]

BILLING CODE 1650–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. PL98–1–001]

Public Access to Information and Electronic Filing; Notice of Availability of Staff Issue Papers for Technical Conference

June 15, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of availability of staff issue papers for technical conference on electronic filing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) notifies interested persons that the Commission Staff is making staff issue papers on major electronic filing issues available for the purpose of facilitating discussion of these issues at the technical conference. The recommendations in the issue papers are preliminary and are subject to revision based on input from the conference and further analysis by staff.

DATES: The conference will be held on Thursday, June 24, 1999, beginning at 9:30 a.m. The Commission published notice of the conference on May 26, 1999.

ADDRESSES: The technical conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Brooks Carter, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 42–29, Washington, DC 20426, (202) 501–8145, FAX: (202) 208–2425, E-Mail: brooks.carter@ferc.fed.us.

Wilbur Miller, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Room 91–17, Washington, DC 20426, (202) 208–0953.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

Take notice that the Commission Staff (Staff) is making available staff issue papers for review in advance of the technical conference on electronic filing. The issue papers are intended to facilitate discussion at the conference of major issues pertaining to the Commission's Electronic Filing Initiative (EFI). The conference will be held on Thursday, June 24, 1999, and will commence at 9:30 a.m. in the Commission Meeting Room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The conference is open to all interested persons.

Staff is convening the conference to: discuss and resolve the issues addressed in the issue papers; review and discuss a prototype for electronic filing, including any desired features or enhancements; discuss prototype testing; and address other electronic filing issues of interest to those in attendance.

The issue papers included with this notice contain Staff's analyses and preliminary recommendations for major electronic filing issues, including:

(1) Filing Formats
(2) Citation
(3) Record Retention
(4) Official Filing Date
(5) Electronic Filing Authentication and Verification (Signatures)
(6) Document Content Standards (for Electronic Submissions)
(7) Electronic Filing Phase 1 Profile

The recommendations are Staff recommendations and do not constitute a proposal by the Commission. The recommendations are based in part on an analysis of comments received in response to a request for comments issued in Docket No. PL98–1–000 on May 13, 1998. Staff has created a new link on the Commission's web site (*www.ferc.fed.us*) called "Electronic Filing Initiative." Through this link, interested persons can access all information pertinent to Docket No. PL98–1, including comments and materials from a previous technical conference.

We urge persons planning to attend the conference to review the materials in advance and be prepared to discuss them at the conference. Staff will entertain requests to establish panels to facilitate discussion of the issues, if attendees believe this will lead to a more orderly discussion. If after reviewing the issues, you would like to participate in a discussion, please contact, Brooks Carter via e-mail (brooks.carter@ferc.fed.us), FAX (202–208–2425) or telephone (202–501–8145).

Although this is an informal technical conference, a court reporter will transcribe the proceedings and make a transcript available for interested parties.

The Capital Connection offers all Open and special FERC meetings *live* on the Internet as well as via telephone and satellite. For a reasonable fee, you can receive these meetings in your office, at home or anywhere in the world. To find out more about The Capitol Connection's live Internet, phone bridge or satellite coverage, contact David Reininger or Julia Morelli at (703) 933–3100 or visit Capitol Connection's website at *www.capitolconnection.gmu.edu*). The Capitol Connection also offers FERC Open Meetings through its Washington, D.C. area television service.

In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call 202–966–2211.

Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703) 715–7999).

David P. Boergers,

Secretary.

[FR Doc. 99–15620 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. OST–99–5843]

RIN 2105–AC80

Standard Time Zone Boundary in the State of Kentucky: Proposed Relocation

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Wayne County, Kentucky, Fiscal Court, DOT proposes to relocate the boundary between eastern time and central time in the State of Kentucky. DOT proposes to relocate the boundary in order to move Wayne County from the Central Time Zone to the Eastern Time Zone.

DATES: Comments should be received by August 20, 1999 to be assured of consideration. Comments received after that date will be considered to the extent practicable. If the time zone boundary is changed as a result of this rulemaking, the effective date would be 2:00 a.m. CDT Sunday, October 31, 1999.

ADDRESSES: You may submit your comments and related material by only one of the following methods:

(1) By mail to the Docket Management Facility (OST–1999–), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

Public Hearing

A public hearing will be chaired by a representative of DOT at the Fiscal Courtroom, Wayne County Courthouse, 109 North Main Street, Monticello, Kentucky, on Thursday, June 24, 1999, at 7:00 p.m. The hearing will be informal and will be tape recorded for inclusion in the docket. Persons who desire to express opinions or ask questions at the hearings do not have to sign up in advance or give any prior notification. To the greatest extent practicable, the DOT representative will provide an opportunity to speak for all those wishing to do so.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9315.

SUPPLEMENTARY INFORMATION:

Background

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce."

Petition for Rulemaking

On April 22, 1999, the Wayne County, Kentucky, Fiscal Court (the highest governmental body in the county) formally petitioned the Department of Transportation to change its time zone from central to eastern. The Resolution stated the following in support of the request:

I. Supplies for businesses are shipped into Wayne County mostly from the Eastern Time Zone. (Somerset, Lexington, Knoxville). United Parcel Service, FedEX and other carrier deliveries come from terminals in the Eastern Time Zone.

II. The major television stations that consider Wayne County as part of their coverage area are all located in the Eastern Time Zone. (Lexington, Knoxville) The local cable that serves Wayne County has no major local affiliates which are located in the Central Time Zone.

III. All daily newspapers that serve Wayne County are located in the Eastern Time Zone. Those being the Louisville Courier-Journal, Lexington Herald-Leader and the

Commonwealth Journal which comes from Somerset, Ky.

IV. The citizens of Wayne County obtain bus transportation in Corbin, Ky, which is located in the Eastern Time Zone. The closest rail service for public transportation is also located in the Eastern Time Zone.

V. The closest commercial airport is Lexington, Ky., located in the Eastern Time Zone.

VI. Approximately 950 of the local workforce works outside Wayne County. It is estimated that 700 of those work in the Eastern Time Zone. This represents manufacturing jobs and is based on the 1996 manufacturing statistics.

VII. Approximately 90% +/− of Wayne County residents that attend educational institutions outside Wayne County attend schools that are located in the Eastern Time Zone. If you look at only the students that commute for education purposes, the figure would be higher. Wayne County needs desperately to improve our educational obtainment level of our residents. Moving to the Eastern Time zone would align us with the resources to make this improvement more feasible.

VIII. Most interscholastic activities (90% or more) are with schools from the Eastern Time Zone. Most all district and regional competitions are held in areas that are in the Eastern Time Zone.

IX. Tourism plays an important role in our economy and the major portion of that comes from people located in the Eastern Time Zone. Lake Cumberland is a major tourism drawing card for out county. A very large portion (80%) of the tourists that come to this area come from the Eastern Time Zone.

X. Major hospitals that serve Wayne County are located in the Eastern Time Zone. It is estimated that 99% of all Wayne County citizens that are referred to obtain other medical services, that are not available locally, are referred to the Eastern Time Zone. (Somerset, Lexington, Louisville)

XI. The State Police Headquarters that serves our area is located in the Eastern Time Zone.

XII. Wayne County is the only county in the Fifth Congressional District that is in the Central Time Zone.

XIII. Looking at two long term factors that could significantly impact Wayne County in the future (the development of the Big South Fork National River and Recreation Area and the construction of I–66) would require Wayne County to be in the Eastern Time Zone to fully align with these two developments.

XIV. Most all of our industry, if not all, that is not headquartered locally has their main company headquarters in the Eastern Time Zone.

XV. Wayne County residents that go outside the county for "shopping" purposes, goes to the Eastern Time Zone (Somerset/Lexington).

XVI. The closest major gateway to our area is I–75. This attaches Wayne County, Kentucky significantly to the Eastern Time Zone."

Under DOT procedures to change a time zone boundary, the Department will generally begin a rulemaking proceeding if the highest elected officials in the area make a *prima facie* case for the proposed change. DOT has determined that the Resolution of the Wayne County Fiscal Court makes a *prima facie* case that warrants opening a proceeding to determine whether the change should be made. Consequently, in this notice of proposed rulemaking, DOT is proposing to make the requested change and is inviting public comment.

Although the Wayne County Fiscal Court has submitted sufficient information to begin the rulemaking process, the decision whether actually to make the change will be based upon information received at the hearing or submitted in writing to the docket. Persons supporting or opposing the change should not assume that the change will be made merely because DOT is making the proposal. We are not bound either to accept or reject the proposal of the Wayne County Fiscal Court at the present time in the proceeding. The Department here issues no opinion on the merits of the County's request. Our decision will be made on the basis of information developed during the rulemaking proceeding.

Impact on observance of Daylight Saving Time

This time zone proposal does not directly affect the observance of daylight saving time. Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2:00 a.m. on the first Sunday in April until 2:00 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance.

Regulatory Analysis & Notices

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposal, if adopted, would primarily affect individuals and their scheduling of activities. Although it would effect some small businesses, not-for-profits and, perhaps, several small governmental jurisdictions, it would not be a substantial number. In addition, the change should have little, if any, economic impact.

Therefore, the Office of the Secretary certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Joanne Petrie at (202) 366–9315.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

This rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

List of Subjects in 49 CFR Part 71

Time.

PART 71—[AMENDED]

For the reasons discussed above, the Office of the Secretary proposes to amend Title 49 Part 71 to read as follows:

1. The authority citation for Part 71 would continue to read:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; 49 CFR 159(a), unless otherwise noted.

2. Paragraph (c) of § 71.5, *Boundary line between eastern and central zones,* would be revised to read as follows:

§ 71.5, Boundary line between eastern and central zones.

* * * * *

(c) Kentucky. From the junction of the east line of Spencer County, Ind., with the Indiana-Kentucky boundary easterly along that boundary to the west line of Meade County, Ky.; thence southeasterly and southwesterly along the west lines of Meade and Hardin Counties to the southwest corner of Hardin County; thence along the south lines of Hardin and Larue Counties to the northwest corner of Taylor County; thence southeasterly along the west (southwest) line of Taylor County and northeasterly along the east (south-east) line of Taylor County to the west line of Casey County; and thence southerly along the west and south lines of Casey and Pulaski Counties to the intersection with the western boundary of Wayne County; and then south along the western boundary of Wayne County to the Kentucky-Tennessee boundary.

* * * * *

Issued this 11th day of June 1999, at Washington, DC.

Rosalind Knapp,

Acting General Counsel.

[FR Doc. 99–15706 Filed 6–18–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 990614161–9161–01; I.D. 061199B]

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Eighteen Species of Marine Fishes in Puget Sound, Washington

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of finding; request for information and comments.

SUMMARY: NMFS has received a petition to list 18 species of Puget Sound marine fishes and to designate critical habitat under the Endangered Species Act (ESA). The petitioned fishes include 1 herring, 1 cod, 1 hake, 1 pollock, and 14 rockfish species. NMFS determines that the petition presents substantial scientific information indicating that the petitioned action may be warranted for seven of the species: Pacific herring, Pacific cod, Pacific hake, walleye pollock, brown rockfish, copper rockfish, and quillback rockfish. NMFS solicits information and comments pertaining to these seven species in Puget Sound and seeks suggestions from the public for peer reviewers for the agency's review of the petitioned action.

DATES: Information and comments on the action must be received by September 20, 1999.

ADDRESSES: Information and comments on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street - Suite 500, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region (503) 231-2005, or Marta Nammack, NMFS, Office of Protected Resources (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1999, the Secretary of Commerce (Secretary) received a petition from Sam Wright of Olympia, Washington, to list and designate critical habitat for 18 species of marine fishes in Puget Sound, Washington. The following are the species petitioned: Pacific herring (*Clupea pallasi*), Pacific cod (*Gadus macrocephalus*), Pacific hake (Aka Pacific whiting) (*Merluccius productus*), walleye pollock (*Theragra chalcogramma*), brown rockfish (*Sebastes auriculatus*), copper rockfish (*S. caurinus*), greenstripe rockfish (*S. elongatus*), widow rockfish (*S. entomelas*), yellowtail rockfish (*S. flavidus*), quillback rockfish (*S. maliger*), black rockfish (*S. melanops*), blue rockfish (*S. mystinus*), China rockfish (*S. nebulosus*), tiger rockfish (*S. nigrocinctus*), bocaccio (*S. paucispinis*), canary rockfish (*S. pinniger*), redstripe rockfish (*S. proriger*), and yelloweye rockfish (*S. ruberrimus*). Although the petitioner identified Pacific herring as "*C. harengus pallasi*," NMFS has followed the naming convention of Robins *et al.* (1991) which considers *C. harengus* (Atlantic herring) and *C. pallasi* as separate species. Therefore, NMFS considered only the latter as the petitioned species. Copies of this petition are available from NMFS (See **ADDRESSES**).

Analysis of Petition

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary to list species under the ESA (16 U.S.C. 1533(b)(3)(A)). Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted. NMFS' ESA implementing regulations define "substantial information" as the

amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating a petitioned action, the Secretary considers several factors, including whether the petition contains a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species (50 CFR. 424.14(b)(2)(ii)). In addition, the Secretary considers whether the petition provides information regarding the status of the species over all or a significant portion of its range (50 CFR. 424.14(b)(2)(iii).

Under the ESA, a listing determination can address a species, subspecies, or distinct population segment (DPS) of a species (16 U.S.C. 1532(15)). The petitioner requested listings for "—species/populations' or evolutionary[sic] significant units" in Puget Sound. The term Evolutionarily Significant Unit or "ESU" is currently defined only for DPSs of Pacific salmonids (see 56 FR 58612, November 20, 1991). For these petitioned species, NMFS would instead rely on the DPS framework described in a NMFS/U.S. Fish and Wildlife Service policy regarding the identification of distinct vertebrate population segments (61 FR 4722, February 7, 1996). Since the petitioner focused on stocks within Puget Sound (rather than on the entire species or subspecies), NMFS considered the petition in the context of defining DPSs in this area that may warrant listing under the ESA.

For each of the petitioned species, NMFS evaluated whether the information provided or cited in the petition met the ESA's standard for "substantial information." The agency also reviewed other information readily available to NMFS scientists (i.e., currently within agency files) and consulted with state and tribal experts on these species to determine whether there was general agreement on issues related to the uniqueness, distribution, abundance, and threats to the petitioned species/populations. With respect to uniqueness, NMFS assessed whether the petitioner's and otherwise available information might support the identification of DPSs that may warrant listing under the ESA.

Information submitted by the petitioner varied considerably for each of the 18 species, and the level of detail was generally the greatest for the herring and cod species. In addition, some of the information was largely speculative or not directly relevant to the petitioner's request. Hence, the amount and quality of information in the petition played a major role in NMFS' decision on whether to initiate a status review for a particular species.

For all of the petitioned species, the petitioner theorized that Puget Sound's unique hydrological and physical characteristics (i.e., numerous fjord-like estuarine basins with sills and constricted entrances) could contribute to genetic differentiation and population subdivision (i.e., the formation of DPSs). While this is plausible, NMFS assessed whether more direct measures of distinctness (in particular, genetic or life history data) are evident in this area. NMFS also assessed whether the petitioner accurately reflected any known trends in abundance or threats to the 18 species and, moreover, whether these trends/threats would lead a reasonable person to believe that listing under the ESA may be warranted. A summary of the results of this assessment follows; members of the family Scorpaenidae (i.e., rockfishes) were assessed together because of the paucity of data for most of the species.

Pacific herring - The petitioner noted that several stocks have been identified in Puget Sound (Bargmann, 1998) and that life history differences (e.g., spawning timing and growth rates) and spawning site fidelity may contribute to stock separation. Populations in Puget Sound have not been examined in detail for genetic distinctness, but plans are being made to conduct genetic sampling for this species in the range petitioned. Also, several studies conducted in other areas of the North Pacific may help shed light on whether DPSs are present in Puget Sound.

The petitioner cited recent studies indicating that some Puget sound stocks are in "critical" or "depressed" condition, and noted that the 1998 run size was the lowest on record for at least one herring stock. The petitioner also expressed concern over the apparent increase in natural mortality and the concurrent decrease in number of age classes for some stocks. NMFS' initial assessment corroborated that, overall, catches of Pacific herring reached a peak in the mid-1970s and then declined and have remained at low levels since the 1980s. The petitioner suggested that harvest, marine mammal predation, and urbanization/industrial development have played a role in the species' decline (but noted that the decline of the Discovery Bay stock may not be attributable to overharvest or habitat degradation).

NMFS has determined that the available information is substantial and that the petitioned action may be warranted. Therefore, the agency will initiate a status review of Pacific herring in Puget Sound.

Pacific cod - The petitioner noted that three stocks have been identified in Puget Sound (Palsson, 1990) and that tagging studies indicate that adults of the species may remain near specific spawning grounds. Also, the petition cited a study reporting high growth rates and egg production rates that may indicate the presence of DPSs of Pacific cod in Puget Sound (Palsson *et al.*, 1997). Allozyme studies show a major genetic demarcation across the North Pacific, but little genetic population structure has been detected among local stocks within these two major groups (Grant *et al.*, 1987).

The petitioner cited commercial and recreational catch data and recent surveys indicating that some Puget Sound cod stocks may have collapsed in the late 1970s and 1980s (Palsson, 1990; Palsson *et al.*, 1997). Also cited were recent acoustic surveys indicating that Agate Passage (south Puget Sound) populations may be at a critical or near-extinct level. NMFS has verified that Puget Sound cod populations have undergone a long-term decline since the mid-1970s and a marked decline since the late–1980s. The petitioner did not identify specific threats to this species, although the petition suggests that overharvest, marine mammal predation, and marine, estuarine, and terrestrial habitat degradation are potential factors in the species' decline.

NMFS has determined that the available information is substantial and that the petitioned action may be warranted. Therefore, the agency will initiate a status review of Pacific cod in Puget Sound.

Pacific hake - The petitioner expressed principal concern for a resident population that occurs in south Puget Sound and migrates seasonally between Port Susan and Saratoga Passage. The petitioner cited studies reporting that Puget Sound hake are genetically distinct from coastal populations (Utter and Hodgins, 1971), and that hake within Puget Sound may be distinguishable as two separate stocks (Goni, 1988). NMFS has confirmed these findings and also reviewed information indicating that other species of hake tend to show subdivided population structure around geographically complex coastlines (Roldan *et al.*, 1998), but not along linear coastlines (Grant *et al.*, 1988; Roldan, 1991)

The petitioner cited commercial catch data and recent surveys documenting that south Puget Sound populations have declined from an estimated adult biomass of over 45 million pounds in 1983 to approximately 1 to 3 million pounds in 5 of the past 6 years (Palsson *et al.*, 1997). The petition did not document the status of north Puget Sound hake; however, Palson *et al.* (1997) reported that abundance peaked in the late 1970s and early 1980s (approximately 7–33 lb./hour in terms of effort) with a decline thereafter to approximately 5 lb./hour. The petitioner identified overharvest and marine mammal predation as important factors in the species' decline and suggested that marine, estuarine, and terrestrial habitat degradation have also played a role.

NMFS has determined that the available information is substantial and that the petitioned action may be warranted. Therefore, the agency will initiate a status review of Pacific hake in Puget Sound.

Walleye pollock - The petitioner noted that Puget Sound stocks of this species represent the southernmost distribution of this species. The petition cited unpublished data indicating stock separation between north and south Puget Sound, with the latter stock being in the worse condition. While NMFS did not find genetic data specific to populations in Puget Sound, some studies have demonstrated genetic differences between Japanese and Northeastern Pacific pollock populations (Grant and Utter, 1980; Mulligan *et al.*, 1992; Shields and Gust, 1995).

The petitioner cited recreational catch data, trawl surveys, and cohort analysis indicating a decline (and possible collapse) in the southern Puget Sound pollock stock since the mid-1980s (Palsson *et al.*, 1997). These authors suggest that the South Sound pollock population is at a critical status and possibly extinct. No information was provided on pollock populations in other areas of Puget Sound, although NMFS has verified that a similar trend can be seen in the North Sound pollock populations as well. The current status of North Sound stock is less certain because of minimal catch data and because the status of pollock stocks in the nearby Strait of Georgia is relatively healthy. The petitioner did not identify specific threats to this species, although the petition suggests that overharvest, marine mammal predation, and marine, estuarine, and terrestrial habitat degradation are potential factors in the species' decline.

NMFS has determined that the available information is substantial and that the petitioned action may be warranted. Therefore, the agency will initiate a status review of walleye pollock in Puget Sound.

Rockfishes - Although 14 species of rockfish are identified in the petition, relatively little information was presented or is readily available on the population characteristics and status of individual species. Aside from the petitioner's general assertion that the physical characteristics of Puget Sound may promote greater population subdivision, the petitioner did not provide information specifically addressing the distribution or population structure of each species in Puget Sound. The petitioner noted that genetic studies using conventional techniques have not consistently shown population differentiation or structuring for Puget Sound rockfishes, adding that other techniques may be required to show such distinctness. NMFS did review evidence from high resolution molecular genetic data for some rockfish species that suggests genetic differences may exist between populations of these species within Puget Sound. However, these studies are limited in sampling and scope and address only three of the petitioned species (brown, copper, and quillback rockfish). The petitioner also stated that there are differences in growth rates for some species within Puget Sound, but failed to reference the particular species.

The petitioner provided no species-specific information on trends or past and current abundance, but did characterize three rockfishes (brown, copper, and quillback rockfish) as the most common species currently caught in Puget Sound. Instead, the petitioner relied on composite data for all members of the genus *Sebastes* that suggest a declining trend in recreational fisheries in both north and south Puget Sound. While these data are the primary stock indicator for Puget Sound, it is impossible to discern the status of particular species from these data. NMFS did review limited supplemental survey data (SCUBA and trawl) for south Puget Sound that demonstrate a reduction in counts from the late 1980s to early 1990s, but these data also fail to distinguish among species.

With respect to threats facing the species, the petitioner identified an array of factors potentially contributing to the decline of Puget Sound rockfishes, including overharvest, marine mammal predation, and marine, estuarine, and terrestrial habitat degradation. The petitioner expressed particular concern over the lack of adequate "no-take" refuges for these species and the risks associated with overfishing these relatively long-lived species.

NMFS concludes that the available information for Puget Sound rockfish is insubstantial for most of the petitioned species. Still, there are reasons to believe that some of the species may warrant ESA protection. The agency believes that the best approach to identifying candidates for an ESA status review includes determining which rockfish species are most likely to yield conclusive information during the review. It is clear from the assessment made to date that the majority of the petitioned species have little or no prospects for yielding such information in the time required to complete a status review (i.e., by February 2000). However, NMFS believes that the petition provides substantial information indicating serious threats and trends for rockfish in general, and that the prospects are good for obtaining more detailed information for three of the better-studied species, i.e., brown, copper, and quillback rockfish. Therefore, the agency will initiate a status review of brown rockfish, copper rockfish, and quillback rockfish in Puget Sound. In addition, NMFS is hopeful that information obtained during status reviews for these three species may help determine whether other Puget Sound rockfish may warrant consideration for an ESA status review.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available to NMFS scientists, the Secretary determines that the petition presents substantial scientific information indicating the petitioned action may be warranted for seven of the species identified in Puget Sound, namely: Pacific herring, Pacific cod, Pacific hake, walleye pollock, brown rockfish, copper rockfish, and quillback rockfish. In accordance with section 4(b)(3)(B) of the ESA, the Secretary will make his determination whether the petitioned action is warranted for these seven species within 12 months from the date the petition was received (i.e., by February 8, 2000).

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered based on any of the following factors: (1) The present or threatened destruction, modification, or curtailment of a species' habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting the species continuing existence. Listing

determinations are based solely on the best available scientific and commercial data after taking into account any efforts being made by any state or foreign nation to protect the species.

Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS solicits information and comments concerning the status of Puget Sound populations of Pacific herring, Pacific cod, Pacific hake, walleye pollock, brown rockfish, copper rockfish, and quillback rockfish (see **DATES** and **ADDRESSES**). NMFS specifically requests the following information: (1) Biological or other relevant data that may help identify DPSs of any of these species (e.g., age structure, genetics, migratory patterns, morphology); (2) the range, distribution, and size of these species' populations in Puget Sound and coastal waters of Washington and British Columbia; (3) current or planned activities and their possible impact on this species (e.g., harvest measures and habitat actions); and (4) efforts being made to protect these species in Washington and British Columbia.

NMFS also requests quantitative evaluations describing the quality and extent of estuarine and marine habitats for these species, as well as information on areas that may qualify as critical habitat in Washington. Areas that include the physical and biological features essential to the recovery of the species should be identified. Essential features include, but are not limited, to the following: (1) Habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS requests information describing (1) the activities that affect the area or could be affected by the designation and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation. The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact "of the [critical habitat] designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs resulting specifically from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 or 4(d) of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. NMFS now solicits the names of recognized experts in the field that could take part in the peer review process for this status review. Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 15, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 99–15721 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223 and 224

[Docket No. 990614160–9160–01; I.D. 061199C]

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List Barndoor Skate ("Raja laevis") as Threatened or Endangered

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of petition finding; request for information and comments.

SUMMARY: NMFS announces a 90-day finding for a petition to add barndoor skate (*Raja laevis*) to the list of threatened and endangered wildlife and to designate critical habitat. NMFS finds that the petition and the information available in NMFS records indicate that the requested action may be warranted. NMFS will conduct a stock assessment to determine if the petitioned action is warranted. To assure that the review is comprehensive, NMFS is soliciting information and data on this species from any interested party.

DATES: Information and comments on the action must be received by August 20, 1999.

ADDRESSES: Information, comments, or questions on the barndoor skate petition should be submitted to Mary Colligan, NMFS, Protected Species Division, One Blackburn Drive, Gloucester, MA, 01930. The petition and supporting data are available for public inspection, by appointment, Monday through Friday at the address above.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, NMFS Northeast Region, 978/281–9116, or Marta Nammack, NMFS Office of Protected Resources, 301/713–1401.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (16 U.S.C. 1531–1544) requires that the National Marine Fisheries Service (NMFS) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. In determining whether substantial information exists for a petition to list a species, NMFS will take into account information submitted with and referenced in the petition and all other information readily available in NMFS files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register. If NMFS finds that a petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(B) of the ESA requires NMFS to make a finding as to whether or not the petitioned action is warranted within one year of the receipt of the petition.

On March 4, 1999, NMFS received a petition from GreenWorld to list barndoor skate as endangered or threatened and to designate Georges Bank and other appropriate areas as critical habitat. The petitioners also requested that barndoor skate be listed immediately, as an emergency matter. Finally, the petitioner requested that other similarly appearing species of skate also be designated as threatened or endangered so as to insure the protection of the barndoor skate. On April 2, 1999, the NMFS received a second petition from Center for Marine Conservation (CMC) to list barndoor skate as an endangered species. This second petition is considered by NMFS as a comment on the first petition submitted by GreenWorld.

The petition and comment on the petition referenced a recent paper in the journal Science, which presents data on the decline of barndoor skates (Casey and Myers 1998). The petitioner cites bycatch in commercial fishing gear as the major threat to the species' continued existence and also expresses concern over inbreeding depression due to small population size. The petitioner also cites the inadequacy of existing regulatory mechanisms as a threat to the species. The comments submitted by CMC claim that barndoor skate are endangered due to overutilization for commercial purposes and the inadequacy of existing regulatory mechanisms.

On January 15, 1999, NMFS requested information from the public on barndoor skate for possible inclusion on the list of candidate species. Such designation highlights species for which NMFS is concerned may warrant listing under the ESA, but it does not afford those species any regulatory protection.

The barndoor skate is 1 of 7 species of skates that occur off the northeastern coast of the United States. Barndoor skates can reach sizes in excess of 1 meter in length and may not reach maturity until age 10 or older. The historic range of the barndoor skate ranged from Cape Hatteras to the Grand Banks off Newfoundland. Skates are found from near the tide line to depths exceeding 700 m. Members of this family lay eggs that are encased in hard, leathery cases commonly called a mermaid's purse. Incubation time is from 6 to 12 months and the young have the appearance of an adult upon hatching. Skates are not known to undertake large-scale migrations, but they do move seasonally in response to changes in water temperature, generally offshore in summer and early autumn and inshore in the winter and spring. Slow growth and late age at maturity may make skates more susceptible to the effects of fishing. Skates are frequently taken as bycatch during ground fishing operations and discarded. There are currently no regulations governing the harvesting of skates in U.S. waters.

CMC has also requested that the Secretary of Commerce categorize barndoor skate as "overfished" under the Magnuson Stevens Act. In order to fully examine the species' status so that a determination can be made under the ESA and under the Magnuson Stevens Act, NMFS intends to present an assessment of barndoor skate at the 30th Northeast Regional Stock Assessment Workshop to be held in November 1999. Staff are currently in the process of compiling and analyzing data on barndoor skate in preparation of the assessment materials to be vetted at the Stock Assessment Workshop. U.S. scientists are coordinating these efforts with their Canadian colleagues to ensure that a comprehensive assessment is conducted.

If it is determined that listing the species is warranted, then NMFS will examine the need to designate critical habitat for barndoor skate. At that time, NMFS would consider those physical and biological features that are essential to the conservation of the species and that may require special management or protection. The evaluation conducted by NMFS to determine if barndoor skate warrant listing under the ESA will also consider whether listing on an emergency basis is warranted.

NMFS finds that the petitioner and the comments on the petition have presented substantial information indicating that the requested action may be warranted. This finding is based on the scientific and commercial information contained and referenced in the petition and petition comments, as well as information available to NMFS at this time.

Listing Factors and Basis for Determination

Under Section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are based on the best scientific and commercial data available after taking into account any efforts being made by any state or foreign nation to protect the species.

Information Solicited

To ensure that the review conducted at the Stock Assessment Workshop is complete and based on the best available scientific and commercial data, NMFS is soliciting information on the species' current and historic distribution and abundance and any information related to the 5 listing factors identified above. NMFS requests that data, information and comments submitted be accompanied by (1) supporting documentation such as maps, bibliographic reference, or reprints of pertinent publications; and (2) the person's name, address, and any association, institution or business that the person represents. Such information may be submitted to the previously mentioned address.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 15, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

References Cited:

Casey, Jill M. and Ransom A. Myers. 1998. Near Extinction of a Large, Widely Distributed Fish. Science. 281: 690–692.

[FR Doc. 99–15724 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 060699D]

RIN 0648–AG88

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coral Reef Resources of Puerto Rico and the U.S. Virgin Islands; Amendment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Amendment 1 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands; request for comments.

SUMMARY: NMFS announces that the Caribbean Fishery Management Council (Council) has submitted Amendment 1 to the Fishery Management Plan (FMP) for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands for review, approval, and implementation by NMFS. This amendment would establish a marine conservation district (MCD) of approximately 16 square nautical miles (mi^2)(41–km^2) in the Exclusive Economic Zone (EEZ) southwest of St. Thomas, U.S. Virgin Islands (USVI), in an area known as "Hind Bank." Fishing and anchoring of fishing vessels would be prohibited within the MCD. The purpose of the MCD is to protect coral reef resources, reef fish stocks, and their habitats.

DATES: Written comments must be received on or before August 20, 1999.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 1, which includes a Final Supplemental Environmental Impact Statement, a Regulatory Impact Review, and an Initial Regulatory Flexibility Analysis, should be sent to the Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; phone: 787–766–5926; fax: 787–766–6239.

FOR FURTHER INFORMATION CONTACT: Michael C. Barnette, NMFS, 727-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires Regional Fishery Management Councils to submit proposed fishery management plans (plans) or amendments to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment from a Council, immediately publish a document in the **Federal Register** stating that the plan or amendment is available for public review and comment.

Caribbean coral reefs are under considerable stress as a result of coastal development and deforestation (sedimentation, pollution, dredging) and fishing (gear impacts and overfishing effects). The FMP currently prohibits the taking of corals and live rock, and limits gear used to collect live reef invertebrates and algae for aquariums. The FMP was recently amended by a generic amendment to address essential fish habitat (EFH) requirements to designate coral and coral reef areas as EFH in the U.S. Caribbean. Amendment 1 would specifically address fishing effects on reefs by establishing a "no take" MCD in a coral reef area known as Hind Bank southwest of St. Thomas, USVI. The dominant coral on Hind Bank is the boulder star coral, *Montastrea annularis*. Observed colonies are roughly 1 m in diameter. Based on recorded growth rates of approximately 0.4–1.2 cm/year, these colonies are at least 100 years old. At about 20 fathoms (36 m), the bottom topography of Hind Bank consists of a series of coral ridges (each approximately 100 m wide) interspersed with sandy depressions.

Fisheries in the U.S. Caribbean are multi-species, multi-gear, and primarily artisanal. Studies show declines in catch rates and relative abundance of groupers, snappers, triggerfish, angelfish, parrotfish, and grunts in USVI trap fisheries. Jewfish, *Epinephelus itajara*, Nassau grouper, *E. striatus*, and queen conch, *Strombus gigas*, have been designated by NMFS as overfished under the provisions of the Magnuson-Stevens Act. Red hind, *Epinephelus guttatus*, the dominant commercial reef fish species in the U.S. Caribbean, is showing signs of declines in catch-per-unit-effort, average size, and a significantly skewed sex ratio.

In addition to red hind, other species thought to aggregate on Hind Bank for spawning include yellowfin grouper, *Mycteroperca venenosa*; yellowtail snapper, *Ocyurus chrysurus*; stoplight parrotfish, *Sparisoma viride*; creole wrasse, *Clepticus parrae*; and the creole-fish, *Paranthias furcifer*. Hind Bank was once a spawning site for Nassau grouper, but few individuals have been seen in the area in recent years.

Since 1991, Hind Bank has been closed under the FMP to fishing from January through March to protect red hind spawning aggregations. A 1997 scientific research report to the Council indicated that this closure was having a positive effect in terms of increased abundance and size of red hind.

The seasonal closure affects all fisheries, including those for highly migratory species (HMS), such as tuna, billfish, and sharks. Amendment 1 would extend the seasonal closure year-round. The Council considered the possibility of allowing some fishing within MCDs to accommodate handline fishermen taking snappers, pelagics, and HMS. However, the Council determined that any fishing activities in the MCD could adversely affect spawning aggregations, degrade the reef ecosystem, and complicate enforcement.

The Council specifically intends that the MCD fishing restrictions apply to all fisheries, including the HMS fisheries. During the public comment periods, the NMFS HMS Fax Network will be used to ensure that all affected HMS fishermen are informed of the MCD proposal.

During 1995–96, 25 commercial fishermen reported landings from the general area southwest of St. Thomas (EEZ waters only); this area accounted for 14 percent of the trips and 31 percent of the total commercial catch (about 390,000 lb (176,901 kg)) in the USVI, primarily from trap fishing for finfish and spiny lobsters. HMS and other handline fishermen in this area accounted for only 4 percent of the trips and 8 percent of the total catch. There are no comparable data for the recreational sector. There are approximately 10 charter fishing operations in the St. Thomas-St. John area; however, these boats reportedly fish the "dropoff" south of St. John, rather than off St. Thomas.

The establishment of the MCD would displace commercial fishermen from preferred fishing grounds. However, the displacement cost to the industry is expected to be small because the majority of vessels fishing in the preferred grounds also make multiple trips to areas outside the proposed MCD, suggesting that movement in fishing effort from one area to another is relatively adjustable. The MCD is likely to result in a short-term reduction in the amount of fish available for harvest and, ultimately, a reduction in harvest. However, the MCD is also expected to result in export of adults and larvae into areas outside the MCD that will, in the long-term, increase the populations available for harvest. As the populations outside the MCD expand, harvests by existing fishermen will expand commensurately, resulting in increased profits. Theoretically, however, increased profits will attract additional entrants into the fisheries and increase effort. Despite increasing effort, establishment of the MCD is expected to result in future increases in total catch.

Comments received by August 20, 1999, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 16, 1999.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15722 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 118
Monday, June 21, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 11, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Plan for Estimating Daily Livestock Slaughter Under Federal Inspection.

OMB Control Number: 0581–0050.

Summary of Collection: The Agricultural Marketing Act of 1046 (7 U.S.C. 1621) Section 203(g), directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and to bring about a balance between production and utilization. Livestock and Grain News provides a timely exchange of accurate and unbiased information on current marketing conditions (supply, demand, prices, trends, movement, and other information) affecting trade in livestock, meats, grain, and wool. Administered by the U.S. Department of Agriculture's Agricultural Marketing Service (AMS), this nationwide market news program is conducted in cooperation with approximately 30 state departments of agriculture. The up-to-the-minute reports collected and disseminated by professional market reporters are intended to provide both buyers and sellers with the information necessary for making intelligent, informed marketing decisions, thus putting everyone in the marketing system in an equal bargaining position. AMS will collect information using market new reports.

Need and Use of the Information: AMS will collect information from processing plants on the estimated of the current day's slaughter and the actual slaughter of the previous day. The report is used to make market outlook projections and maintain statistical data. The information must be collected and disseminated by an impartial third party. Since the Government is a large purchaser of meat, a system to monitor the collection and reporting of data is needed.

Description of Respondents: Business or other for-profit; individuals or households; farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 82.

Frequency of Responses: Reporting: Weekly; other: daily.

Total Burden Hours: 740.

Farm Service Agency

Title: Standard Rules Tender Governing Motor Carrier Transportation.

OMB Control Number: 0560–NEW.

Summary of Collection: USDA provides a variety of commodities for domestic food distribution programs. The types of commodities available to transport for Kansas City Commodity Office (KCCO) include: dairy products (milk, butter, and cheese), fruit and vegetables (canned and frozen), and mixed loads of dry freight. The purpose of this information collection is to establish the motor carrier transportation service needs of USDA, Farm Service Agency (FSA), and KCCO for the movement of its freight traffic; and to ensure that motor freight carriers providing transportation services have both the willingness and the capability to meet these needs. The Standard Rules Tender Governing Motor Carrier Transportation necessitates the collect information to determine motor carrier compliance with the requirements and to determine eligibility of motor carriers to haul agricultural products for FSA. FSA will collect information by mail from motor carriers.

Need and Use of the Information: FSA will collect information to establish the motor carrier's qualifications, insurance coverage, and carriage rates and conditions. Without this information FSA and KCCO could not obtain transportation services to meet program requirements.

Description of Respondents: Business or other for-profit; Federal; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 141.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 141.

Farm Service Agency

Title: Standard Operating Agreement Governing Intermodal Transportation.

OMB Control Number: 0560–NEW.

Summary of Collection: The Farm Service Agency (FSA), in conjunction with the Kansas City Commodity Office (KCCO), delivers commodities worldwide. FSA ships commodities via motor carrier, intermodal marketing company, railroad, or ocean carrier. Intermodal Marketing Companies (IMC) are required to provide information relative to Trailer on Flatcar/Container or on Flatcar (TOFC/COFC) rates and

agreements. The use of the Standard Operating Agreement Governing Intermodal Transportation is necessary to collect information to determine IMC compliance with KCCO eligibility requirements. FSA will collect information by mail from IMCs.

Need and Use of the Information: FSA will collect information to establish the Intermodal Marketing Companies qualifications, insurance coverage, and carriage rates and conditions. Without this information FSA and KCCO could not meet program requirements.

Description of Respondents: Business or other for-profits; Federal; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 23.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 23.

Forest Service

Title: Interpretive Association Annual Report.

OMB Control Number: 0596–0097.

Summary of Collection: The Organic Administration Act of 1897 (30 Stat. 11;16 U.S.C. 55) and the Multiple-Use Sustained-Yield Act of 1960 (Pub. L. 86–517 Stat. 215;16 U.S.C. 528–531) gives Forest Service (FS) general authorities to provide public education and information about the preservation and conservation of the natural resources; and to promote the agency mission to achieve quality land management to meet the diverse needs of people through education about the variety of outdoor recreation uses of the natural resources. The Cooperative Funds and Deposits Act of December 12, 1975 (Pub. L. 94–148, 89 Stat. 804; 16 U.S.C. 565a–1 thru 565a–3) authorizes FS to enter into cooperative agreements with public and private agencies, organizations, institutions, or persons. Non-profit Interpretive Associations affiliated with the Forest Service provide important supplementary services to National Forest visitors. The agreements between FS and the Interpretive Associations state that Interpretive Associations need to submit annual reports and financial statements to the FS. FS will collect information using Form FS–2300–5. Annual Report Interpretive Associations.

Needs and Use of the Information: FS will collect information pertaining to income, expenditures, and annual accomplishments of each interpretive association to the regional forester. Without the collection of information, effective management of interpretive association programs including the monitoring of income allocation for special projects, would not be possible.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 52.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 52.

Agricultural Research Service

Title: USDA Biological Shipment Record—Beneficial Organisms.

OMB Control Number: 0518–0013.

Summary of Collection: Collection of information related to the introduction and release of non-indigenous biological control organisms contributes to the biological control and taxonomic research programs of USDA's Agricultural Research Service (ARS) Provision of the data is entirely voluntary and is used to populate the USDA Release of Beneficial Organisms in the United States and Territories (ROBO) database. ARS will collect information using forms AD–941, AD–942 and AD–943.

Need and Use of the Information: ARS will collect information on the biological/control and taxonomic research program in USDA by recording the introduction and release of non-indigenous biological control organisms and pollinators in the United States.

Description of Respondents: Federal; non-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion, annually.

Total Burden Hours: 25.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–15702 Filed 6–18–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Meeting of Advisory Committee on Emerging Markets

AGENCY: Foreign Agricultural Service, USDA

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the second meeting of the Advisory Committee on Emerging Markets will be held June 22, 1999. The role of the committee is to provide information and advice, based upon knowledge and expertise of the members, useful to the U.S. Department of Agriculture (USDA) in implementing the Emerging Markets Program. The committee will also advise USDA on ways to increase the involvement of the U.S. private sector in cooperative work with emerging markets in food and rural business systems and review proposals submitted to the Program.

DATES: The meeting will be held Tuesday, June 22, 1999, from 9:30 a.m. to 4 p.m. in room 5066 South Agriculture Building.

ADDRESSES: The meeting will be held at the U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review and discuss those proposals the Emerging Markets Office has received which may qualify for Emerging Markets Program funding. The minutes of the meeting announced in this Notice shall be available for review. The meeting is open to the public and members of the public may provide comments in writing to Douglas Freeman, Foreign Agricultural Service, room 6506 South Building, U.S. Department of Agriculture, 14th and Independence Ave. SW., Washington, D.C. 20250, but should not make any oral comments at the meeting unless invited to do so by the Co-chairpersons.

Signed at Washington, DC, June 1, 1999.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

[FR Doc. 99–15701 Filed 6–18–99; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request a Revision of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request a revision to a currently approved information collection, the Agricultural Resources Management Study and Chemical Use Survey.

DATES: Comments on this notice must be received by August 25, 1999, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Resources Management Study and Chemical Use Survey.

OMB Number: 0535–0218.

Expiration Date of Approval: October 31, 2000.

Type of Request: To revise a currently approved information collection.

Abstract: One of the primary objectives of the National Agricultural Statistics Service is to provide high quality and timely estimates about the nation's food supply and environment. Data will be collected regarding chemical uses on field crop, fruit, nut, and vegetable crops; the types and amounts of pesticides used on selected commodities after harvest and before being shipped to the consumer; and production expenses and income sources for farm operations. Information from these data collection efforts is used by government agencies in planning, farm policy analysis, scientific research, and program administration. During calendar year 2000, a one-time collection of information on the land ownership of farm operations and farm households will be included in this information collection. Selected economic and land ownership information gathered will be combined with data collected on the Agricultural Economics Land Ownership Survey (AELOS). The last AELOS covered the 1988 calendar year. Annual costs of production data for specific commodities normally collected in this information collection will not be collected in calendar year 2000 to reduce response burden on farm and ranch operators and owners and to avoid duplication. NASS plans to ask for a 3-year approval. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 26 minutes per response.

Respondents: Farms, Packers/Shippers, Warehouses.

Estimated Number of Respondents: 85,000.

Estimated Total Annual Burden on Respondents: 37,400 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, June 14, 1999.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 99–15705 Filed 6–18–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue new and revised conservation practice standards Section IC of the FOTG. The revised standards are Dry Hydrants (Code 432) and Residue Management, Mulch Till (Code 329B). These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before July 21, 1999.

ADDRESSES: Address all requests and comments to Robert L. Eddleman, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: June 7, 1999.

Robert L. Eddleman,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 99–15626 Filed 6–18–99; 8:45 am]

BILLING CODE 3410–16–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Passenger Vessel Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to assist it in developing a proposed rule on accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. This document gives notice of the dates, times, and location of the next meeting of the Passenger Vessel Access Advisory Committee (committee).

DATES: The next meeting of the committee is scheduled for July 21 through 23, 1999, beginning at 8:30 a.m. and ending at 6:30 p.m. each day, except the 21st when the meeting will end at 5:30 p.m. Optional vessel tours are scheduled for July 20 and 24th.

ADDRESSES: The meeting will be held in the South Auditorium (4th level, 2nd Avenue Entrance) of the Henry Jackson Federal Building, 2nd Avenue and Madison Street, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 19 (Voice); (202) 272–5449 (TTY). E-mail address: pvaac@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request. This document is also available on the Board's Internet Site at http://www.access-board.gov/notices/pvaacmtg.htm.

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Passenger Vessel Access Advisory Committee (committee) to assist the Board in developing proposed accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. 63 FR 43136 (August 12, 1998). The committee is composed of owners and operators of various passenger vessels; persons who design passenger vessels; organizations representing individuals with disabilities; and other individuals affected by the Board's guidelines.

The committee will meet on the dates and at the location announced in this notice. The meeting is open to the public. The facility is accessible to individuals with disabilities. Individuals who require sign language interpreters or real-time captioning systems should contact Paul Beatty by July 9, 1999.

Optional Vessel Tours

In addition to the meeting, optional vessel tours are planned for the committee on July 20 in Seattle and July 24 in Vancouver, British Columbia, Canada. The tours are open to the public on a first-come-first-served basis. In some cases, a fare is charged to ride the vessel. The degree of access varies between vessels. Individuals desiring to participate in the July 24th tour must contact Paul Beatty by July 7, 1999, to be listed on the security access list. For further information on these tours, please contact Paul Beatty.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 99–15602 Filed 6–18–99; 8:45 am]

BILLING CODE 8150–01–P

ARCTIC RESEARCH COMMISSION

Notice of Meeting

June 9, 1999.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 54th Meeting in Boulder, CO on July 7 and 8, 1999.

The Meeting will be held at the Institute for Arctic and Alpine Research at the University of Colorado and will convene at 9:00 AM on Wednesday the 7th and 9:00 AM on Thursday the 8th.

Topics for the meeting include Federal and State Agency reports, Congressional liaison reports and a series of briefings on the NOAA Data Centers, the National Ice Core Repository and the National Center for Atmospheric Research.

Any person planning to attend the meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Persons for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 99–15606 Filed 6–18–99; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Housing Vacancy Survey.

Form Number(s): None (computerized survey instrument).

Agency Approval Number: 0607–0179.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 2,880 hours.

Number of Respondents: 4,800.

Avg. Hours Per Response: 3 minutes.

Needs and Uses: The Housing Vacancy Survey (HVS) provides quarterly and annual statistics on rental vacancy rates and homeownership rates for the United States, the 4 census regions, inside vs. outside Metropolitan Areas (MAs), the 50 states, the District of Columbia, and the 75 largest MAs. HVS data are collected for a sample of vacant housing units identified in the Current Population Survey. Information is collected from homeowners, realtors, landlords, rental agents, neighbors or other knowledgeable persons.

Private and public sector organizations use these rates extensively to gauge and analyze the housing market with regard to supply, cost, and affordability at various points in time. In addition, the rental vacancy rate is a component of the leading economic indicators, published by the Department of Commerce.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 16, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–15684 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Retail Sales and Inventory Survey.

Form Number(s): B–101(97)S, B–101(97)B, B–111(97)S, B–111(97)B, B–111(97)L, B–113(97)I, B–113(97)L, B–114(97).

Agency Approval Number: 0607–0717.

Type of Request: Revision of a currently approved collection.

Burden: 13,875 hours.

Number of Respondents: 8,807.

Avg. Hours Per Response: 7.9 minutes.

Needs and Uses: The Current Retail Sales and Inventory Survey provides estimates of monthly sales and end-of-month merchandise inventories for retail stores in the United States by selected kinds of business. Sales and inventory data provide a current statistical picture of the retail portion of consumer activity. Monthly estimates of changes in sales and the value and levels of inventory are used by government and non-government analysts in gauging economic trends and formulating economic policy. The Bureau of Economic Analysis (BEA) uses this information to prepare the National Income and Products Accounts and to benchmark the annual input-output tables. Statistics provided from the Current Retail Sales and Inventory Survey are used to calculate the gross domestic product (GDP).

We currently publish retail sales and inventory estimates on the Standard Industrial Classification (SIC) basis. Starting in the spring of 2001, we will publish on the North American Industry Classification System (NAICS). Additionally, we are planning to add two new questions concerning Internet sales starting in FY 2000. We are also converting our monthly pin fed report forms to a print-on demand system referred to as DocuPrint.

Affected Public: Businesses or other for-profit organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 16, 1999.

Madeleine Clayton,

Office of the Chief Information Officer.

[FR Doc. 99–15685 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees on the African American Population, the American Indian and Alaska Native Populations, the Asian and Pacific Islander Populations, and the Hispanic Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a joint meeting followed by separate and concurrently held meetings of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian and Pacific Islander Populations, and the Hispanic Population. The Supplementary Information section for this notice provides information about the agenda for this meeting.

DATES: July 15–16, 1999. The July 15 meeting will begin at 9:00 a.m. and end at 5:15 p.m. The July 16 meeting will begin at 8:45 a.m. and end at 5:00 p.m. Last minute changes to the schedule are possible, and they could prevent us from providing advance notice.

ADDRESSES: The meeting will take place at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 20191.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 1647, Federal Building 3, Washington, DC 20233, telephone 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The agenda for the July 15 and 16 combined meetings will include discussions on (1) Introductory remarks and update; (2) Editing and Tabulation of Census 2000 Data on Race and Hispanic Origin; (3) Update on Census 2000 Operational Plan; (4) Update on Census 2000 Field Operations; (5) Update on Accuracy, Coverage, and Evaluation Survey; and (6) Dress Rehearsal Evaluations.

The four committees will meet separately and concurrently for sessions on both July 15 and 16. The Joint Committee meeting will break for the concurrent meetings.

The agenda for the CAC on the African American Population will include: (1) The review of Committee recommendations and responses; (2) update on Census Information Centers; (3) update on posters; and (4) a review of topics for the next day discussions.

The agenda for the CAC on the American Indian and Alaska Native Populations will include: (1) The review of Committee recommendations and responses; (2) update on Census Information Centers: (3) update on advertising campaign; (4) update on sampling and estimation procedures; and (5) a review of topics for the next day discussions.

The agenda for the CAC on the Asian and Pacific Islander Populations will include: (1) The review of Committee recommendations and responses; (2) an update on Hawaiian Homelands; (3) update on Census Information Centers; (4) update on recruitment and hiring; (5) update on the language program; and (6) a review of topics for the next day discussions.

The agenda for the CAC on the Hispanic Population will include: (1) the review of Committee recommendations and responses; (2) update on Census Information Centers; (3) update on recruitment and hiring; (4) update on the language program; and (5) a review of topics for the next day discussions.

On July 16, each of the four Committees will also address draft recommendations.

The CACs on the African American, American Indian and Alaska Native, and Hispanic Populations are comprised of 9 members each, and the Asian and Pacific Islander Committee is comprised of 13 members distributed between two subcommittees—The Asian Subcommittee consisting of 8 members and the Native Hawaiian and Other Pacific Islander Subcommittee consisting of 5 members. The Secretary of Commerce appoints the members. The Committees provide a channel of communication between the representative communities and the Bureau of the Census. They assist the Bureau in its efforts to reduce the count differential for Census 2000 and advise on ways that census data can best be disseminated to communities and other users.

The Committees will provide advice and recommendations for the implementation and evaluation phases of Census 2000. To do so, they will draw on several items including past experience with the 1990 census process and procedures, the results of evaluations and research studies, and the expertise and insight of their members.

All meetings are open to the public, and a brief period will be set aside on July 16 for public comment and questions. Individuals with extensive

questions or statements must submit them in writing to the Committee Liaison Officer, named above, at least three days before the meeting.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer.

Dated: June 14, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–15669 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on the American Indian and Alaska Native Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a meeting of the Census Advisory Committee on the American Indian and Alaska Native Populations. The meeting will focus on updates and plans related to the enumeration of the American Indian and Alaska Native Populations, particularly in American Indian and Alaska Native areas. The meeting also will include a status report on the ongoing American Indian and Alaska Native Regional Meeting for Census 2000.

DATES: July 14, 1999. The meeting will begin at 12 noon and end at 5:10 p.m. Last minute changes to the schedule are possible, and they could prevent us from providing advance notice.

ADDRESSES: The meeting will take place at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 20191.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 1647, Federal Building 3, Washington, DC 20233, telephone 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Committee is composed of nine members appointed by the Secretary of Commerce. The Committee provides a channel of communication between the representative communities and the Bureau of the Census. The Committee assists the Bureau in its efforts to reduce the count differential for Census 2000 and advises on ways that decennial census data can best be disseminated to communities and other users.

The committee will provide advice and recommendations for the implementation and evaluation phases of Census 2000. To do so, they will draw on several items including past experience with the 1990 census process and procedures, the results of evaluations and research studies, and the expertise and insight of their members.

The meeting is open to the public, and a brief period is set aside during the closing session for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer, named above, at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer.

Dated: June 14, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–15667 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on the Hispanic Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a meeting of the Census Advisory Committee on the Hispanic Population. The meeting will focus on the operational plans for conducting Census 2000 in Puerto Rico.

DATES: July 14, 1999. The meeting will begin at 8:00 a.m. and end at 1:15 p.m. Last minute changes to the schedule are possible, and they could prevent us from providing advance notice.

ADDRESSES: The meeting will take place at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 20191.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 1647, Federal Building 3, Washington, DC 20233, telephone 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Committee is composed of nine members appointed by the Secretary of Commerce. The Committee provides a channel of communication between the representative communities and the Bureau of the Census. The Committee assists the Bureau in its efforts to reduce the count differential for Census 2000 and advises on ways that decennial census data can best be disseminated to communities and other users.

The committee will provide advice and recommendations for the implementation and evaluation phases of Census 2000. To do so, they will draw on several items including past experience with the 1990 census process and procedures, the results of evaluations and research studies, and the expertise and insight of their members.

The meeting is open to the public, and a brief period is set aside during the closing session for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer, named above, at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer.

Dated: June 14, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–15668 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 5/18/99–6/15/99

Chicago Dial Indicator Company	1327 Redeker Road, Des Plaines, IL 60016.	05/26/99	Electronic digital and analog measuring instruments.
Polycast Incorporated	9898 SW Tigard Street, Tigard, OR 97223.	05/27/99	Ink jet printer parts.
Sales & Marketing Assistance Corporation.	921 Gaither Road, Gaithersburg, MD 20877.	05/27/99	Personal computers.
Houston Wire Works, Inc	527 Michigan, Houston, TX 77578	05/27/99	Metal racks and display cabinets.
Pacifica Marine, Inc	4735 E. Marginal Way, Seattle, WA 98134.	05/27/99	Passenger railcar interiors.
Sebro Packaging Corp	270 Packaging Corp., S. Hackensack, NJ 07606.	05/27/99	Folding paperboard boxes.
Lenco Industries, Inc	P. O. Box 668, Pittsfield, MA 01201	06/01/99	Non-military armored security vans.
Award Design Medals, Inc	P. O. Box 1170, Noble, OK 73068	06/01/99	Belt buckles.
Fuller Box Company, Inc	150 Chestnut Street, North Attleboro, MA 02761.	06/09/99	Metal hinged and set-up paperboard boxes for the jewelry, giftware and collectible industries.
Crown Yarn Dye Company, Inc	P. O. Box 3328, South Attleboro, MA 02703.	06/09/99	Dyed yarn of cotton, wool, rayon, nylon, polyester, acetate, acrylic and those blends.
Artistic Lamp Company	3 Spencer Highway, S. Houston, TX 77587.	06/08/99	Electrical lamps and lighting fittings of brass.
Geist Manufacturing, Inc	1821 Yolanda Avenue, Lincoln, NE 68521.	06/08/99	Cord covers or duct, extruded plastic stripes that cover electrical cards to prevent people from tripping.
Academy Die Casting and Plating Co., Inc.	47 Langstaff Avenue, Edison, NJ 08817 ..	06/10/99	Zinc die casting of automotive accessories, architectural hardware, hand and lawn garden tools.
Lenco, Inc	10240 Deerpark Rd., Waverly, NE 68462	06/10/99	Audio cassette housings, and other articles of plastic such as flea and tick repellent applicators and nail polish caps.
Cross Creek Apparel, Inc	P.O. Drawer 1107, Mt. Airy, NC 27030	06/10/99	Men's, women's and boy's knit shirts of cotton.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: June 15, 1999.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 99–15629 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Institute of Standard and Technology

Notice of Intent To Establish the Federal Advisory Committee for the Advanced Technology Program; Request for Nominations of Members Willing To Serve on the Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of intent to establish the Federal Advisory Committee for the Advanced Technology Program and request for nominations of members willing to serve on the committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act and the General Services Administration (GSA) rule on Federal Advisory Committee Management, the Secretary of Commerce has determined that the establishment of the Advanced Technology Program (ATP) Advisory Committee (the "Committee") is in the public interest in connection with the performance of duties imposed on the Department by law. The Committee will advise the Director of the National Institute of Standards and Technology (NIST) on ATP programs.

NIST invites and requests nominations of individuals for appointment to the Committee NIST will consider nominations received in response to this notice for appointment to the Committee.

DATES: The charter will be filed under the Act on July 6, 1999. Nominations for members to serve on the committee must be submitted to the address below on or before this date.

ADDRESSES: Advanced Technology Program, National Institute of Standard and Technology, Gaitherburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Brian Belanger, Office of the Director, National Institute of Standards and Technology, Mail Stop 1004, Gaitherburg, MD 20899–1004, telephone: 301–975–4720, fax: 301–948–1224.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act, Title

5 United States Code Appendix Section 2 et seq., and the General Services Administration (GSA) rule on Federal Advisory Committee Management, Title 41 Code of Federal Regulations subpart 101–6.10, the Secretary of Commerce has determined that the establishment of the Advanced Technology Program (ATP) Advisory Committee (the "Committee") is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Director of the National Institute of Standards and Technology (NIST) on ATP programs, plans, and policies.

The Committee will consist of not fewer than six nor more than twelve members appointed by the Director of NIST and its membership will be balanced to reflect the wide diversity of technical disciplines and industrial sectors represented in ATP projects NIST invites and requests nominations of individuals for appointment to the Committee.

The Committee will function solely as an advisory body, in compliance with the provision of the Federal Advisory Committee Act.

Authority: Federal Advisory Committee Act: 5 U.S.C. App. 2 and General Services Administration Rule: 41 CFR subpart 101–6.10.

Dated: June 14, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–15584 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 960223046–9151–04; I.D. 050799B]

RIN 0648–ZA09

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: NMFS (hereinafter referred to as "we" or "us") issues this document to describe how you, the applicant, can apply for funding under the Saltonstall-Kennedy (S-K) Grant Program and how we will determine whether to fund your proposal.

Under the S-K Program, we provide financial assistance for research and development projects that address various aspects of U.S. fisheries (commercial or recreational), including, but not limited to, harvesting, processing, marketing, and associated infrastructures.

DATES: We must receive your application by close of business August 20, 1999, in one of the offices listed in section I.E. Applications Addresses of this document. You must submit one signed original and nine signed copies of the completed application (including supporting information). We will not accept facsimile applications.

ADDRESSES: You can obtain an application package from, and send your completed application(s) to, the NMFS Regional Administrator located at any of the offices listed in section I.E. Applications Addresses of this document.

FOR FURTHER INFORMATION CONTACT: Alicia L. Jarboe, S-K Program Manager, (301) 713-2358.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Saltonstall-Kennedy Act (S-K Act), as amended (15 U.S.C. 713c-3), established a fund (known as the S-K fund) that the Secretary of Commerce uses to provide grants or cooperative agreements for fisheries research and development projects addressed to any aspect of U.S. fisheries, including, but not limited to, harvesting, processing, marketing, and associated infrastructures. U.S. fisheries[1] include any fishery,

commercial or recreational, that is or may be engaged in by citizens or nationals of the United States, or citizens of the Northern Mariana Islands, the Republic of the Marshall Islands, Republic of Palau, and the Federated States of Micronesia.

The objectives of the S-K Grant Program, and therefore the funding priorities, have changed over the years since the program began in 1980. The original focus of the program was to develop underutilized fisheries within the U.S. Exclusive Economic Zone (EEZ).

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), originally passed in 1976, directed us to give the domestic fishing industry priority access to the fishery resources in the EEZ.

To accelerate development of domestic fisheries, the American Fisheries Promotion Act of 1980 amended the S-K Act to

stimulate commercial and recreational fishing efforts in underutilized fisheries.

In the following years, the efforts to Americanize the fisheries were successful to the point that most nontraditional species were fully developed and some traditional fisheries became overfished. Therefore, we changed the emphasis of the S-K Program to resource conservation and management. Funding priorities included a range of conservation and management issues and aquaculture.

In 1996, the Sustainable Fisheries Act (SFA) (Pub. L. 104–297), was enacted. The SFA amended the Magnuson-Stevens Act and supported further adjustment to the S-K Program to address the current condition of fisheries.

The Magnuson-Stevens Act, as amended by the SFA, requires us to undertake efforts to prevent overfishing, rebuild overfished fisheries, insure conservation, protect essential fish habitats, and realize the full potential of U.S. fishery resources. It further requires that we take into account the importance of fishery resources to fishing communities; provide for the sustained participation of such communities; and, to the extent possible, minimize the adverse economic impacts of conservation and management measures on such communities. The Magnuson-Stevens Act defines a "fishing community" as "a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community." (16 U.S.C. 1802 (16)).

The NOAA Strategic Plan, updated in 1998, has three goals under its Environmental Stewardship Mission: Build Sustainable Fisheries (BSF), Recover Protected Species, and Sustain Healthy Coasts. The S-K Program supports fisheries research and development activities that directly relate to the BSF goal.

The revised objectives for BSF, consistent with the Magnuson-Stevens Act, are:

1. Eliminate and prevent overfishing and overcapitalization.

2. Attain economic sustainability in fishing communities.

[1]For purposes of this document, a fishery is defined as one or more stocks of fish, including tuna, and shellfish that are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Alaskan groundfish, Pacific whiting, New England whiting, and eastern oysters.

3. Develop environmentally and economically sound marine aquaculture.

Our goal for the FY 2000 S-K Grant Program announced in this document is to address the needs of fishing communities in terms of the preceding BSF objectives. This goal is reflected in the funding priorities listed in section II of this document. Successful applications will be those aimed at helping fishing communities to resolve issues that affect their ability to fish; make full use of those species that are currently under Federal or state fishery management plans (FMPs) and cultured species; and address the socioeconomic impacts of overfishing and overcapitalization.

The S-K Program is open to applicants from a variety of sectors, including industry, academia, and state and local governments. However, the scope of this program is limited to marine species and Great Lakes species.

B. Changes from the Last Solicitation Notice

We have changed some of the conditions and procedures in this document from the last S-K Grant Program solicitation notice published on March 2, 1998 (63 FR 10191). Therefore, we encourage you to read the entire document before preparing your application.

C. Funding

We are soliciting applications for Federal assistance, pursuant to 15 U.S.C. 713c–3(c). This document describes how you can apply for funding under the S-K Grant Program, and how we will determine which applications we will fund.

Funding for projects depends on an allocation of funds by Congress for the S-K Grant Program in Fiscal Year (FY) 2000, which begins on October 1, 1999. We expect about $1.5 million to be available for FY 2000. We cannot guarantee that sufficient funds will be available to make awards for all approved applications submitted under this program.

In order to be funded under the S-K Grant Program, applications must propose activities that: address the funding priorities listed in section II of this document; are expected to produce a direct benefit (e.g., tool, information, service, or technology) to the fishing community (as defined in section I.A. of this document); and can be accomplished within 18 months. Acceptable research and development activities include applied research, demonstration projects, pilot or field testing, or business plan development. However, we will not fund projects that primarily involve infrastructure construction, port and harbor development, or start-up or operational costs for private business ventures. Furthermore, if your proposed project primarily involves data collection, it must be directed to a specific problem or need and be of a fixed duration, not of a continuing nature, in order to be considered.

D. Catalog of Federal Domestic Assistance

The S-K Grant Program is listed in the "Catalogue of Federal Domestic Assistance" under number 11.427, Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program.

E. Applications Addresses

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930; (978) 281-9267.

Southeast Region, NMFS, 9721 Executive Center Drive, North, St. Petersburg, FL 33702–2432, (727) 570-5324.

Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, (562) 980–4033.

Northwest Region, NMFS, 7600 Sand Point Way, NE., BIN C15700, Building 1, Seattle, WA 98115, (206) 526-6115.

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 or Federal Building, 709 West 9th Street, 4th Floor, Juneau, AK 99801–1668, (907) 586-7224.

F. Electronic Access Addresses

This solicitation and the application package are available on the NMFS S-K Home Page at: *www.nmfs.gov/sfweb/skhome.html*.

The 1998 updated Executive Summary of the NOAA Strategic Plan is available at: *www.strategic.noaa.gov/* and the Magnuson-Stevens Act is available at: *www.nmfs.gov/sfa/magact/*.

The list of species that are currently under Federal FMPs

is in the publication, *Status of Fisheries of the United States*, available at: *www.nmfs.gov/sfa/reports.html*.

II. Funding Priorities

Your proposal must address one of the priorities listed below as they pertain to marine or Great Lakes species. If you select more than one priority, you should list first on your application the priority that most closely reflects the objectives of your proposal.

If we do not receive proposals that adequately respond to the priorities listed, we may use S-K funds to carry out a national program of research and development addressed to aspects of U.S. fisheries pursuant to section 713c–3(d) of the

S-K Act, as amended.

The priorities are not listed in any particular order and each is of equal importance.

A. Conservation Engineering

Reduce or eliminate adverse interactions (that affect fishing activity) between fishing operations and nontargeted, protected, or prohibited species (e.g., juvenile or sublegal-sized fish and shellfish, females of certain crabs, Endangered Species Act (ESA)–listed fish, marine turtles, seabirds, or marine mammals), including the inadvertent take, capture, or destruction of such species.

Improve the survivability of fish discarded or intentionally released and of protected species released in fishing operations.

Reduce or eliminate impacts of fishing activity on essential fish habitat that adversely affect the sustainability of the fishery.

B. Optimum Utilization of Fishery Resources Currently under Federal or State Management, and Cultured Species

Reduce or eliminate technical barriers to trade.

Minimize harvest losses.

Develop usable products from economic discards (whole fish discarded because they are an undesirable species, size, or sex, or parts of fish discarded as not commercially useful) and byproducts of processing.

C. Fishing Community Transition

Help fishing communities to address the socioeconomic effects of overfishing and overcapitalized fisheries through such activities as planning and demonstration projects. Specific areas for these activities could include retraining of fishermen for alternative employment, alternative uses for existing fishing industry infrastructure, and planning for fishing capacity reduction. Activities may complement, but should not duplicate, programs available from other Federal, state, or local agencies.

D. Marine Aquaculture in the Off-Shore Environment

Advance the implementation of marine aquaculture in the off-shore environment (i.e., the EEZ) by addressing technical aspects such as systems engineering, environmental compatibility, and culture technology. Applications should demonstrate that

the goal is to support off-shore industry development.

Reduce or eliminate legal and social barriers to off-shore aquaculture development, e.g., legal constraints, use conflicts, exclusionary mapping, appropriate institutional roles.

III. How to Apply

A. Eligibility

To apply for grants or cooperative agreements, you must follow the instructions in this document. You are eligible to apply if:

1. You are a citizen or national of the United States;

2. You are a citizen of the Northern Mariana Islands (NMI), being an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the constitution of the NMI;

3. You are a citizen of the Republic of the Marshall Islands, Republic of Palau, or the Federated States of Micronesia; or

4. You represent an entity that is a corporation, partnership, association, or other non-Federal entity, non-profit or otherwise (including Indian tribes), if such entity is a citizen of the United States or NMI, within the meaning of section 2 of the Shipping Act, 1916, as amended (46 U.S.C. app. 802).

We support cultural and gender diversity in our programs and encourage women and minority individuals and groups to submit applications. Furthermore, we recognize the interest of the Secretaries of Commerce and Interior in defining appropriate fisheries policies and programs that meet the needs of the U.S. insular areas, so we also encourage applications from individuals, government entities, and businesses in U.S. insular areas.

We encourage applications from members of the fishing community, and applications that involve fishing community cooperation and participation. We will consider the extent of fishing community involvement when evaluating the potential benefit of funding a proposal.

You are not eligible to submit an application under this program if you are an employee of any Federal agency; a Regional Fishery Management Council (Council); or an employee of a Council. However, Council members who are not Federal employees can submit an application to the S-K Program.

Our employees, including full-time, part-time, and intermittent personnel, are not allowed to help you prepare your application, except to provide you with information on program goals, funding priorities, application procedures, and completion of application forms. Since this is a competitive program, we will not provide assistance in conceptualizing, developing, or structuring proposals, or write letters of support for a proposal.

B. Duration and Terms of Funding

We will award grants or cooperative agreements for a maximum period of 18 months.

We do not fund multi-year projects under the S-K Program. If we select your application for funding and you wish to continue work on the project beyond the funding period, you must submit another proposal to the competitive process for consideration, and you will not receive preferential treatment.

If we select your application for funding, we have no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is totally at our discretion.

Even though we are publishing this announcement we are not required to award any specific grant or cooperative agreement, nor are we required to obligate any part or the entire amount of funds available.

C. Cost Sharing

We are requiring cost sharing in order to leverage the limited funds available for this program and to encourage partnerships among government, industry, and academia to address the needs of fishing communities. You must provide a minimum cost share of 10 percent of total project costs, but your cost share must not exceed 50 percent of total costs. (For example, if the proposed total budget for your project is $100,000, you must contribute at least $10,000, but no more than $50,000, toward the total costs. Accordingly, the Federal share you apply for would range from $50,000 to $90,000.) If your application does not comply with these cost share requirements, we will return it to you and will not consider it for funding. The funds you provide as cost sharing may include funds from private sources or from state or local governments, or the value of in-kind contributions. You may not use Federal funds to meet the cost sharing requirement except as provided by Federal statute. In-kind contributions are non-cash contributions provided by you as the applicant or by non-Federal third parties. In-kind contributions may include but are not limited to, personal services volunteered to perform tasks in the project, and permission to use, at no cost, real or personal property owned by others.

We will determine the appropriateness of all cost sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in 15 CFR parts 14 and 24. In general, the value of in-kind services or property you use to fulfill your cost share will be the fair market value of the services or property. Thus, the value is equivalent to the cost for you to obtain such services or property if they had not been donated. You must document the in-kind services or property you will use to fulfill your cost share.

If we decide to fund your application, we will require you to account for the total amount of cost share included in the award document.

D. Format

Your application must be complete and must follow the format described here. Your application should not be bound in any manner and must be printed on one side only. You must submit one signed original and nine signed copies of your application.

1. Cover Sheet

You must use Office of Management and Budget (OMB) Standard Form 424 and 424B (4–92) as the cover sheet for each project. (In order to complete item 16 of Standard Form 424, see section V.A.5. of this document.)

2. Project Summary

You must complete NOAA Form 88–204 (10–98), Project Summary, for each project. You must list on the Project Summary the specific priority to which the application responds (see section II. of this document).

3. Project Budget

You must submit a budget for each project, using NOAA Form 88–205 (10–98), Project Budget and associated instructions. You must provide detailed cost estimates showing total project costs. Indicate the breakdown of costs between Federal and non-Federal shares, divided into cash and in-kind contributions. To support the budget, describe briefly the basis for estimating the value of the cost sharing derived from in-kind contributions. Specify estimates of the direct costs in the categories listed on the Project Budget form.

You may also include in the budget an amount for indirect costs if you have an established indirect cost rate with the Federal government. For this solicitation, the total dollar amount of the indirect costs you propose in your application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. The Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs. If you have an approved indirect cost rate above 25 percent of the total proposed direct cost, you may use the amount above the 25–percent level up to the 100–percent level as part of the non-Federal share. You must include a copy of the current, approved, negotiated indirect cost agreement with the Federal government with your application.

We will not consider fees or profits as allowable costs in your application.

The total costs of a project consist of all allowable costs you incur, including the value of in-kind contributions, in accomplishing project objectives during the life of the project. A project begins on the effective date of an award agreement between you and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, we cannot reimburse you for time that you expend or costs that you incur in developing a project or preparing the application, or in any discussions or negotiations you may have with us prior to the award. We will not accept such expenditures as part of your cost share.

4. Narrative Project Description

You must provide a narrative description of your project that may be up to 15 pages long. The narrative should demonstrate your knowledge of the need for the project, and show how your proposal builds upon any past and current work in the subject area, as well as relevant work in related fields. You should not assume that we already know the relative merits of the project you describe. You must describe your project as follows:

a. Project goals and objectives. Identify the specific priority listed earlier in the solicitation to which the proposed project responds. Identify the problem/opportunity you intend to address and describe its significance to the fishing community. State what you expect the project to accomplish.

If you are applying to continue a project we previously funded under the S-K Program, describe in detail your progress to date and explain why you need additional funding. We will consider this information in evaluating your current application.

b. Project impacts. Describe the anticipated impacts of the project on the fishing community in terms of reduced bycatch, increased product yield, or other measurable benefits. Describe how you will make the results of the project available to the public.

c. Evaluation of project. Specify the criteria and procedures that you will use to evaluate the relative success or failure of a project in achieving its objectives.

d. Need for government financial assistance. Explain why you need government financial assistance for the proposed work. List all other sources of funding you have or are seeking for the project.

e. Federal, state, and local government activities and permits. List any existing Federal, state, or local government programs or activities that this project would affect, including activities requiring: certification under state Coastal Zone Management Plans; section 404 or section 10 permits issued by the Corps of Engineers; experimental fishing or other permits under FMPs; environmental impact statements to meet the requirements of the National Environmental Policy Act; or scientific permits under ESA and/or the Marine Mammal Protection Act. Describe the relationship between the project and these FMPs or activities, and list names and addresses of persons providing this information. If we select your project for funding, you are responsible for complying with all applicable requirements.

f. Project statement of work. The statement of work is an action plan of activities you will conduct during the period of the project. You must prepare a detailed narrative, fully describing the work you will perform to achieve the project goals and objectives. The narrative should respond to the following questions:

(1) What is the project design? What specific work, activities, procedures, statistical design, or analytical methods will you undertake?

(2) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting.)

(3) What are the major products?

You must include milestones, describing the specific activities and associated time lines to conduct the scope of work. Describe the time lines in increments (e.g., month 1, month 2), rather than by specific dates. You must identify the individual(s) responsible for the various specific activities.

This information is critical for us to conduct a thorough review of your application, so we encourage you to provide sufficient detail.

g. Participation by persons or groups other than the applicant. Describe how government and non-government entities, particularly members of fishing communities, will participate in the project, and the nature of their participation. We will consider the degree of participation by members of the fishing community in determining which applications to fund.

h. Project management. Describe how the project will be organized and managed. Identify the principal participants in the project. If you do not identify the principal investigator, we will return your application without further consideration. Include copies of any agreements between you and the participants describing the specific tasks to be performed. Provide a statement of the qualifications and experience (e.g., resume or curriculum vitae) of the principal investigator(s) and any consultants and/or subcontractors, and indicate their level of involvement in the project. If any portion of the project will be conducted through consultants and/or subcontracts, you must follow procurement guidance in 15 CFR part 24, "Grants and Cooperative Agreements to State and Local Governments," and 15 CFR part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations." If you select a consultant and/or a subcontractor prior to submitting an application, indicate the process that you used for selection.

5. Supporting Documentation

You should include any relevant documents and additional information (i.e. maps, background documents) that will help us to understand the project and the problem/opportunity you seek to address.

IV. Screening, Evaluation, and Selection Procedures

A. Initial Screening of Applications

When we receive applications at any of the NMFS Regional Offices, we will first screen them to ensure that they were received by the deadline date (see DATES); include OMB form 424 signed and dated by an authorized representative (see section III.D. of this document); were submitted by an eligible applicant (see section III.A. of this document); provide for at least a 10–percent cost share but not more than 50 percent (see section III.C. of this document); involve an eligible activity (see section I.C. of this document); address one of the funding priorities in this document for marine and Great Lakes species (see section II.A.-D. of this document); and include a budget, statement of work, and milestones, and identify the principal investigator (see sections III.D.3. and III.D.4. of this document). If your application does not

conform to these requirements and the deadline for submission has passed, we will return it to you without further consideration.

We do not have to screen applications before the submission deadline, nor do we have to give you an opportunity to correct any deficiencies that cause your application to be rejected.

B. Evaluation of Proposed Projects

1. Technical Evaluation

After the initial screening, we will solicit individual evaluations of each project application from three or more appropriate private and public sector experts to determine the technical merit. These reviewers will be required to certify that they do not have a conflict of interest concerning the application(s) they are reviewing. They will assign scores ranging from a minimum of 60 (poor) to a maximum of 100 (excellent) to applications based on the following criteria, with weights shown in parentheses:

a. Soundness of project design/ conceptual approach. Applications will be evaluated on the conceptual approach; the likelihood of project results in the time frame specified in the application; whether there is sufficient information to evaluate the project technically; and, if so, the strengths and/or weaknesses of the technical design relative to securing productive results. (50 percent) *b. Project management and experience and qualifications of personnel.* The organization and management of the project will be evaluated. The project's principal investigator and other personnel, including consultants and contractors participating in the project, will be evaluated in terms of related experience and qualifications. Applications that include consultants and contractors will be reviewed to determine if your involvement, as the primary applicant, is necessary to the conduct of the project and the accomplishment of its objectives. (25 percent)

c. Project evaluation. The effectiveness of your proposed methods to monitor and evaluate the success or failure of the project in terms of meeting its original objectives will be examined. (10 percent)

d. Project costs. The justification and allocation of the budget in terms of the work to be performed will be evaluated. Unreasonably high or low project costs will be taken into account. (15 percent)

Following the technical review, we will determine the weighted score for each individual review and average the individual technical review scores to determine the final technical score for each application. Then, we will rank applications in descending order by their final technical scores and determine a "cutoff" score that is based on the amount of funds available for grants. We will eliminate from further consideration those applications that scored below the cutoff.

2. Constituent Panel(s)

For those applications at or above the cutoff technical evaluation score, we will solicit individual comments and evaluations from a panel or panels of three or more representatives selected by the Assistant Administrator for Fisheries (AA). Panel members will be chosen from the fishing industry, state government, non-government organizations, and others, as appropriate. We will provide panelists with a summary of the technical evaluations, and, for applications to continue a previously funded project, information on progress on the funded work to date.

Each panelist will evaluate the applications in terms of the significance of the problem or opportunity being addressed, the degree of fishing community involvement in conducting the project, and the merits of funding each project. Each panelist will provide a rating from 0–4 (poor to excellent) for each project, and provide comments if they wish. Panel members will be required to certify that they do not have a conflict of interest and that they will maintain confidentiality of the panel deliberations.

Following the Constituent Panel meeting, we will average the individual ratings for each project. We will then develop a ranking of projects based on the individual ranks within each of the priority areas.

C. Selection Procedures and Project Funding

After projects have been evaluated and ranked, we will use this information, along with input from the NMFS Regional Administrators (RAs) and Office Directors (ODs), to develop recommendations for project funding. RAs/ODs will prepare a written justification for any recommendations for funding that fall outside the ranking order, or for any cost adjustments.

The AA will review the funding recommendations and comments of the RAs/ODs and determine the projects to be funded. In making the final selections, the AA may consider costs, geographical distribution, and duplication with other federally funded projects. Awards are not necessarily made to the highest ranked applications.

We will notify you in writing whether your application is selected or not. If your application is unsuccessful, we will return it to you. Successful applications will be incorporated into the award document.

The exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in preaward negotiations between you and NOAA/NMFS representatives. The funding instrument (grant or cooperative agreement) will be determined by NOAA Grants. You should not initiate your project in expectation of Federal funding until you receive a grant award document signed by an authorized NOAA official.

V. Administrative Requirements

A. Your Obligations as an Applicant

You must:

1. Meet all application requirements and provide all information necessary for the evaluation of the proposal, including one signed original and nine signed copies of the application.

2. Be available to respond to questions during the review and evaluation of the proposal(s).

3. Submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." The following explanations are provided:

a. Nonprocurement debarment and suspension. Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

b. Drug-free workplace. Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)," and the related section of the certification form prescribed above applies;

c. Anti-lobbying. Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions," and the lobbying section of the certification form applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000; and

d. Anti-lobbying disclosures. Any applicant who has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

4. If applicable, require applicants/ bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for your use and should not be sent to the Department of Commerce (Commerce). You should send an SF-LLL submitted by any tier recipient or subrecipient to Commerce only if your application is recommended for funding. Instructions will be contained in the award document. We will provide you with all required forms.

5. Complete Item 16 on Standard Form 424 (4–92) regarding clearance by the State Point Of Contact (SPOC) established as a result of E.O. 12372. You can get the list of SPOCs from any of the NMFS offices listed in this document or from the S-K Home Page (see section I.F. Electronic Access Addresses of this document). It is also included in the "Catalog of Federal Domestic Assistance." You must contact the SPOC, if your state has one, to see if applications to the S-K Program are subject to review. If SPOC clearance is required, you are responsible for getting that clearance in time to submit your application to the S-K Program by the deadline.

6. Complete Standard Form 424B (4–92), "Assurances—Non-construction Programs."

B. Your Obligations as a Successful Applicant (Recipient)

If you are selected to receive a grant award for a project, you must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and, submit financial status reports (SF 269) to GMD in accordance with the award conditions.

3. Submit semiannual project status reports on the use of funds and progress of the project to us within 30 days after the end of each 6-month period. You will submit these reports to the individual identified as the NMFS Program Officer in the funding agreement.

4. Submit a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work you performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, you are required to submit final reports in electronic format, in accordance with the award terms and conditions, for publication on the NMFS S-K Home Page. You may charge the costs associated with preparing and transmitting your final reports in electronic format to the grant award. We will consider requests for exemption from the electronic submission requirement on a case-by-case basis.

We will provide you with OMB-approved formats for the semiannual and final reports.

5. In addition to the final report in section V.B.4. of this document, we request that you submit any publications printed with grant funds (such as manuals, surveys, etc.) to the NMFS Program Officer for dissemination to the public. Submit either three hard copies or an electronic version of any such publications.

C. Other Requirements of Recipients

1. Federal Policies and Procedures

If you receive Federal funding, you are subject to all Federal laws and Federal and Commerce policies, regulations, and procedures applicable to financial assistance awards. You must comply with general provisions that apply to all recipients under Commerce grant and cooperative agreement programs.

2. Name Check Review

You may be subject to a name check review process. We use name checks to determine if you or any key individuals named in your application have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on your management, honesty, or financial integrity.

3. Financial Management Certification/Preaward Accounting Survey

You may, at the discretion of the NOAA Grants Officer, be required to have your financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable OMB Circulars prior to execution of the award. If you are a first-time applicant for Federal grant funds, you may be subject to a preaward accounting survey by Commerce prior to execution of the award.

4. Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

5. Delinquent Federal Debts

We will not award any Federal funds to you or any subrecipients who have an outstanding delinquent Federal debt or fine until either:

a. The delinquent account is paid in full,

b. A negotiated repayment schedule is established and at least one payment is received, or

c. Other arrangements satisfactory to Commerce are made.

6. Buy American

You are encouraged to the extent feasible to purchase American-made equipment and products with the funding provided under this program.

7. Preaward activities

If you incur any costs prior to receiving an award agreement signed by an authorized NOAA official, you do so solely at your own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that you may have received, there is no obligation on the part of Commerce to cover preaward costs.

8. False statements

A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts.

Furthermore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB under control numbers 0348–0040, 0348–0043, 0348–0046, and 0648–0135. Notwithstanding any other provision of law, no person is

required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

A solicitation for applications will also appear in the "Commerce Business Daily."

Dated: June 15, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15723 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060899A]

Marine Mammals; File No. P466B

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Scott D. Kraus, Ph.D., Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, MA 02110–3309, has requested an amendment to scientific research Permit No. 1014.

DATES: Written or telefaxed comments must be received on or before July 21, 1999.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 1014, issued on August 29, 1996 (61 FR 51688) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222–226).

Permit No. 1014 authorizes the permit holder to: take up to 350 northern right whales (*Eubaleana glacialis*) by harassment during approach closer than 100 feet by vessel or less than 1000 ft. by aircraft. Of these 80 may be biopsy darted; 10 radio tagged, 15 satellite tagged, and 50 ultrasonically measured; collect tissue samples dead stranded animals and exported to Canada, South Africa, New Zealand, Australia and England; and export 100 samples taken legally in other countries.

The permit holder requests an amendment to: play sounds back to up to 100 right whales annually. Sounds projected will not exceed the sound pressure levels found in the normal oceanic environment. Additionally, up to 50 whales will be tagged with suction-cup acoustic recording tags to determine received sound levels from both playback experiments and controlled vessel approaches.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 10, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–15720 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–33–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 980326078–9120–02]

Internet Usage Policy

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Patent and Trademark Office (PTO) is publishing the final Internet usage policy to provide guidance to PTO employees regarding the use of the Internet for official PTO business. The policy covers communications with applicants via Internet electronic mail (e-mail), and using the Internet to search for information concerning patent applications and elements appearing in trademark applications. Guidelines for citing electronic information are provided in the attachment.

DATES: The Internet usage policy is effective June 21, 1999.

FOR FURTHER INFORMATION CONTACT: Magdalen Greenlief, by mail to her attention addressed to Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231; by telephone at (703) 305–8813; by facsimile transmission to (703) 305–8825; or by electronic mail through the Internet to "magdalen.greenlief@uspto.gov".

SUPPLEMENTARY INFORMATION: The PTO published a "Request for Comments on Proposed Internet Usage Policy" in the **Federal Register** on October 26, 1998 (63 FR 57101) and in the Official Gazette of the Patent and Trademark Office on November 17, 1998 (1216 OG 74). The proposed policy is being adopted without change. The attached guidelines for citing electronic information have been revised.

Discussion of Public Comments

Sixteen comments were received by the PTO in response to the request for comments. All comments have been fully considered. The comments generally support (1) the use of Internet e-mail for communications between applicant and the PTO, and (2) the use of the Internet to perform searches provided the confidentiality of pending patent applications is not compromised.

Comments concerning the patent provisions are addressed separately from the comments concerning the trademark provisions.

(A) Comments Concerning the Patent Provisions

Comment 1: One comment stated that Internet e-mail will have a very limited use in view of the fact that proposed Patent Article 5 limits the use of the Internet e-mail for communications that do not require a signature. It was suggested that the PTO establish an Extranet at its earliest convenience to which signed documents can be sent.

Response: The PTO will take the suggestion of establishing an "Extranet" under advisement. The PTO is actively planning other options such as digital signatures, digital certificates, encryption and public key/private key encryption.

Comment 2: One comment suggested that there should be no limitations as to the types of correspondence that may be communicated via Internet e-mail and that e-mail with message encryption with verifiable digital signatures should have the same weight as communications in paper or facsimile.

Response: The PTO is limiting the use of Internet e-mail to communications other than those under 35 U.S.C. 132 (responses to a notice of rejection) or which otherwise require a signature. The PTO is considering how to best handle electronic signatures and how to internally process e-mailed responses to a notice of rejection. Based on the experience gathered with the limited use of e-mail, and after further study and development, the PTO hopes in the future to accept the electronic filing of communications under 35 U.S.C. 132 and communications which otherwise require a signature.

Comment 3: One comment suggested that the use of e-mail should be expanded and urged the PTO to ensure that e-mail sent to it can be securely transmitted and reliably stored. An example of such expanded use would be the sending of draft claims to a patent examiner prior to a telephonic/personal interview.

Response: Communications via Internet e-mail are at the discretion of the applicant. If applicant wishes to communicate with the PTO on an unsecure medium, applicant is doing so at his/her own risk. Article 5 of the Patent Internet Usage Policy does not prohibit applicant from using the Internet e-mail to transmit draft claims to a patent examiner prior to a telephonic/personal interview. If applicant chooses to transmit a copy of the draft claims via Internet e-mail to the patent examiner prior to a telephonic/personal interview, applicant may do so. However, since the correspondence would contain information subject to the confidentiality requirement as set forth in 35 U.S.C. 122, the patent examiner will not respond to applicant's communication via Internet e-mail unless there is a written authorization by applicant in the application file record. The patent examiner may respond by telephone, or other appropriate means. A printed copy of the Internet e-mail communication will be made of record in the application file.

Comment 4: One comment suggested that some simple or routine correspondence of a non-confidential nature (e.g., interview scheduling requests, inquiries as to whether a document has been received by the examiner, inquiries as to an examiner's fax number, etc.) should be permitted without requiring an advance authorization form even though a serial number of a patent application may be included in the e-mail communications.

Response: A written authorization from applicant is required only where applicant's Internet e-mail correspondence to the PTO contains information subject to the confidentiality requirement of 35 U.S.C. 122 *and* applicant wishes the PTO to respond via Internet e-mail to applicant's correspondence. If applicant's e-mail correspondence to the patent examiner contains information subject to the confidentiality requirement of 35 U.S.C. 122 and there is no written authorization by applicant in the application file, the patent examiner may respond to applicant's e-mail correspondence by telephone, or other appropriate means (see Patent Internet Usage Policy Article 7).

Comment 5: One comment indicated that it would not be necessary for the PTO to confirm receipt of an e-mail communication from a sender since the sender can require a receipt from his/her e-mail system for any message sent. Several comments indicated that it would be desirable to receive an acknowledgment from the PTO of receipt of e-mail communications with attachments from applicant. One comment suggested a bounce-back acknowledgment with an attachment such that the sender can verify that the confirmation matches the transmission. Another comment suggested an automatic confirmation that a message was received by the PTO with a later confirmation that the file attachments are received and readable.

Response: The PTO will adopt work steps, develop in-house guidelines, and work with the Office of the Chief Information Officer in an effort to ensure that the acknowledgment of an e-mail communication together with a copy of an attachment containing the original transmission is sent back to the applicant upon receipt in the Office.

Comment 6: Several comments indicated that they do not foresee any problem with the deletion of the requirement for an express waiver of 35 U.S.C. 122 by the applicant before Internet e-mail may be used by PTO employees to reply to the applicant's e-mail correspondence where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified. The comments indicated that the requirement for a written authorization is preferable. One comment suggested that the authorization form should not include a statement that Internet communications are not secure.

Response: The authorization form set forth in Article 5 of the Patent Internet Usage Policy is a sample form suggested by the PTO that applicants may use to give the PTO written authorization to communicate with applicants via Internet e-mail. The PTO recommends that applicants use the suggested language. However, if applicants prefer to use their own authorization form, applicants may do so provided it is clear that applicants are giving the PTO written authorization to use Internet e-mail to respond to applicants' e-mail correspondence.

Comment 7: Several comments indicated that other appropriate means such as fax or telephone would be acceptable to respond to applicant's e-mail correspondence. One comment stated that the use of other means would not be acceptable where applicant requests the PTO to respond via e-mail.

Response: Article 7 of the Patent Internet Usage Policy requires all e-mail correspondence from applicant to be responded to by PTO personnel. Furthermore, Article 7 permits PTO personnel to respond to applicant's Internet e-mail correspondence by other appropriate means such as telephone, or by facsimile transmission. The use of the telephone or facsimile transmission to respond to applicant's e-mail correspondence appears to be just as effective as the use of Internet e-mail. The suggestion to require the PTO to use only Internet e-mail to respond to applicant's e-mail correspondence upon applicant's request has not been adopted since such a requirement would be unreasonable. PTO personnel should have the discretion to decide

what appropriate means he/she should use to respond to applicant's e-mail correspondence.

Comment 8: Several comments indicated that interviews are more effective when conducted in person or by telephone rather than by e-mail. The comments suggested that e-mail would be very useful to transmit proposed claims, or amendments to the patent examiner prior to an interview.

Response: Communications via Internet e-mail are at the discretion of applicants. Applicants may use Internet e-mail to transmit proposed claims, and/or proposed amendments to the patent examiner prior to an interview. Since applicants' e-mail correspondence would contain information subject to the confidentiality requirement of 35 U.S.C. 122, the patent examiner will not be able to respond to applicants' e-mail correspondence via Internet e-mail unless a written authorization from applicant is in the application file record.

Comment 9: One comment indicated that despite the lack of encryption, he would use e-mail almost exclusively if it were authorized since most matters are not of such confidential nature that security is an issue. Another comment indicated that without encryption and digital signature, use of Internet e-mail would be limited to non-substantive issues and non-confidential subject matter. Another comment indicated that Internet e-mail would be a convenient way to request, set up and confirm regular telephone interviews.

Response: The PTO is considering options such as encryption and digital signature to improve security of e-mail.

Comment 10: Several comments favor the use of digital signatures, digital certificates and encryption to improve security of e-mail. The different kinds of software recommended are public/private key encryption program PGP(®), Verisign ™, and S/MIME with digital certification. One comment suggested that the users be given an opportunity to comment on the alternatives considered by the PTO.

Response: The PTO is planning to use PKI technology to provide digital certificates and directory services to support both internal and external e-mail users.

Comment 11: Several comments favor the use of the Internet for searching and retrieving scientific and technical information in patent applications provided that the PTO ensures that the searches are conducted in a manner that does not compromise the confidentiality of patent applications.

Response: Because security issues concerning transmission and capture of search requests by unauthorized individuals have not yet been resolved, patent examiners are instructed to exercise good judgment and restrict their searches to non-specific patent application uses so as to ensure that the confidentiality of patent applications is not compromised. Patent Internet Usage Policy, Article 9, states that Internet search activities that could disclose proprietary information directed to a specific application, other than a reissue application or reexamination proceeding, are not permitted.

(B) Comments Concerning the Trademark Provisions

Comment 1: One comment indicated that a reply to an e-mail communication from the PTO which contained the original transmission would be desirable in order that the sender could verify that the content of the transmission received by the PTO matches the original transmission.

Response: The PTO will adopt work steps, develop in-house guidelines, and work with the Office of the Chief Information Officer in an effort to ensure that the acknowledgment of an e-mail response together with a copy of an attachment containing the original transmission is sent back to the applicant or applicant's attorney upon receipt in the PTO.

Comment 2: A concern was raised regarding the accuracy of the record with regard to the telephonic correspondence between the examining attorney and the applicant. It was suggested that the PTO employ a form of audio capture in order to store telephone conversations and that these electronic files could be made a part of the record.

Response: The intent of Article 10 was to allow the attorney in the PTO to respond to the communication in the most efficient and appropriate method depending upon the circumstances of the particular situation. Accuracy of the notes to the file regarding telephone conversations have not posed a problem in the past and the PTO is not planning to implement audio capture techniques in order to make recordings of telephone conversations a part of the official record.

Comment 3: One comment maintained that examiner's amendment that is issued electronically should only be done so after agreement on the issues have been reached between the examiner and the applicant or his/her attorney. Further, a hard copy of the amendment should be placed in the file.

Response: This is the current policy in the PTO. Examiner's amendments are only issued after agreement has been reached between the examining attorney and the applicant or his/her attorney. This policy will not change. As indicated in the policy statement, all Internet e-mail communications between the examining attorney and the applicant or his/her representative are to be printed as hard copy and inserted into the paper file. An examiner's amendment would be no exception to this policy. (See Trademark Internet Usage Policy, Article 8.)

Comment 4: One comment suggested that all actions issued by the PTO requiring a timely response by the applicant should always be mailed through the U.S. mail system, including those that were communicated to the applicant by e-mail.

Response: Sending an Office action by regular mail as well as by e-mail defeats a significant purpose that would be achieved by the use of e-mail. The use of e-mail to communicate with applicants is fast and eliminates the physical transfer of unnecessary paper. As many applicants and applicants' representatives do today with regular mail, procedures to record receipt of e-mail should be put in place. In this way, an applicant or his/her representative may use these established procedures to establish non-receipt of an e-mail Office action if the application is later abandoned for failure to respond to the Office action. Justification for revival of an application based on documentation of non-receipt of an Office action would be the same for e-mailed Office actions as it is today for Office actions mailed in regular mail. Therefore, it is unnecessary to send a hard copy of the e-mailed Office action through the regular mail. (See also TMEP Section 702.04(e)—Procedure for Filing by Fax)

Comment 5: One Comment suggested that e-mail responses from applicants that require verification through declaration or affidavit be required to provide an electronically reproduced signature or, if such signature cannot adequately be sent via the Internet, that such documents be sent by fax, regular mail or private package delivery.

Response: It would be quite acceptable for a signed declaration or affidavit to be received by e-mail in the PTO by means of a software package that allowed for viewing of the actual signed document. The PTO currently accepts original applications through its Trademark Electronic Application System (TEAS) with an electronic signature, i.e., any combination of alpha/numeric characters that has been specifically adopted to serve the function of the signature, preceded and followed by the forward slash (/). Similarly, an electronic signature selected by the applicant would validate an affidavit or declaration submitted by e-mail in the course of examination of the application. Such an affidavit or declaration would be submitted as the body of or word processing attachment to the applicant's e-mail response.

Comment 6: One comment suggested advising applicants not to send confirming or follow-up hard paper copies of responses which are sent by e-mail. It was observed that such additional submissions could adversely delay prosecuting the trademark application.

Response: The PTO agrees with this suggestion and advises applicants to refrain from sending such "confirmation" copies of e-mail correspondence. This recommendation has also been announced concerning submissions by facsimile in which confirmation copies of faxed correspondence are discouraged. (See TMEP Section 702.04(e)—Procedure for Filing by Fax)

Comment 7: One comment questioned whether an additional form of communication with the PTO would result in increased administrative costs for the PTO and for customers of the PTO.

Response: The PTO would incur no additional costs in the administration of Internet communications. The PTO would utilize the systems and personnel already in place to process these communications. With regard to costs for customers of the PTO, non-participating customers would incur no indirect costs because the PTO has no need to raise fees to administer this system. Participating customers may or may not incur additional costs depending on their circumstances, but since this form of communication is purely at the option of the customer, the customer alone will decide whether the benefits of Internet communications justify any additional expense. Use of Internet e-mail is purely at the option of the applicant.

Comment 8: One comment indicated that foreseeable problems exist in that e-mail communications are more likely to contain errors than other submissions to the PTO, and that the users of this form of communication should bear a higher burden of proof and additional fees for correcting errors in e-mail communications.

Response: There is no basis for the PTO to presume that e-mail submissions are more likely to contain errors than other forms of communications. The PTO expects that applicants and their representatives would exhibit the same attention to the accuracy of their e-mail submissions as they would to submissions made using any other means. Furthermore, the PTO will not penalize customers who wish to use e-mail. Utilization of Internet communications will help the PTO become more technologically advanced and efficient. Additional burdens and fees for those cooperating with these efforts would be counterproductive; therefore, this suggestion will not be adopted.

Comment 9: One comment suggested that the PTO study, publish and request Comments on the e-TEAS electronic application system for the filing of trademark and service mark applications over the Internet.

Response: On November 1, 1997, the PTO began a pilot program accepting trademark and service mark applications over the Internet. Due to the success of the pilot, on October 1, 1998, the PTO opened this system, now known as e-TEAS, to the public. This system does not utilize e-mail communications, but instead requires that a particular form be completed on-line and submitted directly to a dedicated server. While the e-mail communications contemplated by the present policy are related to e-TEAS in that both involve communications over the Internet, the form and substance of these communications are quite different and often not comparable. On May 11, 1999, the PTO published a notice of proposed rulemaking and notice of hearing regarding the Trademark Law Treaty Implementation Act Changes. 64 Fed. Reg. 25223. In this notice, the PTO proposed formal rules to govern the electronic filing of trademark and service mark applications. The notice invites Comments from the public.

Comment 10: One comment indicated that confusion would occur concerning whether e-mail communications are informal communications or formal actions by the PTO or responses to actions, and that Trademark Articles 4 and 11 should better articulate how they should be differentiated. The comment suggested that formal e-mail communications be made of record in the application file and maintained in an electronic log. The Comment also questioned the PTO's procedures for maintaining paper and electronic copies of Internet e-mail correspondence and suggested greater specificity in creating procedures for this purpose.

Response: Trademark Articles 4 and 11 indicate that Internet e-mail may be used for formal communications, such as Office actions or responses to Office actions, or informal communications, such as communications similar to telephone or personal interviews. Trademark Articles 4, 8 and 11 indicate that all such communications, whether formal or informal, must be printed and placed in the application file and become a part of the formal record. All electronic communications received by the PTO will, at a minimum, be maintained on a schedule that is consistent with the PTO's current archival policies for paper records. Furthermore, while no schedule currently exists for the maintenance of e-mail correspondence, retention schedules are currently being developed for electronic records and will be in place in the near future. The PTO will develop guidelines for its employees to ensure that communications emanating from the PTO are clear as to whether a response is required as is done in all written communications. Similarly, the PTO will develop guidelines for determining whether a communication received from an applicant should be interpreted as responsive to an Office communication. Furthermore, while it will be incumbent upon the recipient to initially determine whether a communication is informal or not, the PTO's records will be complete and misunderstandings can be rectified in accordance with the remedies outlined in Trademark Article 9 regarding petitions to the Commissioner. If the applicant does not wish for informal communications to be placed in the application file, the option of telephone or personal interviews are still available. The PTO will not require an applicant to use Internet e-mail for any communications under any circumstances.

Comment 11: One comment indicated that the Internet should not be considered by the PTO as a proper source for information leading to refusals of trademark and service mark applications unless the examining attorney can show that the reference is publicly available in stable form from the date of its first publication.

Response: The Internet contains a great wealth of information of varying reliability and transience. Nevertheless, this information does exist and may be valuable in determining the registrability of a mark. The Trademark Trial and Appeal Board has considered the admissibility of Internet evidence in the context of an *inter partes* proceeding, and held that it is admissible and that the reliability of the information would be directed to the weight or probative value to be given to the evidence. *Raccioppi* v. *Apogee Inc.*, 47 USPQ 1368 (TTAB 1998). The PTO would be remiss in not utilizing this accepted, economical and efficient resource to gather some of the

information required to make proper judgments concerning the registrability of marks. In fact, a separate comment commended the PTO for utilizing the Internet as a research tool because of the potential cost savings of using this free and readily available source of information. The PTO will develop additional guidelines to ensure that examining attorneys provide applicants with adequate information to locate the document retrieved, in accordance with Trademark Article 12.

I. Patent Internet Usage Policy

Introduction

The Internet and its offspring, the World Wide Web (WWW), offer the PTO opportunities to (1) enhance operations by enabling Patent Examiners to locate and retrieve new sources of scientific and technical information, (2) communicate more effectively with our customers via advanced electronic mail (e-mail) and file transfer functions, and (3) more easily publish information of interest to the intellectual property community and the general public. This new technology offers low-cost, high speed, and direct communications capabilities upon which the PTO wishes to capitalize.

The organizations reporting to the Assistant Commissioner for Patents have special legal requirements that must be satisfied as part of the PTO's goal to make effective use of the Internet. Because security issues concerning transmission and capture of search requests by unauthorized individuals have not yet been resolved, Patent Examiners are to exercise good judgment and restrict their searches to nonspecific patent application uses.

Purpose

To establish a policy for use of the Internet by the Patent Examining Corps and other organizations within the PTO;

To address use of the Internet to conduct interview-like communications and other forms of formal and informal communications;

To publish guidelines for locating, retrieving, citing, and properly documenting scientific and technical information sources on the Internet;

To inform the public how the PTO intends to use the Internet; and

To establish a flexible Internet policy framework which can be modified, enhanced, and corrected as the PTO, the public, and customers learn to use, and subsequently integrate, new and emerging Internet technology into existing business infrastructures and everyday activities to improve the patent application, the examining, and granting functions.

Article 1. Applicability

This policy applies to members of the Patent Organization within the PTO, including contractors and consultants working with, or conducting activities in support of, the Patent Organization.

Article 2. Scope

This policy applies to activities associated with, or directly related to, use of the Internet via PTO-provided network connections, facilities, and services. This includes, but is not limited to, PTONet connections, Office of Chief Information Officer (OCIO)-provided PCs and workstations, and Internet provider services. This policy also applies to use of other non-PTO Internet access facilities and equipment that are used to conduct non-patent application specific work.

Article 3. Conformance With Existing, PTO-Wide, Internet Use Policy

This Internet Usage Policy supersedes the Interim Internet Usage Policy published in the Official Gazette on February 1997. The policy outlined in this document augments the existing PTO Internet Acceptable Use Policy as set forth in the Office Automation Services Guide. As such, this policy is an extension of current PTO office-wide Internet policy.

Article 4. Confidentiality of Proprietary Information

If security and confidentiality cannot be attained for a specific use, transaction, or activity, then that specific use, transaction, or activity shall **NOT** be undertaken/conducted.

All use of the Internet by Patent Organization employees, contractors, and consultants shall be conducted in a manner that ensures compliance with confidentiality requirements in statutes, including 35 U.S.C. 122, and regulations. Where a written authorization is given by the applicant for the PTO to communicate with the applicant via Internet e-mail, communications via Internet e-mail may be used.

Backup, archiving, and recovery of information sent or received via the Internet is the responsibility of individual users. The OCIO does not, and will not, as a normal practice, provide backup and recovery services for information produced, retrieved, stored, or transmitted to/from the Internet.

Article 5. Communications via the Internet and Authorization

Communications via Internet e-mail are at the discretion of the applicant.

Without a written authorization by applicant in place, the PTO will not respond via Internet e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application.

The following is a sample authorization form which may be used by applicant:

"Recognizing that Internet communications are not secure, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

A written authorization may be withdrawn by filing a signed paper clearly identifying the original authorization. The following is a sample form which may be used by applicant to withdraw the authorization:

"The authorization given on_____, to the PTO to communicate with me via the Internet is hereby withdrawn. I understand that the withdrawal is effective when approved rather than when received."

Where a written authorization is given by the applicant, communications via Internet e-mail, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used. In such case, a printed copy of the Internet e-mail communications **MUST** be given a paper number, entered into the Patent Application Location and Monitoring System (PALM) and entered in the patent application file. A reply to an Office action may **NOT** be communicated by applicant to the PTO via Internet e-mail. If such a reply is submitted by applicant via Internet e-mail, a paper copy will be placed in the appropriate patent application file with an indication that the reply is **NOT ENTERED**.

PTO employees are **NOT** permitted to initiate communications with applicant via Internet e-mail unless there is a written authorization of record in the patent application by the applicant.

All reissue applications are open to public inspection under 37 CFR 1.11(a) and all papers relating to a reexamination proceeding which have been entered of record in the patent or reexamination file are open to public inspection under 37 CFR 1.11(d). PTO employees are **NOT** permitted to initiate communications with applicant in a reissue application or a patentee of a reexamination proceeding via Internet e-mail unless written authorization is given by the applicant or patentee.

Article 6. Authentication of Sender by a Patent Organization Recipient

The misrepresentation of a sender's identity (i.e., spoofing) is a known risk when using electronic communications. Therefore, Patent Organization users have an obligation to be aware of this risk and conduct their Internet activities in compliance with established procedures.

Internet e-mail must be initiated by a registered practitioner, or an applicant in a *pro se* application, and sufficient information must be provided to show representative capacity in compliance with 37 CFR 1.34. Examples of such information include the attorney registration number, attorney docket number, and patent application number.

Article 7. Use of Electronic Mail Services

Once e-mail correspondence has been received from the applicant, as set forth in Patent Article 4, such correspondence must be responded to appropriately. The Patent Examiner may respond to an applicant's e-mail correspondence by telephone, fax, or other appropriate means.

Article 8. Interviews

Internet e-mail shall **NOT** be used to conduct an exchange or communications similar to those exchanged during telephone or personal interviews unless a written authorization has been given under Patent Article 5 to use Internet e-mail. In such cases, a paper copy of the Internet e-mail contents **MUST** be made and placed in the patent application file as required by the Federal Records Act in the same manner as an Examiner Interview Summary Form is entered.

Article 9. Internet Searching

The ultimate responsibility for formulating individual search strategies lies with individual Patent Examiners, Scientific and Technical Information Center (STIC) staff, and anyone charged with protecting proprietary application data. When the Internet is used to search, browse, or retrieve information relating to a patent application, other than a reissue application or reexamination proceeding, Patent Organization users **MUST** restrict search queries to the general state of the art. Internet search, browse, or retrieval activities that could disclose proprietary information directed to a specific application, other than a reissue application or reexamination proceeding, are **NOT** permitted.

This policy also applies to use of the Internet as a communications medium for connecting to commercial database providers.

Article 10. Documenting Search Strategies

All Patent Organization users of the Internet for patent application searches shall document their search strategies in accordance with established practices and procedures as set forth in MPEP 719.05 subsection I.(F).

Article 11. Citations

All Patent Organization users of the Internet for patent application searches shall record their fields of search and search results in accordance with established practices and procedures as set forth in MPEP 719.05 subsection I.(F).

Subparagraph A

Internet document citations should include information which is normally included for reference documents (i.e., Form PTO–892). In addition, any information which would aid a future searcher in locating the document should be included in the citation. Guidelines for citing electronic information can be found as an attachment to this policy.

Subparagraph B

When a document found on the Internet is not the original publication, then the Patent Examiner or STIC staff shall pursue the acquisition of a copy of the originally published document or an original of the document or Web object in question for all references cited. Note: scanned images are considered to be a copy of the original publication. Electronic-only documents are original publications.

Article 12. Professional Development

The Internet is recognized as a tool for professional development. It may be useful for keeping informed of technological and legal developments in all art areas. For example, use of the Internet for keeping abreast of conferences, seminars, and for receiving mail from appropriate list servers is acceptable. This is consistent with the Department of Commerce's Internet Usage Policy.

Article 13. Policy Guidance and Clarifications

Within the Patent Organization, any questions regarding Internet usage policy should be directed to the user's immediate supervisor. Non-PTO personnel should direct their questions to the Office of the Deputy Assistant Commissioner for Patent Policy and Projects.

II. Trademark Internet Usage Policy

Introduction

The Internet and the World Wide Web offer opportunities to enhance services to attorneys and other representatives (Trademark Applicants) employing Trademark sources of legal, scientific, commercial and technical information, (2) communicate more effectively with customers via electronic mail (e-mail) and file transfer functions, and (3) more easily publish information of interest to the intellectual property community and the general public.

This new technology offers low-cost, high speed, direct communication capabilities that the PTO wishes to leverage to the advantage of its customers.

The organizations reporting to the Assistant Commissioner for Trademarks have special legal requirements that must be satisfied as part of the PTO's goal to make effective use of the Internet and electronic commerce.

Purpose

To establish a policy for use of the Internet by organizations reporting to the Assistant Commissioner for Trademarks, including: the Office of the Assistant Commissioner for Trademarks, the Trademark Examining Operation, Trademark Services, Trademark Program Control and the Trademark Assistance Center;

To address use of the Internet to conduct interview-like communications, and other forms of formal and informal communications;

To publish guidelines for locating, retrieving, citing, and properly documenting scientific, commercial and technical information sources on the Internet;

To inform the public how the PTO intends to use the Internet; and

To establish a flexible Internet policy framework which can be modified, enhanced, and corrected as the PTO, the public, and customers learn to use, and subsequently integrate, new and emerging Internet technology into existing business infrastructures and everyday activities to improve the trademark application, examination, and registration business processes.

Article 1. Applicability

This policy applies to members of Trademark Organization reporting to the Assistant Commissioner for Trademarks within the PTO, including contractors and consultants working with, or conducting activities in support of, the Trademark Organization. It does not

apply to members of the Trademark Trial and Appeal Board or contractors and consultants working with, or conducting activities in support of, the Trademark Trial and Appeal Board.

Article 2. Scope

This policy applies to activities associated with, or directly related to, use of the Internet via PTO-provided network connections, facilities, and services. This includes, but is not limited to, PTONet connections, Office of Chief Information Officer (OCIO)-provided PCs and workstations, and Internet provider services. This policy also applies to use of other non-PTO Internet access facilities and equipment that are used to conduct non-trademark application specific work.

Article 3. Conformance With Existing, PTO-Wide, Internet Use Policy

This Internet Usage Policy supersedes the Interim Internet Usage Policy published in the Official Gazette in February 1997. The policy outlined in this document augments the existing PTO Internet Acceptable Use Policy as set forth in the Office Automation Services Guide. As such, this policy is an extension of current PTO office-wide Internet policy.

Article 4. Correspondence Acceptable via the Internet

Internet e-mail may be used to reply or respond to an examining attorney's Office Action, to reply or respond to a petitions attorney's 30-day letter, to reply or respond to a Post Registration Office Action, as well as to conduct informal communications regarding a particular application or registration with the appropriate Trademark Organization employee. If e-mail communication is initiated by the applicant or applicant's attorney, Office Actions, Priority Actions, Examiner's Amendments, petitions attorney's 30-day letters, and Post Registration Office Actions may be sent to the applicant via Internet e-mail or by telephone, fax, or other appropriate means. Readable attachments to Internet e-mail for such purposes as the submission of evidence, specimens, affidavits and declarations will be accepted.

Article 5. Communications Not Acceptable via the Internet

Internet e-mail or other Internet communications may **NOT** be used to file Trademark Applications, Amendments to Allege Use, Statements of Use, Requests for Extension of Time to File a Statement of Use, Section 8 affidavits, Section 9 affidavits, or Section 15 affidavits until such time as the PTO publishes electronic forms for these filings and they are made available on the Internet by the PTO. Internet e-mail may be used to submit specimens of use, but the Office will determine acceptability of the specimen(s) and if the specimens are found not to meet the standards for specimens of use, additional specimens will be required. Certified copies of foreign certificates will **NOT** be accepted via Internet e-mail. Internet e-mail may **NOT** be used for any correspondence with the Trademark Trial and Appeal Board.

Article 6. Initiating Internet Communications

Internet communications will **NOT** be initiated by the Trademark Organization unless it is authorized to do so by the applicant or by the applicant's attorney. Authorization for members of the Trademark Organization to communicate with applicant or applicant's attorney via Internet e-mail may be given by so indicating in the application submitted to the PTO or in any official written communication with the Trademark Organization. The authorization must include the Internet e-mail address to which all Internet e-mail is to be sent. Internet communications may also be initiated and authorized by applicant or applicant's attorney by telephone or by responding to an Office Action or other official communication via an Internet e-mail address indicated on the official correspondence.

Article 7. Waivers and Authentication

Applicants and their attorneys understand that the misrepresentation of a sender's identity is a known risk when using electronic communications. Therefore, Trademark Organization users have an obligation to be aware of this risk and conduct their Internet activities in compliance with established procedures.

Internet e-mail must be initiated and authorized by a practitioner, or the applicant in a pro se application. Sufficient information must be provided to show representative capacity in compliance with 37 CFR 2.17 and 10.14. In trademark cases, examples of such information would include signing a paper in practice before the PTO in a trademark case, attorney docket number, and trademark application serial number or registration number.

The Assistant Commissioner for Trademarks will waive 37 CFR 10.18 to the extent that it requires an original signature personally signed by a trademark practitioner in permanent ink on any correspondence filed with the PTO. Receipt of an Internet e-mail communication by the Trademark Organization from the address of applicant or applicant's attorney containing the /s/ notation in lieu of signature and which references a Trademark application serial number will be understood to constitute a certificate that:

1. The correspondence has been read by the applicant or practitioner;
2. The filing of the correspondence is authorized;
3. To the best of the applicant's or practitioner's knowledge, information, and belief, there is good ground to support the correspondence, including any allegations of improper conduct contained or alleged therein; and
4. The correspondence is not interposed for delay.

Applicants requesting to correspond with the Trademark Organization via the Internet should recognize that Internet communications might not be secure, and should understand that a copy of any and all communications received via the Internet will be placed in the file wrapper and become a permanent part of the record.

Article 8. Office Procedures

When authorized to do so, the Trademark Organization will send Office Actions and other official correspondence to the Internet e-mail address indicated by the applicant or applicant's attorney. A signed, paper copy of the outgoing correspondence will be associated with the trademark application file wrapper.

When communications are received by an examining attorney, or other appropriate Trademark Organization employee, the attorney or employee will immediately reply to the communication acknowledging receipt of the communication. The date the communication was received by the Trademark Organization that appears in the heading of the communication will constitute the receipt date within the PTO for purposes of time-sensitive communications unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the receipt date will be the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia. A paper copy of all Internet e-mail communications, including a copy of any and all attachments, will be associated with the trademark application file wrapper. A paper copy of any informal communications regarding a particular trademark application or registration will be associated with the file wrapper and become a part of the record.

Article 9. Remedies

When an application is held abandoned because a timely Internet e-mail communication was sent to and received by the Trademark Organization but was not timely associated with the application file wrapper, the abandoned application may be reinstated by the Trademark Organization. There is no fee for a request to reinstate such an application.

When an application is held abandoned because a timely Internet e-mail communication was sent to, but apparently not received by the Trademark Organization, applicant or applicant's attorney may petition the Commissioner to revive the abandoned application pursuant to 37 CFR 2.66 and TMEP §§ 1112.05(a), (b). In determining whether or not an Internet response was timely filed, the Commissioner may accept a copy of a signed certificate of transmission meeting the requirements of 37 CFR 1.8, a copy of the previously transmitted correspondence, and a statement attesting to the personal knowledge of timely transmission of the response. 37 CFR 1.8(b)(1), (2), and (3).

In all situations, the applicant or the applicant's attorney should promptly notify the Office after becoming aware that the application was abandoned because a communication was not timely associated with the file wrapper or was not received by the Office.

Article 10. Use of Electronic Mail Services

Once e-mail correspondence has been received from an applicant, as set forth in Trademark Article 6, such correspondence must be responded to appropriately. The Trademark Organization employee may respond to an applicant's Internet e-mail correspondence by telephone, fax, or other appropriate means.

Article 11. Interviews

Internet e-mail may be used to conduct an exchange of communications similar to those exchanged during telephone or personal interviews. In such cases, a paper copy of the Internet e-mail contents **MUST** be made and placed in the trademark application file wrapper.

Article 12. Documenting Search Strategies

All Trademark Organization users of the Internet for trademark application research shall document their search strategies in accordance with established practices and procedures as set forth in TMEP § 1106.07(a).

Subparagraph A

Any information, which would aid a future searcher in locating the document retrieved through Internet research, should be included in the citation. Guidelines for citing electronic information can be found as an attachment to this policy.

Subparagraph B

When a document found on the Internet is not the original publication, then the Trademark Examining Attorney or Trademark Library staff shall pursue the acquisition of a copy of the originally published document or an original of the document or Web object in question for all references cited. Note: scanned images are considered to be a copy of the original publication. Electronic-only documents are original publications.

Article 13. Professional Development

The Internet is recognized as a tool for professional development. It may be useful for keeping informed of technological and legal developments. For example, use of the Internet for keeping abreast of conferences, seminars, and for receiving mail from appropriate list servers is acceptable. This is consistent with the Department of Commerce's Internet Usage Policy.

Article 14. Policy Guidance and Clarifications

Within the Trademark Organization, any questions regarding the Internet usage policy should be directed to the user's immediate supervisor. Non-PTO personnel should direct their questions to the Office of the Assistant Commissioner for Trademarks.

Attachment

Guidelines for Citing Electronic Resources

The Standing Committee on Information Technologies (SCIT) of the World Intellectual Property Organization (WIPO) has revised WIPO Standard ST.14 "Recommendation for the Inclusion of References Cited in Patent Documents" to provide a standardized method for listing references cited in patent documents. Standard ST.14 is reproduced in its entirety below. Standard ST.14 became effective April 1, 1999, and will be included in future updates of the WIPO Handbook on Industrial Property Information and Documentation. Paragraph 13 of Standard ST.14 sets forth the method for citing electronic resources. The standard set forth in paragraph 13 of ST.14 was modeled after the guidelines provided by the International Organization for Standardization's established Standard ISO 690–2 "Information and documentation—Bibliographic references—Part 2: Electronic documents or parts thereof."

Standard St.14—Recommendation for the Inclusion of References Cited in Patent Documents

Editorial Note Prepared by the International Bureau

Articles published in scientific and technical journals often contain a certain number of references to earlier publications. Patent applications also very often contain (e.g., in the descriptions of the inventions) references to earlier patents or patent applications. In the course of the procedure for obtaining a patent, patent examiners cite one or several patent documents or other documents which describe similar or closely related technical solutions to the one described in a patent application being examined, in order to illustrate the prior art.

Some industrial property offices, but not all of them, bring these cited references to the attention of the general public, by including them in a published patent document. The present Recommendation is intended to generalize the use of printing on the patent document the "reference cited" during the patent examination procedure, to standardize the way in which the said references should be presented in the patent document and to recommend a preferred place, where the "references cited" should appear in a patent document.

Revision Adopted by the SCIT Plenary at its Second Session on February 12, 1999

Definitions

1. For the purposes of this Recommendation, the term "patents" includes such industrial property rights as patents for inventions, plant patents, design patents, inventors' certificates, utility certificates, utility models, patents of addition, inventors' certificates of addition, and utility certificates of addition.

2. For the purposes of this Recommendation, the expressions "patent applications" or "applications for patents" include applications for patents for inventions, plant patents, design patents, inventors' certificates, utility certificates, utility models, patents of addition, inventors' certificates of addition, and utility certificates of addition.

3. For the purposes of this Recommendation, the expression

"patent documents" includes patents for inventions, plant patents, design patents, inventors' certificates, utility certificates, utility models, patents of addition, inventors' certificates of addition, utility certificates of addition, and published applications therefor.

Background

4. Applications for patents are examined by a governmental authority or intergovernmental authority which, as a rule, is an industrial property office. A patent for invention is granted if the application complies with the formal requirements and, depending on whether and to what extent an "examination as to substance" is carried out, if the invention fulfills the substantive requirements of the respective patent law.

5. When patent applications are examined or search reports are established therefor, a certain number of patent documents and other documents might be cited as references to illustrate the prior art by the industrial property office (including a regional Office, and an International Searching Authority under the PCT).

References

6. References to the following Standards are of relevance to this Recommendation:

WIPO Standard ST.2 Standard Manner for Designating Calendar Dates by Using the Gregorian Calendar;

WIPO Standard ST.3 Recommended Standard on Two-Letter Codes for the Representation of States, Other Entities and Intergovernmental Organizations;

WIPO Standard ST.9 Recommendation Concerning Bibliographic Data on and Relating to Patents and SPCs;

WIPO Standard ST.16 Recommended Standard Code for the Identification of Different Kinds of Patent Documents;

International Standard ISO 4:1997 "Information and Documentation—Rules for the abbreviation of title words and titles of publications";

International Standard ISO 690:1987 "Documentation—Bibliographic references—Content, form and structure";

International Standard ISO 690–2:1997 "Information and documentation—Bibliographic references—Part 2: Electronic documents or parts thereof."

Recommendation

7. It is recommended that industrial property offices should include in their granted patents and in their published patent applications all relevant references cited in the course of a search or examination procedure.

8. It is recommended that the "List of references cited" be identified by INID code (56).

9. It is recommended that the "List of references cited" appear either

(a) On the first page of the patent document or

(b) In a search report attached to the patent document.

10. It is recommended that if the "List of references cited" appears in a search report attached to the patent document, (e.g., under the PCT procedure) this should be indicated on the first page of the patent document.

11. It is recommended that the documents in the "List of references cited" be organized in a sequence suitable to the users" needs, this sequence being clearly illustrated in the presentation of the said list. The following is an example of a sequence of documents cited:

(a) Domestic patent documents;

(b) Foreign patent documents;

(c) Non-patent literature.

In search reports, however, the documents may be cited in the order of their pertinence.

12. Identification of any document cited, and available in paper form or in a page-oriented presentation mode (e.g., facsimile, microform, etc.) shall be made by indicating the following elements in the order in which they are listed:

(a) *In the case of a patent document:*

(i) The industrial property office that issued the document, by the two-letter code (WIPO Standard ST.3);

(ii) The number of the document as given to it by the industrial property office that issued it (for Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document);

(iii) The kind of document, by the appropriate symbols as indicated on the document under WIPO Standard ST.16 or, if not indicated on that document, as provided in that Standard, if possible;

(iv) The name of the patentee or applicant (in capital letters and, where appropriate, abbreviated); [1] [3]

(v) The date of publication of the cited patent document (using four digits for a year designation according to the Gregorian Calendar) or, in case of a corrected patent document, the date of issuance of the corrected patent document as referred to under INID code (48) of WIPO Standard ST.9 and, if provided on the document, the supplementary correction code as referred to under INID code (15); [2]

(vi) Where applicable, the pages, columns, lines or paragraph numbers where the relevant passages appear, or the relevant figures of the drawings.[1]

The following examples illustrate the citation of a patent document according to paragraph (a), above:

Example 1: JP 10–105775 A (NCR INTERNATIONAL INC.) 24 April 1998, paragraphs [0026] to [0030].

Example 2: DE 3744403 A1 (JOSEK, A.) 1991.08.29, page 1, abstract.

Example 3: SE 504901 C2 (SWEP INTERNATIONAL AB) 1997–05–26, claim 1.

Example 4: US 5635683 A (MCDERMOTT, R. M. et al.) June 3, 1997, column 7, lines 21 to 40.

(b) In the case of a monograph or parts thereof, e.g., contributions to conference proceedings, etc.:

(i) The name of the author (in capital letters);[3] in the case of a contribution, the name of the author of the contribution;

(ii) In the case of a contribution, the title of the contribution followed by "In:";

(iii) The title of the monograph; in the case of a contribution, the designation of the editorship;

(iv) The number of the edition;

(v) The place of publication and the name of the publisher (where only the location of the publisher appears on the monograph, then that location shall be indicated as the place of publication; in the case of company publications, the name and postal address of the company);[1]

(vi) The year of publication, by four digits; [4]

(vii) Where applicable, the standard identifier and number assigned to the item, e.g., ISBN 2–7654–0537–9, ISSN 1045–1064. It should be noted that these numbers may differ for the same title in the print and electronic versions;

(viii) The location within the monograph by indicating the pages, columns, lines or paragraph numbers where the relevant passages appear, or the relevant figures of the drawings (where applicable).[1]

The following examples illustrate the citation of a monograph (Example 1), as well as of published conference proceedings (Example 2), according to paragraph (b), above:

Example 1: WALTON, Herrmann. Microwave Quantum Theory. London: Sweet and Maxwell, 1973, Vol.2, ISBN 5–1234–5678–9, pages 138 to 192, especially pages 146 to 148.

Example 2: SMITH et al. 'Digital demodulator for electrical impedance imaging.' In: IEEE Engineering in Medicine & Biology Society, 11th Annual Conference. Edited by Y. Kim et al. New York: IEEE, 1989, Vol.6, p. 1744–5.

(c) *In the case of an article published in a periodical or other serial publication:*

(i) The name of the author (in capital letters); [3]

(ii) The title of the article (where appropriate, abbreviated or truncated) in the periodical or other serial publication;

(iii) The title of the periodical or other serial publication (abbreviations conforming to generally recognized international practice may be used, see Appendix 1 to this Standard);

(iv) The location within the periodical or other serial publication by indicating date of issue by four digits for the year designation, issue designation, pagination of the article (where year, month and day are available, the provisions of WIPO Standard ST.2 should be applied);

(v) Where applicable, the standard identifier and number assigned to the item, e.g., ISBN 2–7654–0537–9, ISSN 1045–1064. It should be noted that these numbers may differ for the same title in the print and electronic versions;

(vi) Where applicable, the relevant passages of the article and/or the relevant figures of the drawings.[1]

The following example illustrates the citation of an article published in a periodical or other serial publication according to paragraph (c), above:

Example: DROP, J.G. Integrated Circuit Personalization at the Module Level. IBM tech. dis. bull. October 1974, Vol.17, No.5, pages 1344 and 1345, ISSN 2345–6789.

(d) In the case of an abstract not published together with the full text document which serves as its basis:

The identification of the document containing the abstract, the abstract and the full text document shall be made on the basis of the bibliographic data available in respect thereof.

The following examples illustrate the citation of an abstract according to paragraph (d), above:

Example 1: Shetulov, D.I. Surface Effects During Metal Fatigue. Fiz.-Him. Meh. Mater. 1971, 7(29), 7–11 (Russ.). Columbus, OH, USA: Chemical abstracts, Vol. 75, No. 20, 15 November 1971, page 163, column 1, the abstract No. 120718k.

Example 2: JP 3–002404 A (FUDO). Patent abstracts of Japan, Vol. 15, No. 105 (M–1092), 1991.03.13 (abstract).

Example 3: SU 1374109 A (KARELIN, V. I.) 1988.02.15. (abstract), Soviet Patent Abstracts, Section E1, Week 8836, London: Derwent Publications Ltd., Class S, AN 88–255351.

13. Identification of an electronic document, e. g., retrieved from a CD–ROM, the Internet or from an online database accessible outside the Internet, shall be made in the manner indicated in subparagraphs 12(a), (b), (c), and (d), above, as far as possible and completed, as suggested in the items below.

Attention is drawn to the following items which are modeled after guidelines provided by the International Organization for Standardization's established Standard ISO 690–2 "Information and documentation—Bibliographic references—Part 2: Electronic documents or parts thereof." These items should be provided in the locations indicated:

(i) Type of medium in square brackets [ ] after the title of the publication or the designation of the host document, e.g., [online] [CD–ROM] [disk]. If desired, the type of publication (e.g. monograph, serial, database, electronic mail) may also be specified in the type of medium designator;

(ii) Date when the document was retrieved from the electronic media in square brackets, following the date of publication [retrieved on 1998–03–04];

(iii) Identification of the source of the document using the words "Retrieved from" and its address where applicable; this item will precede the citation of the relevant passages;

(iv) Specific passages of the text could be indicated if the format of the document includes pagination or an equivalent internal referencing system, or by their first and last words.

Office copies of an electronic document should be retained if the same document may not be available for retrieval in the future. This is especially important for sources such as the Internet and online databases.

If an electronic document is also available in paper form or in a page-oriented presentation mode (see paragraph 12, above) it does not need to be identified as an electronic document, unless it is considered desirable or useful to do so.

The following examples illustrate citations of electronic documents:

Examples 1–4: Documents retrieved from online databases outside the Internet

Example 1: SU 1511467 A (BRYAN MECH) 1989–09–30 (abstract) World Patents Index [online]. London, U.K.: Derwent Publications, Ltd. [retrieved on 1998–02–24]. Retrieved from: Questel/Orbit, Paris, France. DW9016, Accession No. 90–121923.

Example 2: Dong, X. R. 'Analysis of patients of multiple injuries with AIS–ISS and its clinical significance in the evaluation of the emergency managements', Chung Hua Wai Ko Tsa Chih, May 1993, Vol. 31, No. 5, pages 301–302. (abstract) Medline [online]. Bethesda, MD, USA: United States National Library of Medicine [retrieved on 24 February 1998]. Retrieved from: Dialog Information Services, Palo Alto, CA, USA. Medline Accession no. 94155687, Dialog Accession No. 07736604.

Example 3: Jensen, B. P. 'Multilayer printed circuits: production and application II'. Electronik, June–July 1976, No. 6–7, pages 8, 10, 12, 14, 16. (abstract) INSPEC [online]. London, U.K.: Institute of Electrical Engineers [retrieved on 1998–02–24]. Retrieved from: STN International, Columbus, Ohio, USA. Accession No. 76:956632.

Example 4: JP 3002404 (TAMURA TORU) 1991–03–13 (abstract). [online] [retrieved on 1998–09–02]. Retrieved from: EPO PAJ Database.

Examples 5–11: Documents retrieved from the Internet

Example 5: (Entire Work—Book or Report) Wallace, S., and Bagherzadeh, N. Multiple Branch and Block Prediction. Third International Symposium on High-Performance Computer Architecture [online], February 1997 [retrieved on 1998–05–20]. Retrieved from the Internet:<URL: http://www.eng.uci.edu/comp.arch/papers-wallace/hpca3-block.ps>.

Example 6: (Part of Work—chapter or equivalent designation) National Research Council, Board on Agriculture, Committee on Animal Nutrition, Subcommittee on Beef Cattle Nutrition. Nutrient Requirements of Beef Cattle [online]. 7th revised edition. Washington, DC: National Academy Press, 1996 [retrieved on 1998–06–10]. Retrieved from the Internet: <URL: http://www2.nap.edu/htbin/docpage/title=Nutrient+Requirements+of+Beef+Cattle%3A+Seventh+Revised+Edition%2C+1996&dload=0&path= /ext5/extra&name=054265%2 Erdo&docid=00805F50FEb%3A840052612&colid=4%7C6%7C41&start=38> Chapter 3, page 24, table 3–1.

Example 7: (Electronic Serial—articles or other contributions) Ajtai. Generating Hard Instances of Lattice Problems. Electronic Colloquium on Computational Complexity, Report TR96–007 [online], [retrieved on 1996–01–30]. Retrieved from the Internet <URL: ftp://ftp.eccc.uni-trier.de/pub/eccc/reports/1996/TR96–007/index.html>.

Example 8: (Electronic bulletin boards, message systems, and discussion lists—Entire System) BIOMET–L (A forum for the Bureau of Biometrics of New York) [online]. Albany (NY): Bureau of Biometrics, New York State Health Department, July, 1990 [retrieved 1998–02–24]. Retrieved from the Internet: <listserv@health.state.ny.us>, message: subscribe BIOMET–L your real name>

Example 9: (Electronic bulletin boards, message systems, and discussion lists—Contributions) PARKER, Elliott. 'Re: citing electronic journals'. In PACS–L (Public Access Computer Systems Forum) [online]. Houston (TX): University of Houston Libraries, November 24, 1989; 13:29:35 CST [retrieved on 1998–02–24]-Retrieved from the Internet: <URL:telnet://bruser@a.cni.org>.

Example 10: (Electronic mail) 'Plumb design of a visual thesaurus'. The Scout Report [online]. 1998, vol. 5 no. 3 [retrieved on 1998 05 18]. Retrieved from Internet electronic mail: <listserv@cs.wisc.edu>, subscribe message: info scout-report. ISSN: 1092–3861.

Example 11: (Product Manual/Catalogue or other information obtained from a Web-site) Corebuilder 3500 Layer 3 High-function Switch. Datasheet [online]. 3Com Corporation, 1997 [retrieved on 1998–02–24].

Retrieved from the Internet: <URL: www.3com.com/products/dsheets/400347.html>.

Examples 12 and 13: Documents retrieved from CD-ROM products

Example 12: JP 0800085 A (TORAY IND INC), (abstract), 1996–05–31. In: Patent Abstracts of Japan [CD–ROM].

Example 13: Hayashida, O. et al.: Specific molecular recognition by chiral cage-type cyclophanes having leucine, valine, and alanine residues. In: Tetrahedron 1955, Vol. 51 (31), p. 8423–36. In: CA on CD [CD–ROM]. Columbus, OH: CAS. Abstract 124:9350.

14. It is recommended that any document (reference) referred to in paragraph 7 above, and cited in the search report should be indicated by the following letters or a sign to be placed next to the citation of the said document (reference):

(a) *Categories indicating cited documents (references) of particular relevance:*

Category "X": The claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone;

Category "Y": The claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art.

(b) *Categories indicating cited documents (references) of other relevant prior art:*

Category "A": Document defining the general state of the art which is not considered to be of particular relevance;

Category "D": Document cited by the applicant in the application and which document (reference) was referred to in the course of the search procedure. Code "D" should always be accompanied by one of the categories indicating the relevance of the cited document;

Category "E": Earlier patent document as defined in Rule 33.1(c) of the Regulations under the PCT, but published on or after the international filing date;

Category "L": Document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (the reason for citing the document shall be given);

Category "O": Document referring to an oral disclosure, use, exhibition or other means;

Category "P": Document published prior to the filing date (in the case of the PCT, the international filing date) but later than the priority date claimed in the application. Code "P" should always be accompanied by one of the categories "X," "Y" or "A;"

Category "T": Later document published after the filing date (in the case of the PCT, the international filing date) or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention;

Category "&": Document being a member of the same patent family or document whose contents have not been verified by the search examiner but are believed to be substantially identical to those of another document which the search examiner has inspected.

15. The list of cited documents (references) given in the search report should indicate, conforming to the generally recognized practice of the International Searching Authorities under the Patent Cooperation Treaty, the respective claim(s) of the patent application to which the citation is considered to be relevant.

16. The category codes referred to in paragraph 14, above, are intended primarily for use in the context of search reports accompanying published patent applications. However, if industrial property offices wish to indicate the relevance of cited documents (references) listed on the first page of a published patent application, they should print the category codes in parentheses, immediately after each citation.

Note: Further detailed information on definitions of terms used in this Standard or on the inclusion of references cited can be found in International Standard ISO 690:1987, "Documentation—Bibliographic References—Content, Form and Structure." Guidance for the abbreviation of titles of articles can be obtained through International Standard ISO 4:1997, "Information and Documentation—Rules for the Abbreviation of Title Words and Titles of Publications."

Examiners are encouraged to speak to a PTO librarian or technical information specialist when they find that crucial elements to the citation are lacking in their records.

The information specialist will work with the examiner to verify dates, authors, and other elements as needed.

Notes:

1. These elements are to be indicated only in a search report.

2. The elements of item (v), having relevance to a corrected patent document, should be indicated together with the other data referred to under subparagraph 12(a)(i) to (iii).

3. Where a surname can be identified, forenames or initials should follow the surname. Such surnames and initials should be given in capital letters.

4. When the year of publication coincides with the year of the application or of the priority claim, the month and, if necessary, the day of publication of a monograph or parts thereof should be indicated in accordance with the provisions set out in WIPO Standard ST.2.

Dated: June 14, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99–15696 Filed 6–18–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Security Policy Advisory Board Action Notice

SUMMARY: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by President on September 16, 1994.

The Board will advise the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Policy Board, and will function as a federal advisory committee in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) will chair the Board. Other members include: Rear Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Advisory Board will be held on June 28, 1999 at 1400 hrs at the Hyatt Regency on the Mall, 1300 Nicollet Mall—Rm Nicollet A, Minneapolis, MN. The meeting will be open to the public.

This notice is submitted late because of Agenda changes and unexpected leave taken by the staff support specialist.

For further information please contact Mr. Bill Isaacs, telephone: 703–602–0815.

Dated: June 15, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–15594 Filed 6–18–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Program for Qualifying Department of Defense (DOD) Brokers

AGENCY: Military Traffic Management Command, DOD.

ACTION: Final notice.

SUMMARY: In previous **Federal Register** notice (Vol. 62, No. 27, pages 5962–5963) Monday, February 10, 1997, the Headquarters, Military Traffic Management Command (HQMTMC) announced a request for comments on the Program for Qualifying Department of Defense (DOD) Brokers. Comments received were about equally divided in favor and in opposition to the proposal. By notice published in the **Federal Register** (Vol. 63, No. 57, page 14431) Wednesday, March 25, 1998, HQMTMC announced its decision to test the broker program for a period of one year, beginning June 1, 1998. The test has been successfully completed. The Carrier Qualification Program is being amended to add qualification standards for brokers and to expand the Basic Agreement to include brokers. The effect is that brokers will be eligible to quality to compete in DOD transportation procurements on the same or similar terms as other carriers, except shipments requiring Transportation Protective Service (TPS). Under MTMC's new policy, brokers interested in competing for DOD traffic (except TPS shipments) can apply for qualification by executing the Basic Agreement, and by complying with the requirements for submission of evidence of insurance (cargo and public liability), a list of underlying carriers which the broker intends to use in the movement of DOD shipments, a performance bond, and other standard requirements. A copy of the Agreement between MTMC and brokers is available upon request.

FOR FURTHER INFORMATION CONTACT: Rick Wirtz, MTOP–QQ, Telephone 703–681–6393; Headquarters, Military Traffic Management Command, ATTN: MTOP–JF, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

SUPPLEMENTARY INFORMATION: MTMC has completed the one-year test program to evaluate the performance, and ability of brokers to participate in the movement of DoD freight. Brokers transported over 16 million pounds of freight during the test. Shipment on time delivery rate was 100% against a test standard of 95%. MTMC received no Transportation Discrepancy Reports regarding broker shipments during the period June 15, 1998 through June 1, 1999. Based on the performance displayed by the brokers, Commander, MTMC, has decided to add the Broker Program as part of its traffic management services to DTS customers. MTMC is changing its policy, in order to offer brokers the opportunity to qualify for participation in DoD transportation procurements, except shipments requiring a Transportation Protective Services (TPS). Under MTMCs new policy, brokers interested in competing for DoD traffic, except TPS shipments, could apply for qualification by executing the basic Agreement, and by complying with requirements for submission of evidence of insurance (public liability and cargo), a list of underlying carriers which the broker intends to use in the movement of DoD shipments, a performance bond, and other standard requirements.

Rick Wirtz,

Traffic Management Specialist, JTMO.

[FR Doc. 99–15699 Filed 6–18–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Military/Industry Personal Property Tender of Service (TOS)

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice (Request public comments on new military/industry contractual agreement).

SUMMARY: The U.S. Transportation Command proposes to issue a new personal property Tender of Service to be signed by the Military Traffic Management Command (MTMC) on behalf of the U.S. Department of Defense (DOD) and personal property carriers wishing to do business in the DOD Personal Property Shipment and Storage Program.

DATES: U.S. Transportation Command will receive comments not later than August 20, 1999. The new TOS will be effective when signed by MTMC and the carrier.

FOR FURTHER INFORMATION CONTACT: Larry Campbell, U.S. Transportation Command, TCJ4–LTP, (618) 256–1985. The public may obtain copies of the proposed Tender of Service for a fee from the U.S. Department of Commerce, National Technical Information Services, 5285 Port Royal, Springfield, Virginia 22161.

SUPPLEMENTARY INFORMATION:

Background

The new TOS is issued under the authority of Deputy Under Secretary of Defense (Logistics) Memorandum "Defense Transportation Regulation (DTR), Part I–IV," August 5, 1995. It implements DOD policies governing the use of DOD-owned and controlled aircraft, sealife/airlift, and establishes criteria for passenger, personal property, cargo, and mobility movement.

Significant changes from the previous TOS include (1) moving quality assurance requirements from the TOS to the Domestic and International Rate Solicitations issued semi-annually by MTMC; and (2) establishment of a mandatory requirement for personal property carriers to pay inconvenience claims. The former requirements became effective in 1997. The latter requirement is found in paragraph 15.b. of the new TOS:

15. *Loss or Damage/Inconvenience Claims.*

b. *Inconvenience Claims.*

(1) I hereby reaffirm that it is my responsibility to pickup and deliver personal property shipments on the agreed date. My failure to do so can cause serious inconvenience to the Department of Defense (DOD) civilian employees and military members and the member's family, and can result in the expenditures of funds by the member of lodging, food rental/purchase of household necessities, and directly related miscellaneous expenses.

(2) I agree to acknowledge receipt of an inconvenience claim filed by a member or an installation TO within 15 calendar days from the date of receipt. I further agree to reimburse the civilian employee and military member for out-of-pocket expenses which result from my failure to offer the shipment for delivery on or before the required delivery date as stated on the Government Bill of Lading (GBL) or correction notice thereof, except for delays caused by acts of God, acts of the public enemy, acts of the Government, acts of the public authority, violent strikes, or mob interference. The member shall document the claim fully with an itemized list of charges and accompanying receipts for charges incurred. Charges shall be computed from the day after the delivery date specified on the PPGBL as the RDD or GBL correction notice thereof or the date following the day the member obtains quarters, whichever date is the latest, and will be payable through the day of actual delivery of the shipment.

(3) Expenses: Out-of-pocket expenses are all expenses incurred by a military member or DOD civilian and their

family members because they are not able to use the items in the shipment or to establish his or her household. Expenses include but are not limited to, lodging, meals, laundry service, furniture and/or appliance rental, to include rental of a television or similar expenses such as towels (2 per person) pots, pans, paper plates, plastic knives, plastic spoons, plastic forks, paper and/or plastic cups, and napkins. A request for reimbursement of alcoholic beverages in any quantity is prohibited.

(a) I agree to pay the member within 30 calendar days of the submission date and will report to the destination TO, with a copy to HQ MTMC, ATTN: MTTP, of the final action taken, to include the date and total amount of settlement. In the event of a disputed claim, I may, within the 45-day period for receipt of the claim, appeal the case to the destination TO. Every effort will be made to resolve the dispute. However, should I disagree with the decision of the TO, I may appeal the case to HQ MTMC. I understand the decision of HQ MTMC is final and the claim must be settled within a total of 75 days of the submission date. Failure to acknowledge and/or settle a valid inconvenience claim may be cause for my company to be disqualified from participation with the DOD. Additionally, I understand that should I fail to settle a valid inconvenience claim set-off action will be taken against my company, by the appropriate claims office/finance office. I am not responsible for payment of an inconvenience claim when a shipment is ordered in storage-in-transit (SIT) at destination, regardless of the required delivery date (RDD), unless the need for SIT is a direct result of my failure to effect delivery of the shipment by the required delivery date and the member was officially ordered away from the area at the time delivery was available. I agree to reimburse the member through the day prior to the member's departure from the area.

William G. Balkus,

COL, GS, DCS Passenger and Personal Property.

[FR Doc. 99–15698 Filed 6–18–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare Supplemental Environmental Impact Statement, Dworshak Dam and Reservoir, Idaho

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, Walla Walla District, intends to prepare a supplement to the Dworshak Dam and Reservoir, Final Environmental Impact Statement (FEIS), September 1975. The Dworshak Dam and Reservoir Master Plan (MP), 1975, will be updated concurrently with preparation of the Supplemental Environmental Impact Statement (SEIS). The SEIS will evaluate environmental effects of multiple land-use management strategies that have developed since completion of the FEIS and are reflected in the updated MP. The SEIS evaluations will cover a range of activities and management practices proposed in the updated MP including reservoir operation, wildlife, fisheries, recreation, and forestry management.

FOR FURTHER INFORMATION CONTACT: Mr. James S. Smith, NEPA Coordinator, Walla Walla District Corps of Engineers, CENWW–PM–PD–E, 201 North Third Avenue, Walla Walla, WA 99362, phone (509) 527–7244.

SUPPLEMENTARY INFORMATION: The Dworshak Dam and Reservoir MP and FEIS were finalized in 1975 prior to completion of construction and establishment of current land-use strategies. The MP will be updated to reflect current environmental resource inventories, existing and planned recreational development, current regional strategies for wildlife and fishery management, and other reservoir and land-use strategies. The SEIS will evaluate the no action alternative and alternatives derived from the public scoping process.

Public Meeting: The Corps plans to conduct public scoping meetings to identify issues relevant to the MP update and SEIS in mid- to late-1999. Dates, times, and locations will be publicized.

Availability: The draft SEIS should be available for public review in late-2000.

William E. Bulen, Jr.,

LTC, EN, Commanding.

[FR Doc. 99–15697 Filed 6–18–99; 8:45 am]

BILLING CODE 3710–GC–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–510–001, FERC–510]

Information Collection Submitted for Review and Request for Comments

June 15, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of February 24, 1999 (64 FR 9135) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before July 21, 1999.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, attention: Federal Energy Regulatory Commission, Desk Office, 725 17th Street, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, CI–1, Attention: Michael Miller, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC–510 "Application for the Surrender of a Hydropower License".

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No. OMB No. 1902–0068.

The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There are no increases to the reporting burden. This is a mandatory information collection requirements and the Commission does not consider the information to be confidential.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Part 1, Section 4(e), 6 and 13 of the Federal Power Act, 16 U.S.C. 797(e), 799 and 806. Section 4(e) gives the Commission the authority to issue licenses for the proposed of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other project works necessary or convenient for developing and improving navigation, transmission and utilization of power over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe the conditions of the licenses including the revocation and/or surrender of the license. Section 13 defines that Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired or not constructed. The information is collected by FERC in the form of a written application for surrender of a hydropower license, which is then used by Commission staff to determine the broad impact of such a surrender. FERC carefully reviews the prepared application, solicits public and agency comments through the insurance of a public notice, and prepares the Surrender of License Order. The order is the result of the an analysis of the information produced, i.e., economic, environmental, etc. which is examine to determine if the application is warranted. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Section 6.1 through 6.4.

5. Respondent Description: The respondent universe currently comprises on average 10 companies subject to the Commission's jurisdiction.

6. Estimated Burden: 100 total burden hours, 10 respondents, 1 response annually, 10 hours per response (average).

7. Estimated Cost Burden to Respondents: 100 hours÷2080 hours per year × $109,889 per year = $5,283.

Statutory Authority: Sections 4(e), 6 and 13 of the Federal Power Act (FPA), 16 U.S.C. 797(e), 799 and 806.

David P. Boergers,

Secretary.

[FR Doc. 99–15683 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–300–002]

Colorado Interstate Gas Company; Notice of Tariff Filing

June 15, 1999.

Take notice that on June 10, 1999, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the Tariff sheets listed in the attached Appendix A, to the filing, to be effective June 1, 1999.

CIG states the tariff sheets are filed in compliance with Order issued May 28, 1999 in Docket Nos. RP99–300–000 and 001. This Order approved CIG's tariff filing subject to conditions. CIG has also requested a waiver of section 154.203(b) of the Commission's Regulations to allow it to correct certain spelling errors and remove duplicative language.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15681 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–34–000]

Distrigas of Massachusetts Corporation; Notice of Refund

June 15, 1999.

Take notice that on June 7, 1999, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing a Refund Report.

DOMAC states that it received a wire transfer of $14,639 from GRI on May 28, 1999 in accordance with the Federal Energy Regulatory Commission Opinion No. 407 issued September 27, 1996 (76 FERC 61,337).

DOMAC further states that it will not be crediting this refund to its customers on a pro rata basis because it has no customers who are eligible for such credits.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 22, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15672 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–550–000]

National Fuel Gas Distribution Corporation; Notice of Application

June 15, 1999.

Take notice that on June 10, 1999, National Fuel Gas Distribution Corporation (Applicant), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–550–000 an application pursuant to Section 7(f) of the Natural Gas Act (NGA), as amended, for a service area determination, a finding that with respect to the

applicable service area, Applicant is a local distribution company for purposes of Section 311 of the Natural Gas Policy Act (NGPA), and for a waiver of the Commission's regulatory requirements, including reporting and accounting requirements applicable to natural gas companies under the NGA and NGPA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at: http:///www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Applicant specifically proposes to expand its system in this service area and to connect its distribution system in Ripley, N.Y. with Applicant's Northeast, Pa. distribution system. Applicant asserts that this interconnection will assist Applicant in serving its customer demand in the area and will assist Applicant with maintaining its system pressure in the area during the winter season. Applicant further asserts that each of its respective state commissions, the New York Public Service Commission and the Pennsylvania Public Utility Commission will have jurisdiction under Section 7(f) to review such further facility expansion and enlargement located in the respective states consistent with the public interest.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–15670 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–333–000]

Questar Pipeline Company; Notice of Tariff Filing

June 15, 1999.

Take notice that on June 9, 1999, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective July 9, 1999.

Questar's Electronic Bulletin Board (EBB) has been phased out to be replaced by a web site containing the informational postings and interactive systems for contracting/capacity release and nominations/confirmations, collectively referred to as Questline. This filing proposes to revise Questar's tariff sheets to reflect the replacement of EBB language with Questline-related language.

Also included in this filing are miscellaneous minor clean-up revisions correcting typographical errors as well as inadvertent omissions and incorrect references to corresponding sections.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15682 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. GT99–26–001 and RP96–312–015]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

June 15, 1999.

Take notice that on June 10, 1999, Tennessee Gas Pipeline Company (Tennessee), submitted for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the revised tariff sheet identified below, with an effective date of July 10, 1999:

Third Revised Sheet No. 159A

Tennessee states that this filing is being made in compliance with the Commission's "Order Accepting Filing Subject to Condition" issued on May 26, 1999 in the above-referenced docket. Tennessee Gas Pipeline Company, 87 FERC ¶ 61,206 (1999). Tennessee further states that it is requesting an effective date of July 10, 1999 for this tariff sheet. Tennessee requests all waivers of the Commission's Regulations that may be necessary to allow this filing to become effective as of July 10, 1999.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15671 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

June 15, 1999.

Take notice that the following hydroelectric application has been filed with the commission and is available for public inspection:

a. *Type of Application:* Sale of Project Land.

b. *Project No.:* 459–101.

c. *Date Filed:* March 22, 1999 and supplemented on May 10, 1999.

d. *Applicant:* AmerenUE.

e. *Name of Project:* Osage Project.

f. *Location:* City of Osage Beach, Lake of The Ozarks in Miller and Camden Counties, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Mr. Jeff Douglas, Real Estate Department, AmerenUE, P.O. Box 66149, St. Louis, MO 63166–6149, (314) 554–2951.

i. *FERC contact:* Any questions on this notice should be addressed to Jack Hannula, E-Mail address John.Hannula@FERC.Fed.US, or telephone (202) 219–0116.

j. *Deadline for filing motions, protests, comments, recommendations:* 20 days from the issuance date of this notice. Please include the project number (459–101) on any filing.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. Description of the application: AmerenUE, licensee, proposes to sell 91.42 acres of project land to the City of Osage Beach for use as a public park. The property is located just outside the northeastern city limits of Osage Beach, on Lake of the Ozarks. The property was formerly used as a fish hatchery; this property is no longer needed for that purpose. The land would remain within the project boundary.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–15673 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

June 15, 1999.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 487.

c. *Date Filed:* May 4, 1999.

d. *Submitted By:* PP&L, Inc.—current licensee.

e. *Name of Project:* Wallenpaupack Project.

f. *Location:* On the Wallenpaupack Creek and Lackawaxen River, near the Borough of Hawley and the City of Scranton, in Wayne and Pike Counties, Pennsylvania.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Gary Petrewski, PP&L, Inc., Two North Ninth Street (GENN5), Allentown, PA 18101 (610) 774–5996.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778, or Patrick Murphy, patrick.murphy@ferc.fed.us, (202) 219–2659 regarding the alternative licensing procedures.

j. *Effective date of current license:* June 1, 1980.

k. *Expiration date of current license:* September 30, 2004.

l. *The project consists of the following existing facilities:* (1) A 870-foot-long, 67-foot-high concrete dam with a center spillway equipped with two 67.5-foot-long by 14-foot-high steel rollers; (2) a 405-foot-long, 40-foot-high earthen embankment; (3) a 1,400-foot-long, 40-foot-high earthen dike; (4) a 13-mile-long, 5,700-acre reservoir at a full pool elevation of 1,190 feet msl; (5) an 18,000-foot-long, 14-foot-diameter pipeline; (6) a surge tank; (7) two 350-foot-long, 8.75-foot-diameter penstocks; (8) a powerhouse containing two

generating units with a total installed capacity of 40,000 kW, (9) a 0.18–mile–long, 230 kV transmission line; and (10) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 2002.

David P. Boergers,

Secretary.

[FR Doc. 99–15674 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

June 15, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2232–391.

c. *Date Filed:* May 12, 1999.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* On Lake Norman in the Mountain Creek Township, in Catawba County, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: brian.romanek@ferc.fed.us.

j. *Deadline for filing comments and or motions:* July 8, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project number (2232–391) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to LakePointe North Homeowners Association (LakePointe North) 1.81 acres of project land for the construction of 50 boat slips and six piers accessing the slips. The boat slips would provide access to the reservoir for residents of the LakePointe North Subdivision. No dredging is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–15675 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11732–000.

c. *Date filed:* April 26, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* DeQueen Lake Dam Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' DeQueen Lock and Dam on the Rolling Fork River, near the Town of DeQueen, Sevier County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' DeQueen Lock and Dam, and would consist of the following facilities: (1) A new steel penstock about 50-foot-long and 6-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 1,600 kilowatts; (3) a new 300-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 11 gigawatthours. The cost of the studies under the permit will not exceed $750,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–15676 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11734–000.

c. *Date filed:* April 26, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Millwood Dam Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Millwood Dam and Reservoir on the Little River, near the Town of Saratoga, Hempstead and Little River Counties, Arkansas.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments

or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environment analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Millwood Dam and Reservoir, and would consist of the following facilities: (1) Seven new steel penstocks, each about 180-foot-long and 8-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 13,500 kilowatts; (3) a new 200-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 83 gigawatthours. The cost of the studies under the permit will not exceed $2,000,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing developing application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular applicaiton. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by he Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–15677 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11743–000.

c. *Date Filed:* May 14, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Rend Lake Dam.

f. *Location:* On the Big Muddy River, near the village of Ziegler, Franklin County, Illinois, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Rend Lake Dam and would consist of: (1) A new 100-foot-long, 78-inch-diameter steel penstock; (2) a new 30-foot-long, 30-foot-wide, 30-foot-high powerhouse containing one 800–Kw generating unit; (3) a new exhaust apron; (4) a new 3000-foot-long, 14.7–kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 5 GWh and that the cost of the studies to be performed under the terms of the permit would be $500,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–15678 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11744–000.

c. *Date Filed:* May 24, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Emmet Sanders L&D #4.

f. *Location:* On the Arkansas River, near the town of Gillett, Jefferson County, Arkansas, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Emmett Sanders L&D #4 and would consist of: (1) 14 new 40-foot-long, 114-inch-diameter steel penstocks; (2) a new 1,000-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 14 generating units having a total installed capacity of 27,000-kW; (3) a new exhaust apron; (4) a new 1000-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 166 GWh and that the cost of the studies to be performed under the terms of the permit would be $3,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be file, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–15679 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11747–000.

c. *Date Filed:* May 24, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Arkansas L&D #5.

f. *Location:* On the Arkansas River, near the town of Pine Bluff, Jefferson County, Arkansas, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Arkansas L&D #5 and would consist of: (1) 16 new 40-foot-long, 114-inch-diameter steel penstocks; (2) a new 480-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 16 generating units having a total installed capacity of 30,600-kW; (3) a new exhaust apron; (4) a new 600-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 187 GWh and that the cost of the studies to be performed under the terms of the permit would $3,500,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statment of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Agency Comments—Federal , State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–15680 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL98–1–001]

Public Access to Information and Electronic Filing; Notice of Agenda for Technical Conference on Electronic Filing; June 24, 1999

June 15, 1999.

9:30 am Introductions & Opening Remarks

9:40 am Major Issues (Staff will briefly introduce each issue, then open topic for discussion. Refer to issue papers for staff analysis).

- Filing Format
- Citation
- Record Retention
- Official Filing Date
- Electronic Filing Authentication and Verification (Signatures)
- Document Content Standards (for Electronic Submissions)
- Electronic Filing Phase 1 Profile

11:00 am Prototype Interventions, Comments, and Protests

- Description of Proposed Process
- Screen Prototypes
- Testing Process

12:00–1:00 Lunch

1:00 pm Phases for Electronic Filing Implementation

1:30 pm Other Issues

- Digital Signatures
- Security
- Y2K Docket Number Format

2:30 pm Adjourn

David P. Boergers,

Secretary.

[FR Doc. 99–15621 Filed 6–18–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6363–9]

Agency Information Collection Activities, OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Ch. 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at (202) 260–2740, or E-mail at "farmer.sandy@epa.gov", and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

ERA ICR No. 1608.02; State Program Adequacy Determination: Non-Municipal, Non-Hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generators (CESQG) Hazardous Waste and Municipal Solid Waste Landfills (MSWLF's); in 40 CFR part 258, 40 CFR part 257, and 40 CFR part 239; was approved April 30, 1999; OMB No. 2050–0152; expires April 30, 2002.

EPA ICR No. 0160.06; Pesticide Registration Application, Notification and Request for Pesticide-Producing Establishments; in 40 CFR part 167; was approved May 19, 1999; OMB No. 2070–0078; expires May 31, 2002.

EPA ICR No. 1154.05; NESHAP Benzene Emissions from Bulk Transfer Operations; in 40 CFR part 61, subpart BB; was approved May 19, 1999; OMB No. 2060–0182; expires May 31, 2002.

EPA ICR No. 1688.03; RCRA Expanded Public Participation; in 40 CFR 124.31–124.33, 270.62 and 270.66; was approved May 19, 1999; OMB No. 2050–0149; expires May 31, 2002.

EPA ICR No. 0012.11; Motor Vehicle Exclusion Determination; in 40 CFR 85.1703; was approved May 24, 1999; OMB No. 2060–0124; expires May 31, 2002.

EPA ICR No. 0969.05; Final Authorization for Hazardous Waste Management; in 40 CFR part 271, subpart A; was approved May 24, 1999; OMB No. 2050–0041; expires May 31, 2002.

EPA ICR No. 0167.06; Verification of Test Parameters and Parts Lists for Light-Duty Vehicles and Light-Duty Trucks; was approved May 24, 1999; OMB No. 2060–0094; expires May 31, 2002.

EPA ICR No. 1292.05; Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters; was approved May 24, 1999; OMB No. 2060–0135; expires May 31, 2002.

EPA ICR No. 0976.09; The 1999 Hazardous Waste Report (Biennial Report); in 40 CFR 262.40, 262.41, 264.75 and 265.75; was approved May 24, 1999; OMB No. 2050–0024; expires November 30, 2000.

EPA ICR No. 1617.03; Stratospheric Ozone Protection, Servicing of Motor Vehicle Air Conditioners; in 40 CFR 82, subpart B; was approved May 24, 1999; OMB No. 2060–0247; expires May 31, 2002.

EPA ICR No. 1852.01; Exclusion Determinations for New Non-Road Spark-Ignited Engines at or Below 19 Kilowatts; in 40 CFR part 90, subpart J; New Compression-Ignited Engines at or Above 37 Kilowatts; in 40 CFR part 89, subpart A; New Marine Engines; in 40 CFR part 91, subpart K and New On-Road Heavy Duty Engines; in 40 CFR 85.1703; was approved May 24, 1999; OMB No. 2060–0395; expires May 31, 2002.

EPA ICR No. 1775.02; Hazardous Remediation Waste Management Requirements (HWIR–Media); in 40 CFR 260.10, 261.4, 264.101, 264.554, 270.68, 270, subpart H, 271.1, and 272.21; was approved June 2, 1999; OMB No. 2050–0161; expires June 30, 2002.

EPA ICR No. 1100.09; NESHAP for Radionuclies; in 40 CFR part 61, subparts B, K, R, and W; was approved June 2, 1999; OMB No. 2060–0191; expires June 30, 2002.

OMB's Comments Filed

EPA ICR No. 1894.01; NESHAP for the Secondary Aluminum Production; proposed at 40 CFR part 63, subpart RRR; OMB filed comments May 19, 1999.

EPA ICR No. 1891.01; NESHAP for Source Category: Public Owned Treatment Works; proposed at 40 CFR part 63, subpart VVV; OMB filed comments May 19, 1999.

Extensions of Expiration Dates

EPA ICR No. 0160.05; Application for Registration of Pesticide-Producing Establishments; Notification of Registration of Pesticide-Producing Establishments; Pesticide Report for Pesticide-Producing Establishments; OMB No. 2070–0078; in 40 CFR part 167; on March 9, 1999 OMB extended the expiration date through May 31, 1999.

EPA ICR No. 0275.06; Preaward Compliance Review Report; in 40 CFR part 7; OMB No. 2090–0014; on April 30, 1999 OMB extended the expiration date through October 31, 1999.

EPA ICR No. 1837.02; Four Private Party Surveys Regarding Prospective Purchaser Agreements and Comfort/Status Letter; OMB No. 2020–0013; OMB extended the expiration date through June 30, 1999.

EPA ICR No. 0795.09; Notification of Chemical Exports—TSCA Section 12(b); in 40 CFR part 707; OMB No. 2070–0030; OMB extended the expiration date through September 30, 1999.

EPA ICR No. 1712.02; National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair Facilities (Surface Coating); in 40 CFR part 63, subpart II; OMB No. 2060–0330; OMB extended the expiration date through November 30, 1999.

EPA ICR No. 0222.04; Investigations into Possible Noncompliance of Motor Vehicles with Federal Emission Standards; OMB No. 2060–0086; OMB extended the expiration date through October 31, 1999.

Dated: June 15, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–15714 Filed 6–18–99; 8:45 am]

BILLING CODE 6360–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00605; FRL–6086–2]

Pesticide Program Dialogue Committee (PPDC); Formation of Subcommittee on Inert Disclosure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs (OPP) is inviting nominations of qualified candidates to consider for appointment on a new workgroup, the Inert Disclosure Stakeholder Workgroup, of the Pesticide Program Dialogue Committee (PPDC).

DATES: Nominations will be accepted until 5 p.m. on July 21, 1999.

ADDRESSES: Submit nominations in writing to Margie Fehrenbach, Designated Federal Officer for PPDC, 7501C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach, Designated Federal Officer for PPDC, 7501C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone (703) 305–7090, or

Cameo Smoot, 7506C, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (703) 305–5454. Office locations: 11th floor, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA; e-mail: fehrenbach.margie@epa.gov or smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION: The Office of Pesticide Programs (OPP) is currently working to establish a workgroup to advise the PPDC on ways of making information on inert ingredients more available to the public while working within the mandates of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and related Confidential Business Information (CBI) concerns. The work group will review the current OPP policy and process for disseminating inert ingredient or "other ingredient" information to the public and examine the process that OPP uses to protect CBI. The workgroup will also provide a forum for open discussions on the principles of disclosure (e.g., right-to-know) and the principles of CBI protection (e.g., substantial harm to a business' competitive position in the market place). Finally, the workgroup will examine options for alternative ways of disseminating inert ingredient information to the public and present its findings to the PPDC.

The workgroup will be formed as a workgroup of the PPDC. The PPDC provides advice and guidance to OPP regarding pesticide regulatory, policy and implementation issues. The PPDC is a balanced group of participants from the following sectors: Federal agencies and State, local, and Tribal governments; consumer and environmental/public interest groups, including representatives from the general public; medical community; the public health community; industry and trade associations; and academia; and user groups. The PPDC may form workgroups for any purpose consistent with its charter. Copies of the PPDC charter are filed with the appropriate committees of Congress and the Library of Congress and are available via the Internet at http://www.epa.gov/oppfead1/cb/ppdc/charter.htm or hard copies are available by request.

An important consideration in EPA's selection of workgroup members will be to maintain balance and diversity of experience and expertise. EPA intends to appoint work group members who represent a broad geographic representation from the following sectors: Environmental/public interest and consumer groups; industry and pesticide users; Federal, State and local governments; the general public; academia and public health organizations.

Potential candidates should submit the following information: Name, occupation, organization, position, address, telephone number and a brief resume containing their background, experience, qualifications and other relevant information as part of the consideration process. Any interested person and/or organization may submit the names of qualified persons.

List of Subjects

Environmental protection, Pesticides.

Dated: June 9, 1999.

Joseph Merenda, Jr.

Acting Director, Office of Pesticide Programs.

[FR Doc. 99–15716 Filed 6–18–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. WA–CA–30451]

Opportunity To Submit Amicus Curiae Briefs in an Unfair Labor Practice Proceeding Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file briefs as amici curiae in a proceeding before the Federal Labor Relations Authority in which the Authority is determining, in the context of resolving the case before it, whether and under what circumstances agencies are obligated to engage in union-initiated midterm bargaining.

SUMMARY: The Federal Labor Relations Authority provides the opportunity for interested parties to file briefs as amici curiae on a significant issue arising in a case pending before the Authority. The Authority is considering the case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute. The issue concerns whether and under what circumstances an agency is required, during the term of a collective bargaining agreement, to engage in union-initiated midterm bargaining.

DATES: Briefs submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Case Control Office by 5 p.m. on July 19, 1999. Placing submissions in the mail by this date will not be sufficient. Extensions of time to submit briefs will not be granted.

FORMAT: All briefs shall be captioned *"Department of the Interior, Washington, D.C. and U.S. Geological Survey, Reston, VA and National Federation of Federal Employees, Local 1309*, WA–CA–30451." Briefs shall not exceed fifteen double-spaced pages and must contain separate, numbered topic-headings. Parties must submit an original and four copies of each amicus brief, on 8½ by 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27(a) and (c). The designated representatives are: Leslie Deak, Union Representative, National Federation of Federal Employees, 1016 16th Street, NW, Washington, D.C. 20036; Beatrice G. Chester, Agency Representative, Office of the Solicitor, U.S. Department of the Interior, 1849 C Street, NW., Washington, D.C. 20240; and Michael W. Doheny, Regional Director, Federal Labor Relations Authority, 800 K Street, NW., Suite 910, Washington, D.C. 20001.

ADDRESSES: Mail or deliver briefs to Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW, Room 415, Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, (202) 482–6540.

SUPPLEMENTARY INFORMATION: The case presenting the issues on which amicus briefs are being solicited is before the Authority on remand from the United States Supreme Court (*NFFE and FLRA* v. *Department of the Interior*, 119 S. Ct. 1003 (1999) (*NFFE and FLRA* v. *Interior*)) and in turn from the United States Court of Appeals for the Fourth Circuit (*U.S. Department of the Interior* v. *FLRA and NFFE*, Nos. 96–2855 and 97–1135 (4th Cir. April 23, 1999) (*Interior* v. *FLRA and NFFE*)). To assist

interested persons in responding, the Authority offers the following litigation background, limitation on briefs, and question on which amicus views are being sought.

A. Litigation Background

In 1987, the United States Court of Appeals for the District of Columbia Circuit set aside the Authority's decision in *Internal Revenue Service*, 17 FLRA 731 (1985) (IRS I) that an agency had no obligation to bargain over union-initiated proposals offered during the term of a collective bargaining agreement. *National Treasury Employees Union* v. *FLRA*, 810 F.2d 295 (D.C. Cir. 1987) (*NTEU* v. *FLRA*). Relying on private sector precedent and congressional intent to encourage and promote collective bargaining in the federal sector, the court held that the obligation to bargain under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1994 & Supp. III 1997) (Statute), extended to union-initiated midterm proposals. Id. at 301. On remand, the Authority adopted the reasoning of the D.C. Circuit and held that an agency is obligated to bargain during the term of a collective bargaining agreement on negotiable union proposals concerning matters not contained in or covered by the term agreement unless the union has waived its right to bargain about the subject matter involved. *Internal Revenue Service*, 29 FLRA 162, 166 (1987) (*IRS II*).

In 1992, the United States Court of Appeals for the Fourth Circuit expressly disagreed with the reasoning of the Authority and the D.C. Circuit, concluding that "union-initiated midterm bargaining is not required by the [S]tatute and would undermine the congressional policies underlying the [S]tatute." *Social Security Admin.* v. *FLRA*, 956 F.2d 1280, 1281 (4th Cir. 1992) (*SSA* v. *FLRA*). The court, on examining the text of the Statute and its legislative history, concluded that the mutual obligation to bargain in good faith "arises as to only one, basic agreement[.]" *Id.* at 1284–85.

Subsequently, the Authority and, in turn, the Fourth Circuit were presented with the issue of midterm bargaining in a different context. In both *U.S. Department of Energy, Washington, D.C.*, 51 FLRA 124 (1995) (*Department of Energy*), and in the case now before the Authority on remand, *U.S. Department of the Interior, Washington, D.C.* and *U.S. Geological Survey*, 52 FLRA 475 (1996) (*Department of Interior*), the Authority analyzed an agency's obligation to bargain over a contract term requiring union-initiated midterm bargaining. In *Department of Energy*, the Authority concluded that the agency had violated the Statute by disapproving a provision obligating an agency to bargain over union-initiated proposals not contained in or covered by the agreement. 51 FLRA at 125. Similarly, in *Department of Interior*, the Authority found a violation where the agency refused to bargain over a proposal substantially identical to that at issue in *Department of Energy*; specifically, the proposal provided, in pertinent part, that "[t]he Union may request and the Employer will be obligated to negotiate on any negotiable matter not covered by the provisions of this agreement." 52 FLRA at 476.

The Fourth Circuit reviewed and reversed both decisions. In *Department of Energy* v. *FLRA*, 106 F.3d 1158 (4th Cir. 1997) (*Energy* v. *FLRA*), the court found the midterm bargaining provision inconsistent with the Statute because it is "at odds with the policies underlying [the Statute] and is wholly contrary to congressional intent." *Id.* at 1164. The court further held that finding the provision at issue negotiable "would effectively vitiate [*SSA* v. *FLRA*]." *Id.* at 1163. In *Interior* v. *FLRA*, 132 F.3d 157 (4th Cir. 1997), on finding the case controlled by *SSA* v. *FLRA* and *Energy* v. *FLRA*, the court granted the agency's petition for review.

The Authority petitioned the Supreme Court for review of the Fourth Circuit's decision in *Interior* v. *FLRA*. Acknowledging the split in the United States Courts of Appeals on this issue, the Supreme Court granted *certiorari* and focused on the issue of whether the Statute "impose[s] a duty to bargain during the term of an existing labor contract[.]" *NFFE* and *FLRA* v. *Interior*, 119 S. Ct. at 1007. Rejecting the view of the court below, the Court found "the Statute's language sufficiently ambiguous or open on the point as to require judicial deference to reasonable interpretation or elaboration by the" Authority. *Id.*

In reaching this determination, the Court, after pointing out that the Statute did not expressly address union-initiated midterm bargaining, rejected the agency's arguments that the Statute prohibited midterm bargaining. Specifically, the Court disagreed with assertions that midterm bargaining was inconsistent with the language, policies, prior practice, legislative history, or management rights provision (section 7106(a)) of the Statute. *Id.* at 1008–10. The Court concluded that "[t]he Authority would seem better suited than a court to make the workplace-related empirical judgments' that will balance "the policy-related considerations" concerning the merits and drawbacks of union-initiated midterm bargaining. *Id.* at 1009. The Court went on to find the "absolute" interpretations of the Fourth and D.C. Circuits inconsistent with the statutory ambiguity. *Id.* at 1010. The Court found this "statutory ambiguity [to be] perfectly consistent, however, with the conclusion that Congress delegated to the Authority the power to determine * * * whether, when, where, and what sort of midterm bargaining is required." *Id.* at 1010.

Finally, noting that the specific question before the Court concerned "whether an agency must bargain endterm about including in the basic labor contract a clause that would require certain forms of midterm bargaining[,]" the Court concluded that "the Statute grants the Authority leeway (within ordinary legal limits) in answering that question as well." *Id.* at 1011. However, the Court found that the Authority's prior explanation concerning the duty to bargain over such proposals was "more an effort to respond to, and to distinguish, a contrary judicial authority, rather than an independently reasoned effort to develop complex labor policies." *Id.* Accordingly, the Court remanded the case to afford the Authority the opportunity to consider the issues of midterm bargaining, and the related question of bargaining about midterm bargaining, "aware that the Statute permits, but does not compel, the conclusions [that the Authority] reached." *Id.*

The Fourth Circuit remanded "to the Authority for further proceedings consistent with the opinion of the Supreme Court." *Interior* v. *FLRA* and *NFFE*, slip op. at 4.

B. Limitations on Briefs

As noted in the preceding section, the Supreme Court has determined that the Statute is ambiguous on the issue of whether an agency is obliged to engage in union-initiated midterm bargaining. As a result, the Authority will not entertain any further argument on the question of whether union-initiated midterm bargaining is required or prohibited by the Statute. Rather, we seek interested parties' views only to assist the Authority in making "the workplace-related empirical judgments" that will balance "the policy-related considerations" concerning union-initiated midterm bargaining. *NFFE* and *FLRA* v. *Interior*, 119 S. Ct. at 1009. Because of the extensive previous litigation on this issue, the Authority has concluded that the fifteen page length limitation noted above is appropriate and will provide ample opportunity for interested parties to express their views.

C. Question on Which Briefs Are Solicited

The parties in the instant case have been directed to address the question set forth below. Additionally, the Authority believes that this issue is likely to be of concern to the federal sector labor-management relations community in general. Accordingly, the Authority invites interested persons to address the following and any other policy-related matters deemed relevant to balancing the pros and cons of union-initiated midterm bargaining.

In the context of resolving this case, what policy considerations and empirical data should the Authority balance in determining whether, when, and where union-initiated midterm bargaining is required?

Dated: June 16, 1999.

For the Authority.

Peter Constantine,

Director of Case Control.

[FR Doc. 99–15656 Filed 6–18–99; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m.–June 24, 1999.

PLACE : 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Docket No. 98–14—Shipping Restrictions, Requirements and Practices of the People's Republic of China.

2. Petition No. P5–98—Petition of National Customs Brokers & Forwarders Associaton of America for Issuance of a Rulemaking or, in the Alternative, for a Declaratory Order.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–15830 Filed 6–17–99; 12:58 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 15, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Peoples Bancorp of North Carolina, Inc., Newton, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank, Newton, North Carolina.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. United Community Banks, Inc., Blairsville, Georgia; to merge with 1st Floyd Bankshares, Inc., Rome, Georgia, and thereby indirectly acquire 1st Floyd Bank, Rome, Georgia.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Mahaska Investment Company, Oskaloosa, Iowa; to acquire 100 percent of the voting shares of Pella State Bank, Pella, Iowa (in organization).

2. Old Kent Financial Corporation, Grand Rapids, Michigan; to merge with Pinnacle Banc Group, Inc., Oak Brook, Illinois, and thereby indirectly acquire Pinnacle Bank, Cicero, Illinois, and Pinnacle Bank of the Quad-Cities, Silvis, Illinois.

In connection with this application, Applicant also has applied to acquire, indirectly through Pinnacle Banc Group, Inc., Oakbrook, Illinois, more than 5 percent of the voting shares of Dovenmuehle Mortgage Company, L.P., Schaumburg, Illinois, and thereby engage in making, acquiring, brokering or servicing loans or other extensions of credit, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, June 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15695 Filed 6–18–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 6, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Fuji Bank, Limited, Tokyo, Japan; to acquire through its subsidiary, Heller Financial Inc., Chicago, Illinois, up to 100 percent of the voting shares of HealthCare Financial Partners, Inc., Chevy Chase, Maryland, and thereby engage in extending credit and servicing

loans, pursuant to § 225.28(b)(1) of Regulation Y, and activities related to extending credit, pursuant to § 225.28(b)(2) of Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Arvest Bank Group, Inc., Bentonville, Arkansas, and its wholly owned subsidiary, Ameribank Corporation, Shawnee, Oklahoma, and its wholly owned subsidiary, United Oklahoma Bancshares, Inc., Del City, Oklahoma; to convert its existing state-chartered bank subsidiary, United Bank, Oklahoma City, Oklahoma, into a savings association and thereby engage in the operation of a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 16, 1999.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Farmers State Corporation, Mankato, Minnesota; to acquire Southwest State Agency, Springfield, Minnesota, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to § 225.28(b)(11)(iii) of Regulation Y. The proposed activity will be conducted under the name United Prairie Agency, Springfield, Minnesota.

Board of Governors of the Federal Reserve System, June 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15694 Filed 6–18–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, whose membership represents interests of consumers, communities, and the financial services industry. Seven new members will be selected for three-year terms that will begin in January 2000. The Board expects to announce the selection of new members by year-end 1999.

DATE: Nominations should be received by August 16, 1999.

ADDRESS: Nominations should be submitted in writing and mailed (not sent by facsimile) to Sandra F. Braunstein, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: Ann Bistay, Secretary to the Council, Division of Consumer and Community Affairs, (202) 452-6470. For Telecommunications Device for the Deaf (TDD) users only: Diane Jenkins, (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976 at the direction of the Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial services industry (15 USC 1691(b)). Under the Rules of Organization and Procedure of the Consumer Advisory Council (12 CFR 267.3), members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected for terms beginning January 1, 2000, to replace members whose terms expire in December 1999; the Board expects to announce its appointment of new members by year-end. Nomination letters should include information about past and present positions held by the nominee; a description of special knowledge, interests or experience related to community reinvestment, consumer credit, or other consumer financial services; and the current address and telephone number of both the nominee and the nominator. Individuals may nominate themselves.

The Board is interested in candidates who have some familiarity with consumer financial services or community reinvestment, and who are willing to express their viewpoints. Candidates do not have to be experts on all levels of consumer financial services or community reinvestment, but they should possess some basic knowledge of the area. They must be able and willing to make the necessary time commitment to prepare for and attend meetings three times a year (usually for two days, including committee meetings), held at the Board's offices in Washington, D.C. The Board pays travel expenses, lodging, and a nominal honorarium.

In making the appointments, the Board will seek to complement the background of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board may consider prior years' nominees and does not limit consideration to individuals nominated by the public when making its selection.

Council members whose terms end as of December 31, 1999, are: Wayne-Kent A. Bradshaw, President and Chief Executive Officer, Family Savings Bank, FSB, Los Angeles, California; Janet C. Koehler, President, Koehler Associates, Ponte Vedra Beach, Florida; Carol Parry, Executive Vice President, Chase Manhattan Bank, New York, New York; Philip Price, Jr., Executive Director, The Philadelphia Plan, Philadelphia, Pennsylvania; Marilyn Ross, Executive Director, Holy Name Housing Corporation, Omaha, Nebraska; Gail Small, Executive Director, Native Action, Lame Deer, Montana; and Yvonne S. Sparks, Vice President, NationsBank Community Investments Group, St. Louis, Missouri.

Council members whose terms continue through 2000 and 2001 are: Lauren Anderson, Executive Director, Neighborhood Housing Services of New Orleans, Inc, New Orleans, Louisiana; Walter J. Boyer, President, United Central Bank, Garland, Texas; Malcolm Bush, President, The Woodstock Institute, Chicago, Illinois; Mary Ellen Domeier, President, State Bank & Trust Company of New Ulm, New Ulm, Minnesota; Jeremy Eisler, Director of Litigation, South Mississippi Legal Services Corp., Biloxi, Mississippi; Robert F. Elliott, Retired Vice Chairman, Household International, Prospect Heights, Illinois; John Gamboa, Executive Director, The Greenlining Institute, San Francisco, California; Rose Garcia, Executive Director, Tierra del Sol Housing Corporation, Las Cruzes, New Mexico; Vincent Giblin, Chief Executive Officer, International Union of Operating Engineers, West Caldwell, New Jersey; Dwight Golann, Professor of Law, Suffolk University Law School, Boston, Massachusetts; Karla Irvine, Executive Director, Housing Opportunities Made Equal of Greater Cincinnati, Inc., Cincinnati, Ohio; Willie Jones, Deputy Director, The Community Builders, Inc., Boston, Massachusetts; Gwenn Kyzer, Vice President, Target Marketing Service Experian, Inc., Allen, Texas; John C. Lamb, Senior Staff Counsel, Department of Consumer Affairs, Legal Services Unit, Sacramento, California; Anne Li, Executive Director, New Jersey

Community Loan Fund, Trenton, New Jersey; Martha W. Miller, President, Choice Federal Credit Union, Greensboro, North Carolina; Daniel W. Morton, Vice President and Senior Counsel, The Huntington National Bank, Columbus, Ohio; David L. Ramp, Assistant Attorney General, State of Minnesota, St. Paul, Minnesota; Marta Ramos, Vice President & CRA Officer, Banco Popular De Puerto Rico, Hato Rey, Puerto Rico; Robert G. Schwemm, Professor Law, University of Kentucky, Lexington, Kentucky; David J. Shirk, Senior Vice President, Frontier Investment Company, Eugene, Oregon; Gary Washington, Senior Vice President, ABN AMRO, Chicago, Illinois; and Robert Wynn, II, Financial Education Officer, Department of Financial Institutions, Madison, Wisconsin.

Board of Governors of the Federal Reserve System, June 14, 1999.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 99–15693 Filed 6–18–99; 8:45a.m.]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Request for Nominations of Members to the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary.

ACTION: Announcement of request for membership nominations.

SUMMARY: The Office of the Secretary requests nominations of individuals to serve on the Advisory Committee on Blood Safety and Availability (ACBSA) in accordance with its charter. Appointments will be made for a term of four years. It is not necessary to re-nominate individuals previously nominated; all nominations previously received have been retained and remain active.

DATES: All nominations must be received at the address below by no later than 4 p.m. EDT July 23, 1999.

ADDRESSES: All nominations shall be submitted to Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Phone (202) 690–5560.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Phone (202) 690–5560.

Nominations

Persons nominated for membership should be from among authorities knowledgeable in blood banking, transfusion medicine, bioethics and/or related disciplines. Members shall be selected from State and local organizations, blood and blood products industry including manufacturers and distributors, advocacy groups, consumer advocates, provider organizations, academic researchers, ethicists, private physicians, scientists, consumer advocates, legal organizations and from among communities of persons who are frequent recipients of blood and blood products.

Information Required

Each nomination shall consist of a package that, at a minimum, includes:

A. The name, return address, daytime telephone number and affiliation of the individual being nominated, the basis for the individual's nomination, the category for which the individual is nominated and a statement that the nominated individual is willing to serve as a member of the committee;

B. The name, return address, daytime telephone number at which the nominator may be contacted. Organizational nominators must identify a principal contact person in addition to the contact information;

C. A copy of the nominee's curriculum vitae.

All nomination information for a nominee must be provided in a complete single package. Incomplete nominations will not be considered. Nomination materials must bear original signatures, and facsimile transmissions or copies are not acceptable.

Dated: June 14, 1999.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 99–15627 Filed 6–18–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health

Availability of Funds for Grants for the Minority Community Health Coalition Demonstration Program, HIV/AIDS

AGENCY: Office of the Secretary, Office of Minority Health.

ACTION: Notice of availability of funds and request for applications for the Minority Community Health Coalition Demonstration Grant Program, HIV/AIDS.

Purpose

The purpose of this Fiscal Year 1999 Minority Community Health Coalition Demonstration Grant Program, HIV/AIDS is to improve the health status, relative to HIV/AIDS, of targeted minority populations through health promotion and education activities. This program is intended to demonstrate the effectiveness of community-based coalitions involving non-traditional partners in:

(1) Developing an integrated community-based response to the HIV/AIDS crisis through community dialogue and interaction;

(2) Addressing sociocultural, linguistic and other barriers to HIV/AIDS treatment to increase the number of individuals seeking and accepting services; and

(3) Developing and conducting HIV/AIDS education and outreach efforts for hardly reached populations.

The overall goal is to increase the health status of minority populations by increasing the educational understanding of HIV/AIDS, increased testing, and improving the access to HIV/AIDS prevention and treatment services.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led national activity of setting priority areas. This announcement, the Minority Community Health Coalition Demonstration Grant Program, HIV/AIDS, is related to four of the 22 priority areas (1) Alcohol and other drugs; (2) educational and community-based programs; (3) HIV Infection; and (4) sexually transmitted diseases. Potential applicants may obtain a copy of Health People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–0473–1) through the Superintendent of Documents,

Government Printing Office, Washington, DC 20402–9325 or telephone (202) 783–3238.

Background

The Minority Community Health Coalition Demonstration Grant Program, HIV/AIDS is based on the hypothesis that the community coalition approach to health promotion and education activities can be effective in reaching minority target populations—especially those most at risk or hardly reached. Among the merits of using coalitions is the higher likelihood that: (1) The intervention will be culturally and linguistically competent, credible and more acceptable to the target population; (2) the project will address HIV/AIDS within the context of related socio-economic issues; and (3) the effort will contribute to overall community empowerment by strengthening indigenous leadership and organizations. The OMH is continuing, through this announcement, to promote the utilization of community coalitions to develop and implement health promotion/education activities to specifically focus on HIV/AIDS. The OMH is also interested in involving those organizations in the coalition that have not traditionally been involved in HIV/AIDS prevention activities or services and outreach (e.g., sororities/fraternities, rotary clubs, religious affiliates) so that hardly reached populations (e.g. inmates, homeless, women at risk, youth) are provided the services they need. By including organizations that have not traditionally been involved in HIV/AIDS activities, the community coalition will expand its network and ability to access and serve these hardly reached populations. Applicants are also encouraged to establish linkages with other federally funded programs supporting HIV prevention and care to maximize these efforts.

Disproportionate Effect of HIV/AIDS on Minorities

Current statistics from the Centers for Disease Control and Prevention (CDC) indicate that Blacks and Hispanics are disproportionately represented among the more than 640,000 people with AIDS that have been reported in the United States. While Blacks and Hispanics respectively represent approximately 13% and 10% of the U.S. population, 45% of people with AIDS reported in 1997 were Black and 21% were Hispanic. Asian/Pacific Islanders and Native Americans respectively represent 4% and 1% of the U.S. population and currently each account for 1% of people with AIDS. During 1997, the rate of new AIDS cases per 100,000 population in the U.S. was 83.7 among Blacks, 37.7 among Hispanics, 10.4 among whites, 10.4 among American Indians/Alaska Natives, and 4.5 among Asians/Pacific Islanders. Although Asian/Pacific Islanders and Native Americans do not appear to be disproportionately affected by HIV infection, it is believed that the low rate may be due in part to undercounting issues, especially in the Native American population.

The behaviors that increase the risk of infection with HIV include: unprotected sexual intercourse; the sharing of HIV infected needles or other drug paraphernalia; and having numerous unprotected sexual partners (homosexual or heterosexual). People who engage in more than one of these behaviors, for example, individuals who have unprotected sex with someone who injects drugs and shares needles or other "works", are at especially high-risk. HIV infections associated with use of injected drugs involve not only drug users themselves, but their sex partners and infants as well. Users of non-injected drugs, e.g. crack, who sell sexual favors to support their habit often expose themselves to multiple potentially infected partners.

Surveillance data shows that a large proportion of AIDS cases among minorities are diagnosed in the 20 to 29 year old age group, indicating HIV infection in adolescence or early 20's. Given the data regarding the incidence of the disease among teenagers, adolescents and adults, it is imperative to conduct targeted outreach activities to implement comprehensive HIV/AIDS prevention and education programs in racial/ethnic communities to reach these populations.

HIV/AIDS and Sexually Transmitted Diseases (STDs)

The behaviors which place individuals at risk for other STDs also increase a person's risk of becoming infected with HIV. Prevention through individual behavior change is the only method currently available to stop the spread of HIV infection. According to the CDC, biological studies suggest both increased susceptibility to HIV infection and increased likelihood of infecting other people when STDs are present. STD surveillance can provide important indications of where HIV infection may spread, and where efforts to promote safer sexual behaviors should be targeted. Therefore, it is important that HIV education and prevention programs integrate STDs as health care problems associated with the high-risk behaviors underlying HIV transmission.

Eligible Applicants: Public and private, nonprofit minority community-based organizations which represent a community coalition of at least three discrete organizations (see definitions of Minority Community-Based Organizations, Community Coalition and AIDS Service Organization found in this announcement.) The applicant and at least one of the three organizations must have significant experience in conducting HIV/AIDS education, prevention and outreach activities. As the applicant, the minority community-based organization must have at least five years or more experience in HIV/AIDS. One of the three organizations must be an AIDS Service Organization (ASO) with at least three years of experience. Additionally, at least one of the coalition members must be an organization rooted in the community, but with limited experience conducting HIV/AIDS programs.

In order to maximize the use of the limited resources available for this program and to address efforts where the HIV/AIDS problem is most prevalent, eligible applicants must be located in one of the following 15 metropolitan statistical areas. These are the areas indicated by the CDC in its HIV/AIDS Surveillance Reports for 1996 and 1997 as having the highest number of newly reported AIDS cases in 1995, 1996 and 1997.

- Atlanta, GA
- Baltimore, MD
- Boston, MA
- Chicago, IL
- Dallas, TX
- Ft. Lauderdale, FL
- Houston, TX
- Los Angeles, CA
- Miami, FL
- New York, NY
- Newark, NJ
- Philadelphia, PA
- San Francisco, CA
- San Juan, PR
- Washington, DC

The minority community-based organization will: serve as the lead agency for the grant; be responsible for management of the project; and serve as the fiscal agent for the Federal grant awarded. The coalition membership must be documented as specified under the project requirements described in this announcement.

National organizations, universities and schools of higher learning are not eligible to apply. However, local affiliates of national organizations which meet the definition of a minority community-based organization are eligible. Currently funded OMH grantees are not eligible to apply (e.g., Minority Community Health Coalition Demonstration Program, Bilingual/Bicultural Service Demonstration Program). Organizations are not eligible to receive funding from more than one OMH grant program.

Deadline: To receive consideration, grant applications must be received by the Office of Minority Health (OMH) Grants Management Office by July 21, 1999. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

Addresses/Contacts: Applications must be prepared using Form PHS 5161–1 (Revised May 1996 and approved by OMB under control Number 0937–0189). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0758. Completed applications are to be submitted to the same address.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed to Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0769.

Technical assistance is also available through the OMH Regional Minority Health Consultants (RMHCs). A listing of the RMHCs and how they may be contacted will be provided in the grant application kit. Additionally, applicants can contact the OMH Resource Center (OMH-RC) at 1–800–444–6472 for health information.

Availability of Funds: Approximately $2.5 million is to be available for award in FY 1999. It is projected that awards of up to $150,000 total costs (direct and indirect) for a 12 month period will be made to approximately 13–15 competing applicants.

Period of Support: The start date for the Minority Community Health Coalition Demonstration Grant program is September 30, 1999. Support may be requested for a total project period not to exceed 3 years. Noncompeting continuation awards of up to $150,000 will be made subject to satisfactory performance and availability of funds.

Project Requirements: Each applicant to this demonstration grant program must:

(1) Propose to conduct a replicable, model program using an integrated community-based response to the HIV/AIDS crisis through community dialogue and interaction designed to improve the health status of targeted minority populations.

(2) Have a coalition capable of ensuring that the target population is provided with HIV/AIDS health promotion and education outreach activities that are linguistically, culturally and age appropriate especially for hardly reached populations.

(3) Engage minority communities in activities that will impact attitudes and perceptions in these communities to increase the number of individuals seeking and accepting services.

(4) The coalition must consist of at least three discrete organizations which include: (1) a minority community-based organization; (2) an ASO; and, (3) one organization rooted in the community with limited experience in HIV/AIDS activities. As the lead, the minority community-based organization must have at least five years of documented experience in conducting HIV/AIDS education and health promotion activities. The coalition must include an ASO with at least three years of documented experience to ensure that information dissemination on HIV/AIDS and related issues is current and accurate from a medical point of view. The coalition must also include at least one organization rooted in the community that has not traditionally been involved in HIV/AIDS activities.

(5) Provide signed documentation between the applicant and each coalition member which specifies, in detail: (a) the roles and resources that each entity will bring to the project, and (b) states the duration and terms of the agreement. The document must be signed by representatives with authority from all the member organizations including the applicant (e.g., president, chief executive officer, executive director).

Use of Grant Funds: Budgets of up to $150,000 total cost (direct and indirect) per year may be requested to cover costs of: personnel, consultants, supplies, equipment, and grant related travel. Funds may not be used for medical treatment, construction, building alterations, or renovations. All budget requests must be fully justified in terms of the proposed goals and objectives and include a computational explanation of how costs were determined.

Criteria for Evaluating Applications

Review of Application

Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive to the announcement or nonconforming will be returned without comment. Each applicant may submit no more than one proposal under this announcement. If an organization submits more than one proposal, all will be deemed ineligible and returned without comment. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Panel chosen for their expertise in minority health, experience relevant to this program, and their understanding and knowledge of the health problems and risk factors confronting racial and ethnic minorities in the United States.

Applicants are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit.

Application Review Criteria

The technical review of applications will consider the following generic factors.

Factor 1: Background (15%)

Adequacy of demonstrated knowledge of the problem at the local level; demonstrated need within the proposed community and target population; demonstrated support of local agencies and/or organizations, and established linkages in order to conduct proposed model; and extent and documented outcome of past efforts/activities with the target population.

Factor 2: Goals and Objectives (15%)

Merit of the objectives, their relevance to the program purpose and stated problem, and their attainability in the stated time frames.

Factor 3: Methodology (35%)

Appropriateness of proposed approach and specific activities for each objective and target group. Logic and sequencing of the planned approaches in relation to the objectives and program evaluation. Extent to which the applicant demonstrates access to the target population. Soundness of the established linkages.

Factor 4: Evaluation (20%)

Thoroughness, feasibility and appropriateness of the evaluation design, and data collection and analysis procedures. Clarity of the intent and plans to document the activities and their outcomes to establish a model. The potential for replication of the project for similar target populations and communities.

Factor 5: Management Plan (15%)

Applicant organization's capability to manage and evaluate the project as determined by: the qualifications of proposed staff or requirements for "to be hired" staff; proposed staff level of effort; management experience of the lead agency; and experience of each coalition member as it relates to its defined roles and the project.

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health, Office of Minority Health and will take under consideration: recommendations/ratings of the review panels and geographic and racial/ethnic distribution. Consideration will also be given to projects proposed to be implemented in Empowerment Zones and Enterprise Communities in the 15 eligible metropolitan statistical areas and those which reach out to neighboring rural communities impacted by the HIV/AIDS epidemic.

Definitions

For purposes of this grant announcement, the following definitions are provided:

AIDS Service Organization (ASO)—A health association, support agency, or other service actively involved in the prevention and treatment of AIDS. (HIV/AIDS Treatment Information Service's Glossary of HIV/AIDS–Related Terms, March 1997.)

Community-Based Organization—Public and private, non-profit organizations which are representative of communities or significant segments of communities, and which address health and human services.

Community Coalition—At least three (3) discrete organizations and institutions in a community which collaborate on specific community concerns, and seeks resolution of those concerns through a formalized relationship documented by written memoranda of understanding/agreement signed by individuals with the authority to represent the organizations (e.g., president, chief executive officer, executive director).

Cultural Competency—A set of behaviors, attitudes, and policies that enable a system, agency, and/or individual to function effectively with culturally diverse clients and communities. (Randall-David, E., 1989)

Intervention—An activity or series of activities (e.g., information dissemination, educational activities, coordinated network-related activities) designed to alter or modify a condition or outcome, or to change behavior to reduce the likelihood of a preventable health problem occurring or progressing further.

Minority Community-Based Organizations—Public and private nonprofit community-based minority organization or a local affiliate of a national minority organization that has: a governing board composed of 51 percent or more racial/ethnic minority members, a significant number of minorities employed in key program positions, and an established record of service to a racial/ethnic minority community.

Minority Populations—American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

Risk Factor—The environmental and behavioral influences capable of causing ill health with or without predisposition.

Sociocultural Barriers—Policies, practices, behaviors and beliefs that create obstacles to health care access and service delivery (e.g., cultural differences between individuals and institutions, cultural differences of beliefs about health and illness, customs and lifestyles, cultural differences in languages or nonverbal communication styles).

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the Office of Minority Health, in accordance with provisions of the general regulations which apply under CFR 74.50–74.52.

Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS Grants

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) a copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Minority Health's Grants Management Officer.

The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See "Intergovernmental Review of Federal Programs" Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements).

Authority: This program is authorized under section 1707(e)(1) of the Public Health Service Act, as amended by Public Law 105–392.

(OMB Catalog of Federal Domestic Assistance: The OMB Catalog of Federal Domestic Assistance number for the Minority Community Health Coalition Demonstration Program is 93–137.)

Dated: June 9, 1999.

Nathan Stinson, Jr.,

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 99–15635 Filed 6–18–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health

Availability of Funds for Grants for State and Territorial Minority HIV/AIDS Demonstration Grant Program

AGENCY: Office of the Secretary, Office of Minority Health.

ACTION: Notice of availability of funds and request for applications for State and Territorial Minority HIV/AIDS Demonstration Grant Program.

Purpose

The purposes of this Fiscal Year 1999 State and Territorial Minority HIV/AIDS Demonstration Program are to:

(1) Assist in the identification of needs within the state for HIV/AIDS prevention and services among minority populations by collection, analysis, and/or tracking of existing data on surveillance and existing providers of HIV services for minority communities;

(2) Facilitate the linkage of minority community-based organizations with other state and local recipients of federal funds for HIV/AIDS to develop greater resource capacity and interventions in the identified areas of need; and

(3) Assist in coordinating federal resources coming into high need, minority communities including identifying the different programs and facilitating access to federal technical assistance available to minority community-based organizations.

This program is intended to demonstrate that the involvement of State and Territorial Offices of Minority Health in coordinating a statewide response to the HIV/AIDS crisis in minority communities can have a greater impact on the communities' understanding of the disease, and the coordination of prevention and treatment services for minority populations, than agencies/organizations working independently.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement relates to 4 of the 22 priority areas established by Healthy People 2000: (1) Alcohol and other drugs; (2) educational and community-based programs; (3) HIV infection; and (4) sexually transmitted diseases. Potential applicants may obtain a copy of the Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 Midcourse Review and 1995 Revisions (Stock No. 017–001–00526–6) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 or telephone (202) 783–8238.

Background

The Office of Minority Health's (OMH) mission is to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help to address the health disparities and gaps. Consistent with its mission, the role of OMH is to serve as the focal point within the Department for service demonstrations, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities. In keeping with this mission, OMH is establishing the State and Territorial Minority HIV/AIDS Demonstration Program to assist in addressing the HIV/AIDS issues facing minority communities across the United States. This program is based on the hypothesis that a broad, state-level approach to HIV/AIDS health care promotion and prevention can be effective in reaching minority populations by both defining existing needs of prevention and treatment, and supporting strategies to address these needs. It is anticipated that this approach will strengthen existing state activities in addressing this health issue by facilitating infrastructure development or expansion of State and Territorial Offices of Minority Health to: (1) Take a lead role in identifying major areas of need in minority communities; (2) link minority community-based organizations with other state and local partners in the identified areas of need; and (3) assist in coordinating federal resources coming into high need, minority communities including identifying the different programs and facilitating access to federal technical assistance available to minority community-based organizations.

Disproportionate Effect of HIV/AIDS on Minorities

Current statistics indicate that although advances have been made in the treatment of HIV/AIDS, this epidemic continues as a significant threat to the public health of the United States (U.S.). Despite showing a decline in the past two years, it remains a disproportionate threat to minorities. While African-Americans and Hispanics respectively represent approximately 13% and 10% of the U.S. population, approximately 36% of the more than 640,000 reported total AIDS cases are African-American and 18% are Hispanic. Asian/Pacific Islanders and Native Americans respectively represent 4% and 1% of the U.S. population and currently each account for less than 1% of the AIDS cases.

In 1997, more African-Americans were reported with AIDS than any other racial/ethnic group. Of the total AIDS cases reported that year, 45% (27,075) were reported among African-Americans, 33% (20,197) were reported among whites, and 21% (12,466) were reported among Hispanics. Among women and children with AIDS, African-Americans have been especially affected, representing 60% of all women reported with AIDS in 1997 and 62% of reported pediatric AIDS cases in 1997. During 1997, the rate of new AIDS cases per 100,000 population in the U.S. was 83.7 among African-Americans, 37.7 among Hispanics, 10.4 among whites, 10.4 among American Indians/Alaska Natives, and 4.5 among Asians/Pacific Islanders.

Data from a recent Centers for Disease Control and Prevention study (Trends in the HIV and AIDS Epidemic, 1998) comparing HIV and AIDS diagnoses in 25 states with integrated reporting systems provide a clearer picture of recent shifts in the epidemic. The study indicates that many of the new HIV diagnoses are occurring among African-Americans, women, and people infected heterosexually, with an increase also observed among Hispanics. During the period from January 1994 through June

1997, African-Americans represented 45% of all AIDS diagnoses, but 57% of all HIV diagnoses. Among young people (ages 13 to 24) diagnosed with HIV, 63% were among African-Americans and 5% were among Hispanics. Although some of the states with large Hispanic populations did not have integrated HIV/AIDS reporting and could not be included in this study, HIV diagnoses among Hispanics increased 10% between 1995 and 1996.

From this same study, for 1996, an estimated 17,250 African-American men and 6,750 African-American women were diagnosed with AIDS. For African-American men, 40% of the transmissions were among men who have sex with men, 38% were linked with injection drug use and 13% were due to heterosexual contact with an HIV infected person. For African-American women, 53% of the transmissions were due to heterosexual contact and 43% were linked with injection drug use. For this same year, an estimated 8,680 Hispanic men and 2,210 Hispanic women were diagnosed with AIDS. Of this number, 45% of the transmissions were among men who have sex with men, 38% were linked with injection drug use and 10% were due to heterosexual contact. For Hispanic women, 60% of the transmissions were due to heterosexual contact and 37% linked with injection drug use.

Eligible Applicants

Eligibility is limited to State and Territorial [1] Offices of Minority Health or, for those states and territories that do not have an established Office of Minority Health, a state or territorial minority health entity located within a State or Territorial Department of Health which functions in the capacity of an Office of Minority Health. (See Definitions in this announcement.) *Each state and territory may submit no more than one proposal under this announcement.*

Documentation to verify official status as a State or Territorial Office of Minority Health must include a signed statement from a state/territorial level authorizing official (e.g., Governor or designated official, Commissioner of Health or designee).

Documentation to verify official status as a state or territorial minority health entity must include a signed statement from the Commissioner of Health or designee in the Department of Health stating that the identified entity has been functioning in the capacity of a State or Territorial Office of Minority Health and describing the types of activities performed or being performed.

Letters of support and commitment to the demonstration project from both the State or Territorial Commissioner of Health and the Office of the Governor are required as part of the application.

Deadline

To receive consideration, grant applications must be received by the Office of Minority Health (OMH) Grants Management Office by July 21, 1999. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

Addresses/Contacts

Applications must be prepared using Form PHS 5161–1 (Revised May 1996). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0758. Completed applications are to be submitted to the same address.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed to Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0769.

Technical assistance is also available through the OMH Regional Minority Health Consultants (RMHCs). A listing of the RMHCs and how they may be contacted will be provided in the grant application kit. Additionally, applicants can contact the OMH Resource Center (OMH–RC) at 1–800–444–6472 for health information.

Availability of Funds

Approximately $3 million will be available for award in FY 1999. It is projected that awards of up to $150,000 total costs (direct and indirect) for a 12-month budget period will be made to approximately 20 competing applicants. The amount of funds requested should be based on the size and complexity of the proposed project.

Period of Support

The start date for the State and Territorial Minority HIV/AIDS Demonstration Program grants is September 30, 1999. Support may be requested for a total project period not to exceed 3 years. Noncompeting continuation awards of up to $150,000 will be made subject to satisfactory performance and availability of funds.

Project Requirements

Each applicant to this demonstration grant program must:

(1) Address the three purposes of the program announcement:

- Assist in the identification of needs within the state for HIV/AIDS prevention and services for minority populations by collection, analysis, and/or tracking of existing data on surveillance and existing providers of HIV services for minority communities. The use of geographic information systems and related techniques should be given due consideration as one of the tools to address this area;
- Facilitate the linkage of minority community-based organizations with other state and local recipients of federal funds for HIV/AIDS to develop greater resource capacity and interventions in the identified areas of need; and
- Assist in coordinating federal resources coming into high need, minority communities including identifying the different programs and facilitating access to federal technical assistance available to minority community-based organizations.

(2) Describe plans to establish a project advisory committee to assist the applicant in carrying out the activities specified in the project. The membership is to be comprised of five to seven individuals with the applicant serving as an ex officio member. Committee membership should include: a representative from a state Office on AIDS or state HIV/AIDS coordinator, an HIV/AIDS health care provider, a representative from an AIDS service organization serving a substantial number of people of color, and a minority person living with HIV/AIDS. Other potential members may include: a representative from an HIV/AIDS community planning committee or group (e.g., a group initiated by a local community; a group established under a Federal program, such as the HIV Prevention Cooperative Agreements projects supported by the Center for Disease Control and Prevention or Ryan White Planning Council), an outreach worker/social worker, or a consumer/patient advocate.

Use of Grant Funds

Budgets of up to $150,000 total cost (direct and indirect) per year may be requested to cover costs of: personnel, consultants, supplies, equipment, and grant related travel. Funds may not be used for medical treatment, construction, building alterations, or renovations. All budget requests must be fully justified in terms of the proposed goals and objectives and include a computational explanation of how costs were determined.

Criteria for Evaluation Applications

Review of Application

Applications will be screened upon receipt. Those that are judged to be incomplete, nonresponsive to the announcement or nonconforming will be returned without review. Each state and territory may submit no more than one proposal under this announcement. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an objective review panel chosen for their expertise in minority health, experience relevant to this program, and their understanding and knowledge of the health problems and risk factors confronting racial and ethnic minorities in the United States.

Applicants are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit.

Application Review Criteria

The technical review of applications will consider the following generic factors:

Factor 1: Background (15%)

Adequacy of demonstrated knowledge of the impact of HIV/AIDS on the state and within minority communities. Adequacy of the description of the HIV/AIDS problem confronting the state and minority communities and of the needs to be addressed. Extent of past efforts/activities in addressing HIV/AIDS in minority communities.

Factor 2: Goals and Objectives (15%)

Merit of objectives in addressing all three purposes stated in **Federal Register** notice and the identified problem. Extent to which objectives are attainable within the stated time frames.

Factor 3: Methodology (35%)

Appropriateness of proposed plan and specific activities for each objective (e.g., capacity to integrate surveillance data and an analysis of existing prevention and treatment delivery systems into a state-wide needs assessment for minority populations, partnership building, technical assistance and resource referral). Logic and sequencing of the planned approaches in relation to the objectives and program evaluation.

Factor 4: Evaluation (20%)

Thoroughness, feasibility and appropriateness of the evaluation design, and data collection and analysis procedures. Clarity of the intent and plans to document the activities and their outcomes. The potential for replication of the project for similar target populations and communities including the assessment of the utility of the different tools used to implement the program.

Factor 5: Management Plan (15%)

Applicant organization's capability to manage and evaluate the project as determined by: the qualifications of proposed staff or requirements for "to be hired" staff; proposed staff level of effort; and composition of proposed advisory committee (e.g., membership, role).

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health, Office of Minority Health and will take under consideration: recommendations/ratings of the review panels; and geographic and racial/ethnic distribution. Consideration will also be given to projects proposed to be implemented in Empowerment Zones and Enterprise Communities.

Definitions

For purposes of this grant announcement, the following definitions are provided:

AIDS Service Organization (ASO)—A health association, support agency, or other service actively involved in the prevention and treatment of AIDS. (HIV/AIDS Treatment Information Service's Glossary of HIV/AIDS-Related Terms, March 1997.)

Minority Community-Based Organizations—Public and private nonprofit community-based minority organization or a local affiliate of a national minority organization that has: a governing board composed of 51 percent or more racial/ethnic minority members, a significant number of minorities employed in key staff positions, and an established record of service to a racial/ethnic minority community.

Minority Populations—American Indian or Alaska Native, Asian, Black or African-American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

Needs Assessment—A systematic process whereby information (including epidemiologic data) is gathered in order to identify barriers to effective access to HIV/AIDS services at the state and local level, resulting in any number of outcomes including identification of risk factors, service gaps, infrastructure needs, strategic or action plans, and recommendations for policy changes.

State or Territorial Offices of Minority Health—An entity established by an Executive Order, a statute or a state/territorial health officer to improve the health of racial and ethnic populations.

State or Territorial Minority Health Entity—A unit or contact located within a State or Territorial Department of Health that addresses the health disparities experienced by minority populations.

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) progress reports; (2) an annual Financial Status Report; and (3) a final project report and Financial Status Report in the format established by the Office of Minority Health, in accordance with provisions of the general regulations which apply under 45 CFR Part 92, Subpart C reporting requirements apply.

Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS Grants

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

[1] Includes all 50 states, the District of Columbia, American Samoa, Federated States of Micronesia, Guam, Marshall Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, and the Virgin Islands.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Minority Health's Grants Management Officer. The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See "Intergovernmental Review of Federal Programs" Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

(OMB Catalog of Federal Domestic Assistance: The OMB Catalog of Federal Domestic Assistance number for this program is pending.)

Authority: This program is authorized under section 1707(e)(1) of the Public Health Service Act, as amended by Public Law 105–392.

Dated: June 9, 1999.

Nathan Stinson, Jr.,

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 99–15634 Filed 6–18–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–148]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period January 1999 through March 1999. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on March 30, 1999, [64 FR 15168]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assesssments Completed or Issued

Between January 1, 1999, and March 31, 1999, public health assessments were issued for the sites listed below:

NPL Sites

Alabama

USA Annniston Army Depot—Bynum—(PB99–123846).

California

Castle Air Force Base—Atwater—(PB99–139248).

Moffet Naval Air Station (a/k/a Moffett Federal Airfield)—Mountain View—(PB99–128910).

Connecticut

Former Clock Factories—Bristol—Thomaston—Waterbury—(PB99–128548).

Georgia

Griffith Oil Company—Arcade—(PB99–134769).

Idaho

USAF Mountain Air Force Base—Mountain Home AFB—(PB99–128258).

Maine

Loring Air Force Base—Limestone—(PB99–134231).

New Mexico

Rinchem Company Incorporated (a/k/a Old Rinchem Incorporated)—(PB99–123853).

Tennessee

American Bemburg Plant—Elizabethton—(PB99–129017).

Virginia

Greenwood Chemical Company—Greenwood—(PB99–132987).

U.S. Titanium—Piney River—(PB99–132979).

Non NPL Petitioned Sites

Georgia

Escambia Brunswick Wood (a/k/a Brunswick Wood Preserving)—(PB99–128993).

Illinois

West Pullman Iron & Metal (a/k/a West Pullman/Victory Heights)—Chicago—(PB99–134397).

Dated: June 14, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–15618 Filed 6–18–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99155]

Non-Invasive Diagnosis of Viral and Bacterial Sexually Transmitted Diseases (STDs) in Sexually Assaulted Female Adolescents and Children; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for non-invasive diagnosis of viral and bacterial sexually transmitted diseases (STDs) in sexually assaulted female adolescents and children. This program addresses the "Healthy People 2000" priority area of Immunization and Infectious Diseases. The purpose of the program is to assist Child Protection and Child Abuse and Assault Intervention Centers (CPCs) in conducting investigations to achieve the project goals to (1) evaluate use of non-invasive specimens with less discomfort for the patient, and greater ease of storage, transport and sensitivity, for diagnosis of STDs; (2) study the epidemiology of viral STDs among sexually abused and non-abused children and adolescents, specifically exploring the significance of infection with various human papilloma virus (HPV) types and herpes simplex virus (HSV–2), and; (3) determine usefulness, if any, of non-invasive assays for viral STDs in increasing certainty of abuse assessment. These funds would enable CPCs to evaluate, in real world settings, the modalities in the diagnosis of STDs and their role in the determination, in children, that sexual abuse has taken place.

B. Eligible Applicants

Assistance will be provided only to recognized CPCs or their bona fide agents. For the purpose of this announcement, CPCs are limited to facilities, including emergency rooms, urgent care facilities, and child protection services that examine at least 300 patients, female children (aged 3–13 years of age) and adolescents (13 years 1 day to 20 years of age), for possible sexual abuse or assault. Applicants need to be facilities that obtain laboratory diagnostic testing for STDs as part of these examinations.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $80,000 is available in FY 1999, to fund one award. It is expected that the average award will be $80,000. It is expected that the award will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Design a protocol to:

1. Evaluate the sensitivity and specificity of urine nucleic acid amplification tests for *C. trachomatis* and *N. gonorrhoeae* relative to the "gold standard" of cultures performed at the laboratory(ies) at which the applicant normally has its diagnostic tests performed. A "gold standard" is the test to which experimental tests will be compared;

2. Perform routine diagnostic tests on children and adolescents in whom sexual abuse or assault is suspected, including vaginal or cervical cultures for *C. trachomatis* and *N. gonorrhoeae;* HSV cultures and/or other tests as judged appropriate by applicant in a Clinical Laboratory Improvement Act (CLIA) approved laboratory;

3. Evaluate the significance relative to certainty of sexual abuse, of finding antibody to HSV 2 or HPV by serologic tests.

4. Evaluate the significance, by HPV type, of genital warts, relative to certainty of sexual abuse.

b. Conduct epidemiologic studies to assess certainty of abuse in children, by whether they present with each of a variety of common complaints related to sexual abuse, including genital lesions, witnessed or reported abuse, etc.

c. Analyze and summarize data from these studies in collaboration with CDC and other funded applicants for presentation, publication, and revision of current child sexual abuse and adolescent sexual assault guidelines.

2. CDC Activities

a. Provide consultation and scientific and technical assistance in designing the protocol, collecting study specimens, and conducting the studies.

b. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Conduct experimental tests not performed by applicant (including HPV and HSV 2 serologic tests, *C. trachomatis* and *N. gonorrhoeae* urine nucleic acid amplification tests, and type-specific HPV tests for genital warts), blinded to the certainty of abuse.

d. Assist in analysis and interpretation of data and participate in the timely dissemination of findings and information stemming from these studies.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than [12] double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available in the application kit. On or before August 15, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received prior to the submission to the review panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background

The extent to which the applicant in the Background section demonstrates a clear understanding of this program and its main goals. The extent to which applicant demonstrates a clear understanding of the requirements, responsibilities, problems, constraints and complexities that may be encountered in conducting this study. (10 points).

2. Technical Approach

The extent to which the applicant defined clearly the population base from which the participants will be enrolled. The extent to which the applicant defines a population base for the study that is appropriate in size and diversity, with high enough number of children and adolescents presenting with possible, probable or certain abuse or assault, and with high enough prevalence of the infections of interest for the accomplishment of proposed activities. The extent to which the applicant clearly describes a population served in 1998, how they came to the attention of the CPC, how the decision was made to test or not test for STDs, the outcome of these laboratory tests and how the determination of certainty of abuse was made. (20 points).

3. Capacity

The extent to which the applicant demonstrates its capacity and ability to maintain a sufficient number of female children possibly, probably or definitely abused by demonstrating referral sources, and collaboration in past or on-going studies. The extent to which the applicant demonstrates its ability to develop and maintain strong cooperative relationships with various public and private local and regional medical, public health, community-based and academic organizations. The extent to which applicant demonstrates its ability to collaborate with other public and private organizations for conducting public health research projects and/or activities related to sexual abuse and/or STDs in children and adolescents. The extent to which applicant provides letters of support from non-applicant participating agencies, institutions, organizations, individuals, consultants, etc., indicating their willingness to participate, as represented in applicant's operational plan, in conducting the study. (25 points).

4. Operational Plan

a. The extent to which the applicant's proposed plan for conducting the study and the protocol is detailed and clearly describes the proposed organizational and operating structure/procedures and clearly identifies the roles and responsibilities of all participating agencies, organizations, institutions, and individuals. The extent to which the applicant describes plans for conducting the project. The extent to which the applicant's plan addresses all Recipient Activities listed in this announcement and appears feasible and capable of accomplishing the purpose of the program. The extent to which the applicant covers Recipients Activities explained in this announcement (15 points).

b. The extent to which the applicant proposal demonstrates support from applicant's institution and consistency with the intent of the RFA, its feasibility, quality of methodology and documentation of plans for recruitment and enrollment of study participants (10 points).

c. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process for study establishing partnerships with community(ies) and recognition of mutual benefits. (5 points).

5. Personnel Qualification and Management Plan

The extent to which the applicant identifies its own professional and support staff, and professional and support staff from other agencies, institutions, and organizations, that have the experience, authority and willingness to carry out recipient activities as evidenced by job descriptions, curriculum vitae, organizational charts, etc. The extent to which the applicant describes an approach to maintain a sufficiently flexible staffing pattern. (10 points).

6. Evaluation Plan

The extent to which applicant provides an adequate evaluation plan, which includes time-based and outcome-based criteria. The quality of the proposed plan for monitoring accomplishments. The quality of the proposed evaluation plan for monitoring progress in achieving the purpose and overall goals of this program. (5 points).

7. Budget

The extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of the awarded funds. The extent to which both Federal and non-Federal (e.g., state funding) contributions are presented. (Not scored).

8. Human Subjects

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored).

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Progress reports (semiannual);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Public Health Service Act, sections 301(a) (42 U.S.C. 241(a)) and 317(k)(2) (42 U.S.C. 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest, 99155.

See also the CDC home page on the Internet web site at http://www.cdc.gov and the program and grants office web site for additional funding opportunities and electronic versions of all necessary forms (www.cdc.gov/od/pgo/forminfo.htm).

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone Number: 770–488–2753, Email Address: gcg4@cdc.gov.

For program technical assistance, contact: Dr. Consuelo Beck-Sague, Office of Minority Health, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone Number: 404–639–3467, Email Address: cmb1@cdc.gov.

Dated: June 15, 1999.

Henry S. Cassell,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–15652 Filed 6–18–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 99090]

Intervention Research Addressing the Primary and Secondary Prevention Needs of HIV-Seropositive Injection Drug Users Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) and the Health Resources and Services Administration (HRSA) announce the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to support intervention research on the primary and secondary prevention needs of HIV-seropositive injection drug users (IDUs). This announcement addresses the "Healthy People 2000" priority area Human Immunodeficiency Virus (HIV) Infection.

The purpose of this announcement is to support intervention research for HIV-seropositive IDUs that leads to the development of effective, feasible, and sustainable interventions having three goals: (1) To prevent HIV transmission due to high risk sexual and drug injection behaviors; (2) to increase access to, use of, and maintenance in primary health care; and (3) to increase access to, use of, and adherence to HIV treatments, including prophylaxis to prevent opportunistic infections.

Consistent with this purpose, funding under this program will support: (1) One year for intervention refinement and piloting of intervention strategies and components, in collaboration with other funded sites; (2) three years for a multi-site randomized controlled trial to test behavioral/biomedical interventions and strategies for this population; and (3) one year for data analysis and dissemination of research findings.

The intervention proposed for the trial must be based on behavioral theory as well as: (1) Prior research on sexual and drug injection practices among IDUs that lead to HIV/STD risk; and (2) prior research or research data on either adherence to HIV treatment or access to health care. The ultimate goal of this research is the identification of successful intervention strategies for HIV-seropositive IDUs, with an emphasis on IDUs newly diagnosed as HIV seropositive (within the past three years). It is expected that these strategies will integrate behavioral and biomedical approaches and will lead to models that are appropriate for implementation in community settings (e.g., local health departments, community-based organizations, health maintenance organizations) and that are suitable for replication in other communities.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, state and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $2,000,000 is available in FY 1999 to fund three to five awards. It is expected that the average award for the first year will be $500,000. An application requesting greater than $600,000, including indirect costs, in year one will not be considered for review and will be returned to the applicant.

Awards are expected to begin on or about **September 30, 1999**. Awards will be made for a 12-month budget period within a total project period of up to five years. It is anticipated that increased funding may be available in years 2–4 to support the randomized controlled trial and in year 5 to support data analysis and dissemination of research findings. Funding estimates may vary and are subject to change based on the availability of funds.

Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preference

In order to prom[illegible] interventions that [illegible] diverse [illegible] geograr[illegible] ay be consi[illegible] g decisions. The recrui[illegible] funded applicants may not overlap. In addition, applicants must demonstrate that intervention programs and research studies for HIV-seropositive IDUs that are currently being conducted in the applicant's catchment area will not jeopardize the success of the proposed research.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities identified under Recipient Activities and CDC and HRSA will be responsible for the activities identified under CDC and HRSA Activities.

1. Recipient Activities

a. Refine and pilot test intervention strategies and components.

b. Develop plans for active collaboration during the entire project with local health departments, medical service providers, members of the affected population, their service providers, and community organizations.

c. Develop research protocols and data collection instruments appropriate to conduct a multi-site randomized controlled intervention trial.

d. Develop plans to collect prospective cost data for the intervention to allow estimates of the

cost of replicating the intervention elsewhere.

e. Establish procedures to maintain the rights and confidentiality of study participants.

f. Submit research protocols to the recipient's Institutional Review Board (IRB).

g. Identify, recruit, and enroll at least 200 research participants according to the study protocol.

h. Collect biological specimens to verify HIV serostatus and assess the presence of sexually transmitted diseases and other blood borne pathogens.

i. Contribute blood specimens (at least every 6–12 months depending on the protocol requirements) for shipment and storage at a centralized repository system at CDC.

j. Summarize the data from the intervention trial, conduct data analyses, and disseminate findings in peer-reviewed journals and at professional meetings.

k. Meet three or four times each year with other funded sites, CDC, and HRSA to discuss research and intervention protocols.

l. Obtain certificate of confidentiality to protect research records.

2. CDC and HRSA Activities

a. Provide scientific and technical assistance and coordination, as requested, for all phases of the study.

b. As needed, participate in the analysis of data gathered from research projects and the reporting of results.

c. Facilitate group meetings with the sites to allow for the exchange of information and for input into the development and refinement of the research and intervention protocol.

d. Conduct site visits to assess program progress.

e. Assist in the development a research protocol for IRB review by each institution participating in the research project as well as the CDC IRB. CDC IRB also will review the projects on at least an annual basis until the research is complete.

f. Arrange meetings with the External Working Group (EWG) convened by CDC. The EWG is an independent advisory group made up of non-CDC experts who will provide input on the scientific, methodological, and ethical aspects of the research and intervention protocol. The EWG will act like a data safety monitoring board during the intervention trial.

g. Assist the sites in obtaining certificates of confidentiality to protect research records.

E. Application Content

You must document that this proposal is consistent with the Statewide Coordinated Statement of Need document from your area or provide a rationale for any discrepancies. Note: This initiative is supported, in part from funds provided under the Special Projects of National Significance Program of the Ryan White Comprehensive AIDS Resource Emergency Act. Section 2691(f) indicates that the Secretary may not make a grant under this program "unless the applicant submits evidence that the proposed program is consistent with the Statewide Coordinated Statement of Need, and the applicant agrees to participate in the ongoing revision process of such statement of need."

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The application may not exceed 40 double-spaced pages in length, excluding appendices. (The appendices are the appropriate location for curriculum vitae, references, letters of support, and memoranda of agreement documenting collaboration with other agencies.) Provide a one-page abstract of the proposal. Number all pages clearly and sequentially and include a complete table of contents to the application and its appendices. Submit the original and five copies of the application UNSTAPLED and UNBOUND. Print all material, double spaced, in a 12-point or larger font on 8½" by 11" paper, with at least 1" margins and printed on one side only.

Use the following outline.

1. Experience With Relevant Research and Familiarity With HIV-Seropositive Injection Drug Users

a. Describe prior research and, if appropriate, service provision to IDUs, and particularly, HIV-seropositive IDUs. Describe methods used to collect prior data among IDUs regarding (1) HIV transmission risk and its correlates, AND (2) either access to, use of, and maintenance in health care, OR, access to, use of, and adherence to HIV treatments;

b. Demonstrate familiarity with issues faced by HIV-seropositive IDUs in coping with HIV, maintaining safer sex and injection practices, accessing and utilizing health care, and adhering to various HIV treatments such as antiretroviral treatment as well as medications used to prevent opportunistic infections. Applicant should describe both its own research experience with any of these issues as well as provide a review of the scientific literature.

c. Describe the characteristics of HIV-seropositive IDUs in the proposed study population, including demographic, drug taking, and other relevant characteristics;

d. Describe procedures for involving the target population, their advocates, or service providers in the design of research and intervention activities:

(1) A statement as to how the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities; and

(2) The proposed plan for the inclusion of racial and ethnic minority populations and women for appropriate representation, and justification when representation is limited or absent.

2. Access to a Sufficient Number of HIV-Seropositive Injection Drug Users

a. Describe methods previously used to recruit and follow research samples of IDUs, particularly HIV seropositive IDUs, and document the ability to recruit and follow at least 200 HIV-seropositive injection drug users for the proposed research activities (including at least 100 IDUs newly diagnosed as HIV seropositive within the past three years).

b. Describe linkages and relationships with organizations providing medical and psycho social services to HIV-seropositive IDUs and how participants will be referred to these services as needed.

c. Demonstrate knowledge of the health care system available to the targeted population, specifically HIV outpatient medical care. Provide detail regarding ability to access care, ability to access HIV treatments, monitoring of adherence to medications, the process for appointment setting and follow-up, etc.

d. In the appendix, include a table of any intervention studies and prevention programs for HIV seropositive IDUs that you are conducting or that you are aware of in the proposed recruitment area. In this table, include target population; proposed activities; sites for recruitment, intervention, or data collection activities and provide a narrative describing potential overlap and plans to coordinate efforts (if any) to minimize overlap.

3. Intervention Research Plan

a. Propose an integrated behavioral/biomedical intervention that will promote the three primary objectives: decreasing sexual and injection risk behavior, increasing access to and maintenance in primary health care, and increasing adherence to HIV treatments;

b. Describe the research design and methods that are proposed for the intervention. Include information about the research hypotheses, randomization procedures, primary (behavioral and biological) and secondary (relevant mediating variables) outcome measures, the reliability and validity of measures that will be used, and procedures for maximizing external and internal validity (e.g., sampling strategies and retention procedures, respectively);

c. Provide a detailed description of the proposed intervention and comparison conditions and give a rationale for each. Clearly specify the way in which the proposed intervention activities are based on findings from prior research and behavioral theory (include the intervention curriculum in the Appendix);

d. Propose a method for conducting a prospective cost analysis (excluding research costs) so the costs of the intervention will be available for replication purposes;

e. Describe procedures for obtaining informed consent and maintaining participant confidentiality;

f. Describe plans to develop specific documents necessary to replicate the intervention (if effective) and to disseminate study findings to community and scientific audiences.

4. Plan for Intervention Refinement and Piloting

Describe plans to refine and pilot the intervention to improve its acceptability to and feasibility with the target population;

5. Research and Intervention Capability

a. Describe the research team and organizational setting;

b. Describe the professional training and relevant research experience of all scientific staff;

c. Describe prior experience collecting biologic data (especially from IDUs) and conducting biomedical research in a behavioral context;

d. Include in the appendix memoranda of agreement that clearly and specifically document activities to be performed by any external agreements, consultants, or collaborating agencies under the cooperative agreement. Clearly indicate roles, responsibilities, and staffing provided by these collaborators.

6. Staffing, Facilities, and Time Line

a. Explain the proposed staffing, percentage of time each staff member commits to this and other projects, and division of duties and responsibilities for the project;

b. Describe the arrangements that you have made for facilitating access to primary health care for project participants;

c. Identify and describe key roles of behavioral scientists, biomedical scientists, and other staff essential to the completion of the project;

d. Describe support activities such as project oversight or data management that will contribute to the completion of all research activities;

e. Provide a statement that project staff will attend three or four meetings each year with CDC and HRSA staff and staff from other recipient sites;

f. Describe existing facilities (including ability to collect and store biologic data), equipment, computer software, and data processing capacity;

g. Describe the procedures to ensure the security of research data (including biologic data); and

h. Provide a time line for the completion of the proposed research.

7. Budget: Provide a Detailed, Line-Item Budget for the Project and a Budget Narrative That Justifies Each Line-Item.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit.

On or before **August 6, 1999**, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Application shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (*i.e.*, receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Experience With Relevant Research and Familiarity With HIV-Seropositive Injection Drug Users (20 points)

a. Extent of applicant's knowledge of issues faced by HIV-seropositive IDUs, as demonstrated by prior research and review of the scientific literature, and applicant's experience in working with this population;

b. Evidence of: (1) Prior research on the correlates of sexual and injection risk behavior, and (2) research or research data on access to medical care, or adherence to HIV treatments among HIV-seropositive IDUs; and overall quality of research in all 3 areas;

c. Description of proposed study population and rationale for focusing on specific subgroups, if any;

d. Feasibility of plans to involve HIV-seropositive IDUs, their advocates, or service providers in the development of research and intervention activities.

2. Access to a Sufficient Number of HIV-Seropositive Injection Drug Users (20 points)

a. Quality of methods used to recruit and follow IDUs for prior studies, and particularly the quality of methods used to recruit HIV-seropositive IDUs and achieve high follow-up rates;

b. Evidence of ability to recruit at least 200 HIV-seropositive IDUs, including at least 100 newly diagnosed IDUs (diagnosed with HIV infection or AIDS in the past three years);

c. Existence of linkages to facilitate recruitment from and referral to programs providing services for HIV-seropositive IDUs;

d. Feasibility of proposed intervention given other intervention studies and prevention programs for HIV-seropositive IDUs being conducted by applicant or other investigators in the same greater metropolitan area;

3. Intervention Research Plan, and the Degree to Which the Applicant Has Met the CDC Policy Requirements Regarding the Inclusion of Ethnic and Racial Groups and Women in the Proposed Research (25 points)

a. Intervention Research Plan.

1. Quality, feasibility, and theoretical bases of the suggested biomedical/behavioral intervention;
2. Appropriateness of proposed research hypotheses and intervention outcome measures;
3. Quality and scientific rigor of the proposed research design and methods for the intervention trial;
4. Quality of the rationale for the curricula for the intervention and comparison conditions, including the extent to which intervention activities are based on findings from prior research and behavioral theory;
5. Ability to collect data for tracking costs (excluding research costs) to conduct a prospective cost analysis;
6. Adequacy of procedures for obtaining informed consent and maintaining participant confidentiality; and
7. Quality of plans to develop appropriate materials for intervention replication and to disseminate study findings to community and scientific audiences.
b. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of ethnic and racial groups and women in the proposed research.
1. The proposed plan for the inclusion of racial and ethnic minority populations and women for appropriate representation;
2. The proposed justification when representation is limited or absent;
3. A statement as to whether the design of the study is adequate to measure differences when warranted; and
4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Plan for Intervention Refinement and Piloting (10 points)

Quality of the proposed plan to refine and pilot test the proposed intervention.

5. Research and Intervention Capability (20 points)

a. Ability of the applicant to conduct the proposed research as reflected in the training, research, and behavioral intervention experience of staff members;
b. Ability of the applicant to collect and monitor biologic data as reflected in prior experience;
c. Extent to which services to be provided by external experts, consultants, or collaborating agencies are documented by memoranda of agreement in the appendix, including a clear indication of roles, responsibilities, and staffing provided by these collaborators.

6. Staffing, Facilities, and Time Line (5 points)

a. Availability of qualified and experienced personnel with sufficient time dedicated to the proposed project. Presence of behavioral scientists in key leadership positions on the project;
b. Availability of persons with biomedical expertise on the research staff and among other project personnel to assure competent and appropriate collection and storage of biological specimens;
c. Clarity of the described duties and responsibilities of project personnel, including support personnel for project oversight and data management, as well as a clear plan for facilitating access to primary health care for participants;
d. Stated agreement to meet three or four times each year with CDC and HRSA staff and staff from other recipient sites to discuss and provide input to each site throughout the 5-year project;
e. Adequacy of the facilities (including ability to collect and store biologic data), equipment, data management resources, and systems for ensuring data security and;
f. Specificity and reasonableness of time line.

7. Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (not scored)

8. Budget (not scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with the intended use of funds.

H. Other Requirements

1. Technical Reporting Requirements Provide CDC with original plus two copies of

a. semi-annual progress reports, no more than 30 days after the end of each reporting period. The progress reports must include the following for each program, function, or activity involved:
(1) A comparison of accomplishments of the goals established for the period;
(2) Reasons that any goals were not met and;
(3) A description of steps taken to overcome barriers to the goals for the period.
b. financial status report, no more than 90 days after the end of the budget period; and
c. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

2. The following additional requirements are applicable to this program. For a complete description of each, see Attachments.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317(k)(2), of the Public Health Service Act [42 U.S.C. 241 and 247b(k)(2)], as amended. The HRSA Special Projects of National Significance (SPNS) program is authorized by section 2691 of the Public Health Service Act (42 U.S.C.300ff–10). The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. You may also view this and all other CDC/ATSDR competitive Program Announcements, and download application forms, via the Internet at http://www.cdc.gov.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Brenda Hayes, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mail Stop E–15, Atlanta, GA 30341–4146, telephone: (770) 488–2720; Email: bkh4@cdc.gov.

Programmatic technical assistance may be obtained from: Robert Kohmescher, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mail Stop E–44, Atlanta, GA 30333, telephone (404) 639–1914 Email HTTP://WWW.RNK1.CDC.GOV

or

Jeff Efird, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mail Stop E–45, Atlanta, GA 30333 telephone (404) 639–6136, Email HTTP://WWW.JLE1@cdc.gov

Dated: June 15, 1999.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–15632 Filed 6–18–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98C–0790]

EM Industries, Inc.; Filing of Color Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a color additive petition filed by EM Industries, Inc., to clarify that the petitioner's request is to amend the color additive regulations to provide for the safe use of composite pigments made from synthetic iron oxide, titanium dioxide, and mica to color food.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 25, 1998 (63 FR 51359), FDA announced that a color additive petition (CAP 8C0262) had been filed by EM Industries, Inc., 7 Skyline Dr., Hawthorne, NY 10532. The petition proposed to amend the color additive regulations to provide for the safe use of synthetic iron oxide and mica to color food and to provide for the safe use of titanium dioxide to color food at levels higher than the current limit.

The data in the petition indicated that the petitioner manufactured color additives, to color food, by combining synthetic iron oxide, mica, and titanium dioxide. Based on these data, at the time of the filing of the petition, FDA considered the color additive combinations the petitioner prepared from synthetic iron oxide, mica, and titanium dioxide to be color additive mixtures.

To more accurately describe the pigments that are the subjects of this petition, FDA is amending the filing notice of September 25, 1998, to indicate that the petition proposes to amend the color additive regulations to provide for the safe use of composite pigments prepared from synthetic iron oxide, mica, and titanium dioxide to color food.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 2, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–15661 Filed 6–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1867]

Asahi Chemical Industry Co. and Japan Synthetic Rubber Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Asahi Chemical Industry Co. and Japan Synthetic Rubber Co. have filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,4-diphenyl-4-methyl-1-pentene (common name alpha-methylstyrene dimer) in the manufacture of coatings for food-contact paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4666) has been filed by Asahi Chemical Industry Co. and Japan Synthetic Rubber Co., c/o Environ International Corp., 4350 North Fairfax Dr., suite 300, Arlington, VA 22203. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) and § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) to provide for the safe use of 2,4-diphenyl-4-methyl-1-pentene (common name alpha-methylstyrene dimer) in the manufacture of coatings for food-contact paper and paperboard.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 2, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–15662 Filed 6–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1833]

SoloPak Laboratories, Inc.; Withdrawal of Approval of 1 New Drug Application and 38 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 1 new drug application (NDA) and 38 abbreviated new drug applications (ANDA's). SoloPak Laboratories, Inc., notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: SoloPak Laboratories, Inc., 1845 Tonne Rd., Elk Grove Village, IL 60007–5125, has informed FDA that the drug products listed in the following table are no longer marketed and has requested that FDA withdraw approval of the applications. SoloPak Laboratories, Inc.,

has also, by its request, waived its opportunity for a hearing.

Application No.	Drug
NDA 19–961	Ganite (gallium nitrate)
ANDA 62–507	Gentamicin Sulfate Injection USP, 10 and 40 milligrams (mg)/milliliter (mL)
ANDA 62–605	Kanamycin Sulfate Injection USP, 500 mg/2 mL and 75 mg/2 mL and 1 gram/3 mL
ANDA 62–819	Clindamycin Phosphate Injection USP, 150 mg/mL
ANDA 62–852	Clindamycin Phosphate Injection USP, 150 mg/mL
ANDA 70–046	Dopamine Hycrochloride Injection USP, 40 mg/mL
ANDA 70–047	Dopamine Hycrochloride Injection USP, 80 mg/mL
ANDA 70–078	Furosemide Injection USP, 10 mg/mL
ANDA 70–137	Propranolol Hydrochloride Injection USP, 1 mg/mL
ANDA 70–623	Metoclopramide Injection USP, 5 mg/mL
ANDA 70–633	Nitroglycerin Injection USP, 5 mg/mL
ANDA 70–696	Verapamil Hydrochloride Injection USP, 2.5 mg/mL
ANDA 70–801	Haloperidol Lactate Injection USP, 5 mg/mL
ANDA 70–841	Methyldopate Hydrochloride Injection USP, 50 mg/mL
ANDA 70–864	Haloperidol Injection USP, 5 mg/mL
ANDA 71–671	Naloxone Hydrochloride Injection USP, 0.02 mg/mL
ANDA 71–681	Naloxone Hydrochloride Injection USP, 0.4 mg/mL
ANDA 71–682	Naloxone Hydrochloride Injection USP, 0.4 mg/mL
ANDA 71–754	Droperidol Injection USP, 2.5 mg/mL
ANDA 71–755	Droperidol Injection USP, 2.5 mg/mL
ANDA 87–591	Hydroxyzine Hydrochloride Injection USP, 25 mg/mL
ANDA 87–593	Hydroxyzine Hydrochloride Injection USP, 50 mg/mL
ANDA 87–595	Hydroxyzine Hydrochloride Injection USP, 50 mg/mL
ANDA 88–239	Heparin Sodium Injection USP, 1,000 Units/mL
ANDA 88–457	Heparin Lock Flush Solution USP, 10 Units/mL
ANDA 88–458	Heparin Lock Flush Solution USP, 10 Units/mL
ANDA 88–459	Heparin Lock Flush Solution USP, 100 Units/mL
ANDA 88–460	Heparin Lock Flush Solution USP, 100 Units/mL
ANDA 88–517	Hydralazine Hydrochloride Injection USP, 20 mg/mL
ANDA 88–519	Phenytoin Sodium Injection USP, 50 mg/mL
ANDA 88–530	Procainamide Hydrochloride Injection USP, 100 mg/mL
ANDA 88–531	Procainamide Hydrochloride Injection USP, 500 mg/mL
ANDA 88–580	Heparin Lock Flush Solution USP, 10 Units/mL
ANDA 88–581	Heparin Lock Flush Solution USP, 100 Units/mL
ANDA 88–749	Aminophylline Injection USP, 25 mg/mL
ANDA 88–767	Fluorouracil Injection USP, 50 mg/mL
ANDA 88–960	Trimethobenzamide Hydrochloride Injection USP, 100 mg/mL
ANDA 89–251	Prochlorperazine Edisylate Injection USP, 5mg/mL
ANDA 89–434	Flourouracil Injection USP, 50 mg/mL

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective July 21, 1999.

Dated: June 7, 1999.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 99–15581 Filed 6–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1818]

Steris Laboratories, Inc.; Withdrawal of Approval of 55 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 55 abbreviated new drug applications (ANDA's). Steris Laboratories, Inc., notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: JULY 21, 1999.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043–4705, has informed FDA that the drug products listed in the following table are no longer marketed and has requested that FDA withdraw approval of the applications. Steris Laboratories, Inc., has also, by its request, waived its opportunity for a hearing.

ANDA No.	Drug
40–043	Edrophonium Chloride Injection USP, 10 milligrams (mg)/milliliter (mL)
40–044	Edrophonium Chloride Injection USP, 10 mg/mL
62–768	Neomycin and Polymyxin B Sulfate and Gramicidin Ophthalmic Solution
62–900	Clindamycin Phosphate Injection USP, 150 mg/mL
63–079	Clindamycin Phosphate Injection USP, 150 mg/mL
70–019	Furosemide Injection USP, 10 mg/mL
70–170	Metronidazole Injection, 500 mg
70–604	Furosemide Injection USP, 10 mg/mL
70–713	Haloperidol Injection USP, 5 mg/mL
70–744	Haloperidol Injection USP, 5 mg/mL
70–911	Diazepam Injection, 5 mg/mL (ampule)
70–930	Diazepam Injection USP, 5 mg/mL (syringe)
71–556	Sulfamethoxazole and Trimethoprim for Injection Concentrate USP, 80 mg/mL and 15 mg/mL
71–339	Naloxone Hydrochloride Injection USP, 0.4 mg/mL
73–488	Fentanyl Citrate Injection USP, 50 micrograms (mcg)/mL
73–520	Droperidol Injection USP, 2.5 mg/mL
73–521	Droperidol Injection USP, 2.5 mg/mL
73–523	Droperidol Injection USP, 2.5 mg/mL
74–228	Etoposide Injection, 20 mg/mL
83–362	Prednisolone Tebutate Suspension, 20 mg/mL
83–702	Dexamethasone Sodium Phosphate Injection USP, 4 mg/mL
83–767	Prednisolone Acetate Suspension, 40 mg/mL
83–820	Brompheniramine Maleate Injection, 100 mg/mL
84–510	Promazine Hydrochloride Injection USP, 25 mg/mL
84–517	Promazine Hydrochloride Injection USP, 50 mg/mL
84–737	Hydrocortisone Sodium Succinate for Injection USP, 250 mg
84–738	Hydrocortisone Sodium Succinate for Injection USP, 100 mg
84–747	Hydrocortisone Sodium Succinate for Injection USP, 500 mg
84–748	Hydrocortisone Sodium Succinate for Injection USP, 1000 mg
84–875	Mersalyl-Theophylline Injection
85–237	Sterile Estrone Suspension USP, 2 mg/mL
85–434	Phenytoin Sodium Injection USP, 50 mg/mL
85–490	Testosterone Propionate Injection, 25 mg/mL and 50 mg/mL
85–594	Amitriptyline Hydrochloride Injection USP, 10 mg/mL
85–599	Testosterone Enanthate Injection USP, 100 mg/mL
85–606	Dexamethasone Sodium Phosphate Injection USP, 24 mg/mL
86–208	Potassium Chloride Injection
86–210	Potassium Chloride Injection
86–386	Nandrolone Phenpropionate Injection USP, 25 mg/mL
86–947	Glycopyrrolate Injection USP, 0.2 mg/mL
86–953	Methylprednisolone Sodium Succinate for Injection, 40 mg
87–030	Methylprednisolone Sodium Succinate for Injection, 125 mg
87–079	Procainamide Hydrochloride Injection USP, 100 mg/mL
87–080	Procainamide Hydrochloride Injection USP, 500 mg/mL
87–460	Mannitol Injection USP, 250 mg/mL
87–488	Nandrolone Phenpropionate Injection USP, 50 mg/mL
88–523	Methylprednisolone Sodium Succinate for Injection, 500 mg
88–524	Methylprednisolone Sodium Succinate for Injection, 1000 mg
88–554	Nandrolone Decanoate Injection, 50 mg/mL
88–772	Corticotropin for Injection USP, 40 units (vial)
89–163	Potassium Chloride for Injection Concentrate USP, 2 milliequivalents (mEq)/mL
89–170	Dexamethasone Ophthalmic Suspension USP, 0.1%
89–171	Tropicamide Ophthalmic Solution USP, 0.5%
89–421	Potassium Chloride Injection USP, 2 mEq/mL
89–606	Prochlorperazine Edisylate Injection USP, 5 mg

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective July 21, 1999

Dated: June 7, 1999.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 99–15660 Filed 6–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1265]

Federal/State Memorandum of Understanding on Interstate Distribution of Compounded Drug Products; Draft; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until August 2, 1999, the comment period for the draft standard memorandum of understanding (MOU) entitled "Memorandum of Understanding on Interstate Distribution of Compounded Drug Products" (draft standard MOU) that States may enter into with FDA. FDA published a notice of availability of the draft standard MOU in the **Federal Register** of January 21, 1999 (64 FR 3301). The agency is taking this action in response to numerous requests for an extension of the comment period.

DATES: Written comments on the draft standard MOU may be submitted by August 2, 1999.

ADDRESSES: Copies of the draft standard MOU are available on the Internet at "http://www.fda.gov/cder/pharmcomp/default.htm". Submit written requests for single copies of the draft standard MOU entitled "Memorandum of Understanding on Interstate Distribution of Compounded Drug Products" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Fred Richman, Center for Drug Evaluation and Research (HFD–332), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855–2737, 301–827–7292.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 21, 1999 (64 FR 3301), FDA published a notice announcing the availability of a draft standard MOU entitled "Memorandum of Understanding on Interstate Distribution of Compounded Drug Products" that States may enter into with FDA. The draft standard MOU describes the responsibilities of the States and FDA in investigating and responding to complaints related to compounded drug products distributed interstate and addresses the interstate distribution of inordinate amounts of compounded drug products. FDA has developed this MOU in consultation with the National Association of Boards of Pharmacy under provisions of the Food and Drug Administration Modernization Act of 1997. Interested persons were given until March 22, 1999, to submit written comments on the draft standard MOU.

In the **Federal Register** of March 23, 1999 (64 FR 13997), FDA extended the comment period on the draft standard MOU to June 1, 1999.

In response to numerous requests, FDA has decided to reopen the comment period on the draft standard MOU until August 2, 1999.

Interested persons may, on or before August 2, 1999, submit to the Dockets Management Branch (address above) written comments on the draft standard MOU. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The draft standard MOU and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 11, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15582 Filed 6–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Assessment of Factors Influencing the Adequacy of Health Care Services to Children in Foster Care and Other Out-of-Home Placements—New

The Maternal and Child Health Bureau of HRSA is planning to conduct a survey of health care services for children in foster care and other out-of-home care settings in the United States. This project is aimed at identifying the contributing factors affecting the delivery of health care services to these children. A survey will be conducted of Child Welfare, Child Health/MCH, Medicaid and Mental Health agencies in all 50 states, the District of Columbia, and five counties in each of 11 states with county-administered child welfare systems. An additional 10 counties will be surveyed to include the counties with the largest population, bringing the total sample to 65 counties. This survey will obtain information describing the range of health service delivery arrangements currently provided, obtain a comprehensive assessment of the organization and delivery of services, and collect data on what different jurisdictions are doing to improve the delivery of health services to this population.

Estimates of the annualized reporting burden are as follows:

Survey	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Child Welfare	93	1	93	4	372
Child Health	93	1	93	2.5	232
Child Mental Health	93	1	93	2.5	232
Medicaid	41	1	41	4	164
Total			320		1000

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 15, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–15663 Filed 6–18–99; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Physician Survey on Genetic Testing

Summary: Under the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 5, 1999, page 519–520 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

Proposed Collection: Title: Physician Survey on Genetic Testing. Type of Information Request: New. Need and Use of Information Collection: The Physicians Survey on Genetic Testing will be used by the National Cancer Institute to establish baseline information on the prevalence of genetic testing for cancer susceptibility among primary care physicians in the United States. The survey will assess whether there are statistically significant differences in (1) self-reported knowledge, current use of, and future intentions to use genetic testing for cancer susceptibility, and (2) perceptions of barriers to testing, among primary care physicians by their type and location of practice, and recency of training. Primary care physicians (internists, pediatricians, family and general practitioners) will also be compared with specialty groups (gastroenterologists, surgeons, urologists and oncologists) with respect to their use, attitudes toward, and knowledge of, genetic testing for cancer susceptibility. A questionnaire will be administered by mail, telephone, facsimile and Internet, using a nationally representative sample of physicians. The study physicians will select their preferred response mode. Frequency of Response: One-time study. Affected Public: Medical Community. Type of Respondents: Primary care and speciality physicians with active licenses to practice medicine in the U.S. The annual reporting burden is as follows: Estimated Number of Respondents: 1,350; Estimated Number of Responses per Respondent: 1; Average Burden Hours per Response: .250 and Estimated Total Annual Burden Hours Requested; 338. The annualized cost to respondents is estimated at: $25,313. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms on information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Louise Wideroff or Andrew Freedman, Epidemiologists, National Cancer Institute, EPN 313, Executive Boulevard MSC 7334, Bethesda, Maryland 20892–7344, Telephone (301) 435–6823 or (301) 435–6819, FAX (301) 435–3710, or E-mail your request, including your address to *wideroff@nih.gov* or Andrew_Freedman@nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: June 11, 1999.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 99–15636 Filed 6–18–99; 8:45 am]

BILLING CODE 4145–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Research and Development of Software for Managing Distributed Knowledgebases Consisting of Large Numbers of Object of Diverse Categories Spanning Administrative, Scientific and Other Knowledge Domains

The National Cancer Institute (NCI) has extended the deadline for submission of written notices and proposals regarding the CRADA opportunity described in the **Federal Register** Notice number 74, volume 64, page 19183, dated April 19, 1999.

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of extension of announcement.

SUMMARY: The National Cancer Institute (NCI) seeks a Cooperative Research and Development Agreement (CRADA) with a software company with demonstrated excellence in the development and deployment of software applications for the enterprise and individuals. NCI has recently developed a powerful but user-friendly computer-based system which enables its users to create, use and share a knowledge base of information consisting of diverse objects related to each other by semantically meaningful links. This system, provisionally called "KBTool", can be considered a new class of software application since it is sufficiently different from existing applications. The system provides a knowledge base that is seamless, allowing individuals to store information on a virtually unlimited range of objects and concepts. In addition, dense and informative links between many types of concepts are constructed. The system is extensible so that it is suited for use in distributed systems in which information is shared between users and stored at different physical locations. Because of the power of the system and its relevance to many domains of knowledge and types of applications, the NCI is seeking a commercial partner for its continued development and deployment. The software was originally created to organize and link vast quantities of scientific data; however, NCI predicts that KBTool's functionality will be applicable to a wide variety of fields. The Collaborator must have a demonstrated record of success in privately producing and marketing information resources. Please refer to **Federal Register** notice number 74, volume 64, page 19183, dated April 19, 1999 for additional information about the KBTool technology and the corresponding CRADA opportunity.

A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into by the NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the national Technology Transfer Advancement Act of 1995. The NCI is looking for a CRADA partner to collaborate in the development of the properties of the KBTool data management system. The expected duration of the CRADA would be from one(1) to five (5) years.

DATES: Interested parties should notify this office in writing of their interest in filing a formal proposal no later than July 21, 1999. They will then have an additional thirty (30) days to submit a formal proposal. CRADA proposals submitted thereafter may be considered if a suitable CRADA Collaborator has not been selected.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Holly S. Symonds, Ph.D. (Tel. #301–496–0477, FAX # 301–402–2117), Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852. Inquiries directed to obtaining patent license(s) needed for participation in the CRADA opportunity may be addressed to John Fahner-Vihtelic, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, (Tel. 301–496–7735, ext. 270; FAX 301–402–0220).

Dated: June 13, 1999.

Kathleen Sybert,

Chief, Technology Development and Commercilization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–15637 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases: Licensing Opportunity and/or Cooperative Research and Development Agreement ("CRADA") Opportunity; Drug and Method for the Therapeutic Treatment of Respiratory Syncytial Virus and Parainfluenza Virus in Children

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID) of the NIH is seeking Licensees and/or capability statements from parties to further develop, evaluate, and commercialize eosinophil-derived neutralizing agent (EDNA) for the treatment of infections in children and/or the elderly caused by Respiratory Syncytial Virus (RSV) and parainfluenza virus (PIV). RSV and PIV are medically the most important single-stranded RNA viruses; infections caused by these viruses hospitalize over 100,000 infants per year in the U.S.

The methods and compositions of this invention provide a means for prevention and treatment of infection by enveloped RNA viruses by eoxinophil derived neutralizing agent (EDNA), a ribonuclease. EDNA is a relatively soluble and thermostable protein, active at low contentrations, with no direct toxicity to bronchial epithelial cells, making it suitable for inhalation therapy. Parenteral administration is also contemplated by this invention.

EDNA, particularly recombinant EDNA, may be used as an agent for direct inhalation therapy in children with established RSV bronchiolitis (associated with the development of future respiratory disorders such as asthma), in children for which there is a high index of suspicion, and as prophylactic therapy in children with predisposing conditions such as prematurity, bronchiole pulmonary displasia, congential heart disease and immunodeficiency. Similar criteria may be applied to the susceptible elderly population.

Recombinant human EDNA has been produced in bacterial and baculovirus expression systems. Furthermore, in vitro experiments have shown it to have potent antiviral activity against RSV (Domachowske, JB et al., 1998, *J. Infect. Dis.* 177:1458–1464.) Initial studies in the Balb/C mouse model of RSV infection support its effectiveness against this virus. This project is a part of the study of ribonucleases and host defenses in the Laboratory of Host Defenses (LHD), Division of Intramural Research, NIAID.

The invention claimed in DHHS Reference No. E–161–97/1, "Methods for Inactivating Enveloped RNA Virus Particles and Compositions for Use Therewith" (HF Rosenberg, JB Domachowske), PCT/US98/13852 filed July 2, 1998, is available for exclusive or non-exclusive licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or further development under one or more CRADAs in the clinically important applications described below in the Supplementary Information section.

ADDRESSES: Questions about licensing opportunities should be addressed to Peter Soukas, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804, Telephone: (301) 496–7056 ext. 268; Facsimile: (301) 402–0220; E-mail: ps193c@nih.gov. Information about Patent Applications and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement. Respondents interested in licensing the invention will be required to submit an "Application for License to Public Health Service Inventions."

Depending upon the mutual interests of the Licensee(s) and the NIAID, a CRADA to collaborate to develop EDNA as an anti-RSV therapeutic may also be negotiated. Proposals and questions about this CRADA opportunity should be addressed to Dr. Michael R. Mowatt, Technology Development Manager, Office of Technology Development, NIAID, Building 31, Room 3B62, 31 Center Drive, Bethesda, MD 20892–2137, Telephone: (301) 435–8618; E-mail: mm25q@nih.gov. Respondents interested in submitting a CRADA Proposal should be aware that it may be necessary to secure a license to the above-mentioned patent rights in order to commercialize products arising from a CRADA.

EFFECTIVE DATE: Respondents interested in licensing the invention will be required to submit an "Application for License to Public Health Service Inventions" on or before September 20, 1999, for priority consideration.

Interested CRADA collaborators must submit a confidential proposal summary to the NIAID [attention Dr. Michael Mowatt at the aforementioned address' on or before September 20, 1999, for consideration. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA and PHS License Applications submitted thereafter may be considered if a suitable CRADA collaborator of Licensee(s) has not been selected.

SUPPLEMENTARY INFORMATION: Under the CRADA the production of biologically active recombinant human EDNA will be optimized and the agent evaluated in a series of preclinical studies in animals as well as initial safety testing in humans. Positive outcomes of these studies will indicate continued clinical development aimed at supporting regulatory approval of a product to be labeled for use in children and/or the elderly. The Public Health Service (PHS) has filed patent applications both in the U.S. and internationally related to this technology. Notice of the availability of the patent application for licensing was first published in the **Federal Register** (Vol. 62, No. 219, Page 60909) on November 13, 1997

NIAID's principal investigator has extensive experience with recombinant technology as applied to ribonucleases, their purification and testing. The Collaborator in this endeavor is expected to assist NIAID in evaluating its current system for producing recombinant EDNA and to develop and optimize an alternative expression system, if necessary, to manufacture sufficient quantities of the product for preclinical testing in animals and initial safety studies in humans. The Collaborator must have experience in the manufacture of recombinant protein products according to applicable FDA guidelines and Points to Consider documents to include Good Manufacturing Procedures (GMP). In addition, it is expected that the Collaborator would provide funds to supplement the LHD's research budget for the project and to support the preclinical and initial human testing.

The capability statement should include detailed descriptions of: (1) Collaborator's expertise in the expression of recombinant proteins, (2) Collaborator's ability to manufacture sufficient quantities of the product according to FDA guidelines and Points to Consider documents, (3) the technical expertise of the Collaborator's principal investigator and laboratory group in preclinical safety testing (e.g., expertise in *in vitro* and *in vivo* toxicity and pharmacology studies) and initial human safety studies, and (4) Collaborator's ability to provide adequate funding to support preclinical and initial human safety studies required for marketing approval.

Dated: May 24, 1999.

Mark Rohrbaugh,

Director, Office of Technology Development, National Institute of Allergy and Infectious Diseases.

Dated: June 10, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–15638 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Susan S. Rucker, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 245; fax: 301/402–0220; e-mail: sr156v@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Transgenomic Viruses

WJ Ramsey, RM Blaese, KG Xanthopoulos (NHGRI)
Serial No. 09/058,686 filed April 10, 1998, PCT/US98/07166 filed April 9, 1998 and 60/043,667 filed April 11, 1997.
Licensing Contact: Susan S. Rucker, 301/496–7056 ext 245

The technology described and claimed in these applications relates to the fields of gene therapy, the production of transgenic non-human animals and diagnostic or quality control applications where identification of an unknown viral genome is desired. More, particularly the technology described and claimed in the application relates to chimeric viruses. When used for gene therapy or the production of transgenic non-human animals the chimeric viruses are capable of producing secondary virus in a producer cell. The secondary virus may be any virus other than the primary virus or a Dependovirus. When used for diagnostic or quality control applications the chimeric virus complements, in *trans*, the secondary packaging components found in the producer cells.

When employed in the fields of gene therapy and the production of transgenic non-human animals the chimeric virus offers the advantages of high transduction efficiency, high viral titer, and the ability to have a producer cell which is from the same source as the target cell allowing for the production of autologous secondary viruses which evade the immune response. The chimeric virus is exemplified by an adenovirus which contains a retroviral vector containing a heterologous protein/transgene. Other chimeric viruses are adenovirus-togavirus chimera such as adenovirus-Semiliki Forest virus or adenovirus-Sindbis virus.

When employed for diagnostic or quality control purposes the chimeric primary virus is constructed to encode all of the packaging components necessary to rescue and package a viral genome. The chimeric primary virus is then used to infect a host cell which is suspected of containing an unknown or known virus which contains a packaging signal which can be recognized by the primary chimeric virus.

This research has been published, in part, in Biochem Biophys Res Commun 246(3): 912–19 (May 29, 1998) and in Gene Therapy 6(3): 454–459 (March 1999).

Dated: June 10, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–15639 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Mouse Animal Models for Human Cancers Consortium.

Date: July 21–23, 1999.

Time: 7:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 29814.

Contact Person: Ray Bramhall, PHD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd, Rockville, MD 20892, (301) 496–3428.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and prevention Research, 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research, 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15640 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for the Molecular Analysis of Cancer: SBIR/STTR Initiative.

Date: July 21, 1999.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Sherwood Githens, PHD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, Executive Plaza North, 6130 Executive Boulevard, Bethesda, MD 20892, 301/435–9050.

Name of Committee: National Cancer Institute Special Emphasis Panel Innovative Technologies for the Molecular Analysis of Cancer: Phased Innovation Award.

Date: July 22–23, 1999.

Time: 8:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Sherwood Githens, PHD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, Executive Plaza North, 6130 Executive Boulevard, Bethesda, MD 20892, 301/435–9050.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15641 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Technologies for Generation of Full-Length Mammalian cDNA.

Date: July 26, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: C.M. Kerwin, PHD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–630, Rockville, MD 20892–7405, 301/496–7421.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15647 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C. The discussions could reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of discussions related to personnel and confidential administrative information would be likely to significantly frustrate the subsequent implementation of recommendations.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: June 23, 1999.

Open: 8:00 AM to 4:30 PM.

Agenda: Report of the Director, NCI; Ongoing and New Business, Status Reports of Implementing Program Review Group(s) Recommendations, Budget Presentation, Reports of Special Initiatives, and RFA Concept Reviews.

Closed: 4:30 PM to 6:00 PM.

Agenda: To review and evaluate personnel and programmatic issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Deputy Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Executive Plaza North, Suite 600, 6130 Executive Boulevard, Rockville, MD 20852, (301) 496–4218.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15732 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the first meeting of the Cancer Advisory Panel for Complementary and Alternative Medicine (CAPCAM) on Thursday, July 8, 1999, through Friday, July 9, 1999. The meeting will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The meeting will be open to the public on Thursday, July 8 from 8:30 am to 12:15 pm. The agenda includes: Remarks from the Acting Director, NCCAM; CAMCAM Chair; and Director, OCCAM, NCI, CAPCAM process overview, and other business of the Panel.

In accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended, the meeting will be closed to the public on July 8, 1999, from 1:15 pm to 5:30 pm for discussions of individual patient information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The meeting will be open to the public on Friday, July 9, 1999, from 8:30 am to 1:30 pm. The agenda will include scientific presentations and public comments session. The public comments session is scheduled from 1 pm to 1:30 pm. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Richard Nahin, National Center for Complementary and Alternative Medicine, NIH, 31 Center Drive, (MSC 2182), Building 31, Room 5B37, Bethesda, Maryland, 20892, 301–594–2013, Fax: 301–480–9500. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 pm on June 28, 1999. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Nahin at the address listed above up to ten calendar days (received by July 19,1999) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Richard Nahin, Executive Secretary, CAPCAM, National Institutes of Health, Building 31, Room 5B37, 31 Center Drive, Bethesda, Maryland 20892, (301) 594–2013, Fax 301–480–9500. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Nahin.

Dated: June 14, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, National Institutes of Health.

[FR Doc. 99–15642 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Prevention of CVD in Diabetes Mellitus—Coordinating Center.

Date: July 7, 1999.

Time: 8:30 AM to 1:30 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Valerie L. Prenger, PHD, Health Scientist Administrator, Review Branch, NIH, NHLBI, DEA, Rockledge Building II, 6701 Rockledge Drive, Suite 7198, Bethesda, MD 20892–7924, (301) 435–0297.

Name of Committee: National Heart Lung, and Blood Institute Special Emphasis Panel—Development of Animal Models in HIV Related Lung Disease.

Date: July 12–13, 1999.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Deborah P. Beebe, PHD, Leader, Cardiology/Pulmonary Scientific Review Group, Rockledge Center II, 6701 Rockledge Drive, Suite 7178, Bethesda, MD 20892–7924, 301/435/0270.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Demonstration & Education Grant Application Review.

Date: July 20, 1999.

Time: 9:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Louise P. Corman, PHD, Scientific Review Administrator, NIH, NHLBI, DEA, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Abdominal Aortic Aneurysm: Pathogenesis.

Date: July 21, 1999.

Time: 8:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Eric H. Brown, PHD, Scientific Review Administrator, NIH, NHLBI, DEA, Rockledge Building II, 6701 Rockledge Drive, Suite 7204, Bethesda, MD C 7956, (301) 435–0299.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Managing Asthma In School Children.

Date: July 29, 1999.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Teleconference Meeting, 6701 Rockledge Drive, 7214, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ivan C. Baines, PHD, Scientific Review Administrator, NIH, NHBLI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Suite 7184, Bethesda, MD 20892–7922, 301/435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15643 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Sciences and Disorders B, June 21, 1999, 7:30 a.m. to June 22, 1999, 5 p.m., Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on May 6, 1999, 64 FR 24411.

The NSDB meeting will now be held June 21–23, 1999 from 8:30 a.m. to 5 p.m. each day at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD, 20814. The meeting is closed to the public.

Dated: June 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15644 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Sciences and Disorders A, June 24, 1999, 8:30 a.m. to June 25, 1999, 5 p.m., Chevy Chase Holiday Inn, Chevy Chase, MD, 20815 which was published in the **Federal Register** on May 6, 1999, 64 FR 24411.

The NSDA meeting will now be held June 23–25, 1999 from 8:30 a.m. to 5 p.m. each day at the Chevy Chase Holiday Inn, Chevy Chase, MD 20815. The meeting is closed to the public.

Dated: June 14, 1999.

LaVerne Y. Stringfield,

Committee Management Office, National Institutes of Health.

[FR Doc. 99–15645 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, June 21, 1999, 8:30 a.m. to June 22, 1999, 5 p.m., Madison Hotel, Fifteenth & M Streets NW, Washington, DC 20005 which was published in the **Federal Register** on June 7, 1999, 64 FR 30348.

The meeting will now be held June 21–23, 1999 from 8:30 a.m. to 5 p.m. each day at the Madison Hotel, Fifteenth & M Streets, NW, Washington, DC 20005. The meeting is closed to the public.

Dated: June 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15646 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Research Resource for Genetics of Families with Multiple Autoimmune Diseases.

Date: July 1, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Sheraton Crystal City Hotel, Crystal III Room, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Hagit S. David, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2155, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–402–4596.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 15, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–15728 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 19, 1999.

Time: 9:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Henry J. Haigler, PHD Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15730 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: July 13, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John R. Lymangrover, PHD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15731 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel Visible Human Project: Image Processing Tools Contract Proposal.

Date: June 21–22, 1999.

Time: June 21, 199, 8:30 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Time: June 22, 1999, 8:30 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Terry S Yoo, AB, MS, PHD, Computer Scientist, High Performance Computing & Communications, Lister Hill Nat'l CTR For Biomed Communications, National Library of Medicine, 8600 Rockville Pike Bldg 38A, RM B1N30P, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15726 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Visible Human Project Atlas of the Head and Neck Contract.

Date: June 30–July 1, 1999.

Time: June 30, 1999, 8:30 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Bockville Pike, Bethesda, MD 20894.

Time: July 1, 1999, 8:30 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Bockville Pike, Bethesda, MD 20894.

Contact Person: Donald Jenkins, BS, PHC, PhD, Special Expert, Computer Scientist, High Performance Computing and Communications, Lister Hill Nat'l Ctr for Biomed Communications, National Library of Medicine, 8600 Rockville Pike, Bldg 38A, RM B1N30P, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15727 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special emphasis Panel, Phase II Next Generation Internet (NGI) Contract Proposals.

Date: June 28–29, 1999.

Time: June 28, 1999, 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD, 20894.

Time: June 29, 1999, 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD, 20894.

Contact Person: Paul A Fontelo, BS, MD, MPH, Special Expert, High Performance Computing & Communications, Lister Hill Nat'l Ctr for Biomed Communications, National Library of Medicine, 8600 Rockville Pike, Bldg 38A, Rm B1N3OP, Bethesda, Md 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 15, 1999.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–15729 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

Center for Scientific Review; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 22–23, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., N.W., Washington, DC 20007.

Contact Person: Joanne T. Fujii, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujii@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group Epidemiology and Disease Control Subcommittee 2.

Date: June 28–29, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: David M. Monsees, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7848, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovasular Sciences Initial Review Group, Cardiovascular Study Section.

Date: June 28–29, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gordon L. Johnson, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–01212, monseesd@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group Cell Development and Function 6.

Date: June 28–29, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.

Contact Person: Anthony D. Carter, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–01212.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 28–29, 1999.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Sreet, NW, Washington, DC 20037.

Contact Person: Mushtaq A. Khan, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7818, Bethesda, MD 20892, (301) 435–1778.khanm@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 28, 1999.

Time: 8:30 AM to 4: PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Eugene Vigil, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 28, 1999.

Time: 9:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Anita Miller Sosteck, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Initial Review Group Genome Study Section.

Date: June 28–29, 1999.

Time: 9:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., N.W., Washington, DC 20007.

Contact Person: Cheryl M. Corsaro, PHD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, (301) 435–1045.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Initial Review Group Surgery, Anesthesiology and Trauma Study Section.

Date: June 28–29, 1999.

Time: 1:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Gerald L. Becker, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 28, 1999.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul K. Strudler, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15733 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences (NIEHS); Corrositex®: An In Vitro Test Method for Assessing Dermal Corrosivity Potential of Chemicals, Report Now Available

SUMMARY: The report entitled "Corrositex®: An *In Vitro* Test Method for Assessing Dermal Corrosivity Potential of Chemicals," NIH Publication 99–4495, is now available and may be obtained as described in this notice. The report describes the results of an independent peer review evaluation of the validation status of Corrositex® that was conducted on January 21, 1999 **Federal Register** 63 FR 57303, October 27, 1998). Corrositex® was proposed by In Vitro International, Inc., Irvine, CA, as an alternative toxicological test method for assessing the dermal corrosivity potential of chemicals and chemical mixtures. The review was coordinated by the Interagency Coordinating Committee on the Validation of Alternative methods (ICCVAM) and the National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). The review was sponsored by NIEHS and the NTP.

Background

Pub. L. 103–43 directed NIEHS to develop and validate alternative methods that can reduce or eliminate the use of animals in acute or chronic toxicity testing, establish criteria for the validation and regulatory acceptance of alternative testing methods, and recommend a process through which scientifically validated alternative

methods can be accepted for regulatory use. Criteria and processes for validation and regulatory acceptance were developed in conjunction with 13 other Federal agencies and programs with broad input from the public. These are described in the document "Validation and Regulatory Acceptance of Toxicological Test Methods: A Report of the Ad Hoc Interagency Coordinating Committee on the Validation of Alternative Methods," NIH publication 97–3981, March 1997, which is available on the Internet at http://ntp-server.niehs.nih.gov/htdocs/ICCVAM/iccvam.html. ICCVAM was subsequently established in a collaborative effort by NIEHS and 13 other Federal regulatory and research agencies and programs. The Committee's functions include the coordination of interagency reviews of toxicological test methods and communication with stakeholders throughout the process of test method development and validation. The following Federal regulatory and research agencies and organizations participate in this effort:

Consumer Product Safety Commission
Department of Defense
Department of Energy
Department of Health and Human Services
  Agency for Toxic Substances and Disease Registry
  Food and Drug Administration
  National Institute for Occupational Safety and Health/CDC
  National Institutes of Health
  National Cancer Institute
  National Institute of Environmental Health Sciences
  National Library of Medicine
Department of the Interior
Department of Labor
  Occupational Safety and Health Administration
Department of Transportation
  Research and Special Programs Administration
Environmental Protection Agency

ICCVAM determined that there was sufficient information available to merit an independent scientific peer review evaluation of the Corrositex® test method. Peer review is an essential prerequisite for consideration of a method for regulatory acceptance. The peer review panel was charged with developing a scientific consensus on the usefulness and limitations of the test method.

Description of the Method

Corrositex® is an *in vitro* method used to determine the dermal corrosive potential of chemicals and chemical mixtures. Corrositex® is based on the ability of a corrosive chemical or chemical mixture to pass through, by diffusion and/or destruction/erosion, a biobarrier and to elicit a color change in the underlying liquid Chemical Detection System (CDS). The biobarrier is composed of a hydrated collagen matrix in a supporting filter membrane, while the CDS is composed of water and pH indicator dyes. Test chemicals and chemical mixtures, including solids and liquids, are applied directly to the biobarrier. The time it takes for a test chemical or chemical mixture to penetrate the biobarrier and produce a color change in the CDS is compared to a classification chart to determine corrosivity/noncorrosivity and to identify the appropriate U.S. Department of Transportation (U.S. DOT) packing group. Chemicals are prescreened for compatibility with the assay by directly applying the test chemical or chemical mixture to the CDS; if a color change is not induced, then the test chemical or chemical mixture does not qualify for testing with this assay. The U.S. DOT currently accepts the use of Corrositex® to assign subcategories of corrosivity (packing groups) for specific chemical classes for labeling purposes according to United Nations (UN) Committee of Experts on the Transport of Dangerous Goods guidelines.

Conclusions and Recommendations

The peer review panel concluded that for specific testing circumstances such as that required by the U.S. DOT, Corrositex® is useful as a stand-alone assay for evaluating the corrosivity or noncorrosivity of acids, bases, and acid derivatives. In other testing circumstances, and for other chemical and product classes, the peer review panel concluded that Corrositex® may be used as part of a tiered assessment strategy. In this approach, negative responses must be followed by dermal irritation testing, and positive responses require no further testing unless the investigator is concerned about potential false positive responses. The panel recommended that in either testing strategy, an investigator may conclude that confirmation testing is necessary based on consideration of supplemental information, such as pH, structure-activity relationships, and other chemical and/or testing information. These conclusions are based on the assumption that the method will be performed in accordance with the following peer review panel recommendations:

1. The protocol should incorporate the following:

- It should be explicitly stated that the biobarrier should be allowed to harden on a level surface and to cool overnight before use.
- Guidance should be provided on how to evaluate an aberrant value, even though replicate variability has been shown to be very low.
- The IVI Corrositex® Data Sheets provided with the test kit should contain a provision for recording the performance of the positive and negative controls. This information should be used to determine the suitability of the test results.
- Description of the test protocol would benefit from the addition of a flow diagram illustrating the steps in the procedure.

2. In future studies, compliance with Good Laboratory Practice (GLP) guidelines and inclusion of quality control procedures would improve data quality and credibility.

3. Positive and negative control values should be reported concurrently with each assay to demonstrate that the test is working properly.

4. Laboratories unfamiliar with conducting the test should obtain appropriate training and conduct tests with test reference chemicals before undertaking any testing of unknown chemicals and chemical mixtures.

5. Prior to the use of Corrositex®, pH testing should be conducted, given the ease and cost effectiveness of conducting a pH test. Such information could be used in the future to re-evaluate the agreement between pH and Corrositex® in identifying corrosivity.

The peer review panel also concluded that Corrositex® offers advantages with respect to animal welfare considerations. Corrositex®, when used as a stand-alone assay for some testing applications such as transportation purposes, can replace the use of animals for corrosivity testing of qualified chemicals in some chemical classes. When used as part of a tiered testing strategy for corrrosivity, there is a reduction in the number of animals required because positive results usually eliminate the need for animal testing, and when further testing in animals is determined to be necessary, only one animal is required to confirm a corrosive chemical. Corrositex® also provides for refinement in that most of the chemicals that are identified as negative by Corrositex® or nonqualifying in the detection system are unlikely to be corrosive when tested in the in vivo test for irritation potential.

The peer review panel's report was accepted by ICCVAM and has been forwarded to Federal agencies for their determination of the regulatory acceptability and applicability of the test method according to their statutory mandates.

Obtaining the Report

The full report contains 238 pages and includes the results of the independent peer review evaluation and supporting documentation, including the original test method submission and supporting data evaluations conducted by NICEATM.

To receive a copy of the report, please contact NICEATM at PO Box 12233, MD EC–17, Research Triangle Park, NC 27709 (mail), 919–541–3398 (phone), 919–541–0947 (fax), or iccvam@niehs.nih.gov (email). The report will also be available on the ICCVAM/NICEATM website at http://iccvam.niehs.hih.gov.

Dated: June 15, 1999.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 99–15725 Filed 6–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4420–N–03]

RIN 2577–AB89

Public Housing Agency Plan and Section 8 Certificate and Voucher Merger Announcement of Public Forum

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Public forums announcement.

SUMMARY: This document announces the (1) exact location of the public forum to be held in Syracuse, New York, on HUD's Public Housing Agency (PHA) Plan interim rule that was published on February 18, 1999, and on HUD's Section 8 certificate and voucher merger interim rule (Section 8 merger) that was published on May 14, 1999, and (2) an additional public forum to be held on both rules in Washington, DC. The statute authorizing these two rules requires that before HUD issues final rules on these subjects, HUD will convene at least two public forums for each rule, and specifically seek recommendations from certain organizations and individuals, as specified in the statute.

DATES: June 28, 1999, and July 28, 1999. The exact times for discussion of each rule at these two forums is provided in the Supplementary Information section of this document.

ADDRESSES: The June 28, 1999 public forum will be held at Grant Auditorium, E.I. White Hall, College of Law, Syracuse University, Syracuse, New York. The July 28, 1999 public forum will be held at HUD Headquarters, 451 Seventh Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: This information will be posted on the QHWRA page of HUD's website (www.hud.gov/pih/legis/titlev.html). Information also may be obtained by contacting your local HUD office, or by contacting the Office of Policy, Program and Legislative Initiatives, in the Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708–0713 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

PHA Plan Interim Rule

Section 511 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (the 1998 Act) added a new section 5A to the United States Housing Act of 1937 (USHA) (42 U.S.C. 1437 *et seq.*). This new section provides for public housing agencies (PHAs) to develop and submit to HUD two plans—a five-year plan and an annual plan on their goals and objectives and current PHA operations. Section 511 also required HUD to publish, within 120 days of enactment of the statute, an interim rule implementing the requirements of the PHA plans and the submission process. HUD published its interim rule on February 18, 1999 (64 FR 8170) (the PHA Plan rule). The PHA Plan rule provided a 60-day public comment period which closed on April 19, 1999.

Section 511 also requires that before HUD issues its final PHA Plan rule, HUD will seek recommendations on implementation of the PHA plans from organizations representing:

(1) State or local public housing agencies;
(2) Residents, including resident management corporations;
(3) Other appropriate parties.

Section 511 also requires HUD to convene not less than two public forums at which the person or organization making recommendations may express their views concerning the proposed disposition of their recommendations.

Through its February 18, 1999 interim rule, HUD specifically sought recommendations from these categories of organizations (see 64 FR 8170, middle column), and again seeks their recommendations through this document.

Section 8 Certificate and Voucher Merger Rule

Section 545 of the 1998 Act amended section 8(o) of the USHA to provide for the merger of the Section 8 certificate and voucher programs. HUD's interim rule implementing the merger of these two programs was published on May 14, 1999 (64 FR 26632) (Merger rule). The Merger rule provides for a 60-day public comment period which closes on July 13, 1999. In accordance with section 559 of the 1998 Act, HUD will also hold a minimum of two public forums on this rule.

Section 559 provides that the Secretary of HUD shall issue interim regulations as may be necessary to implement the amendments made by the 1998 Act as these amendments relate to section 8(o) of the USHA. Section 559 also provides that before the publication of final regulations, in addition to public comment invited in connection with the publication of the interim rule, the Secretary shall seek recommendations on the implementation of sections 8(o)(6(B), 8(o)(7)(B) and 8(o)(10)(D) of the USHA and on the implementation of the renewals of expiring tenant-based assistance from organizations representing:

(1) State or local public housing agencies;
(2) Owners and managers of tenant-based housing assisted under section 8 of the USHA;
(3) Families receiving tenant-based assistance under section 8 of the USHA; and
(4) Legal services organizations.

Section 559 also requires HUD to hold not less than two public forums at which the individuals and organizations described above may express views concerning the proposed disposition of the recommendations.

Through its May 14, 1999 interim rule, HUD specifically sought rulemaking recommendations from these categories of organizations (see 64 FR 26635, middle column), and again seeks their recommendations through this document.

Public Forum Dates and Locations

June 28, 1999 Public Forum. The June 28, 1999 public forum in Syracuse, New York, will be HUD's third public forum on the PHA Plan rule, and its second

public forum on the Merger rule. (HUD's public forum announcement, published on April 27, 1999, provided the dates and locations of the earlier public forums (see 64 FR 22550).)

The public forum on the PHA Plan rule will be held from 9:00 am to 12:00 pm.

The public forum for the Merger rule will be held from 1:00 pm to 4:00 pm.

Both public forums will be held at Grant Auditorium, E.I. White Hall, College of Law, Syracuse University, Syracuse, New York.

July 28, 1999 Public Forum. The July 28, 1999 public forum in Washington, DC, will be HUD's fourth public forum on the PHA Plan rule, and its third public forum on the Merger rule. On this date, the discussion of the Merger rule will precede the discussion of the PHA Plan rule.

The public forum for the Merger rule will be held from 9:00 am to 12:00 pm.

The public forum on the PHA Plan rule will be held from 1:00 pm to 4:00 pm.

Both public forums will be held at HUD Headquarters, 451 Seventh Street, SW, Washington, DC.

Discussions at Public Forums

So that the discussions at the public forums can be productive, recommendations from the categories of organizations specified in the statute need to be submitted in as far in advance of the forum date as possible to: the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should include the following reference: "PHA Plan rule (FR–4420); Public Forum" or "Section 8 Merger rule (FR–4428); Public Forum."

Dated: June 15, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–15628 Filed 6–18–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Policy, Management and Budget

[FA–108–2810–00–24–IE]

Notice of Intent To Establish the Joint Fire Science Program Stakeholder Advisory Group and Call for Non-Federal Nominations

AGENCY: Department of the Interior; Office of the Assistant Secretary For Policy Management and Budget.

ACTION: Notice of intent to establish the Joint Fire Science Program Stakeholder Advisory Group; Public call for nominations.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. App.). Notice is hereby given that the Secretary of the Interior and the Secretary of Agriculture intend to establish the Joint Fire Science Program Stakeholder Advisory Group to provide advice concerning priorities and approaches for research and implementation of research findings for the management of wildland fuels on lands administered by the Department of the Interior, through the Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and U.S. Fish and Wildlife Service, and the Department of Agriculture, through the Forest Service (FS).

DATES: Nominations should be submitted to the address listed below no later than July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Bob Clark, Joint Fire Science Program Manager, National Interagency Fire Center, 3833 S. Development Ave., Boise, Idaho 83705, (208) 387–5349. Internet: b1clark@nifc.blm.gov.

SUPPLEMENTARY INFORMATION: The Stakeholder Advisory Group will consist of 30 members, 15 Federal and 15 nonfederal. This call for nominations will establish the nonfederal membership on the Group. Group membership will be balanced in terms of categories of interest represented.

Any individual or organization may nominate one or more persons to serve on the Joint Fire Science Program Stakeholder Advisory Group. Individuals may also nominate themselves for Group membership. All nomination letters should include the name, address, profession, relevant biographic data, and reference sources for each nominee, and should be sent to the above address. Letters of support should be from interests or groups that nominees claim to represent. This material will be used to evaluate nominees in terms of their expertise and qualifications for advising the Secretaries on matters pertaining to research into wildland fuels problems and implementation of strategies and solutions for managing the increasing fuel loadings on federally administered wildlands.

Nominations may be made for the following categories of interest:

Wildland fire management
Wildland fuels management
Air quality management
Public lands management
Forest ecology
Rangeland ecology
Hydrology
Conservation
Social science
Computer science and modeling
Tribal government
Public-at-large

The specific category that the nominee will represent should be identified in the letter of nomination.

Agency administrators will nominate Federal representatives, including: Four (4) members from the FS, and one member each from the Bureau of Land Management, the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, the National Park Service, the U.S. Geological Survey, the Department of Energy, the Department of Defense, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and the Natural Resources Conservation Service.

Each Stakeholder Advisory Group Member will be appointed to serve a 2-year term.

Members will serve without salary, but non-federal members will be reimbursed for travel and per diem expenses at current rates for Government employees.

The Group will meet at least once annually. Additional meetings may be called in connection with special needs for advice. The Department of the Interior's Senior Policy Advisor, Office of Managing Risk and Public Safety, will be the Designated Federal Officer who will call meetings of the Group.

Dated: June 11, 1999.

John Berry,

Assistant Secretary for Policy, Management and Budget.

[FR Doc. 99–15655 Filed 6–18–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE–799158–0

Applicant: Oklahoma Museum of Natural History, Norman, Oklahoma.

Applicant requests authorization for scientific research and recovery purposes to conduct a study of the movement of the leopard darter (*Percina pantherina*) in the Glover River and Mountain Fork River on USDA Forest Lands in McCurtain County, Oklahoma.

Permit No. TE–004439–1

Applicant: Albuquerque Biological Park, Albuquerque, New Mexico.

Applicant request authorization to capture and hold for public display the following endangered and threatened species of native New Mexican fishes.

Gila trout (*Oncorhynchus gilae*)
Chihuahua chub (*Gila nigrescens*)
Rio Grande silvery minnow (*Hybognathus amarus*)
Spikedace (*Meda fulgida*)
Pecos bluntnose shiner (*Notropis simus pecosensis*)
Colorado squawfish (*Ptychocheilus lucius*)
Loach minnow (*Tiaroga cobitis*)
razorback sucker (*Xyrauchen texanus*)
Pecos gambusia (*Gambusia nobilis*)
Gila topminnow (*Poeciliopsis occidentalis*)

Permit No. PRT–826118

Applicant: Tulsa District, Corps of Engineers, Tulsa, Oklahoma.

Applicant requests authorization to conduct presence/absence surveys for the following endangered species statewide in Oklahoma and in north Texas:

gray bat (*Myotis grisescens*)
Indiana bat (*Myotis sodalis*)
Ozark big-eared bat (*Corynorhinus townsendii ingens*)
leopard darter (*Percina pantherina*)
neosho madtom (*Noturus placidus*)
Ouachita rock pocketbook (*Arkansia wheeleri*)

Permit No. TE012642

Applicant: Blue Earth Biological Consultants, Santa Fe, New Mexico.

Applicant requests authorization to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) throughout New Mexico.

Permit No. TE–812212

Applicant: Karen Melody Lytle, Austin, Texas.

Applicant requests authorization to conduct presence/absence surveys for the peregrine falcon (*Falco peregrinus*), Coffin Cave mold beetle (*Bastrisodes texanus*), and Barton Springs salamander (*Eurycea sosorum*) in Travis County, Texas.

Permit No. TE–797457

Applicant: University of Texas, Department of Zoology, Austin, Texas.

Applicant requests authorization for scientific research and recovery purposes to collect the fountain darter (*Etheostoma fonticola*), Comanche Springs pupfish (*Cyprinodon elegans*), Leon Springs pupfish (*Cyprinodon bovinus*) in Texas.

Permit No. TE—797125

Applicant: The McDonald Company, Maryville, Tennessee.

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the American burying beetle (*Nicrophorus americanus*) bald eagle (*Haliaeetus leucocephalus*), Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), and peregrine falcon (*Falco peregrinus*) in Latimer, Haskell, LeFlore, Cherokee, and Muskogee Counties, Oklahoma.

Permit No. TE–013086

Applicant: Ron J. Van Ommeren, Phoenix, Arizona.

Applicant requests authorization for scientific research and recovery purposed to conduct presence/absence surveys for the following endangered and threatened species in Arizona, New Mexico and Texas:

cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*)
southwestern willow flycatcher (*Empidonax traillii extimus*)
peregrine falcon (*Falco peregrinus*)
golden-cheeked warbler (*Dendroica chrysoparia*)
black-capped vireo (*Vireo atricapillus*)
Yuma clapper rail (*Rallus longiristris yumanensis*)
lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*)
Mexican long-nosed bat (*Leptonycteris nivalis*)
Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*)
desert tortoise (*Gopherus agassizii*)

Permit No. TE—828640

Applicant: Harris Environmental Group, Tucson, Arizona.

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*), and the lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) in New Mexico and Arizona.

Permit No. TE—013103—0

Applicant: Abilene Zoological Society, Abilene, Texas.

Applicant requests authorization for research and recovery purposes to band the black-capped vireos (*Vireo atricapillus*) in Taylor County, Texas.

Permit No. TE—827726—0

Applicant: Tonto National Forest, Phoenix, Arizona.

Applicant request authorization for research and recovery purposes to conduct presence/absence surveys for the endangered and threatened wildlife and collect plant parts for the plant species listed below:

razorback sucker (*Xyrauchen texanus*)
Colorado pikeminnow (*Ptychocheilus lucius*)
desert pupfish (*Cyprinodon macularius macularius*)
Gila topminnow (*Poeciliopsis occidentalis occidentalis*)
lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*)
southwestern willow flycatcher (*Empidonax traillii extimus*)
cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*)
Yuma clapper rail (*Rallus longirostris yumanensis*)
Arizona hedgehog cactus (*Echinocereus triglochidiatus var. arizonica*)
Arizona agave (*Agave arizonica*)
Arizona cliffrose (*Purshia subintegra*)

Permit No. TE—013143—0

Applicant: The Institute for Bird Populations, Point Reyes Station, California.

Applicant requests authorization for research and recovery purposes to conduct presence/absence surveys for the golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapillus*) in Ft. Hood, Texas.

Permit No. TE—0131490—0

Applicant: Thomas Staudt, Tucson, Arizona.

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the following endangered species in Arizona, New Mexico, and Texas:

southwestern willow flycatcher (*Empidonax traillii extimus*)
cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*)
Yuma clapper rail (*Rallus longirostris yumanensis*)
bald eagle (*Haliaeetus leucocephalus*)
peregrine falcon (*Falco peregrinus*)
northern aplomado falcon (*Falco femoralis septentrionalis*)
interior least tern (*Sterna antillarum*)
piping plover (*Charadrius melodus*)
brown pelican (*Pelicanus occidentalis*)
golden-cheeked warbler (*Dendroica chrysoparia*)
black-capped vireo (*Vireo atricapillus*)
western snowy plover (*Charadrius alexandrinus nivosus*)

California condor (*Gymnogyps californianus*)

DATES: Written comments on these permit applications must be received on or before July 21, 1999.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, PO Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: The U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103.

Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–15631 Filed 6–18–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1430–00; GP9–0209]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Lakeview District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Southeast Oregon Resource Advisory Council will meet at the Winema National Forest Headquarters, 2819 Dahlia, Klamath Falls, Oregon, from 8:00 a.m. to 5:30 pm (PDST) on July 27, 1999. Topics to be discussed by the Council include the Klamath Basin water issues, the Owyhee Wild and Scenic River, and other such matters as may reasonably come before the Council. The entire meeting is open to the public. Public comment is scheduled for 11:15–11:45 am.

FOR FURTHER INFORMATION, CONTACT: Julie Bolton, Bureau of Land Management, Lakeview District Office, HC 10, Box 337, Lakeview, OR 97630, (Telephone: 541/947–2177).

Dated: June 7, 1999.

M. Joe Tague,

Designated Federal Official.

[FR Doc. 99–15605 Filed 6–18–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–1430–01: GP–9–0210]

Realty Action; Lake County, Oregon

AGENCY: Bureau of Land Management, Lakeview District, Interior.

ACTION: Competitive sale of public land in Lake County, Oregon, Serial Number (OR 54499).

The following parcel of public land is suitable for competitive sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale for at least 60 days following the publication of this notice in the **Federal Register**.

Legal description	Acreage	Sale price	Deposit
Parcel Serial No., OR 54499 *T.25S., R.18E., W.M., Oregon,* Sec. 32: W½	320	$41,600.00	$4,160.00

The above described parcel of land is hereby classified for disposal pursuant to section 7 of the Taylor Grazing Act, 43 U.S.C. 315f and segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes. The segregation will last for a period of 270 days from the date of publication, until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The land is not considered essential to the public land management base and is unsuitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with Bureau planning for the land involved and will serve important public objectives.

The sale parcel will be offered under competitive sale procedures as authorized under the Federal Land Policy and Management Act of October 21, 1976 and 43 CFR 2711.3–3. The land will be offered for competitive sale at 10 a.m. PST, on September 30, 1999 and will be by written bid only. Sealed written bids, delivered or mailed, must be received by the BLM, Lakeview Resource Area Office, 1300 South G Street, HC 10 Box 337, Lakeview, Oregon 97630, prior to 10 a.m. on Thursday, September 30, 1999, and must be for not less than the appraised sale price indicated. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior-BLM for not less than the bid deposit specified in this notice and shall be enclosed in a sealed envelope clearly marked, in the lower left hand corner, "Bid for Public Land Sale OR 54499, Lake County, Oregon, September 30, 1999." All written sealed bids received will be opened and the high bidder declared at the time of the sale. In the event of a tie, the tied bidders will be notified and given an opportunity to modify their original bids. The resulting bid off will determine the high bidder and the high bidder will be notified by certified mail. The high bidder is required to pay the total purchase price within 180 days of the date of sale or the bid deposit will be forfeited and the parcel reoffered to the public until sold or withdrawn from sale.

The terms, conditions and reservations applicable to the sale are as follows:

(1) Patent to the sale parcel will contain a reservation to the United States for ditches and canals.

(2) The sale parcel will be subject to all valid existing rights of record at the time of patent issuance.

(3) The mineral interests being offered for conveyance with sale parcel OR 54499 have no known value. A deposit or bid to purchase the parcel will also constitute an application for conveyance of the mineral estate with the following reservations;

(a) Oil and gas and geothermal resources will be reserved to the United States. The above mineral reservations are being made in accordance with Section 209 of the Federal Land Policy and Management Act of 1976. The successful bidder must include with the final payment a non-refundable $50.00 filing fee for conveyance of the mineral estate.

Federal law requires that bidders must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

If the land identified in this notice is not sold on the date of first sale offering, the parcel will be available on an over-the-counter competitive sale basis at no less than the indicated sale price and subject to the above terms and conditions. Sealed bids will be accepted on the unsold parcel at the Lakeview Resource Area Office during regular business hours (7:45 a.m. to 4:30 p.m. Monday through Friday) at the address shown above. All sealed bids received will be opened the first Wednesday of each subsequent month until the land is either sold or withdrawn from sale. Prospective buyers should inquire about parcel availability after September 30, 1999.

Detailed information concerning the sale, including the reservations, sale procedures, terms and conditions, planning and environmental documentation, is available at the Lakeview Resource Area Office, 1300 South G Street, HC 10, Box 337, Lakeview, Oregon 97630.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Lakeview Resource Area Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the Lakeview District Manager who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Scott R. Florence,

Manager, Lakeview Resource Area.

[FR Doc. 99–15604 Filed 6–18–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(OR–015–1610–00; GP9–0211)

Notice of Intent To Prepare a Resource Management Plan/Environmental Impact Statement for the Lakeview Resource Area

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to prepare a Resource Management Plan/ Environmental Impact Statement for the Lakeview Resource Area and initiation of public scoping.

SUMMARY: In accordance with section 202 of the Federal Land Policy and Management Act (FLPMA), a Resource Management Plan/Environmental Impact Statement (RMP/EIS) will be prepared for approximately 3.2 million acres of land managed by the Lakeview Resource Area, Lakeview District and located in Lake and Harney Counties in southeastern Oregon. In addition, a small, contiguous portion of Modoc and Washoe Counties located in northeastern California and northwestern Nevada falling within the administrative boundary of the Surprise Field Office in Cedarville, California, but managed by the Lakeview Resource Area will also be included. Decisions generated during this planning process will supersede planning guidance presented in the High Desert, Lost River, and Warner Lakes Management Framework Plans, as amended, and the Lakeview Grazing Management Final EIS/Record of Decision. Valid decisions and guidance in these or other activity plans will be carried forward and brought into conformance with the final EIS and approved Lakeview RMP.

Two public meetings are scheduled for the purposes of disseminating information and accepting public comments:

July 13, 1999 from 7 p.m. to 9 p.m.
BLM—Lakeview District Office, 1300 South G Street, Lakeview, OR 97630

July 14, 1999 from 7 p.m. to 9 p.m.
North Lake School, County Road 510, Silver Lake, OR 97638

Written comments regarding the plan will also be accepted. For comments to be most helpful, they should relate to specific concerns or conflicts that are within the legal responsibilities of BLM and they must be able to be resolved in this planning process.

DATES AND ADDRESSES: All written comments should be sent to Dwayne Sykes, RMP Team Leader, Bureau of Land Management, HC 10 Box 337, Lakeview, OR 97630. The comment period closes July 31, 1999.

SUPPLEMENTARY INFORMATION: This land use plan will focus on the principles of multiple use management and sustained yield as prescribed by section 202 of the FLPMA. This plan will provide direction for management of the public lands within the Lakeview Resource Area for 15–20 years after the plan is completed. Several management alternatives covering a wide range of management actions and resource uses will be and analyzed in the plan. These alternatives will be developed based on internal staff discussions, public input during this scoping process, and meetings with tribal and government agencies. Tentative issues have been identified which will be addressed in the RMP, including designation and management of special management areas, upland ecosystem management and restoration, riparian and wetland area management, motorized vehicle use, and social needs related to local communities and tribes. These issues may be modified or other issues may be developed as a result of public scoping. In addition to issues, several management concerns will also be addressed in the RMP.

The dissemination of information relating to the preparation of the RMP/EIS and opportunities for public input will be provided throughout the process. Ample public notice of these opportunities will be given as they arise.

FOR FURTHER INFORMATION: Contact Dwayne Sykes, (541) 947–6148 (phone), (541) 947–6399 (fax), or e-mail d1sykes@or.blm.gov.

Dated: June 9, 1999.

Scott R. Florence,

Field Manager, Lakeview Resource Area.

[FR Doc. 99–15603 Filed 6–18–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, July 12, 1999.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters

relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1:00 PM to consider the following agenda:

1. Review and approval of minutes from the meeting held June 7, 1999
2. Committee reports
   Land Conservation
   Education
   Park Use
   Science
3. Old business
4. Superintendent's report
5. Public comments
6. Proposed agenda and date of next Commission meeting

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: June 14, 1999.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 99–15654 Filed 6–18–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 23, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. AA1921–114 (Review) (Stainless Steel Plate from Sweden)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 6, 1999.)
5. Outstanding action jackets: (1.) Document No. ID–99–010: Approval to begin work on the proposed final phase in the series in Inv. No. 332–237 (Production Sharing: Use of U.S. Components and Materials in Foreign Assembly Operations, 1995–1998).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 17, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–15832 Filed 6–17–99; 1:27 pm]

BILLING CODE 7020–02–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 20, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0129.

Form Number: NA.

Type of Review: Revision to the currently approved collection.

Title: Corporate Credit Unions.

Description: Part 704 of NCUA's Rules and Regulations directs corporate credit unions to maintain records concerning their activities.

Respondents: Corporate credit unions.

Estimated No. of Respondents/Recordkeepers: 38.

Estimated Burden Hours Per Response: 1,822 hours.

Frequency of Response: Reporting, Recordkeeping, On Occasion and Annually.

Estimated Total Annual Burden Hours: 69,236.

Estimated Total Annual Cost: $2,417,026.

By the National Credit Union Administration Board on June 9, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–15651 Filed 6–18–99; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking and Infrastructure Research (#1207).

Date and Time: July 7 and 8, 1999; 8:30 a.m.–5 p.m.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22203.

Type of Meeting: Closed.

Contact Persons: Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking Research and Special Projects Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 15, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–15609 Filed 6–18–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking and Infrastructure Research (#1207).

Date and Time: June 23 and 24, 1999; 8:30 a.m.–5 p.m.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking Research and Special Projects Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 15, 1999.

Karen J York,

Committee Management Officer.

[FR Doc. 99–15610 Filed 6–18–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking and Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking and Infrastructure Research (#1207).

Date and Time: July 13 and 14, 1999; 8 a.m.–6 p.m.

Place: Room 970, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Darleen Fisher, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1949.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking Research Wireless Technology Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial date, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 15, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–15611 Filed 6–18–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemistry (1191).

Date and Time: July 12 and 13, 1999, 8:00 AM to 5 PM each day.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Richard Hilderbrandt, Program Officer, National Science Foundation, Room 1055, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1844.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Knowledge and Distributed Intelligence (KDI) Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 15, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–15612 Filed 6–18–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

Date and Time: July, 15, 16, 21 and 23 1999; 8:30 a.m. to 5 p.m

Place: NSF, 4201 Wilson Boulevard, Rooms 530 and 580, Arlington, Virginia 22230.

Contact Person: Drs. Daniel C. Davis and Ken P. Chong, Control, Materials and Mechanics Cluster, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230. 703/306–1361, x5078 and 5065.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 15, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–15615 Filed 6–18–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

Date and Time: July 14, 1999; 8:30 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 580, Arlington, Virginia 22230.

Contact Person: Dr. Jorn Larsen-Basse, Control, Materials and Mechanics Cluster, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230. 703/306–1361, x5073.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 15, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–15616 Filed 6–18–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental and Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental and Integrative Activities; CISE/EIA: Minority Institutions Infrastructure Program (MII).

Date/Time: June 24, 1999; 8:45 a.m. to 5:30 p.m.

Place: National Science Foundation, Room 1105.17, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Rita V. Rodriguez, Program Director for Minority Institutions Infrastructure Program, Division of Experimental and Integrative Activities, National Science Foundation, Room 1160, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980

Purpose of Meeting: To provide further evaluation and final recommendation of submitted Minority Institutions Infrastructure proposals submitted to NSF for financial support.

Agenda: To review and discuss recommendations concerning CISE Minority Institutions Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 5552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 15, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–15613 Filed 6–18–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Interagency Research Education Initiative; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Interagency Research Education Initiative (IERI), a sub-panel of the Special Emphasis Panel in Research, Evaluation and Communication.

Date and Time: July 15–16, 1999 (8 a.m.–5 p.m.), July 19–20, 1999 (8 a.m.–5 p.m.)

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John Cherniavsky, Senior Advisor for Research; Research, Evaluation and Communication (REC), Room 855, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: 703/306–1650.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Interagency Research Education Initiative (IERI) of NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Program as a part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 15, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–15614 Filed 6–18–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Assessment Synthesis Team; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: U.S. National Assessment Synthesis Team (#5219).

Date: July 7–9, 1999 (8:30 a.m.–5:30 p.m. on July 7–8 and 8:30 a.m.–3:30 p.m. on July 9).

Place: National Science Foundation, Room 1235, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Melissa J. Taylor, Office of the U.S. Global Change Research Program (USGCRP), 400 Virginia Avenue, SW, Suite 750, Washington, DC 20024. Tel: (202) 314–2230; Fax: (202) 488–8681; Email: mtaylor@usgcrp.gov. Interested persons should contact Ms. Taylor as soon as possible to assure space provisions are made for all participants and observers.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the interagency Subcommittee on Global Change Research on the design and conduct of the national effort to assess the consequences of climate variability and climate change for the United States.

Agenda:

Day 1 (July 7) Review overall progress since the June meeting, and focus on the revisions of the draft sections of the Synthesis Report.

Day 2 (July 8) Continue discussion of the draft sections of the Synthesis Report.

Day 3 (July 9) Continue discussion of the draft sections of the Synthesis Report, review the timetable for next steps, and address any outstanding issues.

Dated: June 15, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–15617 Filed 6–18–99; 8:45 am]

BILLING CODE 7555–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees.

DATES: The meeting is scheduled for 1:00 p.m. on Wednesday, July 7, 1999.

ADDRESSES: The meeting will be held at Eastern States Exposition (Gate 2), Brooks Building/Main Administration Building, 1305 Memorial Avenue, West Springfield, MA.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: June 15, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–15653 Filed 6–18–99; 8:45 am]

BILLING CODE 1605–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Generic Letter 91–02, "Reporting Mishaps Involving LLW Forms Prepared for Disposal."

2. *Current OMB approval number:* 3150–0156.

3. *How often the collection is required:* Reports are made only when the licensee or waste processor experiences a mishap that is reportable under the guidelines described in the Generic Letter.

4. *Who is required or asked to report:* Nuclear power reactor licensees and Agreement State and non-Agreement State waste processors and disposal site operators.

5. *The number of annual respondents:* 34.

6. *The number of hours needed annually to complete the requirement or request:* 272 hours (an average of 8 hours per response).

7. *Abstract:* Generic Letter 91–02 encourages voluntary reporting (by both waste form generators and processors) of information concerning mishaps to low-level radioactive waste (LLW) forms prepared for disposal. The information is used by NRC to determine whether follow up action is necessary to assure protection of public health and safety.

Submit, by August 20, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS@NRC.GOV.

Dated at Rockville, Maryland, this 16th day of June 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–15659 Filed 6–18–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Regulatory Policies and Practices; Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Regulatory Policies and Practices will hold a joint meeting on July 13, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, July 13, 1999—1:00 p.m. until the conclusion of business

The Subcommittees will review proposed options for development of risk-informed revisions to10 CFR Part 50, including proposed definitions and scope changes related to structures, systems, and components as well as policy issues, special studies, and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: June 14, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–15657 Filed 6–18–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request Review of a Revised Information Collection; Presidential Management Intern Program Application 3206–0082

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of a revised information

collection. The Office of Personnel Management is requesting OMB to authorize procession of collection of information associated with the Presidential Management Intern Program Application. Processing and approval of the 1999 Presidential Management Intern Program Application is necessary to facilitate the timely nomination, selection and placement of Presidential Management Intern Finalists in Federal agencies.

We estimate 2000 applications will be received and processed in 1999. Each application takes approximately 2 hours to complete (one hour for applicants (nominees) and one hour for nominating school officials). The annual estimated burden is 4000 hours. For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606–8358, or E-MAIL to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before July 21, 1999.

ADDRESSES:

Kathleen A. Keeney, Presidential Management Intern Program, U.S. Office of Personnel Management, William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, PA 19106
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and, Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Keeney, (215) 861–3027.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–15687 Filed 6–18–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23871; 812–9416]

PaineWebber Group Inc., et al.; Notice of Application

June 15, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an exemption under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") from section 17(a) of the Act, under section 6(c) of the Act from section 12(d)(3) of the Act, and for an order under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF THE APPLICATION: Applicants request an order to permit: (a) GE Issuers (as defined below) to sell commercial paper issued by the GE Issuers to certain registered investment companies and the GE Issuers to repurchase (i.e., prepay) the commercial paper; (b) certain registered investment companies to purchase municipal obligations insured by the Financial Guaranty Insurance Company ("FGIC") and/or insurance policies issued by FGIC on municipal obligations; and (c) certain registered investment companies to purchase in the secondary market common stock and other securities issued by General Electric Company and its subsidiaries.

Applicants: PaineWebber Group Inc. ("PWG"), PaineWebber Incorporated ("PWI"), Mitchell Hutchins Asset Management Inc. ("MHAM"), (collectively, the "PaineWebber Companies"), General Electric Company ("GE"), General Electric Capital Services, Inc. ("GECS"), General Electric Capital Corporation ("GECC"), GE Financial Assurance Holdings, Inc. ("GEFA") (collectively, the "GE Issuers"), FGIC, PaineWebber America Fund, PaineWebber Cashfund, Inc., PaineWebber Investment Series, PaineWebber Managed Assets Trust, PaineWebber Managed Investments Trust, PaineWebber Managed Municipal Trust, PaineWebber Master Series, Inc., PaineWebber Municipal Series, PaineWebber Mutual Fund Trust, PaineWebber Olympus Fund, PaineWebber Financial Services Growth Fund Inc., PaineWebber RMA Money Fund, Inc., PaineWebber RMA Tax-Free Fund, Inc., PaineWebber Securities Trust, Mitchell Hutchins Series Trust, Strategic Global Income Fund, Inc., 2002 Target Term Trust Inc., All-American Term Trust Inc., Global High Income Dollar Fund Inc., Investment Grade Municipal Income Fund Inc., Insured Municipal Income Fund Inc., Managed High Yield Fund Inc., PaineWebber Municipal Money Market Series, PaineWebber Investment Trust, PaineWebber Investment Trust II, Liquid Institutional Reserves, PaineWebber PACE Select Advisors Trust, Mitchell Hutchins Portfolios, PaineWebber Index Trust, Mitchell Hutchins Institutional Series, Managed High Yield Plus Fund Inc. ("PaineWebber Funds"), and The Infinity Mutual Funds, Inc. (the "Outside Fund," and, together with PaineWebber Funds and any other registered investment companies for which PWG or any of its subsidiaries may serve as investment adviser or principal underwriter in the future ("Future Funds"), the "Funds").

Filing Dates: The application was filed on January 3, 1995, and amended on August 16, 1996, and June 1, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. PaineWebber Group Inc., 1285 Avenue of the Americas, New York 10019. The Infinity Mutual Funds, Inc., 3235 Stelzer Road, Columbus, Ohio 4319–3035. General Electric Company, 3135 Easton Turnpike, Fairfield, Connecticut 06431. General Electric Capital Services, Inc., and General Electric Capital Corporation, 260 Long Ridge Road, Stamford, Connecticut 06927. GE Financial Assurance Holdings, Inc., 6604 West Broad Street, Richmond, Virginia 23230. Financial Guaranty Insurance Company, 115 Broadway, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. PWG is a publicly held financial services holding company. GE owns approximately 21.6% of PWG's common stock acquired in a 1994 transaction ("1994 Transaction"). Pursuant to a 1995 SEC order, GE does not control PWG within the meaning of section 2(a)(9) of the Act and will not control PWG for a 15 year period ending on December 16, 2009 ("Effective Period").[1] PWI, a wholly-owned subsidiary of PWG, is a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") and an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"). MHAM, a wholly-owned subsidiary of PWI, a broker-dealer registered under the Exchange Act and an investment adviser registered under the Advisers Act.

2. Each of the Paine Webber Funds is organized as a Massachusetts or Delaware business trust or Maryland corporation and is registered under the Act as an open-end or closed-end investment company. Each of the Paine Webber Funds has entered into an investment advisory agreement with PWI or MHAM. PWI or MHAM serves as principal underwriter to all of the open-end Paine Webber Funds. GE Investment Management Incorporated ("GEIM"), a wholly-owned subsidiary of GE, serves as investment subadviser to Global Small Cap Fund Inc. Series of Funds for which GEIM serves, or may in the future serve, as investment adviser or subadviser are referred to as "GEIM-Advised Series."[2] The Infinity Mutual Funds, Inc. is organized as a Maryland corporation and MHAM serves as investment adviser to two of its series.

3. GE and its consolidated affiliates (the "GE Company") comprise one of the largest and most diversified industrial corporations in the world. Through GECS, a wholly-owned subsidiary of GE, and GECS' two principal subsidiaries, GECC and GE Global Insurance Holding Corporation, the GE Company engages in a broad spectrum of financial services. FGIC, which provides financial guaranty insurance, principally on municipal obligations and structured finance issues, is a subsidiary of FGIC Holdings, Inc., a Delaware holding company that is, in turn, a wholly-owned subsidiary of GECC.

4. Applicants request relief to permit (i) the GE Issuers to sell to the Funds short-term obligations issued by the GE Issuers, commonly known as commercial paper ("GE commercial paper"), (ii) the Funds to purchase, to the extent otherwise permitted by their investment objectives, policies, and restrictions, from the GE Issuers, GE commercial paper, and (iii) the GE Issuers to repurchase (i.e., prepay), and the Funds to request repurchase by the GE Issuers of, GE commercial paper held by the Funds (collectively, "GE Debt Transactions"). While the PaineWebber Funds and the Outside Fund have differing investment objectives, policies and restrictions, virtually all are able to invest some portion of their assets, either as part of their regular investment program or for temporary defensive purposes, in commercial paper.

5. Applicants also request relief to permit (i) the Funds to purchase, to the extent otherwise permitted by their investment objectives, policies, and restrictions, municipal obligations insured as to timely payment of principal and interest by FGIC and/or insurance policies issued by FGIC on municipal obligations, and (ii) FGIC to sell such insurance policies to the Funds (collectively, the "FGIC Transactions"). In addition, with respect to municipal obligations insured by FGIC, applicants request relief to permit the Funds (i) to accept certain payments that might arise from claims made upon such insurance and (ii) in connection with the Funds' acceptance of any such payments, to assign to FGIC the Funds' rights of recovery (i.e., to permit subrogation of FGIC, to the extent of such payments, to the Funds' rights of recovery against other parties) (collectively, "Claim Settlement Transactions").

6. A number of the Funds are permitted to invest at least some portion of their assets, and one has a policy requiring it under normal circumstances to invest at least 80% of its assets, in municipal obligations that are insured as to timely payment of principal and interest ("Insured Municipal Obligations") under an insurance policy (a) obtained by the issuer or underwriter of the municipal obligation ("Primary Market Insurance"), or (b) purchased by a Fund or by a previous owner of the municipal obligation ("Secondary Market Insurance"). The purchase of Secondary Market Insurance by the Funds themselves, however, would be unusual, and the Funds would only purchase Secondary Market Insurance directly from FGIC if the prices offered by FGIC were at least as favorable as those obtainable from non-affiliated insurers of similar stature and creditworthiness.

7. Applicants also request relief to permit the Funds to purchase in the secondary market (on an exchange or over the counter), to the extent otherwise permitted by their investment objectives, policies, and restrictions, common stock and other securities issued by GE and its subsidiaries.

8. Applicants state that as of May 6, 1999, GE had approximately $4.2 billion, GECS had approximately $5.6 billion, GECC had approximately $77.6 billion, and GEFA had approximately $1.0 billion in commercial paper outstanding. Collectively, the GE Issuers are the largest issuer of commercial paper in the United States, with a collective market share of approximately 7.7% as of December 31, 1998. Applicants state that large institutional investors have consistently viewed GE commercial paper as an attractive short-term investment. Commercial paper issued by each of GE, GECS, GECC and GEFA is rated in the highest possible rating category for commercial paper by Standard & Poor's Rating Group, a division of the McGraw Hill Companies, Inc. ("S&P") and Moody's Investors Service, Inc. ("Moody's"). GE commercial paper is also highly liquid, in that the GE Issuers are prepared generally to prepay their paper upon request from a holder, subject to prevailing market conditions and the GE commercial paper's liquidity. Moreover, GE Issuers, like a number of other large corporations, permit institutional purchasers to purchase commercial paper directly, thereby saving the purchaser a dealer's markup.

9. Applicants further state that for at least the last eight years prior to the 1994 Transaction, GE commercial paper represented significant investment opportunities for the PaineWebber Funds. Historically, when considering investments in commercial paper, MHAM has considered investment in commercial paper of various other issuers comparable to the GE Issuers. Of these, the GE Issuers have the largest market presence in the United States (collectively), and, in the judgment of MHAM, offer the highest quality commercial paper at a favorable price. In addition, commercial paper issued by GE itself, representing investments in the electric, appliance, finance, broadcasting, and other industries, offers greater diversification than commercial paper issued by most other issuers, whose commercial paper represents investment in a narrower band of industries.

10. Applicants represent that, with respect to each GE Debt Transaction, a determination will be required, based upon the information reasonably available to the purchasing Fund and its investment adviser, that the commercial paper available for purchase from the GE Issuer in question is of an overall quality and value equal to or better than

[1] *See In the Matter of Paine Webber Group Inc.*, Investment Company Release Nos. 21177 (June 30, 1995) (notice) and 21261 (July 27, 1995) (order).

[2] Series of Funds for which GEIM in the past served, but no longer serves, as investment adviser or subadviser will not be considered GEIM-Advised Series. To the extent that a series of a Fund for which GEIM serves as investment adviser or subadviser ceases to be advised by GEIM, such series will be deemed a Future Fund for purposes of the application.

commercial paper then available in the same quantities from other issuers, taking into consideration such factors as yield, maturity, rating by a NRSRO, quality of issuer, flexibility, transaction costs or any other factor deemed relevant by the Fund and adviser in evaluating the desirability of an investment in commercial paper. In particular, applicants represent that before purchasing any commercial paper from a GE Issuer, applicants will obtain yield information on commercial paper offered by at least two comparable issuers, *i.e.*, issuers with similar credit rating and program size, and in a similar market segment or segments, as the GE Issuer.

11. With respect to FGIC Transactions, applicants state that FGIC is among a small number of leading insurers in the market for issuing insurance policies which guarantee the timely payment of principal of, and interest on, particular municipal obligations or on a portfolio of municipal obligations. As of December 31, 1998, FGIC's 21.7% market share of insured new issues ranked FGIC as third in the market. FGIC has received insurance claims-paying ability ratings of AAA/Aaa/AAA by S&P, Moody's, and Fitch IBCA, Inc. FGIC-insured municipal bonds have represented significant investment opportunities for certain of the Funds.

12. Applicants acknowledge and agree that the requested order will be effective only during the Effective Period and will not be applicable with respect to any GEIM-Advised Series. Applicants further acknowledge and agree that the applicability of the requested order to any Fund is conditioned upon approval of the conditions set forth in the application by the Fund's disinterested directors/trustees.

Applicants' Legal Analysis

Sections 17(a) and (d)

1. Section 17(a) of the Act provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly: (i) to sell any security or other property to such registered company; (ii) to purchase any security or other property from such registered company; or (iii) to borrow money or other property from such registered company. To the extent that GE and each of the GE entities would be deemed to be an affiliated person of an affiliated person of each of the Funds, section 17(a) could be deemed applicable to GE Debt Transactions, FGIC Transactions, and Claim Settlement Transactions.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such affiliated person, acting as principal, from engaging in a joint enterprise or other joint arrangement with such registered investment company, unless an application regarding such enterprise or arrangement has been filed with the SEC and an order has been granted. To the extent that GE and each of the GE entities would be deemed to be affiliated persons of an affiliated person of each of the Funds, section 17(d) and rule 17d–1 could be deemed applicable to FGIC Transactions and Claim Settlement Transactions.

3. Section 17(d) provides that on application, the SEC shall grant an order exempting a proposed transaction from section 17(a) if evidence establishes that: (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the Act. Rule 17d–1(b) provides that in passing upon applications, the SEC will consider whether each party's participation in the proposed joint transaction "is consistent with the provisions, policies and purposes of the Act" as well as the "extent to which such participation is on a basis different or less advantageous than that of other participants."

4. Section 6(c) of the Act provides, in pertinent part, that the SEC may, by order upon application, conditionally or unconditionally exempt any class of transactions from any provisions of the Act "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of this title."

5. Applicants seek an order: (1) Under sections 6(c) and 17(b) of the Act, granting an exemption from the provisions of section 17(a) of the Act to permit the GE Debt Transactions, FGIC Transactions, and Claim Settlement Transactions; and (2) under section 17(d) of the Act and rule 17d–1 under the Act to permit FGIC Transactions and Claim Settlement Transactions.

6. Applicants state that while the requested order would enable the Funds to engage in the enumerated transactions, it would neither require nor encourage the Funds to do so. Such transactions would be matters left solely within the discretion of the Funds' investment advisers and boards of directors, consistent with each of the Funds' investment objectives, policies and restrictions.

7. With respect to GE Debt Transactions, applicants state that the ability of any Fund to continue to invest in GE commercial paper is important to the management of the Funds and their opportunity to achieve their overall investment objectives to the benefit of their shareholders. Applicants contend that in light of the significant market share of GE commercial paper in the commercial paper market, it is undesirable for the Funds to be precluded from these potentially favorable investment opportunities. Since purchases in the significantly smaller secondary market in GE commercial paper are often at a less favorable price than direct purchases from GE Issuers, applicants argue that in the absence of the requested relief, the Funds may not have a reasonable and cost-effective opportunity to purchase GE commercial paper. Given many of the Funds' diversification requirements, applicants contend that the inability of the Funds to purchase GE commercial paper (or to "sell" such paper back to the GE Issuers through requesting prepayment on such paper) could cause the Funds to turn to smaller, possibly less attractive issuers of commercial paper.

8. With respect to the FGIC Transactions, applicants state that the ability of those Funds which are permitted to invest in municipal obligations to continue to engaged in FGIC Transactions is important to the management of the Funds and their opportunity to achieve their overall investment objectives to the benefit of their shareholders. Applicants contend that given the significant position of FGIC in the market of insurers of municipal bonds, as well as the fact that insured municipal bonds make up an increasingly large percentage of the market, it is undesirable for the Funds to be precluded from these potentially favorable investment opportunities. Applicants argue that precluding any municipal Funds, whether or not diversified, from purchasing FGIC-insured municipal obligations would significantly reduce the pool of potential investments for these Funds, thereby potentially adversely affecting the Funds' ability to achieve the most favorable investment results, and could increase the Funds' exposure in the event that one of the other insurers experiences problems meeting its insurance obligations.

9. Applicants state that the proposed conditions will help to ensure that GE Debt Transactions and FGIC Transactions will be reasonable and fair to the shareholders of the Funds will not involve overreaching on the part of any person concerned, and will accord with the relevant policies of the Act by ensuring that the Funds' portfolios securities will not be selected in the interest of affiliated persons or FGIC rather than in the interest of the Funds' shareholders. In addition, with respect to Claim Settlement Transactions, applicants assert that the terms of any Claim Settlement Transactions will be reasonable and fair and will not involve overreaching on the part of any person concerned.

Section 12(d)(3)

10. Section 12(d)(3) of the Act generality prohibits a registered investment company from acquiring any security issued by a securities related buisness—*i.e.* the business of any person who is a broker, a dealer, an underwriter, or an investment adviser. Although rule 12d3–1 exempts from section 12(d)(3) purchases by an investment company of certain such securities, rule 12d3–1(c) provides that the exemption does not extend to the acquisition of any security issued by the acquiring company's investment adviser, promoter, or principal underwriter, or any affiliated person of such investment adviser, promoter, or principal underwriter.

11. To the extent that GE and its subsidiaries may be deemed to be affiliated persons of PWI and MHAM, or to be engaged in a securities-related business, applicants seek an order from the SEC pursuant to section 6(c) of the Act exempting them from section 12(d)(3) to the extent necessary to permit the GE Debt Transactions, as well as secondary market submit that the concerns at which section 12(d)(3) is directed are not implicated, and the criteria of section 6(c) are met, with respect to the proposed transactions. Applicants note that the GE Company itself derived less than 1% of its gross revenues from "securities related activities" (excluding its interest in PWG) of its fiscal year ended December 31, 1989.

Applicants' Conditions

Applicants agree that any order granting this requested relief will be subject to the following conditions:

1. GE Debt Transactions will be limited to commercial paper issued by the GE Issuer that is a party to the transaction.

2. Before any GE Debt Transaction is consummated, the Fund or its investment adviser will obtain such information as it deems necessary to satisfy itself that the price available to the Fund is at least as favorable to the Fund as the price available to other institutional purchasers or sellers, buying or selling, respectively, in approximately the same quantities at approximately the same time.

3. All GE commercial paper purchased by the Funds from GE Issuers under the order will, at the time of purchase, be an "eligible security" and a "rated security" as those terms are defined in rule 2a–7 under the Act.

4. Each GE Debt Transaction will be in accordance with the participating Fund's investment objectives, policies and restrictions, and neither MHAM, PWI nor any other investment adviser of any of the Funds will take any action to encourage a change in such investment objectives, policies or restrictions with the intent of facilitating GE Debt Transactions.

5. The Funds will not purchase commercial paper of a GE Issuer if, after such purchase, the Funds' holdings in the aggregate of such GE Issuer's commercial paper would exceed: (a) 10% (measured at the time of purchase) of the value of the outstanding commercial paper of such GE Issuer if such GE Issuer is GE or GECS (or 15%, measured at the time of purchase), if the Funds are investing for temporary defensive purposes or for other purposes of liquidity) or (b) 5% (measured at the time of purchase) of the value of the outstanding commercial paper of such GE Issuer if such GE Issuer is GECC (or 10%, measured at the time of purchase, if the Funds are investing for temporary defensive purposes or for other purposes of liquidity). The Funds will calculate the amount of limitations applicable under this paragraph on the bases of the amount of each GE Issuer's outstanding commercial paper as shown in, and as of the end of the period covered by, the GE Issuer's most recent quarterly report, or, if more recent, the GE Issuers' annual report.

6. No fund or series of any Fund will invest more then 1% (measured to the time of purchase) of the value of its total assets, or, if lower, the maximum percentage permitted by its investment policies and restrictions, in the commercial paper of GE Issuers, measured in the aggregate, except that each Money Market Fund or series of any Money Market Fund may invest up to 5% (measured at the time of purchase) of the value of its total assets in the commercial paper of GE Issuers, measured in the aggregate, subject to any limitations in rule 2a–7 under the Act.

7. The Funds and their investment advisers will maintain such records with respect to GE Debt Transactions conducted pursuant to the requested order ("Order") as may be necessary to confirm compliance with the conditions of the Order.

a. Each Fund shall maintain an itemized daily record of all purchases and sales of securities pursuant to the Order, showing for each transaction: the name and quality of securities; the unit purchase or sale price; the time and date of the transaction; and the rating of the securities. Such records also shall document for each commercial paper transaction at least two quotations on securities of comparable issuers, including: the source of the quotations (Telerate or another generally accepted electronic means); the prices quoted; the time and dates the quotations were received; and the ratings of these securities of comparable issuers.

b. Each Fund shall maintain a ledger or other record showing, on a daily basis, the percentage of that Fund's total assets invested in GE commercial paper.

c. Each Fund and/or its investment adviser shall maintain records sufficient to verify compliance with the limitations in condition 5 above.

The records required by this condition 7 will be maintained and preserved in the same manner as records required under rule 31a–1(b)(1) under the Act.

8. Each FGIC Transaction will be in accordance with the participating Fund's investment objectives, policies and restrictions, and neither MHAM, PWI nor any other investment adviser of any of the Funds will take any action to encourage a change to such investment objectives, policies or restrictions with the intent of facilitating FGIC Transactions.

9. The Funds and their investment advisers will maintain such records with respect to FGIC Transactions conducted pursuant to the Order as may be necessary to confirm compliance with the conditions of the Order. The records will show for each transaction conducted pursuant to the Order, among other things, the time and date of the FGIC Transaction, the price of the insured purchased pursuant to the Order, the type of insurance covering the security, and, in the case of Secondary Market Insurance purchased directly from FGIC, the procedures taken to make the determination set forth on condition 10. The records will

be maintained and preserved in the same manner as records required under rule 31a–1(b)(1) under the Act.

10. The Funds will not purchase Secondary Market Insurance from FGIC unless the Funds or their investment advisers determine that: (a) the rates and terms of such insurance are at least as favorable to the Funds as the rates and terms FGIC offers non-affiliated investment companies; and (b) the rates and terms of such insurance are at least as favorable to the Funds as those obtainable from non-affiliated insurers of similar stature and creditworthiness.

11. The Funds will not purchase: (a) in any initial public offering of municipal securities insured wholly through FGIC Primary Market Insurance, more than 10% of the offering; and (b) in any initial public offering of municipal securities insured partly through FGIC Primary Market Insurance, more than 10% of that portion of the offering insured by FGIC.

12. A Fund that purchases insurance with an option to continue in effect after the resale of a municipal obligation will only exercise such option when the insured value of the security, less the cost of the premium for the insurance, exceeds the value of the security without the insurance.

13. In the event there is a payment default on a municipal obligation held by a Fund that is insured by FGIC, the Fund will not accept from FGIC in settlement of any claim less than an amount sufficient to pay any principal or interest then due on such municipal obligation in accordance with the insurance policy to which such obligation is subject without obtaining a further exemptive order or other relief from the SEC except as follows: If holders of such obligation, otherwise unaffiliated with FGIC or any GE entity and holding in the aggregate a larger principal amount than the Fund, accept a settlement by a majority (in principal amount) of such unaffiliated holders, then the Fund may accept a settlement on terms as least as favorable as those accepted by such majority without obtaining an order from the Commission, provided the Fund's board of directors/trustees ("Board"), including a majority of the non-interested directors/trustees ("Disinterested Directors"), approve the settlement as in the best interests of the Fund.

14. The Board of each Fund, including a majority of the Disinterested Directors, will adopt guidelines for the Funds and their investment advisers to ensure compliance with the conditions set forth in the application. Each Fund shall maintain and preserve permanently in an easily accessible place a copy of the guidelines. The Board shall review, no less frequently than annually, compliance with such guidelines in order to determine that: (a) transactions conducted pursuant to the Order comply with the conditions set forth herein; (b) the above procedures are followed in all respects; and (c) participation by the Fund in such transactions is, and continues to be, in the best interests of the Fund and its shareholders. The minutes of the meeting of the Board of each Fund at which this determination is made will reflect in detail the reasons for the Board's determination.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15598 Filed 6–18–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41525; File No. SR–DTC–99–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Establishment of an Automated Foreign Tax Reclaim Service

June 14, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 27, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–99–14) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will establish an automated foreign tax reclaim service called "TaxReclaim."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC currently offers two foreign tax withholding services. Under DTC's Elective Dividend Service, participants can certify securities positions that are entitled to reduced withholdings under international tax treaties or source country law in order to obtain tax relief at source or by accelerated tax refunds. DTC also provides a foreign tax information database called "TAXI" which provides withholding tax information on foreign securities.

Under the proposed rule change, DTC will expand its international tax services with the addition of TaxReclaim. TaxReclaim will be an interactive tax reclaim preparation facility that will assist participants in preparing foreign jurisdictions' tax reclaim forms that are required to reclaim tax withheld on income payments on foreign securities. Participants will access TaxReclaim through DTC's participant terminal system. Participants will input data particular to the beneficial owner, foreign security, and payment details as required by the country of issuance. DTC will process the information in a software application that includes the reclaim form and tax information template and will transmit back to the participant using file transfer protocol a print file containing the completed tax reclaim form, reclaim calculation, and information on additional filing requirements and filing instructions. In a subsequent phase, TaxReclaim may be further automated and made accessible to participants over DTC's computer to computer facility.

DTC will initiate the TaxReclaim service as a pilot program with a small group of participant users. It is anticipated that the initial pilot program will begin in July 1999 with approximately 6 to 15 participants. No fees will be charged during the pilot phase. DTC anticipates concluding the pilot program phase and introducing TaxReclaim as a regular DTC service in August 1999. When TaxReclaim becomes a regular DTC service, the fee for each reclaim transaction on a printed reclaim form will be $10. A reclaim transaction will consist of the reclaim calculation applicable to one security, one beneficial owner, and one income payment date. For reclaim transactions that are not completed because the reclaimable amount falls below a threshold value established by the participant, the fee will be $2 per reclaim transaction. DTC will post a disclaimer of liability in connection with use of the TaxReclaim service.

DTC believes that the proposed rule change is consistent with section 17A of the Act[3] and the rules and regulations thereunder because it facilitates return of payments withheld by foreign jurisdiction with respect to distributions made on foreign securities and thereby protects investor entitlements to such payments.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not solicited nor received written comments on the proposed rule change. However, the introduction of a foreign tax reclaim service was discussed with DTC's Participant Advisory Group on Foreign Tax Services at meetings of the group held on September 28, 1998, February 15, 1999, and April 23, 1999. The Participant Advisory Group on Foreign Tax Services consists of representatives of 19 participants. A prototype of the TaxReclaim Service was demonstrated at the meeting of the Participant Advisory Group on Foreign Tax Services held on April 23, 1999, and was favorably received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–14 and should be submitted by July 12, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15600 Filed 6–18–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41516; File No. SR–MBSCC–99–02]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to MBSCC's Risk Management Rules and Procedures

June 10, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on April 15, 1999, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBSCC–99–02) as described in Items I, II, and III below, which Items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to make several modifications to MBSCC's risk management rules. Specifically, the proposed rule change: (i) implements the net-out report, (ii) modifies financial reporting by participants, (iii) modifies certain special provisions applicable to nondomestic participants, (iv) requires additional assurances from MBSCC participants, and (v) clarifies MBSCC's role as agent in a liquidation.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make several modifications to MBSCC's risk management rules. Specifically, the proposed rule change: (i) implements the net-out report, (ii) modifies financial reporting by participants, (iii) modifies certain special provisions applicable to nondomestic participants, (iv) adds a provision for additional assurances, and (v) clarifies MBSCC's role as agent in a liquidation.

The specific objectives of the proposed rule change and the corresponding modifications to MBSCC's rules are described below.

1. Net-Out Report

Article [illegible] MBSCC' [illegible] when [illegible] ceases [illegible] participant. This rule generally provides that if a defaulting participant's participants fund contribution is insufficient to cover losses of the defaulting participant's nonoriginal contra sides, the deficiency

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. 78q–1.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

is assessed against the defaulting participant's original contra sides. Original contra sides remain liable for potential assessments even if as a result of MBSCC's netting process they net-out of transactions. MBSCC, however, does not currently provide participants with information regarding their open net-out obligations.

The proposed rule change modifies Article II, Rule 4 of MBSCC's rules to add a provision for a daily net-out report that will list all of a participant's open net-out obligations. Article I, Rule 1 of MBSCC's rules is also being modified to add a definition of the term "net-out report." The net-out report is intended to provide participants with timely information regarding their open net-out obligations to enable them to better monitor potential risk exposure with original contra sides.

2. Financial Reporting

Article III, Rule 1, Section 10 of MBSCC's rules sets forth the financial reporting requirements for participants. This rule generally requires participants to provide MBSCC with annual audited and quarterly unaudited financial statements.

MBSCC's rules also contain special provisions applicable to certain participants. Article III, Rule 1, Section 11 provides that MBSCC may permit: (i) Any registered broker-dealer to satisfy its obligation to furnish financial statements by providing MBSCC with Form X–17A–5 FOCUS Reports or Form G–405 Report on Finances and Operations, (ii) any bank to satisfy its obligation to furnish financial statements by providing MBSCC with Consolidated Reports of Condition and Income (Call Reports), and (iii) any participant that is subject to the periodic reporting requirements of Section 13 of the Act to satisfy its obligation to furnish financial statements to MBSCC by providing MBSCC with Form 10–K and Form 10–Q Reports.

The proposed rule change modifies Article III, Rule 1, Section 10 of MBSCC's rules to replace the general requirement for quarterly unaudited financial statements with unaudited financial statements as frequently as required by the participant's appropriate regulator, and if not regulated or a nondomestic participant, monthly unaudited financial statements.

This modification is intended to provide MBSCC with more frequent information on the financial condition of certain participants. MBSCC believes that this information should be especially useful in periods of market volatility.

3. Non Domestic Participants

Article III, Rule 1, Section 13 of MBSCC's rules contains special provisions applicable to non domestic participants. This rule generally provides that any participant that is not organized under the laws of the United States must comply with certain additional financial and operational requirements.

The proposed rule change modifies Article III, Rule 1, Section 13 of MBSCC's rules to codify the existing practice of requiring non domestic participants to: (i) execute and deliver to MBSCC a master agreement, (ii) provide MBSCC with an opinion of counsel, and (iii) confirm the master agreement and option of counsel as MBSCC may require. The master agreement and the opinion of counsel generally address the enforceability of MBSCC's rules. Article I, Rule 1 of MBSCC's rules is also being modified to add definitions of the terms "master agreement" and "opinion of counsel."

The master agreement, opinion of counsel, and periodic confirmation thereof are designed to provide MBSCC with additional comfort from non domestic participants regarding the enforceability of MBSCC's rules and procedures.

4. Additional Assurances

Article III, Rule 3, Section 1 of MBSCC' rules requires a participant that is unable to meet its obligations or perform its contracts or is insolvent to immediately notify MBSCC. However, MBSCC's rules do not currently require a participant to notify MBSCC in situations where the participant contemplates that it will be unable to meet its obligations or perform its contracts or will no longer be in compliance with MBSCC's rules and procedures.

The proposed rule change modifies Article III, Rule 1 of MBSCC's rules by adding a new Section 16 regarding additional assurances. The new section provides that any participant that contemplates it no longer will be in compliance with MBSCC's rules and procedures or will no longer be able to perform its contracts or satisfy its obligations to MBSCC or participants must immediately notify MBSCC. If MBSCC has reasonable ground to believe that a participant no longer will be in compliance with MBSCC's rules and procedures or no longer will be able to perform its contracts or satisfy its obligations to MBSCC or participants, MBSCC may require additional information from such participant relating to its ability to comply with the rules and procedures, perform its contracts, and satisfy its obligations to MBSCC or participants. MBSCC may also increase a participant's minimum required deposits to the participants fund if MBSCC has reasonable grounds to believe such conditions may exist. The new section also states that it does not restrict MBSCC from exercising its right at any time to cease to act for the participant pursuant to MBSCC's rules.

The new section providing for additional assurances is designed to enable MBSCC to better determine a participant's potential inability to meet its obligations and to increase the likelihood that a participant's collateral will be sufficient to satisfy its obligations.

5. MBSCC as Agent

Article III, Rule 3, Section 5(f) of MBSCC's rules governs the distribution of funds when MBSCC ceases to act for a participant. MBSCC's role as agent in the distribution of funds is currently implied within the rules because MBSCC does not guaranty its participants' transactions. The proposed rule change modifies Article III, Rule 3, Section 5(f) to make explicit that any distribution of funds relating to a participant for which MBSCC has ceased to act is made by MBSCC as agent.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder because it is designed to assure the safeguarding of securities and funds which are in the custody or control of MBSCC or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(B) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–99–02 and should be submitted by July 12, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

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[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41524; File No. SR–Phlx–99–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Enhance the Exchange's Automated Options Market System and To Employ Trade Reporting Terminals in Certain Options

June 14, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 1999, the Philadelphia Stock Exchange Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On June 10, 1999, the Phlx filed with the Commission Amendment No. 1[3] to the proposed rule change. The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes two enhancements to the Phlx Automated Options Market ("AUTOM")[4] System. The first proposed system enhancement, called the Floor Broker Order Entry System ("FBOE"), allows certain orders to be placed directly onto the X.Station,[5] in lieu of a "paper" book. The second proposed enhancement involves employing trade reporting terminals in certain options for non-AUTOM delivered orders.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Nandita Yagnick, Counsel, Phlx, to Michael Walinskas, Associate Director, Division of Market Regulation, Commission, dated June 10, 1999 ("Amendment No. 1"). Amendment No. 1 makes a technical modification to the proposed rule change.

[4] *See* Phlx Rule 1080. AUTOM is the Exchange's electronic order delivery and reporting system that provides for the automatic entry and routing of Exchange listed equity option and index option orders.

[5] For a more detailed description of the X.Station, *see* Securities Exchange Act Release Nos. 40625 (Nov. 2, 1998), 63 FR 60435 (Nov. 9, 1998) and 39972 (May 7, 1998), 63FR 26666 (May 13, 1998).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The X.Station is the Exchange's full service options electronic book and trading system. The X.Station provides order execution and order canceling by specialists. Orders delivered through AUTOM, if not automatically executed, are placed on the X. Station on the electronic book for execution by the specialist. Orders not delivered through AUTOM are placed on the "paper" book. Currently, orders, that are on the paper book, when due an execution, are manually executed by the specialist. The specialist then writes out tickets for both sides of the trade and submits them to Exchange staff for reporting to the Options Price Reporting Authority ("OPRA") and for the entry of clearing information.

The Exchange is now proposing a system—The FBOE—that would allow hand-delivered orders[6] to be entered directly onto the X.Station rather than on a paper book. The FBOE will place all orders, except all-or-none, stop, and stop limit orders.[7]

The FBOE will operate as follows: The floor broker will give orders to the specialist; the specialist or his clerk will enter the orders into the FBOE terminal located at the specialist post. The floor broker also may enter the order through terminals located at his floor broker booth. The orders will be displayed on the X.Station and reflected in the Auto-

[6] The FBOE will not accept orders of Registered Options Traders (ROTs) nor will it accept "firm" (member) orders entered by a floor broker.

[7] *see* Phlx Rule 1066. An all-or-nore order is a market or limit order that is to be executed in its entirety or not at all. A stop order is a contingency order to buy or sell at a specified price. A stop limit order is a contingency order to buy or sell at limited price when the market for the particular option reaches a specified price.

Quote[8] bids and offers. Once the specialist executes an order (using the X.Station), the execution ticket is immediately printed at the floor broker's post and the trade is reported to OPRA.

Cancellation of orders will operate in the same manner. The floor broker will either deliver the order to the specialist, where the specialist or his clerk will enter the cancellation and the X.Station or the floor broker will cancel the orders from the terminal located at this booth. The cancellation ticket will also be printed at the broker's booth.

The FBOE will provide notification of executions and "outs" as well as query capabilities to determine the status of orders and cleared trades, from the floor broker's booth. The FBOE will allow paper orders originating with floor brokers to exist thereafter on the X.Station just like AUTOM delivered orders. This measure will allow a greater number of orders to be processed electronically through the AUTOM system, which in turn enables the Exchange to better process order flow in the more active issues.

Secondly, in addition to the FBOE system, trade reporting terminals will be placed near the crowd in certain options so that trades that are not executed by the X.Station (non-AUTOM delivered orders) can be reported promptly at the time of the trade, rather than after clearing information is entered into the system. This will result in trades being reported to the participants and OPRA more efficiently.

2. Statutory Basis

The Exchange believes that the proposed enhancements to the AUTOM system are consistent with Section 6 of the Act[9] in general, and Section 6(b)(5)[10] in particular, in that they are designed to facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market and national market system, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, will become effective upon filing pursuant to Section 19(b)(3)(A) of the Act,[11] and Rule 19b–4(f)(5)[12] thereunder, in that it is designated by the Exchange as effecting a change in an existing order entry system of a self-regulatory organization that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of the system. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR–Phlx–99–11 and should be submitted by July 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15601 Filed 6–18–99; 8:45 am]

BILLING CODE 8010–01–M

[8] *See* Phlx Rule 1080, Commentary .01. Automatic Quotation (Auto-Quote) is the Exchange's electronic options pricing system the enables specialists to automatically monitor and instantly update quotations.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(5).

[13] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3186, Amdt. 2]

State of Iowa

In accordance with a notice received from the Federal Emergency Management Agency dated June 7, 1999, the above-numbered Declaration is hereby amended to include Scott County in the State of Iowa as a disaster area as a result of damages caused by severe storms, flooding, and tornadoes beginning on May 16 and continuing through May 29, 1999.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Muscatine County, Iowa and Rock Island County, Illinois. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 19, 1999, and for economic injury the deadline is February 22, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 11, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–15589 Filed 6–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3190]

State of New Mexico

Valencia County and the contiguous Counties of Bernalillo, Cibola, Socorro, and Torrance in the State of New Mexico constitute a disaster area as a result of damages caused by severe thunderstorms and flash flooding that occurred on May 24, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 9, 1999 and for economic injury until the close of business on March 10, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 319006 for physical damage and 9D0500 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 10, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–15586 Filed 6–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3189]

State of North Dakota

As a result of the President's major disaster declaration on June 8, 1999, I find that the following counties in the State of North Dakota constitute a disaster area due to damages caused by severe storms, flooding, snow and ice, ground saturation, landslides, mudslides, and tornadoes beginning on March 1, 1999 and continuing: Barnes, Benson, Bottineau, Burleigh, Cass, Dickey, Emmons, Foster, Grand Forks, Griggs, Kidder, LaMoure, Logan, McHenry, McIntosh, McLean, Mountrail, Nelson, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Steele, Stutsman, Towner, Traill, Walsh, Ward, and Wells Counties, and the Indian Reservations of the Devils Lake Sioux, Fort Berthold, and Turtle Mountain. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 6, 1999, and for loans for economic injury until the close of business on March 8, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd,, Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Burke, Cavalier, Dunn, Eddy, McKenzie, Mercer, Morton, Oliver, Sioux, and Williams Counties in North Dakota; Brown, Campbell, Marshall, McPherson, and Roberts Counties in South Dakota; and Clay, Kittson, Marshall, Norman, Polk, Traverse, and Wilkin Counties in Minnesota.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.188
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 318906. For economic injury the numbers are 9D0200 for North Dakota, 9D0300 for South Dakota, and 9D0400 for Minnesota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 11, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–15588 Filed 6–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3191]

State of South Dakota

As a result of the President's major disaster declaration on June 9, 1999, I find that Shannon County and the Pine Ridge Indian Reservation in the State of South Dakota constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on June 4, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 7, 1999, and for loans for economic injury until the close of business on March 9, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bennett, Custer, Fall River, Jackson, Mellette *, Pennington, and Todd * Counties in South Dakota, and Dawes, Cherry *, and Sheridan Counties in Nebraska.

* These counties are contiguous to the Indian Reservation.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 319106. For economic injury the numbers are 9D0600 for South Dakota and 9D0700 for Nebraska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 11, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–15587 Filed 6–18–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Emergency Consideration Request

In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is requesting emergency consideration from OMB by June 30, 1999 of the information collection listed below.

Request for Information—0960–NEW. The information collected on this form will be used by SSA's Office of the Inspector General (OIG) to conduct periodic eligibility reviews of beneficiaries residing in foreign countries. The form is designed to replace the current time-consuming and expensive method of conducting these reviews by selecting sample cases and conducting in person interviews. The form will permit OIG to review all beneficiary residents of the foreign country under study, thereby narrowing the scope of the beneficiaries requiring in person visits to those who do not respond or to those who provide questionable evidence. The respondents are Social Security beneficiaries residing in foreign countries.

Number of Respondents: 900.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 450 hours.

SSA is currently in the process of clearing this information collection under the normal OMB approval procedures, and published the first **Federal Register** Notice on May 27, 1999. However, time constraints associated with the normal clearance process will not permit SSA to complete this time-sensitive and mission-critical objective as mandated by the Inspector General Act.

SSA's OIG has responsibility for combating fraud, waste and abuse of SSA's programs. Accordingly, this information collection is designed to determine which beneficiaries residing in foreign countries pose the greatest risk of committing fraud against SSA programs. As a result, overpayments will be captured and corrected promptly, thereby minimizing the negative impact to SSA programs and the resulting public harm. To allow adequate time for review and planning purposes, responses to this form must be available to SSA's OIG prior to August 25, 1999. For this survey of foreign eligibility reviews investigators are scheduled to arrive on site on August 30, 1999. Therefore, we are requesting emergency consideration from OMB of the information collection.

You can obtain a copy of the collection instrument and/or OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

Dated: June 15, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 99–15692 Filed 6–18–99; 8:45 am]

BILLING CODE 4190–29–U

DEPARTMENT OF STATE

[Public Notice # 3064]

Public Notice; State Department Consultation With American Indigenous Groups

The Department of State will hold the fourth annual consultation between U.S. Government officials and federally recognized American Indian and Alaska Native Tribes, and other interested groups/parties to discuss issues of interest to indigenous groups and to provide tribal leaders with an update on progress on the United Nations (U.N.) and Organization of American States (OAS) draft declarations on indigenous rights. This event will build on annual consultations held since 1996 providing a regular forum for discussions between the Department of State and federally recognized tribes. The consultation, which is open to the general public, is scheduled for Tuesday, July 13, 1999, from 1:00 p.m. to 5:00 p.m., and Wednesday, July 14, 1999 from 8:30 a.m. to 5:00 p.m. at the Department of State in Washington, DC.

The consultation will take place in the East Auditorium, Room 2925, Department of State, 2201 C Street, NW, Washington, DC. Registration begins at 1:00 p.m., on July 13, and 8:30 a.m. on July 14th, at the 21st Street entrance, the Department of State. The public is invited to attend the meetings.

Those interested in attending or seeking additional information should contact Yvonne Thayer or Sarah Osmer by fax (202–647–0431) or phone (202–647–0293) in the Bureau of Democracy, Human Rights, and Labor at the Department of State. To ensure that your name is on the list of participants, please contact the Department of State no later than July 6, 1999.

Dated: June 11, 1999.

Harold Hongju Koh,

Assistant Secretary, Bureau of Democracy, Human Rights, and Labor Department of State.

[FR Doc. 99–15700 Filed 6–18–99; 8:45 am]

BILLING CODE 4710–18–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–166]

WTO Dispute Settlement Proceeding Regarding USA—Definitive Safeguard Measures on Imports of Wheat Gluten

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of the European Communities' ("EC") request for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO"). The EC challenges the United States' action in imposing temporary quantitative limitations on imports of wheat gluten in an effort to aid the domestic industry to make a positive adjustment to import competition. In this dispute the EC alleges that the United States' safeguard measure is inconsistent with certain obligations under the WTO Agreement on Safeguards ("Safeguards Agreement"), Article XIX of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and the WTO Agreement on Agriculture ("Agriculture Agreement"). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by July 19, 1999, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Wheat Gluten, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Marjorie Florestal, Assistant General Counsel at (202) 395–3581 or Robert Cummings, Senior Economist at (202) 395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that on June 3, 1999, the EC submitted a request for the establishment of a WTO dispute settlement panel to examine the U.S. safeguard measure on imports of wheat gluten. The WTO Dispute Settlement Body ("DSB") is expected to establish a panel for this purpose in July, 1999.

Major Issues Raised and Legal Basis of the Complaint

The EC challenges the safeguard measure on imports of wheat gluten that the President established in Proclamation 7103 of May 30, 1998, and described in the President's Memorandum of May 30, 1998, entitled "Action Under section 203 of the Trade Act of 1974 Concerning Wheat Gluten." The President's Proclamation and Memorandum were published in the **Federal Register** in Vol. 63, No. 106, pp. 30359 and 30363 on June 3, 1998.

In the EC's view the U.S. measure violates the Safeguards Agreement, Article XIX of the GATT 1994, and the Agriculture Agreement. Specifically, the EC asserts violations of:

- Articles 2.1 and 4 of the Safeguards Agreements because the U.S. International Trade Commission allegedly failed to examine "fundamental requirements" under these provisions when it conducted its investigation of the domestic industry.
- Article 5 of the Safeguards Agreement because, in adopting and applying the measure, the United States allegedly violated Article 5's rules on proportionality and allocation of quotas among supplying countries.
- Article 8 of the Safeguards Agreement because the United States allegedly failed to maintain a substantially equivalent level of concessions to affected WTO Members.
- Article 12 of the Safeguards Agreement because the United States allegedly failed to "fully respect" the notification requirements therein.
- Article 4.2 of the Agriculture Agreement because the measure in effect allegedly constitutes a substantial breach of the United States' obligations thereunder.
- Article XIX of GATT 1994 because the United States allegedly failed to fulfill "relevant conditions" under that Article, and because the measure allegedly was designed and applied in order to breach the most-favored-nation principle under Article I of GATT 1994, particularly since the measure allegedly favored Australia in terms of impact on trade.

On March 17, 1999, the EC requested consultations with the United States, and these consultations were held in Geneva on May 3, 1999, but did not lead to a satisfactory resolution of the matter.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–166, "Wheat Gluten") may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 99–15583 Filed 6–18–99; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–18]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 12, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of

Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 16, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28452.
Petitioner: Boeing Commercial Airplane Group.
Section of the FAR Affected: 14 CFR 25.562(b)(2).
Description of Relief Sought: To add Boeing Model 737–700C/–900 to Exemption No. 6425. This would permit exemption from the floor warpage testing requirements of § 25.562(b)(2), as amended by Amendment 25–64, for flight deck seats.

Docket No.: 29552.
Petitioner: Northern Illinois Flight Center, Inc.
Section of the FAR Affected: 14 CFR 135.299(a).
Description of Relief Sought: To permit NIFC pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a pilot-in-command line check in an aircraft.

Docket No.: 29553.
Petitioner: UFS, Inc.
Section of the FAR Affected: 14 CFR 121.344(b)(3).
Description of Relief Sought: To permit UFS to operate nine British Aerospace ATP aircraft without installing the required, approved digital flight data recorder (DFDR) until the next heavy maintenance check conducted after the aircraft manufacturer has made the DFDR modification kit available.

Docket No.: 29565.
Petitioner: Acadia Air, Inc.
Section of the FAR Affected: 14 CFR 119.71(b).
Description of Relief Sought: To permit Mr. Bouffard to continue to act as Director of Operations for Acadia, a certificate holder operating under 14 CFR part 135, without Mr. Bouffard holding a commercial pilot certificate and instrument rating.

Docket No.: 29593.
Petitioner: Empressa Brasileira da Aeronautica, S.A. (EMBRAER)
Section of the FAR Affected: 14 CFR 25.783(f).
Description of Relief Sought: To exempt EMBRAER from the requirements of § 25.783(f), to permit operation of the Embraer Model 135 airplane without a pressurization prevention means for the rear electronic compartment access hatch.

Dispositions of Petitions

Docket No.: 26237.
Petitioner: MCIWORLDCOM Management Company, Inc.
Sections of the FAR Affected: 14 CFR 91.611.
Description of Relief Sought/ Disposition: To permit MCI to conduct ferry flights with one engine inoperative in MCI's Falcon Trijet airplanes, Models No. 50 and 900, without obtaining a special flight permit for each flight. To change the name of the exemption holder from MCI Systemhouse Corporation to MCIWORLDCOM Management Company, Inc. *GRANT, 05/21/99, Exemption No. 5332D.*

Docket No.: 28768.
Petitioner: Franklin Products, Inc.
Section of the FAR Affected: 14 CFR 25.853(a).
Description of Relief Sought/ Disposition: To exempt Franklin Products from the vertical burn test requirements of § 25.853(a) for the Franklin Products' seat cushion assemblies constructed with noncompliant water-based adhesives. *PARTIAL GRANT, 5/28/99, Exemption No. 6634A.*

Docket No.: 27953.
Petitioner: Aero Sports Connections, Inc.
Sections of the FAR Affected: 14 CFR 103.1(a) and (e)(1) through (e)(4)
Description of Relief Sought/ Disposition: To allow individuals authorized by ASC to give instruction in powered ultralights that have maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have poweroff stall speed that does not exceed 35 knots calibrated airspeed. *GRANT, 6/3/99, Exemption No. 6080C.*

Docket No.: 28709.
Petitioner: Mr. William L. Hale.
Section of the FAR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/ Disposition: To permit Mr. Hale to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *GRANT, 5/28/99, Exemption No. 6897.*

Docket No.: 28830.
Petitioner: EMBRAER Service Center TMA.
Section of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit EMBRAER to use the calibration standards of the Instituto Nacional de Metrologia, Normalizaçã e Qualidade Industrial in lieu of the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment. *GRANT, 4/12/99, Exemption No. 6616A.*

Docket No.: 28837.
Petitioner: TEMSCO Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit TEMSCO to make available one copy of its Inspection Procedure Manual (IPM) to all of its supervisory and inspection personnel, rather than providing a copy of the IPM to each of these individuals. *GRANT, 4/12/99, Exemption No. 6623A.*

Docket No.: 29181.
Petitioner: Northwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 93.217.
Description of Relief Sought/ Disposition: To permit NWA to redesignate two international slots at Chicago O'Hare International Airport as domestic slots, which could then be sold or traded. *GRANT, 5/26/99, Exemption No. 6766.*

Docket No.: 29530.
Petitioner: Dornier Luftfahrt GmbH.
Sections of the FAR Affected: 14 CFR 25.1435(b)(1).
Description of Relief Sought/ Disposition: To permit type certification of the Dornier Model 328–300 by conducting a proof pressure test of the hydraulic system at 3580 psig (the system relief pressure) per the proposed § 24.1435(c)(3), and component testing at 1.5 times the operating pressure (450 psig) per the current § 25.1435(a)(2). *PARTIAL GRANT, 5/20/99, Exemption No. 6895.*

Docket No.: 29533.
Petitioner: Mr. Dan E. Chauvet.
Sections of the FAR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/ Disposition: To permit Mr. Chauvet to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning duel controls. *GRANT, 5/20/99, Exemption No. 6896.*

Docket No.: 29559.
Petitioner: Mr. Eric Kindig dba EK Aviation
Sections of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353.
Description of Relief Sought/ Disposition: To permit EK Aviation to conduct sightseeing rides on June 12, 1999, at the Sidney, Ohio and on July 4, 1999, at Urbana, Ohio, for the purpose of carrying passengers on local non-stop flights for compensation or hire. *GRANT, 5/10/99, Exemption No. 6898.*

Petition for Exemption

Docket No.: 28452.
Petitioner: Boeing Commercial Airplane Group.
Regulations Affected: 25.562(b)(2).
Description of Petition: To add Boeing Model 737–700C/–900 to Exemption No. 6425. This would permit exemption from the floor warpage testing requirements of § 25.562(b)(2), as amended by Amendment 25–64, for flight check seats.

[FR Doc. 99–15711 Filed 6–18–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Monterey County, California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Monterey County, California.

FOR FURTHER INFORMATION CONTACT: Robert F. Tally, Team Leader, Program Delivery Team-North, Carolina Division, Federal Highway Administration, 980 9th Street, Suite 400, Sacramento, CA 95814–2724, Telephone: (916) 498–5020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans) will prepare an environmental impact statement (EIS) on a proposal to improve safety and reduce congestion on SR (State Route) 156 in Monterey County between Castroville Boulevard and SR 101. The existing two-lane conventional highway has an accident rate 35% higher than the average rate for comparable highways, and operates at LOS (Level of Service) E which is expected to decline to LOS F by 2020. A bottleneck condition at the SR 156/101 interchange contributes to safety problems in the corridor.

Four alternatives are being considered at this time: A No Action Alternative (Alternative 1) and three build alternatives. All build alternatives would convert the described section of SR 156 from a two-lane highway to a four-lane expressway and construct interchange improvements at SR 156/101. Alternative 2 would construct the additional two lanes directly south of, and on the same alignment as, existing SR 156. Alternative 3 would construct a portion of the additional two lanes on a split alignment south of existing SR 156. Alternative 4 would construct four new lanes south of the existing SR 156 alignment.

Letters describing the proposed action and soliciting comments were sent to the appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed or are known to have interest in this proposal. The Public Participation Program for this study includes community information meetings expected to begin in the summer of 1999, and a formal Public Hearing in early 2001.

To ensure that the full range of issues related to this proposed action is addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. If you have any information regarding historic resources, endangered species, or other sensitive issues, which could be affected by this project, please notify this office. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 8, 1999.

Robert F. Tally,

Team Leader, Program Delivery Team-North, Sacramento, California.

[FR Doc. 99–15607 Filed 6–18–99; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Vernon County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of intent

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for capacity improvements to the USH 14/61 highway corridor between the cities of Viroqua and Westby in Vernon County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Jaclyn Lawton, Environmental Engineer, Federal Highway Administration, 567 D'Onofrio Drive, Madison, Wisconsin, 53719–2814: Telephone: (608) 829-7517. You may also contact Carol Cutshall, Director, Bureau of Environment, Wisconsin Department of Transportation, P.O. Box 7965, Madison, Wisconsin, 53707–7965: Telephone: (608) 266–9626.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare a Draft Environmental Impact Statement (EIS) on a proposal to provide additional transportation capacity on USH 14/61 between the cities of Viroqua and Westby, including possible community bypasses. The approximate 16-mile project begins south of Viroqua at the STH 27/82 intersection with USH 14/61, and ends north of Westby at the CTH GG intersection with USH 14/61. The proposal is being considered to address future transportation demand on USH 14/61, and to preserve land for a future transportation corridor. Alternatives under consideration include: (1) No build, (2) improvements to the existing highway, and (3) possible bypass corridors around Viroqua and Westby.

A project advisory committee comprised of federal and state agencies, local officials, environmental, and other community interests, will provide input during data gathering, development and refinement of alternatives, and long range corridor preservation. A series of public meetings will be held to solicit comments from citizens and interest groups who have previously expressed, or are known to have interest in the proposal. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. Agencies having an interest in or jurisdiction regarding the proposed action will be contacted through interagency coordination meetings and mailings.

To ensure that the full range of issues related to this proposed action are addressed, and all substantive issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or the Wisconsin

Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 10, 1999.

William K. Fung,

Division Administrator, Wisconsin Division, FHWA.

[FR Doc. 99–15630 Filed 6–18–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 24, 1999 [64 FR 14303–14304].

DATES: Comments must be submitted on or before July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Block at the National Highway Traffic Safety Administration, Office of Research and Traffic Records (NTS–31), 202–366–6401. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration.

Title: National Survey of Pedestrian and Bicycle Attitudes, Knowledge, and Behavior.

OMB Number: 2127–NEW.

Type of Request: New information collection.

Abstract: NHTSA proposes to conduct a survey by telephone among a national probability sample of 4,200 adults, including older adults. Participation by respondents would be voluntary. The proposed survey would collect information on pedestrian and bicycling behavior, obstacles to walking and bicycling, use of bicycle helmets, training in bicycling safety, pedestrian and bicyclist safety education for children, knowledge of safety issues and rules of the road, assessment of existing community facilities for walking and bicycling, and other related issues.

In conducting the proposed survey, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. A Spanish-language translation and bilingual interviewers are proposed to minimize language barriers to participation. The proposed survey would be anonymous and confidential

Affected Public: Randomly selected members of the general public aged sixteen and older in telephone households.

Estimated Total Annual Burden: 1514.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, D.C. 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C., on June 16, 1999.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 99–15707 Filed 6–18–99; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–525 (Sub–No. 1X)]

Pittsburgh Industrial Railroad, Inc.—Abandonment Exemption—In Allegheny County, PA

Pittsburgh Industrial Railroad, Inc. (PIRR) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.15-mile line between milepost 5.35 and milepost 6.5, in Neville Township, Allegheny County, PA. The line traverses United States Postal Service Zip Code 15225.

PIRR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 21, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 1, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 12, 1999, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morrell, Esq., Ball Janik LLP, 1455 F Street, NW, Suite 225, Washington, DC 20005. If the verified notice contains false or misleading information, the exemption is void *ab initio.*

PIRR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 28, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PIRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by PIRR's filing of a notice of consummation by June 21, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 4, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–15525 Filed 6–18–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 7, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 21, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0001.

Form Number: IRS Form CT–1.

Type of Review: Extension.

Title: Employer's Annual Railroad Retirement Tax Return.

Description: Railroad employers are required to file an annual return to report employer and employee Railroad Retirement Tax Act (RRTA). Form CT–1 is used for this purpose. IRS uses the information insure that the employer has paid the correct tax.

Respondents: Business or others for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 2,387.

Estimated Burden Hours Per Respondent/Recordkeeper:

	CT–1 (part I)	CT–1 (part II)
Recordkeeping	10 hrs., 17 min	3 hrs., 7 min.
Learning about the law or the form	12 hrs., 12 min	6 min.
Preparing, copying, assembling, and sending the form to the IRS	6 hrs., 3 min	9 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: hours.

OMB Number: 1545–0014.

Form Number: IRS Form 637.

Type of Review: Extension.

Title: Application for Registration (For Certain Excise Tax Activities).

Description: Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under Internal Revenue Code (IRC) section 4101 for purposes of the federal excise tax on taxable fuel imposed by IRC 4041 and 4081; and to certain manufacturers or sellers and purchasers that must register under IRC 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for exemption. Taxable fuel producers are required by IRC 4101 to register with the Service before incurring any tax liability.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 2,000

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—10 hrs., 17 min.

Learning about the law or the form—1 hr., 56 min

Preparing and sending the form to the IRS—1 hr., 41 min.

Frequency of Response: Other (one time only).

Estimated Total Reporting/ Recordkeeping Burden: 27,780 hours.

OMB Number: 1545–0110.

Form Number: IRS Form 1099-DIV.

Type of Review: Extension.

Title: Dividends and Distributions.

Description: The form is used by the Internal Revenue Service to insure that dividends are properly reported as required by Code section 6042 and that liquidation and distributions are correctly reported as required by Code section 6043, and to determine whether payees are correctly reporting their income.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 140,560.

Estimated Burden Hours Per Respondent: 16 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 29,099,759 hours.

OMB Number: 1545–0256.

Form Number: IRS Forms 941c and 941cPR.

Type of Review: Extension.

Title: Supporting Statement To Correct Information (941c); and Planilla Para La Correccion de Informacion (941cPR).

Description: These forms are used by employers to correct previously reported FICA or income tax data. It may be used to support a credit or adjustment claimed on a current return for an error in a prior return period. The information is used to reconcile wages and taxes previously reported or used to support a claim for refund, credit, or adjustment of FICA or income tax.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 958,050.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Hours per respondent
941c	9 hrs., 12 min.
941cPR	7 hrs., 44 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 8,728,727 hours.
OMB Number: 1545–0922.
Form Number: IRS Forms 8329 and 8330.
Type of Review: Extension.
Title: Lender's Information Return for Mortgage Credit Certificates (MCCs) (8329); Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs) (8330).

Description: Form 8329 is used by lending institutions and Form 8330 is used by state and local governments to report on mortgage credit certificates (MCCs) authorized under Internal Revenue Code (IRC) section 25. IRS matches the information supplied by lenders and issuers to ensure that the credit is computed properly.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 10,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8329	Form 8330
Recordkeeping	3 hrs., 35 min	4 hrs., 32 min.
Learning about the law or the form	1 hr. 0 min	1 hr., 17 min.
Preparing and sending the form to the IRS	1 hr., 6 min	1 hr., 25 min.

Frequency of Response: Quarterly.
Estimated Total Reporting/ Recordkeeping Burden: 71,400 hours.
OMB Number: 1545–1079.
Form Number: IRS Form 9041.
Type of Review: Extension.
Title: Application for Electronic/ Magnetic Media Filing of Business and Employee Benefit Plan Returns.

Description: For 9041 is filed by fiduciaries of estates and trusts, partnerships, and plan sponsors/ administrators as an application to file their returns electronically or on magnetic media; and by software developers, service bureaus and electronic transmitters to develop auxiliary services.

Respondents: Business or other for-profit.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Respondent: 18 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 900 hours.
OMB Number: 1545–1110.
Form Number: IRS Form 940–EZ.
Type of Review: Extension.
Title: Employer's Annual Federal Unemployment (FUTA) Tax Return.

Description: Form 940-EZ is a simplified form that most employers with uncomplicated tax situations (e.g., only paying unemployment contributions to one state and paying them on time) can use to pay their FUTA tax. Most small businesses and household employers use the form.

Respondents: Business or other for-profit, Individuals or households, Farms.
Estimated Number of Respondents/ Recordkeepers: 4,089,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—6 hrs., 23 min.
Learning about the law or the form—58 min.
Preparing and sending the form to the IRS—59 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 32,075,163 hours.
OMB Number: 1545–1173.
Form Number: IRS Form 8815.
Type of Review: Revision.
Title: Exclusion of Interest From Certain U.S. Savings Bonds Issued After 1989.

Description: If an individual redeems series I or series EE U.S. Savings Bonds issued after 1989 and pays a qualified higher education expenses during the year, the interest on the bonds may be excludable from income. Form 8815 is used by the individual to figure the amount of savings bond interest that is excludable.

Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 25,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—53 min.
Learning about the law or the form—13 min.
Preparing the form—38 min.
Copying, assembling, and sending the form to the IRS—34 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 51,470 hours.
OMB Number: 1545–1407.
Form Number: IRS Form 8848.
Type of Review: Extension.
Title: Consent to Extend the Time To Assess the Branch Profits Tax Under Regulations Sections 1.884–2(a) and (c).

Description: Form 8848 is used by foreign corporations that have (a) completely terminated all of their U.S. trade or business within the meaning of Temporary Regulations section 1.884–2T(a) during the tax year or (b) transferred their U.S. assets to a domestic corporation in a transaction described in Code section 381(a), if the foreign corporation was engaged in a U.S. trade or business at that time.

Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—4 hrs., 4 min.
Learning about the law or the form—47 min.
Preparing and sending the form to the IRS—54 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 28,800 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 99–15595 Filed 6–18–99; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 10, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 21, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0068.
Form Number: IRS Form 2441.
Type of Review: Extension.
Title: Child and Dependent Care Expenses.

Description: Internal Revenue Code (IRC) section 21 allows a credit for certain child and dependent care expenses to be claimed on Form 1040 (reduced by employer-provided day care benefits excluded under section 129). Day care provider information must be reported to the IRS for both the credit and exclusion. Form 2441 is used to verify that the credit and exclusion are properly figured, and that provider information is reported.

Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 6,519,859.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—40 min.
Learning about the law or the form—25 min.
Preparing the form—46 min.
Copying, assembling, and sending the form to the IRS—28 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 15,060,874 hours.
OMB Number: 1545–0351.
Form Number: IRS Form 3975.
Type of Review: Extension.
Title: Tax Professionals Annual Mailing List Application and Order Blank.

Description: Form 3975 allows a tax professional a systematic way to remain on the Tax Professionals Mailing File and to order copies of tax materials.

Respondents: Business or other for-profit.
Estimated Number of Respondents: 320,000.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 16,000 hours.
OMB Number: 1545–1073.
Form Number: IRS Form 8801.
Type of Review: Extension.
Title: Credit For Prior Year Minimum Tax—Individuals, Estates and Trusts.

Description: Form 8801 is used by individuals, estates, and rusts to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year or to be carried forward for use in a future year.

Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 38,744.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hrs., 4 min.
Learning about the law and the form—1 hr., 51 min.
Preparing the form—1 hr., 40 min.
Copying, assembling, and sending the form to the IRS—17 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 227,427 hours.
OMB Number: 1545–1490.
Regulation Project Number: FI–28–96 Final.
Type of Review: Extension.
Title: Arbitrage Restrictions on Tax-Exempt Bonds.

Description: The recordkeeping requirements are necessary for the Service to determine that an issuer of tax-exempt bonds has not paid more than fair market value for non-purpose investments under section 148 of the Internal Revenue Code.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 1,400.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Estimated Total Recordkeeping Burden: 1,425 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 99–15596 Filed 6–18–99; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 14, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 21, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0227.
Form Number: IRS Form 6251.
Type of Review: Extension.
Title: Alternative Minimum Tax-Individuals.

Description: Form 6251 is used by individuals with adjustments, tax preference items, taxable income above certain exemption amount, or certain credits. Form 6251 computes the alternative minimum tax which is added to regular tax. The information is needed to ensure the taxpayer is complying with the law.

Respondents: Business or others for-profit.
Estimated Number of Respondents/ Recordkeepers: 414,106.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hrs., 31 min.
Learning about the law or the form—1 hr., 11 min..
Preparing the form—1 hr., 50 min.
Copying, assembling, and sending the form to the IRS—28 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 2,476,354 hours.
OMB Number: 1545–1128.
Form Number: IRS Form 8814.
Type of Review: Revision.
Title: Parents' Election To Report Child's Interest and Dividends.

Description: Form 8814 is used by parents who elect to report the interest and dividend income of their child under age 14 on their own tax return. If this election is made, the child is not required to file a return.

Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 1,100,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 min.
Learning about the law or the form—10 min.
Preparing the form—24 min.
Copying, assembling, and sending the form to the IRS—17 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 1,419,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–15597 Filed 6–18–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Discontinuance of Bisynchronous Communications Protocol in IRS E-Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This announcement serves as notice that the Internal Revenue Service plans to discontinue the use of the bisynchronous communication protocol for IRS e-filing of Forms 1040 series, including the stand-alone Electronic Tax Document System. This includes Forms 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return and Form 9465, Installment Agreement Request.

DATES: The effective date for this discontinuation is October 18, 1999 at the conclusion of the 1999 filing season.

ADDRESSES: Questions or concerns should be directed to Carolyn E. Davis, Senior Program Analyst at IRS, Electronic Tax Administration, OP:ETA:O:S, 5000 Ellin Road C4–187, Lanham, MD 20706.

FOR FURTHER INFORMATION CONTACT: Questions or concerns will also be taken over the telephone. Call 202–283–0589 (not a toll-free number) or via email to: carolyn.e.davis@m1.irs.gov.

SUPPLEMENTARY INFORMATION: If transmitters are using the XMODEM, YMODEM, or ZMODEM file transfer protocols, they are using asynchronous and not bisynchronous protocol, and therefore are not affected by this notice. In addition to offering asynchronous connectivity, the IRS also is capable of receiving data via TCP/IP on 56kbs and ISDN lines. Other high-speed alternatives are also being considered. Concurrent with this action, the IBM Series/1 minicomputers will be decommissioned at the same time. All of the above returns/forms will be transmitted to the Austin Service Center in Austin, TX and to the Tennessee Computing Center in Memphis, TN for the 2000 e-file season.

Approved:

Carol Stender-Larkin,

Acting National Director, Electronic Program Operations, Electronic Tax Administration.

[FR Doc. 99–15571 Filed 6–18–99; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 64, No. 118

Monday, June 21, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection: Comment Request

Correction

In notice document 99–14997, appearing on page 31846, in the issue of Monday, June 14, 1999, make the following corrections:

1. On page 31846, in the first column, in the 16th line, "qualify," should read "quality,".

2. On page 31846, in the second column, under the heading **SUPPLEMENTARY INFORMATION**, in the 12th line, "to" should read "the".

[FR Doc. C9–14997 Filed 6-18-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Reserve Officers' Training Corps (ROTC) Program Subcommittee

Correction

In notice document 99–14776, beginning on page 31198, in the issue of Thursday, June 10, 1999, make the following correction:

On page 31198, in the third column, under the heading **AGENCY:**, "DOT" should read "DOD".

[FR Doc. C9–14776 Filed 6-18-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[IND No. 1985-99; AG Order No. 2227-99]

RIN 1115-AE 26

Extension and Redesignation of the Province of Kosovo in the Republic of Serbia in the State of the Federal Republic of Yugoslavia (Serbia-Montenegro) Under Temporary Protected Status

Correction

In notice document 99–14507, beginning on page 30542 in the issue of Tuesday, June 8, 1999, make the following correction:

On page 30542, in the third column, in the penultimate line,"June 18, 1999" should read, "June 8, 1999."

[FR Doc. C9–14507 Filed 6–18–99; 8:45 am]

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NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; Publication of Revised System of Records Notice

Correction

In notice document 99–10748 beginning on page 23362 in the issue of Friday, April 30, 1999, make the following correction(s):

1. On page 23363, in the second column, in designated paragraph 4., in the first line, "is" should read "to".

2. On page 23363, in the second column, in designated paragraph 6., in the third line, "of" should read "or".

3. On page 23363, in the third column, in the 12th line from the bottom, "Rentention" should read "Retention".

[FR Doc. C9–10748 Filed 6–18–99; 8:45 am]

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federal register

Monday
June 21, 1999

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11, 91, 121, 135, and 145
Part 145 Review: Repair Stations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 91, 121, 135, and 145

[Docket No. FAA–1999–5836; Notice No. 99–09]

RIN 2120–AC38

Part 145 Review: Repair Stations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to update and revise the regulations for repair stations. This action is necessary because many portions of the current repair station regulations do not reflect changes in repair station business practices and aircraft maintenance practices, or advances in aircraft technology. The proposed revisions would reorganize the repair station rules to reduce duplication of regulatory language and eliminate obsolete information. The proposal also would establish new requirements that relate to repair station ratings and classes, manual requirements, recordkeeping, and personnel. In addition, the NPRM contains a proposal to ensure that the special issues associated with repair stations outside the United States are adequately addressed, and it invites public comments on this proposal and other measures to ensure proper safety oversight of these repair stations.

DATES: Comments must be received on or before October 19, 1999.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. [FAA–1999–5836], 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments also may be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard E. Nowak, Aircraft Maintenance Division, Airworthiness Systems and Air Agency Branch (AFS–330), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–7228.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–1999–5836." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512–1661), or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322–2722 or (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

Aircraft, powerplants, maintenance, alteration concepts, and technology have progressed substantially in the past three decades. However, the current repair station regulations are based primarily on concepts that were developed during the infancy of the aviation industry. Very few substantive changes have been made to those repair station rules since they were recodified in the Federal Aviation Regulations (27 FR 6662, July 13, 1962).

Portions of Title 14 Code of Federal Regulations (14 CFR) part 145 are no longer appropriate or have become increasingly difficult to administer. Other portions of the rule no longer make a significant contribution to aviation safety or do not warrant the associated administrative costs. The FAA and the aviation industry have had to change the character and method of operations to keep pace with state-of-the-art aviation maintenance practices. Also, the FAA has granted exemptions and created other special administrative procedures to handle situations not provided for adequately in the regulations. To ensure that the regulations are appropriate for today's repair station industry, the FAA has determined that part 145 should be completely revised.

History

In 1975, the FAA and industry participants in the FAA's First Biennial Operations Review recommended that specific and substantial requirements of part 145 be revised. Although minor amendments to part 145 were subsequently adopted, no major revision was made. However, a significant amendment to part 145 was adopted on November 22, 1988 (Amendment No. 145–21, 53 FR 47376), which expanded the scope of work that foreign repair stations (i.e., those U.S.-certificated repair stations located outside the United States) are authorized to perform, and permitted certain repair stations to contract maintenance functions to noncertificated repair organizations/facilities under specific conditions.

As part of a regulatory review of 14 CFR part 43; 14 CFR part 65, subpart E; and part 145, the FAA held several public meetings. These meetings provided a forum for the public to offer comments concerning the possible revision of the rules governing repair stations. More than 500 representatives of repair stations, airlines, unions, manufacturers, foreign governments, industry organizations, and individuals attended the meetings.

The goal of the meetings was to gather enough factual information from the public to determine whether the repair station regulations should be revised, and if so, to determine what revisions should be made.

In preparation for the meetings, the FAA identified several areas of the repair station rules as areas that might need revision. These areas were: organization and format; ratings and classes; operations and inspection procedures; manufacturers' maintenance facilities; contracting of maintenance by repair stations; repair station privileges; facility, housing, and equipment requirements; recordkeeping and report requirements; and management, inspection personnel, and repairmen qualifications. Participants discussed the issues at the FAA public meetings and submitted written comments to Docket No. 25965, which was established for this regulatory review. Responses from participants at the meetings and the comments received in the docket indicate a need to revise and update the repair station regulations.

During the review of the repair station rules, the FAA examined various documents and related rulemaking actions. These documents included FAA Order 8300.10, *Airworthiness Inspector's Handbook;* advisory circulars that relate to repair stations, such as AC No. 145–3, *Guide for Developing and Evaluating Repair Station Inspection Procedures Manuals;* AC No. 145–4, *Inspection, Retread, Repair and Alterations of Aircraft Tires;* AC No. 145–5, *Repair Station Internal Evaluation Programs;* and 145–6, *Repair Stations for Composite and Bonded Aircraft Structure;* and previous petitions for exemption from part 145. The FAA also reviewed Joint Aviation Requirement (JAR) 145: Approved Maintenance Organizations, established by the Joint Aviation Authorities (JAA), an organization of European Civil Aviation Authorities. This NPRM includes efforts toward harmonizing the U.S. repair station regulations with those of the JAA.

General Discussion of the Proposals

Based on the public meetings, comments to Docket No. 25965, and the FAA's review of related documents, the FAA is proposing to revise part 145 completely. The FAA has decided not to include part 43 or part 65, subpart E, in this notice, even though these parts were included in the original regulatory review. Notice No. 94–27, Revision of Certification Requirements: Mechanics and Repairmen (63 FR 37172, July 9, 1998), proposes revisions to part 65, subpart E. Any revisions to part 43 would be addressed in a separate rulemaking action.

The FAA also considered establishing regulations, which were discussed at the public meetings, that would permit certain repair stations to manage the maintenance program of an operator certificated under part 121 or part 135. However, the FAA decided not to address such regulations in this NPRM. Any proposal to permit certain repair stations to manage the maintenance program of a part 121 or part 135 operator would be addressed in a separate rulemaking action.

The FAA's discussion of the proposed revisions to part 145 is organized as follows: organization and format of part 145, manufacturers' maintenance facilities, deviation authority, ratings and classes, implementation of the proposed ratings and classes, manual requirements, quality assurance, capability list, contract maintenance, job functions, training, line station maintenance, and recordkeeping and reporting. Following these discussions is a section-by-section discussion comparing the proposed rule to the current rule.

Organization and Format

Currently, part 145 separates the requirements for domestic repair stations, foreign repair stations, and repair facilities with a limited rating for manufacturers. However, the FAA's analysis of current part 145 revealed that, with few exceptions, no basic distinction exists between the regulations governing operations of domestic repair stations and those governing operations of foreign repair stations. Therefore, the FAA proposes to remove the distinction between domestic and foreign repair stations, except for a few instances where differences exist. (The limited rating for manufacturers is discussed under "Manufacturers Maintenance Facilities.")

The FAA proposes to revise the organization and format of part 145 to combine current similar requirements of domestic and foreign repair stations under the same subpart and section. Proposed part 145 would separate requirements according to subject matter in the following way: General; Certification; Facilities, Equipment, Materials, and Housing; Personnel; Operating Rules; and Job Functions. The proposed reorganization would eliminate many of the redundancies found in the current rule.

Manufacturers' Maintenance Facilities

The limited rating for manufacturers was established in 1966 by Amendment No. 145–4 (31 FR 5248). The amendment enabled manufacturers to obtain a repair station certificate with a limited rating under part 145 so they could perform maintenance or preventive maintenance on articles manufactured by them without meeting certain repair station requirements that other nonmanufacturer organizations were required to meet. The amendment also broadened the manufacturers' rebuilding and alteration authority to include appliances and parts manufactured under an FAA Parts Manufacturer Approval. Facilities that obtain such a rating are referred to as manufacturers' maintenance facilities (MMFs).

Currently, the FAA issues repair station certificates with limited ratings for manufacturers to the holder or licensee of a Type Certificate, the holder of a Production Certificate, the holder of a Technical Standard Order authorization, or any person who meets the requirements of current 14 CFR 21.303 and who has the prescribed fabrication inspection system.

The FAA proposes to eliminate the limited ratings for manufacturers and require that these facilities obtain the appropriate repair station certificate. Although MMFs' systems for inspection, recordkeeping, and quality control vary considerably from those used by repair stations, MMF repair operations do not differ substantially from the operations of other certificated repair stations. Because maintenance practices and aircraft technologies have evolved since the establishment of limited ratings for manufacturers, the FAA has determined that all repair facilities' systems for inspection, recordkeeping, and quality control should be consistent, and that the issuance of limited ratings for manufacturers is no longer appropriate. In granting certification for a manufacturer's repair station, however, the FAA proposes that full consideration be given to the quality control system established by the manufacturer that the manufacturer uses to comply with the pertinent provisions

of 14 CFR part 21. The manufacturer's repair station must operate, however, in compliance with the maintenance rules set forth in parts 43 and 145.

Deviation Authority

The FAA proposes to include deviation authority to provide flexibility to operations subject to part 145 that may be safely or satisfactorily conducted as an alternative means of compliance with portions of part 145. The FAA envisions that limited deviation would be sought from only a few specific sections, and that Letters of Deviation Authority would likely be limited in scope.

Requests for deviation authority would be made in a form and manner acceptable to the Administrator, and the FAA would review the circumstances of each operator requesting a deviation, during the determination process. If a deviation were warranted, the FAA would require that operations be conducted subject to certain conditions and limitations. These would be placed in the Operations Specifications of an operator certificated under part 145. Consistency in granting deviation authority would be achieved by the provision that only the Associate Administrator for Regulation and Certification (AVR–1) could issue letters of deviation authority. The FAA is requesting public comments on the practicality of deviation authority in the proposed rule, as well as situations under which deviation authority may be appropriate.

In addition, the public also is invited to comment on alternative means of compliance for any section of the proposal. Where appropriate, alternative means of compliance will be incorporated in the final rule, if adopted.

Ratings and Classes

The FAA proposes to revise the ratings and classes that can be issued to certificated repair stations. Although the proposed ratings and classes are based on those discussed at the public meetings mentioned earlier, the FAA also considered basing the ratings and classes strictly on certification standards (i.e., 14 CFR parts 21, 23, 25, 27, 29, 33, and 35). The FAA requests that commenters specifically address whether the proposed system of ratings and classes should be prescribed in a separate new regulation. A comparison of the proposed ratings to the current ratings follows.

Current rating	Proposed rating
Airframe Rating	**Aircraft Rating**
Class 1: Composite construction of small aircraft	Class 6: Aircraft composed primarily of composite material, of 12,500 pounds maximum certificated takeoff weight or less.
Class 2: Composite construction of large aircraft	Class 7: Aircraft composed primarily of composite material, over 12,500 pounds maximum certificated takeoff weight.
Class 3: All-metal construction of small aircraft	Class 1: Aircraft (other than rotorcraft and aircraft composed primarily of composite material) of 12,500 pounds maximum certificated takeoff weight or less.
	Class 4: Rotorcraft (other than rotorcraft composed primarily of composite material) of 6,000 pounds maximum certificated takeoff weight or less.
	Class 5: Rotorcraft (other than rotorcraft composed primarily of composite material) over 6,000 pounds maximum certificated takeoff weight.
Class 4: All-metal construction of large aircraft	Class 2: Aircraft (other than rotorcraft and aircraft composed primarily of composite material) over 12,500 pounds maximum certificated takeoff weight and up to, and including, 75,000 pounds maximum certificated takeoff weight.
	Class 3: Aircraft, by make and model, (other than rotorcraft and aircraft composed primarily of composite material) over 75,000 pounds maximum certificated takeoff weight.
Powerplant Rating	**Powerplant Rating**
Class 1: Reciprocating engines of 400 horsepower or less	Class 1: Reciprocating engines.
Class 2: Reciprocating engines of more than 400 horsepower	Class 1: Reciprocating engines.
Class 3: Turbine engines	Class 2: Turbopropeller and turboshaft engines.
	Class 3: Turbojet and turbofan engines.
Propeller Rating	**Propeller Rating**
Class 1: All fixed-pitch and ground-adjustable propellers of wood, metal, or composite construction.	Class 1: Fixed-pitch and ground-adjustable propellers.
Class 2: All other propellers, by make	Class 2: Variable-pitch propellers.
Radio Rating	**Avionics Rating**
Class 1: Communication equipment	Class 1: Communication equipment.
Class 2: Navigational equipment	Class 2: Navigational equipment.
Class 3: Radar equipment	Class 3: Pulsed equipment.
No Equivalent Current Rating	**Computer Systems Rating**
	Class 1: Aircraft computer systems.
	Class 2: Powerplant computer systems.
	Class 3: Avionics computer systems.

Current rating	Proposed rating
Instrument Rating	**Instrument Rating**
Class 1: Mechanical	Class 1: Mechanical.
Class 2: Electrical	Class 2: Electrical.
Class 3: Gyroscopic	Class 3: Gyroscopic.
Class 4: Electronic	Class 4: Electronic.
Accessory Rating	**Accessory Rating**
Class 1: Mechanical accessories that depend on friction, hydraulics, mechanical linkage, or pneumatic pressure for operation, including aircraft wheel brakes, mechanically driven pumps, carburetors, aircraft wheel assemblies, shock absorber struts, and hydraulic servo units.	Class 1: Mechanical accessories that depend on friction, hydraulics, mechanical linkage, or pneumatic pressure for operation.
Class 2: Electrical accessories that depend on electrical energy for their operation, and generators, including starters, voltage regulators, electric motors, or similar electrical accessories.	Class 2: Electrical accessories that depend on or produce electrical energy.
Class 3: Electronic accessories that depend on an electron tube, transistor, or similar device, including supercharger, temperature, air conditioning controls, or similar electronic controls.	Class 3: Electronic accessories that depend on transistors; lasers; fiber optics; solid-state, integrated circuits; vacuum tubes; or similar devices.
	Class 4: Auxiliary power units (APUs) that may be installed on aircraft as self-contained units to supplement the aircraft's engines as a source of hydraulic, pneumatic, or electrical power.
Limited Rating	**Limited Rating**
For airframes; engines; propellers; instruments; radio equipment; accessories; landing gear; components; floats; nondestructive inspection, testing, and processing; emergency equipment; rotor blades by make and model; aircraft fabric work; and other purposes.	For aircraft, airframes, powerplants, propellers, avionics, computer systems, instruments, and accessories by make and model.
Limited Rating for Specialized Service	**Specialized Service Rating**
For example, landing gear components; nondestructive inspection, testing, and processing; emergency equipment; aircraft fabric work; and any other specialized service the Administrator finds appropriate for this rating.	For any specialized service the Administrator finds appropriate for this rating.
Limited Rating for Manufacturers	**No Equivalent Rating in Proposed Rule**
To holder or licensee of Type Certificate or to holder of Production Certificate, Parts Manufacturer Approval, or Technical Standard Order.	

Aircraft Class Rating

Currently, the FAA issues an airframe rating with any of four separate class ratings to repair stations: Classes 1, 2, 3, and 4. Under the proposal, the FAA would eliminate the airframe rating and its associated class ratings and establish an aircraft rating with seven associated class ratings.

Under the current system, airframe class ratings are based on aircraft weight (large or small as defined in current 14 CFR 1.1) and construction (composite or all-metal). Many modern aircraft have an airframe that is constructed of metal and composite materials; the airframe structure is metal and certain portions, such as control surfaces and fairings, are manufactured from composite materials. The FAA proposes to continue to separate ratings based on weight and construction; however, to accurately reflect modern aircraft construction, aircraft ratings would be separated by whether the aircraft is constructed primarily of metal or composite material. Those aircraft on which significant amounts of the structure is constructed of composite materials, such as the fuselage, empennage, wings, or structure that the manufacturer has designated as a primary structure or principal structural element, would be considered primarily constructed of composite materials. Those aircraft with a metal structure and small composite pieces such as fairings, radomes, and so forth would be considered not composed primarily of composite materials. For repair stations that intend to perform work on aircraft that have significant structural components of both metal and composite material, certification under Class 2 and Class 7 may be necessary.

For repair stations that want to perform maintenance, preventive maintenance, or alterations on all aircraft, including rotorcraft that are primarily composed of composite materials, the FAA proposes to establish the Class 6 and Class 7 aircraft ratings. The Class 6 rating would be for small aircraft, and the Class 7 rating would be for large aircraft.

As noted above, current airframe ratings are based on aircraft weight. The current Class 2 and Class 4 airframe ratings apply to "large" aircraft (those of more than 12,500 pounds maximum certificated takeoff weight). Because today's large aircraft vary significantly in complexity, the FAA proposes to establish three aircraft class ratings to separate them: Classes 2, 3, and 7.

The proposed Class 2 and Class 7 aircraft ratings would apply to large aircraft, other than rotorcraft, based on the aircraft's construction (Class 2: not composed primarily of composite materials; or Class 7: composed primarily of composite materials). The proposed Class 3 aircraft rating would apply to aircraft (other than rotorcraft or aircraft composed primarily of composite material) over 75,000 pounds maximum certificated takeoff weight and would be granted only by make and

model. The FAA chose to establish the proposed Class 3 rating because these aircraft are usually more complex than other aircraft and are transport category airplanes.

Currently, a repair station with an airframe rating that wants to perform maintenance on powerplants must obtain a powerplant rating; however, a repair station that meets the requirements of the proposed aircraft rating would be permitted to perform maintenance, preventive maintenance, and alterations to each aircraft's associated powerplant(s) up to, but not including, an "overhaul." Because overhauls require additional training, data, facilities, housing, and equipment, a repair station that wants to overhaul powerplants would continue to be required to obtain a powerplant rating with an appropriate class rating. Those repair stations that meet the requirements for performing maintenance, preventive maintenance, or alterations on airframes, but do not want to, or cannot, perform any work on powerplants, would be certificated with a limited rating for airframes,

Under the current rating system, separate class ratings do not exist for rotorcraft. However, a repair station that performs maintenance, preventive maintenance, or alterations on rotorcraft must meet certain requirements. The requirements to perform work on rotorcraft are unique enough to require separate class ratings for rotorcraft. Therefore, the FAA proposes to establish the Class 4 and Class 5 aircraft ratings for rotorcraft, excluding those composed primarily of composite material. (Composite rotorcraft would be included in either the proposed Class 6 or Class 7 rating.) The 6,000 pound division used in rotorcraft certification would be maintained as the dividing line between the proposed Class 4 and Class 5 aircraft ratings. Rotorcraft with a maximum certificated takeoff weight of 6,000 pounds or less are certificated under 14 CFR part 27, Airworthiness standards: normal category rotorcraft. Rotorcraft with a maximum certificated takeoff weight of greater than 6,000 pounds are certificated under 14 CFR part 29, Airworthiness standards: transport category rotorcraft. Transport category rotorcraft certificated under part 29 must meet more stringent certification requirements; therefore, repair stations that wish to perform work on these aircraft may require different tooling, equipment, personnel, and so forth from those repair stations performing work on normal category rotorcraft certificated under part 27.

The FAA considered establishing separate aircraft class ratings for free balloons, airships, and gliders. Many repair stations that perform maintenance, preventive maintenance, or alterations on these aircraft currently hold a limited rating. However, the FAA does not choose to establish separate aircraft class ratings for these aircraft because these aircraft are less common than airplanes and rotorcraft. As proposed, repair stations that want to perform work only on these aircraft would continue to apply for a limited rating.

Powerplant Rating

The current regulations define three classes that are associated with a powerplant rating: Class 1 Reciprocating engines of 400 horsepower or less, Class 2 Reciprocating engines of more than 400 horsepower, and Class 3 Turbine engines. The FAA proposes to revise the powerplant ratings by combining all reciprocating engine ratings into the same class and dividing the turbine engine rating into two ratings.

When the current powerplant ratings were established, reciprocating engines of more than 400 horsepower were common. Today, these reciprocating engines usually are found on older aircraft and are less common. Therefore, the FAA has determined that a separate class rating for reciprocating engines of more than 400 horsepower is no longer necessary.

Conversely, when the current powerplant ratings were established, turbine engines were just beginning to be used on civil aircraft. Today, turbine engines are the most commonly used engines on transport category aircraft. In addition, more types of turbine engines exist today with technological differences between each type. Therefore, establishing two turbine class ratings is appropriate. Because turbopropeller and turboshaft engines have many technological similarities, the Class 2 powerplant rating has been proposed for these engines. The proposed Class 3 powerplant rating would be used for turbojet and turbofan engines because of the technological similarities of these types of engines.

Propeller Rating

Under the current regulations, a repair station that holds a propeller rating with a Class 1 rating is permitted to perform maintenance, preventive maintenance, or alterations on all fixed-pitch and ground-adjustable propellers of wood, metal, or composite construction. A repair station that holds a propeller rating with a Class 2 rating is permitted to perform maintenance, preventive maintenance, or alterations on all other propellers, by make.

Because of advances in propeller construction technologies, the current propeller class ratings would be revised. Proposed § 145.59(c) would revise the current Class 1 rating by eliminating the references to the types of materials of which fixed-pitch and ground-adjustable propellers are constructed. The proposed Class 2 propeller rating would no longer require propellers to be designated by make and would permit a repair station to perform maintenance, preventive maintenance, or alterations on any variable-pitch propellers regardless of make.

Avionics Rating

The FAA proposes to replace the current radio rating with an avionics rating to address more appropriately today's avionics technology. The current radio class ratings are: Class 1 Communication equipment, Class 2 Navigation equipment, and Class 3 Radar equipment. The FAA proposes the following avionics class ratings: Class 1 Communication equipment, Class 2 Navigation equipment, and Class 3 Pulsed equipment.

The proposed Class 1 avionics rating would be unchanged from the current radio class rating (communication equipment) and would apply to radio transmitting equipment and receiving equipment used in aircraft to send or receive communications, regardless of carrier frequency or type of modulation used.

The proposed Class 2 avionics rating would apply to any system used in aircraft for en route or approach procedures, except navigation equipment operated on pulsed radio frequency principles. This proposed class differs from the current Class 2 radio rating, which includes equipment operated on pulsed radio principles. (Pulsed frequency equipment would be included in the proposed Class 3 avionics rating.) Under the proposal, a repair station with a Class 2 avionics rating would be permitted to perform maintenance on the following equipment: very high frequency omnirange (VOR), automatic direction finder (ADF), localizer, glide slope, marker beacon, loran C, omega, inertial navigation system, microwave landing system (MLS), global positioning system (GPS), and similar devices.

The FAA proposes to replace the current Class 3 radio rating for radar equipment with a Class 3 avionics rating for pulsed equipment. The proposed rating would include aircraft electronic systems operated on pulsed radio frequency principles. A repair station with a Class 3 avionics rating would be permitted to perform maintenance on

distance measuring equipment (DME), transponders, weather radar, radar altimeters, ground proximity warning systems (GPWS), and similar devices.

Computer Systems Rating

The FAA proposes to establish a new rating for computer systems to include technology that was not used in aircraft when the current rating system was instituted. Under the proposal, three classes for the computer rating would be established: Class 1 Aircraft computer systems such as flight management and flight control systems, Class 2 Powerplant computer systems such as fuel control and electronic engine control systems, and Class 3 Avionics computer systems such as traffic alert and collision avoidance systems (TCAS) and electronic flight instrument systems (EFIS).

Participants at the public meetings expressed concern that confusion could exist about whether accessories, instruments, and avionics equipment that may include a computer system would fall under the proposed computer rating. The FAA recognizes that maintenance, preventive maintenance, or alterations on such articles should not be performed under the proposed computer rating. The proposed computer rating would apply to self-contained, separate computer systems that can be removed as a unit from an aircraft for maintenance, preventive maintenance, or alteration. For example, a fuel control unit can be removed from an aircraft, but its internal computer system is a portion of the fuel control unit. In this case, the computer system is not a self-contained, separate system that can be removed as a unit from the aircraft. Under the proposed ratings, a repair station still would require an accessory rating to perform work on a fuel control unit. Possessing an accessory rating would include the capability to maintain the computer portion of the fuel control unit.

Instrument Rating

Currently, the class ratings associated with an instrument rating are: Class 1 Mechanical, Class 2 Electrical, Class 3 Gyroscopic, and Class 4 Electronic. The FAA proposes that these ratings be retained except for a change to the description of the Class 4 instrument rating. The description would be revised by adding references to lasers, fiber optics, and solid-state, integrated circuits.

Accessory Rating

Currently, there are three class ratings associated with accessories: Class 1 Mechanical accessories that depend on friction, hydraulics, mechanical linkage, or pneumatic pressure for operation; Class 2 Electrical accessories that depend on electrical energy for their operation and generators; and Class 3 Electronic accessories that depend on the use of an electron tube, transistor, or similar devices. Under the proposal, these class ratings basically would remain unchanged; however, the current practice of including auxiliary power units (APUs) in the Class 1 rating would be discontinued. The proposal would establish a new accessory rating (Class 4) for APUs.

Because APUs were not widely used when current part 145 was established, no provisions for them were specifically included in the regulations. Repair stations that currently work on APUs perform that work under a Class 1 accessory rating for lack of a more appropriate rating under part 145. Because APUs are similar in many respects to aircraft engines, facilities wishing to approve them for return to service should meet specific requirements before receiving authorization to do so. Repair stations meeting these requirements would operate under the proposed Class 4 accessory rating.

The scope of work that currently may be performed by a repair station that holds an accessory rating with either a Class 2 or Class 3 rating would not be revised; however, the FAA proposes to revise the descriptions for each to include more modern accessories. A Class 2 rating would consist of electrical accessories that depend on or produce electrical energy, and a Class 3 rating would consist of electronic accessories that depend on the use of transistors; lasers; fiber optics; solid-state, integrated circuits; vacuum tubes; and other similar electronic devices.

Limited and Specialized Service Ratings

Currently, the FAA issues limited ratings to repair stations to perform maintenance, preventive maintenance, or alterations to airframes, engines, propellers, instruments, radio equipment, accessories, landing gear components, emergency equipment, rotor blades, and floats. In addition, limited ratings are issued to perform nondestructive testing, inspection and processing, aircraft fabric work, and for other purposes. The FAA proposes to revise this list by changing the term "engines" to "powerplants" and "radio equipment" to "avionics equipment", respectively; adding aircraft and computer systems; and deleting rotor blades, landing gear components, and floats. Current limited ratings for rotor blades, landing gear components, and floats would be included in the proposed limited rating for an airframe, because airframe as defined in current § 1.1 includes those items.

In addition, the FAA currently issues (as a subset of limited ratings) limited ratings for specialized services such as nondestructive inspection, testing, and processing; servicing of emergency equipment; aircraft fabric work; and any other purposes for which the Administrator finds the applicant's request appropriate. The FAA proposes to replace the current limited rating for a specialized service with the proposed specialized service rating.

The proposed specialized service rating would apply to specific equipment or processes. The rating would permit a repair station to perform maintenance, preventive maintenance, or alterations on items such as emergency equipment or audiovisual and nonessential equipment (e.g., in-flight telephones or television and movie equipment). This proposed rating also would permit a repair station to perform specific types of work, such as nondestructive inspection and testing, plating and machining, aircraft and engine welding, and oxygen equipment servicing.

Under this proposal, a holder of a specialized service rating would continue to be required to state in its Operations Specifications the specification or standards used for performing the specialized service. The specification could be a civilian or military specification that is currently used by industry and approved by the Administrator or a specification developed by the repair station and approved by the Administrator.

Implementation of the Proposed Ratings and Classes

The FAA proposes to establish a new § 145.61, "Transition to new system of ratings." This proposed section would require all repair stations to meet the requirements in this proposal within specified periods of time. The transition process and the deadlines for compliance with the proposed regulation would be dictated by one of three possible cases as described below.

The first case involves a repair station (to include an MMF) that makes no changes to its certificates between the effective date of this rule, if adopted, and the proposed 2-year compliance date. Under proposed § 145.61(a), a repair station that takes no action to affect its certificate (such as adding or deleting a class rating) would be permitted to continue meeting only the requirements of current part 145 for up to 2 years. However, repair stations in

this situation would not be required to wait until the end of the 2-year period to make the transition to operations under the proposed rule. These repair stations would be encouraged to apply for their new certificate well before the end of the 2-year transition period to avoid any potential administrative delays.

The second case involves a repair station (to include an MMF) that wishes to make a change to its repair station certificate during the 2-year transition period. Proposed § 145.61(b) would require a repair station that desires to amend, revise, or add a rating to its certificate to obtain a completely new repair station certificate and meet all new applicable requirements as set forth in proposed part 145. The new repair station certificate would reflect each of the new ratings under which the repair station is authorized to either begin or continue exercising privileges. The following example illustrates this case: A repair station currently holds a repair station certificate with an airframe Class 3 rating and instrument Class 1 and 2 ratings, and decides to apply for an accessory Class 1 rating. At the time of its application, this repair station would be required to meet the new requirements and apply for all of the ratings for which it wishes to exercise privileges. Therefore, the repair station would apply for instrument Class 1 and 2 ratings, the accessory Class 1 rating, and the aircraft Class 1 rating. The repair station would not be permitted to continue to exercise the privileges of its old airframe Class 3 rating following the change to its certificate.

The third case involves a repair station (to include an MMF) that is sold, leased, or otherwise conveyed following the adoption of this proposal. Regardless of whether the repair station is operating under the old or new system of ratings and classes, at the time of such conveyance, the receiving entity would be required to meet proposed part 145 and apply for and receive a new repair station certificate. Transfers such as these would be conducted in the same manner as under the current rule, except the receiving entity would not be able to apply for a certificate under the old system of ratings and classes. As under the current rule, the conveying entity's repair station certificate would expire at the time of asset transfer.

The FAA recognizes the administrative burden of applying for a new repair station certificate as well as the complexity of the proposed transition to the new system of ratings and classes. The FAA also recognizes the potential burden on its own personnel and the potential administrative backlog if, in the interest of their own advertising efforts, many repair stations quickly attempt to transition to the new system. Therefore, the FAA is requesting public comments on alternative methods for achieving a smooth transition from the current system to the new system.

Establishment of the Repair Station Manual

Currently, a repair station must maintain an Inspection Procedures Manual (IPM) describing the repair station's inspection system. Repair stations also must meet requirements in part 145 that currently are not required to be documented in the IPM (e.g., recordkeeping and personnel). Because of the complexity of many repair stations' operations, the repair stations should document additional aspects of their operations and not limit the manual to a description of the inspection system.

The FAA proposes to eliminate the requirement that repair stations maintain an IPM and, as proposed in § 145.205, replace it with a requirement that repair stations maintain an approved repair station manual that covers all of the repair station's technical operations. The proposed manual would cover items currently described as acceptable in AC No. 145–3, *Guide for Developing and Evaluating Repair Station Inspection Procedures Manuals*, which are proposed as repair station manual requirements in this NPRM. The proposed manual would be required to include the repair station's procedures and policies that cover the operation of the repair station. All repair station personnel would be required to follow the manual while conducting operations. Repair stations with non-English speaking personnel may therefore have to translate all or certain portions of the proposed manual into the native language of personnel using the manual. Specific requirements for the repair station manual are described throughout the section-by-section discussion and listed in the proposed rule.

Current § 145.45(f) requires a repair station to provide each of its supervisory and inspection personnel with a copy of the IPM and to make the IPM available to its other personnel. The requirement for all repair stations' supervisory and inspection personnel to each have a copy of the manual is unnecessarily burdensome. The FAA has granted numerous exemptions from this requirement that allow repair stations to maintain a master copy of the IPM and one shop copy for use by all personnel. Proposed § 145.205(e) would require only that the proposed repair station manual be readily available to all repair station personnel. This provision would permit a repair station to have shop copies or electronic versions of the proposed manual and would reduce the burden of updating multiple copies of the manual.

Under proposed § 145.205(f), a repair station would be required to provide a current copy of the manual to the FAA certificate holding district office (CHDO). If a repair station uses a repair station manual that is in an electronic format, the repair station would be required to provide the FAA with either a current paper copy or the means (hardware, software, etc.) to access the current manual at the CHDO.

Quality Assurance

Current part 145 does not require a repair station to establish and use a quality assurance system that monitors the effectiveness of the certificate holders' procedures, training, and inspection; however, many repair stations and air carriers have implemented and use such quality assurance systems. In addition, the JAA requires each JAA-approved maintenance organization (which includes some U.S. repair stations) to establish an independent quality system that monitors compliance with and adequacy of the procedures used to ensure good maintenance practices and airworthy aircraft and aircraft components.

After reviewing the success of quality assurance and quality monitoring systems, the FAA has determined that quality assurance systems are necessary to ensure that maintenance, preventive maintenance, or alterations (including the maintenance and alterations performed by a repair station's contractors) are consistently performed in accordance with all applicable requirements. Thus, proposed § 145.201 would require that each repair station establish a quality assurance system acceptable to the Administrator. A description of the entire quality assurance system would be included in the proposed repair station manual. Guidance on the establishment of effective quality assurance systems would be provided in advisory material published concurrently with this rule, if adopted.

The size of an acceptable quality assurance system would be based on the repair station's size and type of operations. The FAA recognizes that many certificated repair stations have few employees. Consequently, the FAA would consider a repair station's size and complexity and the repair station's designation of persons who perform quality assurance functions in reviewing a quality assurance system. For example, the FAA would permit smaller repair stations to assign individuals to quality assurance on a part-time basis.

Capability List

Currently, § 145.11(a)(4) requires that applicants for a propeller Class 2 rating or any accessory rating prepare a list, by type or make, as applicable, of each propeller or accessory for which the repair station seeks approval. Many repair stations use these lists and the limits of their Operations Specifications as marketing tools that describe their capabilities. One constraint related to this practice is that revisions to the current capability list require FAA approval, which makes timely revisions cumbersome in the dynamic aviation maintenance marketing environment.

The FAA proposes to revise part 145 to provide for a capability list for each repair station. The capability list would specify all articles on which the repair station is capable of performing work; the articles would be listed by make and model. The repair station's Operations Specifications would continue to prescribe the ratings and classes under which the repair station is approved to operate.

Under the proposal, prior to working on an article, a repair station would be required to conduct a self-evaluation, described in the quality assurance system in its repair station manual, to ensure that the repair station has the required facilities, equipment, materials, technical data, processes, housing, and trained personnel in place to properly perform the work on the article. Self-evaluations of this nature are consistent with other internal evaluation programs currently encouraged by the FAA.

After the self-evaluation, the article would be added to the repair station's capability list. Procedures would be defined in the repair station manual to require the repair station to inform the FAA CHDO of the revision to the capability list.

For example, if a repair station holds the proposed aircraft Class 1 rating and the repair station's Operations Specifications limit the repair station to performing work on reciprocating engine-powered aircraft, the repair station would not be able to add any turbine engine-powered aircraft to its capability list without an FAA-approved revision to its Operations Specifications. However, the repair station would be able to add other reciprocating engine-powered aircraft to its capability list after the capability list revision procedures in its repair station manual are followed.

Contract Maintenance

Notwithstanding concerns expressed by certain industry groups during the public meetings, contracting out maintenance under the current regulations has proven safe for more than 40 years. In an effort to harmonize part 145 with JAR 145, the FAA proposes to continue permitting repair stations to contract out maintenance and alteration of components of a type-certificated product as is permitted under current § 145.47. However, the proposal would permit any repair station to contract out such work on any article for which it is rated (other than a complete type-certificated product), provided certain conditions are met. Current § 145.47 includes equipment and material requirements and a description of contract maintenance requirements. Proposed § 145.213 would include these current contract maintenance requirements.

In addition, a list of those functions that a repair station would be permitted to contract to an outside facility would be required to be specified by the repair station in its manual under proposed § 145.207(h). Under that paragraph, the repair station would have to list the names of those facilities to which it contracts work, along with their certificates and ratings, if any. The repair station manual would have to include procedures for qualifying and surveilling the facilities. It would also have to include procedures to accept the maintenance, preventive maintenance, or alterations performed by a facility to which work was contracted.

The provisions of the repair station's quality control system specified in proposed § 145.201(a)(2) and § 145.209(c)(2) would require it to inspect articles and materials on which contract maintenance was performed. This mandatory inspection process would ensure that the requisite high level of safety is maintained when job functions are contracted either to certificated or noncertificated sources.

Current § 145.47(c) states that a repair station may contract maintenance and alteration of components of a type-certificated product to a noncertificated source provided: (1) The repair station is the manufacturer who originally manufactured the product for which it holds a U.S. type certificate; (2) the contracted component is included as part of the type-certificated product; (3) the component maintenance is done by the original component manufacturer or its manufacturing licensee; and (4) before the component is approved for return to service, the repair station ensures that it is being approved for return to service in accordance with the repair station's approved quality control system.

Under the proposal, contracting to noncertificated sources would not be restricted to type certificate holders. Proposed § 145.213 would permit a certificated repair station to contract maintenance or alteration of any article for which it is rated to a noncertificated person provided the job function is contracted in accordance with procedures set forth in the certificated repair station's approved repair station manual.

In addition, the certificated repair station would be required to supervise or otherwise remain directly in charge of a shop that performs maintenance, preventive maintenance, or alterations. The term "directly in charge" is defined in proposed § 145.3, Definition of terms, and specifies that a person who is directly in charge need not physically observe and direct each worker constantly but must be available for consultation and decision on matters requiring instruction or decision from higher authority than that of the persons performing the work. This definition is taken from 14 CFR 121.378(b). The certificated repair station would also be required to verify by test and/or inspection that the job function has been satisfactorily performed by the noncertificated person before the certificated repair station approves the article for return to service.

The proposed limits on contracting maintenance would be that contracting of complete, assembled, type-certificated products would not be permitted and a certificated repair station also would not be allowed to only provide approval for return to service for a product after contract maintenance is performed, thereby prohibiting "paper only" repair stations.

The proposed rule also would revise the list of certain job functions in appendix A to part 145 that can be contracted out by a certificated repair station. Current § 145.47 requires that an applicant for a repair station certificate must be equipped to perform the functions listed in appendix A to part 145 that are appropriate to the ratings sought. Current appendix A to part 145 describes the equipment and material requirements for each of the ratings and classes under which a repair station can receive approval to operate. Job functions marked with an asterisk (*) in the current appendix are those for which the repair station may obtain the services of a contractor in lieu of having the appropriate equipment and

materials on the premises for the specific job function. Under the proposal, § 145.111 would require that the repair station be equipped to perform the maintenance, preventive maintenance, or alterations appropriate to the rating(s) held as prescribed by proposed appendix A. Under the proposed rule, functions that could be contracted out by a repair station to another facility (items currently marked with an asterisk) would no longer be included in the appendix. The proposed appendix would reflect the revisions and modifications to repair station ratings and classes found in proposed § 145.59; however, all contracted maintenance functions would be required to be listed in the proposed repair station manual.

The FAA specifically solicits comments to provisions in this notice regarding contracting of work and especially to proposed provisions regarding the contracting of work to noncertificated sources where the certificated repair station has final approval for return to service authority.

Job Functions

The proposed appendix A, Job Functions, includes many significant revisions to current appendix A. In addition to removing those functions for which a contractor may be used, the FAA has excluded much of the advisory material in the proposed appendix. For example, the proposed appendix would retain "Repair and replace alloy members and components," but this would not be followed by "* * * such as tubes, channels, cowlings, fittings, attach angles, etc." The proposed appendix also would reduce current repetition by providing a list of functions that apply to all classes under a rating at the beginning of the rating's discussion. Therefore, subsequent class requirement discussions would state, "In addition to having the capability to perform the appropriate functions as required for a Class 'X' rating, a repair station holding a Class 'Y' or Class 'Z' rating must have * * *." The proposed appendix also adds new job functions for turbine engines and nondestructive testing; however, the most significant revision is the removal of functions that can be contracted out to another facility. This proposed change takes an approach toward contracting out that is similar to the one being developed by the JAA. The FAA requests that, during the comment period, commenters specifically address the equipment and material requirements for the various repair station ratings as well as the deletion from appendix A of those functions that may be contracted out by a repair station. Based on such comments, the FAA may revise this notice to accommodate specific comments.

Training Program

Current §§ 121.375 and 135.433 require that each certificate holder, under part 121, and pursuant to § 135.411(a)(2), respectively, or person performing maintenance or preventive maintenance functions for these certificate holders, have a training program. This training program must ensure that each person who determines the adequacy of work performed is fully informed about procedures, techniques, and new equipment in use, and is able to perform all associated duties. Current § 145.2(a) requires that repair stations supporting operations under part 121 comply with the provisions of current § 121.375. Therefore, repair stations that now perform maintenance or preventive maintenance for part 121 operators are required to have a training program. In some cases, only a portion of a repair station's personnel accomplish work for part 121 operators. Consequently, only those individuals are included in the training program.

Under the proposal, § 145.159 would require that each repair station establish and maintain a documented training program for all employees who perform work under the repair station's ratings and classes. The proposed training program would enhance aviation safety by ensuring that each employee who works for the repair station is fully capable of performing that work, and it would ensure a level of safety equivalent to that of maintenance performed under part 121 or part 135. Because the FAA recognizes that repair stations vary in size, the repair station or any other organization such as a school or manufacturer could provide the training, provided the program is approved by the Administrator. The training program would be described in the repair station manual as set forth in proposed § 145.207(e).

The proposed training would be required to consist of initial and recurrent training for aviation maintenance personnel, be based on each individual's assignment, and ensure that each individual is capable of performing the assigned task. A person who is certificated or rated to perform particular duties, but is not currently assigned to perform those duties at the repair station, would not be required to participate in recurrent training for all of the tasks for which the person is certificated or rated until such time as that person is assigned to those duties.

Because repair stations' activities vary greatly, information about the specific training needed to satisfy the requirements of the proposed rule would be published in advisory material that would be issued with this rulemaking.

Line Station Maintenance

Current FAA policy permits an operator certificated under part 121 or part 135 to contract line maintenance to a repair station located in the United States. A certificated repair station with a limited rating for line maintenance may perform such line maintenance, provided that the repair station holds the appropriate ratings and the operator's particular aircraft are identified in that repair station's Operations Specifications.

Many repair stations located at airports have requested that they be permitted to perform line maintenance for part 121 or part 135 operators without meeting all of the requirements of part 145. Currently, to receive the appropriate ratings or have an operator's aircraft added to the repair station's Operations Specifications, the repair station must meet the current part 145 requirements that exceed those necessary to perform the line maintenance. Proposed § 145.7(e) would permit a repair station to perform line maintenance functions for an operator without meeting all of the part 145 requirements necessary to either obtain a rating or add an aircraft to the repair station's Operations Specifications. Repair stations could provide this service for operators certificated under part 121 or part 135 or for operators of U.S.-registered aircraft under part 129. Consistent with current practice, a repair station's Operations Specifications would state the job functions performed as line maintenance for each operator. The job functions would be based on the aircraft operator's manual or approved program. Also, the repair station would be required to have the necessary equipment, trained personnel, and technical data to perform the line maintenance.

Recordkeeping and Reporting Requirements

Currently, § 145.61 requires each repair station to maintain adequate records of all maintenance, preventive maintenance, or alterations performed. The records must include the name of the certificated mechanic or repairman who performed or supervised the work and the name of the individual who inspected the work. Repair stations are required to retain these records for at least 2 years after the work is completed.

The FAA proposes to revise the current recordkeeping and reporting requirements. Proposed § 145.217 would require a repair station's records and reports to include the make, model, identification number, and serial number (when applicable) of the aircraft, airframe, aircraft engine, propeller, appliance, or component part of the article worked on, and a copy of the maintenance release. The repair station would be permitted to use as the maintenance release the record that it completes to comply with current §§ 43.9 and 43.11.

A repair station would continue to be required to retain records for 2 years. Records could be retained in the form of actual work documents or copies thereof, or by an automated data processing system acceptable to the Administrator.

The record retention period would be based on the date that article was approved for return to service as opposed to the date maintenance, preventive maintenance, or alteration was completed. In some instances, different work may have been completed on the same article on different dates before the article is approved for return to service. Therefore, the date an article is approved for return to service would be easier for a repair station to monitor.

Under current industry practice, the owner or operator of an aircraft, airframe, aircraft engine, propeller, appliance, component, or part on which work is performed receives the maintenance release. This practice would continue and be reflected in proposed § 145.217(b). The proposed rule specifies that the maintenance release would be required to be retrievable in English.

Repair Stations Located Outside the United States

As can be seen from the above discussion, the thrust of this proposal is to reduce the differences between the treatment of "domestic" and "foreign" repair stations. Many of the requirements that would be imposed in this rulemaking are designed to ensure that maintenance functions are performed safely. For example, as discussed below, supervisors of any maintenance function at a repair station, regardless of where it is located, would be required to have at least 18 months of practical experience in the maintenance function the individual is supervising.

Nevertheless, we are mindful of concerns by some that repair stations located outside the United States pose special issues with respect to oversight and safety. Therefore, the FAA is considering the establishment of further measures to ensure that the proposed repair station requirements are implemented safely and effectively. For example, the FAA is considering authorizing an advisory panel or some other partnership to provide feedback to the Administrator on the effects of our rules on the safe operation of repair stations. Such a panel would provide a forum in which industry and labor representatives could discuss concerns and relay information on the real world effects of the repair station rules, including identifying any deficiencies or inequities.

Comments are invited on this or any other idea to ensure the continuing safety and effectiveness of the proposed rule. The FAA will determine, at the time a Final Rule is adopted, whether an advisory panel, or some other plan recommended by commenters would be the best method of achieving this goal.

Section-by-Section Analysis

Special Federal Aviation Regulation No. 36

The proposal would revise paragraph 2(c) of this regulation by replacing the reference to current § 145.51 with a reference to proposed § 145.215(b)(2), and by replacing the references to "domestic repair station certificate under 14 CFR part 145" with "repair station certificate under 14 CFR part 145 that is located in the United States".

Section 11.101 OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

This section would be revised by replacing the reference to current § 145.63 with a reference to proposed § 145.219.

Section 91.411 Altimeter System and Altitude Reporting Equipment Tests and Inspections

Paragraph (b)(2)(iii) would be revised by replacing "limited rating" with "specialized service rating". Paragraph (b)(2)(iv) would be revised by replacing "airframe rating" with "aircraft rating". Paragraph (b)(2)(v), which refers to a limited rating for manufacturers, would be deleted.

Section 91.413 ATC Transponder Tests and Inspections

Paragraphs (c)(1)(i) and (c)(1)(ii) would be revised by changing the term "radio" to "avionics" and by replacing the reference to "Class III" with "Class 3" in paragraph (c)(1)(i). Paragraph (c)(1)(iii) would be revised by replacing the reference to "limited rating" with "specialized service rating". Paragraph (c)(1)(iv), which refers to a limited rating for manufacturers, would be deleted.

Part 91, Appendix A Category II Operations: Manual, Instruments, Equipment, and Maintenance

Paragraph (4)(b)(1)(ii) would be revised by changing the term "radio" to "avionics". Paragraph 4(b)(1)(iii), which refers to ratings issued under subpart D of part 145 (limited ratings for manufacturers), would be deleted.

Section 121.378 Certificate Requirements

This section would be revised by replacing "repair stations certificated under the provisions of subpart C of part 145" in paragraph (a) with "a certificated repair station that is located outside the United States" and by changing the reference to "alteration", the singular, to "alterations", the plural.

Section 121.709 Airworthiness Release or Aircraft Log Entry

This section would be revised by replacing "a repair station certificated under the provisions of subpart C of part 145" in the concluding text of paragraph (b) with "a certificated repair station that is located outside the United States".

Section 135.435 Certificate Requirements

This section would be revised by replacing "repair stations certificated under the provisions of subpart C of part 145" in paragraph (a) with "a certificated repair station that is located outside the United States".

Section 135.443 Airworthiness Release or Aircraft Maintenance Log Entry

This section would be revised by replacing "a repair station certificated under the provisions of subpart C of part 145" in the concluding text of paragraph (b) with "a certificated repair station that is located outside the United States".

Subpart A General

Section 145.1 Applicability

The proposed section is based on current § 145.1 and describes the applicability of new part 145 with respect to obtaining repair station certificates and the general rules under which certificated repair stations must operate. Proposed § 145.1 would revise current § 145.1(a) by adding the term "preventive maintenance" and by changing the current reference pertaining to "airframes, powerplants,

propellers, and appliances" to "any aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof". Current § 145.1(b) and (c) would be deleted because it addresses foreign repair stations and manufacturers' maintenance facilities, respectively. As noted previously, the FAA is proposing, for the most part, to remove the distinction between domestic and foreign repair stations and to eliminate the limited ratings for manufacturers. The proposed changes differ in scope from the applicability section of current part 43 (maintenance rules), in that repair station privileges would be expanded to include foreign-manufactured and -certificated equipment, as well as equipment that has been issued an experimental airworthiness certificate.

Section 145.2 Certificate Issued to a Person in a Country Outside the United States; Certificate Issued to a Person in a Country With Which the U.S. Has a Bilateral Aviation Safety Agreement

As of the issuance of this notice, the U.S. is in the process of signing bilateral aviation safety agreements (BASAs) with several foreign countries; those agreements cover multiple areas of FAA safety regulation, including maintenance to be performed on U.S. registered aircraft and parts thereof. Consistent with those agreements, the FAA will be establishing maintenance implementation procedures (MIPs) with the national (civil) aviation authorities (NAAs) of the respective countries. Each BASA and MIP will provide that the FAA may issue a part 145 certificate to an applicant located in the country with which the U.S. has the BASA, based on a certification from the NAA of that country that the applicant complies with part 145. Each MIP will provide the procedures whereby that certification can be made. New § 145.2(b) is proposed to incorporate that process into part 145; in this regard, it would parallel the process in 14 CFR 21.29 for the certification of aircraft and other type certificated products.

New § 145.2(a) would state, generally, that the FAA may issue a part 145 certificate to an applicant in a foreign country if the FAA finds that the applicant complies with part 145. While that general proposition obviously would not be a change from the existing rule, it is included to clarify that the certification by the foreign authority in proposed paragraph (b) is that the applicant complies with part 145. Thus, the certification in paragraph (b) could be based on a finding that the applicant complies with the repair station requirements of the foreign country, plus all additional requirements necessary to establish compliance with part 145.

Section 145.3 Definition of Terms

For purposes of this part, the proposed section would define: accountable manager, actual work documents, approve for return to service, approved data, article, certificated, CHDO, composite, computer system, consortium, directly in charge, facility, housing, maintenance release, overhauled, and signature.

Section 145.5 Certificate and Operations Specifications Requirements

The proposed section would retain the requirement found in current § 145.3 that no person may operate as a certificated repair station without, or in violation of, a repair station certificate. Specifically, it would state that a repair station may perform work only for which it is rated within the limitations of its Operations Specifications. Proposed paragraph (d) specifies the contents of the Operations Specifications that would be issued to each certificated repair station. The contents would include the repair station's certificate number; class ratings; limited ratings, to include makes, models, or parts; specialized service ratings, to include the specification used; the air carrier's geographic authorization, for repair stations located outside of the United States; and any other items the Administrator may require or allow to meet a particular situation.

Proposed § 145.5 would revise the requirement found in current § 145.19 that a repair station display its repair station certificate at a place normally accessible to the public and that is not obscured. The proposal would require only that a repair station have its certificate available, but not necessarily visible, for inspection by the public. A repair station would continue to be required to have its certificate available on the premises for inspection by the Administrator.

Section 145.7 Performance of Maintenance, Preventive Maintenance, Alterations, and Required Inspections for Certificate Holders Under Parts 121, 125, and 135, and for Foreign Air Carriers or Foreign Persons Operating a U.S.-Registered Aircraft in Common Carriage Under Part 129

The proposed section would combine the requirements of current §§ 145.2 and 145.73 and describe special conditions related to the issuance of a repair station certificate. Proposed paragraph (a)(1) would retain the current requirements for a repair station performing maintenance, preventive maintenance, or alterations for a part 121 operator having a continuous airworthiness maintenance program to conform with the provisions of those parts pertaining to such a program. The proposal, however, would revise the current rule by specifically listing those sections for which compliance is required. Proposed paragraph (a)(2) would revise the current rule by requiring a certificated repair station performing work for an air carrier or commercial operator having a continuous airworthiness maintenance program under part 135 to comply with the sections of that chapter pertaining to the performance of that work.

Proposed paragraph (b) would retain the current requirement that work performed by a repair station for an air carrier or commercial operator having a continuous airworthiness maintenance program be performed in accordance with the air carrier's or commercial operator's manual.

Proposed paragraph (c) retains the requirements of current § 145.2(b) relating to the performance of inspections on airplanes operated pursuant to part 125.

Proposed paragraph (d) would establish a new requirement that a repair station performing work for any person operating an aircraft pursuant to part 129 perform that work in accordance with a program approved by the Administrator.

Proposed paragraph (e) would establish new provisions that would permit a repair station located at a line station for an air carrier certificated under part 121 or part 135, or at a line station for a foreign air carrier or foreign person operating a U.S.-registered aircraft in common carriage, to perform, under certain circumstances, line maintenance on any aircraft of that air carrier or person.

Section 145.9 Advertising

The proposed section includes the requirement of current § 145.3 prohibiting a repair station from advertising as a certificated repair station until the issuance of a certificate. It also includes the requirements of current § 145.25 specifying that the advertisement clearly state the repair station's certificate number. The proposed section also adds an additional requirement that prohibits a repair station from making false statements, either orally or in writing, designed to mislead any person.

Section 145.11 Deviation Authority

Current regulations pertaining to manufacturers and some classes of operators permit them to apply for a deviation from particular requirements of the FAA regulations. Similar provisions do not currently exist for certificated repair stations. The proposed section would establish new procedures for repair stations similar to those used by manufacturers and operators to apply for deviation authority from the regulations. The proposed regulations permit a repair station to apply for a letter of deviation from any sections of part 145. Consistency in granting deviation authority would be enhanced by the provision that only the Associate Administrator for Aviation Standards could issue letters of deviation authority.

Subpart B Certification

Section 145.51 Application for Certificate

This proposed section is based on current §§ 145.11, 145.13, and 145.71. Proposed paragraph (a) is similar to current application requirements but separates the application requirements for the initial issuance of a certificate or rating from the requirements for a change or renewal of a certificate. Applicants for a change or renewal of a certificate would be required to provide only that information necessary to substantiate the change or renewal, and such applications would be addressed in proposed § 145.51(e).

Additionally, the proposal revises the list of items that an applicant would be required to submit to the FAA with the application. The proposal would require that the applicant submit a copy of the repair station's manual to the Administrator for approval. (Current § 145.11 refers to a repair station's IPM.) The proposal also would require that the applicant submit a list by type, make, or model, as appropriate, of the aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof for which an application is made. Current § 145.11 requires this information on applications only for a propeller rating (Class 2) or any accessory rating (Class 1, 2, or 3). Applicants also would be required to include a statement signed by the accountable manager (as defined in proposed § 145.3) that the procedures described in the repair station manual are in place and meet the requirements of the applicable regulations. A list of maintenance functions performed under contract by another repair facility would continue to be required and to be included in the proposed repair station manual. Provisions of current § 145.13, which require an applicant for a foreign repair station certificate to submit an organizational chart containing the names and titles of managing and supervisory personnel and a description of the repair station's facilities, would be expanded to apply to all applicants for a repair station certificate; however, submission of a suitably bound brochure and photographs of the facilities would no longer be required of any applicant. The proposal also would no longer require duplicate copies of all required information. For example, under the proposal, only one copy of the applicant's repair station manual would be required to be submitted.

Proposed paragraph (b) establishes a new requirement that the equipment, facilities, and housing required for the certificate and rating be in place at the time of certification by the Administrator.

Current §§ 121.153(c) and 135.25(d) permit operators to use foreign-registered civil aircraft. Current § 43.1(a) prescribes the rules under which these aircraft must be maintained. Proposed § 145.51(c) expands the scope of current § 145.71 by permitting an applicant located outside the United States to obtain a repair station certificate if it maintains foreign-registered aircraft operated under the provisions of part 121 or part 135, or aircraft engines, propellers, appliances, components, or parts thereof for use on such aircraft.

Proposed § 145.51(c)(2) retains the current requirement that the applicant for a repair station certificate located outside the United States provide evidence that the fee prescribed by the Administrator has been paid; however, the current reference to part 187 has been deleted. Proposed § 145.51(c)(3) would codify the FAA's existing practice of requiring that a repair station located outside the United States complete an application for a repair station certificate in English.

Under current regulations, a repair station that consists of numerous units and partners functioning as a single entity with regard to quality control and quality assurance (i.e., a consortium) is not permitted to operate under a single repair station certificate, unless it is granted an exemption from current § 145.35. Airbus Industrie (Airbus) is an example of such a consortium. Airbus holds an exemption from current § 145.35 to the extent necessary to permit the production units of the members and associated partners of the Airbus consortium to be collectively certificated as a U.S. foreign repair station to support maintenance of U.S.-registered A300, A310, A320, A321, A330, and A340 series aircraft. In its petition for exemption, Airbus contended that the exemption was necessary to permit it to function as an FAA-approved repair station without having a central maintenance facility. In granting the exemption, the FAA stated that a properly structured quality system, operating in a number of facilities under the direct responsibility of a central quality manager, using personnel that are properly trained, qualified, and authorized, and using a uniform system of documentation, can provide an acceptable substitute for the requirements of § 145.35. The exemption was predicated on each Airbus production unit demonstrating its compliance with the applicable housing and facility requirements of the regulations. To exercise its enforcement obligations, the FAA required that Airbus retain certificate responsibility for the implementation and revision (as necessary) of the manual and the quality control procedures used by the Airbus production units and partners. This was achieved through the certification of the Airbus consortium as a foreign repair station. The maintenance, preventive maintenance, and alteration that may be performed in accordance with the Airbus exemption is limited to that necessary to support the operation of U.S.-registered airplanes. To preclude the requirements to obtain an exemption for similar operations in the future, proposed § 145.51(d) would permit all consortiums that function as a single entity with regard to quality control and quality assurance functions, that hold an approved type certificate, and that perform maintenance, preventive maintenance, or alterations of that type-certificated product and components thereof to apply for a repair station certificate under this section.

Section 145.53 Issue of Certificate

The proposed section is based on current §§ 145.11(b) and 145.71, which address the issuance of a repair station certificate. The section retains current regulatory language with no substantive changes.

Section 145.55 Duration and Renewal of Certificate

This section is similar to current §§ 145.15 and 145.17 but deletes the current provision in § 145.17(b) that a certificate or rating for a repair station located outside of the United States expires at the end of 12 months after the date on which it was issued. Instead, the certificate or rating will expire after 24 months.

Proposed paragraphs (a) and (b) retain current certificate duration requirements. The conditions for a

return of a certificate are described in paragraph (c).

Proposed paragraph (d) modifies the current requirement for certificate renewal by specifying that a repair station located outside the United States must submit its request for renewal no later than 90 days before its current certificate expires. Current § 145.15(c) permits this application to be made within 30 days of the current certificate's expiration.

Section 145.57 Amendment to or Transfer of Certificate

This section is based on current § 145.15 and would continue to require that a repair station desiring to amend, revise, or add a new rating to its certificate apply on a form and in a manner prescribed by the Administrator. The current prohibition on the transfer of repair station certificate privileges upon conveyance of the repair station would be retained in proposed paragraph (b). Whereas current § 145.15(b) states that, in the event of a sale or transfer of a repair station's assets, the new owner must apply for an amended certificate, proposed § 145.57(b) clarifies the substance of the requirement by stating explicitly that the privileges of the certificate cannot be transferred if the repair station is sold, leased, or otherwise conveyed. Accordingly, to obtain a repair station certificate, a new owner or transferee of a repair station's assets would have to apply for a new certificate under the provision of proposed § 145.51.

Section 145.59 Ratings and Classes

The proposed section would completely revise the current system of ratings and classes specified in current §§ 145.31 and 145.33. This revised system of ratings and classes is described earlier in this document under the heading "Ratings and classes."

Section 145.61 Transition to New System of Ratings

The proposed section describes the FAA's procedure for phasing in the new system of ratings and classes specified in proposed § 145.59. The manner in which the transition to this new system would be accomplished is described earlier in this document under the heading "Implementation of the proposed ratings and classes."

Subpart C Facilities, Equipment, Materials, and Housing

Section 145.101 General

This section is based on current § 145.55 (Maintenance of personnel, facilities, equipment, and materials) with no substantive differences.

Section 145.103 Facility and Housing Requirements

Proposed § 145.103(a) is based on current § 145.35 and retains many of the general facility and housing requirements currently found in that section for an applicant of a repair station certificate. The proposal would revise the current rule by expanding the applicability of these requirements to all repair stations, as opposed to applicants for repair station certificates or ratings. Proposed paragraph (a) retains the requirements of current § 145.35. It eliminates the current specific requirement of § 145.35(b)(3) to segregate machines and equipment whenever fabric work is done in an area where there is grease and oil. This type of work is not performed as often as in the past, and more general requirements to have facilities for the proper protection of parts and subassemblies, and segregation of certain operations, are included in the proposal.

Proposed § 145.103(b) describes the facility and housing requirements currently found in § 145.37; however, it would establish new requirements for repair stations that perform maintenance, preventive maintenance, or alterations on articles constructed of composite materials and repair stations with the proposed computer systems rating.

Proposed § 145.103(b)(1) would require housing only for the largest type and model of aircraft on which a repair station performs maintenance, preventive maintenance, or alteration. For example, if a repair station with a proposed aircraft Class 3 rating is authorized to work only on Boeing 737s, that repair station would be required to provide housing for at least one Boeing 737, even though larger aircraft, such as a Boeing 747, could be included in an aircraft Class 3 rating.

Current § 145.37(b) addresses the use of permanent work docks and the performance of work outside, where permitted by climatic conditions. During preparation of this proposal, the FAA considered eliminating that portion of § 145.37(b) that specifically permits the use of permanent work docks. The FAA contends that the elimination of this provision would simplify the requirements for all repair stations and help achieve uniform interpretation of the regulations. The FAA also is concerned that some geographical areas exist that are not truly free of rain, sand, dust, or some other environmental element or are affected by high or low temperatures that could have an adverse effect on worker efficiency during the performance of maintenance by the repair station. Repair station work, such as the performance of a detailed visual inspection or certain nondestructive inspection, of an airframe must be accomplished in a environment free of adverse environmental conditions to ensure the work process is not negatively affected by such conditions. In the interest of safety, the FAA contends that the elimination of the work dock provisions would address current situations in which some repair facilities may not provide adequate protection from environmental elements for aircraft, equipment, or personnel as required by § 145.35(a).

However, the FAA notes that currently available data do not permit the FAA to determine the number of repair stations that would be affected or to quantify the potential costs to the repair station industry if the use of work docks were no longer permitted. Therefore, provisions permitting the use of work docks have been retained in this proposal.

During the comment period, the FAA requests that the public specifically address the potential costs that would be incurred by the repair station industry if provisions for permitting work outside were eliminated. In addition, the FAA is requesting that the comments submitted include a detailed discussion of the potential safety benefits that could be realized if such provisions were eliminated. Based on the input received and the data presented during the comment period, the FAA may eliminate the work dock provisions in the final rule.

Proposed § 145.103(b)(3) establishes new provisions that would require a repair station that performs maintenance, preventive maintenance, or alterations on any article of composite construction to meet acceptable process requirements. These process requirements would be based on the manufacturer's recommendations or other processes acceptable to the Administrator.

Proposed § 145.103 (b)(4) through (b)(7) revises current requirements so that they are applicable to the proposed system of certificates and ratings. Proposed § 145.103 (b)(4) and (b)(6) is based on current § 145.37 (c) and (e) with no substantive differences. Proposed § 145.103(b)(5) would require repair stations with a propeller rating to have suitable stands, racks, and fixtures, not only for the proper storage of the propellers, but also for the performance of work on these articles. Proposed § 145.103(b)(7) would establish

requirements for holders of an avionics, instrument, or computer system rating by requiring those holders to have a shop and assembly area that meets the standards for environmental control and protection from contaminants specified by the equipment or system manufacturer.

Proposed § 145.103(b)(8) specifically would establish a requirement for a repair station to meet any special facilities requirements determined by the manufacturer and approved by the Administrator for an article or system on which maintenance, preventive maintenance, or alteration is performed.

Currently, § 145.51(d) permits a repair station to maintain and alter any article for which it is rated at a place other than its fixed location if certain conditions are met. Proposed § 145.103(c) would specify that a repair station is permitted to perform certain job functions on an aircraft at a place other than its fixed location because of a special circumstance as determined by the Administrator (e.g., an aircraft on the ground at an isolated airport requiring repairs to allow it to be flown safely to the operator's main base, a repair station, or in preparation for a ferry flight). The proposed repair station manual would be required to describe the procedures for the performance of work at a place other than the repair station's fixed location.

Section 145.105 Change of Location, Housing, or Facilities

The proposed section is based on current § 145.21 and specifies the types of changes requiring approval by the Administrator. The proposal would include the current requirement that any change to the location or facilities of a repair station be approved in advance. The proposal would specifically indicate that no operation by a repair station at a new location be authorized until approved.

Section 145.107 Satellite Repair Stations

Under current § 145.51(d), a domestic repair station may maintain or alter any article for which it is rated at a place other than the repair station, provided certain conditions are met. This work is normally performed on a case-by-case or as-needed basis. Under the proposal, repair stations would be permitted to establish satellite repair stations to perform work on a permanent basis at a place other than the repair station's primary facility. Proposed § 145.107(a) would define "satellite repair station" and specify the requirements for the certification of these facilities. A satellite repair station would continue to be considered a separate repair station and would be required to meet the requirements (personnel, facilities, housing, etc.) for each rating it holds. A satellite repair station also would be required to prepare a manual consistent with the manual of the parent repair station. The manual would be required to be approved by the FAA CHDO. Proposed paragraph (b) would permit the cross-utilization of personnel and equipment from the parent repair station necessary to perform maintenance, preventive maintenance, or alterations. However, the FAA could specify when equipment and personnel could not be cross-utilized.

Additionally, proposed paragraphs (c) and (d) would codify the current practice that a repair station located within the United States would not be permitted to have a satellite repair station located outside the United States and that a repair station located outside the United States would not be permitted to have a satellite repair station located within the United States.

Section 145.109 Maintenance, Preventive Maintenance, and Alterations Conducted at Satellite Repair Stations

This proposed section would specify the conditions under which a repair station may perform work at a satellite repair station rather than at the repair station's primary facility and would establish inspection personnel requirements for the facility. The proposed section is based on § 141.91, which prescribes requirements for pilot school satellite bases.

Section 145.111 Equipment and Material Requirements

The proposed requirements are based on those requirements found in current §§ 145.47 and 145.49. The proposed section sets forth the requirements that would apply to all repair stations and those additional requirements that would apply to repair stations with specialized service ratings and those with ratings other than specialized service ratings. Additionally, the proposed regulation sets forth requirements for certificated repair stations, whereas the current regulation sets forth requirements for an applicant for a domestic repair station certificate.

The proposed section retains the requirements of current §§ 145.47(a) and (b), and 145.49(a); however, the proposal would require that tools used to accomplish work be those recommended by the manufacturer or equivalent to the manufacturer's recommendation and acceptable to the Administrator. The proposal also would require tools used for product acceptance and/or for making a finding of airworthiness be calibrated to a standard acceptable to the Administrator.

The proposal would delete the specific equipment requirements for an applicant for a rating for specialized services or techniques issued under the current regulation; however, under the proposed rule, a certificated repair station with a specialized service rating would be required to have the appropriate equipment, materials, and technical data prescribed and approved for performing work under that rating.

Subpart D Personnel

The FAA proposes to organize all part 145 repair station personnel requirements into a separate subpart of part 145. The proposed subpart would include current personnel requirements and new requirements relating to training, personnel records, designation of an accountable manager, and the recommendation of persons for certification as repairmen. Personnel requirements for repair stations located within and outside the United States would be standardized; however, repair stations located outside the United States would continue to be able to employ persons not certificated under part 65.

Section 145.151 Personnel Requirements

This proposed section for personnel requirements is based on current §§ 145.39 and 145.75 but does not include requirements for supervisory and inspection personnel. These requirements are found in proposed § 145.153.

Proposed § 145.151 would establish the same general personnel requirements for repair stations located within and outside the United States. It would ensure that personnel employed at any repair station, regardless of its location, are competent to perform assigned tasks.

Proposed § 141.51 would include a new requirement that each certificated repair station designate an individual as the accountable manager. The section would continue to require that a repair station have a sufficient number of personnel to perform the work for which it is rated. The proposed section would specify that it is applicable to all repair stations, whereas current equivalent sections apply to applicants for certificates. The proposal deletes language in current § 145.39(a) requiring officials of the station to consider carefully the justifications and abilities of their employees. This current provision is addressed by the proposed

training requirements. Language in current § 145.39(b) requiring an applicant to have enough properly qualified employees to keep up with the volume of work in progress is addressed in proposed § 145.151(a)(2).

Section 145.153 Supervisory and Inspection Personnel Requirements

This proposed section is based on the supervisory and inspection personnel requirements found in current §§ 145.39 and 145.75. The proposal would retain the requirements of these sections, codify minimum practical experience and training requirements for supervisory and inspection personnel employed at repair stations located outside the United States, and expand the Administrator's ability to determine the competence of all supervisory and inspection personnel.

Proposed paragraphs (a), (b), and (c) are based on current § 145.39(c). These sections would apply to all repair stations.

Proposed paragraph (d) is based on current § 145.39(d). It would contain identical requirements for supervisory and inspection personnel at repair stations located within and outside the United States, with the exception that personnel at repair stations located outside the United States would not be required to be certificated under part 65.

Proposed paragraph (d)(1) retains the current requirement that only those individuals who supervise a maintenance function in a repair station located in the United States be certificated as a mechanic or repairman under part 65. Although the FAA will not require the certification of supervisory personnel at repair stations outside the United States, proposed paragraphs (d)(2) and (d)(3) would apply the practical experience and training requirements currently found in § 145.39(d) to all supervisory personnel regardless of where they perform their duties. Proposed paragraph (d)(2) would require all individuals who supervise a maintenance function at a repair station to have at least 18 months of practical experience in the maintenance function the individual is supervising. Proposed paragraph (d)(3) would require all supervisory personnel to be adequately trained on the maintenance of the article on which work is performed and to be familiar with the procedures, practices, inspection methods, materials, tools, and equipment used in the maintenance, preventive maintenance, or alterations for which the repair station is rated.

The current prohibition found in § 145.39(d) on the use of experience gained as an apprentice or student mechanic has been deleted because the FAA has determined that such experience is acceptable. In addition, the current requirement that at least one of the persons directly in charge of the maintenance functions of a repair station with an airframe rating must have had experience in approving aircraft for return to service after 100-hour, annual, and progressive inspections has been broadened. Current language specifying inspection types has been replaced by a reference to the inspections required by current § 91.409.

Proposed paragraph (e) is based on current § 145.39(d) and would apply to all repair stations with no substantive changes.

Proposed § 145.153(f) imposes additional requirements on repair stations located outside the United States. These requirements are based on the requirements for supervisory and inspection personnel at foreign repair stations specified in current § 145.75. Repair stations located outside the United States would be required to possess a sufficient number of supervisors and inspectors who understand FAA regulations, FAA Airworthiness Directives, and the manufacturers' maintenance and service instructions for the articles on which the repair station performs work. These personnel would also be required to understand, read, and write the English language.

The changes proposed in paragraphs (d)(2) and (d)(3), together with the provisions of proposed paragraph (f), would ensure that repair stations located outside the United States possess a sufficient number of supervisory and inspection personnel who are as well qualified as their domestic counterparts certificated under part 65.

Current references to determining the abilities of supervisory personnel by either the repair station or the Administrator have been included and expanded on in proposed paragraph (g). Current § 145.39(c) provides that the Administrator may inspect the employment and experience records of all supervisory personnel and also may determine further the abilities of supervisors by administering a personal test; however, the current regulation does not provide for the evaluation of inspection personnel located at a repair station in the United States through use of a personal test. In addition to providing that the Administrator may review the employment and experience records of supervisors and inspection personnel, proposed § 145.153(g) would permit the Administrator to use oral or practical tests to evaluate the ability of supervisory and of inspection personnel to perform the tasks for which they are assigned. The procedures the FAA would use to evaluate the technical competency of all repair station personnel would ensure that they possess a uniform level of competency, regardless of individual certification requirements.

Section 145.155 Recommendation of Persons for Certification as Repairmen

The proposal is based on current § 145.41; however, the proposal would require a repair station to recommend a sufficient number of repairmen to meet all applicable requirements of this part if the repair station chooses to use repairmen to satisfy these requirements. The current rule requires only the recommendation of at least one repairman. The proposal would delete the provisions of current § 145.41(b), which require that each person recommended must be at or above the level of shop foreman or department head or be responsible for supervising the work performed by the repair station, and would permit a repair station to recommend any employee who meets the requirements of current § 65.101 for certification as a repairman. The FAA has decided that this proposal would recognize the level of professional expertise of maintenance personnel currently employed at repair stations. The proposal also would enable repair stations to be more flexible in their hiring and placement practices. This proposal is consistent with current § 65.101, which does not require that an individual be employed in a supervisory position at a repair station to meet the eligibility requirements for a repairman certificate.

Consistent with proposed § 145.153(g), proposed § 145.155(b) also would permit the Administrator to evaluate any repairman's ability by inspecting employment and experience records and/or by administering an oral or practical test.

Section 145.157 Records of Management, Supervisory, and Inspection Personnel

This proposed section is based on current § 145.43. The FAA would continue to require a repair station to retain a roster of supervisory (including management) personnel and inspection personnel. Proposed paragraph (a)(3) would establish a new requirement for a repair station to retain a roster of those certificated personnel authorized to sign a maintenance release for approval for return to service of an altered or repaired article.

The proposal would retain current requirements relating to the retention of information indicating compliance with experience requirements; however, the record of total years of experience for an individual would not need to pertain solely to the type of work the individual is performing but only to maintenance work in general. The proposal would modify the current rule by requiring that these rosters be kept current but would not list the specific instances under which they would be required to be modified. Although the proposal does not retain the language of current § 145.43(d), these records would continue to be subject to inspection by the Administrator, as proposed in § 145.221. Because records would be required to be maintained for all management personnel, the language of current § 145.43(e) has not been retained.

Section 145.159 Training Requirements

This section would create a new requirement for each certificated repair station to establish a training program approved by the Administrator that consists of initial and recurrent training for employees assigned to perform maintenance, preventive maintenance, or alteration job functions. The proposal would require that records of this training be documented by the repair station in a form acceptable to the Administrator and that these records be retained for the duration of each individual's employment.

Subpart E Operating Rules

Section 145.201 Quality Assurance and Quality Control Systems

This proposed section is based on certain requirements in current §§ 145.45, 145.57, and 145.105. Proposed § 145.201(a)(1) would set forth a new requirement for a repair station to establish a quality assurance system. Section 145.201(a)(2) would continue to require a repair station to have a quality control and inspection system but would expand the scope of these systems to include the quality control of any work performed by a contractor. The proposal also would require these systems to be described in the repair station's manual.

Proposed § 145.201(b) continues to require repair stations to perform maintenance and alterations in accordance with part 43, which includes the applicable provisions of an approved maintenance program. The proposal also expands the scope of current § 145.57 to include preventive maintenance.

Current § 145.57(a) requires that each repair station maintain, in current condition, all manufacturers' maintenance manuals, instructions, and service bulletins that relate to the articles that it maintains or alters. To standardize language relating to aviation maintenance, the FAA proposes in paragraph (c) to replace the term "instructions" with "Instructions for Continued Airworthiness". Also, the FAA has determined that, because Airworthiness Directives (ADs) disseminate critical information about aviation safety, repair stations should possess all ADs that apply to an article on which that repair station performs maintenance, preventive maintenance, or alterations. Therefore, in proposed § 145.201(c), the FAA would require that each repair station maintain and keep current all ADs, Instructions for Continued Airworthiness, and service bulletins that relate to articles that it includes on its capability list.

Current § 145.57(a) requires a repair station to retain current manufacturer's service manuals for each article that it maintains or alters. The FAA has received petitions for rulemaking requesting that the FAA permit repair stations to have a manufacturer's customized aircraft maintenance manuals only when necessary, instead of continuously maintaining such manuals. The FAA recognizes that difficulties with this requirement frequently occur because manufacturers are reluctant to release proprietary information or are unwilling to provide maintenance manuals for their products when a repair station is not a party to a licensing agreement. Therefore, repair stations are able to receive the manufacturer's maintenance manual for a particular aircraft or article only when the aircraft or article is delivered to the repair station for maintenance. During certification, repair stations would be required to have standard maintenance manuals for the equipment on which they intend to perform maintenance, preventive maintenance, or alterations; however, the FAA proposes in § 145.201(d) to require repair stations to possess article-specific manufacturers' maintenance manuals only when required.

Section 145.203 Capability List

This new section would require repair stations to prepare and retain a current capability list that would contain a list of the articles on which it performs maintenance, preventive maintenance, or alterations. The proposal would require that these articles be identified by make and model, part number, or other nomenclature designated by the article's manufacturer. Before revising the capabilities list, a repair station would be required to complete a self-evaluation to ensure that it meets all of the requirements for the proposed operations.

Section 145.205 Repair Station Manual

The proposed section would establish a new requirement for a repair station to maintain and use a current approved repair station manual that would set forth the procedures and policies for the repair station's operation. It also would set forth requirements specifying the availability of the repair station manual to repair station personnel. Repair stations would be required to provide the CHDO with a current copy of the manual. Repair stations that provide electronic versions of their manual would be required to provide the FAA with the means to access the manual at the CHDO. In addition, except for revisions to the capability list, each revision to the repair station manual must be submitted to the Administrator for approval.

Section 145.207 Repair Station Manual Contents

This section would outline the minimum requirements for the proposed repair station manual. The information specified includes the majority of those items now described as acceptable by AC No. 145–3 for inclusion in the current IPM. The proposed manual would be required to include an organizational chart of management personnel, a roster of inspection personnel, a description of the facility's operations, an explanation of its quality assurance system, a description of its training program, procedures for performing work at a location other than the facility, procedures for self-evaluations, maintenance functions contracted to an outside certificated facility or noncertificated person, procedures for conducting work under § 145.7, a description of the facility's recordkeeping system, the repair station's capability list, procedures for updating the capability list, manual revision procedures, procedures for changes in location and facilities of the repair station, and other information required by the Administrator.

Section 145.209 Quality Control System and Procedures

This proposed section is based on current § 145.45. The proposal retains the basic requirements of that section and modifies certain provisions relating to the use of inspection devices and the

conduct of inspection procedures. It modifies the current rule by requiring inspection personnel to be skilled in operating inspection equipment and to be able to interpret defects indicated by the equipment at times when not just magnetic, fluorescent, or other mechanical inspection devices are used, but when any inspection device is used.

The proposed section would require that a repair station establish specific procedures for the inspection of incoming raw materials and articles, as well as inspection procedures for articles on which contract maintenance or alterations are performed. Current § 145.45(f) requires that an applicant for a repair station certificate provide a manual containing inspection procedures. The manual must explain in detail the repair station's inspection system, including the continuity of inspection responsibility. Although the proposed manual requirements are included in proposed § 145.207, proposed § 145.209(e) includes the inspection continuity requirements by requiring (under the quality control system and procedures) that the repair station ensure the continuity of inspection responsibility for the facility. The repair station's inspection system and procedures are part of its quality assurance system that would be described in the proposed repair station manual.

Section 145.211 Inspection of Maintenance, Preventive Maintenance, or Alterations Performed

This proposed section on inspection of maintenance, preventive maintenance, or alteration is based on current § 145.59 with no substantive differences, but it has been expanded to address repair stations located outside of the United States. It includes current restrictions placed on repair stations located outside the United States and on the supervisory and inspection personnel employed by these repair stations.

Section 145.213 Contract Maintenance

The proposed section is based on current § 145.47(c) and establishes new requirements for a repair station when contracting for services. These new requirements are described in detail under the heading "Contract Maintenance."

Section 145.215 Privileges and Limitations of Certificate

The proposed section is based on current § 145.51 and generally retains the requirements of the current rule, except as noted. Proposed § 145.215(a) modifies current § 145.51 (a) and (b) to include references to preventive maintenance and to describe more accurately the articles on which work can be performed. The proposed section also would permit a repair station to arrange for the maintenance, preventive maintenance, or alteration of any article for which it is rated at another organization under its quality control system. The proposal deletes the current references to the performance of 100-hour, annual, or progressive inspections found in current § 145.51(c). This language has been removed because inspection is included in the current § 1.1 definition of maintenance. Because the current general airframe rating would be eliminated under the proposal (limited ratings would still remain available), a repair station with an aircraft rating would be permitted to perform a 100-hour, annual, or progressive inspection and approve an aircraft for return to service.

In addition, because the applicability section of the proposed rule would permit a repair station to perform maintenance, preventive maintenance, or alterations on any type of article, § 145.215(b)(3) would describe the method and technical data requirements for major repairs or major alterations performed on experimental aircraft.

Section 145.217 Recordkeeping

This proposed section is based on current §§ 145.61 and 145.79. Proposed paragraph (a)(1) modifies the current rule by requiring all repair stations to retain detailed records showing the make, model, identification number, and serial number (when applicable) of the article on which work was performed. The current 2-year record retention requirement would be retained in paragraph (a)(2); however, the proposal would specify that the period from which this time would be measured would commence on the date on which the article was approved for return to service, instead of the date on which the work was performed. Proposed paragraph (a)(3) would require these records to include a copy of the maintenance release. Proposed paragraph (a)(4) would permit these records to be retained as actual work documents or copies thereof, or through the use of an automated data processing system protected from unauthorized use and access. Proposed paragraph (b) would require that the repair station provide a copy of an article's maintenance release, which must be retrievable in English, to the owner or operator. Under the proposed rule, the repair station could use as the maintenance release the record that it completes to comply with §§ 43.9 and 43.11 of this chapter.

Similar to current requirements of §§ 91.417(c), 121.380(c), and 135.439(c), proposed § 145.217(c) would require that a repair station make available to the Administrator or any authorized representative of the National Transportation Safety Board (NTSB) all maintenance records required to be kept by proposed § 145.217. The proposed paragraph specifies that the records would be required to be provided in English. The records would be required to be provided either in paper format or, if in other than paper format, with the means necessary to create a paper copy of the record.

Proposed paragraph (d) would specify those recordkeeping requirements that apply to repair stations located outside the United States.

Section 145.219 Reports of Defects or Unairworthy Conditions

Under current § 145.63 or § 145.79, repair stations are required to submit reports of defects or unairworthy conditions to the FAA. The FAA proposes to standardize the type of data reported under the service difficulty reporting (SDR) system by specifically listing in proposed § 145.219(b) the information required when a repair station submits a report. The required information would be consistent with the type of service difficulty information that air carriers operating under parts 121 and 135 are required to submit. To avoid a duplication of reporting requirements, the repair station still would not be required to submit this information to the FAA if the information has been provided as a result of other regulatory requirements.

Current § 145.63(b) states that in cases where filing a report of defects or unairworthy conditions might prejudice the repair station, the repair station shall refer the matter to the FAA for a determination as to whether a report is necessary. Because such a condition does not appear in other parts of the regulations requiring such reports, the FAA proposes to eliminate this condition from the proposed rule.

Section 145.221 FAA Inspections

This proposed section is based on current § 145.23 but is expanded so that the FAA would be able to inspect repair stations' contract maintenance providers. The proposal also would require that arrangements for contractors' services include provisions for inspection of the contractor by the FAA. The proposed rule would remove the statement found in the current rule specifying that after an inspection the repair station is notified in writing of any defects found during the inspection. This is common FAA practice and need not be specified in regulatory language.

Appendix A Job Functions

Appendix A would continue to set forth the job functions and the equipment requirements for repair stations except for those job functions that are contracted out. The proposed appendix A is updated and revised in accordance with the proposed ratings and classes for repair stations. The deletion of those functions that may be contracted out to another facility is described in detail above under the heading "Job Functions."

Paperwork Reduction Act

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. Information collection requirements in this proposed rule previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511) and have been assigned OMB Control Numbers 2120–0003 and 2120–0010.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposal: (1) would generate benefits that justify its costs and is a significant regulatory action as defined by Executive Order 12866 and DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because there has been considerable public interest in this subject; (2) would not have a significant impact on a substantial number of small entities; and (3) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Costs

The estimated net cost of compliance after subtracting cost savings with the proposed amendment would be approximately $33.3 million (net of cost savings) in 1996 dollars, discounted at 7 percent, over 11 years. The most costly requirement, which is in § 145.201, relates to operations and inspection procedures for quality assurance and quality control systems and would result in repair stations incurring discounted costs of $80.9 million. The most cost-saving requirement, which is in § 145.201, relates to a reduction in the number of manuals that a repair station would be required to maintain and would result in repair stations saving about $76.1 million discounted.

Benefits

The estimated quantifiable safety benefits of the proposed amendment are approximately $54.9 million in 1996 dollars, discounted at 7 percent, over 11 years. On an annual basis, an average of 6.9 total accidents would be avoided, preventing 2.2 fatalities, 1.7 serious injuries, and 2.7 minor injuries. The avoidance of 6.9 accidents would avert at a minimum the destruction of at least 4.7 general aviation aircraft and would avert substantial damage to 1.4 general aviation aircraft. Property damage to other types of aircraft would also be averted.

International Trade Impact Statement

This proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States. The proposal affects repair stations located both within and outside the United States. There are approximately 522 repair stations listed in AC No. 140–7I that are located outside the United States; they would be required to comply with each of the provisions applicable to repair stations located within the United States. However, repair stations located outside the United States would continue to be permitted to employ individuals not certificated under part 65.

The proposal is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. Furthermore, the proposal is consistent with the terms of several trade agreements to which the United States is a signatory, such as the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), incorporating the Agreement on Trade in Civil Aircraft (31 U.S.C. 619) and the Agreement on Technical Barriers to Trade (Standards) (19 U.S.C. 2531). Aircraft repair and maintenance services are subject to general obligations and specific U.S. market access commitments under the General Agreement on Trade in Services (GATS) administered by the World Trade Organization (WTO). The proposed rule is fully consistent with United States' obligations and commitments under this treaty. The proposed revision to part 145 also is consistent with 49 U.S.C. 40105, formerly § 1102(a) of the Federal Aviation Act of 1958, as amended, which requires the FAA to exercise and perform its powers and duties consistently with any obligation assumed by the United States in any agreement that may be in force between the United States and any foreign country or countries.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not meet the cost thresholds described above. Furthermore, this proposed rule would not impose a significant cost on small

governments and would not uniquely affect those small governments. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The initial determination is that the annual costs associated with compliance with the proposed revision of part 145 would be less than $5,000 per repair station and each affected manufacturer. For the type of business entities covered by this proposed rule, these annual costs are negligible. Therefore, the FAA certifies that the proposed revision of part 145, would not have a significant economic impact, negative or positive, on the repair stations or MMFs considered to be small entities under the rule.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Compatibility

In keeping with the U.S. obligation under the Convention of International Civil Aviation, it is the FAA's policy to comply with the Standards and Recommended Practices of the International Civil Aviation Organization to the maximum extent practicable. For this notice, the FAA has determined that this proposal, if adopted, would not present any differences.

This proposed rule would provide nearly uniform requirements by the FAA and the JAA for maintenance facilities that perform maintenance, preventive maintenance, and alterations on aircraft, airframes, aircraft engines, propellers, appliances, components, and parts. Exceptions to these nearly uniform requirements are the FAA's requirements for major repairs and major alterations to be performed in accordance with technical data approved by the FAA, and the JAA's requirements for each approved maintenance organization to designate an accountable manager.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Cross Reference

To illustrate how the current regulations have been revised, and to identify how the proposed rule relates to the current rule, the following cross-reference tables are provided.

CROSS-REFERENCE TABLE

Old section	New section(s)
145.1	145.1
145.2	145.7
145.3	145.5 and 145.9
145.11	145.51 and 145.53
145.13	145.51
145.15	145.57 and 145.105
145.17	145.55
145.19	145.5
145.21	145.105
145.23	145.221
145.25	145.9
145.31	145.59
145.33	145.59
145.35	145.103
145.37	145.103
145.39	145.151 and 145.153
145.41	145.155
145.43	145.157
145.45	145.201, 145.207, and 145.209
145.47	145.111 and 145.213
145.49	145.111
145.51	145.107 and 145.215

CROSS-REFERENCE TABLE—Continued

Old section	New section(s)
145.53	145.5 and 145.215
145.55	145.101
145.57	145.103 and 145.201
145.59	145.211
145.61	145.217
145.63	145.219
145.71	145.51
145.73	145.5 and 145.215
145.75	145.151 and 145.153
145.77	Deleted
145.79	145.217 and 145.219
145.101	Deleted
145.103	Deleted
145.105	145.201
Appendix A	Appendix A.

CROSS-REFERENCE TABLE

New section	Old section(s)
145.1	145.1
145.2	New
145.3	New
145.5	145.3, 145.19, and 145.53
145.7	145.2
145.9	145.3 and 145.25
145.11	New
145.51	145.11, 145.13, and 145.71
145.53	145.11 and 145.71
145.55	145.15 and 145.17
145.57	145.15
145.59	145.31 and 145.33
145.61	New
145.101	145.55
145.103	145.35, 145.37, and 145.57
145.105	145.21
145.107	145.51
145.109	New
145.111	145.47 and 145.49
145.151	145.39 and 145.75
145.153	145.39 and 145.75
145.155	145.41
145.157	145.43
145.159	New
145.201	145.45, 145.57, and 145.105
145.203	New
145.205	New
145.207	145.45
145.209	145.45
145.211	145.59
145.213	145.47
145.215	145.51 and 145.73
145.217	145.61 and 145.79
145.219	145.63 and 145.79
145.221	145.23
Appendix A	Appendix A

List of Subjects

14 CFR Part 11

Aircraft, Airmen, Aviation safety, Safety.

14 CFR Part 91

Aircraft, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 121

Aircraft, Airmen, Airplanes, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 135

Aircraft, Airplanes, Airworthiness, Airmen, Helicopters, Aviation safety, Safety.

14 CFR Part 145

Air carriers, Air transportation, Aircraft, Aviation safety, Recordkeeping and reporting, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 11, 91, 121, 135, and 145 of the Federal Aviation

Regulations (14 CFR parts 11, 91, 121, 135, and 145) as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701, 44702, 44711, 46102.

§ 11.101 [Amended]

2. Section § 11.101(b) is amended by replacing the reference to § 145.63 in the chart with a reference to § 145.219.

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 46507, 47122, 47508, 47528, 47531.

4. Section 91.411 is amended by revising paragraphs (b)(2)(iii) and (b)(2)(iv) and by removing paragraph (b)(2)(v) to read as follows:

§ 91.411 Altimeter system and altitude reporting equipment tests and inspections.

* * * * *

(b) * * *

(2) * * *

(iii) A specialized service rating appropriate to the test to be performed; or

(iv) An aircraft rating appropriate to the airplane or helicopter to be tested; or

* * * * *

5. Section 91.413 is amended by revising paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) and by removing paragraph (c)(1)(iv) to read as follows:

§ 91.413 ATC transponder tests and inspections.

* * * * *

(c) * * *

(1) * * *

(i) An avionics rating, Class 3;

(ii) A limited avionics rating appropriate to the make and model transponder to be tested;

(iii) A specialized service rating appropriate to the test to be performed; or

* * * * *

6. Appendix A to part 91 is amended by revising section 4 paragraph (b)(1)(ii) and by removing section 4 paragraph (b)(1)(iii) to read as follows:

Appendix A to Part 91 Category II Operations: Manual, Instruments, Equipment, and Maintenance

* * * * *

(4) * * *

(b) * * *

(1) * * *

(ii) An avionics rating.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

7. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701, 44702, 44705, 44709, 44711, 44713, 44716, 44717, 44722, 44901, 44903, 44904, 44912, 46105.

8. Special Federal Aviation Regulation No. 36 is amended by revising paragraph (2)(c) to read as follows:

SFAR No. 36

* * * * *

(2) * * *

(c) Contrary provisions of § 145.215(b)(2) of the Federal Aviation Regulations notwithstanding, the holder of a repair station certificate under 14 CFR part 145 that is located in the United States may perform a major repair on an article for which it is rated using technical data not approved by the Administrator and approve that article for return to service, if authorized in accordance with this Special Federal Aviation Regulation. If the certificate holder holds a rating limited to a component of a product or article, the holder may not, by virtue of this Special Federal Aviation Regulation, approve that product or article for return to service.

* * * * *

9. Section 121.378 is amended by revising paragraph (a) to read as follows:

§ 121.378 Certificate requirements.

(a) Except for maintenance, preventive maintenance, alterations, and required inspections performed by a certificated repair station that is located outside the United States, each person who is directly in charge of maintenance, preventive maintenance, or alterations, and each person performing required inspections must hold an appropriate airman certificate.

* * * * *

10. Section 121.709 is amended by removing the concluding text of paragraph (b); redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and adding a new paragraph (c) to read as follows:

§ 121.709 Airworthiness release or aircraft log entry.

* * * * *

(c) Notwithstanding paragraph (b)(3) of this section, after maintenance, preventive maintenance, or alterations performed by a repair station that is located outside the United States, the airworthiness release or log entry required by paragraph (a) of this section may be signed by a person authorized by that repair station.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

11. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44705, 44709, 44711, 44713, 44715, 44717, 44722.

12. Section 135.435 is amended by revising paragraph (a) to read as follows:

§ 135.435 Certificate requirements.

(a) Except for maintenance, preventive maintenance, alterations, and required inspections performed by a certificated repair station that is located outside the United States, each person who is directly in charge of maintenance, preventive maintenance, or alterations, and each person performing required inspections must hold an appropriate airman certificate.

* * * * *

13. Section 135.443 is amended by redesignating paragraph (c) as paragraph (d) and revising it; and redesignating the concluding text of paragraph (b) as paragraph (c) and revising it to read as follows:

§ 135.443 Airworthiness release or aircraft maintenance log entry.

* * * * *

(c) Notwithstanding paragraph (b)(3) of this section, after maintenance, preventive maintenance, or alterations performed by a repair station that is located outside the United States, the airworthiness release or log entry required by paragraph (a) of this section may be signed by a person authorized by that repair station.

(d) Instead of restating each of the conditions of the certification required by paragraphs (b) and (c) of this section, the certificate holder may state in its manual that the signature of an authorized certificated mechanic or repairman constitutes that certification.

14. Part 145 is revised to read as follows:

PART 145—REPAIR STATIONS

Special Federal Aviation Regulations

SFAR No. 36 [Note]

Subpart A—General

Sec.
145.1 Applicability.
145.2 Certificate issued to a person in a country outside the United States; certificate issued to a person in a country with which the U.S. has a bilateral aviation safety agreement.
145.3 Definition of terms.
145.5 Certificate and operations specifications requirements.
145.7 Performance of maintenance, preventive maintenance, alterations, and required inspections for certificate holders under parts 121, 125, and 135; and for foreign air carriers or foreign persons operating a U.S.-registered aircraft in common carriage under part 129.
145.9 Advertising.
145.11 Deviation authority.

Subpart B—Certification

145.51 Application for certificate.
145.53 Issue of certificate.
145.55 Duration and renewal of certificate.
145.57 Amendment to or transfer of certificate.
145.59 Ratings and classes.
145.61 Transition to new system of ratings.

Subpart C—Facilities, Equipment, Materials, and Housing

145.101 General.
145.103 Facility and housing requirements.
145.105 Change of location, housing, or facilities.
145.107 Satellite repair stations.
145.109 Maintenance, preventive maintenance, and alterations performed at satellite repair stations.
145.111 Equipment and material requirements.

Subpart D—Personnel

145.151 Personnel requirements.
145.153 Supervisory and inspection personnel requirements.
145.155 Recommendation of persons for certification as repairmen.
145.157 Records of management, supervisory, and inspection personnel.
145.159 Training requirements.

Subpart E—Operating Rules

145.201 Quality assurance and quality control systems.
145.203 Capability list.
145.205 Repair station manual.
145.207 Repair station manual contents.
145.209 Quality control system and procedures.
145.211 Inspection of maintenance, preventive maintenance, or alterations performed.
145.213 Contract maintenance.
145.215 Privileges and limitations of certificate.
145.217 Recordkeeping.
145.219 Reports of defects or unairworthy conditions.
145.221 FAA inspections.

Appendix A to Part 145—Job Functions

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44707, 44717.

Special Federal Aviation Regulation SFAR No. 36

Editorial Note: For the text of SFAR No. 36, see part 121 of this chapter.

Subpart A—General

§ 145.1 Applicability.

This part prescribes the rules governing the certification of, and associated ratings and general operating rules for, repair stations that perform maintenance, preventive maintenance, or alteration of any aircraft, airframe, aircraft engine, propeller, appliance, or component part thereof.

§ 145.2 Certificate issued to a person in a country outside the United States; certificate issued to a person in a country with which the U.S. has a bilateral aviation safety agreement.

(a) The Administrator may issue a repair station certificate to a person in a country outside the U.S., if the Administrator finds that the person complies with the requirements of this part.

(b) If the person is located in a country with which the U.S. has a bilateral aviation safety agreement, the Administrator may base the finding that the person complies with this part on a certification from the civil aviation authority of that country; such certification must be made in accordance with implementation procedures signed by the Administrator or the Administrator's designee.

§ 145.3 Definition of terms.

For the purposes of this part, the following definitions apply:

(a) *Accountable manager* means the manager who has the corporate authority for ensuring that all maintenance, preventive maintenance, and alteration is carried out to the standards required by the Administrator.

(b) *Actual work documents* means records that provide a detailed description of the maintenance, preventive maintenance, and alteration steps and procedures actually accomplished on a particular aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof, and that are signed by the individual performing or approving the work.

(c) *Approve for return to service* means certification by a certificated repair station representative that the maintenance, preventive maintenance, or alteration performed on an aircraft, airframe, aircraft engine, propeller, appliance, or component part thereof was accomplished using the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or by using other methods, techniques, and practices acceptable to the Administrator.

(d) *Approved data* means technical information approved by the Administrator.

(e) *Article* means any item, including but not limited to, an aircraft, airframe, aircraft engine, propeller, appliance, accessory, assembly, subassembly, system, subsystem, module, component, unit, product, or part.

(f) *Certificated* means certificated by the Administrator.

(g) *Certificate holding district office* means the Flight Standards District Office that has responsibility for administering the certificate and is charged with the overall inspection of the certificate holder's operation.

(h) *Composite* means structural materials made of substances, including, but not limited to, wood, metal, ceramic, plastic, fiber-reinforced materials, graphite, boron, or epoxy, with built-in strengthening agents that may be in the form of filaments, foils, powders, or flakes of a different material.

(i) *Computer system* means any electronic or automated system capable of receiving, storing, and processing external data, and transmitting and presenting such data in a usable form for the accomplishment of a specific function.

(j) *Consortium* means the holder of a type certificate that forms a combination or group of separate certificated repair stations to perform maintenance, preventive maintenance, or alterations of that type-certificated product and components thereof, and functions under a single unified quality control and quality assurance system.

(k) *Directly in charge.* A person who is directly in charge is assigned to a position in which he or she is responsible for the work of a shop that performs maintenance, preventive maintenance, alterations, or other functions affecting aircraft airworthiness. A person who is directly in charge need not physically observe and direct each worker constantly but must be available for consultation and decision on matters requiring instruction or decision from higher authority than that of the persons performing the work.

(l) *Facility* means a physical plant, including land, buildings, and equipment, that provides the means for the performance of maintenance, preventive maintenance, or alteration of any article.

(m) *Housing* means buildings, hangars, and other structures to accommodate the necessary equipment and materials of a repair station that

(1) Provide working space for the performance of the maintenance, preventive maintenance, or alterations for which the repair station is certificated and rated; and

(2) Provide structures for the proper protection of aircraft, airframes, aircraft engines, appliances, components, parts, and subassemblies thereof during disassembly, cleaning, inspection, repair, alteration, assembly, and testing; and for the proper storage, segregation, and protection of materials, parts, and supplies.

(n) *Maintenance release* means a repair station document signed by an authorized repair station representative that states that the article worked on is approved for return to service for the maintenance, preventive maintenance, or alterations performed.

(o) *Overhauled.* An article can be properly described as "overhauled" if, by using methods, techniques, and practices acceptable to the Administrator, the article has been disassembled, cleaned, inspected, repaired as necessary, and reassembled, and it has been tested in accordance with approved standards and technical data or in accordance with current standards and technical data acceptable to the Administrator that have been developed and documented by the holder of the type certificate, supplemental type certificate, or a material, part, process, or appliance approval under 14 CFR 21.305 of this chapter.

(p) *Signature* means an individual's unique identification used as a means of authenticating a maintenance record entry or maintenance record. A signature may be handwritten, electronic, or any other form acceptable to the Administrator.

§ 145.5 Certificate and operations specifications requirements.

(a) No person may operate as a certificated repair station without, or in violation of, a repair station certificate or Operations Specifications issued under this part.

(b) A certificated repair station may perform maintenance, preventive maintenance, or alterations on an aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof only for which it is rated and within the limitations placed in its Operations Specifications.

(c) The certificate issued to each certificated repair station must be available on the premises for inspection by the public and the Administrator.

(d) Operations Specifications issued to each certificated repair station contain the following:

(1) The repair station certificate number;

(2) Class ratings;

(3) Limited ratings, to include makes, models, or parts;

(4) Specialized service ratings, to include the specification used;

(5) The air carrier's geographic authorization for repair stations located outside of the United States; and

(6) Any other items the Administrator may require or allow to meet a particular situation.

§ 145.7 Performance of maintenance, preventive maintenance, alterations, and required inspections for certificate holders under parts 121, 125, and 135; and for foreign air carriers or foreign persons operating a U.S.-registered aircraft in common carriage under part 129.

(a) Each certificated repair station that performs maintenance, preventive maintenance, or alterations for an air carrier or commercial operator having a continuous airworthiness maintenance program under part 121 or part 135 of this chapter must, as applicable, comply with

(1) Sections 121.361, 121.365, 121.367, 121.371, 121.375, 121.377, 121.378, and 121.380 of this chapter as the part 121 certificate holder is required to comply; or

(2) Sections 135.2, 135.411, 135.419, 135.421, 135.423, 135.425, 135.429, 135.433, 135.435, and 135.439 of this chapter as the part 135 certificate holder is required to comply.

(b) Each certificated repair station that performs maintenance, preventive maintenance, or alterations under paragraph (a) of this section must perform that work in accordance with the applicable portions of the air carrier's or commercial operator's manual.

(c) Each certificated repair station that performs inspections on airplanes under part 125 of this chapter must perform those inspections in accordance with the approved inspection program for the operator of the airplane.

(d) Each certificated repair station that performs maintenance, preventive maintenance, or alterations for a foreign air carrier or foreign person operating a U.S.-registered aircraft in common carriage under part 129 of this chapter must perform that work in accordance with a program approved by the Administrator.

(e) Notwithstanding the facility and housing requirements of § 145.103, the Administrator may grant approval for a certificated repair station that is located at a line station for an air carrier certificated under part 121 or part 135 of this chapter, or at a line station for a foreign air carrier or foreign person operating a U.S.-registered aircraft in common carriage under part 129 of this chapter to perform line maintenance on any aircraft of that air carrier or person, provided

(1) The repair station performs such line maintenance in accordance with the operator's manual or approved program;

(2) The repair station has the necessary equipment, trained personnel, and technical data to perform such line maintenance; and

(3) The repair station's Operations Specifications includes an authorization to perform line maintenance.

§ 145.9 Advertising.

(a) No repair facility may advertise as a certificated repair station until a repair station certificate has been issued to that facility.

(b) No certificated repair station may make any statement, either in writing or orally, about itself that is false or is designed to mislead any person.

(c) Whenever the advertising of a repair station indicates that it is certificated, the advertisement must clearly state the repair station's certificate number.

§ 145.11 Deviation authority.

(a) The Administrator may, upon consideration of the circumstances of a particular repair station, issue a deviation providing relief from specified sections of this part, provided the Administrator finds that the circumstances presented warrant the deviation and that a level of safety will be maintained equal to that provided by the rule from which the deviation is sought. This deviation authority will be issued as a Letter of Deviation Authority.

(b) A Letter of Deviation Authority may be terminated or amended at any time by the Administrator.

(c) A request for deviation authority must be made in a form and manner acceptable to the Administrator and submitted to the FAA, Associate Administrator for Regulation and Certification, 800 Independence Avenue SW., Washington, DC 20591, at least 60 days before the date the deviation from specified sections in this part is necessary for the intended maintenance, preventive maintenance, or alteration. A request for deviation authority must contain a complete statement of the circumstances and justification for the deviation requested, and show that a level of safety will be maintained equal to that provided by the rule from which the deviation is sought.

Subpart B—Certification

§ 145.51 Application for certificate.

(a) An application for a repair station certificate and rating must be made on a form and in a manner prescribed by the Administrator, and must include

(1) A copy of the applicant's repair station manual required by § 145.205 for approval by the Administrator;

(2) A list by type, make, or model, as appropriate, of the aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof, for which application is made;

(3) A statement signed by the accountable manager confirming that the procedures described in the repair station manual are in place and meet the requirements of the applicable Federal Aviation Regulations;

(4) An organizational chart of the repair station and a list of the names and titles of managing and supervisory personnel;

(5) A description of the applicant's facilities, including the physical address; and

(6) A list of the maintenance functions to be performed for the repair station, under contract, by another repair organization/facility under § 145.213.

(b) The equipment, personnel, technical data, and housing and facilities required for the certificate and rating for which the repair station has applied, or for an additional rating, must be in place for inspection at the time of certification by the Administrator.

(c) In addition to meeting the other applicable requirements for a repair station certificate and rating, an applicant for a repair station certificate and rating that is located outside the United States must meet the requirements of this paragraph.

(1) The applicant must show that the repair station certificate and/or rating is necessary for maintaining or altering:

(i) U.S.-registered aircraft, and aircraft engines, propellers, appliances, components, or parts thereof for use on U.S.-registered aircraft; or

(ii) Foreign-registered aircraft operated under the provisions of part 121 or part 135 of this chapter, and aircraft engines, propellers, appliances, components, or parts thereof for use on these aircraft.

(2) The applicant must furnish evidence that the fee prescribed by the Administrator has been paid.

(3) The applicant must submit the documentation required by this section in English.

(d) An applicant for a repair station certificate operated by a consortium, which functions as a single organization with regard to quality control and quality assurance, holds an approved type certificate, and performs maintenance, preventive maintenance, and alterations of that type-certificated product and components thereof, must have the consortium's quality control and quality assurance systems in place at each of its facilities.

(e) An application for an additional rating or renewal of a repair station certificate must be made on a form and in a manner prescribed by the Administrator. The application need include only that information necessary to substantiate the change or renewal of the certificate.

§ 145.53 Issue of certificate.

An organization is entitled to a repair station certificate with appropriate ratings prescribing such Operations Specifications and limitations as are necessary in the interest of safety when the Administrator determines that the organization meets the applicable requirements of this part.

§ 145.55 Duration and renewal of certificate.

(a) A certificate or rating issued to a repair station located in the United States is effective from the date of issue until the repair station surrenders it or the Administrator suspends or revokes it.

(b) A certificate or rating issued to a repair station located outside the United States is effective from the date of issue until

(1) The last day of the 24th month after the date of issue,

(2) The repair station surrenders the certificate, or

(3) The Administrator suspends or revokes the certificate.

(c) The holder of a certificate that expires or is surrendered, suspended, or revoked by the Administrator must return it to the Administrator.

(d) A certificated repair station located outside the United States that applies for a renewal of its repair station certificate must:

(1) Submit its request for renewal no later than 90 days before the repair station's current certificate expires. If a request for renewal is not made within this period, the repair station must follow the application procedure prescribed by the Administrator.

(2) Send its request for renewal to the FAA office that has jurisdiction over the station.

§ 145.57 Amendment to or transfer of certificate.

(a) If a repair station desires to amend, revise, or add a rating to its certificate, it must apply for a change in its repair station certificate on a form and in a manner prescribed by the Administrator.

(b) The privileges of a repair station certificate cannot be transferred if the repair station is sold, leased, or otherwise conveyed.

§ 145.59 Ratings and classes.

(a) *Aircraft ratings.* An aircraft rating on a repair station certificate permits that repair station to perform maintenance, preventive maintenance, or alterations on an aircraft, including work on the powerplant(s) of that aircraft up to, but not including, overhaul as that term is defined in § 145.3 under the following classes:

(1) Class 1: Aircraft (other than rotorcraft and aircraft composed primarily of composite material) of 12,500 pounds maximum certificated takeoff weight or less.

(2) Class 2: Aircraft (other than rotorcraft and aircraft composed primarily of composite material) over 12,500 pounds maximum certificated takeoff weight and up to and including 75,000 pounds maximum certificated takeoff weight.

(3) Class 3: Aircraft (other than rotorcraft and aircraft composed primarily of composite material) over 75,000 pounds maximum certificated takeoff weight.

(4) Class 4: Rotorcraft (other than rotorcraft composed primarily of composite material) of 6,000 pounds maximum certificated takeoff weight or less.

(5) Class 5: Rotorcraft (other than rotorcraft composed primarily of composite material) over 6,000 pounds maximum certificated takeoff weight.

(6) Class 6: Aircraft composed primarily of composite material of 12,500 pounds maximum certificated takeoff weight or less.

(7) Class 7: Aircraft composed primarily of composite material over 12,500 pounds maximum certificated takeoff weight.

(b) *Powerplant ratings.* A powerplant rating on a repair station certificate permits that repair station to perform maintenance, preventive maintenance, or alterations of powerplants under the following classes:

(1) Class 1: Reciprocating engines.

(2) Class 2: Turbopropeller and turboshaft engines.

(3) Class 3: Turbojet and turbofan engines.

(c) *Propeller ratings.* A propeller rating on a repair station certificate

permits that repair station to perform maintenance, preventive maintenance, or alterations of propellers under the following classes:

(1) Class 1: Fixed-pitch and ground-adjustable propellers.

(2) Class 2: Variable-pitch propellers.

(d) *Avionics ratings.* An avionics rating on a repair station certificate permits that repair station to perform maintenance, preventive maintenance, or alterations of avionics equipment under the following classes:

(1) Class 1: Communication equipment. Any radio transmitting or receiving equipment, or both, used in aircraft to send or receive communications, regardless of carrier frequency or type of modulation used.

(2) Class 2: Navigational equipment. Any system used in aircraft for navigation except equipment operated on pulsed radio frequency principles.

(3) Class 3: Pulsed equipment. Any aircraft electronic system operated on pulsed radio frequency principles.

(e) *Computer systems ratings.* A computer systems rating on a repair station certificate permits that repair station to perform maintenance, preventive maintenance, or alterations of digital computer systems and components thereof, that have the function of receiving external data, processing such data, and transmitting and presenting the processed data under the following classes:

(1) Class 1: Aircraft computer systems: Flight management, flight control, and similar systems.

(2) Class 2: Powerplant computer systems:

Fuel control, electronic engine control, and similar systems.

(3) Class 3: Avionics computer systems: Electronic flight instrument, navigation management, and similar systems.

(f) *Instrument ratings.* An instrument rating on a repair station certificate permits that repair station to perform maintenance, preventive maintenance, or alterations of instruments under the following classes:

(1) Class 1: Mechanical: Any diaphragm, bourdon tube, aneroid, or optical or mechanically driven centrifugal instrument.

(2) Class 2: Electrical: Any self-synchronous and electrical indicating instruments and systems.

(3) Class 3: Gyroscopic: Any instrument or system using gyroscopic principles and motivated by air pressure or electrical energy.

(4) Class 4: Electronic: Any instrument whose operation depends on transistors; lasers; fiber optics; solid-state, integrated circuits; vacuum tubes; or similar devices.

(g) *Accessory ratings.* An accessory rating on a repair station certificate permits that repair station to perform maintenance, preventive maintenance, or alterations of accessory equipment under the following classes:

(1) Class 1: Mechanical accessories that depend on friction, hydraulics, mechanical linkage, or pneumatic pressure for operation.

(2) Class 2: Electrical accessories that depend on or produce electrical energy.

(3) Class 3: Electronic accessories that depend on the use of transistors; lasers; fiber optics; solid-state, integrated circuits; vacuum tubes; or similar devices.

(4) Class 4: Auxiliary power units (APUs) that may be installed on an aircraft as self-contained units to supplement the aircraft's engines as a source of hydraulic, pneumatic, or electrical power.

(h) *Limited ratings.* Whenever deemed appropriate by the Administrator, a repair station may be issued a limited rating for the performance of maintenance, preventive maintenance, or alterations of a particular make and model, or part thereof, of any of the following articles:

(1) Aircraft,
(2) Airframes,
(3) Powerplants,
(4) Propellers,
(5) Avionics equipment,
(6) Computer systems,
(7) Instruments, and
(8) Accessories.

(i) *Specialized service ratings.* A specialized service rating may be issued to a repair station to perform specific maintenance or processes. The Operations Specifications of the repair station must identify the specification used in performing that specialized service.

The specification may be

(1) A civil or military specification that is currently used by industry and approved by the Administrator; or

(2) A specification developed by the repair station and approved by the Administrator.

§ 145.61 Transition to new system of ratings.

(a) Except as provided in paragraph (b) of this section, a certificated repair station with a certificate issued before [*effective date of the final rule*], may exercise the privileges of that certificate until [*2 years after the effective date of the final rule*].

(b) A certificated repair station with a certificate issued before [*effective date of the final rule*] that makes an application to change any portion of that certificate under § 145.57 must meet all the applicable requirements of this part and apply for and receive approval for each rating under which the repair station desires to exercise privileges.

Subpart C—Facilities, Equipment, Materials, and Housing

§ 145.101 General.

A certificated repair station must provide personnel, facilities, equipment, and materials in quantity and quality that meet the standards required for the issuance of the certificate and ratings that the repair station holds.

§ 145.103 Facility and housing requirements.

(a) Each certificated repair station must provide suitable facilities and housing so that the maintenance, preventive maintenance, or alteration being performed is protected from weather elements, dust, and heat; such facilities must include the following:

(1) Housing for the repair station's necessary equipment and material.

(2) Space for the maintenance, preventive maintenance, or alterations that the repair station performs under its rating.

(3) Facilities for properly storing, segregating, and protecting materials, parts, and supplies.

(4) Facilities for properly protecting parts and subassemblies during disassembly, cleaning, inspection, repair, alteration, and assembly.

(5) Shop space where machine tools and equipment are kept and where the largest amount of bench work is done. The shop space need not be partitioned, but machines and equipment must be segregated whenever

(i) Machine or woodwork is performed near an assembly area where chips or other material might inadvertently fall into assembled or partially assembled work;

(ii) Unpartitioned cleaning units for parts are near other operations;

(iii) Painting or spraying is performed in an area arranged so that paint or paint dust could fall on assembled or partially assembled work;

(iv) Paint spraying, cleaning, or machine operations are performed near testing operations so that the precision of test equipment might be affected; or (v) Determined necessary by the Administrator.

(6) Assembly space in an enclosed structure where the largest amount of assembly work is done. The assembly space must be large enough for the largest article on which work is to be performed.

(7) Storage facilities used exclusively for properly storing and protecting parts and raw materials, separated from shop and working space so that

(i) Only acceptable parts and supplies are used; and

(ii) Parts being assembled or disassembled or awaiting assembly or disassembly will be stored and protected so as to minimize the possibility of damage.

(8) Ventilation for the repair shop and the assembly and storage areas so that the physical capability of workers is not impaired.

(9) Lighting for work being performed that does not adversely affect the quality of work.

(10) Control of the temperature of the shop and assembly area so that the quality of work is not affected. Whenever special maintenance operations are being performed, the temperature and humidity control must be adequate to ensure the airworthiness of the article being maintained.

(b) A certificated repair station must meet the additional special facility and housing requirements of this paragraph that apply to each rating held by that repair station.

(1) Except as provided in paragraph (b)(2) of this section, a repair station with an aircraft rating must provide suitable, permanent housing to enclose the largest type and model of aircraft for which it is rated.

(2) If a repair station is located where climatic conditions allow the repair station to perform maintenance, preventive maintenance, or alterations on aircraft outside, the repair station may use permanent work docks if they meet the requirements of § 145.103(a). These permanent work docks must be acceptable to the Administrator.

(3) A repair station that performs maintenance, preventive maintenance, or alterations on any article of composite construction must meet acceptable process requirements.

(4) A repair station with either a powerplant or accessory rating must

(i) Provide suitable trays, racks, or stands to separate complete engine or accessory assemblies from each other during assembly and disassembly; and

(ii) Ensure that parts are protected to prevent contaminants from entering into or falling on such parts either before or during assembly.

(5) A repair station with a propeller rating must provide suitable stands, racks, or other fixtures to perform the maintenance, preventive maintenance, or alteration, and to store propellers properly.

(6) A repair station with an avionics rating must provide suitable storage facilities to ensure that parts and units that might deteriorate from dampness or moisture are protected.

(7) A repair station with an avionics, instrument, or computer system rating must provide a facility that meets the standards for environmental control and protection from contaminants specified by the equipment or system manufacturer.

(8) A repair station must meet any special facilities requirements determined by the manufacturer and approved by the Administrator for an article or system on which maintenance, preventive maintenance, or alteration is performed.

(c) A certificated repair station may temporarily transport material, equipment, and technical personnel that are necessary to perform maintenance, preventive maintenance, alteration, or a certain specialized service on an aircraft at a place other than that repair station's fixed location, if the following requirements are met:

(1) The work is necessary due to a special circumstance, for example, aircraft on ground, or preparation for a ferry flight, as determined by the Administrator; and

(2) The repair station's manual includes the manner and procedures for accomplishing maintenance, preventive maintenance, alteration, or a specialized service at a place other than the repair station's fixed location.

§ 145.105 Change of location, housing, or facilities.

(a) A certificated repair station may not make any change in its location or any change, deletion, or addition to its housing or facilities, whether the change is a new location, is a substantial rearrangement of space within the present location, or involves moving any of the housing or facilities that are required by § 145.103, unless the change is approved by the Administrator.

(b) The Administrator may prescribe the conditions, including any limitations, under which a certificated repair station may operate while it is changing its location, housing, or facilities.

(c) A certificated repair station may not operate at a new location until approved by the Administrator.

§ 145.107 Satellite repair stations.

(a) A satellite repair station is a repair station with its certificate issued by the Administrator that operates under the managerial control of a parent certificated repair station. A satellite repair station must

(1) Meet the requirements for each rating held by the satellite repair station; and

(2) Prepare a repair station manual required by § 145.205 that is:

(i) Consistent with the parent certificated repair station's manual; and

(ii) Approved by the FAA certificate holding district office.

(b) Unless the Administrator indicates otherwise, personnel and equipment from a certificated repair station and from each of the repair station's independent satellite repair stations may be cross-utilized by the parent repair station or by any of its satellite repair stations.

(c) A repair station located within the United States may not have a satellite repair station located outside the United States.

(d) A repair station located outside of the United States may not have a satellite repair station located within the United States.

§ 145.109 Maintenance, preventive maintenance, and alterations performed at satellite repair stations.

The holder of a repair station certificate may perform maintenance, preventive maintenance, or alterations at a satellite repair station if a chief inspector or assistant chief inspector is designated for each satellite repair station. That inspector must be available at the satellite repair station or, if away from the premises, by telephone, radio, or other electronic means.

§ 145.111 Equipment and material requirements.

(a) Except when work is being performed at an authorized satellite facility, a certificated repair station must have, located on the premises and under its full control, the equipment and material necessary to perform the maintenance, preventive maintenance, or alterations appropriate to the rating held by the repair station as set forth in appendix A to this part. Such equipment and material must be acceptable to the Administrator.

(b) A certificated repair station must ensure that all inspection and test equipment used for product acceptance and/or for making a finding of airworthiness is tested at regular intervals to ensure correct calibration to a standard acceptable to the Administrator.

(c) Each certificated repair station performing work under a rating other than a specialized service rating must have suitable tools and equipment for the functions set forth in appendix A to this part, as appropriate, for each rating held by the repair station. Repair stations with limited ratings and specialized service ratings must be equipped to perform the functions

applicable to the make and model of the article on which maintenance, preventive maintenance, or alteration is performed. The tools and equipment must be those recommended by the manufacturer of the article on which the repair station performs maintenance, preventive maintenance, or alteration, or tools and equipment that are equivalent to the manufacturer's recommendation and acceptable to the Administrator.

(d) A certificated repair station performing work under a specialized service rating must have the appropriate technical data prescribed by the specification or manufacturer for performing the maintenance or alterations permitted by the specialized service rating. Such data must be approved by the Administrator.

Subpart D—Personnel

§ 145.151 Personnel requirements.

(a) Each certificated repair station must:

(1) Designate an individual as the accountable manager;

(2) Have a sufficient number of personnel to plan and perform the maintenance, preventive maintenance, or alterations for which the repair station is rated; and

(3) Determine the abilities of its noncertificated employees to perform maintenance operations, based on practical tests or employment records.

(b) Each certificated repair station is responsible for ensuring the satisfactory performance of work by its maintenance employees.

(c) Each certificated repair station must have a sufficient number of employees who have detailed knowledge of the particular maintenance function or technique for which the repair station is rated, based on satisfactory training or applicable technical experience with the article or technique involved.

§ 145.153 Supervisory and inspection personnel requirements.

(a) Each certificated repair station must provide a sufficient number of trained personnel who can supervise and inspect the maintenance, preventive maintenance, or alterations for which the station is rated.

(b) Each supervisor must have direct supervision over working groups but does not need to be experienced in supervision at the management level.

(c) Whenever apprentices or students are used in working groups, the repair station must provide at least 1 supervisor for each 10 apprentices or students, unless the apprentices or students are integrated into groups of experienced workers.

(d) Each individual who is supervising a maintenance function in a repair station must:

(1) Be appropriately certificated as a mechanic or repairman under part 65 of this chapter when supervising a maintenance function in a repair station located within the United States;

(2) Have had at least 18 months of practical experience in the maintenance function that the individual is supervising; and

(3) Be adequately trained on maintenance of the article upon which work is performed and be familiar with the procedures, practices, inspection methods, materials, tools, and equipment used in the maintenance, preventive maintenance, or alterations for which the repair station is rated.

(e) At least one of the individuals in charge of maintenance functions for a repair station with an aircraft rating must have experience in the methods and procedures prescribed by the Administrator for approving aircraft for return to service after inspections required by § 91.409 of this chapter.

(f) A certificated repair station that is located outside the United States must have a sufficient number of supervisors and inspectors who understand the regulations in this chapter, the FAA Airworthiness Directives, and the manufacturers' maintenance and service instructions for the articles on which the repair station performs maintenance, preventive maintenance, or alterations. These supervisors and inspectors:

(1) Are not required to have U.S. airman certificates issued under this chapter;

(2) Are not considered to be airmen within the meaning of Title 49, United States Code, with respect to work performed in connection with their employment by such a repair station; and

(3) Must understand, read, and write the English language.

(g) The Administrator may evaluate the ability of any certificated repair station supervisory or inspection personnel to meet the requirements of this section by

(1) Inspecting that person's employment and experience records;

(2) Conducting an oral or practical test; or

(3) Any other method the Administrator elects.

§ 145.155 Recommendation of persons for certification as repairmen.

(a) An applicant for a repair station certificate or for an additional rating on a current and valid repair station certificate who chooses to use repairmen to satisfy the personnel requirements of this part must:

(1) Recommend at least the required number of individuals for certification as repairmen to meet the applicable requirements;

(2) Certify that each person recommended is employed by the repair station and meets the requirements of § 65.101 of this chapter; and

(3) Certify that each person recommended has the necessary training and practical experience to perform the repair station work functions for which repairman certification is required.

(b) The Administrator may evaluate any repairman's ability to meet this section's requirements by:

(1) Inspecting that person's employment and experience records;

(2) Conducting an oral or practical test; or

(3) Any other method the Administrator elects.

§ 145.157 Records of management, supervisory, and inspection personnel.

(a) Each certificated repair station must maintain the following:

(1) A roster of management and supervisory personnel, including the names of the repair station officials who are responsible for its management and the names of its technical supervisors;

(2) A roster with the names of all inspection personnel, including the chief inspector;

(3) A roster of personnel authorized to sign a maintenance release for approving an altered or repaired article for return to service;

(4) A summary of the employment of each individual whose name is on the management, supervisory, and inspection personnel roster. The summary must contain enough information on each individual listed on the roster to show compliance with the experience requirements of this part, including:

(i) Present title;

(ii) Total years of experience in type of maintenance work;

(iii) Past employment record with names of places and periods of employment by month and year;

(iv) Scope of present employment; and

(v) If applicable, the type of mechanic or repairman certificate held and the ratings on that certificate.

(b) The rosters required by this section must be kept current and reflect changes caused by termination, reassignment, change in duties or scope of assignment, or addition of personnel.

§ 145.159 Training requirements.

(a) Each certificated repair station must have an employee training program that consists of initial and recurrent training and is approved by the Administrator.

(b) The training program must ensure that each employee assigned to perform maintenance, preventive maintenance, or alterations, and each employee assigned to perform inspection functions is capable of performing the assigned task.

(c) Each certificated repair station must document in a form acceptable to the Administrator programs pertaining to individual employee training. Individual training records for those employees who require training under the requirements in paragraph (b) of this section must be retained for the duration of each individual's employment.

Subpart E—Operating Rules

§ 145.201 Quality assurance and quality control systems.

(a) Each certificated repair station must:

(1) Establish and maintain a quality assurance system acceptable to the Administrator;

(2) Establish and maintain a quality control and inspection system that ensures the airworthiness of the articles on which the repair station or any of its contractors performs maintenance, preventive maintenance, or alterations; and

(3) Describe the systems required by this paragraph in the repair station's manual.

(b) Each certificated repair station must maintain and keep current Airworthiness Directives, Instructions for Continued Airworthiness, and service bulletins that relate to the articles on which that repair station performs maintenance, preventive maintenance, or alterations.

(c) Each certificated repair station must possess all current manufacturers' maintenance manuals relating to an article when that repair station performs maintenance or alteration on the article.

§ 145.203 Capability list.

(a) Each certificated repair station must prepare and retain a current capability list acceptable to the Administrator. The repair station may not perform maintenance, preventive maintenance, or alterations on an article until the article has been listed on the capability list in accordance with this section and § 145.207(g).

(b) The capability list must identify each article by make and model, part number, or other nomenclature designated by the article's manufacturer.

(c) An article may be listed on the capability list only if the article is within the scope of the ratings and classes of the repair station's certificate, and only after the repair station has performed a self-evaluation in accordance with § 145.207(g). The repair station must perform the self-evaluation described in this paragraph to determine that the repair station has all of the facilities, equipment, material, technical data, processes, housing, and trained personnel in place to perform the work on the article as required by part 145. If the repair station makes that determination, it may list the article on the capability list.

(d) The document of the evaluation described in paragraph (c) of this section must be signed by the accountable manager and must be retained on file by the repair station.

(e) Upon listing an additional article on its capability list, the repair station must send a copy of the list to its certificate holding district office.

§ 145.205 Repair station manual.

(a) Each certificated repair station must prepare, keep current, and follow an approved repair station manual for the ratings authorized that is consistent with the size and complexity of the repair station.

(b) The certificated repair station manual must:

(1) Set forth the procedures and policies approved by the Administrator for the repair station's operation in accordance with the requirements of this part; and

(2) Be followed by the repair station's personnel while conducting station operations.

(c) Each certificated repair station must maintain at least one copy of its current manual at its facility.

(d) A copy of the repair station's current manual must be made readily available to repair station personnel required by subpart D of this part.

(e) The repair station must provide to the certificate holding district office:

(1) A current paper copy of the repair station manual; or

(2) A current electronic copy of the repair station manual that is accompanied by the means to access the electronic copy.

(f) Except for changes to the capability list, each revision to the repair station manual must be submitted to the Administrator for approval.

§ 145.207 Repair station manual contents.

Each certificated repair station's manual must include the following:

(a) An organizational chart containing the name of each management employee who is authorized to act for the repair station, the employee's assigned area of responsibility, and the employee's duties, responsibilities, and authority;

(b) A roster of authorized inspection personnel who may approve an article for return to service;

(c) A description of the certificated repair station's operations, including a description of the facilities, equipment, material, and housing as required by subpart C of this part;

(d) An explanation of the certificated repair station's quality assurance system, including:

(1) The quality control system;

(2) References, where applicable, to the manufacturer's inspection standards for a particular article, including reference to any data specified by that manufacturer;

(3) A sample copy of the inspection forms and instructions for completing such forms or a reference to a separate forms manual;

(4) Procedures for updating the capability list required by § 145.203, including notification of the certificate holding district office; and

(5) Procedures for the implementation of corrective actions for any discrepancies found by the quality assurance system;

(e) A description of the training program required by § 145.159;

(f) Procedures to govern maintenance, preventive maintenance, or alterations performed in accordance with § 145.103(c);

(g) Procedures for self-evaluations, including methods and frequency of such evaluations, and procedures for reporting results to the accountable manager for review and action;

(h) A list of the maintenance functions contracted to an outside facility with:

(1) The name of the facility;

(2) The type of certificate and ratings, if any, held by such facility; and

(3) Procedures for qualifying and surveilling the facility and for accepting maintenance, preventive maintenance, or alterations performed by the facility;

(i) Procedures for maintenance, preventive maintenance, or alterations performed under § 145.7;

(j) A description of the required records and the recordkeeping system used to obtain, store, and retrieve the required records;

(k) The repair station's capability list;

(l) Procedures necessary for revising the repair station's manual to include the names of persons authorized to approve such revisions before submitting the revision to the Administrator for approval;

(m) The date of the latest revision on each page;
(n) A list of effective pages;
(o) A table of contents and list of revisions to the repair station manual with the date of each revision; and
(p) The procedures for changes in location and facilities of the repair station.

§ 145.209 Quality control system and procedures.

(a) The inspection personnel for each certificated repair station must be thoroughly familiar with all inspection methods, techniques, and equipment used to determine the airworthiness of an article on which the repair station performs maintenance, preventive maintenance, or alterations.
(b) A certificated repair station's inspection personnel must:
(1) Maintain proficiency with the inspection aids used;
(2) Have available and understand FAA Airworthiness Directives, service bulletins, and current specifications involving inspection tolerances, limitations, and procedures established by the manufacturer for the article the individual inspects; and
(3) In cases where maintenance inspection equipment is used, be skilled in operating that equipment and be able to interpret defects indicated by that equipment.
(c) Each certificated repair station must provide a satisfactory method of inspecting incoming articles and materials. This system must provide for:
(1) Inspection of raw materials and articles to ensure acceptable quality and, where applicable, conformity with type design data;
(2) Inspection of those articles on which contract maintenance or alterations were performed as provided for in § 145.213 to ensure that before such an article is placed in stock or installed in an aircraft or part thereof, the article is in a good state of preservation, is free from apparent defects or damage, is in conformity with type design data, and is in condition for safe operation;
(3) A preliminary inspection system for all articles on which the repair station performs maintenance, preventive maintenance, or alterations to determine the state of preservation, locate defects, and to ensure that any required records are present; and
(4) Entering the results of each inspection on the appropriate form as set forth in the repair station's manual.
(d) Each certificated repair station must provide a system so that any aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof that has been involved in an accident is inspected thoroughly for hidden damage before maintenance, preventive maintenance, or alteration is performed. The repair station must enter the results of this inspection on the inspection form required by paragraph (c)(4) of this section.
(e) Each certificated repair station must ensure the continuity of inspection responsibility for its facility.

§ 145.211 Inspection of maintenance, preventive maintenance, or alterations performed.

(a) A certificated repair station must inspect each aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof upon which it has performed maintenance, preventive maintenance, or alterations as described in paragraphs (b) and (c) of this section before approving that article for return to service.
(b) Each repair station must certify on an article's maintenance release that the article is airworthy with respect to the maintenance, preventive maintenance, or alterations performed after:
(1) The repair station performs work on the article; and
(2) A qualified inspector inspects the article on which the repair station has performed work and determines it to be airworthy.
(c) For the purposes of paragraphs (a) and (b) of this section, the qualified inspector must:
(1) Be a certificated repair station designated employee who has shown by experience an understanding of the inspection methods, techniques, and equipment used to determine the airworthiness of the article concerned;
(2) Be proficient in using the various types of maintenance and visual inspection aids appropriate for the article being inspected; and
(3) If the certificated repair station is located outside the United States, the inspector must meet the requirements of § 145.153(f).
(d) Except for individuals employed by a repair station located outside the United States, only a certificated employee is authorized to sign off on final inspections and maintenance releases for the repair station.

§ 145.213 Contract maintenance.

(a) A certificated repair station may not contract a job function to another certificated repair station unless:
(1) The contracting repair station meets the quality control and inspection system requirements of 145.201(a)(2) and 145.209(c)(2), and
(2) The contracting repair station's approved repair station manual contains the information and procedures specified in 145.207(h).
(b) A certificated repair station may not contract a job function to a noncertificated person unless:
(1) The certificated repair station meets the quality control and inspection system requirements of 145.201(a)(2) and 145.209(c)(2);
(2) The certificated repair station's approved repair station manual contains the information and procedures specified in 145.207(h);
(3) The certificated repair station supervises or otherwise remains directly in charge of the job function; and
(4) The certificated repair station verifies, by test and/or inspection, that the job function has been satisfactorily performed by the noncertificated person prior to approving the article for return to service.
(c) A certificated repair station may not contract the maintenance, preventive maintenance, or alteration of a complete type-certificated product, and it may not provide only approval for return to service of any article following contract maintenance.

§ 145.215 Privileges and limitations of certificate.

(a) A certificated repair station may:
(1) Perform maintenance, preventive maintenance, or alterations only on any aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof for which it is rated;
(2) Arrange for the maintenance, preventive maintenance, or alteration of any article for which it is rated at another organization only if that organization is under the quality control system of the repair station, as prescribed by § 145.201(a); and
(3) Approve for return to service only an article or component of an article for which it is rated after maintenance, preventive maintenance, or alteration has been performed.
(b) A certificated repair station may not approve for return to service:
(1) Any aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof unless the maintenance, preventive maintenance, or alteration was performed in accordance with approved technical data or data acceptable to the Administrator;
(2) Any aircraft, airframe, aircraft engine, propeller, or appliance after a major repair or a major alteration unless the major repair or major alteration was performed in accordance with approved technical data; and
(3) Any experimental aircraft after a major repair or major alteration unless the major repair or major alteration was performed in accordance with methods and technical data acceptable to the Administrator.

§ 145.217 Recordkeeping.

(a) Each certificated repair station located inside the United States must retain adequate records and reports of maintenance, preventive maintenance, and alterations performed on any aircraft, airframe, aircraft engine, propeller, appliance, or component part. The records and reports retained by a repair station must:
(1) Be sufficiently detailed to show the make, model, identification number, and serial number (when applicable) of the article involved;
(2) Be retained for a minimum of 2 years from the date on which the article was approved for return to service;
(3) Include a copy of the maintenance release; and
(4) Be kept in the form of the actual work documents, or copies thereof, or by means of an automated data processing system that is protected from unauthorized use and access and that is acceptable to the Administrator.
(b) Each certificated repair station must give a copy of the maintenance release to the owner or operator of the article on which maintenance, preventive maintenance, or alteration was performed. The maintenance release given to the owner or operator must be retrievable in English. The repair station may use as the maintenance release the record that it completes to comply with §§ 43.9 and 43.11 of this chapter.
(c) Each certificated repair station must make all maintenance records required to be kept by this section available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board. The record must be provided in English, either in paper format or, if provided in other than paper format, with the means necessary to create a paper copy of the record.
(d) Certificated repair stations located outside the United States must:
(1) Retain such records and reports as described in paragraph (a)(1) through (4) of this section for at least 2 years with respect to—
(i) U.S.-registered aircraft and aircraft engines, propellers, appliances, or component parts for use on U.S.-registered aircraft; and
(ii) Foreign-registered aircraft operated under the provisions of part 121 or part 135 of this chapter and aircraft engines, propellers, appliances, or component parts for use on these foreign-registered aircraft; and
(2) Meet the requirements of Appendixes A and B to part 43 of this chapter, in the case of major repairs or major alterations.

§ 145.219 Reports of defects or unairworthy conditions.

(a) Each certificated repair station must meet the requirements of paragraph (b) of this section within 72 hours after discovering any serious defect in, or other recurring unairworthy condition of, any aircraft, airframe, aircraft engine, propeller, appliance, or component part on which the repair station performs maintenance, preventive maintenance, or alterations under this part.
(b) Each repair station must report the defect or unairworthy condition it discovers to the Administrator on a form and in a manner prescribed by the Administrator. The report must include as much of the following information as is available:
(1) Type, make, and model of the aircraft, airframe, aircraft engine, propeller, appliance, or component part;
(2) Name and address of the operator;
(3) Date of the discovery of the serious defect or other recurring unairworthy condition;
(4) Nature of the failure, malfunction, or defect;
(5) Identification of the article or system involved, including available information on type designation of the article and time since last overhaul;
(6) Apparent cause of the failure, malfunction, or defect (e.g., wear, crack, design deficiency, or personnel error); and
(7) Other pertinent information that is necessary for more complete identification, determination of seriousness, or corrective action.
(c) The holder of a repair station certificate who is also the holder of a part 121, 125, or 135 Certificate, Type Certificate (including a Supplemental Type Certificate), Parts Manufacturer Approval (PMA), or Technical Standard Order (TSO) authorization, or who is the licensee of a Type Certificate holder, does not need to report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported under §§ 21.3, 121.703, 125.409, or 135.415 of this chapter.

§ 145.221 FAA inspections.

Each certificated repair station must allow the Administrator to inspect that repair station and any of its contract maintenance facilities at any time to determine compliance with this chapter. Arrangements for maintenance, preventive maintenance, or alterations by a contractor must include provisions for inspections of the contractor by the Administrator.

Appendix A to Part 145—Job Functions

Except for job functions that are contracted out, each certificated repair station must provide equipment and material so that the job functions listed in this appendix, as appropriate to the class or limited rating held or applied for, can be performed as required. The job functions are as follows:
(a) For an aircraft rating:
(1) Classes 1, 2, 3, 4, and 5:
(i) Metal skin and structural components:
(A) Repair and replace steel tubes and fittings using the proper welding techniques, when appropriate.
(B) Apply anticorrosion treatment to the interior and exterior of parts.
(C) Perform simple machine operations.
(D) Fabricate steel fittings.
(E) Repair and replace metal skin.
(F) Repair and replace alloy members and components.
(G) Assemble and align components using jigs or fixtures.
(H) Make up forming blocks or dies.
(I) Repair or replace ribs.
(ii) Wood structure:
(A) Splice wood spars.
(B) Repair ribs and spars.
(C) Align interior of wings.
(D) Repair or replace plywood skin.
(E) Apply treatment against wood decay.
(iii) Fabric covering:
Repair fabric surfaces.
(iv) Aircraft control systems:
(A) Repair and replace control cables.
(B) Rig complete control system.
(C) Replace and repair all control system components.
(D) Remove and install control system units and components.
(v) Aircraft systems:
(A) Replace and repair landing gear hinge-point components and attachments.
(B) Maintain elastic shock absorber units.
(C) Conduct landing gear retraction cycle tests.
(D) Maintain electrical position-indicating and -warning systems.
(E) Repair and fabricate fuel, pneumatic, hydraulic, and oil lines.
(F) Diagnose electrical and electronic malfunctions.
(G) Repair or replace electrical wiring and electronic data transmission lines.
(H) Install electrical and electronic equipment.
(I) Perform bench check of electrical and electronic components. (This check is not to be confused with the more complex functional test after overhaul.)
(vi) Assembly operations:
(A) Assemble aircraft components or parts, such as landing gear, wings, and controls.
(B) Rig and align aircraft components, including the complete aircraft and control system.
(C) Install powerplants.
(D) Install instruments and accessories.
(E) Assemble and install cowlings, fairings, and panels.
(F) Maintain and install windshields and windows.

(G) Jack or hoist complete aircraft.
(H) Balance flight control surfaces.
(vii) Nondestructive inspection and testing using dye penetrants and magnetic, ultrasonic, radiographic, fluorescent, or holographic inspection techniques.
(viii) Inspection of metal structures:
Inspect metal structures using appropriate inspection equipment to perform the inspections required on an aircraft under this chapter.
(2) Classes 6 and 7:
(i) In addition to having the capability to perform the appropriate functions set forth for Class 1, 2, 3, 4, or 5 aircraft ratings, a repair station holding a Class 6 or Class 7 aircraft rating for composite aircraft must have the following equipment:
(A) Autoclave capable of providing positive pressure and temperature consistent with materials used.
(B) Air circulating oven with vacuum capability.
(C) Storage equipment such as freezer, refrigerator, and temperature-control cabinets or other definitive storage areas.
(D) Honeycomb core cutters.
(E) Nondestructive inspection equipment such as x-ray, ultrasonic, or other types of acoustic test equipment as recommended by the manufacturer.
(F) Cutting tools, such as diamond or carbide saws or router bits, suitable for cutting and trimming composite structures.
(G) Scales adequate to ensure proper proportioning by weight of epoxy adhesive and resins.
(H) Mechanical pressure equipment such as vacuum bagging or sand bags, as appropriate.
(I) Thermocouple probes necessary to monitor cure temperatures.
(J) Hardness testing equipment using heat guns that are thermostatically controlled for curing repairs.
(ii) Appropriate inspection equipment to perform inspection of composite structures as recommended by the manufacturer and as required for inspection of an aircraft under this chapter.
(b) Powerplant rating:
(1) Class 1:
(i) Maintain and alter powerplants, including replacement of parts:
(A) Perform chemical and mechanical cleaning.
(B) Perform disassembly operations.
(C) Replace bushings, bearings, pins, and inserts.
(D) Perform heating operations that may involve the use of recommended techniques that require controlled heating facilities.
(E) Perform chilling or shrinking operations.
(F) Remove and replace studs.
(G) Inscribe or affix identification information.
(H) Paint powerplants and components.
(I) Apply anticorrosion treatment for parts.
(ii) Inspect all parts, using appropriate inspection aids:
(A) Determine precise clearances and tolerances of all parts.
(B) Inspect alignment of connecting rods, crankshafts, and impeller shafts.
(C) Inspect valve springs.
(iii) Accomplish routine machine work:
(A) Ream inserts, bushings, bearings, and other similar components.
(B) Reface valves.
(iv) Accomplish assembly operations:
(A) Perform valve-and ignition-timing operations.
(B) Fabricate and test ignition harnesses.
(C) Fabricate and test rigid and flexible fluid lines.
(D) Prepare engines for long-or short-term storage.
(E) Hoist engines by mechanical means.
(2) Classes 2 and 3:
(i) In addition to having the capability to perform the appropriate functions as required for a Class 1 powerplant rating, a repair station holding a Class 2 or a Class 3 powerplant rating must have the following equipment:
(A) Testing equipment.
(B) Surface treatment antigallant equipment.
(ii) Functional and equipment requirements recommended by the manufacturer; and
(iii) Appropriate inspection equipment.
(c) Propeller rating:
(1) Class 1:
(i) Remove and install propellers.
(ii) Maintain and alter propellers, including installation and replacement of parts:
(A) Replace blade tipping.
(B) Refinish wood propellers.
(C) Make wood inlays.
(D) Refinish plastic blades.
(E) Straighten bent blades within repairable tolerances.
(F) Modify blade diameter and profile.
(G) Polish and buff.
(H) Perform painting operations.
(iii) Inspect components using appropriate inspection aids:
(A) Inspect propellers for conformity with manufacturer's drawings and specifications.
(B) Inspect hubs and blades for failures and defects using all visual aids, including the etching of parts.
(C) Inspect hubs for wear of splines or keyways or any other defect.
(iv) Balance propellers:
(A) Test for proper track on aircraft.
(B) Test for horizontal and vertical unbalance using precision equipment.
(2) Class 2:
(i) Remove and install aircraft propellers, which may include installation and replacement of parts.
(A) Perform all functions listed under Class 1 propellers when applicable to the make and model propeller in this class.
(B) Properly lubricate moving parts.
(C) Assemble complete propeller and subassemblies using special tools when required.
(ii) Inspect components using appropriate inspection aids for those functions listed for Class 1 propellers under paragraph (c)(1)(iii) of this appendix when applicable to the make and model of the propeller being worked on.
(iii) Repair or replace components or parts:
(A) Replace blades, hubs, or any of their components.
(B) Repair or replace anti-icing devices.
(C) Remove nicks or scratches from metal blades.
(D) Repair or replace electrical propeller components.
(iv) Balance propellers, including those functions listed for Class 1 propellers under paragraph (c)(1)(iv) of this appendix when applicable to the make and model of the propeller being worked on.
(v) Test propeller pitch-changing mechanism:
(A) Test hydraulically operated propellers and components.
(B) Test electrically operated propellers and components.
(d) Avionics rating:
(1) Classes 1, 2, and 3:
(i) Perform physical inspection of avionics systems and components by visual and mechanical methods.
(ii) Perform electrical inspection of avionics systems and components by means of appropriate electrical and/or electronic test instruments.
(iii) Check aircraft wiring, antennas, connectors, relays, and other associated avionics components to detect installation faults.
(iv) Check engine ignition systems and aircraft accessories to determine sources of electrical interference.
(v) Check aircraft power supplies for adequacy and proper functioning.
(vi) Remove, repair, and replace aircraft antennas.
(vii) Measure transmission-line attenuation.
(viii) Measure audio and radio frequencies to appropriate tolerances and perform calibration necessary for proper operation, as appropriate.
(ix) Measure avionics component values such as inductance, capacitance, and resistance.
(x) Determine wave forms and phase in avionics equipment when applicable.
(xi) Determine proper aircraft avionics antenna, lead-in, and transmission-line characteristics and determine proper locations for type of avionics equipment to which the antenna is connected.
(xii) Determine the operational condition of avionics equipment installed in aircraft by using appropriate portable test apparatus.
(xiii) Test all types of transistors; solid-state, integrated circuits; or similar devices in equipment appropriate to the class rating.
(2) Class 1:
In addition to having the capability to perform the job functions listed in paragraph (d)(1):
(i) Test and repair headsets, speakers, and microphones.
(ii) Measure radio transmitter power output.
(iii) Measure modulation values, noise, and distortion in communication equipment.
(3) Class 2:
In addition to having the capability to perform the job functions listed in paragraph (d)(1):
(i) Test and repair headsets.
(ii) Test speakers.
(iii) Measure loop antenna sensitivity by appropriate methods.
(iv) Calibrate to approved performance standards any radio navigational equipment, en route and approach aids, or similar equipment, as appropriate to this rating.

(4) Class 3:
(i) In addition to having the capability to perform the job functions listed in paragraph (d)(1):
(ii) Measure transmitter power output.
(e) Computer systems rating:
(1) Classes 1, 2, and 3:
(i) Maintain computer systems in accordance with manufacturer's specifications, test requirements, and recommendations.
(ii) Remove, maintain, and replace computer systems in aircraft.
(iii) Inspect, test, and calibrate computer system equipment, including software.
(2) [Reserved].
(f) Instrument rating:
(1) Class 1:
(i) Diagnose instrument malfunctions of the following instruments:
(A) Rate-of-climb indicators.
(B) Altimeters.
(C) Airspeed indicators.
(D) Vacuum indicators.
(E) Oil pressure gauges.
(F) Fuel pressure gauges.
(G) Hydraulic pressure gauges.
(H) Deicing pressure gauges.
(I) Pitot-static tube.
(J) Direct indicating compasses.
(K) Accelerometer.
(L) Direct indicating tachometers.
(M) Direct reading fuel quantity gauges.
(ii) Inspect, test, and calibrate the instruments listed under paragraph (f)(1)(i) of this appendix on and off the aircraft, as appropriate.
(2) Class 2:
(i) Diagnose instrument malfunctions of the following instruments:
(A) Tachometers.
(B) Synchroscope.
(C) Electric temperature indicators.
(D) Electric resistance-type indicators.
(E) Moving magnet-type indicators.
(F) Resistance-type fuel indicators.
(G) Warning units (oil and fuel).
(H) Selsyn systems and indicators.
(I) Self-synchronous systems and indicators.
(J) Remote indicating compasses.
(K) Quantity indicators.
(L) Avionics indicators.
(M) Ammeters.
(N) Voltmeters.
(O) Frequency meters.
(ii) Inspect, test, and calibrate instruments listed under paragraph (f)(2)(i) of this appendix on and off the aircraft, as appropriate.
(3) Class 3:
(i) Diagnose instrument malfunctions of the following instruments:
(A) Turn and bank indicators.
(B) Directional gyros.
(C) Horizon gyros.
(ii) Inspect, test, and calibrate instruments listed under paragraph (f)(3)(i) of this appendix on and off the aircraft, as appropriate.
(4) Class 4:
(i) Diagnose instrument malfunctions of the following instruments:
(A) Capacitance-type quantity gauge.
(B) Laser gyros.
(C) Other electronic instruments.
(ii) Inspect, test, and calibrate instruments listed under paragraph (f)(4)(i) of this appendix on and off the aircraft, as appropriate.
(g) Accessory rating:
(1) Classes 1, 2, 3, and 4:
(i) Perform the following functions in accordance with the manufacturers specifications and recommendations:
(A) Diagnose accessory malfunctions.
(B) Maintain and alter accessories, including installing and replacing parts.
(C) Inspect, test, and calibrate accessories on and off the aircraft, as appropriate.
(ii) [Reserved].
(2) [Reserved].

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L. Nicholas Lacey,

Director, Flight Standards Service.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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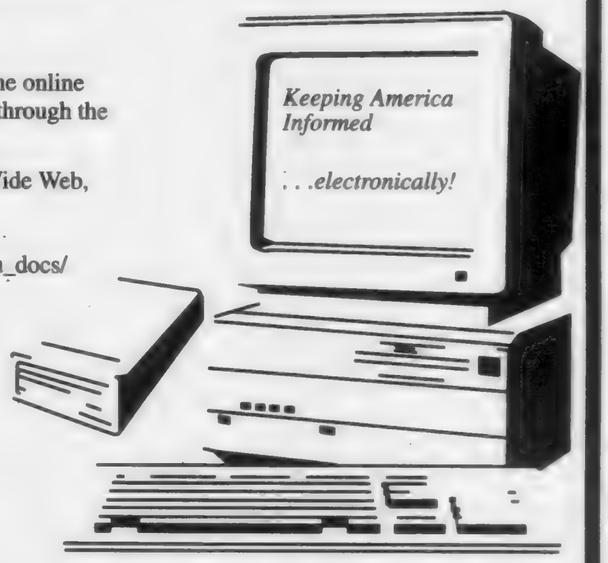
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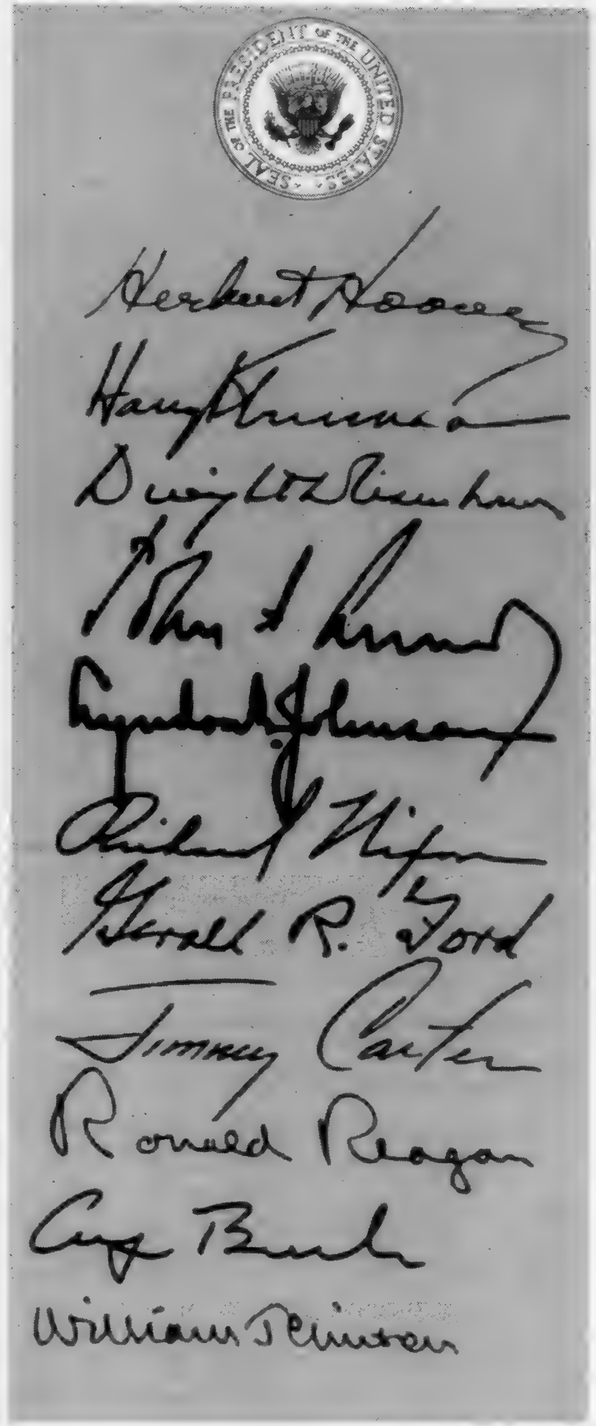
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Federal Register
Vol. 64, No. 119
Tuesday, June 22, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI11

Prevailing Rate Systems; Abolishment of Kansas City, MO, Special Wage Schedule for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is adopting as final an interim rule to abolish the Federal Wage System (FWS) special wage schedule for printing positions in the Kansas City, Missouri, wage area. Printing and lithographic employees in the Kansas City wage area will now be paid rates from the regular Kansas City wage schedule. This change is being made because of decreased employment in printing occupations in the Kansas City FWS wage area.

DATES: This regulation is effective on July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins at (202) 606–2848, or send an email message to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On December 24, 1997, the Office of Personnel Management (OPM) published an interim regulation (62 FR 67258) abolishing the Kansas City special printing schedule. The interim regulation had a 30-day period for public comment, during which OPM received no comments. The interim rule is therefore being made final.

Printing and lithographic employees were converted to the regular schedule for the Kansas City wage area on a grade-for-grade basis, effective January 4, 1998. The conversion of employees stipulated that an employee's new rate of pay would be set at the rate for the step of the applicable grade of the regular schedule that equaled the employee's existing scheduled rate of pay. When the existing rate fell between two steps on the regular schedule, the employee's new rate was to be set at the rate for the higher of those two steps. In addition, pay retention provisions applied for the few employees who may not have received increases upon conversion to the regular wage schedule.

This action was taken after the Department of Defense (DOD) recommended to OPM that the Kansas City, MO, special wage schedule for printing positions be abolished and that the regular Kansas City wage schedule apply to printing employees in the Kansas City wage area. The recommendation was based on the fact that the number of employees paid from the special schedule has declined in recent years from a total of about 70 employees in 1985 to a total of about 30 employees. With the reduced number of employees, DOD found it increasingly difficult to comply with the requirement that workers paid from the special printing schedule participate in the local wage survey process. A full-scale special wage survey in the Kansas City wage area required a substantial work effort in contacting about 70 printing establishments spread over 8 counties and required the participation of about 10 percent of the employees who were paid from the special printing schedule.

The Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national-level labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and concurred by consensus with this change.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on December 24, 1997 (63 FR 67258), is adopted as final without any changes.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–15802 Filed 6–21–99; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AH88

Prevailing Rate Systems; Abolishment of the Lubbock, Texas, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is adopting as final an interim rule to abolish the Lubbock, Texas, nonappropriated fund Federal Wage System wage area and establish a new Curry County, New Mexico, wage area. This change is being made because of the closure of the Lubbock wage area's host installation, Reese Air Force Base. This closure left the lead agency, the Department of Defense, without an installation in the survey area capable of hosting annual local wage surveys.

DATES: This final regulation is effective on July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins, (202) 606–2848, FAX: (202) 606–0824, or email to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On May 29, 1997, the Office of Personnel Management (OPM) published an interim rule (62 FR 28978) to abolish the Lubbock, Texas, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and establish a new Curry County, New Mexico, NAF FWS wage area. The Lubbock wage area consisted of one survey county, Lubbock, TX, and two area of application counties, Curry, NM, and Potter, TX. The closure of the Lubbock wage area's host activity, Reese Air Force Base, left the Department of Defense (DOD), the lead agency for the Lubbock wage area, without an installation in the survey area capable of hosting local annual wage surveys.

Even though the host installation closed, the Lubbock wage area

continued to have NAF FWS employment. Cannon Air Force Base, located in Curry County, NM, has more than the minimum required number of NAF FWS employees and has the capability to host annual local wage surveys. Also, Curry County has more than the required minimum number of private enterprise employees in establishments within survey specifications. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we abolish the Lubbock, TX, NAF wage area and establish a new Curry, NM, NAF wage area. The new wage area consists of one survey county, Curry County, NM, and two area of application counties, Lubbock and Potter, TX.

Full-scale wage surveys were ordered in the Curry, NM, NAF wage area in June of odd-numbered fiscal years. The first full-scale wage survey began in June 1997. The interim rule provided a 30-day public comment period, during which OPM did not receive any comments. The interim rule is being adopted as final with no changes.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on May 29, 1997 (62 FR 28978), is adopted as final with no changes.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–15804 Filed 6–21–99; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB46

General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to: revise the method of determining loan fund eligibility for "ordinary replacements" and authorize the use of guaranteed financing for "minor projects".

DATES: This rule will become effective August 6, 1999 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before July 22, 1999. If we receive such comments or notice, we will publish a timely withdrawal of the Direct Final Rule in the **Federal Register** stating that the rule will not become effective. We will address the comments received and publish a final rule. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW, Washington, DC 20250–1522. Telephone: (202) 720–9550. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Deputy Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, Stop 1560, 1400 Independence Avenue, SW, Washington, DC 20250–1560. Telephone: (202) 720–9547. FAX (202) 690–0717. E-mail: acockey@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 USC § 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The Office of Management and Budget (OMB) has approved the reporting and recordkeeping requirements contained in 7 CFR Part 1710 under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned control number 0572–0032. This rule contains no additional information collection or recordkeeping requirements.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule entitled "Department Programs and Activities Excluded from Executive Order 12372", (50 FR 47034), exempted RUS loans and loan guarantees from coverage under this order.

Unfunded Mandates

This rule contains no Federal Mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Background

RUS is amending its regulations to change the manner in which it categorizes electric plant replacements for the purpose of clarifying financing eligibility for replacements. RUS financing is presently based upon the accounting and engineering classifications of new construction, system improvements, and ordinary replacements. These procedures are established in 7 CFR Part 1710, General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, including § 1710.106, Uses of Loan Funds, establishing the extent of funding for new construction, system improvements, and ordinary replacements, as well as RUS Bulletin 1767B–2, Work Order Procedure (Electric).

At present, RUS financing is provided as follows: (a) for new construction based on cost of construction (amount capitalized), (b) for system improvements based on cost of construction plus removal cost less applicable salvage, and (c) for ordinary replacements based on cost of construction less original cost of units removed.

In each case above, non-refundable contribution amounts by the ultimate customer are deducted from the amount financed.

Section 1710.2, Definitions, provides the following definitions: (a) system improvement means the change or addition to electric plant facilities to improve the quality of electric service or to increase the quantity of electric power available to RE Act beneficiaries; (b) ordinary replacement means replacing one or more units of plant, called "retirement units," with similar units when made necessary by normal wear and tear, damage beyond repair, or obsolescence of facilities. With these definitions, RUS has experienced problems as to which projects should appropriately be classified as either system improvements or ordinary replacements. As a result, there has been confusion and inconsistency in the determination of loan fund eligibility. While the determination does not significantly affect the amount of loan funds provided by RUS, the determination nevertheless is an unnecessary burden for RUS borrowers, their engineering consultants, and RUS staff, who often apply the definitions differently.

This rule change combines the classifications of system improvements and ordinary replacements into a single category. Financing will be based on the process presently used to finance system improvements. This process will provide funding to cover the cost of construction, plus the cost of removal, less any salvage value. No change is being made in the manner in which new construction or system improvements are classified or financed by RUS. It merely changes the manner in which ordinary replacements are categorized and financed by RUS.

RUS has previously authorized certain types of ordinary replacements, including underground cable replacements, to be financed as system improvements. Furthermore, § 1710.106 (3) presently permits RUS to finance the total cost of ordinary replacements, if specifically authorized by the Administrator.

Potentially, the requests for RUS financing assistance may be slightly increased by combining these two methods of accounting for system improvements and ordinary replacements into a single category. However, the overall benefits to the borrowers and RUS outweigh the possible increase in requests for loan funds. This rule change is being made in order to: (a) simplify classifications of construction and eliminate the judgments necessary as to whether a project is considered an improvement or replacement; and (b) avoid creating any new method of financing while still generating necessary information from which RUS can determine appropriate funding eligibility.

It should be further noted that factors other than the amount of construction eligible for financing under the present concepts of system improvements and ordinary replacements impact the amount of funding actually requested from RUS. Generally, RUS borrowers do not request financing assistance for all capital improvements because of desired equity goals. Typically, borrowers utilize internally generated funds from as little as 20 percent to more than 50 percent of total construction costs. The overall effect of this is that borrowers presently borrow funds in amounts which are significantly less than that for which they would be eligible under either present loan concepts (with system improvements and ordinary replacements) or those concepts provided under this rule change.

Benefits of this rule change include: (a) simplified RUS financing and engineering analysis which avoids conflicting interpretations of what is a system improvement and what is an ordinary replacement; (b) expedited close-out and audit processes; (c) little or no change in the application for available loan funds; and (d) elimination of additional analysis in electric plant accounting to determine amount capitalized.

With this rule change, Inventories of Work Orders, RUS Form 219, covering completed construction projects that are closed out after the effective date of this rule, will be subject to these new procedures for "ordinary replacements." During the period while revised RUS Form 219's are being prepared and distributed, RUS borrowers may utilize existing supplies of forms bearing an issue date of 10/88 and include all plant rebuilds and replacements as system improvements. The columns on RUS Form 219 that are currently dedicated to ordinary replacements would, therefore, not be used under this rule change.

The second aspect of this rule change concerns "minor projects" and guaranteed loan funds. Minor projects are defined in 7 CFR Part 1721, Post-Loan Policies and Procedures for Insured Electric Loans, Subpart A, Advance of Funds, § 1721.1(a) as "a project costing $25,000 or less." Section 1721.1(a), further states that: "With the exception of minor construction, insured loan funds will be advanced only for projects in an RUS approved Borrower's construction work plan or approved amendment and in an approved loan, as amended." Also related to this matter is 7 CFR Part 1710, Subpart F, Construction Work Plans and Related Studies. Section 1710.250(e) states that: "Applications for a loan or loan guarantee from RUS...must be supported by a current CWP. . . ." Since part 1721 only covers insured loans, no mechanism is presently in place to authorize minor projects under an RUS loan guarantee. Part 1710, subpart F, would, therefore, presently require inclusion of all projects in either a work plan or an amendment to a work plan and preclude authority for and funding of "minor projects" under an RUS loan guarantee. The purpose of this rule change is to clarify that minor projects may, in fact, be funded through an RUS loan guarantee, just as they are done under insured loan procedures without being specifically approved in a work plan or amendment.

List of Subjects in 7 CFR Part 1710

Electric power, Loan programs, Reporting and recordkeeping requirements, Rural areas.

Accordingly, 7 CFR part 1710 is amended as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS, SUBPART C—LOAN POLICIES AND BASIC POLICIES

1. The authority citation for part 1710 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. Amend § 1710.106 by removing paragraph (a)(3), redesignating paragraphs (a)(4) through (a)(6) as (a)(3) through (a)(5), and revising paragraphs (a)(1)(i) and (a)(2)(i) to read as follows:

§ 1710.106 Uses of loan funds.

(a) * * * * *

(1) *Distribution facilities.* (i) The construction of new distribution facilities or systems, the cost of system improvements and removals less salvage value, the cost of ordinary replacements and removals less salvage value, needed to meet load growth requirements, improve the quality of service, or replace existing facilities.

* * * * *

(2) *Transmission and generation facilities.* (i) The construction of new transmission and generation facilities or systems, the cost of system improvements and removals, less salvage value, the cost of ordinary replacements and removals less salvage value, needed to meet load growth, improve the quality of service, or replace existing facilities.

* * * * *

3. Amend § 1710.250(f) by adding the following sentence to the end of the paragraph to read:

§ 1710.250 General.

* * * * *

(f) * * * Provision for funding of "minor projects" under an RUS loan guarantee is permitted on the same basis as that discussed for insured loan funds in 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.

* * * * *

Dated: June 14, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–15703 Filed 6–21–99; 8:45 am]

BILLING CODE 3410–15–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AF80

Miscellaneous Changes to Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to correct several inconsistencies and to clarify certain sections of its regulations pertaining to the storage of spent fuel and high-level radioactive waste. The amendments differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that quality assurance (QA) records must be maintained as permanent records when identified with activities and items important to safety. These amendments are necessary to facilitate NRC inspections to verify compliance with reporting requirements to ensure the protection of public health and safety and the environment.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: M. L. Au, telephone (301) 415–6181, e-mail mla@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

The Commission's licensing requirements for the independent storage of spent nuclear fuel and high-level radioactive waste are contained in 10 CFR part 72. NRC experience in applying Part 72 has indicated that certain additions and clarifications to the regulations are necessary. The NRC published a proposed rule in the **Federal Register** on June 9, 1998 (63 FR 31364).

When subpart L of part 72 was issued in 1990, the purpose and scope of these regulations (i.e., to approve the design of spent fuel storage casks and issue a Certificate of Compliance (CoC)) was not clearly indicated in §§ 72.1 and 72.2. Additionally, § 72.2 referred to a Federal Interim Storage Program; however, the statutory authorization for this program has expired.

The current regulations contain information in multiple locations on where to send part 72 reports and applications to the NRC. These requirements were inconsistent and did not ensure that received information was properly docketed.

The current regulations in § 72.44 on reporting annual summaries of radioactive effluents released from dry storage casks impose an unnecessary regulatory burden on part 72 licensees by requiring submittal of these reports on a schedule that is different from that required by 10 CFR part 50. Most part 72 licensees are also part 50 licensees. Consequently, this regulation imposed an unnecessary regulatory burden on part 72 licensees.

The current regulations in § 72.75 on reporting requirements for specific events and conditions are inconsistent with the reporting requirements for similar reactor-type events contained in § 50.73.

The current regulations in §§ 72.122 and 72.124 on instrumentation and neutron poison efficacy requirements are unduly burdensome when applied to dry storage cask technology. The Commission has received nine requests for exemption from these regulations over the last three years.

The current regulations in subpart G (quality assurance (QA) requirements) regarding retention of part 72 QA records differ from the retention requirements imposed on part 50 license holders. However, § 72.140(d) currently allows a part 72 license holder to take credit for its part 50 QA program in meeting the requirements of subpart G with the result that differing retention requirements are imposed on part 72 licensees.

Discussion

This final rule makes eight clarifying changes to Part 72. These changes differentiate the requirements for the storage of spent fuel under wet and dry conditions and ensure that necessary information is included in reports and that QA records are maintained permanently when identified with activities and items important to safety. These reports and records are needed to facilitate NRC inspections to verify compliance with reporting requirements to ensure protection of public health and safety and the environment.

The following are a group of eight miscellaneous items of changes to the regulations:

1. Modify §§ 72.1 and 72.2 to include spent fuel storage cask and remove superseded information.

The purpose (§ 72.1) and scope (§ 72.2) were not modified when the Commission amended part 72 on July 18, 1990 (55 FR 29181). Part 72 was

amended to include a process for providing a general license to a reactor licensee to store spent fuel in an independent spent fuel storage installation (ISFSI) at power reactor sites (subpart K) and a process for the approval of spent fuel storage casks (subpart L). Although the language in these sections may be read to include the general license provisions of subpart K, the approval process for spent fuel storage casks in subpart L is not referenced. This rulemaking makes the purpose and scope sections complete by specifically referencing the subpart L cask approval process. Additionally, this rule removes information in the purpose and scope sections, regarding the Federal interim storage program, because the statutory authorization for the interim storage program has expired (61 FR 35935; July 9, 1996).

2. Change the requirement for making initial and written reports in §§ 72.4 and 72.216.

The change to § 72.4 provides that, except where otherwise specified, all communications and reports are to be addressed to NRC's Document Control Desk (DCD) rather than to the Director, Office of Nuclear Material Safety and Safeguards (NMSS). Three current regulations govern the submission of written reports under part 72 (§§ 72.75, 72.216(b), and 50.72(b)(2)(vii)(B), which is referenced in § 72.216(a)). Under § 72.75(d)(2), a report is sent to the DCD. However §§ 50.72(b)(2)(vii)(B) and 72.216(b) indicate that the report be sent, as instructed in § 72.4, to the Director, NMSS. To achieve consistency, § 72.4 is revised to instruct that reports shall be sent to the DCD. Licensing correspondence forwarded to the NRC's DCD ensures proper docketing and distribution. Also, § 72.216(c) is revised to correct an error in the paragraph designation. The current regulation § 72.75(a)(2) and (3) is revised to read § 72.75(b)(2) and (3).

3. Change the requirement for submittal of the dry cask storage effluent report in § 72.44.

Currently, § 72.44(d)(3) requires that a dry cask storage effluent report be submitted to the appropriate NRC regional office within the first 60 days of each year. Section 50.36a(a)(2) requires that a similar report be submitted to the Commission once each year specifying liquid and gaseous effluents from reactor operations.

The revision permits reactor licensees, who also possess licenses for ISFSIs, to submit their dry cask storage effluent report to the NRC once each year, at the same time as the effluent report from their reactor operations. The dry cask storage effluent report would be submitted within 60 days after the end of the 12-month monitoring period. However, after the effective date of this final rule, the licensee may submit the dry cask report covering a shorter period of time to synchronize the reporting schedule with the annual reactor effluent report.

4. Clarify the reporting requirements for specific events and conditions in § 72.75.

Section 72.75 contains reporting requirements for specific events and conditions, including the requirement in § 72.75(d)(2) for a follow-up written report for certain types of emergency and non-emergency notifications. This rule clarifies the specific information required to meet the intent of the existing reporting requirement. A comparable reporting requirement already exists for similar reactor type events in § 50.73(b). This rule will provide greater consistency between parts 50 and 72, on event notification requirements. Since the reporting requirement already exists, a minimal increase in the licensee's reporting burden will occur by clarifying the format and content.

5. Clarify the requirement for capability for continuous monitoring of confinement storage systems in § 72.122(h)(4).

Currently, § 72.122(h)(4) requires the capability for continuous monitoring of storage confinement systems. The meaning of "continuous" is open to interpretation and does not differentiate between monitoring requirements for wet and dry storage of spent fuel. Wet storage requires active heat removal systems which involve a monitoring process that is "continuous" in the sense of being uninterrupted. Because of the passive nature of dry storage, active heat removal systems are not needed and monitoring can be less frequent. This rule clarifies that the frequency of monitoring can be different for wet and dry storage systems.

6. Clarify the requirement specifying instrument and control systems for monitoring dry spent fuel storage in § 72.122(i).

Section 72.122(i) requires that instrumentation and control systems be provided to monitor systems important to safety, but does not distinguish between wet and dry spent fuel storage systems. For wet storage, systems are required to monitor and control heat removal. For dry storage, passive heat removal is used and a control system is not required. Instrumentation systems for dry spent fuel storage casks must be provided in accordance with cask design requirements to monitor conditions that are important to safety over anticipated ranges for normal conditions and off-normal conditions. This rule clarifies that control systems are not needed for dry spent fuel storage systems.

7. Clarify the requirement for dry spent fuel storage casks on methods of criticality control in § 72.124(b).

Section 72.124(b) requires specific methods for criticality control, including the requirement that where solid neutron absorbing materials are used, the design must provide for positive means to verify their continued efficacy. This requirement is appropriate for wet spent fuel storage systems, but not for dry spent fuel storage systems. The potentially corrosive environment under wet storage conditions is not present in dry storage systems, because an inert environment is maintained. Under these conditions, there is no mechanism to significantly degrade the neutron absorbing materials. In addition, the dry spent fuel storage casks are sealed and it is not practical nor desirable to penetrate the integrity of the cask to make the measurements verifying the efficacy of neutron absorbing materials. This rule clarifies that positive means for verifying the continued efficacy of solid neutron absorbing materials are not required for dry storage systems, when the continued efficacy may be confirmed by demonstration or analysis before use.

8. Clarify the requirements in § 72.140(d) concerning the previously approved QA program in conformance with appendix B of 10 CFR part 50.

Section 72.174 specifies that QA records must be maintained by or under the control of the licensee until the Commission terminates the license. However, § 72.140(d) allows a holder of a part 50 license to use its approved part 50, appendix B, QA program in place of the part 72 QA requirements, including the requirement for QA records. Appendix B allows the licensee to determine what records will be considered permanent records. Thus, part 50 licensees using an appendix B, QA program could choose not to make permanent all records generated in support of part 72 activities. This rule requires these licensees to follow the part 72 requirement to maintain QA records until termination of the part 72 license.

Summary of Public Comments on the Proposed Rule

The NRC received four letters containing nineteen comments responding to the proposed rule published in the **Federal Register** on June 9, 1998 (63 FR 31364). These

comments were considered in the development of the final rule. The primary objective of this rulemaking is to clarify requirements for certain sections of the regulations. The amendments differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that QA records must be maintained as permanent records. Copies of the public comments are available for review in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003–1527.

Four comment letters were received in response to the proposed rule. One was from the Department of Energy (DOE) Idaho Operations Office, one was from a private enterprise, and two were from nuclear power plant licensees. All commenters were supportive of the proposed rule.

Public Comments

1. *Comment:* One commenter believed that to ensure consistency with existing regulations in part 72 and with another NRC proposed rulemaking, "Expand Applicability of Regulations to Holders of, and Applicants for, Certificates of Compliance and Their Contractors and Subcontractors" (63 FR 39526; July 23, 1998), which proposes to define a Certificate of Compliance (CoC) as a certificate approving the "design" of a spent fuel storage cask (as opposed to approving a cask), changes should be made to §§ 72.1 and 72.2(f).

Response: The Commission agrees with this comment. Changes have been made to §§ 72.1 and 72.2(f) to reflect the fact that Certificates of Compliance are issued to approve spent fuel storage cask designs rather than individual casks. In addition, in § 72.2(f), the phrase "in accordance with the requirements of this part as stated in § 72.236", which appears in the proposed rule, has been changed to "in accordance with the requirements of subpart L of this part" to reflect the fact that all the requirements of subpart L pertain to the issuance of certificates of compliance.

2. *Comment:* One commenter noted that the proposed revision to § 72.4 removes existing language which provides the street address for NRC's headquarters office. The commenter noted that this information is necessary for persons who wish to either mail communications to the NRC using a private courier service (e.g., FedEx or UPS) or deliver their communication in person. Additionally, § 72.4 did not provide any guidance for instances in which the due date for a report or written communication falls on a weekend or holiday. In that regard the language in § 50.4(e) should be used as an example.

Response: The Commission agrees with this comment. The current language in § 72.4 containing the street address to be used for personal delivery is being retained. In addition, the suggested changes have been made for reports due on the weekend or a holiday. The Public Docket Room at 2120 L Street NW, Washington, DC, has been removed from the address listing because it is no longer receiving mail deliveries, as all mail is now delivered to NRC Headquarters.

3. *Comment:* For § 72.44(d)(3), one commenter was concerned that allowing flexibility in the timing for submitting the annual report could create "ratcheting" of the due date and result in the submittal of each report earlier than required to avoid lateness. The change proposed by the commenter to require that each report be submitted within 60 days from the end of each monitoring period and not to exceed the 12-month reporting interval would ensure timely submittal of these reports.

Response: The Commission agrees that the language in the proposed rule needs clarification. The Commission has added language in the final rule to clarify that the report must be submitted within 60 days after the end of the 12-month monitoring period. This change will allow flexibility in timing of submitting the annual report without resulting in the submittal of each report earlier than required to avoid lateness.

4. *Comment:* Two commenters noted that current § 72.75(d)(2) requires a written follow-up report when an event or condition requires an emergency notification under § 72.75(a) or a non-emergency four-hour report under § 72.75(b), but that a written follow-up report is not required when the event or condition requires a non-emergency 24-hour report under § 72.75(c). The second commenter suggested that the NRC clarify its expectation for Part 72 licensees regarding the use of NRC Form 366 and the format and guidance contained in NUREG 1022, Revision 1, "Events Reporting Guidelines 10 CFR 50.72 and 50.73."

Response: The Commission agrees with the comment on the first issue and the suggested change has been made to require a written follow-up report after a 24-hour oral notification. The written report is required for documentation for future use and inspections. With respect to the second issue, the Commission believes that use of NRC Form 366 and the guidance contained in NUREG–1022, Rev. 1, is an acceptable method for preparing written event reports; however, licensees are not required to follow this method if the written report contains all the information required by § 72.75(d)(2). Therefore, no change has been made to address the second issue.

5. *Comment:* One commenter recommended not specifying the address and addresses in different sections of the regulations where licensees submit reports to NRC. Instead, the commenter recommended the use of one initial location to indicate where reports are submitted to simplify the regulations and ensure a consistent approach. Further, the references in part 72 to the location where persons are to submit information to the NRC should use the phrase "in accordance with § 72.4" instead of providing a specific address in each individual section. This approach would be consistent with the approach taken in other sections in part 72 as well as part 50. This would allow future changes to the NRC receiving address to involve fewer sections of the regulations. The commenter identified §§ 72.44(d)(3), 72.75(d)(2) and 72.140(d) as sections where this change should be made.

Response: The Commission agrees and has made the suggested changes in the final rule.

6. *Comment:* One commenter noted that the proposed amendment to § 72.75 appears to be inconsistent with the advance notice of proposed rulemaking (ANPR) for 10 CFR 50.73 (63 FR 39522; July 23, 1998) concerning the format and content for reporting reactor events and conditions.

Response: An objective of the § 72.75 rulemaking was to make the part 72 independent spent fuel storage installations (ISFSI) report format and content requirements consistent with the current reactor requirements in § 50.73. The final proposed reporting requirements for specific events and conditions in § 72.75 are consistent with the current requirements in § 50.73. If the reporting requirements in § 50.73 should change, the staff will consider whether conforming changes to § 72.75 would be appropriate.

7. *Comment:* One commenter believed that the retention of QA records until termination of the license for part 72 licensees, and the addition of specific information to meet the existing reporting requirement, do not comply with the Backfit Rule. The commenter indicates that both of these amendments will introduce changes to licensee procedures which are not justified by the substantial increase in protection standard and asserts that the NRC appears to be applying a new test; i.e., whether the changes are sufficiently trivial to ignore the Backfit Rule.

Response: Under § 72.62, "backfitting" includes the modification, after the license has been issued, of procedures or organizations required to operate an ISFSI or MRS. This backfitting provision is very similar to the Backfit Rule in § 50.109. The Commission has determined that reporting and record keeping requirements are not considered backfits even though they may result in changes to procedures. If the reporting or record keeping requirements had to meet the standards for a backfit analysis, the Commission would have to find that the information would substantially increase public health or safety or common defense and security without knowing the results of the request. In addition, the existence or non-existence of a record or report usually has no independent safety significance as compared to actions taken by the licensee or NRC as a result of the information contained in the record or report. It is this resulting action that affects public health and safety or the common defense or security that should be measured under the backfit standard and not the method for obtaining or maintaining the information.

Nevertheless, the Commission also recognizes that imposing reports or record keeping requirements may have a significant impact on a licensee's resources. The standard for authorizing reporting or record keeping requirements for NRC licensees that is contained in the Code of Federal Regulations should be the same standard as the regulations requiring the providing of information under 10 CFR 50.54(f). Namely, before the staff either changes existing requirements or issues new requirements affecting reporting or record keeping, a written analysis should be prepared that contains (a) a statement that describes the need for the information in terms of the potential safety benefit and, if appropriate, a discussion of possible alternatives and (b) the licensee actions required and the cost to develop a response to the information request. In addition, the imposition of the new or modified reporting or record keeping requirement should be approved by the appropriate level of senior management (namely the Executive Director for Operations or his or her designee) or the Commission itself in the case of rulemaking. For rulemaking, the analysis justifying either modifications to existing or new reporting and record keeping requirements shall be contained in the regulatory analysis. The regulatory analysis section of this rulemaking package adequately addresses the Commission's standards for this specific record keeping requirement.

8. *Comment:* One commenter recommended that the proposed change to § 72.140(d) should also include QA programs which satisfy the requirements of subpart H of 10 CFR part 71. The commenter believes that QA requirements in part 71 are equivalent to the QA requirements in parts 50 and 72.

Response: While the staff agrees that the QA program requirements in parts 50, 71, and 72 are equivalent, this comment is beyond the scope of this rulemaking. This issue is being considered in a separate rulemaking.

9. *Comment:* One commenter recommended that the wording in §§ 72.75(d)(2)(ii)(5) and (6) be revised to change the word "plant" to "facility" to be consistent with wording in § 72.75(d)(2(ii).

Response: The Commission agrees with this comment and the change has been made.

10. *Comment:* One commenter recommended adding "spent fuel storage" in the second and third sentences to better describe "cask design requirements" in § 72.122(h)(4).

Response: The Commission agrees with this comment and the change has been made.

11. *Comment:* One commenter recommended replacing the terms "systems" and "facility" in the third sentence of § 72.124(b) with the term "cask".

Response: The Commission is not adopting this comment. The term "facility" includes casks but is not limited to casks. It is possible that different noncask design configurations could be proposed. In reviewing this comment, the staff recognized that a mistake had been made in the proposed rule language in this section. The proposed rule stated "demonstration and analysis", this has been corrected to read "demonstration or analysis."

12. *Comment:* One commenter recommended that the term "notification" be used in place of the term "initial report" in the first sentence of § 72.75(d)(2) to help distinguish between verbal and written communications.

Response: The Commission agrees with the comment and the change has been made.

13. *Comment:* One commenter stated that there is no provision in part 72 for changes to NRC approved quality assurance programs comparable to the part 50 provision at § 50.54(a)(3) unless a licensee has a § 72.140(d) QA program incorporating an approved part 50 program. The commenter requests that a program change provision similar to those found in § 72.44(e) and 72.44(f) be provided to allow for changes to a QA program without NRC approval in defined circumstances.

Response: The proposed recommendation is beyond the scope of this rulemaking action.

14. *Comment:* DOE requested that § 72.80(b) be clarified to exclude DOE from the requirement to submit a copy of its annual financial report.

Response: The Commission agrees with the comment and § 72.22(e) has been revised to exclude DOE from financial assurance requirements.

Specific Changes in Regulatory Text

The following section is provided to assist the reader regarding the specific changes made to each section or paragraph in 10 CFR part 72. For clarity and content, a substantial portion of a particular section or paragraph may be repeated, while only a minor change is being made. This approach will allow the reader to effectively review the specific changes without cross-reference to existing material that has been included for content, but has not been significantly changed.

Sections 72.1 (Purpose) and 72.2 (Scope): These sections are revised to remove superseded information regarding the Federal Interim Storage Program that has expired and to indicate that subpart L provides requirements, procedures, and criteria for approval of spent fuel storage cask designs and issuance of a Certificate of Compliance.

Sections 72.4 and 72.216: These revisions specify that all communications and reports are addressed to the NRC's Document Control Desk.

Section 72.44: This revision permits reactor licensees, who also possess licenses for ISFSIs, to submit dry cask storage effluent report once each year at the same time as the effluent report for reactor operations, instead of submitting dry cask storage effluent report within 60 days of the beginning of each year.

Section 72.75: This change incorporates specific format and content information requirements comparable to reporting requirements that already exist for similar reactor type events in § 50.73(b).

Section 72.122(h)(4): This revision is made to state that periodic monitoring instead of continuous monitoring is appropriate for dry spent fuel storage.

Section 72.122(i): This section specifies the differences between wet pool spent fuel storage instrumentation and control systems and dry spent fuel storage cask instrumentation systems.

Section 72.124(b): This change is made to state that a positive means for verifying the continued efficacy of solid neutron absorbing materials is not required for dry storage systems, when the continued efficacy is confirmed by demonstration or analysis before use.

Section 72.140(d): This change requires all licensees, including a holder of a part 50 license using its approved part 50, appendix B, QA program, to follow the requirement in § 72.174 to maintain part 72 QA records until termination of the part 72 license.

Compatibility of Agreement State Regulations

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517, September 3, 1997), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Environmental Impact: Categorical Exclusion

The NRC has determined that Items 1, 5, 6, and 7 of this rule are the types of action described as a categorical exclusion in 10 CFR 51.22(c)(2) and Items 2, 3, 4 and 8 of this rule are the types of action described as a categorical exclusion in 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule increases the burden on licensees by increasing a record retention period from 3 years to life. The public burden for this information collection is estimated to average 38 hours per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond, to the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC and concludes that the final rule results in an incremental improvement in public health and safety that outweighs the small incremental cost associated with this proposed change. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from M. L. Au, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6181; or e-mail mla@nrc.gov.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the operators of independent spent fuel storage installations (ISFSI). These companies do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act of 1954 (AEA), the Commission is issuing the final rule to amend 10 CFR part 72; 72.44, 72.75, 72.140, and 72.216 under one or more of section 161(b), (i), of (o) of AEA. Willful violation of the rule will be subject to criminal enforcement.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR part 72.62, does not apply to this rule, because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR part 72.62(a). Therefore, a backfit analysis is not required for this rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Regulatory Enforcement Fairness Act of 1966, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.1 is revised to read as follows:

§ 72.1 Purpose.

The regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) and the terms and conditions under which the Commission will issue these licenses. The regulations in this part also establish requirements, procedures, and criteria for the issuance of licenses to the Department of Energy (DOE) to receive, transfer, package, and possess power reactor spent fuel, high-level radioactive waste, and other radioactive materials associated with the spent fuel and high-level radioactive waste storage, in a monitored retrievable storage installation (MRS). The regulations in this part also establish requirements, procedures, and criteria for the issuance of Certificates of Compliance approving spent fuel storage cask designs.

3. In § 72.2, paragraph (e) is removed, paragraph (f) is redesignated as paragraph (e) and a new paragraph (f) is added to read as follows:

§ 72.2 Scope.

* * * * *

(f) Certificates of Compliance approving spent fuel storage cask designs shall be issued in accordance with the requirements of subpart L of this part.

4. Section 72.4 is revised to read as follows:

§ 72.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555–0001. Written communications, reports, and applications may be delivered in person to the Nuclear Regulatory Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738 between 7:30 am and 4:15 pm eastern time. If the submittal deadline date falls on a Saturday, or Sunday, or a Federal holiday, the next Federal working day becomes the official due date.

5. In § 72.44, paragraph (d)(3) is revised to read as follows:

§ 72.44 License conditions.

* * * * *

(d) * * *

(3) An annual report be submitted to the Commission in accordance with § 72.4, specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of operation and such other information as may be required by the Commission to estimate maximum potential radiation dose commitment to the public resulting from effluent releases. On the basis of this report and any additional information that the Commission may obtain from the licensee or others, the Commission may from time to time require the licensee to take such action as the Commission deems appropriate. The report must be submitted within 60 days after the end of the 12-month monitoring period.

* * * * *

6. In § 72.75, paragraph (d)(2) is revised, and paragraphs (d)(3), (d)(4), (d)(5), (d)(6) and (d)(7) are added to read as follows:

§ 72.75 Reporting requirements for specific events and conditions.

* * * * *

(d) * * *

(2) Written report. Each licensee who makes an initial notification required by paragraphs (a), (b), or (c) of this section also shall submit a written follow-up report within 30 days of the initial notification. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all the necessary information and the appropriate distribution is made. These written reports must be sent to the Commission, in accordance with § 72.4. These reports must include the following:

(i) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and significant corrective action taken or planned to prevent recurrence;

(ii) A clear, specific, narrative description of the event that occurred so that knowledgeable readers conversant with the design of ISFSI or MRS, but not familiar with the details of a particular facility, can understand the complete event. The narrative description must include the following specific information as appropriate for the particular event:

(A) ISFSI or MRS operating conditions before the event;

(B) Status of structures, components, or systems that were inoperable at the start of the event and that contributed to the event;

(C) Dates and approximate times of occurrences;

(D) The cause of each component or system failure or personnel error, if known;

(E) The failure mode, mechanism, and effect of each failed component, if known;

(F) A list of systems or secondary functions that were also affected for failures of components with multiple functions;

(G) For wet spent fuel storage systems only, after failure that rendered a train of a safety system inoperable, an estimate of the elapsed time from the discovery of the failure until the train was returned to service;

(H) The method of discovery of each component or system failure or procedural error;

(I)(*1*) Operator actions that affected the course of the event, including operator errors, procedural deficiencies, or both, that contributed to the event;

(*2*) For each personnel error, the licensee shall discuss:

(*i*) Whether the error was a cognitive error (e.g., failure to recognize the actual facility condition, failure to realize which systems should be functioning, failure to recognize the true nature of the event) or a procedural error;

(*ii*) Whether the error was contrary to an approved procedure, was a direct result of an error in an approved procedure, or was associated with an activity or task that was not covered by an approved procedure;

(*iii*) Any unusual characteristics of the work location (e.g., heat, noise) that directly contributed to the error; and

(*iv*) The type of personnel involved (e.g., contractor personnel, utility-licensed operator, utility nonlicensed operator, other utility personnel);

(J) Automatically and manually initiated safety system responses (wet spent fuel storage systems only);

(K) The manufacturer and model number (or other identification) of each component that failed during the event;

(L) The quantities and chemical and physical forms of the spent fuel or HLW involved;

(3) An assessment of the safety consequences and implications of the event. This assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event;

(4) A description of any corrective actions planned as a result of the event, including those to reduce the probability of similar events occurring in the future;

(5) Reference to any previous similar events at the same facility that are known to the licensee;

(6) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the facililty's characteristics;

(7) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

7. In § 72.122, paragraphs (h)(4) and (i) are revised to read as follows:

§ 72.122 Overall requirements.

* * * * *

(h) * * *

(4) Storage confinement systems must have the capability for continuous monitoring in a manner such that the licensee will be able to determine when corrective action needs to be taken to maintain safe storage conditions. For dry spent fuel storage, periodic monitoring is sufficient provided that periodic monitoring is consistent with the dry spent fuel storage cask design requirements. The monitoring period must be based upon the spent fuel storage cask design requirements.

* * * * *

(i) *Instrumentation and control systems.* Instrumentation and control systems for wet spent fuel storage must be provided to monitor systems that are important to safety over anticipated ranges for normal operation and off-normal operation. Those instruments and control systems that must remain operational under accident conditions must be identified in the Safety Analysis Report. Instrumentation systems for dry spent fuel storage casks must be provided in accordance with cask design requirements to monitor conditions that are important to safety over anticipated ranges for normal conditions and off-normal conditions. Systems that are required under accident conditions must be identified in the Safety Analysis Report.

* * * * *

8. In § 72.124, paragraph (b) is revised to read as follows:

§ 72.124 Criteria for nuclear criticality safety.

* * * * *

(b) *Methods of criticality control.* When practicable, the design of an ISFSI or MRS must be based on favorable geometry, permanently fixed neutron absorbing materials (poisons), or both. Where solid neutron absorbing materials are used, the design must provide for positive means of verifying their continued efficacy. For dry spent fuel storage systems, the continued efficacy may be confirmed by a demonstration or analysis before use, showing that significant degradation of the neutron absorbing materials cannot occur over the life of the facility.

* * * * *

9. In § 72.140, paragraph (d) is revised to read as follows:

§ 72.140 Quality assurance requirements.

* * * * *

(d) *Previously approved programs.* A Commission-approved quality assurance program which satisfies the applicable criteria of appendix B to part 50 of this chapter and which is established, maintained, and executed with regard to an ISFSI will be accepted as satisfying the requirements of paragraph (b) of this section, except that a licensee using an appendix B quality assurance program also shall meet the requirement of § 72.174 for recordkeeping. Prior to initial use, the licensee shall notify the Commission, in accordance with § 72.4, of its intent to apply its previously approved appendix B quality assurance program to ISFSI activities. The licensee shall identify the program by date of submittal to the Commission, docket number, and date of Commission approval.

10. In § 72.216, paragraph (c) is revised to read as follows:

§ 72.216 Reports.

* * * * *

(c) The general licensee shall make initial and written reports in accordance with §§ 72.74 and 72.75, except for the events specified by § 72.75(b)(2) and (3) for which the initial reports will be made under paragraph (a) of this section.

Dated at Rockville, Maryland, this 15th day of June, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–15793 Filed 6–21–99; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 712

Investment and Deposit Activities; Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA)

ACTION: Final rule.

SUMMARY: The final rule makes four changes to the recently revised rule concerning federal credit unions' (FCUs') investments in and loans to credit union service organizations (CUSOs). The four changes are: First, delete a provision preventing FCUs from investing in or lending to CUSOs in which non-credit union depository institutions are co-investors or lenders; second, revise a provision limiting CUSO investments in non-CUSO service providers; third, delete a provision preventing FCUs from investing in the debentures of a CUSO; and fourth, clarify how the NCUA measures the limit on an FCU's investment in or loans to CUSOs. In addition, the final rule clarifies the meaning of cyber financial services. The changes decrease the regulatory burden for FCUs investing in or lending to CUSOs.

DATES: This rule is effective July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540; or Linda Groth, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1998, the NCUA Board requested comment on proposed changes to part 712 of its regulations. 63 FR 65714 (November 30, 1998). Part 712 sets forth the requirements for FCUs investing in or lending to CUSOs. The proposed amendments addressed four issues resulting from the March 1998 revisions to the CUSO rule. 63 FR 10743 (March 5, 1998). The Board also requested comment on the scope of services that should be included within the existing cyber financial services category of the CUSO rule.

Summary of Comments

The NCUA Board received twenty comments on the proposal: nine from credit unions; three from CUSOs; two from credit union trade groups; one from a CUSO trade group; one from a bank trade group; three from state leagues; and one from an attorney. Of the fourteen commenters that addressed the proposed changes, thirteen generally supported the added flexibility of the proposed amendments.

FCUs Investing in or Lending to a CUSO in Which a Bank or Thrift Is Also a Participant

Section 712.2(c) prohibits an FCU from investing in or lending to a CUSO in which one or more banks or thrift institutions participate. The rationale behind the limitation was that it would be too confusing to credit union members if both NCUSIF and FDIC signs were posted together at shared branches. 63 FR at 10746. The Board believes possible confusion can be addressed through appropriate disclosures and so the proposal removed the prohibition.

The commenters generally supported the added flexibility of this amendment. There were two negative commenters. One was a bank trade group that objected because it believes the requirement that CUSOs primarily serve credit unions or their members will be too hard to monitor if banks and thrifts are allowed to participate. The bank trade group also objected on the basis that insurance disclosures for this type of CUSO would be too burdensome. The Board rejects these arguments. The disclosure issue for federally insured credit unions is currently addressed in § 740.3(c) of NCUA's regulations. The CUSO rule currently allows credit unions to participate with other entities, just not banks or thrifts. This participation has not led to a problem in monitoring the "primarily serves" requirement, and the Board does not anticipate a problem when banks and thrifts are added. One commenter was concerned that NCUA would no longer be able to regulate CUSOs if banks and thrifts were allowed to participate. Inasmuch as NCUA does not currently regulate CUSOs, the Board determined that this concern was not justified.

CUSO Investment in Other Service Providers

Section 712.3(b) limits a CUSO investing in a service provider not meeting the customer base requirement to the minimum amount necessary to provide the service. The NCUA Board does not believe it is necessary to be so restrictive in limiting the amount a CUSO can invest. It proposed limiting the amount to the amount necessary to participate in the service provider or a greater amount if necessary to obtain a reduced price for goods or services.

All of the commenters but the bank trade group were in support of this added flexibility, and three commenters suggested even greater flexibility. One commenter suggested that FCUs also be permitted to invest in non-CUSO service providers. There is no statutory authority for this type of investment. Another commenter recommended deleting any investment restriction on CUSOs, and a third commenter suggested expanding a CUSO's investment authority up to the amount necessary "to obtain a board of director position or policy input in the service provider."

In contrast, the bank trade group objects to a CUSO having the potential to gain a controlling interest in a non-CUSO service provider and recommends limiting the investment to a passive interest. Its position is that CUSOs should be limited as much as possible because of the tax exempt status of FCUs. The final rule allows CUSOs to invest so that they can provide goods and services to their customers at competitive prices without losing sight of the fact that CUSOs cannot function as an investment vehicle for FCUs to invest in what would otherwise be an impermissible investment. Accordingly, the Board thinks the proposal struck the appropriate balance and has adopted that approach in the final rule.

FCUs Investing in the Debentures of a CUSO

Section 712.2(a) limits an FCU's investment in a CUSO structured as a corporation to the equity of a corporation. Although this provision was intended as a clarification, it has the effect of prohibiting an FCU from investing in the debentures of a CUSO structured as a corporation. The proposal removed this prohibition. The one commenter that specifically referenced this amendment was in support of it.

FCUs Accounting in Accordance With GAAP

The proposed change clarified that generally accepted accounting principles (GAAP) are to be used in accounting for an FCU's investment in and loans to a CUSO both for the regulatory limitations under § 712.2 and the financial statement amounts under § 712.3. However, it does not require divestiture or prohibit future investments if the regulatory limitation is exceeded under the equity method without any additional cash outlay.

The commenters generally supported this change because "it maintains consistency in the accounting treatment of CUSOs and avoids the undesired possibility of penalizing success." One commenter objected and two commenters had drafting suggestions. The negative commenter maintains that if the investment in the CUSO is less than .5% of total credit union assets, the credit union should be permitted to use aggregate cash outlay since the material effect would be insignificant. However, § 201(a) of the Credit Union Membership Access Act (CUMAA), Pub. L. No. 105–219, 112 Stat. 918 (1998), requires credit unions having assets of $10 million or more to follow GAAP in all reports or statements filed with the Board. 12 U.S.C. 1782(a)(6)(C). Therefore, the requirement that all FCUs use GAAP in accounting for their investment and loans to CUSOs is consistent with the new accounting requirements of CUMAA and, even for investments below the regulatory limit will insure that future growth or diminution in the investment are fairly reported in FCU financial statements.

Cyber Financial Services

The NCUA Board also requested comment on § 712.5(d)(8) which lists cyber financial services as a permissible CUSO activity. The Board received thirteen comments on this issue. The preamble to the current rule described cyber financial services as "credit union member financial services that are analogous to services performed for credit union members in a credit union branch and not unrelated services." 63 FR at 10753. The NCUA Board specifically requested comment on the scope of services that should be included within the category of cyber financial services.

Six of the commenters opposed having a list of specific permissible services because they thought it would be too limiting and, with changing technology, would rapidly become outdated. The Board agrees with these concerns. The Board also agrees that the limitations described in the preamble to the March 1998 rule are too restrictive. The Board's intent is that CUSOs be permitted to provide to credit unions and their members electronic delivery of any permissible CUSO service and electronic delivery of any permissible credit union service.

Some commenters noted that credit unions need to be able to offer Internet access to their members to market their services effectively and compete in the financial marketplace. Therefore, in addition to allowing CUSOs to provide currently permissible financial services electronically, the Board, similar to a Federal Reserve Board determination, will allow CUSOs to provide FCUs and their members an electronic link to an Internet access provider as part of providing currently permissible financial services electronically. *Royal Bank of Canada, Montreal, Canada, et al.*, Order Approving Notices to Engage in Nonbanking Activities, Federal Reserve Board (December 2, 1996). CUSOs providing Internet access would be limited to providing access through an electronic link to their member credit unions, which in turn would offer Internet access to their members, only as part of a broader package of credit union or financial services. This is an example of an activity that would be considered incidental to permissible cyber financial services.

Group Purchasing

Although comment was not requested on this issue, one commenter suggested that CUSOs be allowed to provide group purchasing for FCU members to the same extent as FCUs under part 721 of NCUA's regulations. Although the

commenter cites the statutory limitations placed on CUSOs to provide a service that "relates to the daily operations of the credit unions they serve" or "the routine operations of credit unions," the commenter ignores the implications of these limitations by arguing that CUSOs should be allowed to market any service provided by a third party vendor. 12 U.S.C. 1757 (5)(D) and (7)(I). The Federal Credit Union Act (Act) prohibits the commenter's broad interpretation of permissible CUSO activities.

Section by Section Analysis

Section 712.2(c) is revised to read: "A federal credit union may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties." This language is substantially the same as the rule prior to the March 1998 revision. In addition, the final rule removes a cross-reference in the current version of § 712.2(c) to § 712.6. Section 712.6 stands on its own to implement the statutory prohibition against using the CUSO authority to acquire control of certain other organizations such as trade associations and other depository institutions. 12 U.S.C. 1757(7)(I).

Section 712.3(b) of the current rule limits the amount a CUSO can invest in other service providers to the minimum amount necessary to provide the service. The revised language concerning service providers permits CUSO investments in non-CUSO service providers if the investment is limited to the amount necessary to participate in the service provider or a greater amount if necessary to obtain a reduced price for goods or services, for the CUSO, its credit unions, or the credit unions' members. The intent of this provision is to allow a CUSO to invest as much as is necessary to obtain an economic advantage on the goods or services it is receiving. CUSOs would not be permitted to use this provision as independent investment authority.

NCUA believes it would be clearer for this provision to be set out in that portion of the regulation addressing permissible activities rather than in the section addressing customer base. NCUA is moving this provision from the customer base section of the rule, § 712.3(b), and adding it as a new subsection (p) to § 712.5 concerning permissible CUSO activities and services.

The third change concerns § 712.2(a) of the current rule that limits an FCU's investment in a CUSO structured as a corporation to the equity of the corporation. The preamble to the March 1998 rule explains that this limitation was a clarification. 63 FR at 10745. However, this provision has the effect of prohibiting an FCU from investing in the debentures of a CUSO structured as a corporation, a practice that was previously permissible. NCUA is eliminating this provision because the limitation is more restrictive than the Act, which permits FCUs to invest in the obligations of a CUSO. 12 U.S.C. 1757(7)(I).

Currently, § 712.2(a) states that an FCU can only invest in a limited partnership as a limited partner. This provision is more related to the permissible structure of a CUSO than permissible investments in a CUSO. NCUA believes this provision would be clearer if it is moved from § 712.2(a) to § 712.3(a). In addition, the provision limiting an FCU's investment in a limited liability company to membership is deleted because it is unnecessary.

This Board is revising §§ 712.2 and 712.3 to clarify that GAAP is to be used in accounting for an FCU's investments in and loans to a CUSO both for purposes of accounting for the regulatory limitations under § 712.2 and the financial statement amounts under § 712.3. The final rule does not require divestiture or prohibit future investments if the regulatory limitation is exceeded under the GAAP equity method without any additional cash outlay.

To accomplish this, new subsections (d) and (e) have been added to § 712.2. Subsection (d) includes the definition of "paid-in and unimpaired capital and surplus" that was formerly in subsection (a) and adds the requirement that total investments in and loans to the CUSO be measured consistent with GAAP for regulatory purposes. Section 712.3(c) is revised by adding "for financial reporting purposes" to the title.

As explained in the proposal, an example of how the rule will be applied is if an FCU owns 45% of a CUSO and the CUSO has an annual net income of $50,000, the equity method requires an FCU to book a $22,500 addition to its "investments in and loans to CUSO" asset account. If by doing so, the regulatory limitation is reached or exceeded, NCUA will not require divestiture.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under 1 million in assets). The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that the amendments to the rule reduce regulatory burden. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule has no effect on reporting requirements in part 712.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The CUSO regulation applies only to FCUs. Thus, the NCUA Board has determined that this rule does not constitute a "significant regulatory action" for purposes of the Executive Order. NCUA will continue to work with the state credit union supervisors to achieve shared goals concerning CUSOs with both FCU and state-chartered credit union participation.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and determined that, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, this is not a major rule.

List of Subjects

12 CFR Part 703

Credit unions, Investments.

12 CFR Part 712

Administrative practices and procedure, Credit, Credit unions, Investments, Reporting and record keeping requirements.

By the National Credit Union Administration Board on June 14, 1999.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, the NCUA amends 12 CFR chapter VII as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 will continue to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8) and 1757(15).

§ 703.20 [Amended]

2. Section 703.20 is amended in paragraph (c) by revising "§ 701.27" to read "part 712."

PART 712—CREDIT UNION SERVICE ORGANIZATIONS

3. The authority citation for part 712 will continue to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

4. Amend § 712.2 by revising the section heading, removing the second and third sentences of paragraph (a), revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

* * * * *

(c) *Parties.* An FCU may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties.

(d) *Measurement for calculating regulatory limitation.* For purposes of paragraphs (a) and (b) of this section: paid-in and unimpaired capital and surplus means shares and undivided earnings; and total investments in and total loans to CUSOs will be measured consistent with GAAP.

(e) *Divestiture.* If the limitations in paragraph (a) of this section are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, without an additional cash outlay by the FCU, divestiture is not required. An FCU may continue to invest up to 1% without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

5. Amend § 712.3 by adding a new sentence following the first sentence of paragraph (a), by removing the second sentence of paragraph (b) and by revising the title of paragraph (c) to read as follows:

§ 712.3 What are the characteristics of and what requirements apply to CUSOs?

(a) *Structure.* * * * An FCU can invest in or loan to a CUSO only if the CUSO is structured as a corporation, limited liability company, or limited partnership. An FCU may only participate in a limited partnership as a limited partner. * * *

* * * * *

(c) *Federal credit union accounting for financial reporting purposes.* * * *

* * * * *

6. In § 712.5 add paragraph (p) to read as follows:

§ 712.5 What activities and service are preapproved for CUSO

* * * * *

(p) *CUSO investments in non-CUSO service providers:* In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.

[FR Doc. 99–15650 Filed 6–21–99; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 712

Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: The interim final rule provides a grandfather exemption for real estate brokerage services if a credit union service organization (CUSO) was providing that service prior to April 1, 1998, and requests comment on that exemption and whether real estate brokerage services should be reinstated as a permissible CUSO service.

DATES: This rule is effective July 22, 1999. Comments must be received on or before August 20, 1999.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540; or Linda Groth, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1998, the NCUA Board requested comment on proposed changes to part 712 of its regulations. 63 FR 65714 (November 30, 1998). Part 712 sets forth the requirements for FCUs investing in or lending to CUSOs. The NCUA Board is issuing a separate final rule adopting the proposed amendments.

Although the Board did not request comment on the issue of real estate brokerage services, eight commenters objected to the Board's removal in March 1998 of real estate brokerage services from the list of permissible services. 12 CFR 712.6(b). The March rule allows a CUSO currently providing this service to continue until April 1, 2001. 12 CFR 712.9. In the alternative, the commenters requested that CUSOs currently providing real estate brokerage services be permitted to continue these services under a grandfather provision.

The Board continues to have concerns with conflicts and the appearance of conflicts between real estate brokerage CUSOs and the credit unions such CUSOs serve. However, because the existing real estate brokerage CUSOs do not appear to present a safety and soundness risk, the Board is willing to provide a grandfather exemption for existing real estate brokerage CUSOs. This interim final rule amends § 712.6(b) so that CUSOs engaged in real estate brokerage services prior to April 1, 1998 may continue to provide that service.

Section 712.5 allows the Board to limit or discontinue a CUSO service if it has supervisory, legal, or safety and soundness concerns. The Board cautions that if a conflict between the real estate brokerage CUSO and the FCU's loan program arises, the Board may order the FCU to divest its investment in the real estate brokerage CUSO.

The Board believes good cause exists to issue this provision as an interim final rule. The rule is relieving a regulatory burden and CUSOs engaging in this activity must either know that they are going to be allowed to continue or begin the process of closing down the business.

Amendment

Section 712.6 is revised to allow FCUs to invest in or loan to CUSOs engaged in real estate brokerage services provided the CUSO was engaging in that activity prior to April 1, 1998.

Request for Comment

The Board is requesting comment on the change made by this interim final rule providing a grandfather exemption for real estate brokerage CUSOs in existence prior to April 1, 1998. The Board is also requesting comment on whether real estate brokerage services

should be reinstated as a permissible CUSO activity.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that the amendment to the rule reduces regulatory burden. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This interim rule has no effect on reporting requirements in part 712.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The CUSO regulation applies only to FCUs. Thus, the NCUA Board has determined that this interim rule does not constitute a "significant regulatory action" for purposes of the Executive Order. NCUA will continue to work with the state credit union supervisors to achieve shared goals concerning CUSOs with both FCU and state-chartered credit union participation.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and determined that, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, this is not a major rule.

List of Subjects

12 CFR Part 712

Administrative practices and procedure, Credit, Credit unions, Investments, Reporting and record keeping requirements.

By the National Credit Union Administration Board on June 14, 1999.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, the NCUA amends part 712 as follows:

PART 712—CREDIT UNION SERVICE ORGANIZATIONS

1. The authority citation for part 712 will continue to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

2. In § 712.6 revise paragraph (b) to read as follows:

§ 712.6 What activities and services are prohibited for CUSOs?

* * * * *

(b) *Real estate brokerage CUSO.* An FCU may not invest in or loan to a CUSO engaged in real estate brokerage services, except those in existence prior to April 1, 1998.

[FR Doc. 99–15648 Filed 6–21–99; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–23]

Modification of Class E Airspace; Neillsville, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Neillsville, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27, and a Nondirectional Beacon (NDB) SIAP to Rwy 27, Amendment (Amdt) 6, have been developed for Neillsville Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 15, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Neillsville, WI (64 FR 18584). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment strongly supporting the proposal was received from the Wisconsin Department of Transportation, and three additional comments were received from the Manager of the Neillsville Airport, WI, the Assistant Manager of the Marshfield Airport, WI, and the President of Duffy's Aircraft Sales and Leasing, Inc., Neillsville, WI. These three commenters all supported the proposal while at the same time expressing a safety-related concern that the adjacent Falls Military Operations Area (MOA) does not exclude enough of the controlled airspace around Neillsville Municipal Airport. Any consideration of modification to a MOA would be a separate non-rulemaking airspace action and is beyond the scope of this proposal. However, these comments relating to the MOA have been forwarded to the appropriate Military Representatives for their consideration. Class E. airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Neillsville, WI, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP, and NDB Rwy 27 SIAP, Amdt 6, at Neillsville Municipal Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Neillsville, WI [Revised]

Neillsville Municipal Airport, WI
(Lat. 44°33′29″ N., long. 90°30′44″ W.)
Neillsville NDB
(Lat. 44°33′26″ N., long. 90°30′55″ W.)

That airspace extending upward from 700 feet above the surface within an 6.3-mile radius of the Neillsville Municipal Airport and within 2.5 miles each side of the 091° bearing from the Neillsville NDB extending from the 6.3-mile radius to 7.0 miles east of the airport.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–15855 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–19]

Modification of Class E Airspace; Savanna, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Savanna, IL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13 has been development for Tri-Township Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 09, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 30, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Savanna, IL (64 FR 15139). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Savanna, IL, to accommodate aircraft executing the proposed GPS Rwy 13 SIAP at Tri-Township Airport by modifying the existing controlled airspace. The area will be depicted on appropriation aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragrph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Savanna IL [Revised]

Savanna, Tri-Township Airport, IL
(Lat 42°02′45″ N., long. 90°06′27″ W.)

That airspace extending upward from 700 feet above the surface within an 8.4-mile radius of the Tri-Township Airport.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–15854 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–18]

Modification of Class E Airspace; Hamilton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Hamilton, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 11 has been developed for Hamilton-Fairfield Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 30, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Hamilton, OH (64 FR 15140). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment modifies Class E airspace at Hamilton, OH, to accommodate aircraft executing the proposed GPS Rwy 11 SIAP at Hamilton-Fairfield Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations, and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Hamilton, OH [Revised]

Hamilton, Hamilton-Fairfield Airport OH
(Lat. 39°21'52" N., long. 84°31'29" W.)
Hamilton NDB
(Lat. 39°22'21" N., long. 84°34'21" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Hamilton-Fairfield Airport and within 2.9 miles either side of the 280° bearing from the Hamilton NDB, extending from the 6.6-mile radius to 10.0 miles west of the NDB, excluding that airspace within the Covington, KY, and Middletown, OH, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–15853 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–20]

Establishment of Class E Airspace; De Kalb, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice establishes Class E airspace at De Kalb, IL. A Localizer/Distance Measuring Equipment (LOC/DME) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 2 has been developed for De Kalb Taylor Municipal Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action creates controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 09, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–250, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, April 5, 1999, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at De Kalb, IL (64 FR 16371). The proposal was to add controlled airspace extending upward from 700 to 1,200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at De Kalb, IL, to accommodate aircraft executing the proposed LOC/DME Rwy 2 SIAP at De Kalb Taylor Municipal Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 De Kalb IL [New]

De Kalb Taylor Municipal Airport, IL
[Lat. 41° 55' 55" N., long. 88° 42' 30" W.)

That airspace extending upward from 700 feet above the surface within an 6.6-mile radius of the De Kalb Taylor Municipal Airport, excluding that airspace which overlies the Chicago, IL, Class E airspace [illegible].

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–15852 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–17]

Modification of Class E Airspace; Willmar, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Willmar, MN. A VHF Omnidirectional Range (VOR) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 28, Amendment (Amdt) 2, and a VOR SIAP Rwy 10, Amdt 2, have been developed for Willmar Municipal-John L. Rice Field Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action adds a northwest extension and a southeast extension to the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, April 5, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Willmar, MN (64 FR 16368). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Willmar, MN, to accommodate aircraft executing the proposed VOR or GPS Rwy 28 SIAP, Amdt 2, and the VOR SIAP Rwy 10, Amdt 2, at Willmar Municipal-John L. Rice Field Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Willmar MN [Revised]

Willmar Municipal-John L. Rice Field Airport, MN
(Lat. 45°06′56″ N. long. 95°05′20″ W.)
Willmar VOR/MDE
(Lat. 45°07′03″ N. long. 95°05′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6.-mile radius of the Willmar Municipal-John L. Rice Field Airport and within 2.4 miles each side of the Willmar VOR/DME 115° radial extending from the 6.6-mile radius to 7.0 miles southeast of the airport, and within 2.4 miles each side of the Willmar VOR/DME 286° radial extending from the 6.6-mile radius to 7.0 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–15851 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–22]

Modification of Class E Airspace; Juneau, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Juneau, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 20 has been developed for Dodge County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 8, 1999, the FAA proposed to amend 14 CFR 71 to modify Class E airspace at Juneau, WI (64 FR 17133). The proposal was to add controlled airspace extending upward from 700 to 1,200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment strongly supporting the proposal was received from the Wisconsin Department of Transportation. Class E airspace designations for airspace areas extending upward form 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR 71 modifies Class E airspace at Juneau, WI, to accommodate aircraft executing the proposed GPS Rwy 20 SIAP at Dodge County Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Juneau, WI [Revised]

Juneau, Dodge County Airport, WI
(Lat. 43°25′36″ N., long. 88° 42′N12″W.)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of the Dodge County Airport, excluding that airspace within the Oshkosh, WI, Hartford, WI, and Watertown, WI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–15850 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–21]

Modification of Class E Airspace; Kokomo, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Kokomo, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 09, and a GPS SIAP to Rwy 27, have been developed for Logansport Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, April 5, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Kokomo, IN (64 FR 16371). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Kokomo, IN, to accommodate aircraft executing the proposed GPS Rwy 09 SIAP, and the GPS Rwy 27 SIAP, at Logansport Municipal Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Kokomo, IN [Revised]

Kokomo Municipal Airport, IN
(Lat. 40°31′41″ N., long. 86° 03′ 32″ W.)
Grissom Air Reserve Base, IN
(Lat. 40°38′53″ N., long. 86° 09′ 08″ W.)
Logansport Municipal Airport, IN
(Lat. 40° 42′ 41″ N., long. 86° 22′ 28″ W.)
Peru Municipal Airport, IN
(Lat. 40° 47′ 11″ N., long. 86° 08′ 47″ W.)

That airspace extending upward fro[m] feet above the surface v[ithin] radius of the Kokomo within 2.6 miles northeast [of] radius to [the] east of the airport, and wi[th] dius of the Grissom ARB and [within] es each side of the ILS localizer northeast course extending from the 7.0-mile radius to 14.5 miles northeast of the base, and within 2.0 miles each side of the ILS localizer southwest course extending from the 7.0-mile radius to 14.5 miles southwest of the base; and within a 7.7-mile radius of the Logansport Municipal Airport; and within a 6.3-mile radius of the Peru Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on: June 8, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–15849 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 23

Guides for the Jewelry, Precious Metals, and Pewter Industries

AGENCY: Federal Trade Commission.

FINAL ACTION: Revision of the Guides for the Jewelry, Precious Metals, and Pewter Industries.

SUMMARY: In a separate document published in the **Federal Register** on June 9, 1999, at 64 FR 30898, the Federal Trade Commission ("Commission") rescinded the Guides for the Watch Industry ("Watch Guides"). This **Federal Register** document revises the Commission's Guides for the Jewelry, Precious Metals, and Pewter Industries to remove a reference to the Watch Guides.

EFFECTIVE DATE: June 22, 1999.

ADDRESSES: Requests for copies of this **Federal Register** document should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. This document also is available on the Internet at the Commission's website, <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Laura J. DeMartino, Attorney, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3030.

SUPPLEMENTARY INFORMATION: In a separate **Federal Register** document published in the **Federal Register** on

June 9, 1999, at 64 FR 30898, the Commission rescinded the Guides for the Watch Industry, 16 CFR part 245. The Commission's Guides for the Jewelry, Precious Metals, and Pewter Industries ("Jewelry Guides"), 16 CFR part 23, refer to the Watch Guides in footnote 1 in § 23.0. Because the Watch Guides have been rescinded, the Commission is amending the Jewelry Guides to remove the reference to the Watch Guides in footnote 1 in § 23.0.

List of Subjects in 16 CFR Part 23

Advertising, Jewelry, Labeling, Trade practices, Watch bands.

The Commission, under the authority of section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends 16 CFR part 23 as follows:

1. The authority citation for part 23 continues to read as follows:

Authority: Sec. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.

§ 23.0 [Amended]

2. Section 23.0 is amended by removing and reserving footnote 1.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–15840 Filed 6–21–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegation of Authority and Organization; Center for Food Safety and Applied Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the general redelegation of authority from the Commissioner of Food and Drugs to other officers of FDA. The amendment delegates to the Director and Deputy Director, Center for Food Safety and Applied Nutrition (CFSAN); the Director, Office of Regulations and Policy, CFSAN; and the Director, Office of Premarket Approval, CFSAN authority to implement the Federal Food, Drug, and Cosmetic Act (the act), as amended hereafter. This redelegation is necessary to improve the efficiency of program operations.

EFFECTIVE DATE: June 22, 1999.

FOR FURTHER INFORMATION CONTACT: Louis B. Brock, Regulation Coordination Staff (HFS–24), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4273, or

Loretta W. Davis, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4809.

SUPPLEMENTARY INFORMATION: Section 309 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) amended section 409 of the act (21 U.S.C. 348). New section 409(h) of the act requires manufacturers or suppliers of food-contact substances to notify the Secretary of Health and Human Services (and by delegation, the Commissioner of Food and Drugs), at least 120 days prior to the introduction or delivery for introduction into interstate commerce, of the identification and use of food-contact substances, and to provide information showing that the substance is safe according to the standards of section 409(c)(3)(A) of the act.

FDA is amending the general redelegation of authority from the Commissioner of Food and Drugs to the Director and Deputy Director, Center for Food Safety and Applied Nutrition (CFSAN); the Director, Office of Regulations and Policy, CFSAN; and the Director, Office of Premarket Approval, CFSAN authority to implement the act, as amended hereafter. This redelegation is necessary to improve the efficiency of program operations. Further redelegation of the authorities is not authorized at this time. Authority delegated to a position may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 2421, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. Section 5.61 is amended by adding paragraph (i) to read as follows:

§ 5.61 Food standards, food additives, generally recognized as safe (GRAS) substances, color additives, nutrient content claims, and health claims.

* * * * *

(i) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs under section 409(h) of the act, excluding the duties set out in section 409(h)(5) of the act, regarding premarket notification of food-contact substances:

(1) The Director and Deputy Director, Center for Food Safety and Applied Nutrition (CFSAN).

(2) The Director, Office of Regulations and Policy, CFSAN.

(3) The Director, Office of Premarket Approval, CFSAN.

Dated: June 11, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15753 Filed 6–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[TD 8819]

RIN 1545–AX14

Use of Actuarial Tables in Valuing Annuities, Interests for Life or Terms of Years, and Remainder or Reversionary Interests; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Friday, April 30, 1999 (64 FR 23187) relating to the use of actuarial tables in valuing annuities, interests for life or terms of years, and remainder or reversionary interests.

DATES: This correction is effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 7520 and 2031 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8819), that were the subject of FR Doc. 99–10533 is corrected as follows:

1. On page 23188, in the table entitled "CROSS REFERENCE TO REGULATION SECTIONS", in the column entitled "Interest rate", line 11, the language "§ 7520....." is corrected to read "§ 7520".

$$\left(1+\frac{i}{2}\right)\sum_{t=0}^{n-1} v^{(t+1)}\left[\left(1-\frac{l_{x+t+1}}{l_x}\right)-\left(1-\frac{l_{x+t}}{l_x}\right)\right]\left(1-\frac{1}{2n}-\frac{t}{n}\right)$$

* * * * *

§ 1.7520–1T [Corrected]

3. On page 23211, column 1, § 1.7520–1T(c)(2) heading, line 3, the language "*interest rates between 2.2 and 26*" is corrected to read "*interest rates between 2.2 and 22*".

4. On page 23211, column 1, § 1.7520–1T(c)(2)(iii), line 5, the language "deprecation adjustment factors. See" is corrected to read "depreciation adjustment factors. See".

PART 20—[CORRECTED]

§ 20.2031–7A [Corrected]

5. On page 23212, column 1, § 20.2031–7A(e)(4), line 9, the language "paragraph (b)(4), and Table B, Table]," is corrected to read "paragraph (e)(4), and Table B, Table J,".

PART 1—[CORRECTED]

§ 1.170A–12T [Corrected]

2. On page 23189, column 3, § 1.170A–12T(b)(2), the formula is corrected to read as follows:

§ 1.170A–12T Valuation of a remainder interest in real property for contributions made after July 31, 1969 (temporary).

* * * * *

(b) (2) * * *

Valuation dates		Applicable regulations
After	Before	
	01–01–52	20.2031–7A(a).
12–31–51	01–01–71	20.2031–7A(b).
12–31–70	12–01–83	20.2031–7A(c).
11–30–83	05–01–89	20.2031–7A(d).
04–30–89	05–01–99	20.2031–7A(e).

* * * * *

7. On page 23222, § 20.2031–7T(d)(7), in the table entitled "TABLE 90 CM.—LIFE TABLE APPLICABLE AFTER APRIL 30, 1999", the column headings are corrected to read as follows:

§ 20.2031–7T Valuation of annuities, interests for life or term of years, and remainder or reversionary interests (temporary).

* * * * *

(d) * * *

(7) * * *

TABLE 90 CM.—LIFE TABLE APPLICABLE AFTER APRIL 30, 1999

Age x	*l* (x)	Age x	*l* (x)	Age x	*l* (x)
(1)	(2)	(1)	(2)	(1)	(2)

* * * * *

§ 20.7520–1T [Corrected]

8. On page 23223, column 2, § 20.7520–1T(c)(2) heading, line 3, the language "*interest rates between 2.2 and 26*" is corrected to read "*interest rates between 2.2 and 22*".

PART 25—[CORRECTED]

§ 25.7520–1T [Corrected]

9. On page 23227, column 3, § 25.7520–1T(c)(2) heading, line 3, the language "*interest rates between 2.2 and 26*" is corrected to read "*interest rates between 2.2 and 22*".

PARTS 1, 20, 25—[CORRECTED]

10. On page 23228, in the table in amendatory instruction Par.32, the entry for 1.170A–6 (c)(5), *Example* (2)(c) is added in numerical order; and the entries for 1.170A–6(c)(5), *Example* (2)(a), first sentence; 1.170A–6(c)(5), *Example* (3)(a), seventh and eighth sentences (the fifth entry from top of chart); 1.642(c)–A6(e)(2)(i); 20.2055–2(f)(2)(iv), *Example* (3), second sentence; 20.2055–2(f)(2)(iv), *Example* (3), third sentence; 20.2056A–4(c)(4)(ii)(B), penultimate sentence; and 25.7520–1(c)(1), third sentence are corrected to read as follows:

Section	Remove	Add
. . . . .	.	.
1.170A–6(c)(5), Example (2)(a), first sentence	1970.	
1.170A–6(c)(5), Example (2)(c)	for 1970.	
. . . . .	.	.
1.170A–6(c)(5), Example (3)(a), seventh, eighth, and ninth sentences	1972	1973.
. . . . .	.	.
1.642(c)–6A(e)(2)(i)	§20.2031–7(d)(6) ..	§20.2031–7A(e)(4).
. . . . .	.	.
20.2055–2(f)(2)(iv), Example (3), third sentence	§20.2031–10(e)	§20.2031–7A(c).
20.2055–2(f)(2)(iv), Example (3), fourth sentence	§20.2031–10(f)	§20.2031–7A(d).
20.2056A–4(c)(4)(ii)(B), fifth sentence	Alpha Volume	Book Aleph.
. . . . .	.	.
25.7520–1(c)(1), third sentence	Section 20.2031–7(d)(6) of this chapter (Estate Tax Regulations) contains.	Sections 20.2031–7(d)(6) and 20.2031–7A(e)(4) of this chapter contain.

Michael Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–15786 Filed 6–21–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–042]

RIN 2115–AA97

Safety Zone: Glen Cove, New York Fireworks, Hempstead Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Hempstead Harbor for the Glen Cove, NY fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Hempstead Harbor.

DATES: This rule is effective from 8:30 p.m. until 10 p.m. on July 4, 1999, and July 5, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 10, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Glen Cove, New York Fireworks, Hempstead Harbor, NY in the **Federal Register** (64 FR 24987). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Good cause exists for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to promulgate a NPRM and a final rule that would be effective at least 30 days after it was published. The Coast Guard published an NPRM with a 30-day comment period, but this did not leave sufficient time to publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of Hempstead Harbor, Glen Cove, New York, and provide for the safety of life on navigable waters. Additionally, the public was notified of this event when the NPRM was published in the Local Notice to Mariners on May 12, 1999.

Background and Purpose

Bay Fireworks submitted an Application for Approval of a Marine Event for a fireworks display on Hempstead Harbor. This regulation establishes a temporary safety zone in all waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″N 073°39′34″W (NAD 1983), approximately 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065). The temporary safety zone is in effect from 8:30 p.m. until 10 p.m. on July 4, 1999. If the event is canceled due to inclement weather, then this event will be held from 8:30 p.m. until 10 p.m. on July 5, 1999. The temporary safety zone prevents vessels from transiting a portion of Hempstead Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 1,075 yards of Hempstead Harbor. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Additionally, vessels are not precluded from mooring at or getting underway from public or private facilities at Glen Cove or Red Spring Point, NY in the vicinity of this event. Public notifications will be made prior to the event via Local Notice to Mariners, and marine information broadcasts. The Coast Guard limited the comment period for this NPRM to 30 days because the temporary safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to the proposed rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of Hempstead Harbor during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at public or private facilities in Glen Cove or Red Spring Point, NY in the vicinity of this event, that vessels may safely transit to the west of the zone, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. *Small Entities* include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–042 to read as follows:

§ 165.T01–042 Safety Zone: Glen Cove, New York Fireworks, Hempstead Harbor, NY.

(a) *Location.* The following area is a safety zone: All waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40° 51′ 58″ N 073° 39′ 34″ W (NAD 1983), approximately 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065).

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on July 4, 1999. If the event is cancelled due to inclement weather, then this section is effective from 8:30 p.m. until 10 p.m. on July 5, 1999.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 11, 1999.

L.M. Brooks,

Captain, U.S. Coast Guard, Acting Captain of the Port, New York.

[FR Doc. 99–15867 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 027–3038; FRL–6363–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology Requirements for Major Sources of Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting conditional limited approval of a State

Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires all major sources of nitrogen oxides (NO_X) to implement reasonably available control technology (RACT). This revision was submitted to comply with the NO_X requirements of the Clean Air Act (the Act). Also, Maryland's regulations are being revised by adding and amending definitions. The intended effect of this action is to grant conditional limited approval of Maryland's NO_X RACT regulation and to approve the new and revised definitions submitted by the State of Maryland.

EFFECTIVE DATE: This final rule is effective on July 22, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Donahue, (215) 814–2095, or by e-mail at donahue.carolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1999 (64 FR 8034), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed conditional limited approval of Maryland's NO_X RACT rule, Code of Maryland Regulations (COMAR) 26.11.09.08. The formal SIP revision was submitted by the Maryland Department of the Environment on June 8, 1993 and amended on July 11, 1995.

Also submitted with the NO_X RACT rule were amendments to COMAR 26.11.09.01 and 26.11.01.01, revising the definition of "fuel burning equipment" and adding definitions for the terms "annual combustion analysis," "space heater," and "system" used in COMAR 26.11.09.08. EPA is fully approving these amendments. Other specific requirements of Maryland's NO_X RACT rule and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

II. Comments Received on EPA's Notice of Proposed Rulemaking

EPA received three letters in response to the February 18, 1999 NPR, all making the same comment. The following discussion summarizes and responds to the comment received.

Comment 1: The commenters oppose submittal of COMAR 26.11.01.11 for inclusion in the Maryland SIP to satisfy the reporting and recordkeeping requirements of Maryland's NO_X RACT rule. The commenters stated that inclusion of this regulation would cause consequences beyond that of using continuous emissions monitoring (CEM) as a NO_X measurement tool. The comment also stated that COMAR 26.11.01.11 should be considered for inclusion in the SIP on its own merits, and the effort to include it "should initiate at the State level."

Response 1: In the State's NO_X RACT rule, Maryland established that the monitoring requirements for NO_X facilities would be those set forth in COMAR 26.11.01.10 and .11. COMAR 26.11.01.10 has been approved into the Maryland SIP; however, COMAR 26.11.01.11 has never been submitted to EPA for approval. Maryland's NO_X RACT rule will be federally enforceable only if the regulations cited by this rule are themselves federally enforceable. As pointed out in the second condition in the NPR, EPA left it to the State to decide whether or not to initiate efforts to include COMAR 26.11.01.11 in the SIP. The second condition in the NPR stated that Maryland may submit COMAR 26.11.01.11 or revise the rule to explain the reporting requirements. Maryland is currently in the process of revising its NO_X RACT rule to address the NO_X monitoring requirements and satisfy this condition.

Terms of Conditional Approval

EPA cannot grant full approval of Maryland's NO_X RACT rule because not every major NO_X source is covered by the presumptive limits in § C or RACT provisions in §§ H and J. Maryland has the option to submit individual RACT determinations as SIP revisions, thus the RACT rule will not be approvable until all of its components are approvable. Therefore, EPA is conditionally approving Maryland's NO_X RACT regulations, based on the State's commitment to submit for approval into the SIP, the case-by-case RACT proposals for all sources subject to RACT requirements currently known to MDE. Maryland submitted this commitment in a letter to EPA, dated October 29, 1998.

To fulfill the condition of this approval the State of Maryland must, within 12 months of the effective date of this rulemaking:

1. Certify that it has submitted case-by-case RACT SIPs for all sources subject to the RACT requirements currently known to the Department, or demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions;
2. Either submit COMAR 26.11.01.11 to EPA for approval, or revise § F to clearly explain the reporting and record keeping requirements in COMAR 26.11.09.08;
3. Change COMAR 26.11.09.08D to unambiguously require all emissions trading plans and proposals be submitted as individual SIP revisions, or meet all the requirements of a discretionary EIP.

Once EPA has determined that the State has met these conditions, EPA shall remove the conditional nature of its approval and the Maryland NO_X regulation SIP revision will, at that time, retain limited approval status. Should the State fail to meet the conditions specified above, the final conditional limited approval of the Maryland NO_X RACT regulation SIP revision shall convert to a disapproval.

Terms of Limited Approval

While EPA does not believe that the Maryland generic NO_X RACT regulation satisfies the Act's RACT requirements as discussed previously in this notice, EPA is also granting limited approval of the Maryland generic RACT regulation on the basis that it strengthens the Maryland SIP. After Maryland has fulfilled the conditions of this rule and once EPA has approved all of the case-by-case RACT proposals as SIP revisions, the limited approval will convert to full approval.

III. Final Action

EPA is granting conditional limited approval to Maryland's NO_X RACT rule, COMAR 26.11.09.08, as a revision to the Maryland SIP, and is approving amendments to COMAR 26.11.01.01.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because conditional and limited approvals of SIP submittals under sections 110 and 301, and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* versus *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to Maryland's

generic NO_X RACT regulation, must be filed in the United States Court of Appeals for the appropriate circuit by August 23, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 2, 1999.

Thomas Maslany,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(143) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(143) Revisions to the Code of Maryland Air Regulations (COMAR) 26.11.01.01 and 26.11.09.01, and limited approval of revisions to COMAR 26.11.09.08, submitted on June 8, 1993 and July 11, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of June 8, 1993 from the Maryland Department of the Environment transmitting COMAR 26.11.09.08, Control of NO_X Emissions from Major Stationary Sources and amendments to COMAR 26.11.09.01, Definitions.

(B) COMAR 26.11.09.08, Control of NO_X Emissions from Major Stationary Sources, effective on May 10, 1993, replacing the existing COMAR 26.11.09.08.

(C) Amendment to COMAR 26.11.09.01, Definitions, effective on May 10, 1993.

(D) Letter of July 11, 1995 from the Maryland Department of the Environment transmitting amendments to COMAR 26.11.09.08, Control of NO_X Emissions from Major Stationary Sources, amendments to COMAR 26.11.01.01, Definitions and COMAR 26.11.09.01, Definitions.

(E) Amendments to COMAR 26.11.09.08, Control of NO_X Emissions from Major Stationary Sources, effective on June 20, 1994 and May 8, 1995.

(F) Amendment to COMAR 26.11.01.01, Definitions, effective on June 20, 1994.

(G) Amendments to COMAR 26.11.09.01, Definitions, effective on June 20, 1994 and on May 8, 1995.

(ii) Additional material.

(A) Remainder of June 8, 1993 and July 11, 1995 State submittals.

(B) Letter of October 29, 1998 from the Maryland Department of the Environment agreeing to meet certain conditions by no later than 12 months after July 22, 1999.

3. Section 52.1072 is amended by adding paragraph (e) to read as follows:

§ 52.1072 Conditional approval.

* * * * *

(e) Revisions to the Code of Maryland Air Regulations (COMAR), rule 26.11.09.08, pertaining to NO_X RACT submitted on June 8, 1993 and amended on July 11, 1995 by the Maryland Department of the Environment, is conditionally approved based on certain contingencies. Maryland must meet the following conditions by no later than 12 months after July 22, 1999. These conditions are that Maryland must:

(1) Certify that it has submitted case-by-case RACT SIPs for all sources subject to the RACT requirements currently known to the Department, or demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions;

(2) Either submit COMAR 26.11.01.11 to EPA for approval, or revise COMAR 26.11.09.08F to clearly explain the reporting and record keeping requirements in COMAR 26.11.09.08;

(3) Change COMAR 26.11.09.08D to unambiguously require all emissions trading plans and proposals be submitted as individual SIP revisions, or meet all the requirements of a discretionary EIP.

[FR Doc. 99–15713 Filed 6–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6363–5]

Final Determination To Extend Deadline for Promulgation of Action on Section 126 Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination.

SUMMARY: The EPA is extending by six months the deadline for taking final action on petitions that three States have submitted to require EPA to make findings that sources upwind of those States contribute significantly to ozone nonattainment problems in those States. Under the Clean Air Act (CAA or Act), EPA is authorized to grant this time extension if EPA determines that the extension is necessary, among other things, to meet the purposes of the Act's rulemaking requirements. By this document, EPA is making that determination. The three States that have submitted the petitions are Delaware, Maryland and New Jersey.

EFFECTIVE DATE: This action is effective as of June 14, 1999.

FOR FURTHER INFORMATION CONTACT: Howard J. Hoffman, Office of General Counsel, MC 2344, 401 M St. SW, Washington, DC 20460, (202) 260–5892, hoffman.howard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Today's action is procedural, and is set in the context of a series of actions EPA is taking to address the problem of the transport of tropospheric ozone and its precursors—especially oxides of nitrogen (NO_X)—across the eastern region of the United States.

By a document dated May 25, 1999, 64 FR 28250, EPA promulgated a final rulemaking concerning petitions submitted by eight northeastern States under section 126(b), which authorizes States or political subdivisions to petition EPA for a finding that major stationary sources in upwind states emit in violation of the prohibition of section 110(a)(2)(D), by contributing significantly to nonattainment problems in downwind States. The eight States submitting the petitions were Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont.

EPA has recently received additional petitions under section 126 from the States of Delaware (received on June 11, 1999), Maryland (received on May 3, 1999), and New Jersey (received on April 15, 1999). These petitions seek findings, similar to those for which EPA granted affirmative technical determinations, for specified sources in specified upwind States.

Under section 126(b), for each petition, EPA must make the requested finding, or deny the petition, within 60 days of receipt of the petition. This period would expire, for the Delaware petition, on August 10, 1999; for the Maryland petition, on July 2, 1999; and, for the New Jersey petition, on June 14, 1999.

Under section 126(c), with respect to any existing sources for which EPA makes the requested finding, those sources must cease operations within three months of the finding, except that those sources may continue to operate if they comply with emissions limitations and compliance schedules that EPA may provide to bring about compliance with the applicable requirements.

Section 126(b) provides that EPA must allow a public hearing for the submitted petitions. In addition, EPA's action under section 126 is subject to the procedural requirements of CAA section 307(d). See section 307(d)(1)(N). One of these requirements is notice-and-comment rulemaking, under section 307(d)(3).

In addition, section 307(d)(10) provides for a time extension, under certain circumstances, for rulemaking subject to section 307(d). Specifically, section 307(d)(10) provides:

> Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

Section 307(d)(10) applies, by its terms, to section 126 rulemakings because the 60-day time limit under section 126(b) necessarily limits the period after proposal to less than six months. In previous rulemaking concerning the earlier section 126 petitions, EPA granted itself several time extensions for acting on those petitions. See, e.g., 62 FR 54769 (Oct. 22, 1997).

In accordance with section 307(d)(10), EPA is today determining that the 60-day period afforded by section 126(b) is not adequate to allow the public and the agency adequate opportunity to carry out the purposes of the section 307(d) procedures for developing an adequate proposal on whether the sources identified in the section 126 petitions contribute significantly to nonattainment problems downwind, and, further, to allow public input into the promulgation of any controls to mitigate or eliminate those contributions. The determination of whether upwind emissions contribute significantly to downwind nonattainment areas is highly complex, although much technical work has already been accomplished in the course of other rulemakings.

EPA is in the process of determining what would be an appropriate schedule for action on the section 126 petitions, in light of the complexity of the required determinations and the other issues. The schedule must afford EPA adequate time to prepare a notice that clearly elucidates the issues so as to facilitate public comment, as well as afford the public adequate time to comment.

Accordingly, extending the date for action on the section 126 petitions for six months is necessary to determine the appropriate overall schedule for action, as well as to continue to develop the technical analysis needed to develop a proposal.

II. Final Action

A. Final Determination

Today, EPA is determining, under CAA section 307(d)(10), that a six-month period is necessary to assure the development of an appropriate schedule for rulemaking on the section 126 petitions, which schedule would allow EPA adequate time to prepare a notice for proposal that will best facilitate public comment, as well as allow the public sufficient time to comment. Accordingly, EPA is granting a six-month extension to the time for rulemaking on the section 126 petitions. Under this extension, the dates for action on the section 126 petitions are:

Delaware: February 10, 2000
Maryland: January 3, 2000
New Jersey: December 14, 1999

B. Notice-and-Comment Under the Administrative Procedures Act (APA)

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make a determination that the deadline for action on the section 126 petitions should be extended, Congress may not have intended such a determination to be subject to notice-and-comment rulemaking. However, to the extent that this determination is subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Providing notice and comment would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert agency resources from the critical substantive review of the section 126 petitions.

C. Effective Date Under the APA

Today's action will be effective on June 14, 1999. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. Today's action—a deadline extension—must take effect immediately because its purpose is to move back by six months the upcoming deadlines for the three section 126 petitions. Moreover, EPA intends to use immediately the six-month extension period to continue to develop an appropriate schedule for ultimate action on the section 126 petitions, and to continue to develop the technical analysis needed to develop the notice of proposed rulemaking. These reasons support an effective date prior to 30 days after the date of publication.

D. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

E. Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 et seq., EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate. In addition, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. EPA has determined that these requirements do not apply to today's action because it (i) is not a Federal mandate—rather, it simply extends the date for EPA action on a rulemaking; and (ii) contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 et seq., EPA must propose a regulatory flexibility analysis

assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such requirements, as described above, it is not subject to RFA.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. of the APA, 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the date of publication of this rule, a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office. This rule is not a "major rule" as defined by 5 U.S.C. 804(2), as amended.

H. Paperwork Reduction Act

This action does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

I. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of June 22, 1999.

Dated: June 14, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–15543 Filed 6–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[IL–64–2–5807; FRL–6344–5]

RIN 2060–AE41

National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for hydrochloric acid process steel pickling facilities and hydrochloric acid regeneration plants pursuant to section 112 of the Clean Air Act (Act). Major source facilities subject to the rule emit hydrochloric acid (HCl), a hazardous air pollutant (HAP). Chronic exposure to HCl has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute inhalation exposure to HCl may cause hoarseness, inflammation and ulceration of the respiratory tract, chest pain, and pulmonary edema. Hydrochloric acid regeneration plants also emit chlorine (Cl_2), which is also a HAP. Acute exposure to high levels of Cl_2 results in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, Cl_2 is a potent irritant to the eyes, the upper respiratory tract, and lungs. The final rule provides public health protection by requiring new or existing pickling lines that use hydrochloric acid as the primary pickling solution, hydrochloric acid regeneration plants, and acid storage tanks to meet emission standards reflecting application of the maximum achievable control technology (MACT). Implementation of the rule is expected to reduce HAP emissions by more than 2,200 megagrams per year (Mg/yr) (2,500 tons per year (tpy) from current levels.

EFFECTIVE DATE: This final rule is effective on June 22, 1999. See the **SUPPLEMENTARY INFORMATION** section concerning judicial review.

ADDRESSES: Docket. Docket A–95–43, containing the information considered by the EPA in development of the final rule, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Jim Maysilles, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–3265, facsimile number (919) 541–5600, electronic mail address, "maysilles.jim@epa.gov".

SUPPLEMENTARY INFORMATION:

Regulated Entities.

Entities potentially regulated by this action are those that emit or have the potential to emit HAP listed in section 112(b) of the Act. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	HCl steel pickling plants and acid regeneration plants (SIC 3312, 3315, and 3317).
Federal government	Not affected.
State/local/tribal government.	Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities of which EPA is aware that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine if your facility is regulated by this action, you should carefully examine the applicability criteria in section III.A of this document and in § 63.1155 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT SECTION.**

Judicial Review

The NESHAP for Steel Pickling Facilities—HCl Process was proposed on September 18, 1997 (62 FR 49051); this action announces EPA's final decisions on this rule. Under section 307(b)(1) of the Act, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements established by today's final rule may not be challenged later in any civil or criminal proceeding brought by EPA to enforce these requirements.

Technology Transfer Network

In addition to being available in the docket, an electronic copy of today's document, which includes the regulatory text, is available through the TTN at the UATW. Following promulgation, a copy of the rule will be posted at the TTN's policy and guidance page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/t3pfpr.html). The TTN facilitates the exchange of information in various areas of air pollution control, such as technology. If more information on the TTN is needed, call the TTN HELP line at (919) 541–5384.

Background Information Document

A background information document (BID) for the promulgated standards containing a summary of all the public comments made on the proposed rule and the EPA's response to those comments is available in the docket for this rulemaking. The BID also is available from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777; or from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Please refer to "National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants—Background Information for Promulgated Standards," (EPA–453/R–98–010b). The BID is posted on the Technology Transfer Network (TTN) at the Unified Air Toxics Website (UATW) (http://www.epa.gov/ttn/uatw/7__10yrstds.html).

Outline

The following outline is provided to aid in reading this preamble to the final rule:

I. Statutory Authority
II. Background
III. Summary
A. Summary of Final Rule and Changes Since Proposal
1. Applicability
2. Definitions
3. Emission Standards
4. Operational and Equipment Standards
5. Compliance Dates
6. Maintenance Requirements
7. Performance Testing and Test Methods
8. Monitoring Requirements
9. Notification, Reporting, and Recordkeeping Requirements
10. Delegation of Authority
11. Display of OMB Control Numbers
B. Summary of Impacts
IV. Summary of Major Public Comments and Responses
A. Applicability
B. Definitions
C. Emission Standards
1. Pickling Lines
2. Hydrochloric Acid Regeneration Plants
3. Acid Storage Vessels
4. Assessment of HCl as a Threshold Pollutant Under Section 112(d)(4)
D. Compliance Dates and Maintenance Requirements
E. Performance Testing and Test Methods
F. Monitoring Requirements
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V. Administrative Requirements
A. Docket
B. Executive Order 12866: Regulatory Planning Review
C. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
D. Executive Order 12875: Enhancing the Intergovernmental Partnerships
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act
G. Submission to Congress and the General Accounting Office
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act
J. Pollution Prevention Act
K. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

I. Statutory Authority

The statutory authority for this rule is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

II. Background

Section 112(c) of the Act requires the EPA to list each category of major and area sources, as appropriate, emitting one or more of the HAP listed in section 112(b) of the Act. On July 16, 1992 (57 FR 31576), the EPA published a list of major and area sources for which NESHAP are to be promulgated, followed by a schedule for promulgation of those standards (58 FR 63941, December 3, 1993). "Steel Pickling—HCl Process" is included on the list of major sources for which EPA must establish national emission standards. The term "major source" means a source emitting 10 tpy or more of any one HAP or 25 tpy or more of any combination of HAP.

The EPA proposed national emission standards for this source category on September 18, 1997 (62 FR 49052). The proposed rule, BID, and other materials containing information used in developing the proposed rule were made available for review and comment. A 60-day comment period from September 18, 1997 to November 17, 1997, was provided to accept written comments from the public. The opportunity for a public hearing was provided to allow interested people to present oral comments on the rulemaking. However, the EPA did not receive a request for a public hearing, so a public hearing was not held.

The EPA received a total of 15 comments on the proposed standards from industry, trade associations, States and representative associations, vendors, and engineering firms. A copy of each comment letter is available for public inspection in Docket No. A–95–43. The EPA held followup discussions with various commenters to clarify specific issues raised in their written comments that were submitted to the Agency during the comment period. Copies of correspondence and other information exchanged between the EPA and the commenters during the post-comment period are available for inspection in the docket.

All of the comments received were reviewed and carefully considered by the EPA. Changes to the rule were made based on public comments where EPA determined it to be appropriate. The final rule and changes made since proposal are summarized in section III of this document; a summary of responses to major comments is included in section IV. Additional discussion of the EPA's responses to public comments is presented in the BID for the final rule.

III. Summary

A. Summary of Final Rule and Changes Since Proposal

1. Applicability

Several changes were made to the applicability provisions of the proposed rule to clarify the regulated source category and affected sources. As proposed, the regulated source category includes steel pickling facilities and acid regeneration plants. Thus, the regulated source category may consist of a stand-alone steel pickling facility or acid regeneration plant that is a major source of HAP or a steel pickling facility and/or acid regeneration plant that is part of a major source of HAP. The title of the final rule has been changed to include acid regeneration plants as part of the source category. This change is made to clarify that the regulation applies to hydrochloric acid regeneration plants, which is not apparent in the original title.

A steel pickling facility is a facility with a collection of equipment and tanks configured for the pickling process, including immersion, drain, and rinse tanks. A steel pickling facility may have one or more pickling lines. Conditions that distinguish pickling from other operations such as cleaning or surface activation are now defined such that each new or existing pickling line (batch or continuous process) using an acid solution in any tank in which hydrochloric acid is at a concentration of 6 percent by weight or greater and has a temperature of 100° F or greater is subject to the rule. For the purposes of the rule, steel pickling is limited to hydrochloric acid pickling of carbon steels, which contain approximately 2 percent or less carbon, 1.65 percent or less manganese, 0.6 percent or less silicon, and 0.6 percent or less copper.

An acid regeneration plant includes the collection of equipment and processes configured to reconstitute fresh hydrochloric acid pickling solution from spent pickle liquor using a thermal treatment process. A new or existing plant that regenerates only pickling solution other than HCl is not subject to the rule.

The rule is not applicable to facilities that pickle only specialty steels. Specialty steel means a category of steel that includes silicon electrical, alloy, tool, and stainless steels. Specialty steels are pickled by a process that may include the use of hydrochloric acid but also includes the use of other acids, which may be mixed with hydrochloric acid in the same pickling bath or used in separate baths as part of a multiacid/multibath pickling sequence. The EPA will determine at a later date if the specialty steel pickling process should or should not be subject to the requirements of a rule that limits HCl emissions.

2. Definitions

The title acid regeneration plant is changed to hydrochloric acid regeneration plant to clarify the applicability of the rule.

The title acid storage tank is changed to hydrochloric acid storage vessel to clarify the applicability of the rule. The definition is changed to apply only to a stationary vessel, not a temporary or mobile vessel, that is used for the bulk containment of virgin or regenerated hydrochloric acid.

The term "vessel" rather than "tank" is used for containers used to store hydrochloric acid, in order to be consistent with terminology used in other subparts of this part to define containers that are used for chemical storage. Similarly, the term "tank" is used for containers that are integral parts of processes, such as acid baths used in pickling lines.

A definition of carbon steel is added to identify processes to which the rule applies.

The definition of closed-vent system is modified to state that emissions may be transported into any device that is capable of reducing or collecting emissions, not necessarily a control device.

The definition *hydrochloric acid regeneration plant* production mode is added to assist in clarifying that the operating and monitoring requirements for hydrochloric acid regeneration plants apply only while the plant is operating in a manner to produce usable regenerated acid or iron oxide.

The definition of *responsible maintenance official* is added to identify a person who is designated to have signature authority for records and reports required under this rule.

The definition of *specialty steel* is added to identify similar processes to which the rule does not apply.

The final rule defines *steel pickling* to mean "the chemical removal of iron oxide mill scale that is formed on steel surfaces during hot rolling or hot forming of semi-finished steel products through contact with an aqueous solution of acid where such contact occurs prior to shaping or coating of the finished steel product. This definition does not include removal of light rust or scale from finished steel products or activation of the metal surface prior to plating or coating."

The definition of *steel pickling facility* is changed to refer only to facilities that conduct pickling.

Hydrochloric acid regeneration plants are discussed separately and also specifically identified in the title of the final rule as distinct entities.

3. Emission Standards

No changes were made regarding the technologies serving as the basis of the proposed standards. The emission control technology identified as achieving the MACT floor control level (wet scrubbing) is discussed in section VII.C of the preamble to the proposed rule (62 FR 49052, September 18, 1997).

The emission standards in §§ 63.1157 and 63.1158 of the proposed rule have been revised. Sections 63.1157 and 63.1158 of the proposed rule included HCl emission standards for existing and new HCl pickling lines based on two options: An HCl emission rate corresponding to a minimum collection efficiency of the air pollution control device, or a maximum concentration of HCl in the exit gases. Based on public comment, EPA revised the level of the standards from that proposed for pickling lines and acid regeneration plants. The final standards are shown in Table 1.

The final standards retain the alternative to the Cl_2 concentration standard for existing acid regeneration plants that allows the owner or operator to request approval for a source-specific standard based on the maximum design temperature and minimum excess air that allows production of iron oxide of acceptable quality. The owner or operator must establish the source-specific Cl_2 standard using procedures specified in the final rule.

The provision in the proposed rule that owners or operators of new or reconstructed hydrochloric acid regeneration plants to request approval for a source specific Cl_2 concentration standard is removed. Upon reconsideration, this provision is not consistent with the statutory requirement that all new sources are to achieve the new source MACT numerical limit. The expectation is that owners and operators are to design and construct new sources capable of meeting the standard.

For pickling lines, the concentration option has been placed ahead of the collection efficiency option to reflect the expectation that the concentration option will be the one most likely exercised. The intent to make either option equally acceptable has not changed.

TABLE 1.—EMISSION STANDARDS FOR AFFECTED SOURCES

Affected source	Emission standard
Pickling line:	
Existing	HCl concentration in air pollution control device or process exhaust gas no more than 18 parts per million by volume (ppmv) or Air pollution control device minimum HCl collection efficiency of 97%.
New	HCl concentration in air pollution control device or process exhaust gas no more than 6 ppmv for continuous lines and 18 ppmv for batch lines or Air pollution control device minimum HCl collection efficiency of 99% for continuous lines and 97% for batch lines.
Hydrochloric acid regeneration plant:	
Existing	HCl concentration in air pollution control device or process exhaust gas no more than 25 ppmv and Cl_2 concentration in air pollution control device or process exhaust gas no more than either 6 ppmv or a source-specific maximum concentration limit.
New	HCl concentration in air pollution control device or process exhaust gas no more than 12 ppmv and Cl_2 concentration in air pollution control device or process exhaust gas no more than 6 ppmv.

TABLE 1.—EMISSION STANDARDS FOR AFFECTED SOURCES—Continued

Affected source	Emission standard
Hydrochloric acid storage vessel: Existing and new	Cover and seal all openings and route emissions to air pollution control device or alternative control system and Use enclosed line or local fume capture system vented to air pollution control device or alternative control system at each point where acid is exposed to atmosphere.

One change was made to the requirements for new or existing acid storage vessels to clarify that a forced ventilation add-on air pollution control device is not the only method allowed for emissions control. The final rule requires that the owner or operator cover and seal all openings on each vessel and route emissions through a closed-vent system to an air pollution control device or alternative device that is capable of reducing or collecting emissions. Acid loading and unloading must still be performed either through enclosed lines or with a local fume capture system, ventilated through an air pollution control device or alternative control device, at each point where the acid is exposed to the atmosphere.

4. Operational and Equipment Standards

A new section on operational and equipment standards has been added. The requirement to operate hydrochloric acid regeneration plants in a manner consistent with good air pollution control practices is highlighted in this new section to define those practices and emphasize their importance. The owner or operator of an acid regeneration plant must operate each affected source at all times while in production mode in a manner that minimizes that proportion of excess air fed to the process and maximizes the process offgas temperature consistent with producing usable regenerated acid or iron oxide.

The standards for hydrochloric acid storage vessels have been moved to this new section to reflect the fact that these standards are equipment standards, not numerical emission limits.

5. Compliance Dates

No changes to the proposed compliance dates have been made in the final rule. Under § 63.1160 of the final rule, compliance for existing sources must be achieved no later than June 22, 2001. The owner or operator of a new or reconstructed source that commences construction or reconstruction after September 18, 1997, must achieve compliance by June 22, 1999, or upon startup, whichever is later. As provided under section 112(i)(3)(B) of the Act, the owner or operator may request that the Administrator or applicable permitting authority in a State with an approved permit program grant an extension for 1 additional year if necessary to install controls.

6. Maintenance Requirements

The owner or operator must develop and implement a written operation and maintenance plan for each emission control device that is consistent with good maintenance practices. For a wet scrubber emission control device, the written plan must, at a minimum, include the actions described in § 63.1160(b)(2)(i) through § 63.1160(b)(2)(iv)(E) of the final rule. The plan is no longer required to be submitted to the applicable permitting authority, but it is required to be incorporated by reference into the source's title V permit.

An additional maintenance requirement is to monitor and record the pressure drop across the scrubber once per shift to identify changes that may indicate a need for maintenance.

If corrective action is required, the owner or operator is allowed 1 working day in which to initiate procedures to correct the problem. Initiation of procedures is defined to be completion of the first applicable step or item in the maintenance plan. Required repairs must be completed as soon as practicable.

Under the proposed rule, a record of each maintenance inspection was required to be signed by a responsible plant official. Under the final rule, the signature authority is assigned to a responsible maintenance official, defined as a person designated by the owner or operator as having authority to sign records and reports required under this rule.

Maintenance rules regarding initiation of corrective action within 1 working day, timely repair, and signing of maintenance records by a responsible maintenance official also apply to hydrochloric acid regeneration plants.

7. Performance Testing and Test Methods

Changes made to the performance test requirements include adding provisions for new wet scrubber operating parameters and deleting the requirement to establish compliant values for pressure drop and scrubber effluent acidity.

Following approval of the site-specific test plan, the owner or operator must conduct an initial performance test for each process or control device to demonstrate compliance with the applicable emission standard. If the owner operator chooses to comply with the collection efficiency standard for a new or existing pickling line, the performance test must measure the mass flows of HCl at the inlet and outlet of the air pollution control device. Inlet and outlet measurements must be performed simultaneously. If the owner or operator chooses to comply with the HCl concentration standard for a new or existing pickling line or is demonstrating compliance with the HCl and Cl_2 concentration standards for a new or existing acid regeneration plant, the performance test must measure the concentration of HCl and, for hydrochloric acid regeneration plants, Cl_2 in the gases exiting the process or the air pollution control device. Compliance with the applicable standards is determined by either the average of three consecutive sampling runs or the average of any three of four consecutive runs. Each run must be conducted under conditions representative of normal process operations. Sampling point locations must be determined according to EPA Method 1, and stack gas conditions must be determined, as appropriate, according to EPA Methods 2, 3, and 4 in 40 CFR part 60, appendix A. An exception to Method 1 is made in that no traverse point shall be within one inch of the stack or duct wall. The final rule requires EPA Method 26A to determine compliance with the HCl and total chloride emission limits. As allowed by § 63.7(f) of the NESHAP general provisions in 40 CFR part 63, subpart A, the owner or operator may use equivalent alternative test methods

subject to approval by the Administrator. The EPA does not delegate authority for this determination.

If a wet scrubber is the air pollution control device, the owner or operator must monitor the makeup water flow rate and, for scrubbers that operate with recirculation, the recirculation water flow rate during each run to establish site-specific operating parameter values for the minimum makeup water flow rate and the minimum recirculation water flow rate. For an acid regeneration plant, the owner or operator must also monitor the process offgas temperature and a suite of parameters necessary to determine the proportion of excess air fed to the process to establish site-specific operating parameter values for the minimum process offgas temperature and the maximum proportion of excess air. The proportion of excess air is determined by a combination of total air flow rate, fuel flow rate, spent pickle liquor addition rate, and amount of iron in the spent pickle liquor or by any other combination of parameters approved by the Administrator. Compliant operating parameter values are determined as the averages of the values recorded during any of the runs for which results are used to establish the emission concentration or collection efficiency. Alternative compliant operating parameter values may be established based on multiple performance tests. The final rule clarifies that the owner or operator may reestablish operating parameter values for wet scrubbers and acid regeneration plants as part of any performance test (or tests) conducted after the initial performance test.

8. Monitoring Requirements

The proposed monitoring requirements for wet scrubbers were revised to require monitoring of the makeup water flow rate and recirculation water flow rate. Alternative monitoring requirements may be developed subject to approval by the Administrator. Requirements for monitoring the scrubber pressure drop (as a monitoring parameter) and effluent acidity are eliminated. The requirement for installation and operation of continuous emission monitoring systems (CEMS) if excursions of the control device operating parameters occur more frequently than six times during any 6-month reporting period is deleted. Commenters on the proposed rule pointed out that the use of CEMS for this application has not been demonstrated; manufacturers have cautioned that using such devices in acidic conditions with water droplets present would interfere with the test methodology and be corrosive to the testing apparatus.

The requirement for periodic performance tests also is revised. The final rule requires that the owner or operator conduct performance tests for each air pollution control device either annually or on an alternative schedule that is approved by the permitting authority, but no less frequently than every 2½ years or twice per title V permit term.

If a wet scrubber is used as the control device for a pickling line or acid regeneration plant, the owner or operator must install, operate, and maintain devices to measure continuously and record at least once per shift the makeup water flow rate and the recirculation water flow rate while the scrubber is operating. The final rule requires operation of the scrubber such that neither the makeup water flow rate nor the recirculation water flow rate are less than values established during the performance test (or tests). If an excursion occurs (i.e., either operating parameter is less than the allowed value), the owner or operator must initiate procedures to correct the problem within 1 working day of detection of the excursion.

The owner or operator of an acid regeneration plant also must install, operate, and maintain a device to measure continuously and record at least once per shift the process offgas temperature and devices to measure the parameters from which proportion of excess air is determined. The final rule requires that excess air must be determined and recorded at least once per shift instead of at least once every 8 hours while the plant is in production mode, which is in accordance with the original intent of the rule.

The proposed rule inadvertently stated that exceedances of scrubber operating parameters were violations of the emission limit. The intention was to state that exceedances of acid regeneration plant operating parameters were violations of the emission limit. This requirement has been changed so that exceedances of scrubber operating parameters only require initiation of corrective action according to the maintenance plan, and exceedances of acid regeneration plant operating parameters are not violations of the emission limit but instead are violations of the operational standard.

Each monitoring device for scrubbers and acid regeneration plants must be certified by the manufacturer to be accurate to within ±5 percent and be calibrated in accordance with the manufacturer's instructions, but not less frequently than once per year.

Monitoring requirements for acid storage vessels are revised. The definition of closed-vent system now includes provisions to transport emissions back into any device that is capable of reducing or collecting the emissions. Under the final rule, the owner or operator must make semiannual instead of monthly inspections of each vessel to ensure proper operation of the closed-vent system and either the air pollution control device or enclosed loading and unloading line, whichever is applicable. Commenters to the proposed rule pointed out that semiannual inspections would be more consistent with other rules that have similar monitoring requirements.

9. Notification, Reporting, and Recordkeeping Requirements

Only minor changes needed to clarify and accommodate changes in the final rule were made to the proposed notification, reporting, and recordkeeping requirements. Requirements pertaining to CEMS were deleted in the final rule because these monitoring systems are no longer required.

The final notification requirements include, under § 63.9 (b) through (h) of subpart A, one-time notifications of applicability, intent to construct or reconstruct (including anticipated startup date and actual startup date), date of performance test, compliance extension requests, special compliance obligations, and compliance status. The final rule requires that the notification of compliance status include identification of the selected emission limits and the full test report documenting the results of initial performance tests (including all data and calculations used to establish operating parameter values or ranges).

Recordkeeping requirements are established in § 63.10(b) of the general provisions. In addition to these requirements, the standard requires plants to maintain records of information needed to determine compliance. All records must be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The records for the most recent 2 years must be retained onsite; records for the remaining 3 years may be retained offsite but still must be readily available for review. The files may be retained on microfilm, on microfiche, on a computer, or on computer or magnetic disks.

The final rule incorporates the general recordkeeping requirements in § 63.10(b) of the NESHAP general provisions in 40 CFR part 63, subpart A and requirements for subpart CCC records. The final rule requires records of scrubber makeup water flow rate and recirculation water flow rate, acid regeneration plant process offgas temperature and parameters from which proportion of excess air is determined, manufacturer certification that monitoring devices are accurate to within ±5 percent, and monitoring device calibrations. The owner or operator also must maintain a current copy of the operation and maintenance plan (with any revisions) and records of each maintenance inspection, repair, replacement, or other corrective action (whether for maintenance or an excursion).

Minor revisions in wording were made to retain consistency with the wording of the general provisions to part 63 (subpart A). Referring to the section numbers that apply to the final rule, the following paragraphs were amended: § 63.1164(c), § 63.1164(c)(1), § 63.1165(a)(1), and § 63.1165(a)(2). These revisions do not change the substance or the intent of the rule.

10. Delegation of Authority

The proposed rule specified that authority for approval of an alternative test method and alternative nonopacity emission standards would be retained by the Administrator and not transferred to a State. Authority for approval of monitoring parameters for hydrochloric acid regeneration plants and alternative monitoring requirements for wet scrubbers is also retained by the Administrator because these parameters are fundamental to effective monitoring and cannot be delegated. The Administrator will also retain authority to waive recordkeeping requirements. Authority to approve an alternative performance testing schedule is delegated to the States.

11. Display of OMB Control Numbers

The EPA also is amending the table of currently approved information collection request (ICR) control numbers issued by the Office of Management and Budget (OMB) for various regulations. This separate amendment updates the table to accurately display those information requirements contained in the NESHAP. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

B. Summary of Impacts

The final standards will reduce nationwide emissions of HAP from steel pickling facilities using the HCl process by 2,200 Mg/yr (2,500 tpy), a 76 percent reduction from current levels. The EPA estimates that 70 steel pickling facilities will be subject to the rule. This estimate excludes any major source speciality steel pickling facilities pending the outcome of a new rulemaking to determine the applicability of the rule to this pickling process.

No significant adverse secondary air, water, or solid waste impacts are anticipated. The amount of water discharged from wet scrubbers would increase by approximately 300,000 cubic meters per year over current levels. The volume of sludge generated by additional control may increase by up to 1,300 Mg/yr (1,400 tpy). Energy use for additional emission control systems is expected to increase by about 6.5 million kilowatt hours per year over current levels.

Nationwide capital costs of the final standards are estimated at $20 million, with annual costs for testing and monitoring of about $1.9 million. The economic impacts are all well below one percent of the cost of production of the steel product and result in no significant adverse impacts on the industry or small entities. No plant closures, regional impacts, or significant employment losses are expected. The economic impact of the rule on the industry as a whole is minor. Additional information on the impacts of the rule is included in the BID.

IV. Summary of Major Public Comments and Responses

The EPA received 15 comment letters on the proposed NESHAP for Steel Pickling Facilities—HCl Process. A copy of each comment letter is available for public inspection in the docket for the rulemaking (Docket No. A–95–43; see the **ADDRESSES** section of this preamble for information on inspecting the docket). The EPA has had followup discussions with commenters regarding specific issues initially raised in their written comments. Copies of correspondence and other information exchanged between the EPA and the commenters during the post-comment period are available for public inspection in the docket for the rulemaking.

The EPA reviewed and carefully considered all comments received. The EPA made changes to the rule where appropriate. A summary of responses to major comments received on the proposed rule is presented below. Additional discussion of the EPA's responses to public comments is presented in the BID.

A. Applicability

Comment: Four commenters requested clarification to show that the rule applies only to facilities that are major sources for HAP, not to facilities that are major sources for criteria pollutants or area sources for HAP.

Response: A revision to § 63.1155 has been made to show the indicated applicability.

Comment: Four commenters requested clarification of the 50-percent HCl criterion proposed as the concentration above which pickling lines were to be subject to the rule. One of the commenters also requested that a *de minimis* HCl concentration be established that excludes rinse tanks.

Response: The EPA has decided to clarify the applicability of the rule by establishing *de minimis* temperature and acid concentration values and is using information cited in the "Metals Handbook, Ninth Edition, Volume 5: Surface Cleaning, Finishing, and Coating," published by the American Society for Metals, which gives temperature and acid concentration ranges for batch and continuous pickling operations using hydrochloric acid (page 69). The lowest hydrochloric acid concentration cited is 6 percent, the lowest temperature is 100 °F. The EPA believes that these values are reasonable *de minimis* values and their establishment constitutes a realistic option to the proposed 50-percent HCl criterion. Most, if not all, rinse tanks would have conditions below these values and would therefore be excluded from the rule.

Comment: Two commenters requested the EPA to address the use of different types of acids in pickling processes. Both noted that the EPA possesses no information on HCl control requirements for processes that use HCl in combination with other acids and cannot verify that data on HCl only operations apply to these processes.

Response: The intent of the rule was to address carbon steel pickling by hydrochloric acid. After the comment period, the EPA received information from operators of two specialty steel

pickling facilities indicating that technology that is effective in collecting emissions from hydrochloric acid pickling of carbon steel may not be as effective in collecting emissions from operations in which specialty steel, such as stainless or electrical steel, is pickled, typically using other acids such as sulfuric acid in combination with hydrochloric acid. The EPA has consequently decided that the standards developed for carbon steel pickling cannot be applied to specialty steel pickling and therefore has clarified the rule to limit its applicability to carbon steel pickling. Definitions for carbon steel and specialty steel have been added to § 63.1156 as part of this clarification. These definitions are taken from the publication "Everything You Always Wanted to Know About Steel—A Glossary of Terms and Concepts," edited by M. G. Applebaum, Salomon Brothers Inc., Chicago, 1997. The facility description in § 63.1155 has been changed to "* * * facilities that pickle carbon steel using hydrochloric acid solution that contains 6 percent or more by weight HCl and is at a temperature of 100 °F or higher."

The EPA will determine at a later date if the specialty steel industry should be regulated under this part of the CFR and, if so, whether it will be regulated by amending subpart CCC or under a separate subpart.

Comment: Two commenters recommended that small mobile vessels, which would be expected to produce minimal emissions, not be subject to the rule.

Response: The EPA agrees that small mobile vessels should be excluded from the rule. The definition of acid storage vessel is modified to read "* * * a stationary vessel used for the bulk containment of virgin or regenerated hydrochloric acid."

Comment: One commenter believes that the proposed rule will require reconstruction of existing scrubber systems, forcing the process to become subject to new source rules. The definition of reconstructed source should be eliminated.

Response: Changes or additions to air pollution control devices do not constitute reconstruction of the source and are not included in the changes that would make a facility or process subject to reconstruction and modification requirements.

B. Definitions

Comment: As discussed under applicability, changes were recommended that required definitions for carbon steel and specialty steel.

Response: The following definition of carbon steel is added to the rule: "Carbon steel means steel that contains approximately 2 percent or less carbon, 1.65 percent or less manganese, 0.6 percent or less silicon, and 0.6 percent or less copper."

The following definition of specialty steel is also added to the rule: "Specialty steel means a category of steel that includes silicon electrical, alloy, tool, and stainless steels."

Comment: Two commenters requested to clarify the definition of control devices for acid storage vessels to avoid the possible interpretation that emissions would have to be routed to a control device of the type used to control pickling or acid regeneration emissions.

Response: The intent of the proposed rule was to allow any device that reduces HCl emissions to the atmosphere. For clarification, the definition of closed-vent systems was changed to include "* * * any device that is capable of reducing or collecting emissions."

Comment: One commenter recommended that reports required by this rule should only require certification by an inspector who has intimate knowledge of the system and not necessarily by a "responsible official" as defined in subpart A, § 63.2.

Response: The EPA agrees and is allowing facilities to designate a "responsible maintenance official" to have signature authority. This official is defined as "* * * a person designated by the owner or operator as having authority to sign records and reports required under this rule."

Comment: Five commenters believe that the proposed definition of steel pickling is too broad and have requested the EPA to clearly distinguish between pickling and other operations, and have offered suggestions for modifying the definition of pickling.

Response: The EPA agrees that the definition of steel pickling should be crafted to avoid misinterpretation. The commenters' suggestions are incorporated to the extent considered appropriate. The definition of steel pickling, with changes underlined, is modified to mean "* * * the chemical removal of iron oxide mill scale that is formed on steel surfaces during hot rolling or hot forming of semi-finished steel products through contact with an aqueous solution of acid where such contact occurs prior to shaping or coating of the finished steel product. This definition does not include removal of light rust or scale from finished steel products or activation of the metal surface prior to plating or coating."

Comment: One commenter believes that rinse tanks should be excluded from the definitions of batch and continuous pickling lines. The rule implies that an air pollution control device would be required for these tanks.

Response: The rule is meant to include all ventilated tanks that are part of a steel pickling process to which the rule applies, which may include some rinse tanks. The rule does not require installation of ventilation systems not previously installed.

C. Emission Standards

1. Pickling Lines

Comment: Five commenters stated that the EPA did not base the standards on the best performing 12 percent of sources. The language in the Act directs the EPA to derive numerical limits for new sources from the best performing scrubbers for a given option, but EPA used this approach in deriving existing source standards. The EPA only considered 10 of the 152 existing continuous pickling lines (7 percent), then used only four of the ten available data sets and determined the concentration limit from only two data sets. The EPA has not justified not using all data sets. The averages of all ten tests, 29.3 ppmv and 97.3 percent, are more representative of the actual variation in the test data which could be expected for properly controlled sources and should be the basis for the limits.

Response: As explained in the preamble to the proposed rule, the EPA based the MACT floor on technology. In determining MACT, the EPA considered alternative approaches for establishing the MACT floor; these include (1) information on State regulations and/or permit conditions, (2) source test data that characterize actual emissions discharged by sources, and (3) use of a technology floor and an accompanying demonstrated achievable emission level that accounts for process and air pollution control device variability. No Federal air emission standards currently apply to steel pickling or acid regeneration sources, and existing State standards cannot be directly related to the requirements of this rule. Applicable test data are only available from 10 of 152 continuous pickling lines. These data points are too few to establish 12 percent MACT floors based on actual releases. By comparison with the limited utility of State regulations and source test data, a substantial body of information is available on the types, configurations, and operating conditions of air pollution control devices applied across the industry. The EPA therefore used the technology floor approach to establishing MACT for pickling lines. Details of this approach are discussed in the preamble to the proposed rule.

The characteristics of the scrubbers constituting the existing source and new source levels of control were determined by evaluating the results of emission tests conducted on units currently employed in the industry. Data from pickling lines controlled by devices of these descriptions were used to represent the capabilities of MACT for this application. The EPA determined the standards from these data, as discussed in the comments and responses below.

Comment: Two commenters stated that the standards are unnecessarily stringent in that they do not reflect what long term performance is achievable on a continuous basis considering natural process and control device variations. One commenter submitted data showing a wide variation in HCl emissions over a 3-year period from one facility using the same control technology where no known malfunctions occurred to cause the variation. Data from this facility consisted of nine tests, with average measured HCl concentrations ranging from 0.4 to 178 ppmv. This commenter also stated that data presented in the EPA BID also illustrate a wide variation in HCl emissions between and within facilities. Using a statistical argument based on standard deviations in data, the standard should be at least 15 ppmv for new sources and 35.8 ppmv for existing sources, according to this commenter. One commenter believes that inaccuracies of the sampling methods do not permit setting an emission standard as low as that proposed.

Response: The EPA is not required to use a specific statistical procedure in arriving at values for emission standards. The commenter's facility's nine tests are comprised of seven tests for which all data points, including individual sampling runs, are within a 13 ppmv concentration limit. The remaining two tests have averages that are about 19 and 37 times the average of the other seven tests. The EPA believes these two tests cannot be the result of normal air pollution control device operation during normal process operation.

Regarding accuracy of sampling, this issue is discussed in section E below. The EPA believes that the test method is sufficiently accurate for the proposed emission standards for new and existing facilities.

Relative to the broad issues of stringency and achievability of the proposed standards, the EPA agrees with the commenters in that the data used to determine the numerical limits are sparse and that variations in operations and in test results should be considered. The numerical limit determination was therefore reexamined. The EPA conducted a thorough review of the scrubber design and source test data base used to develop the pickling standard. Details of this review are given in the BID. Data from all tests, including those with only one or two sampling runs, were examined primarily in regard to variability in individual test run results. The data were considered separately for new and existing source MACT.

Performance of the scrubbers used as the basis for new source MACT was considered on the basis of long term performance and variability in individual sampling runs. All three scrubbers served continuous pickling lines. The average outlet HCl concentrations were 1.6, 2.1, and 7.7 ppmv, with corresponding average HCl collection efficiencies of 99.5, 99.96, and 99.0 percent, respectively. Thus, on the basis of average performance, all three scrubbers meet the proposed new source standard for collection efficiency of 99 percent, and two meet the proposed new source standard for outlet concentration of 3 ppmv. The worst results of individual sampling runs for these scrubbers were HCl outlet concentrations of 5.9, 3.5, and 7.7 ppmv, with worst results for HCl collection efficiencies of 97.6, 99.94, and 99.0 percent, respectively. On this basis, two scrubbers meet the proposed collection efficiency standard but no scrubber meets the proposed concentration standard. To accommodate the uncertainty in sampling, particularly in determining outlet concentration at these low levels, the EPA decided to consider a new source standard for outlet concentration that could be met by the new source MACT scrubbers that did not meet the collection efficiency standard. This concentration is 6 ppmv HCl, which is 5.9 rounded up to the nearest whole number. Based on the worst individual sampling run results, all three scrubbers meet at least one of the two alternative standards; one scrubber meets both the concentration standard of 6 ppmv and the collection efficiency standard of 99 percent, one meets the concentration standard, and one meets the collection efficiency standard. New source standards of 6 ppmv maximum outlet concentration and 99 percent minimum collection efficiency are therefore promulgated for continuous pickling lines.

Performance of the scrubbers used for the basis of existing source MACT for continuous pickling lines was also considered on the basis of individual sampling runs. As discussed in the preamble to the proposed rule, the concentration and collection efficiency standards were derived from the scrubbers that were the better performers in each respect. Three units produced outlet HCl concentrations of 1.7, 8.0, and 13 on the averages, 2.7, 15, and 18 ppmv for the worst runs; all the others produced HCl outlet concentrations of 42 ppmv or higher on the averages, 70 ppmv or higher for the worst runs. The concentration standard was therefore determined to be 18 ppmv HCl from the performance of these three scrubbers. On the basis of HCl collection efficiency, the seven scrubbers used as the basis for existing source MACT performed with average efficiencies of 98.1, 97.8, 97.5, 97.0, 96.8, 94.7, and 92.7 percent. Worst run efficiencies were 97.5, 96.8, 96.7, 96.6, 95.9, 94.1, and 92.1 percent. With efficiencies rounded off to the nearest percent, four of the seven scrubbers would meet a standard of 97 percent. Of the remaining three scrubbers, one is a marginal performer and two poor performers by comparison with the first four. The HCl collection efficiency standard of 97 percent was determined from the performance of the best four scrubbers. Five of the seven scrubbers meet at least one of the alternative standards.

Comment: Two commenters questioned the rationale of using data from the best performing scrubbers to establish separate collection efficiency and concentration limits because each owner or operator would have two options. The logic ignores the statistical ability of scrubbers to comply with the proposed standard continuously and the very basis for proposing alternative standards in the first instance. The EPA "proposed alternative standards out of the recognition that facilities with high HCl inlet concentrations could not meet the low HCl outlet concentration standard, and vice versa. Deriving the MACT standards from the best scrubbers for each option disregards the fact that the MACT floor is supposed to represent the average of the best 12 percent and those facilities that have HCl inlet concentrations too low to comply with the proposed collection efficiency impossible and too high to comply with the proposed 10 ppmv standard."

Response: The EPA disagrees with the commenters. The commenter's logic

expressed above is itself not clear. The fact that the standard is not based on a statistical average has been discussed previously. The assumption of the final standards is that at least some devices will not be able to meet both options but all would be able to meet one or the other. Therefore the numerical limits for each option were developed separately.

Comment: Two commenters stated that the EPA has not sufficiently justified its MACT determination for batch pickling lines. The rulemaking record contains no data specific to batch pickling. Batch pickling lines are significantly different from continuous lines in terms of design, operation, air capture rates, inlet concentrations, hood design, product handling, and volume throughput rates. In light of these differences, the absence of test data from batch lines, and limited data from continuous lines, it may not be appropriate for EPA to simply borrow and apply its MACT determination for continuous lines to batch operations.

If EPA promulgates this rule prior to supporting its MACT determination, batch picklers will be in the position of not knowing if they can meet the standards until they have spent the money to install or upgrade their pollution control equipment. The EPA would be prudent to delay implementation of the proposed rule until it can demonstrate, based on batch pickling-specific data, that the proposed standards do in fact constitute MACT.

Response: The commenters state that there are significant differences between batch and continuous pickling lines but do not give details nor any indication of how air pollution control requirements are different. The commenters do not express any technical considerations that have not already been addressed. Differences in fume capture systems between batch and continuous operations, for example, are discussed in detail in chapter 4 of the proposal BID. However, the effectiveness of the air pollution control system is based on the characteristics of the gas stream, not the capture system. According to scrubber manufacturers and designers, scrubber design considerations are the same for both types of operations. The major difference between batch and continuous operations is that the HCl concentration in batch line offgases varies during different phases of the operating cycle. For example, the concentration can increase when steel is raised out of the tank and allowed to drain before it is rinsed. Scrubbers can be designed on the basis of the maximum concentration experienced.

Regarding the ability of batch operations to meet the same standards as continuous operations, the EPA notes the view expressed by two commenters, one with extensive relevant experience, that the proposed standards are reasonable and can be attained with available control equipment. These comments are presented in the BID.

After the comment period, the EPA received emission data from a batch pickling operation in which the outlet gas was sampled in three runs of 1 hour each; HCl concentrations were 5.1, 4.2, and 3.6 ppmv. The only other information available for batch operations is from a test at another facility in which only one sampling run, of 1 hour duration, was conducted on the scrubber outlet. A concentration of 6.3 ppmv HCl was measured. Results of these two tests give some indication that HCl emission control for these processes at levels achieved for continuous pickling lines is possible.

Based on these considerations, the EPA believes that control of batch pickling lines at the level of existing source standards is achievable. However, the EPA agrees with the commenters to the extent that control of batch lines at the new source standard level is less certain. Because no clear limitation for new batch pickling lines could be determined from the available information, particularly in considering the variation in operating conditions and ventilation system design, the rule is revised to make the new source standard for batch pickling the same as the existing source standard.

2. Hydrochloric Acid Regeneration Plants

Comment: One commenter disagreed that sufficient source test data were available to provide a basis for the MACT floor. The EPA evaluated five measured scrubber outlet concentration values, then noted that one value was far out of line with the others and did not consider this value in establishing the floor. No attempt to review the next appropriate value was made by EPA. Constructing a fifth data point in lieu of actual data has no technical or regulatory basis under section 112 of the Act. The EPA should have used another facility's actual test data or conducted additional tests to establish a fifth point.

A second commenter observed that the MACT floor on which EPA bases its standard is not representative of single stage water scrubbing. Caustic scrubbing technology, contrary to EPA's belief, has been shown to be more effective in reducing HCl emissions than scrubbing with unneutralized water. The EPA notes in the proposed rule that no single stage scrubber has demonstrated the capability of meeting the proposed existing source standard of 8 ppmv HCl. The EPA should consider the cost impacts to the industry for waste water treatment and sludge disposal if the standard is to be based on caustic scrubbing.

A third commenter provided additional data from the two acid plants that use two stage scrubbing. Details are presented in the BID. The data include outlet concentration data for the first stage water scrubbers. These data are from tests conducted on both plants in April 1994, March 1996, and November 1996. All tests except for two consisted of three sampling runs of 3 hours each using EPA Method 26A; the remaining two tests consisted of two sampling runs. Average HCl concentrations in the first stage water scrubber outlet gas for one plant vary between 5.6 and 20 ppmv, with the highest concentration measured for an individual run of 25 ppmv; average HCl concentrations for the other plant vary between 11.2 and 23 ppmv, with the highest concentration measured for an individual run of 31 ppmv.

Response: The EPA agrees with the first commenter in that the method used to determine the proposed floor was not appropriate, specifically, the manufacturing of a fifth data point in lieu of having actual data followed by averaging. Furthermore, the EPA agrees with the suggestion of the second commenter that the proposed existing source standard of 8 ppmv HCl is not demonstrated to be achievable with single stage water scrubbing, the predominant control technology used in the industry.

The floor has therefore been reexamined on the basis of the median of the best five controlled sources on a technology basis. The best two controlled sources employ either two stage acid recovery or two stage scrubbing, with neutralized water used in the last scrubbing stages in both cases. The third best controlled source employs single stage scrubbing with unneutralized water; this technology is also used by all of the remaining sources in this subcategory. The final standard for existing sources is therefore developed based on the performance of single stage water scrubbing, which addresses the main concern of the second commenter.

With the inclusion of the above information, long term data from two acid regeneration plants are now available. Data from the plant for which the measured HCl concentration was 16 ppmv were still restricted to the one test, which consisted of two sampling runs with measured HCl concentrations of 15.6 and 15.8 ppmv. The final data point available was 137 ppmv HCl, which is so far out of line with the other data that the plant tested could not be considered well controlled; data from this plant could therefore not be used to establish an emission standard.

In order to determine a numerical concentration standard from all of the available information, process and control system variability over time were taken into account by considering HCl concentration averages and also values for individual sampling runs. On the basis of average outlet concentrations, it seems clear that the first three plants meet a limit of 25 ppmv HCl. Considering all 19 individual runs from the three plants, except for one run of 31 ppmv, all others are 25 ppmv or less. A maximum outlet concentration of 25 ppmv HCl therefore seems reasonable for a standard based on single stage water scrubbing.

Regarding the new source standard for HCl, the additional data discussed above include outlet concentration data from second stage scrubbers that use neutralized water. Data are from four tests conducted between March 1993 and March 1996. In all tests, three sampling runs of 2 or 3 hours were made using Method 26A. Results of the first tests average 49 and 19.6 ppmv HCl; these results are much higher than those from the more recent three tests and apparently do not reflect current operations. Results of the last three tests are average HCl concentrations ranging from 0.9 to 11.1 ppmv, with results of individual runs ranging up to 11.9 ppmv.

The only other HCl concentration data that have not already been discussed are from the plant that employs two-stage acid recovery plus a venturi scrubber that uses neutralized water. Results from only one test are available; the average HCl outlet concentration was 1.0 ppmv.

Considering the capability of a scrubber to meet a long-term standard, results from the first two plants seem more meaningful. These plants clearly meet an outlet concentration HCl standard of 12 ppmv over the most recent three tests based on individual runs. A new source maximum outlet concentration standard of 12 ppmv HCl therefore has been reasonably demonstrated. Consequently, the final standard is a maximum outlet HCl concentration of 25 ppmv for existing sources, 12 ppmv for new sources.

Comment: Two commenters stated that EPA did not demonstrate that its standards for existing and new sources are based on a sustainable level of performance. One commenter stated that there is a wide variation in HCl emissions at different times using the same control technology. This commenter provided additional data at EPA's request to support the statement. Average emissions range from 31 to 470 ppmv and results of individual tests range from 26 to 542 ppmv HCl, with, according to the commenter, no obvious anomalies in the acid regeneration data. The EPA's data illustrate that there is a wide variation between and within facilities. The standard deviation for all data from which EPA determined its standard is 7.2 ppmv, which is far out of range of the proposed limit.

Response: By comparison with data from other facilities, the plant from which the data provided by the above commenter were taken cannot be well controlled in EPA's opinion, particularly considering the extreme range in values between the lowest and highest measurements. Data from this facility are not relevant in determining a standard based on the best performing plants. The issue of sustainable performance is addressed in the previous comment and response.

Comment: Two commenters state that the Cl_2 limit should be based on five sources instead of three. The small sample size probably does not reflect variability at each source. The 4 ppmv limit has not been shown to be continuously achievable. One commenter states that the existing source emission limits should be determined from the average of five facilities plus two standard deviations; the standard should be at least 74.3 ppmv. For new sources, the standard should be 60 ppmv based on two standard deviations from the mean of EPA's data. The other commenter did not recommend specific standards but provided additional data at EPA's request.

Response: As discussed under the HCl numerical standard, the standards for hydrochloric acid regeneration plants are being revised. The existing source standard is based on technology, which is single stage water scrubbing. As in the case of the HCl standard, the Cl_2 numerical standard was reconsidered based on the body of data available for this technology.

The data provided by the second commenter included results of the three tests discussed above, conducted between April 1994 and November 1996, of outlet Cl_2 concentrations from first stage water scrubbers. Average Cl_2 concentrations are between 0.4 and 5.1 ppmv with the exception of a measurement of 9.9 ppmv from one test conducted in 1994. Results of the more recent tests on this plant were 0.4 ppmv in each case. Excluding this one test, which is assumed to be not representative of current operations, average Cl_2 concentrations range from 0.4 to 5.1 ppmv. Results of all 13 individual runs, except for one value of 7.3 ppmv, range from 0.3 to 5.6 ppmv.

In addition to the data discussed above, Cl_2 outlet concentration data from other facilities are 3.3 and 60 ppmv, each based on one test. The 60 ppmv value is so far out of line with the others that it cannot be considered representative of effective operation and therefore cannot be used in determining the standard.

Considering all of the data, it appears that a limit of 6 ppmv Cl_2 can be met by these operations, considering the variability in measurements (except for the one nonrepresentative value); only one sampling run gives a higher result (7.3 ppmv). The concentration standard for Cl_2 is therefore revised to 6 ppmv for existing sources.

Regarding the standard for new sources, the EPA is required to set the standard according to the capabilities of the best controlled facility. The additional data discussed above included results of the four tests conducted between March 1993 and March 1996 on the outlets of second stage scrubbers that use neutralized water. Results are similar to those for the first stage water scrubbers. Average Cl_2 concentrations range from 0.4 to 5.3 ppmv, with results of individual runs ranging from 0.1 to 7.1 ppmv. An individual plant cannot be identified that provides better performance than existing source MACT. The new source standard for Cl_2 is therefore the same as the existing source standard, 6 ppmv.

Comment: One commenter supported the optional Cl_2 standard to be established for each source.

Response: The optional standard is retained for existing sources but removed for new sources, as discussed above.

3. Acid Storage Vessels

Comment: Two commenters believe EPA should clarify that "control devices" for storage vessels are not a specific control technology, and that facilities can use any method that is demonstrated to minimize emissions to the atmosphere (e.g., bubbling through a drum or small vessel of caustic solution or water).

Response: The EPA agrees with this commenter. No specific control device is required for storage vessels. The definition of closed-vent system is reworded to make the EPA's intention

clear. Examples of devices that might be used include systems that bubble emissions through a small tank of water or caustic without the aid of a fan. However, larger facilities may find it advantageous to route emissions from storage vessels or an acid regeneration plant to a pickling line scrubber or to build a separate scrubber system for control.

4. Assessment of HCl as a Threshold Pollutant Under Section 112(d)(4)

Comment: After the close of the comment period on the proposal, EPA received a letter from a trade association requesting that the Agency assess HCl emissions from steel pickling under section 112(d)(4) of the Act, to determine whether Federal controls on these emissions were necessary, based upon relevant exposure and ecological assessments and a determination in an earlier EPA **Federal Register** notice that HCl was a "health threshold pollutant."

Response: As requested by the commenter, EPA is currently conducting an assessment of HCl emissions from steel pickling operations to determine first whether the Agency would be justified in invoking its section 112(d)(4) authority for steel pickling, and second whether EPA believes it is appropriate to do so, if justified. The EPA does not have adequate information at this time to support development of a standard for the steel pickling source category that may be less stringent than the "floor"-based standard in today's final rule.

Possessing insufficient information at this time to make a decision for the steel pickling source category pursuant to section 112(d)(4) authority, and recognizing that the authority bestowed by Congress is fully discretionary, EPA believes that it is reasonable to finalize today's standard while continuing to conduct an assessment of HCl emissions from steel pickling operations under section 112(d)(4). Absent such information, EPA believes that there is ample reason to regulate HCl emissions from steel pickling operations at the levels of today's standard, as discussed more fully in the remainder of this preamble.

D. Compliance Dates and Maintenance Requirements

Comment: One commenter stated that the required maintenance activities should be guidelines and not requirements. They do not further the rule (beyond required monitoring) to limit emissions and assure compliance with the limits.

Response: Operational and maintenance requirements are necessary to help ensure that emission control equipment continues to operate at a level consistent with its operation at the time of compliance testing and are enforceable independently of emissions limitations. The EPA's statement of these requirements is in 40 CFR 63.6(e)(1)(iii), Operation and Maintenance Requirements.

Comment: Three commenters stated the following. The EPA's maintenance plan should not establish specific elements of the required maintenance plan, i.e., following manufacturer's recommended maintenance, cleaning scrubber internals and mist eliminators at intervals sufficient to prevent fouling, having set intervals for inspecting system components to identify, repair, or replace as needed. Two of the commenters recommend that EPA amend proposed § 63.1159 by eliminating the requirement that maintenance plans must include the elements set forth at § 63.1159(b)(2)(i)–(iv); these elements should be included only as potential elements that may be included in the plan. Another commenter believes that the operation and maintenance plan should not require strict adherence to the manufacturer's operating manual. Many manufacturer's manuals contain steps that are determined not be necessary and/or that only the manufacturer's proprietary products should be used. The EPA should change the wording to, for example, "substantially include" the elements set forth in the manufacturer's operating manual.

Response: The EPA has reviewed the proposed maintenance plan requirements and decided that revisions are appropriate. Manufacturer's instructions for older equipment may require materials no longer available. Manufacturers may no longer be in business so that required parts or materials cannot be purchased except by substitution from a source other than the original manufacturer. Therefore, the EPA has revised the rule so that it no longer requires adherence to the manufacturer's manual. The facility must write an operation and maintenance plan that is consistent with good maintenance practices and includes, at a minimum, the list of items described in the rule. The EPA believes that inclusion of these items is reasonable. Additionally, pressure drop must be monitored once per shift as a means of discovering scrubber operational anomalies that may require maintenance. No specific pressure drop deviation limit is required, but the monitoring records are required to be kept along with the recycle and makeup water flow rates.

Comment: Three commenters stated that the operation and maintenance plan should not be part of the source's title V operating permit. Plan approval places a substantial burden on permitting authorities. The details of these plans are frequently changed as operational problems are addressed. Such a requirement could cause administrative nightmares if a source is required to go through the title V permit modification process every time it modifies a plan, especially during the early stages of the rule. Approval of plans by informal action would encourage timely revision.

Response: The rule requires the plan to be incorporated into the permit only by reference and no longer requires it to be submitted to the permitting authority.

Comment: One commenter believes the requirement that the "responsible plant official" sign records of inspections is overly burdensome. The requirement is acceptable if "responsible plant official" means that an employee delegated the responsibility by the "responsible official" must sign.

Response: The EPA agrees with the commenter and has added the definition "responsible maintenance official," who is a person having signature authority for signing reports required under the rule.

Comment: One commenter states that the requirement to initiate repairs within 1 day is excessive and unworkable. It is unclear what "initiate corrective action" means. In some cases, corrective action may require engineering analysis to determine the source of the problem and effective corrective action. If this provision is retained, the commenter recommends that it be written as a requirement that repairs begin promptly and provide a "safe harbor" that repairs commenced within 1 day are considered to be prompt.

Two commenters state that the proposed requirement that maintenance plans be implemented within 1 working day is too stringent. There may be situations when initiating the plan within 24 hours would be impractical or impossible. In some cases, a facility may have to rely on an outside contractor to conduct necessary action. Instead of establishing a time-specific deadline, the EPA should provide that "facilities must initiate corrective action as soon as practically possible, but no later than 3 working days."

One commenter states that the requirement for corrective action within 1 day of detection of an operating problem with a control device is neither

reasonable or in keeping with the notification and repair requirements of other NESHAP rules. The commenter recommends that the requirement be changed to include a first attempt at repair within 5 working days of detection.

Response: The EPA believes that it is reasonable to expect operators to initiate procedures toward corrective action within 1 day and complete repairs or maintenance as soon as practicable. Initiation of procedures may consist of notification of a contractor or service group that corrective action is necessary. The rule is revised to clarify that the procedures to be initiated are the actions that are specified in the maintenance plan.

E. Performance Testing and Test Methods

Comment: One commenter stated that establishment of site specific scrubber operating parameters as a measure of compliance without first establishing the relationship between the parameters and the emissions in question is not appropriate. The EPA has made no attempt to establish any relationship between the proposed mandated parameters and actual emissions. This information was not evaluated during the MACT development; therefore, site specific parameters should not become mandated compliance parameters.

Response: Without implementation of continuous emissions monitoring systems, monitoring of relevant operating parameters in combination with routine and preventative maintenance is essential to enhanced compliance assurance. The requirement for operating parameter monitoring is retained in the rule.

Comment: One commenter stated that in setting parameter operating limits, the full range of values observed during a compliance test should be used, not the average. Because an average is being established, at least one of the tests must necessarily be above the average if all three tests are not identical. Another commenter believes that owners and operators should be able to establish compliant operating parameters using individual runs from compliance tests and not be restricted to multiple tests. Using multiple runs during a test will greatly diminish costs and repetitive sampling without substantially diminishing the assurance of compliance.

Response: The EPA agrees that some flexibility in establishing operating parameter compliant values is appropriate. The rule is revised to allow an average parameter value measured during any of the runs used to demonstrate compliance to be used as the compliant value rather than the average value measured over the entire testing period.

Comment: Two commenters believe operators should have the option of conducting compliance demonstration tests as needed to show appropriate ranges of scrubber parameters. Establishment of parameters should not be limited to the initial performance test.

Response: The rule allows facilities to conduct multiple performance tests to establish alternative compliant operating parameter values and to reestablish compliant values during any performance test conducted after the initial performance test.

Comment: Two commenters expressed concerns that actions such as installing a more effective capture system or adding a mist eliminator would result in increased pressure drop and hence a violation of the standard.

Response: This issue is no longer a concern because the monitoring parameters have been changed. Pressure drop is now monitored only to detect potential problems with the scrubber.

Comment: Two commenters had the following statement. Method 26A is not validated for steel pickling, only for municipal waste incinerators (MWI). The MWI have higher temperatures, less moisture (and no liquid droplets), and no ferric chloride content, which could interfere with test results. The EPA's tests also show variations of as much as 700 percent for the same pickling line. Test bias may have resulted in an improperly low standard. Inexplicable negative biases are reported in an EPA municipal waste incinerator validation report for Method 26A. These biases are such that validation for pickling sources is required.

The practical level of quantification (PLQ) for Method 26A has not been established for pickling sources, and should be developed using Method 301. Also, ferric chloride might cause a positive bias for the HCl measurements. One facility believes that conditions encountered with HCl pickling tests include high humidity in the gas stream, extremely high solubility of HCl gas in water, condensation in the gas stream, refluxing in the stack, and the use of stack tip entrainment eliminators. These conditions lead to several measurement problems, all of which tend to bias results toward improperly high HCl concentration because of enriched droplet capture in the sampling probe or maldistribution of HCl with regard to sampling probe location. Sampling data show six cases in which the range of measured maximum concentrations varies from 1.3 to 9.3 times the minimum concentration for heated pickling lines or acid regeneration plants. They recommend that the testing protocol include provisions for testing control devices (including stack-tip mist eliminators) and allow for discard of test results more than 50 percent above the average.

Response: The comments do not bring up any technical concerns regarding measurements at pickling or acid regeneration sites. A well designed and conscientiously run field validation of Method 26A specifically at these source categories would not likely uncover any evidence that there is a problem in this application. The EPA knows from its studies that the method is capable of measuring to fractional ppmv levels. Review of data from a 1997 study at a light-weight aggregate kiln burning hazardous waste provides a minimum detection limit estimate of about 0.04 ppmv. The EPA estimated the method precision (reported as the standard deviation of individual runs) to be 0.42 ppmv at 3 ppmv. This value would lead to the precision estimate of the mean of a 3 run test of 0.24 ppmv. If water droplets are routinely present, then the method has to be followed carefully to avoid gathering poor quality data. The EPA has not knowingly field validated the method in the presence of water droplets, but isokinetic sampling is the accepted way to address this problem.

The commenters contended that EPA provides no justification to the preamble statement "EPA considers the method is equally valid for measuring emissions for pickling and acid regeneration sources." They go on to say that HCl pickling emissions are generally 100 to 200 °F and contain water droplets. The presence of water droplets increases the potential for negative bias.

The EPA responds that the method is validated at a municipal waste combustor (MWC) where the sample matrix is a more severe test of the method in terms of potential chemical interferents, and the stack is at a higher temperature. The higher stack temperature at MWCs is a more severe test of the method in that the probe and filter temperatures are less than the stack temperature, which, in theory, could lead to condensation of HCl in the probe. An effective control system would be expected to include a mist eliminator, thus minimizing the potential for excessive water droplet effect. In addition, the test method has provisions to overcome the potential negative bias encountered if water droplets are present.

One commenter also commented on the MWC validation being done with

midget impingers rather than the large impingers. The EPA report No. 600/3–89/064 concludes that there is an inexplicable negative bias compared to those using midget impinges. The most likely cause of the low bias at low (3 to 4 ppmv) concentrations is absorption of HCl on alkaline particulate matter collected on the filter. This condition is not expected at steel pickling plants and, hence, field validation would not be of value.

The commenter also stated that proper field validation of Method 26A would provide the true PLQ that would take into account the normal variations resulting solely from the test procedures. Determining the actual PLQ of Method 26A on HCl pickling emissions is essential to ensure that the final NESHAP limitations are not set lower than the level that can be consistently quantified by the required testing. The recommendation already discussed in this comment should also apply to HCl regeneration plants since the limit of 3 ppmv HCl is at the lower limit of the range tested.

The EPA notes that the commenter provided the Method 301 definition of PLQ. There is general agreement that the intent of the Method 301 calculation procedure of 10 times the standard deviation should use the standard deviation at or near the limit of detection. (The actual Method 301 language adds "* * * at the blank level.") The EPA believes the commenter cites an erroneous conclusion from a Rigo and Rigo Associates, Incorporated, document, that a recent quad-train study at an MWC had a PLQ of at least 125 ppmv at 7 percent oxygen for Method 26A. The study was done in a concentration range of 105 to 636 ppmv at 7 percent oxygen, instead of near the acceptable blank limit of the method. These conditions lead to an inflated standard deviation estimate and a subsequent over estimate of the PLQ. Draft results from a 1997 EPA study using a quad-train arrangement at a light-weight aggregate kiln where the actual (uncorrected for dilution) stack concentration of HCl ranged from 0.22 to 1.29 ppmv (more closely approaching the theoretical lower limit of the method) results in an estimated method standard deviation of 0.12 ppmv at zero. The EPA used these data to extrapolate an estimated method standard deviation of 0.42 ppmv at 3 ppmv as described above. This value compares favorably with the original MWC validation report's estimate of standard deviations of 0.24 ppmv and 0.49 ppmv at concentration of 3.9 ppmv and 15.3 ppmv, respectively.

Regarding positive bias caused by ferric chloride, it would have to have a significant vapor pressure at the filter temperature to pass through the Teflon matte filter in the test equipment. This is not the case.

The EPA believes the test method is appropriate for steel pickling and acid regeneration operations and will continue to require its use (or an approved substitute) for the standard. However, in order to reduce the possibility of collecting water droplets from the stack walls that may be present because of refluxing in the stack or high humidity, the EPA believes that Reference Method 1 should be modified for this application to specify that no sampling point be closer to the stack wall than one inch.

Comment: One commenter states that ammonia is commonly used as a precipitating agent in waste HCl, resulting in ammonium chloride formation. The commenter believes that some ammonium chloride will be decomposed in the acid regeneration plant roaster, but significant amounts may exit in the waste gas and will be recovered along with HCl in gas cleaning. The commenter is currently investigating the possibility of direct measurement of ammonium chloride in the acid plant scrubbers but does not at present have data to offer. The commenter understands that ammonium chloride can interfere in the measurement of HCl at low levels.

Response: Ammonium chloride is identified as a possible interferent in EPA Reference Method 26A that would be expected to appear as chloride ion and thus be measured as HCl. If an acid regeneration plant cannot meet the standard for HCl, it would have the option of demonstrating that ammonium chloride is present in the waste pickle liquor fed to the plant and seeking relief in the HCl emission limit on that basis. However, the need for relief seems unlikely. Ammonium chloride would not be expected to pass the filter that is required for this method at the filter temperature. Ammonium chloride decomposes from the solid state at 339 °C, which is far above the temperature of 248 °F (120 °C) used for sampling acid regeneration plant emissions.

F. Monitoring Requirements

Comment: Four commenters stated that excessive excursions of operating parameters should not trigger implementation of CEMS. In addition, seven commenters stated that the use of CEMS should not be required. No systems have been demonstrated to have the capability to accurately measure and record compliance for this application. Commercially available systems for monitoring at the proposed levels are expensive, difficult to calibrate and maintain, and not reliable to the level of operation required. Manufacturers have cautioned that using such devices in an acidic application containing water droplets would interfere with the test methodology and be corrosive to the testing apparatus. Conditions of high humidity and acidity make it unlikely that an in situ sensor will ever work.

Response: After reviewing the comments, the EPA agrees that reliable operation of currently available CEMS cannot be assured for this application. At best, inordinately burdensome maintenance and operating procedures would be required. The CEMS requirement is therefore deleted.

Comment: Five commenters stated that pressure drop and acidity are not appropriate monitoring parameters. A relationship between these parameters and scrubber efficiency has not been demonstrated. Given the lack of variation of scrubbing efficiency between caustic solution and clear water, monitoring acidity is questionable. Also, the requirement to measure acidity is vague. Three commenters suggested that parameters other than pressure drop and acidity would be better indicators of scrubber performance. Scrubber water flow rate is a more valid indicator of efficient scrubbing. For packed bed scrubbers, betters parameters are pressure drop, air flow rate, and water flow rate to the top of the packing. For plate scrubbers, pressure drop and visual observation provide assurance of correct operation. Other parameters suggested were fan amps and liquid conductivity.

Response: In considering all of these comments, the EPA concludes that scrubber makeup water and recycle water flow rates are better indicators of scrubber performance than pressure drop and acidity, on the basis that the mechanism for HCl collection is absorption in water, which can be done effectively even with slightly acidic water. The rule is revised, eliminating the requirements for monitoring scrubber pressure drop and scrubbing effluent acidity and replacing them with the requirements to monitor scrubber makeup water flow rate and, for scrubbers that operate with recirculation, recirculation water flow rate. Monitoring of pressure drop is moved from operational requirements to maintenance requirements. Pressure drop must be monitored as a means of discovering scrubber operational anomalies that may require maintenance. No specific pressure drop deviation limit is required, but the monitoring records are required to be kept in addition to the recycle and makeup water flow rates. Flow rate increases large enough to cause flooding would be considered malfunctions.

Comment: Four commenters stated that facilities should be allowed to develop their own monitoring protocols. The EPA should set forth minimum monitoring requirements and allow facilities to develop site specific protocols that they can justify.

Response: Alternative monitoring options can be approved under § 63.8(b) of the general provisions to this part. This provision is clarified in the final rule.

Comment: Six commenters believe that monitoring of scrubbers should not be required during nonoperating periods such as stoppages for maintenance and repairs.

Response: Periods of stoppage for maintenance and repairs would be covered under the Startup, Shutdown, and Malfunction Plan (SSMP). The rule is revised to clarify that monitoring scrubber parameters is required only while the scrubber is operating. The rule is also revised to clarify that monitoring acid plant operations is required only while the plant is operating in production mode. Discussions with plant operators after proposal have revealed that plants often operate in modes that are designed, for example, to maintain temperature while acid and iron oxide production are temporarily suspended. These operations are conducted under conditions that are not predicted to produce byproduct chlorine.

Comment: Two commenters stated that storage vessel inspections should be changed from monthly to semiannually to be consistent with the requirement under other subpart L NESHAP rules. Inspection of control devices on storage vessels should be conducted at the same frequency as compliance testing on the scrubber.

Response: The reference is to subpart L of part 61, National Emission Standard for Benzene Emissions from Coke Byproduct Recovery Plants. The requirement in subpart L is to monitor connections and seals on each control system that recovers or destroys emissions from process vessels, tar storage tanks, and tar-intercepting sumps. The EPA believes that the requirements for this subpart should not be more stringent than those for rules with similar monitoring requirements and has revised the rule to require semiannual rather than monthly inspections.

Comment: Three commenters stated that annual stack testing is excessive when coupled with parametric monitoring. One commenter recommended that stack testing only be required if the control device is out of range. The other commenters recommended testing no more frequently than every 2½ years or every 5 years.

Response: In lieu of continuous emissions monitoring or other means for determining continuous compliance, enhanced compliance assurance is established in this rule by monitoring of relevant operating parameters in combination with routine and preventive maintenance plus periodic performance testing. Annual testing is typically required in such situations. The EPA believes, however, that some flexibility can be allowed in view of the requirement to also monitor parameters. The rule is revised to allow facilities to conduct performance testing on an alternative schedule that is approved by the applicable permitting authority but no less frequently than every 2½ years or twice per title V permit term.

Comment: Four commenters stated that excursions of control device or acid plant operating parameters should not be considered violations. Out of range measurements should be treated as indicators of potential problems requiring further investigation or corrective action. A strong enough relationship between variations in pressure drop or acidity and HCl emissions has not been demonstrated.

Response: The proposed rule inadvertently stated that exceedances of scrubber operating parameters were violations of the emission limit. The intention was to state that exceedances of acid regeneration plant operating parameters were violations of the emission limit. The rule is revised to state that excursions of scrubber monitoring parameters only require corrective action as specified by the maintenance requirements and are not violations of the emission limit.

Regarding acid plant monitoring parameters, the EPA's policy is that linking excursions of operating parameters to violations of the emissions limit is preferred but is only defensible where a strong correlation between the parameters values and emissions can be demonstrated. The EPA reexamined the appropriateness of the linkage of acid regeneration plant operating parameters with emissions and agrees with the commenters that a strong enough correlation has not been demonstrated. The rule is revised so that excursions of acid regeneration plant operating parameters are a violation of the operational standard and not the emission limit.

H. Recordkeeping Requirements

Comment: One commenter believes that the requirement for maintaining startup and shutdown records is ambiguous, burdensome, and of no environmental benefit. No guidance is provided on what constitutes a startup or shutdown. If required, startup and shutdown should be defined to exclude the normal stopping and starting of the pickling line during its daily operation.

Response: The EPA disagrees that no environmental benefit is gained from keeping startup and shutdown records. These records can be used as an enforcement tool to ensure continued compliance with environmental rules or to show periods of inactivity when, for example, emissions would not be expected to occur.

The EPA agrees that maintaining records of normal daily interruptions in line operations is onerous if not routinely practiced. This is not the intent of the recordkeeping requirement. Each facility writes its own SSMP and therefore can provide specific definitions of normal startup and shutdown versus intermittent stops and starts characteristic of daily operation. However, as part of the SSMP, these definitions are subject to approval by the facility's permitting authority.

Comment: One commenter suggests that for the air pollution control device recordkeeping, startup and shutdown should be defined to include only "abnormal" cases, perhaps periods of a day or more.

Response: As described in the previous response, each facility writes its own SSMP and can define normal startup and shutdown.

V. Administrative Requirements

A. Docket

The docket is an organized file of information considered by the EPA in the development of a rulemaking. The docket is a dynamic file because information is added throughout the rulemaking development process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in case of judicial review. (See section 307(d)(7)(A) of the Act.) The official rulemaking record, including all public comments received on the proposed rule, is located at the address in the **ADDRESSES** section at the beginning of this document.

B. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine if a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is not a "significant regulatory action" under the terms of the Executive Order and is therefore not subject to OMB review.

C. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866 and (2) concerns the environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonable feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it is based on technology performance and not on health or safety risks.

D. Executive Order 12875: Enhancing the Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or the EPA consults with those governments. If the EPA complies by consulting, EPA must provide the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

In compliance with Executive Order 12875, the EPA involved State regulatory experts in the development of the rule. State and local governments and tribal governments are not directly affected by the rule, i.e., they are not required to purchase control systems to meet the requirements of the rule. However, State and local governments will be required to implement the rule; i.e., incorporate the rule into permits and enforce the rule. They will collect permit fees that will be used to offset the resource burden of implementing the rule. Comments were solicited from States and have been considered in the development of the final rule. No comments were received from any tribal government.

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in developing EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA has determined that the total annualized nationwide cost of the final standard is approximately $7.9 million per year, which is well under the $100 million per year threshold. The only costs to State and local governments are those associated with implementing this standard through the permitting process, and those costs are recouped through permit fees. In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it does not impose any enforceable duties on small governments; such governments own or operate no sources subject to these rules and therefore would not be required to purchase control systems to meet the requirements of the rule. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions whose jurisdictions are less than 50,000 people. This rule will not have a significant impact on a substantial number of small entities because it does not impact small entities whose jurisdictions cover less than 50,000 people. Only three of approximately 80 affected facilities in this industry meet the criteria for small businesses. Of these three, one company is expected to meet the standard and one company is projected to be a nonmajor source based on calculations using an emissions estimating model along with information supplied by the firm. It is not anticipated that these two facilities will be adversely impacted by the regulation. The remaining small company employs a scrubber that may meet the emission limitation. If this facility incurs emission control costs, the costs would likely relate to upgrading existing equipment or improved maintenance practices. Any regulatory impacts for this company are not expected to be significant.

G. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a report, which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 22, 1999.

H. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No.1821.02) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The information collection requirements include mandatory notifications, records, and reports required by the NESHAP general provisions (40 CFR part 63, subpart A). These information collection requirements are needed to confirm the compliance status of major sources, to identify any nonmajor sources not subject to the standards and any new or reconstructed sources subject to the standards, to confirm that emission control devices are being properly operated and maintained, and to ensure that the standards are being achieved. Based on the recorded and reported information, EPA can decide which plants, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized by section 114 of the Act (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B. (See 41 FR 36902, September 1, 1976; 43 FR 39999, September 28, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979.)

The annual public reporting and recordkeeping burden for collecting this information (averaged over the first 3 years after the effective date of the rule) is estimated to total 23,190 hours based on a total of 70 likely respondents over that period (23.3 per year) at 995 hours per respondent per year. The total annualized cost is estimated to be $1,850,000 per year, with a capital and startup cost of $8,200 per year and an operation and maintenance cost of $7,500 per year (excluding labor hours included in the previous total).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like the EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

This action does not involve the proposal of any new technical standards. It does, however, incorporate by reference existing technical standards. Incorporated are EPA Reference test methods 1 through 4 and 26A, as codified under 40 CFR part 60, appendix A. Consequently, the EPA searched for voluntary consensus standards that might be applicable. The search was conducted through the National Standards System Network (NSSN), an automated service provided by the American National Standards Institute (ANSI) for identifying available national and international standards. The search identified no applicable equivalent standards. Therefore, the final rule relies solely on use of the government-unique technical standards cited above for determining compliance.

As part of a larger effort, the EPA is undertaking a project to cross-reference existing voluntary consensus standards on testing, sampling, and analysis with current and future EPA test methods. When completed, this project will assist the EPA in identifying potentially-applicable voluntary consensus standards that can then be evaluated for equivalency and applicability in determining compliance with future regulations.

J. Pollution Prevention Act

"Pollution prevention" means source reduction as defined under the Pollution Prevention Act of 1990 (e.g., equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control), and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation.

The steel pickling industry employs pollution prevention techniques through regeneration of spent pickle liquor. The 10 acid regeneration plants operating in 1991 recovered about 40 percent of the pickling acid requirements for the industry in that year. Without the savings provided by the use of regenerated acid, additional costs would be incurred for treatment or disposal of waste pickle liquor (K062) that are otherwise avoided. The final rule encourages use of acid regeneration by providing simplified and cost effective compliance requirements.

The final rule also encourages pollution prevention through improved maintenance of air pollution control devices. Proper operation maintenance of control systems results in more effective emissions control.

K. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments or the EPA consults with those governments. If the EPA complies by consulting, the EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. No steel pickling facilities are owned or operated by Indian by tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Steel pickling.

Dated: May 12, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart CCC to read as follows:

Subpart CCC—National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants

Sec.

63.1155 Applicability.
63.1156 Definitions.
63.1157 Emission standards for existing sources.
63.1158 Emission standards for new or reconstructed sources.
63.1159 Operational and equipment requirements for existing, new, or reconstructed sources.
63.1160 Compliance dates and maintenance requirements.
63.1161 Performance testing and test methods.
63.1162 Monitoring requirements.
63.1163 Notification requirements.
63.1164 Reporting requirements.
63.1165 Recordkeeping requirements.
63.1166 Delegation of authority.
63.1167–63.1174 [Reserved]
Table 1 to Subpart CCC—Applicability of General Provisions (40 CFR part 63, subpart A) to subpart CCC

Subpart CCC—National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants

§ 63.1155 Applicability.

(a) The provisions of this subpart apply to the following facilities and plants that are major sources for hazardous air pollutants (HAP) or are parts of facilities that are major sources for HAP:

(1) All new and existing steel pickling facilities that pickle carbon steel using hydrochloric acid solution that contains 6 percent or more by weight HCl and is at a temperature of 100 °F or higher; and

(2) All new and existing hydrochloric acid regeneration plants.

(3) The provisions of this subpart do not apply to facilities that pickle carbon steel without using hydrochloric acid, to facilities that pickle only specialty steel, or to acid regeneration plants that regenerate only acids other than hydrochloric acid.

(b) For the purposes of implementing this subpart, the affected sources at a facility or plant subject to this subpart are as follows: Continuous and batch pickling lines, hydrochloric acid regeneration plants, and hydrochloric acid storage vessels.

(c) Table 1 to this subpart specifies the provisions of this part 63, subpart A that apply and those that do not apply to owners and operators of steel pickling facilities and hydrochloric acid regeneration plants subject to this subpart.

§ 63.1156 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in subpart A of this part, or in this section as follows:

Batch pickling line means the collection of equipment and tanks configured for pickling metal in any form but usually in discrete shapes where the material is lowered in batches into a bath of acid solution, allowed to remain until the scale is dissolved, then removed from the solution, drained, and rinsed by spraying or immersion in one or more rinse tanks to remove residual acid.

Carbon steel means steel that contains approximately 2 percent or less carbon, 1.65 percent or less manganese, 0.6 percent or less silicon, and 0.6 percent or less copper.

Closed-vent system means a system that is not open to the atmosphere and that is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices that transport emissions from a process unit or piece of equipment (e.g., pumps, pressure relief devices, sampling connections, open-ended valves or lines, connectors, and instrumentation systems) back into a closed system or into any device that is capable of reducing or collecting emissions.

Continuous pickling line means the collection of equipment and tanks configured for pickling metal strip, rod, wire, tube, or pipe that is passed through an acid solution in a continuous or nearly continuous manner and rinsed in another tank or series of tanks to remove residual acid. This definition includes continuous spray towers.

Hydrochloric acid regeneration plant means the collection of equipment and processes configured to reconstitute fresh hydrochloric acid pickling solution from spent pickle liquor using a thermal treatment process.

Hydrochloric acid regeneration plant production mode means operation under conditions that result in production of usable regenerated acid or iron oxide.

Hydrochloric acid storage vessel means a stationary vessel used for the bulk containment of virgin or regenerated hydrochloric acid.

Responsible maintenance official means a person designated by the owner or operator as having the knowledge and the authority to sign records and reports required under this rule.

Specialty steel means a category of steel that includes silicon electrical, alloy, tool, and stainless steels.

Spray tower means an enclosed vertical tower in which acid pickling solution is sprayed onto moving steel strip in multiple vertical passes.

Steel pickling means the chemical removal of iron oxide mill scale that is formed on steel surfaces during hot rolling or hot forming of semi-finished steel products through contact with an aqueous solution of acid where such contact occurs prior to shaping or coating of the finished steel product. This definition does not include removal of light rust or scale from finished steel products or activation of the metal surface prior to plating or coating.

Steel pickling facility means any facility that operates one or more batch or continuous steel pickling lines.

§ 63.1157 Emission standards for existing sources.

(a) *Pickling lines.* No owner or operator of an existing affected continuous or batch pickling line at a steel pickling facility shall cause or allow to be discharged into the atmosphere from the affected pickling line:

(1) Any gases that contain HCl in a concentration in excess of 18 parts per million by volume (ppmv); or

(2) HCl at a mass emission rate that corresponds to a collection efficiency of less than 97 percent.

(b) *Hydrochloric acid regeneration plants.* (1) No owner or operator of an existing affected plant shall cause or allow to be discharged into the atmosphere from the affected plant any gases that contain HCl in a concentration greater than 25 ppmv.

(2) In addition to the requirement of paragraph (b)(1) of this section, no owner or operator of an existing affected plant shall cause or allow to be discharged into the atmosphere from the affected plant any gases that contain chlorine (Cl_2) in a concentration in excess of either 6 ppmv or an alternative source-specific maximum concentration. The source-specific maximum concentration standard shall be established according to § 63.1161(c)(2) of this subpart.

§ 63.1158 Emission standards for new or reconstructed sources.

(a) *Pickling lines.*—(1) *Continuous pickling lines.* No owner or operator of a new or reconstructed affected continuous pickling line at a steel pickling facility shall cause or allow to be discharged into the atmosphere from the affected pickling line:

(i) Any gases that contain HCl in a concentration in excess of 6 ppmv; or

(ii) HCl at a mass emission rate that corresponds to a collection efficiency of less than 99 percent.

(2) *Batch pickling lines.* No owner or operator of a new or reconstructed affected batch pickling line at a steel pickling facility shall cause or allow to be discharged into the atmosphere from the affected pickling line:

(i) Any gases that contain HCl in a concentration in excess of 18 ppmv; or

(ii) HCl at a mass emission rate that corresponds to a collection efficiency of less than 97 percent.

(b) *Hydrochloric acid regeneration plants.* (1) No owner or operator of a new or reconstructed affected plant shall cause or allow to be discharged into the atmosphere from the affected plant any gases that contain HCl in a concentration greater than 12 ppmv.

(2) In addition to the requirement of paragraph (b)(1) of this section, no owner or operator of a new or reconstructed affected plant shall cause or allow to be discharged into the atmosphere from the affected plant any gases that contain Cl_2 in a concentration in excess of 6 ppmv.

§ 63.1159 Operational and equipment standards for existing, new, or reconstructed sources.

(a) *Hydrochloric acid regeneration plant.* The owner or operator of an affected plant must operate the affected plant at all times while in production mode in a manner that minimizes the proportion of excess air fed to the process and maximizes the process offgas temperature consistent with producing usable regenerated acid or iron oxide.

(b) *Hydrochloric acid storage vessels.* The owner or operator of an affected vessel shall provide and operate, except during loading and unloading of acid, a closed-vent system for each vessel. Loading and unloading shall be conducted either through enclosed lines or each point where the acid is exposed to the atmosphere shall be equipped with a local fume capture system, ventilated through an air pollution control device.

§ 63.1160 Compliance dates and maintenance requirements.

(a) *Compliance dates.* (1) The owner or operator of an affected existing steel pickling facility and/or hydrochloric acid regeneration plant subject to this subpart shall achieve initial compliance with the requirements of this subpart no later than June 22, 2001.

(2) The owner or operator of a new or reconstructed steel pickling facility and/or hydrochloric acid regeneration plant subject to this subpart that commences construction or reconstruction after September 18, 1997, shall achieve compliance with the requirements of this subpart immediately upon startup of operations or by June 22, 1999, whichever is later.

(b) *Maintenance requirements.* (1) The owner or operator of an affected source shall comply with the operation and maintenance requirements prescribed under § 63.6(e) of subpart A of this part.

(2) In addition to the requirements specified in paragraph (b)(1) of this section, the owner or operator shall prepare an operation and maintenance plan for each emission control device to be implemented no later than the compliance date. The plan shall be incorporated by reference into the source's title V permit. All such plans must be consistent with good maintenance practices and, for a scrubber emission control device, must at a minimum:

(i) Require monitoring and recording the pressure drop across the scrubber once per shift while the scrubber is operating in order to identify changes that may indicate a need for maintenance;

(ii) Require the manufacturer's recommended maintenance at the recommended intervals on fresh solvent pumps, recirculating pumps, discharge pumps, and other liquid pumps, in addition to exhaust system and scrubber fans and motors associated with those pumps and fans;

(iii) Require cleaning of the scrubber internals and mist eliminators at intervals sufficient to prevent buildup of solids or other fouling;

(iv) Require an inspection of each scrubber at intervals of no less than 3 months with:

(A) Cleaning or replacement of any plugged spray nozzles or other liquid delivery devices;

(B) Repair or replacement of missing, misaligned, or damaged baffles, trays, or other internal components;

(C) Repair or replacement of droplet eliminator elements as needed;

(D) Repair or replacement of heat exchanger elements used to control the temperature of fluids entering or leaving the scrubber; and

(E) Adjustment of damper settings for consistency with the required air flow.

(v) If the scrubber is not equipped with a viewport or access hatch allowing visual inspection, alternate means of inspection approved by the Administrator may be used.

(vi) The owner or operator shall initiate procedures for corrective action within 1 working day of detection of an operating problem and complete all corrective actions as soon as practicable. Procedures to be initiated are the applicable actions that are specified in the maintenance plan. Failure to initiate or provide appropriate repair, replacement, or other corrective action is a violation of the maintenance requirement of this subpart.

(vii) The owner or operator shall maintain a record of each inspection, including each item identified in paragraph (b)(2)(iv) of this section, that is signed by the responsible maintenance official and that shows the date of each inspection, the problem identified, a description of the repair, replacement, or other corrective action taken, and the date of the repair, replacement, or other corrective action taken.

(3) The owner or operator of each hydrochloric acid regeneration plant shall develop and implement a written maintenance program. The program shall require:

(i) Performance of the manufacturer's recommended maintenance at the recommended intervals on all required systems and components;

(ii) Initiation of procedures for appropriate and timely repair, replacement, or other corrective action within 1 working day of detection; and

(iii) Maintenance of a daily record, signed by a responsible maintenance official, showing the date of each inspection for each requirement, the problems found, a description of the repair, replacement, or other action taken, and the date of repair or replacement.

§ 63.1161 Performance testing and test methods.

(a) *Demonstration of compliance.* The owner or operator shall conduct an initial performance test for each process or emission control device to determine and demonstrate compliance with the applicable emission limitation according to the requirements in § 63.7 of subpart A of this part and in this section.

(1) Following approval of the site-specific test plan, the owner or operator shall conduct a performance test for each process or control device to either measure simultaneously the mass flows of HCl at the inlet and the outlet of the control device (to determine compliance with the applicable collection efficiency standard) or measure the concentration of HCl (and Cl_2 for hydrochloric acid regeneration plants) in gases exiting the process or the emission control device (to determine compliance with the applicable emission concentration standard).

(2) Compliance with the applicable concentration standard or collection efficiency standard shall be determined by the average of three consecutive runs or by the average of any three of four consecutive runs. Each run shall be conducted under conditions representative of normal process operations.

(3) Compliance is achieved if either the average collection efficiency as determined by the HCl mass flows at the control device inlet and outlet is greater than or equal to the applicable collection efficiency standard, or the average measured concentration of HCl or Cl_2 exiting the process or the emission control device is less than or equal to the applicable emission concentration standard.

(b) *Establishment of scrubber operating parameters.* During the performance test for each emission control device, the owner or operator using a wet scrubber to achieve compliance shall establish site-specific operating parameter values for the minimum scrubber makeup water flow rate and, for scrubbers that operate with recirculation, the minimum recirculation water flow rate. During the emission test, each operating parameter must be monitored continuously and recorded with sufficient frequency to establish a representative average value for that parameter, but no less frequently than once every 15 minutes. The owner or operator shall determine the operating parameter monitoring values as the averages of the values recorded during any of the runs for which results are used to establish the emission concentration or collection efficiency per paragraph (a)(2) of this section. An owner or operator may conduct multiple performance tests to establish alternative compliant operating parameter values. Also, an owner or operator may reestablish compliant operating parameter values as part of any performance test that is conducted subsequent to the initial test or tests.

(c) *Establishment of hydrochloric acid regeneration plant operating parameters.* (1) During the performance test for hydrochloric acid regeneration plants, the owner or operator shall establish site-specific operating parameter values for the minimum process offgas temperature and the maximum proportion of excess air fed to the process as described in § 63.1162(b)(1) of this subpart. During the emission test, each operating parameter must be monitored and recorded with sufficient frequency to establish a representative average value for that parameter, but no less frequently than once every 15 minutes for parameters that are monitored continuously. Amount of iron in the spent pickle liquor shall be determined for each run by sampling the liquor every 15 minutes and analyzing a composite of the samples. The owner or operator shall determine the compliant monitoring values as the averages of the values recorded during any of the runs for which results are used to establish the emission concentration per paragraph (a)(2) of this section. An owner or operator may conduct multiple performance tests to establish alternative compliant operating parameter values. Also, an owner or operator may reestablish compliant operating parameter values as part of any performance test that is conducted subsequent to the initial test or tests.

(2) During this performance test, the owner or operator of an existing affected plant may establish an alternative concentration standard if the owner or operator can demonstrate to the Administrator's satisfaction that the plant cannot meet a concentration limitation for Cl_2 of 6 ppmv when operated within its design parameters. The alternative concentration standard shall be established through performance testing while the plant is operated at maximum design temperature and with the minimum proportion of excess air that allows production of iron oxide of acceptable quality while measuring the Cl_2 concentration in the process exhaust gas. The measured concentration shall be the concentration standard for that plant.

(d) *Test methods.* (1) The following test methods in appendix A of 40 CFR part 60 shall be used to determine compliance under § 63.1157(a), § 63.1157(b), § 63.1158(a), and § 63.1158(b) of this subpart:

(i) Method 1, to determine the number and location of sampling points, with the exception that no traverse point shall be within one inch of the stack or duct wall;

(ii) Method 2, to determine gas velocity and volumetric flow rate;

(iii) Method 3, to determine the molecular weight of the stack gas;

(iv) Method 4, to determine the moisture content of the stack gas; and

(v) Method 26A, "Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources—Isokinetic Method," to determine the HCl mass flows at the inlet and outlet of a control device or the concentration of HCl discharged to the atmosphere, and also to determine the concentration of Cl_2 discharged to the atmosphere from acid regeneration plants. If compliance with a collection efficiency standard is being demonstrated, inlet and outlet measurements shall be performed simultaneously. The minimum sampling time for each run shall be 60 minutes and the minimum sample volume 0.85 dry standard cubic meters (30 dry standard cubic feet). The concentrations of HCl and Cl_2 shall be calculated for each run as follows:

$C_{HCl}(ppmv) = 0.659\ C_{HCl}(mg/dscm)$, and $C_{Cl2}(ppmv) = 0.339\ C_{Cl2}(mg/dscm)$, where C(ppmv) is concentration in ppmv and C(mg/dscm) is concentration in milligrams per dry standard cubic meter as calculated by the procedure given in Method 26A.

(2) The owner or operator may use equivalent alternative measurement methods approved by the Administrator.

§ 63.1162 Monitoring requirements.

(a) The owner or operator of a new, reconstructed, or existing steel pickling facility or acid regeneration plant subject to this subpart shall:

(1) Conduct performance tests to measure the HCl mass flows at the control device inlet and outlet or the concentration of HCl exiting the control device according to the procedures described in § 63.1161 of this subpart. Performance tests shall be conducted either annually or according to an alternative schedule that is approved by the applicable permitting authority, but no less frequently than every 2½ years or twice per title V permit term. If any performance test shows that the HCl emission limitation is being exceeded, then the owner or operator is in violation of the emission limit.

(2) In addition to conducting performance tests, if a wet scrubber is used as the emission control device, install, operate, and maintain systems for the measurement and recording of the scrubber makeup water flow rate and, if required, recirculation water flow rate. These flow rates must be monitored continuously and recorded at least once per shift while the scrubber is operating. Operation of the wet scrubber with excursions of scrubber makeup water flow rate and recirculation water flow rate less than the minimum values established during the performance test or tests will require initiation of corrective action as specified by the maintenance requirements in § 63.1160(b)(2) of this subpart.

(3) If an emission control device other than a wet scrubber is used, install, operate, and maintain systems for the measurement and recording of the appropriate operating parameters.

(4) Failure to record each of the operating parameters listed in paragraph (a)(2) of this section is a violation of the monitoring requirements of this subpart.

(5) Each monitoring device shall be certified by the manufacturer to be accurate to within 5 percent and shall be calibrated in accordance with the manufacturer's instructions but not less frequently than once per year.

(6) The owner or operator may develop and implement alternative monitoring requirements subject to approval by the Administrator.

(b) The owner or operator of a new, reconstructed, or existing acid regeneration plant subject to this subpart shall also install, operate, and maintain systems for the measurement and recording of the:

(1) Process offgas temperature, which shall be monitored continuously and recorded at least once every shift while the facility is operating in production mode; and

(2) Parameters from which proportion of excess air is determined. Proportion of excess air shall be determined by a combination of total air flow rate, fuel flow rate, spent pickle liquor addition rate, and amount of iron in the spent pickle liquor, or by any other combination of parameters approved by the Administrator in accordance with § 63.8(f) of subpart A of this part. Proportion of excess air shall be determined and recorded at least once every shift while the plant is operating in production mode.

(3) Each monitoring device must be certified by the manufacturer to be accurate to within 5 percent and must be calibrated in accordance with the manufacturer's instructions but not less frequently than once per year.

(4) Operation of the plant with the process offgas temperature lower than the value established during performance testing or with the proportion of excess air greater than the value established during performance testing is a violation of the operational standard specified in § 63.1159(a) of this subpart.

(c) The owner or operator of an affected hydrochloric acid storage vessel shall inspect each vessel semiannually to determine that the closed-vent system and either the air pollution control device or the enclosed loading and unloading line, whichever is applicable, are installed and operating when required.

§ 63.1163 Notification requirements.

(a) *Initial notifications.* As required by § 63.9(b) of subpart A of this part, the owner or operator shall submit the following written notifications to the Administrator:

(1) The owner or operator of an area source that subsequently becomes subject to the requirements of the standard shall provide notification to the applicable permitting authority as required by § 63.9(b)(1) of subpart A of this part.

(2) As required by § 63.9(b)(2) of subpart A of this part, the owner or operator of an affected source that has an initial startup before June 22, 1999, shall notify the Administrator that the source is subject to the requirements of the standard. The notification shall be submitted not later than October 20, 1999 (or within 120 calendar days after the source becomes subject to this standard), and shall contain the information specified in §§ 63.9(b)(2)(i) through 63.9(b)(2)(v) of subpart A of this part.

(3) As required by § 63.9(b)(3) of subpart A of this part, the owner or operator of a new or reconstructed

affected source, or a source that has been reconstructed such that it is an affected source, that has an initial startup after the effective date and for which an application for approval of construction or reconstruction is not required under § 63.5(d) of subpart A of this part, shall notify the Administrator in writing that the source is subject to the standards no later than 120 days after initial startup. The notification shall contain the information specified in §§ 63.9(b)(2)(i) through 63.9(b)(2)(v) of subpart A of this part, delivered or postmarked with the notification required in § 63.9(b)(5) of subpart A of this part.

(4) As required by § 63.9(b)(4) of subpart A of this part, the owner or operator of a new or reconstructed major affected source that has an initial startup after June 22, 1999, and for which an application for approval of construction or reconstruction is required under § 63.5(d) of subpart A of this part shall provide the information specified in §§ 63.9(b)(4)(i) through 63.9(b)(4)(v) of subpart A of this part.

(5) As required by § 63.9(b)(5) of subpart A of this part, the owner or operator who, after June 22, 1999, intends to construct a new affected source or reconstruct an affected source subject to this standard, or reconstruct a source such that it becomes an affected source subject to this standard, shall notify the Administrator, in writing, of the intended construction or reconstruction.

(b) *Request for extension of compliance.* As required by § 63.9(c) of subpart A of this part, if the owner or operator of an affected source cannot comply with this standard by the applicable compliance date for that source, or if the owner or operator has installed BACT or technology to meet LAER consistent with § 63.6(i)(5) of subpart A of this part, he/she may submit to the Administrator (or the State with an approved permit program) a request for an extension of compliance as specified in §§ 63.6(i)(4) through 63.6(i)(6) of subpart A of this part.

(c) *Notification that source is subject to special compliance requirements.* As required by § 63.9(d) of subpart A of this part, an owner or operator of a new source that is subject to special compliance requirements as specified in §§ 63.6(b)(3) and 63.6(b)(4) of subpart A of this part shall notify the Administrator of his/her compliance obligations not later than the notification dates established in § 63.9(b) of subpart A of this part for new sources that are not subject to the special provisions.

(d) *Notification of performance test.* As required by § 63.9(e) of subpart A of this part, the owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, to allow the Administrator to review and approve the site-specific test plan required under § 63.7(c) of subpart A of this part and, if requested by the Administrator, to have an observer present during the test.

(e) *Notification of compliance status.* The owner or operator of an affected source shall submit a notification of compliance status as required by § 63.9(h) of subpart A of this part when the source becomes subject to this standard.

§ 63.1164 Reporting requirements.

(a) *Reporting results of performance tests.* As required by § 63.10(d)(2) of subpart A of this part, the owner or operator of an affected source shall report the results of any performance test as part of the notification of compliance status required in § 63.1163 of this subpart.

(b) *Progress reports.* The owner or operator of an affected source who is required to submit progress reports under § 63.6(i) of subpart A of this part shall submit such reports to the Administrator (or the State with an approved permit program) by the dates specified in the written extension of compliance.

(c) *Periodic startup, shutdown, and malfunction reports.* Section 63.6(e) of subpart A of this part requires the owner or operator of an affected source to operate and maintain each affected emission source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the level required by the standard at all times, including during any period of startup, shutdown, or malfunction. Malfunctions must be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan.

(1) *Plan.* As required by § 63.6(e)(3) of subpart A of this part, the owner or operator shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, or malfunction, and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard.

(2) *Reports.* As required by § 63.10(d)(5)(i) of subpart A of this part, if actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the startup, shutdown, and malfunction plan, the owner or operator shall state such information in a semiannual report. The report, to be certified by the owner or operator or other responsible official, shall be submitted semiannually and delivered or postmarked by the 30th day following the end of each calendar half; and

(3) *Immediate Reports.* Any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures in the startup, shutdown, and malfunction plan, the owner or operator shall comply with all requirements of § 63.10(d)(5)(ii) of subpart A of this part.

§ 63.1165 Recordkeeping requirements.

(a) *General recordkeeping requirements.* As required by § 63.10(b)(2) of subpart A of this part, the owner or operator shall maintain records for 5 years from the date of each record of:

(1) The occurrence and duration of each startup, shutdown, or malfunction of operation (i.e., process equipment);

(2) The occurrence and duration of each malfunction of the air pollution control equipment;

(3) All maintenance performed on the air pollution control equipment;

(4) Actions taken during periods of startup, shutdown, and malfunction and the dates of such actions (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) when these actions are different from the procedures specified in the startup, shutdown, and malfunction plan;

(5) All information necessary to demonstrate conformance with the startup, shutdown, and malfunction plan when all actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. This information can be recorded in a checklist or similar form (see § 63.10(b)(2)(v) of subpart A of this part);

(6) All required measurements needed to demonstrate compliance with the standard and to support data that the source is required to report, including, but not limited to, performance test measurements (including initial and any subsequent performance tests) and measurements as may be necessary to determine the conditions of the initial test or subsequent tests;

(7) All results of initial or subsequent performance tests;

(8) If the owner or operator has been granted a waiver from recordkeeping or reporting requirements under § 63.10(f) of subpart A of this part, any information demonstrating whether a source is meeting the requirements for a waiver of recordkeeping or reporting requirements;

(9) If the owner or operator has been granted a waiver from the initial performance test under § 63.7(h) of subpart A of this part, a copy of the full request and the Administrator's approval or disapproval;

(10) All documentation supporting initial notifications and notifications of compliance status required by § 63.9 of subpart A of this part; and

(11) Records of any applicability determination, including supporting analyses.

(b) *Subpart CCC records.* (1) In addition to the general records required by paragraph (a) of this section, the owner or operator shall maintain records for 5 years from the date of each record of:

(i) Scrubber makeup water flow rate and recirculation water flow rate if a wet scrubber is used;

(ii) Calibration and manufacturer certification that monitoring devices are accurate to within 5 percent; and

(iii) Each maintenance inspection and repair, replacement, or other corrective action.

(2) The owner or operator of an acid regeneration plant shall also maintain records for 5 years from the date of each record of process offgas temperature and parameters that determine proportion of excess air.

(3) The owner or operator shall keep the written operation and maintenance plan on record after it is developed to be made available for inspection, upon request, by the Administrator for the life of the affected source or until the source is no longer subject to the provisions of this subpart. In addition, if the operation and maintenance plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the plan on record to be made available for inspection by the Administrator for a period of 5 years after each revision to the plan.

(c) *Recent records.* General records and subpart CCC records for the most recent 2 years of operation must be maintained on site. Records for the previous 3 years may be maintained off site.

§ 63.1166 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under 40 CFR part 63, subpart E, the following authorities shall be retained by the Administrator and not transferred to a State:

(1) Approval of alternative emission standards for existing, new, and reconstructed pickling lines, hydrochloric acid regeneration plants, and hydrochloric acid storage vessels to those standards specified in §§ 63.1157 and 63.1158 of this subpart;

(2) Approval of alternative measurement methods for HCl and Cl_2 to those specified in § 63.1161(d)(1) of this subpart;

(3) Approval of alternative monitoring requirements to those specified in §§ 63.1162(a)(2) through 63.1162(a)(5) and 63.1162(b)(1) through 63.1162(b)(3) of this subpart; and

(4) Waiver of recordkeeping requirements specified in § 63.1165 of this subpart.

(b) The following authorities shall be delegated to a State: All other authorities, including approval of an alternative schedule for conducting performance tests to the requirement specified in § 63.1162(a)(1) of this subpart.

§§ 63.1167—63.1174 [Reserved]

TABLE 1 TO SUBPART CCC.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART CCC

Reference	Applies to Subpart CCC	Explanation
63.1–63.5	Yes.	
63.6 (a)–(g)	Yes.	
63.6 (h)	No	Subpart CCC does not contain an opacity or visible emission standard.
63.6 (i)–(j)	Yes.	
63.7–63.9	Yes.	
63.10 (a)–(c)	Yes.	
63.10 (d) (1)–(2)	Yes.	
63.10 (d)(3)	No	Subpart CCC does not contain an opacity or visible emission standard.
63.10 (d) (4)–(5)	Yes.	
63.10 (e)–(f)	Yes.	
63.11	No	Subpart CCC does not require the use of flares.
63.12–63.15	Yes.	

[FR Doc. 99–12939 Filed 6–21–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–244; RM–9200, RM–9235 & RM–9236]

Radio Broadcasting Services; Kerrville, Leakey & Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 291A to Kerrville, Texas, in response to a petition filed by The Stronghold Foundation, Inc. *See* 63 FR 193, January 5, 1998. The coordinates for Channel 291A at Kerrville are 30–02–48 NL and 99–08–24 WL. In response to two separate counterproposals filed by Kent S. Foster, we shall allot Channel 226A to Leakey, Texas, at coordinates 29–43–42 NL and 99–45–48 WL and Channel 224A to Mason, Texas, at coordinates 30–45–00 NL and 99–14–00 WL. Since Kerrville, Leakey and Mason are all located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican Government has been obtained for these allotments. With this action, this proceeding is terminated. A filing window for Channel 291A at Kerrville, Channel 226A at Leakey and Channel 224A at Mason will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–244, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 291A at Kerrville, Channel 226A at Leakey, and Channel 224A at Mason.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15747 Filed 6–21–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–59; RM–9447]

Radio Broadcasting Services; Fairfield, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 279C2 to Fairfield, Montana, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 8787, February 23, 1999. The coordinates for Channel 279C2 at Fairfield are 47–37–00 NL and 111–59–06 WL. The channel can be allotted to Fairfield without a site restriction. Canadian concurrence has been obtained for the allotment of Channel 279C2 at Fairfield. With this action, this proceeding is terminated. A filing window for Channel 279C2 at Fairfield will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–59, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Fairfield, Channel 279C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15745 Filed 6–21–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–60; RM–9449]

Radio Broadcasting Services; Fort Benton, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 239C3 to Fort Benton, Montana, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 8787, February 23, 1999. The coordinates for Channel 239C3 at Fort Benton are 47–44–01 NL and 110–47–41 WL. There is a site restriction 13.4 kilometers (8.4 miles) southwest of the community. Canadian concurrence has been obtained for the allotment of Channel 239C3 at Fort Benton. With this action, this proceeding is terminated. A filing window for Channel 239C3 at Fort Benton will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–60, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Fort Benton, Channel 239C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15744 Filed 6–21–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–62; RM–9410]

Radio Broadcasting Services; Reno, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 255A at Reno, Texas, in response to a petition filed by Thomas S. Desmond. *See* 64 FR 8788, February 23, 1999. The coordinates for Channel 255A at Reno are 30–40–12 NL and 95–36–08 WL. There is a site restriction 13 kilometers (8.1 miles) west of the community. With this action, this proceeding is terminated. A filing window for Channel 255A at Reno will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–62, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Reno, Channel 255A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15743 Filed 6–21–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–71; RM–9362]

Radio Broadcasting Services; Ironton & Salem, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 240C3 for Channel 224A at Ironton, Missouri, and modifies the license for Station KYLS–FM at Ironton, to specify operation on Channel 240C3, and substitutes Channel 225C3 for Channel 240A at Salem, Missouri, and modifies the license for Station KKID(FM) accordingly, in response to a petition filed by Dockins Communications, Inc. and Ultra-Sonic Broadcast Stations, Inc. *See* 64 FR 12923, March 16, 1999. The coordinates for Channel 240C3 at Ironton are 37–33–46 and 90–44–29. The coordinates for Channel 225C3 at Salem are 37–38–01 and 91–32–05. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–71, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 224A and adding Channel 240C3 at Ironton and by removing Channel 240A and adding Channel 225C3 at Salem.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15742 Filed 6–21–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 119
Tuesday, June 22, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 177

RIN 3206–AI70

Administrative Claims Under the Federal Tort Claims Act

AGENCY: Office of Personnel Management (OPM).

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise and update its regulations to reflect changes for the filing of administrative claims with OPM pursuant to the Federal Tort Claims Act for loss or damage of property, personal injury, or death caused by the negligent or wrongful act or omission of OPM employees while acting within the scope of their office or employment.

DATES: Written comments must be received on or before July 22, 1999.

ADDRESSES: Send written comments to Lorraine Lewis, General Counsel, Office of Personnel Management, Room 7355, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James S. Green, Associate General Counsel, or Gloria Clark, Paralegal Specialist, Office of the General Counsel, (202) 606–1700.

SUPPLEMENTARY INFORMATION: The Federal Tort Claims Act, as amended, 28 U.S.C. 2671–2680, provides that the United States Government may be held liable for property damage, personal injury, or death caused by the negligent or wrongful act or omission of its employees, while they are acting within the scope of their office or employment. The purpose of the Federal Tort Claims Act, which was passed in 1946, was to waive the traditional sovereign immunity of the United States from lawsuits in certain tort cases so that injured persons could seek recovery from the United States instead of from individual Federal employees who committed alleged wrongdoings. Under the Federal Tort Claims Act, the United States is responsible to injured persons for the common law torts (i.e., torts as defined by state law case precedents rather than by statutes) of its employees in the same manner and to the same extent as a private individual under similar circumstances, in accordance with the law of the place where the alleged act or omission occurred.

The Department of Justice (DOJ) has the responsibility for overseeing the administration and implementation of the Federal Tort Claims Act for the United States Government. DOJ has authorized each agency to issue regulations and establish procedures consistent with their regulations for the Federal Tort Claims Act. The Federal Tort Claims Act authorizes the head of each Federal agency, or his designee, to consider, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of their office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The Director of OPM has delegated the responsibility for this function to the General Counsel of OPM. Any award, compromise, or settlement in excess of $25,000 can only be effected upon the prior written approval of the Attorney General.

These regulations will only apply to claims asserted under the Federal Tort Claims Act for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of OPM while acting within the scope of his or her office or employment. The proposed regulations will update OPM's regulations for the Federal Tort Claims Act and include revisions to reflect changes for the filing of administrative claims by claimants and the delegation of authority for this function within OPM by the General Counsel.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the changes will only affect the Federal Government.

List of Subjects in 5 CFR Part 177

Claims.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management proposes to revise 5 CFR part 177 as follows:

PART 177—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Sec.

177.101 Scope of regulations.
177.102 Administrative claim; when presented; appropriate OPM office.
177.103 Administrative claim; who may file.
177.104 Investigations.
177.105 Administrative claim; evidence and information to be submitted.
177.106 Authority to adjust, determine, compromise, and settle.
177.107 Limitations on authority.
177.108 Referral to Department of Justice.
177.109 Final denial of claim.
177.110 Action on approved claim.

Authority: 28 U.S.C. 2672; 28 CFR 14.11.

§ 177.101 Scope of regulations.

These regulations apply only to claims presented or filed with the Office of Personnel Management (OPM) under the Federal Tort Claims Act, as amended, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of OPM while acting within the scope of his or her office or employment.

§ 177.102 Administrative claim; when presented; appropriate OPM office.

(a) For purposes of the provisions of 28 U.S.C. 2401(b), 2672, and 2675, a claim is deemed to have been presented when OPM receives from a claimant, his or her authorized agent or legal representative, an executed Standard Form 95 (Claim for Damage, Injury or Death), or other written notification of an incident, accompanied by a claim for money damages stating a sum certain (a specific dollar amount) for injury to or loss of property, personal injury, or death alleged to have occurred as a result of the incident.

(b) All claims filed under the Federal Tort Claims Act as a result of the alleged negligence or wrongdoing of OPM or its employees will be mailed or delivered to the Office of the General Counsel, United States Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–1300.

(c) A claim must be presented to the Federal agency whose activities gave rise to the claim. A claim that should have been presented to OPM, but was mistakenly addressed to or filed with another Federal agency, is presented to OPM, as required by 28 U.S.C. 2401(b), as of the date OPM receives the claim. When a claim is mistakenly presented to OPM, OPM will transfer the claim to the appropriate Federal agency, if ascertainable, and advise the claimant of the transfer, or return the claim to the claimant.

(d) A claimant whose claim arises from an incident involving OPM and one or more other Federal agencies, will identify each agency to which the claim has been submitted at the time the claim is presented to OPM. OPM will contact all other affected Federal agencies in order to designate the single agency that will investigate and decide the merits of the claim. In the event a designation cannot be agreed upon by the affected agencies, the Department of Justice will be consulted and will designate an agency to investigate and determine the merits of the claim. The designated agency will notify the claimant that all future correspondence concerning the claim must be directed to that Federal agency. All involved Federal agencies may agree to conduct their own administrative reviews and to coordinate the results, or to have the investigation conducted by the designated Federal agency, but, in either event, the designated agency will be responsible for the final determination of the claim.

(e) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments must be in writing and signed by the claimant or his or her authorized agent or legal representative. Upon timely filing of an amendment to a pending claim, OPM will have 6 months in which to make a final disposition of the claim as amended and claimant's option under 28 U.S.C. 2675(a) will not accrue until 6 months after the filing of an amendment.

§ 177.103 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his or her authorized legal agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, his or her authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. When an insurer presents a claim asserting the rights of a subrogee, he or she will present with the claim appropriate evidence that he or she has the rights of a subrogee.

(e) A claim presented by an agent or legal representative must be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his or her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 177.104 Investigations.

OPM may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

§ 177.105 Administrative claim; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full names, addresses, birth date, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support on the decedent at the time of death.

(4) Degree of support afforded by the decedent to each survivor dependent on him or her for support at the time of death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injuries and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by OPM or another Federal agency. OPM will make available to the claimant a copy of the report of the examining physician on written request by the claimant, provided that he or she has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to OPM any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his or her claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his or her employer showing actual time lost from employment, whether he or she is a full-or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 177.106 Authority to adjust, determine, compromise, and settle.

(a) The General Counsel of OPM, or his or her designee, is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims under the provisions of 28 U.S.C. 2672, and this part. The General Counsel, in his or her discretion, has the authority to further delegate the responsibility for adjudicating, considering, adjusting, compromising, and settling any claim submitted under the provisions of 28 U.S.C. 2672, and this part, that is based on the alleged negligence or wrongful act or omission of an OPM employee, with the exception of claims involving personal injury. All claims involving personal injury will be adjudicated, considered, adjusted, compromised and settled by the Office of the General Counsel.

§ 177.107 Limitations on authority.

(a) An award, compromise, or settlement of a claim under 28 U.S.C. 2672 and this part in excess of $25,000 may be effected only with the prior written approval of the Attorney General or his or her designee. For purposes of this paragraph, a principal claim and any derivative or subrogated claim will be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled under this part, only after consultation with the Department of Justice when, in the opinion of the General Counsel of OPM, or his or her designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and OPM is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled under 28 U.S.C. 2672 and this part only after consultation with the Department of Justice when OPM is informed or is otherwise aware that the United States or an employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 177.108 Referral to Department of Justice.

When Department of Justice approval or consultation is required, or the advice of the Department of Justice is otherwise to be requested, under § 177.107, the written referral or request will be transmitted to the Department of Justice by the General Counsel of OPM or his or her designee.

§ 177.109 Final denial of claim.

Final denial of an administrative claim must be in writing and sent to the claimant, his or her attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial, but it must include a statement that, if the claimant is dissatisfied with the OPM action, he or she may file suit in an appropriate United States district court not later than 6 months after the date of mailing of the notification.

§ 177.110 Action on approved claim.

(a) Payment of a claim approved under this part is contingent on claimant's execution of a Standard Form 95 (Claim for Damage, Injury or Death); a claims settlement agreement; and a Standard Form 1145 (Voucher for Payment), as appropriate. When a claimant is represented by an attorney, the Voucher for Payment must designate both the claimant and his or her attorney as payees, and the check will be delivered to the attorney, whose address is to appear on the Voucher for Payment.

(b) Acceptance by the claimant, his or her agent, or legal representative, of an award, compromise, or settlement made under 28 U.S.C. 2672 or 28 U.S.C. 2677 is final and conclusive on the claimant, his or her agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any employee of the Government whose act omission gave rise to the claim, by reason of the same subject matter.

[FR Doc. 99–15805 Filed 6–21–99; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB46

General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations to revise the method of determining loan fund eligibility for "ordinary replacements" and authorize use of guaranteed financing for "minor projects".

In the final rule section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a document will be published withdrawing the direct final rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received on or before July 22, 1999.

ADDRESSES: Written comments should be sent to Alex M. Cockey, Jr., Deputy Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, STOP 1560, 1400 Independence Avenue, SW, Washington, DC 20250–1560. RUS requires, in hard copy, a signed original and three copies of all comments (7 CFR part 1700.30(e)). All comments received will be available for public inspection at room 4037 South Building (address as above) between 8 a.m. and 4 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Deputy Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, STOP 1560, 1400 Independence Avenue, SW, Washington, DC 20250–1560. Telephone: (202) 720–9547. FAX (202) 690–0717. E-mail: acockey@rus.usda.gov.

SUPPLEMENTARY INFORMATION: See the Supplementary Information provided in the direct final rule located in the final rule section of this **Federal Register** for the applicable supplementary information on this section.

Dated: June 14, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–15704 Filed 6–21–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–252–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 747–400 series airplanes, that currently requires various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This action would reduce the repetitive interval for one certain functional test. This proposal is prompted by reports indicating that several center drive units (CDU) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by August 6, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–252–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–252–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–252–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 13, 1994, the FAA issued AD 94–15–05, amendment 39–8976 (59 FR 37655, July 25, 1994), applicable to all Boeing Model 747–400 series airplanes, to require various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. That action was prompted by an investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment, which revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The requirements of that AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received reports indicating that several thrust reverser center drive units (CDU) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. This possible failure condition was not included in any previous safety assessment of the thrust reverser by the manufacturer. The returned CDU's had accumulated between 3,400 and 3,600 total flight hours. The cause of the low holding torque is a combination of cone brake wear, overrunning clutch wear, and grease contamination of the cone brake. Such a low torque condition could result in failure of the cone brake of the CDU, which could disable one of the fail safe features of the thrust reverser system that prevent deployment of a thrust reverser during flight.

In addition, this proposed AD changes the acceptable revision levels for Boeing Service Bulletin 747–78A2113, from the original issue, dated November 11, 1993, and Revision 1, dated March 10, 1994, referenced in AD 94–15–05 as the appropriate source of service information for accomplishment of the actions, to Revision 2, dated June 8, 1993 and Revision 3, dated September 11, 1997. Revisions 2 and 3 of the service bulletin incorporate substantial technical changes. These revisions reduce the permitted resistance from 5.0 ohm to 4.0 ohm in the directional control valve hot short protection check, which ensures that the related circuit breaker will open if a hot short occurs. These revisions also add a step to

replace the bullnose seal in the next 650 flight hours if damage of more than 1 inch, but less than 10 inches is found during the bullnose seal inspection.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, which describes procedures for a repetitive functional test of the CDU cone brake on each thrust reverser, and correction of any discrepancy found. The procedures for the functional test of the cone brake are essentially the same as those described in Boeing Service Bulletin 747–78–2113, dated November 11, 1993, and Boeing Alert Service Bulletin 747–78A2113, Revision 1, dated March 10, 1994, for Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines (which were referenced as appropriate sources of service information in AD 94–15–05). However, Boeing Service Bulletin 747–78A2166, Revision 1, specifies a shorter repetitive interval for the functional test (650 flight hours) than was specified in Boeing Service Bulletin 747–78–2113 (1,000 flight hours).

In addition, the FAA has reviewed and approved Boeing Service Bulletins 747–78–2113, Revision 2, dated June 8, 1995, and Revision 3, dated September 11, 1997. The procedures for the functional test of the cone brake are essentially the same as those described in Boeing Service Bulletin 747–78–2113, dated November 11, 1993, and Boeing Alert Service Bulletin 747–78A2113, Revision 1, dated March 10, 1994, referenced previously, for Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–15–05 to continue to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This proposed AD would reduce the repetitive interval for the functional test of the CDU cone brake. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Latest Service Bulletin and This Proposed AD

Operators should note that Boeing Service Bulletin 747–78A2166, Revision 1, specifies that the functional test of the CDU cone brake described in that service bulletin is not necessary for Model 747–400 series airplanes that are equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2151 (or production equivalent). Boeing Model 747–400 series airplanes having line numbers 1061 and higher are equipped with such modified thrust reversers; therefore, the effectivity listing of Boeing Service Bulletin 747–78A2166, Revision 1, includes only Model 747 series airplanes equipped with General Electric Model CF6–80C2 engines having line numbers 679 through 1060 inclusive.

This proposed AD, however, would require that the cone brake functional test be performed on Model 747–400 series airplanes equipped with General Electric Model CF6–80C2 engines regardless of whether they are equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2151. The FAA has determined that an inspection interval of 1,000 hours time-in-service (which was required by AD 94–15–05) provides a sufficient level of safety for the modified thrust reversers, and that an inspection interval of 650 hours time-in-service provides a sufficient level of safety for the unmodified thrust reversers, given the low holding torque condition that has been identified for the CDU cone brake.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 146 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 55 airplanes of U.S. registry would be affected by this proposed AD.

The new actions proposed by this AD would not add any additional economic burden on affected operators, other than the costs that are associated with repeating the functional test of the cone brake at reduced intervals (at intervals not to exceed 650 hours time-in-service for thrust reversers that have not been modified). The current costs associated with AD 94–15–05 are reiterated in their entirety (as follows) for the convenience of affected operators.

For airplanes powered by Pratt & Whitney PW4000 series engines (39 U.S.-registered airplanes), the actions that are currently required by AD 94–15–05, and retained in this AD, take approximately 48 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators of Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines is estimated to be $112,320, or $2,880 per airplane.

For airplanes powered by General Electric CF6–80C2 series engines (16 U.S.-registered airplanes), the actions that are currently required by AD 94–15–05, and retained in this AD, take approximately 60 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators of Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines is estimated to be $57,600, or $3,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Currently, there are no Model 747–400 series airplanes powered by Rolls-Royce RB211–524G/H series engines on the U.S. Register at this time. However, should one of these airplanes be imported and placed on the U.S. Register in the future, it will require approximately 30 hours to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD is estimated to be $1,800 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8976 (59 FR 37655, July 25, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–252–AD. Supersedes AD 94–15–05, Amendment 39–8976.

Applicability: All Model 747–400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Restatement of Requirements of AD 94–15–05, Amendment 39–8976

Inspections and Tests

(a) For Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines: Accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 90 days after August 24, 1994 (the effective date of AD 94–15–05, amendment 39–8976), perform an inspection to detect damage to the bullnose seal on the translating sleeve of the thrust reverser, and perform a test of the lock mechanism of the center locking actuator, in accordance with paragraphs III.C. and III.E. of the Accomplishment Instructions of Boeing Service Bulletin 747–78–2112, dated November 11, 1993; or paragraphs III.E. and III.H. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2112, Revision 1, dated March 7, 1994. Repeat this inspection and test thereafter at intervals not to exceed 1,000 hours time-in-service.

(2) Within 9 months after August 24, 1994, perform inspections and functional tests of the thrust reverser control and indication systems in accordance with paragraphs III.A., III.B., III.D., and III.F. through III.M. of the Accomplishment Instructions of Boeing Service Bulletin 747–78–2112, dated November 11, 1993; or paragraphs III.C., III.D., III.F., III.G., and III.I. through III.P. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2112, Revision 1, dated March 7, 1994. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

Inspections and Tests

(b) For Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines: Accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 90 days after August 24, 1994, perform an inspection to detect damage to the bullnose seal on the translating sleeve of the thrust reverser, and a continuity test of the position switch module of the center drive unit (CDU) and a cone brake test of the CDU, in accordance with paragraphs III.B. and III.C. of the Accomplishment Instructions of Boeing Service Bulletin 747–78–2113, dated November 11, 1993; or paragraphs III.E. through III.G. of Boeing Alert Service Bulletin 747–78A2113, Revision 1, dated March 10, 1994; or Boeing Service Bulletin 747–78–2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997. Repeat the inspection and tests thereafter at intervals not to exceed 1,000 hours time-in-service.

(2) Within 9 months after August 24, 1994, perform inspections and functional tests of the thrust reverser control and indication systems in accordance with paragraphs III.A., III.D., III.F., III.G., III.H., and III.J. through III.M. of the Accomplishment Instructions of Boeing Service Bulletin 747–78–2113, dated November 11, 1993; or paragraphs III.D. and III.H. through III.N. of Boeing Alert Service Bulletin 747–78A2113, Revision 1, dated March 10, 1994; or Boeing Service Bulletin 747–78–2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

Inspections and Tests

(c) For Model 747–400 series airplanes powered by Rolls-Royce RB211–524G/H series engines: Within 9 months after August 24, 1994, and thereafter at intervals not to exceed 18 months, perform inspections and functional tests of the thrust reverser control and indication systems in accordance with paragraphs III.D. through III.K. of the Accomplishment Instructions of Boeing Service Bulletin 747–78–2115, dated October 28, 1993; or paragraphs III.D. through III.L. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2115, Revision 1, dated March 4, 1994.

Corrective Action

(d) If any of the inspections and/or functional tests required by this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, accomplish either paragraph (d)(1) or (d)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747–78–2112, dated November 11, 1993, or Boeing Alert Service Bulletin 747–78A2112, Revision 1, dated March 7, 1994 (for Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines); Boeing Service Bulletin 747–78–2113, dated November 11, 1993, or Boeing Alert Service Bulletin 747–78A2113, Revision 1, dated March 10, 1994, or Boeing Service Bulletin 747–78–2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997 (for Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines); or Boeing Service Bulletin 747–78–2115, dated October 28, 1993, or Boeing Alert Service Bulletin 747–78A2115, Revision 1, dated March 4, 1994 (for Model 747–400 series airplanes powered by Rolls-Royce RB211–524G/H series engines); as applicable. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

New Requirements of this AD

Functional Tests

(e) For Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines: Within 1,000 hours time-in-service after the most recent test of the CDU cone brake performed in accordance with paragraph (a) of this AD, or within 650 hours time-in-service after the effective date of this AD, whichever occurs first, perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; or the applicable section of paragraph III.A. of the Accomplishment Instructions of Boeing Service Bulletin 747–78–2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997.

(1) For Model 747–400 series airplanes having line numbers 679 through 1060 inclusive, equipped with thrust reversers that have not been modified in accordance with Boeing Service Bulletin 747–78–2151: Repeat the functional test of the CDU cone brake thereafter at intervals not to exceed 650 hours time-in-service.

(2) For Model 747–400 series airplanes having line numbers 1061 and higher, equipped with thrust reversers that have been modified in accordance with Boeing Service Bulletin 747–78–2151: Repeat the functional test of the CDU cone brake thereafter at intervals not to exceed 1,000 hours time-in-service.

Terminating Action

(f) Accomplishment of the functional test of the CDU cone brake, as specified in paragraphs (e)(1) and (e)(2) of this AD, as applicable, constitutes terminating action for the repetitive tests of the CDU cone brake required by paragraph (b)(1) of this AD.

Corrective Action

(g) If any functional test required by paragraph (d) of this AD cannot be successfully performed, or if any discrepancy is found during any functional test required by paragraph (d) of this AD, accomplish either paragraph (g)(1) or (g)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; or Boeing Service Bulletin 747–78–2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that no more than one thrust reverser on the airplane is inoperative.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(h)(2) Alternative methods of compliance for Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines, approved previously in accordance with AD 94–15–05, amendment 39–8976, are not considered to be approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 15, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15774 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–55–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8 series airplanes. This proposal would require a one-time inspection of the spring assemblies located in the rudder control feel unit to verify that dual rate configuration springs are installed; and revising the Airplane Flight Manual to prohibit airplane operation from runways less than 75 feet wide, if necessary. This proposal also would require eventual replacement of any single rate configuration springs with dual rate configuration springs, which would terminate the requirement for the AFM revision. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent an asymmetric rudder force condition, which could result in reduced controllability of the airplane and consequent potential for center line deviation.

DATES: Comments must be received by July 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–55–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8 series airplanes. TCA indicated that during production of these airplanes, single rate configuration springs were inadvertently installed in the rudder control feel units. The installation of single rate configuration springs in lieu of the correct dual rate configuration springs could require heavier than normal rudder pedal forces, causing the pilot to exert extreme pressure on the rudder pedal during takeoff or landing resulting in an asymmetric rudder force condition. Such conditions could result in reduced controllability of the airplane and consequent potential for center line deviation.

Explanation of Relevant Service Information

The manufacturer has issued Bombardier Alert Service Bulletin S.B. A8–27–82, dated July 10, 1998, which describes procedures for a one-time inspection of the spring assemblies located in the rudder control feel unit to verify that dual rate configuration springs are installed, and replacement of any single rate configuration springs with dual rate configuration springs. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. TCA classified this alert service bulletin as mandatory and issued Canadian airworthiness directives CF–98–39, dated October 23, 1998, and CF–98–39R1, dated December 31, 1998; in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Differences Between Proposed Rule and Foreign AD

The proposed AD would differ from the parallel Canadian airworthiness directive in that it would require a revision to the operator's Airplane Flight Manual (AFM). The AFM revision would specify that operation from runways less than 75 feet wide is prohibited for airplanes operating with single rate configuration springs. Operators currently follow the procedures specified in deHavilland Supplement No. 54, "Operation from Narrow Runways," which has not been FAA-approved for U.S.-registered airplanes. This supplement allows a minimum runway width of 59 feet for airplanes operating with single rate configuration springs. The FAA has examined the charts included in the supplement, crew training issues, and feedback from U.S. operators, and has determined that accomplishment of the AFM revision described previously is necessary in order to address the unsafe condition. This is based on the FAA's determination that this would not impose an unnecessary burden on U.S. operators, and would allow affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 235 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $14,100, or $60 per airplane.

It would take approximately 10 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $141,000, or $600 per airplane.

If accomplished, it would take approximately 1 work hour per airplane to accomplish the AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision on U.S. operators, if accomplished, is estimated to be $14,100, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 99–NM–55–AD.

Applicability: Model DHC–8 series airplanes, as listed in Bombardier Alert

Service Bulletin S.B. A8–27–82, dated July 10, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an asymmetric rudder force condition, which could result in reduced controllability of the airplane and consequent potential for center line deviation, accomplish the following:

General Visual Inspection

(a) Within 100 flight hours or 14 days after the effective date of this AD, whichever occurs later: Perform a one-time visual inspection of the spring assemblies located in the rudder control feel unit to verify that dual rate configuration springs are installed, in accordance with Bombardier Alert Service Bulletin S.B. A8–27–82, dated July 10, 1998.

(1) If dual rate configuration springs are installed, no further action is required by this AD.

AFM Revision

(2) If any single rate configuration springs are installed, prior to further flight: Revise the Limitations Section of the de Havilland Dash 8 Airplane Flight Manual (AFM) to include the following statement. This action may be accomplished by inserting a copy of this AD into the AFM.

"OPERATION FROM RUNWAYS LESS THAN 75 FEET WIDE IS PROHIBITED."

Terminating Action

(b) At the next scheduled maintenance visit, but no later than 36 months after the effective date of this AD: Replace any single rate configuration springs located in the rudder control feel unit with dual rate configuration springs, in accordance with Part C through Part H inclusive, of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8–27–82, dated July 10, 1998. Such replacement constitutes terminating action for the requirements of this AD. After the replacement has been accomplished, the AFM limitation required by paragraph (a)(2) of this AD may be removed from the AFM.

Spares Paragraph

(c) As of the effective date of this AD, no person shall install any spring assembly having part number 82760050–003 on any airplane.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directives CF–98–39, dated October 23, 1998, and CF–98–39R1, dated December 31, 1998.

Issued in Renton, Washington, on June 15, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15773 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–13–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–37]

Proposed Modification of Class E Airspace; Delaware, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Delaware, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 10, a GPS SIAP to Rwy 28, a Nondirectional Beacon (NDB) SIAP to Rwy 10, and VHF Omnidirectional Range (VOR) SIAP to Rwy 28, have been developed for Delaware Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before August 9, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistance Chief Counsel, AGL–7, Rules Docket No. 99–AGL–37, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–37." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Delaware, OH, to accommodate aircraft executing the proposed GPS Rwy 10 SIAP, GPS Rwy 28 SIAP, NDB Rwy 10 SIAP, and VOR Rwy 28 SIAP, at Delaware Municipal Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Delaware, OH [Revised]

Delaware Municipal Airport, OH
(Lat. 40°16'47" N., long. 83°06'53" W.)
Delaware NDB
(Lat. 40°16'41" N., long. 83°06'33".W.)

That airspace extending upward from 700 feet above the surface within an 6.5-mile radius of Delaware Municipal Airport and within 2.6 miles either side of the 286° bearing from the Delaware NDB extending from the NDB to 8.3 miles northwest of the NDB.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–15856 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 25

[REG–108287–98]

RIN 1545–AW25

Definition of a Qualified Interest in a Grantor Retained Annuity Trust and a Grantor Retained Unitrust

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the definition of a qualified interest. The proposed regulations apply to a grantor retained annuity trust (GRAT) and a grantor retained unitrust (GRUT) in determining whether a retained interest is a "qualified interest." The proposed regulations will affect individuals who have made a transfer in trust to a family member and have retained an interest in the trust. The proposed regulations clarify that a trust that uses a note, other debt instrument, option or similar financial arrangement to satisfy the annual payment obligation will not meet the requirements of section 2702(b) of the Internal Revenue Code. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by September 20, 1999. Outlines of topics to be discussed at the public hearing scheduled for October 20, 1999, at 10 a.m., must be received by September 29, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–108287–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–108287–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.gov/prod/tax_regs/regslist.html. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James F. Hogan, (202) 622–3090; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Sections 2701 through 2704 were added to the Internal Revenue Code in the Omnibus Budget and Reconciliation Act of 1990 (1990 Act), 1991–2 C.B. 481, 524. Section 2702 applies to a transfer in trust that benefits a family member where the transferor retains an interest in the property subject to the transfer. If section 2702 applies to a transfer, the transferor's retained interest will be

valued at zero for gift tax purposes (and the transferor will be treated as making a gift of the entire value of the property), unless the interest is a "qualified interest." The term "qualified interest" is defined in section 2702(b) and includes a right to receive, annually, fixed payments (a qualified annuity interest) and a right to receive, annually, a fixed percentage of the trust corpus determined annually (a qualified unitrust interest).

Congress was particularly concerned about properly valuing gifts in trust with retained interests. The legislative history that accompanied the 1990 Act states:

[T]he committee is concerned about the undervaluation of gifts valued pursuant to Treasury tables. Based on average rates of return and life expectancy, those tables are seldom accurate in a particular case, and therefore, may be the subject of adverse selection. Because the taxpayer decides what property to give, when to give it, and often controls the return on the property, use of Treasury tables undervalues the transferred interests in the aggregate, more often than not.

Therefore, the committee determines that the valuation problems inherent in trusts and term interests in property are best addressed by valuing retained interests at zero unless they take an easily valued form—as an annuity or unitrust interest. By doing so, the bill draws upon present law rules valuing split interests in property for purposes of the charitable deduction.

136 Cong. Rec. S15681 (daily ed. Oct. 18, 1990) (Informal Senate Report on S. 3209).

The provisions of section 2702 and the regulations thereunder are intended to ensure that, when a donor transfers property and retains an interest in the property, the value of the retained interest is readily ascertainable. Thus, the value of the gift, that is, the value of the transferred property less the value of the retained interest, can be accurately determined. Section 25.2702–3(b)(1) of the Gift Tax Regulations implements this principle by requiring that for a qualified annuity interest: (1) The annuity must be a fixed amount; (2) the annuity must be payable at least annually; and (3) the yearly amount must be paid by a specified date each year, that is, the annuity payment may be paid after the close of the taxable year, but no later than the due date of the trust's income tax return. The annuity payment must be payable to (or for the benefit of) the holder of the annuity interest for each taxable year of the trust term. A right of withdrawal, whether or not cumulative, is not a qualified annuity interest. Section 25.2702–3(c) provides comparable rules applicable in the case of a qualified unitrust interest.

To avoid making a cash or an in-kind payment, some GRATs have issued notes to the transferor in satisfaction of the obligation to make the annual payment. In certain cases, the trust instrument specifically authorizes the trustee to satisfy the annual payment obligation with notes. The notes provide for actual payment at a date some time in the future.

Thus far, the transactions that have come to the Service's attention have involved the use of notes. However, the Service is also concerned about other financial arrangements that have the effect of delaying payment from the trust to the grantor and thus may alter the value of the transferor's retained interest. These techniques include the grant of an option to purchase trust property in the future.

Issuing a note is not payment of a fixed amount not less frequently than annually, nor is it payment of a fixed percentage of the trust assets determined annually, as required by the statute and regulations. A note is merely a promise to pay in the future. Delaying payment by the use of a note to satisfy the annual payment obligation alters the true value of the transferor's retained interest, contrary to Congressional intent in requiring provisions ensuring an accurate valuation of the interest. This position is consistent with case law and rulings concluding that the use of a note to satisfy an obligation does not constitute payment of the obligation for tax purposes. *Don E. Williams Company* v. *Commissioner,* 429 U.S. 569 (1977); *Helvering* v. *Price,* 309 U.S. 409 (1940); *Eckert* v. *Burnet;* 283 U.S. 140 (1931); *Maddrix* v. *Commissioner,* 780 F.2d 946 (11th Cir. 1986); *Battelstein* v. *Internal Revenue Service,* 631 F.2d 1182 (5th Cir. 1980); Rev. Rul. 76–135, 1976–1 C.B. 114.

Furthermore, under §§ 25.2702–(3)(b)(1)(i) and 25.2702–(3)(c)(1)(i), a right of withdrawal is not a qualified annuity or unitrust interest. A right of withdrawal allows the payee to determine, in the payee's discretion, when the payment will be made, and thus, neither the timing nor the amount of each payment is fixed and determinable under the trust instrument. For similar reasons, the use of notes, other debt instruments, options or other similar financial arrangements that place the amount and timing of each payment at the discretion of the payee should not satisfy the annual payment obligation.

Accordingly, these proposed regulations amend the regulations under section 2702 to provide that issuance of a note, other debt instrument, option or similar financial arrangement does not constitute payment for purposes of section 2702. A retained interest that can be satisfied with such instruments is not a qualified annuity interest or a qualified unitrust interest. In examining all of these transactions, the Service will apply the step transaction doctrine where more than one step is used to achieve similar results. In addition, a retained interest is not a qualified interest under section 2702, unless the trust instrument expressly prohibits the use of notes, other debt instruments, options or similar financial arrangements that effectively delay receipt by the grantor of the annual payment necessary to satisfy the annuity or unitrust interest amount. Under these provisions, in order to satisfy the annuity or unitrust payment obligation under section 2702(b), the annuity or unitrust payment must be made with either cash or other assets held by the trust.

The proposed regulations provide a transition rule for trusts created before September 20, 1999. If a trust created before September 20, 1999 does not prohibit a trustee from issuing a note, other debt instrument, option or other similar financial arrangement in satisfaction of the annuity or unitrust payment obligation, the interest will be treated as a qualified interest under section 2702(b) if notes, etc. are not used after September 20, 1999 to satisfy the obligation and any note or notes or other debt instruments issued on or prior to September 20, 1999 to satisfy the annual payment obligation are paid in full by December 31, 1999, and any option or similar financial arrangement is terminated by December 31, 1999, such that the grantor actually receives cash or other trust assets in satisfaction of the payment obligation. For purposes of this section, an option will be considered terminated if the grantor is paid the greater of the required annuity or unitrust payment plus interest computed under section 7520 of the Code, or the fair market value of the option.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. it also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the regulations will be submitted to the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 20, 1999, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments by September 20, 1999, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 29, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is James F. Hogan, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 25 is proposed to be amended as follows:

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Paragraph 1. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 25.2702–3 is amended as follows:

1. Paragraph (b)(1)(i) is amended by adding a new sentence after the third sentence.

2. Paragraph (c)(1)(i) is amended by adding a new sentence after the fourth sentence.

3. A new paragraph (d)(5) is added.

The additions read as follows:

§ 25.2702–3 Qualified interests.

* * * * *

(b) * * *

(1) * * * (i) * * * Issuance of a note, other debt instrument, option or other similar financial arrangement in satisfaction of the annuity amount does not constitute payment of the annuity amount. * * *

* * * * *

(c) * * *

(1) * * * (i) * * * Issuance of a note, other debt instrument, option or other similar financial arrangement in satisfaction of the unitrust amount does not constitute payment of the unitrust amount. * * *

* * * * *

(d) * * *

(5) *Use of debt obligations to satisfy the annuity or unitrust payment obligation*—(i) *In general.* The trust instrument must prohibit the trustee from issuing a note, other debt instrument, option or other similar financial arrangement in satisfaction of the annuity or unitrust payment obligation.

(ii) *Special rule in the case of a trust created prior to September 20, 1999.* In the case of a trust created prior to September 20, 1999, the interest will be treated as a qualified interest under section 2702(b) if—

(A) Notes, other debt instruments, options or similar financial arrangements are not used after September 20, 1999 to satisfy the annuity or unitrust payment obligation; and

(B) Any note or notes or any other debt instruments issued to satisfy the annual payment obligation on or prior to September 20, 1999, are paid in full by December 31, 1999, and, any option or similar financial arrangement issued to satisfy the annual payment obligation is terminated by December 31, 1999, such that the grantor receives cash or other trust assets in satisfaction of the payment obligation. For purposes of the preceding sentence, an option will be considered terminated only if the grantor receives cash or other trust assets equal in value to the greater of the required annuity or unitrust payment plus interest computed under section 7520 of the Code, or the fair market value of the option.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–15524 Filed 6–21–99; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–215, RM–9337]

Radio Broadcasting Services; Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by BK Radio requesting the allotment of Channel 239C2 at Mason, Texas, and modification of its application for Channel 249C2 at Mason to specify operation Channel 239C2 with cut-off protection. The coordinates for Channel 239C2 at Mason are 30–33–24 and 99–25–34. Concurrence of the Mexican government will be requested for this allotment.

DATES: Comments must be filed on or before August 2, 1999, and reply comments on or before August 17, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lee J. Peltzman, Shainis & Peltzman, Chartered, 1901 L Street, NW, Suite 290, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–215, adopted June 2, 1999, and

released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15746 Filed 6–21–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 212, 247, and 252

[DFARS Case 98–D014]

Defense Federal Acquisition Regulation Supplement; Cargo Preference—Subcontracts for Commercial Items

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) guidance regarding the applicability of statutory requirements for use of U.S. vessels in the transportation of DoD supplies by sea. The DFARS presently waives these requirements for subcontracts for the acquisition of commercial items. This rule would require the use of the U.S. vessels under certain subcontracts for commercial items.

DATES: Comments on the proposes rule should be submitted in writing to the address specified below on or before August 23, 1999, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite DFARS Case 98–D014.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 98–D014 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 98–D014 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131. Please cite DFARS Case 98–D014.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2631 provides a preference for use of U.S. vessels for ocean transportation of supplies purchased under DoD contracts. DFARS Parts 212 and 247 presently waive the requirements of 10 U.S.C. 2631 for subcontracts for the acquisition of commercial items or commercial components. This rule proposes to amend DFARS Parts 212 and 247 and corresponding clauses to limit the types of subcontracts for which the waiver of 10 U.S.C. 2631 is applicable. The rule is intended to ensure compliance with 10 U.S.C. 2631 for ocean cargoes clearly destined for DoD cause, while avoiding disruption of commercial delivery systems.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most entities providing ocean transportation of cargo are not small business concerns. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 98–D014 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 212, 247, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 212, 247, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 212, 247, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.504 is amended by revising paragraph (a)(xxii) to read as follows:

§ 212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(A) * * *

(xxii) 10 U.S.C. 2631, Transportation of Supplies by sea (except for the types of supplies listed at 252.247–7023(b)).

* * * * *

PART 247—TRANSPORTATION

§ 247.572–1 [Amended]

3. Section 247.572–1 is amended in paragraph (a) by removing the last sentence.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.212–7001 is amended by revising the clause date; in paragraph (b) by adding in numerical order the entry "____252.247–7023 Transportation of Supplies by Sea (10 U.S.C. 2631)."; and by revising paragraph (c) to read as follows:

§ 252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (XXX 1999)

* * * * *

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items

clause of this contract, the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225–7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247–7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247–7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

5. Section 252.244–7000 is revised to read as follows:

§ 252.244–7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts).

As prescribed in 244.403, use the following clause:

Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (XXX 1999)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract, the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225–7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247–7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247–7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

6. Section 252.247–7023 is amended by revising the clause date; in paragraph (a)(5) by removing the last sentence; by redesignating paragraphs (b) through (g) as paragraphs (c) through (h) respectively; by adding a new paragraph (b); in newly designated paragraph (c) by removing the first sentence; and by revising newly designated paragraph (h). The added and revised text reads as follows:

§ 252.247–7023 Transportation of Supplies by Sea.

* * * * *

Transportation of Supplies by Sea (XXX 1999)

* * * * *

(b) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract. A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(1) This contract is a construction contract; or

(2) The supplies being transported are—

(i) Non-commercial items; or

(ii) Commercial items that are—

(A) Shipped in direct support of U.S. military contingencies, exercises, or forces deployed in peacekeeping missions.

(B) For commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643; or

(C) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value with it subcontracts items for f.o.b. destination shipment.)

* * * * *

(h) The Contractor shall include this clause, including this paragraph (h), in all subcontracts under this contract that—

(1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(2) Are for a type of supplies described in paragraph (b) of this clause.

(End of Clause)

7. Section 252.247–7024 is amended by revising the clause date and paragraph (b) to read as follows:

252.247–7024 Notification of Transportation of Supplies By Sea.

* * * * *

Notification of Transportation of Supplies by Sea (XXX 1999)

* * * * *

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties—

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for—

(i) Non-commercial items; or

(ii) Commercial items that are—

(A) Shipped in direct support of U.S. military contingencies, exercises, or forces deployed in peacekeeping missions;

(B) For commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643; or

(C) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value when it subcontracts items for f.o.b. destination shipment.)

(End of clause)

[FR Doc. 99–15836 Filed 6–21–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 214 and 215

[DFARS Case 97–D011]

Defense Federal Acquisition Regulation Supplement; Distribution of Contract Financing Payments

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: DoD is withdrawing a proposed rule published on November 26, 1997 (62 FR 63047). The rule proposed amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that, when a contract contains multiple accounting classification reference numbers and a clause for progress payments, the contracting officer must provide instructions to enable the payment office to distribute the progress payments in proportions that reasonably reflect the performance of work under the contract. After review of public comments, and in consultation with the Office of the Under Secretary of Defense (Comptroller), the Director of Defense Procurement issued a policy memorandum, dated August 12, 1998, which is available via the Internet at http://www.acq.osd.mil/dp/. The memorandum requires contracting officers to provide progress payment distribution instructions for any fixed-price contract, other than firm-fixed-price, that is funded with multiple appropriations. Consequently, DoD has determined that the proposed DFARS revisions are unnecessary.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062; telephone (703) 602–0131; telefax (703) 602–0350.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 99–15835 Filed 6–21–99; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register

Vol. 64, No. 119

Tuesday, June 22, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[DA–99–03]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Services's (AMS) intention to request an extension for and revision to a currently approved information collection for the Dairy Inspection and Grading Program.

DATES: Comments on this notice must be received by August 23, 1999 to be assured consideration.

ADDRESSES: Comments should be sent to: Office of the Deputy Administrator, USDA/AMS/Dairy Programs, Room 2968–S, P.O. Box 96456, Washington, DC 20090–6456. Comments received will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: F. Tracy Schonrock, USDA/AMS/Dairy Programs, Dairy Grading Branch, Room 2750-South Building, P.O. Box 96456, Washington, DC 20090–6456; Tel: (202) 720–3171, Fax (202) 720–2643.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Record Keeping.

OMB Number: 0581–0110.

Expiration Date of Approval: February 28, 2000.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621–1627) directs the Department to develop programs which will provide for and facilitate the marketing of agricultural products. One of these programs is the USDA voluntary inspection and grading program for dairy products where these dairy products are graded according to U.S. grade standards by a USDA grader. The dairy products graded under the dairy program may be identified with the USDA grade mark. Dairy processors, buyers, retailers, institutional users, and consumers have requested that such a program be developed to assure the uniform quality of dairy products purchased. In order for any service program to perform satisfactorily, there are regulations for the provider and user. For these reasons, the dairy inspection and grading program regulations were developed and issued under the authority of the Act. These regulations are essential to administer the program to meet the needs of the user and to carry out the purposes of the Act.

The information collection requirements in this request are essential to carry out the intent of the AMA to insure that dairy products are produced under sanitary conditions and that buyers are purchasing a quality product. In order for the Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products to serve the government, industry, and the consumer, laboratory test results must be recorded.

Respondents are not required to submit information to the agency. The records are to be evaluated by a USDA inspector at the time of an inspection. These records include quality tests of each producer, plant records of required tests and analysis, and starter and cheese make records. As an off-setting benefit, the records required by USDA are also records which are routinely used by the inspected facility for their own supervisory and quality control purposes.

Estimate of Burden: Public reporting burden for this record keeping is estimated to average 3.002 hours per year per individual record keeper.

Record Keepers: Dairy products manufacturing facilities.

Estimated Number of Record Keepers: 508.

Estimated Total Annual Burden on Record Keepers: 1525 hours.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency; (2) the accuracy of the collection burden estimate and the validity of the methodology and assumptions used in estimating the burden on record keepers; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments should reference OMB No. 0581–0110 and the Dairy Inspection and Grading Program and be sent to USDA in care of the Office of the Deputy Administrator, USDA/AMS/Dairy Programs, Room 2968–S, P.O. Box 96456, Washington, DC 20090–6456. Comments received will be available for public inspection at this location during regular business hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 16, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–15771 Filed 6–21–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–99–00–3]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB) to assist in the development of standards for substances to be used in organic production and to advise the Secretary of Agriculture on any other aspects of the implementation of the Act. The NOSB was originally established on January 24, 1992, with individual members appointed for staggered appointments of 3, 4, and 5 years. Appointments for four members will be up in January 2000, and the Secretary seeks nominations of individuals to be considered for selection as NOSB members.

DATES: Written nominations, with resumes, must be postmarked on or before September 20, 1999.

ADDRESSES: Nominations should be sent to Keith Jones, Program Manager, Room 2510 South Building, U.S. Department of Agriculture (USDA), AMS, Transportation and Marketing, National Organic Program, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Keith Jones, (202) 720–3252.

SUPPLEMENTARY INFORMATION: The OFPA of 1990 requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish a NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the program.

The current NOSB made recommendations to the Secretary regarding various matters, including recommendations regarding substances that it believed should be permitted to be used in organic production. It is expected that the NOSB will continue to work and make additional recommendations to the Secretary on various matters, including substances that should be permitted or prohibited for use in organic production and processing.

The NOSB was originally established in January 1992. A member of the NOSB is to serve for a term of 5 years, except that the original members were to serve staggered terms. The terms of four members of the current NOSB, who were appointed for 5-year terms, will be completed on January 24, 2000. A board member may serve consecutive terms if such member served an original term that was less than 5 years.

The NOSB is required to be composed of various individuals, including individuals who own or operate an organic farming operation, an organic handling operation, and a retail store with significant trade in organic products, as well as individuals who have expertise in the areas of environmental protection and resource conservation.

Nominations are sought for the positions of farmer/grower (1), environmentalist (1), retailer (1), and handler/processor (1). An individual desiring to be appointed to the NOSB at this time must be one of the following: An owner or operator of an organic farming operation, an owner or operator of a handling operation, an owner or operator of a retail store with significant trade in organic products, or an expert in the area of environmental or resource conservation.

Selection criteria will include such factors as: Demonstrated experience and interest in organics; commodity and geographic representation; endorsed support of consumer and public interest organizations; demonstrated experience with environmental concerns; and other factors as may be appropriate for specific positions.

After applications have been reviewed, individuals receiving nominations will be contacted and supplied with biographical information forms. The biographical information must be completed and returned to USDA within 10 working days of the receipt of the forms, to expedite the security clearance process that is required by USDA.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations for the Board have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Authority: 7.U.S.C. 6501–6522.

Dated: June 16, 1999.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 99–15770 Filed 6–22–99; 8:45 am]

BILLING CODE 3410–02–P

ARMED FORCES RETIREMENT HOME

Privacy Act of 1974; Computer Matching Program Between the Armed Forces Retirement Home and the Social Security Administration

AGENCY: Armed Forces Retirement Home.

ACTION: Notice.

SUMMARY: Pursuant to section 552a(e)(12) of the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby made of the computer matching between the Armed Forces Retirement Home (AFRH) and the Social Security Administration (SSA). The purpose of this match is for SSA to provide and verify benefit payment information on the AFRH's residents.

DATES: This proposed action will become effective July 22, 1999. The computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget, or Congress, objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the U.S. Soldiers' and Airmen's Home, Resource Management Directorate, 3700 N Capitol Street NW, Washington, DC 20317–0002.

FOR FURTHER INFORMATION: Donna H. Dietz, at (202) 722–3163.

SUPPLEMENTARY INFORMATION: AFRH and SSA have concluded an agreement to conduct a computer matching program. The purpose of this agreement is to establish the conditions under which the SSA agrees to the disclosure of benefit payment information for the residents of the AFRH, which includes the United States Soldiers' and Airmen's Home (USSAH) and United States Naval Home (USNH). The AFRH Resident Fee Maintenance System will be used in a matching program with the SSA Master Beneficiary Records and Supplemental Security Income Records. Residents of the AFRH are required by 24 U.S.C. 414 to pay a monthly fee, which is a percentage of their monthly income and monthly payments, (including federal payments); thus, the AFRH will use the SSA data to verify the benefit earnings information currently provided by the residents, and identify any unreported recipients of benefit payments. A computer matching is the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice of accomplishing this requirement.

The matching agreement and an advance copy of this notice were submitted on June 9, 1999, to the Committee on Governmental Reform and Oversight of the United States

House of Representatives, the Committee on Governmental Affairs of the United States Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching program is subject to review by Congress and OMB and shall not become effective until that review period has elapsed.

David F. Lacy,

Armed Forces Retirement Home Board, Chair/CEO.

Computer Matching Program Between the Armed Forces Retirement Home and the Social Security Administration

A. *Participating Agencies:* AFRH and SSA.

B. *Purpose of the Matching Program:* The purpose of this computer matching program is to identify and verify the gross Social Security benefit earnings of each resident of the AFRH. This is necessary to properly assess correct resident fee amounts, which is required by 24 USC 414 to be a percentage of residents' monthly income and monthly payments (including federal payments).

C. *Authority for Conducting the Matching Program:* The Armed Forces Retirement Home Act of 1991, 24 USC 401–441, requires the Directors of the USSAH and USNH, which are incorporated under the Armed Forces Retirement Home, to collect from each resident a monthly resident fee. The fee is a percentage of residents' monthly income and monthly payments (including federal payments).

D. *Records to be Matched:* The SSA records involved in the match are the Supplemental Security Income Record, SSA/OSR, 09–60–0103, and the Master Beneficiary Record, SSA/OSR, 09–60–0090. The AFRH will provide a finder file established from the AFRH Resident Fee Maintenance System (last published at 58 FR 68629).

E. *Inclusive Dates of the Matching Program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If there are no objections by either within 40 days, and the 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments, this computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time and will be repeated on a semiannual basis. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between SSA and AFRH, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

F. *Address for Receipt of Public Comments or Inquiries:* U.S. Soldiers' and Airmen's Home, Resource Management Directorate, 3700 N Capitol Street NW, Washington, DC 20317–0002, (202) 722–3163.

[FR Doc. 99–15795 Filed 6–21–99; 8:45 am]

BILLING CODE 8250–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No 1041]

Grant of Authority for Subzone Status; Komatsu Latin-America Corporation (Construction/Mining Equipment Components and Products), Miami, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Greater Miami Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 32, has made application to the Board for authority to establish special-purpose subzone status at the construction and mining equipment components and products warehousing/distribution (non-manufacturing) facility of Komatsu Latin-America Corporation, located in Miami, Florida, (FTZ Docket 19–98, filed 4/6/98, and amended 11/30/98);

Whereas, notice inviting public comment has been given in the **Federal Register** (63 FR 18363, 4/15/98 and 63 FR 67645, 12/8/98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the construction and mining equipment parts warehousing/distribution facility of Komatsu Latin-America Corporation, located in Miami, Florida, (Subzone 32B), at the location described in the application, as amended, and subject to the FTZ Act and the Board's regulations, including § 400.28. The scope of authority does not include activity conducted under FTZ procedures that would result in a change in tariff classification.

Signed at Washington, DC, this 11th day of June 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–15858 Filed 6–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1040]

Expansion of Foreign-Trade Zone 40, Cleveland, Ohio

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40 to include four new sites at the Emerald Valley Business Park (Site 5), the Collinwood Industrial Park (Site 6), the Water Tower Industrial Park (Site 7) and the Strongsville Industrial Park (Site 8) in Cuyahoga County, Ohio, within the Cleveland Customs port of entry (FTZ Docket 31–98; filed 6/15/98);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 34144, 6/23/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 11th day of June 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–15857 Filed 6–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–815]

Certain Welded Stainless Steel Pipe from Taiwan; Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of administrative review.

SUMMARY: On May 15, 1997, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1992–1993 and 1993–1994 administrative reviews of the antidumping duty order on certain welded stainless steel pipe from Taiwan (A–583–815). These reviews cover one manufacturer/exporter of the subject merchandise during the periods June 22, 1992 through November 30, 1993 and December 1, 1993 through November 30, 1994.

We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received we have not changed the results from those presented in our preliminary results of review.

EFFECTIVE DATE: June 22, 1999.

FOR FURTHER INFORMATION CONTACT: Robert James at (202) 482–5222 or John Kugelman at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1992, the Department published in the **Federal Register** the antidumping duty order on welded stainless steel pipe (WSSP) from Taiwan (57 FR 62300). On November 26, 1993, the Department published a notice of "Opportunity to Request Administrative Review" for the period June 22, 1992 through November 30, 1993 (58 FR 62326). In accordance with 19 CFR 353.22(a)(1), respondent Ta Chen Stainless Pipe Co., Ltd. (Ta Chen) requested that we conduct a review of its sales for this period. On January 18, 1994, we published in the **Federal Register** a notice of initiation of an antidumping duty administrative review covering the period June 22, 1992 through November 30, 1993. The Department subsequently published a notice of "Opportunity to Request Administrative Review" for the period December 1, 1993 through November 30, 1994 on December 6, 1994 (59 FR 62710). Again, Ta Chen requested a review of its sales for this period. On January 13, 1995, we published in the **Federal Register** our notice of initiation of the second administrative review (60 FR 3192).

We published the preliminary results of these reviews in the **Federal Register** on May 15, 1997 (Certain Welded Stainless Steel Pipe From Taiwan; Notice of Preliminary Results of Administrative Reviews, 62 FR 26776 (Preliminary Results)). Ta Chen filed a case brief on September 3, 1997; petitioners [1] submitted their rebuttal brief on September 10, 1997. The Department held a hearing on October 21, 1997.

The Department has now completed these reviews in accordance with section 751 of the Tariff Act.

Scope of the Review

The merchandise subject to these administrative reviews is certain welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of the order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines.

Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTS) subheadings: 7306.40.5005, 7306.04.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this order is dispositive.

The periods for these reviews are June 22, 1992 through November 30, 1993 and December 1, 1993 through November 30, 1994. These reviews cover one manufacturer/exporter, Ta Chen, and its wholly-owned U.S. subsidiary, Ta Chen International (TCI) (collectively, Ta Chen).

Analysis of Comments Received

Due to the number of individual and company names and the importance of the timing of events in these reviews, that history is summarized briefly here. The comments that follow concern our application of adverse best information available (BIA) as the basis for Ta Chen's margins in the preliminary results of these reviews. Our decision to resort to BIA resulted from Ta Chen's dealings with two U.S. customers, referred to in the Preliminary Results as "Company A" and "Company B" to protect their identities. Ta Chen has since entered the names of these customers into the public record of these reviews and we here identify them by name: Company A is San Shing Hardware Works, USA (San Shing), and Company B is Sun Stainless, Inc. (Sun). San Shing and Sun were both established by current or former managers and officers of Ta Chen, were staffed entirely by current or former Ta Chen employees, and distributed only

[1] Avesta Sheffield Pipe, Damascus Tube Division, Damascus-Bishop Tube Co., and the United Steel Workers of America (AFL–CIO/CLC).

Ta Chen products in the United States. According to Ta Chen, prior to June 1992 (the date of the preliminary determination in the less-than-fair-value (LTFV) investigation) Ta Chen had sold pipe from the U.S. inventory of its subsidiary, TCI. In June 1992 TCI and San Shing (a U.S. company established in 1988 by the president of a Taiwanese firm, San Shing Hardware Works, Ltd.) allegedly signed an agreement whereby San Shing would purchase all of TCI's existing U.S. inventory and would replace TCI as the principal distributor of Ta Chen pipe products in the United States. San Shing also committed itself to purchasing substantial dollar values of Ta Chen products from TCI over the next two years, and rented its business location from the president of Ta Chen and TCI, Robert Shieh. Ta Chen claims it took these measures to avoid the burden of reporting exporter's sales price (ESP) sales to the Department. Operating under a number of "doing business as" (dba) names including, *inter alia*, Sun Stainless, Inc., Anderson Alloys, and Wholesale Alloys, San Shing accounted for well over eighty percent of Ta Chen's U.S. sales during the 1992–1993 period of review.

According to Ta Chen, in September 1993 a member of Ta Chen's board of directors, Frank McLane, incorporated a new entity, also called Sun Stainless, Inc. This new Sun Stainless purchased all of San Shing's assets, including inventory, and assumed all of San Shing's obligations regarding its lease of space from Ta Chen's president, purchase commitments, credit arrangements, etc. One month later, in October 1993, Mr. McLane allegedly sold all of his Ta Chen stock, resigned as an officer of Ta Chen, and severed all ties with the firm, devoting his full energies from that time forward to the new Sun.

On May 18, 1994, Ta Chen filed its initial questionnaire response in the 1992–1993 review. San Shing, which accounted for over four-fifths of Ta Chen's U.S. sales in that review, was not mentioned anywhere in the response. On July 18, 1994, petitioners first called the Department's attention to San Shing's existence, and named six of an eventual eight dba parties all claimed by Ta Chen as unrelated U.S. customers. Ta Chen responded on July 28, 1994, claiming that San Shing, as a newcomer to the U.S. stainless steel pipe market, had adopted the names of prior Ta Chen customers as dba names. This submission failed to note the two additional dba names also used by San Shing, but not included in the petitioners' July 18 allegations. On August 3, 1994, sixteen days after petitioners first called attention to its existence, the corporate charter of San Shing USA, Ta Chen's chosen replacement as master distributor, was dissolved.

The Department conducted a thorough verification of Ta Chen's home market submissions in October 1994. Department officials then traveled to TCI's headquarters in Long Beach, California to verify Ta Chen's U.S. sales submissions. Aside from minor corrections, the resulting verification reports noted no major discrepancies and repeated Ta Chen's account of San Shing's and Sun's histories without further comment. See Memoranda to the File, Ta Chen and TCI Verifications, November 7, 1996, public versions of which are on file in Room B–099 of the main Commerce building.

On July 12, 1995, petitioners renewed their allegations that Ta Chen, San Shing, and Sun were related parties, and appended reports by Dun & Bradstreet (D&B) and a foreign market researcher indicating that Sun Stainless had actually been founded by Frank McLane and W. Kendall (Ken) Mayes, TCI's sales manager, in May of 1992, not September 1993, as claimed by Ta Chen. Ta Chen's rebuttal of August 3, 1995 included affidavits from Mr. Mayes and a Taiwanese employee of Ta Chen denying the July 12 allegations.

Over a year later, on November 12, 1996, Ta Chen filed a supplemental response in the third (1994–1995) review of this order which disclosed for the first time that Ta Chen (i) had authority to sign checks issued by San Shing, its dbas, and Frank McLane's Sun, (ii) had physical custody of these parties' check-signing stamps, (iii) controlled San Shing's and Sun's assets and had pledged these as collateral for a loan obtained on behalf of TCI, (iv) enjoyed full-time and unfettered computer access to San Shing's and Sun's computerized accounting records, and (v) shared sales and clerical personnel with San Shing and Sun. See Preliminary Results for a further description of these ties. The Department elicited further details concerning these connections in additional questionnaires, the relevant portions of which have been incorporated into the records of these reviews. Based on the totality of evidence before the Department, in the Preliminary Results we concluded that Ta Chen was related to San Shing and Sun within the meaning of section 771(13) of the Tariff Act. The Department also determined that Ta Chen had significantly impeded these reviews through its incomplete and inconsistent accounts of the events of the relevant periods and that Ta Chen's behavior warranted application of first-tier, uncooperative BIA.

Comment 1: Related Party as Defined by Statute and Practice

Ta Chen insists that San Shing and Sun[2] were not related parties as defined by the Tariff Act in force at the time of all of Ta Chen's sales to these customers during the first and second periods of review (POR). First, Ta Chen notes that under the 1994 statute, section 771(13) of the Tariff Act defines an "exporter" as including "the person by whom or for whose account the merchandise is imported into the United States, if—

* * * * *

(B) Such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer;

(C) The exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business conducted by such person.

Ta Chen's September 3, 1997 Case Brief (Case Brief) at 7, quoting section 771(13) of the Tariff Act (Ta Chen's emphasis omitted).

Under this statutory framework, Ta Chen argues, the "exporter" can only include the parties "by whom or for whose account the merchandise is imported." According to Ta Chen, because Ta Chen first sold the subject merchandise to its U.S. subsidiary TCI, which took legal title to the pipe, incurred all seller's risks of non-payment, acted as the importer of record for all these transactions, and "entered the importation into its financial inventory," TCI, not San Shing or Sun, was "the person by whom, or for whose account," the merchandise was imported. Case Brief at 9. Therefore, section 771(13) of the Tariff Act never reaches the issue of whether or not TCI subsequently resold the subject merchandise to a related party such as San Shing or Sun. Any such transactions, in Ta Chen's view, would be irrelevant under the statute, citing Certain Small Business Telephone Systems from the Republic of Korea, 54 FR 53141, 53151 (December 27, 1989) (Small Business Telephones). In that case, Ta Chen submits, the Department concluded that the respondent's related U.S. customer was "neither the importer nor the person for whose account the merchandise is imported;" therefore, the sales transactions between the respondent's U.S. subsidiary and the related U.S. customer did not constitute "related party" transactions, as defined by the antidumping statute. *Id.* at 9, quoting Small Business Telephones. That the sales at issue in Small Business Telephones represented ESP transactions from the U.S. affiliate's warehouse, as opposed to what Ta Chen characterizes as purchase price (PP) transactions "facilitated" by its U.S. subsidiary TCI does not, Ta Chen argues, make any difference.

Further, Ta Chen maintains that the Department's preliminary determination that Ta Chen is related to San Shing and to Sun because it controlled these entities is contrary to the plain language of the statute. Section 771 of the Tariff Act, Ta Chen argues, only defines two parties as related if one party "owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the other." Case Brief at 11, quoting section 771 of the Tariff Act (Ta Chen's emphasis). This "interest," Ta Chen insists, is defined both in case law and Departmental practice as involving equity ownership of at least five percent of the stock of the related party. Ta Chen avers that the Department's Preliminary Results in these reviews have read the phrase "any interest" out of the statute. According to Ta Chen, "[i]t is an elementary principle of statutory construction that a portion of a statute should not be rendered a nullity." *Id.*, quoting *Asociacion Colombiana de Exportadores de Flores* v. *United States (Asocoflores)*, 717 F. Supp. 847, 851 (CIT 1989). Ta Chen interprets the Department's Preliminary Results as stating essentially that because Ta Chen exercised "control" over San Shing and Sun, Ta Chen thereby controlled "an interest in" San Shing and Sun; such a reading, Ta Chen argues, renders the relevant statutory language meaningless and redundant. Case Brief at 12. Compounding the Department's error, Ta Chen continues, is that while recognizing the "any interest" requirement of section 771(13)(B) and (C) of the Tariff Act, the Department nonetheless failed to define "any interest" in its Preliminary Results. In Ta Chen's view, this failure to define "any interest" as applied in these reviews, especially in light of past practice defining "any interest" as entailing five percent or more equity ownership, places the burden upon the respondent to definel the meaning of the undefined. Further, this "abdication" by the Department effectively precludes judicial review, as the reviewing court would also be hobbled by this same failure to define the relevant terms.

Ta Chen suggests that, had Congress intended to include a control test in the definition of related parties under section 771, it would have done so. Instead, Ta Chen maintains, Congress chose to define two parties as related to one another not when one controlled the other but, rather, when one controlled "any interest" in the other. This distinction is critical, Ta Chen asserts, because Congress did include a simple control test at sections 773(d) and (e) of the Tariff Act (the "Special Rules" for, respectively, Certain Multinational Corporations and disregarding related-party transfer prices for major inputs in the calculation of constructed value). "Where the Congress includes language in one provision of a statute, but not in another, it is assumed that the Congress did so for a purpose. * * * [T]he difference in statutory language must be recognized." Case Brief at 14, citing *Russello* v. *United States*, 464 U.S. 16, 23 (1983), and *United States* v. *Wong Kim Bo*, 472 F. 2d. 720, 722 (5th Cir. 1972). According to Ta Chen, Congress never intended that "control any interest" would be synonymous with "control" where, as here, neither entity owns or controls equity in the other. This reading, Ta Chen maintains, is supported by the legislative history underlying the relevant statutory provisions. Ta Chen, citing *Nacco Materials Handling Group* v. *United States*, Slip Op. 97–99 (CIT July 15, 1997) (*Nacco Materials*), notes that the Senate Report accompanying the Antidumping Act of 1921 (the 1921 Act), progenitor of the Tariff Act, defined "exporter" as including the importer when "the latter is financially interested in the former, or vice versa, whether through agency, stock control, resort to organization of subsidiary corporation, or otherwise." Case Brief at 15, quoting from S. Rep. No. 67–16, at 13 (April 28, 1921). One party's being "financially interested" in another, Ta Chen submits, is different from that party "controlling" another. *Id.*

Ta Chen argues that the Preliminary Results not only ignore the plain statutory language but also conflict with the common dictionary meaning of the term "interest" as entailing equity ownership of a share, right, or title in a business or property. *Id.* at 16. The Department, Ta Chen avers, embraced this definition when it stated that its policy is to find parties related only where the ownership interest of one party in the other meets the five percent threshold. See, e.g., Certain Forged Steel Crankshafts From Japan (Crankshafts), 52 FR 36984 (October 2, 1987).

According to Ta Chen, that this interpretation (i.e., the reference to at least five-percent equity ownership) survived two major revisions to the antidumping law underscores Congress's approval of that interpretation. Ta Chen notes that both the 1984 Trade Act and the Omnibus Trade and Competitiveness Act of 1988 left intact the statutory language of section 771(13) and its reliance on equity ownership. "Congress's amendment or re-enactment of the statutory scheme without overruling or clarifying the [administering] agency's interpretation is considered as approval of the agency interpretation." Case Brief at 20, quoting *Casey* v. *C.I.R.*, 830 F. 2d 1092, 1095 (10th Cir. 1987).

Ta Chen further argues that the Department's interpretation of section 771(13) of the Tariff Act in the Preliminary Results could lead to absurd results, asserting that under this standard, "any control, no matter how inconsequential, would make the parties related," including "any clerical assistance, any forwarding of orders to a customer, any attempt to insure payment, any security interest, any informational exchanges, any movement of an employee from one company to another, *etc.*" Case Brief at 18. And, having created one absurdity by reading "any interest" out of the statute, Ta Chen continues, the Department creates another absurdity by altering the statutory definition of "controls . . . any interest" into "controls a substantial interest." *Id.*, citing the Preliminary Results at 26778 (Ta Chen's emphasis). Ta Chen argues that this attempt to rescue the Preliminary Results from absurdities founders on the Department's long-established practice that a party's five percent equity interest in another makes them related for purposes of the statute; "[five] percent is not a substantial or significant control interest." *Id.* at 19.

Ta Chen points to the amendments to the Tariff Act effected by the Uruguay Round Agreements Act (URAA) as further confirmation that control did not define related parties under the pre-URAA Tariff Act governing these administrative reviews. According to Ta Chen, the Statement of Administrative Action (SAA) accompanying the URAA supports Ta Chen's contention that the URAA fundamentally altered the prior definition of related parties by adding a control test as a means for finding parties affiliated. For example, the SAA states that "including control in the definition of "affiliated" will permit a more sophisticated analysis which better reflects the realities of the marketplace." Case Brief at 21 and 22

[2] Although Ta Chen refers to San Shing and Sun Stainless, Inc. collectively as "Sun," for clarity the Department has not done so.

(quoting the SAA at 78). Further, Ta Chen argues, the Senate report notes that the URAA added the factor of control in determining whether two parties are affiliated. *Id.* That Congress felt compelled to amend the Tariff Act to include specifically the indicium of control, Ta Chen avers, demonstrates that such a test was lacking in the old law: "when a legislative body amends statutory language, its intention is to change existing law." Ta Chen continues: "Congress completely rewrote the statutory language of the affiliated parties provision . . . adding the control test." *Id.* at 24 and 25. If control had been a factor in the pre-URAA Tariff Act's definition of related parties, Ta Chen concludes, there would have been no need to change the statutory language within the context of the Uruguay Round negotiations.

The Department, Ta Chen argues, has similarly distinguished between the prior definition of "related parties" and the expanded definition of "affiliated persons," which, Ta Chen asserts, introduced the concept of control. Ta Chen notes that the Department in its Notice of Proposed Rulemaking (Proposed Rule) (61 FR 7308 (February 27, 1996)) issued in the wake of the URAA's amendments, remarked upon the confusion of many parties over the definition of control, and noted that the statute and SAA failed to provide "sufficient guidance as to when the Department will consider an affiliate to exist by virtue of "control" . . ." Case Brief at 28, quoting Proposed Rule. If the control test always existed in the law, Ta Chen asks, why is the Department only now beginning to define control? The answer, Ta Chen submits, is that the control test was added by the 1995 amendments of the URAA.

To buttress its contention that the URAA added a control test to the related-party equation, Ta Chen notes that non-equity control relationships have been common—and widely known—for years prior to enactment of the URAA; yet, Ta Chen asserts, neither Congress nor the Department felt an apparent need to address these non-equity relationships within the context of the antidumping law. Furthermore, generally-accepted accounting principles (GAAP) in the United States have long recognized, and distinguished between, relationships involving control and those involving equity interest. Ta Chen maintains that this bifurcation is evident in the Department's administration of antidumping administrative reviews; since enactment of the URAA the Department's antidumping questionnaires, verification outlines, and published determinations are replete with discussions of control, whereas "[s]uch discussion does not exist under the pre-[URAA Tariff] Act." The reason, Ta Chen avers, is "not because the world changed . . . [r]ather, the reason is that the law changed." Case Brief at 31.

The Preliminary Results, Ta Chen continues, are contrary not only to the plain language of the statute and the common meaning of the term "related," but also fly in the face of long-standing Department practice. Citing Crankshafts and Disposable Pocket Lighters from Thailand, 60 FR 14263, 14268 (March 16, 1995) (Pocket Lighters), Ta Chen contends that under the pre-URAA statute, the Department has determined that two parties cannot be considered related absent common stock ownership. According to Ta Chen, in Disposable Lighters the Department refused to find two parties related despite closely intertwined operations, joint manipulation of prices and production decisions, and long-standing business relationships, including past ownership of one party by the other. The decisive factor in this determination, Ta Chen suggests, was the absence of any common equity relationship between the two entities during the period under review. Ta Chen maintains that the Department has hewn to this interpretation in litigation, as well. For example, Ta Chen continues, in *Nacco Materials* the Department concluded that the respondent and its two related entities satisfied the ownership requirements of section 771(13)(C) of the Tariff Act through direct or indirect ownership by the respondent. *See Nacco Materials*, at 10 and 11. Ta Chen insists that in the instant reviews Ta Chen, San Shing, and Sun have not satisfied what Ta Chen views as a statutory requirement for finding parties related.

Ta Chen suggests that even cases cited by petitioners in these reviews to support their claim that parties can be related through control (see, e.g., Certain Fresh Cut Flowers From Colombia, 61 FR 42833, 42861 (August 19, 1996) (Colombian Flowers), and Roller Chain, Other Than Bicycle Chain, From Japan, 57 FR 43697 (September 22, 1992)) indicate that the Department defined "any interest" solely in terms of equity ownership. Case Brief at 36 and 37. Ta Chen maintains that prior to the Preliminary Results the Department has never stated that control of a company is tantamount to controlling an interest in that party. Indeed, Ta Chen avers, such control is "irrelevant to whether the statutory standard is met." *Id.* at 37. As an example, Ta Chen cites Fresh Cut Roses From Ecuador where, Ta Chen argues, the Department concluded that the petitioner's concerns over the possibility of price manipulation and control of production and sales were inapposite as there was no evidence that "any of these statutory indicators" of related parties had been found. See Fresh Cut Roses From Ecuador, 60 FR 7019, 7040 (February 6, 1995). According to Ta Chen, the Department likewise argued before the Court of International Trade (the Court) that the issue of control over prices "is irrelevant to the initial determination of whether the parties are indeed related" within the meaning of section 771(D) of the Tariff Act. Case Brief at 38, quoting *Torrington Co., Inc.* v. *United States*, Slip Op. 97–29 (CIT March 7, 1997). In that case, Ta Chen argues, the Court concluded that "requiring Commerce to look beyond the financial relationships of the companies would obviate the need for a statute setting forth specific guidelines for determining whether parties are indeed related." *Id.* at 40, quoting *Torrington* at 19. And in *Zenith Radio Corp.* v. *United States (Zenith)*, Ta Chen maintains, the Court affirmed the Department's position that such financial relationships "go to the essence of those relationships which the law details in 19 U.S.C. Sec. 1766(13)." *Id.*, quoting *Zenith* at 606 F. Supp 695, 699 (CIT 1985), aff'd, 783 F.2d 185 (Fed. Cir. 1986). Ta Chen points to Cellular Mobile Telephones From Japan, 54 48011, 48016 (November 20, 1989) as another instance where the Department ruled that the presence of non-equity relationships embodied in a Japanese keiretsu was irrelevant to its related-party determination. Case Brief at 40.

Ta Chen draws further support for its interpretation of the statute from a "separate line of cases" involving the collapsing of related parties. While conceding that home market collapsing determinations are not coterminous with the Department's definition of exporter for the purpose of determining United States price, Ta Chen nonetheless asserts the Department has consistently reached the statutory definition that two parties are related before proceeding to the "non-statutory question" of whether or not to collapse the two entities for purposes of antidumping margin calculation. Case Brief at 45 and 46, citing Pocket Lighters, 60 FR 14263, 14276, Fresh Cut Roses From Ecuador, 60 FR 7019, 7040 (February 6, 1995), and Colombian Flowers, 61 FR 42833, 42853 (1996). Rather, Ta Chen avers, the Department's Preliminary Results "[puts] the cart before the horse" by, as Ta Chen frames it, reaching the collapsing decision first, and then using that decision to determine whether Ta Chen is related to San Shing and Sun within the meaning of section 771(13)(B) and (C) of the Tariff Act. Case Brief at 47. Citing these "parallel lines" of precedent, Ta Chen argues that the Department has always found parties "only related when one owns another and no other factors are considered relevant." *Id.* at 48 and 49.

Ta Chen next turns to the Department's conclusion in the Preliminary Results that Ta Chen and Sun were related pursuant to subsection 771(13)(B) of the Tariff Act by virtue of the common ownership interests allegedly held by Mr. Frank McLane, who at the time in question was still a board member of Ta Chen. Ta Chen notes that the Preliminary Results assert that Mr. McLane simultaneously held equity interest in Ta Chen and owned Sun outright, thus making Ta Chen and Sun related. This conclusion, Ta Chen argues, is both factually and legally flawed. As a threshold matter, Ta Chen asserts, subsection 771(13)(B) of the Tariff Act holds that the exporter includes the person "by whom or for whose account" the subject pipe is imported into the United States (i.e., Mr. McLane's Sun), if such person owns or controls "any interest in the business of the exporter, manufacturer or producer" (i.e., Ta Chen). In Ta Chen's view, the Department could at most conclude that Mr. McLane was related to Sun or that Mr. McLane was related to Ta Chen. The Department could not argue, Ta Chen maintains, that Sun was, therefore, related to Ta Chen. Case Brief at 97.

Ta Chen adduces additional support for its contention that Frank McLane did not simultaneously own interests in Sun and Ta Chen by citing to corporate tax returns for San Shing for the 1992 and 1993 tax years. According to Ta Chen, San Shing's return for the year ended October 31, 1993 does not list Mr. McLane as either an officer or an owner. Ta Chen also argues that separate D&B reports on Ta Chen International, submitted by petitioners, do not list Sun as a related concern. Furthermore, Ta Chen claims, its audited financial statements do not list Sun as being related to Ta Chen or TCI, although they do list Mr. McLane's other business interests, such as McLane Leisure and McLane Manufacturing, as related parties. Case Brief at 105. Finally, Ta Chen concludes, the Department has stated in verification reports in other proceedings that Mr. McLane's involvement with Sun commenced after he left Ta Chen. *Id.*, citing Ta Chen's July 18, 1994 submission.

Assuming that Ta Chen and Sun were related before November 1993, Ta Chen claims that it did not sell subject merchandise to Sun prior to that time. According to Ta Chen, until November Ta Chen sold to San Shing, doing business as Sun Stainless, Inc., not to Frank McLane's Sun Stainless, Inc. It would be "pure conjecture," Ta Chen submits, for the Department to conclude that Ta Chen sold to Mr. McLane's Sun. Case Brief at 107.

Finally, assuming that the pre-URAA law permits consideration of control in finding parties related, Ta Chen argues that the application of such a test in the instant reviews is unlawful absent sufficient agency explanation. The Preliminary Results, Ta Chen insists, represent a departure from the Department's practice of defining related parties in terms of five percent equity ownership; the failure to note and explain this so-called departure renders these determinations unlawful. Case Brief at 51, citing *USX Corp.* v. *United States"* 682 F. Supp. 60, 63 (CIT 1988). Furthermore, Ta Chen continues, the Preliminary Results represent an unfair retroactive application of what Ta Chen describes as a new control test under section 771(13) of the pre-URAA Tariff Act. Principles of fairness, Ta Chen submits, require the Department to reverse its preliminary finding that Ta Chen is related to San Shing and Sun, especially, Ta Chen argues, because (i) this is a case of first impression, (ii) the Preliminary Results represent an abrupt departure from past administrative practice with respect to related-party issues, (iii) Ta Chen relied upon its understanding of the law then in effect when it responded to the Department's requests for information on related parties, (iv) the Preliminary Results would impose an "enormous" burden upon Ta Chen (by raising its margins to the BIA rates presented in the Preliminary Results), and (v) there is, in Ta Chen's view, no statutory interest in applying this new test to these backlog reviews.

Petitioners dismiss Ta Chen's arguments about the statutory definition of related parties, noting that the plain language of the statute "expressly speaks of parties being related through control other than by equity ownership, and [that] the Department's questionnaires were unambiguous in so defining related parties and asking for information accordingly from Ta Chen." Petitioners' September 10, 1997 Rebuttal Brief (Rebuttal Brief) at 1. As a preliminary matter, petitioners assert that Ta Chen's behavior throughout the first and second reviews of this order has constituted a "deliberate hoax" by which Ta Chen has "intentionally reported the wrong body of sales in each of these two reviews, having refused to submit to the Department the sales that Ta Chen surreptitiously made through San Shing and Sun Stainless to Ta Chen's first truly unrelated customers in the United States." *Id.* at 2; for more of petitioners' discussion of Ta Chen's comportment in these reviews, see Comments 2 and 3, below).

According to petitioners, section 771(13) of the pre-URAA Tariff Act defined "exporter" primarily to determine when ESP versus PP is the appropriate basis for United States price. Petitioners maintain that the critical question facing the Department in the instant reviews is whether or not the Department may rely upon Ta Chen's reported sales prices to San Shing and to Sun Stainless, Inc., or must instead use the price charged by these parties to their subsequent U.S. customers. Therefore, petitioners insist, section 771(13) controls whether or not Ta Chen, San Shing, and Sun are "related" under the pre-URAA statute. Quoting section 771(13), petitioners stress that the term " 'exporter' includes the person by whom or for whose account the merchandise is imported into the United States" when such person "owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business" of the exporter." Rebuttal Brief at 17, quoting section 771(13)(B) of the Tariff Act (petitioners' emphases). Likewise, petitioners note, section 771(13)(C) repeats the explicit reference to parties being related when the exporter "owns or controls, through stock ownership, or control or otherwise, any interest in the business" of the importer. *Id.* (petitioners' emphases). Thus, petitioners assert, *contra* Ta Chen, that the pre-URAA definition of related parties extended beyond the bright-line test of equity ownership and provided expressly for situations wherein one party controls, through means other than stock ownership, any interest in the business of the other party. Stock ownership is not, petitioners insist, the "*sine qua non*" for a finding that two or more parties are related for the statutory purposes of defining the "exporter."

Rather, petitioners continue, Ta Chen ignores several aspects of the statute's plain language in its "quest to prove that Ta Chen was not related to [San Shing or to] Sun by virtue of its control over [San Shing's and] Sun's activities under the pre-1995 law." Rebuttal Brief

at 17.[3] According to petitioners, the focus of the definition of exporter is not solely on the person by whom the merchandise is imported into the United States, but also on the person for whose account the merchandise is imported. In the instant case, petitioners argue, San Shing and Sun were the persons for whose account subject WSSP was imported during the relevant POR. Ta Chen's own representations during these reviews that TCI was a mere facilitator and paper-processor for its back-to-back U.S. sales is, petitioners believe, further evidence that San Shing and Sun, not TCI, were the parties for whom subject stainless steel pipe was imported into the United States. In petitioners' view, Ta Chen's persistent arguments concerning TCI's role in Ta Chen's U.S. sales transactions raise additional questions as to whether these sales were properly characterized as PP sales. Indeed, petitioners contend, the sole case cited by Ta Chen in support of its claim that TCI is properly considered the exporter under section 771(13) of the Tariff Act, Small Business Telephones, involved ESP, and not PP, sales, thus supporting petitioners' view that Ta Chen's sales through TCI were ESP transactions. Rebuttal Brief at 18.

Petitioners term unfounded Ta Chen's interpretation of the phrase "any interest" as requiring equity ownership to find two or more parties related under section 771(13) of the Tariff Act, and suggest that Ta Chen has attempted to dismiss the explicit statutory reference to relationships based on control other than through stock ownership by means of a "creative interpretation of the law that is not supported by its plain language, its legislative history or basic principles of statutory construction." Rebuttal Brief at 19. Ta Chen, petitioners note, has accused the Department of violating a basic principle of statutory construction that no part of a statute be rendered a nullity (i.e., by allegedly disregarding the phrase "any interest"). However, petitioners continue, Ta Chen's reading of the statute would violate the same principle: by defining the term "interest" as requiring ownership of an equity share in a company, Ta Chen has rendered the explicit references to "control" superfluous. Rather, petitioners submit, were Ta Chen's interpretation of the statute correct, there would be no need to refer to "control" beyond ownership, as control of an interest in a business would be synonymous with ownership of equity in that business. Ta Chen's reading of the statute, petitioners contend, would defeat this "cardinal principle of statutory construction by striking reference to "control" other than through stock ownership from the statute." Rebuttal Brief at 20.

As for Ta Chen's assertions that equity ownership is required to demonstrate that two parties are related, petitioners argue that Ta Chen's interpretation is not supported by the statute's legislative history. Specifically, petitioners note, the Senate Report cited by Ta Chen in its case brief refers to cases wherein an exporter is financially interested in an importer, and lists various examples of how one company might be financially interested in the other. "Only one of those examples is stock control," petitioners note. Other possible scenarios, according to petitioners, include "agency relationships, resort to organization of subsidiary corporation, 'or otherwise.'" *Id.* at 20, quoting S. Rep. No. 67–16, at 13 (1921). Thus, petitioners aver, the legislative history recognized that companies could be financially interested by means other than equity ownership. Petitioners insist that the exclusive supplier relationships, the debt-financing arrangements, Ta Chen's custody of San Shing's and Sun's check signing stamps, and Ta Chen's complete access to these customers' computer records "provide overwhelming evidence that Ta Chen had a financial interest in [San Shing and] Sun, even in the absence of stock ownership." *Id.* at 21.

Petitioners concede that in the past the Department has focused primarily upon stock ownership in rendering its related-party determinations, noting that "as a matter of commercial reality," most related-party situations entail some measure of common stock ownership. However, petitioners aver, that the primary means of identifying related parties under the pre-URAA Tariff Act was through equity ownership can in no way be interpreted to preclude examination of relationships outside of equity ownership. "Indeed, the plain language of the statute states just the opposite—that control could be based on stock ownership 'or otherwise.'" Rebuttal Brief at 21 (citation omitted). For example, petitioners claim, in Colombian Flowers the Department "recognized that section 771(13) 'establishes a standard for relationship based on association, ownership or control.'" *Id.* at 22.

The possibility that parties could be related through means other than stock ownership, petitioners insist, was confirmed in several cases before the Court. Petitioners argue that in *E.I. DuPont de Nemours & Co.* versus *United States (DuPont)*, the Court "explicitly rejected" the respondent's argument that the Department may only consider evidence of equity ownership, quoting approvingly from the Court's opinion that "the ITA is not constrained to examine only financial relationships in making the determination." Petitioners quote further: "The requirements of U.S. law were satisfied when the ITA investigated both financial and non-financial connections. The ITA properly considered and balanced those relationships which the law details in [section 771(13)(B)]." Rebuttal Brief at 22, quoting *DuPont*, 841 F. Supp. 1237, 1248 (CIT 1993). That this case actually entailed equity ownerships, petitioners stress, is irrelevant to the specific proposition that equity ownership is not the sole criterion for defining related parties under section 771(13) of the Tariff Act. Petitioners also point to the Court's holdings in *Sugiyama Chain Co., Ltd.* versus *United States (Sugiyama)* that the Department "may properly consider 'both financial and/or non-financial connections' when assessing whether parties are related within the meaning of [771(13)(C) of the Tariff Act]." *Id* at 22, quoting *Sugiyama*, 852 F. Supp. 1103, 1110 (CIT 1994). This interpretation of the relevant related-party provisions of the statute by both the Department and the Court, petitioners conclude, renders Ta Chen's exclusive focus on equity ownership "invalid." *Id.* at 23.

Petitioners also find Ta Chen's reliance on *Torrington* disingenuous. The facts of that case, petitioners maintain, revealed that the parties at issue were clearly related based upon a "substantial level of stock ownership." The foreign respondent, in urging the Department not to treat the parties as related, argued that the Department should be required to look beyond equity ownership and examine the level of control exercised by the parties. Petitioners note that the Court agreed with the Department's position that a demonstration of equity ownership alone sufficed to find parties related, thus obviating the need for any additional requirement that the Department also demonstrate control. This, petitioners suggest, is far different from Ta Chen's reading of *Torrington* as holding negatively that control in the absence of equity ownership could not be the basis for finding parties related. The *Torrington* decision, petitioners insist, is perfectly consistent with the Department's Preliminary Results in finding Ta Chen related to San Shing and Sun; "[i]n other words, either equity ownership or control is sufficient; both are not needed." Rebuttal Brief at 24.

In petitioners' view, the Department must resist Ta Chen's efforts to focus solely upon the issue of stock ownership, and to gloss over Departmental and judicial precedent holding that parties may be related even without common equity relationships. According to petitioners, the reason the Department tended to rely primarily upon equity relationships in the past was simply because such equity ownership is the most common means by which control is found in commercial practice. Petitioners acknowledge that most of the cases where the Department examined the possibility of control also involved some degree of equity ownership. However, petitioners conclude, nothing in these cases disturbs the fundamental conclusion of the Department or the courts—or the plain language of the statute—that control other than through stock ownership is sufficient grounds to find parties related under section 771(13).

As for Ta Chen's assertion that the URAA added the concept of control to the Department's related-party (or "affiliated persons") determinations, petitioners maintain that Ta Chen's arguments are equally unavailing. The URAA, petitioners submit, did not add a new concept of control to the Tariff Act as Ta Chen suggests. There was no need to add a control test to the related-party provisions of the Tariff Act because, petitioners contend, such a test already existed under the plain language of the pre-URAA Tariff Act. Rather, petitioners suggest, the URAA's amendments merely "heighten[ed] the agency's focus on this concept." Rebuttal Brief at 25 (original emphasis). Thus, petitioners aver, as the Department stated in a memorandum in Engineering Process Gas Turbo-Compressor Systems From Japan cited by Ta Chen, "[p]rior to enactment of the URAA, the Department traditionally focused on equity ownership as the basis for determining what entities were 'related.' The URAA expanded the definition of related parties (now called 'affiliated' parties) and shifted the focus to control rather than equity." Rebuttal Brief at 25, quoting the Department's December 4, 1996 memorandum at 2 (petitioners' emphasis added). Contrary to Ta Chen's assertions, petitioners believe, stating that the Department will shift its focus from equity ownership to control is decidedly different than stating that control outside of equity ownership was entirely irrelevant under the pre-URAA statute.

Petitioners further suggest that Ta Chen itself is guilty of violating a second cardinal principle of statutory construction cited by Ta Chen in its case brief: that Congress did not intend for an agency's interpretation of a statute to lead to absurdities. According to petitioners, Ta Chen accuses the Department of perpetrating absurdities with the Preliminary Results' focus on "any control, no matter how inconsequential." Rebuttal Brief at 26, quoting Ta Chen's Case Brief at 18. This contention, petitioners insist, is meritless, suggesting that while the Department may have concluded that any single activity cited by Ta Chen was insufficient grounds for finding two or more parties related, never before has the Department observed such a collection of activities "demonstrating operational control by a supplier over its customer." Rebuttal Brief at 26. Second, petitioners accuse Ta Chen of "mischaracteriz[ing]" the nature of these activities. Thus, petitioners aver, the Preliminary Results did not, as Ta Chen holds, find that "any security interest" indicated control; rather, petitioners note, Sun's and San Shing's pledging of their assets for Ta Chen's benefit indicated control. Similarly, petitioners stress, the Department did not state that "any attempt to insure payment" indicated control, but that Ta Chen's unfettered access to San Shing's and Sun's computers and proprietary data indicated control. Nor did the Department conclude that "any forwarding of orders" indicated control but, rather, petitioners maintain, that Ta Chen's direct involvement in sales negotiations indicated control. When examining the record, petitioners argue, "it is clear that the Department is not finding 'control' based on 'inconsequential' factors but rather on the array of activities that far exceeds that observed between companies that are truly unrelated and dealing at arm's-length." Rebuttal Brief at 27. Rather, petitioners insist, the Preliminary Results are "fully justified and consistent with legislative intent" as expressed through Congress' use of language which included ownership or control, direct or indirect, in defining the "exporter." *Id.*

Petitioners submit that it would be an absurdity, given the facts of record in these reviews, for the Department to find that Ta Chen, San Shing and Sun were not related parties. The array of connections found between Ta Chen and its principal customers San Shing and Sun, petitioners contend, is far beyond that seen between unrelated parties, and "establishes a degree of control that is unparalleled, to petitioners' knowledge, in any other case." Rebuttal Brief at 27 and 28. Even where parties are clearly related through equity ownership of five percent (the figure cited by Ta Chen as defining related parties for purposes of the statute), petitioners ask, would one expect to see the level of control Ta Chen exercised over San Shing and Sun in these reviews? Would a supplier holding less than a majority stock interest in a customer be in a position to demand custody of the customer's signature stamp, access to its computer records and accounts, the ability to negotiate sales to the customer's customers, and the pledging of the customer's accounts receivable and inventory for the supplier's benefit? Petitioners answer with a firm no, reiterating that the degree of control Ta Chen exercised over San Shing and Sun far exceeds that seen in other cases, and more than satisfies the statutory related-party provisions of section 771(13) of the Tariff Act.

Furthermore, petitioners aver, the Department's questionnaires in these reviews provided explicit instructions that Ta Chen rely upon the definition of related party found at section 771(13), which includes relationships through equity ownership or control. In petitioners' view, that Ta Chen failed to do so both in its submitted responses and during a verification focusing specifically upon the issue of related parties "can only be seen as an effort by Ta Chen deliberately to withhold requested information * * *" Rebuttal Brief at 29. The evidence regarding direct sales negotiations with its customers' customers, check-signing authority, the pledging of the customers' assets for Ta Chen's benefit, and direct computer access to the customers' records, none of which was revealed at verification, establishes a compelling case that Ta Chen controlled San Shing and Sun, and failed to disclose that control until after its responses had been submitted and verified. Petitioners dismiss out of hand Ta Chen's contention that it withheld all of this information because the statutory definition of related party was somehow unclear. Rather, petitioners note, Ta Chen came forward only when forced to do so by the subsequent disclosure of "certain, salient facts" by petitioners and by a separate grand jury proceeding. Even accepting Ta Chen's definition of related parties as being limited to equity ownership, petitioners argue, the Department specifically asked Ta Chen to supply information on parties to which Ta Chen was related by virtue of

[3] As in Ta Chen's case brief, petitioners have referred to San Shing and Sun collectively as "Sun."

control other than through stock ownership. This, petitioners insist, Ta Chen failed to do. Rather, petitioners suggest that Ta Chen's behavior throughout these two reviews evidences "the deliberate withholding of information" and "justifies application of total, adverse" BIA to Ta Chen. *Id.* at 30.

Department's Position:

Based upon our review of the evidence on the record in these reviews, we conclude that the Department cannot reasonably rely upon sales between Ta Chen and San Shing or Sun for the purpose of calculating Ta Chen's dumping margins for these reviews. We agree with petitioners that the record evidence is clear that Ta Chen was, in fact, related to San Shing and Sun, as defined in section 771(13) of the pre-URAA Tariff Act.

First, nothing in the statute or its legislative history proscribes the examination of non-equity relationships in making a related-party determination pursuant to section 771(13) of the pre-URAA Tariff Act. The plain language of the Tariff Act provides the Department with the statutory mandate to examine, where appropriate, whether parties are related by means of control in defining the exporter for purposes of determining U.S. price. Furthermore, the Department has recognized in its pre-URAA administrative determinations that certain factual situations require it to look to non-financial factors when making its related-party determinations, an interpretation of the statute which the Court has upheld.

We also reject Ta Chen's contention that the definition of "interest" in section 771(13)(B) and (C) is limited to common stock ownership; nothing in the statute itself or its accompanying legislative history so constrains the Department in its analysis of related parties. Rather, we agree with petitioners that the principal reason stock ownership is so often cited as the basis for finding an exporter related to a U.S. importer is because equity ownership is the most common indicator of two parties' relationship found in commercial practice. In fact, common equity ownership has served as *prima facie* evidence that two parties are related for purposes of the Tariff Act. See, e.g., Color Television Receivers, Except for Video Monitors, From Taiwan, 53 FR 49706, 49712 (December 9, 1988). That common equity ownership constitutes *prima facie* evidence of related-party status is not, however, tantamount to saying it is the only evidence of such a relationship. Put simply, the statute does not direct the Department to find parties unrelated in the absence of common stock ownership. Further, nothing in the statute, the legislative history, or the regulations defines "interest" as being limited solely to stock ownership, or fixes a bright-line figure for the requisite level of equity ownership at five percent or more.

Turning first to the statutory language, the statute's explicit reference to parties being related "through stock ownership or control or otherwise" demonstrates clearly that Congress anticipated that companies could be related for the purposes of defining the "exporter" through means other than through stock or equity ownership. Such a reading is consistent with Congressional intent, the legislative history, and the express purpose of section 771(13) of the Tariff Act, which is to determine the proper basis for United States price in calculating dumping margins. As Ta Chen notes, "[i]t is an elementary principle of statutory construction that a portion of the statute should not be rendered a nullity." *See Asocoflores*. Ta Chen's reading of the statute, however, would render a nullity the explicit statutory references to parties being related "through stock ownership or control or otherwise." Therefore, accepting the narrow reading of the statute posited by Ta Chen would be inconsistent with the plain language of the statute.

In addition, the Senate Report accompanying the 1921 Act clarifies that the Department is not limited solely to consideration of equity interests in making its related-party determinations, nor does it limit "financial interests" solely to common equity ownership. Congress specifically included non-equity relationships as possible bases for finding parties related; by noting that an interest can involve a financial interest or interest "through agency, stock control, resort to organization of subsidiary corporation or otherwise," Congress clearly envisioned the possibility of non-equity relationships between an exporter and an importer such that the prices between them become unreliable for purposes of calculating dumping margins. See S. Rep. No. 67–16, at 13 (1921). Clearly, then, Congress did not share the view of section 771(13) urged by Ta Chen that related parties were limited *per se* to those sharing common equity ownership. Rather, Congress' broader view, as expressed in the plain language of the statute, afforded the Department the discretion to examine non-financial relationships where, as here, the record evidence so demanded. Any other reading of the legislative history would place artificial restraints on the Department's analysis and would be inconsistent with commercial realities, which recognize a wide range of relationships which could affect pricing and production decisions between parties.

Turning to the Department's interpretation of the relevant statutory provisions, at one time the Department focused primarily upon equity interests in rendering its related-party determinations under section 771(13) of the Tariff Act. See, e.g., Cellular Mobile Telephones and Subassemblies From Japan, 54 FR 48011, 48016 (November 20, 1989), and Small Business Telephones, 54 FR 53141, 53151 (December 27, 1989). The Department concluded that an equity interest of five percent or more, standing alone, was sufficient evidence to demonstrate that the prices between the parties could be manipulated. See, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products From Japan, 58 FR 37154, 37157 (July 9, 1993). In certain situations, the Department decided that the facts on record did not justify examining factors of control beyond five percent equity ownership when determining if parties were related. See, e.g., Pocket Lighters, 60 FR 14263. In *Zenith* the Court upheld our decision not to broaden the related party inquiry beyond an examination of equity relationships. 606 F. Supp. 695, 699 and 700 (CIT 1985). The court stated that the Department is not required by the statute to look beyond financial relationships.[4]

However, the Department has recognized the possibility of parties being related through non-financial interests in factual situations where elements of control exist that raise the distinct possibility of price manipulation. Thus, the Department has not felt constrained to examine only financial relationships and, where appropriate, has ventured beyond a consideration of equity ownership in its interpretation of section 771(13) of the Tariff Act. See, e.g., Portable Electric Typewriters From Japan: Final Results of Administrative Review, 48 FR 7768, 7770 (February 24, 1983) (considering

[4] Ta Chen misreads the Court's decision in *Zenith*. There the Court found that while there was no statutory requirement that the Department examine "relationships which do not find expression in financial terms," nowhere did the court assert that the Department was statutorily barred from an examination of non-financial relationships. *Zenith*, 606 F. Supp. at 700.

factors indicating control, but ultimately rejecting the sufficiency of these factors to prove the parties were related in this case); Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina, 60 FR 33539, 33544 (June 28, 1995) (considering, in addition to equity factors, non-equity factors such as shared management and indirect control before concluding that the producer was not related to certain customers). For example, in Polyethylene Terephthalate Film From Korea, the Department "confirmed that the three entities are related in terms of common stock ownership, shared directors, and common management control" for purposes of determining U.S. price. See Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film From Korea, 56 FR 16305, 16314 (April 22, 1991) (emphasis added). Similarly, in Roller Chain From Japan the Department, in finding that respondent Sugiyama was related to its customer, stated that it "considers shared directorship to be evidence of a relationship between these two organizations." Roller Chain, Other Than Bicycle Chain, From Japan, 57 FR 43697, 43701 (September 22, 1992). Again, the Department clearly examined factors of control, and not solely the level of equity ownership in defining related parties under the statute.

The Court has affirmed the Department's interpretation that a related-party determination may include an examination of non-financial factors. In *Sugiyama Chain Co.* v. *United States*, the Court expressly rejected the plaintiff's argument that section 771(13)(C) of the Tariff Act limited the Department to an examination of financial relationship when determining if parties are related under that provision of the statute. 852 F. Supp. 1103, 1112 (CIT 1994). Instead, the Court held that the Department "may properly consider 'both financial and/or non-financial connections' when assessing whether parties are related within the meaning of [section 771(13)(c)]." *Id.* (quoting *DuPont*, 841 F. Supp. 1237, 1248). Similarly, the court in *Dupont* ruled that the Department's examination of both financial and non-financial factors was in accordance with its statutory mandate. *See DuPont*, 841 F. Supp. at 1248.

As the express statutory language indicates, the purpose of the pre-URAA definition of "exporter" provided at section 771(13) is to "determine when an importer is 'connected' to the exporter so as to warrant the use of 'exporters sales price' as the basis for U.S. price." Statement of Administrative Action at 839. Under the statute the Department is constrained from relying upon prices between an exporter and a related U.S. customer in calculating dumping margins because of the possibility that prices between the parties will be manipulated to mask dumping activities of the foreign respondent. As stated earlier, in order to effectuate this statutory mandate the Department has recognized that certain non-financial relationships between parties may give rise to the potential for price manipulation or control. See, e.g., Polyethylene Terephthalate Film From Korea, 56 FR 16305, 16314 (April 22, 1991); Portable Electric Typewriters From Japan, 48 FR 7768, 7770 (February 24, 1983). The Court has held that this interpretation is reasonable and in accordance with the law.

Ta Chen's exclusive focus on equity ownership in its Case Brief ignores the express purpose of the related-party determination made pursuant to section 771(13). While the Department's inquiry may begin with an examination of equity ownership, nothing precludes examination of other factors, especially where, as here, we have record evidence of non-financial relationships demonstrating connections between the parties which raise the distinct possibility of price manipulation. Our examination of related parties in light of non-financial relationships in these reviews is consistent with the express purposes of this provision. In fact, Ta Chen insists in its case brief that its prices to San Shing and Sun were lower than prices to its other U.S. customers, mistakenly viewing this as evidence that the parties could not be related, and that the prices between them are reliable for margin calculations. On the contrary, by offering preferential pricing for goods sold to San Shing and Sun, Ta Chen not only has demonstrated that its relationship with San Shing and Sun raises the possibility of Ta Chen affecting pricing, but has admitted that this relationship has resulted in preferential pricing. We also find misplaced Ta Chen's emphasis on revisions to the Tariff Act effected by the URAA. Contrary to Ta Chen's argument, new section 771(33) does not represent a fundamental change in the statute's intent. Rather, as petitioners note, the URAA's definition of affiliated persons merely shifted the focus. While in the past the predominant focus was on control through equity ownership, the new Tariff Act highlights all means of control in addition to equity ownership. See Rebuttal Brief at 25, citing Engineering Process Gas Turbo-Compressor Systems From Japan.

We also do not accept Ta Chen's definition of "any interest" as being limited to a minimum five percent equity ownership. The five-percent equity test is a mere starting point in the Department's inquiry, establishing *prima facie* evidence that two parties are related. The analysis urged by Ta Chen would ignore the clear evidence in the record of these reviews that Ta Chen controlled San Shing and Sun and, through these parties, had the potential to manipulate prices to U.S. customers. We conclude further that Ta Chen did, in fact, have a non-equity financial interest in San Shing or Sun. The totality of the facts in this case, including Ta Chen's control of San Shing's and then Sun's check signing stamps, the unfettered computer ties, the involvement of Mr. Shieh in negotiating the prices accepted by San Shing and Sun, the exclusive supplier relationships, the pledging of San Shing's and Sun's assets to TCI's benefit, the intermingling of personnel, the preferential pricing and credit terms (for more on each of these ties see our response to Comment 2, below), and the rise and disappearance at Ta Chen's behest of both San Shing and Sun as Ta Chen's sole distributors, all indicate that San Shing's and Sun's financial interests were indistinguishable from Ta Chen's.

In fact, given the depth and breadth of these non-equity financial ties, one would reasonably expect to find common equity ownership. Its absence is the only missing element in the panoply of indicia which demonstrate that Ta Chen "owned or controlled, through stock ownership, or control, or otherwise," an interest in the business of San Shing and Sun. Notwithstanding this absence, the Department cannot be constrained to finding that no relationship exists where parties have no equity interest between them. Such a limitation would invite parties to evade the antidumping law by simply avoiding any common stock ownership.

Finally, assuming, *arguendo*, that the statute and the Department's past practice bar a finding that Ta Chen was related to San Shing and Sun pursuant to section 771(13)(C) of the Tariff Act, the facts of these reviews lead us to conclude, nevertheless, that the prices between these parties were, at a minimum, subject to manipulation by Ta Chen. Ta Chen acknowledges that its prices to San Shing and Suh were lower than its prices to Ta Chen's other U.S. customers. This pattern of prefcrential pricing undermines the credibility of Ta Chen's assertions concerning its

relationships with San Shing and Sun and renders prices between them unsuitable for margin calculation purposes, given our statutory mandate to calculate dumping margins based upon arm's-length prices to the United States.

Our interpretation of the related-party provisions for these final results is consistent with the plain language of the statute when applied to the facts of this case. Any other conclusion would render this portion of the Tariff Act a nullity and would result in absurdities, given the evidence of record demonstrating Ta Chen's control over these parties. Both San Shing and Sun were established by current or former managers and officers of Ta Chen, were staffed entirely by current or former Ta Chen employees, and distributed only Ta Chen pipe products in the United States. Finally, we reject Ta Chen's suggestion that the Department has in this case applied an extra-statutory test based upon "substantial" interest. Our use of this adjective in the Preliminary Results was descriptive only, and in no way implies the use of any new basis for the examination of relationships based upon control.

Comment 2: Ta Chen's Control of San Shing and Sun

Assuming, *arguendo*, that the statute permits finding parties related based upon control, Ta Chen insists that it exercised no control over either San Shing or Sun. Ta Chen first contends that if it had held any interest in San Shing or Sun it would have "received something" from Chih Chou Chang's sale of San Shing to Frank McLane, and the subsequent sale of Mr. McLane's Sun Stainless, Inc. to a third party, Picol Enterprises.[5] Ta Chen claims that it received nothing from either transaction, which "alone demonstrates that Ta Chen had no interest in either [San Shing or] Sun." Case Brief at 54.

Furthermore, Ta Chen argues, even the indicia of control cited by the Department in the Preliminary Results do not lead to a finding that Ta Chen exercised control over San Shing and Sun. For example, while Ta Chen concedes that it had physical custody of the check signature stamps used first by San Shing and later by Sun, Ta Chen claims that it could not unilaterally execute checks drawn against San Shing's or Sun's accounts. Nor, Ta Chen continues, could Ta Chen prevent either San Shing or Sun from writing checks without Ta Chen's approval and signature. This physical custody of the signature stamp was, Ta Chen insists, merely an avenue for monitoring disbursements by these companies. Ta Chen suggests that this was a prudent measure given both the large volume of merchandise involved, as well as the 210-day credit terms Ta Chen extended first to San Shing and then to Sun. In Ta Chen's view, under these conditions it was entirely reasonable to impose "strong measures" to permit "stringent credit monitoring." Case Brief at 57.

In addition, Ta Chen admits that it had full access to San Shing's and Sun's computer systems. Because, Ta Chen claims, San Shing and Sun could write checks without using the signature stamps held by Ta Chen, this method of monitoring their disbursements "was not perfect." *Id.* Hence, Ta Chen insisted upon additional computer monitoring of San Shing's and Sun's accounts receivable and payable. Ta Chen concludes by insisting that (i) it did not control disbursements of funds by San Shing and Sun, and (ii) any such control over disbursements would be irrelevant where, as in the instant reviews, the only control at issue would be control over prices. Such stringent control, Ta Chen argues further, is an acceptable practice under the Uniform Commercial Code (UCC). According to Ta Chen, under Article 9 of the UCC, "policing" or "dominion" by a secured party (here, Ta Chen) over its unrelated debtors (referring to San Shing and Sun) "is both permissible and expected." Case Brief at 59, citing § 9–205, Comment 5 of the UCC. In other contexts, Ta Chen argues, courts have found it unremarkable that one company would provide its financial and computer records to a second unrelated company.

Ta Chen also takes issue with the Preliminary Results' conclusion that Ta Chen shared sales department personnel with San Shing and Sun. According to Ta Chen, the record indicates that no individuals were simultaneously employed by Ta Chen and either San Shing or Sun. As to the activities of Ta Chen's former sales manager Ken Mayes, Ta Chen asserts that Mr. Mayes was an independent contractor, and not an employee of Ta Chen. Ta Chen maintains that Mr. Mayes only began working for San Shing (and later, Sun) after terminating the independent contractor relationship with Ta Chen. Furthermore, Ta Chen continues, it is not uncommon for individuals in the U.S. stainless steel market to move about among the limited number of players in the industry. While acknowledging that Ta Chen did provide some assistance to San Shing and Sun, Ta Chen insists that its employees remained on Ta Chen's payroll, acting on Ta Chen's behalf. Case Brief at 63. Even if Ta Chen shared employees with San Shing or Sun, Ta Chen avers, such commingling of personnel would not indicate that the parties are related. Even company officers, Ta Chen suggests, are merely corporate employees who do not necessarily have a share of, and therefore, an interest in, their employers. Ta Chen argues that the Department may not assume that because an individual is employed simultaneously by two firms, the two firms are related, or that the individual controls any interest in the firms. *Id.* at 64. Ta Chen also insists that a payment Ta Chen made to Mr. Mayes in 1995, or three years after he allegedly left Ta Chen's employ, does not indicate that Mr. Mayes was employed by Ta Chen in the intervening period (i.e., when he worked for San Shing and Sun). Rather, Ta Chen claims, this payment stemmed from a previous agreement between Mr. Mayes and Mr. Robert Shieh, Ta Chen's and TCI's president and CEO, whereby in return for Mr. Mayes's expertise and assistance in Ta Chen's start-up in the United States, Ta Chen would pay a certain amount to Mr. Mayes should it reach a pre-determined level of profits in any future year. Ta Chen accuses the Department of establishing a "*per se* rule" that because money changed hands between Ta Chen and Ken Mayes, Mr. Mayes was an employee of Ta Chen, and further, Ta Chen and Mr. Mayes were, therefore, related parties. This one-time profit sharing payment, Ta Chen argues, conferred no ownership rights or control over prices to Mr. Mayes, and is thus irrelevant to a related-party determination. Further, Ta Chen insists, both Ta Chen and San Shing (or Sun) acted freely and in their own best interests throughout this period. *Id.* at 66 and 69.

The close business relationships which existed in the instant reviews, Ta Chen maintains, do not constitute grounds for finding Ta Chen related with San Shing or Sun. For instance, Ta Chen argues, in OCTG From Argentina the Department found close business ties between parties irrelevant, even in the face of a prior equity connection. Subsequent equity ties were likewise found irrelevant in Pocket Lighters, 60 FR 14263, 14267. According to Ta Chen, the parties at issue must be related through equity ownership at the time of the sales in question for the relationship to be legally relevant. Case Brief at 65. Furthermore, Ta Chen continues, the Department has previously examined cases wherein a respondent provided "clerical type assistance" [sic] to customers and found such assistance irrelevant to the issue of relatedness. See, e.g., Polyethylene Terephthalate Film From Korea, 62 FR 10526, 10529 (1997). In Tapered Roller Bearings From Japan, 61 FR 57629 (November 7, 1996), Ta Chen maintains, even the provision of sales personnel, training, inventory management assistance, use of computer resources for inventory and ordering, accounting assistance, and marketing and customer service training were insufficient to find a U.S. subsidiary related to its customers. Ta Chen continues by noting that the Department's level-of-trade analysis performed under the post-URAA Tariff Act routinely includes examination of precisely these types of relationships, demonstrating, Ta Chen submits, that "such services can be, and are, provided by sellers to their unrelated customers." Case Brief at 66.

Furthermore, Ta Chen argues, in past cases the Department has determined that parties are not related even in the face of much starker evidence of the parties' consanguinity. According to Ta Chen, in Certain Fresh Cut Flowers From Mexico, 56 FR 1794, 1799 (January 17, 1991) the parties shared the same address, telephone numbers, invoice forms, and the same individual signed all invoices. The Department not only found the parties unrelated, but "did not indicate that these facts were even relevant to whether the parties were related." Case Brief at 67.

Ta Chen also insists that there was nothing untoward in Ta Chen's practice of meeting with the customers of San Shing and Sun, and forwarding orders from these customers to San Shing and Sun. On the contrary, Ta Chen maintains, "it is a perfectly understandable business practice for a mill to act in this way and to meet with it own previous customers and assure them that its use of a new inventory-holding master distributor will not adversely affect service or the price competitiveness of its products." Case Brief at 70, n. 17. Ta Chen claims that its officials "knew the prices" Sun would charge for subject WSSP, and accepted customer orders on behalf of San Shing and Sun. As Ta Chen "would not wish to undermine [San Shing and] Sun," Ta Chen claims, it forwarded these orders to San Shing or Sun, as appropriate, rather than simply filling the order and billing the customers directly. Case Brief at 71. According to Ta Chen's account, San Shing and Sun were free to accept or reject any orders obtained by Ta Chen. Ta Chen likens this pattern of activity with a commission agent who secures an order on behalf of a given supplier, and then forwards that order to the supplier. In Ta Chen's estimation, such a transaction would not render the commissionaire related to the supplier.

Furthermore, Ta Chen asserts, such practices as described in these reviews are common between unrelated parties and "thus, are not probative of Ta Chen and [San Shing and] Sun being related." Case Brief at 73. Citing statements by officials of a U.S. pipe company, a U.S. pipe and pipe fittings distributor, and a distributors' association, which Ta Chen submitted for the record, Ta Chen contends that mill officials would not fill orders directly from their distributors' customers, thus undercutting the distributors; rather, Ta Chen claims, the mill would forward the order to the distributor. Ta Chen challenges the credibility of one witness put forth by petitioners, Mr. Brent Ward, who asserted in a sworn affidavit that such intimate involvement of a mill with its customers' subsequent sales of merchandise is unheard of among unrelated parties. Ta Chen wonders whether "this lone domestic mill witness can really speak knowledgeably about the practices of offshore mills in assuring [the] ultimate customers about shipment and delivery with respect to" subject WSSP. *Id.* at 74 (original emphases).

Ta Chen argues that even if it knew the prices at which San Shing and Sun would sell the subject pipe they purchased from Ta Chen, such knowledge "is of no moment." *Id.* Ta Chen cites the public testimony of Joe Avento before the International Trade Commission (the Commission) in an unrelated inquiry that the market for a fungible product such as WSSP is price-driven, and that these prices are "generally well known by these participants" in the marketplace. *Id.* at 75. Ta Chen also cites to TRBs From Japan, where a respondent provided its distributors with resale prices, as another case where the supplier had knowledge of its customers' prices. Again, Ta Chen avers, such knowledge would be insufficient grounds for finding two parties related for purposes of the Tariff Act.

Turning next to the liens held by Ta Chen on San Shing's and Sun's assets, which these parties supplied voluntarily, Ta Chen argues that such liens do not make parties related and are, in fact, common between unrelated parties. Ta Chen reiterates that it sold stainless steel pipe and other stainless steel products to San Shing and Sun on extended credit terms. As an exercise in prudence, Ta Chen allows, it obtained a security interest in the inventory and accounts receivable of first San Shing, and then Sun. Furthermore, Ta Chen submits, its assignment of these security interests to a third party (i.e., TCI's creditor bank) is irrelevant to a discussion of whether Ta Chen was related to San Shing and Sun. In fact, Ta Chen stresses, the UCC, at § 9–318, Comment 4, notes that security interests in "intangibles" such as accounts receivable "can be freely assigned." Case Brief at 81, quoting UCC § 9–318, Comment 4.

Ta Chen states that in June 1993 TCI asked San Shing to grant a lien directly to TCI's bank. Ta Chen insists that this arrangement had the same result as TCI securing an interest in San Shing's inventory and accounts receivable and then assigning this interest to TCI's bank. Asking San Shing to grant the lien directly to TCI's bank was, Ta Chen avers, "a way to simplify a still otherwise ordinary commercial arrangement," and imposed no additional burdens upon San Shing. *Id.* Ta Chen accuses the Department of creating another *per se* rule that providing UCC security interests as a condition for obtaining a loan makes two parties related. Rather, Ta Chen submits, failure to seek a lien on a borrower's assets would be a stronger indication that two parties are related, and that the creditor did not need to secure the debt. Ta Chen also claims that San Shing (and later, Sun) actually did receive consideration in return for granting these UCC liens, in the form of extended credit terms.

In addition, Ta Chen claims that since San Shing and Sun only distributed Ta Chen products, any liens on their inventory and accounts receivable were necessarily limited to the outstanding amounts owed to Ta Chen. That the liens covered all of San Shing's inventory and accounts receivable is, Ta Chen declares again, "of no moment." Ta Chen notes that Article 9 of the UCC permits creditors to seek a "blanket" interest in both existing and "after-acquired" assets, rather than attempting to secure interests only in specific assets. Case Brief at 83. Nor is it unusual, Ta Chen continues, for a party pledging its assets as security to a creditor to pledge full cooperation in enforcing the lien in the event of default by the creditor. In the instant case, Ta Chen submits, as San Shing and Sun held the accounts receivable at issue, efforts to secure payment from San Shing's and Sun's customers would necessarily continue to rest with San Shing and Sun.

[5] This firm is identified variously as "Picol International" and "Picol Enterprises." The contract covering Frank McLane's sale of Sun lists the purchaser as "Picol Enterprises."

Ta Chen also sees nothing unusual in San Shing and Sun, putatively unrelated parties, entering into these security arrangements with no written documentation as to their terms. Ta Chen claims that, while it was "unable to find any formal writing memorializing the agreement that [TCI's loan with its creditor bank] would always be less than the accounts payable of San Shing and McLane's Sun Stainless to TCI," such agreements were, Ta Chen contends, "referenced in various correspondence during the relevant period between the parties * * *" Case Brief at 85. Ta Chen implies that, just as terms of sales are not always committed to writing, there is nothing unusual in the absence of written documents concerning the debt financing arrangements between Ta Chen and San Shing, and between Ta Chen and Sun.

Even if the facts surrounding the debt financing arrangements between these parties were, in fact, unusual, Ta Chen avers, that would not provide a basis for finding Ta Chen related with San Shing or Sun. Ta Chen asserts that all parties acted freely and in their own best interests. Therefore, Ta Chen concludes, these security agreements do not indicate that Ta Chen controlled San Shing or Sun. Ta Chen points to the statements it submitted for the record from two individuals involved in the steel industry in the United States as support for its contention that security arrangements such as those described above are "reasonable given a concern of nonpayment." Case Brief at 88. Ta Chen quotes one of these statements at length, noting with approval this individual's opinion that such measures can and do occur between suppliers and their unrelated distributor customers. Not only did Ta Chen's witnesses find these arrangements "perfectly normal," but TCI's audited financial statements likewise did not include San Shing or Sun when listing loan guarantees provided by related parties. *Id.* at 89.

As two final notes with respect to the debt financing arrangements, Ta Chen states that no prior Departmental precedent exists for the proposition that secured debts or loan guarantees are sufficient grounds for finding parties related under the pre-URAA Tariff Act. Even under what Ta Chen interprets as a broader definition of "affiliation" under the post-URAA Tariff Act, to date the Department has yet to find that loans make parties affiliated. Case Brief at 90, citing to Certain Internal Combustion Industrial Forklift Trucks From Japan, 62 FR 5592, 5604 (February 6, 1997), and Large Newspaper Printing Presses From Japan, 61 FR 38139, 38157 (July 23, 1996). Second, Ta Chen criticizes the Preliminary Results for failing to explain precisely how the liens at issue in these reviews could affect control over prices which, Ta Chen reiterates, is the only aspect of control relevant to these reviews.

Ta Chen next discusses San Shing's and Sun's exclusive supplier relationships with Ta Chen. While conceding that, in fact, San Shing and Sun purchased and sold Ta Chen products exclusively, Ta Chen claims that San Shing and Sun were "free to do business with others of [their] own choosing, as well as buy and sell others' products." Case Brief at 90. Ta Chen cites prior cases decided under the pre-URAA statute wherein the Department considered exclusive buy-sell relationships; in such cases, Ta Chen argues, the Department did not find such relationships indicative of the parties' being related. *Id.*, citing Portable Electric Typewriters From Japan, 48 FR 7768, 7770 (February 28, 1983), and Certain Residential Door Locks and Parts Thereof From Taiwan, 54 FR 53153 (December 27, 1989) (Door Locks From Taiwan). Even under post-URAA determinations, Ta Chen avers, the Department has not found exclusive buy-sell relationships sufficient to consider two or more parties affiliated. According to Ta Chen, the Department examined such relationships in Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea, 62 FR 18404, 18441 (April 15, 1997) and Open-End Spun Rayon Singles Yarn From Austria, 62 FR 14399, 14401 (March 26, 1997), and concluded that because the parties were free to transact with others, their exclusive buy-sell arrangements did not render the parties affiliated. Case Brief at 91 and 92. On a broader plane, Ta Chen continues, San Shing and Sun could not be considered "reliant" upon Ta Chen because each had interests beyond their dealings with Ta Chen. San Shing, Ta Chen notes, sold fasteners, while Mr. McLane had interests involving lawnmower parts and plastic patio furniture. Ken Mayes, Ta Chen asserts, had an additional business interest in another pipe distributor, Stainless Specialties, Inc.

As further evidence that San Shing and Sun were not related to Ta Chen, the company states that its "net, ex-factory price to [San Shing and] Sun was less than its net, ex-factory price to other U.S. customers." Case Brief at 95 (original emphasis). These pricing patterns, Ta Chen asserts, demonstrate that Ta Chen "did not have control over" San Shing and Sun. *Id.* Ta Chen allows that, had it exercised control over these distributors, it would have charged them higher prices, so as to mask any dumping of subject stainless pipe sold to genuinely unrelated customers. That Ta Chen's prices to San Shing and Sun were lower than its prices to other customers "further confirm[s]" that Ta Chen is not related to San Shing or to Sun.

Ta Chen also assails the credibility of the D&B report cited in the Preliminary Results as evidence that Ta Chen and Sun were related through Frank McLane's common equity ownership. According to Ta Chen, the conclusion in the D&B report that Frank McLane and Ken Mayes had been active with Sun since 1992 (indicating that Mr. McLane simultaneously held equity in Ta Chen and owned Sun outright) is based upon hearsay: "[o]ne D&B clerk apparently heard something from somebody. A second D&B clerk speculates from what the first D&B clerk said." Case Brief at 100. According to Ta Chen, its certification that Mr. McLane "had no involvement with any Sun before the one he incorporated in September 1993" should be sufficient to refute the D&B report. *Id.* Requiring Ta Chen to go beyond the certified questionnaire responses "unlawfully places the burden on Ta Chen to rebut the D&B report." *Id.* at 108. Ta Chen also claims that the Department should disregard the D&B report because petitioners failed to submit the September 1994 D&B report to the Department prior to the October 1994 verification in the first pipe review.

Assuming that the D&B report constitutes evidence, Ta Chen asserts that it is not substantial evidence and, therefore, any reliance upon it is unlawful. Citing *Timken Co.* v. *United States*, 894 F. 2d 385, 388 (Fed. Cir. 1990), Ta Chen argues that "substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Case Brief at 101. Ta Chen notes that Dun & Bradstreet issues a stock disclaimer with its reports that it does not guarantee their accuracy. Further, Ta Chen charges, the accuracy of this particular report is further impeached by the apparent removal of the unique D&B number identifying the subject of the report. Ta Chen asserts that this is not a minor matter since two Suns are at issue in this case—San Shing's dba Sun Stainless, Inc., and Frank McLane's Sun Stainless, Inc. Ta Chen also hints that other alterations may have been made to the D&B report.

In addition, Ta Chen maintains that the D&B report does not specifically cite Mr. Mayes as the source for the claim that Messrs. McLane and Mayes had been active in Sun since 1992. Since the D&B report does not indicate that Mr. McLane was president or owner of Sun prior to November 1993, the clear and unequivocal evidence indicates that Mr. McLane only became involved with Sun at the later date. In fact, Ta Chen submits, the contract arising from Mr. McLane's July 1995 sale of Sun to an unrelated firm, Picol Enterprises, states that Mr. McLane was president of Sun since November 5, 1993.

In closing on this point, Ta Chen alleges that the Department treated it unfairly by not accepting into the record submissions by Ta Chen addressing the credibility of the D&B report. Ta Chen asserts that it first received notice of the possible "breadth of § 771(13)(B)," and the importance of the D&B report, upon publication of the Department's Preliminary Results. Case Brief at 109. Ta Chen maintains that its July 2, 1997 submission on this point (rejected by the Department as untimely new factual information) should have been accepted for the record.

Petitioners assert that "Ta Chen's version of its actions [with respect to San Shing and Sun] and what has transpired is incomplete and defies common sense and reality." Rebuttal Brief at 3. As a preliminary matter, petitioners chide Ta Chen for failing to provide a single specific example involving any other firms of ties such as those found between Ta Chen and San Shing and Ta Chen and Sun, which Ta Chen maintains are common between unrelated parties. The reason Ta Chen has failed to do so, petitioners insist, is because these practices "are not common and do not exist between unrelated parties." Rebuttal Brief at 12. Petitioners maintain that Ta Chen has failed to substantiate its claims that these extraordinary ties are, in fact, normal. With respect to Ta Chen's possession of San Shing's and Sun's signature stamps, petitioners note that Ta Chen was unable to cite a single instance where a supplier had physical custody of its unrelated customers' signature stamps. Similarly, although Ta Chen claims that the invasive computer monitoring Ta Chen employed with respect to San Shing and Sun was "prudent," petitioners note that Ta Chen has failed to provide a single example involving any other companies of such monitoring. "[I]f Ta Chen's ties with San Shing and Sun Stainless really are nothing out of the ordinary commercially speaking, why has the Department * * * never seen the likes of these ties in any other of the many cases under the antidumping law that the Department has considered over the last seventeen years?" *Id.* Were this not such a serious matter, petitioners suggest, Ta Chen's claims with respect to the shared sales personnel, computer links, common negotiations with San Shing's and Sun's customers, and the pledging of San Shing's and Sun's assets to Ta Chen's benefit "would be laughable, because they are ludicrous." *Id.*

Addressing in turn each element of control cited by the Department in its Preliminary Results and discussed at length in Ta Chen's case brief, petitioners present a point-by-point rebuttal. As for Ta Chen's possession of the signature stamp and its maintenance of the computer links with San Shing and Sun, petitioners contend that these arrangements are "exceptional and [amount] to control over the other person's finances." Rebuttal Brief at 13. Ken Mayes's statement that San Shing and Sun were free to write checks of their own volition is, petitioners charge, "an unsubstantiated *ipse dixit* that is entitled to no credence." *Id.*

With respect to the sharing of sales personnel, petitioners also disagree with Ta Chen's assertion that it did not share common employees with San Shing or Sun. According to petitioners, Ta Chen's November 12, 1996 submission in the 1994—1995 administrative review (portions of which were incorporated into the records of these administrative reviews) indicates clearly that there was sharing of sales personnel among these parties; "the sort of intermingling of employees that Ta Chen admits took place suffices to establish Ta Chen's control of San Shing and Sun Stainless." Rebuttal Brief at 14. Furthermore, petitioners continue, Ta Chen's claims with respect to payments made to Ken Mayes are "not buttressed by documented evidence." Rather, petitioners aver, while allegedly employed by San Shing and later Sun, Mr. Mayes's self interest "lay in helping Ta Chen to be sufficiently profitable to trigger his bonus," doing so at the expense of San Shing and Sun. *Id.* Such a tie, petitioners attest, would further support the Department's determination that Ta Chen controlled San Shing and Sun.

Petitioners also dismiss as "fanciful speculation" Ta Chen's claim that its knowledge of San Shing's and Sun's prices for WSSP was not remarkable and, thus, "of no moment." Petitioners insist that "[t]he idea that a distributor would inform its arm's-length supplier of the distributor's prices to its customers is not believable in any market." *Id.* Rather, petitioners suggest, a distributor would keep its prices from its supplier to "maximize whatever negotiating room [the distributor] has with [its] supplier." *Id.* at 15.

As for the security interests pledged by San Shing and Sun, petitioners contend that this arrangement "epitomizes the control exerted by Ta Chen over San Shing and Sun Stainless." *Id.* With San Shing and Sun retaining legal title to the subject merchandise, petitioners aver, the pledging of these assets as collateral for TCI's line of credit should not have occurred. Furthermore, petitioners continue, that San Shing and Sun entered into these arrangements without any written agreements is additional evidence that "there was no arm's-length relationship at play." *Id.* In fact, petitioners note, the failure of San Shing or Sun to obtain written agreement concerning any of the elements of control cited in the Preliminary Results (i.e., the custody of the signature stamp, the free computer access, and the security interests) establishes a "pattern that confirms control and related-party relationships." Petitioners also dismiss as unsubstantiated Ta Chen's assertion that San Shing and Sun were free to do business with others; petitioners point out that there is no evidence of record that San Shing or Sun ever purchased subject merchandise from anyone other than Ta Chen.

As for the D&B report, petitioners stand by the accuracy of this document, and point to an affidavit from an employee of Dun & Bradstreet attesting to the provenance of the information contained in that report. According to this employee, the source for the information, including that Mr. McLane and Mr. Mayes had started the company in 1992, was none other than Ken Mayes himself, who provided this information in a May 24, 1994 interview with Dun & Bradstreet analysts. Petitioners aver that Mr. Mayes offered this account of Sun's history long before Ta Chen and Sun were aware of petitioners' concerns, i.e., at a time when Mr. Mayes "had no reason to miscite Sun Stainless date of establishment and roster of officers from its inception." Rebuttal Brief at 8. Petitioners compare the May 24, 1994 statement with Mr. Mayes's later statement, submitted on December 20, 1996, that he and Mr. McLane's affiliation with Sun commenced in November 1993, describing the latter as unsubstantiated. Further, according to petitioners, the later statement is based upon claims that Mr. McLane actually purchased San Shing's assets "that are themselves unsubstantiated." *Id.* at 9. In defending the accuracy of the D&B report, petitioners reiterate that Dun & Bradstreet's source for the report was Ken Mayes, and assert that the timing of this May 1994 statement, and "Dun &

Bradstreet's professional reputation are solid grounds for the Department to conclude that the D&B report is accurate." *Id.*

Petitioners conclude by asserting that Sun Stainless was established expressly to evade antidumping duties. Since Sun's 1992 establishment, petitioners allege, "Ta Chen has maneuvered by pretense and artifice to keep its real unrelated-party sales in the United States from undergoing the Department's scrutiny." According to petitioners, Ta Chen's means to this end were its "hidden control" of San Shing and Sun; therefore, petitioners argue, "the statute calls for the conclusion that Ta Chen was related to San Shing and Sun Stainless." Rebuttal Brief at 16.

Department's Position

We agree with petitioners that the factual evidence of record demonstrates a level of operational control exercised by Ta Chen over both San Shing and Sun that more than satisfies the statutory provisions for finding Ta Chen, San Shing, and Sun related parties.

Ta Chen in its case brief focuses upon each indication of control cited in the Preliminary Results in isolation, characterizing each of these connections as (i) commonplace and unremarkable in the commercial world, (ii) insufficient to demonstrate Ta Chen's control of these parties, and, (iii) irrelevant to a finding that these parties are related for purposes of the Tariff Act. However, we have examined the totality of the evidence in this case as it pertains to Ta Chen's overarching control over not only the activities of San Shing and Sun, but over their existence as well.

In placing such emphasis on a so-called five-percent equity test, Ta Chen ignores the true purpose of section 771(13) of the Tariff Act, which is to define the "exporter" for purposes of determining the correct basis for U.S. price. According to Ta Chen's repeated assertions, the only relevance of the present discussion is whether or not Ta Chen could control pricing decisions made by San Shing and Sun in selling subject merchandise in the United States. In fact, the evidence of record indicates this was so, as do Ta Chen's own admissions during the course of these reviews. As we have indicated , San Shing and Sun were both established by current or former managers and officers of Ta Chen, were staffed entirely by current or former Ta Chen employees, and distributed only Ta Chen products in the United States. Throughout their involvement in these proceedings Ta Chen had control of San Shing's and Sun's bank accounts, with authority to sign checks issued by San Shing, its dbas, and Frank McLane's Sun. Ta Chen also had physical custody of these parties' check-signing stamps. Ta Chen further controlled San Shing's and Sun's assets and these parties pledged their assets as collateral for a loan obtained on behalf of TCI. In addition, Ta Chen enjoyed full-time and unfettered computer access to San Shing's and Sun's computerized accounting records. Ta Chen's owner, Robert Shieh, owned the property housing San Shing and Sun, and Ta Chen shared sales and clerical personnel with the two companies. Finally, Robert Shieh actually negotiated the prices that San Shing and Sun would realize on their subsequent resales of subject merchandise to unrelated customers.

Furthermore, for the Department to conclude that Ta Chen did not exercise effective control over San Shing and Sun would require the Department to ignore numerous *lacunae* in Ta Chen's account. The inconsistencies, inaccuracies, partial admissions, and lack of documentation in Ta Chen's version of events in these administrative reviews do not support Ta Chen's claims.

First, as for Ta Chen's argument that had it held an interest in San Shing or Sun it would have received consideration for the sale of San Shing to Mr. McLane, and Mr. McLane's eventual sale of Sun Stainless, Inc. to Picol Enterprises, this argument suffers one fatal flaw. Ta Chen's claim that Mr. McLane purchased San Shing from Chih Chou Chang in the fall of 1993 is unsubstantiated. The transaction itself has never been documented for the record. In fact, aside from Ta Chen's claims on this matter, we have no evidence that any assets, or consideration therefor, actually changed hands in September 1993. Ta Chen's failure to document for the record this transaction is significant given Ta Chen's ability to enter into the record the most sensitive financial information concerning these parties, e.g., the individual tax returns of Frank McLane and the corporate tax returns of the putatively unrelated parties, San Shing and Sun. More fundamentally, as we discuss below, record evidence indicates that Ta Chen misstated the commencement of Frank McLane's (and Ken Mayes's) involvement with the second "Sun Stainless, Inc.," incorrectly indicating that Mr. McLane did not simultaneously act as president of Sun and as a director and shareholder of Ta Chen. Because the underlying chronology is itself impeached, we cannot accept at face value Ta Chen's claim that it did not receive compensation for these transactions, whether in the form of cash value or other non-monetary consideration.

Turning now to the indications of control enumerated in the Preliminary Results, we affirm our preliminary finding that Ta Chen controlled San Shing's and Sun's disbursements. One avenue Ta Chen used to exercise this control was through its possession of San Shing's and Sun's signature stamps. Ta Chen's assertion that it is commonplace for a business entity to surrender control over its disbursements to an unrelated party, as both San Shing and Sun did to Ta Chen, by turning over physical custody of their signature stamps to an unrelated supplier is not credible and is not supported by record evidence. Nor is there record support for Ta Chen's *ex post facto* claim that it could not execute checks unilaterally; having possession of both the checks and the signature stamp enabled Ta Chen to execute checks at will upon these entities' accounts. Furthermore, there is no support, either in the record of these reviews or in the Department's experience, for the notion that demanding control over an unrelated customer's checking account would be required to effect "stringent credit monitoring" of the customer's expenditures, as Ta Chen claims here. In fact, control by one party over another party's checking account is usually only found between related parties.

Similarly, we find that Ta Chen's unlimited level of computer access to San Shing's and Sun's proprietary data supports a finding that Ta Chen exercised control over these parties. Ta Chen's assertions with respect to this computer access are unpersuasive and are not supported by evidence in the record. Ta Chen attempts to present its full-time and unrestricted ability to scrutinize San Shing's and Sun's proprietary business records as prudent monitoring by a creditor of its unrelated debtors which is "permissible and expected" under provisions of the UCC. We note that, while a creditor is entitled to periodic reports from a debtor concerning, e.g., the debtor's sales and deliveries and the agings of accounts receivable used as collateral, nothing in the UCC envisions the unlimited access Ta Chen enjoyed here. See Nassberg, Richard T., The Lender's Handbook, American Law Institute, American Bar Association Committee on Continuing Professional Education, Philadelphia, 1986, at 32 and 33. Further, Ta Chen has offered no examples of any other firm allowing its unrelated supplier such extensive access to its payroll and

accounting information. Contrary to Ta Chen's claims, such a practice is not common and, to the Department's knowledge, does not exist between truly unrelated parties. As we noted in the final results of the 1994–1995 administrative review of this order, "Ta Chen officials stated at the Department's [June 1997] verification at TCI that [Sun] maintained no security system or passwords with which to limit or terminate Ta Chen's access to its records; Ta Chen's access to [Sun's] accounting system was complete." Certain Welded Stainless Steel Pipe From Taiwan, 62 FR 37543, 37549 (July 14, 1997).[6]

With respect to the claimed need for the computer access and control over San Shing's and Sun's disbursements, this claim too is undermined by Ta Chen's own statements in the record. Ta Chen insists that it required these measures of control as a means of monitoring its customers in light of the substantial quantities of merchandise Ta Chen sold to San Shing and Sun, and in return for the 210-day credit terms offered by Ta Chen.[7] But as Ta Chen noted in its July 28, 1994 submission in the first administrative review, San Shing was an established company enjoying "substantial resources including lines of credit." Ta Chen's July 28, 1994 submission at 9. Furthermore, with respect to the balances owed by San Shing and Sun, as Ta Chen itself concedes, Ta Chen's "risk [of non-payment] is not significant, since actual bad debt has not been a problem." Ta Chen's November 12, 1996 submission at 81. If San Shing enjoyed such substantial resources, and never presented a risk of non-payment, Ta Chen's stated need to implement monitoring measures to secure payment for its sales is without support. The absence of a genuine credit risk would, in fact, attenuate the need for this relationship. The second possible reason for these ties, posited by Ta Chen's witnesses, is that it allows for "just-in-time" delivery of inventory. While electronic ordering is a common and growing practice between suppliers and their distributors, this typically entails a sharply delimited level of access—most commonly, a one-way communication between the customer's purchasing department and the supplier's sales department. We are aware of no circumstances where electronic ordering would allow a supplier to have unrestricted access to the accounts payable, accounts receivable, inventory, and payroll data of an unrelated customer. We conclude that these untrammeled on-line computer ties existed because Ta Chen was controlling and directing San Shing and Sun.

We also conclude that the record indicates that Ta Chen shared personnel with San Shing and Sun. In fact, Ta Chen's November 12, 1996 submission details a long two-way history of shared office personnel between Ta Chen and San Shing dating to before San Shing ever purchased Ta Chen pipe. For example, Ta Chen claims that "[f]rom the outset of [Ta Chen's and San Shing's] landlord-tenant relationship, TCI provided San Shing USA with assistance from its personnel and, from time to time, the use of TCI office equipment." Furthermore, San Shing "provided necessary technical and other support to TCI personnel" when TCI commenced its production of fasteners. See Ta Chen's November 12, 1996 submission at pages 51 through 54. In addition, Ta Chen's sales manager, Mr. Mayes, also acted as sales manager for San Shing and for Sun. For more on Mr. Mayes's role in these reviews, see our response to Comment 3, below. When considered together with the other indicia of control, this commingling of personnel lends additional support to the conclusion that Ta Chen was related to San Shing and Sun as defined in the Tariff Act.

With respect to Ta Chen's involvement in negotiating sales prices to San Shing's and Sun's customers—the true focus of this inquiry—Ta Chen insists that this involvement does not indicate control by Ta Chen of San Shing and Sun, and further asserts that such practices are commonplace. However, we agree with petitioners that Ta Chen's claims that negotiating the prices of its customers' subsequent sales is common between unrelated parties are unsupported either by record evidence or the Department's experience. San Shing and Sun were engaged in the distribution of a fungible, commodity product, i.e., ASTM A312 pipe and fittings made from this pipe. As Ta Chen's witness Mr. Joe Avento notes, the market for such products is price-driven. With little margin for profit, an unrelated distributor, as a matter of survival, would guard the prices it would accept for reselling the product in order, as petitioners phrase it, to "maximize whatever negotiating room [the customer] has with [its] supplier." Rebuttal Brief at 15. Ta Chen has argued that the only element of control relevant to an antidumping proceeding is control over prices; Ta Chen's admitted role in setting prices for San Shing's and Sun's subsequent sales of WSSP to unrelated customers in the United States is evidence of precisely this type of control. For Ta Chen, as the supplying mill, to liken its role in these transactions to that of a mere commission agent, passing purchase orders between end-users and its distributors San Shing and Sun, is not credible. Ta Chen has noted that Ta Chen officials (specifically, Ta Chen's president, Mr. Robert Shieh) not only met with customers of San Shing and Sun, but that these same customers would contact Ta Chen directly, bypassing altogether their putative suppliers, San Shing and Sun. Ta Chen claims that "Ta Chen officials would not wish to undermine [San Shing or] Sun," and that it merely forwarded any purchase orders it received to San Shing or Sun for their independent consideration and acceptance or rejection. See Ta Chen's Case Brief at 71. Here again, however, there is no record evidence, aside from Ta Chen's unsupported claims, that it ever forwarded a customer's order to San Shing or Sun, nor is there evidence of either San Shing or Sun ever rejecting a purchase order so obtained from TCI. Furthermore, Ta Chen's fastidious avoidance of "undermining" San Shing and Sun was unnecessary, given its control of the transactions from the mill in Tainan to the delivery to the ultimate end user in the United States.

Turning to the debt security arrangements between San Shing, Sun, TCI, and TCI's creditor bank, Ta Chen claims that such arrangements are "irrelevant." Ta Chen maintains that debt security arrangements by themselves have proven insufficient grounds for finding parties related for purposes of section 771(13) of the Tariff Act. Nevertheless, the nature of these particular security assignments, including the absence of any written agreement between these putative unrelated parties, f finding that trans parties were r the larg relati find provide addi evidence of the degree of Ta Chen's control over all aspects of San Shing's and Sun's operations. Here, San Shing, and then Sun, unilaterally, and without consideration, assigned their entire

[6] The original text identifies Sun as "Company B." Although the verification concerned the 1994–1995 administrative review, this narrative applied to prior periods as well. See Memorandum to the File, June 19, 1997, at 5, a public version of which is on file in room B–099 of the main Commerce building.

[7] We note that, in addition to preferential pricing, these extended credit terms offered to San Shing and Sun would further indicate that their dealings were not at arm's length.

inventory and accounts receivable directly to TCI's bank to facilitate a loan for TCI. That San Shing and Sun would accept such a risk without any consideration—without even a written agreement memorializing the terms and duration of the agreement—is not consistent with the dealings between truly unrelated companies. Nor has Ta Chen offered convincing evidence that this arrangement is, in fact, commonplace. Ta Chen fails to note that the UCC financing statements submitted for the record "serve only to perfect the lender's rights against competing creditors and that rights so perfected must be created under a valid security agreement." The Lender's Handbook, *op. cit.* at 27 (emphasis added). In spite of numerous submissions focusing upon the significance of these loan guarantees and their relevance to these proceedings, and in spite of our specific requests that Ta Chen do so, Ta Chen has never submitted evidence that a valid security agreement was ever created. Ta Chen has stated only that it "asked" first San Shing, and then Sun, to assign their inventory and receivables as security for a line of credit TCI obtained from a California bank, and that these parties agreed freely in return for extended credit terms. See Case Brief at 81 and 82. However, that these putatively unrelated parties would accede to such a request in the absence of any written security agreement as to the nature of the assignments, their scope, their duration, etc. does not comport with the actions of unrelated parties dealing at arm's length. Contrary to Ta Chen's assertion, in fact, the existence of these UCC filings absent any valid security agreement serves merely to underscore the dominion Ta Chen enjoyed over the actions and the assets of both San Shing and Sun.

Furthermore, Ta Chen has never documented for the record why the allegedly unrelated San Shing would be willing to offer its entire accounts receivable and inventory to secure a loan for TCI, or why Sun, supposedly unrelated to either Ta Chen or to San Shing, would assume these same obligations *in toto* when, as of the claimed date of its founding, it would have no outstanding balances whatever with Ta Chen. Two other aspects of these security agreements bear noting. First, that the secured amount available to TCI from its bank was always limited to the amount San Shing or Sun owed TCI for their purchases of Ta Chen's stainless pipe products is an *ipse dixit* which Ta Chen, the sole party able to do so, has failed to document for the record. Ta Chen claims in its case brief that these agreements were "referenced in various correspondence during the relevant periods between the parties," yet Ta Chen did not submit any of this correspondence for the record. Our thorough review of Ta Chen's and TCI's correspondence files during the October 1994 verifications also did not reveal any mention of these agreements. Second, Ta Chen insists that because San Shing and Sun only sold Ta Chen products, the value of any assets assigned by San Shing and Sun to TCI's bank necessarily equaled the amount owed by San Shing and Sun to TCI. See Case Brief at 82 and 83. However, this would be true only if San Shing and Sun sold this merchandise at the same price it originally paid to TCI. If San Shing and Sun marked up the price of the merchandise, which they would have to do to realize any profit from these transactions, then the secured amount necessarily exceeded the receivables San Shing and Sun owed to TCI. Furthermore, San Shing sold nuts and bolts for the automotive industry. Thus, its inventory and accounts receivable from the start of this relationship extended beyond the pipe and pipe fittings supplied by Ta Chen. Contrary to Ta Chen's assertions, the value of San Shing's inventory and accounts receivable clearly did exceed the amount San Shing owed to Ta Chen for its pipe products.

As for the exclusive supplier relationships between Ta Chen, San Shing and Sun, Ta Chen concedes that it was the exclusive supplier to both entities, but claims that each was free to do business with whomever it chose. However, Ta Chen has presented no evidence of San Shing or Sun ever seeking to purchase pipe or pipe products from any other firm. In fact, the record clearly indicates that except for the fasteners manufactured by San Shing Hardware Works, Ltd., San Shing dealt exclusively with Ta Chen merchandise; Sun Stainless was established for this purpose alone. Both were entirely reliant upon Ta Chen for their supplies of pipe and pipe fittings. We also find that Ta Chen's case citations in this regard are not entirely on point. In Portable Electric Typewriters, for example, respondent Tokyo Juki sold merchandise exclusively to EuroImport, S.A., a subsidiary of Olivetti. Petitioner in that case, citing a number of factors, including assumption of start-up costs, Olivetti's supplying typewriter parts to Tokyo Juki, and the fact that Tokyo Juki sold subject typewriters exclusively to EuroImport, alleged that Tokyo Juki and Olivetti were related parties. We concluded that "Olivetti's and Tokyo Juki's relationship does not constitute control as contemplated by section 771(13) of the Tariff Act," and that petitioner's arguments with respect to EuroImport were "not persuasive." Portable Electric Typewriters From Japan, 48 FR 7768, 7771.[8] While EuroImport had an exclusive distributor arrangement to distribute Tokyo Juki's typewriters, there is no indication that the obverse was true, i.e., that Tokyo Juki was the exclusive supplier to EuroImport. In all likelihood, EuroImport also distributed typewriters manufactured by its parent, Olivetti, and may have distributed typewriters supplied by any number of manufacturers. Unlike the instant case, there is no evidence that EuroImport was dependent upon Tokyo Juki for its continued sales operations. Thus, Portable Electric Typewriters never reaches the issue of whether or not an exclusive supplier relationship is, or is not, evidence of parties' being related under section 771(13) of the Tariff Act by means of control. Furthermore, in sharp contrast to the instant case, the totality of evidence in Portable Electric Typewriters clearly indicated that Tokyo Juki could not control Olivetti or vice versa. Likewise, the citation to Residential Door Locks From Taiwan is inapposite. There we concluded that "[t]here is no evidence on the record that Posse and Tong Lung operated closely together, were billed jointly, had their day-to-day operations directed by joint owners, or conducted transactions between themselves." Residential Door Locks From Taiwan, 54 FR 53153, 53161 (emphases added). We did not say, as Ta Chen asserts, that exclusive-supplier relationships could not be indicative of related-party status; on the contrary, we clearly examined the issue of exclusive supplier relationships within the context of a related-party determination and found that not only was there no exclusive supplier relationship between Posse and Tong Lung, there were no business transactions of any kind between the two.

Furthermore, Ta Chen has presented no evidence in support of its contention that these indicia of control, including computer access, control of disbursements, and intervention by a mill in its unrelated customers' sales are common. Despite the claims of Ta Chen's witnesses, Mr. Charles Reid, Mr. Theodore Cadieu of the USX Corporation, and officials from a U.S. pipe producer and a distributors' association, that such practices happen "all the time," none could cite a single specific example of similar ties between unrelated parties. The head of the distributors' association, who would be expected to have familiarity with the practices of its membership, failed to name a single member firm engaging in such "common" practices. See Ta Chen's February 7, 1997 submission at 54, Ta Chen's January 31, 1997 submission at 151, and Ta Chen's April 1, 1997 submission. As for the qualification of petitioner's affiant, Mr. Brent Ward, to speak to "the practices of offshore mills," Ta Chen has known at least since the Department's April 28, 1997 public hearing (in the 1994–1995 administrative review) Mr. Ward's qualifications to address these matters. Mr. Ward is the president of the domestic producer, Damascus-Bishop Tube Company, and also the Specialty Tubing Group, an association of North American producers of WSSP. His firm also purchases and distributes ornamental steel tubing produced by offshore mills. See Memorandum to the File, October 30, 1997, at 2, and Hearing Transcript ("Open Session"), May 12, 1997 at 15 through 21 and 34 through 37, on file in room B–099 of the main Commerce building. It is worth quoting Mr. Ward, acting in all three capacities, at some length:

> [a]t most, if it is necessary, a producing mill might have the opportunity to meet with both a distributor and that distributor's customer to discuss issues of material specification and/or quality requirements, but not to discuss issues of prices and quantities. * * * [I]n reality distributors in the welded stainless steel pipe industry in the United States that are truly unaffiliated with their supplying mills jealously guard both their corporate independence and their commercial ties with their customers and limit any contact by the mills with those customers as much as possible. The logic behind this approach at one level, of course, is simply that the distributors do not want to lose control of their businesses and do not want their customers to buy directly from the mills and eliminate the distributor's role in the chain of distribution.

See Affidavit of Mr. Brent Ward, submitted April 8, 1997.

We find Mr. Ward's common-sense description of the business ties typically found between unrelated parties to be credible, especially in light of Ta Chen's inability to cite any evidence to the contrary.

Finally, turning to Ta Chen's relationship with Sun through Mr. McLane's full ownership of Sun while holding a share of, and acting as a director for, Ta Chen, we find that substantial evidence of record in these reviews indicates that Mr. McLane's involvement with Sun predates the September 14, 1993 date claimed by Ta Chen. Mr. McLane, working with Mr. Mayes, established Sun and was actively engaging in sales of subject merchandise by 1992. The evidence of this is not, as Ta Chen characterizes it, hearsay. It is, in fact, the September 20, 1994 report of a disinterested and credible organization, Dun & Bradstreet, whose reports are routinely relied upon by the business and investment communities in assessing businesses' creditworthiness. Dun & Bradstreet's source was Mr. Ken Mayes who, as the putative vice president and director of Sun, clearly had familiarity with the history and operations of this firm. In a May 27, 1994 interview with Dun & Bradstreet's analysts, Mr. Mayes stated that "Sun Stainless, Inc." was started in 1992.[9] Mr. Mayes noted that Mr. McLane was the president and he the vice president of Sun. Furthermore, the D&B report includes a "fiscal statement" covering the period from November 1, 1992 to October 31, 1993. This document shows that for the year ended October 31, 1993, Sun had millions of dollars in sales, accounts payable, and accounts receivable.

If, as Ta Chen claims, Frank McLane's Sun Stainless, Inc. only became operational as of November 1, 1993, there should have been no financial activity reported for the year prior to that date. Certainly, there would be no activity reported prior to September 1993 when Mr. McLane allegedly founded his new Sun Stainless, Inc. Perhaps recognizing this inconsistency, Ta Chen suggested in its August 2, 1995 submission that

> [t]he Dun & Bradstreets submitted by Petitioners on Frank McLane's Sun Stainless, Inc. obviously include the financial results of San Shing USA for the pre-October 31, 1993 period and the financial results of Frank McLane's Sun Stainless, Inc. for the period November 1, 1993 onward.

Ta Chen's August 2, 1995 submission at 3, n. 4 (original bracketing deleted).

Ta Chen went on to speculate that "D&B's reporting in this fashion may be useful, as the profitability of San Shing USA's assets during the pre-October 31, 1993 period may be a useful indicator of the financial performance of Frank McLane's Sun Stainless, Inc. during the post-November 1, 1993 period." *Id.* It is not at all obvious, however, that the D&B report for a putatively new corporate entity, Sun Stainless, Inc., would include the financial results for a separate party, San Shing. Unless Mr. Mayes incorrectly presented San Shing's financial results as Sun's own, Dun & Bradstreet could not have confused the two. Indeed, since San Shing used the name "Sun Stainless, Inc." as a fictitious dba name only, any search for financial information on "Sun Stainless, Inc." (as distinct from San Shing Hardware Works, USA), would be unavailing because, according to Ta Chen, Sun never really existed before September 1993, other than as a name on San Shing's invoice forms. Furthermore, if Sun had truly started as a new, independent entity in November 1993, the performance of San Shing in the prior year would be of little or no help in predicting how a new firm, with different ownership, different levels of financing, and different levels of business experience and expertise, would perform in the market.

Mr. Mayes's May 27, 1994 statements to a disinterested person, i.e., Dun & Bradstreet, were made at a time when Mr. Mayes had no reason to foresee that petitioners and, later, the Department, would inquire as to the dates of Sun's establishment. To the contrary, his later statements on Ta Chen's behalf for the record of these reviews were made at a time when he had a direct interest in sustaining Ta Chen's claim that it was not related to Sun. We conclude that the information contained in the D&B report more accurately reflects the history of Frank McLane's Sun Stainless, Inc.[10]

To conclude, after an exhaustive examination of the record evidence in this case, we find that Ta Chen enjoyed complete control over the establishment, existence, and activities of both San Shing and Sun, and that as a result, Ta Chen was related to San Shing and Sun in accordance with section 771(13) of the pre-URAA Tariff Act.

Comment 3: Use of Best Information Available

Even if the Department had the discretion to find Ta Chen related to San

[8] This discussion of "control as contemplated by section 771(13) of the Tariff Act" would be unnecessary if, as Ta Chen insists, the statute only defined related parties in terms of common equity ownership.

[9] We note this date coincides with Ta Chen's decision to "exit the ESP business" and to rely on newcomers to the pipe industry as its sole distributors in the United States. Thus, contrary to Ta Chen's assertions, the D&B report has not erroneously stated the founding date of San Shing USA, which existed as a distributor of fasteners manufactured by its parent, San Shing Hardware Works, Ltd., in Taiwan prior to its involvement in Ta Chen's pipe distribution. See Case Brief at 107.

[10] This same chronology was corroborated by a foreign market researcher retained by petitioners. See Petitioners' July 12, 1995 submission at Attachment 5. Even if the D&B analysts interpreted erroneously Mr. Mayes's May 27, 1994 statements, it is clear that Mr. McLane negotiated the purchase of San Shing USA's inventory sometime prior to mid-September 1993, i.e., while he was still a shareholder in, and director of, Ta Chen.

Shing and Sun within the meaning of section 771(13) of the Tariff Act, Ta Chen argues, the Department nonetheless acted unlawfully in applying BIA to Ta Chen. According to Ta Chen, the Department never clearly requested from Ta Chen any information regarding control of San Shing or Sun by Ta Chen, and never indicated what such control might entail. Citing *Sigma Corp.* v. *United States*, 841 F. Supp. 1255 (CIT 1994), Ta Chen asserts that the Department cannot " 'expect a respondent to be a mind-reader' * * * BIA cannot be imposed for failure to provide information that was not requested, or clearly requested." Case Brief at 112 (Ta Chen's emphasis omitted). Ta Chen also points to, *inter alia*, *Usinor Sacilor* v. *United States*, 907 F. Supp. 426, 427 (CIT 1995), *Creswell Trading Co., Inc.* v. *United States*, 15 F. 3d 1054, 1062 (Fed. Cir. 1994), *Daewoo Electronic Co.* v. *United States*, 13 CIT 253 266, and *Queen's Flowers de Colombia, et al., v. United States*, Slip Op. 96–152 (CIT September 25, 1996) as supporting its contention that the Department may not penalize a respondent "for failure to provide information on relationships which the respondent had no fair notice that the Department wanted." Case Brief at 112 through 114.

The Preliminary Results are especially galling, Ta Chen charges, given what Ta Chen characterizes as the Department's oft-stated position that "control indicia were irrelevant under the pre-[URAA] statute." *Id.* at 114. In cases involving financial inter-dependencies, interlocking and coordinated directors and officers, and *de facto* joint operation through, e.g., a Japanese keiretsu, Ta Chen claims, the Department has "repeatedly and publicly" stated that control was irrelevant to its analysis. *Id.*

Furthermore, Ta Chen avers, Ta Chen submitted for the record the information relied upon by the Department as indicative of control prior to issuing any supplemental questionnaires in the 1992–1993 and 1993–1994 reviews. With this information in hand, Ta Chen alleges, the Department issued supplemental questionnaires in both of these reviews, all covering Ta Chen's sales to San Shing and Sun. At no time, Ta Chen submits, did the Department ask Ta Chen to report the subsequent resales of Ta Chen pipe made by San Shing and Sun Stainless. Ta Chen argues that in *Olympic Adhesives, Inc.* v. *United States*, 899 F. 2d 1565, 1573 (Fed. Cir. 1990) the Court of Appeals for the Federal Circuit (Federal Circuit) held that when a respondent answers fully the Department's questionnaire and receives a supplemental request "pursuing a different inquiry," the respondent has reasonable grounds for believing that the original queries were fully answered. Case Brief at 116. This holds *a fortiori*, Ta Chen continues, where the information concerning Ta Chen's relationships with San Shing and Sun was submitted prior to the Department's supplemental questionnaire. Why, Ta Chen asks, if the previous information "clearly indicated" that Ta Chen was related to San Shing and Sun, did the Department ask Ta Chen for wide-ranging information concerning Ta Chen's sales to San Shing and Sun, but never to report sales by San Shing and Sun? Ta Chen submits that it is not the Department's practice to determine that a response is inadequate *in toto* because a respondent reports the wrong body of U.S. sales, not to inform the respondent of the deficiency, to ask extensive questions about the putatively useless sales data, and only then to notify the respondent of what the Department now claims was evident all along: that the Department could not use Ta Chen's reported U.S. sales.

Ta Chen concludes that the questionnaires it received did not state that parties could be considered related through control; therefore, Ta Chen declares, it would be unlawful for the Department to proceed with BIA because Ta Chen failed to address these control issues in its responses.

If the Department continues to hold that Ta Chen's submitted U.S. sales data are unusable for these final results, Ta Chen nonetheless disputes the Preliminary Results' finding that Ta Chen failed to cooperate with the Department and, thus, deserves adverse (or "first tier") BIA. First, Ta Chen rejects the Department's conclusion that Ta Chen failed to disclose fully its relationships with San Shing and Sun. Rather, Ta Chen claims, it reported that Ta Chen was not related to San Shing and Sun as defined by the Tariff Act. Only later, Ta Chen avers, in the context of the 1994–1995 administrative review of WSSP did the Department phrase the question differently, asking Ta Chen to describe "all relationships" with San Shing and Sun. Ta Chen asserts that it answered fully this broader inquiry in its November 12, 1996 response in that proceeding. Ta Chen dismisses petitioners' claim that Ta Chen was forthcoming with this new information only because of a separate legal proceeding as both speculative and irrelevant to these proceedings. Rather, Ta Chen holds, once the Department framed the question as it did in the 1994–1995 review, Ta Chen responded candidly.

Ta Chen also claims that it explained accurately the provenance of the dba names used by San Shing and that, in any event, the Department failed to explain the significance of Ta Chen's account to the decision to apply uncooperative BIA. Furthermore, Ta Chen submits, in the 1993–1994 POR all sales of subject WSSP to "Sun Stainless, Inc." were to Frank McLane's Sun, not to San Shing and its dba Sun, thus making the derivation of these names especially irrelevant to the latter review period. Case Brief at 121, citing the Department's verification report for the 1992–1993 review. Ta Chen challenges the Preliminary Results' conclusion that Ta Chen misled the Department with respect to the origin of the dba names. According to Ta Chen, its November 12, 1996 submission never claimed that "all of the dba names would appear in the Ta Chen customer list submitted in the original [LTFV] investigation." *Id.* Rather, Ta Chen argues, only some of these names would be drawn from the customer list with the remainder selected because they were "American[-]sounding." *Id.* In any event, Ta Chen continues, the record does indicate the prior existence of six of the eight dba names Ta Chen claims were used by San Shing. Ta Chen claims that Charles Reid, with whom the Department spoke at the October 1994 verification, was also owner of Wholesale Alloys, one of the dba names. As to the use of the name Sun, Ta Chen asserts:

> [t]he record does not establish the prior existence of the name Sun in the market. But what the record does show is that San Shing essentially went by the name Sun. That is what it was known as in the market and the vast bulk of its sales were under the name Sun. For someone to have the mindset that this was a company known as Sun, but on occasion using other dba names, would be reasonable and reflect the reality of the situation.

Case Brief at 123.

As for one customer name, Anderson Alloys (Anderson), Ta Chen insists that the Department in the Preliminary Results has assumed incorrectly that the Anderson of South Carolina is the same as San Shing's dba Anderson Alloys. The record, Ta Chen notes, is replete with references to two Andersons. The Anderson allegedly owned and operated by Charles Reid had a South Carolina mailing address; any sales to this Anderson, Ta Chen avers, can be segregated in Ta Chen's U.S. sales listing through use of this address. Furthermore, Ta Chen declares, all sales to Anderson in the 1993–1994 POR were to the South Carolina firm, as San Shing USA was no longer using the dba designation Anderson Alloys. "By then, Sun was of course a sufficiently known company in the market that there was no reason to use dba designations for name recognition." Case Brief at 125.

Ta Chen takes issue with petitioners' attempt to portray the use of dba names as part of an effort to conceal sales to San Shing. Citing its October 20, 1994 submission in the 1992–1993 review, Ta Chen claims that it reported its U.S. sales to the Department using the names as appearing on the invoices TCI issued to the customer. For example, Ta Chen continues, a majority of its invoices to San Shing bore the name "Sun Stainless, Inc.", and were so reported. Other sales to San Shing under its other dba names were likewise reported using the applicable dba name. Furthermore, Ta Chen argues, its submitted sales data reflect a trend where sales to the various dbas were supplanted by sales exclusively to Sun Stainless, Inc., as "Sun became more well-known and the use of alternative dba names became unnecessary." Case Brief at 127.

As for the sales contracts between Ta Chen and San Shing, and between San Shing and Frank McLane, Ta Chen avers that these documents were not unusual, nor did they provide substantial grounds for adverse BIA. Contrary to the Preliminary Results, Ta Chen claims that the June 1992 contract, while allowing the possibility of future negotiations, did, in fact, set the prices for the sale of San Shing's inventory to Frank McLane. According to Ta Chen, sales contracts often omit price terms when, e.g., "the parties in their repeated dealings have customarily set the price at a later date," or in the face of risks of a "fluctuating market, particularly where delivery is postponed a considerable period of time (for example, 'delivery six months from today.')" Case Brief at 129, quoting, respectively, Nelson, Deborah L., and Jennifer L. Howicz, Williston on Sales, 5th Ed. at 377, and Hawkland, Will D., Uniform Commercial Code Series, § 2–305:01 at 301 (1997). Under the two-year term of the contract between Ta Chen and San Shing, Ta Chen submits, the open-ended nature of this contract was not remarkable. Ta Chen also claims that the first such purchase, which entailed all of TCI's then-existing U.S. inventory of WSSP, was concluded prior to the preliminary LTFV determination in this case, thereby averting suspension of liquidation. According to Ta Chen, the second incremental purchase six months later was timed to permit TCI to sell all of its existing inventory of fittings prior to suspension of liquidation in that investigation. See Preliminary Determination of Sales at Less Than Fair Value: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 57 FR 61047 (December 23, 1992). Ta Chen asserts that such agreements between Ta Chen and San Shing were not improvident and that, in any event, these contracts are irrelevant for purposes of the Tariff Act. The Department, Ta Chen alleges, failed to explain why an "unusual" contract would suffice to treat the respondent with adverse BIA. Case Brief at 132. When confronted with similar contracts in other cases, Ta Chen argues, the Department concluded that the contracts were "not necessary or relevant to calculation of the dumping margin," and have never been the basis for imposing uncooperative BIA. *Id.*

With respect to Mr. Mayes's involvement with Ta Chen, San Shing and Sun, Ta Chen maintains that this is also an inappropriate basis for resorting to adverse BIA. Mr. Mayes, Ta Chen declares, worked for Ta Chen, later worked for San Shing, and later still worked for Mr. McLane's Sun; however, "[Mr.] Mayes never worked for Ta Chen and Sun at the same time." Ta Chen submits that an employee leaving one company to work for another "happens all the time." Case Brief at 133. As to Ta Chen's previous statement that Mr. Mayes was never "employed by San Shing," Ta Chen claims that it did note that Mr. Mayes was an "independent contractor" for San Shing. An independent contractor is not, Ta Chen declares, an employee. Case Brief at 134. As to monies paid by Ta Chen to Mr. Mayes after his alleged departure from TCI, Ta Chen insists that there was a single payment in 1995 pursuant to the standing agreement between Ta Chen and Mr. Mayes. According to Ta Chen, in return for helping Ta Chen get its start in the U.S. pipe market by turning over his customer lists to Ta Chen, Mr. Mayes would become eligible for a one-time payment should Ta Chen reach a specific profit level. Ta Chen suggests that "in a cyclical steel industry, where, when profits are good, they are great," achieving this level of profit was "almost an inevitability." Case Brief at 135. Ta Chen charges once again that the Department has created a *per se* rule that payment of money by one party to another is tantamount to employment by the former of the latter. Rather, Ta Chen concludes, this one-time profit-sharing payment conferred no ownership rights and is, thus, irrelevant to the issue of related parties.

Ta Chen next assails the Department's characterization in the Preliminary Results that Ta Chen misled the Department with respect to the debt-financing arrangements between Ta Chen and San Shing and Ta Chen and Sun. According to Ta Chen, its descriptions of these arrangements were "consistent" and "clear" throughout these reviews. Ta Chen insists that as early as July 1994 the record indicated that San Shing's accounts receivable were "not securing San Shing's debt to TCI but, rather, Ta Chen's debt to a Los Angeles bank." Case Brief at 137. Furthermore, Ta Chen disagrees with the Preliminary Results' conclusion that it had misled the Department through its various characterizations of the debt arrangements. That Ta Chen pursued one argument to rebut the petitioners' submission as to the implication of the debt assignment, and later pursued a different argument to address petitioners' documentary evidence of those assignments is not, Ta Chen insists, a basis for concluding that Ta Chen misled the Department. Finally, Ta Chen avers, the relevance of Ta Chen's submissions addressing the security arrangements is unclear given the "undefined" nature of the Department's control test. As for the 1993–1994 review, Ta Chen claims the alternating arguments in the cited submissions were only presented in the 1992–1993 review; thus, they are irrelevant with respect to a BIA decision in the later review period.

Ta Chen claims further that the Department's verification reports in the first administrative review confirm that the company cooperated fully with the Department. Ta Chen states that it answered accurately every question asked, and supplied all requested documents. "There is," Ta Chen insists, "no record evidence otherwise." *Id.* at 139 and 140. Noting the free access granted to the Department's verifiers, Ta Chen concludes that "[n]ever once did the verifiers state that, per a control standard for relatedness, they were now going to address common indicia of control, or ask questions thereon. There are no statements in any of the verification reports otherwise." Case Brief at 140. Ta Chen dismisses the Preliminary Results' claim that Ta Chen withheld relevant information from the verifiers "[d]espite repeated probing by [the] verifiers," claiming that the Preliminary Results failed to explain what this "repeated probing" involved. *Id.*, quoting the Department's Preliminary Results Analysis Memorandum at 9. Ta Chen claims that the concern expressed by the Department during verification was whether one party owned the other, not whether one party controlled another. "Nothing was said or asked by the verifiers to suggest otherwise." *Id.* The Department cannot, Ta Chen insists,

resort to BIA where it "does not have the information it wants because it did not ask the right questions." *Id.* at 141. Furthermore, even if an alleged failure to be forthcoming in the October 1994 verification could be cited as grounds for adverse BIA in the 1992–1993 administrative review, Ta Chen continues, such is not the case for the 1993–1994 period of review. Conceding that it has, in fact, entered the relevant portions of the 1994 verification reports into the records of the 1993–1994 WSSP review and the 1992–1994 review of butt-weld pipe fittings, Ta Chen nevertheless insists that it "did not use the verification in the first pipe review to conceal its relationship with [San Shing and] Sun in these other reviews." Case Brief at 142.

Comparing its treatment at the hands of the Department in the instant reviews to that of respondents in other proceedings, Ta Chen suggests that the Department has elsewhere allowed far more egregious conduct to pass without resort to first-tier BIA. For example, Ta Chen cites a review of Antifriction Bearings (except Tapered Roller Bearings) From France, *et al.*, 57 FR 28360 (June 24, 1992), where the Department applied uncooperative BIA only to those companies that failed to respond to the questionnaire altogether. There, Ta Chen submits, the Department applied second-tier BIA to other firms despite "extensive misrepresentations and omission in [the firms'] questionnaire responses." *Id.* Likewise, Ta Chen cites *Emerson Power Transmission Corp.* v. *United States*, 903 F.Supp. 48 (CIT 1995) (*Emerson*), and *NSK, Ltd.* v. *United States*, 910 F.Supp. 663 (CIT 1995) (NSK) for the proposition that second-tier BIA is "proper and consistent with" Departmental practice where a respondent has tried but failed to cooperate. *Id.* at 144, quoting *NSK, Ltd.* v. *United States*. In addition, Ta Chen avers, a Binational Panel Review convened pursuant to Article 1904 of the North American Free Trade Act concluded that the Department must impose second-tier BIA in light of the respondents' "repeated efforts to provide answers to the Department's numerous questionnaires." *Id.*

Ta Chen notes that the Department applied second-tier BIA in Certain Small Business Telephones From Taiwan, 59 FR 66912 (December 28, 1994), and Certain Fresh Cut Flowers From Colombia, 59 FR 15159 (March 31, 1994), even though respondents in these proceedings improperly reported U.S. sales to related parties, improperly classified ESP sales as PP sales, and misreported data which were crucial to the antidumping calculations. In *Sugiyama Chain Co., Ltd.* v. *United States*, 852 F. Supp. 1003 (CIT 1994), a case spanning seven review periods, Ta Chen points out that the Department relied upon second-tier cooperative BIA despite Sugiyama's failure to report its sixty percent equity relationship with its "dominant" home market customer. In addition, Ta Chen claims, the Department found that Sugiyama failed to provide its financial statements, had significant unrecorded transactions, and could not reconcile its U.S. and home market sales listings. Yet, Ta Chen asserts, the Department applied cooperative BIA in all but one of the seven reviews at bar. Ta Chen argues that because it disclosed the information upon which the Department based its related-party determination (as distinct from the *Sugiyama* case, where the Department discovered this information on its own), Ta Chen should not be a candidate for first-tier uncooperative BIA.

As for the choice of a BIA margin, Ta Chen takes issue with the Department's use of the highest margin from the petition as BIA in the Preliminary Results. In Certain Welded Carbon Steel Pipes and Tubes From Thailand, 62 FR 17590 (April 10, 1997), Ta Chen maintains, the Department used an average of the petition margins as BIA even though (i) the Department discovered purchases from and sales to affiliated parties and (ii) the parties' affiliation was evident on the basis of common stock ownership and, thus, the respondent should have known to report the affiliated-party transactions. Similarly, according to Ta Chen, in Brass Sheet and Strip From Sweden, 57 FR 29278 (July 1, 1992), the Department rejected a respondent's questionnaire response *in toto*, applying first-tier BIA; yet, Ta Chen notes, despite what it characterizes as the more egregious failings of the company's questionnaire response, the Department assigned as adverse BIA the respondent's own margin from the LTFV investigation. Selection of a BIA margin, Ta Chen asserts, should be based upon an objective reading of the respondent's cooperation, rather than any subjective and speculative standard of intent. *Id.* at 148 and 151.

Ta Chen urges the Department to use as BIA Ta Chen's cash deposit rate from the LTFV investigation, claiming this would be sufficient to "motivate cooperation" on the part of Ta Chen. *Id.* at 153. Ta Chen reasons that it requested the three pending administrative reviews in order to reduce its antidumping liabilities; if the Department reinstated the prior cash deposit rate of 3.27 percent, "Ta Chen's purpose in participating in these reviews will have been completely undermined." Case Brief at 153. Ta Chen draws a distinction between the pending reviews of WSSP and other cases wherein a respondent is required to participate in an administrative review sought by a petitioner; in the latter case, Ta Chen argues, the threat of a higher margin suggested by petitioner serves to induce respondents' cooperation. This is especially so, Ta Chen argues, where the possible revocation of the antidumping duty order with respect to the respondent hangs in the balance. Ta Chen suggests that it requested the first three reviews of WSSP with the expectation that it would receive zero or *de minimis* margins in all three and, thereby, be eligible for revocation. Failure to cooperate in the instant reviews, Ta Chen concludes, would defeat Ta Chen's purpose in requesting these reviews in the first place.

Ta Chen distinguishes these reviews from the issue before the Court in *Industria de Fundicao Tupy and American Iron & Alloys Corp.* v. *United States (Industria de Fundicao)*, 936 F. Supp. 1009, 1019 (CIT 1989). In contrast to these reviews of WSSP, Ta Chen submits, the review at issue in *Tupy* was requested by the petitioners. In light of Tupy's failure to cooperate, Ta Chen notes, petitioners in that case presented evidence that Tupy's existing dumping margin would be insufficient to induce cooperation. There, Ta Chen concludes, the Department also used an average of the margins alleged in the antidumping petition in setting Tupy's BIA margin.

Ta Chen also faults the 31.90 percent BIA margin presented in the Preliminary Results as unlawfully punitive, contending that it is not probative of current conditions. Consistent with the holdings of the Federal Circuit in *D&L Supply Co, Inc.* v. *United States, (D&L Supply)* 1997 WL 230117 at 2 (Fed. Cir. May 8, 1997), Ta Chen asserts that there is an "interest in selecting a rate that has some relationship to commercial practices in the particular industry." Case Brief at 155, quoting *D&L Supply*. Rather, Ta Chen argues, the Department has already verified that Ta Chen's margins should be 3.27 percent for the WSSP case and 0.67 percent for the pipe fittings case. These past margins, Ta Chen submits, are "substantial evidence" as to Ta Chen's expected future dumping of subject merchandise. *Id.* at 156. Ta Chen urges the Department to disregard the margins suggested in the petition in favor of the verified dumping margins from the appropriate LTFV determination.

Ta Chen also suggests that the failure of petitioners in this case to request a review of Ta Chen for the first three PORs is indicative of petitioners' belief that Ta Chen is not dumping WSSP into the U.S. market. In administrative reviews requested solely by a respondent who then fails to cooperate, Ta Chen argues, the Department's practice is to impose second-tier BIA. The Department's treatment of Ta Chen in the instant reviews, Ta Chen asserts, constitutes another *per se* rule (i.e., that it is irrelevant whether respondents or petitioners requested the review when selecting BIA), which is contrary to the Department's practice of deciding BIA issues on a case-by-case basis.

In addition, Ta Chen notes what it sees as significant changes in the U.S. market since publication of the antidumping duty order. Ta Chen claims that it is no longer forced to compete against other Taiwanese producers of WSSP who, according to Ta Chen, largely withdrew from the U.S. market after the imposition of antidumping duties. In support of this contention, Ta Chen quotes from a 1996 determination by the Canadian International Trade Tribunal which concludes that "Taiwanese producers other than Ta Chen have been excluded from the U.S. market." Ta Chen's Case Brief at 166 and 167. Ta Chen also insists that the health of the U.S. industry has improved markedly since the original investigation in this case. *Id.* at 162 and 163, citing Welded Stainless Steel Pipe From Malaysia, ITC Pub. No. 2744 (March 1994).

According to Ta Chen, petitioners' inaction is especially relevant in light of statements made by representatives of the U.S. industry in other antidumping proceedings. For instance, Ta Chen claims that the U.S. industry testified before the Commission in the investigation of welded stainless steel pipe from Malaysia that the imposition of antidumping duties on WSSP from Taiwan had effectively eliminated dumping by Taiwanese producers. See ITC Pub. No. 2744 at I–10. Ta Chen cites a telephone conversation purportedly held between the president of a U.S. pipe producer and Robert Shieh wherein this individual stated that he did not think a review of Ta Chen was necessary. Case Brief at 158. In a similar vein, Ta Chen cites the testimony of Mr. Avento, president of the U.S. pipe producer Bristol Metals, insisting that "Taiwan imports have been checked by the antidumping laws." Ta Chen's Case Brief at 162, quoting Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, ITC Pub. No. 2900 (June 1995). Ta Chen argues that these statements "support a [zero] percent dumping finding for Ta Chen." *Id.* at 163. Furthermore, Ta Chen suggests that these statements, coming after the original petition in this case, are more indicative of present market conditions. Ta Chen also cites to statements submitted by Ta Chen into the record of these reviews from the pipe company president and another purchaser of Ta Chen's WSSP and stainless steel butt-weld pipe fittings, both claiming that Ta Chen was not dumping at 31.90 percent margins through San Shing and Sun. Taken together, Ta Chen submits that petitioners' failure to request a review, and the subsequent statements as to the state of the U.S. market for WSSP after imposition of antidumping duties, indicate that petitioners have "repudiated [the 31.90 percent margin] as inapplicable to more recent time periods, including the period[s] of these reviews." *Id.* at 165. Furthermore, Ta Chen argues, the 31.90 percent rate applied to producers other than Ta Chen and is, thus, "irrelevant and unlawful."

Petitioners reject Ta Chen's description of events in these reviews, charging that "Ta Chen is a scofflaw and has lied to the Department." Rebuttal Brief at 31. According to petitioners, Ta Chen's "convoluted and excessive contentions and claims" do not alter the simple issue in these reviews. First, petitioners contend, Ta Chen did, in fact, know from the outset that the Department was seeking a full reporting of Ta Chen's sales in the United States to unrelated parties. Petitioners insist that Ta Chen was "fairly, timely, and pointedly" asked by the Department whether or not it was related through equity ownership or control or otherwise to any of its U.S. customers. Petitioners also argue that the questionnaires were clear in requiring Ta Chen to report only sales in the United States to unrelated purchasers. Rebuttal Brief at 31 and 32.

Second, petitioners continue, Ta Chen knew precisely what was being asked of it by the Department and acted deliberately to conceal from the Department the true nature of its related-party transactions through San Shing and Sun Stainless. Petitioners point to what they term the "glaring omissions" of Ta Chen in these reviews, such as its failure to even mention the existence of San Shing until petitioners identified it in the record, and its inability to document Mr. McLane's alleged purchase of San Shing's assets in the fall of 1993. Such omissions, petitioners argue, cannot be reconciled with Ta Chen's portrayal of itself as a "confused, cooperative respondent that has been misled and treated unfairly by the Department." *Id.* at 33.

Third, petitioners suggest that Ta Chen deliberately decided to misreport the proper body of its U.S. sales by claiming San Shing's various dbas as unrelated customers. Ta Chen has persisted with this sham, petitioners charge, throughout the Department's verifications in October 1994 (in the 1992–1993 administrative review), June 1997 (in the 1994–1995 review), and to the present day. *Id.* at 33.

Finally, petitioners characterize Ta Chen as "an intransigently uncooperative respondent," that has "in the most egregious manner conceivable" attempted to compromise the integrity of the Department's administration of the antidumping law. According to petitioners, Ta Chen has done so by simultaneously submitting reams of unusable data while "deliberately withholding critical information" necessary for the Department's analysis. *Id.* at 34 and 35. Citing the chronology of events in these reviews, petitioners accuse Ta Chen of working to deceive the Department, withholding critical evidence and "attempting to explain away" unfavorable evidence it could not suppress. These explanations, petitioners maintain, "are not substantiated by the record and are so divorced from commercial reality as to be patently ridiculous." *Id.* Accusing Ta Chen of "a manipulative disdain for and an offensive disregard of the antidumping law," petitioners urge the Department to assign total adverse BIA to Ta Chen. *Id.*

Petitioners dismiss Ta Chen's protestations that it has been a cooperative respondent in these reviews, terming Ta Chen's reported sales data "a deliberate hoax." Rebuttal Brief at 2. Resort to uncooperative BIA, petitioners insist, is "not only justified, but essential to the integrity of the administrative process." *Id.* Petitioners suggest that Ta Chen's belated admissions contained in Ta Chen's November 12, 1996 submission in the third administrative review owed more to a grand jury investigation of Ta Chen, "and not to the sudden realization by Ta Chen that this material was considered to be relevant * * * Ta Chen chose rather to deceive the Department insofar as possible." *Id.* at 3.

Petitioners point to the following as examples of Ta Chen's fraudulent deception in these reviews:

- Despite making the overwhelming majority of it sales in the first review to San Shing, Ta Chen never acknowledged the existence of San Shing in its questionnaire

responses or sales listings until forced to by petitioners' July 18, 1994 submission. Nor, petitioners claim, has Ta Chen explained convincingly why it failed to volunteer this information:

- With respect to the use of dba names, Ta Chen's description has been inconsistent and, in any event, unbelievable. That Ta Chen would turn its U.S. sales operations over to San Shing, which had no prior experience in the stainless steel industry, and that Ta Chen's previous customers would lend their names to San Shing (thus undercutting their own livelihoods) is, petitioners aver, unsubstantiated;
- The August 3, 1994 dissolution of San Shing, falling a mere sixteen days after petitioners first called the Department's attention to San Shing's role in the first administrative review, further reinforces the conclusion, petitioners maintain, that Ta Chen "fraudulently" failed to cooperate in these reviews. Contrary to Ta Chen's proffered explanations, petitioners insist, "San Shing's involvement having been discovered, Ta Chen acted promptly in early August 1994 to remove San Shing from the Department's scrutiny as much as possible";
- Further unsubstantiated, according to petitioners, are Ta Chen's claims with respect to Frank McLane's alleged purchase of San Shing in October 1993. The reason this sale has not been substantiated, petitioners charge, is that it never took place. Petitioners contrast the "dearth of documentation" regarding Mr. McLane's purchase of San Shing with the July 1995 sale of Sun Stainless, Inc. to Picol Enterprises, which occurred after Ta Chen had known of petitioners' concerns regarding Sun for more than a year. Even if events unfolded as Ta Chen has claimed, petitioners continue, "[w]hile an officer and member of the board of directors of Ta Chen until some unspecified time in October 1993, Frank McLane could not have negotiated on his own behalf to purchase San Shing's assets [i.e., Ta Chen pipe and pipe fittings] * * * and still be in harmony with his fiduciary duties as an officer and member of the board of directors of Ta Chen."
- With respect to the D&B report on Sun, petitioners note that Ken Mayes provided Dun & Bradstreet with the information contained in the report on May 27, 1994, before petitioners voiced concern over the activities of San Shing and Sun; at that time, petitioners contend, Mr Mayes "had no reason to miscite Sun Stainless" date of establishment and roster of officers from its inception." Ta Chen's assertions that Mr. McLane had no involvement with Sun prior to November 1993 are, petitioners insist, unsubstantiated, and are based upon claims that are also unsubstantiated;
- Petitioners stand by their foreign market research, portions of which are in the record of these reviews, which indicated through interviews with Ta Chen officials that Sun Stainless was created by Ta Chen expressly to circumvent antidumping duty liability.

Rebuttal Brief at pages 3 through 9.

According to petitioners, the pattern of facts cited above proves that Ta Chen has "actively tried to deceive the Department," both through its failure to report accurately is U.S. sales and by concealing the true nature of its ties to San Shing and Sun. *Id.* at 9. Furthermore, petitioners charge, each time petitioners submitted information which they claim Ta Chen rightly should have volunteered, Ta Chen "has quickly reacted to cover its fraud and thereby has compounded its fraud." Rebuttal Brief at 9. "In essence," petitioners continue, "the same group of individuals, among them Frank McLane, Kou-An Lee [the president of San Shing Hardware Works, Ltd. in Taiwan], Chih Chou Chang, and the president of Ta Chen and Ta Chen International, Robert Shieh—have simply used different corporate names to conduct their common business, jettisoning one name and moving on to the next whenever their charade was in jeopardy of being discovered." *Id.* at 10. The clearest illustration of Ta Chen's fraud, petitioners maintain, is its failure to even name San Shing as a customer in the first review, and its inability to document the origins of "Sun Stainless, Inc." And once petitioners alerted the Department to these activities, petitioners contend, San Shing was dissolved as a corporate entity in an effort by Ta Chen to "perpetuate its misreporting scheme."

Likewise, petitioners dismiss Ta Chen's assertion that it voluntarily provided all the relevant facts concerning San Shing and Sun in its November 12, 1996 submission. Petitioners characterize Ta Chen's case brief as exhibiting "utter contempt for the statute and an extraordinary brazenness" in its efforts to demonstrate both that Ta Chen did not appreciate the relevance of this information and that the ties among Ta Chen, San Shing, and Sun are commonplace in the U.S. stainless steel pipe industry. Ta Chen's protestations, petitioners claim, "ring hollow," especially in light of petitioners' numerous submissions challenging Ta Chen's activities with respect to San Shing and Sun, and the Department's extraordinary verifications in October 1994. In fact, petitioners view Ta Chen's continued claims of cooperation as further evidence of bad faith on Ta Chen's part.

Petitioners turn next to Ta Chen's lengthy arguments that it did, in fact, cooperate fully with the Department in these reviews. Petitioners emphasize that there was never any doubt as to which body of U.S. sales data the Department required from Ta Chen. Given the unambiguous language of the statute, petitioners aver, "Ta Chen's efforts to find refuge" in defining related parties solely in terms of equity ownership "is so much chicanery." Rebuttal Brief at 32. Petitioners insist that anything less than first-tier BIA "would reward Ta Chen for flagrantly and fraudulently disregarding the statute and the Department's regulations and questionnaires." *Id.* at 33.

As for the choice of BIA margins, petitioners urge the Department to dismiss Ta Chen's argument that use of the 31.90 percent rate as BIA would be unlawful. According to petitioners, the Department's application of BIA is "discretionary and case-by-case in nature." *Id.* The Department's BIA methodology must be consistent with the statute, petitioners aver; beyond that, the Department "is not required to supply a 'reasoned analysis' justifying its adoption of best information otherwise available." *Id.*, citing *Allied Signal Aerospace Co.* v. *United States*, 28 F.3d 1188, 1191 (Fed. Cir. 1994), and *National Steel Corp.* v. *United States*, 870 F. Supp. 1130, 1135 (CIT 1994). Nor, petitioners argue, should the Department be swayed by Ta Chen's claims that its misreporting in these reviews has been less severe than that of respondents in other cases that received second-tier BIA. According to petitioners, Ta Chen's behavior in these reviews "strikes at the essence of the Department's authority," making reliance on the 31.90 percent rate "reasonable." Rebuttal Brief at 34, n.11. Petitioners also reject Ta Chen's claims that the 31.90 percent rate has been verified as wrong, noting that this rate "has stood for nearly five years as the rate given as the best information available to two other similarly uncooperative Taiwanese respondents." *Id.* Petitioners insist that use of total BIA is appropriate where, as here, a respondent's submitted information is so flawed that the "response as a whole is rendered unusable." *Id.* at 34, citing *Rhone Poulenc, Inc.* v. *United States*, 710 F. Supp. 341, 346 (CIT 1989), aff'd, 899 F.2d 1185 (1990). Ta Chen's submitted data are "so badly skewed," petitioners insist, as to render its entire response "unreliable and unusable." *Id.*

Department's Position

As is clear from our responses to Comments One and Two, Ta Chen submitted the improper body of U.S. sales to the Department. The U.S. sales data submitted by Ta Chen in the 1992–1993 and 1993–1994 administrative reviews cannot be relied upon in calculating Ta Chen's antidumping margins. These flaws affect such a vast majority of Ta Chen's U.S. sales in both reviews as to render its questionnaire responses unuseable *in toto*.

We also agree with petitioners that, through its persistent refusal to disclose fully its relationships with San Shing and Sun, despite our repeated inquiries into these relationships, Ta Chen impeded the conduct of these administrative reviews and did not act to the best of its ability by providing complete, accurate and verifiable responses to the Department's questionnaires.

As a factual matter, we reject Ta Chen's claims that the Department never clearly requested information from Ta Chen concerning its sales to unrelated customers in the United States, or that the Department was in some way remiss in failing to seek data on San Shing's or Sun's downstream sales. In fact, the only reason we did not insist immediately that Ta Chen report San Shing's and Sun's sales as its first sales to unrelated customers in the United States is because the full extent of these relationships was not known until well after we had received and verified Ta Chen's original and supplemental responses in the first review. In our original antidumping questionnaires, issued March 16, 1994 in the 1992–1993 review, and March 2, 1995 in the 1993–1994 review, we asked Ta Chen to report its first U.S. sales to unrelated customers, and provided the statutory definition of related parties, including the references to parties being related "through stock ownership or control or otherwise," at Appendix II. Ta Chen instead reported sales to numerous customers, representing each of these as Ta Chen's separate and unrelated customers. Despite the fact that well over eighty percent of Ta Chen's U.S. sales in the first review were to San Shing, Ta Chen never acknowledged this company's existence in its initial questionnaire response. When petitioners first obtained business and real estate records indicating that Ta Chen might be related to these parties, Ta Chen admitted the existence of San Shing, and presented the wholly unconvincing story of San Shing's entrance into the United States market (see below for more on this point).

The Department issued its supplemental questionnaire in the 1992–1993 review on July 19, 1994, or one day after petitioners' first allegations concerning San Shing and Sun. On August 12, 1994, Ta Chen filed its 274-page supplemental questionnaire response. While this response included a revised U.S. sales listing and voluminous narrative and statistical information, again Ta Chen made no mention of San Shing.

As petitioners adduced additional evidence pointing to Ta Chen's failure to disclose relevant information, however, Ta Chen proffered arguments why the Department should not inquire further into these relationships. Due to petitioners' related-party allegations, however, the Department sent a team of verifiers to Tainan and to Long Beach in October 1994 to verify Ta Chen's questionnaire responses in the 1992–1993 review. Ta Chen argues now that the results of these verifications, as outlined in the Department's reports for the record, prove conclusively that Ta Chen cooperated fully in these reviews. To the contrary, the results of these verifications do not support Ta Chen's claims that it cooperated with the Department. Despite an extensive verification of related-party issues, Ta Chen withheld all of the information concerning its extensive ties to San Shing and Sun. We were able to verify only those aspects of the control indicia for which petitioners had already produced documentary evidence for the record. Ta Chen provided information concerning (i) the dates Mr. McLane allegedly sold his stock in Ta Chen, and (ii) Mr. Shieh's ownership of the real property allegedly rented first to San Shing and then to Sun, including the arm's-length nature of the monthly rents charged by Mr. Shieh. Despite having free access to any employee, and despite reviewing TCI's correspondence files with relevant customers, including San Shing and Sun, and Ta Chen's correspondence files with TCI, we did not find a single memorandum, letter, facsimile message, phone message, or any other communication concerning the check-signing ability, the computer access, the debt-financing arrangements, the shared employees, etc. And, Ta Chen's protestations notwithstanding, the verifiers did indeed ask questions about, *inter alia*, the facts of, and reasons for, Mr. McLane's establishment of the second "Sun Stainless, Inc.," Mr. Shieh's rental of property to San Shing and Sun, and other questions about their dealings. The Department also polled other offices within the International Trade Administration for information on Ta Chen, and interviewed third parties, such as the president of San Shing Hardware Works, Ltd. in Tainan and several of Ta Chen's putative U.S. agents (including Mr. Reid) in Long Beach.[11] See Memoranda, Holly A. Kuga to Robert Chu, Ian Davis, Dan Duvall, and to Charles Bell, dated October 5, 1994. Clearly, all of these efforts were to determine if the transactions between these parties were at arm's-length. And all were equally unavailing.

Therefore, contrary to the claims in Ta Chen's Case Brief, after two sales and two cost questionnaire responses, and full home market and U.S. sales and cost-of-production verifications, Ta Chen disclosed nothing about the nature of its ties to San Shing and Sun. Finally, in November and December 1996, Ta Chen made further partial disclosures of the facts surrounding its relationships with San Shing and Sun. The incomplete nature of these disclosures was made clear when Ta Chen, in its September 3, 1997 Case Brief, disclosed additional salient information for the first time: Ta Chen identified two additional dba names used by San Shing during this period. Ta Chen's partial and belated disclosure of relevant factual information casts further doubt on the reliability of its reported sales data as a whole.

Had Ta Chen had any concerns or questions as to the statutory definition of related parties, it could have contacted the Department's officials, as instructed in the questionnaires. Further, petitioners' July 1994, October 1994, and July 1995 allegations concerning San Shing and Sun, and the Department's attendant focus upon this issue, put Ta Chen on notice that its relationships with San Shing and Sun were a major issue in these reviews. Instead, Ta Chen released information piecemeal and incompletely.

Ta Chen's explanations for its behavior during these reviews are in themselves problematic. As a preliminary matter, they are not credible from a business standpoint when one looks beyond the text of the legal arguments. Ta Chen has claimed that in 1992 it elected to "exit the "ESP business,"' essentially because reporting ESP sales in the wake of the antidumping duty order would be too burdensome. See Ta Chen's July 28, 1994 submission at 8 and 9. Ta Chen continues:

> [t]he market void created by Ta Chen's withdrawal from the "ESP business"—i.e., TCI sales from U.S. inventory—created an opportunity for others. San Shing, a company unrelated to Ta Chen, and with substantial resources, including lines of credit, decided to fill this void. That is, San Shing decided to buy pipe from Ta Chen for inventory in the United States and subsequent resale.

But U.S. pipe customers did not know San Shing. U.S. pipe customers did know TCI's prior customers who had resold Ta Chen pipe, including customers who were Rep's, consignment agents and distributors for Ta Chen. Hence, San Shing, in agreement with these prior TCI customers, used their names on a "dba basis" to make those unfamiliar

[11] It should be noted that none of these individuals provided any information about Ta Chen's and TCI's ties to San Shing and Sun.

with the San Shing name feel comfortable by using a name they knew.
Ta Chen's July 18, 1994 submission at 10 (emphasis added; Ta Chen's bracketing omitted).

Ta Chen, therefore, elected to rely upon San Shing, a company with no prior experience in the stainless steel or tubular products industries, to replace TCI as its sole distributor of stainless steel pipe and pipe fittings in the United States. Having made this decision, San Shing then purportedly on its own struck deals with known pipe dealers in the United States who had been prior TCI customers, whereby San Shing would use these dealers' names as dbas. The customers would then turn over their customer lists to San Shing and stand aside, allowing San Shing effectively to replace them in the distribution chain. However, having gone to such lengths to secure the names of known players in the U.S. market, San Shing then funneled the majority of its sales through the one previously unknown dba, "Sun Stainless, Inc."

As petitioners pointed out more than four years ago, "this arrangement makes neither commercial nor logical sense." Petitioners" October 12, 1994 submission at 7. According to Ta Chen's narrative account, San Shing, operating under its various dba names, e.g., Sun and Anderson Alloys, sold Ta Chen pipe to the same customers who formerly purchased pipe from TCI's customers, e.g., Sun and Anderson Alloys. The stated reason for this arrangement is that it would make those downstream purchasers "unfamiliar with the San Shing name feel comfortable by using a name they knew." Ta Chen's July 18, 1994 submission at 10. But clearly Sun's and Anderson's former customers knew with whom they were dealing. If San Shing replaced these dealers, their customers would not "feel more comfortable" because they were buying pipe from "San Shing, dba Sun Stainless," or "San Shing, dba Anderson Alloys." On a more elementary level, this narrative implies that established pipe distributors in the United States, who earned their income by purchasing pipe from TCI and reselling it after a markup to various end users, simply stepped aside and allowed San Shing to use their businesses' names to sell to their former customers. Such a step is inconsistent with commercial reality, and yet Ta Chen claims to have found not one, but eight pipe distributors amenable to this arrangement.

Ta Chen also misstated the origins of the dba names themselves. In its July 18, 1994 submission Ta Chen explained that "San Shing, in agreement with these prior TCI customers, used their names on a "dba basis" to make those unfamiliar with the San Shing name feel comfortable by using a name they knew." *Id.* To verify this claim the Department introduced into the record of these reviews Ta Chen's U.S. customer list from the LTFV investigation. See Memorandum for the File, February 24, 1997. The most significant dba name, "Sun Stainless, Inc.," is not found on this list. In fact, only three of the admitted eight dbas were prior Ta Chen customers. In explaining the need for San Shing to use dbas and how San Shing came to select the names it used, Ta Chen misstated the origins of these names, and never explained for the record where the dba names, most significantly "Sun Stainless, Inc.," originated. Ta Chen explains its earlier misstatements by arguing in its case brief that its November 12, 1996 submission did not claim that "all" the dba names were those of prior TCI customers. While this is true, Ta Chen did so claim when first confronted with petitioners' knowledge of San Shing's and Sun's existence. Given the absence of evidence on the record that any sale of assets to Frank McLane ever took place (aside from Ta Chen's undocumented claims), given the lack of clarity surrounding Sun's 1992 founding, and given Ta Chen's failure to document for the record precisely how and why San Shing came to use dba names in the first place, Ta Chen's version of events is neither credible nor supported by evidence.

Other factual aspects of the record are also troubling. For example, we continue to believe that the sales contract involving Chih Chou Chang and Robert Shieh was, in fact, highly unusual. Ta Chen argues that sales contracts with no prices are commonplace when such transactions are customary between the parties, or where the date of delivery is in doubt. That was certainly not the case here. These transactions were not a "customary practice" between Ta Chen and San Shing, they were one-time deals involving the transfer of Ta Chen's entire existing inventory of stainless steel pipe and stainless steel pipe fittings to San Shing. Delayed delivery was also not at issue, as delivery was immediate, with Robert Shieh arranging to move the merchandise from one of his properties (TCI's warehouse) to another of his properties nearby, rented to San Shing. The relevance of the contract in the present discussion is that its commercially-unrealistic terms further indicate that San Shing was created by, and related to, Ta Chen. We affirm our preliminary conclusion that "[t]he terms of this contract do not comport with Ta Chen's repeated assertions that San Shing was new to the pipe trade, and so lacked familiarity with the U.S. pipe market that it was compelled to use "dba" names which 'sounded more American.' " Preliminary Analysis Memorandum, March 4, 1997, at 7 and 8 (original bracketing omitted).

We also disagree with Ta Chen's description of the activities of W. Kendall Mayes. The record clearly indicates that Mr. Mayes, working with TCI since its inception, took over the day-to-day management of first San Shing and then Sun Stainless at the insistence of Ta Chen, and not as a free agent who coincidentally migrated between these three firms as a result of the normal peregrinations within a tightly restricted industry environment. As to the "independent contractor" relationship with Ta Chen, the record evidence indicates that Mr. Mayes worked exclusively on behalf of Ta Chen, used Ta Chen office space and equipment, was paid monthly by Ta Chen, was covered under Ta Chen's group health insurance policy (even after he putatively ended his employment with Ta Chen), and continued to enjoy substantial financial benefits from his relationships with Ta Chen and Mr. Shieh long after this relationship allegedly ended. Furthermore, in return for this "independent contractor" relationship, Mr. Mayes had to provide to Ta Chen his own list of customers, thus effectively selling his business to Ta Chen. We also disagree with Ta Chen's conclusion that the one-time payment to Mr. Mayes conferred no control over pricing. Rather, given Mr. Mayes's successive roles as sales manager for TCI, San Shing, and Sun Stainless, together with Ta Chen's admitted role in negotiating the final prices between San Shing and Sun and their unrelated customers, the record indicates that Mr. Mayes enjoyed a knowledge and control of prices unknown between unrelated parties. Finally, as petitioners note, with a sizeable payment to Mr. Mayes from Ta Chen dependent upon Ta Chen's profitability, Mr. Mayes's own self-interest lay not in negotiating truly arm's-length prices between San Shing and Sun and Ta Chen, but in maximizing Ta Chen's profits in these transactions. This relationship further buttresses the Department's Preliminary Results determination that these transactions were not, in fact, at arm's-length. Rather than enforcing a *"per se"* rule concerning the exchange of money between Ta Chen and Mr. Mayes, we have drawn the only reasonable conclusion possible in light of the record evidence.

As for sales made to Anderson Alloys, Ta Chen mistakenly argues that the Department can sort these sales by customer address to segregate sales made to the "real" Anderson Alloys in South Carolina from those made to the dba Anderson Alloys. However, we have no idea which sales are to which entity, as Ta Chen used the same address and customer code for both Andersons. More to the point, the ability to segregate sales to Charles Reid's Anderson and sales to San Shing's dba Anderson would have no bearing on our decision to resort to total first-tier BIA. Rather, we cannot "use only portions of a response that were verifiable since this 'would allow respondents to selectively submit data that would be to their benefit in the analysis of their selling practices.' " *Chinsung Industries Co., Ltd. et al.* v. *United States,* 705 F. Supp 598, 601 (CIT 1989) (citations omitted). As the Court noted in *Persico Pizzamiglio, S.A.* v. *United States,* by allowing the Department "to reject a submission *in toto,* the court encourages full disclosure by the respondent, because only full disclosure will lead to a dumping margin lower than that established by employing BIA." *Persico Pizzamiglio, S.A.* v. *United States,* 18 CIT 299 (CIT 1994).

Finally, with respect to Ta Chen's reliance upon the statements of Messrs. Avento and Reid to support its arguments, we note Bristol Metal's and Mr. Avento's longstanding affiliation with Ta Chen. Bristol Metals was one of Mr. Shieh's original partners in founding Ta Chen, and Joseph Avento himself was at one time on Ta Chen's board of directors. See, e.g., Ta Chen's May 18, 1994 questionnaire response at Exhibit 1. Mr. Avento later joined the petitioners in initiating this antidumping case. He now appears before the Department as Ta Chen's witness and advocate. Neither in its case brief nor in its original filing of Mr. Avento's statement has Ta Chen elected to reveal the current relationships between Ta Chen, Bristol Metals, and Mr. Avento, such as whether Ta Chen and Bristol make purchases from each other, or whether either holds stock in the other. Given his ongoing ties to Mr. Shieh and Ta Chen, the unsubstantiated nature of his testimony, and Ta Chen's unwillingness to disclose for the record Mr. Avento's current dealings with Mr. Shieh and Ta Chen, we are unable to establish his credibility as a witness about the U.S. stainless steel pipe industry as a whole.

As for Charles Reid, Ta Chen acknowledges for the public record that Mr. Reid, using at least three trade names, was a customer of Ta Chen during the investigation and first period of administrative review. See Case Brief at 122.

We conclude, therefore, that the use of total, adverse BIA is appropriate in this case. The statute's provision for use of BIA is, as the Federal Circuit has held, "an investigative tool, which the [Department] may wield as an informal club over recalcitrant respondents whose failure to cooperate may work against their best interest." *Atlantic Sugar Ltd.* v. *United States,* 744 F.2d 1556, 1560 (Fed. Cir. 1984). In the absence of subpoena power, the Department "cannot be left merely to the largesse of the parties at their discretion to supply the [Department] with information. . . . Otherwise, alleged unfair traders would be able to control the amount of antidumping duties by selectively providing the ITA with information." *Olympic Adhesives, Inc.* v. *United States,* 899 F.2d 1565, 1571 (Fed. Cir. 1990). The decision to resort to BIA in an administrative review is made on a case-by-case basis after evaluating all evidence in the administrative record. With respect to the selection of BIA, the Department is granted considerable deference in deciding what constitutes the "best" information available. *See Allied-Signal Aerospace Corp.* v. *United States,* 966 F.2d 1185, 1191 (Fed. Cir. 1993). The courts have long held that "it is for Commerce, not respondent, to determine what is the best information" available. *Yamaha Motor Co.* v. *United States,* 910 F. Supp. 679, 688 (CIT 1995).

As discussed, we believe Ta Chen has impeded these administrative reviews through the submission of inaccurate and incomplete information, and through its lack of cooperation in bringing forth factual information known by Ta Chen to be of immediate relevance to these proceedings. We also agree with petitioners that Ta Chen's conduct in these reviews warrants use of first-tier BIA.

We also find that Ta Chen's citations to past Departmental determinations in support of using cooperative, second-tier BIA are not on point. In Fresh Cut Flowers From Colombia, for example, the respondent's related entities had either gone out of business entirely, or were in the process of liquidation, and thus the firms were unable to provide sales data to the Department. Similarly, in Certain Small Business Telephones From Taiwan, the affiliated U.S. customer of respondent Bitronics was out of business. We concluded that "[s]ince Bitronics made substantial attempts to submit information to the Department," second-tier, or cooperative, BIA would be most appropriate. See Certain Small Business Telephones From Taiwan; Preliminary Results of Administrative Review, 59 FR 66912, 66913 (December 28, 1994). In the instant case, despite the 1995 sale of Sun to Picol Enterprises, Ta Chen has never indicated any such difficulty in accessing San Shing's and Sun's records, and has even submitted these companies' federal income tax returns in the record of this review.

Emerson and *NSK,* cited by Ta Chen as grounds for use of second-tier BIA, are likewise not on point. *Emerson* involved a review of antifriction bearings from Japan where the Department, in two significant departures from standard practice, determined it would (i) use a sampling of home market sales, and (ii) use annual average home market prices as the basis for FMV, both to reduce the complexity and reporting burden of the review. Respondent Nippon Pillow Block Sales made good faith efforts to respond to the Department's questionnaire, but misinterpreted the instructions concerning which home market sales it would be required to report for purposes of sampling.[12] In addition, the Department discovered other unreported sales at verification. The Department determined that, while Nippon had attempted to cooperate, it had failed to provide the home market sales data necessary to calculate annual weighted-average prices; therefore, Nippon's margin was based on second-tier BIA. In *NSK,* involving a review of tapered roller bearings (TRBs) from Japan, plaintiff NSK submitted complete, verifiable, and timely U.S. and home market sales responses. However, NSK balked when directed to submit cost of production data on TRB parts acquired from related suppliers, arguing that the Department had no legal authority to request these data absent "a specific and objective basis" for suspecting that NSK's prices for the parts had been less than the suppliers' cost of production. *NSK,* 910 F. Supp. at 666. The Court held that we properly rejected NSK's arguments, and that we correctly resorted to partial second-tier

[12] Thus, while it is true that Nippon "failed to report approximately 80% of its home market sales," it is only fair to note that Nippon was required to report only a portion of its home market sales for sampling purposes to begin with. *Emerson,* 903 F. Supp. at 52.

BIA for the missing cost data.[13] In each of the cited cases, while the responses were found to be deficient, the respondents attempted to cooperate with the Department's review. We contrast the behavior of these respondents with that of Ta Chen, and find that Ta Chen not only failed to submit the proper body of U.S. sales, but impeded the reviews. We conclude, therefore, that it would be inappropriate to base Ta Chen's margins for these reviews on second-tier, or cooperative, BIA.

Similarly, we cannot accede to Ta Chen's suggestion that we apply its margin from the LTFV investigation as first-tier BIA, as this would amount to rewarding Ta Chen for its failure to disclose essential facts to the Department and to report the proper body of its U.S. sales. Were we to consider Ta Chen's margin, which was calculated in a segment of these proceedings wherein Ta Chen was deemed cooperative and its responses fully verified, as first-tier BIA, we would effectively cede control of these reviews to Ta Chen. The respondent would be free to submit selective, misleading, or inaccurate information, secure in its knowledge that the worst fate it could expect would be to receive its prior cash deposit rate as BIA. *See Olympic Adhesives, Inc.* v. *United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990). We find the Court's holdings in *Industria de Fundicao* to be directly on point: "the Court will not allow respondent to cap its antidumping rate by refusing to provide updated information to [the Department]." *Industria de Fundicao*, 936 F. Supp 1009, 1011. Contrary to Ta Chen's suggested approach, our aim in selecting BIA for non-cooperating respondents is to choose a margin which is sufficiently adverse "to induce respondents to provide [the Department] with complete and accurate information in a timely fashion." *National Steel Corp.* v. *United States*, 913 F. Supp 593 (CIT 1996). Likewise, we find that the antidumping proceedings of other countries, such as Canada, are irrelevant to our selection of BIA in these reviews which are being conducted pursuant to U.S. antidumping law. Furthermore, aside from its irrelevance, information concerning antidumping proceedings before Canadian authorities is not in the administrative record of these reviews.

We also reject Ta Chen's assertion that the 31.90 percent BIA margin is inappropriate because it was drawn from an earlier segment of these proceedings. In *Mitsuboshi Belting Corp. Ltd.* v. *United States*, the Court, relying upon the findings in *Rhone Poulenc*, found that the Department's use of a margin drawn from a LTFV investigation was reasonable and, further, that "best information" doesn't necessarily mean "most recent information." The Court also rejected plaintiff's claim that the Department's choice of BIA was unreasonably harsh:

> to be properly characterized as "punitive," the agency would have had to reject low margin information in favor of high margin information that was demonstrably less probative of current conditions. Here, the agency only presumed that the highest prior margin was the best information of current margins. . . . We believe a permissible interpretation of the statute allows the agency to make such a presumption and that the presumption is not "punitive." Rather, it reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.

Mitsuboshi Belting Ltd. and MBL (USA) Corp. v. *United States.*, Court No. 93–09–00640, Slip Op. 97–28 (CIT March 12, 1997).

Likewise, in *Sugiyama Chain Co., Ltd. et al.*, v. *United States*, the plaintiff contested our selection of best information available as having no probative value concerning Sugiyama's current margins because the rate taken from the LTFV investigation had "only a tenuous link to Sugiyama Chain's margins in the instant review." The Court approved of our use of the highest prior margin as BIA, noting that the Department "can make a common sense inference—indeed, there is a rebuttable presumption—that the highest prior margin is the most probative evidence indicative of the current margin." *Sugiyama Chain Co., Ltd., et al.* v. *United States*, 880 F. Supp. 869, 873 (CIT 1995); *see also Rhone Poulenc, Inc.* v. *United States*, 710 F. Supp. 341, 346 (CIT 1989) ("There is no mention in the statute or regulations that the best information available is the most recent information available."), aff'd 899 F.2d 1185 (Fed. Cir. 1990). Furthermore, we reject Ta Chen's suggestion that the 31.90 percent margin has been "verified as wrong." Our use of a margin drawn from data supplied by the petitioners comports fully with section 776(b) of the Tariff Act. It is not necessary, as Ta Chen appears to argue, for the Department to conduct an economic analysis of the stainless steel pipe industry before using a margin based on petitioners' data to determine the validity of these data. *See Tai Ying Metal Industries Co.* v. *United States*, 712 F. Supp 973, 978 (CIT 1989) ("it is reasonable for Commerce to rely upon the published margin from the LTFV investigation as the best information available without reassessing the record therefrom"). Furthermore, Ta Chen fails to note a prior investigation involving Ta Chen where the Department acted precisely as we have acted here, i.e., using the highest margin from the petition as first-tier BIA. In Certain Forged Stainless Steel Flanges From Taiwan Ta Chen was deemed an uncooperative respondent because it "withdrew" from the investigation immediately prior to verification. As first-tier, uncooperative BIA the Department chose the highest margin alleged in the petition, 48 percent, applying this rate to Ta Chen and to two other uncooperative respondents. See Certain Forged Stainless Steel Flanges From Taiwan, 58 FR 68859 (December 29, 1993).

The 31.90 percent margin has stood unchallenged for over five years as the first-tier BIA margin and, in fact, still applies to two other Taiwan manufacturers of subject merchandise. See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes From Taiwan, 57 FR 53705, 53708 (November 12, 1992). We conclude that use of this margin from the LTFV investigation is entirely consistent with the statute, the Department's regulations, and our past precedent.

We also find inapposite Ta Chen's argument that, since petitioners did not request these reviews, petitioners are satisfied with Ta Chen's existing cash deposit rate. Whether or not petitioners requested these reviews is, at this point, irrelevant, and cannot be construed in any way as evidence of Ta Chen's dumping activities, or lack thereof, during the first and second periods of review. Ta Chen's reference to our determination concerning Yamaha in *Antifriction Bearings From France, et al.* (57 FR 28360) is also entirely inapposite. There, the Department was merely summarizing the extent of Yamaha's cooperation in the review, noting that "Yamaha requested the review, provided the Department with questionnaire responses, and submitted to verification of its response . . ." Ta Chen posits this one sentence as evidence of a *per se* rule that if a respondent requests a review, it is immune from first-tier BIA. Not only is this contention historically wrong, it ignores Ta Chen's failure to cooperate with the Department. As the Court noted in *Industria de Fundicao*, a respondent may not cap its antidumping margins by refusing to cooperate in an administrative review.

[13] The Court did remand *NSK*, ordering the Department to correct its application of second-tier BIA; the decision to use BIA was, however, upheld.

Final Results of Review

Based on our review of the arguments presented above, for these final results we have made no changes in the margins for Ta Chen. We have determined that Ta Chen's weighted-average margin for the period June 22, 1992 through November 30, 1993 is 31.90 percent. Likewise, Ta Chen's margin for the December 1, 1993 through November 30, 1994 period of review is 31.90 percent.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of WSSP from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of these administrative reviews, as provided in section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for Ta Chen will continue to be zero percent (see Welded Stainless Steel Pipe From Taiwan; Final Results of Administrative Review, 63 FR 38382 (July 16, 1998);

(2) For previously reviewed or investigated companies other than Ta Chen, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 19.84 percent. See Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipe From Taiwan, 57 FR 62300 (December 30, 1992).

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: June 11, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–15567 Filed 6–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061499C]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Scientific & Statistical Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, July 8,1999, from 10:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Sheraton International Hotel, BWI Airport, Baltimore, MD, telephone: 410–859–3300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purposes of this meeting are to review the summer flounder stock assessment and make recommendations on the status of the summer flounder resources, review the scup rebuilding schedule, and review the surfclam overfishing definition.

Although other issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, such issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 15, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15861 Filed 6–21–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061499A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: A Groundfish Stock Assessment Review (STAR) Panel will hold a work session which is open to the public.

DATES: The bocaccio rockfish and lingcod review panel will meet beginning at 10 a.m., July 12, 1999 and continue until 5 p.m. on July 16, 1999 or as necessary to complete business.

ADDRESSES: The bocaccio rockfish and lingcod review panel will be held in the Plum Room at the Division of Agriculture and Natural Resources Building, University of California, 1 Hopkins Road, Davis, CA 95616.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with Stock Assessment Teams to make necessary revisions, and produce STAR

Panel reports for use by the Council family and other interested persons.

Although other issues not contained in this agenda may come before this Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: June 15, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15862 Filed 6–21–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060299B]

Marine Mammals; File No. 633–1483–01

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Center for Coastal Studies (CCS), 59 Commercial Street, P.O. Box 1036, Provincetown, MA 02657, has been issued an amendment to scientific research Permit No. 633–1483.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (978/281–9250).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On April 8, 1999, notice was published in the **Federal Register** (64 FR 17147) that an amendment of Permit No. 633–1483, issued March 3, 1999 (64 FR 10276), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222–226).

The permit now authorizes research on humpback (*Megaptera novaeangliae*), fin (*Balaenoptera physalus*), sei (*Balaenoptera borealis*), minke (*Balaenoptera acutorostrata*) and blue (*Balaenoptera musculus*) whales, designated under Project II.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 14, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–15860 Filed 6–21–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 2, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–15992 Filed 6–18–99; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 9, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–15993 Filed 6–18–99; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 16, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–15994 Filed 6–18–99; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 23, 1999.

PLACE: 1155 21st St, N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–15995 Filed 6–18–99; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 30, 1999.

PLACE: 1155 21st St, N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–15996 Filed 6–18–99; 2:26 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Tuesday, June 29, 1999, 2 p.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 18, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–16024 Filed 6–18–99; 2:54 pm]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Availability of Funds To Support AmeriCorps Promise Fellowships in Selected States, Indian Tribes, and U.S. Territories

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (the Corporation) will use up to approximately $1.1 million to award grants to sponsor AmeriCorps Promise Fellowships in Alaska, Delaware, New Mexico, North Dakota, South Carolina, South Dakota, Virginia and Wyoming, and in the District of Columbia. Indian tribes and programs in U.S. territories are also eligible to apply. AmeriCorps Promise Fellows will spend up to one year serving with organizations that are committed to implementing programs in support of the five goals for children and youth set at the Presidents' Summit for America's Future.

These grants, in the aggregate, will support approximately 80 Fellows. Each Fellow will receive a living allowance of between $13,000 and $17,376 based on twelve months of service. Upon successfully completing a term of service, a Fellow will receive the $4,725 AmeriCorps education award. The Corporation will issue grants on a fixed amount per Fellow basis of $13,000 per Fellowship awarded. These amounts exclude the education award. The grants are fixed-amount awards that do not require Corporation monitoring of actual costs incurred.

DATES: All sponsor proposals must be submitted to the Corporation by 5 p.m., Eastern Daylight Time, August 12, 1999. The Corporation anticipates announcing sponsor selections under this announcement no later than September 23, 1999. The project period is negotiable, but generally proposals should indicate a proposed project start date between November 1 and December 31, 1999, and an end date no later than December 31, 2000.

ADDRESSES: Proposals to sponsor one or more Fellows must be submitted to the Corporation at the following address: Corporation for National Service, Attn: Tracy Stone, 1201 New York Avenue NW, Room 9623, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a sponsor application, contact Rosa Harrison at the Corporation for National Service, (202) 606–5000, ext. 433. T.D.D. (202) 565–2799. This notice may be requested in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service addresses the nation's educational, public safety, environmental and other human needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. For more information about the Corporation and the activities that it supports, go to http://www.nationalservice.org.

Pursuant to the National and Community Service Act of 1990, as amended (the Act), the Corporation may support "innovative and model programs" and may award national service fellowships. 42 U.S.C. 12653b. In addition, the Corporation may approve the provision of education awards to individuals who successfully complete a term of service in "national service positions as the Corporation determines to be appropriate". 42 U.S.C. 12573(7). The federal regulations governing the Corporation, published at 45 CFR 2520 *et seq.*, are available at public libraries or on the Internet at http://www.law.cornell.edu/cfr/.

At the Presidents' Summit for America's Future, held in April 1997 in Philadelphia, President Clinton, former Presidents Bush, Carter, and Ford, Mrs. Nancy Reagan, and General Colin Powell, with the endorsement of many governors, mayors, and leaders of the independent sector, declared: "We have a special obligation to America's children to see that all young Americans have:

1. Caring adults in their lives, as parents, mentors, tutors, coaches;
2. Safe places with structured activities in which to learn and grow;
3. A healthy start and healthy future;
4. An effective education that equips them with marketable skills; and
5. An opportunity to give back to their communities through their own service.

These five goals are now the five fundamental resources—or "promises"—sought by America's Promise—The Alliance for Youth, the national organization leading efforts to follow up on the goals of the Presidents' Summit. For more information about the five goals of the Presidents' Summit, go to http://www.americaspromise.org.

As a major partner in this effort, the Corporation devotes a substantial part of its activities to help meet these goals, including the work of AmeriCorps, Learn and Serve America, and the National Senior Service Corps. The AmeriCorps Promise Fellows program provides States and local communities with support to help carry out their plans to provide America's children with these five fundamental resources.

Through this notice, the Corporation invites grant proposals from eligible entities who wish to sponsor one or more AmeriCorps Promise Fellows.

Eligible Sponsors

The Corporation seeks to place Fellows in states, tribes and territories that are not represented by a governor-appointed state commission on national and community service (State Commission) or in which the State Commission has not previously been awarded AmeriCorps Promise Fellowships. The following entities are eligible to apply to become a sponsor:

1. State Commissions in Alaska, Delaware, New Mexico, South Carolina, Virginia and Wyoming;
2. State Education Agencies in the District of Columbia, North Dakota, and South Dakota;
3. State Education Agencies in Alaska, Delaware, New Mexico, South Carolina,

Virginia and Wyoming, if the State Commission is not applying for funding under this Notice. A letter signed by the State Commission Chair or Executive Director verifying that the Commission is not applying for funding under this Notice must accompany the State Education Agency's application to the Corporation; and

4. Local government agencies, institutions of higher education, or public or private nonprofit organizations in the District of Columbia, North Dakota, or South Dakota, or U.S. territories; and

5. Indian tribes (as defined in the National and Community Service Act at 42 U.S.C. 12511(11)).

The Corporation encourages State Commissions and State Education Agencies to collaborate in applying for funding under this Notice and to use their Unified State Plans as the basis for their application. Where both agencies are involved in proposing an AmeriCorps Promise Fellows program for their state, the application should be submitted to the Corporation by the State Commission.

Substance of the Fellowship Program

The AmeriCorps Promise Fellows program is a national service leadership initiative. Designed for those who have demonstrated skill and passion for service to their community, an AmeriCorps Promise Fellowship provides an opportunity to make a unique contribution to organizations helping to meet one or more of the five fundamental needs declared at the Presidents' Summit and being advanced by national, state, and local nonprofit organizations; and the national service network.

Although AmeriCorps Promise Fellows may be placed by a sponsor at a host organization that focuses its resources on only one of the goals of the Presidents' Summit, the host organization must be part of a larger effort (e.g., Community of Promise) that supports the delivery of all of the five fundamental resources to children and young people.

The most important considerations in establishing an AmeriCorps Promise Fellows program are that the prospective Fellows help meet the goals of the Presidents' Summit and that they have the ability to play a leadership role in producing a defined outcome. In this regard, Fellows' activities should principally be capacity-building in nature, seeking to help increase substantially a community's ability to deliver the five fundamental resources. For illustrative purposes, the following are examples of specific activities or roles Fellows may pursue:

- Coordinating a Community of Promise campaign providing a targeted number of young people with all or several of the five fundamental resources.
- Initiating a program to provide multiple resources to targeted young people, for example, adding a service component and access to dental care to an existing after-school tutoring program.
- Planning or promoting State Education Agency efforts to stimulate service-learning opportunities by K–12 students.
- Expanding Volunteer Center activities to promote the goals of the Presidents' Summit.
- Spearheading immunization efforts aimed at young children and their families.
- Establishing new Federal Work-Study service opportunities and recruiting and placing students in the new positions.
- Recruiting new Communities of Promise.

Although no particular academic credentials or work experience are required, Fellows will be viewed as leaders in the efforts to implement the goals of the Presidents' Summit, and as a group will have an identity tied to this overall effort. Therefore, confidence in the ability of applicants to produce outcomes in support of the goals of the Presidents' Summit, such as the implementation of projects like those described above, is the central criterion for selection. This is evidenced by: Strong academic credentials; demonstrated leadership skills; substantial and successful work experience in a field related to the organization's activities; and experience performing significant service-related activities, particularly various national service leaders' programs, including AmeriCorps leaders, AmeriCorps*VISTA leaders, AmeriCorps*National Civilian Community Corps leaders, and leadership activities in programs sponsored by Learn and Serve America and the National Senior Service Corps.

Fellowships may not be used simply to supplement the numbers of AmeriCorps Members at existing programs already carrying out activities consistent with the goals of the Presidents' Summit. Rather, the role of AmeriCorps Promise Fellows should be to provide higher-level support that will enable an organization to become more involved, or to substantially increase the amount or quality of activities supporting achievement of the Presidents' Summit's five goals.

An AmeriCorps Promise Fellow must: (1) Be at least 17 years of age; (2) be a U.S. citizen, national, or lawful permanent resident alien; and (3) have a high school diploma or GED. Individuals who have already served in two approved national service positions (a position for which an education award is provided) are, by statute, not eligible for a third education award.

Fellowships must be completed in no less than 10 months and no more than 12 months. Fellows must serve on a full-time basis. To qualify for an education award of $4,725, a Fellow must perform at least 1,700 hours of service and successfully complete the Fellowship.

Sponsors must provide Fellows a living allowance between $13,000 and $17,376 based on a twelve-month term of service. If the term of service is shorter than twelve months, the sponsor must pro-rate the amount of the living allowance.

Sponsors are not required to provide health insurance and/or child care to Fellows or their families. However, the sponsor is encouraged to offer such assistance and may use funds awarded under this Notice for this purpose.

Sponsor's Role

The Corporation anticipates supporting no more than five AmeriCorps Promise Fellowships under each grant. If the sponsor identifies additional non-Corporation resources to support more than five Fellows, including provision of the required living allowance, the sponsor may propose to increase the number of Fellows. In such instances, the Corporation may approve additional education awards subject to their availability, and the number of Fellowships per sponsor may exceed five.

Each sponsor determines the process for the recruitment and selection of AmeriCorps Promise Fellows in its respective area. State Commissions and State Education Agencies are encouraged to use their Unified State Plan as the basis for their plans. The sponsor must certify that the host organization in which the Fellow is being placed is conducting activities that contribute to one or more of the five goals of the Presidents' Summit, and that this is part of a larger effort to provide all five of the fundamental resources to children and youth.

The Corporation anticipates that host organizations generally will be local or state nonprofit organizations that are engaged in activities in support of the goals of the Presidents' Summit. Fellows may serve at a State Commission only under limited circumstances. In proposing such an arrangement, a State Commission must describe in its application how it will comply with (1) The prohibition on State Commissions operating any national service program receiving financial assistance from the Corporation and (2) the prohibition on a State Commission receiving Corporation assistance to carry out activities that are already supported by its administrative grant from the Corporation. A State Commission proposing this arrangement must also submit a detailed position description for the Fellow demonstrating that the Fellow's responsibilities are directly tied to achieving the goals of the Presidents' Summit.

Sponsors are responsible for ensuring compliance with required elements of the Fellowship program. These requirements, which will be individually described in the grant agreement between the Corporation and the sponsor, include, but are not limited to, the following:

- Providing office space, supplies, and equipment.
- Providing a living allowance.
- Paying and withholding FICA taxes.
- Withholding income taxes.
- Providing unemployment insurance if required by State law.
- Providing workers' compensation if required by State law or obtaining insurance to cover service-related injuries.
- Providing liability insurance to cover claims relating to Fellows.
- Providing adequate training and supervision.
- Ensuring that Fellows not engage in prohibited activities (such as lobbying).
- Complying with statutory prohibitions on uses of assistance (such as displacement, discrimination).
- Providing a grievance procedure that meets statutory standards.
- Verifying and submitting timely documentation relating to each Fellow's eligibility for an education award.
- Providing an adequate financial management system.
- Complying with other reporting requirements.

Contents of the Sponsor Application

Sponsor applications must contain the following information:

1. Background concerning the applicant's current efforts to achieve the goals of the Presidents' Summit.

2. The proposed start date for the AmeriCorps Promise Fellows. Please note that it is strongly encouraged that all Fellows begin service between November 1 and December 31, 1999 to promote esprit de corps among the class of Fellows.

3. An explanation of the method for determining the organizations where Fellows will be assigned that addresses the matters listed below. If host organizations have already been selected, please list the designated organizations and indicate how the following were addressed in making the selection.

(a) The process through which these organizations will be selected,

(b) The criteria used to evaluate their suitability for hosting a Fellow(s),

(c) The expected number of Fellows who will serve at each organization,

(d) The supervision, support and member development activities that will be provided for the Fellow(s) at each organization or by the sponsor, and

(e) Background concerning the selected organizations and the roles they are playing in local summit follow-up.

4. A detailed description of the activities that the Fellows will perform that includes:

(a) An explanation of how the activities will support significant growth and/or improvements in the quality of efforts to meet the five goals of the Presidents' Summit;

(b) Clearly defined, outcome-based objectives for:

i. The Fellows' service activities that are linked to the five fundamental resources or efforts to increase community involvement in strategies to deliver all five resources; and

ii. The Fellows' development as leaders in delivering the five fundamental resources; and

(c) A description of how the Fellowship program will complement, enhance, or offer services distinct from other AmeriCorps programs that the applicant may sponsor.

If the Fellow serves at a State Commission, a detailed position description must be provided.

5. A plan for recruiting Fellows that demonstrates an understanding of the Fellows' leadership role in expanding and enhancing activities that deliver on the goals of the Presidents' Summit and indicates the anticipated process for recruiting Fellows, the desired qualifications of Fellows, how these qualifications relate to the proposed Fellows' activities, and the potential sources from which applicants will be recruited.

6. An estimated budget to carry out the program, consistent with the description below.

The application may not exceed 21 double-spaced pages in length; additional instructions concerning the contents of the application are contained in the application package.

Organizations interested in applying for these program funds may participate in conference calls to be held on Thursday, July 15 and Friday, July 30 during which Corporation staff will provide technical assistance to potential applicants. The calls will begin at 1:30 p.m. and conclude at 3:00 p.m. Eastern Daylight Time. To register for either call, please contact Rosa Harrison at (202) 606–5000, ext. 433. Upon registration, you will be apprised of the (800) number needed for participation.

Budget and Finances

The Corporation will issue grants on a fixed amount per Fellow basis of $13,000 per Fellowship awarded. These amounts exclude the education award. The grants are fixed-amount awards that do not require Corporation monitoring of actual costs incurred. The cost principles normally applicable to Federal awards do not apply. The sponsor assumes full financial responsibility for the program. Sponsors must provide the additional financial support necessary to carry out their proposed Fellowship program. The sponsor should indicate the amounts and types of additional financial support required for the Fellowship program in the budget narrative of the application.

In addition to the approved grant amount, the Corporation will provide an education award to Fellows who successfully complete their term of service. The Corporation will sponsor a national training event to provide Fellows with an opportunity to come together to assess national progress in meeting the goals of the Presidents' Summit. The Corporation will also promote the availability of these Fellowships.

The Corporation anticipates that these grants will be renewable for up to a two-year period, subject to performance and the availability of appropriati ns.

Process for Selecting Sponsors

In selecting sponsors, the Corporation will consider: program design (60%), including (in order of importance) Getting Things Done to help achieve the five goals of the Presidents' Summit, recruiting a leadership cadre of Fellows and fostering their continued leadership development, and strengthening communities; organizational capacity (25%); and budget/cost effectiveness (15%). The Corporation will make all final decisions concerning approval of these grants for Fellowships. Given the Corporation's interest in having the common elements for the Fellowships that are described above, the Corporation announces its intent to enter into such negotiations with any sponsor in a manner that may require revisions to the original grant proposal.

The Corporation anticipates that all awards will be granted no later than November 1, 1999. All awards are subject to the availability of federal appropriations.

Dated: June 16, 1999.

Deborah Jospin,

Director, AmeriCorps, Corporation for National and Community Service.

[FR Doc. 99–15794 Filed 6–21–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing and Extension of the Public Comment Period for the Draft Environmental Impact Statement (DEIS) for Disposal and Reuse of Surplus Navy Property Identified in the Guam Land Use Plan (GLUP '94)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency (EPA) the DEIS for Disposal and Reuse of Surplus Navy Property Identified in the Guam Land Use Plan (GLUP '94). Navy announced locally that a public hearing would be held on June 24, 1999 at the Guam Hilton for the purpose of receiving oral and written comments on the DEIS. This notice announces to the public that Navy is extending the public comment period for the DEIS until July 30, 1999 and rescheduling the public hearing that was previously announced locally in Territory of Guam Newspapers and direct mailings. Federal and Government of Guam agencies, interested individuals, and organizations are invited to be present or represented at the public meeting that is hereby rescheduled as show below.

DATES: The public meeting will be held on July 15, 1999 at 7:00 p.m.

ADDRESSES: Guam Hilton, Marianas Ballroom, 202 Pale San Vitores Road, Tumon, Guam 96931.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Gibbons (PLN231GG), Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, telephone (808) 471–9338, facsimile (808) 474–5909.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Navy has prepared and filed with the EPA the DEIS for Disposal and Reuse of Surplus Navy Property Identified in the GLUP '94. A Notice of Intent (NOI) to prepare an EIS was published in the **Federal Register** on April 10, 1998. A public scoping meeting announcement was published on April 18, 19, and 20, 1998, in the Pacific Daily News on Guam. A public scoping meeting was held on May 7, 1998 at the Chamorro Village Main Pavilion, Paseo Complex, Agana, Guam. The notice of availability of the DEIS was published in the **Federal Register** on May 21, 1999.

The proposed action is the disposal of approximately 2,798 acres of surplus Navy property in the Territory of Guam in a manner consistent with the reuse identified by the local redevelopment authority, the Guam Economic Development Authority (GEDA), in its Reuse Plan for GLUP '94 Navy Surplus Properties. The property covered in the EIS has been divided into 20 parcels located in Dededo, Tiyan, Tamuning, Barrigada, Nimitz Hill, Apra Heights, Naval Station, Piti, and Santa Rita. Nineteen parcels were identified as releasable in the GLUP '94. One parcel, the Officers Housing site at Naval Air Station (NAS) Agana, was not considered in the GLUP '94 but was recommended for disposal as part of the 1995 Base Realignment and Closure (BRAC) decision. This parcel was included in GEDA's Reuse Plan and is included in the scope of this EIS.

The DEIS evaluates three reuse alternatives and a "No Action" Alternative. The reuse alternatives are based upon conceptual land use plans documented in GEDA's Reuse Plan and approved by Governor Carl T.C. Gutierrez of Guam. Each reuse alternative proposes various land uses, e.g., residential, commercial, etc., as well as roadway improvements. The "No Action" Alternative assumes Navy's retention of the parcels in caretaker status and continuation of existing leases according to their terms.

The Preferred Alternative recommended by GEDA consists of the following elements: retention of open space for recreation and conservation, single-family affordable housing, a golf resort, commercial centers, warehouse and light industrial space, and agricultural activities. The EIS also evaluates reuse alternatives with lower and higher intensities of development. The Lower Intensity Alternative would retain more open space and involve renovation rather than expansion of certain facilities and less new construction. The Higher Intensity Alternative would provide more new construction, and development densities would approach the maximum allowed under local zoning.

Except for traffic and air quality impacts at one intersection, potentially significant impacts under all of the reuse alternatives can be mitigated to nonsignificant levels. The impacts which can be mitigated by the local reuse authority to nonsignificant levels include infrequent exceedance of air quality standards during peak-hour traffic at intersections, incompatible land uses and noise, effects on cultural resources, traffic congestion at key intersections, increases in school enrollment in three districts due to new housing development, and cumulative impacts on health care, police, fire, and civil defense services. Unacceptable traffic conditions at the intersection of Route 1 and Route 16 would occur with or without the proposed reuse. Mitigation would compensate for the reuse component of traffic at this intersection, but it would still remain above capacity. The following potentially significant but mitigable impacts are identified for the Higher Intensity Alternative: inadequate capacity of the Agana wastewater treatment plant during peak flow conditions, cumulative solid waste impacts, and impacts of the proposed power plant at Rizal/Affleje beach on the marine environment. The "No Action" Alternative has the least potential for environmental impacts and demands on Guam's infrastructure.

The DEIS has been distributed to agencies and other interested parties. Copies may be reviewed at the Agana, Barrigada, Dededo, Merizo, and Yona public libraries. A limited number of single copies are available upon request from the contact listed above. A public hearing will be held on July 15, 1999 at the Guam Hilton to inform the public of the DEIS findings and to solicit and receive oral and written comments. Government agencies and interested parties are invited to be present at the hearing. Oral comments will be heard and transcribed by a court recorder; written comments are also requested to ensure accuracy of the record. All comments, both oral and written, will become part of the official record. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to Mr. Gerald Gibbons at the address given above. Comments must be postmarked no later than July 30, 1999 to be considered in the Final EIS.

Dated: June 19, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Liaison Officer.

[FR Doc. 99–15796 Filed 6–21–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 23, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 16, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.
Title: Federal Perkins Loan, Federal Work-Study, Federal Supplemental Opportunity Grant Programs.
Frequency: Recordkeeping.
Reporting and Recordkeeping Hour Burden:
Responses: 17,188
Burden Hours: 12,719
Abstract: Campus-based program records are maintained by the institutions that administer the program. Records are necessary to ensure that the institution has followed regulatory procedures in administering these programs and to justify the payments of funds by the Department of Education.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Vivian Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact, Joe Schubart at 202–708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–15780 Filed 6–21–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 22, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 15, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Title: Local Educational Agencies' (LEAs') Collection of Data and Submission of Comprehensive Plan for Coordinating Social and Educational Services Under Title XI, Section 11004 of the Elementary and Secondary Education Act (ESEA) as Amended by the Improving America's Schools Act (Pub. L. 103–382)
Frequency: On occasion.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 500.
Burden Hours: 20,000.
Abstract: Under Title XI, LEAs may apply to the Secretary for authority to use up to 5 percent of the ESEA funds they receive to develop, implement, or expand a coordinated services project will improve the access of children and their families to social, health and educational services necessary for success in school.

Requests for copies of this information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian—Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Patrick Sherrill at 202–708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–15781 Filed 6–21–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Kirtland Area Office; Notice of Floodplain/Wetlands Involvement for Embankment and Streambed Restoration in the Arroyo Seco, Sandia National Laboratories, California

AGENCY: Kirtland Area Office, Department of Energy.

ACTION: Notice of floodplain/wetlands involvement.

SUMMARY: The Department of Energy (DOE) is proposing to remove debris and repair erosional damage to streambanks at two channel structures located in the Arroyo Seco, Sandia National Laboratories, California. An existing earthfill crossing that traverses Arroyo Seco and two associated culverts would also be removed as a feature of the proposal. These actions are necessary to restore the runoff carrying capacity of the stream channel, to restore and protect the function of the channel structures, and to restore the integrity of security fencing. Restoration activities associated with the three project features would occur within the 100-year-flood frequency elevation. Two of the three project features are located within channel wetlands. Approximately 2,100 square feet of wetland would be affected. A restoration plan would be prepared to mitigate the loss of wetlands and riparian vegetation.

DATES: Written comments are due to the address below no later than July 7, 1999.

ADDRESSES: Written comments and requests for additional information on this proposed action should be addressed to: Susan Lacy, NEPA Compliance Officer, U.S. Department of Energy, Kirtland Area Office, P.O. Box 5400, Albuquerque, New Mexico 87185–5400, PHONE (505) 845–5542 FAX (505) 845–4710.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

1. Project Description

DOE proposes to implement restorative measures in the channel of Arroyo Seco, Sandia National Laboratories, California. These measures are necessary to restore the runoff capacity of the channel, to restore and protect the function of channel structures, and to restore the integrity of security fencing. Restorative measures would be accomplished at three existing channel structures: (1) The East Buffer Zone Fence Crossing which consists of a concrete hinged grate structure with wingwalls and crossing security fence, (2) a trash rack located upstream of the East Buffer Zone Fence Crossing, and (3) an earthfill channel crossing located south of Building 928. Measures proposed at the hinged grate structure and the trash rack consist of removing accumulated channel debris, filling of eroded channel embankments caused by debris blocking flows through the structures and consequent erosion of structure abutments, restoration of streambed elevations, placement of rock (riprap) for scour protection, and repair of associated security fencing. Approximately 100 cubic yards of earth and two, 48-inch diameter culverts would be removed from the channel crossing. The channel at the crossing would be restored to its original configuration. The removal of the crossing would assist in restoring the original channel capacity.

2. Wetlands and Floodplains

Restoration activities associated with the three project features would occur within the 100-year-flood frequency elevation. Measures associated with the concrete hinged grate structure and the trash rack would involve channel wetlands. Approximately 300 square feet of wetland soils and vegetation would be covered with riprap at the hinged grate structure and about 1,800 square feet of wetland and riparian vegetation would be removed at the trash rack. A restoration plan would be prepared and implemented to mitigate the loss of wetland and riparian vegetation. The restoration plan would be coordinated with the California Department of Fish and Game.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), DOE will prepare a floodplain/wetlands assessment for this proposed action. After DOE issues the assessment, a floodplain statement of findings will be published in the **Federal Register**.

Issued in Albuquerque, New Mexico on June 10, 1999.

George K. Laskar,

Assistant Area Manager, Laboratory Operations, U.S. Department of Energy, Kirtland Area Office.

[FR Doc. 99–15868 Filed 6–21–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge.

DATE: Wednesday, July 7, 1999: 6:00–9:30 p.m. Board Meeting.

ADDRESS: Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN 37830

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Environmental Management Integration Initiative.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–0314.

Issued at Washington, DC on June 17, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–15869 Filed 6–21–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, July 7, 1999: 6 p.m.–9 p.m.

ADDRESSES: Beatty Community Center, 100 "A" Avenue South, Beatty, NV.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Ground water update and discussion
- Waste transportation and emergency response update and discussion

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on June 17, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–15870 Filed 6–21–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, July 15, 1999: 9 a.m.–5 p.m.; Friday, July 16, 1999: 8:30 a.m.–4 p.m.

ADDRESSES: Double Tree Inn (Hanford House), 802 George Washington Way, Richland, WA, ph: 509–946–7611.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy, Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA 99352; Ph: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

July 15, 1999

- Forum with Senior Managers from the Department of Energy, Richland Operations Office, Department of Energy Office of River Protection, U.S. Department of Environmental Protection Agency, and Washington State Department of Ecology, on vision and key issues related to Hanford cleanup (This interactive session is scheduled from 9 a.m. to approximately 3 p.m.)
- FY 2000 Performance Agreements
- Process for responding to Board Advice

July 16, 1999

- Workshop to identify key issues for the Board to follow in FY 2000
- Hanford Draft Solid Waste EIS

Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC on June 17, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–15871 Filed 6–21–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–553–000]

Reliant Energy Gas Transmission Company; Notice of Application

June 16, 1999.

Take notice that on June 11, 1999, Reliant Energy Gas Transmission Company (REGT), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP99–553–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities in Kay County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

REGT proposes to abandon and reclaim a deteriorated delivery lateral line, Line A–3–C, comprised of approximately 2,814 feet of 2-inch dresser-coupled pipe, and a 1-inch rural domestic tap, located in Kay County, Oklahoma, because of safety and economic reasons. REGT states that Line A–3–C has functioned only to deliver gas to one rural customer served by Reliant Energy-Arkla, a distribution division of Reliant Energy Resources Corporation (Arkla). REGT declares that Line A–3–C is deteriorated and exposed, and REGT has experienced annual gas losses of approximately 576 dth (when priced at current gas prices equates to an annual value of $1,354). REGT asserts that comparatively, in 1998, REGT delivered approximately 123 dth annually to Arkla and received annual revenues of approximately $26. REGT states that to continue safe and reliable service through Line A–3–C and eliminate the loss of gas, REGT would have to replace this lien at an estimated cost of $22,558, which does not take into account the future cots to operate and maintain such line.

REGT states that Line A–3–C delivers gas to Arkla for further deliveries to a single rural customer, Mr. Elbert Urban. REGT asserts that it has offered $1,500 as compensation to Mr. Urban for converting his existing gas service to an alternate source of fuel. REGT declares that Mr. Urban has rejected their offer. REGT states that alternatively, Mr. Urban requested that REGT relocate his meter and purchase, at its sole expense, an inactive plastic line along a county road adjacent to Mr. Urban's property. REGT declares that this alternative is unacceptable and uneconomical, due to the addition of the unknown cost of purchasing the pipe, two road crossings would have to be constructed, requiring the purchase of new pipe, at an estimated cost of $7,403. Despite the lack of agreement, REGT requests authority to abandon the pipe for safety and economic reasons.

Any person desiring to be heard or to make any protest with reference to said Application should on or before July 7, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15762 Filed 6–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–547–000]

Reliant Energy Gas Transmission Company; Notice of Application

June 15, 1999.

Take notice that on June 8, 1999, Reliant Energy Gas Transmission Company (REGT), 1111 Louisiana Street, Houston, Texas 77210, filed an application pursuant to Section 7(b) of the Natural Gas Act for permission approval to abandon pipeline facilities located in Caddo and Bossier Parishes, Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

REGT proposes to abandon by sale and transfer to Reliant Energy Field Services Corp. (REFS) a 4.3 mile segment of an 8-inch line identified as Line LIT–1 in Louisiana. It is stated that the line was installed as an intrastate pipeline used to transport gas supply to REGT's interstate system for delivery to the Shreveport and Bossier City, Louisiana, markets. REGT asserts that it acquired the line from NorAm Intrastate in 1994. REGT requests a determination that following the sale and transfer to REFS the line will be used as a gathering facility and thus exempt from Commission regulation.

REGT proposes to sell the line to REFS at the net book value at the time of closing. It is stated that REGT has no firm transportation services on this line segment. It is asserted that the proposed abandonment would not affect REGT's ability to meet its customer obligations and that no customer would lose service as a result of the abandonment. REGT states that the abandonment to REFS would benefit customers because a non-jurisdictional gatherer has more flexibility to acquire gas supplies and furnish them to customers at competitive prices.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for REGT to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–15769 Filed 6–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–551–000]

Tennessee Gas Pipeline Company; Notice of Application

June 16, 1999.

Take notice that on June 10, 1999, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, P.O. Box 2511, Houston, Texas 77002, filed in Docket No. CP99–551–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing Tennessee to increase the maximum allowable operating pressure (MAOP) for Tennessee's existing La Gloria Line, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us.online/rims.htm (call 202–208–2222 for assistance).

Tennessee proposes to increase the MAOP of its 2.4 mile, 4-inch diameter Line No. 403A–100 pipeline (referred to as the La Gloria Line) in Brooks County, Texas, from 765 psig to 891 psig. Tennessee indicates that the proposed MAOP increase will allow Tennessee to consistently deliver natural gas supplies received on the La Gloria Line into its mainline pipeline system. Tennessee further states that the uprate procedures require no construction.

Any person desiring to be heard or making any protest with reference to said application should on or before July 7, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commentets will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15761 Filed 6–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–297–000]

Tennessee Gas Pipeline Company; Notice of Final Reconciliation Report

June 16, 1999.

Take notice that on April 29, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, in accordance with Article 1, Section 4 of the July 27, 1994 PGA Stipulation and Agreement (Stipulation) filed its Final Reconciliation Report for its Account No. 191. Tennessee also filed pro-forma tariff sheets to reflect proposed changes to its FERC Gas Tariff as a result of the final reconciliation and termination of Account No. 191. Tennessee submitted this filing as Docket Nos. RP93–147, RP94–201, RP94–175, RP91–203, RP92–132 (Phase III) and CP94–153 (Not Consolidated)—Final Account No. 191 Reconciliation Report.

Tennessee contends that the purpose of the filing is to report adjustments to

revenues and costs recorded in Tennessee's Account No. 191 since June 1, 1995, now that all of the outstanding imbalances relating to that account have been resolved. Tennessee reports a final net underrecovery in its Account No. 191 of $3,823,599.

Tennessee avers that copies of the Final Reconciliation Report have been served on all affected customers.

Pursuant to Article I, Section 4 of the Stipulation, any customer that disagrees with the computations in Tennessee's Final Reconciliation Report should file a statement with the Commission explaining the basis of its disagreement no later than 30 days after Tennessee files the Report.

Tennessee proposes to file actual tariff sheets to implement the suggested revisions within 30 days of a Commission Order approving the request changes.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 22, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15766 Filed 6–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–549–000]

Tennessee Gas Pipeline Company and Natural Gas Pipeline Company of America; Notice of Application To Abandon

June 15, 1999.

Take notice that on June 9, 1999, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, P.O. Box 2511, Houston, Texas 77252–2511 and Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148 (referred to Collectively as Applicants) filed under Section 7(b) of the Natural Gas Act, for authority to abandon, a certificated gas exchange service. The exchange service has been provided under Tennessee's Rate schedule X–53 in its FERC Gas Tariff, Original Volume No. 2 and Natural's Rate Schedule X–77 in its FERC Gas Tariff, Second Revised Volume No. 2. Applicants state that they no longer need the service and have both consented to its abandonment. The proposal is more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Internet at http://www.ferc.us/online/rims.htm. (call 202–208–2222 for assistance).

Any person desiring to be heard or make any protest with reference to said application should on or before July 6, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicants to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–15768 Filed 6–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Project; Notice of Application for Amendment for Project Boundary and Soliciting Comments, Motions to Intervene, and Protests

June 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Application for an Amendment of License to Increase the Normal Maximum Pool Elevation of the Upper Reservoir of the Project.

b. *Project No.:* 2716–031.

c. *Date Filed:* May 14, 1999.

d. *Applicant:* Virginia Electric and Power Company.

e. *Name of Project:* Bath County Pumped Storage.

f. *Location:* On Back Creek and Little Back Creek in Bath County, Virginia. The Project occupies federal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. Edward J. Rivas, Jr., Vice-President-Fossil and Hydro Operations, Virginia Power, 5000 Dominion Blvd., Glen Allen, VA 23060, (804) 273–3990.

i. *FERC Contact:* Any questions on this notice should be addressed to Mohamad Fayyad at 202–219–2665, or e-mail address: mohamad.fayyad@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* July 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project number and sub-dockets (2716–031) on any comments or motions filed.

k. *Description of Filing:* VEPCO is proposing to increase the normal maximum operating level of the upper reservoir from 3,320 feet to 3,321 feet. This will increase the maximum power pool storage by 278 acre-feet.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm, (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15763 Filed 6–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Project; Notice of Application for Amendment of Project Boundary and Soliciting Comments, Motions to Intervene, and Protests

June 16, 1999.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Application Type:* Application for an Amendment of License to Remove Mile Run Dam and Revise the Project Boundary.

b. *Project No.:* 2916–036.

c. *Date Filed:* May 19, 1999.

d. *Applicant:* East Bay Municipal Utility District.

e. *Name of Project:* Lower Mokelumne River.

f. *Location:* On Mokelumne River, Amador, Calaveras, and San Joaquin Counties, California. The project will not affect any federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contract:* Mr. Jon A. Myers, Manager, Water Resources Planning, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607–4240, (510) 278–1121.

i. *FERC Contact:* Any questions on this notice should be addressed to Mohamad Fayyad at 202–219–2665, or e-mail address: mohamad.fayyad@ferc.fed.us.

j. Deadline for filing comments and/or motions: July 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426.

Please include the project number and sub-dockets (2916–036) on any comment or notions filed.

k. *Description of Filing:* EBMUD is proposing to remove Mine Run Dam, which is located on Mine Creek on the upstream reach of the project's Comanche Reservoir. The Mine Run Dam was used to control acid mine drainage from the abandoned deep shaft copper mine (Penn Mine). The Mine Run Dam controls the flow of contaminated water from the Pen Mine.

EBMUD plans to remove the Mine Run Dam as a part of the Environmental Protection Agency's (EPA) Lone Germ Solution Project (Remediation Plan) for the Penn Mine Site. The Remediation Plan was mandated by EPA through a Clean Water Act section 309 order.

Please, note that we had public noticed this amendment proposal previously, on January 27, 1999. however on September 13, 1999, EBMUD withdrew its previous application,, and filed the current revised application.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction of the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm, (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named document must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15764 Filed 6–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Project; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11731–000.

c. *Date filed:* April 26, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Red River Lock and Dam No. 2 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers; Red River Lock and Dam No. 2 on the Red River, near the Town of Simmesport, Rapids County, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. Deadline for filing motions to intervene and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 2, and would consists of the following facilities: (1) five new steel penstocks, each about 100-foot-long and 10-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 23,000 kilowatts; (3) a new 300-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 141 gigawatthours. The cost of the studies under the permit will not exceed $3,000,000.

m. Available Locations of Application: A copy of the application is available fir inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file a competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15765 Filed 6–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11690–001, AK]

Alaska Village Electric Cooperative, Inc.; Notice of Application Tendered; Notice of Application and Applicant-prepared EA Accepted for Filing; Notice Requesting Interventions and Protests; and Notice Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions

June 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor Original License.

b. *Project No.:* 11690–001.

c. *Date filed:* May 14, 1999.

d. *Applicant:* Alaska Village Electric Cooperative, Inc.

e. *Name of Project:* Old Harbor.

f. *Location:* On Mountain Creek, a tributary to the East Fork of Barling Creek, near Old Harbor, Alaska. The project is located partially on lands of the United States administered by the U.S. Department of the Interior, Kodiak National Wildlife Refuge.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Daniel Hertrich, Polarconsult, Inc., 1503 West 33rd Avenue, Anchorage, AK 99503, (907) 258–2420.

i. *FERC Contact:* Nan Allen, nan.allen@ferc.fed.us, 202–219–2938.

j. *Deadline for filing interventions, protests, comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project consists of: (1) a 4-foot-high, uncontrolled, concrete diversion located in Mountain Creek, the East Fork of Barling Creek, at an elevation of 860 feet mean sea level; (2) a trash rack, screens, and a de-sander box at the diversion intake; (3) a 16-inch-diameter, 3,293-foot-long high density polyethylene pipe; (4) a 16-inch diameter, 6,966-foot-long steel pipe; (5) a 400-square-foot powerhouse containing one Impulse turbine with a generation capacity of 500 kilowatts (kW) and a maximum hydraulic capacity of 13 cubic feet per second; (6) a 4,270-foot-long buried transmission route that would connect the project with Old Harbor's existing power supply system near the city of Old Harbor; and (7) a 4,270-foot-long access road to the powerhouse.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1351. This filing may be viewed on http://www.ferc. fed.us/online /rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The

Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–15767 Filed 6–21–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6364–6]

Agency Information Collection Activities; Proposed Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before August 23, 1999.

ADDRESSES: U.S. EPA, Office of Compliance, 401 M Street SW, Washington, DC 20460, Mail code 2223A.

Interested persons may obtain a copy of the ICR without charge by calling Sandy Farmer of OPPE at (202) 260–2740 or by e-mail at farmer.sandy@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Belinda Breidenbach, (202) 564–7022/ Facsimile Number (202) 564–0050/e-mail breidenbach.belinda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are subject to NESHAP for Mercury Emissions, 40 CFR Part 61, Subpart E.

Title: NESHAP for Mercury Emissions, OMB Control Number 2060–0097, EPA Number 0113.06, expiration date August 31, 1999.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Mercury emissions (40 CFR Part 61, Subpart E) were proposed on December 7, 1971, promulgated on April 6, 1973, and amended on October 14, 1975 and March 19, 1987. These standards apply to all stationary sources which process mercury ore to recover mercury, use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and incinerate or dry wastewater treatment plant sludge.

Approximately 298 sources (274 sludge incineration and drying plants and 24 mercury-cell chlor-alkali plants) are currently subject to the standard; and no additional sources are expected to become subject to the standard in the next three years. Mercury is the pollutant regulated under this standard.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. A written report of each period for which hourly monitored parameters fall outside their established limits is required semi-annually for mercury-cell chlor-alkali plants. These notifications, reports and records are required, in general, of all sources subject to NESHAP.

In the Administrator's judgment, mercury emissions from mercury ore processing facilities, mercury chlor-alkali plants, including the cell room ventilation system, and sludge incineration and drying plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

In order to ensure compliance with the standards promulgated to protect public health, adequate recordkeeping and reporting is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Recordkeeping and reporting are mandatory under this regulation. Records of emission test results and other data needed to determine total emissions shall be maintained at the source and made available for inspection for a minimum of two years.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to industry over the next three years from these recordkeeping and reporting requirements is estimated at 37,068 person-hours. Assumed that there will be no new sources in the next 3 years. Therefore, none of the burden hours for new sources are anticipated to be applicable in the next three years. For each existing source emission test annual emission tests require 12 person hours, semi-annual reports 8 hours and 4 hours are needed to submit notifications on other monitored parameters. Recordkeeping of operating parameters for emission test and mercury leaks require 15 minute per tests. Compilation of data for semi-annual reports require 8 person-hours and the maintenance of data on monitored leaks and monitored parameters require a period of one-half hour. It is assumed plants operate 365 days per year and that all the mercury-cell chlor-alkali plants will have exceedences or leaks semi-annually.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 10, 1999.

John Rasnic,

Director, Manufacturing, Energy and Transportation Division.

[FR Doc. 99–15834 Filed 6–21–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–227]

Telecommunications Services Between the United States and Cuba

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 22, 1999, the Commission approved the application of Sprint Communications Company, L.P. (Sprint) to acquire and operate additional satellite facilities for provision of service between the United States and Cuba. This authorization includes upgrade of an existing private line circuit. Sprint is currently authorized by the Commission to provide service directly to Cuba. The Commission has authorized Sprint to provide service between the United States and Cuba in accordance with the provisions of the Cuban Democracy Act. This will allow Sprint to help meet the large demand for direct telecommunications services between the United States and Cuba. Under the guidelines established by the Department of State, Sprint is to submit reports indicating the numbers of circuits activated by facility, on or before June 30, and December 31 of each year, and on the one-year anniversary of this notification in the **Federal Register**.

DATES: Effective January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner, Chief, Policy and Facilities Branch, International Bureau, (202) 418–1468.

Federal Communications Commission.

Rebecca Arbogast,

Chief, Telecommunications Division, International Bureau.

[FR Doc. 99–15396 Filed 6–21–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–903]

Telecommunications Services Between the United States and Cuba

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 13, 1999, the Commission approved the application of Sprint Communications Company, L.P. (Sprint) to lease and operate one additional satellite circuit between the United States and Cuba. Sprint is currently authorized by the Commission to provide service directly to Cuba. The Commission has authorized Sprint to provide service between the United States and Cuba in accordance with the provisions of the Cuban Democracy Act. This will allow Sprint to help meet the large demand for direct telecommunications services between the United States and Cuba. Under the guidelines established by the Department of State, Sprint is to submit reports indicating the numbers of circuits activated by facility, on or before June 30, and December 31 of each year, and on the one-year anniversary of this notification in the **Federal Register**.

DATES: Effective May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner, Chief, Policy and Facilities Branch, International Bureau, (202) 418–1468.

Federal Communications Commission.

Rebecca Arbogast,

Chief, Telecommunications Division, International Bureau.

[FR Doc. 99–15397 Filed 6–21–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1276–DR]

Colorado; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Colorado (FEMA–1276–DR), dated May 17, 1999 and related determinations.

EFFECTIVE DATE: May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 17, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Colorado, resulting from severe storms and flooding on April 29, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Colorado.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is determined to be warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James S. Logan of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Colorado to have been affected adversely by this declared major disaster:

Bent, El Paso, Larimer, Otero, and Weld Counties for Individual Assistance.

All counties within the State of Colorado are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–15812 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1276–DR]

Colorado; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Colorado, (FEMA–1276–DR), dated May 17, 1999, and related determinations.

EFFECTIVE DATE: May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Colorado is hereby amended to include the Public Assistance program in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1999:

Bent, El Paso, Larimer, Otero, and Weld Counties for Public Assistance (already designated for Individual Assistance).

Crowley, Custer, Elbert, Fremont, Kiowa, Las Animas, and Pueblo Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–15818 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1276–DR]

Colorado; Amendment No. 2 to the Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Colorado (FEMA–1276–DR), dated May 17, 1999, and related determinations.

EFFECTIVE DATE: May 19, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 19, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–15819 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1276–DR]

Colorado; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Colorado, (FEMA–1276–DR), dated May 17, 1999, and related determinations.

EFFECTIVE DATE: May 26, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Colorado is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1999:

Pueblo County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–15820 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3139–EM]

Florida; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida, (FEMA–3139–EM), dated April 27, 1999, and related determinations.

EFFECTIVE DATE: May 18, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of April 27, 1999:

Duval, Nassau, and Clay Counties for appropriate assistance for required emergency protective measures as authorized under Title V of the Stafford Act.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

William F.W. Jones,

Acting Division Director, Infrastructure.

[FR Doc. 99–15809 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3139–EM]

Florida; Amendment #3 to the Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida (FEMA–3139–EM), dated April 27, 1999, and related determinations.

EFFECTIVE DATE: May 25, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective May 25, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–15810 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1278–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1278–DR), dated May 28, 1999, and related determinations.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 28, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms and flash flooding on May 16–17, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act").

I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Phil Zapferopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Jo Daviess County for Individual Assistance and Public Assistance.

All counties within the State of Illinois are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dated: June 8, 1999.

James L. Witt,

Director.

[FR Doc. 99–15815 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1277–DR]

Iowa; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster, for the state of Iowa, (FEMA–1277–DR), dated May 21, 1999, and related determinations.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 21, 1999:

Butler and Clinton for Public Assistance.

Butler, Clinton, and Crawford for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services

Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99–15811 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1277–DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1277–DR), dated May 21, 1999, and related determinations.

EFFECTIVE DATE: May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 21, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms, flooding and tornadoes on May 16, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts, as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is determined to be warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Curtis D. Musgrave of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

Black Hawk, Bremer, Buchanan, Clayton, Delaware, Dubuque, Fayette, Harrison, Jones, and Linn Counties for Individual Assistance.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–15813 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1277–DR]

Iowa; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1277–DR), dated May 21, 1999, and related determinations.

EFFECTIVE DATE: May 29, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective may 29, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99–15814 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1277–DR]

Iowa; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1277–DR), dated May 21, 1999, and related determinations.

EFFECTIVE DATE: May 24, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include the Public Assistance program in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 21, 1999:

Black Hawk, Bremer, Buchanan, Clayton, Delaware, Dubuque, Fayette, Harrison, Jones, and Linn Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–15821 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1273–DR]

Kansas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1273–DR), dated May 4, 1999, and related determinations.

EFFECTIVE DATE: May 14, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 4, 1999:

Sumner County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–15824 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1273–DR]

Kansas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1273–DR), dated May 4, 1998, and related determinations.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 6, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–15825 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1270–DR]

Missouri; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1270–DR), dated April 20, 1999, and related determinations.

EFFECTIVE DATE: May 19, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1999:

Cole County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

William F.W. Jones,

Division Director, Response and Recovery Directorate.

[FR Doc. 99–15822 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1272–DR]

Oklahoma; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA–1272–DR), dated May 4, 1999, and related determinations.

EFFECTIVE DATE: May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 4, 1999:

Latimer County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–15823 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1275–DR]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1275–DR), dated May 12, 1999, and related determinations.

EFFECTIVE DATE: May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 1999:

Sumner County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99–15816 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1275–DR]

Tennessee; Amendment No. 2 to the Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1275–DR), dated May 12, 1999, and related determinations.

EFFECTIVE DATE: May 19, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 19, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–15817 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1274–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1274–DR), dated May 6, 1999, and related determinations.

EFFECTIVE DATE: May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 1999:

Titus County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–15826 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1274–DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1274–DR), dated May 6, 1999, and related determinations.

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6,1999:

Gregg County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99–15827 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of teleconference meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: July 8, 1999.

Place: The FEMA Conference Operator in Washington, DC will initiate the teleconference. Individuals interested in participating should call 1–800–320–4330 at the time of the teleconference. Callers will be prompted for the conference code, #16, and then connected through to the teleconference.

Time: 2:00 p.m. to 4:00 p.m., EST.

Proposed Agenda:

1. Call to order.
2. Announcements.
3. Action on minutes from May 1999 meeting.
4. Status of letter regarding possible extension of Council's duration.
5. Update on recommendations.
6. Discuss preparation for the 1999 Annual Report.
7. Discuss agenda for September 1999 meeting in Louisville, KY.
8. Discuss agenda for December 1999 meeting in Washington, DC.
9. New business.
10. Adjournment.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting in September 1999.

Dated: June 14, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–15808 Filed 6–21–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL TRADE COMMISSION

[File No. 9723075]

Tiger Direct, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 23, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Andrew Caverly or Colleen Lynch, Boston Regional Office, Federal Trade Commission, 101 Merrimac Street, Suite 810, Boston, MA 02114–4719, (617) 424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 10th, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comments or views will be [illegible] by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Tiger Direct, Inc. ("Tiger Direct"), a mail order retailer of computer products.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint alleges that Tiger Direct violated Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(a)(1), by deceptively advertising its on-site warranty service for Tiger-brand computer systems. Additionally, the complaint alleges that Tiger Direct has violated the Magnuson-Moss Warranty Act ("Warranty Act"), 15 U.S.C. 2301 *et seq.*, and two Rules promulgated thereunder: the Rule concerning the Disclosure of Written Consumer Product Warranty Terms and Conditions ("Disclosure Rule"), 16 CFR 701; and the Rule concerning the Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Availability Rule"), 16 CFR 702. Under Section 110(b) of the Warranty Act, 15 U.S.C. § 2310(b), violations of the Warranty Act or its Rules are also violations of Section 5 of the FTC Act.

First, the complaint alleges that Tiger Direct violated Section 5 of the FTC Act by misrepresenting that it would provide on-site warranty service to purchasers of Tiger-brand computer systems when notified that the system or any of its parts was defective or had malfunctioned and that it would provide such service within a reasonable period of time after being notified of a problem.

Second, the complaint alleges that Tiger Direct violated the Pre-Sale Availability Rule by failing to disclose material warranty terms or otherwise comply with the Rule. The complaint also alleges that Tiger Direct failed to comply with the requirements of the Disclosure Rule that certain language be

included in written warranties including: what the warrantor will not pay for or provide, where necessary for clarification; a step-by-step explanation of the procedure that the consumer should follow in order to obtain performance of any warranty obligation; a notice that its warranty exclusion of incidental and consequential damages does not apply to consumers in states that prohibit such exclusions; and that a consumer may have other rights that vary from state to state. In addition, the complaint alleges that Tiger Direct violated the Warranty Act by failing to clearly and conspicuously designate its written warranty as "full" or "limited" and by disclaiming all implied warranties, which the Warranty Act prohibits.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent Tiger Direct from engaging in similar deceptive acts and practices in the future.

Part I of the proposed order prohibits Tiger Direct from representing that it provides on-site service unless it discloses all limitations and conditions that apply to obtaining on-site service clearly, prominently and in close proximity to the on-site service representation.

Part II of the proposed order provides that Tiger Direct shall provide warranty service within a reasonable period of time after receiving notice from a consumer of a problem. The order defines a reasonable period of time as the time period specified in respondent's promotional materials and advertisements, or if no time period is specified in respondent's promotional materials and advertisements, a period no longer than thirty (30) days after respondent receives notice from a consumer of a computer problem.

Part III of the proposed order contains provisions designed to remedy respondent's violations of the Warranty Act, the Disclosure Rule and the Pre-Sale Availability Rule. It prohibits respondent from failing to make the text of a warranty readily available; failing to disclose a statement of what the warrantor will not pay for or provide; failing to disclose a step-by-step explanation of the procedure the consumer should follow to obtain warranty service; failing to make the necessary disclosures regarding a consumer's rights under state law; failing to properly designate its warranty as full or limited; and disclaiming any implied warranty except as permitted.

Parts IV and V of the proposed order require Tiger Direct to distribute copies of the order and written instructions regarding its responsibilities and duties under the order and the Warranty Act, including the Disclosure Rule and the Pre-Sale Availability Rule, to certain current and future personnel. Part VI of the proposed order requires Tiger Direct to maintain copies of all such written instructions, as well as copies of warranties and advertising exemplars. Part VII of the proposed order requires Tiger Direct to notify the Commission of any changes in its corporate structure that might affect compliance with the order. Part VIII of the order requires Tiger Direct to file with the Commission one or more reports detailing compliance with the order.

Lastly, Part IX of the proposed order provides for termination of the order after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–15839 Filed 6–21–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Request for Expressions of Interest ("RFEI")

A. Background

In January, 1999, the Agency for Health Care Policy and Research (AHCPR) published a request for applications (RFA: HS–99–003, Translating Evidence into Practice [TRIP]) to conduct research related to implementing evidence-based tools and information in diverse health care settings among practitioners caring for diverse populations. Applications were sought for studies that applied innovative strategies for implementing evidence-based tools and information and would be able to demonstrate improved clinical practice and sustained practitioner behavior change.

In fiscal year 2000, AHCPR plans to publish a second research solicitation focused on translating research into practice (TRIP–II). The aim of this solicitation will be to encourage partnerships between health care systems (e.g., integrated health service delivery systems, academic health systems, managed care programs including HMOs, practice networks, etc.) and researchers to evaluate the effectiveness of different strategies for improving the quality of care. To concentrate the TRIP–II effort, we will ask partners to address at least one of the following priorities:

- The six focus areas selected by the Department of Health and Human Services in which racial and ethnic minorities experience serious disparities in health access and outcomes:
  - (a) Infant Mortality
  - (b) Cancer Screening and Management
  - (c) Cardiovascular Disease
  - (d) Diabetes
  - (e) HIV Infection/AIDS
  - (f) Immunizations
- Pediatric Asthma
- Medical Errors and Patient Safety

AHCPR has a particular interest in health systems that utilize the strengths of information systems for implementing strategies for quality improvement.

B. Purpose

The purpose of this **Federal Register** Notice is to identify health care systems which have begun or plan to develop programs in the above referenced areas and would be willing to partner with a research team in response to the TRIP–II solicitation. When the TRIP–II solicitation (request for applications or RFA) is published, health care systems interested in exploring partnerships with researchers will be listed in the RFA. Health care systems which have already established relationships with researchers—either internally or in academic settings—and who do not wish to be listed in the FRA itself will be eligible to apply. Health care systems which do not have existing relationships with researchers and choose not to respond to this RFEI are not precluded from responding with appropriate research partners to the TRIP–II RFA. The benefit of responding to this RFEI, however, will be helpful in facilitating the development of those relationships.

Along with a letter expressing interest in partnerships, we would also appreciate suggestions and ideas regarding how AHCPR can encourage meaningful partnerships between researchers and health care systems. Suggestions and ideas are welcome independent of letters expressing interest.

C. Dates

We are requesting that letters of interest be submitted no later than August 4, 1999. These letters should include names, addresses, telephone numbers and e-mail addresses of key contacts in the health care system and/or the academic setting if identified and potential research topic. The letter of interest is not binding and does not enter into the consideration of any subsequent application. The letter should also clearly state willingness to be listed in the RFA or a preference not to be listed.

D. Address

Letters of interest should be addressed to: Carolyn M. Clancy, MD, Director, Center for Outcomes and Effectiveness Research, Agency for Health Care Policy and Research, 6010 Executive Boulevard, Suite 300, Rockville, MD 20852, E-mail: cclancy@ahcpr.gov.

Dated: June 17, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–15865 Filed 6–21–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Health Care Policy and Research (AHCPR) Technical Review Committee (TRC) meeting. This TRC's charge is to provide review of contract proposals and recommendations to the Administrator, AHCPR, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "Automated Data Processing Support Services for Agency for Health Care Policy and Research". The RFP was published in the Commerce Business Daily on March 8, 1999.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Health Care Policy and Research—"Automated Data Processing Support Services for Agency for Health Care Policy and Research".

Date: July 8, 1999 (Closed to the public).

Place: Agency for Health Care Policy and Research, 2101 East Jefferson Street, 5th Floor Conference Room, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact William Yu, Center for Cost and Financing Studies, Agency for Health Care Policy and Research, 2101 Executive Boulevard, Suite 500, Rockville, Maryland, 20852, 301–594–1069.

Dated: June 15, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–15864 Filed 6–21–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99091]

Community-Based HIV Prevention Services and Capacity-Building Assistance to Organizations Serving Gay Men of Color at Risk for HIV Infection; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year (FY) 1999 funds for cooperative agreement programs with non-governmental minority organizations to support: (1) Community-based organizations (CBOs) to develop and implement effective community-based HIV prevention programs for gay men of color (Category A); and (2) non-governmental minority organizations to provide regionally structured and focused capacity-building assistance to CBOs that serve the HIV prevention needs of gay men of color at risk for HIV infection (Category B).

This program addresses the "Healthy People 2000" priority areas of Educational and Community-Based Programs, Human Immuno-deficiency Virus (HIV) Infection, and Sexually Transmitted Diseases (STDs).

The goals for program Category A—Community-Based HIV Prevention Services are to:

1. Provide financial and technical assistance to CBOs so they can provide HIV prevention services to populations of gay men of color for which gaps in services are demonstrated;
2. Support HIV prevention programs that are consistent with the HIV prevention priorities outlined in the jurisdiction's comprehensive HIV prevention plan or adequately justify addressing other priorities; and
3. Promote collaboration and coordination of HIV prevention efforts among CBOs; HIV prevention community planning groups; and other local, State, Federal and privately funded programs.

The goals for program Category B—Capacity-Building Assistance Program are to:

1. Improve the capacity of CBOs serving gay men of color to mobilize their communities to increase their awareness, leadership, participation and support for HIV prevention; and
2. Enhance the capacity of CBOs serving gay men of color to effectively participate in, and improve the responsiveness of the HIV prevention community planning process to the HIV prevention needs of gay men of color.

Refer to Section M, "Where to Obtain Additional Information", for dates and times of audio-conferences.

B. Eligible Applicants

Note: Applicants that meet the eligibility requirements for both Categories A and B may apply for both under separate applications. For Category B, applicants may only apply to provide capacity-building assistance to a single racial or ethnic group (that is, African American, Latino, Asian/Pacific Islander, or American Indian/Alaskan Native). For example, if an organization applies to provide capacity-building assistance for African American gay men, that organization may not also apply to provide assistance for Latino gay men.

1. Category A—Community-Based HIV Prevention Services

Eligible applicants for Category A are African American, Latino, Asian/Pacific Islander, and American Indian/Alaskan Native CBOs that provide services to gay men, and that meet the following criteria (also see Proof of Eligibility section):

a. Have been granted tax-exempt status under Section 501(c)(3), as evidenced by an Internal Revenue Service (IRS) determination letter.

b. Have a board or governing body composed of greater than 50 percent of the racial/ethnic minority population to be served.

c. Members of the racial/ethnic minority population to be served must serve in greater than 50 percent of key positions in the organization, including management, supervisory, administrative, and service provision positions (for example, executive director, program director, fiscal director, outreach worker, prevention case manager, counselor, group facilitator, or trainer).

d. Documentation of an established record of services to the target population is required. An established record is defined as a minimum of two years serving the target population.

e. Two or more racial/ethnic minority CBOs may apply as a collaborative partnership. In a collaborative contractual partnership, one CBO must be the legal applicant and will function as the lead organization in the collaboration. The lead organization must meet criteria a–d specified above and the collaborating CBO(s) must meet criteria b and c specified above.

f. Racial/ethnic minority CBOs currently funded under program announcement 704 that meet criteria a–e above are eligible to apply for funding under this program announcement only as a part of a collaboration with other racial/ethnic minority CBOs.

Note: A CBO can only submit one application under this category; that is, it may apply as an individual organization or as part of a collaboration, but not both.

g. Local affiliates, chapters, or programs of national and regional organizations are eligible to apply. In this case, the local affiliate, chapter, or program applying must meet criteria a–f, above.

h. Governmental or municipal agencies, their affiliate organizations or agencies (e.g., health departments, school boards, public hospitals), and private or public universities and colleges are not eligible for funding under this announcement.

2. Category B—Capacity-Building Assistance Program

The Capacity-Building Assistance Program (Category B) will serve four regional groups as follows:

Northeast Region: CT, MA, ME, NH, NJ, NY, PA, RI, VT, PR, U.S. Virgin Islands

Midwest Region: IA, IL, IN, KS, MI, MN, MO, ND, NE, OH, SD, WI

South Region: AL, AR, D.C., DE, FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV

West Region: AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, WY

Eligible applicants for Category B are: (1) A national minority organization serving up to four regions either independently or as the lead agency within a coalition; or (2) a regional minority organization serving at least one region either independently or as the lead agency within a coalition; or (3) a local minority organization as the lead agency within a coalition serving one region. A coalition may consist of any combination of national, regional or local minority organizations.

The lead agency must be the legal applicant and all applicants must meet the following criteria:

a. Have a copy of a currently valid IRS Determination letter stating that the organization is a 501(c)(3).

b. Have a documented and established 3-year record of service to community-based organizations serving gay men of color and to gay men of color population(s). Acceptable documentation includes letters of support, agency annual reports, client satisfaction survey summaries, and memoranda of agreement.

c. Have a board or governing body composed of greater than 50 percent of the racial/ethnic minority population to be served. This body must also include representation from members of the target population (i.e. men who have sex with men, including bisexuals, transgenders, and Gay, Bisexual and Transgender (GBT) youth).

d. Have greater than 50 percent of key positions in the applicant organization, including management, supervisory, administrative, and service positions filled by persons of the racial/ethnic population to be served (for example, executive director, program director, fiscal director, trainer, technical assistance provider, curricula development specialist, or group facilitator).

e. Local affiliates, chapters, or programs of national and regional organizations are eligible. In this case, the local affiliate, chapter, or program applying must meet criteria a–d, above.

3. Categories A and B

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Awards will be made in two categories: (A) community-based HIV prevention services; and (B) capacity-building assistance program. Applicants may apply for both categories if eligible; however, separate applications must be submitted for each category.

1. Category A—Community-Based HIV Prevention Services. Approximately $4,000,000 is available in FY 1999 to fund approximately 20 awards. It is expected that awards will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period of up to 4 years. It is expected that the average award will be approximately $200,000.

Note: Funds to support CBOs to provide HIV prevention services are also available under Program Announcement 99092—Community Based Human Immunodeficiency Virus (HIV) Prevention Projects for African Americans, Program Announcement 99096–HIV Prevention Projects for African American Faith-Based Organizations, and Program Announcement 99047—Human Immunodeficiency Virus Community Based Prevention Projects for the Commonwealth of Puerto Rico and the United States Virgin Islands. Eligible organizations may apply for and receive funding under more than one of these announcements; however, the total combined funding provided to any organization under these four new announcements and those grantees currently funded under Program Announcement 704 (97004) can not exceed $300,000, and awards will not support the same project activities twice.

2. Category B—Capacity-Building Assistance Program Approximately $2,400,000 is available in FY 1999 to fund approximately 9 awards. It is expected that awards will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period of up to five years. It is expected that the average award will be approximately $300,000.

3. Categories A and B

Funding estimates may change based on the availability of funds.

Continuation awards within an approved project period will be made on the basis of availability of funds and the applicant's satisfactory progress toward achieving objectives. Satisfactory progress toward achieving objectives will be determined by progress reports submitted by the recipient and site visits conducted by CDC representatives. Proof of continued eligibility is required with noncompeting continuation applications.

Use of Funds

1. Category A—Community-Based HIV Prevention Services Funds provided under this Announcement must support activities directly related to primary HIV prevention. However, intervention activities which involve preventing other STDs or substance abuse as a means of reducing or eliminating the risk of HIV transmission may also be supported.

2. Category B—Capacity-Building Assistance Program Funds available under this announcement must support assistance that increases the capacity of CBOs to expand and sustain effective HIV prevention activities for gay men of color whose behavior places them at high risk for HIV and other STDs, and should include the following populations: men who have sex with men, including bisexuals, transgenders, and Gay, Bisexual and Transgender (GBT) youth.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated indirect rate agreement. In the absence of an indirect cost rate agreement, the recipient may request, with detailed justification, a maximum of 10 percent for the executive director. If the organization has an indirect rate that includes the executive director's salary, no additional funds will be provided. Funds will not be provided for the salary of an executive director that is also a member of the organization's Board of Directors.

3. Categories A and B:

Applicants are encouraged to develop coalitions and may contract with other organizations under these cooperative agreements; however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of services) for which funds are requested. Applications requesting funds to support only administrative and managerial functions will not be accepted.

No funds will be provided for direct patient medical care (including substance abuse treatment, medical treatment, or medications) or research.

These funds may not be used to supplant or duplicate existing funding. Funds awarded should be used to enhance or expand existing activities.

Funding Priorities

1. Category A—Community-Based HIV Prevention Services

In making awards under Category A—Community Prevention Services, priority for funding will be given to:

a. Ensuring a national distribution of CBO awards based on AIDS morbidity among racial/ethnic minority populations, and

b. Supporting several CBO collaborations (consisting of two or more minority organizations) in which the applicant (the lead organization) proposes to share resources, strategies, and expertise with a start-up or less experienced HIV prevention organization.

2. Category B—Capacity-Building Assistance Program

In making awards under Category B (Capacity-Building Assistance Program), priority for funding will be given to: ensure that funding for capacity-building assistance is distributed in proportion to the disease burden for gay men of color in each region.

Interested persons are invited to comment on the proposed funding priorities. All comments received within 30 days after publication in the **Federal Register** will be considered before the final funding priorities are established. If the funding priorities change because of comments received, a revised announcement will be published in the **Federal Register**, and revised applications will be accepted before the final selections are made. Address comments to: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Mailstop E–15, Atlanta, GA 30341–4146.

D. Program Requirements—Category A—(Community-Based HIV Prevention Services)

HIV prevention interventions are specific activities (or set of related activities) using a common method of delivering the prevention messages to reach persons at risk of becoming HIV-infected or, if already infected, of transmitting the virus to others. The goal of HIV prevention interventions is to bring about HIV risk reduction in a particular population.

In order to maximize the effective use of CDC funds, each applicant must conduct at least one of the following priority HIV prevention interventions: (1) HIV Counseling, Testing and Referral Services; (2) Individual Level Interventions; (3) Group Level Interventions; (4) Community Level Interventions; and (5) Street and Community Outreach. A brief description of these priority interventions is provided in Attachment 1. Also, please reference the materials included in the tool kit for additional information about these interventions. The tool kit will be sent with the application packet.

Although activities may overlap from one type of intervention to another (e.g., individual or group level interventions may be a part of a community-level intervention), each applicant must indicate which one of the five interventions is their primary focus.

Because of the resources, special expertise, and organizational capacities needed for success, applicants should carefully consider the feasibility of undertaking more than two of the priority interventions listed. Recipients proposing to conduct more than two of these priority prevention interventions must demonstrate the capacity to implement them effectively.

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under number 1. (Recipient Activities) and CDC will be responsible for activities under number 2. (CDC Activities) below.

1. Recipient Activities:

a. Design program activities by using epidemiologic data, needs assessments, and prioritization of groups and interventions.

b. Develop program activities which are consistent with applicable State and local comprehensive HIV prevention plans or adequately justify addressing other priorities.

c. Provide—or assist high risk clients in gaining access to—HIV counseling, testing, and referral for other needed services.

d. Conduct health education and risk reduction interventions for persons at high risk of becoming infected or transmitting HIV to others.

e. Assist HIV-positive persons in gaining access to appropriate HIV treatment and other early medical care, substance abuse prevention services, STD screening and treatment, partner counseling and referral services, psychosocial support, mental health services, TB prevention and treatment, primary HIV prevention such as health education and risk reduction services, and other supportive services. High-risk clients who test negative should be referred to appropriate health education and risk reduction services and other appropriate prevention and treatment services.

f. Ensure adequate protection of client confidentiality.

g. Coordinate and collaborate with health departments, community planning groups, and other organizations and agencies involved in HIV prevention activities, especially those serving the target population.

h. Participate in the HIV prevention community planning process. Participation may include involvement in workshops; attending meetings; if nominated and selected, serving as a member of the group; reporting on program activities; or reviewing and commenting on plans.

i. Incorporate cultural competency and linguistic and developmental appropriateness into all program activities and prevention messages.

j. Coordinate program activities with relevant national, regional, State, and local HIV prevention programs to prevent duplication of efforts.

k. Monitor and evaluate major program and intervention activities and services supported with CDC HIV prevention funds under this cooperative agreement. This should include assessing client satisfaction periodically via quantitative (e.g., periodic surveys) and qualitative methods (e.g., focus groups).

l. Compile "lessons learned" from the project and facilitate the dissemination of "lessons learned" and successful prevention interventions and program models to other organizations and CDC through peer-to-peer interactions, meetings, workshops, conferences, Internet, communications with project officers, and other capacity-building and technology transfer mechanisms.

m. Work with CDC-funded capacity-building assistance programs to meet your and other organizations' capacity-building needs.

n. Develop and implement a plan for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement and to enhance the likelihood of its continuation after the end of the project period.

o. Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

p. Before using funds awarded through this cooperative agreement to develop HIV prevention materials, recipients must check with the CDC National Prevention Information Network (NPIN) to determine if suitable materials are already available. Also, materials developed by recipients must be made available for dissemination through the CDC NPIN.

CDC's National Prevention Information Network (NPIN) maintains a collection of HIV, STD and TB resources for use by organizations and the public. Successful applicants may be contacted by NPIN to obtain information on program resources for use in referrals and resource directories. Also, grantees should send three copies of all educational materials and resources developed under this grant for inclusion in NPIN's databases.

NPIN also makes available information and technical assistance services for use in program planning and evaluation. For further information on NPIN services and resources, contact NPIN at 1–800–458–5231(TTY users: 1-800–243–7012). NPIN's web site is www.cdcnpin.org; the fax number is 1–888–282-7681.

2. CDC Activities

a. As appropriate, link funded applicants to a coordinated national capacity building and technology transfer network.

b. Provide consultation and technical assistance in planning, implementing, and evaluating prevention activities. CDC may provide consultation and technical assistance both directly and indirectly through prevention partners such as health departments, national and regional minority organizations (NRMOs), contractors, and other national organizations.

c. Provide up-to-date scientific information on risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

d. Assist in the design and implementation of program evaluation activities, including provision of evaluation forms, if appropriate.

e. Assist recipients in collaborating with State and local health departments, community planning groups, and other federally supported HIV/AIDS recipients.

f. Facilitate the transfer of successful prevention interventions, program models, and "lessons learned" through convening meetings of grantees, workshops, conferences, newsletters, use of the Internet, and communications with project officers. Also facilitate exchange of program information and technical assistance among community organizations, health departments, and national and regional organizations.

g. Monitor the recipient's performance of program activities, protection of client confidentiality, and compliance with other requirements.

h. Conduct an overall evaluation of this cooperative agreement program.

E. Application Content—Category A—Community-Based HIV Prevention Services

Use the information in the Program Requirements, Other Requirements, and Application Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 pages (not including the budget or attachments).

Number each page sequentially, and provide a complete Table of Contents to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single spaced, with unreduced 12 point or 10 pitch font on 8½" by 11" paper, with at least 1" margins, headings and footers, and printed on one side only. Materials which should be part of the basic narrative will not be accepted if placed in the appendices.

Note: Applicants may apply for both categories (A and B), if eligible; however, a separate application must be submitted for each category.

In developing the application, you must follow the format and instructions below:

Format For Category A—Community-Based HIV Prevention Services

1. Abstract.
2. Assessment of Need and Justification for Proposed Activities.
3. Long-term Goals.
4. Organizational History and Capacity.
5. Program Plan.
6. Program Evaluation Plan.
7. Communications and Dissemination Plan.
8. Plan for Acquiring Additional Resources.
9. Budget and Staffing Breakdown and Justification.
10. Training and Technical Assistance Plan.
11. Attachments.

Instructions For Category A—Community-Based HIV Prevention Services

1. Abstract (not to exceed 2 pages): summarize which intervention category of the five priority HIV prevention interventions—(1) HIV Counseling, Testing, and Referral Services; (2) Individual Level Interventions; (3) Group Level Interventions; (4) Community Level Interventions; and (5) Street and Community Outreach—you intend to implement and your proposed intervention activities. Include the following:

a. brief summary of the need for the proposed activities;

b. long-term goals;

c. brief summary of proposed plan of operation, including the population(s) to be served, activities to be undertaken, and services to be provided; and

d. brief summary of plans for evaluating the activities of this project.

2. Assessment of Need and Justification for Proposed Activities (not to exceed 5 pages):

a. Describe the population(s) for which your proposed intervention(s) will provide services.

b. Describe the impact of the AIDS epidemic on the priority population and their community and any specific environmental, social, cultural, or linguistic characteristics of the priority populations which you have considered and addressed in developing prevention strategies, such as:

(1) HIV prevalence and incidence (if available), reported AIDS cases, and the proportion that engages in specific risk behaviors (sexual behaviors, substance use, etc.) in the target population;

(2) HIV/AIDS-related baseline knowledge, attitudes, beliefs, and behaviors;

(3) Patterns of substance use and rates of STDs and tuberculosis (TB); and

(4) Other relevant information. (Specify)

c. Identify the need that will be addressed by your proposed intervention(s), and describe how you assessed the need. Include epidemiologic and other data that were used to identify the need. Include a description of existing HIV prevention and risk-reduction efforts provided by other organizations to address the needs of the target population(s), and an analysis of the gap between the identified need and the resources currently available to address the need (i.e., How will the proposed intervention(s) address an important unmet HIV prevention need?).

d. Describe the specific behaviors and practices that the proposed intervention(s) is designed to promote and prevent (e.g., increases in correct and consistent condom use, knowledge of serological status, not sharing needles, and enrollment in drug treatment and other preventive programs).

e. Describe how your proposed intervention(s) complements the HIV prevention priority populations and interventions identified in the applicable State or local comprehensive HIV prevention plan(s). If the comprehensive HIV prevention plan does not prioritize the needs that you have identified, justify the need and the priority of your proposed intervention activities and summarize how the activities address prevention gaps and complement ongoing prevention efforts. State why the funds being applied for in this application are necessary to address the need. A list of the names and telephone numbers of State health department contacts from whom you may obtain a copy of the jurisdiction's comprehensive HIV prevention plan is provided with the application kit;

f. Explain any specific barriers to the implementation of your proposed intervention(s) and how you will overcome these barriers.

3. Long-term Goals (not to exceed 2 pages): Describe the broad HIV prevention goals that your proposed intervention(s) aims to achieve by the end of the project period (four years).

4. Organizational History and Capacity (not to exceed 4 pages) Describe the following:

a. Organizational structure, including the role, responsibilities, and racial/ethnic composition of board of directors; committee structure of board of directors; organizational management, administrative and program components; constituent or affiliate organizations or networks; how the organizational structure will support the proposed intervention activities; and how the structure offers the capacity to reach targeted populations. Describe how the organizational structure includes, or has the ability to obtain meaningful input and representation from, members of the target population(s) (for example, gay, bisexual, and Transgender populations, youth at risk, HIV-positive individuals, substance abusers).

b. Past and current experience in developing and implementing effective HIV prevention strategies and activities, and in developing and implementing interventions similar to the one(s) proposed in this application.

c. The process in your organization for making major programmatic decisions.

d. Mechanisms used by your organization to monitor program implementation and quality assurance.

e. Experience in working or collaborating with governmental and non-governmental organizations, including State and local health departments, local and State non-governmental organizations, national agencies or organizations, community planning groups, and other groups that provide HIV prevention services.

f. Capacity to provide the proposed interventions in a manner that is culturally competent and linguistically and developmentally appropriate, and which responds effectively to the gender, environmental, and social characteristics of the target populations.

g. For any of the above areas in which you do not have direct experience or current capacity, describe how you will ensure that your organization will gain capacity (e.g., through staff development, collaboration with other organizations, or a contract).

5. Program Plan (not to exceed 10 pages): Use this section to describe the specific characteristics of your proposed intervention(s).

a. Involvement of the target population: Describe how the target population is, or will be, involved in planning, implementing, and evaluating activities and services throughout the project period.

b. Intervention Objectives: Develop process objectives that are specific, measurable, appropriate, realistic, and time-based. Process objectives focus on the projected amount, frequency, and duration of the intervention activities and the number and characteristics of the target population to be served. If applicable, describe how the objectives are related to the prevention priorities outlined in the jurisdiction's comprehensive HIV prevention plan. Describe potential barriers to or facilitators for reaching these objectives.

c. Plan of Operation:

(1) Describe the specific activities to be conducted or services to be provided to accomplish the objectives and where these activities or services will take place. Make certain that your proposal addresses all required activities. The following four HERR interventions will be funded: Individual level (including prevention case management [PCM]), group level, community level interventions, and street and community outreach. Each recipient must conduct at least one of these interventions. Applicants should not apply for more interventions than they can conduct effectively.

(2) Describe your mechanisms for soliciting clients into the program and obtaining informed consent.

(3) Describe your staffing plan and the responsibilities each staff position will have in conducting the proposed activities. Describe how the proposed program will be managed, including the location of the program within your organization.

(4) Describe the potential for volunteer involvement in your program. If volunteers will be involved, describe plans to recruit, train, place, and retain volunteers.

(5) Describe how you will market and promote your program in the community.

(6) Describe how you will prioritize the program activities to place emphasis on populations or communities that are at high risk for HIV infection.

d. Appropriateness of Interventions: Describe mechanisms that will be used to ensure client satisfaction. Describe how you will ensure that the proposed interventions and services are culturally competent; sensitive to issues of sexual orientation; developmentally, educationally, and linguistically appropriate; and targeted to the needs of the target populations.

e. Scientific, Theoretical, Conceptual, or Program Experience Foundation for Proposed Activities: Provide a detailed description of the program experience or scientific, theoretical, or conceptual foundation on which the proposed

activities are based and which support the potential effectiveness of these activities for addressing the stated needs.

f. Collaborations, Linkages, and Coordination:

(1) Describe any formal collaborations with State or local health departments, community planning groups, and other appropriate service groups or organizations that will be used in the development and implementation of your program. Describe the respective roles and responsibilities of each collaborating entity in developing and implementing the program.

(2) Specify any and all organizations and agencies with which you will establish linkages and coordinate activities, and describe the activities that will be coordinated with each listed organization. These may include, as appropriate, the following:

(a) Community groups and organizations, including churches and religious groups;

(b) HIV/AIDS service organizations;

(c) Ryan White CARE Title I and Title II planning bodies;

(d) Schools, boards of education, and other State or local education agencies;

(e) State and local substance abuse agencies, community-based and other drug treatment or detoxification programs;

(f) Federally funded community projects, such as those funded by the Substance Abuse and Mental Health Services Administrations' (SAMHSA) Center for Substance Abuse Treatment (CSAT) and Center for Substance Abuse Prevention (CSAP), the Health and Human Services' Health Resource Services Administration (HRSA), Office of Minority Health (OMH), and other Federal entities;

(g) Providers of services to youth in high risk situations (e.g., youth in shelters);

(h) State or local departments of mental health;

(i) Juvenile and adult criminal justice, correctional, or parole systems and programs;

(j) Family planning and women's health agencies; and

(k) STD and TB clinics and programs.

(3) Describe how referrals to other service providers will be initiated.

(4) Provide a time line that identifies major implementation steps and assigns approximate dates for the inception and completion of each.

6. Quality Assurance and Program Evaluation Plan (not to exceed 5 pages): The plan should describe when and how evaluation activities will be implemented. At a minimum, the plan should outline strategies for implementing process evaluation of interventions to determine if the process objectives are being achieved. Indicate which member(s) of the staff will be responsible for implementing the evaluation plan.

Your process evaluation plan should include the following:

a. A list of resources available to the organization to carry out process evaluation (e.g., provider staff, health department staff, data experts to design a system for managing information about proposed interventions, evaluation consultants, NRMOs (National/Regional Minority Organizations)).

b. A list of who will be involved in implementing the evaluation and identify their roles. Describe who will collect, report, enter, and analyze data.

c. A description of the data that will be collected. To assure valid data are collected, established instruments should be used when feasible. Established instruments include those that have been either science-based or previously administered in effective HIV prevention interventions. In addition, data sources should be verifiable through appropriate documentation (such as storing original data for the duration of the cooperative agreement). Examples of data that could be collected include:

(1) Detailed information on the specific intervention service(s).

(2) The number of persons who received the service(s) by (a) risk categories (MSM, IDU, etc.) and (b) demographics, such as age, race and ethnicity, gender, and if appropriate and available, sexual orientation.

(3) When and how often the intervention service was provided.

(4) Where the intervention service was provided (e.g., CTRPN site, STD clinic, street corner, housing project).

(5) Documents referral systems, including the number of persons referred; how you intend to determine the success of referral systems (e.g., the number actually receiving services by referral sites); and how well the system functions in identifying referral services.

(6) Describe client satisfaction with HIV prevention intervention services.

d. Discuss how data will be collected, managed, and monitored over time. Address ways to collect, report, enter, and analyze data as well as how you would use data for program improvement. Describe how often data will be collected. Discuss how data security will be maintained and client confidentiality assured.

e. Discuss how you will assess the performance of staff to ensure that they are providing information and services accurately and effectively.

Because of the additional cost and need for scientific support beyond the scope of these cooperative agreements, you may not be able to conduct outcome evaluations (i.e., long-term effects of the program in terms of changes in behavior or health status, such as changes in HIV incidence after the intervention) with funds provided through this cooperative agreement. CDC will continue to support special projects to evaluate the behavioral and other outcomes of interventions commonly used by CBOs and other organizations, and disseminate information and lessons learned from this research to CBOs, health departments, community planning groups, and other organizations and agencies involved in HIV prevention programs.

7. Communications and Dissemination Plan (not to exceed 2 pages): Describe how you will share successful approaches and "lessons learned" with other organizations.

8. Plan for Acquiring Additional Resources (not to exceed 1 page): Describe how you will develop and implement a plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

9. Budget/Staffing Breakdown and Justification

a. Detailed Budget: Provide a detailed, separate budget for each intervention proposed (i.e., CTR, individual level, group level, community level, or street and community outreach), with accompanying justification of all operating expenses that is consistent with the stated objectives and planned priority activities. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

For contracts and consultant agreements, applicants should name the contractor, if known; describe the services to be performed which justifies the use of a contractor; provide a breakdown of and justification for the estimated costs of the contracts; the period of performance; the method of selection; and method of monitoring the contract.

b. Staffing Plan: Provide a job description for each position specifying job title; function, general duties, and activities; salary range or rate of pay; and the level of effort and percentage of time spent on activities funded through this cooperative agreement. If the identity of any key personnel who will fill a position is known, her/his name and resume should be attached. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project provide job descriptions.

10. Training and Technical Assistance Plan (not to exceed 2 pages): Describe areas in which you anticipate needing technical assistance in designing, implementing, and evaluating your program and discuss how you will obtain needed technical assistance. Also, describe anticipated staff training needs related to the proposed program and how these needs will be met. Describe your plan for providing ongoing training to ensure that staff are knowledgeable about HIV and STD risks and prevention measures. This information will assist CDC to better address your needs and help you to identify technical assistance and training providers.

11. Attachments

a. Proof of Eligibility.

Each applicant must provide documentation that they comply with all eligibility requirements specified under the "Eligible Applicants" section of this program announcement. Applicants should provide a separate section within this Attachments section that is entitled Proof of Eligibility to include the documents listed below. Failure to provide the required documentation will result in disqualification.

(1) A copy of the Internal Revenue Service's determination letter showing their approval of your 501(c)(3) status.

(2) A list of the members of your organization's governing body along with their positions on the board, their expertise in working with or providing services to the proposed target population, and their racial/ethnic backgrounds. (Submission of information regarding the HIV status or other confidential information regarding the board is optional, and must not be linked to a specific individual.)

(3) Documentation that your organization is located and provides services in the geographical area to be served. This documentation could include letters of support, news articles, brochures or flyers, annual reports, memoranda of agreement, or client surveys.

(4) A Table of Organization of existing and proposed staff, including the board of directors, volunteer staff, and their racial/ethnic backgrounds.

(5) Documentation that your organization has an established record of providing services to the target population for at least two years, and a description of the specific services that have been provided.

(6) Affiliates, chapters, or programs of national or regional organizations must include with the application an original, signed letter from the national or regional organization's chief executive officer assuring their understanding of the intent of this program announcement and the responsibilities of recipients.

(7) A separate sheet of paper stating if your organization is currently funded under CDC Program Announcement 704, Community Based HIV Prevention Projects.

b. Other Attachments.

(1) A list of all collaborating or coordinating entities and memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative or coordinating relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place. Memoranda of agreement from health departments should include a statement that they have reviewed your application for these funds.

(2) A list of major community resources and health care providers to which referrals will be made.

(3) Protocols to guide and document training, activities, services, and referrals (e.g., applicants seeking funds for Street and Community Outreach Interventions must provide a description of the policies and procedures that will be followed to assure the safety of outreach staff).

(4) Samples of data collection tools that will be used in performing, monitoring, or evaluating program activities, if available.

(5) A description of funds received from any source to conduct HIV/AIDS programs and other similar programs targeting the population proposed in the program plan. This summary must include: (1) the name of the sponsoring organization/source of income, amount of funding, a description of how the funds have been used, and the budget period; (2) a summary of the objectives and activities of the funded program(s); and (3) an assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting.

(6) Independent audit statements from a certified public accountant for the previous 2 years.

(7) A copy of your organization's current negotiated Federal indirect cost rate agreement, if applicable.

Note: Materials submitted as attachments should be printed on one side of 8½" × 11" paper. Please do not attach bound materials such as booklets or pamphlets. Rather, submit copies of the materials printed on one side of 8½" × 11" paper. Bound materials may not be reviewed.

F. Evaluation Criteria—Category A—Community-Based HIV Prevention Services

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Abstract. (not scored)

2. Assessment of Need and Justification for the Proposed Activities. (15 points)

a. The extent to which the applicant soundly and convincingly documents a substantial need for the proposed program and activities; and the degree to which the proposed activities are consistent with the Recipient Activities described in the Program Requirements Section. (5 points)

b. The degree to which the applicant describes the specific behaviors and practices that the interventions are designed to promote and prevent (i.e., increases in correct and consistent condom use, knowledge of serological status, not sharing needles, and enrollment in drug treatment and other preventive programs). (5 points)

c. The quality of the applicant's plan to ensure consistency with the State and local comprehensive HIV prevention plans and, if applicable, the adequacy with which the applicant demonstrates the rationale for deviating from the jurisdiction's comprehensive HIV prevention plan. (5 points)

3. Long-term Goals (5 points) The quality of the applicant's stated goals and the extent to which they are consistent with the purpose of this cooperative agreement, as described in this program announcement.

4. Organizational History and Capacity (15 points) The extent of the applicant's documented experience, capacity, and ability to address the identified needs and implement the proposed activities, including:

a. How the applicant's organizational structure and planned collaborations (including constituent or affiliated organizations or networks) will support the proposed program activities, and how the proposed program will have the capacity to reach targeted populations; (3 points)

b. Applicant's past and current experience in developing and implementing effective HIV prevention strategies and activities, and in developing and implementing programs similar to those proposed in this application; (3 points)

c. Applicant's experience and ability in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services; (3 points)

d. Applicant's capacity to obtain meaningful input and representation from members of the target population(s) and to provide culturally competent and appropriate services which respond effectively to the cultural, gender, environmental, social, and multilingual character of the target audiences, including documentation of any history of providing such services; (3 points) and

e. Plans to ensure capacity to implement proposed program where no direct experience or capacity currently exists within the applicant organization. (3 points)

5. Program Plan. (45 total points)

a. Involvement of the target population (5 points) The degree to which the applicant describes the involvement of the target population in planning, implementing, and evaluating activities and services throughout the project period.

b. Intervention Objectives (5 points) Degree to which the proposed process objectives are specific, measurable, appropriate, realistic, and time-based, related to the proposed activities, and consistent with the program's long-term goals; and the extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives.

c. Plan of Operation (15 points) The quality of the applicant's plan for conducting program activities, and the potential effectiveness of the proposed activities in meeting objectives.

d. Appropriateness of Interventions (5 points) The degree to which the applicant describes how the proposed priority interventions and services are culturally competent, sensitive to issues of sexual orientation, developmentally appropriate, linguistically-specific, and educationally appropriate.

e. Scientific, Theoretical, Conceptual, or Program Experience Foundation for Proposed Activities (5 points) The degree to which the applicant provides a detailed description of the scientific, theoretical, conceptual, or program experience foundation on which the proposed activities are based and which support the potential effectiveness of these activities for addressing the stated need.

f. Collaborations, Linkages, and Coordination (5 points) Appropriateness of collaboration and coordination with other organizations serving the same priority population(s). At minimum, the applicant provides a description of the collaboration or coordination and a signed memoranda of agreement for each agency with which collaborative activities are proposed, and other evidence of collaboration that describe previous, current, as well as future areas of collaboration.

g. Time line (5 points) The extent to which the applicant's proposed time line is specific and realistic.

6. Quality Assurance and Program Evaluation Plan (10 points) The potential of the evaluation plan to describe when and how evaluation activities will be implemented by the applicant; the extent to which the evaluation plan is realistic and feasible, taking into account the applicant's unique needs, resources, capabilities, and priorities; and the extent to which a plan has been created that will guide the collection of data for improving HIV prevention efforts and informing stakeholders of the progress made in HIV prevention.

7. Communication and Dissemination Plan (5 points) The degree to which the applicant describes how successful approaches and "lessons learned" will be documented and shared with other organizations.

8. Plan for Acquiring Additional Resources (5 points) the degree to which the applicant describes plans to develop and implement a plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

9. Budget and Staffing Breakdown and Justification (not scored)

a. Budget Appropriateness of the budget for the proposed project.

b. Personnel Appropriateness of the staffing pattern for the proposed project.

10. Training and Technical Assistance Plan (not scored). The extent to which the applicant describes areas in which technical assistance is anticipated in designing, implementing, and evaluating the proposed program and how the applicant will obtain this technical assistance. The extent to which the applicant describes anticipated staff training needs related to the proposed program and how these needs will be met. The extent to which the applicant describes a plan for providing ongoing training to staff.

Before final award decisions are made, CDC may either make predicisional site visits to CBOs whose applications are highly ranked or review the items below with the local or State health department and applicant's board of directors.

a. The organizational and financial capability of the applicant to implement the proposed program.

b. The special programmatic conditions and technical assistance requirements of the applicant.

A business management and fiscal recipient capability assessment may be required of some applicants prior to the award of funds.

G. Program Requirements—Category B Capacity-Building Assistance

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under number 1. (Recipient Activities) and CDC will be responsible for activities under number 2. (CDC Activities) below.

For additional information on capacity-building assistance activities, see Attachment 2.

1. Recipient Activities:

a. Conduct regional community needs and resource assessments around issues related to HIV prevention, leadership development, and community mobilization.

b. Develop a regional plan of action to mobilize community and agency resources to meet priority needs related to Community Capacity-Building for HIV prevention.

c. Develop a regional plan of action to provide capacity-building assistance in HIV Prevention Community Planning Effectiveness and Participation.

d. Provide capacity-building assistance to CBOs serving gay men of color populations and community stakeholders in the following areas: Community Capacity-Building for HIV Prevention, and HIV Prevention Community Planning Effectiveness and Participation. These services are to be provided through the use of the following mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services, and Technology Transfer (where appropriate and approved by the CDC). See Addendum for additional information.

e. Develop and implement a plan for targeting, engaging, and maintaining long term capacity-building relationships with CBOs serving gay men of color populations and community stakeholders. The plan should include strategies for conducting ongoing CBO and community stakeholder needs assessments related to areas listed in Section d above. The plan should also include the strategy for developing tailored capacity building packages to be delivered over the course of the project period.

f. Develop a strategy that includes forming a regional community advisory board which includes CDC-funded CBOs, members of the target population(s), and community representatives and other HIV prevention stakeholders. This community advisory board should be involved with providing input into the overall direction of the proposed program and in assessing the proposed program's communication, linkages, performance, and services to the target population.

g. Ensure that capacity-building assistance is allocated according to priority capacity-building assistance needs of CBOs and highly affected gay men of color communities and sub-populations, such as gay, bisexual and Transgender youth (GBT Youth); injection drug users and other substance abusers (IDU/SA); and incarcerated, soon-to-be-released and released persons.

h. Develop and implement a system that responds to requests for assistance in Community Capacity-Building; HIV Prevention Community Planning Participation and Effectiveness; and other types of capacity-building assistance from CBOs and gay men of color community stakeholders. This process must include mechanisms for conducting needs assessments, prioritizing requests, assigning staff or consultants, delivering services, reporting on service delivery, and conducting quality assurance.

i. Develop a standardized system for tracking and reporting all capacity-building assistance requests and delivery with CDC assistance as needed.

j. Incorporate cultural competency and linguistic and educational appropriateness into all capacity-building activities.

k. Develop and implement an effective strategy for marketing capacity-building assistance and services.

l. Participate in a CDC-coordinated capacity-building network.

m. Coordinate program activities with appropriate national, regional, state, and local HIV prevention programs and community planning groups to prevent duplication of efforts and optimize use of resources.

n. Monitor and evaluate the accomplishment of program objectives, and the process of capacity-building assistance.

o. Facilitate the dissemination of information about successful capacity-building assistance strategies and "lessons learned" through peer-to-peer interactions, meetings, workshops, conferences, and communications with CDC project officers.

p. Participate in CDC coordinated train-the-trainer opportunities.

q. Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

r. Develop a strategy for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement and to enhance the likelihood of its continuation after the end of the project period.

2. CDC Activities:

a. Serve as the coordinator for CDC's capacity-building programs, which will include organizations providing capacity-building assistance under this program announcement.

b. Provide recipients with consultation in planning, developing, managing, and evaluating capacity-building services. CDC will provide consultation and assistance both directly through CDC and indirectly through contractors; national, regional and local organizations; and peer-to-peer assistance from CDC-funded partners.

c. Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

d. Facilitate and promote collaboration through the exchange of program information, coalition maintenance strategies, and technical assistance among CBOs; State and local health departments; HIV prevention community planning groups; national, regional, and local organizations; and other HIV prevention partners.

e. Support train-the-trainer opportunities that enhance capacity-building assistance delivery systems.

f. Facilitate and collaborate in the dissemination of successful capacity-building strategies and "lessons learned" through meetings of grantees, workshops, conferences, and communications.

g. Work with recipients to standardize a system for tracking and reporting all capacity-building assistance requests and delivery.

h. Monitor the recipient's performance of program activities, protection of client confidentiality, and compliance with federally mandated requirements.

i. Coordinate an evaluation of the overall capacity-building assistance program.

H. Application Content—Category B—Capacity-Building Assistance

Use the information in the Program Requirements, Other Requirements, and Application Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 pages.

Number each page sequentially, and provide a complete Table of Contents to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single spaced, with unreduced 12 point or 10 pitch font on 8½" by 11" paper, with at least 1" margins, headings and footers, and printed on one side only. Materials which should be part of the basic narrative will not be accepted if placed in the appendices.

Note: Applicants may apply for both categories (A and B), if eligible; however, a separate application must be submitted for each category.

In developing the application, you must follow the format and instructions below:

Format for Category B—Capacity-Building Assistance Program

1. Abstract.
2. Long-term Goals.
3. Organizational History and Capacity.
   a. Organizational Structure.
   b. History Providing Community Capacity Development and Other Capacity-Building Assistance to CBOs serving Gay Men of Color populations and communities.
   c. Capacity for Cultural Competence.
   d. Current Capability in Providing Capacity-Building Assistance.
   e. Experience Working with Coalitions (where appropriate) and Current Collaborations.
4. Assessing the Need for Community Capacity Development and HIV Prevention Community Planning Effectiveness and Participation.
   a. Characteristics of Gay Men of Color Population(s).
   b. Capacity-Building Needs.
5. Program Plan.
   a. Involvement of Local CBOs and HIV Prevention Stakeholders.
   b. Objectives.

c. Plan of Operation.
d. Coordination/Collaboration.
e. Time line.
6. Program Evaluation Plan.
7. Communications/Dissemination Plan.
8. Plan for Acquiring Additional Resources.
9. Budget and Staffing Breakdown and Justification.
a. Detailed Budget.
b. Mechanisms for Use of Funds.
c. Staffing Plan.
10. Training and Technical Assistance Plan.
11. Attachments.

Instructions for Category B—Capacity-Bui'ding Assistance Program

1. Abstract (not to exceed 3 pages).
Briefly summarize the following:
a. Region(s) applying for and the type of organization (national, regional, or local) and, if national or regional, whether applying independently or with a coalition.
b. Organizational structure, philosophy, mission, history.
c. Long term goals of the proposed project.
d. Overview of plan of operation.
e. Overview of plan for collaboration and coordination with other capacity-building service providers, state and local health departments, and community planning groups.
f. Composition of proposed coalition (where appropriate).
g. Future year activities.
2. Long-term Goals (not to exceed 1 page).
Describe the broad capacity-building goals that your proposed program aims to achieve over the course of the project period.
3. Organizational History and Capacity (not to exceed 10 pages).
a. Describe your existing organizational structure, including the role, responsibilities, and racial/ethnic composition of board of directors; board committee structure (including advisory board); board recruitment and training process; organizational management, administrative, and program components; constituent or affiliate organizations or networks; and how the organizational structure offers the ability to provide capacity-building assistance.
b. Describe your organization's history with providing assistance in community capacity development; HIV prevention community planning effectiveness and participation; and providing other capacity-building assistance to CBOs serving Gay Men of Color populations and communities. Describe specific assistance or services provided.
c. Describe your organization's capability to provide services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of CBOs serving Gay Men of Color populations. Include a description of the types of services provided and a list summarizing culturally, linguistically, and developmentally appropriate curricula and materials.
d. Describe your organization's capability in developing and implementing capacity-building programs, strategies, or activities (refer to recipient activities section), and in developing and implementing programs similar to the one proposed in this program announcement. If you are proposing to conduct more than two priority prevention interventions, demonstrate your capacity to implement both effectively.
e. Describe your organization's experience, if appropriate, working with a coalition(s) and in collaborating with governmental and non-governmental organizations, including national or regional agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services.
4. Assessing the Need for Community Capacity Development, and HIV Prevention Community Planning Effectiveness and Participation (not to exceed 5 pages).
a. Describe the demographics of the racial/ethnic minority populations you intend to serve. Describe the impact of the HIV and AIDS epidemic on these population(s) and any specific environmental, social, cultural, or linguistic characteristics which will be considered in your capacity-building strategy.
b. Describe the priority needs related to community capacity development and HIV prevention community planning effectiveness and participation for Gay Men of Color communities and CBOs serving Gay Men of Color populations in the region(s) you intend to serve. Describe the process for determining these needs, including where appropriate: the use of epidemiologic and other data, resource inventories, regional needs assessments, and the use of gap analyses.
c. Describe how your proposed program complements the HIV comprehensive plans in the region(s) you plan to serve.
5. Program Plan (not to exceed 20 pages).
Describe your proposed program, including:
a. Involvement of Local CBOs and Community HIV Prevention Stakeholders: Describe how CBOs and other community HIV prevention stakeholders within a region will be involved in providing input into the direction of the proposed program and in assessing the proposed program's communication, linkages, performance, and services provided throughout the project period.
b. Objectives: Provide specific, realistic, time-phased, and measurable objectives to be accomplished during the first budget period. Describe how these objectives relate to the goals described in this announcement. Describe possible barriers to or facilitators for reaching these objectives.
c. Plan of Operation: Describe the following:
(1) the strategies (in detail) that will be used, the activities that will be conducted, and the services that will be provided to meet the proposed goals and objectives and to complete all the required recipient activities (including the provision of services through the use of the "capacity-building assistance delivery mechanisms");
(2) the process for responding to requests for assistance in community capacity development; HIV prevention community planning participation and effectiveness; and other types of capacity-building assistance from CBOs and other HIV prevention stakeholders in the Gay Men of Color community. Include in your description how you will: (a) conduct needs assessments, (b) prioritize requests to place major emphasis on assistance to CBOs and other prevention stakeholders serving Gay Men of Color populations most heavily affected by HIV, (c) assign staff and consultants, (d) deliver services, (e) report on service delivery, and (f) conduct quality assurance;
(3) how your organization will ensure that assistance provided will be culturally competent, sensitive to issues of sexual and gender identity, developmentally appropriate, linguistically-specific, educationally appropriate, and targeted to the needs of CBOs and other prevention stakeholders serving Gay Men of Color;
(4) how your organization will market program services;
(5) how the proposed program will be managed and staffed, including the fiscal, administrative, managerial, and personnel infrastructure and resources that will be used to support the proposed capacity-building program;
(6) the placement of the program within your organizational structure and the space that will be used to house the proposed program staff;

(7) the equipment and information management systems that could be used to maintain information related to this announcement; and
(8) the respective roles and responsibilities of your organization and those of each coalition member performing any of the proposed activities or functions.
d. Coordination and Collaboration: Describe how you will coordinate and collaborate with other national, regional, state, and local governmental and nongovernmental organizations and HIV prevention providers (see Addendum for examples of collaborating agencies).
e. Time line: Provide a time line that identifies major implementation phases and assigns approximate dates for inception and completion.
6. Program Evaluation Plan (not to exceed 5 pages). Describe your plan for monitoring progress to determine if the objectives are being achieved and demonstrating that the methods used to deliver the proposed capacity-building services are effective and efficient. At a minimum, the plan should (1) outline strategies for implementing process evaluation of capacity building activities to determine if the process objectives are being achieved, (2) outline strategies for outcome monitoring to determine if the services and methods used to deliver the services are effective and efficient, (3) describe what data will be collected and how this data will be collected, analyzed, and used to evaluate and improve the program, and (4) specify the persons responsible for designing and implementing evaluation activities, collecting and analyzing data, and reporting findings.
7. Communication and Dissemination Plan (not to exceed 2 pages).
Describe how you will share successful approaches and "lessons learned" with other organizations.
8. Plan for Acquiring Additional Resources (not to exceed 2 pages).
Describe how you will develop and implement a plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.
9. Budget/Staffing Breakdown and Justification (not scored).
a. Detailed Budget: Provide a detailed budget for each proposed activity. Justify all operating expenses in relation to the stated objectives and planned activities. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.
For contracts and consultants, applicants should name the contractor, if known; describe the services to be performed which justifies the use of a contractor; provide a breakdown of and justification for the estimated costs of the contracts; the period of performance; the method of selection; and method of monitoring the contract.
b. Staffing Plan: Provide a job description for each position specifying job title; function, general duties, and activities; salary range or rate of pay; and the level of effort and percentage of time spent on activities funded through this cooperative agreement. If the identity of any key personnel who will fill a position is known, her/his name and resume should be attached. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project provide job descriptions.
10. Training and Technical Assistance Plan (not scored).
Describe areas in which you anticipate needing technical assistance in designing, implementing, and evaluating your program and discuss how you will obtain needed technical assistance. Also, describe anticipated staff training needs related to the proposed program and how these needs will be met. Describe your plan for providing ongoing training to ensure that staff are knowledgeable about HIV and STD risks and prevention measures. This information will assist CDC to better address your needs and help you to identify technical assistance and training providers.
11. Attachments.
a. Proof of Eligibility: Each applicant must provide documentation that they comply with all eligibility requirements specified under the "Eligible Applicants" section of this program announcement. Applicants should provide a separate section within this Attachments section that is entitled Proof of Eligibility to include the documents listed below. Failure to provide the required documentation will result in disqualification.
(1) A copy of the Internal Revenue Service's determination letter showing their approval of your 501(c)(3) status.
(2) Documentation that your organization has an established record of providing capacity-building services to the CBOs serving Gay Men of Color for at least two years, and a description of the specific services that have been provided.
(3) Section of Bylaws or Agency Charter that indicates organization's national or regional scope of work, if applying as a national or regional organization.
(4) A list and organizational chart of the members of your organization's governing body along with their positions on the board, their expertise in working with or providing services to the proposed target population, and their racial/ethnic backgrounds. (Submission of information regarding the HIV status or other confidential information regarding the board is optional, and must not be linked to a specific individual.)
(5) A list and an organizational chart of existing and proposed staff for this program, their race/ethnicity, their area of expertise, and relevant experience. Include resumes (not to exceed 2 pages per person).
b. Other Attachments:
(1) A list of all collaborating or coordinating entities and memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative or coordinating relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place.
(2) Description of coalition organizations and original signed letters from the chief executive officers of each organization assuring their understanding of the intent of this program announcement, the proposed program, their role in the proposed program, and the responsibilities of recipients.
(3) A list summarizing services currently delivered and culturally, linguistically, and developmentally appropriate curricula and materials.
(4) A description of funds received from any source to conduct HIV/AIDS programs and other similar programs targeting the population proposed in the program plan. This summary must include: (a) the name of the sponsoring organization/source of income, amount of funding, a description of how the funds have been used, and the budget period; (b) a summary of the objectives and activities of the funded program(s); and (c) an assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. CDC awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds. In addition, identify proposed personnel devoted to this project who are

supported by other funding sources and the activities they are supporting.

(5) Independent audit statements from a certified public accountant for the previous 2 years.

(6) A copy of your organization's current negotiated Federal indirect cost rate agreement, if applicable.

I. Evaluation Criteria—Category B—Capacity-Building Assistance Program

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Abstract. (not scored)

2. Long-term Goals. (Total 5 points)

The quality of the applicant's stated long-term goals and the extent to which the goals are consistent with the purpose of this program announcement.

3. Organizational History and Capacity. (Total 35 points)

The extent to which the applicant has demonstrated history and capacity to provide capacity-building assistance and to implement the proposed program.

These criteria include:

a. The extent to which the applicant's organizational structure (including planned collaborations or coalition) will support the proposed program activities. (5 points)

b. The extent to which the applicant demonstrates a history in providing assistance in community capacity development; HIV prevention community planning effectiveness and participation; and other capacity-building assistance to CBOs serving Gay Men of Color and to Gay Men of Color communities heavily affected by HIV and other STDs. (7 points)

c. The extent to which the applicant demonstrates capacity to provide services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of CBOs serving Gay Men of Color and to Gay Men of Color Communities. (7 points)

d. The extent to which the applicant demonstrates capability in developing and implementing capacity-building programs, strategies or activities, and in developing and implementing programs similar to those proposed in this application. The extent to which the applicant demonstrates the capacity to effectively implement more than two of the priority prevention interventions, if applicable. (10 points)

e. The extent to which the applicant demonstrates experience and ability in working with coalitions (where appropriate) and in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services. (6 points)

4. Assessing the Need for Community Capacity Development and HIV Prevention Community Planning Effectiveness and Participation (Total 10 Points) The extent to which the applicant demonstrates an understanding of the need for community capacity development and HIV prevention community planning effectiveness and participation. These criteria include:

a. The extent to which the applicant describes the demographics of the racial/ethnic minority population to be served, the impact of the HIV and AIDS epidemic on this population, and any specific environmental, social, cultural, or linguistic characteristics which will be considered in the capacity-building strategy.

b. The extent to which the applicant describes the priority needs related to community capacity development and HIV prevention community planning effectiveness and participation for CBOs serving Gay Men of Color populations and communities in the region(s) to be served, and the process for determining these needs.

c. The extent to which the applicant describes how the proposed program complements the HIV comprehensive plans in the region(s) to be served.

5. Program Plan. (Total 35 points)

a. Involvement of CBOs. (5 points)

The extent to which CBOs and community HIV prevention stakeholders will be involved in providing input into the direction of the program and the program's communication, linkages, performance, and services provided throughout the project period.

b. Objectives. (5 points)

(1) The extent to which the proposed first-year objectives are specific, realistic, time-phased, measurable, and consistent with the program's long-term goals and proposed services; and

(2) The extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives.

c. Plan of Operation. (15 points)

(1) The overall quality of the applicant's plan for providing capacity-building assistance in community capacity development and HIV prevention community planning effectiveness and participation to CBOs serving Gay Men of Color populations and communities, and the likelihood that the proposed methods will be successful in achieving proposed goals and objectives.

(2) The extent to which the applicant's plans address all the activities listed under Required Recipient Activities.

(3) The extent to which the roles and responsibilities of the primary applicant and each coalition member (where appropriate), collaborating organization, or subcontractor are consistent with the proposed activities.

d. Coordination and Collaboration. (5 points)

(1) The extent to which the applicant describes and documents, as applicable, intended coordination with national, regional, State, and local governmental and nongovernmental organizations and HIV prevention providers, such as other national agencies or organizations, State and local health departments.

(2) The extent to which the applicant provides memoranda of agreement or understanding as evidence of agreed-upon collaborative relationships.

6. Time line. (5 points)

The extent to which the applicant's proposed time line is specific and realistic.

7. Program Evaluation Plan. (Total 5 points)

The quality of the applicant's evaluation plan for monitoring and evaluating the implementation of proposed services and measuring the achievement of program goals and objectives.

8. Communications and Dissemination Plan. (Total 5 points)

The quality of the applicant's plan for sharing successful approaches and "lessons learned" with other organizations.

9. Plan for Acquiring Additional Resources. (Total 5 points)

The quality of the applicant's plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and ensure its continuation after the end of the project period.

10. Budget/Staffing Breakdown and Justification. (not scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with intended use of funds.

11. Training and Technical Assistance Plan. (not scored)

The quality of the applicant's plan for obtaining needed technical assistance and staff training to support the proposed program.

Before final award decisions are made, CDC may either make predecisional site visits to applicants whose applications are highly ranked or review the items below with the applicant's board of directors.

a. The organizational and financial capability of the applicant to implement the proposed program.

b. The special programmatic conditions and technical assistance requirements of the applicant.

A business management and fiscal recipient capability assessment may be required of some applicants prior to the award of funds.

J. Submission and Deadline—Categories A and B

Submit the original and two copies of PHS 5161 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov/* * * Forms, or in the application kit. On or before August 5, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date;

or

(b) Sent on or before the deadline date and received in time for submission to the Independent Review Group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

K. Other Requirements—Categories A and B

1. Technical Reporting Requirements.

Provide CDC with the original plus two copies of:

a. Progress reports quarterly, no more than 30 days after the end of each 3 month period;

b. Financial status report, no more than 90 days after the end of each budget period; and

c. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 3 in the application kit.

AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health system Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Health People 2000
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

L. Authority and Catalog of Federal Domestic Assistance Number—Categories A and B

This program is authorized under Sections 301(a) and 317 of the Public Health Service Act, 42 U.S.C. 241(a) and 247(b), as amended. The Catalog of Federal Domestic Assistance Number is 93.939.

M. Where To Obtain Additional Information—Categories A and B

To receive additional written information and to request an application and tool kit, call NPIN at 1–800–458–5231 (TTY users: 1–800–243–7012); visit their web site: www.cdcnpin.org/program; send requests by fax to 1–888–282–7681; or sent requests by e-mail: application-gmc@cdcnpin.org. This information is also posted on the Division of HIV/AIDS Prevention (DHAP) Web site at http://www.cdc.gov/nchstp/hiv_aids/funding/toolkit/.

CDC maintains a Listserv (HIV–PREV) related to this program announcement. By subscribing to the HIV–PREV Listserv, members can submit questions and will receive information via e-mail with the latest news regarding the program announcement. Frequently asked questions on the Listserv will be posted to the Web site. You can subscribe to the Listserv on-line or via e-mail by sending a message to: listserv@listserv.cdc.gov and writing the following in the body of the message: subscribe hiv-prev first name last name.

Pre-application Audio-conference Information: June 24 (2:30–4:00 p.m. EDT)—June 29 (2:30–4:00 p.m. EDT)

The telephone number for all calls is: 800–311–3437 and the pass code (when asked by the automated voice) is 990238 and the name of the audio-conference (Gay Men of Color).

Prospective applicants are strongly encouraged to participate in one of the scheduled audio-conferences. These audio conferences will include information on the application and business management requirements, and how to access additional pre-application resources relevant to application development. Prospective applicants are strongly encouraged to read and become familiar with this program announcement before participating in the audio-conferences.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement [99091], Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Mailstop E–15, Atlanta, GA 30341–4146, Telephone (770) 488–2733; E-mail vxm7@cdc.gov.

For program technical assistance, contact: Dr. George Roberts or Mr. Samuel Taveras, Community Assistance, Planning, and National Partnerships Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, M/S E–58, Atlanta, GA 30333, Telephone number (404) 639–5280 and (404) 639–5240; Email syt2@cdc.gov or gwr2@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov

Dated: June 11, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–15372 Filed 6–21–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Year 2000 Systems Compliance Report to the Department of Health and Human Services.

OMB No: 0970–0191.

Description: Report the Year 2000 readiness of the State systems that support States' (Child Care, Child Support Enforcement, Child Welfare, and Temporary Assistance for Needy Families) programs CORE functions. For each program, identify the major functions must be operational for the program to operate successfully; provide the status of the State's effort to make the automated systems, which support the functions Year 2000 ready.

Respondents: States, District of Columbia, Territories.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 2000	54	5	1	270

Estimated Total Annual Burden Hours: 270.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collectin of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: ACF Desk Officer.

Dated: June 15, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–15751 Filed 6–21–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1879]

BetzDearborn; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BetzDearborn has filed a petition proposing that the food additive regulations be amended to expand the safe use of 2-bromo-2-nitro-1,3-propanediol as an antimicrobial for use in food-contact paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4671) has been filed by BetzDearborn, 4636 Somerton Rd., Trevose, PA 19053. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to expand the safe use of 2-bromo-2-nitro-1,3-propanediol as an antimicrobial for use in food-contact paper and paperboard.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 7, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–15797 Filed 6–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1910]

Cytec Industries, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cytec Industries, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-[4,6-bis(2,4-dimethylphenyl)-1,3,5-triazin-2-yl]-5-(octyloxy)phenol as a stabilizer for olefin polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4675) has been filed by Cytec Industries, Inc., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2-[4,6-bis(2,4-dimethylphenyl)-1,3,5-triazin-2-yl]-5-octyloxy)phenol as a stabilizer for olefin polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 9, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–15798 Filed 6–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98M–0855, 98M–0722, 98M–0835, 98M–0856, 98M–0857, 98M–0897, 98M–0907, 98M–0972, 98M–0999, 99M–0034, 99M–0894, 99M–0237, 99M–0793]

Medical Devices; Availability of Summaries of Safety and Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval application (PMA) approvals. This list is intended to inform the public of the existence and the availability of summaries of safety and effectiveness of approved PMA's through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Summaries of safety and effectiveness are available on the World Wide Web (WWW) at http://www.fda.gov/cdrh/pmapage.html. Copies of summaries of safety and effectiveness are also available by submitting a written request to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in Table 1 in the Supplementary Information section of this document, when submitting a written request.

FOR FURTHER INFORMATION CONTACT: Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page on the Internet (http://www.fda.gov), by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch, and by publishing in the **Federal Register** after each quarter a list of the PMA approvals and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant: in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of all PMA applications for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure as explained previously through March 31, 1999. There were no denial actions during this period. The list provides the manufacturer's name, the generic name or the trade name, and the approval date.

TABLE 1.—LIST OF APPROVED PMA'S FROM SEPTEMBER 25, 1998 THROUGH DECEMBER 31, 1998

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P970026/98M–0722	Miriad Ultra Sound, Inc.	Sound Scan 2000 Sound Scan Compact Sound Scan Clinical Bone Sonometer	May 29, 1998
P970034/98M–0855	Ophthalmic Innovations International, Inc.	Ophthalmic Innovations International Modified C-Loop	September 25, 1998
P980017/98M–0835	Possis Medical, Inc.	Perma-Seal Dialysis Access Graft Model 2C20	September 25, 1998
P980018/98M–0857	DAKO A/S	DAKO Herceptest	September 25, 1998
P980025/98M–0856	Logicon RDA	Logicon Caries Detector	September 25, 1998
P960014/98M–0897	Global Therapeutics, Inc.	Magellan-C Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters Model C22020, C22520, C23020, & C23520	Ooctober 5, 1998
P980016/98M–0907	Medtronic, Inc.	Medtronic Gem Dr Model 7271 Dual Chamber Implantable Cardioverter Defibrillator System with Model 9960 (Gem Dr) Applicator	October 9, 1998
P980023/98M–0972	Biotronik, Inc	Phylax Implantable Cardioverter Defibrillator System	October 27, 1998
D970012/98M–0999	American Medical Systems, Inc.	AMS 700 Series Inflatable Penile Prosthesis Product Line; AMS700CX, AMS700CXM, AMS700CX Preconnect, AMS 700 Ultrex and AMS 700 Ultrex Plus	November 2, 1998
P980024/99M–0034	Vysis, Inc.	Path Vysion™; HER–2 DNA Probe Kit	December 11, 1998
P960025/99M–0894	Acromed Corp.	Brantigen I/F Cage® Used with VSP® Spine Plates and Pedicle Screws	February 2, 1999
P980006/99M–0237	Bausch & Lomb Inc.	Pure Vision™ Balafilcon A Visibility Tinted Contact Lens	February 5, 1999
P980041/99M–0793	Beckman Coulter, Inc.	Access AFP Reagents on the Access Immunoassay Analyzer	February 8, 1999

Dated: June 9, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–15755 Filed 6–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs Advisory Committee, Ophthalmic Drugs Subcommittee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dermatologic and Ophthalmic Drugs Advisory Committee, Ophthalmic Drugs Subcommittee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 21, 1999, 8:30 a.m. to 5 p.m.

Location: Hilton Hotel, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Tracy Riley or Angie Whitacre, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting. Current information may also be accessed on the Internet at the FDA Website "www.FDA.GOV".

Agenda: The subcommittee will discuss new drug application (NDA) 21–023 (cyclosporine ophthalmic emulsion, 0.05%, Allergan, Inc.), for treatment of moderate to severe keratoconjunctivitis sicca.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by July 16, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before July 16, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 16, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–15752 Filed 6–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Public Availability of Information on Clinical Trials for Investigational Devices Intended to Treat Serious or Life-Threatening Conditions; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting concerning the public availability of information on clinical trials for investigational devices intended to treat serious or life-threatening conditions and the availability of this information in a publicly available data bank. This meeting is being held to assist the agency in preparing a report to Congress required under the FDA Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is inviting written comments and information that may assist FDA in this endeavor.

DATES: The meeting will be held on July 8, 1999, from 1:30 p.m. to 4:30 p.m.; registration will begin at 1 p.m.

ADDRESSES: The meeting will be held at 9200 Corporate Blvd., conference room 020B, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Robert R. Gatling, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190, ext. 140, FAX 301–594–2977, or e-mail "rrg@cdrh.fda.gov".

Those persons interested in attending the meeting should fax or e-mail their registration including name, title, firm name, address, telephone, and fax number to Linda J. Lyons at 301–594–1190, ext. 108 or by fax at 301–594–2977. There is no charge to attend this meeting, but advance registration is requested due to limited seating. If you need special accommodations due to a disability, please contact Linda J. Lyons at least 7 days in advance. Comments at the meeting may be limited in time depending on the number of presenters. Presenters should contact Linda J. Lyons by July 5, 1999.

SUPPLEMENTARY INFORMATION: FDAMA (Pub. L. 105–115) was enacted on November 21, 1997. Section 113(a) of FDAMA amends section 402 of the Public Health Service Act (PHS Act) (42 U.S.C. 282) by adding a new section 402(j). This new section directs the Secretary of Health and Human Services (the Secretary), acting through the Director of the National Institutes of Health (NIH), to establish, maintain, and operate a data bank of information on clinical trials for drugs for serious or life-threatening diseases and conditions.

Section 113(b) of FDAMA (collaboration and report) directs the Secretary, the Director of NIH, and the Commissioner of Food and Drugs to collaborate to determine the feasibility of including device investigations within the scope of the data bank under new section 402(j) of the PHS Act. In addition, section 113(b) of FDAMA directs the Secretary to prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Commerce of the House of Representatives a report on the following:

1. The public health need, if any, for inclusion of device investigations within the scope of the data bank under section 402(j) of the PHS Act;

2. The adverse impact, if any, on device innovation and research in the United States if information relating to such device investigations is required to be publicly disclosed; and,

3. Such other issues relating to section 402(j) of the PHS Act as the Secretary determines to be appropriate.

Elsewhere in this issue of the **Federal Register**, FDA is inviting written comments and information that may assist FDA in preparing their report to Congress. Those questions should also be considered by those making presentations at the public meeting.

Dated: June 14, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–15758 Filed 6–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Registration and Listing Grassroots Meeting for Medical Device Manufacturers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following meeting: Registration and Listing Grassroots Meeting for Medical Device Manufacturers. The topic to be discussed is FDA's intention to propose changes to the current medical device registration and listing process. This meeting is being conducted to provide a forum in which FDA can obtain industry views on changes to the device registration and listing system that FDA is currently considering. The changes being considered are aimed at streamlining the collection of registration and listing data, improving the accuracy and quality of the data in the system, and decreasing the time it takes manufacturers to register their establishments and list their devices, while ultimately reducing FDA's cost of maintaining the registration and listing system.

DATES: The meeting will be held on July 15, 1999, 8:30 a.m. to 12 m.; registration will begin at 8 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Minneapolis West (Calhoun Ballroom), 9970 Wayzata Blvd., St. Louis Park, MN, 612–593–1918, FAX 612–593–0150.

FOR FURTHER INFORMATION CONTACT: Bryan H. Benesch, Office of Health and Industry Programs (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597 ext. 131, e-mail "BHB@CDRH.FDA.GOV".

For registration information: Rhonda L. Mecl, Supervisory Investigator, Minneapolis District Office, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401–1912, FAX 612–334–4134.

Those persons interested in attending the meeting should fax their registration including name, title, firm name, address, telephone, and fax number. There is no charge to attend this meeting, but advance registration is requested due to limited seating. If you need special accommodations due to a disability, please contact Rhonda L. Mecl at least 7 days in advance.

SUPPLEMENTARY INFORMATION: Over the past one and a half years, FDA has reviewed the entire registration and listing process to determine if the process can be made more efficient and accurate. This was one of many reengineering efforts conducted by the Center for Devices and Radiological Health (CDRH). This reengineering effort has resulted in a number of suggestions aimed at improving the registration and listing process for both FDA and industry. This meeting will help FDA obtain the medical device industry perspective on the changes under consideration and suggestions for additional changes. FDA has held three meetings on the same subject on April 20 and 21, 1999, in California (64 FR 12813, March 15, 1999) and on May 25, 1999, in Rockville, MD (64 FR 20006, April 23, 1999).

Some of the changes that FDA is currently considering include the following:

(1) Require industry submission of registration and listing information through the World Wide Web (WEB). What are the advantages and disadvantages to industry and how would industry be affected if WEB submissions were mandated?

(2) Require that owners and parent companies register and list and take responsibility for the registration and listing of their establishments. What is the highest level in a company that should be responsible for registration and listing and how should this level be defined/described?

(3) Require that additional data elements be submitted to FDA, e.g., premarket submission numbers for those devices that have gone through the premarket notification (510(k)), premarket approval, or product development protocol process.

(4) Because of the ease of submission through the WEB, require that firms register and list within 5 days (current requirement is 30 days) of entering into an operation that requires registration and listing.

A summary report of the meeting will be available on CDRH's Registration and Listing Process Reengineering Team website approximately 20 working days after the meeting. The CDRH Registration and Listing Process Reengineering Team home page may be accessed at "http://www.fda.gov/cdrh/grassroots/reglist.htm".

Dated: June 13, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–15756 Filed 6–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1878]

"Draft Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test Results for Antibody to HCV (Anti-HCV);" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance (dated June 1999) entitled "Draft Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test Results for Antibody to HCV (Anti-HCV)." The draft guidance is intended to provide recommendations for donor screening and supplemental testing for antibody to HCV, and notification of consignees and quarantine of prior collections from a donor who later tests repeatedly reactive for antibody to HCV (including single antigen and multiantigen screening tests), notification of consignees and recipients of blood and blood components at increased risk for transmitting HCV. The draft guidance, when final, is intended to supersede the September 1998 guidance entitled "Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Test for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV."

DATES: Written comments on the draft guidance may be submitted at any time, however, comments should be submitted by August 23, 1999, to ensure their adequate consideration in preparation of the final document. Submit written comments on the

information collection provisions by August 23, 1999.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled "Draft Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from Donors with Repeatedly Reactive Screening Test for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test Results for Antibody to HCV (Anti-HCV)" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

For technical/scientific questions, contact Robin M. Biswas, Center for Biologics Evaluation and Research (HFM–325), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3011, or FAX 301–496–0338.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance (dated June 1999) entitled "Draft Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from Donors with Repeatedly Reactive Screening Test for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test Results for Antibody to HCV (Anti-HCV)." The draft guidance is intended to provide recommendations for appropriate action when a repeat donor subsequently tests repeatedly reactive for HCV using either a single antigen or multiantigen screening test, commonly referred to as HCV "lookback." The draft guidance provides recommendations for the following: (1) Quarantine (and disposition of products) of prior collections from donors who later test repeatedly reactive for anti-HCV using either a single antigen or multiantigen screening test, (2) supplemental testing and notification of consignees and transfusion recipients, (3) procedures and recordkeeping, (4) review of records of donor testing for "historical" repeatedly reactive donations, and (5) additional testing of donors with no record of supplemental testing on the "historical" repeatedly reactive screening test or with an indeterminate recombinant immunoblot assay 2.0 test result.

On March 20, 1998 (63 FR 13675), FDA announced the availability of "Guidance for Industry: Supplemental Testing and the Notification of Consignees of Test Results for Antibody to Hepatitis C Virus (Anti-HCV)," (the March 1998 guidance). The March 1998 guidance superseded the recommendations related to HCV in FDA's July 19, 1996, guidance entitled: "Recommendations for Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV) and Human T–Lymphotropic Virus Type I (HTLV–I)" (the July 1996 guidance). The March 1998 guidance did not, however, supersede the recommendations related to HTLV and HBV in the July 1996 guidance. (Note: The scope of the July 1996 guidance was limited to enzyme immunoassay (EIA) 2.0 and 3.0 screening performed since 1992.)

On June 18, 1998, at a public meeting of its Blood Products Advisory Committee (BPAC), FDA announced plans to respond to public comments submitted to the docket for the March 1998 guidance by issuance of a comprehensive guidance. At the BPAC meeting, FDA announced it was considering changes to the HCV "lookback" policy based on considerations which had been raised by public comments. FDA continued to receive extensive public comments to the docket which were evaluated carefully by CBER. Under the agency's good guidance practices, FDA issued a notice on September 8, 1998, to withdraw the March 1998 guidance pending issuance of a second comprehensive guidance.

In September 1998, FDA finalized a guidance entitled "Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Test for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV" (the September 1998 guidance). The September 1998 guidance superseded the March 1998 guidance. FDA announced the availability of this document in the **Federal Register** of October 21, 1998 (63 FR 56198).

On January 28, 1999, the Public Health Service Advisory Committee on Blood Safety and Availability (The PHS Advisory Committee) met to consider whether to expand the targeted HCV "lookback" program to include recipients of blood from donors subsequently identified as repeatedly reactive by the single antigen EIA 1.0 screening test for HCV infection that was licensed in 1990. Approximately 80 percent of the EIA 1.0 repeatedly reactive donations occurred before the first supplemental test became available. The PHS Advisory Committee concluded that, for EIA 1.0 repeatedly reactive donations without supplemental testing, it would be reasonable to limit the "lookback" based on the signal to cutoff value of the screening test in cases where supplemental testing had not been done. The PHS Advisory Committee concluded that it would be optimal to perform HCV "lookback" on a subset of the donors testing repeatedly reactive on EIA 1.0 screening tests to capture the vast majority of the true positives and minimize the unnecessary false recipient notifications.

This draft guidance represents the agency's current thinking on the management of prior collections from donors testing repeatedly reactive at a later date using a single antigen or multiantigen screening test for antibody to HCV, including product quarantine, further testing of the donor, and notification of consignees and transfusion recipients. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test Results for Antibody to HCV (Anti-HCV).

This draft guidance recommends that blood establishments prepare and follow written procedures when blood establishments have collected Whole Blood, blood components, Source Plasma, and Source Leukocytes later determined to be at risk for transmitting HCV infections. This draft guidance provides recommendations, similar to the requirements now in effect for HIV "lookback" (21 CFR 610.46 and 610.47 reported and approved under OMB Control No. 0910–0336), to clarify the status of the donor who later tests repeatedly reactive for HCV, to quarantine prior collections from such donors, and to notify consignees and transfusion recipients, as appropriate, based on further testing of the donor. The draft guidance recommends that when a donor who previously donated blood is tested in accordance with this draft guidance on a later donation, and tests repeatedly reactive for antibody to HCV, the blood establishment should perform an additional test using a licensed test, and notify consignees who received Whole Blood, blood components, Source Plasma, and Source Leukocytes from prior collections so that appropriate action is taken. The draft guidance document recommends that blood establishments and consignees quarantine previously collected Whole Blood, blood components, Source Plasma and Source Leukocytes from such donors, and if appropriate, consignees should notify transfusion recipients. In addition to these "lookback" recommendations, which are similar to the "lookback" requirements for HIV, this draft guidance recommends a retrospective review of testing records dating back indefinitely to the extent that electronic or other readily retrievable records are available, to indentify collections from donors who had tested repeatedly reactive in the past, prior to the existence of guidance recommending "lookback" activities. However, the recommendations provide for the review of records to be limited to a lesser period of time, that is, 12 months prior to the last negative licensed multiantigen screening test, whenever there is a record of such a prior test. The draft guidance recommends that blood establishments notify consignees of the risk of HCV transmission that exists for prior collections based on the retrospective review of records and the results of the additional testing performed before or as a result of the retrospective review of records. In addition, the draft guidance recommends that blood establishments notify consignees of the risk of HCV transmission that exists for prior collections from a donor who tested repeatedly reactive on a screening test for HCV and for whom the blood establishment has no record of further testing and the repeatedly reactive results cannot be clarified because further testing is impractical or infeasible. This draft guidance recommends that blood establishments maintain records of the source and disposition of all units of blood and blood products for at least 10 years from the date of disposition or 6 months after the latest product expiration date, whichever is the later date. Under 21 CFR 606.160 (reported and approved under OMB Control No. 0910–0116), such records are required to be retained for 5 years. FDA is recommending an extended records retention period because advances in medical diagnosis and therapy have created opportunities for disease prevention or treatment many years after recipient exposure to a donor later determined to be at increased risk for transfusion-transmitted disease. Additionally, methods of recordkeeping have advanced, improving the ability of blood establishments to more easily maintain and retrieve records. Also, this draft guidance recommends that any consignee of a blood establishment notify the transfusion recipients or their physicians of blood and blood components at increased risk for transmitting HCV. The agency is issuing this draft guidance to promote the continued safety of the blood supply, to help provide users with critical information about blood and blood components, and to promote notification to transfusion recipients who have received blood and blood components at risk for transmitting HCV so that recipients may receive medical counseling.

Respondents to this information collection are blood establishments (business and not-for-profit) and consignees of blood establishments, including hospitals, transfusion services, and physicians. The total

reporting and recordkeeping burden is estimated to be 723,508 hours. However, of this total, approximately 715,986 hours would be expended on a one-time basis for establishing the written procedures and doing the one-time retrospective review of records. Therefore, 8,242 hours is estimated as the ongoing annual burden related to this draft guidance. The total ongoing prospective annual burden for blood establishments is estimated to be 2,880 hours. The prospective annual burden for consignees of blood establishments is estimated to be 5,362 hours.

Based on the June 1998 registration records, there are approximately 2,800 FDA registered blood collection facilities in the United States that collect approximately 27 million units of whole blood and source plasma annually of which, based on the Centers for Disease Control and Prevention (CDC) estimates, there are approximately 9,750,000 donations from repeat donors per year. Based on the prevalence of HCV among donors from 1996 to 1998, CDC estimates that 7,200 of those repeat donors per year would test repeatedly reactive for HCV. For each of these donors, the recommendations in this draft guidance call for blood establishments to notify the consignee (transfusion service) two times, once for quarantine purposes and again with additional test results for a total of 14,400 notifications as an annual ongoing burden. Based on estimates from CDC, FDA expects that for the one-time review of records, as many as 1,117,000 blood products would be at increased risk for transmitting HCV. For each of these products, blood establishments would notify consignees to quarantine these products, report additional test results to consignees, and consignees would notify recipients or recipients' attending physicians. In March 1999, CDC estimated that there could be approximately 566,000 recipients that should be notified after a retrospective review of donor records between May 1990 and June 1998. FDA estimates that a total of 2,234,000 notifications, 1,117,000 affected blood products times 2 notifications, would result from the retrospective review. The total annual responses for blood establishments is estimated to be the combined number of notifications, prospective and retrospective, or 2,248,400. FDA estimates the amount of time for each notification of a consignee by a blood establishment will be approximately 6 minutes (0.1 hours). Consequently, the total estimated reporting burden hours for blood establishments is 224,840 hours. However, the ongoing annual burden not associated with the retrospective review would be 1,440 hours, 14,400 prospective notifications times 0.1 hour per notification.

CDC expects that approximately 2,232 repeat donors who have repeatedly reactive HCV screening test results will confirm positive for HCV each year. Based on CDC's research and information, a donor who confirms positive for HCV will have donated on the average only two previous times and on the average two components will have been made from each donation. Based on this information, there could be 8,936 transfusion recipients that should be notified per year. The total notifications by consignees is estimated to be 574,936 annually, 566,000 recipients notified due to the retrospective review plus 8,936 recipients due to the prospective review. The time estimated for consignees to make a notification is 30 minutes or 0.5 hours on average. This time allows for the possibility of a consignee having to make up to 3 attempts to complete the notification process and creates a total reporting burden of 287,468 hours. According to the Health Care Financing Administration, there are approximately 6,200 consignees that should be responsible for notification.

In Table 2 of this document, the 40 hours per blood establishment recordkeeper represents the time to develop written procedures for the HCV "lookback" recommendations and to update an estimated 4 HCV repeat reactive records as an ongoing annual burden. FDA estimates that it takes approximately 5 minutes to update each record. Therefore, the total recordkeeping by blood establishments is estimated to be 112,000 hours 2,800 registered blood establishments times 40 hours per establishment. FDA estimates that each consignee recordkeeper would need 16 hours to develop written procedures for the HCV "lookback" notification process and to update approximately 1 to 2 transfusion recipient records. FDA estimates that it takes approximately 5 minutes to update each record. Therefore, the total recordkeeping burden for consignees is estimated to be 99,200 hours. The combined total recordkeeping burden for both blood establishments and consignees is estimated to be 211,200 hours. However, based on the prospective number of repeat donors per year and the number that confirm positive for HCV, the ongoing annual recordkeeping burden may only be 2,334 hours. Over time, we expect the ongoing annual recordkeeping burden to decline as the prevalence of HCV among donors has declined due to the implementation of screening tests for anti-HCV, which helps to reduce the number of persons infected with HCV from the donor pool.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Collection Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Blood Establishments	2,800	803	2,248,400	0.1	224,840
Consignees	6,200	93	574,936	0.5	287,468
Total					512,308

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Collection Activity	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Recordkeeper	Total Hours
Blood Establishments	2,800	5	10,000	40	112,000
Consignees	6,200	2.5	15,136	16	99,200
Total					211,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Maintenance costs were not estimated for the additional maintenance of records beyond the current 5 years to the recommended 10 years because modern storage technology has markedly reduced the space needed to store records.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this draft guidance to OMB for review. Interested persons may submit comments regarding this information collection by August 23, 1999, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

IV. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: June 16, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15754 Filed 6–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1737]

Public Availability of Information on Clinical Trials for Investigational Devices Intended to Treat Serious or Life-Threatening Conditions; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Devices and Radiological Health, is requesting comments concerning the feasibility of including information for device investigations for serious or life-threatening diseases and conditions in a public data bank. This action is being taken to assist the agency in preparing a report to Congress required under the FDA Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is announcing an open public meeting on this subject.

DATES: Written comments by August 23, 1999.

ADDRESSES: Written comments concerning this document must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Robert R. Gatling, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190, ext. 140 or e-mail "rrg@cdrh.fda.gov".

SUPPLEMENTARY INFORMATION: FDAMA (Pub. L. 105–115) was enacted on November 21, 1997. Section 113(a) of FDAMA amends section 402 of the Public Health Service Act (PHS Act) (42 U.S.C. 282) by adding a new section 402(j). This new section directs the Secretary of Health and Human Services (the Secretary), acting through the Director of the National Institutes of Health (NIH), to establish, maintain, and operate a data bank of information on clinical trials for drugs for serious or life-threatening diseases and conditions.

Section 113(b) of FDAMA (collaboration and report) directs the Secretary, the Director of NIH, and the Commissioner of Food and Drugs to collaborate to determine the feasibility of including device investigations within the scope of the data bank under new section 402(j) of the PHS Act. In addition, section 113(b) of FDAMA directs the Secretary to prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Commerce of the House of Representatives a report on the following:

1. The public health need, if any, for inclusion of device investigations within the scope of the data bank under section 402(j) of the PHS Act;

2. The adverse impact, if any, on device innovation and research in the United States if information relating to such device investigations is required to be publicly disclosed; and,

3. Such other issues relating to section 402(j) of the PHS Act as the Secretary determines to be appropriate.

Section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) permits the investigational use of devices by experts qualified by scientific training and experience to investigate the safety and effectiveness of such devices. Part 812 (21 CFR part 812) contains the implementing regulations for section 520(g) of the act. In accordance with part 812 and the agency's public information regulations, FDA generally will not disclose the existence of an investigational device exemptions (IDE) application unless its existence has previously been publicly disclosed or acknowledged, until FDA approves an application for premarket approval (PMA) for the device, or until a notice of completion of a product development protocol (PDP) for the device has become effective. The establishment of a data bank intended to contain publicly available information about certain IDE's would require changes in these implementing regulations. Section 113(b) of FDAMA requires the Secretary to evaluate whether public disclosure of IDE information would adversely impact device innovation and research.

The provisions of section 113 of FDAMA apply to drugs for "serious or life-threatening diseases and conditions." Any consideration of inclusion of device trials within the scope of the data bank requires a definition of what types of devices would be covered. FDA does not currently have a definition for "serious" or "life-threatening," as those terms would apply to devices.

In the **Federal Register** of September 18, 1997 (62 FR 48940), FDA published a final rule for treatment use of an investigational device. The rule added § 812.36 (21 CFR 812.36). In the preamble to the final rule, FDA explained that it did not define "serious disease or condition" because the agency concluded that defining the term

could be unduly restrictive and limit the agency's discretion when determining whether certain stages of a disease or condition are "serious." Instead, § 812.36(a) applies the treatment IDE rule to "immediately life-threatening" diseases, and defines that as a stage of a disease in which there is a reasonable likelihood that death would occur within a matter of months or in which premature death is likely without early treatment.

This definition could be used to help define the category of device trials that could be included in a clinical trials data bank. The clinical trials data bank could contain a list of clinical trials, whether Federally or privately funded, of investigational devices for serious or life-threatening diseases, a description of the investigational device, eligibility criteria for patients, the location of clinical trials sites, and a point of contact for those wanting to enroll in the trial. In evaluating the public health need for a device trials data bank and the effects a mandatory public data bank would have on innovation and research, FDA is currently assuming the devices that would fall within the scope of the provision are those intended to treat such "immediately life-threatening" situations, but FDA invites public comment on this issue.

FDA is in the process of consulting with NIH on the feasibility of adding device trials to the data bank. In addition, through this notice, FDA is soliciting comments and information that will help the agency draft its report to Congress under section 113(b) of FDAMA. In particular, FDA seeks input in response to the following questions:

1. Is there a public health need for inclusion of device investigations within the scope of the data bank under 402(j) of the PHS Act?

2. If there is a public health need, what category of device trials should be made publicly available and how should this category be defined? FDA's treatment IDE regulation applies only to devices for which no comparable or satisfactory alternative exists. Should a data bank for IDE's be similarly restricted? Should the trials that become part of the data bank include feasibility/pilot trials or only studies that are intended to demonstrate reasonable assurance of safety and effectiveness?

3. Investigational device trials have historically been smaller in numbers of subjects and numbers of investigational sites than investigational drug trials. What impact, both positive and negative, would the release of information have on these device trials, the sponsors, the investigators, the investigational sites, and the patients? Will a public data bank create pressures to increase the size of device trials or number of sites in situations where such expansion may increase risk to patients?

4. IDE information is generally protected from public disclosure under FDA regulations. If public disclosure were voluntary, would disclosure by one sponsor put pressure on sponsors of similar investigations to disclose the existence of their studies against their better judgment? Is this in the interest of the public health?

5. If disclosure is mandatory, is it likely to hamper innovations and investment in research and development? Would disclosure of these investigational device trials help or hinder research by increasing patient enrollment?

6. Because sponsors can recover some of the costs of the device research and development under the investigational device regulations, should FDA be concerned that publicly available information concerning investigational device trials will result in undue financial pressure or incentives on the trial sponsors to add subjects to the trials without appropriate consideration of risk? Should FDA be concerned about the possibility that improper promotion and commercialization will occur as a result of a public data bank for IDE trials?

7. Will public disclosure of information about device trials for products to treat serious or life-threatening diseases or conditions affect reimbursement policies of third party payers?

8. What other important information or issues should the agency consider?

FDA is planning a public meeting to give interested parties a chance to present their views on the feasibility, utility, and effects of a data bank for device trials. Information regarding the date and place of this meeting is published elsewhere in this issue of the **Federal Register**.

Interested persons may, on or before August 23, 1999Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 14, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–15757 Filed 6–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1081–2N]

Medicare Program; Cancellation of the June 24, 1999, Meeting of the Competitive Pricing Advisory Committee and the Area Advisory Committee for the Kansas City Metropolitan Area

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting cancellation.

SUMMARY: This notice announces the cancellation of the June 24, 1999, meeting of the Competitive Pricing Advisory Committee and the Area Advisory Committee for the Kansas City metropolitan area.

FOR FURTHER INFORMATION CONTACT: Sharon Arnold, Ph.D., Executive Director, Competitive Pricing Advisory Committee, Health Care Financing Administration, 7500 Security Boulevard C4–14–17, Baltimore, MD 21244–1850, (410) 786–6451 (for information about the CPAC).

Richard P. Brummel, Deputy Regional Administrator, Health Care Financing Administration, Richard Bolling Federal Building, Room 235, 601 East 12th Street, Kansas City, MO 64106, (816) 426–5233 (for information about the Kansas City metropolitan area AAC).

SUPPLEMENTARY INFORMATION: This notice announces the cancellation of the June 24, 1999, meeting of the Competitive Pricing Advisory Committee and the Area Advisory Committee for the Kansas City metropolitan area. The meeting will be rescheduled and announced in a subsequent **Federal Register** notice. (Section 4012 of the Balanced Budget Act of 1997, Pub. L. 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App.2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 17, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–15986 Filed 6–18–99; 1:45 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority Office of Communications and Operations Support

Part F of the Statement of Organization, Functions, and Delegations of Authority; for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 62, No. 129, pp. 36294–36295, dated Monday, July 7, 1997, is amended to reflect a reorganization in the Office of Communications and Operations Support.

The specific change will transfer the Audit Liaison Staff from the Office of Financial Management to the Office of Communications and Operations Support to ensure timely resolution of all audit findings and recommendations.

The specific amendments to part F are described below:

Section F.10.A.5., Health Care Financing Administration, is amended by the creation of a new Division of Audit Liaison in the Office of Communications and Operations Support, Operations Support Group, and adding the function of this new Division to the Office functional statement. The existing functional statement is superseded by the following revision:

Office of Communications and Operations Support (FAL)

- Serves a neutral broker coordination role, including scheduling meetings and briefings for the Administrator and coordinating communications between and among central and regional office, in order to ensure that emerging issues are identified early, all concerned components are directly and fully involved in policy development/decision making and that all points of view are presented.
- Coordinates and monitors assigned Agency initiatives which are generally tactical, short-term and cross-component in nature (e.g., legislative implementation).
- Provides operational and analytical support to the Executive Council.
- Manages speaking and meeting requests for or on behalf of the Administrator and Deputy Administrator and researches and writes speeches.
- Coordinates agency-wide communication policies to insure that messages for external audiences appropriately incorporate Agency themes.
- Coordinates the preparation of manuals and other policy instructions to insure accurate and consistent implementation of the Agency's programs.
- Manages the Agency's system for developing, clearing and tracking regulations, setting regulation priorities and corresponding work agendas; coordinates the review of regulations received for concurrence from departmental and other government agencies and develops routine and special reports on the Agency's regulatory activities.
- Manages the Agency-wide clearance system to insure appropriate involvement from Agency components and serves as a primary focal point for liaison with the Executive Secretariat in the Office of the Secretary.
- Operates the agency-wide correspondence tracking and control system and provides guidance and technical assistance on standards for content of correspondence and memoranda.
- Formulates strategies to advance overall communications goals and coordinates the design and publication process in electronic and other media for HCFA electronic information, publications and reports to ensure consistency with other information.
- Provides management and administrative support to the Office of the Attorney Advisor and staff.
- Acts as audit liaison with the General Accounting Office (GAO) and the HHS Office of Inspector General (OIG).

The function of this newly-created Division was deleted from the functional statement of the Office of Financial Management.

Dated: May 28, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–15806 Filed 6–21–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request to reinstate the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

2. The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: State Water Research Institute Program.

Current OMB approval number: 1028–0044.

Abstract: Respondents supply information on eligibility for Federal grants to support water-related research and provide performance reports on accomplishments achieved through use of such funds. This information allows the agency to determine compliance with the objectives and criteria of the grant program.

Bureau form number: None.

Freqiemcu: Annually.

Description of respondents: State water research institutes.

Annual Responses: 108.

Annual burden hours: 5,832.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John E. Schefter,

Chief, Office of External Research.

[FR Doc. 99–15783 Filed 6–21–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–910–0777–26–262F]

Notice of Relocation/Change of Address/Office Closure; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is given that on July 19, 1999, the Bureau of Land Management's (BLM) Billings Field Office and the Billings Curation Center will collocate with the (BLM) Montana State Office and move to a new facility.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra Brooks, Field Manager, 406–238–1540, BLM Billings Field Office, 810 East Main Street, Billings, Montana 59105.

SUPPLEMENTARY INFORMATION: On July 19, 1999, the BLM Billings Field Office will relocate to 5001 Southgate Drive, Billings, Montana 59101. The following business practices will be in effect from July 19 through August 1, 1999:

(A) The office will be closed during the period of July 19 through August 1, 1999. There will be no over-the-counter transactions or phone business during this interim period. The official records (i.e., case files, maps, plats, etc.) will not be available for public inspection. Emergency calls may be directed to 406–255–2888.

(B) The mailing address will change. Effective July 19, 1999, all correspondence should be sent to the following address: P.O. Box 36800, Billings, Montana 59107–6800.

(C) The telephone number will change. Effective August 2, 1999, the new phone number will be: 406–896–5013.

(D) We will resume a full service business on August 2, 1999, at 5001 Southgate Drive, Billings, Montana 59101.

Dated: June 15, 1999.

Sandra Brooks,

Field Manager.

[FR Doc. 99–15772 Filed 6–21–99; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–63256]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a fire station.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., sec. 28
NE¼NW¼NE¼SE¼
Containing 2.5 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

An easement 40 feet in width along Washington Avenue in favor of the City of Las Vegas for roads, public utilities and flood control purposes. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89108.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a fire station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a fire station.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: June 2, 1999.

Sharon DiPinto,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 99–15608 Filed 6–21–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. OR–050–1430–00; GP9–0197]

Notice of Intent To Amend Land Use Plan and Notice Of Realty Action: Classification for Direct Sale Of Public Land In Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice to amend Resource Management Plan to permit direct sale to Deschutes County.

SUMMARY: In accordance with 43 CFR 1610.2 and 1610.3 the Bureau of Land Management (BLM) in the State of Oregon, Prineville District, intends to analyze an amendment to the Brothers/La Pine Resource Management Plan (RMP). The purpose of the amendment is to make available for direct sale the following public lands in Deschutes County, Oregon, under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2760, 43 U.S.C. 1713), at not less than the estimated fair market value:

Williamette Meridian

T. 22 S., R. 10 E.,
Tract 38.
Containing 518.8 acres, more or less

The RMP amendment would facilitate the completion of a land sale that is a key component in a program developed by Deschutes County to protect groundwater. The need by the county to acquire this parcel was identified during the Regional Problem Solving Project, which is a State or Oregon sponsored process to evaluate community problems stemming from unregulated development prior to the implementation of state land use planning laws. The Secretary of the Interior may make this parcel available for sale pursuant to Section 7 of the *Oregon Public Lands Transfer and Protection Act of 1998.*

The patent, if issued, may contain certain reservations to the United States and will be subject to valid and existing rights. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of mineral interests.

SUPPLEMENTARY INFORMATION: The Brothers/La Pine RMP (1989) assigns all lands administered by the Prineville District to one of three Land Tenure Zones. Those lands in Zone 1 are identified for retention and may not be transferred out of Federal ownership. While those in Zone 2 may be considered for exchange and those in Zone 3 may be considered for sale or exchange. The regulations at 43 CFR 2711.1–1(a) require that no parcel of public land may be offered for sale until it has been specifically identified in an approved land use plan (i.e. assigned to Land Tenure Zone 3). The parcel proposed for sale is Land Tenure Zone 2, but would be assigned to Land Tenure Zone 3 by this amendment.

The plan amendment and proposed sale will be analyzed in an environmental assessment. The sale is pending until the appropriate environmental analyses and public and interagency reviews are completed.

The plan amendment is anticipated for completion in the summer of 1999. A 45 day comment period will be provided to allow for additional public involvement. The comment period will be announced through the local media. The need for a public meeting will be evaluated based on the level of public input as a result of public notification procedures. Any public meeting will be announced at least 15 days in advance.

ADDRESSES: Detailed information concerning the plan amendment and the direct sale of public lands is available for review at the office of the Bureau of Land Management, Prineville District, 3050 NE Third, Prineville, 97754.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, pending disposition of this action. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the classification or proposed sale of the lands to the District Manager, Prineville District Office, P.O. Box 550, Prineville, Oregon 97754. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factors not directly related to the suitability of the land for a sale.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: June 9, 1999.

Donald L. Smith,

Assistant District Manager.

[FR Doc. 99–15784 Filed 6–21–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 12, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 7, 1999.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Greene County

Carpenter, Capt. Nathan, House, 2.5 mi. SE of Clinton, Eutlaw vicinity, 99000793

ARKANSAS

Benton County

Sulphur Springs Park Reserve, AR 59, Sulphur Springs, 99000791

Sebastian County

Ayers, William, House, 820 N. 12th St., Fort Smith, 99000792

COLORADO

Denver County

Hover, W.A., and Company Building, 1390 Lawrence St., Denver, 99000794

FLORIDA

Lee County

Bonita Springs School (Lee County MPS), 10701 Dean St., Bonita Springs, 99000800
English, J. Colin, School (Lee County MPS), 120 Pine Island Rd., North Fort Myers, 99000798
Fort Myers Beach School (Lee County MPS), 2751 Oak St., Fort Myers Beach, 99000796
Sanibel Colored School (Lee County MPS), 520 Tarpon Bay Rd., Sanibel, 99000797
Tice Grammer School (Lee County MPS), 4524 Tice St., Tice, 99000799

Palm Beach County

Grandview Heights Historic District, Roughly bounded by Park Pl., Alabama Ave., M St., and S. Lake Ave., West Palm Beach, 99000795
Mango Promenade Historic District, Roughly bounded by S. Dixie Hwy., Austin Ln., Coconut Ln., and Cranesnest Way, West Palm Beach, 99000801

Pinellas County

Mount Olive African Methodist Episcopal Church, 600 Jones St., Clearwater, 99000802

GEORGIA

Harris County

Duke, Welcome P., Log House, 312 Duke Rd., Hamilton vicinity, 99000803

IDAHO

Power County

American Falls Archeological District, Address Restricted, vicinity, 99000804

MASSACHUSETTS

Middlesex County

Old Chestnut Hill Historic District (Boundary Increase), (Newton MRA), Suffolk Rd., Newton, 99000805

MINNESOTA

Winona County

Winona City Hall, (Federal Relief Construction in Minnesota MPS), 207 Lafayette St., Winona, 99000806

NEW YORK

Delaware County

Old School Baptist Church of Halcottsville, Old NY 30, Halcottsville, 99000809

Rockland County

Old Sloatsburg Cemetery, Richards Rd., Sloatsburg, 99000807

Ulster County

Guilford—Bower Farm House, Albany Post Rd., New Paltz vicinity, 99000810
Hasbrouck, Maj. Jacob, Jr. House, 193 Huguenot St., New Paltz, 99000808

NORTH CAROLINA

Duplin County

Boney, W. Stokes, House, (Duplin County MPS), 651 E. Southerland St., Wallace, 99000812

Moore County

Black, J.C., House, 106 McNeill St., Carthage, 99000811

Rutherford County

Cool Springs High School, 382 W. Main St., Forest City, 99000813

PENNSYLVANIA

Philadelphia County

Germantown Junction Station, 2900 N. Broad St., Philadelphia, 92000940

SOUTH CAROLINA

Bamberg County

American Telephone and Telegraph Company Building, 124 N. Palmetto Ave., Denmark, 99000815

Hampton County

Pineland, The, The Pineland Lane, Off US 321, Garnett vicinity, 99000814

York County

Clover Downtown Historic District, Jct. of Main and Kings Mountain Sts., Clover, 99000816

WISCONSIN

Brown County

Broadway—Walnut Historic District, 100 N and part of 100 S Block Broadway; 100 N Block Pearl St., 400 Block W. Walnut St., Green Bay, 99000817

Dunn County

Upper Wakanda Park Mound Group, Address Restricted, Menomonie vicinity, 99000818

Monroe County

Walczak—Wontor Quarry Pit Workshop, Address Restricted, Cataract vicinity, 99000819

[FR Doc. 99–15838 Filed 6–21–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–7]

Michael J. Pine, D.D.S.; Denial of Application

On October 22, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Michael J. Pine, D.D.S. (Respondent) of Roseburg, Oregon, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f) and 824(a)(1) and (a)(4) for reason that his registration would be inconsistent with the public interest.

Respondent filed a request for a hearing, and the matter was docketed before Administrative Law Judge Gail A. Randall. Following prehearing procedures, a hearing was held on April 2, 1998, in Eugene, Oregon. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument.

On November 27, 1998, while the matter was still pending before Judge Randall, counsel for the Government filed a Motion to Reopen Record and for Summary Disposition, alleging that Respondent is currently without authority to handle controlled substances in the State of Oregon. The motion was supported by a copy of the Consent Order for Revocation of License entered into by Respondent with the Oregon Board of Dentistry dated June 26, 1998. The Government argued that DEA cannot issue Respondent a registration since Respondent is without state authorization to handle controlled substances. Although Respondent was given the opportunity to file a response to the Government's motion, no such response was filed.

Thereafter, on December 29, 1998, Judge Randall issued her Opinion and Recommended Decision, finding that based upon the evidence before her, Respondent lacks authorization to handle controlled substances in the State of Oregon and therefore he is not entitled to a DEA registration in that state; granting the Government's Motion for Summary Disposition; and recommending that Respondent's application for registration be denied. Neither party filed exceptions to her opinion, and on February 5, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1416.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that by a Consent Order for Revocation of License dated June 26, 1998, the Oregon Board of Dentistry ordered the immediate revocation of Respondent's license to practice dentistry. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to practice dentistry in Oregon, the state where he has applied to be registered with DEA. The Deputy Administrator further finds that it is reasonable to infer that since Respondent is not authorized to practice dentistry in Oregon, he is also not authorized to handle controlled substances in that state.

DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. *See* 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here, it is clear that Respondent is not licensed to handle controlled substances in Oregon. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in Oregon. *See Dong Ha Chung, M.D.*, 63 FR 11,694 (1998); *Jesus R. Juarez, M.D.*, 62 FR 14,945 (1997).

Since DEA does not have the statutory authority to issue Respondent a DEA registration because he is not currently authorized to handle controlled substances in Oregon, the Deputy Administrator concludes that it is unnecessary to determine whether Respondent's application for registration should be denied based upon the grounds alleged in the Order to Show Cause.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Michael J. Pine, D.D.S. on June 5, 1995, be, and it hereby is, denied. This order is effective June 22, 1999.

Dated: June 14, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–15748 Filed 6–21–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–15]

Saihb S. Halil, M.D.; Revocation of Registration; Denial of Request for Modification

On November 6, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Snow Cause to Saihb S. Halil, M.D. (Respondent) of California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AH1993749, and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that his California medical license was revoked effective May 3, 1995, and he is therefore not currently authorized to handle controlled substances in that state. Following subsequent communication between Respondent and DEA, Respondent submitted a letter to DEA dated January 29, 1998, requesting that his DEA Certificate of Registration be modified to reflect a Puerto Rico address. On February 20, 1998, DEA issued an Amended Order to Show Cause to Respondent proposing to revoke his DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(1) and (a)(3), and to deny his request to modify his registration and to deny any pending applications for renewal of such registration under 21 U.S.C. 823(f) for reason that his continued registration would be inconsistent with the public interest.

By letter dated March 2, 1998, Respondent timely filed a request for a hearing, and following prehearing procedures, a hearing was held in San Francisco, California on July 1, 1998, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called a witness to testify and introduced documentary evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law and argument. On November 19, 1998, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's DEA registration be revoked and that his request for modification and any pending applications for renewal be denied. Neither party filed exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge, and on January 6, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the findings of fact and conclusions of law of the Administrative Law Judge, and adopts Judge Randall's recommended ruling with one exception. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent was issued DEA Certificate of Registration AH1993749 on March 18, 1983.

Effective July 10, 1995, the Medical Board of California (Board) revoked Respondent's license to practice medicine based upon his patient care in 1987 and 1988. The Board concluded that Respondent's license should be revoked (1) "For gross negligence in his treatment of [3 named patients];" (2) "for repeated acts of negligence in his treatment of [3 named patients];" (3) "for acts and omissions which constitute incompetence in his treatment of [2 named patients];" (4) "for dishonest and corrupt acts in his dealings with [1 named patient];" and (5) "for sexual misconduct with [1 named patient]." Further the Board adopted the state administrative Law judge's finding that Respondent had been "untruthful in his depositions in 1990, and he [had been] untruthful at trial in 1994."

In October 1995, Respondent submitted a renewal application for his DEA Certificate of Registration listing a California address. On this application, Respondent listed the license number for his revoked California medical license in response to the question regarding the status of his state licensure. Further, Respondent answered "No" in response to the question on the application (hereinafter referred to as the liability question") which asks in relevant part: "Has the applicant ever * * * had a State professional license or controlled substance registration revoked, suspended denied, restricted or placed on probation, or is any such action pending against the applicant?" At the hearing in this matter, Respondent testified that he had not personally completed this renewal application nor had he signed it.

On November 6, 1996, DEA issued the first Order to Show Cause to Respondent. By letter dated November 22, 1996, Respondent informed DEA that he currently was practicing medicine in Puerto Rico, and requested information concerning what other action he should take in response to the Order to Show Cause. DEA did not reply to Respondent's letter until December 30, 1997. DEA informed Respondent that he needed to request a modification of his DEA registration to reflect his Puerto Rico address. By letter dated January 29, 1998, Respondent requested modification of his DEA Certificate of Registration to reflect a Puerto Rico address.

At the hearing in this matter, Respondent admitted that he lacked in-depth knowledge of the applicable DEA regulations. He further testified that although he has pursued extensive medical training while in Puerto Rico, the training did not include classes concerning the handling of controlled substances.

The Government contends that Respondent's DEA Certificate of Registration must be revoked since he is no longer authorized to practice medicine or handle controlled substances in California, and state authorization is a necessary prerequisite to DEA registration. Further the Government contends that Respondent's request for modification of his DEA registration to reflect a Puerto Rico address should be denied based upon Respondent's material falsification of his October 1995 renewal application.

Respondent asserts that his request for modification of his DEA Certificate of Registration should be granted because he did not materially falsify his renewal application; the Government failed to prove that modification of his registration would be inconsistent with the public interest; and the Government is estopped from taking adverse action based upon its failure to process his application in a timely manner. Respondent further asserts that if his request for modification is granted to reflect a Puerto Rico address, then the Government no longer has a basis for revoking his DEA registration.

As to Respondent's estoppel argument, the Deputy Administrator agrees with Judge Randall that "[t]he chronology of agency action in this case

is troubling * * *". Respondent submitted a timely reply to the initial Order to Show Cause requesting further guidance; however the Government did not respond for 13 months.

But, DEA has previously held that:

> [P]rinciples of equitable estoppel cannot be applied to deprive the public of the protection of a statute because of the mistaken action, or lack of action, on the part of public officials * * *. Generally, a governmental unit is not estopped when functioning in a governmental capacity.

James Dell Potter, M.D., 49 FR 9970 (1994) (alteration and omission in original).

The Deputy Administrator agrees with Judge Randall's conclusion that "[a]lthough worthy of consideration and concern, such lack of timeliness does not overcome the public interest in this case. Equitable estoppel does not operate under these circumstances to preclude the DEA from protecting the public health and safety." Therefore, the Deputy Administrator must determine whether Respondent's registration should be revoked and his request for modification denied in light of the facts of this case and the relevant law.

Initially, the Deputy Administrator notes that DEA does not have the statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to handle controlled substances by the state in which he or she practices. See 802(21), 823(f), and 824(a)(3). DEA has consistently held that a practitioner may not maintain a DEA registration when the practitioner lacks authority to handle controlled substances in the state in which he or she practices. See, e.g., Charles Milton Waller, D.D.S., 62 FR 34,310 (1997); Suzanne Kirkwood King, M.D., 62 FR 33,680 (1997); *Anne Lazar Thorn, M.D.*, 62 FR 12,847 (1997).

The Deputy Administrator finds that it is undisputed that Respondent is not currently authorized to practice medicine in the State of California, where he is registered with DEA. Therefore, it is reasonable to infer that he is also not authorized to handle controlled substances in that state. As a result, Respondent is not entitled to maintain a DEA registration in that state.

However, Respondent has sought to modify his DEA registration to an address in Puerto Rico where he is authorized to handle controlled substances. Pursuant to 21 CFR 1301.51, requests for modification "shall be handled in the same manner as an application for registration."

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

The Deputy Administrator agrees with Judge Randall that factors one and five are relevant in this case in determining the public interest. As to factor one, it is undisputed that Respondent's California medical license was revoked in July 1995. However, Respondent is currently licensed to practice medicine and handle controlled substances in the Commonwealth of Puerto Rico.

The Government argues that Respondent's material falsification of his DEA renewal application should be considered under factor five in determining whether Respondent's continued registration is inconsistent with the public interest. Answers to liability questions are considered material, because DEA relies upon such answers to determine whether an investigation is needed prior to granting the application. See Ezzat E. Majd Pour, M.D., 55 FR 47,547 (1990). DEA has consistently held that the test for determining whether an applicant has materially falsified an application for registration is whether the applicant knew or should have known that the information he provided on the application was false. See Herbert J. Robinson, M.D., 59 FR 6304 (1994); Bobby Watts, M.D. 58 FR 46,995 (1993).

Respondent's California medical license was revoked in July 1995, yet he indicated in his October 1995 renewal application that no action had been taken against his state license. Respondent knew or should have known, at the time that his renewal application was submitted, that his answer to the liability question was false.

As Judge Randall noted, "[a]though the Respondent testified that he had not personally completed the renewal application, such an assertion does not relieve him of the responsibility of assuring the truthfulness of information submitted to the DEA on his behalf." The Deputy Administrator agrees with Judge Randall that the Government has presented a prima facie case of material falsification.

The Deputy Administrator also agrees with Judge Randall that Respondent's admission of a lack of in-depth knowledge of controlled substance regulations is relevant under factor five. Registrants must be familiar with the regulations relating to controlled substances to ensure that controlled substances are properly handled and not diverted for illicit purposes.

Judge Randall concluded that Respondent's registration should be revoked based upon his lack of state authorization to handle controlled substances, and that his request for modification of his registration should be denied based upon his material falsification of his renewal application and his admitted lack of knowledge of controlled substance regulations. But Judge Randall further stated that:

> given the extraordinary lapse of time since the Respondent's unacceptable medical practices in 1987 and 1988, should the Respondent (1) Apply for a new registration with a truthful application, disclosing his complete license history, and (2) submit evidence of recent training in the handling of controlled substances, then I would recommend that the Deputy Administrator consider granting such an application.

The Deputy Administrator agrees that Respondent's request for modification of his DEA registration to reflect a Puerto Rico address should be denied as inconsistent with the public interest. Respondent was responsible for the material falsification of his renewal application. In addition, his admitted lack of knowledge concerning the proper handling of controlled substances is troubling to the Deputy Administrator. As a result, the Deputy Administrator is not convinced that Respondent can be trusted to responsibly handle controlled substances.

The Deputy Administrator further concludes that since Respondent's request for modification is denied, Respondent is left with his DEA registration in California. Respondent cannot maintain his DEA registration in California based upon his lack of authorization to handle controlled substances in that state. As a result, his DEA Certificate of Registration must be revoked.

Therefore, the Deputy Administrator agrees with Judge Randall that Respondent's registration must be revoked and his request for modification denied. But, the Deputy Administrator declines to indicate under what circumstances DEA would consider granting any future applications. Any such applications will be considered in light of the facts and circumstances that exist at that time.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AH1993749, issued to Saihb S. Halil, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that Dr. Halil's request to modify his registration, and any pending applications for renewal of his registration, be, and they hereby are, denied. This order is effective July 22, 1999.

Dated: June 14, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–15750 Filed 6–21–99; 8:45 am]

BILLING CODE 4410–25–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ahmed A. Shohayeb, M.D.; Denial of Applications

On January 28, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ahmed A. Shohayeb, M.D. of California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS4243591 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration and two pending applications, executed on August 20, 1996, and September 11, 1996, for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of California. The order also notified Dr. Shohayeb that should no request for a hearing be filed within 30 days, his hearing right should be deemed waived.

The Order to Show Cause was sent to Dr. Shohayeb by registered mail to his DEA registered address and to the addresses listed on his two applications for registration, but were returned to DEA unclaimed. A DEA investigator attempted to contact Dr. Shohayeb by telephone, but all telephone numbers listed for Dr. Shohayeb were disconnected. On February 27, 1998, the investigator went to the address listed on Dr. Shohayeb's driver's license and confirmed that Dr. Shohayeb lived at that address, however he was unable to talk to Dr. Shohayeb at that time. The investigator left a copy of the Order to Show Cause under the door.

No request for a hearing or any other reply was received by the DEA from Dr. Shohayeb or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Shohayeb is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that there are indications in the file that Dr. Shohayeb's DEA Certificate of Registration BS4243591, expired on February 28, 1998, and that no renewal applications have been filed for this registration. Therefore the Deputy Administrator concludes that as of February 28, 1998, this registration was no longer valid, and as a result, there is noting to revoke. *See Ronald J. Reigel, D.V.M.*, 63 FR 67,132 (1998). However, there are two pending applications for registration that must be addressed.

The Deputy Administrator finds that effective May 23, 1997, the Medical Board of California (Board) revoked Respondent's license to practice medicine. The Board found that Dr. Shohayeb engaged in sexual misconduct with a patient; he engaged in acts of gross negligence; he advertised his practice of medicine using a name which was not his own or one which was approved by the Board; and he engaged in unprofessional conduct.

The Deputy Administrator finds that Dr. Shohayeb is not currently licensed to practice medicine in the State of California and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Shohayeb is not currently authorized to handle controlled substances in the State of California. As a result, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the applications, executed on August 20, 1996 and September 11, 1996 by Ahmed A. Shohayeb, M.D., for registration as a practitioner, be, and they hereby are, denied. This order is effective June 22, 1999.

Dated: June 14, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–15749 Filed 6–21–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for employment authorization.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 28, 1999 at 64 FR 4471, allowing for an emergency OMB review and approval and a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 22, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the

Office of Management and Budget, Office of Information and Regulatory Affairs, Attention : Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530, 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–765, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information contained in this form will be used by the INS to determine eligibility for work authorization and for the issuance of the employment document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,244,722 responses at 3 hours and 25 minutes (3.416 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,251,970 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: June 16, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–15760 Filed 6–21–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 1999 for a cooperative agreement to fund the "Classification of Women Offenders" project.

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. An award is made to an organization that will, in concert with the Institute, provide assistance to correctional agencies making enhancements in their classification systems to develop classification instruments and procedures that are valid and appropriate for women offenders. The project will entail an assessment of the current status of classification of women offenders nationally by determining which state systems have initiated the development of classification instruments and operational procedures to address the requirements of this offender population.

Assistance will be provided under this cooperative agreement to at least three agencies requesting technical assistance in assessing current practices and operational procedures and the impact of their classification systems on women offenders. The recipient of the cooperative agreement will conduct onsite assessments of the classification systems at participating agencies; provide assistance and oversight in revising the instruments and procedures, as necessary; and provide technical assistance and training. Prison systems selected for participation will have the resources necessary to make enhancements, to provide data for analysis, and the capacity to measure outcomes and impact of the classification systems implemented. A steering committee will be appointed by each agency to coordinate activities related to the project. No funds are transferred to state or local governments.

Background: It is assumed that because women offenders represent a small percentage of the total inmate population, and present a lower level of institutional and public risk, many correctional agencies have not addressed the gender-specific and validation concerns related to differences in risks and program needs of women offenders. An evaluation of the procedures and instrument for intake assessment, initial classification and reclassification is required to determine if the objective classification criteria developed for an offender population which is predominately male results in over-classification and inadequate service delivery with the female population.

Classification systems should to be monitored and periodically evaluated to ensure the system is working as designed. Classification systems should also be validated on both the male and female offender population to determine what impact the system has on inmate operations and assessing risks and needs. This cooperative agreement will concentrate on the female population.

NIC has announced the availability of technical assistance through the annual Program Plan and will send letters to agency directors advising them that their agencies can apply for assistance through this project. A selection of states will be made by NIC and the cooperative agreement awardee. The selections will be based on criteria that will be established to find correctional agencies with the interest, need and resources for this type of assistance.

Purpose: The National Institute of Corrections is seeking applications for a cooperative agreement to do the project management to assist correctional agencies to plan and evaluate their classification systems to address the gender-specific issues; develop classification instruments that are valid and appropriate for women offenders to assess risks and needs; guide the agencies in the development of a plan for implementation of changes that may result from this work; and develop detailed reports on each state project and the national assessment. It is anticipated that subject to satisfactory completion of the first phase of work, the recipient of the FY 1999 cooperative agreement will be awarded the cooperative agreement for the continuation of work through a second year in FY 2000, to assist additional correctional agencies and produce a publication.

Authority: Public Law 93–415.

Funds Available: The award will be limited to a maximum total of $100,000 (direct and indirect costs) and project activity must be completed within 12 months of the date of the award. Funds may only be used for the activities that are linked to the desired outcomes of the project. This project will be a collaborative venture with the NIC Prisons Division.

All products from this funding effort will be in public domain and available to interested agencies through the National Institute of Corrections.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on Friday, July 30, 1999. They should be addressed to: National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, D.C. 20534, Attention: Administrative Officer. Hand delivered applications can be brought to 500 First Street, NW, Washington, D.C. 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Addresses and Further Information: Requests for the application kit, which consists of a copy of this announcement and copies of the required forms, should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, N.W., Room 5007, Washington, D.C. 20534 or by calling (800) 995-6423, extension 159 or (202) 307–3106, extension 159. She can also be contacted by E-mail via jevens@bop.gov. All technical and/or programmatic questions concerning this announcement should be directed to Sammie D. Brown at the above address or by calling (800) 995–6423, or (202) 307–3106, extension 126, or by E-mail via sbrown@bop.gov. Application forms may also be obtained through the NIC website: http://www.nicic.org.

Eligible Applicants: An eligible applicant is any private or non-profit organization, institution, individual, or team with expertise in both prison classification and women offender issues.

Review Considerations: Applications received under this announcement will be subjected to an NIC three to five member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 99P03. This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424.

Executive Order 12372: This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit, along with further instructions on proposed projects serving more than one State.

The Catalog of Federal Domestic Assistance number is: 16.603.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 99–15787 Filed 6–21–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting In Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The cite following "FR Notice:" refers to the issue of the **Federal Register** where MSHA published the notice that the petitioner was seeking a modification.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated: June 16, 1999.

Carol J. Jones,

Acting Director, Office o
Regulations and Varia

Affirmati
Modific

Dock)11–C.
FR Notice: 6 K 697.
Petitioner: FKZ Coal, Inc.
Regulation Affected: 30 CFR 75.1100–2.

Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the No. 1 Slope Mine with conditions.

Docket No.: M–98–022–C.
FR Notice: 63 FR 18232.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use a spring-loaded metal locking device instead of padlocks for securing battery-charging plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered scoop cars considered acceptable alternative method. Granted for the Rend Lake Mine with conditions.

Docket No.: M–98–028–C.
FR Notice: 63 FR 29034.
Petitioner: Lodestar Energy.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use 750 feet of No. 6 cable on Fletcher single boom roof bolters considered acceptable alternative method. Granted for the Baker Mine with conditions.

Docket No.: M–98–030–C.
FR Notice: 63 FR 29034.
Petitioner: Lone Mountain Processing, Inc.

Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places and to install a low-level carbon monoxide detection system as an early warning fire detection system in belt entries considered acceptable alternative method. Granted for the Darby Fork No. 1 and Huff Creek Mine No. 1 with conditions.

Docket No.: M–98–031–C.
FR Notice: 63 FR 29034.
Petitioner: Freeman United Coal Mining Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use 2,400 volt A.C. cables and equipment inby the last open crosscut within 150 feet of gob areas so that they can be used to power continuous mining equipment considered acceptable alternative method. Granted for the Crown II Mine with conditions.

Docket No.: M–98–032–C.
FR Notice: 63 FR 29034.
Petitioner: Mettiki Coal Corporation.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use 4,300 volt cables on high-voltage longwall electric equipment used within 150 feet from pillar workings (longwall gob) considered acceptable alternative method. Granted for the Mettiki Mine with conditions.

Docket No.: M–98–035–C.
FR Notice: 63 FR 29034.
Petitioner: Lone Mountain Processing, Inc.
Regulation Affected: 30 CFR 75.1103–4.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places and to install a low-level carbon monoxide detection system as an early warning fire detection system considered acceptable alternative method. Granted for the Darby Fork Mine No. 1 with conditions.

Docket No.: M–98–037–C.
FR Notice: 63 FR 29035.
Petitioner: CONSOL of Kentucky, Inc.
Regulation Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal to use a single line of automatic sprinklers for its fire protection system on the main and secondary belt conveyors at the Motts Branch Mine considered acceptable alternative method. Granted for the Motts Branch Mine with conditions.

Docket No.: M–98–044–C.
FR Notice: 63 FR 41598.
Petitioner: Joliett Coal Company.
Regulation Affected: 30 CFR 75.335.
Summary of Findings: Petitioner's proposal to construct seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings to use; a design criteria in the 10 psi range; and to install the water trap in the gangway seal and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted for the No. 3 Vein Slope Mine with conditions.

Docket No.: M–98–045–C.
FR Notice: 63 FR 41598.
Petitioner: Joliett Coal Company.
Regulation Affected: 30 CFR 75.360.
Summary of Findings: Petitioner's proposal to visually examine each seal for physical damage from the slope gunboat during the pre-shift examination after an air quality reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working considered acceptable alternative method. Granted for the No. 3 Vein Slope Mine with conditions.

Docket No.: M–98–046–C.
FR Notice: 63 FR 41598.
Petitioner: Joliett Coal Company.
Regulation Affected: 30 CFR 75.364 .
Summary of Findings: Petitioner's proposal to examine the intake haulage slope and primary escapeway areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month considered acceptable alternative method. Granted for the Mine No. 3 Vein Slope Mine with conditions.

Docket No.: M–98–048–C.
FR Notice: 63 FR 41598.
Petitioner: Joliett Coal Company.
Regulation Affected: 30 CFR 75.1100–2.
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage is not practical considered acceptable alternative method. Granted for the No. 3 Vein Slope Mine with conditions.

Docket No.: M–98–049–C.
FR Notice: 63 FR 41598.
Petitioner: Joliett Coal Company.
Regulation Affected: 30 CFR 75.1200.
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined considered acceptable alternative method. Granted for the No. 3 Vein Slope Mine with conditions.

Docket No.: M–98–050–C.
FR Notice: 63 FR 41598.
Petitioner: Joliett Coal Company.
Regulation Affected: 30 CFR 75.1202–1.
Summary of Findings: Petitioner's proposal to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations considered acceptable alternative method. Granted for the No. 3 Vein Slope Mine.

Docket No.: M–98–051–C.
FR Notice: 63 FR 41598.
Petitioner: Webster County Coal Corporation.
Regulation Affected: 30 CFR 75.364.
Summary of Findings: Petitioner's proposal to establish two continuous monitoring stations to continuously monitor for methane and oxygen; to have an audible alarm signal at a surface location where a responsible person would be on duty at all times while miners are underground, and to train this person in the proper procedures for handling the monitoring system if immediate action is necessary in the event of an emergency or malfunction; to have a certified person check the monitoring stations weekly for air quantity and direction; and to have the results of the check recorded in a book that would be maintained on the surface considered acceptable alternative method. Granted for the Dotiki Mine with conditions.

Docket No.: M–98–053–C.
FR Notice: 63 FR 44291.
Petitioner: Primrose Coal Company.
Regulation Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength and secondary safety rope connection in place of such devices considered acceptable alternative method. Granted for the Buck Mountain Vein Slope Mine with conditions.

Docket No.: M–98–058–C.
FR Notice: 63 FR 44291.
Petitioner: Rustler Coal Company.
Regulation Affected: 30 CFR 75.1405.
Summary of Findings: Petitioner's proposal to use bar and pin, or link and pin couplers on underground haulage equipment considered acceptable alternative method. Granted for the Archard Slope Mine with conditions.

Docket No.: M–98–059–C.
FR Notice: 63 FR 44291.
Petitioner: CONSOL of Kentucky, Inc.
Regulation Affected: 30 CFR 75.1101–8.

Summary of Findings: Petitioner's proposal to use a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors in the Big Springs No. 1 Mine, and to have the automatic sprinklers located not more than 10 feet apart so that the discharge of water would extend over the belt drive, belt take-up, electrical control, and gear reducing unit considered acceptable alternative method. Granted for the Big Springs No. 17 Mine with conditions.

Docket No.: M–98–068–C.
FR Notice: 68 FR 45865.
Petitioner: Jewell Smokeless Coal Corporation.
Regulation Affected: 30 CFR 77.214.
Summary of Findings: Petitioner's proposal to construct a refuse bench fill in an area containing abandoned mine openings considered acceptable alternative method. Granted for the Dominion Mine No. 25 with conditions.

Docket No.: M–98–071–C.
FR Notice: 63 FR 45866.
Petitioner: Mettiki Coal Corporation.
Regulation Affected: 30 CFR 75.804.
Summary of Findings: Petitioner's proposal to use specially designed high-voltage cables for longwall mining equipment, and to use cables that would be MSHA accepted as flame-resistant and used only for high-voltage longwall equipment; and to train miners performing electrical maintenance on high-voltage cables on the longwall to safely install, splice, and repair the specially designed high-voltage cables considered acceptable alternative method. Granted for the Mettiki Mine with conditions.

Docket No.: M–98–072–C.
FR Notice: 63 FR 45866.
Petitioner: Independence Coal Company, Inc.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal to plug oil and gas wells using specific procedures outlined in the petition for modification considered acceptable alternative method. Granted for the Justice No. 1 Mine with conditions.

Docket No.: M–98–075–C.
FR Notice: 63 FR 48765.
Petitioner: The Kedco, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f)).
Summary of Findings: Petitioner's proposal to replace a padlock on battery plug connectors with a threaded ring and a spring loaded device on mobile battery-powered machines to prevent the plug connector from accidently disengaging while under load considered acceptable alternative method. Granted for the No. 2 Mine with conditions.

Docket No.: M–98–079–C.
FR Notice: 63 FR 50603.
Petitioner: Independence Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage longwall mining equipment and that the nominal voltage of the longwall power circuit(s) would not exceed 4,160 volts considered acceptable alternative method. Granted for the Justice No. 1 Mine with conditions.

Docket No.: M–98–083–C.
FR Notice: 63 FR 58430.
Petitioner: Long Branch Coal.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use a threaded ring and a spring loaded device on battery plug connectors on mobile battery-powered machines to prevent the plug connector from accidently disengaging while under load considered acceptable alternative method. Granted for Mine No. 23 with conditions.

Docket No.: M–97–049–C.
FR Notice: 62 FR 29371.
Petitioner: Island Creek Coal Company.
Regulation Affected: 30 CFR 75.364.
Summary of Findings: Petitioner's proposal to monitor the water level by a float and if the water level goes away indicating a problem with the seal below water, a set of contacts will close sounding an alarm in the mine-wide monitoring system on the surface; to check the water level each production day; to establish two check points to monitor the affected area; to maintain these check points in a safe condition; to have a certified person test these check points on a weekly basis for methane and the quantity of air; and to have the person making the tests place his/her initials, date, and time in a record book kept on the surface and made available for inspection by interested persons considered acceptable alternative method. Granted for the Ohio No. 11 Mine with conditions for continuous monitoring using intrinsically safe sensors installed as part of the mines AMS and weekly evaluation for methane and oxygen content of the air ventilating the flooded mine seals No. 1 (Old Supply Slope) and No. 2 (Old Belt Slope).

Docket No.: M–97–092–C.
FR Notice: 62 FR 46379.
Petitioner: Peabody Coal Company.
Regulation Affected: 30 CFR 75.364.
Summary of Findings: Petitioner's proposal to monitor methane and oxygen concentrations and the volume of air at the locations and frequency specified in the petition; to have trained and certified persons conduct the monitoring; and to record the results of the monitoring in a book to be maintained on the surface of the mine considered acceptable alternative method. Granted for the Camp No. 11 Mine with conditions.

Docket No.: M–97–128–C.
FR Notice: 63 FR 2698.
Petitioner: Jim Walter Resources, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to amend the Decision and Order Granting Petition for Modification No. M–85–045–C is granted. The Assistant Secretary had granted a modification of 30 C.F.R. 75.1002. The amendment states that where high-voltage cable that moves during normal operation of the longwall is damaged to the extent that any metallic component of the cable is damaged, the cable shall be repaired and the outer jacket of such repair shall be vulcanized with flame-resistant material. Granted for the No. 5 Mine with conditions.

Docket No.: M–97–129–C.
FR Notice: 63 FR 2698.
Petitioner: Jim Walter Resources, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to amend the Decision and Order Granting Petition for Modification No. M–97–129–C is granted. The Assistant Secretary had granted a modification of 30 CFR 75.1002. The amendment states that where high-voltage cable that moves during normal operation of the longwall is damaged to the extent that any metallic component of the cable is damaged, the cable shall be repaired and the outer jacket of such repair shall be vulcanized with flame-resistant material. Granted for the No. 7 Mine with conditions.

Docket No.: M–97–148–C.
FR Notice: 63 FR 5972.
Petitioner: Mountain Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to amend the Decision and Order Granting Petition for Modification No. M–95–183–C is granted. The Assistant Secretary had granted a modification of 30 CFR 75.1002. The petitioner requests that stipulation No. 4 be revised to remove the reference to permissible equipment and to clarify that only the non-permissible equipment being used for purposes of the petition be inspected weekly since the petition is to allow the use of non-permissible equipment for testing and diagnostics purposes within 150 feet of pillar workings considered acceptable alternative method. Granted for the No. 7 Mine with conditions.

Docket No.: M–94–166–C.
FR Notice: 59 FR 67735.
Petitioner: Energy West Mining Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner request amendments of specific terms and conditions addressing the use of an early warning fire detection system two entry longwall mining systems ventilated with belt air considered acceptable alternative method. Amended for the Trail Mountain Mine with conditions.

Docket No.: M–98–002–M.
FR Notice: 63 FR 41599.
Petitioner: Chemical Lime Company.
Regulation Affected: 30 CFR 56.6306.
Summary of Findings: Petitioner's proposal to load explosives to within one hole of the hole being drilled during the drilling cycle of overburden removal considered acceptable alternative method. Granted for the O'Neal Quarry Mine with conditions.

Docket No.: M–98–004–M.
FR Notice: 63 FR 45866.
Petitioner: Hecla Mining Company.
Regulation Affected: 30 CFR 49.8(b).
Summary of Findings: Petitioner's proposal to conduct 5 10 hour training sessions annually with a minimum of 12 ½ hours spent under oxygen considered acceptable alternative method. Granted for the Rosebud Mine with conditions.

Docket No.: M–95–017–M.
FR Notice: 61 FR 8307.
Petitioner: Swenson Granite Company, Inc.
Regulation Affected: 30 CFR 56.19003.
Summary of Findings: Petitioner's proposal to amend the Decision and Order Granting Petition for Modification No. M–95–17–M is granted. The Assistant Secretary had granted a modification of 30 C.F.R. 56.19003. The petitioner requests that stipulation No. 4 be revised to be in agreement with revised condition No. 2. Granted for the Gray Quarry Mine with conditions.

Docket No.: M–94–042–M.
FR Notice: 59 FR 55298.
Petitioner: Specialty Minerals, Inc.
Regulation Affected: 30 CFR 56.13020.
Summary of Findings: Petitioner's proposal to establish blow-off stations at various locations in the plant where employees can clean their cloths with forced or compassed air that has an OSHA approved nozzle with pressure not greater than 2 to 6 psi at normal average line pressure considered acceptable alternative method. Granted for the Marble Canyon Mine with conditions.

[FR Doc. 99–15874 Filed 6–21–99; 8:45 am]
BILLING CODE 1510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–089]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.
ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that The Jemison Group, of Houston, Texas, has applied for an exclusive license to practice the invention described and claimed in U.S Patent No. 5,694,939, entitled "Autogenic-Feedback Training Exercise Method and System," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.
DATES: Responses to this notice must be received by August 23, 1999.
FOR FURTHER INFORMATION CONTACT: Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: June 14, 1999.
Edward A. Frankle,
General Counsel.
[FR Doc. 99–15872 Filed 6–21–99; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, June 29, 1999.
PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.
STATUS: Open to the Public.
MATTERS TO BE CONSIDERED:
7053A—Brief of Accident: Scenic Airlines Cessna 208B, N12022, Montrose, Colorado, October 8, 1997, operated by the Department of Interior (DOI) and Safety Recommendation to the Federal Aviation Administration (FAA), the DOI, the General Services Administration (GSA) and the National Association of State Aviation Officials (NASAO).
7170—Railroad Accident Summary Report: Derailment of a CSX Freight Train and Subsequent Hazardous Material Release at Cox Landing, West Virginia, June 20, 1998.
NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, June 25, 1999.
FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: June 18, 1999.
Rhonda Underwood,
Federal Registration Liaison Officer.
[FR Doc. 99–16025 Filed 6–18–99; 2:49 pm]
BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[50–387 and 50–388]

PP&L, Inc.; Susquehanna Steam Electric Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License Nos. NPF–14 and NPF–22, respectively, issued to PP&L, Inc., (the licensee), for operation of the Susquehanna Steam Electric Station, Unit Nos. 1 and 2, located in Luzerne County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix E, Items IV.F.2.b and c regarding conduct of a full participation exercise of the onsite and offsite emergency plans every 2 years. Under the proposed exemption, the licensee would reschedule the federally observed full participation emergency exercise from November 1999, to October 2000.

The proposed action is in accordance with the licensee's application for an exemption dated January 29, 1999.

The Need for the Proposed Action

Title 10 of the *Code of Federal Regulation,* (10 CFR) Part 50, Appendix E, Items IV.F.2.b and c requires each licensee at each site to conduct an exercise of its onsite and offsite emergency plan every 2 years. Federal agencies (the Nuclear Regulatory Commission for the onsite exercise portion and the Federal Emergency Management Agency for the offsite exercise portion) observe these exercises and evaluate the performance of the licensee, state and local authorities having a role under the emergency plan.

The licensee had initially planned to conduct an exercise of its onsite and offsite emergency plan in November 1999, which is at the end of the 2-year required interval. Due to Federal agencies scheduling conflicts, the licensee found that its planned November 1999, exercise must now be shifted to October 2000, which is beyond the required 2-year interval.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action involves an administrative activity (a schedular change in conducting an exercise) unrelated to plant operations.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Susquehanna Steam Electric Station, Unit Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on May 6, 1999, the staff consulted with the Pennsylvania State official, Mr. Stan Maingi of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments. In addition, by letter dated March 11, 1999, from Ms. Vanessa Quinn, the Federal Emergency Management Agency indicated support for rescheduling the exercise.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 29, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 14th day of June 1999.

For the Nuclear Regulatory Commission.
Victor Nerses,
Senior Project Manager, Secton I, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.
[FR Doc. 99–15658 Filed 6–21–99; 8:45 am]
BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 25–7

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 25–7, Marital Status Certification, is used to determine whether widows, widowers, and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits from OPM.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 1000 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov
DATES: Comments on this proposal should be received on or before August 23, 1999.
ADDRESSES: Send or deliver comments to—Victor J. Roy, Chief, Eligibility Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 2336, Washington, DC 20415.
FOR FURTHER INFORMATION CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.
Janice R. Lachance,
Director.
[FR Doc. 99–15799 Filed 6–21–99; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of an Information Collection: RI 38–45

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of an information collection. RI 38–45, We Need the Social Security Number of the Person Named Below, is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Approximately 3,000 RI 38–45 forms are completed annually. Each form requires approximately 5 minutes to complete. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before July 22, 1999.

ADDRESSES: Send or deliver comments to—

Dennis A. Matteotti, Acting Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–15800 Filed 6–21–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of an Information Collection: RI 78–11

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of an information collection. RI 78–11, Medicare Part B Certification, collects information from annuitants, their spouses, and survivor annuitants to determine their eligibility under the Retired Federal Employees Health Benefits Program for a Government contribution toward the cost of Part B Medicare.

Approximately 100 RI 78–11 forms are completed annually. Each form requires approximately 10 minutes to complete for an annual estimated burden of 17 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before July 22, 1999.

ADDRESS: Send or deliver comments to—

Dennis A. Matteotti, Acting Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–15801 Filed 6–21–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Karen Jacobs, Acting Director, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on May 7, 1999 (64 FR 24684). Individual authorities established or revoked under Schedules A and B and established under Schedule C between April 1, 1999, and April 30, 1999, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during April 1999.

Schedule B

No Schedule B authorities were established or revoked during April 1999.

Schedule C

The following Schedule C authorities were established during April 1999:

Department of Agriculture

Staff Assistant to the Confidential Assistant to the Secretary of Agriculture. Effective April 1, 1999.

Staff Assistant to the Chief, Natural Resources Conservation Service. Effective April 2, 1999.

Department of the Army (DOD)

Secretary (Office Automation) to the General Counsel of the Army. Effective April 12, 1999.

Department of Commerce

Senior Advisor to the Director, Office of Business Liaison. Effective April 8, 1999.

Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective April 12, 1999.

Department of Defense

Staff Specialist to the Special Assistant to the Secretary and Deputy Secretary of Defense. Effective April 9, 1999.

Department of Education

Special Assistant to the Director, Office of Bilingual Education and Minority Languages and Affairs. Effective April 8, 1999.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective April 8, 1999.

Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective April 8, 1999.

Confidential Assistant to the Secretary's Regional Representative, San Francisco. Effective April 9, 1999.

Confidential Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective April 13, 1999.

Special Assistant to the Assistant Secretary, Office of Post Secondary Education. Effective April 19, 1999.

Confidential Assistant to the Senior Advisor to Secretary on Education Reform. Effective April 26, 1999.

Department of Energy

Special Assistant to the Assistant Secretary for Policy and International Affairs. Effective April 1, 1999.

Department of Health and Human Services

Confidential Assistant to the Deputy Assistant Secretary for Health. Effective April 22, 1999.

Department of Housing and Urban Development

Special Assistant to the Secretary's Representative. Effective April 12, 1999.

Advisor for Management Reform and Operations to the Assistant Secretary for Administration. Effective April 13, 1999.

Senior Advisor to the Assistant Secretary for Community Planning and Development. Effective April 19, 1999.

Special Assistant to the Secretary's Representative, New England. Effective April 21, 1999.

Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations. Effective April 22, 1999.

Special Assistant to the Assistant Secretary for Policy Development and Research. Effective April 28, 1999.

Special Assistant to the Assistant Secretary for Policy Development and Research. Effective April 30, 1999.

Department of the Interior

Special Assistant to the Director, Office of Surface Mining. Effective April 8, 1999.

Special Assistant to the Director, Minerals Management Service. Effective April 22, 1999.

Department of Labor

Special Assistant to the Director, Women's Bureau. Effective April 28, 1999.

Department of State

Public Affairs Specialist to the Deputy Assistant Secretary. Effective April 1, 1999.

Public Affairs Specialist to the Deputy Assistant Secretary, Department Spokesman, Bureau of Public Affairs. Effective April 1, 1999.

Public Affairs Specialist to the Deputy Assistant Secretary. Effective April 1, 1999.

Public Affairs Specialist to the Deputy Assistant Secretary. Effective April 1, 1999.

Public Affairs Specialist to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective April 9, 1999.

Public Affairs Specialist to the Deputy Assistant Secretary. Effective April 15, 1999.

Federal Communications Commission

Special Assistant for Policy and Communication to the Chief, Office of Public Affairs. Effective April 16, 1999.

General Services Administration

Special Assistant to the Regional Administrator, National Capital Region. Effective April 19, 1999.

National Aeronautics and Space Administration

Writer-Editor to the Associate Administrator for Public Affairs. Effective April 2, 1999.

Office of Management and Budget

Legislative Analyst to the Associate Director for Legislative Affairs. Effective April 8, 1999.

Senior Public Affairs Officer to the Associate Director for Communications. Effective April 30, 1999.

Office of the United States Trade Representative

Deputy Assistant U.S. Trade Representative for Congressional Relations to the Deputy U.S. Trade Representative. Effective April 27, 1999.

Securities and Exchange Commission

Special Assistant to the Director, Office of Investor Education and Assistance. Effective April 13, 1999.

Small Business Administration

Special Assistant to the Associate Deputy Administrator for Management. Effective April 26, 1999.

Social Security Administration

Confidential Assistant to the Commissioner of Social Security. Effective April 6, 1999.

Special Assistant to the Chief of Staff. Effective April 21, 1999.

United States Information Agency

Special Assistant for Public Diplomacy to the Associate Director, Bureau of Information. Effective April 2, 1999.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

Janice R. Lachance,

Director, Office of Personnel Management.

[FR Doc. 99–15803 Filed 6–21–99; 8:45 am]

BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Pension Plan Reports: OMB 3220–0080.

Under Section 2(b) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to Section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25–29 years of railroad service. In addition to 25 years of service, a "current connection" with the railroad industry is required. Eligibility is further limited to employees who had at least one month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained).

The RRB requires the following information from railroad employers to calculate supplemental annuities: (a) the current status of railroad employer pension plans and whether such an employer pension plan causes a reduction to the supplemental annuity; (b) the amount of the employer private pension being paid to the employee; (c) whether or not the railroad employer pension is based on a collective bargaining agreement, (d) whether or not the employee made contributions to the pension; and (e) whether the employer pension plan continues when the employer status under the RRA changes.

The RRB currently utilizes Form(s) G–88p (Employer's Supplemental Pension Report), G–88r (Request for Information

About New or Revised Pension Plan), and G–88r.1 (Request for Additional Information about Employer Pension Plan in Case of Change of Employer Status or Termination of Pension Plan), to obtain the necessary information from railroad employers. One response is requested of each respondent. Completion is mandatory. Minor non-burden impacting changes are being proposed to all of the forms in the collection.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Nos.	Annual responses	Time (Min)	Burden (Hrs)
G–88p	2,200	8	293
G–88r	25	10	4
G–88r.1	15	10	3
Total	2,240	.....	300

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–15782 Filed 6–21–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23872; 812–10636]

J.P. Morgan Series Trust and J.P. Investment Management Inc.; Notice of Application

June 16, 1999.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an exemption under sections 6(c) and 17(b) the Investment Company Act of 1940 (the "Act") from section 17(a) of the Act.

Summary of Application: Applicants seek an order to permit redemptions in-kind of shares of certain registered open-end management investment companies by certain affiliated shareholders.

Applicants: J.P. Morgan Series Trust (the "Trust") and J.P. Morgan Investment Management Inc. (the "Adviser").

Filing Dates: The application was filed on April 28, 1997, and amended on March 29, 1999 and May 20, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 12, 1999 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, 60 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto Senior Counsel, at (202) 942–0527, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is an open-end management investment company registered under the Act, and currently consists of seven series (the "Funds"). The Adviser, a wholly-owned subsidiary of J.P. Morgan & Co. Incorporated, is registered under the Investment Advisers Act of 1940, and serves as the investment adviser to the Funds.

2. Applicants request relief to permit the Funds to satisfy redemption requests made by shareholders who are "affiliated persons" of the Funds solely by reason of owning, controlling or holding with the power to vote, five percent or more of a Fund's shares ("Covered Shareholders") by distributing portfolio securities in-kind. The relief sought would not extend to shareholders who are "affiliated persons" of a Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.[1]

3. Each Fund's prospectus provides that redemption request generally will be paid in cash, but that the Fund reserves the right to pay redemption requests greater than $250,000 in whole or in part in-kind. The board of trustees of the Trust, including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Non-Interested Trustees"), have determined that it would be in the best interest of the Funds and their shareholders to pay to a Covered Shareholder the redemption price for shares of the Funds in-kind to the extent permitted by certain Funds' election to be governed by rule 18f–1 under the Act.

Applicants' Legal Analysis

Section 17(a)(2) of the Act, in relevant part, makes it unlawful for an affiliated person of a registered investment company or an affiliated person of such a person, acting as principal, to knowingly "purchase" from such registered investment company any security or other property (except securities of which the seller is the issuer). Section 2(a)(3)(A) of the Act defines "affiliated person" to include any person owning 5% or more of the outstanding voting securities of such

[1] Applicants request that the relief also extend to all future registered open-end management investment companies and their series for which the Adviser or any person controlling, controlled by, or under common control with the Adviser serves as investment adviser. All registered open-end management investment companies that currently intend to rely on the requested order are named as applicants. Any existing or future registered open-end management investment company that relies on the order in the future will do so only in accordance with the terms and conditions contained in the application.

other person. Applicants state that to the extent that an in-kind redemption could be deemed to involve the purchase of portfolio securities (of which the affected Fund is not the issuer) by a Covered Shareholder, the proposed redemptions in-kind would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a), the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting them from the provisions of section 17(a) of the Act to permit Covered Shareholders to redeem their shares in-kind from the Funds. The requested order will not apply to redemptions by shareholders who are affiliated persons of a Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

5. Applicants submit that the requested relief satisfies the requirements of sections 6(c) and 17(b). Applicants assert that neither an affected Fund nor the Covered Shareholder will have any choice as to the type of consideration to be received in connection with a redemption request, and neither the Adviser nor the Covered Sharehold will have any opportunity to select the specific portfolio securities to be distributed. Applicants further state that the portfolio securities to be distributed will be valved according to an objective, verifiable standard and that the in-kind redemptions are consistent with the investment policies of the Funds. Applicants also state that the proposed in-kind redemptions are consistent with the general purposes of the Act because the Covered Shareholder would not receive any advantage not available to other redeeming shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The securities distributed to both Covered Shareholders and non-affiliated shareholders pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed by each Fund on a *pro rata* basis after excluding: (a) securities which could not be publicly offered or sold in the United States without registration under the Securities Act of 1933; (b) certain portfolio positions (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contactual obligations, require special trading facilities or can only be traded with an institutional counterparty to the transaction; (c) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); (d) other assets which are not readily distributable (including recevables and prepaid expenses); and (e) portfolio securities representing fractional shares, odd lot securities and accruals on such securities. Cash will be paid for the portion of the in-kind distribution represented by assets set forth in (a)–(e) less liabilities (including accounts payable).

3. The In-Kind Securities distributed to the Covered Shareholders will be valued in the same manner as they would be valued for purposes of computing each Fund's net asset value.

4. The Trust's Board, including a majority of the Non-Interested Trustees, will determine no less frequently than annually: (a) whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of each affected Fund as reflected in its prospectus. In addition, the Board will make and approve such changes in the procedures as it deems necessary for monitoring the Fund's compliance with the terms and conditions of this application.

5. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which a proposed in-kind redemption by a Covered Shareholder occurs, the first two years in an easily accessible place, a written record of each such redemption setting forth the identity of the Covered Shareholder, a descrption of each security distributed in-kind, the terms of the in-kind distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15847 Filed 6–21–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41526; File No. SR–CHX–99–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

June 15, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 10, 1999, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 28, 1999, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,[4] which render the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Kathleen M. Boege ("Boege"), Associate General Counsel, Exchange to Joseph Morra ("Morra"), Attorney, Division of Market Regulation ("Division"), SEC, dated May 26, 1999 ("Amendment No. 1"). Amendment No. 1 corrected Section II(C) of the proposal, to acknowledge that the Exchange solicited input from firms that serve as CHX specialists for Nasdaq issues that are traded on the CHX pursuant to unlisted trading privileges, and that there was unanimous consent to the proposal by those firms. Amendment No. 1 was filed on May 28, 1999, following several interchanges between Division staff and Exchange staff. The Commission processed Amendment No. 1 on the same day. Consequently, the proposal is deemed to have been filed as of May 28, 1999.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] The filing date of this proposed rule change is May 28, 1999. *see supra* footnote 3.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule, effective with the May billing statements. The text of the proposed change is below. Additions are in italics; deletions are in brackets.

Membership Dues and Fees

* * * * *

Technical Equipment (per month)

Four Screen Rich Units	$250.00
Three Screen Rich Units	$208.35
Two Screen Rich Units	$166.65
Max Floor Broker Terminals	$37.95
Floor Broker Printer	$49.95
Specialist Back Post MAX Terminals	$37.95
OTC/UTP Equipment	
Pentium 450 PC	*$100.00*
Two 21" CRTs	*$110.00*
Two 15" flat-panel monitors	*$140.00*
Two 18" flat-panel monitors	*$250.00*
[Specialist] Printer *(Listed or OTC/UTP Specialist)*	*$49.95*

Tools of the Trade Access — *Each specialist firm shall be billed on a monthly basis, based on usage by each of the firm's OTC/UTP co-specialists, for actual Tools of the Trade access charges that become due in accordance with the Exchange's license agreement with Financial Systemware, Inc.*

Server and Network Infrastructure Charges

Tools of the Trade and Nasdaq Connection Charges — *All Server and Network Infrastructure Charges and all Tools of the Trade and Nasdaq Connection Charges (i.e., the costs of providing access to and use of the Exchange's Nasdaq and Tools of the Trade servers to facilitate OTC/UTP trading) shall be located pro rata on a monthly basis among all specialist firms engaged in OTC/UTP trading, based on the number of OTC/UTP co-specialists at each firm.*

(b) Not applicable.
(c) Not applicable.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of membership dues and fees to pass on to Exchange specialists engaged in trading certain securities on an over-the-counter basis pursuant to unlisted trading privileges (collectively, the "OTC/UTP" specialists) those costs associated with providing new technology and dedicated equipment to the Exchange's OTC/UTP community.

The CHX maintains that due to the recent explosive growth in OTC/UTP trading at the Exchange and the corresponding increase in related technological demands, the Exchange has had to augment its existing CHX computer equipment and network infrastructure, solely to accommodate the Exchange's OTC/UTP specialists. Because the rapid expansion of the OTC/UTP program has necessitated, and will continue to demand, significant expenditures of the Exchange's capital and personnel resources, the Exchange's Finance Committee has determined that the Exchange should not continue to absorb all of the costs incurred by the Exchange in connection with the OTC/UTP program. Accordingly, the Exchange proposes to commence rebilling OTC/UTP specialists for these costs.

The CHX rules expressly authorize the Exchange to "* * * fix and impose other charges or fees to be paid to the Exchange by members and member organizations * * * for the use of equipment or facilities * * *."[6] Proceeding under this authority, Exchange management developed a proposed fee schedule, identifying the costs that will be passed on to OTC/UTP specialists. The proposed fee schedule was discussed with specialist firms that will be affected thereby; none of these firms (nor any individual co-specialist) opposed the Exchange's proposal. In light of this consensus, the CHX Finance Committee approved the proposed amendment at its April 13, 1999 meeting and the CHX Board of Governors concurred at its April 15, 1999 meeting.

As reflected in the proposed text set forth above, the costs that the Exchange seeks to pass on to OTC/UTP co-specialists consist of three principal categories. Each category is comprised of costs that are incurred by the Exchange solely on account of the OTC/UTP program. Accordingly, the Exchange believes that it is appropriate to limit pass-through of these costs to OTC/UTP co-specialists on a pro rata basis. The first category, "Server and Network Infrastructure Charges" and "Tools of the Trade and Nasdaq Connection Charges" consists of the costs (including ongoing maintenance and service costs) relating to the Exchanges' new Nasdaq and Tools of the Trade[7] servers. The second category, "Technical Equipment" assesses the OTC/UTP co-specialist with the cost of computer equipment, monitors and printers dedicated to an OTC/UTP co-specialist's own trading environment. Finally, the "Tools of the Trade Access" category provides for direct rebilling of actual access charges incurred by the Exchange when a co-specialist uses Tools of the Trade for the particular issues traded by the co-specialist.

[6] Article XIV, Rule 7(a).

[7] Tools of the Trade is a proprietary software enhancement licensed to CHX by Financial Systemware, Inc. This software operates as an overlay on existing OTC/UTP systems and provides for increased functionality and enhanced capacity with respect to automated quotation display and trade execution.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CHX held a meeting on March 29, 1999, which was attended by the principals of all UTP Specialist Firms, at which time CHX management outlined the proposed fee structure contained in this proposal, and the rationale for imposition of such fees. There was unanimous consent of the UTP Specialist Firms to the imposition of the proposed fees. Subsequently, the proposal was approved unanimously by the CHX committee (referred to as the OTC Committee) responsible for matters having an impact on unlisted trading at the Exchange.[9]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change (May 28, 1999), the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

[8] 15 U.S.C. 78f(b)(4).

[9] *See* Amendment No. 1.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–99–02, and should be submitted by July 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 99–15845 Filed 6–21–99; 8:45 am]

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[12] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41529; File No. SR–DTC–99–08]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Amendments to Organization Certificate and By-Laws

June 15, 1999.

On March 18, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on April 12, 1999, amended a proposed rule change (File No. SR–DTC–99–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on April 23, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the rule change, DTC is amending its Organization Certificate and By-Laws to increase the size of its Board of Directors, to redesignate its capital stock, and to modernize its Certification of Organization. The amendments are subject to stockholder approval.

A. Increasing the Number of Board Directors

The Boards of Directors of DTC and the National Securities Clearing Corporation ("NSCC") have decided to integrate DTC and NSCC. An initial step in the integration is to propose at this year's annual shareholders' meeting the reelection of DTC's Board of Directors.[3] Subject to regulatory approval, the Boards of DTC and NSCC will be restructed so that the same group of individuals will serve as the Board of Directors for each of the two companies.[4] Through this process and with the inclusion of DTC and NSCC management directors, the Board of Directors for each company will be comprised of twenty-seven people.[5]

DTC's Organization Certificate and By-Laws currently provide for the number of directors of the Board to be not less than five nor more than twenty. In order to accommodate the number of directors resulting from the consolidated plan described above, paragraph "SEVENTH" of the Organization Certificate (which after elimination of paragraph "FOURTH," as described below, will become paragraph "SIXTH") and Article II, Section 2.1 of the By-laws will be amended to provide that the number of directors be not less than seven nor more than twenty-five. Section 2.1 by the By-Law will also be

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Lease No. 41305 (April 16, 1999), 64 FR 20034.

[3] The Commission recently approved a similar proposal submitted by NSCC. Securities Exchange Act Release No. 41520 (June 11, 1999) [File No. SR–NSCC–99–08].

[4] Simply combining DTC's current Board to NSCC's current Board to achieve uniform Boards would result in certain user and marketplace organizations having more then one representative on the uniform Boards. As a result, each organization represented will be asked to select only one representative.

[5] Under the Federal Reserve Act, DTC may have no more than twenty-five members on its Board. As a result, after the uniform Boards are elected DTC's Board will have twenty-five members and two non-voting advisors, and NSCC's board will have twenty-seven members.

amended to set the current number of directors at twenty-five.

B. Redesignating DTC's Capital Stock

DTC's Organization Certificate currently limits DTC to only one class of stock, specifically 18,500 shares of capital stock having a par value of $100.00 per share. All of this stock is issued and outstanding. DTC has informed the Commission that its Board of Directors may in the future wish to consider authorizing the issuance of preferred stock. Therefore, paragraph "THIRD" will be amended, and paragraph "FOURTH" will be eliminated in order to designate the existing class of capital stock as "common stock" and to provide for 1,500,000 shares of preferred stock having a par value of $100.00 per share.

C. Modernizing the Organization Certificate

DTC's Organization Certificate was originally drafted in 1973. DTC has informed the Commission that provisions of the Organization Certificate relating to DTC's powers refer both explicitly and implicitly to New York State Statutory provisions that are no longer applicable. In addition, the Organization Certificate does not recognize DTC's status as a clearing agency registered with the Commission or provide for powers incidental to that status. Accordingly, paragraph "THIRTEENTH" (which after elimination of paragraph "FOURTH," as described above, will become paragraph "TWELFTH") will be amended to update DTC's Organization Certificate.

II. Discussion

Section 17A(b)(3)(C) of the Act [6] requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(C) because it should not affect the representation of DTC's shareholders and participants in the selection of its directors and the administration of its affairs.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

[6] 15 U.S.C. 78q–1(b)(3)(C).

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–99–08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15842 Filed 6–21–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41528; File No. SR–MSRB–99–4]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Technical Amendments to Rules A–3, A–5, A–7, A–11 Through A–15, A–17, D–5, G–1 Through G–3, G–5 Through G–9, G–11 Through G–16, G–18, G–20, G–23, G–27, G–28, G–32, G–34, G–36, G–37 and G–39

June 15, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 1999, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (SR–MSRB–99–4). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Board has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act which renders the proposal effective upon receipt of this filing by the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On May 21, 1999, pursuant to Rule 19b–4(f)(6), the Board provided the required five day advance notice to the Commission of its intent to file this proposed rule change. In this notice, the Board has represented that this proposed rule change: (1) Will not significantly affect the protection of investors; (2) will not impose any significant burden on competition; and (3) will not become operative for thirty days after the date of this filing. *See* letter from Ernesto A. Lanza, Associate General Counsel, MSRB, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 21, 1999.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change consisting of technical amendments to rules A–3, A–5, A–7, A–11 through A–15, A–17, D–5, G–1 through G–3, G–5 through G–9, G–11 through G–16, G–18, G–20, G–23, G–27, G–28, G–32, G–34, G–36, G–37 and G–39. The proposed rule change will become operative on July 1, 1999.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board has adopted a series of technical amendments to Rules A–3, A–5, A–7, A–11, through A–15, A–17, D–5, G–1 through G–3, G–5 through G–9, G–11 through G–16, G–18, G–20, G–23, G–27, G–28, G–32, G–34, G–36, G–37 and G–39 for the purpose of making certain non-substantive changes. These changes are designed to:

- Ensure uniform usage of the term "brokers, dealers and municpal securities dealers" throughout all Board rules;
- Elminate the usage of the term "municipal securities business" in rules other than rules G–37 and G–38;
- Make certain grammatical corrections;
- Make all rule language gender neutral;
- Correct certain cross-references to other Board rules, SEC rules or federal statutes, including updating the cross-reference in rule G–8(a)(xi) to Section 203 of the Investment Advisers Act of 1940 to take into account the reallocation of regulatory oversight of investment advisers between the Commission and the states effected by the National Securities Markets Improvement Act of 1996 and the rules promulgated thereunder;
- Ensure uniform references to sections and paragraphs within Board rules; and
- Eliminate duplicative, superfluous or obsolete rule language, including elimination of the cross-reference and related language in rule G–12(e)(xvi) regarding subparagraph

[4] *Id.*

(b)(i)(D) of rule G–33, which subparagraph was previously deleted by the Board.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)[5] of the Act. The Board believes that the proposed rule change ensures that existing rule provisions are accurate and understandable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change; (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five business days prior to the filing date; and (iv) does not become operative for 30 days from the date of its filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder and will become operative on July 1, 1999.[6]

In particular, the Commission believes the proposed rule change qualifies as a "non-controversial filing" in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any peson, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–99–4 and should be submitted by July 12, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15844 Filed 6–21–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41532; File No. SR–NASD–99–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Extending the Effectiveness of the Pilot Injunctive Relief Rule

June 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD Regulation, Inc. ("NASD Regulation"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below,the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10335 of the Code of Arbitration ("Code") of the Association to extend the pilot injunctive relief rule for six months. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

10335. Injunctions

(i) Effective Date

This Rule shall apply to arbitration claims filed on or after January 3, 1996. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This Rule shall expire on [July 3, 1999] *January 3, 2000*, unless extended by the Association's Board of Governors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASD Regulation has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 10335 took effect on January 3, 1996 for a one-year pilot period. The Commission has periodically extended the initial pilot period in order to permit NASD Regulation's Office of Dispute Resolution to assess the effectiveness of the rule. The rule is currently due to expire on July 3, 1999. In July 1998, the NASD filed a rule filing proposing to amend Rule 10335 and to make it a permanent part of the Code. The NASD

[5] Section 15B(b)(2)(C) states in pertinent part that the rules of the Board "shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest."

[6] *See supra* note 3.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed amendments and responses to comments received by the Commission regarding the rule filing in December 1998. In response to additional comments received regarding both the original rule filing and the amendments, as well as comments from the Commission staff, the NASD is preparing further amendments to the pending rule filing. These amendments will be considered shortly by the National Arbitration and Mediation Committee ("NAMC"). If approved, the amendments will then be considered by the Board of NASD Regulation. NASD Regulation believes that it is in the interest of members and associated persons that the effectiveness of the rule remain uninterrupted pending the filing of amendment to, and Commission action on, the permanent rule filing.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the current pilot rule serves the public interest by enhancing the satisfaction with the arbitration process afforded by expeditious resolution of certain disputes.[3]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 460 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–27 and should be submitted by July 13, 1999.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

NASD Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act[4] for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act.[5] Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. Rule 10335 is intended primarily to facilitate the disposition of employment disputes and other related disputes concerning members who file for injunctive relief to prevent registered representatives from transferring their client accounts to new firms. The Commission expects that, during the pilot's extension, NASD Regulation will consider amendments to the proposed rule change to permanently add Rule 10335 to the Code.[6]

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate because members will continue to have the benefit of injunctive relief in arbitration pending filing of amendments to, and Commission action on, the rule filing that would amend Rule 10335 and make it a permanent part of the Code. The Commission finds, therefore, that granting accelerated approval of the proposed rule change in consistent with Section 15A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–99–27) is approved on an accelerated basis through January 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland

Deputy Secretary

[FR Doc. 99–15843 Filed 6–21–99; 8:45 am]

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[3] Telephone conversation between Laura Leedy Gansler, Office of the General Counsel, NASD Regulation, and Daniel M. Gray, Special Counsel, Division of Market Regulation, SEC, on June 14, 1999.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78o–3. In reviewing the proposed rule change, the Commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] *See* Securities Exchange Act Release No. 40441 (September 15, 1998), 63 FR 50611 (September 22, 1998) providing notice of File No. SR–NASD–98–49.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41520; File No. SR–NSCC–99–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Amendments to By-Laws and Temporary Waiver of Certain Provisions of Shareholders Agreement

June 11, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 11, 1999, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–99–08) as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, NSCC will amend its By-Laws and will temporarily waive certain provisions of its shareholders agreement in order to increase the size of its Board of Directors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Boards of Directors of NSCC and The Depository Trust Company ("DTC") have decided to integrate NSCC and DTC. An initial step in the integration is to propose at NSCC's and DTC's annual meetings in June the reelection of NSCC's Board of Directors by shareholders of NSCC and to propose the reelection of DTC's Board of Directors by the shareholders of DTC. Subject to regulatory approval, the two Boards will then be restructured so that the same group of individuals will serve as the Boards of Directors for each of the two companies.[3] Through this process and with the inclusion of DTC and NSCC management directors, the Board of Directors for each company will be comprised of twenty-seven people.[4]

To achieve this result, NSCC will amend Article II, Section 1 of its By-Laws (which currently provides for a Board of 21 Directors) to increase the size of the Board to a maximum of 30 directors. In addition, Section 8(A)(ii) of NSCC's shareholders agreement among NSCC, the New York Stock Exchange Inc./Stock Clearing Corporation, American Stock Exchange Inc./American Stock Exchange Clearing Corporation, and National Association of Securities Dealers Inc./National Clearing Corporation, dated December 15, 1976, as amended, will be temporarily waived.[5] Further, because some NSCC directors have already served the maximum term of 5 years, Section 8(A)(i) of the shareholders agreement will also be waived.[6]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[7] and the rules and regulations thereunder applicable to NSCC. The proposed rule change will not affect the safeguarding of securities and funds in NSCC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(C) of the Act[8] requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission believes that the proposed rule change is consistent with NSCC's obligations under Section 17A(b)(3)(C) because it should not affect the representation of NSCC's shareholders and participants in the selection of its directors and the administration of its affairs. On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow NSCC to proceed at its annual meeting on June 12, 1999, with the steps necessary to modify its Board of Directors so that NSCC and DTC can implement uniform boards.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–NSCC–99–08 and should be submitted by July 12, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–99–08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15846 Filed 6–21–99; 8:45 am]

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[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Simply combining NSCC's current Board with DTC's current Board to achieve uniform Boards would result in certain user and marketplace organizations having more than one representative on the uniform Boards. As a result, each organization represented will be asked to select only one representative.

[4] Under the Federal Reserve Act, DTC's may have no more than twenty-five members on its Board. As a result, after the uniform Boards are elected, DTC's Board will have twenty-five members and two non-voting advisors, and NSCC's board will have twenty-seven members.

[5] Section 8(A)(i) of NSCC's shareholders agreement sets forth the process for establishing the nominating committee of NSCC's Board of Directors.

[6] Section 8(A)(ii) of NSCC's shareholders agreement provides, among other things, that no person shall be eligible to serve as a participant for more than five consecutive years.

[7] 15 U.S.C. 78q–1(b)(3)(A).

[8] 15 U.S.C. 78q–1(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling, SSR 99–3p, Title XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Age 65 or Older

AGENCY: Social Security Administration.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 99–3p. This Ruling clarifies the Social Security Administration's standards and procedures for the adjudication of disability and blindness

claims for individuals age 65 or older under title XVI, Supplemental Security Income for the Aged, Blind, and Disabled, of the Social Security Act.

EFFECTIVE DATE: June 22, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle Hungerman, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–2289.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and Agency interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program No. 96.006 Supplemental Security Income.)

Dated: June 14, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

Social Security Ruling

Title XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Age 65 or Older

Purpose: To clarify SSA's standards and procedures for the adjudication of title XVI of the Social Security Act (the Act) disability and blindness claims for individuals age 65 or older. In particular, this Ruling explains that:

In general, the regulations and procedures for determining disability for adults under title XVI of the Act who are under age 65 are used when determining whether an individual age 65 or older is disabled.

Adjudicators are required to consider any impairment(s) the individual has, including those that are often found in older individuals.

If an individual age 72 or older has a medically determinable impairment, that impairment will be considered to be "severe."

If the individual's impairment(s) prevents the performance of his or her past relevant work (PRW), or, if the individual does not have PRW, the adjudicator must consider two special medical-vocational profiles showing an inability to make an adjustment to other work before referring to appendix 2 to subpart P of 20 CFR Part 404.

Generally, adjudicators should use the rules for individuals age 60–64 when determining whether an individual age 65 or older can perform other work.

Beginning at age 65, age is considered to be a factor that imposes greater limits on vocational adaptability for individuals who retain the functional capacity to perform medium work. If illiteracy in English or the inability to communicate in English further limits such an individual's vocational scope, a finding of "disabled" is warranted unless the individual's PRW was skilled or semiskilled and provided the individual with transferable skills.

Some individuals age 65 or older may not understand, or be able to comply with, our requests to submit evidence or attend a consultative examination (CE). Therefore, adjudicators must make special efforts in situations in which it appears that an individual age 65 or older may not be cooperating.

Citations: Section 5301 of Public Law (P.L.) 105–33, sections 402 and 431 of P.L. 104–193, as amended, sections 1614(a), 1619(b) and 1621(f)(1) of the Act, as amended; 20 CFR Part 404, subpart P, appendices 1 and 2, and 20 CFR Part 416, sections 416.901–416.923, 416.925, 416.926, 416.927–416.986, 416.988–416.994, and 416.995–416.998.

Background: On August 5, 1997, P.L. 105–33, the Balanced Budget Act of 1997, amended P.L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, and added additional alien eligibility criteria. Under the new criteria, "qualified" aliens who were lawfully residing in the United States on August 22, 1996, and who are disabled or blind as defined in section 1614(a) of the Act are eligible for benefits under title XVI provided all other eligibility requirements are met. Individuals can establish eligibility based on disability or blindness at any age, even on or after attaining age 65.

In addition to qualified aliens, determinations of disability under title XVI also may be needed for other individuals age 65 or older to determine:

State supplements in some States (section 1616 of the Act);

Whether the work incentive provisions of section 1619(b) of the Act are applicable; or

Appropriate deeming of income and resources (section 1621(f)(1) of the Act; 20 CFR 416.1160, 416.1161, 416.1166a, and 416.1204).

For adults (individuals age 18 or older) section 1614(a)(3)(A) of the Act defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

The rules we use to determine if this definition is met are set forth in our regulations in subpart I of 20 CFR Part 416, and appendices 1 and 2 to subpart P of 20 CFR Part 404. Although these rules were, in general, developed for individuals who have not attained age 65, they do recognize that certain characteristics would result in greater vocational adversity as individuals age.

Ruling:

Evaluation Issues

In general, the regulations and procedures for determining disability for adults under title XVI of the Act who are under age 65 are used when determining whether an individual age 65 or older is disabled, except as provided later in this Ruling.

To determine if an adult is disabled as defined in the Act, adjudicators generally use the 5-step sequential evaluation process set out in 20 CFR 416.920.

Step 1—Is the Individual Working?

If the individual is working, and the work is substantial gainful activity (see 20 CFR 416.971–416.976), we will find that the individual is not disabled regardless of his or her medical condition, age, education, or work experience.

Step 2—Does the Individual Have a Severe Impairment?

At step 2 of the sequential evaluation process, a determination is made about whether an individual has a medically determinable impairment and whether the individual's medically determinable impairment—or combination of impairments—is "severe." An individual who does not have an impairment or combination of impairments that is "severe" will be found not disabled.

An impairment(s) is considered "severe" if it significantly limits an individual's physical or mental abilities to do basic work activities. An impairment(s) that is "not severe" must be a slight abnormality, or a combination of slight abnormalities, that has no more than a minimal effect on the ability to do basic work activities. It is incorrect to consider an impairment to be "not severe" because the impairment's effects are "normal" for a person of that age.

As in any claim, adjudicators must consider signs, symptoms, and laboratory findings when determining whether an individual age 65 or older has a medically determinable impairment (see 20 CFR 416.908 and 416.928). The likelihood of the occurrence of some impairments increases with advancing age; e.g., osteoporosis, osteoarthritis, certain cancers, adult-onset diabetes mellitus, impairments of memory, hypertension, and impairments of vision or hearing. Adjudicators are required to consider any impairment(s) the individual has, including impairments like the ones listed above that are often found in older individuals. It is incorrect to disregard any of an individual's impairments because they are "normal" for the person's age.

When an individual has more than one medically determinable impairment and each impairment by itself is "not severe," adjudicators must still assess the impact of the combination of those impairments on the individual's ability to function. A claim may be denied at step 2 only if the evidence shows that the individual's impairments, when considered in combination, are "not severe"; i.e., do not have more than a minimal effect on the individual's physical or mental ability(ies) to perform basic work activities.

Special Rule for Individuals Age 72 or Older

Generally, we use step 2 of the sequential evaluation process as a "screen" to deny individuals with impairments that would have no more than a minimal effect on their ability to work even if we considered their age, education, and work experience. However, with advancing age, it is increasingly unlikely that individuals with medically determinable impairments will be found to have minimal limitations in their ability to do basic work activities. By age 72, separate consideration of whether an individual's medically determinable impairment(s) is "severe" does not serve the useful screening purpose that it does for individuals who have not attained age 72. Therefore, if an individual age 72 or older has a medically determinable impairment(s), that impairment(s) will be considered to be "severe," and evaluation must proceed to the next step of the sequential evaluation process.

Step 3—Does the Individual Have an Impairment(s) That Meets or Equals an Impairment Listed in Appendix 1?

When an individual has a severe impairment(s) that meets or medically equals the requirements for one of the impairments in the Listing of Impairments in appendix 1 to subpart P of 20 CFR Part 404, and meets the duration requirement, the individual is disabled.

When Disability Cannot Be Found at Step 3—Assessing Residual Functional Capacity

When the individual does not have an impairment(s) that meets or equals the requirements for a listed impairment, the adjudicator is required to assess the individual's residual functional capacity (RFC). The RFC assessment is an adjudicator's finding about the ability of an individual to perform both physical and mental work-related activities despite his or her impairment(s). The assessment considers all of the individual's medically determinable impairments, including those that are "not severe," and all limitations or restrictions caused by symptoms, such as pain, that are related to the medically determinable impairment(s). The assessment is based upon consideration of all relevant evidence in the case record, including medical evidence and relevant nonmedical evidence, such as observations of lay witnesses of an individual's apparent symptomatology, or an individual's own statement of what he or she is able or unable to do.

When assessing RFC in an initial claim, an adjudicator should not find that an individual has limitations or restrictions beyond those caused by his or her medically determinable impairment(s). Limitations or restrictions due to factors such as age, height, or whether the individual has ever engaged in certain activities in his or her PRW (e.g., lifting heavy weights) are, per se, not considered in assessing RFC. (See SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims.")

Step 4—Does the Individual Have an Impairment(s) That Prevents Him or Her From Performing Past Relevant Work?

The RFC assessment discussed above is first used at step 4 of the sequential evaluation process to determine whether the individual is capable of doing PRW. The rules and procedures we use to make this determination for individuals under age 65 are also applicable to individuals age 65 or older. This includes consideration of whether the individual can perform his or her PRW as he or she actually performed it or as it is generally performed in the national economy. If the individual's PRW was performed in a foreign economy, we will generally only consider whether the individual can perform his or her PRW as he or she described it. However, if the work the individual did in a foreign economy also exists in the U.S. economy, we will consider whether he or she can perform the work as it is generally performed in the national economy. If the individual can perform his or her PRW, he or she will be found not disabled.

(See SSR 82–40, "Titles II and XVI: The Vocational Relevance of the Past Work Performed in a Foreign Country.")

Step 5—Can the Individual Do Other Work?

The last step of the sequential evaluation process requires us to determine whether an individual can do other work considering his or her RFC, age, education and work experience.

Special Medical-Vocational Profiles Showing an Inability To Make an Adjustment to Other Work

If the individual's impairment(s) does preclude the performance of PRW, or if the individual does not have PRW, two special medical-vocational profiles must be considered before referring to appendix 2 to subpart P of 20 CFR Part 404. The special profiles are discussed in SSR 82–63, "Titles II and XVI: Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work."

The "arduous unskilled physical labor" profile applies when an individual:

Is not working;

Has a history of 35 years or more of arduous unskilled physical labor;

Can no longer perform this past arduous work because of a severe impairment(s); and

Has no more than a marginal education (generally 6th grade or less).

The "no work experience" profile applies when an individual:

Has a severe impairment(s);

Has no past relevant work;

Is age 55 or older; and

Has no more than a limited education (generally, 11th grade or less).

If either of these profiles applies, a finding of "disabled" must be made. This finding is made without considering the criteria in appendix 2 to subpart P of 20 CFR Part 404.

Applying the Criteria in Appendix 2 to Subpart P of 20 CFR part 404

If the special medical-vocational profiles are not applicable, we use the rules in appendix 2 to subpart P of 20 CFR Part 404 to determine whether the individual has the ability to do other work. The highest age category used in appendix 2 is age 60–64, "closely approaching retirement age." However, we have longstanding internal procedures that direct our adjudicators to use the rules for ages 60–64 when making determinations for individuals age 65 or older at step 5.

Under those rules, individuals age 65 or older who are limited to "sedentary" or "light" work will be found disabled unless their PRW provided them with transferable skills or they are at least a high school graduate and their education provides for direct entry into skilled work. As set out in sections 201.00(f) and 202.00(f) of appendix 2, to find transferability of skills for individuals age 65 or older who are limited to sedentary or light work, there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.[1]

Individuals age 65 or older who can perform the full range of medium work are found disabled when they have no more than a marginal education and their PRW was unskilled or they had no PRW, or when they have no more than a limited education and no PRW. In addition, some individuals who do not meet these criteria may also be found disabled as set forth in the next section.

Special Rule for Determining Disability for Individuals Age 65 or Older Who Can Perform Medium Work But Who Are Illiterate in English or Unable To Communicate in English

Section 203.00 of appendix 2 contains rules used to make disability determinations for individuals who retain the functional capacity to perform medium work. The capacity to perform medium work also includes the capacity to perform light and sedentary work, and represents the capability to perform a substantial number of jobs. For individuals under age 65 considered under this section, this capability represents a substantial vocational scope even for individuals who are illiterate in English or unable to communicate in English.

However, beginning at age 65, the individual's age is considered to be a factor that imposes greater limits on vocational adaptability. If illiteracy in English or the inability to communicate in English further limits such an individual, a finding of "disabled" is warranted unless the individual's PRW was skilled or semiskilled and provided the individual with transferable skills. For a finding of transferability of skills to medium work for an individual age 65 or older, there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

Duration

As indicated earlier, the likelihood of the occurrence of some impairments, such as osteoporosis, osteoarthritis, certain cancers, adult-onset diabetes mellitus, impairments of memory, hypertension, and impairments of vision or hearing, increases with advancing age. Moreover, such impairments are more likely to be chronic than acute. Therefore, adjudicators must be especially careful before concluding that an impairment in an individual age 65 or older will not meet the 12-month duration requirement.

Development Issues

Developing Allegations of Impairment(s)

When obtaining the medical history of an individual age 65 or older, it is important to be alert to and address allegations of impairments that are commonly associated with the aging process, such as osteoporosis, arthritis, loss of vision, hearing loss, and memory loss. Allegations may be raised in response to specific questions about the individual's impairment(s); e.g., on Form SSA–3368–BK. However, adjudicators must also be alert to allegations raised in other evidence in the file. For example, questionnaires about activities of daily living may contain statements like "I have difficulty walking or climbing stairs because my legs hurt," "I can't clean my apartment because my back hurts," or "I don't read much anymore because I don't see well." These statements constitute allegations of impairment(s). Therefore, adjudicators must:

Review the case file thoroughly to identify all allegations or other indications of impairment.

Be aware that the medical evidence or third party statements can raise additional allegations.

When contacting an individual age 65 or older, be alert to statements indicating the presence of an impairment(s) commonly associated with the aging process.

Consider all signs or symptoms indicative of an impairment(s), including those impairments caused by degenerative changes associated with the aging process.

Purchasing Medical Evidence

Our regulations, at 20 CFR 416.912(f) and 416.917, indicate that we will purchase CEs when the individual's medical sources cannot or will not give us sufficient medical evidence about the individual's impairment for us to determine if he or she is disabled. Section 416.919f further provides that we will purchase only the specific examinations and tests that we need to make a determination or decision. Due to the wide range of allegations contained in cases of individuals age 65 or older, evidence addressing more than one body system may need to be purchased. In these situations, it is usually appropriate to purchase general medical examinations rather than examinations targeted at particular body systems. This will ensure that all allegations of impairment are evaluated, and will reduce the burden on the individual. For example, if the individual alleges back and knee pain, shortness of breath on exertion, and numbness and weakness in his or her arm, a general medical examination would usually be preferable to separate orthopedic, neurologic, and respiratory or cardiac examinations.

Failure To Cooperate

Individuals filing for benefits based on disability or blindness have certain responsibilities for furnishing us with, or helping us obtain, needed evidence. Our regulations at 20 CFR 416.912(c), 416.916, and 416.918 describe these responsibilities. However, due to factors such as possible language barriers or limited education, some individuals age 65 or older may not understand, or be able to comply with, our requests to submit evidence or attend a CE.

If it appears that an individual age 65 or older is not cooperating, adjudicators must take the following additional actions when the individual does not have an appointed representative, or when the appointed representative has asked us to deal directly with the individual.

If an individual age 65 or older has not supplied evidence or taken an action we requested and still need, the adjudicator must:

Contact the individual to determine why he or she has not complied with our request. If it appears that the individual needs personal assistance, including interpreter assistance, to complete forms, request field office assistance.

Contact a third party (i.e., someone other than the individual's representative) if one has been identified, about assisting the individual at the same time the adjudicator contacts the individual.

If an individual age 65 or older did not attend a CE, the adjudicator must:

- Contact the individual to determine why he or she did not attend the CE.
- Make at least two attempts at different times on different days to contact the individual by telephone. (A busy signal does not constitute an attempt.)
- Send the claimant a call-in letter if telephone contact is not possible or successful.
- Contact a third party, if one has been identified, about assisting the claimant at the same time contact is attempted with the claimant.
- When contact is made with the individual or the third party, explain that the CE is for evaluation purposes only, and that no treatment will be required.
- Reschedule the CE if the individual had a good reason for not attending the prior CE (e.g., he or she had transportation problems or was out of the country at the time of the CE) and indicates a willingness to attend a rescheduled CE.

Non-English-Speaking or Limited-English-Proficiency Individuals

For all the development issues discussed above, adjudicators must remember that we are responsible for obtaining the services of a qualified interpreter if the individual requests or needs one. This includes providing an interpreter at a CE if the CE provider is not sufficiently fluent in the individual's language.

EFFECTIVE DATE: This Ruling is effective on the date of its publication in the **Federal Register**.

CROSS-REFERENCES: SSR 82–40, "Titles II and XVI: The Vocational Relevance of the Past Work Performed in a Foreign Country"; SSR 82–61, "Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation as Generally Performed"; SSR 82–62, "Titles II and XVI: A Disability Claimant's Capacity To Do Past Relevant Work, In General"; SR 82–63, "Titles II and XVI: Medical-Vocational Profiles Showing an Inability To Make an Adjustment to Other Work'"; SSR 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe"; SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment Is Severe"; SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims"; AR 95–1(6), "Preslar v. Secretary of Health and Human Services, 14 F.3d 1107 (6th Cir. 1994)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act"; AR 99–2(8), "Kerns v. Apfel, 160 F.3d 464 (8th Cir. 1998)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act"; AR 99–3(5), "McQueen v. Apfel, —Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act"; and Program Operations Manual System, sections DI 22505.015, DI 22510.018, DI 22510.019, DI 23515.010, DI 23515.025, DI 25010.001, SI 00502.142, and GN 00203.001.

[1] However, for individuals residing in the Fifth, Sixth, and Eighth Federal judicial circuits, see Acquiescence Rulings AR 95–1(6), AR 99–2(8), and AR 99–3(5).

[1] Training, or isolated, brief, or remote periods of semiskilled or skilled work will not preclude a finding or arduous unskilled work if such training or experience did not result in skills that enable the individual to do other work.

[FR Doc. 99–15972 Filed 6–21–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Overseas Presence Advisory Panel (OPAP)

[Public Notice #3068]

Meeting Notice; Closed Meeting

The Department of State announces a meeting of the Overseas Presence Advisory Panel on Monday, June 28, 1999, from 9 a.m. to 1 p.m. at the U.S. Department of State. Pursuant to section 10(d) of the Federal Advisory Committee Act abd 5 U.S.C. 552b [c] [1], it has been determined that the meeting will be closed to the public. The Panel is charged with advising the Secretary of State with respect to the level and type of representation required overseas in light of new foreign policy priorities, a heightened security situation and extremely limited resources. The agenda includes a discussion of sensitive information relating to the Panel's final draft report of ongoing findings and recommendations concerning Embassies and Consulates overseas; this would include, but not be limited to, intelligence and operational policies, and security aspects of all the U.S. Government agencies the Department of State supports abroad.

For more information, contact Marilyn Shapiro, Overseas Presence Advisory Panel, Department of State, Washington, D.C. 20520; phone: 202–647–6427.

Dated: June 18, 1999.

Ambassador William H. Itoh,

Executive Secretary, Overseas Presence Advisory Panel.

[FR Doc. 99–15983 Filed 6–18–99; 2:32 pm]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5838]

Commercial Fishing Industry Vessel Advisory Committee (CFIVAC); Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications; extension of application deadline.

SUMMARY: The Coast Guard extends the deadline for applying to be a member of the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC). CFIVAC provides advice and makes recommendations to the Coast Guard on the safety of the commercial fishing industry.

DATES: Applications must reach the Coast Guard on or before July 9, 1999.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–2), U.S. Coast Guard, room 1210, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–0214; or by faxing 202–267–4570. Submit applications to the same address. This notice and the application forms are available on the internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Commander Randy Clark, Assistant Executive Director of CFIVAC, rclark@comdt.uscg.mil, or, LTJG Karen Weaver, kweaver@comdt.uscg.mil, telephone 202–267–0214, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: The Coast Guard originally requested people to apply for membership to the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) in the June 2, 1998, **Federal Register** [USCG–1998–3882]. Several applications were received; however, the Coast Guard is providing more time for applicants. If you applied in response to the June 2 notice you do not need to submit another application. All applications submitted will be considered for the positions available.

CFIVAC is a Federal advisory committee covered by 5 U.S.C. App. 2. As required by the Commercial Fishing Industry Vessel Safety Act of 1988, Pub. L. 100–424, the Coast Guard established

CFIVAC to provide advice to the Coast Guard on issues related to the safety of commercial fishing vessels regulated under chapter 45 of title 46, United States Code, which includes uninspected fishing vessels, fish processing vessels, and fish tender vessels. CFIVAC consists of 17 members as follows: Ten members from the commercial fishing industry who reflect a regional and representational balance and have experience in the operation of vessels to which chapter 45 of Title 46, United States Code applies, or as a crew member or processing line member on an uninspected fish processing vessel; one member representing naval architects or marine surveyors; one member representing manufacturers of equipment for vessels to which chapter 45 applies; one member representing education or training professionals related to fishing vessel, fish processing vessel, or fish tender vessel safety, or personnel qualifications; one member representing underwriters that insure vessels to which chapter 45 applies; and three members representing the general public, including whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing owners of vessels to which chapter 45 applies and persons representing the marine insurance industry.

CFIVAC meets at least once a year in different seaport cities nationwide. Special meetings may also be called. Subcommittee meetings are held to consider specific problems as required.

Applications will be considered for six positions that expire or become vacant in October 1999 in the following categories: (a) Commercial Fishing Industry (four positions); (b) General Public (one position); (c) Equipment Manufacturers (one position).

Persons selected as general public members are required to complete a Confidential Financial Disclosure Report, OGE Form 450, on an annual basis. Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Each member serves for a term of three years. A limited portion of the membership may serve consecutive terms. Members of the CFIVAC serve without compensation from the Federal Government, although travel reimbursements and per diem are provided.

In support of the policy of the Department of Transportation on ethnic and gender diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Dated: June 11, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–15759 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Brunswick County, North Carolina.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Brunswick County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, Operations Engineer, Federal Highway Administration, Suite 410, 310 New Bern Avenue, Raleigh, North Carolina 27601, Telephone: (919) 856–4350, extension 133.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposal to construct a second bridge to Oak Island in Brunswick County, North Carolina. The proposed improvement will involve the construction of the second high-rise bridge over the Atlantic Intracoastal Waterway from SR 1105 (Middleton Avenue) to the mainland and the construction of a two-lane roadway with partial control of access on new location from the waterway to NC 211. The proposed action also includes widening the existing SR 1105 from SR 1104 (Beach Road) to the Atlantic Intracoastal Waterway and replacing Bridge No. 206 over Davis Canal. The proposed improvements are considered necessary to provide an increased level of service on the existing road system by increasing traffic capacity and would provide additional access onto and off of the island. Alternatives under consideration include (1) no-build, (2) transportation system management (TSM), (3) mass transit, (4) improve existing facilities, and (5) construction of a new bridge and roadway over the Intracoastal waterway.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. A series of public meetings and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on the Federal programs and activities apply to this program)

Issued on: June 10, 1999.

Roy C. Shelton,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 99–15785 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0029]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed from a private sector sales broker to submit an offer to VA on behalf of a prospective purchaser of a VA-acquired property.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 23, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0029" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–5079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles and Form Numbers

a. Offer to Purchase and Contract of Sale, VA Form 26–6705.

b. Credit Statement of Prospective Purchaser, VA Form 26–6705b.

c. Addendum to VA Form 26–6705 (Virginia), VA Form 26–6705d

OMB Control Number: 2900–0029.

Type of Review: Revision of a currently approved collection.

Abstract: a. VA Form 26–6705 is used by the private sector sales broker to submit an offer to the VA on behalf of a prospective purchaser of a VA-acquired property. The form will be prepared for each proposed contract submitted to the VA. If the VA accepts the offer to purchase, it then becomes a contract of sale. The form defines the terms of sale, provides the prospective purchaser with a receipt for his/her earnest money deposit, eliminates the need for separate transmittal of a purchase offer and develops the contract without such intermediate processing steps and furnishes evidence of the station decision with respect to the acceptance of the contract as tendered. Without this information, a determination of the best offer for a property cannot be made.

b. VA Form 26–6705b is used as a credit application to determine the creditworthiness of a prospective purchaser in those instances when the prospective purchaser seeks VA vendee financing, along with VA Form 26–6705. In such sales, the offer to purchase will not be accepted until the purchaser's income and credit history have been verified and a loan analysis has been completed, indicating loan approval. Without this information, the creditworthiness of a prospective purchaser cannot be determined and the offer to purchase cannot be accepted.

c. VA Form 26–6705d is an addendum to VA Form 26–6705 for use in Virginia. It includes requirements of State law which must be acknowledged by the purchaser at or prior to closing.

Affected Public: Individuals or households.

Estimated Annual Burden: 57,917 hours.

a. VA Form 26–7605—35,000 hours.
b. VA Form 26–6705b—22,500 hours.
c. VA Form 26–6705d—417 hours.

Estimated Average Burden Per Respondent: 20 minutes (average).

a. VA Form 26–7605—21 minutes.
b. VA Form 26–6705b—20 minutes.
c. VA Form 26–6705d—5 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Total Respondents: 172,500.

a. VA Form 26–7605—100,000.
b. VA Form 26–6705b—67,500.
c. VA Form 26–6705d—5,000.

Dated: May 10, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–15788 Filed 6–21–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0086]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information to determine an applicant's eligibility for Loan Guaranty benefits, and the amount of entitlement available.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 23, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0086" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for a Certificate of Eligibility for VA Home Loan Benefits, VA Form 26–1880.

OMB Control Number: 2900–0086.

Type of Review: Extension of a currently approved collection.

Abstract: The form is completed by an applicant to establish eligibility for Loan Guaranty benefits, request restoration of entitlement previously used, or request a duplicate Certificate of Eligibility due to the original being lost or stolen. The information furnished on VA Form 26–1880 is necessary for VA to make a determination on whether or not the

applicant is eligible for Loan Guaranty benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 130,910 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 523,639.

Dated: May 10, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–15789 Filed 6–21–99; 8:45 am]

BILLING CODE 8325–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0090]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the suitability and placement of potential volunteers.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 23, 1999.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (191A1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0090" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Voluntary Service, VA Form 10–7055.

OMB Control Number: 2900–0090.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The form is used to assist personnel of both voluntary organizations, which recruit volunteers from their membership, and the VA in selection, screening and placement of volunteers in the nationwide VA Voluntary Service program. The volunteer program supplements the medical care and treatment of veteran patients in all VA medical centers. This form is necessary to assist in determining the suitability and placement of potential volunteers.

Affected Public: Individuals or households, Not-for-profit institutions.

Estimated Total Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: May 10, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–15790 Filed 6–21–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0191]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the qualifications and acceptability of those management brokers who apply to participate in the VA management broker program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 23, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0191" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501 " 3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Designation as Management Broker, VA Form 26–6685.

OMB Control Number: 2900–0191.

Type of Review: Extension of a currently approved collection.

Abstract: It is the general policy of the VA to utilize the services of local brokers in the sale and management of VA-owned properties. Generally management activities are conducted by staff personnel only when the property is in close proximity to a VA field station and no reputable local brokers are willing to represent the VA. Each management broker wishing to represent the VA must submit a signed VA Form 26–6685. The information collected on the form, as well as other relevant material, such as a credit report, is used to determine the qualifications and acceptability of those management brokers who apply to participate in this program.

Affected Public: Business or other for profit.

Estimated Annual Burden: 63 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally on-time.

Estimated Number of Respondents: 250.

Dated: May 12, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–15791 Filed 6–21–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0563]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the feasibility of conducting additional scientific research on "health hazards" resulting from exposure to dioxin and herbicides used in Vietnam.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 23, 1999.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (191A1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0563" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501 " 3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Army Chemical Corps Vietnam Veterans Health Study, Phase II, VA Form 10–20998(NR).

OMB Control Number: 2900–0563.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: In July 1993, the Institute of Medicine of the Nationnl Academy of Sciences (IOM) issued its report "Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam" containing six research recommendations including a recommendation that this proposed study of Army Vietnam Chemical Corps veterans be conducted. The Secretary of Veterans Affairs approved the IOM research recommendations in general and informed the Congress of his decision by letter of September 27, 1993. If the information for the study is not collected, VA will not be able to do the study and will have failed to comply with the intent of Congress when Public Law 102–4, the "Agent Orange Act of 1991" was enacted. In addition, the results of the study will be valuable to VA in formulating compensation and medical benefits policies for veterans of the Vietnam War.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Estimated Total Annual Burden: 2,531 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,375.

Dated: May 10, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–15792 Filed 6–21–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 64, No. 119
Tuesday, June 22, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1992-99]

RIN 1115-AF47

Extending the Period of Duration of Status for Certain F and J Nonimmigrant Aliens

Correction

In rule document 99–15032 beginning on page 32146 in the issue of Tuesday, June 15, 1999, make the following correction:

§ 214.2 [Corrected]

On page 32148, in the third column, in § 214.2(j)(1)(iv), in the fifth line,"any" should be "Any".

[FR Doc. C9–15032 Filed 6–21–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41488; File No. SR-AMEX-98-42]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Regarding the Confirmation and Affirmation of Securities Transactions

Correction

In notice document 99–14990, beginning on page 31886, in the issue of Monday, June 14, 1999, make the following correction:

On page 31886, in the third column, under the heading, add "June 7, 1999".

[FR Doc. C9–14990 Filed 6-21-99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Tuesday
June 22, 1999

Part II

Department of Housing and Urban Development

24 CFR Part 902

Public Housing Assessment System (PHAS) Amendments to the PHAS; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 902

[Docket No. FR–4497–P–01]

RIN 2577–AC08

Public Housing Assessment System (PHAS) Amendments to the PHAS

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Public Housing Assessment System regulation at 24 CFR part 902 to provide additional information and revise certain procedures and establish others for the assessment of the physical condition, financial health, management operations and resident service and satisfaction in public housing, including the technical review of physical inspection results and appeals of PHAS scores. The rule would also implement certain recently enacted statutory amendments. The purpose of the Public Housing Assessment System is to function as a comprehensive management tool that effectively and fairly measures a PHA's performance based on standards that are objective, uniform and verifiable.

DATES: Comment Due Date: August 23, 1999.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time at the above address).

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center (REAC), Attention: Wanda Funk, U. S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Customer Service Center at (888)–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac. Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 1, 1998 (63 FR 46596), HUD published a final rule, codified at 24 CFR part 902, that established a new system for the assessment of America's public housing. The new system, the Public Housing Assessment System (PHAS), is designed to enhance public trust by creating a comprehensive oversight tool that effectively and fairly measures a PHA based on standards that are objective and uniform. The PHAS becomes effective for all PHAs with fiscal years ending on and after September 30, 1999, and replaces the Public Housing Management Assessment Program (PHMAP). HUD's Real Estate Assessment Center (REAC) is charged with the responsibility for assessing and scoring the performance of PHAs under the PHAS.

Under the PHAS, HUD evaluates a PHA based on the following four indicators: (1) The physical condition of the PHA's public housing properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) the residents' assessment (through a resident survey) of the PHA's performance. Each of the four PHAS indicators is assigned a maximum value as follows:

(1) Physical Condition—maximum 30 points: the PHA's score is based on the results of physical inspections of PHA properties performed by REAC contractors. The results are electronically transmitted to the REAC.

(2) Financial Condition—maximum 30 points: the PHA's score is initially based on unaudited financial information prepared in accordance with generally accepted accounting principles (GAAP) and electronically submitted by the PHA to the REAC. The PHA's submission is then audited by an Independent Public Accountant (IPA) and the audit results are electronically transmitted to the REAC, which reassesses the PHA's score based on the audit results. The financial condition of the PHA is assessed on its entire operations.

(3) Management Operations—maximum 30 points: the PHA's score is based on an electronic certification made by the PHA and verified by an IPA. This performance indicator uses six of the same indicators as the current Public Housing Management Assessment Program.

(4) Resident Service and Satisfaction—maximum 10 points: the PHA's score is based, in part, on responses to a resident survey managed by the PHA and collected by the REAC. The PHA's score is also based on the survey results, the PHA's level of implementation of the resident survey and the PHA's follow-up actions on survey results. Implementation and follow-up plans are in the form of an electronic certification made by the PHA. Follow-up plans may be verified by an IPA.

With respect to PHAS Indicators #2, #3 and #4, a PHA is required to electronically submit its year-end financial statements, and its management operations and resident service and satisfaction certifications, within two months after the end of its fiscal year. Information necessary to conduct the physical condition assessment will be obtained from HUD-contracted inspectors during the fiscal year being assessed and scored through electronic transmission of the data.

On the basis of these four indicators, HUD's REAC calculates a composite score for each PHA. The PHAS composite score represents a single score for a PHA's entire operation under the four indicators. The PHAS composite score will determine whether a PHA is performing well or is not performing well. The PHAS composite score is derived from the scores calculated for each of the four indicators. The composite PHAS score will be issued by the REAC for each PHA one month after the PHA submits its year-end financial data and certifications.

Adjustments to the PHAS score may be made after a PHA's audit report for the year being assessed is transmitted to the REAC. If material differences (as defined in GAAP guidance) are noted between the unaudited and audited results, a PHA's PHAS score will be adjusted in accordance with the audited results.

As provided in the PHAS final rule issued on September 1, 1998, a PHA will be scored with a corresponding designation of high performer, standard performer, or troubled performer, including troubled with respect to a PHA's performance under the modernization component under PHAS Indicator #3. (As discussed later in this preamble, the reference to modernization assistance is replaced with a reference to Capital Fund assistance.)

A PHA designated as troubled will be referred to the appropriate HUD office, including but not limited to, HUD's Office of Troubled Agency Recovery, for oversight and remedial action. A PHA that does not correct identified deficiencies within a maximum of two years from the date that the PHA is designated as troubled will be referred to the Departmental Enforcement Center (DEC) for further action.

High performer PHAs will be eligible for various incentives. However, relief from any standard procedural requirement does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations and other handbook requirements.

This proposed rule would amend the PHAS regulation at 24 CFR part 902 to provide additional information, and revise certain procedures and establish others for the assessment of the physical condition, financial health, management operations and resident service and satisfaction indicators and for the technical review of physical inspection results, and appeals of PHAS scores.

II. Proposed Amendments to PHAS

Brief Overview

This rule would make the following amendments to the current PHAS rule at 24 CFR part 902:

(A) Revise the PHAS rule to reflect conforming changes made necessary by recently enacted statutory amendments.

(B) Reference a series of notices, published in the **Federal Register** on May 13, 1999, that describe the scoring process for each of the four PHAS Indicators, and describe the process for requesting and granting a technical review of physical inspection results, or appeal of an overall PHAS score.

(C) Add language, under PHAS Indicator #1, that would clarify that vacant units not under lease at the time of inspection will not be inspected.

(D) Modify the designation of "troubled" performer to provide a subdesignation or category that identifies the particular performance area (physical, financial, or management) in which a PHA is troubled.

A. Statutory Amendments Related to the PHAS

Sections 564 and 565 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act) amend section 6(j) of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437d(j)), the statutory authority for assessment of public housing. This rule would revise the PHAS regulation at 24 CFR part 902 to incorporate these statutory amendments, as discussed in this Section III of the preamble.

Capital Fund Assistance Replaces Modernization Assistance. Section 564 makes conforming changes to the 6(j) references to modernization (mod) funding under section 14 of the 1937 Act by substituting "the Capital Fund under section 9(d)" for "section 14". This rule makes the appropriate conforming changes in part 902 to replace the references to section 14 and modernization funding.

Utility Consumption Replaces Energy Consumption. The term "energy consumption" in the indicator at section 6(j)(1)(D) was statutorily changed to "utility consumption" and this rule amends part 902 to reflect this change.

Four New Indicators for Assessment of PHAs. Section 564 adds four new indicators for the evaluation of performance by public housing agencies.

(1) The first of these indicators requires an evaluation of the extent to which a public housing agency coordinates, promotes, or provides effective programs and activities to promote the economic self-sufficiency of public housing residents. This statutory amendment is addressed under PHAS Indicator #3, Management Operations, by including economic self-sufficiency grant goals in management sub-indicator #6, security and economic self-sufficiency. Economic self-sufficiency is assessed using comparable measurements as PHMAP Indicator #7, subcomponent (a) (see 24 CFR 901.40).

(2) The second new indicator requires an evaluation to the extent to which a public housing agency provides public housing residents with opportunities for involvement in the administration of public housing. The determination that residents are provided the opportunity for involvement in the administration of public housing is provided for under PHAS Indicator #4, Resident Service and Satisfaction. The resident survey includes questions that address the statutory amendment, including: (i) Involvement in a resident organization to determine the percentage of residents involved in a PHAS recognized resident organization, which is the primary vehicle of providing opportunities for involvement in the administration of public housing; (ii) issues communicated from a PHA to its resident population to determine whether a PHA communicates to its residents issues that are related to the administration of public housing; and (iii) the responsiveness of a PHA to resident input to determine whether a PHA acts upon the recommendations of residents regarding involvement in the administration of public housing after such communication has taken place. In addition, a PHA's follow-up plan, if applicable, will specifically address a PHA's provision of opportunities for resident involvement in the administration of public housing.

(3) The third new indicator added by section 564 of the Public Housing Reform Act requires an assessment of the extent to which a public housing agency implements effective screening and eviction policies and other anticrime strategies; and coordinates with local government officials and residents in the project on implementation of such strategies. The effective policies and anticrime strategies portion of this statutory indicator has already been implemented on a discretionary basis in the security sub-indicator of PHAS Indicator #3, Management Operations. Component #1 of the security sub-indicator addresses this statutory requirement and provides for the maximum amount of points to a PHA that coordinates with local government officials and its residents on the implementation of anticrime strategies.

(4) The fourth indicator added by section 564 examines the extent to which the public housing agency is providing acceptable basic housing conditions. This indicator is given additional emphasis by a related requirement in the section 564 amendment to section 6(j) of the 1937 Act that provides that an agency "that fails on a widespread basis to provide acceptable basic housing conditions for its residents shall be designated as a troubled public housing." HUD construes "acceptable basic housing conditions" to be synonymous with the standards of decent, safe, sanitary and in good repair (DSS/GR). HUD also finds that the statutory amendment is consistent with HUD's existing PHAS regulation. Under PHAS, if an agency fails to receive a passing score under PHAS Indicator #1, Physical Condition, the agency is troubled.

Amendment to On-site, Independent Assessment Provision. Section 564 amends the 6(j) provision relating to on-site, independent assessments of PHAs by striking the narrow exception that such an assessment will not duplicate any "review conducted under section 14(p)" and replacing it with a broader exception that the assessment will not duplicate any "comparable and recent review". This amendment permits HUD to conduct these assessments through a greater variety of sources, including its HUBs and its Troubled Agency Recovery Centers (TARCs).

Review by Independent Auditor. The section 564 amendment provides in relevant part that:

To the extent that the Secretary determines such action to be necessary in order to ensure the accuracy of any certification made under this section, the Secretary shall require an independent auditor to review documentation or other information maintained by a public housing agency pursuant to this section to substantiate each certification submitted by the agency or corporation relating to the performance of that agency or corporation.

This section also provides that: "The Secretary may withhold, from assistance otherwise payable to the agency or corporation under section 9, amounts sufficient to pay for the reasonable costs of any review under this paragraph." Section 902.60 of the PHAS rule is amended to reference HUD's authority to require an independent auditor to review documentation or other information maintained by a PHA to substantiate a certification.

Resident Management Corporations. The final provision of section 564 addressed by this rule provides, that, "the Secretary shall apply the provisions of this subsection to resident management corporations in the same manner as applied to public housing agencies." This provision is already implemented in the PHAS, under which RMCs are scored for those functions which they contract to undertake.

Substantial Default. Section 565 of the Public Housing Reform Act makes extensive amendments to the substantial default provisions of section 6(j)(3) of the 1937 Act. These amendments, however, are consistent with the existing PHAS regulation, or provide additional options for HUD to take into account circumstances that constitute a substantial default, and require no further regulatory implementation by HUD. Section 565(d), titled "Implementation", specifically provides that, "The Secretary may administer the amendments made by subsection (a) as necessary to ensure the efficient and effective initial implementation of this section."

B. PHAS Scoring Process, Technical Review of Physical Inspection Results and PHAS Appeals

This proposed rule, as noted earlier, in this preamble, includes information about the PHAS scoring process for each of the four PHAS Indicators, and provides the procedures for requesting and granting a technical review of physical inspection results and PHAS appeals, generally. This information already was provided by HUD in notices published on May 13, 1999 (64 FR 26160; 64 FR 26166; 64 FR 26218; 64 FR 26222; 64 FR 26232; and 64 FR 26236). Four of these notices discussed in detail the scoring process for each of the four PHAS Indicators, and the process for requesting and granting a technical review of physical inspection results and PHAS appeals.

This preamble does not repeat the information provided in these notices. They will be republished in the **Federal Register** of June 23, 1999. Any changes or clarifications to the May 13, 1999, notices will be identified in the individual notices published in that issue. The proposed regulatory text covers the technical review and appeal processes discussed in the May 13, 1999 notice.

C. No Inspection for Vacant Units Not Under Lease

This proposed rule clarifies that vacant units not under lease at the time of inspection will not be inspected under the PHAS. The categories of vacant units not under lease are as follows:

(1) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turn over; i.e., the period between which one resident has vacated a unit and a new lease takes effect;

(2) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded;

(3) Off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal period of time (considered to be between 5 and 7 days) and which are not included under an approved rehabilitation plan.

D. Identification of a PHA's Performance Problems

The proposed rule modifies the designation of "troubled" performer to identify the particular performance area (physical, financial, or management) in which a PHA is troubled. The proposed rule provides that a PHA that achieves less than 60 percent of the points under any one of three main PHAS Indicators (Indicator #1—Physical Condition; Indicator #2—Financial Condition; or Indicator #3—Management Operations) will be categorized as substandard physical, substandard financial, or substandard management performer.

III. Section-by Section Overview of PHAS Amendments

For the convenience of the reader, the entire PHAS regulation is being published in this proposed rule, although not every section of the current PHAS regulation is being amended. The publication of the entire rule allows the reader to see how the proposed amendments would appear in the codified regulation. HUD is seeking comment on the sections of the rule that are proposed to be amended. To assist the reader in identifying those sections of the existing PHAS regulations that are revised and the new sections that are being added, the following provides section-by-section overview of the amendments being proposed by this rule. If the section is not listed below, then this means that no changes are proposed to be made by HUD to the section.

Subpart A—General Provisions

Section 902.3 (Scope). Only a minor editorial change is made to this section. The last sentence which awkwardly begins with the words "PHAs' adherence" is changed to read "A PHA's adherence."

Section 902.7 (Definitions). This section is amended to revise the following definitions: *deficiency, improvement plan* and *work order deferred for modernization.* The following definitions are added to this section: *days* and *property.* The definition of "improvement plan" is revised to change "indicator" to "sub-indicator" and define the acronym "MOA." The definition of "work order deferred for modernization" is revised to replace the word "modernization" with "Capital Fund." Additionally, in this section, the references to numbers are spelled out (for example "3" becomes "three").

Subpart B—PHAS Indicator #1: Physical Condition

Section 902.20 (Physical Condition Assessment). This section is amended to include the section 564 language pertaining to "acceptable basic housing conditions" (paragraph a) and to clarify that this phrase is synonymous with HUD's physical condition standards of decent, safe, sanitary and in good repair. This section also is revised to exclude from physical condition assessment, vacant units not under lease at the time of physical inspection (paragraph b).

Section 902.23 (Physical Condition Standards for Public Housing—Decent, Safe, Sanitary and in Good Repair (DSS/GR)). This section is amended by dividing existing paragraph (a) into two paragraphs. New paragraph (b) lists the major inspectable areas of public housing. Existing paragraph (b) which references Appendix A to part 902 (Areas and Items to be Inspected) is removed. The areas and items to be inspected are part of the Item Weights and Criticality Levels document, which is referenced in this part. Former paragraph (a)(6) which addresses health and safety concerns becomes new paragraph (c).

Section 902.24 (Physical Inspection of Properties). This new section is added.

Section 902.25 (Physical Condition Scoring and Thresholds). This section is amended to reference the scoring process described in the PHAS Notice on the Physical Condition Scoring Process. A new paragraph (c) is added to this section to define the overall PHA Physical Condition Indicator score. Former paragraph (c) on Thresholds becomes paragraph (d) and adds language that provides that if a PHA's physical condition score falls below a minimum threshold of 60 percent of the available points, the PHA shall be identified as a substandard physical agency. (As noted below, similar changes are made to §§ 902.33 and 902.45).

Section 902.26 (Physical Inspection Report). This new section is added.

Subpart C—PHAS Indicator #2: Financial Condition

Section 902.30 (Financial Condition Assessment). Paragraph (b) of this section is amended to cross-reference to the components of the PHAS Financial Indicator listed in § 902.33.

Section 902.33 (Financial Reporting Requirements). Paragraph (a) of this section is amended to reference the Financial Data Schedule (FDS). Paragraph (b) of this section is amended to provide that a PHA must submit its unaudited financial information to HUD two months after the end of the PHA's fiscal year. The PHA's audited financial information must be submitted within nine months of the end of the PHA's fiscal year. Additionally, the time periods designated in days were converted to months.

Section 902.35 (Financial Condition Scoring and Thresholds). Paragraph (a) of this section is amended to reference the scoring process described in the PHAS Notice of the Financial Condition Scoring Process. A new paragraph (b) is added to list the components of PHAS Indicator #2, which are currently listed in paragraph (a) of the existing regulation, and with the following revisions: "utility consumption" replaces "energy consumption"; and under the "Occupancy Loss" component, the phrase "non-occupancy of dwelling units" replaces "vacancy". Existing paragraph (b) on Thresholds becomes paragraph (c), and adds language concerning substandard financial agency.

Subpart D—PHAS Indicator #3: Management Operations

Section 902.40 (Management Operations Assessment). Paragraph (b) of this section is amended to remove the reference to inclusion of a non-statutory indicator (security). This indicator is now statutory.

Section 902.43 (Management Operations Performance Standards). Paragraph (a) of this section is amended to note that the components and grades for each sub-indicator of the Management Operations Indicator are the same as those for the corresponding indicator under PHMAP, unless otherwise noted in this section. The term "indicator" used throughout this section is replaced by "sub-indicator." Paragraph (a)(2) is amended to replace reference to modernization assistance with the Capital Fund. Paragraph (a)(6) is amended to reflect the new statutory indicators added by the Public Housing Reform Act.

Paragraph (b) of this section is amended to clarify that the reporting required under PHAS Indicator #3 is to be electronically submitted to HUD.

Section 902.45 (Management Operations Scoring and Thresholds). This section is revised to reference the PHAS Notice on the Management Operations Scoring Process. Paragraph (b) on Thresholds is revised to add the language concerning substandard management agency.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

Section 902.50 (Resident Service and Satisfaction). The heading of paragraph (b) of this section is amended. A new paragraph (c) is added to clarify that the reporting required under PHAS Indicator #4 is to be electronically submitted to HUD.

Section 902.51 (Updating of Resident Information). This new section is added.

Section 902.52 (Distribution of Survey to Residents). This new section is added.

Section 902.53 (Resident Service and Satisfaction Scoring and Thresholds). Paragraph (a) is revised to organize the existing information in a more logical fashion. Additionally, a new paragraph (a)(2) is added to reference the PHAS Notice on the Resident Service and Satisfaction Scoring Process.

Subpart F—PHAS Scoring

Section 902.60 (Data Collection). This section is amended to change the references to days in this section to months (e.g, 60 days is changed to two months). In paragraph (e) of this section the reference to mod-troubled is replaced by reference to troubled with respect to Capital Fund assistance. Paragraph (f) is amended to reflect HUD's authority to require an independent auditor to review documentation or other information maintained by a PHA to substantiate a certification.

Section 902.63 (PHAS Scoring). Paragraph (a) is revised to provide that a PHAS score will be issued for each PHA one month after a PHA submits its year-end financial data certifications, which replaces an issuance date of 60 to 90 days after the end of the PHA's fiscal year. Paragraph (d) of this section is revised to reference RMCs and AMEs.

Section 902.67 (Score and Designation Status). Paragraph (c) of this section is amended to include language concerning identification of the particular area in which a PHA is troubled (e.g., substandard physical, substandard financial, substandard management). A new paragraph (d) is added to provide that designations may be withheld under certain circumstances.

Section 902.68 (Technical Review of Results of PHAS Indicators #1 or #4). This new section is added.

Section 902.69 (PHA Right of Petition and Appeal). Paragraph (a) is revised to remove subparagraph (a)(2). A new paragraph (b) is added, and existing paragraphs (c) and (d) become part of paragraph (b).

Subpart G—PHAs Incentives and Remedies

Section 902.71 (Incentives for High Performers). Existing paragraph (a)(1) is subdivided into two paragraphs. Subparagraph (a)(1)(A) contains the information currently found in existing paragraph (a)(1). Subparagraph (a)(1)(B) provides relief for annual physical inspections for high scoring PHAs.

Section 902.73 (Referral to an Area HUB/Program Center). In paragraph (g) of this section, reference to remedies for substantial default is added.

Section 902.75 (Referral to a TARC). The introductory paragraph of this section is revised to provide that remedial action may include a determination of priority of needs and referral the HUD/Program Center. Paragraph (a) is revised to reflect that within 30 days of notification to a PHA of troubled designation, HUD, not necessarily the TARC, will take appropriate action. In paragraph (c)(6) the reference to mod-troubled is removed and replaced with reference to the new Capital Fund. Paragraph (d) is revised to reflect the new statutory language.

IV. Request for Comment

In addition to requesting public comment on this proposed rule, HUD is specifically requesting comment on the following:

(1) HUD seeks comment on the four scoring process notices (the Physical, Financial, Management and Resident Services and Satisfaction scoring process scoring notices) published elsewhere in this issue of the **Federal Register**;

(2) Although HUD proposes to inspect only occupied units, HUD is concerned that PHAs make appropriate efforts to have as many units on line and occupied as possible. For example, PHAs should be keeping units unoccupied for modernization or unit turnover for the minimum possible time. The rule addresses this concern to an extent in the PHAS finance and management indicators. HUD requests comments whether this concern should be addressed further, and seeks suggestions and recommendations on ways to do address this matter in the PHAS rule or elsewhere (e.g., other regulations).

(3) Although HUD has not proposed to penalize PHAs in the PHAS score for missing or inoperable smoke detectors because of the extent to which this may not be within a PHA's control, HUD is very concerned about this issue in view of the critical importance of fire prevention. Because of the safety risk presented by missing or inoperable smoke detectors, HUD is considering whether the PHAS rule should provide, at the final rule stage, some consequence to PHAs for missing or inoperable smoke detectors (particularly if the number is high), including possibly a reduction in a PHA's physical inspection score. HUD requests comments on this option, and solicits suggestions how the availability of working smoke detectors can be encouraged further, either in the PHAS rule or elsewhere.

(4) HUD requests comments on ways of improving the economic self-sufficiency sub-indicator so that it may be implemented more effectively, and specifically seeks comments on whether the sub-indicator is properly weighted and appropriately placed in the rule as part of management sub-indicator #6 (see § 902.43(a)(6)).

(5) HUD seeks comments on the consequences to PHAs of withholding designation as provided in new paragraph (d)(2) of § 902.67.

(6) HUD also requests comments on how PHAs should be assessed with respect to their responsibility to submit occupancy data to the Multifamily Tenant Characteristics System (MTCS) in an accurate, complete and timely manner.

V. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements for the PHAS regulation at 24 CFR part 902 were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2535–0106. This rule adds no new information collection requirements to that rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This rule revises HUD's existing regulations for the assessment of public housing at 24 CFR part 902, PHAS, to provide additional information on the PHAS scoring process and to revise certain procedures and establish others in accordance with recently enacted statutory requirements. The additional information and the revision of certain procedures impose no significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism

The General Counsel, as the Designated Official under Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. The rule will not create any new significant requirements. As a result, the rule is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for Public Housing is 14.850.

List of Subjects in 24 CFR Part 902

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

Accordingly, HUD proposes to revise part 902 of title 24 of the Code of Federal Regulations to read as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

Sec.
902.1 Purpose and general description.
902.3 Scope.
902.5 Applicability.
902.7 Definitions.

Subpart B—PHAS Indicator #1: Physical Condition

902.20 Physical condition assessment.
902.23 Physical condition standards for public housing—decent, safe, sanitary and in good repair (DSS/GR).
902.24 Physical inspection of PHA properties.
902.25 Physical condition scoring and thresholds.
902.26 Physical Inspection Report.
902.27 Physical condition portion of total PHAS points.

Subpart C—PHAS Indicator #2: Financial Condition

902.30 Financial condition assessment.
902.33 Financial reporting requirements.
902.35 Financial condition scoring and thresholds.
902.37 Financial condition portion of total PHAS points.

Subpart D—PHAS Indicator #3: Management Operations

902.40 Management operations assessment.
902.43 Management operations performance standards.
902.45 Management operations scoring and thresholds.
902.47 Management operations portion of total PHAS points.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

902.50 Resident service and satisfaction assessment.
902.51 Updating of resident information.
902.52 Distribution of survey to residents.
902.53 Resident service and satisfaction scoring and thresholds.
902.55 Resident service and satisfaction portion of total PHAS points.

Subpart F—PHAS Scoring

902.60 Data collection.
902.63 PHAS scoring.
902.67 Score and designation status.
902.68 Technical review of results of PHAS indicators #1 or #4.
902.69 PHA right of petition and appeal.

Subpart G—PHAS Incentives and Remedies

902.71 Incentives for high performers.
902.73 Referral to an Area HUB/Program Center.
902.75 Referral to a TARC.
902.77 Referral to the Departmental Enforcement Center.
902.79 Substantial default.
902.83 Interventions.
902.85 Resident petitions for remedial action.

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 902.1 Purpose and general description.

(a) *Purpose.* The purpose of the Public Housing Assessment System (PHAS) is to enhance trust in the public housing system among public housing agencies (PHAs), public housing residents, HUD and the general public by providing a comprehensive management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations, including rewards for high performers and consequences for poor performers.

(b) *Responsible office for PHAS assessments.* The Real Estate Assessment Center (REAC) is responsible for assessing and scoring the performance of PHAs.

(c) *PHAS indicators of a PHA's performance.* REAC will assess and score a PHA's performance based on the following four indicators:

(1) PHAS Indicator #1—the physical condition of a PHA's properties (addressed in subpart B of this part);

(2) PHAS Indicator #2—the financial condition of a PHA (addressed in subpart C of this part);

(3) PHAS Indicator #3—the management operations of a PHA (addressed in subpart D of this part); and

(4) PHAS Indicator #4—the resident service and satisfaction feedback on a PHA's operations (addressed in subpart E of this part).

(d) *Assessment tools.* REAC will make use of uniform and objective protocols for the physical inspection of properties and the financial assessment of the PHA, and will gather relevant data from the PHA on the Management Operations Indicator and the Resident Service and Satisfaction Indicator. On the basis of this data, REAC will assess and score the results, advise PHAs of their scores and identify low scoring and failing PHAs so that these PHAs will receive the appropriate attention and assistance.

(e) *Limitation of change of PHA's fiscal year.* To allow for a period of consistent assessment of the PHAS indicators, a PHA is not permitted to change its fiscal year for the first three full fiscal years following October 1, 1998.

§ 902.3 Scope.

The PHAS is a strategic measure of a PHA's essential housing operations. The PHAS, however, does not evaluate a PHA's compliance with or response to every Department-wide or program specific requirement or objective. Although not specifically referenced in this part, PHAs remain responsible for complying with such requirements as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and requirements of programs under which the PHA is receiving assistance. A PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's annual contributions contract.

§ 902.5 Applicability.

(a) *PHAs, RMCs, AMEs.* (1) This part applies to PHAs, Resident Management Corporations (RMCs) and Alternate Management Entities (AMEs). The management assessment of an RMC/AME differs from that of a PHA. Because an RMC/AME enters into a contract with a PHA to perform specific management functions on a development-by-development or program basis, and because the scope of the management that is undertaken varies, not every indicator that applies to a PHA would be applicable to each RMC/AME.

(2) This part is applicable beginning October 1, 1999.

(b) *PHA ultimate responsible entity under ACC.* Due to the fact that the PHA and not the RMC/AME is ultimately responsible to HUD under the Annual Contributions Contract (ACC), the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (pursuant to a court ordered receivership agreement, if applicable).

(c) *Assumption of management operations by AME.* When a PHA's management operations have been assumed by an AME:

(1) If the AME assumes only a portion of the PHA's management operations, the provisions of this part that apply to RMCs apply to the AME (pursuant to a court ordered receivership agreement, if applicable); or

(2) If the AME assumes all, or substantially all, of the PHA's management functions, the provisions of this part that apply to PHAs apply to the AME (pursuant to a court ordered receivership agreement, if applicable).

§ 902.7 Definitions.

As used in this part:

Adjustment for physical condition (project age) and neighborhood environment is a total of three additional points added to PHAS Indicator #1 (Physical Condition). The three additional points, however, shall not result in a total point value over the total points available for PHAS Indicator #1 (established in subpart B of this part).

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action), to manage all or part of a PHA's operations. Depending upon the scope of PHA management functions assumed by the AME, in accordance with § 902.5(c), the AME is treated as a PHA or an RMC for purposes of this part and, as appropriate, the terms PHA and RMC include AME.

Assessed fiscal year is the PHA fiscal year that has been assessed under the PHAS.

Average number of days nonemergency work orders were active is calculated:

(1) By dividing the total of—

(i) The number of days in the assessed fiscal year it takes to close active nonemergency work orders carried over from the previous fiscal year;

(ii) The number of days it takes to complete nonemergency work orders issued and closed during the assessed fiscal year; and

(iii) The number of days all active nonemergency work orders are open in the assessed fiscal year, but not completed;

(2) By the total number of nonemergency work orders used in the calculation of paragraphs (1)(i), (ii) and (iii) of this definition.

Days in this part, unless otherwise specified refer to calendar days.

Days Receivable Outstanding is Tenant Receivables divided by Daily Tenant Revenue.

Deficiency means any PHAS score below 60 percent of the available points in any indicator, sub-indicator or component. (In the context of physical problem condition and physical inspection, deficiency refers to a physical condition and is defined for purposes of subpart B of this part in § 902.24)

Improvement plan is a document developed by a PHA, specifying the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the sub-indicators and components within the indicator(s), identified as a result of the PHAS assessment when a Memorandum of Agreement (MOA) is not required.

Property is a project/development with a separate identifying project number.

Reduced actual vacancy rate within the previous three years is a comparison of the vacancy rate in the PHAS assessed fiscal year (the immediate past fiscal year) to the vacancy rate of that fiscal year two years prior to the assessed fiscal year. It is calculated by subtracting the vacancy rate in the assessed fiscal year from the vacancy rate in the earlier year. If a PHA elects to certify to the reduction of the vacancy rate within the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Reduced the average time nonemergency work orders were active during the previous three years is a comparison of the average time nonemergency work orders were active in the PHAS assessment year (the immediate past fiscal year) to the average time nonemergency work orders were active in that fiscal year two years prior to the assessment year. It is calculated by subtracting the average time nonemergency work orders were active in the PHAS assessment year from the average time nonemergency work orders were active in the earlier year. If a PHA elects to certify to the reduction of the average time nonemergency work orders were active during the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Vacancy loss is vacant unit potential rent divided by gross potential rent.

Work order deferred to the Capital Fund Program is any work order that is combined with similar work items and completed within the current PHAS assessment year, or will be completed in the following year when there are less than three months remaining before the end of the PHA fiscal year from the time the work order was generated, under the PHA's Capital Fund program or other PHA capital improvements program.

Subpart B—PHAS Indicator #1: Physical Condition

§ 902.20 Physical condition assessment.

(a) *Objective.* The objective of the Physical Condition Indicator is to determine whether a PHA is meeting the standard of decent, safe, sanitary, and in good repair (DSS/GR), as this standard is defined in § 902.23 (a standard that provides acceptable basic housing conditions) and the level to which the PHA is maintaining its public housing in accordance with this standard.

(b) *Physical inspection under PHAS Indicator #1.* To achieve the objective of paragraph (a) of this section, REAC will provide for an independent physical inspection of a PHA's property or properties that includes, at minimum, a statistically valid sample of the units in the PHA's public housing portfolio to determine the extent of compliance with the DSS/GR standard. All occupied units will be inspected. However, any vacant units not under lease at the time of the inspection will not be inspected. The categories of vacant units not under lease are as follows:

(1) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turn over; i.e., the period between which one resident have vacated a unit and a new lease takes effect;

(2) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded;

(3) Off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal period of time (considered to be between 5 and 7 days) and which are not included under an approved rehabilitation plan.

(c) *PHA physical inspection requirement.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(j)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)(1)), and § 902.43(a)(5).

(d) *Compliance with State and local codes.* The physical condition standards in this subpart do not supersede or preempt State and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

§ 902.23 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).

(a) *General.* Public housing must be maintained in a manner that meets the physical condition standards set forth in this part in order to be considered decent, safe, sanitary and in good repair (standards that constitute acceptable basic housing conditions). These standards measure a PHA's performance in maintaining the major physical areas of public housing (paragraph (b) of this section). These standards also identify health and safety deficiencies that require correction (paragraph (c) of this section).

(b) *Major Inspectable Areas.* The five major inspectable areas of public housing are the following:

(1) *Site.* The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(2) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(3) *Building systems.* Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(4) *Dwelling units.* (i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.

(iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(iv) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(5) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

(c) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

§ 902.24 Physical inspection of PHA properties.

(a) *The inspection, generally.* The score for PHAS Indicator #1 is based upon an independent physical inspection of a PHA's properties provided by REAC and using HUD's uniform physical inspection protocols.

(1) During the physical inspection of a property, an inspector looks for deficiencies for each inspectable item within the inspectable areas, such as holes (deficiencies) in the walls (item) of a dwelling unit (area). The dwelling units inspected in a property are a randomly selected, statistically valid sample of the units in the property, excluding vacant units not under lease at the time of the physical inspection.

(2) To ensure prompt correction of health and safety deficiencies before leaving the site, the inspector gives the property representative the list of every observed exigent/fire safety health and safety deficiency that calls for immediate attention or remedy. The property representative acknowledges receipt of the deficiency report by signature.

(3) After the inspection is completed, the inspector transmits the results to REAC where the results are verified for accuracy and then scored in accordance with the procedures in this subpart.

(b) *Definitions.* The following definitions apply to the physical condition scoring process in this subpart:

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item. (1) Based on the importance of the deficiency, reflected in its criticality value, points are deducted from the score for an inspectable area.

Criticality	Level
Critical	5
Very important	4
Important	3
Contributes	2
Slight contribution	1

(2) The Item Weights and Criticality Levels document lists all deficiencies with their designated levels, which vary from 1 to 5, with 5 as the most critical, and the point values assigned to them.

Deficiencies means the specific problems, comparable to Housing Quality Standards (HQS), such as a hole in a wall or a damaged refrigerator in the kitchen, that can be recorded for inspectable items.

Dictionary of Deficiency Definitions refers to the Dictionary of Deficiency Definitions document published as an appendix to the PHAS Notice on the Physical Condition Scoring Process that contains specific definitions of each severity level for deficiencies under this subpart. HUD will publish any significant proposed amendments to this document for comment. After comments have been considered HUD will publish a notice adopting the final Dictionary of Deficiency Definitions document or the amendments to the document.

Inspectable area (or area) means any of the five major components of the property that are inspected, which are: site; building exteriors; building systems; common areas; and dwelling units.

Inspectable item means the individual parts, such as walls, kitchens, bathrooms, and other things, to be inspected in an inspectable area. The number of inspectable it
each area. Weights are
item as show in t
Criticality l

Item We ality Levels Document em Weights and Criticality Levels document published as an appendix to the PHAS Notice on the Physical Condition Scoring Process that contains a listing of the inspectable items, item weights, observable deficiencies, criticality levels and values, and severity levels and values that apply to this subpart. HUD will publish any significant proposed amendments to this document for comment. After comments have been

considered HUD will publish a notice adopting the final Item Weights and Criticality Levels document or the amendments to the document.

Normalized weights mean weights adjusted to reflect the inspectable items or areas that are present to be inspected.

Score means a number on a scale of 0 to 100 that reflects the physical condition of a property, inspectable area, or sub-area. To record a health or safety deficiency, a specific designation (such as a letter—a, b, or c) is added to the property score that highlights that a health or safety deficiency (or deficiencies) exists. To note that smoke detectors are inoperable or missing, another designation (such as an asterisk (*)) is added to the property score. Although noted, inoperable or missing smoke detectors do not reduce the score.

Severity means one of three levels, severe, major or minor, that reflect the extent of the damage or problem associated with each deficiency. The Item Weights and Criticality Levels document shows the severity levels for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity. For specific definitions of each severity level, see the REAC's "Dictionary of Deficiency Definitions".

Sub-area means an inspectable area for one building. For example, if a property has more than one building, each inspectable area for each building in the property is treated as a sub-area.

(c) *Compliance with Civil Rights/Nondiscrimination Requirements.* HUD will review certain elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–19) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). A PHA will not be scored on those elements. Any indication of possible noncompliance will be referred to HUD's Office of Fair Housing and Equal Opportunity.

(d) *HUD Access to PHA properties.* PHAs are required by the Annual Contributions Contract to provide the government with full and free access to all facilities contained in the project. PHAs are required to provide HUD or its representative with access to the project, all units and appurtenances thereto in order to permit physical inspections under this part. Access to the units must be provided whether or not the resident is home or has installed additional locks for which the PHA did not obtain keys. In the event that the PHA fails to provide access as required by HUD or its representative, the PHA will be given "0" points for the project or projects involved which will be reflected in the physical condition and overall PHAS score.

§ 902.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #1, REAC will calculate a score for the overall condition of a PHA's public housing portfolio following the procedures described in the PHAS Notice on the Physical Condition Scoring Process, issued on [insert date of final rule]. HUD will publish any significant proposed amendments to this notice for comment. After comments have been considered, HUD will publish a notice adopting a final notice or amendment.

(b) *Adjustment for physical condition (property age) and neighborhood environment.* In accordance with section 6(j)(1)(I)(2) of the 1937 Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall physical score for a property will be upwardly adjusted to the extent that negative conditions are caused by situations outside the control of the PHA. These situations are related to the poor physical condition of the property or the overall depressed condition of the immediately surrounding neighborhood. The intent of this adjustment is to not unfairly penalize the PHA through appropriate application of the adjustment.

(1) *Adjustments in three areas.* Adjustments to the PHA physical property score will be made in three factually observed and assessed areas (inspectable areas):

(i) Physical condition of the site;

(ii) Physical condition of the common areas on the property; and

(iii) Physical condition of the building exteriors.

(2) *Definitions.* Definitions and application of physical condition and neighborhood environment factors are:

(i) Physical condition applies to properties over 10 years old and that have not received substantial rehabilitation in the last 10 years.

(ii) Neighborhood environment applies to properties located where the immediate surrounding neighborhood (that is a majority of the population that resides in the census tracts or census block groups on all sides of the development) has at least 51 percent of families with incomes below the poverty rate as documented by the latest census data.

(3) Adjustment is for physical condition (property age) and neighborhood environment. HUD will adjust the physical score of a PHA's property subject to both the physical condition (property age) and neighborhood environment conditions. The adjustments will be made to the scores assigned to the applicable inspectable areas so as to reflect the difficulty in managing. In each instance where the actual physical condition of the inspectable area (site, common areas, building exterior) is rated below the maximum score for that area, 1 point will be added, but not to exceed the maximum number of points available to that inspectable area.

(i) These extra points will be added to the score of the specific inspectable area, by property, to which these conditions may apply. A PHA is required to certify on form HUD–50072, PHAS Certification, the extent to which the conditions apply, and to the inspectable area the extra scoring point should be added.

(ii) A PHA that receives the maximum potential weighted points on the inspectable areas may not claim any additional adjustments for physical condition and/or neighborhood environments for the respective inspectable area(s). In no circumstance shall a PHA's score for the inspectable area, after any adjustment(s) for physical condition and/or neighborhood environments, exceed the maximum potential weighted points assigned to the respective inspectable area(s).

(4) *Scattered site properties.* The Date of Full Availability (DOFA) shall apply to scattered site properties, where the age of units and buildings vary, to determine whether the properties have received substantial rehabilitation within the past 10 years and are eligible for an adjusted score for the Physical Condition Indicator.

(5) *Maintenance of supporting documentation.* PHAs shall maintain supporting documentation to show how they arrived at the determination that the property's score is subject to adjustment under this section.

(i) If the basis was neighborhood environments, the PHA shall have on file the appropriate maps showing the census block groups surrounding the development(s) in question with supporting census data showing the level of poverty. Properties that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the physical condition factor, a PHA would have to maintain documentation showing the age and condition of the properties and the record of capital improvements, evidencing that these particular properties have not received capital funds.

(iii) PHAs shall also document that in all cases, properties that were exempted for other reasons were not included in the calculation.

(c) *Overall PHA Physical Condition Indicator score.* The overall physical inspection score for a PHA is the weighted average of the PHA's individual property physical inspection scores, where the weights are the number of units in each property divided by the total number of units in all properties for the PHA.

(d) *Thresholds.* (1) The physical inspection score is reduced to a 30 point basis for the PHAS Physical Condition Indicator.

(2) In order to receive a passing score under the Physical Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Physical Condition Indicator, the PHA shall be categorized as a substandard physical agency.

§ 902.26 Physical Inspection Report.

(a) Following the physical inspection and computation of the score under this subpart, each PHA receives a Physical Inspection Report, which allows the PHA to see the magnitude of the points lost by inspectable area, and the impact on the score of the health and safety (H&S) deficiencies.

(b) The following items are listed in the Physical Inspection Report:

(1) Normalized weights as the "possible points" by area;

(2) The area scores, taking into account the points deducted for observed deficiencies;

(3) The H&S deductions for site, buildings and units, with H&S deductions for buildings combined for exteriors, systems and common areas; a listing of all observed smoke detector deficiencies; and a projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units; and

(4) The overall property score.

§ 902.27 Physical condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Physical Condition Indicator.

Subpart C—PHAS Indicator #2: Financial Condition

§ 902.30 Financial condition assessment.

(a) *Objective.* The objective of the Financial Condition Indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary and in good repair.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator by measuring the PHA's entity-wide performance in each of the components listed in § 902.35, on the basis of the annual financial report provided in accordance with § 902.33.

§ 902.33 Financial reporting requirements.

(a) *Annual financial reports.* PHAs must submit their unaudited and audited financial data to HUD on an annual basis. The financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles (GAAP) as further defined by HUD in supplementary guidance; and

(2) Submitted electronically in the electronic format using the Financial Data Schedule (FDS).

(b) *Annual financial report filing dates.* The unaudited financial information to be submitted to HUD in accordance with paragraph (a) of this section, must be submitted to HUD annually, no later than two months after the end of the PHA's fiscal year for the reporting period. A PHA must submit its audited data using the FDS within nine months of the fiscal year end.

(c) *Reporting compliance dates.* The requirement for compliance with the financial reporting requirements of this section begins with PHAs with fiscal years ending September 30, 1999 and thereafter. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133 (see 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited report earlier than the due date of November 30, 1999 must submit its financial report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

§ 902.35 Financial condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #2, REAC will calculate a score based on the point values of financial condition components, as well as audit and internal control flags. Each financial condition component has several levels of performance, with different point values for each level. A PHA's score for a financial condition component depends upon both the level of the PHA's performance under a component, and the PHA's size, based on the number of public housing and section 8 units and other units the PHA operates. Under PHAS Indicator #2, the REAC will calculate a score following the procedures described in the PHAS Notice on the Financial Condition Scoring Process, issued on [insert date of final rule]. HUD will publish any significant proposed amendments to this notice for comment. After comments have been considered, HUD will publish a notice adopting a final notice or amendment.

(b) *Components of PHAS Indicator #2.* The components of PHAS Indicator #2 are:

(1) *Current Ratio* is current assets divided by current liabilities.

(2) *Number of Months Expendable Fund Balance* is the number of months a PHA can operate on the Expendable Fund Balance without additional resources. The Expendable Fund Balance is the portion of the fund balance representing expendable available financial resources, that is, the unreserved and undesignated fund balance.

(3) *Days Receivable Outstanding* is the average number of days tenant receivables are outstanding.

(4) *Occupancy Loss* is the loss of potential rent due to non-occupancy of dwelling units.

(5) *Net Income or Loss divided by the Expendable Fund Balance* measures how the year's operations have affected the PHA's viability.

(6) *Expense Management/Utility Consumption* is the expense per unit for key expenses, including utility consumption, and other expenses such as maintenance and security.

(c) *Thresholds.* (1) In order to receive a passing score under the Financial Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Financial Condition Indicator, the PHA shall be categorized as a substandard financial agency.

§ 902.37 Financial condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Financial Condition Indicator.

Subpart D—PHAS Indicator #3: Management Operations

§ 902.40 Management operations assessment.

(a) *Objective.* The objective of the Management Operations Indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.

(b) *Management assessment.* PHAS Indicator #3 pertaining to Management Operations incorporates the majority of the statutory indicators of section 6(j) of the U.S. Housing Act of 1937, as provided in § 902.43.

§ 902.43 Management operations performance standards.

(a) *Management operations sub-indicators.* The following sub-indicators listed in this section will be used to assess a PHA's management operations. The components and grades for each sub-indicator are the same as those for the corresponding indicator under the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901, except as may be otherwise noted in this subpart.

(1) *Management sub-indicator #—vacancy rate and unit turnaround time.* This management sub-indicator examines the vacancy rate, a PHA's progress in reducing vacancies, and unit turnaround time. Implicit in this management sub-indicator is the adequacy of the PHA's system to track the duration of vacancies and unit turnaround, including down time, make ready time, and lease up time.

(2) *Management sub-indicator #2—Capital Fund.* This management sub-indicator examines the amount and percentage of funds provided to the PHA from the Capital Fund under section 9(d) of the 1937 Act, which remain unobligated by the PHA after three years, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. For funding under the HOPE VI Program and the Vacancy Reduction Program, only components #3, #4, and #5 of this sub-indicator are applicable. This management sub-indicator is automatically excluded if the PHA does not have 9(d) capital funding.

(3) *Management sub-indicator #3—rents uncollected.* This management sub-indicator examines the PHA's ability to collect dwelling rents owed by residents in possession during the immediate past fiscal year by measuring the balance of dwelling rents uncollected as a percentage of total dwelling rents to be collected.

(4) *Management sub-indicator #4—work orders.* This management sub-indicator examines the time it takes to complete or abate emergency work orders, the average number of days nonemergency work orders were active, and any progress a PHA has made during the preceding three years to reduce the period of time nonemergency maintenance work orders were active. Implicit in this management sub-indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.

(5) *Management sub-indicator #5—PHA annual inspection of units and systems.* This management sub-indicator examines the percentage of units that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term Capital Fund needs. This management sub-indicator requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart B of this part. All occupied units are required to be inspected.

(6) *Management sub-indicator #6—Security and Economic Self-Sufficiency.* (i) This management sub-indicator evaluates the PHA's performance in tracking crime related problems in their developments; reporting incidence of crime to local law enforcement agencies; the adoption and implementation, consistent with section 9 of the Housing Opportunity Program Extension Act of 1996 (One-Strike and You're Out) (42 U.S.C. 1437d(r)), of applicant screening and resident eviction policies and procedures, and other anticrime strategies; coordination with local government officials and residents in the project on implementation of such strategies; and as applicable, PHA performance under any HUD drug prevention/crime reduction/economic self-sufficiency grants.

(ii) Paragraph (a) of this section provides that the components and grades for each sub-indicator are the same as those for the corresponding indicator under PHMAP except as may be otherwise noted. Instead of using the Grade A description in Component #1, Tracking and Reporting Crime Related Problems, of PHMAP Indicator #8, Security, the following will be used to describe a Grade of A: The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it:

(A) Tracks crime and crime-related problems in at least 90 percent of its developments;

(B) Has a cooperative system for tracking and reporting incidents of crime to local police authorities to improve law enforcement and crime prevention; and

(C) Coordinates with local government officials and its residents on the implementation of anticrime strategies.

(iii) The economic self-sufficiency sub-indicator measures the PHA's efforts to coordinate, promote or provide effective programs and activities to promote the economic self-sufficiency of residents. For this sub-indicator, PHAs will be assessed for all the programs that the PHA has HUD funding to implement. Also, PHAs will get credit for implementation of programs through partnerships with non-PHA providers, even if the programs are not funded by HUD or the PHA.

(b) *Reporting on performance under the Management Operations Indicator.* A PHA is required to electronically submit a certification of its performance under each of the management operations sub-indicators.

(1) If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access. In the event local resources are not available, a PHA may go to the nearest HUD Public and Indian Housing program office and assistance will be given to the PHA to transmit its management operations certification.

(2) If circumstances preclude a PHA from reporting electronically, HUD will consider granting approval to allow a PHA to submit its management operations certification manually. A PHA that seeks approval to submit its certification manually must ensure that the REAC receives a request for manual submission in writing 60 calendar days prior to the submission due date of its Management Operations certification. The written request must include the reasons why the PHA cannot submit its certification electronically. The REAC will respond to such a request and will manually forward its determination in writing to the PHA.

§ 902.45 Management operations scoring and thresholds.

(a) *Scoring.* The Management Operations Indicator score provides an assessment of each PHA's management effectiveness. Under PHAS Indicator #3, REAC will calculate a score of the overall management operations of a PHA that reflects weights based on the relative importance of the individual management sub-indicators. Under PHAS Indicator #3, the REAC will calculate a score following the procedures described in the PHAS Notice on the Management Operations Scoring Process, issued on [insert date of final rule]. HUD will publish any significant proposed amendments to this notice for comment. After comments have been considered, HUD will publish a notice adopting a final notice or amendment.

(b) *Thresholds.* (1) In order to receive a passing score under the Management Operations Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60 percent of the available points under this PHAS Indicator #3. If the PHA fails to receive a passing score on the Management Operations Indicator, the PHA shall be categorized as a substandard management agency.

§ 902.47 Management operations portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Management Operations Indicator.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

§ 902.50 Resident service and satisfaction assessment.

(a) *Objective.* The objective of the Resident Service and Satisfaction Indicator is to measure the level of resident satisfaction with living conditions at the PHA.

(b) *Method of assessment, generally.* The assessment required under PHAS Indicator #4 will be performed through the use of a resident service and satisfaction survey. The survey process will be managed by the PHA in accordance with a methodology prescribed by HUD. The PHA will be responsible for developing a follow-up plan, if applicable, to address issues resulting from the survey, subject to independent audit.

(c) *PHA certification of completion of resident survey process.* At the completion of the resident survey process as described in this subpart, a PHA must certify that the resident survey process has been managed as directed by HUD. PHAs are required to electronically submit their resident service and satisfaction certification.

(1) If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access.

(2) In the event local resources are not available, the PHA may go to the nearest HUD PIH program office and assistance will be given to the PHA to transmit its resident service and satisfaction certification.

(3) If circumstances preclude the PHA from reporting electronically, HUD will consider granting approval to allow a PHA to submit its resident service and satisfaction certification manually. A PHA that seeks approval to submit the certification manually must ensure that the REAC receives the PHA's written request for manual submission 60 calendar days before the submission due date of its resident service and satisfaction certification. The written request must include the reasons why the PHA cannot submit the certification electronically. The REAC will respond to the PHA's request and will manually forward its determination in writing to the PHA.

§ 902.51 Updating of resident information.

(a) *Electronic updating.* The scoring process for the Resident Service and Satisfaction Indicator is dependent upon electronic updating, submission and certification of resident and unit information by PHAs.

(b) *Unit address update and verification.* The scoring process for PHAS Indicator #4 begins with ensuring accurate information about the PHA's units.

(1) PHAs will be required to electronically update unit address information initially obtained by the REAC from the recently revised form HUD 50058, Family Report. The REAC will supply a list of current units (listed by development) to PHAs via the internet. PHAs will be asked to make additions, deletions and corrections to their unit address list.

(2) After updating the list, PHAs must verify that the list of unit addresses under their jurisdiction is complete. Any incorrect or obsolete address information will have a detrimental impact on the survey results. A statistically valid number of residents cannot be selected to participate in the survey if the unit addresses are incorrect or obsolete. If a PHA does not verify the address information within 30 calendar days of submission of the list of current units to the PHA by the REAC, and the address information is not valid, the REAC will not be able to conduct the survey at that PHA. Under those conditions, the PHA would not receive any points for the PHAS Resident Service and Satisfaction Indicator.

(c) *Electronic updating of the address list.* The preferred method for updating a unit address list is electronic updating.

(1) If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access.

(2) In the event local resources are not available, the PHA may go to the nearest HUD Public and Indian Housing (PIH) program office and assistance will be given to transmit the unit address information. The PIH office will assist the PHA in electronically updating and transmitting its unit address list to the REAC.

(3) If circumstances preclude a PHA from updating and submitting its unit address list electronically, HUD will consider granting approval to allow a PHA to submit the updated unit address list information manually. A PHA that seeks approval to update its unit address list manually must ensure that the REAC receives the PHA's written request for manual submission 30 calendar days before the submission due date. The written request must include the reasons why the PHA cannot update the list electronically. The REAC will respond to the PHA's request within 15 calendar days of receipt of the request.

§ 902.52 Distribution of survey to residents.

(a) *Sampling.* A statistically valid number of residents will be chosen to receive the Resident Service and Satisfaction survey. These residents will be randomly selected based on the total number of occupied and vacant units of the PHA. The Resident Service and Satisfaction assessment takes into account the different properties managed by a PHA by organizing the resident sampling based on the resident representation of each development in relation to the size of the entire PHA resident population.

(b) *Survey distribution by third party organization.* The Resident Service and Satisfaction survey will be distributed to the randomly selected sample of residents of each PHA by a third party organization designated by HUD. The third party organization will also be responsible for:

(1) Collecting, scanning and aggregating results of the survey;

(2) Transmitting the survey result to HUD for analysis and scoring; and

(3) Keeping individual responses to the survey confidential.

§ 902.53 Resident service and satisfaction scoring and thresholds.

(a) *Scoring.* (1) Under the PHAS Indicator #4, REAC will calculate a score based upon two components that receive points and a third component that is a threshold requirement.

(i) One component will be the point score of the survey results. The survey content will focus on resident evaluation of the overall living conditions, to include basic constructs such as:

(A) Maintenance and repair (i.e., work order response);

(B) Communications (i.e, perceived effectiveness);

(C) Safety (i.e., perception of personal security);

(D) Services (i.e., recreation and personal programs); and

(E) Neighborhood appearance.

(ii) The second component will be a point score based on the level of implementation and follow-up or corrective actions based on the results of the survey.

(iii) The final component, which is not scored for points, but which is a threshold requirement, is verification that the survey process was managed in a manner consistent with guidance provided by HUD.

(2) Under PHAS Indicator #4, the REAC will calculate a score following the procedures described in the PHAS Notice on the Resident Service and Satisfaction Scoring Process, issued on [insert date of final rule]. HUD will publish any significant proposed amendments to this notice for comment. After comments have been considered, HUD will publish a notice adopting a final notice or amendment.

(b) *Thresholds.* A PHA will not receive any points under PHAS Indicator #4 if the survey process is not managed as directed by HUD or the survey results are determined to be altered. A PHA will receive a passing score on the Resident Service and Satisfaction Indicator if the PHA receives at least 6 points, or 60 percent of the available points under this PHAS Indicator #4.

§ 902.55 Resident service and satisfaction portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 10 points based on the Resident Service and Satisfaction Indicator.

Subpart F—PHAS Scoring

§ 902.60 Data collection.

(a) *Fiscal Year Reporting Period—limitation on changes after PHAS effectiveness.* An assessed fiscal year for purposes of the PHAS corresponds to a PHA's fiscal year. To allow for a period of consistent assessments to refine and make necessary adjustments to the PHAS, a PHA is not permitted to change its fiscal year for the first three full fiscal years following the effective date of this part (see § 902.1(e)).

(b) *Physical Condition information.* Information necessary to conduct the physical condition assessment under subpart B of this part will be obtained from HUD inspectors during the fiscal year being scored through electronic transmission of the data.

(c) *Financial Condition information.* Year-end financial information to conduct the assessment under subpart C, Financial Condition, of this part will be submitted by a PHA through electronic transmission of the data to HUD not later than two months after the end of the PHA's fiscal year. An audited report of the year-end financial information is due not later than 9 months after the end of the PHA's fiscal year.

(d) *Management Operations and Resident Service and Satisfaction Information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Service and Satisfaction, of this part not later than two months after the end of the PHA's fiscal year.

(1) The certification shall be approved by PHA Board resolution, and signed and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(e) *Failure to submit data by due date.* If a PHA without a finding of good cause by HUD does not submit its certifications or year-end financial information, required by this part, or submits its certifications or year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of 1 point in the total PHAS score for each 15-day period past the due date. If all certifications or year-end financial information are not received within three months past the due-date, the PHA will receive a presumptive rating of failure in all of the PHAS indicators, sub-indicators and components certified to, which shall result in a troubled designation or identification as troubled with respect to the program for assistance from the Capital Fund under section 9(d).

(f) *Verification of information submitted.* (1) A PHA's certifications, year-end financial information and any supporting documentation are subject to verification by HUD at any time, including review by an independent auditor as authorized by 42 U.S.C. 1437(d)(j)(6). Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under individual PHAS indicators and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to REAC, or to the PHA's independent auditor for the assessment under any indicator(s), sub-indicator(s) and/or component(s) shall receive a score of 0 for the relevant indicator(s), sub-indicator(s) and/or component(s), and its overall PHAS score shall be lowered.

(3) A PHA's PHAS score under individual indicators, sub-indicators or components, or its overall PHAS score, may be changed by HUD pursuant to the data included in the independent audit report, or obtained through such sources as HUD on-site review, investigations by HUD's Office of Fair Housing and Equal Opportunity, or reinspection by REAC, as applicable.

(g) *Management operations assumed by an RMC.* For those developments of a PHA where management operations have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC. The PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. Following verification of the RMC's certification, the PHA shall submit the RMC's certified questionnaire along with its own. The RMC's certification shall be approved by its Executive Director or Chief Executive Officer or responsible party.

§ 902.63 PHAS scoring.

(a) *Issuance of score by HUD.* An overall PHAS score will be issued by REAC for each PHA one month after a PHA submits its year-end financial data and certifications.

(b) *Computing the PHAS score.* Each of the four PHAS indicators in this part will be scored individually, and then will be used to determine an overall score for the PHA. Components within each of the four PHAS indicators will be scored individually, and the scores for the components will be used to determine a single score for each of the PHAS indicators.

(c) *Adjustments to the PHAS score.* Adjustments to the score may be made after a PHA's audit report for the year being assessed is transmitted to HUD. If

significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between unaudited and audited results, a PHA's PHAS score will be raised or lowered, as applicable, in accordance with the audited results.

(d) *Posting and publication of PHAS scores.* Each PHA (or RMC or AME as the case may be) shall post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status. In addition, HUD will publish every PHA's score and status in the **Federal Register**.

§ 902.67 Score and designation status.

Designation status corresponding to score. A PHA will be scored with a corresponding designation of status as follows:

(a) *High Performer.* A PHA that achieves a score of at least 60 percent of the points available under each of the four PHAS Indicators (addressed in subparts B through E of this part) and achieves an overall PHAS score of 90 percent or greater shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator. High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 902.71.

(b) *Standard Performer.* A PHA that is not a high performer but achieves a total PHAS score of not less than 60 percent shall be designated a standard performer. All standard performers must correct reported deficiencies. A PHA that achieves a total PHAS score of less than 70 percent, but not less that 60 percent, is required by the HUB/Program Center to submit an Improvement Plan to correct identified deficiencies.

(c) *Troubled Performer.* (1) *Overall troubled PHAs.* A PHA that achieves an overall PHAS score of less than 60 percent or achieves less than 60 percent of the total points available under more than one of the following indicators, PHAS Indicators #1, #2, or #3, shall be designated as troubled (overall), and referred to the TARC as described in § 902.75.

(2) *Troubled in one area.* A PHA that achieves less than 60 percent of the total points available under one of the following indicators, PHAS Indicators #1, #2, or #3, shall be categorized as substandard physical, substandard financial, or substandard management performer, and referred to the TARC as described in § 902.75.

(d) *Withholding designation.* (1) In *exceptional circumstances,* even though a PHA has satisfied all of the PHAS Indicators for high or standard performer designation, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high or standard performer designation, in the case of a PHA that:

(i) Is operating under a special agreement with HUD;

(ii) Is involved in litigation that bears directly upon the physical, financial or management performance of a PHA;

(iii) Is operating under a court order;

(iv) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit or an investigation by any appropriate legal authority; or

(v) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under the PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the Annual Contributions Contract. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing developments and operate them consistent with Federal laws and regulations.

(2) If high performer designation is denied or rescinded, the PHA shall be designated a standard performer. If standard performer designation is denied or rescinded, the PHA shall be designated troubled.

§ 902.68 Technical review of results of PHAS Indicator #1 or #4.

(a) *Request for technical reviews.* This section describes the process for requesting and granting technical reviews of physical inspection results and resident survey results.

(1) For both reviews, the burden of proof is on the PHA to show that an error occurred.

(2) For both reviews, a request for technical review must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by REAC no later than 15 days following the issuance of the applicable results to the PHA (either the physical inspection results or the resident survey results). The request must be accompanied by the PHA's reasonable evidence that an error occurred.

(b) *Technical review of physical inspection results.* (1) For each property inspected, the REAC will provide the results of the physical inspection and a score for that property to the PHA. If the PHA believes that an objectively verifiable and material error (or errors) occurred in the inspection of an individual property, the PHA may request a technical review of the inspection results for that property.

(2) For a technical review of physical inspection results, the PHA's request must be accompanied by the PHA's evidence that an objectively verifiable and material error has occurred. The documentation submitted by the PHA may be photographic evidence, written material from an objective source, such as a local fire marshal or building code official, or other similar evidence. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a property's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will the REAC consider a request for a technical review that is based on a challenge to the inspector's findings as to the severity of the deficiency (i.e., minor, major or severe).

(4) Upon receipt of a PHA's request for technical review of a property's inspection results, the REAC will review the PHA's file and any objectively verifiable evidence produced by the PHA. If the REAC's review determines that an objectively verifiable and material error (or errors) has been documented, then the REAC may take one or a combination of the following actions:

(i) Undertake a new inspection;

(ii) Correct the physical inspection report;

(iii) Issue a corrected physical condition score;

(iv) Issue a corrected PHAS score.

(5) In determining whether a new inspection of the property is warranted and a new PHAS score must be issued, the REAC will review the PHA's file and evidence submitted to determine whether the evidence supports that there may have been a significant contractor error in the inspection which results in a significant change from the property's original physical condition score and the PHAS designation assigned to the PHA (i.e., high performer, standard performer, or troubled). If the REAC determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and the PHA's PHAS

score and PHAS designation, the REAC shall issue a new PHAS score to the PHA.

(6) Material errors are the only grounds for technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are:

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the property, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to the REAC.

(ii) *Unit count error.* A unit count error occurs if the total number of units considered in scoring is incorrect. Since scoring uses total units, the REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *Non-existent deficiency error.* A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(7) A PHA's subsequent correction of deficiencies identified as a result of a property's physical inspection cannot serve as the basis for an appeal of the PHA's physical condition score.

(c) *Technical review of resident survey results.* The REAC will consider conducting a technical review of a PHA's resident survey results in cases where the contracted third party organization can be shown by the PHA to be in error.

(1) The burden of proof rests with the PHA to provide objectively verifiable evidence that a technical error occurred. Examples include, but are not limited to, incorrect material being mailed to residents; or the PHA's units addresses were incorrect due to the third party organization's error, such as unit numbers being omitted from the addresses. A PHA that does not update its unit address list as described, above, will not be eligible for a technical review based on incorrect addresses.

(2) Upon receipt of a PHA's request for technical review of a resident survey results, the REAC will review the PHA's file and evidence submitted by the PHA. If the REAC's review determines that an error has been documented, the REAC may take one or a combination of the following actions:

(i) Undertake a new survey;

(ii) Correct the resident survey results report;

(iii) Issue a corrected resident services and satisfaction score;

(iv) Issue a corrected PHAS score.

§ 902.69 PHA right of petition and appeal.

(a) *Petition for removal of troubled designation and appeal of refusal to remove troubled designation.* A PHA may:

(1) Petition for removal of troubled designation; and

(2) Appeal any refusal to remove such designation.

(b) *Appeal of PHAS score.* (1) If a PHA believes that an objectively verifiable and material error (or errors) exists in any of the scores for its PHAS Indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (i.e., as troubled, standard, or high performer), the PHA may appeal its PHAS score. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (i.e., from troubled performer to standard performer, or from standard performer to high performer).

(2) To request an appeal of its PHAS score, a PHA must submit its request in writing to the Director of the Real Estate Assessment Center and must be received by the REAC no later than 30 calendar days following the issuance of the PHAS score to the PHA. The request for appeal must be accompanied by the PHA's reasonable evidence that an objectively verifiable and material error occurred. The REAC will review the PHA's file and the evidence submitted by the PHA to support that an error occurred. If the REAC determines that an objectively verifiable and material error has been documented by the PHA, the REAC may undertake a new inspection of the property, and/or a reexamination of the financial information, management information, or resident information (the components of the PHAS score), depending upon which PHAS Indicator the PHA believes was scored erroneously and the type of evidence submitted by the PHA to support its position that an error occurred. An appeal submitted to the REAC without appropriate documentation will not be considered and will be returned to the PHA.

(3) *Consideration of appeal by REAC.* Upon receipt of an appeal from a PHA, the REAC will convene a Board of Review (the Board) to evaluate the appeal and its merits for the purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, the Office of Public and Indian Housing, and such other office or representative as the Secretary may designate (excluding, however, representation from the Troubled Agency Recovery Center). For purposes of reassessment, the REAC will schedule a reinspection and/or acquire audit services, as determined by the Board, and a new score will be issued, if appropriate.

(4) *Final appeal decisions.* HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period an additional 30 days if further inquiry is necessary. Failure by a PHA to submit requested information within the 30-day period or any additional period granted by HUD is grounds for denial of an appeal.

Subpart G—PHAS Incentives and Remedies

§ 902.71 Incentives for high performers.

(a) *Incentives for high-performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives:

(1) *Relief from specific HUD requirements.* (i) A PHA that is designated high performer will be relieved of specific HUD requirements (for example, fewer reviews and less monitoring), effective upon notification of high performer designation.

(ii) A PHA's project(s) that receives a physical inspection score of 90 percent or greater shall be subject to a physical inspection of that project(s) every other year rather than annually. For example, project A received a physical inspection score of 94 percent and project B received a physical inspection score of 78 percent. Project A will receive a physical inspection every other year and project B will receive a physical inspection annually.

(2) *Public recognition.* High-performer PHAs and RMCs that receive a score of at least 60 percent of the points available under each of the four PHAS Indicators and achieve an overall PHAS score of 90, will receive a Certificate of Commendation from HUD as well as special public recognition, as provided by the HUB/Program Center.

(3) *Bonus points in funding competitions.* A high-performer PHA will be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program.

(b) *Compliance with applicable Federal laws and regulations.* Relief from any standard procedural requirement that may be provided under this section, does not mean that a PHA is relieved from compliance with the

provisions of Federal law and regulations or other handbook requirements. For example, although a high performer or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36).

(c) *Audits and reviews not relieved by designation.* A PHA designated as a high performer or standard performer remains subject to:

(1) Regular independent auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or invesugations will continue to be conducted as circumstances may warrant.

§ 902.73 Referral to an Area HUB/Program Center.

(a) Standard performers will be referred to the HUB/Program Center for appropriate action. A standard performer that receives a total score of less than 70 percent but not less than 60 percent shall be required to submit an Improvement Plan to eliminate deficiencies in the PHA's performance. A standard performer that receives a score of not less than 70 percent may be required, at the discretion of the appropriate area HUB/Program Center, to submit an Improvement Plan to address specific deficiencies.

(b) *Submission of an Improvement Plan.* (1) Within 30 days after a PHAS score is issued, a standard performer with a score less than 70 percent is required to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section and determined acceptable by the HUB/Program Center, for each indicator, sub-indicator and/or component identified as deficient as well as other performance and/or compliance deficiencies as may be identified as a result of an on-site review of the PHA's operations. An RMC that is required to submit an Improvement Plan must develop the plan in consultation with its PHA and submit the Plan to the HUB/Program Center through its PHA.

(2) The HUB/Program Center may require, on a risk management basis, a standard performer with a score of not less than 70 percent to submit within 30 days after receipt of its PHAS score an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator, sub-indicator and/or component of a PHAS indicator identified as deficient.

(c) *Correction of deficiencies.* (1) *Time period for correction.* After a PHA's receipt of its PHAS score and designation as a standard performer or, in the case of an RMC, notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD approved Improvement Plan if an Improvement Plan is required.

(2) *Notification and report to HUB/Program Center.* A PHA shall notify the HUB/Program Center of its action to correct a deficiency. A PHA shall also forward to the HUB/Program Center an RMC's report of its action to correct a deficiency.

(d) *Improvement Plan.* An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score under each individual PHAS indicator, sub-indicator and/or component that was identified as a deficiency;

(2) Describe the procedures that will be followed to correct each deficiency;

(3) Provide a timetable for the correction of each deficiency; and

(4) Provide for or facilitate technical assistance to the PHA.

(e) *Determination of acceptability of Improvement Plan* (1) The HUB/Program Center will approve or deny a PHA's (or RMC's Improvement Plan submitted to the HUB/Program Center through the RMC's PHA), and notify the PHA of its decision. A PHA that submits an RMC's Improvement Plan must notify the RMC in writing, immediately upon receipt of the HUB/Program Center notification, of the HUB/Program Center approval or denial of the RMC's Improvement Plan.

(2) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the HUB/Program Center for revising the Improvement Plan to obtain approval.

(f) *Submission of revised Improvement Plan.* A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the HUB/Program Center recommendations.

(g) *Failure to submit acceptable Improvement Plan.* If a PHA fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the HUB/Program Center will notify the PHA of its noncompliance. The PHA (or the RMC through the PHA) will provide the HUB/Program Center its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be referred to the area Troubled Agency Recovery Center (TARC) for remedial actions or such actions as the TARC may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations, including the remedies available for substantial default. In the case of a PHA's failure to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, if the TARC determines that it is appropriate to refer the PHA to the Departmental Enforcement Center (DEC), it will only do so after the PHA has had one year since the issuance of the PHAS score (or, in the case of an RMC, notification of its score from a PHA) to correct its deficiencies.

§ 902.75 Referral to a Troubled Agency Recovery Center (TARC).

Upon a PHA's designation of troubled (including PHAs categorized as substandard), in accordance with the requirements of section 6(j)(2)(B) of the 1937 Act and in accordance with this part, the REAC shall refer each troubled PHA to the PHA's area TARC for remedial action, which may include a determination of priority of needs and referral to the HUB/Program Center. The actions to be taken by HUD and the PHA will include actions statutorily required, and such other actions as may be determined by HUD:

(a) *Recovery Plan and Memorandum of Agreement (MOA).* Within 30 days of notification of the designation of a troubled PHA, HUD will take action to develop a Recovery Plan or MOA. The Recovery Plan shall include recommendations for improvements to correct or eliminate deficiencies that resulted in a failing PHAS score and designation as troubled. The Recovery Plan will incorporate a MOA as described in paragraph (c) of this section.

(b) *PHA review of Recovery Plan and MOA.* The PHA will have 10 days to review the Recovery Plan and the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the Plan with HUD, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by HUD, the MOA is to be executed 15 days following issuance of the preliminary MOA.

(c) *Memorandum of Agreement.* The final MOA is a binding contractual

agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the PHAS indicators, sub-indicators or components identified as a deficiency;

(2) Annual and quarterly performance targets, which may be the attainment of a higher score within an indicator, sub-indicator or component that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by HUD, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled designation or troubled with respect to the program for assistance from the Capital Fund under section 9(d) and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including, but not limited to, such sanctions as the imposition of budget and management controls by HUD, declaration of substantial default and subsequent actions, including referral to the DEC for judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions deemed appropriate by the DEC; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(d) *Maximum recovery period.* (1) Upon the expiration of the one-year period beginning on the date on which the PHA receives initial notice of troubled designation or substandard status, or October 21, 1998, whichever is later, the PHA shall improve its performance, as measured by the PHAS Indicators, by at least 50 percent of the difference between the most recent performance measurement and the measurement necessary to remove the PHA's designation as troubled or substandard status.

(2) Upon the expiration of the two-year period beginning on the later of the date on which the PHA receives initial notice of troubled or substandard status, or October 21, 1998, the PHA shall improve its performance and achieve an overall PHAS score of at least 60 percent, and/or achieve a score of at least 60 percent of the total points available under each PHAS Indicator.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution), or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the HUB/Program Center.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.*

(1) If a troubled PHA does not execute a MOA within the period provided in paragraph (b) of this section, or the TARC determines that the PHA does not show a substantial improvement toward a passing PHAS score following the issuance of the failing PHAS score by the REAC, the TARC shall refer the PHA to the DEC, which shall initiate proceedings for judicial appointment of a receiver, and other sanctions as may be appropriate. For purposes of this paragraph (g), *substantial improvement* is defined as an increase of at least 50 percent of the points needed to achieve a passing PHAS score. The maximum period of time for remaining in troubled status before being referred to the DEC is two years.

(2) The following example illustrates the provisions of paragraph (g)(1) of this section:

Example: A PHA receives a score of 50 percent; 60 percent is a passing score. The PHA is referred to the TARC. Within one year after the score is issued to the PHA, the PHA must achieve a five-point increase to continue recovery efforts in the TARC. If the PHA fails to achieve the five-point increase, the PHA will be referred to the DEC. The maximum period of time for remaining in troubled status before being referred to the DEC is two years.

(h) To the extent feasible, while a PHA is under a referral to a TARC, all services to residents will continue uninterrupted.

§ 902.77 Referral to the Departmental Enforcement Center.

(a) Failure of a troubled PHA to execute or meet the requirements of a memorandum of agreement in accordance with § 902.75 constitutes a substantial default in accordance with § 902.79 and shall result in referral to the DEC. The DEC is officially responsible for recommending to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. The DEC shall initiate the judicial appointment of a receiver or the interventions provided in § 902.83; and may initiate limited denial of participation, suspension, debarment, the imposition of other sanctions available to the DEC including referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(b) To the extent feasible, while a PHA is under a referral to the DEC, all services to residents will continue uninterrupted.

§ 902.79 Substantial default.

(a) *Events or conditions that constitute substantial default.* The following events or conditions shall constitute substantial default.

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the 1937 Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant ACC.

(2) HUD may determine that a PHA's failure to satisfy the terms of a memorandum of agreement entered into in accordance with § 902.75, or to make reasonable progress to execute or meet requirements included in a memorandum of agreement, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a PHA that has been designated as troubled and does not show substantial improvement, as defined in § 902.75(g), in its PHAS score in 1 year following issuance of the failed score is in substantial default.

(4) HUD may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(5) HUD may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

(b) *Notification of substantial default and response.* If information from an annual assessment or audit, or any other credible source (including but not limited to the Office of Fair Housing Enforcement, the Office of the Inspector General, a judicial referral or a referral from a mayor or other official) indicates that there may exist events or conditions constituting a substantial breach or default, HUD shall advise a PHA of such information. HUD is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, HUD shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as troubled PHAs, or to demonstrate that the information is incorrect.

(1) *Form of notification.* Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(ies) of the Board, and shall include, but is not limited to:

(i) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;

(ii) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(iii) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;

(iv) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

(v) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, HUD will refer the PHA to the Enforcement Center, using any or all of the interventions specified in § 902.83, and determined to be appropriate to remedy the noncompliance, citing § 902.83, and any additional authority for such action.

(2) *Receipt of notification.* Upon receipt of the notification described in paragraph (b)(1) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in HUD's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

(3) *Waiver of notification.* A PHA may waive, in writing, receipt of explicit notice from HUD as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which can be remedied by technical assistance, and the PHA shall provide HUD with written assurances that all deficiencies will be addressed by the PHA. HUD will then immediately proceed with interventions as provided in § 902.83.

(4) *Emergency situations.* In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Secretary or the Secretary's designee is authorized to intercede to protect the residents' and HUD's interests by causing the proposed interventions to be implemented without further appeals or delays.

§ 902.83 Interventions.

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, HUD could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, HUD may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA;

(4) Entering into agreements, arrangements, and/or contracts for or on behalf of a PHA, or acting as the PHA, and expending or authorizing the expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default;

(5) The provision of intervention and assistance necessary to remedy emergency conditions;

(6) After the solicitation of competitive proposals, select an administrative receiver to manage and operate all or part of the PHA's housing; and

(7) Petition for the appointment of a receiver to any District Court of the United States or any court of the State in which real property of the PHA is located.

(c) The receiver is to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide.

(d) The appointment of a receiver pursuant to this section may be terminated upon the petition of any party, when the court determines that all defaults have been cured or the public housing agency is capable again of discharging its duties.

(e) HUD may take the actions described in this part sequentially or simultaneously in any combination.

§ 902.85 Resident petitions for remedial action.

The total number of residents that petition HUD to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the 1937 Act must equal at least 20 percent of the residents, or the petition must be from an organization or

organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

Dated: June 15, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Donald J. LaVoy,

Acting Director, Real Estate Assessment Center.

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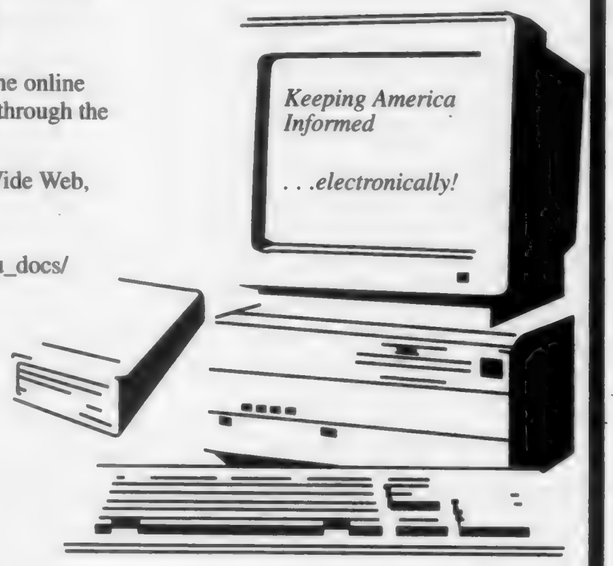
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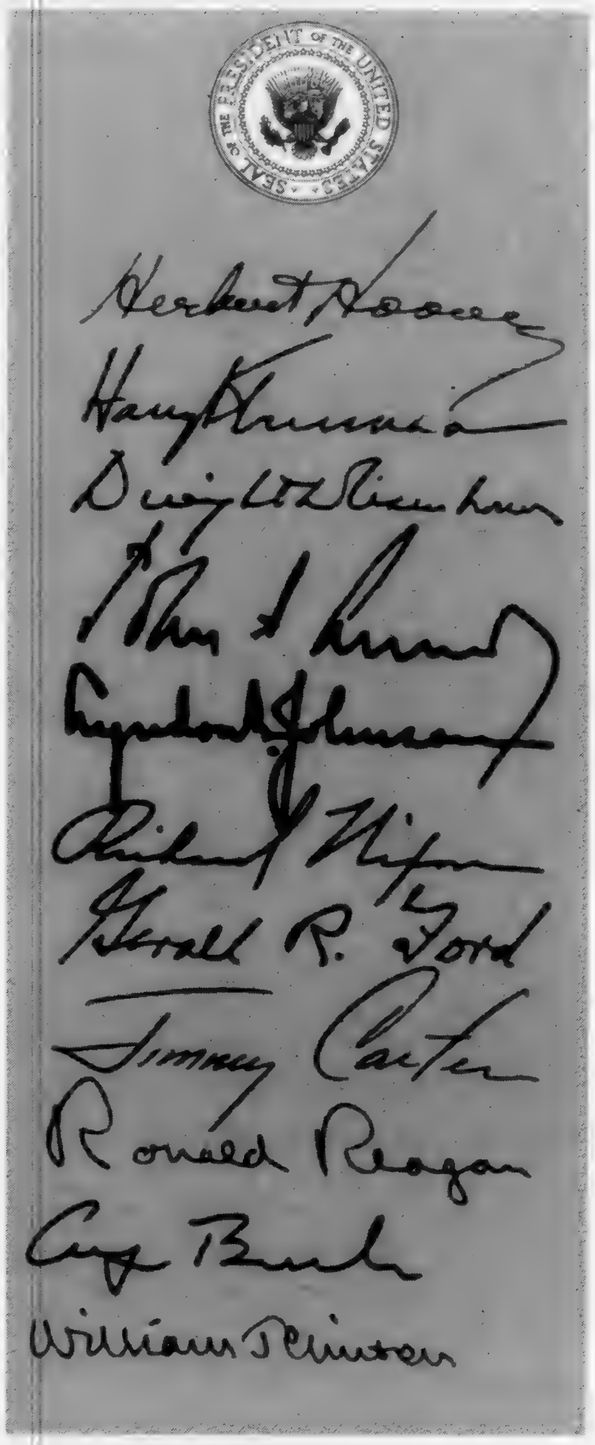
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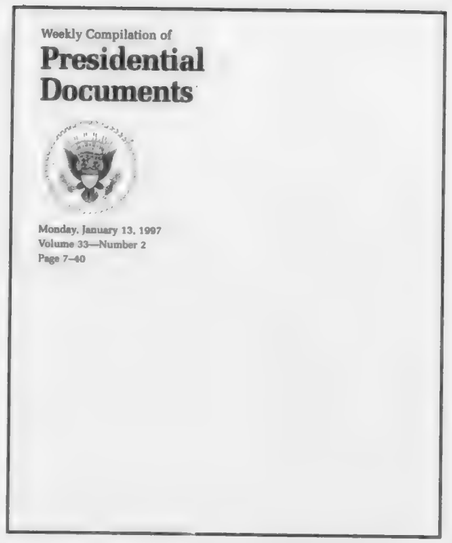
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 1 and 11

National Appeals Division Rules of Procedure

AGENCY: National Appeals Division, Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: On December 29, 1995, the National Appeals Division (NAD) in the Office of the Secretary published an interim final rule to implement Title II, Subtitle H, of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, by setting forth procedures for program participant appeals of adverse decisions by United States Department of Agriculture (USDA) agency officials to NAD. The deadline for receipt of comments was March 28, 1996. Nineteen timely public comments were received in response to the interim final rulemaking.

The Secretary now issues a final rule for the rules of procedure of NAD and for the technical change regarding authentication of NAD records by the NAD Director. The interim final rulemaking document also included conforming changes to the former appeal rules of USDA agencies whose adverse decisions are now subject to NAD review. This final rulemaking document does not contain final rules for the conforming changes. Those final rules will be issued by the respective agencies at a later date.

DATES: *Effective Date:* This final rule is effective July 23, 1999.

Applicability Date: This rule applies to all agency adverse decisions issued after July 23, 1999, all agency adverse decisions on which timely NAD appeals have not yet been taken, and pending NAD appeals.

FOR FURTHER INFORMATION CONTACT: L. Benjamin Young, Jr., General Law Division, Office of the General Counsel, United States Department of Agriculture, STOP 1415, 1400 Independence Avenue SW, Washington, DC 20250–1415; 202/720–4076; e-mail: benjamin.young@usda.gov.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under E.O. 12866, and it has been determined that it is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local, or tribal governments or communities. This final rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in E.O. 12866.

Regulatory Flexibility Act

USDA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

USDA has determined that the provisions of the Paperwork Reduction Act, as amended, 44 U.S.C., chapter 35, do not apply to any collections of information contained in this rule because any such collections of information are made during the conduct of administrative action taken by an agency against specific individuals or entities. 5 CFR 1320.4(a)(2).

Background and Purpose

On December 27, 1994 (*see* 59 FR 66517), the Secretary of Agriculture noticed that the NAD was established pursuant to Title II, Subtitle H of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354, 7 U.S.C. 6991 *et seq.* ("the Reorganization Act"). NAD was assigned responsibility for all administrative appeals formerly handled by the National Appeals Division of the former Agriculture Stabilization and Conservation Service (ASCS) and by the National Appeals Staff of the former Farmers Home Administration (FmHA), appeals arising from decisions of the former Rural Development Administration (RDA) and the former Soil Conservation Service (SCS), appeals arising from decisions of the successor agencies to the foregoing agencies established by the Secretary, appeals arising from decisions of the Commodity Credit Corporation (CCC) and the Federal Crop Insurance Corporation (FCIC), and such other administrative appeals arising from decisions of agencies and offices of USDA as may in the future be assigned by the Secretary.

This final rule sets for the jurisdiction of the NAD, and the procedures appellants and agencies must follow upon appeal of adverse decisions by covered USDA program "participants" as defined in detail in 7 CFR part 11.

Response to Comments and Changes to Interim Final Rule

Nineteen comments were received by March 28, 1996 in response to the request for comments on the interim final NAD rule. In response to these comments, minor changes have been made to the interim final rule. Additionally, a few other changes to the interim final rule have been made to reflect subsequent Congressional and USDA action established in the Risk Management Agency and to clarify some aspects of the rule as a result of the application of the interim final rule since it was promulgated.

The following explanation is given for those sections of the interim final rule that have been changed. Responses to comments not addressed in the explanation of changes follow.

Effective Date

The provisions of the interim final rule applicable to NAD Director review (7 CFR 11.9) were made effective retroactively to October 20, 1994, the date on which the Secretary established NAD. The purpose of the retroactive application of that section was to provide an administrative mechanism

for reconsideration of Director reviews during the transition from the old to the new appeals system where appellants had not received notice or copies or agency requests for review of hearing officer decisions. At this point, USDA has determined that any difficulties with prior decisions should have been resolved. In order to remove any ambiguity regarding the finality of Director review decisions, USDA accordingly is not making § 11.9 of this final rule retroactive.

Section 11.1 Definitions

Agency. Section 194 of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104–127, amended the Reorganization Act by adding a new section 226A (7 U.S.C. 6933) authorizing the Secretary to establish an Office of Risk Management to supervise the Federal Crop Insurance Corporation (FCIC) and other crop insurance-related programs. The Secretary implemented this provision with Secretary's Memorandum 1010–2 issued on May 3, 1996, which established the Risk Management Agency (RMA). Since the RMA has taken over FCIC supervisory functions formerly assigned to the Farm Service Agency (FSA), USDA has added RMA to the definition of "agency" in this final rule.

Given that the Reorganization Act was enacted more than four years ago, USDA has deleted obsolete references to the former Agricultural Stabilization and Conservation Service (ASCS), Farmers Home Administration (FmHA), and Soil Conservation Service (SCS) from the definition of "agency." However, to ensure any matters that may arise from those former agencies remain within the jurisdiction of NAD, appropriate reference has been made to include a "predecessor" of a named agency within the definition of "agency."

USDA has deleted the Rural Development Agency (RDA) from the definition of "agency" as that agency no longer exists.

In many States and at the national office level, decisions relating to programs of the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and Rural Utilities Service (RUS) may be issued under the auspices of "Rural Development." Accordingly, USDA adds Rural Development (RD) to the definition of "agency" to avoid any confusion as to whether such decisions are subject to appeal to NAD.

Participant. For USDA response to comments and amendments regarding the participation of parties in NAD proceedings other than the agency and the appellant, see the preamble text below addressing new § 11.15 of the rule.

USDA also amends this section to clarify that participants in proceedings before State Tobacco Marketing Quota Review Committees ("Tobacco Committees) under section 361, *et seq.*, of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1361, *et seq.*) are excluded from the definition of "participant" in § 11.1. In creating the NAD, Congress repealed several statutory appeal processes in section 273 of the Reorganization Act, but did not repeal these statutory appeal and judicial review provisions for decisions of the Tobacco Committees. Accordingly, in order to construe the statutes harmoniously, USDA concludes Congress did not intend for NAD review to supersede the specific statutory review process for decisions of the Tobacco Committees, and amends the NAD rule to give effect to this interpretation.

Section 11.4 Inapplicability of Other Laws and Regulations

Three comments were received from the same commenter concerning the applicability of the provisions of the Administrative Procedure Act (APA) regarding formal adjudicative proceedings (5 U.S.C. 554–57, 3105) and the Equal Access to Justice Act (EAJA) (5 U.S.C. 504) to NAD proceedings. The commenter suggests that 5 U.S.C. 559 requires that the formal adjudication provisions of the APA apply to NAD proceedings, and therefore, by its terms, EAJA also applies to NAD proceedings.

For the reasons set forth in the preamble to the interim final rule, it is the position of USDA that Congress did not intend for either the APA or the EAJA to apply to NAD proceedings. This is the same position that USDA took with respect to the applicability of the APA and EAJA when it was addressed in the regulations applicable to appeals before the former Farmers Home Administration National Appeals Staff. *See* 53 FR 26401 (July 12, 1988).

In *Lane* v. *U.S. Dept. of Agriculture*, 120 F.3d 106 (8th Cir. 1997), the court disagreed with the USDA position regarding the applicability of the APA and EAJA, holding that 5 U.S.C. 559 required application of both Acts to NAD proceedings. Consequently, USDA will apply the holding in *Lane* to NAD appeals which arise within the 8th Circuit. For adverse decisions arising outside of the 8th Circuit, USDA will continue to assert the inapplicability of NAD and EAJA, and NAD will not process EAJA applications filed in such appeals.

By definition, USDA EAJA regulations at 7 CFR part 1, subpart J, apply to any adjudication that USDA is required to conduct under the formal adjudication provisions of the APA. 7 CFR 1.183(a)(1)(i). Accordingly, EAJA applications on 8th Circuit NAD appeals have been processed by USDA in accordance with the USDA EAJA regulations at 7 CFR part 1, subpart J, and will continue to be processed in accordance with those regulations with one change.

Under EAJA, it is the agency, not the adjudicative officer, that is the final agency decisionmaker on an administrative EAJA application. 5 U.S.C. 504(a)(3). A NAD Hearing Officer clearly falls within the definition of "adjudicative officer" under the USDA EAJA regulations (7 CFR 1.180(b)); however, the Secretary has delegated to the Judicial Officer (with the exception of covered proceedings arising before the Board of Contract Appeals) his authority to review decisions of adjudicative officers as the final agency decisionmaker under EAJA (7 CFR 1.189). Concurrently with the promulgation of this final rule, the Secretary by separate memorandum will reassign, from the Judicial Officer to the NAD Director, his authority to make final agency determinations under EAJA for initial EAJA determinations rendered by NAD Hearing Officers. This delegation will apply prospectively to initial EAJA determinations issued by NAD Hearing Officers after the date the memorandum is signed.

As the holding of the 8th Circuit in *Lane* makes apparent, the right of a NAD appellant under EAJA to recover attorneys fees incurred in NAD proceedings will not rise or fall on the basis of whether or not USDA promulgates a regulation accepting or denying the applicability of the APA and EAJA. Further, as a result of *Lane*, the statement in the interim final rule regarding the inapplicability of the APA and EAJA no longer has universal application.

Accordingly, USDA has determined to remove any references to the APA or EAJA from the final rule in order to eliminate the issue of rulemaking from what is a pure matter of statutory construction involving the relationship of the Reorganization Act, the APA, and EAJA. The removal of references to the APA and EAJA, however, does not mean that USDA now finds the APA and EAJA applicable to NAD proceedings. As indicated above, USDA will continue to assert that the APA and EAJA do *not* apply to NAD appeals except where required by judicial ruling.

Section 11.5 Informal Review of Adverse Decisions

Section 11.5(a) of the interim final rule provides that a participant first must seek county or area committee review of any adverse decision issued at the field service office level by an officer or employee of FSA, or any employee of such county or area committee. In the context of the USDA reorganization with the combination of the former Farmers Home Administration and the Agricultural Stabilization and Conservation Service into FSA, confusion has surrounded this provision with respect to its applicability to the former FmHA farm credit programs. As a result of reorganization, very few farm credit decisions would come within the scope of this requirement in any case. Accordingly, to clarify the scope of the provision, language has been added excepting farm credit programs from its coverage. Any inconsistency with the interim final rule at 7 CFR part 780 will be corrected when that rule is finalized but in the meantime NAD will apply these rules in determining the acceptability of an appeal to NAD of a farm credit decision by FSA.

Section 11.6 Director Review of Agency Determinations of Appealability and Right of Participants to Division Hearing

Paragraph (a)(1) of § 11.6 is amended to correct an omission in the interim final rule that led to a discrepancy between the statement in the preamble to that rule and the text of that rule. The preamble of the interim final rule provided that a request for Director review of an agency determination that a decision is not appealable must be personally signed by the participant, just as the case with a participant request for a hearing and request for Director review of a Hearing Officer determination. However, the language of section 11.6(a)(1) did not expressly state that such requests must be personally signed. Section 11.6(a)(1) now makes clear that the participant must personally sign the request for Director review of an agency determination of non-appealability.

Further, with respect to the need for personal signature for certain actions, USDA clarifies that the reasonable interpretation of this requirement is vested in the NAD Hearing Officers or Director in individual cases. While it is not a statutory jurisdictional prerequisite for perfecting a timely appeal, it is reasonable to expect that authorized representatives seeking to file appeals before NAD would check the rules of the forum for filing requirements. Even though the requirement is expressed using the term "personally," it also is reasonable to interpret that term as applying to a responsible officer or employee of an entity where the definition of "participant" in § 11.1 encompasses an "entity" as well as an "individual."

Section 11.8 Division Hearings

Section 11.8(b)(6) is ambiguous with respect to the options of a NAD hearing officer when a party fails to show up at a hearing. Section 11.8(b)(6)(i)(B) states that if the hearing officer elects to cancel the hearing, he can accept evidence into the record from any party present and then issue a determination, whereas § 11.8(b)(6)(ii) suggests that the hearing officer must allow the absent party an opportunity to respond to any such evidence admitted prior to rendering a determination. USDA has modified the language of § 11.8(b)(6)(i)(B) to make the acceptance of evidence clearly subject to § 11.8(b)(6)(ii) prior to issuing a determination.

Section 11.9 Director Review of Determinations of Hearing Officers

The word "Associate" in § 11.9(d)(3) is changed to "Assistant" to reflect the curent organization of NAD.

Section 11.15 Participation of Third Parties and Interested Parties in Division Proceedings

Several commenters, either reinsurance companies or organizations commenting on behalf of reinsurance companies, requested that reinsurance companies be notified of and allowed to participate in NAD proceedings on participant appeals of FCIC decisions where the outcome of the NAD proceeding would affect policies held by reinsurance companies. For example, if FCIC declares an insured ineligible for crop insurance, a reinsurance company may cancel a previously existing policy as a result of that decision; however, if the insured then successfully appeals to NAD and the FCIC decision is overturned, the reinsurance company now will have a policy on its books that it had thought removed and it may not have received any notice of the NAD appeal or decision.

One commenter also objected to the change from the proposed rule in the interim final rule that required a bank holding a guaranteed loan to jointly appeal with the borrower any adverse decision. The commenter argued that the borrower was the individual directly affected and thus should be able to appeal an adverse decision related to a guaranteed loan independently from the lender.

In addition to the concerns raised by these commenters, NAD also has experienced difficulties in the appeal process where the interests of parties other than the appellant and the agency are involved.

Accordingly, a new § 11.15 has been added to the rule to provide procedures for handling these types of situations involving the interests of other parties in a NAD appeal.

The new § 11.15 recognizes that there are two types of situations where parties other than the appellant or the agency may be interested in participating in NAD proceedings. In the first situation, a NAD proceeding may in fact result in the adjudication of the rights of a third party, e.g., an appeal of a tenant involving a payment shared with a landlord, an appeal by one recipient of a share of a payment shared by multiple parties, or an appeal by one heir of an estate. In the second situation, there may be an interested party that desires to receive notice of and perhaps participate in an appeal because of the derivative impact the appeal determination will have on that party, e.g., guaranteed lenders and reinsurance companies.

These two different types of situations require separate procedures. Thus, in the first type where the actual rights of a third party are being adjudicated, USDA has termed such a party a "third party" and provided a new § 11.15(a) to provide for the participation of a "third party." After an appellant files an appeal, if the agency, appellant, of NAD itself identifies a third party whose rights will be adjudicated in an appeal, NAD will issue a notice of the appeal to the third party and provide such party with an opportunity to participate fully as a party in the NAD proceeding. Participation will include the right to seek Director review of the determination of the Hearing Officer. USDA believes the participation of a third party under § 11.15 also gives the third party the right to seek judicial review of the final NAD determination. If the third party receiving notice declines to participate, he will be bound by the final NAD determination as if he had participated. The intent of this provision is to include all parties in the initial NAD appeal and prevent a secondary appeal by a third party who did not receive notice of the appeal, but who is adversely affected by the agency implementation of the NAD determination of appeal, and who thus would then be entitled to an appeal of his own that could lead to a contradictory result.

For example, the agency determines a recipient sharing in a payment with two

other parties is entitled to 25% of the payment, and the recipient appeals. NAD determines that the agency decision was erroneous, and the agency implements by according the appellant 50% of the payment. The first NAD determination would not be binding as to the other two recipients, thus giving rise to secondary appeals, unless the other two recipients had notice and opportunity to participate in the first appeal.

In the second type of situation, new § 11.15(b) provides for the participation of guaranteed lenders and crop reinsurers as "interested parties" in an appeal where the actual rights of such interested parties under a USDA program are not being adjudicated (i.e., the appeal would not lead to an agency implementation decision that would give rise to NAD appeal rights for them), but such parties would be impacted by the outcome. Interested parties are not entitled under this new provision to request Director review of a hearing officer determination. It also is the position of USDA that such participation of an "interested party" does not give rise to a right by such "interested party" to judicial review of the final NAD determination.

In light of these changes, USDA is striking the requirement in the definition of "participant" in § 11.1 of the interim final rule that guaranteed lenders jointly appeal to NAD with borrowers.

With respect to the comments suggesting that reinsurers should be notified of NAD appeals taken by insureds, that topic should be addressed in agency rules and not the rules pertaining to NAD itself. NAD does not have the resources, capability, or function to carry out that mission.

Other Comments

As indicated above, the other CFR sections amended by the interim final rule and that are not a part of this final rule will be issued as final rules at a later date. Comments received on those rules are not addressed below except to the extent that they are related to a provision of 7 CFR part 11. Comments related to other parts of the interim final rule, or other agency rules (such as those for mediation), will be referred to the appropriate parties for further consideration.

Crop Insurance Issues

One commenter expressed concern that the revision of 7 CFR part 400, subpart J, in the interim final rule eliminated the rights of appeal previously contained in 7 CFR 400.92. The commenter questioned whether the more general language of the interim final rule provided for appeal rights coextensive to those in 7 CFR 400.92.

Except with respect to the provision for notification to the reinsurance company in 7 CFR 400.92(f), USDA believes that the specified rights of appeal outlined in 7 CFR 400.92 are covered by the NAD appeal regulations contained in this final rule. Further, the notification issue has been dealt with partially in this final rule by providing reinsurance companies the right to participate in NAD appeals as detailed above.

One reinsurance commenter also expressed the view that if allowed to participate in a NAD appeal it also should be allowed to request Director review of a hearing officer's decision. The comment reflected a concern that the agency would not timely request Director review of a hearing officer's decision and thus leave the reinsurer at risk. USDA does not adopt this recommendation because only program participants receiving adverse decisions from an agency have a statutory right to appeal under the NAD statute; since a reinsurer is not the recipient of the adverse decision, it may not be a NAD appellant able to request hearings and Director review. However, as interested parties, USDA is allowing reinsurers to participate in the hearing and Director review process.

One commenter on behalf of crop insurers suggested that the interim final rule be revised to allow reinsurance companies to appeal to NAD where a matter would not be subject to appeal to the Agriculture Board of Contract Appeals (AGBCA). The NAD process was established as a forum primarily for producer appeals, not as a forum for contractual and quasi-contractual matters. USDA at this time does not perceive a gap between a reinsurance company's right of appeal to the AGBCA and the availability of participant appeals to NAD by recipients of FCIC or RMA adverse decisions; therefore, a safety provision in this NAD final rule to cover appeals not taken by the AGBCA is neither required nor appropriate.

Mediation

Several commenters addressed issues regarding mediation. The mediation process between participants and agencies is not the subject of this final rule. Mediation is relevant to this rule only with respect to the determination of when a participant's right to appeal to NAD begins to toll. Comments regarding the length of time agencies allow for mediation to be requested and the length of time they permit for mediation to continue therefore are outside the scope of this rule and are not addressed herein.

Section 11.5(c)(1) of the interim final rule provides that a participant request for mediation or alternative dispute resolution (ADR) stops the running of the 30-day period after an adverse decision in which a participant may appeal that decision. Once mediation or ADR has concluded, this provision provides that the participant then has the remaining balance of the 30 days to appeal. Finding this process prone to confusion, four commenters suggested that the termination of mediation without settlement should in some way be construed as a new adverse decision with a full 30 days to seek NAD review of the decision. This suggestion does not comport with the concept of mediation. First of all, the mediator is not an agency decisionmaker and the results of the mediator's work is not therefore an agency decision. Second, mediation does not result in decisions; it results either in a mutually acceptable solution to all parties or a termination of the mediation with no resolution of the dispute. The NAD statute does not provide for a new 30-day period for a NAD appeal to begin at the conclusion of the mediation process.

One of the commenters, however, suggested that agencies issue a new adverse decision at the conclusion of mediation, with a notice of appeal rights. This adverse decision would replace the initial adverse determination and start the 30-day clock running anew for a NAD appeal. Such a mandate on USDA program agencies is beyond the scope of this final rule.

Three commenters suggested that § 11.5 of the rule provide that agencies notify participants of the balance of time remaining for appeal at the conclusion of mediation. Two commenters suggested that it would be inappropriate for the mediator to perform this task for reasons of liability and impartiality.

USDA agrees that it would be inappropriate to require the mediator to provide such notice; however, USDA does not adopt the suggestion that agencies should be required to give such notice. Agency notices to participants of appeal rights are beyond the scope of this final rule.

One commenter suggested that participants be billed for their share of the costs of medication. That subject is beyond the scope of this final rule.

Required Informal Agency Review

One commenter suggested that the required informal review by a county or area committee as a prerequisite to a NAD appeal, as set forth in § 11.5(a), should be dropped because it results in additional costs and delays for participants. USDA declines to remove this provision.

Notification of Appeal Rights for Adverse Decisions Determined Non-Appealable

One commenter suggested that agencies be required to provide participants with notice of appeal rights to NAD under § 11.6(a) of agency determinations that an adverse decision is not appealable. USDA agrees that information on such appeal rights should be given by agencies when a decision is issued with a statement that it is not appealable. As with other notice requirements, however, USDA does not mandate this requirement on agencies in this final rule.

"Reasonably Should Have Known"

One commenter objected to the requirement in § 11.6(b)(1) that a participant must request an appeal within 30 days after "the participant reasonably should have known that the agency had not acted within the timeframes specified by agency program regulations". The commenter suggested that the agency should have specified timeframes to respond to participant requests, application, or inquiries; that participants should be notified of agency deadlines so that they can monitor them and know when to appeal; and that, alternatively, that if an agency fails to respond by deadlines, participant requests or applications should be automatically approved.

The purpose of the above-quoted phrase in § 11.6(b)(1) is to bring finality to agency decisions and programs by requiring appellants to appeal within 30 days of an agency missing a deadline specified in published agency regulations. Participants are deemed to have knowledge of published laws and regulations. If a regulation states that the agency will act on a given application in 60 days, a participant may not rest on his or her rights for a year before appealing to NAD because the agency never acted on the applications. Requiring an agency to specify timeframes for all actions in regulations, or to notify participants of such timeframes, is beyond the scope of this rule and the mission of NAD. Finally, USDA by general rule cannot establish automatic award of applications for failure to act on them where contrary to statute or principles of sovereign immunity.

"Adverse Decision"

Two commenters suggested that § 11.8(b) should be revised to allow participants 30 days to appeal upon receiving a *written* decision from the agency including: a clear statement of the adverse decision, a citation of the regulatory basis for the adverse decision, a notification of appeal rights, notification of the proper agency from which to appeal the adverse decision, notification of the proper reviewing officer to whom the appeal must be sent, and notification of mediation rights. One of the commenters further suggested that the definition of "adverse decision" be changed to "adverse final decision" so that preliminary adverse letters to participants—which a given agency may not regard as starting the 30-day clock—will not start the 30-day clock until the adverse decision is made officially by the agency.

These suggestions by the commenters appear to reflect several concerns. First, one commenter takes issue with our view, stated in the preamble to the interim final rule, that the requirement fro notice of an agency adverse decision in § 274 of the Reorganization Act is not a prerequisite for NAD jurisdiction. Placing the requirement for a written decision in § 11.8(b)(1), as suggested, implicitly would provide that notice and allow the participant a fair amount of time to develop his or her appeal. Second, there is a concern that agencies will seek to trigger the 30-day clock with oral decisions that participants will not understand as triggering their appeal rights. Third, agencies often do not view some actions as the adverse decisions for which appeal rights run and thus participants may prematurely appeal. Fourth, the suggested required content for an adverse decision is needed for the written determinations so that participants understand all their rights and clearly understand what the adverse decision is and the basis therefor.

USDA declines to adopt these suggestions for several reasons. While well-intentioned, these suggestions would be a triumph of form over substance spawning unnecessary litigation over who got what notice when. First and foremost, USDA interprets the statute to provide a clear intent on the part of Congress to afford participants the right to appeal *de facto* decisions rendered by an agency failure to act. The definition of "adverse decision" in section 271(1) of the Reorganization Act expressly includes "the failure of an agency to issue a decision or otherwise act on the request or right of the participant." To require a written decision from the agency before a participant may appeal essentially stops a participant's ability to appeal agency inaction, contrary to Congressional intent.

Second, if an administrative decision adversely affects a participant, it is an adverse decision subject to appeal under the statute regardless of whether the agency has sent out the formal letter with formal appeal rights. Each agency subject to NAD jurisdiction handles decisions in various ways and to attempt to specify that only "final" adverse decisions will count does not provide for an efficient NAD appeals process. (This, of course, does not mean that an agency may not recall and re-issue an earlier decision, in which case the 30-day clock begins to run anew).

Finally, with respect to the fairness of the appeal by providing the basis therefore, USDA sees no intent on the part of Congress to allow agencies to hold up the processing of appeals by failing to provide the basis for the decision. Section 11.8(c)(ii) in fact is written to require the agency to provide NAD with a copy of the adverse decision and a written explanation, including regulatory and statutory citation, once an appeal is filed in the event the participant was unable to get that information beforehand. If the agency does not furnish the information at that point, it merely runs the danger of losing the appeal for lack of information. At least, however, the participant has gotten his appeal before NAD whereas requiring the agency to provide that information to the participant before he or she may appeal to NAD effectively would prevent the participant from even filing an appeal.

Copies of Agency Record

Two commenters suggested changes to §§ 11.8(a) and 11.8(b)(1) to require agencies to notify an appellant of the appellant's right to an agency record after the appellant has filed an appeal, to require the agency to provide the hearing officer with a copy of the agency file to be placed automatically in the record, to require the agency to provide a copy of the agency record upon request, and to provide specific procedures for how an appellant could obtain the agency record. One commenter also suggested adding language to § 11.8(c)(5)(ii) to require the agency to present similar information, as well as additional information on the basis of the decision, at the hearing itself.

USDA declines to adopt these comments. They are either already covered specifically in the cited sections of the rule or else are covered within the language of the rule in a way that allows flexibility for agency and NAD response. Appellants are placed on notice of their

right to request and receive copies of the agency record by this final rule itself and a further requirement for agencies to provide such notice is beyond the scope of this rule. Further, requiring the agency to present such information at the hearing runs contrary to the statutory requirement that the appellant must prove the agency decision erroneous. This places the burden of going forward in the appeal on the appellant. If the agency fails to provide an adequate response to the appellant by failing to provide informataton, it runs the risk of losing the appeal.

Notice of Director Review

Section 11.9(b) requires the Director to notify all parties of receipt of a request for Director review and section 11.9(c) requires a party to submit responses to a request for Director review within 5 business days of receiving a copy of the request for Director review.

One commenter suggested clarifying how the Director is to provide notification under § 11.9(b), and suggested inserting the word "their" in § 11.9(c) presumably to distinguish the running of the 5 business days from the receipt of the Director review itself by the Division from the 5 business days from receipt of a *copy* by the other parties. USDA declines to adopt either of these comments. The method of notification should remain within the discretion of the Director and § 11.9(c) is clear without further amendment.

Basis for Determinations

Three commenters suggested removal or revision of the phrase "and with the generally applicable interpretations of such laws and regulations" in § 11.10(b) to reflect that generally applicable interpretations of laws and regulations should not be the sole basis for agency adverse decisions. These commenters were concerned that § 11.10(b) is inconsistent with the principle that adverse decisions must be based on regulations promulgated in accordance with notice-and-comment rulemaking procedures. For the reasons set forth in explanation of § 11.10(b) in the preamble to the interim final rule, USDA finds this language appropriate and declines to remove it as requested in the comments. Further, USDA notes that inclusion of this language does not reflect an intent to bind NAD to arbitrary interpretations of statutes or regulations by agency officials. Any unpublished, generally applicable interpretations of laws and regulations may be relied upon only to the extent permitted by the APA and interpretations thereof by relevant caselaw. NAD is bound to decide appeals in accordance with law; therefore, if an interpretation is not permissible under the APA, then NAD cannot rely upon that interpretation to sustain an agency decision.

Reconsideration

One commenter suggested that appellants be given 15 days, instead of 10 days, to request the Director to reconsider his determination under § 11.11. USDA declines to change this provision.

Section 11.11 was added to the interim final rule to reflect the inherent authority of a decisionmaker under general principles of law to review his or her decisions to correct *errors*. These are errors (such as citation to the wrong dates, wrong amounts, wrong regulations, or wrong statutes), not changes of interpretations or opinions, and as such should be quickly detectable upon reading the determination and reviewing the record. A request for reconsideration under this provision should not require a great deal of time for research, and rarely should require additional time for gathering information and evidence since this is not another step in the appeal process.

Implementation

One commenter suggested that § 11.12(a) was vague about how implementation would occur, thus allowing agencies to obstruct the implementation process. The commenter suggested amending § 11.12(a) to incorporate the implementation language from the old National Appeals Staff rules of procedure (7 CFR 1900.59(d) (1–1–95)) that provided that implementation meant the taking of the next step by the agency that would be required by agency regulations if no adverse action had occurred.

USDA indicated in the preamble to the interim final rule its position that implementation meant taking the next step. However, that interpretation of implementation comes from the farm credit appeals system that is now under the auspices of NAD. NAD also reviews decisions related to farm programs, disaster assistance, soil and water conservation programs, and crop insurance. Given the variety of programs now covered by NAD that were not subject to the "next step" rule, USDA declines to adopt any express guidance regarding implementation at this time until experience with a unified appeals process provides a clear picture of what uniform implementation rule would work for all agencies under the jurisdiction of NAD.

Discrimination Complaints

One commenter suggested that NAD develop a process for consolidating program appeals with related civil rights complaints. USDA declines to adopt this suggestion. The rights and remedies available to NAD appellants under USDA statutes and regulations are much different than those available to individuals asserting discrimination claims against USDA under civil rights laws of governmentwide applicability. USDA already has a separate administrative process for review of discrimination complaints. NAD does not have the ability or capacity to undertake consolidated civil rights appeals that exceed the scope of the purpose for which it was established.

List of Subjects

7 CFR Part 1

Administrative practice and procedure, Agriculture, Reporting and recordkeeping requirements.

7 CFR Part 11

Administrative practice and procedure, Agriculture, Agricultural commodities, Crop insurance, Ex parte communications, Farmers, Federal aid programs, Guaranteed loans, Insured loans, Loan programs, Price support programs, Soil conservation.

For the reasons set out in the preamble, Title 7 of the Code of Federal Regulations is amended as set forth below.

PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 552. Appendix A also issued under 7 U.S.C. 2244; 31 U.S.C. 9701, and 7 CFR 2.75(a)(6)(xiii).

2. Section 1.20 is revised to read as follows:

§ 1.20 Authentication.

When a request is received for an authenticated copy of a document which the agency determines to make available to the requesting party, the agency shall cause a correct copy to be prepared and sent to the Office of the General Counsel which shall certify the same and cause the seal of the Department to be affixed, except that the Hearing Clerk in the Office of Administrative Law Judges may authenticate copies of documents in the records of the Hearing Clerk and that the Director of the National Appeals Division may authenticate copies of documents in the records of the National Appeals Division.

PART 11—NATIONAL APPEALS DIVISION RULES OF PROCEDURE

Part 11 is revised to read as follows:

PART 11—NATIONAL APPEALS DIVISION RULES OF PROCEDURE

Sec.

11.1 Definitions.
11.2 General statement.
11.3 Applicability.
11.4 Inapplicability of other laws and regulations.
11.5 Informal review of adverse decisions.
11.6 Director review of agency determination of appealability and right of participants to Division hearing.
11.7 *Ex parte* communications.
11.8 Division hearings.
11.9 Director review of determinations of Hearings Officers.
11.10 Basis for determinations.
11.11 Reconsideration of Director determinations.
11.12 Effective date and implementation of final determinations of the Division.
11.13 Judicial review.
11.14 Filing of appeals and computation of time.
11.15 Participation of third parties and interested parties in Division proceedings.

Authority: 5 U.S.C. 301; Title II, Subtitle H, Pub. L. 103–354, 108 Stat. 3228 (7 U.S.C. 6991 *et seq.*); Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

§ 11.1 Definitions.

For purposes of this part:

Adverse decision means an administrative decision made by an officer, employee, or committee of an agency that is adverse to a participant. The term includes a denial of equitable relief by an agency or the failure of an agency to issue a decision or otherwise act on the request or right of the participant within timeframes specified by agency program statutes or regulations or within a reasonable time if timeframes are not specified in such statutes or regulations. The term does not include a decision over which the Board of Contract Appeals has jurisdiction.

Agency means:

(1) The Commodity Credit Corporation (CCC);

(2) The Farm Service Agency (FSA);

(3) The Federal Crop Insurance Corporation (FCIC);

(4) The Natural Resources Conservation Service (NRCS);

(5) The Risk Management Agency (RMA);

(6) The Rural Business-Cooperative Service (RBS);

(7) Rural Development (RD);

(8) The Rural Housing Service (RHS);

(9) The Rural Utilities Service (RUS) (but not for programs authorized by the Rural Electrification Act of 1936 or the Rural Telephone Bank Act, 7 U.S.C. 901 *et seq.*);

(10) A State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h (b)(5)); and

(11) Any predecessor or successor agency to the above-named agencies, and any other agency or office of the Department which the Secretary may designate.

Agency record means all the materials maintained by an agency related to an adverse decision which are submitted to the Division by an agency for consideration in connection with an appeal under this part, including all materials prepared or reviewed by the agency during its consideration and decisionmaking process, but shall not include records or information not related to the adverse decision at issue. All materials contained in the agency record submitted to the Division shall be deemed admitted as evidence for purposes of a hearing or a record review under § 11.8.

Agency representative means any person, whether or not an attorney, who is authorized to represent the agency in an administrative appeal under this part.

Appeal means a written request by a participant asking for review by the National Appeals Division of an adverse decision under this part.

Appellant means any participant who appeals an adverse decision in accordance with this part. Unless separately set forth in this part, the term "appellant" includes an authorized representative.

Authorized representative means any person, whether or not an attorney, who is authorized in writing by a participant, consistent with § 11.6(c), to act for the participant in an administrative appeal under this part. The authorized representative may act on behalf of the participant except when the provisions of this part require action by the participant or appellant personally.

Case record means all the materials maintained by the Secretary related to an adverse decision: The case record includes both the agency record and the hearing record.

Days means calendar days unless otherwise specified.

Department means the United States Department of Agriculture (USDA).

Director means the Director of the Division or a designee of the Director.

Division means the National Appeals Division established by this part.

Equitable relief means relief which is authorized under section 326 of the Food and Agriculture Act of 1962 (7 U.S.C. 1339a) and other laws administered by the agency.

Ex parte communication means an oral or written communication to any officer or employee of the Division with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports, or inquiries on Division procedure, in reference to any matter or proceeding connected with the appeal involved.

Hearing, except with respect to § 11.5, means a proceeding before the Division to afford a participant the opportunity to present testimony or documentary evidence or both in order to have a previous determination reversed and to show why an adverse determination was in error.

Hearing Officer means an individual employed by the Division who conducts the hearing and determines appeals of adverse decisions by any agency.

Hearing record means all documents, evidence, and other materials generated in relation to a hearing under §11.8.

Implement means the taking of action by an agency of the Department in order fully and promptly to effectuate a final determination of the Division.

Participant means any individual or entity who has applied for, or whose right to participate in or receive, a payment, loan, loan guarantee, or other benefit in accordance with any program of an agency to which the regulations in this part apply is affected by a decision of such agency. The term does not include persons whose claim(s) arise under:

(1) Programs subject to various proceedings provided for in 7 CFR part 1;

(2) Programs governed by Federal contracting laws and regulations (appealable under other rules and to other forums, including to the Department's Board of Contract Appeals under 7 CFR part 24);

(3) The Freedom of Information Act (appealable under 7 CFR part 1, subpart A);

(4) Suspension and debarment disputes, including, but not limited to, those falling within the scope of 7 CFR parts 1407 and 3017;

(5) Export programs administered by the Commodity Credit Corporation;

(6) Disputes between reinsured companies and the Federal Crop Insurance Corporation;

(7) Tenant grievances or appeals prosecutable under the provisions of 7 CFR part 1944, subpart L, under the multi-family housing program carried out by RHS;

(8) Personnel, equal employment opportunity, and other similar disputes

with any agency or office of the Department which arise out of the employment relationship;

(9) The Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. 3721;

(10) Discrimination complaints prosecutable under the nondiscrimination regulations at 7 CFR parts 15, 15a, 15b, 15e, and 15f; or

(11) Section 361, *et seq.*, of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1361, *et seq.*) involving Tobacco Marketing Quota Review Committees.

Record review means an appeal considered by the Hearing Officer in which the Hearing Officer's determination is based on the agency record and other information submitted by the appellant and the agency, including information submitted by affidavit or declaration.

Secretary means the Secretary of Agriculture.

§ 11.2 General statement.

(a) This part sets forth procedures for proceedings before the National Appeals Division within the Department. The Division is an organization within the Department, subject to the general supervision of and policy direction by the Secretary, which is independent from all other agencies and offices of the Department, including Department officials at the state and local level. The Director of the Division reports directly to the Secretary of Agriculture. The authority of the Hearing Officers and the Director of the Division, and the administrative appeal procedures which must be followed by program participants who desire to appeal an adverse decision and by the agency which issued the adverse decision, are included in this part.

(b) Pursuant to section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354 (the Act), 7 U.S.C. 6912(e), program participants shall seek review of an adverse decision before a Hearing Officer of the Division, and may seek further review by the Director, under the provisions of this part prior to seeking judicial review.

§ 11.3 Applicability.

(a) *Subject matter.* The regulations contained in this part are applicable to adverse decisions made by an agency, including, for example, those with respect to:

(1) Denial of participation in, or receipt of benefits under, any program of an agency;

(2) Compliance with program requirements;

(3) The making or amount of payments or other program benefits to a participant in any program of an agency; and

(4) A determination that a parcel of land is a wetland or highly erodible land.

(b) *Limitation.* The procedures contained in this part may not be used to seek review of statutes or USDA regulations issued under Federal Law.

§ 11.4 Inapplicability of other laws and regulations.

(a) Reserved.

(b) The Federal Rules of Evidence, 28 U.S.C. App., shall not apply to proceedings under this part.

§ 11.5 Informal review of adverse decisions.

(a) *Required informal review of FSA adverse decisions.* Except with respect to farm credit programs, a participant must seek an informal review of an adverse decision issued at the field service office level by an officer or employee of FSA, or by any employee of a county or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590h(b)(5), before NAD will accept an appeal of a FSA adverse decision. Such informal review shall be done by the county or area committee with responsibility for the adverse decision at issue. The procedures for requesting such an informal review before FSA are found in 7 CFR part 780. After receiving a decision upon review by a county or area committee, a participant may seek further informal review by the State FSA committee or may appeal directly to NAD under § 11.6(b).

(b) *Optional informal review.* With respect to adverse decisions issued at the State office level of FSA and adverse decisions of all other agencies, a participant may request an agency informal review of an adverse decision of that agency prior to appealing to NAD. Procedures for requesting such an informal review are found at 7 CFR part 780 (FSA), 7 CFR part 614 (NRCS), 7 CFR part 1900, subpart B (RUS), 7 CFR part 1900, subpart B (RBS), and 7 CFR part 1900, subpart B (RHS).

(c) *Mediation.* A participant also shall have the right to utilize any available alternative dispute resolution (ADR) or mediation program, including any mediation program available under title V of the Agricultural Credit Act of 1987, 7 U.S.C. 5101 *et seq.*, in order to attempt to seek resolution of an adverse decision of an agency prior to a NAD hearing. If a participant:

(1) Requests mediation or ADR prior to filing an appeal with NAD, the participant stops the running of the 30-day period during which a participant may appeal to NAD under § 11.6(b)(1), and will have the balance of days remaining in that period to appeal to NAD once mediation or ADR has concluded.

(2) Requests mediation or ADR after having filed an appeal to NAD under § 11.6(b), but before the hearing, the participant will be deemed to have waived his right to have a hearing within 45 days under § 11.8(c)(1) but shall have a right to have a hearing within 45 days after conclusion of mediation or ADR.

§ 11.6 Director review of agency determination of appealability and right of participants to Division hearing.

(a) *Director review of agency determination of appealability.* (1) Not later than 30 days after the date on which a participant receives a determination from an agency that an agency decision is not appealable, the participant must submit a written request personally signed by the participant to the Director to review the determination in order to obtain such review by the Director.

(2) The Director shall determined whether the decision is adverse to the individual participant and thus appealable or is a matter of general applicability and thus not subject to appeal, and will issue a final determination notice that upholds or reverses the determination of the agency. This final determination is not appealable. If the Director reverses the determination of the agency, the Director will notify the participant and the agency of that decision and inform the participant of his or her right to proceed with an appeal.

(3) The Director may delegate his or her authority to conduct a review under this paragraph to any subordinate official of the Division other than a Hearing Officer. In any case in which such review is conducted by such a subordinate official, the subordinate official's determination shall be considered to be the determination of the Director and shall be final and not appealable.

(b) *Appeals of adverse decisions.* (1) To obtain a hearing under § 11.8, a participant personally must request such hearing not later than 30 days after the date on which the participant first received notice of the adverse decision or after the date on which the participant receives notice of the Director's determination that a decision is appealable. In the case of the failure

of an agency to act on the request or right of a recipient, a participant personally must request such hearing not later than 30 days after the participant knew or reasonably should have known that the agency had not acted within the timeframes specified by agency program regulations, or, where such regulations specify no timeframes, not later than 30 days after the participant reasonably should have known of the agency's failure to act.

(2) A request for a hearing shall be in writing and personally signed by the participant, and shall include a copy of the adverse decision to be reviewed, if available, along with a brief statement of the participant's reasons for believing that the decision, or the agency's failure to act, was wrong. The participant also shall send a copy of the request for a hearing to the agency, and may send a copy of the adverse decision to be reviewed to the agency, but failure to do either will not constitute grounds for dismissal of the appeal. Instead of a hearing, the participant may request a record review.

(c) If a participant is represented by an authorized representative, the authorized representative must file a declaration with NAD, executed in accordance with 28 U.S.C. 1746, stating that the participant has duly authorized the declarant in writing to represent the participant for purposes of a specified adverse decision or decisions, and attach a copy of the written authorization to the declaration.

§ 11.7 Ex parte communications.

(a)(1) At no time between the filing of an appeal and the issuance of a final determination under this part shall any officer or employee of the Division engage in *ex parte* communications regarding the merits of the appeal with any person having any interest in the appeal pending before the Division, including any person in an advocacy or investigative capacity. This prohibition does not apply to:

(i) Discussions of procedural matters related to an appeal; or

(ii) Discussions of the merits of the appeal where all parties to the appeal have been given notice and an opportunity to participate.

(2) In the case of a communication described in paragraph (a)(1)(ii) of this section, a memorandum of any such discussion shall be included in the hearing record.

(b) No interested person shall make or knowingly cause to be made to any officer or employee of the Division an *ex parte* communication relevant to the merits of the appeal.

(c) If any officer or employee of the Division receives an *ex parte* communication in violation of this section, the one who receives the communication shall place in the hearing record:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses to such communications, and memoranda stating the substance of any oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section the Hearing Officer or Director may, to the extent consistent with the interests of justice and the policy of the underlying program, require the party to show cause why such party's claim or interest in the appeal should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

§ 11.8 Division hearings.

(a) *General rules.* (1) The Director, the Hearing Officer, and the appellant shall have access to the agency record of any adverse decision appealed to the Division for a hearing. Upon request by the appellant, the agency shall provide the appellant a copy of the agency record.

(2) The Director and Hearing Officer shall have the authority to administer oaths and affirmations, and to require, by subpoena, the attendance of witnesses and the production of evidence. A Hearing Officer shall obtain the concurrence of the Director prior to issuing a subpoena.

(i) A subpoena requiring the production of evidence may be requested and issued at any time while the case is pending before the Division.

(ii) An appellant or an agency, acting through any appropriate official, may request the issuance of a subpoena requiring the attendance of a witness by submitting such a request in writing at least 14 days before the scheduled date of a hearing. The Director or Hearing Officer shall issue a subpoena at least 7 days prior to the scheduled date of a hearing.

(iii) A subpoena shall be issued only if the Director or a Hearing Officer determined that:

(A) For a subpoena of documents, the appellant or the agency has established that production of documentary evidence is necessary and is reasonably calculated to lead to information which would affect the final determination or is necessary to fully present the case before the Division; or

(B) For a subpoena of a witness, the appellant or the agency has established that either a representative of the Department or a private individual possesses information that is pertinent and necessary for disclosure of all relevant facts which could impact the final determination, that the information cannot be obtained except through testimony of the person, and that the testimony cannot be obtained absent issuance of a subpoena.

(iv) The party requesting issuance of a subpoena shall arrange for service. Service of a subpoena upon a person named therein may be made by registered or certified mail, or in person. Personal service shall be made by personal delivery of a copy of the subpoena to the person named therein by any person who is not a party and who is not less than 18 years of age. Proof of service shall be made by filing with the Hearing Officer or Director who issued the subpoena a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service in person or by return receipts for certified or registered mail.

(v) A party who requests that a subpoena be issued shall be responsible for the payment of any reasonable travel and subsistence costs incurred by the witness in connection with his or her appearance and any fees of a person who serves the subpoena in person. The Department shall pay the costs associated with the appearance of a Department employee whose role as a witness arises out of his or her performance of official duties, regardless of which party requested the subpoena. The failure to make payment of such charges on demand may be deemed by the Hearing Officer or Director as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(vi) If a person refuses to obey a subpoena, the Director, acting through the Office of the General Counsel of the Department and the Department of Justice, may apply to the United States District Court in the jurisdiction where that person resides to have the subpoena enforced as provided in the Federal Rules of Civil Procedure (28 U.S.C. App.).

(3) Testimony required by subpoena pursuant to paragraph (a)(2) of this section may, at the discretion of the Director or a Hearing Officer, be presented at the hearing either in person or telephonically.

(b) *Hearing procedures applicable to both record review and hearings.* (1) Upon the filing of an appeal under this part of an adverse decision by any

agency, the agency promptly shall provide the Division with a copy of the agency record. If requested by the applicant prior to the hearing, a copy of such agency record shall be provided to the appellant by the agency within 10 days of receipt of the request by the agency.

(2) The Director shall assign the appeal to a Hearing Officer and shall notify the appellant and agency of such assignment. The notice also shall advise the appellant and the agency of the documents required to be submitted under paragraph (c)(2) of this section, and notify the appellant of the option of having a hearing by telephone.

(3) The Hearing Officer will receive evidence into the hearing record without regard to whether the evidence was known to the agency officer, employee, or committee making the adverse decision at the time the adverse decision was made.

(c) *Procedures applicable only to hearings.* (1) Upon a timely request for a hearing under § 11.6(b), an appellant has the right to have a hearing by the Division on any adverse decision within 45 days after the date of receipt of the request for the hearing by the Division.

(2) The Hearing Officer shall set a reasonable deadline for submission of the following documents:

(i) By the appellant;

(A) A short statement of why the decision is wrong;

(B) A copy of any document not in the agency record that the appellant anticipates introducing at the hearing; and

(C) A list of anticipated witnesses and brief descriptions of the evidence such witnesses will offer.

(ii) By the agency:

(A) A copy of the adverse decision challenged by the appellant;

(B) A written explanation of the agency's position, including the regulatory or statutory basis therefor;

(C) A copy of any document not in the agency record that the agency anticipates introducing at the hearing; and

(D) A list of anticipated witnesses and brief descriptions of the evidence such witnesses will offer.

(3) Not less than 14 days prior to the hearing, the Division must provide the appellant, the authorized representative, and the agency a notice of hearing specifying the date, time, and place of the hearing. The hearing will be held in the State of residence of the appellant, as determined by the Hearing Officer, or at a location that is otherwise convenient to the appellant, the agency, and the Division. The notice also shall notify all parties of the right to obtain an official record of the hearing.

(4) Pre-hearing conference. Whenever appropriate, the Hearing Officer shall hold a pre-hearing conference in order to attempt to resolve the dispute or to narrow the issues involved. Such pre-hearing conference shall be held by telephone unless the Hearing Officer and all parties agree to hold such conference in person.

(5) Conduct of the hearing. (i) A hearing before a Hearing Officer will be in person unless the appellant agrees to a hearing by telephone.

(ii) The hearing will be conducted by the Hearing Officer in the manner determined by the Division most likely to obtain the facts relevant to the matter or matters at issue. The Hearing Officer will allow the presentation of evidence at the hearing by any party without regard to whether the evidence was known to the officer, employee, or committee of the agency making the adverse decision at the time the adverse decision was made. The Hearing Officer may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. Any party shall have the opportunity to present oral and documentary evidence, oral testimony of witnesses, and arguments in support of the party's position; controvert evidence relied on by any other party; and question all witnesses. When appropriate, agency witnesses requested by the appellant will be made available at the hearing. Any evidence may be received by the Hearing Officer without regard to whether that evidence could be admitted in judicial proceedings.

(iii) An official record shall be made of the proceedings of every hearing. This record will be made by an official tape recording by the Division. In addition, either party may request that a verbatim transcript be made of the hearing proceedings and that such transcript shall be made the official record of the hearing. The party requesting a verbatim transcript shall pay for the transcription service, shall provide a certified copy of the transcript to the Hearing Officer free of charge, and shall allow any other party desiring to purchase a copy of the transcript to order it from the transcription service.

(6) Absence of parties. (i) If at the time scheduled for the hearing either the appellant or the agency representative is absent, and no appearance is made on behalf of such absent party, or no arrangements have been made for rescheduling the hearing, the Hearing Officer has the option to cancel the hearing unless the absent party has good cause for the failure to appear. If the Hearing Officer elects to cancel the hearing, the Hearing Officer may:

(A) Treat the appeal as a record review and issue a determination based on the agency record as submitted by the agency and the hearing record developed prior to the hearing date;

(B) Accept evidence into the hearing record submitted by any party present at the hearing (subject to paragraph (c)(6)(ii) of this section), and then issue a determination; or

(C) Dismiss the appeal.

(ii) When a hearing is cancelled due to the absence of a party, the Hearing Officer will add to the hearing record any additional evidence submitted by any party present, provide a copy of such evidence to the absent party or parties, and allow the absent party or parties 10 days to provide a response to such additional evidence for inclusion in the hearing record

(iii) Where an absent party has demonstrated good cause for the failure to appear, the Hearing Officer shall reschedule the hearing unless all parties agree to proceed without a hearing.

(7) Post-hearing procedure. The Hearing Officer will leave the hearing record open after the hearing for 10 days, or for such other period of time as the Hearing Officer shall establish, to allow the submission of information by the appellant or the agency, to the extent necessary to respond to new facts, information, arguments, or evidence presented or raised at the hearing. Any such new information will be added by the Hearing Office to the hearing record and sent to the other party or parties by the submitter of the information. The Hearing Officer, in his or her discretion, may permit the other party or parties to respond to this post-hearing submission.

(d) *Interlocutory review.* Interlocutory review by the Director of rulings of a Hearing Officer are not permitted under the procedures of this part.

(e) *Burden of proof.* The appellant has the burden of proving that the adverse decision of the agency was erroneous by a preponderance of the evidence.

(f) *Timing of issuance of determination.* The Hearing Officer will issue a notice of the determination on the appeal to the named appellant, the authorized representative, and the agency not later than 30 days after a hearing or the closing date of the hearing record in cases in which the Hearing Officer receives additional evidence from the agency or appellant after a hearing. In the case of a record review, the Hearing Officer will issue a notice of determination within 45 days of receipt of the appellant's request for a record review. Upon the Hearing Officer's request, the Director may establish an earlier or later deadline. A notice of determination shall be accompanied by a copy of the procedures for filing a request for Director review under § 11.9. If the determination is not appealed to the Director for review under § 11.9, the notice provided by the Hearing Officer shall be considered to be a notice of a final determination under this part.

§ 11.9 Director review of determinations of Hearing Officers.

(a) *Requests for Director review.* (1) Not later than 30 days after the date on which an appellant receives the determination of a Hearing Officer under § 11.8, the appellant must submit a written request, signed personally by the named appellant, to the Director to review the determination in order to be entitled to such review by the Director. Such request shall include specific reasons why the appellant believes the determination is wrong.

(2) Not later than 15 business days after the date on which an agency receives the determination of a Hearing Officer under § 11.8, the head of the agency may make a written request that the Director review the determination. Such request shall include specific reasons why the agency believes the determination is wrong, including citations of statutes or regulations that the agency believes the determination violates. Any such request may be made by the head of an agency only, or by a person acting in such capacity, but not by any subordinate officer of such agency.

(3) A copy of a request for Director review submitted under this paragraph shall be provided simultaneously by the submitter to each party to the appeal.

(b) *Notification of parties.* The Director promptly shall notify all parties of receipt of a request for review.

(c) *Responses to request for Director review.* Other parties to an appeal may submit written responses to a request for Director review within 5 business days from the date of receipt of a copy of the request for review.

(d) *Determination of Director.* (1) The Director will conduct a review of the determination of the Hearing Officer using the agency record, the hearing record, the request for review, any responses submitted under paragraph (c) of this section, and such other arguments or information as may be accepted by the Director, in order to determine whether the decision of the Hearing Officer is supported by substantial evidence. Based on such review, the Director will issue a final determination notice that upholds, reverses, or modifies the determination of the Hearing Officer. The Director's determination upon review of a Hearing Officer's decision shall be considered to be the final determination under this part and shall not be appealable. However, if the Director determines that the hearing record is inadequate or that new evidence has been submitted, the Director may remand all or a portion of the determination to the Hearing Officer for further proceedings to complete the hearing record or, at the option of the Director, to hold a new hearing.

(2) The Director will complete the review and either issue a final determination or remand the determination not later than—

(i) 10 business days after receipt of the request for review, in the case of a request by the head of an agency; or

(ii) 30 business days after receipt of the request for review, in the case of a request by an appellant.

(3) In any case or any category of cases, the Director may delegate his or her authority to conduct a review under this section to any Deputy or Assistant Directors of the Division. In any case in which such review is conducted by a Deputy or Assistant Director under authority delegated by the Director, the Deputy or Assistant Director's determination shall be considered to be the determination of the Director under this part and shall be final and not appealable.

(e) *Equitable relief.* In reaching a decision on an appeal, the Director shall have the authority to grant equitable relief under this part in the same manner and to the same extent as such authority is provided an agency under applicable laws and regulations.

§ 11.10 Basis for determinations.

(a) In making a determination, the Hearing Officers and the Director are not bound by previous findings of facts on which the agency's adverse decision was based.

(b) In making a determination on the appeal, Hearing Officers and the Director shall ensure that the decision is consistent with the laws and regulations of the agency, and with the generally applicable interpretations of such laws and regulations.

(c) All determinations of the Hearing Officers and the Director must be based on information from the case record, laws applicable to the matter at issue, and applicable regulations published in the **Federal Register** and in effect on the date of the adverse decision or the date on which the acts that gave rise to the adverse decision occurred, whichever date is appropriate under the applicable agency program laws and regulations.

§ 11.11 Reconsideration of Director determinations.

(a) Reconsideration of a determination of the Director may be requested by the appellant or the agency within 10 days of receipt of the determination. The Director will not consider any request for reconsideration that does not contain a detailed statement of a material error of fact made in the determination, or a detailed explanation of how the determination is contrary to statute or regulation, which would justify reversal or modification of the determination.

(b) The Director shall issue a notice to all parties as to whether a request for reconsideration meets the criteria in paragraph (a) of this section. If the request for reconsideration meets such criteria, the Director shall include a copy of the request for reconsideration in the notice to the non-requesting parties to the appeal. The non-requesting parties shall have 5 days from receipt of such notice from the Director to file a response to the request for reconsideration with the Director.

(c) The Director shall issue a decision on the request for reconsideration within 5 days of receipt of responses from the non-requesting parties. If the Director's decision upon reconsideration reverses or modifies the final determination of the Director rendered under § 11.9(d), the Director's decision on reconsideration will become the final determination of the Director under § 11.9(d) for purposes of this part.

§ 11.12 Effective date and implementation of final determinations of the Division.

(a) On the return of a case to an agency pursuant to the final determination of the Division, the head of the agency shall implement the final determination not later than 30 days after the effective date of the notice of the final determination.

(b) A final determination will be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable under the applicable agency program statutes or regulations.

§ 11.13 Judicial review.

(a) A final determination of the Division shall be reviewable and enforceable by any United States District Court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code.

(b) An appellant may not seek judicial review of any agency adverse decision appealable under this part without

receiving a final determination from the Division pursuant to the procedures of this part.

§ 11.14 Filing of appeals and computation of time.

(a) An appeal, a request for Director Review, or any other document will be considered "filed" when delivered in writing to the Division, when postmarked, or when a complete facsimile copy is received by the Division.

(b) Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the Division is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

(c) The time for filing an appeal, a request for Director review, or any other document expires at 5:00 p.m. local time at the office of the Division to which the filing is submitted on the last day on which such filing may be made.

§ 11.15 Participation of third parties and interested parties in Division proceedings.

In two situations, parties other than the appellant or the agency may be interested in participating in Division proceedings. In the first situation, a Division proceeding may in fact result in the adjudication of the rights of a third party, e.g., an appeal of a tenant involving a payment shared with a landlord, an appeal by one recipient of a portion of a payment shared by multiple parties, an appeal by one heir of an estate. In the second situation, a party may desire to receive notice of and perhaps participate in an appeal because of the derivative impact the appeal determination will have on that party, e.g., guaranteed lenders and reinsurance companies. The provisions in this section set forth rules for the participation of such third and interested parties.

(a) *Third parties.* When an appeal is filed, the Division shall notify any potential third party whose rights may be adjudicated of its right to participate as an appellant in the appeal. This includes the right to seek Director review of the Hearing Officer determination. Such third parties may be identified by the Division itself, by an agency, or by the original appellant. The Division shall issue one notice to the third party of its right to participate, and if such party declines to participate, the Division determination will be binding as to that third party as if it had participated. For purposes of this part, a third party includes any party for which a determination of the Division could lead to an agency action on implementation that would be adverse to the party thus giving such party a right to a Division appeal.

(b) *Interested parties.* With respect to a participant who is a borrower under a guaranteed loan or an insured under a crop insurance program, the respective guaranteed lender or reinsurance company having an interest in a participant's appeal under this part may participate in the appeal as an interested party, but such participation does not confer the status of an appellant upon the guaranteed lender or reinsurance company such that it may request Director review of a final determination of the Division.

Done at Washington, D.C., this 14th day of June 1999.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–15624 Filed 6–22–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AA85

Peanut Crop Insurance Regulations; and Common Crop Insurance Regulations, Peanut Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; Correcting amendment.

SUMMARY: This document is a correction to the final rule which was published Tuesday, June 9, 1998 (63 FR 31331–31337). The regulation pertains to the insurance of peanuts.

EFFECTIVE DATE: June 23, 1999.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The regulation subject to this correction provided policy changes to better meet the needs of the insured and include the current Peanut Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of policy terms and conditions.

Need For Correction

As published, the final regulation contained an error which may prove to be misleading and is in need of clarification. Section 9(a)(3) of the Basic Provisions (§ 457.8) states that acreage which is not replanted in accordance with that subsection is not insurable. Section 9(a) of the crop provisions contained in § 457.134 provides that acreage of the insured crop damaged before the final planting date must be replanted unless FCIC agrees replanting is not practical. Section 14(d) states that total production to count from all insurable acreage on the unit will include all appraised and harvested production. Subsection (e)(1)(v) of that section, in turn, provides that appraised production will include acreage which is not replanted in accordance with the policy. The latter provision may cause confusion because it implies that such acreage is insurable in direct conflict with section 9(a). Furthermore, it is unnecessary because production to count is only calculated based on insurable acreage under section 14(d). This correction is consistent with other crop provisions providing for replanting payments.

List of Subjects in 7 CFR Part 457

Crop insurance, Peanut.

Accordingly, 7 CFR part 457 is corrected by making the following correcting amendment:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

§ 457.134 [Corrected]

2. Amend the crop provisions in § 457.134 to remove section 14(e)(1)(v) and revise section 14(e)(1)(iv) to read as follows:

14. Settlement of Claim.

* * * * *

(e) * * *

(1) * * *

(iv) For which you fail to provide production records that are acceptable to us.

* * * * *

Signed in Washington, DC, on June 16, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–15940 Filed 6–22–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Onion Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of onions. The intended effect of this action is to provide policy changes to better meet the needs of the insured by adding provisions that allow flexibility in setting stage guarantees, allow optional units by section, section equivalent or farm serial numbers, modify the termination date for one county in Oregon and one county in Washington, and reduce the production to count for "damaged onions" that are subsequently sold. The changes will be effective for the 2000 and subsequent crop years.

EFFECTIVE DATE: June 23, 1999.

FOR FURTHER INFORMATION CONTACT: William Klein, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through April 30, 2001.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Additionally, the regulation does not require any action on the part of small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicate regulations and improve those that remain in force.

Background

On Thursday, February 18, 1999, FCIC published a notice of proposed rulemaking in the **Federal Register** at 63 FR 46706–46708 to revise 7 CFR 457.135, Onion Crop Insurance Provisions, effective for the 2000 and succeeding crop years.

Following publication of the proposed rule on February 18, 1999, the public was afforded 45 days to submit written comments and opinions. A total of 28 comments were received from 2 reinsured companies, an insurance service organization, a producer association, a county cooperative association, and an onion producer. The comments received and FCIC's responses are as follows:

Comment: A reinsured company expressed concern the proposed language for "production guarantee" states in part "unless otherwise specified in the Special Provisions" and likewise the language in the definition of "unit division" references type " if the type is designated in the Special Provisions." The company stated that these references make it difficult to fully evaluate the proposed program. The commenter suggests FCIC take steps to make its intent known on the specifics of these issues.

Response: An important purpose of the Special Provisions is to allow modification of certain terms of the policy when such terms are not appropriate in certain counties because of farming practices used, the topography, soil conditions, climate, or other factors that may affect producers of the crop. This is especially important when a single policy is used nationwide. In this case, the stages included in the Crop Provisions are generally applicable to all areas but there may be a location where such amounts are not appropriate. This is the same for units by type. There are locations where such units are not appropriate.

Comment: A reinsured company and an insurance service organization

expressed concern that the proposed language for the definition of "Production Guarantee" and the description of stages in Section 3 do not provide enough stages for the crop. They recommend at least one to two additional stages be added. They state that this would better reflect the costs incurred by the producer and the applicable liability in effect. Specifically, they propose a first stage of 20 percent for seed onions and 40 percent for transplanted onions through the second leaf. They point out that additional stages will result in more gradual changes in the production guarantee. They also questioned why there is a 10 percent difference between seeded onions (70 percent) and transplanted onions (60 percent) in the second stage.

Response: FCIC believes that adding additional stages will not benefit the onion program. When establishing stages and stage guarantees, FCIC requested production costs from regions throughout the country. The production cost data and other agronomic and insurance considerations led FCIC to establish 3 stages rather than 2 or 4 stages, which were also considered. For seeded onions, data indicates a 20 percent production guarantee would probably be too low for most regions of the country. The proposed stage structure in this rule most accurately reflects the appropriate guarantees for most regions. By allowing flexibility in stage percentage guarantees in the Special Provisions, the percentage guarantee will take into account any regional differences. The primary reason for distinguishing between seeded and transplanted onions in the second stage (70 percent versus 60 percent) is that all transplanted onions are hand harvested. Hand harvesting is more expensive than machine harvesting. Onion data in budgets provided by agricultural colleges and our field offices consistently show harvest and harvest related expenses are approximately 40 percent for hand harvested production. With approximately 60 percent of the production costs incurred through the second stage, a 60 percent guarantee for onions that are hand harvested is appropriate. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization acknowledged providing for stage guarantees to be increased through the Special Provisions is intended to allow for regional differences, however, they expressed concern that allowing the stage percentages to be increased in this manner may backfire. They contend that probably no area will reduce the guarantee below 35 percent but they believe second stages might be significantly increased, perhaps to as high as 90 percent for the Northeast. The reinsured company contended even percentage guarantees as high as 70 percent in the second stage seem excessive when considering the lower input costs a producer has when the crop is lost early in that stage. In addition, the company stated that these high percentages could render CAT coverage more attractive and make it difficult to justify the purchase of buy-up coverage.

Response: While FCIC acknowledges the company's concern, allowing flexibility in stage guarantees through the Special Provisions enables FCIC to manage a diverse national program without creating multiple crop insurance policies on the same crop. Changes will only be made if justified by the cost data. The existing stages are also based on the best available cost data. It is possible that such cost will be incurred at different times during the stage depending on the producer but it is impossible to tailor the program so narrowly. Therefore no change has been made.

Comment: A grower association recommended that the definition of "damaged onion production in section 1 include storage type onions that do not grade 85 percent U.S. No. 1 Jumbo or Colossal. They provided 5 years of data for a 5 county area that shows a pack out and shipping percentage of over 80 percent for Jumbo and larger onions. They claim that since the larger onions are much more profitable for them than smaller onions, the latter should be considered "damaged onion production." Additionally, they recommended that the Special Provision statements for both damaged onion production and stage production guarantee percentages apply to only the five county area because this area is a unique onion producing area with the ability to track production.

Response: FCIC made a major improvement in the onion policy in 1998 when it went from "field run" to insuring only No. 1 onions. FCIC will consider the 5 county area recommended by the commenter. If sufficient data exists to justify a change, the Special Provisions in any applicable area(s) can be revised accordingly. While the policy definition of damaged production will not be changed based on the recommendation covering a limited area of the country, this provision could, as recommended by the onion grower's association, be modified in the Special Provisions. When FCIC considers areas for modification of the term "damaged onion production" through the Special Provisions, it will evaluate all areas with the ability to provide complete production and marketing data.

Comment: A reinsured company expressed concern with adding optional units by section, section equivalent or FSA number to the onion crop provisions due to the way the crop is handled, *ie.* when onions enter the pack shed, the production is often commingled during the sorting and packing process causing the production in many cases to lose its identity after it leaves the field. The commenter expressed concern that insureds may not maintain accurate production records making the addition of optional units harder to administer and, therefore it may not be in the long term best interest of the program.

Response: FCIC recognizes the concerns expressed. However, the additional effort that is required of producers to keep the damaged onion production separate does not warrant not allowing optional units by section, section equivalent, or FSA number. All onion production is routinely weighed prior to going into the pack shed and appraisals can be made at that time. FCIC insures a number of crops, including fresh market vegetables and sugar beets, that are delivered to a processor or packer and are insured on an optional unit basis and have not experienced significant problems with inability to determine production to count on a unit basis. Optional units by section, section equivalent or FSN is consistent with most other crops FCIC insures and provides opportunities for producers who only grow one type and have not previously qualified for optional units to now qualify for optional units on a section basis. Therefore, no change has been made.

Comment: A reinsured company suggested rates will need to increase substantially to address the accuracy of loss records that will result from adding optional units. They believe any inaccuracy will likely benefit the producer.

Response: FCIC disagrees the rates will need to increase substantially due to the addition of optional units by section, section equivalent or FSA number. As with other insurance policies, there will be a modest increase in rates due to additional unit exposure. It remains the insured's responsibility to timely report losses and maintain records of production on a unit basis. When the program is administered in a manner consistent with the crop policy and loss procedures, which require timely loss adjustment, the greatest potential for risk due to commingling of unit production will be mitigated. In the event that commingling does occur, the optional units will be combined into the basic unit from which they came. There will be no benefit to the producer and therefore no change has been made.

Comment: A New York county cooperative association suggests that while the addition of optional units by section, section equivalent or FSN is a step in the right direction, in reality few if any onion producers will be able to take advantage of the change because a section is 640 acres and the average size onion farm in his county is a little over 100 acres and no one in the entire State of New York farms 1280 acres of yellow onions. The association recommends that producers be able to separately insure noncontiguous acreage that is 1 or more miles apart.

Response: Based on producer and company requests, FCIC included optional units by section in the proposed rule. It is not necessary to have a full 1,280 acres (two 640 acre sections) to be eligible for two optional units. To qualify for two optional units, the acreage planted to onions simply needs to be located in two separate sections, section equivalents or FSNs and meet the other unit division requirements. There are no minimum acreage requirements for optional units. Allowing optional units by section, section equivalent or FSN accomplishes the same thing as if optional units based on non contiguous land more than 1 mile apart were allowed. Therefore, no change has been made.

Comment: A western onion growers' association recommended that units be added for individual fields in addition to ownership, and color (yellow, red, and white). They claim that most producers in their association grow more than one field and could sustain significant damage to a field in one area and be ineligible for compensation if onions in another field offset the damage. The commenter states that since premium is being paid over all the acres, compensation should be based on the smallest feasible definable division, which would be an individual field, ie. each field should stand on its own and premium and loss compensation paid accordingly.

Response: This rule provides for optional units by section, section equivalent or FSN, which will benefit producers represented by this growers' association and others. Premium rates are established taking into account the unit structure for a crop. Field-by-field insurance would substantially increase rates, and could adversely affect program integrity. Therefore no change has been made.

Comment: A New York county cooperative association expressed dissatisfaction with the presence of stages in the onion crop policy. The comment contends that stage percentage guarantees exist in only 6 other crop insurance policies. While New York stages were set higher than the remainder of the country for this past crop year, the commenter was concerned that FCIC could always revert to the lower policy levels in the future. The commenter "fundamentally rejects a Staged Production Guarantee as being arbitrary and unfair * * * it should either be in all policies or removed from all policies. * * *" The commenter acknowledges that no other onion growing area has voiced opposition to the stage guarantees, but believes this is the result of onion producers in these areas not realizing how bad the MPCI policy is and that, in general, the onion industry does not have a cohesive and well financed lobby as do the program crops.

Response: Stages would not be appropriate for most row crops where a majority of the costs are incurred early in the growing season. Stages are generally utilized for high liability crops that have varied production costs throughout the season, particularly late in the season. Onions in most regions of the country have extensive production costs during mid-season and high harvest costs. Removal of stages that reflect cumulative production costs at various points during the season would result in significant premium rate increases. Flexibility in modifying stage guarantees through the Special Provisions is designed to allow the onion program to fit regional differences. FCIC will not lower the stage guarantee percentages unless they have cost of production evidence that supports lower stage percentage guarantees. Therefore, no change has been made.

Comment: A New York county cooperative association expressed concern that a staged production guarantee increases the loss threshold. The commenter believes that the statute requires a 50 percent production loss to qualify for CAT coverage. However, the commenter argues that with a staged guarantee the loss deductible for stage 1 is 82.5 percent and for stage 2, 65 percent and questions how this is legally justified.

Response: Section 508(b)(2)(B) of the Federal Crop Insurance Act specifically authorizes FCIC to reduce the indemnity paid that is proportional to the out-of-pocket costs not incurred by the producer. To accomplish this, the guarantees are adjusted to reflect costs not incurred. Therefore, no change has been made.

Comment: A New York county cooperative association expressed concern over the change in language in section 3(b)(1)(i), which the commenter believes has extended the stage 1 to the 4th leaf with the percentage of coverage remaining the same. The commenter believes that this change ignores the realities of the New York onion producers who have heavy front-end loaded production costs. Stage guarantees, the commenter maintains, are totally inappropriate for onions in New York and this change worsens an already bad provision in the policy.

Response: This rule did not affect when the second stage begins. The second stage begins under both the current provisions and for the proposed provisions with the emergence of the fourth leaf. The language in the current provisions regarding the first stage reads * * * through the emergence of the third leaf and the second stage begins with the emergence of the fourth leaf. The proposed rule language regarding the first stage reads * * * until the emergence of the fourth leaf and the second stage thus begins with the emergence of the fourth leaf. The only difference is between the words "through" and "until" which were changed as a result of comments that this would make the provision clearer. If the cost of production evidence is available to support an even higher first stage for New York producers, FCIC will make that percentage of coverage available for onion producers via the Special Provisions.

Comment: A New York county cooperative association cites section 3(b)(2) which reads "the second stage extends, for all onions, from the end of the first stage until the acreage has been subjected to topping and lifting." The association contends that the final stage is of little value to New York onion producers, since "this stage only exists for 3 to 4 days in August when the onions are drying in the field. The commenter states that since no farmer lifts and tops his onions when it looks like rain storm, it is safe to assume New York onion farmers will not collect 100 percent of this policy." The commenter states this circumstance violates the statutory language and intent of the program.

Response: FCIC disagrees that the third stage exists only for the 3–4 days while the onions are drying. Due to insurable damage, a significant percentage of harvested onions may not grade number 1 and consequently the

loss will result in an indemnity based on the final stage guarantee. FCIC acknowledges New York onions are normally dried for a shorter period of time than onions in other regions of the country. FCIC has significantly increased New York's second stage production guarantee in part to recognize the costs they have incurred up to harvesting the onions. FCIC is unaware of any provision in this proposed rule that violates either statutory language or the intent of the program.

Comment: A New York onion producer stated that as late as January, 1999, the New York onion producers were promised that stages, which they consider to be outrageous and fraudulent, would be removed when the Onion Crop Insurance Provisions proposed rule was published in the **Federal Register**. They were "shocked" to learn stage guarantees remained and that another key issue for them, production to count was even worse than before. In their opinion, the proposed rule will even further decrease the value of the MPCI onion policy. The commenter states that this will only weaken the "safety net," which Secretary Glickman has repeatedly stated needs to be "stitched stronger."

Response: Stage guarantees are necessary in this policy in order to protect the integrity of the program and allow for affordable premium rates. Furthermore, there were no comments to the proposed rule from outside New York requesting that stages be removed. Adding provisions in section 1 to specify a different stage guarantee in the Special Provisions clearly benefits New York onion producers who have provided FCIC with cost data to justify higher first and second stage guarantees than contained in the policy. Further, as stated above, the production to count provisions have been greatly improved by allowing for quality adjustments that will reduce the production to count when "damaged production" as described in section 13(d) is subsequently sold. This change will benefit all onion producers. Units by section, section equivalent or FSN will also benefit New York onion producers who farm in more than one section or FSN. On balance, the producer safety net will be stronger under the amended onion policy than under the existing policy.

Comment: An onion growers' association maintains the price election is too low for their counties since outside of a loss year most of their onions grade Jumbo or Colossal. They claim the 5 year Jumbo price averaged $13.22 per cwt which translates to $8.22 for the producer. They state that the Colossals typically command an even higher price. The commenter argues that their price election for the 1999 crop year is $5.00, thus the price election needs to be raised.

Response: FCIC establishes the price for onions through the actuarial documents rather than in a regulation such as this. FCIC will consider this information for the 2000 and future crop years. Any change to the established price election for onion will be stated in the actuarial documents.

Comment: A grower's association recommended the percentage stage guarantees be raised in a five county area of the western United States to better reflect the producer's cost of production and that supporting stage language be slightly modified. They recommended that Stage 1 should be through the third leaf, and should have a guarantee of 60 percent. Further, the commenter suggested that the second stage should be "up to topping and lifting" and should have a guarantee of 90 percent. They provided a Yellow Onion Data Sheet and pointed out their stage guarantee recommendations are based on the land charge, management, general overhead, and one-half of the operating capital interest shifted into the first stage.

Response: FCIC welcomes producer data that helps establish the appropriate stage guarantee percentages for the various areas. This rule allows for stage percentage guarantees in the Special Provisions to modify the Crop Provisions in cases where this is warranted and FCIC will consider this information for future changes.

Comment: A western onion growers' association requested a more timely disclosure of their options once a loss has occurred. They do not believe that their agents and adjusters understand the policy sufficiently to advise them on all of their options, particularly as to whether to continue on with a damaged crop or to destroy the crop in the present stage. The association contends extensive producer investment requires the producer to be informed of all options.

Response: Producers, in an event of a loss, must be timely informed of all their options. FCIC requires companies to train their agents and loss adjusters and to provide a copy of the crop insurance provisions to each insured. Section 3(c) of the Crop Provisions now specifies when onions damaged in the first or second stage are deemed to be destroyed. FCIC also intends to provide additional guidelines in the loss procedures to further clarify when onions are deemed to have been destroyed. This should assist producers with their decision whether to continue to care for the crop.

Comment: A western onion growers' association asked for clarification of the provisions in section 3(c) that address onions damaged in the first or second stage to the extent that producers in the area would not normally further care for the crop. They would like to know how to determine when onions are "deemed to be destroyed."

Response: There are a number of criteria to be applied when determining whether producers in the area would normally continue to care for the crop. Such criteria includes whether the Extension Service considers continued care to be a good farming practice, whether the insured would make the same decision in the absence of insurance, etc. This criteria will be included in the loss adjustment procedure.

Comment: A reinsured company expressed concern over how to handle a peril that transcends stages, such as dry conditions that persist through the growing season. The commenter stated that such perils cause producer concern that they can never insure for the full value of the crop.

Response: Section 3(c) of the Onion Crop Provisions addresses this issue and states "any acreage of onions damaged in the first or second stage, to the extent that producers in the area would not normally further care for the onions, will be deemed to have been destroyed even though you may continue to care for the onions." It further reads that the production guarantee for the acreage will not exceed the production guarantee for the stage in which the damage occurred. This language prevents insureds from continuing to care for a crop when it is not practical to do so, simply to advance the stage guarantee. The intent of the staged production guarantee is to generally cover the costs of production up to the time the onions are lost and not provide an indemnity for costs that have not been incurred. FCIC has routinely used stage guarantees for those crops that normally incur significant costs later in the growing season. Onions are another such crop and the use of stages makes the onion policy more affordable and results in a more manageable program. Therefore, no change has been made.

Comment: An insurance service organization expressed concern about moving the termination date one month later for one county in Oregon and one county in Washington. They claim that this results in different cancellation and termination dates for these counties. The commenter believes that this will lead to difficulties. For example, transfers must be requested by the cancellation date, but if the previous carrier terminates the policy for non-payment of premium, the new carrier will have done a month's work on the policy only to have it terminated. The commenter states that the program is easier to administer when the cancellation and termination dates are the same. They suggested that the solution to avoid different cancellation and termination dates in these counties is to move the spring acreage reporting date to mid-May instead of June 30, allowing 60 days between billing and termination.

Response: While it is easier to administer the program when the cancellation and termination dates are the same, it is not always feasible. Several options were considered to provide insureds with a period of time greater than the current 30 days between billing and termination in these counties. Changing the termination date was the least disruptive. Several years ago the acreage reporting dates varied for spring crops in these counties. At the request of the companies operating in this area, a common acreage reporting date of June 30 was established for spring crops in these counties. Currently no crops with either a November 30 or December 31 cancellation date have an acreage reporting date earlier than June 30. It would be more disruptive and generate more work if there are separate acreage reporting dates. Therefore, no change has been made.

Comment: An insurance service organization recommended changing one of the criteria for replanting onions in section 11 from 7 percent of the final stage production guarantee to perhaps 10 or 20 percent because this would be easier to remember and easier for the loss adjuster to figure. The commenter would also like to see the same percentage for all or most crops. They also recommended minor language changes in this section to avoid repetition.

Response: The percentage of the final stage production guarantee (production guarantee in many crops) is based on the approximate cost of replanting. Seven percent of the final stage production guarantee is appropriate for onions. For lower liability crops, 10 or 20 percent may be more appropriate. Standardizing these percentages for all crops could result in a replant payment that is either too high or too low. The provisions in section 11 were expanded to cover all the criteria that must be considered when determining a replant payment. Previously, field personnel were confused because part of the criteria for replant payments was in the Basic Provisions and part in the Crop Provisions. FCIC believes this language makes the onion replant provisions clear. Therefore, no change has been made.

Comment: A New York county cooperative association takes exception with the language in section 13(d) that reads when "damage to harvested or unharvested onion production exceeds the percentage shown in the Special Provisions for the type, no production will be counted for the unit or portion of a unit unless such damaged onion production from that acreage is sold. The association expressed concern that, if sold, the damaged onion production will be counted on a pound-per-pound basis regardless of the quality. The commenter points out that based on this language, any production grading less than number 1 including undersized onions, if sold, are counted on a pound-per-pound basis. The commenter suggests it would be more advantageous for the producer to dump these onions than to sell them at a substantially lower price. The commenter's short term solution is to either count number 1 onions only, or if the onions were sold at less than the price election, reduce the onion production to count by a quality adjustment factor which would be derived by dividing the dollar per hundred weight sold by the established market price.

Response: FCIC originally established this provision in response to producers who stated that onions from fields that sustained damage exceeding 50 percent that could not be separated in a cost effective manner and consequently could not be sold. They stated the normal practice is to destroy the onions in the field. Producers made the case that under these circumstances no onion production should be counted against them even though there were some undamaged onions in the field. In implementing this concept, FCIC must not pay a full crop insurance indemnity when producers harvest, sort, and sell the damaged onions. Therefore, the first sentence of section 13(d) will not be changed. However, FCIC accepts the commenter's recommendation to adjust the production to count based on the price received for the damaged onion production and has amended the second sentence in 13(d) as follows "* * * If sold, the hundred weight of production to be counted will be adjusted by dividing the price received for the damaged onions by the price election and multiplying the resulting factor times the hundred weight sold."

Comment: A New York county cooperative association contends "production to count" is a fundamental problem with this policy as well as other MPCI policies. The association contends it violates the statuary language and "eviscerates" the value of the indemnities. The commenter further maintains no other policies, whether private crop insurance or insurance for home, property, etc. contain a feature like production to count, which subtracts what the policy is not covering from what it is covering. They argue that the proposed onion policy actually makes the production to count provision worse than it was in the previous policy.

Response: FCIC has statutory requirements with respect to what percent of the value it can insure. Section 508(c)(4) of the Federal Crop Insurance Act (Act) authorizes FCIC to offer up to an 85 percent coverage level. At this time FCIC limits onions to a 75 percent coverage level. This results in a minimum deductible of 25 percent. If there were no production-to-count provisions, the legally-required deductible could be breached, resulting in the combined indemnity and producer-sold production exceeding the total value of the crop. This situation is called overinsurance. Even with homeowners and automobile insurance, there is usually a deductible that must be met before an indemnity is paid. In addition, a set value is placed on the home to prevent overinsurance. FCIC has revised section 13(d) of the policy to permit reduction of production to count for quality adjustment. This process is used in many other crop policies.

Comment: A New York county cooperative association recommended a modification to the way FCIC considers production-to-count. The commenter suggested that FCIC only count the percentage of producer "salvaged production" that exceeds the deductible. Under this plan, the production guarantee plus salvaged production could not exceed 100 percent of the approved actual production history (APH). The commenter states that the advantage is that this would enable a producer to reach 100 percent of their APH approved yield in a disaster year. They state that with expenses for growing onions consuming up to 60 percent of the farmer's gross income, the crop insurance policy must count damage towards the "insured portion" of the crop first. Further they claim that, this way, a producer can be assured in the event of loss that he will be able to at least cover all or a portion of his expenses, and then assess how much risk he is willing to accept. The

commenter maintains the current crop insurance policy "guarantees a minimum loss" if the producer collects on his insurance, because salvaged production counts as production to count. They state that with high production costs, producers do not need a "guaranteed loss" from the government. The producer does acknowledge this concept might make higher levels of coverage too expensive to offer but the commenter believes that producers would be more willing to accept the possibility of a loss from the weather rather than a guarantee of a loss from the government.

Response: There is no authority to adopt this recommendation. Under the Act, crop insurance only covers the loss in excess of the producer's deductible. Therefore, the guarantee can not exceed more than the coverage level times the APH. To operate a sound insurance program all production that is sold must be included as production to count. Under the policy as revised, all undamaged onions are included as production to count and the total production of damaged onions as defined in section 13(d), that are subsequently sold, are reduced by a factor determined by dividing the price received by the price they elected. Under the previous policy, such hundredweight of production was counted on a pound-per-pound basis. This is certainly a benefit to the producer.

Comment: A western onion growers' association recommended that the provisions in section 13(d) be modified because it is unfair to count all onions sold equally with no regard to reduction in price of the damaged onions.

Response: As discussed above and as the comment recommended, FCIC has amended the second sentence in 13(d) to allow adjustment of the production to count based on the reduced price for damaged onions.

Comment: An insurance service organization expressed concern about the language in section 13(d) that refers to "* * * the percentage shown in the Special Provisions for the type." The commenter recognizes the language provides flexibility by type for geographical areas, but believes it would be simpler if the factor for "damaged onions" was standardized. In addition, the comment stated that loss adjusters would be able to use the factors more correctly and effectively if they were included in the crop's loss adjustment standards. The commenter suggested the following language "* * * no production will be counted for that unit or portion of a unit if the production is destroyed in a manner acceptable to us." The comment stated that if the damaged production is sold, it would be counted on a pound-per-pound basis.

Response: It is not practical to include a single factor for all onions. The onion policy is used nationwide for different kinds of onions. The percentage that applies for any area and type is based on the percent of damage below which the onions normally cannot be sorted and sold. The percentage shown in the Special Provisions must be flexible to accommodate different situations. As stated above, FCIC has revised the provision regarding sold damaged production to permit a quality adjustment.

Comment: An insurance service organization recommended the prevented planting guarantee be changed to 30 percent of the final stage production guarantee for timely planted acreage instead of the current 45 percent. They contend that since the first stage guarantee for a loss is 35 percent, it doesn't seem appropriate to pay more than that for not planting. The commenter also questions whether the last sentence "Additional prevented planting coverage levels are not available for onions" is necessary. Instead, they recommend removing the current sentence that increased levels may be allowed in the actuarial documents. The commenter further recommends that the prevented planting guarantee should be based on a set dollar amount shown in the Special Provisions for all crops with prevented planting coverage. They contend that eligibility would be determined by subtracting this year's actual prevented planted acres for all insurable crops from the highest number of all insurable planted acres by crop year in the four prior Actual Production History (APH) years.

Response: When the prevented planting provisions were revised for the 1998 crop year, all preventing planting levels were raised 10 percent for the applicable crops including onions, which was raised from 35 percent to 45 percent. FCIC determined not to reduce the basic prevented planting coverage for onions, but determined that buy-up prevented planting (up to 55 percent of the final stage production guarantee) was not appropriate based on the economics of onions. Since other crops allow buy-up prevented planting, the last sentence in section 14 makes it clear that buy-up prevented planting is not available for onions. The commenter's recommendation to modify the way eligible prevented planting acreage is determined will be considered. However, not all crops are based on APH and basing a prevented planting payment on all insured crops, verses a single crop, would meet producer opposition. Therefore, no change has been made.

Comment: A New York county cooperative association cites the proposed rule language that reads in part "the intended effect of this action (Onion Crop Insurance Provisions Proposed Rule) is to modify the existing policy so that it is actuarially sound and better meets the needs of the insureds." The association contends that the President and lawmakers have used the "actuarially sound" requirement as a justification to write valueless policies, and as a result the proposed onion policy changes do not meet the needs of insured onion producers.

Response: Foremost, the Federal Crop Insurance program is an insurance program. Therefore, the premium charged must cover the anticipated losses. FCIC must balance the need to create an affordable program with the need to provide meaningful coverage. This rule makes major strides toward meeting the needs of New York and other onion producers, by allowing flexibility in setting stage guarantees, adding optional units by section, section equivalent or FSN, and reducing the production to count by allowing a quality adjustment for "damaged onions" that are subsequently sold. We note that an actuarially sound policy includes a government subsidy approaching 50 percent. Since, overall indemnities paid by the Corporation exceed the premium paid by the producer, the program is hardly valueless.

Comment: A New York county cooperative association recommended an adjustment to the approved APH yield process. They recommended that if a county has been officially declared a disaster area, producers should be allowed to use the county average instead of their actual yield. They also suggested that with the disaster designation, the drop in the county yield should be cupped at 10 percent. They claim that this would lessen the effect of successive disaster years. The commenter states that under the current APH rules the producer's APH continues to drop drastically resulting in producers being unable to purchase an adequate amount of insurance.

Response: Actual Production History (APH) regulations are published at 7 C.F.R. Subpart G. Changes to APH cannot be considered in this regulation. Therefore, no change has been made in the Onion Crop Insurance Provisions.

In addition to the changes described above, FCIC has made minor editorial changes.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule must be effective prior to the June 30 contract change date to be effective for the 2000 crop year. Therefore, public interest requires the agency to act immediately to make these provisions available.

List of Subjects in 7 CFR Part 457

Crop insurance, Onion.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) by amending 7 CFR 457, for the 2000 and succeeding crop years, to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Revise the introductory text to section 457.135 to read as follows:

§ 457.135 Onion Crop Insurance Provisions.

The onion crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

§ 457.135 Onion Crop Insurance Provisions.

a. Amend section 1 of the Onion Crop Provisions to add definitions for "direct seeded" and "transplanted" and to revise the definition of "production guarantee (per acre)" as follows:

1. Definitions.

* * * * *

Direct seeded. Placing onion seed by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

* * * * *

Production Guarantee (per acre):

(a) First stage production guarantee—Thirty-five percent (35%) of the final stage production guarantee for direct seeded storage and non-storage onions and 45 percent of the final stage production guarantee for transplanted storage and non-storage onions, unless otherwise specified in the Special Provisions.

(b) Second stage production guarantee—Seventy percent (70%) of the final stage production guarantee for direct seeded storage onions and 60 percent of the final stage production guarantee for transplanted storage onions and all non-storage onions, unless otherwise specified in the Special Provisions.

* * * * *

Transplanted. Placing of the onion plant or bulb, by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

* * * * *

b. Revise Section 2 of the Onion Crop Provisions to read as follows:

2. Unit Division.

In addition to, or instead of, establishing optional units as provided in section 34 of the Basic Provisions, optional units may be established by type, if the type is designated in the Special Provisions.

* * * * *

c. Revise sections 3(b)(1) and (2) of the Onion Crop Provisions to read as follows:

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(b) * * *

(1) First stage extends:

(i) For direct seeded storage and non-storage onions, from planting until the emergence of the fourth leaf; and

(ii) For transplanted storage and non-storage onions, from transplanting of onion plants or sets through the 30th day after transplanting.

(2) Second stage extends:

(i) For direct seeded storage and non-storage onions, from the emergence of the fourth leaf; and

(ii) For transplanted storage and non-storage onions, from the 31st day after transplanting.

* * * * *

d. Revise section 5 of the Onion Crop Provisions to read as follows:

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State & County	Termination Date	Cancellation Date
All Georgia Counties; Kinney, Uvalde, Medina, Bexar, Wilson, Karnes, Bee, and San Patrico Counties, Texas, and all Texas Counties lying south thereof.	August 31	August 31.
Umatilla County, Oregon; and Walla Walla County, Washington.	August 31	September 30.
All other states and counties.	February 1	February 1.

e. Revise section 11(b) of the Onion Crop Provisions to read as follows:

11. Replanting Payment.

* * * * *

(b) The maximum amount of the replanting payment per acre will be your actual cost for replanting, but will not exceed the lesser of:

(1) 7 percent of the final stage production guarantee multiplied by your price election for the type originally planted and by your insured share; or

(2) 18 hundredweight multiplied by your price election for the type originally planted and by your insured share.

* * * * *

f. Revise section 13(d) of the Onion Crop Provisions to read as follows:

13. Settlement of Claim.

* * * * *

(d) If the damage to harvested or unharvested onion production exceeds the percentage shown in the Special Provisions for the type, no production will be counted for that unit or portion of a unit unless such damaged onion production from that acreage is sold. If sold, the hundredweight of production to be counted will be adjusted by dividing the price received for the damaged onion production by the price election and multiplying the resulting factor times the hundredweight sold.

* * * * *

g. Revise section 14 of the Onion Crop Provisions to read as follows:

14. Prevented planting.

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. Additional prevented planting coverage levels are not available for onions.

Signed in Washington, D.C., on June 18, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–15941 Filed 6–22–99; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 208, 240, 246, 274a and 299

[INS No. 1915–98; AG Order No. 2224–99]

RIN 1115–AF14

Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries

AGENCY: Immigration and Naturalization Service and Executive Office for Immigration Review, Justice.

ACTION: Correction to interim rule.

SUMMARY: This document contains corrections to the interim regulation, published Friday, May 21, 1999 at 64 FR 27856, relating to section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA).

EFFECTIVE DATE: June 21, 1999.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Immigration and Naturalization Service; Joanna Ruppel, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, ULLICO Bldg., third floor, Washington, DC 20536, telephone number (202) 305–2663. For matters relating to the Executive Office for Immigration Review: Chuck Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone number (703) 305–0470.

SUPPLEMENTARY INFORMATION:

Background

The interim rule that is the subject of this correction implements section 203 of NACARA. It amends the Department of Justice regulations by offering certain beneficiaries of section 203 of NACARA who currently have asylum applications pending with the Immigration and Naturalization Service (Service), and their qualified dependents, the option of applying to the Service for suspension of deportation or cancellation of removal under the statutory requirements set forth in NACARA ("special rule cancellation of removal").

Need for Correction

As published, the interim rule contains an omission in § 240.64(d)(1) and must be amended. Section 240.64(d)(1) provides that "[a]n applicant described in paragraphs (a)(1) or (a)(2) of § 240.61 who has submitted a completed Form I–881 to either the Service or the Immigration Court shall be presumed to have established that deportation or removal from the United States would result in extreme hardship to the applicant or to his or her spouse, parent, or child, who is a United States citizen or an alien lawfully admitted for a permanent residence." Certain applicants who are entitled to the presumption may already have filed with EOIR an application for relief under section 203 of NACARA using EOIR Form-40. Under § 240.63(a) of the interim rule, certain applicants who submitted to EOIR a completed Form EOIR–40, Application for Suspension of Deportation, before the effective date of the Form I–881 may apply with the Service by submitting the completed Form EOIR–40 attached to a completed first page of the Form I–881. Furthermore, § 240.63(b) of the interim rule provides that if jurisdiction rests with the Immigration Court under § 260.62(b) of the interim rule, applications for suspension of deportation or special rule cancellation of removal filed prior to June 21, 1999 shall be filed on form EOIR–40. Accordingly, the language of § 240.64(d)(1) mut be amended to include the Form EOIR–40.

Corrections

§ 240.64(d) [Corrected]

1. On page 27878, in the second column, in § 240.64(d)(1), the phrase "who has submitted a completed Form I–881 to either the Service or the Immigration Court" is corrected to read "who has submitted a completed Form I–881 or Form EOIR–40 to either the Service or the Immigration Court, in accordance with § 240.63."

Dated: June 17, 1999.

Rosemary Hart,

Federal Register Liaison Officer.

[FR Doc. 99–15881 Filed 6–22–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–11–AD; Amendment 39–11202; AD 99–13–08]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that currently requires inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between inner wing stations 310 and 343, and of the web area around those fasteners; and various follow-on actions. That AD also provides for an optional modification, which, if accomplished, would defer the initiation of the inspections for a certain period of time. This amendment requires accomplishment of the previously optional modification. This amendment is prompted by an FAA determination that the optional terminating modification specified in the existing AD must be accomplished within a specified period of time to ensure an acceptable level of safety of the affected fleet. The actions specified by this AD are intended to prevent fatigue cracking in the web of the rear spar of the wing, which could result in failure of the rear spar of the wing and consequent fuel spillage.

DATES: Effective July 28, 1999.

The incorporation by reference of Lockheed L–1011 Service Bulletin 093–57–218, dated April 11, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 27, 1996 (61 FR 29642, June 12, 1996).

The incorporation by reference of certain other publications, as listed in the regulations, is approved by the Director of the Federal Register as of July 28, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–12–24, amendment 39–9667 (61 FR 29642, June 12, 1996), which is applicable to all Lockheed Model L–1011–385 series airplanes, was published in the **Federal Register** on November 25, 1997 (62 FR 62728). The action proposed to continue to require inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between inner wing stations 310 and 343, and of the web area around those fasteners; and various follow-on actions. That action also proposed to require accomplishment of a previously optional modification.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Clarify the Inspection Requirements

One commenter requests clarification of the subsequent inspections required by the proposed AD. The commenter states that the proposed AD does not clearly address the subsequent inspection program for Model L–1011–385–3 series airplanes that have accomplished the rear spar modification for extensive cracking "after June 27, 1996," because paragraph (a)(2) of the proposed AD only addresses spar replacements accomplished "prior to June 27, 1996."

The FAA points out that the inspection thresholds in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (which is referenced in the final rule as the appropriate source of service information), are calculated from the date of accomplishment of Lockheed Service Bulletin 093–57–215, dated April 11, 1996. In addition, the FAA considers that paragraph (e)(2) of the final rule adequately addresses the inspection requirements for operators that have accomplished the modification in accordance with Service Bulletin 093–57–215. No change has been made to paragraph (a)(2) of the final rule.

Request for Additional Inspections and a Reduced Inspection Threshold

One commenter requests revising the proposed AD to include additional inspections for detecting cracks that originate in the fastener holes, and to shorten the inspection thresholds after accomplishment of the cold working modification. The commenter adds that it recommends accomplishment of the modification as required by the proposed AD; however, the commenter does not consider that the modification should be used for complete reliance for crack prevention. Following accomplishment of the modification, the commenter recommends that certain other inspections of the wing rear spar web and upper cap be added to the inspection requirements of the proposed AD. The commenter suggests adding surface scan inspections using high frequency eddy current techniques, and ring probe inspections using low frequency eddy current techniques. The commenter also recommends that, instead of accomplishing the inspections at 5,000 landings, the inspections be accomplished at 500 flight cycles following the cold working modification.

The commenter states that its recommendations are based on its service experience and a damage tolerance assessment (DTA). The commenter also states that, after modifying its entire fleet of Model L–1011–385–3 series airplanes in accordance with paragraph (d) of the proposed AD, subsequent cracking was found before 5,000 landings. The commenter adds that its service experience indicates that new or recurring cracks occur within 500 to 1,000 flight cycles after repair of the upper spar cap. In addition, half-crack lengths of approximately 0.25 inch were found during subsequent inspections, and a DTA of the area indicates that inspections at 500 flight cycles are required to ensure aircraft safety, regardless of the cold working condition.

The FAA does not concur that additional inspections should be included in the final rule, or that the inspection threshold of 5,000 landings, as required by paragraphs (d) and (e)(1) of the proposed AD, should be reduced to 500 landings. The FAA considers it is likely that other factors induced the early cracking found in the operator's airplane, and that the 5,000-flight-cycle threshold required by the proposed AD is an adequate inspection threshold after accomplishment of the fastener hole cold working. The FAA points out that it will continue to monitor service findings of modified airplanes and may revise the inspection requirements in the future, if necessary. However, no changes were made to the inspection thresholds required by paragraph (d) or (e)(1) of the final rule.

Explanation of Changes Made to This Final Rule

The notice of proposed rulemaking (NPRM) references Lockheed Service Bulletin 093–57–212, dated November 14, 1994, as amended by Change Notification CN1, dated September 27, 1995, as an appropriate source of service information for accomplishment of the modifications specified in paragraphs (f)(1) and (f)(2) of the NPRM. The FAA finds that the procedures in Service Bulletin 093–57–212 are no longer necessary because the procedures included in the other service bulletins cited in those paragraphs are adequate for accomplishment of the actions required by this AD. The references to that service bulletin have been removed from the final rule.

Although the NPRM includes references to certain Change Notifications for a number of service bulletins, the FAA has determined that it is unnecessary to include those references in the final rule. The FAA points out that the Change Notifications did not include any substantive changes to the service bulletins, and that such change notifications included only minor editorial changes or clarification of certain data. The FAA has determined that the service bulletins referenced in the final rule include all of the procedures necessary for accomplishment of the actions required by this AD. In light of this, references to the Change Notifications were deleted from the final rule.

Although the NPRM did not include references to certain earlier revision levels of Lockheed Service Bulletins 093–57–184, 093–57–196, and 093–57–203, the FAA has determined that references to those earlier revision levels should be included in the final rule to give credit to any operator that may have accomplished the modification previously in accordance with those service bulletins. In light of this, the FAA has included references to those earlier service bulletins in NOTE 2, NOTE 3, and NOTE 4 of this AD. The FAA considers that the service bulletins referenced in those notes are adequate for specifying the procedures necessary for accomplishment of the actions required by this AD.

The FAA has added Lockheed Service Bulletin 093–57–203, Revision 4, dated March 27, 1995, to paragraph (e)(1) of this AD as an additional reference for the accomplishment of the rear spar modification.

In paragraph (g) of this AD, the FAA has added the word "discrepant" preceding the word "fasteners" in the parenthetical phrase. This word was

added to clarify that one of the conditions to be identified during the required modification is for "discrepant fasteners" rather than just "fasteners."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 235 Lockheed Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 96–12–24, and retained in this AD, take approximately 13 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $91,260, or $780 per airplane.

The actions that are required by this new AD will take approximately 100 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $702,000, or $6,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9667 (61 FR 29642, June 12, 1996), and by adding a new airworthiness directive (AD), amendment 39–11202, to read as follows:

99–13–08 Lockheed: Amendment 39–11202. Docket 97–NM–11–AD. Supersedes AD 96–12–24, Amendment 39–9667.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking on the web of the rear spar of the wing, which could result in failure of the rear spar of the wing and consequent fuel spillage, accomplish the following:

Restatement of Actions Required by AD 96–12–24, Amendment 39–9667

(a) Perform a visual inspection to detect signs of cracking and other discrepancies (i.e., corrosion, fastener looseness, nicks, scratches, or other surface damage) of the web-to-cap fasteners of the rear spar between inner wing stations (IWS) 310 and 343, as specified in Figure 2 of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996; and of the web area around those fasteners; in accordance with Part I of the Accomplishment Instructions of that service bulletin. Perform the inspection at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Except as provided by paragraph (a)(2) of this AD: Perform the initial inspection prior to the accumulation of the number of landings specified as the "inspection threshold" in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996, or within 10 days after June 27, 1996 (the effective date of AD 96–12–24, amendment 39–9667), whichever occurs later.

(2) For airplanes on which the wing rear spar has been modified prior to June 27, 1996, in accordance with one of the Lockheed service bulletins listed in paragraph (a)(2)(ii) of this AD, accomplish the inspection as follows:

(i) Perform the initial inspection prior to the accumulation of the number of landings specified as the "inspection threshold" in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996, calculated from the time the wing rear spar was modified (rather than from the date of manufacture of the airplane), or within 10 days after June 27, 1996, whichever occurs later.

(ii) This paragraph applies to airplanes on which the wing rear spar has been modified in accordance with one of the following service bulletins:

- Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994; or
- Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994; or
- Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991, or Revision 4, dated March 27, 1995; or
- Lockheed Service Bulletin 093–57–215, dated April 11, 1996.

(b) If no sign of cracking or other discrepancy is found during the inspection required by paragraph (a) of this AD, repeat that inspection thereafter at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996.

(c) If any sign of cracking is found during an inspection required by paragraph (a) or (b) of this AD, prior to further flight, perform either eddy current surface scan inspections, or bolt hole eddy current inspections, as appropriate, to confirm cracking, in accordance with Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996.

(1) If no cracking is confirmed, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of the service bulletin.

(2) If any cracking is confirmed, prior to further flight, repair it in accordance with the service bulletin.

New Requirements of This AD

Modification

(d) Except as provided by paragraph (e) or (f) of this AD, as applicable: Within 12 months after the effective date of this AD, modify the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343 in accordance with Part II of the Accomplishment Instructions of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Within 5,000 landings following accomplishment of the modification, perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

(e) For Model L–1011–385–3 series airplanes: Accomplishment of the modification specified in paragraph (e)(1) or (e)(2) of this AD, within 12 months after the effective date of this AD, constitutes an acceptable alternative to the modification specified in paragraph (d) of this AD.

(1) Modify the upper and lower caps of the rear spar between IWS 228 and IWS 346 in accordance with Part I of the Accomplishment Instructions of Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991; or Revision 4, dated March 27, 1995. Within 5,000 landings following accomplishment of the modification, perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Or

(2) Modify the left and right wing rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–215, dated April 11, 1996. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–215, dated April 11, 1996), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

Note 2: Accomplishment of the modification of the upper and lower caps of the rear spar between IWS 228 and IWS 346, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–203, dated July 25, 1988, Revision 1, dated August 11, 1989, or Revision 2, dated January 25, 1991, is considered acceptable for compliance with the modification specified in paragraph (e)(1) of this amendment.

(f) For Model L–1011–385–1 series airplanes: Accomplishment of the modification specified in paragraph (f)(1) or (f)(2) of this AD, within 12 months after the effective date of this AD, constitutes an acceptable alternative to the modification specified in paragraph (d) of this AD.

(1) Modify the inboard and outboard rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991; or Revision 7, dated December 6, 1994. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Or

(2) Modify the inboard and outboard rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991; or Revision 6, dated December 6, 1994. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

Note 3: Accomplishment of the modification of the inboard and outboard rear spars, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–184, Revision 2, dated October 12, 1988; Revision 3, dated August 11, 1989, Revision 4, dated May 16, 1990; or Revision 5, dated May 23, 1990, is considered acceptable for compliance with the modification specified in paragraph (f)(1) of this amendment.

Note 4: Accomplishment of the modification of the inboard and outboard rear spars, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–196, Revision 1, dated October 25, 1988; Revision 2, dated July 31, 1989; Revision 3, dated March 7, 1990; or Revision 4, dated July 1, 1991, is considered acceptable for compliance with the modification specified in paragraph (f)(2) of this amendment.

(g) If any condition (i.e., number of discrepant fasteners per stiffener bay, or cracking) is identified during the accomplishment of the modification specified in Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996, and that condition exceeds the limits specified in paragraph B.(3) of Part II of the Accomplishment Instructions of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

Alternative Method of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(h)(2) Alternative methods of compliance, approved previously in accordance with AD 96–12–24, amendment 39–9667, are approved as alternative methods of compliance with paragraph (d) of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided by paragraph (g) of this AD, the actions shall be done in accordance with the following service bulletins, as applicable:

- Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991; or Lockheed Service Bulletin 093–57–184, Revision 7, dated December 6, 1994;
- Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991; or Lockheed Service Bulletin 093–57–196, Revision 6, dated December 6, 1994;
- Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991; or Lockheed Service Bulletin 093–57–203, Revision 4, dated March 27, 1995;
- Lockheed Service Bulletin 093–57–215, dated April 11, 1996; and
- Lockheed Service Bulletin 093–57–218, dated April 11, 1996; or Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

Revision 1 of Lockheed Service Bulletin 093–57–218 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2, 4–9, 13–18.	1	Sept. 9, 1996.
3, 10–12, 19 ..	Original ..	Apr. 11, 1996.

(1) The incorporation by reference of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, was approved previously by the Director of the Federal

Register as of June 27, 1996 (61 FR 29642, June 12, 1996).

(2) The incorporation by reference of the remainder of the service bulletins listed above is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(3) Copies may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on July 28, 1999.

Issued in Renton, Washington, on June 15, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15779 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–116–AD; Amendment 39–11198; AD 99–13–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This action requires repetitive inspections to detect cracking of the upper cutout and lower flange of the outboard support assembly of the flaperons on the wings; and corrective actions, if necessary. This amendment also provides an optional terminating action for the repetitive inspections. This amendment is prompted by results of flight testing conducted by the manufacturer indicating that high engine thrust conditions during takeoff cause excessive cyclic loads and could lead to fatigue cracking of the outboard support of the flaperon. The actions specified in this AD are intended to detect and correct such fatigue cracking, which could result in fracture of the flaperon support structure, loss of the flaperon, and consequent reduced controllability of the airplane.

DATES: Effective July 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: Results of flight testing of the Boeing Model 777 series airplane indicate that high engine thrust conditions during takeoff cause excessive cyclic loads on the flaperon support structure of the flaperons on the left and right wings. Based on engineering analysis of the flaperon support structure, it was determined that due to the reduced fatigue life of the affected parts, fatigue cracks could develop on the outboard support of the flaperons. For airplanes powered by Rolls-Royce engines, it was determined that fatigue cracks could occur prior to the accumulation of 4,000 total flight cycles; and for airplanes powered by General Electric and Pratt & Whitney engines, fatigue cracks could occur prior to the accumulation of 10,000 total flight cycles. Such fatigue cracking of the outboard support of the flaperons, if not detected and corrected, could result in fracture of the flaperon support structure, loss of the flaperon, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–57A0008, dated March 25, 1999, which describes procedures for accomplishment of repetitive high frequency eddy current (HFEC) inspections to detect cracking of the upper cutout and lower flange of the outboard support assembly of the flaperons on the left and right wings; and corrective actions, if necessary. The corrective actions include modification of the fairings of the outboard flaperon; modification of the lower panels of the fixed trailing edge of the outboard flaperon; replacement of the existing outboard support, the outboard support bearing block, and the upper panel bracket of the fixed trailing edge of the flaperons on each wing with new components; and an operational test to detect fuel leakage.

In addition, the service bulletin describes procedures for accomplishment of modification of the inboard aft fairing assembly of the flaperons to be accomplished concurrently with the modification of the outboard support assemblies. These procedures include modification of the aft fairing of the inboard support and replacement of the existing inboard support bearing block with a new block.

Accomplishment of the modifications described previously eliminates the need for the repetitive inspections.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct fatigue cracking of the outboard support assembly of the flaperons on each wing, which could result in fracture of the flaperon support structure, loss of the flaperon, and consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below. In addition, this AD provides an optional terminating action for the repetitive inspections.

Differences Between This Rule and Alert Service Bulletin

The alert service bulletin specifies that the manufacturer may be contacted for disposition of certain cracking conditions, in lieu of accomplishment of the terminating action. However, if any cracking is detected, this AD requires accomplishment of the terminating action prior to further flight.

The alert service bulletin specifies that certain corrective actions required by this AD may be accomplished in accordance with the Airplane Maintenance Manual or an operator's "equivalent procedure." However, this AD requires that any such actions be accomplished only in accordance with the procedures specified in the Airplane Maintenance Manual. An "operator's equivalent procedure" may be used only if approved as an alternative method of compliance in accordance with the provisions of this AD.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring modification of the outboard and inboard support assemblies of the flaperons, as described in the alert service bulletin, which would constitute terminating action for the repetitive inspections required by this AD. However, the planned compliance time for these actions is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–116–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–13–05 Boeing: Amendment 39–11198. Docket 99–NM–116–AD.

Applicability: Model 777 series airplanes, as listed in Boeing Alert Service Bulletin 777–57A0008, dated March 25, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the outboard support of the flaperon, which could result in fracture of the flaperon support structure, loss of the flaperon, and consequent reduced controllability of the airplane; accomplish the following:

Repetitive Inspections

(a) Perform high frequency eddy current (HFEC) inspections to detect fatigue cracking of the upper cutout and lower flange of the outboard support assembly of the flaperons on the left and right wings, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0008, dated March 25, 1999, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes identified as Group 1 in the alert service bulletin: Perform HFEC inspections prior to the accumulation of 10,000 total flight cycles, or within 225 flight cycles after the effective date of this AD, whichever occurs later. Repeat the inspections thereafter at intervals not to exceed 225 flight cycles.

(2) For airplanes identified as Group 2 in the alert service bulletin: Perform HFEC inspections prior to the accumulation of 4,000 total flight cycles, or within 70 flight cycles after the effective date of this AD, whichever occurs later. Repeat the inspections thereafter at intervals not to exceed 70 flight cycles.

Corrective Action

(b) If any fatigue cracking is detected during any inspection required by paragraph (a) of this AD: Prior to further flight, concurrently accomplish the modifications specified in Parts 2 and 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0008, dated March 25, 1999. Accomplishment of the modifications constitutes terminating action for the repetitive inspection requirements of this AD.

(c) If any fatigue cracking is detected, and Boeing Alert Service Bulletin 777–57A0008, dated March 25, 1999, specifies that corrective actions may be accomplished in accordance with an operator's "equivalent procedure:" The actions must be accomplished in accordance with the chapter of the Boeing 777 Airplane Maintenance Manual (AMM) specified in the alert service bulletin.

Optional Terminating Action

(d) Concurrent accomplishment of the modifications specified in Parts 2 and 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0008, dated March 25, 1999, constitutes terminating action for the repetitive inspections required by this AD.

Spares

(e) As of the effective date of this AD, no person shall install any part identified in the "Existing Part Number" column of Section 2.E. of Boeing Alert Service Bulletin 777–57A0008, dated March 25, 1999, on any airplane.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–57A0008, dated March 25, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on July 8, 1999.

Issued in Renton, Washington, on June 10, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15778 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–109–AD; Amendment 39–11201; AD 99–13–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes, Model MD–88 Airplanes, and Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD); applicable to certain McDonnell Douglas Model DC–9–80 series airplanes, Model MD–88 airplanes, and Model MD–90–30 airplanes; that requires repetitive inspections to detect cracking of the main landing gear (MLG) shock strut pistons, and replacement of a cracked piston with a new or serviceable part. This amendment is prompted by reports indicating that, while an airplane was positioned on the taxiway, the right MLG shock strut piston failed due to fatigue cracking. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in failure of the piston, and consequent damage to the airplane structure or injury to the passengers and flightcrew.

DATES: Effective July 28, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes, Model MD–88 airplanes, and Model MD–90–30 airplanes was published in the **Federal Register** on September 8, 1998 (63 FR 47443). That action proposed to require repetitive inspections to detect cracking of the main landing gear (MLG) shock strut pistons, and replacement of a cracked piston with a new or serviceable part.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Three commenters support the proposal, and three commenters have no objection to the proposal.

Request To Revise Applicability

One commenter requests that the proposed rule be revised to provide for airplanes on which an existing piston is replaced with a modified piston having certain part numbers. The commenter provides no justification for its request.

The FAA concurs with the commenter's request to include a provision for operators who replace an existing piston with a modified piston. The FAA has determined that Boeing will produce modified pistons having the part numbers referenced by the commenter. The FAA finds that an airplane on which a modified piston, having part number 5935347–517 or 5935347–519, is installed is not subject to the requirements of this AD. Therefore, the applicability statement of this final rule has been revised to include only airplanes that are equipped with a MLG shock strut piston having part number 5935347–1 through 509 inclusive, 5935347–511, or 5935347–513.

Request To Revise Cost Impact Information

Two commenters request that the cost impact information in the proposed rule be revised to more accurately represent the number of work hours necessary to accomplish the inspection. One commenter estimates that it will take 14 work hours to accomplish the initial inspection and 12 work hours to accomplish each repetitive inspection. The other commenter states that the work hours should reflect the estimates provided in the service bulletin.

The FAA does not concur with the commenters' request to revise the cost impact information. The cost impact information, which is restated below, describes only the "direct" costs of the specific actions required by this AD. The estimated number of work hours represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. However, the cost analysis in AD rulemaking actions typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. No change to the final rule is necessary in this regard.

Request To Reference Specific Chapters of Component Maintenance Manual

One commenter requests that paragraph (a)(2) of the proposed AD be revised to reference McDonnell Douglas Component Maintenance Manual (CMM) Chapter 32–17–01 or 32–17–02, instead of All Operator Letter (AOL) 9–2153, dated June 27, 1991, as the appropriate source of service information for initial inspection of the MLG shock strut piston accomplished prior to the effective date of this AD on McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. The commenter also requests that the proposed rule be revised to provide credit for airplanes on which major overhaul is accomplished in accordance with CMM Chapter 32–17–01 or 32–17–02, so that such airplanes are subject to a repetitive inspection interval of 2,500 flight cycles after overhaul. The commenter justifies its requests by stating that AOL 9–2153 does not describe inspection procedures, but specifies only that inspection methods will be added to the CMM.

The FAA does not concur with the commenter's request to reference specific chapters of the CMM instead of AOL 9–2153. The FAA cannot reference appropriate revision levels of CMM sections by citing specific dates, as it can with service bulletins and AOL's. Therefore, as stated in the proposal, the FAA intends the compliance time stated in paragraph (a)(2) to apply only to Model DC–9–80 series airplanes and Model MD–88 airplanes that are inspected or overhauled prior to the effective date of this AD in accordance with the instructions incorporated into the CMM per AOL 9–2153. With regard to the commenter's request for credit for airplanes overhauled in accordance with the applicable chapters of the CMM, the FAA finds that paragraph (a)(2) clearly states that inspection is required within 2,500 landings after major overhaul in accordance with AOL 9–2153. No change to the final rule is necessary in this regard.

Explanation of Change to Final Rule

Paragraph (b) of the final rule has been revised to provide clarification. The FAA finds that the last sentence of paragraph (b) in the proposal did not make it clear that replacement of a cracked MLG shock strut piston with a new or serviceable piston allows the compliance threshold for the inspection to be "reset" to 10,000 total landings on the piston. Therefore, the last sentence of paragraph (b) of the final rule has been revised to read, "Thereafter, repeat the inspections required by paragraph (a) of this AD prior to the accumulation of 10,000 total landings on the MLG shock strut piston."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,250 airplanes of the affected design in the worldwide fleet. The FAA estimates that 828 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $198,720, or $240 per airplane, per inspection cycle.

Should an operator be required to accomplish the replacement of an MLG shock strut piston, it will take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $107,070 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $108,030 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–13–07 McDonnell Douglas: Amendment 39–11201. Docket 98–NM–109–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and

DC–9–87 (MD–87) series airplanes, Model MD–88 airplanes, and Model MD–90–30 airplanes; equipped with a main landing gear (MLG) shock strut piston having part number 5935347–1 through –3509 inclusive, 5935347–511, or 5935347–513; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the MLG shock strut pistons, which could result in failure of the piston, and consequent damage to the airplane structure or injury to the passengers and flightcrew, accomplish the following:

Initial Inspection

(a) Perform fluorescent dye penetrant and fluorescent magnetic particle inspections to detect cracking of an MLG shock strut piston, in accordance with McDonnell Douglas Alert Service Bulletin MD80–32A308, dated March 5, 1998, or MD80–32A308, Revision 01, dated May 12, 1998 [for Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes]; or MD90–32A030, dated March 26, 1998, or MD90–32A030, Revision 01, dated May 11, 1998 (for Model MD–90–30 airplanes); as applicable. Perform the inspections at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 10,000 total landings on an MLG shock strut piston, or within 6 months after the effective date of this AD, whichever occurs later.

(2) Within 2,500 landings after a major overhaul and initial inspection of the MLG shock strut piston accomplished prior to the effective date of this AD, in accordance with McDonnell Douglas All Operator Letter 9–2153 [for Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes], or McDonnell Douglas Component Maintenance Manual, Chapter 32–17–01 (for Model MD–90–30 airplanes).

Corrective Actions

(b) Condition 1. If any cracking is detected, prior to further flight, replace any cracked MLG shock strut piston with a new or serviceable piston, in accordance with McDonnell Douglas Alert Service Bulletin MD80–32A308, dated March 5, 1998, or MD80–32A308, Revision 01, dated May 12, 1998 [for Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes]; or MD90–32A030, dated March 26, 1998, or MD90–32A030, Revision 01, dated May 11, 1998 (for Model MD–90–30 airplanes); as applicable. Thereafter, repeat the inspections required by paragraph (a) of this AD prior to the accumulation of 10,000 total landings on the MLG shock strut piston.

(c) Condition 2. If no cracking is detected, repeat the fluorescent dye penetrant and fluorescent magnetic particle inspections thereafter at intervals not to exceed 2,500 landings, in accordance with McDonnell Douglas Alert Service Bulletin MD80–32A308, dated March 5, 1998, or MD80–32A308, Revision 01, dated May 12, 1998 [for Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes]; or MD90–32A030, dated March 26, 1998, or MD90–32A030, Revision 01, dated May 11, 1998 (for Model MD–90–30 airplanes); as applicable.

Spares

(d) As of the effective date of this AD, no person shall install on any airplane a replacement MLG shock strut piston, part number 5935347–509, –511, or –513, or an MLG assembly from an operator's spares inventory, unless those components have been inspected in accordance with the requirements specified by paragraph (a) of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD80–32A308, dated March 5, 1998; McDonnell Douglas Alert Service Bulletin MD80–32A308, Revision 01, dated May 12, 1998; McDonnell Douglas Alert Service Bulletin MD90–32A030, dated March 26, 1998; or McDonnell Douglas Alert Service Bulletin MD90–32A030, Revision 01, dated May 11, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on July 28, 1999.

Issued in Renton, Washington, on June 15, 1999.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15777 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–121–AD; Amendment 39–11199; AD 99–12–52]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T99–12–52 that was sent previously to all known U.S. owners and operators of all Boeing Model 727 series airplanes by individual telegrams. This AD requires a boost pump dry bay inspection to detect leakage of fuel through an arced-through conduit, and corrective action, as necessary. This AD also requires repetitive detailed visual inspections of the in-tank fuel boost pump wiring to detect chafing of the wire insulation, evidence of electrical arcing, or arc-through of the conduit wall on Model 727 series airplanes, and applicable corrective action; and installation of sleeving over the in-tank fuel boost pump wires as a method to protect the wiring from chafing. This action is prompted by reports of severe wear of in-tank fuel boost pump wiring, and arc-through of the surrounding conduit on two Model 727 series airplanes. The actions specified by this AD are intended to prevent fuel tank explosion resulting from arc-through of the fuel boost pump wiring conduits.

DATES: Effective June 28, 1999, to all persons except those persons to whom it was made immediately effective by telegraphic AD T99–12–52, issued May 24, 1999, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2687; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Issuance of Telegraphic AD T99–12–51

On May 21, 1999, the FAA issued telegraphic AD T99–12–51, which is applicable to all Boeing Model 727 series airplanes, to require a boost pump dry bay inspection to detect leakage of fuel through an arced-through conduit, and corrective action, as necessary.

Telegraphic AD T99–12–51 was prompted by reports of severe wear of the in-tank fuel boost pump wiring, and arc-through of the surrounding conduit on two Model 727 series airplanes that had accumulated in excess of 50,000 total flight hours. The wear and arc-through condition of the conduit surrounding the in-tank fuel boost pump wiring has been attributed to chafing between the in-tank fuel boost pump wiring and the wall of the surrounding conduit, exposing the electrical conductor of the boost pump power wire and placing it in contact with the aluminum wall of the conduit, resulting in arc-through of the conduit wall. Arc-through of the conduit presents an ignition source inside the fuel tank. In addition, the resultant hole in the conduit provides a path for fuel to leak from the fuel tank. The actions required by telegraphic AD T99–12–51 were intended to detect and correct fuel boost pump wiring conduits which have experienced severe chafing and electrical arcing, resulting in burn-through of the conduit. This condition, if not corrected, could result in ignition of fuel vapors in a fuel tank, and a fuel tank explosion.

Issuance of Telegraphic AD T99–12–52

On May 24, 1999, the FAA issued telegraphic AD T99–12–52, applicable to all Model 727 series airplanes, which superseded telegraphic AD T99–12–51 to continue to require a boost pump dry bay inspection to detect leakage of fuel through an arced-through conduit, and corrective action, as necessary.

Telegraphic AD T99–12–52 adds a requirement for repetitive detailed visual inspections of the in-tank fuel boost pump wiring to detect chafing of the wire insulation, evidence of electrical arcing, or arc-through of the conduit wall on Model 727 series airplanes, and applicable corrective action. In addition, this telegraphic AD requires installation of sleeving over the in-tank fuel boost pump wires as a method to protect the wiring from chafing. If the initial inspection of the wiring is performed before the inspection of the fuel boost pump dry bay for fuel leaks, the inspection of the fuel boost pump dry bay for fuel leaks is not required.

Telegraphic AD T99–12–52 was prompted by the same reports that are described in the Summary of this AD and in telegraphic AD T99–12–51.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999, which describes procedures for performing a boost pump dry bay inspection to detect leakage of fuel through an arced-through conduit. That alert service bulletin also describes procedures for performing detailed inspections of the in-tank fuel boost pump wire bundles, installing wire bundle sleeving, replacing the conduit if fuel leakage is detected, and performing applicable corrective actions. In addition, the alert service bulletin describes procedures for performing leak checks of the replaced conduit and installing the new fuel boost pump wire.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD T99–12–52 to prevent fuel tank explosion resulting from arc-through of the fuel boost pump wiring conduits. This AD supersedes telegraphic AD T99–12–51 to continue to require a boost pump dry bay inspection to detect leakage of fuel through an arced-through conduit, and corrective action, as necessary. This AD adds a requirement for repetitive detailed visual inspections of the in-tank fuel boost pump wiring to detect chafing of the wire insulation, evidence of electrical arcing, or arc-through of the conduit wall on Model 727 series airplanes, and applicable corrective action. In addition, this AD requires installation of sleeving over the in-tank fuel boost pump wires as a method to protect the wiring from chafing. If the initial inspection of the wiring is performed before the inspection of the boost pump dry bay for fuel leaks, the inspection of the fuel boost pump dry bay for fuel leaks is not required.

Except as described in the "Differences" paragraph below, the actions are required to be accomplished in accordance with Boeing All Operator Message (AOM) M–7200–99–04035, dated May 21, 1999, (for the boost pump dry bay inspection), and Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999, (for the boost pump dry bay inspection and the wiring inspection).

Differences Between This AD and the Service Information

Although the Boeing AOM describes general procedures for inspecting the fuel boost pump wire bundles and installing new fuel boost pump wire bundles and sleeving, the FAA considers that use of the more specific instructions included in Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999, is necessary to ensure that the wire inspections are performed properly.

However, if the wire bundle inspection or wire bundle replacement has been accomplished in accordance with the Boeing AOM, these actions may provide the basis for an alternative method of compliance as provided in paragraph (l) of this AD.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on May 24, 1999, to all known U.S. owners and operators of all Model 727 series airplanes. These conditions still exist, and this AD is hereby published in the

Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Explanation of Changes Made to the Final Rule

The FAA has determined that reference to a certain paragraph that was included in the "Differences" paragraph and in NOTE 1 of Telegraph AD T99–12–52 is incorrect. The FAA has revised this AD to correctly reference paragraph (l) instead of paragraph (e).

Interim Action

In the preamble to AD T99–12–51, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this AD follows from that determination.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–121–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–12–52 Boeing: Amendment 39–11199. Docket 99–NM–121–AD. Supersedes Telegraphic AD T99–12–51.

Applicability: All Model 727 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (l) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel tank explosion resulting from arc-through of the fuel boost pump wiring conduits, accomplish the following:

(a) For airplanes with 50,000 or more total flight hours as of the date of receipt of AD T99–12–51, within 5 days after the effective date of this AD, accomplish the requirements of paragraph (c) of this AD.

(b) For airplanes with less than 50,000 total flight hours as of the date of receipt of AD T99–12–51, prior to the accumulation of 30,000 total flight hours, or within 10 days after receipt of this AD, whichever occurs later, accomplish the requirements of paragraph (c) of this AD.

Initial Inspection and Corrective Action

(c) Except as provided in paragraphs (d) and (e) of this AD, perform a boost pump dry bay inspection and applicable follow-on corrective actions, in accordance with steps 1 through 6 of the "Boost Pump Dry Bay Inspection," specified in Boeing All Operator Message M–7200–99–04035, dated May 21, 1999, or in accordance with Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999.

(d) For airplanes on which the actions specified in step 5–E–<3> of Boeing All Operator Message M–7200–99–04035, dated May 21, 1999, are accomplished, the fuel tank in which the conduit has been replaced must be refueled prior to accomplishing step 6.

(e) Accomplishment of the requirements of paragraph (c) of this AD is not required if the requirements of paragraph (i) of this AD are accomplished within the times specified in paragraph (a) or (b) of this AD, as applicable.

New Requirements of This AD

(f) For airplanes with 50,000 or more total flight hours as of the effective date of this AD, within 20 days after the effective date of this AD, accomplish the requirements of paragraph (i) of this AD.

(g) For airplanes with less than 50,000 total flight hours, but more than 30,000 total flight hours, as of the effective date of this AD, within 30 days after the effective date of this AD, accomplish the requirements of paragraph (i) of this AD.

(h) For airplanes with 30,000 total flight hours or fewer, as of the effective date of this AD, within 90 days after the effective date of this AD, accomplish the requirements of paragraph (i) of this AD.

Detailed Visual Inspection, Corrective Action, and Installation

(i) Perform a detailed visual inspection of the in-tank fuel boost pump wire bundles, and applicable corrective actions; and, except as provided in paragraph (j) of this AD, install sleeving over the wire bundles; in accordance with Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as an intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.

Installation: Possible Deferral

(j) Installation of sleeving over the wire bundles, as required by paragraph (i) of this AD, may be deferred if, within 18 months or 6,000 flight hours, whichever occurs first, after accomplishment of the inspection and applicable corrective actions required by paragraph (i), the following actions are accomplished: Perform a detailed visual inspection of the in-tank fuel boost pump wire bundles, and applicable corrective actions; and install sleeving over the wire bundles; in accordance with Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999.

Repetitive Inspections and Corrective Actions

(k) Repeat the detailed visual inspection and applicable corrective actions required by paragraphs (i) and (j) of this AD at intervals not to exceed 30,000 flight hours.

Alternative Methods of Compliance

(l) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(m) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(n) The actions shall be done in accordance with Boeing All Operator Message (AOM) M–7200–99–04035, dated May 21, 1999, or Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(o) This amendment becomes effective on June 28, 1999, to all persons except those persons to whom it was made immediately effective by telegraphic AD T99–12–52, issued on May 24, 1999, which contained the requirements of this amendment.

Issued in Renton, Washington, on June 15, 1999.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15775 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29594; Amdt. No. 1935]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAP, mailed one every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box, 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The

provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on June 11, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective July 15, 1999*

Shelbyville, IN, Shelbyville Muni, GPS RWY 1, Orig
Shelbyville, IN, Shelbyville Muni, GPS RWY 19, Orig
Manchester, NH, Manchester, ILS RWY 17, Amdt 2
Manchester, NH, Manchester, ILS RWY 35, Amdt 20

** * * Effective August 12, 1999*

Grand Junction, CO Walker Field, VOR RWY 11, Amdt 1A, Cancelled
Savanna, IL, Tri-Township, GPS, RWY 13, Orig
Hallock, MN, Hallock Muni, VOR/DME RWY 31, Amdt 7
Hallock, MN, Hallock Muni, GPS RWY 31, Orig
Columbia, SC, Columbia Metropolitan, VOR/DME RNAV RWY 5, Orig-C, Cancelled
New Braunfels, TX, New Braunfels Muni, NDB–B, Amdt 1
New Braunfels, TX, New Braunfels Muni, GPS RWY 31, Amdt 1
New Braunfels, TX, New Braunfels Muni, GPS RWY 35, Amdt 1
Quincy, WA, Quincy Muni, VOR/DME RNAV OR GPS RWY 27, Orig, Cancelled

** * * Effective September 9, 1999*

Fort Yukon, AK, Fort Yukon, GPS RWY 3, Orig
Fort Yukon, AK, Fort Yukon, GPS RWY 21, Orig
Nome, AK, Nome, VOR/DME RWY 9, Amdt 1
Nome, AK, Nome, VOR RWY 27, Amdt 1
Nome, AK, Nome, LOC/DME BC RWY 9, Amdt 1
Nome, AK, Nome, NDB/DME RWY 2, Amdt 1
Nome, AK, Nome, NDB RWY 27, Amdt 1
Marianna, FL, Marianna Muni, VOR OR GPS–A, Amdt 11
Marianna, FL, Marianna Muni, VOR OR GPS–B, Amdt 4
Marianna, FL, Marianna Muni, NDB OR GPS–C, Amdt 3
Marianna, FL, Marianna Muni, GPS RWY 18, Amdt 1
Chicago, IL, Chicago O'Hare Intl, ILS RWY 22R, Amdt 7
Chicago, IL, Chicago O'Hare Intl, GPS RWY 22R, Orig
Decatur, IL, Decatur, VOR RWY 36, Amdt 15
Decatur, IL, Decatur, LOC BC RWY 24, Amdt 10
Decatur, IL, Decatur, NDB RWY 6, Amdt 6
Decatur, IL, Decatur, ILS RWY 6, Amdt 13
Decatur, IL, Decatur, GPS RWY 6, Orig
Decatur, IL, Decatur, GPS RWY 18, Orig
Decatur, IL, Decatur, GPS RWY 30, Amdt 1
Decatur, IL, Decatur, GPS RWY 36, Orig
Frankfort, IN, Frankfort Muni, NDB RWY 9, Amdt 2
Frankfort, IN, Frankfort Muni, GPS RWY 9, Orig
Frankfort, IN, Frankfort Muni, GPS RWY 27, Amdt 1
Lafayette, IN, Aretz, VOR–C, Amdt 1, Cancelled
Lafayette, IN, Aretz, GPS RWY 25, Orig, Cancelled
Topeka, KS, Forbes Field, VOR/DME OR TACAN RWY 3, Amdt 6
Topeka, KS, Forbes Field, VOR/DME OR TACAN RWY 21, Amdt 7
Topeka, KS, Forbes Field, NDB RWY 13, Amdt 6
Topeka, KS, Forbes Field, NDB RWY 31, Amdt 8
Topeka, KS, Forbes Field, ILS RWY 31, Amdt 9
Topeka, KS, Forbes Field, VOR/DME RNAV RWY 13, Amdt 4
Topeka, KS, Forbes Field, GPS RWY 3, Orig
Topeka, KS, Forbes Field, GPS RWY 13, Orig
Topeka, KS, Forbes Field, GPS RWY 21, Orig
Topeka, KS, Forbes Field, GPS RWY 31, Orig
Laurel, MS, Hesler-Noble Field, VOR/DME OR GPS–A, Amdt 3
Laurel, MS, Hesler-Noble Field, NDB RWY 13, Amdt 7
Laurel, MS, Hesler-Noble Field, GPS RWY 13, Orig
Laurel, MS, Hesler-Noble Field, GPS RWY 31, Orig
Wallace, NC, Henderson Field, VOR/DME–A, Amdt 4, Cancelled
Wallace, NC, Henderson Field, NDB RWY 27, Amdt 1
Wallace, NC, Henderson Field, GPS RWY 9, Orig
Wallace, NC, Henderson Field, GPS RWY 27, Orig
Ashtabula, OH, Ashtabula County, GPS RWY 8, Amdt 1
Ashtabula, OH, Ashtabula County, GPS RWY 26, Orig
Ashtabula, OH, Ashtabula County, VOR/DME RNAV OR GPS RWY 26, Amdt 6, Cancelled
Cadiz, OH, Harrison County, VOR–A, Amdt 1
Cadiz, OH, Harrison County, GPS RWY 13, Orig
Cadiz, OH, Harrison County, GPS RWY 31, Orig

[FR Doc. 99–15591 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29595; Amdt. No. 1936]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them affective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington DC on June 11, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC data	State	City	Airport	FDC No.	SIAP
06/01/99	GA	Pine Mountain	Callaway Gardens-Harris County	9/3721	NDB or GPS RWY 9, AMDT 8...
06/02/99	IN	Connersville	Mettel Field	9/3748	ILS RWY 18, Orig...
06/02/99	IN	Connersville	Mettel Field	9/3749	VOR or GPS–A, Orig...
06/02/99	IN	Connersville	Mettel Field	9/3751	NDB or GPS RWY 18, Orig...
06/02/99	KS	Belleville	Belleville Muni	9/3765	VOR/DME–A, AMDT 3...
06/02/99	OR	Portland	Portland-Hillsboro	9/3771	VOR/DME or GPS–A Orig-A...
06/03/99	UT	Provo	Provo Muni	9/3811	ILS RWY 13, Orig...
06/04/99	MA	Worcester	Worcester Regional	9/3831	VOR/DME RWY 33 Orig-A...
06/04/99	ME	Wiscasset	Wiscasset	9/3841	NDB RWY 25 AMDT 5...
06/04/99	NY	New York	La Guardia	9/3843	ILS RWY 13 Orig-A...
06/04/99	VA	Brookneal	Campbell County	9/3833	VOR/DME or GPS–A Orig...
06/04/99	VA	Moneta	Smith Mountain Lake	9/3832	VOR/DME or GPS RWY 23 Orig...
06/04/99	VA	Tangier	Tangier Island	9/3834	VOR/DME or GPS RWY 2 Orig-A...
06/04/99	WV	Martinsburg	Eastern West Virginia Regional/Shepherd Field.	9/3830	LOC/DME BC RWY 8 AMDT 5...
06/07/99	AZ	St Johns	St Johns Industrial Airpark	9/3931	VOR/DME or GPS–A AMDT 1...
06/07/99	CO	Colorado Springs	City of Colorado Springs Muni	9/3925	ILS/DME RWY 17L, Orig-A...
06/07/99	CO	Grand Junction	Walker Field	9/3926	ILS/DME RWY 11, AMDT 14...
06/07/99	MD	Cumberland	Greater Cumberland Regional	9/3903	LOC–A AMDT 3B...
06/07/99	MD	Cumberland	Greater Cumberland Regional	9/3910	LOC/DME RWY 23 AMDT 5B...
06/07/99	MI	Howell	Livingston County	9/3922	NDB RWY 13, AMDT 1...
06/07/99	MI	Howell	Livingston County	9/3923	GPS RWY 13, Orig...
06/07/99	UT	Ogden	Ogden-Hinckley	9/3915	VOR/DME RNAV or GPS RWY 3, Orig...
06/07/99	UT	Ogden	Ogden-Hinckley	9/3916	VOR RWY 7, AMDT 5...
06/07/99	UT	Ogden	Ogden-Hinckley	9/3918	GPS RWY 7, Orig...
06/07/99	UT	Ogden	Ogden-Hinckley	9/3919	ILS RWY 3, AMDT 3A...
06/08/99	NY	White Plains	Westchester County	9/3939	COPTER ILS/DME 162 Orig...

[FR Doc. 99–15590 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 881

Determination of Active Military Service and Discharge for Civilian or Contractual Groups

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising 32 CFR part 881, *Determination of Active Military Service and Discharge for Civilian or Contractual Groups* of the Code of Federal Regulations to reflect current policies. Part 881 establishes procedures for processing discharge applications of civilians or contractors claiming prior active military service with the U.S. Air Force or a predecessor organization.

EFFECTIVE DATES: June 21, 1999.

ADDRESSES: Mr. John C. Wooten, HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph, TX 78150–4713, 210–565–3769.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Wooten, HQ AFPC/DPPRS, 210–565–3769.

List of Subjects in 32 CFR Part 881

Military, Personnel, Veterans.

For the reasons set forth in the preamble, the Department of the Air Force is revising 32 CFR Part 881 as follows:

PART 881—DETERMINATION OF ACTIVE MILITARY SERVICE AND DISCHARGE FOR CIVILIAN OR CONTRACTUAL GROUPS

Sec.

881.1 Applying for discharge.
881.2 Screening the application.
881.3 Individual service review board.
881.4 Processing the application.
881.5 If an application is approved.
881.6 If an application is denied.
881.7 Discharge upgrade.
881.8 Disposition of documents.
881.9 Form prescribed.

Authority: 38 U.S.C. 106.

§ 881.1 Applying for discharge.

(a) Who may apply.

(1) You may apply for discharge if you were a member of a recognized group. A spouse, next of kin, or legal representative may apply on behalf of a deceased or mentally incompetent person. Proof of death or mental incompetency must accompany such an application.

(b) Where to apply.

(1) Send your application for discharge to the Directorate of Personnel Program Management, Separations Branch, HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713.

(c) How to apply.

(1) Fill out DD Form 2168, *Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty With the Armed Forces of the U.S.*, or write a letter.

(2) Obtain DD Form 2168 from HQ AFPC/DPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713 or the National Personnel Records Center (NPRC), 9700 Page Boulevard, St. Louis, MO 63132.

(3) Make your application as complete as possible; the burden of proof is on you. Provide all available evidence to document your membership in the group and what services you performed.

(d) Documentation may include:

(1) Flight logbooks.

(2) Separation or discharge certificates.

(3) Mission orders.

(4) Identification cards.

(5) Contracts.

(6) Personnel action forms.

(7) Employment records.

(8) Education certificates and diplomas.

(9) Pay vouchers.

(10) Certificates of awards.

(11) Casualty information.

(e) The Air Force will not under any circumstances provide or pay for legal representation for you.

§ 881.2 Screening the applications.

(a) HQ AFPC/DPPRS reviews your application and does one of the following:

(1) Refers your application to another military department and sends you a written notice or a copy of the referral letter.

(2) Returns your application without prejudice if the Secretary of the Air Force has not determined whether members of your group are certified for discharge. You may resubmit the application after the Secretary determines that your group is certified.

(3) Refers applications made by a group (or individuals on behalf of a group) to the Secretary of the Air Force, Manpower, Reserve Affairs and installations, Personnel Council (AFPC), The Pentagon, Washington, DC 20330 for further review. This Part does not cover such applications.

(4) Returns the application to you if it is complete.

(5) Refers all complete applications to the Individual Service Review Board for further consideration.

§ 881.3 Individual Service Review Board.

(a) The Commander, Headquarters Air Force Personnel Center (HQ AFPC/CC) establishes the Individual Service Review Board as necessary.

(b) The Board consists of military members in grade Lieutenant Colonel or higher, and civilian members, grade GS–12 or higher, appointed by the HQ AFPC/CC. Three members constitute a quorum. The senior member acts as Board chairperson. A nonvoting member keeps a record of the Board's actions on an application.

(c) The Directorate of Personnel Program Management, Separations Branch, HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713, provides administrative support to the Board.

§ 881.4 Processing the application.

(a) Individual Service Review Board meets in closed session to consider the application, the evidence submitted, and other relevant information. Applicants or their representatives do not have the right to appear before the Board.

(b) The Board:

(1) Evaluates the evidence.

(2) Decides whether the applicant was a member of a recognized group during dates of its qualification.

(3) Decides whether to approve the application for discharge.

(4) Determines the period and character of the applicant's service.

§ 881.5 If an application is approved.

(a) If the Board approves an application for discharge and determines that it should be honorable, HQ AFPC/DPPRSO issues the applicant a DD Form 256AF, Honorable Discharge, and a DD Form 214, *Certificate of Release or Discharge from Active Duty* under AFI 36–3202, *Separation Documents* (formerly AFR 35–6).

(b) Enter a military grade on the DD Form 214 only if the Administrator of Veterans' Affairs requests it.

(c) Enter a pay grade on the DD Form 214 only for individuals who were killed or received service-related injuries or disease during the approved period of service. For proof of grade criteria, see DoD 1000.20, *Determinations of Active Military Service and Discharge Civilian or Contractual Personnel*, section E, paragraph 3g.

(d) If the Board approves an application for discharge but determines that it should be "under honorable conditions" (general discharge), it forwards the case to the Air Force Personnel Council (AFPC) for final decision. HQ AFPC/DPPRSO, 550 C Street West, Suite 20, Randolph AFB, TX 78150–4722, then issues the appropriate discharge certificate and a DD Form 214 to the applicant.

(e) To appeal the characterization of a discharge, submit DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S.C., Section 1552*, to the Secretary of the Air Force through the Air Force Review Boards Office (SAF/MIBR).

(f) If the member dies or is declared missing during the period of equivalent active military duty, the Directorate of Casualty Matters (HQ AFPC/DPW) issues DD Form 1300, *Report of Casualty*, including military pay grade, to the next of kin or a designated representative, according to DODI 1300.18, *Military Personnel Casualty Matters, Policies and Procedures*, and AFI 36–3002, *Casualty Services* (formerly AFR 30–25).

§ 881.6 If an application is denied.

(a) Once the Board has decided your case, HQ AFPC/DPPRS notifies you:

(1) If the Board denied your application for discharge because there is insufficient evidence to show that you belonged to a qualifying group.

(2) If the Board determines that your service cannot be characterized as "under honorable conditions."

(b) You have 60 days from the date of this notice to submit additional evidence or information to HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713.

(c) If after 60 days you have submitted new evidence, the Board reviews the case again. If the Board determines that your application now merits approval, it proceeds according to paragraph (e).

(d) If you do not submit additional evidence or if, after review, the Board determines that your application should be denied, it forwards the case to the AFPC for final decision.

(e) HQ AFPC/DPPRS notifies you of the final decision.

(f) If your application is denied, the Board returns it to you without prejudicing any later consideration.

§ 881.7 Discharge upgrade.

If you are approved for a General Discharge, you may apply to the Air Force Discharge Review Board for discharge upgrade under AFI 36–3201, *Air Force Discharge Review Board* (formerly AFR 20–10) or to the Air Force Board for Correction of Military Records under AFI 36–2603, *Air Force Board for Correction of Military Records*

(formerly AFR 31–3). SAF/MIBR provides copies of these instructions and application forms to individuals who received a General Discharge.

§ 881.8 Disposition of documents.

(a) File a copy of the application, supporting evidence, and DD Form 214 in the Master Personnel Records Groups maintained at the National Personnel Records Center, St. Louis, MO 63132, for approved cases. Send copies of DD Form 214 to:

(1) The applicant.

(2) The Veterans' Administration.

(3) HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713.

§ 881.9 Form prescribed.

The following form, DD Form 2168, *Application for Discharge of Member or Survivor of Member of a Group Certified To Have Performed Active Duty With the Armed Forces of the U.S.*, is required for processing the stated claims.

Appendix A to Part 881—Glossary of Terms

Active Military Service—See 38 U.S.C. 106.

Civilian or Contractual Group—An organization whose members rendered service to the U.S. Air Force or a predecessor organization during a period of armed conflict. In that capacity the members were considered civilian employees with the Armed Forces or contractors with the U.S. Government, providing direct support to the Armed Forces. An example of such a group is the Women's Air Force Service Pilots, who were Federal civilian employees attached to the U.S. Army Air Force during World War II.

Discharge—Complete severance from the active military service. The discharge includes a reason and characterization of service.

Recognized Group—A group whose service the Secretary of the Air Force has determined was "active duty for the purposes of all laws administered by the Department of Veterans' Affairs," such as VA benefits under 38 U.S.C. 106.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–15428 Filed 6–22–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–99–037]

RIN 2115–AE47

Special Local Regulations: Skull Creek, Hilton Head, SC.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special Local Regulations are being adopted for the Skull Creek July 4th celebration Fireworks Display, Skull Creek, Hilton Head, SC. The event will be held from 9 p.m. to 10 p.m. Eastern Daylight Time (EDT) on July 4, 1999 in Skull Creek, Hilton Head, SC. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective at 8:30 p.m. and terminate at 10:30 p.m. EDT on July 4, 1999

FOR FURTHER INFORMATION CONTACT: Chief D. Jersey at (843) 724–7616.

SUPPLEMENTARY INFORMATION:

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of the inherent danger of the fireworks display during the Skull Creek July 4th celebration, Skull Creek, Hilton Head, SC. In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication, as information concerning the exact time and location of the event were only recently received.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT (44 FR 11040, February 26, 1979)). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulated policies and procedures of DOT is unnecessary. The regulated area encompasses only a 500 foot radius around the fireworks barge on Skull Creek.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. Small entities include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, as the regulations will only be in effect for approximately 2 hours.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations: In consideration of the foregoing, the Coast Guard amends part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[Amended]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. Add temporary § 100.35T–07–037 to read as follows:

§ 100.35T–07–037 Skull Creek July 4th Celebration, Skull Creek, Hilton Head, SC.

(a) *Regulated area.* A regulated area is established for waters in Skull Creek, Hilton Head, SC, encompassing an area within a 500 foot radius from position 32°13′95″N, 089°45′1″W. All coordinates references use Datum: NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Group Charleston, SC.

(c) *Special Local Regulations.* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander.

(d) *Dates.* These regulations become effective at 8:30 p.m. and terminate at 10:30 p.m.

Dated: June 15, 1999.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 99–16007 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 09–99–039]

Drawbridge Operating Regulation; Gulf Intracoastal Waterway, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 384 drawbridge across the Gulf Intracoastal Waterway, mile 237.5 west of Harvey Locks, near Black Bayou, Calcasieu Parish, Louisiana. This deviation allows the LDOTD to maintain the bridge in the closed to navigation position from 7 a.m. until 7 p.m. on June 29, 1999 to allow for the replacement of the draw works.

DATES: This deviation is effective from 7 a.m. until 7 p.m. on June 29, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: Navigation on the Gulf Intracoastal Waterway consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft. The Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the bridge in 33 CFR 117.5 in order to accommodate the replacement of the draw works. This maintenance is essential for the continued operation of the draw span.

This deviation allows the draw of the SR 384 pontoon bridge across the Gulf Intracoastal Waterway, mile 237.5 west of Harvey Locks, near Black Bayou to remain in the closed-to-navigation position from 7 a.m. until 7 p.m. on June 29, 1999. Presently, the draw opens on signal for the passage of vessels.

Dated: June 4, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 99–16008 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–059]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Path Railroad vertical lift bridge, mile 3.0, across the Hackensack River in Jersey City, New Jersey. This deviation authorizes the bridge to remain closed for two one-week periods with a twenty-four hour advance notice requirement for bridge openings on the last two days of each closed period. This action is necessary to facilitate mechanical repairs to the bridge.

DATES: This deviation is effective from June 5, 1999 through June 11, 1999 and from June 26, 1999 through July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Yee, First Coast Guard District, Bridge Branch, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Path Railroad vertical lift bridge, mile 3.0, across the Hackensack River has vertical clearances of 40 feet at mean high water, and 45 feet at mean low water in the closed position, and 135 feet and 140 feet in the fully open position. The operating regulations for the bridge require the bridge to open on signal at all times.

The owner, the Port Authority of New York and New Jersey, requested a temporary deviation from the operating regulations for the Path Railroad Bridge in order to conduct necessary repairs to the bridge. This work is essential for public safety. Repairs to the trunnion in the east tower must be done to ensure continued operation of the bridge. In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to operation as soon as possible.

This deviation to the operating regulations will allow the Path Railroad Bridge, mile 3.0, across the Hackensack River in Jersey City, New Jersey, to operate as follows:

(1) The bridge shall remain in the closed position from June 5 through June 9, 1999 and from June 26 through June 30, 1999.

(2) The bridge shall open on signal from 12:01 a.m., June 10, through 12 midnight, June 11, 1999, and 12:01 a.m., July 1, through 12 midnight, July 2, 1999, if at least 24 hour advance notice is given by calling (917) 649–9543.

This deviation from the normal operating regulations is authorized under 33 CFR 117.35.

Dated: May 25, 1999.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 99–16009 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–040]

Drawbridge Operation Regulation; Bayou Des Allemands, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Burlington Northern Santa Fe Railroad swing span bridge across Bayou Des Allemands, St. Charles Parish, Louisiana. This deviation allows the draw of the Burlington Northern Santa Fe Railroad swing span drawbridge to remain closed to navigation continuously from 7 a.m. on July 12, 1999 through 6 p.m. on July 16, 1999 and from 7 a.m. on July 19, 1999, through 6 p.m. on July 23, 1999.

DATES: This deviation is effective from 7 a.m. on July 12, 1999 through 6 p.m. on July 23, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard

District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Burlington Northern Santa Fe Railroad swing span drawbridge across Bayou Des Allemands, mile 14, at Des Allemands, Louisiana has a vertical clearance of three feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft. The Burlington Northern Santa Fe Railroad requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work, involving replacement of the steel truss members, stringers, floor beams and railroad ties and rails, an extensive but necessary maintenance operation. Presently, the draw opens on signal Monday through Friday from 7 a.m. until 3 p.m. At all other times the draw opens on signal if at least 4 hours notice is given. This work is essential for continued safe operation of the bridge.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the draw of the Burlington Northern Santa Fe Railroad swing span drawbridge to remain closed to navigation from 7 a.m. on July 12, 1999 through 6 p.m. on July 16, 1999 and from 7 a.m. on July 19, 1999 through 6 p.m. on July 23, 1999.

In event of an approaching tropical storm or hurricane, the draw will return to normal operation with 12 hours notice from the Coast Guard. Presently, the draw opens on signal Monday through Friday from 7 a.m. until 3 p.m. At all other times the draw opens on signal if at least 4 hours notice is given.

Dated: June 4, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eight Coast Guard District.

[FR Doc. 99–16010 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–084]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Portal Bridge, mile 5.0, across the Hackensack River at Little Snake Hill, New Jersey. This deviation authorizes the bridge owner to keep the bridge in the closed position for six weekends beginning 10 p.m. on Friday evening through 5 a.m. on Monday morning each weekend. This action is necessary to facilitate timber and mitre rail rehabilitation at the bridge.

DATES: This deviation is effective from 10 p.m. on June 11 through 5 a.m. on June 14, 1999; 10 p.m. on June 18 through 5 a.m. on June 21, 1999; 10 p.m. on June 25 through 5 a.m. on June 28, 1999; 10 p.m. on July 9 through 5 a.m. on July 12, 1999; 10 p.m. on July 16 through 5 a.m. on July 19, 1999; 10 p.m. on July 23 through 5 a.m. on July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Yee, First Coast Guard District, Bridge Branch, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Portal Bridge, mile 5.0, across the Hackensack River has vertical clearances of 23 feet at mean high water, and 28 feet at mean low water in the closed position. The current operating regulations listed at 33 CFR 117.723(c) require the bridge to open on signal; except that, from Monday through Friday, except federal holidays, the draw need not open from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m. At all other times, an opening may not be delayed for more than ten minutes, unless the drawtender and the vessel operator agree to a longer delay.

The bridge owner, AMTRAK, requested a temporary deviation from the operating regulations for the Portal Bridge in order to conduct repairs to the bridge timber and mitre rails. This work will require the bridge to remain in the closed position and not open for vessel traffic during these repairs. Vessels that can pass under the bridge without an opening may do so at all times during the closed periods. This work is essential for public safety and the continued operation of the bridge. In accordance with 33 CFR 117.25(c), this work will be performed with all due speed to return the bridge to normal operation as soon as possible.

This deviation to the operating regulations will allow the Portal Bridge, mile 5.0 across the Hackensack River in Little Snake Hill, New Jersey, to remain in the closed position as follows:

10 p.m. on June 11 through 5 a.m. on June 14, 1999.
10 p.m. on June 18 through 5 a.m. on June 21, 1999.
10 p.m. on June 25 through 5 a.m. on June 28, 1999.
10 p.m. on July 9 through 5 a.m. on July 12, 1999.
10 p.m. on July 16 through 5 a.m. on July 19, 1999.
10 p.m. on July 23 through 5 a.m. on July 26, 1999.

At all other times the draw shall operate as published at 33 CFR 117.723(c). This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 11, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–16011 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–1998–4819]

RIN 2115–AF85

Year 2000 (Y2K) Reporting Requirements for Vessels and Marine Facilities

AGENCY: Coast Guard, DOT.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard establishes temporary regulations to require owners and operators of certain vessels and marine facilities to report Year 2000 (Y2K) preparedness information. These reporting requirements are based on vessel and marine facility-specific Y2K questionnaires issued by the International Maritime Organization (IMO) as IMO Circular Letter 2121. Responses to questionnaires will help Coast Guard Captains of the Port (COTPs) assess vessel and marine facility preparedness for potential Y2K-related malfunctions of equipment and systems. This preparedness information will help COTPs identify potentially hazardous situations during peak Y2K risk periods, enabling them to take appropriate measures to promote port safety and environmental protection.

DATES: This temporary interim rule is effective on July 23, 1999 and expires on March 31, 2000. Comments must reach the Docket Management Facility on or before August 23, 1999. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before August 23, 1999.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, [USCG–1998–4819], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and related material, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this temporary interim rule, call Mr. John Hannon, Project Manager, Office of Compliance, Commandant (G–MOC–2), Coast Guard, telephone 202–267–1464. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG–1998–4819], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard encourages you to file any important comments as quickly as possible. We will consider all comments and material received during the comment period and may change this rule, even prior to the effective date, if necessary, in response to the comments.

Discussion of Regulatory Action

Due to the unique nature of the Year 2000 (Y2K) problem, this rule is being published as a temporary interim rule and is being made effective on July 23, 1999. It will have considerable positive impact on marine safety by establishing a reporting requirement for certain vessels and marine facilities on Y2K preparedness. The rule is temporary in nature—it runs for a defined period of time and is tailored to critical Y2K-related dates. This temporary interim rule is both time sensitive and time critical. The first peak risk period begins at midnight on September 7, 1999 and ends at midnight September 9, 1999, and the last peak risk period begins at midnight on February 27, 2000 and ends at midnight February 29, 2000. It is imperative that, on these dates, Captains of the Port (COTPs) have all information reasonably available to make informed decisions regarding the safety of vessels and marine facilities. To ensure timely data collection and analysis, this rule requires most vessel and marine facility representatives to submit Y2K preparedness information to the Coast Guard by August 1, 1999. In addition, although the last Y2K peak risk period ends at midnight on February 29, 2000, this rule is effective through March 31, 2000. This extra "period of vigilance" provides the Coast Guard with needed flexibility to quickly address potential emerging Y2K problems. Any delay to this rule could result in a significant increase in avoidable risk.

The Coast Guard has been assessing Y2K-related risks, both internally and externally. On December 4, 1998, the Coast Guard published a request for comments in the **Federal Register** [63 FR 67166] seeking comments on how best to address the Y2K problem aboard vessels, at port facilities, and at marine terminals. In the request for comments, the Coast Guard stated that the focus was not on mandating new industry requirements. Rather, the goal was to use existing authority to address Y2K-related risks. The request for comments was summarized in the Marine Safety Newsletter and posted on the Coast Guard Internet site. Thirty-nine responses to this request were received. In January 1999, a meeting of Coast Guard COTPs was held in which they stressed the need for a Y2K risk assessment tool. Based on the substance of the comments and the COTPs' need for a risk assessment tool, the Coast Guard has decided to issue this rule requiring the submission of information needed to use the risk assessment tool.

Further, the international nature of shipping presents additional challenges. At the behest of the U.S. Coast Guard and the United Kingdom Maritime and Coastguard Agency, a meeting was held at the International Maritime Organization (IMO) Headquarters to consider issues relating to the Y2K problem, promote international awareness and knowledge sharing, identify and refine preparedness actions, and promote contingency planning. On March 5, 1999, IMO issued Circular Letter No. 2121 which established, through unanimous agreement, the Year 2000 Code of Good Practice and Key Elements of Y2K contingency plans for ships, ports, and terminals. IMO Circular Letter No. 2121 is available in the docket at the addresses listed under **ADDRESSES**. Part of the Code of Good Practice is an assessment of vessel and facility Y2K preparedness. The forms contained in IMO Circular Letter No. 2121, which are used to determine the level of Year 2000 preparedness, are the questionnaires used in this rule.

Following the issuance of the IMO Circular, the Coast Guard began an effort to develop a risk assessment matrix, and to evaluate the need for supplemental information to that provided through the questionnaires contained in the Circular. This effort was completed in mid-May 1999. Since its issuance, the Circular has received worldwide acceptance, underscoring its applicability as the basis for Y2K

submit an IMO Year 2000 Questionnaire 2 (page 2 of the Vessel Questionnaire).

You may submit one copy of the IMO Year 2000 Questionnaire 2 on behalf of an entire fleet of vessels if the same Y2K preparedness information applies to all vessels within the fleet. However, you must submit a U.S. Supplement 1 (page 3 of the Vessel Questionnaire) for each vessel in the fleet. If any vessel(s) in your fleet has a different level of Y2K preparedness, you must submit a separate Vessel Questionnaire for that vessel(s).

If the Y2K preparedness status of your vessel(s) changes, or your operational plans change, you must submit a new or updated Vessel Questionnaire or updated U.S. Supplement 1 as soon as possible. If you submit updated information during any of the peak risk periods, you must instead submit it to the applicable COTP. This process will ensure that the COTP has the most up-to-date information available for your vessel(s).

Though these regulations require submission of information at least 24 hours prior to your vessel's arrival in the U.S., you are encouraged to submit information as soon as practicable in case corrective actions become necessary. You do not need to provide Y2K preparedness information for a vessel that will not operate in U.S. waters between August 1, 1999 and March 31, 2000.

The Coast Guard is currently putting the final touches on its Y2K questionnaire data processing system and should have the system up and running by July 1, 1999. Please do not submit Vessel Questionnaires or U.S. Supplement 1's to the Coast Guard prior to July 1, 1999.

Y2K reporting requirements for marine facilities. If you are a representative of a marine facility that will operate during any of the peak risk periods, you must submit a Marine Facility Questionnaire so that it is received by the Coast Guard no later than August 1, 1999.

If you are a representative of a marine facility that will not operate during any of the peak risk periods, but will operate during the period August 1, 1999, through March 31, 2000, you must submit a U.S. Supplement 2 (page 3 of the Marine Facility Questionnaire) so that it is received by the Coast Guard no later than August 1, 1999. You do not need to submit an IMO Year 2000 Questionnaire 3 (page 2 of the Marine Facility Questionnaire).

If your facility's Y2K preparedness or operational plans change, you must submit a new or updated Marine Facility Questionnaire or updated U.S. Supplement 2 as soon possible. If your facility's Y2K status or operational plans change during any of the peak risk periods, you must instead submit the updated information to the applicable COTP. This process will ensure that the COTP has the most up-to-date information available for your facility.

The Coast Guard is currently putting the final touches on its Y2K questionnaire data processing system and should have the system up and running by July 1, 1999. Please do not submit Marine Facility Questionnaires or U.S. Supplement 2's to the Coast Guard prior to July 1, 1999.

Regulatory Evaluation

This temporary interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary interim rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Costs

The costs of the rule are the labor costs and Internet, fax, and mail costs required by industry to complete and submit the questionnaires, plus costs to the government. The total cost of the rule to industry and government is $385,262 ($282,262 industry costs plus $103,000 government costs).

Benefits

This rule will provide Coast Guard COTPs with critical Y2K preparedness information on vessels and marine facilities. COTPs will use this information to identify potentially high risk operations during peak risk periods so appropriate measures can be taken to promote safety and environmental protection.

Small Entities

Since we did not publish a notice of proposed rulemaking, this action is not covered by the Regulatory Flexibility Act (5 U.S.C. 601–612). However, we have considered whether this temporary interim rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Small entities that own or operate marine facilities, certain U.S. vessels, or foreign flag vessels that operate on U.S. waters from August 1, 1999, through March 31, 2000 are affected by this rule. Small entities that own or operate uninspected commercial fishing vessels, uninspected passenger vessels, uninspected barges, recreational vessels, and public vessels are exempted from this rule.

The Marine Facility Questionnaire will take each marine facility representative, on average, 8 minutes to complete and submit. At an average unit labor cost of $45 per hour, we estimate the average labor cost to complete and submit the Marine Facility Questionnaire is $5.85 per facility. Each facility representative can submit the completed questionnaire either by Internet, fax, or mail. Delivery costs range from $0 (Internet) to $1.30 (fax). Thus, the total cost to a marine facility, on average, is expected to range from $5.85 to $7.15.

It is expected to take a vessel representative, on average, 13 minutes to complete a Vessel Questionnaire (includes 8 minutes to complete IMO Year 2000 Questionnaire 2 and 5 minutes to complete U.S. Supplement 1). The total cost for a single vessel, on average, is expected to range from $9.45 to $10.75 (depending on delivery costs). For each additional vessel in a fleet, total labor cost increases by $3.60 per vessel, and total delivery cost increases by $0 to $0.65, depending upon method of delivery.

The smaller a company's fleet, the smaller the hour burden and labor cost to complete and submit the Vessel Questionnaire. Because fleet size is a reasonable measure of entity size, we expect small entities to have relatively small fleets. According to the Coast Guard's database, a U.S. vessel company, on average, has 4 vessels. Thus, the total hour burden and total cost of this rule to an entity with an average fleet is 0.47 hours and from $21.15 to $24.58, respectively. We expect the hour burden and cost of this rule to small entities to be less than this average.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary interim rule would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary interim rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Mr. John Hannon at (202) 267–1464.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This temporary interim rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Year 2000 (Y2K) Reporting Requirements for Vessels and Marine Facilities

Summary of the Collection of Information: Approximately 7,821 marine facilities, 42,819 vessels (and 22,151 vessel owners/operators) are affected by this temporary interim rule. We expect 50,640 U.S. Supplements and 19,327 IMO Year 2000 Questionnaires will be submitted by vessel and marine facility representatives. The total hour burden of this rule to respondents is 5,939 hours. The total labor cost of this rule to respondents is estimated to be $267,255. The total delivery/submission cost is estimated to be $15,007. Thus, the total cost to respondents is estimated to be $282,262.

Need for Information: At present, there are no regulations that require either vessels or marine facilities to disclose their Y2K preparedness. The Y2K preparedness information required by this rule will help COTPs assess vessel and marine facility preparedness for potential Y2K-related malfunctions of equipment and systems. This preparedness information will help COTPs identify potentially hazardous situations during peak Y2K risk periods, enabling them to take appropriate measures to promote port safety and environmental protection.

Proposed Use of Information: To help COTPs conduct Y2K risk assessments for their ports. Risk assessments will identify potentially hazardous situations during peak risk periods so appropriate measures can be taken to help ensure port safety and environmental protection.

Description of the Respondents: Marine facilities and vessels that arrive in, operate in, and reside in U.S. ports from August 1, 1999, through March 31, 2000.

Number of Respondents: 7,821 marine facilities and 42,819 vessels (22,151 owners/operators)

Frequency of Response: One questionnaire per marine facility and one questionnaire per vessel (or owner/operator), or as needed.

Burden of Response: According to the Coast Guard's MSMS database, there are 7,821 marine facilities and 42,819 certain U.S. and foreign vessels that arrive in, operate in, and reside at U.S. ports during an eight-month time frame.

A Marine Facility Questionnaire (includes an IMO Year 2000 Questionnaire 3 and U.S. Supplement 2) must be submitted for each marine facility by August 1, 1999. The Coast Guard estimates it will take a facility representative, on average, 8 minutes (0.13 hours) to complete and submit the Marine Facility Questionnaire. The total hour burden to marine facilities is 1,017 hours. At an average unit labor cost of $45 per hour, the total labor cost of this rule to marine facilities is $45,765.

A marine facility representative can submit the required information by Internet, fax, or mail. The Coast Guard estimates the average delivery cost to be $0 if sent by Internet, $1.30 if sent by fax, and $0.33 by U.S. mail. Most marine facilities are connected to the Internet, so the Coast Guard expects 75% of facility representatives to submit the required information by Internet, 20% by fax, and the remaining 5% by mail. The total delivery cost to marine facilities is estimated to be $2,162. Thus, the total cost of this information collection to marine facilities is expected to be $47,927.

According to the Coast Guard's MSMS database, 37,171 U.S. vessels and 8,682 U.S. vessel owning or operating companies are affected by this rule. A U.S. vessel owning or operating company owns, on average, 4 vessels.

Each U.S. company will be required to complete U.S. Supplement 1 (part of the Vessel Questionnaire) for every vessel in its fleet that arrives in, operates in, or resides in U.S. ports from August 1, 1999, through March 31, 2000. We expect that 37,171 U.S. Supplement 1's will be submitted for U.S. vessels. Each company that has a vessel arriving in, operating in, or residing at U.S. waters during any of the three peak risk periods must submit IMO Year 2000 Questionnaire 2. We expect all U.S. vessels will operate in U.S. waters during at least one of the peak risk periods; therefore, we expect that 8,682 Questionnaire 2's will be submitted for U.S. vessels. The Coast Guard estimates it will take, on average, 5 minutes (0.08 hours) to complete and submit U.S. Supplement 1 for every vessel and, on average, 8 minutes (0.13 hours) to complete and submit IMO Year 2000 Questionnaire 2. Thus, the total hour burden to U.S. vessel companies is 4,103 hours (2,974 + 1,129). With an average unit labor cost of $45 per hour, we expect the total labor cost to owners/operators of U.S. vessels is $184,635.

The Coast Guard estimates the average delivery cost for the required vessel information is $0 for Internet submission, $0.65 per page by fax, or $0.53 for 5 pages by U.S. mail. Furthermore, the Coast Guard estimates that a third of the vessel representatives will deliver the required information by Internet, a third by fax, and the remaining third by mail. U.S. vessel representatives will submit a total of 45,853 submissions (37,171 U.S. Supplement 1's and 8,682 IMO Year 2000 Questionnaire 2's). Thus, the total delivery cost for Internet submission is $0; to fax is $9,934, and to mail is $1,534. The total delivery cost to owners/agents of U.S. vessels is $11,468.

The total cost of this rule to U.S. vessels is $196,103.

According to the Coast Guard's MSMS database, 8,475 foreign vessels arrived in U.S. ports in 1998. Given that number, we assume an average of 706 foreign flag vessels per month are affected by this rule. Thus, we expect 5,648 foreign vessels to arrive in U.S. ports from August 1, 1999, through March 31, 2000. Thus, we expect that 5,648 U.S. Supplement 1's will be submitted by foreign flag vessel representatives. (5,509 Supplement 1's will be submitted to Coast Guard Headquarters and 139 Supplement 1's will be submitted to Captains of the Port).

The Coast Guard estimates that 50% of the 5,648 foreign flag vessels will operate in U.S. waters during the peak Y2K risk periods. Thus, we expect that a total of 2,824 IMO Year 2000 Questionnaire 2's will be submitted by foreign flag vessel representatives. (69 will be submitted to Captains of the Port, while 2,755 will be submitted to Coast Guard Headquarters).

The Coast Guard estimates it will take, on average, 5 minutes (0.08 hours) to complete and submit U.S. Supplement 1, and 8 minutes (0.13 hours) to complete and submit IMO Year 2000 Questionnaire 2. Consequently, the total hour burden to foreign flag vessels is 819 hours (452 + 367). At a unit labor cost of $45 per hour, the total labor cost is $36,855.

We expect foreign flag vessel representatives to submit a total of 8,472 submissions (2,824 IMO Year 2000 Questionnaires and 5,648 U.S. Supplement 1's). The Coast Guard estimates that 75% (6,354 pages will be submitted by Internet, and the remaining 25% (2,118 pages) by fax. At a cost of $0 per page to Internet, and $0.65 per page to fax, we estimate the total delivery cost to foreign flag vessels is $1,377.

The total cost of this rule to foreign flag vessels is $38,232 (36,855 + 1,377).

The total cost of this rule to industry is $282,262 [$47,927 (marine facilities) plus $196,103 (U.S. vessels) plus $38,232 (foreign vessels)].

Estimate of Total Annual Burden: The temporary interim rule implementing this collection will be effective from July 23, 1999 through March 31, 2000.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this temporary interim rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. The Coast Guard has received emergency approval from OMB on the collection of information requirements (OMB approval number 2115–0639). This emergency OMB approval is effective for six months. Prior to the expiration of the emergency approval, the Coast Guard will submit the requirements to OMB for renewal.

Federalism

We have analyzed this temporary interim rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This temporary interim rule would not impose an unfunded mandate.

Taking of Private Property

This temporary interim rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary interim rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary interim rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this temporary interim rule and concluded that, under figure 2–1, paragraph (34)(i), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This rule establishes temporary reporting requirements that will assist the Coast Guard in assessing Y2K-related risks. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous material transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 160 as set forth below:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

1. The authority citation for part 160 is amended to read as follows:

Authority: 33 U.S.C. 1223, 1231; 49 CFR 1.46. Subpart D is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

2. Subpart D is added to part 160 effective July 23, 1999 through March 31, 2000, to read as follows:

Subpart D—Year 2000 (Y2K) Preparedness Reporting for Certain Vessels and Marine Facilities

160.301 What is the purpose of this subpart?
160.303 When is this subpart effective?
160.305 To which vessels and facilities does this subpart apply?
160.307 Which vessels and facilities are exempt from this subpart?
160.309 What definitions apply to this subpart?
160.311 What are the Year 2000 (Y2K) peak risk periods?
160.313 What are the Year 2000 (Y2K) reporting requirements for vessels owned in the United States?
160.315 What are the Year 2000 (Y2K) reporting requirements for foreign flag vessels?
160.317 What are the Year 2000 (Y2K) reporting requirements for marine facilities?
Appendix A to Subpart D of Part 160—United States Coast Guard Vessel Questionnaire
Appendix B to Subpart D of Part 160—United States Coast Guard Marine Facility Questionnaire

Subpart D—Year 2000 (Y2K) Preparedness Reporting for Certain Vessels and Marine Facilities

Authority: 33 U.S.C. 1223, 1231; 49 CFR 1.46. Subpart D is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

§ 160.301 What is the purpose of this subpart?

This subpart contains temporary regulations implementing the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) and related statutes. The information collected as a result of these temporary regulations will help Captains of the Port assess vessel and marine facility preparedness for potential Year 2000-related malfunctions.

§ 160.303 When is this subpart effective?

This subpart is effective from July 23, 1999 through March 31, 2000.

§ 160.305 To which vessels and facilities does this subpart apply?

This subpart applies to:

(a) Vessels owned in the United States and foreign flag vessels operating on waters subject to the jurisdiction of the U.S. between August 1, 1999, and March 31, 2000;

(b) Vessels owned in the United States and foreign flag vessels engaged in lightering operations under part 156 of this title on the navigable waters of the United States or in the marine environment;

(c) Vessels inspected under Chapter 33 of Title 46 United States Code; and

(d) Marine facilities as defined in § 160.309.

§ 160.307 Which vessels and facilities are exempt from this subpart?

The following vessels and facilities are exempt from this subpart:

(a) Recreational vessels under 46 U.S.C. 4301 *et seq.*;

(b) Public vessels;

(c) Uninspected commercial fishing vessels;

(d) Uninspected barges;

(e) Foreign flag vessels engaged in innocent passage;

(f) Uninspected passenger vessels; and

(g) Facilities directly operated by the Department of Defense or under the authority of the Department of the Interior.

§ 160.309 What definitions apply to this subpart?

As used in this subpart:

Agent means any person, partnership, firm, company, or corporation engaged by the owner or charterer of the vessel to act in their behalf in matters concerning the vessel.

Facility Representative means the owner, operator, person in charge, or employee of a marine facility who is responsible for the facility's Y2K preparedness.

Marine facility means any facility designated by the following:

(1) 33 CFR 125.07 or 126.01 as a Waterfront Facility;

(2) 33 CFR 126.05 as a Designated Waterfront Facility;

(3) 33 CFR 127.005 as a Waterfront Facility Handling Liquefied Hazardous Gas (LNG) or Liquefied Natural Gas (LNG);

(4) 33 CFR 148.3 as a Deepwater Port;

(5) 33 CFR 154.105 as a Facility, Mobile Facility, or Offshore Facility; or

(6) 33 CFR 154.1020 as a Marine Transportation-related Facility.

Marine Facility Questionnaire means "IMO Year 2000 Questionnaire 3 (IMO circular letter 2121, Appendix 3) and U.S. Supplement 2" for marine facilities.

Midnight means the last moment or end of a calendar day, i.e., 2400 hours local time on a 24-hour clock.

Operating means vessels underway, conducting cargo loading/transfer operations, or carrying passengers, or facilities conducting cargo loading/transfer operations with vessels.

Operator means any person including, but not limited to, an owner, a demise or bareboat charterer, or a contractor who conducts, or is responsible for, the operation of a vessel.

Port or place of departure means any port or place in which a vessel is anchored or moored.

Port or place of destination means any port or place to which a vessel is bound to anchor or moor.

Recreational vessel means a vessel being used only for pleasure as defined in 46 U.S.C. 2101(25).

Vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Vessel owned in the United States means any vessel documented or numbered under the laws of the United States; and, any vessel owned by a citizen of the United States that is not documented or numbered by any nation.

Vessel Questionnaire means "IMO Year 2000 Questionnaire 2 (IMO circular letter 2121, Appendix 2) and U.S. Supplement 1" for vessels.

Vessel Representative means the owner, agent, master, operator, person in charge, or other person responsible for a vessel's or fleet's Y2K preparedness.

Year 2000 (Y2K) preparedness means checking for the proper operation of systems that include, but are not limited to, power generation equipment, steering and propulsion, loading and unloading equipment, and alarms into the next century on all potential risk dates; preparing for the Y2K risk dates which may require updating software and hardware and replacing systems, subsystems, or components; and determining that other computer-based systems' data exchanges internal or external to the company's, vessel's, or marine facility's will also correctly function before, into, and during the Year 2000.

§ 160.311 What are the Year 2000 (Y2K) peak risk periods?

The Y2K peak risk periods are:

(a) Between midnight September 7, 1999, and midnight September 9, 1999;

(b) Between midnight December 30, 1999, and midnight January 1, 2000; and

(c) Between midnight February 27, 2000, and midnight February 29, 2000.

§ 160.313 What are the Year 2000 (Y2K) reporting requirements for vessels owned in the United States?

(a) The vessel representative of a vessel owned in the United States must submit the following information—

(1) If your vessel will operate during any of the peak risk periods identified in § 160.311, you must submit a Vessel Questionnaire, as contained in Appendix A to this subpart, so that it is received by the U.S. Coast Guard no later than August 1, 1999.

(2) If your vessel will not operate during any of the peak risk periods identified in § 160.311, but will operate during the period August 1, 1999, through March 31, 2000, you must submit U.S. Supplement 1 (page 3 of the Vessel Questionnaire as contained in Appendix A to this subpart) so that it is received by the U.S. Coast Guard no later than August 1, 1999.

(b) You must submit the information required by paragraph (a) of this section to the U.S. Coast Guard by one of the following means.

(1) By mail to: United States Coast Guard (MOC/Y2K), c/o The Centech Group, 2000 N. 14th Street, Suite 700, Arlington, VA 22201;

(2) By fax to: 1–800–825–4357; or

(3) Electronically via the Internet at: http://www.ucsg.mil/hq/g-m/y2k.htm.

(c) You may submit one copy of the IMO Year 2000 Questionnaire 2 (page 2 of the Vessel Questionnaire contained in Appendix A to this subpart) on behalf of your entire fleet if the same information provided in the IMO Year 2000 Questionnaire 2 applies to all vessels within the fleet, unless circumstances as described in paragraphs (f) or (g) of this section apply. You must still complete a U.S. Supplement 1 for each vessel operating between August 1, 1999, and March 31, 2000.

(d) For vessels described in paragraph (a)(1) of this section, you must notify the U.S. Coast Guard, through the completion of a Vessel Questionnaire

contained in Appendix A to this subpart. The information required to complete the questionnaire includes:

(1) Name of person completing the questionnaire;

(2) Company contact personnel and address, phone number, facsimile number (if available), and electronic mail address (if available);

(3) Vessel's name;

(4) Vessel's type;

(5) Cargo type;

(6) Vessel's gross tonnage;

(7) Vessel's Flag State;

(8) Vessel's IMO or Official Number;

(9) Captain of the Port zone(s) the vessel may be operating in from August 1, 1999, through March 31, 2000.

(10) Status of Y2K preparedness.

(e) For vessels described in paragraph (a)(2) of this section, you must notify the U.S. Coast Guard, through the completion of a U.S. Supplement 1 (page 3 of the Vessel Questionnaire contained in Appendix A to this subpart). The information required to complete the supplement includes:

(1) Name of person completing the questionnaire;

(2) Company contact personnel and address, phone number, facsimile number (if available), and electronic mail address (if available);

(3) Vessel's name;

(4) Vessel's type;

(5) Cargo type;

(6) Vessel's gross tonnage;

(7) Vessel's Flag State;

(8) Vessel's IMO or Official Number;

(9) Captain of the Port zone(s) the vessel may be operating in from August 1, 1999, through March 31, 2000.

(f) If the Y2K preparedness or operational plans of your vessel(s) changes after the initial submission of a Vessel Questionnaire or U.S. Supplement 1, you must submit an updated or new Vessel Questionnaire or updated U.S. Supplement 1 by the means described in paragraph (b) of this section.

(g) If you submit a new or updated Vessel Questionnaire, as contained in Appendix A to this subpart, during any of the peak risk periods identified in § 160.311, you must submit the information to the Captain of the Port for each port or place of destination the vessel will operate in instead of by one of the means described in paragraph (b) of this section.

§ 160.315 What are the Year 2000 (Y2K) reporting requirements for foreign flag vessels?

(a) The vessel representative of a foreign flag vessel must submit the following information—

(1) If your vessel will operate on waters subject to the jurisdiction of the U.S. during any of the peak risk periods identified § 160.311, you must submit a Vessel Questionnaire, as contained in Appendix A to this subpart, so that it is received by the U.S. Coast Guard no later than 24 hours prior to arrival in a U.S. port or U.S. place of destination.

(2) If your vessel will not operate on waters subject to the jurisdiction of the U.S. during any of the peak risk periods identified in § 160.311, but will operate on waters subject to the jurisdiction of the U.S. during the period August 1, 1999, through March 31, 2000, you must submit U.S. Supplement 1 (page 3 of the Vessel Questionnaire as contained in Appendix A to this subpart) so that it is received by the U.S. Coast Guard no later than 24 hours prior to arrival in a U.S. port or U.S. place of destination.

(b) You must submit the information required by paragraph (a) of this section to the U.S. Coast Guard by one of the following means:

(1) By mail to: United States Coast Guard (MOC/Y2K), c/o The Centech Group 2000 N. 14th Street, Suite 700, Arlington, VA 22201;

(2) By fax to: 1–800–825–4357; or

(3) Electronically via the Internet at: http://www.ucsg.mil/hq/g-m/y2k.htm.

(c) You may submit one copy of the IMO Year 2000 Questionnaire 2 (page 2 of the Vessel Questionnaire contained in Appendix A to this subpart) on behalf of your entire fleet if the same information provided in the IMO Year 2000 Questionnaire 2 applies to all vessels within the fleet, unless circumstances as described in paragraphs (f) or (g) of this section apply. You must still complete a U.S. Supplement 1 for each vessel operating on waters subject to the jurisdiction of the U.S. between August 1, 1999, and March 31, 2000.

(d) For vessels described in paragraph (a)(1) of this section, you must notify the U.S. Coast Guard, through the completion of a Vessel Questionnaire contained in Appendix A to this subpart. The information required to complete the questionnaire includes:

(1) Name of person completing the questionnaire;

(2) Company contact personnel and address, phone number, facsimile number (if available), and electronic mail address (if available);

(3) Vessel's name;

(4) Vessel's type;

(5) Cargo type;

(6) Vessel's gross tonnage;

(7) Vessel's Flag State;

(8) Vessel's IMO or Official Number;

(9) Captain of the Port zone(s) the vessel may be operating in from August 1, 1999, through March 31, 2000.

(10) Status of Y2K preparedness.

(e) For vessels described in paragraph (a)(2) of this section, you must notify the U.S. Coast Guard, through the completion of a U.S. Supplement 1 (page 3 of the Vessel Questionnaire contained in Appendix A to this subpart). The information required to complete the supplement includes:

(1) Name of person completing the questionnaire;

(2) Company contact personnel and address, phone number, facsimile number (if available), and electronic mail address (if available);

(3) Vessel's name;

(4) Vessel's type;

(5) Cargo type;

(6) Vessel's gross tonnage;

(7) Vessel's Flag State;

(8) Vessel's IMO or Official Number;

(9) Captain of the Port zone(s) the vessel may be operating in from August 1, 1999, through March 31, 2000.

(f) If the Y2K preparedness or operational plans of your vessel(s) changes after the initial submission of a Vessel Questionnaire or U.S. Supplement 1, you must submit an updated or new Vessel Questionnaire or updated U.S. Supplement 1 by the means described in paragraph (b) of this section.

(g) If you submit a new or updated Vessel Questionnaire, as contained in Appendix A to this subpart, during any of the peak risk periods identified in § 160.311, you must submit the information to the Captain of the Port for each port or place of destination the vessel will operate in instead of by one of the means described in paragraph (b) of this section.

§ 160.317 What are the Year 2000 (Y2K) reporting requirements for marine facilities?

(a) The facility representative of a marine facility must submit the following information—

(1) If your marine facility will operate during any of the peak risk periods identified § 160.311, you must submit a Marine Facility Questionnaire, as contained in Appendix B to this subpart, so that it is received by the U.S. Coast Guard no later than August 1, 1999.

(2) If your marine facility will not operate during any of the peak risk periods identified in § 160.311, but will operate during the period August 1, 1999, through March 31, 2000, you must submit U.S. Supplement 2 (page 3 of the Marine Facility Questionnaire as contained in Appendix B to this subpart) so that it is received by the U.S. Coast Guard no later than August 1, 1999.

(b) You must submit the information required by paragraph (a) of this section

to the U.S. Coast Guard by one of the following means:

(1) By mail to: United States Coast Guard (MOC/Y2K), c/o The Centech Group, 2000 N. 14th Street, Suite 700, Arlington, VA 22201;

(2) By fax to: 1–800–825–4357; or

(3) Electronically via the Internet at: http://www.ucsg.mil/hq/g-m/y2k.htm.

(c) For marine facilities described in paragraph (a)(1) of this section, you must notify the U.S. Coast Guard, through the completion of a Marine Facility Questionnaire contained in Appendix B to this subpart. The information required to complete the questionnaire includes:

(1) Captain of the Port zone the facility is located in;

(2) Name of facility;

(3) Type(s) of facility;

(4) Name of company;

(5) Name and title of person providing Y2K preparedness information;

(6) Company contact personnel and address, phone number, facsimile number (if available), and electronic mail address (if available); and

(7) Status of Y2K preparedness.

(d) For marine facilities described in paragraph (a)(2) of this section, you must notify the U.S. Coast Guard, through the completion of a U.S. Supplement 2 (page 3 of the Marine Facility Questionnaire contained in Appendix B to this subpart). The information required to complete the supplement includes:

(1) Captain of the Port zone the facility is located in;

(2) Name of facility;

(3) Type(s) of facility;

(4) Name of company;

(5) Name and title of person providing Y2K preparedness information; and

(6) Company contact personnel and address, phone number, facsimile number (if available), and electronic mail address (if available).

(f) If the Y2K preparedness or operational plans of your marine facility changes after the initial submission of a Marine Facility Questionnaire or U.S. Supplement 2, you must submit an updated or new Marine Facility Questionnaire or updated U.S. Supplement 2 by the means described in paragraph (b) of this section.

(g) If you submit a new or updated Marine Facility Questionnaire, as contained in Appendix B to this subpart, during any of the peak risk periods identified in § 160.311, you must submit the information to the Captain of the Port for the place the facility operates in instead of by one of the means described in paragraph (b) of this section.

BILLING CODE 4910–15–P

Appendix A to Subpart D of Part 160—United States Coast Guard Vessel Questionnaire

OMB Approval No. 2115-0639

United States Coast Guard Vessel Questionnaire

IMO Year 2000 Questionnaire 2 and United States Supplement 1

Instructions

- Please complete this vessel questionnaire as fully as possible and submit to the U.S. Coast Guard via:

Mail:	OR	Fax:	OR	
U. S. Coast Guard (G-MOC/Y2K) c/o The Centech Group 2000 N. 14th Street Suite 700 Arlington, VA 22201		1-800-825-4357		Complete the questionnaire and supplement on the Coast Guard's Internet web site at: http://www.uscg.mil/hq/g-m/y2k.htm

- You must submit this vessel questionnaire such that it is received by:

U.S. Vessels:	Foreign Vessels arriving in U.S. Waters:
August 1, 1999	24 hours prior to 1st arrival after August 1, 1999

- The peak risk periods are: Midnight (2400) Sept 7, 1999, through midnight (2400) Sept 9, 1999, **AND** Midnight Dec 30, 1999, through midnight Jan 1, 2000 **AND** Midnight Feb 27, 2000 through midnight February 29, 2000.
- If your vessel or fleet of vessels **will** be operating in U.S. waters during any of the peak risk periods, you must submit at least one vessel questionnaire. If you operate a fleet of vessels which all have the same Y2K preparedness status, you may submit one IMO Questionnaire 2 for all vessels in that fleet. However, you must complete a U.S. Supplement 1 for each individual vessel in your fleet. The following examples are provided:

  1. Company A has 5 vessels and the same answers to the questions in IMO Questionnaire 2 apply to all 5 vessels. Company A must submit 5 U.S. Supplements (1 for each vessel) but may submit one IMO questionnaire 2 that covers all 5 vessels.

  2. Company B also has 5 vessels; however, each vessel has different answers to the questions in the IMO questionnaire. Company B must submit 5 U.S Supplements (1 for each vessel) and 5 IMO Questionnaire 2s (1 for each vessel).

- If your vessel **will not** be operating in U.S. waters during any of the peak risk periods, but **will** be operating in U.S. waters from August 1, 1999, through March 31, 2000, you need only complete the U.S. Supplement 1 and submit it to the Coast Guard via one of the methods outlined above by the appropriate date. You do not have to complete the IMO Year 2000 Questionnaire 2.
- If a vessel's Y2K preparedness or its operational plans change, please submit an updated questionnaire and supplement via mail/fax or update the information via the Internet. **Any new or updated vessel questionnaires submitted during the peak risk periods must be submitted directly to the Captain of the Port (COTP) in whose zone the vessel is operating instead of the locations specified above.** A list of COTP addresses and fax numbers is on page 4.
- **Data items on the IMO Questionnaire 2 marked with an asterisk (*) do not need to be filled in if the questionnaire is being submitted to the U.S. Coast Guard since the U.S. Supplement addresses similar information.**
- For the purpose of this questionnaire, operating means a vessel is underway, conducting cargo loading/transfer operations, or carrying passengers.
- Please DO NOT SUBSTITUTE Y2K-related contingency plans, brochures, policy statements or similar documents for this questionnaire and supplement. If you have questions about the questionnaire and/or supplement, contact the Coast Guard Office of Compliance at: Commandant (G-MOC), 2100 2nd Street SW, Washington DC 20593-0001; tel: 202-267-2978; fax: 202-267-4349.

An agency may not conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection is: 2115-0639.

The Coast Guard estimates it will take averages of 8 minutes to complete and submit Questionnaire 2, and 5 minutes to complete and submit Supplement 1. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G-MOC), U.S. Coast Guard, Washington, DC 20593-001.

IMO YEAR 2000 QUESTIONNAIRE 2

From: (Port Authority/Terminal Operator) United States Coast Guard

To: (Name of Ships) _____

Please answer the following as fully as you can. Your response to this questionnaire will assist the Port Authority/Terminal Operator in deciding whether due care has been exercised in avoiding possible equipment failure caused by Year 2000 electronic date recognition problems, and in putting in place contingency plans to cope with unforeseen failures.

Company: _____

Ship's IMO Number *: _____ **Flag *:** _____

Tonnage (gross) *: _____ **Ship Type (e.g. ro-ro, cargo) *:** _____

Date/time of expected arrival/departure *: _____

	Circle as appropriate	
1) Does your company have a documented Year 2000 policy in place?	YES	NO
2) Has an inventory check to identify and categorize potentially non-compliant equipment been carried out?	YES	NO
3) Has equipment critical to the operational safety of the ship(s) been investigated, and have appropriate remedial actions been carried out with regard to:		
- Navigational Systems?	YES	NO
- Propulsion and Power Generation Systems?	YES	NO
- Cargo Handling Equipment?	YES	NO
- Other Safety Equipment?	YES	NO
4) Are records of Year 2000 compliance, and/or the results of equipment tests/investigations documented?	YES	NO
5) Are the above documents available onboard the ships for inspection by the port authority/terminal operator?	YES	NO
6) Do the ships have a documented Year 2000 specific contingency plan, including competent personnel to implement it?	YES	NO
7) Has the ships' Year 2000 contingency plan been tested and reviewed to confirm its effectiveness?	YES	NO
8) Has the ships' equipment not currently in use, but critical to safe operation of the ship, been checked to establish that its functionality has not been affected?	YES	NO
9) Has all necessary information been exchanged and agreed with the above named port/terminal on any additional Year 2000 specific requirements applicable to ship operations in the port?	YES	NO

Name of the Master *: _____

Signature of the Master *: _____

Date: _____

UNITED STATES SUPPLEMENT 1 TO IMO YEAR 2000 QUESTIONNAIRE 2

In addition to the IMO Year 2000 Questionnaire 2, please answer the following as fully as you can for each individual vessel arriving in, operating in, or residing at U.S. ports from August 1, 1999 through March 31, 2000.

Name of the Person Completing Questionnaire: _____

Address: _____

_____

_____

_____

Phone: _____

Fax: _____

Email: _____

Vessel Name: _____

Vessel Type (check one):

___ Oil Tanker (single hull) ___ Oil Tanker (double hull) ___ Ore/Bulk/Oil (OBO) ___ LPG Carrier ___ LNG Carrier ___ Chemical Tanker

___ Bulk Carrier ___ Containership ___ Ro-Ro Cargo ___ General Cargo ___ Passenger ___ Offshore Supply

___ MODU Other: _____

Cargo (check one):

___ Cargo of Particular Hazard (33 CFR 126) ___ Liquefied Hazardous Gas (LHG) ___ Bulk HAZMAT (liquid or solid) ___ Bulk Oil

___ 150 or more passengers ___ 7 to 149 passengers ___ 1 to 6 passengers ___ Other

Gross Tonnage: _____ **Flag:** _____ **IMO or Official Number:** _____

Captain of the Port zone you may be operating in (check "yes" for the dates that the vessel may be in each COTP zone. If needed, attach a separate sheet to list additional COTP zones. Refer to page 4 for a list of COTP zones):

Captain of the Port Zone:	Sept 7, 1999 – Sept 9, 1999	Dec 30, 1999 – Jan 1, 2000	Feb 27, 2000 – Feb 29, 2000	Any other dates Aug 1, 1999 - Mar 31, 2000
	___ Yes	___ Yes	___ Yes	___ Yes
	___ Yes	___ Yes	___ Yes	___ Yes
	___ Yes	___ Yes	___ Yes	___ Yes
	___ Yes	___ Yes	___ Yes	___ Yes
	___ Yes	___ Yes	___ Yes	___ Yes

Please answer the following question	Circle as appropriate
1) If you were required to complete IMO Questionnaire 2 and answered yes to question #6 of that questionnaire, does the contingency plan call for the following when the vessel is underway:	
• Two or more additional trained crew on board during the risk periods?	YES NO
• Anchor detail set and anchor ready for letting go during the risk periods?	YES NO
• Manning the engine room with engine and generator alarm systems in manual override mode during the risk periods?	YES NO
• Setting the steering in manual mode (disengaging automatic pilot) during the risk periods?	YES NO
• Enabling the ship for mechanical steering at rudder post and manning the steering compartment during the risk periods?	YES NO

Marine Safety Offices (MSOs)/Captains of the Port

MSO Portland 103 Commercial Street Portland, ME 04101-4726 PHONE: (207) 780-3681 FAX: (207) 780-3567	MSO Boston 455 Commercial Street Boston, MA 02109-1045 PHONE: (617) 223-3435 FAX: (617) 223-3032	MSO Providence 20 Risho Avenue East Providence, RI 02914-1208 PHONE: (401) 435-2350 FAX: (401) 435-2382	Group/MSO Long Island Sound 120 Woodward Avenue New Haven, CT 06512-3698 PHONE: (203) 468-4401 FAX: (203) 468-4445
USCG Activities New York Prevention/Compliance Division 212 Coast Guard Drive Staten Island, NY 10305 PHONE: (718) 354-4207 FAX: (718) 354-4301	Coast Guard Activities Baltimore 2401 Hawkins Point Road Baltimore, MD 21226-1791 PHONE: (410) 576-2693 FAX: (410) 962-0930	MSO Hampton Roads Norfolk Federal Building, 200 Granby Street Norfolk, VA 23510-1888 PHONE: (757) 441-3300 FAX: (757) 441-3262	MSO Wilmington 272 N. Front Street, Suite 500 Wilmington, NC 28401-3907 PHONE: (910) 815-4895 ext. 107 FAX: (910) 815-4523
MSO/Group Philadelphia 1 Washington Avenue Philadelphia, PA 19147-4395 PHONE: (215) 271-4806 FAX: (215) 271-4833	MSO Miami P.O. Box 01-6940 Miami, FL 33101-6940 PHONE: (305) 535-8705 FAX: (305) 535-8742	MSO Jacksonville 7820 Arlington Expressway, Suite 400 Jacksonville, FL 32211-7445 PHONE: (904) 232-2640 ext. 106 FAX: (904) 232-2664	MSO Tampa 155 Columbia Drive Tampa, FL 33606-3598 PHONE: (813) 228-2189 FAX: (813) 228-2399
MSO Savannah 222 W. Ogelthorpe Avenue, Suite 402 Savannah, GA 31401-3606 PHONE: (912) 652-4353 FAX: (912) 652-4180	MSO Charleston 196 Tradd Street Charleston, SC 29401-1899 PHONE: (843) 724-7684 FAX: (843) 720-7750	MSO San Juan P.O. Box 9023666 San Juan, PR 00902-3666 PHONE: (787) 729-6800 ext.303 FAX: (787) 729-6648	MSO New Orleans 1615 Poydras Street New Orleans, LA 70112-1254 PHONE: (504) 589-4256 FAX: (504) 589-7470
MSO Morgan City 800 David Drive Morgan City, LA 70380-1304 PHONE: (504) 380-5312 FAX: (504) 385-1687	MSO Corpus Christi 400 Mann Street, Suite 210 Corpus Christi, TX 78401-2046 PHONE: (512) 888-3162 FAX: (512) 888-3115	MSO Houston-Galveston P.O. Box 446 Galena Park, TX 77547-0446 PHONE: (713) 671-5100 ext. 0 FAX: (713) 671-5177	MSO Mobile P.O. Box 2924 150 N. Royal Street Mobile, AL 36652-2924 PHONE: (334) 441-5121 FAX: (334) 441-6169
MSO Port Arthur Federal Building 2875 Jimmy Johnson Boulevard Port Arthur , TX 77640-2099 PHONE: (409) 723-6509 ext. 251 FAX: (409) 723-6534	MSO St. Louis 1222 Spruce Street, Suite 8.104E St. Louis, MO 63103-2835 PHONE: (314) 539-3091 ext. 281 FAX: (314) 539-2659	MSO Huntington 1415 6th Avenue Huntington, WV 25701-2420 PHONE: (304) 529-5432 FAX: (304) 529-5051	MSO Louisville 600 Martin Luther King, Jr. Pl., Room 360 Louisville, KY 40202-2230 PHONE: (502) 582-5194 ext. 39 FAX: (502) 582-6825
MSO Memphis 200 Jefferson Avenue, Suite 1301 Memphis, TN 38103-2300 PHONE: (901) 544-3941 ext. 226 FAX: (901) 544-3886	MSO Paducah 225 Tully Street Paducah, KY 42003-1582 PHONE: (502) 442-1621 FAX: (502) 442-1633	MSO Pittsburgh Kossman Building, Suite 1150 100 Forbes Avenue Pittsburgh, PA 15222-1371 PHONE: (412) 644-5808 ext. 115 FAX: (412) 644-3479	MSO Buffalo 1 Fuhrman Boulevard Buffalo, NY 14230 PHONE: (716) 843-9570 FAX: (716) 843-9571
MSO Chicago 215 W. 83rd Street, Suite D Burr Ridge, IL 60521 PHONE: (630) 986-2155 FAX: (630) 986-2120/2174	MSO Cleveland 1055 E. 9th Street Cleveland, OH 44114 PHONE: (216) 522-4405 FAX: (216) 522-3290	MSO Detroit 110 Mt. Elliot Avenue Detroit, MI 48207 PHONE: (313) 568-9580 FAX: (313) 568-9581	MSO Duluth 600 S. Lake Avenue, Canal Park Duluth, MN 55802-2352 PHONE: (218) 720-5286 FAX: (218) 720-5258
MSO Milwaukee 2420 S. Lincoln Memorial Drive Milwaukee, WI 53207-1997 PHONE: (414) 747-7155 FAX: (414) 747-7890	MSO Toledo Federal Building 234 Summit Street, Room 501 Toledo, OH 43604 PHONE: (419) 259-6372 FAX: (419) 259-6374	MSO Sault Ste. Marie 337 Water Street Sault Ste. Maire, MI 49783 PHONE: (906) 635-3223 FAX: (906) 635-3321	MSO Long Beach 165 N. Pico Avenue Long Beach, CA 90802-1096 PHONE: (562) 980-4447 FAX: (562) 980-4413
MSO San Diego 2716 N. Harbor Drive San Diego, CA 92101-1064 PHONE: (619) 683-6477 FAX: (619) 683-6504	MSO San Francisco Building 14, Coast Guard Island Alameda, CA 94501-5100 PHONE: (510) 437-3082 FAX: (510) 437-3072	MSO Puget Sound 1519 Alaskan Way South, Building 1 Seattle, WA 98134-1192 PHONE: (206) 217-6232 FAX: (206) 217-6345	MSO Portland 6767 N. Basin Avenue Portland, OR 97217-3992 PHONE: (503) 240-9301 FAX: (503) 240-9302
MSO Honolulu 433 Ala Moana Boulevard Honolulu, HI 96813-4909 PHONE: (808) 522-8252 FAX: (808) 522-8271	MARSEC/MSO Guam PSC 455, Box 176 FPO AP, 95-6540-1056 PHONE: (671) 339-2001 ext.164 FAX: (671) 339-2005	MSO Juneau 2760 Sherwood Lane, Suite 2A Juneau, AK 99801-8545 PHONE: (907) 463-2464 FAX: (907) 463-2445	MSO Anchorage 510 L Street, Suite 100 Anchorage, AK 99501-1946 PHONE: (907) 271-6724 FAX: (907) 271-6751
MSO Valdez P.O. Box 486 105 South Clifton Valdez, AK 99686-0486 PHONE: (907) 835-7205 FAX: (907) 835-7207			

The geographic boundaries for all Captain of the Port Zones are contained in 33 CFR part 3.

Appendix B to Subpart D of Part 160—United States Coast Guard Marine Facility Questionnaire

OMB Approval No. 2115-0639

United States Coast Guard Marine Facilities Questionnaire

[IMO Year 2000 Questionnaire 3 and United States Supplement 2]

Instructions

- Please complete this marine facility questionnaire as fully as possible and submit to the U.S. Coast Guard via:

Mail: U. S. Coast Guard (G-MOC/Y2K) c/o The Centech Group 2000 N. 14th Street Suite 700 Arlington, VA 22201	OR	**Fax:** 1-800-825-4357	OR	Complete the questionnaire and supplement on the Coast Guard's Internet web site at: **http://www.uscg.mil/hq/g-m/y2k.htm**

- You must submit all portions of this questionnaire required for your facility so that they are received by **August 1, 1999**. If your facility **will not** conduct cargo loading/transfer operations on any of the peak risk periods, but will be operating at any time between August 1, 1999, and March 31, 2000, you need only complete the U.S. Supplement 2 and submit it to the Coast Guard via one of the methods outlined above. You **do not** have to complete the IMO Year 2000 Questionnaire 3.
- If your facility will not be operating at any time between August 1, 1999, and March 31, 2000, you need not submit any portion of this questionnaire.
- The peak risk periods are:
  Midnight (2400) September 7, 1999, through midnight (2400) September 9, 1999; and
  Midnight (2400) December 30, 1999, through midnight (2400) January 1, 2000; and
  Midnight (2400) February 27, 2000, through midnight (2400) February 29, 2000.
- If your Y2K preparedness changes or your operational plans change, you must submit an updated questionnaire(s) as soon as possible.
- Any updated or new questionnaires submitted during the peak risk periods must be submitted to the Captain of the Port of the zone in which the facility is operating instead of the locations specified above. A list of Captain of the Port addresses and fax numbers is provided on page 4.
- **Data items on the IMO Questionnaire 3 marked with an asterisk (*) do not need to be filled in if the questionnaire is being submitted to the U.S. Coast Guard since the U.S. Supplement addresses similar information.**
- Please **DO NOT SUBSTITUTE** Y2K-related contingency plans, brochures, policy statements or similar documents for this questionnaire and supplement.
- If you have questions about this questionnaire, contact the Coast Guard Office of Compliance at Commandant (G-MOC), 2100 2nd Street, SW, Washington, D.C. 20593-0001; tel: 202-267-2978; fax: 202-267-4394.

An agency may not conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection is 2115-0639. The Coast Guard estimates it will take, on average, 8 minutes to complete and submit both Questionnaire 3 and Supplement 2. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G-MOC), U.S. Coast Guard, Washington, DC 20593-001.

IMO YEAR 2000 QUESTIONNAIRE 3

From: United States Coast Guard

To: (Marine Facility/Terminal Operator) _____

Date/time of expected arrival/departure *: _____

It is anticipated that the above ship will/may require to navigate or handle cargo within your port on or around the above dates. Please complete the following questions concerning the Year 2000 preparations made by the Port Authority/Terminal Operator.

	Circle as appropriate	
1) Does the facility have a documented Year 2000 policy in place?	YES	NO
2) Has an inventory check to identify and categorize non-compliant equipment been carried out?	YES	NO
3) Has all equipment critical to the safety of navigation/cargo handling been assessed for Year 2000 compliance?	YES	NO
4) Has facility personnel investigated potential problems and solutions?	YES	NO
5) Where non-compliant equipment has not been replaced or upgraded, have alternative systems or manual operations been established?	YES	NO
6) Has the facility sought to establish whether its critical suppliers, utilities and external services are Year 2000 compliant?	YES	NO
7) Is there serious doubt as to the availability of any supply, utility or service which is critical to safety?	YES	NO
8) Does the facility have operational contingency plans in place to cope with unforeseen Year 2000 equipment malfunctions?	YES	NO
9) Have these contingency plans been tested and reviewed to confirm their effectiveness?	YES	NO
10) Has all necessary information been exchanged and agreed with ships/shipping company on any additional Year 2000 specific requirements applicable to port/terminal/facility operations?	YES	NO

Name: _____
Position*: _____
Contact Address*: _____
_____

Signature*: _____
Date: _____

UNITED STATES SUPPLEMENT 2 TO IMO YEAR 2000 QUESTIONNAIRE 3

In addition to the IMO Year 2000 Questionnaire3, please answer the following as fully as you can for each Marine Facility operating from August 1, 1999 through March 31, 2000.

Marine Safety Office/Captain of the Port zone located in: _____

Name of Facility: _____

Type(s) of Facility: _____

Name of Company: _____

Name of Person completing questionnaire: _____

Your Title: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Phone: _____ **FAX:** _____ **E-mail:** _____

Please indicate (by circling) if this is an: Initial/Original Questionnaire Updated Questionnaire

Please answer the following questions.	**Circle as appropriate**
1) Will the facility conduct cargo loading/transfer operations on the following dates of concern? • Midnight September 7 – midnight September 9, 1999 • Midnight December 30, 1999 – midnight January 1, 2000 • Midnight February 27 – midnight February 29, 2000 **If you answer "yes" or "maybe" for any date, please complete IMO Year 2000 Questionnaire 3. If you answer "no" for all dates, stop here, you are not required to complete the IMO questionnaire, but you must still submit this supplement to the United States Coast Guard per the instructions on page 1. If, in the future, one of your answers changes from "no" to "yes" or "maybe," submit an updated questionnaire.**	YES MAYBE NO YES MAYBE NO YES MAYBE NO
2) Where potential problems and solutions have been identified, has the facility carried out appropriate remedial actions?	YES NO

Marine Safety Offices (MSOs)/Captains of the Port

MSO Portland 103 Commercial Street Portland, ME 04101-4726 PHONE: (207) 780-3681 FAX: (207) 780-3567	MSO Boston 455 Commercial Street Boston, MA 02109-1045 PHONE: (617) 223-3435 FAX: (617) 223-3032	MSO Providence 20 Risho Avenue East Providence, RI 02914-1208 PHONE: (401) 435-2350 FAX: (401) 435-2382	Group/MSO Long Island Sound 120 Woodward Avenue New Haven, CT 06512-3698 PHONE: (203) 468-4401 FAX: (203) 468-4445
USCG Activities New York Prevention/Compliance Division 212 Coast Guard Drive Staten Island, NY 10305 PHONE: (718) 354-4207 FAX: (718) 354-4301	Coast Guard Activities Baltimore 2401 Hawkins Point Road Baltimore, MD 21226-1791 PHONE: (410) 576-2693 FAX: (410) 962-0930	MSO Hampton Roads Norfolk Federal Building, 200 Granby Street Norfolk, VA 23510-1888 PHONE: (757) 441-3300 FAX: (757) 441-3262	MSO Wilmington 272 N. Front Street, Suite 500 Wilmington, NC 28401-3907 PHONE: (910) 815-4895 ext. 107 FAX: (910) 815-4523
MSO/Group Philadelphia 1 Washington Avenue Philadelphia, PA 19147-4395 PHONE: (215) 271-4806 FAX: (215) 271-4833	MSO Miami P.O. Box 01-6940 Miami, FL 33101-6940 PHONE: (305) 535-8705 FAX: (305) 535-8742	MSO Jacksonville 7820 Arlington Expressway, Suite 400 Jacksonville, FL 32211-7445 PHONE: (904) 232-2640 ext. 106 FAX: (904) 232-2664	MSO Tampa 155 Columbia Drive Tampa, FL 33606-3598 PHONE: (813) 228-2189 FAX: (813) 228-2399
MSO Savannah 222 W. Ogelthorpe Avenue, Suite 402 Savannah, GA 31401-3606 PHONE: (912) 652-4353 FAX: (912) 652-4180	MSO Charleston 196 Tradd Street Charleston, SC 29401-1899 PHONE: (843) 724-7684 FAX: (843) 720-7750	MSO San Juan P.O. Box 9023666 San Juan, PR 00902-3666 PHONE: (787) 729-6800 ext.303 FAX: (787) 729-6648	MSO New Orleans 1615 Poydras Street New Orleans, LA 70112-1254 PHONE: (504) 589-4256 FAX: (504) 589-7470
MSO Morgan City 800 David Drive Morgan City, LA 70380-1304 PHONE: (504) 380-5312 FAX: (504) 385-1687	MSO Corpus Christi 400 Mann Street, Suite 210 Corpus Christi, TX 78401-2046 PHONE: (512) 888-3162 FAX: (512) 888-3115	MSO Houston-Galveston P.O. Box 446 Galena Park, TX 77547-0446 PHONE: (713) 671-5100 ext. 0 FAX: (713) 671-5177	MSO Mobile P.O. Box 2924 150 N. Royal Street Mobile, AL 36652-2924 PHONE: (334) 441-5121 FAX: (334) 441-6169
MSO Port Arthur Federal Building 2875 Jimmy Johnson Boulevard Port Arthur , TX 77640-2099 PHONE: (409) 723-6509 ext. 251 FAX: (409) 723-6534	MSO St. Louis 1222 Spruce Street, Suite 8.104E St. Louis, MO 63103-2835 PHONE: (314) 539-3091 ext. 281 FAX: (314) 539-2659	MSO Huntington 1415 6th Avenue Huntington, WV 25701-2420 PHONE: (304) 529-5432 FAX: (304) 529-5051	MSO Louisville 600 Martin Luther King, Jr. Pl., Room 360 Louisville, KY 40202-2230 PHONE: (502) 582-5194 ext. 39 FAX: (502) 582-6825
MSO Memphis 200 Jefferson Avenue, Suite 1301 Memphis, TN 38103-2300 PHONE: (901) 544-3941 ext. 226 FAX: (901) 544-3886	MSO Paducah 225 Tully Street Paducah, KY 42003-1582 PHONE: (502) 442-1621 FAX: (502) 442-1633	MSO Pittsburgh Kossman Building, Suite 1150 100 Forbes Avenue Pittsburgh, PA 15222-1371 PHONE: (412) 644-5808 ext. 115 FAX: (412) 644-3479	MSO Buffalo 1 Fuhrman Boulevard Buffalo, NY 14230 PHONE: (716) 843-9570 FAX: (716) 843-9571
MSO Chicago 215 W. 83rd Street, Suite D Burr Ridge, IL 60521 PHONE: (630) 986-2155 FAX: (630) 986-2120/2174	MSO Cleveland 1055 E. 9th Street Cleveland, OH 44114 PHONE: (216) 522-4405 FAX: (216) 522-3290	MSO Detroit 110 Mt. Elliot Avenue Detroit, MI 48207 PHONE: (313) 568-9580 FAX: (313) 568-9581	MSO Duluth 600 S. Lake Avenue, Canal Park Duluth, MN 55802-2352 PHONE: (218) 720-5286 FAX: (218) 720-5258
MSO Milwaukee 2420 S. Lincoln Memorial Drive Milwaukee, WI 53207-1997 PHONE: (414) 747-7155 FAX: (414) 747-7890	MSO Toledo Federal Building 234 Summit Street, Room 501 Toledo, OH 43604 PHONE: (419) 259-6372 FAX: (419) 259-6374	MSO Sault Ste. Marie 337 Water Street Sault Ste. Maire, MI 49783 PHONE: (906) 635-3223 FAX: (906) 635-3321	MSO Long Beach 165 N. Pico Avenue Long Beach, CA 90802-1096 PHONE: (562) 980-4447 FAX: (562) 980-4413
MSO San Diego 2716 N. Harbor Drive San Diego, CA 92101-1064 PHONE: (619) 683-6477 FAX: (619) 683-6504	MSO San Francisco Building 14, Coast Guard Island Alameda, CA 94501-5100 PHONE: (510) 437-3082 FAX: (510) 437-3072	MSO Puget Sound 1519 Alaskan Way South, Building 1 Seattle, WA 98134-1192 PHONE: (206) 217-6232 FAX: (206) 217-6345	MSO Portland 6767 N. Basin Avenue Portland, OR 97217-3992 PHONE: (503) 240-9301 FAX: (503) 240-9302
MSO Honolulu 433 Ala Moana Boulevard Honolulu, HI 96813-4909 PHONE: (808) 522-8252 FAX: (808) 522-8271	MARSEC/MSO Guam PSC 455, Box 176 FPO AP, 95-6540-1056 PHONE: (671) 339-2001 ext.164 FAX: (671) 339-2005	MSO Juneau 2760 Sherwood Lane, Suite 2A Juneau, AK 99801-8545 PHONE: (907) 463-2464 FAX: (907) 463-2445	MSO Anchorage 510 L Street, Suite 100 Anchorage, AK 99501-1946 PHONE: (907) 271-6724 FAX: (907) 271-6751
MSO Valdez P.O. Box 486 105 South Clifton Valdez, AK 99686-0486 PHONE: (907) 835-7205 FAX: (907) 835-7207			

The geographic boundaries for all Captain of the Port Zones are contained in 33 CFR part 3.

Dated: June 15, 1999.

R.C. North,

Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–15985 Filed 6–18–99; 3:21 pm]

BILLING CODE 4910–15–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[DA 99–1133]

Closed Captioning and Video Description of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document contains an editorial amendment to the Commission's regulations concerning closed captioning. The amendment eliminates an inadvertent reference to a term used as a trademark.

DATES: Effective June 23, 1999.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418–1720.

SUPPLEMENTARY INFORMATION: This is the full text of the Order of the Commission's Managing Director, DA 99–1133, adopted on June 8, 1999, and released June 10, 1999.

1. By this order, we correct the language of 47 CFR 79.1, the Commission's closed captioning rule. Paragraph 79.1(e)(3) deals with the acceptability of using a method of captioning referred to in the rule as the: "so-called 'electronic newsroom' or ENR technique." The Commission intended by this term to refer to a generic captioning methodology that generates captions using the output of news script computer or teleprompter systems. See Closed Captioning and Video Description of Video Programming, 13 FCC Rcd 19973, 19989 ¶ 32 (1998), 63 FR 55959 (October 20, 1998). While it appears that the terms "electronic newsroom" and "electronic newsroom captioning" are indeed generic terms, it has come to our attention that the rule's reference to "ENR" may be confused with the term "ENR" used by Comprompter, Inc. of La Crosse, Wisconsin as the trademark for one of its products. To eliminate any possible confusion, we will amend the rule accordingly.

2. Accordingly, it is Ordered, Pursuant to the authority delegated under 47 CFR 0.231(b), 47 CFR Part 79 is amended effective June 23, 1999.

List of Subjects in 47 CFR Part 79

Cable television, Closed captioning, Television.

Federal Communications Commission

Mary Beth Richards

Deputy Managing Director

Rule Change

For the reasons discussed in the preamble, Part 79 of the Code of Federal regulations is amended as follows:

PART 79—CLOSED CAPTIONING OF VIDEO PROGRAMMING

1. The authority citation for Part 79 continues to read as follows:

Authority: 47 U.S.C. 613.

2. Section 79.1(e)(3) is revised to read as follows:

§ 79.1 Closed captioning of video programming.

* * * * *

(e)***

(3) Live programming or repeats of programming originally transmitted live that are captioned using the so-called "electronic newsroom technique" will be considered captioned, except that effective January 1, 2000, and thereafter, the major national broadcast television networks (i.e., ABC, CBS, Fox and NBC), affiliates of these networks in the top 25 television markets as defined by Nielsen's Designated Market Areas (DMAs) and national nonbroadcast networks serving at least 50% of all homes subscribing to multichannel video programming services shall not count electronic newsroom captioned programming towards compliance with these rules. The live portions of noncommercial broadcasters' fundraising activities that use automated software to create a continuous captioned message will be considered captioned;

* * * * *

[FR Doc. 99–15958 Filed 6–22–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 061699C]

Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for Summer Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest for Summer period.

SUMMARY: NMFS announces that the scup commercial quota available in the Summer period to the coastal states from Maine to North Carolina has been harvested. Commercial vessels may not land scup in the northeast region for the remainder of the 1999 Summer quota period (through October 31, 1999). Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing scup in these states.

DATES: Effective 0001 hours June 28, 1999, through October 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into three quota periods, based upon percentages of the annual quota. The Summer commercial quota (May through October) is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.120.

The initial total commercial quota for scup for the 1999 calendar year was set equal to 2,534,000 lb (1,149,403 kg)(63 FR 72203, December 31, 1998). The Summer period quota, which is equal to 38.95 percent of the annual commercial quota (minus a discard estimate), was set at 986,993 lb (447,692 kg).

Section 648.121 requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the commercial scup quota for each quota period, and based upon dealer reports, state data, and other available information, to determine when the commercial quota has been harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the scup commercial quota has been harvested and no commercial quota is available for landing scup for the remainder of the Summer period. The Regional Administrator has determined, based upon dealer reports and other available information, that the scup commercial quota for the 1999 Summer period has been harvested.

The regulations at § 648.4(b) provide that Federal scup moratorium permit holders agree as a condition of the permit not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the scup is available. The Regional Administrator has determined that the Summer period for scup no longer has commercial quota available. Therefore, effective 0001 hours June 28, 1999, further landings of scup in coastal states from Maine through North Carolina, by vessels holding Federal scup moratorium permits are prohibited through October 31, 1999. The Winter II period for commercial scup harvest will open on November 1, 1999. Effective 0001 hours June 28, 1999, Federally permitted dealers are also advised that they may not purchase scup from Federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the Summer period (through October 31, 1999).

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 17, 1999.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15831 Filed 6–17–99; 4:06 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990113011–9011–01; I.D. 010699A]

RIN 0648–AM06

Fisheries of the Exclusive Economic Zone Off Alaska; Observer and Inseason Management Requirements for Pollock Catcher/Processors; Extension of Expiration Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; extension of expiration date.

SUMMARY: NMFS extends the expiration date of an emergency interim rule that established additional observer coverage requirements for the 20 catcher/processor (C/P) vessels and that established inseason authority to manage the non-pollock harvest limitations required under the American Fisheries Act (AFA) for these 20 vessels. The emergency interim rule that is effective from January 20, 1999, through July 19, 1999, is extended through December 31, 1999. This action is necessary to monitor and manage the harvest of the listed C/Ps and is intended to comply with the statutory provisions promulgated under the AFA for these vessels in 1999.

DATES: Effective June 23, 1999, the expiration date of the emergency interim rule published January 22, 1999 (64 FR 3435), is extended from July 19, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: On October 20, 1998, the President signed the AFA into law. The AFA specifies the manner in which the Bering Sea and Aleutian Islands management area (BSAI) pollock fishery must be managed, as well as measures to limit activity of pollock vessels in non-pollock fisheries. Section 208(e)(1) through (20) of the AFA lists C/Ps that are subject to specific harvest limitations for pollock and non-pollock species starting in 1999. These harvest limitations were established as part of the 1999 groundfish specification process authorized under regulations at 50 CFR 679.20 (64 FR 50, January 4, 1999, and 64 FR 12103, March 11, 1999). NMFS published an emergency interim rule in the **Federal Register** on January 22, 1999 (64 FR 3435), that implemented additional observer coverage and inseason management authority necessary to monitor and manage these harvest limitations at the start of the 1999 fishing season. Specifically, the emergency interim rule implemented the following measures for a 180-day period (through July 19, 1999):

1. A requirement that two NMFS-certified observers must be aboard each of the 20 listed C/Ps at all times the vessel is used to fish for groundfish in Federal waters off Alaska and that at least one of the observers aboard each listed C/P must have successfully completed the additional training necessary to be certified to observe in the multispecies groundfish community development quota program (§ 679.50(h)(1)(i)(D)); and

2. The authority to establish directed fishing allowances for the non-pollock groundfish harvest limitations specified for the listed C/Ps under the AFA and the regulatory authority to close directed fishing for non-pollock groundfish by the listed C/Ps if NMFS determines that these vessels have reached a prohibited species limitation.

Further background and descriptive information is contained in the preamble to the emergency interim rule published on January 22, 1999 (64 FR 3435).

The North Pacific Fishery Management Council (Council) is scheduled to take final action to implement the AFA requirements in 2000 and beyond under amendments to the BSAI Fishery Management Plan (FMP) at its June and October 1999 meetings. Given the statutory review and implementation schedule for FMP amendments set out under sections 303 and 304 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Council requested NMFS to extend the emergency provisions to provide for the monitoring of listed C/P harvest limitations for the remainder of 1999 as authorized under section 305(c)(3)(B) of the Magnuson-Stevens Act. NMFS concurs that this time period is minimally necessary for the development and preparation of FMP amendments to implement management provisions of the AFA.

Details concerning the basis for this action are contained in the initial emergency interim rule and are not repeated here. No comments were received during the comment period for the initial emergency interim rule.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Extension of the expiration date for this emergency interim rule is necessary to continue to monitor and manage the non-pollock harvest limitations required under the AFA for the listed C/Ps so that the intent of the AFA for these vessels in 1999 is met. Failure to implement an extension of the emergency measures would mean non-compliance with the statutory provisions promulgated under the AFA for the listed C/P vessels. The AA finds good cause to extend the emergency interim rule in accordance with section 305(c)(3)(B) of the Magnuson-Stevens Act. Pursuant to authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these

reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for public comment, as the delay associated with such procedures would be contrary to the public interest.

Similarly, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest. Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This rule has been determined to be not significant for purposes of E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 15, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15859 Filed 6–22–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 64, No. 120

Wednesday, June 23, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI74

Prevailing Rate Systems; Redefinition of the Eastern South Dakota and Wyoming Appropriated Fund Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing a proposed rule that would redefine Jackson County, South Dakota, from the area of application of the Eastern South Dakota appropriated fund Federal Wage System (FWS) wage area to the area of application of the Wyoming wage area, and redefine Teton County, Wyoming, from the area of application of the Wyoming FWS wage area to the area of application of the Montana wage area. The redefinition of Jackson County would provide equitable pay treatment for all FWS employees at Badlands National Park and the redefinition of Teton County would place employees at Grand Teton National Park on the same wage schedule as employees at Yellowstone National Park.

DATES: Comments must be received by July 23, 1999.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins (202) 606–2848, or send an email message to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is engaged in an ongoing project to review the geographic definitions of selected appropriated fund Federal Wage System (FWS) wage areas. The Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has recommended by consensus that we redefine Jackson County, South Dakota, and Teton County, Wyoming. After careful consideration of FPRAC's recommendation, we have found that it is appropriate to redefine Jackson and Teton Counties based on the regulatory criteria for defining FWS wage areas and on agency organizational relationships in the region.

Section 532.211 of title 5, Code of Federal Regulations, lists the following criteria for consideration when OPM defines FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

The Eastern South Dakota wage area continues to meet the regulatory requirements to remain a separate wage area. There are currently about 550 FWS workers in the wage area, the wage area's host activity continues to have the capacity to host local wage surveys, and wage surveys in the area continue to produce adequate wage data to determine local prevailing rates. Based on an analysis of the regulatory criteria for defining FWS wage areas, FPRAC found mixed results for Jackson County. The distance to the closest city criterion favored the Wyoming wage area, while the distance to the closest host installation criterion favored the Eastern South Dakota wage area. All other criteria studied had indeterminate findings. Based on the mixed nature of the regulatory analysis findings, there was no clear indication that Jackson County should be redefined to one wage area more than another; however, Badlands National Park is currently split by the boundary of the Wyoming wage area, with the park headquarters located in the Eastern South Dakota wage area, while most of the park is located in the Wyoming wage area. The redefinition of Jackson County to the Wyoming wage area would place the entire park in one wage area. FPRAC found no compelling reasons to make other changes in the Eastern South Dakota wage area.

The Wyoming wage area also continues to meet the regulatory requirements to remain a separate wage area. There are currently about 1,300 FWS workers in the wage area, the wage area's host activity continues to have the capacity to host local wage surveys, and wage surveys in the area continue to produce adequate wage data to determine local prevailing rates. Based on an analysis of the regulatory criteria for defining FWS wage areas, FPRAC found mixed results for Teton County. The distance to the closest city criterion slightly favored the Montana wage area, while the distance to the closest host installation criterion slightly favored the Wyoming wage area. All other criteria had indeterminate findings. Based on the mixed nature of the regulatory analysis findings, there was no clear indication that Teton County should be redefined to one wage area more than another; however, the two main FWS employers in northwestern Wyoming are Yellowstone National Park and Grand Teton National Park. The parks are connected by the John D. Rockefeller, Jr., Memorial Parkway, with a distance of only about 5 miles (8 kilometers) separating the parks.

Because the parks are located in a region geographically isolated by the Rocky Mountains from both the Montana and Wyoming survey areas, and because the regulatory criteria do not clearly favor defining Teton County to one wage more than another, FPRAC recommended that we place the parks in the same wage area. This change would place all Department of the Interior FWS employees stationed in northwestern Wyoming in the same wage area and would provide equitable pay treatment for FWS employees at Yellowstone National Park and Grand Teton National Park by paying these employees from one wage schedule. FPRAC found no compelling reasons to make other changes in the Wyoming wage area.

Jackson County and Teton County would be redefined on the first day of the first applicable pay period beginning on or after 30 days after the issuance of a final regulation implementing this proposed change.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities

because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix C to subpart B is amended by revising the wage area listings for the Montana, Eastern South Dakota, and Wyoming wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

MONTANA

Survey Area

Montana:
- Cascade
- Lewis and Clark
- Yellowstone

Area of Application. Survey Area Plus

Montana:
- Beaverhead
- Big Horn
- Blaine
- Broadwater
- Carbon
- Carter
- Chouteau
- Custer
- Daniels
- Dawson
- Deer Lodge
- Fallon
- Fergus
- Flathead
- Gallatin
- Garfield
- Glacier
- Golden Valley
- Granite
- Hill
- Jefferson
- Judith Basin
- Lake
- Liberty
- Lincoln
- McCone
- Madison
- Meagher
- Mineral
- Missoula
- Musselshell
- Park
- Petroleum
- Phillips
- Pondera
- Powder River
- Powell
- Prairie
- Ravalli
- Richland
- Roosevelt
- Rosebud
- Sanders
- Sheridan
- Silver Bow
- Stillwater
- Sweet Grass
- Teton
- Toole
- Treasure
- Valley
- Wheatland
- Wibaux

Wyoming:
- Big Horn
- Park
- Teton

* * * * *

SOUTH DAKOTA

EASTERN SOUTH DAKOTA

Survey Area

South Dakota:
- Minnehaha

Area of Application. Survey Area Plus

South Dakota:
- Aurora
- Beadle
- Bennett
- Bon Homme
- Brookings
- Brown
- Brule
- Buffalo
- Campbell
- Charles Mix
- Clark
- Clay
- Codington
- Corson
- Davison
- Day
- Deuel
- Dewey
- Douglas
- Edmunds
- Faulk
- Grant
- Gregory
- Haakon
- Hamlin
- Hand
- Hanson
- Hughes
- Hutchinson
- Hyde
- Jerauld
- Jones
- Kingsbury
- Lake
- Lincoln
- Lyman
- McCook
- McPherson
- Marshall
- Mellette
- Miner
- Moody
- Potter
- Roberts
- Sanborn
- Spink
- Stanley
- Sully
- Todd
- Tripp
- Turner
- Union
- Walworth
- Washabaugh
- Yankton
- Ziebach

Iowa:
- Dickinson
- Emmet
- Lyon
- Osceola

Minnesota:
- Jackson
- Lincoln
- Lyon
- Murray
- Nobles
- Pipestone
- Rock

* * * * *

WYOMING

Survey Area

Wyoming:
- Albany
- Laramie
- Natrona

South Dakota:
- Pennington

Area of application. Survey Area Plus

Wyoming:
- Campbell
- Carbon
- Converse
- Crook
- Fremont
- Goshen
- Hot Springs
- Johnson
- Lincoln
- Niobrara
- Platte
- Sheridan
- Sublette
- Sweetwater
- Uinta
- Washakie
- Weston

Nebraska:
- Banner
- Box Butte
- Cheyenne
- Dawes
- Deuel
- Garden
- Kimball
- Morrill
- Scotts Bluff
- Sheridan
- Sioux

South Dakota:
- Butte
- Custer
- Fall River
- Harding
- Jackson
- Lawrence
- Meade
- Perkins
- Shannon

[FR Doc. 99–15963 Filed 6–22–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 841

RIN 3206–AH62

State Income Tax Withholding and Allotments

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to permit expansion of the State income tax withholding and the voluntary allotment program under the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). These regulations would simplify the current State income tax withholding program, continue the currently-authorized programs established by regulation, and allow OPM to add additional allotment programs for the convenience of annuitants.

DATES: Comments must be received on or before August 23, 1999.

ADDRESSES: Send comments to Mary E. Wilson, Chief, Retirement Policy Division; Retirement and Insurance Service; Office of Personnel Management; PO Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC. Comments may also be submitted by electronic mail to combox@opm.gov.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester, (202) 606–0299.

SUPPLEMENTARY INFORMATION: We propose to amend Title 5, Code of Federal Regulations, to allow for expansion of our voluntary allotment program. In the past, technological constraints in OPM's automated systems limited the range of allotments offered to annuitants and survivors. Recent improvements in OPM's automated systems now make a broader range of allotments possible. In the future, additional allotments will be considered for inclusion in the program. Key considerations will be needed improvements in banking technology that will assure that allotments are processed and appropriate information provided to the allotees concerning the amount to be credited in each individual case, as well as the allotees' acceptance of responsibility for timely crediting of the allotment to the appropriate account on its records. OPM in its sole discretion, will determine if such allotments will be processed, pursuant to our statutory authority to make such determinations.

There will be an immediate expansion in our program of State income tax withholding and full implementation of our pilot U.S. Savings Bonds allotment program. Participation in these programs will be entirely voluntary.

As we have already stated, these regulations will also allow us to expand our voluntary allotment program to other areas such as allotments to checking and savings accounts. Other types of allotments are also under consideration; however, our ability to make some allotment programs available to annuitants and survivors will be dependent upon advancements in banking technology within the small, independent banking communities. Changes have already been proposed by the National Automated Clearing House Association (NACHA) to require the banking community to accept and pass on addendum information necessary to credit allotments to the proper accounts. As these changes become effective and more financial institutions are able to handle allotment transactions, we will determine which programs we consider appropriate for addition to the allotments program.

1. State Income Tax Withholding

Sections 8345(k) and 8469 of title 5, United States Code, require OPM to provide State income tax withholding from Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) annuities. The statutes provide that the withholding will be made in accordance with an agreement between the State and OPM and require certain conditions in that agreement, including that the withholding be limited to annuitants who voluntarily request such withholding in writing, that the amounts withheld be retained in the Fund and disbursed to the States quarterly, and other administrative items concerning the frequency and timing of State tax changes that an annuitant may request. The current implementing regulations, contained in subpart S of part 831 (CSRS) and subpart J of part 841 (FERS) of Title 5, Code of Federal Regulations, require annuitants who want State income tax withholding to contact the State. The State prepares a list of taxpayers and amounts to be withheld and submits that list monthly to OPM via magnetic tape.

The expanded State income tax withholding program will streamline the current withholding process by allowing our annuitants directly with OPM (in individual States). able to initia ate tax withho g or calling OPM. Cu ts' State income tax withholdings from nuity will continue without interruption. OPM has already notified annuitants of the availability of the expanded program.

Under the expanded program, States that wish to receive annuitant tax withholdings will no longer have to obtain election forms from annuitants and maintain their accounts. States need only execute an agreement with OPM. OPM will then assume administrative responsibility for the State income tax withholding program and permit annuitants to initiate or change their withholding by specifying a specific dollar amount.

2. Voluntary Allotments

Sections 8345(h) and 8465(b) of title 5, United States Code, authorize an individual entitled to benefits from the Fund to make allotments from an annuity for such purposes as OPM considers appropriate. Under subpart O of part 831 of Title 5, Code of Federal Regulations, we issued regulations limiting the availability of allotments under this authority to payments to large national organizations existing primarily for the purpose of representing employees or annuitants. Using new technology, we are prepared to offer an expanded allotment program without eliminating the program applicable to current participants. The current program will be continued for participating organizations for 3 years from the date of publication of final regulations in order to give the organizations in the current program time to make the adjustments necessary to utilize the expanded program proposed by these regulations.

The Savings Bond allotment program offers annuitants, for the first time, the opportunity to purchase U.S. Savings Bonds in a manner similar to the payroll-savings plan available to employees, except that the full purchase price of the bond must be paid each month. Series EE bonds are currently available in denominations of $100, $200, and $500. We have also added Series I bonds in denominations of $50, $75, $100, $500, $1,000, or $5,000. Other options may be added as they become available.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only provides information about the increased responsibility OPM will assume in providing certain allotment services to annuitants, survivors and former spouses.

Lists of Subjects in 5 CFR Parts 831 and 841

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management,
Janice R. LaChance,
Director.

Accordingly, under 5 U.S.C. 8347, 8461, and as discussed in the preamble, OPM proposes to amend Title 5, Code of Federal Regulations Parts 831 and 841, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(1) also issued under 5 U.S.C. 8347(g); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; § 831.204 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under Pub. L. 103–66, 107 Stat. 412; § 831.682 also issued under section 201(d) of Pub. L. 99–251, 100 Stat. 23; subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508; 104 Stat. 1388–328.

§§ 831.1501, 831.1511 and 831.1521 (Subpart O) [Removed and reserved]

2. Subpart O of consisting of §§ 831.1501, 831.1511, and 831.1521, of part 831 is removed and reserved.

§§ 831.1901–831.1907 (Subpart S) [Removed and reserved]

3. Subpart S, consisting of §§ 831.1901 through 831.1907, of part 831 is removed and reserved.

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

4. The authority citation for part 841 is revised to read as follows:

Authority: 5 U.S.C. 8461; § 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; § 841.504 also issued under 5 U.S.C. 8422; § 841.506 also issued under 5 U.S.C. 7701(b)(2); § 841.507 also issued under section 505 of Pub. L. 99–335; § 841.508 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C 8345(k), 8345(h), 8465(b), and 8469.

5. Subpart J of part 841 is revised to read as follows:

Subpart J—Voluntary Allotments for State Income Tax Withholding and for Other Purposes

Sec.
841.1001 Purpose and scope.
841.1002 Definitions.
841.1003 State income tax withholding.
841.1004 Other voluntary allotments.
841.1005 Limitations.

Subpart J—Voluntary Allotments for State Income Tax Withholding and for Other Purposes

§ 841.1001 Purpose and scope.

This subpart consolidates regulations pertaining to the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) on—

(a) The State income tax withholding program required under sections 8345(k) and 8469 of title 5, United States Code; and

(b) The program that OPM uses to honor annuitant requests for such other voluntary allotments as OPM may decide to allow from annuity payments under CSRS and FERS pursuant to sections 8345(h) and 8465(b) of title 5, United States Code.

§ 841.1002 Definitions.

In this subpart—

Allotment means a specified amount an annuitant voluntarily authorizes to be paid to an allottee.

Allottee means the institution, organization or individual to which the allotment is paid. Annuitant means an individual who is a retiree, a former spouse, or a survivor.

Annuity payment means the net monthly annuity payment due an annuitant after all authorized deductions (such as those for health benefits, Federal income tax, overpayment of annuity, indebtedness to the Government) have been made.

Former spouse means an individual who is receiving recurring payments under CSRS or FERS based on a court order under part 838 of this chapter.

Retiree means a former employee or Member who is receiving recurring payments under CSRS or FERS based on his or her service as an employee.

Survivor means a widow, widower, child, former spouse, or person with an insurable interest who is receiving recurring payments under CSRS or FERS based on the death of an employee, Member, or retiree.

§ 841.1003 State income tax withholding.

(a) *Agreements with States.* OPM will maintain a program under which an annuitant may voluntarily request State income tax withholding for a State with which OPM has an agreement for withholding State income taxes from CSRS and FERS annuities.

(b) Agreements between OPM and a State will establish each party's responsibilities in the process of withholding for State income taxes from CSRS and FERS annuities.

(c) Agreements for State income tax withholding may be modified or terminated—

(1) By OPM or the State in accordance with the terms of the agreement; or

(2) By OPM in accordance with appropriate rulemaking procedures pursuant to title 5 of the United States Code.

§ 841.1004 Other voluntary allotments.

(a) *General.* An annuitant may make an allotment from annuity payments for any purpose OPM deems appropriate.

(b) *Effective dates.* A request for an allotment is effective when processed by OPM. OPM will process each request no later than the 1st day of the second month following the month in which it is received, but incurs no liability or indebtedness to the annuitant or allottee by its failure to do so.

(c) *Disputes.* A dispute regarding any authorized allotment properly paid by OPM is a matter between the annuitant and the allotee.

§ 841.1005 Limitations.

(a) The total amount of any allotments may not exceed the annuity payment due.

(b) Allotments—State income tax withholdings excepted— are paid only on the regularly designated paydays of the annuitant.

(c) Payment of an allotment will be discontinued when annuity payments are terminated or suspended by OPM. OPM is not responsible for any interest or penalties incurred when allotments are discontinued due to the termination or suspension of annuity payments.

(d)(1) If annuity payments are made beyond the date the annuitant's entitlement to annuity ceases, the annuitant must repay any allotments paid after the date annuity payments should have ceased.

(2) If annuity payments are made after the annuitant's death, OPM will recover from—

(i) His or her estate; or,

(ii) In an appropriate case, from any survivor benefits payable based on the annuitant's service; or

(iii) If there is neither an estate nor a survivor annuity payable, from the allottee.

(f) Allotments, except allotments to large organizations under agreements established prior to the effective date of these regulations, may only be made to a valid electronic-funds-transfer address established under part 210 of title 31, Code of Federal Regulations.

[FR Doc. 99–15686 Filed 6–22–99; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 432

[Docket Number EE–TP–98–550]

Energy Conservation Program: Test Procedures for Distribution Transformers

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice of availability of documents and limited reopening of the record and opportunity for public comment.

SUMMARY: The Department of Energy previously published a Notice of Proposed Rulemaking to adopt test procedures for measuring the energy efficiency of distribution transformers under the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6317(a). Since the time that Notice appeared, the Department has received documents and comments containing new information concerning National Electrical Manufacturers Association (NEMA) TP 2, the sampling plan, and transformers to be covered by the rulemaking. In addition, DOE has concerns regarding the definition of a basic model. The Department is reopening the record of its rulemaking to provide an opportunity for additional public comment on the validity of this new information and its implications regarding the proposed test procedures and the policy options now under consideration by the Department.

DATES: The Department will accept comments, data, and information regarding the proposed rule and this reopening notice no later than July 23, 1999.

ADDRESSES: Please submit 10 copies (no faxes) to: Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, "Energy Conservation Program: Test Procedures for Distribution Transformers, Docket No. EE–RM–S–97–700", EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121. In addition, the Department requests that an electronic copy (3½" diskette) of the comments on WordPerfect™ 6.1 be provided.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Copies of the National Electrical Manufacturers Association Standard TP 2–1998, "Guide for Determining Energy Efficiencies for Distribution Transformers" (NEMA TP 2), the National Institute of Standards and Technology Technical Note 1427, "An Analysis of Efficiency Testing under the Energy Policy and Conservation Act: A Case Study with Application to Distribution Transformers" (NIST TN 1427), and other correspondence related to this rulemaking are available for public inspection and copying at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0121, (202) 586–7425, email: Kathi.Epping@ee.doe.gov, or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9507, email: Edward.Levy@hq.doe.gov

SUPPLEMENTARY INFORMATION: Pursuant to section 346(a) of the Energy Policy and Conservation Act, as amended (EPCA), 42 U.S.C. 6317(a), the Department of Energy (DOE or the Department) proposed in a Notice of Proposed Rulemaking ("NOPR" or "Notice") to adopt a new regulation, 10 CFR Part 432. 63 FR 63360 (November 12, 1998). The regulation (the "proposed rule") would include test procedures for measuring the energy efficiency of distribution transformers; several definitions regarding the test procedure, including the definition of a distribution transformer and the definition of a basic model; and a sampling plan for minimizing test burden. DOE held a public hearing on January 6, 1999, and received 9 written comments on the proposed rule. After reviewing the hearing transcript and comments, DOE concluded that a number of significant issues had been raised that required additional analysis. These issues include: (1) the adequacy of stakeholder opportunity to review NEMA TP 2; (2) the suitability of NEMA TP 2 to be adopted as the DOE test procedure; (3) transformers covered under the definition of "distribution transformer"; (4) the appropriateness of proposed sampling plans for demonstrating compliance; and (5) the suitability of the definition of "basic model" for the purpose of grouping transformers to limit test burden.

1. Availability of Documents

In the Notice, DOE stated it was proposing incorporation by reference either ANSI/IEEE standards C57.12.90 and C57.12.91 or NEMA standard TP 2. In the Notice, the Department stated its concern over whether TP 2 had undergone broad-based scrutiny, and DOE stated that, in order to accept TP 2, DOE would need sufficient evidence that all users and stakeholders have had an opportunity to review TP 2. In comments on the proposed rule, some stakeholders expressed concern that they had not been given the opportunity to Review NEMA TP 2. (ERMCO, No. 13 at 1; Dynapower, No. 17 at 1; and Howard Industries, No. 18 at 2.)[1] Because the DOE wants to ensure that all stakeholders have an opportunity to review TP 2, the Department has sent copies of NEMA TP 2 to the parties on its Distribution Transformer Stakeholder mailing list. In addition, the National Institute of Standards and Technology (NIST) issued Technical Note 1427 entitled "An Analysis of Efficiency Testing under the Energy Policy and Conservation Act: A Case Study with

[1] Comments are identified by company name, followed by comment number in the docket at page number. For example, "ERMCO, No. 13 at 1" means comment number 13, submitted by ERMCO, at page 1. Also note that comment number "11 DD" refers to the hearing transcript.

Application to Distribution Transformers." (NIST TN 1427) The Department has also sent this report, which analyzes the sampling plans contained in proposed 10 CFR Part 432 and in NEMA TP 2 and compares them to each other, to the parties on the Department's distribution transformer mailing list. Copies of both NIST TN 1427 and NEMA TP 2 are available for inspection in the DOE Freedom of Information Reading Room. For information and copies of NEMA TP 2, please contact Anthony Balducci of NEMA at (703) 841–3245. For copies or questions on NIST TN 1427, please contact Ken Stricklett of NIST at (301) 975–3955.

2. NEMA TP 2

On the subject of whether NEMA TP 2 is ready to be adopted as the national test procedure, the American Council for an Energy Efficient Economy (ACEEE) has indicated its support of NEMA TP 2, provided that both NEMA and non-NEMA industry representatives have had sufficient opportunity to review the standard, and there is wide support for it among these representatives. (ACEEE, No. 20 at 1.) ACEEE and Dynapower, Inc. both expressed concerns, however, that NEMA TP 2 may not be appropriate for all customers. For example, the loading conditions may not be representative of all applications. For these reasons, Dynapower believes further evaluation is necessary before the final rule is issued, and ACEEE suggested that DOE investigate whether a corollary test procedure to address those transformers that distribute power to industrial or large commercial customers may be necessary in addition to NEMA TP 2. (Dynapower, No. 17 at 1 and ACEEE, No. 20 at 1.)

Howard Industries believes having all the requirements in a single standard is NEMA TP 2's predominant advantage, and therefore Howard Industries tentatively supported the adoption of NEMA TP 2, pending a more thorough review. (Howard Industries, No. 18 at 1.)

At the January hearing, ERMCO stated that it could not comment on NEMA TP 2 at that time, but that it did support the American National Standards Institute (ANSI) approval process. (ERMCO, No. 11 DD at 18–23.) At the same hearing, Edison Electric Institute (EEI) indicated its preference for ANSI standards. (EEI, No. 11 DD at 31.)

In its comments on the NOPR, NEMA indicated that NEMA TP 2 has been submitted to ANSI's accreditation standards committee C57 for approval. NEMA further stated that it anticipated receiving ballots by the end of March 1999 and resolution of comments shortly thereafter, and that it should take approximately sixty days for ANSI to approve NEMA TP 2. (NEMA, No. 21 at 2.)

Because of the controversy over the two options delineated in the proposed rule, the Department invites further comment on whether DOE should choose Option 1 (ANSI/IEEE standards C57.12.90 and C57.12.91) or Option 2 (NEMA TP 2), as described in the NOPR, for the final rule for test procedures. The Department also seeks comment on the subsidiary issue of the appropriateness of tying adoption of NEMA TP 2 to ANSI approval.

In addition, the Department wants to ensure that the test procedures that DOE adopts are suitable for all distribution transformers that are being regulated under the statute. Because DOE is concerned that the loading factor in the test procedure may not be appropriate for all distribution transformers, DOE would consider the adoption of different loading factors for different types of distribution transformers in order to capture the loadings they typically carry and more accurately rate the efficiency level of each. DOE solicits comments on whether this course of action is appropriate. If several loading factors are selected, only the loading factors used in the calculations would change; the test procedure would remain the same. DOE realizes that, in developing the TP 2 loading factors, NEMA considered this issue, and the Department welcomes its comments as well as those of stakeholders not represented by NEMA.

3. Definition of Distribution Transformer

Section 346 of EPCA directs the Department to address the development of energy efficiency requirements for "distribution transformers." The statute provides no definition for "distribution transformer." As part of the Notice, the Department proposed a definition, so as to delineate the transformers that EPCA requires to be evaluated for standards and, therefore, initially subject to the test procedures.

The definition in the proposed rule is as follows: "a transformer with a primary voltage of 480 V to 35 kV, a secondary voltage of 120 V to 600 V, a frequency of 55–65 Hz, and a capacity of either 10 kVA to 2500 kVA for liquid-immersed transformers or 0.25 kVA to 2500 kVA for dry-type transformers, except for (1) converter and rectifier transformers with more than two windings per phase, and (2) transformers which are not designed to be continuously connected to a power distribution system as a distribution transformer. This second exception includes regulating transformers, machine tool transformers, welding transformers, grounding transformers, testing transformers, and other transformers which are not designed to transfer electrical energy from a primary distribution circuit, to a secondary distribution circuit, or within a secondary distribution circuit, or to a consumer's service circuit." 63 FR at 63370.

The following are a list of areas of the definition in which there is disagreement among stakeholders:

a. Low Voltage Transformers

In oral, as well as written, comments on the proposed rule, NEMA stated that the definition of "distribution transformer" in the proposed rule was too broad and should not include low voltage (600 Volts and below) transformers. (NEMA, No. 21 at 2 and No. 11 DD at 63.) In NEMA's view, these low voltage transformers are considered "general purpose transformers," which NEMA says are defined as "specialty transformers," not "distribution transformers." NEMA quoted the ANSI/IEEE C57.12.80 definition of "distribution transformer" as "a transformer for transferring electrical energy from a primary distribution circuit to a secondary distribution circuit or consumer's service circuit. NOTE: Distribution transformers are usually rated in the order of 5–500 kVA." NEMA also noted that the IEEE Dictionary defines "primary distribution circuit" as "an alternating current circuit that supplies the primary of a distribution transformer from a generator, a substation, or a distribution bus." NEMA stated further that the IEEE Power Engineering Society does not consider low voltage transformers to be distribution transformers. However, NEMA acknowledged that in IEEE standard 241, the Industry Application Society (IAS) defines low voltage transformers as indoor distribution transformers, but went on to observe that the IAS consists of transformer installers, not manufacturers. (NEMA, No. 21 at 2–4.) Naval Facilities Engineering Command Atlantic Division (NAVFAC LANTDIV) indicated support of NEMA's comments regarding low voltage transformers. (NAVFAC LANTDIV, No. 22 at 1.)

Howard Industries commented that it suspects the definition of distribution transformer in the NOPR is too broad and suggested DOE perform a further review. (Howard Industries, No. 18 at 2–3.)

Tony Dell'arciprete, an Electrical Engineer for Electrical Design and Construction Projects for GSA, stated that indoor distribution transformers are distribution transformers. He also sited ANSI/IEEE Standard 241 ("the Gray Book"). He stated that he considers a 480 volt primary and a 120/208 volt secondary to be a distribution level voltage. Furthermore, he indicated that excluding these transformers by calling them "general purpose transformers" or "specialty transformers" is a "play on words." (Dell'arciprete, No. 23 at 1.)

In its comments on the proposed rule, ACEEE noted that ANSI/IEEE Standard 241 defines "indoor distribution transformer" as one for which "both primaries and secondaries are 600 volts and below (the most common ratio is 480–208Y/120V)," and that these transformers offer the greatest potential energy savings. ACEEE also recommended that, given the ambiguity of the definition of the term "distribution transformer," the Department should "err on the side of a broader interpretation—particularly at this stage of the process, before standard setting has begun— to ensure energy savings opportunities are not lost." (ACEEE, No. 20 at 2.)

The Department is inclined to agree with ACEEE. Furthermore, the Department does not believe the definition of "distribution transformer" found in ANSI/IEEE standard C57.12.80 precludes the coverage of low voltage transformers. The Department believes an alternating current circuit that supplies the primary of a distribution transformer from a 277/480 volt distribution bus would fall within the definition of "primary distribution circuit" that NEMA provided from the IEEE dictionary. Consequently, the Department believes that these low voltages are covered under the ANSI/IEEE definition of "distribution transformers."

The Department also is inclined to disagree with NEMA's interpretation that because low voltage and "indoor distribution transformers" are also referred to as "general purpose transformers" or "specialty transformers," they are not distribution transformers. In fact, next to the terms "general purpose transformers" and "specialty transformers" in the IEEE dictionary are the words "(power and distribution transformers)." The Department believes these words indicate that the authors of the dictionary consider these transformers to be a subset of distribution transformers. Hence, it appears to the Department that the "indoor distribution transformers" defined in ANSI/IEEE standard 241, are merely a subset of "distribution transformers." The Department questions NEMA's implication that the Industry Application Society (IAS) IEEE standard is less valid because the IAS consists of installers of transformers, not manufacturers. In addition, several manufacturers, including Acme Electric Corporation, Jefferson Electric, Cutler-Hammer, Falvo Electrical Supply, and PowerSmiths International Corporation, identified these low voltage transformers as "distribution transformers" in their product literature/web pages. Web pages for Delta Transformer and Hammond Manufacturing Transformer Group used the words "General Purpose Transformers (distribution)" and "General purpose distribution transformers," respectively, indicating that the terms "general purpose transformer" and "distribution transformer" are not exclusive. (Product literature, No. 24.)

In the proposed rule's definition of distribution transformer, as well as in the notice announcing its determination as to the distribution transformers for which standards appear to be warranted, 62 FR 54809 (October 27, 1997), ("Determination Notice"), the Department construed the term "distribution transformer" in EPCA as including low voltage transformers. The Department does not find persuasive the comments discussed above that advocate a contrary approach. Thus, the Department intends to adopt, in the final rule, the proposed rule's inclusion of low voltage transformers in the definition of distribution transformer, unless it receives information that justifies exclusion of these transformers.

b. Capacity/Power Ratings

NEMA commented that units with fractional power ratings are not defined as distribution transformers, and NEMA recommended a capacity (power rating) limit of 15 kVA for dry-type distribution transformers. NEMA also provided a comment noting that ANSI C57.12.50 identifies a range of 1–500 kVA for dry-type distribution transformers. (NEMA, No. 21 at 4.)

The Department is inclined to agree with NEMA regarding fractional power ratings. Consequently, DOE does not intend to include transformers with kVA ratings less than one in the distribution transformer definition and intends in the final rule to increase the proposed rule's 0.25 kVA lower capacity limit for distribution transformers. However, the Department is undecided as to whether this limit for dry-type distribution transformers should be 1 kVA (consistent with ANSI C57.12.50), 5 kVA (consistent with ANSI C57.12.80), 10 kVA (consistent with the lower limit for liquid-filled transformers), or 15 kVA (consistent with NEMA TP 2). The Department requests further comments on the appropriate lower limit for the power ratings of distribution transformers.

c. Liquid-filled Distribution Transformers

Edison Electric Institute (EEI) requested that liquid-filled transformers be excluded from the rulemaking, because the utility market already drives these transformers to be efficient, within the limits of cost effectiveness. EEI stated that utilities already apply total owning cost methodologies in its purchasing decisions, and, therefore, it is unnecessary and counterproductive for the Department to mandate energy efficiency standards for liquid-filled transformers. However, EEI conceded that it would not object to DOE compiling and comparing test methods approved by standards setting bodies such as IEEE and ANSI. EEI also voiced support for the EPA's voluntary Energy Star program. (EEI, No. 19 at 1–5.)

In the Determination Notice, the Department concluded that standards are warranted for liquid-filled distribution transformers. 62 FR 54816. Thus, they were included in the proposed rule. Because the final rule addresses test procedures only, and not whether efficiency standards are warranted, the Department intends to include liquid-filled transformers as outlined in the proposed rule. During the efficiency standards rulemaking, the Department will reevaluate its determination of the transformers for which standards are warranted. 62 FR 54817.

d. Rectifier and Converter Transformers

NEMA, Mr. Kline, and Howard Industries stated their belief that rectifier and converter transformers are not distribution transformers. (Kline, No. 14 at 1–2; Howard Industries, No. 18 at 3; and NEMA, No. 15 at 1–2 and No. 21 at 4–5.) As a result of these comments and discussion at the public hearing, the Department is inclined to exclude from the "distribution transformer" definition all rectifier and converter transformers if they are built and labeled as such.

e. Autotransformers and Transformers with Tap Ranges Greater Than 15%

NEMA and Howard Industries requested that transformers with tap ranges greater than 15 percent and autotransformers be excluded from the

rulemaking. (Howard Industries, No. 18 at 3 and NEMA, No. 15 at 2 and No. 21 at 5.) The Department is inclined to believe few of these transformers exist in the distribution system, little energy would be saved by regulating them, and excluding them would be unlikely to create loopholes in the regulation. Consequently, the Department is inclined to exclude these transformers from this rulemaking.

f. Sealed/Non-Ventilated Transformers and Special Impedance and Harmonic Transformers

NEMA and Howard Industries requested that sealed/non-ventilated transformers and special impedance and harmonic transformers be excluded from the rulemaking. (Howard Industries, No. 18 at 3 and NEMA, No. 15 at 2 and No. 21 at 5.) However, NEMA's justification for their exclusion is the inability of these transformers to meet the TP 1 efficiency levels. NEMA provided no other reasons why these transformers should not be covered by the test procedure.

These transformers were included in the proposed rule's definition of distribution transformer, 63 FR 63370, as well as in the Determination Notice, 62 FR 54811. The Department does not find persuasive the comments discussed above that advocate exclusion of these products. Thus, the Department intends to include sealed/non-ventilated transformers and special impedance and harmonic transformers in the test procedures final rule, unless it receives information that justifies exclusion of these transformers from the test procedures. The appropriate efficiency levels, if any, for these and other classes of distribution transformers will be evaluated during the efficiency standards rulemaking.

g. Retrofit Transformers

NEMA and Howard Industries indicated that while they do not recommend excluding all retrofit transformers, some currently operating transformers fit tightly into their locations or enclosures, making it impossible to replace them with more efficient transformers, which are generally larger or configured differently. (NEMA, No. 21 at 5 and Howard Industries, No. 18 at 3.) The Department is contemplating whether this situation calls for exclusion of these transformers from this rulemaking or for consideration of a separate class in a future standards rulemaking. In either case, the Department needs further information in order to define and treat these transformers appropriately. The Department is therefore soliciting further comments on how to distinguish these from other transformers and on the dimensional restrictions imposed on them.

4. Sampling Plans

In the NOPR, the Department proposed a methodology—a sampling plan—that a manufacturer would be required to use to establish the efficiency of a basic model of distribution transformers based on tests of sample units of that basic model. 63 FR at 63366–67, 63371. In its comments on the proposed rule, Howard Industries expressed concern that a large amount of testing and record-keeping may add unnecessary costs to its products. The company believes that the statistical approaches used in 10 CFR Part 430, upon which the proposed rule was based, are suitable for highly standardized products, while distribution transformers are very specialized products often produced in very low volumes. Howard Industries stated that certain sizes may be produced in quantities of less than five per year, and some may not even be produced at all for a whole year. The company strongly recommended that the approach adopted by DOE minimize the number of units that must be tested to satisfy both compliance and enforcement, and it suggested that basic models of which fewer than 5 units are produced in a 180 day period be exempt from the rule for this period of time and no testing be performed. Howard Industries believes the impact of energy loss due to this small quantity of units is so small it can be neglected. The company also supports the eight percent tolerance used in the NEMA sampling plan. (Howard Industries, No. 18 at 4.)

Southern Transformer Company commented that it will be difficult for small companies to assemble, calibrate, and certify test sets to comply with the proposed rule's testing requirements. Southern Transformer Company suggested that DOE provide a grant to NIST to assist small companies in this effort. (Southern Transformer, No. 12 at 1.)

In its comments on the proposed rule, NEMA urged the Department to use the sampling plan for compliance found in Section 7 of NEMA TP 2. (NEMA, No. 11 DD at 174, No. 15 at 3–4; and No. 21 at 6–8.) NEMA also stated that the 8 percent loss tolerance (throw-away limit) in the TP 2 sampling plan compels manufacturers to design their products to at least the minimum average efficiency standard. NEMA also stated that it would consider adopting, in Section 7 of NEMA TP 2, subdivisions of its globalized aggregation into the following possible categories: Low Voltage Dry, Medium Voltage Dry, Liquid-Filled 500 kVA and below, and Liquid-Filled above 500 kVA. (NEMA, No. 21 at 7.)

ACEEE supports a sampling plan that minimizes the testing burden, provided that a small sample can provide a high degree of confidence that efficiency levels reported by manufacturers are accurate. ACEEE believes the burden of proof is on the industry to prove NEMA TP 2 satisfies these conditions. ACEEE believes the sampling plan in the NOPR is satisfactory. (ACEEE, No. 20 at 3.)

The Department still has concerns regarding the aggregation of basic models used in NEMA TP 2. Nonetheless, the Department recognizes the aggregation and 100% testing method in the NEMA TP 2 sampling plan does have merit, particularly for limited production models. However, the Department doubts that any basic models of which there are at least 50 units produced per 180 days would need to be aggregated with other basic models. The Department is inclined to believe that 100% testing of smaller, limited production models, coupled with the assurance that any individual unit that is 8% below a standard would be eliminated, renders it likely that these units would be designed to meet any applicable minimum standard efficiency.

For the final rule, the Department, however, is considering adoption of one or some combination of the following sampling plan options:

(1) Variation on NEMA TP 2:

(a) Basic models for which all units are tested because the manufacturer chooses to do so, because of customer's specifications, requirements to comply with other standards, or other such reasons: [2]

- Demonstrate the compliance of aggregations of basic models to the aggregate standard as described in TP–2 Section 7.2.1.
- Additionally, demonstrate the compliance of each basic model for which 50 or more units have been manufactured during 180 calendar days.
- Discard all units whose losses exceed 8% of the rated value for that basic model, as required by TP 2.

[2] For basic models that have sufficiently large numbers of units to minimize the statistical likelihood of error, this approach provides evidence, based on direct measurements, that each basic model meets or exceeds the efficiency standard. For basic models with limited production (< 50 per 180 days), the aggregation of both large and small production models reduces the risk of rejecting the limited production models due to the relatively high statistical possibility of erroneously estimating the mean of a population from a small sample.

(b) Basic models which consist of units of identical design and are tested on a sampling basis:

- Per NEMA TP 2 Section 7.2.2, take a sample of at least five units of each basic model per month over a 180 calendar day period and compute from the test results the estimated mean of each basic model from the sample.
- Demonstrate the compliance of the aggregate as in TP 2.
- Additionally, demonstrate the compliance of each basic model for which 50 or more units have been manufactured during 180 calendar days.
- Discard all units whose losses exceed 8% of the rated value for the basic model as required by TP 2.

For small population basic models of fewer than 5 units, all units must be tested.

(2) A sampling plan similar to that in the NOPR, allowing some form of aggregation for small production basic models.

(3) The requirement of a certification of compliance or compliance statement only, in which the manufacturer would provide a written explanation of how it has demonstrated, verified, and certified compliance. In the written material accompanying the certificate, the manufacturer must demonstrate the basic premise for compliance.

A sampling plan would be included in the final test procedures rule primarily for the purpose of demonstrating compliance with possible future standards. The Department acknowledges that a sampling plan is not necessary for the test procedure itself. However, the sampling plan might be used in the evaluation of possible future standards. The Department also recognizes that although some of the sampling plans under consideration may be adequate to demonstrate compliance with a minimum efficiency standard, these plans may not be adequate to address the question of efficiency representations. The Department is deliberating over whether labeling of particular efficiency values is appropriate for this product. The issue of representations will need to be addressed at a future time.

5. Definition of "Basic Model"

ERMCO, Howard industries, ACEEE, and NEMA supported the definition of "basic model" in the proposed rule. (ERMCO, No. 13 at 2; Howard Industries, No. 18 at 3; ACEEE, No. 20 at 2–3; and NEMA, No. 21 at 6.) ACEEE also suggested that industry sources provide guidance for ensuring manufacturers do not intentionally design some high efficiency models to counterbalance other low efficiency models within the same basic model. (ACEEE, No. 20 at 2–3.)

After further examination, the Department believes the definition of basic model in the proposed rule may be problematic. As set forth in the NOPR, a basic model is intended to be a group of models, produced by a given manufacturer, that have performance, design, mechanical, functional, and electrical characteristics that are essentially identical, and do not have refinements that affect energy consumption. 63 FR 63365. The general Part 430 definition of basic model was modified for distribution transformers in the proposed rule (Part 432). 63 FR at 63365–66, 63369. However, the proposed Part 432 definition of basic model may need some further modification.

All products within the same basic model should be in the same product class. (In its standards rulemakings, the Department establishes a separate "class" with its own efficiency standard for a product when the record indicates that the product includes a utility or performance-related feature that affects energy efficiency.) The following is an example depicting how the proposed basic model definition may be problematic:

A special impedance distribution transformer model, because of its inherently inferior efficiency, would likely be in a class separate from regular distribution transformers. The proposed basic model definition specifies that the following characteristics must be used to group different models of distribution transformers in a basic model: output power rating, voltage range, insulation type, and number of phases. These features of a special impedance distribution transformer, however, could be the same as for a regular distribution transformer. Consequently, under the proposed definition of basic model, these two transformers could be within the same basic model even though they would have significantly different efficiencies. This example illustrates that the current definition of basic model will likely categorize, within the same basic model, transformers that should be in different classes.

The Department would appreciate comments on how the Department should deal with this problem. The Department realizes that manufacturers would prefer special classes of distribution transformers to be exempted from regulation. However, as previously stated, the Department does not find that solution to be appropriate in this test procedures rulemaking.

In grouping transformers into basic models, we have to look at all the features, and the ones that have widely differing effects on efficiency should not be grouped together. In the final rule, the Department is considering adding some other features that affect efficiency (such as physical material of the windings and core, physical size, and impedance range) to the definition of basic model. The Department is open to suggestions as to what other features should be considered for the basic model definition, so that we do not have the problem outlined above. The Department also is considering adding the words "and the other features of which have comparable effect on efficiency" to the proposed definition of "basic model" to alleviate this problem.

Issued in Washington, D.C., on June 17, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 99–16020 Filed 6–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–26–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Tay 620–15, Tay 650–15, and Tay 651–54 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Rolls-Royce plc Tay 620–15, Tay 650–15, and Tay 651–54 series turbofan engines. This proposal would require initial and repetitive visual inspections of the emergency fuel shutoff cable for broken strands or failed cables, and, if necessary, replacement with serviceable parts. This proposal is prompted by reports of broken strands and failed emergency fuel shutoff cables. The actions specified by the proposed AD are intended to prevent emergency fuel shutoff cable failure, which could result in the non-operation of the emergency fuel shut-off system in the event of a low pressure shaft failure.

DATES: Comments must be received by August 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–26–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "9-ane-adcomment@faa.gov". Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce plc, Technical Publications Department, PO Box 31, Derby DE24 8BJ England; telephone 1332 242424, fax 1332 37645. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–26–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–26–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (R-R) Tay 620–15, Tay 650–15, and Tay 651–54 series turbofan engines. The CAA advises that they have received reports of broken strands and failed emergency fuel shutoff cables. This condition, if not corrected, could result in the non-operation of the emergency fuel shutoff system in the event of a low pressure shaft failure.

R–R has issued Service Bulletin (SB) No. Tay 76–1434, Revision 1, dated August 28, 1998, that specifies procedures for visual inspections of emergency fuel shutoff cables for broken strands or failed cables. The CAA classified this SB as mandatory and issued Airworthiness Directive (AD) 003–03–98 in order to assure the airworthiness of these engines in the UK.

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require initial and repetitive visual inspections of the emergency fuel shutoff cable for broken strands or failed cables, and, if necessary, replacement with serviceable parts. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 900 engines of the affected design in the worldwide fleet. The FAA estimates that 451 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 0.25 work hours to accomplish the inspections, 3 to 28 work hours per engine to remove and replace an unacceptable emergency fuel shutoff cable, depending on engine aircraft installation and position, and that the average labor rate is $60 per work hour. Required parts would cost approximately $86 per engine. The total cost for inspections is estimated to be $6,750. The total cost for replacing parts on the Fokker F70 and Fokker F100 aircraft is estimated to be $75,125. The total cost for replacing parts on the No.1 position engine on Boeing 727 aircraft is estimated to be $14,918. The total cost for replacing parts on the No. 2 and No. 3 position engines on Boeing 727 aircraft, since engine removal is required for these two engine positions, is $197,837. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $294,630.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce plc: Docket No. 99–NE–26–AD.

Applicability: Rolls-Royce plc (R–R) Tay 620–15, Tay 650–15, and Tay 651–54 series turbofan engines, installed on but not limited to Fokker F.28 Mark 0070 series, Fokker F.28 Mark 0100 series, and Boeing 727 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent emergency fuel shutoff cable failure, which could result in the non-operation of the emergency fuel shut-off system in the event of a low pressure shaft failure, accomplish the following:

(a) Perform initial and repetitive visual inspections of the emergency fuel shutoff cable for broken strands or failed cables as follows:

(1) Initially inspect the emergency fuel shutoff cable within 1,000 hours time-in-service (TIS) after the effective date of this AD.

(i) If the emergency fuel shutoff cable has no strands broken, re-inspect within 1000 hours TIS after the inspection.

(ii) If the emergency fuel shutoff cable has 1, 2, or 3 strands broken, re-inspect within 800 hours TIS after the inspection.

(iii) If the emergency fuel shutoff cable has 4, 5, or 6 strands broken, replace the cable within 100 hours TIS after the inspection.

(iv) If the emergency fuel shutoff cable has 7 or more strands broken, or the cable has failed, replace the cable within 25 hours TIS after the inspection.

(2) Thereafter, perform inspections of the emergency fuel shutoff cable and replace the emergency fuel shutoff cable as provided in paragraph (a)(1) of this AD.

Note 2: Information on inspection of the emergency fuel shutoff cable and replacement of cables may be found in R–R Service Bulletin (SB) No. Tay 76–1434, Revision 1, dated August 28, 1998, and Maintenance Manual 76–23–00.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on June 15, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–15904 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–72–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, and follow-on actions, if necessary. That AD also provides optional terminating action for the repetitive inspections. This proposal would require accomplishment of the previously optional terminating action. This proposal is prompted by a report that a fractured diagonal brace lug was found during a routine maintenance inspection. The actions specified by the proposed AD are intended to prevent cracking of the diagonal brace of the nacelle strut, which could result in failure of the diagonal brace, and consequent fatigue failure of a strut secondary load path and separation of the engine and strut.

DATES: Comments must be received by August 9, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–72–AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 17, 1999, the FAA issued AD 99–07–06, amendment 39–11091 (64 FR 14578, March 26, 1999), applicable to certain Boeing Model 767 series airplanes, to require repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, and follow-on actions, if necessary. That action also provides optional terminating action for the repetitive inspections. That action was prompted by a report that a fractured diagonal brace lug was found during a routine maintenance inspection. The requirements of that AD are intended to detect and correct cracking of the diagonal brace of the nacelle strut, which could result in failure of the diagonal brace, and consequent fatigue failure of a strut secondary load path and separation of the engine and strut.

Actions Since Issuance of Previous Rule

In the preamble to AD 99–07–06, the FAA specified that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination and would require accomplishment of the previously optional terminating action, in accordance with Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. (That service bulletin was referenced in AD 99–07–06 as the appropriate source of service information for accomplishment of the replacement.)

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–07–06 to continue to require repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, and follow-on actions, if necessary. In addition, this proposed AD would require accomplishment of the previously optional terminating action for the repetitive inspection requirements.

Cost Impact

There are approximately 208 airplanes of the affected design in the worldwide fleet. The FAA estimates that 105 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 99–07–06, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $6,300, or $60 per airplane, per inspection cycle.

The replacement that is proposed in this AD action would take approximately 8 work hours (4 work hours for each strut) per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $50,000 per airplane.

Based on these figures, the cost impact of the proposed replacement required by this AD on U.S. operators is estimated to be $5,300,400, or $50,480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11091 (64 FR 14578, March 26, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–72–AD. Supersedes AD 99–07–06, amendment 39–11091.

Applicability: Model 767 series airplanes; as listed in Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the diagonal brace of the nacelle strut, which could result in failure of the diagonal brace, and consequent fatigue failure of a strut secondary load path and separation of the engine and strut, accomplish the following:

Restatement of Requirements of AD 99–07–06

Initial Inspection

(a) Perform a detailed visual inspection to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, on the left and right sides of the airplane, in accordance with Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. Perform the inspection at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes in Groups 1, 3, and 4: Inspect prior to the accumulation of 12,000 total flight cycles, or within 90 days after April 12, 1999 (the effective date of AD 99–07–06, amendment 39–11091), whichever occurs later.

(2) For airplanes in Group 2: Inspect prior to the accumulation of 24,000 total flight cycles, or within 90 days after April 12, 1999, whichever occurs later.

Follow-On Actions

(b) If no cracking or damage is detected during the inspection required by paragraph (a) of this AD, repeat the inspection thereafter at the interval specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. Repeat the inspection until the actions specified by paragraph (d) or (e) of this AD have been accomplished.

(1) For airplanes in Groups 1, 3, and 4; and for airplanes in Group 2 on which the diagonal brace has accumulated more than 32,000 total flight cycles: Repeat the inspection at intervals not to exceed 1,000 flight cycles.

(2) For airplanes in Group 2 on which the diagonal brace has accumulated 32,000 or fewer total flight cycles: Repeat the inspection at intervals not to exceed 3,000 flight cycles.

(c) If any cracking or damage is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, remove the diagonal brace and perform additional inspections to detect damage of the strut secondary load paths, in accordance with Part 4 of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998; and accomplish the requirements of paragraphs (c)(1) and, if applicable, (c)(2) of this AD.

(1) Prior to further flight, replace the one-piece diagonal brace with a new three-piece diagonal brace, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin. Such replacement constitutes terminating action for the requirements of this AD.

(2) If any additional damage of the alternate load paths is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(d) For airplanes on which no cracking is detected during the inspection required by paragraph (a) of this AD, in lieu of accomplishing repetitive inspections in accordance with paragraph (b) of this AD, rework of the forward and aft lugs of the diagonal brace may be accomplished in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. If such rework is accomplished: Within 12,000 flight cycles after the rework, repeat the inspection required by paragraph (a) of this AD; and, prior to the accumulation of 37,500 total flight cycles on the diagonal brace, replace the one-piece diagonal brace with a new three-piece diagonal brace, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin. Such replacement constitutes terminating action for the requirements of this AD.

New Requirements of This AD

Terminating Action

(e) Prior to the accumulation of 37,500 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later: Replace the one-piece diagonal brace with a new three-piece diagonal brace, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. Such replacement constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 17, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15931 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–137–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–30, SD3–60, SD3 SHERPA, and SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–30, SD3–60, SD3 SHERPA, and SD3–60 SHERPA series airplanes. This proposal would require a one-time borescope inspection to detect corrosion of the shear decks and ribs of the left and right stub wings, follow-on corrective actions, if necessary; and drilling of new drain holes in the lower shear decks. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent corrosion of the stub wing shear decks and ribs, which could result in cracking or failure of the stub wing structure.

DATES: Comments must be received by July 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–137–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–137–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–137–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–30, SD3–60, SD3 SHERPA, and SD3–60 SHERPA series airplanes. The CAA advises that corrosion has been found in the area of the upper and lower shear decks, and on the outer and inner ribs of the left and right stub wings. The corrosion is believed to have been caused by the ingress of water and debris into the area from the main landing gear wheels, and lack of follow-on maintenance in ensuring that the area is dry and clean. Corrosion of the stub wing shear decks and ribs, if not corrected, could result in cracking or failure of the stub wing structure.

Explanation of Relevant Service Information

Shorts has issued the following service bulletins, all dated November 27, 1998:

- SD330–53–68 (for Model SD3–30 series airplanes);
- SD360–53–43, Revision 1 (for Model SD3–60 series airplanes);
- SD3 Sherpa–53–4 (for Model SD3 SHERPA series airplanes); and
- SD360–Sherpa–53–4 (for Model SD3–60 SHERPA series airplanes).

These service bulletins describe procedures for a one-time borescope inspection to detect corrosion of the shear decks and ribs of the left and right stub wings, in the areas of the inner and outer ribs, front and rear web plates, strut support bracket, and upper and lower shear decks; and corrective actions, if necessary. The corrective actions include additional inspections for corrosion in other areas; removal of corrosion within acceptable limits; replacement of certain components with new components; and, follow-on repetitive inspections if corrosion is found. The service bulletins also describe procedures for drilling of new drain holes in the lower shear decks. Additionally, the service bulletins specify that operators are to report the results of the initial inspection to the manufacturer.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The CAA classified these service bulletins as mandatory and issued British airworthiness directives 006–11–97, 006–11–98, 007–11–98, and 008–11–98 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletins

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain corrosion conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the CAA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the CAA would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 112 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 100 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour.

Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $672,000, or $6,000 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers PLC: Docket 98–NM–137–AD.

Applicability: All Model SD3–30, SD3–60, SD3 SHERPA, and SD3–60 SHERPA series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the stub wing shear decks and ribs, which could result in cracking or failure of the stub wing structure, accomplish the following:

Inspection and Corrective Actions

(a) Within 6 months after the effective date of this AD, perform a borescope inspection in the areas of the stub wing shear decks and ribs to detect corrosion, and drill new drain holes in the lower shear decks, in accordance with Part A of the Accomplishment Instructions of the applicable Shorts Service Bulletin specified below, all dated November 27, 1998 (hereinafter referred to as the applicable service bulletin):

- SD330–53–68 (for Model SD3–30 series airplanes);
- SD360–53–43, Revision 1 (for Model SD3–60 series airplanes);
- SD3 Sherpa-53–4 (for Model SD3 SHERPA series airplanes); and
- SD360-Sherpa-53–4 (for Model SD3–60 SHERPA series airplanes).

Note 2: In the case where no corrosion is detected during the inspection described in Part A of the Accomplishment Instructions of the applicable service bulletin, the service bulletin specifies accomplishment of follow-on repetitive inspections of this area as specified in Short Brothers Aircraft Maintenance Programme, Chapter 5–26–57.

(b) Except as provided by paragraph (c) of this AD: If any corrosion is detected during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish corrective actions (i.e., additional inspections, removal of corrosion, replacement of components), as applicable, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 12 months.

(c) If any corrosion condition is found for which the applicable service bulletin specifies that Short Brothers is to be contacted for an appropriate repair action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Civil Aviation Authority (CAA) of the United Kingdom (or its delegated agent).

Reporting Requirement

(d) Within 10 days after accomplishment of the initial inspection required by paragraph (a) of this AD, or within 30 days after the effective date of this AD, whichever occurs later, submit a report of the inspection findings (positive or negative) to: Team Leader, Service Engineering-Aerospace Customer Support Short Brothers plc, Belfast, N. Ireland. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in British airworthiness directives 006–11–97, 006–11–98, 007–11–98, and 008–11–98.

Issued in Renton, Washington, on June 17, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15930 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–201–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–300 and ATR42–320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes. This proposal would require a one-time inspection for cracking of a fastener hole located on the lower surface of the outer wing, and repair, if necessary; and cold working of the hole and installation of a new fastener in the hole. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue damage on the outer wing and consequent reduced structural integrity of the wing.

DATES: Comments must be received by July 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–201–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–201–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–201–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes. Fatigue testing conducted by the manufacturer on the test airframe revealed damage to several fastener holes located on the lower surface of the outer wing. A service bulletin previously issued by the manufacturer contained procedures for cold working of certain fastener holes where such fatigue damage could occur. However, the service bulletin inadvertently omitted identification of one fastener hole located on the lower surface of the outer wing near the spar/rib 15 junction for cold working. Failure to accomplish cold working of the hole could allow fatigue damage to develop on the lower surface panel of the outer wing. This condition, if not corrected, could result in reduced structural integrity of the wing.

Other Relevant Rulemaking

The FAA has previously issued AD 89–25–12, amendment 39–6414 (54 FR 50343, December 6, 1989), which requires operators to perform cold working of certain fastener holes located on the lower surface of the outer wing, in accordance with Avions de Transport Regional Service Bulletin ATR42–57–0010, Revision 1, dated May 20, 1989.

This proposed AD will not affect the requirements of AD 89–25–12.

Explanation of Relevant Service Information

Aerospatiale has issued Avions de Transport Regional Service Bulletin ATR42–57–0050, dated April 17, 1998, which describes procedures for a one-time high frequency eddy current inspection to detect cracking of a fastener hole located on the lower surface of the outer wing near the spar/rib 15 junction. The service bulletin also describes procedures for cold working of the hole and installation of a new fastener in the hole. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 98–147–075(B), dated April 8, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC (or its delegated agent) would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 14 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,720, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 98–NM–201–AD.

Applicability: Model ATR42–300 and ATR42–320 series airplanes, serial numbers 3 through 59 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue damage on the outer wing and consequent reduced structural integrity of the wing, accomplish the following:

Corrective Action

(a) Prior to the accumulation of 33,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Avions de Transport Regional Service Bulletin ATR42–57–0050, dated April 17, 1998.

(1) Perform a high frequency eddy current inspection to detect cracking of the fastener hole located on the lower surface of the outer wing near the spar/rib 15 junction. If any cracking is found, prior to further flight, repair the cracking in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (or its delegated agent).

(2) Perform cold working of the fastener hole located on the lower surface of the outer wing near the spar/rib 15 junction, and install a new fastener in the hole.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 98–147–075(B), dated April 8, 1998.

Issued in Renton, Washington, on June 17, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15929 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–226–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200 Series Airplanes Modified in Accordance With Supplemental Type Certificate (STC) ST00969AT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–200 series airplanes. This proposal would require removal of the existing emergency floor path lighting system and replacement with an FAA-approved emergency floor path lighting system. This proposal is prompted by information indicating that the existing emergency floor path lighting system does not provide adequate lighting and cueing for safe evacuation of the airplane in the event of an emergency. The actions specified by the proposed AD are intended to prevent such inadequate lighting and cueing, which could delay or impede the flight crew and passengers when exiting the airplane during an emergency.

DATES: Comments must be received by August 9, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Angela Compton, Aerospace Engineer, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6070; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–226–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96-NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received information indicating that the photoluminescent emergency floor path lighting system installed on Boeing Model 737–200 series airplanes that have been modified in accordance with Supplemental Type Certificate (STC) ST00969AT does not provide adequate lighting and cueing for safe evacuation of the airplane in the event of an emergency. (This STC entails the installation of a SAF–T–GLO Aerospace Limited emergency floor path lighting system.)

As specified in section 121.310(c)(3) of the Federal Aviation Regulations (14 CFR 121.310), airplanes that are type certificated after January 1, 1958, must, after November 26, 1986, include floor proximity emergency escape path marking requirements which meet the requirements of section 25.812(e) of this chapter that were in effect on November 26, 1994. Investigation revealed that the system does not comply with the certification requirements specified in section 25.812 as of November 26, 1994.

Such inadequate lighting and cueing of the escape path, if not corrected, could impede or delay the flight crew and passengers when exiting the airplane during an emergency.

Issuance of New Design Information

The FAA received an application for a type design change and has issued Supplemental Type Certification (STC) ST01829AT, dated February 11, 1999. The STC describes the installation of SAF–T–GLO Aerospace Limited's photoluminescent floor proximity emergency escape path marking system (FPEEPMS), which is a hybrid photoluminescent system that incorporates both electrical and photoluminescent parts.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal of the existing emergency floor path lighting system and replacement with an FAA-approved emergency floor path lighting system.

Cost Impact

There are approximately 40 Boeing Model 737–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the removal of the system, and at an average labor rate of $60 per work hour. It would take approximately 40 work hours per airplane to accomplish the proposed replacement with an FAA-approved system. Required parts for the replacement would cost approximately $10,000 for a new system, per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $524,800, or $13,120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 96–NM–226–AD.

Applicability: Model 737–200 series airplanes equipped with SAF–T–GLO Aerospace Limited emergency floor path lighting systems installed in accordance with Supplemental Type Certificate (STC) ST00969AT, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadequate lighting and cueing of the emergency floor path lighting system, which could delay or impede the flight crew and passengers when exiting the airplane during an emergency, accomplish the following:

(a) Within 120 days after the effective date of this AD, remove the existing photoluminescent emergency floor path lighting system from the airplane. Replace it with an emergency floor path lighting system in accordance with Supplemental Type Certificate ST01829AT, dated February 11, 1999, or an FAA-approved emergency floor path lighting system that is installed in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 17, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15928 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–119–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. The proposed AD would require inspecting all flap actuators in the internal gear system to assure that correct end-play and backlash measurements exist, and accomplishing any corrective adjustments as necessary. The proposed AD would also require incorporating a temporary revision into the Pilot's Operating Handbook (POH) in order to update operating procedures for the flap actuators; and would require incorporating temporary revisions to the maintenance manual in order to make the proposed inspection part of the future maintenance program. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent premature wear of the internal gear system caused by excessive backlash in the flight control flap actuators, which could eventually result in loss of actuator output with possible reduced or loss of airplane control.

DATES: Comments must be received on or before July 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–119–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–119–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–119–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA of Switzerland reports excessive backlash found in the flap actuators of the internal gear system. Excessive backlash will lead to premature wear of the gear.

This condition, if not detected and corrected, could result in internal failure of the internal gear system with loss of actuator output and possible reduced or loss of airplane control.

Relevant Service Information

Pilatus has issued Service Bulletin No. 27–005, November 18, 1998, which specifies procedures for:

—Inspecting all flap actuators in the internal gear system to assure that correct end-play and backlash measurements exist;

—Incorporating both Temporary Revision No. 27–04, and Temporary Revision No. 04–01, both dated November 18, 1998; into the Pilatus PC–12 Maintenance Manual; and

—Incorporating PC–12 Pilot's Operating Handbook, Pilatus Report No. 01973–001, Temporary Revision No. 4, Flap Actuators, dated November 18, 1998.

The FOCA of Switzerland classified this service bulletin as mandatory and issued Swiss AD HB 98–460, dated November 23, 1998, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA of Switzerland; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus PC–12 and PC–12/45 airplanes of the same type design that incorporate a certain flight control flap actuator and that are registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting all flap actuators in the internal gear system to assure that correct end-play and backlash measurements exist, and accomplishing any corrective adjustments as necessary. The proposed AD would also require incorporating the temporary revision into the POH in order to update operating procedures for the flap actuators; and would require incorporating temporary revisions to the maintenance manual in order to make the proposed inspection part of the future maintenance program.

The affected airplanes could incorporate one of the following flight control flap actuators:

—Pilatus part number (P/N) 978.71.20.302—Actuator, Linear (951D100–5);
—Pilatus P/N 978.71.20.303—Actuator, Linear (951D100–7); and
—Pilatus P/N 978.71.20.304—Actuator, Linear (951D100–9).

Accomplishment of the proposed inspection would be in accordance with Pilatus Service Bulletin No. 27–005, November 18, 1998. The proposed adjustments, if necessary, would be accomplished in accordance with the maintenance manual.

Cost Impact

The FAA estimates that 69 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. The manufacturer will provide parts free-of-charge to the owners/operators of the affected aircraft. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $24,840, or $360 per airplane.

Incorporating the proposed POH and maintenance manual revisions may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact the proposed POH and maintenance manual revision requirements impose is the time it would take each owner/operator of the affected airplanes to incorporate this information into the POH and maintenance manual.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft LtD.: Docket No. 98–CE–119–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 101 through MSN 236; certificated in any category, that have one of the following flight control flap actuators installed:

—Pilatus part number (P/N) 978.71.20.302—Actuator, Linear (951D100–5);
—Pilatus P/N 978.71.20.303—Actuator, Linear (951D100–7); and
—Pilatus P/N 978.71.20.304— Actuator, Linear (951D100–9).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent premature wear of the internal gear system caused by excessive backlash in the flight control flap actuators, which could eventually result in loss of actuator output with possible reduced or loss of airplane control, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, inspect all flap actuators in the internal gear system to assure that correct end-play and backlash measurements exist, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Service Bulletin No. 27–005, November 18, 1998. Prior to further flight, perform any corrective adjustments, as necessary, in accordance with the maintenance manual.

(b) As of the effective date of this AD, no person may install, on any airplane, a flap actuator that has not been inspected and adjusted (as necessary) as required by paragraph (a) this AD.

(c) Prior to further flight after the inspection and possible modification required by paragraph (a) of this AD, accomplish the following:

(1) Insert Pilatus Report No. 01973–001, Temporary Revision No. 4, Flap Actuators, dated November 18, 1998, into the Pilot's Operating Handbook (POH).

(2) Insert Temporary Revision No. 27–04, and Temporary Revision No. 04–01, both dated November 18, 1998; into the Pilatus PC–12 Maintenance Manual.

(d) Accomplishment of the POH revision and maintenance manual insertions, as required by paragraph (c) of this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) Questions or technical information related to Pilatus Service Bulletin No. 27–005, dated November 18, 1998, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD HB 98–460, dated November 23, 1998.

Issued in Kansas City, Missouri, on June 16, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15927 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–80–AD]

Airworthiness Directives; MD Helicopters Inc. Model 369D, 369E, 369FF, 500N, and 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) applicable to MD Helicopters Inc. (MDHI) Model 369D, 369E, 369FF, 500N, and 600N helicopters. The AD would require replacing the oil cooler blower bracket (bracket). This proposal is prompted by three reports of cracked brackets. The actions specified by the proposed AD are intended to prevent failure of a bracket, loss of cooling of engine oil and transmission oil, and a subsequent forced landing.

DATES: Comments must be received on or before August 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–80–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bruce Conze, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5261, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–80–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–80–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD, applicable to MDHI Model 369D, 369E, 369FF, 500N, and 600N helicopters. The AD would require replacing the bracket, part number (P/N) 369F5190–1 with an airworthy bracket, P/N 369F5194–1. This proposal is prompted by three reports of cracked brackets. The actions specified by the proposed AD are intended to prevent failure of a bracket, loss of cooling of engine oil and transmission oil, and a subsequent forced landing.

The FAA has reviewed Boeing Service Bulletin SB369D–196 SB369E–089 SB369F–076 SB500N–016 SB600N–012, dated April 28, 1998, which describes procedures for removing affected brackets and replacing them with improved-design brackets.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHI Model 369D, 369E, 369FF, 500N, and 600N helicopters of the same type design, the proposed AD would require removing the bracket, P/N 369F5190–1, and replacing it with an airworthy bracket, P/N 369F5194–1.

The FAA estimates that 100 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per helicopter to replace the bracket, and that the average labor rate is $60 per work hour. Required parts would cost approximately $225 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $37,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

MD Helicopters Inc. (MDHI): Docket No. 98–SW–80–AD.

Applicability: Model 369D, 369E, 369FF, 500N, and 600N helicopters, with oil cooler blower bracket (bracket), part number (P/N) 369F5190–1, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service, unless accomplished previously.

To prevent failure of a bracket, loss of cooling of engine oil and transmission oil, and a subsequent forced landing, accomplish the following:

(a) Remove the bracket, P/N 369F5190–1, and replace it with an airworthy bracket, P/N 369F5194–1.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on June 17, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–15932 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 876; Ref: Notice Nos. 861 and 867]

RIN 1512–AB70

Net Contents Statement on Wine Labels (95R–054P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this notice of withdrawal to inform interested persons that we are not pursuing rulemaking regarding the net contents statement on wine labels as proposed in Notice No. 861. The majority of commenters believe that allowing the net contents to be expressed in centiliters as an alternative to milliliters is misleading and would result in consumer confusion.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of ATF, as the delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer and to provide the consumer with adequate information as to, among other things, the net contents of the product. Regulations which implement the provisions of section 105(e), as they relate to wine, are set forth in title 27, Code of Federal Regulations (CFR), part 4. Section 4.32(b) provides, in part, that a statement of net contents must appear on the label of all containers of wine in accordance with section 4.37. Section 4.37 provides that the net contents of wine for which a metric standard of fill is prescribed must be stated on the label in the same manner and form as set forth in the standard of fill. The authorized metric standards of fill for American and imported wine, for sale in interstate commerce within the United States, are set forth in section 4.73 as follows:

3 liters
1.5 liters
1 liter
750 milliliters
500 milliliters
375 milliliters
187 milliliters
100 milliliters
50 milliliters

As provided in section 4.37(a), the net contents of wine for which no standard of fill is prescribed, e.g., sake, must be stated in liters and in decimal portions of a liter for quantities larger than one liter, and in milliliters for quantities of less than one liter.

Pursuant to section 4.32(b)(2), if the net contents of the wine is an authorized standard of fill, e.g., 750 milliliters, the net contents statement may appear on any label affixed to the container. If the net contents is a standard of fill other than an authorized standard of fill, e.g., 720 milliliters, the net contents statement must appear on a label affixed to the front of the container. Since the regulations show "ml" as an abbreviation for milliliter (section 4.37(a)(2)), that abbreviation may be used in lieu of milliliter, where required.

Finally, section 4.37 provides that the net contents need not be stated on the label if it is legibly blown, etched, sandblasted, marked by underglaze coloring, or otherwise permanently marked by any method approved by the Director on the side, front, or back of the container in an unobscured location.

Notice No. 861

On May 15, 1998, we published a notice in the **Federal Register** soliciting comments from the public and industry on a proposal to amend the regulations to provide that the net contents statement for wine in containers of less than 1 liter may be expressed on the label in centiliters (cl) as an alternative to milliliters (ml) (Notice No. 861, 63 FR 27017). The proposal was based on a petition we received from Banfi Vintners (Banfi) of Old Brookville, New York. Banfi had asked that the regulations be amended to provide that the net contents for wine bottled in a 750 milliliter (750 ml) standard of fill be expressed in centiliters, as "75 cl," as an alternative to "750 ml." The petitioner stated that 75 centiliters is a universally recognized measurement equivalent to 750 milliliters in the metric system. Furthermore, authorizing this alternative net contents statement on wine labels "would simplify current regulations and allow for an easier flow of wines among Europe, the world markets and the United States."

The comment period for Notice No. 861, initially scheduled to close on August 13, 1998, was subsequently extended until October 19, 1998 (Notice No. 867, September 18, 1998; 63 FR 49883).

Analysis of Comments

We received 95 comments in response to Notice No. 861. Comments were submitted by consumers, industry members (representing domestic and foreign interests), various organizations and trade associations (e.g., the National Conference on Weights and Measures, the U.S. Metric Association, Inc., the Wine Institute, the National Association of Beverage Importers, and the Scotch Whisky Association), and one Federal agency (U.S. Department of Commerce—National Institute of Standards and Technology).

Of the 93 comments that addressed the proposed regulations, 82 objected to allowing the net contents for wine to be expressed in centiliters as an alternative to milliliters. The commenters contend that the American consumer is not yet fully oriented to the metric system and that the proposed regulations, if adopted, would result in consumer confusion. Furthermore, the current regulations provide consumers with one standard of common measurement for wine bottled in containers of less than 1 liter, i.e., milliliters. The commenters believe that having the net contents expressed in milliliters and centiliters on bottles of the same size may lead consumers to assume the containers do not hold the same amount of wine.

Other commenters expressed similar concerns with the proposed regulations. One commenter, the National Conference on Weights and Measures (NCWM), is a standards-development organization whose members include representatives from Federal, State, and local weights and measures and other government agencies; businesses, trade and professional organizations; consumer and other interested groups. The NCWM stated the following:

> The proposed changes are in direct conflict with the metric provisions of the 'Uniform Packaging and Labeling Regulation' adopted by the NCWM in 1993, the metric regulations adopted by the Federal Trade Commission (1994), and metric labeling regulations proposed by the Food and Drug Administration for foods, drugs and cosmetics (1993). * * * The labeling requirements for packaged goods adopted by the NCWM, other Federal Agencies, and OIML limit quantity declarations on consumer products to either milliliters or liters to reduce the possibility of consumer confusion. The Committee urges ATF to withdraw its proposal to permit centiliters because its adoption would result in a proliferation of net quantity declarations that may mislead consumers * * *

The NCWM explained that the OIML (Organization for Legal Metrology) is a worldwide, intergovernmental organization whose primary aim is to harmonize the regulations and metrological controls applied by its Member States, including the United States, Canada, and the European Union.

Other commenters shared the views of the NCWM, including the National Institute of Standards and Technology, a Federal agency within the Department of Commerce, and the U.S. Metric Association, Inc. The U.S. Metric Association was established in 1916 for the purpose of assisting the U.S. in adopting the metric system and providing guidance for metric system usage to industry, business, education, and consumers.

Eleven commenters supported the proposed regulations. One commenter, a national trade association representing importers of alcohol beverages, stated that "differences between labeling rules of U.S. and Europe can cause unnecessary expense to an importer without providing the consumer any added protection or information." This commenter also argued that the proposed regulations would provide producers with flexibility in labeling their products. In addition, the commenter believed that the proposed regulations should apply to distilled spirits. Other commenters in favor of the proposal expressed similar concerns.

Decision

After careful consideration of the comments received, we have determined that an amendment of the regulations is not justified or warranted. In Notice No. 861 we stated that the metric standards of fill were first prescribed on December 31, 1974, pursuant to T.D. ATF–12, and became mandatory on January 1, 1979. In order to standardize the manner by which metric net contents were to be stated on the label and to avoid confusion among consumers, the final rule required metric net contents to be expressed in liters and decimal portions thereof for quantities larger than one liter and in milliliters for quantities less than one liter. Thus, as one commenter pointed out in the comments received in response to Notice No. 861, for more than 20 years the regulations have provided consumers "with the advantage of one simple standard of common measurement (milliliters) for wines in quantities less than one liter. The proposed regulation would remove that advantage. Seeing different units of measurement (ml and cl) on wine bottles of the same size may lead the consumer to assume that there is some difference in the contents of these bottles, * * *."

In addition, as discussed in Notice No. 861, our decision to express the net contents in milliliters for wine in containers of less than one liter was based, in part, on testimony presented at the hearing which preceded T.D. ATF–12. In particular, the American National Metric Council recommended milliliter (ml) as the only submultiple of liter and emphasized that "[t]he important thing is to avoid the confusion of an excessive variety of submultiples, which may cause errors in communication. These other submultiples, * * * would be a deciliter—dl, a centiliter—cl." This concern is still valid more than 20 years later. As the NCWM stated in their comment:

> When the NCWM developed its metric labeling regulations it was the consensus of the organization and FTC and FDA that metric prefixes such as centi, deka, deci, hecto and others were inappropriate for use on consumer packages.

It is clear from the comments received in response to Notice No. 861 that American consumers are not yet completely familiar with all units in the metric system. Based on the information contained in the comments, we believe that the proposed regulations, if adopted, would not be of any value to consumers and would result in confusion. Furthermore, we did not receive any comments from consumers in support of the regulations. We did, however, receive comments from

consumers expressing their objections to the proposed regulations.

Accordingly, for the reasons stated above, we are withdrawing Notice No. 861.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This document is issued under the authority in 27 U.S.C. 205.

Signed: April 29, 1999.

John W. Magaw,

Director.

Approved: June 4, 1999.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–15944 Filed 6–22–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 178 and 179

[Notice No. 877]

RIN 1512–AB84

Identification Markings Placed on Firearms (98R–341P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to prescribe minimum height and depth requirements for identification markings placed on firearms by licensed importers and licensed manufacturers. Specifically, we are proposing a minimum height of 3/32 inch and a minimum depth of .005 inch for serial numbers and a minimum depth of .005 inch for all other required markings. We believe that such minimum standards are necessary to ensure that firearms are properly identified in accordance with the law. In addition, the proposed regulations, if adopted, will facilitate our ability to trace the origin of firearms used in crime.

DATES: Written comments must be received on or before September 21, 1999.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; PO Box 50221; Washington, DC 20091–0221; ATTN: Notice No. 877.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

Section 923(i) of the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44), requires licensed importers and licensed manufacturers to identify, by means of a serial number, each firearm imported or manufactured. The serial number must be engraved, cast, or stamped on the receiver or frame of the weapon in such manner as the Secretary of the Treasury prescribes by regulation. With respect to certain firearms subject to the National Firearms Act (e.g., machine guns), 26 U.S.C. 5842 requires each manufacturer and importer and anyone making a firearm to identify each firearm by a serial number. The serial number may not be readily removed, obliterated, or altered. Section 5842 also requires the firearm to be identified by the name of the manufacturer, importer, or maker, and such other identification as the Secretary may prescribe by regulation.

Regulations that implement section 923(i) are set forth in 27 CFR 178.92. In general, this section requires each licensed manufacturer or licensed importer of firearms to legibly identify each firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing on the frame or receiver an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed.

Section 178.92 also requires licensed importers and manufacturers to conspicuously place the following identification markings on the frame, receiver, or barrel of each firearm imported or manufactured in a manner not susceptible of being readily obliterated, altered, or removed:

1. The model, if such designation has been made;
2. The caliber or gauge;
3. The name (or recognized abbreviation of same) of the manufacturer and also, when applicable, of the importer;
4. In the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) where the licensed manufacturer maintains its place of business; and
5. In the case of an imported firearm, the name of the country in which manufactured and the city and State (or recognized abbreviation thereof) where the importer maintains its place of business.

The same marking requirements appear in regulations issued under the National Firearms Act at 27 CFR 179.102.

In the case of any semiautomatic assault weapon manufactured after September 13, 1994, the regulations also require that the frame or receiver be marked "RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY" or, in the case of weapons manufactured for export, "FOR EXPORT ONLY" (27 CFR 178.92(a)(2)).

Discussion

The GCA requires Federal firearms licensees to maintain records of their acquisitions and dispositions of firearms, including complete and accurate descriptions of the firearms. One of the principal objectives of the GCA is to facilitate the tracing of firearms used in crime "to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence * * *." Gun Control Act of 1968, section 101, 82 Stat. 1213. To accomplish this objective, § 178.92 requires that each manufacturer or importer utilize an individual serial number for each firearm manufactured or imported and prohibits the duplication of any serial number placed by the manufacturer or importer on any other firearm. Furthermore, section 922(k) of the GCA makes it unlawful for any person to transport, ship, possess, or receive, in interstate or foreign commerce, any firearm that has had the importer's or manufacturer's serial number removed, obliterated, or altered.

The serial number, along with other required markings such as caliber, model, name of manufacturer, and city and State of the manufacturer or importer make any given firearm uniquely identifiable and traceable. Thus, firearms tracing is an integral part of any investigation involving the criminal use of firearms. The systematic tracking of firearms from the manufacturer or U.S. importer to the first retail purchaser enables law enforcement agencies to identify suspects involved in criminal violations, determine if the firearm is stolen, and provide other information relevant to an investigation. Our National Tracing Center (NTC) maintains the capability to trace the origin of recovered firearms used in crimes. Over the years, the NTC has experienced a substantial increase in the number of requests received for crime gun traces by Federal, State, and local law enforcement agencies. The total number of requests for gun traces increased from 77,000 in 1995 to approximately 200,000 in 1997.

Currently, there are no minimum standards concerning size and depth of impression for markings on firearms. The regulations require that the identifying information, including the serial number, be legible, conspicuous, and placed on the firearm "in a manner not susceptible of being readily obliterated, altered, or removed." The lack of specific minimum standards causes problems for licensees in properly recording identifying information in their required records, particularly with respect to serial numbers that are very small or are not applied to a uniform depth. Moreover, worn, hard-to-read markings often result in State and local law enforcement officers forwarding erroneous information to ATF in connection with a trace request. Serial numbers that are stamped very lightly on the frame or receiver of the firearm are more susceptible to being easily obliterated, altered, or removed. These problems often hinder our efforts to trace a particular firearm.

Proposed Regulations

To reduce the problem of incorrect record entries by licensees and to make identification markings less susceptible to being readily obliterated, altered, or removed, we are proposing to amend the regulations to prescribe minimum height and depth requirements for identification markings placed on firearms. Specifically, we are proposing that licensed manufacturers and licensed importers cast, stamp (impress) or engrave serial numbers to a depth of at least .005 inch and in a print size no smaller than 3/32 inch. We are also proposing that all other required markings, including the special markings for semiautomatic assault weapons, be cast, stamped (impressed) or engraved to a depth of at least .005 inch. We are not proposing to require a minimum height requirement of 3/32 inch for all identification markings since such a requirement would make it difficult to fit all the information on a firearm, particularly in the case of handguns.

We believe that the minimum standards proposed in this notice ensure that firearms are properly identified in accordance with the law. In addition, the proposed regulations, if adopted, will facilitate our ability to trace firearms used in crime.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a Regulatory Assessment is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. We hereby certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities because the revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Accordingly, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, at the address previously specified. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collections of information in this proposed regulation are in 27 CFR 178.92 and 27 CFR 179.102. This information is required to properly identify each firearm that is manufactured or imported. The collections of information are mandatory. The likely respondents are businesses.

Estimated total annual reporting and/or recordkeeping burden: 5,012 hours.

Estimated average burden hours per respondent and/or recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 2,506.

Estimated annual frequency of responses: one-time requirement to change size and depth.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Public Participation

We are requesting comments on the proposed regulations from all interested persons. In particular, we are soliciting input from the industry as to whether a minimum depth of .007 inch, rather than the .005 inch proposed in this notice, is feasible using existing machinery or if additional costs would be incurred to comply with such a minimum depth. We are also specifically requesting comments on the clarity of this proposed rule and how it may be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

We will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The

Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the **Federal Register** in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Drafting Information: The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Incorporation by reference, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR parts 178 and 179 as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

Par. 2. Section 178.92 is amended by revising the section heading and paragraph (a) to read as follows:

§ 178.92 How must licensed manufacturers and licensed importers identify firearms, armor piercing ammunition, and large capacity ammunition feeding devices?

(a)(1) *Firearms.* You, as a licensed manufacturer or licensed importer of firearms, must legibly identify each firearm manufactured or imported as follows:

(i) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed, and must not duplicate any serial number placed by you on any other firearm. For firearms manufactured on and after [Insert effective date of final rule], the engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .005 inch and in a print size no smaller than 3/32 inch; and

(ii) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered, or removed. For firearms manufactured on and after [Insert effective date of final rule], the engraving, casting, or stamping (impressing) of this information must be to a minimum depth of .005 inch. The additional information includes:

(A) The model, if such designation has been made;

(B) The caliber or gauge;

(C) Your name (or recognized abbreviation) and also, when applicable, the name of the foreign manufacturer;

(D) In the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) where you as the manufacturer maintain your place of business; and

(E) In the case of an imported firearm, the name of the country in which it was manufactured and the city and State (or recognized abbreviation thereof) where you as the importer maintain your place of business.

(2) *Firearm frames or receivers.* A firearm frame or receiver that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.

(3) *Special markings for semiautomatic assault weapons, effective July 5, 1995.* In the case of any semiautomatic assault weapon manufactured after September 13, 1994, you must mark the frame or receiver "RESTRICTED LAW ENFORCEMENT/ GOVERNMENT USE ONLY" or, in the case of weapons manufactured for export, "FOR EXPORT ONLY," in a manner not susceptible of being readily obliterated, altered, or removed. For weapons manufactured on and after [Insert effective date of final rule], the engraving, casting, or stamping (impressing) of the special markings prescribed in this paragraph (a)(3) must be to a minimum depth of .005 inch.

(4) *Exceptions.*—(i) *Alternate means of identification.* The Director may authorize other means of identification upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(ii) *Destructive devices.* In the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of a letter application from you, submitted in duplicate, showing that engraving, casting, or stamping (impressing) such a weapon would be dangerous or impracticable.

(iii) *Machine guns, silencers, and parts.* Any part defined as a machine gun, firearm muffler, or firearm silencer in § 178.11, that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you, must be identified as required by this section. The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

* * * * *

PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Par. 3. The authority citation for 27 CFR part 179 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 179.102 is revised to read as follows:

§ 179.102 How must firearms be identified?

(a) You, as a manufacturer, importer, or maker of a firearm, must legibly identify the firearm as follows:

(1) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed, and must not duplicate any serial number placed by you on any other firearm. For firearms manufactured on and after [insert effective date of final rule], the engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .005 inch and in a print size no smaller than 3/32 inch; and

(2) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed), or placed on the frame, receiver, or barrel thereof certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered or removed. For firearms manufactured on and after [Insert effective date of final rule], the engraving , casting, or stamping (impressing) of this information must be to a minimum depth of .005 inch. The additional information includes:

(i) The model, if such designation has been made;

(ii) The caliber or gauge;

(iii) Your name (or recognized abbreviation) and also, when applicable, the name of the foreign manufacturer or maker;

(iv) In the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) where you as the manufacturer maintain your place of business, or where you, as the maker, made the firearm; and

(v) In the case of an imported firearm, the name of the country in which it was manufactured and the city and State (or recognized abbreviation thereof) where you as the importer maintain your place of business.

(b) The Director may authorize other means of identification upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(c) In the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of a letter application you, submitted in duplicate, showing that engraving, casting, or stamping (impressing) such a weapon would be dangerous or impracticable.

(d) A firearm frame or receiver that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.

(e)(1) Any part defined as a machine gun, muffler, or silencer for the purposes of this part that is not a component part of a complete firearm at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.

(2) The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

Signed: April 12, 1999.

John W. Magaw,

Director.

Approved: June 4, 1999.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–15943 Filed 6–22–99; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket No. A–99–03; FRL–6364–8]

Hazardous Air Pollutants List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of a complete petition to delist methyl ethyl ketone from the list of Hazardous Air Pollutants (HAPs).

SUMMARY: This notice announces the receipt of a complete petition from the Chemical Manufacturers Association's (CMA'S) Ketone Panel requesting EPA to remove the chemical methyl ethyl ketone (MEK, 2-Butanone) (CAS No. 78–93–3) from the list of hazardous air pollutants (HAPs) contained in section 112(b)(1) of the 1990 Clean Air Act (Act). We have determined that the Chemical Manufacturers Association's original petition dated November 27, 1996 and the supplemental materials provided by CMA through August 31, 1998 will support an assessment of the human health impacts associated with people living in the vicinity of facilities emitting methyl ethyl ketone. In addition, the data submitted by CMA will support an assessment of the environmental impacts associated with emissions of methyl ethyl ketone to the ambient air and deposited onto soil or water. Consequently, we have concluded that CMA's petition is complete as of August 31, 1998, the date of the last supplement, and is ready for public comment and the technical review phase of our delisting procedure.

This notice invites the public to comment on the petition and to provide additional data, beyond that filed in the petition, on sources, emissions, exposure, health effects and environmental impacts associated with methyl ethyl ketone that may be relevant to our technical review.

DATES: Written comments on this proposal must be received by July 23, 1999.

ADDRESSES: *Documents.* A copy of the complete petition is contained in a docket available at the Air and Radiation Docket and Information Office, 401 M Street S.W., Room M–1500 (Mail Code 6102), Waterside Mall, Washington DC 20460. The docket number for this action is A–99–03. The docket is an organized file of all the information received and considered in making the decision on the completeness of CMA's petition. The main purpose of the docket is to allow you to readily identify and locate documents that record the process we followed in making our decision. You may inspect the petition and copy it for offsite review between 8:30 a.m. and 4:30 p.m. E.S.T., Monday through Friday. A reasonable fee may be charged for copying. In addition, CMA will make copies of the petition available upon request. You may call Mr. Andrew Jakes at CMA's help line at (703) 741–5627 between 8:30 a.m. and 4:30 p.m. EST, Monday through Friday, for information on how to obtain a copy of the petition. A reasonable fee may be charged for copying.

Data Submissions. Comments and additional data should be submitted (in duplicate if possible) to: The Docket Clerk, Air and Radiation Docket and Information Office, 401 M Street S.W., Room M–1500 (Mail Code 6102), Waterside Mall, Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: James B. White, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0842, electronic mail address: White.James@epa.gov.

SUPPLEMENTARY INFORMATION: *Plain Language.* In compliance with President Clinton's June 1, 1998 Executive Memorandum on Plain Language in Government Writing, this package is written using plain language. Therefore,

the use of "we" in this package refers to the EPA. The use of "you" refers to the reader and may include State, local or tribal government agencies, industry, environmental groups, or other interested individuals.

I. Introduction

A. What Is the List of Hazardous Air Pollutants?

Hazardous air pollutants (HAPs) include a wide variety of organic and inorganic substances released from large and small industrial operations, fossil fuel combustion, gasoline and diesel-powered vehicles, and many other sources. The HAPs have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects, and developmental effects. The health effects associated with the various HAPs may differ depending upon the toxicity of the individual HAP and the particular circumstances of exposure, such as the amount of chemical present, the length of time a person is exposed, and the stage in life of the person when the exposure occurs. The list of HAPs, which includes methyl ethyl ketone, can be found in section 112(b)(1) of the Act. The HAPs list provides the basis for research, regulation, and other related EPA activities under the Act.

B. What Is a Delisting Petition?

A delisting petition is a formal request to the EPA from an individual or group to remove a specific HAP from the HAPs list. The removal of a HAP from the list eliminates it from consideration in EPA's program to promulgate national, technology-based emissions control standards. This technology-based standards program is commonly referred to as the MACT (Maximum Achievable Control Technology) program.

Petitions to add or delete chemicals from the HAPs list are allowed under section 112(b)(3)(A) of the Act. The Act specifies that any person may petition the Administrator to modify, by addition or deletion, the list of HAPs. The EPA Administrator is required under section 112(b)(3)(A) of the Act to either grant or deny a petition to delist a specific HAP within 18 months of the receipt of a complete petition.

To delete a substance from the HAPs list, section 112(b)(3)(C) requires that the petitioner must provide adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bio-accumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to human health or adverse environmental effects.

C. How Does EPA Review a Petition To Delist a HAP?

The petition review process proceeds in two phases: a completeness determination and a technical review. During the completeness determination, we conduct a broad review of the petition to determine whether or not all the necessary subject areas are addressed. In addition, we determine if adequate data, analyses, and evaluation are included for each subject area. Once the petition is determined to be complete, we place a "Notice of Receipt of a Complete Petition" in the **Federal Register**. That **Federal Register** notice announces a public comment period on the petition and starts the technical review phase of our decision making process. The technical review determines whether the petition has satisfied the necessary requirements and can support a decision to delist the HAP. All comments and data submitted during the public comment period are considered during the technical review.

D. How Is the Decision to Delist a HAP Made?

The decision to either grant or deny a petition is made after a comprehensive technical review of both the petition and the information received from the public to determine whether the petition satisfies the requirements of section 112(b)(3)(C) of the Act. If the Administrator decides to grant a petition, a "Notice of Proposed Rule Making" is published in the **Federal Register**. That notice proposes a modification of the HAPs list and presents the reasoning for doing so. However, if the Administrator decides to deny a petition, a notice setting forth an explanation of the reasons for denial will be published instead. A notice of denial constitutes final Agency action of nationwide scope and applicability, and is subject to judicial review as provided in section 307(b) of the Act.

II. Completeness Determination and Request for Public Comment

On November 27, 1996, we received a petition from the CMA's Ketone Panel to remove methyl ethyl ketone (MEK, 2-Butanone)(CAS No. 78–93–3) from the HAPs list. The petition was presented on behalf of the producers and consumers of methyl ethyl ketone in the United States. After reviewing the petition, we found that all of the necessary subject areas for a human health and environmental risk assessment had been addressed. However, we determined that there were certain information gaps in the emission modeling and the ecological risk assessment that required supplemental information before being considered complete. To address the modeling issue, we requested specific modeling data for several of the major emitting sources identified in the petition. The CMA returned to the largest emitters and obtained their permission to release the data that had previously been provided to CMA as a part of a private study. To address the issues in the ecological risk assessment, we requested additional modeling to relate emissions of methyl ethyl ketone to ecological effects. The CMA responded with a report on the output from a fugacity model which predicted methyl ethyl ketone tendency to either remain airborne or to collect in soil or water. Fugacity is a thermodynamic quantity that describes the "escaping tendency" of a chemical from an environmental compartment such as air, soil, water, or biota. It is used in certain environmental models to describe a chemical's movement between the different compartments.

After reviewing all of the supplemental information, we have determined that the essential subject areas have been addressed. Therefore, the petition is complete and ready for technical review. The CMA's last supplement which occurred August 31, 1998 marked the start of the 18-month technical review and decision period. Today's notice initiates our comprehensive technical review of the petition and invites public comment on the substance of the petition as described above.

III. Description of Petition

The original petition and the supplemental materials provided by CMA contain the following information:

(A) Identification and location of facilities producing or using methyl ethyl ketone.

(B) Background data on methyl ethyl ketone, including chemical and physical properties data and production and use data.

(C) Toxicological data on human heath and environmental effects of methyl ethyl ketone. These data include CMA's proposed recalculation of the air inhalation reference concentration (RfC) currently contained in the EPA's Integrated Risk Information System (IRIS). The RfC is a quantitative estimate of an inhalation exposure to humans that is likely to be without appreciable risk of adverse impacts over a lifetime. The IRIS is an electronic data base prepared and maintained by EPA that contains information on human health effects that may result from exposure to various chemicals in the environment.

(D) Estimated emissions of methyl ethyl ketone derived from the most recent version of the Toxic Release Inventory (TRI). The TRI is an emissions inventory database developed under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986.

(E) Tiered air dispersion modeling that provides estimates of the ambient concentration of methyl ethyl ketone adjacent to those facilities that use it. Tiered modeling involves the use of successive modeling techniques to move from conservative "worst case" estimates of the ambient concentrations of a substance emitted from a source toward more realistic site-specific estimates of the ambient concentrations.

(F) Characterization of the exposures and risks from methyl ethyl ketone to human health and the environment.

(G) Documentation of a literature search on methyl ethyl ketone conducted immediately prior to the filing of the petition. This includes an identification of the data bases searched, the search strategy, and printed results.

(H) Printed copies of all human, animal, in vitro, or other toxicity studies cited in the literature search.

(I) Environmental effects data characterizing the fate of methyl ethyl ketone emitted to the atmosphere. This includes atmospheric residence time, solubility, phase distribution, vapor pressure, octanol/water partition coefficients, particle size, adsorption coefficients, information on atmospheric transformations, potential degradation or transformation products, and bio-accumulation potential.

(J) Other relevant considerations, such as CMA's petition to delist methyl ethyl ketone under EPCRA section 313.

(K) List of all support documents in the petition.

At the time of the petition, only three companies: Exxon Chemical Company, Hoechst Celanese, and Shell Chemical, produced methyl ethyl ketone. The estimated total domestic capacity in 1995 was approximately 595 million pounds. The 1994 Toxic Release Inventory (TRI) shows that over 2,300 facilities reported emissions associated with the use of methyl ethyl ketone and that 85 percent of these facilities reported emissions of less than 25 tons per year.

The petition describes methyl ethyl ketone as being both a solvent and chemical intermediate. When used as a solvent, it is highly efficient for dissolving a wide variety of resins. Therefore, it is widely used in surface coatings, adhesives, inks, and traffic marking paints. Methyl ethyl ketone is also used as a solvent in cleaning fluids and dewaxing agents, and in the extraction of fats, oils, waxes, and resins. It is especially valuable in the formulation of high-solids coatings which are being used to reduce emissions of volatile organic compounds (VOCs) from many types of coatings. Methyl ethyl ketone is reported to occur naturally as an emission from plants such as European firs, junipers, cedars, cypress trees, and ferns. It has also been identified as a natural component of several foods.

Based on an analysis of the TRI, the petition states that inhalation is the only significant route of human exposure to methyl ethyl ketone emissions. Using the most recent TRI data as input in a tiered air dispersion modeling approach, the petition develops estimates of the maximum annual and 24-hour concentrations anticipated to occur at the boundaries of facilities known to emit methyl ethyl ketone. The petition compares the output from the air models and available IRIS health data to conclude that, given the low concentrations anticipated to occur at the facility boundaries, methyl ethyl ketone cannot reasonably be anticipated to cause either acute or chronic adverse health effects to people living nearby these facilities.

This conclusion is based on methyl ethyl ketone's relatively low toxicity, the estimated low ambient concentrations, and a proposed revision of the IRIS RfC for methyl ethyl ketone. The proposed revision increases methyl ethyl ketone's RfC from 1.0 mg/m^3 to 3.3 mg/m^3. The proposal is based on guidelines published by EPA in 1994 (EPA Office of Research and Development, "Methods for the Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry," EPA No. 600/8–90/066F (October 1994)). This proposed RfC and the assumptions underlying its derivation will be evaluated during our technical review.

The petition also uses a fugacity model to demonstrate that methyl ethyl ketone tends to remain in the air rather than to accumulate in water or on soil. Data is provided to support the position that in the concentrations expected to occur in the environment, methyl ethyl ketone is non-toxic to plants and animals. It is readily degradable through natural process and does not tend to accumulate in living organism. Based on the lack of toxicity and the limited persistence in the environment, the petition concludes that methyl ethyl ketone does not pose a significant adverse effect to the environment.

Dated: June 14, 1999.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 99–15981 Filed 6–22–99; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 64, No. 120

Wednesday, June 23, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Crop Revenue Coverage

ACTION: Notice of availability.

SUMMARY: In accordance with section 508(h) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) approved for reinsurance and subsidy the insurance of wheat in select states and counties under the Crop Revenue Coverage (CRC) plan of insurance submitted by American Agrisurance (AmAg). This notice is intended to inform eligible producers and the private insurance industry of the coverage changes for durum wheat under CRC, for the 2000 crop year.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, Missouri 64131, telephone (816) 926–7387.

SUPPLEMENTARY INFORMATION: Section 508(h) of the Act allows the submission of a policy to FCIC's Board and authorizes the Board to review and, if the Board finds that the interests of producers are adequately protected and any premiums charged to the producers are actuarially appropriate, approve the policy for reinsurance and subsidy in accordance with section 508(e) of the Act.

In accordance with section 508(h) of the Act, the Board approved a program of insurance known as CRC, originally submitted by AmAg, a managing general agency for Redland Insurance Company. All terms and conditions of the policy and all premium rates are determined by AmAg. FCIC does not have the authority to modify or waive any terms or conditions. FCIC only has the authority to approve or disapprove the terms and conditions submitted by AmAg.

The CRC program has been approved for reinsurance and premium subsidy, including subsidy for administrative and operating expenses. CRC is designed to protect producers against both price and yield losses.

Beginning with the 1999 crop year, producers could select 95 or 100 percent of the average daily settlement price and a separate price for durum wheat.

AmAg has requested the following changes for durum wheat for the 2000 crop year: (1) To only offer producers 100 percent of the average daily settlement price rather than a choice of 95 or 100 percent; (2) to cap the durum base price basis premium to $1.00 for Arizona and California; and (3) to remove the northern durum Base Price and Harvest Price from the Commodity Exchange Endorsement pending further review and evaluation by the company.

FCIC herewith gives notice that this Commodity Exchange Endorsement for wheat replaces the Commodity Exchange Endorsement published in the **Federal Register** at 63 FR 37845–37847 for CRC wheat for use by private insurance companies.

The CRC Commodity Exchange Endorsement and underwriting rules for wheat will be released electronically to all reinsured companies through FCIC's Reporting Organization Server.

Notice

The Commodity Exchange Endorsement for the 2000 CRC winter wheat program of insurance is as follows.

Crop Revenue Coverage
Commodity Exchange Endorsement
CROP REVENUE COVERAGE

Mandatory Actuarial Document Endorsement

COMMODITY EXCHANGE ENDORSEMENT—WHEAT

(This is a Continuous Endorsement)

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) this Commodity Exchange Endorsement; (3) the Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

How this endorsement affects your coverage:

(I) This endorsement is attached to and made a part of your Crop Revenue Coverage (CRC) Wheat crop policy provisions and actuarial documents, subject to the terms and conditions described herein.

(II) This endorsement specifies how, where, and when commodity prices for your CRC Wheat policy are determined.

(III) In lieu of section 4(c) of the Basic Provisions, you may only select 100 percent of Base Price and Harvest Price.

(IV) This endorsement defines the Average Daily Settlement Price, as used in the Base Price and Harvest Price, as—The average calculated by totaling all the daily settlement prices for the contract specified in the applicable Base Price or Harvest Price definition (established on full active trading days), during the month specified in the applicable Base Price or Harvest Price definition, and dividing that sum by the total number of days included in the total. The average must include at least fifteen (15) days and each day included in the average must be a full active trading day for the contract specified in the applicable Base Price or Harvest Price definition. A full active trading day is any day on which there are fifty (50) or more open interest contracts of the contract specified in the Base Price or Harvest Price definition. If there are less than fifteen (15) full active trading days for the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, then additional daily settlement prices, established on full active trading days, for the contract immediately prior to the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, will be used until there are fifteen (15) prices from fifteen (15) full active trading days included in the average.

(V) This endorsement defines the Base Price and Harvest Price as shown in Section 1 of the Crop Revenue Coverage Basic Provisions by wheat type and state as follows:

Winter Wheat—(Insured as Winter Wheat), Chicago Board of Trade (CBOT)

Illinois, Indiana, Michigan, Ohio, and Wisconsin

Base Price (CBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's CBOT July soft red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (CBOT)—The July 15 to August 14 harvest year's average daily settlement price for the harvest year's CBOT September soft red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by August 20 of the harvest year.

Winter Wheat—(Insured as Winter Wheat), (CBOT)

Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia

Base Price (CBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's CBOT July soft red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (CBOT)—The June harvest year's average daily settlement price for the harvest year's CBOT July soft red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by July 10 of the harvest year.

Winter Wheat—(Insured as Winter Wheat), Kansas City Board of Trade (KCBOT)

Iowa, Montana, Nebraska, South Dakota, and Wyoming

Base Price (KCBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (KCBOT)—The July 15 to August 14 harvest year's average daily settlement price for the harvest year's KCBOT September hard red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by August 20 of the harvest year.

Winter Wheat—(Insured as Winter Wheat), (KCBOT)

Arizona, Arkansas, Colorado, Kansas, Missouri, New Mexico, Oklahoma, and Texas

Base Price (KCBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (KCBOT)—The June harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by July 10 of the harvest year.

Spring Wheat—(Insured as Spring Wheat in counties with a 3/15 Cancellation Date), Minneapolis Grain Exchange (MGE)

Colorado, Iowa, Minnesota, Montana, North Dakota, South Dakota, Wisconsin, and Wyoming

Base Price (MGE)—The February harvest year's average daily settlement price for the harvest year's MGE September hard red spring wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by March 10 of the harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for the harvest year's MGE September hard red spring wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Spring Wheat—(Insured as spring wheat in counties with a 9/30 cancellation date), (KCBOT/MGE)

Colorado, Iowa, Montana, South Dakota and Wyoming

Base Price (KCBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for the harvest year's MGE September hard red spring wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Wheat—Portland Grain Exchange (PGE)

California, Idaho, Oregon, Utah, and Washington

Base Price (PGE)—The Portland Price equals the August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's CBOT September soft red winter wheat futures contract (rounded to the nearest whole cent) plus an adjustment equal to the current five-year average difference between the August average daily settlement price for the nearby CBOT September soft red winter wheat futures contract (rounded to the nearest whole cent) and the August average daily settlement price for the PGE soft white wheat contract (rounded to the nearest whole cent). The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (PGE)—The August harvest year's average daily settlement price for the PGE soft white wheat contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Durum Wheat—(Insured as durum wheat in counties with a 10/31 cancellation date), (MGE)

Arizona and California

Base Price (MGE)—The Southern Durum Price equals the September 15 to October 14 pre-harvest year's average daily settlement price for the harvest year's CBOT September soft red winter wheat futures contract (rounded to the nearest whole cent) plus an adjustment equal to the average of the current year nearby basis, determined during the months of May, June, July and August of the current crop year, and the current five-year average difference between the August average daily settlement price for top milling durum wheat as reported by the MGE (rounded to the nearest whole cent) and the August average daily settlement price for the nearby CBOT September soft red winter wheat futures contract (rounded to the nearest whole cent) not to exceed $1.00. During the months of May and June the nearby futures contract used to determine the current year nearby basis for top milling durum wheat will be the July contract. During the months of July and August the nearby futures contract used to determine the current year nearby basis for top milling durum wheat will be the September contract. The Base Price will be released as an actuarial document addendum by October 20 of the pre-harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for top milling durum wheat as reported by the MGE rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

All other terms and conditions of the Policy remain unchanged.

Signed in Washington, DC, on June 16, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–15922 Filed 6–22–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; National Forest Recreation Use

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to extend a previously approved information collection and add a new component to the collection. The Forest

Service uses the currently approved collection to assess customer satisfaction and agency performance in meeting customer needs. The new collection will enable the Forest Service to estimate the amount and type of recreational use that occurs on National Forest System areas. The revised collection also will help the Forest Service meet the requirements of the Government Performance and Results Act of 1993 and the National Forest Management Act of 1976. Information will be collected from people who visit National Forest System lands for recreational activities.

DATES: Comments must be received in writing on or before August 23, 1999.

ADDRESSES: All comments should be addressed to Donald B.K. English, Research Social Scientist, Forestry Sciences Laboratory, Forest Service, USDA, 320 Green St., Athens, GA 30602, or email: denglish/srs__athens@fs.fed.us.

The public may inspect comments at the offices of Donald English, Research Work Unit SRS–4901, Forest Service, USDA, 320 Green St., Athens, GA.

FOR FURTHER INFORMATION CONTACT: Donald B.K. English, Southern Research Station, at (706) 559–4268.

SUPPLEMENTARY INFORMATION:

Background

The Government Performance and Results Act of 1993 requires that Federal agencies establish measurable goals and monitor their success at meeting those goals. Two items the Forest Service has agreed to measure are: (1) the views and satisfaction level of recreational visitors to National Forest System lands about the types and quality of recreational services the agency provides; and (2) the number of visitors who come to National Forest System lands for recreational purposes. The agency is often asked for this kind of information from a variety of organizations that include Congressional Staffs, newspapers, magazines, and recreational trade organizations.

The currently approved information collection is designed to evaluate agency performance in meeting the needs of visitors to individual recreational sites, such as the visitor's level of satisfaction and evaluation of the agency's ability to meet the visitor's recreational needs. However, at present, Forest Service personnel are unable to estimate the number of visitors who visit National Forest System lands for recreational purposes. The current information collection is being revised to meet these agency informational needs.

National Forest System land managers will use the collected information to better understand their recreational customers, to improve recreational opportunities and services, and to identify barriers that prevent the agency from meeting the recreational needs of its customers. Data from this information collection also will be considered when revising land and resource management plans for National Forests, as required by the National Forest Management Act of 1976. The collected information will be shared with all National Forest System land managers and, upon request, with others. Results from this collection will be published in agency reports and various research journals.

Description of Information Collection

The following describes the information collection to be extended:

Title: Customer and Use Survey Techniques for Operations, Management, Evaluation, and Research.

OMB Number: 0596–0110.

Expiration Date of Approval: December 31, 1999.

Type of Request: Extension, with revision, of a previously approved information collection.

Abstract: The data from this information collection provides the agency with information about the characteristics, desires, needs, and opinions of recreational visitors to selected recreational sites on National Forest System lands and other public agency lands.

Agency personnel, contract personnel, and volunteers, trained in conducting face-to-face interviews, will contact people who are visiting public lands for recreational purposes. Survey questions will focus on how well the agency meets visitors' expectations for recreational opportunities, their satisfaction with the recreational site of their choice, and if they have concerns regarding the agency's management of the site.

Agency land managers will use the collected information to better understand their recreational customers, to improve recreational opportunities and services, and to identify barriers that prevent the agency from meeting the recreational needs of its customers.

The collected information will be shared with agency land managers and upon request, with others.

Data gathered in this collection is not available from other sources.

Estimate of Burden: 10 minutes.

Type of Respondents: People who visit National Forest System land for recreational purposes.

Estimated Number of Respondents: 9,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,500 hours.

Description of Information Collection

The following describes the new component of a currently information collection to be extended:

Title: National Forest Recreation Use Survey.

OMB Number: 0596–0110.

Expiration Date of Approval: December 31, 1999.

Type of Request: New information collection.

Abstract: Data from this information collection will be used to estimate the numbers of recreational visitors to National Forest System lands, as well as the types of activities in which they participate. The data also will be used to identify recreational markets and to estimate the economic values and impacts of recreational visits.

Respondents will be asked questions about the activities in which they participate while visiting National Forest System lands, the duration of their visit, how often they visit, what types of items they have purchased during their visit, and the State in which they live.

Forest Service personnel will interview visitors as they exit National Forest System land recreational sites. Surveys will be conducted on about one-fourth of the National Forests each year, so that complete coverage of agency lands will occur over a 4-year cycle. Each National Forest will retain a copy of data collected on its visitors. Results of this study will be published in agency reports and various research journals.

Data gathered in this collection is not available from other sources.

Estimate of Burden: 6 minutes.

Type of Respondents: People who visit the National Forest System lands for recreational purposes.

Estimated Number of Respondents: 80,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8,000 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 17, 1999.

Robert Lewis, Jr.,

Deputy Chief for Research & Development.

[FR Doc. 99–15987 Filed 6–22–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Swan Flat Proposed Timber Sale; Cache National Forest (Administered by the Caribou National Forest), Bear Lake County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The USDA, Forest Service will prepare an Environmental Impact Statement to document the analysis and disclose the environmental impacts of proposed actions to harvest timber, build roads, and regenerate new stands of trees in the Swan Flat area of the Cache National Forest in Bear Lake County, Idaho. The proposed project is located in T.16S., R.42E., Section 23, 24, 25, and T.116S., R. 43E., Section 30, Boise Meridian. Implementing the silvicultural prescriptions under the proposed action will bring these timber stands to a healthy and productive condition. This would result in reduction of insect and disease activity, increased growth on regenerated stands, and provide a more uniform age and size distribution of timber stands.

On July 7, 1997, the Montpelier Ranger District released to the public, the Swan Flat Environmental Assessment for a 30 day predecisional review. After reviewing the responses of the predecisional review, the Montpelier Ranger District determined that an Environmental Impact Statement would be needed to address entering the Swan Creek Mountain Roadless Area.

The Montpelier Ranger District of the Caribou National Forest proposes to harvest an estimated 1.5 million board feet of commercial timber in 13 stands on 291 acres. A total of 5 acres would be clear cut. The remaining stands would be partially cut using thinning, sanitation /salvage, group seed tree, shelterwood and improvement cut. All stands would be tractor logged. Approximately 1.3 miles of the Swan Flat Road from the junction of U.S. Highway 89 in Logan Canyon would be graveled. Approximately 1.5 miles of the Swan Flat Road from the junction of the Red Sinks Road would be realigned to enhance log hauling. Four hundred feet of the Swan Flat Road from the Red Sinks Road junction would be spot graveled. Approximately 0.5 miles of road construction would be needed within the area designated as located by the Caribou National Forest Lane and Resource Management Plan. All newly constructed roads within the goaded area would be obligated at the completion of the logging operation. Eight of the proposed cutting units are located in the Swan Creek Mountain Roadless Area. These cutting units are located on the fringe of the roadless area and adjacent to the existing Swan Flat Road and Red Sinks Road. Timber would be skidded to these existing roads. There would be no road construction in the Swan Creek Mountain Inventoried Road less Area.

The following preliminary issues have been identified:

- Regeneration cutting in deer and elk travel routes would compromise security cover.
- Eight of the proposed cutting units are located in the Swan Creek Mountain Roadless Area. Harvest activities would affect roadless characteristics.
- Regenerations cutting could effect the quality of winter recreational activities for cross-country skiers now and in the future.

The following alternatives have been developed:

Alternative 1 is the no action alternative.

Alternative 2 is the proposal. Under this alternative an estimated 1.5 million board feet of sawtimber would be removed from 265 acres.

Alternative 3 would address the winter recreation concerns. Under this alternative 1.1 million board feet of sawtimber would be removed from 307 acres.

Alternative 4 would address the concerns about wildlife corridors. Under this proposal 1.5 million board feet of sawtimber would be removed from 291 acres.

This proposed sale is scheduled to be offered in 2001. For maps of the proposed project area, please contact the Montpelier Range District, 322 North 4th Street, Montpelier, Idaho 83254.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before July 23, 1999. No scoping meetings are planned at this time. Information received will be used in preparation of the draft EIS and final EIS.

ADDRESSES: Send written comments to Caribou National Forest, Montpelier Ranger District, 322 North 4th Street, Montpelier, Idaho 83254.

FOR FURTHER INFORMATION: Questions concerning the proposed action and EIS should be directed to Eric Mattson, Caribou National Forest, Montpelier Ranger District, 322 N. 4th Street, Montpelier, Idaho 83254 (Telephone: (208) 847–0375).

SUPPLEMENTARY INFORMATION: The Forest Service is seeking information and comments from Federal, State, and local agencies, as well as individuals and organizations who may be interested in, or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

The responsible official is Jerry B. Reese, Supervisor, Caribou National Forest, 250 South Fourth Avenue, Pocatello, Idaho 83254.

The decision to be made is: Whether the proposed stands shall be brought under management (i.e. change from the management of natural succession to management activities that would achieve multiple-use goals) by cutting the sawtimber in each stand? If so, what cutting methods should be applied to each stand and what mitigation may be necessary?

The tentative date for filing the Draft EIS is October 1, 1999. The tentative date for filing the final EIS is January 5, 2000. The comment period on the draft environmental impact statement will be open for 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give viewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is

meaningful and alert an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period of the Draft Environmental Impact Statement so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement. Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality.

Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

Dated: June 14, 1999.

Jerry B. Reese,

Forest Supervisor, Caribou National Forest, Intermountain Region, USDA Forest Service.

[FR Doc. 99–15885 Filed 6–22–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for "Self-Help Technical Assistance Grants" (RD Instruction 1944–I).

DATES: Comments on this notice must be received by August 23, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Lucia A. McKinney, Senior Loan Specialist, Single Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Ag Box 0783, Washington, DC 20250, Telephone (202) 720–1457.

SUPPLEMENTARY INFORMATION:

Title: Self-Help Technical Assistance Grants.

OMB Number: 0575–0043.

Expiration Date of Approval: September 30, 1999.

Type of Request: Extension of a currently approved information collection.

Abstract: This subpart set forth the policies and procedures and delegates authority for providing Technical Assistance funds to eligible applicants to finance programs of technical and supervisory assistance for self-help housing, as authorized under Section 523 of the Housing Act of 1949 loan program under 42 U.S.C. 1472. This financial assistance may pay part of all of the cost of developing, administering or coordinating program of technical and supervisory assistance to aid very low- and low-income families in carrying out self-help housing efforts in rural areas. The primary purpose is to fund organizations that are willing to locate and work with families that otherwise do not qualify as homeowners, are below the 50 percent of median incomes, and living in substandard housing.

RHS will be collecting information from non-profit organizations to enter into grant agreements. These non-profit organizations will give technical and supervisory assistance, and in doing so, they must develop a final application for Section 523 grant funds. This application includes Agency forms that contain essential information for making a determination of eligibility.

Estimate of Burden: Public reporting for this collection of information is estimated to average .91 hours per response.

Respondents: Individual or households.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 34.35.

Estimated Total Annual Burden on Respondents: 3,121 hours.

Copies of this information collection can be obtained from Jean Mosley, Regulations and Paperwork Management Branch at (202) 692–0041.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Housing Service, including whether the information will have practical utility; (b) the accuracy of Rural Housing Service's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosley, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Ag Box 0742, Washington, D.C. 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 7, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–16015 Filed 6–22–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–840]

Initiation of Antidumping Duty Investigation: Acrylonitrile Butadiene Rubber From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: June 23, 1999.

FOR FURTHER INFORMATION CONTACT: Marian Wells, Annika O'Hara, or Ryan Langan, Office One, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–6309, 482–3798, and 482–1279, respectively.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 as amended ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 351 (1998).

The Petition

On May 27, 1999, the Department of Commerce ("the Department") received a petition filed in proper form by Zeon Chemicals L.P. and Uniroyal Chemical Company, Inc., hereinafter collectively referred to as "the petitioners."

In accordance with section 732(b) of the Act, the petitioners allege that imports of acrylonitrile butadiene rubber from the Republic of Korea ("Korea") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are both materially injuring and threatening material injury to an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and because the petitioners have demonstrated that they represent, at a minimum, the required proportion of the United States industry (*see* "Determination of Industry Support for the Petition" section, below).

Scope of the Investigation

The product covered by this investigation is commonly referred to as acrylonitrile butadiene rubber or nitrile rubber ("NBR"). NBR is a synthetic rubber produced by the copolymerization of butadiene and acrylonitrile. NBR is sold in bale, slab, crumb, powder and latex form. NBR in the latex form is excluded from the scope of this investigation. Also excluded from the scope of this investigation is NBR containing additives, NBR containing rubber processing chemicals, and NBR containing other materials used for further processing beyond the copolymerization process. The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 4002.59.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope of the investigation with the petitioners to ensure that the scope language accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to our regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of its preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as "the producers as a whole of a domestic like product." Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1] Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the refer
from which the analysi
like product begins
subject to an
class or kin to be
investigate ally will be the
scope as defined in the petition.

The domestic like product identified in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. Therefore, the Department has adopted this definition of the domestic like product.

In this case, the Department has determined that the petition contains evidence of sufficient industry support. Therefore, polling was not necessary. *See* Initiation Checklist dated June 16, 1999 (the public version is on file in the Central Records Unit of the Department of Commerce, Room B–099). Based on the record evidence, the producers who

[1] See *Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

support the petition account for more than 50 percent of the production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9)(C), (D), (E) or (F) of the Act has expressed opposition on the record to the petition. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

On June 15, 1999, the Department received a letter from counsel for the potential respondents who argued that the Department should not initiate this investigation unless it determines, through polling, that the petition is supported by the U.S. industry. The basis for this request was the potential respondents' claim that one of the petitioners, Uniroyal, will cease its production of the subject merchandise in the United States in mid-1999 and move all of its production to Mexico. Thereby, Uniroyal would not be a U.S. producer, according to respondents. This fact was argued as outcome determinative that there was no industry support.

The Department has decided to continue to treat Uniroyal as a petitioner and interested party in this investigation. First, Uniroyal was producing the subject merchandise in the United States at the time the petition was filed and, to the best of our knowledge, the planned move to Mexico had not yet taken place at the time of this initiation of the investigation. Second, if we were to exclude Uniroyal, the companies supporting the petition would still exceed the required 25 percent of total production and more than 50 percent of the production produced by that portion of the industry expressing support for, or opposition to, the petition. If we were to accept the argument that Uniroyal no longer is a U.S. producer, we would exclude its production from both the numerator and the denominator in our calculation of industry support. Thus, it would not change industry support substantially and the Department's determination regarding industry support, mentioned above, would stand.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioners identified Korea Kumho Petrochemical ("Kumho") and Hyundai Petrochemical Co., Ltd. ("Hyundai") as producers and exporters of NBR to the United States. According to the petitioners, Korean producers sold NBR to unaffiliated imports/distributors in the United States and, therefore, U.S. price is calculated using the export price ("EP") methodology.

For their EP calculation, the petitioners have used multiple offers for sale of the subject merchandise by unaffiliated U.S. importer/distributors to unaffiliated purchasers in the United States between March 1998 and February 1999. In order to approximate the price paid by the U.S. importers/distributors to Korean exporters, the petitioners subtracted the importers/distributors' estimated profit, selling, general, and administrative expenses, and imputed credit expenses. The petitioners also deducted movement charges incurred in bringing the merchandise to the United States.

The Department has made several adjustments to the petitioners' calculation of net U.S. price. First, only two of the several U.S. prices presented by the petitioners are supported by source documentation in the petition. Of these two prices, one is from the anticipated period of investigation ("POI") whereas the other price dates to a period prior to the POI. Therefore Department has recalculated the U.S. price based on the price which pertained to the POI and for which the petitioners have submitted supporting documentation. Second, based on our understanding of the distribution process of the Korean product in the United States, the price paid by the unaffiliated importer/distributor in the United States can be computed by simply deducting the importers/distributors' markup (as reported in the petition) from the price charged by the importers/distributors to their unaffiliated customers. Therefore, we deducted this markup rather than the alleged expenses and profit of the importers/distributors. In addition, we subtracted Korean inland freight, ocean freight, U.S. inland freight, U.S. warehousing expenses, U.S. merchandise processing fees, and U.S. harbor maintenance fees. The resulting amount is the net U.S. export price which we have compared to normal value. *See* Initiation Checklist.

On June 16, the petitioners submitted to the Department unit import values based on U.S. import statistics for January through March 1999. As an alternative calculation of U.S. price, we have used the import values adjusted for the movement expenses above.

The petitioners have used quoted sales prices in the home market to calculate normal value. They obtained gross unit prices and multiple offers for sale in May and October of 1998 for products which were either identical or similar to those sold to the United States. The petitioners subtracted from the gross unit home market prices the estimated transportation costs to home market customers. They made adjustments for differences in circumstances of sale in the U.S. and home markets (for credit and technical services), and they applied a commission offset (corresponding to their deduction of importers/distributors' expenses and profits in calculating EP). Finally, they deducted estimated home market packing costs and added estimated U.S. (international) packing costs.

The Department has also made several adjustments to the petitioners' calculation of normal value. First, we converted the home market prices to U.S. dollars using exchange rates contemporaneous with the U.S. sales. We then computed an average home market price. Second, we did not include the commission offset computed by the petitioners because, as discussed above, no commission was reflected in the U.S. price. Following the petitioners' methodology, we made the circumstance-of-sale adjustment and adjusted for packing and freight. *See* Initiation Checklist.

Fair Value Comparison

Based on the data provided by the petitioners, there is reason to believe that imports of NBR from Korea are being, or are likely to be, sold at less than fair value. Based on the Department's recalculations of export price and normal value, the comparisons yield dumping margins ranging from 83.81 percent to 102.20 percent.

Allegation and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value. The petitioners explained that the industry's injured condition is evident in the declining trends in net operating income, net sales volumes, net selling prices, and U.S., production. The allegation of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist.

Initiation of Antidumping Investigation

Based upon our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of NBR from Korea are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination by November 3, 1999.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to representatives of the Government of Korea. We will attempt to provide a copy of the public version of the petition to the Korean exporters named in the petition.

International Trade Commission Notification

We have notified the ITC of our initiation of this investigation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by July 12, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of NBR from Korea. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published in accordance with section 777(i) of the Act.

Dated: June 16, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–15997 Filed 6–22–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Initiation of Antidumping Duty Investigation: Bulk Aspirin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 23, 1999.

FOR FURTHER INFORMATION CONTACT: Craig W. Matney or Alysia Wilson, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1778 or (202) 482–0108, respectively.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (1998).

The Petition

On May 28, 1999, the Department received a petition filed in proper form by Rhodia, Inc., referred to hereinafter as "the petitioner." The petitioner filed supplemental information to the petition on June 14, 1999.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of bulk aspirin from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring or threaten to injure an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it represents, at a minimum, the required proportion of the United States industry (*see Determination of Industry Support for the Petition* section below).

Scope of Investigation

For purposes of this investigation, the product covered is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia (USP) 23. It is classified under the *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the Handbook of Nonprescription Drugs, eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets

this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1] Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

To the best of the Department's knowledge, the petitioner is the sole U.S. producer of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to sections 771(9) (C), (D), (E) or (F) of the Act has expressed opposition on the record to the petition. Thus, the petitioner accounts for more than 50 percent of the production of the domestic like product. Accordingly, in accordance with section 732(c)(4) of the Act, we determine that the petition has been filed on behalf of the domestic industry. *See* Initiation Checklist dated May 17, 1999 (public version on file in the Central Records Unit of the Department of Commerce, Room B–099) (Initiation Checklist).

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determination for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioner identified four potential PRC exporters and producers of bulk aspirin. The petitioner based export price (EP) on (1) an offer for sale of the subject merchandise to a U.S. purchaser by a PRC exporter during the first quarter of 1999; (2) the market prices of the subject merchandise paid by a U.S. purchaser; (3) U.S. import statistics for 1998; (4) U.S. import statistics for the first quarter of 1999; and (5) export statistics from the PRC. From these starting prices, the petitioner deducted international freight and marine insurance, when the terms of the sale were delivered, and import duties, where appropriate. The petitioner based international freight and marine insurance fees on the difference between the FAS and the CIF values stated in the U.S. Bureau of the Census import statistics for 1998 imports of subject merchandise from China. Additionally, the petitioner deducted U.S. import duties of 8.7 percent from the dutiable value to obtain the net export price.

Because the PRC is considered a nonmarket economy (NME) country under section 771(18) of the Act, the petitioner based normal value (NV) on the factors of production valued in a surrogate country, in accordance with section 773(c)(3) of the Act. The petitioner selected India as the most appropriate surrogate market economy. For the factors of production, the petitioner used its own factor inputs and consumption data for materials, labor and energy, based on the production processes that the petitioner uses in its plant which is most comparable in level of technology to production processes utilized by several of the major PRC producers of bulk aspirin. The petitioner presented two alternative methods for calculating NV: The first assumes that the primary material input is purchased, and the second assumes that this input is produced in-house.

Materials, utilities, and recovered by-products were valued based on Indian prices obtained from public information contained in an affidavit supplied by the petitioner on Indian domestic market prices, international publications containing the prices applicable to India, Indian import statistics, and U.S. export statistics. Labor was valued using the regression-based wage rate for the PRC provided by the Department, in accordance with 19 CFR 351.408(c)(3). The petitioner reduced the total cost of production (COP) by the value of by-products recovered. For factory overhead; selling, general and administrative expenses; and profit, the petitioner applied rates derived from information gathered from the financial statements of a publicly-traded Indian producer of aspirin. The petitioner added one percent of COP to account for packing factor costs, consistent with Department practice in certain previous cases. (For further information on the EP and NV calculation methodology, *see Initiation Checklist* and *Calculation Adjustments Memorandum*, both dated June 17, 1999.)

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of bulk aspirin from the PRC are being, or are likely to be, sold at less than fair value. Based on a comparison of EP to NV, the petitioner's calculated dumping margins range from 8.28 percent to 144.02 percent.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist.*

Initiation of Antidumping Investigation

Based on our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of bulk aspirin from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination by November 4, 1999.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by July 12, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury by reason of imports of bulk aspirin from the PRC. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published in accordance with section 777(i) of the Act.

Dated: June 17, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–16000 Filed 6–22–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–506]

Oil Country Tubular Goods From Canada; Notice of Extension of Time Limit for New Shipper Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for new shipper administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the new shipper administrative review of the antidumping duty order on oil country tubular goods from Canada. The review covers Atlas Tube, Inc. (Atlas), a new shipper of the subject merchandise to the United States and the period of review is June 1, 1998, through November 30, 1998. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994 (19 U.S.C. 1675(a)(3)(A)).

EFFECTIVE DATE: June 23, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Jack Dulberger, AD/CVD Enforcement, Group II, Office 4, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4114, or (202) 482–5505, respectively.

Postponement of Preliminary Results of New Shipper Administrative Review

On January 28, 1999, the Department of Commerce (the Department) initiated this new shipper review of the antidumping duty order on oil country tubular goods from Canada. *See Oil Country Tubular Goods From Canada: Notice of Initiation of New Shipper Antidumping Duty Administrative Review*, 64 FR 5265 (February 3, 1999). We have determined that this review is extraordinarily complicated, and that we are unable to complete it within the original timeframe. *See* the Memorandum from Bernard T. Carreau to Robert S. LaRussa, dated June 9, 1999, on file in the Central Records Unit located in room B–099 of the main Department of Commerce building. Therefore, the Department is extending the time limit for issuing the preliminary results from July 27, 1999, for an additional 120 days, to November 24, 1999.

Accordingly, the deadline for issuing the preliminary results is now due no later than November 24, 1999. The deadline for issuing the final results will be no later than 90 days from the issuance of the preliminary results.

This notice is in accordance with section 751(a)(2)(B)(iv) of the Trade and Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(2)(B)(iv)).

Dated: June 16, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–15999 Filed 6–22–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–826]

Certain Paper Clips From the People's Republic of China; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On December 23, 1998, the Department of Commerce published in the **Federal Register** (63 FR 71091) a notice announcing the initiation of an administrative review of the antidumping duty order on certain paper clips from the People's Republic of China. This review covered the period from November 1, 1997, through October 31, 1998. The Department of Commerce has now rescinded this review as a result of the withdrawal of requests by respondents for administrative review.

EFFECTIVE DATE: June 23, 1999.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Robin Gray, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published in the **Federal Register** on November 12, 1998 (63 FR 63287), a "Notice of Opportunity to Request Administrative Review" of the antidumping duty order on certain paper clips from the People's Republic of China (59 FR 60606, November 25, 1994). On November 30, 1998, Zhejiang Light Industrial Products Import and Export Corporation (ZLIP), a respondent, requested an administrative review of imports of its merchandise into the United States. On December 1, 1998, Direct Source International Inc., an importer of record, requested an administrative review of imports of merchandise from a manufacturer/exporter, Hui Zhou Shi Da Wing Plastic Metal Factory (Zhou), into the United States. The Department initiated the review on December 23, 1998 (63 FR 71091).

On February 12, 1999, ZLIP withdrew its request for an administrative review. On May 24, 1999, Direct Source

International Inc. also withdrew its request for an administrative review. Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. There were two requests for administrative review and both have been withdrawn. Although Direct Source International Inc. withdrew its request after the 90-day deadline, given that the review has not progressed substantially and there would be no undue burden on the parties or the Department, we have determined that it is reasonable to grant the request to withdraw the original review requests. Therefore, we are rescinding this review. This rescission of the administrative review and notice are in accordance with section 751 of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(d).

The cash-deposit rates will remain at 46.01 percent for ZLIP and 126.94 percent for Zhou, the rates established in the most recently completed segment of this proceeding (59 FR 51168, October 7, 1994). This notice is in accordance with section 777(i) of the Act.

Dated: June 9, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–15998 Filed 6–22–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061699A]

Endangered and Threatened Species; Revision of Candidate Species List Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of modification of list of candidate species.

SUMMARY: NMFS identifies marine and anadromous species as candidates for possible addition to the List of Endangered and Threatened Species. NMFS is soliciting information concerning the status of these species. This notice is not a proposal for listing, and the involved species do not receive substantive or procedural protection under the Endangered Species Act of 1973 (ESA). The candidate species list serves to notify the public that NMFS has concerns regarding these species/vertebrate populations that may warrant listing in the future, and it facilitates voluntary conservation efforts. NMFS encourages Federal agencies and other appropriate parties to take these species into account in project planning.

DATES: This updated list is effective on June 23, 1999.

ADDRESSES: Reliable documentation for these additions to the candidate species list should be sent to the Chief of Endangered Species, NMFS, Office of Protected Resources, 1315 East-West Highway, F/PR3, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Marta Nammack or Terri Jordan at (301)713–1401.

SUPPLEMENTARY INFORMATION: The ESA requires determinations of whether species of wildlife and plants are endangered or threatened, based on the best available scientific and commercial data. "Species" includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature (vertebrate population). NMFS and the U.S. Fish and Wildlife Service share responsibilities under the ESA. With some exceptions, NMFS is responsible for species that reside all or the major portion of their lifetimes in marine or estuarine waters. The regulations implementing Section 4 of the ESA (49 FR 38900, October 1, 1984) define "candidate" as "any species being considered by the Secretary for listing as an endangered or a threatened species, but not yet the subject of a proposed rule." As resources permit, NMFS conducts a review of the status of each candidate species to determine if it warrants listing as endangered or threatened under the ESA.

Species/vertebrate populations may be added to the candidate species list based on consideration of their biological status. Biological status is determined by both demography and genetic composition of the species/vertebrate population. If there is evidence of demographic or genetic concerns that would indicate that listing may be warranted, the species/vertebrate population should be added to the candidate species list.

Demographic concerns would occur when there is a significant decline in abundance or range from historical levels that would indicate that listing may be warranted. This could result from overharvest, habitat degradation, disease outbreaks, predation, natural climatic conditions, and hatchery practices that lead to competition with natural stocks or depletion of natural fish for use as hatchery broodstock.

Genetic concerns that would indicate that listing may be warranted include outbreeding and inbreeding depression resulting from poor hatchery practices or substantially reduced numbers of natural individuals.

On July 14, 1997, NMFS revised its candidate species list (62 FR 37561). On January 15, 1999, NMFS published notification soliciting comments and reliable documentation on species it was considering to add to the candidate species list (64 FR 2629). NMFS considered all comments received and all available information in updating the candidate species list.

This document adds 14 new species to the list of candidate species for which reliable information is available to NMFS meeting the previously stated criteria (Table 1). As resources permit, NMFS intends to conduct status reviews on candidate species, collect further documentation on them, and make appropriate amendments to the accompanying table during the next revision.

In addition to these new species, changes to the candidate status of Pacific salmon as a result of status reviews have been noted in Table 1 to this document. In some cases, even when NMFS determines that listing a species under the ESA is not warranted, it may add the species to the candidate species list because some concerns about its status still remain. Chum, sockeye, and chinook salmon are no longer candidate species, though the Hood Canal summer-run and Columbia River chum salmon evolutionarily significant units (ESU), the Ozette Lake sockeye salmon ESU, and the Upper Columbia River spring-run, Puget Sound, Lower Columbia River, and Upper Willamette River chinook salmon ESUs were listed as threatened or endangered (64 FR 14308, March 24, 1999; 64 FR 14508, March 25, 1999; 64 FR 14517, March 25, 1999; 64 FR 14528, March 25, 1999). NMFS designated three more steelhead ESUs (Northern California, Klamath Mountains Province, and Oregon Coast) as candidate species (63 FR 13347, March 19, 1998) and listed the former candidate species, Middle Columbia River steelhead ESU, and the Upper Willamette River steelhead ESU, as threatened (64 FR 14517; March 25, 1999). NMFS also listed the former candidate species, Oregon Coast coho salmon ESU, as threatened in August 1998 (63 FR 42587; August 10, 1998), leaving only two coho salmon ESUs on the candidate species list. After conducting a coastwide status review of sea-run cutthroat, NMFS proposed to list the Southwestern Washington/Columbia River ESU as threatened and designated the Oregon Coastal sea-run cutthroat trout ESU as a candidate species (64 FR 16397; April 5, 1999).

In addition, though NMFS determined that the Gulf of Maine population of harbor porpoise's status did not warrant listing under the ESA, the population has been added to the candidate species list because concerns on its status still remain.

It is important to note that the candidate species list is limited by the information available. Therefore, it does not encompass all declining marine and anadromous species that may warrant listing in the future. Moreover, inclusion of a species on the candidate list does not create a higher listing priority for that species. As appropriate, NMFS may initiate a status review for any species or vertebrate population of concern, regardless of whether it is a candidate species, and the public may petition to list any species or vertebrate population. Inclusion in the candidate species list is intended to stimulate voluntary conservation efforts, which, if effective, can result in a lower likelihood of an ESA listing.

In Table 1, Revised list of candidate species, the common name appears as the first entry followed by the scientific name, the family name, and the area of concern. This area denotes the general geographic boundaries of the species or the vertebrate population for which concern has been expressed. Ongoing or future biological status reviews may narrow the geographic area or population of concern in the future.

Dated: June 15, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

Table 1 - Revised list of candidate species

Common Name	Scientific Name	Family	Area of Concern [3]
Marine Mammals			
beluga whale	*Delphinapterus leucas*	Monodontidae	AK (Cook Inlet population).
harbor porpoise	*Phocoena phocoena*	Phocoenidae	ME - NC (Gulf of Maine population).
Fishes			
dusky shark	*Carcharhinus obscurus*	Carcharhinidae	Atlantic; Gulf of Mexico; Pacific.
sand tiger shark	*Odontaspis taurus*	Odontaspididae	Atlantic; Gulf of Mexico.
night shark	*Carcharinus signatus*	Carcharhinidae	Atlantic; Gulf of Mexico.
smalltooth sawfish*	*Pristis pectinata*	Pristidae	Atlantic; NC to Gulf of Mexico.
largetooth sawfish*	*Pristis pristis*	Pristidae	Atlantic; TX, FL.
barndoor skate*	*Raja laevis*	Rajidae	Atlantic; Cape Hatteras, NC to Newfoundland, Canada.
Atlantic sturgeon	*Acipenser oxyrhynchus oxyrhynchus*	Acipenseridae	Atlantic, anadromous.
Pacific herring*	*Clupea pallasi*	Clupeidae	Puget Sound.
Alabama shad	*Alosa alabamae*	Clupeidae	AL, FL, anadromous.
searun cutthroat trout	*Oncorhynchus clarki clarki*	Salmonidae	Pacific, anadromous. Oregon Ceastal ESU.
coho salmon	*Oncorhynchus kisutch*	Salmonidae	Pacific, anadromous. Puget Sound/Strait of Georgia and Southwest WA/Lower Columbia River ESUs[1]
steelhead trout	*Oncorhynchus mykiss*	Salmonidae	Pacific, anadromous. Northern CA, Klamath Mountains Province, and OR Coast ESUs.
Atlantic salmon	*Salmo salar*	Salmonidae	Atlantic, anadromous. Gulf of Maine DPS[2]
Pacific cod*	*Gadus macrocephalus*	Gadidae	Puget Sound.
Pacific hake*	*Merluccius productus*	Gadidae	Puget Sound.
walleye pollock*	*Theragra chalcogramma*	Gadidae	Puget Sound.
mangrove rivulus	*Rivulus marmoratus*	Aplocheilidae	FL, estuarine.
saltmarsh topminnow	*Fundulus jenkinsi*	Cyprinodontidae	TX, LA, MS, AL, FL.
Key silverside	*Menidia conchorum*	Atherinidae	Florida Keys.
opposum pipefish	*Microphis brachyurus lineatus*	Syngnathidae	Florida, Indian River Lagoon.
brown rockfish*	*Sebastes auriculatus*	Scorpaenidae	Puget Sound.
copper rockfish*	*Sebastes caurinus*	Scorpaenidae	Puget Sound.
quillback rockfish*	*Sebastes maliger*	Scorpaenidae	Puget Sound.
bocaccio*	*Sebastes paucispinis*	Scorpaenidae	Pacific, CA to OR.
speckled hind	*Epinephelus drummondhayi*	Serranidae	NC to Gulf of Mexico.
jewfish	*ephinephelus itijara*	Serranidae	NC southward to Gulf of Mexico.
warsaw grouper	*Epinephelus nigritus*	Serranidae	MA southward to Gulf of Mexico.
Nassau grouper	*Epinephelus striatus*	Serranidae	NC southward to Gulf of Mexico.
Mollusks			
white abalone	*Haliotes sorenseni*	Haliotidae	CA, Baja CA.
black abalone*	*Haliotis cracherodii*	Haliotidae	OR, CA, Baja CA.
Anthozoans (Corals)			
elkhorn coral*	*Acropora palmata*	Acroporidae	western Atlantic; Caribbean.
staghorn coral*	*Acropora cervicornis*	Acroporidae	western Atlantic; Caribbean.

*addition to list

[1] ESU = evolutionarily significant unit. Pacific salmon populations can only be listed under the ESA if they are "evolutionarily significant", per NMFS policy (56 FR 58612).

[2] DPS = distinct population segment

[3] Defines the general geographic area or populations of concern for the species.

[FR Doc. 99–15863 Filed 6–22–99; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

I.D. 061599E

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fisheries for Dolphin and Wahoo

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agency action.

SUMMARY: NMFS, under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), has designated the South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils (Councils) as joint preparers of a new fishery management plan for the fisheries for dolphin, *Coryphaena hippurus*, and wahoo, *Acanthocybium solandri* (FMP), throughout their range in the exclusive economic zone (EEZ) of the Atlantic, Gulf of Mexico, and Caribbean Sea. NMFS has further designated the South Atlantic Fishery Management Council (South Atlantic Council) as the Council with the administrative lead in preparing and amending this new FMP. Under the new FMP, the three Councils would jointly set the population parameters (e.g., maximum sustainable yield (MSY)) for dolphin and wahoo. NMFS has encouraged the Councils to develop an FMP framework regulatory adjustment procedure that would provide authority for each of the three Councils to establish independently regulatory measures in its respective area of jurisdiction. The Mid-Atlantic and New England Fishery Management Councils indicated a preference not to manage the stocks directly, but to serve in an advisory capacity to the other Councils with joint FMP preparation and amendment responsibility.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 727–570–5305.

SUPPLEMENTARY INFORMATION: Currently, dolphin in the EEZ of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea is managed under the FMP for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Pelagics FMP). Wahoo in the EEZ is currently not managed under any Federal FMP. The Gulf and South Atlantic Councils have joint responsibility for developing and amending the Coastal Pelagics FMP (managed species include king mackerel, Spanish mackerel, cero, cobia, dolphin, little tunny, and, in the Gulf of Mexico only, bluefish). The Coastal Pelagics FMP is implemented under authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. Presently, those regulations specify authorized and unauthorized fishing gears for dolphin and corresponding dolphin possession limits for those gears.

Given the increasing fishing pressure on dolphin and wahoo, and the sparse information available on stock structure and status, the South Atlantic Council perceives a need to provide management for dolphin and wahoo throughout their ranges. The South Atlantic Council believes that present fishery conditions require timely action to prevent overfishing and serious user group conflicts before they occur off the southern Atlantic states or elsewhere in the Atlantic EEZ. Consequently, the South Atlantic Council requested authorization under the Magnuson-Stevens Act to develop an FMP that would provide comprehensive management and protection of dolphin and wahoo in the EEZ of the Atlantic, Gulf of Mexico, and Caribbean Sea. Inclusion of dolphin in the proposed dolphin/wahoo FMP would have required its removal from the Coastal Pelagics FMP by an amendment to that FMP.

Under its request, the South Atlantic Council would have prepared the dolphin/wahoo FMP and subsequent amendments for submission to NMFS for review, approval, and implementation (as provided under section 302(h) of the Magnuson-Stevens Act). This proposed scenario would have required Council adoption of the final FMP/amendment only by majority vote of the South Atlantic Council.

On March 9, 1998 (63 FR 11422), and May 5, 1998 (63 FR 24774), NMFS published documents in the **Federal Register** affording opportunity for public comment on the South Atlantic Council's proposal. NMFS published the second document at the Gulf Council's request to allow more time for its membership to consider more fully the issues and impacts of the proposal.

After considering the South Atlantic Council's request, and the public comment received, NMFS, acting on behalf of the Secretary of Commerce (Secretary) under the procedures of the Magnuson-Stevens Act, has designated the South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils as joint preparers of a new FMP for the fisheries for dolphin and wahoo throughout their range in the EEZ of the Atlantic, Gulf of Mexico, and Caribbean Sea. NMFS has further designated the South Atlantic Council as the Council with the administrative lead in preparing and amending this new dolphin/wahoo FMP. Authority to designate a Council or Councils to prepare an FMP for fisheries that extend beyond one Council's geographical area of authority is granted to the Secretary under section 304(f) of the Magnuson-Stevens Act. That section further states that no jointly prepared FMP or amendment may be submitted to NMFS for review, approval, and implementation unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

Under this joint designation, the Gulf, Caribbean, and South Atlantic Councils will jointly set the population parameters for dolphin and wahoo, such as MSY, optimum yield, minimum stock size threshold, and maximum fishing mortality threshold; the South Atlantic Council will have the administrative lead in establishing these parameters. NMFS will encourage the Councils to develop jointly an FMP framework regulatory adjustment procedure that will provide authority for each Council to establish independently the regulatory measures in its respective area of jurisdiction. The Mid-Atlantic and New England Fishery Management Councils have indicated a preference not to manage directly, but to serve in an advisory capacity to the other Councils. It would be the responsibility of the South Atlantic Council to coordinate matters of international concern with the other Councils.

Once completed, the dolphin/wahoo FMP or its amendments will be submitted for agency review, approval, and implementation, but only after approval by a majority of the voting members, present and voting, of the South Atlantic, Gulf, and Caribbean Councils. NMFS believes that this approach is the most expedient and practicable method to manage dolphin and wahoo effectively and equitably throughout their ranges. Managing these species throughout their ranges should facilitate maintaining populations at levels sufficient to produce MSY on a continuing basis, and ultimately optimize the socioeconomic benefits of the resource.

NMFS' approval of the dolphin/wahoo FMP would require removal of dolphin from the Coastal Pelagics FMP.

Comments and Responses

In total, 49 comments were received on the South Atlantic Council's original proposal to develop a dolphin/wahoo FMP. Comments were received from 9 recreational fishing organizations with 1 organization commenting twice; 4 commercial organizations or associations; 7 commercial businesses with 3 businesses commenting twice; 13 other individuals with one individual commenting twice; 3 environmental organizations; 3 state agencies; and 3 Regional Fishery Management Councils with 2 Councils responding twice.

Comments were diverse. Five commenters believed that no management was needed for dolphin and wahoo, and seven commenters suggested management options for dolphin and wahoo without indicating who should assume responsibility for that management. Designation of the South Atlantic Council as the lead council to develop the FMP was supported by 14 commenters, whereas 22 commenters suggested that management of dolphin and wahoo by NMFS Highly Migratory Species Division or through joint activities of the affected Regional Fishery Management Councils would be more appropriate.

Commercial Sector

Comments: The majority of the commenters did not support the proposed designation of the South Atlantic Council as the lead Council to develop the dolphin/wahoo FMP and subsequent amendments, preferring management by NMFS' Highly Migratory Species Division (NMFS/HMSD) with the involvement of the International Commission for the Conservation of Atlantic Tunas (ICCAT) or, alternatively, a multi-Council dolphin/wahoo FMP with NMFS/HMSD and ICCAT involvement. A few commenters from the commercial sector recommended continued management of dolphin, with the inclusion of wahoo, under the Coastal Pelagics FMP. Most of the commercial sector commenters stated that the composition of the South Atlantic Council was unbalanced, with a membership that gave preference to the recreational sector. Thus, they were concerned that the commercial sector, especially pelagic longliners, would not be fairly represented during Council deliberations. Additionally, comments expressed concern about a lack of scientific data on which to base management decisions and urged NMFS or other management agencies, such as ICCAT, to begin collecting biological information on these species prior to developing an arguably unnecessary FMP.

Response: NMFS agrees that only limited biological information exists for dolphin or wahoo and, thus, the status of the stocks are poorly known. However, this does not preclude NMFS and the Councils from taking necessary action to manage and conserve these resources, especially given the increasing fishing effort and landings for these species.

NMFS disagrees with the comments alleging bias in the composition of the South Atlantic Council membership. In approving candidates for Council membership, the Secretary and his designees endeavor to balance equitably the representation of diverse user groups and resource managers. Any management measures developed under the dolphin/wahoo FMP and its amendments that NMFS approves would have to comply fully with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable law.

Councils and States

Comments: Both the Gulf and Caribbean Councils commented that they support development of a joint dolphin/wahoo FMP where the South Atlantic Council acts in an administrative lead capacity. The Gulf and Caribbean Councils requested the authority to manage unilaterally the dolphin and wahoo stocks occurring in their jurisdictional areas. Three South Atlantic states (North Carolina, Georgia, and Florida) submitted comments that supported the South Atlantic Council's FMP proposal. All of these commenters agreed that management is needed, particularly as a precautionary approach in the absence of definitive scientific information on the status of the stocks, to maintain healthy dolphin and wahoo stocks and to address fishery problems in a timely manner.

Response: NMFS believes that a joint Council dolphin/wahoo FMP, with the South Atlantic Council assuming an administrative lead, is the most expedient and practicable method to manage dolphin and wahoo effectively and equitably throughout their ranges. Managing these species throughout their ranges should facilitate maintaining populations at levels sufficient to produce MSY on a continuing basis and optimize the socioeconomic benefits of the resource. NMFS encourages the development of an FMP framework procedure for regulatory adjustments that would grant authority to the Gulf, Caribbean, and South Atlantic Councils to develop and adopt management measures for dolphin and wahoo in their respective jurisdictional areas. Ultimately, the implementation of the dolphin/wahoo FMP is contingent upon NMFS' review and approval of the submitted proposed measures.

Conservation Organizations and Private Citizens

Comments: Three conservation organizations supported the development of a dolphin/wahoo FMP by the South Atlantic Council because of concerns about significant increases in the fishing mortality on these species, thus threatening both the resource (localized depletions) and the fishery (user conflicts).

Five commenters indicated that the responsibility to preserve dolphin and wahoo fisheries should be shared equitably by both recreational and commercial fishermen. Two individuals commented that both commercial harvest and fishing tournaments that target the largest fish, which usually are the most prolific spawners, should be controlled. These commenters recommended a variety of harvest restrictions (size limits, bag limits, and closed spawning seasons/areas) to be equitably applied to both sectors.

Response: Dolphin and wahoo may become depleted by intensive fishing pressure from all fishing sectors. NMFS believes that the most equitable approach to addressing these issues is through a new dolphin/wahoo FMP developed jointly by the three Councils, with an administrative lead role for the South Atlantic Council. NMFS has encouraged the development of an FMP framework procedure that allows each Council to manage the fisheries in its respective jurisdictional area, consistent with the overall population parameters approved by all three Councils.

Recreational Sector

Comments: All recreational fishing organizations supported the management of dolphin and wahoo resources, and several commented that, in the absence of reliable stock assessment information, a management program is needed as a precautionary approach to preserve and protect dolphin and wahoo stocks. One commenter preferred the development of separate FMPs for the Gulf of Mexico and Atlantic areas because of the differing fisheries between the regions and the differences in abundance of the stocks between regions.

Some commenters expressed concern about commercial longline vessels turning to dolphin harvest to offset economic losses sustained from decreasing swordfish catches.

Response: NMFS agrees that only limited biological information exists for dolphin or wahoo and, thus, the status of the stocks is poorly known. Therefore, NMFS encourages the development of a joint dolphin/wahoo

FMP where the Councils would provide equitable management that complies with the national standards and other applicable laws in their respective jurisdictional areas, while maintaining the regionwide population at levels sufficient to produce MSY on a continuing basis.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 17, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 99–15875 Filed 6–17–99; 4:06 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061699B]

Marine Mammals; File No. 376–1520

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. James H.W. Hain, Associated Scientists at Woods Hole, Box 721, 3 Water Street, Woods Hole, MA 02543, has applied in due form for a permit to take various cetacean and sea turtle species for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before July 23, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222–226).

The Applicant proposes to take various cetacean species, including Northern right whales, loggerhead, leatherback and kemp's ridley sea turtles, and to collect samples from stranded dead endangered species. Activities will occur in the North Atlantic Ocean and Caribbean Sea.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 16, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–16012 Filed 6–22–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052599A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that on May 25, 1999, Permit No. 966 (P586), issued to Continental Shelf Associates, Inc., 759 Parkway Street, Jupiter, FL 33477–9596, was amended.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Region, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive North, St. Petersburg, FL 33704–2432 (727/570–5301).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson (301/713–2289).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the regulations of the governing the taking and importing (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The amendment authorizes the continuation of research under Permit No. 966 (P586D) for an additional year. The permit will now expire June 30, 2000.

Issuance of this permit amendment, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 16, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–16013 Filed 6–22–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052499H]

Marine Mammals; File No. 881–1443–03

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center, P.O. Box 1329, Seward, AK 99664 has been issued an amendment to scientific research Permit No. 881–1443.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On April 8, 1999, notice was published in the **Federal Register** (64 FR 17146) that an amendment of Permit No. 881–1443, issued March 27, 1998 (63 FR 14905), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Permit No. 881–1443 (ASLC) authorizes the Permit Holder to: assess nutritional physiology, metabolic development, and clinical health under captive conditions of eight harbor seals (*Phoca vitulina*) and three Steller sea lions (*Eumetopias jubatus*); conduct stable isotope and lipid metabolism studies on the harbor seals; and conduct a two-week fasting study on the Stellers, as part of the controlled dietary studies.

The amendment now authorizes the Holder to conduct the following experiments on the Steller sea lions: reproductive chemistry and physiology; immunology; organochlorine testing; dive disorders; optimal foraging; and body condition.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 16, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–16014 Filed 6–22–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and Increase of Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

June 21, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and increasing guaranteed access levels.

EFFECTIVE DATE: June 23, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

Upon the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current guaranteed access levels for textile products in certain categories.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63297, published on November 12, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 21, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 5, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on June 23, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	877,006 dozen.
342/642	303,683 dozen.
351/651	1,314,857 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The guaranteed access levels (GAL) for Categories 340/640, 342/642 and 351/651 remain unchanged. The GALs for the following categories are being increased:

Category	Guaranteed access level
338/638	5,150,000 dozen.
339/639	3,150,000 dozen.
433	81,000 dozen.
633	100,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–16079 Filed 6–22–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange for Designation as a Contract Market in CME Degree Days Index Futures and Option Contracts Representing 10 Specified Cities

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in degree days index futures and option contracts representing the following 10 cities—Atlanta, GA; Chicago, IL; Cincinnati, OH; Dallas, TX; Des Moines, IA; Las Vegas, NV; New York, NY; Philadelphia, PA; Portland, OR; and Tucson, AZ. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before July 23, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to the CME degree days index futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@CFTC.gov.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 16, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–16022 Filed 6–22–99; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Reinstatement of Approval of Information Collection Requirements—Sound Levels for Toy Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the April 6, 1999 **Federal Register** (64 FR 16710), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), to announce the agency's intention to seek a reinstatement of approval for a period of three years from the date of approval by the Office of Management and Budget of information collection requirements in a regulation exempting certain toy caps from a banning rule. The Commission now announces that it has submitted to the Office of Management and Budget a request for reinstatement of approval of that collection of information.

A regulation codified at 16 CFR 1500.18(a)(5) bans toy caps producing peak sound levels at or above 138 decibels (dB). Another regulation codified at 16 CFR 1500.86(a)(6) exempts toy caps producing sound levels between 138 and 158 dB from the banning rule if they bear a specified warning label and if firms intending to distribute such caps: (1) Notify the Commission of their intent to distribute such caps; (2) participate in a program to develop toy caps producing sound levels below 138 dB; and (3) report quarterly to the Commission concerning the status of their programs to develop caps with reduced sound levels.

The Commission requests reinstatement of approval of the information collection requirements in the rule codified at 16 CFR 1500.86(a)(6) to obtain current and periodically-updated information from all manufacturers concerning the status of programs to reduce sound levels of toy caps. The Commission will use this information to monitor industry efforts to reduce the sound levels of toy caps, and to ascertain which firms are currently manufacturing or importing toy caps with peak sound levels between 138 and 158 db.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Information Collection Requirements for Sound Levels for Toy Caps; 16 CFR 1500.86(a)(6)(ii) and (iii).

Type of request: Reinstatement of approval.

Frequency of collection: One-time notification before beginning distribution; status report four times each year.

General description of respondents: Manufacturers and importers of toy caps.

Estimated number of respondents: 10.

Estimated average number of hours per respondent: 4 per year.

Estimated number of hours for all respondents: 40 per year.

Comments: Comments on this request for reinstatement of approval of information collection requirements should be submitted by July 23, 1999 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov. Copies of this request for reinstatement of approval of information collection requirements are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–0416, extension 2226.

Dated: June 17, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–15876 Filed 6–22–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 23, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *DWERFEL@OMB.EOP.GOV*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1965 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfer with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement,; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 17, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: Regular.

Title: "What Works" Study for Adult ESL Literacy Students.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden: Responses: 1,600; Burden Hours: 4,033.

Abstract: This study will examine the outcomes of instruction to adult ESL literacy students by comparing instructional activities that focus on literacy development with activities that focus on English acquisition. Instructional activities will be coded through a structured classroom observation guide and through information standardized tests of speaking, reading and writing and through a structured interview of literacy practices. Teachers, policymakers and teacher trainers will use the information from the study to develop more effective instruction.

Requests for copies of this information collection request should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Vivian Reese @ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: Revision.

Title: Student Aid Report (SAR).

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden: Reponses: 9,848,645. Burden Hours: 3,775,753.

Abstract: The Student Aid Report (SAR) is used to notify all applicants of their eligibility to receive Federal student aid for postsecondary education. The form is submitted by the applicant to the institution of their choice.

Request for copies of this information collection request should be addressed to Vivian Reese, U. S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian Reese, @ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joe Schubart at 202–708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–15918 Filed 6–22–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–598–000, FERC 598]

Proposed Information Collection and Request for Comments

June 17, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before August 23, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873 and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–598

"Determinations for Entities Seeking Exempt Wholesale Generator Status" (OMB No. 1092–0166) is used by the Commission to implement the statutory provisions of Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA) as added and redesignated by Section 711 of the Energy Policy Act of 1992. Section 32(a) of PUHCA defines an Exempt Wholesale Generator (EWG) as an individual determined by the Commission to be engaged directly or indirectly through one or more affiliates, and exclusively in the business of owning and/or operating all or part of eligible facilities and selling electric energy at wholesale. An eligible facility may include interconnecting transmission facilities necessary to effect wholesale power sales. Persons granted EWG status will be exempt from regulation under PUHCA. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 365.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
112	1	6	672

Estimated cost burden to respondents: 672 hours/2,080 hours per year × $109,889 per year = $35,503. The cost per respondent is equal to $317.00

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collection, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are cost incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particularly function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15899 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–178–001]

ANR Pipeline Company; Notice of Activity Report

June 17, 1999.

Take notice that, on June 14, 1999 ANR Pipeline Company (ANR) tendered for filing in compliance with a Commission Order dated April 29, 1998, its activity report after one year's experience detailing activity under its Interruptible Wheeling Service (IWS).

ANR states that this report includes all IWS transactions carried out for the period May 1, 1998 to April 30, 1999.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 24, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15894 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–001]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 17, 1999.

Take notice that, on June 11, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective June 1, 1999:

Fifth Revised Sheet No. 89
Fourth Revised Sheet No. 188
Fifth Revised Sheet No. 189

ANR states that this filing is made in compliance with Ordering Paragraphs (A) and (B) of the Commission's Order dated May 28, 1999 in the above captioned proceeding.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15898 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–331–000]

CNG Transmission Corporation; Section 4 Filing

June 17, 1999.

Take notice that on June 4, 1999, CNG Transmission Corporation (CNG) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services currently being provided on specified uncertificated gathering lines in Ritchie County, West Virginia. CNG states that the uncertificated lines are being abandoned by sale to HAH Petroleum, Inc. CNG states that no contract for transportation service with CNG will be canceled or terminated as a result of this abandonment.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. Motions or protests must be filed no later than June 23, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http:www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15974 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–195–002]

Equitrans, L.P.; Notice of Compliance Filing

June 17, 1999.

Take notice that on June 14, 1999, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets with a proposed effective date of February 1, 1999:

Original volume No. 1

Second Revised Sheet No. 6
First Revised Sheet No. 305

First Revised Volume No. 1

Second Substitute Thirteenth Revised Sheet No. 6
Substitute Fourth Revised Sheet No. 266

Equitrans states that the proposed revised tariff sheets are intended to comply with the Commission's "Order On Compliance Filing and Technical Conference" issued herein on May 28, 1999 by (1) omitting a termination provision and (2) revising the products extraction rate to $0.1786 per Dth effective February 1, 1999.

Finally, Equitrans has provided a recalculation of its products extraction rate showing a per unit rate of $0.1802 per Dth resulting from the updating of billing determinants to match the same time period in which costs had been previously updated in data already submitted in this proceeding. Equitrans states that it is not now seeking any further adjustment in its products extraction rate but will instead reflect undercollections in its next annual products extraction filing in accordance with the terms of its tariff.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15897 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–040]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 17, 1999.

Take notice that on June 11, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet to be effective June 6, 1999:

Original Sheet No. 8E

REGT states that the purpose of this filing is to reflect the appropriate pagination and its name change consistent with its recently approved FERC Gas Tariff, Fifth Revised Volume No. 1.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–15892 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–041]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 17, 1999.

Take notice that on June 14, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet to be effective June 15, 1999:

Original Sheet No. 8F

REGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate contract.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15893 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–64–005]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

June 17, 1999.

Take notice that on June 11, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of September 1, 1998:

Seventh Revised Sheet No. 209
Original Sheet No. 209.01
Original Sheet No. 209.02
Original Sheet No. 209.03
Fifth Revised Sheet No. 209A
Fourth Revised Sheet No. 209B
Fifth Revised Sheet No. 217
Second Revised Sheet No. 406A

Tennessee states that the attached tariff sheets are submitted in compliance with the Commission's Letter Order issued April 28, 1999 in the above-referenced dockets. Tennessee Gas Pipeline Company, 87 FERC ¶ 61,106 (1999). In the Letter Order, the Commission approved a Stipulation and Agreement whereby Tennessee and its customers agreed to resolve all issues in the above-referenced five cashout dockets.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15891 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–394–003]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 17, 1999.

Take notice that on June 14, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Second and Third Revised Volume No. 1, certain revised tariff sheets listed on Appendix A attached to the filing, contains the enumeration and effective dates of the revised tariff sheets.

Transco states that on November 30, 1998, Transco filed certain tariff sheets in the referenced docket in compliance with Commission's order issued on October 28, 1998. On May 14, 1999, the Commission issued an "Order on Rehearing and Compliance Filing" (May 14 Order), which, among other things, requires that Transco file within 30 days of the issuance of the order revised tariff sheets to reflect directed modifications.

Transco, in compliance with the May 14 Order, has submitted for filing certain revised tariff sheets under Rate Schedule WSS and Rate Schedule WSS-Open Access. Specific revisions are listed in the filing.

Transco states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15896 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–290–004]

Viking Gas Transmission Company; Notice of Filing Refund Report

June 17, 1999.

Take notice that on June 14, 1999, Viking Gas Transmission Company (Viking) tendered for filing a report of refunds in accordance with the Offer of Settlement and Stipulation and Agreement (Settlement) filed by Viking on March 16, 1999 in the above-referenced docket and approved by the Commission by order issued May 12, 1999.

Viking states that copies of this filing have been served on all parties designated on the official service list in this proceeding, on all Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protest must be filed on or before June 24, 1999. Protests will be considered by the Commission in determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the we at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15895 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–35–000]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

June 17, 1999.

Take notice that on June 11, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing a report of GRI refunds made to customers.

Williams states that this filing is being made in compliance with Commission order issued February 22, 1997, in Docket No. GT97–31. The February 22 order directed each pipeline receiving a refund from GRI to credit such refunds pro rata to its eligible customers, and within days of making these credits, file a refund report with the Commission.

Williams states that the refund report reflects refunds of $484,162 made by Williams to its eligible firm customers on June 11, 1999.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 24, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15888 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1337–002, et al.]

Boston Edison Company, et al.; Electric Rate and Corporate Regulation Filings

June 14, 1999.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER99–1337–002]

Take notice that on June 8, 1999, Boston Edison Company tendered for filing a report in compliance with the Commission's May 28, 1999, order in the above docket with regard to the issue of NERC's experimental interim program for the 1999 summer season.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Central Hudson Gas & Electric Corporation, et al.

[Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4234–000]

Take notice that on June 9, 1999, New York State Reliability Council, tendered for filing a letter that serves as notification to the Federal Energy Regulatory Commissin of the members of the Executive Committee of the New York State Reliability Council Executive Committee, pursuant to Section 4.03 of the New York State Reliability Agreement filed by the Member Systems of the New York Power Pool in the above-referenced dockets.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER98–2048–001]

Take notice that on June 9, 1999, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a Compliance Filing in response to the Federal Energy Regulatory Commission's Order, dated May 13, 1999, in Docket No. ER98–2048–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Edison Company and Commonwealth Edison Company of Indiana

[Docket Nos. ER98–2279–001 and ER98–3689–000]

Take notice that on June 9, 1999, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing its Final Report on Non-Firm Redispatch and to continue its Redispatch Service and Third-Party Redispatch Service.

Copies of the filing were served upon each person or company named on the Commission's official service list in the above-captioned proceedings.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER99–1476–002]

Take notice that on June 9, 1999, New England Power Company, tendered for filing a Report of Compliance in response to the Commission's order of May 28, 1999 in the above-referenced docket.

Copies of said filing have been served upon all parties to this proceeding.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. American Electric Power Service Corporation

[Docket No. ER99–1991–001]

Take notice that on June 9, 1999, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (AEP), tendered for filing changes to its Open Access Transmission Tariff in accordance with the Commission's May 12, 1999 Order on Interim Procedures in North American Electric Reliability Council, Docket Nos. EL98–52–000, *et al.*

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. California Power Exchange Corporation

[Docket No. ER99–2229–001]

Take notice that on June 8, 1999, the California Power Exchange Corporation, on behalf of its newly-created division, CalPX Trading Services, made a compliance filing in accordance with the Commission's Order Accepting for Filing Proposed Block-Forward Market, As Modified, issued in this docket on May 26, 1999 and published at 87 FERC ¶ 61,203 (1999).

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Western Resources, Inc.

[Docket No. ER99–3026–000]

Take notice that on June 9, 1999, Western Resources, Inc., (Western Resources) tendered for filing an amendment to Docket No. ER99–3026–000.

Copies of the filing were served upon Kansas Electric Power Cooperative, Inc.,and the Kansas Corporation Commission.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. PP&L, Inc.

[Docket No. ER99–3156–000]

Take notice that on June 4, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated May 26, 1999, with Statoil Energy Services, Inc. (Statoil), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Statoil as an eligible customer under the Tariff.

PP&L requests an effective date of June 4, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Statoil and to the Pennsylvania Public Utility Commission.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. PP&L, Inc.

[Docket No. ER99–3157–000]

Take notice that on June 4, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated May 26, 1999, with Rochester Gas and Electric Corporation (RG&E) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds RG&E as an eligible customer under the Tariff.

PP&L requests an effective date of June 4, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to RG&E and to the Pennsylvania Public Utility Commission.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. FirstEnergy System

[Docket No. ER99–3171–000]

Take notice that on June 8, 1999, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for TransAlta Energy Marketing (U.S.), Incorporated, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is May 24, 1999, for the above mentioned Service Agreement in this filing.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. California Independent System Operator Corporation

[Docket No. ER99–3172–000]

Take notice that on June 8, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and American Electric Power Service Corporation for acceptance by the Commission.

The ISO states that this filing has been served on American Electric Power Service Corporation and the California Public Utilities Commission.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. FirstEnergy System

[Docket No. ER99–3173–000]

Take notice that on June 8, 1999, FirstEnergy System tendered for filing a Service Agreement to provide Firm Point-to-Point Transmission Service for TransAlta Energy Marketing (U.S.), Incorporated, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is May 24, 1999.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Long Sault, Inc.

[Docket No. ER99–3174–000]

Take notice that on June 8, 1999, pursuant to section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, Long Sault, Inc. (Long Sault), tendered for filing with the Federal Energy Regulatory Commission a Notice of Termination of the Exchange Agreement between Long Sault and Consolidated Edison Company of New York, Inc., effective date January 1, 1974, designated as Long Sault Rate Schedule FERC No. 11.

Additionally, pursuant to section 35.15(a) of the Commission's Regulations, Long Sault requests an effective date for this termination 60 days from the date of filing or August 7, 1999.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER99–3175–000]

Take notice that on June 8, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (EGSI), tendered for filing a Generator Imbalance Agreement with Crown Paper Company d/b/a Crown Vantage.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER99–3176–000]

Take notice that on June 8, 1999, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an amendment to the Interconnection Agreement between Entergy Gulf States, Inc., and Crown Paper Company d/b/a Crown Vantage.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER99–3179–000]

Take notice that on June 8, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which PP&L Energy Plus Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 15, 1999.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER99–3180–000]

Take notice that on June 8, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Bridgestone/Firestone, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 15, 1999.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. PP&L, Inc.

[Docket No. ER99–3181–000]

Take notice that on June 8, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated May 17, 1999, with Wabash Valley Power Association, Inc. (Wabash), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Wabash as an eligible customer under the Tariff.

PP&L requests an effective date of June 8, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Wabash and to the Pennsylvania Public Utility Commission.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Southern California Edison Company

[Docket No. ER99–3182–000]

Take notice that on June 9, 1999, Southern California Edison Company (SCE), tendered for filing the Harborgen Substation Interconnection Facilities and Interconnection Agreement (Agreement) between Harbor Cogeneration Company (Harbor) and SCE.

The Agreement specifies the terms and conditions under which SCE will interconnect Harbor's 80,000 kW generator with the 230 kV Harborgen Substation pursuant to SCE's Transmission Owner Tariff.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. KeySpan-Ravenswood, Inc.

[Docket No. ER99–3183–000]

Take notice that on June 9, 1999, KeySpan-Ravenswood, Inc. (KeySpan-Ravenswood), tendered for filing with the Federal Energy Regulatory Commission, pursuant to Rule 205, 18 CFR 385.205, and section 35.12, 18 CFR 35.12 of the Commission's Regulations, as an initial rate schedule, on a market rate basis, the Transition Energy Agreement dated as of May 24, 1999, as amended, executed by KeySpan-Ravenswood and the Consolidated Edison Company of New York, Inc. (Con Edison).

The proposed rate schedule would authorize KeySpan-Ravenswood to sell energy to Con Edison from generation facilities that will be transferred by Con Edison to KeySpan Ravenswood.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Indianapolis Power & Light Company

[Docket No. ER99–3184–000]

Take notice that on June 9, 1999, Indianapolis Power & Light Company (IPL), tendered for filing a power sales agreement, dated June 9, 1999, between IPL and Constellation Power Source, Inc.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–3185–000]

Take notice that on June 9, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing executed Service Agreements between LG&E/KU and the following entities under LG&E/KU's Rate Schedule MBSS.

Alabama Electric Cooperative, Inc.
American Energy Solutions, Inc.
CINergy Services, Inc.
Commonwealth Edison Company
FirstEnergy Corp.
Griffin Energy Marketing, L.L.C.
Merchant Energy Group of the Americas, Inc.
Oglethrope Power Corporation
Ohio Valley Electric Corporation
Rainbow Energy Marketing Corporation
Southern Indiana Gas and Electric Company
Tennessee Power Company
Tennessee Valley Authority
Virginia Electric and Power Company, DBA Virginia Power
Wabash Valley Power Association, Inc.
Wisconsin Electric Power Company

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. PP&L EnergyPlus Co.

[Docket No. ER99–3186–000]

Take notice that on June 9, 1999, PP&L EnergyPlus Co. (EnergyPlus), tendered for filing with the Federal Energy Regulatory Commission a letter approving its membership in the Western Systems Power Pool (WSPP).

EnergyPlus requests that the Commission allow its membership in the WSPP to become effective on June 10, 1999.

EnergyPlus states that a copy of this filing has been provided to the WSPP Executive Committee, the Pennsylvania Public Utility Commission, Michael E. Small, Esq., General Counsel to the WSPP and the members of the WSPP.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Orange and Rockland Utilities, Inc.

[Docket No. ER99–3187–000]

Take notice that on June 9, 1999, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and TXU Energy Trading Company (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland's Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of May 19, 1999, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Entergy Services, Inc.

[Docket No. ER99–3188–000]

Take notice that on June 9, 1999, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an amendment to the Interconnection Agreement between Entergy Gulf States, Inc., and Dow Chemical Company.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Idaho Power Company

[Docket No. ER99–3189–000]

Take notice that on June 9, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service between Idaho Power Company and the City of Idaho Falls.

Idaho Power requests that the Commission accept these Service

Agreements for filing, designate an effective date of May 21, 1999, and a rate schedule number.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Carolina Power & Light Company

[Docket No. ER99–3190–000]

Take notice that on June 9, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short Term Firm Point-to-Point Transmission Service with Southern Company Services, Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of June 1, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Public Service Company of New Mexico

[Docket No. OA96–202–003, OA96–202–002, and ER96–1551–004]

Take notice that on June 8, 1999, Public Service Company of New Mexico (PNM), tendered for filing a letter regarding refunds of Open Access Transmission Tariff (OATT) Ancillary Services Fees collected in excess of PNM's FERC approved Ancillary Services Settlement Rates.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Duke Power Company

[Docket No. OA97–450–005

Take notice that on June 3, 1999, Duke Power Company and Nantahala Power and Light Company filed a joint response to the Commission's May 4, 1999 order on standards of conduct. 87 FERC ¶ 61,145 (1999).

Duke Power Company and Nantahala Power and Light Company state that they served copies of the filing on all parties in this proceeding.

Comment date: June 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15900 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2170–010 Alaska]

Chugach Electric Association, Inc.; Notice of Availability of Draft Environmental Assessment

June 17, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, the Office of Hydropower Licensing has reviewed the application for the proposed Amendment of License for the Cooper Lake Project, located on Cooper Lake, Cooper Creek, and Kenai Lake near Cooper Landing on the Kenai Peninsula, Alaska, and has prepared a draft environmental assessment (DEA) for the proposed action. The Cooper Lake Project occupies lands within the Chugach National Forest.

Chugach Electric Association proposes to increase the generating capacity of the project by 4.38 MW. The increase would be achieved by installing new, modern design turbine runners in the existing casings, which would increase the hydraulic capacity of each of the two generating units from 165.5 cubic feet per second (cfs) to 190 cfs, a total project increase from 331 cfs to 380 cfs. This 14.8 percent increase is defined as a non-capacity related amendment under the Commission's regulations (18 CFR 4.201(b)).

The DEA finds that approval of the amendment would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the DEA are available for review in the Commission's Public Reference Branch, Room 2A, 888 First Street, NE, Washington, DC 20426 or by calling (202) 208–1371. The DEA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. Please call (202) 208–2222 for assistance.

Any comments on the DEA should be filed within 30 days from the date of this notice and should be addressed to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix "Cooper Lake Project Amendment of License, Project No. 2170–010" to all comments. For further information, please contact John K. Novak at (202) 219–2828.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15890 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission and Soliciting Comments and Recommendations, Motions To Intervene, and Protests

June 17, 1999.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No:* 1494–187.

c. *Date Filed:* June 2, 1999.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Hydroelectric Project.

f. *Location:* The Pensacola Project is on the Grand River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. Grand Lake O' the Cherokees is the reservoir for the Pensacola Project.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. Bob Sullivan, Grand River Dam Authority, P.O. Box 409, Drawer G, Vinita, OK 74301.

i. *FERC Contact:* Any questions on this notice should be addressed to Steve Hocking, E-mail address steve.hocking@ferc.fed.us, or telephone (202) 219–2656.

j. *Deadline for filing comments and recommendations, motions to intervene, and protests:* July 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of the Application:* Article 401 of Grand River Dam Authority's (GRDA) license for the Pensacola Project requires GRDA to lower Grand Lake to elevation 741 feet Pensacola Datum (PD) from September 1 through October 15 yearly. Lowering the lake supports the project's millet seeding program designed to enhance fish and wildlife.

GRDA filed an application June 2, 1999, for a temporary variance so GRDA would not have to lower Grand Lake to elevation 741 feet PD from September 1 through October 15, 1999. Instead, GRDA would keep the lake at elevation 742 feet PD during this time. GRDA says it is not necessary to lower Grand Lake to 741 feet PD this year because it intends to seed millet at elevation 742 feet or above. The temporary variance it seeks would only apply September 1 through October 15, 1999.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Comments, protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15889 Filed 6–22–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6365–1]

Ambient Air Monitoring Reference and Equivalent Methods: Designation of Three New Reference Methods for PM_{10}

AGENCY: Environmental Protection Agency.

ACTION: Notice of designation.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR Part 53, three new reference methods (samplers) for measuring concentrations of PM_{10} in ambient air.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–2622, email: mcelroy.frank@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR Part 53, the EPA examines various methods for monitoring the concentrations of certain pollutants in the ambient air. Methods that are determined to meet specific requirements for adequacy are designated as either reference or equivalent methods, thereby permitting their use under 40 CFR Part 58 by States and other agencies for determining attainment of the National Ambient Air Quality Standards. EPA hereby announces the designation of three new reference methods for measuring PM_{10} in ambient air. This designation is made under the provisions of 40 CFR Part 53, as amended on July 18, 1997 (62 FR 38764).

The new reference methods for PM_{10} are manual monitoring methods based on particular commercially available PM_{10} samplers. The newly designated methods are identified as follows:

RFPS–0699–130, "Andersen Instruments, Incorporated Model RAAS10–100 Single Channel Reference Method PM_{10} Sampler," with RAAS–10 PM_{10} inlet, configured as a PM_{10} reference method, and operated for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, in accordance with the Model RAAS10–100 Operator's Manual and with the requirements and sample collection filters specified in 40 CFR Part 50, Appendix J or Appendix M.

RFPS–0699–131, "Andersen Instruments, Incorporated Model RAAS10–200 Single Channel Reference Method PM_{10} Audit Sampler," with RAAS–10 PM_{10} inlet, configured as a PM_{10} reference method, and operated for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, in accordance with the Model RAAS10–200 Operator's Manual and with the requirements and sample collection filters specified in 40 CFR Part 50, Appendix J or Appendix M.

RFPS–0699–132, "Andersen Instruments, Incorporated Model RAAS10–300 Multi Channel Sequential Reference Method PM_{10} Sampler," with RAAS–10 PM_{10} inlet, configured as a PM_{10} reference method, and operated for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, in accordance with the Model RAAS10–300 Operator's Manual and with the requirements and sample collection filters specified in 40 CFR Part 50, Appendix J or Appendix M.

An application for reference method determinations for the methods based on the corresponding Andersen Instruments PM_{10} samplers was received by the EPA on September 18, 1998, and a notice of the receipt of this application was published in the **Federal Register** on December 17, 1998. The methods are available commercially from the applicant, Andersen Instruments, Incorporated; 500 Technology Court; Smyrna, GA 30082.

Test samplers representative of these methods have been tested by the applicant in accordance with the test procedures specified in 40 CFR Part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that these methods should be designated as reference methods. The information submitted by the applicant will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As designated reference methods, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, each method must be used in strict accordance with the operation or instruction manual associated with the method, the specifications and limitations (*e.g.*, sample period or flow rate) specified in the applicable designation method description (see identifications of the methods above), and the specifications and requirements set forth in Appendixes J or M to 40 CFR Part 50. Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Guidance Document 2.12" and "Quality Assurance Guidance Document 2.10." Vendor modifications of a designated reference or equivalent method used for purposes of Part 58 are permitted only with prior approval of the EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to 40 CFR Part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in Parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with Part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-certified facility.

(i) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in Part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these reference methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR Part 58. Questions concerning the commercial availability or technical aspects of these methods should be directed to the applicant.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 99–15979 Filed 6–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6365–7]

Clean Air Act Advisory Committee Mobile Sources Technical Review Subcommittee Notification of Public Advisory Subcommittee Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet on: Wednesday, July 14, 1999 from 9:00 am to 3:15 pm, Eastern Standard Time (registration starts at 8:30 am) at: Marriott Hotel—Key Bridge, 1401 Lee Highway, Arlington, VA 22209, Ph: (703) 524–6400; FAX: (703) 524–8964.

This is an open meeting and seating is on a first-come basis. During this meeting, the subcommittee will hear progress reports from its workgroups, updates and announcements on activities of general interest such as the Clean Air Act Advisory Committee, the Tier 2 Notice of Proposed Rulemaking, the Diesel Fuel Advanced Notice of Proposed Rulemaking, the National Research Council's review of the MOBILE model, and discuss other current issues in the mobile source program including tentative presentations on DOE work on fuels, a review of in-use emissions from heavy-duty diesel vehicles, and current programs to measure emissions from in-use heavy-duty vehicle emissions.

The preliminary agenda and draft minutes from the previous meeting are available from the subcommittee's website at: http://transaq.ce.gatech.edu/epatac

Subcommittee members and interested parties requesting further technical information should contact: Mr. John T. White, Alternate Designated Federal Officer, Assessment and Modeling Division, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105., Ph: 734/214–4353, Fax: 734/214–4821, email: white.johnt@epa.gov.

Subcommittee members and interested parties requesting administrative or logistics information should contact: Ms. Jennifer Criss, FACA Management Officer, Assessment and Modeling Division, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105. FACA Helpline: 734/214–4518, Ph: 734/214–4029, Fax: 734/214–4821, email: criss.jennifer@epa.gov.

Individuals or organizations wishing to provide comments to the subcommittee should submit them to Mr. John T. White, Alternate Designated Officer, at the address above by July 7, 1999.

The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Michael Shields,

Acting Director, Office of Mobile Sources.

[FR Doc. 99–15982 Filed 6–22–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6365–4]

Science Advisory Board; Notice of Public Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Advisory Council on Clean Air Compliance Analysis (the Council) of the Science Advisory Board (SAB) will hold a public meeting on Tuesday, July 13, 1999, from 9:30 am to 5:00 pm, Eastern time and Wednesday, July 14, 1999, from 9:00 am to 5:00 pm. The Meeting will take place in the Conference Room of the Office of Children's Health Protection (Room W911), United States Environmental Protection Agency, 401 M Street SW, Washington DC 20460. The meeting is open to the public, however, seating is on a first come basis. Materials that are the subject of SAB reviews are normally available from the responsible EPA Program office and are not available from the SAB. All times noted are Eastern Time.

The Council will review a draft Prospective Study: Report to Congress, prepared by the Agency as part of implementing Section 812 of the Clean Air Act Amendments (CAAA) of 1990. The Council will address the following charge questions provided by the Agency:

Charge #1: Are the input data used for each component of the analysis sufficiently valid and reliable for the intended analytical purpose? If not, does the Council recommend the Agency consider using alternative data or assumptions for the first prospective analysis?

Charge #2: Are the models, and the methodologies they employ, used for each component of the analysis sufficiently valid and reliable for the intended analytical purpose? If not, does the Council recommend the Agency consider using alternative models or methodologies for the first prospective analysis?

Charge #3: Are the analytical results developed using these data and methodologies sufficiently valid and reliable for the intended analytical purpose, and are the characterizations of the analytical methods and results sufficiently accurate and appropriate for the intended expository purpose?

While the above charge questions define the general scope of the advice requested from the Council, a number of specific additional questions are presented below for which the Agency is interested in obtaining particular advice from the Council. In addition, further specific questions and issues may be presented for consideration to the Council during the discussions scheduled to take place on July 13–14, 1999. The supplemental charge questions are listed below, and detailed background information pertaining to each of these specific supplemental charge questions is included in an attachment to this memorandum.

Charge #4: Unquantified/ Unmonetized Benefit and Disbenefit Categories.

(4a) Does the Council endorse the recommendation of HEES members that EPA strive to provide estimates of changes in some additional health and welfare effects in order to provide information on the potential relative importance of currently unquantified or unmonetized endpoints?

(4b) Does the Council concur with the simplistic approaches for providing screening-level estimates proposed by EPA for each endpoint and for inclusion of these calculations in the 812 report as illustrative calculations presented in an appendix?

(4c) Does the Council have specific suggestions for additional benefit or disbenefit categories not listed by EPA? If so, does the Council have specific suggestions for methods for developing screening level estimates of these categories?

Charge #5: Value of Avoided Chronic Bronchitis.

(5a) Does the Council concur with EPA's proposed continued use of the adjusted WTP value from Viscusi et al.—i.e. $260,000 per incidence (1990$)—to support the primary benefit estimate?

(5b) If the Council does not concur with EPA's proposed use of the Viscusi, et al. value in the primary estimate, does the Council recommend using an unadjusted value based on the cost-of-illness method, or is an adjustment based on empirical evidence relating COI to WTP appropriate? (In previous reviews, the Council has recommended that "there is not a sufficient empirical basis for making these adjustments at this time," but suggested that EPA "include some illustrative calculations to show the sensitivity of total benefits to the range of possible adjustments to cost-of-illness estimates." SAB, EPA–SAB–COUNCIL–ADV–98–003, September 9, 1998 page 9).

(5c) If the Council does not concur with EPA's proposed use of the Viscusi, et al. value to determine the primary benefit estimate, does the council recommend using the Viscusi et al. value in a sensitivity analysis to illustrate potential differences between COI and WTP?

Charge #6: Value of Avoided Visibility Degradation.

(6a) Does the Council concur with EPA's proposed use of the WTP value from McClelland et al. (1993)—i.e. $14 per household per deciview improvement (1990$)—to support the primary benefit estimate? If not, should EPA treat residential/urban visibility improvements as a screening level benefit category to be reported in an appendix, or does the Council have a specific recommendation for an alternative estimate of the value for this endpoint?

(6b) Does the Council concur with EPA's proposed use of the WTP values from Chestnut and Rowe (1990)—i.e. $4.91 to $13.51 per household per deciview improvement (1990$) for households living outside of the region where a Class I area is located and $7.98 to $16.82 per household per deciview

improvement (1990$) for households living in the region where a Class I area is located—to support the primary benefit estimate? If not, should EPA treat Class I area visibility improvements as a screening level benefit category to be reported in an appendix, or does the Council have a specific recommendation for an alternative estimate of the value for this endpoint?

Charge #7: Value of Avoided Premature Mortality.

(7a) Does the Council concur with EPA's proposal to continue using the Weibull distribution as the most appropriate distribution to characterize the variability in the 26 VSL estimates? If not, does the Council have a specific recommendation for an appropriate distribution of these values?

(7b) Does the Council concur with EPA's proposed use of the arithmetic mean as the appropriate point estimate for the VSL? If not, does the Council have a specific recommendation for an appropriate alternative point estimate?

(7c) Does the Council concur with EPA's proposal to continue using 5 percent as the appropriate discount rate for estimating the value of an avoided mortality incidence using the statistical life years method? If not, does the Council have a specific recommendation for the appropriate discount rate?

(7d) Does the Council concur with EPA's proposal to (1) continue using an estimate of 14 years as the appropriate number of life years saved when age specific distributions of avoided premature mortality incidences are not available and (2) continue using age-specific numbers of life years when age specific distributions of avoided premature mortality incidences are available?

Charge #8: Tax Interaction Effects. Does the Council consider the scope and content of the Appendix B text on tax interaction effects valid and appropriate given the intended purpose of the 812 Prospective? If not, does the Council have specific recommendations for revisions to the scope and/or substance of the draft report language?

Charge #9: Income Adjustments to WTP. Does the Council concur with the specification of the sensitivity analysis examining income adjustment to WTP currently incorporated in the draft report, and with EPA's specific proposal to include this sensitivity analysis in Appendix H of the first prospective analysis? If not, does the Council have specific recommendations for revisions to the specification of the sensitivity analysis and/or recommendations regarding the merits of incorporating any analysis and discussion of income adjustments to WTP in the first prospective analysis?

FOR FURTHER INFORMATION CONTACT: (a) *Contacting Program Office Staff and Obtaining Review Materials*—To obtain copies of the draft documents pertaining to the CAA Section 812 Prospective Study, please contact Ms. Catrice Jefferson, Office Manager, Office of Policy Analysis and Review (OPAR), (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, Tel. (202) 260–5580; FAX (202) 260–9766, or via e-mail at <jefferson.catrice@epa.gov>. To discuss technical aspects of the draft Section 812 Prospective Study: Report to Congress, please contact Mr. James DeMocker, Office of Policy Analysis and Review (OPAR) (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, Tel. (202) 260–8980; FAX (202) 260–9766, or via e-mail at: <democker.jim@epa.gov>.

(b) *Contacting SAB Staff and Obtaining Meeting Information*—To obtain copies of the meeting agendas, rosters of participants, or copies of the draft reports, please contact Ms. Diana L. Pozun, Management Assistant to the Council, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460, Tel. (202) 260–8432; FAX (202) 260–7118; or via e-mail: <pozun.diana@epa.gov>. To discuss technical or logistical aspects of the Council review process or to submit written comments, please contact Dr. Angela Nugent, Designated Federal Officer to the Council, at the address above or at Tel. (202) 260–4126; FAX (202) 260–7118, or via e-mail: <nugent.angela@epa.gov>.

(c) *Providing Public Comments to the SAB*—To request time to provide brief oral comments at the meeting, please contact Ms. Diana L. Pozun *in writing* by mail, FAX or E-Mail at the addresses given above no later than 12 noon by Tuesday, July 6, 1999. Please provide a summary of the issue you intend to present, your name and address (incl. phone, fax and e-mail) and the organization (if any) you will represent. Written comments should be submitted to Ms. Pozun at the above address prior to the meeting date.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board (SAB) expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, opportunities for oral comment at face-to-face meetings will be usually limited to ten minutes per speaker. At teleconference meetings, speakers will be usually limited to three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting), may be mailed to the committees or its respective subcommittees prior to its meeting; comments received too close to the meeting date will normally be provided to the Council and its subcommittees at the meeting. Written comments may be provided up until the time of the meeting.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Dr. Nugent at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 17, 1999.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 99–15978 Filed 6–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00611; FRL–6069–5]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, June 28 and 29, 1999. This notice announces the location and times for the state co-regulator meeting and sets forth tentative agenda topics that impact the state pesticide regulatory programs. This meeting is open to the public.

DATES: The SFIREG will meet on Monday, June 28, 1999 from 8:30 a.m. to 5:00 p.m. and Tuesday, June 29, 1999 from 8:30 to 12:00 noon.

ADDRESSES: The meeting will be held at: The meeting will be held at the Doubletree Hotel, 300 Army Navy Drive, Arlington-Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax: (802) 472–6957; e-mail: aapco@plainfield.bypass.com or Elaine Y. Lyon, Field and External Affairs Division, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Crystal Mall 2 (CM #2), Arlington, VA, (703) 305–5306; fax: (703) 308–1850; lyon.elaine@.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of SFIREG includes the following:.

1. Internet Distributions of EPA Registered and Non Registered Pesticides.
2. North American Trade Agreement Update; Harmonization Opportunities.
3. Food Safety Initiative.
4. Waiver of Liability.
5. Pesticide Registration Notice on Mandatory vs. Advisory Labeling.
6. Waiver of Liability.
7. Keep Out of Reach of Children Labeling Issues (KOORC).
8. Worker Protection Standard Compliance/Enforcement - Labeling Initiative.
9. Inspector Issues:
   a) Federal Credentials.
   b) Inspector Manual.
   c) Inspector Training.
10. Quality Management Plan.
11. Section 19 rule.
12. Status of 24c Guidance Issues.
13. BT Plant Resistance Management Plans.
14. Pesticide Registration Notice on Voluntary Resistance Management Labeling.
15. Office of Pesticide Programs Update.
16. Office of Enforcement and Compliance Assurance Update.
17. Introduction of State Issue/ Discussion Papers.
18. Other Topics as appropriate.

List of Subjects

Environmental protection.

Dated: June 18, 1999.

Jay Ellenberger,

Director, Field and External Affairs Division.

[FR Doc. 99–16090 Filed 6–22–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34189; FRL 6084–7]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on December 20, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Rm. 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients, and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before December 20, 1999 to discuss withdrawal of the applications for amendment. This 180-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. (Note: Registration number(s) preceded by * indicate a 30–day comment period. ** indicate a 90–day comment period)

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
*000279–02735	Thiodan Pyrenone C.O. EC	Piperonyl butoxide; Pyrethrins; Endosulfan	Use on broccoli
000432–00452	SBP–1382 Insecticide Aqueous Pressurized Spray 0.25% for House and Garden	Resmethrin	Use on dogs and cats
000524–00403	Partner WDG Herbicide	Alachlor	Aerial applications
*000644–00048	Orchex 796	Mineral oil – Includes paraffin oil	Cranberries
*001386–00599	Diazinon 4EC (AG)	Diazinon	Walnuts/nuts
005905–00090	2,4-D 2-Ethylhexyl Ester 4	Acetic acid, (2,4-dichlorophenoxy)-, ethylhexyl ester	Rice and aquatic non-food uses
005905–00093	2,4-D 2-Ethylhexyl Ester 6	Acetic acid, 2,4-dichlorophenoxy)-, ethylhexyl ester)	Rice and aquatic non-food uses
*007401–00433	3-Way Dust Garden Insecticide	Rotenone; sulfur; Cube resins other than rotenone	All food and feed crop uses
**010163–00110	Gowan Endosulfan 3EC	Endosulfan	Alfalfa grown for forage, safflower, sugar beets, sunflowers, and peas grown for seed

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
011694–00107	Dry Fog Drop-Um	Piperonyl butoxide; Pyrethrins	Use on dogs and cats
*034911–00021	Hi-Yield Rotenone 100 Insecticide Dust	Rotenone; Cube resins other than rotenone	All food and feed crop uses

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000279	FMC Corporation, Agricultural Products Group, 1735 Market Street, Philadelphia, PA 19103.
000432	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
000524	Monsanto Company, 600 13th Street, N.W., Suite 660, Washington, DC 20005.
000544	Exxon Company, U.S.A., P.O. Box 2180, Houston, TX 77252.
001386	Universal Cooperatives, Inc., 7801 Metro Parkway, Minneapolis, MN 55440.
005905	Helena Chemical Company, 6075 Poplar Avenue, Suite 500 Memphis, TN 38119.
007401	Voluntary Purchasing Group Inc., P.O. Box 460, Bonham, TX 75418.
010163	Gowan, P.O. Box 5569, Yuma, AZ 85366.
011694	ITW Dymon, 805 E. Old 56 Hwy, Olathe, KS 66061.
034911	Hi-Yield Chemical Co., P.O. Box 460, Bonham, TX 75418.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: June 10, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–15717 Filed 6–22–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00607; FRL–6088–1]

Pesticides; Pesticide Registration Proposal for Isomeric Active Ingredients; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On April 28, 1999 EPA issued a **Federal Register** notice (64 FR 22863) (FRL–6055–1) soliciting comments on how the Agency should handle the registration of pesticide active ingredients (AI's) that are composed of chemical isomers. In particular the Agency intended to clarify its approach on determining whether a particular isomeric pesticide is a new active ingredient or not. The comment period for this notice was scheduled to end on June 28, 1999. In response to several requests, EPA has decided to extend the comment period 30 days.

DATES: Written comments, identified by the docket control number "OPP–00607," must be received on or before July 28, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IV. of the "SUPPLEMENTARY INFORMATION" section of this notice.

FOR FURTHER INFORMATION CONTACT: Alan Dixon, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 703–305–7237, Fax: 703–305–6920, e-mail: dixon.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be potentially affected by this notice if you are applying for a registration or amended registration of a pesticide product that contains isomeric active ingredients and in particular a product purified for one or more (usually more chemically active) isomers. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. Why is EPA Issuing This Notice?

The Office of Pesticide Program (OPP) is soliciting comments on how the Agency should handle the registration of pesticide active ingredients that are composed of chemical isomers. In particular, OPP is interested in learning the various opinions on the question of whether an AI originally registered at a particular proportion of isomers should be subsequently registered as a new AI when purified for one or more (usually more chemically active) isomers.

In the past the Agency has treated some purified isomeric compounds as new formulations and some purified isomeric compounds as new AI's. Examples of purified isomeric compounds treated as new formulations are: Fluazifop butyl and fluazifop-p-butyl, fenoxaprop-ethyl and fenoxaprop-p-ethyl, 2,4-DP and 2,4-DP-p, and MCPP to MCPP-p. Examples of purified isomeric compounds treated as new AI's are: Metolachlor and alpha-metolachlor, and metalaxyl and mefenoxam. Some recent regulatory decisions caused the Agency to re-evaluate its policy on isomeric active ingredients.

The Agency is considering three options:

1. To continue determining case by base whether an isomeric compound is a new AI.

2. To consider all purified isomeric compounds not as new AI's but as new formulations.

3. To consider all purified isomeric compounds as new active ingredients.

III. How Can I Get Additional Information or Copies of This Document or Other Documents?

A. Electronic Availability

You may obtain electronic copies of this document from the EPA internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "**Federal Register** - Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. In Person or By Phone

If you have any questions or need additional information about this action, you may contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this notice, including the public version, has been established under docket control number "OPP–00607". A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

IV. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, "OPP–00607", in your correspondence.

A. By Mail

Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

B. In Person or By Courier

Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

C. Electronically

Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–00607". Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

V. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

VI. What Should I Consider as I Prepare My Comments for EPA?

A. General Tips for Preparing Your Comments

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Tell us what you support, as well as what you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the document.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation.

B. Specific Issues for Your Consideration

For a detailed description of this section please refer to the original **Federal Register** notice (64 FR 22863) (FRL–6055–1) published April 28, 1999.

List of Subjects

Environmental protection, Pesticides.

Dated: June 15, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–15715 Filed 6–22–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6364–9]

Implementation Guidance for the Interim Enhanced Surface Water Treatment Rule and the Disinfectants and Disinfection Byproducts Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for comments.

SUMMARY: The EPA would like to obtain stakeholder and public comments on the Draft Implementation Guidance for the Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR). Comments will be considered in developing the final version. EPA encourages the full participation of all stakeholders and the public throughout this process.

The Draft IESWTR and Stage 1 DBPR Implementation Guidance is a

comprehensive reference to assist with Regional and State implementation of the rules. The draft guidance has been developed based on input from an Environmental Protection Agency (EPA) Headquarters and Regional staff workgroup, several State-EPA training meetings, and State review of a previous version of the guidance. Along with summaries of each rule, the document contains guidance for preparing State primacy revision applications, and a thorough list of questions and answers compiled during Regional and State training meetings. The implementation guidance covers special primacy requirements for States, information on compliance determinations, Safe Drinking Water Information System (SDWIS) reporting and definitions for significant non-compliance.

DATES: Comments must be submitted on or before July 23, 1999.

ADDRESSES: Address all comments concerning this notice to Nicole Foley (Mailcode 4606), U.S. EPA Headquarters, 401 M Street SW, Washington, DC 20460. See Supplementary Information section for information to request a copy of the draft guidance and electronic addresses.

FOR FURTHER INFORMATION CONTACT: For general information related to IESWTR and Stage 1 DBPR, please contact: Doug McKenna of EPA's Office of Ground Water and Drinking Water at (202) 260–5760 or by sending electronic mail (e-mail) at mckenna.doughlas@epamail.epa.gov, or Nicole Foley at (202) 260–0875 or e-mail at foley.nicole@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: To request a copy of the draft guidance, please contact Nicole Foley of EPA's Office of Ground Water and Drinking Water at (202) 260–0875. You may request a copy of the document or submit comments e-mail to: foley.nicole@epamail.epa.gov.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–15980 Filed 6–22–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, June 28, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 21, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16075 Filed 6–21–99; 11:30 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSYTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 64 FR 32878, June 18, 1999.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, June 23, 1999.

CHANGES IN THE MEETING: Change in the time of the open meeting to 9:00 a.m., Wednesday, June 23, 1999.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: June 21, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16076 Filed 6–21–99; 11:30 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Availability of Environmental Impact Study Record of Decision

AGENCY: General Services Administration, National Capital Region.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) National Capital Region (NCR) announces the Record of Decision (ROD) for the Environmental Impact Study (EIS) undertaken for the U.S. Patent and Trademark Office (PTO) consolidation project. The project is for the lease acquisition of 2.4 million rentable square feet with a 20-year term on three possible sites in northern Virginia: Crystal City, Eisenhower Avenue, and Carlyle. The ROD as well as EIS is available at *http://ncr.gsa.gov/pto.*

DATES: The Rod was issued on June 14, 1999 and the final EIS availability was published in the **Federal Register** on January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Carl W. Winters, General Services Administration, Capital Development Division (WPC), 7th & D Streets, S.W., Washington, DC 20407, (202) 401–1025. E-mail *carl.winters@gsa.gov.*

Dated: June 17, 1999.

Jeffrey Hysen,

Assistant Regional Counsel (WL).

[FR Doc. 99–15878 Filed 6–22–99; 8:45 am]

BILLING CODE 6820–BR–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1866]

Goldschmidt Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Goldschmidt Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of silicone acrylate resins produced by addition of ω-hydroxyalkenes and/or propenyloxy-2,3-dihydroxypropane, mono- or diester with acrylic acid, acetic acid or other saturated monocarboxylic acid, to dimethyl polysiloxane, methylhydrogen polysiloxane, or dimethyl-methylhydrogen polysiloxane as coatings or components of coatings on polymers and on paper and paperboard intended for contact with food. The following optional adjuvants may also be required in the manufacture of silicone acrylate resins: 2-hydroxy-2-methyl-1-phenyl-1-propanone and/or oligomeric 2-hydroxy-2-methyl-1-[4-(1-methylvinyl)phenyl]-1-propanone.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 9B4658) has been filed by Goldschmidt Chemical Corp., 914 East Randolph Rd., Hopewell, VA 23860. The petition proposes both to amend the food additive regulations in part 177 (21 CFR part 177) by adding a new section and to amend § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of silicone acrylate resins produced by addition of ω-hydroxyalkenes and/or propenyloxy-2,3-dihydroxypropane, mono- or diester with acrylic acid, acetic acid or other saturated monocarboxylic acid, to dimethyl polysiloxane, methylhydrogen polysiloxane, or dimethyl-methylhydrogen polysiloxane as coatings or components of coatings on polymers and on paper and paperboard intended for contact with food. The following optional adjuvants may also be required in the manufacture of silicone acrylate resins: 2-hydroxy-2-methyl-1-phenyl-1-propanone and/or oligomeric 2-hydroxy-2-methyl-1-[4-(1-methylvinyl)phenyl]-1-propanone.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 2, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–15877 Filed 6–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The FDA Review Process for New Product Applications: An Interactive Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of workshop.

The Food and Drug Administration (FDA), Los Angeles District, in cosponsorship with the Orange County Regulatory Affairs Discussion Group (OCRA) is announcing the following workshop: The FDA Review Process for New Product Applications: An Interactive Workshop, which is intended to give the medical products industry (drugs, biologics, and medical devices) an opportunity to learn and discuss the process by which the centers and district offices review new product applications. Reviewing staff from the Centers for Biologics, Devices, and Drugs will make presentations regarding the elements of submissions that make the review process more efficient.

Date and Time: The workshop will be held on July 12 and 13, 1999, from 7:30 a.m. to 5 p.m.

Location: The workshop will be held at the Irvine Marriott, 18000 Von Karman Ave., Irvine, CA, 949–553–0100.

Contact: Sandi Velez, Los Angeles District Office, Food and Drug Administration, 19900 MacArthur Blvd., Irvine, CA 92612–2445, 949–798–7748 or FAX 949–798–7715, for further information including a registration form.

Registration: Space is limited. Preregistration and confirmation are required. Registration forms can be obtained at the OCRA web site "http://www.ocra-dg.org" or from Sandi Velez at the numbers given previously. There is a $250 registration fee if postmarked by June 30, 1999 ($275 after July 1, 1999) payable to OCRA. The registration fee and form should be sent to PeriAnn DiRocco at OCRA Submissions Conference, 5405 Alton Pkwy., suite 5A–624, Irvine, CA 92604, FAX and voice 949–348–9141, and received no later than July 7, 1999. The registration fee will cover actual expenses incurred by OCRA including refreshments, lunch, materials, parking fees, and speaker expenses.

If you need special accommodations due to disability, please contact Sandi Velez at least 7 days in advance.

Dated: June 17, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–16091 Filed 6–21–99; 2:29 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–263]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* On Site Inspection for Durable Medical Equipment (DME) Supplier Location & Supporting Regulations in 42 CFR, 424.57; *Form Nos.:* HCFA–R–263 (OMB# 0938–0749);

Use: To identify and implement measures to prevent fraud and abuse in the Medicare program. Controlling the entry of suppliers of durable medical equipment, prosthetics, orthotics, or supplies (DMEPOS) to Medicare has been identified as one of the most effective ways to prevent fraud and abuse. To meet this challenge, HCFA is moving forward with a plan to improve the quality of the process for enrolling and reenrolling DMEPOS suppliers into the Medicare program by enhancing procedures for verifying supplier information collected on the Form HCFA 855S (DMEPOS Supplier Enrollment Application, OMB Approval No. 0938–0685). This form will be used

to complete information on DMEPOS suppliers' compliance with regulations found in 42 CFR 424.57.

Frequency: On occasion;

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government;

Number of Respondents: 40,000;

Total Annual Responses: 40,000;

Total Annual Hours: 20,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 19, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–15887 Filed 6–22–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1999 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of extension of deadline dates.

SUMMARY: This notice extends the application due date for two Guidance for Applicants (GFAs) previously announced by the Substance Abuse and Mental Health Services Administration: (1) Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services grants (short title: TCE/HIV, GFA No. TI 99–004) and (2) Targeted Capacity Expansion Cooperative Agreements for Substance Abuse and HIV/AIDS Prevention grants (short title: Targeted SA & HIV/AIDS Prevention, GFA No. SP 99–03) previously published in the **Federal Register** on March 9, 1999 and March 10, 1999, respectively, as part of the General Notice: Fiscal Year (FY) 1999 Funding Opportunities (FR Vol. 64, No. 45, 11478–11483 and Vol. 64, No. 46, 11940–11943, respectively). TCE/HIV grants are intended to augment the capabilities of substance abuse treatment programs to address the growing HIV/AIDS problem in African American and other racial/ethnic minority communities. Targeted SA & HIV/AIDS Prevention grants are intended to increase community capacity to provide integrated substance abuse and HIV/AIDS prevention services targeted to African American and other racial/ethnic minority youth, and women and their children. Questions related to the extension should be directed to Judith B. Braslow, Deputy Associate Administrator for Policy and Program Coordination, (301) 443–4111.

Extension of Receipt Date

In the second column of the tables on pages 11478 (FR Vol. 64, No. 45) and 11941 (FR Vol. 64, No. 46), the application deadline published in the **Federal Register** notices has been extended from June 17, 1999 to July 13, 1999, to increase the pool of applicants.

Dated: June 18, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–16035 Filed 6–22–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4442–N–11]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: August 23, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Rm. 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Paul B. Dornan, Department of Housing and Urban Development, Office of Policy Development and Research, 451 7th Street, SW, Rm 8140, Washington, DC 20410, (202) 708–0574, extension 4486 (this is not a toll-free number). A copy of the proposed data collection instruments and other available documents submitted to OMB may be obtained from Mr. Dornan.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Welfare to Work Voucher Program Evaluation.

Description of the need for the information and proposed use: The Department is conducting under contract the evaluation of a demonstration program—Welfare to Work Vouchers—which was intended by Congress to demonstrate that the provision of tenant-based rental assistance to eligible low-income families would permit them to obtain or retain employment.

Members of affected public: Heads of eligible families who have been assigned into either a treatment group (i.e., receiving Section 8 vouchers) or control group (i.e., not receiving Section 8 vouchers) within the jurisdiction of housing authorities electing to participate in the evaluation.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The researchers will survey participants, both those from the treatment and control groups, once for the baseline survey. 10,000 participants will be surveyed in all; the surveys are expected to last 40 minutes.

Status of the proposed information collection: Awaiting OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 11, 1999.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 99–15914 Filed 6–22–99; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4444–N–09]

Notice of Proposed Information Collection: Study of the Effectiveness of Program Implementation of the Milwaukee Lead Hazard Control Ordinance

AGENCY: Office of Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: August 23, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Gail N. Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Dr. Peter Ashley, 202–755–1785 ext. 115 (this is not a toll-free number) for available documents regarding this proposal.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Notice also lists the following information:

Title of Proposal: Study of the Effectiveness of Program Implementation of the Milwaukee Lead Hazard Control Ordinance.

OMB Control Number: To be assigned.

Description of the need for the information and proposed use: Despite dramatic reductions in blood-lead levels over the past 15 years, lead poisoning continues to be a significant health risk for young children. The Third National Health and Nutrition Examination Survey suggests that the greatest risk exists for children under the age of two. The development of a viable national strategy for the primary prevention of lead poisoning in these young children is a difficult task. The City of Milwaukee has enacted an ordinance requiring owners of pre-1950 rental properties in two target neighborhoods to carry out specified essential maintenance practices and standard treatments by April 30, 2000. The purpose of this information collection activity is to valuate the feasibility, costs, and effectiveness (in terms of reducing residential dust-lead levels and preventing elevated blood-lead levels in children under two years of age) of the comprehensive primary prevention program being conducted in two target Milwaukee neighborhoods. The collected information will be used as vital input for developing a viable national strategy.

This information collection will involve conducting brief on site interviews of tenants, conducting visual inspections of rental units, collecting dust-wipe samples for lead analysis from selected floor and window sill locations, and obtaining blood-sample from study subjects. If appropriate, the results of this information collection will be used to improve existing HUD guidance for primary prevention lead-hazard control activities.

Agency form numbers: Not applicable.

Members of affected public: Selected residents of study neighborhoods within the City of Milwaukee.

Total Burden Estimate:

Number of respondents	Frequency of response	Total hours of response
320	4	[illegible]

Status of the proposed information collection: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 14, 1999.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 99–15915 Filed 6–22–99; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–17]

Notice of Proposed Information Collection: Comment Request; Request and Payment for Labels, Manufactured Home Monthly Production Report, Due Manufacturer, Adjustment Report and List or Damaged Label Report

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: August 23, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Stuart Margulies, Office of Single Family Housing, Manufactured Housing and Standards Division, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–6409 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed

information collection to OMB for review, as required by the paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Request and Payment for Labels, Manufactured Home Monthly Production Report, Due Manufacturer, Adjustment Report and List or Damaged Label Report.

OMB Control Number, if applicable: 2502–0233.

Description of the need for the information and proposed use: The National Manufactured Home Construction and Safety Standards Act, 42 U.S.C., 5400, *et seq.*, authorizes HUD to promulgate and enforce reporting standards for the production of manufactured housing. HUD uses the forms to calculate and collect monitoring inspection fees for manufactured housing units.

Agency form numbers, if applicable: NCS/BCS—Forms 301, 302, 303, 304.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 283, frequency of responses are occasional, the total annual responses are 10,298, and the estimated annual burden hours requested are 5,480.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 9, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–15916 Filed 6–22–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–02]

Draft Environmental Impact Report/ Environmental Impact Statement (EIR/ EIS); City of Monterey Park, CA; Section 108 Loan Guarantee/Economic Development Initiative Grant (EDI)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development gives this notice to the public that the City of Monterey Park, California intends to prepare an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Monterey Park Towne Plaza Project, which, among other components includes the development of a 515,382-square foot retail center including a home improvement store with a garden center, three restaurants, and various retail uses, in the City of Monterey Park, California.

This notice is in accordance with regulations of the Council on Environmental Quality as described in 40 CFR parts 1500–1508. Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interests and indicate their readiness to aid in the EIR/EIS efforts as a "Cooperating Agency." Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and dates which the EIR/EIS should consider and recommended mitigation measures and alternatives associated with the proposed project.

A Draft EIR/EIS will be completed for the proposed action described herein. Comments relating to the Draft EIR/EIS are requested and will be accepted by the contact person listed below. When the Draft EIR/EIS is completed, a notice will be sent to individuals and groups known to be interested in the Draft EIR/EIS and particularly on the environmental impact issues identified therein. Any person or agency interested in receiving a notice and making comment on the Draft EIR/EIS should contact the person listed below.

ADDRESSES: All interested agencies, groups and persons are invited to submit written comments on the within-named project and the Draft EIR/EIS to: Ray Hamada, City of Monterey Park, Community Development Department, 320 West Newmark Avenue, Monterey Park, California, 91754 (626) 307–1463. Comments pertaining to the proposed project should be received by the person and office named above, within 15 days of the publication of this notice in order for all comments to be considered in the preparation of the Draft EIR/EIS.

SUPPLEMENTARY INFORMATION: The City of Monterey Park, acting on behalf of the U.S. Department of Housing and Urban Development, will prepare an EIR/EIS to analyze potential impacts of developing a triangular-shaped, 47.1-acre piece of property, located in the southeast portion of the City of Monterey Park immediately north of the Pomona Freeway (State Route 60) and west of Paramount Boulevard. The proposed project would consist of a 515,382-square foot retail center including a home improvement store with a garden center, three restaurants, and various other retail uses. The project site includes a net 0.1-acre land dedication to Caltrans that results from an approximately 1-acre land trade. The proposed project would also include roughly 4.4-acres of Southern California Edison property to the northwest and east of the site to be used for surface parking and an access road. The new access road would require realignment of the intersection of Paramount Boulevard/Neil Armstrong Street. An existing berm located along the southern boundary of the site would also be leveled.

Approximately 10 acres of the western portion of the site contain a historic landfill ("North Parcel Landfill"), that received municipal solid waste between 1948 and 1975. Due to the past landfill operations, the project site is currently designated as a Superfund site. A leachate treatment plant (LTP) is also located on the site and currently processes collected groundwater (leachmate) from a landfill located just south of the Pomona Freeway ("South Parcel Landfill"), which stopped accepting waste in 1984. The LTP will continue to operate on-site in this capacity following the closure of the South Parcel Landfill in the year 2000. The North Parcel Landfill is currently being remediated based upon guidance from the U.S. Environmental Protection Agency.

Other businesses that currently occupy the site include Ecology Auto Wrecking, Aman Brothers Pavement Crushing, Manhole Adjustment, Inc., and Recycled Wood Products. The project applicant has negotiated lease termination agreements with each of the site tenants. Other than the LTP, all of the tenants will vacate the project site prior to development of the site.

It is anticipated that the City of Monterey Park will be awarded a Section 108 Loan Guarantee and an accompanying Economic Development Initiative (EDI) grant from the Department of Housing and Urban Development which will help with the costs associated with land acquisition, site cleanup and required access. The section 108 Loan Guarantee request by the City of Monterey Park is $6.5 million and the EDI request is $540,000.

Need for the EIS

It has been determined that the project may constitute an action significantly affecting the quality of the human environment and an Environmental Impact Report/ Environmental Impact Statement will be prepared by the City of Monterey Park in accordance with the National Environmental Policy Act of 1969 (Pub.L. 91–190) on such project.

Responses to this notice will be used to:

1. Determine significant environmental issues;
2. Identify data which the EIS/EIR should address; and
3. Identify agencies and other parties which will participate in the EIS process and the basis for their involvement.

This notice is in accordance with the regulations of the Council on Environmental Quality under its rule (40 CFR parts 1500–1508).

The Draft Environmental Impact Report/Environmental Impact Statement will be published and distributed about August 30, 1999 and a copy will be on file at the City of Monterey Park, Community Development Department, 320 West Newmark Avenue, Monterey Park, California, 91754 and available for public inspection, or copies may be attained at the same address, upon request to Mr. Ray Hamada, Planning Manager (626) 307–1463.

Scoping

This notice is part of the process used for scoping the EIR/EIS. Responses will help determine the significant environmental issues, identify data which the EIR/EIS should address, and help identify cooperating agencies.

The Draft EIR/EIS will be published upon completion and will be on file, and available for public inspection, at the address listed above. Copies may also be obtained upon request at the same address.

This Notice shall be in effect for one year. If one year after the publication of the Notice in the **Federal Register** a Draft EIS has not been filed on the project, then the Notice for that project shall be canceled. If the Draft EIS is expected more than one year after the publication of this Notice, a new and updated Notice shall be published.

Dated: June 17, 1999.

Richard H. Broun,

Director, Office of Community Viability.

[FR Doc. 99–15991 Filed 6–22–99; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4340–FA–08]

Housing Counseling Program Announcement of Funding Awards for Fiscal Year 1998

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a SuperNOFA competition for funding of HUD-approved counseling agencies to provide counseling services. This announcement contains the names and addresses of the agencies selected for funding and the amount.

FOR FURTHER INFORMATION CONTACT: Kitty Woodley, Director, Program Support Division, Room 9166, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0317. Hearing-or speech-impaired individuals may access this number by calling the Federal Information Relay Service on 1–800–877–8339 or (202) 708–9300. (With the exception of the "800" number, these are not toll free numbers.)

SUPPLEMENTARY INFORMATION: The Housing Counseling Program is authorized by Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). HUD enters into agreement with qualified public or private nonprofit organizations to provide housing counseling services to low- and moderate-income individuals and families nationwide. The services include providing information, advice and assistance to renters, first-time homebuyers, homeowners, and senior citizens in areas such as pre-purchase counseling, financial management, property maintenance and other forms of housing assistance to improve the clients' housing conditions and meet the responsibilities of tenancy and homeownership.

The purpose of the grant is to assist HUD-approved housing counseling agencies in providing housing counseling services to HUD-related and other clients. HUD funding of approved housing counseling agencies is not guaranteed and when funds are awarded, a HUD grant does not cover all expenses incurred by an agency to deliver housing counseling services. Counseling agencies must actively seek additional funds from other sources such as city, county, state and federal agencies and from private entities to ensure that they have sufficient operating funds. The availability of housing counseling program grants depends upon whether the U.S. Congress appropriates funds for this purpose, the amount of those funds, and the outcome of the competitions for award.

The 1998 grantees announced in this Notice were selected for funding in competitions announced in a **Federal Register** Notice published on March 31, 1998 (63 FR 15545) for the housing counseling program. Applications submitted for each competition were scored and selected for funding on the basis of selection criteria contained in the Notice. HUD awarded $18 million housing counseling grants to 359 housing counseling agencies nationwide: 322 local agencies, 8 intermediaries, and 29 State housing finance agencies.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and award amounts as provided in Appendix A.

The Catalog of Federal Domestic Assistance number for this program is 14.169.

Dated: June 17, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A—Housing Counseling Recipients of Funding Awards for FY 1998

Intermediary Organizations (8)

ACORN HOUSING CORPORATION, 846 N. Broad Street, Philadelphia, PA 19130, Amount Awarded: $1,000,000

CATHOLIC CHARITIES USA, 1731 King Street, Suite 200, Alexandria, VA 22314, Amount Awarded: $999,222

HOUSING OPPORTUNITIES, INC., 133 Seventh Avenue, P.O. Box 9, McKeesport, PA 15134, Amount Awarded: $623,782

NATIONAL ASSOCIATION OF HOUSING PARTNERSHIPS, INC., 153 Milk Street,

Suite 300, Boston, MA 02109, Amount Awarded: $632,693
NATIONAL COUNCIL OF LA RAZA, 1111 19th Street, NW, Suite 1000, Washington, DC 20036, Amount Awarded: $659,427
NATIONAL FOUNDATION FOR CONSUMER CREDIT, 8611 Second Avenue, Suite 100, Silver Spring, MD 20910, Amount Awarded: $1,000,000
NEIGHBORHOOD REINVESTMENT CORPORATION, 1325 G Street, NW, Suite 800, Washington, DC 20005–3100, Amount Awarded: $703,983
THE CONGRESS OF NATIONAL BLACK CHURCHES, INC., 1225 Eye Street, NW, Suite 750, Washington, DC 20005–3914, Amount Awarded: $380,890

State Housing Finance Agencies (29)

Atlanta (HOC)

FLORIDA HOUSING FINANCE CORPORATION, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301, Amount Awarded: $192,032
GEORGIA HOUSING & FINANCE AUTHORITY, 60 Executive Park South, Atlanta, GA 30329–2231, Amount Awarded: $250,000
ILLINOIS HOUSING DEVELOPMENT AUTHORITY, 401 N. Michigan Avenue, Suite 900, Chicago, IL 60611, Amount Awarded: $334,939
KENTUCKY HOUSING CORPORATION, 1231 Louisville Road, Frankfort, KY 40601, Amount Awarded: $290,281
MISSISSIPPI HOME CORPORATION, 840 East River Place, Suite 605, Jackson, MS 39202, Amount Awarded: $245,622
NORTH CAROLINA HOUSING FINANCE AGENCY, P. O. Box 28066, Raleigh, NC 27611–8066, Amount Awarded: $406,393
SOUTH CAROLINA STATE HOUSING FINANCE & DEVELOPMENT AUTH., 919 Bluff Road, Columbia, SC 29201, Amount Awarded: $94,681

Denver (HOC)

INDUSTRIAL COMMISSION OF NORTH DAKOTA, North Dakota Housing Finance Agency, P.O. Box 1535, Bismarck, ND 58502, Amount Awarded: $50,000
KANSAS DEPARTMENT OF COMMERCE & HOUSING, 700 SW Harrison, Suite 1300, Shawnee County, Topeka, KS 66603–3712, Amount Awarded: $200,000
MINNESOTA HOUSING FINANCE AGENCY, 400 Sibley Street, Suite 300, St. Paul, MN 55101, Amount Awarded: $150,000
NEW MEXICO MORTGAGE FINANCE AUTHORITY, 344 Fourth Street SW, Albuquerque, NM 87123, Amount Awarded: $315,000
OKLAHOMA HOUSING FINANCE AGENCY, P. O. Box 26720, Oklahoma, OK 73126–0720, Amount Awarded: $100,000
SOUTH DAKOTA HOUSING DEVELOPMENT AUTHORITY, P. O. Box 1237, Pierre, SD 57501, Amount Awarded: $130,000
STATE OF TEXAS, P. O. Box 13941, 507 Sabine, Suite 900, Austin, TX 78711–3941, Amount Awarded: $380,000
WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY, 201 W. Washington Ave., Suite 700, P. O. Box 1728, Madison,, WI 53701–1728, Amount Awarded: $150,000

Philadelphia (HOC)

CONNECTICUT HOUSING FINANCE AGENCY, 999 West Street, Rocky Hill, CT 06067, Amount Awarded: $110,000
DELAWARE STATE HOUSING AUTHORITY, Carvel State Building, 820 North French Street, Wilmington, DE 19801, Amount Awarded: $131,101
MAINE STATE HOUSING AUTHORITY, 353 Water Street, Augusta, ME 04330–4633, Amount Awarded: $125,000
MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, 100 Community Place, Crownsville, MD 21032, Amount Awarded: $145,000
MASSACHUSETTS HOUSING FINANCE AGENCY, One Beacon St., Boston, MA 02108, Amount Awarded: $130,000
NEW HAMPSHIRE HOUSING FINANCE AUTHORITY, P.O. Box 5087, Manchester, NH 03108, Amount Awarded: $110,101
NEW JERSEY HOUSING & MORTGAGE FINANCE AGENCY, 637 South Clinton Ave., Trenton, NJ 08650–2085, Amount Awarded: $150,000
PENNSYLVANIA HOUSING FINANCE AGENCY, 2101 North Front St., Harrisburg, PA 17105, Amount Awarded: $175,000
RHODE ISLAND HOUSING & MORTGAGE FINANCE CORPORATION, 44 Washington St., Providence, RI 02903, Amount Awarded: $110,000
STATE OF MICHIGAN, 401 S. Washington Square, Lansing, MI 48909, Amount Awarded: $130,000
VIRGINIA HOUSING DEVELOPMENT AUTHORITY, 601 S. Belvidere St., Richmond, VA 23220, Amount Awarded: $145,000
WEST VIRGINIA HSG. DEVELOPMENT FUND, 814 Virginia St. E., Charleston, WV 25301, Amount Awarded: $110,101

Santa Ana (HOC)

IDAHO HOUSING AND FINANCE ASSOCIATION, P. O. BOX 7899, 565 MYRTLE, BOISE, ID 83707–1899, Amount Awarded: $193,100
WASHINGTON STATE HOUSING FINANCE COMMISSION, 1000 SECOND AVENUE, SUITE 2700, SEATTLE, WA 98104, Amount Awarded: $500,000

Local Organizations (322)

Atlanta (HOC)

CITY OF ALBANY, GEORGIA, 230 S. Jackson St., Suite 315, Albany, GA 31701, Amount Awarded: $22,959
COBB HOUSING, INC., 700 Sandy Plains Rd., Suite B–8, Marietta, GA 30066, Amount Awarded: $37,893
CONSUMER CREDIT COUNSELING SERVICE OF GREATER ATLANTA, 100 Edgewood Avenue, Suite 1500, Atlanta, GA 30303, Amount Awarded: $22,660
DEKALB FULTON HOUSING COUNSELING CENTER, INC., 4151 Memorial Drive, Suite 107–E, Decatur, GA 30032, Amount Awarded: $94,500
ECONOMIC OPPORTUNITY FOR SAVANNAH–CHATHAM COUNTY AREA, INC., 618 West Anderson Street, Savannah, GA 31401, Amount Awarded: $94,500
GWINNETT HOUSING RESOURCE PARTNERSHIP, INC., 3453 Holcomb Bridge Road, Suite 140, Norcross', GA 30092, Amount Awarded: $21,500
METRO COLUMBUS URBAN LEAGUE, INC., 802 First Avenue, Columbus, GA 31901, Amount Awarded: $5,000
UNIFIED GOVERNMENT OF ATHENS–CLARKE COUNTY, 155 E. Washington St., P.O. Box 1868, Athens, GA 30603, Amount Awarded: $27,894
ALABAMA COUNCIL ON HUMAN RELATIONS, P. O. Box 409, Auburn, AL 36831–0409, Amount Awarded: $5,000
BIRMINGHAM URBAN LEAGUE, INC., 1717 4th Avenue North, P. O. Box 11269, Birmingham, AL 35202, Amount Awarded: $6,374
COMMUNITY ACTION & COMMUNITY DEVELOPMENT AGENCY OF N. AL, P. O. Box 1788, 107 Second Avenue, NE, Decatur, AL 35602, Amount Awarded: $6,607
COMMUNITY ACTION AGENCY HUNTSVILLE/MADISON & LIMESTONE, 3516 Stringfield Road, P. O. Box 3975, Huntsville, AL 35810–0975, Amount Awarded: $5,000
COMMUNITY ACTION AGENCY OF NORTHWEST ALA., INC., 502 E. College Street, Florence, AL 35630, Amount Awarded: $5,000
HOUSING AUTHORITY OF THE BIRMINGHAM DISTRICT, 1826 3rd Avenue South, Birmingham, AL 35233, Amount Awarded: $6,451
JEFFERSON COUNTY HOUSING AUTHORITY, 3700 Industrial Parkway, Birmingham, AL 35217, Amount Awarded: $7,462
MOBILE HOUSING BOARD, 151 South Claiborne Street, Mobile, AL 36633, Amount Awarded: $6,529
ORGANIZED COMMUNITY ACTION PROGRAM, INC., P.O. Box 908, Troy, AL 36081, Amount Awarded: $5,000
THE HOUSING AUTHORITY OF THE CITY OF AUBURN, ALABAMA, 931 Booker Street, Auburn, AL 36832, Amount Awarded: $6,684
THE HOUSING AUTHORITY OF THE CITY OF MONTGOMERY, 1020 Bell Street, Montgomery, AL 36104, Amount Awarded: $6,374
WIL-LOW NONPROFIT HOUSING CORP., INC., P.O. Box 383, 200A commerce Street, Haynesville, AL 36040, Amount Awarded: $6,684
BROWARD COUNTY HOUSING AUTHORITY, 1773 North State Road 7, Lauderhill, FL 33313, Amount Awarded: $39,241
CONSUMER CREDIT COUNSELING SERVICE OF PALM BEACH CO., 2330 Congress Avenue south, Suite 1A, West Palm Beach, FL 33406, Amount Awarded: $47,314
CONSUMER CREDIT COUNSELING SERVICE OF SOUTH FL, 11645 Biscayne Blvd. #205, No. Miami, FL 33181, Amount Awarded: $10,000
MIAMI BEACH COMMUNITY DEVELOPMENT CORPORATION, 1205 Drexel Avenue, Miami Beach, FL 33139, Amount Awarded: $5,000
URBAN LEAGUE OF PALM BEACH COUNTY, INC., 1700 North Australian Avenue, West Palm Beach, FL 33407, Amount Awarded: $36,000
WEST PERRINE COMMUNITY DEVELOPMENT CORPORATION, 17623 Homestead Avenue, Miami, FL 33157, Amount Awarded: $30,000
CAROLINA REGIONAL LEGAL SERVICES, INC., P.O. Box 479, 279 West Evans Street, Florence, SC 29503–0479, Amount Awarded: $13,531
FAMILY SERVICE CENTER, 1800 Main Street, Columbia, SC 29201, Amount Awarded: $16,811
PALMETTO LEGAL SERVICES, 2109 Bull Street, P.O. Box 2267, Columbia, SC 29202, Amount Awarded: $10,250
TRIDENT UNITED WAY, 6296 Rivers Avenue, North Charleston, SC 29406, Amount Awarded: $5,000
CUMBERLAND COMMUNITY ACTION PROGRAM, INC., P.O. Box 2009, 328 Gillespie Street, Fayetteville, NC 28302, Amount Awarded: $36,296
NORTHWESTERN REGIONAL HOUSING AUTHORITY, P.O. Box 2510, Boone, NC 28607, Amount Awarded: $29,490
SANDHILLS COMMUNITY ACTION PROGRAM, INC., 103 Saunders Street, P O. Box 937, Carthage, NC 28327, Amount Awarded: $24,499
GULF COAST COMMUNITY ACTION AGENCY, INC., 500 24th Street, P.O. Box 519, Gulfport, MS 39502–0519, Amount Awarded: $22,792
HOUSING EDUCATION AND ECONOMIC DEVELOPMENT, 3405 Medgar Evers Blvd., Jackson, MS 39213, Amount Awarded: $18,424
SACRED HEART SOUTHERN MISSIONS HOUSING CORP., 6144 Highway, 161 North, P.O. Box 365, Walls, MS 38680, Amount Awarded: $5,000
CITY OF GAINESVILLE, Station 10–B, P.O. Box 490, Gainesville, FL 32602–0490, Amount Awarded: $5,000
FAMILY COUNSELING SERVICES, 1639 Atlantic Boulevard, Jacksonville, FL 32207, Amount Awarded: $38,872
TALLAHASSEE URBAN LEAGUE, INC., 923 Old Bainbridge Road, Tallahassee, FL 32303, Amount Awarded: $5,000
LOUISVILLE URBAN LEAGUE, 1535 West Broadway, Louisville, KY 40203, Amount Awarded: $9,977
NORTHERN KENTUCKY COMMUNITY CENTER, 824 Greenup Street, P.O. Box 2030, Covington, KY 41011, Amount Awarded: $5,000
REALTOR-COMMUNITY HOUSING FOUNDATION, 2250 Regency Road, Lexington, KY 40503–2302, Amount Awarded: $9,978
TENANT SERVICES & HOUSING COUNSELING, INC., 136 N. Martin Luther King Blvd., Lexington, KY 40507, Amount Awarded: $9,300
CITY OF CHATTANOOGA HUMAN SERVICES DEPT., 501 W. 12th Street, Chattanooga, TN 37402, Amount Awarded: $5,051
CONSUMER CREDIT COUNSELING SERVICE OF EAST TN, 1012 Heiskell Avenue, P.O. Box 3924, Knoxville, TN 37927, Amount Awarded: $7,175
FAMILY AND CHILDREN'S SERVICES OF CHATTANOOGA, INC., 300 East 8th Street, Chattanooga, TN 37403, Amount Awarded: $5,125
KNOX HOUSING PARTNERSHIP, INC., 220 Carrick Street, Suite 306, Knoxville, TN 37921, Amount Awarded: $7,321
KNOXVILLE LEGAL AID SOCIETY, INC., 502 S. Gay Street, Suite 404, Knoxville, TN 37902, Amount Awarded: $7,321
MEMPHIS AREA LEGAL SERVICES, 109 N. Main., Suite 200, Memphis, TN 38103–5013, Amount Awarded: $32,176
THE MEMPHIS HOUSING RESOURCE CENTER, 61 Adams, Memphis, TN 38103, Amount Awarded: $5,000
VOLLINTINE-EVERGREEN COMMUNITY ASSOCIATION (VECA)-CDC, 1680 Jackson Avenue, Memphis, TN 38107, Amount Awarded: $30,836
WEST TENNESSEE LEGAL SERVICES, INC., 210 W. Main Street, P.O. Box 2066, Jackson, TN 38302, Amount Awarded: $33,517
C.C.C.S. OF MIDDLE TENNESSEE, INC., P.O. Box 160328, Nashville, TN 37216–0328, Amount Awarded: $8,600
CITIZENS FOR AFFORDABLE HOUSING, INC., 1719 West End Avenue, Suite 607W, Nashville, TN 37203, Amount Awarded: $7,414
HOPE, INCORPORATED, 212 Capitol Blvd., Nashville, TN 37219, Amount Awarded: $8,106
METROPOLITAN DEVELOPMENT & HOUSING AGENCY, 701 South Sixth Street, Nashville, TN 37206–3893, Amount Awarded: $9,193
NASHVILLE URBAN LEAGUE, 1219 Ninth Avenue North, Nashville, TN 37208–2552, Amount Awarded: $9,688
CONSUMER CREDIT COUNSELING SERVICE, 220 Coral Sands Drive, Rockledge, FL 32955, Amount Awarded: $5,000
CONSUMER CREDIT COUNSELING SERVICE OF CENTRAL FLORIDA, INC., 3670 Maguire Blvd., Suite 103, Orlando, FL 32803, Amount Awarded: $27,215
HOMES IN PARTNERSHIP, INC., 235 E. Fifth Street, P.O. Box 761, Apopka, FL 32704–0761, Amount Awarded: $26,100
HOUSING AND NEIGHBORHOOD DEV. SERV OF CENTRAL FLORIDA, 2211 Hillcrest St, Orlando, FL 32803, Amount Awarded: $24,440
CEIBA HOUSING & ECONOMIC DEVELOPMENT CORPORATION, Ave. Lauro Pinero #252, P.O. Box 203, Ceiba, PR 00735, Amount Awarded: $43,856
CONSUMER CREDIT COUNSELING SERVICE OF PR, INC., 1603 Ponce de Leon Avenue, Stop 23, Suite GM–03 Santurce, PR 00909, Amount Awarded: $48,355
CONSUMER CREDIT COUNSELING SERVICE OF FL. GULF COAST, INC., 5201 W. Kennedy Blvd., Suite 110, Tampa, FL 33609, Amount Awarded: $66,450
MANATEE OPPORTUNITY COUNCIL, INC., 347 6th Avenue, West Bradenton, FL 34205, Amount Awarded: $5,000
AGENCY METROPOLITAN PROGRAM SERVICES 3210, W. Arthington Street, Chicago, IL 60624, Amount Awarded: $5,000
CEFS ECONOMIC OPPORTUNITY CORPORATION, 1805 S. Banker Street, P.O. Box 928, Effingham, IL 62401, Amount Awarded: $5,000
CHICAGO URBAN LEAGUE DEVELOPMENT CORPORATION, 4510 S. South Michigan Ave., Chicago, IL 60653, Amount Awarded: $5,000
COMMUNITY SERVICE COUNCIL OF NORTHERN WILL COUNTY, 719 Parkwood Avenue, Romeoville, IL 60446, Amount Awarded: $30,240
COMMUNITY AND ECONOMIC DEVELOPMENT ASSOC. OF COOK COUNTY, 208 South Lasalle, Suite 1900, Chicago, IL 60604–1001, Amount Awarded: $31,810
DUPAGE HOMEOWNERSHIP CENTER, INC., 1333 North Main Street, Wheaton, IL 60187, Amount Awarded: $20,000
HOUSING AUTHORITY OF THE COUNTY OF LAKE, IL, 33928 North, Route 45, Grayslake, IL 60030, Amount Awarded: $28,670
LATIN UNITED COMMUNITY HOUSING ASSOCIATION, 2750 W. North Avenue, Chicago, IL 60647, Amount Awarded: $30,240
MADISON COUNTY URBAN LEAGUE, 210 Williams Street, Alton, IL 62002, Amount Awarded: $28,050
NEIGHBORHOOD HOUSING SERVICES OF CHICAGO, INC., 747 North May Street, Chicago, IL 60622, Amount Awarded: $5,000
ROGERS PARK COMMUNITY COUNCIL, 1772 W. Lunt Avenue, Chicago, IL 60626, Amount Awarded: $5,000
SPANISH COALITION FOR HOUSING, 4035 West North Avenue, Chicago, IL 60639, Amount Awarded: $29,300
ANDERSON HOUSING AUTHORITY, 528 West 11th Street, Anderson, IN 46016, Amount Awarded: $8,180
CITY OF BLOOMINGTON, P.O. Box 100, 401 N. Morton Street, Bloomington, IN 47402, Amount Awarded: $6,100
COMMUNITY ACTION OF GREATER INDIANAPOLIS, INC., 2445 North Meridian Street, Indianapolis, IN 46208, Amount Awarded: $7,669
CONSUMER CREDIT COUNSELING OF NWI, 3637 Grant Street, Gary, IN 46408–1439, Amount Awarded: $7,669
HAMMOND HOUSING AUTHORITY, 7329 Columbia Circle West, Hammond, IN 46324, Amount Awarded: $7,158
HOOSIER UPLANDS ECONOMIC DEVELOPMENT CORPORATION, 521 West Main Street, Mitchell, IN 47446, Amount Awarded: $5,000
HOPE OF EVANSVILLE, INC., 608 Cherry Street, Evansville, IN 47713, Amount Awarded: $10,466
HOUSING AUTHORITY OF THE CITY OF FORT WAYNE, P.O. Box 13489, 2013 South Anthony Blvd., Fort Wayne, IN 46869–3489, Amount Awarded: $7,924
LAKE COUNTY, 2293 North Main Street, Crown Point, IN 46307, Amount Awarded: $6,306
LINCOLN HILLS DEVELOPMENT CORPORATION, 302 Main Street, P.O. Box 336, Tell City, IN 47586, Amount Awarded: $6,817
MUNCIE HOMEOWNERSHIP AND DEVELOPMENT CENTER, 206 S. Walnut Street, P.O. Box 93, Muncie, IN 47308, Amount Awarded: $7,413
REAL SERVICES, INC., 1151 S. Michigan, P.O. Box 1835, South Bend, IN 46634, Amount Awarded: $6,100
TELAMON CORPORATION/TRANSITION RESOURCES CORPORATION, 2511 E.

46th Street, Suite 02, Indianapolis, IN 46205, Amount Awarded: $6,220
URBAN LEAGUE OF NORTHWEST INDIANA, INC., 3101 Broadway, Gary, IN 46409, Amount Awarded: $5,453

Denver (HOC)

COMMUNITY ACTION, INC. OF ROCK AND WALWORTH COUNTIES, 2300 Kellog Avenue, Janesville, WI 53546, Amount Awarded: $8,000
WALKER'S POINT DEVELOPMENT CORP, 914 S. 5th Street, Milwaukee, WI 53204, Amount Awarded: $5,153
COMMUNITY ACTION FOR SUBURBAN HENNEPIN, 33 Tenth Avenue South, Suite 150, Hennepin County, Hopkins, MN 55343, Amount Awarded: $44,370
SOUTHERN MINNESOTA REGIONAL LEGAL SERVICE, 700 Minnesota Building, 46 East Fourth Street, St. Paul, MN 55101, Amount Awarded: $30,000
ST. PAUL HOUSING INFORMATION OFFICE, 25 West Fourth Street, St. Paul, MN 55102, Amount Awarded: $27,716
CITY OF FORT WORTH, 1000 Throckmorton, Fort Worth, TX 76102, Amount Awarded: $100,000
CONSUMER CREDIT COUNSELING SERVICE OF GREATER FORT WORTH INC, 1320 South University, Suite 200, Fort Worth, TX 76107, Amount Awarded: $78,000
GULF COAST COMMUNITY SERVICE ASSOCIATION, 6300 Bowling Green, Houston, TX 77021, Amount Awarded: $70,000
CRAWFORD-SEBASTIAN COMMUNITY DEVELOPMENT COUNCIL, INC., 4831 Armour, P.O. Box 4069, Fort Smith, AR 72914, Amount Awarded: $12,500
CROWLEY'S RIDGE DEVELOPMENT COUNCIL, INC., P.O. Box 1497, 249 S. Main, Jonesboro, AR 72401, Amount Awarded: $20,884
EAST ARKANSAS LEGAL SERVICES, P.O. Box 1149, 500 East Broadway, West Memphis, AR 72301, Amount Awarded: $15,000
FAMILY SERVICE AGENCY, 4504 Burrow Drive, P.O. Box 16615, North Little Rock, AR 72231–6615, Amount Awarded: $12,500
GUADALUPE ECONOMIC SERVICES CORPORATION, 1416 First Street, Lubbock, TX 79401, Amount Awarded: $37,982
ASSIST AGENCY, P.O. Box 1404, Crowley, LA 70527–1404, Amount Awarded: $9,061
CENTRAL CITY HOUSING DEVELOPMENT CORP., 2020 Jackson Avenue, New Orleans, LA 70113, Amount Awarded: $9,000,
LAFAYETTE CONSOLIDATED GOVERNMENT, P.O. Box 4017-C, Lafayette, LA 70502–4017, Amount Awarded: $9,000
PARISH OF JEFFERSON, 1221 Elmwood Park Blvd., Suite 402, Jefferson, LA 70123, Amount Awarded: $40,000
ST. MARY COMMUNITY ACTION COMMITTEE ASSOC., INC., 1407 Barrow St., P.O. Box 271, Franklin, LA 70538, Amount Awarded: $11,500
CDSA, 2615 E. Randolph, Enid, OK 73701, Amount Awarded: $7,000
CONSUMER CREDIT COUNSELING SERVICE OF CENTRAL OKLAHOMA INC., 3230 North Rockwell, Bethany, OK 73008, Amount Awarded: $20,197
HOUSING AUTHORITY OF THE CITY OF LAWTON, OK, 609 SW "F" Avenue, Comanche County, Lawton, OK 73501, Amount Awarded: $6,500
NORMAN HOUSING AUTHORITY, 700 N. Berry Rd., Norman, OK 73069, Amount Awarded: $6,500
CITY OF SAN ANTONIO, 115 Plaza de Armas, Suite 150, San Antonio, TX 78205, Amount Awarded: $50,000
COMMUNITY DEVELOPMENT CORPORATION OF BROWNSVILLE, 1150 E. Adams, Second Floor, Brownsville, TX 78520, Amount Awarded: $35,000
LEGAL AID OF CENTRAL TEXAS, 205 West 9th Street, Suite 200, Austin, TX 78701, Amount Awarded: $10,452
METRO AFFORDABLE HOUSING CORPORATION, 2000 San Francisco, Laredo, TX 78040, Amount Awarded: $16,000
MARSHALL HOUSING AUTHORITY, 1401 Poplar, P.O. Box 609, Marshall, TX 75671, Amount Awarded: $22,831
DEEP FORK COMMUNITY ACTION FDN., INC., P.O. Box 670, Okmulgee County, Okmulgee, OK 74447, Amount Awarded: $6,000
FAMILY MANAGEMENT CREDIT COUNSELORS, INC. (FMCCI), 1409 W. 4th, Waterloo, IA 50702, Amount Awarded: $7,500
HAWKEYE AREA COMMUNITY ACTION PROGRAM, INC., P.O. Box 789, Cedar Rapids, IA 52406–0789, Amount Awarded: $9,800
GREATER KANSAS CITY HOUSING INFORMATION CENTER, 3810 Paseo, Kansas City, MO 65109–2721, Amount Awarded: $29,226
HOUSING AND CREDIT COUNSELING, INC., 1195 SW Buchanan, Suite 203, Shawnee County, Topeka, KS 66604–1183, Amount Awarded: $29,227
MENNONITE HOUSING REHABILITATION SERV. INC., 3033 W. 2nd Street, Wichita, KS 67203, Amount Awarded: $10,000
NORTHEAST KANSAS COMMUNITY ACTION PROGRAM (NEK-CAP, INC.), P.O. Box 380, Hiawatha, KS 66434, Amount Awarded: $29,227
WEST CENTRAL MISSOURI COMMUNITY ACTION AGENCY, P.O. Box 125, 106 W. 4th, Appleton City, MO 64724, Amount Awarded: $10,000
FAMILY HOUSING ADVISORY SERVICES, INC., 2416 Lake Street, Douglas County, Omaha, NE 68111, Amount Awarded: $38,942
LINCOLN ACTION PROGRAM, INC., 2202 south 11, Lincoln, NE 68502, Amount Awarded: $14,500
HOUSING OPTIONS PROVIDED FOR THE ELDERLY, 4265 Shaw Avenue, St. Louis, MO 63110, Amount Awarded: $5,000
LEGAL SERVICES OF EASTERN MISSOURI, INC., 4232 Forest Park Avenue, St. Louis, MO 63108, Amount Awarded: $54,172
URBAN LEAGUE OF METROPOLITAN ST. LOUIS, 3701 Grandel Square, P.O. Box 8138, St. Louis, MO 63156–8138, Amount Awarded: $6,000
ADAMS COUNTY HOUSING AUTHORITY, 7190 Colorado Blvd., Commerce City, CO 80022, Amount Awarded: $60,000
BLACK HILLS LEGAL SERVICES, INC., 621 6th Street, Suite 202, P.O. Box 1500, Rapid City, SD 57709, Amount Awarded: $16,800
BOULDER COUNTY HOUSING AUTHORITY, Boulder, Boulder, CO 80302, Amount Awarded: $20,000
COMMUNITY ACTION OPPORTUNITIES, INC., 420 3rd St., SW, Minot, ND 58701–4304 Amount Awarded: $10,000
COMMUNITY ACTION PROGRAM REGION VII, INC., 2105 Lee Avenue, Burleigh County, Bismarck, ND 58504–6798, Amount Awarded: $15,000
CONSUMER CREDIT COUNSELING SERVICE OF BLACK HILLS, INC., 621 6th Street, Suite 201, Rapid City, SD 57709, Amount Awarded: $6,000
CONSUMER CREDIT COUNSELING SERVICE OF LSS, 705 East 41st Street, Suite 100, Sioux Falls, SD 57105, Amount Awarded: $3,546
NEIGHBOR TO NEIGHBOR, INC., 424 Pine Street, Suite 203, Fort Collins, CO 80524, Amount Awarded: $20,000
RED RIVER VALLEY COMMUNITY ACTION, 1013 North Fifth Street, Grand Forks, ND 58203, Amount Awarded: $5,000
SOUTHEASTERN NORTH DAKOTA COMMUNITY ACTION AGENCY, 3233 South University Drive, P.O. Box 2683, Fargo, ND 58104, Amount Awarded: $10,000
DISTRICT 7 HUMAN RESOURCES DEVELOPMENT COUNCIL, 7 North 31st Street, P.O. Box 2016, Billings, MT 59103, Amount Awarded: $10,000
WOMEN'S OPPORTUNITY & RESOURCE DEVELOPMENT, 127 N. Higgins, Missoula, MT 59802, Amount Awarded: $6,055
COMMUNITY ACTION SERVICES, 257 East Center Street, Provo, UT 84606, Amount Awarded: $19,500
FAMILY LIFE CENTER, 493 North 700 East, Cache County, Logan, UT 84321, Amount Awarded: $20,000
SALT LAKE COMMUNITY ACTION PROGRAM, 764 South 200 West, Salt Lake City, UT 84101, Amount Awarded: $2,500
YOUR COMMUNITY CONNECTION, 2261 Adams, Ogden, UT 84401, Amount Awarded: $2,500

Philadelphia (HOC)

CONSUMER CREDIT COUNSELING SERVICES OF MAINE INC, 111 Wescott Road, South Portland, MA 04106, Amount Awarded: $10,000
GREATER BOSTON LEAGAL SERVICES, INC., 197 Friend Street, Boston, MA 02114, Amount Awarded: $15,000
MERRIMACK VALLEY HOUSING PARTNERSHIP, INC., P.O. BOX 1042, Lowell, MA 01853–1042, Amount Awarded: $12,000
QUINCY COMMUNITY ACTION PROGRAMS, INC., 1509 Hancock Street, Norfolk County, Quincy, MA 02169, Amount Awarded: $10,000
CONSUMER CREDIT COUNSELING SERVICE OF CT. INC., 111 Founders Plaza, Suite 1400, East Hartford, CT 06108, Amount Awarded: $20,000

COASTAL ECONOMIC DEVELOPMENT CORP., 39 Andrews Road, Bath, ME 04530, Amount Awarded: $10,000
COASTAL ENTERPRISES, INC, 36 Water Street Wiscasset, ME 04578, Amount Awarded: $15,000
BLACKSTONE VALLEY COMMUNITY ACTION PROGRAM, INC, 32 Goff Avenue, Pawtucket, RI 02860, Amount Awarded: $10,000
CHAMPLAIN VALLEY OFFICE OF ECONOMIC OPPORTUNITY, P.O. BOX 1603, Burlington VT 05402, Amount Awarded: $6,000
URBAN LEAGUE OF RHODE ISLAND, INC., 246 Prairie Avenue, Providence County, Providence, RI 02905, Amount Awarded: $10,000
ALBANY COUNTY RURAL HOUSING ALLIANCE, INC., P.O. Box 407, 34 S. Main Street, Voorheesville, NY 12186, Amount Awarded: $15,000
BETTER NEIGHBORHOODS INCORPORATED, 986 Albany Street, Schenectady, NY 12307, Amount Awarded: $15,000
CORTLAND HOUSING ASSISTANCE COUNCIL, INC., 159 Main Street, Cortland, NY 13045, Amount Awarded: $5,000
METRO INTERFAITH SERVICES, INC, 21 New Street, Binghamton, NY 13903, Amount Awarded: $10,000
OPPORTUNITIES FOR CHENANGO, INC., P.O. Box 470, 44 West Main Street, Norwich, NY 13815–0470, Amount Awarded: $15,000
RURAL ULSTER PRESERVATION COMPANY, INC., 289 Fair Street, Ulster County, Kingston, NY 12401, Amount Awarded: $8,900
SYRACUSE UNITED NEIGHBORS, INC., 1540 South Salina Street, Onondaga County, Syracuse, NY 13205–1149, Amount Awarded: $10,000
UNITED TENANTS OF ALBANY, INC., 33 Clinton Avenue, Albany, NY 12207, Amount Awarded: $8,000
URBAN LEAGUE OF ONONDAGA COUNTY, INC., 324 University Avenue , Syracuse, NY 13203, Amount Awarded: $10,000
CENTER CITY NEIGHBORHOOD DEVELOPMENT CORPORATION, 1818 Main Street, Niagara Falls, NY 14305, Amount Awarded: $25,000
CHAUTAUQUA OPPORTUNITIES, INC., 17 West Courtney Street, Dunkirk, NY 14048, Amount Awarded: $20,000
HOUSING ASSISTANCE CENTER OF NIAGARA FRONTIER, INC, 1219 Main Street, Buffalo, NY 14209, Amount Awarded: $25,000
JAMAICA HOUSING IMPROVEMENT, INC, 161–10 Jamaica Avenue, Suite 601, Jamaica, NY 11432, Amount Awarded: $20,000
NEAR WESTSIDE NEIGHBORHOOD ASSOCIATION, INC., 353 Davis Street, Elmira, NY 14901, Amount Awarded: $12,000
THE HOUSING COUNCIL IN THE MONROE COUNTY AREA, 183 East Maint Street, Suite 1100, Rochester, NY 14604, Amount Awarded: $15,000
ATLANTIC HUMAN RESOURCES, INC., One South New York Ave., Atlantic City, NJ 08401, Amount Awarded: $9,000
CITY OF PLAINFIELD, 515 Watchung Avenue, Plainfield, NJ 07060, Amount Awarded: $20,000
GENESIS HOUSING CORPORATION, 217 South Barber Avenue, Woodbury, NJ 08096, Amount Awarded: $15,000
ISLES INC, 10 Wood Street, Trenton, NJ 08618, Amount Awarded: $10,000
JERSEY COUNSELLING AND HOUSING DEVELOPMENT, INC., 1840 South Broadway, Camden City, NJ 08104, Amount Awarded: $25,000
MERCER COUNTY HISPANIC ASSN.—MECHA, 410–416 W. Hanover St., P.O. Box 1331, Trenton, NJ 08608, Amount Awarded: $20,000
SENIOR CITIZENS UNITED COMMUNITY SERVICES OF CC, INC, 146 Black Horse Pike, Ephraim, NJ 08059, Amount Awarded: $8,000
ASIAN AMERICANS FOR EQUALITY, INC., 111 Division Street, New York, NY 10002, Amount Awarded: $25,000
BISHOP SHEEN ECUMENICAL HOUSING FOUNDATION, INC, 935 East Avenue, Rochester, NY 14607, Amount Awarded: $15,000
COMMUNITY DEVELOPMENT CORPORATION OF LONG ISLAND, 2100 Middle Country Road, Centereach, NY 11720, Amount Awarded: $20,000
CYPRESS HILLS LOCAL DEVELOPMENT CORP., 625 Jamaica Avenue, Kings County, Brooklyn, NY 11208, Amount Awarded: $15,000
FAMILY AND CHILDREN'S ASSOCIATION, 336 Fulton Avenue, Hempstead, NY 11550, Amount Awarded: $15,000
LONG ISLAND HOUSING SERVICES, INC, 1747 Veterns Memorial, Highway, Suite 42A, Islandia, NY 11722, Amount Awarded: $10,000
MARGERT COMMUNITY CORPORATION, 1931 Mott Avenue, Room 412, Far Rockaway, NY 11691, Amount Awarded: $20,000
NEIGHBORS HELPING NEIGHBORS, INC., 5313 5th Avenue, Brooklyn, NY 11220, Amount Awarded: $20,000
OPEN HOUSING CENTER, INC., 594 Broadway, Suite 608, New York, NY 10012, Amount Awarded: $15,000
PUTNAM COUNTY HOUSING CORPORATION, 5 Seminary Hill Road, Carmel, NY 10512, Amount Awarded: $15,000
RURAL SULLIVAN COUNTY HOUSING OPP., INC, P.O. Box 1497, Monticello, NY 12701, Amount Awarded: $10,000
ROCKLAND HOUSING ACTION COALITION, INC, 747 Chestnut Street, Chestnut Ridge, NY 10977, Amount Awarded: $20,000
ROCKWAY DEVELOPMENT & REVITALIZATION CORP., 1920 Mott Avenue, Suite #2 Far Rockaway, NY 11691, Amount Awarded: $15,000
WESTCHESTER RESIDENTIAL OPPORTUNITIES, INC, 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605, Amount Awarded: $25,000
CATHOLIC CHARITIES, DIOCESE OF METUCHEN, 540–550 ROUTE 22 EAST, BRIGEWATER, SOMERSET, NJ 08807, Amount Awarded: $15,000
CHECK MATE INC., 550 COOKMAN AVENUE, ASBURY PARK, NJ 07712, Amount Awarded: $10,000
CITIZEN ACTION OF NEW JERSEY, 400 Main Street, Hackensack, NJ 07601, Amount Awarded: $25,000
HOUSING COALITION OF CENTRAL JERSEY, 78 NEW STREET, NEW BRUNSWICK, NJ 08901, Amount Awarded: $20,000
MONMOUTH COUNTY BOARD OF CHOSEN FREEHOLDERS, P.O. BOX 1255, FREEHOLD, NJ 07728, Amount Awarded: $20,000
SOMERSET COUNTY COALITION ON AFFORDABLE HOUSING, ONE WEST MAIN STREET, 2ND FLOOR, SOMERVILLE, NJ 08876, Amount Awarded: $20,000
TRI COUNTY COMMUNITY ACTION AGENCY, INC, 143 W. Broad Street, Bridgeton, NJ 08302, Amount Awarded: $10,000
URBAN LEAGUE OF UNION COUNTY, INC., 272 NORTH BROAD ST., ELIZABETH, NJ 07207, Amount Awarded: $15,000
ANN ARUNDEL CO. ECONOMIC OPPORTUNITY, 251 West Street, Annapolis, Anne Arundel, MD 21404, Amount Awarded: $20,000
CITY OF FREDERICK, 100 South Market Street, Frederick County, Frederick, MD 21701, Amount Awarded: $5,000
COMMUNITY ASSISTANCE NETWORK, INC., 7701 Dunmanway, Baltimore, MD 21222, Amount Awarded: $20,000
CONSUMER CREDIT COUNSELING SERVICE OF GREATER WASHINGTON, 15847 Crabbs Branch Way, Rockville,, MD 20855 Amount Awarded: $20,000
COUNTY COMMISSIONER OF CARROLL COUNTY, 10 Distillery Drive Suite 101, Westminster, MD 21157–5194, Amount Awarded: $12,000
DRUID HEIGHTS COMMUNITY DEVELOPMENT CORPORATION, 1821 Mc Culloh Street Baltimore, MD 21217, Amount Awarded: $10,000
HARFORD COUNTY, 15 South Main Street—Suite 106 Harford County, Bel Air, MD 21014, Amount Awarded: $10,000
HARLEM PARK REVITALIZATION CORPORATION, 1017 Edmondson Avenue, Baltimore, MD 21223, Amount Awarded: $20,000
INNER CITY COMMUNITY DEVELOPMENT CORP, 3030 WEST NORTH AVENUE BALTIMORE, MD 21216, Amount Awarded: $15,000
MARYLAND RURAL DEVELOPMENT CORPORATION, 428 4TH STREET, ANNAPOLIS, MD 21403, Amount Awarded: $20,000
MIDDLE EAST COMMUNITY DEVELOPMENT CORP., 730 North Collington Avenue, Baltimore, MD 21205, Amount Awarded: $20,000
ST AMBROSE HOUSING AID CENTER, 321 E. 25TH STREET, BALTIMORE, MD 21218, Amount Awarded: $25,000
SHORE UP!, INC., P.O. Box 430, Salisbury, MD 21803, Amount Awarded. $20,000
SOUTHEAST DEVELOPMENT, INC., 10 South Wolfe Street, Baltimore, MD 21234, Amount Awarded: $15,000

TRI-CHURCHES HOUSING, INC., 815 Scott Street, Baltimore, MD 21230, Amount Awarded: $10,000
BAYFRONT NATO, INC., 312 CHESTNUT STREET, ERIE,, PA 16507, Amount Awarded: $5,900
BERKS COMMUNITY ACTION PROGRAM/ BUDGET COUNSELING CENTER, Post Office Box 22, Berks County, Reading, PA 19603–0022, Amount Awarded: $15,000
COMMISSION ON ECONOMIC OPPORTUNITY, 165 Amber Lane, Wilkes-Barre, PA 18702, Amount Awarded: $10,000
COMMUNITY ACTION SOUTHWEST, 315 East Hallam Avenue, Washington, PA 15301, Amount Awarded: $10,000
COMMUNITY HOUSING, INC., 613 Washington Street, Wilmington, DE 19801, Amount Awarded: $15,000
FAYETTE COUNTY COMMUNITY ACTION AGENCY, INC, 137 N. Beeson Avenue, Uniontown, PA 15401, Amount Awarded: $7,000
FIRST STATE COMMUNITY ACTION AGENCY, INC., 308 North Railroad Avenue, P.O. Box 877, Georgetown, DE 19947, Amount Awarded: $25,000
HISPANIC AMERICAN ORGANIZATION, 711 CHEW ST., ALLENTOWN, PA 18102, Amount Awarded: $15,000
HARRISBURG FAIR HOUSING COUNCIL, 2100 North 6th Street, Harrisburg, PA 17110, Amount Awarded: $12,000
HOUSING CONSORTIUM FOR DISABLED INDIVIDUALS, 4040 Market Street, Philadelphia, PA 19104, Amount Awarded: $10,000
HOUSING COUNCIL OF YORK, INC., 116 North George Street, York County, York, PA 17401, Amount Awarded: $20,000
KEYSTONE LEGAL SERVICES, INC., 2054 EAST COLLEGE AVE. STATE COLLEGE, PA 16801, Amount Awarded: $12,000
NCALL RESEARCH, INC., 20 East Division Street, P.O. Box 1092, Dover, DE 19903–1092, Amount Awarded: $25,000
NORTHWEST COUNSELING SERVICE, INC., 5001 NORTH BROAD Street, PHILADELPHIA, PA 19141, Amount Awarded: $25,000
NEIGHBORHOOD HOUSE, INC., 1218 B Street, New Castle County, Wilmington, DE 19801, Amount Awarded: $20,000
NEW KENSINGTON COMMUNITY DEVELOPMENT CORPORATION, 2515 Frankford Avenue, Philadelphia, PA 19125, Amount Awarded: $10,000
PHILADELPHIA COUNCIL FOR COMMUNITY ADVANCEMENT, 100 North 17th Street, Suite 700, Philadelphia, PA 19107, Amount Awarded: $20,000
RESOURCES FOR HUMAN DEVELOPMENT, 4333 Kelly Drive, Philadelphia, PA 19129, Amount Awarded: $15,000
TABOR COMMUNITY SERVICES INC, 439 EAST KING ST., LANCASTER, PA 17602, Amount Awarded: $20,000
THE TREHAB CENTER, 10 PUBLIC AVENUE, P.O. BOX 366, MONTROSE, PA 18801, Amount Awarded: $15,000
YOUNG WOMEN'S CHRISTIAN ASSOCIATION, 233 KING Street, WILMINGTON, DE 19801, Amount Awarded: $20,000
BOOKER T. WASHINGTON CENTER, 1720 Holland Street, Erie, PA 16503, Amount Awarded: $3,000
CENTER FOR INDEPENDENT LIVING OF SOUTHWESTERN PENNA, 7110 PENN AVENUE, PITTSBURGH, PA 15208, Amount Awarded: $20,000
COMMUNITY/LENDER CREDIT PROGRAM, INC., 355 Fifth Avenue—Suite 1022, Park Building, Pittsburgh, PA 15222–2407, Amount Awarded: $15,000
ECONOMIC OPPORTUNITY CABINET OF SCHUYLKILL COUNTY, 225 N. CENTRE Street, POTTSVILLE, PA 17901, Amount Awarded: $10,000
GECAC HOUSING COUNSELING, 18 WEST NINTH Street, ERIE, PA 16501, Amount Awarded: $1,500
GARFIELD JUBILEE ASSOCIATION, INC., 5138 Penn Avenue, Pittsburgh, PA 15224, Amount Awarded: $5,000
INDIANA COUNTY COMMUNITY ACTION PROGRAM, INC., P.O. Box 187, 827 Water Street, Indiana, PA 15701, Amount Awarded: $5,500
ARLINGTON HOUSING CORPORATION, 2300 S. 9TH ST. #200 ARLINGTON, VA 22204, Amount Awarded: $20,000
FAMILY SERVICES OF TIDEWATER, INC., 222 W. 19TH Street, NORFOLK, VA 23517, Amount Awarded: $15,000
HOUSING OPPORTUNITIES OF RICHMOND, INC., 1218 W, Cary Street, RICHMOND, VA 23220, Amount Awarded: $20,000
HAMPTON REDEVELOPMENT & HOUSING AUTHORITY, P.O. Box 280, 22 Lincoln Street, Hampton, VA 23669, Amount Awarded: $10,000
MONTICELLO AREA COMMUNITY ACTION AGENCY, 1025 Park Street, Charlottesville, VA 22901, Amount Awarded: $10,000
OFFICE OF HUMAN AFFAIRS, 6060 JEFFERSON AVENUE., SUITE 12C P.O. BOX 37, NEWPORT NEWS, VA 23607, Amount Awarded: $15,000
PEOPLE INCORPORATED OF SOUTHWEST VIRGINIA, 1173 WEST MAIN Street, ABINGTON, VA 24210, Amount Awarded: $2,500
PRINCE WILLIAM COUNTY, 803 ASHTON AVENUE, SUITE 105, MANASSAS, VA 20109, Amount Awarded: $20,000
SKYLINE CAP, INC, P.O. BOX 588, MADISON, VA 22727, Amount Awarded: $10,000
SOUTHSIDE COMMUNITY DEVELOPMENT & HOUSING CORP., 1624 HULL Street, RICHMOND, VA 23224, Amount Awarded: $15,000
TOTAL ACTION AGAINST POVERTY (TAP), 145 CAMPBELL AVENUE, SW, ROANOKE, VA 24001–2868, Amount Awarded: $20,000
TELAMON CORPORATION 4915 Radford Avenue, Suite 202–A, Richmond, VA 23230, Amount Awarded: $15,000
THE STOP ORGANIZATION OPPORTUNITY PROJECT, INC., 2551 Almeda Avenue, Norfolk, VA 23513, Amount Awarded: $15,000
VIRGINIA EASTERN SHORE ECONOMIC EMPOWERMENT & HSG. CORP., P.O. Box 814, Nassawadox, VA 23413, Amount Awarded: $20,000
HOUSING COUNSELING SERVICES, INC., 2430 ONTARIO ROAD NW, WASHINGTON, DC 20009, Amount Awarded: $20,000
MARSHALL HEIGHTS COMMUNITY DEV., ORG, 3917 Minnesota Avenue, Washington, DC 20019, Amount Awarded: $15,000
NEAR NORTHEAST COMMUNITY IMPROVEMENT CORPORATION, 1326 Florida Avenue—N.E., Washington, DC 20002, Amount Awarded: $20,000
UNIVERSITY LEGAL SERVICES, 300 I Street, NE, Suite 202, Washington, DC 20002, Amount Awarded: $15,000
BETTER HOUSING LEAGUE OF GREATER CINTI, 2400 Reading Road, Cincinnati, OH 45202, Amount Awarded: $25,000
FAIR HOUSING CONTACT SERVICE 333 South Main Street—Suite 300, Akron, OH 44308, Amount Awarded: $20,000
LUTHERAN HOUSING CORPORATION, 13944 Euclid Avenue, Suite 208, East Cleveland, OH 44112, Amount Awarded: $20,000
COMMUNITY ACTION COMMISSION OF BELMONT COUNTY, INC, 410 FOX-SHANNON PLACE, ST. CLAIRSVILLE,, OH 43950, Amount Awarded: $10,000
COMMUNITY ACTION COMMISSION OF FAYETTE COUNTY, INC, 324 EAST COURT STREET, FAYETTE COUNTY, OH 43160, Amount Awarded: $12,000
CONSOC HOUSING COUNSELING, INC, 1889 E. LIVINGSTON Avenue, COLUMBUS, OH 43209, Amount Awarded: $10,000
HOUSING DIRECTIONS OF GREATER TOLEDO, 3539 HILL AVE. AT BYRNE, TOLEDO, OH 43607, Amount Awarded: $15,000
MID–OHIO REGIONAL PLANNING COMMISSION, 285 East Main Street, Franklin County, Columbus, OH 43215–5272, Amount Awarded: $12,000
D.T.& ASSOCIATES, 33625 State Street, Oakland County, Farmington, MI 48335, Amount Awarded: $15,000
DETROIT NON-PROFIT HOUSING CORPORATION, 1200 Sixth Street, Suite 404, Detroit, MI 48226, Amount Awarded: $20,000
HOUSING RESOURCE CENTER, 300 N. Washington Square., Suite 103, Lansing, MI 48933, Amount Awarded: $15,000
OAKLAND COUNTY MICHIGAN, 1200 North Telegraph Road, Oakland County, Pontiac, MI 48341–9901, Amount Awarded: $20,000
MICHIGAN HOUSING COUNSELORS, INC., 237 S.B. GRATIOT, MT. CLEMENS, MI 48043, Amount Awarded: $12,000
SAGINAW COUNTY COMMUNITY ACTION COMMITTEE, INC., 2824 Perkins Street, Saginaw, MI 48601, Amount Awarded: $20,000

Santa Ana (HOC)

CONSUMER CREDIT COUNSELING SERVICE OF CENTERAL VALLEY INC, 4969 E. McKINLEY, SUITE #107, FRESNO, CA 93727, Amount Awarded: $77,804
CONSUMER CREDIT COUNSELORS OF KERN COUNTY, INC., 5300 LENNOX AVENUE, SUITE 200, BAKERSFIELD, CA 93309–1662, Amount Awarded: $50,000

STANISLAUS COUNTY AFFORDABLE HSG. CORP. (STANCO), 1207 13th Street, Suite #5, Modesto, CA 95354, Amount Awarded: $68,189
HALE MAHAOLU, 200 HINA AVENUE, KAHULUI, HI 96732, Amount Awarded: $3,750
LEGAL AID SOCIETY OF HAWAII, 1108 NU'UANU AVENUE, HONOLULU, HI 96817–5119, Amount Awarded: $9,494
CONSUMER CREDIT COUNSELING SERVICE OF LOS ANGELES, 500 CITADEL DRIVE, SUITE #300, LOS ANGELES, CA 90040, Amount Awarded: $95,671
CONSUMER CREDIT COUNSELING SERVICE OF VENTURA COUNTY, INC., 80 NORTH WOOD ROAD, SUITE 312, CAMARILLO, CA 93010, Amount Awarded: $70,301
HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA, 815 W. OCEAN AVENUE, LOMPOC, CA 93438–0397, Amount Awarded: $25,000
INSTITUTE FOR HOMEOWNER EDUCATION AND AWARENESS INC., 14402 S. HAWTHORNE BLVD. #171, LAWNDALE, CA 90260, Amount Awarded: $99,724
NHS NEIGHBORHOOD LENDING SERVICES, 3111 SOUTH FLOWER STREET, LOS ANGELES, CA 90007, Amount Awarded: $93,226
CHICANOS POR LA CAUSA, INC., 1112 EAST BUCKEYE ROAD, PHOENIX, AZ 85034, Amount Awarded: $50,000
CITY OF PHOENIX NEIGHBORHOOD SERVICES DEPARTMENT, 200 W. WASHINGTON ST, 4TH FLOOR, PHOENIX, AZ 85003, Amount Awarded: $100,000
COMMUNITY HOUSING & CREDIT COUNSELING CENTER (CHCCC), 1560 HUMBOLDT ROAD, STE 2, CHICO, CA 95928, Amount Awarded: $61,891
CONSUMER CREDIT COUNSELING SERVICE OF MID COUNTIES, 1776 West March Lane, Suite 420, Stockton, CA 95207, Amount Awarded: $73,704
CONSUMER CREDIT COUNSELORS OF SAN DIEGO AND IMPERIAL CO., 1550 HOTEL CIRCLE N. Suite 110, SAN DIEGO, CA 92108–2907, Amount Awarded: $21,520
NEIGHBORHOOD HOUSE ASSOCIATES, 5660 COPLEY DRIVE, SAN DIEGO, CA 92111, Amount Awarded: $20,618
SAN DIEGO HOME LOAN COUNSELING SERVICE, 2859 El Cajon Blvd., Suite 1–A, San Diego, CA 92104, Amount Awarded: $22,909
CONSUMER CREDIT COUNSELING SERVICE OF SAN FRANCISCO, 77 MAIDEN LANE, SAN FRANCISCO, CA 94108, Amount Awarded: $16,363
CITY OF VACAVILLE, OFFICE OF HOUSING AND REDEVELOPMENT, 40 Eldridge Avenue, Suite 1–5, Vacaville, CA 95688, Amount Awarded: $14,000
EDEN COUNCIL FOR HOPE AND OPPORTUNITY, 770 A STREET, HAYWARD, CA 94541 Amount Awarded: $14,625
HOUSING AUTHORITY OF THE COUNTY OF SANTA CRUZ 2160 41st AVENUE, CAPITOLA, CA 95010–2060, Amount Awarded: $9,857
HUMAN INVESTMENT PROJECT, INC., 364 SOUTH RAILROAD AVENUE, SAN MATEO, CA 94401, Amount Awarded: $8,000
PACIFIC COMMUNITY SERVICES, INC., P.O. BOX 1397, 329 RAILROAD AVENUE, PITTSBURG, CA 94565, Amount Awarded: $14,625
PROJECT SENTINEL, 430 SHERMAN AVENUE, STE 308, PALO ALTO, CA 94306, Amount Awarded: $11,936
CONSUMER CREDIT COUNSELING SERVICE OF INLAND EMPIRE, 6370 MAGNOLIA AVENUE, SUITE 200, RIVERSIDE, CA 92506, Amount Awarded: $100,000
CONSUMER CREDIT COUNSELING SERVICE OF ORANGE COUNTY, P.O. BOX 11330, 1920 OLD TUSTIN AVENUE, SANTA ANA, CA 92705, Amount Awarded: $75,000
FAIR HOUSING COUNCIL OF ORANGE COUNTY, 1666 N. MAIN ST., SUITE 500, SANTA ANA, CA 92701, Amount Awarded: $69,664
INLAND MEDIATION BOARD, 1005 BEGONIA AVENUE, ONTARIO, CA 91762, Amount Awarded: $65,621
CONSUMER CREDIT COUNSELING SERVICE OF SOUTH NEVADA, 3650 S. DECATUR, SUITE 30, LAS VEGAS, NV 89103, Amount Awarded: $55,507
WASHOE LEGAL SERVICES, 650 TAHOE STREET, RENO, NV 89509, Amount Awarded: $40,000
WOMEN'S DEVELOPMENT CENTER, 953 E. SAHARA SUITE #201, LAS VEGAS, NV 89104 Amount Awarded: $24,978
ADMINISTRATION OF RESOURCES AND CHOICES, 209 SOUTH TUCSON BLVD., TUCSON, AZ 85016, Amount Awarded: $11,628
PPEP MICROBUSINESS AND HOUSING DEVELOPMENT, 802 E. 46TH STREET, TUCSON, AZ 85713, Amount Awarded: $12,207.
SOUTHEASTERN ARIZONA GOVERNMENT ORGANIZATION, 118 ARIZONA STREET, BISBEE, AZ 85603, Amount Awarded: $9,601
CONSUMER CREDIT COUNSELING SERVICE OF ALASKA, 208 East 4th Avenue, Anchorage, AK 99501, Amount Awarded: $20,000
COMMUNITY ACTION AGENCY, 124 NEW 6TH STREET, LEWISTON, ID 83501, Amount Awarded: $15,000
ACCESS, INC., 3630 AVIATION WAY, MEDFORD, OR 97504, Amount Awarded: $11,040
CENTRAL OREGON COMMUNITY ACTIVE AGENCY NETWORK, 2303 SW FIRST STREET, REDMOND, OR 97756, Amount Awarded: $18,113
OPEN DOOR COUNSELING SOCIAL SERVICE, 34420 SW Tualatin Valley Highway, Hillsboro, OR 97123, Amount Awarded: $8,504
PORTLAND HOUSING CENTER, 1605 NE 45th, PORTLAND, OR 97213, Amount Awarded: $13,902
UMPQUA COMMUNITY ACTION NETWORK, 2448 WEST HARVARD, ROSEBURG, OR 97470, Amount Awarded: $15,000
COMMUNITY HEALTH CENTER LA CLINICA, P.O. Box 1323, Pasco, WA 99301, Amount Awarded: $26,752
FREMONT PUBLIC ASSOCIATION, P.O. Box 31151, Seattle, WA 98103, Amount Awarded: $27,881
PIERCE COUNTY DEPARTMENT OF COMMUNITY SERVICES, Community Action Program 8811 South Tacoma, Tacoma, WA 98499, Amount Awarded: $28,544
SPOKANE NEIGHBORHOOD ACTION PROGRAM, 2116 East First Avenue, Spokane, WA 99202, Amount Awarded: $20,000
THE COMMUNITY HOUSING RESOURCE CENTER, 5212 B St. John Road, Vancouver, WA 98668, Amount Awarded: $28,976

[FR Doc. 99–15990 Filed 6–22–99; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4361–FA–04]

National Housing Counseling Training Program Announcement of Funding Awards for Fiscal Year 1998

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding award decisions made by the Department for the National Housing Counseling Training Program under the National SuperNOFA for experienced training professionals to provide training and technical assistance to counselors of HUD-approved housing counseling agencies. This announcement contains the names and addresses of the organizations selected for funding and the amounts.

FOR FURTHER INFORMATION CONTACT: Kitty Woodley, Director, Program Support Division, Room 9166, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0317. Hearing-or speech-impaired individuals may access this number by calling the Federal Information Relay Service on 1–800–877–8339 or (202)708–9300. (With the exception of the "800" number, these are not toll free numbers.)

SUPPLEMENTARY INFORMATION: The Housing Counseling Program is authorized by Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). HUD enters into

agreement with qualified public or private nonprofit organizations to provide housing counseling services to low- and moderate-income individuals and families nationwide. Section 106 further authorizes the Department to conduct education and training activities to meet the training needs of HUD-approved counseling agencies to ensure the currency and accuracy of the information being provided to HUD-related and other clients.

The purpose of the housing counseling training grant is to provide training for housing counselors of local HUD-approved counseling agencies to improve the quality of counseling services being provided. The training will be made available in several cities beginning the second quarter of 1999 through year 2000.

The 1998 awards announced in this Notice were selected for funding in competitions announced in a **Federal Register** Notice published on April 30, 1998 (63 FR 23977) for the national housing counseling training program. Applications submitted for each competition were scored and selected for funding on the basis of selection criteria contained in the Notice. HUD awarded a total of $550,000 in housing counseling training grants to two (2) non-profit training providers. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and award amounts as follows:

Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800 Washington, DC 20005, Amount Awarded: $484,019

National Consumer Law Center, Inc. 18 Tremont Street, Suite 400, Boston MA 02108–2336, Amount Awarded: $65,918

The Catalog of Federal Domestic Assistance number for this program is 14.169.

Dated: June 17, 1999.

William C. Apgar,

Assistant Secretary for Housing -Federal Housing Commissioner.

[FR Doc. 99–15989 Filed 6–22–99; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–07–1990–00]

Call for Nominations for the Bureau of Land Management's California Desert District Advisory Council

SUMMARY: The Bureau of Land Management's California Desert District is soliciting nominations from the public for six members of its District Advisory Council to serve the 2000–2002 three-year term. Council members provide advice and recommendations to BLM on the management of public lands in southern California. Public notice begins with the publication date of this notice. Nominations will be accepted through Tuesday, August 31, 1998. The three-year term would begin January 1, 2000.

The six positions to be filled include:

—One recreation representative;
—One renewable resources representative;
—One transportation/right-of-way representative;
—Three public-at-large representatives.

Four council members are eligible for reappointment. The transportation/right-of-way representative, and one public-at-large representative will retire December 31, 1999. Council members serve three-year terms and may be nominated for reappointment for an additional three-year term. The recreation appointee will serve a two-year term, which will end December 31, 2001.

The California Desert District Advisory Council is comprised of 15 private individuals who represent different interests and advise BLM officials on policies and programs concerning the management of 10.4 million acres of public land in southern California. The Council meets in formal session three to four times each year in various locations throughout the California Desert District. Council members serve without compensation except for reimbursement of travel expenditures incurred in the course of their duties.

Section 309 of the Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of BLM administered lands. The Secretary also selects council nominees consistent with the requirements of the Federal Advisory Committee Act (FACA), which requires nominees appointed to the council be balanced in terms of points of view and representative of the various interests concerned with the management of the public lands.

The Council also is balanced geographically, and BLM will try to find qualified representatives from areas throughout the California Desert District. The District covers portions of eight counties, and includes 10.4 million acres of public land in the California Desert Conservation Area and 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles Counties (known as the South Coast).

Any group or individual may nominate a qualified person, based upon their education, training, and knowledge of BLM, the California Desert, and the issues involving BLM-administered public lands throughout southern California. Qualified individuals also may nominate themselves.

Nominations must include the name of the nominee; work and home addresses and telephone numbers; a biographical sketch that includes the nominee's work and public service record; any applicable outside interests or other information that demonstrates the nominees qualifications for the position; and the specific category of interest in which the nominee is best qualified to offer advice and council. Nominees may contact the BLM California Desert District External Affairs staff at (909) 697–5217/5220 or write to the address below and request a copy of the nomination form.

All nominations must be accompanied by letters of reference from represented interests, organizations, or elected officials supporting the nomination. Individuals nominating themselves must provide at least one letter of recommendation. Advisory Council members are appointed by the Secretary of the Interior, generally in late January or early February.

Nominations should be sent to the District Manager, Bureau of Land Management, California Desert District, 6221 Box Springs Boulevard, Riverside, California 92507.

FOR FURTHER INFORMATION CONTACT: BLM California Desert District External Affairs: Carole Levitzky, (909) 697–5217 or Doran Sanchez, (909) 697–5220.

Dated: June 16, 1999.

Tim Salt,

District Manager.

[FR Doc. 99–15921 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–99–1010–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council public input meetings and Southwest Resource Advisory Council meeting.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC), utilizing a designated subcommittee, will hold a series of public input meetings in July and early August, 1999, in Cortez, Colorado. The meetings are for the purpose of identifying community concerns and issues to be considered as greater protection is given to BLM's 156,000 acre Anasazi Culture Multiple-Use Area of Critical Environmental Concern [Anasazi ACEC) west of Cortez.

DATES: The public input meetings are scheduled for the following dates and times. Any changes to the time, date and/or location of the meetings will be posted on the Southwest RAC web page (http://www.co.blm.gov/mdo/mdo__sw__rac.htm) and publicized via local media.

All of the public input meetings will be held at the Cortez Conference Center, 2121 East Main Street in Cortez, Colorado. Unless otherwise indicated, all meetings will begin at 7:00 p.m. and end at approximately 9:00 p.m.

Thursday, July 8—This meeting is for the purposes of organizing subsequent meetings and the procedures of the RAC subcommittee and local constituents, who together will comprise a Working Group. A segment of this meeting will be open to public input on organization and procedural concerns and comments.

Wednesday, July 14—The purpose of this meeting is for the Working Group to obtain public input on concerns and issues to be considered as greater protection is given to the Anasazi ACEC. The majority of this meeting will be open to public input regarding the identification of those concerns and issues.

Thursday, July 15—The purpose of this meeting is to provide another opportunity for the Working Group to obtain public input on concerns and issues to be considered as greater protection is given to the Anasazi ACEC. The majority of this meeting will be open to public input regarding the identification of those concerns and issues.

Wednesday, July 21—The primary purpose of this meeting is for the Working Group to characterize, categorize, rate and rank the concerns and issues identified in the July 14 & 15 meetings. A segment of this meeting will be open for public input regarding the characterization, categorization, rating and ranking process.

Thursday, July 22—The primary purpose of this meeting is to provide another opportunity for the Working Group to characterize, categorize, rate and rank the concerns and issues identified in the July 14 & 15 meetings. A segment of this meeting will be open for public input regarding the characterization, categorization, rating and ranking process.

Thursday, August 5—This meeting is for the purpose of preparing the report for the public and the Southwest RAC. A segment of this meeting will be open to public input on the report contents and the identification of any omissions and/or misinterpretations of the concerns and issues identified during the July 14 & 15 meetings.

Thursday, August 12—This meeting will be an official Southwest Resource Advisory Council meeting. The meeting will begin at 1:00 p.m. The afternoon agenda will be limited to Southwest RAC business and discussion on proposed statewide BLM recreation guidelines being developed by BLM Colorado's three RAC's. The afternoon session will end at 5:00 p.m. The evening session will begin at 7:00 p.m. and will be limited to presentation of the final report on the public input process regarding community concerns and issues relating to the future management of the Anasazi ACEC. Public comment is scheduled from 7:30 p.m. to 8:30 p.m.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Southwest Center, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail Roger__Alexander@co.blm.gov.

SUPPLEMENTARY INFORMATION: Existing management has proven to be inadequate to ensure the long-term protection of cultural resources in the Anasazi ACEC. The Secretary of the Interior has asked the Southwest RAC to conduct a series of public meetings to identify community concerns and issues to be considered when determining what form the future management of the area will take.

All Resource Advisory Council and RAC subcommittee meetings are open to the public. Interested persons are encouraged to attend the series of public meetings and to make verbal statements to the RAC subcommittee and working group and on August 12, to the full Council. Written statements may also be submitted for the both the RAC subcommittee/working group and the full Council's consideration. If necessary, a per-person time limit for verbal comments may be established.

Summary minutes for all Council meetings are maintained in the Southwest Center Office and on the Internet at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: June 17, 1999.

Mark W. Stiles,

Southwest Center Manager.

[FR Doc. 99–15919 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Parkwide Trails Plan Environmental Impact Statement and General Management Plan Amendment (GMPA/EIS)

AGENCY: National Park Service; Interior

ACTION: Notice of availability

SUMMARY: Delaware Water Gap National Recreation Area announces the availability of the draft Trails Plan/General Management Plan Amendment/Environmental Impact Statement. The draft plan has been developed to meet the needs of its many visitors. This plan serves as an amendment to the park's 1987 General Management Plan. The document will be available for a 45-day public review beginning on July 2, 1999.

Public meetings will be held in early August. Notices of these meetings will be distributed to prior respondents/participants and through the local media. For further information about this document, contact: Superintendent, Delaware Water Gap National Recreation Area, 1 River Road, Bushkill, PA 18324, 570–588–2418.

Copies available at: Website: www.nps.gov/dewa

Park Headquarters, River Road, Bushkill, PA 18324.

Warren County Library, Belvidere NJ 07823

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenburg, U.S. Senate, SH–506 Hart Senate Office

Building, Washington, DC 20510–3002
Honorable Robert G. Torricelli U.S. Senate, Washington, DC 20510–3001
Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, DC 20510
Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, DC 20510–3802
Honorable Pat Toomey, U.S. House of Representatives, Cannon House Office Bldg., Washington DC 20515
Honorable Don Sherwood, U.S. House of Representatives, Washington DC 20515–3810
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, DC 20515–3005
Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120
Honorable Christine Whitman, State House, Trenton, NJ 08625
Kemp Library, East Stroudsburg University, E Stroudsburg PA 18301
State Library of Pennsylvania, P.O. Box 1601, Harrisburg, PA 17105
Easton Area Public Library, 6th and Church Street, Easton PA 18042
Sussex County Library, 125 Morris Turnpike, Newton NJ 07860
New Jersey State Library, 185 West State Street, CN 520, Trenton NJ 08625
Eastern Monroe Public Library, 1002 North Ninth Street, Stroudsburg PA 18360
Pike County Library, 201 Broad Street, Milford PA 18337.

Dated: June 15, 1999.

J. Robert Kirby,

Acting Superintendent.

[FR Doc. 99–15913 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability; Final Environmental Impact Statement for the Marsh-Billings-Rockefeller National Historical Park Final General Management Plan

AGENCY: National Park Service.

ACTION: Availability for 30 days of Final Environmental Impact Statement (FEIS) for Marsh-Billings-Rockefeller National Historical Park Final General Management Plan.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the Final Environmental Impact Statement for Marsh-Billings-Rockefeller National Historical Park Final General Management Plan.

The Final Environmental Impact Statement is presented in an abbreviated format. It must be integrated with the Marsh-Billings National Historical Park Draft General Management Plan/Draft Environmental Impact Statement issued in April 1998, to be considered a complete document reflecting the full proposal and alternative, and all significant environmental impacts. The two documents *together* compose the complete Final Environmental Impact Statement.

Marsh-Billings-Rockefeller National Historical Park is the only national park to focus on conservation history and the evolving nature of land stewardship in America. Opened in June of 1998, Vermont's first national park preserves and interprets the historic Marsh-Billings-Rockefeller property in Woodstock. The park is named for George Perkins Marsh, Frederick Billings, and Laurance S. Rockefeller. George Perkins Marsh was one of the nation's first global environmental thinkers (who grew up on the property). Frederick Billings was an early conservationist who established a progressive dairy farm and professionally managed forest on the former Marsh farm. Frederick Billing's granddaughter, Mary French Rockefeller, and her husband, conservationist Laurance S. Rockefeller came to own the property in the 1950s. They sustained Billings's mindful practices in forestry and farming on the property over the latter half of the twentieth century. In 1983, they established the Billings Farm & Museum to continue the farm's working dairy and to interpret rural Vermont life and agricultural history. The Billings Farm & Museum is operated by the Woodstock Foundation, Inc. as a private nonprofit educational institution.

Marsh-Billing-Rockefeller National Historical Park was created in 1992 when the Rockefellers' gave the estate's residential and forest lands to the people of the United States. Today, the park interprets the history of conservation with tours of the Marsh-Billings-Rockefeller mansion and the surrounding 550-acre forest—one of the oldest planned and continuously managed woodlands in America. Working in partnership, the park and the museum present historic and contemporary examples of conservation stewardship and interpret the lives and contributions of George Perkins Marsh, Frederick Billings and his descendants, and Mary and Laurance S. Rockefeller.

The National Park began to plan for the management of Marsh-Billings-Rockefeller National Historical Park in 1993. Park planners conducted a conservation stewardship workshop, a community study, visitor and community surveys, a transportation analysis, neighborhood meetings, and other resource inventories and assessments. In a Draft-General Management Plan/Draft Environmental Impact Statement that underwent 60 days of public review, the National Park Service presented and evaluated two management scenarios (the Proposal and the Alternative) and described five management options that were considered, but rejected by the planning team. After considering public and agency comment, the National Park Service adopted the draft plan's Proposal as the final plan.

Availability

The FEIS is available for a period for thirty days, beginning on the date of the Environmental Protection Agency publication in the **Federal Register**. The National Park Service will take no action for the thirty-day period of availability, after which time a Record of Decision will be prepared and made available.

SUPPLEMENTARY INFORMATION: Public reading copies of the FEIS will be available for review at Marsh-Billings-Rockefeller National Historical Park, 54 Elm Street, Woodstock, Vermont. For further information, please contact the Superintendent, Marsh-Billings-Rockefeller National Historical Park, P.O. Box 178, Woodstock, Vermont 05091; voice at (802) 457–3368; fax at (802) 457–3405.

Dated: May 25, 1999.

Terry W. Savage,

Superintendent, Boston Support Office.

[FR Doc. 99–15912 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Draft Principles of Agreement Regarding the Disposition of Culturally Unidentifiable Human Remains

AGENCY: National Park Service

ACTION: Notice

Section 8 (c)(5) of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3006 (c)(5)) requires the Review Committee to recommend specific actions for developing a process for the disposition of culturally unidentifiable Native American human remains. The Review Committee has developed the following draft principles of agreement for comment and discussion. The document is intended for wide circulation to elicit comments from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and national scientific and museum organizations.

Anyone interested in commenting on the review committee's draft principles of agreement should send written comments to:

The NAGPRA Review Committee
c/o Departmental Consulting Archeologist
National Park Service (2275)
1849 C St. NW. (NC340)
Washington DC, 20240

Comments received by August 15, 1999 will be considered by the committee at its next scheduled meeting. For additional information, please contact Dr. C. Timothy McKeown at (202) 343-4101.

Note: We will not accept any comments in electronic form.

Dated: June 15, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

DRAFT PRINCIPLES OF AGREEMENT

At its June 25-27, 1998 meeting, the NAGPRA Review Committee examined the legislative history of NAGPRA and discussed both the law's intent and how to proceed with one of the Committee's most pressing tasks– making recommendations on the disposition of culturally unidentifiable human remains. One result was a set of principles. Working from these, the Review Committee offers the following draft principles of agreement as a next step for discussion. The Committee wishes to underscore the preliminary nature of these principles and their placement as a beginning point for consideration of this topic.

A. Intent of NAGPRA.

1. The legislative intent of NAGPRA is stated by the statute's title, the "Native American Graves Protection and Repatriation Act".

2. Specifically, the statute mandates:

a. The disposition of all Native American human remains and cultural items excavated on Federal lands after November 16, 1990,

b. The repatriation of culturally affiliated human remains and associated funerary objects in Federal agency and museum collections,

c. The development of regulations for the disposition of unclaimed remains and objects (under 25 U.S.C. 3002) and culturally unidentified human remains in Federal agency and museum collections (under 25 U.S.C. 3006).

3. The legal standing of funerary objects associated with culturally unidentifiable human remains is not addressed by NAGPRA and is beyond the Review Committee's charge.

4. While the statute does not always specify disposition, it is implicit that:

a. The process be primarily in the hands of Native people (as the nearest next of kin),

b. Repatriation is the most reasonable and consistent choice.

5. Additionally, a fundamental tension exists within the statute between the legitimate and long denied need to return control over ancestral remains and funerary objects to Native people, and the legitimate public interest in the educational, historical and scientific information conveyed by those remains and objects. (25 U.S.C. 3002 (c); 25 U.S.C. 3005 (b))

B. Culturally Unidentifiable Human Remains.

1. Federal agencies and museums must make a decision as to whether all Native American human remains are related to lineal descendants, culturally affiliated with a present day Federally recognized Indian tribe, or are culturally unidentifiable. This determination must be made through a good faith evaluation of all relevant, available documentation and consultation with any appropriate Indian tribe.

2. A determination that human remains are culturally unidentifiable may change as additional information becomes available.

3. Human remains can be identified as "culturally unidentifiable" for different reasons. At present, four categories are recognized:

a. Those which are culturally affiliated, but with a non-Federally recognized Native American group.

b. Those which represent a defined past population, but for which no present day Indian tribe exists.

c. Those for which some evidence exists, but insufficient for a Federal agency or museum to make a determination of cultural affiliation.

d. Those for which no information exists.

C. Guidelines for the disposition of culturally unidentifiable human remains.

1. Four principles must serve as the foundation for any regulations on the disposition of culturally unidentifiable human remains. They must be:

a. *Respectful.* Culturally unidentifiable human remains are no less deserving of respect than those for which culturally affiliation can be established. While the Review Committee is aware that the term "culturally unidentifiable" is inherently offensive to many Native people, it is the term used in the statute.

b. *Equitable.* Regulations must be perceived as fair and within the intent of the statute.

c. *Doable.* Regulations must propose a process that is possible for Federal agencies, museums, and claimants and worth the effort to implement.

d. *Enforceable.* There is no point in making regulations that can not or will not be enforced.

2. Since human remains may be determined to be culturally unidentifiable for different reasons, there will be more than one appropriate disposition/repatriation solution. Examples:

a. Human remains that are, technically, culturally unidentifiable because the appropriate claimant is not federally recognized [section B(3)(a.) above], may be repatriated once federal recognition has been granted, or if the claimant works with another culturally affiliated, federally recognized Indian tribe (example– the Titicut site / Mashpee case).

b. Human remains for which there is little or no information [section B(3)(c. and d.) above] should be speedily repatriated since they have little educational, historical or scientific value.

3. Documentation.

a. Since documentation is required (25 U.S.C. 3003 (b)(2)), it is appropriate that it be conducted in accordance with defined standards.

b. Documentation should be proportional to the importance of the information conveyed. For example, remains from a defined past population for which no present-day Indian tribe exists [section B(3)(b.) above] are of far greater educational, historical and scientific importance than those for which there is little or no information [section B(3)(c) and (d) above].

c. Appropriate documentation includes non-invasive techniques such as measurement, description and photography.

d. Invasive testing is not required for statutory documentation. Such testing may be performed if agreed upon by the parties in consultation.

e. Documentation prepared for compliance with the statute is a public record.

D. Models for the disposition of culturally unidentifiable human remains.

1. Joint recommendations by institutions, Federal agencies, or states and appropriate claimants. The Review Committee has recommended the repatriation of culturally unidentifiable human remains in those cases where:

a. All the relevant parties have agreed in writing,

b. Statutory requirements have been met,

c. The guidelines listed above have been followed.

These cases have included institutions (University of Nebraska, Lincoln), units of the National Park Service (Carlsbad Caverns NP and Guadalupe Mountains NM), and states (Minnesota and Iowa).

2. Regional consultations

Historical and cultural factors, and therefore issues concerning the definition and disposition of culturally unidentifiable human remains, vary significantly across the United States. For example, issues in the Southeast, where most Indian tribes were forcibly removed during the 19th century, are very different from those in the Southwest where many Indian tribes remain on their ancestral lands. Similarly, issues in the Northeast and California differ significantly from those in the Great Plains. Therefore, it is reasonable to look for regional solutions that best fit regional circumstances.

The Review Committee recommends a process in which the Federal agencies, institutions and Indian tribes within a region consult together and propose the most appropriate disposition solutions for that region.

As with joint recommendations, any proposed regional disposition must meet both statutory requirements and the guidelines listed above.

[FR Doc. 99–15975 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Central Valley, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a supplement to the draft programmatic environmental impact statement (DPEIS).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Reclamation is preparing a supplement to the DPEIS for the Central Valley Project Improvement Act. The original DPEIS was released for public review on November 7, 1997, and numerous comments addressing a wide range of issues were received on the document. Reclamation is preparing this supplement in response to a general group of comments received on the DPEIS. These comments addressed an inconsistency that was discovered in the Project Simulation Model (PROSIM) hydrology shortly before the DPEIS was completed.

DATES: The supplement to the DPEIS will be released to the public in early July 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Candlish, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825; (916) 978–5190.

Dated: June 15, 1999.

Kirk C. Rodgers,

Acting Regional Director.

[FR Doc. 99–15923 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974, as Amended; System of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of minor changes to a system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is updating a system of records managed by the Bureau of Reclamation (Reclamation). The changes are to the system of records "Real Estate Comparable Sales Data Storage, WBR–43" which is published in its entirety below.

DATES: These actions are effective June 23, 1999.

FOR FURTHER INFORMATION CONTACT: For information regarding "Real Estate Comparable Sales Data Storage, WBR–43" contact Mr. Graham McMullen, Chief, Land Resources Branch at (916) 978–5260. For general information regarding Reclamation's Privacy Act program, contact Mr. Casey Snyder at (303) 445–2048.

SUPPLEMENTARY INFORMATION: When originally published in the **Federal Register** this system of records was identified with an organization prefix of "LWP" (i.e., LWP–43). The content of the system of records is the same; the prefix on this system was changed to reflect organizational changes.

This system of records notice was previously published in the **Federal Register** on March 11, 1980 (45 FR 15684). This publication revises the system location, adds a purpose statement which was not included in the original system of records notice, and revises the storage, retention and disposal, and system manager and address sections. All other changes proposed are editorial in nature.

Murlin Coffey,

Manager, Property and Office Services.

INTERIOR/WBR–43

SYSTEM NAME:

Real Estate Comparable Sales Data Storage.

SYSTEM LOCATION:

Mid-Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who own or lease property adjacent to or within the vicinity of property owned or leased by the Bureau of Reclamation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain data on the physical and nonphysical characteristics of properties having transferred ownership within the vicinity of Federal reclamation projects. Ownership transfers are defined herein as a transfer by deed, agreements to sell or purchase, leases, and contracts. In addition to the property characteristics, the records contain the terms, names, addresses, and telephone numbers of the parties involved, plus other official recorded data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) The Reclamation Act of 1902, as amended and acts supplemental thereto, 43 U.S.C. 371, *et seq.*; and (2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4651, *et seq.*

PURPOSE(S):

(1) To make available to the Department of the Interior data concerning real estate which has transferred ownership within the vicinity of a Bureau of Reclamation project; (2) For use as comparable data involving real estate appraisals in connection with acquisition programs, land disposals or leases of land owned by the United States, or appraisals of excess land in compliance with the acreage limitation; and (3) To make available to independent appraisers, which are under contract with the Bureau of Reclamation or the Department of Justice, comparable data for use in connection with an appraisal assignment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior (Department) may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertain.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual file folders and on electronic media.

RETRIEVABILITY:

Records are indexed by Bureau of Reclamation-assigned document control number and data field codes which identify property characteristics.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officer, Attn: MP–450, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the Regional Director, Attn: MP–450, Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, Sacramento, California 95825. A written, signed request stating that the requestor seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained, county recorder, title companies, and appraisers.

[FR Doc. 99–15942 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for 30 CFR part 800, Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

DATES: Comments on the proposed information collection must be received by August 23, 1999, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies an information collection activity that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 800, Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden on respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited to: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs—30 CFR 800.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR part 800 primarily implement section 509 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with section 519 of the Act, liability insurance requirements pursuant to section 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Surface coal mining and reclamation permittees and State regulatory authorities.

Total Annual Responses: 16,974.

Total Annual Burden Hours: 188,736 hours.

Dated: June 17, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–15933 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Proposed Abandoned Mine Land Research Projects

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of application for grant funding; public comment period on request to fund the Abandoned Mine Land Research Projects.

SUMMARY: OSM is announcing its receipt of a grant application from the Wyoming Department of Environmental Quality, Abandoned Mine Land Division (AMLD). Wyoming is requesting $225,000 from the Abandoned Mine Reclamation Fund to pay for research in the area of abandoned and active coal mine land reclamation as a public facility project that will benefit a community impacted by coal mining activities.

This notice describes when and where the Wyoming abandoned mine land (AML) program and the grant application for funding the Abandoned Coal Mine Land Research Program are available for you to read. It also sets the time period during which you may send written comments on the request to us.

DATES: We will accept written comments until 4 p.m., m.s.t., July 23, 1999.

ADDRESSES: You should mail or hand-deliver written comments to Guy V. Padgett, Casper Field Office Director, at the address shown below. You many read Wyoming's grant application for this proposed project during normal business hours Monday through Friday (excluding holidays) at the same address. Also, we will send one free copy of the grant application to you if you contact OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Rm. 2403, 1000 East "B" Street, Casper, Wyoming 82601–1918

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6555.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) program. The purpose of the AMLR program is to reclaim and restore lands and waters that were adversely affected by past mining. The program is funded by a reclamation fee paid by active coal mining operations. Lands and waters eligible for reclamation under Title IV are primarily those that were mined, or affected by mining, and abandoned or inadequately reclaimed before August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, or other laws.

Title IV of SMCRA allows States to submit AMLR plans to us. We, on behalf of the Secretary, review those plans and consider any public comments we receive about them. If we determine that a State has the ability and necessary legislation to operate an AMLR program, the Secretary can approve it. The Secretary's approval gives a State exclusive authority to put its AMLR plan into effect.

Once the Secretary approves a State's AMLR plan, the State may annually apply to us for money to fund specific projects that will achieve the goals of its approved plan. We follow the requirements of the Federal regulations at 30 CFR parts 874, 875, and 886 when re review and approach such applications.

II. Background on the Wyoming AMLR Plan

The Secretary of the Interior approved Wyoming's AMLR plan on February 14, 1983. You can find background information on the Wyoming AML program, including the Secretary's findings and our responses to comments, in the February 14, 1983, **Federal Register** (48 FR 6536). Wyoming changed its plan a number of times since the Secretary first approved it. In 1984, we accepted the State's certification that it addressed all known coal-related impacts in Wyoming that were eligible for funding under its program. As a result, the State may now reclaim low priority non-coal reclamation projects. You can read about the certification and OSM's acceptance in the May 25, 1984, **Federal Register** (49 FR 22139). At the same time, we also accepted Wyoming's proposal that it will ask us for funds to reclaim any additional coal-related problems that occur during the life of the Wyoming AML program as soon as it becomes aware of them. In the April 13, 1992, **Federal Register** (57 FR 12731), we announced our decision to accept other changes in Wyoming's plan that describe how it will rank eligible coal, non-coal, and the facility projects for funding. Those changes also authorized the Governor of Wyoming to elevate the priority of a project based upon the Governor's determination of need and urgency. They also expanded the State's ability to construct public facilities under section 411 of SMCRA. We approved additional changes in Wyoming's plan concerning noncoal lien authority and contractor eligibility that improve the efficiency of the State's AML program. That approval is described in the February 21, 1996, **Federal Register** (61 FR 6537).

Once a State certifies that it has addressed all remaining abandoned coal mine problems, and the Secretary concurs, then it may request funds to undertake abandoned noncoal mine reclamation, community impact assistance, and public facilities projects under sections 411 (b), (e), and (f), of SMCRA.

State law and regulations that apply to the proposed Abandoned Coal Mine Land Research Program funding request include Wyoming Statute 35–11–1202 and Wyoming Abandoned Mine Land Regulations, Chapter VII, of the Wyoming Abandoned Mine Program.

III. Wyoming's Request To Fund the Cost of the Abandoned Coal Mine Land Research Program

The Wyoming Department of Environmental Quality submitted to us a grant application dated December 21, 1998. In that application, Wyoming asked for $225,000 to pay for the cost of an applied research program focusing on reclamation techniques. The Governor of Wyoming certified the need and urgency to fund this applied research program prior to completing the State's remaining inventory of non-coal reclamation work, as allowed by section 411(f) of SMCRA. That certification says the project is in a community impacted by coal mining activities. The applied research program is the result of a 1989 agreement between the University of Wyoming and the Abandoned Mine Land Division of the Wyoming Department of Environmental Quality (DEQ). Through agreement, the research office of the University of Wyoming will administer the program. Annually, the University will solicit research proposals. A technical review committee will review and rank proposals and recommend the best proposals for funding. The program is intended to stimulate applied research and demonstration projects related to underground and surface mine reclamation techniques, in order to increase transfer of information on state-of-the-art technology and to increase the exchange of research information and expertise between the academia, state agencies, and engineering, mining, and construction entities. The projects approved for funding will help the State in reclaiming AML sites and assist Wyoming, other States and the Office of Surface Mining in reclamation methods for both active and abandoned mine sites. The DEQ reviews the recommendations of the Selection Committee to assure that selected projects are eligible for funding under section 403 and 404 of Pub. L. 95–87.

IV. How We Will Review Wyoming's Grant Application

We will review this grant application with respect to the regulations at 30 CFR 875.15, specifically §§ 875.15(e) (1) through (7). As stated in those regulations, the application must include the following information: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on Wyoming's coal or minerals industry; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved; (4) documentation from other local, State, and Federal agencies with oversight for such utilities or facilities describing what funding they have available and why their agency is not fully funding this specific project; (5) the impact on the State, the public, and the minerals industry if the facility is not funded; (6) the reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities, and (7) an analysis and review of the procedures Wyoming used to notify and involve the public in this funding request, and a copy of all comments received and their resolution by the State. Wyoming's application for the Abandoned Coal Mine Land Research Program projects contains the information described in these seven subsections.

Section 875.15(f) requires us to evaluate all comments we receive and determine whether the funding meets the requirements of §§ 875.15(e) (1) through (7) described above. It also requires us to determine if the request is in the best interests of the State's AML program. We will approve Wyoming's request to fund this project if we conclude that it meets all the requirements of 30 CFR 875.15.

V. What To Do if You Want To Comment on the Proposed Project

We are asking for public comments on Wyoming's request for funds to pay for the Abandoned Coal Mine Land Research Program. You are welcome to comment on the project. If you do, please send us written comments. Make sure your comments are specific and pertain to Wyoming's funding request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCRA. You should explain any recommendations you make. If we receive your comments after the time shown under **DATES** or at locations other than the Casper Field Office, we will not necessarily consider them in our final decision or include them in the administrative record.

Dated: June 11, 1999.

Guy Padgett,

Director, Casper Field Office.

[FR Doc. 99–15934 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Proposed Greybull Sewer Replacement Project in Wyoming

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM). Interior.

ACTION: Notice of application for grant funding; public comment period on request to fund the Greybull Sewer Replacement project.

SUMMARY: OSM is announcing its receipt of a grant application from the Wyoming Department of Environmental Quality, Abandoned Mine Land Division (AMLD). Wyoming is requesting $302,885 from the Abandoned Mine Reclamation Fund to pay approximately 85 percent of the cost of building the Greybull Sewer Replacement project in Greybull, Wyoming. In its application, the State proposes paying for part of the reconstruction cost as a public facility project that will benefit a community impacted by coal mining activities.

This notice describes when and where the Wyoming abandoned mine land (AML) program and the grant application for funding the Greybull Sewer Replacement project are available for you to read. It also sets the time period during which you may send written comments on the request to us.

DATES: We will accept written comments until 4 p.m., m.s.t., July 23, 1999.

ADDRESSES: You should mail or hand-deliver written comments to Guy V. Padgett, Casper Field Office Director, at the address shown below. You may read Wyoming's grant application for this proposed project during normal business hours Monday through Friday (excluding holidays) at the same address. Also, we will send one free copy of the grant application to you if you contact OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Rm. 2403, 100 East "B" Street, Casper, Wyoming 82601–1918

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6555.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) program. The purpose of the AMLR program is to reclaim and restore lands and waters that were adversely affected by past mining. The program is funded by a reclamation fee paid by active coal mining operations. Lands and waters eligible for reclamation under Title IV are primarily those that were mined, or affected by mining, and abandoned or inadequately reclaimed before August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, or other laws.

Title IV of SMCRA allows States to submit AMLR plans to us. We, on behalf of the Secretary, review those plans and consider any public comments we receive about them. If we determine that a State has the ability and necessary legislation to operate an AMLR program, the Secretary can approve it. The Secretary's approval gives a State exclusive authority to put its AMLR plan into effect.

Once the Secretary approves a State's AMLR plan, the State may annually apply to us for money to fund specific projects that will achieve the goals of its approved plan. We follow the requirements of the Federal regulations at 30 CFR parts 874, 875, and 886 when we review and approve such applications.

II. Background on the Wyoming AMLR Plan

The Secretary of the Interior approved Wyoming's AMLR plan on February 14, 1983. You can find background information on the Wyoming AML program, including the Secretary's findings and our responses to

comments, in the February 14, 1983, **Federal Register** (48 FR 6536). Wyoming changed its plan a number of times since the Secretary first approved it. In 1984, we accepted the State's certification that it addressed all known coal-related impacts in Wyoming that were eligible for funding under its program. As a result, the State may now reclaim low priority non-coal reclamation projects. You can read about the certification and OSM's acceptance in the May 25, 1984, **Federal Register** (49 FR 22139). At the same time, we also accepted Wyoming's proposal that it will ask us for funds to reclaim any additional coal-related problems that occur during the life of the Wyoming AML program as soon as it becomes aware of them. In the April 13, 1992, **Federal Register** (57 FR 12731), we announced our decision to accept other changes in Wyoming's plan that describe how it will rank eligible coal, non-coal, and facility projects for funding. Those changes also authorized the Governor of Wyoming to elevate the priority of a project based upon the Governor's determination of need and urgency. They also expanded the State's ability to construct public facilities under section 411 of SMCRA. We approved additional changes in Wyoming's plan concerning noncoal lien authority and contractor eligibility that improve the efficiency of the State's AML program. That approval is described in the February 21, 1996, **Federal Register** (61 FR 6537).

Once a State certifies that it has addressed all remaining abandoned coal mine problems, and the Secretary concurs, then it may request funds to undertake abandoned noncoal mine reclamation, community impact assistance, and public facilities projects under sections 411 (b), (e), and (f), of SMCRA.

State law and regulations that apply to the proposed Greybull funding request include Wyoming Statute 35–11–1202 and Wyoming Abandoned Mine Land Regulations, Chapter VII, of the Wyoming Abandoned Mine Program.

III. Wyoming's Request To Fund Part of the Cost of the Greybull Sewer Replacement Project

The Wyoming Department of Environmental Quality submitted to us a grant application dated December 21, 1998. In that application, Wyoming asked for $302,885 that it will use to pay for part of the cost of building the Greybull Sewer in Big Horn County, Wyoming. This sewer project is a public facility in a community impacted by coal mining activities. The requested funding is 84.6 percent of the project's total cost. Money for the balance of the project cost will come from the City of Greybull (15.4 percent).

The Governor of Wyoming certified the need and urgency to fund the Greybull Sewer Replacement project prior to completing the State's remaining inventory of non-coal reclamation work, as allowed by section 411(f) of SMCRA. The governor certifies that the project is in a community impacted by coal mining activities. The present sewer system is deteriorating rapidly and it is suspected that it is contaminating groundwater and surface water.

The Governor's certification states that the threat to public health and safety is greater at this site than on remaining non-coal mine sites.

IV. How We Will Review Wyoming's Grant Application

We will review this grant application with respect to the regulations at 30 CFR 875.15, specifically subsections 875.15(e)(1) through (7). As stated in those regulations, the application must include the following information: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on Wyoming's coal or minerals industry; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved; (4) documentation from other local, State, and Federal agencies with oversight for such utilities of facilities describing what funding they have available and why their agency is not fully funding this specific project; (5) the impact on the State, the public, and the minerals industry if the facility if not funded; (6) the reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities; and (7) an analysis and review of the procedures Wyoming used to notify and involve the public in this funding request, and a copy of all comments received and their resolution by the State. Wyoming's application for the Greybull Sewer project contains the information described in these seven subsections.

Section 875.15(f) requires us to evaluate all comments we received and determine whether the funding meets the requirements of § § 875.15(e)(1) through (7) described below. It also requires us to determine if the request is in the best interests of the State's AML program. We will approve Wyoming's request to fund this project if we conclude that it meets all the requirements of 30 CFR 875.15.

V. What To Do if You Want To Comment on the Proposed Project

We are asking for public comments on Wyoming's request for funds to pay for part of the cost of the Greybull sewer system. You are welcome to comment on the project. If you do, please send us written comments. Make sure your comments are specific and pertain to Wyoming's funding request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCRA. You should explain any recommendations you make. If we receive your comments after the time shown under **DATES** or at locations other than the Casper Field Office, we will not necessarily consider them in our final decision or include them in the administrative record.

Dated: June 11, 1999.

Guy Padgett,

Director, Casper Field Office.

[FR Doc 99–15935 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Proposed Rock Springs Stormwater Drainage Channel Project in Wyoming

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of application for grant funding; Public comment period on request to fund the Rock Springs Stormwater Drainage Channel project.

SUMMARY: OSM is announcing its receipt of a grant application from the Wyoming Department of Environmental Quality, Abandoned Mine Land Division (AMLD). Wyoming is requesting $10,000 from the Abandoned Mine Reclamation Fund to pay approximately 51 percent of the cost of building the Rock Springs Stormwater Drainage Channel Project in Sweetwater County, Wyoming. In its application, the State proposes paying for part of the reconstruction cost as a public facility project that will benefit a community impacted by coal mining activities.

This notice describes when and where the Wyoming abandoned mine land (AML) program and the grant application for funding the Rock Springs Stormwater Drainage Channel project are available for you to read. It also sets the time period during which you may send written comment on the request to us.

DATES: We will accept written comments until 4 p.m., m.s.t., July 23, 1999.

ADDRESSES: You should mail or hand-deliver written comments to Guy V. Padgett, Casper Field Office Director, at the address shown below. You may read Wyoming's grant application for this proposed project during normal business hours Monday through Friday (excluding holidays) at the same address. Also, we will send one free copy of the grant application to you if you contact OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Rm. 2403, 100 East "B" Street, Casper, Wyoming 82601–1918

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6555.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) program. The purpose of the AMLR program is to reclaim and restore lands and waters that were adversely affected by past mining. The program is funded by a reclamation fee paid by active coal mining operations. Lands and waters eligible for reclamation under Title IV are primarily those that were mined, or affected by mining, and abandoned or inadequately reclaimed before August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, or other laws.

Title IV of SMCRA allows States to submit AMLR plans to us. We, on behalf of the Secretary, review those plans and consider any public comments we receive about them. If we determine that a State has the ability and necessary legislation to operate an AMLR program, the Secretary can approve it. The Secretary's approval gives a State exclusive authority to put its AMLR plan into effect.

Once the Secretary approves a State's AMLR plan, the State may annually apply to us for money to fund specific projects that will achieve the goals of its approved plan. We follow the requirements of the Federal regulations at 30 CFR parts 874, 875, and 886 when we review and approve such applications.

II. Background on the Wyoming AMLR Plan

The Secretary of the Interior approved Wyoming's AMLR plan on February 14, 1983.

You can find background information on the Wyoming AML program, including the Secretary's findings and our responses to comments, in the February 14, 1983, **Federal Register** (48 FR 6536). Wyoming changed its plan a number of times since the Secretary first approved it. In 1984, we accepted the State's certification that it addressed all known coal-related impacts in Wyoming that were eligible for funding under its program. As a result, the State may now reclaim low priority non-coal reclamation projects. You can read about the certification and OSM's acceptance in the May 25, 1984, **Federal Register** (48 FR 22139). At the same time, we also accepted Wyoming's proposal that it will ask us for funds to reclaim any additional coal-related problems that occur during the life of the Wyoming AML program as soon as it becomes aware of them. In the April 13, 1992, **Federal Register** (57 FR 12731), we announced our decision to accept other changes in Wyoming's plan that describe how it will rank eligible coal, non-coal, and facility projects for funding. Those changes also authorized the Governor of Wyoming to elevate the priority of a project based upon the Governor's determination of need and urgency. They also expanded the State's ability to construct public facilities under section 411 of SMCRA. We approved additional changes in Wyoming's plan concerning noncoal lien authority and contractor eligibility that improve the efficiency of the State's AML program. That approval is described in the February 21, 1996, **Federal Register** (61 FR 6537).

Once a State certifies that it has addressed all remaining abandoned coal mine problems, and the Secretary concurs, then it may request funds to undertake abandoned noncoal mine reclamation community impact assistance, and public facilities projects under sections 411(b), (e), and (f), of SMCRA.

State law and regulations that apply to the proposed Rock Springs funding request include Wyoming Statute 35–11–1202 and Wyoming Abandoned Mine Land Regulations, Chapter VII, of the Wyoming Abandoned Mine Program.

III. Wyoming's Request To Fund Part of the Cost of Building the Rock Springs Stormwater Drainage Channel Project

The Wyoming Department of Environmental Quality submitted to us a grant application dated December 21, 1998. In that application, Wyoming asked for $210,000 that it will use to pay for part of the cost of building the Rock Springs Stormwater Drainage Channel. This drainage project is a public facility in a community impacted by coal mining activitive. The requested funding is 51 percent of the project's total cost. Money for the balance of the project will come from the city of Rock Springs (49%). The Governor of Wyoming certified the need and urgency to fund the Rock Springs Stormwater Drainage Channel project prior to completing the State's remaining inventory of non-coal reclamation, as allowed by section 411(f) of SMCRA. That certification says the project is in a community impacted by coal mining activities. The project involves providing flood control to a community that supports a large coal and trona industry. The project is designed to mitigate impacts resulting from historic boom and bust cycles of the mining industry and the overall growth of the community from mining. An extensive flood event in an adjacent area (White Mountain/Belmont area) resulted in property loss (residential and business) and business disruption in 1991.

This project will mitigate the impacts of flooding and damage to property. The Governor's certification states that the threat to public health and safety is as great at these locations as at unreclaimed non-coal mines. The potential health risks warrant funding this project before the remaining non-coal projects.

IV. How We Will Review Wyoming's Grant Application

We will review this grant application with respect to the regulations at 30 CFR 875.15, specifically §§ 875.15(e) (1) through (7). As stated in those regulations, the application must include the following information: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on Wyoming's coal or minerals industry; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved; (4) documentation from other local, State, and Federal agencies with oversight for such utilities or facilities describing what funding they have available and why their agency is

not fully funding this specific project; (5) the impact on the State, the public, and the minerals industry if the facility is not funded; (6) the reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities, and (7) an analysis and review of the procedures Wyoming used to notify and involve the public in this funding request, and a copy of all comments received and their resolution by the State. Wyoming's application for the Rock Springs Stormwater Drainage Channel Project contains the information described in these seven subsections.

Section 875.15(f) requires us to evaluate all comments we receive and determine whether the funding meets the requirements of §§ 875.15(e) (1) through (7) described above. It also requires us to determine if the request is in the best interests of the State's AML program. We will approve Wyoming's request to fund this project if we conclude that it meets all the requirements of 30 CFR 875.15.

V. What To Do if You Want To Comment on the Proposed Project

We are asking for public comments on Wyoming's request for funds to pay for part of the cost of building the Rock Springs Stormwater Drainage Channel Project. You are welcome to comment on the project. If you do, please send us written comments. Make sure your comments are specific and pertain to Wyoming's funding request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCRA. You should explain any recommendations you make. If we receive your comments after the time shown under **DATES** or at locations other than the Casper Field Office, we will not necessarily consider them in our final decision or include them in the administrative record.

Dated: June 11, 1999.

Guy Padgett,

Director, Casper Field Office.

[FR Doc. 99–15936 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Proposed Converse County Road 37 Project in Wyoming

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of application for grant funding; public comment period on request to fund the Converse County Road 37 project.

SUMMARY: OSM is announcing its receipt of a grant application from the Wyoming Department of Environmental Quality, Abandoned Mine Land Division (AMLD). Wyoming is requesting $261,000 from the Abandoned Mine Reclamation Fund to pay approximately 50 percent of the cost of rebuilding Converse County Road 37 in Converse County, Wyoming. In its application, the State proposes paying for part of the reconstruction cost as a public facility project that will benefit a community impacted by coal mining activities.

This notice describes when and where the Wyoming abandoned mine land (AML) program and the grant application for funding the Converse County Road 37 project are available for you to read. It also sets the time period during which you may send written comments on the request to us.

DATES: We will accept written comments until 4 p.m. m.s.t., July 23, 1999.

ADDRESSES: You should mail or hand-deliver written comments to Guy V. Padgett, Casper Field Office Director, at the address shown below. You may read Wyoming's grant application for this proposed project during normal business hours Monday through Friday (excluding holidays) at the same address. Also, we will send one free copy of the grant application to you if you contact OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Rm. 2403, 100 East "B" Street, Casper, Wyoming 82601–1918.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6555.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) program. The purpose of the AMLR program is to reclaim and restore lands and waters that were adversely affected by past mining. The program is funded by a reclamation fee paid by active coal mining operations. Lands and waters eligible for reclamation under Title IV are primarily those that were mined, or affected by mining, and abandoned or inadequately reclaimed before August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, or other laws.

Title IV of SMCRA allows States to submit AMLR plans to us. We, on behalf of the Secretary, review those plans and consider any public comments we receive about them. If we determine that a State has the ability and necessary legislation to operate an AMLR program, the Secretary can approve it. The Secretary's approval gives a State exclusive authority to put its AMLR plan into effect.

Once the Secretary approves a State's AMLR plan, the State may annually apply to us for money to fund specific projects that will achieve the goals of its approved plan. We follow the requirements of the Federal regulations at 30 CFR parts 874, 875, and 886 when we review and approve such applications.

II. Background on the Wyoming AMLR Plan

The Secretary of the Interior approved Wyoming's AMLR plan on February 14, 1983. You can find background information on the Wyoming AML program, including the Secretary's findings and our responses to comments, in the February 14, 1983, **Federal Register** (48 FR 6536). Wyoming changed its plan a number of times since the Secretary first approved it. In 1984, we accepted the State's certification that it addressed all known coal-related impacts in Wyoming that were eligible for funding under its program. As a result, the State may now reclaim low priority non-coal reclamation projects. You can read about the certification and OSM's acceptance in the May 25, 1984, **Federal Register** (49 FR 22139). At the same time, we also accepted Wyoming's proposal that it will ask us for funds to reclaim any additional coal-related problems that occur during the life of the Wyoming AML program as soon as it becomes aware of them. In the April 13, 1992, **Federal Register** (57 FR 12731), we announced our decision to accept other changes in Wyoming's plan that describe how it will rank eligible coal, non-coal, and facility projects for funding. Those changes also authorized the Governor of Wyoming to elevate the priority of a project based upon the Governor's determination of need and urgency. They also expanded the State's ability to construct public facilities under section 411 of SMCRA. We approved additional changes in Wyoming's plan concerning noncoal lien authority and contractor eligibility that improve the efficiency of the State's AML program. That approval is described in the February 21, 1996, **Federal Register** (61 FR 6537).

Once a State certifies that it has addressed all remaining abandoned coal mine problems, and the Secretary concurs, then it may request funds to undertake abandoned noncoal mine reclamation, community impact assistance, and public facilities projects under sections 411 (b), (e), and (f), of SMCRA.

State law and regulations that apply to the proposed Converse County Road 37 funding request include Wyoming Statute 35–11–1202 and Wyoming Abandoned Mine Land Regulations, Chapter VII, of the Wyoming Abandoned Mine Program.

III. Wyoming's Request To Fund Part of the Cost of Rebuilding Converse County Road 37

The Wyoming Department of Environmental Quality submitted to us a grant application dated December 21, 1998. In that application, Wyoming asked for $261,000 that it will use to pay for part of the cost of rebuilding Converse County Road 37 in Converse County, Wyoming. This road is a public facility in a community impacted by coal mining activities. The requested funding is 50 percent of the project's total cost. Money for the balance of the project cost will come from the County's general fund (25 percent), Powder River Coal Company and Kennecott Energy Company (25 percent). The Governor of Wyoming certified the need and urgency to fund the Converse County Road 37 project prior to completing the State's remaining inventory of non-coal reclamation, as allowed by section 411(f) of SMCRA. That certification says the project is in a community impacted by coal mining activities. The project involves the rebuilding and paving of 3 miles of County Road 37. This road is one of the busiest roads in the County. The road directly serves the employees of three coal mines. Employees commute daily to these mines by personal vehicles and company buses. A mine employee bus accident on the road indicates the need for improving the road.

The project will mitigate the impacts of safety hazards associated with the present condition of County Road 37. The Governor's certification states that safety hazards impacting coal mine employees warrant funding of this project before the remaining inventory of non-coal projects are completed.

IV. How We Will Review Wyoming's Grant Application

We will review this grant application with respect to the regulations at 30 CFR 875.15, specifically § 875.15(e) (1) through (7). As stated in those regulations, the application must include the following information: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on Wyoming's coal or minerals industry; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved; (4) documentation from other local, State, and Federal agencies with oversight for such utilities or facilities describing what funding they have available and why their agency is not fully funding this specific project; (5) the impact on the State, the public, and the minerals industry if the facility is not funded; (6) the reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities, and (7) an analysis and review of the procedures Wyoming used to notify and involve the public in this funding request, and a copy of all comments received and their resolution by the State. Wyoming's application for the Converse County Road 37 project contains the information described in these seven subsections.

Section 875.15(f) requires us to evaluate all comments we receive and determine whether the funding meets the requirements of § 875.15(e) (1) through (7) described above. It also requires us to determine if the request is in the best interests of the State's AML program. We will approve Wyoming's request to fund this project if we conclude that it meets all the requirements of 30 CFR 875.15.

V. What To Do if You Want To Comment on the Proposed Project.

We are asking for public comments on Wyoming's request for funds to pay for part of the cost of rebuilding Converse County Road 37. You are welcome to comment on the project. If you do, please send us written comments. Make sure your comments are specific and pertain to Wyoming's funding request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCRA. You should explain any recommendations you make. If we receive your comments after the time shown under **DATES** or at locations other than the Casper Field Office, we will not necessarily consider them in our final decision or include them in the administrative record.

Dated: June 11, 1999.

Guy Padgett,

Director, Casper Field Office.

[FR Doc. 99–15937 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Proposed Community Health Center in the Town of Kaycee, WY

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of application for grant funding; public comment period on request to fund the Kaycee Community Health Center project.

SUMMARY: OSM is announcing its receipt of a grant application from the Wyoming Department of Environmental Quality, Abandoned Mine Land Division (AMLD). Wyoming's application requests $612,660 from the Abandoned Mine Reclamation Fund to pay approximately 81% percent of the cost of building the Kaycee Community Health Center in Kaycee, Wyoming. In its application, the State proposes paying for part of the reconstruction cost as a public facility project that will benefit a community impacted by coal mining activities.

This notice describes when and where the Wyoming abandoned mine land (AML) program and the grant application for funding the Kaycee Community Health Center project are available for you to read. It also sets the time period during which you may send written comments on the request to us.

DATES: We will accept written comments until 4 p.m., m.s.t., July 23, 1999.

ADDRESSES: You should mail or hand-deliver written comments to Guy V. Padgett, Casper Field Office Director, at the address shown below. You may read Wyoming's grant application for this proposed project during normal business hours Monday through Friday (excluding holidays) at the same address. Also, we will send one free copy of the grant application to you if you contact OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Rm. 2403, 100 East "B" Street, Casper, Wyoming 82601–1918.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6555.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) program. The purpose of the AMLR program is to reclaim and restore and lands and waters that were adversely affected by past mining. The program is funded by a reclamation fee paid by active coal mining operations. Lands and waters eligible for reclamation under Title IV are primarily those that were mined, or affected by mining, and abandoned or inadequately reclaimed before August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, or other laws.

Title IV of SMCRA allows States to submit AMLR plans to us. We, on behalf of the Secretary, review those plans and consider any public comments we receive about them. If we determine that a State has the ability and necessary legislation to operate an AMLR program, the Secretary can approve it. The Secretary's approval gives a State exclusive authority to put its AMLR plan into effect.

Once the Secretary approves a State's AMLR plan, the State may annually apply to us for money to fund specific projects that will achieve the goals of its approved plan. We follow the requirements of the Federal regulations at 30 CFR parts 874, 875, and 886 when we review and approve such applications.

II. Background on the Wyoming AMLR Plan

The Secretary of the Interior approved Wyoming's AMLR plan on February 14, 1983. You can find background information on the Wyoming AML program, including the Secretary's findings and our responses to comments, in the February 14, 1983, **Federal Register** (48 FR 6536). Wyoming changed its plan a number of times since the Secretary first approved it. In 1984, we accepted the State's certification that it addressed all known coal-related impacts in Wyoming that were eligible for funding under its program. As a result, the State may now reclaim low priority non-coal reclamation projects. You can read about the certification and OSM's acceptance in the May 25, 1984, **Federal Register** (49 CFR 22139). At the same time, we also accepted Wyoming's proposal that it will ask us for funds to reclaim any additional coal-related problems that occur during the life of the Wyoming AML program as soon as it becomes aware of them. In the April 13, 1992, **Federal Register** (57 FR 12731), we announced our decision to accept other changes in Wyoming's plan that describe how it will rank eligible coal, non-coal, and facility projects for funding. Those changes also authorized the Governor of Wyoming to elevate the priority of a project based upon the Governor's determination of need and urgency. They also expanded the State's ability to construct public facilities under section 411 of SMCRA. We approved additional changes in Wyoming's plan concerning noncoal lien authority and contractor eligibility that improve the efficiency of the State's AML program. That approval is described in the February 21, 1996, **Federal Register** (61 FR 6537).

Once a State certifies that it has addressed all remaining abandoned coal mine problems, and the Secretary concurs, then it may request funds to undertake abandoned noncoal mine reclamation, community impact assistance, and public facilities projects under sections 411 (b), (e), and (f), of SMCRA.

State law and regulations that apply to the proposed Kaycee Community Health Center finding request include Wyoming Statute 35–11–1202 and Wyoming Abandoned Mine Land Regulations, Chapter VII, of the Wyoming Abandoned Mine Program.

III. Wyoming's Request To Fund Part of the Cost of Building a Community Health Center in the Town of Kaycee

The Wyoming Department of Environmental Quality submitted to us a grant application dated December 21, 1998. In that application, Wyoming asked for $612,660 that it will use to pay for part of the cost of building the Community Health Center in Kaycee, Wyoming. This building project is a public facility in a community impacted by coal mining activities. The requested funding is 81 percent of the project's total cost. Money for the balance of the project cost will come from Kaycee (19 percent). The Governor of Wyoming certified the need and urgency to fund the Kaycee Community Health Center project prior to completing the State's remaining inventory of non-coal reclamation work, as allowed by section 411(f) of SMCRA. That certification says the project is in a community impacted by coal mining activities. The present health clinic serving Kaycee is an old mobile home and does not meet health and safety codes and will not pass the next accreditation inspection. The clinic does not accommodate a wheelchair and is not ADA accessible. The clinic is the only medical facility in southern Johnson County. The Governor's Certification states that lack of medical services in Kaycee is a greater threat to Wyoming citizens than the threat presented at remaining abandoned non-coal mine sites.

IV. How We Will Review Wyoming's Grant Application

We will review this grant application with respect to the regulations at 30 CFR 875.15, specifically §§ 875.15(e)(1) through (7). As stated in those regulations, the application must include the following information: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on Wyoming's coal or minerals industry; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved; (4) documentation from other local, State, and Federal agencies with oversight for such utilities or facilities describing what funding they have available and why their agency is not fully funding this specific project; (5) the impact on the State, the public, and the minerals industry if the facility is not funded; (6) the reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities, and (7) an analysis and review of the procedures Wyoming used to notify and involve the public in this funding request, and a copy of all comments received and their resolution by the State. Wyoming's application for the Kaycee Community Health Center project contains the information described in these seven subsections.

Section 875.15(f) requires us to evaluate all comments we receive and determine whether the funding meets the requirements of §§ 875.15(e)(1) through (7) described above. It also requires us to determine if the request is in the best interests of the State's AML program. We will approve Wyoming's request to fund this project if we conclude that it meets all the requirements of 30 CFR 875.15.

V. What To Do If You Want To Comment on the Proposed Project

We are asking for public comments on Wyoming's request for funds to pay for part of the cost of building a Community Health Center in the Town of Kaycee, Wyoming. You are welcome to comment on the project. If you do, please give us written comments. Make sure your comments are specific and pertain to Wyoming's funding request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCRA. You should explain any recommendations you make. If we receive your comments after the time shown under **DATES** or at locations other than the Casper Field Office, we will not necessarily consider them in our final decision or include them in the administrative record.

Dated: June 11, 1999.

Guy Padgett,

Director, Casper Field Office.

[FR Doc. 99–15938 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Proposed Construction of Cokeville High School in Lincoln County, WY

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of application for grant funding; public comment period on request to fund the Cokeville High School project.

SUMMARY: OSM is announcing its receipt of a grant application from the Wyoming Department of Environmental Quality, Abandoned Mine Land Division (AMLD). Wyoming is requesting $1 million from the Abandoned Mine Reclamation Fund to pay approximately 19 percent of the cost of building the Cokeville High School in Lincoln County, Wyoming. The Wyoming State Legislature will provide $3 million (58%) of the funds and the Lincoln County School Board will provide $1.2 million. In its application, the State proposes paying for part of the reconstruction cost as a public facility project that will benefit a community impacted by coal mining activities.

This notice describes when and where the Wyoming abandoned mine land (AML) program and the grant application for funding the Cokeville High School project are available for you to read. It also sets the time period during which you may send written comments on the request to us.

DATES: We will accept written comments until 4 p.m., m.s.t., July 23, 1999.

ADDRESSES: You should mail or hand-deliver written comments to Guy V. Padgett, Casper Field Office Director, at the address shown below. You may read Wyoming's grant application for this proposed project during normal business hours Monday through Friday (excluding holidays) at the same address. Also, we will send one free copy of the grant application to you if you contact OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Rm. 2403, 100 East "B" Street, Casper, Wyoming 82601–1918

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6555.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) program. The purpose of the AMLR program is to reclaim and restore lands and waters that were adversely affected by past mining. The program is funded by a reclamation fee paid by active coal mining operations. Lands and waters eligible for reclamation under Title IV are primarily those that were mined, or affected by mining, and abandoned or inadequately reclaimed before August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, or other laws.

Title IV of SMCRA allows States to submit AMLR plans to us. We, on behalf of the Secretary, review those plans and consider any public comments we received about them. If we determine that a State has the ability and necessary legislation to operate an AMLR program, the Secretary can approve it. The Secretary's approval gives a State exclusive authority to put its AMLR plan into effect.

Once the Secretary approves a State's AMLR plan, the State may annually apply to us for money to fund specific projects that will achieve the goals of its approved plan. We follow the requirements of the Federal regulations at 30 CFR parts 874, 875, and 886 when we review and approve such applications.

II. Background on the Wyoming AMLR Plan

The Secretary of the Interior approved Wyoming's AMLR plan on February 14, 1983. You can find background information on the Wyoming AML program, including the Secretary's findings and our responses to comments, in the February 14, 1983, **Federal Register** (48 FR 6536). Wyoming changed its plan a number of times since the Secretary first approved it. In 1984, we accepted the State's certification that it addressed all known coal-related impacts in Wyoming that were eligible for funding under its program. As a result, the State may now reclaim low priority non-coal reclamation projects. You can read about the certification and OSM's acceptance in the May 25, 1984, **Federal Register** (49 FR 22139). At the same time, we also accepted Wyoming's proposal that it will ask us for funds to reclaim any additional coal-related problems that occur during the life of the Wyoming AML program as soon as it becomes aware of them. In the April 13, 1992, **Federal Register** (57 FR 12731), we announced our decision to accept other changes in Wyoming's plan that describe how it will rank eligible coal, non-coal, and facility projects for funding. Those changes also authorized the Governor of Wyoming to elevate the priority of a project based upon the Governor's determination of need and urgency. They also expanded the State's ability to construct public facilities under section 411 of SMCRA. We approved additional changes in Wyoming's plan concerning noncoal lien authority and contractor eligibility that improve the efficiency of the State's AML program. That approval is described in the February 21, 1996, **Federal Register** (61 FR 6537).

Once a State certifies that it has addressed all remaining abandoned coal mine problems, and the Secretary concurs, then it may request funds to undertake abandoned noncoal mine reclamation, community impact assistance, and public facilities projects under sections 411(b), (e) and (f), of SMCRA.

State law and regulations that apply to the proposed Cokeville High School funding request include Wyoming Statute 35–11–1202 and Wyoming Abandoned Mine Land Regulations, Chapter VII, of the Wyoming Abandoned Mine Program.

III. Wyoming's Request to Fund Part of the Cost of Construction of a New High School in Cokeville, Wyoming

The Wyoming Department of Environmental Quality submitted to us a grant application dated December 21, 1998. In that application, Wyoming asked for $1 million that it will use to pay for part of the cost of building the Cokeville High School This building project is a public facility in a community impacted by coal mining activities. The requested funding is 19 percent of the project's total cost. Money for the balance of the project cost will come from the State Legislature (58%) and Lincoln County School District #2 (23%). The Governor of Wyoming certified the need and urgency to fund the Cokeville High School project prior to completing the State's remaining inventory of non-coal reclamation work

as allowed by section 411(f) of SMCRA. That certification says the project is in a community impacted by coal mining activities. The State Fire Marshal has condemned the existing structure and will not permit its use. Only the gymnasium and auditorium can be used. The remainder cannot be used. The school was heavily damaged by earthquakes. An inspection by AML engineers confirms the danger. Currently, students are housed in portions of the old high school (gymnasium and auditorium), modular buildings and other community buildings. This poses a safety hazard to the students because no central emergency system exists in case of fire or other hazard. The Governor's Certification states that the safety hazards associated with the old high school warrant funding of this project before the remaining inventory of non-coal projects.

IV. How We Will Review Wyoming's Grant Application

We will review this grant application with respect to the regulations at 30 CFR 875.15, specifically §§ 875.15(e)(1) through (7). As stated in those regulations, the application must include the following information: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project till have on Wyoming's coal or minerals industry; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved; (4) documentation from other local, State, and Federal agencies with oversight for such utilities or facilities describing what funding they have available and why their agency is not fully funding this specific project; (5) the impact on the State, the public, and the minerals industry if the facility is not funded; (6) the reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities, and (7) an analysis and review of the procedures Wyoming used to notify and involve the public in this funding request, and a copy of all comments received and their resolution by the State. Wyoming's application for the Cokeville High School project contains the information described in these seven subsections.

Section 875.15(f) requires us to evaluate all comments we receive and determine whether the funding meets the requirements of § 875.15(e)(1) through (7) described above. It also requires us to determine if the request is in the best interests of the State's AML program. We will approve Wyoming's request to fund this project if we conclude that it meets all the requirements of 30 CFR 875.15.

V. What to Do if You Want to Comment on the Proposed Project

We are asking for public comments on Wyoming's request for funds to pay for part of the cost of building a new high school in Cokeville, Wyoming. You are welcome to comment on the project. If you do, please send us written comments. Make sure your comments are specific and pertain to Wyoming's funding request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCFA. You should explain any recommendations you make. If we receive your comments after the time shown under **DATES** or at locations other than the Casper Field Office, we will not necessarily consider them in our final decision or include them in the administrative record.

Dated: June 11, 1999.

Guy Padgett,

Director, Casper Field Office.

[FR Doc. 99–15939 Filed 6–22–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–807 (Final)]

Certain Hot-Rolled Steel Products From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured [2] by reason of imports from Japan of certain hot-rolled steel products, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission finds that critical circumstances do not exist with respect to subject imports from Japan.[3]

Background

The Commission instituted this investigation effective September 30, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by Bethlehem Steel Corp., Bethlehem, PA; U.S. Steel Group, a unit of USX Corp., Pittsburgh, PA; Ispat Inland Steel, East Chicago, IN; LTV Steel Co., Inc., Cleveland, OH; California Steel Industries, Fontana, CA; Gallatin Steel Co., Ghent, KY; Geneva Steel, Vineyard, UT; Gulf States Steel, Inc., Gadsden, AL; IPSCO Steel, Inc., Muscatine, IA; Steel Dynamics, Butler, IN; Weirton Steel Corp., Weirton, WV; Independent Steelworkers Union, Weirton, WV; and the United Steelworkers of America, Pittsburgh, PA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain hot-rolled steel products from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 5, 1999 (64 FR 10723). The hearing was held in Washington, DC, on May 4, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 18, 1999. The views of the Commission are contained in USITC Publication 3202 (June 1999), entitled Certain Hot-Rolled Steel Products from Japan: Investigation No. 731–TA–807 (Final).

Issued: June 18, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16006 Filed 6–22–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Askey determines that an industry in the U.S. is threatened with material injury.

[3] Commerce found that critical circumstances do not exist with respect to two Japanese producers: Nippon Steel Corp. and NKK Corp. Chairman Bragg finds that critical circumstances exist with respect to subject imports from Japan. Commissioner Askey did not assess critical circumstances because she did not determine that the industry in the U.S. is materially injured.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–412]

Certain Video Graphics Display Controllers and Products Containing Same; Decision To Extend the Deadline for Determining Whether To Review an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by 29 days, or until July 16, 1999, the deadline for determining whether to review an initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on July 27, 1998, based on a complaint filed on behalf of Cirrus Logic, Inc., Fremont, California. 63 FR 40932 (1998). The presiding administrative law judge (ALJ) issued her final ID on April 30, 1999, concluding that there was no violation of section 337 of the Tariff Act of 1930 in the instant investigation. The previous deadline for deciding whether to review the ID was June 17, 1999.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42(h)(2) of the Commission's Rules of Practice and Procedure (19 CFR § 210.42(h)(2)).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: June 17,1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16005 Filed 6–22–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 29, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. AA1921–115 (Review)(Synthetic Methionine from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 12, 1999.)
5. Outstanding action jackets: (1.) Document No. ID–99–010: Approval to begin work on the proposed final phase in the series in Inv. No. 332–237 (Production Sharing: Use of U.S. Components and Materials in Foreign Assembly Operations, 1995–1998).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: June 21, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16093 Filed 6–21–99; 2:03 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Notice is hereby given that a proposed consent decree in *United States* v. *Tucson Airport Authority, et al.*, Civil No. CIV–99–313–TUC–WDB, was lodged on June 17, 1999, with the United States District Court for the District of Arizona ("Airport Property Decree"). The proposed Airport Property Decree would resolve claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, 9607, as amended, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, brought against defendants Tucson Airport Authority, the City of Tucson, General Dynamics Corporation and McDonnell Douglas Corporation (collectively "Defendants"), to compel performance of response actions and to recover response costs incurred and to be incurred by the Environmental Protection Agency in connection with the release and threatened release of hazardous substances at a portion of the Tucson International Airport Area Superfund Site known as the Airport Property.

The proposed Airport Property Decree would resolve the liability of the Defendants with respect to the Airport Property. The proposed Airport Property Decree would release claims against the Defendants for performance of the remedy selected in the Record of Decision entitled "Tucson International Airport Area Superfund Site, Tucson, Arizona, Airport Property Soils and Shallow Groundwater Zone, Burr-Brown Property Soils, Former West-Cap Property Soils" signed by the Environmental Protection Agency on September 30, 1997. The proposed Airport Property Decree would also release claims for response costs incurred and to be incurred by the Environmental Protection Agency in responding to releases and threatened releases of hazardous substances at and from the Airport Property. To resolve these claims, the Defendants collectively would perform the remedy selected in the 1997 ROD, would pay $1,719,771.23 to the Hazardous Substances Superfund to reimburse the United States for Past Response Costs, and would reimburse the United States for all Interim and Future Response Costs.

The proposed Airport Property Decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

The United States also lodged on June 17, 1999, a proposed modification to a consent decree entered on June 5, 1991, in *United States* v. *Tucson Airport Authority, et al.*, D. Ariz., Civ. No. 90–587–TUC–RMB ("TARP Decree"). In return for a single, unallocated payment of $35 million to Tucson Airport

Authority, the United States Department of the Air Force would receive a covenant not to take administrative action from the United States Environmental Protection Agency under the proposed Airport Property Decree, and would effect Final Settlement under the TARP Decree. The proposed modification to the TARP Decree is lodged with the Court in order to allow the public to evaluate the Environmental Protection Agency's covenant not to take administrative action against the Department of the Air Force under the proposed Airport Property Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Airport Property Decree. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d). Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Tucson Airport Authority, et al.*, D. Ariz, Civil No. CIV–99–313–TUC–WDB, DOJ Ref. #90–11–3–369/2.

The Airport Property Decree and the modification to the TARP Decree may be examined at the office of the United States Attorney, District of Arizona, 110 S. Church Avenue, Suite 8310, Tucson, Arizona 85701; the Region 9 Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Airport Property Decree and modification to the TARP Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting copies please refer to the referenced case and enclose a check in the amount of $80.25 for the Airport Property Decree and $8.25 for the modification to the TARP Decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 99–16021 Filed 6–22–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jeffrey I. Goltz, M.D.; Revocation of Registration

On November 5, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Jeffrey I. Goltz, M.D., of Washington, DC, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AG2606599 pursuant to 21 U.S.C. 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the District of Columbia. The order also notified Dr. Goltz that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause Was sent to Dr. Goltz by registered mail to his DEA registered address, but was returned to DEA with a notation that Dr. Goltz had moved without leaving a forwarding address. Copies of the Order to Show Cause were sent by regular mail to Dr. Goltz at a correctional facility in Maryland and to an attorney who had previously represented Dr. Goltz. Thereafter, a DEA investigator went to Dr. Goltz' registered address and learned that he no longer resided at that location.

No request for a hearing or any other reply was received by the DEA from Dr. Goltz or anyone purporting to represent him in this matter. The Deputy Administrator finds that DEA has made numerous attempts to serve Dr. Goltz with the Order to Show Cause without success. It is evident that Dr. Goltz is no longer practicing medicine at the address listed on his DEA Certificate of Registration. Dr. Goltz is therefore deemed to have waived his opportunity for a hearing. The Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that a letter in the investigative file dated March 5, 1998, from the District of Columbia Department of Consumer and Regulatory Affairs indicates that Dr. Goltz' District of Columbia controlled substances registration expired on July 30, 1996. Therefore, the Deputy Administrator finds that Dr. Goltz is not currently authorized to handle controlled substances in the District of Columbia, where he is registered with DEA.

DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez, M.D.* 62 FR 16,193 (1997); *Demetris A. Green, M.D.* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Goltz is not currently authorized to handle controlled substances in the District of Columbia. Therefore, Dr. Goltz is not entitled to a DEA registration there.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AG2606599, previously issued to Jeffrey I. Goltz, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective July 23, 1999.

Dated: June 14, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–15879 Filed 6–22–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John Robert Harrison, M.D.; Revocation of Registration

On November 17, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John Robert Harrison, M.D., of Rhode Island, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AH6477942 under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of his registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Rhode Island. The order also notified Dr. Harrison that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by registered mail to Dr. Harrison's registered location in Rhode Island, and was returned to DEA. Another copy of the Order to Show Cause was sent to Dr. Harrison at an address in Massachusetts. On November 24, 1998, DEA received a signed receipt for this Order to Show Cause. No request for a hearing or any other reply has been received by DEA from Dr. Harrison or anyone purporting to represent his in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Harrison is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) 1301.46.

The Deputy Administrator finds that Dr. Harrison currently possesses DEA Certificate of Registration AH6477942, issued to him in Rhode Island. In an Administrative Decision dated July 8, 1998, the Rhode Island Department of Health, Board of Medical Licensure and Discipline (Board) revoked Dr. Harrison's license to practice medicine. The Board concluded "that (Dr. Harrison) is seriously impaired and incompetent to practice."

The Deputy Administrator concludes that Dr. Harrison is not currently licensed to practice medicine in the State of Rhode Island and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. *See* 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld *See Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Harrison is not currently authorized to handle controlled substances in the State of Rhode Island. As a result, Dr. Harrison is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AH6477942, previously issued to John Robert Harrison, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective July 23, 1999.

Dated: June 14, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–15880 Filed 6–22–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; reinstatement, without change, of a previously approved collection for which approval has expired: Number of full-time law enforcement employees as of October 31.

The Department of Justice, Federal Bureau of Investigation has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 31, 1999 allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until July 23,1 999. This process is conducted in accordance with 5 CFR 1320.10.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Department of Justice Office of Management and Budget, Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 1725 17th Street, N.W., Washington, D.C. 20530.

Overview of this information collection:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Number of Full-Time Law Enforcement Employees as of October 31.

(3) *The agency form number, if any, and applicable component of the department sponsoring the collection:* Form 1–711a/1–711b/1–711c. Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Local and State Law Enforcement Agencies. This collection is needed to collect information to determine the number of Civilian and sworn full-time law enforcement employees throughout the United States. Data are tabulated and published in the annual *Crime in the United States.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to reply:* 17,667 agencies with 17,667 responses (including zero reports); and with an average of 8 minutes a year per responding agency devoted to compilation of data for this information collection.

(6) *An estimate of the total public burden (in hours) associated with this collection:* 2,356 hours annually.

If additional information is required contact: Mr. Robert B. Briggs. Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, D.C. 20530.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 99–15688 Filed 6–22–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; reinstatement, without change, of a previously approved

collection for which approval has expired: Law Enforcement Officers Killed and Assaulted (LEOKA).

The Department of Justice, Federal Bureau of Investigation has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 31, 1999 allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until July 23, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Department of Justice Office of Management and Budget, Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 1725 17th Street, N.W., Washington, D.C. 20530.

Overview of this information collection:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Law Enforcement Officers Killed and Assaulted (LEOKA).

(3) *The agency from number, if any, and applicable component of the department sponsoring the collection:* Form: 1–705. Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Local and State Law Enforcement Agencies. This collection is needed to provide data regarding Law Enforcement Officers Killed and Assaulted throughout the United States. Data is tabulated and published in the comprehensive annual *Law Enforcement Officers Killed and Assaulted.*

(5) The FBI UCR Program is currently reviewing its race and ethnicity data collection in compliance with the Office of Management and Budget's *Revisions for the Standards for the Classification of Federal Data on Race and Ethnicity.*

(6) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to reply:* 17,667 agencies with 212,004 estimated annual responses (includes zero reports); and with an average completion time of 7 minutes a month per responding agency.

(7) *An estimate of the total public burden (in hours) associated with this collection:* 24,734 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, D.C. 20530.

Dated: June 16, 1999.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 99–15689 Filed 6–22–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; reinstatement, without change, of a previously approved collection for which approval has expired: Monthly Return of Arson Offenses Known to Law Enforcement.

The Department of Justice, Federal Bureau of Investigation has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 31, 1999 allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until July 23, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Department of Justice Office of Management and Budget, Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 1725 17th Street, N.W., Washington, D.C. 20530.

Overview of this information collection:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Monthly Return of Arson Offenses Known to Law Enforcement.

(3) *The agency form number, if any, and applicable component of the department sponsoring the collection:* Form: 1–725. Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Local and State Law Enforcement Agencies. This collection is needed to collect information on arson offenses committed throughout the United States. Data is tabulated and published in the annual *Crime in the United States.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to reply:* 17,667 agencies with 212,004 estimated annual responses (includes zero reports); and with an average completion time of 9 minutes a month per report.

(6) *An estimate of the total public burden (in hours) associated with this collection:* 31,801 hours annually.

In additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, D.C. 20530.

Dated: June 16, 1999.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 99–15690 Filed 6–22–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; reinstatement, without change, of a previously approved collection for which approval has expired; Analysis of law enforcement officers killed and assaulted.

The Department of Justice, Federal Bureau of Investigation has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 31, 1999 allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until July 23, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Department of Justice Office of Management and Budget, Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 1725 17th Street, N.W., Washington, D.C. 20530.

Overview of this information collection:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Analysis of Law Enforcement published in the Comprehensive annual *Law Enforcement* Officers Killed and Assaulted.

(3) *The agency form number, if any, and applicable component of the department sponsoring the collection:* Form: 1–728. Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Local and State Law Enforcement Agencies. Collection will be printed in English and Spanish. This collection is needed to provide data regarding Law Enforcement Officers Killed and Assaulted throughout the United States. Data is analyzed, tabulated, and published in the comprehensive annual *Law Enforcement Officers Killed and Assaulted.*

(5) *The FBI UCR Program is currently reviewing its race and ethnicity data collection in compliance with the Office of Management and Budget's Revisions for the Standards for the Classification of Federal Data on Race and Ethnicity.*

(6) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to reply:* 17,667 agencies with 570 estimated annual responses (zero reports are not required); and with an average of 1 hour per report per responding agency.

(7) *An estimate of the total public burden (in hours) associated with this collection:* 570 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, D.C. 20530.

Dated: June 16, 1999.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 99–15691 Filed 6–22–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review: Application to Replace Alien Registration Card.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 23, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Replace Alien Registration Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the*

collection: Form I–90. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected will be used by the INS to determine eligibility for an initial Alien Registration Card, or to replace a previously issued card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 410,799 responses at 55 minutes (.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 376,292 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 17, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–15969 Filed 6–22–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; Notice of Naturalization Oath Ceremony.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 23, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of currently approved collection.

2. *Title of the Form/Collection:* Notice of Naturalization Oath Ceremony.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–445. Adjudications Division, Immigration and Naturalization Service.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information furnished on this form refers to events that may have occurred since the applicant's initial interview and prior to the administration of the oath of allegiance. Several months may elapse between these dates and the information that is provided assists the officer to make and render an appropriate decision on the application.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 650,000 responses at 5 minutes (.083) per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 53,950 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 17, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–15970 Filed 6–22–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Employment eligibility verification.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. A notice containing this information collection was previously published in the **Federal Register** on February 9, 1999 at 64 FR 6380. The notice allowed for a 60-day public review and comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 23, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the

estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–9. Programs Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form was developed to facilitate compliance with Section 274A of the Immigration and Nationality Act (the Act), as amended by the Immigration Reform and Control Act of 1986 (IRCA), which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000,000 respondents at 9 minutes or (.15) hours per response and 20,000,000 record keepers at 4 minutes or (.066) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,020,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 18, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–15971 Filed 6–22–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1238]

RIN 1121–ZB72

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will take place in Annapolis, Maryland, beginning at 2 p.m. (EST) on Thursday, July 8, 1999, and ending at 4 p.m. (EST) on July 8, 1999. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at the Maryland Inn, located at 16 Church Circle, Annapolis, MD 21401. The Coordinating Council, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. Members of the public who are attending the meeting should RSVP to the Juvenile Justice Resource Center by close of business June 29, 1999.

The point of contact is Jan Shaffer, who can be reached at (301) 519–5014. For security purposes, picture identification will be required.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 99–16034 Filed 6–22–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 17, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Claim for Continuance of Pay/Compensation (CA–2a).

OMB Number: 1215–0167.

Frequency: As needed.

Affected Public: Individuals or households.

Number of Respondents: 550.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 275.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $198.

Description: The CA–2a is a form used by current or occasionally former Federal employees to claim wage loss resulting from a recurrence of a work-related injury while Federally employed.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 99–15951 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 16, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Regulations, 29 CFR Part 825, the Family and Medical Leave Act of 1993.

OMB Number: 1215–0181.

Frequency: Recordkeeping, Reporting on occasion.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; State, Local or Tribal government.

Number of Respondents: 3.9 million.

Estimated Time Per Respondent: 1 minute to 10 minutes.

Total Burden Hours: 645,625.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Family and Medical Leave Act of 1993 (FMLA) requires private sector employers of 50 or more employees, and public agencies, to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Records are required to be kept so that the Department of Labor can determine employer compliance with FMLA.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–15952 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission of OMB Review; Comment Request

June 15, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Hours at Work Survey.

OMB Number: 1220–0076.

Frequency: Annually.

Affected Public: Business or other for-profit.

Form	Total number of respondents	Frequency	Total annual responses	Average time per response	Estimated total annual burden hours
BLS 2000N	2,500	Annually	2,500	1 hour	2,500
BLS 2000P	3,500	Annually	3,500	1 hour	3,500
RAS	1,000		1,000	15 min	250
TOTAL	6,000		7,000		6,250

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Ratios of hours at work to hours paid are needed to measure labor input for productivity statistics. Ratios from this survey are used to convert hours paid data from the Current Employment Statistics Program to hours at work. The resulting hours at work measures are then incorporated into the Bureau's labor and multifactor productivity statistics published annually and quarterly. The collection of information on hours at work began in 1982 and must be done annually because of the cyclical sensitivity of productivity measures.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–15953 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,449A]

ARCO, dba ARCO Exploration and Production Technology (AEPT) Plano, Texas; Negative Determination on Reconsideration

On April 21, 1999, the Department issued an Affirmative Determination Regulatory Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 6, 1999 (66 FR 24417).

The Department initially denied TAA to workers of ARCO Exploration and Production Technology because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. Initial information indicated that the workers were engaged in exploration related to serving foreign markets. The workers at the subject firm were engaged in employment related to the research related to exploration of crude oil and natural gas.

The company asserted that the workers were involved in both the domestic and foreign markets and provided additional information which warranted reconsideration of the Department's previous denial.

On reconsideration, the Department requested that the subject firm provide additional information about the work being conducted at the subject facility. Additional information revealed that the workers at the subject facility were providing research and technical services in the areas of exploration, reservoir engineering, drilling, production, safety. The Plano facility is the main research, development, and technical service center as well as computing resource for ARCO's upstream operations. Most of the work done by the workers at AEPT is done at the Plano campus. AEPT provides a supporting role in domestic oil and natural gas exploration. Since the work is primarily done at the Plano campus, and not at the well site, the work is considered a service to the parent company and its subsidiaries and not an activity directly engaged in the exploration of crude oil and natural gas.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for the workers and former workers of ARCO Exploration and Production Technology, Plano, Texas.

Signed at Washington, D.C., this 4th day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15955 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,899]

Consolidated Coal Company Humphrey #7 Mine Osage, West Virginia; Affirmative Determination Regarding Application for Reconsideration

By letter of May 25, 1999, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–35,899. The denial notice was signed on May 7, 1999 and published in the **Federal Register** on June 3, 1999 (64 FR 29888).

The petitioner provided additional information about imports of coal which should have been considered by the Department in its survey of customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted. Signed at Washington, D.C. this 8th day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15956 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,276]

Dawson Production, Midland, Texas; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at

Dawson Production, Midland, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,276; Dawson Production, Midland, Texas (June 14, 1999)

Signed at Washington, D.C. this 14th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15946 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,480]

Florida Coast Paper Company, L.L.C. Port Saint Joe, Fl; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Florida Coast Paper Company, L.L.C., Port Saint Joe, Florida. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,480; Florida Coast Paper Co., L.L.C., Port Saint Joe, Florida (June 14, 1999)

Signed at Washington, DC this 11th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15954 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 6, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 6, 1999.

The petitions filed in this case are available for inspection at the office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 05/10/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,171	Gerber Childrenswear (Wkrs)	Ballinger, TX	04/26/1999	Babies Blanket Sleepers.
36,172	Pennant Etc (Wkrs)	Long Island, NY	04/26/1999	Underwear, Lingerie.
36,173	Young Morgan Lumber (Co.)	Lyons, OR	04/29/1999	Lumber.
36,174	Cranston Print Works (Wkrs)	Providence, RI	04/15/1999	Engraved Screens for Textile Printing.
36,175	Frog, Switch & Mfg. (USWA)	Carlisle, PA	04/15/1999	Maganese Steel Crusher Parts.
36,176	Phoenix Production (Co.)	Cody, WY	04/12/1999	Crude Oil.
36,177	Lansdale Manufacturing (Wkrs)	Montgomeryville, PA	04/14/1999	Ladies' Apparel.
36,178	Alcoa Memory Products (Wkrs)	Sidney, OH	04/15/1999	Aluminum Disk Blanks.
36,179	Wilcox Forging Corp (USWA)	Mechanicsburg, PA	04/14/1999	Die Commerical Forgings.
36,180	Aromat Corporation (Co.)	San Jose, CA	04/12/1999	Electronic Relays.
36,181	Lighthouse Electric Ltd. (Co.)	Middlesex, NC	04/23/1999	Telecommunications Equipment.
36,182	Jackes Evans (Wkrs)	St. Louis, MO	04/22/1999	Stovepipes.
36,183	Oxford Automotive (Co.)	Hamilton, IN	04/21/1999	Leaf Springs for Autos.
36,184	LM and Sons, Inc. (Wkrs)	Vineland, NJ	04/22/1999	Ladies' Jackets.
36,185	AZT Sewing Co. (Wkrs)	Commerce, CA	04/21/1999	Jeans, Jackets.
36,186	International Electronic (Wkrs)	Burbank, CA	04/23/1999	Electronics.
36,187	Fluor Daniel (Co.)	Sugar Land, TX	04/16/1999	Hydrocarbons.
36,188	Preferred Foundations (UNITE)	Freeport, TX	04/28/1999	Intimate Apparel.
36,189	Gary Williams Energy (Wkrs)	Roosevelt, UT	04/23/1999	Natural Gas Liquid.
36,190	Cole Haan Manufacturing (Co.)	Livermore Falls, ME	04/27/1999	Leather Shoes.
36,191	Greene Metal Products (Wkrs)	Sturtevant, WI	04/16/1999	Gas Grill Burner, Tubes.
36,192	Nextrom, Inc (Wkrs)	Perth Amboy, NJ	04/23/1999	Wire Drawing Machines & Spare Parts.
36,193	Andin International (Wkrs)	New York, NY	04/22/1999	Jewelry.
36,194	Barko Hydraulics, LLC (IBB)	Superior, WI	04/20/1999	Log Handling Equipment.
36,195	Jahmpasa USA (Wkrs)	Vass, NC	04/26/1999	Shirts.
36,196	Biological Abstracts (Wkrs)	Philadelphia, PA	04/25/1999	Printed Reference Publications.
36,197	Copper Industries, Inc (IUE)	Elizabethtown, KY	04/13/1999	Circuit Protection Products (Fuses).
36,198	William Carter Co (Wkrs)	Senatobia, MS	04/26/1999	Infants and Children's Apparel.

APPENDIX—Continued

[Petitions instituted on 05/10/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,199	Key Tronic Southwest (Co.)	El Paso, TX	04/26/1999	Computer Keyboards.
36,200	AMG Resources Corp. (Wkrs)	Philadelphia, PA	04/23/1999	Detined Steel Bundles.
36,201	Lighting Resources Int'l (Wkrs)	Bellevue, OH	04/28/1999	Equipment for Making Lamps.
36,202	Thunderbird Mining (USWA)	Eveleth, MN	04/22/1999	Taconite Pellets.
36,203	Apollo Tanning Ltd (Co.)	Camden, ME	04/30/1999	Leather Tanners.
36,204	Madeira Twin Fashion (UNITE)	New Bedford, MA	04/20/1999	Ladies' Winter Coats.
36,205	Dante Fashions (UNITE)	Jeanette, PA	04/26/1999	Ladies' Sportswear.
36,206	Hamilton Beach Proctor (Co.)	Southern Pines, NC	04/27/1999	Soleplate and Heating Elements.
36,207	Tarkett, Inc (PACE)	Whitehall, PA	04/29/1999	Vinyl Flooring.
36,208	QDS Components (Wkrs)	Winchester, TN	04/23/1999	Hubs, Spindles and Industrial Wheels.
36,209	Acorn Products (Co.)	Hampden, ME	05/03/1999	Footwear.
36,210	Flying J. Oil and Gas (Wkrs)	Sidney, MT	04/08/1999	Crude Oil and Natural Gas.
36,211	Aquila Gas Pipeline (Co.)	San Antonio, TX	04/21/1999	Gas Pipeline Transmission.
36,212	Weatherford International (Co.)	Longview, TX	04/09/1999	Seismic Data Analysis.
36,213	Veritas Geosciences (Wkrs)	Midland, TX	04/12/1999	Process Exploration Data.
36,214	Union Drilling (Wkrs)	Roosevelt, UT	04/06/1999	Oil.
36,215	Circle C Tool & Wireline (Co.)	Snyder, TX	04/01/1999	Service Oilwells.
36,216	Key Four Corners (Wkrs)	Roosevelt, UT	04/08/1999	Drilling, Completions for Gas Industry.
36,217	Fairweather E and P (Co.)	Anchorage, AK	04/06/1999	Oil Drilling.
36,218	Trans Texas Gas (Wkrs)	Laredo, TX	04/21/1999	Oil and Gas.
36,219	Matador Petroleum (Wkrs)	Dallas, TX	04/02/1999	Exploration of Oil and Gas.
36,220	Forcenergy, Inc (Co.)	Miami, FL	04/01/1999	Exploration of Oil and Gas.
36,221	Don Nan Machine (Wkrs)	Midland, TX	04/23/1999	Oilfield Products.
36,222	Fairfield Industries (Co.)	Sugar Land, TX	04/27/1999	Digital Telemetry Systems.
36,223	Hydrolex, Inc (Wkrs)	Longview, TX	04/02/1999	Pressure Control Equipment.
36,224	Starke Uniform Mfg. (Wkrs)	Starke, FL	04/21/1999	Employee Uniforms.
36,225	Glenn Enterprises (Co.)	Reform, AL	05/03/1999	Men's and Boys' Pants and Shorts.
36,226	Seagull Energy (Co.)	Houston, TX	04/08/1999	Oil and Gas.

[FR Doc. 99–15948 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 6, 1999.

Interested persons are invited to submit written comments regrading the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 6, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC this 17th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 05/17/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,227	R and M Energy Systems (Wrks)	Borger, TX	04–22–1999	Oilfield Equipment.
36,228	Buster Brown Apparel (Comp)	Lebanon, VA	05–04–1999	Children's Apparel.
36,229	Neomet Corp (Comp)	Edinburg, PA	04–07–1999	Magnets.
36,230	Johansen Brothers Shoe (Wrks)	Harrisburg, AR	04–30–1999	Shoes.
36,231	BASF Corp (UFCW)	Rensselaer, NY	04–30–1999	Chemicals.
36,232	Total Safety, Inc (Wrks)	Watford City, ND	04–28–1999	Rental of Safety Prod. to Oil Industry.
36,233	ADC Solitra (Wrks)	Hutchinson, MN	04–23–1999	RF Filters.
36,234	Northrop Grumman Corp (UAW)	Dallas, TX	04–29–1999	Stop Fittings.

APPENDIX—Continued

[Petitions instituted on 05/17/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,235	Homer Flooring Co., Inc (Comp)	Dollar May, MI	04–19–1999	Hardwood Flooring.
36,236	Yopp & Co., Inc (Wrks)	Florence, SC	04–22–1999	Infants Apparel.
36,237	Actown Electrocoil (Wrks)	Spring Grove, IL	05–03–1999	Transformers.
36,238	H.L. Miller & Son, Inc (Comp)	Iola, KS	05–03–1999	Ladies' Apparel.
36,239	NewsSouth Apparel, LLC (Comp)	Brewton, AL	04–28–1999	Ladies' Blouses, Tops.
36,240	Consolidated papers, Inc (Comp)	Niagara, WI	04–29–1999	Coated Groundwood Printing Papers.
36,241	Holston Defense Corp (Wrks)	Kingsport, TN	04–23–1999	Explosives.
36,242	Radan CIM, Inc (Comp)	Malvern, PA	04–29–1999	Sales and Service of Software.
36,243	Levi Strauss and Co (Comp)	Morrilton, AR	05–10–1999	Jeans.
36,244	White Knight Healthcare (Wrks)	Douglas, AZ	05–07–1999	Surgeon Gowns and Drapes.
36,245	Clariant Corp (Comp)	Coventry, RI	05–10–1999	Textile Dyes and Pigments.
36,246	Wheaton, Inc (GMP)	Millville, NJ	04–27–1999	Glass Containers.
36,247	Softspun Knitting Mills (Comp)	Henderson, NC	05–02–1999	Men's Ladies'; and Childrens' Hosiery.
36,248	Armenian American Explor. (Comp)	Rancho Santa Fe, CA	04–29–1999	Oil Exploration.
36,249	Coastal Oil and Gas Corp (Wrks)	Houston, TX	04–20–1999	Oil and Gas.
36,250	ASCG Inspection, Inc (Wrks)	Anchorage, AK	04–09–1999	Oil and Gas.
36,251	Gary Drilling Co., Inc (Comp)	Bakersfield, CA	04–19–1999	Oil/Gas Drilling.
36,252	Fina Oiland Chemical Co (Comp)	Midland, TX	04–23–1999	Oil and Gas.
36,253	Venture Petroleum Inc (Wrks)	Noble, IL	04–19–1999	Oil.
36,254	Riggs Petroleum Co (Wrks)	Graham, TX	04–27–1999	Crude Oil.

[FR Doc. 99–15947 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,385]

Rainbow Piece Dye, Fair Lawn, NJ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Rainbow Piece Dye, Fair Lawn, New Jersey. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,385; Rainbow Piece Dye, Fair Lawn, New Jersey (June 14, 1999).

Signed at Washington, D.C. this 14th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15949 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,853]

Titan Oil, Incorporated, Baker, MT; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 15, 1999 in response to a worker petition which was filed on behalf of former workers at Titan Oil, Incorporated, located in Baker, Montana (TA–W–35, 853).

The Department of Labor has not been able to collect the necessary data and information from the company official of the subject firm to render a trade adjustment assistance determination. Consequently, the Department of Labor cannot conduct an investigation to make a determination as to whether the workers are eligible for adjustment assistance benefits under the Trade Act of 1974. Therefore, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 4th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15945 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02667; NAFTA–02667A]

Russell Corp., Marianna, Florida and Jerzees Activewear, Niceville, Florida; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 as amended (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 24, 1998, applicable to all workers at Russell Corp., Marianna, Florida. The notice was published in the **Federal Register** on December 16, 1998 (63 FR 69314).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's and women's activewear (T-shirts, plackets, headwear and fleece). Findings show that Jerzees Activewear, Niceville, Florida is a division of Russell Corp. The workers are engaged in the production of knitted T-shirts and sweatwear. The company reports that worker separations will occur at Jerzees Activewear when it closes in July, 1999.

Accordingly, the Department is amending the certification to cover the workers of Jerzees Activewear, Niceville, Florida.

The intent of the Department's certification is to include all workers of Russell Corp. adversely affected by increased imports from Mexico.

The amended notice applicable to NAFTA–02667 is hereby issued as follows:

All workers of Russell Corp., Marianna, Florida (NAFTA–02667) and Jerzees Activewear, Niceville, Florida (NAFTA–02667A) who became totally or partially separated from employment on or after September 8, 1997 through November 24, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15950 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–4]

Process Safety Management of Highly Hazardous Chemicals; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed reduction, and extension of the information collection requirements contained in the standard on Process Safety Management of Highly Hazardous Chemicals (29 CFR 1910.119).

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Written comments must be submitted on or before August 23, 1999.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–99–4, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Written comments 10 pages or less in length may also be transmitted by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in the Process Safety Management (PSM) standard is available for inspection and copying in the Docket Office, or will be mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR on PSM, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

1. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and impact of information collection requirements on respondents can be properly assessed.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In this regard, the information collection requirements in the Process Safety Management of Highly Hazardous Chemicals Standard (29 CFR 1910.119) prevent or minimize the consequences of accidents involving highly hazardous chemicals.

II. Proposed Actions

OSHA proposes to reduce its earlier estimates of the burden hours for the Process Safety Management Standard from 93,407,489 to 73,111,180 hours. The burden reduction resulted when the Agency reestimated the number of plants and processes that were in compliance with the standard before it was promulgated. Under ORA–95, the burden for activities that are a normal and customary business practice are not counted when calculating the burden associated with information collection requirements. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to extend the approval of the information collection requirements in the PSM standard.

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Process Safety Management of Highly Hazardous Chemicals (29 CFR 1910.119).

OMB Number: 1218–0200.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 192,865.

Frequency: Varies (on occasion, annually).

Average Time per Response: Varies from 5 minutes (.08 hr.) to 146.5 hours.

Estimated Total Burden Hours: 73,711,180.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 11.

Signed at Washington, DC, this 24th day of May 1999.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99–15957 Filed 6–22–99; 8:45 am]

BILLING CODE 4510–23–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

June 16, 1999.

Federal Register Citation of Previous Announcements, Vol. 64, No. 89, at 31,020, June 9, 1999.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 a.m., Friday, June 11, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW, Washington, DC.

STATUS: Open.

CHANGES IN MEETING: The Commission meeting to consider the location and terms of oral argument in *Morgan* v. *Arch of Illinois*, Docket No. LAKE 98–17–D, was canceled.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 a.m., Thursday, June 17, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW, Washington, DC.

STATUS: Open.

CHANGES IN MEETING: The Commission postponed until 9:30 a.m., Wednesday, June 23, 1999, the meeting to consider and act upon the following:

1. *Secretary of Labor on behalf of Baier* v. *Durango Gravel*, Docket No. WEST 97–96–DM (Issues include whether substantial evidence supports the judge's determination that Durango Gravel's termination of the complainant violated section 105(c) of the Mine Act.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–16092 Filed 6–21–99; 1:57 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–090]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: Available for licensing on or after June 23, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681–0001; telephone (757) 864–9260, fax (757) 864–9190.

NASA Case No. LAR–15543–1: Phenylethynyl Containing Reactive Additives;

NASA Case No. LAR–15818–1: Optical Path Switching Based Differential Absorption Radiometry for Substance Detection;

NASA Case No. LAR–15544–1: High Performance/High Temperature Transfer Molding Resins;

NASA Case No. LAR–15492–2: A Method of Making Carbon-Carbon Piston Architectures (Div of-1);

NASA Case No. LAR–15971–1: Three Dimensional Object Tracking System and Method Employing Plural Sensors and Plural Processors for Performing Parallel Processing (CIP of 15289–2);

NASA Case No. LAR–15604–1–CU: Thin-Film Thermal Conductivity Meter;

NASA Case No. LAR–15968–1: A Novel Shape Parameterization Approach;

NASA Case No. LAR–15834–1: High Performance/High Temperature Resins for Infusion and Transfer Molding Processes;

NASA Case No. LAR–15767–1: Polyimide Foam from Monomeric Solutions;

NASA Case No. LAR–15831–1: Hollow Polyimide Microspheres;

NASA Case No. LAR–15645–1–CU: Modulated Ft-Ramen Fiber Optic Spectroscopy for Thermal Discrimination in Real-Time High Temp Chemical Reactions;

NASA Case No. LAR–15977–1: Polyimide Foam from Monomeric Solutions;

NASA Case No. LAR–15498–2: Carbon Fiber Reinforced Carbon Composite Rotary Valves for Internal Combustion Engines (Div of-1);

NASA Case No. LAR–15498–3: Carbon Fiber Reinforced Carbon Composite Rotary Valves for Internal Combustion Engines (Div of-1);

NASA Case No. LAR–15498–4: Carbon Fiber Reinforced Carbon Composite Rotary Valves for Internal Combustion Engines (Div of-1);

NASA Case No. LAR–15962–1–CU: Poly(Arylether Ketones) Bearing Alkylated Side Chains.

Dated: June 15, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15873 Filed 6–22–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Theater/Musical Theater Section (Creation & Presentation (A) category) to the National Council on the Arts will be held on July 12–16, 1999 in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506. The panel will meet from 9:30 a.m. to 7 p.m. on July 12th–14th, from 9:30 a.m. to 5:30 p.m. on July 15th, and from 9:30 a.m. to 5 p.m. on July 16th. A portion of this meeting, from 3:30 p.m. to 5:30 p.m. on July 15th, will be open to the public for policy discussion.

The remaining portions of this meeting, from 9:30 a.m. to 7 p.m. on July 12th–14th, from 9:30 a.m. to 3:30 p.m. on July 15th, and from 9:30 a.m. to 5 p.m. on July 16th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these session will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Accessability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 7, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–15905 Filed 6–22–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Literature Section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held on July 19–21, 1999 in Room 708 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. Panel A will meet from 9 a.m. to 7 p.m. on July 19th–20th, and from 9 a.m. to 1 p.m. on July 21st, and Panel B will meet from 2:30 p.m. to 4:30 p.m. on July 21st. A portion of this meeting, from 9a.m. to 11 a.m. on July 21st, will be open to the public for policy discussion.

The remaining portions of these meeting from 9 a.m. to 7 p.m. on July 19th and 20th, and from 11 a.m. to 1 p.m. (Panel A), and 2:30 p.m. to 4:30 p.m. (Panel B), on July 21st, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 7, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–15906 Filed 6–22–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meetings of the Combined Arts Panel, Theater Section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held on July 26–30, 1999 in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. The panel will meet from 9:30 a.m. to 7 p.m. on July 26th–29th and from 9:30 a.m. to 5 p.m. on July 30th. A portion of this meeting, from 3:00 p.m. to 5 p.m. on July 30th, will be open to the public for policy discussions.

The remaining portions of this meeting, from 9:30 a.m. to 7 p.m. on July 26th–29th and from 9:30 a.m. to 3 p.m. on July 30th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 17, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–15907 Filed 6–22–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meetings of the Combined Arts Panel, Multidisciplinary Section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held on July 27–28, 1999 and July 30, 1999, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. The panel reviewing the Creation & Presentation category will meet from 9 a.m. to 5:30 p.m. on July 27th, and from 9 a.m. to 4:30 p.m. on July 28th, and the panel reviewing the Planning & Stabilization category will meet from 9 a.m. to 5 p.m. on July 30th. A portion of each meeting, from 3:30 p.m. to 4:30 p.m. on July 28th, and from 2:30 p.m. to 3:30 p.m. on July 30th, will be open to the public for policy discussions.

The remaining portions of these meeting, from 9 a.m. to 5:30 p.m. on July 27th, from 9 a.m. to 3:30 p.m. on July 28th, and from 9 a.m. to 2:30 p.m. and 3:30 p.m. to 5 p.m. on July 30th, are for the purposes of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the

Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 16, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–15908 Filed 6–22–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meetings of the Combined Arts Panel, Presenting Section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held on July 29, 1999. The panel will meet from 8:30 a.m. to 6 p.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506. A portion of this meeting, from 4:30 p.m. to 5 p.m., will be open to the public for policy discussions.

The remaining portions of this meeting, from 8:30 a.m. to 4:30 p.m. and from 5 p.m. to 6 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: June 16, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–15909 Filed 6–22–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company, et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company, et al. (the licensee) to withdraw its August 23 and November 3, 1995, applications for proposed amendments to Facility Operating License No. DPR–65 for the Millstone Nuclear Power Station, Unit No. 2, located in Waterford, Connecticut.

The proposed amendments would have revised the facility Technical Specifications to allow outage time extensions for the Emergency Diesel Generators and the Low Safety Injection System.

The Commission had previously issued for each application a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 13, 1995, and March 27, 1996 (60 FR 47620 and 61 FR 13529). However, by letter dated May 14, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the applications for amendments dated August 23 and November 3, 1995, and the licensee's letter dated May 14, 1999, which withdrew the applications for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Public Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 15th day of June 1999.

For the Nuclear Regulatory Commission.

Ronald B. Eaton, Sr.,

Project Manager, Section 2 Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15960 Filed 6–22–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Evidence for Application of Overall Minimum.
(2) *Form(s) submitted:* G–319,G–320.
(3) *OMB Number:* 3220–0083.
(4) *Expiration date of current OMB clearance:* 08/31/1999.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Individuals or households.
(7) *Estimated annual number of respondents:* 290.
(8) *Total annual responses:* 290.
(9) *Total annual reporting hours:* 121.
(10) *Collection description:* Under section 3(f)3 of the Railroad Retirement Act, the total monthly benefits payable to a railroad employee and his family are guaranteed to be no less than the amount which be payable if the employee's railroad service had been covered by the Social Security Act.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–15886 Filed 6–22–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 17a–19 and Form X–17A–19, SEC File No. 270–148, OMB Control No. 3235–0133

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–19 requires National Securities Exchanges and Registered National Securities Associations to file a Form X–17A–19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examining authority may be necessary.

It is anticipated that approximately eight National Securities Exchanges and Registered National Securities Associations collectively will make 3,000 total annual filings pursuant to Rule 17a–19 and that each filing will take approximately 15 minutes. The total burden is estimated to be approximately 750 total annual hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: June 16, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15910 Filed 6–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23873; 812–11520]

Salomon Brothers Series Funds Inc., et al.; Notice of Application

June 17, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit Salomon Brothers Small Cap Growth Fund, series of Salomon Brothers Series Funds Inc., to acquire all of the assets and liabilities of the Smith Barney Special Equities Fund, a series of Smith Barney Investment Funds Inc. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: Salomon Brothers Series Funds Inc. ("Salomon Brothers Fund"), Smith Barney Investment Funds Inc. ("Smith Barney Fund"), Salomon Brothers Asset Management Inc ("SBAM"), and SSBC Fund Management Inc. ("SSBC," together with SBAM, the "Advisers").

FILING DATES: The application was filed on February 16, 1999. Applicants have agreed to file and amendment to the application during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 8, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Scretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 7 World Trade Center, 38th Floor, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, (202) 942–0634, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. Salomon Brothers Fund, a Maryland corporation, is registered under the Act as an open-end management investment company and is currently comprised of multiple series, including Salomon Brothers Small Cap Growth Fund (the "Acquiring Fund"). Smith Barney Fund, a Maryland corporation, is registered under the Act as an open-end management investment company. Smith Barney Special Equities Fund (the "Acquired Fund," together with the Acquiring Fund, the "Funds") is a series of the Smith Barney Fund.

2. SBAM is registered under the Investment Advisers Act of 1940 ("Advisers Act") and is the investment adviser to the Acquiring Fund. SBAM is wholly-owned by Salomon Brothers Holding Company ("SBHC"), which is wholly-owned by Salomon Smith Barney Holdings Inc. ("Holdings"). As of April 23, 1999, SBHC owned approximately 31.6% of the outstanding shares of the Acquiring Fund. SSBC is registered under the Advisers Act and is the investment adviser to the Acquired Fund. SSBC is wholly-owned by Holdings.

3. On January 7, 1999, and January 11, 1999, the boards of directors of Salomon Brothers Fund and Smith Barney Fund ("Boards"), including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"), respectively, approved a Plan of Reorganization ("Plan"). Under the Plan, on the closing date as defined in the Plan ("Closing Date"), the Acquiring Fund will acquire all of the assets and liabilities of the acquired Fund in exchange for shares in the Acquiring Fund ("the Reorganization"). Following the Reorganization, each Acquired Fund shareholder will receive shares of a corresponding class of the Acquiring Fund that have an aggregate net asset value ("NAV") equal to the aggregate

NAV of the Acquired Fund's shares held by that shareholder on the Closing Date. Applicants anticipate that the Closing Date will be on or around July 9, 1999.

4. Applicants state that the investment objectives and policies of the Acquiring and Acquired Funds are generally similar. In addition, applicants state that the characteristics of there respective classes of the Acquiring Fund are substantially the same as those of the corresponding classes of the Acquired Fund. The Acquiring Fund offers Class A shares, Class B shares, Class 2 shares, and Class O shares. The Acquired Fund offers Class A shares, Class B shares, Class L shares, and Class Y shares. The Acquired Fund currently has no Class Y shareholders. Class A, Class B, and Class L shareholders of the Acquired Fund will receive Class A, Class B, and Class 2 shares, respectively, of the Acquiring Fund. Class A shares of the Acquiring and Acquired Fund are generally subject to a maximum front-end sales charge of 5.75% and 5.00%, respectively. Class B shares of the Acquiring Fund are subject to a maximum contingent deferred sales charge ("CDSC") of 5.00%, declining to zero seven years after purchase. Class B shares of the Acquired Fund are subject to a maximum DCSC of 5.00%, declining to zero five years after purchase. Class B shares of the Acquiring Fund received in exchange for Class B shares of the Acquired Fund as a result of the Reorganization will continue to be subject to the DCSC schedule in effect for the Acquired Fund at the time of purchase. Class 2 shares of the Acquiring Fund and Class L shares of the Acquired Fund are sold with a front-end sales charge of 1.00% and are subject to a CDSC if redeemed within one year of purchase. For purposes of calculating the CDSC, shareholders of the Acquired Fund will be deemed to have held shares of the corresponding class of the Acquiring Fund since the date the shareholders initially purchased the shares of the Acquired Fund. No sales charge will be imposed in connection with the Reorganization.

5. The Boards, including all of the independent Directors, determined, after considering relevant factors, that the Reorganization is in the best interests of the Acquired Fund's and Acquiring Fund's shareholders, and that the interests of the existing shareholders would not be diluted by the Reorganization. In approving the Plan, the Bonds considered factors including (a) the benefits of managing the Funds as a single Fund; (b) the tax free-nature of the Reorganization; (c) increased operational efficiencies; (d) shareholder expenses after the Reorganization; and (e) the potential benefits to Fund affiliates, including SSBC and SBAM. SBAM will be responsible for expenses incurred in connection with the Reorganization.

6. The Reorganization is subject to a number of conditions precedent, including that: (a) The Acquiring and Acquired Funds receive opinions of counsel that the Reorganization will be tax-free for each Fund and its shareholders; (b) the Acquired Fund's shareholders approve the Plan; and (c) applicants receive from the SEC an exemption from section 17(a) of the Act for the Reorganization. The Plan may be terminated by mutual agreement of the parties at any time prior to the Closing Date. In addition, either party may terminate the Plan if (a) the other party materially breaches a representation, warranty, or agreement contained in the Plan or (b) a condition precedent to the terminating party's obligations cannot be met.

7. Definitive proxy solicitation materials have been filed with the SEC and were mailed to the Acquired Fund's shareholders on April 12, 1999. A special meeting of the Acquired Fund's shareholders was held on May 28, 1999, and the Plan was approved.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization because the Funds may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or common officers. Applicants state that the Acquiring Fund may be deemed to be an affiliated person of SBHC because SBHC owns more than 25% of the outstanding voting securities of the Acquiring Fund. Additionally, SBAM and SBHC are under the common ownership and control of Holdings. because of this ownership, the Acquiring Fund may be deemed an "affiliated person of an affiliated person" of the Acquired Fund.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization. Applicants believe that the terms of the Reorganization are fair and reasonable and do not involve overreaching. Applicants state that the Reorganization will be based on the relative NAVs of the Acquiring and Acquired Funds' shares. Further, applicants state that the Funds have similar investment objectives and policies. Finally, applicants state that the Boards, including all of the Independent Directors, determined that the Reorganization is in the best interests of each Fund and that the interests of the shareholders of the Funds will not be diluted.

For the SEC, by the Division of Investment Management, under designed authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15966 Filed 6–22–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41527; File No. SR–Amex–99–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to the Development of a New Equity Market Structure

June 15, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 16, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commisson" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. Amex filed an amendment to the proposed rule change on May 24, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from William Floyd-Jones, Assistant General Counsel, Legal and Regulatory Policy, Amex, to Michael Walinskas, Associate Director, Division of Market Regulation, Commission, dated May 21, 1999 ("Amendment No. 1"). Amendment No. 1 replaces and supersedes the original filing.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

The Exchange intends to implement a program to change and make its equity market operation more competitive (the "New Equity Market Structure"). A key element of the program is the development of a new electronic order book for equities incorporating automatic execution for electronically delivered orders and transparency of the book up to two minimum trading increments ("ticks") away from the Amex bid and offer. In order to integrate traditional auction market processes with automatic execution of electronically delivered orders, the Exchange will amend it rules to specify that bids and offers in the trading crown must be incorporated in the Amex published quote to be eligible to interact with marketable electronic orders, and that a bid or offer in the quote is not deemed to be accepted by a member on the floor until the specialist enters the acceptance into the book.

To reduce the cost of doing business on the Amex, the Exchange intends to prohibit specialists from charging a commission for executing orders delivered electronically from off the floor for securities traded under the New Equity Market Structure. The Amex will waive a portion of its fees imposed on specialists and will share its revenue with specialists to effectively offset the specialists' loss of floors brokerage with respect to orders delivered electronically from off the floor for securities traded under the New Equity Market Structure. In addition, the Exchange proposes to eliminate the stabilization requirements of Commentaries, .01, .02, and .07 to Rule 170 and expand the parameters of the "2, 1, ½ point Rule" (Rule 154, Commentary .08) to permit specialists to respond to the needs of the fast moving, modern market without unnecessary restrictions.

New Electronic Order Book for Equities

Look at the Book

Specialists will continue to see the entire limit order book at they currently do. In addition, the Exchange will provide trading crowds, booths on the trading floor, and upstairs members with information regarding limit orders on the book up to two ticks away from the Amex displayed quote. Thus, limit order book information for a security that trades in minimum increments of 1/16 will be available for up to 12.5 cents away from the Amex best bid and offer. While limit order book information currently is available to floor brokers on an inquiry basis,[4] the proposed look at the book will make this information available systematically.

For example, assume the Amex quoted market for a stock is 20 to 20⅛, 5,000 by 5,000, and there are limit orders on the book to buy 2,000 shares at 19¹⅝, buy 1,000 at 19⅞ and buy 1,000 at 19¹³⁄₁₆. In this example, the look at the book would include the orders to buy 2,000 by 19¹⁵⁄₁₆ and 1,000 at 19⅞. No limit order information would be disseminated if the order on the book closest to the Amex bid were the order to buy 1,000 at 19¹³⁄₁₆. For any securities that trade in increments smaller than 1/16 under the New Equity Market Structure, the look at the book will remain at two ticks and will narrow in dollar terms.

The Exchange will not include all or none orders, the unelected or unconverted portion of percentage orders, orders for non-regular way settlement,[5] and stop orders in the look at the book display. The Exchange believes that it would be inappropriate to disseminate information regarding all or none orders due to the restriction placed on the execution of these orders, and notes that these orders currently are not included in the Amex published quote.[6] Percentage orders require either an electing transaction or conversion by the specialist into a bid or offer to become capable to execution. Percentage orders, consequently, only will be included in the book or displayed in look at the book information upon election or conversion.[7] Non-regular way delivery is a fundamentally different proposition from standard settlement.[8] To prevent confusion, therefore, limit orders for non-regular way settlement will not be commingled with orders for regular way delivery in look at the book information. The Exchange also believes that the distribution of information regarding the existence and location of stop orders should be minimized to reduce opportunities for trading abuses.[9]

[4] Amex Rule 174.

[5] Orders for delivery on a cash, next day, or seller's option basis are non-regular way orders.

[6] Amex Rule 131(c). *See also* Exchange Act Rule 11 Ac1–4(c0(7).

[7] Amex Rules 131(n) and 154, Commentary .15.

[8] Amex Rule 126(a).

[9] "Gunning" stop orders, for example, is a practice whereby persons with knowledge of the location of stop orders will engage in buying or selling designed to elect the stop orders and trigger additional buying or selling.

Transmission of Orders and Crowd Interest

Market and limit orders will be transmitted electronically to the book from off the floor via CMS ("Common Message Switch") and from on the floor via BARS ("Booth Automated Routing System").[10] Floor brokers and traders may also drop hard copy limit orders with the specialist or stand in the crowd and bid and offer as they do currently. Specialist unit personnel will be responsible for entering dropped orders and bids and offers from the trading crowd into the book or the Amex published quote.

Orders and modifications to orders (*e.g.*, cancellations) that are electronically transmitted to the post will be processed automatically. For example, limit orders transmitted to the post electronically will be automatically filed in the limited order book in appropriate price/time priority and limit orders that would affect the Amex published quote will be automatically incorporated into the Amex published quotes.

Automatic Execution

Market and marketable limit orders entered electronically may execute automatically (*i.e.*, without any human intervention) against the Amex published quote up to the display size, and such executions will be automatically reported to the Tape and to the member firms that initiated the orders. Following an automatic execution, the specialist will have the ability to manually determine the new Amex published quote to assure appropriate representation of book, crowd and specialist proprietary interest.[11] The Exchange believes that customers will favor an automatic execution since it will speed reports and provide customers with increased control over their orders. Persons that do not wish an automatic execution may have their orders entered with a request for a "stop" and these orders will be ineligible for automatic execution.[12]

Crowd interest, the specialist's proprietary quote, and orders dropped by brokers must be incorporated into the Amex published quote to take part in automatic executions. Similarly, crowd interest, the specialist's proprietary quote and dropped orders will be firm with respect to electronic orders until physically removed form the Amex published quote. The Exchange is amending Rules 123 ("Manner of Bidding and Offering") to provide that bids and offers must be incorporated into the published quote to preserve their standing with respect to incoming electronic orders, and that such bids and offers remain firm with respect to electronic orders until physically removed from the Amex quote or until an execution takes place.[13] Trades between brokers and traders in the crowd will occur outside the book and will be reported to the Tape.

The following examples will illustrate how automatic execution will work. Assume an Amex published quote of 20 to 20⅛, 5,000 by 5,000. Assume further that the bid consists exclusively of one order on the book, and that an order to sell 3,000 shares at the market is sent electronically to the floor. In this case, 3,000 shares would trade automatically at 20, the trade would be reported to the Tape, and execution reports would be sent to both the buy and sell side member firms. Automatic execution will work similarly if the Amex published bid consists of both booked limit orders and the specialist's proprietary interest. Assume an Amex published quote of 20 to 20⅛, 5,000 by 5,000, with the bid consisting of a 2,000 share limit order and the specialist's bid for 3,000 shares. Assume that an order to sell 3,000 shares at the market is sent electronically to the book. In this example, 3,000 shares would trade automatically at 20, the trade would be reported to the Tape, the book would automatically allocate 2,000 shares to the limit order and 1,000 shares to the specialist,[14] and execution reports would be sent to the buy and sell side firms.

The process will change slightly if the Amex published quote includes crowd interest. As before, the book will automatically execute eligible incoming electronic orders. The specialist, however, will manually allocate the execution on the contra side of the electronic order in accordance with the Exchange's rules of precedence. For example, assume the market is quoted 20 to 20⅛, 5,000, and an order to sell 3,000 shares at the market is sent electronically to the floor. Also assume that the bid consists of (i) the specialist as principal bidding for 1,000 shares, (ii) a broker representing a customer order bidding for 1,000 shares, (iii) a limit order on the book to buy 3,000 shares, and (iv) the broker and book bids are on parity. In this case, 3,000 shares would trade automatically at 20, the selling firm would get a report at 20, and the 3,000 share trade would print automatically. The specialist, however, would allocate the fill on the buy side of the trade in accordance with the Exchange's current rules of precedence.[15] Thus, in the example above, the specialist would allocate 2,000 shares to the order on the book and 1,000 shares to the broker in the crowd. Following the allocation, the book would automatically generate execution reports to the buy side firms.

In the event that an incoming executable electronic order is equal to or larger than the displayed quote, the incoming order will automatically execute to the full extent of the displayed quote, the trade will print, the member firm entering the electronic order will receive a report for the amount that traded, the specialist will manually requote the market, and the unexecuted balance of the incoming electronic order will be handled in accordance with the Exchange's current auction market processes. For example, assume the market for a stock is 20 to 20⅛, 5,000 by 5,000, and there are limit orders on the book to buy 2,000 at 19$^{15}/_{16}$, by 1,000 to 19⅞ and buy 1,000 at 19$^{13}/_{16}$. Assume further that there is a broker in the crowd working a sell order and that an electronic order to sell 7,000 shares at the market arrives at the book. The book would automatically execute 5,000 shares at 20 (the electronic order would sell all 5,000 shares) and print the trade. The specialist then would execute the remaining 2,000 shares of the unexecuted electronic market order given the limit orders on the book, the crowd's expressed interest, and the specialist's interest and requote the market.

Automatic execution will be unavailable when the specialist is in the process of manually executing a trade. This will occur in connection with (i) openings and reopenings, (ii) trades between the crowd and the specialist or orders in the book, (iii) trades between the specialist and the book, (iv) block trades, (v) the execution of queued orders, and (vi) the pendency of

[10] BARS is currently under development.

[11] During the brief period between an automatic execution and the time the specialist updates the market, the "old" quote will be unavailable for trading because the specialist will be in the process of revising the Amex published quote.

[12] An agreement to "stop" stock at a specified price constitutes a guarantee by the member who grants the stop to execute the order at the stop price or better. *See* Amex Rule 109.

[13] Amex has indicated that bids and offers will also remain firm with respect to electronic orders until an execution takes place. Telephone call between Michael Ryan, Chief of Staff & Senior Legal Officer, Amex, and Michael Walinskas, Associate Director, Commission, on June 4, 1999. Disputes regarding bids and offers will be resolved by Floor Officials. *See* Amex Rules 22 and 126(h).

[14] Amex Rule 155 provides that a specialist shall give precedence to orders on the book.

[15] Amex Rules 111, Commentary .07; 126(e); and 155.

Intermarket Trading System ("ITS") commitments.

The Exchange will preserve its existing procedures for opening and reopenings to ensure single price openings.[16] A single price opening involves a balancing of supply and demand to arrive at a single consensus price that cannot be achieved by an automatic execution against a displayed bid or offer.

The Exchange's rules currently provide that a trade occurs upon the acceptance of a bid or offer.[17] Due to the speed of automatic executions, however, these executions could preempt trades executed in the traditional manner if automatic execution were available during the processing of such trades. For example, assume a broker walks into a crowd, asks for a market, and is told to 20⅛, 5,000 by 5,000. Assume the broker says "sell 5,000." Under the Exchange's current rules, a trade has occurred on the broker's acceptance of the bid. However, if automatic execution were available during the processing of the trade, it would be possible for an incoming electronic order to hit the bid and sell the stock ahead of the broker. For this reason, automatic execution will be unavailable while manually executed trades are being processed.

The Exchange, accordingly, is amending Rule 128 to provide that a trade does not occur between a broker in the crowd and the specialist or another member whose bid or offer is incorporated in the Amex published quote until the specialist begins to process the trade.[18]

Automatic execution will be unavailable following automatic executions to allow for the inclusion of specialist and crowd interest in the Amex published quote. Where there is no crowd interest in the Amex published quote, there are no messages in queue that may affect the quote, and [19] the bid or offer is not exhausted, automatic execution will be available after a fixed time interval (*e.g.*, 15 seconds), or immediately after the specialist manually updates the market.[20] In those circumstances where there is crowd interest in the published quote, there are messages in queue that may affect the quote, or the bid or offer is exhausted, automatic execution will be available immediately after the specialist manually updates the market. For example, assume the market is 20 to 20⅛, 5,000 by 5,000, there is no crowd interest in the quote, and an order to sell 3,000 shares at the market is automatically executed. If the specialist takes no action following this trade and there are no messages in queue that would affect the quote, after a fixed time interval (*e.g.*, 15 seconds), the Amex published quote would automatically become 20 to 20⅛, 2,000 by 5,000, and automatic execution would become available.

Incoming electronic orders and other messages that may affect the quote (*e.g.*, order cancellations) will queue during times when automatic execution is unavailable. The specialist will neither have access to, nor be advised of the existence of, queued messages until the termination of queuing. The book will automatically process order cancellations and modifications and away from the market limit orders immediately following termination of queuing without manual intervention. After the book automatically processes order cancellations and modifications and away from the market limit orders, the specialist will manually process queued marketable orders to ensure maximum possible order interaction. Automatic execution will resume once all messages in the queue are processed and a new market is disseminated.

The benefits of manually processing of queued marketable orders are illustrated by the following example. Assume the market is 20 to 20⅛, 5,000 by 5,000 and a broker walks into the crowd and sells 5,000 shares, eliminating the entire Amex published bid. Assume that a market order to buy 1,000 shares and a market order to sell 1,000 shares both are received electronically by the book while the specialist processes the 5,000 share trade, and that the specialist requotes the market 19$^{15}/_{16}$ to 20$^{1}/_{16}$, 2,000 by 2,000, following the execution of the 5,000 share trade. If automatic execution were available prior to the disposition of the orders in the queue, the two electronic market orders would execute sequentially at different prices. To prevent this, the specialist will execute queued orders manually to ensure maximum potential order interaction. In this example, the specialist would pair-off the two orders at 20, requote the market at 19$^{15}/_{16}$ to 20$^{1}/_{16}$, 2,000 by 2,000, and automatic execution would resume.

The Exchange anticipates that during heavy trading it may be desirable to suspend automatic execution in a particular stock without queuing incoming messages. Such action only will be taken with the approval of a Floor Official. In addition, it may be necessary to suspend automatic execution on a floor-wide basis without queuing incoming messages in the event of systems difficulties or unusual market conditions. Floor-wide suspension of automatic execution only will be authorized by a Senior Floor Official. If automatic execution is suspended, orders and messages will be processed by the specialist in the same manner as they currently are handled.

Interaction With Other Markets

The new equity book will not permit automatic executions in situations where an away market displays a higher bid or lower offer for 200 or more shares. In these situations, the specialist will have the option either to manually execute the income order at the better price or transmit it to the away market. For example, assume the Amex market is 20 to 20⅛, 5,000 by 5,000, and an away market is bidding 20$^{1}/_{16}$ for 200 shares. Assume that the book receives an electronic order to sell 200 shares at the market. In this case, the book would not execute the electronic order automatically. Instead, the specialist either would execute the order at 20$^{1}/_{16}$, or ship it to the away market via ITS. Once the incoming order is shipped through ITS as a commitment, it can neither be executed on the Amex nor canceled by the originating firm until it expires (one minute) or is canceled by the receiving market.

The implementation of the new book will not result in the way ITS commitments are handled, and incoming ITS commitments will not receive an automatic execution. Similarly, the Exchange proposes to adopt new Rule 431 that would prohibit members and member organizations from submitting orders for market makers in other markets for automatic execution in the Exchange's trading system unless such market affords a comparable level of service to Amex specialists. The Exchange believes it is appropriate to not provide the new automatic execution service to the market in Amex listed stocks that

[16] Amex Rules 108(a) and 154, Commentary .07.

[17] Amex Rule 128 ("Contract Made on Acceptance of Bid or Offer").

[18] Amex has indicated that the point at which the specialist "begins to process the trade" means when the specialist has accepted the trade and is ready to report it. Telephone call between Michael Ryan, Chief of Staff & Senior Legal Officer, Amex, and Michael Walinskas, Associate Director, Commission, on June 4, 1999.

[19] Amex has clarified that the filing should state "and the bid or offer is not exhausted," not "or the bid or offer is not exhausted." Telephone call between Michael Ryan, Chief or Staff & Senior Legal Officer, Amex, and Michael Walinskas, Associate Director, Commission, on June 4, 1999.

[20] *Id.*

excludes Amex specialists from their comparable services.[21]

During the period when there are pending incoming or outgoing ITS commitments, the book will not permit automatic executions in order to prevent trade throughs and to provide that the market does not change during the pendency of the commitments. During these times, incoming orders and cancellations (but not additional ITS commitments) will queue. Incoming ITS commitments will not queue to allow specialists sufficient time to respond to them within their life.

Specialists will not see queued messages or receive an advice of their existence prior to processing except when an ITS commitment is received while messages already are in queue (*i.e.*, there is a preexisting queue at the time the commitment arrives). In this one circumstance, specialists will receive an advice that there are orders in queue without any specification as to the contents of the queued messages (*e.g.*, whether the messages are buy or sell orders or the size of the orders). This advice will permit specialists to process queued orders and ITS commitments together in their proper time sequence following the conclusion of the event that caused the initial suspension of automatic execution. Automatic execution will resume once the orders in the queue and the ITS commitment are processed.[22]

Market Surveillance

The Exchange currently requires specialists to maintain and file with the Exchange a paper record of their principal transactions in both specialty securities and related derivative securities. This record, referred to as the "191 Book" after the Exchange Rule that requires its preparation, is a three-part form that includes for each specialty security opening positions, principal trades, trade times, contra broker badge numbers, and tick. In addition, certain actions by specialists require Floor Official approval, and these approvals traditionally have been memorialized by the Floor Official signing the specialist's 191 Book.[23]

Today, the Exchange's regulatory staff go to the trading floor if they wish to see specialist trading information in real-time. The new equity book, however, will update this procedure and electronically provide the Exchange's regulatory personnel with specialist trading activity in real-time. The new book also will maintain a record of Floor Official approval of specialist transactions. The Exchange, accordingly, is amending Rule 191 to eliminate those specialist's record keeping requirements that will be captured and maintained by the Exchange's new systems.

Pilot and Roll-Out of the New Equity Book

The Exchange anticipates that it will implement the use of the new equity book on a pilot basis during the third quarter of 1999 and that providing the look at the book to upstairs members may require additional time. The initial pilot will involve a cross section of listed stocks and will last for approximately six months. In recognition of the fact that Index Share products (*e.g.*, Portfolio Depositary Receipts and Index Fund Shares) have trading characteristics, and in certain respects trade under rules, that differ from those applicable to other products traded under the Exchange's equity rules, the New Equity Market Structure and the associated rule changes are not intended to be applied to Index Share products.

The Exchange will use the new equity book for actual trading during the pilot phase, and may make changes to the book as the result of operational experience or to enhance the system. Following the completion of the pilot program and the implementation of any changes to the book, the Exchange will commence its floor wide introduction. This roll-out will be done in steps to accommodate training and technical considerations.

Floor Brokerage

Specialists will not be permitted to charge commissions upon the execution of orders delivered electronically from off the floor for securities traded under the New Equity Market Structure. This should reduce the cost of doing business on the Exchange and thereby benefit investors. Specialists will continue to be able to charge floor brokerage on manually delivered orders. The Exchange also is proposing to confirm that specialists may charge a commission on hand delivered orders when acting as principal if the member leaving the order consents. The Exchange proposes to amend Rule 152(c) in order to effect these changes.

The Amex will share its review with the specialists based on a specified rate schedule to effectively offset the specialists' loss of floor brokerage with respect to orders delivered electronically from off the floor of the Exchange. Index Share orders will not be covered by this program. Floor brokerage will cease and revenue sharing will commence for each equity security on the date such security begins trading under the New Equity Market Structure. In addition, any portion of the Amex regulatory fee payable by specialists on qualifying trades[24] that does not exceed $1.5 million in any year will be waived by the Amex.

Specialist Activity

The Exchange is proposing to eliminate the stabilization requirements of Commentaries .01, .02, and .07 to Rule 170 and expand the parameters of the "2, 1, ½ point Rule" (Rule 154, Commentary .08) to permit specialist to respond to the needs of the fast moving, modern market without unnecessary restrictions.

Specialists are subject to affirmative and negative obligations in trading for their account. The affirmative obligation requires them to engage in a course of dealing to assist in the maintenance, insofar as reasonably practical, of a fair and orderly market in specialty securities. This involves engaging in dealing reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to the minimizing of the effect of temporary disparities between supply and demand, immediate or reasonably anticipated. The negative obligation provides that specialists may not buy or sell a specialty security unless such dealings are reasonably necessary to permit specialist to maintain a fair and orderly market in such security.

Good specializing involves judgments as to the proper degree of continuity and the reasonableness of depth in light of shifting market conditions. The price of a stock, overall market trends, company specific news, order flow, the specialist's position in a stock and overall risk position, among other factors, go into the mix that needs to be considered in determining how

[21] Amex has clarified that the filing should state that a market, not a market maker, would be required to "afford a comparable level of service." Telephone call between Michael Ryan, Chief of Staff & Senior Legal Officer, Amex, and Michael Walinskas, Associate Director, Commission, on June 4, 1999.

[22] The Amex specialist has no control over the execution or non-execution of outgoing commitments which may be canceled or expire in the receiving ITS market. Specialists, accordingly, will be able to manually restore automatic execution and end queuing even if outgoing commitments have neither been processed nor expired to prevent delays in order handling on the Amex that are beyond the Exchange's control.

[23] For example, *see* Exchange Rule 170, Commentaries .01, .02 and .04.

[24] Qualifying trades are trades with orders qualifying for revenue sharing. Qualifying orders are those delivered electronically from off the floor of the Exchange, excluding orders for Index Shares.

specialists fulfill their affirmative obligations. For these reasons, the Exchange (and the Commission) have not developed standardized criteria to assess the performance of specialists with respect to their affirmative obligations.

In contrast to the absence of concrete guidelines with respect to specialists' affirmative obligations, there are a variety of trading rules that circumscribe the ability of specialists to trade and therefore, define specialist negative obligations. These rules include Amex Rules 126, 154, 155, 170(c), (d) and (e), Commentaries .01, through .09 to Rule 170, and 175. Some of these rules are generally applicable to members (*e.g.*, Rule 126 which prescribes rules of priority, parity and precedence) while other rules are specific to specialists (*e.g.*, Rule 155). In particular, Commentaries .01, .02 and .07 to Rule 170 identify transactions characterized as "destabilizing" (*i.e.*, purchases on plus or zero-plus ticks and sales on minus or zero minus ticks) and circumscribe a specialist's ability to trade on destabilizing transactions.

When Congress first adopted the Exchange Act, Congress delegated to the Commission broad authority to regulate specialists. As originally enacted, Section 11(b) of the Act provided in part that *if* the Commission were to adopt rules permitting specialists to act as dealer, such rules would, "restrict his dealings so far as practicable, to those reasonably necessary to permit him to maintain a fair and orderly market." In 1937, the Commission issued an interpretation (the "Saperstein Interpreation") with respect to specialists and their functions.[25] It avoided hard and fast rules and defined permitted transactions under the statutory standard as those which enhanced price continuity and minimized the effects of imbalances between supply and demand.

The Commission did not use its rule making authority under Section 11(b) until 1964, when it promulgated Rule 11b–1.[26] The rule was a result of the SEC's finding in the *Report of Special Study of Securities Markets*,[27] and was the product of intensive negotiations between the Commission and the primary exchanges. Rule 11b–1 includes both the specialist's affirmative and negative obligations.[28] The Exchange adopted paragraphs (b), (c), (d) and Commentaries .01 and .02 to Rule 170 in January 1965 soon after the adoption of Exchange Act Rule 11b–1.

In 1975, Congress amended section 11(b) of the Act *and entirely deleted the prior statutory limitation on specialist dealing*. The Senate Committee Report of the legislation stated that the limitation on specialist dealing might become unnecessary with the evolution of the National Market System and, specifically, "active competition among market makers," and the elimination of the specialists "trading advantages."[29] Congress, accordingly, gave the SEC flexibility to eliminate the restrictions on specialist dealing when the looked-for changes in the National Market System occurred. The Commission, however, has not substantively amended Rule 11b–1 since its adoption in 1964.[30]

In 1991, the SEC approved NYSE rule change to permit specialists to reduce dealer positions on zero minus or zero plus destabilizing ticks *without* Floor Official approval, and to reduce dealer positions on straight plus and minus destabilizing ticks *with* Floor Official approval, provided that the specialist reentered the market following the liquidating transaction on the opposite side of the market from the liquidating trade.[31] In 1994, the SEC approved similar rule change for the Amex.[32]

It has been almost 25 years since Congress amended the Act to eliminate the statutory restriction on specialists dealing, and approximately 35 years have elapsed since the adoption of Rule 11b–1 in its present form. During this time, there have been tectonic changes to securities trading in the U.S., and the two preconditions to the elimination of the restrictions on specialist dealing identified by Congress, *i.e.*, the "elimination of specialist trading advantages" and "active competition among the market makers," have occurred. The explosion in trading volume, proliferation of trading venues, nearly instantaneous dissemination of market information, development of electronic order routing and execution facilities, and implementation of the consolidated tape have substantially eroded the time and place advantage enjoyed by specialists in the mid-1970s and earlier. In addition, much of the specialist's perceived trading advantage derived from special access to the limit order book.[33] To the extent that any such advantage persists today, it would be significantly eroded in the New Equity Market Structure by the proposed "look at the book."

Specialists today face substantially greater competition from other market makers and liquidity providers than they faced in 1975 when Congress struck the restruction on specialist dealing from the Act. Off-Board trading restrictions are largely inapplicable to the Exchange's current equity list and third market makers and regional exchanges now trade substantial portions of the consolidated volume in Exchange listed stocks and constitute an even higher percentage of the trades. Block positions, derivatives markets and alternative trading systems also provide investors with sources of liquidity and

[25] Exchange Act Release No. 1117, March 30, 1937.

[26] Exchange Act Release Nos. 7432 (September 24, 1964), 29 FR 13777 (October 6, 1964) (proposing Rule 11b–1); and 7456 (November 23, 1964), 29 FR 15862 (adopting the Rule).

[27] *Report of Special Study of Securities Markets of the Securities and Exchange Commission*, 88th Congress, 1st Session, House Document No. 95, 1963 (hereinafter "Special Study of Securities Markets").

[28] In relevant part, Rule 11b–1(a) states:

(2) The rules of a national securities exchange permitting a member of such exchange to register as a specialist and to act as a dealer shall include:

(ii) Requirements, as a condition of a specialist's registration, that a specialist engage in a course of dealings for his won account to assist in the maintenance, so far as practicable, of a fair and orderly market, * * *

(iii) Provisions restricting his dealings so far as practicable to those reasonably necessary to permit him to maintain a fair and orderly market * * *.

[29] The Senate Committee Report states:

The present requirement in Section 11(b) that a specialist's dealing must be limited to those transactions 'reasonably necessary to permit him to maintain a fair and orderly market' would be eliminated. This change does not reflect a belief on the Committees' part that this present limitation of specialist dealing is inappropriate. The change is merely intended to provide the SEC with greater flexibility in prescribing a specialist's obligations in a national market system. It might well be that with active competition among market makers and the elimination of the trading advantages specialists now enjoy, such a restriction on specialists' dealings would become unnecessary. Because trading patterns and market making behavior in the context of a national market system cannot now be predicted, it appears appropriate to expand the Commission's rulemaking authority in this area so that the Commission may define responsibilities and restrict activities of specialists in response to changing conditions in the markets.

Senate Committee Report No. 94–75, page 100 (1975).

[30] In 1981, the Commission amended Rule 11b–1 to clarify that it also applied to options specialists and to eliminate duplicative SRO rule filing requirements. *See* Exchange Act Release No. 17574 (February 25, 1981), 46 FR 15134 (March 4, 1981).

[31] *See* Exchange Act Release No. 29626 (August 29, 1991), 56 FR 43949 (September 5, 1991) (approving SR–NYSE–91–07). The SEC permanently approved the rule changes in 1993. *See* Exchange Act Release No. 31797 (January 23, 1993), 58 FR 7277 (February 5, 1993).

[32] *See* Exchange Act Release No. 33957 (April 22, 1994), 59 FR 22188 (April 29, 1994) (temporarily approving SR–Amex–92–26). The SEC permanently approved the rule changes in 1997. *See* Exchange Act Release No. 38379 (March 10, 1997), 62 FR 13918 (March 24, 1997).

[33] *See* H.R. Report No. 1383.73rd Congress, Second Session, April 27, 1934, pages 14 and 15. The *Special Study of Securities Markets*, Part 2 at page 77 states:

Thus, in executing his brokerage functions, the specialist has a powerful tool [the limit order book] available to him only, giving him insight into the possible course of the market.

trading venues for Exchange listed securities that were unavailable or undreamed of the mid-1970s. With the erosion of commission income, specialists have had to rely increasingly upon trading revenues to survive, and rules that impede their ability to trade, but are inapplicable to their competitors,[34] threaten their competitive position. In addition, the Exchange's market surveillance capabilities have substantially increased in the last quarter entry. The Exchange, accordingly, is better able to identify and address inappropriate specialist activity when it occurs, and the need for prophylactic restrictions on specialists trading has been correspondingly reduced.

The Exchange believes that the elimination of the stabilization rules with respect to securities traded under the New Equity Market Structure will benefit investors by enhancing the ability of specialists to comply with their affirmative obligations to the modern, fast moving market by allowing them flexibility to manage their inventory. For example, assume that a specialists is long 5,000 shares of a stock that typically trades 50,000 shares per day. A brokerage firm publishes an initial "buy" recommendation on the stock and there is a predictable influx of buy orders. In this situation, the price of the stock would rise and the specialist would sell out of inventory to supply the demand. If a seller were to enter the market and the specialist were permitted to buy on a plus or zero (destabilizing) tick, the specialist could replenish its inventory and be in a position to better fulfill its affirmative obligations to the market. As matters stand now, however, the specialists is precluded from increasing its position on a destabilizing tick without obtaining Floor Official approval. In the time it would take to locate and obtain Floor Official approval, the offered stock would be purchased by another buyer. The specialists in the example thus would be unable to effectively manage its inventory to respond to changed market conditions.

It is important to note that the Exchange is not proposing the complete elimination of specialist negative obligations (even though Congress gave the Commission explicit authority to do so in 1975 in contemplation that the changes due to the advent of the National Market System would make such restrictions unnecessary). Instead, the Exchange is proposing to eliminate trading rules of the sort never applied by the Exchange and Commision in the context of specialist affirmative obligations. Thus specialists would be permitted under the Exchange's proposal to deal for their account without reference to the "tick" of the trade[35] and without the time consuming and duplicative review of a Floor Official. Specialists, however, would remain subject to the general negative obligation that they may not effect a principal transaction unless it is reasonably related to the maintenence of a fair and orderly market.[36] Specialists also would remain bound by the numerous other rules that circumscribe their dealer activity. Potential concerns with inappropriate specialist trading in the absence of the stabilizing rules should be addressed by the Exchange's review of specialist dealer activity to determine if it complies with the negative obligation and other rules applicable to specialist trading.

The Exchange also believes that the trading restrictions of Commentary .08 to Rule 154 (which requires specialists to obtain Floor Official approval prior to effecting trades at specified variations from the last sale) whould be modified to expand the price variations that require Floor Official approval. The current two dollar (for securities trading at $20 or more per share), one dollar (for securities trading between $10 and $20), and half dollar (for securities trading below ten dollars per share) price parameters have become too restrictive given the increasing speed of trading, and the Exchange proposes that the parameters be expanded to three, two and one dollar for stocks in the respective price ranges.

2. Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the proposed New Equity Market Structure and assocaited rule changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing informaiton with respect to, and facilitating transactions in securities, to remove impediment and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change also is consistent with section 11A of the Act in that it enhances (i) economically efficient execution of securities transactions, (ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, (iii) the availability to brokers, dealers, and investors of informaiton with respect to quotations for and transactions in securities, (iv) the practicability of brokers executing investors' orders in the best market, and (v) an opportunity, consistent with the provisions of clauses (i) and (iv), for investors orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not beleive that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to File No. SR–Amex–99–08 and should be submitted by July 14, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15967 Filed 6–22–99; 8:45 am]

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[34] In the Release adopting Rule 11b–1, the Commission exempted specialists on regional exchanges from the requirements of the Rule. *See* Exchange Act Release no. 7465 (November 23, 1964), 29 FR 15862. In 1981, the Commission modified the exemption to apply Rule 11b–1 to regional exchanges with respect to such of their securities that are not listed on the Amex or NYSE. *See* Exchange Act Release No. 18157 (October 7, 1981), 46 50639 (October 14, 1981). The regional exchanges currently have rules that apply the general specialists affirmative and negative obligations to their specialists. They have not, however, applied stabilizing rules to their specialists. *See* Philadelphia Stock Exchange Rule 203, Chicago Stock Exchange Article XXX, Rule 1, and Pacific Exchange Rules 5.29(f) and 5.33(a).

[35] Specialists would remain subject to the Commission's short sale rule notwithstanding the proposed rule change.

[36] Amex Rules 170(c) and (d).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41535; SR–DTC–99–16]

Self-Regulatory Organizations; The Depository Trust Corporation; Notice of Filing of Proposed Rule Change Relating to Profile Modification Feature of the Direct Registration System

June 17, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 17, 1999, The Depository Trust Corporation ("DTC") filed with the Securities and Exchange Commission ("Commission") the prosed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of DTC's filing is to resolve an impasse among members of the securities industry relating to the implementation of the Profile Modification System feature of the Direct Registration System.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to resolve an impasse among members of the Securities Transfer Association ("STA") and the Securities Industry Association ("SIA")[3] relating to the delay in implementing the Profile Modification System feature ("Profile")[4] of the Direct Registration System ("DRS").[5] Profile will allow a participant upon instructions from the participant's customer to electronically request a "DRS limited participant"[6] to move the customer's DRS share positions to the participant's acount at DTC.[7] Profile will be available over both DTC's Participant Terminal System ("PTS") and DTC's Computer-to-Computer Facility ("CCF").

Representative member of the STA have reported that some of their members may not be able to implement Profile until some time in calendar year 2000. Members of the SIA had envisioned that Profile would be implemented during the third quarter of 1999. Becuase of differing views on the implementation schedule for Profile, there is no industry consensus on whether DRS should continue to operate as it does today[8] or whether use of DRS should be restricted in some manner until Profile is fully implemented.

If DRS is to continue to operate as it does today, there are several ways to handle making additional securities issued eligible for inclusion in DRS. The options include:

(1) If all "DRS limited participants" are not able to implement Profile by August 31, 1999, no additional securities issues would be made eligible after August 31, 1999, for inclusion in DRS until sometime in the first quarter of 2000 when all "DRS" limited participants" are able to implement Profile using either PTS or CCF;

(2) securities issues would continue to be made eligible for inclusion in DRS in the manner in manner in which they are currently made eligible for inclusion; or

(3) securities would continue to be made eligible for inclusion in DRS provided that each "DRS limited participant" could be the "DRS limited participant" for no more than two new issues per month. If all "DRS limited participants" are not able to implement Profile by using PTS and CCF by March 31, 2000, no additional securities issues would be made eligible for inclusion in DRS until such time as all "DRS limited participants" are ready to use Profile.

DTC requests that the Commission staff provide guidance on the above options or any other option not described in this filing.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change is designed to further the perfection of the mechanism for the national system for the prompt and accurate clearance and settlement of securities transactions.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The STA and the SIA are two member groups on the DRS Committee, which is an industry responsible for designing DRS. The other members include Corporate Transfer Association and DTC.

[4] Profile is an electronic communication system through DTC which allows participants and DRS Limited Participants to send instructions to each other regarding the movement of DRS shares.

[5] See Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 (concept release relating to the direct registration system); Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 [File No. SR–DTC–96–15] (order relating to the establishment of DRS).

[6] For a description of "DRS limited participants," refer to Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 [File No. SR–DTC–96–15].

[7] Profile will also allow a "DRS limited participant" upon instructions from a customer to electronically request a participant to move the customer's share positions to a "DRS limited participant's" account.

[8] Because "DRS limited participants" are currently not using Profile to receive instructions, brokers or their customers must submit requests to move DRS shares by sending a medallion guaranteed transaction advice to the "DRS limited participants."

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consents, the Commission will:

(a) by order approved the proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–16 and should be submitted by July 14, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15968 Filed 6–22–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41534; File No. SR–EMCC–99–4]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Expansion of Eligible Instruments

June 16, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 26, 1999, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposal rule change (File No. SR–EMCC–99–04) as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to expand the types of instruments eligible for clearance and settlement at EMCC.

II. Self-Regulatory Organization's Statement of the Purpose of, Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspect of such statement.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand the types of instruments eligible for processing by EMCC. To accomplish this, the proposed rule change will amend the definition of "eligible sovereign debt," which is set forth in Rule 1, to mean any instruments which either:

(1) Are issued by or on behalf of an emerging markets sovereign issuer or an agency or instrumentality thereof (including, without limitation, any central bank thereof); provided that, in the case of any instrument issued by an agency or instrumentality, the credit quality of those instruments is judged by one or more NRSROs or by market participants generally on the basis of the credit quality of the related sovereign issuer; or

(2) Have the timely payment of principal and interest guaranteed by an issuer who meets the criteria set forth in (1).

As with all instruments that are EMCC eligible, these instruments must also meet the existing criteria set forth in Rule 3, Section 1 that they must be eligible for settlement at a qualified securities depository and that they must be U.S. dollar denominated.

The dollar denominated non-Brady sovereign debt of Brazil, Argentina, and Mexico has been eligible at EMCC since August 1998. Since that time, there have been two extreme market events affecting emerging market debt generally, one in August/September 1998 and another in January 1999. According to EMCC, it is the consensus of current members that having non-Brady sovereign debt of Brazil, Argentina, and Mexico eligible at EMCC during these events significantly reduced settlement risk and increased safety and soundness. EMCC also believes that these events demonstrated that EMCC's risk management systems and procedures, as well as their clearance and settlement systems and procedures, are well suited to non-Brady sovereign debt, even during times of market stress and extreme violability. EMCC staff and members attribute this primarily to the facts that (1) the distinction between Brady and non-Brady sovereign debt (*i.e.*, whether or not it originated as part of a loan restructuring) is not relevant to the market behavior of the instruments and (2) the trading and settlement practices for both types of sovereign instruments are virtually identical.

EMCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[3] and the rules and regulations thereunder because the inclusion of dollar denominated sovereign debt will help to reduce risk and respect to the clearance and settlement of those specific instruments as well as will help to reduce risk with respect to the emerging market marketplace generally.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments relating to the proposed rule change have been solicited of received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it funds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–4 and should be submitted by July 14, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15911 Filed 6–22–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)/Joint Planning Advisory Group (JPAG)

AGENCY: Maritime Administration, DOT.

ACTION: Synopsis of June 9, 1999, meeting with VISA participants.

On June 9, 1999, a Voluntary Intermodal Sealift Agreement (VISA) Joint Planning Advisory Group (JPAG) meeting was held via video telephonic conference (VTC). The sites connected by the VTC were the Military Sealift Command headquarters, Washington, DC, the Military Traffic Management Command, Falls Church, Virginia, and the U.S. Transportation Command, Scott Air Force Base, Illinois.

Meeting attendance was by invitation only, due to the classified nature of the information discussed and the requirement for a government-issued security clearance. Of the 35 U.S.-flag carrier corporate participants enrolled in VISA at the time of the meeting, 12 cleared carrier representative companies participated in the JPAG VTC. In addition, JPAG attendance included representatives from the Department of Defense (DoD) and the Maritime Administration (MARAD).

The purpose of the JPAG was to update VISA participants about current and future sealift operations in support of NATO operation "Allied Force" and Balkan region humanitarian support. The meeting convened at 9:00 a.m. EDT and adjourned at 10:30 a.m.

The full text of the VISA program is published in 64 FR 8214–8222, dated February 18, 1999. One of the program requirements is that MARAD periodically publish a list of VISA participants in the **Federal Register**. As of June 9, 1999, the following commercial U.S.-flag vessel operators were enrolled in VISA with MARAD: Alaska Cargo Transport Inc., American Auto Carriers, Inc., American Automar, Inc., American President Lines, Ltd., American Ship Management, LLC, Central Gulf Lines, Inc., Crowley American Transport, Inc., Crowley Marine Services, Inc., Dixie Fuels II, Limited, Double Eagle Marine, Inc./Caribe USA, Inc., Farrell Lines Incorporated, First American Bulk Carrier Corp., Foss Maritime Company, Lykes Line Limited, L.L.C., Lynden Incorporated, Maersk Line, Limited, Matson Navigation Company, Inc., Maybank Navigation Company, LLC, McAllister Towing & Transportation Company, Inc., Moby Marine Corporation, NPR, Inc., OSG Car Carriers, Inc., Osprey Shipholding Corporation, L.L.C., Resolve Towing & Salvage, Inc., Seacor Marine International Inc., Sealift Inc., Sea-Land Service, Inc., Smith Maritime, Totem Ocean Trailer Express, Inc., Trailer Bridge, Inc., Trico Marine Operators, Inc., Troika International, Ltd., Van Ommeren Shipping (USA) LLC, Waterman Steamship Corporation, and Weeks Marine, Inc.

FOR FURTHER INFORMATION CONTACT: Raymond R. Barberesi, Director, Office of Sealift Support, (202) 366–2323.

By Order of the Maritime Administrator.

Dated: June 17, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–15848 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Compliance Policy for Year 2000 (Y2K) Problems

AGENCY: Research and Special Programs Administration (RSPA); U.S. Department of Transportation (DOT).

ACTION: Notice; compliance policy.

SUMMARY: RSPA has developed safety standards, procedures and reporting requirements, found at 49 CFR Parts 190, 191, 192, 193, 194, 195 and 199, for ensuring the safe operation of pipeline facilities. Civil enforcement action (civil penalty or compliance order) can be taken for violations of pipeline safety regulations. RSPA can also issue a corrective action order if it determines a pipeline facility poses a hazard to life, property, or the environment. RSPA can also seek injunctive relief.

We do not intend to pursue applicable pipeline safety compliance actions for regulatory violations or for environmental or safety problems

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] 15.U.S.C. 78g–1.

[4] 17 CFR 200.30–3(a)(12).

caused by tests that are specifically designed to identify and eliminate Year 2000-related malfunctions. For example, we would not pursue any compliance actions should an over-pressurization, hazardous liquid or natural gas release, fire, or explosion occur as a result of component failure during Year 2000 testing, as long as no substantial environmental damage or serious harm results and the failure is promptly corrected. The proposed stays of compliance actions are limited to testing-related problems disclosed to RSPA by February 1, 2000, if certain criteria have been met, such as ensuring that the tests are designed to protect human health and the environment, ensuring that the tests are conducted well in advance of the Year 2000 critical dates, and ensuring that all testing-related problems are immediately corrected. If a testing-related problem does occur, testing plans should be available to document that these criteria have been met.

We will pursue enforcement action or other applicable compliance action against companies that do not prepare for potential Year 2000 problems and thereby endanger the public and the environment. Such actions will include assessing maximum civil penalties for any pipeline safety regulatory violation. Failure to identify and correct Year 2000 problems before 2000 could result in serious safety problems, such as unexpected shutdowns or other safety and operational malfunctions. The federal pipeline safety regulations require companies to prepare for and address any adverse or abnormal operations on its pipeline system, including those associated with Year 2000 issues. Every company must ensure Year 2000 readiness of its system through testing, repair, and contingency planning.

The millennium date change is near and substantial progress in assessing and remediating Year 2000 non-compliant computer code and hardware should already have occurred. Therefore, we are encouraging companies to focus on preparing business continuity and contingency plans. These plans need to ensure that the impact of any Year 2000 failure is minimized and that appropriate and adequate preparations are in place to ensure continuous, safe service to customers.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety (OPS) home page at: http://ops.dot.gov.

FOR FURTHER INFORMATION CONTACT: Roger Little, (202) 366–4569.

SUPPLEMENTARY INFORMATION:

Background

The Year 2000 issue arises because a number of computerized functions require recognition of a specific year, day, and time, but many computers and computerized equipment recognize only the last two digits of a year's date (e.g., 1998 is 98; 2000 is 00). Therefore, when the calendar changes to the year 2000, computers and equipment with embedded computer chips may have difficulty interpreting the correct date. They may interpret the year to be 1900 or some other year. As a result, some computers and equipment containing embedded computer chips could become permanently unable to function properly. Others may continue to operate, but erroneously, while others simply may stop and need to be restarted. Some may create data that look correct, but in reality contain errors, and some may continue to operate correctly. In addition, some computer-related systems may have trouble functioning properly on other dates such as a leap year, and on September 9, 1999, where the date string 9–9–99 was commonly used as an end-of-operation command or for other purposes than for representing the date. Our policy to stay compliance actions encompasses any facility or computer-related testing problems that may arise as a result of the generally recognized suspect dates associated with Year 2000 non-compliance. We are referring to all of these dates as Year 2000 problems for purposes of this compliance policy.

Emphasis on Testing

The public expects compliance with the nation's environmental and safety laws. The regulated pipeline community must take all steps necessary to anticipate and resolve potential environmental and safety compliance problems that may result from Year 2000-related equipment problems. In an effort to ensure timely compliance, RSPA adopts this compliance policy to encourage any necessary testing of computer systems and their related pipeline facilities (e.g., Supervisory Control and Data Acquisition systems, overpressure protection devices, or other pipeline system components). We recognize that regulated companies need to understand how RSPA will react should such testing result in pipeline safety violations or other compliance problems.

Relationship to Year 2000 Dates

Although the focus of this policy is on testing-related problems that occur prior to January 1, 2000, RSPA notes that with respect to problems occurring after January 1, 2000, we will continue to recognize good faith efforts and other potentially mitigating factors in determining an appropriate response. In that regard, companies that test and prepare necessary plans in accordance with the terms of this policy are likely to be in a more favorable position to avoid compliance action than companies that do not, should a company not be able to correct all Year 2000-related deficiencies in a timely manner.

Criteria Justifying Application of This Policy

Companies must address potentially adverse conditions on their pipelines. The pipeline safety regulations require procedures to assure safety from adverse, abnormal and emergency operating conditions. RSPA will fully consider a company's preparations if a violation or incident results from a Year 2000 problem and will mitigate any subsequent compliance action if necessary preparations have been taken. However, RSPA will pursue strong enforcement action, including assessing maximum civil penalties, for regulatory violations or other safety problems resulting from a pipeline company not having prepared for potential Year 2000 problems.

As noted above, RSPA will exercise its discretion to forego applicable compliance actions for problems resulting from specific tests, where the company can demonstrate to RSPA that it has satisfied all of the nine (9) applicable criteria below.

(1) *Systematic Design of Testing Protocols.* Written testing protocols were (a) designed in advance of the testing period, (b) reflect a good faith effort to evaluate the company's Year 2000-related safety and environmental compliance status, (c) will not circumvent pipeline safety regulatory compliance, (d) were designed to prevent or limit violations or other compliance problems that may result from such testing (e.g., through adoption or revision of appropriate contingency plans) and (e) include provisions to protect the public, employees and the environment.

(2) *Problems Caused By Testing.* The specific Year 2000-related testing was the direct cause of the potential compliance problems.

(3) *Testing Need, Timing and Length.* The specific testing that caused the problem was:

(a) Necessary to determine the effectiveness of specific Year 2000-related modifications or existing operations in ensuring pipeline safety compliance;

(b) Part of a comprehensive testing program designed to correct Year 2000 deficiencies at the facility;

(c) Conducted well in advance of the Year 2000 dates in question (i.e., normally at least 30 days in advance of the dates in question);

(4) *Absence of Harm.* Testing problems do not result in substantial environmental damage or serious actual harm to the public;

(5) *Immediate Correction.* The company corrected all problems caused by the testing as soon as possible (i.e. normally within 24 hours).

(6) *Expeditious Remediation.* The company expeditiously remediated any hazardous liquid release in accordance with the company response plan required by 49 CFR Part 194.

(7) *Reporting.* The company has met all applicable reporting requirements including those for releases from a pipeline facility (49 CFR Parts 191 and 195) and safety related condition reports (49 CFR Parts 191 and 195).

(8) *Retesting.* Any retesting conducted prior to the Year 2000 dates in question met all the criteria outlined in this policy and included modifications to earlier testing and/or applicable operating conditions that are reasonably designed to achieve compliance.

(9) *Cooperation.* The company provides any information RSPA requests as necessary to determine whether to forego compliance action.

Emphasis on Business Continuity and Contingency Planning

Time is running out for solving Year 2000 problems. Some companies may not be able to fully test and remediate all of their mission-critical systems and may face disruptions in their operations. Systems that have been tested and remediated may still encounter unanticipated Year 2000 problems. Despite best efforts of dedicated staff to assess, remediate, validate, and implement mission-critical systems, companies remain vulnerable to disrupted business processes. Because most companies are highly dependent on information technology to carry out their business, Year 2000-induced failures may have a severe impact on their ability to deliver critical services and assure safety. Additionally, the risk of failure is not limited to the company's internal information systems. Many companies depend on information and data provided by business partners such as other pipeline companies, state and local agencies, international suppliers, and private sector entities. Every company depends on key infrastructure services such as power, water, transportation, and telecommunications. Because of these risks, it is important that companies conduct business continuity and contingency planning to reduce the risk of Year 2000 business and facility failures.

Each company should ensure the continuity of core business processes by identifying, assessing, managing, and mitigating its Year 2000 risks. This effort should not be limited to the risks posed by the Year 2000-induced failures of internal information systems, but should include potential Year 2000 failures of others, including business partners and infrastructure service providers.

The business continuity planning process focuses on reducing the risk of Year 2000-induced business and facility failures. It safeguards a company's ability to maintain safety functions and produce a minimum acceptable level of services in the event of failures of critical information systems and services. It also helps to identify alternate resources and processes needed to operate the core business processes. Although it does not offer a long-term solution to Year 2000-induced failures, it will help the company to prepare for a potential crisis, and may facilitate the restoration of normal service at the earliest possible time in the most cost-effective manner.

Cooperation With States

RSPA is strongly encouraging States participating in the pipeline safety program to adopt this or a similar approach to address Year 2000 compliance issues. RSPA is coordinating closely with State agencies concerning Year 2000-related testing issues.

Disclaimer

This policy does not constitute a final Department action. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any persons or entities. It sets forth factors that RSPA intends to use in the exercise of its compliance discretion, and it is not intended for use in pleading, at hearing, at trial, or in any adjudicatory context.

Specific Compliance Concerns

Individual facility-specific concerns may be directed to the RSPA Office of Pipeline Safety Regional offices listed below:

EASTERN REGION, 400 Seventh Street, SW, Room 7130, DPS–24, Washington, D.C. 20590, Telephone: (202) 366–4580, Fax: (202) 366–3274

SOUTHERN REGION, 61 Forsyth Street, Suite 16T15, DPS–25, Atlanta, GA 30303, Telephone: (404) 562–3530, Fax: (404) 562–3569

CENTRAL REGION, 1100 Main Street, Suite 1120, DPS–26, Kansas City, MO 64105, Telephone: (816) 426–2654, Fax: (816) 426–2598

SOUTHWEST REGION, 2320 LaBranch Street, Room 2100, DPS–27, Houston, TX 77004, Telephone: (713) 718–3746, Fax: (713) 718–3724

WESTERN REGION, 12600 W. Colfax Avenue, Suite A–250, DPS–28, Lakewood, CO 80215–3736, Telephone: (303) 231–5701, Fax: (303) 231–5711

Issued in Washington, D.C., on June 16, 1999.

Stacey L. Gerard,

Director, Office of Policy, Regulations and Training.

[FR Doc. 99–15988 Filed 6–22–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (99–3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the third quarter 1999 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter 1999 RCAF (Unadjusted) is 1.002. The third quarter 1999 RCAF (Adjusted) is 0.586. The third quarter 1999 RCAF–5 is 0.579.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW., Washington, DC 20423–0001, telephone (202) 289–4357. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: June 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16004 Filed 6–22–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33763]

Paducah & Louisville Railway, Inc.—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Paducah & Louisville Railway, Inc. (P&L) over CSXT's rail line between the P&L/CSXT connection at Madisonville, KY, at or near milepost OOH 275, and the Dotiki mines located on CSXT's Morganfield Branch, at or near milepost MF–298.3, a total distance of approximately 23 miles.

The transaction is scheduled to be consummated on June 18, 1999.

The purpose of the trackage rights is to allow P&L to handle movements of coal from the Dotiki mines to the Louisville Gas & Electric Cave Run plant in Louisville, KY, and the Louisville Gas & Electric Mill Creek plant in Kosmosdale, KY, and to handle empties via the reverse route.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33763, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on (1) J. Thomas Garrett, Esq., Paducah & Louisville Railway, Inc., 1500 Kentucky Avenue, Paducah, KY 42003, and (2) Fred R. Birkholz, Esq., CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 16, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16002 Filed 6–22–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33765]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company

Illinois Central Railroad Company (IC) has agreed to grant limited overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over IC's rail line between a point at the east end of the St. Charles Airline near IC's milepost 1.7 at Chicago, IL, and a point near IC's milepost 19.5 at Harvey, IL, a distance of approximately 17.6 miles.

The transaction is scheduled to be consummated on or shortly after June 18, 1999.

The purpose of the trackage rights is to permit BNSF, using its own trains with its own crews, to interchange unit coal trains with Canadian National Railway (CN) at CN's connection with IC at Harvey.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33765, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 16, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16001 Filed 6–22–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 382X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment of Chicago Area Trackage in Cook County, IL

On June 3, 1999, The Burlington Northern and Santa Fe Railway Company (BNSF) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its switching/industrial lead track beginning north of Corwith Yard at station 24 + 43 and ending at station 149 + 87 near the east end of the Western Avenue Bridge, a total distance of 2.38 miles within the city limits of Chicago, in Cook County, IL.[1] The line traverses U.S. Postal Service Zip Codes 60608, 60623, and 60632 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in BNSF's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 21, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of

[1] BNSF states that the line is arguably not subject to regulation by the Board pursuant to 49 U.S.C. 10906. However, to avoid any doubt over the status of the line and to avoid delays from possible litigation over the line's status, BNSF has elected to file this petition for exemption.

rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 13, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–6 (Sub-No. 382X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Sarah Whitley Bailiff, BNSF, 3017 Lou Menk Drive, Fort Worth, TX 76161–0039. Replies to the BNSF petition are due on or before July 13, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.[2]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 16, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16003 Filed 6–22–99; 8:45 am]

BILLING CODE 4915–00–P

[2] BNSF requests a waiver of the 20 days' advance service requirement for the environmental and historic reports (49 CFR 1105.7 and 1105.8), due to an urgent need to discontinue service because of safety concerns. Both reports were filed simultaneously with the petition for exemption. Given the circumstances, waiver of the advanced service requirement is granted.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 136X)]

Union Pacific Railroad Company—Abandonment Exemption—In Hidalgo County, TX

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon its Santa Rosa Industrial Lead from milepost 145.0, near Edinburg, to milepost 161.0, near Rogerslacy, a distance of 16.0 miles in Hidalgo County, TX (line). The line traverses United States Postal Service Zip Codes 78539–40 (Edinburg), 78539 (San Carlos), 78543 (Elsa), 78538 (Edcouch), and 78593 (Rogerslacy).

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 6, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 13, 1999, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179. If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 28, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by June 23, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 10, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–15452 Filed 6–22–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 16, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 23, 1999 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0057.
Form Number: None.
Type of Review: Extension.
Title: Annual Letter—Certification of Authority.
Description: The letter is sent to insurance companies that provide surety bonds to protect the Federal Government. These companies then provide information necessary for the renewal of their Treasury Certification and the determination of their underwriting limit. Summary information about the company is then published in Circular 570 for use by Federal bond approving officers.
Respondents: Individuals or households.
Estimated Number of Respondents: 317.
Estimated Burden Hours Per Respondent: 62 hours and 30 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 19,813 hours.
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 99–15882 Filed 6–22–99; 8:45 am]
BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 15, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 23, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0067.
Form Number: IRS Form 2555.
Type of Review: Revision.
Title: Foreign Earned Income.
Description: Form 2555 is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction. The information is used by the service if a taxpayer qualifies for the exclusion(s) or deduction.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 286,955.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hr., 52 min.
Learning about the law or the form—26 min.
Preparing the form—1 hr., 47 min.
Copying, assembling, and sending the form to the IRS—49 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1,403,210 hours.
OMB Number: 1545–0173.
Form Number: IRS Form 4563.
Type of Review: Extension.
Title: Exclusion of Income for Bona Fide Residents of American Samoa.
Description: Form 4563 is used by bona fide residents of American Samoa whose income is from sources within American Samoa, Guam, and the Northern Mariana Islands to the extent specified in Internal Revenue Code (IRC) section 931. This information is used by the IRS to determine if an individual is eligible to exclude possession source income.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 100.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—52 min.
Learning about the law or the form—7 min.
Preparing the form—28 min.
Copying, assembling, and sending the form to the IRS—17 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 174 hours.
OMB Number: 1545–1119.
Form Number: IRS Forms 8804, 8805 and 8813.
Type of Review: Extension.
Title: Annual Return for Partnership Withholding Tax (Section 1446) (Form 8804); Foreign Partner's Information Statement of Section 1446 Withholding Tax (Form 8805); and Partnership Withholding Tax Payment (Section 1446) (Form 8813).
Description: Code section 1446 requires partnerships to pay a withholding tax if they have effectively connected taxable income to foreign partners. Forms 8804, 8805 and 8813 are used by withholding agents to provide IRS and affected partners with data to assure proper withholding, crediting to partners' accounts and compliance.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	8804	8805	8813
Recordkeeping	59 min	59 min	26 min.
Learning about the law or the form	57 min	54 min	49 min.
Preparing the form	31 min	17 min	16 min.
Copying, assembling, and sending the form to the IRS	20 min	17 min	10 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 121,200 hours.
OMB Number: 1545–1139.
Regulation Project Number: PS–264–82 Final.
Type of Review: Extension.
Title: Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distribution by S Corporation to Shareholders.
Description: The regulations provide the procedures and the statements to be filed by S corporations for making the election provided under section 1368, and by shareholders who choose to reorder items that decrease their basis. Statements required to be filed will be used to verify that taxpayers are complying with the requirements.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 2,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 6 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 200 hours.
OMB Number: 1545–1204.
Form Number: IRS Form 8823.
Type of Review: Extension.
Title: Low-Income Housing Credit Agencies Report of Noncompliance Building Disposition.
Description: Form 8823 is used by housing agencies to report noncompliance with the low-income housing provisions of Code section 42.
Respondents: State, Local or Tribal Government.
Estimated Number of Respondents/Recordkeepers: 20,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hr., 39 min.
Learning about the law or the form—30 min.
Preparing and sending the form to the IRS—39 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 176,000 hours.
OMB Number: 1545–1491.
Regulation Project Number: REG–209798–95 Final.
Type of Review: Extension.
Title: Amortizable Bond Premium.
Description: The information requested is necessary for the Service to determine whether a holder of a bond has elected to amortize bond premium and to determine whether an issuer or a holder has changed its method of accounting for premium.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 100,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Other (once).
Estimated Total Reporting Burden: 50,000 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 99–15883 Filed 6–22–99; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 16, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 23, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1648.
Publication Number: Publication 3319.
Type of Review: Extension.
Title: Low-Income Taxpayer Clinics—199 Grant Application Package and Guidelines.
Description: Publication 3319 outlines requirements of the IRS Low-Income Taxpayer Clinics (LITC) program and provides instructions on how to apply to a LITC grant award.
Respondents: Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 825.
Estimated Time For Program Sponsors: 60 hours.
Estimated Time For Student and Program Participants: 2 hours.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 6,000 hours.
OMB Number: 1545–1649.
Revenue Procedure Number: Revenue Procedure 99–21.
Type of Review: Extension.
Title: Disability Suspension.
Description: The information is needed to establish a claim that a taxpayer was financially disabled for purposes of section 6511(h) of the Internal Revenue Code (which was added by section 3203 of the Internal Revenue Service Restructuring and Reform Act of 1998). Under section 6511(h), the statute of limitations on claims for credit or refund is suspended for any period of an individual's taxpayer's life during which the taxpayer is unable to manage his or her financial affairs because of a medically determinable mental or physical impairment, if the impairment can be expected to result in death, or has lasted (or can be expected to last) for a continuous period of not less than 12 months. Section 6511(h)(2)(A) requires that prof of the taxpayer's financial disability be furnished to the Internal Revenue Service.
Respondents: Individuals or households.
Estimated Number of Respondents: 48,200.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 24,100 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 99–15884 Filed 6–22–99; 8: 45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–51]

Customs Accreditation of Chemical and Petroleum Inspections, Inc. as an Accredited Laboratory

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: Notice of Accreditation of Chemical and Petroleum Inspections, Inc. as a Commercial Accredited Laboratory.

SUMMARY: Chemical and Petroleum Inspections, Inc. of Groves, Texas, an approved Customs gauger, has applied to U.S. Customs for accreditation to perform analysis under Part 151.13 of the Customs Regulations (19 CFR 151.13) at their Groves, Texas facility. Customs has determined that Chemical and Petroleum Inspections, Inc. meets all of the requirements for accreditation as a Commercial Laboratory to perform the analyses for Identity and Composition. Therefore, in accordance with Part 151.13(f) of the Customs Regulations, Chemical and Petroleum Inspections, Inc., is granted accreditation to perform the analyses listed above.

LOCATION: Chemical and Petroleum Inspections, Inc. accredited site is located at: 5300 39th Street, Groves, Texas 77619.

EFFECTIVE DATE: June 15, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.5–B, Washington, D.C. 20229 at (202) 927–1060.

Dated: June 16, 1999.

George D. Heavey,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 99–15964 Filed 6–22–99; 8:45 am]

BILLING CODE 4820–02–P

federal register

Wednesday
June 23, 1999

Part II

Environmental Protection Agency

40 CFR Parts 9 and 63
National Emission Standards for Hazardous Air Pollutants: Pesticide Active Ingredient Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–6345–5]

RIN–2060–AE83

National Emission Standards for Hazardous Air Pollutants: Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for the pesticide active ingredient (PAI) production source category under section 112 of the Clean Air Act as amended (CAA or Act). The intent of the standards is to reduce emissions of hazardous air pollutants (HAP) from existing and new facilities that manufacture organic PAI used in herbicides, insecticides, and fungicides. The standards protect human health and the environment by reducing HAP emissions to the level corresponding to the maximum achievable control technology (MACT) through the use of pollution prevention measures and control strategies. The major HAP emitted by facilities covered by this rule include toluene, methanol, methyl chloride, and hydrogen chloride (HCl). All of these pollutants can cause reversible or irreversible toxic effects following exposure. The rule is estimated to reduce total HAP emissions from existing facilities by 2,500 megagrams per year (Mg/yr) (2,755 tons per year (tons/yr)), a reduction of 65 percent from the baseline emission level. Because many of these pollutants are also volatile organic compounds (VOC), which are precursors to ambient ozone, the rule will aid in the reduction of tropospheric ozone. The emission reductions achieved by these standards, when combined with the emission reductions achieved by other similar standards, will achieve the primary goal of the CAA, which is to "enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population."

The July 16, 1992 source category list included an agricultural chemicals industry group that contained 10 source categories. Today's final rule groups these 10 agricultural chemicals source categories into one source category, renames the source category, and adds additional chemical production processes to the source category.

EFFECTIVE DATE: June 23, 1999.

ADDRESSES: *Docket.* Docket No. A–95–20, containing supporting information considered by the EPA in developing the promulgated standards, is available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room 1500, 1st Floor, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning this final rule, contact Mr. Lalit Banker at (919) 541–5420, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA regional representatives. For a list of regional representatives, see the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION: *Regulated entities.* Entities potentially regulated are those which produce PAI's and integral intermediates that are used in herbicides, insecticides, or fungicides and are located at facilities that are major sources as defined in section 112 of the CAA. Regulated categories and entities include:

Category	NAICS codes	SIC codes	Examples of potentially regulated entities
Industry	Typically, 325199 and 32532.	Typically, 2869 and 2879.	• Producers of pesticide active ingredients that contain organic compounds and are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in the onsite production of an active ingredient used in an herbicide, insecticide, or fungicide.

The foregoing table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1360 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

Regional Representatives. The EPA regional representatives are:

Region I

NESHAP (MACT) Coordinator, U.S. EPA Region I, John F. Kennedy Federal Building, One Congress Street, Boston, MA 02114–2023, (617) 918–1111

Region II

Umesh Dholakia, U.S. EPA Region II, 290 Broadway Street, New York, NY 10007–1866, (212) 637–4023 (Umesh)

Region III

Bernard Turlinski, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2150

Region IV

Lee Page, U.S. EPA Region IV, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, GA 30303–3104, (404) 562–9131

Region V

Bruce Varner, U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 886–6793

Region VI

Robert Todd, U.S. EPA Region VI, First Interstate Bank Tower @ Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202–2733, (214) 665–2156

Region VII

Richard Tripp, U.S. EPA Region VII, Air Toxics Coordinator, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7566

Region VIII

Ann Marie Patrie, U.S. EPA Region VIII, Air Toxics Coordinator, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6524

Region IX

Nahid Zoueshtiagh, U.S. EPA Region IX, Air Division-6, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1261

Region X

Andrea Wullenweber, U.S. EPA Region X, Air Toxics Coordinator, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–8760

Background Documentation. The following is a listing of background documents pertaining to this rulemaking. The complete title, EPA publication number, publication date, docket item number, and the abbreviated descriptive title used to refer to the document throughout this notice are included.

(1) National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Pesticide Active Ingredient Production Industry: Summary of Public Comments and Responses. EPA–453/R–98–011. April 1999. Docket item No. IV–B–1. Response to Comment Document for Promulgated Standards.

(2) Pesticide Active Ingredient NESHAP—Basis and Purpose document. July 1997. Docket item No. III–B–1. Basis and Purpose Document.

(3) Hazardous Air Pollutant Emissions From the Pesticide Active Ingredient Production Industry—Supplementary Information Document for Proposed Standards. July 1997. Docket item No. II–B–21. Supplementary Information Document.

The response to comment document for the promulgated standards contains: (1) a summary of all the public comments made on the proposed rule and the Administrator's response to the comments; and (2) a summary of the changes made to the rule since proposal. The basis and purpose document contains much of the rationale for the standards. The supplementary information document contains a compilation of technical memoranda.

Electronic Versions of Documents. Electronic versions of documents from the Office of Air and Radiation (OAR) are available for downloading from EPA's OAR Technology Transfer Network Web site (TTNWeb). The TTNWeb is a collection of related Web sites containing information about many areas of air pollution science, technology, regulation, measurement, and prevention. The TTNWeb is directly accessible from the Internet via the World Wide Web at the following address: "http://www.epa.gov/ttn." This preamble and rule are located under the OAR Policy and Guidance Information Web site, "http://www.epa.gov/ttn/oarpg/t3main.html," under the **Federal Register** Notices section. The background documents are located at the same web site, under the Reports section. If more information on the TTNWeb is needed, contact the Systems Operator at (919) 541–5384.

Judicial review. Under section 307(b)(1) of the CAA, judicial review of NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. List of Source Categories
  A. Initial Source Categories
  B. Addition of Other Pesticide Active Ingredients
  C. Single Source Category
  D. Change of the Source Category Name
II. Background
  A. Summary of Considerations Made in Developing this Rule
  B. Regulatory Background
III. Authority for NESHAP Decision Process
  A. Source of Authority for NESHAP Development
  B. Criteria for Development of NESHAP
IV. Summary of Promulgated Standards
  A. Source Categories to be Regulated
  B. Pollutants to be Regulated and Associated Environmental and Health Benefits
  C. Affected Sources
  D. Compliance Dates
  E. Process Vent Provisions
  F. Storage Vessel Provisions
  G. Wastewater Provisions
  H. Equipment Leak Provisions
  I. Bag Dump and Product Dryer Provisions
  J. Heat Exchanger System Provisions
  K. Alternative Standard
  L. Pollution Prevention Alternative
  M. Emissions Averaging Provisions
  N. Initial Compliance and Performance Test Provisions
  O. Monitoring Requirements
  P. Recordkeeping and Reporting Requirements
V. Summary Of Nationwide Impacts
  A. Air Impacts
  B. Water and Solid Waste Impacts
  C. Energy Impacts
  D. Cost Impacts
  E. Economic Impacts
VI. Major Comments and Changes to the Proposed Standards
  A. Applicability Provisions
  B. Compliance Dates for New Sources
  C. Process Vents Provisions
  D. Storage Vessel Provisions
  E. Equipment Leak Provisions
  F. Wastewater Provisions
  G. Bag Dump and Product Dryer Provisions
  H. Heat Exchanger Provisions
  I. Alternative Standard
  J. Pollution Prevention Alternative
  K. Emissions Averaging
  L. Testing Provisions and Initial Compliance Demonstration
  M. Monitoring
  N. Recordkeeping and Reporting
  O. Miscellaneous
VII. Technical Amendment to 40 CFR Part 9
VIII. Administrative Requirements
  A. Docket
  B. Executive Order 12866
  C. Executive Order 12875
  D. Executive Order 13084
  E. Paperwork Reduction Act
  F. Regulatory Flexibility
  G. Unfunded Mandates
  H. Submission to Congress and the Comptroller General Office
  I. National Technology Transfer and Advancement Act
  J. Executive Order 13045

I. List of Source Categories

Section 112 of the CAA requires that EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under section 112 (d) and (f) and work practice and equipment standards under section 112(h) for categories of sources that emit HAP. On July 16, 1992, EPA published an initial list of major and area source categories to be regulated (57 FR 31576). Today's final rule adds additional chemical production processes to the agricultural chemicals industry group, groups the initial and additional source categories into a single source category, and renames the source category.

A. Initial Source Categories

Included on the initial source category list were major sources emitting HAP from 10 categories of agricultural chemicals production; in addition to being an agricultural chemical, each of these compounds is also a PAI. One source category on the initial source category list, butadiene furfural cotrimer (R–11) production, was moved from the polymers and resins industry group to this industry group on June 4, 1996 (61 FR 28197). The EPA decided it was appropriate to move butadiene furfural cotrimer (R–11) to the agricultural chemicals industry group because it is an insecticide commonly used for delousing cows.

B. Addition of Other Pesticide Active Ingredients

In developing the rule, the EPA identified a number of other PAI production operations that were not on the initial source category list. It was determined that production of these compounds is similar to the production of the compounds in the 11 initial agricultural chemical source categories. Production of these other PAI's are being added to the source category list under section 112(c) of the CAA based on information obtained during the gathering of HAP emission data for this proposed rule. From this information, it

was determined that: (1) there are similarities in process operations, emission characteristics, control device applicability and costs, and opportunities for pollution prevention of these PAI's with the listed agricultural chemicals; and (2) the production of these PAI's occurs at facilities that are major sources. Like the initial agricultural chemicals, these PAI's are those that are used in herbicides, insecticides, and fungicides that are registered as end-use products under section 3 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

C. Single Source Category

In developing the proposed rule, EPA decided not to set MACT for each individual PAI chemical but, rather, to aggregate all PAI's together under the same source category. The PAI's that EPA proposes to include in this source category are all organic PAI's that are used to produce insecticide, herbicide, or fungicide products. Data gathered from the PAI production industry indicate that the process equipment, emission characteristics, and applicable control technologies are sufficiently similar for the broad group of sources that EPA intends to regulate under a single set of standards. There are no significant differences in the types of control technologies applicable to controlling emissions from the various PAI processes. Common HAP control technologies are applicable to the production operations at all of the facilities. Based on these factors, EPA concluded that determining MACT for each individual PAI is not warranted.

The EPA believes it is technically feasible to regulate emissions from a variety of PAI processes by a single set of emission standards. Similar to the Hazardous Organic NESHAP (HON) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI), separate requirements are proposed for process vents, storage vessels, equipment leaks, and wastewater HAP emission points (often referred to as planks). The set of standards also establishes different control requirements based on distinctions in the size of the emission points. Variability in the characteristics of the production processes for each individual PAI chemical may affect the quantity of HAP emissions. This variability has been addressed by incorporating cutoffs for uncontrolled emissions in the standards for individual planks.

Several other reasons support the development of a single set of emission standards for a group of PAI processes. Many of these PAI's are only produced at a single facility or by a single company. In addition, data indicate that many of the PAI processes that EPA is proposing to regulate by this set of standards are collocated within individual facilities; at some facilities, multiple PAI's are also produced in the same equipment (i.e., flexible operating equipment). Facilities with collocated PAI manufacturing could more easily comply with a single set of emission standards than with individual standards for each of the collocated processes. Several industry representatives also expressed interest in a generic regulation that would specify consistent requirements for a wide range of processes.

Another justification for developing a single set of emission standards to regulate production of a variety of PAI's is that it is more efficient and less costly for EPA to develop a single standard than to develop separate standards for several individually listed source categories which have similar emission characteristics and applicable control technologies. A single set of standards for PAI manufacturing will ensure that process equipment with comparable HAP emissions and control technologies are subject to consistent emission control requirements. In addition, compliance and enforcement activities would be more efficient and less costly.

D. Change of the Source Category Name

Under today's final rule, EPA is revising the source category list published under section 112(c) of the CAA to add a source category called "Pesticide Active Ingredient Production" and to subsume the 11 initial, separate source categories into that category, as well as to include other identified chemical production processes which are major sources of HAP. All 11 agricultural chemicals on the initial source category list are PAI's; all of the other chemicals identified during data gathering that have been added to the list are also PAI's. Because these other PAI's have been added to the source category list and because they have been grouped with the initial 11 agricultural chemicals, which are also PAI's, the EPA decided that it is appropriate to change the title of this NESHAP source category. Effective by this notice, EPA is changing the title of the source category to "pesticide active ingredient production." This change is appropriate to avoid confusion regarding the definition of the source category and to aid in distinguishing the types of air emission sources addressed by this source category.

II. Background

A. Summary of Considerations Made in Developing This Rule

The CAA was created in part "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" (CAA section 101(b)(1)). Section 112(b) of the CAA lists 189 HAP believed to cause adverse health or environmental effects. (Through rulemaking, EPA subsequently delisted caprolactam). Section 112(d) of the CAA requires that emission standards be promulgated for all categories and subcategories of major sources of these HAP and for many smaller "area" sources listed for regulation under section 112(c) in accordance with the schedules listed under section 112(c). Major sources are defined as those that emit or have the potential to emit at least 10 tons/yr of any single HAP or 25 tons/yr of any combination of HAP.

On July 16, 1992 (57 FR 31576), EPA published the initial list of categories of sources slated for regulation. As noted above, this list included 10 categories of Agricultural Chemicals Production; with today's final rule, these source categories are combined into a single category called Pesticide Active Ingredient Production, and additional PAI processes are added to the source category. The statute requires emissions standards for the listed source categories to be promulgated between November 1992 and November 2000. On December 3, 1993, the EPA published a schedule for promulgating these standards (58 FR 83841).

In the CAA, Congress specified that each standard for major sources must require the maximum reduction in emissions of HAP that EPA determines is achievable considering cost, health and environmental impacts, and energy requirements. In essence, these MACT standards would ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions.

Available emissions data show that pollutants that are listed in section 112(b)(1) of the CAA and are emitted in substantial amounts by the PAI production source category include toluene, methanol, methyl chloride, and HCl. The PAI production source category also emits small amounts of other listed pollutants including benzene, benzyl chloride, 1,3-butadiene, carbon tetrachloride, chloroform, ethylbenzene, ethyl chloride, ethylene dichloride, hexachlorobenzene, hexachlorocyclopentadiene, hexachloro ethane, hexane, methylene chloride, tetrachloroethylene, trichlorobenzene, trichloroethylene, xylenes, acetonitrile, Captan®, formaldehyde, glycol ethers, hydroquinone, methyl ethyl ketone, methyl isobutyl ketone, methyl isocyanate, napthalene, phosgene, chlorine, and hydrogen cyanide. Some of these pollutants have been classified as known, probable, or possible human carcinogens when inhaled, and all can cause reversible and irreversible toxic effects following sufficient exposure. These effects include respiratory and skin irritation, neurological disorders (e.g., dizziness, headache, and narcosis), effects upon the eye (including blindness), damage to organs (e.g., liver, kidney, and testes), and in extreme cases, death. Emissions of these pollutants will be reduced by implementation of today's final rule.

The list of HAP in section 112(b) of the CAA includes 22 HAP compounds (or classes of compounds) that have been reported to be possible endocrine disruptors. Many of these 22 HAP are PAI's, or are used in the production of PAI's, and, thus, could possibly be emitted from PAI manufacturing plants. In a survey of 20 plants producing PAI's, EPA found only one of these 22 HAP in the actual emissions of these plants. The quantity of this one potential endocrine disruptor was very low relative to the total HAP emissions reported at the 20 surveyed plants.

Based on published chemical property data, the vapor pressures of the possible endocrine disruptors tend to be low relative to the solvents and raw materials used in the PAI manufacturing processes (the lower the vapor pressure, the less material that will volatilize). In addition, based on a PAI industry buyer's guide, the possible endocrine disruptors that are also PAI's are each produced by only one or a small number of companies. As a result, the HAP that are possible endocrine disruptors are likely emitted in small quantities, if at all, relative to the HAP listed above. The EPA is implementing a program under the Federal Food Drug and Cosmetic Act and Safe Drinking Water Act to screen pesticides and other chemicals for their potential to disrupt the endocrine system of humans and wildlife. The EPA will assess the risk to humans and wildlife of chemicals identified in this program as endocrine disruptors and take appropriate risk management action. The EPA's risk management strategy could include the development of risk based emission standards under the CAA.

The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing sources, are based on process and emissions data received from 20 of the estimated 78 existing facilities that are subject to today's final rule. Regulatory alternatives more stringent than the MACT floor (the minimum control level required by the CAA) were selected when they were judged to be reasonable, considering cost, non-air quality health and environmental impacts, and energy requirements.

Included in today's final rule are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that affected sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule. The EPA has also attempted to maintain consistency with existing regulations by either incorporating text from existing regulations or referencing the applicable sections.

Representatives from other interested EPA offices and programs, State environmental agency personnel, and industry participated in the regulatory development process as MACT partnership members. The partnership members were given opportunities to review and comment on the regulation prior to proposal. Industry, regulatory authorities, environ mental groups, and other interested parties provided comment on drafts of the proposed standards and provided additional information during the public comment period.

B. Regulatory Background

Today's final rule implements section 112(d) of the CAA, which requires the Administrator to regulate emissions of HAP listed in section 112(b) of the CAA. The intent of this rule is to protect the public health and the environment by requiring new and existing major sources to reduce generation of emissions by using pollution prevention strategies or to control emissions to the level achievable by the MACT.

In 1994, EPA promulgated National Emission Standards for Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (59 FR 19587). Processes producing Captafol®, Captan®, Chlorothalonil, Dacthal, and Tordon™ acid that use butadiene, carbon tetrachloride, methylene chloride, or ethylene dichloride as a reactant or process solvent, are subject to the Negotiated Regulation for Equipment Leaks. Today's final rule requires control of leaking components that are currently not subject to the Negotiated Regulation for Equipment Leaks, but that contain and/or transport HAP and are associated with processes in this source category. Today's final rule also allows sources subject to the Negotiated Regulation to comply with the leak detection and repair (LDAR) provisions of this rule.

III. Authority for NESHAP Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the CAA gives the EPA the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed; this list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The Agency must list all known categories and subcategories of "major sources" that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAP.

Under section 112(c)(1) of the CAA, the Administrator has the authority to establish additional source categories as appropriate. Ten (revised to 11) categories of agricultural chemicals were included on the initial list. Because the processes, HAP emissions, control technologies, and control costs for these 11 agricultural chemicals are similar to the processes, HAP emissions, control technologies, and control costs for other PAI's, the Administrator included other PAI's on the source category list and grouped the agricultural chemicals and the PAI's together into one source category.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the CAA. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP

that is achievable for new or existing sources. This control level is based on the MACT. The selection of MACT must reflect consideration of the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements for control levels more stringent than the floor (described below).

The MACT floor is the least stringent level for MACT standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (CAA section 112(d)(3)). Existing source standards can be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources, or the average emission limitation achieved by the best performing 5 sources for categories or subcate gories with fewer than 30 sources (CAA section 112(d)(3)). The average emission limitation achieved by the best performing sources is termed the "MACT floor," and the "average" is based on a measure of central tendency such as the arithmetic mean, median, or mode.

In establishing the floors for this rulemaking, EPA designed its information collection approach to reduce the paperwork burden on the industry. Rather than collect detailed information from all 78 existing sources, EPA narrowed its detailed collection request. Through literature reviews, State contacts, and plant visits, EPA identified companies which appeared to have the best controlled plants and sent data collection requests only to those companies. In identifying those companies, EPA also considered the need to include a variety of process and product types in the survey. Data for the PAI production industry were collected from 20 facilities that are major sources. In addition, many of those facilities achieve high emissions reductions, produce a variety of PAI's, and use a variety of production processes. As the standards for existing sources are based on the best-performing 12 percent of sources, the number of best-performing sources for this source category is nine facilities (i.e., 12 percent of 78 facilities). The best-performing nine facilities are included in the 20 facilities surveyed.

After the nine best performing sources in the source category were identified, the "average emission limitation achieved" was determined for each of the four types of emission points at these sources. The arithmetic mean was evaluated first for each type of emission point. If this value corresponded with the level of control achieved by a known technology, it was selected as the MACT floor. If the value did not correspond with the level of control achieved by a known technology, the median was evaluated. In all cases where the median was evaluated, it was selected as the MACT floor because it either corresponded with the level of control achieved by a known technology, or it was no control.

IV. Summary of Promulgated Standards

This section describes the source category and pollutants that are regulated, defines an affected source, and summarizes the final standards for each type of emission point. A pollution prevention alternative is also summarized in this section.

A. Source Categories to be Regulated

The final standards regulate HAP emissions from facilities that are major sources and produce PAI's for use in insecticide, herbicide, or fungicide products. These standards apply to existing sources as well as new sources. The final standards for existing and new sources are summarized in Table 1.

TABLE 1.—STANDARDS FOR NEW AND EXISTING PAI SOURCES

Emission source	Applicability	Requirement
Process vents	Existing:	
	Processes having uncontrolled organic HAP emissions ≥0.15 Mg/yr.	90% for organic HAP per process or to outlet concentration of ≤20 ppmv TOC.
	Processes having uncontrolled HCl and chlorine emissions ≥6.8 Mg/yr.	94% for HCl and chlorine per process or to outlet HCl and chlorine concentration of ≤20 ppmv.
	Individual process vents meeting flow and mass emissions criteria that have gaseous organic HAP emissions controlled to less than 90% on or after November 10, 1997.	98% gaseous organic HAP control per vent or ≤20 ppmv TOC outlet limit.
	New:	
	Processes having uncontrolled organic HAP emissions ≥0.15 Mg/yr.	98% for organic HAP per process or ≤20 ppmv TOC.
	Processes having uncontrolled HCl and chlorine emissions ≥6.8 Mg/yr and <191 Mg/yr.	94% for HCl and chlorine per process or to outlet concentration of ≤20 ppmv HCl and chlorine.
	Processes having uncontrolled HCl and chlorine emissions ≥191 Mg/yr.	99% for HCl and chlorine per process or to outlet concentration of ≤20 ppmv HCl and chlorine.
Storage vessels	Existing: ≥75 m^3 capacity and vapor pressure ≥3.45 kPa.	Install a floating roof, reduce HAP by 95% per vessel, or to outlet concentration of ≤20 ppmv TOC.
	New: ≥38 m^3 capacity and vapor pressure ≥16.5 kPa ...	Same as for existing sources.
	≥75 m^3 capacity and vapor pressure ≥3.45 kPa	
Wastewater[a]	Existing: Process wastewater with ≥10,000 ppmw Table 9 compounds at any flowrate or ≥1,000 ppmw Table 9 compounds at ≥10 L/min, and maintenance wastewater with HAP load ≥5.3 Mg per discharge event.	Reduce concentration of total Table 9 compounds to <50 ppmw (or other options).
	New:	
	Same criteria as for existing sources	Reduce concentration of total Table 9 compounds to <50 ppmw (or other options).
	Total HAP load in wastewater POD streams ≥2,100 Mg/yr.	99% reduction of Table 9 compounds from all streams.
Equipment leaks	Subpart H	Subpart H with minor changes, including monitoring frequencies consistent with the proposed CAR.

TABLE 1.—STANDARDS FOR NEW AND EXISTING PAI SOURCES—Continued

Emission source	Applicability	Requirement
Product dryers and bag dumps.	Dryers used to dry PAI that is also a HAP, and bag dumps used to introduce feedstock that is a solid and a HAP.	Particulate matter concentration not to exceed 0.01 gr/dscf.
Heat exchange systems	Each heat exchange system used to cool process equipment in PAI manufacturing operations.	Monitoring and leak repair program as in HON.

[a] Table 9 is listed in the appendix to subpart G of 40 CFR part 63.

B. Pollutants to be Regulated and Associated Environmental and Health Benefits

Pesticide Active Ingredients production facilities emit an estimated 3,850 Mg/yr of organic and inorganic HAP. Organic HAP include methyl chloride, methanol, and toluene as well as other compounds. Hydrogen chloride is the inorganic HAP emitted in the greatest quantities by this industry. The final rule reduces overall HAP emissions from PAI facilities by 65 percent.

Some of these pollutants are considered to be carcinogenic, and all can cause toxic health effects following exposure, including nausea, headaches, and possible reproductive effects. The extent and degree to which the human health effects may be experienced is dependent upon (1) the ambient concentration observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain); (2) the frequency of and duration of exposures; (3) characteristics of exposed individuals (e.g., genetics, age, preexisting health conditions, and lifestyle) which vary significantly with the population; and (4) pollutant specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence).

Most of the organic HAP emitted from this industry are classified as VOC. The emission controls for HAP will reduce non-HAP VOC emissions as well. Emissions of VOC have been associated with a variety of health and welfare impacts. Volatile organic compound emissions, together with nitrogen oxides, are precursors to the formation of tropospheric ozone. Exposure to ambient ozone is responsible for a series of public health impacts, such as alterations in lung function, changes in lung structure, and aggravation of existing respiratory disease. Welfare impacts from exposure to ambient ozone include damage to selected commercial timber species and economic losses for commercially valuable crops such as soybeans and cotton.

In addition to being listed under section 112(b)(1) for the purposes of this rulemaking, HCl is listed under section 112(r) of the CAA. The intent of Section 112(r), Prevention of Accidental Releases, is to focus on chemicals that pose a significant hazard to the community should an accident occur, to prevent their accidental release, and to minimize consequences should a release occur. Hydrogen chloride, along with the other substances listed under section 112(r)(3), is listed because it is known to cause, or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment (59 FR 4478, January 31, 1994). Sources that handle hydrogen chloride in greater quantities than the established threshold quantity under section 112(r)(5) will be subject to the risk management program requirements under section 112(r)(7) (58 FR 54190, October 20, 1993).

In essence, the MACT standards mandated by the CAA will ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions. In addition, the emission reductions achieved by today's final standards, when combined with the reductions achieved by other MACT standards, will contribute to achieving the primary goal of the CAA, which is to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" (CAA section 101(b)(1)).

C. Affected Sources

The affected source for the purpose of this regulation is the facility-wide collection of PAI manufacturing process units (PAI process units) that process, use, or produce HAP, and are located at a plant site that is a major source, as defined in section 112(a) of the CAA. An affected source also includes waste management units, heat exchange systems, and cooling towers that are associated with the PAI process units. A PAI process unit includes: the processing equipment; connected piping and ducts; associated storage vessels; and components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that are assembled at a facility for the purpose of manufacturing a PAI or integral intermediate.

The final rule specifies that new source requirements apply to an affected source for which construction or reconstruction commenced after November 10, 1997, or to any single PAI process unit that meets the following conditions: (1) It is not part of a process unit group; (2) construction commenced after November 10, 1997; and (3) it has the potential to emit 10 tons/yr of any one HAP or 25 tons/yr of combined HAP. The EPA expects that reconfiguration of processing equipment in a process unit group at an existing source generally will not meet the definition of construction or reconstruction. Therefore, reconfiguration generally will not trigger new source requirements.

D. Compliance Dates

Existing sources must comply within 3 years after June 23, 1999. New or reconstructed affected sources must comply on June 23, 1999 or startup, whichever is later.

E. Process Vent Provisions

The final standards require existing sources to reduce organic HAP emissions from each process with uncontrolled organic HAP emissions greater than or equal to 0.15 Mg/yr. The reduction may be either 90 percent from the sum of all vents within the process or to a total organic carbon (TOC) outlet concentration of 20 parts per million by volume (ppmv). If some vents within a process are controlled to the outlet concentration limits, the 90 percent reduction requirement applies to the sum of uncontrolled organic HAP emissions from all other vents in the process. Additionally, the final rule requires organic HAP emissions from any individual vent that meets certain annual emissions and flowrate criteria to be reduced by 98 weight percent or

to outlet concentrations of 20 ppmv as TOC; the 90 percent requirement would apply to the sum of organic HAP emissions from all other vents in the process. (Those process vents achieving 90 percent control prior to November 10, 1997 are not required to meet the 98 percent control requirement.)

The final standards also require existing sources to reduce HCl and chlorine emissions by 94 percent from each process or to an outlet concentration of 20 ppmv if the sum of uncontrolled HCl and chlorine emissions from all vents in the process is greater than or equal to 6.8 Mg/yr.

New sources are required to meet various process-based control levels. Specifically, for each process where the sum of the uncontrolled organic HAP emissions from all vents in the process is greater than or equal to 0.15 Mg/yr, the final standards require an overall 98 percent reduction in the organic HAP emissions per process. Alternatively, the final standards require that control devices meet outlet concentrations of 20 ppmv as TOC, and the 98 percent reduction requirement applies to the sum of uncontrolled organic HAP emissions from all other vents in the process.

The final standards also require new sources to reduce HCl and chlorine emissions by either a specified percentage or to an outlet concentration not to exceed 20 ppmv. If the uncontrolled HCl and chlorine emissions from the sum of all vents within a process are greater than or equal to 6.8 Mg/yr and less than 191 Mg/yr, the final standards require a reduction of at least 94 percent from the sum of all vents that are not controlled to 20 ppmv. If the uncontrolled HCl and chlorine emissions from the sum of all vents within a process are greater than 191 Mg/yr, the final standards require a reduction of at least 99 percent from the sum of all vents that are not controlled to 20 ppmv.

The final rule also contains an alternative standard for process vents that is similar to the outlet concentration options described above. The initial compliance determination and the monitoring provisions differ from the above outlet concentration options. See section IV.K for additional details regarding the alternative standard.

F. Storage Vessel Provisions

The final standards require both existing and new sources to control organic HAP emissions from storage vessels that have a capacity greater than or equal to 75 cubic meters (m^3) and HAP vapor pressure greater than or equal to 3.45 Kilopascals (kPa). New sources are also required to control organic HAP emissions from storage vessels with capacities greater than or equal to 38 m^3 and less than 75 m^3 and vapor pressure greater than or equal to 16.5 kPa. For all of the affected storage vessels, emissions must be controlled by one of the following methods:

(1) An internal floating roof with proper seals and fittings;

(2) An external floating roof with proper seals and fittings;

(3) An external floating roof converted to an internal floating roof with proper seals and fittings; or

(4) A closed vent system with a control device that is 95 percent efficient or reduces organic HAP to outlet concentrations of less than or equal to 20 ppmv as TOC.

Following comments received on the proposed storage vessel standards, the MACT floor for storage vessels was revised. For the final standards, the storage vessel cutoffs are based on the vessel capacity and the vapor pressure of the stored material rather than the capacity and uncontrolled emissions. See section VI.D for additional information on the changes made to the storage vessel standard.

The final rule also contains an alternative standard for storage vessels that is similar to the outlet concentration options described above. The initial compliance determination and the monitoring provisions differ from the above outlet concentration options. See section IV.K for additional details regarding the alternative standard.

G. Wastewater Provisions

The wastewater provisions are similar to the HON wastewater provisions (subpart G of 40 CFR part 63), except for maintenance wastewater and new source requirements. The final standards require existing and new sources to control Group 1 wastewater streams. Under the final standards, existing and new sources are required to determine Group 1 status for both process wastewater streams and maintenance wastewater streams. A process wastewater stream is a Group 1 stream for compounds listed in Table 9 of the appendix to subpart G of 40 CFR part 63 ("Table 9 compounds") if:

(1) The total annual average concentration of Table 9 compounds is greater than or equal to 10,000 ppmw at any flowrate; or

(2) The total annual average concentration of Table 9 compounds is greater than or equal to 1,000 ppmw and the annual average flow rate is greater than or equal to 10 liters per minute (L/min).

A maintenance wastewater stream is a Group 1 stream if the mass of Table 9 compounds in an individual maintenance wastewater discharge exceeds 5.3 Mg.

The final standards require existing sources with Group 1 process and maintenance wastewater streams for Table 9 compounds to do one of the following:

(1) Reduce the concentration of Table 9 compounds to less than 50 ppmw;

(2) Use a steam stripper with specific design and operating requirements;

(3) Reduce the mass flow rate of Table 9 compounds by at least 99 percent;

(4) Reduce the mass flow rate of Table 9 compounds by an amount equal to or greater than the fraction removed (Fr) value in Table 9;

(5) If a source using biotreatment for at least one wastewater stream that is Group 1 for Table 9 compounds, achieve a required mass removal greater than or equal to 95 percent for Table 9 compounds; or

(6) Treat with permitted Resource Conservation and Recovery Act (RCRA) units or by discharging to a permitted underground injection well.

The final standards require new sources with Group 1 wastewater streams for Table 9 compounds to control Table 9 compounds to the same level required for existing sources. In addition, new sources with a total mass flow rate from the source of 2,100 Mg/yr or more of Table 9 compounds would be required to reduce the mass flow rate of Table 9 compounds from all wastewater streams by 99 percent. This difference from the HON was needed because the MACT floor for new sources is more stringent than the provisions in the HON for facilities that exceed this mass flow rate cutoff.

A source is exempted from the wastewater standards if:

(1) The total mass flow rate of Table 9 compounds in Group 1 streams is less than 1 Mg/yr; or

(2) If the total mass flow rate of Table 9 compounds in untreated Group 1 wastewater streams and in Group 1 wastewater streams that are treated to levels less stringent than the levels required by the standard is less than 1 Mg/yr.

H. Equipment Leak Provisions

Today's final rule contains revisions to the proposed equipment leak requirements that were based on subpart H (of the HON rule). The final rule contains changes to the standards for valves and connectors in gas/vapor service and light liquid service as follows: the requirement to implement a quality improvement program and all references to 40 CFR § 63.175 have been removed; an allowance for monitoring every 2 years for those processes with less than 0.25 percent leaking valves has been added; an allowance for valve subgrouping was also added; the equation used to determine the percent of leaking valves in a process was changed to eliminate the optional credit for valves removed, and, the rolling average of leaking valves was revised so that it is calculated as an average of the last three monitoring periods for annual or biannual monitoring programs. The monitoring schedule for connectors in gas/vapor service and light liquid service was also revised to allow for decreased monitoring for those components with the lowest leak rates. If less than 0.25 percent of the connectors in a group of processes are leaking, the monitoring frequency is now once every 8 years. These changes, which are consistent with the proposed consolidated air rule (CAR), are designed to reduce the recordkeeping requirements while achieving the same level of control as under subpart H. The standard for existing sources is based on a regulatory alternative more stringent than the floor, and the standard for new sources is based on the MACT floor for new sources.

I. Bag Dump and Product Dryer Provisions

Under the final standards, particulate matter emissions are not allowed to exceed 0.01 grains per dry standard cubic foot (gr/dscf) from both (1) product dryers that are used to dry a PAI (or integral intermediate) that is also a HAP, and (2) bag dumps that are used to introduce a feedstock that is a solid material and a HAP. The standard applies to both existing and new sources.

J. Heat Exchanger System Provisions

The final standards apply to each heat exchange system that is associated with the affected source. The standards require a monitoring program to detect leakage of organic HAP from the process into the cooling water. The final standards refer to the monitoring program in the HON (§ 63.104 of subpart F).

K. Alternative Standard

As an alternative to the requirements for process vents and storage vessels that are discussed in sections IV.E and F, respectively, the emissions from any process vent may be routed to a control device achieving outlet concentrations of less than or equal to 20 ppmv TOC (calibrated on methane or the predominant HAP) and less than or equal to 20 ppmv HCl and chlorine. Initial compliance with the alternative standard is achieved when the outlet concentrations for TOC are demonstrated using a TOC monitor that meets the requirements of Performance Specification 8 or 9 of appendix B of 40 CFR part 60. Monitoring to demonstrate ongoing compliance is also conducted with the TOC monitor. Initial and ongoing compliance with the alternative standard for HCl and chlorine is achieved when the outlet concentrations are demonstrated using Method 26.

L. Pollution Prevention Alternative

For existing sources, the promulgated rule also includes a pollution prevention (P2) alternative standard that meets the requirements of the MACT standards and can be implemented in lieu of the requirements described above. The P2 alternative standard provides a way for facilities to comply with the MACT standards by reducing overall consumption of HAP from their processes. The two options that were developed are described in Table 2 and are discussed below.

TABLE 2.—ALTERNATIVE P2 STANDARD

Option	Description of P2 option
1	Demonstrate an 85% reduction in the production-indexed HAP consumption factor (kg HAP consumed/kg product produced) from a baseline period.
2	Demonstrate at least a 50% reduction in the production-indexed HAP consumption factor and additional reduction from add-on control to yield overall reduction equivalent to an 85% reduction in the production-indexed HAP consumption factor from a baseline period.

In the first option, an owner or operator can satisfy the MACT requirements for all process vents, storage vessels, equipment leaks, wastewater, and heat exchange systems associated with an existing process by demonstrating that the production-indexed consumption of HAP has decreased by 85 percent from a baseline (certain restrictions are discussed below). The baseline comprises the average consumption and production values averaged over the first 3-year period in which the process was operational, beginning no earlier than the period consisting of the 1987 to 1989 calendar years. Alternatively, for a process that has been operational for less than 3 years, but more than 1 year, the baseline may be established for the time period from startup of the process until the present. The production-indexed HAP consumption factor (HAP factor) is expressed as kilograms (kg) HAP consumed per kg product produced. The numerator in the HAP factor is the total consumption of material, which describes all the different areas where material can be consumed, either through losses to the environment, consumption in the process as a reactant, or some other form of destruction. Consumption, rather than emissions, is tracked because it can be used as a true measure of pollution prevention; any decrease in consumption for the same unit of product generated must involve some type of increase in process efficiency, including reduction of waste, increased product yield, and in-process recycling. Because HAP are used generally as raw materials and solvents in this industry, reductions in consumption can be generally associated with reductions in emissions to air, water, or solid waste.

The second option also uses the production-indexed HAP consumption factor and is also applied to existing processes. This option allows an owner or operator to supplement reductions achieved with P2 with add-on controls. The EPA believes that such an option will provide greater flexibility and cost efficiency to the operators who already may have some add-on controls. Under this option, an owner or operator must demonstrate reductions in the HAP factor of at least 50 percent via P2 measures. In addition, the mass of HAP emissions must be reduced by an amount that, when divided by the production rate and added to the reduction in the HAP factor, yields a reduction equivalent to at least 85 percent of the baseline HAP factor. Thus, the total reduction required by option 2 would be equivalent to or greater than an 85 percent reduction in the HAP factor, the same as in option 1.

The following restrictions also apply to the pollution prevention standards in today's final rule. First, for any reduction in the production-indexed HAP consumption factor that is achieved by reducing a HAP that is also a VOC, an equivalent reduction in the production-indexed VOC consumption factor is required. Second, for any reduction in the production-indexed HAP consumption factor that is achieved by reducing a HAP that is not a VOC, the production-indexed VOC consumption factor may not be increased. Third, particulate matter emissions from product dryers are excluded from the P2 option because

the product is not consumed in the process. Fourth, processes that began operation after November 10, 1997 are not eligible for the P2 alternative. Fifth, the P2 alternative does not apply to HAP that are generated in the process if they are not also added as a raw material or solvent; emissions of these generated HAP must be controlled as specified in the standards for process vents, storage vessels, equipment leaks, and wastewater systems.

Today's final rule also require owners and operators complying with the P2 standard to submit a P2 Demonstration Summary as part of the Precompliance plan that describes how the P2 alternative will be applied at their facilities. The minimum data requirements for the P2 Demonstration Summary are listed in § 63.1364(g)(3) of today's final rule.

M. Emissions Averaging Provisions

Today's final rule includes emissions averaging provisions that are essentially unchanged from the proposed provisions that would allow emissions averaging among process vent, storage vessel, and wastewater emission points within an existing affected source. Under emissions averaging, a system of "credits" and "debits" is used to determine whether an affected source is achieving the required emissions reductions. Emissions averaging allows existing sources the flexibility to achieve compliance at diverse points with varying degrees of control already in place in the most economically and technically reasonable fashion. This flexibility to account for controls already in place is not as justified for new sources because they can and should be designed and constructed with compliance in mind. Therefore, new sources are not allowed to use emission averaging.

N. Initial Compliance and Performance Test Provisions

1. Promulgated Standards

a. *Process Vents.* To determine compliance with the percent reduction requirements for gaseous HAP and HCl emissions from PAI process vents, the owner or operator is required to quantify the uncontrolled and controlled gaseous emissions from all process vents to demonstrate the appropriate overall reduction requirements. For process vents controlled by a device with an inlet of less than 9.1 Mg/yr of HAP, the owner or operator can either test or use mathematical methodologies to determine the uncontrolled and controlled emission rates from individual process vents. For process vents controlled by a device with an inlet of 9.1 Mg/yr or more of HAP, performance tests are required to determine the reduction efficiency of each device.

Performance test provisions were structured to account for the peak-case emissions. The EPA adopted this approach primarily for batch operations, which, because of their cyclic nature, tend to have variable emissions. Continuous processes tend to have more consistent emissions, but for simplicity, the same performance test provisions are applied to controls for continuous processes. This approach essentially considers emissions from continuous processes to be peak-case at all times. Control devices, that have previously been tested under conditions required by this standard, and condensers are exempt from performance testing.

To determine compliance with the outlet concentration standards, the final rule requires the owner or operator to conduct a performance test using the EPA methods specified in the rule under the same peak-case conditions. Today's final rule also specifies procedures to demonstrate initial compliance when using flares.

b. *Storage Vessels.* For demonstrating compliance with the percent reduction requirements for storage vessel emissions, today's final rule requires that the owner or operator conduct either a performance test or a design evaluation. To demonstrate compliance with the 20 ppmv outlet concentration, the final rule requires the owner or operator to conduct a performance test. However, if a control device is shared by storage vessels and process vents, the results of a performance test conducted to demonstrate compliance with the process vent standards may also be used to demonstrate initial compliance with storage vessel standards. For demonstrating compliance with the floating roof equipment standards, the final rule refers to the compliance provisions in the HON. Today's final rule also specifies procedures to demonstrate initial compliance when using flares.

c. *Wastewater.* The wastewater provisions in the final rule remain essentially unchanged from those of the proposed rule. For demonstrating compliance with the various wastewater requirements, owners and operators have a choice of using a specified design, conducting performance tests, or documenting engineering calculations, consistent with the wastewater provisions in the HON. Appropriate inspection, monitoring, reporting, and recordkeeping requirements are included in the regulation via cross-references to the HON.

d. *Equipment Leaks.* To determine compliance with the standard for equipment leaks, facilities must demonstrate that an LDAR program meeting the requirements of the final rule is in use.

e. *Bag Dumps and Product Dryers.* To demonstrate initial compliance with the particulate matter emission limit of 0.01 gr/dscf, the owner or operator is required to conduct a performance test.

2. Pollution Prevention Alternative Standard

To demonstrate initial compliance with the pollution prevention alternative standard, the final rule requires the owner or operator to document yearly quantities of HAP raw materials and products using preapproved material tracking records, including standard purchasing and accounting records, and calculating the baseline HAP and VOC factors. Prior to the compliance date, the final rule requires owners and operators to submit a pollution prevention Demonstration Summary that describes how the pollution prevention alternative will be applied at the facility. The pollution prevention Demonstration Summary provides the regulatory agency an opportunity to review and approve the proposed material tracking procedures. Procedures are also specified in the final rule to demonstrate that the required reductions are achieved by the control devices used to meet option 2.

O. Monitoring Requirements

1. MACT Emission Standards

The final rule requires monitoring to demonstrate compliance on an ongoing basis. This monitoring is done either by (1) continuously measuring emission reductions directly, or (2) continuously measuring a site-specific operating parameter, the value of which is established by the owner or operator during the initial compliance determination. The operating parameter value is defined as the minimum or maximum value established for a control device or process parameter that, if achieved on a daily average by itself or in combination with one or more other operating parameter values, determines that the owner or operator is complying with the applicable emission standards. Except for the bag leak detectors, these parameters are required to be monitored at 15-minute intervals throughout the operation of the control device. For a device controlling streams that, in aggregate, contain less than 0.91 Mg/yr of HAP, only a site-specific

periodic verification that the device is operating as designed is required to demonstrate continuous compliance. Owners and operators must determine the most appropriate method of verification and propose this method to the Agency for approval in the Precompliance plan, which is due 6 months prior to the compliance date of the standard.

Under the final rule, each fabric filter that is used to control particulate matter emissions from a bag dump or product dryer that is subject to the particulate matter standard must be equipped with a bag leak detection system with an alarm to indicate bag leaks or other causes of increased emissions. In addition, the owner or operator must prepare a written operation and maintenance manual that describes inspection and maintenance procedures for these fabric filters. The manual must also include a corrective action plan that describes procedures to diagnose the cause of any alarm as well as corrective actions to be taken to correct malfunctions or minimize emissions. The manual must be submitted to EPA for approval in the Precompliance report. Not initiating the corrective action plan within 1 hour of an alarm is a violation of an operating requirement.

2. Pollution Prevention Alternative Standard

An owner or operator electing to use the pollution prevention alternative can demonstrate ongoing compliance by calculating the rolling average of the HAP and VOC factors for each applicable process or portions of the process. For continuous processes, the rolling average is calculated every 30 days, and for batch processes, the rolling average is calculated every 10 batches. In both cases, the rolling average is based on data from the previous 12 months. In addition, an owner or operator electing to use pollution prevention Option 2 is required to monitor the emission reduction obtained through the use of traditional controls using the methods described above.

P. Recordkeeping and Reporting Requirements

The owner or operator of any PAI production facility subject to these standards is required to fulfill reporting requirements specified in the final rule, as well as requirements outlined in the General Provisions of subpart A to 40 CFR part 63. Table 1 following the regulatory text of today's final rule designates which sections of subpart A apply to the rule. Generally, the recordkeeping provisions require the owner or operator to maintain all records documenting the applicability determinations and indicating that the source is in compliance with the applicable requirements. Required reports under this standard include the Initial Notification of applicability to the standards, the Precompliance report, the Notification of Compliance Status report, and the Periodic reports required after the date of compliance.

V. Summary of Nationwide Impacts

The emission reductions that are required by this regulation could be met by regulated sources using one or more of several different techniques. Impacts were estimated for control scenarios based on traditional control techniques that were judged to be the most feasible for meeting the requirements of the final standards from a technical and cost standpoint. Energy, cost, and economic impacts of the pollution prevention alternative would be equivalent to or lower than the estimated impacts for traditional controls because it is likely that an owner or operator would elect to implement only those pollution prevention techniques that have lower impacts than traditional controls.

A. Air Impacts

The standards are estimated to reduce HAP emissions from existing sources by 2,500 Mg/yr from the baseline level, a reduction of 65 percent from the baseline (i.e., current) emissions level, and 93 percent from the uncontrolled emissions level. These reductions would also occur if facilities elect to implement the alternative pollution prevention standard. In addition to reducing HAP emissions, VOC will also be reduced. This reduction includes both VOC that are HAP and other VOC that are not HAP. Volatile organic compounds are precursors in the atmospheric reaction with oxides of nitrogen that generates tropospheric ozone. The amount of VOC reduction (beyond the HAP portion of the VOC) due to implementation of the PAI standards has not been quantified for this rulemaking. The basis for the estimated emissions reductions is discussed in Chapter 5 of the Basis and Purpose Document and in memoranda in the docket (Docket A–95–20, Docket item numbers III–B–1, IV–B–2, IV–B–3, and IV–B–4).

B. Water and Solid Waste Impacts

With the assumption that overheads from steam stripping will be recoverable as material or fuel, no solid waste is expected to be generated from steam stripping wastewater streams. Additionally, no solid waste is expected to be generated from controls of other emission points.

Under the final standards, wastewater generated from water scrubbers used to control HCl emissions is expected to increase by an estimated 10.8 million liters per year. The volume of wastewater generated would also increase at plants that choose a water scrubber to control certain water soluble organic HAP; however, the increase is expected to be minimal because the use of water scrubbers for this purpose is expected to be uncommon. The basis for the water and solid waste impacts is discussed in the Environmental Impacts memorandum in the Supplementary Information Document in the docket (Docket A–95–20, Docket item number II–B–21).

C. Energy Impacts

Under the final standards, energy use is expected to increase by an estimated 4,880 x 109 British thermal units per year (Btu/yr). The basis for the estimated energy use is discussed in the Environmental Impacts memorandum in the Supplementary Information Document in the docket (Docket A–95–20, Docket item number II–B–21).

D. Cost Impacts

The total control cost includes the capital cost to install control devices (including floating roofs), the costs involved in operating control devices (energy and operating and maintenance costs), costs associated with monitoring control devices to ensure compliance, costs associated with implementing work practices, and the cost savings generated by reducing the loss of valuable product in the form of emissions. Monitoring cost includes the cost to purchase and operate devices, as well as recordkeeping to demonstrate average cost effectiveness (dollars per megaram ($/Mg) of HAP reduction) is also presented as part of cost impacts and is determined by dividing the annual cost by the annual emission reduction. The basis for the cost impacts is discussed in the Cost Impacts memorandum in the Supplementary Information Document and in subsequent memoranda in the docket (Docket A–95–20, Docket item numbers II–B–21, IV–B–2, IV–B–3, and IV–B–5).

Under the final standards, EPA estimates that the total capital costs for existing and new sources will be $71.6 million and $10.3 million, respectively (June 1998 dollars). The total annual costs for control at existing and new sources are estimated to be

approximately $39.4 million and $5.47 million, respectively (June 1998 dollars). The average cost effectiveness of the standards is estimated to be about $15,800/Mg for existing sources and $13,400/Mg for new sources.

The EPA estimates that in the first three years following promulgation industry's nationwide annual cost burden will average $304,000/yr for monitoring, recordkeeping, and reporting requirements. Most of these costs are for new and reconstructed sources that must be in compliance upon startup; other costs are for existing sources to prepare initial notifications and plans. In the fourth year after promulgation, existing facilities must begin to record monitoring data and prepare periodic reports, which will significantly increase the nationwide annual burden.

It is expected that the actual compliance cost impacts of the final rule will be less than described above because of the potential to use common control devices, upgrade existing control devices, use other less expensive control technologies, implement pollution prevention technologies, or use emissions averaging. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, it is not possible to quantify the amount by which actual compliance costs will be reduced. The EPA believes that the overall control costs and the monitoring, reporting, and recordkeeping costs will be substantially reduced for the facilities opting to comply via the pollution prevention option.

E. Economic Impacts

The control costs imposed on producers in the PAI production industry will increase their cost of production. The effects of the changes in production costs are evaluated in the "Economic Impact Analysis of the Proposed NESHAP for the Production of Pesticide Active Ingredients" (Docket A–95–20, Docket item No. II–A–20). This report was not changed as a result of public comments and will serve as documentation for the final rule. The resulting increase in production costs will increase the market price by less than 1 percent and decrease market output by less than 1 percent. In addition, the regulation's impact on foreign competition is relatively small. Social cost incorporates the changes in welfare to consumers, unaffected producers, and foreign producers and consumers to the cost of the regulation. These costs were determined to be negligible for the PAI production industry; therefore, the total social cost is estimated to be equal to the total control cost. No plant closures are expected from compliance with this set of alternatives.

VI. Major Comments and Changes to the Proposed Standards

A. Applicability Provisions

1. Selection of Source Category

The initial list of categories of major and area sources included 10 source categories in the agricultural chemicals industry group. In June 1996, butadiene furfural cotrimer was moved from the polymers and resins industry group to the agricultural chemicals industry group (61 FR 28197). In the notice of proposed rulemaking, EPA made the following additional changes: (1) All active ingredients within the meaning of FIFRA section 2(a) that are used in herbicide, insecticide, or fungicide pesticide end-use products were added to the agricultural chemicals industry group; (2) the individual initial and new source categories in the agricultural chemicals industry group were combined into a single source category; and (3) the new source category was named "pesticide active ingredient production."

The EPA received numerous comments on the change in the source category. Many of the commenters requested exemptions for specific processes or classes of processes. Examples include: antimicrobials; chromic acid and sodium bichromate; chlorine; sodium hypochlorite; kaolin (aluminum silicate); sulfuric acid, particularly from copper smelters; and copper sulfate, from copper refineries and rod mills. The commenters contend that these processes should be exempt because the production processes are significantly different than organic PAI production processes. In addition to differences in the production processes, each commenter cited one or more of the following reasons to support their requests for exemptions: (1) Minimal toxicity of some of the products themselves; (2) the HAP emitted are not organic compounds or HCl, or they are impurities introduced with feedstocks; (3) regulation would achieve minimal environmental benefit but impose significant burden, especially to demonstrate that equipment does not emit HAP; (4) the product is not primarily sold for use as PAI; and (5) the production process is part of another source category that will be regulated by another MACT standard, is part of a delisted source category, or, if not currently listed, would be more logically listed among the categories of inorganic chemicals. Some of the commenters also indicated that sulfuric acid plants will be MACT for copper and lead smelter furnaces.

Some commenters opposed the expansion of the source category because some products are produced synthetically and others are derived from naturally occurring materials. These commenters are also concerned that the proposal did not identify either the number of processes that would be covered or examples of the processes, and that EPA has not ensured that process operation, emission characteristics, control device applicability, and costs are similar. As a result, they contend that the proposed regulation is arbitrary and capricious, is inconsistent with the Clean Air Act and EPA's procedures for developing MACT standards, and defeats the purpose of creating source categories. The commenters suggested limiting the regulation to synthetically produced materials because this would be consistent with the process descriptions presented in the Basis and Purpose document and with the definition of intermediate (i.e., a compound produced in a chemical reaction). These commenters explained that other regulations (e.g., the HON) have recognized this distinction, and many of the compounds derived from naturally occurring materials are not used primarily as PAI's.

One commenter stated that EPA should not further expand the source category beyond that covered by the proposed rule because owners and operators of other processes may not have read the proposal preamble closely enough to realize that EPA was requesting comment on such action. Two commenters supported the scope of the applicability and the definition of PAI.

The reasons for expanding the source category to include PAI's other than those on the initial source category list, and for aggregating them all together in a single source category, are summarized in section I of this preamble. Since proposal, however, EPA reexamined the scope of the source category and determined that the proposed rule included some processes that are not similar to the others. For the final rule, changes were made to narrow the scope of the source category; in addition, for processes that remain in the source category, changes have been made to exempt some processes and to clarify requirements for others. These changes are: (1) A statement has been added to specify that the provisions of the rule apply only to PAI process units that "process, use, or produce HAP"; (2) the definition of PAI has been changed to mean any organic material that is an active ingredient within the meaning of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 2(a); and (3) a statement has been added to specify that the provisions of the rule do not apply to the production of ethylene (processes subject to the HON are also exempted, as they were in the proposed rule). Finally, EPA decided not to limit the source category only to production of compounds by chemical synthesis. Each of these decisions is discussed in more detail later in this section. The provision specifying that the rule applies only to PAI process units that "process, use, or produce HAP" has been added to the final rule because EPA did not intend for owners and operators to demonstrate compliance for processes that do not meet this condition. Note, however, that this provision does not automatically exempt process units that do not "emit" HAP; for emission points in such process units, an owner or operator must demonstrate that emissions are less than the applicability thresholds.

The EPA decided to exclude production of inorganic compounds from the source category because: (1) Inorganic PAI's comprise only a small percentage of the total PAI production; (2) many of the inorganic PAI production processes do not use or emit HAP; (3) data are unavailable on the use, emissions, and control of HAP compounds other than organics and HCl; (4) some of the inorganic PAI's are included in other active or delisted source categories; and (5) most of the inorganic PAI's are used primarily for non-pesticidal purposes. In this context, "organic" means any compound that contains carbon and hydrogen with or without other elements. Based on a review of pesticide registration data in 1996, less than 10 percent of the PAI's in pesticide products that are registered as insecticides, herbicides, or fungicides are inorganic compounds. Inorganic compounds comprise a similar percentage by weight based on 1993 consumption data; the top 25 compounds account for nearly half of the total PAI production, and the two inorganic compounds in the group (sulfur and copper hydroxide) account for less than 10 percent of the total.

Of the inorganic PAI processes, only those producing HCl, chlorine, and compounds containing arsenic and chromium are known to use and emit HAP. Both HCl and chlorine production processes are part of source categories that will be addressed by other MACT standards that are under development. Chromium-based compounds are part of the delisted chrome chemicals source category and thus, EPA agrees with the commenter that they should not also be part of the PAI source category. Data on the existing control levels for arsenic-based compounds are unavailable. In the absence of such data, EPA has decided that production of such compounds should not be part of the PAI source category.

The commenters cited examples of some inorganic compounds that are primarily used for nonpesticidal purposes. The EPA believes there are other inorganic compounds that could be added to this list of compounds used only in minor amounts as pesticides. Conversely, most of the organic compounds are specifically designed as PAI's. Exceptions include ethylene, which has been specifically exempted in the final rule because it is the subject of a MACT standard that is under development, and several compounds covered by the HON such as acrolein, ethylene oxide, napthalene, and propylene glycol.

Production of organic PAI compounds that are derived from natural materials is retained in the source category. Natural materials used as PAI's fall into one of two categories. One category includes materials such as herbs, tobacco dust, dried blood, chitin, putrescent whole egg solids, pyrethrum flowers, cinnamon, sawdust, and ground sesame plant. These compounds are simply harvested or collected and the only processing involves mechanical action. None of these compounds is a HAP. As a result, these processes are not subject to the final rule because the production processes do not process, use, or produce HAP. The second category includes compounds like turpentine that are extracted from natural materials. Extraction processes are not exempted from the final rule because they tend to use large amounts of solvent and have a high potential for emissions. Emissions from extraction processes tend to be more concentrated than emissions from many of the operations in chemical synthesis processes, and they tend to be larger scale operations than extraction operations that are part of a chemical synthesis process. These characteristics make control of extraction processes more cost effective than control of many chemical synthesis processes. However, because the final rule includes a primary use criterion for determining applicability (see section VI.A.2), extraction processes are only subject to the final rule if the product is primarily used as a PAI.

One commenter believes the Captan® process (one of the 10 initial source categories) should not be combined with other PAI processes because it differs from the other processes in a number of ways. According to the commenter, some of the differences are: (1) The process vent flow rate for production of the intermediate is much lower than the process vent flow rate for the active ingredient production, which leads to differences in the complexity and cost of the control devices; (2) the Captan® process has both volatile organic HAP and particulate HAP emissions; and (3) the cost to control carbon disulfide emissions would be much higher than the modeled costs.

The EPA disagrees with the commenter's assertion that the Captan® process (and the associated intermediate process) should be considered separately from other PAI processes. The EPA assumed the intermediate is an integral intermediate. As a result, the intermediate process and the Captan® process are separate processes, both of which are subject to the final rule. Although the flow rates of the intermediate and Captan® process vent streams differ, the flow rates and other process vent stream characteristics for both processes are well within the range of characteristics for process vent streams at other surveyed PAI facilities. These differences were accounted for in EPA's impact analysis by using different models to represent the two processes.

In addition, although the Captan® process itself emits both particulate HAP (i.e., the Captan® product) and a gaseous organic HAP, carbon disulfide, the two pollutants are emitted from different vents. The particulate emissions from product dryers also are considered to be a separate type of emission point like process vents or storage vessels. The fact that this facility is the only one of the MACT floor facilities to have HAP emissions from product dryers is not considered a significantly unique characteristic. It is analogous to the fact that some of the other plants have HAP storage vessel emissions or wastewater discharges and are subject to the specific standards for these emission points, where other plants are not. Finally, EPA believes the cost impacts analysis is correct. Carbon disulfide can be controlled with many of the same control devices that are used to control other organic HAP. If incinerated, the resulting sulfur dioxide (SO_2) emissions can be controlled using scrubbers comparable to those used to control HCl emissions. A detailed discussion of the cost analysis is provided in section VI.O.2. Therefore, EPA believes the Captan® process is not sufficiently different from other PAI processes to warrant development of a

subcategory or a separate source category.

2. Designation of Affected Source

At proposal, the affected source was defined as the facility-wide collection of process vents, storage tanks, waste management units, heat exchange systems, cooling towers, equipment identified in § 63.149 of subpart G, and equipment components (pumps, compressors, agitators, pressure release devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems) in PAI manufacturing operations at a major source of HAP emissions. The EPA received several comments on the affected source. The comments focused on the following issues: (1) Definition of terms, (2) limiting applicability to processes where the primary product is a PAI, and (3) limiting applicability to processes where the product is primarily used as a PAI.

a. *Definitions.* Two commenters requested changes in the definition of the affected source and in the terms used to describe the affected source. One commenter requested that the definition of "pesticide active ingredient manufacturing operations" exclude waste management units because these units are not subject to the standards but instead are used to comply with the standards, and typically they are not dedicated to a particular production process. In addition, the commenter expressed concern that the proposed definition could be interpreted to require compliance with new source standards at an existing waste management unit simply because a new and major PAI manufacturing operation is built that will contribute wastewater to the unit.

The second commenter believes the definition of affected source needs to be revised to include not only the emission points, but also the process unit and emission control technologies. The commenter recognizes that the definition in the proposed rule is similar to the definitions in other MACT standards, but the commenter has recently realized that it is too narrow. For example, in determining whether changes constitute "reconstruction," the changes must cost more than half as much as building a new similar affected source. However, under the proposed rule, the affected source included only process vents, not the reactors, distillation units, or other process equipment of which the vent is a part. Similarly, it included valves and connectors on process piping, but not the piping itself. The commenter also contended that the cost of installing emission controls is a legitimate part of the cost of building a new affected source, but to consider that cost in the reconstruction analysis, emission control technologies must be included in the definition of the affected source.

The EPA made several changes to the definition of affected source and related terms to respond to the comments and to clarify the terms. One change was to remove much of the language from § 63.1360(a) because it is included in the definition of other terms in § 63.1361. Another change was to eliminate the term "PAI manufacturing operations" because it is redundant with the definition of the affected source. In its place, the term "PAI process unit" is used to describe the process and all related equipment used to produce a single PAI or integral intermediate. The EPA agrees with the commenter that the equipment and piping within a process are components of an affected source that should be considered in the fixed capital cost analysis for determining whether changes constitute reconstruction. For the final rule, these items have been included, along with most of the items on the list of equipment in the proposed definition of the affected source, in the definition of the "PAI process unit."

The EPA also agrees with the commenter that waste management units should not be considered part of the PAI manufacturing operations or, in the final rule, part of the PAI process unit. However, waste management units are not used to comply with the standards; they are a type of emission point for which standards are developed. Therefore, waste management units are considered part of the affected source in the final rule. This change makes the final rule consistent with other MACT standards and allows the waste management units to be considered in reconstruction analyses.

Finally, the commenter's conclusion regarding the application of new source requirements is correct. If a new PAI process unit meets the requirements for new source applicability, then the waste management units associated with that new PAI process unit would have to meet the requirements for new sources. If the owner or operator wants to discharge to existing waste management units, they must meet the requirements for new sources. The practical impact of this requirement, however, is expected to be minimal because the requirements for new sources and existing sources are identical except when the HAP load to the waste management units exceeds 2,100 Mg/yr. Based on survey data from the industry, no single existing PAI process unit discharges wastewater with such a high load (and only one facility discharges wastewater containing that much HAP).

The EPA disagrees with the commenter's assertion that control devices should be a component of an affected source for the purposes of determining reconstruction costs. The preamble to the General Provisions cites EPA's policy on this issue, which was originally stated in the preamble to a December 16, 1975 regulation that deals with modification, notification, and reconstruction requirements under 40 CFR part 60. That preamble states, "Costs associated with the purchase and installation of air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, etc.) are not considered in estimating the fixed capital cost of a comparable entirely new facility unless that control equipment is required as part of the process (e.g., product recovery)" (40 FR 58416, December 16, 1975).

b. *Primary Product.* Two commenters urged EPA to specify, as in other MACT standards, that a process (or process unit) is subject to the rule only if its primary product is a PAI. Both commenters believe this determination is needed when processing equipment periodically is reconfigured to produce different products. In addition, one of the commenters believes it is needed when multiple products are produced by a given process unit. This commenter also believes it is needed when a facility makes a change that is intended to be permanent because the commenter could not find any provision in the proposed rule that would allow such a process unit to be exempt from the rule if they stop making a PAI. The commenters believe the primary product determination would help manufacturers determine which rules apply and would result in regulation of processes that produce a given product under only one, most appropriate MACT standard. One commenter suggested that the primary product be defined as the one with the greatest annual design capacity on a mass basis. The other commenter noted that a simple way to define applicability is to specify that if a process unit stops making a PAI, the PAI rule no longer applies.

Another commenter interpreted the proposed rule to mean that the rule would apply whenever a PAI is produced. If a facility uses non-dedicated equipment, the commenter realized that this could mean that other rules would apply when the equipment was reconfigured to produce a different product (e.g., the proposed pharmaceuticals rule used the same language). The commenter believes that complying with two standards for the same equipment would be confusing. Therefore, the commenter suggested that the PAI rule apply only when 50 percent or more of the annual production from the equipment is a PAI, or that EPA allow a facility to comply only with the most stringent rule that would apply to the equipment, regardless of the configuration or the product being produced.

In response to the comments EPA evaluated several options for including a primary product determination. The analysis considered two types of situations. The first situation consists of processing equipment that produces only one PAI, produces different PAI's at different times, or simultaneously produces coproducts (one of which is a PAI). The second situation involves processing equipment that produces different products periodically, and some of the products are not PAI's.

For the first situation, EPA determined that a primary product determination is not needed. This conclusion is obvious for equipment that only produces PAI's because no other rule could apply (because compounds subject to the HON are exempted from today's final rule). The analysis is more complicated if a PAI is produced as a byproduct or is produced in minor quantities relative to some other product of the process. The EPA is not aware of any such situations. However, if such processes exist, they may already be subject to the HON, in which case they are exempted under § 63.1360(d) of today's final rule. The only other standard that might apply to such a process in the future is the Miscellaneous Organic NESHAP (MON). The MON will cover a wide variety of compounds in many different industries. Thus, EPA believes that a process unit producing a PAI, even if the PAI is not the primary product, has more in common with other PAI process units than with process units that will be subject to the MON. Therefore, EPA also believes it is more appropriate to regulate all such process units under today's rule rather than the MON.

The EPA considered four options for defining the applicability of the rule to equipment periodically used to produce chemicals other than PAI's. The first option is no change from proposal (i.e., no primary product determination). The second option is to include all equipment used to produce different products in a "process unit group," and always comply with the regulation that applies to the primary product for the group, regardless of what product is being produced. The third option is to define applicability of the rule based on the primary product of the process unit. The fourth option is similar to Option 2, except that the applicable rule for the process unit group could, under certain circumstances, be a rule other than the one for the primary product of the group.

Under option 1, a PAI process unit exists whenever a PAI is being produced, when there is no primary product determination, and when the owner or operator must comply with the PAI standard for each PAI process unit. This option was rejected because, as the commenters noted, it has the undesirable effect of requiring an owner or operator to comply with a different regulation each time the feedstock changes or the equipment is reconfigured to make a different type of product.

The second option is to lump all non-dedicated equipment into one or more "process unit groups" and require the owner or operator to comply with the rule that applies to the primary product within the group. A variation on this option would be to require compliance at all times with the most stringent rule that would apply to any of the individual process units within the group. This option was rejected because the promulgated pharmaceuticals standard does not include a provision that would allow an owner or operator to elect to comply with today's final rule when a pharmaceutical is produced in a process unit group that has a PAI for the primary product. The variation also was rejected because it would be difficult to implement; the most stringent regulation would vary depending on the mix of different types of emission points at a given facility and could require mixing and matching different requirements from different rules that apply to the various emission points.

The third option would specify that the rule apply only if the primary product of the process unit is a PAI. This option was rejected because it does not solve the problem of equipment being subject to multiple regulations. A process unit is defined only by the product it makes. If the raw materials are changed or the equipment is reconfigured to make a different product, the result is a different process unit. An exemption for a process unit when it no longer produces a PAI would be meaningless because, by definition, a change in product creates a different process unit. In other words, it is not possible to make a permanent change in the primary product of a process unit because a given process unit cannot have more than one primary product.

The fourth option, like the second option, includes the concept of process unit groups. This option requires compliance with today's final rule for all PAI process units within the group, except for the following situations. One exception is that the owner or operator may elect to comply with another existing MACT standard for any PAI process unit(s) if the primary product of the process unit group is subject to the other standard on June 23, 1999 or the date of startup of the process unit group, whichever is later. Thus, PAI process units within a group, even if the PAI is not the primary product for the group, are subject to this standard unless and until the process unit group is subject to another MACT standard that covers the primary product of the group. This option also allows the owner or operator to elect to comply with the pharmaceuticals standard for any PAI process unit(s) if any of the products produced in the process unit group are subject to the pharmaceuticals standard. Thus, pharmaceutical manufacturing process units within a group that are covered by the pharmaceuticals MACT may comply with those standards even if a PAI is the primary product of the group. This provision is included because the pharmaceuticals rule does not have a provision that would allow an owner or operator to comply with the PAI rule while producing a pharmaceutical product when the primary product of the group is a PAI. However, two provisions in the pharmaceuticals rule are not applicable when producing a PAI. First, the process vent emission limit of 0.15 Mg/yr in the PAI rule applies instead of the 2,000 lb/yr limit in the pharmaceuticals rule because the 2,000 lb/yr cutoff would not be consistent with the MACT floor for PAI process vents. Second, the owner or operator of a new source that will produce PAI's as well as pharmaceuticals must comply with all of the requirements regarding application for approval of construction or reconstruction in § 63.5 of the General Provisions; the exclusions in § 63.1259(a)(5) of the pharmaceuticals rule do not apply. Again, EPA believes this change is necessary to avoid disparate treatment of PAI producers. The fourth option was selected because it simplifies compliance by allowing an owner or operator to comply with only one regulation for a process unit group. It accomplishes this goal without sacrificing emission reductions because the requirements of the rules are similar.

It also does not require that an existing regulation be amended.

Under the fourth option, the primary product of a group is defined as the product (e.g., a PAI, pharmaceutical, HON chemical, or currently unregulated chemical) with the highest estimated operating time or total production rate for the 5 years after the compliance date for today's final rule or after startup of the process unit group, whichever is later. The owner or operator proposes the number of groups and the boundaries of each group based on site-specific operation, but a group may only include equipment that is or may be used with equipment that is used to produce a PAI (i.e., some equipment must overlap between the PAI process unit and some other process unit for all equipment in both process units to be part of the same group).

c. *Primary Use.* Two commenters believe the rule should only apply to production of materials that are primarily intended to be used as PAI's. One of the commenters noted that for some chemicals registered as PAI's, only a small percentage of the total product is sold for use as a PAI.

Since proposal, EPA has evaluated four options for determining applicability of process units that produce a product for use both as a PAI and other purposes. Option 1 is to require no primary use determination (i.e., no change from proposal). Option 2 is to list, in the rule, compounds that are registered as PAI's but that would not be subject to the rule based on determinations that their primary use nationwide is not as a PAI. Option 3 is to require site-specific determinations of primary use. Option 4 is to list, in the rule, all PAI's that are subject to the rule.

Option 1 would encompass the most process units and would therefore achieve the greatest environmental benefit. The EPA rejected this option, however, because it could result in inequitable regulatory treatment of a given type of process unit. For example, one facility might produce a compound for multiple purposes, including a small amount for use as a PAI, but other facilities produce the same compound exclusively for other purposes. Under this option, only the facility producing a small amount of the compound for use as a PAI would be subject to the rule even though otherwise identical to the other facility.

Under option 4, a list of PAI's subject to the regulation would be included in the regulation. Compounds for which the primary use is the collective non-PAI purposes would be excluded from the list. This option was rejected because it would not accommodate changes in the industry. This is a dynamic industry with new compounds being developed and registered as PAI's every year. Between 1984 and 1995, the industry added an average of 14 new compounds per year, although not all of these new compounds would meet the definition of organic PAI subject to regulation under this rule. As a result, updating the list every year would be impractical. Another disadvantage to this option is that EPA's pesticide reregistration process is not yet complete. Presumably, compounds with incomplete evaluations would be included on the list. The list then would have to be amended periodically to delete compounds whose registrations are canceled.

Option 2 was rejected because, like option 4, it would not automatically accommodate changes in the industry; the rule might have to be amended periodically to exempt new compounds that are primarily used for non-PAI purposes. Another concern with option 2 is that it would be difficult to ensure that the list is accurate and complete.

The final rule adopts option 3, which requires site-specific determinations of primary use. This option was selected for several reasons. First, this approach is likely to result in a given process being subject to only one, most appropriate regulation because EPA is not aware of any compounds for which the primary use is as a PAI for one facility but not others. Furthermore, EPA does not expect the primary use at a given facility to vary. However, if the primary use changes to non-PAI purposes, today's final rule will still apply to the process unit (based on EPA's "once-in, always-in" policy); if the primary use changes to a PAI, today's final rule will apply only if the process unit is not already subject to the HON. A second advantage of this option is that it automatically accommodates new compounds that are developed in the future, and existing compounds that are found to have a pesticidal application. A third advantage is that minimal additional recordkeeping and reporting is required. Manufacturers are required under FIFRA to record and report the annual production of each PAI that they produce; today's final rule requires that they also record and report the total production to demonstrate that the compound is produced primarily for non-PAI purposes. Finally, the pharmaceuticals rule provides a recent precedent for including a primary use provision.

The final rule incorporates the primary use concept in the definition of PAI process unit. Specifically, a process unit is considered to be a PAI process unit if more than 50 percent of the material produced is used as a PAI or integral intermediate. The primary use is determined based on the projected annual production from the process unit in the 3 years after June 23, 1999 or startup, whichever is later.

3. Recovery Devices

One commenter requested that EPA clarify the applicability of recovery devices that are used for multiple processes when the recovered material from a PAI process is used in a non-PAI process. In the proposed rule, the term recovery device had the same meaning as in the HON, but it should have been used only in connection with the wastewater provisions. The MACT floor for process vents is based on the concept that certain condensers are part of the process (i.e., process condensers) and any other add-on devices are considered to be control devices; the concept of recovery devices as in the HON does not apply to process vents. For the final rule, the term recovery device has been revised to include only devices used with water streams, and to specify that equipment based on gravity separation may be a recovery device only if all of the inlet streams are two-phase liquid streams. The material recovered in a recovery device may be used in any process, including non-PAI processes.

4. Intermediates

Under the proposed rule, the affected source would include manufacturing of any intermediate that is integral to a PAI production process and for which more than 50 percent of the annual production of the intermediate is used in the on-site production of PAI's. An integral intermediate process was defined as a process manufacturing an intermediate that is used in the onsite production of PAI's and is not removed to storage before being used to produce the PAI(s). An intermediate was defined as a compound produced in a chemical reaction that is further processed or modified in one or more additional chemical reactions to produce a PAI. The proposed rule would also allow an owner or operator to elect to include production of the following intermediate processes in the affected source: (1) Integral intermediates for which less than 50 percent of the intermediate is used in the onsite production of PAI's and (2) isolated intermediates. "Isolated intermediates" were defined as intermediates that are removed to storage before being used in the on-site production of PAI's.

Several commenters addressed the definitions of different types of intermediates and their inclusion in the definition of affected source. One commenter recommended editorial changes to clarify the meaning of affected source. Another commenter stated that the term "isolated intermediate" should not be used because it has a different meaning under Toxic Substances and Control Act (TSCA), and different definitions for the same term would cause confusion. Another commenter stated that the rule needs to include a definition for "storage" to clarify which intermediate processes are integral. Other commenters believe the proposed rule combined integral intermediate production with PAI production in a single process, which, as described further in section VI.C.1, differs from the approach used to develop the MACT floor.

The intent of the proposed rule was to consider each integral intermediate process to be a separate process within the affected source, and to allow the owner or operator to elect to include any other intermediate process in the affected source. To improve the clarity of these provisions, EPA made several changes in the final rule. The first change was to include the production of integral intermediates in the definition of the new term "PAI process unit," as described in section VI.A.2.a. This change clarifies that production of each integral intermediate is a separate process unit. The second change was to delete the term "isolated intermediate" to eliminate possible confusion with the term as it is defined under TSCA. The impact of this change was minimal because the term was only used in the proposed rule to describe intermediates that are not integral intermediates. The third change was to replace the term "integral intermediate process" with the term "integral intermediate" and change the definition to mean an intermediate for which 50 percent or more of the annual production is used in the onsite production of one or more PAI's and is not stored before being used in the production of another integral intermediate or the PAI(s). For the purposes of this definition, an intermediate is stored if it is discharged to a storage vessel and at least one of the following conditions is met: (1) The processing equipment that discharges to the storage vessel is shutdown before the processing equipment that withdraws from the vessel is started up; (2) on average, the material is stored in the storage vessel for at least 30 days before being used to make a PAI; or (3) the processing equipment that discharges to the storage vessel is located in a separate building or processing area of the plant than the processing equipment that uses material from the storage vessel as a feedstock, and control equipment is not shared by the two processing areas. Processes that satisfy any of these conditions are considered to be significantly distinct and separate. The fourth change was to clarify the provisions allowing the owner or operator to elect to include any intermediate process in the affected source. The final rule specifies that an owner or operator may elect to designate production of any intermediate that does not meet the definition of integral intermediate (and is not otherwise exempted) as a PAI process unit in the affected source. See section VI.C.1 for a discussion of integral intermediates in the development of the MACT floor.

5. Determining New Source Status

Under the proposed rule, an addition of PAI manufacturing operations at an existing plant site would be subject to the requirements for a new source if it had the potential to emit 10 tons/yr or more of any HAP or 25 tons/yr or more of any combination of HAP, unless the Administrator establishes a lesser quantity at a plant that currently is an affected source. Two commenters questioned whether this meant that a source with minor actual emissions but major potential to emit could elect to accept a federally enforceable "synthetic minor" operating permit with an emission limit below the 10 and 25 tons/yr cutoffs, and thereby avoid the new source requirements for process vents, storage vessels, and wastewater.

The new affected source provisions have been revised for the final rule. As noted above, the term "PAI manufacturing operations" has been removed from the final rule. The phrase "unless the Administrator establishes a lesser quantity at a plant that currently is an affected source" is not included in the final rule because this statement is redundant with section 112(c)(1) of the CAA, and the term "addition" was determined to be ambiguous. To address these concerns, the final rule specifies that new source requirements apply to an affected source for which construction or reconstruction commenced after November 10, 1997, or to any single PAI process unit that meets the following conditions: (1) It is not part of a process unit group; (2) construction commenced after November 10, 1997; and (3) it has the potential to emit 10 tons/yr of any one HAP or 25 tons/yr of combined HAP. Thus, if an owner or operator elects to accept federally enforceable conditions that limit the potential to emit for a single PAI process unit that is added to an existing facility to levels below these thresholds, the PAI process unit would be subject to existing source standards, not new source standards.

6. Startup, Shutdown, and Malfunction

For batch processes, the proposed rule would require an owner or operator to comply with the provisions in the rule during periods of startup and shutdown; periods of malfunction would be regulated according to § 63.6 of the General Provisions. For continuous processes, the proposed rule specified that only § 63.6 of the General Provisions would apply during periods of startup, shutdown, and malfunction.

One commenter agrees that routine startups and shutdowns between batches should be covered by the rule, but stated that it should not apply during other startups and shutdowns because normal emission control techniques may be inappropriate or ineffective during those times. According to the commenter, some of the other situations include (1) initial startup of a process unit, (2) startup after a malfunction or an extended period of nonoperation, and (3) shutdowns due to a malfunction. The commenter explained that during initial startup, control devices and monitoring systems need to undergo "shakedown" and debugging, and may need time to reach their full efficiency. After an extended downtime, process equipment also will need time to get back to normal operating conditions, and control devices will need to reach operating temperatures or equilibrium. Although the commenter understands that the proposed rule would not apply during malfunctions, the requirements during a shutdown associated with the malfunction were not clear.

The commenter also stated that the final PAI MACT standards should not incorporate § 63.6(e) of the General Provisions for four reasons. First, the requirement in § 63.6(e)(3)(i)(A) to minimize emissions "at least to the levels required by all relevant standards" is ambiguous. Second, the General Provisions do not address shutdowns of compliance equipment such as control devices. Third, the General Provisions do not address startups, shutdowns, and malfunctions that affect only a portion of the process. Fourth, the General Provisions do not say how to deal with periods of nonoperation. To address these concerns, the commenter recommended that the rule have self-contained startup,

shutdown, and malfunction provisions patterned after those in the HON.

Another commenter recommended that EPA consider revising the rule to allow batch processes with air pollution control equipment to comply with the startup, shutdown, and malfunction requirements in § 63.6(e) of the General Provisions. The commenter explained that operating practices for controls used with batch processes are the same as those for controls used with continuous processes; for both types of processes, operators verify that all control equipment is on-line and functioning properly to minimize emissions at all times (consistent with § 63.6(e)(1)(i) of the General Provisions). Furthermore, the commenter stated that maintenance and corrective actions after a malfunction of a control device are the same for both batch and continuous processes. Therefore, the commenter recommended that EPA consider revising the rule to include the following language: "For batch processes with air pollution control equipment, startup, shutdown, and malfunction shall be regulated according to § 63.6 of subpart A of this part. For batch processes without air pollution control equipment, the provisions of this subpart shall apply during startup and shutdown, and periods of malfunction shall be regulated according to § 63.6 of subpart A of this part."

The EPA has reconsidered the applicability of the rule during periods of startup and shutdown and determined that the requirements of the rule should not be applied under certain situations for batch processes as well as for continuous processes. For batch processes, these situations include initial startups of new or reconstructed processes, and shutdowns that are not part of intended operation (e.g., for maintenance, replacement of equipment, or other repair, possibly as a result of a malfunction). These are times when the operators may be unfamiliar with the equipment operation or it may not be possible to follow standard operating procedures. However, a startup after maintenance, after switching to a product that has been produced in the past, or the startups between batches during a campaign are all routine, normal operating conditions that should result in the same emissions profile. Similarly, shutdown at the end of a campaign, between batches, or for planned, preventive maintenance are all normal operations with the same emissions profile. Conversely, for continuous processes, startup and shutdown for any reason results in operation under conditions different from the normal steady-state operation. To account for these differences between batch and continuous processes, the final rule provides definitions for startup and shutdown that differ from the definitions in the General Provisions. Specifically, the following definitions have been added to the rule:

Startup means the setting in operation of a continuous PAI process unit for any purpose, the first time a new or reconstructed batch PAI process unit begins production, or, for new equipment added, including equipment used to comply with this subpart, the first time the equipment is put into operation. For batch process units, startup does not apply to the first time the equipment is put into operation at the start of a campaign to produce a product that has been produced in the past, after a shutdown for maintenance, or when the equipment is put into operation as part of a batch within a campaign. As used in § 63.1363, startup means the setting in operation of a piece of equipment or a control device that is subject to this subpart.

Shutdown means the cessation of operation of a continuous PAI process unit for any purpose. Shutdown also means the cessation of a batch PAI process unit or any related individual piece of equipment required or used to comply with this part or for emptying and degassing storage vessels for periodic maintenance, replacement of equipment, repair, or any other purpose not excluded from this definition. Shutdown does not apply to cessation of a batch PAI process unit at the end of a campaign or between batches (e.g., for rinsing or washing of equipment), for routine maintenance, or for other. routine operations.

The EPA has also clarified in the final rule that the provisions can apply to processing equipment, as well as control, monitoring, and recordkeeping equipment. Additionally, in response to the commenter's concerns regarding ambiguity of the General Provisions, EPA has replaced the reference to the General Provisions with language from the HON that specifically clarifies applicability of provisions during startup, shutdown, and malfunction events.

7. Overlap With Other Standards

Several commenters stated that, in addition to the exemptions provided in the proposed rule, the rule must also address overlap with other regulations. Commenters identified potential overlap with new source performance standards (NSPS) in 40 CFR part 60 (e.g., subparts Kb, III, NNN, and RRR), NESHAP in 40 CFR part 61 (e.g., subparts BB, FF, and G), and RCRA equipment leak requirements. The commenters suggested using language similar to that in § 63.110 of the HON for provisions dealing with process vents, storage vessels, and wastewater and language from § 63.160(b) through (d) to address overlapping provisions that deal with equipment leaks.

The EPA agrees with the commenters that the rule must address overlap with other regulations. The final rule includes language similar to that in § 63.110 of the HON, thus addressing the overlap with NSPS requirements for storage vessels in subpart Kb of 40 CFR part 60 and RCRA requirements in 40 CFR parts 260 through 272. The EPA also added a provision specifying that an owner or operator subject to both this rule and the equipment leak requirements in subpart I of 40 CFR part 63 may elect to comply with the requirements of either rule.

The requirements in NSPS subparts III, NNN, and RRR apply to individual vents, whereas the process vent standards in today's final rule apply to the sum of all process vents within a process. As a result, a facility generally must comply with both today's final rule and any applicable NSPS. One exception is provided in the final rule. If an owner or operator elects to reduce emissions from a process vent by 98 percent (or implement an equivalent control option), then the owner or operator is required to comply only with the provisions of today's final rule.

The final rule does not address overlap with NESHAP in 40 CFR part 61. Subparts BB and FF regulate emissions from benzene production, which, because it is subject to the HON, is not subject to today's rule. Subpart G is reserved and also is not covered in § 63.110 of the HON.

B. Compliance Dates for New Sources

Several commenters addressed the provision in the proposed rule that would require new sources to be in compliance upon startup. One commenter believes the provision should be revised to require compliance by initial startup or the promulgation date of the rule, whichever is later. Other commenters believe EPA should either allow new sources a period of up to 6 months to complete any required testing after startup, or change the definition of startup to stipulate that startup is not complete until all required performance testing is complete, and that this testing must be completed no later than 6 months after steady state production for continuous processes, or until 6 months after a successful batch production run has been completed.

A provision requiring that new sources be in compliance by initial startup or the promulgation date, whichever is later, is consistent with other MACT standards and has been added to the final rule.

The EPA does not believe that the compliance date needs to be changed to accommodate required emissions testing. Under the proposed rule, an owner or operator would be required to submit the Notification of Compliance Status report no later than 150 days after the compliance date (i.e., startup for a new source). This requirement is consistent with other MACT standards (e.g., the HON, Polymers and Resins (P&R) I, and P&R IV), and it is nearly the requested 6 months after the compliance date. Furthermore, much of the required work (e.g., the emissions profile) may be completed before the compliance date. The amount of time needed to reach steady state production or to complete a successful batch production run should not be greater in this industry than in other chemical production industries. Therefore, the final rule retains the provision to submit the Notification of Compliance Status report no later than 150 days after the compliance date.

C. Process Vent Provisions

1. MACT and MACT Floor

Several commenters requested that sources be able to use process vents meeting the criteria for 98 percent control in determining 90 percent overall process control requirements. Commenters stated that the EPA determined that the MACT floor was 90 percent on a processwide basis and excluding these vents increases the stringency of the floor.

The MACT floor was determined to be 90 percent control for process vents at existing sources. In addition to the MACT floor, the EPA is required to develop regulatory alternatives beyond the floor and to select MACT based on the cost effectiveness of these alternatives. A regulatory alternative was developed that would require 98 percent control efficiency for specific vents that meet the flow and annual uncontrolled emissions criteria described in § 63.1362(b)(2)(iii); and would require 90 percent control efficiency for the sum of emissions from all other vents within the process. The cost of the regulatory alternative was judged to be acceptable, and this alternative was selected as MACT. The EPA agrees that this requirement is more stringent than the floor. If a vent that must be controlled to 98 percent is included in determining 90 percent control for all process vents within the process, the owner or operator would only be complying with the MACT floor, not the more stringent regulatory alternative. Thus, the final rule does not allow an owner or operator to use process vents that are subject to the 98 percent control requirement when determining compliance with the 90 percent overall control level.

Two commenters perceived an inconsistency that they believe should be resolved. The commenters pointed out that in the proposed standards, integral intermediate processes are combined with PAI processes to define a single "process," but they were evaluated separately in the MACT floor analysis. One commenter further noted that this change would result in an increase in the applicability cutoff of the MACT floor because part of the emissions from an intermediate process should be combined with the active ingredient process with the lowest uncontrolled emissions that were used to establish the applicability cutoff of 0.15 Mg/yr.

The discussion in section VI.A.4 explains that the intent in the proposed rule was to consider production of integral intermediates and active ingredients to be separate processes. As the commenters noted, this is also the approach used to develop the MACT floor. However, in reexamining this approach since proposal, EPA realized that some of the active ingredient processes at the surveyed facilities included production of intermediates; in addition, some of the reported intermediate processes may satisfy one of the criteria for storage and thus not be integral intermediates. If all of the intermediates are integral intermediates, the floor would increase to 92 percent. If none of the intermediates are integral intermediates, the floor would decrease to 88 percent. Thus, EPA considers the proposed floor of 90 percent control to be appropriate. The applicability cutoff also is unchanged because the active ingredient production and intermediate production are not combined into a single PAI process unit.

Several commenters requested that the definition of a Group 1 process vent be revised to include an uncontrolled emissions concentration cutoff of 50 ppmv and a flow rate cutoff of 0.005 standard cubic meters per minute. Several commenters also requested changing the applicability cutoff in this definition. Some commenters suggested the applicability cutoff should be based on "total resource effectiveness," as in the HON. The commenters asserted that these changes would provide incentives for sources to implement pollution prevention practices.

Some commenters suggested raising the applicability cutoff to 2,000 lb/yr to be consistent with the cutoff in the proposed pharmaceuticals rule; the commenters asserted this change was needed because the amount of available data on PAI processes was limited. Another commenter suggested raising the applicability cutoff to 10,000 lb/yr because this is the minimum value that was determined to be cost effective in the Batch Processes Alternative Control Techniques (Batch ACT) document. One commenter requested either a higher threshold for a process as a whole or for the individual process entities that comprise the Captan® process.

One commenter also noted that in many cases, controls on processes with small HAP emissions were added to control odors or VOC. The commenter disagreed with EPA's assertion during Partnership Group meetings that the CAA does not allow the Agency to consider the reason controls were added. The commenter states that there is no statutory limitation on how EPA defines "affected source"; for example, EPA has already provided exclusions in § 63.1360, and a higher applicability cutoff could be another.

The EPA disagrees with the suggestions to change the definition of "Group 1 process vent" because these changes would be inconsistent with the MACT floor. The suggested concentration and flow rate cutoffs are inconsistent because the MACT floor was based on the sum of emissions from all vents within a process, not the characteristics of an individual vent. However, for the final rule, EPA did change the definition of "process vent" to exclude streams with HAP concentrations less than 20 ppmv. Although concentration data are not available from the surveyed plants, streams with such low concentrations are likely to be uncontrolled because 20 ppmv is considered to be the practical limit of control (Docket No. A–79–32, Docket item No. II–B–31). Furthermore, such streams are likely to have low annual emissions and, thus, have little impact on the applicability determination for a process.

The EPA attempted to collect information on the best controlled facilities in the PAI industry; EPA believes that the best controlled facilities are contained in its PAI data base and that the processes contained in the data base are representative of the industry. Based on the PAI data base, many processes with uncontrolled emissions that were significantly less

than the cutoffs mentioned by the commenters were controlled to levels of 90 percent or greater. Because the emission cutoffs mentioned by the commenters were not supported by the process vent data, these cutoffs would not have been defensible because they would have been less stringent than the cutoff prescribed by the MACT floor.

Regarding the comment that the cutoff for processes is not cost effective and that other cutoffs that have been demonstrated as cost effective should be provided, EPA notes that there is no provision in the amended CAA for consideration of cost-effectiveness in setting the MACT floor. Therefore, it is conceivable that the standards, which are set based on the practices of the industry, will require a level of control that is greater than what was determined to be cost-effective for other CAA programs. For example, the 10,000 lb/yr cutoff contained in the draft Batch ACT that was referenced by the commenters was intended to simplify applicability of presumptive reasonably available control technology (RACT) control measures, which are applied to the reduction of criteria pollutants (in this case, VOC) and can include the consideration of cost effectiveness.

Finally, the amended CAA contains no provisions for considering reasons why certain processes are controlled and others are not when determining the group of sources that will make up the best 12 percent of the source category. Therefore, the issue of facilities controlling HAP for odor control or other purposes is not a consideration in setting the floors.

One commenter asserted that the applicability equation used to determine which vents must be controlled to 98 percent is inappropriately applied to batch processes. The commenter explained that the flow rate used in the computer model to develop the 98 percent applicability regulatory alternative in the Batch ACT is a constant flow rate, which is inconsistent with batch processing.

In the Batch ACT, EPA developed costs for an incinerator to estimate the cost effectiveness of controlling emissions from batch process vents. Although flow rates from batch processes vary, the control device must be capable of handling the maximum flow rate possible. Therefore, the incinerator was sized and costed for the maximum flow rate, even though venting from batch processes will include periods of lower flow rates.

2. HCl Standards

Two commenters expressed concern that EPA's approach to determining the MACT floor for the HCl emission limit criteria (e.g., the 6.8 Mg/yr cutoff) in the proposed rule considers only a limited number of process vents emitting HCl which may not be representative of the entire source category. The commenters recommend that EPA consider setting the HCl cutoff for existing sources at least as high as the average of the two lowest HCl emission rates from controlled processes at the MACT floor facilities (i.e., (6.8 Mg/yr + 11.0 Mg/yr)/2 = 9.0 Mg/yr), or that the control device for the process vent emitting HCl meet a minimum 90 percent efficiency if installed and in operation before November 7, 1997. (Note: EPA assumes the commenter meant the proposal date of November 10, 1997.) The commenters believe these changes will improve incentives for pollution prevention, and that allowing 90 percent control would reduce the cost burden on existing facilities because retrofitting to achieve an incremental improvement in control is very expensive.

The EPA disagrees with the commenters that the proposed cutoff for HCl emissions is inappropriate. As described in the Basis and Purpose document and summarized below, EPA believes the cutoff of 6.8 Mg/yr is a very clear and obvious breakpoint. Also, even though the MACT floor plants have fewer processes with HCl emissions than organic HAP emissions, this is representative of the industry as a whole. Thus, one would expect that the HCl floor would be based on less data than the floor for organic HAP emissions. The EPA also notes that if the floor were determined by evaluating the best controlled processes throughout the industry rather than the processes at the best performing 12 percent of existing facilities, that the applicability cutoff might be lower than 6.8 Mg/yr. It certainly would not be higher.

To develop the MACT floor for the proposed rule, all of the processes at the nine MACT floor facilities were ranked by uncontrolled HCl emissions. All processes with uncontrolled emissions below 6.8 Mg/yr were uncontrolled, and processes with higher emissions were controlled to various levels. Therefore, the MACT floor was determined to be no control for processes below this threshold and 94 percent for processes above it.

The EPA believes there is no basis for setting a cutoff at 9.0 Mg/yr or for setting a control level of 90 percent for control devices installed before November 10, 1997. Because the MACT floor consists of both a control efficiency and a cutoff, the cutoff cannot be changed independently of the control efficiency. A cutoff of 9.0 Mg/yr would be inappropriate because it is not associated with the determined MACT floor control efficiencies. Furthermore, it would not make sense to include one controlled process (i.e., the process with emissions of 6.8 Mg/yr) with all of the uncontrolled processes; this is a very clear and natural cutoff. If the standard were based on an alternative more stringent than the floor, the rule might allow emission points that are already controlled to the level of the MACT floor to comply with that level (as was done for organic emissions from process vents). However, there is no basis for a 90 percent control level, regardless of the installation date, because the 94 percent control level for HCl is the MACT floor. Finally, the EPA recognizes that the incremental cost effectiveness will be high for a facility with control just below the required level. However, this would be true no matter where the level was set.

Other commenters stated that the HCl standards for new sources should be set at 99 percent removal for consistency with the HON requirements. One commenter stated that since there is no actual test data from the pesticide manufacturing industry demonstrating a 99.9 percent removal of HCl, a change to 99 percent would provide consistency with HON rule requirements.

The EPA agrees with the commenters. The proposed control level was based on a value reported by a surveyed facility. This value was not supported by test data or other documentation. However, a control level of at least 99 percent is likely for this scrubber because HCl control levels of 99 percent are widely accepted as achievable by scrubbers, and several other facilities reported this level. Therefore, for the final rule, the required control level for new sources has been changed to 99 percent. Although being consistent with the HON is not a priority, this change, as one commenter observed, does make the two rules consistent.

3. Surge Control Vessels and Bottoms Receivers

One commenter opposes the proposed requirement to regulate surge control vessels and bottoms receivers as process vents because it introduces a third way to regulate such emissions under the MACT standards. The commenter would prefer that these emissions be regulated as equipment leaks, as under the HON. If that is not acceptable, the commenter's second choice is to regulate the emissions as storage vessels, as under Polymers & Resins IV. The commenter believes that additional inconsistency is confusing and likely to lead to inadvertent compliance mistakes.

The EPA notes that there is essentially no difference between regulating emissions from these equipment as "equipment leaks" (as in subpart H) versus as "storage vessels" (as in subpart G). Both the applicability and control requirements for these sources in the HON are identical. The reason EPA departed from this approach in the proposed (as well as the pharmaceuticals rule) rule is that surge control vessels and bottoms receivers typify the processing equipment, in capacity and function, found in the PAI and pharmaceuticals industries. Especially in the case of batch processing (where the HON does not regulate process vents), the characteristics of emission streams from these equipment are not significantly different than any other equipment. Emission streams from bottoms receivers and surge control vessels result from the displacement of saturated gases from incoming materials. Displacement emissions are very common in both the pharmaceuticals and PAI industries. Therefore, EPA decided to regulate them in a manner consistent with the remainder of processing equipment found in these industries.

In response to the commenter's concern about possible confusion from the inconsistent application of requirements across different source categories, EPA believes that the consistent treatment described above will actually eliminate a great deal of confusion in the implementation of the rule, because all equipment associated with a process will be treated in the same manner, and the control requirements, which are process based, can be evaluated over all equipment in the process. Additionally, because of the similarities of these equipment with other process vessels, the confusion related to defining a surge control vessel or bottoms receiver from another process vessel will also be averted.

D. Storage Vessel Provisions

1. MACT Floor

Under the proposed rule, the MACT floor for storage tanks consisted of applicability cutoffs and a control efficiency for tanks that exceeded the cutoffs. To develop the floor, the storage tanks at the best performing 12 percent of facilities (the "MACT floor facilities") were ranked by decreasing uncontrolled emissions. The tanks were divided into two groups based on an uncontrolled emissions cutoff below which the median control efficiency was no control. The median control efficiency below 108 kg/yr was no control; the median control above the cutoff was 41 percent. A tank size cutoff was established at 38 cubic meters (m^3) based on the smallest tank with uncontrolled emissions greater than 108 kg/yr that was controlled at least to 41 percent. For new sources, the smallest tank with the best level of control was determined. The floor for new sources was determined to be 98 percent control efficiency for storage vessels with capacity of 26 m^3 or greater and uncontrolled emissions of at least 0.45 kg/yr.

One commenter stated that the control levels originally provided by the commenter for two storage vessels are inaccurate due to incorrect coolant temperatures used by the commenter. The commenter stated that the impact of this change is that the existing source MACT floor based on the median control level for tanks with uncontrolled emissions greater than 108 kg/yr becomes 21 percent, instead of 41 percent. Another commenter stated that MACT floor should be revised to include consideration of vapor pressure of the stored HAP to be a primary parameter.

The EPA has corrected the control efficiencies for each of the storage vessels mentioned by the commenter. The EPA also reexamined the data base since proposal and removed several vessels that should not have been included because they do not meet the definition of storage vessel. Changes to the storage vessel data base, and changes to the MACT floor and the final standard that are summarized below are discussed in the memorandum "Explanation of Options for Reevaluating the Storage Tank MACT Floor for the Production of Pesticide Active Ingredients NESHAP," (Docket A–95–20, Docket item No. IV–B–2).

The proposed approach to developing the MACT floor for storage vessels was significantly different than the approach used to develop the floor for other rules (e.g., the HON, polymers & resins, and pharmaceuticals). Since proposal, EPA has reevaluated the revised data base and determined that an approach consistent with that used for the other rules is feasible and appropriate for this rule. One of the commenters also recommended that the floor include vapor pressure cutoffs as in other rules. As a result, EPA decided to revise the MACT floor. The revised approach established vapor pressure cutoffs at the same storage vessel capacity cutoffs and control efficiency cutoffs as were used in the previous rules. Specifically, the approach examined storage vessel cutoffs at 38 m^3, 75 m^3, and 151 m^3. (In English units, these capacities correspond with 10,000 gallons [gal], 20,000 gal, and 40,000 gal, respectively, and the data base includes at least one storage vessel at each of these sizes.) Within these size ranges, the vapor pressure cutoff at which the majority of storage vessels were controlled to 95 percent or more was determined; the 95 percent level is consistent with the efficiency of floating roofs, which are the most cost effective controls.

Under the revised approach, at liquid vapor pressures of 3.45 kPa and higher, the median control efficiency was found to be at least 95 percent in both the 75 m^3 and larger range and the 151 m^3 and larger range; at all vapor pressures, the majority of storage vessels with capacities smaller than 75 m^3 were found to be uncontrolled. The vapor pressure of 3.45 kPa is the vapor pressure of toluene, which is the predominant HAP in the industry and the most common organic HAP stored in storage vessels. Therefore, the revised MACT floor for storage vessels at existing sources was determined to be 95 percent control for storage vessels with a capacity greater than or equal to 75 m^3 that store material with a vapor pressure greater than or equal to 3.45 kPa. In addition, the MACT floor was determined to be no control for all storage vessels with a capacity less than 75 m^3.

The MACT floor for storage vessels at new sources is based on the best controlled storage vessel. As discussed above, the best level of control for storage vessels is considered to be 95 percent. The capacity of the smallest vessel controlled to 95 percent was determined to be 40 m^3, and the vapor pressure of the compound stored in this vessel was 16.5 kPa. The MACT floor for new sources must be at least as stringent as the floor for existing sources. Therefore, the MACT floor for new sources is 95 percent control for storage vessels with (1) a capacity of 40 m^3 or greater that store material with a vapor pressure of 16.5 kPa or greater and (2) a capacity of 75 m^3 or greater that store material with a vapor pressure of 3.45 kPa or greater.

2. Standard

Under the proposed rule, one regulatory alternative more stringent than the floor was developed. The regulatory alternative would require 95 percent control of storage vessels with capacity of 75 m^3 or greater that have uncontrolled emissions of 108 kg/yr or greater. Storage vessels smaller than 75 m^3 (and greater than 38 m^3) that have uncontrolled emissions of 108 kg/yr or

greater would require control to the floor level (41 percent). This regulatory alternative was determined to be cost effective. Therefore, the proposed standard for storage vessels at existing sources was established at 95 percent control for vessels with a capacity greater than or equal to 75 m^3 that have uncontrolled emissions greater than or equal to 108 kg/yr. No regulatory alternatives more stringent than the MACT floor were developed for storage vessels at new sources. Therefore, the proposed standard for storage vessels at new sources was determined to be 98 percent control efficiency for storage vessels with a capacity of 26 m^3 or greater with uncontrolled HAP emissions of at least 0.45 kg/yr.

Several commenters requested that EPA increase the lower emission cutoff for existing and new storage vessels. Most commenters recommended increasing it to at least 227 kg/yr; this level corresponds to the level in the Batch Processes ACT document for which manifolding to an existing control device was shown to be cost effective. One commenter suggested adding an exemption in § 63.1360(d)(4) for such storage vessels. Several of the commenters also noted that combustion would be the only feasible means of controlling HAP emissions of only 0.45 kg/yr, and that secondary emissions would increase significantly as a result.

The Agency has determined that including the higher cutoff suggested by the commenter would have been less stringent than the cutoff prescribed by the MACT floor. The emission cutoffs mentioned by the commenters are not supported by the storage vessel data base.

Since proposal, a different method for estimating the MACT floor has been incorporated (as discussed above). The revised MACT floor uses storage vessel capacity and the vapor pressure of stored material as the parameters for determining applicability for storage vessels, and no uncontrolled emissions cutoff is included in the floor. The Agency expects that implementing standards based on this format will be considerably easier than implementing the proposed standards, because no ongoing emission tracking will be required to demonstrate compliance with the standard. Use of these parameters is consistent with requirements for storage vessels in other rules.

Two commenters stated that the minimum applicability size cutoff for existing Group 1 storage vessels should be changed to correlate with the NSPS subpart Kb size cutoff to simplify compliance. The commenters stated that the cutoff for storage vessels at existing sources would change from 38 m^3 to 40 m^3. In addition, the commenters pointed out that the 38 m^3 cutoff is below the smallest storage vessel controlled to the median control efficiency in the study (i.e., 39 m^3).

For the final rule, EPA based the standards for new and existing sources on the MACT floor because the cost to go beyond the floor was determined to be unreasonable. As a result of the changes to the database discussed above, the capacity cutoffs in the final rule are higher than the cutoffs suggested by the commenters. For existing sources, the cutoff is 75 m^3 instead of the 40 m^3 suggested by the commenters. For new sources, the cutoff is 40 m^3 instead of the 39 m^3 suggested by the commenters.

One commenter pointed out that in both the definitions of Group 1 Storage Vessel (§ 63.1361) and the standard (§ 63.1362), the conversion from metric units to English units are rounded off. The commenter requests that EPA provide a more precise conversion to English units. In an effort to reduce confusion over the conversion from English to metric units (or vice versa), only metric units have been included in the final rule.

One commenter requested that EPA keep the existing source standard for storage vessels with capacities greater than 75 m^3 the same as that for smaller storage vessels, unless floating roof technology is already in-place. The commenter asserted that the EPA's "beyond the floor" standard of 95 percent organic HAP control for existing "large" storage vessels is not justified for storage vessels that were not already equipped with floating roof technology. The commenter stated that EPA's assumption that any existing storage vessel larger than 75 m^3 can be cost-effectively retrofitted with a floating roof is unrealistic.

For the proposed rule, the MACT floor was based on a control efficiency of 41 percent. As discussed above, the revised MACT floor is based on 95 percent control. The final standards also are based on a control of 95 percent because the cost to control to a higher level was determined to be unreasonable. Now that both the MACT floor and the standard are based on the same control efficiency, the commenter's concern about going beyond the floor is no longer relevant.

Several commenters stated that EPA should allow floating roofs as a control option for storage vessels at new sources. Some of the commenters stated that it is possible to reduce emissions of some HAP by 98 percent using a floating roof, with the efficiency calculated using TANKS3, EPA's computer program to calculate VOC emissions from storage tanks.

As noted above, the control level for storage vessels at new sources is 95 percent under the final rule. Floating roof technology is allowed to meet this limit, just as it is for existing sources.

3. Routine Maintenance

Several commenters requested either an extension in the 240 hours per year (hr/yr) allowance for routine maintenance or greater flexibility in its application. One commenter suggested that EPA allow up to a 30-day extension for control devices (like RCRA incinerators) that require more than 10 days of maintenance per year, or allow a facility to compensate for longer downtime by overcontrolling at other times (this would also require a change in the compliance averaging period—see section VI.M.1). Other commenters recommended that the 240 hr/yr be allowed for each PAI process unit that is created using the non-dedicated equipment because maintenance may be required prior to each campaign. Alternatively, one commenter suggested that, based on standard maintenance work practices, the startup, shutdown, and malfunction requirements in subpart A of part 63 should be allowed in lieu of the proposed 240 hr/yr allowance. The commenter stated that the standard work practice for many companies is to isolate all equipment upstream of control devices where planned maintenance will occur to eliminate all safety hazards to personnel and minimize any impact to the environment. One commenter supported the provision, but suggested it be expanded to cover controls for waste management units, controls used on equipment leaks, and recovery devices (if applicable).

The proposed 240 hr/yr for planned routine maintenance was mistakenly applied to all control devices in the proposed rule; it should only have been applied to storage vessels. The startup, shutdown, and malfunction provisions prohibit the shutdown of control devices during operation; however, EPA recognizes that for storage vessels, it is impossible to "not operate" (i.e., not have breathing losses) during a period of time in which an add-on control device would be undergoing planned maintenance. Therefore, EPA has in the final rule allowed an amount of time in which the control devices for storage tanks only can be nonoperational due to planned routine maintenance. All other situations (i.e., those that require unplanned, emergency maintenance) should be addressed through the startup, shutdown, and malfunction provisions. This change makes the final rule consistent with other MACT standards. The rationale for the 240 hr/yr allowance is that EPA determined that routine maintenance for certain control devices may require up to 10 days to complete, and because this timeframe is consistent with State permitting activities (see 59 FR 19441 for a more detailed discussion of this time allowance).

E. Equipment Leak Provisions

The proposed rule would have required compliance with the provisions of subpart H; this requirement was based on a regulatory alternative more stringent than the MACT floor. However, commenters contended that the data used to justify the program (e.g., the leak rates) were not representative of the PAI industry, and they supplied data which contain a sampling of LDAR program results from numerous types of facilities, including SOCMI and polymer and resins manufacturing facilities. These data indicate that initial equipment leak frequencies and, thus, the potential for emissions from leaking components, may be significantly lower than those assumed in the original development of subpart H. The commenters also contend that the monitoring costs were underestimated. One commenter cited the following specific examples based on a quote from a monitoring contractor: (1) initial and annual monitoring costs should be at least $4.50/component and $2.95/component, respectively, instead of $2.50/component and $2.00/component; and (2) labor costs should be at least $30.00/hr, not $22.50/hr.

In recent regulatory development efforts involving similar industries, EPA has generally found equipment leaks to be a significant source of emissions. In general, EPA's approach has been to require industries to identify leaks and fix them as soon as possible. The EPA is sensitive to the recordkeeping burden associated with an LDAR program for this industry and has strived to minimize the number of activities that have to be conducted and documented while still requiring sources to identify and eliminate equipment leaks. Relative to earlier rules, the Agency developed the HON to focus most of the recordkeeping and reporting burden on those processes and types of equipment that have the most significant leaks, in terms of HAP emissions. Since the development of the HON, the Agency has proposed the CAR that is designed to minimize the reporting and recordkeeping burden even further (63 FR 57748, October 28, 1998). The EPA believes that, in addition to consolidating many LDAR programs, the CAR addresses many concerns regarding the burden placed on industry to implement LDAR programs with little environmental benefit. The proposed CAR is specifically focused on identifying and fixing leaking components, and leaves out many of the recordkeeping requirements that are focused on nonleakers. Therefore, EPA decided to determine the impacts of a standard consistent with the LDAR program in the proposed CAR.

The EPA does not consider the emission estimates in the original analysis to be invalid. However, for the revised analysis, EPA used the leak rate data provided by the commenters and other recently obtained data to determine a lower bound on the baseline emissions (and a corresponding upper bound on cost effectiveness for a given set of assumptions regarding subsequent leak frequencies and the number of monitoring instruments that are needed). Most of the data provided by the commenters were from facilities in the SOCMI or polymers and resins industry. The EPA also combined recently obtained initial leak rate data for components in pharmaceuticals processes with the data provided by the commenters. These data were combined because EPA believes pharmaceuticals processes are at least as representative of PAI processes as are SOCMI or polymers and resins processes due to the prevalence of batch processing, similar process equipment, and similar HAP in the pharmaceuticals and PAI industries.

For the revised analysis, emissions and costs were estimated for the same two model PAI processes that were developed for the original analysis. Uncontrolled emissions for the model processes were estimated based on averages of the initial leak rates that were obtained from the commenters and for pharmaceuticals processes. Controlled emissions were estimated based on assumed average leak rates over a monitoring cycle after implementation of the provisions in the proposed CAR. For valves and connectors, the average leak rates were assumed to be equal to one-half of the performance level (i.e., one-half of 0.25 percent); for pumps, average leak rates were assumed to be equal to one quarter of the initial leak rates (i.e., one-half of the occurrence rate, where the occurrence rate is assumed to be equal to one-half of the initial leak rate).

Since proposal, EPA has reviewed the cost analysis and updated costs for the monitoring instrument. The original analysis was based on costs for a monitor that is no longer available. Capital costs for a currently available monitor that is widely used are higher than the capital costs in the original analysis, but maintenance costs are lower. As a result, the new monitor has a lower total annual cost. The EPA also reviewed the monitoring costs, repair costs, and other factors used in the costing methodology and determined that no changes were warranted. The EPA believes the contractor costs cited by a commenter are higher than the values used in the EPA analysis because they include overhead and capital recovery costs, whereas these are all separate cost items in the EPA analysis.

Two approaches were evaluated in the revised cost analysis. The first approach pro-rated the cost of the monitoring instrument based on the ratio of the number of components in the model processes to the number of components that a fully utilized instrument could be used to monitor (i.e., about 9,000 components). This approach assumes facilities will use a given instrument to monitor multiple PAI processes or PAI processes as well as other processes that also are, or will be, subject to similar LDAR requirements. The cost-effectiveness of the revised analysis was determined to be $1,400/Mg of HAP removed. A second, more conservative approach is to assume monitoring instruments are dedicated to the PAI process(es) at each facility. Thus, one instrument was assumed for facilities with less than 9,000 components, and two or more were assumed for surveyed facilities that have more than 9,000 components. This approach raises the cost-effectiveness to $1,800/Mg. Additional information about the revised cost analysis is provided in the docket (Docket A–95–20, Docket Item No. IV–B–3).

Because both of these cost effectiveness values are considered to be reasonable, EPA revised today's final rule to make it consistent with the CAR. This change makes the final rule consistent with the Agency's recent efforts toward consolidation of equipment leak requirements for air regulations. It also increases the focus on processes with leaking components by reducing the monitoring, recordkeeping, and reporting requirements for processes with nonleaking components.

Most of the changes since proposal involve the requirements for valves and connectors. These changes include: extending the monitoring period from once every four quarters to once every 2 years for process units with less than

0.25 percent leaking valves, adding provisions for valve subgrouping, extending the monitoring period for connectors with low leak rates, deleting both the quality improvement program implementation requirement and the credit for valves removed, and revising the calculations for determining the percentage of leaking valves. The Agency believes that the equipment leak requirements included in today's final rule greatly reduce the administrative burden associated with LDAR recordkeeping and reporting, and at the same time, result in a significant reduction in emissions. Based on the leak rates reported by the commenters, EPA believes the affected sources will be able to take advantage of the provisions extending the monitoring periods.

F. Wastewater Provisions

1. Maintenance Wastewater

Several commenters stated that maintenance wastewater streams should either be excluded from the regulation or subject to the same requirements as in § 63.105(b)(2) of the HON. All of the commenters cited the variability and unpredictable nature of maintenance wastewater streams (which makes it difficult to determine whether a stream is Group 1 or Group 2) and the low potential for substantial emissions (because such streams are typically due to rinsing or flushing equipment) as reasons to regulate maintenance wastewater differently. One commenter added that maintenance wastewater streams cannot be controlled like process wastewater streams. For example, the commenter explained that trying to pump the small amount of water generated when bleed lines or pumps are drained would cause equipment problems if there was not enough flow to keep material running through the pump itself. This commenter also stated that the cost to comply with conveyance requirements would be enormous, especially if an enclosed system has to be connected to every piece of equipment because a maintenance wastewater stream might be generated there.

The EPA considered the comments and is persuaded by the commenters' arguments that the variability of maintenance activities makes characterization of these wastewater streams difficult, and that there is fairly low potential for substantial emissions from most of these wastewater streams. However, EPA has no data on typical quantities of maintenance wastewater generated, or the characteristics of these wastewater streams. Therefore, EPA's approach in resolving this issue was to specify characteristics of maintenance wastewater streams that have significant emission potential. The EPA also sought to minimize the burden of characterization of all maintenance wastewater streams. Based on this approach, EPA evaluated three possible options for regulating maintenance wastewater. The first option was to adopt the same requirements as in § 63.105 of the HON, which is the option suggested by the commenters. The EPA believes that maintenance wastewater streams may warrant a different treatment in this industry than what was done under the HON because the PAI industry is expected to generate process wastewater streams in discrete batches, due to the batch nature of the industry. These process wastewater streams are expected to have properties similar to those for maintenance wastewater streams in terms of the quantities generated, the frequency of generation, and the options for management, suppression, and treatment. Therefore, for streams with significant emissions potential, whether generated because of maintenance activities or by the process operations, EPA believes that proper management and treatment is warranted.

The second option evaluated was to require the same management and treatment for both maintenance and process wastewater, as in the proposed rule. Under this option, the applicability thresholds are the same as in the HON for both types of streams. However, because information on maintenance wastewater streams is unavailable, it is not clear how many such streams would be subject to management and treatment requirements. In addition, it is possible that industry would be required to characterize numerous maintenance wastewater streams with no environmental benefit. Another concern with this option is the extent of dedicated maintenance wastewater conveyance systems that will need to meet emission suppression requirements on the chance that a Group 1 maintenance wastewater stream might be discharged in the processing area served by that part of the conveyance system. Because one of the applicability thresholds for Group 1 streams is 10,000 ppmw at any flow-rate, it is possible that there is a high potential for many maintenance wastewater streams to meet Group 1 applicability criteria. However, even though streams may be concentrated (e.g., greater than 10,000 ppmw HAP), the emission potential also depends on the quantity of water generated. Because the flow rate applicability criterion for 10,000 ppmw streams is unlimited, this option does not consider emission potential.

The third option considered and incorporated into the final rule is a modification of option 2 that does not require characterization, suppression, and treatment of small maintenance wastewater streams with low emission potential. The HON includes two thresholds for triggering Group 1 applicability: the first, which has already been discussed, captures any streams with greater than 10,000 ppmw HAP load and does not consider emissions potential; the second applicability threshold, however, considers emission potential by adding a quantity (greater than 10 L/min) in addition to the HAP concentration (1,000 ppmw HAP). When converted to a HAP load, the second applicability threshold is equivalent to approximately 5.3 Mg of HAP. This load was used as the applicability threshold in the definition of maintenance wastewater in the final rule. The wastewater definition in the final rule also applies to individual discharge events resulting from maintenance activities, not the sum of all events occurring from a single point of determination (POD) over the course of a year. By defining wastewater in this manner, only the largest, most significant maintenance wastewater streams would be subject to suppression and treatment. These large streams should be easier to identify and may occur only at certain POD's. The definition of Group 1 wastewater also includes maintenance wastewater streams with this same load; thus, there are no Group 2 maintenance wastewater streams, and there is no burden to characterize and track any maintenance wastewater streams other than Group 1 streams.

It is conceivable that there are no maintenance wastewater streams in the industry with characteristics approaching this definition. However, because EPA has no data on the quantities or characteristics of these maintenance wastewater streams, EPA believes the best approach is to define a threshold of concern rather than to exempt from suppression and treatment all maintenance wastewater streams.

2. Treatment Options

Several commenters requested that the enhanced biological treatment option in the proposed pharmaceuticals MACT standard be included in this rule (i.e., for wastewater that contains soluble HAP and less than 50 ppmw of partially soluble HAP) for discharges to a privately owned treatment works (POTW). According to one commenter, the HON provisions essentially preclude discharge to POTW's because owners or operators of POTW's could not reasonably be expected to understand, implement, and certify compliance with this regulation. Furthermore, the commenter stated that the detailed analysis performed for the proposed pharmaceuticals rule indicated that air emissions for certain wastewater streams would be negligible; thus, there is no need to "ban" discharge to POTW's.

Except for minor differences in applicability cutoffs, one of the treatment options in the HON (and thus in the proposed rule) is similar to the enhanced biotreatment option under the proposed pharmaceuticals rule. Both the HON and the proposed pharmaceuticals rule regulate two groups of HAP compounds in wastewater. For the HON, the groups are called "list 1" and "list 2" compounds. For the proposed pharmaceuticals rule, they are called "partially soluble HAP" and "soluble HAP." All 52 of the compounds on list 2 are also classified as partially soluble HAP. List 1 contains all 14 soluble HAP as well as the 10 remaining partially soluble HAP. (Note that for the final pharmaceuticals rule, epichlorhydrin has been moved from the solubles list to the partially solubles list.) Under the HON, an owner or operator is exempt from the performance test requirement if wastewater is treated in an enhanced biological treatment process, and compounds on list 1 comprise at least 99 percent by weight of the HAP compounds (list 1 plus list 2) in the wastewater. Under the proposed pharmaceuticals rule, an owner or operator would be exempt from the performance test requirement if wastewater containing soluble HAP and less than 50 ppmw of partially soluble HAP is treated in an enhanced biological treatment unit, and the owner or operator demonstrates that less than 5 percent of the soluble HAP is emitted from the municipal sewer system. The definition of an enhanced biotreatment unit also is the same under both rules, and waste treatment units that qualify as enhanced biotreatment units are subject to the same compliance requirements under both rules. Therefore, EPA disagrees with the commenter's assertion that the treatment provisions in the proposed pharmaceuticals rule reduce the burden on POTW's, and EPA has not revised the treatment provisions for today's final rule.

One commenter cited the results of a study conducted by the Pharmaceutical Research and Manufacturers of America (PhRMA) (and discussed in detail in PhRMA's comments on the proposed pharmaceuticals rule) showing that streams discharged to POTW's have the potential for significant emissions only from "totally open" collection and municipal sewer systems. Therefore, if the collection and municipal sewer system is totally open, the commenter recommended adding a provision that would allow an owner or operator to use the enhanced biotreatment option only if the owner or operator demonstrates, as specified in the proposed pharmaceuticals rule, that less than 5 percent of the soluble HAP is emitted from the system.

Under the proposed rule, an off-site facility that treats wastewater would be required to comply with the same requirements as an affected source, including the emission suppression requirements from the collection system. The EPA has reexamined municipal sewer systems and determined that the primary potential for emissions from the collection system is from the headworks at the POTW. Thus, the final rule specifies that either the waste management units up to the activated sludge unit must be covered, or the owner or operator must demonstrate that less than 5 percent of the total list 1 HAP is emitted from these units.

3. Standards for New Sources

Several commenters consider the proposed wastewater standards for new sources with HAP loading greater than 2,100 Mg/yr to be too restrictive. One commenter believes only Group 1 wastewater, not all wastewater, should be subject to the standards. The commenter claims that requiring control of all wastewater will result in negligible additional environmental benefits, and would likely cause greater secondary air and resource impacts (e.g., from fuel usage and emissions of combustion products).

All of the commenters requested that additional treatment options be allowed. One commenter requested that EPA add a treatment option that allows an owner or operator to reduce the mass flow rate by the Fr values; the commenter stated that a 99 percent reduction might be achievable for an individual facility with a certain combination of HAP, but it would not be achievable by all facilities. Other commenters recommended adding at least an enhanced biotreatment option. One commenter believes all of the treatment options for existing sources should be allowed for new sources. Commenters requested the additional options because they believe that limiting treatment options significantly impacts compliance flexibility with little, or no, environmental benefit. For example, one commenter realizes that a steam stripper would not meet the standard for compounds that have Fr values less than 0.99, but believes that because the remaining HAP in the treated streams are less volatile, they would have negligible air impacts. Other commenters stated that EPA had agreed during the development of revised wastewater provisions for the HON that the various treatment options under the HON are equivalent from an air emissions standpoint (e.g., 95 percent reduction in a biological treatment unit is equivalent to 99 percent reduction in a non-biological treatment unit).

According to the CAA, the MACT floor for new sources is to be based on the emission control that is achieved by the best controlled similar source. In the PAI production industry, the best controlled source is achieving 99 percent control. This source also is treating all of its wastewater from PAI processes, the HAP load in this wastewater is 2,100 Mg/yr, and this wastewater contains a mixture of compounds with a range of Henry's law constants. Thus, the proposed MACT floor for new sources with a HAP load exceeding 2,100 Mg/yr consisted of the requirements to treat all wastewater and to achieve a 99 percent reduction in the HAP content in the wastewater; for new sources with lower HAP loadings, the MACT floor is no control, as for existing sources. The EPA continues to stress that the proposed MACT floor is consistent with the CAA, and it is retained in the final rule.

If a facility has a HAP load that exceeds the cutoff, the enhanced biotreatment option (i.e., the option that exempts an owner or operator from initial compliance demonstrations) is not allowed because EPA does not have information showing that enhanced biotreatment units achieve 99 percent removal for mixtures of compounds with low Fr values. Otherwise, the final rule allows any treatment option (including enhanced biotreatment) for such affected sources, provided the owner or operator demonstrates that it achieves 99 percent removal of all HAP in the wastewater. The EPA also points out that the requirement to achieve 99 percent removals applies only to facilities that have extremely high HAP loads and thus, high potential for emissions. Few new sources are likely to exceed the applicability cutoffs for the MACT floor because 2,100 Mg/yr was more than three times higher than the load at any other surveyed facility.

Finally, the commenter's statement about the equivalence of treatment

options needs clarification. Under the HON, the 95 percent option for biological treatment units requires that the reduction be achieved from all wastewater sent to the treatment unit, not just the Group 1 wastewater. The 95 percent reduction also applies to all Table 9 compounds in the wastewater, not just compounds with high Fr values. Thus, on average, this option is considered equivalent to other treatment options in the HON. This option is not considered equivalent to the 99 percent option for new sources described above because the 99 percent reduction is required for all wastewater and all compounds.

G. Bag Dump and Product Dryer Provisions

Numerous commenters opposed the development of standards for bag dumps, and many of these commenters also opposed the development of standards for product dryers. The commenters believe the MACT floor was not established properly per EPA protocol and that the level of the standard (0.01 gr/dscf) is not readily achievable and is not typical of fabric filter control. Pointing to the decision in *Portland Cement Association* v. *Ruckleshaus*, 486 F. 2d 375, 396 (D.C. Cir. 1973), the commenters stated that the test method used to demonstrate compliance must be closely linked to the test method used as the basis for the standard. The commenters expressed concern that the standard was based on data for only one source. Some of the commenters stated that the standard should not cover bag dumps because no data on bag dumps were used to develop the MACT floor, and bag dumps are sources of fugitive emissions that are difficult to capture and route to a control device. One commenter also stated that regulating bag dumps would not result in any meaningful emission reductions because the use of bag dumps is avoided for ergonomic and workplace exposure reasons, and any particulate matter emissions are small and already controlled to reduce workplace exposure. Some of the commenters stated that if standards are promulgated for these emission points, the standard should include an applicability cutoff as well as the concentration limit, and the terms "particulate HAP" and "bag dump" should be defined in the final rule.

Standards for product dryers and bag dumps were included in the proposed rule because these emission points can be a source of HAP emissions, specifically particulate matter HAP emissions. The MACT floor for these emission points was developed for equipment that emits particulate matter HAP; this equipment was limited to product dryers and bag dumps because these are the only known sources of particulate matter HAP emissions at PAI facilities. The MACT floor also was based on the level of control for these emission points at the MACT floor facilities (i.e., the nine facilities with the best overall control of PAI process units). One of the MACT floor facilities dried a PAI that is also a HAP. Emissions from this product dryer were controlled with a fabric filter, and emissions tests showed the outlet PM concentration was less than 0.01 gr/dscf. The floor for particulate matter HAP emission sources was based on this value because both product dryers and bag dumps are controlled with fabric filters, and 0.01 gr/dscf is a typical level for fabric filters.

The EPA is not persuaded by the commenter's argument that bag dumps should not be regulated because they are (or may be) sources of fugitive emissions and are thus not comparable to product dryers. The EPA knows of two bag dumps where a HAP raw material is added to a PAI process, and both are controlled with fabric filters. At a minimum, a hood or partial enclosure can be placed above or around a bag dump to capture the emissions and route them to the control device. Furthermore, one of the commenters stated that particulate emissions would be controlled to reduce workplace exposure. Uncontrolled emissions (i.e., the pre-control emissions) from one of the two known bag dumps exceed 1.6 Mg/yr. The EPA considers this to be a significant source, and the required emission reduction to be meaningful. The fact that some facilities may have found more desirable alternatives to the use of bag dumps does not justify exempting facilities that still use them from regulation.

No mass emission rate cutoff was established because all known bag dumps that are used to add a HAP raw material to a PAI process unit, and all product dryers that dry a product that is a HAP, are controlled with fabric filters, and EPA believes 0.01 gr/dscf is a reasonable level for all fabric filters in such applications. An emissions test for the fabric filter used to control the product dryer at the MACT floor facility provides evidence that this concentration is achievable. The outlet concentration was less than 0.01 gr/dscf for each of the 12 runs in the test. The EPA expects that the existing fabric filters were designed to meet this outlet concentration, but the standards and associated monitoring requirements are included in the rule to provide assurance that they will continue to perform at this level. As a result, EPA did not change the level of the standard, or add an applicability cutoff, for the final rule.

In summary, EPA maintains that standards are appropriate for bag dumps and product dryers that emit HAP, that the MACT floor is valid, and that the standard should be based on the MACT floor. However, EPA has decided to make one change for the final rule. At proposal, the standard was for "particulate matter HAP." For the final rule, the standard is for "particulate matter" because the material captured in the fabric filters is essentially all HAP, and test methods are for "particulate matter," not "particulate matter HAP." (The EPA assumes this is why the commenters mentioned linking the test method used as the basis of the standard with the method used to demonstrate compliance.) The final rule also specifies that the particulate matter standards are for product dryers that dry a PAI or integral intermediate that is a HAP, and for bag dumps that introduce a HAP to a PAI process unit. The final rule also defines "bag dump" as equipment into which bags or other containers containing a powdered, granular, or other solid feedstock material are emptied.

H. Heat Exchanger Provisions

One commenter stated that the requirements for heat exchange systems should be deleted because EPA has not justified the high costs of sampling that would be required by the proposed rule.

The EPA disagrees with the commenter's assertion that the heat exchanger provisions impose a high cost for sampling. The rule allows considerable flexibility in the type of sampling or other monitoring that an owner or operator may perform, and the amount of required sampling or monitoring is minimal. The owner or operator may elect to sample for one or more HAP or other substances whose presence in the cooling water indicates a leak. Alternatively, the owner or operator may elect to monitor for any surrogate indicator that reliably identifies the presence of a leak. If the owner or operator elects to comply by monitoring for a surrogate indicator, the owner or operator must develop a plan that specifies what parameter or condition will be monitored, the level that constitutes a leak, and an explanation of how the selected parameter or condition will reliably identify a leak. In the first year, sampling or monitoring is required eight times; in subsequent years, sampling or monitoring is required only four times per year. If the heat exchangers are all part of a single system, only one set of inlet and outlet samples is required. These requirements also are not considered burdensome because many facilities in the chemical processing industry, and presumably the PAI production industry as well, conduct such sampling or monitoring as a common maintenance practice. Furthermore, sampling for the detection of heat exchanger system leaks is a general requirement of some State permits (e.g., Texas Natural Resources Conservation Commission).

One commenter supports the decision to use the HON requirements for heat exchangers, but believes the rule should simply cross-reference the HON, not modify and spread out the requirements among the standards, compliance, monitoring, recordkeeping, and reporting sections of this rule.

The EPA agrees with the comment that cross-referencing the heat exchanger provisions in subpart F of the HON would simplify the rule. Therefore, the final rule cross-references all of the provisions in subpart F rather than incorporating some of the provisions in the rule and cross-referencing others. However, the heat exchanger system provisions are contained in more than one section in the PAI rule because the two rules have different structures. In the HON, all of the requirements for a specific type of emission point were presented in a single section or in consecutive sections. In the PAI rule, the standards for all types of emission points are presented in one section, the initial compliance provisions for all types of emission points are presented in the next section, and so on. Therefore, each section in today's final rule cross-references the appropriate heat exchanger system provisions from subpart F.

I. Alternative Standard

Since proposal, EPA has received comments on another proposed regulation requesting the inclusion of an alternative standard for facilities that treat HAP emissions, especially from aggregated streams, with add-on control devices. The commenters contended that the use of such control devices should be encouraged because (1) greater emission reduction would occur by controlling processes that are not subject to a rule as well as those that are, (2) it may facilitate the streamlining of compliance requirements and thus reduce the resource burdens on both industry and the enforcement agencies, (3) it may be easier to assure and assess compliance, and (4) it may be more energy efficient and result in lower secondary emissions if fewer control devices are used.

The EPA agrees with the commenters and therefore decided to include an alternative in today's final rule. The alternative standard can be applied to individual process vents and storage vessels or to process vents and/or storage vessels that are manifolded together (with or without emissions from other sources) for control in an end-of-line control device (or series of control devices). The control device (or last control device in a series) must achieve an outlet, undiluted TOC concentration of 20 ppmv or less, as calibrated on methane or the predominant HAP. The control device must also achieve an outlet concentration of 20 ppmv or less as HCl and chlorine. Any other process vents within a process are regulated under the rule as otherwise specified without taking credit for the vents that are controlled under the alternative standard.

To simplify applicability of the alternative, all process vent and storage vessel emissions that are manifolded to a control device are considered as one regulated entity. As a result, an exceedance under the alternative standard results in only a single violation for a given control device, whereas an exceedance under the regular standard results in separate violations for each process using the control device.

J. Pollution Prevention Alternative

Comments relating to the proposed pollution prevention alternative included objections to the high numerical reduc tion target of 85 percent, and to the lack of specific recordkeeping and reporting requirements for demonstrating compliance. Commenters also objected to the proposed restriction on the use of the alternative for processes that generate HAP, and to the requirement that most of the reductions be achieved through pollution prevention techniques and not add-on controls. The following sections summarize major comments on the proposed pollution prevention alternative, EPA's response to these concerns, and subsequent changes made in today's final rule.

1. Objection to the High Removal Target for the Pollution Prevention Alternative

Two commenters asserted that the 85 percent reduction in HAP consumption factor should be changed to 75 percent for both pollution prevention options to be consistent with the Pharmaceutical MACT proposal.

The 85 percent reduction was not changed in the final rule to be consistent with the value specified in the Pharmaceutical MACT standard because both values were developed using industry-specific data. The basis for the 85 percent reduction is the overall nationwide reduction from uncontrolled emissions that is estimated as a result of the implementation of the standards in this industry. Although the required reduction "target" was calculated using the same methodology as that in the Pharmaceuticals MACT standard, the difference in numerical value is simply due to differences in the impact of the two rules on each respective industry. For the PAI production industry, the standards achieve slightly greater reductions relative to the uncontrolled baseline, which is carried forward to the reduction target for the pollution prevention alternative. See the pollution prevention memorandum in the Supplementary Information Document for details of this analysis.

2. Data Management for Compliance Demonstrations

One commenter stated that the mechanism to realize pollution prevention reductions must be maintained in a system that can be managed and provide data that regulated entities and EPA can use. The commenter asserted that States may not be prepared to support this regulation with the training requirements of their already overworked staffs.

The Agency agrees with the commenter that the information necessary to demonstrate compliance with the pollution prevention alternative should be identified, collected, and managed in a way that minimizes burdens on both the industry and the regulatory agencies charged with enforcement. Therefore, the final rule requires sources seeking to comply with the pollution prevention alternative to submit, as part of the Precompliance plan, a pollution prevention demonstration summary that describes how the pollution prevention alternative will be applied at the facilities, and what tracking mechanisms will be used to demonstrate compliance with the alternatives. This summary should include descriptions of how the facility will measure and record HAP consumption and production on a daily, monthly, and annual basis. The summary should also include appropriate documentation of how consumption will be tracked such as, but not limited to, operator log sheets, daily, monthly, and annual inventories

of materials and products, and shipment and purchasing records. The pollution prevention demonstration summary report allows the owner or operator some flexibility in deciding the most reasonable and efficient way to demonstrate compliance, while incorporating the regulatory agency's review and approval prerogative. Regarding the agency burden, EPA believes that compliance with the pollution prevention alternative may actually reduce much of the burden on the enforcement agency, in that the monitoring, reporting and recordkeeping burden will be reduced to a material tracking effort, potentially minimizing the amount of data needed to demonstrate continuous compliance (e.g., monitoring data) for an entire process.

3. Pollution Prevention for Reactant and Generated HAP

The EPA received several comments on the proposed rule's restriction against using the pollution prevention option in situations where HAP are generated in the process. One commenter specifically stated that pollution prevention should be allowed for HAP generated in a process. Another commenter indicated that the rule was not clear on how to comply when the HAP generated in the process is the same as that introduced. A third commenter noted that these exclusions would prevent them from using pollution prevention and suggested that the rule include calculations based on total resource effectiveness (TRE) equations like in the HON as a way to provide more cost-effective alternatives for processes that are prohibitively expensive to control (i.e., that would exclude such processes from the requirements of the conventional standards).

The Agency reviewed the language contained in the proposed standard and has revised it to capture the Agency's intent in restricting the use of the alternative in situations where HAP are generated, without prohibiting its use altogether. The Agency's concern, in adding the restriction to the proposed standard, was that HAP generated in a process would not be addressed through the pollution prevention alternative because it requires only a reduction in the consumption of HAP that are actually brought into the process. Therefore, a situation could exist in which a process could be exempted from control because the production-indexed consumption factors were reduced by adequate amounts (85 percent), while a potentially significant amount of HAP, which happened to be generated in the process, could still be emitted. The EPA agrees with the commenter that sources that generate HAP should be eligible for the pollution prevention standard, provided the HAP generated by the sources are included in the analysis. Therefore, the final rule allows owners and operators to use the pollution prevention alternative for processes that generate HAP that are not part of the production-indexed consumption factor (e.g., the HAP generated are different from the HAP brought into the process), provided the following conditions are met: (1) emissions of generated HAP are controlled to the levels required by the applicable provisions for storage vessels, process vents, wastewater, and equipment leaks; and (2) the pollution prevention requirements are applied to the HAP that are added to the process. For HAP that are generated in the process, as well as brought into the process (consumed), the definition of consumption has been revised in the final rule to consider quantities of HAP that are generated by the process.

A related issue is the tracking of the VOC consumption-indexed production factor and the proposed rule's requirement that this factor should not be increased as a result of pollution prevention. Although this issue was not specifically commented on, EPA also revised the language of the final rule regarding the production-indexed VOC consumption factor. In developing the pollution prevention alternative, EPA's intention was to recognize those processes that have reduced or will reduce the amount of HAP solvents used in the manufacture of PAI's as viable alternatives to add-on controls. By preventing affected sources from increasing the production-indexed VOC consumption factor, EPA intended to prevent solvent substitutions that merely replaced HAP with VOC. After reviewing the proposed pollution prevention standard, EPA realized that the proposed standard gave an unfair advantage to affected sources that use VOC-HAP solvents as opposed to non-VOC HAP solvents. As proposed, the rule did not allow affected sources using non-VOC HAP solvents to switch to low-VOC solvents and still qualify under the pollution prevention alternative because such a switch would increase the production-indexed VOC consumption factor. However, affected sources that use VOC-HAP solvents could switch to low-VOC solvents as long as the production-indexed VOC consumption factor did not increase. The EPA's intention in the final rule is that pollution prevention be accomplished through reductions in solvent usage as opposed to solvent substitution. After consideration, EPA changed the final rule to require an equivalent reduction in the production-indexed VOC consumption factor, if the reduction in the production-indexed HAP consumption factor is achieved by reducing a HAP that is also a VOC. If the reduction in the production-indexed HAP consumption factor is achieved by reducing HAP that is not a VOC, the consumption-indexed VOC factor may not be increased. In making these changes to the final rule, EPA essentially eliminated the possibility of receiving credit, through the pollution prevention alternative, for substituting VOC for HAP.

4. Restrictions on Reductions Achieved Through End of Pipe Controls (Option 2 of the Pollution Prevention Alternative Standard)

As proposed, option 2 limited reductions in the HAP factor to exactly 50 percent of the baseline factor, even if actual reductions exceeded this level. Several commenters recommended revising option 2 to allow any combination of pollution prevention and end-of-pipe controls to meet the 85 percent reduction requirement. Some of the commenters explained that not allowing credit for higher reductions makes the option unworkable under certain conditions, and it provides incentives for destruction of recovered material instead of reuse. Some commenters also stated that allowing credit for reductions less than 50 percent would be beneficial, in that such combinations of pollution prevention and emission control would bring overall removals to levels equal to or greater than those required by the standards. As an alternative to option 2, one commenter suggested allowing sources to comply with 90 percent of any applicable standard if at least 50 percent of the reductions are the result of pollution prevention. Finally, the commenters believe option 2 places "unnecessary" constraints on the type of control devices that can be used to obtain the required reductions.

In response to the comments, EPA stresses that the pollution prevention alternative is an alternative to the standards in the rule. As such, the Agency has flexibility in developing requirements that may provide alternative approaches for compliance, but is charged with preserving the reductions that would have been achieved through compliance with the standards themselves. Under option 2, EPA required that a significant portion (50 percent) of the reductions be achieved using pollution prevention techniques, not add-on controls. Without such a restriction, owners and operators could attempt to use add-on controls entirely in meeting the pollution prevention target reductions, which might result in reductions that are less than those required by the standards. For example, the process vent standard requires a 90 percent reduction in the HAP emissions from affected processes, not an 85 percent reduction.

In an effort to ensure the emission reductions from the pollution prevention alternative are at least equivalent to the emission reductions achieved by the standards, the reduction target for the pollution prevention consumption factor was linked to the predicted reductions from the nationwide uncontrolled emissions through implementation of the standards. It was always the Agency's intent that these reductions would be achieved primarily through pollution prevention techniques. In recognition of the difficulties associated with achieving such high consumption reduction targets (85 percent), however, the Agency developed option 2 to allow some of the reductions to be achieved using add-on controls. For these reasons, the Agency disagrees, in general, with the comments suggesting lesser reductions in both the overall target of 85 percent and the requirement that at least 50 percent of the reductions be attributed to the pollution prevention alternative. However, the Agency agrees with the comments that option 2 as proposed is unworkable if the reduction achieved by pollution prevention exceeds 50 percent of the required amount. For the final rule, option 2 was revised to require that at least 50 percent of the reductions be achieved using pollution prevention and that the remainder of the 85 percent, however much is needed, be achieved using conventional controls.

The Agency stresses that the restrictions on the types of add-on controls allowed to be considered in addition to the pollution prevention reductions in meeting the overall target, are in place to guard against double-counting of emission reductions; for example, control via a technique that recycles HAP material back to the process is an environmentally beneficial technique and is encouraged. However, the recycling effect will also reduce the consumption of HAP; therefore, the recycling is inherently considered. To further reduce the consumption factor by the control achieved by the condenser would result in double counting of emissions reductions.

K. Emissions Averaging

1. Complexity of the Methodology

One commenter supported the concept of emissions averaging, but noted that the provisions are so complex and burdensome that many owners and operators may be deterred from using this option.

The emissions averaging provisions provided in the proposed rule are identical to those included in the HON. Further, the requirements are necessarily complex because of the increased flexibility of the compliance approach provided by the provisions. As stated in the HON promulgation preamble discussion, the EPA's goal in crafting the emissions averaging provisions was to make emissions averaging available to sources faced with controlling emission points that are particularly difficult or costly to control, while maintaining the ability to demonstrate compliance with the standard.

2. Nominal Efficiencies for Control Devices

Two commenters suggested that EPA set a nominal control efficiency for combustion devices used for air emission control for storage tanks and/or wastewater at 98 percent. One of the commenters asserted that EPA's wording in § 63.1362(k)(2) of the proposed rule inappropriately restricts sources equipped with controls listed in that section from generating emissions averaging credits.

The EPA believes that the commenters would like to equate 98 percent control to the performance specifications provided in the proposed rule for combustion devices used for air emission control for storage tanks and/or wastewater sources. The EPA does not agree that a nominal 98 percent should be assigned to these devices. Although EPA did establish these performance specifications, EPA maintains that testing is important to ensure that a control device can achieve the reported efficiency. For these reasons, EPA has required performance testing on combustion devices that control greater than 10 tons/yr of HAP. Therefore, EPA will not allow credits based on a control efficiency that has not been demonstrated. Secondly, the provisions of § 63.1362(k)(2) incorrectly referred to the 98 percent and 95 percent control levels as "nominal" control efficiencies. These efficiencies must be demonstrated via performance testing and therefore should not be restricted from obtaining credits in emissions averaging. The final rule has been changed to reflect this correction.

3. Restrictions on Calculation of Credits

Commenters believe EPA should delete the restrictions that prohibit a source from calculating emission averaging credits for emission reductions achieved prior to November 15, 1990 or with equipment installed to comply with other State/Federal rules. The commenters believe these restrictions (1) are arbitrary, (2) are not dictated by the CAA, (3) unfairly limit economic incentives and thus impose unreasonable costs, (4) penalize progressive companies, and (5) are inconsistent with procedures to develop the floor (i.e., emission points that would be excluded from emissions averaging are used in setting the standard). In addition, one commenter believes EPA's response to comments in the April 22, 1994 **Federal Register** notice on the HON are inadequate to justify the restriction.

The EPA's policy on not allowing averaging of emission reductions for controls in place prior to the passage of the 1990 CAA Amendments was explained in the April 22, 1994 **Federal Register** notice for the promulgated HON (59 FR 19426), and this rationale is still applicable. In general, the emissions averaging provisions are designed to provide an owner or operator with flexibility in designing a compliance strategy that optimizes the use of existing controls, rather than replacing them. However, the final rule does not allow credit for emissions reductions achieved by control devices installed before November 15, 1990 because EPA policy is that regulations must achieve additional reductions beyond what would have occurred in the absence of the amended CAA. Emission reductions achieved by controls that were in place prior to November 15, 1990 would have occurred regardless of whether or not the CAA was amended. If the rule allowed a source to take credit for these preexisting emission reductions, the source could increase its emissions above the 1990 baseline levels. Regarding the commenter's view that the restrictions penalize progressive companies, EPA notes that, at least for process vents that meet the applicability criteria for 98 percent control, owners and operators who can demonstrate that controls achieving the MACT floor level of control (90 percent) were in place prior to the proposal date of these standards are not required to achieve the higher efficiency requirement of 98 percent. In this manner, companies who have taken proactive measures to control emissions are actually rewarded. Additionally, the pollution prevention

alternative standard also rewards facilities which have demonstrated significant reductions in their production-indexed consumption factors. Finally, these provisions have been included in numerous regulations beginning with the HON, and they have been reviewed and approved by Office of Management and Budget (OMB).

4. Emissions Averaging for New Sources

Commenters objected to restrictions on emissions averaging for "new sources." The commenters disagreed with EPA's rationale in the preamble that this approach holds new sources to a stricter standard and that flexibility is unnecessary for new sources. The commenters argued that using emissions averaging is the more stringent approach because of the 10 percent discount factor that is applied to credits. Furthermore, the commenters stated that new sources also need flexibility to comply with the standard in the most economical and efficient manner; for example, if a new source is added to an existing facility there may be opportunities to route emissions from the new source to existing controls, or to over control certain existing or new emission points to provide equal or greater environmental benefit at lower cost. Also, commenters believe this restriction unfairly limits economic incentives and imposes unreasonable costs.

The EPA's policy on not allowing averaging of emission reductions for new sources was explained in the April 22, 1994 **Federal Register** notice for the promulgated HON (59 FR 19427), and this rationale is still applicable. As noted above, EPA designed emissions averaging provisions to provide existing sources with flexibility in achieving compliance. Instead of requiring the replacement of all existing controls that do not meet the level of the standard, the emissions averaging provisions allow an existing source to optimize the use of existing controls in the most economical and technically feasible fashion. The EPA maintains that this concern does not apply to new sources because the owner or operator of a new source would be able to integrate state-of-the-art controls into the design of the new source. However, nothing in the rule prevents an owner or operator from routing emissions from a new PAI process unit to an existing control that meets the required control levels. Finally, these provisions have been included in numerous regulations, beginning with the HON, and they have been reviewed and approved by OMB.

Even if emissions averaging were allowed for new sources, certain other factors may limit its feasibility. For example, new sources are subject to the requirements of the new source review (NSR) program that may require levels of control similar to those in the rule for new sources. In addition, because the level of stringency in the new source standards is high (98 percent), achieving credit above and beyond the 98 percent levels is probably unrealistic in most situations.

L. Testing Provisions and Initial Compliance Demonstration

1. Testing Conditions

Several comments were received regarding the proposed rule's language on testing. Specifically, commenters identified the requirements for testing under "absolute," "representative," and "hypothetical" conditions to be confusing and suggested simpler language that specifies, under actual or simulated conditions, the highest 1-hour period of HAP loading. Another commenter objected to the requirement of testing under the worst-case loading conditions, and suggested that testing be required to be conducted under "representative" conditions, citing several reasons for the comment, including safety (operating the device at higher than design loads could create safety issues), precedent from other regulations, and difficulty with production scheduling and the resulting production of unmarketable products if the process was operated in an abnormal fashion. The commenter also questioned the benefits of such testing, stating that organic HAP removal efficiency should be fairly stable across a device.

In response to these comments, EPA has made several changes to the testing language in the final rule that generally cover the commenters' suggested revisions, but also allow more flexibility in defining the required peak-case testing conditions. These changes include the elimination of the option to test under "representative" peak-case testing conditions, and the elimination of testing requirements for condensers. Additionally, EPA has expanded the testing language to cover factors other than the highest HAP load that also impair control efficiencies (i.e., the most challenging conditions for the control device). These other factors that limit control efficiencies relate to characteristics of components and the operating principles of the control devices. For example, the solubility of an emission stream component in scrubbing media, or the affinity of an emission stream component for carbon can also define the most challenging conditions for a particular control device.

The intent of compliance testing under peak-case conditions is to document the reduction efficiency of the control device under the most challenging conditions. This documentation is necessary to assure compliance in cases where the process operations yield emission stream characteristics that may vary significantly over time, and where conditions approaching absolute peak-case may occur. Subsequent to the initial compliance test, continuous monitoring of operating parameters established during the test is a reasonable measure of continuous compliance. Presumably, the control device should function as well or better under conditions that are not as challenging.

Although EPA is sensitive to unnecessarily increasing the burden associated with testing of control devices for little benefit, the Agency still has concern that testing under "representative" conditions (where "representative" is defined either as in the proposed rule for representative peak-case or as a more general concept as suggested by the commenter) may not be sufficient to demonstrate that the control device will achieve required efficiencies under all conditions. This is especially important as it relates to the continuous compliance demonstration provision. Therefore, the option to test under representative peak-case conditions has been eliminated for the final rule, and testing under representative conditions has not been added.

The final rule, however, does allow more flexibility in defining absolute and hypothetical peak-case conditions. The definition of "absolute peak-case" in the final rule incorporates the possibility that conditions other than the highest HAP loading constitute the most challenging conditions for the device. These conditions include, but are not limited to, periods when the emissions to the device may contain the highest combined VOC and HAP load, periods when the streams contain HAP constituents that approach limits of solubility for scrubbers, or periods when the streams contain HAP that approach limits of adsorptivity for carbon systems.

The hypothetical peak-case conditions also have been expanded. In addition to establishing hypothetical peak-case testing conditions based on a calculation of maximum actual emissions, the final rule allows hypothetical peak-case conditions to be defined based on equipment design

features that limit the maximum hourly emissions that can be routed to the control device. For example, a fan may limit the flowrate, and the concentration may be limited to a certain percentage of the lower explosive limit before a bypass valve opens.

The Agency does not believe that the testing provisions in the final rule require operation in a manner that could damage equipment, because the testing is only required for conditions that have some reasonable likelihood of occurring. Thus, the design of the system should have considered the possibility of operating under these conditions.

Regarding the comment that the testing provisions should not require operation in a manner that produces excess or unmarketable products, or in a manner that will not occur within the time frame allotted prior to the compliance date, the Agency concedes that some inconvenience to the source may occur, but believes that in most situations, facilities will be able to work within the confines of the definitions to arrive at a set of testing conditions that minimize production disruptions. The Agency also notes that the requirement for submittal of the site-specific test plan is also an opportunity for the facility to present site-specific information that may influence the selection of testing conditions. The EPA encourages owners and operators to work with the permitting agencies to arrive at solutions that meet the intent of this regulation.

2. Emission Estimation Procedures

One commenter stated that facilities should be allowed to calculate emissions based on all available information, including, but not limited to, the equations in the proposed rule, and that they should not have to demonstrate that the equations in the rule are inappropriate. According to the commenter, it is not logical to require facilities that produce a variety of products, only a small portion of which are PAI's, to modify their calculation methodology; nor is it logical to require recalculation on a large scale when the existing emissions estimates are based on fundamentally sound principles. The commenter also noted that facilities already may have invested significant resources to develop methodologies for calculating emissions. Another commenter requested that the rule specify when the emission estimation procedures are not considered appropriate.

For the final rule, EPA did not change the requirement to use equations to estimate emissions when the emission episodes fit the descriptions provided in the rule. The EPA believes that the equations in the rule are the most appropriate methods to estimate emissions from seven specific types of emission episodes. The requirement to use the equations, when appropriate, also is important in standardizing compliance procedures for the industry and in providing replicable procedures which the regulated community and the Administrator can follow to assure compliance. However, the rule also allows owners or operators to request approval to use alternatives for estimating emissions. The EPA believes it is important that the owner or operator be able to make a case for any alternative approach. The final rule clarifies the language describing when an engineering assessment must be conducted and when it may be conducted.

3. Compliance with the Outlet TOC Limit

Several commenters believe EPA should justify why a performance test to demonstrate compliance with the outlet TOC concentration under § 63.1364(c)(1)(viii) of the proposed rule must be conducted only under absolute peak-case conditions. Other commenters also stated that this section of the proposed regulation unnecessarily restricts the choice of test methods to demonstrate compliance with the outlet TOC concentration. Commenters requested that this section be modified to allow combinations of test methods to measure TOC, and to allow measurement of total organic HAP using Method 18.

The EPA reviewed the language in the proposed rule and decided to include two options for demonstrating compliance with the outlet TOC concentration. The source must choose one of the following compliance methods: (1) continuously monitor outlet concentration using a flame ionization detector (FID) or other devices, or (2) perform an initial performance test at absolute or hypothetical peak-case conditions and continuously monitor operating parameter levels. Initial testing at absolute or hypothetical peak-case conditions is not necessary for option 1 because continuous compliance is determined through the use of an FID or other device that continuously monitors outlet concentration (however, if the monitor is to be calibrated on the predominant HAP, it may be necessary to perform an initial test to identify the HAP). Conversely, EPA believes testing under absolute or hypothetical peak-case conditions is necessary for the second option to ensure that operating parameter levels are established that will ensure compliance under all operating conditions. The monitoring requirements for option 2 are the same as the monitoring requirements for complying with the percentage reduction format of the standard. Therefore, EPA believes the initial testing that is used to establish the monitoring parameters should also be the same in both cases.

Finally, EPA has modified the final rule so as not to restrict the choice of methods that the owner or operator may use to determine TOC (i.e., Method 18 is allowed for speciation). However, EPA emphasizes that the concentration limit is based only on TOC, not total organic HAP.

Commenters also objected to the requirement to correct outlet TOC emissions to 3 percent oxygen for the 20 ppmv outlet standard. Commenters oppose this provision because many thermal and catalytic incinerators normally operate with higher oxygen levels in the exhaust stream. Commenters suggested that a more reasonable requirement would be to correct the outlet TOC concentration to the design outlet oxygen concentration for each particular device. One commenter noted that the requirement should only apply when the control device is an incinerator.

The General Provisions prohibit the use of dilution as a means of achieving compliance with a standard (see 40 CFR 63.4(b), Circumvention). However, EPA also recognizes that there are valid reasons for introducing air or inert gases into manifolds for safety or design considerations. For example, supplemental combustion air may be required for proper operation of an incinerator. The intent of the proposed requirement for correction to 3 percent oxygen was to allow an owner or operator to add supplemental combustion air, but only take credit for the amount that is needed for proper operation. As one commenter noted, this correction was not intended to apply to other types of control devices.

The correction to 3 percent oxygen concentrations was drawn from the HON and the earlier SOCMI NSPS. Under these rules, this correction is required for purposes of demonstrating compliance with a 20 ppmv outlet concentration standard. The value of 3 percent originates from good engineering practices. For oxygen deficient streams, if the proper amount of supplemental combustion air is added, the outlet stream would contain approximately 3 percent oxygen. Typically, SOCMI facilities have low oxygen, high VOC/HAP concentration

streams that generally require supplemental combustion air when they are combusted. Therefore, a correction to prevent dilution was needed in rules for the SOCMI industry.

A similar requirement to correct the outlet concentration was included in the Polymer Manufacturing NSPS. Commenters on the proposed NSPS asserted that an oxygen correction may be appropriate for oxygen deficient streams to which supplemental combustion air is added to ensure combustion of the emissions, but it is not appropriate for high oxygen, low VOC concentration streams. The commenters on the proposed NSPS further stated that requiring an oxygen correction for processes with inherently high oxygen concentrations would prevent facilities from being able to use the 20 ppmv outlet concentration compliance option. Because at some point the combination of low VOC/HAP concentration and technology limitations of control devices makes it impossible to achieve a high percentage reduction (98 percent in the case of the Polymers NSPS), the 20 ppmv outlet concentration may be the only compliance option for some streams. As a result of considering these comments, the final rule for the Polymer NSPS was changed to require a correction to 3 percent oxygen only if supplemental air was used to combust emissions.

Other available information indicates that for some pharmaceuticals processes, dilution is needed for safety or design considerations other than for use as supplemental combustion air. Typically, this dilution occurs in manifolds conveying emission streams from unit operations that already have high oxygen concentrations, and it occurs for control devices other than incinerators. Although EPA does not have similar information for the PAI production industry, the information from the surveyed plants supports the commenters contention that there are process vent streams with high oxygen concentrations. It is also possible that some of these streams are diluted for reasons other than to supply supplemental combustion air.

It is not EPA's intent to prohibit the introduction of dilution air or other gases, only to ensure that outlet concentrations are corrected for such dilution. As a result, EPA made a number of changes in the requirement to correct outlet concentrations to prevent dilution. First, a definition of "supplemental gases" has been added to the final rule; this term includes supplemental combustion air as well as any other nonaffected streams with TOC and total HCl/Cl_2 concentrations less than 20 ppmv that are combined with affected streams. Second, the final rule clarifies that the correction to 3 percent oxygen applies only for incinerators, and only if supplemental gases are added. Third, the final rule explicitly describes procedures to correct for dilution in noncombustion devices.

4. Exemptions From Performance Testing

Several commenters requested that EPA change the cutoff that defines the minimum size of a control device for which a performance test must be conducted to demonstrate compliance. The proposed rule required performance testing of devices receiving at least 10 tons/yr of HAP emissions. Additionally, other commenters stated that the exemption to the performance test requirement for sources that have conducted a previous test using the same procedures as those required by the rule is basically useless because it is unlikely that a previous performance test would have been conducted using the same procedures and under the same peak-case conditions as those required by the rule. The commenters added that any test on the control device to demonstrate compliance under any EPA-supervised program (e.g., NSPS, NESHAP, RCRA, NSR) should be sufficient to demonstrate compliance with this regulation.

The EPA continues to believe that the testing cutoff for control devices is proper. In developing the regulation, EPA could have required testing of all devices. The EPA proposed the testing cutoff to decrease the burden of testing on the industry. For devices handling lesser loads, EPA believes that the design evaluation will be adequate to demonstrate compliance.

The EPA also continues to believe that the conditions for exempting certain sources from performance testing are proper. As described previously, EPA believes compliance must be demonstrated under the most challenging conditions for the control device to ensure compliance over a range of conditions, especially when variability in emission stream characteristics cannot be predetermined. Therefore, only performance tests that have been conducted at conditions that represent the absolute or hypothetical peak-case conditions are considered valid for demonstrating compliance with this rule.

5. Initial Compliance for Condensers

Under the proposed rule, EPA included three options for sources to determine emissions and control efficiencies for condensers: (1) Performance testing including measurement of HAP concentration and flowrate under peak-case conditions, (2) direct measurement of temperature of the outlet gas under peak-case conditions, or (3) emission estimation. Since proposal, EPA identified the following problems with the proposed options: (1) Direct measurement of temperature is a procedure to demonstrate ongoing compliance, not initial compliance; (2) for condensers, determining the control efficiency during the peak-case conditions does not ensure that the same or higher control efficiencies will be achieved under other conditions, (3) options 2 and 3 are not independent because the outlet temperature is needed to estimate emissions from a condenser, and (4) performance testing is not a replicable procedure for batch processing operations and is unnecessary for establishing the control efficiency. To address these concerns, the final rule was revised to include only one procedure for demonstrating initial compliance when using a condenser. This procedure requires calculation of the outlet temperature that is needed to achieve the required control efficiency for an emission episode (or group of episodes).

Determining the control efficiency for condensers under the peak-case conditions does not ensure that the control efficiency under other conditions will be the same or higher. Under the proposed rule, the peak-case conditions were defined based on the stream from which the maximum amount of heat must be removed over a specified time period to achieve the required emissions reduction. However, to achieve the required control efficiency for another emission stream with a different pollutant and/or temperature may require a significantly lower outlet temperature, even though less heat is removed. Basing the monitoring on the temperature for the stream with the maximum heat removal requirement would not ensure that the lower outlet temperature could be achieved for the other stream.

The revised procedure for the final rule is a replicable protocol in that for identical inlet conditions, every source will estimate the same controlled emissions and control efficiency when using the same outlet temperature. Performance testing for batch processing operations, on the other hand, can be difficult and can lead to considerable variability in results. In addition to concerns about replicable results, the performance testing provisions in the proposed rule were not structured to properly account for control efficiency of condensers under all conditions. Under the performance testing option in the proposed rule, the control efficiency would be determined for the peak-case conditions. Then, using the heat removal rate that occurred during the test, the outlet temperatures, and thus control efficiencies, could be calculated for other inlet conditions. However, a performance test is not needed because these temperatures can be calculated based on the properties of the emission streams. For these reasons, the final rule does not specifically require testing of condensers (e.g., measurement of flowrate and concentration to generate a mass rate) as a means of compliance with the standards. However, as with other practices, owners and operators can propose alternative means of demonstrating compliance with the standards for approval on a case-by-case basis.

M. Monitoring

1. Establishing Parameter Levels

Several commenters suggested that testing under peak-case conditions and establishing parameter levels for the continuous compliance demonstration results in overcontrol during most of the operations and therefore increases the stringency of the standards. The commenters also believe the requirements to use the average of the three test runs to set the parameter level and to determine compliance on a daily basis, as opposed to a yearly basis, increase the stringency of the standards. One commenter believes that a source should be able to establish parameter ranges other than those measured during a performance test.

In the final rule, EPA requires that testing be conducted under absolute or hypothetical peak-case conditions if all control device inlet stream conditions cannot be predetermined. If inlet stream conditions can be predetermined, the owner or operator has the option of setting different monitoring levels for different operating conditions. This option was provided in the proposed rule and has been retained in the final rule. Therefore, EPA does not believe the requirement results in over control.

Regarding averaging periods, EPA has modified the compliance period of the standard to allow averaging on either a 24-hour basis or a "block" basis, where the block may be any length of time less than the time from the beginning to the end of a batch process. For batch operations, an annual compliance period was determined by EPA to be too difficult to implement and therefore not practical. The annual compliance period implies that owners and operators could control a process to varying degrees during the course of a year, as long as the yearly percent reduction target would be met. Although this format would offer flexibility to owners and operators who want to change control strategies to accommodate production scheduling and operational changes, EPA believes that the demonstration of compliance over such an extended time period would result in delayed determination of exceedances and the possibility for extended periods of violations. The EPA notes that the final rule offers numerous compliance options to provide flexibility for owners and operators to address variability within their processes.

Regarding the setting of parameter levels, the purpose of monitoring operating parameters is to provide evidence of continued compliance with the rule. Monitoring parameters are set based on test data, calculations, or information from the evaluation of the control device design. The final rule requires sources to establish maximum or minimum operating parameter levels based on the average of the average parameter values for each of the three test runs (i.e., average values are to be determined for each of the three test runs, and the monitoring parameter level is to be based on the average of these three values). The Agency believes that setting monitoring levels based on the average of three test runs is necessary because the control efficiency is also based on the average from the three test runs. Basing the monitoring parameter on the results of only one of the test runs would be inconsistent with the average control level.

2. Monitoring With Bag Leak Detectors

Two commenters believe the requirement to initiate corrective action within 1 hour of a bag dump alarm is unnecessarily rigid or unnecessary because other situations may require priority attention, replacement parts may not be readily obtainable after normal business hours, or it could trip accidentally. One commenter suggested changing the 1 hour time period to 3 hours. Commenters also believe it is both unnecessary and inconsistent with other aspects of the rule to require written approval before adjusting the range, averaging period, alarm setpoints or alarm delay time contained in the Notification of Compliance Status report. The commenter suggested requiring changes to be reported in the next periodic report, and, if prior approval is needed, it could be handled under the Operating Permit program.

The intent of the requirement to initiate corrective action procedures within 1 hour is to ensure the prompt investigation of the cause of an alarm and resolution of the underlying problem. The corrective action does not necessarily have to be completed within the hour, but the owner or operator should follow predetermined procedures that are to be described in a written corrective action plan. These procedures may vary depending on the time of day, what was determined to cause the alarm, other priorities in an emergency, and other factors. Timing is one aspect of the procedures that the owner or operator should address in the corrective action plan. For the final rule, these provisions have been edited to clarify intent. One substantive change since proposal is that the corrective action plan is to be submitted with the Precompliance plan rather than the Notification of Compliance Status report. This change will allow the implementing agency to review and approve the procedures.

The intended use of the bag leak detector is to identify upset conditions in the baghouse operation. The EPA is concerned that unrestricted adjustment of the bag leak detector could result in improper use, possibly resulting in the alarm and sensitivity settings being set such that leaks or malfunctions could occur undetected. Based on further review, EPA has determined that periodic adjustment may be necessary. Therefore, EPA has revised the bag leak system adjustment requirements to: (1) Allow for routine minor adjustments to the detector system, (2) require owners and operators to identify all routine adjustments in an operating and maintenance plan that is to be submitted with the Precompliance plan, and (3) require that owners and operators perform complete baghouse inspection to ensure proper operation of the baghouse prior to any significant adjustments to the sensitivity or range.

3. Monitoring Frequency

One commenter believes two aspects of the proposed monitoring frequency are excessive: (1) The requirement in § 63.1365(b)(3) of the proposed rule to monitor batch episodes less than 15 minutes in duration, and (2) the requirement to monitor control devices controlling less than 10 ton/yr of an individual HAP or 25 ton/yr of aggregate HAP. For the control devices, the commenter believes "periodic" monitoring would be sufficient because many parameters do not vary frequently, and it would allow for the use of simpler monitoring systems that are less prone to design and maintenance problems.

When only one monitoring level is established for a parameter, the EPA agrees with the commenter that monitoring of batch episodes less than 15 minutes in duration should not be required because the practical limit of monitoring frequency is one reading per 15 minutes. Instead of requiring that each batch episode be monitored at least once, the final rule requires an owner or operator to measure and record the parameter level at least once every 15 minutes during the period in which the control device "is functioning in achieving the HAP removal required" by the rule. This means that one reading must be taken for every 15-minute period of continuous venting from any combination of emission episodes manifolded to the control device. Thus, even when individual emission episodes are shorter than 15 minutes, one reading is required if venting occurs for at least 15 minutes due to overlapping or "contiguous" episodes. On the other hand, if short emission episodes are separated by periods of no flow or venting from vents that are not subject to control, the owner or operator does not need to monitor during each episode. In this case, monitoring every 15 minutes will result in some readings that correspond with an emission episode of an affected stream. Only these readings must be included in the daily (or batch) average. For storage vessels, a control device is considered to be functioning in achieving the HAP removal required at all times material is stored in the vessel. Although working losses occur only during relatively short periods when the tank is being filled, breathing losses may occur at any time. To identify periods of no flow, a flow indicator (not necessarily a flow monitor) would be required.

An exception to the procedures described above exists if the owner or operator establishes separate monitoring levels for different emission episodes. In this case, at least one reading must be taken each time the level changes, even if episode lasts less than 15 minutes. This exception is included to counteract the possibility of setting multiple levels in order to avoid monitoring.

As a result of the change in monitoring frequency, the definition of a valid hour of data as used in the definition of an excursion also has been modified in the final rule. At proposal, monitoring data would not constitute a valid hour of data if measured values are unavailable for any of the 15-minute periods within the hour. For the final rule, the word required has been added before the phrase "15-minute period" to address the fact that less than four data points per hour may be allowed in some situations.

The EPA believes that the requirement to take 15-minute readings for devices controlling more than 0.91 Mg/yr of HAP is reasonable. The cutoff for continuous monitoring was set because EPA wanted to reduce the compliance burden on facilities with smaller control devices. The EPA also notes that "periodic" monitoring could increase the potential for being out of compliance with the standard, because a reduction in the number of data points places a significantly higher emphasis on each reading for compliance determination. Additionally, because emission stream characteristics in this industry are variable, the use of "periodic" readings may not represent true conditions over the monitoring period.

4. Monitoring for Storage Vessel Controls

One commenter believes the proposed rule lacks appropriate monitoring provisions for control devices that are used to control emissions from storage vessels. According to the commenter, the proposed provisions address only continuous monitoring, which often will not be appropriate for storage vessels because the emissions occur primarily during filling. Furthermore, if emissions are controlled using a disposable carbon canister, the monitoring may consist only of replacing the canister before the end of its rated life, not periodically checking a parameter. Therefore, the commenter recommended that EPA include some of the concepts from the storage tank monitoring provisions in § 63.120(d) of the HON. For example, these provisions specify that the owner or operator must prepare a monitoring plan that describes how the monitoring will be done. In addition, the commenter indicated that the rule needs to define "excursion" for situations where monitoring is not continuous (e.g., the rule should specify that the monitoring plan "shall define an excursion in terms of the relevant operating parameter").

The monitoring provisions in § 63.1365(a) of the proposed rule were intended to apply to control devices used for continuous processes, and the provisions in § 63.1365(b) were intended to apply to control devices for all other emission streams. In the final rule, the provisions from § 63.1365(a) and (b) have been consolidated into one section that specifies monitoring provisions for all control devices (§ 63.1366(b)). The final rule also includes monitoring provisions for nonregenerative carbon canisters; the owner or operator is required to determine the maximum time interval between replacement based on operation under absolute or hypothetical peak-case conditions and to replace the canister before this time elapses.

Unlike the HON, the final PAI rule requires the same type of monitoring regardless of the purpose for which the control device is used. The EPA does not believe it is necessary to have different procedures for storage vessel control devices because the types of emission episodes from storage vessels are comparable to those from batch process vents. Furthermore, most storage vessels at the surveyed PAI plants emit less than 0.91 Mg/yr. Under the final rule, if the total uncontrolled HAP emissions entering a control device are less than 0.91 Mg/yr, the owner or operator may elect to conduct a periodic (at least daily) verification that the control device is operating properly. The verification procedures are to be described in the Precompliance plan. This provision is comparable to the monitoring plan concept described in § 63.120(d)(2) of the HON. On the other hand, if the total uncontrolled HAP emissions entering the control device exceed 0.91 Mg/yr, the owner operator must monitor the appropriate parameter(s) every 15 minutes during which the control device is functioning in achieving the HAP removal required by the rule. Based on information from the surveyed PAI facilities, this situation would apply to very few storage vessels in the PAI industry. Most of the few storage vessels with emissions greater than 0.91 Mg/yr are vented to the same control device that is used to control process vent emissions. Thus, a separate set of monitoring requirements for storage vessel control devices is not needed.

For devices that control more than 0.91 Mg/yr of HAP, the definition of excursion in the final rule is the same as that in the proposed rule, and it is applicable to all control devices. Specifically, a valid hour of monitoring data must be obtained for 75 percent of the hours that a control device operates during a day (or, if the control device operates less than 4 hours, at least 3 hours of valid data must be obtained). As noted above, the control device operation is based on the time when the control device is functioning in achieving the HAP reduction required by the rule. For storage tanks, this means all of the time that the storage tank contains material. When compliance for small control devices is demonstrated by conducting a periodic verification, the final rule has been revised to clarify that not conducting the verification is an excursion.

The final rule also clarifies that exceedances of operating parameters are those times when (1) the parameter level, averaged over the operating day, is above a maximum or below a minimum established during the initial compliance demonstration, or (2) the required operating characteristic is not met (e.g., loss of all pilot flames for a flare). If compliance is demonstrated by conducting a periodic verification, an exceedance occurs any time the daily, or more frequent, demonstration does not confirm that the control device is operating properly.

5. Violations

Several commenters asserted that excursions or exceedances of an operating parameter should not be violations of the emission standard. Another commenter also stated that failure to take corrective action after a bag dump alarm should be a violation of a work practice requirement, not the emission standard. The commenters stated that such incidents should not be violations of an emission limit because the parameters are only indicators of proper operation, they do not prove compliance with an emission standard. Another commenter stated that the proposed provision conflicts with the basis of the compliance assurance monitoring (CAM) regulation. Two commenters also stated that the requirement in § 63.1365(a) to "operate processes and control devices within the parameters" must be revised. Both commenters interpreted this statement to mean that each data point must be within the established limit. One commenter indicated that the source must be allowed to demonstrate continued compliance with the emission standard despite exceedance of a monitoring parameter. Another commenter stated that (1) monitoring data collected during any startup, shutdown, or malfunction should be excluded from daily averages; (2) the rule should specify that there is no violation if an event such as a malfunction results in insufficient data or an exceedance of a parameter; and (3) the statement that an excursion is not a violation if it happens during a startup, shutdown, or malfunction and the facility follows it startup, shutdown, and malfunction plan is a concern because it could be interpreted to mean that EPA could assess two penalties if the plan is not followed.

The EPA's policy is that new part 63 rules, in particular those that require the use of a control device to reduce pollutant emissions, will include compliance determinations on two levels. The first level is the "traditional" performance test requirement that is based on the use of a specific test method over a set period of time and operating conditions. A performance test is generally conducted at the time the rule is first effective (e.g., at facility startup or after an effective date for an existing facility) and may be repeated periodically thereafter. The results of the performance test are compared with an emission limitation (e.g., concentration, control efficiency, or mass rate). The second level of the compliance determination in part 63 rules is the continuous compliance obligation, which is implemented through monitoring.

In general, EPA recognizes two basic approaches to monitoring. One method is to establish monitoring as a direct measure of continuous compliance. Under this continuous compliance monitoring approach, an enforceable value of the monitored parameters is defined and measured. The Agency has adopted this approach in part 63 standards and is committed to following this approach whenever appropriate in future rulemakings. Another approach is to establish monitoring to provide a reasonable assurance of compliance by documenting continued proper operation of the control devices, indicating excursions from proper operating conditions, and correcting the problems that cause excursions. This second approach is the basis of the CAM rule, which applies to sources that are not currently subject to part 63 standards.

Some part 63 rules specify that compliance be demonstrated continuously using either a continuous emissions monitoring system (CEMS) for a surrogate pollutant or parameter monitoring. In these situations, the rule includes specific limitations and averaging times. The surrogate pollutant or operating parameter limit becomes an enforceable limit for the rule. There is no requirement that an alternative limit, whether a surrogate pollutant or an operational parameter, be statistically correlated with emissions or the compliance level of the regulated pollutant(s). The alternative limit is a separately enforceable requirement of the rule. The alternative is not secondary to the emission limit; rather, it is applied in lieu of a continuous emission limit obligation.

The enforceable level for the surrogate pollutant or operating parameter may be based on measurements made during a performance test or other conditions specified by the part 63 rule. In any case, the alternative limit becomes the continuous compliance obligation and fulfills the second level of compliance for the rule.

The EPA has considered the commenters' argument that an exceedance of a monitoring parameter is not necessarily an exceedance of an emission limit. The Agency acknowledges that a parameter exceedance does not necessarily mean that the source has exceeded the emission limit. However, as discussed above, under the EPA's approach to continuous compliance in part 63 rules, the continuous parameter monitoring limit is a separate requirement that is not rebuttable through contrast with actual or estimated HAP emission values. In addition, EPA believes that given the flexibility the owner or operator has to select operating parameters, including the option that allows the owner or operator to set different parameter levels for different operating conditions, the burden is on the source to remain within the operating limit defined for the parameter or parameters.

To address the potential disparity between parameter limit exceedances and emission limit exceedances, the final rule contains two different types of continuous compliance violations. When a source is using a CEMS to monitor compliance with the 20 ppmv alternative standard, an exceedance is defined as a violation of the emission limit. Similarly, because the exit gas temperature of a condenser is so closely correlated with emissions, a condenser temperature exceedance is considered a violation of the emission limit. Exceedances of other types of parameter limits are defined as violations of an operating limit. Failure to initiate the corrective action plan after a bag leak detector alarm also is a violation of an operating limit.

If monitoring data obtained during a startup, shutdown, or malfunction result in an exceedance, the exceedance is not a violation as long as the facility follows the startup, shutdown, and malfunction plan. If the facility does not follow the plan, an exceedance would be a violation, but it would not be two violations. Thus, the final rule retains the requirement to use data obtained during any startup, shutdown, and malfunction in daily averages.

Similarly, if a startup, shutdown, or malfunction results in the inability to collect monitoring data, it may cause an excursion. This excursion would not be a violation if the facility followed its startup, shutdown, and malfunction plan, but it would be a violation if they did not follow the plan.

As noted above, the final rule requires monitoring when the control device is functioning in achieving the HAP removal required by the rule. Thus, data obtained during time when the process is not operating are not to be used in determining the daily average of the parameter level.

Finally, EPA believes that the language in the final rule is clear regarding the determination of a violation. The final rule no longer contains language specifying that owners and operators "shall operate within established parameter levels." Additionally, EPA believes that the final rule clearly identifies averaging periods for reducing monitoring data and comparing against established parameter levels.

N. Recordkeeping and Reporting

Comments received relating to recordkeeping generally focused on the burden of the extensive recordkeeping required by the regulation. Comments related to reporting focused on dates for submittal of reports, and the burden of submitting all the reports required by the regulation. These comments are discussed below.

1. Recordkeeping Burden

Several commenters took issue with the amount of recordkeeping required by the rule and requested that EPA review the recordkeeping requirements to ensure that the amount of recordkeeping is really necessary. One commenter supports the provisions in § 63.1366(a) and (a)(3) that would require an owner or operator to maintain records of only the daily average of the parameter values not each datapoint, because this reduces the recordkeeping burden. This commenter also stated that the rule should contain a provision similar to the provision in § 63.152(g) of the HON, which allows for retention of only average parameter values, rather than each individual data point.

Detailed records are needed to demonstrate compliance with the regulation. However, prior to proposal, EPA made a concerted effort to eliminate duplicative and unnecessary recordkeeping requirements because EPA recognizes that these requirements would burden both the affected sources and EPA enforcement agencies. Since proposal, EPA has reviewed the recordkeeping provisions and made a number of changes. Many of the changes are editorial revisions designed to clarify the requirements. Some of these clarifications are discussed in more detail in other responses in this chapter. Other clarifications explicitly state recordkeeping requirements that were merely implied in the proposed rule (e.g., records of planned routine maintenance and records of the absolute or hypothetical peak-case conditions for process vent testing).

The final rule also includes additional recordkeeping requirements to document compliance with new or revised provisions in the rule. For example, the final rule includes recordkeeping to document the primary use for material produced by PAI process units if the primary use is not as a PAI (see section 3.2 for a discussion of the new primary use provisions). Another example in the final rule includes procedures to demonstrate ongoing compliance with the annual emission limit for process vents by calculating an annual rolling summation every day, and records of these calculations must be maintained. Finally, § 63.1362(j) was added to the final rule to specify that bypass lines that could divert a vent stream away from a control device must be monitored either with a flow indicator or by visual inspection of the seal or closure mechanism that secures the valve in the closed position; records of any flow or the results of inspections must also be maintained.

One additional change involves the parameter monitoring records in § 63.1366(a) and (a)(3) that were cited by the commenter. After reviewing these requirements, EPA now believes that, even when the daily average is in compliance, it is necessary to maintain all parameter readings, not just the daily averages. This rule requires that owners and operators select only parameter readings that are taken when the control device is controlling HAP emissions from affected emission streams. Emission episodes from batch processes, which predominate in the PAI production industry, are discontinuous. As a result, some monitoring readings may occur during periods of no flow for affected streams (although there may be flow of nonaffected streams). Readings taken during these periods must be excluded from the daily averages. In order to verify that the daily average values were calculated correctly, the rule requires owners and operators to keep all data. The EPA also does not believe that the approach in § 63.152(g) of the HON would be appropriate for this rule because, unlike this rule, the HON regulates emission streams with continuous flow.

2. Reporting Burden

Some commenters stated that the requirement in the proposed rule to submit a Precompliance report should be deleted. Additionally, some commenters requested that the proposed frequency for submitting periodic reports should be changed from quarterly to semiannually to be consistent with other MACT standards.

The final rule retains the requirement to submit a Precompliance report (or Precompliance plan in the final rule). The EPA believes the Precompliance plan is a valuable tool for the regulatory agency that will be making compliance determinations for the affected source. It provides an enforcement official or inspector with some initial background information about the process being controlled, the types of emissions associated with the process, corresponding control equipment, and the monitoring parameters that have been or will be correlated to the process conditions. The Precompliance plan is also the mechanism by which the affected source requests approval to use alternative monitoring parameters and to use calculations or other compliance procedures that differ from those prescribed in the rule. Because many of the compliance procedures for this rule are more complicated than those for the HON, EPA believes the Precompliance plan requirement is warranted for this industry and has retained the provision in the final rule.

The EPA has also reevaluated the overall reporting requirements in the proposed rule and compared the proposed reporting requirements with requirements in rules for similar industries. As a result, the Agency decided to change the periodic reporting from quarterly to semiannually. In those cases where continuous emission monitoring data are used to demonstrate compliance with the 20ppmv alternative standards, and the source experiences excess emissions, quarterly reporting is required until a request to reduce reporting frequency is approved. Section 63.1368(g) in the final rule is now titled "Periodic reports" and details the submittal schedule and content of the required Periodic reports. Also, as a result of comments, the final rule now requires that equipment leak reports be included with the Notification of Compliance Status report and the Periodic reports. The final rule requires that the Periodic reports be submitted within 60 operating days after the end of the applicable reporting period.

Other changes made to the final rule as a result of comments include the addition of a new section to address the submittal of information describing process changes or changes made in the information submitted as part of the Notification of Compliance Status report. This information must be submitted within 90 days after the changes are made. The information may be included as part of a Periodic report, if one is to be submitted within the 90-day period. The information to be reported is to include: a brief description of the process change, a description of any modifications to standard procedures or quality assurance procedures, revisions to any of the information reported in the original Notification of Compliance Status Report, and information required by the Notification of Compliance Status report for changes involving the addition of processes or equipment.

3. Date for Submittal of Notification of Compliance Status Report

One commenter stated that the Notification of Compliance Status report submittal date in the proposed rule conflicts with the requirements of the General Provisions in § 63.7(a)(2) to complete performance testing within 180 days and § 63.10(d)(2) to submit performance test reports within 60 days after tests.

The submittal date for the Notification of Compliance Status report in § 63.1368(f) of the final rule does not conflict with the General Provisions requirements in §§ 63.7(a)(2) and 63.10(d)(2), it supersedes it. As noted in Table 1 to Subpart MMM—General Provisions Applicability to Subpart MMM, "[T]est results must be submitted in the Notification of Compliance Status report due 150 days after the compliance date." This means that the performance testing and the compilation of the test results must be completed and submitted as part of the Notification of Compliance Status report which is due within 150 days after the compliance date. Additional language was added to the final rule under § 63.1368(a) to clarify which of the reporting requirements of subpart A (General Provisions) remain in effect for this rule and which requirements have been superseded.

O. Miscellaneous

1. Environmental Impacts

One commenter believes EPA did not adequately consider the secondary air impacts of nitrogen oxide (NO_X) formation caused by combusting nitrogen-bearing HAP (and non-HAP VOC that may also be present) in process vent streams and wastewater.

The impacts analysis was based on a small number of model streams with characteristics that represent typical or average characteristics of streams at the surveyed facilities. Very little nitrogen-bearing HAP is emitted from the surveyed facilities (less than 5 percent of both the total uncontrolled organic HAP emissions from process vents and the HAP load in wastewater streams), and most of these HAP are controlled to the level of the standard. Therefore, the model emission streams that were used to estimate secondary air impacts did not include nitrogen-bearing HAP. In addition, any small underestimate in the NO_X emissions from nitrogen-bearing HAP is likely more than offset by the use of conservative estimates in the original analysis. For example, the estimated increase in NO_X emissions were based solely on the emissions associated with operation of the more efficient controls needed to achieve the level of the standards; emissions from existing controls that would be replaced were assumed to be negligible.

2. Cost Impacts

Two commenters believe EPA underestimated the costs to comply with the proposed rule. Based on recent experience installing some of the control devices that are used in the cost analysis, one commenter believes the costs are "significantly" underestimated, especially when the standard is more stringent than the floor. This commenter also indicated that, based on the additional secondary air impact described in the comment above, the cost analysis should consider the need to install best available control technology (BACT) or RACT to control NO_X emissions.

The other commenter believes none of the models used in the cost analysis adequately address the situation at the commenter's facility. This commenter operates an affected source that emits carbon disulfide, which, when burned, generates a significant amount of sulfur oxides (SO_X). The SO_X is not an issue under the MACT standard, but it is a criteria pollutant that would have to be controlled under State regulations. As a result, the commenter believes EPA's cost analysis underestimates the cost the commenter would face for two reasons. First, the model is based on a thermal incinerator with 70 percent recuperative heat recovery, but the commenter could not use this control device because carbon disulfide has a low auto-ignition temperature; they would have to use either a thermal incinerator with no heat recovery or a regenerative thermal oxidizer with 85 percent heat recovery. Second, the scrubber that follows the incinerator would need to be able to control the SO_X emissions as well as HCl emissions.

The cost impacts were based on models that represent a range of characteristics at actual facilities. The models are expected to overestimate costs at some facilities and to underestimate costs at others.

It is possible that installing a control device could trigger the requirement for a BACT or RACT analysis. Typically, to trigger BACT analysis, the control device would have to cause a net increase in NO_X emissions of 40 tons/yr (or any amount that has an impact of 1 microgram per cubic meter within 10 kilometers of a class I area). To increase emissions by 40 tons/yr would require a very large incinerator; the incinerator to control the largest model process was estimated to increase NO_X emissions by only about 11 tons/yr. Typically, a facility has only two PAI processes. Thus, even if all emission streams are routed to the incinerator and the emission stream contains nitrogen-bearing HAP, it will be a very unusual situation for NO_X emissions to increase by 40 tons/yr. Typically, RACT is applied only to existing sources; thus, a new incinerator installed to comply with today's final rule would not trigger RACT. As a result, EPA did not include BACT or RACT technology in the models used in the impacts analyses.

The SO_X control also was not included in the cost analysis because it is not a typical requirement, the amount of SO_2 control that would be needed is unknown, and the cost is not expected to be significantly different from that for an HCl scrubber. The total annual cost of a thermal incinerator with no heat recovery is approximately equal to that for a thermal incinerator with 70 percent recuperative heat recovery. The annual auxiliary fuel costs would be higher for the incinerator without heat recovery, but these costs are nearly offset by lower capital costs, which would result in lower capital recovery costs. Although the performance of a given scrubber will be better for HCl than for SO_2, a scrubber can easily be designed to obtain excellent SO_2 removal efficiencies.

3. Economic Impacts

One commenter believes EPA has not adequately evaluated the impact of the proposed rule on small businesses. The commenter notes that the regulatory flexibility analysis finds minimal impact on small businesses, but the docket states that the two known small firms for which data were available were not surveyed to find the impact of the regulation on them. The commenter believes a survey of small businesses is needed; otherwise the impact on them is unknown. This issue is important to the commenter because at the time facilities responded to the section 114

information request, the commenter's plant was part of a large business, but it has since been sold and is now classified as a small business.

The EPA reevaluated the economic impact using revenue data for the commenter's facility. Using Dun & Bradstreet data, EPA estimates that the cost-to-revenue ratio for this small business is approximately 2.3 percent. As noted at proposal, the control costs for model small businesses were also estimated to be less than 3 percent of revenue for model plants. This percentage suggests that the final rule will not significantly impact small firms in the PAI manufacturing industry.

4. Standards for Possible Endocrine Disruptors

In the preamble to the proposed rule, EPA solicited comment on whether the risk posed by possible endocrine disruptors warrants more stringent requirements than those proposed. Numerous commenters opposed the development of more stringent requirements; none supported the idea. The commenters cited the following reasons for not developing more stringent requirements: (1) The science for determining disrupting properties of chemicals and their risks is still under development; (2) technology-based standards are not appropriate to address endocrine disruption; (3) endocrine disruption is not an adverse endpoint, but a mechanism of action; (4) the compounds are emitted in small quantities; and (5) this has not been an issue under other MACT standards that address essentially the same materials.

In the proposal preamble, EPA indicated that available information shows emissions of possible endocrine disruptors is very low relative to other HAP emissions. Based on these data and the comments, EPA has decided not to include more stringent requirements for possible endocrine disruptors in today's final rule. Today's final rule does not preclude the possibility that EPA may take action on endocrine disruptors in the future as new information becomes available.

5. Risk-Based Standards for HCl

The preamble to the proposed rule explained that section 112(d)(4) of the CAA provides EPA with authority, at its discretion, to develop risk-based standards for HAP "for which a health threshold has been established," provided that the standard achieves an "ample margin of safety." Because HCl is a threshold pollutant that is emitted from PAI manufacturing facilities, EPA solicited comment on the adequacy, desirability, and feasibility of developing a risk-based standard instead of a MACT standard for HCl emissions from PAI manufacturing facilities. One commenter opposed the development of a risk-based standard for HCl emissions because it would delay promulgation of the rule. Another commenter opposed development of a risk-based standard because the commenter believes the proposed requirements, in conjunction with permit limitations based on ambient concentrations, are protective of the environment and human health. Another commenter supported EPA's determination of HCl as a threshold pollutant.

The EPA agrees with the commenter that a risk-based approach would delay promulgation of the rule. Given the relatively small potential difference between a MACT-based standard and a risk-based standard, EPA believes that the small benefits are substantially outweighed by the burden to EPA and the industry of collecting and analyzing the data needed for a risk-based standard.

VII. Technical Amendment to 40 CFR Part 9

In compliance with the Paperwork Reduction Act (PRA), this technical correction amends the table that lists the OMB control numbers issued under the PRA for this final rule.

The EPA is today amending the table in 40 CFR part 9 (section 9.1) of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The affected regulations are codified at 40 CFR part 63 subpart MMM, §§ 63.1366 and 63.1367 (recordkeeping and reporting requirements, respectively). The OMB control (tracking) number for this final rule is 2060–0370. The EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements and the current OMB control numbers. The listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the PRA (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

VIII. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of the final standards. The principal purposes of the docket are:

(1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A))).

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of this Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of Executive Order 12866, the OMB has notified EPA that it considers this a "significant regulatory action" under criterion number four of the Executive Order. The EPA submitted this action for OMB review. The OMB cleared this action without any comments.

C. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communication from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities because they do not own or operate sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not affect these entities because they do not own or operate sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2060–0370.

The EPA is required under section 112(d) of the CAA to regulate emissions of HAP listed in section 112(b). The requested information is needed as part of the overall compliance and enforcement program. The ICR requires that pesticide active ingredient production facilities retain records of control device monitoring and records of HAP emissions calculations at facilities for a period of 5 years, which is consistent with the General Provisions to 40 CFR part 63 and the operating permit requirements under 40 CFR part 70. All sources subject to this rule will be required to obtain operating permits either through the State-approved permitting program or, if one does not exist, in accordance with the provisions of 40 CFR part 71, when promulgated.

The public reporting burden for this collection of information is estimated to average 289 hours per respondent for each of the first 3 years following promulgation. Beginning in the fourth year after promulgation, existing facilities must comply with the monitoring requirements, which will result in a significant increase in the burden to the industry. It is also estimated that there are approximately 82 facilities that are likely respondents. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA is amending Table 9.1 in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information collection requirements contained in this final rule.

F. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

In screening the potential impacts on small entities, the EPA found that there are three companies operating in the PAI production industry that will be subject to the final rule that are considered "small" businesses as defined by the Small Business Administration (SBA). The SBA defines small businesses in SIC 2879 as a firm with fewer than 500 employees. The majority of facilities are owned by large chemical manufacturers having greater than 500 employees. In all instances, the average total annual cost for each of the affected small firms is less than 3 percent of company-wide sales revenues. The screening analysis for this rule is detailed in the Economic Impact Analysis and a subsequent memorandum (see Docket No. A–95–20, Docket item no. II–A–20 and IV–B–7).

G. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section

205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final standards do not include a Federal mandate that may result in expenditures of $100 million or more by either State, local, or tribal governments, in the aggregate, or by the private sector, in any 1 year. The rule does not impose any enforceable duties on State, local, or tribal governments because they do not own or operate sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule. The annual economic impact on the private sector will be far less than $100 million—the estimated cost impact is $39.4 million/yr, as discussed in section IV.D. of today's final rule. The rule also contains no requirements that will significantly or uniquely impact small governments; the rule contains no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the UMRA do not apply to this final rule.

H. Submission to Congress and the Comptroller General Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. § 804(2).

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Pub. L. 104–113 (March 7, 1996), directs all Federal agencies to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards. This section summarizes the EPA's response to the requirements of the NTTAA for the analytical and test methods to be required by today's final rule.

Consistent with the NTTAA, the EPA conducted a search to identify voluntary consensus standards. The search identified 22 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods in this rule. However, after reviewing available standards, EPA determined that 14 of the candidate consensus standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data or other important technical and policy considerations. Eight of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review, and consider adopting at a later date.

One consensus standard, ASTM Z7420Z, is potentially practical for EPA use in lieu of EPA Method 18 (See 40 CFR Part 60, Appendix A). At the time of EPA's search, the ASTM standard was still under development and EPA had provided comments on the method. The EPA also compared a draft of this ASTM standard to methods previously approved as alternatives to EPA Method 18 with specific applicability limitations. These methods, designated as ALT–017 and CTM–028, are available through EPA's Emission Measurement Center Internet site at www.epa.gov/ttn/emc/tmethods.html. The proposed ASTM Z7420Z standard is very similar to these approved alternative methods. When finalized and adopted by ASTM, the standard may be equally suitable for specific applications. However, this rule does not adopt the ASTM standard as it is not practical to do so until the potential candidate is final and EPA has reviewed the final standard. The EPA plans to continue to follow the progress of the standard and will consider adopting the ASTM standard at a later date.

This final rule requires standard EPA methods known to the industry and States. Approved alternative methods also may be used with prior EPA approval.

J. Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's final rule falls into that category only in part: the minimum rule stringency is set according to a congressionally-mandated, technology-based lower limit called the "floor," while a decision to increase the stringency beyond this floor can be based on risk considerations only to the extent that the Agency may consider the inherent toxicity of a regulated pollutant, and any differential impact such a pollutant may have on children's health, in deciding whether to adopt control requirements more stringent than floor level.

Today's final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. No children's risk analysis was performed for this rulemaking because no alternative technologies exist that would provide greater stringency at a reasonable cost, and therefore the results of any such analysis would have no impact on the stringency decision. The MACT floor and regulatory alternatives more stringent than the floor for process vents, storage vessels, equipment leaks, and wastewater systems are presented in Chapters 6 and 8 of the Basis and Purpose Document and related memoranda (Docket A–95–20, Docket items II–B–21, III–B–1, IV–B–2, and IV–B–3). For each of the four types of emission points, the standards are based on the most stringent alternative for which the cost was determined to be reasonable.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 13, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I, of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671g, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding in numerical order a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * * * *

40 CFR citation	OMB Control No.
National Emission Standards for Hazardous Air Pollutants for Source Categories.[3]	
63.1367–63.1368	2060–0370

[3] The ICR's referenced in this section of the table encompass the applicable General Provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et. seq.*

2. Part 63 is amended by adding a new subpart MMM to read as follows:

Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

Sec.

63.1360 Applicability.
63.1361 Definitions.
63.1362 Standards.
63.1363 Standards for equipment leaks.
63.1364 Compliance dates.
63.1365 Test methods and initial compliance procedures.
63.1366 Monitoring and inspection requirements.
63.1367 Recordkeeping requirements.
63.1368 Reporting requirements.
63.1369 Delegation of authority.

Table 1 to Subpart MMM of part 63—General Provisions Applicability to Subpart MMM.

Table 2 to Subpart MMM of part 63—Standards for New and Existing PAI Production.

Table 3 to Subpart MMM of Part 63—Monitoring Requirements for Control Devices.

Table 4 to Subpart MMM of Part 63—Control Requirements for Items of Equipment that Meet the Criteria of § 63.1362(k).

Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

§ 63.1360 Applicability.

(a) *Definition of affected source.* The affected source subject to this subpart is the facility-wide collection of pesticide active ingredient manufacturing process units (PAI process units) that process, use, or produce HAP, and are located at a plant site that is a major source, as defined in section 112(a) of the CAA. An affected source also includes waste management units, heat exchange systems, and cooling towers that are associated with the PAI process units. Exemptions from an affected source are specified in paragraph (d) of this section.

(b) *New source applicability.* A new affected source subject to this subpart and to which the requirements for new sources apply is defined according to the criteria in either paragraph (b)(1) or (2) of this section.

(1) An affected source for which construction or reconstruction commenced after November 10, 1997.

(2) Any single PAI process unit that:

(i) Is not part of a process unit group; and

(ii) For which construction, as defined in § 63.1361, commenced after November 10, 1997; and

(iii) Has the potential to emit 10 tons/yr of any one HAP or 25 tons/yr of combined HAP.

(c) *General provisions.* Table 1 of this subpart specifies the provisions of subpart A of this part that apply to an owner or operator of an affected source subject to this subpart, and clarifies specific provisions in subpart A of this part as necessary for this subpart.

(d) *Exemptions from the requirements of this subpart.* The provisions of this subpart do not apply to:

(1) Research and development facilities;

(2) PAI process units that are subject to subpart F of this part;

(3) Production of ethylene; and

(4) The following emission points listed:

(i) Storm water from segregated sewers;

(ii) Water from fire-fighting and deluge systems, including testing of such systems;

(iii) Spills;

(iv) Water from safety showers;

(v) Noncontact steam boiler blowdown and condensate;

(vi) Laundry water;

(vii) Vessels storing material that contains no organic HAP or contains organic HAP as impurities only; and

(viii) Equipment, as defined in § 63.1363, that is intended to operate in organic HAP service for less than 300 hours during the calendar year.

(e) *Applicability of this subpart except during periods of startup, shutdown, and malfunction.* (1) Each provision set forth in this subpart shall apply at all times except that emission limitations shall not apply during periods of startup, shutdown, and malfunction, as defined in § 63.1361, if:

(i) The startup, shutdown, or malfunction precludes the ability of the owner or operator of an affected source to comply with one or more specific emission limitations to which a particular emission point is subject; and

(ii) The owner or operator follows the provisions for periods of startup, shutdown, and malfunction, as specified in §§ 63.1367(a)(3) and 63.1368(i).

(2) The provisions set forth in § 63.1363 shall apply at all times except during periods of nonoperation of the PAI process unit (or specific portion thereof) in which the lines are drained and depressurized resulting in the cessation of the emissions to which § 63.1363 applies.

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the emissions limitations of this subpart during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment, if the shutdown would contravene emissions limitations of this subpart applicable to such items of equipment. This paragraph does not apply if the item of equipment is malfunctioning, or if the owner or operator must shut down the equipment to avoid damage due to a malfunction of the PAI process unit or portion thereof.

(4) During startups, shutdowns, and malfunctions when the emissions limitations of this subpart do not apply pursuant to paragraphs (e)(1) through (3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions. For purposes of this paragraph, "excess emissions" means emissions in excess of those that would have occurred if there were no startup, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this subpart. The measures to be taken shall be identified in the applicable startup, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the source. Back-up control devices are not required, but may be used if available.

(f) *Storage vessel applicability determination.* An owner or operator shall follow the procedures specified in paragraphs (f)(1) through (4) of this section to determine whether a storage vessel is part of the affected source to which this subpart applies.

(1) If a storage vessel is already subject to another subpart of 40 CFR part 63 on June 23, 1999, the storage vessel shall belong to the process unit subject to the other subpart.

(2) Unless otherwise excluded under paragraph (f)(1) of this section, the storage vessel is part of a PAI process unit if either the input to the vessel from the PAI process unit is greater than or equal to the input from any other PAI or non-PAI process unit, or the output from the vessel to the PAI process unit is greater than or equal to the output to any other PAI or non-PAI process unit. If the greatest input to and/or output from a shared storage vessel is the same for two or more process units, including at least one PAI process unit, the owner or operator may assign the storage vessel to any one of the PAI process units that meet this condition. If the use varies from year to year, then the use for purposes of this subpart for existing sources shall be based on the utilization that occurred during the year preceding June 23, 1999 or, if the storage vessel was not in operation during that year, the use shall be based on the expected use in the 5 years after startup. This determination shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

(3) Unless otherwise excluded under paragraph (f)(1) of this section, where a storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart shall be determined according to the provisions in paragraphs (f)(3)(i) through (iv) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw material, as appropriate). With respect to a process unit, an intervening storage vessel means a storage vessel connected by hard-piping to the process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If no PAI process unit meets the criteria of paragraph (f)(3)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If only one PAI process unit, and no non-PAI process unit, meets the criteria of paragraph (f)(3)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that PAI process unit.

(iv) If two or more process units, including at least one PAI process unit, meet the criteria of paragraph (f)(3)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraph (f)(2) of this section. The input and output shall be determined among only those process units that meet the criteria of paragraph (f)(3)(i) of this section. If the storage vessel is not assigned to a PAI process unit according to the provisions of paragraph (f)(2) of this section, this subpart does not apply to the storage vessel.

(4) If the storage vessel begins receiving material from (or sending material to) another process unit, or ceasing to receive material from (or send material to) a PAI process unit, or if the applicability of this subpart has been determined according to the provisions of paragraph (f)(2) of this section, and there is a significant change in the use of the storage vessel, the owner or operator shall reevaluate the ownership determination for the storage vessel.

(g) *Designating production of an intermediate as a PAI process unit.* Except as specified in paragraph (d) of this section, an owner or operator may elect to designate production of any intermediate that does not meet the definition of integral intermediate as a PAI process unit subject to this subpart. Any storage vessel containing the intermediate is assigned to a PAI process unit according to the procedures in paragraph (f) of this section. Any process tank containing the intermediate is part of the process unit used to produce the intermediate.

(h) *Applicability of process units included in a process unit group.* (1) If any of the products produced in the process unit group are subject to 40 CFR part 63, subpart GGG (Pharmaceuticals MACT), the owner or operator may elect to comply with the requirements of subpart GGG for the PAI process unit(s) within the process unit group, except for the following:

(i) The emission limit standard for process vents in § 63.1362(b)(2)(i) shall apply in place of § 63.1254(a)(1) of subpart GGG of this part;

(ii) When the date of April 2, 1997 is provided in § 63.1254(a)(iii) of subpart GGG of this part, the date of June 23, 1999 shall apply for purposes of this subpart; and

(iii) Requirements in § 63.1367(a)(5) regarding application for approval of construction or reconstruction shall apply in place of the provisions in § 63.1259(a)(5) of subpart GGG of this part.

(2) If the primary product of a process unit group is determined to be a material that is subject to another subpart of 40 CFR part 63 on June 23, 1999 or startup of the process unit group, whichever is later, the owner or operator may elect to comply with the other subpart for any PAI process unit within the process unit group.

(3) The primary product of the process unit group shall be determined according to paragraphs (h)(3)(i) and (ii) of this section.

(i) The primary product is the product that is produced for the greatest operating time over a 5 year period, based on expected utilization for the 5 years following the compliance date or following initial startup of the process unit group, whichever is later; or

(ii) If the process unit group produces multiple products equally based on operating time, then the product with the greatest production on a mass basis over 5 years shall represent the primary product of the process unit, based on expected utilization for the 5 years following the compliance date or following initial startup of the unit or unit group, whichever is later.

(i) *Overlap with other regulations.* (1) *Overlap with other MACT standards.* After the compliance dates specified in § 63.1364, an affected source subject to the provisions of this subpart that is also subject to the provisions of any other subpart of 40 CFR part 63 may elect, to the extent the subparts are consistent, under which subpart to maintain records and report to EPA. The affected source shall identify in the Notification of Compliance Status report required by § 63.1368(f) under which authority such records will be maintained.

(2) *Overlap with RCRA subparts AA, BB, and/or CC.* After the compliance dates specified in § 63.1364, if any affected source subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA, BB, or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA, BB, or CC, and the owner or operator complies with the periodic reporting requirements under 40 CFR part 264, subpart AA, BB, or CC that would apply to the device if the facility had final-permitted status, the owner or operator may elect to comply either with the monitoring, recordkeeping, and reporting requirements of this subpart, or with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph, which shall constitute compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. If the owner or operator elects to comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, the owner or operator shall report all excursions as required by § 63.1368(g). The owner or operator shall identify in the Notification of Compliance Status report required by § 63.1368(f) the monitoring, recordkeeping, and reporting authority under which the owner or operator will comply.

(3) *Overlap with NSPS subpart Kb.* After the compliance dates specified in § 63.1364, a Group 1 or Group 2 storage vessel that is also subject to the provisions of 40 CFR part 60, subpart Kb, is required to comply only with the provisions of this subpart MMM.

(4) *Overlap with subpart I.* After the compliance dates specified in § 63.1364, for all equipment within a process unit that contains equipment subject to subpart I of this part, an owner or operator may elect to comply with either the provisions of this subpart MMM or the provisions of subpart H of this part. The owner or operator shall identify in the Notification of Compliance Status report required by § 63.1368(f) the provisions with which the owner or operator elects to comply.

(5) *Overlap with RCRA regulations for wastewater.* After the compliance dates specified in § 63.1364, the owner or operator of an affected wastewater stream that is also subject to provisions in 40 CFR parts 260 through 272 shall comply with the more stringent control requirements (e.g., waste management units, numerical treatment standards, etc.) and the more stringent testing, monitoring, recordkeeping, and reporting requirements that overlap between the provisions of this subpart and the provisions of 40 CFR parts 260 through 272. The owner or operator shall keep a record of the information used to determine which requirements were the most stringent and shall submit this information if requested by the Administrator.

(6) *Overlap with NSPS subparts III, NNN, and RRR.* After the compliance dates specified in § 63.1364, if an owner or operator of a process vent subject to this subpart MMM that is also subject to the provisions of 40 CFR part 60, subpart III, or subpart NNN, or subpart RRR, elects to reduce organic HAP emissions from the process vent by 98 percent as specified in § 63.1362(b)(2)(iii)(A), then the owner or operator is required to comply only with the provisions of this subpart MMM. Otherwise, the owner or operator shall comply with the provisions in both this subpart MMM and the provisions in 40 CFR part 60, subparts III, NNN, and RRR, as applicable.

(j) *Meaning of periods of time.* All terms in this subpart MMM that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual), unless specified otherwise in the section or subsection that imposes the requirement, refer to the standard calendar periods.

(1) Notwithstanding time periods specified in the subpart MMM for completion of required tasks, such time periods may be changed by mutual agreement between the owner and operator and the Administrator, as specified in subpart A of this part (e.g., a period could begin on the compliance date or another date, rather than on the first day of the standard period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraph (j)(2)(i) or (ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period within which the initial compliance deadline occurs.

(3) In all instances where a provision of this subpart MMM requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided the task is conducted at a reasonable interval after completion of the task in the previous period.

§ 63.1361 Definitions.

Terms used in this subpart are defined in the CAA, in subpart A of this part, or in this section. If the same term is defined in subpart A of this part and in this section, it shall have the meaning given in this section for the purposes of this subpart MMM.

Air pollution control device or control device means equipment installed on a process vent, storage vessel, wastewater treatment exhaust stack, or combination thereof that reduces the mass of HAP emitted to the air. The equipment may consist of an individual device or a series of devices. Examples include incinerators, carbon adsorption units, condensers, flares, boilers, process heaters, and gas absorbers. Process condensers are not considered air pollution control devices or control devices.

Bag dump means equipment into which bags or other containers containing a powdered, granular, or other solid feedstock material are emptied. A bag dump is part of the process.

Batch emission episode means a discrete venting episode that is associated with a single unit operation. A unit operation may have more than one batch emission episode. For example, a batch distillation unit operation may consist of batch emission episodes associated with charging and heating. Charging the vessel with HAP will result in one discrete batch emission episode that will last through the duration of the charge and will have an average flowrate equal to the rate of the charge. Another discrete batch emission episode will result from the expulsion of expanded vapor as the contents of the vessel are heated.

Batch operation means a noncontinuous operation involving intermittent or discontinuous feed into PAI or integral intermediate manufacturing equipment, and, in general, involves the emptying of the equipment after the batch operation ceases and prior to beginning a new operation. Addition of raw material and withdrawal of product do not occur simultaneously in a batch operation. A batch process consists of a series of batch operations.

Bench-scale batch process means a batch process (other than a research and development facility) that is capable of being located on a laboratory bench top. This bench-scale equipment will typically include reagent feed vessels, a small reactor and associated product separator, recovery and holding equipment. These processes are only capable of producing small quantities of product.

Block means a time period equal to, at a maximum, the duration of a single batch.

Car seal means a seal that is placed on a device that is used to change the position of a valve (e.g., from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

Cleaning operation means routine rinsing, washing, or boil-off of equipment in batch operations between batches.

Closed-loop system means an enclosed system that returns process fluid to the process and is not vented to the atmosphere except through a closed-vent system.

Closed-purge system means a system or combination of system and portable containers, to capture purged liquids. Containers must be covered or closed when not being filled or emptied.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic HAP vapors.

Connector means flanged, screwed, or other joined fittings used to connect two pipe lines or a pipe line and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and record keeping, connector means joined fittings that are not inaccessible, ceramic, or ceramic-lined as described in § 63.1255(b)(1)(vii) and 63.1255(f)(3).

Construction means the onsite fabrication, erection, or installation of an affected source or PAI process unit. Addition of new equipment to an existing PAI process unit does not constitute construction.

Consumption means the makeup quantity of HAP entering a process that is not used as reactant. The quantity of material used as reactant is the theoretical amount needed assuming a 100 percent stoichiometric conversion. Makeup is the net amount of material that must be added to the process to replenish losses.

Container, as used in the wastewater provisions, means any portable waste management unit that has a capacity greater than or equal to 0.1 m^3 in which a material is stored, transported, treated, or otherwise handled. Examples of containers are drums, barrels, tank trucks, barges, dumpsters, tank cars, dump trucks, and ships.

Continuous process means a process where the inputs and outputs flow continuously throughout the duration of the process. Continuous processes typically approach steady state.

Continuous seal means a seal that forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

Controlled HAP emissions means the quantity of HAP components discharged to the atmosphere from an air pollution control device.

Cover, as used in the wastewater provisions, means a device or system which is placed on or over a waste management unit containing wastewater or residuals so that the entire surface area is enclosed to minimize air emissions. A cover may have openings necessary for operation, inspection, and maintenance of the waste management unit such as access hatches, sampling ports, and gauge wells provided that each opening is closed when not in use. Examples of covers include a fixed roof installed on a wastewater tank, a lid installed on a container, and an air-supported enclosure installed over a waste management unit.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Duct work means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

Equipment, for purposes of § 63.1363, means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in organic hazardous air pollutant service.

External floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a storage tank or waste management unit with no fixed roof.

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act.

Fill or filling means the introduction of organic HAP into a storage tank or the introduction of a wastewater stream or residual into a waste management unit, but not necessarily to complete capacity.

First attempt at repair means to take action for the purpose of stopping or

reducing leakage of organic material to the atmosphere.

Fixed roof means a cover that is mounted on a waste management unit or storage tank in a stationary manner and that does not move with fluctuations in liquid level.

Flame ionization detector (FID) means a device in which the measured change in conductivity of a standard flame (usually hydrogen) due to the insertion of another gas or vapor is used to detect the gas or vapor.

Floating roof means a cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the liquid being contained, and is equipped with a continuous seal or seals to close the space between the roof edge and waste management unit or storage vessel wall.

Flow indicator means a device that indicates whether gas flow is, or whether the valve position would allow gas flow to be, present in a line.

Group 1 process vent means any process vent from a process at an existing or new affected source for which the uncontrolled organic HAP emissions from the sum of all process vents are greater than or equal to 0.15 Mg/yr and/or the uncontrolled hydrogen chloride (HCl) and chlorine emissions from the sum of all process vents are greater than or equal to 6.8 Mg/yr.

Group 2 process vent means any process vent that does not meet the definition of a Group 1 process vent.

Group 1 storage vessel means a storage vessel at an existing affected source with a capacity equal to or greater than 75 m^3 and storing material with a maximum true vapor pressure greater than or equal to 3.45 kPa, or a storage vessel at a new affected source with a capacity equal to or greater than 40 m^3 and storing material with a maximum true vapor pressure greater than or equal to 16.5 kPa and with a capacity greater than or equal to 75 m^3 and storing material with a maximum true vapor pressure greater than or equal to 3.45 kPa.

Group 2 storage vessel means a storage vessel that does not meet the definition of a Group 1 storage vessel.

Group 1 wastewater stream means process wastewater at an existing or new source that meets the criteria for Group 1 status in § 63.132(c) of subpart G of this part for compounds in Table 9 of subpart G of this part or a maintenance wastewater stream that contains 5.3 Mg of HAP per discharge event.

Group 2 wastewater stream means any wastewater stream that does not meet the definition of a Group 1 wastewater stream.

Group of processes means all of the equipment associated with processes in a building, processing area, or facility-wide. A group of processes may consist of a single process.

Halogenated compounds means organic compounds that contain chlorine atoms.

Halogenated vent stream means a process, storage vessel, or waste management unit vent stream determined to have a concentration of halogenated compounds of greater than 20 ppmv, as determined through process knowledge, test results using Method 18 of 40 CFR part 60, appendix A, or test results using any other test method that has been validated according to the procedures in Method 301 of appendix A of this part.

Hard-piping means piping or tubing that is manufactured and properly installed using good engineering judgment and standards, such as ANSI B31–3.

Impurity means a substance that is produced coincidentally with the product(s), or is present in a raw material. An impurity does not serve a useful purpose in the production or use of the product(s) and is not isolated.

In gas/vapor service means that a piece of equipment in organic HAP service contains a gas or vapor at operating conditions.

In heavy liquid service means that a piece of equipment in organic HAP service is not in gas/vapor service or in light liquid service.

In light liquid service means that a piece of equipment in organic HAP service contains a liquid that meets the following conditions:

(1) The vapor pressure of one or more of the organic compounds is greater than 0.3 kPa at 20° C;

(2) The total concentration of the pure organic compounds constituents having a vapor pressure greater than 0.3 kPa at 20° C is equal to or greater than 20 percent by weight of the total process stream; and

(3) The fluid is a liquid at operating conditions.

Note: To definition of "In light liquid service: Vapor pressures may be determined by the methods described in 40 CFR 60.485(e)(1).

In liquid service means that a piece of equipment in organic HAP service is not in gas/vapor service.

In organic hazardous air pollutant or in organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP as det... ...ding to the provisions of § 63.180(d) of subpart H of this part. The provisions of § 63.180(d) of subpart H of this part also specify how to determine that a piece of equipment is not in organic HAP service.

In vacuum service means that equipment is operating at an internal pressure which is at least 5 kPa below ambient pressure.

In-situ sampling systems means nonextractive samplers or in-line samplers.

Individual drain system means the stationary system used to convey wastewater streams or residuals to a waste management unit or to discharge or disposal. The term includes: hard piping; all process drains and junction boxes; and associated sewer lines, other junction boxes, manholes, sumps, and lift stations conveying wastewater streams or residuals. A segregated stormwater sewer system, which is a drain and collection system designed and operated for the sole purpose of collecting rainfall-runoff at a facility, and which is segregated from all other individual drain systems, is excluded from this definition.

Instrumentation system means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (e.g., composition, pressure, flow, etc.). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 0.5 inches and smaller and connectors nominally 0.75 inches and smaller in diameter are considered instrumentation systems for the purposes of this subpart. Valves greater than nominally 0.5 inches and connectors greater than nominally 0.75 inches associated with instrumentation systems are not considered part of instrumentation systems and must be monitored individually.

Integral intermediate means an intermediate for which 50 percent or more of the annual production is used in on-site production of any PAI(s) and that is not stored before being used in the production of another integral intermediate or the PAI(s). For the purposes of this definition, an intermediate is stored if it is discharged to a storage vessel and at least one of the following conditions is met: the processing equipment that discharges to the storage vessel is shutdown before the processing equipment that withdraws from the storage vessel is

started up; during an annual period, the material must be stored in the vessel for at least 30 days before being used to make a PAI; or the processing equipment that discharges to the storage vessel is located in a separate building (or processing area) of the plant than the processing equipment that uses material from the storage vessel as a feedstock, and control equipment is not shared by the two processing areas. Any process unit that produces an intermediate and is subject to subpart F of this part is not an integral intermediate.

Intermediate means an organic compound that is produced by chemical reaction and that is further processed or modified in one or more additional chemical reaction steps to produce another intermediate or a PAI.

Internal floating roof means a cover that rests or floats on the liquid surface (but not necessarily in complete contact with it) inside a storage tank or waste management unit that has a permanently affixed roof.

Junction box means a manhole or access point to a wastewater sewer system line or a lift station.

Large control device means a control device that controls process vents, and the total HAP emissions into the control device from all sources are greater than or equal to 10 tons/yr.

Liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel or waste management unit and the floating roof. The seal is mounted continuously around the tank or unit.

Liquids dripping means any visible leakage from the seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquid dripping include puddling or new stains that are indicative of an existing evaporated drip.

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the PAI process unit into an individual drain system prior to or during maintenance activities. Maintenance wastewater can be generated through planned or unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewaters include descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of low legs and high point bleeds, draining of pumps into an individual drain system, and draining of portions of the PAI process unit for repair.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, emissions monitoring equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused all or in part by poor maintenance or careless operation are not malfunctions.

Maximum true vapor pressure means the equilibrium partial pressure exerted by the total organic HAP in the stored or transferred liquid at the temperature equal to the highest calendar-month average of the liquid storage or transferred temperature for liquids stored or transferred above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored or transferred at the ambient temperature, as determined:

(1) In accordance with methods described in Chapter 19.2 of the American Petroleum Institute's Manual of Petroleum Measurement Standards, Evaporative Loss From Floating-Roof Tanks (incorporated by reference as specified in § 63.14 in subpart A of this part); or

(2) As obtained from standard reference texts; or

(3) As determined by the American Society for Testing and Materials Method D2879–97, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope (incorporated by reference as specified in § 63.14 of subpart A of this part); or

(4) Any other method approved by the Administrator.

Metallic shoe seal or mechanical shoe seal means metal sheets that are held vertically against the wall of the storage tank by springs, weighted levers, or other mechanisms and connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

Nonrepairable means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process shutdown.

Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

Operating scenario, for the purposes of reporting and recordkeeping, means a description of a PAI process unit, including: identification of each wastewater point of determination (POD) and process vent, their associated emissions episodes and durations, and their associated level of control and control devices, as applicable; calculations and engineering analyses required to demonstrate compliance; and a description of operating and/or testing conditions for any associated control device.

Organic compound, as used in the definitions of intermediate and PAI, means any compound that contains both carbon and hydrogen with or without other elements.

Organic HAP means those HAP listed in section 112(b) of the CAA that are measured according to the procedures of Method 18 or Method 25A, 40 CFR part 60, appendix A.

Pesticide active ingredient or PAI means any material that is an active ingredient within the meaning of FIFRA section 2(a); that is used to produce an insecticide, herbicide, or fungicide end use pesticide product; that consists of one or more organic compounds; and that must be labeled in accordance with 40 CFR part 156 for transfer, sale, or distribution. These materials are typically described by North American Industrial Classification System (NAICS) Codes 325199 and 32532 (i.e., previously known as Standard Industrial Classification System Codes 2869 and 2879). These materials are identified by product classification codes 01, 21, 02, 04, 44, 07, 08, and 16 in block 19 on EPA form 3540–16, the Pesticides Report for Pesticide-Producing Establishments.

Pesticide active ingredient manufacturing process unit (PAI process unit) means a process unit that is used to produce a material that is primarily used as a PAI or integral intermediate. A PAI process unit consists of: the process, as defined in this subpart; associated storage vessels, as determined by the procedures in § 63.1360(f); equipment identified in § 63.1362(l); connected piping and ducts; and components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems. A material is primarily used as a PAI or integral intermediate if more than 50 percent of the projected annual production from a process unit in the 3 years after June 23, 1999 or startup, whichever is later, is used as a PAI or integral intermediate; recordkeeping is required if the material is used as a PAI or integral intermediate, but not as the primary use. If the primary use changes to a PAI or integral intermediate, the process unit becomes a PAI process unit unless it is already subject to the HON. If the primary use changes from a PAI or integral intermediate to another use, the process unit remains a PAI process unit. Any process tank containing an integral intermediate is part of the PAI process unit used to produce the integral intermediate. A process unit that produces an intermediate that is not an integral intermediate may be designated as a PAI process unit according to the procedures of § 63.1360(g). Formulation of pesticide products is not considered part of a PAI process unit. Quality assurance and quality control laboratories are not considered part of a PAI process unit.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Point of determination (POD) means each point where a wastewater stream exits the PAI process unit.

Note to definition of "point of determination": The regulation allows determination of the characteristics of a wastewater stream: at the point of determination; or downstream of the point of determination if corrections are made for changes in flow rate and annual average concentration of Table 9 compounds as determined in § 63.144 of subpart G of this part. Such changes include: losses by air emissions, reduction of annual average concentration or changes in flow rate by mixing with other water or wastewater streams, and reduction in flow rate or annual average concentration by treating or otherwise handling the wastewater stream to remove or destroy HAP.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device. This release can be one release or a series of releases over a short time period due to a malfunction in the process.

Pressure relief device or valve means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

Process means a logical grouping of processing equipment which collectively function to produce a product. For the purpose of this subpart, a PAI process includes all, or a combination of, reaction, recovery, separation, purification, treatment, cleaning, and other activities or unit operations, which are used to produce a PAI or integral intermediate. A PAI process and all integral intermediate processes for which 100 percent of the annual production is used in the production of the PAI may be linked together and defined as a single PAI process unit.

Process condenser means a condenser whose primary purpose is to recover material as an integral part of a unit operation. The condenser must cause a vapor-to-liquid phase change for periods during which the temperature of liquid in the process equipment is at or above its boiling or bubble point. Examples of process condensers include distillation condensers, reflux condensers, and condensers used in stripping or flashing operation. In a series of condensers, all condensers up to and including the first condenser with an exit gas temperature below the boiling or bubble point of the liquid in the process equipment are considered to be process condensers. All condensers in line prior to the vacuum source are included in this definition.

Process shutdown means a work practice or operational procedure that stops production from a process or part of a process during which it is technically feasible to clear process material from a process or part of a process consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process or part of a process for less than 24 hours is not a process shutdown. An unscheduled work practice or operational procedure that would stop production from a process or part of a process for a shorter period of time than would be required to clear the process or part of the process of materials and start up the process, and would result in greater emissions than delay of repair of leaking components until the next scheduled process shutdown, is not a process shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process shutdowns.

Process tank means a tank that is used to collect material discharged from a feedstock storage vessel or equipment within the process and transfer of this material to other equipment within the process or a product storage vessel. Processing steps occur both upstream and downstream of the tank within a given process unit. Surge control vessels and bottoms receivers that fit these conditions are considered process tanks.

Process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product.

Process unit group means a group of process units that manufacture PAI's and products other than PAI's by alternating raw materials or operating conditions, or by reconfiguring process equipment. Only process equipment that has been or could be part of a PAI process unit, because of its function or capacity, is included in a process unit group.

Process vent means a point of emission from processing equipment to the atmosphere or a control device. The vent may be the release point for an emission stream associated with an individual unit operation, or it may be the release point for emission streams from multiple unit operations that have been manifolded together into a common header. Examples of process vents include, but are not limited to, vents on condensers used for product recovery, bottom receivers, surge control vessels, reactors, filters, centrifuges, process tanks, and product dryers. A vent is not considered to be a process vent for a given emission episode if the undiluted and uncontrolled emission stream that is released through the vent contains less than 20 ppmv HAP, as determined through process knowledge that no HAP are present in the emission stream; using an engineering assessment as discussed in § 63.1365(b)(2)(ii); from test data collected using Method 1818 of 40 CFR part 60, appendix A; or from test data collected using any other test method that has been validated according to the procedures in Method 301 of appendix A of this part. Process vents do not include vents on storage vessels regulated under § 63.1362(c), vents on wastewater emission sources regulated under § 63.1362(d), or pieces of equipment regulated under § 63.1363.

Process wastewater means wastewater which, during manufacturing or processing, comes into direct contact with, or results from, the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples include: product tank drawdown or feed tank drawdown; water formed during a chemical reaction or used as a reactant; water used to wash impurities from organic products or reactants; water used to clean process equipment; water used to cool or quench organic vapor streams through direct contact; and condensed steam from jet ejector systems pulling vacuum on vessels containing organics.

Product means the compound(s) or chemical(s) that are produced or manufactured as the intended output of a process unit. Impurities and wastes are not considered products.

Product dryer means equipment that is used to remove moisture or other liquid from granular, powdered, or other solid PAI or integral intermediate products prior to storage, formulation, shipment, or other uses. The product dryer is part of the process.

Product dryer vent means a process vent from a product dryer through which a gas stream containing gaseous pollutants (i.e., organic HAP, HCl, or chlorine), particulate matter, or both are released to the atmosphere or are routed to a control device.

Production-indexed HAP consumption factor (HAP factor) is the result of dividing the annual consumption of total HAP by the annual production rate, per process.

Production-indexed VOC consumption factor (VOC factor) is the result of dividing the annual consumption of total VOC by the annual production rate, per process.

Publicly owned treatment works (POTW) is defined at 40 CFR part 403.3(0).

Reactor means a device or vessel in which one or more chemicals or reactants, other than air, are combined or decomposed in such a way that their molecular structures are altered and one or more new organic compounds are formed.

Recovery device, as used in the wastewater provisions, means an individual unit of equipment capable of, and normally used for the purpose of, recovering chemicals for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include organic removal devices such as decanters, strippers, or thin-film evaporation units. To be a recovery device, a decanter and any other equipment based on the operating principle of gravity separation must receive only two-phase liquid streams.

Repaired means that equipment is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable paragraphs of § 63.1363.

Research and development facility means any stationary source whose primary purpose is to conduct research and development, where the operations are under the close supervision of technically trained personnel, and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.

Residual means any liquid or solid material containing Table 9 compounds (as defined in § 63.111 of subpart G of this part) that is removed from a wastewater stream by a waste management unit or treatment process that does not destroy organics (nondestructive unit). Examples of residuals from nondestructive wastewater management units include the organic layer and bottom residue removed by a decanter or organic-water separator and the overheads from a steam stripper or air stripper. Examples of materials which are not residuals include: silt; mud; leaves; bottoms from a steam stripper or air stripper; and sludges, ash, or other materials removed from wastewater being treated by destructive devices such as biological treatment units and incinerators.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purposes of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

Sampling connection system means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Set pressure means the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

Sewer line means a lateral, trunk line, branch line, or other conduit including, but not limited to, grates, trenches, etc., used to convey wastewater streams or residuals to a downstream waste management unit.

Shutdown means the cessation of operation of a continuous PAI process unit for any purpose. Shutdown also means the cessation of a batch PAI process unit or any related individual piece of equipment required or used to comply with this part or for emptying and degassing storage vessels for periodic maintenance, replacement of equipment, repair, or any other purpose not excluded from this definition. Shutdown does not apply to cessation of a batch PAI process unit at the end of a campaign or between batches (e.g., for rinsing or washing equipment), for routine maintenance, or for other routine operations.

Small control device means a control device that controls process vents, and the total HAP emissions into the control device from all sources are less than 10 tons of HAP per year.

Startup means the setting in operation of a continuous PAI process unit for any purpose, the first time a new or reconstructed batch PAI process unit begins production, or, for new equipment added, including equipment used to comply with this subpart, the first time the equipment is put into operation. For batch process units, startup does not apply to the first time the equipment is put into operation at the start of a campaign to produce a product that has been produced in the past, after a shutdown for maintenance, or when the equipment is put into operation as part of a batch within a campaign. As used in § 63.1363, startup means the setting in operation of a piece of equipment or a control device that is subject to this subpart.

Storage vessel means a tank or other vessel that is used to store organic liquids that contain one or more HAP and that has been assigned, according to the procedures in § 63.1360(f) or (g), to a PAI process unit that is subject to this subpart MMM. The following are not considered storage vessels for the purposes of this subpart:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels storing material that contains no organic HAP or contains organic HAP only as impurities;

(4) Wastewater storage tanks;

(5) Process tanks; and

(6) Nonwastewater waste tanks.

Supplemental gases means any nonaffected gaseous streams (streams that are not from process vents, storage vessels, equipment or waste management units) that contain less than 20 ppmv TOC and less than 20 ppmv total HCl and chlorine, as determined through process knowledge, and are combined with an affected vent stream. Supplemental gases are often used to maintain pressures in manifolds or for fire and explosion protection and prevention. Air required to operate combustion device burner(s) is not considered a supplemental gas.

Surface impoundment means a waste management unit which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or waste containing free liquids. A surface impoundment is used for the purpose of treating, storing, or disposing of wastewater or residuals, and is not an injection well. Examples of surface impoundments are equalization, settling, and aeration pits, ponds, and lagoons.

Total organic compounds (TOC) means those compounds measured according to the procedures of Method 18 or Method 25A, 40 CFR part 60, appendix A.

Treatment process means a specific technique that removes or destroys the organics in a wastewater or residual stream such as a steam stripping unit, thin-film evaporation unit, waste incinerator, biological treatment unit, or any other process applied to wastewater streams or residuals to comply with § 63.138 of subpart G of this part. Most treatment processes are conducted in tanks. Treatment processes are a subset of waste management units.

Uncontrolled HAP emissions means a gas stream containing HAP which has exited the process (or process condenser, if any), but which has not yet been introduced into an air pollution control device to reduce the mass of HAP in the stream. If the process vent is not routed to an air pollution control device, uncontrolled emissions are those HAP emissions released to the atmosphere.

Unit operation means those processing steps that occur within distinct equipment that are used, among other things, to prepare reactants, facilitate reactions, separate and purify products, and recycle materials. Equipment used for these purposes includes, but is not limited to, reactors, distillation units, extraction columns, absorbers, decanters, dryers, condensers, and filtration equipment.

Vapor-mounted seal means a continuous seal that completely covers the annular space between the wall of the storage tank or waste management unit and the edge of the floating roof, and is mounted such that there is a vapor space between the stored liquid and the bottom of the seal.

Volatile organic compounds are defined in 40 CFR 51.100.

Waste management unit means the equipment, structure(s), and/or device(s) used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include wastewater tanks, surface impoundments, individual drain systems, and biological wastewater treatment units. Examples of equipment that may be waste management units include containers, air flotation units, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. If such equipment is a recovery device, then it is part of a PAI process unit and is not a waste management unit.

Wastewater means water that meets either of the conditions described in paragraph (1) or (2) of this definition and is discarded from a PAI process unit that is at an affected source:

(1) Is generated from a PAI process and contains either:

(i) An annual average concentration of compounds in Table 9 of subpart G of this part of at least 5 ppmw and has an average flow rate of 0.02 L/min or greater; or

(ii) An annual average concentration of compounds in Table 9 of subpart G of this part of at least 10,000 ppmw at any flow rate;

(2) Is generated from a PAI process unit as a result of maintenance activities and contains at least 5.3 Mg of HAP per individual discharge event.

Wastewater tank means a stationary waste management unit that is designed to contain an accumulation of wastewater or residuals and is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support. Wastewater tanks used for flow equalization are included in this definition.

Water seal controls means a seal pot, p-leg trap, or other type of trap filled with water (e.g., flooded sewers that maintain water levels adequate to prevent air flow through the system) that creates a water barrier between the sewer line and the atmosphere. The water level of the seal must be maintained in the vertical leg of a drain in order to be considered a water seal.

§ 63.1362 Standards.

(a) On and after the compliance dates specified in § 63.1364, each owner or operator of an affected source subject to the provisions of this subpart shall control HAP emissions to the levels specified in this section and in § 63.1363, as summarized in Table 2 of this subpart.

(b) *Process vents.* (1) The owner or operator of an existing source shall comply with the requirements of paragraphs (b)(2) and (3) of this section. The owner or operator of a new source shall comply with the requirements of paragraphs (b)(4) and (5) of this section. Compliance with paragraphs (b)(2) through (b)(5) of this section shall be demonstrated through the applicable test methods and initial compliance procedures in § 63.1365 and the monitoring requirements in § 63.1366.

(2) *Organic HAP emissions from existing sources.* The owner or operator of an existing affected source must comply with the requirements in either paragraph (b)(2)(i) of this section or with the requirements in paragraphs (b)(2)(ii) through (iv) of this section.

(i) The uncontrolled organic HAP emission rate shall not exceed 0.15 Mg/yr from the sum of all process vents within a process.

(ii) (A) Except as provided in paragraph (b)(2)(ii)(B) of this section, uncontrolled organic HAP emissions from a process vent shall be reduced by 98 percent by weight or greater if the flow-weighted average flowrate for the vent as calculated using Equation 1 of this subpart is less than or equal to the flowrate calculated using Equation 2 of this subpart.

$$FR_a = \frac{\sum_{i=1}^{n}(D_i)(FR_i)}{\sum_{i=1}^{n} D_i} \qquad \text{(Eq. 1)}$$

$$FR = 0.02*(HL) - 1{,}000 \qquad \text{(Eq. 2)}$$

Where:

FR_a=flow-weighted average flowrate for the vent, scfm

D_i=duration of each emission event, min

FR_i=flowrate of each emission event, scfm

n=number of emission events

FR=flowrate, scfm

HL=annual uncontrolled organic HAP emissions, lb/yr, as defined in § 63.1361

(B) If the owner or operator can demonstrate that a control device, installed on or before November 10, 1997 on a process vent otherwise

subject to the requirements of paragraph (b)(2)(ii)(A) of this section, reduces inlet emissions of total organic HAP by greater than or equal to 90 percent by weight but less than 98 percent by weight, then the control device must be operated to reduce inlet emissions of total organic HAP by 90 percent by weight or greater.

(iii) Excluding process vents that are subject to the requirements in paragraph (b)(2)(ii) of this section, uncontrolled organic HAP emissions from the sum of all process vents within a process shall be reduced by 90 percent or greater by weight.

(iv) As an alternative to the requirements in paragraphs (b)(2)(ii) and (iii) of this section, uncontrolled organic HAP emissions from any process vent may be reduced in accordance with any of the provisions in paragraphs (b)(2)(iv)(A) through (D) of this section. All remaining process vents within a process must be controlled in accordance with paragraphs (b)(2)(ii) and (iii) of this section.

(A) To outlet concentrations less than or equal to 20 ppmv as TOC; or

(B) By a flare that meets the requirements of § 63.11(b); or

(C) By a control device specified in § 63.1365(a)(4); or

(D) In accordance with the alternative standard specified in paragraph (b)(6) of this section.

(3) *HCl and Cl_2 emissions from existing sources.* For each process, the owner or operator of an existing source shall comply with the requirements of either paragraph (b)(3)(i) or (ii) of this section.

(i) The uncontrolled HCl and Cl_2 emissions, including HCl generated from the combustion of halogenated process vent emissions, from the sum of all process vents within a process shall not exceed 6.8 Mg/yr.

(ii) HCl and Cl_2 emissions, including HCl generated from combustion of halogenated process vent emissions, from the sum of all process vents within a process shall be reduced by 94 percent or greater or to outlet concentrations less than or equal to 20 ppmv.

(4) *Organic HAP emissions from new sources.* For each process, the owner or operator of a new source shall comply with the requirements of either paragraph (b)(4)(i) or (ii) of this section.

(i) The uncontrolled organic HAP emissions shall not exceed 0.15 Mg/yr from the sum of all process vents within a process.

(ii) The uncontrolled organic HAP emissions from the sum of all process vents within a process at a new affected source that are not controlled according to any of the requirements of paragraphs (b)(4)(ii)(A) through (C) or (b)(6) of this section shall be reduced by 98 weight percent or greater.

(A) To outlet concentrations less than or equal to 20 ppmv as TOC; or

(B) By a flare that meets the requirements of § 63.11(b); or

(C) By a control device specified in § 63.1365(a)(4).

(5) *HCl and Cl_2 emissions from new sources.* For each process, the owner or operator of a new source shall comply with the requirements of either paragraph (b)(5)(i), (ii), or (iii) of this section.

(i) The uncontrolled HCl and Cl_2 emissions, including HCl generated from combustion of halogenated process vent emissions, from the sum of all process vents within a process shall not exceed 6.8 Mg/yr.

(ii) If HCl and Cl_2 emissions, including HCl generated from combustion of halogenated process vent emissions, from the sum of all process vents within a process are greater than or equal to 6.8 Mg/yr and less than 191 Mg/yr, these HCl and Cl_2 emissions shall be reduced by 94 percent or to an outlet concentration less than or equal to 20 ppmv.

(iii) If HCl and Cl_2 emissions, including HCl generated from combustion of halogenated process vent emissions, from the sum of all process vents within a process are greater than 191 Mg/yr, these HCl and Cl_2 emissions shall be reduced by 99 percent or greater or to an outlet concentration less than or equal to 20 ppmv.

(6) *Alternative standard.* As an alternative to the provisions in paragraphs (b) (2) through (5) of this section, the owner or operator may route emissions from a process vent to a control device or series of control devices achieving an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 20 ppmv or less, and an outlet concentration of HCl and Cl_2 of 20 ppmv or less. Any process vents within a process that are not routed to such a control device or series of control devices must be controlled in accordance with the provisions of paragraphs (b)(2)(ii), (b)(2)(iii), (b)(2)(iv), (b)(3)(ii), (b)(3)(iii), (b)(4)(ii), (b)(5)(ii), or (b)(5)(iii) of this section, as applicable.

(c) *Storage vessels.* (1) The owner or operator shall either determine the group status of a storage vessel or designate it as a Group 1 storage vessel. If the owner or operator elects to designate the storage vessel as a Group 1 storage vessel, the owner or operator is not required to determine the maximum true vapor pressure of the material stored in the storage vessel.

(2) *Standard for existing sources.* Except as specified in paragraphs (c) (4) and (5) of this section, the owner or operator of a Group 1 storage vessel at an existing affected source, as defined in § 63.1361, shall equip the affected storage vessel with one of the following:

(i) A fixed roof and internal floating roof, or

(ii) An external floating roof, or

(iii) An external floating roof converted to an internal floating roof, or

(iv) A closed vent system meeting the conditions of paragraph (k) of this section and a control device that meets any of the following conditions:

(A) Reduces organic HAP emissions by 95 percent by weight or greater; or

(B) Reduces organic HAP emissions to outlet concentrations of 20 ppmv or less as TOC; or

(C) Is a flare that meets the requirements of § 63.11(b); or

(D) Is a control device specified in § 63.1365(a)(4).

(3) *Standard for new sources.* Except as specified in paragraphs (c)(4) and (5) of this section, the owner or operator of a Group 1 storage vessel at a new source, as defined in § 63.1361, shall equip the affected storage vessel in accordance with any one of paragraphs (c)(2)(i) through (iv) of this section.

(4) *Alternative standard.* As an alternative to the provisions in paragraphs (c)(2) and (3) of this section, the owner or operator of an existing or new affected source may route emissions from storage vessels to a control device or series of control devices achieving an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 20 ppmv or less, and an outlet concentration of hydrogen chloride and chlorine of 20 ppmv or less.

(5) *Planned routine maintenance.* The owner or operator is exempt from the specifications in paragraphs (c)(2) through (4) of this section during periods of planned routine maintenance of the control device that do not exceed 240 hr/yr.

(6) Compliance with the provisions of paragraphs (c)(2) and (3) of this section is demonstrated using the initial compliance procedures in § 63.1365(d) and the monitoring requirements in § 63.1366. Compliance with the outlet concentrations in paragraph (c)(4) of this section shall be determined by the initial compliance provisions in § 63.1365(a)(5) and the continuous emission monitoring requirements of § 63.1366(b)(5).

(d) *Wastewater.* The owner or operator of each affected source shall comply with the requirements of §§ 63.131 through 63.147 of subpart G of this part, with the differences noted in paragraphs (d)(1) through (13) of this section for the purposes of this subpart.

(1) When the determination of equivalence criteria in § 63.102(b) is referred to in §§ 63.132, 63.133, and 63.137 of subpart G of this part, the provisions in § 63.6(g) of subpart A of this part shall apply.

(2) When the storage tank requirements contained in §§ 63.119 through 63.123 of subpart G of this part are referred to in §§ 63.132 through 63.148 of subpart G of this part, §§ 63.119 through 63.123 of subpart G of this part are applicable, with the exception of the differences noted in paragraphs (d)(2)(i) through (v) of this section.

(i) When the term "storage vessel" is used in §§ 63.119 through 63.123 of subpart G of this part, the definition of the term "storage vessel" in § 63.1361 shall apply for the purposes of this subpart.

(ii) When December 31, 1992, is referred to in § 63.119 of subpart G of this part, November 10, 1997 shall apply for the purposes of this subpart.

(iii) When April 22, 1994 is referred to in § 63.119 of subpart G of this part, June 23, 1999 shall apply for the purposes of this subpart.

(iv) When the phrase "the compliance date specified in § 63.100 of subpart F of this part" is referred to in § 63.120 of subpart G of this part, the phrase "the compliance date specified in § 63.1364" shall apply for the purposes of this subpart.

(v) When the phrase "the maximum true vapor pressure of the total organic HAP in the stored liquid falls below the values defining Group 1 storage vessels specified in Table 5 or Table 6 of this subpart" is referred to in § 63.120(b)(1)(iv) of subpart G of this part, the phrase, "the maximum true vapor pressure of the total organic HAP in the stored liquid falls below the values defining Group 1 storage vessels specified in § 63.1361" shall apply for the purposes of this subpart.

(3) To request approval to monitor alternative parameters, as referred to in § 63.146(a) of subpart G of this part, the owner or operator shall comply with the procedures in § 63.8(f) of subpart A of this part, as referred to in § 63.1366(b)(4), instead of the procedures in § 63.151(f) or (g) of subpart G of this part.

(4) When the Notification of Compliance Status report requirements contained in § 63.152(b) of subpart G of this part are referred to in § 63.146 of subpart G of this part, the Notification of Compliance Status report requirements in § 63.1368(f) shall apply for the purposes of this subpart.

(5) When the recordkeeping requirements contained in § 63.152(f) of subpart G of this part are referred to in § 63.147(d) of subpart G of this part, the recordkeeping requirements in § 63.1367 shall apply for the purposes of this subpart.

(6) When the Periodic report requirements contained in § 63.152(c) of subpart G of this part are referred to in §§ 63.146 and 63.147 of subpart G of this part, the Periodic report requirements contained in § 63.1368(g) shall apply for the purposes of this subpart.

(7) When the term "process wastewater" is referred to in §§ 63.132 through 63.147 of subpart G of this part, the term "wastewater" as defined in § 63.1361 shall apply for the purposes of this subpart.

(8) When the term "Group 1 wastewater stream" is used in §§ 63.132 through 63.147 of subpart G of this part, the definition of the term "Group 1 wastewater stream" in § 63.1361 shall apply for both new sources and existing sources for the purposes of this subpart.

(9) The requirements in §§ 63.132 through 63.147 for compounds listed on Table 8 of subpart G of this part shall not apply for the purposes of this subpart.

(10) When the total load of Table 9 compounds in the sum of all process wastewater from PAI process units at a new affected source is 2,100 Mg/yr (2,300 tons/yr) or more, the owner or operator shall reduce, by removal or destruction, the mass flow rate of all compounds in Table 9 of subpart G of this part in all wastewater (process and maintenance wastewater) by 99 percent or more. Alternatively, the owner or operator may treat the wastewater in a unit identified in and complying with § 63.138(h) of subpart G of this part. The removal/destruction efficiency shall be determined by the procedures specified in § 63.145(c) of subpart G of this part, for noncombustion processes, or § 63.145(d) of subpart G of this part, for combustion processes.

(11) The compliance date for the affected source subject to the provisions of this section is specified in § 63.1364.

(12) The option in § 63.139 of subpart G of this part to reduce emissions from a control device to an outlet HAP concentration of 20 ppmv shall not apply for the purposes of this subpart.

(13) The requirement to correct outlet concentrations from combustion devices to 3 percent oxygen in § 63.139(c)(1)(ii) of subpart H of this part shall apply only if supplemental gases are combined with affected vent streams. If emissions are controlled with a vapor recovery system as specified in § 63.139(c)(2) of subpart H of this part, the owner or operator must correct for supplemental gases as specified in § 63.1365(a)(7)(ii).

(14) If wastewater is sent offsite for biological treatment, the waste management units up to the activated sludge unit must be covered, or the owner or operator must demonstrate that less than 5 percent of the total HAP on list 1 in § 63.145(h) of subpart H of this part is emitted from these units.

(e) *Bag dumps and product dryers.* (1) The owner or operator shall reduce particulate matter emissions to a concentration not to exceed 0.01 gr/dscf from product dryers that dry a PAI or integral intermediate that is a HAP.

(2) The owner or operator shall reduce particulate matter emissions to a concentration not to exceed 0.01 gr/dscf from bag dumps that introduce to a PAI process unit a feedstock that is a solid material and a HAP, excluding bag dumps where the feedstock contains HAP only as impurities.

(3) Gaseous HAP emissions from product dryers and bag dumps shall be controlled in accordance with the provisions for process vent emissions in paragraph (b) of this section.

(f) *Heat exchange systems.* Unless one or more of the conditions specified in § 63.104(a)(1) through (6) of subpart F of this part are met, an owner or operator shall monitor each heat exchange system that is used to cool process equipment in PAI process units that are part of an affected source as defined in § 63.1360(a) according to the provisions in either § 63.104(b) or (c) of subpart F of this part. When the term "chemical manufacturing process unit" is used in § 63.104(c) of subpart F of this part, the term "PAI process unit" shall apply for the purposes of this subpart. Whenever a leak is detected, the owner or operator shall comply with the requirements in § 63.104(d) of subpart F of this part. Delay of repair of heat exchange systems for which leaks have been detected is allowed in accordance with the provisions of § 63.104(e) of subpart F of this part.

(g) *Pollution prevention alternative.* Except as provided in paragraph (g)(1) of this section, for a process that has an initial startup before November 10, 1997, an owner or operator may choose to meet the pollution prevention alternative requirement specified in either paragraph (g)(2) or (3) of this section for any PAI process unit, in lieu of the requirements specified in paragraphs (b), (c), (d), and (e) of this section and in § 63.1363. Compliance with the requirements of paragraphs (g)(2) and (3) of this section shall be

demonstrated through the procedures in §§ 63.1365(g) and 63.1366(f).

(1) A HAP must be controlled according to the requirements of paragraphs (b), (c), (d), and (e) of this section and § 63.1363 if it is generated in the PAI process unit or an associated control device and it is not part of the production-indexed HAP consumption factor (HAP factor).

(2) The HAP factor shall be reduced by at least 85 percent from a 3-year average baseline beginning no earlier than the 1987 through 1989 calendar years. Alternatively, for a process that has been operating for less than 3 years but more than 1 year, the baseline factor may be calculated for the time period from startup of the process until the present. For any reduction in the HAP factor achieved by reducing a HAP that is also a VOC, an equivalent reduction in the production-indexed VOC consumption factor (VOC factor) is also required (the equivalence is determined on a mass basis, not a percentage basis). For any reduction in the HAP factor that is achieved by reducing a HAP that is not a VOC, the VOC factor may not be increased.

(3) As an alternative to the provisions in paragraph (g)(2) of this section, the owner or operator may combine pollution prevention with emissions control as specified in paragraphs (g)(3)(i) and (ii) of this section.

(i) The HAP factor shall be reduced as specified in paragraph (g)(2) of this section except that a reduction of at least 50 percent shall apply for the purposes of this paragraph.

(ii) The total annual HAP emissions from the PAI process unit shall be reduced by an amount that, when divided by the annual production rate and added to the reduction of the HAP factor yields a value of at least 85 percent of the baseline HAP factor. The total annual VOC emissions from the process unit must be reduced by an amount equivalent to the reduction in HAP emissions for each HAP that is a VOC (the equivalence is determined on a mass basis). For HAP emissions reductions that are achieved by reducing a HAP that is not a VOC, the total annual VOC emissions may not be increased. The reduction in HAP air emissions must be achieved using one of the following control devices:

(A) Combustion control devices such as incinerators, flares, or process heaters.

(B) Control devices such as condensers and carbon adsorbers whose recovered product is destroyed or shipped offsite for destruction.

(C) Any control device that does not ultimately allow for recycling of material back to the PAI process unit.

(D) Any control device for which the owner or operator can demonstrate that the use of the device in controlling HAP emissions will have no effect on the HAP factor for the PAI process unit.

(h) *Emissions averaging provisions.* Except as provided in paragraphs (h)(1) through (7) of this section, the owner or operator of an existing affected facility may choose to comply with the emission standards in paragraphs (b), (c), and (d) of this section by using emissions averaging procedures specified in § 63.1365(h) for organic HAP emissions from any storage vessel, process, or waste management unit that is part of an affected source subject to this subpart.

(1) A State may restrict the owner or operator of an existing source to use only the procedures in paragraphs (b), (c), and (d) of this section to comply with the emission standards where State authorities prohibit averaging of HAP emissions.

(2) Emission points that are controlled as specified in paragraphs (h)(2)(i) through (iii) may not be used to calculate emissions averaging credits, unless a nominal efficiency has been assigned according to the procedures in § 63.150(i) of subpart G of this part. The nominal efficiency must exceed the percent reduction required by paragraphs (b) and (c) of this section for process vents and storage vessels, respectively, and exceed the percent reduction required in § 63.138(e) or (f) of subpart G of this part for wastewater streams.

(i) Group 1 storage vessels controlled with an internal floating roof meeting the specifications of § 63.119(b) of subpart G of this part, an external floating roof meeting the specifications of § 63.119(c) of subpart G of this part, or an external floating roof converted to an internal floating meeting the specifications of § 63.119(d) of subpart G of this part.

(ii) Emission points controlled with a flare.

(iii) Wastewater controlled as specified in paragraphs (h)(2)(iii)(A) or (B) of this section.

(A) With controls specified in § 63.133 through § 63.137 of subpart G of this part;

(B) With a steam stripper meeting the specifications of § 63.138(d) of subpart G of this part.

(3) Process vents and storage vessels controlled with a control device to an outlet concentration of 20 ppmv and wastewater streams controlled in a treatment unit to an outlet concentration of 50 ppmw may not be used in any averaging group.

(4) Maintenance wastewater streams and wastewater streams treated in biological treatment units may not be included in any averaging group.

(5) Processes which have been permanently shut down and storage vessels permanently taken out of HAP service may not be included in any averaging group.

(6) Emission points already controlled on or before November 15, 1990 may not be used to generate emissions averaging credits, unless the level of control has been increased after November 15, 1990. In these cases, credit will be allowed only for the increase in control after November 15, 1990.

(7) Emission points controlled to comply with a State or Federal rule other than this subpart may not be included in an emissions averaging group, unless the level of control has been increased after November 15, 1990, above what is required by the other State or Federal rule. Only the control above what is required by the other State or Federal rule will be credited. However, if an emission point has been used to generate emissions averaging credit in an approved emissions average, and the point is subsequently made subject to a State or Federal rule other than this subpart, the point can continue to generate emissions averaging credit for the purpose of complying with the previously approved average.

(i) *Opening of a safety device.* Opening of a safety device, as defined in § 63.1361, is allowed at any time conditions require it to avoid unsafe conditions.

(j) *Closed-vent systems.* The owner or operator of a closed-vent system that contains bypass lines that could divert a vent stream away from a control device used to comply with the requirements in paragraphs (b) through (d) of this section shall comply with the requirements of Table 3 of this subpart and paragraph (j)(1) or (2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, rupture disks and pressure relief valves needed for safety purposes are not subject to this paragraph.

(1) Install, calibrate, maintain, and operate a flow indicator that determines whether vent stream flow is present at least once every 15 minutes. Records shall be maintained as specified in § 63.1367(f)(1). The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere; or

(2) Secure the bypass line valve in the closed position with a car seal or lock and key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line. Records shall be maintained as specified in § 63.1367(f)(2).

(k) *Control requirements for certain liquid streams in open systems within a PAI process unit.* (1) The owner or operator shall comply with the provisions of Table 4 of this subpart, for each item of equipment meeting all the criteria specified in paragraphs (k)(2) through (4) of this section and either paragraph (k)(5)(i) or (ii) of this section.

(2) The item of equipment is of a type identified in Table 4 of this subpart;

(3) The item of equipment is part of a PAI process unit as defined in § 63.1361;

(4) The item of equipment is controlled less stringently than in Table 4 of this subpart, and the item of equipment is not otherwise exempt from controls by the provisions of this subpart or subpart A of this part;

(5) The item of equipment:

(i) Is a drain, drain hub, manhole, lift station, trench, pipe, or oil/water separator that conveys water with a total annual average concentration greater than or equal to 10,000 ppm by weight of compounds in Table 9 of subpart G of this part at any flowrate; or a total annual average concentration greater than or equal to 1,000 ppm by weight of compounds in Table 9 of subpart G of this part at an annual average flow rate greater than or equal to 10 liters per minute; or

(ii) Is a tank that receives one or more streams that contain water with a total annual average concentration greater than or equal to 1,000 ppm by weight of compounds in Table 9 of subpart G of this part at an annual average flowrate greater than or equal to 10 liters per minute. The owner or operator of the source shall determine the characteristics of the stream as specified in paragraphs (k)(5)(ii)(A) and (B) of this section.

(A) The characteristics of the stream being received shall be determined at the inlet to the tank.

(B) The characteristics shall be determined according to the procedures in § 63.144(b) and (c) of subpart G of this part.

(l) *Exemption for RCRA treatment units.* An owner or operator shall be exempt from the initial compliance demonstrations and monitoring provisions in §§ 63.1365 and 63.1366 and the associated recordkeeping and reporting requirements in §§ 63.1367 and 63.1368 for emissions from process vents, storage vessels, and waste management units that are discharged to the following devices:

(1) A boiler or process heater burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(2) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

§ 63.1363 Standards for equipment leaks.

(a) *General equipment leak requirements.* (1) The provisions of this section apply to "equipment" as defined in § 63.1361 and any closed-vent systems and control devices required by this subpart.

(2) *Consistency with other regulations.* After the compliance date for a process, equipment subject to both this section and either of the following will be required to comply only with the provisions of this subpart:

(i) 40 CFR part 60.

(ii) 40 CFR part 61.

(3) [Reserved].

(4) The provisions in § 63.1(a)(3) of subpart A of this part do not alter the provisions in paragraph (a)(2) of this section.

(5) Lines and equipment not containing process fluids are not subject to the provisions of this section. Utilities, and other nonprocess lines, such as heating and cooling systems which do not combine their materials with those in the processes they serve, are not considered to be part of a process.

(6) The provisions of this section do not apply to bench-scale processes, regardless of whether the processes are located at the same plant site as a process subject to the provisions of this subpart MMM.

(7) Each piece of equipment to which this section applies shall be identified such that it can be distinguished readily from equipment that is not subject to this section. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, or by designation of process boundaries by some form of weatherproof identification. If changes are made to the affected source subject to the leak detection requirements, equipment identification for each type of component shall be updated, if needed, within 15 calendar days of the end of each monitoring period for that component.

(8) Equipment that is in vacuum service is excluded from the requirements of this section.

(9) Equipment that is in organic HAP service, but is in such service less than 300 hours per calendar year, is excluded from the requirements of this section if it is identified as required in paragraph (g)(9) of this section.

(10) When each leak is detected by visual, audible, or olfactory means, or by monitoring as described in § 63.180(b) or (c) of subpart H of this part, the following requirements apply:

(i) A weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.

(ii) The identification on a valve or connector in light liquid or gas/vapor service may be removed after it has been monitored as specified in paragraph (e)(7)(iii) of this section and § 63.174(e) of subpart H of this part, and no leak has been detected during the follow-up monitoring.

(iii) The identification on equipment, except on a valve or connector in light liquid or gas/vapor service, may be removed after it has been repaired.

(b) *References.* The owner or operator shall comply with the provisions of subpart H of this part as specified in paragraphs (b)(1) through (3) of this section. When the term "process unit" is used in subpart H of this part, it shall mean any group of processes for the purposes of this subpart. Groups of processes as used in this subpart may be any individual process or combination of processes.

(1) Sections 63.160, 63.161, 63.162, 63.163, 63.167, 63.168, 63.170, 63.173, 63.175, 63.176, 63.181, and 63.182 of subpart H of this part shall not apply for the purposes of this subpart MMM. The owner or operator shall comply with the provisions specified in paragraphs (b)(1)(i) through (viii) of this section.

(i) Sections 63.160 and 63.162 of subpart H of this part shall not apply, instead the owner or operator shall comply with paragraph (a) of this section;

(ii) Section 63.161 of subpart H of this part shall not apply, instead the owner or operator shall comply with § 63.1361;

(iii) Sections 63.163 and 63.173 of subpart H of this part shall not apply,

instead the owner or operator shall comply with paragraph (c) of this section;

(iv) Section 63.167 of subpart H of this part shall not apply, instead the owner or operator shall comply with paragraph (d) of this section;

(v) Section 63.168 of subpart H of this part shall not apply, instead the owner or operator shall comply with paragraph (e) of this section;

(vi) Section 63.170 of subpart H of this part shall not apply, instead the owner or operator shall comply with § 63.1362(b);

(vii) Section 63.181 of subpart H of this part shall not apply, instead the owner or operator shall comply with paragraph (g) of this section; and

(viii) Section 63.182 of subpart H of this part shall not apply, instead the owner or operator shall comply with paragraph (h) of this section.

(2) The owner or operator shall comply with §§ 63.164, 63.165, 63.166, 63.169, 63.177, and 63.179 of subpart H of this part in their entirety, except that when these sections reference other sections of subpart H of this part, the owner or operator shall comply with the revised sections as specified in paragraphs (b)(1) and (3) of this section. Section 63.164 of subpart H of this part applies to compressors. Section 63.165 of subpart H of this part applies to pressure relief devices in gas/vapor service. Section 63.166 of subpart H of this part applies to sampling connection systems. Section 63.169 of subpart H of this part applies to: pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service. Section 63.177 of subpart H of this subpart applies to general alternative means of emission limitation. Section 63.179 of subpart H of this part applies to alternative means of emission limitation for enclosed-vented process units.

(3) The owner or operator shall comply with §§ 63.171, 63.172, 63.174, 63.178, and 63.180 of subpart H of this part with the differences specified in paragraphs (b)(3)(i) through (v) of this section.

(i) Section 63.171, Delay of repair, shall apply except § 63.171(a) shall not apply. Delay of repair of equipment for which leaks have been detected is allowed if one of the following conditions exist:

(A) The repair is technically infeasible without a process shutdown. Repair of this equipment shall occur by the end of the next scheduled process shutdown.

(B) The owner or operator determines that repair personnel would be exposed to an immediate danger if attempting to repair without a process shutdown. Repair of this equipment shall occur by the end of the next scheduled process shutdown.

(ii) Section 63.172, Closed-vent systems and control devices, shall apply for closed-vent systems used to comply with this section, and for control devices used to comply with this section only, except:

(A) Section 63.172(k) and (l) shall not apply. The owner or operator shall instead comply with paragraph (f) of this section.

(B) Owners or operators may, instead of complying with the provisions of § 63.172(f), design a closed-vent system to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the associated control device is operating.

(iii) Section 63.174, Connectors, shall apply except:

(A) Section 63.174(f) and (g) shall not apply. Instead of § 63.174(f) and (g), the owner or operator shall comply with paragraph (f) of this section.

(B) Days that the connectors are not in organic HAP service shall not be considered part of the 3-month period in § 63.174(e).

(C) Section 63.174(b)(3)(ii) of subpart H of this part shall not apply. Instead, if the percent leaking connectors in the group of process units was less than 0.5 percent, but equal to or greater than 0.25 percent, during the last required monitoring period, monitoring shall be performed once every 4 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40 percent of the connectors in the first 2 years and the remainder of the connectors within the next 2 years. The percent leaking connectors will be calculated for the total of all monitoring performed during the 4-year period.

(D) Section 63.174(b)(3)(iv) of subpart H of this part shall not apply. Instead, the owner or operator shall increase the monitoring frequency to once every 2 years for the next monitoring period if leaking connectors comprise at least 0.5 percent but less than 1.0 percent of the connectors monitored within the 4 years specified in paragraph (b)(3)(iii)(C) of this section, or the first 4 years specified in § 63.174(b)(3)(iii) of subpart H of this part. At the end of that 2-year monitoring period, the owner or operator shall monitor once per year while the percent leaking connectors is greater than or equal to 0.5 percent; if the percent leaking connectors is less than 0.5 percent, the owner or operator may return to monitoring once every 4 years or may monitor in accordance with § 63.174(b)(3)(iii) of subpart H of this part, if appropriate.

(E) Section 63.174(b)(3)(v) of subpart H of this part shall not apply. Instead, if an owner or operator complying with the requirements of paragraph (b)(3)(iii)(C) and (D) of this section or § 63.174(b)(3)(iii) of subpart H of this part for a group of process units determines that 1 percent or greater of the connectors are leaking, the owner or operator shall increase the monitoring frequency to one time per year. The owner or operator may again elect to use the provisions of paragraphs (b)(3)(iii)(C) or (D) of this section after a monitoring period in which less than 0.5 percent of the connectors are determined to be leaking.

(F) Section 63.174(b)(3)(iii) of subpart H of this part shall not apply. Instead, monitoring shall be required once every 8 years, if the percent leaking connectors in the group of process units was less than 0.25 percent during the last required monitoring period. An owner or operator shall monitor at least 50 percent of the connectors in the first 4 years and the remainder of the connectors within the next 4 years. If the percent leaking connectors in the first 4 years is equal to or greater than 0.35 percent, the monitoring program shall revert at that time to the appropriate monitoring frequency specified in paragraphs (b)(3)(iii)(C), (D), or (E) of this section.

(iv) Section 63.178 of subpart H of this part, Alternative means of emission limitation: Batch processes, shall apply except that § 63.178(b) of subpart H of this part, requirements for pressure testing, shall apply to all processes, not just batch processes;

(v) Section 63.180 of subpart H of this part, Test methods and procedures, shall apply except § 63.180(b)(4)(ii)(A) through (C) of subpart H of this part shall not apply. Calibration gases shall be a mixture of methane and air at a concentration of approximately, but less than, 10,000 parts per million methane for agitators, 2,000 parts per million for pumps, and 500 parts per million for all other equipment, except as provided in § 63.180(b)(4)(iii) of subpart H of this part.

(c) *standards for pumps in light liquid service and agitators in gas/vapor service and in light liquid service.* (1) The provisions of this section apply to each pump that is in light liquid service, and to each agitator in gas/vapor service or in light liquid service.

(2)(i) *Monitoring.* Each pump and agitator subject to this section shall be monitored quarterly to detect leaks by the method specified in § 63.180(b) of subpart H of this part, except as provided in § 63.177 of subpart H of this part, paragraph (f) of this section, and paragraphs (c)(5) through (c)(9) of this section.

(ii) *Leak definition.* The instrument reading, as determined by the method as specified in § 63.180(b) of subpart H of this part, that defines a leak is:

(A) For agitators, an instrument reading of 10,000 parts per million or greater.

(B) For pumps, an instrument reading of 2,000 parts per million or greater.

(iii) *Visual inspections.* Each pump and agitator shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump or agitator seal. If there are indications of liquids dripping from the seal, a leak is detected.

(3) *Repair provisions.* (i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (b)(3)(i) of this section.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempts at repair include, but are not limited to, the following practices where practicable:

(A) Tightening of packing gland nuts.

(B) Ensuring that the seal flush is operating at design pressure and temperature.

(4) *Calculation of percent leakers.* (i) The owner or operator shall decide no later than the end of the first monitoring period what groups of processes will be developed. Once the owner or operator has decided, all subsequent percent calculations shall be made on the same basis.

(ii) If, calculated on a 1 year rolling average, the greater of either 10 percent or three of the pumps in a group of processes leak, the owner or operator shall monitor each pump once per month.

(iii) The number of pumps in a group of processes shall be the sum of all the pumps in organic HAP service, except that pumps found leaking in a continuous process within 1 quarter after startup of the pump shall not count in the percent leaking pumps calculation for that one monitoring period only.

(iv) Percent leaking pumps shall be determined using Equation 3 of this subpart:

$$\%P_L = \left[(P_L - P_S)/(P_T - P_S)\right] \times 100 \qquad \text{(Eq. 3)}$$

where:

$\%P_L$ = percent leaking pumps

P_L = number of pumps found leaking as determined through quarterly monitoring as required in paragraphs (c)(2)(i) and (ii) of this section.

P_T = total pumps in organic HAP service, including those meeting the criteria in paragraphs (c)(5) and (6) of this section

P_S = number of pumps in a continuous process leaking within 1 quarter of startup during the current monitoring period

(5) *Exemptions.* Each pump or agitator equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraphs (c)(1) through (c)(4)(iii) of this section, provided the following requirements are met:

(i) Each dual mechanical seal system is:

(A) Operated with the barrier fluid at a pressure that is at all times greater than the pump/agitator stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of paragraph (b)(3)(ii) of this section; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(ii) The barrier fluid is not in light liquid service.

(iii) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(iv) Each pump/agitator is checked by visual inspection each calendar week for indications of liquids dripping from the pump/agitator seal.

(A) If there are indications of liquids dripping from the pump/agitator seal at the time of the weekly inspection, the pump/agitator shall be monitored as specified in § 63.180(b) of subpart H of this part to determine if there is a leak of organic HAP in the barrier fluid.

(B) If an instrument reading of 2,000 parts per million or greater is measured for pumps, or 10,000 parts per million or greater is measured for agitators, a leak is detected.

(v) Each sensor as described in paragraph (c)(5)(iii) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(vi)(A) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicate failure of the seal system, the barrier fluid system, or both.

(B) If indications of liquids dripping from the pump/agitator seal exceed the criteria established in paragraph (c)(5)(vi)(A) of this section, or if, based on the criteria established in paragraph (c)(5)(vi)(A) of this section, the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(C) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (b)(3)(i) of this section.

(D) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(6) Any pump/agitator that is designed with no externally actuated shaft penetrating the pump/agitator housing is exempt from the requirements of paragraphs (c)(1) through (4) of this section, except for the requirements of paragraph (c)(2)(iii) of this section and, for pumps, paragraph (c)(4)(iv) of this section.

(7) Any pump/agitator equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals back to the process or to a control device that complies with the requirements of paragraph (b)(3)(ii) of this section is exempt from the requirements of paragraphs (c)(2) through (5) of this section.

(8) Any pump/agitator that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (c)(2)(iii) and (c)(5)(iv) of this section, and the daily requirements of paragraph (c)(5)(v) of this section, provided that each pump/agitator is visually inspected as often as practicable and at least monthly.

(9) If more than 90 percent of the pumps in a group of processes meet the criteria in either paragraph (c)(5) or (6) of this section, the process is exempt

from the requirements of paragraph (c)(4) of this section.

(d) *Standards: open-ended valves or lines.* (1)(i) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 63.177 of subpart H of this part and paragraphs (d)(4) through (6) of this section.

(ii) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance or repair. The cap, blind flange, plug, or second valve shall be in place within 1 hour of cessation of operations requiring process fluid flow through the open-ended valve or line, or within 1 hour of cessation of maintenance or repair.

(2) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(3) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (d)(1) of this section at all other times.

(4) Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in the event of a process upset are exempt from the requirements of paragraphs (d)(1) through (3) of this section.

(5) Open-ended valves or lines containing materials which would autocatalytically polymerize are exempt from the requirements of paragraphs (d)(1) through (3) of this section.

(6) Open-ended valves or lines containing materials which could cause an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraphs (d)(1) through (3) of this section are exempt from the requirements of paragraphs (d)(1) through (3) of this section.

(e) *Standards: valves in gas/vapor service and in light liquid service.* (1) The provisions of this section apply to valves that are either in gas/vapor service or in light liquid service.

(2) For existing and new affected sources, all valves subject to this section shall be monitored, except as provided in paragraph (f) of this section and in § 63.177 of subpart H of this part, by no later than 1 year after the compliance date.

(3) *Monitoring.* The owner or operator of a source subject to this section shall monitor all valves, except as provided in paragraph (f) of this section and in § 63.177 of subpart H of this part, at the intervals specified in paragraph (e)(4) of this section and shall comply with all other provisions of this section, except as provided in paragraph (b)(3)(i) of this section and §§ 63.178 and 63.179 of subpart H of this part.

(i) The valves shall be monitored to detect leaks by the method specified in § 63.180(b) of subpart H of this part.

(ii) An instrument reading of 500 parts per million or greater defines a leak.

(4) *Subsequent monitoring frequencies.* After conducting the initial survey required in paragraph (e)(2) of this section, the owner or operator shall monitor valves for leaks at the intervals specified below:

(i) For a group of processes with 2 percent or greater leaking valves, calculated according to paragraph (e)(6) of this section, the owner or operator shall monitor each valve once per month, except as specified in paragraph (e)(9) of this section.

(ii) For a group of processes with less than 2 percent leaking valves, the owner or operator shall monitor each valve once each quarter, except as provided in paragraphs (e)(4)(iii) through (v) of this section.

(iii) For a group of processes with less than 1 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 quarters.

(iv) For a group of processes with less than 0.5 percent leaking valves, the owner or operator may elect to monitor each valve once every 4 quarters.

(v) For a group of processes with less than 0.25 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 years.

(5) *Calculation of percent leakers.* For a group of processes to which this subpart applies, the owner or operator may choose to subdivide the valves in the applicable group of processes and apply the provisions of paragraph (e)(4) of this section to each subgroup. If the owner or operator elects to subdivide the valves in the applicable group of processes, then the provisions of paragraphs (e)(5)(i) through (viii) of this section apply.

(i) The overall performance of total valves in the applicable group of processes must be less than 2 percent leaking valves, as detected according to paragraphs (e)(3)(i) and (ii) of this section and as calculated according to paragraphs (e)(6)(ii) and (iii) of this section.

(ii) The initial assignment or subsequent reassignment of valves to subgroups shall be governed by the provisions of paragraphs (e)(5)(ii) (A) through (C) of this section.

(A) The owner or operator shall determine which valves are assigned to each subgroup. Valves with less than 1 year of monitoring data or valves not monitored within the last 12 months must be placed initially into the most frequently monitored subgroup until at least 1 year of monitoring data have been obtained.

(B) Any valve or group of valves can be reassigned from a less frequently monitored subgroup to a more frequently monitored subgroup provided that the valves to be reassigned were monitored during the most recent monitoring period for the less frequently monitored subgroup. The monitoring results must be included with the less frequently monitored subgroup's monitoring event and associated next percent leaking valves calculation for that group.

(C) Any valve or group of valves can be reassigned from a more frequently monitored subgroup to a less frequently monitored subgroup provided that the valves to be reassigned have not leaked for the period of the less frequently monitored subgroup (e.g., for the last 12 months, if the valve or group of valves is to be reassigned to a subgroup being monitored annually). Nonrepairable valves may not be reassigned to a less frequently monitored subgroup.

(iii) The owner or operator shall determine every 6 months if the overall performance of total valves in the applicable group of processes is less than 2 percent leaking valves and so indicate the performance in the next Periodic report. If the overall performance of total valves in the applicable group of processes is 2 percent leaking valves or greater, the owner or operator shall revert to the program required in paragraphs (e)(2) through (4) of this section. The overall performance of total valves in the applicable group of processes shall be calculated as a weighted average of the percent leaking valves of each subgroup according to Equation 4 of this subpart:

$$\%V_{LO} = \frac{\sum_{i=1}^{n}\left(\%V_{Li} \times V_i\right)}{\sum_{i=1}^{n} V_i} \qquad \text{(Eq. 4)}$$

where:

$\%V_{LO}$ = overall performance of total valves in the applicable group of processes

$\%V_{Li}$ = percent leaking valves in subgroup i, most recent value calculated according to the procedures in paragraphs (e)(6)(ii) and (iii) of this section

V_i = number of valves in subgroup i

n = number of subgroups

(iv) *Records.* In addition to records required by paragraph (g) of this section, the owner or operator shall maintain records specified in paragraphs (e)(5)(iv)(A) through (D) of this section.

(A) Which valves are assigned to each subgroup,

(B) Monitoring results and calculations made for each subgroup for each monitoring period,

(C) Which valves are reassigned and when they were reassigned, and

(D) The results of the semiannual overall performance calculation required in paragraph (e)(5)(iii) of this section.

(v) The owner or operator shall notify the Administrator no later than 30 days prior to the beginning of the next monitoring period of the decision to subgroup valves. The notification shall identify the participating processes and the valves assigned to each subgroup.

(vi) *Semiannual reports.* In addition to the information required by paragraph (h)(3) of this section, the owner or operator shall submit in the Periodic reports the information specified in paragraphs (e)(5)(vi)(A) and (B) of this section.

(A) Valve reassignments occurring during the reporting period, and

(B) Results of the semiannual overall performance calculation required by paragraph (e)(5)(iii) of this section.

(vii) To determine the monitoring frequency for each subgroup, the calculation procedures of paragraph (e)(6)(iii) of this section shall be used.

(viii) Except for the overall performance calculations required by paragraphs (e)(5)(i) and (iii) of this section, each subgroup shall be treated as if it were a process for the purposes of applying the provisions of this section.

(6)(i) The owner or operator shall decide no later than the implementation date of this subpart or upon revision of an operating permit how to group the processes. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis.

(ii) Percent leaking valves for each group of processes or subgroup shall be determined using Equation 5 of this subpart:

$$\%V_L = \left[V_L / V_T\right] \times 100 \qquad \text{(Eq. 5)}$$

Where:

$\%V_L$ = percent leaking valves

V_L = number of valves found leaking excluding nonrepairables as provided in paragraph (e)(6)(iv)(A) of this section

V_T = total valves monitored, in a monitoring period excluding valves monitored as required by paragraph (e)(7)(iii) of this section

(iii) When determining monitoring frequency for each group of processes or subgroup subject to monthly, quarterly, or semiannual monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last two monitoring periods. When determining monitoring frequency for each group of processes or subgroup subject to annual or biennial (once every 2 years) monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last three monitoring periods.

(iv)(A) Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable and as required to comply with paragraph (e)(6)(iv)(B) of this section. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking calculation in a previous period) up to a maximum of 1 percent of the total number of valves in organic HAP service at a process may be excluded from calculation of percent leaking valves for subsequent monitoring periods.

(B) If the number of nonrepairable valves exceeds 1 percent of the total number of valves in organic HAP service at a process, the number of nonrepairable valves exceeding 1 percent of the total number of valves in organic HAP service shall be included in the calculation of percent leaking valves.

(7) *Repair provisions.* (i) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in paragraph (b)(3)(i) of this section.

(ii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(iii) When a leak is repaired, the valve shall be monitored at least once within the first 3 months after its repair. Days that the valve is not in organic HAP service shall not be considered part of this 3-month period.

(8) First attempts at repair include, but are not limited to, the following practices where practicable:

(i) Tightening of bonnet bolts,

(ii) Replacement of bonnet bolts,

(iii) Tightening of packing gland nuts, and

(iv) Injection of lubricant into lubricated packing.

(9) Any equipment located at a plant site with fewer than 250 valves in organic HAP service in the affected source is exempt from the requirements for monthly monitoring specified in paragraph (e)(4)(i) of this section. Instead, the owner or operator shall monitor each valve in organic HAP service for leaks once each quarter, or comply with paragraphs (e)(4)(iii) or (iv) of this section.

(f) *Unsafe to monitor, difficult to monitor, and inaccessible equipment.* (1) Equipment that is designated as unsafe to monitor, difficult to monitor, or inaccessible is exempt from the requirements as specified in paragraphs (f)(1) (i) through (iv) of this section provided the owner or operator meets the requirements specified in paragraph (f) (2), (3), or (4) of this section, as applicable. Ceramic or ceramic-lined connectors are subject to the same requirements as inaccessible connectors.

(i) For pumps and agitators, paragraphs (c) (2), (3), and (4) of this section do not apply.

(ii) For valves, paragraphs (e)(2) through (7) of this section do not apply.

(iii) For closed-vent systems, § 63.172(f)(1), (f)(2), and (g) of subpart H of this part do not apply.

(iv) For connectors, § 63.174(b) through (e) of subpart H of this part do not apply.

(2) *Equipment that is unsafe to monitor.* (i) Equipment may be designated as unsafe to monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements identified in paragraphs (f)(1)(i) through (iv) of this section.

(ii) The owner or operator of equipment that is designated as unsafe-to-monitor must have a written plan that requires monitoring of the equipment as frequently as practicable during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable.

(3) *Equipment that is difficult to monitor.* (i) Equipment may be designated as difficult to monitor if the owner or operator determines that the equipment cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface or the equipment is not accessible at anytime in a safe manner;

(ii) At an existing source, any equipment within a group of processes that meets the criteria of paragraph (f)(3)(i) of this section may be designated as difficult to monitor. At a new affected source, an owner or operator may designate no more than 3 percent of each type of equipment as difficult to monitor.

(iii) The owner or operator of equipment designated as difficult to monitor must follow a written plan that requires monitoring of the equipment at least once per calendar year.

(4) *Inaccessible equipment and ceramic or ceramic-lined connectors.* (i) A connector, agitator, or valve may be designated as inaccessible if it is:

(A) Buried;

(B) Insulated in a manner that prevents access to the equipment by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the equipment by a monitor probe;

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold which would allow access to equipment up to 7.6 meters above the ground; or

(E) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines, or would risk damage to equipment.

(ii) At an existing source, any connector, agitator, or valve that meets the criteria of paragraph (f)(4)(i) of this section may be designated as inaccessible. At a new affected source, an owner or operator may designate no more than 3 percent of each type of equipment as inaccessible.

(iii) If any inaccessible equipment or ceramic or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in paragraph (b)(3)(i) of this section.

(g) *Recordkeeping requirements.* (1) An owner or operator of more than one group of processes subject to the provisions of this section may comply with the recordkeeping requirements for the groups of processes in one recordkeeping system if the system identifies with each record the program being implemented (e.g., quarterly monitoring) for each type of equipment. All records and information required by this section shall be maintained in a manner that can be readily accessed at the plant site. This could include physically locating the records at the plant site or accessing the records from a central location by computer at the plant site.

(2) *General recordkeeping.* Except as provided in paragraph (g)(5) of this section, the following information pertaining to all equipment subject to the requirements in this section shall be recorded:

(i)(A) A list of identification numbers for equipment (except instrumentation systems) subject to the requirements of this section. Connectors, except those subject to paragraph (f) of this section, need not be individually identified if all connectors in a designated area or length of pipe subject to the provisions of this section are identified as a group, and the number of subject connectors is indicated. The list for each type of equipment shall be completed no later than the completion of the initial survey required for that component. The list of identification numbers shall be updated, if needed, to incorporate equipment changes within 15 calendar days of the completion of each monitoring survey for the type of equipment component monitored.

(B) A schedule for monitoring connectors subject to the provisions of § 63.174(a) of subpart H of this part and valves subject to the provisions of paragraph (e)(4) of this section.

(C) Physical tagging of the equipment is not required to indicate that it is in organic HAP service. Equipment subject to the provisions of this section may be identified on a plant site plan, in log entries, or by other appropriate methods.

(ii)(A) A list of identification numbers for equipment that the owner or operator elects to equip with a closed-vent system and control device, under the provisions of paragraph (c)(7) of this section or §§ 63.164(h) or 63.165(c) of subpart H of this part.

(B) A list of identification numbers for compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 parts per million above background, under the provisions of § 63.164(i) of subpart H of this part.

(iii)(A) A list of identification numbers for pressure relief devices subject to the provisions in § 63.165(a) of subpart H of this part.

(B) A list of identification numbers for pressure relief devices equipped with rupture disks, under the provisions of § 63.165(d) of subpart H of this part.

(iv) Identification of instrumentation systems subject to the provisions of this section. Individual components in an instrumentation system need not be identified.

(v) The following information shall be recorded for each dual mechanical seal system:

(A) Design criteria required by paragraph (c)(5)(vi)(A) of this section and § 63.164(e)(2) of subpart H of this part, and an explanation of the design criteria; and

(B) Any changes to these criteria and the reasons for the changes.

(vi) A list of equipment designated as unsafe to monitor, difficult to monitor, or inaccessible under paragraphs (f) or (b)(3)(i)(B) of this section and a copy of the plan for monitoring or inspecting this equipment.

(vii) A list of connectors removed from and added to the process, as described in § 63.174(i)(1) of subpart H of this part, and documentation of the integrity of the weld for any removed connectors, as required in § 63.174(j) of subpart H of this part. This is not required unless the net credits for removed connectors is expected to be used.

(viii) For batch processes that the owner or operator elects to monitor as provided under § 63.178(c) of subpart H of this part, a list of equipment added to batch product processes since the last monitoring period required in § 63.178(c)(3)(ii) and (iii) of subpart H of this part. This list must be completed for each type of equipment within 15 calendar days of the completion of the each monitoring survey for the type of equipment monitored.

(3) *Records of visual inspections.* For visual inspections of equipment subject to the provisions of paragraphs (c)(2)(iii) and (c)(5)(iv) of this section, the owner or operator shall document that the inspection was conducted and the date of the inspection. The owner or operator shall maintain records as specified in paragraph (g)(4) of this section for leaking equipment identified in this inspection, except as provided in paragraph (g)(5) of this section. These records shall be retained for 5 years.

(4) *Monitoring records.* When each leak is detected as specified in paragraphs (c) and (e) of this section and §§ 63.164, 63.169, 63.172, and 63.174 of subpart H of this part, the owner or operator shall record the information specified in paragraphs (g)(4)(i) through (ix) of this section. All records shall be retained for 5 years, in accordance with the requirements of § 63.10(b)(1) of subpart A of this part.

(i) The instrument and the equipment identification number and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) If postrepair monitoring is required, maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A, after it is successfully repaired or determined to be nonrepairable.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures may be included as part of the startup/shutdown/malfunction plan, required by § 63.1367(a), for the source or may be part of a separate document that is maintained at the plant site. Reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked onsite before depletion and the reason for depletion.

(vi) If repairs were delayed, dates of process shutdowns that occur while the equipment is unrepaired.

(vii)(A) If the alternative in § 63.174(c)(1)(ii) of subpart H of this part is not in use for the monitoring period, identification, either by list, location (area or grouping), or tagging of connectors disturbed since the last monitoring period required in § 63.174(b) of subpart H of this part, as described in § 63.174(c)(1) of subpart H of this part.

(B) The date and results of follow-up monitoring as required in § 63.174(c) of subpart H of this part. If identification of disturbed connectors is made by location, then all connectors within the designated location shall be monitored.

(viii) The date and results of the monitoring required in § 63.178(c)(3)(i) of subpart H of this part for equipment added to a batch process since the last monitoring period required in § 63.178(c)(3)(ii) and (iii) of subpart H of this part. If no leaking equipment is found in this monitoring, the owner or operator shall record that the inspection was performed. Records of the actual monitoring results are not required.

(ix) Copies of the periodic reports as specified in paragraph (h)(3) of this section, if records are not maintained on a computerized data base capable of generating summary reports from the records.

(5) *Records of pressure tests.* The owner or operator who elects to pressure test a process equipment train and supply lines between storage and processing areas to demonstrate compliance with this section is exempt from the requirements of paragraphs (g)(2), (3), (4), and (6) of this section. Instead, the owner or operator shall maintain records of the following information:

(i) The identification of each product, or product code, produced during the calendar year. It is not necessary to identify individual items of equipment in the process equipment train.

(ii) Records demonstrating the proportion of the time during the calendar year the equipment is in use in the process that is subject to the provisions of this subpart. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit. These records are not required if the owner or operator does not adjust monitoring frequency by the time in use, as provided in § 63.178(c)(3)(iii) of subpart H of this part.

(iii) Physical tagging of the equipment to identify that it is in organic HAP service and subject to the provisions of this section is not required. Equipment in a process subject to the provisions of this section may be identified on a plant site plan, in log entries, or by other appropriate methods.

(iv) The dates of each pressure test required in § 63.178(b) of subpart H of this part, the test pressure, and the pressure drop observed during the test.

(v) Records of any visible, audible, or olfactory evidence of fluid loss.

(vi) When a process equipment train does not pass two consecutive pressure tests, the following information shall be recorded in a log and kept for 2 years:

(A) The date of each pressure test and the date of each leak repair attempt.

(B) Repair methods applied in each attempt to repair the leak.

(C) The reason for the delay of repair.

(D) The expected date for delivery of the replacement equipment and the actual date of delivery of the replacement equipment.

(E) The date of successful repair.

(6) *Records of compressor and pressure relief valve compliance tests.* The dates and results of each compliance test required for compressors subject to the provisions in § 63.164(i) of subpart H of this part and the dates and results of the monitoring following a pressure release for each pressure relief device subject to the provisions in § 63.165(a) and (b) of subpart H of this part. The results shall include:

(i) The background level measured during each compliance test.

(ii) The maximum instrument reading measured at each piece of equipment during each compliance test.

(7) *Records for closed-vent systems.* The owner or operator shall maintain records of the information specified in paragraphs (g)(7)(i) through (iii) of this section for closed-vent systems and control devices subject to the provisions of paragraph (b)(3)(ii) of this section. The records specified in paragraph (g)(7)(i) of this section shall be retained for the life of the equipment. The records specified in paragraphs (g)(7)(ii) and (iii) of this section shall be retained for 5 years.

(i) The design specifications and performance demonstrations specified in paragraphs (g)(7)(i)(A) through (D) of this section.

(A) Detailed schematics, design specifications of the control device, and piping and instrumentation diagrams.

(B) The dates and descriptions of any changes in the design specifications.

(C) The flare design (i.e., steam assisted, air assisted, or nonassisted) and the results of the compliance demonstration required by § 63.11(b) of subpart A of this part.

(D) A description of the parameter or parameters monitored, as required in paragraph (b)(3)(ii) of this section, to ensure that control devices are operated and maintained in conformance with their design and an explanation of why that parameter (or parameters) was selected for the monitoring.

(ii) Records of operation of closed-vent systems and control devices.

(A) Dates and durations when the closed-vent systems and control devices required in paragraph (c) of this section and §§ 63.164 through 63.166 of subpart H of this part are not operated as designed as indicated by the monitored parameters, including periods when a flare pilot light system does not have a flame.

(B) Dates and durations during which the monitoring system or monitoring device is inoperative.

(C) Dates and durations of startups and shutdowns of control devices required in paragraph (c) of this section and §§ 63.164 through 63.166 of subpart H of this part.

(iii) Records of inspections of closed-vent systems subject to the provisions of § 63.172 of subpart H of this part.

(A) For each inspection conducted in accordance with the provisions of § 63.172(f)(1) or (2) of subpart H of this part during which no leaks were detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(B) For each inspection conducted in accordance with the provisions of § 63.172(f)(1) or (f)(2) of subpart H of this part during which leaks were detected, the information specified in paragraph (g)(4) of this section shall be recorded.

(8) *Records for components in heavy liquid service.* Information, data, and

analysis used to determine that a piece of equipment or process is in heavy liquid service shall be recorded. Such a determination shall include an analysis or demonstration that the process fluids do not meet the criteria of "in light liquid or gas/vapor service." Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(9) *Records of exempt components.* Identification, either by list, location (area or group), or other method of equipment in organic HAP service less than 300 hr/yr subject to the provisions of this section.

(10) *Records of alternative means of compliance determination.* Owners and operators choosing to comply with the requirements of § 63.179 of subpart H of this part shall maintain the following records:

(i) Identification of the process(es) and the organic HAP they handle.

(ii) A schematic of the process, enclosure, and closed-vent system.

(iii) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

(h) *Reporting Requirements.* (1) Each owner or operator of a source subject to this section shall submit the reports listed in paragraphs (h)(1)(i) and (ii) of this section.

(i) A Notification of Compliance Status report described in paragraph (h)(2) of this section, and

(ii) Periodic reports described in paragraph (h)(3) of this section.

(2) *Notification of compliance status report.* Each owner or operator of a source subject to this section shall submit the information specified in paragraphs (h)(2)(i) through (iii) of this section in the Notification of Compliance Status report described in § 63.1368(f). Section 63.9(j) of subpart A of this part shall not apply to the Notification of Compliance Status report.

(i) The notification shall provide the information listed in paragraphs (h)(2)(i)(A) through (C) of this section for each group of processes subject to the requirements of paragraphs (b) through (g) of this section.

(A) Identification of the group of processes.

(B) Approximate number of each equipment type (e.g., valves, pumps) in organic HAP service, excluding equipment in vacuum service.

(C) Method of compliance with the standard (for example, "monthly leak detection and repair" or "equipped with dual mechanical seals").

(ii) The notification shall provide the information listed in paragraphs (h)(2)(ii)(A) and (B) of this section for each process subject to the requirements of paragraph (b)(3)(iv) of this section and § 63.178(b) of subpart H of this part.

(A) Products or product codes subject to the provisions of this section, and

(B) Planned schedule for pressure testing when equipment is configured for production of products subject to the provisions of this section.

(iii) The notification shall provide the information listed in paragraphs (h)(2)(iii)(A) and (B) of this section for each process subject to the requirements in § 63.179 of subpart H of this part.

(A) Process identification.

(B) A description of the system used to create a negative pressure in the enclosure and the control device used to comply with the requirements of paragraph (b)(3)(ii) of this section.

(3) *Periodic reports.* The owner or operator of a source subject to this section shall submit Periodic reports.

(i) A report containing the information in paragraphs (h)(3)(ii), (iii), and (iv) of this section shall be submitted semiannually. The first Periodic report shall be submitted no later than 240 days after the date the Notification of Compliance Status report is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status report is due. Each subsequent Periodic report shall cover the 6-month period following the preceding period.

(ii) For equipment complying with the provisions of paragraphs (b) through (g) of this section, the Periodic report shall contain the summary information listed in paragraphs (h)(3)(ii)(A) through (L) of this section for each monitoring period during the 6-month period.

(A) The number of valves for which leaks were detected as described in paragraph (e)(2) of this section, the percent leakers, and the total number of valves monitored;

(B) The number of valves for which leaks were not repaired as required in paragraph (e)(7) of this section, identifying the number of those that are determined nonrepairable;

(C) The number of pumps and agitators for which leaks were detected as described in paragraph (c)(2) of this section, the percent leakers, and the total number of pumps and agitators monitored;

(D) The number of pumps and agitators for which leaks were not repaired as required in paragraph (c)(3) of this section;

(E) The number of compressors for which leaks were detected as described in § 63.164(f) of subpart H of this part;

(F) The number of compressors for which leaks were not repaired as required in § 63.164(g) of subpart H of this part;

(G) The number of connectors for which leaks were detected as described in § 63.174(a) of subpart H of this part, the percent of connectors leaking, and the total number of connectors monitored;

(H) The number of connectors for which leaks were not repaired as required in § 63.174(d) of subpart H of this part, identifying the number of those that are determined nonrepairable;

(I) The facts that explain any delay of repairs and, where appropriate, why a process shutdown was technically infeasible.

(J) The results of all monitoring to show compliance with §§ 63.164(i), 63.165(a), and 63.172(f) of subpart H of this part conducted within the semiannual reporting period.

(K) If applicable, the initiation of a monthly monitoring program under either paragraph (c)(4)(ii) or paragraph (e)(4)(i)(A) of this section.

(L) If applicable, notification of a change in connector monitoring alternatives as described in § 63.174(c)(1) of subpart H of this part.

(iii) For owners or operators electing to meet the requirements of § 63.178(b) of subpart H of this part, the Periodic report shall include the information listed in paragraphs (h)(3)(iii) (A) through (E) of this section for each process.

(A) Product process equipment train identification;

(B) The number of pressure tests conducted;

(C) The number of pressure tests where the equipment train failed either the retest or two consecutive pressure tests;

(D) The facts that explain any delay of repairs; and

(E) The results of all monitoring to determine compliance with § 63.172(f) of subpart H of this part.

(iv) Any change in the information submitted under paragraph (h)(2) of this section shall be provided in the next Periodic report.

§ 63.1364 Compliance dates.

(a) *Compliance dates for existing sources.* (1) An owner or operator of an existing affected source must comply with the provisions of this subpart within 3 years after June 23, 1999.

(2) Pursuant to section 112(i)(3)(B) of the CAA, an owner or operator of an existing source may request an extension of up to 1 additional year to comply with the provisions of this subpart if the additional time is needed for the installation of controls.

(i) For purposes of this subpart, a request for an extension shall be submitted no later than 120 days prior to the compliance date specified in paragraph (a)(1) of this section, except as provided in paragraph (a)(2)(ii) of this section. The dates specified in § 63.6(i) of subpart A of this part for submittal of requests for extensions shall not apply to sources subject to this subpart.

(ii) An owner or operator may submit a compliance extension request after the date specified in paragraph (a)(1)(i) of this section provided the need for the compliance extension arose after that date and before the otherwise applicable compliance date, and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include the data described in § 63.6(i)(8)(A), (B), and (D) of subpart A of this part.

(b) *Compliance dates for new and reconstructed sources.* An owner or operator of a new or reconstructed affected source must comply with the provisions of this subpart on June 23, 1999 or upon startup, whichever is later.

§ 63.1365 Test methods and initial compliance procedures.

(a) *General.* Except as specified in paragraph (a)(4) of this section, the procedures specified in paragraphs (c), (d), (e), (f), and (g) of this section are required to demonstrate initial compliance with § 63.1362(b), (c), (d), (f), and (g), respectively. The provisions in paragraph (a)(1) of this section apply to design evaluations that are used to demonstrate compliance with the standards for process vents and storage vessels. The provisions in paragraph (a)(2) of this section apply to performance tests that are specified in paragraphs (c), (d), and (e) of this section. The provisions in paragraph (a)(3) of this section describe initial compliance procedures for flares. The provisions in paragraph (a)(5) of this section are used to demonstrate initial compliance with the alternative standards specified in § 63.1362(b)(6) and (c)(4). The provisions in paragraph (a)(6) of this section are used to comply with the outlet concentration requirements specified in § 63.1362(b)(2)(iv)(A), (b)(3)(ii), (b)(4)(ii)(A), (b)(5)(ii), and (b)(5)(iii).

(1) *Design evaluation.* To demonstrate that a control device meets the required control efficiency, a design evaluation must address the composition and HAP concentration of the vent stream entering the control device. A design evaluation also must address other vent stream characteristics and control device operating parameters as specified in any one of paragraphs (a)(1)(i) through (vii) of this section, depending on the type of control device that is used. If the vent stream is not the only inlet to the control device, the efficiency demonstration also must consider all other vapors, gases, and liquids, other than fuels, received by the control device.

(i) For an enclosed combustion device used to comply with the provisions of § 63.1362(b)(2)(iv), (b)(4)(ii), (c)(2)(iv)(B), or (c)(3) with a minimum residence time of 0.5 seconds and a minimum temperature of 760 °C, the design evaluation must document that these conditions exist.

(ii) For a combustion control device that does not satisfy the criteria in paragraph (a)(1)(i) of this section, the design evaluation must document control efficiency and address the following characteristics, depending on the type of control device:

(A) For a thermal vapor incinerator, the design evaluation must consider the autoignition temperature of the organic HAP, must consider the vent stream flow rate, and must establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design evaluation must consider the vent stream flow rate and must establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design evaluation must consider the vent stream flow rate, must establish the design minimum and average flame zone temperatures and combustion zone residence time, and must describe the method and location where the vent stream is introduced into the flame zone.

(iii) For a condenser, the design evaluation must consider the vent stream flow rate, relative humidity, and temperature, and must establish the design outlet organic HAP compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. The temperature of the gas stream exiting the condenser must be measured and used to establish the outlet organic HAP concentration.

(iv) For a carbon adsorption system that regenerates the carbon bed directly onsite in the control device such as a fixed-bed adsorber, the design evaluation must consider the vent stream flow rate, relative humidity, and temperature, and must establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number of carbon beds and their capacities, type and working capacity of activated carbon used for the carbon beds, design total regeneration stream mass or volumetric flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon. For vacuum desorption, the pressure drop must be included.

(v) For a carbon adsorption system that does not regenerate the carbon bed directly onsite in the control device such as a carbon canister, the design evaluation must consider the vent stream mass or volumetric flow rate, relative humidity, and temperature, and must establish the design exhaust vent stream organic compound concentration level, capacity of the carbon bed, type and working capacity of activated carbon used for the carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(vi) For a scrubber, the design evaluation must consider the vent stream composition, constituent concentrations, liquid-to-vapor ratio, scrubbing liquid flow rate and concentration, temperature, and the reaction kinetics of the constituents with the scrubbing liquid. The design evaluation must establish the design exhaust vent stream organic compound concentration level and must include the additional information in paragraphs (a)(1)(vi)(A) and (B) of this section for trays and a packed column scrubber.

(A) Type and total number of theoretical and actual trays;

(B) Type and total surface area of packing for entire column, and for individual packed sections if column contains more than one packed section.

(vii) For fabric filters, the design evaluation must include the pressure drop through the device and the net gas-to-cloth ratio (i.e., cubic feet of gas per square feet of cloth).

(2) *Calculation of TOC or total organic HAP concentration.* The TOC concentration or total organic HAP concentration is the sum of the concentrations of the individual components. If compliance is being determined based on TOC, the owner or operator shall compute TOC for each run using Equation 6 of this subpart. If compliance with the percent reduction format of the standard is being

determined based on total organic HAP, the owner or operator shall compute total organic HAP using Equation 6 of this subpart, except that only organic HAP compounds shall be summed; when determining compliance with the wastewater provisions of § 63.1363(d), the organic HAP compounds shall consist of the organic HAP compounds in Table 9 of subpart G of this part.

$$CG_T = \frac{1}{m}\sum_{j=1}^{m}\left(\sum_{i=1}^{n} CGS_{i,j}\right) \quad \text{(Eq. 6)}$$

Where:

CG_T = total concentration of TOC in vented gas stream, average of samples, dry basis, ppmv

$CGS_{i,j}$ = concentration of sample components in vented gas stream for sample j, dry basis, ppmv

n = number of compounds in the sample

m = number of samples in the sample run

(3) *Initial compliance using flares.* When a flare is used to comply with the standards, the owner or operator shall comply with the provisions in § 63.11(b) of subpart A of this part.

(i) The initial compliance determination shall consist of a visible emissions determination using Method 22 of 40 CFR part 60, appendix A, as described in § 63.11(b)(4) of subpart A of this part, and a determination of net heating value of gas being combusted and exit velocity to comply with the requirements of § 63.11(b)(6) through (8) of subpart A of this part. The net heating value and exit velocity shall be based on the results of performance testing under the conditions described in paragraphs (b)(10) and (11) of this section.

(ii) An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration when a flare is used.

(4) *Exemptions from compliance demonstrations.* An owner or operator using any control device specified in paragraphs (a)(4)(i) through (ii) of this section is exempt from the initial compliance provisions in paragraphs (c), (d), and (e) of this section.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(ii) A boiler or process heater into which the emission stream is introduced with the primary fuel.

(5) *Initial compliance with alternative standard.* Initial compliance with the alternative standards in § 63.1362(b)(6) and (c)(4) is demonstrated when the outlet TOC concentration is 20 ppmv or less, and the outlet HCl and chlorine concentration is 20 ppmv or less. To demonstrate initial compliance, the owner or operator shall be in compliance with the monitoring provisions in § 63.1366(b)(5) on the initial compliance date. The owner or operator shall use Method 18 of 40 CFR part 60, appendix A to determine the predominant organic HAP in the emission stream if the TOC monitor is calibrated on the predominant HAP.

(6) *Initial compliance with the 20 ppmv outlet limit.* Initial compliance with the 20 ppmv TOC and HCl and chlorine concentration is demonstrated when the outlet TOC concentration is 20 ppmv or less, and the outlet HCl and chlorine concentration is 20 ppmv or less. To demonstrate initial compliance, the operator shall use applicable test methods described in paragraphs (b)(1) through (9) of this section, and test under conditions described in paragraphs (b)(10) or (11) of this section, as applicable. The owner or operator shall comply with the monitoring provisions in § 63.1366(b)(1) through (5) on the initial compliance date.

(7) *Outlet concentration correction for supplemental gases.* If supplemental gases are added to a vent stream for which compliance with an outlet concentration standard in § 63.1362 or 63.1363 will be demonstrated, the owner or operator must correct the outlet concentration as specified in paragraphs (a)(7)(i) and (ii) of this section.

(i) *Combustion device.* If the vent stream is controlled with a combustion device, the owner or operator must comply with the provisions in paragraphs (a)(7)(i)(A) through (C) of this section.

(A) To comply with a TOC outlet concentration standard in § 63.1362(b)(2)(iv)(A), (b)(4)(ii)(A), (b)(6), (c)(2)(iv)(B), (c)(4), (d)(13), or § 63.172 of subpart H of this part, the actual TOC outlet concentration must be corrected to 3 percent oxygen.

(B) If the inlet stream to the combustion device contains any HCl, chlorine, or halogenated compounds, and the owner or operator elects to comply with a total HCl and chlorine outlet concentration standard in § 63.1362(b)(3)(ii), (b)(5)(ii), (b)(5)(iii), (b)(6), or (c)(4), the actual total HCl and chlorine outlet concentration must be corrected to 3 percent oxygen.

(C) The integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A shall be used to determine the actual oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the TOC and HCl and chlorine samples are taken. The concentration corrected to 3 percent oxygen (C_c) shall be computed using Equation 7 of this subpart:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \quad \text{(Eq. 7)}$$

Where:

C_c = concentration of TOC or total HCl and chlorine corrected to 3 percent oxygen, dry basis, ppmv

C_m = total concentration of TOC or total HCl and chlorine in the vented gas stream, average of samples, dry basis, ppmv

$\%O_{2d}$ = concentration of oxygen measured in vented gas stream, dry basis, percent by volume

(ii) *Noncombustion devices.* If a control device other than a combustion device, and not in series with a combustion device, is used to comply with a TOC or total HCl and chlorine outlet concentration standard, the owner or operator must correct the actual concentration for supplemental gases using Equation 8 of this subpart.

$$C_a = C_m\left(\frac{V_s + V_a}{V_a}\right) \quad \text{(Eq. 8)}$$

Where:

C_a = corrected outlet TOC or total HCl and chlorine concentration, dry basis, ppmv

C_m = actual TOC or total HCl and chlorine concentration measured at control device outlet, dry basis, ppmv

V_a = total volumetric flow rate of affected streams vented to the control device

V_s = total volumetric flow rate of supplemental gases

(b) *Test methods and conditions.* When testing is conducted to measure emissions from an affected source, the test methods specified in paragraphs (b)(1) through (9) of this section shall be used. Compliance tests shall be performed under conditions specified in paragraphs (b)(10) and (11) of this section. Testing requirements for condensers are specified in paragraph (b)(12) of this section.

(1) Method 1 or 1A of appendix A of 40 CFR part 60 shall be used for sample and velocity traverses.

(2) Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60 shall be used for velocity and volumetric flow rates.

(3) Method 3 of appendix A of 40 CFR part 60 shall be used for gas analysis.

(4) Method 4 of appendix A of 40 CFR part 60 shall be used for stack gas moisture.

(5) Concentration measurements shall be adjusted to negate the dilution effects of introducing nonaffected gaseous streams into the vent streams prior to control or measurement. The following methods are specified for concentration measurements of organic compounds:

(i) Method 18 of appendix A of 40 CFR part 60 may be used to determine HAP concentration in any control device efficiency determination.

(ii) Method 25 of appendix A of 40 CFR part 60 may be used to determine total gaseous nonmethane organic concentration for control efficiency determinations in combustion devices.

(iii) Method 25A of appendix A of 40 CFR part 60 may be used to determine the HAP or TOC concentration for control device efficiency determinations under the conditions specified in Method 25 of appendix A of 40 CFR part 60 for direct measurement of an effluent with a flame ionization detector, or in demonstrating compliance with the 20 ppmv TOC outlet standard. If Method 25A of appendix A of 40 CFR part 60 is used to determine the concentration of TOC for the 20 ppmv standard, the instrument shall be calibrated on methane or the predominant HAP. If calibrating on the predominant HAP, the use of Method 25A of appendix A of 40 CFR part 60 shall comply with paragraphs (b)(5)(i)(A) through (C) of this section.

(A) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume.

(B) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(C) The span value of the analyzer must be less than 100 ppmv.

(6) The methods in either paragraph (b)(6)(i) or (ii) of this section shall be used to determine the concentration, in mg/dscm, of total HCl and chlorine. Concentration measurements shall be adjusted to negate the dilution effects of introducing nonaffected gaseous streams into the vent streams prior to control or measurement.

(i) Method 26 or 26A of 40 CFR part 60, appendix A.

(ii) Any other method if the method or data have been validated according to the applicable procedures of Method 301 of appendix A of this part.

(7) Method 5 of appendix A of 40 CFR part 60 shall be used to determine the concentration of particulate matter in exhaust gas streams from bag dumps and product dryers.

(8) Wastewater analysis shall be conducted in accordance with § 63.144(b)(5)(i) through (iii) of subpart G of this part.

(9) Method 22 of appendix A of 40 CFR part 60 shall be used to determine visible emissions from flares.

(10) *Testing conditions for continuous processes.* Testing of process vents on equipment operating as part of a continuous process shall consist of three one-hour runs. Gas stream volumetric flow rates shall be measured every 15 minutes during each 1-hour run. Organic HAP concentration shall be determined from samples collected in an integrated sample over the duration of each one-hour test run, or from grab samples collected simultaneously with the flow rate measurements (every 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate shall be adjusted proportionally to reflect variations in flow rate. For continuous gas streams, the emission rate used to determine compliance shall be the average emission rate of the three test runs.

(11) *Testing conditions for batch processes.* Except as provided in paragraph (b)(12) of this section for condensers, testing of emissions on equipment where the flow of gaseous emissions is intermittent (batch operations) shall be conducted at absolute peak-case conditions or hypothetical peak-case conditions, as specified in paragraphs (b)(11)(i) and (ii) of this section, respectively. Gas stream volumetric flow rates shall be measured at 15-minute intervals. Organic HAP, TOC, or HCl and chlorine concentration shall be determined from samples collected in an integrated sample over the duration of the test, or from grab samples collected simultaneously with the flow rate measurements (every 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate shall be adjusted proportionally to reflect variations in flow rate. In all cases, a site-specific test plan shall be submitted to the Administrator for approval prior to testing in accordance with § 63.7(c) of subpart A of this part. The test plan shall include the emissions profile described in paragraph (b)(11)(iii) of this section. The term "HAP mass loading" as used in paragraphs (b)(11)(i) through (iii) of this section refers to the class of HAP, either organic or HCl and chlorine, that the control device is intended to control.

(i) *Absolute peak-case.* If the most challenging conditions for the control device occur under maximum HAP load, the absolute peak-case conditions shall be characterized by the criteria presented in paragraph (b)(11)(i)(A) or (B) of this section. Otherwise, absolute peak-case conditions are defined by the conditions in paragraph (b)(11)(i)(C) of this section.

(A) The period in which the inlet to the control device will contain at least 50 percent of the maximum HAP mass load that may be vented to the control device over any 8-hour period. An emission profile as described in paragraph (b)(11)(iii)(A) of this section shall be used to identify the 8-hour period that includes the maximum projected HAP load.

(B) A 1-hour period of time in which the inlet to the control device will contain the highest hourly HAP mass loading rate that may be vented to the control device. An emission profile as described in paragraph (b)(11)(iii)(A) of this section shall be used to identify the 1-hour period of maximum HAP loading.

(C) The period of time when a condition other than the maximum HAP load is most challenging for the control device. These conditions include, but are not limited to the following:

(*1*) Periods when the streams contain the highest combined VOC and HAP hourly load, as described by the emission profiles in paragraph (b)(11)(iii) of this section; or

(*2*) Periods when the streams contain HAP constituents that approach the limits of solubility for scrubbing media; or

(*3*) Periods when the streams contain HAP constituents that approach the limits of adsorptivity for carbon adsorption systems.

(ii) *Hypothetical peak-case.* Hypothetical peak-case conditions are simulated test conditions that, at a minimum, contain the highest total average hourly HAP load of emissions that would be predicted to be vented to the control device from the emissions profile described in either paragraph (b)(11)(iii)(B) or (C) of this section.

(iii) *Emissions profile.* The owner or operator may choose to perform tests only during those periods of the peak-case episode(s) that the owner or operator selects to control as part of achieving the required emission reduction. The owner or operator shall develop an emission profile for the vent to the control device that describes the characteristics of the vent stream at the inlet to the control device under either absolute or hypothetical peak-case conditions. The emissions profile shall be developed based on the applicable procedures described in paragraphs (b)(11)(iii)(A) through (C) of this section, as required by paragraphs (b)(11)(i) and (ii) of this section.

(A) *Emissions profile by process.* The emissions profile must consider all emission episodes that could contribute to the vent stack for a period of time that is sufficient to include all processes venting to the stack and shall consider production scheduling. The profile shall describe the HAP load to the device that equals the highest sum of emissions from the episodes that can vent to the control device during the period of absolute peak-case conditions specified in paragraph (b)(11)(i)(A), (B), or (C) as appropriate. Emissions per episode shall be calculated using the procedures specified in paragraph (c)(2) of this section. When complying with paragraph (b)(1)(i)(B) of this section, emissions per episode shall be divided by the duration of the episode if the duration of the episode is longer than 1 hour.

(B) *Emission profile by equipment.* The emission profile must consist of emissions that meet or exceed the highest hourly HAP load that would be expected under actual processing conditions. The profile shall describe equipment configurations used to generate the emission events, volatility of materials processed in the equipment, and the rationale used to identify and characterize the emission events. The emissions may be based on using a compound more volatile than compounds actually used in the process(es), and the emissions may be generated from all equipment in the process(es) or only selected equipment.

(C) *Emission profile by capture and control device limitation.* The emission profile shall consider the capture and control system limitations and the highest hourly emissions that can be routed to the control device, based on maximum flow rate and concentrations possible because of limitations on conveyance and control equipment (e.g., fans, LEL alarms and safety bypasses).

(iv) *Test duration.* Three runs, at a minimum of 1 hour each, are required for performance testing. Each run must occur over the same absolute or hypothetical peak-case conditions, as defined in paragraph (b)(11)(i) or (ii) of this section.

(12) *Testing requirements for condensers.* For emission streams controlled using condensers, the owner or operator shall calculate the condenser outlet gas temperature that is needed to meet the required percent reduction.

(c) *Initial compliance with process vent provisions.* The owner or operator of an affected source shall demonstrate compliance with the process vent standards in § 63.1362(b) using the procedures described in paragraphs (c)(1) through (3) of this section.

(1) Compliance with the process vent standards in § 63.1362(b) shall be demonstrated in accordance with the provisions specified in paragraphs (c)(1)(i) through (viii) of this section.

(i) Initial compliance with the emission limit cutoffs in § 63.1362(b)(2)(i) and (b)(4)(i) is demonstrated when the uncontrolled organic HAP emissions from the sum of all process vents within a process are less than or equal to 0.15 Mg/yr. Uncontrolled HAP emissions shall be determined using the procedures described in paragraph (c)(2) of this section.

(ii) Initial compliance with the emission limit cutoffs in § 63.1362(b)(3)(i) and (b)(5)(i) is demonstrated when the uncontrolled HCl and Cl_2 emissions from the sum of all process vents within a process are less than or equal to 6.8 Mg/yr. Initial compliance with the emission limit cutoffs in § 63.1362(b)(5)(ii) and (iii) is demonstrated when the uncontrolled HCl and Cl_2 emissions are greater than or equal to 6.8 Mg/yr or greater than or equal to 191 Mg/yr, respectively. Uncontrolled emissions shall be determined using the procedures described in paragraph (c)(2) of this section.

(iii) Initial compliance with the organic HAP percent reduction requirements specified in § 63.1362(b)(2)(ii), (b)(2)(iii), and (b)(4)(ii) is demonstrated by determining controlled HAP emissions using the procedures described in paragraph (c)(3) of this section, determining uncontrolled HAP emissions using the procedures described in paragraph (c)(2) of this section, and calculating the applicable percent reduction.

(iv) Initial compliance with the HCl and Cl_2 percent reduction requirements specified in § 63.1362(b)(3)(ii), (b)(5)(ii), and (b)(5)(iii) is demonstrated by determining controlled emissions of HCl and Cl_2 using the procedures described in paragraph (c)(3) of this section, determining uncontrolled emissions of HCl and Cl_2 using the procedures described in paragraph (c)(2) of this section, and calculating the applicable percent reduction.

(v) Initial compliance with the outlet concentration limits in § 63.1362(b)(2)(iv)(A), (b)(3)(ii), (b)(4)(ii)(A), (b)(5)(ii), and (b)(5)(iii) is demonstrated when the outlet TOC concentration is 20 ppmv or less and the outlet HCl and chlorine concentration is 20 ppmv or less. The owner or operator shall demonstrate compliance by fulfilling the requirements in paragraph (a)(6) of this section. If an owner or operator elects to develop an emissions profile by process as described in paragraph (b)(11)(iii)(A) of this section, uncontrolled emissions shall be determined using the procedures in paragraph (c)(2) of this section.

(vi) Initial compliance with the alternative standard in § 63.1362(b)(6) is demonstrated by fulfilling the requirements in paragraph (a)(5) of this section.

(vii) Initial compliance when using a flare is demonstrated by fulfilling the requirements in paragraph (a)(3) of this section.

(viii) No initial compliance demonstration is required for control devices specified in § 63.1362(l).

(2) *Uncontrolled emissions.* The owner or operator referred to from paragraphs (c)(1)(i) through (v) of this section shall calculate uncontrolled emissions according to the procedures described in paragraph (c)(2)(i) or (ii) of this section, as appropriate.

(i) *Emission estimation procedures.* The owner or operator shall determine uncontrolled HAP emissions using emission measurements and/or calculations for each batch emission episode according to the engineering evaluation methodology in paragraphs (c)(2)(i)(A) through (H) of this section.

(A) Individual HAP partial pressures in multicomponent systems shall be determined in accordance with the methods specified in paragraphs (c)(2)(i)(A)*(1)* through *(3)* of this section. Chemical property data may be obtained from standard references.

(1) If the components are miscible in one another, use Raoult's law to calculate the partial pressures;

(2) If the solution is a dilute aqueous mixture, use Henry's law constants to calculate partial pressures;

(3) If Raoult's law or Henry's law are not appropriate or available, use any of the methods specified in paragraphs (c)(2)(i)(A)*(3)(i)* through *(iii)* of this section.

(i) Use experimentally obtained activity coefficients;

(ii) Use models such as the group-contribution models to predict activity coefficients;

(iii) Assume the components of the system behave independently and use the summation of all vapor pressures from the HAP as the total HAP partial pressure;

(B) *Charging or filling.* Emissions from vapor displacement due to transfer of material to a vessel shall be calculated using Equation 9 of this subpart:

$$E = \frac{(V)}{(R)(T)} \times \sum_{i=1}^{n} (P_i)(MW_i) \qquad \text{(Eq. 9)}$$

Where:

E = mass of HAP emitted
P_i = partial pressure of the individual HAP
V = volume of gas displaced from the vessel
R = ideal gas law constant
T = temperature of the vessel vapor space; absolute
MW_i = molecular weight of the individual HAP

(C) *Purging.* Emissions from purging shall be calculated using Equation 10 of this subpart, except that for purge flow rates greater than 100 scfm, the mole fraction of HAP will be assumed to be 25 percent of the saturated value.

$$E = \sum_{i=1}^{n} P_i MW_i \times \frac{(V)(t)}{(R)(T)} \times \frac{P_T}{P_T - \sum_{j=1}^{m} (P_j)} \qquad \text{(Eq. 10)}$$

Where:

E = mass of HAP emitted
V = purge flow rate at the temperature and pressure of the vessel vapor space
R = ideal gas law constant
T = temperature of the vessel vapor space; absolute
P_i = partial pressure of the individual HAP
P_j = partial pressure of individual condensable VOC compounds (including HAP)
P_T = pressure of the vessel vapor space
MW_i = molecular weight of the individual HAP
t = time of purge
n = number of HAP compounds in the emission stream
m = number of condensable VOC compounds (including HAP) in the emission stream

(D) *Heating.* Emissions caused by heating the contents of a vessel to a temperature less than the boiling point shall be calculated using the procedures in either paragraph (c)(2)(i)(D)*(1)*, *(2)*, or *(4)* of this section, as appropriate. If the contents of a vessel are heated to the boiling point, emissions while boiling are assumed to be zero if the owner or operator is complying with the provisions in paragraph (d)(2)(i)(C)*(3)* of this section.

(1) If the final temperature to which the vessel contents are heated is lower than 50 K below the boiling point of the HAP in the vessel, then emissions shall be calculated using Equations 11 through 14 of this subpart.

(i) The mass of HAP emitted per episode shall be calculated using Equation 11 of this subpart:

$$E = \frac{\frac{\sum_{i=1}^{n} (P_i)_{T1}}{Pa_1} + \frac{\sum_{i=1}^{n} (P_i)_{T2}}{Pa_2}}{2} \times \Delta\eta \times MW_{HAP} \qquad \text{(Eq. 11)}$$

Where:

E = mass of HAP vapor displaced from the vessel being heated
$(P_i)_{Tn}$ = partial pressure of each HAP in the vessel headspace at initial (n = 1) and final (n = 2) temperatures
Pa_1 = initial noncondensable gas pressure in the vessel, as calculated using Equation 13 of this subpart
Pa_2 = final noncondensable gas pressure in the vessel, as calculated using Equation 13 of this subpart
$\Delta\eta$ = number of moles of noncondensable gas displaced, as calculated using Equation 12 of this subpart
MW_{HAP} = The average molecular weight of HAP present in the vessel, as calculated using Equation 14 of this subpart:
n = number of HAP compounds in the displaced vapor

(ii) The moles of noncondensable gas displaced shall be calculated using Equation 12 of this subpart:

$$\Delta\eta = \frac{V}{R}\left|\left(\frac{Pa_1}{T_1}\right) - \left(\frac{Pa_2}{T_2}\right)\right| \qquad \text{(Eq. 12)}$$

where:

$\Delta\eta$ = number of moles of noncondensable gas displaced
V = volume of free space in the vessel
R = ideal gas law constant
Pa_1 = initial noncondensable gas pressure in the vessel, as calculated using Equation 13 of this subpart
Pa_2 = final noncondensable gas pressure in the vessel, as calculated using Equation 13 of this subpart
T_1 = initial temperature of vessel contents, absolute
T_2 = final temperature of vessel contents, absolute

(iii) The initial and final pressure of the noncondensable gas in the vessel shall be calculated according to Equation 13 of this subpart:

$$Pa_n = Pa_{atm} - \sum_{j=1}^{m} (P_j)_{Tn} \qquad \text{(Eq. 13)}$$

Where:

Pa_n = partial pressure of noncondensable gas in the vessel headspace at initial (n = 1) and final (n = 2) temperatures
P_{atm} = atmospheric pressure
$(P_j)_{Tn}$ = partial pressure of each condensable volatile organic compound (including HAP) in the vessel headspace at the initial temperature (n = 1) and final (n = 2) temperature

(iv) The average molecular weight of HAP in the displaced gas shall be calculated using Equation 14 of this subpart:

$$MW_{HAP} = \sum_{i=1}^{n} \frac{\left((P_i)_{T_1} + (P_i)_{T_2}\right) MW_i}{\sum_{i=1}^{n}\left((P_i)_{T_1} + (P_i)_{T_2}\right)} \quad \text{(Eq. 14)}$$

Where:

MW_{HAP} = average molecular weight of HAP in the displaced gas

$(P_i)_{Tn}$ = partial pressure of each HAP in the vessel headspace at the initial (T_1) and final (T_2) temperatures

MW_i = molecular weight of each HAP

n = number of HAP compounds in the emission stream

(*2*) If the vessel contents are heated to a temperature greater than 50 K below the boiling point, then emissions from the heating of a vessel shall be calculated as the sum of the emissions calculated in accordance with paragraphs (c)(2)(i)(D)(*2*)(*i*) and (*ii*) of this section.

(*i*) For the interval from the initial temperature to the temperature 50 K below the boiling point, emissions shall be calculated using Equation 11 of this subpart, where T_2 is the temperature 50 K below the boiling point.

(*ii*) For the interval from the temperature 50 K below the boiling point to the final temperature, emissions shall be calculated as the summation of emissions for each 5 K increment, where the emission for each increment shall be calculated using Equation 11 of this subpart. If the final temperature of the heatup is lower than 5 K below the boiling point, the final temperature for the last increment shall be the final temperature of the heatup, even if the last increment is less than 5 K. If the final temperature of the heatup is higher than 5 K below the boiling point, the final temperature for the last increment shall be the temperature 5 K below the boiling point, even if the last increment is less than 5 K.

(*3*) While boiling, the vessel must be operated with a properly operated process condenser. An initial demonstration that a process condenser is properly operated is required for vessels that operate process condensers without secondary condensers that are air pollution control devices. The owner or operator must either measure the condenser exhaust gas temperature and show it is less than the boiling point of the substance(s) in the vessel, or perform a material balance around the vessel and condenser to show that at least 99 percent of the material vaporized while boiling is condensed. Uncontrolled emissions are assumed to be zero under these conditions. The initial demonstration shall be conducted for all appropriate operating scenarios and documented in the Notification of Compliance Status report as specified in § 63.1368(f).

(*4*)(*i*) As an alternative to the procedures described in paragraphs (c)(2)(i)(D)(*1*) and (*2*) of this section, emissions caused by heating a vessel to any temperature less than the boiling point may be calculated using Equation 15 of this subpart.

$$E = MW_{HAP} \times \left(N_{avg} \times \ln\left(\frac{P_T - \sum_{j=1}^{m}(P_{j,1})}{P_T - \sum_{j=1}^{m}(P_{j,2})} \right) - \left(n_{HAP,2} - n_{HAP,1}\right) \right) \quad \text{(Eq. 15)}$$

Where:

E = mass of HAP vapor displaced from the vessel being heated

N_{avg} = average gas space molar volume during the heating process, as calculated using Equation 16 of this subpart

P_T = total pressure in the vessel

$P_{i,1}$ = partial pressure of the individual HAP compounds at T_1

$P_{i,2}$ = partial pressure of the individual HAP compounds at T_2

MW_{HAP} = average molecular weight of the HAP compounds, as calculated using Equation 14 of this subpart

$n_{HAP,1}$ = number of moles of total HAP in the vessel headspace at T_1

$n_{HAP,2}$ = number of moles of total HAP in the vessel headspace at T_2

m = number of condensable VOC compounds (including HAP) in the emission stream

(*ii*) The average gas space molar volume during the heating process is calculated using Equation 16 of this subpart.

$$N_{avg} = \frac{VP_T}{2R}\left(\frac{1}{T_1} + \frac{1}{T_2}\right) \quad \text{(Eq. 16)}$$

Where:

N_{avg} = average gas space molar volume during the heating process

V = volume of free space in vessel

P_T = total pressure in the vessel

R = ideal gas law constant

T_1 = initial temperature of the vessel contents, absolute

T_2 = final temperature of the vessel contents, absolute

(*iii*) The difference in the number of moles of total HAP in the vessel headspace between the initial and final temperatures is calculated using Equation 17 of this subpart.

$$\left(n_{HAP,2} - n_{HAP,1}\right) = \frac{V}{(R)(T_2)}\sum_{i=1}^{n} P_{i,2} - \frac{V}{(R)(T_1)}\sum_{i=1}^{n} P_{i,1} \quad \text{(Eq. 17)}$$

Where:

$n_{HAP,2}$ = number of moles of total HAP in the vessel headspace at T_2

$_{HAP,1}$ = number of moles of total HAP in the vessel headspace at T_1

V = volume of free space in vessel

R = ideal gas law constant

T_1 = initial temperature of the vessel contents, absolute

T_2 = final temperature of the vessel contents, absolute

$P_{i,1}$ = partial pressure of the individual HAP compounds at T_1

$P_{i,2}$=partial pressure of the individual HAP compounds at T_2

n=number of HAP compounds in the emission stream

(E) *Depressurization.* Emissions from depressurization shall be calculated using the procedures in paragraphs (c)(2)(i)(E)(*1*) through (*5*) of this section. Alternatively, the owner or operator may elect to calculate emissions from depressurization using the procedures in paragraph (c)(2)(i)(E)(*6*) of this section.

(*1*) The moles of HAP vapor initially in the vessel are calculated using Equation 18 of this subpart:

$$n_{HAP} = \frac{V}{RT} \times \sum_{i=1}^{n}(P_i) \quad \text{(Eq. 18)}$$

Where:

n_{HAP}=moles of HAP vapor in the vessel

P_i=partial pressure of each HAP in the vessel vapor space

V=free volume in the vessel being depressurized

R=ideal gas law constant

T=absolute temperature in vessel

n=number of HAP compounds in the emission stream

(*2*) The initial and final moles of noncondensable gas present in the vessel are calculated using Equations 19 and 20 of this subpart:

$$n_1 = \frac{VP_{nc_1}}{RT} \quad \text{(Eq. 19)}$$

$$n_2 = \frac{VP_{nc_2}}{RT} \quad \text{(Eq. 20)}$$

Where:

n_1=initial number of moles of noncondensable gas in the vessel

n_2=final number of moles of noncondensable gas in the vessel

V=free volume in the vessel being depressurized

P_{nc1}=initial partial pressure of the noncondensable gas, as calculated using Equation 21 of this subpart

P_{nc2}=final partial pressure of the noncondensable gas, as calculated using Equation 22 of this subpart

R=ideal gas law constant

T=temperature, absolute

(*3*) The initial and final partial pressures of the noncondensable gas in the vessel are determined using Equations 21 and 22 of this subpart.

$$P_{nc1} = P_1 - \sum_{j=1}^{m}(P_j^*)(X_j) \quad \text{(Eq. 21)}$$

$$P_{nc2} = P_2 - \sum_{j=1}^{m}(P_j^*)(x_j) \quad \text{(Eq. 22)}$$

where:

P_{nc1}=initial partial pressure of the noncondensable gas

P_{nc2}=final partial pressure of the noncondensable gas

P_1 = initial vessel pressure

P_2=final vessel pressure

P_j^*=vapor pressure of each condensable VOC (including HAP) in the emission stream

X_j=mole fraction of each condensable VOC (including HAP) in the emission stream

m=number of condensable VOC compounds (including HAP) in the emission stream

(*4*) The moles of HAP emitted during the depressurization are calculated by taking an approximation of the average ratio of moles of HAP to moles of noncondensable and multiplying by the total moles of noncondensables released during the depressurization, using Equation 23 of this subpart:

Where:

$n_{HAP,e}$=moles of HAP emitted

$$n_{HAP,e} = \frac{\left(\frac{n_{HAP,1}}{n_1} + \frac{n_{HAP,2}}{n_2}\right)}{2}\left[n_1 - n_2\right] \quad \text{(Eq. 23)}$$

$n_{HAP,1}$=moles of HAP vapor in vessel at the initial pressure, as calculated using Equation 18 of this subpart

$n_{HAP,2}$=moles of HAP vapor in vessel at the final pressure, as calculated using Equation 18 of this subpart

n_1=initial number of moles of noncondensable gas in the vessel, as calculated using Equation 19 of this subpart

n_2=final number of moles of noncondensable gas in the vessel, as calculated using Equation 19 of this subpart

(*5*) Use Equation 24 of this subpart to calculate the mass of HAP emitted:

$$E = n_{HAP,e} * MW_{HAP} \quad \text{(Eq. 24)}$$

Where:

E=mass of HAP emitted

$n_{HAP,e}$=moles of HAP emitted, as calculated using Equation 23 of this subpart

MW_{HAP}=average molecular weight of the HAP as calculated using Equation 14 of this subpart

(*6*) As an alternative to the procedures in paragraphs (c)(2)(i)(E)(1) through (5) of this section, emissions from depressurization may be calculated using Equation 25 of this subpart:

$$E = \frac{V}{(R)(T)} \times \ln\left(\frac{P_1 - \sum_{j=1}^{m}(P_j)}{P_2 - \sum_{j=1}^{m}(P_j)}\right) \times \sum_{i=1}^{n}(P_i)(MW_i) \quad \text{(Eq. 25)}$$

where:

V=free volume in vessel being depressurized

R=ideal gas law constant

T=temperature of the vessel, absolute

P_1=initial pressure in the vessel

P_2=final pressure in the vessel

P_i=partial pressure of the individual HAP compounds

P_j=partial pressure of individual condensable VOC compounds (including HAP)
MW_i=molecular weight of the individual HAP compounds
n=number of HAP compounds in the emission stream
m=number of condensable VOC compounds (including HAP) in the emission stream

$$E = \frac{(MWs)(La)(t)}{MW_{nc}}\left(\frac{\sum_{i=1}^{n} P_i}{P_T - \sum_{j=1}^{m} P_j}\right) \quad \text{(Eq. 26)}$$

Where:
E=mass of HAP emitted
P_T=absolute pressure of receiving vessel or ejector outlet conditions, if there is no receiver
P_i=partial pressure of individual HAP at the receiver temperature or the ejector outlet conditions
P_j=partial pressure of individual condensable VOC compounds (including HAP) at the receiver temperature or the ejector outlet conditions
L_a=total air leak rate in the system, mass/time
MW_{nc} = molecular weight of noncondensable gas
t=time of vacuum operation
MW_{HAP}=average molecular weight of HAP in the emission stream, as calculated using Equation 14 of this subpart, with HAP partial pressures calculated at the temperature of the receiver or ejector outlet, as appropriate
n=number of HAP components in the emission stream
m=number of condensable VOC compounds (including HAP) in the emission stream

(G) *Gas evolution.* Emissions from gas evolution shall be calculated using Equation 10 of this subpart with V calculated using Equation 27 of this subpart:

$$V = \frac{(W_g)(R)(T)}{(P_T)(MW_g)} \quad \text{(Eq. 27)}$$

Where:
V=volumetric flow rate of gas evolution
W_g=mass flow rate of gas evolution
R=ideal gas law constant
T=temperature at the exit, absolute
P_T=vessel pressure
MW_g=molecular weight of the evolved gas

(H) *Air drying.* Use Equation 28 of this subpart to calculate emissions from air drying:

$$E = B \times \left(\frac{PS_1}{100 - PS_1} - \frac{PS_2}{100 - PS_2}\right) \quad \text{(Eq. 28)}$$

Where:
E=mass of HAP emitted
B=mass of dry solids
PS_1=HAP in material entering dryer, weight percent
PS_2=HAP in material exiting dryer, weight percent.

(ii) *Engineering assessments.* The owner or operator shall conduct an engineering assessment to determine uncontrolled HAP emissions for each emission episode that is not due to vapor displacement, purging, heating, depressurization, vacuum systems, gas evolution, or air drying. For a given emission episode caused by any of these seven types of activities, the owner or operator also may request approval to determine uncontrolled HAP emissions based on an engineering assessment. All data, assumptions, and procedures used in the engineering assessment shall be documented in the Precompliance plan in accordance with § 63.1367(b). An engineering assessment includes, but is not limited to, the information and procedures described in paragraphs (c)(2)(ii)(A) through (D) of this section:

(A) Test results, provided the tests are representative of current operating practices at the process unit. If test data show a greater than 20 percent discrepancy between the test value and the estimated value, the owner or operator may estimate emissions based on the test data, and the results of the engineering assessment shall be included in the Notification of Compliance Status report.

(B) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(C) Maximum flow rate, HAP emission rate, concentration, or other relevant parameter specified or implied within a permit limit applicable to the process vent.

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*1*) Use of material balances based on process stoichiometry to estimate maximum organic HAP concentrations;

(*2*) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities; and

(*3*) Estimation of HAP concentrations based on saturation conditions.

(3) *Controlled emissions.* Except for condensers, the owner or operator shall determine controlled emissions using the procedures in either paragraph (c)(3)(i) or (ii) of this section, as applicable. For condensers, controlled emissions shall be calculated using the emission estimation equations described in paragraph (c)(3)(iii) of this section. The owner or operator is not required to calculate controlled emissions from devices described in paragraph (a)(4) of this section or from flares for which compliance is demonstrated in accordance with paragraph (a)(3) of this section. If the owner or operator is complying with an outlet concentration standard and the control device uses supplemental gases, the outlet concentrations shall be corrected in accordance with the procedures described in paragraph (a)(7) of this section.

(i) *Small control devices, except condensers.* Controlled emissions for each process vent that is controlled using a small control device, except for a condenser, shall be determined by using the design evaluation described in paragraph (c)(3)(i)(A) of this section, or by conducting a performance test in accordance with paragraph (c)(3)(ii) of this section.

(A) *Design evaluation.* The design evaluation shall include documentation demonstrating that the control device being used achieves the required control efficiency under absolute or hypothetical peak-case conditions, as determined from the emission profile described in paragraph (b)(11)(iii) of this section. The control efficiency determined from this design evaluation shall be applied to uncontrolled emissions to estimate controlled emissions. The documentation must be conducted in accordance with the provisions in paragraph (a)(1) of this section. The design evaluation shall also include the value(s) and basis for the parameter(s) monitored under § 63.1366.

(B) Whenever a small control device becomes a large control device, the owner or operator must comply with the provisions in paragraph (c)(3)(ii) of this section and submit the test report in the next Periodic report.

(ii) *Large control devices, except condensers.* Controlled emissions for each process vent that is controlled using a large control device, except for a condenser, shall be determined by applying the control efficiency of the large control device to the estimated uncontrolled emissions. The control efficiency shall be determined by conducting a performance test on the control device as described in paragraphs (c)(3)(ii)(A) through (C) of this section, or by using the results of a previous performance test as described in paragraph (c)(3)(ii)(D) of this section. If the control device is intended to control only HCl and chlorine, the owner or operator may assume the control efficiency of organic HAP is 0 percent. If the control device is intended to control only organic HAP, the owner or operator may assume the control efficiency for HCl and chlorine is 0 percent.

(A) Except for control devices that are intended to meet outlet TOC or HCl and chlorine concentrations of 20 ppmv, the performance test shall be conducted by performing emission testing on the inlet and outlet of the control device following the test methods and procedures of paragraph (b) of this section. For control devices that meet outlet TOC or HCl and chlorine concentrations of 20 ppmv, the performance testing shall be conducted by performing emission testing on the outlet of the control device following the test methods and procedures of paragraph (b) of this section. Concentrations shall be calculated from the data obtained through emission testing according to the procedures in paragraph (a)(2) of this section.

(B) Performance testing shall be conducted under absolute or hypothetical peak-case conditions, as defined in paragraphs (b)(11)(i) and (ii) of this section.

(C) The owner or operator may elect to conduct more than one performance test on the control device for the purpose of establishing more than one operating condition at which the control device achieves the required control efficiency.

(D) The owner or operator is not required to conduct a performance test for any control device for which a previous performance test was conducted, provided the test was conducted using the same procedures specified in paragraphs (b)(1) through (11) of this section over conditions typical of the absolute or hypothetical peak-case, as defined in paragraphs (b)(11)(i) and (ii) of this section. The results of the previous performance test shall be used to demonstrate compliance.

(iii) *Condensers.* The owner or operator using a condenser as a control device shall determine controlled emissions using exhaust gas temperature measurements and calculations for each batch emission episode according to the engineering methodology in paragraphs (c)(3)(iii)(A) through (G) of this section. Individual HAP partial pressures shall be calculated as specified in paragraph (c)(2)(i) of this section.

(A) Emissions from vapor displacement due to transfer of material to a vessel shall be calculated using Equation 9 of this subpart with T set equal to the temperature of the receiver and the HAP partial pressures determined at the temperature of the receiver.

(B) Emissions from purging shall be calculated using Equation 10 of this subpart with T set equal to the temperature of the receiver and the HAP partial pressures determined at the temperature of the receiver.

(C) Emissions from heating shall be calculated using Equation 29 of this subpart. In Equation 29 of this subpart, $\Delta\eta$ is equal to the number of moles of noncondensable displaced from the vessel, as calculated using Equation 12 of this subpart. In Equation 29 of this subpart, the HAP average molecular weight shall be calculated using Equation 14 with the HAP partial pressures determined at the temperature of the receiver.

$$E = \Delta\eta \times \frac{\sum_{i=1}^{n} P_i}{P_T - \sum_{j=1}^{m} P_j} \times MW_{HAP} \quad \text{(Eq. 29)}$$

Where:
E=mass of HAP emitted
$\Delta\eta$=moles of noncondensable gas displaced
P_T=pressure in the receiver
P_i=partial pressure of the individual HAP at the receiver temperature
P_j=partial pressure of the individual condensable VOC (including HAP) at the receiver temperature
n=number of HAP compounds in the emission stream
MW_{HAP}=the average molecular weight of HAP in vapor exiting the receiver, as calculated using Equation 14 of this subpart
m=number of condensable VOC (including HAP) in the emission stream

(D)(*1*) Emissions from depressurization shall be calculated using Equation 30 of this subpart.

$$E = (V_{nc1} - V_{nc2}) \times \frac{\sum_{i=1}^{n} (P_i)}{P_T - \sum_{j=1}^{n} (P_j)} \times \frac{P_T}{RT} \times MW_{HAP} \qquad \text{(Eq. 30)}$$

Where:

E=mass of HAP vapor emitted

V_{nc1}=initial volume of noncondensable in the vessel, corrected to the final pressure, as calculated using Equation 31 of this subpart

V_{nc2}=final volume of noncondensable in the vessel, as calculated using Equation 32 of this subpart

P_i=partial pressure of each individual HAP at the receiver temperature

P_j=partial pressure of each condensable VOC (including HAP) at the receiver temperature

P_T=receiver pressure

T=temperature of the receiver, absolute

R=ideal gas law constant

MW_{HAP}=the average molecular weight of HAP calculated using Equation 14 of this subpart with partial pressures determined at the receiver temperature

n=number of HAP compounds in the emission stream

m=number of condensable VOC (including HAP) in the emission stream

(2) The initial and final volumes of noncondensable gas present in the vessel, adjusted to the pressure of the receiver, are calculated using Equations 31 and 32 of this subpart.

$$V_{nc1} = \frac{VP_{nc_1}}{P_T} \qquad \text{(Eq. 31)}$$

$$V_{nc2} = \frac{VP_{nc_2}}{P_T} \qquad \text{(Eq. 32)}$$

Where:

V_{nc1}=initial volume of noncondensable gas in the vessel

V_{nc2}=final volume of noncondensable gas in the vessel

V=free volume in the vessel being depressurized

P_{nc1}=initial partial pressure of the noncondensable gas, as calculated using Equation 33 of this subpart

P_{nc2}=final partial pressure of the noncondensable gas, as calculated using Equation 34 of this subpart

P_T=pressure of the receiver

(3) Initial and final partial pressures of the noncondensable gas in the vessel are determined using Equations 33 and 34 of this subpart.

$$P_{nc1} = P_1 - \sum_{j=1}^{m} P_j \qquad \text{(Eq. 33)}$$

$$P_{nc2} = P_2 - \sum_{j=1}^{m} P_j \qquad \text{(Eq. 34)}$$

Where:

P_{nc1}=initial partial pressure of the noncondensable gas in the vessel

P_{nc2}=final partial pressure of the noncondensable gas in the vessel

P_1=initial vessel pressure

P_2=final vessel pressure

P_j=partial pressure of each condensable VOC (including HAP) in the vessel

m=number of condensable VOC (including HAP) in the emission stream

(E) Emissions from vacuum systems shall be calculated using Equation 26 of this subpart.

(F) Emissions from gas evolution shall be calculated using Equation 8 with V calculated using Equation 27 of this subpart, T set equal to the receiver temperature, and the HAP partial pressures determined at the receiver temperature. The term for time, t, in Equation 10 of this subpart is not needed for the purposes of this calculation.

(G) Emissions from air drying shall be calculated using Equation 9 of this subpart with V equal to the air flow rate and P_i determined at the receiver temperature.

(d) *Initial compliance with storage vessel provisions.* The owner or operator of an existing or new affected source shall demonstrate initial compliance with the storage vessel standards in § 63.1362(c)(2) through (4) by fulfilling the requirements in either paragraph (d)(1), (2), (3), (4), (5), or (6) of this section, as applicable. The owner or operator shall demonstrate initial compliance with the planned routine maintenance provision in § 63.1362(c)(5) by fulfilling the requirements in paragraph (d)(7) of this section.

(1) *Percent reduction requirement for control devices.* If the owner or operator equips a Group 1 storage vessel with a closed vent system and control device, the owner or operator shall demonstrate initial compliance with the percent reduction requirement of § 63.1362(c)(2)(iv)(A) or (c)(3) either by calculating the efficiency of the control device using performance test data as specified in paragraph (d)(1)(i) of this section, or by preparing a design evaluation as specified in paragraph (d)(1)(ii) of this section.

(i) *Performance test option.* If the owner or operator elects to demonstrate initial compliance based on performance test data, the efficiency of the control device shall be calculated as specified in paragraphs (d)(1)(i)(A) through (D) of this section.

(A) At the reasonably expected maximum filling rate, Equations 35 and 36 of this subpart shall be used to calculate the mass rate of total organic HAP at the inlet and outlet of the control device.

$$E_i = K_2 \left(\sum_{j=1}^{n} C_{ij} M_{ij} \right) Q_i \qquad \text{(Eq. 35)}$$

$$E_o = K_2 \left(\sum_{j=1}^{n} C_{oj} M_{oj} \right) Q_o \qquad \text{(Eq. 36)}$$

Where:

C_{ij}, C_{oj}=concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, ppmv

E_i, E_o=mass rate of total organic HAP at the inlet and outlet of the control device, respectively, dry basis, kg/hr

M_{ij}, M_{oj}=molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, g/gmole

Q_i, Q_o=flow rate of gas stream at the inlet and outlet of the control device, respectively, dscmm

K_2=constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature is 20 °C

(B) The percent reduction in total organic HAP shall be calculated using Equation 37 of this subpart:

$$R = \frac{E_i - E_o}{E_i}(100) \qquad \text{(Eq. 37)}$$

Where:

R=control efficiency of control device, percent

E_i=mass rate of total organic HAP at the inlet to the control device as calculated under paragraph (d)(l)(i)(A) of this section, kilograms organic HAP per hour

E_o=mass rate of total organic HAP at the outlet of the control device, as calculated under paragraph (d)(1)(i)(A) of this section, kilograms organic HAP per hour

(C) A performance test is not required to be conducted if the control device used to comply with § 63.1362(c) (storage tank provisions) is also used to comply with § 63.1362(b) (process vent provisions), provided compliance with § 63.1362(b) is demonstrated in accordance with paragraph (c) of this section and the demonstrated percent reduction is equal to or greater than 95 percent.

(D) A performance test is not required for any control device for which a previous test was conducted, provided the test was conducted using the same procedures specified in paragraph (b) of this section.

(ii) *Design evaluation option.* If the owner or operator elects to demonstrate initial compliance by conducting a design evaluation, the owner or operator shall prepare documentation in accordance with the design evaluation provisions in paragraph (a)(1) of this section, as applicable. The design evaluation shall demonstrate that the control device being used achieves the required control efficiency when the storage vessel is filled at the reasonably expected maximum filling rate.

(2) *Outlet concentration requirement for control devices.* If the owner or operator equips a Group 1 storage vessel with a closed vent system and control device, the owner or operator shall demonstrate initial compliance with the outlet concentration requirements of § 63.1362(c)(2)(iv)(B) or (c)(3) by fulfilling the requirements of paragraph (a)(6) of this section.

(3) *Floating roof.* If the owner or operator equips a Group 1 storage vessel with a floating roof to comply with the provisions in § 63.1362(c)(2) or (c)(3), the owner or operator shall demonstrate initial compliance by complying with the procedures described in paragraphs (d)(3)(i) and (ii) of this section.

(i) Comply with § 63.119(b), (c), or (d) of subpart G of this part, as applicable, with the differences specified in § 63.1362(d)(2)(i) through (iii).

(ii) Comply with the procedures described in § 63.120(a), (b), or (c) of subpart G of this part, as applicable, with the differences specified in § 63.1362(d)(2)(i), (iv), and (v).

(4) *Flares.* If the owner or operator controls the emissions from a Group 1 storage vessel with a flare, initial compliance is demonstrated by fulfilling the requirements in paragraph (a)(3) of this section.

(5) *Exemptions from initial compliance.* No initial compliance demonstration is required for control devices specified in paragraph (a)(4) of this section.

(6) *Initial compliance with alternative standard.* If the owner or operator equips a Group 1 storage vessel with a closed-vent system and control device, the owner or operator shall demonstrate initial compliance with the alternative standard in § 63.1362(c)(4) by fulfilling the requirements of paragraph (a)(5) of this section.

(7) *Planned routine maintenance.* The owner or operator shall demonstrate initial compliance with the planned routine maintenance provisions of § 63.1362(c)(5) by including the anticipated periods of planned routine maintenance for the first reporting period in the Notification of Compliance Status report as specified in § 63.1368(f).

(e) *Initial compliance with wastewater provisions.* The owner or operator shall demonstrate initial compliance with the wastewater requirements by complying with the applicable provisions in § 63.145 of subpart G of this part, except that the owner or operator need not comply with the requirement to determine visible emissions that is specified in § 63.145(j)(1) of subpart G of this part, and references to compounds in Table 8 of subpart G of this part are not applicable for the purposes of this subpart.

(f) *Initial compliance with the bag dump and product dryer provisions.* Compliance with the particulate matter concentration limits specified in § 63.1362(e) is demonstrated when the concentration of particulate matter is less than 0.01 gr/dscf, as measured using the method described in paragraph (b)(7) of this section.

(g) *Initial compliance with the pollution prevention alternative standard.* The owner or operator shall demonstrate initial compliance with § 63.1362(h)(2) and (3) for a PAI process unit by preparing the demonstration summary in accordance with paragraph (g)(1) of this section and by calculating baseline and target annual HAP and VOC factors in accordance with paragraphs (g)(2) and (3) of this section. To demonstrate initial compliance with § 63.1362(h)(3), the owner or operator must also comply with the procedures for add-on control devices that are specified in paragraph (g)(4) of this section.

(1) *Demonstration summary.* The owner or operator shall prepare a pollution prevention demonstration summary that shall contain, at a minimum, the information in paragraphs (g)(1)(i) through (iii) of this section. The demonstration summary shall be included in the Precompliance report as specified in § 63.1368(e)(4).

(i) Descriptions of the methodologies and forms used to measure and record consumption of HAP and VOC compounds.

(ii) Descriptions of the methodologies and forms used to measure and record production of the product(s).

(iii) Supporting documentation for the descriptions provided in accordance with paragraphs (g)(1)(i) and (ii) of this section including, but not limited to, operator log sheets and copies of daily, monthly, and annual inventories of materials and products. The owner or operator must show how this documentation will be used to calculate the annual factors required in § 63.1366(f)(1).

(2) *Baseline factors.* The baseline HAP and VOC factors shall be calculated by dividing the consumption of total HAP and total VOC by the production rate, per process, for the first 3-year period in which the process was operational, beginning no earlier than the period consisting of the 1987 through 1989 calendar years. Alternatively, for a process that has been operational for less than 3 years, but more than 1 year, the baseline factors shall be established for the time period from startup of the process until the present.

(3) *Target annual factors.* The owner or operator must calculate target annual factors in accordance with either paragraph (g)(3)(i) or (ii) of this section.

(i) To demonstrate initial compliance with § 63.1362(h)(2), the target annual HAP factor must be equal to or less than 15 percent of the baseline HAP factor. For each reduction in a HAP that is also a VOC, the target annual VOC factor must be lower than the baseline VOC factor by an equivalent amount on a mass basis. For each reduction in a HAP that is not a VOC, the target annual factor must be equal to or less than the baseline VOC factor.

(ii) To demonstrate initial compliance with § 63.1362(h)(3)(i), the target annual HAP and VOC factors must be calculated as specified in paragraph (g)(3)(i) of this section, except that when "15 percent" is referred to in paragraph (g)(3)(i) of this section, "50 percent" shall apply for the purposes of this paragraph.

(4) *Requirements for add-on control devices.* Initial compliance with the requirements for add-on control devices in § 63.1362(h)(3)(ii) is demonstrated when the requirements in paragraphs (g)(4)(i) through (iii) of this section are met.

(i) The yearly reductions associated with add-on controls that meet the criteria of § 63.1362(h)(3)(ii)(A) through (D), must be equal to or greater than the amounts calculated using Equations 38 and 39 of this subpart:-

$$HAP_{reduced} = (HF_{base})(0.85 - R_{P2})(M_{prod}) \quad \text{(Eq. 38)}$$

$$VOC_{reduced} = (VF_{base} - VF_{P2} - VF_{annual}) \times M_{prod} \quad \text{(Eq. 39)}$$

Where:

$HAP_{reduced}$ = the annual HAP emissions reduction required by add-on controls, kg/yr

HF_{base} = the baseline HAP factor, kg HAP consumed/kg product

R_{P2} = the fractional reduction in the annual HAP factor achieved using pollution prevention where R_{P2} is ≥0.5

$VOC_{reduced}$ = required VOC emission reduction from add-on controls, kg/yr

VF_{base} = baseline VOC factor, kg VOC emitted/kg production

VF_{P2} = reduction in VOC factor achieved by pollution prevention, kg VOC emitted/kg production

VF_{annual} = target annual VOC factor, kg VOC emitted/kg production

M_{prod} = production rate, kg/yr

(ii) Demonstration that the criteria in § 63.1362(i)(3)(ii)(A) through (D) are met shall be accomplished through a description of the control device and of the material streams entering and exiting the control device.

(iii) The annual reduction achieved by the add-on control shall be quantified using the methods described in paragraph (c) of this section.

(h) *Compliance with emissions averaging provisions.* An owner or operator shall demonstrate compliance with the emissions averaging provisions of § 63.1362(h) by fulfilling the requirements of paragraphs (h)(1) through (6) of this section.

(1) The owner or operator shall develop and submit for approval an Emissions Averaging Plan containing all the information required in § 63.1367(d). The Emissions Averaging Plan shall be submitted no later than 18 months prior to the compliance date of the standard. The Administrator shall determine within 120 calendar days whether the Emissions Averaging Plan submitted by sources using emissions averaging presents sufficient information. The Administrator shall either approve the Emissions Averaging Plan, request changes, or request that the owner or operator submit additional information. Once the Administrator receives sufficient information, the Administrator shall approve, disapprove, or request changes to the plan within 120 days. If the Emissions Averaging Plan is disapproved, the owner or operator must still be in compliance with the standard by the compliance date.

(2) For all points included in an emissions average, the owner or operator shall comply with the procedures that are specified in paragraphs (h)(2)(i) through (v) of this section.

(i) Calculate and record monthly debits for all Group 1 emission points that are controlled to a level less stringent than the standard for those emission points. Equations in paragraph (h)(5) of this section shall be used to calculate debits.

(ii) Calculate and record monthly credits for all Group 1 and Group 2 emission points that are overcontrolled to compensate for the debits. Equations in paragraph (h)(6) of this section shall be used to calculate credits. All process vent, storage vessel, and wastewater emission points except those specified in § 63.1362(h)(1) through (6) may be included in the credit calculation.

(iii) Demonstrate that annual credits calculated according to paragraph (h)(6) of this section are greater than or equal to debits calculated according to paragraph (h)(5) of this section for the same annual compliance period. The initial demonstration in the Emissions Averaging Plan or operating permit application that credit-generating emission points will be capable of generating sufficient credits to offset the debit-generating emission points shall be made under representative operating conditions. After the compliance date, actual operating data shall be used for all debit and credit calculations.

(iv) Demonstrate that debits calculated for a quarterly (3-month) period according to paragraph (h)(5) of this section are not more than 1.30 times the credits for the same period calculated according to paragraph (h)(6) of this section. Compliance for the quarter shall be determined based on the ratio of credits and debits from that quarter, with 30 percent more debits than credits allowed on a quarterly basis.

(v) Record and report quarterly and annual credits and debits as required in §§ 63.1367(d) and 63.1368(d).

(3) Credits and debits shall not include emissions during periods of malfunction. Credits and debits shall not include periods of startup and shutdown for continuous processes.

(4) During periods of monitoring excursions, credits and debits shall be adjusted as specified in paragraphs (h)(4)(i) through (iii) of this section.

(i) No credits shall be assigned to the credit-generating emission point.

(ii) Maximum debits shall be assigned to the debit-generating emission point.

(iii) The owner or operator may demonstrate to the Administrator that full or partial credits or debits should be assigned using the procedures in § 63.150(l) of subpart G of this part.

(5) Debits are generated by the difference between the actual emissions from a Group 1 emission point that is uncontrolled or controlled to a level less stringent than the applicable standard and the emissions allowed for the Group 1 emission point. Debits shall be calculated in accordance with the procedures specified in paragraphs (h)(5)(i) through (iv) of this section.

(i) Source-wide debits shall be calculated using Equation 40 of this subpart.

Debits and all terms of Equation 40 of this subpart are in units of Mg/month Where:

$$\text{Debits} = \sum_{i=1}^{n}\left[EPV_{iA} - (0.10)(EPV_{iU})\right] + \sum_{i=1}^{n}\left[ES_{iA} - (0.05)(ES_{iU})\right] + \sum_{i=1}^{n}\left[EWW_{iA} - (EWW_{iC})\right] \quad \text{(Eq. 40)}$$

EPV_{iU} = uncontrolled emissions from process i calculated according to the procedures specified in paragraph (h)(5)(ii) of this section

EPV_{iA} = actual emissions from each Group 1 process i that is uncontrolled or is controlled to a level less stringent than the applicable standard. EPV_{iA} is calculated using the procedures in paragraph (h)(5)(ii) of this section

ES_{iU} = uncontrolled emissions from storage vessel i calculated according to the procedures specified in paragraph (h)(5)(iii) of this section

ES_{iA} = actual emissions from each Group 1 storage vessel i that is uncontrolled or is controlled to a level less stringent than the applicable standard. ES_{iA} is calculated using the procedures in paragraph (h)(5)(iii) of this section

EWW_{iC} = emissions from each Group 1 wastewater stream i if the standard had been applied to the uncontrolled emissions. EWW_{iC} is calculated using the procedures in paragraph (h)(5)(iv) of this section

EWW_{iA} = actual emissions from each Group 1 wastewater stream i that is uncontrolled or is controlled to a level less stringent than the applicable standard. EWW_{iA} is calculated using the procedures in paragraph (h)(5)(iv) of this section

n = the number of emission points being included in the emissions average; the value of n is not necessarily the same for process vents, storage tanks, and wastewater

(ii) Emissions from process vents shall be calculated in accordance with the procedures specified in paragraphs (h)(5)(ii)(A) through (C) of this section.

(A) Except as provided in paragraph (h)(5)(ii)(C) of this section, uncontrolled emissions for process vents shall be calculated using the procedures that are specified in paragraph (c)(2) of this section.

(B) Except as provided in paragraph (h)(5)(ii)(C) of this section, actual emissions for process vents shall be calculated using the procedures specified in paragraphs (c)(2) and (c)(3) of this section, as applicable.

(C) As an alternative to the procedures described in paragraphs (h)(5)(ii)(A) and (B) of this section, for continuous processes, uncontrolled and actual emissions may be calculated by the procedures described in § 63.150(g)(2) of subpart G of this part. For purposes of complying with this paragraph, a 90 percent reduction shall apply instead of the 98 percent reduction in § 63.150(g)(2)(iii) of subpart G of this part, and the term "process condenser" shall apply instead of the term "recovery device" in § 63.150(g)(2) for the purposes of this subpart.

(iii) Uncontrolled emissions from storage vessels shall be calculated in accordance with the procedures described in paragraph (d)(1) of this section. Actual emissions from storage vessels shall be calculated using the procedures specified in § 63.150(g)(3)(ii), (iii), or (iv) of subpart G of this subpart, as appropriate, except that when § 63.150(g)(3)(ii)(B) refers to the procedures in § 63.120(d) for determining percent reduction for a control device, § 63.1365(d)(2) or (3) shall apply for the purposes of this subpart.

(iv) Emissions from wastewater shall be calculated using the procedures specified in § 63.150(g)(5) of subpart G of this part.

(6) Credits are generated by the difference between emissions that are allowed for each Group 1 and Group 2 emission point and the actual emissions from that Group 1 or Group 2 emission point that have been controlled after November 15, 1990 to a level more stringent than what is required in this subpart or any other State or Federal rule or statute. Credits shall be calculated in accordance with the procedures specified in paragraphs (h)(6)(i) through (v) of this section.

(i) Source-wide credits shall be calculated using Equation 41 of this subpart. Credits and all terms in Equation 41 of this subpart are in units of Mg/month, the baseline date is November 15, 1990, the terms consisting of a constant multiplied by the uncontrolled emissions are the emissions from each emission point subject to the standards in § 63.1362(b) and (c) that is controlled to a level more stringent than the standard. Where:

$$\text{Credits} = D\sum_{i=1}^{n}\left[(0.10)(EPV1_{iU}) - EPV1_{iA}\right] + D\sum_{i=1}^{m}(EPV2_{iB} - EPV2_{iA}) + D\sum_{i=1}^{n}\left[(0.05)(ES1_{iU}) - ES1_{iA}\right] +$$
$$D\sum_{i=1}^{m}(ES2_{iB} - ES2_{iA}) + D\sum_{i=1}^{n}(EWW1_{iC} - EWW1_{iA}) + D\sum_{i=1}^{m}(EWW2_{iB} - EWW2_{iA}) \quad \text{(Eq. 41)}$$

$EPV1_{iU}$ = uncontrolled emissions from each Group 1 process i calculated according to the procedures in paragraph (h)(6)(iii)(A) of this section

$EPV1_{iA}$ = actual emissions from each Group 1 process i that is controlled to a level more stringent than the applicable standard. $EPV1_{iA}$ is calculated according to the procedures in paragraph (h)(6)(iii)(B) of this section

$EPV2_{iB}$ = emissions from each Group 2 process i at the baseline date. $EPV2_{iB}$ is calculated according to the procedures in paragraph (h)(6)(iii)(C) of this section

$EPV2_{iA}$ = actual emissions from each Group 2 process i that is controlled. $EPV2_{iA}$ is calculated according to the procedures in paragraph (h)(6)(iii)(C) of this section

$ES1_{iU}$ = uncontrolled emissions from each Group 1 storage vessel i calculated according to the procedures in paragraph (h)(6)(iv) of this section

$ES1_{iA}$ = actual emissions from each Group 1 storage vessel i that is controlled to a level more stringent that the applicable standard. $ES1_{iA}$ is calculated according to the procedures in paragraph (h)(6)(iv) of this section

$ES2_{iB}$ = emissions from each Group 2 storage vessel i at the baseline date. $ES2_{iB}$ is calculated according to the procedures in paragraph (h)(6)(iv) of this section

$ES2_{iA}$ = actual emissions from each Group 2 storage vessel i that is controlled. $ES2_{iA}$ is calculated according to the procedures in paragraph (h)(6)(iv) of this section

$EWW1_{iC}$ = emissions from each Group 1 wastewater stream i if the standard had been applied to the uncontrolled emissions. $EWW1_{iC}$ is calculated according to the procedures in paragraph (h)(6)(v) of this section

$EWW1_{iA}$ = emissions from each Group 1 wastewater stream i that is controlled to a level more stringent that the applicable standard. $EWW1_{iA}$ is calculated according to the procedures in paragraph (h)(6)(v) of this section

$EWW2_{iB}$ = emissions from each Group 2 wastewater stream i at the baseline date. $EWW2_{iB}$ is calculated according to the procedures in paragraph (h)(6)(v) of this section

$EWW2_{iA}$ = actual emissions from each Group 2 wastewater stream i that is controlled. $EWW2_{iA}$ is calculated according to the procedures in paragraph (h)(6)(v) of this section

n = number of Group 1 emission points that are included in the emissions average. The value of n is not necessarily the same for process vents, storage tanks, and wastewater

m = number of Group 2 emission points included in the emissions average. The value of m is not necessarily the same for process vents, storage tanks, and wastewater

D = discount factor equal to 0.9 for all credit-generating emission points except those controlled by a pollution prevention measure, which will not be discounted

(ii) For an emission point controlled using a pollution prevention measure, the nominal efficiency for calculating credits shall be as determined as described in § 63.150(j) of subpart G of this part.

(iii) Emissions from process vents shall be calculated in accordance with the procedures specified in paragraphs (h)(6)(iii)(A) through (C) of this section.

(A) Uncontrolled emissions from Group 1 process vents shall be calculated according to the procedures in paragraph (h)(5)(ii)(A) or (C) of this section.

(B) Actual emissions from Group 1 process vents with a nominal efficiency greater than the applicable standard or a pollution prevention measure that achieves reductions greater than the applicable standard shall be calculated using Equation 42 of this subpart:

$$EPV1_{iA} = EPV1_{iU} \times \left[1 - N_{eff}/100\right] \quad \text{(Eq. 42)}$$

Where:

$EPV1_{iA}$ = actual emissions from each Group 1 process i that is controlled to a level more stringent than the applicable standard

$EPV1_{iU}$ = uncontrolled emissions from each Group 1 process i

N_{eff} = nominal efficiency of control device or pollution prevention measure, percent

(C) Baseline and actual emissions from Group 2 process vents shall be calculated according to the procedures in § 63.150(h)(2)(iii) and (iv) with the following modifications:

(*1*) The term "90 percent reduction" shall apply instead of the term "98 percent reduction"; and

(*2*) When the phrase "paragraph (g)(2)" is referred to in § 63.150(h)(2)(iii) and (iv), the provisions in paragraph (h)(5)(ii) of this section shall apply for the purposes of this subpart.

(iv) Uncontrolled emissions from storage vessels shall be calculated according to the procedures described in paragraph (d)(1) of this section. Actual and baseline emissions from storage tanks shall be calculated according to the procedures specified in § 63.150(h)(3) of subpart G of this part, except when § 63.150(h)(3) refers to § 63.150(g)(3)(i), paragraph (d)(1) of this section shall apply for the purposes of this subpart.

(v) Emissions from wastewater shall be calculated using the procedures in § 63.150(h)(5) of subpart G of this part.

§ 63.1366 Monitoring and inspection requirements.

(a) To provide evidence of continued compliance with the standard, the owner or operator of any existing or new affected source shall install, operate, and maintain monitoring devices as specified in this section. During the initial compliance demonstration, maximum or minimum operating parameter levels, or other design and operating characteristics, as appropriate, shall be established for emission sources that will indicate the source is in compliance. Test data, calculations, or information from the evaluation of the control device design, as applicable, shall be used to establish the operating parameter level or characteristic.

(b) *Monitoring for control devices.* (1) *Parameters to monitor.* Except as specified in paragraph (b)(1)(i) of this section, for each control device, the owner or operator shall install and operate monitoring devices and operate within the established parameter levels to ensure continued compliance with the standard. Monitoring parameters are specified for control scenarios in paragraphs (b)(1)(ii) through (xii) of this section, and are summarized in Table 3 of this subpart.

(i) *Periodic verification.* For control devices that control vent streams containing total HAP emissions less than 0.91 Mg/yr, before control, monitoring shall consist of a periodic verification that the device is operating properly. This verification shall include, but not be limited to, a daily or more frequent demonstration that the unit is working as designed and may include the daily measurements of the parameters described in paragraphs (b)(1)(ii) through (xii) of this section. This demonstration shall be included in the Precompliance plan, to be submitted 6 months prior to the compliance date of the standard.

(ii) *Scrubbers.* For affected sources using liquid scrubbers, the owner or operator shall establish a minimum scrubber liquid flow rate or pressure drop as a site-specific operating parameter which must be measured and recorded at least once every 15 minutes during the period in which the scrubber is controlling HAP from an emission stream as required by the standards in § 63.1362. If the scrubber uses a caustic solution to remove acid emissions, the pH of the effluent scrubber liquid shall also be monitored once a day. The minimum scrubber liquid flow rate or pressure drop shall be based on the conditions under which the initial compliance demonstration was conducted.

(A) The monitoring device used to determine the pressure drop shall be certified by the manufacturer to be accurate to within a gage pressure of ±10 percent of the maximum pressure drop measured.

(B) The monitoring device used for measurement of scrubber liquid flowrate shall be certified by the manufacturer to be accurate to within ±10 percent of the design scrubber liquid flowrate.

(C) The monitoring device shall be calibrated annually.

(iii) *Condensers.* For each condenser, the owner or operator shall establish the maximum condenser outlet gas temperature as a site-specific operating parameter which must be measured and recorded at least once every 15 minutes during the period in which the condenser is controlling HAP from an emission stream as required by the standards in § 63.1362.

(A) The temperature monitoring device must be accurate to within ±2 percent of the temperature measured in degrees Celsius or ±2.5°C, whichever is greater.

(B) The temperature monitoring device must be calibrated annually.

(iv) *Regenerative carbon adsorbers.* For each regenerative carbon adsorber, the owner or operator shall comply with the provisions in paragraphs (b)(1)(iv)(A) through (F) of this section.

(A) Establish the regeneration cycle characteristics specified in paragraphs (b)(1)(iv)(A) (*1*) through (*4*) of this section under absolute or hypothetical peak-case conditions, as defined in § 63.1365(b)(11)(i) or (ii).

(*1*) Minimum regeneration frequency (i.e., operating time since last regeneration);

(*2*) Minimum temperature to which the bed is heated during regeneration;

(*3*) Maximum temperature to which the bed is cooled, measured within 15 minutes of completing the cooling phase; and

(*4*) Minimum regeneration stream flow.

(B) Monitor and record the regeneration cycle characteristics specified in paragraphs (b)(1)(iv)(B) (*1*) through (*4*) of this section for each regeneration cycle.

(*1*) Regeneration frequency (i.e., operating time since end of last regeneration);

(*2*) Temperature to which the bed is heated during regeneration;

(*3*) Temperature to which the bed is cooled, measured within 15 minutes of the completion of the cooling phase; and

(*4*) Regeneration stream flow.

(C) Use a temperature monitoring device that is accurate to within ±2 percent of the temperature measured in degrees Celsius or ±2.5°C, whichever is greater.

(D) Use a regeneration stream flow monitoring device capable of recording the total regeneration stream flow to within ±10 percent of the established value (i.e., accurate to within ±10 percent of the reading).

(E) Calibrate the temperature and flow monitoring devices annually.

(F) Conduct an annual check for bed poisoning in accordance with manufacturer's specifications.

(v) *Nonregenerative carbon adsorbers.* For each nonregenerative carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the owner or operator shall replace the existing carbon bed in the control device with fresh carbon on a regular schedule based on one of the following procedures:

(A) Monitor the TOC concentration level in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity under absolute or hypothetical peak-case conditions as defined in § 63.1365(b)(11)(i) or (ii), whichever is longer.

(B) Establish the maximum time interval between replacement, and replace the existing carbon before this time interval elapses. The time interval shall be established based on the conditions anticipated under absolute or hypothetical peak-case, as defined in § 63.1365(b)(11)(i) or (ii).

(vi) *Flares.* For each flare, the presence of the pilot flame shall be monitored at least once every 15 minutes during the period in which the flare is controlling HAP from an emission stream subject to the standards in § 63.1362. The monitoring device shall be calibrated annually.

(vii) *Thermal incinerators.* For each thermal incinerator, the owner or operator shall monitor the temperature of the gases exiting the combustion chamber as the site-specific operating parameter which must be measured and recorded at least once every 15 minutes during the period in which the combustion device is controlling HAP from an emission stream subject to the standards in § 63.1362.

(A) The temperature monitoring device must be accurate to within ±0.75 percent of the temperature measured in degrees Celsius or ±2.5°C, whichever is greater.

(B) The monitoring device must be calibrated annually.

(viii) *Catalytic incinerators.* For each catalytic incinerator, the parameter levels that the owner or operator shall establish are the minimum temperature of the gas stream immediately before the catalyst bed and the minimum temperature difference across the catalyst bed. The owner or operator shall monitor the temperature of the gas stream immediately before and after the catalyst bed, and calculate the temperature difference across the catalyst bed, at least once every 15 minutes during the period in which the catalytic incinerator is controlling HAP from an emission stream subject to the standards in § 63.1362.

(A) The temperature monitoring devices must be accurate to within ±0.75 percent of the temperature measured in degrees Celsius or ±2.5°C, whichever is greater.

(B) The temperature monitoring devices must be calibrated annually.

(ix) *Process heaters and boilers.* (A) Except as specified in paragraph (b)(1)(ix)(B) of this section, for each boiler or process heater, the owner or operator shall monitor the temperature of the gases exiting the combustion chamber as the site-specific operating parameter which must be monitored and recorded at least every 15 minutes during the period in which the boiler or process heater is controlling HAP from an emission stream subject to the standards in § 63.1362.

(*1*) The temperature monitoring device must be accurate to within ±0.75 percent of the temperature measured in degrees Celsius or ±2.5°C, whichever is greater.

(*2*) The temperature monitoring device must be calibrated annually.

(B) The owner or operator is exempt from the monitoring requirements specified in paragraph (b)(1)(ix)(A) of this section if either:

(*1*) All vent streams are introduced with primary fuel; or

(*2*) The design heat input capacity of the boiler or process heater is 44 megawatts or greater.

(x) *Continuous emission monitor.* As an alternative to the parameters specified in paragraphs (b)(1)(ii) through (ix) of this section, an owner or operator may monitor and record the outlet HAP concentration or both the outlet TOC concentration and outlet total HCl and chlorine concentration at least every 15 minutes during the period in which the control device is controlling HAP from an emission stream subject to the standards in § 63.1362. The owner or operator need not monitor the total HCl and chlorine concentration if the owner or operator determines that the emission stream does not contain HCl or chlorine. The owner or operator need not monitor the TOC concentration if the owner or operator determines the emission stream does not contain organic compounds. The HAP or TOC monitor must meet the requirements of Performance

Specification 8 or 9 of appendix B of part 60 and must be installed, calibrated, and maintained, according to § 63.8 of subpart A of this part. As part of the QA/QC Plan, calibration of the device must include, at a minimum, quarterly cylinder gas audits. If supplemental gases are introduced before the control device, the monitored concentration shall be corrected as specified in § 63.1365(a)(7).

(xi) *Fabric filters.* For each fabric filter used to control particulate matter emissions from bag dumps and product dryers subject to § 63.1362(e), the owner or operator shall install, calibrate, maintain, and continuously operate a bag leak detection system that meets the requirements in paragraphs (b)(1)(xi)(A) through (G) of this section.

(A) The bag leak detection system sensor must provide output of relative particulate matter emissions.

(B) The bag leak detection system must be equipped with an alarm system that will sound when an increase in particulate matter emissions over a preset level is detected.

(C) For positive pressure fabric filters, a bag leak detector must be installed in each fabric filter compartment or cell. If a negative pressure or induced air filter is used, the bag leak detector must be installed downstream of the fabric filter. Where multiple bag leak detectors are required (for either type of fabric filter), the system instrumentation and alarm may be shared among detectors.

(D) The bag leak detection system shall be installed, operated, calibrated and maintained in a manner consistent with available guidance from the U.S. Environmental Protection Agency or, in the absence of such guidance, the manufacturer's written specifications and instructions.

(E) Calibration of the system shall, at a minimum, consist of establishing the relative baseline output level by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time.

(F) Following initial adjustment, the owner or operator shall not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as established in an operation and maintenance plan that is to be submitted with the Precompliance plan. In no event shall the sensitivity be increased more than 100 percent or decreased by more than 50 percent over a 365-day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition.

(G) If the alarm on a bag leak detection system is triggered, the owner or operator shall, within 1 hour of an alarm, initiate the procedures to identify the cause of the alarm and take corrective action as specified in the corrective action plan.

(xii) For each waste management unit, treatment process, or control device used to comply with § 63.1362(d), the owner or operator shall comply with the procedures specified in § 63.143 of subpart G of this part, except that when the procedures to request approval to monitor alternative parameters according to the procedures in § 63.151(f) are referred to in § 63.143(d)(3), the procedures in paragraph (b)(4) of this section shall apply for the purposes of this subpart.

(xiii) *Closed-vent system visual inspections.* The owner or operator shall perform monthly visual inspections of each closed vent system as specified in § 63.1362(j).

(2) *Averaging periods.* Averaging periods for parametric monitoring levels shall be established according to paragraphs (b)(2)(i) through (iii) of this section.

(i) Except as provided in paragraph (b)(2)(iii) of this section, a daily (24-hour) or block average shall be calculated as the average of all values for a monitored parameter level set according to the procedures in (b)(3)(iii) of this section recorded during the operating day or block.

(ii) The operating day or block shall be defined in the Notification of Compliance Status report. The operating day may be from midnight to midnight or another continuous 24-hour period. The operating block may be used as an averaging period only for vents from batch operations, and is limited to a period of time that is, at a maximum, equal to the time from the beginning to end of a series of consecutive batch operations.

(iii) Monitoring values taken during periods in which the control devices are not controlling HAP from an emission stream subject to the standards in § 63.1362, as indicated by periods of no flow or periods when only streams that are not subject to the standards in § 63.1362 are controlled, shall not be considered in the averages. Where flow to the device could be intermittent, the owner or operator shall install, calibrate and operate a flow indicator at the inlet or outlet of the control device to identify periods of no flow.

(3) *Procedures for setting parameter levels for control devices used to control emissions from process vents.* (i) *Small control devices.* Except as provided in paragraph (b)(1)(i) of this section, for devices controlling less than 10 tons/yr of HAP for which a performance test is not required, the parameteric levels shall be set based on the design evaluation required in § 63.1365(c)(3)(i)(A). If a performance test is conducted, the monitoring parameter level shall be established according to the procedures in paragraph (b)(3)(ii) of this section.

(ii) *Large control devices.* For devices controlling greater than or equal to 10 tons/yr of HAP for which a performance test is required, the parameter level must be established as follows:

(A) If the operating parameter level to be established is a maximum or minimum, it must be based on the average of the average values from each of the three test runs.

(B) The owner or operator may establish the parametric monitoring level(s) based on the performance test supplemented by engineering assessments and/or manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of expected parameter values. The rationale for the specific level for each parameter, including any data and calculations used to develop the level(s) and a description of why the level indicates proper operation of the control device shall be provided in the Precompliance plan. Determination of the parametric monitoring level using these procedures is subject to review and approval by the Administrator.

(iii) *Parameter levels for control devices controlling batch process vents.* For devices controlling batch process vents alone or in combination with other streams, the level(s) shall be established in accordance with paragraph (b)(3)(iii)(A) or (B) of this section.

(A) A single level for the batch process(es) shall be calculated from the initial compliance demonstration.

(B) The owner or operator may establish separate levels for each batch emission episode or combination of emission episodes selected to be controlled. If separate monitoring levels are established, the owner or operator must provide a record indicating at what point in the daily schedule or log of processes required to be recorded per the requirements of § 63.1367(b)(7), the parameter being monitored changes levels and must record at least one reading of the new parameter level, even if the duration of monitoring for the new parameter level is less than 15 minutes.

(4) *Requesting approval to monitor alternative parameters.* The owner or operator may request approval to monitor parameters other than those required by paragraphs (b)(1)(ii) through (xiii) of this section. The request shall be submitted according to the

procedures specified in § 63.8(f) of subpart A of this part or in the Precompliance report (as specified in § 63.1368(e)).

(5) *Monitoring for the alternative standards.* For control devices that are used to comply with the provisions of § 63.1362(b)(6) and (c)(4), the owner or operator shall monitor and record the outlet TOC concentration and the outlet total HCl and chlorine concentration at least once every 15 minutes during the period in which the device is controlling HAP from emission streams subject to the standards in § 63.1362. A TOC monitor meeting the requirements of Performance Specification 8 or 9 of appendix B of 40 CFR part 60 shall be installed, calibrated, and maintained, according to § 63.8 of subpart A of this part. The owner or operator need not monitor the total HCl and chlorine concentration if the owner or operator determines that the emission stream does not contain HCl or chlorine. The owner or operator need not monitor for TOC concentration if the owner or operator determines that the emission stream does not contain organic compounds. If supplemental gases are introduced before the control device, the monitored concentration shall be corrected as specified in § 63.1365(a)(7).

(6) *Exceedances of operating parameters.* An exceedance of an operating parameter is defined as one of the following:

(i) If the parameter level, averaged over the operating day or block, is below a minimum value established during the initial compliance demonstration.

(ii) If the parameter level, averaged over the operating day or block, is above the maximum value established during the initial compliance demonstration.

(iii) A loss of all pilot flames for a flare during an operating day or block. Multiple losses of all pilot flames during an operating day constitutes one exceedance.

(iv) Each operating day or block for which the time interval between replacement of a nonregenerative carbon adsorber exceeds the interval established in paragraph (b)(1)(v) of this section.

(v) Each instance in which procedures to initiate the response to a bag leak detector alarm within 1 hour of the alarm as specified in the corrective action plan.

(7) *Excursions.* Excursions are defined by either of the two cases listed in paragraph (b)(7)(i) or (ii) of this section. An excursion also occurs if the periodic verification for a small control device is not conducted as specified in paragraph (b)(1)(i) of this section.

(i) When the period of control device operation is 4 hours or greater in an operating day or block and monitoring data are insufficient to constitute a valid hour of data, as defined in paragraph (b)(7)(iii) of this section, for at least 75 percent of the operating hours.

(ii) When the period of control device operation is less than 4 hours in an operating day or block and more than 1 of the hours during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(iii) Monitoring data are insufficient to constitute a valid hour of data, as used in paragraphs (b)(7)(i) and (ii) of this section, if measured values are unavailable for any of the required 15-minute periods within the hour.

(8) *Violations.* Exceedances of parameters monitored according to the provisions of paragraphs (b)(1)(ii) and (b)(1) (iv) through (ix) of this section or excursions as defined by paragraphs (b)(7) (i) and (ii) of this section constitute violations of the operating limit according to paragraphs (b)(8) (i), (ii), and (iv) of this section. Exceedances of the temperature limit monitored according to the provisions of paragraph (b)(1)(iii) of this section or exceedances of the outlet concentrations monitored according to the provisions of paragraph (b)(1)(x) of this section constitute violations of the emission limit according to paragraphs (b)(8) (i), (ii), and (iv) of this section. Exceedances of the outlet concentrations monitored according to the provisions of paragraph (b)(5) of this section constitute violations of the emission limit according to the provisions of paragraphs (b)(8) (iii) and (iv) of this section.

(i) Except as provided in paragraph (b)(8)(iv) of this section, for episodes occurring more than once per day, exceedances of established parameter limits or excursions will result in no more than one violation per operating day for each monitored item of equipment utilized in the process.

(ii) Except as provided in paragraph (b)(8)(iv) of this section, for control devices used for more than one process in the course of an operating day, exceedances or excursions will result in no more than one violation per operating day, per control device, for each process for which the control device is in service.

(iii) Except as provided in paragraph (b)(8)(iv) of this section, exceedances of the 20 ppmv TOC outlet emission limit, averaged over the operating day, will result in no more than one violation per day per control device. Except as provided in paragraph (b)(8)(iv) of this section, exceedances of the 20 ppmv HCl and chlorine outlet emission limit, averaged over the operating day, will result in no more than one violation per day per control device.

(iv) Periods of time when monitoring measurements exceed the parameter values as well as periods of inadequate monitoring data do not constitute a violation if they occur during a startup, shutdown, or malfunction, and the facility follows its startup, shutdown, and malfunction plan.

(c) *Monitoring for uncontrolled emission rates.* The owner or operator shall demonstrate continuous compliance with the emission limit in § 63.1362 (b)(2)(i) or (b)(4)(i) by calculating daily a 365-day rolling summation of uncontrolled emissions based on the uncontrolled emissions per emission episode, as calculated using the procedures in § 63.1365(c)(2), and records of the number of batches produced. Each day that the summation for a process exceeds 0.15 Mg/yr is considered a violation of the emission limit.

(d) *Monitoring for equipment leaks.* The standard for equipment leaks is based on monitoring. All monitoring requirements for equipment leaks are specified in § 63.1363.

(e) *Monitoring for heat exchanger systems.* The standard for heat exchanger systems is based on monitoring. All monitoring requirements for heat exchanger systems are specified in § 63.1362(f).

(f) *Monitoring for pollution prevention alternative.* The owner or operator of an affected source that chooses to comply with the requirements of § 63.1362(b), (2) or (3) shall calculate annual rolling average values of the HAP and VOC factors in accordance with the procedures specified in paragraph (f)(1) of this section. If complying with § 63.1362(g)(3), the owner or operator shall also comply with the monitoring requirements specified in paragraph (b) of this section for the applicable add-on air pollution control device.

(1) *Annual factors.* The annual HAP and VOC factors shall be calculated in accordance with the procedures specified in paragraphs (f)(1) (i) through (iii) of this section.

(i) The consumption of both total HAP and total VOC shall be divided by the production rate, per process, for 12-month periods at the frequency specified in either paragraph (f)(1) (ii) or (iii) of this section, as applicable.

(ii) For continuous processes, the annual factors shall be calculated every 30 days for the 12-month period preceding the 30th day (annual rolling

average calculated every 30 days). A process with both batch and continuous operations is considered a continuous process for the purposes of this section.

(iii) For batch processes, the annual factors shall be calculated every 10 batches for the 12-month period preceding the 10th batch (annual rolling average calculated every 10 batches). Additional annual factors shall be calculated every 12 months during the period before the 10th batch if more than 12 months elapse before the 10th batch is produced.

(2) *Violations.* Each rolling average that exceeds the target value established in § 63.1365(g)(3) is considered a violation of the emission limit.

(g) *Monitoring for emissions averaging.* The owner or operator of an affected source that chooses to comply with the requirements of § 63.1362(h) shall meet all monitoring requirements specified in paragraph (b) of this section, as applicable, for all processes, storage tanks, and waste management units included in the emissions average.

§ 63.1367 Recordkeeping requirements.

(a) *Requirements of subpart A of this part.* The owner or operator of an affected source shall comply with the recordkeeping requirements in subpart A of this part as specified in Table 1 of this subpart and in paragraphs (a)(1) through (5) of this section.

(1) *Data retention.* Each owner or operator of an affected source shall keep copies of all records and reports required by this subpart for at least 5 years, as specified in § 63.10(b)(1) of subpart A of this part.

(2) *Records of applicability determinations.* The owner or operator of a stationary source that is not subject to this subpart shall keep a record of the applicability determination, as specified in § 63.10(b)(3) of subpart A of this part.

(3) *Startup, shutdown, and malfunction plan.* The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3) of subpart A of this part. This plan shall describe, in detail, procedures for operating and maintaining the affected source during periods of startup, shutdown, and malfunction and a program for corrective action for a malfunctioning process, air pollution control, and monitoring equipment used to comply with this subpart. The owner or operator of an affected source shall keep the current and superseded versions of this plan onsite, as specified in § 63.6(e)(3)(v) of subpart A of this part. The owner or operator shall keep the startup, shutdown, and malfunction records specified in paragraphs (b)(3)(i) through (iii) of this section. Reports related to the plan shall be submitted as specified in § 63.1368(i).

(i) The owner or operator shall record the occurrence and duration of each malfunction of air pollution control equipment used to comply with this subpart, as specified in § 63.6(e)(3)(iii) of subpart A of this part.

(ii) The owner or operator shall record the occurrence and duration of each malfunction of continuous monitoring systems used to comply with this subpart.

(iii) For each startup, shutdown, or malfunction, the owner or operator shall record all information necessary to demonstrate that the procedures specified in the affected source's startup, shutdown, and malfunction plan were followed, as specified in § 63.6(e)(3)(iii) of subpart A of this part; alternatively, the owner or operator shall record any actions taken that are not consistent with the plan, as specified in § 63.6(e)(3)(iv) of subpart A of this part.

(4) *Recordkeeping requirements for sources with continuous monitoring systems.* The owner or operator of an affected source who installs a continuous monitoring system to comply with the alternative standards in § 63.1362(b)(6) or (c)(4) shall maintain records specified in § 63.10(c)(1) through (14) of subpart A of this part.

(5) *Application for approval of construction or reconstruction.* For new affected sources, each owner or operator shall comply with the provisions regarding construction and reconstruction in § 63.5 of subpart A of this part.

(b) *Records of equipment operation.* The owner or operator must keep the following records up-to-date and readily accessible:

(1) Each measurement of a control device operating parameter monitored in accordance with § 63.1366 and each measurement of a treatment process parameter monitored in accordance with the provisions of § 63.1362(d).

(2) For processes subject to § 63.1362(g), records of consumption, production, and the rolling average values of the HAP and VOC factors.

(3) For each continuous monitoring system used to comply with the alternative standards in § 63.1362(b)(6) and (c)(4), records documenting the completion of calibration checks and maintenance of the continuous monitoring systems.

(4) For processes in compliance with the 0.15 Mg/yr emission limit of § 63.1362(b)(2)(i) or (b)(4)(i), records of the rolling annual calculations of uncontrolled emissions.

(5) For each bag leak detector used to monitor particulate HAP emissions from a fabric filter, the owner or operator shall maintain records of any bag leak detection alarm, including the date and time, with a brief explanation of the cause of the alarm and the corrective action taken.

(6) The owner or operator of an affected source that complies with the standards for process vents, storage tanks, and wastewater systems shall maintain up-to-date, readily accessible records of the information specified in paragraphs (b)(6)(i) through (vii) of this section to document that HAP emissions or HAP loadings (for wastewater) are below the limits specified in § 63.1362:

(i) The initial calculations of uncontrolled and controlled emissions of gaseous organic HAP and HCl per batch for each process.

(ii) The wastewater concentrations and flow rates per POD and process.

(iii) The number of batches per year for each batch process.

(iv) The operating hours per year for continuous processes.

(v) The number of batches and the number of operating hours for processes that contain both batch and continuous operations.

(vi) The number of tank turnovers per year, if used in an emissions average or for determining applicability of a new PAI process unit.

(vii) A description of absolute or hypothetical peak-case operating conditions as determined using the procedures in § 63.1365(b)(11).

(viii) Periods of planned routine maintenance as described in § 63.1362(c)(5).

(7) Daily schedule or log of each operating scenario prior to its operation.

(c) *Records of equipment leak detection and repair.* The owner or operator of an affected source subject to the equipment leak standards in § 63.1363 shall implement the recordkeeping requirements specified in § 63.1363(g). All records shall be retained for a period of 5 years, in accordance with the requirements of § 63.10(b)(1) of subpart A of this part.

(d) *Records of emissions averaging.* The owner or operator of an affected source that chooses to comply with the requirements of § 63.1362(h) shall maintain up-to-date records of the following information:

(1) An Emissions Averaging Plan which shall include in the plan, for all emission points included in each of the emissions averages, the information listed in paragraphs (d)(1)(i) through (v) of this section.

(i) The identification of all emission points in each emissions average.

(ii) The values of all parameters needed for input to the emission debits and credits equations in § 63.1365(h).

(iii) The calculations used to obtain the debits and credits.

(iv) The estimated values for all parameters required to be monitored under § 63.1366(g) for each emission point included in an average. These parameter values, or as appropriate, limited ranges for parameter values, shall be specified as enforceable operating conditions for the operation of the process, storage vessel, or waste management unit, as appropriate. Changes to the parameters must be reported as required by § 63.1368(k).

(v) A statement that the compliance demonstration, monitoring, inspection, recordkeeping and reporting provisions in § 63.1365(h), § 63.1366(g), and § 63.1368(k) that are applicable to each emission point in the emissions average will be implemented beginning on the date of compliance.

(2) The Emissions Averaging Plan shall demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the operating permit authority, greater risk to human health or the environment than if the emission points were controlled according to the provisions in § 63.1362(b) through (d).

(i) This demonstration of hazard or risk equivalency shall be made to the satisfaction of the operating permit authority.

(A) The Administrator may require an owner or operator to use specific methodologies and procedures for making a hazard or risk determination.

(B) The demonstration and approval of hazard or risk equivalency shall be made according to any guidance that the Administrator makes available for use or any other technically sound information or methods.

(ii) An Emissions Averaging Plan that does not demonstrate hazard or risk equivalency to the satisfaction of the Administrator shall not be approved. The Administrator may require such adjustments to the Emissions Averaging Plan as are necessary in order to ensure that the average will not result in greater hazard or risk to human health or the environment than would result if the emission points were controlled according to § 63.1362(b) through (d).

(iii) A hazard or risk equivalency demonstration must satisfy the requirements specified in paragraphs (d)(2)(iii) (A) through (C) of this section.

(A) Be a quantitative, comparative chemical hazard or risk assessment;

(B) Account for differences between averaging and nonaveraging options in chemical hazard or risk to human health or the environment; and

(C) Meet any requirements set by the Administrator for such demonstrations.

(3) Records as specified in paragraphs (a) and (b) of this section.

(4) A calculation of the debits and credits as specified in § 63.1365(h) for the last quarter and the prior four quarters.

(e) The owner or operator of an affected source subject to the requirements for heat exchanger systems in § 63.1362(g) shall retain the records as specified in § 63.104(f)(1)(i) through (iv) of subpart G of this part.

(f) For each vapor collection system or closed-vent system that contains bypass lines that could divert a vent stream away from the control device and to the atmosphere, the owner or operator shall keep a record of the information specified in either paragraph (f) (1) or (2) of this section.

(1) Hourly records of whether the flow indicator specified under § 63.1362(j)(1) was operating and whether a diversion was detected at any time during the hour, as well as records of the times and durations of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(2) Where a seal mechanism is used to comply with § 63.1362(j)(2), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanism has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has broken.

(g) *Records of primary use.* For a PAI process unit that is used to produce a given material for use as a PAI as well as for other purposes, the owner or operator shall keep records of the total production and the production for use as a PAI on a semiannual or more frequent basis if the use as a PAI is not the primary use.

§ 63.1368 Reporting requirements.

(a) The owner or operator of an affected source shall comply with the reporting requirements of paragraphs (b) through (l) of this section. The owner or operator shall also comply with applicable paragraphs of §§ 63.9 and 63.10 of subpart A of this part, as specified in Table 1 of this subpart.

(b) *Initial notification.* The owner or operator shall submit the applicable initial notification in accordance with § 63.9(b) or (d) of subpart A of this part.

(c) *Application for approval of construction or reconstruction.* The owner or operator who is subject to § 63.5(b)(3) of subpart A of this part shall submit to the Administrator an application for approval of the construction of a new major source, the reconstruction of a major affected source, or the reconstruction of a major affected source subject to the standards. The application shall be prepared in accordance with § 63.5(d) of subpart A of this part.

(d) *Notification of continuous monitoring system performance evaluation.* An owner or operator who is required by the Administrator to conduct a performance evaluation for a continuous monitoring system that is used to comply with the alternative standard in § 63.1362(b)(6) or (c)(4) shall notify the Administrator of the date of the performance evaluation as specified in § 63.8(e)(2) of subpart A of this part.

(e) *Precompliance plan.* The Precompliance plan shall be submitted at least 6 months prior to the compliance date of the standard. For new sources, the Precompliance plan shall be submitted to the Administrator with the application for approval of construction or reconstruction. The Administrator shall have 90 days to approve or disapprove the Precompliance plan. The Precompliance plan shall be considered approved if the Administrator either approves it in writing, or fails to disapprove it in writing within the 90-day time period. The 90-day period shall begin when the Administrator receives the Precompliance plan. If the Precompliance plan is disapproved, the owner or operator must still be in compliance with the standard by the compliance date. To change any of the information submitted in the Precompliance plan, the owner or operator shall notify the Administrator at least 90 days before the planned change is to be implemented; the change shall be considered approved if the Administrator either approves the change in writing, or fails to disapprove the change in writing within 90 days of receipt of the change. The Precompliance plan shall include the information specified in paragraphs (e)(1) through (5) of this section.

(1) Requests for approval to use alternative monitoring parameters or requests to set monitoring parameters according to § 63.1366(b)(4).

(2) Descriptions of the daily or per batch demonstrations to verify that control devices subject to

§ 63.1366(b)(1)(i) are operating as designed.

(3) Data and rationale used to support the parametric monitoring level(s) that are set according to § 63.1366(b)(3)(ii)(B).

(4) For owners and operators complying with the requirements of § 63.1362(i), the pollution prevention demonstration summary required in § 63.1365(g)(3).

(5) Data and rationale used to support an engineering assessment to calculate uncontrolled emissions from process vents as required in § 63.1365(c)(2)(ii).

(6) For fabric filters that are monitored with bag leak detectors, an operation and maintenance plan that describes proper operation and maintenance procedures, and a corrective action plan that describes corrective actions to be taken, and the timing of those actions, when the particulate matter concentration exceeds the setpoint and activates the alarm.

(f) *Notification of compliance status report.* The Notification of Compliance Status report required under § 63.9(h) shall be submitted no later than 150 calendar days after the compliance date and shall include the information specified in paragraphs (f)(1) through (7) of this section.

(1) The results of any applicability determinations, emission calculations, or analyses used to identify and quantify HAP emissions from the affected source.

(2) The results of emissions profiles, performance tests, engineering analyses, design evaluations, or calculations used to demonstrate compliance. For performance tests, results should include descriptions of sampling and analysis procedures and quality assurance procedures.

(3) Descriptions of monitoring devices, monitoring frequencies, and the values of monitored parameters established during the initial compliance determinations, including data and calculations to support the levels established.

(4) Operating scenarios.

(5) Descriptions of absolute or hypothetical peak-case operating and/or testing conditions for control devices.

(6) Identification of emission points subject to overlapping requirements described in § 63.1360(h) and the authority under which the owner or operator will comply, and identification of emission sources discharging to devices described by § 63.1362(l).

(7) Anticipated periods of planned routine maintenance during which the owner or operator would not be in compliance with the provisions in § 63.1362(c)(1) through (4).

(8) Percentage of total production from a PAI process unit that is anticipated to be produced for use as a PAI in the 3 years after either June 23, 1999 or startup, whichever is later.

(g) *Periodic reports.* The owner or operator shall prepare Periodic reports in accordance with paragraphs (g)(1) and (2) of this section and submit them to the Administrator.

(1) *Submittal schedule.* Except as provided in paragraphs (g)(1)(i) and (ii) of this section, the owner or operator shall submit Periodic reports semiannually, beginning 60 operating days after the end of the applicable reporting period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status report is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status report is due.

(i) The Administrator may determine on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the affected source.

(ii) Quarterly reports shall be submitted when the monitoring data are used to comply with the alternative standards in § 63.1362(b)(6) or (c)(4) and the source experiences excess emissions. Once an affected source reports excess emissions, the affected source shall follow a quarterly reporting format until a request to reduce reporting frequency is approved. If an owner or operator submits a request to reduce the frequency of reporting, the provisions in § 63.10(e)(3) (ii) and (iii) of subpart A of this part shall apply, except that the term "excess emissions and continuous monitoring system performance report and/or summary report" shall mean "Periodic report" for the purposes of this section.

(2) *Content of periodic report.* The owner or operator shall include the information in paragraphs (g)(2)(i) through (vi) of this section, as applicable.

(i) Each Periodic report must include the information in § 63.10(e)(3)(vi)(A) through (M) of subpart A of this part, as applicable.

(ii) If the total duration of excess emissions, parameter exceedances, or excursions for the reporting period is 1 percent or greater of the total operating time for the reporting period, or the total continuous monitoring system downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, the Periodic report must include the information in paragraphs (g)(2)(ii)(A) through (D) of this section.

(A) Monitoring data, including 15-minute monitoring values as well as daily average values of monitored parameters, for all operating days when the average values were outside the ranges established in the Notification of Compliance Status report or operating permit.

(B) Duration of excursions, as defined in § 63.1366(b)(7).

(C) Operating logs and operating scenarios for all operating days when the values are outside the levels established in the Notification of Compliance Status report or operating permit.

(D) When a continuous monitoring system is used, the information required in § 63.10(c)(5) through (13) of subpart A of this part.

(iii) For each vapor collection system or closed vent system with a bypass line subject to § 63.1362(j)(1), records required under § 63.1366(f) of all periods when the vent stream is diverted from the control device through a bypass line. For each vapor collection system or closed vent system with a bypass line subject to § 63.1362(j)(2), records required under § 63.1366(f) of all periods in which the seal mechanism is broken, the bypass valve position has changed, or the key to unlock the bypass line valve was checked out.

(iv) The information in paragraphs (g)(2)(iv)(A) through (D) of this section shall be stated in the Periodic report, when applicable.

(A) No excess emissions.

(B) No exceedances of a parameter.

(C) No excursions.

(D) No continuous monitoring system has been inoperative, out of control, repaired, or adjusted.

(v) For each storage vessel subject to control requirements:

(A) Actual periods of planned routine maintenance during the reporting period in which the control device does not meet the specifications of § 63.1362(c)(5); and

(B) Anticipated periods of planned routine maintenance for the next reporting period.

(vi) For each PAI process unit that does not meet the definition of primary use, the percentage of the production in the reporting period produced for use as a PAI.

(viii) Updates to the corrective action plan.

(h) *Notification of process change.* (1) Except as specified in paragraph (h)(2) of this section, whenever a process change is made, or any of the information submitted in the Notification of Compliance Status report changes, the owner or operator shall submit a report quarterly. The report may be submitted as part of the next Periodic report required under paragraph (g) of this section. The report shall include:

(i) A brief description of the process change;

(ii) A description of any modifications to standard procedures or quality assurance procedures;

(iii) Revisions to any of the information reported in the original Notification of Compliance Status report under paragraph (f) of this section; and

(iv) Information required by the Notification of Compliance Status report under paragraph (f) of this section for changes involving the addition of processes or equipment.

(2) The owner or operator must submit a report 60 days before the scheduled implementation date of either of the following:

(i) Any change in the activity covered by the Precompliance report.

(ii) A change in the status of a control device from small to large.

(i) *Reports of startup, shutdown, and malfunction.* For the purposes of this subpart, the startup, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic reports required under paragraph (g) of this section instead of the schedule specified in § 63.10(d)(5)(i) of subpart A of this part. These reports shall include the information specified in § 63.1367(a)(3)(i) through (iii) and shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy. Reports are only required if a startup, shutdown, or malfunction occurred during the reporting period. Any time an owner or operator takes an action that is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall submit an immediate startup, shutdown, and malfunction report as specified in § 63.10(d)(5)(ii) of subpart A of this part.

(j) *Reports of equipment leaks.* The owner or operator of an affected source subject to the standards in § 63.1363, shall implement the reporting requirements specified in § 63.1363(h). Copies of all reports shall be retained as records for a period of 5 years, in accordance with the requirements of § 63.10(b)(1) of subpart A of this part.

(k) *Reports of emissions averaging.* The owner or operator of an affected source that chooses to comply with the requirements of § 63.1362(h) shall submit all information as specified in § 63.1367(d) for all emission points included in the emissions average. The owner or operator shall also submit to the Administrator all information specified in paragraph (g) of this section for each emission point included in the emissions average.

(1) The reports shall also include the information listed in paragraphs (k)(1)(i) through (iv) of this section:

(i) Any changes to the processes, storage tanks, or waste management unit included in the average.

(ii) The calculation of the debits and credits for the reporting period.

(iii) Changes to the Emissions Averaging Plan which affect the calculation methodology of uncontrolled or controlled emissions or the hazard or risk equivalency determination.

(iv) Any changes to the parameters monitored according to § 63.1366(g).

(2) Every second semiannual or fourth quarterly report, as appropriate, shall include the results according to § 63.1367(d)(4) to demonstrate the emissions averaging provisions of § 63.1362(h), § 63.1365(h), § 63.1366(g), and § 63.1367(d) are satisfied.

(l) *Reports of heat exchange systems.* The owner or operator of an affected source subject to the requirements for heat exchange systems in § 63.1362(f) shall submit information about any delay of repairs as specified in § 63.104(f)(2) of subpart F of this part, except that when the phrase "periodic reports required by § 63.152(c) of subpart G of this part" is referred to in § 63.104(f)(2) of subpart F of this part, the periodic reports required in paragraph (g) of this section shall apply for the purposes of this subpart.

(m) *Notification of performance test and test Plan.* The owner or operator of an affected source shall notify the Administrator of the planned date of a performance test at least 60 days before the test in accordance with § 63.7(b) of subpart A of this part. The owner or operator also must submit the test Plan required by § 63.7(c) of subpart A of this part and the emission profile required by § 63.1365(b)(10)(ii) with the notification of the performance test.

(n) *Request for extension of compliance.* The owner or operator may submit to the Administrator a request for an extension of compliance in accordance with § 63.1364(a)(2).

(o) The owner or operator who submits an operating permit application before the date the Emissions Averaging Plan is due shall submit the information specified in paragraphs (o)(1) through (3) of this section with the operating permit application instead of the Emissions Averaging Plan.

(1) The information specified in § 63.1367(d) for emission points included in the emissions average;

(2) The information specified in § 63.9(h) of subpart A of this part, as applicable; and

(3) The information specified in paragraph (e) of this section, as applicable.

§ 63.1369 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the CAA, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) The authority conferred in § 63.177 of subpart H of this part, the authority to approve applications for determination of equivalent means of emission limitation, and the authority to approve alternative test methods shall not be delegated to any State.

TABLE 1 TO SUBPART MMM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM

Reference to subpart A	Applies to subpart MMM	Explanation
§ 63.1(a)(1)	Yes	Additional terms are defined in § 63.1361.
§ 63.1(a)(2)–(3)	Yes	
§ 63.1(a)(4)	Yes	Subpart MMM (this table) specifies applicability of each paragraph in subpart A to subpart MMM.
§ 63.1(a)(5)	N/A	Reserved.
§ 63.1(a)(6)–(7)	Yes	
§ 63.1(a)(8)	No	Discusses State programs.
§ 63.1(a)(9)	N/A	Reserved.
§ 63.1(a)(10)–(14)	Yes	

TABLE 1 TO SUBPART MMM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM—Continued

Reference to subpart A	Applies to subpart MMM	Explanation
§ 63.1(b)(1)	No	§ 63.1360 specifies applicability.
§ 63.1(b)(2)–(3)	Yes	
§ 63.1(c)(1)	Yes	Subpart MMM (this table) specifies the applicability of each paragraph in subpart A to sources subject to subpart MMM.
§ 63.1(c)(2)	No	Area sources are not subject to subpart MMM.
§ 63.1(c)(3)	N/A	Reserved.
§ 63.1(c)(4)–(5)	Yes	
§ 63.1(d)	N/A	Reserved.
§ 63.1(e)	Yes	
§ 63.2	Yes	Additional terms are defined in § 63.1361; when overlap between subparts A and MMM occurs, subpart MMM takes precedence.
§ 63.3	Yes	Other units used in subpart MMM are defined in that subpart.
§ 63.4(a)(1)–(3)	Yes	
§ 63.4(a)(4)	N/A	Reserved.
§ 63.4(a)(5)–(c)	Yes	
§ 63.5(a)	Yes	Except the term "affected source" shall apply instead of the terms "source" and "stationary source" in § 63.5(a)(1) of subpart A.
§ 63.5(b)(1)	Yes	
§ 63.5(b)(2)	N/A	Reserved.
§ 63.5(b)(3)–(5)	Yes	
§ 63.5(b)(6)	No	§ 63.1360(g) specifies requirements for determining applicability of added PAI equipment.
§ 63.5(c)	N/A	Reserved.
§ 63.5(d)–(e)	Yes	
§ 63.5(f)(1)	Yes	Except "affected source" shall apply instead of "source" in § 63.5(f)(1) of subpart A.
§ 63.5(f)(2)	Yes	
§ 63.6(a)	Yes	
§ 63.6(b)(1)–(2)	No	§ 63.1364 specifies compliance dates.
§ 63.6(b)(3)–(4)	Yes	
§ 63.6(b)(5)	Yes.	
§ 63.6(b)(6)	N/A	Reserved.
§ 63.6(b)(7)	Yes	
§ 63.6(c)(1)–(2)	Yes	Except "affected source" shall apply instead of "source" in § 63.6(c)(1)–(2) of subpart A.
§ 63.6(c)(3)–(4)	N/A	Reserved.
§ 63.6(c)(5)	Yes	
§ 63.6(d)	N/A	Reserved.
§ 63.6(e)	Yes	Except § 63.1360 specifies that the standards in subpart MMM apply during startup and shutdown for batch processes; therefore, these activities would not be covered in the startup, shutdown, and malfunction Plan.
§ 63.6(f)	Yes	Except § 63.1360 specifies that the standards in subpart MMM also apply during startup and shutdown for batch processes.
§ 63.6(g)	Yes	An alternative standard has been proposed; however, affected sources will have the opportunity to demonstrate other alternatives to the Administrator.
§ 63.6(h)	No	Subpart MMM does not contain any opacity or visible emissions standards.
§ 63.6(i)(1)	Yes	
§ 63.6(i)(2)	Yes	Except "affected source" shall apply instead of "source" in § 63.6(i)(2)(i) and (ii) of subpart A.
§ 63.6(i)(3)–(14)	Yes	
§ 63.6(i)(15)	N/A	Reserved.
§ 63.6(i)(16)	Yes	
§ 63.6(j)	Yes	
§ 63.7(a)(1)	Yes	
§ 63.7(a)(2)(i)–(vi)	Yes	§ 63.1368 specifies that test results must be submitted in the Notification of Compliance Status due 150 days after the compliance date.
§ 63.7(a)(2)(vii)–(viii)	N/A	Reserved.
§ 63.7(a)(2)(ix)–(c)	Yes	
§ 63.7(d)	Yes	Except "affected source" shall apply instead of "source" in § 63.7(d) of subpart A.
§ 63.7(e)(1)	Yes	§ 63.1365 contains test methods specific to PAI sources.
§ 63.7(e)(2)	Yes	
§ 63.7(e)(3)	Yes	Except § 63.1365 specifies less than 3 runs for certain tests.
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes	
§ 63.7(g)(1)	Yes	Except § 63.1368(a) specifies that the results of the performance test be submitted with the Notification of Compliance Status report
§ 63.7(g)(2)	N/A	Reserved.
§ 63.7(g)(3)	Yes	
§ 63.7(h)	Yes	
§ 63.8(a)(1)–(2)	Yes	

TABLE 1 TO SUBPART MMM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM—Continued

Reference to subpart A	Applies to subpart MMM	Explanation
§ 63.8(a)(3)	N/A	Reserved.
§ 63.8(a)(4)	Yes	
§ 63.8(b)(1)	Yes	
§ 63.8(b)(2)	No	§ 63.1366 specifies CMS requirements.
§ 63.8(b)(3)–(c)(3)	Yes	Except the submittal date of the immediate startup, shutdown, and malfunction reports for CMS events shall be 2 days as in § 63.6(e)(3)(iv).
§ 63.8(c)(4)	No	§ 63.1366 specifies monitoring frequencies.
§ 63.8(c)(5)–(8)	No	
§ 63.8(d)–(f)(3)	Yes	
§ 63.8(f)(4)	Yes	Except § 63.1368(b) specifies that requests may also be included in the Precompliance report.
§ 63.8(f)(5)	Yes	
§ 63.8(f)(6)	No	Subpart MMM does not require CEM's.
§ 63.8(g)	No	§ 63.1366 specifies data reduction procedures.
§ 63.9(a)–(d)	Yes	
§ 63.9(e)	No	
§ 63.9(f)	No	Subpart MMM does not contain opacity and visible emission standards.
§ 63.9(g)	No	
§ 63.9(h)(1)	Yes	
§ 63.9(h)(2)(i)	Yes	Except § 63.1368(a)(1) specifies additional information to include in the Notification of Compliance Status report.
§ 63.9(h)(2)(ii)	No	§ 63.1368 specifies the Notification of Compliance Status report is to be submitted within 150 days after the compliance date.
§ 63.9(h)(3)	Yes	
§ 63.9(h)(4)	N/A	Reserved.
§ 63.9(h)(5)–(6)	Yes	
§ 63.9(i)–(j)	Yes	Except § 63.9(j) does not apply for changes in information in the notification of compliance status report on equipment leaks as specified in § 63.1363(h)(2).
§ 63.10(a)–(b)(1)	Yes	
§ 63.10(b)(2)	No	§ 63.1367 specifies recordkeeping requirements.
§ 63.10(b)(3)	Yes	
§ 63.10(c)	Yes	
§ 63.10(d)(1)	Yes	
§ 63.10(d)(2)	Yes	
§ 63.10(d)(3)	No	Subpart MMM does not include opacity and visible emission standards.
§ 63.10(d)(4)	Yes	
§ 63.10(d)(5)	Yes	Except that actions and reporting for batch processes do not apply during startup and shutdown.
§ 63.10(e)(1)–(2)(i)	Yes	
§ 63.10(e)(2)(ii)	No	Subpart MMM does not include opacity monitoring requirements.
§ 63.10(e)(3)	Yes	
§ 63.10(e)(4)	No	Subpart MMM does not include opacity monitoring requirements.
§ 63.10(f)	Yes	
§ 63.11–§ 63.15	Yes.	

TABLE 2 TO SUBPART MMM OF PART 63—STANDARDS FOR NEW AND EXISTING PAI SOURCES

Emission source	Applicability	Requirement
Process vents	Existing:	
	Processes having uncontrolled organic HAP emissions ≥0.15 Mg/yr.	90% for organic HAP per process or to outlet concentration of ≤20 ppmv TOC.
	Processes having uncontrolled HCl and chlorine emissions ≥6.8 Mg/yr.	94% for HCl and chlorine per process or to outlet HCl and chlorine concentration of ≤20 ppmv.
	Individual process vents meeting flow and mass emissions criteria that have gaseous organic HAP emissions controlled to less than 90% on or after November 10, 1997.	98% gaseous organic HAP control per vent or ≤20 ppmv TOC outlet limit.
	New:	
	Processes having uncontrolled organic HAP emissions ≥0.15 Mg/yr.	98% for organic HAP per process or ≤20 ppmv TOC.
	Processes having uncontrolled HCl and chlorine emissions ≥6.8 Mg/yr and <191 Mg/yr.	94% for HCl and chlorine per process or to outlet concentration of ≤20 ppmv HCl and chlorine.
	Processes having uncontrolled HCl and chlorine emissions ≥191 Mg/yr.	99% for HCl and chlorine per process or to outlet concentration of ≤20 ppmv HCl and chlorine.
Storage vessels	Existing: ≥75 m^3 capacity and vapor pressure ≥3.45 kPa	Install a floating roof, reduce HAP by 95% per vessel, or to outlet concentration of ≤20 ppmv TOC.
	New: ≥38 m^3 capacity and vapor pressure ≥16.5 kPa	Same as for existing sources.
	≥75 m^3 capacity and vapor pressure ≥3.45 kPa	Same as for existing sources.

TABLE 2 TO SUBPART MMM OF PART 63—STANDARDS FOR NEW AND EXISTING PAI SOURCES—Continued

Emission source	Applicability	Requirement
Wastewater [a]	Existing: Process wastewater with ≥10,000 ppmw Table 9 compounds at any flowrate or ≥1,000 ppmw Table 9 compounds at ≥10 L/min, and maintenance wastewater with HAP load ≥5.3 Mg per discharge event.	Reduce concentration of total Table 9 compounds to <50 ppmw (or other options).
	New:	
	Same criteria as for existing sources	Reduce concentration of total Table 9 compounds to <50 ppmw (or other options).
	Total HAP load in wastewater POD streams ≥2,100 Mg/yr..	99% reduction of Table 9 compounds from all streams.
Equipment leaks	Subpart H	Subpart H with minor changes, including monitoring frequencies consistent with the proposed CAR.
Product dryers and bag dumps.	Dryers used to dry PAI that is also a HAP, and bag dumps used to introduce feedstock that is a solid and a HAP.	Particulate matter concentration not to exceed 0.01 gr/dscf.
Heat exchange systems.	Each heat exchange system used to cool process equipment in PAI manufacturing operations.	Monitoring and leak repair program as in HON.

[a] Table 9 is listed in the appendix to subpart G of 40 CFR part 63.

TABLE 3 TO SUBPART MMM OF PART 63—MONITORING REQUIREMENTS FOR CONTROL DEVICES [a]

Control device	Monitoring equipment required	Parameters to be monitored	Frequency
All control devices	1. Flow indicator installed at all bypass lines to the atmosphere and equipped with continuous recorder or.	1. Presence of flow diverted from the control device to the atmosphere or.	Hourly records of whether the flow indicator was operating and whether a diversion was detected at any time during each hour.
	2. Valves sealed closed with car-seal or lock-and-key configuration.	2. Monthly inspections of sealed valves.	Monthly.
Scrubber	Liquid flow rate or pressure drop mounting device. Also a pH monitor if the scrubber is used to control acid emissions..	1. Liquid flow rate into or out of the scrubber or the pressure drop across the scrubber..	1. Every 15 minutes.
		2. pH of effluent scrubber liquid ...	2. Once a day.
Thermal incinerator	Temperature monitoring device installed in firebox or in ductwork immediately downstream of firebox [b].	Firebox temperature	Every 15 minutes.
Catalytic incinerator	Temperature monitoring device installed in gas stream immediately before and after catalyst bed.	Temperature difference across catalyst bed.	Every 15 minutes.
Flare	Heat sensing device installed at the pilot light.	Presence of a flame at the pilot light.	Every 15 minutes.
Boiler or process heater <44 megawatts and vent stream is not mixed with the primary fuel.	Temperature monitoring device installed in firebox [b].	Combustion temperature	Every 15 minutes.
Condenser	Temperature monitoring device installed at condenser exit.	Condenser exit (product side) temperature.	Every 15 minutes.
Carbon adsorber (nonregenerative)	None	Operating time since last replacement.	N/A.
Carbon adsorber (regenerative)	Stream flow monitoring device, and.	1. Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle(s).	1. For each regeneration cycle, record the total regeneration stream mass or volumetric flow.
	Carbon bed temperature monitoring device.	2. Temperature of carbon bed after regeneration.	2. For each regeneration cycle, record the maximum carbon bed-temperature.
		3. Temperature of carbon bed within 15 minutes of completing any cooling cycle(s).	3. Within 15 minutes of completing any cooling cycle, record the carbon bed temperature.
		4. Operating time since end of last regeneration.	4. Operating time to be based on worst-case conditions.
		5. Check for bed poisoning ..	5. Yearly.

[a] As an alternative to the monitoring requirements specified in this table, the owner or operator may use a CEM meeting the requirements of Performance Specifications 8 or 9 of appendix B of part 60 to monitor TOC every 15 minutes.
[b] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.

TABLE 4 TO SUBPART MMM OF PART 63—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 63.1362(K)

Item of equipment	Control requirement [a]
Drain or drain hub	(a) Tightly fitting solid cover (TFSC); or (b) TFSC with a vent to either a process, or to a control device meeting the requirements of § 63.1256(h)(2); or (c) Water seal with submerged discharge or barrier to protect discharge from wind.
Manhole [b]	(a) TFSC; or (b) TFSC with a vent to either a process, or to a fuel gas system, or to a control device meeting the requirements of § 63.1256(h)(2); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Lift station	(a) TFSC; or (b) TFSC with a vent to either a process, or to a control device meeting the requirements of § 63.1256(h)(2); or (c) If the lift station is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter. The lift station shall be level controlled to minimize changes in the liquid level.
Trench	(a) TFSC; or (b) TFSC with a vent to either a process, or to a control device meeting the requirements of § 63.1256(h)(2); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Pipe	Each pipe shall have no visible gaps in joints, seals, or other emission interfaces.
Oil/Water separator	(a) Equip with a fixed roof and route vapors to a process, or equip with a closed-vent system that routes vapors to a control device meeting the requirements of § 63.1256(h)(2); or (b) Equip with a floating roof that meets the equipment specifications of § 60.693 (a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4).
Tank	Maintain a fixed roof.[c] If the tank is sparged [d] or used for heating or treating by means of an exothermic reaction, a fixed roof and a system shall be maintained that routes the organic hazardous air pollutants vapors to other process equipment or a fuel gas system, or a closed-vent system that routes vapors to a control device that meets the requirements of 40 CFR § 63.119(e)(1) or (e)(2).

[a] Where a tightly fitting soiid cover is required, it shall be maintained with no visible gaps or openings, except during periods of sampling, inspection, or maintenance.
[b] Manhole includes sumps and other points of access to a conveyance system.
[c] A fixed roof may have openings necessary for proper venting of the tank, such as pressure/vacuum vent, j-pipe vent.
[d] The liquid in the tank is agitated by injecting compressed air or gas.

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Part III

Department of Housing and Urban Development

24 CFR Part 968
Comprehensive Improvement Assistance Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 968

[Docket No. FR–4462–F–02]

RIN 2577–AB97

Comprehensive Improvement Assistance Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the regulations for the Comprehensive Improvement Assistance Program (CIAP) to permit the non-competitive distribution of CIAP funds to all eligible public housing authorities (PHAs) based on two equally-weighted factors: a PHA's share of the total number of units eligible for CIAP; and a PHA's share of the total number of bedrooms in units eligible for CIAP (with studio units counted as one-bedroom units). The purpose of this amendment is to provide small PHAs the opportunity of a transition period to become familiar with a non-competitive, capital funding process in anticipation of formula funding in Federal Fiscal Year (FFY) 2000 under new statutory authority.

DATES: Effective date: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: William J. Flood, Director, Office of Capital Improvements, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4134, Washington, DC 20410. Telephone (202) 708–1640. (This is not a toll free number.) Persons with hearing or speech impediments may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Comprehensive Improvement Assistance Program (CIAP) is authorized under section 14 of the United States Housing Act of 1937 (1937 Act). CIAP provides modernization funds to public housing authorities (PHAs) that own or operate less than 250 units of public housing, to enable them to improve the physical condition and upgrade the management and operations of existing public housing developments to assure their continued availability for low-income families. In FFY 1999, a total of $2.895 billion is available for Modernization Programs (CIAP and Comprehensive Grant Program (CGP)), of which approximately $364 million will be available to CIAP PHAs.

On April 30, 1999 (64 FR 23484), HUD published and requested comment on a proposed rule to amend the CIAP regulations to permit the distribution of funds, after the formula allocation described in 24 CFR 968.103, to all eligible PHAs on a non-competitive basis.

II. Response to Public Comments

HUD received a total of 18 public comments on the April 30, 1999 proposed rule, 15 from PHAs and three from industry associations. The comments were almost entirely positive and in support of the proposed rule stating, for example, that the rule would allow PHAs to plan improvements each year based on funding they know they will receive rather than hope they will receive as in the past.

A few comments suggested changes to the proposal, primarily to the formula factors. Suggested as alternative or additional factors to use in the formula were: age of units; management performance; prior unfunded CIAP applications; geographic location; availability of other government funding; market competition with other federal rent subsidized units; need, generally; and counting each studio unit as a half-bedroom, rather than a one-bedroom, unit. HUD acknowledges that many more or different factors could be considered, but for purposes of the FFY 1999 distribution, the final year of CIAP funding which this rule addresses, basically agrees with the comment that commended HUD for not complicating the formula with a multitude of other factors and stated: "Basing the formula only on the number of units and the bedroom distribution appears simple and straightforward." Section 519 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) (the "Public Housing Reform Act"), authorizes a new system of funding capital improvement needs for all PHAs, large and small, on a formula basis beginning in FFY 2000.

Other comments focused on the vacancy preference provided in the proposed rule. One comment explicitly supported the retention of preferences for emergency modernization and vacancy reduction. Another comment stated that a vacancy factor of 25% is too high for a small PHA, and the presence of such a high rate suggests severe physical conditions, poor management, or design or area factors that would not be overcome with minor amounts of CIAP funding. HUD presently considers this factor an appropriate threshold as the determinant of an emergency that merits additional funding, but will monitor the requests for and use of emergency funds for future reconsideration.

In consideration of the strong positive response to the proposed rule, HUD is adopting it as final without change.

Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements of the Comprehensive Improvement Assistance Program have been approved by the Office of Management and Budget under OMB Approval No. 2577–0044. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(2) of the HUD regulations, this rule amends an existing document, the regulations at 24 CFR part 968, which as a whole would not fall within an exclusion, but the amendment by itself would do so. Therefore, the actions in this document are determined not to have the potential of having a significant impact on the quality of the human environment and further review under the National Environmental Policy Act is not necessary. A Finding of No Significant Impact (FONSI) is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule would only modify the funding process for the final year of the CIAP to provide small PHAs with a transition period to become familiar with a non-competitive capital funding process.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. The rule would only modify the funding process for the final year of the CIAP to provide small PHAs with a transition period to become familiar with a non-competitive capital funding process.

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the Comprehensive Improvement Assistance Program is 14.852.

List of Subjects

24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, part 968 of title 24 of the Code of Federal Regulations is amended as follows:

PART 968—PUBLIC HOUSING MODERNIZATION

1. The authority citation for 24 CFR part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437l, and 3535(d).

2. In § 968.110, paragraph (a) is revised to read as follows:

§ 968.110 Other program requirements.

* * * * *

(a) *Nondiscrimination and equal opportunity.* The PHA shall comply with Title II of the Americans with Disabilities Act and 28 CFR part 35; section 504 of the Rehabilitation Act of 1973 and 41 CFR part 60–471; and the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and 24 CFR part 40.

* * * * *

3. Section 968.210 is revised to read as follows:

§ 968.210 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* After modernization funds for a particular FFY become available, HUD will notify PHAs of the time frame for submission of the CIAP application and other pertinent information.

(b) *Distribution of funding.* HUD will distribute the available funding under this subpart to every eligible PHA that responds to the notice issued pursuant to paragraph (a) of this section based on two equally-weighted factors: a PHA's share of the total number of units eligible for CIAP; and a PHA's share of the total number of bedrooms in units eligible for CIAP (with studio units counted as one-bedroom units). HUD will also provide a vacancy preference, consisting of an additional increment of funding, to PHAs that have modernization capability and demonstrate that at least 25% of their units are vacant, substandard units (where vacancies are not due to insufficient demand). A PHA has modernization capability if it has previously received CIAP funding and meets the requirements of *Modernization capability* as defined at § 968.205.

(c) *ACC amendment.* HUD and the PHA shall enter into an ACC amendment in order for the PHA to draw down modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The PHA Executive Director, where authorized by the Board of Commissioners and permitted by State law, may sign the ACC amendment on behalf of the PHA. HUD has the authority to condition an ACC amendment (e.g., to require a PHA to hire a modernization coordinator or contract administrator to administer its modernization program).

(d) *Declaration of trust.* As HUD may require, the PHA shall execute and file for record a Declaration of Trust, as provided under the ACC, to protect the rights and interests of HUD throughout the 20-year period during which the PHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

Dated: June 15, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–15737 Filed 6–22–99; 8:45 am]

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federal register

Wednesday
June 23, 1999

Part IV

Department of Housing and Urban Development

24 CFR Part 960
Pet Ownership in Public Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 960

[Docket No. FR–4437–P–01]

RIN 2577–AB94

Pet Ownership in Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish pet ownership requirements for residents of public housing other than federally assisted rental housing for the elderly or persons with disabilities. Regulations covering pet ownership requirements for residents of federally assisted rental housing for the elderly or persons with disabilities are located at 24 CFR part 5, subpart C. This proposed rule would not alter or affect these current regulations in any way.

DATES: *Comments Due Date:* August 23, 1999.

ADDRESSES: Submit your comments about this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Your comments should refer to the above docket number and title. We do not accept facsimile (FAX) comments. A copy of each comment submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia S. Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Room 4222, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–5000; telephone (202) 708–0744 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

a. Pet Ownership in Public Housing—Section 31 of the United States Housing Act of 1937

Section 526 of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, 112 Stat. 2461, 2568)(the Public Housing Reform Act of 1998) added new section 31 (captioned "Pet Ownership in Public Housing") to the United States Housing Act of 1937 (42 U.S.C. 1437z–3)(the 1937 Act). Section 31 establishes pet ownership requirements for residents of public housing other than federally assisted rental housing for the elderly or persons with disabilities.[1] Section 31(a) of the 1937 Act (captioned "Ownership Conditions") states that:

> A resident of a dwelling unit in public housing (as such term is defined in subsection (c)) may own 1 or more common household pets or have 1 or more household pets present in the dwelling unit of such resident, subject to the reasonable requirements of the public housing agency, if the resident maintains each pet responsibly and in accordance with applicable State and local public health, animal control, and animal anti-cruelty laws and regulations and with the policies established in the public housing agency plan for the agency.

Section 31(b) of the 1937 Act (captioned "Reasonable Requirements") lists a number of requirements that are reasonable for the purposes of section 31(a) and that a public housing agency may impose on residents who own or have pets in their dwelling units. These requirements may include:

(1) Requiring the payment of a non-refundable nominal fee, a refundable pet deposit, or both;

(2) Limitations on the number of animals in a unit based on unit size;

(3) Prohibitions against dangerous animals and other animals based on certain factors including size and weight; and

(4) Restrictions and prohibitions based on size and type of building or project or other relevant conditions.

b. Pet Ownership for the Elderly and Persons With Disabilities—Section 227 of the Housing and Urban-Rural Recovery Act of 1983

It is important to note that section 31 of the 1937 Act does not apply to public housing that is federally assisted rental housing for the elderly or persons with disabilities. Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r–1) (the 1983 Act) covers pet ownership requirements for this type of housing. There are existing regulations that implement section 227 of the 1983 Act located at 24 CFR part 5, subpart C. This proposed rule would not alter or affect these regulations in any way, nor would the regulations at part 5, subpart C apply in any way to public housing that is covered by section 31 of the 1937 Act. This proposed rule is not related in any way to section 227 of the 1983 Act nor the regulations that implement section 227 located at 24 CFR part 5, subpart C. This proposed rule would implement section 31 of the 1937 Act in 24 CFR part 960, rather than part 5, in part, to make this distinction clear.

c. This Proposed Rule

This proposed rule would implement new section 31 of the 1937 Act by adding new subpart G to 24 CFR part 960. The proposed rule would add four new sections to subpart G. These sections would comprise the entire subpart. New § 960.701 (captioned "Purpose") would state that the purpose of subpart G is to implement section 31 of the 1937 Act. New § 960.703 (captioned "Applicability") would limit the applicability of the subpart G regulations to public housing other than federally assisted rental housing for the elderly or persons with disabilities. New § 960.703 would also direct readers to 24 CFR part 5, subpart C, for regulations covering pet ownership requirements for federally assisted rental housing for the elderly or persons with disabilities.

New § 960.707 (captioned "Pet ownership") would implement the primary requirements of section 31 of the 1937 Act. The structure of new § 960.707 closely follows the structure of section 31. This proposed rule would implement section 31 in this way in order to provide public housing agencies (PHAs) with discretion to fashion pet requirements that reflect local needs. HUD's decision to allow PHAs this discretion derives from the basic policy, reflected in section 502(b) of the Public Housing Reform Act of 1998 (42 U.S.C. 1437 note), of deregulating and decontrolling PHAs.

In addition to the primary requirements of section 31, new § 960.707 would clarify that the non-refundable nominal fee that public housing agencies may require residents to pay is intended to cover the reasonable operating costs to the project, and that the refundable pet deposit is intended to cover additional costs not otherwise covered. New § 960.707 would also clarify that if public housing agencies require a resident to pay a pet deposit, the deposit must be placed in an escrow account and the public housing agency must refund the unused portion of the deposit, plus any accrued interest, to the resident within a reasonable time after the resident moves from the project or no longer owns or has a pet present in the resident's dwelling unit.

d. Service Animals That Assist Persons With Disabilities

New § 960.705 (captioned "Service animals that assist persons with disabilities") would clarify that the regulations that would be added by this proposed rule would not apply to service animals that assist persons with disabilities. New § 960.705 would clarify that this exclusion would apply to both service animals that reside in public housing, covered under section 31 of the 1937 Act, and service animals that visit these projects. New § 960.705 would also clarify that nothing in new subpart G limits or impairs the rights of persons with disabilities, authorizes PHAs to limit or impair the rights of persons with disabilities, or affects any authority PHAs may have to regulate service animals that assist persons with disabilities.

II. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91–190, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule implements section 31 of the United States Housing Act of 1937, which establishes pet ownership requirements for public housing other than federally assisted rental housing for the elderly or persons with disabilities.

Section 31, and the regulations proposed by this rule, allow public housing agencies to require residents that own or have pets in their dwelling units to pay a non-refundable nominal fee to cover the reasonable operating costs to the project relating to the presence of pets, a refundable pet deposit to cover additional costs not otherwise covered, or both. Consequently, HUD does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities.

While HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, we welcome any comments regarding alternatives to this rule that would meet HUD's objectives, as described in this preamble, and would be less burdensome to small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 109 Stat. 48, 64, codified at 2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (captioned "Federalism"), has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government.

Regulatory Planning and Review

The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 960 as follows:

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

1. The authority citation for 24 CFR part 960 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

2. Add subpart G to read as follows:

Subpart G—Pet Ownership in Public Housing

Sec.
960.701 Purpose.
960.703 Applicability.
960.705 Service animals that assist persons with disabilities.
960.707 Pet ownership.

Subpart G—Pet Ownership in Public Housing

§ 960.701 Purpose.

The purpose of this subpart is to implement section 31 of the United States Housing Act of 1937 (42 U.S.C. 1437z–3).

§ 960.703 Applicability.

This subpart applies to public housing as that term is defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)), except that such term does not include any public housing that is federally assisted rental housing for the elderly or handicapped, as such term is defined in section 227(d) of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r–1(d)). Regulations that apply to pet ownership in federally assisted rental housing for the elderly or handicapped are located at 24 CFR part 5, subpart C.

§ 960.705 Service animals that assist persons with disabilities.

(a) This subpart G does not apply to service animals that assist persons with disabilities. Public housing agencies may not apply or enforce any policies established under this subpart against service animals that assist persons with disabilities. This exclusion applies to both service animals that reside in public housing, as that term is used in § 960.703, and service animals that visit these projects.

(b) Nothing in this subpart G:

(1) Limits or impairs the rights of persons with disabilities;

(2) Authorizes public housing agencies to limit or impair the rights of persons with disabilities; or

(3) Affects any authority that public housing agencies may have to regulate service animals that assist persons with

[1] Section 31 of the 1937 Act uses the term "federally assisted rental housing for the elderly or handicapped." HUD prefers to use the term "persons with disabilities" in place of the term "handicapped." Accordingly, this preamble uses the term "persons with disabilities" wherever possible. However, because HUD's regulations must comply with the statutory authority upon which they are based, the text of the regulations proposed by this rule retains the language of the 1937 Act.

disabilities, under Federal, State, or local law.

§ 960.707 Pet ownership.

(a) *Ownership Conditions.* A resident of a dwelling unit in public housing, as that term is used in § 960.703, may own one or more common household pets or have one or more common household pets present in the dwelling unit of such resident, subject to the reasonable requirements of the public housing agency, if the resident maintains each pet:

(1) Responsibly;

(2) In accordance with applicable State and local public health, animal control, and animal anti-cruelty laws and regulations; and

(3) In accordance with the policies established in the public housing agency plan for the agency.

(b) *Reasonable requirements.* Reasonable requirements may include but are not limited to:

(1) Requiring payment of a non-refundable nominal fee to cover the reasonable operating costs to the project relating to the presence of pets, a refundable pet deposit to cover additional costs not otherwise covered, or both;

(2) Limitations on the number of animals in a unit, based on unit size;

(3) Prohibitions on types of animals that are classified as dangerous, and prohibitions on individual animals, based on certain factors, including the size and weight of animals; and

(4) Restrictions or prohibitions based on size and type of building or project, or other relevant conditions.

(c) *Pet deposit.* A public housing agency that requires a resident to pay a pet deposit must place the deposit in an escrow account, and the public housing agency must refund the unused portion of the deposit, plus any accrued interest, to the resident within a reasonable time after the resident moves from the project or no longer owns or has a pet present in the dwelling unit of such resident.

(d) *Public Housing Agency Plan.* Any policies established under this section must be included in the public housing agency's public housing agency plan.

Dated: June 8, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–15734 Filed 6–22–99; 8:45 am]

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federal register

Wednesday
June 23, 1999

Part V

Department of Housing and Urban Development

24 CFR Part 964

Public Housing Agency Organization; Required Resident Membership on Board of Directors or Similar Governing Body; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 964

[Docket No. FR–4502–P–01]

RIN 2577–AC13

Public Housing Agency Organization; Required Resident Membership on Board of Directors or Similar Governing Body

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 2(b) of the United States Housing Act of 1937, which was added by section 505 of the Quality Housing and Work Responsibility Act of 1998 (the Public Housing Reform Act of 1998). Section 2(b) requires, with certain exceptions, that the membership of the board of directors or similar governing body of a public housing agency must contain not less than one member who is directly assisted by the public housing agency.

DATES: *Comments Due Date:* August 23, 1999.

ADDRESSES: Submit your comments about this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Your comments should refer the above docket number and title. We do not accept facsimile (FAX) comments. A copy of each comment submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives, Room 4116, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–5000; telephone (202) 708–0713 (this is not a toll-free number) or Paula Blunt, Associate Deputy Assistant Secretary for Community Relations and Involvement, Room 4226, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–5000; telephone (202) 619–8201 (this is not a toll-free number). Hearing- or speech-impaired individuals may access these numbers via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

a. Public Housing Reform

Section 505 of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, 112 Stat. 2461)(the Public Housing Reform Act of 1998) amended section 2 of the United States Housing Act of 1937 (42 U.S.C. 1437)(the 1937 Act). New section 2(b)(1) of the 1937 Act requires, except in certain cases, that:

> the membership of the board of directors or similar governing body of each public housing agency shall contain not less than 1 member—(A) who is directly assisted by the public housing agency; and (B) who may, if provided for in the public housing agency plan, be elected by the residents directly assisted by the public housing agency.

New section 2(b)(2) of the 1937 Act establishes two exceptions to the resident board member requirement. First, public housing agencies that are located in a State that requires the members of a board of directors or similar governing body of a public housing agency to be salaried and to serve on a full-time basis are excepted from the resident board member requirement. Second, public housing agencies with less than 300 units are excepted from the resident board member requirement if they meet two conditions:

(1) The public housing agency must provide reasonable notice to the resident advisory board of the opportunity for residents to serve on the agency's board of directors or similar governing body; and

(2) The public housing agency must wait a reasonable time after the resident advisory board has received this notice.

If the public housing agency has not been notified within this reasonable time that any resident intends to participate on the board of directors, then the public housing agency is excepted from the resident board member requirement.

Section 2(b) also makes clear that no person may be prohibited from serving on the board of directors or similar governing body of the public housing agency because that person is a public housing resident or is assisted under section 8 of the 1937 Act (42 U.S.C. 1437f)(section 8).

b. This Proposed Rule

This proposed rule would implement section 2(b) of the 1937 Act in a new subpart E (captioned "Resident board members") in 24 CFR part 964 (captioned "Tenant Participation and Tenant Opportunities in Public Housing"). In addition, this proposed rule would also revise § 964.3 (captioned "Applicability and scope") to clarify that while part 964 generally applies only to public housing residents, new subpart E would apply to both public housing residents and persons assisted under section 8.

The proposed rule would implement the requirements of section 2(b) discussed above. In addition, the proposed rule would clarify a number of issues raised by section 2(b) as follows:

(1) *Exception for public housing agencies not governed by board.* Public housing agencies that are not governed by a board of directors or similar governing body would be excepted.

(2) *Resident is full member.* A resident board member would be a full member of the board of directors or similar governing body. The board would not be able to exclude a resident board member from participating in any matter before the board on the grounds that the resident board member's lease with the public housing agency either results or may result in a conflict of interest, unless the matter is clearly applicable to the resident board member only in a personal capacity.

(3) *Initial implementation of requirement.* A board of directors or similar governing body would be required to comply with the following deadlines, unless the membership of the board already contains at least one resident board member. If the board consists of appointed board members, the first seat on the board that becomes open on or after October 1, 1999, would have to be filled by an eligible resident. If the board consists of elected board members, the chief executive officer of the unit of general local government whose jurisdiction coincides most directly with the jurisdiction of the public housing agency would have to create at least one additional seat on the board, by December 31, 1999, and would have to fill that seat with an eligible resident. In the case of multi-jurisdictional public housing agencies, the chief executive officers of each unit of general local government that comprises the jurisdiction of the public housing agency would be jointly responsible for creating and filling any additional seats. For the purposes of this rule, the term "elected board member" means:

(1) A board member who is elected directly to the board; or

(2) An elected official who serves on the board as a result of being elected to another office (i.e. county commissioner, city council member, etc.).

(4) *Filling open seats.* When the term of a resident board member expires or a seat occupied by, or intended for, a resident board member otherwise becomes open, the open seat would have to be filled with an eligible resident, unless the membership of the board would continue to have at least one resident board member after the seat becomes open. If the loss of a resident board member would leave the membership of the board with no resident board member, the open seat would have to be filled with an eligible resident and would have to be filled according to the following procedures.

If the public housing agency plan does not provide for an elected resident board member, the board's normal appointing authority would have to appoint an eligible resident to fill the open seat. If there are no eligible residents who wish to serve on the board at the time the seat becomes open, the board would have to continue to make reasonable efforts to identify an eligible resident, until an eligible resident is appointed to board.

If the public housing agency plan provides for an elected resident board member, the board would have to initiate an election process. If there are no eligible residents who wish to stand for election to the board at the time the seat becomes open, the board would have to cancel the election and initiate a new election process when the board identifies an eligible resident who wishes to stand for election. The board would have to continue to make reasonable efforts to identify an eligible resident until an eligible resident is elected to the board.

II. Findings and Certifications

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, under HUD's regulations at 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule implements section 505 of the Public Housing Reform Act of 1998 (42 U.S.C. 1437), which requires with certain exceptions, that the board of directors or similar governing body of a public housing agency contain not less than one member who is directly assisted by the public housing agency. Section 505 and this proposed rule provide flexibility for smaller public housing agencies through an exception for public housing agencies that have less than 300 public housing units. Consequently, HUD does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities.

While HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, we welcome any comments regarding alternatives to this rule that would meet HUD's objectives, a described in this preamble, and would be less burdensome to small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (captioned "Federalism"), has determined that the policies contained in this proposed rule would have federalism implications. Specifically, the requirement that the membership of the board of directors or similar governing body of a public housing agency must contain not less than one member who is directly assisted by the public housing agency would have direct effects on any state or local laws that govern the organization of public housing agencies. HUD has prepared and submitted to the Office of Management and Budget a Federalism Assessment that addresses the federalism implications raised by this proposed rule.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 964 as follows:

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

1. The authority citation for 24 CFR part 964 is revised to read as follows:

Authority: 42 U.S.C. 1437, 1437d, 1437g, 1437l, 1437r, 1437t, and 3535(d).

2. Revise § 964.3 as follows:

a. Revise paragraph (a) to read as follows;

b. Redesignate paragraph (e) as paragraph (f); and

c. Add new paragraph (e) to read as follows.

§ 964.3 Applicability and scope.

(a) The policies and procedures contained in this part apply to any HA that has a Public Housing Annual Contributions Contract (ACC) with HUD. This part, except for subpart E, does not apply to PHAs with housing assistance payments contracts with HUD under section 8 of the U.S. Housing Act of 1937.

* * * * *

(e) Subpart E of this part implements section 2(b) of the United States Housing Act of 1937 (42 U.S.C. 1437), which provides for resident membership on the board of directors or similar governing body of a public housing agency. Subpart E applies to any public housing agency that has a public housing annual contributions contract with HUD or a housing assistance payments contract with HUD under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

* * * * *

2. Add subpart E to read as follows:

Subpart E—Resident Board Members

Sec.
964.400 Purpose.
964.405 Applicability.

964.410 Additional definitions.
964.415 Resident board members.
964.420 Resident board member may be elected.
964.425 Exceptions.
964.430 Nondiscrimination.
964.435 Initial implementation of resident board member requirement.
964.440 Filling an open board member seat.

Subpart E—Resident Board Members

§ 964.400 Purpose.

The purpose of this subpart is to implement section 2(b) of the United States Housing Act of 1937 (42 U.S.C. 1437).

§ 964.405 Applicability.

This subpart applies to any public housing agency that has a public housing annual contributions contract with HUD or a housing assistance payments contract with HUD under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

§ 964.410 Additional definitions.

The following additional definitions apply to this subpart only:

(a) *Directly assisted.* Directly assisted means a public housing resident or a participant in the tenant-based section 8 program.

(b) *Governing board.* Governing board means the board of directors or similar governing body of a public housing agency.

(c) *Resident board member.* A resident board member is a member of the governing board who is directly assisted by that public housing agency.

(d) *Related unit of general local government.* A related unit of general local government is the unit of State or local government whose jurisdiction coincides most directly with the jurisdiction of the public housing agency, or in the case of a multi-jurisdictional public housing agency, a unit of State or local government whose jurisdiction comprises the jurisdiction of the public housing agency.

(e) *Elected board member.* An elected board member is either a member of the governing board who is elected directly to the governing board or who serves on the board as a result of being elected to another office.

(f) *Eligible resident.* An eligible resident is a resident who is directly assisted by a public housing agency and is eighteen years of age or older.

§ 964.415 Resident board members.

Except as provided in § 964.425, the membership of the governing board of each public housing agency must contain not less than one resident board member.

§ 964.420 Resident board member may be elected.

Residents directly assisted by a public housing agency may elect a resident board member if provided for in the public housing agency plan.

§ 964.425 Exceptions.

The requirements of this subpart do not apply to any public housing agency that:

(a) Is located in a State that requires the members of a governing board to be salaried and to serve on a full-time basis;

(b) Is not governed by a governing board; or

(c) Has less than 300 public housing units provided that the public housing agency has:

(1) Provided reasonable notice to the resident advisory board of the opportunity for residents to serve on the governing board;

(2) Not been notified of the intention of any resident to participate on the governing board within a reasonable time of the resident advisory board receiving the notice described in paragraph (c)(1) of this section; and

(3) Repeated the requirements of paragraphs (c)(1) and (c)(2) of this section at least once every year.

§ 964.430 Nondiscrimination.

(a) *Membership status.* A resident board member is a full member of the governing board.

(b) *Residence status.* A governing board may not prohibit any person from serving on the governing board because that person is a resident of a public housing project or is assisted under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(c) *Conflict of Interest.* A governing board may not exclude any resident board member from participating in any matter before the governing board on the grounds that the resident board member's lease with the public housing agency either results or may result in a conflict of interest, unless the matter is clearly applicable to the resident board member only in a personal capacity.

§ 964.435 Initial implementation of resident board member requirement.

Unless the membership of its governing board already contains not less than one resident board member, a public housing agency must comply with the following deadlines, as applicable:

(a) *If the governing board consists of appointed board members.* If the governing board consists of appointed board members, the first seat on the governing board that becomes open on or after October 1, 1999, must be filled by an eligible resident according to the requirements of § 964.440.

(b) *If the governing board consists of elected board members.* If the governing board consists of elected board members, the chief executive officer of the related unit of general local government must create at least one additional seat on the governing board, by December 31, 1999, and must fill that seat with an eligible resident according to the requirements § 964.440. In the case of multi-jurisdictional public housing agencies, the chief executive officers of each related unit of general local government are jointly responsible for creating and filling any additional seats.

§ 964.440 Filling an open board member seat.

When the term of a resident board member expires or when a seat occupied by, or intended for, a resident board member otherwise becomes open, the open seat must be filled with an eligible resident, unless the membership of the governing board would continue to contain not less than one resident board member if the open seat were not filled with an eligible resident. An open seat that does not meet this requirement must be filled with an eligible resident according to the following procedures, as applicable:

(a) *If the public housing agency plan does not provide for an elected resident board member.* If the public housing agency plan does not provide for an elected resident board member, the governing board's normal appointing authority must appoint an eligible resident to fill the open seat. If there are no eligible residents who wish to serve on the governing board at the time the seat becomes open, the governing board must continue to make reasonable efforts to identify an eligible resident who wishes to serve on the governing board, until an eligible resident is appointed to the governing board.

(b) *If the public housing agency plan provides for an elected resident board member.* If the public housing agency plan provides for an elected resident board member, the governing board must initiate an election process. If there are no eligible residents who wish to stand for election to the governing board at the time the seat becomes open, the governing board must cancel the election and initiate a new election process when the governing board identifies an eligible resident who wishes to stand for election to the governing board. The governing board must continue to make reasonable efforts to identify an eligible resident who wishes to stand for election to the governing board until an eligible resident is elected to the governing board.

Dated: June 15, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

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federal register

Wednesday
June 23, 1999

Part VI

Department of Housing and Urban Development

Public Housing Assessment System, Physical Condition Scoring Process; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4509–N–07]

Public Housing Assessment System, Physical Condition Scoring Process

AGENCY: Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies and members of the public about HUD's process for issuing scores under the Physical Condition Indicator of the Public Housing Assessment System (PHAS).

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20024; telephone Customer Service Center at 1–888–245–4860 (this is a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

Purpose of This Notice

The purpose of this notice is to provide additional information about the scoring process for PHAS Indicator #1, Physical Condition. The purpose of the Physical Condition assessment is to ensure that public housing units are safe, decent, sanitary and in good repair, using HUD's uniform physical condition standards for the assessment. The physical condition assessment under the PHAS utilizes uniform physical inspection procedures to determine compliance with the uniform standards and is an important indicator of a PHA's performance.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points under PHAS Indicator #1. The physical condition score is included in the aggregate PHAS score.

The information provided in this notice was originally published on May 13, 1999 (64 FR 26166). HUD is publishing this information again since it relates to the Public Housing Assessment System proposed rule, published in the **Federal Register** on June 22, 1999. This notice is different from the May 13, 1999 notice in the following respects: the information concerning common areas and building exteriors or building systems has been expanded; a new paragraph 16 is added to Section I, and previous paragraph 16 is now paragraph 17; and another inspection summary report model is provided.

The PHAS/REAC Physical Inspection and the HQS Inspection

The PHAS physical inspection is performed by HUD's Real Estate Assessment Center (REAC), and is also referred to as the REAC physical inspection. The REAC physical inspection encompasses virtually everything covered by the Housing Quality Standards (HQS) inspection. The REAC physical inspection, however, is more objective and more defined in identifying and classifying deficiencies. While the HQS inspection generates a reasonably subjective "pass/fail" designation, the REAC inspection generates much more comprehensive results, such as:

- Physical scores reported at the property level;
- Area level scores for each of the five REAC physical inspection areas; and
- Observations of deficiencies recorded by the inspector electronically at the time of the inspection.

The Physical Inspection Scoring Process

1. Definitions

The following are the important definitions of terms used in the physical condition scoring process:

Score means a number between 0 and 100 that reflects the physical condition of a property, inspectable area, or sub-area:

- To record a health or safety problem, a letter is added to the property score (a, b, or c); and
- To note that smoke detectors are inoperable or missing, an asterisk (*) is added to the property score.

Inspectable area means any of the five major components of the property, which are:

- Site
- Building exteriors
- Building systems
- Common areas
- Dwelling units

Sub-area means an inspectable area for one building. For example, if a property has more than one building, each inspectable area for each building in the property is treated as a sub-area.

Inspectable items refer to walls, kitchens, bathrooms, and other things to be inspected in an inspectable area. The number of inspectable items may vary from 8 to 17 items for each area. Weights are assigned to each item as shown in Appendix 1 (Item Weights and Criticality Levels).

Deficiencies refer to specific problems, comparable to HQS, that can be recorded for the inspectable items, such as a hole in a wall or a damaged refrigerator in the kitchen.

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item. Appendix 1 also lists all deficiencies with their designated levels, which vary from 1 to 5, with 5 as the most critical. The deficiencies also have assigned values used in scoring as follows:

Criticality	Level	Value
Critical	5	5.00
Very important	4	3.00
Important	3	2.25
Contributes	2	1.25
Slight contribution	1	0.50

Based on the importance of the deficiency, reflected in its criticality value, points are deducted from the property score. For example, a clogged drain in the kitchen is more critical than a damaged surface on a counter top. Therefore, more points will be deducted for a clogged drain than for a damaged surface.

Severity means one of three levels that reflect the extent of damage associated with each deficiency, with values assigned as follows:

Severity	Value
Severe	1.00
Major	0.50
Minor	0.25

Appendix 1 shows the severity levels that are possible for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity, as described below. For specific definitions of each severity level, see the REAC's "Dictionary of Deficiency Definitions," which is available from REAC's Internet Site, http://www.hud.gov/reac and is reproduced in this Notice as Appendix 2 (Dictionary of Deficiency Definitions).

Normalized area weights mean weights used with area scores to create property level scores. The weights are adjusted to reflect the inspectable items that are present.

2. Scoring Process Input

To generate accurate scores, it is crucial to determine the appropriate relative weights of the various components of the inspection; that is, which components are the most important, the next most important, and so on. To develop the scoring methodology for the PHAS physical inspection, HUD utilized information provided by several knowledgeable parties, including:

- Professionals experienced in assessing the physical condition of properties;
- Representatives from the housing and public housing industries; and
- HUD professionals.

In an extensive series of meetings, these parties gave HUD valuable advice and comments on the relative weights and values for inspectable areas, items, criticality of deficiencies, and severity levels of deficiencies.

3. Equity Principles

In addition to determining the appropriate relative weights, HUD also took into consideration several issues concerning equity between properties:

Proportionality. The scoring methodology includes an important control, which does not allow any sub-area scores to be negative. If a sub-area, such as the building exterior for a given building, has so many deficiencies that the sub-area score is negative, the score is set to zero. This control mechanism ensures that no single building or dwelling unit can affect the overall score more than its proportionate share of the whole.

Configuration of property. The scoring methodology takes into account that properties have different numbers of units in buildings. To fairly score properties with different numbers of units in buildings, the area scores are calculated for building exteriors and systems by using weighted averages of the sub-area scores, where the weights are based on the number of units in each building.

Differences between properties. The scoring methodology also takes into account that properties have different features and amenities. To ensure that the overall score reflects only items are present to be inspected, weights to calculate area and property scores are adjusted depending on how many items are there to be inspected.

4. Deficiency Definitions

During a physical inspection of a property, the inspector looks for deficiencies for each inspectable item within the inspectable areas, such as the walls (item) of a dwelling unit (area). A specific criticality level is assigned to each deficiency. The criticality level reflects the importance of the deficiency relative to all deficiencies for the item. One of three severity levels is also assigned based on the observed condition.

The REAC's "Dictionary of Deficiency Definitions" specifically defines the three levels of severity: severe, major, and minor. As noted earlier, this dictionary is found in Appendix 2 to this notice, and is also available on the REAC Internet Site.

5. Health and Safety Deficiencies

The REAC physical inspection emphasizes health and safety (H&S) deficiencies because of their crucial importance to the well-being of residents. H&S deficiencies can substantially reduce the overall property score. As noted earlier, the H&S deficiencies are highlighted by adding a letter to the numeric score are added as follows:

- If there are no H&S deficiencies, add a;
- If there are H&S deficiencies that are not life-threatening (NLT), add b; and
- If there are exigent H&S deficiencies that are life threatening(LT), i.e., calling for immediate attention or remedy—or fire safety H&S deficiencies, add c.

Appendix 1 lists all H&S deficiencies with an "LT" designation for exigent/fire safety and "NLT" for non-life threatening deficiencies.

To ensure prompt correction of H&S deficiencies, the inspector gives the property representative the list of every observed exigent/fire safety H&S deficiency before leaving the site. The property representative acknowledges receipt of the deficiency report by signature. The inspector also transmits the deficiency report to HUD not later than the morning after completing the inspection. HUD sends to all PHAs inspection reports that summarize the H&S deficiencies recorded by the inspector. These reports clearly show:

- The number of H&S deficiencies (exigent/fire safety and non-life threatening) that the inspector observed;
- All observed smoke detector deficiencies; and
- A projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units.

If there are smoke detector deficiencies, the physical condition score will include an asterisk. However, problems with smoke detectors do not currently affect the overall score. When there is an asterisk indicating the property has at least one smoke detector deficiency, that part of the score may be identified as "risk." For example, "93a, risk" for 93a* and "71c, risk" for 71c*.

There are six distinct letter grade combinations: a, a*, b, b*, c and c*. For example:

- A score of 90c* means that the property contains at least one exigent/fire safety H&S deficiency to be corrected, including some smoke detector; deficiencies, but is otherwise in excellent condition.
- A score of 55a means that the property is in poor condition, even though there are no H&S deficiencies; and
- A property in excellent physical condition with no H&S deficiencies would have a score of 90a to 100a.

6. Scoring Process Elements

The physical condition scoring process is based on three elements within a property:

- Inspectable areas;
- Inspectable items; and
- Observed deficiencies.

7. Scoring as Weighted Averages

The score for a property is the weighted average of area scores, with the area weights adjusted to take into account how many of an area's inspectable items are actually present to be inspected.

The area scores are calculated by deriving weighted averages of sub-area scores over buildings or dwelling units as appropriate.

The sub-area scores are calculated by deducting points for deficiencies, based on criticality and severity levels. (Sub-area scores may not be less than zero.) Points are also deducted for H&S deficiencies.

8. Essential Weights and Levels

The process of scoring a property's physical condition depends on the weights, levels, and associated values of several quantities:

- Weights for inspectable areas (5 areas);
- Weights for inspectable items within areas (8 to 17 per area);
- Criticality levels and their associated values for the possible deficiencies within items inspected;
- Severity levels and their associated values for deficiencies; and
- Health and safety deficiencies (exigent/fire safety and non-life threatening) for site, buildings, and dwelling units.

9. Normalized Area Weights

A property's overall physical condition score is a weighted average of area scores. Approximate relative weights appeared in the PHAS final rule, published on September 1, 1998 (see 63 FR 46596, pages 46598–46599):

Area	Weight (percent)
Site	15
Building exterior	15
Building systems	20
Common areas	15
Dwelling units	35

These weights are assigned if all inspectable items are present for each area for each building and unit. Typically, some areas are missing a number of inspectable items for some or all buildings or units. For example, common areas may be missing in some buildings. When items are missing for an area, the area weight is reduced to reflect the missing item weights and then all area weights are "normalized" so that they again add up to 100%. As an example, if there were no common areas, the weights of the other four areas would be reduced to a total of 85%. Each area's weight then would be divided by 0.85, resulting in normalized weights of 17.6%, 17.6%, 23.5%, 0% and 41.2% for site, building exterior, building systems, common areas and units, respectively. These new weights add to 100%.

10. Site, Unit and Sub-Area Scores

These are the steps to arrive at site, unit and sub-area scores for a site, building, or unit:

Step 1: Calculate an "initial proportionate score"—the difference between the possible points for the site, a building sub-area, or a unit and the deductions associated with the deficiencies recorded. The number of possible points is the total of the inspectable item weights, ignoring the H&S item, for the site, or a building sub-area, or unit.

Step 2: Calculate the deduction for an observed deficiency by multiplying the relevant item weight by the criticality value and by the severity value.

Step 3: In a similar manner, reduce the scores for any health and safety (H&S) deficiencies observed, including those in the H&S item and those in other non-H&S items. (The item weight for deficiencies included in the H&S item is equal to the largest weight among the items present.) At this point, the control to prevent negative scores is applied. Thus, no one building or unit may affect an area score more than its proportionate share would justify.

Step 4: Normalize the resulting proportionate scores to scores based on 100 points by dividing by the total of weights of items present to be inspected, other than the H&S item.

11. Area Scores

Within each area involving either multiple buildings or units, the area score is a weighted average of the building sub-area scores or unit scores. To calculate these weighted averages, follow these guidelines:

Dwelling units: The area score is the weighted average of sub-area scores for each unit, weighted by the total of item weights present to be inspected in each unit.

Common areas: Like the dwelling unit score, the area score for common areas is the weighted average of sub-area common area scores weighted by the total weights for items inspected in the common areas for each building. When computing area scores for common areas, there may be special considerations when there are common buildings with no units. All common buildings with no units are inspected. In those cases where a sample is taken of buildings with units, the effect of common buildings on the common area score should be reduced. This reduction is accomplished by multiplying the weights for common buildings by the number of units in inspected buildings, divided by the total number of units in the property.

Building exteriors or building systems: The area scores for building exteriors and building systems are weighted averages of sub-area scores. The weights are the product of the total weights for items, ignoring the H&S item, inspected for each building exterior or systems times the total number of units for each building. (Note: the total number of units is all units, not just units inspected.) When computing area scores for building exterior or building systems, a number of adjustments are made for common buildings without units. In a manner identical to that for common areas, if buildings with units are sampled, the weights of common building scores are reduced. Also for weighting purposes, a common building is assigned the average number of units in all buildings, including all common buildings and all buildings with units, whether inspected or not. Finally, to adjust for differences in size between common buildings, a common building's weight is multiplied by the total weight of items present to be inspected for the building's common areas.

12. Overall Property Score

To calculate the overall property score, the normalized area weights are applied to the area scores.

13. Possible Points

Normalized area weights reflect both the initial weights and the relative weights between areas of inspectable items actually present. For reporting purposes, normalized weights are presented as the maximum point contributions for each of the five inspectable areas. In the Physical Inspection Report, sent to all PHAs, the following items are listed:

- Normalized weights as the "possible points" by area;
- The area scores, taking into account the points deducted for observed deficiencies;
- The deductions for H&S for site, buildings and units, where H&S deductions for buildings are combined for exteriors, systems and common areas; and
- The overall property score.

The Physical Inspection Report allows the PHA to see the magnitude of the points lost by inspectable area, and the impact on the score of the H&S deficiencies.

14. Examples of Physical Condition Score Calculations

To illustrate how physical condition scores are calculated, three examples are provided below.

Example #1: Example #1 illustrates how the score for a sub-area is calculated based on the following features:

#1a. Ignoring the H&S item, the other seven items have a total weight of 100%, as shown in Appendix 1. If the building had no fire escapes, an item with a nominal weight of 16.7%, then the total item weight for the remaining non-H&S items would be 83.3%, which is then the base (83.3 points) from which deductions are made to create the "initial proportionate score" as described, above, under *Sub-Area Scores.*

#1b. Assume damaged vents were found in the roof. The criticality level for this deficiency is provided in Appendix 1 as a 4, which has a value of 3.00 as given, above, under *Definitions.* If, based on the Dictionary of Deficiency Definitions (Appendix 2), it is determined that the damaged vents seen are minor deficiencies, then the amount of points deducted is the item weight (16.7) times the criticality value (3.00), times the severity value (0.25), which equals 12.5 points.

#1c. If this is the only deficiency observed, then the initial proportionate score for this sub-area would be 83.3 − 12.5 or 70.8 points.

#1d. Additional deficiencies or H&S deficiencies (calculated in the same manner) would further decrease the sub-area score and if the score dropped below zero, then it would be changed to zero.

#1e. The initial proportionate sub-area score is then normalized to a 100 point basis by dividing by the total of the non-H&S item weights (0.833), which would create the final score of (70.8)/(0.833) = 85.0

Example #2

Example #2 illustrates how the score for an area is calculated based on the following features:

#2a. Consider a property with 2 buildings with the following characteristics:

- Building #1 (from Example #1, above):

—10 units
—83.3% of the weight for the items that were present in building exterior
—Building exterior score is 85 points

- Building #2:

—20 units
—100% of the weight for the items that were present in building exterior
—Building exterior score is 70 points

#2b. The building exterior score for the building exterior area is the weighted average of the individual scores. Each building exterior score is weighted by the number of units and the percent of the weight for items present in the building exterior.

#2c. The scores for buildings #1 and #2, above, are calculated using the following formula: Building Exterior Score = sum of [(Building score) times (Building weight divided by the sum of Building weights)]

- Building #1 weight: [(10 units)*(83.3% weight)] = 8.33
- Building #2 weight: [(20 units)*(100% weight)] = 20
- Total weight = 8.33 + 20, or 28.33
- Building exterior score = (85 points)*(8.33/28.33) + (70 points)*(20/28.33)

= 25.0 + 49.4
= 74.4

Example #3

Example #3 illustrates how the score for a property is calculated based on the following:

#3a. Consider a property with the following characteristics:

- Site:

—Score: 90 points
—100% of weight of items present
—Nominal weight: 15%

- Building Exteriors (from example #2, above):

—Score: 74 points
—92% of weight of items present
—Nominal weight: 15%

- Building Systems:

—Score: 70 points
—80% of weight of items present
—Nominal weight: 20%

- Common Areas:

—Score: 60 points
—30% of weight of items present
—Nominal weight: 15%

- Dwelling Units:

—Score: 80 points
—80% of weight of items present
—Nominal weight: 35%

#3b. First, adjust the area weights for each area. Multiply the weight of items present by the nominal weight for each area and add the total:

• Site:	15*100%	= 15
• Building Exteriors:	15*92%	= 13.8
• Building Systems:	20*80%	= 16.0
• Common Areas:	15*30%	= 4.5
• Dwelling Units: -	35*80%	= 28.0
• Total:		= 77.3

#3c. Adjust the area weights to "normalize" so that they add to 100. Divide each adjusted area weight by the total and multiply by 100 (this also results in the maximum possible points reported for each area):

• Site:	(15/77.3)*10	=19.4
• Building Exteriors:	(13.8/77.3)*100	=17.9
• Building Systems:	(16/77.3)*100	=20.7
• Common Areas:	(4.5/77.3)*100	= 5.8
• Dwelling Units:	(28/77.3)*100	= 36.2

#3d. Multiply the new "normalized" weights by the area scores, above, divide by 100, and add the results:

	Points
• Site: 19.4 * 90/100	= 17.5
• Building Exteriors: 17.9 * 74/100	= 13.2
• Building Systems: 20.7 * 70/100	= 14.5
• Common Areas: 5.8 * 60/100	= 3.5
• Dwelling Units: 36.2 * 80/100	= 29.0
• Total Property Score	= 77.6

15. Computing the PHAS Overall Physical Inspection Score

The physical inspection score for the PHAS for a PHA is the weighted average of the PHA's individual project physical inspection scores, where the weights are the number of units in each project divided by the total number of units in all projects for the PHA.

Example:

Project 1 has a score of 60 and has 100 units.

Project 2 has a score of 80 and has 900 units.

The overall PHAS score is computed as follows:

Score = [60 × 100/(100+900)] + [80 × 900/(100+900)]
= 6 + 72
= 78

16. Accessibility Questions

For public housing developments for which accessibility requirements are applicable, the physical inspection will include determining if: (1) There is a wheelchair accessible route to and from the main ground floor entrance of the buildings inspected; (2) the main entrance for every building inspected is at least 32" wide, measured between the door and the opposite door jamb; (3) there is an accessible route to all exterior common areas; and (4) for multistory buildings that are inspected, the interior hallways to all inspected units and common areas are at least 36" wide.

17. Inspection Summary Report

Appendix 3 includes an inspection summary report which provides another example of the information sent to PHAs.

Dated: June 14, 1999.

Donald J. LaVoy,

Acting Director, Real Estate Assessment Center.

BILLING CODE 4210-33-P

Appendix1 - Item Weights and Criticality Levels
Area:Site

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Fencing and Retaining Walls	12.5%	Damaged or Missing Gates	4		X	X	NLT
	12.5%	Damaged/Falling/Leaning	2		X	X	NLT
	12.5%	Holes	3	X		X	NLT
	12.5%	Missing Sections	3	X		X	NLT
Grounds	12.5%	Erosion Areas	4		X	X	NLT
	12.5%	Overgrown/Penetrating Vegetation	3		X	X	
	12.5%	Ponding/Site Drainage	4	X	X	X	
	12.5%	Rutting	2		X	X	
Health & Safety	12.5%	Air Quality - Sewer Odor Detected	3			X	NLT
	12.5%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT
	12.5%	Flammable Materials - Improperly Stored	3			X	NLT
	12.5%	Garbarge and Debris - Outdoors	3			X	NLT
	12.5%	Hazards - Other	3			X	NLT
	12.5%	Hazards - Sharp Edges	3			X	NLT
	12.5%	Hazards - Tripping	3			X	NLT
	12.5%	Infestation - Insects	3			X	NLT
	12.5%	Infestation - Rats/Mice/Vermin	3			X	NLT
Lighting	8.0%	Broken Fixtures	4		X	X	
	8.0%	Missing/Broken Bulbs	4		X	X	
Mailboxes/Project Signs	1.0%	Mailbox Missing/Damaged	2	X		X	
	1.0%	Signs Missing/Damaged	2	X		X	
Market Appeal	8.0%	Graffiti	4	X	X	X	
	8.0%	Litter	4		X		
Parking Lots/Driveways/Roads	8.0%	Cracks	3		X	X	
	8.0%	Ponding	4	X	X	X	
	8.0%	Potholes/Loose Material	4	X	X	X	
	8.0%	Settlement/Heaving	4	X	X	X	
Play Areas and Equipment	12.5%	Damaged/Broken Equipment	3	X	X	X	NLT
	12.5%	Deteriorated Play Area Surface	3	X	X	X	
Refuse Disposal	12.5%	Broken/Damaged Enclosure	3		X	X	
	12.5%	Inadequate Outside Storage Space	3	X		X	
Storm Drainage	12.5%	Damaged/Broken/Cracked	4		X	X	
	12.5%	Debris/Obstruction/Sediment	5		X	X	
Walkways/Stairs	12.5%	Broken/Missing Hand Railing	3			X	NLT
	12.5%	Broken/Missing Steps	3			X	NLT
	12.5%	Cracks/Settlement/Heaving	3		X	X	
	12.5%	Spalling	3	X		X	

Note: 1.) Nominal item weight assumes that all items for the Site are present. Item weights would be adjusted accordingly when items are not applicable (N/A)
2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 12.5%
3.) "X" in the severity column indicates which severity levels are applicable.
4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.
5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)

Appendix 1 - Item Weights and Criticality Levels
Area: Building Exterior

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Doors	16.0%	Broken/Missing Glazing/Glass Damaged	4		X	X	NLT
	16.0%	Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	16.0%	Damaged Hardware/Locks	3	X	X	X	
	16.0%	Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	16.0%	Damaged/Missing Screen/Storm/Security Door	3	X	X	X	NLT
	16.0%	Deteriorated/Missing Caulking/Seals	4	X	X	X	
	16.0%	Missing Door	5			X	
Fire Escapes	16.0%	Blocked Egress/Ladders	5			X	LT
	16.0%	Visibly Missing Components	5			X	LT
Foundations	16.0%	Cracks/Gaps	5	X	X	X	
	16.0%	Spalling/Exposed Rebar	4	X	X	X	
Health and Safety	16.0%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT
	16.0%	Electrical Hazards - Water Leaks on/near Electrical Equipment	5			X	LT
	16.0%	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	5			X	LT
	16.0%	Emergency Fire Exits - Missing Exit Signs	3			X	NLT
	16.0%	Flammable Materials - Improperly Stored	3			X	NLT
	16.0%	Garbage and Debris - Indoors	3			X	NLT
	16.0%	Garbage and Debris - Outdoors	3			X	NLT
	16.0%	Hazards - Other	3			X	NLT
	16.0%	Hazards - Sharp Edges	3			X	NLT
	16.0%	Hazards - Tripping	3			X	NLT
	16.0%	Infestation - Insects	3			X	NLT
	16.0%	Infestation - Rats/Mice/Vermin	3			X	NLT
Lighting	10.0%	Broken Fixtures	4			X	X
	10.0%	Missing/Broken Bulbs	4			X	X
Roofs	16.0%	Damaged Soffits/Fascia	4	X		X	
	16.0%	Damaged Vents	4	X		X	
	16.0%	Damaged/Clogged Drains	5		X	X	
	16.0%	Damaged/Torn Membrane/Missing Ballast	5		X	X	
	16.0%	Missing/Damaged Components from Downspout/Gutter	3	X		X	
	16.0%	Missing/Damaged Shingles	5		X	X	
	16.0%	Ponding	4			X	
Walls	13.0%	Cracks/Gaps	5	X	X	X	
	13.0%	Damaged Chimneys	4		X	X	NLT
	13.0%	Missing/Damaged Caulking/Mortar	4	X	X		
	13.0%	Missing Pieces/Holes/Spalling	4		X	X	
	13.0%	Stained/Peeling/Needs Paint	3	X	X		
Windows	13.0%	Broken/Missing/Cracked Panes	3	X		X	NLT
	13.0%	Damaged Sills/Frames/Lintels/Trim	5		X	X	
	13.0%	Damaged/Missing Screens	2	X			
	13.0%	Missing/Deteriorated Caulking/Glazing Compound	5	X	X	X	
	13.0%	Peeling/Needs Paint	2	X			
	13.0%	Security Bars Prevent Ingress/Egress	5			X	LT

Note: 1.) Nominal item weight assumes that all items for the Building Exterior are present. Item weights would be adjusted accordingly when items are not applicable (N/A)
2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 16.0%
3.) "X" in the severity column indicates which severity levels are applicable.
4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies
5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)

Appendix 1 - Item Weights and Criticality Levels
Area: Building Systems

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Domestic Water	15.5%	Central Hot Water Supply Inoperable	5			X	NLT
	15.5%	Leaking Central Water Supply	4			X	
	15.5%	Misaligned Ventilation System	5			X	LT
	15.5%	Missing Pressure Relief Valve	5			X	NLT
	15.5%	Rust/Corrosion on Heater Chimney	2			X	NLT
	15.5%	Rust/Corrosion-Central Water Components	3		X	X	
	15.5%	Water Supply Inoperable	5			X	NLT
Electrical System	15.5%	Blocked Access/Improper Storage	3			X	NLT
	15.5%	Burnt Breakers	4			X	NLT
	15.5%	Evidence of Leaks/Corrosion	5			X	NLT
	15.5%	Frayed Wiring	5			X	
	15.5%	Missing Breakers	5			X	LT
	15.5%	Missing Covers	5			X	LT
Elevators	5.0%	Not Operable	5			X	NLT
Emergency Power	2.0%	Auxiliary Lighting Inoperable	5			X	
	2.0%	Run-Up Records/Documentation Not Available	4		X	X	
Exhaust System	15.5%	Roof Exhaust Fan Inoperable	3			X	
Fire Protection	15.5%	Missing (Sprinkler Head)	5			X	NLT
	15.5%	Missing/Damaged/Expired Extinguishers	5			X	LT
Health & Safety	15.5%	Air Quality - Mold and/or Mildew Observed	3			X	NLT
	15.5%	Air Quality - Propane/Nat'l Gas/Methane Gas Detected	5			X	LT
	15.5%	Air Quality - Sewer Odor Detected	3			X	NLT
	15.5%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT
	15.5%	Electrical Hazards - Water Leaks on/near Electrical Equipment	5			X	LT
	15.5%	Elevator - Tripping	3			X	NLT
	15.5%	Flammable Materials - Improperly Stored	3			X	NLT
	15.5%	Garbage and Debris - Indoors	3			X	NLT
	15.5%	Garbage and Debris - Outdoors	3			X	NLT
	15.5%	Hazards - Other	3			X	NLT
	15.5%	Hazards - Sharp Edges	3			X	NLT
	15.5%	Hazards - Tripping	3			X	NLT
	15.5%	Infestation - Insects	3			X	NLT
	15.5%	Infestation - Rats/Mice/Vermin	3			X	NLT
HVAC	15.5%	Boiler/Pump Leaks	4			X	
	15.5%	Fuel Supply Leaks	4			X	NLT
	15.5%	Gas Fired Unit-Missing/Misaligned Chimney	5			X	LT
	15.5%	General Rust/Corrosion	2		X	X	NLT
Sanitary System	15.5%	Broken/Leaking/Clogged Pipes or Drains	5			X	NLT
	15.5%	Missing Drain/Cleanout/Manhole Covers	3		X	X	

Note:1.) Nominal item weight assumes that all items for the Building System are present. Item weights would be adjusted accordingly when items are not applicable (N/A)
2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 15.5%
3.) "X" in the severity column indicates which severity levels are applicable.
4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.
5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Basement/Garage/Carport	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	3	X	X	X	
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	4	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	5			X	
	5.0%	Doors - Missing Door	4	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Closet/Utility/Mechanical	5.0%	Ceiling - Bulging/Buckling	4			X	
		Ceiling - Holes/Missing					
	5.0%	Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
		Ceiling - Water Stains/Water					
	5.0%	Damage/Mold/Mildew	2	X	X	X	
		Doors - Broken/Missing					
	5.0%	Glazing/Glass	4	X		X	NLT
		Doors - Damaged					
	5.0%	Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
		Doors - Damaged Surface					
	5.0%	(Holes/Paint/Rusting)	3	X	X	X	
		Doors - Damaged/Missing					
	5.0%	Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	NLT
		Electrical - Blocked Access to					
	5.0%	Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
		Electrical - Evidence of					
	5.0%	Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
		Floors - Water Stains/Water					
	5.0%	Damage/Mold/Mildew	2		X	X	
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
		Outlets/Switches/Cover Plates -					
	5.0%	Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
		Stairs- Broken/Damaged/Missing					
	5.0%	Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
		Walls - Water Stains/Water					
	5.0%	Damage/Mold/Mildew	2	X	X	X	
		Windows - Cracked/Broken/Missing					
	5.0%	Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
		Windows - Deteriorated/Missing					
	5.0%	Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
		Windows - Security Bars Prevent					
	5.0%	Egress	5			X	LT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Community Room	10.0%	Ceiling - Bulging/Buckling	4			X	
		Ceiling - Holes/Missing					
	10.0%	Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
		Ceiling - Water Stains/Water					
	10.0%	Damage/Mold/Mildew	2	X	X	X	
		Doors - Broken/Missing					
	10.0%	Glazing/Glass	4	X		X	NLT
		Doors - Damaged					
	10.0%	Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
		Doors - Damaged Surface					
	10.0%	(Holes/Paint/Rusting)	3	X	X	X	
		Doors - Damaged/Missing					
	5.0%	Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	NLT
		Electrical - Blocked Access to					
	10.0%	Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
		Electrical - Evidence of					
	10.0%	Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
		Floors - Water Stains/Water					
	10.0%	Damage/Mold/Mildew	2		X	X	
		HVAC - Gas Fired Unit -					
	10.0%	Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
		HVAC - Convection/Radiant Heat					
	10.0%	System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
		Outlets/Switches/Cover Plates -					
	10.0%	Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
		Stairs- Broken/Damaged/Missing					
	10.0%	Steps	3			X	NLT
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
		Walls - Water Stains/Water					
	10.0%	Damage/Mold/Mildew	2	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Day Care	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	10.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Halls/Corridors/Stairs	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	10.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	Graffiti	4	X	X	X	
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Mailbox Missing/Damaged	2	X		X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Health & Safety	10.0%	Air Quality - Mold and/or Mildew Observed	3			X	NLT
	10.0%	Air Quality - Propane/Nat'l Gas/Methane Gas Detected	5			X	LT
	10.0%	Air Quality - Sewer Odor Detected	3			X	NLT
	10.0%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT
	10.0%	Electrical Hazards - Water Leaks on/near Electrical Equipment	5			X	LT
	10.0%	Flammable Materials - Improperly Stored	3			X	NLT
	10.0%	Garbage and Debris - Indoors	3			X	NLT
	10.0%	Garbage and Debris - Outdoors	3			X	NLT
	10.0%	Hazards - Other	3			X	NLT
	10.0%	Hazards - Sharp Edges	3			X	NLT
	10.0%	Hazards - Tripping	3			X	NLT
	10.0%	Infestation - Insects	3			X	NLT
	10.0%	Infestation - Rats/Mice/Vermin	3			X	NLT
Kitchen	10.0%	Cabinets - Missing/Damaged	2	X	X	X	
	10.0%	Call for Aid - Inoperable	3			X	NLT
	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Countertops - Missing/Damaged	2	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	10.0%	Dishwasher/Garbage Disposal - Inoperable	2		X		
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	10.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Exhaust Sys.-Excessive Grease/Inoperable	2	X		X	NLT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	GFI - Inoperable	5			X	NLT
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	10.0%	Plumbing - Clogged Drains	4	X		X	NLT
	10.0%	Plumbing - Leaking Faucet/Pipes	3	X		X	NLT
	10.0%	Range/Stove - Missing/Damaged/Inoperable	3	X		X	
	10.0%	Range Hood /Exhaust Fans - Excessive Grease/Inoperable	2	X		X	
	10.0%	Refrigerator - Missing/Damaged/Inoperable	3	X		X	
	10.0%	Sink - Damaged/Missing	5	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Laundry Room	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	10.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	
	10.0%	Dryer Vent Missing/Damaged/Inoperable	3			X	
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	GFI - Inoperable	5			X	NLT
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Lobby	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5				LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Office	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Other Community Spaces	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Patio/Porch/Balcony	5.0%	Baluster/Side Railing Damaged	3			X	
	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Pools and Related Structure	5.0%	Fencing - Damaged/Not Intact	5			X	
	5.0%	Pool - Not Operational	5			X	
Restrooms/Pool Structures	5.0%	Call for Aid - Inoperable	3			X	NLT
	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	GFI - Inoperable	5			X	NLT
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lavatory Sink - Damaged/Missing	3	X		X	NLT
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	5.0%	Plumbing - Clogged Drains	5	X		X	NLT
	5.0%	Plumbing - Leaking Faucet/Pipes	4	X		X	NLT
	5.0%	Restroom Cabinet - Damaged/Missing	2	X		X	
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Shower/Tub - Damaged/Missing	4		X	X	
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Ventilation/Exhaust System - Inoperable	4			X	
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Water Closet - Damaged/Clogged/Missing	5		X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Storage	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Trash Collection Areas	5.0%	Chutes Damaged/Missing Components	3		X	X	

Note:1.) Nominal item weight assumes that all items for the Common Area are present. Item weights would be adjusted accordingly when items are not applicable (N/A)
2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 10.0%
3.) "X" in the severity column indicates which severity levels are applicable.
4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.
5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)

Appendix 1 - Item Weights and Criticality Levels
Area: Unit

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Bathroom	15.0%	Bathroom Cabinets - Damaged/Missing	2	X		X	
	15.0%	Lavatory Sink - Damaged/Missing	3	X		X	NLT
	15.0%	Plumbing - Clogged Drains	5	X		X	NLT
	15.0%	Plumbing - Leaking Faucet/Pipes	4	X		X	NLT
	15.0%	Shower/Tub - Damaged/Missing	4		X	X	NLT
	15.0%	Ventilation/Exhaust System - Inoperable	4			X	
	15.0%	Water Closet/Toilet - Damaged/Clogged/Missing	5		X	X	NLT
Call-for-Aid	2.0%	Inoperable	3			X	NLT
Ceiling	4.5%	Bulging/Buckling	4			X	
	4.5%	Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	4.5%	Needs Paint	1	X	X		
	4.5%	Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
Doors	4.5%	Broken/Missing Glazing/Glass	4	X		X	NLT
	4.5%	Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	4.5%	Damaged Hardware/Locks	3	X	X	X	
	4.5%	Damaged Surface - Holes/Paint/Rusting	3	X	X	X	
	4.5%	Damaged/Missing Screen/Storm/Security Door	3	X	X	X	NLT
	4.5%	Deteriorated/Missing Seals (Entry Only)	4			X	
	4.5%	Missing Door	5	X	X	X	NLT
Electrical System	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Burnt Breakers	4			X	NLT
	10.0%	Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Frayed Wiring	5			X	
	10.0%	GFI - Inoperable	5			X	NLT
	10.0%	Missing Breakers	5			X	LT
	10.0%	Missing Covers	5			X	LT
Floors	4.5%	Bulging/Buckling	4			X	
	4.5%	Floor Covering Damage	4	X	X	X	
	4.5%	Missing Flooring	4	X	X	X	
	4.5%	Needs Paint	1	X	X		
	4.5%	Rot/Deteriorated Subfloor	4		X	X	
	4.5%	Water Stains/Water Damage/Mold/Mildew	2		X	X	
Health & Safety	15.0%	Air Quality - Mold and/or Mildew Observed	3			X	NLT
	15.0%	Air Quality - Sewer Odor Detected	3			X	NLT
	15.0%	Air Quality- Propane/Nat'l Gas/Methane Gas Detected	5			X	LT
	15.0%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT

Appendix 1 - Item Weights and Criticality Levels
Area: Unit

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	Severity MA	Severity SE	H&S
	15.0%	Electrical Hazards - Water Leaks on/near Electrical Equipment	5			X	LT
	15.0%	Flammable Materials - Improperly Stored	3			X	NLT
	15.0%	Garbage and Debris - Indoors	3			X	NLT
	15.0%	Garbage and Debris - Outdoors	3			X	NLT
	15.0%	Hazards - Other	3			X	NLT
	15.0%	Hazards - Sharp Edges	3			X	NLT
	15.0%	Hazards - Tripping	3			X	NLT
	15.0%	Infestation - Insects	3			X	NLT
	15.0%	Infestation - Rats/Mice/Vermin	3			X	NLT
Hot Water Heater	10.0%	Gas Fired Unit-Missing/Misaligned Chimney	5			X	LT
	10.0%	Inoperable Unit/Components	5			X	NLT
	10.0%	Leaking Valves/Tanks/Pipes	4			X	
	10.0%	Pressure Relief Valve Missing	5			X	NLT
	10.0%	Rust/Corrosion	3	X	X	X	NLT
HVAC System	15.0%	Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	15.0%	Gas Fired Unit - Missing/Misalign Chimney	5			X	LT
	15.0%	Inoperable	5			X	
	15.0%	Noisy/Vibrating/Leaking	4		X		
	15.0%	Rust/Corrosion	2		X	X	
Kitchen	15.0%	Cabinets Missing/Damaged	2	X	X	X	NLT
	15.0%	Countertops Missing/Damaged	2	X	X	X	NLT
	15.0%	Dishwasher/Garbage Disposal - Inoperable	2		X		
	15.0%	Plumbing - Clogged Drains	4	X		X	NLT
	15.0%	Plumbing - Leaking Faucet/Pipes	3	X		X	NLT
	15.0%	Range Hood/Exhaust Fans - Excessive Grease/Inoperable	2	X		X	
	15.0%	Range/Stove - Missing/Damaged/Inoperable	3	X		X	
	15.0%	Refrigerator- Missing/Damaged/Inoperable	3	X		X	
	15.0%	Sink - Damaged/Missing	5	X		X	NLT
Lighting	2.0%	Missing/Inoperable Fixture	4	X	X	X	NLT
Outlets/Switches	4.5%	Missing	3			X	
	4.5%	Missing/Broken Cover Plates	3	X		X	
Patio/Porch/Balcony	2.0%	Baluster/Side Railings Damaged	3			X	
Smoke Detector	0.0%	Missing/Inoperable	5			X	LT
Stairs	2.0%	Broken/Damaged/Missing Steps	3			X	NLT
	2.0%	Broken/Missing Hand Railing	3			X	NLT
Walls	4.5%	Bulging/Buckling	4			X	

Appendix 1 - Item Weights and Criticality Levels
Area: Unit

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	Severity MA	Severity SE	H&S
	4.5%	Damaged	3	X	X	X	
	4.5%	Damaged/Deteriorated Trim	1	X	X	X	
	4.5%	Needs Paint	1	X	X		
	4.5%	Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
Windows	4.5%	Cracked/Broken/Missing Panes	3	X		X	NLT
	4.5%	Damaged Window Sill	4	X	X		
	4.5%	Deteriorated/Missing Caulking/Seals	5	X	X	X	
	4.5%	Inoperable/Not Lockable	3	X		X	NLT
	4.5%	Peeling/Needs Paint	1	X			
	4.5%	Security Bars Prevent Egress	5			X	LT

Note:1.) Nominal item weight assumes that all items for the Unit are present. Item weights would be adjusted accordingly when items are not applicable (N/A)
2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 15.0%
3.) "X" in the severity column indicates which severity levels are applicable.
4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.
5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)

BILLING CODE 4210–32–C

Appendix 2—Dictionary of Deficiency Definitions

Site Inspectable Items

Items to inspect for "Site" are as follows:

Fencing and Retaining Walls
Grounds
Lighting
Mailboxes/Project Signs
Market Appeal
Parking Lots/Driveways/Roads
Play Areas and Equipment
Refuse Disposal
Storm Drainage
Walkways/Stairs

Fencing and Retaining Walls (Site)

A structure functioning as a boundary or barrier. An upright structure serving to enclose, divide or protect an area.

Note: This does not include swimming pool fences. Swimming Pool Fences are covered under Common Areas—Pools and Related Structures.

This inspectable item can have the following deficiencies:

Damaged or Missing Gates
Damaged/Falling/Leaning
Holes
Missing Sections

Grounds (Site)

The improved land adjacent to or surrounding the housing and related structures. This does not include land not owned or under the control of the housing provider.

This inspectable item can have the following deficiencies:

Erosion Areas
Overgrown/Penetrating Vegetation
Ponding/Site Drainage
Rutting

Lighting (Site)

System to provide illumination of the community grounds. Includes fixtures, lamps, stanchions, poles, supports, and electrical supply.

This inspectable item can have the following deficiencies:

Broken Fixtures
Missing/Broken Bulbs

Mailboxes/Project Signs (Site)

Mailbox is a public container where mail is deposited for distribution and collection. This does not include mailboxes owned and maintained by the US Postal Service, such as the "Blue Boxes."

Project signs are boards, posters, or placards displayed in a public place to advertise, impart information, or give directions. This does not include signs owned and maintained by the city.

This inspectable item can have the following deficiencies:

Mailbox Missing/Damaged
Signs Missing/Damaged

Market Appeal (Site)

Evaluate only those areas or structures that are under the control of the housing provider.

This inspectable item can have the following deficiencies:

Graffiti
Litter

Parking Lots/Driveways/Roads (Site)

An area for parking motorized vehicles begins at the curbside and includes all parking lots, driveways or roads within the property lines that are under the control of the housing provider.

This inspectable item can have the following deficiencies:

Cracks
Ponding
Potholes/Loose Material
Settlement/Heaving

Play Areas and Equipment (Site)

An outdoor area set aside for recreation or play, especially one containing equipment such as seesaws and swings.

This inspectable item can have the following deficiencies:

Damaged/Broken Equipment
Deteriorated Play Area Surface

Refuse Disposal (Site)

Collection areas for trash/garbage common pick-up.

This inspectable item can have the following deficiencies:

Broken/Damaged Enclosure
Inadequate Outside Storage Space

Storm Drainage (Site)

System used to collect and dispose of surface runoff water through the use of culverts, underground structures, or natural drainage features, e.g., swales, ditches, etc.

This inspectable item can have the following deficiencies:

Damaged/Broken/Cracked
Debris/Obstruction/Sediment

Walkways/Stairs (Site)

Passages for walking and the structures that allow for changes in vertical orientation.

This inspectable item can have the following deficiencies:

Broken/Missing Hand Railing
Cracks/Settlement/Heaving
Spalling

Damaged or Missing Gates (Fencing and Retaining Walls)

Gate structure is damaged or missing and does not prevent passage.

This does not include gates for swimming pool fences. Gates for swimming pool fences are covered under Common Areas—Pools and Related Structures.

Note: Deficiency level depends on the fence's purpose. Perimeter/Security Fences

are assessed at a higher level than interior fences.

Severity Defined

Minor: N/A.
Major: Absence or damage to an interior fence gate which renders a gate inoperable/ineffective.
OR
Damage to a perimeter or a security fence gate that is still operational.
Severe: Absence or damage to a perimeter or security gate which renders the gate inoperable/ineffective and potentially compromises safety and/or security.

Damaged/Falling/Leaning (Fencing and Retaining Walls)

Structure is rusted, deteriorated, uprooted presents threat to security and/or health and safety.

Note: Deficiency level depends on the fence's purpose. Perimeter/Security Fences are assessed at a higher level than interior fences.

Severity Defined

Minor: N/A.
Major: An interior fence is damaged so that it does not satisfy its designed purpose.
OR
A perimeter/security fence and/or a retaining wall shows signs of deterioration, but still serves its designed purpose and presents no security/safety risk.
Severe: A perimeter/security fence and/or a retaining wall is damaged to the point that it does not satisfy its designed purpose.

Holes (Fencing and Retaining Walls)

An opening or penetration.

Note: Some fences are not designed to keep intruders out or children in such as rail fences, and these type of fences should not be evaluated for holes.

Severity Defined

Minor: Hole is smaller than 6" x 6" piece of paper.
Major: N/A.
Severe: Hole is larger than 6" x 6" which allows passage of animals and can pose a threat to the safety of children.

Missing Sections (Fencing and Retaining Walls)

Structure does not present an obstacle against intrusion or egress—damaged by the destruction or removal of section.

Note: Deficiency level depends on the fence's purpose. Perimeter/Security fences are assessed at a higher level than interior fences.

Severity Defined

Minor: An interior fence has section missing.
Major: N/A.
Severe: A perimeter/security fence has a section missing which compromises safety/security.

Erosion Areas (Grounds)

An area subjected to natural processes, such as weathering or gravity, by which material is moved on the earth's surface.

Note: This does not include erosion from a defined storm drainage system or in a play area. This type of erosion would be covered under Site—Storm Drainage and/or Site—Play Areas and Equipment.

Severity Defined

Minor: N/A.
Major: Visible collection of surface material indicated by visible erosion deposits leading to a degraded surface condition that would likely cause water to pool in a confined area, especially next to structures, paved areas or walkways.
Severe: Extensive displacement of soil caused by runoff. Condition is responsible for visible damage or the potential failure of adjoining structures or systems, e.g., pipes, pavements, foundations, building, etc.
OR
Advanced erosion in an area which creates an unsafe pedestrian condition and/or renders an area of the grounds unusable.

Overgrown/Penetrating Vegetation (Grounds)

Plant life that has infiltrated unacceptable areas and/or has grown beyond established parameters.

Severity Defined

Minor: N/A.
Major: Vegetation is of such size or density as to make the visibility of hazards, such as broken glass, holes, etc., difficult.
OR
Plant life is in contact with an unintended surface, such as, buildings, gutters, walkways, roads, fences/walls, roofs, HVAC units, etc.
OR
Vegetation is of such size or density that it obstructs intended walkways.
Severe: Plants have rendered visible damage to a component, area, or system of the property or have made them unusable.

Ponding/Site Drainage (Grounds)

An accumulation of water and/or ice is observed to be collecting in a depressed area or has collected on the grounds for which ponding was not intended.

Note: This does not include detention/retention basins NOR ponding on paved areas. Detention/retention basins are covered under Site—Storm Drainage and ponding on paved areas is covered under Roads, Walkways, and Parking Lots/Driveways.

Severity Defir.

Minor: Shallow accumulation of water (less than 3 inches).
Major: An accumulation of water (from 3 to 5 inches in depth) that affects the use of a section of the grounds; however, the grounds are generally usable.
Severe: An accumulation of more than 5 inches in depth.
OR
An accumulation that has rendered a section of the grounds unusable.

Rutting (Grounds)

A man made sunken track or groove/depression.

Note: These are typically made by a car, bike or other machine.

Severity Defined

Minor: N/A.
Major: Condition that is 6–8" wide x 3–5" deep.
Severe: Condition larger than 6–8" wide x 3–5" deep and has the potential to cause serious injury.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards").

Broken Fixtures (Lighting)

All or a portion of the lighting that is associated with the site itself. This includes lighting attached to the building which is utilized for such purposes as lighting the site, but does not include exterior lighting, associated with the building.

Note: If a damaged fixture or fixtures presents a safety hazard, rate it as severe, and recorded manually as a health and safety concern. This includes, but is not limited to, broken fixtures that have the potential to fall on pedestrians, or fixtures that could lead to electrocution.

Severity Defined

Minor: N/A.
Major: Between 10% and 50% of the lighting fixtures surveyed are visibly broken. The broken portion of the system does not constitute an obvious safety hazard.
Severe: Over 50% of the lighting fixtures surveyed are visibly broken; or the broken portion of the system constitutes an obvious safety hazard.

Comments

Severe: If condition is a health and safety concern, it must be recorded. (Includes but not limited to "Electrical Hazards" or "Hazards'.)

Missing/Broken Bulbs (Lighting)

Lamps are missing or are broken from fixtures. May include incandescent, fluorescent, mercury vapor, or others.

Note: This does not include building exterior lighting. Building exterior lighting is covered under Building Exterior—Lighting.

Severity Defined

Minor: N/A.
Major: Between 10% and 50% of the fixtures surveyed have at least a single bulb missing or broken.
Severe: Over 50% of the fixtures surveyed have at least a single bulb missing or broken.

Comment

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

Mailbox Missing/Damaged (Mailbox/Project Signs)

Mailbox does not function properly due to deterioration, damage, or is absent.

Severity Defined

Minor: Mailbox is damaged, vandalized, or deteriorated, but functional.

Major: N/A.

Severe: Mailbox is damaged, vandalized, or deteriorated, and as a result, is not functional.
OR
Mailbox is missing.

Signs Missing/Damaged (Mailbox/Project Signs)

Project sign is not readable due to deterioration, damage, or is absent. This does not include locations that do not require a project sign.

Severity Defined

Minor: Sign is damaged, vandalized, or deteriorated, but readable.
Major: N/A.
Severe: Sign is damaged, vandalized, or deteriorated, and as a result, is not readable.
OR
Sign is missing.

Comments

Severe: Missing signs should only be recorded where a sign is required. This would follow from evidence that a sign has been removed through vandalism and/or neglect, etc.

Graffiti (Market Appeal)

Visual observation of a crude, (not recognizable as an art form), inscription or drawing scratched, painted or sprayed on a building surface, retaining wall, or fence so as to be seen by the public.

Note: Do not count full wall murals and similar art forms as graffiti.

Severity Defined

Minor: Visual graffiti observed in at least one location/area.
Major: Graffiti observed in 2–5 locations/areas.
Severe: Graffiti observed in 6 or more locations/areas.

Litter (Market Appeal)

Subject to disorderly accumulation of objects, especially carelessly discarded trash located on the property.

Note: *Excessive* litter should be judged as you would view a city park in America.

Severity Defined

Minor: N/A.
Major: Excessive litter is observed on the property.
Severe: N/A.

Cracks (Parking Lots/Driveways/Roads)

Visible faults in the pavement, including longitudinal, lateral, alligator, etc. This does not include cracks from settlement/heaving.

Severity Defined

Minor: N/A.
Major: A crack which is up to ½" wide.
Severe: A crack larger than ½" or multiple cracks accompanied by surface deterioration.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Ponding (Parking Lots/Driveways/Roads)

A visible accumulation of water and/or ice collecting in a depression on an otherwise flat plane.

Severity Defined

Minor: Shallow accumulation of water (less than 3").
Major: An accumulation of water that affects the use of a section of a parking lot/driveway more than 3" in depth. Parking lot/driveway is passable.
Severe: An accumulation of water that has rendered a parking lot/driveway unusable.

Potholes/Loose Material (Parking Lots/Driveways/Roads)

A hole resulting from road surface failure; or loose, freestanding aggregate material is observed resulting from deterioration.

Severity Defined

Minor: Failure of pavement due to potholes or loose material that has not penetrated to or exposed the subsurface.
Major: Failure of pavement due to potholes or loose material that has penetrated to or exposed the subsurface.
Severe: Loose material and/or potholes that render a parking lot/driveway unusable/unpassable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Settlement/Heaving (Parking Lots/Driveways/Roads)

Pavement that sinks and/or rises due to failure of subbase materials.

Note: If there is a visible accumulation of water and/or ice collecting in the depression, record the observation under ponding.

Severity Defined

Minor: Visual indication of settlement/heaving with no visible surface cracks.
Major: Visual indication of settlement/heaving evidenced by cracks and deteriorated surface material.
Severe: Settlement/Heaving that renders a parking lot/driveway unusable/unpassable and/or creates unsafe pedestrian conditions.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Damaged/Broken Equipment (Play Areas and Equipment)

Forcibly fractured into pieces or shattered, incomplete, inoperable, or missing.

Severity Defined

Minor: Visual estimate indicates some equipment (less than 50%) does not operate correctly or is missing but pose no safety risk.
Major: Visual estimate indicates most of the equipment (more than 50%) does not operate correctly or is missing but pose no safety risk.
Severe: Equipment poses a threat to safety capable of causing injury.

Deteriorated Play Area Surface (Play Areas and Equipment)

Damage to play area caused by cracking, heaving, settling, ponding, potholes, loose materials, erosion, rutting, etc.

Severity Defined

Minor: Up to 10% of total surveyed play area surface shows signs of deterioration.
Major: Deterioration of 10 to 50% of total surveyed play area surface.
Severe: Deterioration of more than 50% of the surveyed play area surface.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Broken/Damaged Enclosure (Refuse Disposal)

The outdoor enclosed area which serves as a trash/refuse site is broken or damaged including its walls.

Note: This does not include areas not designed as trash/refuse enclosures such as curb pick-up. Address condition of slab at parking lots/driveways/roads.

Severity Defined

Minor: N/A.
Major: A single wall or gate has holes or missing components.
Severe: A single wall or gate of the enclosure has collapsed or is leaning and in danger of falling.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Inadequate Outside Storage Space (Refuse Disposal)

Insufficient capacity for the proper storage of refuse until disposal.

Note: This does not include curb side pick-up areas.

Severity Defined

Minor: Appearance of storage area is unsightly and needs improvement, or the area surrounding the refuse storage area is impacted by the presence of unpleasant odors.
Major: N/A.
Severe: Trash cannot be stored in the designated area due to under-capacity of refuse storage.

Damaged/Broken/Cracked (Storm Drainage)

Separated into pieces. Broken, but not into parts (fractured).

Severity Defined

Minor: N/A.
Major: Visible structural damage/failure impacting the system's effectiveness. Significant visible fracture evidence by large, visible cracks.
Severe: Visible deterioration or failure of a large section yielding an inoperable system.

Debris/Obstruction/Sediment (Storm Drainage)

Partial or complete blockage by broken or collapsed pipe, infiltration of tree roots, accumulation of sediment, or other obstructions.

Severity Defined

Minor: N/A.
Major: Accumulation of debris or sediment which causes or has the estimated potential of significantly reducing the flow of storm water.
Severe: Complete blockage of the system due to accumulation of a large quantity of debris causing backups into adjacent area(s).

Broken/Missing Hand Railing (Walkways/Steps)

The hand rail is damaged or non-existent.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: The hand-rail for four or more stairs is completely missing or damaged, loose or otherwise unusable.

Cracks/Settlement/Heaving (Walkways/Steps)

Visible faults in the pavement, including longitudinal, lateral, alligator, etc. Pavement that sinks and/or rises due to failure of subbase materials.

Note: This does not include cracks on parking lots/driveways or roads.

Severity Defined

Minor: N/A.
Major: Evidence of cracks or other defects which do not affect traffic ability.
Severe: Cracks/hinging/tilting and/or missing sections that affect traffic ability.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Spalling (Walkways/Steps)

A concrete or masonry walkway that is flaking, chipping or crumbling, possible exposing underlying reinforcing material.

Severity Defined

Minor: Small areas, (4" x 4" or less), of walkway/stairs are affected.
Major: N/A.
Severe: Large areas, (greater than 4" x 4"), of walkway/stairs are impacted and affects traffic ability.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Building Exterior Inspectable Items

Items to inspect for "Building Exterior" are as follows:

Doors
Fire Escapes
Foundations
Lighting
Roofs
Walls
Windows

Doors (Building Exterior)

Means of access to the interior of a building or structure. Doors provide privacy, control passage, maintain security, provide fire and weather resistance. Includes entry to maintenance areas, boiler and mechanical rooms; electrical vaults, storage areas, etc.

Note: This does not include unit doors.

This inspectable item can have the following deficiencies:

Broken/Missing Glazing/Glass
Damaged Frames/Threshold/Lintels/Trim
Damaged Hardware/Locks
Damaged Surface (Holes/Paint/Rusting)
Deteriorated/Missing Caulking Seals
Missing Door
Damaged/Missing Screen/Storm/Security Door

Fire Escapes (Building Exterior)

All buildings must have acceptable fire exits. This includes both stairway access doors & external exits. These can include external fire escapes, fire towers, operable windows on the lower floors with easy access to the ground or a back door opening onto a porch with a stairway leading to the ground.

This inspectable item can have the following deficiencies:

Blocked Egress/Ladders
Visibly Missing Components

Foundations (Building Exterior)

Lowest level structural wall or floor responsible for transferring the building's load to the appropriate footings and soil. Materials may include concrete, stone, masonry and wood.

This inspectable item can have the following deficiencies:

Cracks/Gaps
Spalling/Exposed Rebar

Lighting (Building Exterior)

System to provide illumination of building exteriors and surrounding grounds. Includes fixtures, lamps, stanchions, poles, supports, and electrical supply that are associated with the building itself.

Note: This does not include site lighting.

This inspectable item can have the following deficiencies:

Broken Fixtures
Missing/Broken Bulbs

Roofs (Building Exterior)

Roof system consists of the structural deck, weathering surface, flashing, parapet, and drainage system. They may be flat or pitched.

This inspectable item can have the following deficiencies:

Damaged/Clogged Drains
Damaged Soffits/Fascia
Damaged Vents
Damaged/Torn Membrane/Missing Ballast
Missing/Damaged Shingles
Ponding (Roofs)
Missing/Damaged Components from Downspout/Gutter

Walls (Building Exterior)

The exterior enclosure of the building or structure. Materials for construction include concrete, masonry block, brick, stone, wood, glass block. Surface finish materials include metal, wood, vinyl, stucco.

Note: This does not include foundation walls.

This inspectable item can have the following deficiencies:

Cracks/Gaps
Damaged Chimneys
Missing Pieces/Holes/Spalling
Stained/Peeling/Needs Paint
Missing/Damaged Caulking/Mortar

Windows (Building Exterior)

Window systems provide light, security, and exclusion of exterior noise, dust, heat, and cold. Frame materials include wood, aluminum, vinyl, etc.

Note: This does not include windows that have defects noted from inspection from inside the unit.

This inspectable item can have the following deficiencies:

Broken/Missing/Cracked Panes
Damaged/Missing Screens
Damaged Sills/Frames/Lintels/Trim
Security Bars Prevent Egress
Missing/Deteriorated Caulking/Glazing Compound
Peeling/Needs Paint

Broken/Missing Glazing/Glass (Doors)

The glass and/or compound/structure to support and hold glass or other materials within a frame are missing or broken.

Severity Defined

Minor: For one or more doors, glazing is inadequate to secure glass, but door is usable and presents no immediate security risk.
Major: N/A.
Severe: For at least one door, the operation, function, or security of the door is destroyed by the missing or broken glazing and/or glass. One door in this condition is sufficient to classify the door system as severe.

Damaged Frames/Threshold/Lintels/Trim (Doors)

The frame, header, jamb, threshold, lintels, or trim, is visibly warped, split, cracked, or broken in some manner.

Severity Defined

Minor: A single door's frame/threshold/lintel and/or trim is damaged but does not hinder door operation. The damaged door frame does not prevent door from being locked.
Major: More than one door has the minor damage defined above.
Severe: At least one door is rendered inoperable and/or unlockable due to damage to the door's frame/threshold/lintel and/or trim.

Damaged Hardware/Locks (Doors)

The attachments to a door to provide hinging, hanging, opening, closing, or security are damaged or missing. Includes locks, panic hardware, overhead door tracks, springs and pulleys, sliding door tracks and hangers, and door closures.

Severity Defined

Minor: A single door's hardware, as defined above, is damaged but does not hinder current door operation. The door functions, is lockable, and the door's panic hardware is operable.
Major: More than one building exterior door has minor damaged hardware as defined above.
Severe: A single door is rendered inoperable and/or unlockable (if locking is required) due to damage to the door's hardware.
OR
A single building exterior door's panic hardware is not operable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Damaged Surface (Holes/Paint/Rusting) (Doors)

Damage in the door surface that may affect either the surface protection or the strength of the door, or it may compromise building security. Includes holes, peeling/cracking/no paint, or significant rust.

Severity Defined

Minor: Any one door has either: small holes (less than ¼ inch in diameter); cracking/peeling paint; and/or the door or its components are rusting.
Major: If more than one door has minor surface damage as defined above.
OR
Any single door that has a hole or holes ranging in size from ¼ inch up to 1 inch in diameter.
Severe: Any single door has a hole or holes larger than 1 inch in diameter, or significant peeling/cracking/no paint or rust that affects the integrity of the door surface.

Deteriorated/Missing Caulking/Seals (Doors)

Sealant and stripping designed to provide weather resistance or caulking is missing or deteriorated.

Severity Defined

Minor: For a single door, missing or deteriorated caulk is confined to small areas with no evidence of damage to the door and/or surrounding structure.
Major: For a single door, missing or deteriorated caulk is consistently evident for the majority of the door with no evidence of damage to the door and/or surrounding structure.
OR
2 or more of the doors surveyed have minor deficiencies.
Severe: For at least one door, missing or deteriorated caulking is evident along with evidence of leaks or damage to the door or surrounding structure; or more than half the total door surveyed have minor caulking deficiencies.
OR
The seal is missing.

Missing Door (Doors)

Door is absent.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: A single missing building exterior door constitutes a severe condition.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Blocked Egress/Ladders (Fire Escapes)

Any part of the fire escape, including ladders, is visibly blocked in a way that limits or restricts clear egress. (Note: This may include actual fire escapes themselves, fire towers, windows on the ground floor level that would be used in case of an emergency, etc.)

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Items are stored or barriers are present such that clear egress is restricted or blocked.

Visibly Missing Components (Fire Escapes)

Any components that affect functionality of the fire escape are visibly missing.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Functional components are visibly missing (such as one section of a ladder is not present or a railing is missing).

Cracks/Gaps (Foundations)

Visible split in the exterior of the lowest structural wall.

Note: Cracks that show evidence of water penetration should be evaluated here.

Severity Defined

Minor: Visible hairline cracks that do not appear to provide opportunity for water penetration.
OR
Minor broken pieces from settlement (e.g., a single brick).
Major: Cracks that exceed ⅛" in width or depth. May also provide opportunities for water penetration.
OR
Large pieces, such as numerous bricks, that are separated from the wall/floor.
Severe: Large cracks or gaps visibly estimated to exceed 3/8" in width or depth possibly indicating a serious structural problem.
OR
Cracks that are the full depth of the wall and/or provide opportunity for water penetration.
OR
Wall/floor sections that are broken apart.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Spalling/Exposed Rebar (Foundations)

The concrete or masonry wall that is flaking, chipping, or crumbling possibly exposing underlying reinforcing material (rebar).

Severity Defined

Minor: Spalling is confined to areas affecting less than 10% of the foundation wall area inspected.
Major: Obvious large spalled area(s) affecting 10% to 50% of any individual foundation wall.
Severe: Obvious significant spalled area(s) affecting 50% or more of any individual foundation wall.
OR
Spalling which causes any reinforcing material (rebar or other) to be exposed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Broken Fixtures (Lighting)

All or a portion of the lighting that is associated with the building itself. This does not include lighting attached to the building utilized for purposes such as lighting the site.

Note: If a damaged fixture or fixtures presents a safety hazard, rate it as severe, and recorded manually as a health and safety concern. This includes, but is not limited to, broken fixtures that have the potential to fall on pedestrians, or fixtures that could lead to electrocution.

Severity Defined

Minor: N/A.
Major: Between 10% and 50% of the lighting fixtures surveyed are visibly broken. The broken portion of the system does not constitute an obvious safety hazard.
Severe: Over 50% of the lighting fixtures surveyed are visibly broken; or the broken portion of the system constitutes an obvious safety hazard.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards" or "Hazards.")

Missing/Broken Bulbs (Lighting)

Lamps are missing or broken from fixtures. May include incandescent, fluorescent, mercury vapor, or others.

Note: This does not include SITE Lighting. Site Lighting is covered under Site—Lighting.

Severity Defined

Minor: N/A.
Major: Between 10% and 50% of the fixtures surveyed have at least a single bulb visibly missing or broken.
Severe: Over 50% of the fixtures surveyed have at least a single bulb visibly missing or broken.

Comments

Major: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

Damaged/Clogged Drains (Roofs)

The drainage system does not effectively remove water.

Note: Generally, this deficiency applies to flat roofs. This does not include gutters and downspouts. Refer to Building Exterior—Roofs—Missing Components from Downspouts/Gutters.

Severity Defined

Minor: N/A.
Major: Debris around or in a drain is observed with no evidence of ponding observed.
OR
Drain is damaged but still functions.
Severe: Debris around or in a drain is observed with evidence of ponding observed.
OR
Damage is such that drain no longer functions.

Comments

Severe: Inspection by roofing specialist is recommended if doubt of the severity of the condition exists.

Damaged Soffits/Fascia (Roofs)

Soffit fascia and/or associated components are damaged. May provide visible

opportunity for water penetration or other damage from natural elements.

Severity Defined

Minor: Damage to soffit/fascia is visible but no obvious opportunities for water penetration are observed.
Major: N/A.
Severe: Soffits/Fascia are missing (from where required) or damaged so that water penetration is visibly possible.

Comments

Severe: Inspection by roofing specialist is recommended if doubt of the severity of the condition exists.

Damaged Vents (Roofs)

Damaged vents on or extending through the roof surface or components are damaged and/or missing. Vents may include, but is not limited to, ridge vents, soffit vents, gable vents, plumbing vents, or gas vent. (NOTE: This does not include exhaust fans located on the roof. Exhaust fans are covered under building systems—exhaust system.)

Severity Defined

Minor: The vents are visibly damaged but do not present an obvious risk to promote subsequent roof damage.
Major: N/A.
Severe: Vents are missing or visibly damaged to the extent that subsequent roof damage is possible.

Damaged/Torn Membrane/Missing Ballast (Roofs)

Visible rip or wear in the membrane. Includes punctures, holes, cracks, blistering, and separated seams.

Note: Includes flashing.

Severity Defined

Minor: N/A.
Major: Ballast has shifted and no longer performs function.
Severe: Visible damage to the membrane with visible signs of current damage and/or leaks.

Comments

Severe: Inspection by roofing specialist is recommended if doubt of severity of the condition exists.

Missing/Damaged Components from Downspout/Gutter (Roofs)

Components of the drainage system are visibly missing. The system includes gutters, leaders, downspouts, splashblocks and drain openings.

Note: This does not include clogged drains. Refer to Building Exterior—Roofs—Clogged Drains.

Severity Defined

Minor: Splashblocks are missing or damaged.
Major: N/A.
Severe: Drainage system components are visibly missing or damaged providing opportunities for damage to the roof, structure, exterior wall surface, interior, or surrounding grounds.

Missing/Damaged/Shingles (Roofs)

The shingles are missing or damaged which includes, but is not limited to, cracking, warping, cupping or deteriorated.

Note: A square is defined as 100 square feet.

Severity Defined

Minor: N/A.
Major: Up to 2 squares of surface material or shingles are missing.
Severe: More than 2 squares of shingles are observed to be missing from surveyed roofing areas.

Ponding (Roofs)

Evidence of areas of standing water exists.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Evidence of standing water on roof causing potential or visible damage to roof surface or underlying materials.

Comments

Severe: Inspection by roofing specialist is recommended if doubt of the severity of the condition exists.

Cracks/Gaps (Walls)

Visible split, separation, or gap in the exterior walls.

Severity Defined

Minor: Crack that is less than ⅛ inch in width or depth.
Major: Crack that exceeds ⅛ inch in width or depth. May also provide opportunities for water penetration.
OR
Pieces, such as numerous bricks, that are separated from the wall.
Severe: Large crack or gap visibly estimated to exceed ⅜ inch in width or depth possibly indicating a serious structural problem.
OR
Crack that is the full depth of the wall and/or provides opportunity for water penetration.
OR
Wall sections that are broken apart.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Damaged Chimneys (Walls)

The chimney, including the portion extending above the roof line, has separated from the wall or has cracks, spalling, missing pieces, or broken sections.

Severity Defined

Minor: N/A.
Major: Surface of chimney is cracking, spalling, or otherwise showing visible surface damage.
Severe: Part or all of the chimney has visibly separated from the adjacent wall. Cracked or fallen pieces or sections may currently be present or there is a risk of falling pieces creating a safety hazard.

Missing Pieces/Holes/Spalling (Walls)

Deterioration, such as missing pieces, holes or spalling in the exterior wall surface. May also be attributed to rotting materials; or, concrete, stucco, or masonry wall is flaking, chipping, or crumbling.

Severity Defined

Minor: N/A.
Major: Any missing piece, such as, a single brick or section of siding, or hole.
OR
Deterioration that affects an area up to 8½" x 11".
Severe: Deterioration that causes any reinforcing material (re-bar) to be exposed.
OR
More than one missing piece, such as a few bricks, or section of siding or holes that affects an area larger than 8½" x 11".
OR
Any size hole that completely penetrates the exterior wall.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Missing/Damaged Caulking/Mortar (Walls)

Caulking designed to provide weather resistance or mortar is missing or deteriorated.

Note: This doesn't include caulking relative to doors and windows as they are covered in other areas. All other caulking, etc. should be addressed here.

Severity Defined

Minor: Mortar is missing around a single masonry unit.
OR
Deteriorated caulk is confined to less than 12 inches.
Major: Mortar is missing in around more than one contiguous masonry unit.
OR
Deteriorated caulking is evident in an area longer than 12 inches.
Severe: N/A.

Stained/Peeling/Needs Paint (Walls)

Paint is cracking, flaking, otherwise deteriorated. Water damage or related problems have stained the paint.

Note: This does not include walls that are not intended to have paint, such as most brick walls, etc.

Severity Defined

Minor: Visible observations estimate that less than 50% of a single building exterior wall is affected.
Major: Visible observations estimate that more than 50% of a single building exterior wall is affected.
Severe: N/A.

Broken/Missing/Cracked Panes (Windows)

Glass pane is broken, missing or cracked.

Severity Defined

Minor: Glass pane is cracked, but no sharp edges are present.
Major: N/A.
Severe: Glass pane is missing or broken.

Damaged/Missing Screens (Windows)

Screen is punctured, torn, is otherwise damaged or is missing.

Severity Defined

Minor: Screen has significant punctures, tears, is otherwise damaged or is missing.
Major: N/A.
Severe: N/A.

Damaged Sills/Frames/Lintels/Trim (Windows)

Window sills, frames, sash lintels, or trim are damaged by decay, rust, rot, corrosion, or other deterioration.

Severity Defined

Minor: N/A.
Major: Damage does not affect the window's intended operation.
Severe: Damage affects the window's intended operation.

Missing/Deteriorated Caulking/Glazing Compound (Windows)

Caulking or glazing compound to provide weather resistance is missing or deteriorated.

Note: This also includes Thermopane or insulated windows that have failed.

Severity Defined

Minor: Missing or deteriorated caulk or glazing compound is confined to small areas with no evidence of damage to the window and/or surrounding structure.
Major: Missing or deteriorated caulk or glazing compound is consistently evident for the majority of the window with no evidence of damage to the window and/or surrounding structure.
OR
2 or more of the windows surveyed have minor deficiencies.
Severe: Evidence of leaks or damage to the window or surrounding structure.

Peeling/Needs Paint (Windows)

Paint covering the window assembly/trim is cracking, flaking, or otherwise failing; or window assembly/trim is not painted or is exposed to the elements.

Note: This does not include windows that are not intended to be painted.

Severity Defined

Minor: Peeling paint and/or a window in need of paint is observed.
Major: N/A.
Severe: N/A.

Security Bars Prevent Egress (Windows)

Security bars are damaged, constructed or installed, such that egress is severely limited or impossible.

Note: This does not include windows not designed or intended for egress.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: The ability to exit through the window is limited by security bars that do not function properly and, therefore, pose safety risks.

Deteriorated/Missing Caulking/Seals (Doors)

Sealant and stripping designed to provide weather resistance or caulking is missing or deteriorated.

Severity Defined

Minor: For a single window, missing or deteriorated caulk is confined to small areas with no evidence of damage to the door and/or surrounding structure.
Major: For a single door, missing or deteriorated caulk is consistently evident for the majority of the door with no evidence of damage to the door and /or surrounding structure.
OR
2 or more of the doors surveyed have minor deficiencies.
Severe: For at least one door missing or deteriorated caulking is evident along with evidence of leaks or damage to the door surrounding structure; or more than half of the total door surveyed have minor caulking deficiencies.
OR
The seal is missing.

Building Systems Inspectable Items

Items to inspect for "Building Systems" are as follows:

Domestic Water
Electrical System
Elevators
Emergency Power
Exhaust System
Fire Protection
HVAC
Sanitary System

Domestic Water (Building Systems)

Portion of the building system that provides potable water conditioning, heating, and distribution taking its source from outside the building and terminating in domestic plumbing fixtures. The system typically consists of water conditioners (filters and softeners), water heaters, transfer and circulating pumps, strainers, and connecting piping, fittings, valves, and supports.

Note: This does not include portion of water supply that connects to the heating and cooling system. Also, the delivery points of the system such as sinks and faucets in units or common areas.

This inspectable item can have the following deficiencies:

Central Hot Water Supply Inoperable
Leaking Central Water Supply
Misaligned Ventilation System
Missing Pressure Relief Valve
Rust/Corrosion on Heater Chimney
Water Supply Inoperable
Rust/Corrosion on Central Water Components

Electrical System (Building Systems)

Portion of the building system that safely provides electrical power throughout the building. Including equipment that provides control, protection, metering, and service.

Note: This does not include transformers or metering that belongs to the providing utility. Equipment that is part of any emergency power generating system. Terminal equipment such as receptacles, switches, or panelboards that are located in the units or common areas.

This inspectable item can have the following deficiencies:

Blocked Access/Improper Storage
Burnt Breakers
Evidence of Leaks/Corrosion
Frayed Wiring
Missing Breakers
Missing Covers

Elevators (Building Systems)

Vertical conveyance system for moving personnel, equipment, materials, household goods, etc.

This inspectable item can have the following deficiency: Not Operable.

Emergency Power (Building Systems)

Standby/backup equipment intended to supply illumination or power or both, (battery or generator set) during utility outage.

This inspectable item can have the following deficiencies:

Run-Up Records/Documentation Not Available

Exhaust System (Building Systems)

The system used to primarily exhaust stale air from the building. Primarily from the kitchen and bathroom areas.

Note: This does not include elements related to the HVAC system.

This inspectable item can have the following deficiencies: Roof Exhaust Fans Inoperable

Fire Protection (Building Systems)

Building System designed to minimize the effects of a fire. May include the following: fire walls and doors, portable fire extinguishers, and permanent sprinkler systems.

Note: This does not include fire detection, alarm, and control devices.

This inspectable item can have the following deficiencies:

Missing Sprinkler Head
Missing/Damaged/Expired Extinguishers

HVAC (Building Systems)

Portion of the building system that provides ability to heat or cool the air within the building. Includes equipment such as boilers, burners, furnaces, fuel supply, hot water and steam distribution, and associated piping, filters, and equipment. Also includes air handling equipment and associated ventilation ducting.

This inspectable item can have the following deficiencies:

Boiler/Pump Leaks
Fuel Supply Leaks
General Rust/Corrosion
Gas Fired Unit " Missing/Misaligned Chimney

Sanitary System (Building Systems)

Portion of the building system that provides for the disposal of waste products with discharge to the local sewage system. Can include sources such as domestic plumbing fixtures, floor drains, and other area drains. Consists of floor drains and traps, collection sumps, sewage ejectors, sewage pumps, and collection piping, fittings, valves, and supports.

Note: This does not include site storm drainage. Refer to *Site—Storm Drainage*.

This inspectable item can have the following deficiencies:

Broken/Leaking/Clogged Pipes or Drains (Sanitary System)
Missing Drain/Cleanout/Manhole Covers

Leaking Central Water Supply (Domestic Water)

Water visibly leaking from any water system component. Includes valve flanges, stems, bodies, hose bibbs or from any domestic water tank or its pipe or pipe connections.

Note: This includes both hot and cold water.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Water is visibly leaking.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards".)

Misaligned Ventilation System (Domestic Water)

The ventilation system on a gas/oil fired water heater is misaligned.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any misalignment/damaged which may cause improper or dangerous venting of exhaust gases.

Missing Pressure Relief Valve (Domestic Water)

Pressure relief valve on central hot water heating system is not present.

Note: This does not include the pipe from the PRV to the floor.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: No pressure relief valve present.

Rust/Corrosion on Central Water Components (Domestic Water)

The material condition of the equipment and/or associated piping shows evidence of flaking, discoloration, pitting or crevices.

Severity Defined

Minor: N/A.
Major: Significant formations of metal oxides are visible or a noticeable pit or crevice has developed.
Severe: Condition has rendered equipment and/or piping inoperable.

Rust/Corrosion on Heater Chimney (Domestic Water)

The material condition of the water heater chimney shows evidence of flaking, discoloration, pitting or crevices.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: The water heater chimney shows evidence of flaking, discoloration, pitting or crevices which may result in holes, ultimately, allowing leaks of toxic gases from the chimney.

Water Supply Inoperable (Domestic Water)

Water is unavailable at unit or common area faucets.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Running water is unavailable within any area of the building.

Blocked Access/Improper Storage (Electrical System)

The placing of any object that will delay or prevent access to any panelboard or main power switch.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: One or more items are placed in front of the building systems' electrical panel.

Burnt Breakers (Electrical System)

Breakers having carbon on the plastic body, or plastic body is melted and scarred.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any signs of carbon residue or breaker is melted and/or has arcing scars.

Evidence of Leaks/Corrosion (Electrical System)

Liquid stains, rust marks or other signs of corrosion are found on electrical enclosures or hardware.

Note: Do not address surface rust if it does not affect the condition of the electrical enclosure.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any corrosion that affects the condition of the current carrying components. Stains and/or rust on the interior of electrical enclosures or evidence of water leaks are present in the enclosure or hardware.

Frayed Wiring (Electrical System)

Insulation may be frayed, stripped, or removed resulting in a potentially dangerous condition.

Note: This does not include any wires not intended to be insulated, such as grounding wires.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Nicks, abrasions or fraying of the insulation.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

Missing Breakers (Electrical System)

An open circuit breaker position in a panel-board, main panel board or other electrical box containing circuit breakers; not appropriately blanked-off.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Open breaker port.

Missing Covers (Electrical System)

Missing covers on any electrical device box, panel box, switch gear box, control panel, etc., where visible electrical connections are exposed.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Cover is missing resulting in exposed visible electrical connections.

Not Operable (Elevators)

Elevator will not ascend or descend. Door will not open or close. Door opens without cab being present.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any elevator that is either inoperable or doors open without cab present.

Auxiliary Lighting Inoperable (Emergency Power)

Emergency lighting which provides illumination during periods of power outage.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Auxiliary lighting does not function.

Severity Defined

Minor: N/A.
Major: Current records (within the last 12 months) are lost but old records demonstrate proper use.
Severe: No records are available.

Roof Exhaust Fans Inoperable (Exhaust System)

The ventilation system to exhaust kitchen and/or bathroom air is inoperable.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Roof exhaust fan unit is inoperable.

Missing Sprinkler Head (Fire Protection)

Any sprinkler head connected to the central fire protection system is missing, visibly disabled, blocked, and/or capped.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any sprinkler head is missing, visibly disabled, blocked, and/or capped.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Missing/Damaged/Expired Extinguishers (Fire Protection)

A portable fire extinguisher is not in its proper location, is damaged or the extinguisher certification has expired.

Note: This includes fire hoses in fire cabinets.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Missing or damaged extinguisher, or expired extinguisher certificate is observed.

Boiler/Pump Leaks (HVAC)

Escaping of water/steam from unit casing or system piping.

Note: This does not include fuel supply leaks. See Building Systems—HVAC fuel supply leaks. Also, don't include steam escaping from pressure relief valves.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Visible leak is observed.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Include but not limited to "Hazards.")

Fuel Supply Leaks (HVAC)

There is evidence of fuel escaping from a fuel storage tank or fuel line.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any leakage of fuel from the supply tank or piping.

Gas Fired Unit—Missing/Misaligned Chimney (HVAC)

The exhaust system on a gas/oil fired unit is misaligned.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any misalignment which causes improper or dangerous venting of gases.

General Rust/Corrosion (HVAC)

The material condition of the equipment and/or associated piping/ducting shows evidence of flaking, discoloration, pitting or crevices.

Severity Defined

Minor: N/A.
Major: Significant formations of metal oxides are visible or a noticeable pit or crevice has developed.
Severe: Condition has rendered equipment and/or piping inoperable.

Broken/Leaking/Clogged Pipes or Drains (Sanitary System)

Any visible leaks in sanitary system components or visibly clogged drains.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Visible active leaks are observed within or around the system components. Standing water, puddles, or ponding have occurred which is indicative of leaks or clogged drains.

Missing Drain/Cleanout/Manhole Covers (Sanitary System)

The protective covers are not present.

Note: This also includes covers observed while walking the site.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Cover is missing.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Include but is not limited to "Air Quality", "Hazards.")

Common Areas Inspectable Items

Items to inspect for "Common Areas" are as follows:

Basement/Garage/Carport
Closet/Utility/Mechanical
Community Room
Day Care
Halls/Corridors/Stairs
Kitchen
Laundry Room
Lobby
Office
Other Community Spaces
Patio/Porch/Balcony
Pools and Related Structures
Restrooms/Pool Structures
Storage
Trash Collection Areas

Basement/Garage/Carport (Common Areas)

Basement: the lowest habitable story of a building, usually below ground level. Garage: a building or wing of a building in which to park a car. Carport: a roof projecting from the side of a building or free standing, used to shelter an automobile.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Closet/Utility/Mechanical (Common Areas)

An enclosed room or closet housing machines and/or equipment that service the building.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Community Room (Common Areas)

Meeting place used by members of a community for social, cultural, or recreational purposes.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Outlets/Switches
Smoke Detector
Stairs/Hand Railings
Walls Damaged
Lighting Damaged/Inoperable
Windows Damaged

Day Care (Common Area)

Place that provides daytime supervision, training, and medical services for preschool children or for the elderly.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Halls/Corridors/Stairs (Common Areas)

Passageway in a building, which organizes its rooms, apartments and staircases.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Damaged
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged
Graffiti
Mailboxes Damaged

Kitchen (Common Areas)

A place where food is cooked or prepared. The facilities and equipment used in preparing and serving food.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Kitchen
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Laundry Room (Common Areas)

Place where soiled clothes and linens are washed and/or dried.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Laundry Room
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Lobby (Common Area)

A foyer, hall, or waiting room at or near the entrance of a building.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Office (Common Areas)

Place in which business, professional, or clerical activities are conducted. This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Other Community Spaces (Common Areas)

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Patio/Porch/Balcony (Common Areas)

Covered entrance to a building, usually with a separate roof or a recreation area that adjoins a unit.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Patio/Porch/Balcony
Stairs/Hand Railings Damaged
Walls Damage
Windows Damaged

Pools and Related Structures (Common Areas)

Swimming pools and related structures including fencing, etc.

This inspectable item can have the following deficiencies: Pool and Related Structures—Damaged/Not Operational.

Restrooms/Pool Structures (Common Area)

A room equipped with a water closet or toilet, tub and/or shower, sink, cabinet(s) and/or closet. This includes locker rooms or bathhouses associated with swimming pools.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Restrooms
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Storage (Common Areas)

A room in which items are kept for future use.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Trash Collection Areas (Common Areas)

Collection areas for trash/garbage common pick-up.

This inspectable item can have the following deficiencies: Trash Collection Areas.

Electrical—Blocked Access/Improper Storage (Common Areas)

The placing of any object that will delay or prevent access to any panelboard or main power switch.

Severity Defined

Minor: N/A.
Major: N/A
Severe: One or more items are placed in front of the unit's electrical panel, impeding accessibility in time of an emergency.

Electrical—Burnt Breakers (Common Areas)

Breakers having carbon on the plastic body, or plastic body is melted or scarred.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any signs of carbon residue or breaker is melted and/or has arcing scars.

Electrical—Evidence of Leaks/Corrosion (Common Areas)

Liquid stains, rust marks or other signs of corrosion are found on electrical enclosures or hardware.

Note: Do not address surface rust if it does not affect the condition of the electrical enclosure.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any corrosion that affects the condition of the current carrying components. Stains and/or rust on the interior of electrical enclosures or evidence of water leaks are present in the enclosure or hardware.

Electrical—Frayed Wiring (Common Areas)

Insulation may be frayed, stripped, or removed resulting in a potentially dangerous condition.

Note: This does not include any wires not intended to be insulated, such as grounding wires.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Nicks, abrasions or fraying of the insulation.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

Electrical—Missing Breakers (Common Areas)

An open circuit breaker position in a panel-board, main panel board or other electrical box containing circuit breakers; not appropriately blanked-off.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Open breaker port.

Electrical—Missing Covers (Common Areas)

Missing covers on any electrical device box, panel box, switch gear box, control panel, etc., where visible electrical connections are exposed.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Cover is missing resulting in exposed visible electrical connections.

Ceiling—Bulging/Buckling (Common Areas)

Ceiling has bowed, deflected, is sagging, or has deviated from original horizontal alignment.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Bulging, buckling, or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Ceiling—Holes/Missing Tiles/Panels/Cracks (Common Areas)

Punctures in the ceiling surface. May or may not penetrate completely. Panels or tiles may be missing or damaged.

Severity Defined

Minor: Small holes or missing tile/panel found in a ceiling, visually estimated at no larger than a sheet of paper (8½ x 11 inches). Hole does not fully penetrate into the area above (cannot see through it).

Major: A hole or missing tile/panel is found which is visually estimated to be larger than a sheet of paper (8½ x 11 inches) but does not fully penetrate into the area above (cannot see through it).

OR

A crack greater than ⅛" wide and a minimum of 11" long.

Severe: Any hole is found which fully penetrates into the area above (can see through the hole to upper space).

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Ceiling—Needs Paint (Common Areas)

Paint is peeling, cracking, flaking, otherwise deteriorated, or surface is not painted.

Severity Defined

Minor: Area affected is less than 4 square feet.
Major: Area affected is greater than 4 square feet.
Severe: N/A.

Ceiling—Water Stains/Water Damage/Mold/Mildew (Common Areas)

Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: For a single ceiling, visible indication of a leak, mold, or mildew, such as a darkened area, exists over a small area (less than 4 sq. ft.). Water may or may not be evident. Visual observations estimate that less than 10% of the ceiling surface area is affected.

Major: For a single ceiling, visible indication of a leak mold or mildew, such as a darkened area, exists over a large area (more than 4 sq. ft.). Water may or may not be evident.

OR

Visual observations estimate that 10% to 50% of the ceiling area has minor damage.

Severe: Visual observations estimate that a large portion (50% of its surface area) of one ceiling has been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, moist areas, mold, or mildew are evident. The ceiling surface may have failed.

OR

Cases where visual observations estimate that more than 50% of the ceiling area shows minor defined signs of damage, stains, mold, or mildew.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Air Quality.")

Doors—Broken/Missing Glazing/Glass (Common Areas)

The glass and/or compound/structure to support and hold glass or other materials within a frame are missing or broken.

Severity Defined

Minor: For one or more doors, glazing is inadequate to secure glass, but door is usable and presents no immediate security risk.
Major: N/A.
Severe: For at least one door, the operation, function, or security of the door is destroyed by the missing or broken glazing and/or glass. One door in this condition is sufficient to classify the door system as severe.

Doors—Damaged Surface (Holes/Paint/Rusting) (Common Areas)

Damage in the door surface that may affect either the surface protection or the strength of the door, or it may compromise building security or privacy. Includes holes, peeling/cracking/no paint, or significant rust.

Note: A restroom, fire door, or entry door impacted is severe.

Severity Defined

Minor: Any one door has either: small holes (less than ¼ inch in diameter); cracking/peeling paint; and/or the door or its components are rusting.

Major: If more than one door has minor surface damage as defined above.

OR

Any single door that has a hole or holes ranging in size from ¼ inch up to 1 inch diameter.

Severe: Any single door has a hole or holes larger than 1 inch in diameter or significant peeling/cracking/no paint or rust that affects the integrity of the door surface.

Doors—Damaged Frames/Threshold/Lintels/Trim (Common Areas)

The frame, header, jamb, threshold, lintels, or trim, is visibly warped, split, cracked, or broken in some manner.

Severity Defined

Minor: A single door's frame/threshold/lintel and/or trim is damaged but does not hinder door operation. The damaged door frame does not prevent door from being locked.

Major: More than one door has the minor damage defined above.

Severe: At least one door is rendered inoperable and/or unlockable due to damage to the door's frame/threshold/lintel and/or trim.

OR

Minor damage as defined above affects a restroom, entry, or fire door.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Doors—Damaged Hardware/Locks (Common Areas)

The attachments to a door to provide hinging, hanging, opening, closing, or security are damaged or missing. Includes locks, panic hardware, overhead door tracks, springs and pulleys, sliding door tracks and hangers, and door closures.

Severity Defined

Minor: A single door's hardware, as defined above, is damaged but does not hinder current door operation. The door functions, is lockable, and the door's panic hardware is operable.

Major: More than one door has minor damaged hardware as defined above.

Severe: A single door is rendered inoperable and/or unlockable due to damage to the door's hardware.

OR

Minor damaged as defined above affects a restroom, entry or fire door.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Doors—Deteriorated/Missing Seals (Common Areas)

The seals and stripping around the door(s) designed to provide fire resistance are damaged or missing.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: For a single door the seals are missing. Seals are damaged to the point that they no longer serve the intended purpose.

Doors—Missing Door (Common Areas)

Door is absent.

Note: A restroom, entry or fire door impacted is severe.

Severity Defined

Minor: The missing door is not a restroom, entry, or fire door.

Major: Missing doors are not an entry, restroom, or fire door. They present no hazard and visual observation shows two doors or up to 50% of the doors are missing.

Severe: The missing door is a restroom, entry, or fire door.

OR

Visual observation estimates more than 50% of the doors are missing.

Comments

Severe: If condition is a health and safety concern it must be recorded manually. (Includes but not limited to "Hazards.")

Floors—Bulging/Buckling (Common Areas)

Floor has bowed, deflected, is sagging, or has deviated from original horizontal alignment.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Bulging, buckling, or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Floors—Floor Covering Damaged (Common Areas)

Damage to the carpet, tiles, wood, sheet vinyl, or other floor covering.

Severity Defined

Minor: For a single floor, floor covering may have stains, surface burns, shallow cuts, small holes, tears, loose areas or exposed seams. The covering is fully functional. Visual observation estimates that less than 10% of the floor area is affected. Does not present a safety hazard.

Having minor damage as described above are affected. Visual observations estimate that 10% to 50% of the floors are affected.

Severe: For a single floor, large sections of the covering are damaged estimated at more than 50% of the floor area.

OR

Floor covering damage that exposes the underlying material.

OR

Covering that has failed in most traffic areas.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Floors—Missing Flooring (Common Areas)

Flooring such terrazzo, hardwood, ceramic tile or other flooring material is missing.

Severity Defined

Minor: For a single floor small holes in areas of the floor surface. Visual observations estimate less than 10% of the floors surveyed are affected. No safety problems exist due to this condition.

Major: Visual observations estimate 10% to 50% of the floors have minor holes/damage. No safety problem exists due to this condition.

Severe: Visual observations estimate more than 50% of the floors are affected by minor holes/damage; or the holes are sufficient for safety to be compromised. One concern involving compromised safety is sufficient to classify the floor system as severe.

Floors—Needs Paint (Common Areas)

For floors that are painted, paint is peeling, cracking, flaking, or otherwise deteriorated.

Note: This applies to any painted floor surface, typically concrete.

Severity Defined

Minor: For a single floor, a peeling condition exists. Up to or less than 50% of the floor is affected.

Major: For a single floor, a peeling condition exists. More than 50% of the floor is affected.

Severe: N/A.

Floors—Rot/Deteriorated Subfloor (Common Areas)

Subfloor has decayed or is decaying.

Severity Defined

Minor: N/A.

Major: Condition is slightly noticeable. Small areas of rot or spongy flooring are found. Inspection observations estimate less than 10% of the floors are affected.

Severe: Large areas of rot are readily visible. Application of weight causes noticeable deflection. Inspection observations estimate more than 10% of floors are affected.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Floors—Water Stains/Water Damage/Mold/Mildew (Common Areas)

Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: N/A.

Major: Visible indication of a water stain, mold, or mildew, such as darkened area, exists over a small area (4 sq. ft. or less). Water may or may not be evident.

Severe: Visual observations estimate that a large portion of floor has been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, mold, moist areas and flaking are evident. The floor surface may have failed.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Air Quality," "Hazards.")

Lighting Damaged/Inoperable (Common Areas)

Lighting fixture is damaged, inoperable, or missing.

Severity Defined

Minor: N/A.

Major: The permanent lighting fixture is damaged, inoperable or missing.

Severe: N/A.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards," "Hazards.")

Outlets/Switches/Cover Plates—Missing/Broken (Common Areas)

The flush plate used to cover the opening surrounding a switch or outlet is damaged or does not exist. Switch or outlet is missing.

Severity Defined

Minor: Outlet or switch has broken cover plate which does not result in exposed wiring.

Major: N/A.

Severe: An outlet or switch is missing.

OR

A cover plate is missing or broken resulting in exposed wiring.

Smoke Detector—Missing/Inoperable (Common Areas)

Smoke detector will not activate, or is missing.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: A single missing or inoperable smoke detector is severe.

Stairs—Broken/Missing Hand Railing (Halls/Corridors/Stairs)

The hand rail is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The hand-rail for four or more stairs is completely missing or damaged, loose or otherwise unusable.

Stairs—Broken/Damaged/Missing Steps (Halls/Corridors/Stairs)

The horizontal tread or stair surface is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Step is broken, damaged or missing.

Mailbox Missing/Damaged (Halls/Corridors/Stairs)

Mailbox does not function properly due to deterioration, damage, or is absent.

Severity Defined

Minor: Mailbox is damaged, vandalized, or deteriorated, but functional.

Major: N/A.

Severe: Mailbox is damaged, vandalized, or deteriorated, and as a result, is not functional.

OR

Mailbox is missing.

Graffiti (Halls/Corridors/Stairs)

Visual observation of a crude, (not recognizable as an art form), inscription or drawing scratched, painted or sprayed on a building surface, retaining wall, or fence so as to be seen by the public.

Note: Do not count full wall murals and similar art forms as graffiti.

Severity Defined

Minor: Visual graffiti observed in at least one location/area.

Major: Graffiti observed in 2–5 locations/areas.

Severe: Graffiti observed in 6 or more locations/areas.

Walls—Bulging/Buckling (Common Areas)

Wall has bowed, deflected, sagged or has deviated from original vertical alignment.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Bulging/Buckling or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Walls—Damaged/Deteriorated Trim (Common Areas)

Cove molding, chair rail, base molding or other decorative trim is damaged or has decayed.

Severity Defined

Minor: Small areas of deterioration in the trim surfaces. Visual observations estimate that less than 10% of the wall area surveyed is affected.

Major: Large areas of deterioration in the trim surfaces. Visual observation estimate that 10% to 50% in any of the wall area surveyed is affected.

Severe: Significant areas of deterioration in the wall surfaces. Visual observations estimate that more than 50% of the wall area surveyed is affected.

Walls—Damaged (Common Areas)

Punctures in the wall surface. May or may not penetrate completely. Panels or tiles may be missing or damaged. Does not include small holes created by hanging pictures, etc.

Severity Defined

Minor: A hole missing tile/panel, or other damage found in a wall, visually estimated at no larger than 8½ x 11 inches. Hole does not fully penetrate into the adjoining room (cannot see through it).

Major: A hole missing tile/panel or other damage wall that is larger than a sheet of paper (8½ x 11).

OR

A crack greater than ⅛" in wide and a minimum of 11" long.

Severe: A hole of any size is found in one or more walls which fully penetrates into an adjoining room (can see through the hole).

OR

Two or more walls have major holes.

Walls—Needs Paint (Common Areas)

Paint is peeling, cracking, flaking, otherwise deteriorated.

Severity Defined

Minor: Area affected is less than 4 square feet.

Major: Area affected is greater than 4 square feet.

Severe: N/A.

Walls—Water Stains/Water Damage/Mold/Mildew (Common Areas)

Walls are not watertight. Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: For a single wall, visible indication of a leak, mold, or mildew, such as darkened area, exists over a small area. (less than 4 sq. ft. by visual estimate). Water may or may not be evident.

Major: For a single wall, visible indication of a leak exists over a large area (visually estimated at more than 4 sq. ft.). Water is probably evident.

Major: Visual observation estimates that a large portion (more than 50% of the surface) of one or more walls have been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, moisture area, mold and flaking are evident. The wall surface may have failed. One occurrence of this condition is sufficient to classify the wall system as severe.

OR

Visual observations estimate that more than 50% of the wall surface in any one area shows signs of water damage, stains, mold, or mildew.

Windows—Cracked/Broken/Missing Panes (Common Areas)

Glass or pane is cracked, broken or missing.

Severity Defined

Minor: Cracked window pane is observed.

Major: N/A.

Severe: Glass pane is broken or missing.

Windows—Damaged Window Sill (Common Areas)

The horizontal member of the window that bears the upright portion of the frame is damaged.

Severity Defined

Minor: Sill is damaged but still present. The inside of the surrounding wall is not exposed. No impact to window operation or weather tightness is visually apparent.

Major: Sill is missing or damaged enough to expose the inside of the surrounding walls and/or compromise its weather tightness.

Severe: N/A.

Windows—Security Bars Prevent Egress (Common Areas)

Security bars are damaged, constructed or installed such that egress is severely limited or impossible.

Note: This does not include windows not designed or intended for egress.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The ability to exit through the window is limited by security bars that do not function properly and, therefore, pose safety risks.

HVAC—Gas Fired Unit—Missing/Misaligned Chimney (Common Areas)

The exhaust system on a gas fired unit is misaligned.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any misalignment which causes improper or dangerous venting of gases.

HVAC—Inoperable (Common Areas)

The heating, cooling, or ventilation system is inoperable.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The HVAC does not function, providing neither necessary heating or cooling as designed. System does not respond when the controls are engaged.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

HVAC—Noisy/Vibrating/Leaking (Common Areas)

The HVAC distribution components, including fans, are the source of abnormal noise, unusual vibration, or leaks.

Severity Defined

Minor: N/A.

Major: The HVAC system exhibits or shows signs of abnormal vibration, other noise or leaks when engaged. The condition does not prevent the system from providing heating or cooling sufficient to maintain a minimum temperature range in the major living areas of the unit.

Severe: N/A.

HVAC—Radiator Covers Missing/Damaged (Common Areas)

Radiator cover is missing, damaged or inoperable.

Severity Defined

Minor: N/A.

Major: Radiator is damaged, impeding proper heating and cooling, but not creating any type of safety hazard.

Severe: Radiator is missing, damaged or substantially not installed to burn, fan or other potentially serious hazards.

HVAC—Rusted/Corroded (Common Areas)

The material condition of the equipment and/or associated piping/ducting shows evidence of flaking, discoloration or pitting.

Severity Defined

Minor: N/A.

Major: Significant formations of metal oxides are visible or a noticeable pit or crevice has developed.

Severe: Condition has rendered equipment and/or piping inoperable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Call-for-Aid Inoperable (Common Areas)

Call-for-Aid is inoperable.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: System does not function as intended.

Countertops—Missing/Damaged (Common Areas)

A flat work surface in a kitchen often integral to lower cabinet space is missing or deteriorated.

Severity Defined

Minor: Counter-top surface is discolored; materials have begun to separate or minor scratching and chipping is present.

Major: Surface shows advanced stage of deterioration and/or scratching, chipping.

Severe: Countertop working surface is missing or deteriorated and/or damaged and does not provide a sanitary surface to prepare food.

Cabinets—Missing/Damaged (Common Areas)

A case, box or piece of furniture with sets of drawers or shelves, with doors, primarily used for storage, mounted on walls or mounted on floors.

Severity Defined

Minor: Cabinet is discolored; materials have begun to separate or minor scratching and chipping is present. Cabinet assembly is present; up to two cabinets may be only marginally functional.

Major: Several (up to 50%) cabinets are either missing, damaged, or lacking adequate doors and/or shelves.

Severe: A significant number (more than 50%) of cabinets are either missing, damaged, or lacking adequate doors and/or shelves.

Dishwasher/Garbage Disposal—Inoperable (Kitchen) (Day Care) (Other Community Spaces)

A dishwasher or garbage disposal, if provided, does not work.

Severity Defined

Minor: N/A.

Major: The dishwasher or garbage disposal does not work.

Severe: N/A.

Exhaust Systems—Excessive Grease/Inoperable (Kitchen)

Failure of apparatus to draw cooking exhaust.

Severity Defined

Minor: Accumulation of dirt threatens the free passage of air.
Major: N/A.
Severe: Exhaust fan is inoperable or flue may be completely blocked based on visual estimation.

GFI—Inoperable (Kitchen)(Restrooms/Pool Structures)

GFI is present and inoperable.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: GFI is present and is found inoperable.

Fencing—Damaged/Not Intact (Pools and Related Structures)

Fencing surrounding the swimming pool was observed to be damaged.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any damage that compromises the integrity of the fence.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Pool—Not Operational (Pools and Related Structures)

Pool was not in operation during the inspection.

Note: If not operational due to seasonal changes the observation should still be recorded that the pool was not in operation.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Pool was observed not to be operational.

Lavatory Sink—Damaged/Missing (Restrooms/Pool Structures)

Sink, faucet, or accessories are missing, damaged or inoperable.

Severity Defined

Minor: Presence of extensive discoloration and/or cracks in the basin. Sink is still usable.

Major: N/A.

Severe: Absence or failure of the sink and/or associated hardware. Sink is unusable.

Plumbing—Clogged Drains (Kitchen) (Restrooms/Pool Structures)

Water does not drain adequately in shower, sink, tub or basin.

Severity Defined

Minor: Water does not drain freely when stopper is disengaged. Sink is usable.
Major: N/A.
Severe: Drain is completely clogged or has suffered extensive deterioration. Sink is not usable.

Plumbing—Leaking Faucet/Pipes (Kitchen) (Restrooms/Pool Structures)

Sink faucet or piping leaks.

Severity Defined

Minor: Leak or drip that is contained by basin. Faucet is usable.
Major: N/A.
Severe: Faucet leak and surrounding area is adversely affected.
OR
Piping leaks and surrounding area is adversely affected.

Range/Stove—Missing/Damaged/Inoperable (Kitchen)

Unit is absent or damaged.

Severity Defined

Minor: Unit's surface is dented, chipped or scratched. Operation of doors or drawers is impeded but stove is operational. Burner is misaligned and flame is not distributed equally. Pilot light is out on one or more burners.
Major: N/A.
Severe: The unit is missing, or any burners and/or oven is inoperable.

Refrigerator—Missing/Damaged/Inoperable (Kitchen)

The refrigerator does not perform adequately.

Severity Defined

Minor: Refrigerator has excessive accumulation of ice.
OR
Seals around doors are deteriorated.
OR
Operation of doors or drawers is impeded but refrigerator is operational.
Major: N/A.
Severe: Refrigerator is missing or does not cool at all.

Sink—Damaged/Missing (Kitchen)

Sink, faucet or accessories are missing, damaged, or inoperable.

Severity Defined

Minor: Presence of extensive discoloration and/or cracks in the basin. Sink & hardware are still usable for food preparation.
Major: N/A.
Severe: Sink or hardware is missing or is totally unusable for food preparation.

Dryer Vent Missing/Damaged/Inoperable (Laundry Room)

Inadequate means is available to vent accumulated heat to outside.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Dryer vent is missing or is visually determined to be inoperable (blocked). Dryer exhaust is not effectively vented to the outside.

Baluster/Side Railings Damaged (Patio/Porch/Balcony)

Baluster or side railing on this exterior improvement is loose, damaged or inoperable, limiting the safe use of this area.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: The baluster and/or side rails enclosing this area are loose, damaged or missing, impeding the safe use of this area.

Restroom Cabinet—Damaged/Missing (Restrooms/Pool Structures)

Damaged or missing cabinets, vanity tops, drawers, shelves, and doors to include medicine cabinets and vanities.

Severity Defined

Minor: One or more cabinets/vanities have missing and/or damaged shelves, vanity tops, drawers, and/or doors, but all cabinets are fully usable.
Major: N/A.
Severe: One or more cabinets are missing or are not usable for storage due to their poor condition.

Shower/Tub—Damaged/Missing (Restrooms/Pool Structures)

Shower/tub or components are damaged or non-existent.
Minor: N/A.
Major: Presence of extensive discoloration and/or cracks in the basin. Shower/tub is usable.
Severe: Absence or failure of the shower, tub, faucets or drains and/or associated hardware. Shower or tub are unusable for any reason.

Ventilation/Exhaust System—Inoperable (Restrooms/Pool Structure)

Failure of apparatus to exhaust air.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Exhaust fan is inoperable or restroom window cannot be opened.

Water Closet/Toilet—Damaged/Clogged/Missing (Restrooms/Pool Structures)

Water closet/toilet is damaged or non-existent.

Severity Defined

Minor: N/A.
Major: Fixture elements, such as but not limited to the seat, the flush handle, the cover, etc., are missing or damaged.
Severe: Fractured or broken bowl will not retain water. Fixture may not exist or a hazardous condition exists. Absence of all flushing ability due to obstruction or other defect.

Chutes Damaged/Missing Components (Trash Collection Areas)

Structure that is utilized to direct garbage into the appropriate storage container. Components include but are not limited to the chute, the chute door.

Note: Do not evaluate the door that leads to the trash room.

Severity Defined

Minor: N/A.
Major: Substantially reduced capacity to dispose of refuse.
Severe: Broken or inadequate collection structure causes garbage to backup into chutes. Compactors or components have failed.

Unit Inspectable Items

Items to inspect for "Unit" are as follows:

Bathroom
Call-for-Aid
Ceiling
Doors
Electrical System
Floors
Hot Water Heater
HVAC System
Kitchen
Lighting
Outlets/Switches
Patio/Porch/Balcony
Smoke Detector
Stairs
Walls
Windows

Call-for-Aid (Unit)

System to summon help. May be visual, audible, or both. May be activated manually or automatically when pre-programmed conditions are met.
This inspectable item can have the following deficiency: Inoperable

Ceiling (Unit)

The visible overhead structure lining the inside of a room or area.
This inspectable item can have the following deficiencies:
Bulging/Buckling
Holes/Missing Tiles/Panels
Needs Paint
Water Stains/Water Damage/Mold/Mildew

Doors (Unit)

Means of access to the interior of a unit, room within the unit, or closet. Doors provide privacy and security, control passage, provide fire and weather resistance.
This inspectable item can have the following deficiencies:
Damaged Surface Holes/Paint/Rusting
Damaged Frames/Threshold/Lintels/Trim
Damaged Hardware/Locks
Damaged/Missing Screen/Storm/Security Door
Deteriorated/Missing Seals (Entry Only)
Missing Door

Electrical System (Unit)

Portion of the building system that safely provides electrical power throughout the building. Includes equipment that provides control, protection, metering, and service.
This inspectable item can have the following deficiency:
Blocked Access to Electric Panel
Burnt Breakers
Evidence of Leaks Corrosion
Frayed Wiring
GFI Inoperable
Missing Breakers
Missing Covers

Floors (Unit)

The visible horizontal surface system within a room or area underfoot; the horizontal division between two stories of a structure.
This inspectable item can have the following deficiencies:
Bulging/Buckling Floor
Covering Damage
Missing Flooring
Needs Paint
Rot/Deteriorated Subfloor
Water Stains/Water Damage/Mold/Mildew

Hot Water Heater (Unit)

This inspectable item can have the following deficiencies:
Gas Fired Unit—Missing/Misaligned Chimney
Inoperable Unit/Components
Leaking Valves/Tanks/Pipes
Pressure Relief Valve Missing
Rust/Corrosion

HVAC System (Unit)

System to provide heating, cooling and ventilation to the unit.
This does not include building heating or cooling system deficiencies such as boilers, chillers, circulating pumps, distribution lines, fuel supply, etc., OR occupant owned or supplied heating sources.
This inspectable item can have the following deficiencies:
Inoperable
Noisy/Vibrating/Leaking
Rust/Corrosion
Gas Fired Unit—Missing/Misaligned Chimney
Convection/Radiant Heat System/Covers Missing/Damaged

Kitchen (Unit)

A place where food is cooked or prepared. The facilities and equipment used in preparing and serving food.
This inspectable item can have the following deficiencies:
Cabinets—Missing/Damaged
Plumbing—Clogged Drains
Plumbing—Leaking Faucets/Pipes
Range/Stove—Missing/Damaged/Inoperable
Refrigerator—Missing/Damaged/Inoperable
Dishwasher/Garbage Disposal—Inoperable
Range Hoods/Exhaust Fans—Excessive Grease/Inoperable
Countertops—Missing/Damaged
Sink—Missing/Damaged

Lighting (Unit)

System to provide illumination to a room or area. Includes fixtures, lamps, and supporting accessories. This inspectable item can have the following deficiencies:
Missing/Inoperable Fixture

Outlets/Switches (Unit)

The receptacle connected to a power supply or method to control the flow of electricity. Includes two and three prong outlets, ground fault interrupters, pull cords, two & three pole switches, and dimmer switches.
This inspectable item can have the following deficiencies:
Missing
Missing/Broken Cover Plates

Patio/Porch/Balcony (Unit)

Adjoining patio, porch, or balcony.
This inspectable item can have the following deficiency:
Baluster/Side Railings Damaged

Smoke Detector (Unit)

Sensor to detect the presence of smoke and activate an alarm. May be battery operated or hard-wired to electrical system. May provide visual signal, audible signal, or both. Smoke detector must be located on every floor.
This inspectable item can have the following deficiencies: Missing/Inoperable

Stairs (Unit)

Series of 4 or more steps or flights of steps joined by landings connecting levels of a unit. Includes supports, frame, treads, handrails.
This inspectable item can have the following deficiencies:
Broken/Missing Hand Railing
Broken/Damaged/Missing Steps

Walls (Unit)

The enclosure of the unit and rooms. Materials for construction include concrete, masonry block, brick, wood, glass block, plaster, sheet-rock. Surface finish materials include paint, wall-coverings.
This inspectable item can have the following deficiencies:
Bulging/Buckling
Damaged
Damaged/Deteriorated Trim
Needs Paint
Water Stains/Water Damage/Mold/Mildew

Windows (Unit)

Window systems provide light, security, and exclusion of exterior noise, dust, heat, and cold. Frame materials include wood, aluminum, and vinyl.
This inspectable item can have the following deficiencies:
Cracked/Broken/Missing Panes
Damaged Window Sill
Deteriorated/Missing Caulking/Seals
Inoperable/Not Lockable
Peeling/Needs Paint
Security Bars Prevent Egress

Bathroom Cabinets—Damaged/Missing (Bathroom)

Damaged or missing cabinets, vanity tops, drawers, shelves, and doors. Includes medicine cabinets and vanities.

Severity Defined

Minor: Cabinet or vanity has missing and/or damaged shelves, vanity tops, drawers, and/or doors, but is fully usable.
Major: N/A.
Severe: Cabinet is missing or is not usable for storage due to its poor condition.

Lavatory Sink—Damaged/Missing (Bathroom)

Basin (sink) that shows signs of deterioration, distress, and/or is non-existent.

Severity Defined

Minor: Presence of extensive discoloration and/or cracks in the basin. Sink is still usable.
Major: N/A.
Severe: Absence or failure of the sink and/or associated hardware. Sink is unusable.

Plumbing—Clogged Drains (Bathroom)

Water does not drain adequately in shower, tub, or basin (sink).

Severity Defined

Minor: Water does not drain freely when stopper is disengaged; however, sink or tub is usable.

Major: N/A.

Severe: Drain is completely clogged or has suffered extensive deterioration. Sink or tub is not usable.

Plumbing—Leaking Faucet/Pipes (Bathroom)

Basin, shower, water closet, or tub faucet and/or associated pipes leak water.

Severity Defined

Minor: Leak or drip that is contained by basin. Plumbing fixture is usable.

Major: N/A.

Severe: Leak is steady and surrounding area is adversely affected.

OR

Piping leaks and surrounding area is adversely affected.

Shower/Tub—Damaged/Missing (Bathroom)

Shower/tub or components are damaged or non-existent.

Note: This does not include Leaks.

Severity Defined

Minor: N/A.

Major: Presence of extensive discoloration and/or cracks in the basin. Shower/Tub is usable.

Severe: Absence or failure of the shower, tub, faucets or drains and/or associated hardware. Shower or tub is unusable for any reason.

Ventilation/Exhaust System—Inoperable (Bathroom)

Failure of apparatus to exhaust air.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Exhaust fan is inoperable or bathroom window cannot be opened.

Water Closet/Toilet—Damaged/Clogged/Missing (Bathroom)

Water closet/toilet is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: Fixture elements, such as but not limited to the seat, the flush handle, the cover etc., are missing or damaged.

OR

Toilet runs constantly.

Severe: Fractured or broken bowl will not retain water. Fixture may not exist or a hazardous condition exists. Absence of all flushing ability due to obstruction or other defect.

Inoperable (Call-for-Aid)

The system does not function.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: System does not function as intended.

Bulging/Buckling (Ceiling)

Ceiling has bowed, deflected, is sagging, or has deviated from original horizontal alignment.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Bulging, bucking or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Holes/Missing Tiles/Panels (Ceiling)

Punctures in the ceiling surface. May or may not penetrate completely. Panels or tiles may be missing or damaged.

Severity Defined

Minor: Small holes or missing tile/panel found in a ceiling, visually estimated at no larger than a sheet of paper (8½ x 11 inches). Hole does not fully penetrate into the area above (cannot see through it).

Major: A hole or missing tile/panel is found which is visually estimated to be larger than a sheet of paper (8½ x 11 inches) but does not fully penetrate into the area above (cannot see through it).

OR

A crack greater than ⅛" wide and a minimum of 11" long.

Severe: Any hole is found which fully penetrates into the area above (can see through the hole to upper space).

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Needs Paint (Ceiling)

Paint is peeling, cracking, flaking, otherwise deteriorated, or surface is not painted.

Severity Defined

Minor: Area affected is less than 4 square feet.

Major: Area affected is greater than 4 square feet.

Severe: N/A.

Water Stains/Water Damage/Mold/Mildew (Ceiling)

Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: For a single ceiling, visible indication of a leak, mold, or mildew, such as a darkened area, exists over a small area (less than 4 sq. ft.). Water may or may not be evident. Visual observations estimate that less than 10% of the ceiling surface area is affected.

Major: For a single ceiling, visible indication of a leak mold or mildew, such as a darkened area, exists over a large area (more than 4 sq. ft.). Water may or may not be evident.

OR

Visual observations estimate that 10% to 50% of the ceiling area has minor damage.

Severe: Visual observations estimate that a large portion (50% of its surface area) of one ceiling has been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, moist areas, mold, or mildew are evident. The ceiling surface may have failed.

OR

Cases where visual observations estimate that more than 50% of the ceiling area shows minor defined signs of damage, stains, mold, or mildew.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Air Quality.")

Damaged Surface—Holes/Paint/Rusting (Doors)

Damage in the door surface that may affect either the surface protection or the strength of the door, or it may compromise building security or privacy. Includes holes, peeling/cracking/no paint, or significant rust.

Note: A bathroom, bedroom, or entry door impacted is severe.

Severity Defined

Minor: Any one door has either: small holes (less than ¼ inch in diameter); cracking/peeling paint; and/or the door or its components are rusting.

Major: If more than one building exterior door has minor surface damage as defined above.

OR

Any single unit door except bathroom/bedroom and/or entry doors, has a hole or holes ranging in size from ¼ inch up to 1 inch diameter.

Severe: If any unit door has a hole or holes larger than 1 inch in diameter, or significant peeling/cracking/no paint or rust that affects the integrity of the door surface.

OR

If bathroom, bedroom and/or entry door has either minor or major damage as defined above.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Damaged Frames/Threshold/Lintels/Trim (Doors)

The frame, header, jamb, threshold, lintels, or trim, is visibly warped, split, cracked, or broken in some manner.

Severity Defined

Minor: A single door's frame/threshold/lintel and/or trim is damaged but does not hinder door operation. The damaged door frame does not prevent door from being locked.

Major: More than one door has the minor damage defined above.

Severe: At least one door is rendered inoperable and/or unlockable due to damage to the door's frame/threshold/lintel and/or trim.

Damaged Hardware/Locks (Doors)

The attachments to a door to provide hinging, hanging, opening, closing, or security are damaged or missing. Includes locks, panic hardware, overhead door tracks, springs and pulleys, sliding door tracks and hangers, and door closures.

Severity Defined

Minor: A single door's hardware, as defined above, is damaged but does not hinder current door operation. The door functions, is lockable, and the door's panic hardware is operable.

Major: More than one door has minor damaged hardware as defined above.

Severe: A single door is rendered inoperable and/or unlockable due to damage to the door's hardware.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Damaged/Missing Screen/Storm/Security Door (Doors)

Visible damage to surfaces including screens, glass, frames, hardware, and door surface.

Severity Defined

Minor: One or more screen/storm doors has damage or is missing screens/glass.

Major: One or more security doors has damage, but is still operational and the security door still serves its design purpose.

Severe: A single security door is inoperable or missing. (Missing only applies to those situations where a security door is supposed to be present but is observed not to be there.)

Deteriorated/Missing Seals (Entry Only) (Doors)

The seals and stripping around the entry door(s) designed to provide weather and fire resistance are damaged or missing.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: For a single entry door the seals are missing. Seals are damaged to the point that they no longer serve the intended purpose.

Deteriorated/Missing Caulking/Seals (Windows)

The caulking or seal is missing, poorly installed, or deteriorated.

Note: This also includes Thermopane or insulated windows that have failed.

Severity Defined

Minor: Missing or deteriorated caulk or seals are observed. No evidence of damage to window or surrounding structure exists.

Major: Missing or deteriorated caulk or seals are observed, with some evidence of leaks or damage to the window or surrounding structure visible.

OR

A Thermopane or insulated window has failed. (Typically indicated by being fogged up.)

Severe: Missing or deteriorated caulk or seals are observed and the window is not weather-tight. Evidence of leaks or damage to the window or surrounding structure is readily apparent.

Missing Door (Door)

Door is absent.

Note: A bathroom, bedroom, or entry door impacted is severe.

Severity Defined

Minor: The missing door is not a bathroom, bedroom or entry door.

Major: Missing doors are not an entry, bedroom, or bathroom. They present no hazard and visual observation shows two doors or up to 50% of the doors are missing.

Severe: The missing door is a bathroom, bedroom or entry door.

OR

Visual observation estimates more than 50% of the unit doors are missing from areas other than the bathroom, bedroom, or entry door.

Blocked Access to Electric Panel (Electrical System)

The placing of any object that will delay or prevent the access to any panelboard or main power switch in an emergency and cause a fire hazard.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: One or more items are placed in front of the unit's electrical panel, impeding accessibility in time of an emergency.

Burnt Breakers (Electrical System)

Breakers having carbon on the plastic body, or plastic body is melted or scarred.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any signs of carbon residue or breaker is melted and/or has arcing scars.

Evidence of Leaks/Corrosion (Electrical System)

Liquid stains, rust marks, or other signs of corrosion are found on electrical enclosures or hardware.

Note: Do not address surface rust if it does not affect the condition of the electrical enclosure.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any corrosion that affects the condition of the current carrying components. Stains and/or rust on the interior of electrical enclosures or evidence of water leaks are present in the enclosure or hardware.

Frayed Wiring (Electrical System)

Insulation may be frayed, stripped, or removed resulting in a potentially dangerous condition.

Note: This does not include any wires not intended to be insulated, such as grounding wires.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Nicks, abrasions or fraying of the insulation.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

GFI—Inoperable (Electrical System)

GFI is present and inoperable.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: GFI is present and inoperable.

Comments

Severe: This creates a health and safety concern.

Missing Breakers (Electrical System)

An open circuit breaker position in a panel-board, main panel board or other electrical box containing circuit breakers; not appropriately blanked-off.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Open breaker port.

Missing Covers (Electrical Sy

Missing covers on any el box, panel box, switch panel, etc., whe connections a

Severity Def

Minor: N/A.

Major: N/A.

Severe: Cover is missing resulting in exposed visible electrical connections.

Bulging/Buckling (Floors)

Floor has bowed, deflected, is sagging, or has deviated from original horizontal alignment.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Bulging, buckling, or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Floor Covering Damage (Floors)

Damage to the carpet tiles, wood, sheet vinyl or other floor covering.

Severity Defined

Minor: Floor covering may have stains, surface burns, shallow cuts, small holes or tears in non-traffic areas, loose areas, exposed seams. The covering is fully functional. Visual observation estimates that less than 10% of the floor area is affected. Does not present a safety hazard.

Major: Floor covering may have burn marks, cuts, tears, holes, or large sections of exposed seams exposing the underlying material. The covering does not present a safety hazard. Visual observations estimate that 10% to 50% of the floors are affected.

Severe: Large sections of the floor covering are damaged estimated at more than 50% of the floor area.

OR

Floor covering damage that exposes the underlying material.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Missing Flooring Tiles (Floors)

Flooring such as VCT, sheet vinyl, carpet or other flooring material is missing.

Severity Defined

Minor: For a single floor small holes in areas of the floor surface are missing. Visual observations estimate less than 10% of the floors surveyed are affected. No safety problems exist due to this condition.
Major: Visual observations estimate 10% to 50% of the floors have missing flooring. No safety problem exists due to this condition.
Severe: Visual observations estimate more than 50% of the floors are affected missing flooring; or the missing flooring is sufficient for safety to be compromised. One concern involving compromised safety is sufficient to classify the floor system as severe.

Needs Paint (Floors)

For floors that are painted, paint is peeling, cracking, flaking, or otherwise deteriorated.

Severity Defined

Minor: Area affected is less than 4 square feet.
Major: Area affected is greater than 4 square feet.
Severe: N/A.

Rot/Deteriorated Subfloor (Floors)

Subfloor has decayed or is decaying.

Severity Defined

Minor: N/A.
Major: Condition is slightly noticeable. Small areas of rot or spongy flooring are found.
Severe: Large areas of rot are readily visible, application of weight causes noticeable deflection.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Water Stains/Water Damage/Mold/Mildew (Floors)

Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: N/A.
Major: Visible indication of a water stain, mold, or mildew, such as darkened area, exists over a small area (4 sq. ft. or less). Water may or may not be evident.
Severe: Visual observations estimate that a large portion (more than 10%) of floor has been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, mold, moist areas and flaking are evident. The floor surface may have failed.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Air Quality", "Hazards.")

Gas Fired Unit—Missing/Misaligned Chimney (Hot Water Heater)

The exhaust system on a gas or fired unit is misaligned.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any misalignment which causes improper or dangerous venting of gases.

Inoperable Unit/Components (Hot Water Heater)

Hot water supply is unavailable due to system or system component malfunction.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: After running for several minutes, water from the hot water taps is not warmer than room temperature.

Leaking Valves/Tanks/Pipes (Hot Water Heater)

Water visibly leaking from any hot water system component. Includes valve flanges, stems, bodies, or from any domestic hot water tank or its piping.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Water is visibly leaking.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Electrical Hazards.")

Pressure Relief Valve Missing (Hot Water Heater)

Valve that regulates the temperature and pressure of the water heater is missing.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: No pressure relief valve is present.

Rust/Corrosion (Hot Water Heater)

The material condition of the equipment and/or associated piping shows evidence of flaking, discoloration, reduction in wall thickness, pitting, or crevices.

Severity Defined

Minor: Patches of noticeable formations of metal oxides.
Major: Significant formations of metal oxides are visible and a noticeable pit or crevice has developed.
Severe: Equipment and/or piping integrity has been compromised, (e.g., leaks are visible).

Gas Fired Unit—Missing/Misaligned Chimney (HVAC)

The exhaust system on a gas or fired unit is misaligned.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any misalignment which causes improper or dangerous venting of gases.

Inoperable (HVAC)

The heating or cooling system is inoperable in the unit.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: The HVAC in the unit does not function, providing neither necessary heating or cooling as designed. System does not respond when the unit controls are engaged.

Noisy/Vibrating/Leaking (HVAC)

The HVAC distribution components in the unit, including fans, are the source of abnormal noise, unusual vibration, or leaks.

Severity Defined

Minor: N/A.
Major: The HVAC system in the unit exhibits or shows signs of abnormal vibration, other noise or leaks when engaged. The condition does not prevent the system from providing heating or cooling sufficient to maintain a minimum temperature range in the major living areas of the unit.
Severe: N/A.

Convection/Radiant Heat System Covers Missing/Damaged (HVAC)

Convection/Radiant heat system cover is missing or damaged.

Severity Defined

Minor: N/A.
Major: One or more covers are damaged, impeding proper heating, but not creating any type of safety hazard.
Severe: One or more covers are missing, or substantially not installed, enabling exposure to burn, fan or other potentially serious hazards. A single occurrence constitutes a safety hazard.

Rust/Corrosion (HVAC)

A component(s) of the system show visible deterioration due to oxidation or corrosion of system parts.

Severity Defined

Minor: N/A.
Major: Deterioration from rust and corrosion is observed on the HVAC units in the unit. The condition does not prevent the system from providing sufficient heating or cooling.
Severe: N/A.

Cabinets—Missing/Damaged (Kitchen)

A case, box or piece of furniture with sets of drawers or shelves, with doors, primarily used for storage, mounted on walls or mounted on floors.

Severity Defined

Minor: Cabinet is discolored; materials have begun to separate or minor scratching and chipping is present. Cabinet assembly is present; up to two cabinets may be only marginally functional.
Major: Several (up to 50%) cabinets are either missing, damaged, or lacking adequate doors and/or shelves.
Severe: A significant number (more than 50%) of cabinets are either missing, damaged, or lacking adequate doors and/or shelves.

Countertops—Missing/Damaged (Kitchen)

A flat work surface in a kitchen often integral to lower cabinet space is missing or deteriorated.

Severity Defined

Minor: Counter-top surface is discolored; materials have begun to separate or minor scratching and chipping is present.

Major: Surface shows advanced stage of deterioration and/or scratching, chipping.
Severe: Countertop working surface is missing or deteriorated and/or damaged and does not provide a sanitary surface to prepare food.

Dishwasher/Garbage Disposal—Inoperable (Kitchen)

A dishwasher or garbage disposal, if provided, does not work.

Severity Defined

Minor: N/A.
Major: The dishwasher or garbage disposal does not work.
Severe: N/A.

Range Hood/Exhaust Fans—Excessive Grease/Inoperable (Kitchen)

Failure of apparatus to draw out cooking exhaust due to excess dirt, excessive grease, and/or other operational problems.

Severity Defined

Minor: Accumulation of dirt or grease threatens the free passage of air.
Major: N/A.
Severe: Range hood/ exhaust fan is inoperable or presents serious electrical hazard to health or property. Flue may be completely blocked based on visual estimation.

Plumbing—Clogged Drains (Kitchen)

Water does not drain adequately.

Severity Defined

Minor: Basin does not drain freely when stopper is disengaged.
Major: N/A.
Severe: Drain is completely clogged or has suffered extensive deterioration

Inoperable/Not Lockable (Windows)

Window cannot be opened or closed due to frame damage, faulty hardware, or other reason.

Severity Defined

Minor: Window is inoperable, but can be secured. Other operable windows are present in the immediate area.
Major: N/A.
Severe: Window is inoperable and cannot be secured. No operable windows are present in the immediate area.

Cracked/Broken/Missing Panes (Windows)

Glass or pane is cracked, broken or missing.

Severity Defined

Minor: Cracked window pane is observed.
Major: N/A.
Severe: Glass pane is broken or missing.

Damaged Window Sill (Windows)

The horizontal member of the window that bears the upright portion of the frame is damaged.

Severity Defined

Minor: Sill is damaged, but still present. The inside of the surrounding wall is not exposed. No impact to window operation or weather tightness is visually apparent.
Major: Sill is missing, or damaged enough to expose the inside of the surrounding walls and/or compromise its weather tightness.
Severe: N/A.

Plumbing—Leaking Faucets/Pipes (Kitchen)

Basin faucet or drain connections leak.

Severity Defined

Minor: Leak or drip that is contained by basin/pipes. Faucet is usable.
Major: N/A.
Severe: Leak is steady. Surrounding area is adversely affected. Water supply must be turned off. The faucet/pipe is not usable.

Range/Stove—Missing/Damaged/Inoperable (Kitchen)

Unit is missing or damaged.

Severity Defined

Minor: Unit's surface is dented, chipped or scratched. Operation of doors or drawers is impeded but stove is operational. Burner is misaligned and flame is not distributed equally. Pilot light is out on one or more burners.
Major: N/A.
Severe: Unit is missing, or any burners and/or oven is inoperable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Refrigerator—Missing/Damaged/Inoperable (Kitchen)

The refrigerator is not present or does not cool adequately.

Severity Defined

Minor: Refrigerator has excessive accumulation of ice.
OR
Seals around doors are deteriorated.
OR
Operation of doors or drawers is impeded but refrigerator is operational.
Major: N/A.
Severe: Refrigerator is missing or does not cool or work at all.

Sink—Missing/Damaged (Kitchen)

Sink, faucet or accessories are missing, damaged, or inoperable.

Severity Defined

Minor: Presence of extensive discoloration and/or cracks in the basin. Sink & hardware are still usable for food preparation.
Major: N/A.
Severe: Sink or hardware is missing or is totally unusable.

Missing/Inoperable Fixture (Lighting)

Lighting fixture is missing, or does not operate normally. Malfunction may be with the total system or with individual components.

Severity Defined

Minor: Permanent lighting fixture is missing or inoperable, in one room in a unit, and switched outlet exists in the room.
Major: Permanent lighting fixture is missing or inoperable in two rooms, and no switched outlet exists in the room.
Severe: More than two rooms have missing or inoperable permanent light fixtures, and do not have switched outlets within the room.

Missing (Outlets/Switches)

Outlet, switch or both are missing.

Note: This does not apply to empty junction boxes that were not intended to contain an outlet or switch.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: An outlet or switch is missing.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Electrical Hazards.")

Missing/Broken Cover Plates (Outlets/Switches)

The flush plate used to cover the opening surrounding a switch or outlet is damaged or does not exist.

Severity Defined

Minor: Outlets/switches has broken cover plate. The condition does not result in exposed wiring.
Major: N/A.
Severe: A broken or missing cover plate results in exposed wiring.

Baluster/Side Railings Damaged (Patio/Porch/Balcony)

Baluster or side railing on the porch/patio/balcony is loose, damaged, or inoperable, limiting the safe use of this area.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: The baluster and/or side rails enclosing this area are loose, damaged or missing, impeding the safe use of this area.

Missing/Inoperable (Smoke Detector)

Smoke detector will not activate, or is missing.

Note: At least one smoke detector is required on each level.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: A single missing or inoperable smoke detector.

Broken/Missing Hand Railing (Stairs)

The hand rail is damaged or non-existent.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: The hand-rail for four or more stairs is completely missing or damaged, loose or otherwise unusable.

Broken/Damaged/Missing Steps (Stairs)

The horizontal tread or stair surface is damaged or non-existent.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Step is broken, damaged or missing.

Bulging/Buckling (Walls)

Wall has bowed, deflected, sagged or has deviated from original vertical alignment.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Bulging/Buckling or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer, if doubt about severity exists.

Walls—Damaged/Deteriorated Trim (Walls)

Cove molding, chair rail, base molding or other decorative trim is damaged or has decayed.

Severity Defined

Minor: Small areas of deterioration in the trim surfaces.
Major: Large areas of deterioration in the trim surfaces.
Severe: Significant areas of deterioration in the trim surfaces.

Damaged (Walls)

Punctures in the wall surface. May or may not penetrate completely. Panels or tiles may be missing or damaged. Does not include small holes created by hanging pictures, etc.

Severity Defined

Minor: A hole, missing tile/panel, or other damage found in a wall, visually estimated at no larger than 8½ x 11 inches. Hole does not fully penetrate into the adjoining room (cannot see through it).
Major: A hole, missing tile/panel or other damage is found in a wall that is larger than a sheet of paper (8½ x 11).

OR

A crack greater than ⅛" in wide and a minimum of 11" long.
Severe: A hole of any size is found which fully penetrates into an adjoining room, (can see through the hole).

OR

Two or more walls have major holes.

Needs Paint (Walls)

Paint is peeling, cracking, flaking, otherwise deteriorated.

Severity Defined

Minor: Area affected is less than 4 square feet.
Major: Area affected is greater than 4 square feet.
Severe: N/A.

Water Stains/Water Damage/Mold/Mildew (Walls)

Walls are not watertight. Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: For a single wall, visible indication of a leak, mold, or mildew, such as darkened area, exists over a small area. (less than 4 sq. ft. by visual estimate). Water may or may not be evident.
Major: For a single wall, visible indication of a leak exists over a large area (visually estimated at more than 4 sq. ft.). Water is probably evident.
Severe: Visual observation estimates that a large portion (more than 50% of the surface) of one or more walls have been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, moisture area, mold and flaking are evident. The wall surface may have failed. One occurrence of this condition is sufficient to classify the wall systems as severe.

OR

Visual observations estimate that more than 50% of the wall surface in any one unit show signs of water damage, stains, mold, or mildew.

Deteriorated/Missing Caulking/Seals (Windows)

The caulking or seal is missing, poorly installed, or deteriorated.

Note: This also includes Thermopane or insulated windows that have failed.

Severity Defined

Minor: Missing or deteriorated caulk or seals are observed. No evidence of damage to window or surrounding structure exists.
Major: Missing or deteriorated caulk or seals are observed, with some evidence of leaks or damage to the window or surrounding structure visible.

OR

A Thermopane or insulated window has failed. (Typically indicated by being fogged up.)
Severe: Missing or deteriorated caulk or seals are observed and the window is not weather-tight. Evidence of leaks or damage to the window or surrounding structure is readily apparent.

Peeling/Needs Paint (Windows)

Paint covering the window assembly/trim is cracking, flaking, or otherwise failing.

Severity Defined

Minor: Peeling paint and/or a window in need of paint is observed.
Major: N/A.
Severe: N/A.

Security Bars Prevent Egress (Windows)

Security bars are damaged, constructed or installed, such that ingress/egress is severely limited or impossible.

Note: This does not include windows not designed or intended for ingress/egress.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: The ability to exit through the window is limited by security bars that do not function properly and, therefore, pose safety risks.

Health and Safety Inspectable Items

Items to inspect for "Health and Safety" are as follows:

Air Quality
Elevator
Flammable Materials
Hazards
Electrical Hazards
Emergency/Fire Exits
Garbage and Debris
Infestation

Air Quality (Health and Safety)

Indoor spaces must be free from high levels of sewer gas, fuel gas, mold, mildew, or other harmful pollutants. Indoors must have adequate ventilation.

The following deficiencies can be noted:
Mold and/or Mildew Observed
Propane/Natural Gas/Methane Gas Detected
Sewer Odor Detected

Electrical Hazards (Health and Safety)

Any hazard that poses a risk of electrical fires, electrocution, or spark/explosion.

The following deficiencies can be noted:
Exposed Wires/Open Panels
Water Leaks On or Near Electrical Equipment

Emergency/Fire Exits (Health and Safety)

All buildings must have acceptable fire exits that are also properly marked and operational. (This would include fire towers, stairway access doors, & external exits.) These can include operable windows on the lower floors with easy access to the ground or a back door opening onto a porch with a stairway leading to the ground.

Note: This does not apply to individual units.

The following deficiencies can be noted:
Emergency/Fire Exits Blocked/Unusable
Missing Exit Signs

Flammable Materials (Health and Safety)

Any substance that is either known to be combustible or flammable or is stored in a container identifying it as such.

The following deficiency can be noted:
Improperly Stored.

Garbage and Debris (Health and Safety)

Accumulation of garbage and debris exceeding the capacity of the storage area or not stored in an area sanctioned for such use.

The following deficiencies can be noted:
Outdoors.
Indoors.

Hazards (Health and Safety)

Physical hazards that pose risk of bodily injury.

The following deficiencies can be noted:
Sharp Edges
Other
Tripping

Infestation (Health and Safety)

Presence of rats, or severe infestation by mice or insects such as roaches or termites.

The following deficiencies can be noted:
Insects
Rats/Mice/Vermin

Mold and/or Mildew Observed (Air Quality)

Evidence of mold and/or mildew; especially in such areas as bathrooms and air outlets.

Propane/Natural Gas/Methane Gas Detected (Air Quality)

Strong propane, natural gas, and/or methane gas odors detected that could pose risk of explosion/fire or health risk if inhaled.

Sewer Odor Detected (Air Quality)

Sewer odors detected that could pose risk if inhaled for prolonged periods.

Exposed Wires/Open Panels (Electrical Hazards)

Exposed bare wires or openings in electrical panels.

Water Leaks On or Near Electrical Equipment (Electrical Hazards)

Water is observed leaking, puddling, or ponding on or immediately near any electrical apparatus. Poses risk of fire, electrocution, or explosion.

Tripping (Elevator)

Elevator is misaligned (doesn't level properly) by more than ¾" with the floor. Presents tripping hazard during ingress/egress.

Emergency/Fire Exits Blocked/Unusable (Emergency/Fire Exits)

The exit is not useable or ingress/egress is limited due to conditions such as debris, storage, door or window nailed shut, broken lock or chained panic hardware.

Missing Exit Signs (Emergency/Fire Exit)

Exit signs must be present and clearly identify all emergency exits. Illumination in area of sign must be provided.

Improperly Stored (Flammable Materials)

Improperly stored flammable materials. Potential risk of fire/explosion is identified by the location or manner in which the substance is stored.

Indoors (Garbage and Debris)

An accumulation of garbage that visibly exceeds planned storage capacity or is located in an area not sanctioned for staging or storing garbage or debris.

Note: Please review for fire hazard effects.

This does not include garbage and debris improperly stored outside. See *Garbage and Debris—Outdoors* for this deficiency.

Outdoors (Garbage and Debris)

An accumulation of garbage that visibly exceeds planned storage capacity or is located in an area not sanctioned for staging or storing garbage or debris.

Note: this does not include garbage improperly stored indoors. See *Garbage and Debris—Indoors* for this deficiency.

Sharp Edges (Hazards)

Any physical defect that poses the risk of cutting or breaking human skin or other bodily harm, generally in commonly used or traveled areas.

Tripping (Hazards)

Any physical defect that poses a tripping risk, generally in walkways or other traveled areas.

Note: This does not include tripping hazards from elevators that do not level properly. See *Elevator—Tripping* under Health & Safety for these occurrences.

Other (Hazards)

Other general defects or hazards that pose risk of bodily injury. (Must be specified by the inspector.)

Note: This would include items not specifically defined elsewhere but pose a risk.

Insects (Infestation)

Infestation of insects including, but not limited to, roaches or ants are observed throughout the unit or room especially in food preparation and storage areas.

Note: This does not include infestation from rats/mice. See *Infestation—Rats/Mice/Vermin* under Health & Safety for these occurrences.

Rats/Mice/Vermin (Infestation)

The presence of rats or mice is indicated by sightings, rat or mouse holes, or droppings.

Note: This does not include infestation from insects. See *Infestation—Insects* under Health & Safety for these occurrences.

Appendix 3—Physical Inspection Summary Report

The Inspection Summary Report is designed to achieve two objectives:

1. Provide the Public Housing Agency or owner and/or owner agent (POA) with the background information i.e. addresses, phone numbers, building names, etc., collected during inspection of a given property so that any relevant discrepancies can be identified and resolved.

2. Inform the POA of the physical condition of their property captured during a REAC inspection.

The items described below introduce the information provided in the Inspection Summary Report and are intended to meet the objectives illustrated above.

Inspection Number: The inspection number is unique for each inspection conducted by REAC. Each time a property is inspected by REAC, a new inspection number is utilized. These unique numbers may be used to communicate with REAC on any matter concerning a particular inspection.

Property Information: Information related to a property is provided:

Property identification number (in parentheses)—a unique number in HUD databases
Property name
Status as a scattered site (Yes/No)
Relevant addresses, phone numbers, fax numbers, and e-mail addresses for property

Each of these should be checked carefully for accuracy. Any discrepancies should be reported to your contact in the HUD office having jurisdiction over your property.

Building Unit Count: The total number of buildings and units on the property are given, along with the number of buildings and units actually inspected by REAC

Scores: An overall numerical score is given as a value from zero to 100. Separate numerical scores are also given for each of five areas:

Site
Building exterior
Building systems
Common areas
Units

The five area scores range from zero to the maximum number of points possible for each area. The possible points for a given area are determined for a specific property based on the inspectable items actually present in each area. The sum of the area points identifies what the overall score would be if there were no health & safety (H&S) deficiencies. The overall numerical score is then calculated by subtracting the sum of deductions for H&S deficiencies from the sum of the individual "area points." Examples of overall scores are: 95c; 67b*; 84a*; 100b; 78a; and 43c*. The asterisk indicates that H&S deficiencies were found with respect to smoke detectors. The lower-case letter indicates whether or not other kinds of H&S deficiencies were observed, as follows:

The letter "a" is given if no health and safety deficiencies were observed other than for smoke detectors.

The lower-case letter "b" is given if one or more non-life threatening H&S deficiencies, but no exigent/fire safety H&S deficiencies were observed other than for smoke detectors.

The lower-case letter "c" is given if there were one or more exigent/fire safety (calling for immediate attention or remedy) H&S deficiencies observed.

Although all H&S deficiencies other than smoke detector problems affect the scores with appropriate deductions, the letters grades are added to highlight the serious nature of H&S deficiencies, all of which need to be addressed by the POA.

Health and Safety Counts: In addition to the counts of actual H&S deficiencies observed in the inspected buildings and units, the estimated number of H&S deficiencies that would have been found had all buildings and units been inspected is also given. This projected count gives a sense of the total H&S problem for the inspected property. The projection is calculated by dividing the counts actually observed in buildings or units by the proportion of buildings or units inspected. These projected counts for buildings and units are added to the actual counts for site to determine the total projection. The percent of buildings and units inspected is additionally given to show the basis for the calculations.

Participants/Buildings/Units: Information provided includes:

Relevant addresses, phone numbers, fax numbers, and e-mail addresses for participants; Name, year built, number of units and address for each building on the property.

Note: All buildings on the property should be listed.

As before, each of these should be checked carefully for accuracy and any discrepancies should be reported to your contact in the HUD office having jurisdiction over your property.

Inspectable Items: This portion of the report details all deficiencies found in the inspection. The main headings in the first column refer to the inspectable area—site, building exterior, building systems, common areas, unit, or health & safety, where the deficiency was observed. The entries are "inspectable items" within which the deficiencies were found. Some items may not be present for a given property. In such cases, appropriate adjustments are made in the area weights used to obtain the overall score. Items present, but with no deficiencies found, are not listed. The potential inspectable items are:

Site: Fencing & retaining walls, grounds, lighting, mail boxes/project signs, market appeal, parking lots/driveways, play areas & equipment, refuse disposal, roads, storm drainage, and walkways.

Building Exterior: Doors, fire escapes, foundations, lighting, roofs, walls, and windows.

Building Systems: Domestic water, electrical system, elevators, emergency power, fire protection, heating/ventilation/air conditioning, and sanitary system

Common Areas: Basement/garage/carport, closet/utility/mechanical, community room, day care, halls/corridors/stairs, kitchen, laundry room, lobby, office, other community spaces, patio/porch/balcony, pools & related structures, restrooms, storage, and trash collection areas.

Unit: Bathroom, call-for-aid, ceiling, doors, electrical system, floors, heating/ventilation/air conditioning, hot water heater, kitchen, lighting, outlets/switches, patio/porch/balcony, stairs, walls, and windows.

Health & Safety: Emergency/fire exits, electrical hazards, flammable materials, garbage and debris, infestation, handrails, air quality, hazards, and elevator.

NO/OD: The inspection protocol requires the inspector to check for the existence of certificates for certain items such as lead-based paint, elevators, etc. If all of the required certificates are verified by the inspector, the report will not include any certificate information. If any appropriate certificates are not present, the first inspectable item listed will be "certificates" and the designation "NO" will be listed for each unavailable certificate.

OD in this column refers to "observed deficiency" for the given item.

Observation: The column lists the specific deficiencies observed within a given inspectable item. Each deficiency has a definition, which specifies what must be observed for that deficiency to be recorded. Also noted in this column are observations about Health & Safety items. These are:

(LT)—Exigent/Fire Safety (calling for immediate attention or remedy)
(NLT)—Not Life Threatening
(SD)—Smoke Detector

Definitions for all deficiencies are given in the physical inspection section at REAC's web site on the Internet (www.hud.gov/reac/reaphyin.html).

Severity: Deficiencies differ by "severity." The definitions specify what must be recorded for a given deficiency under one of three possible severity levels'minor, major and severe. The severity level is given on the report to indicate which part of the definition actually applies for the specific deficiency observed. Severity levels are defined within a given deficiency and do not necessarily indicate which deficiencies are the worst. For more serious deficiencies, a major severity level may be more of a problem and may reduce the overall score more than less serious deficiencies with a severity level of "severe."

Location/Comments: Comments are required for all "severe" deficiencies.

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Inspection Summary Report -

Inspection No:
Property:

Inspection Date:
Phone: ( ) -
Fax: ( ) -
E-Mail Address:
ACC#:
CA#:

Scattered Site?:

Building Unit Count

	#Total	#Inspected
Buildings		
Units		

Health and Safety Counts ❺

Non-Life Threatening	Site	Bldg	Unit	Total
Actual				
%Inspected	—			—
Projected				

Life Threatening

	Site	Bldg	Unit	Total
Actual				
%Inspected	—			—
Projected				

Smoke Detectors

	Site	Bldg	Unit	Total
Actual				
%Inspected	—			—
Projected				

Scores ❶ ❷ ❸

	Possible Points	Area Points	H & S Deduction
Site			
Bldg Ext			
Bldg Sys			
CA			
Units			
Overall	100.0		
Final Score = Area Points - H & S Deduction			❹

Participants:

Management Agent Contact	Phone:
	Fax:
	E-Mail Address:

Buildings/Units:

No	Name/Type/Reason Uninspectable	Year built	# Units	Address

❶ Normalized weights as the "possible points" by area

❷ Area scores, taking into account the points deducted for observed deficiencies

❸ Deductions for H&S for site, buildings and units, where H&S deductions for buildings are combined for exteriors, systems and common areas

❹ Overall property score.

❺ Health and Safety Counts
- ➢the number of H&S deficiencies (exigent/fire safety and non-life threatening) that the inspector observed
- ➢all problems relating to smoke detectors
- ➢a *projection* of the total number of H&S problems that the inspector potentially would see in an inspection of *all* buildings and *all* units

[FR Doc. 99–15738 Filed 6–22–99; 8:45 am]
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June 23, 1999

Part VII

Department of Housing and Urban Development

Public Housing Assessment System, Financial Condition Scoring Process; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4509–N–08]

Public Housing Assessment System, Financial Condition Scoring Process

AGENCY: Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies and members of the public about HUD's process for issuing scores under the Financial Condition Indicator of the Public Housing Assessment System (PHAS).

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, the Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Customer Service Center, 1–888–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

Purpose of this Notice

The purpose of this Notice is to provide additional information about the scoring process for PHAS Indicator # 2, Financial Condition. Under the PHAS, the financial condition score is based on financial information reported to HUD according to generally accepted accounting principles (GAAP). GAAP classifies accounting data according to standard definitions. Of the total points available for a PHAS score, a PHA may receive up to 30 points under the PHAS Indicator #2. The financial condition score is included in the aggregate PHAS score.

The information provided in this notice was originally published on May 13, 1999 (64 FR 26222). HUD is publishing this information again since it relates to the Public Housing Assessment System proposed rule, published in the **Federal Register** on June 22, 1999. The chart below shows the six components that constitute the Financial Condition Indicator and their assigned points.

FINANCIAL CONDITION INDICATOR

Scoring components	Measurement	Points
Quick Ratio (QR)	Short-term liquidity	9
Months Expendable Fund Balance (MEFB).	Adequacy of reserves	9
Days Receivable Outstanding (DRO)	Ability to collect payments of tenant receivables	4.5
Occupancy Loss (L)	Ability to realize potential rental income	4.5
Expense Management (EM)	Ability to control various expenses, including utilities, administrative, maintenance, general and non-routine expenses.	1.5
Net Income as a Percentage of Fund Balance (N).	Profitability against the current year's operations	1.5

The values of the six components of the Financial Indicator calculated from the financial data comprise the overall financial assessment of the PHA. The components and their relative importance to the total financial score are the result of studies of PHA financial performance and of industry portfolio management techniques to identify the most appropriate financial measures to gauge a PHA's financial position and financial management. These components represent measures that are appropriate benchmarks in any residential real estate environment. The scoring assigned within each component is based on the distributions of that component's values and the relative relationship between the components and the PHA's overall financial performance.

Under the PHAS, the components that make up the Financial Condition Indicator are approached in the same manner for GAAP as they were for non-GAAP financial information although the thresholds may change as a result of the conversion to GAAP. For example, a good Quick Ratio under the current basis of accounting (non-GAAP) for a small PHA may be 6 to 1 and receive the maximum 9 points. In contrast, under GAAP a good Quick Ratio may be 5 to 1 and also get the maximum 9 points. Thus, to the extent that a PHA's performance relative to its peers does not change, its score will not be affected by the conversion to GAAP. The GAAP conversion schedule by PHAs fiscal year end, shown below, is reprinted from the PHAS final rule published on September 1, 1999.

GAAP CONVERSION SCHEDULE

Fiscal year end dates for PHAs	Unaudited GAAP financial data to HUD by	Audit reports due to HUD by
9/30/99	11/30/99	6/30/00
12/31/99	2/28/00	9/30/00
3/31/00	5/31/00	12/31/00
6/30/00	8/31/00	3/31/01

GAAP Reporting Method

Financial data for GAAP scoring is currently collected in paper form from audited financial data submitted by PHAs and entered into a database by REAC staff. PHAs, with fiscal years ending September 30, 1999, and later, will submit their unaudited financial data electronically using the Financial Data Schedule (FDS), within 60 days of their fiscal year end. This submission will be reviewed by REAC for reasonableness. To the extent that an audit is required for a PHA under OMB Circular A–133, a PHA will submit its audited data using the FDS within nine months of the fiscal year end.

Program Funds

The PHAS financial assessment is based on the entity-wide operations of a PHA, which includes financial information on Section 8, Community Development Block Grants, and other HUD funding in its calculations, as well as funds from non-HUD sources.

GAAP Scoring Approach

Under PHAS, the components of the PHAS Financial Indicator were developed that both fairly and accurately assess a PHA's financial performance and financial management. As part of the development, the components were tested to establish the correlation between PHA performance under each component and the fiscal health of a PHA. As part of the development, PHAs were evaluated and assigned scores based a PHA's performance relative to its peers. In other words, all PHAs as a group determine the mean score and each PHA is then ranked accordingly. This peer assessment approach, which was formulated following extensive economic and financial analysis, examination of well-accepted business principles, and discussions with PHA industry representatives and PHA staff, provides an equitable means of measuring the financial performance of PHAs.

Comparable Scoring Systems

HUD's financial scoring process is similar to those already undertaken in the mortgage housing and securities industries. Fannie Mae, the mortgage housing industry leader, developed an assessment system with financial indicators similar to those contained in HUD's financial assessment of PHAs, such as vacancy, reserve balances, and net income. Like HUD, Fannie Mae uses these indicators to rank properties and identify those which require further attention. In the securities area, Standard & Poors conducts peer assessment of a company's operational capabilities and cash flows relative to their peers. Among federal agencies, the Department of Health and Human Services (HHS) contracts with state and local entities to perform financial audits of nursing homes and hospitals participating in the federal Medicare program. Based on these financial audits, HHS determines the continued eligibility of these health service providers in the Medicare program.

GAAP Scoring Processes

GAAP-based scores are produced using data contained in the Financial Data Schedule (FDS). The GAAP-based financial data are first used to calculate six financial components that measure various aspects of financial health, such as short-term liquidity, expense management, and collection of receivables. Each PHA is awarded points for each component according to its performance relative to its peers. Peer groupings are established according to the size of the PHA, based on the number of public housing units operated. Peer groupings are as follows:

Very Small (0–49 units)
Small (50–249 units)
Low Medium (250–499 units)
High Medium (500–1249 units)
Large (1250+ units)

A PHA is assigned a score for each of the six components of the Financial Indicator based on its component value relative to its peers. The minimum number of points (zero) and the maximum number of points can each be achieved over a range of values. This system allows PHAs to target a range of values which they want to avoid and target one value which they should strive to achieve. Aside from these extremes, points are assigned to component values along a continuous linear function. This means that each component value will receive a different number of points. This system ("semi-continuous scoring") ensures that points are awarded equitably to PHAs along the distribution of component values because, in most cases, small differences in component values result in only small differences in the scores of the individual components. Therefore, two PHAs of a similar size whose values for its financial condition components are in close proximity will receive only slightly different scores to capture their performance relative to each other.

The number of points assigned to each component value or range of values is based on where the thresholds for that component are set. The thresholds separate distinct ranges of scores along the distribution of component values. The thresholds and their associated scores are estimated based on well-accepted business principles and statistical distributions of values within the peer groupings of the PHAs.

Business Principles

Scoring of certain of the components follows generally recognized business principles. These principles indicate that there are certain absolute thresholds below which component values are clearly financially unacceptable and component values below that point should result in a score of zero. These principles are used in scoring the Quick Ratio and Months Expendable Fund Balance components. For both of these components, a value of less than one is financially unacceptable, regardless of PHA size, and therefore merits a score of zero.

Statistical Distributions

The remaining thresholds are estimated by examining the distributions of component values by peer group. For the four most significant components (Quick Ratio, Months Expendable Fund Balance, Days Receivable Outstanding, and Occupancy Loss), thresholds are set such that approximately 50 percent of the distribution receives the maximum number of points, as long as 50 percent of the distribution have acceptable values for the component. Thus, the highest number of points are awarded to the PHAs whose financial measures are most reasonable both relative to their peers and in an absolute business sense. The specific percentiles that make up this 50 percent of PHAs are established by identifying natural breakpoints along the distributions. For example, for the Quick Ratio and Months Expendable Fund Balance, these breakpoints fall at approximately the 30th and 80th percentiles. The remaining two components (Expense Management and Net Income as a Percentage of Fund Balance) assign zero points to PHAs that fall only in the extreme outer ranges of the distribution of values, and award 1.5 points to the remaining PHAs.

Audit Information

The information collected from the annual audit report pertains to the type of audit opinion, details of the audit opinion, and the presence of reportable conditions and material weaknesses. This information will be used as a basis for accepting or adjusting financial component scores. If the auditor's opinion is other than unqualified, points will be deducted from the financial components to determine the PHA's financial score. The points have been established by REAC using a system that considers the seriousness of the audit qualification and limits the deducted points to a reasonable portion of the PHA's available score.

Reportable conditions and material weaknesses are considered to be audit flags, alerting REAC to an internal control weakness or an instance of noncompliance with Federal laws and regulations. These flags also have the potential to adjust the PHA's financial component scores, based on the seriousness of the reported issue. REAC will review the audit and internal control flags to determine the significance as it directly pertains to the assessment of the PHA's financial condition. If the flag has no effect on the financial components or the overall financial condition of the PHA as it relates to the PHAS assessment, the score will not be adjusted.

There are two types of adjustments related to audited financial information. The first type deals with material differences between the unaudited and audited financial information reported to HUD. The second deals with the audit flags and reports that result from the audit itself.

The purpose of a comparison of the ratios and scores resulting from the current year's unaudited Financial Data Schedule submission to the ratios and scores resulting from the current year's audited submission is to:

- Identify material changes in ratio calculation results and/or scores from the unaudited submission to the audited submission;

• Identify PHA's that consistently provide materially different data from their unaudited submission to their audited submission;

• Assess or alleviate penalties associated with the inability to provide reasonably accurate unaudited data within the required time period.

This review process will only be performed for the audited submission. In addition, it is only applicable to PHAs whose overall PHAS designation (high, standard or troubled) was reclassified to a lesser designation based on the audited submission and the reclassification was necessary because of a material change in the reported financial data affecting one or more of the six components. Materiality for purposes of this review is based on a formula within PHAS and varies based on the size and funding level of the PHA. Therefore, the materiality threshold may vary from PHA to PHA, even within the same peer group.

REAC views the transmission of materially inaccurate unaudited financial data as a more serious condition than the late submission of unaudited data. Therefore, the penalties assessed for material differences between the unaudited and audited submission have been designed to encourage PHAs to assure financial data is as reliable as possible at the 60 day submission. The penalties to be assessed are based on the significance of the reclassification, assuming the financial data reported meets the materiality threshold. For each designation level that the PHA has been reduced, points will be deducted from the PHA's overall FASS score. The following table summarizes the point reductions.

Designation reclassification	Percent of FASS points deducted
High to Standard	1
High to Marginal	2
High to Troubled	3
Standard to Marginal	1
Standard to Troubled	2
Marginal to Troubled	1

The FASS system will automatically deduct the applicable points and this reduction will trigger the REAC analyst review.

The purpose of a review of the audit and internal control flags is to adjust the financial score as a result of the audit. These flags are collected by using the OMB A–133 Data Collection Form. This form is completed by the PHA both for the unaudited and audited submissions. At the time of the unaudited submission the form is used as a self-assessment tool and should reflect the PHA's knowledge of their financial and internal control condition and should acknowledge their understanding of what the auditor will report. In the PHAS final rule, HUD discussed the review of audit and internal control flags as follows, and also included the following chart. (See 63 FR 46607, September 1, 1998.)

As part of the analysis of the financial health of the a PHA including assessment of the potential or actual waste, fraud or abuse at a PHA, HUD will look to the Audit Opinion to provide an additional basis for accepting or adjusting financial indicator scores. The following is a summary of the types of audit opinions and the number of total financial points that will be deducted if a PHA receives such an audit opinion from its IPA:

Type of flag	FASS points deducted
Unqualified Opinion	0
No audit opinion	30
Adverse opinion	30
Disclaimer of opinion	30
Qualified opinion	(*)
Going concern opinion	30
Material weakness in internal control	(*)
Reportable condition	(*)
Findings of non-compliance and/or questioned costs	(*)
Indicator outlier analyses	(*)

*Note: See subsequent table titled "Audit Flags and Tier Classification" for FASS points to be deducted.

If the OMB A–133 Data Collection Form indicates that the auditor's opinion will be other than unqualified, PHAS will automatically deduct the appropriate points based on the above table. The points have been established by REAC using a three-tier system. The tiers are meant to give consideration to the seriousness of the audit qualification and to limit the deducted points to a reasonable portion of the PHA's total, actual score. The tiers, as established by REAC, are also defined below.

AUDIT FLAG TIERS

Tier	PHAS points deducted
Tier 1	Maximum reduction: Lesser of 30 points or 100 percent of the PHA's total unadjusted PHAS score.
Tier 2	Maximum reduction: 3 points or 10 percent of the PHA's total unadjusted PHAS score.
Tier 3	Maximum reduction: 1.5 points or 5 percent of the PHA's total unadjusted PHAS score. This maximum is cumulative and not to be assessed for each audit or internal control flag.

AUDIT FLAGS AND TIER CLASSIFICATIONS

Audit flag	Tier classification
Unqualified opinion	None.
No audit opinion	Tier 1.
Adverse opinion	Tier 1.
Disclaimer of opinion	Tier 1.
Qualified opinion:	
1. GAAP qualifications:	
• Change in accounting principle	Tier 3.
• Change in accounting estimate	Tier 3.
• Change in accounting method	Tier 3.
• Departures from GAAP	Tier 2.
• Financial statements using basis other than GAAP	Tier 1.
• Exclusion of alternate accounting for an account or group of accounts	Tier 2.
• Inconsistently applied GAAP	Tier 2.
• Omissions/Inadequate Disclosure	Tier 2.

AUDIT FLAGS AND TIER CLASSIFICATIONS—Continued

Audit flag	Tier classification
2. GASS—Scope Limitations	Tier 2.
• Imposed by management	Tier 2.
• Imposed by circumstance	Tier 3.
• Year 2000 (add back)	Tier 3.
3. Report on major program compliance	Tier 3.
4. Report on internal control	Tier 3.
Accounting principles used caused the financial statements to be materially misstated	Tier 2.
Inadequate records	Tier 2.
Going concern	Tier 1.
Material noncompliance disclosed	Tier 2.
• Internal control weakness	Tier 3.
• Compliance	Tier 3.
• Opinion on Supplemental schedules	Tier 3.
Reportable condition:	
• Internal control	Tier 3.
• Compliance	Tier 3.

The graphs shown in Appendix 1 depict the approximate GAAP-based scoring functions used for each of the six components of the Financial Indicator.

Appendix 2 provides estimated GAAP-based threshold values and associated scores for each component and peer group, based on the data pool as of April 15, 1999. These GAAP thresholds are preliminary and are based upon financial data obtained for a limited number of PHAs currently reporting under GAAP. The thresholds established for GAAP-based scores will be re-assessed on a quarterly basis to ensure their statistical validity as the data collected indicates a shift in distributions and any modifications to the thresholds will be communicated through a Notice. However, the financial components and component calculations will remain the same and the component scores for a PHA will continue to be established on a peer assessment basis. Thus, if a PHA's performance remains consistent relative to its peers, the PHA's score will not be affected by threshold changes.

Dated: June 14, 1999.

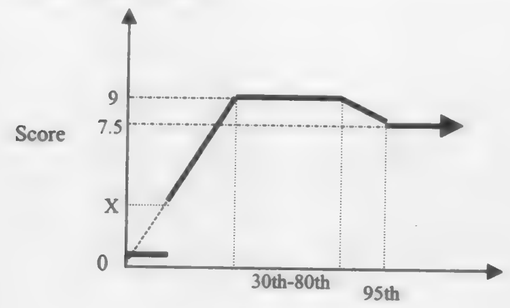
Donald J. LaVoy,

Acting Director, Real Estate Assessment Center.

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Appendix 1 – Graphs of GAAP-based Financial Indicators

Graph 1: *QR & MEFB*

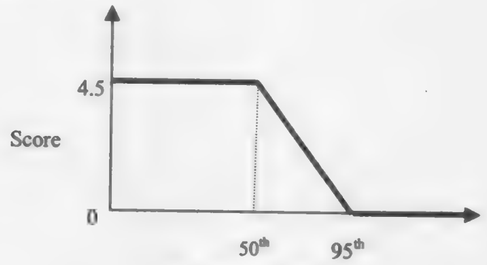


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The scoring structure depicted above is established based on the distribution of data for each peer group. For both QR and MEFB, a PHA receives zero points for indicator values of less than one. With a value of one, they receive X points, which is determined by the distribution of the data, and therefore varies by size category. The maximum number of points is received between approximately the 30th and 80th percentiles. PHAs with values falling beyond the upper bound of this range receive incrementally fewer points because they have exceeded the acceptable levels of liquidity or reserves to operate optimally.

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Graph 2: *OL & DRO*



BILLING CODE 4210-32-C

For OL and DRO, the maximum number of possible points is 4.5, which is received up to approximately the 50th percentile. For values beyond approximately the 95th percentile, the PHA receives zero points.

BILLING CODE 4210-32-P

Graph 3: *EM & NI*



BILLING CODE 4210-32-C

For both EM and NI, a PHA can receive either 1.5 or zero points. The Threshold for EM is set at 1.645 standard deviations (approximately the 95th percentile) from the mean of each distribution (which means it is in the top five percent of values for that distribution), and thus varies by size category, whereas for NI it is set at—10% across all size categories.

Appendix 2—Threshold Tables for GAAP Scoring

These tables can be interpreted in the following manner:

- Identify a size category for an indicator;
- The rows under that size category identify ranges of possible values for that indicator; and
- The column to the right labeled "Score" identifies the score or range of scores that is awarded to each range of indicator values for that size category.

QUICK RATIO (QR) *

	Score
Very Small	
QR<1	0
QR=1	2.6
1<QR<3.5	2.6<Score<9
3.5≤QR≤12	9
12<QR<15	9>Score>7.5
QR≥15	7.5
Small	
QR<1	0
QR=1	2.6
1<QR<3.5	2.6<Score<9
3.5≤QR≤7.5	9
7.5<QR<11	9>Score>7.5
QR≥11	7.5
High Medium	
QR<1	0
QR=1	3
1<QR<3	3<Score<9
3<QR<6.5	9
6.5<QR<8	9>Score>7.5
QR≥8	7.5
Large	
QR<1	0
QR=1	3.6
1<QR<2.5	3.6<Score<9
2.5≤QR≤5.5	9
5.5<QR<7	9>Score>7.5
QR≥7	7.5

MONTHS EXPENDABLE FUNDS BALANCE (MEFB) *

	Score
Very Small	
MEFB<1	0
MEFB=1	1.3
1<MEFB<7	1.3<Score<9
7≤MEFB≤15	9
15<MEFB<20	9>Score>7.5
MEFB≥20	7.5
Small	
MEFB<1	0
MEFB=1	1.8
1<MEFB<5	1.8<Score<9
5≤MEFB≤13	9
13<MEFB<18	9>Score>7.5
MEFB≥18	7.5
Low Medium	
MEFB<1	0
MEFB=1	2
1<MEFB<4.5	2<Score<9
4.5≤MEFB≤12	9
12<MEFB<15	9>Score>7.5
MEFB≥15	7.5
High Medium	
MEFB<1	0
MEFB=1	2
1<MEFB<4.5	2<Score<9
.45≤MEFB≤11	9
11<MEFB<13	9>Score>7.5
MEFB≥13	7.5
Large	
MEFB<1	0
MEFB=1	3
1<MEFB<3	3<Score<9
3≤MEFB≤11	9
11<MEFB<13	9>Score>7.5
MEFB≥13	7.5

DAYS RECEIVABLE OUTSTANDING (DRO) *

Very small	Small	Low medium	High medium	Large	Score
DRO≤2	DRO≤3	DRO≤7	DRO≤8	DRO≤12	4.5
2<DRO<18	3<DRO<20	7<DRO<23	<DRO<23	12<DRO<25	4.5>Score>0
DRO≥18	DRO≥20	DRO≥23	DRO≥23	DRO≥25	0

** The estimated GAAP thresholds were based on data from financial information from a limited number of PHAs currently reporting under GAAP as of April 15, 1999. The PHA financial statements had fiscal year ends ranging between 1996 and 1998. As more data is entered into the system, these thresholds will be re-assessed to better reflect the data distributions.*

OCCUPANCY LOSS (OL) *

Very small	Small	Low medium	High medium	Large	Score
OL≤4.5%	OL≤4.5%	OL≤5.5%	OL≤5.5%	OL≤7%	4.5
4.5<OL<12%	4.5<OL<12%	5.5<OL<14.5%	5.5<OL<15%	7<OL<15%	4.5<Score<0
OL≥12%	OL≥12%	OL≥14.5%	OL≥15%	OL≥15%	0

* The estimated GAAP thresholds were based on data from financial information from a limited number of PHAs currently reporting under GAAP as of April 15, 1999. The PHA financial statements had fiscal year ends ranging between 1996 and 1998. As more data is entered into the system, these thresholds will be re-assessed to better reflect the data distributions.

NET INCOME (NI) *

Very small	Small	Low medium	High medium	Large	Score
NI<−10%	NI<−10%	NI<−10%	NI<−10%	NI<−10%	0
NI≥−10%	NI≥−10%	NI≥−10%	NI≥−10%	NI≥−10%	1.5

* The estimated GAAP thresholds were based on data from financial information from a limited number of PHAs currently reporting under GAAP as of April 15, 1999. The PHA financial statements had fiscal year ends ranging between 1996 and 1998. As more data is entered into the system, these thresholds will be re-assessed to better reflect the data distributions.

Expense Management

The Components of the Expense Management are expressed in dollars per unit per month. The REAC is also examining the impact of seasonal and geographic variations on the expense indicators. If the REAC's analysis finds a significant impact on PHA expenses of these regional differences, regional peer groupings may be added to the scoring of the expense management indicator.

Thresholds for four of the six components of the expense management indicators are listed below. Thresholds for tenant services and protective services will be set as more information is submitted.

ADMINISTRATIVE EXPENSE (AE) *

Very small	Small	Low medium	High medium	Large	Score
AE<$81	AE<$75	AE<$65	AE<$71	AE<$82	1.5
AE≥$81	AE≥$75	AE≥$65	AE≥$71	AE≥$82	0

* The estimated GAAP thresholds were based on data from financial information from a limited number of PHAs currently reporting under GAAP as of April 15, 1999. The PHA financial statements had fiscal year ends ranging between 1996 and 1998. As more data is entered into the system, these thresholds will be re-assessed to better reflect the data distributions.

UTILITIES EXPENSE (UE) *

Very small	Small	Low medium	High medium	Large	Score
UE<$74	UE<$93	UE<$110	UE<$120	UE<$135	1.5
UE≥$74	UE≥$93	UE≥$110	UE≥$120	UE≥$135	0

* The estimated GAAP thresholds were based on data from financial information from a limited number of PHAs currently reporting under GAAP as of April 15, 1999. The PHA financial statements had fiscal year ends ranging between 1996 and 1998. As more data is entered into the system, these thresholds will be re-assessed to better reflect the data distributions.

ORDINARY MAINTENANCE EXPENSE (AE) *

Very small	Small	Low medium	High medium	Large	Score
OE<$89	OE<$88	OE<$94	OE<$106	OE<$129	1.5
OE≥$59	OE≥$88	OE≥$94	OE≥$106	OE≥$129	0

* The estimated GAAP thresholds were based on data from financial information from a limited number of PHAs currently reporting under GAAP as of April 15, 1999. The PHA financial statements had fiscal year ends ranging between 1996 and 1998. As more data is entered into the system, these thresholds will be re-assessed to better reflect the data distributions.

GENERAL EXPENSE (GE) *

Very small	Small	Low medium	High medium	Large	Score
GE<$54	GE<$59	GE<$62	GE<$65	GE<$70	1.5
GE≥$54	GE≥$59	GE≥$62	GE≥$65	GE≥$70	0

* The estimated GAAP thresholds were based on data from financial information from a limited number of PHAs currently reporting under GAAP as of April 15, 1999. The PHA financial statements had fiscal year ends ranging between 1996 and 1998. As more data is entered into the system, these thresholds will be re-assessed to better reflect the data distributions.

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Wednesday
June 23, 1999

Part VIII

Department of Housing and Urban Development

Public Housing Assessment System, Management Operations Scoring Process; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4509–N–09]

Public Housing Assessment System, Management Operations Scoring Process

AGENCY: Office of the Director, Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies and members of the public, regarding HUD's Management Operations process for issuing scores to PHAs under the Public Housing Assessment System (PHAS).

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Customer Service Center at 1–888–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

1. Purpose of This Notice

The purpose of this notice is to provide additional information about the scoring process for PHAS Indicator #3, Management Operations. The purpose of the Management Operations assessment is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.

The information provided in this notice was originally published on May 13, 1999 (64 FR 26232). HUD is publishing this information again since it relates to the Public Housing Assessment System proposed rule, published in the **Federal Register** on June 23, 1999. This notice differs from the May 13, 1999 notice to reflect the new economic self-sufficiency sub-indicator.

2. Changes From PHMAP to PHAS

The PHAS assessment of a PHA's management operations utilizes six of the eight current PHMAP indicators:

- Vacancies;
- Capital Fund;
- Rents uncollected;
- Work orders;
- Inspection of units and systems; and
- Security/Economic Self-Sufficiency.

The adjustment for physical condition and/or neighborhood environment will be made under PHAS Indicator #1, Physical Condition. The same definitions and exemptions that apply to the PHMAP also apply to the PHAS. The current PHMAP indicator for financial management is assessed under PHAS Indicator #2, Financial Condition; and the current PHMAP indicator #7 for resident services is assessed under PHAS Indicator #4, Resident Service and Satisfaction.

There are certain differences between the PHMAP score and the PHAS score calculated for a PHA's management operations. Under the PHAS, modifications and exclusions no longer apply. PHAs will certify to sub-indicator #2, Capital Fund, and all PHAs will certify to and be scored on sub-indicator #6, Security/Economic Self-Sufficiency, under PHAS Indicator #3.

3. Submission of Management Operations Certification

Under the PHAS, a PHA is required to electronically submit certification on its performance under each of the management operations sub-indicators. If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access. In the event local resources are not available, a PHA may go to the nearest HUD Public and Indian Housing program office and assistance will be given to the PHA to transmit its Management Operations certification. If circumstances preclude a PHA from reporting electronically, HUD will consider granting approval to allow a PHA to submit its Management Operations certification manually. A PHA that seeks approval to submit its certification manually must ensure that the REAC receives a request for manual submission in writing 60 calendar days prior to the submission due date of its Management Operations certification. The written request must include the reasons why the PHA cannot submit its certification electronically. The REAC will respond to such a request and will manually forward its determination in writing to the PHA.

4. Elements of Scoring

The Management Operations Indicator score provides an assessment of each PHA's management effectiveness. The computation of the score under this PHAS Indicator utilizes data that was submitted for PHMAP and requires three main calculations, which are:

- Scores are first calculated for all of the components that have been submitted by the PHA;
- Based upon the component scores, a score is then calculated for each sub-indicator; and
- From the six sub-indicator scores, an indicator score is then calculated.

The three calculations are performed on the basis of the following:

- The weights of the six sub-indicators and/or components, which are listed in Table 1; and
- The grades assigned under PHMAP for each sub-indicator and/or component.

TABLE 1.—MANAGEMENT OPERATIONS SUB-INDICATORS AND COMPONENTS WEIGHTS

Sub-indicator	Sub-indicator weight	Component	Component weight
Vacancy Rate/Progress to Reduce (PHMAP Indicator #1).	8.0	Vacancy Rate	4.0
Capital Fund (PHMAP Indicator #2)	6.0	Unit Turnaround Time	4.0
		Unexpended Funds	1.0
		Timeliness of Fund Obligation	1.5
		Contract Administration	1.0
		Quality of Physical Work	2.0
		Budget Controls	0.5
Rents Uncollected (PHMAP Indicator #3)	4.0		
Work Orders (PHMAP Indicator #4)	4.0	Emergency Work Orders	2.0
		Non-Emergency Work Orders	2.0
Inspections of Units and Systems (PHMAP Indicator #5)	4.0	Inspection of Units	2.0
		Inspections of Systems	2.0

TABLE 1.—MANAGEMENT OPERATIONS SUB-INDICATORS AND COMPONENTS WEIGHTS—Continued

Sub-indicator	Sub-indicator weight	Component	Component weight
Security/Economic Self-Sufficiency (PHMAP Indicator #8).	4.0	Tracking/Reporting Crime-Related Problems	1.0
		Screening of Applicants	1.0
		Lease Enforcement	1.0
		Grant Program Goals	1.0

If the PHAS Capital Fund sub-indicator (PHMAP Indicator #2) is not applicable, then the 6 points for that sub-indicator are redistributed among the other five sub-indicators. This is accomplished by multiplication of 30/24 or 1.25, which is 125 percent of the original weights. The new weight for the sub-indicator "Vacancy Rate/Progress to Reduce" would be 10.0, and the new weight for the other four sub-indicators would be 5.0.

The PHMAP grades for each sub-indicator/component are assigned values to indicate the percentage of the sub-indicator/component weight that will be awarded in the calculations. The assigned values for the PHMAP grades, which are listed in Table 2, are the same for each sub-indicator/component that is being assessed. For example, a PHA with an E for the component "Inspection of Units and Systems" would receive 30% of the component weight of 2, for a score of 0.6 for the component.

TABLE 2.—POSSIBLE GRADES

Grades	Value
A	1.00
B	0.85
C	0.70
D	0.50
E	0.30
F	0.00
NA—Data not submitted	[1]

[1] NA—No value assigned.

Calculations under the PHAS Management Operations Indicator are performed as follows:

Component Score. The component score equals its weight multiplied by the value of the grade for the PHA, unless no data exists for an assessment of the PHA for the component. For example, a PHA with an E for the component Inspection of Units and Systems would receive 30% of the component weight of 2, for a score of 0.6 for the component.

Sub-indicator Score. The sub-indicator score is the sum of the component scores with the weight of non-assessed (NA) sub-indicators being proportionately redistributed across sub-indicators that have been assessed.

If the Capital Fund sub-indicator (PHMAP indicator #2) is not applicable (the PHA does not have a Capital Fund Program), then the 6 points for that sub-indicator are redistributed among the other five sub-indicators in the calculation of the indicator score.

If no data was submitted for an assessment of the entire sub-indicator (excluding the Capital Fund sub-indicator), then for PHAS scores, the sub-indicator score is equal to the appropriate sub-indicator weight with an asterisk appended to it. The asterisk indicates the score is not a true assessment of the PHA's effectiveness for the sub-indicator.

Indicator Score. The Indicator score equals the sum of the sub-indicator scores. If the PHA does not have a Capital Fund Program, the indicator score equals the sum of the five other sub-indicator scores multiplied times 30/24 or 1.25, which is 125 percent of the original weight.

5. Examples of Score Computations

An Example of Computing a Sub-Indicator Score With a Non-Assessed Component. The following provides an example for the calculation of a Capital Fund sub-indicator score and its component scores, when the Quality of Physical Work component has not been assessed. For this example, Table 3 provides the necessary information, which is:

- The weight of the Capital Fund sub-indicator components from Table 1;
- The sample grade for each component;
- The value of each grade from Table 2;
- The calculations for the component score; and
- The component scores.

The component score is calculated in this table by multiplying the weights by the values in Table 3. These scores are included in the PHAS Report. Note that for reporting purposes, all scores are rounded to one decimal place.

TABLE 3.—EXAMPLE ASSESSMENT OF THE CAPITAL FUND SUB-INDICATOR

Component	Weight	Grade	Value	Calculations	Score
#1 Unexpended Funds	1.0	A	1.0	(1.0) times (1.0) = 1.0	1.0
#2 Timeliness of Fund Obligation	1.5	A	1.0	(1.5) times (1.0) = 1.5	1.5
#3 Contract Administration	1.0	C	0.7	(1.0) times (0.7) = 0.7	0.7
#4 Quality of Physical Work	2.0	NA	NA	NA	NA
#5 Budget Controls	0.5	F	0.0	(0.5) times (0.0) = 0.0	0.0

In this example, the 4th component has not been assessed for PHMAP indicator #2. Consequently, the weight of the non-assessed component needs to be redistributed proportionately across assessed components in order to calculate the Capital Fund sub-indicator score. This redistribution is accomplished by multiplying the sum of the component scores by 6 (the weight of the sub-indicator) and dividing this result by the sum of the weights of the components that have been assessed. This calculation for the Capital Fund sub-indicator score is provided below:

$$\text{Capital Fund Score} = \frac{(1.0 + 1.5 + 0.7 + 0.0) \text{ times } (6.0)}{1.0 + 1.5 + 1.0 + 0.5} = 4.8$$

An Example of Computing the Indicator Score for a PHA Without a Capital Fund Program and That Has Less Than 250 Units. For this example, the PHA's sub-indicator scores are:

- The Vacancy Rate/Progress to Reduce score equals 6.8;
- The Capital Fund sub-indicator was not assessed (NA);
- The Rents Uncollected score equals 4.0;
- The Work Orders score equals 2.8;
- The Inspection of Units and Systems score equals 3.7; and
- The Security/Economic Self-Sufficiency score equals 4.0*.

For this PHA, the Indicator score is calculated by the following formula;

$$\text{Management Operations Indicator Score} = \frac{(6.8 + 4.0 + 2.8 + 3.7 + 4.0) \text{ times } (30.0)}{24} = 26.6$$

Dated: June 14, 1999.

Donald J. LaVoy,

Acting Director, Real Estate Assessment Center.

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Wednesday
June 23, 1999

Part IX

Department of Housing and Urban Development

Public Housing Assessment System, Resident Service and Satisfaction Scoring Process; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4509–N–10]

Public Housing Assessment System, Resident Service and Satisfaction Scoring Process

AGENCY: Office of the Director, Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies, and members of the public, regarding HUD's process for issuing scores under the Resident Service and Satisfaction Indicator of the Public Housing Assessment System (PHAS).

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Customer Service Center at 1–888–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

1. Purpose of this Notice

The purpose of this notice is to provide additional information about the scoring process for PHAS Indicator #4, Resident Service and Satisfaction. The purposes of the Resident Service and Satisfaction assessment are to measure the level of resident satisfaction with living conditions at their public housing, to facilitate positive interaction and communication between public housing agencies (PHAs) and residents, and to guide PHAs in recognizing areas of concern identified by residents in survey responses. The Resident Service and Satisfaction assessment is an important indicator of a PHA's performance.

Of the total 100 points available for a PHAS score, a PHA may receive up to ten points under PHAS Indicator #4. Unlike PHAS Indicators #1, #2, or #3, PHAs will not be designated as "troubled" for a failing score under Indicator #4 in accordance with 24 CFR 902.67. The Resident Service and Satisfaction score, however, is included in the aggregate PHAS score.

The information provided in this notice was originally published on May 13, 1999 (64 FR 26236). HUD is publishing this information again since it relates to the Public Housing Assessment System proposed rule, published in the **Federal Register** on June 23, 1999.

2. Elements of Scoring

The score of the Resident Service and Satisfaction assessment for all PHAs will be based upon two components, plus a threshold requirement.

First Component. The first component will be the aggregate score of the survey results.

Second Component. The second component will be a score based on the PHA's certification that plans for survey implementation and follow-up corrective actions have been prepared by the PHA and have or will be acted upon. HUD's PHAS regulation at 24 CFR 902.53 provides that the second component will be a point score based on the level of implementation and follow-up or corrective actions based on the survey results.

Each of the components are worth five points, for a total of ten points, as outlined under Indicator #4 in the PHAS final rule (24 CFR 902.53). A PHA will receive a passing score if it receives at least six points of the available ten points. As noted earlier in this notice, however, a failing score under this Indicator will not cause a PHA to be designated as troubled.

Threshold Requirement. A PHA will not receive any points under PHAS Indicator #4 if the survey process is not managed as directed by HUD or the survey results are determined to have been altered. The threshold requirement is subject to verification.

The following chart shows the scoring components and point range.

Scoring components	Point range
Component One—Survey Results (5 points)	
Maintenance and Repair Section	0–1
Communication Section	0–1
Safety Section	0–1
Services Section	0–1
Neighborhood Section	0–1
Component Two—Implementation/Follow-Up Plan (5 points)	
Survey Implementation Plan	0 or 2
Survey Follow-up Plan	0 or 3
Total Possible Score	10

3. Scoring Process

The scoring process for the Resident Service and Satisfaction Indicator is dependent upon electronic updating, submission and certification of information by PHAs. Although this notice discusses these electronic steps in terms of requirements, HUD has made allowance for manual submission of information, as discussed later in the notice.

Unit Address Update and Verification

The scoring process for PHAS Indicator #4 begins with ensuring accurate information about the PHA's units. PHAs will be required to electronically update unit address information initially obtained by the REAC from the recently revised form HUD–50058, Family Report. The REAC will supply a list of current units (listed by development) to PHAs via the internet. PHAs will be asked to make additions, deletions and corrections to their unit address list. After updating the list, PHAs must verify that the list of unit addresses under their jurisdiction is complete. Any incorrect or obsolete address information will have a detrimental impact on the survey results. A statistically valid number of residents cannot be selected to participate in the survey if the unit addresses are incorrect or obsolete. If a PHA does not verify the address information within 30 calendar days of submission of the list of current units to the PHA by the REAC, and the address information is not valid, the REAC will not be able to conduct the survey at that PHA. Under those conditions, the PHA would not receive any points for the PHAS Resident Service and Satisfaction Indicator.

Electronic Update of Address List

The preferred method for updating a unit address list is electronic updating. If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access. In the event local resources are not available, the PHA may go to the nearest HUD Public and Indian Housing (PIH) program office and assistance will be given to transmit the unit address information. The PIH office will assist the PHA in electronically updating and transmitting its unit address list to the REAC. If circumstances preclude a PHA from updating and submitting its unit address list electronically, HUD will consider granting approval to allow a PHA to submit the updated unit address list information manually. A PHA that seeks approval to update its unit address list manually must ensure that the REAC receives the PHA's written request for manual submission 30 calendar days before the submission due date. The written request must include the reasons why the PHA cannot update the list electronically. The REAC will respond to the PHA's request within 15 calendar days of receipt of the request.

Sampling

A statistically valid number of residents will be chosen to receive the Resident Service and Satisfaction survey. These residents will be randomly selected using a computerized program based on the total number of occupied and vacant units of the PHA. The Resident Service and Satisfaction assessment takes into account the different properties managed by a PHA by organizing the resident sampling based on the resident representation of each development in relation to the size of the entire PHA resident population. This procedure is known as selection with probability proportional to size. For example, if a PHA houses five percent of its residents in a given development, then five percent of the sample will be chosen from that development. A PHA's score, however, will represent the entire population within that agency.

Survey Distribution

The Resident Service and Satisfaction survey will be distributed to the randomly selected sample of residents of each PHA by a third party organization designated by HUD. The third party organization will also be responsible for collecting, scanning and aggregating results of the survey. The aggregate results will be transmitted to HUD for analysis and scoring. HUD will keep individual responses to the survey confidential.

Component One—Survey Results (5 Points)

The Resident Service and Satisfaction survey form, published in the **Federal Register** on November 23, 1998, with OMB approval No. 2535–0108, may be modified for nationwide implementation based on the pilot test currently underway at 32 public housing agencies. The modifications may include, but are not limited to, rewording of specific questions and possible elimination of some questions. No additional questions will be added to the existing Resident Service and Satisfaction survey. In addition, the basic content of the survey, as described in 24 CFR 902.53, will not be modified.

Once the survey form is finalized, weights will be assigned to individual questions. Answers to some questions on the survey will be used for informational purposes only and will not be calculated into the score for the PHA. For example, questions regarding overall satisfaction with the PHA will be used to confirm survey results and will not be calculated into the final survey score. The only questions that will be included in the score for the PHA will be questions that are directly related to compliance with the regulations or statutes applicable to the management of public housing. The score for the Resident Service and Satisfaction survey will be based on a total possible score of five points.

Five Survey Sections. There are five survey sections as follows:

1. Maintenance and repair (e.g., work order response);
2. Communication (e.g., perceived effectiveness);
3. Safety (e.g., perception of personal security);
4. Services (e.g., recreation and personal programs); and
5. Neighborhood appearance.

Scores for each survey section will be calculated in the following manner. Each section will be given a score between zero and one. For example, if the maintenance and repair survey section has 83 percent of the possible points for that section, then it would be given a score of .83. The total survey score will be the sum of the five survey section scores. Thus, there are five possible points for the survey results. This part of the score will be presented in a numeric format with one decimal place (i.e., 4.3).

Component Two—Implementation and Follow-Up Plans (5 Points)

Points awarded for component two are based on the level of implementation of the survey and follow-up on the results of the survey, where necessary.

Survey Implementation Plan. Although as noted earlier, a third party organization will be responsible for distributing and collecting the survey results, the PHA will be responsible for disseminating information about the survey to its residents based on Survey Implementation Plan provided by HUD. The Survey Implementation Plan will explicitly outline required implementation activities. The PHA must certify to the dates the implementation activities are carried out. Activities will include, but are not limited to, displaying posters supplied by HUD; conducting meetings with residents and/or communicating with residents through a newsletter; and distributing flyers.

If the PHA certifies to having completed the above activities prior to the date set by HUD, the PHA will receive the full two points for this section. All implementation activities should take place prior to residents' receipt of the survey. HUD will set deadlines for electronic submission of Survey Implementation Plans by PHAs. All Survey Implementation Plans received past the deadline will not be considered, and the PHA will not receive any points for this component.

Survey Follow-Up Plan. HUD will supply PHAs with an electronic template to develop a Survey Follow-up Plan based on the results of the survey. If a PHA scores 4.5 or higher on the resident survey, a follow-up plan will not be required and the PHA will receive the additional three points. The PHA will receive its aggregate survey results electronically prior to its PHAS Resident Service and Satisfaction certification due date. Once the PHA receives its survey results, the PHA must electronically access a template to be completed outlining any follow-up actions. The appropriate HUD Office will supply suggested actions to assist the PHA in completing its Survey Follow-up Plan. Follow-up actions will be directly related to the five survey sections listed above. The PHA will be able to develop its Survey Follow-up Plan based on areas identified by the survey which need improvement. As part of the Survey Follow-up Plan, the PHA will need to specify the following:

- Actions to be taken in the next fiscal year,
- The target date of completion,
- The funding source (if required) that will be utilized,
- The section of the survey being addressed with the action (i.e., communication, safety, etc.).

A PHA will receive the full three points for this section by completing its Survey Follow-up Plan and submitting a copy of it electronically to HUD/REAC by the due date. Survey Follow-up Plans will then be bundled and forwarded via the internet to the Public Housing Director in the appropriate HUD Field Office. Where appropriate, Field Office staff may offer technical assistance to a PHA regarding the Survey Follow-up Plan. Survey Follow-up Plans shall be retained for three years, and available for review at REAC or the PHA by HUD auditors. No points will be awarded for this component if a PHA fails to submit its Survey Follow-up Plan.

Audit. Where appropriate, the Survey Follow-up Plan will be subject to audit. If the auditor finds that the PHA is not following its plan in good faith, the PHA will not receive the three points for the Survey Follow-up Plan portion of the Resident Service and Satisfaction assessment score.

Submission of Resident Service and Satisfaction Certification

Submission to the REAC by the PHA of its Resident Service and Satisfaction certification brings a close to the scoring process for this PHAS Indicator. Through the Resident Service and Satisfaction certification, the PHA certifies that the resident survey process has been managed as directed by HUD. PHAs are required to electronically submit their Resident Service and Satisfaction certification. If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access. In the event local resources are not available, the PHA may go to the nearest HUD PIH program office and assistance will be given to the PHA to transmit its Resident Service and Satisfaction certification.

If circumstances preclude the PHA from reporting electronically, HUD will consider granting approval to allow a PHA to submit its Resident Service and Satisfaction certification manually. A PHA that seeks approval to submit the certification manually must ensure that the REAC receives the PHA's written request for manual submission 60 calendar days before the submission due date of its Resident Service and Satisfaction certification. The written request must include the reasons why the PHA cannot submit the certification electronically. The REAC will respond to the PHA's request and will manually forward its determination in writing to the PHA.

Technical Review of the Resident Survey

The REAC will consider conducting a technical review of a PHA's resident survey results in cases where the contracted third party organization can be shown by the PHA to be in error. The burden of proof, however, rests with the PHA to provide objectively verifiable evidence that a technical error occurred. Examples include, but are not limited to, incorrect material being mailed to residents; too few survey forms sent, which could render the sample size invalid; or the PHA's units addresses were incorrect due to the third party organization's error, such as unit numbers being omitted from the addresses. A PHA that does not update its unit address list as described, above, will not be eligible for a technical review based on incorrect addresses.

Dated: June 14, 1999.

Donald J. LaVoy,

Acting Director, Real Estate Assessment Center.

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federal register

Wednesday
June 23, 1999

Part X

Department of Health and Human Services

Centers for Disease Control and Prevention

Availability of Funds for Cooperative Agreements for Human Immunodeficiency Virus Prevention Projects for African American Faith-Based Organizations; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99096]

Cooperative Agreements for Human Immunodeficiency Virus Prevention Projects for African American Faith-based Organizations; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year (FY) 1999 funds for cooperative agreements to support comprehensive HIV/AIDS education and prevention programs within African American faith, religious, and spiritual communities in three categories:

Category I—Community-Based HIV Prevention Services, to support faith, spiritual, and religious-based community-based organizations (faith-based CBOs) to develop and implement effective community-based HIV prevention programs for African Americans;

Category II—Capacity Building Assistance Program, to support nongovernmental minority organizations (including faith-based organizations) to develop and implement regionally structured and focused capacity building assistance for CDC-funded and other faith-based CBOs providing HIV prevention services to African Americans and for African American faith community leaders and other African American community stakeholders; and

Category III—Curriculum Development and Training Program, to support the development and implementation of a comprehensive HIV and substance abuse prevention curriculum and training program for use by Divinity Schools associated with Historically Black Colleges and Universities (HBCU's), other theological schools, and other faith leader training venues.

This program addresses the "Healthy People 2000" priority areas for Educational and Community-Based Programs, Human Immuno-deficiency Virus (HIV) Infection, and Sexually Transmitted Diseases (STDs).

1. The goals for Category I (Community-Based HIV Prevention Services) are to:

a. Provide financial and technical assistance to faith-based CBOs so they can provide HIV prevention services to African American populations for which gaps in services are demonstrated;

b. Support HIV prevention programs that are consistent with the HIV prevention priorities outlined in the jurisdiction's comprehensive HIV prevention plan or adequately justify addressing other priorities; and

c. Promote collaboration and coordination of HIV prevention efforts among faith-based CBOs; HIV prevention community planning groups; and other local, State, Federally, and privately funded programs.

2. The goals for Category II (Capacity Building Assistance Program) are to:

a. Improve the capacity of CDC-funded and other faith-based CBOs serving African Americans to mobilize their communities to increase their awareness, leadership, participation and support for HIV prevention;

b. Enhance the capacity of CDC-funded and other faith-based CBOs serving African Americans to effectively participate in, and improve the responsiveness of the HIV prevention community planning process to the HIV prevention needs of African Americans; and

c. Enhance the capacity of African American faith community leaders to provide leadership and support for HIV prevention.

3. The goals for Category III (Curriculum Development and Training Program) are to:

a. Provide comprehensive HIV and substance abuse prevention education for faith-leaders using a core instructional curriculum that can be easily adapted and modified to meet the needs of diverse faith traditions;

b. Promote leadership and support for HIV and substance abuse prevention among faith leaders serving disproportionately affected African American populations; and

c. Engage faith leaders in identifying ways to provide effective HIV and substance abuse prevention information and services to disproportionately affected African American populations within their congregations and outreach ministries.

Refer to Section P, "Where to Obtain Additional Information", for dates and times of audio-conferences.

B. Eligible Applicants

Note: Applicants may apply for more than one category, if eligible; however, a separate application must be submitted for each category.

1. Category I—Community-Based HIV Prevention Services

Eligible applicants for Category I are faith-based CBOs that provide services to African Americans and meet the following criteria (also see proof of eligibility under Section E.

Application Content—Attachments):

a. Have a faith, spiritual, or religious focus or constituency, and have access to local faith, spiritual, and religious leaders and communities. Examples of faith-based CBOs include (1) individual churches, mosques, temples, or other places of worship; (2) a network or coalition of churches, mosques, temples, or other places of worship; or (3) a CBO whose primary constituents are faith, spiritual, or religious community organizations or leaders.

b. Have been granted tax-exempt status under section 501(c)(3), as evidenced by an Internal Revenue Service (IRS) determination letter.

c. Have a board or governing body composed of greater than 50 percent African Americans.

d. African Americans must serve in greater than 50 percent of key positions in the organization, including management, supervisory, administrative, and service provision positions (for example, executive director, program director, fiscal director, outreach worker, prevention case manager, counselor, group facilitator, or trainer).

e. Documentation of an established record of services to the target population is required. An established record is defined as a minimum of two years serving the target population.

f. Two or more African American faith-based CBOs may apply as a collaborative partnership. In a collaborative contractual partnership, one CBO must be the legal applicant and will function as the lead organization in the collaboration. The lead organization must meet criteria a–e specified above and the collaborating CBO(s) must meet criteria as specified above.

Note: A Faith-based CBO can only submit one application under this category; that is, it may apply as an individual organization or as part of a collaboration, but not both.

g. Local affiliates, chapters, or programs of national and regional organizations are eligible to apply. In this case, the local affiliate, chapter, or program applying must meet criteria a–f, above.

h. Governmental or municipal agencies, their affiliate organizations or agencies (e.g., health departments, school boards, public hospitals), and private or public universities and colleges are not eligible for funding under this category.

i. CBOs currently funded under Program Announcement 704, titled, "Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects," are not eligible to apply.

2. Category II—Capacity Building Assistance Program

The Capacity Building Assistance Program (Category II) will serve four regional groups as follows:

Northeast Region: CT, MA, ME, NH, NJ, NY, PA, RI, VT, PR, U.S. Virgin Islands

Midwest Region: IA, IL, IN, KS, MI, MN, MO, ND, NE, OH, SD, WI

South Region: AL, AR, D.C., DE, FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV

West Region: AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, WY

Eligible applicants for Category II are: (1) A national minority organization, including faith-based organizations, serving up to four regions either independently or as the lead agency within a coalition; or (2) a regional minority organization, including faith-based organizations, serving at least one region either independently or as the lead agency within a coalition; or (3) a local minority organization, including faith-based organizations, as the lead agency within a coalition serving one region. A coalition may consist of any combination of national, regional or local minority organizations.

For the purpose of this program announcement, a national or regional faith-based organization is a nonprofit organization (1) whose constituency includes faith, spiritual, or religious communities, organizations, or leaders and (2) which has a formal or informal network of affiliates, constituent organizations, or offices distributed nationally or regionally and involving multiple states.

The lead agency must be the legal applicant and all applicants must meet the following criteria:

a. Have a copy of a currently valid IRS Determination letter stating that the organization is a 501(c)(3).

b. Have a documented and established 3-year record of service to community-based organizations serving African Americans and to African American population(s). Acceptable documentation includes letters of support, agency annual reports, client satisfaction survey summaries, and memoranda of agreement.

c. Have a board or governing body composed of greater than 50 percent African Americans.

d. Have greater than 50 percent of key positions in the applicant organization, including management, supervisory, administrative, and service positions filled by African Americans (for example, executive director, program director, fiscal director, trainer, technical assistance provider, curricula development specialist, or group facilitator).

e. Local affiliates, chapters, or programs of national and regional organizations are eligible. In this case, the local affiliate, chapter, or program applying must meet criteria a—d, above.

f. Organizations currently funded under CDC Program Announcement #98043 (National Partnerships for Human Immunodeficiency Virus) are eligible to apply; however, awards to these currently funded organizations will not exceed $100,000 and no more than one such award will be made in this category.

g. Governmental or municipal agencies, their affiliate organizations or agencies (e.g., health departments, school boards, public hospitals), and private or public universities and colleges are not eligible for funding under this category.

Note: An organization may submit only one application under this category; that is, it may apply as an individual organization or as part of a coalition, but not both.

3. Category III—Curriculum Development and Training Program

Eligible applicants under this category:

a. Must be a Theological or Divinity School associated with a Historically Black College or University. These Theological or Divinity Schools include Hood, Howard, Interdenominational Theological Center, Payne, Shaw, and Virginia Union.

b. Must have a documented and established 2-year record of promoting leadership and support for health-based programs, including HIV prevention or substance abuse prevention programs, within African American populations disproportionately affected by HIV/AIDS.

4. Categories I, II, and III

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Awards will be made in three categories: (I) Community-based HIV Prevention Services; (II) Capacity Building Assistance Program; and (III) Curriculum Development and Training Program. Applicants may apply for more than one category if eligible; however, separate applications must be submitted for each category.

1. Category I—Community-Based HIV Prevention Services

Approximately $600,000 is available in FY 1999 to fund up to four awards. It is expected that awards will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period of up to 4 years. It is expected that the average award will be approximately $200,000, ranging from $150,000 to $250,000. Applications requesting more than $250,000, including indirect costs, will be deemed ineligible.

Note: Funds to support CBOs to provide HIV prevention services are also available under Program Announcement 99092—Community Based Human Immunodeficiency Virus (HIV) Prevention Projects for African Americans, Program Announcement 99091—Community-Based HIV Prevention Services and Capacity Building Assistance to Organizations Serving Gay Men of Color at Risk for HIV Infection, and Program Announcement 99047—Human Immunodeficiency Virus Community Based Prevention Projects for the Commonwealth of Puerto Rico and the United States Virgin Islands. Eligible organizations may apply for and receive funding under more than one of these announcements; however, the total combined funding provided to any organization under these four new announcements will not exceed $300,000.

2. Category II—Capacity Building Assistance Program

Approximately $600,000 is available in FY 1999 to fund up to three awards. It is expected that awards will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period of up to 4 years. It is expected that the average award will be approximately $200,000, ranging from $100,000 to $600,000. Applications requesting more than $600,000, including indirect costs, will be deemed ineligible.

3. Category III—Curriculum Development and Training Program

Approximately $300,000 is available in FY 1999 to fund one Divinity School associated with a Historically Black College or University. It is expected that awards will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to 4 years. Applications requesting more than $300,000, including indirect costs, will be deemed ineligible.

4. Categories I, II, and III

Funding estimates may change based on the availability of funds. Continuation awards within an

approved project period will be made on the basis of availability of funds and the applicant's satisfactory progress toward achieving objectives. Satisfactory progress toward achieving objectives will be determined by progress reports submitted by the recipient and site visits conducted by CDC representatives. Proof of continued eligibility is required with noncompeting continuation applications.

Use of Funds

1. Category I—Community-Based HIV Prevention Services

Funds provided under this category shall support activities directly related to primary HIV prevention. However, intervention activities which involve preventing other STDs or substance abuse as a means of reducing or eliminating the risk of HIV transmission may also be supported.

2. Category II—Capacity Building Assistance Program

Funds provided under this category shall support assistance that increases the capacity of faith-based CBOs to expand and sustain effective HIV prevention activities for African Americans whose behavior places them at high risk for HIV.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated indirect rate agreement. In the absence of an indirect cost rate agreement, the recipient may request, with detailed justification, a maximum of ten percent for the executive director. If the organization has an indirect rate that includes the executive director's salary, no additional funds will be provided. Funds will not be provided for the salary of an executive director that is also a member of the organization's Board of Directors.

3. Category III—Curriculum Development and Training Program

Funds provided under this category shall support the development, implementation, and evaluation of a comprehensive HIV and substance abuse prevention curriculum and training program. The curriculum shall be adaptable and contain modules or units easily modified to meet the education and training needs of diverse faith traditions.

The curriculum and training program shall be developed for use by Divinity Schools associated with Historically Black Colleges and Universities, other theological schools, and other faith leader training venues and settings. Faith leaders and members of affected populations shall be afforded the opportunity to provide input into its development through needs assessments, surveys, focus groups, and other appropriate mechanisms.

4. Categories I, II, and III

Applicants are encouraged to develop coalitions and may contract with other organizations under these cooperative agreements; however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of services) for which funds are requested. Applications requesting funds to support only administrative and managerial functions will not be accepted.

No funds will be provided for direct patient medical care (including substance abuse treatment, medical treatment, or medications) or research.

These funds may not be used to supplant or duplicate existing funding. Funds awarded should be used to enhance or expand existing activities.

Funding Priorities

1. Category I—Community-Based HIV Prevention Services

In making awards under Category I—Community-Based HIV Prevention Services, priority for funding will be given to ensuring a geographical distribution of faith-based CBO awards based on AIDS morbidity among African Americans.

2. Category II—Capacity Building Assistance Program

In making awards under Category II (Capacity Building Assistance Program), priority for funding will be given to: Ensuring that funding for capacity building assistance is distributed in proportion to the disease burden for African American populations in each region.

3. Category III—Curriculum Development and Training Program

In making awards under Category III (Curriculum Development and Training Program), priority for funding will be given to ensuring provision of a comprehensive curriculum and training program to faith leaders serving African American communities in the metropolitan statistical areas (MSAs) with more than 1000 prevalent AIDS cases in African Americans in 1997.

Interested persons are invited to comment on the proposed funding priorities for Categories I, II, and III. All comments received within 30 days after publication in the **Federal Register** will be considered before the final funding priorities are established. If the funding priorities change because of comments received, a revised announcement will be published in the **Federal Register**, and revised applications will be accepted before the final selections are made. Address comments to: Julia Valentine, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

D. Program Requirements—Category I—Community-Based HIV Prevention Services

HIV prevention interventions are specific activities (or set of related activities) using a common method of delivering the prevention messages to reach persons at risk of becoming HIV-infected or, if already infected, of transmitting the virus to others. The goal of HIV prevention interventions is to bring about HIV risk reduction in a particular population.

In order to maximize the effective use of CDC funds, each applicant must conduct at least one of the following priority HIV prevention interventions: (1) HIV Counseling, Testing and Referral Services; (2) Individual Level Interventions; (3) Group Level Interventions; (4) Community Level Interventions; and (5) Street and Community Outreach. A brief description of these priority interventions is provided in Attachment 1. Also, please reference the materials included in the tool kit for additional information about these interventions. The tool kit will be sent with the application packet upon request.

Although activities may overlap from one type of intervention to another (e.g., individual or group level interventions may be a part of a community-level intervention), each applicant must indicate which one of the five interventions is the primary focus.

Because of the resources, special expertise, and organizational capacities needed for success, applicants should carefully consider the feasibility of undertaking more than two of the priority interventions listed. Recipients proposing to conduct more than two of these priority prevention interventions must demonstrate the capacity to implement them effectively.

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under number 1. (Recipient Activities) and CDC will be responsible for activities under number 2. (CDC Activities) below.

1. Recipient Activities:

a. Use epidemiologic data, needs assessments, and prioritization of groups and interventions to design program activities.

b. Develop program activities which are consistent with applicable State and local comprehensive HIV prevention plans or adequately justify addressing other priorities.

c. Provide or assist high risk clients in gaining access to HIV counseling, testing, and referral for other needed services.

d. Conduct health education and risk reduction interventions for persons at high risk of becoming infected or transmitting HIV to others.

e. Assist HIV-positive persons in gaining access to appropriate HIV treatment and other early medical care, substance abuse prevention services, STD screening and treatment, reproductive and perinatal health services, partner counseling and referral services, psychosocial support, mental health services, TB prevention and treatment, primary HIV prevention such as health education and risk reduction services, and other supportive services. High-risk clients who test negative should be referred to appropriate health education and risk reduction services and other appropriate prevention and treatment services.

f. Ensure adequate protection of client confidentiality.

g. Coordinate and collaborate with health departments, community planning groups, and other organizations and agencies involved in HIV prevention activities, especially those serving the target population.

h. Participate in the HIV prevention community planning process. Participation may include involvement in workshops; attending meetings; if nominated and selected, serving as a member of the group; reporting on program activities; or reviewing and commenting on plans.

i. Incorporate cultural competency and linguistic and developmental appropriateness into all program activities and prevention messages.

j. Coordinate program activities with relevant national, regional, State, and local HIV prevention programs to prevent duplication of efforts.

k. Monitor and evaluate major program and intervention activities and services supported with CDC HIV prevention funds under this cooperative agreement. This should include assessing client satisfaction periodically via quantitative (e.g., periodic surveys) and qualitative methods (e.g., focus groups).

l. Compile "lessons learned" from the project and facilitate the dissemination of "lessons learned" and successful prevention interventions and program models to other organizations and CDC through peer-to-peer interactions, meetings, workshops, conferences, internet, communications with project officers, and other capacity building and technology transfer mechanisms.

m. Work with CDC-funded capacity building assistance programs to meet your and other organizations' capacity building needs.

n. Develop and implement a plan for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement and to enhance the likelihood of its continuation after the end of the project period.

o. Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

p. Before using funds awarded through this cooperative agreement to develop HIV prevention materials, recipients must check with the CDC National Prevention Information Network (NPIN) to determine if suitable materials are already available. Also, materials developed by recipients must be made available for dissemination through the CDC NPIN.

CDC's National Prevention Information Network (NPIN) maintains a collection of HIV, STD and TB resources for use by organizations and the public. Successful applicants may be contacted by NPIN to obtain information on program resources for use in referrals and resource directories. Also, grantees should send three copies of all educational materials and resources developed under this grant for inclusion in NPIN's databases.

NPIN also makes available information and technical assistance services for use in program planning and evaluation. For further information on NPIN services and resources, contact NPIN at 1–800–458-5231(TTY users: 1–800–243–7012). NPIN's web site is www.cdcnpin.org; the fax number is 1–888–282–7681.

2. CDC Activities:

a. Coordinate a national capacity building and technology transfer network.

b. Provide consultation and technical assistance in planning, implementing, and evaluating prevention activities. CDC may provide consultation and technical assistance both directly and indirectly through prevention partners such as State health departments, national and regional minority organizations (NRMOs), contractors, and other national organizations.

c. Provide up-to-date scientific information on risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

d. Assist in the design and implementation of program evaluation activities, including provision of evaluation forms, if appropriate.

e. Assist recipients in collaborating with State and local health departments, community planning groups, and other federally supported HIV/AIDS recipients.

f. Facilitate the transfer of successful prevention interventions, program models, and "lessons learned" through convening meetings of grantees, workshops, conferences, newsletters, use of the internet, and communications with project officers. Also facilitate exchange of program information and technical assistance among community organizations, health departments, and national and regional organizations.

g. Monitor the recipient's performance of program activities, protection of client confidentiality, and compliance with other requirements.

h. Conduct an overall evaluation of this cooperative agreement program.

E. Application Content—Category I—Community-Based HIV Prevention Services

Use the information in the Program Requirements, Other Requirements, and Application Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 pages (not including the budget or attachments).

Number each page sequentially, and provide a complete Table of Contents to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single spaced, with unreduced 12 point or 10 pitch font on 8½" by 11" paper, with at least 1" margins, headings and footers, and printed on one side only. Materials which should be part of the basic narrative will not be accepted if placed in the appendices.

Note: Applicants may apply for more than one category, if eligible; however, a separate application must be submitted for each category.

In developing the application, you must follow the format and instructions below:

Format For Category I—Community-Based HIV Prevention Services

1. Abstract

2. Assessment of Need and Justification for Proposed Activities
3. Long-term Goals
4. Organizational History and Capacity
5. Program Plan
6. Program Evaluation Plan
7. Communications and Dissemination Plan
8. Plan for Acquiring Additional Resources
9. Budget and Staffing Breakdown and Justification
10. Attachments

Instructions For Category I—Community-Based HIV Prevention Services

1. Abstract (not to exceed 3 pages): summarize which intervention category of the five priority HIV prevention interventions—(1) HIV Counseling, Testing, and Referral Services; (2) Individual Level Interventions; (3) Group Level Interventions; (4) Community Level Interventions; and (5) Street and Community Outreach)—you intend to implement and your proposed intervention activities. Include the following:

a. brief summary of the need for the proposed activities;

b. long-term goals;

c. brief summary of proposed plan of operation, including the population(s) to be served, activities to be undertaken, and services to be provided; and

d. brief summary of plans for evaluating the activities of this project.

2. Assessment of Need and Justification for Proposed Activities (not to exceed 5 pages):

a. Describe the population(s) for which your proposed intervention(s) will provide services.

b. Describe the impact of the AIDS epidemic on the priority population and their community and any specific environmental, social, cultural, or linguistic characteristics of the priority populations which you have considered and addressed in developing prevention strategies, such as:

(1) HIV prevalence and incidence (if available), reported AIDS cases, and the proportion that engages in specific risk behaviors (sexual behaviors, substance use, etc.) in the target population;

(2) HIV/AIDS-related baseline knowledge, attitudes, beliefs, and behaviors;

(3) Patterns of substance use and rates of STDs and tuberculosis (TB); and (4) Other relevant information. (Specify)

c. Identify the need that will be addressed by your proposed intervention(s), and describe how you assessed the need. Include epidemiologic and other data that were used to identify the need. Include a description of existing HIV prevention and risk-reduction efforts provided by other organizations to address the needs of the target population(s), and an analysis of the gap between the identified need and the resources currently available to address the need (i.e., How will the proposed intervention(s) address an important unmet HIV prevention need?).

d. Describe the specific behaviors and practices that the proposed intervention(s) is designed to promote and prevent (e.g., increases in correct and consistent condom use, knowledge of serological status, not sharing needles, and enrollment in drug treatment and other preventive programs).

e. Describe how your proposed intervention(s) complements the HIV prevention priority populations and interventions identified in the applicable State or local comprehensive HIV prevention plan(s). If the comprehensive HIV prevention plan does not prioritize the needs that you have identified, justify the need and the priority of your proposed intervention activities and summarize how the activities address prevention gaps and complement ongoing prevention efforts. State why the funds being applied for in this application are necessary to address the need. A list of the names and telephone numbers of State health department contacts from whom you may obtain a copy of the jurisdiction's comprehensive HIV prevention plan is provided with the application kit;

f. Explain any specific barriers to the implementation of your proposed intervention(s) and how you will overcome these barriers.

3. Long-term Goals (not to exceed 1 page): Describe the broad HIV prevention goals that your proposed intervention(s) aims to achieve by the end of the project period (four years).

4. Organizational History and Capacity (not to exceed 10 pages): Describe the following:

a. Organizational structure, including the role, responsibilities, and racial/ethnic composition of board of directors; committee structure of board of directors; organizational management, administrative and program components; constituent or affiliate organizations or networks; how the organizational structure will support the proposed intervention activities; and how the structure offers the capacity to reach targeted populations. Describe how the organizational structure includes, or has the ability to obtain meaningful input and representation from, members of the target population(s) (for example, gay, bisexual, and transgender populations, youth at risk, HIV-positive individuals, substance abusers).

b. Past and current experience in developing and implementing effective HIV prevention strategies and activities, and in developing and implementing interventions similar to the one(s) proposed in this application.

c. The process in your organization for making major programmatic decisions.

d. Mechanisms used by your organization to monitor program implementation and quality assurance.

e. Experience in working or collaborating with governmental and non-governmental organizations, including State and local health departments, local and State non-governmental organizations, national agencies or organizations, community planning groups, and other groups that provide HIV prevention services.

f. Capacity to provide the proposed interventions in a manner that is culturally competent and linguistically and developmentally appropriate, and which responds effectively to the gender, environmental, and social characteristics of the target populations.

g. For any of the above areas in which you do not have direct experience or current capacity, describe how you will ensure that your organization will gain capacity (e.g., through staff development, collaboration with other organizations, or a subcontract).

5. Program Plan (not to exceed 20 pages): Use this section to describe the specific characteristics of your proposed intervention(s).

a. Involvement of the target population: Describe how the target population is, or will be, involved in planning, implementing, and evaluating activities and services throughout the project period.

b. Intervention Objectives: Develop process objectives that are specific, measurable, appropriate, realistic, and time-based. Process objectives focus on the projected amount, frequency, and duration of the intervention activities and the number and characteristics of the target population to be served. If applicable, describe how the objectives are related to the prevention priorities outlined in the jurisdiction's comprehensive HIV prevention plan. Describe potential barriers to or facilitators for reaching these objectives.

c. Plan of Operation:

(1) Describe the specific activities to be conducted or services to be provided to accomplish the objectives and where these activities or services will take place. Make certain that your proposal addresses all required activities. The following four HERR interventions will be funded: Individual level (including prevention case management [PCM]), group level, community level interventions, and street and community outreach. Each recipient must conduct at least one of these interventions. Applicants should not apply for more interventions than they can conduct effectively.

(2) Describe your mechanisms for soliciting clients into the program and obtaining informed consent.

(3) Describe your staffing plan and the responsibilities each staff position will have in conducting the proposed activities. Describe how the proposed program will be managed, including the location of the program within your organization.

(4) Describe the potential for volunteer involvement in your program. If volunteers will be involved, describe plans to recruit, train, place, and retain volunteers.

(5) Describe how you will market and promote your program in the community.

(6) Describe how you will prioritize the program activities to place emphasis on populations or communities that are at high risk for HIV infection.

d. Appropriateness of Interventions: Describe mechanisms that will be used to ensure client satisfaction. Describe how you will ensure that the proposed interventions and services are culturally competent; sensitive to issues of sexual orientation; developmentally, educationally, and linguistically appropriate; and targeted to the needs of the target populations.

e. Scientific, Theoretical, Conceptual, or Program Experience Foundation for Proposed Activities:

Provide a detailed description of the program experience or scientific, theoretical, or conceptual foundation on which the proposed activities are based and which support the potential effectiveness of these activities for addressing the stated needs.

f. Collaborations, Linkages, and Coordination:

(1) Describe any formal collaborations with State or local health departments, community planning groups, and other appropriate service groups or organizations that will be used in the development and implementation of your program. Describe the respective roles and responsibilities of each collaborating entity in developing and implementing the program.

(2) Specify any and all organizations and agencies with which you will establish linkages and coordinate activities, and describe the activities that will be coordinated with each listed organization. These may include, as appropriate, the following:

(a) Community groups and organizations, including churches and religious groups;

(b) HIV/AIDS service organizations;

(c) Ryan White CARE Title I and Title II planning bodies;

(d) Schools, boards of education, and other State or local education agencies;

(e) State and local substance abuse agencies, community-based and other drug treatment or detoxification programs;

(f) Federally funded community projects, such as those funded by the Substance Abuse and Mental Health Services Administrations' (SAMHSA) Center for Substance Abuse Treatment (CSAT) and Center for Substance Abuse Prevention (CSAP), the Health and Human Services' Health Resource Services Administration (HRSA), Office of Minority Health (OMH), and other Federal entities;

(g) Providers of services to youth in high risk situations (e.g., youth in shelters);

(h) State or local departments of mental health;

(i) Juvenile and adult criminal justice, correctional, or parole systems and programs;

(j) Family planning and women's health agencies; and

(k) STD and TB clinics and programs.

(3) Describe how referrals to other service providers will be initiated.

g. Provide a timeline that identifies major implementation steps and assigns approximate dates for the inception and completion of each.

6. Quality Assurance and Program Evaluation Plan (not to exceed 5 pages): The plan should describe when and how evaluation activities will be implemented. At a minimum, the plan should outline strategies for implementing process evaluation of interventions to determine if the process objectives are being achieved. Indicate which member(s) of the staff will be responsible for implementing the evaluation plan.

Your process evaluation plan should include the following:

a. A list of resources available to the organization to carry out process evaluation (e.g., provider staff, health department staff, data experts to design a system for managing information about proposed interventions, evaluation consultants, NRMOs).

b. A list of who will be involved in implementing the evaluation and identify their roles. Describe who will collect, report, enter, and analyze data.

c. A description of the data that will be collected. To assure valid data are collected, established instruments should be used when feasible.

Established instruments include those that have been either science-based or previously administered in effective HIV prevention interventions. In addition, data sources should be verifiable through appropriate documentation (such as storing original data for the duration of the cooperative agreement). Examples of data that could be collected include:

(1) Detailed information on the specific intervention service(s).

(2) The number of persons who received the service(s) by (a) risk categories (MSM, IDU, etc.) and (b) demographics, such as age, race and ethnicity, gender, and if appropriate and available, sexual orientation.

(3) When and how often the intervention service was provided.

(4) Where the intervention service was provided (e.g., CTRPN site, STD clinic, street corner, housing project).

(5) Documents referral systems, including the number of persons referred; how you intend to determine the success of referral systems (e.g., the number actually receiving services by referral sites); and how well the system functions in identifying referral services.

(6) Describe client satisfaction with HIV prevention intervention services.

d. Discuss how data will be collected, managed, and monitored over time. Address ways to collect, report, enter, and analyze data as well as how you would use data for program improvement. Describe how often data will be collected. Discuss how data security will be maintained and client confidentiality assured.

e. Discuss how you will assess the performance of staff to ensure that they are providing information and services accurately and effectively.

Because of the additional cost and need for scientific support beyond the scope of these cooperative agreements, you may not be able to conduct outcome evaluations (i.e., long-term effects of the program in terms of changes in behavior or health status, such as changes in HIV incidence after the intervention) with funds provided through this cooperative agreement. CDC will continue to support special projects to evaluate the behavioral and other outcomes of interventions commonly used by CBOs and other organizations, and disseminate information and lessons learned from this research to CBOs, health departments, community planning groups, and other organizations and agencies involved in HIV prevention programs.

7. Communications and Dissemination Plan (not to exceed 2 pages): Describe how you will share successful approaches and "lessons learned" with other organizations.

8. Plan for Acquiring Additional Resources (not to exceed 2 page): Describe how you will develop and implement a plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

9. Budget/Staffing Breakdown and Justification (not scored)

a. Detailed Budget: Provide a detailed, separate budget for each intervention proposed (i.e., CTR, individual level, group level, community level, or street and community outreach), with accompanying justification of all operating expenses that is consistent with the stated objectives and planned priority activities. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

For contracts, applicants should name the contractor, if known; describe the services to be performed which justifies the use of a contractor; provide a breakdown of and justification for the estimated costs of the contracts; the period of performance; the method of selection; and method of monitoring the contract.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement.

b. Staffing Plan: Provide a job description for each position specifying job title; function, general duties, and activities; salary range or rate of pay; and the level of effort and percentage of time spent on activities funded through this cooperative agreement. If the identity of any key personnel who will fill a position is known, her/his name and resume should be attached. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project provide job descriptions.

10. Attachments:

a. Proof of Eligibility

Each applicant must provide documentation that they comply with all eligibility requirements specified under the "Eligible Applicants" section of this program announcement. Applicants should provide a separate section within this Attachments section that is entitled Proof of Eligibility to include the documents listed below. Failure to provide the required documentation will result in disqualification.

(1) A reference to your organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code, i.e., IRS determination letter.

(2) A list of the members of your organization's governing body along with their positions on the board, their expertise in working with or providing services to the proposed target population, and their racial/ethnic backgrounds. (Submission of information regarding the HIV status or other confidential information regarding the board is optional, and must not be linked to a specific individual.)

(3) Documentation that your organization is located and provides services in the geographical area to be served. This documentation could include letters of support, news articles, brochures or flyers, annual reports, memoranda of agreement, or client surveys.

(4) A Table of Organization of existing and proposed staff, including the board of directors, volunteer staff, and their racial/ethnic backgrounds.

(5) Documentation that your organization has an established record of providing services to the target population for at least two years, and a description of the specific services that have been provided.

(6) Affiliates, chapters, or programs of national or regional organizations must include with the application an original, signed letter from the national or regional organization's chief executive officer assuring their understanding of the intent of this program announcement and the responsibilities of recipients.

(7) A separate sheet of paper stating if your organization is currently funded under CDC Program Announcement 704, Community Based HIV Prevention Projects.

b. Other Attachments

(1) A list of all collaborating or coordinating entities and memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative or coordinating relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place. Memoranda of agreement from health departments should include a statement that they have reviewed your application for these funds.

(2) A list of major community resources and health care providers to which referrals will be made;

(3) Protocols to guide and document training, activities, services, and referrals (e.g., applicants seeking funds for Street and Community Outreach Interventions must provide a description of the policies and procedures that will be followed to assure the safety of outreach staff).

(4) Samples of data collection tools that will be used in performing, monitoring, or evaluating program activities, if available.

(5) Training and Technical Assistance Plan which describes areas in which you anticipate needing technical assistance in designing, implementing, and evaluating your program and discuss how you will obtain needed technical assistance. Also, describe anticipated staff training needs related to the proposed program and how these needs will be met. Describe your plan for providing ongoing training to ensure that staff are knowledgeable about HIV and STD risks and prevention measures. This information will assist CDC to better address your needs and help you to identify technical assistance and training providers.

(6) A description of funds received from any source to conduct HIV/AIDS programs and other similar programs targeting the population proposed in the program plan. This summary must include: (1) the name of the sponsoring organization/source of income, amount of funding, a description of how the funds have been used, and the budget period; (2) a summary of the objectives and activities of the funded program(s); and (3) an assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. CDC awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting.

(7) Independent audit statements from a certified public accountant for the previous 2 years.

(8) A copy of your organization's current negotiated Federal indirect cost rate agreement, if applicable.

Note: Materials submitted as attachments should be printed on one side of 8½" x 11" paper. Please do not attach bound materials such as booklets or pamphlets. Rather, submit copies of the materials printed on one side of 8½" x 11" paper. Bound materials may not be reviewed.

F. Evaluation Criteria—Category I—Community-Based HIV Prevention Services

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Abstract (not scored)

2. Assessment of Need and Justification for the Proposed Activities (15 points)

a. The extent to which the applicant soundly and convincingly documents a substantial need for the proposed program and activities; and the degree to which the proposed activities are consistent with the Recipient Activities described in the Program Requirements Section. (5 points)

b. The degree to which the applicant describes the specific behaviors and practices that the interventions are designed to promote and prevent (i.e., increases in correct and consistent condom use, knowledge of serological status, not sharing needles, and enrollment in drug treatment and other preventive programs). (5 points)

c. The quality of the applicant's plan to ensure consistency with the State and local comprehensive HIV prevention plans and, if applicable, the adequacy with which the applicant demonstrates the rationale for deviating from the jurisdiction's comprehensive HIV prevention plan. (5 points)

3. Long-term Goals (5 points) The quality of the applicant's stated goals and the extent to which they are consistent with the purpose of this cooperative agreement, as described in this program announcement.

4. Organizational History and Capacity (15 points) The extent of the applicant's documented experience, capacity, and ability to address the identified needs and implement the proposed activities, including:

a. How the applicant's organizational structure and planned collaborations (including constituent or affiliated organizations or networks) will support the proposed program activities, and how the proposed program will have the capacity to reach targeted populations; (3 points)

b. Applicant's past and current experience in developing and implementing effective HIV prevention strategies and activities, and in developing and implementing programs similar to those proposed in this application; (3 points)

c. Applicant's experience and ability in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services; (3 points)

d. Applicant's capacity to obtain meaningful input and representation from members of the target population(s) and to provide culturally competent and appropriate services which respond effectively to the cultural, gender, environmental, social, and multilingual character of the target audiences, including documentation of any history of providing such services; (3 points) and

e. Plans to ensure capacity to implement proposed program where no direct experience or capacity currently exists within the applicant organization. (3 points)

5. *Program Plan* (45 total points)

a. Involvement of the target population (5 points) The degree to which the applicant describes the involvement of the target population in planning, implementing, and evaluating activities and services throughout the project period.

b. Intervention Objectives (5 points) Degree to which the proposed process objectives are specific, measurable, appropriate, realistic, and time-based, related to the proposed activities, and consistent with the program's long-term goals; and the extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives.

c. Plan of Operation (15 points) The quality of the applicant's plan for conducting program activities, and the potential effectiveness of the proposed activities in meeting objectives.

d. Appropriateness of Interventions (5 points) The degree to which the applicant describes how the proposed priority interventions and services are culturally competent, sensitive to issues of sexual orientation, developmentally appropriate, linguistically-specific, and educationally appropriate.

e. Scientific, Theoretical, Conceptual, or Program Experience Foundation for Proposed Activities (5 points) The degree to which the applicant provides a detailed description of the scientific, theoretical, conceptual, or program experience foundation on which the proposed activities are based and which support the potential effectiveness of these activities for addressing the stated need.

f. Collaborations, Linkages, and Coordination (5 points) Appropriateness of collaboration and coordination with other organizations serving the same priority population(s). At minimum, the applicant provides a description of the collaboration or coordination and a signed memoranda of agreement for each agency with which collaborative activities are proposed, and other evidence of collaboration that describe previous, current, as well as future areas of collaboration.

g. Timeline (5 points) The extent to which the applicant's proposed timeline is specific and realistic.

6. Quality Assurance and Program Evaluation Plan (10 points) The potential of the evaluation plan to describe when and how evaluation activities will be implemented by the applicant; the extent to which the evaluation plan is realistic and feasible, taking into account the applicant's unique needs, resources, capabilities, and priorities; and the extent to which a plan has been created that will guide the collection of data for improving HIV prevention efforts and informing stakeholders of the progress made in HIV prevention.

7. Communication and Dissemination Plan (5 points) The degree to which the applicant describes how successful approaches and "lessons learned" will be documented and shared with other organizations.

8. Plan for Acquiring Additional Resources (5 points) The degree to which the applicant describes plans to develop and implement a plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

9. Budget and Staffing Breakdown and Justification (not scored)

a. Budget Appropriateness of the budget for the proposed project.

b. Personnel Appropriateness of the staffing pattern for the proposed project.

Before final award decisions are made, CDC may make predecisional site visits to CBOs whose applications are highly ranked or review the items below with the local or State health department and applicant's board of directors:

a. The organizational and financial capability of the applicant to implement the proposed program.

b. The special program conditions and approach requirements.

A business and fiscal recipient capability assessment may be required of some applicants prior to the award of funds.

G. Program Requirements—Category II—Capacity Building Assistance

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities

under number 1. (Recipient Activities) and CDC will be responsible for activities under number 2. (CDC Activities) below.

For additional information on capacity building assistance activities, see Attachment 2.

1. Recipient Activities:

a. Conduct regional community needs and resource assessments around issues related to HIV prevention, leadership development, and community mobilization.

b. Develop a regional plan of action to mobilize communities and relevant agencies to direct resources to meet priority needs related to Community Capacity Building for HIV prevention.

c. Develop a regional plan of action to provide capacity building assistance in HIV Prevention Community Planning Effectiveness and Participation.

d. Provide capacity-building assistance to CBOs serving African Americans and to diverse faith leaders within the African American community in the following areas: Community Capacity Building for HIV Prevention, and HIV Prevention Community Planning Effectiveness and Participation. These services are to be provided through the use of the following mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services and Technology Transfer. See Attachment 2 for additional information.

e. Develop and implement a plan for targeting, engaging, and maintaining long term capacity building relationships with CBOs serving African American populations and African American community faith leaders. The plan should include strategies for conducting ongoing assessments of faith CBOs and community faith leaders in the areas listed in Section d above. The plan should also include the strategy for developing tailored capacity building packages to be delivered over the course of the project period.

f. Develop a strategy that includes forming a regional community advisory board which includes CDC-funded faith-based CBOs, members of the target population(s), and faith community representatives and leaders. This community advisory board should be involved with providing input into the overall direction of the proposed program and in assessing the proposed program's communication, linkages, performance, and services to the target population.

g. Ensure that capacity building assistance is allocated according to priority capacity building assistance needs of CDC-funded and other faith-based CBOs and highly affected African American communities and sub-populations, such as men who have sex with men (MSM); gay, lesbian, bisexual and transgender youth (GLBT Youth); high-risk heterosexuals (HRH) including youth, men, and women; injection drug users and other substance abusers (IDU/SA); and incarcerated, soon-to-be-released and released persons.

h. Develop and implement a system that responds to requests for assistance in Community Capacity Building; HIV Prevention Community Planning Participation and Effectiveness; and other types of capacity building assistance from faith-based CBOs and African American community faith leaders. This process must include mechanisms for conducting needs assessments, prioritizing requests, assigning staff or consultants, linking requests (when appropriate) to the retainer consultant system funded under the Capacity Building Assistance Program Announcement 99095, delivering services, reporting on service delivery, and conducting quality assurance.

i. Develop a standardized system for tracking and reporting all capacity building assistance requests and delivery with CDC assistance as needed.

j. Incorporate cultural competency and linguistic and educational appropriateness into all capacity building activities.

k. Develop and implement an effective strategy for marketing capacity building assistance and services.

l. Participate in a CDC-coordinated capacity building network.

m. Coordinate program activities with appropriate national, regional, state, and local HIV prevention programs and community planning groups to prevent duplication of efforts and optimize use of resources.

n. Monitor and evaluate the accomplishment of program objectives, and the process of capacity building assistance.

o. Facilitate the dissemination of information about successful capacity building assistance strategies and "lessons learned" through peer-to-peer interactions, meetings, workshops, conferences, and communications with CDC project officers.

p. Participate in CDC coordinated train-the-trainer opportunities.

q. Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

r. Develop a strategy for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement and to enhance the likelihood of its continuation after the end of the project period.

2. CDC Activities:

a. Serve as the coordinator for CDC's capacity building programs, which will include organizations providing capacity building assistance under this program announcement.

b. Provide recipients with consultation in planning, developing, managing, and evaluating capacity building services. CDC will provide consultation and assistance both directly through CDC and indirectly through contractors; national, regional and local organizations; and peer-to-peer assistance from CDC-funded partners.

c. Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

d. Facilitate and promote collaboration through the exchange of program information, coalition maintenance strategies, and technical assistance among CBOs; State and local health departments; HIV prevention community planning groups; national, regional, and local organizations; and other HIV prevention partners.

e. Support train-the-trainer opportunities that enhance capacity building assistance delivery systems.

f. Facilitate and collaborate in the dissemination of successful capacity building strategies and "lessons learned" through meetings of grantees, workshops, conferences, and communications.

g. Work with recipients to standardize a system for tracking and reporting all capacity building assistance requests and delivery.

h. Monitor the recipient's performance of program activities, protection of client confidentiality, and compliance with federally mandated requirements.

i. Coordinate an evaluation of the overall capacity building assistance program.

H. Application Content—Category II—Capacity Building Assistance

Use the information in the Program Requirements, Other Requirements, and Application Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 pages.

Number each page sequentially, and provide a complete Table of Contents to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single spaced, with unreduced 12 point or 10 pitch font on 8½" by 11" paper, with at least 1" margins, headings and footers, and printed on one side only. Materials which should be part of the basic narrative will not be accepted if placed in the appendices.

Note: Applicants may apply for more than one category, if eligible; however, a separate application must be submitted for each category.

In developing the application, you must follow the format and instructions below:

Format for Category II—Capacity Building Assistance Program

1. Abstract
2. Long-term Goals
3. Organizational History and Capacity
   a. Organizational Structure
   b. History Providing Community Capacity Development and Other Capacity Building Assistance to CBOs serving African American populations and African American community faith leaders
   c. Capacity for Cultural Competence
   d. Current Capability in Providing Capacity-Building Assistance
   e. Experience Working with Coalitions (where appropriate) and Current Collaborations
4. Assessing the Need for Community Capacity Development and HIV Prevention Community Planning Effectiveness and Participation
   a. Characteristics of African American populations and communities
   b. Capacity-Building Needs
5. Program Plan
   a. Involvement of CDC-funded faith-based CBOs and African American community faith leaders
   b. Objectives
   c. Plan of Operation
   d. Coordination/Collaboration
   e. Timeline
6. Program Evaluation Plan
7. Communications/Dissemination Plan
8. Plan for Acquiring Additional Resources
9. Budget and Staffing Breakdown and Justification
   a. Detailed Budget
   b. Mechanisms for Use of Funds
   c. Staffing Plan
10. Attachments

Instructions for Category II—Capacity Building Assistance Program

1. Abstract (not to exceed 3 pages)

Briefly summarize the following:

a. Region(s) applying for and the type of organization (national, regional, or local) and, if national or regional, whether applying independently or with a coalition
b. Organizational structure, philosophy, mission, history
c. Long term goals of the proposed project
d. Overview of plan of operation
e. Overview of plan for collaboration and coordination with other capacity-building service providers, state and local health departments, and community planning groups
f. Composition of proposed coalition (where appropriate)
g. Future year activities.

2. Long-term Goals (not to exceed 1 page) Describe the broad capacity-building goals that your proposed program aims to achieve over the course of the project period.

3. Organizational History and Capacity (not to exceed 10 pages)

a. Describe your existing organizational structure, including the role, responsibilities, and racial/ethnic composition of board of directors; board committee structure (including advisory board); board recruitment and training process; organizational management, administrative, and program components; constituent or affiliate organizations or networks; and how the organizational structure offers the ability to provide capacity building assistance.

b. Describe your organization's history with providing assistance in community capacity development; HIV prevention community planning effectiveness and participation; and other capacity building assistance to faith-based CBOs, faith leaders, and other CBOs serving African American populations. Describe specific assistance or services provided.

c. Describe your organization's capability to provide services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of faith-based CBOs and African American community faith leaders. Include a description of the types of services provided and a list summarizing culturally, linguistically, and developmentally appropriate curricula and materials.

d. Describe your organization's capability in developing and implementing capacity-building programs, strategies, or activities (refer to recipient activities section), and in developing and implementing programs similar to the one proposed in this program announcement.

e. Describe your organization's experience, if appropriate, working with a coalition(s) and in collaborating with governmental and non-governmental organizations, including national or regional agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services.

4. Assessing the Need for Community Capacity Development, and HIV Prevention Community Planning Effectiveness and Participation (not to exceed 5 pages)

a. Describe the demographics and structure of the faith-based stakeholders (such as faith-based CBOs and African American community faith leaders) you intend to serve. Describe the impact of the HIV and AIDS epidemic on these stakeholders and any specific environmental, social, cultural, or linguistic characteristics which will be considered in your capacity building strategy.

b. Describe the priority needs related to community capacity development and HIV prevention community planning effectiveness and participation for faith-based CBOs and faith leaders you intend to serve. Describe the process for determining these needs, including where appropriate: the use of epidemiologic and other data, resource inventories, regional needs assessments, and the use of gap analyses.

c. Describe how your proposed program complements the HIV comprehensive plans in the region(s) you plan to serve.

5. Program Plan (not to exceed 20 pages) Describe your proposed program, including:

a. Involvement of CDC-funded and other faith-based CBOs and faith community representatives and leaders: Describe how CDC-funded and other faith-based CBOs and faith community leaders within a region will be involved in providing input into the direction of the proposed program and in assessing the proposed program's communication, linkages, performance, and services provided throughout the project period.

b. Objectives: Provide specific, realistic, time-phased, and measurable objectives to be accomplished during the first budget period. Describe how these objectives relate to the goals described in this announcement. Describe possible barriers to or facilitators for reaching these objectives.

c. Plan of Operation:

Describe the following:

(1) The strategies (in detail) that will be used, the activities that will be conducted, and the services that will be provided to meet the proposed goals and objectives and to complete all the required recipient activities (including the provision of services through the use

of the "capacity-building assistance delivery mechanisms");

(2) The process for responding to requests for assistance in community capacity development; HIV prevention community planning participation and effectiveness; and other types of capacity building assistance from faith-based CBOs and African American community faith leaders. Include in your description how you will: (a) conduct needs assessments, (b) prioritize requests to place major emphasis on assistance to faith-based CBOs and leaders serving African American sub-populations most heavily affected by HIV, (c) link requests (when appropriate) to the retainer consultant system funded under the Capacity Building Assistance Program Announcement 99095,(d) assign staff and consultants, (e) deliver services, (f) report on service delivery, and (g) conduct quality assurance;

(3) How your organization will ensure that assistance provided will be culturally competent, sensitive to issues of sexual and gender identity, developmentally appropriate, linguistically-specific, educationally appropriate, and targeted to the needs of faith-based CBOs and African American community faith leaders;

(4) How your organization will market program services;

(5) How the proposed program will be managed and staffed, including the fiscal, administrative, managerial, and personnel infrastructure and resources that will be used to support the proposed capacity-building program;

(6) The placement of the program within your organizational structure and the space that will be used to house the proposed program staff;

(7) The equipment and information management systems that could be used to maintain information related to this announcement; and

(8) The respective roles and responsibilities of your organization and those of each coalition member performing any of the proposed activities or functions.

d. Coordination and Collaboration: Describe how you will coordinate and collaborate with other national, regional, state, and local governmental and nongovernmental organizations and HIV prevention providers (see Attachment 2 for examples of collaborating agencies).

e. Timeline: Provide a timeline that identifies major implementation phases and assigns approximate dates for inception and completion.

6. Program Evaluation Plan (not to exceed 5 pages) Describe your plan for monitoring progress to determine if the objectives are being achieved and demonstrating that the methods used to deliver the proposed capacity building services are effective and efficient. At a minimum, the plan should (1) outline strategies for implementing process evaluation of capacity building activities to determine if the process objectives are being achieved, (2) outline strategies for outcome monitoring to determine if the services and methods used to deliver the services are effective and efficient, (3) describe what data will be collected and how this data will be collected, analyzed, and used to evaluate and improve the program, and (4) specify the persons responsible for designing and implementing evaluation activities, collecting and analyzing data, and reporting findings.

7. Communication and Dissemination Plan (not to exceed 2 pages) Describe how you will share successful approaches and "lessons learned" with other organizations.

8. Plan for Acquiring Additional Resources (not to exceed 2 pages) Describe how you will develop and implement a plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

9. Budget/Staffing Breakdown and Justification (not scored)

a. Detailed Budget: Provide a detailed budget for each proposed activity. Justify all operating expenses in relation to the stated objectives and planned activities. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

For contracts, applicants should name the contractor, if known; describe the services to be performed which justifies the use of a contractor; provide a breakdown of and justification for the estimated costs of the contracts; the period of performance; the method of selection; and method of monitoring the contract.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement. In the absence of an indirect cost rate agreement, the recipient may request, with detailed justification, a maximum of ten percent for the executive director. This limitation also applies to contracts and coalitions. If the organization has an indirect rate that includes the executive director's salary, no additional funds will be provided. Funds will not be provided for the salary of an executive director that is also a member of the organization's Board of Directors.

b. Staffing Plan: Provide a job description for each position specifying job title; function, general duties, and activities; salary range or rate of pay; and the level of effort and percentage of time spent on activities funded through this cooperative agreement. If the identity of any key personnel who will fill a position is known, her/his name and resume should be attached. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project provide job descriptions.

10. Attachments

a. Proof of Eligibility

Each applicant must provide documentation that they comply with all eligibility requirements specified under the "Eligible Applicants" section of this program announcement. Applicants should provide a separate section within this Attachments section that is entitled Proof of Eligibility to include the documents listed below. Failure to provide the required documentation will result in disqualification.

(1) A reference to your organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501 (c) (3) of the IRS Code, i.e., IRS determination letter.

(2) Documentation that your organization has an established record of providing capacity building services to the CBOs serving African American communities, or an African American sub-population heavily affected by HIV, for at least two years, and a description of the specific services that have been provided.

(3) Section of Bylaws or Agency Charter that indicates organization's national or regional scope of work, if applying as a national or regional organization.

(4) A list and organizational chart of the members of your organization's governing body along with their positions on the board, their racial/ethnic backgrounds, and their expertise in working with or providing services to the proposed target population. (Submission of information regarding the HIV status or other confidential information regarding the board is optional, and must not be linked to a specific individual.)

(5) A list and an organizational chart of existing and proposed staff for this program, their race/ethnicity, their area of expertise, and relevant experience. Include resumes (not to exceed 2 pages per person).

b. Other Attachments

(1) A list of all collaborating or coordinating entities and memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative or coordinating relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place.

(2) Description of coalition organizations and original signed letters from the chief executive officers of each organization assuring their understanding of the intent of this program announcement, the proposed program, their role in the proposed program, and the responsibilities of recipients.

(3) Training and Technical Assistance Plan which describes areas in which you anticipate needing technical assistance in designing, implementing, and evaluating your program and discuss how you will obtain needed technical assistance. Also, describe anticipated staff training needs related to the proposed program and how these needs will be met. Describe your plan for providing ongoing training to ensure that staff are knowledgeable about HIV and STD risks and prevention measures. This information will assist CDC to better address your needs and help you to identify technical assistance and training providers.

(4) A list summarizing services currently delivered and culturally, linguistically, and developmentally appropriate curricula and materials.

(5) A description of funds received from any source to conduct HIV/AIDS programs and other similar programs targeting the population proposed in the program plan. This summary must include: (a) the name of the sponsoring organization/source of income, amount of funding, a description of how the funds have been used, and the budget period; (b) a summary of the objectives and activities of the funded program(s); and (c) an assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. CDC awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting.

(6) Independent audit statements from a certified public accountant for the previous 2 years.

(7) A copy of your organization's current negotiated Federal indirect cost rate agreement, if applicable.

Note: Materials submitted as attachments should be printed on one side of 8½" x 11" paper. Please do not attach bound materials such as booklets or pamphlets. Rather, submit copies of the materials printed on one side of 8½" x 11" paper. Bound materials may not be reviewed.

I. Evaluation Criteria—Category II—Capacity Building Assistance Program

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Abstract (not scored)

2. Long-term Goals (Total 5 points)

The quality of the applicant's stated long-term goals and the extent to which the goals are consistent with the purpose of this program announcement.

3. Organizational History and Capacity (Total 35 points)

The extent to which the applicant has demonstrated history and capacity to provide capacity-building assistance and to implement the proposed program.

These criteria include:

a. The extent to which the applicant's organizational structure (including planned collaborations or coalition) will support the proposed program activities. (5 points)

b. The extent to which the applicant demonstrates a history in providing assistance in community capacity development; HIV prevention community planning effectiveness and participation; and other capacity building assistance to faith-based CBOs serving African American populations (especially African American communities heavily affected by HIV and other STDs) and to African American community faith leaders. (7 points)

c. The extent to which the applicant demonstrates capacity to provide services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of faith-based CBOs and faith leaders in African American communities. (7 points)

d. The extent to which the applicant demonstrates capability in developing and implementing capacity building programs, strategies or activities, and in developing and implementing programs similar to those proposed in this application. (10 points)

e. The extent to which the applicant demonstrates experience and ability in working with coalitions (where appropriate) and in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services. (6 points)

4. Assessing the Need for Community Capacity Development and HIV Prevention Community Planning Effectiveness and Participation (Total 10 Points)

The extent to which the applicant demonstrates an understanding of the need for community capacity development and HIV prevention community planning effectiveness and participation. These criteria include:

a. The extent to which the applicant describes the demographics and structure of the faith community HIV prevention stakeholders (leaders) it intends to serve, the impact of the HIV and AIDS epidemic on these stakeholders, and any specific environmental, social, cultural, or linguistic characteristics which will be considered in the capacity building strategy.

b. The extent to which the applicant describes the priority needs related to community capacity development and HIV prevention community planning effectiveness and participation for faith-based CBOs serving African Americans and for African American community stakeholders in the region(s) to be served, and the process for determining these needs.

c. The extent to which the applicant describes how the proposed program complements the HIV comprehensive plans in the region(s) to be served.

5. Program Plan (Total 30 points)

a. Involvement of CBOs (5 points)

The extent to which CDC-funded and other faith-based CBOs and African American community faith leaders will be involved in providing input into the direction of the program and the program's communication, linkages, performance, and services provided throughout the project period.

b. Objectives (5 points)

(1) The extent to which the proposed first-year objectives are specific, realistic, time-phased, measurable, and consistent with the program's long-term goals and proposed services; and

(2) The extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives.

c. Plan of Operation (15 points)

(1) The overall quality of the applicant's plan for providing capacity building assistance in community capacity development and HIV prevention community planning effectiveness and participation to faith-based CBOs serving African American

populations and to African American community faith leaders, and the likelihood that the proposed methods will be successful in achieving proposed goals and objectives.

(2) The extent to which the applicant's plans address all the activities listed under Required Recipient Activities.

(3) The extent to which the roles and responsibilities of the primary applicant and each coalition member (where appropriate), collaborating organization, or subcontractor are consistent with the proposed activities.

d. Coordination and Collaboration (5 points)

(1) The extent to which the applicant describes and documents, as applicable, intended coordination with national, regional, State, and local governmental and nongovernmental organizations and HIV prevention providers, such as other national agencies or organizations, State and local health departments.

(2) The extent to which the applicant provides memoranda of agreement or understanding as evidence of agreed-upon collaborative relationships.

6. Timeline (5 points) The extent to which the applicant's proposed timeline is specific and realistic.

7. Program Evaluation Plan (Total 5 points) The quality of the applicant's evaluation plan for monitoring and evaluating the implementation of proposed services and measuring the achievement of program goals and objectives.

8. Communications and Dissemination Plan (Total 5 points) The quality of the applicant's plan for sharing successful approaches and "lessons learned" with other organizations.

9. Plan for Acquiring Additional Resources (Total 5 points) The quality of the applicant's plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and ensure its continuation after the end of the project period.

10. Budget/Staffing Breakdown and Justification (not scored) Extent to which the budget is reasonable, itemized, clearly justified, and consistent with intended use of funds.

Before final award decisions are made, CDC may make predecisional site visits to applicants whose applications are highly ranked or review the items below with the applicant's board of directors:

a. The organizational and financial capability of the applicant to implement the proposed program.

b. The special programmatic conditions and technical assistance requirements of the applicant.

A business management and fiscal recipient capability assessment may be required of some applicants prior to the award of funds.

J. Program Requirements—Category III—Curriculum Development and Training Program

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under number 1. (Recipient Activities) and CDC will be responsible for activities under number 2. (CDC Activities) below.

1. Recipient Activities:

a. Establish and coordinate a coalition of Divinity Schools associated with Historically Black Colleges and Universities to collaborate in the development of the curriculum and training program for African American faith leaders.

b. Develop a plan for conducting ongoing assessments of HIV and substance abuse prevention training and education needs of community faith leaders, seminary students and other faith leaders which serve African Americans. Tools may include surveys to determine current attitudes, beliefs, and gaps in knowledge of faith leaders.

c. Assess the appropriateness, use, and availability of curriculum and training program models, materials, resources, and information for faith leaders in order to avoid duplication and where possible to build on existing curriculum.

d. Use assessment and survey data to develop a culturally relevant, theologically and linguistically appropriate, gender-sensitive, curriculum and training program designed to meet the HIV and substance abuse prevention training and educational needs of diverse faith, spiritual, and religious leaders (for example, clergy, imams, rabbis, ministerial leaders, Sunday school teachers etc.)

e. Provide HIV and substance abuse prevention education and training programs for both currently enrolled students and faith leaders serving African American communities disproportionately affected by HIV/AIDS and/or substance abuse. Activities may include seminars, conferences, or in-services.

f. Develop a strategy to market available training to community faith leaders, seminary students and other faith leaders serving African Americans.

g. Design a curriculum with modules or units, that can be easily adapted or modified for use by other theological schools, seminaries, and training venues and settings of diverse faith-based organizations. The curriculum should improve the ability of faith leaders to:

(1) define the role of faith, religious, and spiritual leaders in HIV/AIDS and substance abuse prevention education;

(2) provide standardized and accurate HIV/AIDS and substance abuse information, including epidemiology, HIV pathogenesis and transmission modalities, prevention, treatment and care to members of congregations, employees, volunteers, and individuals within communities served;

(3) dispel myths about HIV/AIDS and related substance abuse;

(4) encourage open dialogue about homosexuality, substance abuse and HIV prevention, treatment, and care;

(5) reduce discrimination and stigma related to HIV/AIDS and substance abuse;

(6) provide educational programs that encourage adoption and maintenance of safer behaviors related to HIV/AIDS and substance abuse;

(7) provide faith-based support and counseling that encourages the adoption and maintenance of safer behaviors related to HIV/AIDS and substance abuse;

(8) conduct outreach and to promote voluntary, confidential HIV testing and counseling to populations that are disproportionately affected by HIV/AIDS;

(9) identify and implement acceptable intervention strategies designed to reach at-risk populations and behaviors, based on AIDS morbidity and/or available HIV surveillance data. Strategies should include prevention case management and individual, group, and community level interventions;

(10) build, strengthen, and maintain linkages with other faith organizations, leaders, secular groups and public health agencies in support of HIV and substance abuse prevention;

(11) mobilize communities in support of HIV and substance abuse prevention and to build awareness of the affects of HIV/AIDS and substance abuse;

(12) identify HIV/AIDS prevention, treatment, and care systems, including the role of non-governmental organizations (community, State, regional, and national organizations) and governmental organizations (health departments, CDC, Center for Substance Abuse Prevention, etc.);

(13) access available technical assistance;

(14) develop linkages with other partners and collaborate with CBOs, other prevention, treatment and care providers and to make appropriate referrals to these providers;

(15) participate in the HIV prevention community planning process and to work with health departments and HIV prevention planning groups;

(16) collaborate with local HIV prevention community planning groups and health departments in identifying and addressing critical prevention priorities and gaps in services so as to avoid duplication of effort; and

(17) create and sustain AIDS ministries or units responsible for ongoing prevention projects and for assisting in the care of infected and affected members;

h. Collaborate and consult with other theological schools; national, regional, and local faith-based organizations; and other organizations (such as health departments, community planning groups) serving disproportionately affected African American populations in the development, implementation, and delivery of the HIV and substance abuse curriculum and training program.

i. Ensure that education and training is allocated according to priority needs of faith leaders in highly affected African American communities, and those serving sub-populations, such as men who have sex with men (MSM); gay, lesbian, bisexual and transgender youth (GLBT Youth); high risk heterosexuals (HRH) including youth, men, and women; injection drug users and other substance abusers (IDU/SA); and incarcerated, soon-to-be-released and released persons.

j. Pilot test Curriculum and Training program to determine potential effectiveness of curriculum modules or components and training programs (Methods may include knowledge assessments, reviews, and training evaluations completed by students.)

k. Develop a strategy to modify training programs, curriculum, and materials as determined necessary through pilot testing and ongoing needs assessments.

l. Develop a plan to provide a replicable and modifiable curriculum and training program for use by other theological schools and faith leader training venues and settings. This plan should include strategies to provide assistance in training program staff and faculty, assessing appropriateness of modules, and how to deliver the curriculum and training program.

m. Develop a realistic time-line for development, implementation, and evaluation of the curriculum and training program.

n. Evaluate the curriculum and training program supported with CDC HIV prevention funds.

o. Participate in the CDC-supported network of capacity building assistance providers which may include collaborating with national and other partners when appropriate.

2. CDC Activities

a. Coordinate a national capacity building and assistance network.

b. Provide grantees with consultation and assistance in planning, developing, operating, implementing, and evaluating education and training programs. CDC may provide consultation and technical assistance both directly and indirectly through prevention partners such as State health departments, national and regional minority organizations (NRMOs), contractors, and other national organizations.

c. Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

d. Assist in the design and implementation of evaluation activities.

e. Facilitate and promote collaboration through the exchange of program information, coalition maintenance strategies, and technical assistance among federally-supported HIV/AIDS programs such as State and local health departments, community planning groups, and national, regional, and local organizations.

f. Facilitate the transfer of successful prevention interventions, program models, and "lessons learned" through convening meetings of grantees, workshops, conferences, newsletters, and communications with project officers.

g. Monitor the recipient's performance of program activities, protection of client confidentiality, and compliance with other requirements.

h. Coordinate the evaluation of HIV prevention programs and services funded under this program announcement.

i. Support train-the-trainer opportunities to enhance capacity building assistance delivery systems.

j. Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

K. Application Content—Category III—Curriculum Development and Training Program

Use the information in the Program Requirements, Other Requirements, and Application Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 pages.

Number each page sequentially, and provide a complete Table of Contents to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single spaced, with unreduced 12 point or 10 pitch font on 8½" by 11" paper, with at least 1" margins, headings and footers, and printed on one side only. Materials which should be part of the basic narrative will not be accepted if placed in the appendices.

Note: Applicants may apply for more than one category, if eligible; however, a separate application must be submitted for each category.

In developing the application, you must follow the format and instructions below:

Format for Category III—Curriculum Development and Training Program

1. Abstract
2. Assessment of Need and Justification for Proposed Activities
3. Long-term Goals
4. Organizational History and Capacity
5. Program Plan
6. Program Evaluation Plan
7. Communications and Dissemination Plan
8. Plan for Acquiring Additional or Matching Resources
9. Budget and Staffing Breakdown and Justification
10. Attachments

Instructions for Category III—Curriculum Development and Training Program

1. Abstract (not to exceed 2 pages): summarize your proposed program activities. Include the following:

a. brief summary of the need for the proposed program;

b. long-term goals;

c. brief summary of a proposed plan of operation, including planning activities undertaken and coordination, collaboration and training strategy proposed;

d. brief summary of the proposed curriculum and training program and implementation strategy.

e. brief summary of strategy to provide the proposed curriculum and training program to other theological schools and training venues and settings or settings.

f. brief summary of plans for evaluating the activities of this project; and

g. brief summary of future year activities.

2. Assessment of Need and Justification for Proposed Activities (not to exceed 6 pages)

a. Identify the faith leaders and communities for which your proposed program will provide educational and training services.

b. Identify the need that will be addressed by your proposed program, and describe how you assessed the need. Include epidemiologic and other data that were used to identify the need. Include a description of existing HIV prevention and risk-reduction efforts provided by other organizations to address the educational and training needs of faith leaders, and an analysis of the gap between the identified need and the resources currently available to address the need. Include a description of the current level of knowledge and participation in HIV and substance abuse prevention activities by faith leaders in communities to be served (i.e., How will the proposed activities and program address an important unmet HIV and substance abuse prevention educational and training need?).

c. Describe the impact of the AIDS epidemic on the communities you intend to serve and any specific environmental, social, cultural, or linguistic characteristics of specific African American populations disproportionately affected by HIV/AIDS and substance abuse which you have considered in developing the proposed HIV and substance abuse prevention curriculum and training program, such as:

(1) HIV prevalence and incidence (if available), reported AIDS cases, and risk behaviors (sexual behaviors, substance use, etc.) in communities to be served;

(2) HIV/AIDS-related baseline knowledge, attitudes, beliefs, and behaviors;

(3) Patterns of substance use and rates of STDs and tuberculosis (TB); and

(4) Other relevant information. (Specify)

d. Describe the specific knowledge and educational objectives of the proposed training.

e. Describe how your proposed curriculum or training program complements the HIV prevention priorities identified in the applicable State or local comprehensive HIV prevention plan(s). If the comprehensive HIV prevention plan does not meet identified needs, justify the need and priority for your proposed program activities and summarize how the activities address prevention gaps and complement ongoing prevention efforts. State why the funds being applied for in this application are necessary to address the need. A list of the names and telephone numbers of State health department contacts from whom you may obtain a copy of the jurisdiction's comprehensive HIV prevention plan is provided with the application kit;

f. Explain any specific barriers to the implementation of your proposed program and how you will overcome these barriers.

3. Long-term Goals (not to exceed 2 pages) Describe the broad HIV prevention goals that your proposed program aims to achieve by the end of the project period (four years).

4. Organizational History and Capacity (not to exceed 5 pages) Describe the following:

a. Organizational structure, including the role, responsibilities, and composition of your board of directors or governing body; committee structure of board of directors; organizational management, administrative and program components; constituent or affiliate organizations or networks; how the organizational structure will support the proposed program activities; and how the structure offers the capacity to reach targeted populations.

b. Past and current experience in conducting training and educational needs assessments and in using related data to develop culturally relevant, gender-sensitive, and linguistically appropriate curricula and training programs. Describe experience in conducting HIV/AIDS and substance abuse prevention training and educational needs assessments.

c. Past and current experience implementing health focused curricula and training programs for diverse faith leaders and the communities they serve, specific HIV and substance abuse prevention training, strategies and activities, and in developing and implementing programs similar to the one(s) proposed in this application.

d. The process in your organization for making major programmatic decisions.

e. Mechanism used by your organization to monitor program performance and quality assurance.

f. Experience in working or collaborating with governmental and non-governmental organizations, including State and local health departments, local and State non-governmental organizations, educational agencies or organizations (such as Historically Black Colleges or Universities), faith-based organizations, community planning groups, and other groups that provide HIV prevention services.

g. Capacity to coordinate the development of an HIV and substance abuse prevention curriculum and training program.

h. Describe past experience in coordinating collaborative efforts in curriculum and training program design, development, and implementation.

i. For any of the above areas in which you do not have direct experience or current capacity, describe how you will ensure that the proposed program has that capacity (e.g., through staff development, collaboration with other organizations, or a subcontract).

5. Program Plan (not to exceed 20 pages) Use this section to describe the specific characteristics of your proposed intervention.

a. Involvement of the target populations: Describe the involvement of affected populations in planning, implementing, and evaluating activities and services throughout the project period.

b. Involvement of Community Faith leaders: Describe the involvement of community faith leaders, seminary students and other faith leaders in planning, implementing, and evaluating activities and services throughout the project period.

c. Program Objectives: Develop objectives that are specific, measurable, time-phased, realistic, related to the long-term goals and proposed activities, and if applicable, related to the prevention priorities outlined in the jurisdiction's comprehensive HIV prevention plan. Describe the expected educational and training program results, and overall impact in meeting the educational and training needs of program participants. Describe potential barriers to or facilitators for reaching these objectives.

d. Plan of Operation:

(1) Describe the specific activities and methods to be conducted to accomplish the objectives related to each required program activity(recipient activities.) Include the following: (a) Description of services to be provided to accomplish each objectives; (b) Approximate dates when activities will be accomplished; (c) Description of volunteer involvement in your program. (If volunteers will be involved, describe plans to recruit, train, place, and retain volunteers.) (d) Description of how you will collaborate with Divinity Schools, State or local health departments, community planning groups, faith-based organizations, and other appropriate service groups or organizations in the activity; and (e) Description of the mechanism for soliciting program participants.

(2) Describe how you will promote your program in the community.

(3) Describe the mechanism to determine effectiveness of training activities in accomplishing program objectives.

(4) Describe how you will prioritize the program activities to place emphasis on faith leaders serving African American populations or communities that are disproportionately affected by HIV and AIDS.

(5) Identify program staff responsible for conducting the proposed activities.

e. Appropriateness of Interventions: Describe how the proposed program is culturally competent, sensitive to theological and doctrinal beliefs, developmentally and educationally appropriate, and linguistically-specific. Please reference the appendix for definitions of these terms.

f. Scientific, Theoretical, Conceptual, or Program Experience Foundation for Proposed Activities: Provide a detailed description of the program experience or scientific, theoretical, conceptual foundation on which the proposed activities are based and which support the potential effectiveness of these activities for addressing the stated need.

g. Coordination/Collaboration:

(1) Specify the organizations and agencies with which you will establish linkages and coordinate activities in the process of developing and implementing your project. Specify how your program will develop and coordinate a collaborative network of Divinity schools associated with HBCU-associated Divinity Schools. Specify how your program will collaborate with and incorporate input from diverse faith leaders in the development of the curriculum and training program. Specify how your program will collaborate with other theological schools and faith leader training venue. Specify how your program will collaborate with State and local health departments, State or regional community planning groups, and should include, as appropriate, the following:

(a) Community groups and organizations, including but not limited to churches, mosques, temples and religious groups;

(b) HIV/AIDS service organizations;

(c) Ryan White CARE Title I and Title II planning bodies;

(d) Schools, boards of education, and other State or local education agencies;

(e) State and local substance abuse agencies, community-based and other drug treatment or detoxification programs;

(f) Federally funded community projects, such as those funded by the Center for Substance Abuse Treatment (CSAT), Center for Substance Abuse Prevention (CSAP), Health Resource Services Administration (HRSA), Office of African American Health (OMH), and other federal agencies;

(g) Providers of services to youth in high risk situations (e.g., youth in shelters);

(h) State or local departments of mental health;

(i) Juvenile and adult criminal justice, correctional or parole systems and programs;

(j) Family planning and women's health agencies; and

(k) STDS and TB clinics and programs.

(2) Describe the activities that will be coordinated with each organization.

(3) Submit and include as attachments memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place. Memoranda of agreement from health departments should include a statement that your application has been reviewed.

h. Timeline: Provide a timeline that indicates the approximate date by which activities will be accomplished.

6. Program Evaluation Plan (not to exceed 6 pages): Describe how you will monitor progress to determine if the program objectives are being achieved and if the methods used to deliver the proposed activities are effective. Describe how data will be collected, analyzed, and used to evaluate and improve the program. Use the format and answer the questions below in laying out your evaluation plan. Note: Include samples of data collection tools in the attachments, if available.

7. Communications and Dissemination Plan (not to exceed 2 pages): Describe how you will share successful approaches and "lessons learned" with other organizations.

8. Plan for Acquiring Additional or Matching Resources (not to exceed 2 pages): Describe your plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

9. Budget/Staffing Breakdown and Justification (not scored)

a. Detailed Budget: Provide a detailed budget for each proposed activity. Justify all operating expenses in relation to the stated objectives and planned activities. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

For contracts, applicants should name the contractor, if known; describe the services to be performed which justifies the use of a contractor; provide a breakdown of and justification for the estimated costs of the contracts; the period of performance; the method of selection; and method of monitoring the contract.

b. Staffing Plan: Provide a job description for each position specifying job title; function, general duties, and activities; salary range or rate of pay; and the level of effort and percentage of time spent on activities funded through this cooperative agreement. If the identity of any key personnel who will fill a position is known, her/his name and resume should be attached. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project provide job descriptions.

11. Attachments

a. Proof of Eligibility

Each applicant must provide documentation that they comply with all eligibility requirements specified under the "Eligible Applicants" section of this program announcement. Applicants should provide a separate section within this Attachments section that is entitled Proof of Eligibility to include documentation that your organization has an established record of at least two years providing leadership and support for health-based programs, including HIV prevention or substance abuse prevention programs, within African American populations disproportionately affected by HIV/AIDS. Failure to provide the required documentation will result in disqualification.

b. Other Attachments

(1) A list of all collaborating or coordinating entities and memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative or coordinating relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place.

(2) Description of coalition organizations and original signed letters from the chief executive officers of each organization assuring their

understanding of the intent of this program announcement, the proposed program, their role in the proposed program, and the responsibilities of recipients.

(3) Training and Technical Assistance Plan which describes areas in which you anticipate needing technical assistance in designing, implementing, and evaluating your program and discuss how you will obtain needed technical assistance. Also, describe anticipated staff training needs related to the proposed program and how these needs will be met. Describe your plan for providing ongoing training to ensure that staff are knowledgeable about HIV and STD risks and prevention measures. This information will assist CDC to better address your needs and help you to identify technical assistance and training providers.

(4) A list summarizing services currently delivered and culturally, linguistically, and developmentally appropriate curricula and materials.

(5) A description of funds received from any source to conduct HIV/AIDS programs and other similar programs targeting the population proposed in the program plan. This summary must include: (a) the name of the sponsoring organization/source of income, amount of funding, a description of how the funds have been used, and the budget period; (b) a summary of the objectives and activities of the funded program(s); and (c) an assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. CDC awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting.

(6) Independent audit statements from a certified public accountant for the previous 2 years.

(7) A copy of your organization's current negotiated Federal indirect cost rate agreement, if applicable.

L. Evaluation Criteria—Category III—Curriculum Development and Training Program

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Abstract (not scored)

2. Assessment of Need and Justification for the Proposed Activities (15 points)

a. The extent to which the applicant soundly and convincingly documents a substantial need for the proposed curriculum and training program and activities; and the degree to which the proposed activities are consistent with the programmatic categories described in the Program Requirements Section. (5 points)

b. The degree to which the applicant describes the specific educational and training needs that the curriculum and training program will provide. (5 points)

c. The quality of the applicant's plan to ensure consistency with the State and local comprehensive HIV prevention plans and, if applicable, the adequacy with which the applicant demonstrates the rational for deviating from the jurisdiction's comprehensive HIV prevention plan. (5 points)

3. Long-term Goals (5 points). The quality of the applicant's stated goals and objectives and the extent to which they are consistent with the purpose of this cooperative agreement, as described in this program announcement.

4. Organizational History and Capacity (10 points). The extent of the applicant's documented experience, capacity, and ability to address the identified needs and implement the proposed curriculum and training program and activities, including:

a. How the applicant's organizational structure and planned collaborations (including constituent or affiliated organizations or networks) will support the proposed program activities, and how the proposed program will have the capacity to reach faith leaders serving African American communities disproportionately affected by HIV/AIDS and substance abuse; (2 points)

b. Applicant's past and current experience in developing and implementing effective HIV prevention curriculum or training strategies and activities, and in developing and implementing programs similar to those proposed in this application; (2 points)

c. Applicant's experience and ability in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, faith-based organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services; (2 points)

d. Applicant's capacity to provide culturally competent and appropriate services which respond effectively to the cultural, gender, environmental, social and theological characteristics of communities to be served, including documentation of any history of providing such services; (2 points) and

e. Plans to ensure capacity to implement proposed program where no direct experience or capacity currently exists within the applicant organization. (2 points)

5. Program Plan (50 total points)

a. Involvement of the target populations (5 points). The degree to which the applicant describes the involvement of affected populations in planning, implementing, and evaluating activities and services throughout the project period.

b. Involvement of faith leaders (5 points). The degree to which the applicant describes the involvement of faith leaders serving affected populations in planning, implementing, and evaluating activities and services throughout the project period.

c. Program Objectives (5 points) Degree to which the proposed objectives are specific, measurable, time-phased, related to the proposed activities, and consistent with the program's long-term goals; the extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives.

d. Plan of Operation (15 points) The quality of the applicant's plan for conducting program activities, and the potential effectiveness of the proposed activities in meeting objectives.

e. Appropriateness of the proposed program (5 points) The degree to which the applicant describes how the proposed program is culturally competent, sensitive to theological and doctrinal beliefs, developmentally and educationally appropriate, and linguistically-specific.

f. Scientific, Theoretical, Conceptual, or Program Experience Foundation for Proposed Activities (5 points) The degree to which the applicant provides a detailed description of the scientific, theoretical, conceptual, or program experience foundation on which the proposed activities are based and which support the potential effectiveness of these activities for addressing the stated need.

g. Coordination/Collaboration (5 points) Degree to which the applicant describes appropriate collaboration, coordination and linkages with other organizations and; evidence of collaborations (signed memoranda of agreement for each agency with which collaborative activities are proposed, and other evidence of collaboration that describe previous, current, as well as future areas of collaboration.)

h. Timeline (5 points) The extent to which the applicant's proposed timeline is specific and realistic.

6. Program Evaluation Plan (10 points) The potential of the evaluation plan to measure the effectiveness of program implementation, achievement of program objectives, and facilitate program improvement.

7. Communication and Dissemination Plan (5 points) The degree to which the applicant describes how successful approaches and "lessons learned" will be documented and shared with other organizations.

8. Plan for Acquiring Additional or Matching Resources (5 points) The degree to which the applicant describes the plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

9. Budget and Staffing Breakdown and Justification (not scored)

a. Personnel Appropriateness of the staffing pattern for the proposed project.

b. Budget Appropriateness of the budget for the proposed project.

Before final award decisions are made, CDC may make predecisional site visits to CBOs whose applications are highly ranked or review the items below with the local or State health department and applicant's board of directors:

a. The organizational and financial capability of the applicant to implement the proposed program.

b. The special programmatic conditions and technical assistance requirements of the applicant.

A business management and fiscal recipient capability assessment may be required of some applicants prior to the award of funds.

M. Submission and Deadline—Categories I, II, and III

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov (click on forms) or in the application kit. This and other CDC/ATSDR program announcements and application forms may be viewed or downloaded at this site. On or before August 5, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the Independent Review Group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

N. Other Requirements—Categories I, II, and III

1. Technical Reporting Requirements

Provide CDC with the original plus two copies of:

a. Progress reports quarterly, no more than 30 days after the end of each 3 month period;

b. Financial status report, no more than 90 days after the end of each budget period; and

c. Final financial status report and performance report, no more than 90 days after the end of the project period.

2. Send all reports to: Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

3. The following additional requirements are applicable to this program. For a complete description of each, see Attachment 3 in the application kit.

AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health system Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Health People 2000
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

O. Authority and Catalog of Federal Domestic Assistance Number—Categories I, II, and III

This program is authorized under sections 301(a) and 317 of the Public Health Service Act, 42 U.S.C. 241(a) and 247(b), as amended. The Catalog of Federal Domestic Assistance Number is 93.939.

P. Where To Obtain Additional Information—Categories I, II, and III

To receive additional written information and to request an application and tool kit, call NPIN at 1–800–458–5231 (TTY users: 1–800–243–7012); visit their web site: www.cdcnpin.org/program; send requests by fax to 1–888–282–7681; or sent requests by e-mail: application-gmc@cdcnpin.org. This information is also posted on the Division of HIV/AIDS Prevention (DHAP) Web site at http://www.cdc.gov/nchstp/hiv_aids/funding/toolkit/.

CDC maintains a Listserv (HIV–PREV) related to this program announcement. By subscribing to the HIV–PREV Listserv, members can submit questions and will receive information via e-mail with the latest news regarding the program announcement. Frequently asked questions on the Listserv will be posted to the Web site. You can subscribe to the Listserv on-line or via e-mail by sending a message to: listserv@listserv.cdc.gov and writing the following in the body of the message: subscribe hiv-prev first name last name.

Pre-application Audio-conference Information:

June 22 (1:00–2:30 p.m. EDT)
June 23 (1:00–2:30 p.m. EDT)
June 30 (1:00–2:30 p.m. EDT)

The telephone number for all calls is: 800–713.1971 and the pass code (when asked by the automated voice) is 634310 and the name of the audio-conference (Faith).

Prospective applicants are strongly encouraged to participate in one of the scheduled audio-conferences. These audio conferences will include information on the application and business management requirements, and how to access additional pre-application resources relevant to application development. Prospective applicants are strongly encouraged to read and become familiar with this program announcement before participating in the audio-conferences.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Julia L. Valentine, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Center for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Mailstop E–15, Atlanta, GA 30341–4146, Telephone Number: 770–488–2732, Email: jxv1@cdc.gov.

For program technical assistance, contact: Qairo K. Ali or Samuel Taveras, Community Assistance, Planning, and National Partnerships Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mailstop E–58, Atlanta, GA 30333, Telephone Number: 404–639–5224 and 404–639–5241, Email: cda1@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov.

Dated: June 17, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–15917 Filed 6–18–99; 3:10 pm]

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federal register

Wednesday
June 23, 1999

Part XI

The President

Proclamation 7205—Father's Day, 1999

Federal Register
Vol. 64, No. 120
Wednesday, June 23, 1999

Presidential Documents

Title 3—

The President

Proclamation 7205 of June 18, 1999

Father's Day, 1999

By the President of the United States of America

A Proclamation

Each year on Father's Day, Americans take special joy in remembering the many cherished moments they have shared with their fathers through the years. Reading stories before bedtime, playing catch after dinner, camping out in the backyard, sharing driving lessons—at these moments and countless others throughout a lifetime, devoted fathers are there to guide their sons and daughters, to instill confidence in them, and to provide for them and protect them in times of need.

The impact of these moments on children's development and future is immeasurable. Although children may not understand it until they become parents themselves, these are the times when fathers impart to their sons and daughters strong values and teach them important lessons about love, responsibility, faith, hard work, and determination. In these moments, fathers imbue in their children the strength and self-esteem they need to achieve their full potential.

As children grow and mature—from toddlers carried on their fathers' shoulders to teenagers who need help navigating the challenges of adolescence to young men and women who need guidance on life, love, family, and career—their relationships with their fathers change as well. Yet, the need for a father's friendship and wisdom continues to grow; and throughout all the seasons of life, fathers remain role models, teachers, heroes, and friends.

Vice President Gore and I have challenged fathers to be actively involved in their children's lives and to provide both emotional and financial support. Last June, the Vice President released a report showing that children who grow up without fathers are more likely to do poorly in school, to get into trouble with the law, and to have difficulty in getting and keeping a job. But our fathers cannot always meet their responsibilities to their children without help. That is why it is crucial that we lift up our fathers through efforts like the reauthorization of the Welfare-to-Work program so that more low income fathers can work, pay child support, and become more involved with their children.

We can never truly repay our fathers—whether biological, adoptive, foster, or stepfather—for their many precious gifts to us, for their steadfast faith in our potential and abilities, for their unwavering devotion and unconditional love. We can, however, express our deep appreciation for all they have done and thank them for the many sacrifices they have made to create a better life for us. There is no more fitting national tribute to fathers than reserving a day in their honor, and there is no more appropriate celebration of their profound impact on the lives of their children and the strength of our Nation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 20, 1999, as Father's Day. I invite the States, communities across the country, and all the citizens of the United States to observe this day with appropriate ceremonies and activities to express our deep appreciation and abiding love for our fathers.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of June, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

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H.R. 1376/P.L. 106–35
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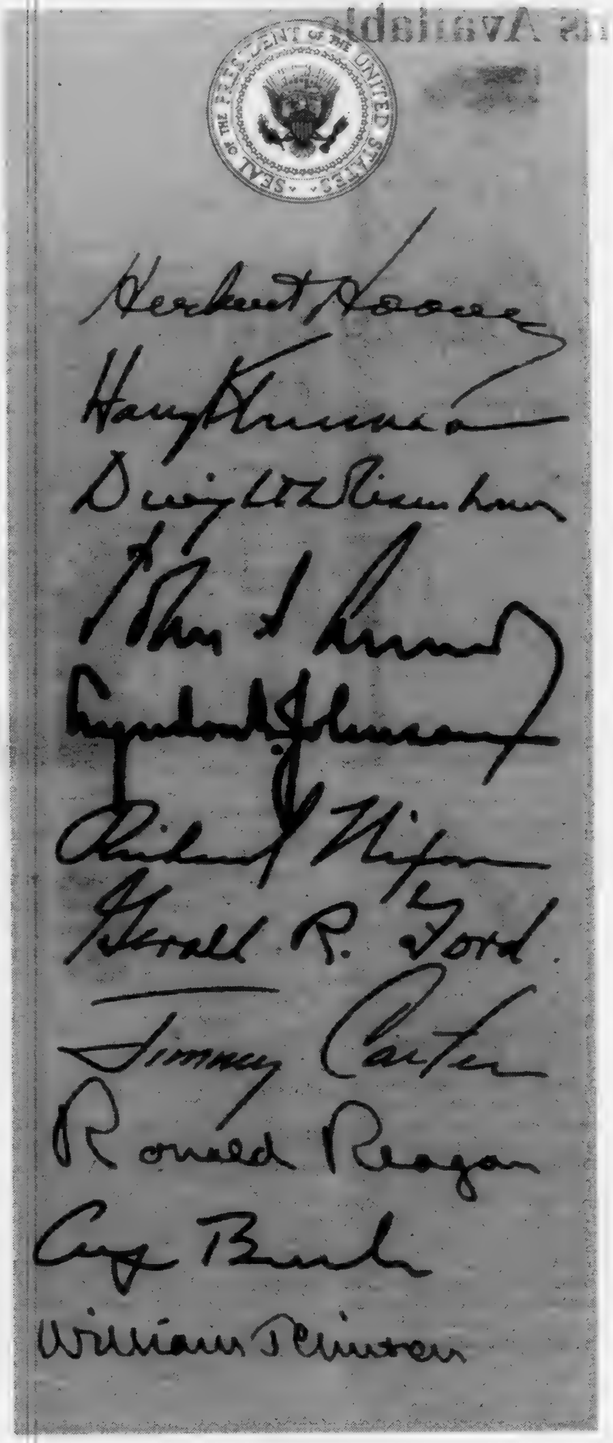
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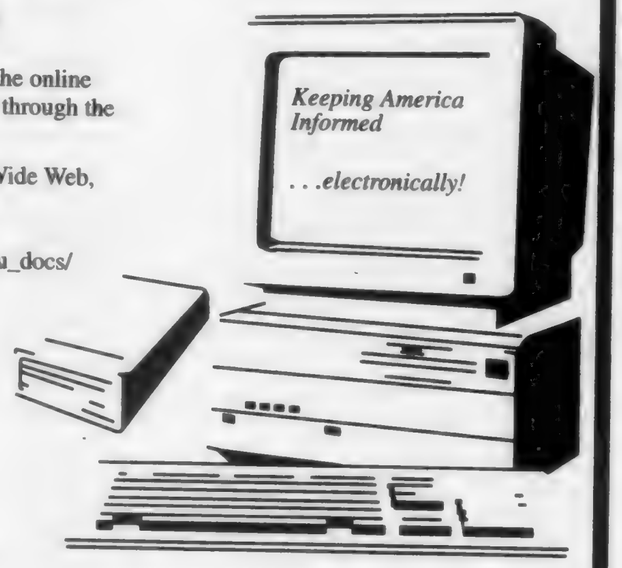
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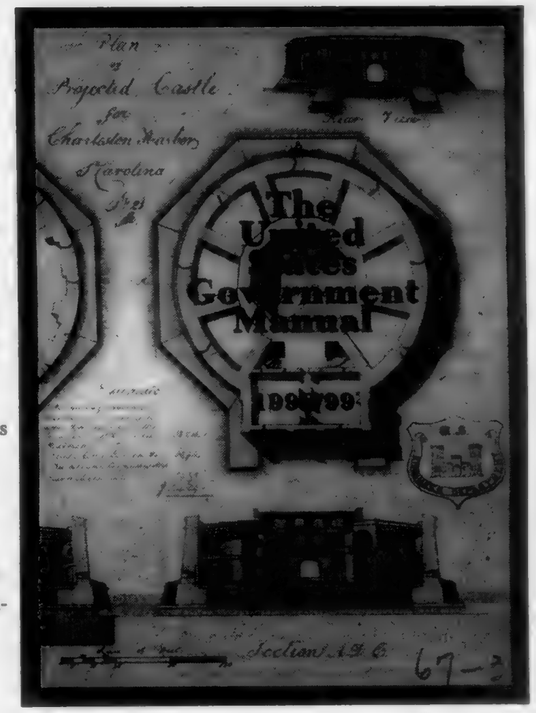
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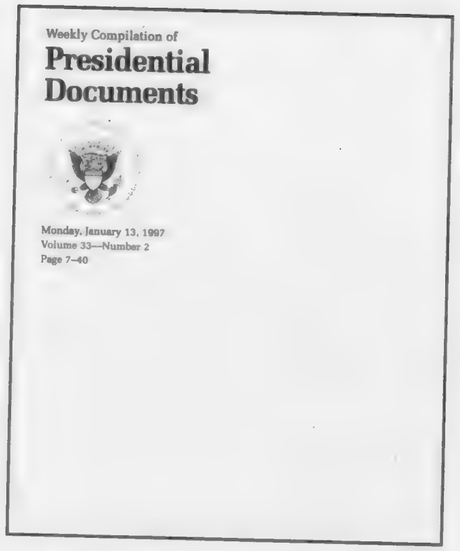
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Presidential Documents

Title 3—

The President

Presidential Determination No. 99–29 of June 17, 1999

Suspension of Limitation Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the "Act"), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitation set forth in section 3(b) of the Act.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.

William J. Clinton

THE WHITE HOUSE,
Washington, June 17, 1999.

[FR Doc. 99–16233
Filed 6–23–99; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 64, No. 121
Thursday, June 24, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV99–923–1 IFR]

Sweet Cherries Grown in Designated Counties in Washington; Change in Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the pack requirements currently prescribed under the Washington cherry marketing order. The marketing order regulates the handling of sweet cherries grown in designated counties in Washington and is administered locally by the Washington Cherry Marketing Committee (Committee). This rule establishes two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation. The two additional row count/row size designations are 8 row (8$^{4}/_{64}$ inches in diameter) and 8½ row (7$^{9}/_{64}$ inches in diameter). This change will allow the Washington cherry industry to further differentiate cherries by row count/row size. The change is intended to provide handlers more marketing flexibility, clarify the choices available to buyers, and improve returns to producers.

DATES: Effective June 25, 1999; comments received by August 23, 1999 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 134 and Marketing Order No. 923, both as amended (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule changes the pack requirements currently prescribed under the Washington cherry marketing order. This rule establishes two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation.

Section 923.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety or varieties of cherries grown in any district or districts of the production area during any period or periods. Section 923.53 further authorizes the modification, suspension, or termination of regulations issued under § 923.52.

Minimum grade, size, quality, maturity, container, and pack requirements for cherries regulated under the order are specified in § 923.322. Paragraph (e) of that section provides that when containers of cherries are marked with a row count/row size designation the row count/row size marked shall be one of those shown in Column 1 of the following table and at least 90 percent, by count, of the cherries in any lot shall be not smaller than the corresponding diameter shown in Column 2 of the table: *Provided*, That the content of individual containers in the lot are not limited as to the percentage of undersize; but the total of

undersize of the entire lot shall be within the tolerance specified.

TABLE

Column 1, row count/row size	Column 2 diameter (inches)
9	75/64
9½	71/64
10	67/64
10½	64/64
11	61/64
11½	57/64
12	54/64

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington cherries which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its May 13, 1999, meeting, the Committee unanimously recommended changing the pack requirements currently prescribed under the Washington cherry marketing order. The Committee recommended establishing two additional row count/row size designations for Washington cherries when containers are marked with a row count/row size designation. The additional row count/row size designations recommended are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter). The Committee requested that this rule be effective as soon as possible as shipments of the 1999 Washington cherry crop may begin as early as mid-June.

When the current row count/row sizes were modified in 1993, cherry sizes as large as 8 and 8½ row were not produced. The new varieties developed since that time tend to size larger. Further differentiation by row count/row size will allow handlers and producers to benefit from the extra effort and costs involved in producing and marketing larger sized cherries, and accrue the premium prices generally received for large-sized cherries.

Price data during peak shipment periods shows an increase of $2 per container for each row count/row size designation increase. Therefore, it is anticipated that 8 row and 8½ row cherries will receive an additional $2 and $4 per container, respectively, over 9 row cherries. While the current percentage of larger cherries produced and shipped is small, the production of large-sized cherry varieties is trending upward.

The largest row count/row size now designated is 9 row (75/64 inches in diameter). Hence, handlers marketing cherries larger than 9 row are not able to differentiate their pack to receive the higher prices generally received for larger-sized cherries. The Committee believes that differentiation by row count/row size will provide handlers more marketing flexibility and clarify the choices available to buyers. By allowing handlers the opportunity to differentiate these cherries with the larger row count/row size designations, the Committee believes that producers' returns will improve.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of Washington cherries who are subject to regulation under the marketing order and approximately 1,100 cherry producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 93 percent of the Washington cherry handlers ship under $5,000,000 worth of cherries and 7 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Washington cherry producers, the average annual grower revenue is approximately $100,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of Washington cherries may be classified as small entities.

This rule changes the pack requirements currently prescribed under the Washington cherry marketing order by establishing two additional row count/row size designations for Washington cherries when containers are marked with a row count/row size designation.

At its May 13, 1999, meeting, the Committee unanimously recommended changing the pack requirements currently prescribed under the Washington cherry marketing order. The Committee recommended establishing two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation. The additional row count/row size designations recommended are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter).

When the current row count/row sizes were modified in 1993, cherry sizes as large as 8 and 8½ row were not produced. The new varieties developed since that time tend to size larger. Further differentiation by row count/row size cherries will allow handlers and producers to benefit from the extra effort and costs involved in producing and marketing larger-sized cherries, and accrue the premium prices generally received for large-sized cherries.

Price data for peak shipment periods shows an increase of $2 per container for each row count/row size designation increase. Therefore, it is anticipated that 8 row and 8½ row cherries will receive an additional $2 and $4 per container, respectively, over 9 row cherries. While the current percentage of larger cherries is small, the production of large-sized cherry varieties is trending upward.

The largest row count/row size now designated is 9 row (75/64 inches in diameter). Hence, handlers marketing cherries larger than 9 row are not able to differentiate their pack to receive the higher prices generally received for larger-sized cherries. The Committee believes that differentiation by row count/row size will provide handlers more marketing flexibility and clarify the choices available to buyers. By allowing handlers the opportunity to differentiate these cherries with the larger row count/row size designations, the Committee believes that producers' returns will improve.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will allow handlers to market larger cherries in containers designated with the larger row counts/row sizes. Accurate identification of the sizes packed in the containers is expected to benefit buyers. Further, this rule will allow handlers greater flexibility in marketing the Washington cherry crop.

The Committee did not discuss any alternatives to this rule, except not to allow the larger row count/row size designations for larger cherries. This was not acceptable because producers and handlers would not be able to reap the benefits expected from further differentiation of the larger sizes.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Washington cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 13, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 15 members, of which 5 are handlers and 10 are producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on changes to the pack requirements currently prescribed under the Washington cherry marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule changes the pack requirements for Washington cherries which should be in effect as soon as possible as 1999–2000 season shipments of Washington cherries are expected to begin shortly, and this action should apply to as much of the season's shipments as possible; (2) this rule was unanimously recommended by the Committee at an open public meeting and all interested persons had an opportunity to express their views and provide input; (3) Washington cherry handlers are aware of this rule and need no additional time to comply with the relaxed requirements; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 923 is amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR Part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 923.322 is amended by revising paragraph (e) to read as follows:

§ 923.322 Washington Cherry Regulation 22.

* * * * *

(e) *Pack.* (1) When containers of cherries are marked with a row count/row size designation the row count/row size marked shall be one of those shown in Column 1 of the following table and at least 90 percent, by count, of the cherries in any lot shall be not smaller than the corresponding diameter shown in Column 2 of such table: *Provided*, That the content of individual containers in the lot are not limited as to the percentage of undersize; but the total of undersize of the entire lot shall be within the tolerance specified.

TABLE

Column 1, row count/row size	Column 2 diameter (inches)
8	84/64
8½	79/64
9	75/64
9½	71/64
10	67/64
10½	64/64
11	61/64
11½	57/64
12	54/64

* * * * *

Dated: June 18, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–16055 Filed 6–23–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–26–AD; Amendment 39–11205; AD 99–11–04]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Model S–76A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–11–04 which was sent previously to all known U.S. owners and operators of Sikorsky Aircraft Model S–76A helicopters by individual letters. This AD requires, before further flight, either revising the flight manual to show reduced single-engine rotorcraft performance or determining if an AC generator interlock system is installed. If an interlock system is installed, the flight manual revision is not required. This amendment is prompted by the discovery that Sikorsky Aircraft Model S–76A helicopters with Turbomeca Arriel 1S1 engines may fail to achieve the specified single-engine rotorcraft performance if an AC generator interlock system is not installed. The actions specified by this AD are intended to prevent the inability of the rotorcraft to achieve certain published one-engine-inoperative performance.

DATES: Effective July 9, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–11–04, issued on May 13, 1999, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–26–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Robert Mann, Aerospace Engineer,

Boston Aircraft Certification Office, ANE–150, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On May 13, 1999, the FAA issued Priority Letter AD 99–11–04, applicable to Sikorsky Aircraft Model S–76A helicopters, which requires, before further flight, either revising the flight manual to show reduced single-engine rotorcraft performance or determining if an AC generator interlock system is installed. If an interlock system is installed, the flight manual revision is not required. That action was prompted by the discovery that Sikorsky Aircraft Model S–76A helicopters with Turbomeca Arriel 1S1 engines may fail to achieve the specified single-engine rotorcraft performance if an AC generator interlock system is not installed. This condition, if not corrected, could result in the inability of the rotorcraft to achieve certain published one-engine-inoperative performance.

Since the unsafe condition described is likely to exist or develop on other Sikorsky Aircraft Model S–76A helicopters of the same type design, the FAA issued Priority Letter AD 99–11–04 to reduce the published Category "A" maximum takeoff and landing gross weights and single-engine forward climb performance limitations of the Rotorcraft Flight Manual (RFM), when an AC generator interlock system is not installed. The AD requires, before further flight, revising the RFM to publish reduction of Category "A" weight by 150 pounds and single-engine performance by 50 feet per minute, or determining whether an AC generator interlock system has been installed. If the AC generator interlock system is not installed, the revision to the RFM is required. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, revising the flight manual to show reduced single-engine rotorcraft performance or determining if an AC generator interlock system is installed is required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 13, 1999, to all known U.S. owners and operators of Sikorsky Aircraft Model S–76A helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. There is a minor editorial change in this published version of the priority letter AD; the FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 5 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to revise the RFM, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $150 to revise the RFM on the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–26–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–11–04 Sikorsky Aircraft Corporation: Amendment 39–11205. Docket No. 99–SW–26–AD.

Applicability: Sikorsky Model S–76A helicopters with Turbomeca Arriel 1S1 engines installed in accordance with Supplemental Type Certificate SH568NE, including drawing number 76070–30601.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Before further flight, unless accomplished previously.

To reduce the published Category "A" maximum takeoff and landing gross weights and single-engine forward climb performance limitations of the Rotorcraft Flight Manual (RFM), when an AC generator interlock system is not installed, accomplish the following:

(a) Insert Sikorsky Model S–76A RFM Supplement (RFMS) No. 29B, Temporary Revision 1, dated April 9, 1999, into RFMS No. 29B, dated December 21, 1993, or

(b) Determine if the AC generator interlock relays are installed by conducting the following inspection:

(1) Uncover the No. 2 Relay Panel, located in the right side of the cockpit overhead. This panel is also referred to as the right-hand panel.

(2) Inspect for the presence of the AC generator interlock relays identified as K43 and K44 (two relays) or K46, K47, and K48 (three relays).

Note 2: For S–76A helicopters, serial numbers (S/N's) 760001 through 760237, the AC generator interlock relays are wired through splice groups to the K31, K32, K11, and K13 relays. For S–76A helicopters, S/N's 760238 and higher, the AC generator interlock relays are wired through splice groups to the K11 and K13 relays. Depending on how and when each helicopter was modified, the labels on these relays could be K43 and K44 (two relays) or K46, K47, and K48 (three relays).

Note 3: Sikorsky Aircraft Corporation Alert Service Bulletin 76–77–4A, Revision A, dated May 5, 1999, pertains to the subject of this AD.

(3) If the AC generator interlock relays are installed, no further action is required by this AD.

(4) If the AC generator interlock relays are not installed, insert Sikorsky S–76A RFMS No. 29B, Temporary Revision 1, dated April 9, 1999, into RFMS No. 29B, dated December 21, 1993.

(c) This AD revises the Limitations Section of the RFM for helicopters on which the AC generator interlock relays are not installed by inserting a new RFMS revision limiting Category "A" gross weight and reducing published climb performance.

(d) Remove Sikorsky Model S–76A RFMS No. 29B, Temporary Revision 1, dated April 9, 1999, inserted into RFMS No. 29B, dated December 21, 1993, from the RFM upon installation of one of the following, as applicable:

(1) For Model S–76A helicopters, S/N's 760001 through 760237, AC generator interlock kit (kit), part number (P/N) 33776–84790–012.

(2) For Model S–76A helicopters, S/N's 760238 and higher, kit, P/N 33776–84790–011.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on July 9, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–11–04, issued May 13, 1999, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on June 15, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–15901 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

RIN 2120–AA64

[Docket No. 98–SW–71–AD; Amendment 39–11204; AD 99–13–11]

Airworthiness Directives; Robinson Helicopter Company (Robinson) Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Robinson Model R44 helicopters, that requires installing a shutoff clamp on the auxiliary fuel tank sump drain tube (drain tube) and a placard decal to alert operators as to the proper use of the auxiliary fuel tank drain. This amendment is prompted by a report of fuel leaking from a drain tube opening in the area of the horizontal and vertical firewalls. The actions specified by this AD are intended to prevent fuel leaks from the drain tube that could cause a fire and subsequent loss of control of the helicopter.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5265; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Robinson Model R44 helicopters was published in the **Federal Register** on March 22, 1999 (64 FR 13732). That action proposed to require installation of a shutoff clamp on the drain tube to prevent fuel leakage and a placard decal to alert operators as to the proper use of the auxiliary fuel tank drain.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with only minor editorial changes that will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 200 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. The manufacturer has indicated that each operator will be provided parts at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–13–11 Robinson Helicopter Company: Amendment 39–11204. Docket No. 98–SW–71–AD.

Applicability: Model R44 helicopters, Serial Numbers 0002 through 0529 except 0440, 0485, 0512, 0515, 0519, 0526, 0527, and 0528, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Within 100 hours time-in-service or 3 calendar months, whichever occurs first.

To prevent fuel leaks from the auxiliary fuel tank sump drain, which could cause a fire and subsequent loss of control of the helicopter, accomplish the following:

(a) Install a shutoff clamp, part number (P/N) D663–1, by sliding it onto the auxiliary fuel tank sump drain tube, P/N A729–7, as shown in Figure 1.

(b) Install placard decal, P/N A654–93, as shown in Figure 1.

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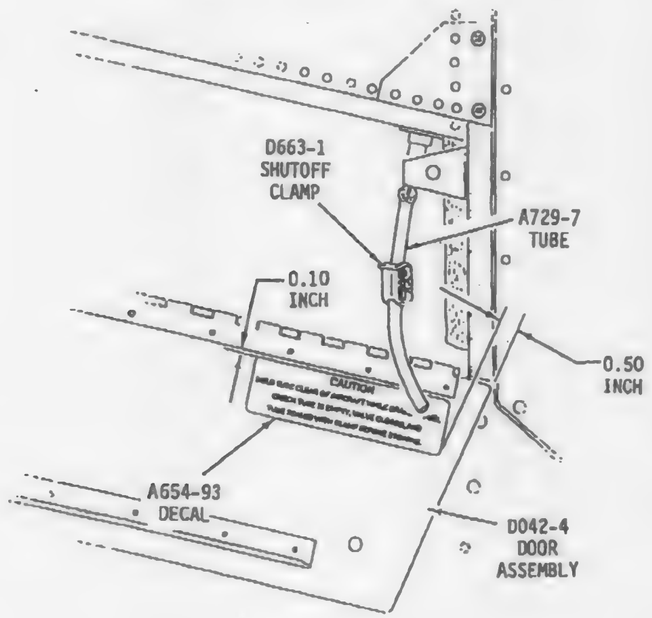


Figure 1

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(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on July 29, 1999.

Issued in Fort Worth, Texas, on June 15, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–15903 Filed 6–23–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–23–AD; Amendment 39–11207; AD 99–13–12]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 206L, 206L–1, 206L–3, and 206L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Bell Helicopter Textron Canada (BHTC) Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, that currently requires visual inspections and visual checks at specified time intervals, and a fluorescent-penetrant inspection (FPI) for any cracks in the tailboom skins around the horizontal stabilizer openings. Inserting a copy of the priority letter AD into the Rotorcraft Flight Manual (RFM) is also required. This amendment revises the inspection procedures and specified time intervals mandated by the priority letter AD. This amendment is prompted by crack growth analysis that indicates the need to detect cracks before they propagate from underneath the horizontal stabilizer supports. The actions specified by this AD are intended to detect a crack in the tailboom skin that could result in separation of the tailboom from the helicopter and subsequent loss of control of the helicopter.

DATES: Effective July 9, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–23–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On January 6, 1999, the FAA issued Priority Letter AD 99–02–01, applicable to BHTC Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, to require visual inspections and visual checks at specified time intervals, and a FPI for any cracks in the tailboom skins around the horizontal stabilizer openings. Inserting a copy of the priority letter AD into the RFM is also required. That action was prompted by 7 reports of fatigue cracks that propagated from the edges of the horizontal stabilizer openings in the tailboom skins. That condition, if not corrected, could result in separation of the tailboom and subsequent loss of control of the helicopter.

Since the issuance of that priority letter AD, further review of crack growth rates has shown that cracks need to be detected before they propagate from underneath the horizontal stabilizer supports. Therefore, this superseding AD requires, at specified time intervals, not just visually inspecting and checking the tailboom skins in the area of the horizontal stabilizer supports, but also removing the horizontal stabilizer supports and visually inspecting the edges of the tailboom skins around the horizontal stabilizer openings for cracks. Removing the horizontal stabilizer supports will allow the detection of cracks at an earlier stage.

Transport Canada, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on BHTC Model 206L, 206L–1, 206L–3, and 206L–4 helicopters. Transport Canada advises that cracks were found on the tailboom skins in the area of the horizontal stabilizer.

Bell Helicopter Textron has issued BHTC Alert Service Bulletin No. 206L–98–114, dated November 25, 1998, which specifies a pilot preflight check for cracks in the horizontal stabilizer area before the first flight of each day. Transport Canada classified this service bulletin as mandatory and issued AD No. CF–98–42R1, dated February 16, 1999, which states that a review of crack growth rates indicates the need to detect cracks earlier. In addition to the preflight check for cracks introduced by the service bulletin, the Transport Canada AD requires removing the horizontal stabilizer supports and visually inspecting the tailboom skin underneath the horizontal stabilizer supports at specified time intervals.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 206L, 206L–1, 206L–3, and 206L–4 helicopters of the same type designs, this AD supersedes Priority Letter AD 99–02–01 to require:

- Prior to further flight, and thereafter, at intervals not to exceed 10 hours time-in-service (TIS) until a one-time FPI is accomplished, a visual inspection for any crack in the tailboom skins around the horizontal stabilizer supports;
- At intervals not to exceed 5 hours TIS, a visual preflight pilot check for any crack in the tailboom skins around the horizontal stabilizer supports;
- Within 50 hours TIS, a one-time FPI for any crack in the edge of the tailboom skins around the left and right horizontal stabilizer openings on the tailboom; and
- After completion of the one-time FPI, at intervals not to exceed 100 hours TIS, a visual inspection of the entire edge of the horizontal stabilizer opening on both sides of the tailboom for any crack.

The visual check that is required at intervals not to exceed 5 hours TIS may be performed by an owner/operator (pilot), and must be entered into the aircraft records showing compliance with paragraph (b) of this AD in accordance with sections 43.11 and

91.417 (a)(2)(v) of the Federal Aviation Regulations (14 CFR sections 43.11 and 91.417 (a)(2)(v)). This AD allows a pilot to perform this check because it involves only a visual check for cracking in the tailboom skins, and can be performed equally well by a pilot or mechanic. These checks are additional measures to ensure that a crack that is visible without the aid of a magnifying glass has not developed during the time between maintenance inspections.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter, and this AD must be issued immediately. Therefore, a visual inspection to detect any crack using a 10-power or higher magnifying glass is required before further flight and at intervals not to exceed 10 hours TIS until accomplishing the FPI; a visual preflight pilot check for any crack is required at intervals not to exceed 5 hours TIS; a one-time FPI is required within 50 hours TIS; and after completion of the one-time FPI and at intervals not to exceed 100 hours TIS, a visual inspection for cracks around the left and right horizontal stabilizer opening on both sides of the tailboom using a 10-power or higher magnifying glass is required.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 1,546 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to conduct a FPI; 0.5 work hour to conduct a visual inspection; 0.5 work hour to conduct the repetitive visual check; and 20 work hours to replace the tailboom, if necessary. The average labor rate is $60 per work hour. Required parts will cost approximately $22,000 per tailboom. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $278,280 to conduct the initial fluorescent-penetrant inspections and to conduct one of the inspections and one of the visual checks for the entire fleet; $36,145,480 if it is necessary to replace the tailboom on the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–23–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–11207, to read as follows:

AD 99–13–12 Bell Helicopter Textron Canada: Amendment 39–11207. Docket No. 99–SW–23–AD. Supersedes Priority Letter AD 99–02–01, Docket No. 98–SW–83–AD.

Applicability:

- Model 206L helicopters, serial numbers (S/N) 45004 through 45153, and 46601 through 46617;
- Model 206L–1 helicopters, S/N 45154 through 45790;
- Model 206L–3 helicopters, S/N 51001 through 51613; and
- Model 206L–4 helicopters, S/N 52001 and higher,

with tailboom, part number (P/N) 206–033–004-all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect a crack in the tailboom skin and to prevent separation of the tailboom from the helicopter and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, and thereafter, at intervals not to exceed 10 hours time-in-service (TIS) until accomplishing the one-time fluorescent-penetrant inspection (FPI) required by paragraph (c)(2) of this AD,

visually inspect for any crack in the shaded areas shown in Figure 1. Use a 10-power or higher magnifying glass. If any crack is found, replace the tailboom with an airworthy tailboom.

(b) At intervals not to exceed 5 hours TIS, visually conduct a preflight check of the shaded areas shown in Figure 1 for any crack. If any crack is found, replace the tailboom with an airworthy tailboom. The visual check may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with paragraph (b) of this AD in accordance with sections 43.11 and 91.417 (a)(2)(v) of the Federal Aviation Regulations (14 CFR sections 43.11 and 91.417 (a)(2)(v)).

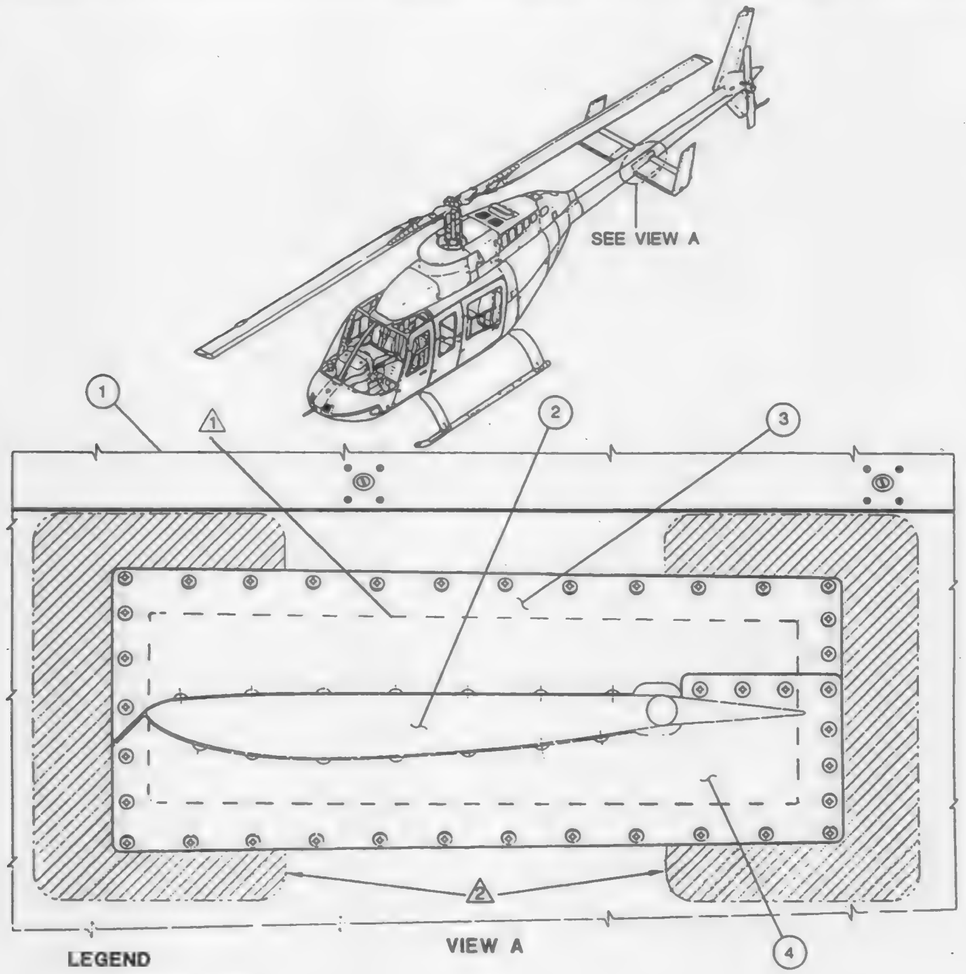
(c) Within 50 hours TIS:

(1) Remove all 4 horizontal stabilizer supports, P/N 206–023–100-all dash numbers, from the tailboom and the horizontal stabilizer.

(2) Perform a one-time FPI of the edges of the tailboom skins for any crack around the left and right horizontal stabilizer openings (Figure 1). Remove paint and primer to inspect the edges and exterior skin surface in the skin area at least ¾ inch around the edges of the horizontal stabilizer openings.

(3) If a crack is found, replace the tailboom with an airworthy tailboom.

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LEGEND

1. Tailboom assembly
2. Horizontal stabilizer
3. Upper support
4. Lower support

NOTES

2 Inspect for a crack in these two areas on both sides of the tailboom.

1 Inspect entire edge of stabilizer opening on both sides of the tailboom.

Figure 1

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(d) At intervals not to exceed 100 hours TIS after completion of the FPI, accomplish the following:

(1) Remove all 4 horizontal stabilizer supports, P/N 206–023–100-all dash numbers, from the tailboom and the horizontal stabilizer.

(2) Visually inspect the entire edge of the horizontal stabilizer opening on both sides of the tailboom for any crack using a 10-power or higher magnifying glass.

(3) If any crack is found, replace the tailboom with an airworthy tailboom.

(e) Insert a copy of this AD into the Rotorcraft Flight Manual.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(g) Special flight permits may be issued for a one-time flight, not to exceed 5 hours TIS and a maximum of one landing, in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished. The visual preflight check required by paragraph (b) must be accomplished prior to making a one-time flight.

(h) This amendment becomes effective on July 9, 1999.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–98–42R1, dated February 16, 1999.

Issued in Fort Worth, Texas, on June 16, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–15925 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–97–2353; 96–20]

RIN 2125–AD63

National Standards for Traffic Control Devices; Metric Conversion

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule adopts as final, with changes, the interim rule concerning national standards for traffic control devices, metric conversion, published on Tuesday, June 11, 1996. This document makes minor changes to certain regulatory citations and corrects the titles of certain publications incorporated by reference.

DATES: This final rule is effective June 24, 1999. The incorporation by reference of certain publications listed in the regulations was reapproved by the Director of the Federal Register as of June 24, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Transportation Operations (HOTO), (202) 366–9064, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366–1377, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

You may download an electronic copy of this document by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

The text for Part 1 of the MUTCD is available from the FHWA Office of Transportation Operations (HOTO or from the FHWA Home Page at the URL: *http://www.ohs.fhwa.dot.gov/devices/mutcd.html*.

Background

Section 1211(d) of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107) removed the target date for metric conversion, thereby allowing the State departments of transportation (DOTs) the option of converting to the International System of Measurements (SI). Section 205(c)(2) of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568) was amended by striking the language "before September 30, 2000," which removes the mandate that States convert to SI. Most of the State DOTs have substantially converted their project development and construction processes to SI. Full conversion by all the State DOTs remains an FHWA goal since it will improve efficiency within the highway construction industry by reducing translation errors and enabling the contractors, consultants, fabricators and materials suppliers to utilize a single system of units. The FHWA believes that it is in the best interest of the highway community to expedite the metrication process and ensure compatibility within the highway industry and with other industries. Reversion to inch-pound units by some States will perpetuate a confusing mix of measurement systems.

The FHWA is adopting, as its policy for the design of traffic control devices for use on all roads open to public travel, two American Association of State Highway and Transportation Officials' (AASHTO) publications: "Guide to Metric Conversion, AASHTO, 1993," and "Traffic Engineering Metric Conversion Factors, 1993—Addendum to the Guide to Metric Conversion, AASHTO, October 1993."

The FHWA's Metric Conversion Policy, published at 57 FR 24843 on June 11, 1992, requires that newly authorized Federal-aid construction contracts be in metric units only by September 30, 1996. The National Highway System Designation Act of 1995 postponed this requirement until September 30, 2000. Many States have progressed in their conversion activities to a point that it is impractical not to continue the transition into full metric use. Because of the long lead times required for highway construction projects, planning for projects is already underway and, in fact, the majority of the Federal-aid highway construction program nationwide is currently being constructed in metric units. It is the intent of this rulemaking to assure the States and other FHWA partners that the metric conversions used to formulate their plans are consistent nationwide.

The traffic control device design and applications standards have been adopted by the FHWA for use on all streets and highways open to public travel and are incorporated by reference in 23 CFR Part 655, subpart F. The current design standards are on file at the Office of the Federal Register in Washington, D.C. and are available for inspection from the FHWA Washington Headquarters and all FHWA Division and Resource Centers as prescribed in 49 CFR Part 7. Copies of the current AASHTO publications are also available for purchase from the American Association of State Highway and

Transportation Officials, Suite 249, 444 North Capitol Street NW., Washington, D.C. 20001.

The American Association of State Highway and Transportation Officials (AASHTO) is an organization which represents the 52 State highway and transportation agencies (including the District of Columbia and Puerto Rico). Its members consist of the duly constituted heads and other chief officials of those 52 agencies. The Secretary of the United States Department of Transportation (DOT) is an ex officio member, and DOT officials participate in various AASHTO activities as non-voting representatives. Among other functions, the AASHTO develops and issues standards, specifications, policies, guides, and related materials for use by the States for highway projects. Many of the standards adopted by the FHWA and incorporated in 23 CFR Part 655 were developed and issued by the AASHTO or by organizations of which it is a major voting member. Revisions made to such documents by the AASHTO are independently reviewed and adopted by the FHWA before they are applied to street and highway projects.

The FHWA initiated a phased five-year plan to convert its activities and business operations to the metric system of weights and measures as required by the Metric Conversion Act of 1975 ((Pub. L. 94–168, 89 Stat. 1007) as amended by sec. 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 Stat. 1107, 1451)) (Metric Act). The TEA–21, section 1211(d), does not change the requirements placed on the FHWA by the Omnibus Trade and Competitiveness Act of 1988. Therefore, the FHWA will continue to use SI in its daily business activities. In keeping with existing policy, correspondence or publications intended for a broad audience which includes the general public may use dual units with the SI value first followed by the inch-pound value in parentheses. All other documents should be in SI only.

The AASHTO developed and published "Traffic Engineering Metric Conversion Factors, 1993—Addendum to the Guide to Metric Conversion, AASHTO, October 1993," listing the conversion values for nationwide uniformity. Through the interim final rule, the FHWA adopted the metric conversion traffic engineering values established by the AASHTO in the publications entitled "Guide to Metric Conversion, AASHTO, 1993," and "Traffic Engineering Metric Conversion Factors, 1993—Addendum to the Guide to Metric Conversion, AASHTO, October 1993." Included are metric values for determining the metric sizes for signs and pavement markings.

The language in the interim final rule cited to 49 CFR Part 7, Appendix D. Please note that the appendices to Part 7 have been removed. Therefore, the new citation has been changed to 49 CFR Part 7.

Discussion of Comments

An interim final rule for 23 CFR 655.601 was published on June 11, 1996, at 61 FR 29624. Interested persons were invited to participate in this rulemaking by submitting written comments to FHWA Docket No. 96–20 on or before August 11, 1996. The FHWA has rearranged its docket system to accord with the electronic system adopted by the Department of Transportation. A new docket was established to receive the information with the number FHWA Docket FHWA–97–2353. Material previously submitted to Docket 96–20 was transferred to FHWA–97–2353. Comments were received from three State highway agencies, one local jurisdiction, one association, one traffic consultant, and one safety group. Five of these either favored metric conversion, did not address the issue of AASHTO guidelines, or offered suggestions for improving the guidelines.

Two commenters, Advocates for Highway and Auto Safety (AHAS) and Connecticut Construction Industries Association, Inc. (CCIA), opposed the FHWA's adoption of the AASHTO metric conversion publications as the agency's interim policy for design of traffic control devices without prior notice and the opportunity for comment. These commenters objected to issuance of the interim final rule, alleging that the FHWA has truncated proper rulemaking procedures. The CCIA specifically requests that the FHWA rescind the rule until such time as it is adopted after notice of an opportunity for comment.

The FHWA believes prior notice and opportunity for comment are unnecessary because the interim metric value documents adopted here are functionally equivalent to the English measurements already adopted by the FHWA pursuant to notice and comment procedures in various revisions of the Manual on Uniform Traffic Control Devices (MUTCD) and, at the same time, allow easier and more manageable conversions to metric measurements. In addition, as indicated in the prior notice, we anticipate that the AASHTO metric values adopted here will be used only on an interim basis until the MUTCD is revised to incorporate design values converted to the metric system. This action is expected during 2001.

We also reiterate the prior finding that imposition of notice and comment procedures here would be contrary to the public interest. Adoption as a final rule of the interim metric values provides States and other FHWA partners, including highway construction contractors, with necessary certainty and continuity as they formulate their plans for metric projects. Almost all of the States continued their metric conversion activities to meet the previously established deadline and are either awarding contracts in metric or plan to do so in the near future. Comments of State transportation agencies introduced here support the view that availability of these metric standards will assist States markedly in developing and achieving uniformity in project plans and in adopting metric standards for traffic engineering.

Furthermore, we expect these particular metric values to be used on an interim basis only until the MUTCD with design values converted to the metric system is adopted and published.

Prior notice and opportunity for comment are not required under the Department of Transportation's Regulatory Policies and Procedures because it is not anticipated that such action will result in the receipt of useful information. The FHWA has determined that the AASHTO interim metric values come as close as possible to retaining the English measurements already adopted by the FHWA pursuant to notice and comment rulemaking, and express adoption of these metric values now provides necessary certainty and continuity for States and other FHWA partners, including highway construction contractors. For these reasons, we adhere to the view that, consistent with 5 U.S.C. 553(d)(3), good cause supports the FHWA's action making this final rule effective. In addition, the FHWA believes that this final rule should be effective immediately upon publication.

The APA also allows agencies, upon a finding of good cause, to make a rule effective immediately and avoid the 30-day delayed effective date requirement. 5 U.S.C. 553(d)(3). The FHWA has determined that good cause exists to make this rule effective upon publication because the rule provides information to States for their use in contracting with private contractors for the construction of highways. Making this rule effective upon publication will enable States to begin incorporating metric units now. Furthermore, since this was published as an interim final rule, it is already effective. Therefore, no good purpose would be served by delaying the effective date of this rule.

In addition to implementing the interim rule as a final rule, the FHWA is making one additional change. The FHWA is eliminating 23 CFR 655.601(e)—Pavement Marking Demonstration Program, FHWA, 23 CFR part 920. Paragraph (e) is a cross reference to 23 CFR part 920 which no longer exists, thereby making paragraph (e) obsolete.

Review Procedure

Based on an analysis of public comments received, the FHWA has examined its determination that the AASHTO publications adopted by this rule are acceptable as the basis for the design of signs and pavement markings for streets and highways open to public travel.

Rulemaking Analyses and Notices

Administrative Procedure Act

The Administrative Procedure Act provides that an agency may dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). The FHWA has determined that prior notice and opportunity for comment are unnecessary in the elimination of 23 CFR 655.601(e). Paragraph (e) cross references 23 CFR part 920. The Pavement Marking Demonstration Program expired. The DOT issued an NPRM on May 20, 1992, at 57 FR 21362, giving notice and providing an opportunity for comments. Part 920 was removed in a final rule on December 22, 1992, at 57 FR 60725. Comments regarding a reference to a nonexistent program are unnecessary. Therefore, notice and opportunity for comment are not required.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. As stated previously, the FHWA has determined that the interim metric values selected by the AASHTO documents are functionally equivalent to English system measurements previously adopted by notice and comment rulemaking. It is anticipated that the economic impact of the rulemaking will be minimal. The additional guidance and clarification provided by this final amendment will improve application of traffic control devices at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. This final amendment provides expanded guidance and clarification for traffic control devices. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private section, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs and symbols, and Traffic regulations.

Accordingly, the FHWA hereby adopts as final its interim final rule amending 23 CFR part 655 published at 61 FR 29624 on June 11, 1996, with changes as set forth below:

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F—[Amended]

2. In § 655.601, revise paragraphs (c) and (d), and remove paragraph (e), to read as follows:

§ 655.601 Purpose.

* * * * *

(c) Guide to Metric Conversion, AASHTO, 1993. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This document is available for inspection as provided in 49 CFR part 7. It may be purchased from the American Association of State Highway and Transportation Officials, Suite 249, 444 North Capitol Street, NW., Washington, DC 20001.

(d) Traffic Engineering Metric Conversion Factors, 1993—Addendum to the Guide to Metric Conversion, AASHTO, October 1993. This publication is incorporated by reference

in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This document is available for inspection as provided in 49 CFR part 7. It may be purchased from the American Association of State Highway and Transportation Officials, Suite 249, 444 North Capitol Street, NW., Washington, DC 20001.

Issued on: June 17, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–16027 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4321–F–06]

RIN 2501–AC49

Uniform Financial Reporting Standards for HUD Housing Programs; Technical Amendment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; technical amendment.

SUMMARY: This final rule makes a technical amendment to HUD's regulations on Uniform Financial Reporting Standards, published on September 1, 1998. The amendment will provide a delayed submission date for the first annual financial report required by all multifamily entities subject to these standards. The delayed submission date is only for the first year of compliance with HUD's uniform financial reporting standards.

DATES: Effective July 26, 1999.

FOR FURTHER INFORMATION CONTACT: For further information contact James Martin, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20410; telephone Customer Service Center 1–888–245–4860. Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at 1–800–877–8399. (Both telephone numbers are toll free numbers).

SUPPLEMENTARY INFORMATION: On September 1, 1998 (63 FR 46582), HUD published a final rule that established uniform annual financial reporting standards for HUD's Public Housing, Section 8 housing, and multifamily insured housing programs. The rule provides that the financial information already required to be submitted to HUD on an annual basis under these programs must be submitted electronically to HUD and must be prepared in accordance with generally accepted accounting principles.

The September 1, 1998 final rule also established annual financial report filing dates. The rule provides for all covered entities an annual financial report submission date that is 60 days after the end of a covered entity's fiscal year. For the first year of compliance with the new standards, the September 1, 1998 rule provided an April 30, 1999 annual financial report submission date for those entities that are:

(1) Owners of housing assisted under Section 8 project-based housing assistance payments programs, described in § 5.801(a)(3) of the new rule; or

(2) Owners of multifamily projects receiving direct or indirect assistance from HUD, or with mortgages insured, coinsured, or held by HUD, including but not limited to housing under certain HUD programs described in § 5.801(a)(4) of the new rule; and

(3) Have fiscal years ending December 31, 1998.

The majority of non-public housing entities covered by this rule fall into the category of entities that will have reports due by April 30, 1999. (Note that for public housing agencies (PHAs), the rule provides that compliance with the uniform financial reporting standards begins for PHAs with fiscal years ending September 30, 1999.)

On January 11, 1999 (64 FR 1504), HUD amended the September 1, 1998 rule to change the April 30, 1999 due date to June 30, 1999, to provide additional time for participants (subject to the April 30, 1999 report deadline) to convert to the new reporting system and to complete the first annual financial report.

All entities subject to HUD's uniform financial reporting requirements, (including those entities provided the deferred date of June 30, 1999) advise of the necessity for additional time for successful conversion to the new reporting system. For this first year with HUD's new financial reporting system, HUD has agreed to provide additional time. This technical amendment provides for delayed report submission dates as shown in the regulatory text.

Other Matters

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this final rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. Public procedure is unnecessary because this final rule simply makes a technical amendment to its uniform financial reporting standards regulations to provide, for covered entities, for a delayed submission date for the first financial report due under HUD's uniform financial reporting standards. HUD acknowledges that conversion to the new reporting system and completion of the required report involves more time than originally contemplated for these entities. The regulatory amendment made by this rule, therefore, alleviates a burden for these entities. No policies or standards are changed by this rulemaking.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule only makes a technical amendment to existing regulations by changing a reporting deadline for the first year of compliance with HUD's uniform financial reporting standards. Although this change alleviates a burdensome requirement for covered entities and the covered entities include small entities, the rulemaking nevertheless does not result either adversely or beneficially in any significant economic impact on a substantial number of small entities.

Environmental Impact

This final rule is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1). This final rule only makes a technical correction to existing regulations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this rule are:

14.126—Mortgage Insurance—Cooperative Projects (Section 213)
14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)
14.134—Mortgage Insurance—Rental Housing (Section 207)
14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d) (3) and (4))
14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)
14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)
14.157—Supportive Housing for the Elderly (Section 202)
14.181—Supportive Housing for Persons with Disabilities (Section 811)
14.188—Housing Finance Agency (HFA) Risk Sharing Pilot Program (Section 542(c))
14.850—Public Housing
14.851—Low Income Housing—Homeownership Opportunities for Low Income Families (Turnkey III)
14.852—Public Housing—Comprehensive Improvement Assistance Program
14.855—Section 8 Rental Voucher Program
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation
14.857—Section 8 Rental Certificate Program
14.859—Public Housing—Comprehensive Grant Program

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. Paragraph (c) of § 5.801 is revised to read as follows;

§ 5.801 Uniform financial reporting standards.

* * * * *

(c) *Annual financial report filing dates.* (1) The financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

(2) For entities listed in paragraphs (a)(3) and (4) of this section, the first annual financial report shall be due on the date provided in this paragraph (2), or at such later date that HUD may provide through notice. This delayed submission date is only for the first year of compliance with the requirements of this section:

(i) For entities with fiscal years ending December 31, 1998, the first annual financial report shall be due August 31, 1999;

(ii) For entities with fiscal years ending in January through April 1999, the first annual financial report shall be due August 31, 1999;

(iii) For entities with fiscal years ending in May through November 1999, the first annual financial report shall be due 120 days after the end of the applicable fiscal year end date.

* * * * *

Dated: June 18, 1999.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 99–16134 Filed 6–21–99; 4:34 pm]

BILLING CODE 4210–27–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPTS–66009E; FRL–6072–4]

RIN 2070–AC01

Technical and Procedural Amendments to TSCA Regulations—Disposal of Polychlorinated Biphenyls (PCBs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical and procedural amendments.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of June 29, 1998 a document amending the regulations affecting disposal of polychlorinated biphenyls (PCBs). EPA has identified several technical errors in that document. This rule corrects those errors. In addition, this rule establishes procedures for requesting an approval for risk-based sampling, cleanup, storage, or disposal of PCB remediation waste, and for risk-based decontamination or sampling of decontaminated material, where those activities occur in more than one EPA Region.

DATES: This rule is effective June 24, 1999. In accordance with 40 CFR 23.5, this rule is promulgated for purposes of judicial review at 1 p.m. eastern standard time on July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Christine Augustiniak, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, (202) 554–1404, TDD (202) 544–0551, e-mail: TSCA-Hotline@epa.gov.

For technical information contact: Julie Simpson, Attorney Advisor, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington DC 20460; telephone number: 202-260-7873; fax number: 202-260-1724; e-mail address: simpson.julie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does this Notice Apply to You?

You may be affected by this notice if you manufacture, process, distribute in commerce, use, or dispose of PCBs or materials containing PCBs. Regulated categories and entities may include, but are not limited to:

Category	Examples of Regulated Entities
Industry	Chemical manufacturers Electro-industry manufacturers End-users of electricity PCB waste handlers (such as storage facilities, landfills, and incinerators) Waste transporters General contractors
Utilities and rural electric cooperatives.	Electric power and light companies
Individuals, Federal, State, and municipal governments.	Individuals or agencies which own, manufacture, process, distribute in commerce, use, or dispose of PCBs

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether you or your business is regulated by this action, you should carefully examine the applicability criteria in 40 CFR Part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of Support Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA Home page at the Federal Register - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. *In person.* The official record for this notice, as well as the public version, has been established under docket control number [OPPTS–66009], (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC.

C. How and to Whom Do I Submit Comments?

This rule promulgates technical and procedural amendments to the PCB Disposal Amendments. EPA is not soliciting comments.

II. Authority

This action is issued under the authority of sections 6(e)(1) and 6(e)(2)(B) of TSCA. Section 6(e)(1)(A) gives EPA the authority to promulgate rules regarding the disposal of PCBs (15 U.S.C. 2605(e)(1)(A)). TSCA section 6(e)(1)(B) provides broad authority for EPA to promulgate rules that would require PCBs to be marked with clear and adequate warnings (15 U.S.C. 2605(e)(1)(B)). TSCA section 6(e)(2)(B) gives EPA the authority to authorize the use of PCBs in other than a totally enclosed manner based on a finding of no unreasonable risk of injury to health or the environment (15 U.S.C. 2605(e)(2)(B)).

III. Background

The PCB Disposal Amendments published on June 29, 1998 (63 FR 35384)(FRL–5726–1), promulgated significant amendments to 40 CFR part 761 affecting the use, manufacture, processing, distribution in commerce, and disposal of PCBs. Among other things, the Disposal Amendments authorized additional uses of PCBs, provided new alternatives for the cleanup and disposal of PCBs, established standards and procedures for decontaminating materials contaminated with PCBs, and created a mechanism for recognizing, under TSCA, other Federal or State waste management permits or approvals for PCBs.

A number of technical errors occurred in publishing the Disposal Amendments. These errors included typographical errors resulting in incorrect characters, numbers, and units of measurement; incorrect cross-references to the codified text; editing errors resulting in differences between the preamble provisions and the codified text of the rule; and errors in transcribing the final version of the rule for publication. This rule corrects those errors.

This rule also corrects several instances of incorrect use of the term "industrial furnace". The proposed Disposal Amendments, 59 FR 62788 (December 6, 1994), included provisions for disposal of certain types of PCB waste in combustion facilities, termed "industrial furnaces", that complied with specified operating parameters and conditions. (See 59 FR 62803.) Commenters expressed confusion over EPA's use of the term "industrial furnace", since the proposed operating conditions and parameters were not identical to those applicable to an "industrial furnace" as defined in the regulations at 40 CFR 260.10 that implement the Resource Conservation and Recovery Act (40 U.S.C. 6901 *et seq.*). In § 761.72 of the final rule, EPA changed the term "industrial furnace" to "scrap metal recovery oven" or "smelter". (See 63 FR 35402.) Both the preamble and the codified text, however, incorrectly retain several references to the term "industrial furnace".

In addition, this rule establishes a procedure for requesting an approval for risk-based sampling, cleanup, storage, or disposal of PCB remediation waste under § 761.61(c), and for risk-based decontamination or sampling of decontaminated material under § 761.79(h), where those activities occur in more than one EPA Region. Those sections of the Disposal Amendments now require a person wishing to engage in those activities to apply for and receive an approval from the EPA Regional Administrator. This rule amends those sections to provide that requests for approval of these activities should be submitted to the EPA Regional Administrator for activity occurring in a single EPA Region, and to the Director, National Program Chemicals Division, for activities occurring in more than one EPA Region.

Under section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), the requirements to publish a notice of proposed rulemaking and to offer an opportunity for public comment do not apply to rules of agency organization, procedure, or practice, or to rules as to which the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. EPA finds that the technical corrections and amendments included in this rule are minor, routine clarifications that will not have a significant effect on industry or the public, and that prior notice and opportunity for public comment are therefore unnecessary. Similarly, EPA is promulgating the procedural changes in this rule without notice or opportunity for public comment as provided for in section 553(b) of the APA.

A. Technical Corrections to the Preamble

Below are listed errors in the preamble to the Disposal Amendments, with reference to the page and column of the **Federal Register** in which they occurred, and the correct text.

1. On page 35388, a word was inadvertently omitted. In the fourth sentence of the first full paragraph of the first column, the phrase "and a non-aqueous phase containing 60 ppm" should read, "and a non-aqueous liquid phase containing 60 ppm".

2. Page 35390 contains an incorrect character. In the first sentence of the third full paragraph of the second column, the phrase, "for non-porous surfaces in contact with liquid PCBs destined for smelting, ≤ 100 µg PCBs/100 cm^2", should read, "for non-porous surfaces in contact with liquid PCBs destined for smelting, <100 µg PCBs/100 cm^2".

3. Page 35390 refers to different units of measurement than are used in the corresponding regulatory text at § 761.79(b)(2). In the first partial paragraph of the third column, the phrase, "for organic and non-aqueous inorganic liquids, ≤ 2 mg PCBs/L", should read, "for organic and non-aqueous inorganic liquids, ≤ 2 mg PCBs/kg"; the phrase, "The codified text uses ppm or milligrams per liter (mg/L) for concentration measurements of non-aqueous liquids", should read, "The codified text uses ppm or milligrams per kilogram (mg/kg) for concentration measurements of non-aqueous liquids".

4. Page 35390 contains an incorrect citation. In the fifth sentence of the first full paragraph of the third column, "§ 761.79(g)(2)" should read "§ 761.79(g)(3)".

5. EPA has been informed of a new address for the American Society for Testing and Materials. On page 35391, in the second sentence of the third full paragraph of the third column, "Philadelphia, PA" should read "West Conshohocken, PA".

6. Page 35392 contains an incorrect citation. In the last paragraph of the first column, "40 CFR 261.10" should read "40 CFR 260.10".

7. Page 35392 contains an incorrect reference to industrial furnaces. In the last paragraph of the first column, "industrial furnace" should read "scrap metal recovery oven or smelter".

8. Page 35396 contains an incorrect citation. In the last sentence of the second full paragraph of the first column, "§ 761.30(t)" should read "§ 761.30(s)".

9. Page 35396 contains an editing error. The last sentence of the first full paragraph of the second column incorrectly states that the definition of "natural gas pipeline system" in § 761.3 excludes end users. This sentence should read, "As noted above, because end users are not sellers or distributors of natural gas, they are not subject to the requirements of § 761.30(i)."

10. Page 35403 contains incorrect references to industrial furnaces. In the third sentence of the first partial paragraph of the first column, and in the first sentence of the first full paragraph of the second column, "an industrial furnace" should read "a scrap metal recovery oven or smelter".

11. Page 35404 contains an editing error. The sixth sentence of the second full paragraph of the third column should read, "Collect condensate within 72 hours of the final transmission of natural gas through the part of the system to be abandoned or removed. Collect wipe samples after the last transmission of gas through the pipe or during removal from the location it was used to transport natural gas."

12. Page 35405 contains an incorrect reference to industrial furnaces. In the second sentence of the fourth full paragraph of the first column, "an industrial furnace" should read "a smelter".

13. Page 35405 contains an incorrect citation. In the last sentence of the last partial paragraph of the second column, "§ 761.60(b)(6)(iv)" should read "§ 761.60(b)(8)".

14. Page 35409 contains an editing error. In the first sentence of the first full paragraph in the first column, delete the word "in-situ".

15. Page 35409 contains an incorrect citation. In the second paragraph of the second column, "(see § 761.61(a)(5)(i)(B)(*3*)(*iv*) of the regulatory text)" should read "(see § 761.61(a)(5)(i)(B)(*2*)(*iv*) of the regulatory text)".

16. On page 35409, a citation was inadvertently omitted. In the second paragraph of the second column, the last sentence should read, "In addition, the subpart J recordkeeping requirements and the subpart K notification and manifesting requirements do not apply to off-site disposal of PCB remediation waste at < 50 ppm."

17. Page 35410 contains an incorrect citation. In the fourth sentence of the third full paragraph of the third column, "§ 761.65(c)(10)" should read "§ 761.65(c)(9)".

18. Page 35411 contains an incorrect citation. In the last partial paragraph of the first column, "(see § 761.62(b)(1)(iii))" should read "(see § 761.62(b)(1)(ii))".

19. On page 35411 a citation was inadvertently omitted. The second full paragraph of the third column should read, "Also, part 761, subparts C, J and K, do not apply to PCB bulk product waste disposed of under § 761.62(b)."

20. Page 35412 contains incorrect references. In the second and third full paragraphs of the first column, "subpart O" should read "subpart R".

21. On page 35413, a spelling error occurs. In the second sentence of the second full paragraph of the first column, "(e.g., chopping, stripping insulation, and scrapping)" should read "(e.g., chopping, stripping insulation, and scraping)".

22. As a technical clarification, on page 35413, after the third sentence in the first full paragraph of the third column, add, "EPA also changed the term 'industrial furnaces', used in the proposed rule, to 'scrap metal recovery ovens and smelters'."

23. On page 35414, the preamble makes a statement that is inconsistent with the corresponding regulatory text. In the last partial paragraph of the second column, the last three sentences should be replaced with the following: "Since RCRA interim status facilities have financial assurance and are subject to corrective action, § 761.65(b)(2) allows alternate storage of PCBs at these facilities as long as the containment requirements of 40 CFR 264.175 are met and spills of PCBs are cleaned up in accordance with the PCB Spill Cleanup Policy."

24. Page 35418 contains an incorrect number. In the second sentence of the second full paragraph of the second column, the phrase "concentrations "≧ 500 ppm" should read concentrations "≧ 50 ppm".

25. Page 35418 contains incorrect references to industrial furnaces. In the second sentence of the second full paragraph of the second column, and in the fifth sentence of the second full paragraph of the second column, "an industrial furnace" should read "a smelter".

26. Page 35420 contains an editing error. The last sentence of the second full paragraph of the third column should read, "Today's rule implements the Sierra Club decision by amending § 761.93 to prohibit import of any PCBs or PCB Items."

B. Technical Amendments to the Codified Text

This rule also amends specified provisions of the codified text of the Disposal Amendments. Most of these amendments correct typographical errors and errors in citations, change incorrect references to industrial furnaces, and effect minor punctuation changes that make the rule easier to read. Changes that are not self-explanatory are described in this section.

This rule removes the definition of "emergency situation" from § 761.3. This definition supported portions of § 761.30(a)(1)(iii), which authorized, until 1990, the otherwise-prohibited installation of a PCB Transformer in or near a commercial building in an "emergency situation". The Disposal Amendments removed the portions of

§ 761.30(a)(1)(iii) that authorized these emergency installations because they expired in 1990. However, the agency neglected to remove the supporting definition of "emergency situation".

This rule removes and reserves § 761.30(j)(3). That section prescribes manifesting requirements for certain research and disposal wastes. Those requirements conflict with the generally-applicable requirements for manifesting and disposing of research and development waste at § § 761.65(i) and 761.64(b)(2).

EPA included § 761.50(b)(3) in the Disposal Amendments to clarify the status of PCB waste that was placed in a land disposal facility, spilled, or otherwise released into the environment prior to the effective date of the regulations implementing TSCA section 6(e). The Disposal Amendments state that sites containing PCB waste at concentrations ≥ 50 ppm that was placed in a land disposal facility, spilled, or otherwise released into the environment prior to April 18, 1978 (the effective date of the first PCB disposal rules), are presumed not to present an unreasonable risk of injury to health or the environment from exposure to PCBs at the site. This rule extends the presumption to include PCB waste at as-found concentrations ≥ 50 ppm that was placed in a land disposal facility, spilled, or otherwise released into the environment on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was ≥ 50 ppm but < 500 ppm. Between these two dates, disposal of PCBs was regulated, but only if the PCBs were at concentrations ≥ 500 ppm.

This rule removes and reserves § 761.60(a)(3)(i) because the regulatory provisions it cites in 40 CFR part 268, specifying requirements for disposal of PCB liquids under RCRA, have been removed (see 62 FR 26022, May 12, 1997 (FRL–5816–5), and 63 FR 28556, see page 28622, May 26, 1998)(FRL–6010–5).

This rule removes the cross-reference in § 761.60(b)(1)(i)(B) to § 761.60(a)(1). At the time of the proposed rule, § 761.60(a)(1) required disposal of certain PCB liquids in an incinerator. The final rule revised § 761.60, changing the content of paragraph (a)(1), but did not include the necessary conforming change to § 761.60(b)(1)(i)(B). This rule corrects that error by replacing the reference to paragraph (a)(1) in § 761.60(b)(1)(i)(B) with a specific reference to incineration.

Section 761.60(b)(4), pertaining to PCB-Contaminated Electrical Equipment, and § 761.60(b)(6)(ii), pertaining to PCB-Contaminated Articles, specify slightly different disposal requirements for what are essentially the same materials. This rule amends § 761.60(b)(4) by providing that, with the exception of PCB-Contaminated Large Capacitors, PCB-Contaminated Electrical Equipment must be disposed of in the same manner as a PCB-Contaminated Article under § 761.60(b)(6)(ii). The requirements for this equipment have been consolidated at § 761.60(b)(6)(ii).

Section 761.60(b)(6)(ii), as amended by this rule, includes a provision to exclude this equipment from the manifesting requirements of subpart K. This provision was inadvertently omitted from the final rule. Prior to promulgation of the Disposal Amendments, PCB-Contaminated Electrical Equipment was not regulated for disposal and thus was not subject to manifesting. While the Disposal Amendments imposed certain requirements on disposal of this equipment, it was EPA's intent that the manifesting requirements not apply. This intent was stated at the public meeting on the proposed rule held June 6–7, 1995. (See transcript, Informal Public Hearing, Disposal of Polychlorinated Biphenyls, Part One, June 6, 1995, p. 219.) In addition, this intent is reflected in the Response to Comments Document on the proposed rule, which states that the manifesting requirement for drained PCB-Contaminated Electrical Equipment was deleted from the final rule. (See Response to Comments Document on the Proposed Rule – Disposal of Polychlorinated Biphenyls, OPPTS Docket #66009A, May 1998, p. 58). Section 761.60(b)(6)(ii)(C) corrects the inadvertent omission of the manifesting exclusion.

C. Procedural Amendments

As noted above, this rule contains procedural amendments to § 761.61(c) and § 761.79(h) to allow the Director of the National Program Chemicals Division to issue risk-based approvals for activities occurring in more than one EPA Region. Those sections of the Disposal Amendments now require a person wishing to sample, clean up, store, or dispose of PCB remediation waste, or to decontaminate PCBs or sample decontaminated material, in a manner not specifically provided for in the Disposal Amendments, to apply for a risk-based approval from the EPA Regional Administrator. This rule amends those sections to provide that requests for approval of these activities should be submitted to the EPA Regional Administrator for activities occurring in a single EPA Region, and to the Director, National Program Chemicals Division, for activities occurring in more than one EPA Region.

IV. What Actions Were Required by The Various Regulatory Assessment Mandates?

This rule implements technical and procedural amendments to 40 CFR part 761. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4). This rule does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule also is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish any environmental standards intended to mitigate health or safety risks. This rule does not involve technical standards and therefore is not subject to section 12(d) of the National Technology Transfer and Advancement Act of 1995, 15 U.S.C. 272 note. Finally, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because it does not impose any monitoring, reporting, or recordkeeping requirements. EPA's compliance with the statutes and Executive Orders for the underlying Disposal Amendments rule is discussed in the June 29, 1998, **Federal Register** notice.

V. Are There Any Impacts on Tribal, State and Local Governments?

A. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

B. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VI. Submission to Congress and the General Accounting Office

The Congressional Review Act (CRA), 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 24, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule effects technical and procedural amendments to 40 CFR part 761 and is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements

Dated: June 15, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR Part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

§ 761.1 [Amended]

2. In § 761.1(b)(3), revise "≤ 10/100 cm^2" to read "≤ 10 µg/100 cm^2".

3. Amend § 761.2(a)(3) by revising the last sentence to read as follows:

§ 761.2 PCB concentration assumptions for use.

(a) * * *

(3) * * * If the date of manufacture and the type of dielectric fluid are unknown, any person must assume the transformer to be a PCB Transformer.

* * * * *

4. Amend § 761.3 as follows:

a. Remove the definition of "emergency situation".

b. Revise the definition of "ASTM" and in the definition of "PCB remediation waste" revise the first sentence of the introductory text and revise paragraph (3) to read as follows:

§ 761.3 Definitions.

* * * * *

ASTM means American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

* * * * *

PCB remediation waste means waste containing PCBs as a result of a spill, release, or other unauthorized disposal, at the following concentrations: Materials disposed of prior to April 18, 1978, that are currently at concentrations ≥ 50 ppm PCBs, regardless of the concentration of the original spill; materials which are currently at any volume or concentration where the original source was ≥ 500 ppm PCBs beginning on April 18, 1978, or ≥ 50 ppm PCBs beginning on July 2, 1979; and materials which are currently at any concentration if the PCBs are spilled or released from a source not authorized for use under this part. ***

* * * * *

(3) Buildings and other man-made structures (such as concrete floors, wood floors, or walls contaminated from a leaking PCB or PCB-Contaminated Transformer), porous surfaces, and non-porous surfaces.

* * * * *

5. Amend § 761.19(b) by revising the last sentence to read as follows:

§ 761.19 References.

* * * * *

(b) * * * Copies of the incorporated material may be obtained from the American Society for Testing and Materials (ASTM), 100 Barr Harbor

Drive, West Conshohocken, PA 19428–2959.

* * * * *

§ 761.20 [Amended]

6. In § 761.20(c)(2)(ii), correct the reference to "§ 261.10 of this chapter" to read "§ 260.10 of this chapter".

7. Amend § 761.30 as follows:

a. Revise paragraph (a)(1)(xii)(J) and the first sentence of paragraph (i)(4).

b. In the last sentence of paragraph (i)(1)(iii)(D), revise "delegate" to read "defer".

c. In the first sentence of paragraph (i)(5), revise the reference "§ 761.60(a)" to read "§ 761.61(a)(5)(iv)".

d. Remove and reserve paragraph (j)(3).

e. In the introductory language to paragraph (p)(1), revise "> 10 µg/100 cm^2" to read "≧ 50 ppm".

The revised portions read as follows:

§ 761.30 Authorizations.

(a) * * *

(1) * * *

(xii) * * *

(J) Records of transfer of ownership in compliance with § 761.180(a)(2)(ix).

* * * * *

(i) * * *

(4) Any person characterizing PCB contamination in natural gas pipe or natural gas pipeline systems must do so by analyzing organic liquids collected at existing condensate collection points in the pipe or pipeline system. The level of PCB contamination found at a collection point is assumed to extend to the next collection point downstream. Any person characterizing multi-phasic liquids must do so in accordance with § 761.1(b)(4).

* * * * *

8. Section 761.40 is amended in paragraph (b), by revising "1979" to read "1978", and by revising paragraph (l) to read as follows:

§ 761.40 Marking requirements.

* * * * *

(l)(1) All voltage regulators which contain 1.36 kilograms (3 lbs.) or more of dielectric fluid with a PCB concentration of ≥ 500 ppm must be marked individually with the M_L mark as described in § 761.45(a).

(2) Locations of voltage regulators which contain 1.36 kilograms (3 lbs.) or more of dielectric fluid with a PCB concentration of ≥ 500 ppm shall be marked as follows: The vault door, machinery room door, fence, hallway, or means of access, other than grates or manhole covers, must be marked with the M_L mark as described in § 761.45(a).

9. Amend § 761.50 by revising the introductory text of paragraph (b)(3)(i), the first sentence of paragraph (b)(3)(i)(B), paragraph (b)(3)(ii) introductory text, and in paragraph (b)(8) by revising the reference "§ 761.61(a)(5)(iii)" to read "§ 761.61".

The revised portions read as follows:

§ 761.50 Applicability.

* * * * *

(b) * * *

(3) * * *

(i) Any person responsible for PCB waste at as-found concentrations ≥ 50 ppm that was either placed in a land disposal facility, spilled, or otherwise released into the environment prior to April 18, 1978, regardless of the concentration of the spill or release; or placed in a land disposal facility, spilled, or otherwise released into the environment on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was ≥ 50 ppm but < 500 ppm, must dispose of the waste as follows:

* * * * *

(B) Unless directed by the EPA Regional Administrator to dispose of PCB waste in accordance with paragraph (b)(3)(i)(A) of this section, any person responsible for PCB waste at as-found concentrations ≥ 50 ppm that was either placed in a land disposal facility, spilled, or otherwise released into the environment prior to April 18, 1978, regardless of the concentration of the spill or release; or placed in a land disposal facility, spilled, or otherwise released into the environment on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was ≥ 50 ppm but < 500 ppm, who unilaterally decides to dispose of that waste (for example, to obtain insurance or to sell the property), is not required to clean up in accordance with § 761.61. * * *

(ii) Any person responsible for PCB waste at as-found concentrations ≥ 50 ppm that was either placed in a land disposal facility, spilled, or otherwise released into the environment on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was ≥ 500 ppm; or placed in a land disposal facility, spilled, or otherwise released into the environment on or after July 2, 1979, where the concentration of the spill or release was ≥ 50 ppm, must dispose of it in accordance with either of the following:

* * * * *

§ 761.60 [Amended]

10. Amend § 761.60 as follows:

a. Remove and reserve paragraph (a)(3)(i).

b. Revise the second sentence of paragraph (b)(1)(i)(B).

c. In paragraph (b)(3)(i)(C), revise the phrase "an industrial furnace" to read "a scrap metal recovery oven or smelter".

d. Revise paragraph (b)(4).

e. Amend paragraphs (b)(5)(i)(B) and (b)(5)(ii)(A)(*1*) by removing the phrase "in accordance with subpart M of this part".

f. Amend paragraph (b)(5)(i)(C)(*2*) by adding "or more" after, "The pipe is filled to 50 percent".

g. In paragraph (b)(5)(i)(D), revise "§ 761.62(c)" to read "§ 761.61(c)".

h. Revise the last sentence of paragraph (b)(5)(iii)(A).

i. In paragraph (b)(5)(ii)(A), revise the phrase, "scrap metal recovery oven and smelter", to read, "a scrap metal recovery oven or smelter".

j. Redesignate paragraphs (b)(6)(ii) introductory text, (b)(6)(ii)(A), (b)(6)(ii)(B), (b)(6)(ii)(C), and (b)(6)(ii)(D) as paragraphs (b)(6)(ii)(A) introductory text, and paragraphs (b)(6)(ii)(A)(*1*) through (b)(6)(ii)(A)(*4*), respectively.

k. In redesignated paragraph (b)(6)(ii)(A)(*3*), revise the phrase "an industrial furnace" to read "a scrap metal recovery oven or smelter".

l. Revise redesignated paragraph (b)(6)(ii)(A) introductory text, add paragraphs (b)(6)(ii)(B) and (b)(6)(ii)(C), remove paragraph (b)(6)(iv) and add paragraph (b)(8), to read as follows:

§ 761.60 Disposal requirements.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) * * * Any person disposing of PCB liquids that are removed from the transformer (including the dielectric fluid and all solvents used as a flush), shall do so in an incinerator that complies with § 761.70 of this part, or shall decontaminate them in accordance with § 761.79. * * *

* * * * *

(4) *PCB-Contaminated Electrical Equipment.* Any person disposing of PCB-Contaminated Electrical Equipment, except capacitors, shall do so in accordance with paragraph (b)(6)(ii)(A) of this section. Any person disposing of Large Capacitors that contain ≥ 50 ppm but < 500 ppm PCBs shall do so in a disposal facility approved under this part.

(5) *Natural gas pipeline systems containing PCBs.* * * *

(iii) *Characterization of natural gas pipeline systems by PCB concentration in condensate.* * * *

(A) * * * Collect condensate within 72 hours of the final transmission of natural gas through the part of the system to be abandoned or removed. Collect wipe samples after the last transmission of gas through the pipe or during removal from the location it was used to transport natural gas.

* * * * *

(6) * * *

(ii) * * *

(A) Except as specifically provided in paragraphs (b)(1) through (b)(5) of this section, any person disposing of a PCB-Contaminated Article must do so by removing all free-flowing liquid from the article, disposing of the liquid in accordance with paragraph (a) of this section, and disposing of the PCB-Contaminated Article with no free-flowing liquid by one of the following methods:

* * * * *

(B) Storage for disposal of PCB-Contaminated Articles from which all free-flowing liquids have been removed is not regulated under subpart D of this part.

(C) Requirements in subparts J and K of this part do not apply to PCB-Contaminated Articles from which all free-flowing liquids have been removed.

* * * * *

(8) Persons disposing of PCB Articles must wear or use protective clothing or equipment to protect against dermal contact with or inhalation of PCBs or materials containing PCBs.

11. Amend § 761.61 as follows:

a. In paragraph (a)(5)(ii)(B)(*1*), revise "paragraph (a)(5)(i)(B)(*3*)(*ii*)" to read "paragraph (a)(5)(i)(B)(*2*)(*ii*)".

b. In paragraph (a)(5)(ii)(B)(*2*) revise "paragraph (a)(5)(i)(B)(*3*)(*iii*)" to read "paragraph (a)(5)(i)(B)(*2*)(*iii*)".

c. Revise the second sentence of paragraph (a)(3)(ii), paragraphs (a)(5)(i)(A) introcductory text, (a)(5)(i)(B)(*2*)(*i*), paragraph (a)(5)(v)(A), and the first sentence of paragraph (c)(1) to read as follows:

§ 761.61 PCB remediation waste.

* * * * *

(a) * * *

(3) * * *

(ii) *** If the EPA Regional Administrator does not respond within 30 calendar days of receiving the notice, the person submitting the notification may assume that it is complete and acceptable and proceed with the cleanup according to the information the person provided to the EPA Regional Administrator. ***

* * * * *

(5) * * *

(i) * * *

(A) Any person cleaning up bulk PCB remediation waste on-site using a soil washing process may do so without EPA approval, subject to all of the following:

* * * * *

(B) * * *

(*2*) * * *

(*i*) Unless sampled and analyzed for disposal according to the procedures set out in § § 761.283, 761.286, and 761.292, the bulk PCB remediation waste shall be assumed to contain ≥ 50 ppm PCBs.

* * * * *

(v) * * *

(A) Non-liquid cleaning materials and personal protective equipment waste at any concentration, including non-porous surfaces and other non-liquid materials such as rags, gloves, booties, other disposable personal protective equipment, and similar materials resulting from cleanup activities shall be either decontaminated in accordance with § 761.79(b) or (c), or disposed of in one of the following facilities, without regard to the requirements of subparts J and K of this part:

(*1*) A facility permitted, licensed, or registered by a State to manage municipal solid waste subject to part 258 of this chapter.

(*2*) A facility permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste subject to § § 257.5 through 257.30 of this chapter, as applicable.

(*3*) A hazardous waste landfill permitted by EPA under section 3004 of RCRA, or by a State authorized under section 3006 of RCRA.

(*4*) A PCB disposal facility approved under this part.

* * * * *

(c) * * * (1) Any person wishing to sample, cleanup, or dispose of PCB remediation waste in a manner other than prescribed in paragraphs (a) or (b) of this section, or store PCB remediation waste in a manner other than prescribed in § 761.65, must apply in writing to the EPA Regional Administrator in the Region where the sampling, cleanup, disposal or storage site is located, for sampling, cleanup, disposal or storage occurring in a single EPA Region; or to the Director of the National Program Chemicals Division, for sampling, cleanup, disposal or storage occurring in more than one EPA Region. * * *

* * * * *

§ 761.62 [Amended]

12. Amend § 761.62 as follows:

a. In paragraph (b)(1)(ii), revise "subpart O", to read "subpart R".

b. In paragraph (b)(4)(i), revise "≤ 50 ppm" to read "≥ 50 ppm".

c. In paragraph (b)(6), revise "subparts C and K" to read "subparts C, J, and K".

d. Revise the title of paragraph (c) to read, "*Risk-based disposal approval.*"

e. Paragraph (c) is further amended by removing the phrases "disposal or storage" and "storage or disposal" wherever they appear and adding in place thereof, the phrase "sampling, disposal, or storage".

§ 761.72 [Amended]

13. Amend § 761.72 as follows:

a. In paragraph (c)(3), in the first sentence, revise the phrase, "In lieu of the requirements in paragraphs (a) and (b) of this section", to read, "In lieu of the requirements in paragraph (c)(1) of this section"; and revise the phrase, "the parameters and conditions listed in paragraphs (a)(1) through (a)(8) and (b)(1) through (b)(9) of this section", to read, "the parameters and conditions listed in paragraph (a) or (b) of this section".

b. Revise paragraph (a)(7) to read as follows:

§ 761.72 Scrap metal recovery ovens and smelters.

* * * * *

(a) * * *

(7) Emissions from the secondary chamber must be vented through an exhaust gas stack in accordance with either:

(i) State or local air regulations or permits, or

(ii) The standards in paragraph (a)(8) of this section.

* * * * *

§ 761.79 [Amended]

14. Amend § 761.79 as follows:

a. In paragraph (a)(5), amend "(c)(8)" to read "(c)(6)".

b. Amend paragraph (c)(2) introductory text by removing the phrase, "and used in storage areas".

c. In paragraph (c)(5)(i), revise "paragraphs (b), (c)(1) through (c)(6), or (c)(8) of this section" to read "paragraphs (b), (c)(1) through (c)(4), or (c)(6) of this section".

d. In the last sentence of paragraph (c)(5)(iv), revise "PODF" to read "solvent".

e. In paragraph (c)(6)(i), revise "an industrial furnace" to read "a scrap metal recovery oven or smelter".

f. In paragraph (c)(6)(ii), revise "an industrial furnace" to read "a smelter".

g. Revise the first sentences of paragraphs (h)(1), (h)(2), and (h)(3) to read as follows. The paragraph title is shown for the convenience of the reader.

§ 761.79 Decontamination standards and procedures.

* * * * *

(h) *Alternative decontamination or sampling approval.* (1) Any person wishing to decontaminate material described in paragraph (a) of this section in a manner other than prescribed in paragraph (b) of this section must apply in writing to the EPA Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or the Director of the National Program Chemicals Division, for decontamination activity occurring in more than one EPA Region. * * *

(2) Any person wishing to decontaminate material described in paragraph (a) of this section using a self-implementing procedure other than prescribed in paragraph (c) of this section must apply in writing to the EPA Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or the Director of the National Program Chemicals Division, for decontamination activity occurring in more than one EPA Region. * * *

(3) Any person wishing to sample decontaminated material in a manner other than prescribed in paragraph (f) of this section must apply in writing to the EPA Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or the Director of the National Program Chemicals Division, for decontamination activity occurring in more than one EPA Region. * * *

* * * * *

§ 761.247 [Amended]

15. Amend § 761.247 as follows:

a. Amend the heading by removing "or pipeline section abandonment".

b. Amend paragraph (a)(3) by removing "or pipeline section".

c. In the fourth sentence of paragraph (b)(2)(ii)(B)(2), revise "section" to read "length".

d. Amend the introductory language to paragraph (c) by removing "pipeline section or".

e. Amend paragraph (c)(5)(iii) by removing "pipeline section or".

f. Amend the second sentence of paragraph (d) by removing "pipeline section or" each time it appears.

§ 761.250 [Amended]

16. In § 761.250(a)(2), revise "§ 761.247(d)" to read "§ 761.247(c) and (d)".

§ 761.347 [Amended]

17. In § 761.347(c)(3)(i)(C), revise "paragraph (c)(3)(iii) of this section" to read "paragraph (c)(3)(i)(B) of this section".

[FR Doc. 99–16098 Filed 6–23–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 545 and 571

[Docket No. 98–21]

Miscellaneous Amendments to Rules of Practice and Procedure; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Maritime Commission published in the **Federal Register** of February 17, 1999, a final rule making changes to existing regulations to update and improve them, and to conform them to and implement the Ocean Shipping Reform Act of 1998. Subsequently on May 3, 1999 a correction was published to add several amendatory instructions that were omitted in the final rule. This document satisfies Office of the Federal Register concerns, by correcting the new amendatory instructions.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW, Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail:secretary@fmc.gov.

DATES: Effective on June 24, 1999.

SUPPLEMENTARY INFORMATION: The FMC published a final rule in the **Federal Register** of February 17, 1999, (64 FR 7804) which made corrections and changes to existing rules of practice and procedure. Subsequently, a correction to the final rule was published on May 3, 1999 (64 FR 23551) to add several amendatory instructions which had been omitted. The **Federal Register** has requested that the FMC publish the following correction to clarify those amendatory instructions.

In the correction to Docket No. 98–21, published on May 3, 1999, on page 23551 in the second column, revise correction number one (1) to read as follows:

1. On page 7807, in the first column, after the text of instruction 4(c) add the following amendatory instructions:

d. In redesignating paragraph (b), revise the phrase "paragraphs (b)(5), (6), and (7)," to read "paragraphs (e), (f), and (g)."

e. In redesignated paragraph (d), redesignate paragraphs (i), (ii), and (iii) as paragraphs (1), (2), and (3), and in redesignated paragraph (d)(3), revise the phrase "(b)(4)(i) and (b)(4)(ii)" to read "(d)(1) and (d)(2)."

f. In redesignated paragraph (e), revise the reference "(b)(4)", to read "(d)."

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–15973 Filed 6–23–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[WT Docket No. 96–18; PR Docket No. 93–253; FCC 99–98]

Future Development of Paging Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerns rules and policies for the geographic area licensing of Common Carrier Paging and exclusive 929 MHz Private Carrier Paging, and competitive bidding procedures for auctioning mutually exclusive applications for these licenses. This document also adopts rules concerning the partitioning and disaggregation of paging licenses, and institutes procedures designed to deter application fraud on shared paging channels. The intended effect of this action is to clarify and resolve issues pertaining to the paging service prior to the Commission's auctions of remaining spectrum within that service.

EFFECTIVE DATES: Effective August 23, 1999.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: For non-auction information: Cyndi Thomas or Todd Slamowitz, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–7240. For auction information: Anne Napoli, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660. TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order on Reconsideration and Third Report and Order* in WT Docket No. 96–18 and PR Docket No. 93–253, FCC 99–98, adopted on May 13, 1999, and released on May 24, 1999. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY–B400, Washington DC. The complete text is also available under the file name fcc99098.wp on the Commission's internet site at http://www.fcc.gov/Bureaus/Wireless/Orders/1999.

Paperwork Reduction Act

The *Second R&O* and this *MO&O* and *Third R&O* contain a revision to an existing information collection that has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, Public Law No. 104–13 (3060–0697). The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the OMB to comment on this information collection in a separate **Federal Register** publication.

Synopsis of Memorandum Opinion and Order on Reconsideration and Third Report and Order

Memorandum Opinion and Order on Reconsideration

1. The Commission adopts a *Memorandum Opinion and Order on Reconsideration* (*MO&O*) and *Third Report and Order* (*Third R&O*) that responds to petitions for reconsideration or clarification of the *Second Report and Order* (*Second R&O*) and *Further Notice of Proposed Rulemaking* (*Further Notice*) adopted in this proceeding on February 19, 1997. The *Second R&O* (62 FR 11616, March 12, 1997) established rules to govern the geographic area licensing of Common Carrier Paging (CCP) and exclusive 929 MHz Private Carrier Paging (PCP), and procedures for auctioning mutually exclusive applications for these licenses. In general, the *MO&O* affirms the rules adopted in the *Second R&O*, with some changes and clarifications, stating the Commission's continuing belief that the adopted rules will facilitate competition in the wireless market by encouraging a more diverse array of entities, including small businesses and rural telephone companies, to offer paging services to the public. The *Further Notice* (62 FR 11616, March 12, 1997) sought comment on issues concerning partitioning and disaggregation of paging licenses, coverage requirements for nationwide geographic area licensees, and possible revisions to application procedures for shared channels. The *Third R&O* modifies the paging rules to permit partitioning by all nationwide geographic area licensees and to allow disaggregation by all geographic area licensees; adopts rules governing the coverage requirements for parties to partitioning or disaggregation agreements involving non-nationwide geographic area licenses, and the license term of partitioned or disaggregated geographic area licenses; permits geographic area licensees to combine partitioning and disaggregation; and establishes additional mechanisms to inform consumers of the rules governing paging licenses and the danger of fraudulent schemes perpetrated by application mills.

Dismissal of Pending Applications

2. The *MO&O* denies the petitions seeking reconsideration of the Commission's decision to dismiss all mutually exclusive paging applications and all paging applications filed after July 31, 1996. In the *Second R&O*, the Commission stated that, in light of its decision to adopt geographic area licensing, it would dismiss all pending mutually exclusive paging applications, including those filed under the interim rules adopted in the *First R&O* (61 FR 21380, May 10, 1996), and all applications filed after July 31, 1996. On December 14, 1998, the Commercial Wireless Division of the Wireless Telecommunications Bureau dismissed these applications pursuant to the *Second R&O*.[1]

3. The Commission disagrees with petitioners' arguments that the Commission did not notify the public prior to release of the *Second R&O* of its intent to dismiss these applications; that the Commission is unlawfully applying new rules retroactively; that applicants reasonably relied on the Commission's prior procedures for processing applications; and that the only reason for licensing paging spectrum through competitive bidding is to raise money for the Federal government. The Commission notes that courts have consistently recognized that the filing of an application creates no vested right to continued application of licensing rules that were in effect when the application was filed, and an application may be dismissed if substantive standards subsequently change. In this proceeding, the Commission dismissed pending applications based on its substantive rule changes establishing geographic area licensing for paging. In light of the notice the Commission gave of its interest in instituting geographic area licensing, and of its intent not to process applications filed after July 31, 1996, the Commission does not believe that any applicants could have reasonably relied on its processing applications filed after that date.

4. Moreover, the Commission does not think that carriers that had previously pending applications will be irreparably harmed by a decision to proceed to the auction of paging licenses without any further processing of site-specific applications because such applications were dismissed without prejudice and these applicants may therefore file applications to participate in the auctions. The Commission states that the reasons for adopting competitive bidding procedures for paging licenses are set forth at length in the *Notice of Proposed Rulemaking* (*Notice*) (61 FR 6199, February 16, 1996) and *Second R&O*, and these reasons do not include revenue-raising considerations. The Commission also notes that it concluded in the *Competitive Bidding Second R&O* (59 FR 162981, May 4, 1994) that mutually exclusive initial paging applications were auctionable under the auction authority provided the Commission by the 1993 Budget Act. This conclusion is unchanged by the Balanced Budget Act of 1997, which amended Section 309(j) to expand the Commission's auction authority.

5. Petitioners also assert that dismissal of pending applications undermines the policy goal of expediting the licensing of paging spectrum because dismissal will delay the initiation of paging service in many market areas and will prevent the expansion of networks. The Commission finds, however, that it was the formidable administrative burden of processing site-by-site applications, and the substantial number of mutually exclusive applications that were filed, which created a backlog of pending applications and caused their processing to be delayed. The Commission further rejects petitioners' suggestion to hold an additional auction for the purpose of resolving mutually exclusive site-by-site licenses, prior to conducting an auction for geographic areas containing these same sites, because it would be grossly inefficient.

6. Citing section 309(j)(6)(E) of the Communications Act of 1934, petitioners contend that the Commission may not proceed to geographic area licensing without first attempting to avoid mutual exclusivity through "engineering solutions, negotiation, threshold qualifications, service regulations, and other means." The Commission has previously

[1] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Order*, WT Docket No. 96–18, DA 98–2543 (Dec. 14, 1998) (*CWD Order*).

construed Section 309(j)(6)(E) to mean that it has an obligation to attempt to avoid mutual exclusivity by the methods prescribed therein only when it would further the public interest goals of Section 309(j)(3). In the *Second R&O*, the Commission concluded that the public interest would be better served by licensing all remaining paging spectrum through a geographic area licensing scheme than by processing additional site-specific licenses. The Commission thereby effectively determined that it would not be in the public interest to implement other licensing schemes or other processes that avoid mutual exclusivity, thus fulfilling its obligation under Section 309(j)(6)(E).

7. Several petitions for reconsideration and an application for review were filed in response to the *CWD Order*. The parties generally reiterate the same arguments against dismissing their applications that were set forth in the petitions for reconsideration filed in response to the Second *R&O*. Having already considered these arguments, the Commission denies the application for review filed by Robert J. and Laurie F. Keller d/b/a Western Maryland Wireless Company on December 28, 1998, and petitions for reconsideration filed on January 13, 1999, by: AirTouch Paging, AirTouch Paging of California, AirTouch Paging of Kentucky, AirTouch Paging of Texas, AirTouch Paging of Virginia, Allcom Communications, Inc., Arch Capitol District, Inc., Arch Connecticut Valley, Inc., Arch Southeast Communications, Inc., Becker Beeper, Inc., Blasiar, Inc., Electronic Engineering Company, Hello Pager Company, Paging Systems Management, Inc., PowerPage Inc., Robert Kester *et al.*, Satellite Paging, Inc., South Texas Paging, Inc. (Arthur Flemmer), USA Mobile Communications, Inc. II, Westlink Licensee Corporation, and Westlink of New Mexico Licensee.

Geographic Areas

8. The Commission grants the petitions that request the Commission to use Major Economic Areas (MEAs) instead of Major Trading Areas (MTAs) for geographic licensing of the upper bands (929 and 931 MHz). When the Commission adopted the *Second R&O*, it had not established MEAs, which were first developed by the Commission to define geographic license areas for the Wireless Communications Service (WCS). Although MTAs and MEAs are substantially similar, the Commission finds that geographic area licensing based on MEAs will provide geographic area licensees with benefits that could not be obtained if the Commission maintained MTAs as the geographic area for the 929–931 MHz band. Licensees with paging systems in both the upper bands and the lower bands (35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz), which will be licensed as EAs, will benefit from the use of MEAs for the upper bands because MEAs are composed of EAs. The fact that the geographic borders of MEAs coincide with those of the EAs contained within the MEAs will enable licensees with both upper and lower band systems to operate more efficiently. The Commission also finds that adopting MEAs on the upper bands will enhance competition between the paging systems on the lower channels and the paging systems on the upper bands because the paging systems on the lower channels will be able to combine their EAs to form MEAs. The Commission also acknowledges that licensees will benefit economically from licensing based on a geographic designation that is in the public domain.

9. The Commission rejects one petitioner's contention that the decision to eliminate section 90.496 of the Commission's rules was arbitrary and capricious and an unlawful retroactive rulemaking without the opportunity for notice and comment. In the *Second R&O*, the Commission eliminated section 90.496 of its rules, which provided for extended implementation of construction and operations deadlines for proposed systems on the 929–930 MHz band that qualified for regional or nationwide channel exclusivity. As explained in the *Notice*, the Commission found that extended implementation would be unnecessary under its geographic area licensing scheme and, in fact, would hinder geographic area licensing because construction extensions for incumbents could effectively allow them to occupy an entire geographic area. The Commission sought comment in the *Notice* on its proposal to eliminate extended implementation and to dismiss all "slow growth" applications pending at the time an order pursuant to the *Notice* was adopted without prejudice to refile under its geographic area licensing scheme. The Commission affirms removal of section 90.496 of its rules and clarifies that removal of the rule does not affect the rights associated with extended implementation authority granted under that rule as of May 12, 1997, the effective date of the *Second R&O*. In addition, any requests pending as of May 12, 1997, are dismissed without prejudice to obtain licenses under the geographic area licensing rules.

10. The Commission rejects one petitioner's request to use BTAs for geographic area licensing in the lower bands, affirming its determination that EAs are appropriate for geographic area licensing on the 35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz bands. The petitioner contends that the size of EAs will prevent small and rural paging companies from participating in the geographic area licensing auctions; that EAs contain major urban areas as well as rural and suburban areas, and that small and rural companies are only interested in the rural and suburban areas of the EA; and that partitioning does not address the concerns of small and rural companies. Contrary to the petitioner's arguments, the Commission believes that the size of EA geographic areas will not prevent paging operators of smaller systems from participating in geographic area licensing auctions. The Commission also believes bidding credits will allow small businesses to compete against larger bidders. Further, small and rural paging companies will not be prevented from expanding their systems even if they choose not to participate in the geographic area licensing auctions, because the Commission will allow geographic area licensees to partition their service areas and it has no reason to believe that geographic area licensees will be unwilling to enter into partitioning agreements. The Commission continues to conclude that EAs, which the majority of commenters supported, best reflect the geographic area that the paging licensees on the lower channels seek to serve.

11. The Commission amends section 22.503(b)(3) of the Commission's rules to include three additional EA-like areas for the U.S. territories, which the Commission inadvertently omitted in the Second R&O. The Commission adds the following three EA-like service areas: Guam and the Northern Mariana Islands (EA 173); Puerto Rico and the United States Virgin Islands (EA 174); and American Samoa (EA 175).

Highly Encumbered Areas

12. The Commission denies petitions arguing that those incumbent licensees that have previously satisfied certain coverage requirements should receive a geographic area license without competitive bidding. Petitioners advocate granting a market area license to an incumbent providing coverage to at least 70 percent, two-thirds, or a similar portion of the market. Petitioners propose a two-step process for granting market area licenses. First, where an incumbent operator certifies that it covers 70 percent of a market area's population or geographic area, the Commission should grant a market area license to that incumbent. If multiple incumbents serving a market on a single frequency together cover 70 percent of the population or geographic area, those licensees should be permitted jointly to file an application that demonstrates their joint coverage, and receive a market area license on that basis. In the second step, interested parties could file applications for all remaining available frequencies in each market. Mutually exclusive applications would then be subject to the Commission's auction rules. Petitioners alternatively propose to limit eligible bidders to the same channel incumbents operating within the geographic area or in an area adjacent to the geographic area license.

13. To support their proposals, petitioners argue, for example, that, under the Commission's rules adopted in the *Second R&O*, new opportunities for greenmail and speculative applications will result in inflated auction prices, and reliable service will decline because auctions introduce additional parties for coordination and negotiation and customers will be unable to receive or obtain services if multiple providers are using the same channel within a market area. Petitioners further argue that new entrants will increase the potential for co-channel interference; "dead zones" will occur between the incumbent and geographic area licensee's service areas; the incumbent's ability to expand to provide the "widest area coverage" will be blocked if a new entrant wins at auction; new entrants will be encouraged to enter markets where it would not be economically viable to do so; and customers will not reap the benefits of competition. In addition, petitioners state that an applicant is not qualified if it cannot meet the construction benchmark of covering two-thirds of the population of an MTA where operating incumbents already meet the coverage requirements. Petitioners further assert that the Commission's current rules do not meet its statutory obligation to avoid mutual exclusivity, while mutual exclusivity could be avoided through "threshold qualifications," identified in their percent-of-coverage proposals.

14. While the Commission recognizes that some geographic areas are significantly served by incumbent licensees, it believes that the market should decide whether an economically viable paging system can be established in the unserved area of a geographic market. For instance, a paging provider that primarily serves an adjacent geographic market may have a strong desire to serve the unserved area in its neighbor's "home" market. In addition, even where only 30 percent of a geographic area is available to a potential new entrant, the Commission does not believe that it has been shown that the new entrant cannot establish a viable system that serves the public as well as the incumbent. Thus, the Commission cannot conclude that an incumbent licensee is entitled to a geographic area license without competitive bidding simply because its paging system may cover a substantial portion of the geographic area. The Commission continues to believe that open eligibility promotes prompt service to the public by allocating spectrum to the entity that values it most.

15. The Commission also believes that the benefits of open eligibility outweigh the risks that speculators and misguided applicants pose to the competitive bidding process. Indeed, while speculation can be a problem when licenses are awarded through such systems as lotteries, the Commission believes that auctions deter speculation. The Commission has auctioned other highly encumbered services and has not seen any evidence that speculative applications have raised bidding prices. Petitioners also have not provided any evidence that speculative applications have raised bidding prices in prior auctions.

16. Other issues raised by petitioners are addressed in other sections of the *MO&O*. The Commission states that a new entrant will be able to meet its coverage requirements by providing "substantial service" within the geographic area and geographic area licensees must provide co-channel protection to all incumbents. Moreover, the Commission notes that petitioners have not provided any evidence that the "border" issues raised here, including problems related to "dead zones," are any different from issues that arise under other circumstances where one licensee is adjacent to another. Finally, turning to its obligation to attempt to avoid mutual exclusivity when it is in the public interest, the Commission does not believe that Congress intended the Commission to interpret the term "threshold qualifications" in Section 309(j)(6)(E) to mean that carriers should receive licenses for unserved areas without competitive bidding simply because they already hold certain licenses for other areas in the vicinity, particularly because the result of such an approach would be to preclude the dissemination of licenses to new entrants.

Basic Exchange Telecommunications Radio Systems Licensees

17. The *Second R&O* directs that Basic Exchange Telecommunications Radio Systems (BETRS) licensed under the Rural Radiotelephone Service should be subject to geographic area licensing and competitive bidding, and also allows providers in these services to obtain site licenses on a secondary basis. It further provides that all existing BETRS operating on a co-primary basis remain in place and receive full protection from interference by geographic area licensees. BETRS licensees may also enter into partitioning agreements with auction participants and auction winners both before and after the paging auctions. In the *Second R&O*, the Commission stated that "[i]f a geographic area licensee is concerned that a BETRS facility operating on secondary sites may cause interference to the geographic area licensee's existing or planned facilities, the BETRS provider must discontinue use of the interfering channel no later than six months after the geographic area licensee notifies the BETRS provider of the actual or potential interference." This policy is codified at section 22.723 of the rules.

18. Several petitioners argue that BETRS is essential to the Commission's universal service goal of delivering local exchange service to remote, rural areas and should be licensed on a site-by-site, co-primary basis with geographic area licensees, and exempt from competitive bidding procedures. These petitioners contend that participation in auctions will impair the ability of rural telephone companies to respond to their customers' needs for local exchange service in remote rural areas.

19. The Commission declines to adopt rules that permit site-by-site licensing of BETRS on a co-primary basis with geographic area paging licensees. The Commission agrees that BETRS provide an important service, but finds that BETRS do not require exemption from competitive bidding to ensure continued BETRS service and lower costs to subscribers. The rules that the Commission adopted in the *Second R&O* provide competitive bidding benefits to small businesses that will enable them to compete more effectively with larger auction participants. The Commission also believes that BETRS operators will be able to obtain interests in paging licenses or actual paging licenses through entering into partitioning arrangements both before and after the paging auctions. The

Commission emphasizes that it is committed to promoting service in rural areas and believes that the rules adopted for BETRS in the *Second R&O* will further that goal. If a BETRS operator demonstrates that it cannot serve a particular need in a rural area under these rules, the Commission will consider appropriate action to address specific concerns.

20. Petitioners contend that, contrary to the Commission's universal service goals, section 22.723 of the Commission's rules will allow geographic area licensees to terminate BETRS upon any allegation of harmful co-channel interference, resulting in a loss of communications services essential to the public in rural areas. Petitioners argue that the Commission must either retain existing rules or establish safeguards against allowing geographic area licensees to "shut down BETRS operations." Another petitioner, however, seeks clarification that section 22.723 confers no right on rural radio service licensees to continue operations that cause actual interference to geographic area licenses for six months after receiving notice of the interference. The Commission affirms its earlier decision to allow BETRS licensees to obtain site licenses and operate facilities on a secondary basis. The Commission clarifies that under section 22.723 of its rules, the geographic area licensee must provide notification to the BETRS provider that the relevant BETRS facility causes or will cause interference with the geographic area licensee's service contour in violation of the Commission's interference rules. Where the BETRS facility would create interference with a facility the geographic area licensee is proposing to build, the geographic area licensee may not provide notification of impermissible interference to the BETRS provider earlier than six months prior to the date it intends to initiate operation of the proposed facility. Thus, the geographic area licensee may not force the BETRS provider to discontinue service before the geographic area licensee initiates service. Where the BETRS facility is constructed after the geographic area licensee's facility is already constructed and the BETRS facility causes interference with that existing facility, the BETRS operator must discontinue use of the interfering channel in accordance with the Commission's interference rules. Where a geographic area licensee plans construction and initially determines that the BETRS facility would not cause interference, but after construction determines the BETRS facility is causing interference, the BETRS operator must discontinue use of its facility within six months of receiving notification. If a dispute arises, either party may submit the interference information to the Commission to resolve the dispute. If the geographic area licensee provides proper notification to the BETRS provider, no adjustments will be made to the initial six month period. If the Commission determines that the notification was improper or inaccurate, the geographic area licensee, where appropriate, must submit a new, corrected notification to the BETRS provider. In the latter case, the six month period would restart.

21. Contrary to petitioners' argument, the Commission has not exceeded its statutory authority by employing competitive bidding procedures to issue geographic area paging licenses. Section 309(j) of the Communications Act, as amended, gives the Commission authority to issue geographic area paging licenses through competitive bidding. Petitioners have offered no evidence to support their assertion that revenue for the federal treasury "appears to be the real reason for the Commission's proposal." The recovery of a portion of the value of the public spectrum made available through competitive bidding does not amount to maximizing revenue, nor is it the Commission's sole objective.

22. Certain petitioners also argue that the Commission did not adequately consider adopting "mandatory partitioning" of rural areas of the geographic area license, at no cost to the rural telephone company, to offset the unwillingness of geographic area licensees to enter into agreements for the provision of BETRS service. The Commission affirms its conclusion in the *Second R&O* that BETRS licensees may acquire partitioned licenses from other licensees by: (1) participating in bidding consortia; or (2) acquiring partitioned licenses from other licensees through private negotiation and agreement either before or after the auctions. The Commission has no reason to believe that auction winners will not be willing to enter into partitioning arrangements. Petitioners themselves argue that winning geographic area licensees may have no desire or intention to build in rural areas. If this is true, there appears to be little incentive for these licensees to demand unreasonable amounts of money for the rural portion of a license prior to or subsequent to the auction, especially if the choice is between selling to a willing buyer or leaving the rural area unserved. Where possible, the Commission encourages market forces and the business judgment of companies to dictate the formation of business relationships. The Commission believes voluntary agreements will be an adequate means of accommodating BETRS licensees seeking modifications to existing BETRS or wishing to establish new systems, and that mandatory partitioning is unnecessary.

Spectrum Reversion

23. The Commission reaffirms that where an incumbent permanently discontinues operations at a given site, as defined by the Commission's rules, the spectrum automatically reverts to the geographic area licensee. In the *Second R&O*, the Commission concluded that spectrum within a geographic area recovered by the Commission from a non-geographic area licensee should automatically revert to the geographic area licensee. The Commission found that granting this right to geographic area licensees would give them greater flexibility in managing their spectrum, establish greater consistency with cellular and PCS rules, and reduce the regulatory burdens on both licensees and the Commission with respect to future management of the spectrum.

24. One petitioner suggests that the Commission should clarify that recovered spectrum automatically reverts to the geographic area licensee in all instances except where an incumbent licensee discontinues operations in a location wholly encompassed by the incumbent licensee's valid composite interference contours. The petitioner argues that the geographic area licensee would not be able to serve such an area, and that reversion would be contrary to the Commission's policy of allowing fill-in transmitters anywhere within the incumbent's outer perimeter interference contour. The Commission disagrees. As an initial matter, the Commission notes that an incumbent's valid composite interference contour does not include areas surrounded by the composite interior contour that is not part of the interference contours of the incumbent's individual sites. The Commission further finds that the petitioner has not demonstrated that a geographic area licensee would be unable to serve areas wholly surrounded by an incumbent; such service by the geographic area licensee would be subject to the Commission's interference rules. Moreover, where an incumbent discontinues service to an area, the Commission does not believe it serves the public interest to withhold that area from the geographic area licensee in the hope that the incumbent may wish to resume service sometime in the future. Should an incumbent desire to serve the reverted area in the future, it is free to reach an agreement with the geographic area licensee for the partitioning of this area. This approach is consistent with the Commission's treatment of reverted spectrum in the 800 MHz SMR service, and it is in the public interest, as it promotes use of the spectrum.

System-wide Licensing

25. The Commission clarifies certain aspects of its rules regarding system-wide licensing. In the *Second R&O*, the Commission allowed all incumbent paging licensees to either continue operating under existing authorizations or trade in their site-specific licenses for a single system-wide license. The Commission stated that such a system-wide license would be demarcated by the aggregate of the interference contours around each of the incumbent licensee's contiguous sites operating on the same channel. The Commission also concluded that incumbent licensees may add or modify sites within their existing interference contours without filing site-specific applications, but may not expand their existing interference contours without the consent of the geographic area licensee.

26. Although system-wide licenses and site-specific licenses are identical in terms of operational and technical flexibility, some licensees may realize administrative benefits from consolidating site-specific licenses. Petitioners seek clarification of the procedures for converting site-specific licenses to a system-wide license. In the *ULS Order* (63 FR 856163, December 14, 1998), the Commission stated that conversions from site-specific to system-wide licenses are minor modifications subject to the Commission's prior approval. Applicants requesting a system-wide license will be notified by public notice of the action taken on their request and public notices granting such requests will indicate the new call sign associated with the system-wide license. The expiration date of the system-wide license will be determined by the earliest expiration date of the site-specific licenses that are consolidated into the system-wide license. Once a system-wide license is approved, the licensee must submit a timely renewal application for the system-wide license based on that expiration date. The Commission emphasizes, however, that the licensee is solely responsible for filing timely renewal applications for site-specific licenses included in a system-wide license request until the request is approved. If the situation arises where a site-specific renewal application for a site included in a system-wide license request and the system-wide license request itself are pending at the same time before the Wireless Telecommunications Bureau, the Bureau may elect to complete the site-specific license renewal proceeding prior to making a determination on the system-wide license request. Renewal applications will be placed on public notice as accepted for filing pursuant to the Commission's rules. To minimize administrative burdens on licensees and conserve government resources, the Bureau will use electronic filing to the greatest extent possible in accepting and processing these applications.

27. Several petitioners seek clarification of the definition of "contiguous sites" for the purpose of determining an incumbent's "aggregate interference contour." Petitioners also urge the Commission to modify section 22.503(i) to define non-geographic area incumbent systems according to the composite interference contours of all authorized transmitters, including valid construction permits, regardless of the grant date. The Commission has consistently stated that system-wide licenses are defined by interference contours and it now clarifies that contiguous sites are defined by overlapping interference contours, not service contours. The Commission further clarifies that all authorized site-specific paging licenses and construction permits are included in a composite interference contour. The Commission is continuing to process site-specific applications that were not mutually exclusive and were filed prior to July 31, 1996, and it will not revoke authorized construction permits before the construction deadline. In addition, the Commission is continuing to resolve pending petitions that might result in grants of applications. The Commission also notes that for purposes of due diligence it intends to release, prior to auction, a list of site-specific applications and petitions pending at that time. Accordingly, the Commission amends section 22.503(i) to clarify that geographic area licensees must provide co-channel interference protection in accordance with sections 22.537 or 22.567, as appropriate for the channel involved, to all authorized co-channel facilities of exclusive licensees within the paging geographic area.

28. Petitioners also contend that system-wide licenses should include areas where an incumbent's interference contours do not overlap, but where no other licensee could place a transmitter because of interference rules. The Commission concludes that a system-wide license is merely a consolidation of a system's call signs such that one call sign will be associated with the system-wide license. The contours of the system-wide license remain as the aggregate of the contours of the individual sites. The Commission finds that inclusion of areas that are outside of an incumbent's interference contours within a system-wide license would be contrary to the Commission's objective of prohibiting encroachment on the geographic area licensee's operations. A system-wide license is not intended to expand an incumbent's system beyond the contours of its individual sites. Incumbent licensees seeking to expand their contours may participate in the auction of geographic area licenses, or may seek partitioning agreements with the geographic area licensee.

29. One petitioner seeks clarification as to whether the discontinuance of operation of an interior site would jeopardize a system-wide license. Where a system-wide licensee allows an area within its system to revert to the geographic area licensee, the system-wide license shall remain intact; however, the parameters of the system-wide license shall be amended to the demarcation of the remaining contiguous interference contours.

30. The Commission will allow licensees to include in system-wide licenses remote, stand-alone transmitters that are linked to contiguous systems via control/repeater facilities or by satellites. Including these remote, stand-alone sites in the system-wide license, however, in no way expands the licensee's composite interference contours. The Commission will also permit licensees to maintain separate site-specific licenses for remote, stand-alone transmitters. The Commission further finds that an incumbent licensee should be permitted to obtain multiple system-wide licenses where applicable.

Interference

31. The Commission affirms its earlier decision to use Tables E–1 and E–2 to determine interference contours for both perimeter and "fill-in" transmitters. Co-channel interference rules are designed to protect licensees from interference caused by other licensees operating facilities on the same channel. Exclusive paging systems are protected from co-channel interference by a variety of rules that govern transmitter height and power, distance between transmission stations, the licensee's protected service area, and the field strength of the licensee's service and interfering signals. For the CCP channels below 931 MHz, the Commission uses

mathematical formulas to determine the distance from each transmitting site to its service and interference contours along the eight cardinal radials from the transmitter site. To determine service and interference contours for the 931 MHz channels, the Commission uses two tables of fixed radii, Tables E–1 and E–2. Prior to adoption of the *Second R&O*, for the 929 MHz exclusive channels, the Commission used geographic separation rules that agreed with the separations that result from the application of the fixed radii tables for 931 MHz. Unlike the Commission's CCP rules, at that time, the PCP rules did not formally define a protected service or interference contour for each station.

32. In the *Notice*, the Commission proposed to adopt the eight-radial contour method and new mathematical formulas, rather than fixed tables, to determine the service and interference contours for the exclusive 929 MHz and 931 MHz channels. The commenters addressing this issue strenuously objected to the Commission's proposal, stating that the proposed method could require incumbents to reduce coverage or be required to accept interference from geographic area licensees. Consequently, the Commission decided not to adopt the proposed formulas. The Commission did, however, adopt Tables E–1 and E–2 for the exclusive 929 MHz channels, thus maintaining the *status quo* for 931 MHz channels and conforming 929 MHz channels to the current procedures for 931 MHz channels.

33. Several petitioners now request that instead of using Tables E–1 and E–2, the Commission permit incumbents to employ alternative formulas to determine the interference contours of "fill-in" transmitters. One petitioner suggests using signal strength criteria, rather than alternative formulas, for determining the interference contours of "fill-in" transmitters. The Commission does not find that permitting incumbents to use different formulas for "fill-in" transmitters will serve the public interest. The record in this proceeding supports the decision to use Tables E–1 and E–2 to determine interference and service contours for all 929 MHz and 931 MHz transmitters. The Commission finds that to permit incumbents to add sites under alternative formulas depending on the location and power of each of their transmitters significantly raises the risk of encroachment on a geographic area licensee's territory. In addition, the incumbent will have the opportunity to cover any existing gaps in coverage by either competing for the geographic area license or by partitioning from the geographic area licensee.

34. The Commission affirms its previous conclusion to require geographic area licensees to negotiate to resolve interference problems with adjacent geographic area licensees. In the *Second R&O*, the Commission concluded that geographic area licensees should be able to negotiate mutually acceptable agreements with all adjacent geographic area licensees if their interfering contours extend into other geographic areas. The Commission also indicated that adjacent licensees have a duty to negotiate in good faith with one another regarding co-channel interference protection. The Commission noted that lack of adequate service to the public because of failure to negotiate reasonable solutions with adjacent geographic area licensees could reflect negatively on licensees seeking renewal.

35. Certain parties now seek clarification of the good faith negotiation requirement, arguing the standard is vague and invites litigation. One petitioner further notes that while the cellular industry has negotiated agreements, paging coordination will be more difficult because paging carriers operate on only one frequency, while cellular carriers have many channels with which to negotiate. The *Second R&O* adopted the good faith standard to provide flexibility for licensees to negotiate mutually acceptable agreements. Providing for adjacent geographic area licensees to negotiate mutually acceptable agreements should reduce the amount of unserved area that could result from specifying a minimum distance a geographic area licensee's transmitter must be from a geographic border. In other services, such as the Multipoint Distribution Service (MDS), the Commission has expected licensees to cooperate among themselves to resolve interference issues before bringing them to the attention of the Commission. Based on the limited number of interference complaints that it has been called upon to resolve, the Commission believes this policy has worked well in the MDS service. Moreover, none of the parties have proposed a better way to achieve flexibility and the reduction of unserved areas.

36. The Commission clarifies various issues regarding channel exclusivity on the 929–930 MHz bands. Prior to 1993, all PCP channels were assigned on a non-exclusive basis. In 1993, the Commission established rules allowing PCP carriers in the 929–930 MHz band to obtain channel exclusivity as local, regional, and nationwide paging systems on thirty-five of the forty 929 MHz PCP channels. Those licensees that qualified for exclusivity as a local, regional, or nationwide system at that time were grandfathered as exclusive licensees, and required to maintain their existing sharing arrangements with other licensees, but were protected from the addition of other licensees on these channels. Thus, no application for a new paging site would be granted on a channel assigned to an incumbent who qualified for exclusivity if the applicant proposed a paging facility that did not comply with the separation standards based on antenna height and transmitter power of the respective systems. All other incumbent licensees were grandfathered with respect to their existing systems as shared licensees, and required to continue to share channels with each other. The Commission notes that grandfathered licensees could not add stations to their existing systems in areas where a co-channel licensee had qualified for exclusivity. Therefore, on these thirty-five 929 MHz channels, the Commission has: (1) exclusive incumbents: grandfathered exclusive systems that are exclusive with respect to new licensees, but share with other grandfathered licensees; (2) non-exclusive incumbents: grandfathered shared licensees; (3) licensees who failed to construct enough sites to qualify for exclusivity under the *PCP Exclusivity Order* (considered "secondary" with respect to licensees with earned exclusivity); and (4) licensees with earned exclusivity. In the *Second R&O*, the Commission concluded that geographic area licensees must provide co-channel protection to all incumbent licensees.

37. Certain petitioners seek clarification as to whether non-exclusive 929 MHz licensees operating on the thirty-five exclusive channels (*i.e.*, categories 2 and 3 in the above paragraph) will receive the same interference protection as an exclusive licensee. Other petitioners seek clarification that the Commission did not elevate incumbent licensees operating on shared channels to exclusive status. One petitioner specifically argues that section 22.503(i) will require that nationwide geographic area licensees terminate sharing arrangements they have with non-exclusive licensees and provide interference protection to them, while another contends that section 22.503(i) does not require the termination of existing channel sharing arrangements involving exclusive incumbent licensees and non-exclusive incumbent licensees. Non-exclusive incumbent licensees on the thirty-five exclusive 929 MHz channels will continue to operate under the same arrangements established with the exclusive incumbent licensees and other non-exclusive incumbent licensees prior to the adoption of the *Second R&O*. The Commission further clarifies that MEA, EA, and nationwide geographic area licensees will be able to share with non-exclusive incumbent licensees on a non-interfering shared basis. The non-exclusive incumbent licensees must cooperate with the nationwide and geographic area licensees' right to share on a non-interfering shared basis. Accordingly, the Commission amends section 22.503(i) to clarify that nationwide and geographic area licensees are afforded the right to share with non-exclusive incumbent licensees on a non-interfering shared basis. As for shared PCP channels, the Commission concluded in the *Second R&O* that licensees on these channels will not be converted to exclusive status and that these channels will not be subject to competitive bidding. Therefore, licensees on these shared channels will continue to share with any future licensees.

38. The Commission declines to grant one petitioner's request to grant full interference protection to existing control link operations on the UHF and VHF paired channels originally allocated for mobile telephone service once the "auction for the UHF and VHF common carrier channels" is completed. The petitioner contends that in reliance on the Commission's proceeding in CC Docket 87–120, which permitted paging carriers to use these two-way channels as control links, "numerous carriers have configured their paging systems on [the] basis of their protected use of a VHF or UHF frequency to link their base stations." Another petitioner requests clarification as to whether incumbent mobile telephone service providers operating on the lower paging frequencies will be protected from interference from geographic area licensees. Furthermore, the petitioner requests that incumbent mobile telephone service providers be permitted to obtain additional site licenses on a secondary basis.

39. The Commission concludes that the petitioner's request to protect control link operations is unclear and outside the scope of this proceeding. The Commission's rules do not generally provide protection from interference to fixed stations and the petitioner's request would require a rulemaking to develop interference criteria, which is beyond the scope of this proceeding. In addition, the petitioner's request is unclear. For example, the petitioner does not specify whether any protection provided should apply to the mobile channel used as a control link or the base channel used as a control link. The Commission therefore denies the request. With respect to the request for clarification, the Commission reiterates that geographic area licensees must provide co-channel protection to all incumbent licensees, including incumbent mobile telephone service providers operating on the 150 MHz and 450 MHz bands.

40. The Commission will not, however, grant the petitioner's request that incumbent mobile telephone service providers be permitted to obtain additional site licenses on a secondary basis. While the Commission is generally aware that two-way incumbent mobile telephone service providers serve rural areas in the western part of the country, the petitioner provides no information at all for determining whether to permit incumbent mobile telephone service providers to operate facilities on a secondary basis. The Commission therefore denies the request.

Shared Channels

41. The Commission affirms its decision to not impose a limit or "cap" on the number of licensees for each of the shared channels. In the *Notice*, the Commission sought comment on whether to use geographic area licensing for the shared PCP channels in the 152–158 MHz, 462 MHz, and 465 MHz bands. Most commenters who responded to this issue in the Notice were opposed to geographic area licensing for the shared channels and sought to retain the *status quo*. In the *Second R&O*, the Commission found that the cost and disruption caused by converting shared channels to exclusive channels and subjecting them to competitive bidding would outweigh the benefits. The Commission did not impose a limit or "cap" on the number of licensees for each of the shared channels, as it found that capacity limits of paging channels are based primarily on use and not the number of licensees. Thus, "capping" the number of licensees would not necessarily ensure efficient spectrum use. The Commission also determined in the *Second R&O* that pending the resolution of issues related to consumer fraud addressed in the *Further Notice*, it would retain the interim licensing rules, which limited applications to incumbents seeking to expand their systems. The Commission did, however, eliminate the 40-mile requirement for new sites, allowing incumbents to file for new sites at any location. Finally, noting that it would not grant applications proposing operations on a commercial basis, the Commission allowed new applicants to file applications for private, internal-use systems, and reiterated that Special Emergency Radio Service providers would remain exempt from the licensing freeze and could continue to file applications on shared channels.

42. Petitioners oppose granting new applicants licenses for private, internal-use systems, alleging that allowing new applications would encourage speculative applications and result in harmful congestion on the shared PCP channels. As a remedy, petitioners urge the Commission to retain the interim rules, which limit the filing of new applications primarily to incumbents. Petitioners further urge the Commission to limit incumbents' expansion applications to sites that are within 75 miles of an existing facility, in lieu of the 40-mile requirement that the Commission has eliminated, to deter incumbents from filing speculative applications, and ask that the Commission permit applications from public safety and medical services providers for shared channels only upon certification that no public safety channels are available to meet those providers' needs.

43. The Commission does not believe that eliminating the opportunity for new licensees to establish service on shared channels serves the public interest because it does not promote efficient use of spectrum. The Commission does not believe that concerns about speculation or congestion on shared channels are sufficient at this time to warrant additional burdens on new applicants. The Commission's goal is to increase the use of these shared channels, not to unduly restrict access to them. Therefore, the Commission affirms its previous decision and declines to impose limits on the number of licensees for each channel in a particular area. The Commission will take further action if it finds that the transition of the exclusive channels to geographic area licensing results in congestion and interference problems on the shared channels. The Commission also declines to adopt a certification requirement for public safety providers. Finally, as described below, the Commission will be removing the interim licensing rules on all the shared paging channels. Accordingly, the Commission declines to impose any mileage limitations on expansion applications to provide service on shared paging channels.

44. One petitioner contends that the Commission should reconsider its

decision not to subject the five 929 MHz non-exclusive channels to competitive bidding. The Commission declines to reconsider this decision. Petitioner's arguments to include shared channels in competitive bidding are effectively a request to limit the number of licensees authorized to operate on shared channels. As previously stated, the Commission declines to impose limits on the number of licensees for each channel in a particular area.

45. The Commission also denies another petitioner's request to adopt specific interference rules for shared frequencies, and provide shared frequency licensees with some form of exclusivity protection. In the *Second R&O*, the Commission found that shared channels are heavily used by incumbent systems, many of whom have entered into time-sharing or interconnection agreements to avoid interference with one another. The Commission believes the imposition of specific interference requirements at this time could jeopardize the viability of some of these existing relationships.

Coordination with Canada

46. The Commission clarifies rules regarding coordination requirements with Canada. The Commission states that it is bound by international agreement to coordinate with the Canadian government (Industry Canada) stations using certain frequencies north of Line A or east of Line C. Incumbent and geographic area licensees on the lower paging channels must submit a Form 600 (or Form 601) to obtain authorization to operate stations north of Line A or east of Line C because the lower paging channels are subject to the *Above 30 Megacycles per Second Agreement* with Industry Canada. The *U.S.-Canada Interim Coordination Considerations for the Band 929–932 MHz, as amended*, assigns specific 929 and 931 MHz frequencies to the United States for licensing along certain longitudes above Line A, and assigns other specific 929 and 931 MHz frequencies to Canada for licensing along certain longitudes along the U.S.-Canada border. As a result, the Commission notes that frequency coordination with Canada is not required for the 929 and 931 MHz frequencies that U.S. licensees are permitted to use north of Line A pursuant to that agreement. In addition, the 929 and 931 MHz frequencies assigned to Canada are unavailable for use by U.S. licensees above Line A as set out in the agreement. Finally, the Commission is implementing electronic filing and automated coordination procedures to the extent practical and allowable under its agreements with Canada.

Power Requirements

47. The Commission clarifies that 929 MHz licensees, with certain limitations, do not need to file a modification application to increase the effective radiated power (ERP). Thus, the Commission states that licensees may modify power levels without filing a modification application only to the extent that their composite interference contour, as determined by Table E–2, remains constant or decreases. Again, the Commission restates that, pursuant to the *First R&O*, an incumbent licensee is not permitted to increase its composite interference contour.

Coverage Requirements

48. The Commission reaffirms coverage requirements for MEA and EA licensees. In the *Second R&O*, the Commission concluded that for each MTA or EA the geographic area licensee must provide coverage to one-third of the population of the entire area within three years of the license grant, and to two-thirds of the population of the entire area within five years of the license grant; or in the alternative, the MTA or EA licensee may provide substantial service to the geographic license area within five years of license grant. In addition, the Commission concluded that failure to meet the coverage requirements would result in automatic termination of the geographic area license. The Commission stated that it would reinstate any licenses that were authorized, constructed, and operating at the time of termination of the geographic area license.

49. One petitioner advocates requiring the geographic area licensee to provide coverage to one-third of the market area within one year, and two-thirds within three years. Other petitioners argue, however, that small companies will have difficulty meeting these suggested coverage requirements, especially if they must construct in rugged areas with low population density to cover two-thirds of the population. The Commission declines to adopt the proposal. The Commission believes that its previously adopted coverage requirements adequately promote prompt service to the public without being unduly burdensome on licensees that require a reasonable amount of time to complete construction. The Commission finds that areas which are currently unserved have remained so in spite of the fact that paging service has existed for many years and is extremely competitive in some markets. This finding suggests that providers of service in these areas may face unusual difficulties. Moreover, the Commission finds that overly stringent coverage requirements would unfairly favor incumbents by erecting a formidable barrier to entry.

50. Petitioners argue that the "substantial service" alternative should be eliminated because it will encourage speculation, greenmail and anticompetitive conduct. However, in some MEAs or EAs, an incumbent licensee may already serve more than one-third of the population. The elimination of the substantial service alternative would prevent a potential co-channel licensee other than the incumbent from bidding in these markets because the five-year coverage requirement could only be satisfied by the incumbent. The option of providing a showing of substantial service allows those MEA and EA licensees who cannot meet the three-year and five-year coverage requirements because of the existence of incumbent co-channel licensees to satisfy a construction requirement. Moreover, the Commission recognizes that the unserved areas of many MEAs and EAs are rural areas that may be more difficult to serve than urban areas. The Commission thinks it is in the public interest to encourage build-out in rural areas by allowing licensees to make a substantial service showing. Further, the substantial service option enables licensees to use spectrum flexibly to provide new services without being concerned that they must meet a specific percentage of the coverage benchmark or lose their license.

51. Certain petitioners argue that the vagueness of the definition of "substantial service" will result in an abundance of litigation. One petitioner suggests that substantial service could be defined as coverage of fifty percent at three years, and seventy-five percent at five years, of the geographic area that is not served by co-channel incumbent licensees; and that the Commission could require licensees to show a specified level of infrastructure investment by the three-year and five-year deadlines. Another petitioner suggests that the Commission provide specific examples of what construction levels would satisfy the substantial service test.

52. The Commission declines to adopt specific coverage requirements as the sole means of defining "substantial service." As already noted, the unserved area of an MEA or EA license (i.e., the area not served by co-channel incumbent licensees at the time the MEA or EA license is granted) may consist largely of spectrum in rural areas. The Commission believes that imposing strict coverage requirements to define substantial service in the unserved area would discourage new entrants from attempting to acquire licenses to serve rural areas. Nonetheless, the Commission finds that establishing an objective criterion as one means of meeting the substantial service option in the unserved areas of an MEA or EA would be useful. Therefore, the Commission will presume that the substantial service coverage requirement is satisfied if an MEA or EA licensee provides coverage to two-thirds of the population in the unserved area of the MEA or EA within five years of license grant.

53. At the same time, the Commission recognizes the need for flexibility in areas where stringent coverage requirements would discourage provision of any service. Therefore, the Commission clarifies that an MEA or EA licensee may be able to satisfy the substantial service requirement even if it does not provide coverage to two-thirds of the population in the unserved area within five years of license grant. The Commission offered guidance to WCS licensees with regard to factors that it would consider in evaluating whether the substantial service requirement has been met, and the Commission now applies this additional guidance to paging licensees. Thus, the Commission may consider such factors as whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers, and whether the licensee's operations serve niche markets. A licensee may also demonstrate that it is providing service to unserved or underserved areas without meeting a specific percentage, as the Commission permitted SMR providers in the 800 MHz band to do. Because the substantial service requirement can be met in a variety of ways, the Wireless Telecommunications Bureau will review licensees' showings on a case-by-case basis.

54. Petitioners request clarification as to whether licensees who fail to meet coverage requirements will be permitted to retain licenses for those facilities authorized, constructed, and operating at the time the geographic area license is cancelled, or only those authorized, constructed, and operating at the time of grant of the geographic area license. The Commission agrees with the argument that licenses reinstated after termination of the geographic area license should be limited to the sites authorized, constructed, and operating at the time the geographic area license was granted. In other words, the right to use channels any place in the geographic area will be forfeited, but any licenses for which individual sites were constructed and operating prior to the grant of the geographic area license will be reinstated. The Commission believes that this approach properly balances its overarching goal of ensuring, to the extent possible, continuous service to the public and the Commission's policy of discouraging speculation and spectrum warehousing. Accordingly, the Commission amends section 22.503(k) to provide that licensees who fail to meet their coverage requirements will be permitted to retain licenses only for those facilities authorized, constructed, and operating at the time the geographic area license was granted. In such instances, incumbent licensees will have the burden of showing when their facilities were authorized, constructed, and operating, and they should retain necessary records of these sites until they have fulfilled their construction requirements.

Geographic Area Licensing for Nationwide Channels

55. The Commission affirms its decision in the *Second R&O* to grant nationwide geographic area licenses without competitive bidding to those licensees that met the exclusivity criteria established under its previous rules. The *Second R&O* awarded nationwide geographic area licenses on three 931 MHz channels and to the eighteen licensees who had constructed sufficient stations to obtain nationwide exclusivity on 929 MHz channels under the Commission's rules as of February 8, 1996. In addition, the Commission granted nationwide geographic area licenses to four licensees on the 929 MHz band that had sufficient authorizations, as of February 8, 1996, to qualify for nationwide exclusivity on a conditional basis, but had not completed build-out at that time. The Commission also granted nationwide exclusivity to Nationwide 929.8875 LLC on 929.8875 MHz based on showings that it had met the criteria for nationwide exclusivity as of February 8, 1996.

56. Certain petitioners argue that the exemption from competitive bidding for nationwide licensees is arbitrary and capricious because it results in similarly situated licensees being treated in a disparate manner. According to petitioners, incumbents that have met their five-year coverage requirement are similar to nationwide licensees that met the Commission's previous build-out requirements to qualify for exclusivity. The Commission does not believe that its decision to exempt nationwide licensees from competitive bidding discriminates against other paging systems. This decision merely recognizes licenses granted prior to this rulemaking proceeding. The exclusivity rules provided nationwide licensees with the right to continue to build out anywhere in the country on their designated channels, whereas non-nationwide paging licensees have been afforded no right to expand their service area beyond their interference contours. Thus, there are no areas available for auction on the channels on which nationwide geographic area licensees operate, while there are available areas on the channels on which non-nationwide licensees operate.

57. The Commission affirms its decision to deny Mobile Telecommunications Technologies, Inc. (MTel) a nationwide geographic area license on the 931.4375 MHz channel. The Commission disagrees with MTel's argument that denying MTel a nationwide grant on 931.4375 MHz is inconsistent with the Commission's grant of nationwide geographic area licenses to paging carriers in the 929 MHz band. The Commission recognizes that MTel is extensively licensed on 931.4375 MHz with over 800 transmitters in various locations throughout the United States. In addition, several other 931 MHz channels are extensively licensed by one carrier. But these 931 MHz channels, including 931.4375 MHz, have never been designated as nationwide channels. The Commission did not establish rules for a licensee to earn nationwide exclusivity on the thirty-seven channels in the 931 MHz band reserved for local and regional paging, as it did for the thirty-five exclusive 929 MHz channels, so MTel could not reasonably have expected to be granted nationwide status.

Competitive Bidding

58. The *MO&O* declines to adopt proposals regarding various operational aspects of the paging auctions, including: the sequence of the auctions (*e.g.*, auctioning the lower band channels prior to the upper band channels); modification of the hybrid simultaneous/license-by-license stopping rule adopted in the *Second R&O* (*e.g.*, replacing it with a market-by-market or license-by-license stopping rule); and the information disclosure to bidders during the Paging auctions (*e.g.*, whether bidder identities will be announced). The Commission concludes that, consistent with the Balanced Budget Act of 1997, the Wireless Telecommunications Bureau

will seek further comment on these matters during the pre-auction process. Doing so will allow the Bureau, pursuant to its delegated authority, to fully consider these matters in the unique context of the Paging auctions, and will provide adequate notice and opportunity for comment on auction procedures prior to the commencement of the auctions.

59. The *MO&O* declines to require paging auctions participants to identify on the FCC Form 175 each market for which they wish to bid and submit an upfront payment for each identified license. The Commission's current rules allow bidders to apply to bid for all available markets and submit an upfront payment that corresponds to the maximum number of bidding units on which a bidder expects to be active in a single round. The Commission believes that this approach provides bidders the flexibility to pursue back-up strategies and adequately protects against insincere bidding.

60. The *MO&O* rejects a proposal that the Commission modify its bid withdrawal rule to allow the withdrawal of high bids placed due to typographical or clerical error. The Commission concludes that recent modifications to its bid software adequately protect against the placement of erroneous bids. The *MO&O* also rejects petitions for reconsideration of the Commission's decision to apply its general anti-collusion rule, *see* 47 CFR 1.2105(c), in the Paging auctions. These petitions seek safe harbors for business discussions regarding such topics as mergers/consolidations and intercarrier agreements. The Commission concludes that sufficient guidance regarding application of the anti-collusion rule currently is readily available, and that applicants, not the Commission, are in the best position to determine whether their conduct or discussions may give rise to a potential violation of the rule.

61. In response to petitions for clarification of the Commission's attribution rules and small business definitions, the *MO&O* clarifies that personal net worth is not attributable for purposes of determining eligibility for small business bidding credits, and that controlling interests in an applicant are not required to hold a minimum amount of equity. In addition, the *MO&O* adopts a definition of "controlling interest," which focuses on the concepts of *de jure* and *de facto* control, to further clarify the application of the attribution rule. Moreover, the *MO&O* declines to conclude that intercarrier agreements among otherwise independent entities do not constitute affiliation under the Commission's Rules, and explains that such agreements may rise to the level of affiliation if they meet the criteria set forth in the affiliation rule, *see* 47 CFR 22.223(d).

62. Finally, although the *MO&O* declines to eliminate the availability of bidding credits for small businesses, it does eliminate the availability of installment payments for these entities. This action is consistent with the Commission's prior decision in *Part 1 Third R&O and Second Further Notice* (63 FR 2315, January 15, 1998), to eliminate installment payments for all future auctions, including the Paging auctions. To balance the impact of this action, however, the *MO&O* increases the level of bidding credits available to small and very small businesses respectively from ten percent to twenty-five percent, and from fifteen percent to thirty-five percent. These amounts are based on the schedule of bidding credits adopted in the *Part 1 Third R&O and Second Further Notice*. Finally, the *MO&O* further conforms the paging competitive bidding rules with the Commission's general competitive bidding rules by allowing winning bidders to make their final payments within ten business days of the deadline, provided they also pay a late fee equal to five percent of the amount due. These actions will allow participants in the Paging auctions to enjoy the same advantages as bidders in other recent spectrum auctions.

Third Report and Order

63. In the *Second R&O*, the Commission adopted rules governing geographic area licensing of paging systems for exclusive channels in the 35–36 MHz, 43–44 MHz, 152–159 MHz, 454–460 MHz, 929–930 MHz, and 931–932 MHz bands allocated for paging. The Commission adopted competitive bidding rules for granting mutually exclusive applications, adopted partitioning for non-nationwide geographic area licenses, imposed coverage requirements on non-nationwide geographic area licenses, and awarded nationwide geographic area licenses on the 929 MHz and 931 MHz bands. The Commission concurrently adopted a *Further Notice* seeking comment on whether it should adopt coverage requirements for nationwide geographic area licenses, various rules related to partitioning and disaggregation by paging licensees, and whether the Commission should revise the application procedures for shared channels.

Coverage Requirements for Nationwide Geographic Area Licenses

64. The Commission elects to defer a decision on whether to impose coverage requirements on nationwide geographic area licensees. As discussed in the *MO&O*, the Commission designated three channels in the 931 MHz band for exclusive nationwide use. In 1993, to encourage the development of wide-area paging systems, the Commission also implemented exclusive licensing of qualified local, regional, and nationwide paging systems on thirty-five of the forty 929 MHz channels licensed, at that time, under Part 90 of its rules. In the *Second R&O*, the Commission noted that its existing Part 22 and Part 90 requirements for construction of nationwide systems were not consistent, and both sets of requirements differ from the construction and coverage requirements applicable to nationwide narrowband PCS licenses. As a result, the Commission sought comment in the *Further Notice* on whether to impose minimum coverage requirements for nationwide paging licenses, and on what the appropriate coverage area should be. The Commission also sought comment on whether it should auction the entire nationwide license, or just a portion of the license, if the licensee fails to meet the coverage requirements.

65. The Commission rejects the constitutional and statutory arguments commenters make in opposition to coverage requirements. The Commission also disagrees with several commenters that argue that nationwide licensees' compliance with existing rules created a reasonable expectation that they would enjoy exclusivity on a nationwide basis, and imposing additional coverage requirements would improperly subject those licensees to retroactive rulemaking. Certain commenters also argue against nationwide coverage requirements on the basis that nationwide licensees are not similarly situated with either MEA/EA paging licensees or narrowband PCS licensees. Commenters that oppose coverage requirements also oppose any cancellation of nationwide licenses based on a failure to meet such requirements.

66. While petitioners have not persuaded the Commission that there are any legal impediments to the adoption of coverage requirements for nationwide geographic area paging licensees, the Commission concludes that it is best to defer any decision on this issue until the Commission resolves similar issues raised in the *Narrowband PCS Further Notice* (62 FR 27507, May 20, 1997). Doing so will allow the Commission to more fully consider the question of whether regulatory parity with respect to coverage requirements is appropriate not only for nationwide and MEA/EA paging licensees, but also for nationwide paging and narrowband PCS carriers. In the *Narrowband PCS Further Notice*, the Commission sought comment on whether to conform its narrowband PCS coverage rules to its paging rules by allowing narrowband PCS licensees to meet their performance requirements through a demonstration of substantial service as an alternative to meeting the coverage requirements provided under the existing rules. The Commission further sought comment on whether to conform MTA-based narrowband PCS coverage requirements to the same requirements adopted for MTA and EA paging licenses in this proceeding. As a result, commenters in the *Narrowband PCS* proceeding have raised the issue of whether narrowband PCS, nationwide paging, and MTA/EA licensees provide substantially similar services. The Commission believes that it needs to consider this issue more carefully and to make a decision on nationwide paging coverage requirements in conjunction with a decision on narrowband PCS. Accordingly, the Commission defers resolution of whether to impose coverage requirements on nationwide paging geographic area licensees to the *Narrowband PCS Further Notice* proceeding. If it ultimately determines that coverage requirements are appropriate for nationwide paging geographic area licensees, the Commission will decide, at that time, what the consequence of failing to meet those requirements should be.

Partitioning and Disaggregation

67. In the *Second R&O*, the Commission adopted partitioning rules that permit all MEA and EA paging licensees to partition to any party eligible to be a paging licensee. In the *Further Notice*, the Commission sought comment as to whether nationwide geographic area licensees should also be permitted to partition their license areas. In the *Third R&O*, the Commission adopts rules that permit partitioning of nationwide geographic area licenses to any eligible party. The Commission agrees with the commenters that geographic partitioning would be an effective means of providing nationwide geographic area licensees with the flexibility to tailor their service offerings to meet market demands and facilitating greater participation in the paging industry by small businesses and rural telephone companies. The Commission found that the overall goal of partitioning—operational flexibility—outweighs any possible disadvantage of allowing nationwide licensees to receive a financial windfall though partitioning. Finally, consistent with the partitioning rules established for MEA and EA licensees, the Commission will permit partitioning of nationwide geographic area paging licenses based on any boundaries defined by the parties.

68. Under the rules adopted in the *Third R&O*, all MEA and EA licensees may partition at any time after the grant of their geographic area licenses, and all nationwide geographic area licensees may partition upon the effective date of this Order. The Commission established two options for parties to a partitioning agreement involving an MEA or EA license to satisfy coverage requirements. Under the first option, both the partitioner and partitionee are individually responsible for meeting the coverage requirements for their respective areas. Therefore, partitionees of MEA or EA licenses must provide coverage to one-third of the population in their partitioned area within three years of the initial grant of the license, and to two-thirds of the population in their partitioned area within five years of the initial grant of the license; or, licensees may provide, in the alternative, substantial service within five years of the grant of the MEA or EA license. The Commission states that failure by either party to meet its coverage requirements will result in the automatic cancellation of its license without further Commission action.

69. Under the second option, the original licensee may certify at the time of the partitioning transaction that it has already met, or will meet, the coverage requirements for the entire geographic area. The Commission states that only the partitioner's license will be cancelled if it fails to meet the coverage requirements for the entire geographic area. The Commission also states that the partitionee will not be subject to coverage requirements except for those necessary to obtain renewal. Finally, the Commission states that partitioners whose licenses are cancelled will retain those sites authorized, constructed, and operating at the time the geographic area license was granted.

70. The Commission rejects a proposal to eliminate the "substantial service" option because the Commission explains that this option will encourage licensees to build out their systems while safeguarding the financial investments made by those licensees who are financially unable to meet specific population coverage requirements. Thus, the Commission states that the substantial service alternative will promote service growth while helping licensees to remain financially viable and retain their licenses.

71. The Commission decided not to impose coverage requirements at this time on partitionees of a nationwide geographic area license, and will defer reaching a decision on this issue until it resolves the question of coverage requirements for nationwide licensees generally. The Commission believes that it would be inappropriate to subject entities that obtain partitioned licenses from nationwide geographic area licensees to coverage requirements when no such requirements have been established for partitioners. However, the Commission states that partitionees of nationwide licenses may be subject to coverage requirements in the future.

72. The Commission determined that partitionees should be authorized to hold their licenses for the remainder of the partitioner's original ten-year term. The Commission rejected a proposal that a partitionee receive a one-year term when any partitioning transaction occurs within one year of the renewal date of the original license because, in this instance, the partitioner would be conferring greater rights than it was awarded under the terms of its license grant. The Commission also found that a partitionee should be granted the same renewal expectancy as the partitioner; a Commercial Mobile Radio Services (CMRS) licensee will be entitled to a renewal expectancy if it demo ıstrates that it has provided substanti l service during the license term and l.as complied with the Commission's rules and policies and the Communications Act.

73. Although several commenters oppose establishing disaggregation rules at this time, the Commission will permit MEA, EA, and nationwide geographic area licensees to engage in disaggregation. The Commission also will not impose a minimum limit on spectrum disaggregation in the paging service. The Commission concludes that the market should determine if paging spectrum is technically and economically feasible to disaggregate. In addition, the Commission notes that allowing disaggregation will encourage the further development of paging equipment capable of operating on less than 25 kHz. The Commission further concludes that allowing spectrum disaggregation at this time could potentially expedite the introduction of service to underserved areas, provide increased flexibility to licensees, and encourage participation by small businesses in the provision of services.

The Commission also finds that commenters have not provided sufficient evidence that interference to adjacent or co-channel licensees is a substantial risk that should preclude the Commission from allowing disaggregation of paging spectrum. The Commission finds that its existing technical rules provide parties with sufficient protection from interference. The Commission also believes that all qualified parties should be eligible to disaggregate any geographic area license. The Commission states that open eligibility to disaggregate spectrum promotes prompt service to the public by facilitating the assignment of spectrum to the entity that values it most.

74. The Commission establishes two options for parties to a disaggregation agreement involving an MEA or EA license to satisfy coverage requirements. Under the first option, which is the option proposed in the *Further Notice*, the parties may agree that either the disaggregator or the disaggregatee will be responsible for meeting the coverage requirements for the geographic service area. Under this option, the disaggregating party certifying responsibility for the coverage requirements of an MEA or EA license will be required to provide coverage to one-third of the population of the licensed geographic area within three years of license grant, and to two-thirds of the population within five years of license grant; or, in the alternative, provide substantial service to the geographic area within five years of license grant. Under the second option, the disaggregator and disaggregatee may certify that they will share the responsibility for meeting the coverage requirements for the entire geographic area. Under this option, both parties jointly will be required to provide coverage to one-third of the population of the licensed geographic area within three years of license grant, and to two-thirds of the population within five years of license grant; or, in the alternative, provide substantial service to the geographic area within five years of license grant.

75. The Commission recognizes that if the parties to a disaggregation agreement select the first option, situations may arise where a party minimally builds its system but will retain its license because the other party has met the coverage requirements for the geographic area. Nonetheless, the Commission believes that it is appropriate for one party to assume full responsibility for construction within the shared service area, because service would be offered to the required percentage of the population on a common frequency, even if not on the entire spectrum.

76. Under the first option, if the certifying party fails to meet the coverage requirements for the entire geographic area, that party's license will be subject to cancellation, but the non-certifying party's license will not be affected. However, if the parties to a disaggregation agreement select the second option and jointly fail to satisfy the coverage requirements for the entire geographic area, both parties' licenses will be subject to cancellation. The Commission notes that MEA or EA licensees whose licenses are cancelled will retain those sites authorized, constructed, and operating at the time the geographic area license was granted.

77. As the Commission did with respect to the issue of coverage requirements for partitionees of nationwide geographic area licenses, it will defer any decision on such requirements for disaggregatees of nationwide geographic area licenses until the Commission decides the question of whether to impose coverage requirements on nationwide geographic area licensees generally. Thus, the Commission notes that disaggregatees of nationwide licenses may be subject to coverage requirements in the future.

78. Disaggregatees will be authorized to hold licenses for the remainder of the disaggregator's original ten-year term. As the Commission concluded with respect to partitioners, the disaggregator should not be entitled to confer greater rights than it was awarded under the initial license grant. The Commission also concludes that a disaggregatee should be afforded the same renewal expectancy as the disaggregator. The Commission also concludes that carriers may engage in combinations of partitioning and disaggregation. As in other wireless services, the Commission further concludes that in the event there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules should prevail.

Unjust Enrichment Provisions Regarding Partitioning and Disaggregation

79. The Commission concludes that unjust enrichment provisions adopted in the *Part 1 Third R&O and Second Further Notice* will apply to any MEA or EA paging licensee that receives a bidding credit and later elects to partition or disaggregate its license. Specifically, the rules adopted in the *Part 1 Third R&O and Second Further Notice* indicate that if a licensee seeks to partition any portion of its geographic area, the amount of the unjust enrichment payment will be calculated based on the ratio of the population in the partitioned area to the overall population of the license area. In the event of disaggregation, the amount of the unjust enrichment payment will be based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the disaggregating licensee. When combined partitioning and disaggregation is proposed, the Commission will, consistent with its rules for other services, use a combination of both population of the partitioned area and amount of spectrum disaggregated to make these *pro rata* calculations. The Commission does not address how partitioning and disaggregation will affect installment payments because, in the *MO&O*, the Commission eliminated the use of installment payments for auctioned spectrum in the paging service.

Application Fraud

80. To deter fraud by application mills on the shared channels, the Commission will add language to the long-form application regarding construction and coverage requirements, and will disseminate information regarding its licensing rules and the potential for fraud through public notices and the Commission's website. The Commission is currently in the process of modifying FCC Form 601 to include language near the signature block that warns applicants that the failure of the licensee to construct may result in cancellation of the license. The Commission believes this language will be helpful to applicants in all services and may be of some use in deterring fraud. The Commission also applauds the measures taken by the Personal Communications Industry Association (PCIA) (frequency coordinator) to make applicants aware of the potential for fraud by applications mills.

81. Finally, once the Commission has completed the modification of FCC Form 601 to include warning language as described above, the Wireless Telecommunications Bureau will release a public notice that removes the interim licensing rules for both the lower band shared PCP channels and the five shared 929 MHz PCP channels. Presently, the interim paging rules for the shared PCP paging channels permit only incumbents to file for new sites at any location. The Commission allows non-incumbents to file applications, but only for private, internal-use systems. Once the interim licensing rules are removed, non-incumbents will be permitted to file applications on the shared PCP paging channels for new sites at any location. The Commission further notes that while frequency coordination is no longer required on the exclusive paging channels, all applications for new sites filed on the shared PCP paging channels will continue to require frequency coordination prior to the filing of these applications with the Commission. Accordingly, the Commission amends section 90.175(f) to clarify that frequency coordination is only needed for shared frequencies in the 929–930 MHz band.

Supplemental Final Regulatory Flexibility Analysis

Memorandum Opinion and Order on Reconsideration

82. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix A of the *Notice* in this proceeding, and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix C of the subsequent *Second R&O*. As described below, two petitions for reconsideration of the *Second R&O* raise an issue concerning the previous FRFA. The *MO&O* addresses those reconsideration petitions, among others. This associated Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) also addresses those petitions and conforms to the RFA.

I. Need for and Purpose of this Action

83. In the *Second R&O*, the Commission adopted rules for geographic area licensing of Common Carrier Paging and exclusive 929 MHz Private Carrier Paging and procedures for auctioning mutually exclusive applications for these licenses. The actions taken in this *MO&O* are in response to petitions for reconsideration or clarification of the *Second R&O*. Throughout this proceeding, the Commission has sought to promote Congress's goal of regulatory parity for all CMRS, and to encourage the participation of a wide variety of applicants, including small businesses, in the paging industry. In addition, the Commission has sought to establish rules for the paging services that will streamline the licensing process and provide a flexible operating environment for licensees, foster competition, and promote the delivery of service to all areas of the country, including rural areas.

II. Summary of Significant Issues Raised in Response to the Final Regulatory Flexibility Analysis

84. Priority Communications, Inc.'s (Priority) petition for reconsideration raises various issues, one of which is in direct response to the FRFA contained in the *Second R&O*. Priority states that the FRFA did not address alternatives to competitive bidding, *e.g.*, granting geographic area licenses, without competitive bidding, to incumbents of highly encumbered areas. The Commission disagrees with the contention that the Commission failed to consider alternatives to competitive bidding. In the *Second R&O*, the Commission considered and rejected proposals to retain site-by-site licensing for the paging industry. In rejecting the proposals, the Commission found that geographic area licensing provides flexibility for licensees and ease of administration for the Commission, facilitates further build-out of wide-area systems, and enables paging operators to meet the needs of their customers more easily. Moreover, the Commission concluded that geographic area licensing will further the goal of providing carriers that offer substantially similar services more flexibility to compete, and will enhance regulatory symmetry between paging and other service in the CMRS marketplace.

85. The Commission further concluded that it would grant mutually exclusive applications for geographic area licenses through competitive bidding even in areas extensively built out by an incumbent licensee. The Commission specifically considered and rejected proposals to award geographic area licenses, without competitive bidding, to any incumbent providing coverage to 70 percent or more of the population or to two-thirds of the population in the license area. Similarly, the Commission rejected a proposal not to hold auctions where an incumbent licensee is serving at least 50 percent of the geographic area or 50 percent of the population in that market. The Commission also considered and rejected proposals to award a dispositive preference in the auction to a licensee that provides service to one-third or greater of the population, or one-half or greater of the geographic area, or to restrict competitive bidding to incumbent licensees. In rejecting these proposals, the Commission concluded that market forces, not regulation, should determine participation in competitive bidding for geographic area licenses.

86. In its petition for reconsideration, the National Telephone Cooperative Association (NTCA) contends that the FRFA failed to address alternatives that parties suggested in response to the *Notice* to minimize the impact of the rule changes adopted in the *Second R&O* on small BETRS operators. NTCA specifically contends that the Commission did not address the investment BETRS operators would be unable to recover once they were required to terminate operations upon notification by a geographic area licensee of interference. NTCA further contends that the Commission did not address the adverse impact on small BETRS operators resulting from auctions that "pit them against paging operations that have no interest in the site licenses needed for BETRS operations." Initially, the Commission notes that NTCA did not raise these issues in response to the *Notice*. NTCA has raised these issues only in response to the *Second R&O*. The Commission also disagrees with the contention that the Commission failed to consider alternatives that would minimize the impact on small BETRS operators. The Commission specifically found it unnecessary to adopt the plan that Puerto Rico Telephone proposed, under which (1) BETRS operators would be given preferential treatment over paging operators for mutually exclusive applications (on a site-by-site basis), and (2) the Commission would designate a frequency block for reallocated frequencies solely for BETRS use. Based on the potentially competitive environment in local exchange services, the Commission saw no basis for distinguishing BETRS from other commercial radio services that are auctionable under Section 309(j) of the Communications Act. Rather, the Commission determined that BETRS licensees should be required to participate in competitive bidding for paging licenses. In considering proposals to continue licensing BETRS facilities on a site-specific basis, the Commission decided that BETRS licensees could obtain site licenses on a secondary basis and enter into partitioning agreements with paging geographic area licensees. With respect to the issue of stranded costs, the *Second R&O* does not limit BETRS operators' options to that of obtaining licenses on a secondary basis. As already explained, they may also obtain co-primary licenses through partitioning. Moreover, the Commission has adopted specific procedures in the *MO&O* to limit the extent to which BETRS providers will be required to discontinue operations at secondary sites.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

87. The rules adopted in the *MO&O* will affect all small businesses that hold or seek to acquire commercial paging

licenses. As noted, a FRFA was incorporated into the *Second R&O*. In that analysis, the Commission described the small businesses that might be significantly affected at that time by the rules adopted in the *Second R&O*. Those entities include existing commercial paging operators and new entrants into the paging market. To ensure the more meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Second R&O*: (1) an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. Because the Small Business Administration (SBA) had not yet approved this definition, the Commission relied in the FRFA on the SBA's definition applicable at that time to radiotelephone companies, *i.e.*, an entity employing less than 1,500 persons. Given the fact that nearly all radiotelephone companies had fewer than 1,000 employees, and that no reasonable estimate of the number of prospective paging licensees could be made, the Commission assumed, for purposes of the evaluations and conclusions in the FRFA, that all the auctioned 16,630 geographic area licenses would be awarded to small entities. In December 1998, the SBA approved the two-tiered size standards for paging services set forth in the *Second R&O*.

88. In the FRFA, the Commission anticipated that approximately 16,630 non-nationwide geographic area licenses will be auctioned. No party submitting or commenting on the petitions for reconsideration giving rise to this *MO&O* commented on the potential number of small businesses that might participate in the commercial paging auction and no reasonable estimate can be made. While the Commission is unable to predict accurately how many paging licensees meeting one of the above definitions will choose to participate in or be successful at auction, the *Third CMRS Competition Report* estimated that, as of January 1998, there were more than 600 paging companies in the United States. The *Third CMRS Competition Report* also indicates that at least ten of the top twelve publicly held paging companies had average gross revenues in excess of $15 million for the three years preceding 1998. Data obtained from publicly available company documents and SEC filings indicate that this is also true for the three years preceding 1999. While the Commission expects these ten companies to participate in the paging auction, the Commission also expects, for the purposes of the evaluations and conclusions in this Supplemental FRFA, that a number of geographic area paging licenses will be awarded to small businesses.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

89. With one exception, this *MO&O* does not impose additional recordkeeping or other compliance requirements beyond the requirements contained in the *Second R&O*. If an MEA or EA licensee fails to meet its coverage requirements, that licensee will have the burden of showing which of its facilities were authorized, constructed, and operating at the time the geographic area license was granted. MEA and EA licensees will need to retain necessary records of any such facilities until they meet the geographic area license coverage requirements.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

90. The previous FRFA stated that the rules adopted for geographic area licensing will affect the Common Carrier Paging and exclusive 929 MHz Private Carrier Paging services. This Supplemental FRFA concludes that a number of geographic area commercial paging licenses may be awarded to small businesses. As described below, the Commission's actions taken to implement the transition to geographic area licensing and competitive bidding represent a balancing of various factors.

91. Certain petitioners suggested replacing Rand McNally MTAs with Major Economic Areas (MEAs) for the 929 MHz and 931 MHz bands. Considering these requests, the Commission has decided to adopt MEAs instead of MTAs. Because MEAs are composed of EAs, licensees with paging systems on both the lower channels and the 929 and 931 MHz bands, including small businesses, will be able to operate their systems more efficiently. The MEA designation will also enhance competition because paging systems on the lower channels, including small business paging systems, will be able to combine their EAs to form MEAs. In addition, the Commission considered and rejected a recommendation to use Basic Trading Areas (BTAs) for geographic area licensing on the lower paging bands. In rejecting the BTA designation, the Commission concluded that EAs, which the majority of commenters supported, best reflect the geographic area that the paging licensees on the lower channels seek to serve. The Commission also found that the use of EAs will not prevent paging operators of small systems from participating in the auction. The Commission noted that bidding credits will allow small businesses to compete against larger bidders. In addition, the Commission's partitioning rules will allow entities, including small businesses, to acquire licenses for areas smaller than EAs.

92. A number of petitioners have requested that the Commission reconsider its decision to grant mutually exclusive applications for geographic area licenses through competitive bidding even in areas extensively built out by an incumbent licensee. Again balancing various interests, the Commission has affirmed the use of competitive bidding to grant mutually exclusive paging applications. The Commission has rejected the petitioners' request because open eligibility promotes prompt service to the public by allocating spectrum to the entity that values it most. The Commission believes that the market should decide whether an economically viable paging system can be established in the unserved area of a geographic market. The Commission's decision on this issue will provide adjacent geographic area licensees and new entrants, including small businesses, with the opportunity to establish a viable system that serves the public as well as an incumbent. Moreover, the Commission sees no reason to give licensees that serve a substantial portion of a geographic area an advantage over other entities, including small businesses, that may also value the spectrum in that particular market.

93. Several petitioners request that the Commission clarify section 22.723 of its rules, which requires Rural Radiotelephone Service (RRS) licensees, including BETRS operators, to discontinue operations once the paging geographic area licensee notifies the RRS licensee that its co-channel secondary facilities may cause interference to the geographic area licensee's existing or planned facilities. The petitioners argue that the Commission's rules will allow geographic area licensees to terminate BETRS upon any allegation of harmful interference. In response to this concern, the Commission is adopting new procedures in the *MO&O* that geographic area licensees must follow in notifying a BETRS operator that its facility causes or will cause interference with the geographic area licensee's service contour in violation of the Commission's interference rules. The new procedures limit the termination of operating BETRS co-channel secondary facilities until harmful interference would occur.

94. In the *Second R&O*, the Commission defined a system-wide license by the aggregate of the interference contours around each of the incumbent's contiguous sites operating on the same channel. The Commission also concluded that incumbent licensees may add or modify sites within their existing interference contours without filing site-specific applications, but may not expand their existing interference contours without the consent of the geographic area licensee. Several petitioners expressed confusion over the Commission's definition of "contiguous sites" for the purpose of determining an incumbent's "aggregate interference contour." In addition, one petitioner asked that the Commission define "composite interference contours" to include all authorized transmitters, including valid construction permits, regardless of the grant date. Another petitioner requested that the Commission include remote transmitters within system-wide licenses, or in the alternative maintain separate licenses for any stand-alone or remote transmitter. Recognizing these concerns and balancing various interests as explained more fully in the *MO&O*, the Commission has maximized the definition of composite interference contour to reduce unnecessary regulatory burdens on licensees, reduce administrative costs on the industry, and thereby benefit consumers. In this regard, the Commission has clarified that contiguous sites, for the purpose of defining an incumbent's composite interference contour, are defined by overlapping interference contours, not service contours. The Commission further states that all authorized site-specific paging licenses and construction permits are included in a composite interference contour. Finally, the Commission has amended section 22.507 to allow system-wide licensees to maintain separate licenses for any stand-alone or remote transmitters, or to include remote and stand-alone sites within the system-wide license.

95. On a related matter, petitioners asked the Commission to allow reversion to the geographic area licensee of spectrum recovered from an incumbent in all instances except where an incumbent licensee discontinues operations in a location wholly encompassed by the incumbent's composite interference contour. In balancing the various relevant considerations, the Commission concluded that no demonstration had been made showing that the geographic area licensee would be unable to serve areas wholly surrounded by an incumbent. Moreover, the Commission does not believe the public interest would be served by withholding such areas from the geographic area licensee in hope that the incumbent will one day resume service to those areas. The Commission further noted that if incumbents, including small businesses, wish to serve reverted areas, they may seek to enter into partitioning agreements with the geographic area licensees. Similarly, a number of petitioners contended that system-wide licenses should include areas where an incumbent licensees' interference contours do not overlap, but where no other licensee could place a transmitter because of interference rules. The Commission considered and rejected this proposal, finding that inclusion of areas outside of an incumbent's interference contours would be contrary to the objective of prohibiting encroachment on the geographic area licensee's operations. Incumbents seeking to expand their contours, including small businesses, may participate in the auction or seek partitioning agreements with geographic area licensees.

96. In the *Second R&O*, the Commission elected not to impose a limit or "cap" on the number of licensees that may operate on shared paging channels. Two petitioners asked the Commission to reconsider that determination. Again, balancing the options, the Commission reaffirmed its prior decision. A "cap" would not promote efficient use of spectrum because the capacity limits on paging channels are based primarily on use and not the number of licensees. The Commission's goal is to increase the use of these shared channels, not to unduly restrict access to them. This decision will provide new entrants, including small businesses, with another opportunity to acquire paging spectrum.

97. In the *Second R&O*, the Commission also eliminated the Part 90 height and power limitations on 929 MHz stations and increased the maximum permitted effective radiated power (ERP) to 3,500 watts. Some petitioners have asked for clarification as to whether incumbent 929 MHz licensees must file a modification application to increase the current ERP for their base stations up to the maximum permissible. In response to this request, the Commission has clarified that incumbent 929 MHz licensees need not file a modification application to increase the ERP for base stations at any location, including exterior base stations, as long as they do not expand their existing composite interference contour. This clarification conforms the Commission's technical requirements for height and power with the general rule that incumbents need not file applications for internal system changes. Adopting this rule will minimize burdens on all entities, including small businesses, that increase the ERP of their base stations.

98. One petitioner advocated that the Commission make its coverage requirements more stringent by requiring geographic area licensees to provide coverage to one-third of the market area within one year, and two-thirds within three years. The Commission considered and rejected this proposal because it believes that the coverage requirements adequately promote prompt service to the public without being unduly burdensome on licensees, including small businesses, that need a reasonable amount of time to complete construction. Moreover, the Commission believes that overly stringent coverage requirements unfairly favor incumbents by erecting formidable barriers to new entrants, including small businesses. Several petitioners also requested that the Commission eliminate the "substantial service" option for meeting MEA or EA coverage requirements. The Commission rejected this request because the Commission believes that the "substantial service" option will facilitate build-out in rural areas, encourage licensees to provide new services, and enable new entrants to satisfy the Commission's coverage requirements in geographic areas where incumbents are already substantially built out. The Commission believes that rural service providers as well as new entrants are likely to include small businesses, and thus retaining the "substantial service" option should benefit small businesses. While the Commission will presume that the "substantial service" option is satisfied if an MEA or EA licensee provides coverage to two-thirds of the population in unserved areas within five years of license grant, the Commission declines to adopt specific coverage requirements as the sole means of defining "substantial service." Giving licensees flexibility to satisfy the "substantial service" option in different ways should benefit small businesses.

99. In the *Part 1 Third R&O and Further Notice*, the Commission suspended the availability of installment payment financing for small businesses participating in future

auctions. Consistent with this decision, the *MO&O* rescinds installment payment financing for the paging auctions. To balance the impact of this decision on small businesses, however, the Commission is increasing the bidding credits available to qualifying entities. The revised rule conforms to a schedule of bidding credits adopted in the *Part 1 Third R&O and Second Further Notice*. Under this rule, an applicant will qualify for a twenty-five percent (25%) bidding credit if the average gross revenues for the preceding three years of the applicant, its affiliates and controlling interests do not exceed $15 million. Similarly, an applicant will qualify for a thirty-five percent (35%) bidding credit if the average gross revenues for the preceding three years of the applicant, its affiliates and controlling interests do not exceed $3 million. As the Commission stated in the *Part 1 Third R&O and Second Further Notice*, the Commission believes that these increased bidding credits will provide small businesses with adequate opportunities to participate in the paging auctions. Moreover, the Commission is further conforming the paging competitive bidding rules to the Part 1 rules by allowing winning bidders to make their final payments within ten (10) business days after the payment deadline, provided that they also pay a late fee of five (5) percent of the amount due. As the Commission stated in the *Part 1 Third R&O and Second Further Notice*, it believes that this additional ten-day period provides winning bidders with adequate time to adjust for any last-minute problems in arranging financing and making final payment.

VI. Report to Congress

100. The Commission will send a copy of the *MO&O*, including this Supplemental FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *MO&O*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Association. A copy of the *MO&O* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

Final Regulatory Flexibility Analysis

Third Report and Order

101. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix D of the *Second R&O and Further Notice* in this proceeding. The Commission sought written public comment on the proposals in that *Further Notice*, including comment on the IRFA. As described below, no commenter raised an issue concerning the IRFA. The Commission's Final Regulatory Flexibility Analysis in this *Third R&O* conforms to the RFA.

I. Need for and Purpose of this Action

102. In the *Second R&O*, the Commission adopted coverage requirements for and decided to allow partitioning by non-nationwide geographic area licensees, including small businesses. In the *Further Notice*, the Commission sought comment on whether to adopt coverage requirements for nationwide geographic area licenses, whether to allow partitioning by nationwide geographic area licensees, whether to permit disaggregation of paging licenses, and whether to revise the application procedures for shared channels. In the *Third R&O*, the Commission concludes that it is best to defer any decision on coverage requirements for nationwide geographic area licenses until similar issues raised in the *Narrowband PCS Further Notice of Proposed Rulemaking* are resolved. The Commission further modifies the paging rules to permit partitioning by all nationwide geographic area licensees and to allow disaggregation by all MEA, EA, and nationwide geographic area licensees. The *Third R&O* also adopts rules governing the coverage requirements for parties to partitioning or disaggregation agreements involving MEA or EA licenses, and the license term of partitioned or disaggregated MEA, EA, and nationwide geographic area licenses. Further, the *Third R&O* permits MEA, EA, and nationwide geographic area licensees to combine partitioning and disaggregation. These partitioning and disaggregation rules will allow entities in addition to the initial geographic area licensees, including small businesses, to participate in providing paging services. Indeed, partitioning and disaggregation should be well suited to small businesses that do not wish to acquire an entire geographic area license. Finally, the *Third R&O* establishes additional mechanisms to inform consumers of the rules governing paging licenses and the danger of fraudulent schemes perpetrated by application mills. These mechanisms should help to reduce application fraud and protect consumers.

II. Summary of Issues Raised in Response to the Initial Regulatory Flexibility Analysis

103. None of the commenters submitted comments specifically in response to the IRFA. The Commission has, however, taken small business concerns into account in the *Third R&O*, as discussed in Sections V and VI of the FRFA.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

104. The rules adopted in the *Third R&O* will affect small businesses that hold or seek to acquire commercial paging licenses. These entities include small business nationwide geographic area licensees that decide to partition or disaggregate, small businesses that obtain MEA or EA licenses through auction and subsequently decide to partition or disaggregate, and small businesses that may acquire partitioned and/or disaggregated MEA, EA, or nationwide geographic area licenses. To ensure the more meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Second R&O*: (1) An entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. In December 1998, the Small Business Association approved the two-tiered size standards for paging services set forth in the *Second R&O*.

MEA and EA Licenses

105. In the Final Regulatory Flexibility Analysis incorporated in Appendix C of the *Second R&O*, the Commission anticipated that approximately 16,630 non-nationwide geographic area licenses will be auctioned. No parties, however, commented in response to the *Further Notice* on the number of small businesses that might elect to use the proposed partitioning and disaggregation rules and no reasonable estimate can be made. While the Commission is unable to predict accurately how many paging licensees meeting one of the above definitions will participate in or be successful at auction, the *Third CMRS Competition Report* estimated that, as of January 1998, there were more than 600 paging companies in the United States. The *Third CMRS Competition Report* also indicates that at least ten of the top twelve publicly held paging companies had average gross revenues in excess of $15 million for the three years preceding 1998. The Commission expects that these ten companies will participate in the paging auction and may employ the partitioning or disaggregation rules. The Commission also expects, for purposes of the evaluations and conclusions in this Final Regulatory Flexibility Analysis, that a number of paging licenses will be awarded to small businesses, and at least some of those small business licensees will likely also take advantage of the partitioning and disaggregation rules. The Commission is unable to predict accurately the number of small businesses that may choose to acquire partitioned or disaggregated MEA or EA licenses. The Commission expects, however, for purposes of the evaluations and conclusions in this Final Regulatory Flexibility Analysis, that entities meeting one of the above definitions will use partitioning and disaggregation as a means to obtain a paging license from an MEA or EA licensee at a cost lower than the cost of the license for the entire MEA or EA.

Nationwide Geographic Area Licenses

106. The partitioning and disaggregation rules pertaining to nationwide geographic area licenses adopted in the *Third R&O* will affect the 26 licensees holding nationwide geographic area licenses to the extent they choose to partition or disaggregate, as well as any entity that enters into a partitioning or disaggregation agreement with a nationwide geographic area licensee. No parties, however, commented on the number of small business nationwide geographic area licensees that might elect to partition or disaggregate their licenses and no reasonable estimate can be made. While the Commission is unable to state accurately how many nationwide geographic area licensees meet one of the above small business definitions, the *Third CMRS Competition Report* indicates that at least eight of the top twelve publicly held paging companies hold nationwide geographic area licenses and had average gross revenues in excess of $15 million for the three years preceding 1998. The Commission expects at least some of these eight companies to employ the partitioning or disaggregation rules, and also expects, for the purposes of evaluations and conclusions in this Final Regulatory Flexibility Analysis, that nationwide geographic area licensees meeting one of the above definitions may use the partitioning or disaggregation rules. No parties commented on the number of small businesses that may choose to acquire partitioned or disaggregated licenses from nationwide geographic area licensees and, again, no reasonable estimate can be made. While the Commission is unable to predict accurately the number of small businesses that may choose to acquire partitioned or disaggregated licenses from nationwide geographic area licensees, the Commission expects, for purposes of the evaluations and conclusions in the Final Regulatory Flexibility Analysis, that entities meeting one of the above small business definitions will use partitioning and disaggregation as a means to obtain a paging license from a nationwide geographic area licensee.

Fraud on Shared Paging Channels

107. The additional mechanisms established to inform consumers of the paging rules and the potential for paging application fraud on the shared channels will not affect small businesses seeking to acquire a license on a shared paging channel, except that small businesses interested in investing in shared channel licenses will be more informed of the potential for fraud.

IV. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

108. The rules adopted in the *Third R&O* impose reporting and recordkeeping requirements on small businesses, as well as others, seeking to obtain or transfer licenses through partitioning and disaggregation. The information requirements would be used to determine whether the proposed partitionee or disaggregatee is an entity qualified to obtain a partitioned license or disaggregated spectrum. This information will be a one-time filing by any applicant requesting such a license. The information can be submitted on FCC Form 490 or Form 603 for Part 22 paging services until July 1, 1999. Part 22 applicants must file electronically in the Universal Licensing System (ULS) on Form 603 on or after July 1, 1999. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that seventy-five percent of the respondents, which may include small businesses, will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining twenty-five percent of respondents, which may include small businesses, are estimated to employ in-house staff to provide the information. Applicants filing electronically, including small businesses, will not incur any per minute on-line charge. The Commission estimates that applicants contracting out the information would use an attorney or engineer (average of $200 per hour) to prepare the information.

V. Steps Taken to Minimize Burdens on Small Entities

109. The rules adopted in the *Third R&O* are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services. The rules are also consistent with the Communications Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services.

Partitioning and Disaggregation

110. Partitioning of nationwide geographic area licenses and disaggregation of MEA, EA, and nationwide geographic area licenses will facilitate market entry by parties that may lack the financial resources to participate in auctions, including small businesses. Partitioning and disaggregation are expected to enable small businesses to obtain licenses for areas smaller than MEA, EA, and nationwide areas, or smaller amounts of spectrum, at costs they will be able to afford. Allowing for the partitioning and disaggregation of MEA and EA licenses prior to fulfillment of construction requirements by the initial licensees will facilitate the immediate entry of new competitors, including small businesses, into the paging market. Finally, the Commission's decision to allow parties to partitioning or disaggregation agreements of MEA and EA licenses to choose between two options to meet the coverage requirements will provide small businesses with more flexibility in managing their resources.

Fraud on Shared Paging Channels

111. As stated above, the additional mechanisms established to deter paging application fraud on the shared channels are not expected to have an impact on any small business or other entity applying for a paging license on a shared channel. The changes are intended to protect consumers from application fraud. Small businesses interested in investing in shared channel licenses, however, will be more informed of the potential for fraud.

VI. Significant Alternatives Considered

112. The Commission considered and rejected the following alternative proposals concerning partitioning, disaggregation, coverage requirements for parties to partitioning and disaggregation agreements, and license terms.

Partitioning

113. The Commission declined to adopt Paging Network, Inc.'s (PageNet) proposal that partitioning should be allowed only after the initial geographic area licensee has met the build-out requirements for the entire geographic area, and that partitioning before a geographic area licensee meets its construction requirements should be allowed only on a waiver basis where good cause is shown. PageNet's concern was that the ability to partition may encourage bidders in the auction to engage in unlawful contact with other bidders, particularly if the market is highly contested, and that geographic area licensees may seek to avoid the cancellation of their licenses by partitioning to a "straw man" when they fail to meet the Commission's coverage requirements. The Commission found, however, that there was no evidence that "sham" arrangements between geographic area licensees and other parties to avoid construction requirements are likely to occur in the paging service or have already taken place in other services. The Commission also determined that any unlawful activity between bidders concerning partitioning falls within its anti-collusion rules. Finally, allowing parties to partition spectrum immediately after license grant will facilitate the entry of new competitors to the paging market, many of whom will be small businesses seeking to acquire a smaller service area or smaller amount of paging spectrum at a reduced cost.

Disaggregation

114. A number of petitioners opposed the Commission's proposal to allow MEA, EA, and nationwide geographic area licensees to disaggregate, contending that disaggregation of paging spectrum is neither technically nor practically feasible. Small Business in Telecommunications (SBT) proposes that disaggregation should be limited only to small businesses during the original licensee's construction period. In considering and rejecting the petitioners' arguments, the Commission concluded that the market should determine whether it is technically or economically feasible to disaggregate spectrum. The Commission further concluded that all qualified parties should be eligible to disaggregate any geographic area license because open eligibility to disaggregate spectrum promotes prompt service to the public by facilitating the assignment of spectrum to the entity that values it most. The Commission found that allowing spectrum disaggregation at this time could potentially expedite the introduction of service to underserved areas, provide increased flexibility to licensees, and encourage participation by small businesses in the provision of services.

Coverage Requirements

115. The Commission declined to adopt Metrocall, Inc.'s proposal that geographic area licensees' coverage benchmarks should be based on the entire geographic area, including the partitioned area, to prevent the geographic area licensee from using partitioning to circumvent coverage requirements. As stated previously, the Commission found that there was no evidence that "sham" arrangements between geographic area licensees and other parties to avoid construction requirements are likely to occur in the paging service or have already taken place in other services. The Commission also declined to adopt PCIA's proposal that the partitioner should be responsible for build-out in the partitioned area if the partitionee fails to build out, and that the entire license should be cancelled if build-out in the partitioned area is not completed by either the partitionee or the partitioner. The decision not to place the ultimate responsibility for the partitionee's coverage requirements on the partitioner, as well as the decision to provide parties to partitioning agreements with two options for meeting the coverage requirements, is expected to encourage more partitioning agreements, including agreements involving small businesses. The resulting benefits will be the same for disaggregation arrangements.

116. Finally, the Commission declined to adopt commenters' proposal to eliminate the "substantial service" option as it applies to coverage requirements in the partitioning and disaggregation context. The Commission found that maintaining the "substantial service" option will encourage licensees to build out their systems while safeguarding the financial investments made by those licensees who are financially unable to meet specific population coverage requirements. Thus, the Commission found that the substantial service alternative will promote service growth while helping licensees to remain financially viable and retain their licenses. Retaining the "substantial service" option will also allow small businesses flexibility in meeting their coverage requirements.

License Term

117. The Commission declines to adopt SBT's proposal that when an area is partitioned within one year of the renewal date of the original ten-year license term, the partitionee should receive the license for a one-year term. The Commission found that adopting this proposal would result in the partitioner conferring greater rights than it was awarded under the original terms of its license grant.

VII. Report to Congress

118. The Commission shall send a copy of the *Third R&O*, including this Final Regulatory Flexibility Analysis, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Third R&O*, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Association. A copy of the *Third R&O* and Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

119. Authority for issuance of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* is contained in Sections 4(i), 303(r), 309(j), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), 332, and 405.

120. Accordingly, *it is ordered* that the petitions for reconsideration or clarification listed in Appendix A *are granted* to the extent provided herein and otherwise *are denied;* and that the Petition for Partial Reconsideration of PSWF Corporation filed April 11, 1997, is to the extent provided herein *dismissed* as moot. This action is taken pursuant to Sections 4(i), 303(r), 309(j), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), 332, and 405, and Section 1.429(i) of the Commission's rules, 47 CFR 1.429(i).

121. *It is further ordered* that the petitions for reconsideration and application for review of the *CWD Order* listed in footnote 51 *are denied*. This action is taken pursuant to Sections 4(i), 303(r), 309(j), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), 332, and 405, and Sections 1.429(i) and 1.115 of the Commission's rules, 47 CFR 1.429(i), 1.115.

122. *It is further ordered* that the Commission's rules are amended as set forth in Appendix B. *It is further ordered* that the provisions of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* and the Commission's rules, as amended in Appendix B, *shall become effective* 60 days after publication of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* in the **Federal Register**.

123. *It is further ordered* that a Public Notice will be issued by the Wireless Telecommunications Bureau following the adoption of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* that will remove the interim licensing rules on the shared PCP channels from the Commission's rules.

124. *it is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, including the Supplemental Final Regulatory Flexibility Analysis and Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 22

Public mobile services.

47 CFR Part 90

Private land mobile radio services.

Rule Changes

For the reasons stated in the preamble, parts 22 and 90 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 309 and 332, unless otherwise noted.

2. Section 22.213 is added to read as follows:

§ 22.213 Long-form application (FCC Form 601).

Each successful bidder for a paging geographic area authorization must submit a "long-form" application (Form 601) within ten (10) business days after being notified by Public Notice that it is the winning bidder. Applications for paging geographic area authorizations on FCC Form 601 must be submitted in accordance with § 1.2107 and § 1.2112 of this chapter, all applicable procedures set forth in the rules in this part, and any applicable Public Notices that the FCC may issue in connection with an auction. After an auction, the FCC will not accept long-form applications for paging geographic area authorizations from anyone other than the auction winners and parties seeking partitioned authorizations pursuant to agreements with auction winners under § 22.221 of this part.

3. Section 22.215 is amended by revising paragraph (a) to read as follows:

§ 22.215 Authorization, grant, denial, default, and disqualification.

(a) Each winning bidder will be required to pay the full balance of its winning bid no later than ten (10) business days following the release date of a Public Notice establishing the payment deadline. If a winning bidder fails to pay the balance of its winning bids in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment no later than ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five (5) percent of the amount due. When a winning bidder fails to pay the balance of its winning bid by the late payment deadline, it is considered to be in default on its authorization(s) and subject to the applicable default payments. Authorizations will be awarded upon the full and timely payment of winning bids and any applicable late fees.

* * * * *

4. Section 22.217 is amended by revising paragraph (a) and adding paragraph (b)(4) to read as follows:

§ 22.217 Bidding credits for small businesses.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 22.223(b)(1)(i) of this part may use a bidding credit of thirty-five (35) percent to lower the cost of its winning bid. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 22.223(b)(1)(ii) of this part may use a bidding credit of twenty-five (25) percent to lower the cost of its winning bid.

(b) * * *

(4) If a small business that utilizes a bidding credit under this section partitions its authorization or disaggregates its spectrum to an entity not meeting the eligibility standards for the same bidding credit, the partitioning or disaggregating licensee will be subject to the provisions concerning unjust enrichment as set forth in § 1.2111(e) (2) and (3) of this chapter.

§ 22.219 [Removed]

5. Section 22.219 is removed.

6. Section 22.221 is amended by revising paragraphs (b) and (c) to read as follows:

§ 22.221 Eligibility for partitioned licenses.

* * * * *

(b) Each party to an agreement to partition the authorization must file a long-form application (FCC Form 601) for its respective, mutually agreed-upon geographic area together with the application for the remainder of the MEA or EA filed by the auction winner.

(c) If the partitioned authorization is being applied for as a partial assignment of the MEA or EA authorization following grant of the initial authorization, request for authorization for partial assignment of an authorization shall be made pursuant to § 1.948 of this part.

7. Section 22.223 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii) and (b)(2) and adding paragraphs (b)(4) and (e) to read as follows:

§ 22.223 Definitions concerning competitive bidding process.

* * * * *

(b) * * *

(1) * * *

(i) Together with its affiliates and controlling interests has average gross revenues that are not more than $3 million for the preceding three years; or

(ii) Together with its affiliates and controlling interests has average gross revenues that are not more than $15 million for the preceding three years.

(2) For purposes of determining whether an entity meets either the $3 million or $15 million average annual gross revenues size standard set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, and controlling interests shall be considered on a cumulative basis and aggregated.

(3) * * *

(4) Applicants without identifiable controlling interests. Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

* * * * *

(e) *Controlling interest.* (1) For purposes of this section, controlling interest includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is greater than 50 percent of the voting stock of a corporation, or in the case of a

partnership, the general partner. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) *Calculation of certain interests.* (i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person or its affiliate pursuant to paragraph (d) of this section has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have an attributable interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

8. Section 22.225 is amended by revising paragraphs (a)(1), (b)(1) and (e) to read as follows:

§ 22.225 Certifications, disclosures, records maintenance and audits.

(a) * * *

(1) The identity of the applicant's controlling interests and affiliates, and, if a consortium of small businesses, the members of the joint venture; and

* * * * *

(b) * * *

(1) Disclose separately and in the aggregate the gross revenues, computed in accordance with § 22.223, for each of the following: the applicant, the applicant's affiliates, the applicant's controlling interests, and, if a consortium of small businesses, the members of the joint venture;

* * * * *

(e) *Definitions.* The terms affiliate, small business, consortium of small businesses, gross revenues, and controlling interest used in this section are defined in § 22.223.

9. Section 22.503 is amended by revising paragraphs (b)(2), (b)(3), (h), (i), and (k)(1) and (k)(2) to read as follows:

§ 22.503 Paging geographic area authorizations.

* * * * *

(b) * * *

(2) Major Economic Areas (MEAs) and Economic Areas (EAs) are defined below. EAs are defined by the Department of Commerce, Bureau of Economic Analysis. *See* Final Redefinition of the MEA Economic Areas, 60 FR 13114 (March 10, 1995). MEAs are based on EAs. In addition to the Department of Commerce's 172 EAs, the FCC shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa, which have been assigned FCC-created EA numbers 173–175, respectively, and MEA numbers 49–51, respectively.

(3) The 51 MEAs are composed of one or more EAs as defined in the following table:

MEAs	EAs
1 (Boston)	1–3.
2 (New York City)	4–7, 10.
3 (Buffalo)	8.
4 (Philadelphia)	11–12.
5 (Washington)	13–14.
6 (Richmond)	15–17, 20.
7 (Charlotte-Greensboro-Greenville-Raleigh)	18–19, 21–26, 41–42, 46.
8 (Atlanta)	27–28, 37–40, 43.
9 (Jacksonville)	29, 35.
10 (Tampa-St. Petersburg-Orlando)	30, 33–34.
11 (Miami)	31–32.
12 (Pittsburgh)	9, 52–53.
13 (Cincinnati-Dayton)	48–50.
14 (Columbus)	51.

MEAs	EAs
15 (Cleveland)	54–55.
16 (Detroit)	56–58, 61–62.
17 (Milwaukee)	59–60, 63, 104–105, 108.
18 (Chicago)	64–66, 68, 97, 101.
19 (Indianapolis)	67.
20 (Minneapolis-St. Paul)	106–107, 109–114, 116.
21 (Des Moines-Quad Cities)	100, 102–103, 117.
22 (Knoxville)	44–45.
23 (Louisville-Lexington-Evansville)	47, 69–70, 72.
24 (Birmingham)	36, 74, 78–79.
25 (Nashville)	71.
26 (Memphis-Jackson)	73, 75–77.
27 (New Orleans-Baton Rouge)	80–85.
28 (Little Rock)	90–92, 95.
29 (Kansas City)	93, 99, 123.
30 (St. Louis)	94, 96, 98.
31 (Houston)	86–87, 131.
32 (Dallas-Fort Worth)	88–89, 127–130, 135, 137–138.
33 (Denver)	115, 140–143.
34 (Omaha)	118–121.
35 (Wichita)	122.
36 (Tulsa)	124.
37 (Oklahoma City)	125–126.
38 (San Antonio)	132–134.
39 (El Paso-Albuquerque)	136, 139, 155–157.
40 (Phoenix)	154, 158–159.
41 (Spokane-Billings)	144–147, 168.
42 (Salt Lake City)	148–150, 152.
43 (San Francisco-Oakland-San Jose)	151, 162–165.
44 (Los Angeles-San Diego)	153, 160–161.
45 (Portland)	166–167.
46 (Seattle)	169–170.
47 (Alaska)	171.
48 (Hawaii)	172.
49 (Guam and the Northern Mariana Islands)	173.
50 (Puerto Rico and U.S. Virgin Islands)	174.
51 (American Samoa)	175.

* * * * *

(h) *Adjacent geographic area coordination required.* Before constructing a facility for which the interfering contour (as defined in § 22.537 or § 22.567 of this part, as appropriate for the channel involved) would extend into another paging geographic area, a paging geographic area licensee must obtain the consent of the relevant co-channel paging geographic area licensee, if any, into whose area the interfering contour would extend. Licensees are expected to cooperate fully and in good faith attempt to resolve potential interference problems before bringing matters to the FCC. In the event that there is no co-channel paging geographic area licensee from whom to obtain consent in the area into which the interfering contour would extend, the facility may be constructed and operated subject to the condition that, at such time as the FCC issues a paging geographic area authorization for that adjacent geographic area, either consent must be obtained or the facility modified or eliminated such that the interfering contour no longer extends into the adjacent geographic area.

(i) *Protection of existing service.* All facilities constructed and operated pursuant to a paging geographic area authorization must provide co-channel interference protection in accordance with § 22.537 or § 22.567, as appropriate for the channel involved, to all authorized co-channel facilities of exclusive licensees within the paging geographic area. Non-exclusive licensees on the thirty-five exclusive 929 MHz channels are not entitled to exclusive status, and will continue to operate under the sharing arrangements established with the exclusive licensees and other non-exclusive licensees that were in effect prior to February 19, 1997. MEA, EA, and nationwide geographic area licensees have the right to share with non-exclusive licensees on the thirty-five exclusive 929 MHz channels on a non-interfering basis.

* * * * *

(k) *Coverage requirements.* Failure by an MEA or EA licensee to meet either the coverage requirements in paragraphs (k)(1) and (k)(2) of this section, or alternatively, the substantial service requirement in paragraph (k)(3) of this section, will result in automatic termination of authorizations for those facilities that were not authorized, constructed, and operating at the time the geographic area authorization was granted. MEA and EA licensees have the burden of showing when their facilities were authorized, constructed, and operating, and should retain necessary records of these sites until coverage requirements are fulfilled. For the purpose of this paragraph, to "cover" area means to include geographic area within the composite of the service contour(s) determined by the methods of §§ 22.537 or 22.567 as appropriate for the particular channel involved. Licensees may determine the population of geographic areas included within their service contours using either the 1990 census or the 2000 census, but not both.

(1) No later than three years after the initial grant of an MEA or EA geographic area authorization, the licensee must construct or otherwise acquire and operate sufficient facilities to cover one third of the population in the paging geographic area. The licensee

must notify the FCC at the end of the three-year period pursuant to § 1.946 of this chapter, either that it has satisfied this requirement or that it plans to satisfy the alternative requirement to provide substantial service in accordance with paragraph (k)(3) of this section.

(2) No later than five years after the initial grant of an MEA or EA geographic area authorization, the licensee must construct or otherwise acquire and operate sufficient facilities to cover two thirds of the population in the paging geographic area. The licensee must notify the FCC at the end of the five year period pursuant to § 1.946 of this chapter, either that it has satisfied this requirement or that it has satisfied the alternative requirement to provide substantial service in accordance with paragraph (k)(3) of this section.

* * * * *

10. Section 22.507 is amended by revising paragraph (c) to read as follows:

§ 22.507 Number of transmitters per station.

* * * * *

(c) *Consolidation of separate stations.* The FCC may consolidate site-specific contiguous authorizations upon request (FCC Form 601) of the licensee, if appropriate under paragraph (a) of this section. Paging licensees may include remote, stand-alone transmitters under the single system-wide authorization, if the remote, stand-alone transmitter is linked to the system via a control/repeater facility or by satellite. Including a remote, stand-alone transmitter in a system-wide authorization does not alter the limitations provided under § 22.503(f) on entities other than the paging geographic area licensee. In the alternative, paging licensees may maintain separate site-specific authorizations for stand-alone or remote transmitters. The earliest expiration date of the authorizations that make up the single system-wide authorization will determine the expiration date for the system-wide authorization. Licensees must file timely renewal applications for site-specific authorizations included in a single system-wide authorization request until the request is approved. Renewal of the system-wide authorization will be subject to § 1.949 of this chapter.

§ 22.509 [Amended]

11. Paragraph (c) of § 22.509 is removed.

12. Section 22.513 is added to read as follows:

§ 22.513 Partitioning and disaggregation.

MEA and EA licensees may apply to partition their authorized geographic service area or disaggregate their authorized spectrum at any time following grant of their geographic area authorizations. Nationwide geographic area licensees may apply to partition their authorized geographic service area or disaggregate their authorized spectrum at any time as of August 23, 1999.

(a) *Application required.* Parties seeking approval for partitioning and/or disaggregation shall apply for partial assignment of a license pursuant to § 1.948 of this chapter.

(b) *Partitioning.* In the case of partitioning, requests for authorization for partial assignment of a license must include, as attachments, a description of the partitioned service area and a calculation of the population of the partitioned service area and the authorized geographic service area. The partitioned service area shall be defined by 120 sets of geographic coordinates at points at every 3 degrees azimuth from a point within the partitioned service area along the partitioned service area boundary unless either an FCC-recognized service area is used (*e.g.*, MEA or EA) or county lines are followed. The geographical coordinates must be specified in degrees, minutes, and seconds to the nearest second latitude and longitude, and must be based upon the 1983 North American Datum (NAD83). In the case where FCC-recognized service areas or county lines are used, applicants need only list the specific area(s) through use of FCC designations or county names that constitute the partitioned area.

(c) *Disaggregation.* Spectrum may be disaggregated in any amount.

(d) *Combined partitioning and disaggregation.* Licensees may apply for partial assignment of authorizations that propose combinations of partitioning and disaggregation.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 1.955 of this chapter.

(f) *Coverage requirements for partitioning.* (1) Parties to a partitioning agreement must satisfy at least one of the following requirements:

(i) The partitionee must satisfy the applicable coverage requirements set forth in § 22.503(k)(1), (2) and (3) for the partitioned license area; or

(ii) The original licensee must meet the coverage requirements set forth in § 22.503(k)(1), (2) and (3) for the entire geographic area. In this case, the partitionee must meet only the requirements for renewal of its authorization for the partitioned license area.

(2) Parties seeking authority to partition must submit with their partial assignment application a certification signed by both parties stating which of the above options they select.

(3) Partitionees must submit supporting documents showing compliance with their coverage requirements as set forth in § 22.503(k)(1), (2) and (3).

(4) Failure by any partitionee to meet its coverage requirements will result in automatic cancellation of the partitioned authorization without further Commission action.

(g) *Coverage requirements for disaggregation.*

(1) Parties to a disaggregation agreement must satisfy at least one of the following requirements:

(i) Either the disaggregator or disaggregatee must satisfy the coverage requirements set forth in § 22.503 (k)(1), (2) and (3) for the entire license area; or

(ii) Parties must agree to share responsibility for meeting the coverage requirements set forth in § 22.503 (k)(1), (2) and (3) for the entire license area.

(2) Parties seeking authority to disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the above requirements they meet.

(3) Disaggregatees must submit supporting documents showing compliance with their coverage requirements as set forth in § 22.503 (k)(1), (2) and (3).

(4) Parties that accept responsibility for meeting the coverage requirements and later fail to do so will be subject to automatic license cancellation without further Commission action.

13. Section 22.531 is amended by revising paragraph (f) to read as follows:

§ 22.531 Channels for paging operation.

* * * * *

(f) For the purpose of issuing paging geographic authorizations, the paging geographic areas used for UHF channels are the MEAs, and the paging geographic areas used for the low and high VHF channels are the EAs (see § 22.503(b)).

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

14. Section 90.175 is amended by revising paragraph (f) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(f) For frequencies in the 929–930 MHz band listed in paragraph (b) of § 90.494: A statement is required from the coordinator recommending the most appropriate frequency.

* * * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–15329 Filed 6–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45 and 97–21; FCC 99–49]

Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we clarify certain portions of the Commission's funding priority rules for the schools and libraries universal service support mechanism to remove any ambiguity that may exist in the application of such rules. In this document, we also reconsider, on our own motion, the Commission's rule that prohibits the disbursement of funds during the pendency of an appeal of a decision issued by the Administrator.

DATES: June 24, 1999.

FOR FURTHER INFORMATION CONTACT: Sharon Webber, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

I. Introduction

1. In this Order, we clarify certain portions of the Commission's funding priority rules for the schools and libraries universal service support mechanism to remove any ambiguity that may exist in the application of such rules. Specifically, we clarify that, when a filing window is in effect, and demand exceeds total authorized support, the Administrator of the universal service support mechanisms (the Universal Service Administrative Company or USAC), shall allocate funds for discounts to schools and libraries for internal connections beginning with those applicants at the highest discount level, i.e., ninety percent, and to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage.

2. In this Order, we also reconsider, on our own motion, the Commission's rule that prohibits the disbursement of funds during the pendency of an appeal of a decision issued by the Administrator. We find that, if the appeal relates to a request for additional support by the applicant or involves a challenge by a third party to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of the appeal, those funds that have been approved by the Administrator.

II. Rules of Funding Priority

3. In the *Fifth Reconsideration Order*, 63 FR 43088 (August 12, 1998), the Commission adopted new rules of funding priority that would apply when a filing window is in effect and demand exceeds total authorized support. In establishing these rules of priority, the Commission sought to ensure that funds are directed to the most economically disadvantaged schools and libraries and that every eligible school and library that filed within the window would receive some assistance. Consistent with these goals, the rules of priority provide that requests for telecommunications services and Internet access for all discount categories shall receive first priority for the available funding (priority one services). The remaining funds are allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix, i.e., schools and libraries eligible for a ninety percent discount. To the extent funds remain, the rules provide that the Administrator shall allocate funds to the requests for support for internal connections submitted by schools and libraries eligible for an eighty percent discount, then for a seventy percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining. The rules further provide that, if the remaining funds are not sufficient to support all funding requests within a particular discount level, the Administrator shall allocate the total amount of remaining support on a pro rata basis to that particular discount level.

4. Although the Commission's rules prioritize funding requests on the basis of broad discount categories, e.g., ninety percent or eighty percent, the Commission's rules also specifically recognize that not all discounts calculated under the schools and libraries support mechanism will fall within these broad discount categories. In the *Fourth Reconsideration Order*, 63 FR 2093 (January 13, 1998), the Commission revised the rules regarding how to calculate the appropriate discount level when schools and libraries aggregate their demand with others to create a consortium. The Commission determined, *inter alia*, that, for services that are shared by two or more schools, libraries, or consortia members, i.e., "shared services," the discount level should be calculated by averaging the applicable discounts of all member schools and libraries. As a result, the discount levels for "shared service" requests, which typically are internal connection requests, are single discount level percentages, e.g., eighty-nine percent, eighty-eight percent, and so on.

5. While the Commission's funding priority rules do not specifically address the single discount percentage levels associated with "shared service" requests, the rules on "shared services" and the funding priority rules must be read in concert. We clarify, therefore, that, when sufficient funds are not available to fund all internal connection requests, the Administrator shall allocate funds for discounts to schools and libraries beginning with those applicants at the ninety percent discount level and, to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on. We believe that this method of allocating funds is consistent with the Commission's goal of ensuring that support for internal connections is directed first toward the most economically disadvantaged schools. We also note that allocating funds at each descending discount level will enable the Administrator to distribute funds sooner than it could if it were required to determine the pro rata amount for the entire discount category before distributing support. We add a Note to section 54.507(g)(1)(iii) to reflect the clarification made in this Order. We also clarify that, to the extent sufficient funds do not exist to fund all requests within a single discount percentage, the Administrator shall allocate the

remaining support on a pro rata basis over that single discount percentage level, as provided in section 54.505(g)(1)(iv) of the Commission's rules.

III. Disbursement of Funding During Pendency of a Request for Review of an Administrator Decision

6. The Commission's rules provide that, during the pendency of a request for review of a decision by the Administrator, a service provider shall not be reimbursed for the provision of discounted services under the schools and libraries or rural health care support mechanisms, or receive support under the high cost and low income support mechanism, until a final decision has been issued either by the Administrator or by the Commission. In adopting this rule, we reasoned that withholding support during the pendency of an appeal would reduce the likelihood that support is disbursed in error. We did not intend, however, to require that funds be withheld where an applicant claims on appeal that it was eligible for more support than that which was approved by the Administrator or where a third party challenges only a portion of the support approved by the Administrator. In such a case, assuming the application is not otherwise the subject of an appeal, there is no reason to withhold the disbursement of those funds that the Administrator has approved. Moreover, we believe that withholding funds under such circumstances might also have the unintended result of discouraging applicants from filing legitimate appeals. Such a result would undermine one function of our appeal procedures, which is to help ensure that the universal service support mechanisms are operating consistent with Commission rules and policies. Accordingly, we find that, where a pending appeal involves a request for additional support or a third party challenge to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of that appeal, the unchallenged portion of the approved support. Accordingly, section 54.725 of the Commission's rules is revised.

IV. Effective Date of Rules

7. In this Order, we revise section 54.725 of the Commission's rules to provide that, where an applicant seeks review of a decision of the Administrator on the grounds that the applicant was eligible for additional support or a third party challenges only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse the funds that it has approved. Some applicants already have filed appeals seeking additional support, but, under our current rules, they are unable to receive the support that the Administrator has approved. Receipt of support is particularly crucial with regard to internal connections in light of the Commission's requirement that applicants complete implementation of their internal connections by a date certain for this funding year. To ensure that the disbursement of support to these applicants is not further delayed, this revised rule must take effect upon publication in the **Federal Register**. We therefore find good cause to depart in the manner described above from the general requirement of 5 U.S.C. 553(d) that final rules take effect not less than thirty (30) days after their publication in the **Federal Register**. Accordingly, section 54.725 of the Commission's rules, as revised below, shall become effective upon release of this Order.

VI. Regulatory Flexibility Analysis

A. Supplemental Final Regulatory Flexibility Analysis

8. In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (SFRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Universal Service Order*, 62 FR 32862 (June 17, 1997), and the Supplemental Final Regulatory Flexibility Analyses in the *Fifth Reconsideration Order* and the *Eighth Order on Reconsideration*, 63 FR 70564 (December 21, 1998), only to the extent that changes to the Order adopted here on reconsideration require changes in the conclusions reached in the FRFA in the *Universal Service Order* and the Supplemental Final Regulatory Flexibility Analyses in the *Fifth Reconsideration Order* and *Eighth Order on Reconsideration*. This FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Notice of Proposed Rulemaking and Order Establishing the Joint Board (NPRM), prepared in connection with the Recommended Decision, which sought written public comment on the proposals in the NPRM and the Recommended Decision.

9. To the extent that any statement contained in this Supplemental Final Regulatory Flexibility Analysis is perceived as creating ambiguity with respect to our rules or statements made in sections of this Order, the rules and statements set forth in those sections shall be controlling.

1. Need for and Objectives of This Report and Order

10. The Commission is required by section 254 of the Act to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules intended, *inter alia*, to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we clarify one aspect of those rules and reconsider another aspect of those rules. First, we clarify that, when a filing window is in effect, and demand exceeds total authorized support, the Administrator shall allocate funds for discounts to schools and libraries for internal connections beginning with those applicants at the highest discount level, i.e., ninety percent, and to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage. Second, we find that, if an appeal of a decision by the Administrator relates to a request for additional support by the applicant or involves a challenge by a third party to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of the appeal, those funds that have been approved by the Administrator.

2. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA

11. In this Order, the Commission clarifies certain portions of the Commission's funding priority rules for the schools and libraries universal service support mechanism to remove any ambiguity that may exist in the application of such rules. In doing so, the Commission affirms similar guidance that was provided by the Common Carrier Bureau to the Schools and Libraries Division of USAC. In this Order, the Commission also reconsiders, on its own motion, the rule that prohibits the disbursement of funds during the pendency of an appeal from a decision of the Administrator. The Order modifies the rule to provide that, where a pending appeal involves a request for additional support or a third party challenge to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of that appeal, the funds that it has approved.

3. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Order Will Apply

12. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

13. As noted in the FRFA at paragraphs 890–925 of the *Universal Service Order*, there are a number of small entities that would be affected by the new universal service rules. The rules adopted in this Order, however, would affect primarily schools and libraries. Moreover, because the rules would allow schools and libraries to benefit more fully from the schools and libraries universal service support mechanism, would not have a significant impact on these small entities. We further describe and estimate, however, the number of small governmental jurisdictions, small businesses, and small organizations that may potentially be affected by the rules adopted in this Order.

14. The Commission specifically noted in the *Universal Service Order* that the SBA defined small elementary and secondary schools and small libraries as those with under $5 million in annual revenues. The Commission further estimated that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in the Universal Service Order. We believe that these same small entities may be affected potentially by the rules adopted in this Order.

15. In addition, the Commission noted in the *Universal Service Order* that neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term "health care provider" and sets forth the seven categories of health care providers eligible to receive universal service support. We estimated that there are fewer than 12,296 health care providers potentially affected by the rules in the *Universal Service Order*. We note that these small entities may potentially be affected by the rules adopted in this Order.

4. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements.

Both the clarification and modification to the Commission's rules that are set forth in this Order relate only to actions that need to be taken by the Administrator of the universal service support mechanisms. As a result, we do not anticipate any additional burdens or costs associated with these proposed rules on any entities, including on small entities.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.

16. In the FRFA to the *Universal Service Order*, the Commission described the steps taken to minimize the significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order*. As described, our current action to amend our rules will benefit schools, libraries, and rural health care providers, by ensuring that funds are allocated first to the neediest schools and libraries and that schools, libraries, and rural health care providers will be able to receive any support approved by the Administrator that is not the subject of an appeal. We believe that these amended rules fulfill the statutory mandate to enhance access to telecommunications services for schools, libraries, and rural health care providers, and fulfill the statutory principle of providing quality services at "just, reasonable, and affordable rates," without imposing unnecessary burdens on schools, libraries, rural health care providers, or service providers, including small entities.

17. *Report to Congress.* The Commission will send a copy of the Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45 including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45 including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45 and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

VII. Ordering Clauses

18. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR 1.108, the Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45 are adopted.

19. It is furthered ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR 1.108, Part 54 of the Commission's rules, is amended.

20. It is further ordered that, if the Administrator determines that sufficient funds are available to provide support for all priority one service appeals that may be granted for the first funding year, the Administrator may allocate support immediately to such appeals.

21. It is furthered ordered that, to the extent funds remain after the Administrator has allocated support to all priority one services, and the Administrator has determined that sufficient funds are available to allocate

support to all internal connection appeals down to the seventy percent discount level, the Administrator may allocate support immediately to such internal connection appeals that may be granted.

22. It is furthered ordered that, because the Commission has found good cause, this Order and 47 CFR 54.725, as amended, is effective June 24, 1999.

23. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Fifth Order on Reconsideration in CC Docket No. 97–21 and Eleventh Order on Reconsideration in CC Docket No. 96–45, including the Supplemental Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 54 of Title 47 of the Code of Federal Regulations is amended to read as follows:

Part 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Add a Note to paragraph (g)(1)(iii) to read as follows:

§ 54.507 Cap.

* * * * *

(g) * * *

Note to paragraph (g)(1)(iii): To the extent that there are single discount percentage levels associated with "shared services" under § 54.505(b)(4), the Administrator shall allocate funds for internal connections beginning at the ninety percent discount level, then for the eighty-nine percent discount, then for the eighty-eight percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining.

* * * * *

3. Revise § 54.725 to read as follows:

§ 54.725 Universal service disbursements during pendency of a request for review and Administrator decision.

(a) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the schools and libraries support mechanism or the rural health care support mechanism, the Administrator shall not reimburse a service provider for the provision of discounted services until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Administrator may disburse funds for any amount of support that is not the subject of an appeal.

(b) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the high cost and low income support mechanisms, the Administrator shall not disburse support to a service provider until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Administrator may disburse funds for any amount of support that is not the subject of an appeal.

[FR Doc. 99–16181 Filed 6–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–178; FCC 99–116]

Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission dismisses petitions for reconsideration of the *First Report and Order* filed by Blackstar of Ann Arbor, Inc., licensee of WBSX–TV and by Costa de Oro Television, Inc., licensee of KSTV, that ask for special treatment for certain kinds of situations during the transition from ADIs to DMAs. The Commission has found that special relief is not warranted for these stations as they have taken advantage of the market modification process. Also addressed are possible ways to ease the transition for both broadcasters and cable operators, and the viewers they serve, as the Commission moves from an ADI to a DMA-based market structure. The Commission has set forth several procedural and evidentiary mechanisms to ameliorate the impact the change in market definitions may have on cable operators and broadcasters. The principal goal of the measures taken is to reduce, to the maximum extent feasible, cable subscriber confusion, and disruption in viewing patterns, that may arise because of the change. The Commission also improves the functioning of the *ad hoc* market modification process mandated by the Communications Act. New rules have been implemented encapsulizing the evidence necessary for filing market modification petitions.

DATES: These rules are effective July 26, 1999. Public comments on the modified information collection requirements are due on or before July 14, 1999.

ADDRESSES: A copy of any comments on the modified information collection requirements should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Consumer Protection and Competition Division, Cable Services Bureau, at (202) 418–7111. For additional information concerning the information collection contained herein, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration and Second Report and Order, CS Docket No. 95–178, FCC 99–116 adopted May 21, 1999 and released May 26, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th St. SW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 12th St. SW, Washington, DC 20554.

Synopsis of the Order on Reconsideration and Second Report and Order

1. The *First Report and Order and Further Notice of Proposed Rulemaking* ("*First Order*"), 61 FR 29312, in this proceeding established new television market definitions for purposes of the cable television signal carriage and retransmission consent rules. The Commission concluded that it was appropriate to change market definitions from Arbitron areas of dominant influence ("ADIs") to Nielsen Media Research designated market areas ("DMAs") for must-carry/retransmission consent elections. That action was necessary because the Arbitron market definition mechanism previously relied on was no longer available. However, the Commission continued to use

Arbitron's 1991–1992 *Television ADI Market Guide* designations for the 1996–1999 must-carry/retransmission consent election period and postponed the switch to DMAs until the third must-carry/retransmission consent cycle that is to commence on January 1, 2000.

2. The *First Order* delayed the transition to DMAs because of concerns related to the transition from one market definition to another and the relationship of such a transition to the *ad hoc* market boundary change process provided for in Section 614(h) of the Communications Act. For this reason, the *Further Notice of Proposed Rulemaking* was issued to solicit additional information and provide parties an opportunity to further consider issues relating to the transition to market designations based on DMAs. It also sought comment on procedures for refining the Section 614(h) market modification process.

3. Our task in this *Order on Reconsideration and Second Report and Order* is twofold. First, we consider the arguments raised in petitions for reconsideration of the *First Report and Order* filed by Blackstar of Ann Arbor, Inc., licensee of WBSX–TV (ch. 31—Ann Arbor, MI) ("WBSX–TV"), and by Costa de Oro Television, Inc., licensee of KSTV (ch. 57—Ventura, CA) ("KSTV–TV"), that ask for special treatment for certain kinds of situations during the transition from ADIs to DMAs. For the reasons discussed below, we conclude that no special treatment for these petitioners is warranted.

4. Second, we address the issues raised in the *Further Notice*, and by the comments filed in response to that *Notice*, regarding possible ways to ease the transition for both broadcasters and cable operators, and the viewers they serve, as we move from an ADI to a DMA-based market structure. We also take this opportunity to improve the functioning of the *ad hoc* market modification process mandated by Section 614(h) of the Communications Act. Our principal goal is to reduce, to the extent feasible, cable subscriber confusion and disruption in viewing patterns that may arise because of the switch from ADIs to DMAs. Another goal is to clarify the procedures for determining markets for must carry purposes so that the administration of Section 614 by the Commission is efficient and workable.

5. Under provisions added to the Act by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), local commercial broadcast television stations may elect whether they will be carried by local cable television systems, and open video systems, under the mandatory carriage ("must-carry") or retransmission consent rules. A station electing must carry rights is entitled to insist on cable carriage in its local market. Should a local station choose retransmission consent, it and the cable system negotiate the terms of a carriage agreement and the station is permitted to receive compensation in return for carriage. Stations are required to make this election once every three years. The current cycle commenced on January 1, 1997, with elections having been made by October 1, 1996.

6. For the purposes of these carriage rights, a station is considered local on all cable systems located in the same television market as the station. As enacted, Section 614(h)(1)(C) of the Act specifies that a station's market shall be determined in the manner provided in section 73.3555(d)(3)(i) of the Commission's rules, in effect on May 1, 1991. Section 73.3555(d)(3)(i), now redesignated as section 73.3555(e)(2)(i), is a separate rule concerned with broadcast station ownership issues that refers to Arbitron's ADIs. An ADI is a geographic market designation that defines each television market based on measured viewing patterns. Essentially, each county or portion of a county in the contiguous areas of the United States is allocated to a discrete market based on which home-market stations receive a preponderance of total viewing hours in the county. For the purposes of this calculation, both over-the-air and cable television viewing are included. Because of the topography involved, certain counties are divided into more than one sampling unit. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county.

7. Moreover, under the "home county rule," the county in which the station's community of license is located is considered within its market. Under Arbitron, a station's city of license, and its home county, may be located in one ADI but assigned by Arbitron to another ADI for ratings reporting purposes. The station may assert its must carry rights, or elect retransmission consent, against cable operators in its home county and all of the cable operators in the ADI to which the station is assigned.

8. In addition to ADIs that generally define the area in which a station is entitled to insist on carriage, Section 614(h) of the Act directs the Commission to consider individual requests for changes through a market modification process, including the determination that particular communities may be part of more than one television market. The Act provides that the Commission may "With respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section."

9. Section 614(h)(1)(C)(ii) states that in deciding requests for market modifications, the Commission shall consider several factors: (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; (II) whether the television station provides coverage or other local service to such community; (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interests to the community; and (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community. Section 76.59 of the rules provides that broadcast stations and cable operators shall submit requests for market modifications in accordance with the procedures for filing petitions for special relief.

10. Arbitron discontinued its television ratings and research business after the Commission established the mechanism for determining a station's local market for purposes of the triennial must carry/retransmission consent election. Thus, future editions of the publications referred to in the rules are no longer available and new procedures for defining market areas for must carry purposes had to be established.

11. Historically, Arbitron and Nielsen have been the primary national television ratings services. Conceptually, their market designations—ADIs and DMAs—are the same. They both use audience survey information from cable and noncable households to determine the assignment of counties to local television markets based on the market whose stations receive the largest share of viewing in the county. The differences in their assignments of specific counties to particular markets reflect a number of factors, including slightly different methodologies and criteria as well as normal sampling and statistical variations. Each company also has a policy for determining what constitutes a separate market based on a complex

statistical formula. For example, Arbitron considers some areas, such as Hagerstown, Maryland, or Sarasota, Florida, as separate markets, compared to Nielsen, which includes Hagerstown in the Washington, DC. DMA and Sarasota in the Tampa DMA. In addition, these services reserve the right to take into account other considerations. Nielsen, in particular, "reserves the right not to create a DMA if there is a lack of sufficient financial support of Nielsen Service in that potential DMA."

12. Nielsen has established a system to determine which stations are considered "local" for ratings reporting purposes. This is the "Market-Of-Origin" assignment process and involves several statistical calculations based upon viewership and other factors. However, a station may petition Nielsen to change its Market-Of-Origin assignment if both its transmitter and the majority of its Grade B service contour are located in a different DMA than the DMA in which the station's community of license is located. Such a petition must include relevant information on which the petitioning station bases its request for a change in Market-Of-Origin including, but not limited to, community of license, present transmitter location, signal coverage (including FCC coverage maps), audience data from previous measurements, and/or competitive considerations. Nielsen reserves the right to use its best judgment based upon the information available to it in considering whether the change sought by the petition reflects the reality of the market affected. The station's assignment is then made available in Nielsen's *Directory of Stations* publication. Thus, it appears that the home county rule applies in the DMA context as it had in the ADI context.

13. In the *First Order*, the Commission concluded that Nielsen's DMA market assignments provide the most accurate method for determining the areas serviced by local stations, recognizing that over time the 1992–92 ADI market list, if relied upon, would become outdated. Moreover, we continued to believe that our 1993 decision to use updated market designations for each election cycle to account for changing markets was appropriate. Nielsen currently provides the only generally recognized source of information on television markets that would permit us to retain this policy. Thus, we concluded that Nielsen's DMA market designations will provide the best method of "delineat[ing] television markets based on viewing patterns" in the future.

14. We observed, however, that a shift to a DMA-based market definition standard could result in some stations currently on local cable systems being replaced, some other programming services (i.e., cable networks) being dropped to accommodate situations where the number of stations entitled to carriage increases, and some channel line-ups needing to be reconfigured to accommodate the channel positioning requests of stations with new must-carry rights. The Commission also voiced concern about the impact the change to DMAs would have on the Section 614(h) market modification decisions already in force. The consensus of commenters was that prior market modification decisions should remain in effect. It was unclear, however, whether cable operators could face conflicting obligations or be subject to carriage of signals from multiple markets based on a revised market standard when these modifications are considered in conjunction with a new market definition. We did not receive any information regarding the effect that such decisions, in conjunction with a change to a DMA standard, would have on the must-carry obligations of cable operators. In addition, we were unable to determine the burden on the Commission to remedy conflicts that might result from an immediate switch to DMAs. The complexity of such situations and the administrative burden on the Commission and others to resolve possible conflicts could, the Commission believed, disrupt the orderly provision of local television service to subscribers.

15. Based on these considerations, the Commission postponed the switch in market designation until the next must-carry/retransmission consent takes effect on January 1, 2000, to ensure that potential transitional problems could be addressed. We reasoned that the phased-in approach would assist parties who expressed concerns that a switch in market definitions would result in administrative burdens and costs for cable operators, including small cable operators, and would impede the entry of new market entrants, such as local exchange carriers planning to operate cable systems under Title VI or the OVS provisions. Thus, the Commission decided to continue to use the 1991–1992 ADI market list for the 1996 election and to establish a framework that uses updated DMA markets lists for the 1999 and subsequent elections.

16. Two parties, Blackstar of Ann Arbor, Inc., licensee of WBSX–TV (channel 31, Ann Arbor, Michigan) ("WBSX–TV") and Costa de Oro Television, Inc., licensee of KSTV (channel 57, Ventura, California) ("KSTV–TV") filed petitions for reconsideration of the First Order generally arguing that the Commission did not adequately consider updated market information, unique to their situations, when considering the transition from ADIs to DMAs.

17. We believe there is no reason to make special exceptions for these two stations. The individual circumstances that apply to WBSX–TV and KSTV–TV are most appropriately dealt with through the market modification process, which takes into consideration their future DMA assignments. Both stations have used the market modification process to seek significant expansion of their ADI markets for must carry purposes. WBSX–TV has already added 55 communities to its current ADI, and KSTV–TV has added 22 communities. The Commission has specifically indicated that information regarding DMAs could be useful in resolving individual ad hoc market modification requests filed pursuant to Section 614(h). The stations may therefore use the modification process to change their DMAs, in the future, if the situation so warrants.

18. The *Further Notice of Proposed Rulemaking* sought comment on mechanisms for facilitating the transition from a market definition system based on ADIs to one based on DMAs. Commenters were asked to consider whether special provisions should be made for particular types of systems (e.g., systems with fewer than a specified number of subscribers) to minimize the disruptions that could occur due to a switch to DMAs. The Commission is also concerned about the potential impact on consumers who are cable subscribers.

19. We are not making the change suggested by Southern. Its concern about non-network territorial exclusivity arrangements appears to be misplaced and are better left addressed in Gen. Docket No. 87–24, which focuses on the network rules of concern to Southern. The change from ADIs to DMAs for must carry purposes in section 76.55 affects neither of the market listings referenced in Section 73.658(m) for purposes of territorial exclusivity in non-network arrangements. Section 73.658(m) provides that exclusivity may be secured in hyphenated markets included in the top 100 markets listed in section 76.51 or, if the market in question is not in the top 100 list, then Section 73.658(m) makes reference to the ARB Television Market Analysis. Even though Arbitron's television market analysis is no longer published, there has been no change in the reference, and the Nielsen DMA list has not been substituted theretofore. Because section 73.568(m) refers to section 76.51, the reference to DMAs in section 76.55 is not relevant to territorial exclusivity in non-network arrangements, and Southern's objection to the switch to DMAs on this basis is unwarranted.

20. We agree with those commenters that continue to express concern about the potentially disruptive consequences of switching to DMAs. A comparison of the ADI markets currently used with the DMA markets that will be used after the current election cycle is over, reveals that 135 counties change markets because of the switch from ADIs to DMAs. A sampling of these counties suggests that, in certain instances, the changes will have serious impact, even though a relatively small number of cable systems and broadcasters would be involved. And, though a strong case could be made for reversing the market shift based on the *ad hoc* market evaluation factors contained in Section 614(h), this statutory mechanism, in and of itself, may not significantly lessen the impact of the change. Thus, we believe that some general relief is warranted. We note that the change in market definition from ADI to DMA will take effect on January 1, 2000, which prompts us to consider on our own motion whether this timing would create a Year 2000 ("Y2K") problem, particularly for the cable systems that will experience carriage or channel line-up changes. Commission staff has confirmed with relevant industry representatives that cable systems' headend signal processing equipment is not dependent on date or time, and, therefore, the market definition change would not raise Y2K considerations.

21. A cable system currently within a particular station's ADI, but outside that station's DMA, may want to continue carrying that station after the transition to DMAs because the station serves the local interests of its subscribers. We believe that when the cable system wants to carry a particular station, it is a strong indication that the community it serves continues to be within the station's local market notwithstanding the change in market definition. Therefore, to minimize programming disruptions, we adopt a policy whereby a cable system within a television station's ADI (but outside its DMA) that currently carries the station on its channel line-up may continue to carry the station, without being subject to copyright liability, even after the transition to DMAs. We note that the Act's one-third channel capacity cap, and related closest network affiliate provision, apply in this particular situation. This policy adheres to the Commission's goals of providing cable subscribers with television programming that serves the interests of localism, while also reducing the possibility of channel line-up disruptions and subsequent subscriber confusion. Our approach also takes into account the Commission's need for current market information that only Nielsen can provide while, at the same time, ensuring that cable subscribers are not deprived of valued broadcast services. In these cases, the commercial television station is, and will continue to be, local with respect to this cable system, in conformance with section 76.55 of the Commission's rules. This policy applies to stations that elected retransmission consent or must carry.

22. As stated earlier, one of the principal goals in this proceeding is to reduce channel line-up disruptions whenever possible. The rule changes we are adopting, which permit individual fact-specific Commission adjustments prior to the shift to DMAs, seek to accomplish that goal. The new rules, amending sections 76.55(e) and 76.59, will include the following features:

—In the absence of any mandatory carriage complaint or market modification petition, cable operators in communities that change from one market to another will be permitted to treat their systems as either in the new market, or with respect to the specific stations carried prior to the market change, as in both markets.

—If any dispute is triggered by a change in markets that results in the filing of a mandatory carriage complaint, any affected party may respond to that complaint by filing a market modification request. The market modification request and the carriage complaint will then be addressed simultaneously. All broadcast signal carriage issues, such as channel positioning matters, would be addressed in the same proceeding. Pending complaints and petitions will be disposed of in a single proceeding whenever practicable.

23. We also find that where a broadcast station is dissatisfied with a final market modification decision issued by the Commission, and then successfully petitions Nielsen to change its market-of-origin in response to the Commission's adverse decision, the Commission's market modification decision remains controlling.

24. In Section 614(h) market modification cases, where issues are raised as to which market the cable communities are properly associated, the Commission will pay particular attention to the following considerations:

—Where persuasive evidence exists showing that two markets have been merged into a single market because there was insufficient financial support from purchasers of the rating report available from the rating service to maintain separate markets, or for other reasons unrelated to market definitions relevant to the purposes of the Commission's broadcast signal carriage rules, it will be presumed, in the absence of a demonstration to the contrary, that the previous demarcation points between the markets should be maintained. A failure of financial support for the ratings service shall not be regarded as indicative of a market change for purposes of the rules. Such evidence, as letters to the station from Nielsen explaining the change, would fulfill the burden of proof in this context.

—Where a county is shifted into a noncontiguous market (*e.g.*, a county in State A is considered part of a DMA in State B, which is not geographically contiguous with the county in State A), in considering whether that shift should be followed or revised through the Section 614(h) process, localism as reflected in over-the-air audience ratings, will be given particular attention. That is, because over-the-air audience data is a more accurate and reliable indication of local viewership, greater evidentiary weight will be given to over-the-air audience data than to cable audience data. Careful attention will be given to unique market situations, like those in the Rocky Mountain area, where counties are sometimes hundreds of miles away from the core of the market. In considering a requested market modification, the Commission will closely examine whether the challenged market redesignation resulted from audience change due to cable carriage of the signals in question as opposed to resulting from changes in the local market.

—Where Nielsen's market redesignation is the result of potentially transitory programming popularity shifts on particular stations rather than from significant changes in the facilities or locations of such stations, the Commission may, upon request, resurrect the former market structure. Thus, for example, if a county were shifted to market A because the stations in that market garnered a 52% share of the audience and

deleted from market B because its stations garnered only a 48% share, the Commission would consider leaving the market unchanged because stability is in the public interest and the underlying structure of the market has not been significantly altered to warrant the difficulties associated with the change.

—We will also consider factors such as changes in the time zone from the old market to the new market, as well as significant disruptions to subscribers. Evidence of significant disruptions to subscribers could include extensive changes in channel line-ups and subscriber objections to the change.

—Where a cable operator or broadcaster seeks to remain associated with a smaller market rather than be shifted to a larger market, the Commission will give weight to this consideration in a market modification proceeding. Supporting the smaller market is consistent with the Section 614(h) policy of paying "particular attention to the value of localism." In general, small cable system and small broadcast station concerns will be given careful attention. In this regard, the Commission will review whether such a change supports the policy of localism. In this situation, we will also take into consideration broadcasters' costs to deliver signals to cable system headends in the market and the costs to cable systems to receive local market stations.

—Separate from the specifics of the market modification process, the four statutory criteria, and other evidence considered in that process, the Commission will consider whether extreme hardship is imposed on small cable systems or small broadcast stations, often those unaffiliated with the top networks, by the DMA conversion process. Such hardship would include disproportionate expense to the system and programming disruption to subscribers that is exacerbated by the small size of the system. Evidence of such hardship would include reliable cost estimates for carrying the new stations and channel position conflicts between old and new stations. We believe this hardship scheme will address the concerns raised by small cable operators in their comments, and are more closely aligned with the Act's localism tenets than the small operators' opt out and reimbursement proposals discussed.

25. We noted concern about the effect of changing to a DMA market definition on previous Section 614(h) decisions and petitions pending before the Commission. Specifically, we requested commenting parties to address the consequences of a shift in definitions on the more particularized market boundary redefinition process contained in Section 614(h), the decisions that have been made under that section, and the proceedings under it that would result from shifting market definitions.

26. We conclude that market modification requests filed prior to the effective date of the change from ADI to DMA, including petitions, petitions for reconsideration, and applications for review, will be processed under Arbitron's ADI market definitions. We do not believe that the petitions for reconsideration and applications for review currently pending will be affected by the conversion to DMAs because, in most of these cases, the market assignment will not change. In cases in which the conversion to DMAs will have a direct consequence, we will take the future DMA assignment into account, as we have done since the *First Order* was released. We will also leave intact final market modification cases that have not been appealed and/or cases that have been subject to final Commission review so as to avoid disturbing settled expectations.

27. In addition, we agree with NCTA's argument that where the Commission has previously decided to delete a community from a station's ADI market, that deletion will remain in effect after the conversion to DMAs. We also recognize NCTA's concern that stations should not be able to assert carriage rights in its former market while a market modification deletion request is pending. Generally, a cable operator may not delete a commercial television station from carriage during the pendency of a market modification proceeding. However, if conversion to DMAs moves a station out of the ADI that is the subject of a pending deletion request, the deletion request is effectively moot, and the cable operator may drop the station. We believe that few, if any, pending proceedings will fall within this factual pattern. Nevertheless, we agree with NCTA that, as we stated earlier, the Act and our rules cannot be read to allow a television station to claim carriage rights in more than one DMA, barring a modification by the Commission.

28. We also sought comment on what changes in the modification process may be warranted given that administrative resources available to process Section 614(h) requests are limited and the Act established a 120-day time period for action on these petitions. We stated that new techniques may be needed to increase the efficiency of the decision making process. Under the existing process, a party is free to make its case using whatever evidence it deems appropriate. One suggested means of expediting the modification process was to establish more focused and standardized evidentiary specifications. Therefore, we proposed to establish specific evidentiary requirements in order to support market modification petitions under Section 614(h) of the Act. We requested comment on the following specific information submission requirements and sought alternatives that would assist the Commission in its review of individual requests. In particular, we proposed that each filing include exhibits showing:

—A map detailing the relevant community locations and geographic features, disclosing station transmitter sites, cable system headend locations, terrain features that would affect station reception, and transportation and other local factors influencing the shape of the economic market involved. Relevant mileage would be clearly disclosed;

—Historical cable carriage, illustrated by the submission of documents, such as rate cards, listing the cable system's channel line-ups for a period of several years.

—Coverage provided by the stations, including maps of the areas in question with the universe of involved broadcast station contours and cable system franchise areas clearly delineated with the same level of specificity as the maps filed with the Commission for broadcast licensing proceedings;

—Information regarding coverage of news or other programming of interest to the community as demonstrated by program logs or other descriptions of local program offerings, such as detailed listings of the programming provided in a typical week that address issues of importance in the community in question and not the market in general;

—Other information that demonstrates a nexus between the station and the cable community, including data on transportation, shopping, and labor patterns;

—Published audience data for the relevant stations showing their average all day audience (i.e., the reported audience averaged over Sunday–Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both cable and noncable households over a period of several years.

29. We will adopt the standardized evidence approach with regard to market modification petitions and amend the rules accordingly. Petitions that do not provide the evidence required by the rule will be dismissed without prejudice. This option has distinct advantages. First, it promotes administrative efficiency. Commission staff would no longer have to spend time tracking down the appropriate maps, ratings data, and carriage records that are missing from the record. Nor would Commission staff need to contact the relevant party to request the information that should have been included in the filing in the first place. With the relevant evidence available, the resources needed to process modification requests would be reduced. It now takes almost the entire 120-day statutory period to research, draft, adopt, and release a market modification decision. The interests of both broadcasters and cable operators will be advanced by a standardized evidentiary approach that will facilitate the decision-making process. By adopting the standardized evidence option, we may be able to bring greater uniformity and certainty to the process and avoid unnecessary reconsideration petitions and appeals, which will enable us to redirect administrative resources that would have been devoted to those proceedings.

30. In addition to the evidence delineated above, we encourage petitioners to provide a more specific technical coverage showing, through the submission of service coverage prediction maps that take terrain into account, particularly maps using the Longley-Rice prediction methodology. In situations involving mountainous terrain or other unusual geographical feature, the Commission will consider Longley-Rice propagation studies in determining whether or not a television station actually provides local service to a community under factor two of the market modification test. We will view such studies as probative evidence in our analysis and a proper tool to augment Grade B contour showings. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. Since both the Commission and the broadcasting industry have relied upon the Longley-Rice model in determining the digital television Table of Allocations, these studies will become increasingly useful in defining market areas for digital television stations as they come on the air.

31. We do not find merit in the argument that the standardized evidence option would pose an unreasonable financial burden on petitioners. We believe that the requested evidence should be obtainable without unreasonable difficulty and is in any case the kind of information that should be reviewed in determining whether a filing is appropriate. Most of the requested information has been included by more careful petitioners in the past without complaint about costs or administrative difficulties. Our decision here simply standardizes the type of evidence we find relevant in processing market modification petitions. However, if a requested item is in the exclusive control of the opposing party, and the opposing party refuses to provide the information, we will take into consideration which party is responsible for the absence of the requested information.

32. ALTV contends that the standardized evidence approach conflicts with the Act because Section 614(h) specifies a limited range of evidence needed to support a market modification petition. We disagree. The language of Section 614(h) provides that in considering market modification requests, "the Commission shall afford particular attention to the value of localism by taking into account *such factors as* * * *" (emphasis added), indicating that the factors are non-exclusive. Likewise, the legislative history accompanying Section 614(h) indicates that the four factors are non-exclusive, and we have interpreted this language to mean that the parties may submit any additional evidence they believe is appropriate. The approach we adopt today adds substance to this directive by clearly indicating what kind of evidence is necessary for a modification petition to be deemed complete. Parties may continue to submit whatever additional evidence they deem appropriate and relevant.

33. The second proposal proffered by the Commission to increase the efficiency of the decision making process was to alter to some extent the burden of producing the relevant evidence. Thus, for example, Section 614(h) establishes four statutory factors to govern the *ad hoc* market change process, including historical carriage, local service, service from other station, and audience viewing patterns. These factors are intended to provide evidence as to a particular station's market area, but they are not the only factors considered. These factors must be considered in conjunction with other relevant information to develop a result that is designed to "better effectuate the purposes" of the must-carry requirements. The *Notice* sought comment on whether the process could be expedited by permitting the party seeking the modification to establish a *prima facie* case based on historical carriage, technical signal coverage of the area in question, and off-air viewing. Such factors track the statutory provision and are relatively free from factual dispute. The presentation of such a *prima facie* case would trigger an obligation on the objecting party to place in the record by affidavit all evidence relevant to the full scope of the economic area involved. This could include, for example, programming information and other evidence as to the local advertising market involved. Dividing the obligations in this fashion, the *Notice* suggested, would force the party with the best access to relevant information to disclose that information at the earliest possible point in the process.

34. We find that the *prima facie* option is not the proper approach because it seems likely to create another area for procedural disputes. In contrast to the standardized evidence approach, which provides a framework that should expedite review, we are concerned that the *prima facie* approach, while possibly streamlining the process, would sacrifice the flexibility to consider all useful evidence. We also reject the market deletion plan proposed by Paxson. Under this approach, the Commission need only find that the cable system and the broadcaster share a DMA, and the cable system still has capacity for the carriage of local signals, in order to dismiss a market deletion petition. We believe this plan is contrary to the plain meaning of the Act because it ignores the four statutory factors that we must take into account when reviewing market deletion requests.

35. With regard to WRNN–TV and Paxson's request that programming should be given more weight in the modification analysis, we believe that it is inappropriate to state that one factor is universally more important than any other, as each is valuable in assessing whether a particular community should be included or excluded from a station's local market, and the relative importance of particular factors will vary depending on the circumstances in a given case. Programming is considered in the context of Section 614(h) proceedings only insofar as it serves to demonstrate the scope a station's existing market and service area, not as

a *quid pro quo* that guarantees carriage or an obligation that must be met to obtain carriage. However, we do find that such information is particularly useful in determining if the television station provides specific service to the community subject to modification. As such, we will include programming of local interest in the analysis along with mileage, Grade B contour coverage, and physical geography, when reviewing the local service element of the market modification test.

36. We continue to believe that our interpretation of Section 614(h), and the evidence we have used to analyze local service and adjust markets is reasonable and consistent with the language of the Act and statutory intent. We note that the arguments Paxson and WRNN raise were addressed at length in the *New York ADI Appeals Memorandum Opinion and Order, ("New York ADI Order")*, 12 FCC Rcd 12262 (1997), which disposed of numerous separate must carry/market modification appeals involving seven New York ADI cable operators and five television stations. The Commission's decision, subsequently affirmed by the United States Court of Appeals for the Second Circuit, *WLNY v. FCC*, 163 F.3d 187 (2d Cir. 1998), generally affirmed a staff decision to retain certain communities, and to delete other communities, from each of the stations' markets based on the four statutory factors, with particular attention paid to the local service factor as measured by Grade B contours and geographic distance, as well as other considerations. The Court's opinion fully endorsed the Commission's approach to market modifications and agreed that our careful balancing of the enumerated statutory factors, and other important considerations, are entirely consistent with the language and intent of the Act.

37. We note that Section 614(h) prohibits cable operators from deleting from carriage commercial broadcast stations during the pendency of a market modification request but does not address maintaining the status quo with respect to additions. Given the absence of a parallel statutory directive with respect to channel additions, we see no reason to depart from the general presumption that a decision is valid and binding until it is stayed or overruled. To the extent the process aids broadcast stations in both retaining and obtaining cable carriage rights, that appears to be the result intended by the statutory framework adopted.

Market Entry Analysis

38. Section 257 of the Act requires the Commission to complete a proceeding to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the telecommunications industry. The Commission is directed to promote, *inter alia*, a diversity of media voices and vigorous economic competition. We believe that this *Order* is consistent with the objectives of Section 257 in that it promotes a smooth transition to DMAs for both cable operators and broadcasters.

Paperwork Reduction Act

The requirements adopted in this Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and would impose modified information collection requirements on the public. The Commission has requested Office of Management and Budget ("OMB") approval, under the emergency processing provisions of the 1995 Act (5 CFR 1320.13), of the modified information collection requirements contained in this Report and Order. Public comments are due on or before 20 days after date of publication of this Notice in the **Federal Register**. OMB comments are due on or before 30 days after date of publication of this Notice in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0546.

Title: Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules.

Type of Review: Revision of existing collection.

Respondents: Business and for-profit entities.

Number of Respondents: 150.

Estimated Time per Response: 4–40 hours.

Frequency of Response: On occasion filing requirement.

Total Estimated Annual Burden to Respondents: 1,680 hours.

Total Estimated Annual Cost to Respondents: $721,500.

Needs and Uses: This collection (OMB 3060–0546) accounts for the paperwork burden imposed on entities when undergoing the market modification request process. Information furnished in market modification filings is used by the Commission to deem that the television market of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's television market.

Final Regulatory Flexibility Act Analysis

39. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. Section 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Order and Further Notice of Proposed Rulemaking*, 61 FR 29312. The Commission sought written public comments on the proposals in the *Further Notice* including comments on the IRFA. The FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Pub. L. 104–121, 110 Stat. 847.

40. *Need and Purpose of this Action:* This action is necessary because the procedure for determining local television markets for signal carriage purposes relies on a market list no longer published by the Arbitron Ratings Company. Moreover, action is required to mitigate disruptions in cable channel line-ups that will be caused by the shift to a new television market paradigm.

41. *Summary of Issues Raised by the Public in Response to the Initial Regulatory Flexibility Analysis:* SCBA filed comments in response to the Initial Regulatory Flexibility Analysis. SCBA states that the Commission's objective of a smooth transition from a market definition based on ADIs to one based on DMAs can be accomplished with respect to small cable systems by creating special transition rules. SCBA has submitted small cable transition rules that allegedly will help minimize regulatory burdens on small cable systems. SCBA first proposes rules that allow qualified small cable systems to opt out of the change in market definitions for the 1999 election. According to SCBA, this will allow certain small cable systems an additional three years to prepare for the impact of market redefinition. In the alternative, SCBA suggests transition rules, detailed in paragraphs 29–30, above, that will protect existing programming and shift certain costs associated with market redefinition to the broadcasters that benefit from those costs. These comments are addressed in the Order.

42. *Description and Estimate of the Number of Small Entities Impacted.* The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," and the same meaning as the term "small business concern" under Section 3 of the Small Business Act." A small concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

43. *Cable Operators.* The Communications Act at 47 U.S.C. Section 543 (m) (2) defines a small cable operator as "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. We have found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. We are likewise unable to estimate the number of these small cable operators that serve 50,000 or fewer subscribers in a franchise area. We can, however, assume that the number of cable operators serving 617,000 subscribers or less that (1) are not affiliated with entities whose gross annual revenues exceed $250,000,000 or (2) serve 50,000 or fewer subscribers in a franchise area, is less than 1450.

44. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

45. *Open Video System ("OVS").* To date the Commission has certified 23 OVS systems, at least two of which are known to be currently providing service. Little financial information is available for entities authorized to provide OVS that are not yet operational. We believe that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenue, we conclude that at least some of the OVS operators qualify as small entities.

46. *Television Stations.* The proposed rules and policies will apply to television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There are approximately 1,589 operating full power television broadcasting stations in the nation as of April 30, 1999. Approximately 1,200 of those stations are considered small businesses.

47. In addition to owners of operating television stations, any entity who seeks or desires to obtain a television broadcast license may be affected by the rules contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown.

48. *Reporting, Recordkeeping and Other Compliance Requirements.* The rules adopted in this *Order* will affect broadcast stations, cable operators, and OVS system operators, including those that are small entities. The rules adopted in this *Order* require broadcasters, cable operators, and OVS operators to provide specific forms of evidence to support market modification petitions. We do not believe that the rules adopted here today will require any specialized skills beyond those already used by broadcasters and cable operators.

49. *Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Rejected.* While declining to adopt SCBA's proposals, the Commission has implemented a procedural mechanism allowing small cable systems to file hardship petitions, if certain conditions are met. Specifically, the Commission will consider, in a case-by-case adjudicatory proceeding, whether extreme hardship would be imposed on small cable systems by requiring a transition to a new DMA market. Such hardship would include disproportionate expense to the system and programming disruption to subscribers exacerbated by the small size of the system. Evidence of such hardship would include reliable cost estimates for carrying the new stations; channel position conflicts between old and new stations; or an extensive change in channel line-ups. This mechanism should allay the concerns proffered by small cable operators.

50. *Report to Congress.* The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. Section 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

Ordering Clauses

51. *Accordingly, it is ordered that,* pursuant to Section 4(i), 4(j), 614 and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 534 and 573, and Section 301 of the Telecommunications Act of 1996, Pub. L. 104–104 (1996), part 76 *is amended* as set forth in the rule changes, effective July 26, 1999.

It is further ordered that the commission's Office of Public Affairs, Reference Operations Division, *Shall send* a copy of this *Final Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et. seq.* (1981).

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.

Rule Changes

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.55 is amended by revising paragraphs (e)(1) through (e)(6) to read as follows:

§ 76.55 Definitions applicable to the must-carry rules.

* * * * *

(e) *Television market.* (1) Until January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Area of Dominant Influence (ADI) as determined by Arbitron and published in the Arbitron 1991–1992 Television ADI Market Guide, as noted, except that for areas outside the contiguous 48 states, the market of a station shall be defined using Nielsen's Designated Market Area (DMA), where applicable, as published in the Nielsen 1991–92 DMA Market and Demographic Rank Report, and that Puerto Rico, the U.S. Virgin Islands, and Guam will each be considered a single market.

(2) Effective January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its *DMA Market and Demographic Rank Report* or any successor publication.

(i) For the 1999 election pursuant to § 76.64(f), which becomes effective on January 1, 2000, DMA assignments specified in the 1997–98 *DMA Market and Demographic Rank Report*, available from Nielsen Media Research, 299 Park Avenue, New York, NY, shall be used.

(ii) The applicable DMA list for the 2002 election pursuant to § 76.64(f) will be the DMA assignments specified in the 2000–2001 list, and so forth for each triennial election pursuant to § 76.64(f).

(3) In addition, the county in which a station's community of license is located will be considered within its market.

(4) A cable system's television market(s) shall be the one or more ADI markets in which the communities it serves are located until January 1, 2000, and the one or more DMA markets in which the communities it serves are located thereafter.

(5) In the absence of any mandatory carriage complaint or market modification petition, cable operators in communities that shift from one market to another, due to the change in 1999–2000 from ADI to DMA, will be permitted to treat their systems as either in the new DMA market, or with respect to the specific stations carried prior to the market change from ADI to DMA, as in both the old ADI market and the new DMA market.

(6) If the change from the ADI market definition to the DMA market definition in 1999–2000 results in the filing of a mandatory carriage complaint, any affected party may respond to that complaint by filing a market modification request pursuant to § 76.59, and these two actions may be jointly decided by the Commission.

* * * * *

3. Section 76.59 is amended by revising paragraphs (b) and (c) to read as follows:

§ 76.59 Modification of television markets.

* * * * *

(b) Such requests for modification of a television market shall be submitted in accordance with § 76.7, petitions for special relief, and shall include the following evidence:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.

Note to paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.

(c) Petitions for Special Relief to modify television markets that do not include such evidence shall be dismissed without prejudice and may be refiled at a later date with the appropriate filing fee.

[FR Doc. 99–15959 Filed 6–23–99; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD91

Endangered and Threatened Wildlife and Plants; Final Rule To Remove the Plant "Echinocereus lloydii" (Lloyd's Hedgehog Cactus) From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are removing the plant *Echinocereus lloydii* (Lloyd's hedgehog cactus), from the Federal List of Endangered and Threatened Species under the authority of the Endangered Species Act of 1973, as amended (Act). Lloyd's hedgehog cactus was listed as endangered on October 26, 1979, as a result of threats presented by collection and highway projects. Recent evidence indicates that Lloyd's hedgehog cactus is not a distinct species but rather a hybrid or cross which is not evolving independently of its parental species. Therefore, *E. lloydii* no longer qualifies for protection under the Act. Removing Lloyd's hedgehog cactus from the list constitutes our recognition of its hybrid status and removes Federal protection under the Endangered Species Act.

DATES: This rule is effective July 26, 1999.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Austin Texas Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

FOR FURTHER INFORMATION CONTACT: Kathryn Kennedy, botanist, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758, (telephone 512/490–0057; facsimile 512/490–0974).

SUPPLEMENTARY INFORMATION:

Background

Echinocereus lloydii (Lloyd's hedgehog cactus), a member of the cactus family, was first collected by F.E. Lloyd in 1909 and was named in his honor by Britton and Rose (1922). The first plants collected by Mr. Lloyd were from near Fort Stockton, Pecos County, Texas (Weniger 1970). Lloyd's hedgehog cactus is cylindrical with one or several ribbed stems which grow up to about 20 centimeters (cm) (8 inches (in)) high and 10 cm (4 in) in diameter. The flowers vary a great deal in color from lavender to magenta, are about 5 cm (2 in) in diameter, and form mature fruits that are green tinged with pink or orange when ripe. (Correll and Johnston 1979, Poole and Riskind 1987).

Lloyd's hedgehog cactus is known from Brewster, Culberson, Pecos, and Presidio Counties, Texas, and Eddy County, New Mexico. It has also been reported from the state of Chihuahua in Mexico. Currently fewer than 15 populations are known, most occurring on private lands.

We listed Lloyd's hedgehog cactus as an endangered species on October 26, 1979 (44 FR 61916), under the authority of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et. seq.*) At the time of listing, botanists considered Lloyd's hedgehog cactus a distinct species threatened by over-collection, habitat loss or alteration due to highway construction and maintenance, and potentially by overgrazing.

The physical characteristics of specimens of Lloyd's hedgehog cactus were long recognized as intermediate between those of *Echinocereus dasyacanthus* (Texas rainbow cactus) and *Echinocerus coccineus* (a species of claret-cup cactus). Several theories emerged as to how this intermediacy may have arisen. One theory was that Lloyd's hedgehog cactus represented a primitive ancestral evolutionary lineage (ancestry), which diversified over time to give rise to two new lineages producing *E. dasyacanthus* and *E. coccineus*. A second theory was that Lloyd's hedgehog cactus was of more recent hybrid origin, the result of ancient hybridization or crossing between *E. dasyacanthus* and *E. coccineus*, but now an independent taxon or group of organisms recognizable as a species.

While reports of interspecific hybridization (cross between two species) between members of the genus *Echinocereus* were known, hybridization between *E. coccineus* and *E. dasyacanthus* seemed highly unlikely as the two species differ greatly in morphology (structure and form), have different predominant pollinators (one hummingbird pollinated, the other bee pollinated), and generally grow in different habitats; the first being a more mesic species (average moisture) and the latter being more typically found in more open desert. In addition, in sites where the plants were grown or seen in proximity to each other they were observed to bloom at different times with little if any overlap. While many hybrids are sterile, plants of *E. lloydii* are fertile and able to reproduce. In addition, because these wild populations have persisted over time, treatment as a distinct species was generally accepted.

Steve Brack (U.S. Fish and Wildlife Service 1985) reported locating *E. lloydii* only in proximity to *E. dasyacanthus* and *E. coccineus*. This apparent lack of isolation combined with the intermediate appearance of the plants raised questions about the taxonomic interpretation of *E. lloydii* as a distinct species. These taxonomic questions supported the possibility that Lloyd's hedgehog cactus might be a result of recent and sporadic hybridization events, with these wild populations simply representing relatively unstable hybrid swarms that are not evolving independently and are not recognizable as a species. In response to this new information we determined that the question of the hybrid status of Lloyd's hedgehog cactus should be further investigated.

In studies by Powell, Zimmerman, and Hilsenbeck (1991) and Powell (1995) the progeny resulting from the artificial crossing of *E. dasyacanthus* and *E. coccineus* and naturally occurring *E. lloydii* was examined using artificial cross-pollination (cross fertilization), morphological analyses (analysis of structure and form), pollen stainability studies (using slide stain techniques to assess the viability of pollen), chromosome counts, and phytochemical analysis (plant chemical). Their research demonstrated that hybrids between *E. dasyacanthus* and *E. coccineus* could be easily produced, closely resembled the naturally occurring *E. lloydii*, and were interfertile and able to backcross to the parental species. One theory resulting from this work was that if fertile hybrids were produced in the wild, they could presumably multiply and backcross to the parental species forming the sort of persistent intermediate populations of high variability which are found naturally in the wild. This suggests that Lloyd's hedgehog cactus may have arisen as a result of hybridization between these other two species of *Echinocereus*, both of which are common and not protected by the Act.

The probability that Lloyd's hedgehog cactus arose through hybridization (crossbreeding) rather than representing a persistent ancestral condition was heightened by Powell *et al.'s* (1991) finding that naturally occurring *E. lloydii* have tetraploid chromosome numbers (four times the normal chromosome numbers), as do *E. dasyacanthus* and *E. coccineus*. Tetraploid chromosome numbers are considered an advanced or recently derived characteristic in the family Cactaceae, rather than a primitive one. Zimmerman (1993) made additional observations on pollinators and other ecological and phenological (the study of periodicity in relation to climate and environment) isolating mechanisms, examined the primitive and advanced species of the *E. dasyacanthus* and *E. coccineus* taxonomic groups (rainbow cacti and claret-cup cacti) and *E. lloydii*, and performed cladistic analyses (analysis of the order of evolutionary decent). This work resulted in his agreement that Lloyd's hedgehog cactus is not primitive and probably arose as a result of hybridization.

The conclusion that plants recognized as *E. lloydii* arose through hybridization raised questions about the integrity or cohesiveness of populations and whether they were a sufficiently distinct, isolated and independently evolving genome (genetic entity) that they should be recognized as distinct species. Powell *et al.* (1991) and Powell (1995), in their phytochemical, morphological, and crossing studies detected no unique characters or reproductive isolation that would demonstrate any independent evolution had occurred. Though their study lacked comprehensive examination and interpretation of populations in the field and throughout the known range, they suggested that populations recognized as *E. lloydii* might represent mere hybrids, and should probably at best be recognized only as an illegitimate species recognized nomenclaturally (by scientific name) for purposes of identification. They designated their artificially produced hybrids as *Echinocereus* X *lloydii*.

Zimmerman (1993) examined geographical distribution, correlations with geographic variation across the range of *E. lloydii* and its parental

species, and population characteristics at several sites in the wild. He found that *E. lloydii* was only found in areas where both *E. dasyacanthus* and *E. coccineus* occur. Further, sites with plants known as *E. lloydii* were not uniform in appearance, and exhibited great variation among individuals consistent with a pattern of backcrossing or introgression with the parental species. Zimmerman could find no evidence of reproductive isolation in the field. Zimmerman found that blooming time overlapped both parental species, and hybrid individuals did not exhibit any significant habitat preference that would provide any significant separation from the parental species, concluding that *E. lloydii* is not a legitimate species. Zimmerman's review of the nomenclature resulted in the recommendation that plants formerly recognized as *E. lloydii* should properly be referred to as *Echinocereus* X *roetteri* var. *neomexicanus*.

Previous Federal Action

Federal action concerning Lloyd's hedgehog cactus began with Section 12 of the original Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51 was presented to Congress on January 9, 1975. A notice was published on July 1, 1975 (40 FR 27823), of our acceptance of the report of the Smithsonian Institution as a petition to list these species, including *Echinocereus lloydii*, under Section 4(c)(2), now section 4(b)(3)(A) of the Act.

The report was published in the **Federal Register** on July 1, 1975 (40 FR 27823–27924), and provided notice of our intention to review the status of the plant taxa named within. On June 16, 1976, we published a proposed rulemaking in the **Federal Register** (41 FR 24523–24572) proposing the listing of approximately 1,700 vascular plant species as endangered under Section 4 of the Act. *Echinocereus lloydii* was included in this list. In response to our proposal of June 16, 1976, four hearings were held in July and August of 1976, in the following locations: Washington, D.C.; Honolulu, Hawaii; El Segundo, California; and Kansas City, Missouri. We held a fifth public hearing on July 9, 1979, in Austin, Texas for seven Texas cacti, including *E. lloydii*, and one fish.

We published a final rule in the **Federal Register** on June 24, 1977 (42 FR 32373–32381, codified at 50 CFR 17) detailing the regulations to protect Endangered and Threatened plant species. These regulations codified the prohibitions of the Act and established procedure for the permitting of certain activities under the Act. We published a final rule to list the Lloyd's hedgehog cactus as an endangered species on October 26, 1979 (44 FR 61916).

We initiated our review of new information and the status of Lloyd's hedgehog cactus in 1994 and a draft proposed delisting rule was forwarded to the Washington Office on April 4, 1995. However, a listing moratorium (Public Law 104–6, April 10, 1995) and rescission of listing program funding in Fiscal Year 1996 disrupted our listing program. This moratorium was lifted and our listing program funding was restored on April 26, 1996. We issued guidance on May 16, 1996 (61 FR 24722), setting priorities for restarting the listing program that included processing of proposed delistings already in the Washington Office. The proposed rule for delisting Lloyd's hedgehog cactus was published on June 14, 1996 (61 FR 30209). The public comment period on the proposed rule closed August 13, 1996.

Our listing priority guidance for Fiscal Year 1997, finalized December 5, 1996 (61 FR 64475), precluded the final delisting decision and processing of this final rule. Our 1997 guidance determined that, given limited resources, enacting conservation protection for the backlog of listing actions for high priority imperiled species merited priority. Delistings and reclassifications actions were given our lowest priority.

With the publication of listing priority guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 FR 25502), we returned to a more balanced listing program. Delisting and reclassification actions are now in the lowest priority position within Tier 2 actions. With resources allocated to all types of Tier 2 listing actions, work on the final determination for Lloyd's hedgehog cactus resumed.

In our June 14, 1996 (61 FR 30209), proposed rule, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. One hundred and fifteen letters of notification were sent to appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties requesting comment. Newspaper notices were published in the *Carlsbad Current-Argus* on June 22, 1996, The *El Paso Times* on June 25, 1996, the *Fort Stockton Pioneer* on June 27, 1996, and in the *Van Horn Advocate* on June 27 and July 4. We received five responses, all supporting delisting. One response was from the U.S. Forest Service, three were from botanists familiar with Lloyd's hedgehog cactus and one was from the president of a landowner's group. One response included a scientific paper published in 1995 after the proposed rule had been drafted and transmitted to Washington, which was not previously reviewed. This paper is cited in this final rule, and is a slight extension of earlier work supporting the hybrid nature of Lloyd's hedgehog cactus.

During the public comment period we invited peer review of the conclusions and supporting information from four qualified systematic botanists. In response we received two responses, both concurring that Lloyd's hedgehog cactus is not a distinct species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that Lloyd's hedgehog cactus should be removed from the List of Threatened and Endangered Plants. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations implementing the delisting provisions of the Act (50 CFR Part 424) were followed. The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error.

Since the time of listing, additional study has shown that Lloyd's hedgehog cactus is not a distinct species but a hybrid. After a review of the species' taxonomy, we conclude, based on the best scientific and commercial information available, that the original listing decision was based on a taxonomic interpretation subsequently demonstrated to be incorrect. Lloyd's hedgehog cactus no longer qualifies for protection under the Act because it does not conform with the definition of species.

A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). At the time of listing it was believed that Lloyd's hedgehog cactus was a distinct species and that several of these factors were relevant to its status. These factors and their application to *Echinocereus lloydii* Britt. & Rose (Lloyd's hedgehog cactus) were discussed in detail in the final rule (44 FR 61916) and included:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The primary concern in our prior rulemaking was that Lloyd's hedgehog cactus was vulnerable from past and potential habitat destruction due to highway construction and maintenance, and the potential destructive impacts of overgrazing in the rural rangeland habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* At the time of the final rule and continuing today, *Echinocereus lloydii* is in world-wide demand by collectors of rare cacti. Removal of plants from the wild has resulted in the depletion of natural populations.

C. *Disease or predation.* At the time of listing it was felt that *Echinocereus lloydii*, particularly young plants, could suffer possible adverse affects from trampling by grazing cattle. The final rule reported that light grazing did not seem to affect the species, however, intensified grazing could threaten the continued existence of *E. lloydii*.

D. *The inadequacy of existing regulatory mechanisms.* At the time *Echinocereus lloydii* was listed, the states of Texas and New Mexico had no laws protecting endangered and threatened plants. Since the listing, both states have enacted protective laws and regulations for plants. Lloyd's hedgehog cactus is on the New Mexico State List of Plant Species (9–10–10 NMSA 1978; NMFRCD Rule No. 91–1) and on the Texas List of Endangered, Threatened, or Protected Plants (Chapter 88, Texas Parks and Wildlife Code).

On July 1, 1975, Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was amended to include all members of the family Cactaceae. CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting country before an Appendix II species may be shipped. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not regulate take or domestic trade.

E. *Other naturdl or manmade factors affecting its continued existence.* The final rule contained some discussion of the low numbers of populations and the resulting restricted gene pool as a factor that could intensify the adverse effects of other threats.

The determination that Lloyd's hedgehog cactus should be delisted is based upon evidence that it is a hybrid that does not qualify for protection under the Act, rather than on the control of threats. Since Lloyd's hedgehog cactus is a hybrid which continues to be produced by the two parent species, the number of *E. lloydii* populations is no longer significant.

We have carefully assessed the best scientific and commercial information available regarding the conclusion that *Echinocereus lloydii* is a hybrid that does not qualify for protection under the Act in determining to make this rule final. Based on this evaluation, the preferred action is to remove Lloyd's hedgehog cactus from the list of Endangered and Threatened Plants.

In accordance with 5 U.S.C. 553(d), we have determined that this rule relieves an existing restriction and good cause exists to make this rule effective immediately. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting Section 7 consultation on actions which may affect the Lloyd's hedgehog cactus, when this hybrid should no longer come under the protection of the Act. Lifting the existing restrictions associated with the listing of this species will enable Federal agencies to minimize any delays in project planning and implementation for actions that may affect Lloyd's hedgehog cactus.

Effects of the Final Rule

This action removes Lloyd's hedgehog cactus from the List of Endangered and Threatened Plants. The Act and its implementing regulations set forth a series of general prohibitions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, currently apply to Lloyd's hedgehog cactus. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. These prohibitions will no longer apply to Lloyd's hedgehog cactus.

The requirements of Section 7 of the Act will also no longer apply to Lloyd's hedgehog cactus and Federal agencies will no longer be required to consult on their actions that may affect Lloyd's hedgehog cactus.

The 1988 amendments to the Act require that all species which have been delisted due to recovery be monitored for at least 5 years following delisting. Lloyd's hedgehog cactus is being delisted because the taxonomic interpretation that it is a valid species has been found to be incorrect, and Lloyd's hedgehog cactus is an unstable hybrid rather than a distinct taxon. Therefore no monitoring period following delisting is required.

Some protection for Lloyd's hedgehog cactus will remain in place. All native cacti, including hybrids, are on Appendix II of CITES. CITES regulates international trade of cacti, but does not regulate trade within the United States or prevent habitat destruction.

National Environmental Policy Act

We have determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the basis for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Authors

The primary author of this document is Kathryn Kennedy, Austin Ecological Services Field Office (refer to **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.12 [Amended]

2. Section 17.12(h) is amended by removing the entry for "*Echinocereus lloydii*" under "FLOWERING PLANTS" from the List of Endangered and Threatened Plants.

Dated: May 13, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–16029 Filed 6–23–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990615162–9162–01; I.D. 122298A]

RIN 0648–AM73

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Extension of Effective Date of Red Snapper Bag Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency interim rule is in effect through June 29, 1999, that reduces the daily bag limit for red snapper possessed in or from the exclusive economic zone (EEZ) of the Gulf of Mexico from five fish to four fish. NMFS extends the emergency interim rule for an additional 180 days. The intended effects of this rule are to maintain the current 4–fish bag limit consistent with the Gulf of Mexico Fishery Management Council's intent, avoid angler confusion that otherwise would result from an unintended in-season change in the bag limit, and help ensure that the recreational quota is not exceeded.

DATES: The effective date for the emergency interim rule published at 63 FR 72200, December 31, 1998, is extended from June 29, 1999, through December 26, 1999.

ADDRESSES: Copies of documents supporting this rule may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Roy Crabtree, phone: 727–570–5305 or fax: 727–570–5583.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) prepared the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). Regulations at 50 CFR part 622 implement the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

In response to a request from the Council, NMFS published an emergency interim rule (63 FR 72200, December 31, 1998), under section 305(c)(1) of the Magnuson-Stevens Act, that reduced the daily bag limit for red snapper possessed in or from the EEZ of the Gulf of Mexico from five fish to four fish. This reduction in the bag limit was, and still is, necessary to maintain the recreational harvest rate at a level that will allow the recreational fishing season to be extended without exceeding the quota. The December 31, 1998, emergency interim rule is effective through June 29, 1999. Under the FMP framework procedure for regulatory adjustments, the Council has submitted a regulatory amendment to NMFS for review that contains a proposed reduction in the red snapper bag limit from five fish to four fish. If NMFS approves and implements the proposed bag limit reduction in the regulatory amendment, it is unlikely that it could be implemented prior to expiration of the current emergency interim rule on June 29, 1999. The result would be a temporary in-season change in the red snapper bag limit that would cause angler confusion and an increase in harvest rate that would be inconsistent with the current management regime. To avoid these negative impacts, NMFS extends the effective date of the emergency interim rule, consistent with section 305(c)(3)(B) of the Magnuson-Stevens Act, for 180 days beyond the June 29, 1999, expiration date that was specified for the emergency interim rule published December 31, 1998 (63 FR 72200).

NMFS solicited public comments on the initial emergency interim rule; no comments were received. On June 8, 1999, NMFS issued an emergency interim rule to increase the minimum size limit for red snapper in the Gulf EEZ from 15 inches (38.1 cm) to 18 inches (45.7 cm) for persons subject to the bag limit and to announce the closure of the recreational red snapper fishery in the Gulf EEZ effective 12:01 a.m., local time, August 29, 1999 (64 FR 30445, June 8, 1999). Upon closure of the recreational red snapper fishery, the bag limit becomes zero and will remain so until the recreational fishery is reopened, as provided by 50 CFR 622.43(a)(1)(ii).

Additional details concerning the basis for the reduction of the red snapper bag limit are contained in the preamble to the initial emergency interim rule and are not repeated here.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that the extension of the emergency interim rule is necessary to maintain regulatory consistency, to avoid confusion among the regulated public, and to help ensure that the recreational red snapper quota is not exceeded. The AA has also determined that this extension is consistent with the Magnuson-Stevens Act and other applicable laws.

This extension of the emergency interim rule is not subject to review under E.O. 12866.

NMFS prepared an economic evaluation of the regulatory impacts associated with the emergency interim rule. The economic evaluation indicates that the major effects of the emergency interim rule are the generation of non-quantifiable positive economic benefits, compared with those of the status quo that should accrue because of consistency of bag limit measures throughout the year and of a lengthening of the recreational fishery's open season. The economic consequences of the rule are summarized as ranging from a small to a significant increase in economic benefits for the recreational red snapper fishery. Copies of the economic evaluation are available (see **ADDRESSES**).

The extension of the emergency interim rule continues the current 4–fish red snapper bag limit, thereby maintaining a recreational harvest rate consistent with extending the recreational red snapper fishing season without exceeding the recreational quota. The rule will also avoid angler confusion that otherwise could result from an inadvertent in-season change in the bag limit. A delay in implementing this action would result in unnecessary adverse impacts on those entities dependent on the red snapper recreational fishery, including the associated fishing communities. Accordingly, pursuant to authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment because the delay associated with such procedures would be contrary to the public interest.

Similarly, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest.

Because prior notice and an opportunity for public comment are not required to be provided for this extension by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Dated: June 17, 1999.

Penelope D. Dalton, Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16085 Filed 6–23–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 121
Thursday, June 24, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–1998–4720]

RIN 2125–AE50

Revision of the Manual on Uniform Traffic Control Devices; Tourist Oriented Directional Signs, Recreation and Cultural Interest Signs, and Traffic Controls for Bicycle Facilities

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in FHWA regulations regarding traffic control devices on Federal-aid and other streets and highways, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads.

This document proposes new text for the MUTCD in Chapter 2G-Tourist Oriented Directional Signs (TODS), Chapter 2H-Recreation and Cultural Interest Area Signs, and Part 9, Traffic Controls for Bicycle Facilities. The purpose of this rewrite effort is to reformat the text for clarity of intended meanings, to include metric dimensions and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD. The proposed changes to the MUTCD are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before March 24, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendments contact Ms. Linda Brown, Office of Highway Safety, Room 3414, (202) 366–2192, or Mr. Raymond Cuprill, Office of Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL 401, by using the universal resource locator (URL):http/dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this notice of proposed amendment may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

The text for the proposed sections of the MUTCD is available from the FHWA Office of Highway Safety (HHS–10) or from the FHWA Home Page at the URL: http://www.ohs.fhwa.dot.gov/devices/mutcd.html. Please note that the current rewrite sections contained in this docket for MUTCD Chapters 2G, 2H, and Part 9 will take approximately 8 weeks from the date of publication before they will be available at this web site.

Background

The 1988 MUTCD with its revisions are available for inspection and copying as prescribed in 49 CFR Part 7. It may be purchased for $57.00 (Domestic) or $71.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This document is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments received and upon its own experience, the FHWA may issue a final rule concerning the proposed changes included in this document.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting and reformatting the MUTCD, which is incorporated by reference in 23 CFR part 655, subpart F. The NCUTCD proposal is available from the U.S. DOT Dockets (see address above). Pursuant to 23 CFR Part 655, the FHWA is responsible for approval of changes to the MUTCD.

The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. Although the MUTCD will be revised in its entirety, it is being completed in phases due to the enormous volume of text. The FHWA reviewed the NCUTCD's proposal for MUTCD Part 3—Markings, Part 4—Signals, and Part 8—Traffic Control for Roadway-Rail Intersections. The summary of proposed changes for Parts 3, 4, and 8 were published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691. The FHWA reviewed the NCUTCD's proposal for Part 1—General Provisions and Part 7—Traffic Control for School Areas. The summary of proposed changes for Parts 1 and 7 were published as phase 2 of the MUTCD rewrite effort in a previous notice of proposed amendment dated December 5, 1997, at 62 FR 64324. The FHWA reviewed the NCUTCD's proposal for Chapter 2A—General Provisions and Standards for Signs, Chapter 2D—Guide Signs for Conventional Roads, Chapter 2E—Guide Signs for Expressways and Freeways, Chapter 2F—Specific Service Signs, and Chapter 2I—Signing for Civil Defense. The summary of proposed changes for Chapters 2A, 2D, 2E, 2F, and 2I were published as Phase 3 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 11, 1998, at 63 FR 31950.

This notice of proposed amendment is Phase 4 of the MUTCD rewrite effort and includes the summary of proposed changes for MUTCD Chapter 2G, Chapter 2H, and Part 9. The public will have an opportunity to review and comment on the remaining parts of the MUTCD in a future notice of proposed amendment. The remaining parts and chapters are as follows: Part 5—Traffic Control for Low Volume Roads; Part 6—Traffic Control for Construction, Maintenance, Utility, and Incident Management; Part 10—Traffic Control for Light Rail Operations; Chapter 2B—Regulatory Signs; and Chapter 2C—Warning Signs; Update for Part 1—General Provisions; and an Update for Part 4—Signals.

The FHWA invites comments on the proposed text for Chapter 2G, Chapter 2H, and Part 9 of the MUTCD. A summary of the significant changes contained in these sections of the Manual are discussed in this notice of proposed amendment. The proposed new style of the MUTCD would be a 3-ring binder with 8½ x 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing "shall" conditions; (2) Guidance—representing "should" conditions; (3) Options—representing "may" conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices. For review purposes during this rewrite effort, dimensions will be shown in both metric and English units. This will make it easier to compare text shown in the 1988 Edition with the proposed new edition. However, the adopted final version of the new MUTCD will be solely in metric units. This effort to rewrite and reformat the MUTCD will be an ongoing activity over the next two to three years.

Discussion of Proposed Amendments to Chapter 2G—Tourist Oriented Directional Signs (TODS)

The following items are the most significant proposed revisions to Chapter 2G:

In Section 2G.1, paragraph 1, the FHWA proposes to define the terms "panel" and "sign" as used throughout Chapter 2G. The proposed definition is as follows: A "panel" consists of the name or identification of the business, service, or activity facility. A tourist oriented directional "sign" consists of one or more panels.

In Section 2G.1, paragraph 5, the FHWA proposes to add a recommended criteria that tourist oriented directional signs (TODS) should not be used where the facility and its on-premise advertising signs are readily visible from the roadway. This is consistent with the proposed criteria for specific service signs (Chapter 2F) in a previously published notice of proposed amendment.

In Section 2G.2, paragraph 2, the FHWA proposes to include a standard that each tourist oriented directional panel shall display only one eligible business, service, or activity facility.

In the 1988 MUTCD, Figure 2–53 shows 6 feet as the maximum sign height for tourist oriented directional signs. To be consistent with the figure, the FHWA proposes to include a discussion of this 6 feet maximum sign height in paragraph 1 of the proposed text for Section 2G.4, Arrangement and Size of Signs. The FHWA also proposes to clarify the text previously contained in the 1988 MUTCD for the arrangement, number, and size of tourist oriented directional signs.

In 2G.5, paragraph 6, the FHWA proposes to include an OPTION to clarify that in cases where directional word messages such as NEXT RIGHT (LEFT) or AHEAD are appropriate for application, this additional information may be added to the 6 feet maximum sign height.

In Section 2G.6, paragraph 5, the FHWA proposes to require that all tourist directional signs (TODS), rather than only the advance TODS signs as in the 1988 MUTCD, shall not obstruct the road user's view of other traffic control devices. This is consistent with the current policy that the location of other traffic control devices takes precedence over the location of TODS.

In Section 2G.7, paragraph 1, the FHWA proposes to add the equal opportunity criteria of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352, 78 Stat. 241) as a STANDARD condition for TODS, since most Federal programs require compliance with the Title VI regulations. This is consistent with what was proposed for specific service signs in Section 2F.1, paragraph 4.

Discussion of Proposed Amendments to Chapter 2H—Recreation and Cultural Interest Symbol Signs

The following are the most significant proposed changes to Chapter 2H:

Chapter 2H contains standards for the design, application, and placement of recreational and cultural interest signs. Based on a Memorandum of Understanding between the Federal Highway Administration and the U.S. Department of Agriculture Forest Service, many of the symbols used by the Forest Service are adopted by reference in the MUTCD and "Standard Highway Signs" (SHS) Book.[1] These symbols were referred to as the "88 Forest Service Symbol Signs." In 1997, the Forest Service submitted a request to modify some and adopt other recreational and cultural interest area symbols. Diagrams of these signs are shown in the proposed text. The proposed text can be requested from the FHWA, Office of Highway Safety as indicated in the preface of this notice of proposed amendment.

The FHWA proposes to modify the following existing recreation and cultural interest signs to improve their visibility and make the sign design less complex: Litter Container (RG–130), Ranger Station (RG–170), Picnic Area (RM–120), Laundry (RA–060), Sleeping Shelter (RA–110) and Interpretative Trail (RL–130).

The FHWA is proposing to adopt the following Forest Service symbols and include them in the SHS Book: Motor Home (RM–200), Group Picnicking (RM–220), Group Camping (RM–210), Dog (RG–240), Seaplane (RG–260), Family Restroom (RA–150), Helicopter (RA–160), All-Terrain Vehicle (RL–170), Archer (RL–190), Hang Glider (RL–210), Fishing Pier (RW–160), Hand Launch for Boating (RW–170), Kayak (RW–190), Wind Surf (RW–210), and Chairlift for Skiing (RS–100).

In Section 2H.1, the FHWA proposes to expand the use of recreation and cultural interest signs to provide the OPTION of using these symbols on directional guide signs found on expressways and freeways. The 1988

[1] "Standard Highway Signs," FHWA, 1979 Edition is included by reference in the 1988 MUTCD. It is available for purchase from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA division Offices as prescribed at 49 CFR part 7.

MUTCD provided only the Winter and Marine recreation and cultural interest signs for use on expressway and freeway guide signs.

Table II–6, "Category and Usage Chart" on pages 2H–3 and 2H–4 of the 1988 MUTCD has been deleted. Based on the FHWA's proposal to expand the use of recreation and cultural interest signs to include not just conventional roads but also to include unrestricted use on expressways and freeways as well, the discussion of road/type usage is no longer appropriate. In addition, the signs and series numbers are more appropriate for inclusion in the SHS Book.

In Section 2H.5, paragraph 1, the FHWA proposes to delete Table II–7, "Sign Sizes," of the 1988 MUTCD which shows the recreational and cultural interest sign sizes based on road types. Instead of using this table to discuss road types and sign sizes, the FHWA proposes to discuss only the information on sign sizes. This information will be shown in paragraph format rather than in a table.

In Section 2H.6, paragraph 1, the FHWA proposes to recommend that the width of educational plaques used with recreational and cultural interest signs should be equal to the width of the symbol sign. This proposed change will simplify manufacturer specifications and sign installation procedures.

In the 1988 MUTCD, Sections 2H–10 through 2H–15 gave a general description of the categories of recreation and cultural interest symbol signs. The FHWA proposes to delete these sections since the category titles are self-explanatory and the categories are shown in Section 2H.4 of the proposed text. The FHWA proposes to show diagrams and details for each sign category in the SHS Book.

Discussion of Proposed Amendments to Part 9—Traffic Controls for Bicycle Facilities

The discussions contained in the following sections of the 1988 MUTCD are proposed for deletion: Sections 9A–1, 9A–4, 9A–6, 9A–7, and 9A–9. The information contained in these sections can be found in Part 1 of the MUTCD and to repeat this information would appear redundant.

In Section 9A.3, two additional definitions have been proposed: "bicycle lane" and "shared use path." These terms were not listed in the definitions section of the proposed text for Part 1, published in the **Federal Register** dated December 5, 1997. However, the FHWA plans to add these terms to the proposed definitions section of MUTCD Part 1, in a notice of proposed amendment which will be published at a later date. In Part 9 of the 1988 MUTCD, the term "designated bicycle lane" was used. The definition for the proposed term "bicycle lane" is similar to the definition of "designated bicycle lane." In Part 9 of the 1988 MUTCD the term "bicycle trail" was used. The definition for the proposed term "shared use path" is similar to the definition of "bicycle trail" except it has been expanded to include wheelchair users, skaters, pedestrians, and joggers.

In Section 9B.1, the FHWA proposes to combine the discussion on application and location of signs as previously discussed in sections 9B–1 and 9B–2 of the 1988 MUTCD into one section entitled, "Application and Placement of Signs." In paragraph 2, the FHWA proposes to include the dimensions shown in Figure 9–1 of the 1988 MUTCD for lateral sign clearance so that the text discusses the same information shown in the figure. The FHWA proposes to change the minimum vertical mounting height for ground-mounted signs used on shared-paths clearance from 1.2 m (4 feet) to 2.1 m (7 feet) as proposed in Section 2A–18. The minimum mounting height of signs used on bicycle paths would remain 1.2 m (4 feet).

The FHWA proposes to add a new Table 9B.1 "Bikeway Sign Sizes." This table shows the dimensions and sizes that are contained in the SHS Book. The table eliminates the need to show the dimensions and sizes in the associated MUTCD text discussion and the need to refer the reader to the SHS Book.

In Section 9B.6, the FHWA proposes to change the title (shown in the 1988 MUTCD Section 9B–8) from "Designated Lane Signs" to "Preferential Bicycle Lane Signs." This proposed change is consistent with the definition section in Part 1 of the MUTCD rewrite.

In Section 9B.7, the FHWA proposes to change the title (shown in the 1988 MUTCD Section 9B–9) from "Travelpath Restriction Signs" to "Shared Use Path Restriction Sign." This proposed change in terminology more clearly indicates the specific sign and the specific message that a facility is to be shared by pedestrians and bicycles.

In Section 9B.9, the FHWA proposes to change the title (shown in the 1988 MUTCD Section 9B–11) from "No Parking Signs" to "No Parking Bicycle Lane Signs." This proposed change more clearly distinguishes the fact that the signs are intended for bicycle lanes.

In Section 9B.10, the FHWA proposes to change the title (shown in the 1988 MUTCD Section 9B–12) from "Lane Use Control Signs" to "Bicycle Preferential Lane-Use Control Signs." This proposed change more clearly distinguishes lane-use control signs that relate to bicycle traffic.

In Section 9B.17, paragraph 2, the FHWA proposes to change the GUIDANCE from the 1988 MUTCD which recommends that the "Bicycle Route Marker" (M1–8) should be used to establish a unique designation for a State or local bicycle route. The FHWA proposes to change this condition to an OPTION.

In Section 9C.2, paragraph 3, the FHWA proposes to clarify the previous language in the 1988 MUTCD related to word messages stenciled in the bike lanes. The FHWA proposes to clearly indicate that this should be recommended practice. Pavement markings provide important information to bicyclists, especially since the location of the pavement marking is directly in the bicyclist's line of vision while traveling. The FHWA is also proposing to add a new GUIDANCE to recommend that pavement marking materials that will minimize loss of traction for bicycles under wet conditions should be selected.

In Section 9C.3, paragraph 7, the FHWA proposes to change the GUIDANCE to an OPTION for using a solid white line to separate different types of users on shared use paths. The reason for this proposed change is because there are other methods of separation that may be used such as different pavement textures or materials.

The FHWA proposes to change the title of Section 9C.4 from "Marking of Designated Bikeways" to "Marking of Preferential Bicycle Lanes." This proposed change is consistent with the proposed new term "Preferential Bicycle Lane" that is defined in the proposed new Section 1A.14, "Definitions." Also in Section 9C.4, paragraph 2, the FHWA proposes to add a sentence requiring signs to be used with the preferential lane symbol. Using signs is particularly important for notifying drivers of the appropriate travel lane for vehicle positioning so as to prevent conflict with bicycle traffic. The FHWA proposes to include the following new figures to demonstrate proper installation of pavement marking treatments: Figure 9–4, "Typical Pavement Markings for Preferential Bicycle Lane on Two-Way Street"; Figure 9–7, "Typical Preferential Bicycle Lane Treatment at Right Turn Only Lane"; and Figure 9–8, "Typical Preferential Bicycle Lane Treatment at Parking on Two-Way Street with Parking and Right Turn Only Lane."

The FHWA is also proposing to delete the preferential lane symbol (diamond) for bicycles. The intended meaning of this symbol is to indicate "exclusive use lanes." However, many people misinterpret the meaning of this symbol to apply to high occupancy vehicles (HOV) lanes only. Both the R3–16 and R3–17 signs and the pavement marking would be affected by this proposed change. Bicycle lanes would be identified by using the bicycle symbol or the words "BIKE LANE" or "BIKE LANE ONLY" as pavement markings. See Figure 9–5 for an example of these markings. Please note that such a change would include a very generous phase-in period so as not to be a financial burden on those implementing the changes. FHWA is considering a compliance date of 7 to 10 years after publication in the **Federal Register**.

FHWA is also adding two new symbol signs: (1) the R3–17a is for situations where "on street parking" is allowed next to a bicycle lane, and (2) the R3–16a is used to indicate that a bicycle lane is ending.

In Section 9C.6 the FHWA proposes changing the title from "Object Markers on Bicycle Trails" to "Object Markers on Shared Use Paths." The proposed term "Shared Use Paths" is a more accurate description than bicycle trails. The proposed definition of shared use paths is "A separate trail or path from which motor vehicles are prohibited and which is for the shared use of bicyclists, skaters, wheelchair users, joggers, and pedestrians. Where such trail or path forms a part of a highway, it is separated from the roadways for motor vehicle traffic by an open space or barrier."

The FHWA proposes including a separate Section 9C.7 to cover the discussion on pavement markings used for obstructions on bikeways. Although this discussion was formerly included as part of the discussion on object markers, the FHWA believes that separating these two distinct types of traffic control devices is appropriate.

In Section 9D.2, the FHWA proposes to combine the discussion on visibility requirements with the discussion on signal operations for bicycles. In the 1988 MUTCD (Sections 9D–2 and 9D–3) these two discussions were inappropriately handled as separate sections. The two sections are related and should be combined. Instead of using the term "programmed signals," the FHWA proposes to use the term "visibility-limited signal faces." The FHWA proposes to make it a requirement that signal timing on bikeways be reviewed and adjusted to consider the visibility needs of bicyclists.

Discussion of Adopted Amendments to Part 9 of the 1988 MUTCD

The following adopted change was published in a previous final rule on June 19, 1998, at 63 FR 33546 and is highlighted in this discussion of proposed changes for purpose of consistency:

Section 9B.2, paragraph 5 has been modified to reference the option to use fluorescent yellow-green as the background color for Bicycle Crossing signs.

The following adopted change was published in a previous final rule on January 9, 1997, at 62 FR 1368 and is highlighted in this discussion of proposed changes for purpose of consistency:

Section 9B.15, paragraph 2 has been modified to reference the option to use the "Share the Road" (W16–1) sign in situations where there is a need to warn motorists to watch for bicyclists traveling along the highway.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Public Law 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to expedite traffic, improve safety, and provide a more uniform application of traffic control devices. Since most of the proposed revisions provide recommended practice, expanded guidance, and clarification of existing information, the FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the FHWA anticipates that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. The proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that this amendment would override any existing State requirements regarding traffic control devices, it does so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding

intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs and symbols, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32; 49 CFR 1.48)

Issued on: June 16, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–16028 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–1999–5704]

RIN 2125–AE58

Revision of the Manual on Uniform Traffic Control Devices; Warning Signs and Traffic Controls for Highway-Light Rail Transit Grade Crossings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134.

This document proposes new text for the MUTCD in Chapter 2C-Warning Signs and Part 10—Traffic Controls for Highway-Light Rail Transit Grade Crossings. The purpose of this rewrite effort is to reformat the text for clarity of intended meanings, to include metric dimensions and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD. The proposed changes to the MUTCD are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before March 24, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendments: Ms. Linda Brown, Office of Transportation Operations, Room 3408, (202) 366–2192, or for legal issues: Mr. Raymond Cuprill, Office of Chief Counsel, Room 4217, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL 401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this notice of proposed amendment may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

The text for the proposed sections of the MUTCD is available from the FHWA Office of Transportation Operations (HOTO–1) or from the FHWA at the URL: *http://www.ohs.fhwa.dot.gov/devices/mutcd.html*. Please note that the current proposed sections contained in this docket for MUTCD Chapters 2C and Part 10 will take approximately 8 weeks from the date of publication before they will be available at this web site.

Background

The 1988 MUTCD with its revisions are available for inspection and copying as prescribed in 49 CFR Part 7. It may be purchased for $57.00 (Domestic) or $71.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments received and its own experience, the FHWA may issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting and reformatting the MUTCD. The NCUTCD proposal is available from the U.S. DOT Dockets (see address above). Pursuant to 23 CFR Part 655, the FHWA is responsible for approval of changes to the MUTCD.

Although the MUTCD will be revised in its entirety, it is being completed in phases due to the enormous volume of text. The FHWA reviewed the NCUTCD's proposal for MUTCD Part 3—Markings, Part 4—Signals, and Part 8—Traffic Control for Roadway-Rail Intersections. The proposed changes for Parts 3, 4, and 8 were published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691. The FHWA reviewed the NCUTCD's proposal for Part 1—General Provisions and Part 7—Traffic Control for School Areas. The proposed changes for Parts 1 and 7 were published as phase 2 of the MUTCD rewrite effort in a previous notice of proposed amendment dated December 5, 1997, at 62 FR 64324. The FHWA reviewed the NCUTCD's proposal for Chapter 2A—General Provisions and Standards for Signs, Chapter 2D—Guide Signs for Conventional Roads, Chapter 2E—Guide Signs for Expressways and Freeways, Chapter 2F—Specific Service Signs, and Chapter 2I—Signing for Civil Defense. The proposed changes for Chapters 2A, 2D, 2E, 2F, and 2I were published as Phase 3 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 11, 1998, at 63 FR 31950. The FHWA reviewed the NCUTCD's proposal for Chapters 2G—Tourist Oriented Directional Signs, Chapter 2H—Recreational and Cultural Interest Signs, and Part 9—Traffic Control for Bicycles. The proposed changes were published as Phase 4 of the MUTCD rewrite effort in a previous notice of proposed amendments in 1999.

This notice of proposed amendment is Phase 5 of the MUTCD rewrite effort and includes the summary of proposed changes for MUTCD Chapter 2C and Part 10. The public will have an opportunity to review and comment on the remaining parts of the MUTCD in a future notice of proposed amendment. The remaining parts and chapters are as follows: Part 5—Traffic Control for Low Volume Roads; Part 6—Traffic Control for Construction, Maintenance, Utility, and Incident Management; Chapter 2B—Regulatory Signs; and the following previously published parts of the MUTCD will be updated based on additional information which the FHWA has received: Part 1—Definitions; Part 3—Markings; Part 4—Signals; and Part 8—Traffic Control for Roadway-Rail Intersections.

The FHWA invites comments on the proposed text for Chapter 2C and Part 10 of the MUTCD. A summary of the significant changes contained in these sections of the Manual is provided in this notice of proposed amendment. The proposed new style of the MUTCD would be a 3-ring binder with 8½ x 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing "shall" conditions; (2) Guidance—representing "should" conditions; (3) Options—representing "may" conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices.

For review purposes during this rewrite effort, dimensions will be shown in both metric and English units. This will make it easier to compare text shown in the 1988 Edition with the proposed new edition. However, the adopted final version of the new MUTCD will be in metric units only with respect to design specifications, placement location, and spacing application. Dual units will be used for speed limit, guide sign distances, and other measurements which the public must read.

Discussion of Proposed Amendments to Chapter 2C—Warning Signs

The following items are the most significant proposed revisions to Chapter 2C:

1. Instead of repeating in Chapter 2C and other sections of the Manual the requirement that "*all* signs be either retroreflective or illuminated unless otherwise stated in the MUTCD," the FHWA is proposing to refer the reader to the general statement in Section 2A.8 of the proposed new text. Also, instead of repeating the colors for warning signs shown in Chapter 2C, the FHWA is proposing to refer the reader to Table 2A.5. The discussion regarding the design of signs is deleted since it is more appropriate for inclusion in the "Standard Highway Signs" Book [1]. However, the FHWA proposes to add a Table 2C–2 to show the various warning sign sizes.

2. The FHWA proposes to reorder the discussion of warning signs so that the sections are discussed by category type and grouped by application. In Section 2C.4, the proposed Table 2C–1 shows the categories, application, appropriate sections, and sign numbers for the warning signs in Chapter 2C. The table is designed so that it is easy to reference this information. The section topics are grouped by roadway-related, traffic-related, and non-vehicle related categories.

3. In Section 2C.4, Table 2C–2 shows the sign sizes for various warning signs. The FHWA proposes to increase the minimum size of the "Merge" Sign (W4–1), "Narrow Bridge" Sign (W5–2), "Two-Way Traffic" Sign (W6–3), and the "Double Arrow" Sign (W12–1) from 600 mm (24 inches) to 750 mm (30 inches). This proposed change will make the minimum size consistent with the other signs in the respective sign series and will improve sign visibility for the road users.

4. In Section 2C.4, paragraph 2, the FHWA proposes to add language that explains when Standard, Minimum, and Expressway/Freeway size signs are used.

5. In Section 2C.6, the FHWA proposes to combine the discussions for each of the horizontal alignment signs (W1–1 through W1–5) into one section. The FHWA proposes to add a Table 2C–4 to give the reader specific guidance for determining when to use the horizontal alignment signs based on the number of alignment changes and based on whether or not the advisory speed is greater than, equal to, or less than 75 km/h (30 mph).

6. In Section 2C.7, the FHWA proposes to add a new discussion on the use of a Combination Horizontal Alignment/Advisory Speed Sign (W1–9). When used, this sign would be required to supplement the advance warning Turn and Curve Signs. The placement of this new sign is proposed for installation within the turn or curve itself so that drivers can see the appropriate speed as they manuever through the alignment change. The FHWA proposes a minimum size of 1200 x 1200 millimeters (48 x 48 inches).

7. In Section 2C.8, paragraph 1, the FHWA proposes to add a new sign (W1–10) and a new section to the MUTCD which allows the Turn and Curve signs to be combined with the Cross Road and Side Road signs. This would in effect create one warning sign which may be used to depict roadway conditions where intersections occur within a turn or curve.

8. In section 2C.12, the FHWA is considering allowing State and local departments of transportation the option of using the word message "truck escape ramp" signs since this term is very widely and commonly used. The FHWA proposes to continue to allow the use of the word message "runaway truck ramps." This proposed change would make it optional to use either term. A new word message "Truck Escape Ramp" sign (W7–4c) would be allowed as an alternate to the "Runaway Truck Ramp" sign. In the last sentence of the first paragraph in Section 2C.12, for the benefit of the safety of road users, the

[1] "Standard Highway Signs," FHWA, 1979 Edition (Metric) is included by reference in the 1988 MUTCD. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

FHWA proposes to recommend that "No Parking" signs be placed near the entrance to truck escape ramps due to the potentially hazardous nature of these ramp locations.

9. In the 1988 edition of the MUTCD, Section 2C–26, paragraph 6 discussed truck escape turnouts at hill crests and the optional use of diagrammatic signs for these situations. The FHWA proposes to delete this discussion from the proposed text in new section 2C.12 since it is more of a supporting-type discussion that applies to the roadway design characteristics. Although in the 1988 edition the FHWA mentioned that diagrammatic signs may be used, we did not suggest any application examples because the FHWA believes these type situations are best left to the discretion of the engineer.

10. In section 2C.13, the FHWA proposes to add an OPTION of using the Advisory Speed (W13–1) plaque to indicate the recommended speed for situations where the road abruptly narrows to a width that may require road users to reduce their speed.

11. In section 2C.20, the FHWA proposes to require the use of the Low Clearance sign to warn road users of clearances less than the statutory maximum vehicle height. Providing this critical information is especially important to operators of large vehicles.

12. In section 2C.21, the FHWA proposes to change the use of the Advisory Speed plaque (W13–1) which supplements the "Bump" (W8–1) and "Dip" (W8–2) signs from an OPTION to GUIDANCE. An engineering study should be conducted by the jurisdiction responsible for the roadway to determine whether or not the road user can safely negotiate the roadway condition and to determine if an advisory speed plaque should be installed.

13. In section 2C.22, the FHWA proposes to recommend that the Advisory Speed plaque (W13–1) be used to supplement the "Pavement Ends" (W8–3) sign when the change in roadway conditon requires road users to reduce their speed. The FHWA is also proposing to delete the use of the "Pavement Ends" (W8–3a) symbol sign. Since studies have shown that road users do not comprehend the symbol's message, the FHWA is proposing to recommend only the word message sign. A phase-in period for compliance is proposed to be 10 years after the effective date of the final rule or as signs are replaced within the 10 year period. This would allow for replacement after the normal service life of the signs.

14. On October 30, 1997, the FHWA received a telephone inquiry from Ms. Devra Pulley with DJS Associates, Inc. concerning the "Low Shoulder" symbol sign which is shown in one of the FHWA's publications entitled, "Road Symbols Brochure."[2] The inquiry brought to our attention the fact that there is no accompanying discussion in the MUTCD for the "Low Shoulder" sign. The "Standard Highway Signs" Book shows a diagram of the word message "Low Shoulder" (W8–9) sign. However, the symbol shown in both the "Road Symbols Brochure" and the "Standard Highway Signs" Book is for the "Shoulder Drop-off" (W8–9a) sign and not the "Low Shoulder" sign. To rectify the confusion and discrepencies, the FHWA proposes to change the title of section 2C.23 to "Shoulder Signs" and to include language in the text for: the SOFT SHOULDER (W8–4) sign; the LOW SHOULDER (W8–9) sign; and the SHOULDER DROP-OFF (W8–9a) sign. The FHWA proposes to also recommend only word messages rather than symbols for each of these signs. Research studies have shown that the symbols are often misunderstood by the public and that the conditions are difficult to depict symbolically. A phase-in period for compliance is proposed to be 10 years after the effective date of the final rule or as signs are replaced within the 10 year period. This would allow for replacement after the normal service life of the signs.

15. In section 2C.25, paragraph 1, the FHWA proposes to combine sections 2C–15, 2C–16, and 2C–17 of the 1988 MUTCD into one section entitled, "Advance Traffic Control Signs." The Advance Traffic Control signs consist of the "Stop Ahead," the "Yield Ahead," and the "Signal Ahead" warning signs. General application standards and guidance are provided.

16. In section 2C.27, the NCUTCD is proposing to delete the "Lane Reduction Transition" symbol sign and use the "LANE ENDS MERGE LEFT" word message sign as the recommended sign for use to warn of lane reduction situations. Comprehension studies have shown that this symbol is often misunderstood by the public and, until a better symbol is developed, the FHWA proposes to recommend the word message sign instead of the symbol. A phase-in period for compliance is proposed to be 10 years after the effective date of the final rule or as signs are replaced within the 10 year period. This would allow for replacement after the normal service life of the signs.

17. In section 2C.28, paragraph 5, the FHWA proposes to add a new sentence indicating that roadway delineation may also be used to notify road users of lane reduction situations. The option to use pavement markings in addition to the recommended signs will provide additional guidance information to the road users.

18. In section 2C.28, paragraph 6, the FHWA proposes to add a discussion indicating that, in situations where an extra lane has been added for slower moving traffic, a "Lane Ends" sign should be installed in advance of the end of the extra lane.

19. In section 2C.31, the FHWA is proposing to include an OPTION for engineers to install a new CROSS TRAFFIC DOES NOT STOP (W14–4P) plaque to warn road users that they are approaching a 2-way stop controlled intersection. A research study conducted by the Texas Transportation Institute (TTI)[3] documented that some drivers have difficulties distinguishing 2-way stop intersections from 4-way stop intersections. The TTI also studied various traffic control device treatments for 2-way stop control and their study results recommended this sign. This sign was also recommended in the "Older Driver Highway Design Handbook."[4] FHWA believes that it is appropriate from a safety standpoint to add this new warning sign to help road users quickly identify the type of stop controlled intersection.

20. In section 2C.32, the FHWA is proposing to include GUIDANCE to clarify the difference between when the Exit Speed (W13–2) signs and the Ramp Speed (W13–3) signs should be used.

21. In section 2C.33, the FHWA proposes to combine the discussion in sections 2C–11 through 2C–14 of the 1988 Edition of the MUTCD into one section entitled, "Intersection Signs." The FHWA also proposes to include a new supplemental street name plaque that may be used in conjunction with the Intersection Signs to provide advance information to the road user. This proposed Advance Street Name Plaque is black legend on a yellow background and is described in more detail in proposed section 2C.44.

22. The FHWA proposes to add a new section 2C.35 entitled, "Motorized Traffic Warning Signs." As shown in Table 2C–1, these are traffic related signs that may be used to notify road users of possible vehicles crossing or traveling along the roadway. The FHWA proposes to include a new "Emergency Signal Ahead" (W11–12) warning sign for use with the "Emergency Vehicle (W11–8) warning sign. These 2 signs would be required in advance of all emergency beacon installations. The FHWA has also included the "Share the Road" (W16–1) word message supplemental plaque for use with the "Motorized Traffic Warning Signs." The "Share the Road" sign was adopted in a final rule dated January 9, 1997, at 62 FR 1364.

23. Proposed Section 2C.36 discusses the application of the non-motorized traffic crossing signs. Section 2C.36 also proposes a new application for advance crossing and crossing signs. These two signs would be identical in design. In the past, the crossing signs were distinguished from the advance crossing signs by the use of crosswalk lines on the sign. The FHWA is proposing to delete the crosswalk lines on the crossing signs since motorist comprehension studies show that people really do not know the difference between the two signs. Instead of using crosswalk lines within the sign to indicate where the actual crossing is located, the FHWA proposes a crossing sign with a supplemental downward pointing arrow plaque to show the crossing location. For advance crossing situations, the FHWA proposes to use a crossing sign supplemented with an "Ahead" or "XX feet" plaque. The FHWA proposes a phase-in compliance period of 10 years after the date of the final rule or as signs are replaced within the 10 year period. This would allow for replacement of the existing crossing signs after the normal service life.

24. In Section 2C.38 and 2C.39, the FHWA proposes to add a new discussion on the use of supplemental warning plaques. When engineering judgment determines that road users need additional information beyond that contained in the main message of the warning sign, these supplemental warning plaques may be used. The supplemental warning plaques must be used in conjunction with the primary warning sign. The proposed series of supplemental warning plaques will consist of: the "Share the Road" Sign (W16–1); Distance Plaques (W16–2 through W16–4 and W7–3a); Supplemental Arrows (W16–5 through W16–7); the "Advisory Speed" Plaque (W13–1); the "Hill Grade-Related" Plaques (W7–2 and W7–3 series); the "Advance Street Name" Plaque (W16–9); and the "Dead End" and "No Outlet" plaques (W14–1 and W14–2). The FHWA also proposes to include Table 2C–5 to show the minimum sizes of supplemental warning plaques.

Discussion of Adopted Amendments to Chapter 2C of the 1988 MUTCD

The following adopted change was published in a previous final rule on June 19, 1998, at 63 FR 33546 and is highlighted in this disucssion of proposed changes for purposes of consistency:

In section 2C.36, paragraph 6, the FHWA has included a change which allows the OPTIONAL use of the color fluorescent yellow green for pedestrian, bicycle, and school advance crossing and crossing signs. Guidance for the recommended installation of these signs is also provided in section 2C.36, paragraph 7.

Discussion of Proposed New Part 10—Traffic Controls for Highway-Light Rail Transit Grade Crossings

1. The FHWA proposes to add a new part to the MUTCD entitled, "Part 10—Traffic Controls for Highway-Light Rail Transit Grade Crossings."

2. In Section 10B.1, paragraph 4, the FHWA proposes to add STOP, YIELD, and advance warning signs as eligible for installation at highway-light rail transit crossings. The FHWA believes these other signs will provide options and flexibility to local decision makers concerned with safety and traffic control at these specific light-rail transit grade crossings.

3. In Section 10C.2, the FHWA proposes to add a new standard "Light Rail Transit" advance warning sign (W10–6). This sign would be required for use on each roadway in advance of every highway-light rail transit crossing controlled by automatic (traffic) gates or flashing light signals. The "Light Rail Transit" advance warning sign (W10–6) would be optional in advance of light rail transit crossings on semi-exclusive alignments without automatic (traffic) gates or flashing light signals. This sign would also be optional in advance of highway-light rail transit crossings controlled by traffic signals only (i.e., mixed-use alignment).

4. In Section 10C.2, the FHWA proposes to add a new "Light Rail Transit Both Directions" warning sign (W10–6a). This sign would be recommended for use at intersections and mid-block crossings (including alleys and driveways) where light rail transit operates in both directions.

5. In Section 10C.5, the FHWA proposes to add new "Light Rail Transit Only Lane" regulatory signs (R15–4 series). These signs would be optional for use on a roadway lane limited to light rail transit use only. They would be used to indicate restricted lane use in semi-exclusive and mixed alignments. The purpose of the sign is primarily for multi-lane operations, where roadway users may need additional guidance on vehicle lane use and/or restrictions.

6. In Section 10C.6, the FHWA proposes to add a new "Do Not Pass Light Rail Transit" regulatory sign (R15–5). This sign would be optional for installation at mixed-use alignments. The purpose of the sign is to indicate that vehicles are not allowed to pass light rail transit cars that are loading or unloading passengers where there is no raised platform.

7. In Section 10C.7, the FHWA proposes to add a new "No Vehicles On Tracks" regulatory sign (R15–6). This sign would be optional for use in situations where the decision has been made to deter vehicles from driving on the trackway. The sign would be used: (1) Where either the cross street is solely for light rail transit and traffic is not permitted to turn down the intersecting street; or (2) where there are adjacent traffic lanes separated from the light rail transit lane by a curb.

8. In Section 10C.8, the FHWA proposes to add new "Divided Highway With Light Rail Transit Crossing" regulatory signs (R15–7 series). These signs would be optional as a supplemental sign on the approach legs of roadways that intersect with a divided highway where light rail transit cars operate in the median.

9. In Section 10C.11, the FHWA proposes to add a new "Light Rail Transit Approaching" warning sign (W10–7). This sign would be optional at signalized intersections near grade crossings where road users turning across the tracks are controlled by exclusive turn signal phases displaying a red indication. This sign would also be optional at crossings controlled by STOP signs, automatic (traffic) gates, or traffic signals where traffic turning across the tracks is not controlled by exclusive signal phases. The sign is intended to supplement the traffic control signal and to warn road users turning across the tracks that a light rail transit train may be approaching.

10. In Section 10C.12, the FHWA proposes to add a new "Light Rail Station" information sign (I–12). This use of this sign would be optional to direct road users to a light rail station or boarding location. The sign may be supplemented by the name of the transit system and by arrows.

11. In Section 10D.2 and throughout the text as appropriate, the FHWA

[2] Road Symbols Brouchre," Stock No. 050–000–00152–1, is a vailable from the Government Printing Office, Superintendent of Documents, PO Box 37154, Pittsburgh, PA 15250–7954.

[3] Picha, D.L., C.E. Schuckel, J.A. Parham, and C.T. Mai. "Traffic Control Devices at Two-Way Stop Controlled Intersections," Research Report 1374–1F, Texas Transportation Institute, College Station, Texas, November 1996.

[4] "Older Driver Highway Design Handbook," Report No FHWA–RD–97–135, available from the FHWA Research and Technology Report Center, 9701 Philadelphia Court, Unit Q, Lanham, Maryland 20706.

proposes to revise the term "automatic gates" to "traffic gates." The purpose of the proposed change is that the FHWA believes the qualifier "automatic" is archaic in that most gates today are assumed to be automatic. Instead the FHWA believes "traffic" would be a more suitable qualifier.

12. In Section 10D.5, the FHWA proposes to include a special light rail transit traffic signal control indication. This signal indication would be recommended for control of light rail transit movements only. The indications are described as horizontal, diagonal, or vertical white bars. Additionally, the FHWA proposes to provide that the standard traffic control signal indications (typical red-, yellow-, green-ball and/or arrow) may also be used to control light rail transit movements.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and safety, and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to improve traffic operations and safety, expand guidance, and clarify application of traffic control devices. The FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the FHWA anticipates that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. The proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that this amendment would override any existing State requirements regarding traffic control devices, it does so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32; 49 CFR 1.48)

Issued on: June 18, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–16138 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–042]

RIN 1218–AB77

Employer Payment for Personal Protective Equipment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of Availability of Survey.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has completed a survey of current patterns of personal protective equipment (PPE) payment and usage. We have submitted the survey to the docket of our rulemaking concerning employer payment for PPE (Docket S–042). The survey is available for review, and we invite the public to comment and testify on the survey. Also, OSHA is requesting information about the impact of the proposed rule on the shipyard industry.

DATES: *Written comments.* Written comments must be postmarked by July 23, 1999. If you submit comments electronically through OSHA's internet site, you must transmit those comments by July 23, 1999.

Informal pubic hearing. The hearing is scheduled to begin at 9:30 a.m. on August 10, 1999.

Notice of intention to appear, testimony, and documentary evidence. Notices of intention to appear at the informal public hearing must be postmarked by July 16, 1999. If you will be requesting more than 10 minutes for your presentation, or if you will be submitting documentary evidence at the hearing, you must submit the full text of your testimony and all documentary evidence to the Docket Office, postmarked by July 23, 1999.

ADDRESSES: *Survey.* The Survey is available from the OSHA Docket Office (Docket S–042), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW Washington, DC 20210. (Telephone: (202) 693–2350)

Informal public hearing. The hearing will be held in the auditorium of the U.S. Department of Labor (Frances Perkins Building), 200 Constitution Avenue, NW, Washington, DC

Comments, Testimony, and Documentary Evidence. Submit four copies of written comments, notices of intention to appear at the informal public hearing, testimony, and documentary evidence to the OSHA Docket Office at the address listed above. Please identify the document at the top of the first page as either a comment, notice of intention to appear, testimony, or documentary evidence. If your written comments are 10 pages or less, you may fax them to the Docket Office, but you must then submit a heard copy to the Docket Office postmarked within two days. The OSHA Docket Office fax number is (202) 693–1648.

You may also submit comments electronically through OSHA's Internet site. The URL of that site is as follows: http://www.osha-slc.gov/e-comments/e-comments-ppe.html. Please be aware that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit them separately in quadruplicate to the Docket Office at the address listed above. When submitting such materials to the Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach them to your electronic comments.

SUPPLEMENTARY INFORMATION:

I. Background

On March 31, 1999, OSHA published a proposed rule (64 FR 15402) that would require employers to pay for required personal protective equipment, with limited exceptions for some types of protective footwear and protective eyewear.

We provided a written comment period and scheduled an informal public hearing to provide the public with opportunities to comment on the proposed rule and provide relevant data.

On May 24, 1999, OSHA published a **Federal Register** notice (64 FR 27941) rescheduling the hearing to begin on August 10, 1999, and extending the written comment period to July 23, 1999.

Survey. As discussed in the preamble of the proposed rule, OSHA conducted a nationwide telephone survey of employers to obtain more accurate data on current patterns of PPE payment and usage. The survey has been completed and is now available from the Docket Office (Docket S–042) for review and comment.

Issue concerning impact of proposed rule on collective bargaining agreements. After we issued the proposal, the Shipbuilders Council of America, a trade association of shipyards, contacted the Agency with concerns about the impact of the proposal on their members' collective bargaining agreements.

They told OSHA that the cost of welding gloves and other PPE, especially "leathers" worn to protect employees against welding sparks, slag, and molten metal, often is covered in their collective bargaining agreements. Some agreements split the cost between employers and employees, others cover the cost with pay premiums, others specify that employees pay for PPE. The Council also stated that the proposed rule would be very costly for its members.

OSHA did not specifically ask for comment on this exact issue in the proposal although we did note in the proposal that "the longshoring and marine terminal industries have a unique employer-employee relationship in may ports" (64 FR 15416). We asked if there were unique issues in these industries that should affect our considerations of the proposed rule.

Because of the concerns expressed by the Council, OSHA is interested in comments on whether requiring employers to pay for PPE, especially PPE such as "leathers" for welders, would impact the shipyard industry. Would collective bargaining agreements and hiring practices be affected? Would the kind of protective gear worn while welding change because of the proposed rule? What would be the cost to shipyard employers of any change in payment practices?

II. Public Participation

Written Comments

Interested parties are invited to submit written data, views, and comments with respect to the survey discussed above, and the questions relating to the maritime industry. If you wish to file written comments, you must submit them in one of the following forms: (1) Hard copy, in quadruplicate; or (2) an original (hard copy) with 1 disk (3½" or 5¼") in WordPerfect 5.0, 5.1, 6.0, 8.0, or ASCII, to the Docket Office, Docket No. S–042, Room N2625, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210.

You may also submit written comments electronically, using OSHA's website: http://www.osha-slc.gov/e-comments/e-comments-ppe.html. However, please be aware that you cannot attach materials such as studies or journal articles to your electronic comment. If you wish to submit such materials to supplement your electronic comment, you must submit them separately (either in quadruplicate or in single copy plus diskette) to the Docket Office at the address noted above. You must clearly identify these materials by including your name and the date and subject of your electronic comments, so that we can attach the materials to your comments.

All comments, views, data, and arguments that we receive within the specified comment period will become part of the record and will be available for public inspection and copying at the above Docket Office address.

Informal Public Hearing

The informal public hearing will begin at 9:30 a.m. on August 10, 1999, in the auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC. We will continue the hearing through August 20, 1999, depending on the number of public participants.

If you wish to participate in the hearing, you must file four copies of a notice of intention to appear. This notice must be postmarked on or before July 16, 1999. Your notice of intention to appear, which will be available for inspection and copying at the OSHA Docket Office (Room N2625), must contain the following information:

1. The name, address, and telephone number of each person to appear;

2. The capacity in which the person will appear;

3. The approximate amount of time required for the presentation;

4. The issues that will be addressed;

5. A brief statement of the position that will be taken with respect to each issue; and,

6. Whether the party intends to submit documentary evidence and, if so, a brief summary of that evidence.

Mail the notice of intention to appear to: Docket Office, Docket S–042, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. The telephone number of the Docket Office is (202) 693–2350.

You may also transmit your notice of intention to appear by facsimile to (202) 693–1648 (Attention: Docket S–042), by July 16, 1999, provided that you send an original and 3 copies of the notice to the Docket Office postmarked no more than 3 days later.

Filing of Testimony and Evidence Before the Hearing

If you request more than 10 minutes for your presentation at the hearing, or if you will be submitting documentary evidence, you must provide us with four copies of the complete text of the testimony and documentary evidence. One copy must not be stapled or bound and must be suitable for copying. You must provide the Docket Office with these materials postmarked no later than July 23, 1999.

We will review all testimony and evidence in light of the amount of time requested in the notice of intention to appear. If the information contained in a submission does not justify the amount of time requested, we will allocate a more appropriate amount of time and notify the participant of that fact prior to the informal public hearing.

If you do not submit your materials in accordance with the schedule and other requirements, we may limit your presentation to 10 minutes. We may also ask you to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notices of intention to appear, testimony, and evidence will be available for copying at the Docket Office at the address noted above.

Signed at Washington, DC, this 21 day of June 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–16142 Filed 6–23–99; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6364–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Hebelka Auto Salvage Yard site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete the Hebelka Auto Salvage Yard Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended. EPA and the Pennsylvania Department of Environmental Protection (PADEP) have determined that all appropriate CERCLA response actions have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and PADEP have determined that remedial activities conducted at the Site to date have been protective of public health, welfare and the environment.

DATES: Comments concerning the proposed deletion of this site from the NPL may be submitted on or before July 26, 1999.

ADDRESSES: Comments may be submitted to Deanna Moultrie, (3HS21), Project Manager, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, (215) 814–5125.

Comprehensive information on this site is available for viewing at the Site information repositories at the following locations: U.S. EPA, Region 3, Public Reading Room, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–3157; Weisenberg Township Building, 2175 Seipstown Road, Fogelsville, PA 18051, (610) 285–6660.

FOR FURTHER INFORMATION CONTACT: Ms. Deanna Moultrie (3HS21), U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA, 19103, (215) 814–5125.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region III announces its intent to delete the Hebelka Auto Salvage Yard Site, Lehigh County, Pennsylvania, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site from the NPL for thirty calendar days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with PADEP, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with PADEP, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with PADEP, has determined that the release poses no significant threat to public health or the environment and therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

In the NPL rulemaking published on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice of comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP proposed on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individuals rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region III will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

(1) EPA Region III has recommended deletion and has prepared the relevant documents.

(2) PADEP has concurred with the deletion decision.

(3) Local notice will be published in local newspapers and distributed to appropriate federal, state and local officials and other interested parties. This local notice presents information on the site and announces the thirty (30) day public comment period on the deletion package.

(4) The Region has made information supporting the proposed deletion available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address significant comments received during the public comment period. A deletion will occur after the EPA Regional Administrator places a document in the **Federal Register**. The NPL will reflect any deletions in the final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region III.

IV. Basis for Intended Site Deletion

The Hebelka Auto Salvage Yard Superfund Site occupies approximately 20 acres within the headwaters of the Iron Run subdrainage basin in Lehigh County, Pennsylvania. The Site is the location of a former automobile junkyard and salvage operation involving junk cars, used storage tanks and miscellaneous scrap metals and debris with periods of activity between 1958 and 1979. The Pennsylvania Department of Environmental Resources reported that operations ceased in 1979.

The Site was purchased in 1958 by Mr. and Mrs. Joseph Hebelka, now deceased. The property is currently a part of the estate of Lovie Hebelka. In December 1985, the EPA Region III Field Investigation Team (FIT III) visited the Site for the purpose of conducting a Site Inspection (SI). The SI revealed the presence of two battery piles at the Site, termed the eastern pile and the western pile. The major contaminant identified at this site was lead in soils downgradient from the battery piles. The Site was proposed for inclusion on the Superfund National Priorities List on June 1, 1986 and finalized on that list on August 21, 1987.

Operable Unit 1 (OU1) addressed the areas of the Site with lead in soil concentrations above 560 mg/kg and the piles of scrap battery casings lying on top of these soil areas. Operable Unit 2 (OU2) addressed the soils outside of this high concentration area, the air in the vicinity of the Site, the groundwater in the vicinity (including nearby home well water), the nearby stream water and the stream sediments.

A Remedial Investigation and Feasibility Study (RI/FS) was conducted between March 1987 and July 1991 to define the nature and extent of contamination and to identify alternatives for remediating the Site conditions. Remedies for the Operable Units were selected and described in separate Records of Decision (ROD). ROD 1 was issued March 31, 1989 for OU1 and ROD 2 was issued September 30, 1991 for OU2. The remedy selected in ROD 1 was designed to prevent ingestion of lead-contaminated particles and soil in excess of health-based levels by removing them from the Site and treating and-or disposing of them. This was done by removing battery casings and recycling them. Recycling was proven to be impractical so they were disposed of in a RCRA landfill. Soil above health-based risk levels was excavated, stabilized offsite and deposited in a RCRA Subtitle D municipal landfill. Clean soil was then backfilled and revegetated. EPA determined that no further action was necessary at the Site for OU2 because contamination pathways via the site media posed no current or potential threat to human health and the environment. Therefore, the remedy chosen in ROD 1, eliminated the need for further action.

Because the remedies chosen for OU1 and OU2 did not result in hazardous substances remaining onsite above health-based levels, the five-year review process will not apply to this site.

The remedies selected for this site have been implemented in accordance with the Records of Decision. As a result of these remedies, human health threats and potential environmental impacts at this site have been eliminated. EPA and PADEP find that the remedies implemented continue to provide adequate protection of human health and the environment.

EPA, in concurrence with PADEP believes that the criteria stated in section II(i) for deletion of this site has been met. Therefore, EPA is proposing the deletion of this site from the NPL.

Dated: April 19, 1999.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 99–15833 Filed 6–23–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45 and 97–21; FCC 99–49]

Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: In this document, the Commission proposes a method for allocating funds in the event that the Administrator's initial denial of a request for support is reversed by the Administrator or the Commission. The Commission proposes a method for allocating support when there is sufficient funding to support all telecommunications service and Internet access (priority one services) appeals, but not sufficient funding to support all internal connection appeals. The Commission also proposes a method for allocating support in the unlikely event that sufficient funds are not available for all priority one service appeals.

DATES: Comments are due on or before June 30, 1999.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission,

445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Sharon Webber, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

I. Introduction

1. In the this Further Notice of Proposed Rulemaking (Further Notice), we propose a method for allocating funds in the event that the Administrator's initial denial of a request for support is reversed by the Administrator or the Commission. Specifically, we propose a method for allocating support when there is sufficient funding to support all telecommunications service and Internet access (priority one services) appeals, but not sufficient funding to support all internal connection appeals. We also propose a method for allocating support in the unlikely event that sufficient funds are not available for all priority one service appeals.

2. The Commission's rules provide that an applicant may file a request for review with the Administrator or the Commission in connection with the Administrator's denial of an application. Although the Administrator has taken all reasonable and appropriate steps to ensure that it will be able to fund fully all appeals that may be granted, we conclude that it is necessary to adopt additional funding priority rules setting forth how funds will be allocated in the unlikely event that sufficient funds are not available at the appeal phase. Consistent with the Commission's funding priority rules, we propose that, when a filing window is in effect, the Administrator shall first fund all priority one service appeals that have been granted and, if sufficient funds remain, shall allocate funds to internal connection appeals at each descending single discount percentage, e.g., ninety percent, eighty-nine percent, and so on. In no case, however, would an applicant be able to receive support for internal connections below the discount level for which an applicant received support in the original application process. That is, if the Administrator were only able to provide support during the original application process to applicants at a discount level of seventy percent or above, an applicant would not be able to receive support on appeal for an internal connection request at a sixty-nine percent discount level. To the extent funds do not exist to fund all appeals granted within a single discount percentage, we propose that the Administrator allocate the remaining support on a pro rata basis within that single discount percentage. We seek comment on this proposal.

3. If the Administrator determines that sufficient funds are not available to fund all priority one service appeals, we propose that the Administrator allocate the available funds to all appeals for priority one services, i.e., telecommunications services and Internet access on a pro rata basis, irrespective of the discount level associated with the request. We believe that this is the best approach in light of both the funding priority rules, which grant first priority to requests for telecommunications services and Internet access, and the Commission's goal of ensuring that every eligible school and library receive some assistance. We seek comment on this proposal. In particular, we seek comment on how this proposed allocation method should be implemented in light of our appeal procedures, which permit applicants to seek review of decisions issued by the Administrator from either the Administrator or the Commission. We tentatively conclude that, to ensure an equitable distribution of funds to all priority one service appeals, the Administrator should wait until a final decision has been issued on all priority one service appeals before it allocates funds on a pro rata basis. We seek comment on this tentative conclusion. We also seek comment on whether it would be more appropriate for the Commission to permit the Administrator to use funds collected in the next funding year to fund priority one service appeals for the prior year. While we recognize that using funds collected for the next funding year may deplete the available funds for that year, we nevertheless seek comment on whether there are any advantage to such an approach. We also invite parties to submit alternative proposals that would enable the Administrator to distribute fairly funds for appeals in the event that sufficient funds are not available to fund all priority one service appeals.

4. We recognize that applicants must complete the installation of internal connections by a date certain for each funding year. We tentatively conclude that an applicant would be required to complete the installation of internal connections that received support pursuant to an appeal within six months from the date that the final decision on appeal is issued. We seek comment on this tentative conclusion.

5. Finally, pending the outcome of this Further Notice, we find that, if the Administrator is able to determine that sufficient funds are available to provide support for all priority one service appeals that may be granted for the first funding year, the Administrator may allocate support immediately to such appeals. To the extent funds remain, and the Administrator is able to determine that sufficient funds are available to allocate funds to all internal connection appeals down to the seventy percent discount level, i.e., the lowest discount level for which applicants received support during the original funding period, the Administrator may allocate support immediately to such internal connection appeals that may be granted.

VI. Filing Procedures

6. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments by June 30, 1999. Pursuant to section 1.3 of the Commission's rules, 47 CFR 1.3, we find good cause to waive section 1.415(c) of the Commission's rules, which provides for the submission of replies to original comments. Dispensing with reply comments is crucial in light of the urgent need to provide definitive guidance to the Administrator regarding the priorities for allocating funds to applications whose initial denials are reversed by the Administrator or the Commission.

7. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

8. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Sheryl Todd, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, S.W., room 5–A523, Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (97–21)), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., room CY–B400, 445 Twelfth Street, S.W., Washington, D.C. 20554. For further information, please contact: Sharon Webber, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

9. Pursuant to section 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

VII. Regulatory Flexibility Analysis

A. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking provided above. The Commission will send a copy of the Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Further Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**. *See* id.

11. *Need for an Objectives of the Proposed Rules.* The Commission's rules provide that an applicant may file a request for review with the Administrator or the Commission in connection with the Administrator's denial of an application. Although the Administrator has taken all reasonable and appropriate steps to ensure that it will be able to fund fully all appeals that may be granted, we conclude that it is necessary to adopt additional funding priority rules setting forth how funds will be allocated in the unlikely event that sufficient funds are not available at the appeal phase. Accordingly, the Further Notice proposes that, when a filing window is in effect, the Administrator shall first fund all priority one service appeals that have been granted and, if sufficient funds remain, shall allocate funds to internal connection appeals at each descending single discount percentage, e.g., ninety percent, eighty-nine percent, and so on. To the extent funds do not exist to fund all appeals granted within a single discount percentage, we propose that the Administrator allocate the remaining support on a pro rata basis within that single discount percentage. If the Administrator determines that sufficient funds are not available to fund all priority one service appeals, the Further Notice proposes that the Administrator allocate the available funds to all appeals for priority one services, i.e., telecommunications services and Internet access on a pro rata basis, irrespective of the discount level associated with the request.

12. *Legal Basis.* The proposed action is supported by sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 254, and 403.

13. *Description and Estimate of the Number of Small Entities to which the proposed rules will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

14. *Schools and Libraries.* The Commission specifically noted in the *Universal Service Order* that the SBA defined small elementary and secondary schools and small libraries as those with under $5 million in annual revenues. The Commission further estimated that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in the Universal Service Order. We believe that these same small entities may be affected potentially by the rules proposed in this Further Notice.

15. *Rural Health Care Providers.* The Commission noted in the *Universal Service Order* that neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term "health care provider" and sets forth the seven categories of health care providers eligible to receive universal service support. We estimated that there are fewer than 12,296 health care providers potentially affected by the rules in the *Universal Service Order*. We note that these small entities may

potentially be affected by the rules proposed in this Further Notice.

16. *Description of Projected Reporting, Record keeping, and Other Compliance Requirements.* We tentatively conclude that there will not be any additional burdens or costs associated with the proposed rules on any entities, including on small entities. We seek comment on this tentative conclusion.

17. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* In the FRFA to the *Universal Service Order*, the Commission described the steps taken to minimize the significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order*. Our current action to amend our rules will benefit schools, libraries, and rural health care providers, by ensuring that funds are allocated first to the neediest schools and libraries and that schools, libraries, and rural health care providers will be able to receive any support approved by the Administrator that is not the subject of an appeal. We believe that the amended rules fulfill the statutory mandate to enhance access to telecommunications services for schools, libraries, and rural health care providers, and fulfill the statutory principle of providing quality services at "just, reasonable, and affordable rates," without imposing unnecessary burdens on schools, libraries, rural health care providers, or service providers, including small entities.

18. *Federal Rules That May Overlap, Duplicate, or Conflict with the Proposed Rule.* None.

VIII. Ordering Clauses

19. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and section 1.108 of the Commission's rules, 47 CFR 1.108, the Further Notice of Proposed Rulemaking is adopted.

20. It is further ordered that, because the Commission has found good cause, this Further Notice of Proposed Rulemaking is effective upon publication in the **Federal Register**.

21. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16182 Filed 6–23–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF67

Endangered and Threatened Wildlife and Plants; Proposed Rule to Remove the Northern Populations of the Tidewater Goby From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service, pursuant to the Endangered Species Act of 1973, as amended (Act), proposes to remove the northern populations of the tidewater goby (*Eucyclogobius newberryi*) from the list of endangered and threatened wildlife. The species is now classified as endangered throughout its entire range. We have determined that north of Orange County there are more populations than were known at the time of the listing, that the threats to those populations are less severe than previously believed, and that the tidewater goby has a greater ability than was known in 1994 to recolonize habitats from which it is temporarily absent. This proposal would remove the northern populations of the tidewater goby from protection under the Act.

The Orange and San Diego counties population of tidewater goby, which constitutes a distinct population segment, is genetically distinct, is comprised of gobies from only six localities, and continues to be threatened by habitat loss and degradation, predation by non-native species, and extreme weather and streamflow conditions. Therefore, this distinct population segment will be retained as an endangered species on the List of Endangered and Threatened Wildlife.

DATES: We must receive comments from all interested parties by August 23, 1999. We must receive public hearing requests by August 9, 1999.

ADDRESSES: Send written comments and other materials concerning this proposal to Ms. Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. You may inspect comments and materials received, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl Benz at the above address; telephone 805/644–1766, facsimile 805/644–3958.

SUPPLEMENTARY INFORMATION:

Background

The tidewater goby was first described in 1857 by Girard as *Gobius newberryi*. Gill (1862) erected the genus *Eucyclogobius* for this distinctive species. The majority of scientists has accepted this classification (e.g., Bailey *et al.* 1970, Miller and Lea 1972, Hubbs *et al.* 1979, Robins *et al.* 1991, Eschmeyer *et al.* 1983). No other species has been described in this genus. A few older works and Ginsburg (1945) placed the tidewater goby and the eight related eastern Pacific species into the genus *Lepidogobius*. This classification includes the currently recognized genera *Lepidogobius, Clevelandia, Ilypnus, Quietula,* and *Eucyclogobius*. Birdsong *et al.* (1988) coined the informal *Chasmichthys* species group, recognizing the phyletic relationship of the eastern Pacific group with species in the northwestern Pacific.

Crabtree's (1985) allozyme work on tidewater gobies from 12 localities throughout the range shows fixed allelic differences at the extreme northern (Lake Earl, Humboldt Bay) and southern (Cañada de Agua Caliente, Winchester Canyon, and San Onofre Lagoon) ends of the range. The northern and southern populations are genetically distinct from each other and from the central populations sampled. The more centrally distributed populations are relatively similar to each other (Brush Creek, Estero Americano, Corcoran Lagoon, Arroyo de Corral, Morro Bay, Santa Ynez River, and Jalama Creek). Crabtree's results indicate that there is a low level of gene flow (movement of individuals) between the populations sampled in the northern, central, and southern parts of the range. However, Lafferty *et al.* (in prep.) point out that Crabtree's sites were widely distributed geographically, and may not be

indicative of gene flow on more local levels.

Recently, David Jacobs (University of California, Los Angeles, Department of Organismic Biology, Ecology and Evolution, *in litt.*, 1998) initiated an analysis of mitochondrial genetic material from tidewater goby populations ranging from Humboldt to San Diego counties. Preliminary results indicate the San Diego gobies separated from other gobies along the coast long ago. These southernmost populations likely began diverging from the remainder of the gobies in excess of 100,000 years ago. Furthermore, gobies from the Point Conception area are more closely related to gobies from Humboldt County than they are to the gobies analyzed in San Diego County.

The tidewater goby (*Eucyclogobius newberryi*) is a small, elongate, grey-brown fish with dusky fins not exceeding 50 millimeters (mm) (2 inches (in.)) standard length (SL). The tidewater goby is a short-lived species, apparently having an annual life cycle (Irwin and Soltz 1984, Swift *et al.* 1997). At the time of the listing, the species was believed to have more stringent habitat requirements and to be less likely to disperse successfully than recent research indicates (see below). These factors, coupled with the short life span of the tidewater goby, were believed to make most tidewater goby populations vulnerable to extirpation by human activities. At the time of the listing, we believed that approximately 50 percent of the documented populations had been extirpated. However, in spite of the many factors affecting coastal wetlands, recent survey data demonstrate a less than 25 percent permanent loss of the known tidewater goby populations (Ambrose *et al.* 1993; Swift *et al.* 1994; Lafferty *et al.* 1996; C. Chamberlain, U.S. Fish and Wildlife Service, Arcata, California, *in litt.* 1997; Lafferty 1997; Swift *et al.* 1997).

The tidewater goby inhabits coastal brackish water habitats entirely within California. Within the range of the tidewater goby, these conditions occur in two relatively distinct situations: (1) The upper edge of tidal bays, such as Tomales, Bolinas, and San Francisco bays near the entrance of freshwater tributaries, and (2) the coastal lagoons formed at the mouths of small to large coastal rivers, streams, or seasonally wet canyons, along most of the length of California. Few well authenticated records of this species are known from marine environments outside of enclosed coastal lagoons and estuaries (Swift *et al.* 1989). This may be due to the lack of collection efforts at appropriate times (i.e., following storm events or breachings when gobies are flushed from the estuaries and lagoons). Historically, the species ranged from Tillas Slough (mouth of the Smith River, Del Norte County) near the Oregon border to Agua Hedionda Lagoon (northern San Diego County).

The tidewater goby is often found in waters of relatively low salinities (around 10 parts per thousand (ppt)) in the uppermost brackish zone of larger estuaries and coastal lagoons. However, the fish can tolerate a wide range of salinities (Swift *et al.* 1989, 1997; Worcester 1992; K. R. Worcester, California Department of Fish and Game (CDFG), *in litt.* 1996; Worcester and Lea 1996), and is frequently found throughout lagoons. Tidewater gobies regularly range upstream into fresh water, and downstream into water of up to 28 ppt salinity (Worcester 1992, Swenson 1995), although specimens have been collected at salinities as high as 42 ppt (Swift *et al.* 1989). The species' tolerance of high salinities (up to 60 ppt for varying time periods) likely enables it to withstand the marine environment, allowing it to colonize or re-establish in lagoons and estuaries following flood events (Swift *et al.* 1989; K. R. Worcester, *in litt.* 1996; Worcester and Lea 1996; Lafferty *et al.* in prep.).

Tidewater gobies are usually collected in water less than 1 meter (m) (3 feet (ft)) deep; many localities have little or no area deeper than this (Wang 1982, Irwin and Soltz 1984, Swift *et al.* 1989, Swenson 1995). However, it has been found in waters over 1 m in depth (Worcester 1992, Lafferty and Altstatt 1995, Swift *et al.* 1997, Smith 1998). In lagoons and estuaries with deeper water, the failure to collect gobies may be due to the inadequacy of the sampling methods, rather than the lack of gobies (Worcester 1992, Lafferty 1997, Smith 1998).

Tidewater gobies often migrate upstream into tributaries up to 2,0 kilometers (km) (1.2 mile (mi)) from the estuary. However, in San Antonio Creek and the Santa Ynez River, Santa Barbara County, tidewater gobies are often collected 5 to 8 km (3 to 5 mi) upstream of the tidal or lagoonal areas, sometimes in beaver impounded sections of streams (Swift *et al.* 1989). The fish move upstream in summer and fall, as sub-adults and adults. There is little evidence of reproduction in these upper areas (Swift *et al.* 1997).

Populations originally inhabiting tidal areas, such as those found in San Francisco Bay, rarely were studied before they disappeared, and none remain to adequately study their use of truly tidal conditions. Several of the lagoonal habitats have been converted by human activities into tidal harbors and bays, such as Humboldt Bay, Elkhorn Slough, Morro Bay and Santa Margarita River, among others (Swift *et al.* 1989, 1993). Populations recently present in these artificially created tidal situations, such as Elkhorn Slough, Morro Bay, and Santa Margarita River, have disappeared in the last 5 to 10 years. The only remaining tidal system with tidewater gobies is Humboldt Bay (Swift *et al.* 1989; C. Chamberlain, *in litt.* 1997).

The life history of tidewater gobies is keyed to the annual cycles of the coastal lagoons and estuaries (Swift *et al.* 1989, 1994; Swenson 1994, 1995). Water in estuaries, lagoons and bays is at its lowest salinity during the winter and spring as a result of precipitation and runoff. During this time, high runoffs cause the sandbars at the mouths of the lagoons to breach, allowing mixing of the relatively fresh estuarine and lagoon waters with seawater. This annual building and breaching of the sandbars is part of the normal dynamics of the systems in which the tidewater goby has evolved (e.g., Zedler 1982, Lafferty and Alstatt 1995, Heasly *et al.* 1997). The time of sandbar closure varies greatly between systems and years, and typically occurs from spring to late summer. Later in the year, occasional waves washing over the sandbars can introduce some sea water, but good mixing often keeps the lagoon water at a few parts per thousand salinity or less. Summer salinity in the lagoon depends upon the amount of freshwater inflow at the time of sandbar formation (Zedler 1982, Heasly *et al.* 1997).

Males begin digging breeding burrows 75–100 mm (3–4 in.) deep, usually in relatively unconsolidated, clean, coarse sand averaging 0.5 mm (0.02 in.) in diameter, in April or May (Swift *et al.* 1989; Swenson 1994, 1995). Swenson (1995) has shown that tidewater gobies prefer this substrate in the laboratory, but also found tidewater gobies digging breeding burrows in mud in the wild (Swenson 1994). Inter-burrow distances range from about 5 to 275 centimeters (cm) (2 to 110 in.) (Swenson 1995). Females lay about 100–1000 eggs per clutch, averaging 400 eggs/clutch, with clutch size depending on the size of both the female and the male. Females can lay more than one clutch of eggs over their lifespan, with captive females spawning 6–12 times (Swenson 1995). Wild females may spawn less frequently due to fluctuations in food supply and other environmental conditions, but the species clearly has a high reproductive potential, enabling populations to recover quickly under suitable conditions. Male gobies remain in the

burrow to guard the eggs that are attached to sand grains in the walls of the burrow. Males also spawn more than once per season (Swenson 1995), and although they can have more than one clutch in their burrow, presumably from different females (Swift *et al.* 1989), Swenson (1995) found that males accepted only one female per brood period. Males frequently go for at least a few weeks without feeding, and this probably contributes to a mid-summer mortality often noted in populations (Swift *et al.* 1989; Swenson 1994, 1995).

Reproduction peaks during spring to mid-summer, late April or May to July, and can continue into November or December depending on the seasonal temperature and rainfall. Reproduction sometimes increases slightly in the fall (Swift *et al.* 1989; Camm Swift, Department of Biology, Loyola Marymount University, pers. comm., 1995). Reproduction takes place from 15–20 degrees Celsius© (60–65 degrees Fahrenheit (F)) and at salinities of 0–25 ppt (Swift *et al.* 1989; Swenson 1994, 1995). Typically, winter rains and cold weather interrupt spawning, but in some warm years reproduction may occur all year (Goldberg 1977, Wang 1984). Goldberg (1977) showed by histological analysis that females have the potential to lay eggs all year in southern California, but this rarely has been documented. Length-frequency data from southern and central California (Swift *et al.* 1989; Swenson 1994, 1995) and analysis of otoliths from central California populations (Swift *et al.* 1997) indicate that tidewater gobies are an annual species and typically live one year or less.

Tidewater goby eggs hatch in 7–10 days at temperatures of 15–18 degrees C (60–65 degrees F). The newly hatched larvae are 4–7 mm (0.2 in) in length and are planktonic for one to a few days. Once they reach 8–18 mm (0.3–0.8 in.) in length they become substrate oriented. All larger size classes are substrate oriented and, although little habitat segregation by size has been noted (Swift *et al.* 1989, Swenson 1995), Worcester (1992) did find that larval gobies in Pico Creek Lagoon tended to use the deeper portion of the lagoon. Individuals collected in marshes appear to be larger (43–45 mm (1.7–1.8 in.) SL) than those collected in open areas of lagoons (32–35 mm (1.3–1.4 in.) SL) (Swenson 1995).

Studies of the tidewater goby's feeding habits suggest that it is a generalist. At all sizes examined, tidewater gobies feed on small invertebrates, usually mysids, amphipods, ostracods, snails, and aquatic insect larvae, particularly dipterans (Irwin and Soltz 1984; Swift *et al.* 1989; Swenson 1994, 1995). The food items of the smallest tidewater gobies (4–8 mm (0.2–0.3 in.)) have not been examined, but these gobies, like many other early stage larval fishes, probably feed on unicellular phytoplankton or zooplankton (Swenson and McCray 1996).

Tidewater gobies may be preyed upon by native species such as steelhead (*Oncorhynchus mykiss*) (Swift *et al.* 1989), and are documented prey items of prickly sculpin (*Cottus asper*), staghorn sculpin (*Leptocottus armatus*), and starry flounder (*Platichthys californicus*) (Swift *et al.* 1997). However, tidewater gobies were found in stomachs of only 6 percent of nearly 120 of the latter three species examined, and comprised less than 20 percent by volume of the prey. Predation by the Sacramento perch (*Archoplites interruptus*) and tule perch (*Hysterocarpus traski*) may have prevented tidewater gobies from inhabiting the San Francisco Bay delta (Swift *et al.* 1989), although direct documentation to support this hypothesis is lacking.

Tidewater gobies also are preyed upon by non-native African clawed frogs (*Xenopus laevis*) (Lafferty and Page 1997), although this is probably not a significant source of mortality due to the limited distribution of this frog species in tidewater goby habitats. The frogs are killed by the higher salinities that occur when the lagoons are breached (Glenn Greenwald, U.S. Fish and Wildlife Service, pers. obs.). Several non-native fish species also prey on tidewater gobies. The shimofuri goby (*Tridentiger bifasciatus*), which has become established in the San Francisco Bay region (Matern and Fleming 1995), may compete with the smaller tidewater goby, based on dietary overlap (Swenson 1995) and foraging and reproductive behavioral observations in captivity. Shimofuri gobies have been observed to eat juvenile tidewater gobies in captivity, but usually were unable to catch subadult and adult tidewater gobies (Swenson and Matern 1995). Evidence of predation or competition in the wild is lacking (Swenson 1998). Competition with yellowfin (*Acanthogobius flavimanus*) and chameleon (*Tridentiger trigonocephalus*) gobies has also been hypothesized. Although Wang (1984) found that yellowfin gobies do prey on tidewater gobies, no data were presented indicating the extent of such interactions, nor has there been any further documentation of such competitive or predatory interactions with either species. Shapovalov and Taft (1954) documented the non-native striped bass (*Morone saxatilis*) preying on tidewater gobies in Waddell Creek Lagoon, but stated that striped bass were found only infrequently in the areas inhabited by the goby. Sunfishes and black bass (*Centrarchidae*) have been introduced in or near coastal lagoons and may prey heavily on tidewater gobies under some conditions. Predation by young-of-the-year largemouth bass (*Micropterus salmoides*) on tidewater gobies was documented in one system (Santa Ynez River), where tidewater gobies accounted for 61 percent of the prey volume of 55 percent (10 of 18) of the juvenile bass sampled (Swift *et al.* 1997). Although tidewater gobies disappeared soon after centrarchids were introduced at several localities, direct evidence that the introductions led to the extirpations is lacking (Swift *et al.* 1989, 1994; Rathbun *et al.* 1991; Dan Holland, Department of Biology, Southwestern Louisiana State University, Monroe, LA, pers. comm. 1991). In at least one location, tidewater gobies have re-established naturally (see below).

Lafferty *et al.* (1996) monitored post-flood persistence of 17 tidewater goby populations in Santa Barbara and Los Angeles counties during and after the heavy winter flows of 1995. All 17 populations persisted after the high flows, and no significant changes in population sizes were detected. In addition, gobies apparently colonized Cañada Honda, approximately 10 km (6 mi) from the closest known population, during or after the flooding (Swift *et al.* 1997). Lafferty *et al.* (in prep.) estimated the extirpation and recolonization rates for 37 populations in southern California, based on over 250 presence-absence records. They found higher recolonization rates than expected, and suggested that there is more gene flow among populations within geographic clusters (northern California, San Francisco Bay, Santa Cruz, San Luis Obispo and south) than previously believed to exist. They also found an association between tidewater goby presence and wet years. This information suggests that flooding may contribute to recolonization of sites from which gobies have temporarily disappeared.

Lagoons in which tidewater gobies are found range in size from a few square meters (yards) (less than 0.10 hectares (ha) (0.25 acres (ac)) of surface area to about 800 ha (2000 ac). Most lagoons with tidewater goby populations are in the range of 0.5–5 ha (1.25–12.5 ac). Surveys of tidewater goby localities and historical records indicate that size, configuration, location, and access by humans are all related to persistence of populations of this species (Swift *et al.* 1989, 1994). Watered surface areas smaller than about 2 ha (5 ac) generally have histories of extinction, extirpation, or population reduction to very low levels, although some as small as 0.35 ha (0.86 ac) have been identified as having permanent tidewater goby populations (Swift *et al.* 1997, Lafferty 1997, Heasly *et al.* 1997). As evidenced by the Cañada Honda colonization (Swift *et al.* 1997), even relatively long distances are not obstacles to colonization or re-establishment. Many of the small lagoons with histories of intermittent populations are within 1–2 km (0.6–1.2 mi) of larger lagoons that can act as sources of colonizing gobies.

The largest localities have not proved to be the best for the species, as evidenced by the loss of tidewater gobies from San Francisco and Morro bays and the Santa Margarita River estuary. Today, the most stable and largest populations are in lagoons and estuaries of intermediate sizes, 2–50 ha (5–125 ac) that have remained relatively unaffected by human activities, although some systems that are heavily affected or altered also have large, stable populations (e.g., Santa Clara River, Ventura County; Santa Ynez River, Santa Barbara County; Pismo Creek, San Luis Obispo County). In many cases these probably have provided the colonists for the smaller ephemeral sites (Swift *et al.* 1997, Lafferty *et al.* in prep.).

Distinct Population Segments

We analyzed tidewater goby populations based on the joint National Marine Fisheries Service and U.S. Fish and Wildlife Service Policy Regarding the Recognition of Distinct Vertebrate Populations, published in the **Federal Register** on February 7, 1996 (61 FR 4722). We consider three elements in determining whether a vertebrate population segment could be treated as threatened or endangered under the Act: discreteness, significance, and conservation status in relation to the standards for listing. Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity, or (2) populations delimited by international boundaries. We determine significance either by the importance or contribution, or both, of a discrete population to the species throughout its range. The policy lists four examples of factors that may be used to determine significance:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and

(4) Evidence that the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics.

If we determine that a population segment is discrete and significant, we evaluate it for endangered or threatened status based on the Act's standards.

The previously discussed electrophoretic and mitochondrial DNA analysis indicates the Orange and San Diego counties population is genetically discontinuous from other coastal populations of tidewater gobies. Furthermore, the significant distance (129 km, 80 mi) between the Orange and San Diego counties population and the closest extant population physically isolates these gobies from those populations to the north. Therefore, we conclude the Orange and San Diego counties population of tidewater gobies is discrete in accordance with our distinct vertebrate populations policy.

Genetic investigations (e.g., Jacobs *in litt.*, 1998) indicate that tidewater gobies are made up of four geographically distinct populations in California. Of these four, the southernmost, in Orange and San Diego counties, constitutes the most genetically divergent population. The genetic data reveal differences in the southern population that are consistent with interspecific boundaries in other species, and suggest divergence of the southern population from the rest of the populations over 100,000 years ago. This coincides with the fact that the southern population is the most geographically isolated, being 129 km (80 mi) from the nearest extant population. Loss of the Orange and San Diego counties population of tidewater gobies would result in a loss of a genetically unique tidewater goby population, and a reduction in range of tidewater gobies by approximately 129 km (80 mi). We therefore conclude that the Orange and San Diego counties population is significant in accordance with our distinct vertebrate populations policy. This population constitutes a distinct population segment, and we have evaluated it for endangered or threatened status based on the Act's standards.

Previous Federal Actions

We first classified the tidewater goby as a category 2 species in 1982 (47 FR 58454). We reclassified it as a category 1 candidate in 1991 (56 FR 58804) based on status and threat information in Swift *et al.* (1989). Category 2 applied to taxa for which information we possessed indicated that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not currently available to support a listing proposal. Category 1 species, now referred to as candidate species, applies to taxa for which we have on file substantial information on biological vulnerability and threats to support a proposal to list as threatened or endangered. On October 24, 1990, we received a petition from Dr. Camm Swift, Associate Curator of Fishes at the Los Angeles Museum of Natural History, to list the tidewater goby as endangered. We published a finding that the requested action may be warranted on March 22, 1991. We published a proposal to list the tidewater goby as an endangered species on December 11, 1992 (57 FR 58770). On March 7, 1994, we listed tidewater goby as a federally endangered species (59 FR 5494). No critical habitat was designated.

Federal involvement with the tidewater goby following listing has included consultations under section 7 of the Act, permitting of breaching and other activities in lagoons through the section 404 process by the U.S. Army Corps of Engineers (ACOE), and funding and conducting research and surveys. Measures to reduce impacts to tidewater goby habitat and reduce or eliminate the potential for take of individuals have included adjusting the timing of projects to avoid disruption to breeding activities, the use of silt fencing to reduce sediment loads and as barricades around project sites, installing coffer dams above and below project sites and removal and translocation of animals found within the exclosures prior to necessary dewatering of project sites, minimization of project area, and requiring qualified biologists to oversee all activities.

Tidewater Goby Status Review

At the time of listing (1994), California had recently experienced 5 years of drought conditions (1987–1991), and we believed that most populations throughout the species' range were threatened by one or more factors, including modification and loss

of habitat as a result of coastal development, channelization of habitat, diversion and alteration of water flows, groundwater overdrafting, discharge of agricultural and sewage effluents, introduction of exotic fish species (particularly centrarchid species), and increased sedimentation due to cattle grazing and feral pig activity (59 FR 5494). We have assembled and evaluated new information regarding habitat status, habitat requirements of the goby, critical life history needs, dispersal processes and goby population status during drought and wet years. In the remainder of this section and in the Summary of Factors Affecting this Species, we review this new information and reassess the threats to the tidewater goby.

At the time of listing, we believed that the number of extant tidewater goby populations was 46, with 87 known historically. Since the listing, 4 populations once believed permanently extirpated have been rediscovered, 2 populations have been re-established artificially (Waddell Creek, Malibu Creek), records for at least 15 populations indicate that they are naturally intermittent, 11 populations believed extinct due to drought conditions have re-established naturally, and 20 new populations have been found. At present the number of extant populations is believed to be about 85, and the number of historical populations about 110.

In the early 1990s, the number of tidewater goby populations believed to be extinct caused concern, especially considering the high proportion believed lost in the southern third of the species' range. The final rule for the listing of the tidewater goby stated that 74 percent of the populations in coastal lagoons south of Morro Bay had been extirpated, with only 3 populations remaining south of Ventura County. We now know of 6 populations south of Ventura County, and only about 20 percent of populations south of Morro Bay are currently considered extirpated. Range-wide, of the 25 populations currently considered permanently extirpated, 19 were extirpated prior to 1970, before regulations protecting the environment were promulgated. The six more recent population extirpations are discussed in the appropriate sections below.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act, set forth the procedures for listing, reclassifying, and delisting species on Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). A species may be delisted, according to section 4 regulations (50 CFR Part 424.11(d)), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) original data for classification of the species were in error.

In the case of the tidewater goby, a significant number of populations previously believed extirpated have recolonized naturally, and a significant number of populations previously believed to be in decline have stabilized or increased in size since the listing. Therefore, we reevaluated all of the factors believed to be threatening the existence of the tidewater goby. We found that some of our interpretations of the data available when the species was listed were in error, and we also found that new information exists which supports interpretations of status and threats that differ from those presented in the final listing rule. After a thorough review of all available information, including considerable new information, we have determined that, north of Orange and San Diego counties, the tidewater goby is not endangered or threatened with endangerment. In this part of the range we now know that there are more populations than were known at the time of the listing, that the threats to those populations are less severe than previously believed, and that the tidewater goby has a marked ability to recolonize habitats from which it is temporarily absent. The 1994 final rule identified several threats to the tidewater goby, including coastal development, upstream water diversions and alteration of flows, groundwater overdrafting, discharge of agricultural and sewage effluents, channelization, cattle grazing, feral pig activity, predation by introduced fish species, inadequacy of existing regulatory mechanisms, drought, flood events and competition with introduced species. A reanalysis of these threats follows.

The remaining tidewater gobies in Orange and San Diego counties, which constitute a distinct population segment, are limited to the U.S. Marine Corps Base, Camp Pendleton. Threats to these southernmost tidewater goby populations differ from those found elsewhere on the California coast or, due to the small number of populations or other factors, threats that are minor to the northern populations of gobies are greatly exacerbated in the south. Urban development, although possibly impacting recovery areas, is not an overriding threat on Camp Pendleton. Nevertheless, habitat loss and degradation have occurred frequently and continue to threaten this population segment, as do predation by and competition with introduced species. These factors are discussed below for both the populations north of Orange and San Diego counties and the population within Orange and San Diego counties.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Populations North of Orange and San Diego Counties. Coastal development projects that result in the loss of coastal saltmarsh habitat were identified in the final rule as the major threat adversely affecting the tidewater goby. Such projects probably were the most significant threat responsible for the historical loss of tidewater goby populations. Projects included dredging of waterways for navigation and harbors and road construction that severed the connections of marshes with the Pacific Ocean. Reevaluation of the number of extirpations resulting from coastal development and habitat modification and loss shows that the potential for the substantial habitat loss and modification that occurred historically has been reduced substantially. This is due largely to the implementation of key environmental regulations required by the Clean Water Act, Coastal Zone Management Act and related California environmental statutes. For example, only five permanent extirpations resulting from destruction or modification of habitat have occurred since the initial promulgation of environmental regulations during the early 1970s (two due to construction of golf courses, one due to installment of culverts that altered natural lagoon dynamics, one due to placement of riprap cutting off ocean access, and one due to water appropriations). Thus, in the northern part of the species' range (i.e., north of Orange and San Diego counties) there is insufficient evidence to suggest that destruction and modification of habitat from coastal development are occurring at levels that constitute a substantial threat to the continued existence of the northern populations of tidewater gobies.

We stated in the final rule that upstream water diversions and groundwater overdrafting may adversely affect the tidewater goby by altering downstream flows, thereby diminishing the extent of marsh habitats that occurred historically at the mouths of

most rivers and creeks and potentially affecting the species' breeding and foraging activities. The final rule also suggested that alterations of flows upstream of coastal lagoons resulting in changes in downstream salinity regimes might affect the tidewater goby due to its presumed narrow salinity tolerances. Supporting these arguments at the time of the listing, the population in San Antonio Creek, Santa Barbara County, was believed to have been extirpated due to groundwater overdrafting. However, gobies are not currently extirpated from this location; they were found there in 1995.

Tidewater gobies have been collected from waters ranging from 0 to 42 ppt salinity (Swift *et al.* 1989, Lafferty and Alstatt 1995). During the late 1980s and early 1990s, Worcester (1992) conducted an investigation of habitat use in Pico Creek lagoon, and observed large numbers of tidewater gobies using the lower portion of the lagoon where high salinities (up to 27 ppt) were documented. Since the listing, Swenson (1995) and Swift *et al.* (1997) have reported capturing gobies in waters up to 28 ppt and 32 ppt salinity, respectively. Two salinity tolerance experiments discussed in Swift *et al.* (1989) indicate that tidewater gobies can withstand a wide range of salinities, from 0–40 ppt for up to 25 days with 20 percent or less mortality, even when moved directly from low salinity environments into high. A third experiment allowed salinities to increase through evaporation for 53 days. At a final salinity of 25 ppt, 75 percent of the tidewater gobies survived, while 59 percent of those held in water reaching a final salinity of 62 ppt survived. In the early 1990s, while tidewater gobies were held at the Granite Canyon Fish Culture Facility, a salinity tolerance test was conducted in hypersaline water (45–54 ppt) for 6 months, with no mortality. In addition, tidewater gobies were maintained in fresh water and salinities of 10–15 ppt, 20 ppt, and normal sea water (about 33 ppt salinity). Reproduction took place in all four regimes. Some of the laboratory bred tidewater gobies spawned when they matured (K. R. Worcester, *in litt.* 1996; Worcester and Lea 1996). Based on these studies, the goby appears tolerant of a broad range of salinity conditions.

Channelization was identified as a threat in "most" of the habitats occupied by the species due to the scouring effects of high winter flows in the restricted channels and the lack of protective habitat. However, with the exception of the extirpation of the Waddell Creek, Santa Cruz County, population during the winter of 1972–73 attributed to channelization, further review of causes of extirpations since 1970 has not been able to identify population extirpation due to this threat. Moreover, tidewater gobies were re-established in Waddell Creek in 1991 and have persisted there through 1997 (Smith 1998).

Siltation from topsoil runoff and the increased sedimentation and habitat degradation associated with cattle grazing and feral pig activity were also identified as threats to the tidewater goby. Many tidewater goby populations exist in habitats where such agricultural effluent and runoff and wastewater effluent occur, and the final rule identified the resulting algal blooms and deoxygenation as possible factors in the further degradation of tidewater goby habitats. During the 1950s, sewage effluents high in ammonia were discharged into the Salinas River and are believed to have been a factor in the apparent extirpation of that tidewater goby population (Jerry J. Smith, Ph.D., San Jose State University, pers. comm. 1998). However, in many lagoons receiving agricultural and sewage effluents, tidewater gobies are the most abundant fish species present, as found during surveys of lagoons in Santa Barbara County (Ambrose *et al.* 1993). Field observations made during tidewater goby surveys have found extremely low levels of dissolved oxygen (0.2–1.7 mg/l) (Worcester1992, Swift *et al.* 1997) and elevated temperatures (greater than 30 degrees C) where gobies were found in high numbers (C. Chamberlain, pers. comm. 1996; E. Ballard, U.S. Fish and Wildlife Service, Sacramento, California, personal observation 1997). Based on those observations, the tidewater goby appears to be tolerant of agricultural and sewage effluents, and of a wide range of dissolved oxygen levels and temperatures.

We suggested in the final rule that only 6 to 8 of the 46 remaining populations were large enough and free enough from habitat degradation to be safe in the immediate future. The remaining lagoons were considered so small or modified that tidewater goby populations were thought to be restricted in distribution and vulnerable to extirpation. Of particular concern was the extirpation of smaller populations due to effects of drought exacerbated by upstream water diversions. The number of extirpated populations of gobies was believed to leave remaining populations so widely separated throughout most of the species' range that recolonization was unlikely. New information and analyses indicate that the tidewater goby is very well adapted to the climatically dynamic system within which it has evolved, and that the intermittent occupancy of some sites is a normal aspect of the species' biology (Swift *et al.* 1994, 1997; Lafferty *et al.* in prep.; J. Smith, pers. comm. 1998). Following the listing of the tidewater goby and the end of the 1987–1992 drought, at least 14 populations considered extirpated due to the drought and other causes were found to be extant. In some cases, these habitats were documented as being dry during the drought, with no gobies believed to be present in the drainages (e.g., Laguna and Moore creeks, Santa Cruz County; Arroyo del Puerto, San Luis Obispo County). Following a return to normal or above average rainfall, gobies were found not only in those 14 sites but also in approximately 20 others from which they previously had not been found. These findings show that recolonization is possible and indicate that it is a normal process following habitat variation due to climatic fluctuations (Swift *et al.* 1994, 1997; Lafferty *et al.* in prep.; J. Smith, pers. comm. 1998).

In a number of cases, surveys that concluded that populations were extirpated from localities that did not go dry during the drought apparently were inadequate to determine presence or absence of the species. Periodic disappearances and re-appearances of the tidewater goby in various locations during the last 25 years (Lafferty 1997, Lafferty *et al.* in prep.) suggest that conclusions regarding presence/absence based on standard survey methods may not be reliable. Researchers along the central California coast have observed periods when tidewater gobies cannot be found, but then later reappear (Rathbun *et al.* 1991; Swift *et al.* 1993, 1997; J. Smith, pers. comm. 1998). These observations may be the result of the gobies being temporarily absent from the sampled habitat or the population decreasing temporarily to a size not detectable by standard presence/absence methods (e.g., seine hauls). Regardless, the reappearance of tidewater gobies in localities where they previously were considered to be extirpated may be the result of earlier surveys being conducted during the windows of time when gobies temporarily were not observable (Smith 1998; Norm Scott, Ph.D., U.S. Geological Survey, Biological Resources Division, San Simeon, pers. comm. 1997). The continued survival of tidewater goby populations, both large and small, following the long drought of the late 1980s and early 1990s suggests that the previous assessment that most of the

populations are extremely vulnerable to extirpation is not valid.

Although not discussed in the final listing rule, artificial lagoon breaching during the dry season has been suggested as a potential threat to tidewater gobies. No data exist to substantiate the severity of this threat (but see the adverse effects of artificial breaching San Onofre Creek lagoon, below). Significant decreases in water level, exposure of tidewater goby breeding burrows and bottom habitat, and increased salinity resulting from breaching during the dry season are factors that we considered as possible threats to the persistence of tidewater goby populations. However, in the northern part of its range, the species continues to persist at numerous locations (e.g., Pescadero Creek, San Mateo County; Pismo Creek, San Luis Obispo County; Santa Ynez and Arroyo Burro, Santa Barbara County; Santa Clara River, Ventura County) where unseasonal breaching occurred on a regular basis prior to the listing (Swenson 1995; Lafferty 1995; Lafferty and Alstatt 1995; Heasly *et al.* 1997; D. W. Alley, *in litt.* 1998). The lack of any records of breaching-related extirpations leads us to conclude that breaching does not pose a significant threat to the northern populations of the species.

Orange and San Diego Counties Population. Of the 13 historic and current sites in Orange and San Diego counties, the two northernmost, Aliso and San Juan creeks in Orange County were lost in the 1980s and 1960s (respectively). The three southernmost sites, San Luis Rey, Buena Vista, and Agua Hedionda were lost in the 1940s and 1950s. More recently, it appears that Santa Margarita River, which probably was habitat for a naturally intermittent population (see Lafferty 1997, Lafferty *et al.* in prep.), is now permanently unsuitable due to exotic species and hydrologic changes. Permanent population losses, such as those listed above, can seriously influence metapopulation dynamics in the region, leading to larger scale extinctions, by reducing opportunities for recolonization of suitable sites. Exacerbating this concern, recent human activities have further endangered the two largest goby populations in Orange and San Diego counties (San Onofre Creek Lagoon, San Mateo Creek Lagoon) which may be important sources of dispersing gobies that repopulate other areas when they are periodically lost.

In October 1996, a survey conducted by Drs. Dan Holland and Camm Swift in the San Onofre Creek lagoon estimated the population of gobies at 12,265. On November 22, 1996, the lagoon was artificially breached and water immediately began draining from the lagoon into the ocean. The water level dropped 40 to 50 cm and the surface area of the lagoon decreased approximately 60 to 75 percent during the next 12 hours. During the night of November 22–23, 1996, the bar across the mouth of the lagoon reformed and water ceased to flow directly into the Pacific Ocean. On November 24, 1996, Drs. Holland and Swift resurveyed the lagoon and estimated the goby population at 5,345, a decrease of 6,920 fish from their October 1996 survey (Swift and Holland 1998). Recent surveys confirm that tidewater gobies are still present in San Onofre Creek Lagoon but no precise population estimates are available.

On February 24, 1998, repair work began on storm-damaged railroad trestles that traverse San Mateo Creek Lagoon. This work included dredging portions of the creek and lagoon, and filling fresh water marsh which function as goby refugia. The San Mateo goby population at this locality was estimated at approximately 70,000 in 1996 (Swift and Holland 1998). After the dredging and filling, several surveys were conducted and no gobies were detected, but they were found at Las Flores, Cockleburr, and Hidden lagoons. The trestle repair work coupled with the winter storms may have resulted in the extirpation of the goby at San Mateo Creek. The consequences of population losses or elimination of the San Mateo and San Onofre populations, which had appeared to be two of the three most stable in the area, are very serious because the effects could extend to other areas, contributing, for example, to long term or permanent extirpation of the remaining intermittent populations in the region (Hidden, Aliso, French and Cockleburr creeks).

These examples described above illustrate serious adverse population responses to earthmoving activities in and around creeks and lagoons. The specific mechanism or mechanisms (e.g., changed hydrological regime, siltation, water quality) leading to population declines are not known, and it is also not known if gobies in the Orange and San Diego counties distinct population segment respond differently to environmental stresses than gobies to the north. Tidewater gobies from Orange and San Diego counties are genetically distinct and live in a very different physical and biotic environment from those in more northerly habitats. It is possible that in this part of the range, environmental stresses such as siltation or changed hydrology affect gobies more severely than the same stresses to the north. Or, environmental factors unique to southern California or combinations of factors of which we are now currently unaware may be leading to declines in disturbed areas occupied by Orange and San Diego counties populations. Whatever the mechanisms, the recent loss or serious reduction of the Santa Margarita River and San Onofre and San Mateo lagoon populations, all of which have experienced human-caused changes in hydrologic regime and earthmoving activities, suggests that, in this part of the range, this kind of disturbance has serious negative consequences for tidewater gobies. Depending on the alternative alignment selected, the proposed Foothill Transportation Corridor-South project could result in population effects similar to those described above.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Populations North of Orange and San Diego Counties. Overutilization is not known to be applicable; there is no change in this factor since the species was listed in 1994.

Orange and San Diego Counties Population. Same as above.

C. Disease or Predation

Populations North of Orange and San Diego Counties. Disease was not identified as a threat in the final listing rule, nor is it known to be a threat at this time. Swenson (1995) reported finding cysts, presumably of the digenean trematode (a flatworm or fluke (*Cryptocotyle lingua*), and felt that the fluke could have been a factor in the apparent population decline of tidewater gobies in Pescadero Lagoon in 1992 and 1993. However, gobies have persisted in the lagoon and associated creek and marsh, at least through 1996 (J. Smith, pers. comm. 1998). The fluke species also has been reported from fish in Corcoran (Rodeo) Lagoon in Santa Cruz County (Swift *et al.* 1989), but there is no indication of consequences for the tidewater goby population there.

A large number of exotic species that have been perceived as threats to the tidewater goby have been introduced into goby habitats. In the final rule, the introduction of striped bass into the San Francisco delta area was hypothesized to have caused the loss of tidewater gobies in that habitat. However, no historic data exist to test this hypothesis. As discussed in the background section, predation by and competition with the introduced yellowfin, chameleon, and shimofuri gobies exists. However, tidewater goby populations north of Orange and San Diego counties are not particularly vulnerable to these introduced fish. The centrarchid species largemouth bass and green sunfish (*Lepomis cyanellus*) were identified in the final listing rule as having caused the loss of at least two populations. However, centrarchids are known to exist in many sites inhabited by large populations of tidewater gobies (e.g., Santa Clara River, Las Pulgas Creek, San Mateo Creek). Because of the range of salinity tolerances of the tidewater goby and the more limited salinity tolerances of many exotic species, and because tidewater goby populations are sufficiently large and can repopulate from adjacent streams, the threat of tidewater goby extirpation throughout its habitat as a result of predation by exotic species appears minimal. While exotic species forage on tidewater gobies, the current suite of exotic fishes are not likely a serious threat to populations north of Orange County at this time. Although African clawed frogs feed on tidewater gobies (Lafferty and Page 1997), gobies are found in large numbers in at least one habitat (Santa Clara River) occupied by the frogs.

Orange and San Diego Counties Population. As described under Factor A, above, it is not known if tidewater gobies in Orange and San Diego counties respond differently to environmental stresses than gobies to the north. Exotic fishes are thought to have played an important role in population losses or declines in San Onofre Creek and the Santa Margarita River. The predatory yellowfin goby, native to the inshore marine waters of Japan and China, is established in most lagoons that have or had gobies in Orange and San Diego counties. This and other exotic species may or may not by themselves extirpate tidewater gobies in Orange and San Diego counties, but when combined with other factors, especially habitat disturbance (see Factor A, above), may pose a serious ongoing threat to the Orange and San Diego counties distinct population segment. In addition, only six populations remain and two of the formerly largest have been seriously imperiled recently by human activities (see Factor A, above). Therefore, threats such as exotic predators, that prevent or contribute to significant reductions in dispersal and recolonization of sites where gobies are temporarily absent, could lead to the extinction of the entire Orange and San Diego distinct population segment.

D. The Inadequacy of Existing Regulatory Mechanisms

Populations North of Orange and San Diego Counties. Inadequacies of existing regulatory mechanisms were cited in the final listing rule as a factor leading to the listing. This factor undoubtably contributed to the loss of populations prior to the promulgation of environmental regulations *circa* 1970. Currently, the review and permitting of projects conducted by the ACOE under section 10 of the Rivers and Harbors Appropriation Act of 1899 and section 404 of the Clean Water Act (CWA) are unlikely to allow the extent of destruction and modification of tidewater goby habitat that occurred prior to the implementation of these regulations. Measures are often included as standard measures in section 404 permits because other listed and sensitive species (e.g., California red-legged frog (*Rana aurora draytoni*), steelhead trout (*Oncorhynchus mykiss*), unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*)) often occur in the same locations as tidewater gobies. Examples of these measures include eliminating or reducing siltation by silt fencing along project sites and access roads, preventing sensitive species from entering project areas, erecting coffer dams on either side of project sites, and timing project activities to reduce impacts during the breeding season. Little evidence exists to support the conclusion that existing regulatory mechanisms inadequately protect the species or are contributing to substantial or widespread population decline and loss in the northern portion of the species' range (see Factor A, above).

Current regulations require that a project that may alter wetland habitat be reviewed by and permitted through the ACOE and the California Coastal Commission (CCC). During the review of projects, avoidance of impacts (i.e., the prevention of habitat degradation including that occupied by listed species) is the first consideration. If wetlands will be altered, mitigation and/or compensation are required (40 CFR Part 230, CCC 1994). Section 404 of the CWA and the subsequent guidelines (40 CFR Part 230) for implementing that act govern the discharge of materials into waters of the United States in such a manner as to avoid or minimize impacts to (in part) human health and welfare; aquatic life and wildlife; aquatic system diversity, and productivity and stability; and they prohibit violation of state water quality standards, Environmental Protection Agency toxic effluent standards, the Act, and the Marine Protection, Research and Sanctuaries Act. Projects within the California coastal zone come under the provisions of the Federal Coastal Zone Management Act of 1990, and must go through an environmental review process. As with projects falling under section 404 of the CWA, the priorities are to avoid impacts, to mitigate if impacts are unavoidable, and to provide compensation if mitigation is infeasible (CCC 1994).

In most cases, current regulations generally do not require minimal freshwater inflows into lagoons and estuaries in California. However, in many cases, water inflows during the dry season probably are higher than occurred historically due to wastewater treatment plant discharge and urban and agricultural runoff. Although discharge of such effluents was identified as an adverse factor in the final listing rule, and the effects of such effluents have not been studied directly, many of the habitats where such dry season inflows occur (e.g., Santa Ynez Lagoon, Ventura Lagoon, Santa Clara Lagoon) support large populations of tidewater gobies. A review of the Environmental Protection Agency's on-line database AQUIRE found no contaminant data directly relating to tidewater gobies. No published research has addressed contaminant concentrations or effects in the tidewater goby. Little evidence exists to support the conclusion that water diversions, groundwater overdrafting and modifications in salinity regimes, or the discharge of effluents are posing a significant threat to the ongoing existence of the goby in the northern portion of its range, especially in today's regulatory environment. Of the five populations extirpated due to habitat destruction and modification since 1970, only the loss of the Upper Morro Bay population possibly can be attributed to water appropriation.

Orange and San Diego Counties Population. Despite the fact that the previously cited regulatory mechanisms were in place, three of the largest populations of tidewater goby (e.g., Santa Margarita River, and San Onofre and San Mateo creeks) have been lost or nearly lost since 1993. The populations in San Onofre and San Mateo creeks were lost or greatly diminished following single human-caused events occurring so rapidly that existing regulatory processes failed to protect the gobies. The small number (6) of extant populations in the Orange and San Diego counties distinct population segment makes the loss of any one population a greater cause for concern than in the northern portion of the

range. With fewer extant populations, the likelihood of recolonization of temporarily empty habitat is reduced, and the risk that all populations will be extirpated due to drought or human factors is greater.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Populations North of Orange and San Diego Counties. The deterioration of coastal and riparian habitats mostly resulting from drought was cited as the most significant natural factor adversely affecting the tidewater goby in the final rule. At the time of listing, California had experienced over 5 consecutive years of lower than average rainfall. The stressful conditions brought on by the drought were considered to be exacerbated by human-induced water reductions (i.e., diversions of water from streams, excessive groundwater withdrawals). The substantial increase in the numbers of populations apparently extirpated and in the rates of decline of other populations during the drought were the major impetus for listing the species. However, since the end of the drought, 14 sites from which tidewater gobies were believed to have been extirpated have been recolonized. The recovery of nearly all populations and recolonization after the prolonged drought demonstrated that recovery and recolonization of habitats following natural events is probably a normal process for this species. No information exists to indicate that the natural processes are being significantly compromised by current regulatory mechanisms, habitat use, or natural events. The survival and recovery of these populations following a prolonged drought has alleviated the concern that drought exacerbated by human-induced water reductions will result in significant permanent population decline and loss.

The extent of habitat degradation and losses of the tidewater goby from weather related phenomena, cited as threats in the final listing rule, has been difficult to determine. However, flood events have been shown to have no significant adverse effect on tidewater goby populations. The flushing action of floods is probably the primary mechanism for colonization of other habitats along the coast (Lafferty *et al.* 1996, Swift *et al.* 1997).

Competition with introduced species also was identified as a potential threat in the final listing rule. The competing species of concern were the yellowfin goby and the chameleon goby. The shimofuri goby is also found in some tidewater goby sites, exhibits dietary overlap with the tidewater goby (Swenson 1995), and has been documented to prey on tidewater gobies in the laboratory (Swenson and Matern 1995). The significance of these interactions in the wild remains undocumented. To date no documented extirpation or population decline can be attributed directly to these or other introduced competing species. Lafferty and Page (1997) cite Brittan *et al.* (1970) and McGinnis (1984) as evidence that the introduction of the yellowfin goby into San Francisco Bay and the disappearance of tidewater gobies were correlated. However, Brittan *et al.* (1970) do not discuss the distribution of nor impacts on the tidewater goby. Lafferty and Page (1997) cited Hubbs and Miller (1965) as evidence that killifish also were involved in the loss of tidewater gobies from that region. However, Lafferty and Page (1997) note that yellowfin gobies, mosquitofish, and green sunfish coexist with tidewater gobies in at least one location, the Santa Clara River.

Orange and San Diego Counties Population. Historically, natural events such as high storm flows washed many fish, including tidewater gobies, out of lagoons. These events ultimately may have benefitted many native fishes, including tidewater gobies. High flows likely reduced populations of predators, and gobies soon recolonized the lagoons from adjacent populations. Unfortunately, the extirpation of many historic tidewater goby populations from adjacent watersheds requires the gobies to travel greater distances and from smaller source populations. As a result, this natural recolonization is much more difficult and uncertain.

Similarly, droughts may have temporarily reduced local tidewater goby populations, but they soon recovered during wet years. However, many of the larger tidewater goby populations in Orange and San Diego counties have already been lost, and therefore, recolonization of smaller intermittent lagoons following droughts appears much more unlikely. Extended droughts, coupled with other physical alterations to the lagoons threaten the tidewater goby in Orange and San Diego counties.

Effects of the Rule

Finalization of this rule will change the portion of the range of the tidewater goby listed as endangered from "Entire" to "Orange and San Diego counties" in the List of Endangered and Threatened Wildlife. Therefore, taking, interstate commerce, import and export of tidewater gobies occurring outside of Orange and San Diego counties will no longer be prohibited under the Act. In addition, Federal agencies will no longer need to consult with the Service to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of the tidewater goby outside of Orange and San Diego counties.

The distinct population segment of the tidewater goby in Orange and San Diego counties will remain an endangered species on the List of Endangered and Threatened Wildlife. Federal agencies will need to continue to consult with the Service to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of the Orange and San Diego counties population of tidewater goby.

Future Conservation Measures

Section 4(g) of the Act requires that all species that have been delisted due to recovery be monitored for at least 5 years following delisting. The tidewater goby populations north of Orange and San Diego counties are proposed for delisting primarily because there have been additional discoveries of tidewater goby populations since the original listing and more complete information is now available. A monitoring plan is not required for species delisted due to errors in or insufficiency of the data on which the classification was based, but we strongly encourage those parties involved in conducting surveys and monitoring programs for tidewater gobies to continue their efforts and forward the information to us.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) Additional information concerning the range, distribution, and population size of this species; and

(3) Current or planned activities in the range of this species and their possible impacts on this species.

The final decision on this proposal for the tidewater goby will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the office listed in the **ADDRESSES** section (above).

Required Determinations

Paperwork Reduction Act

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this proposed rule are Ed Ballard and Grace McLaughlin, Ventura Fish and Wildlife Office (805/644–1766), and Paul Barrett, Carlsbad Fish and Wildlife Office (760/431–9440), U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), we propose to amend the table by revising the entry for "geby, tidewater" under FISHES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.
FISHES							
.	.	.	.	.	.	.	.
Goby, tidewater	Eucyclogobius newberryi.	U.S.A. (CA)	Orange and San Diego Counties (U.S.A.-CA).	E	527	NA	NA
.	.	.	.	.	.	.	.

Dated: May 28, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–16030 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 121
Thursday, June 24, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m. on Friday, July 16, 1999, at the St. Anthony Hotel, Crockett Room, 300 East Travis, San Antonio, Texas 78205. The purpose of the meeting is to discuss the status of the Hopwood Project and civil rights issues in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 14, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–16099 Filed 6–23–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Sulfanilic Acid From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 24, 1999.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of the antidumping order on sulfanilic acid from the People's Republic of China, covering the period August 1, 1997 through July 31, 1998.

FOR FURTHER INFORMATION CONTACT: Jonathan Lyons, Linda Smiroldo, or Nithya Nagarajan, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–0374, (202) 482–6412, or (202) 482–4243, respectively.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Tariff Act, as amended (the Act), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days after the last day of the anniversary month for the relevant order. In the instant case, the Department has determined that it is not practicable to complete the review within that statutory time limit. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, dated June 17, 1999. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until August 31, 1999. This extension fully extends the statutory deadline to 365 days after the last day of the anniversary month for the relevant order. The Department previously extended the time period for the preliminary results from May 3, 1999 to July 2, 1999. 64 FR 7168 (February 12, 1999).

Dated: June 17, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–16126 Filed 6–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061599C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Marine Reserve Committee will hold a public meeting.

DATES: The meeting will begin on Monday, July 12 at 10 a.m., and will continue through 4 p.m. Tuesday, July 13. The Monday session may go into the evening until business for the day is completed. The Tuesday session will begin at 8 a.m.

ADDRESSES: The meeting will be held in the Council Conference Room, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Seger, Economic Analysis Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop design criteria for marine reserve options to be presented to the Council.

Although other issues not contained in this agenda may come before the committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues will not be the subject of action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: June 17, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16086 Filed 6–23–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061699D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits (1121, 1217); receipt of applications to modify scientific research permits (1075, 1167, 1213); issuance of scientific research and incidental take permits (1150, 1199, 1201, 1212, 1213); and modifications/amendments to existing scientific research and incidental take permits (1010, 1017, 1120).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received permit applications from David Salsbery, Santa Clara Valley Water District in San Jose, CA (SCVWD) (1121) and Dr. Mark Stromberg, Hastings Natural History Reservation in Carmel Valley, CA (MS-HNHR) (1217); NMFS has received applications for modifications to existing permits from: Mr. Harry Vaughn, Pacific Coast Federation of Fisherman's Associations in Miranda, CA (PCFFA)(1075), Dr. Peter Moyle, of the University of California at Davis (PM-UCD) (1167), and NMFS Northwest Fisheries Science Center in Seattle, WA (NWFSC) (1213); NMFS has issued permits to: Idaho Department of Fish and Game at Boise, ID (IDFG) (1150), Mr. Gerry Davis, of Guam Department of Agriculture (GD-GDA)(1199), Dr. Thane Wibbels, of University of Alabama at Birmingham (TW-UAB)(1201), and NWFSC (1212 and 1213); and NMFS has issued modifications/amendments to scientific research permits to IDFG (1010 and 1120) and Oregon Department of Fish and Wildlife at Portland, OR (ODFW)(1017).

DATES: Written comments or requests for a public hearing on any of the new applications or modification requests must be received on or before July 26, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1010, 1017, 1120, 1150, 1212, 1213: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

For permits 1075, 1121, 1167, 1217: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

For permits 1199, 1201: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

FOR FURTHER INFORMATION CONTACT:

For permits 1199, 1201: Terri Jordan, Silver Spring, MD (301–713–1401).

For permits 1075, 1121, 1167, 1217: Dan Logan, Protected Resources Division, Santa Rosa, CA (707-575-6053).

For the permit 1213: Leslie Schaeffer, Portland, OR (503–230–5433).

For permits 1010, 1017, 1120, 1150, 1212: Robert Koch, Portland, OR (503–230–5424).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Threatened Green turtle (*Chelonia mydas*), endangered Hawksbill turtle (*Eretmochelys imbricata*), endangered Kemp's ridley turtle (*Lepidochelys kempii*), threatened Loggerhead turtle (*Caretta caretta*).

Fish

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SnR) fall, threatened SnR spring/summer, endangered upper Columbia River (UCR) spring.

Coho salmon (*Oncorhynchus kisutch*): threatened Southern Oregon/Northern California coast (SONCC).

Cutthroat trout (*Oncorhynchus clarki clarki*): endangered Umpqua River UmR.

Sockeye salmon (*Oncorhynchus nerka*): endangered SnR.

Steelhead trout (*Oncorhynchus mykiss*): threatened Central Valley (CV), threatened Central California coast (CCC), threatened South-Central California coast (SCCC), endangered UCR.

To date, protective regulations for threatened CV, CCC, or SCCC steelhead under section 4(d) of the ESA have been not promulgated by NMFS. This notice of receipt of applications requesting takes of CV, CCC, and SCCC steelhead is issued as a precaution in the event that NMFS issues CV, CCC, or SCCC steelhead protective regulations. The initiation of a 30-day public comment period on the applications, including their proposed takes of CV, CCC, and SCCC steelhead, does not presuppose the contents of the eventual protective regulations.

New Applications Received

SCVWD (1121) requests a 5-year permit to authorize takes of adult and juvenile CCC and SCCC steelhead associated with population, habitat and migration studies within the ESUs. This research will provide a baseline of fish populations and help to determine the effects water management, mitigation and maintenance activities in Santa Clara County. Authorization to relocate steelhead as necessary for survival is also requested.

MS-HNHR (1217) requests a 5-year permit to authorize takes of adult and juvenile SCCC steelhead associated with sampling conducted for genetic studies in the upper Carmel, San Jose, Little Sur, Big Sur and Big Creek drainage systems. The research will provide information useful in determining

genetic relationships with respect to geographical distribution.

Modification Requests Received

PCFFA requests a modification to permit 1075 for authorization of an increase in take of juvenile SONCC coho salmon associated with fish population, migration and habitat studies in the Eel River Basin. The modification is requested to be valid for the duration of the permit, which expires on June 30, 2003.

PM-UCD requests a modification to permit 1167 to increase authorized takes of adult and juvenile CV steelhead associated with sampling and tagging activity during habitat and distribution studies in the lower Yuba River. The modification is requested to be valid for the duration of the permit, which expires on June 30, 2003.

NWFSC requests modifications to scientific research permit 1213. Permit 1213 authorizes direct takes of juvenile SnR sockeye salmon; juvenile, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile SnR fall chinook salmon; and adult and juvenile, naturally produced and artificially propagated, UCR steelhead associated with seven studies at hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. For the modification, NWFSC requests an increase in take of juvenile SnR sockeye salmon; juvenile SnR fall chinook salmon; juvenile, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and juvenile, naturally produced and artificially propagated, UCR steelhead associated additional testing at McNary Dam under Study 4. The additional take is requested to (1) evaluate the performance of extended-length bar screens equipped with a newly designed perforated plate system, and (2) release fish tagged with sonic transmitters to support the U.S. Army Corps of Engineers' Turbine Survival Program. Under this program, juvenile hatchery steelhead will be gastrically implanted with sonic tags, released through special release pipes into a turbine intake at the dam, and tracked electronically. NWFSC also requests a take of juvenile, endangered, naturally produced and artificially propagated, UCR spring chinook salmon associated with the study. The modifications are requested to be valid for the duration of the permit, which expires on December 31, 1999.

Permits, Modifications, and Amendments Issued

Notice was published on July 14, 1998 (63 FR 37851), that an application had been filed by IDFG for a modification to scientific research/enhancement permit 1010. Permit 1010 authorizes IDFG annual direct takes of adult and juvenile, naturally produced, SnR spring/summer chinook salmon associated with a captive rearing program. Each year, IDFG collects no more than 25 percent of the ESA-listed juvenile fish from the West Fork Yankee Fork of the Salmon River, upper East Fork Salmon River, and Lemhi River in ID. The ESA-listed juvenile fish are reared in captivity until mature. For modification 2, IDFG is authorized annual releases of mature, radio-tagged, spring chinook salmon from the program into the fish's respective stream of origin for natural spawning. IDFG is also authorized to collect ESA-listed adult fish carcasses subsequent to spawning for inspection and the acquisition of tissue samples. In addition, IDFG is authorized the retention of ESA-listed adult fish from each population in the hatchery to initiate a captive spawning program, annual releases of eyed-eggs (in hatch boxes or artificial redds) and/or juveniles from the captive spawning program, and the retention of eggs in the hatchery as a "safety net". Further, IDFG is authorized annual incidental takes of ESA-listed species due to adult and juvenile fish releases from the captive rearing and spawning programs. Modification 2 to permit 1010 was issued to IDFG on May 20, 1999, and is valid for the duration of the permit, which expires on December 31, 2000.

On June 4, 1999, NMFS issued an amendment of ODFW's incidental take permit 1017. Permit 1017 authorizes ODFW an annual incidental take of resident, fluvial, and anadromous, Umpqua River cutthroat trout associated with the State of Oregon's recreational and commercial fisheries in the Umpqua River Basin. For the amendment, NMFS has extended permit 1017 for an additional year. Permit 1017 will now expire on September 30, 2000.

On April 20, 1999, NMFS issued an amendment of IDFG's scientific research/enhancement permit 1120. Permit 1120 authorizes IDFG annual direct takes of adult and juvenile SnR sockeye salmon associated with a captive broodstock program. Annual incidental takes of ESA-listed species associated with fish releases from IDFG's captive broodstock program are also authorized by permit 1120. For the amendment, IDFG is authorized an annual incidental take of UCR spring chinook salmon associated with fish releases from IDFG's SnR sockeye salmon captive broodstock program. The incidental take authorization covers effects and/or impacts that are likely to occur in the mainstem Columbia River migration corridor. The amendment is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on October 28, 1998 (63 FR 57664), that an application had been filed by IDFG for an incidental take permit. Permit 1150 was issued to IDFG on May 28, 1999, and authorizes incidental takes of SnR sockeye salmon; naturally produced and artificially propagated, SnR spring/summer chinook salmon; and SnR fall chinook salmon associated with implementation of the State of Idaho's sport-fishing programs. IDFG's sport-fishing programs include the following activities: (1) Resident sport-fishing in ESA-listed chinook and sockeye salmon ranges in Idaho under the IDFG General Fishing Regulations, including kokanee and trout fisheries in Redfish, Alturas, and Pettit Lakes; (2) chinook salmon sport-fishing in the Clearwater River, Little Salmon River, and South Fork Salmon River under the IDFG Anadromous Salmon Fishing Regulations; and (3) summer steelhead fishing program during the fall and spring seasons under the IDFG Steelhead Fishing Regulations. Permit 1150 expires on December 31, 1999.

Notice was published on February 19, 1999 (64 FR 8331), that GD-GDA had applied for a 5-year research permit to take green and hawksbill sea turtles, record biological data, and sample tissue and run DNA analysis according to NMFS sampling protocols. A few of the turtles will be satellite-tagged. The purpose of the research is to: a) Collect baseline population size structure (age and sex) and genetic information for sea turtles in and about Guam, b) survey Guam's beaches for sea turtle nesting activity for both species throughout the nesting period. Nesting turtle research is covered by a section 6 agreement with FWS. Permit 1199 was issued on June 15, 1999, and expires April 30, 2004.

Notice was published on March 25, 1999 (64 FR 14432), that TW-UAB had applied for a scientific research permit to evaluate the abundance, movements, and location of juvenile sea turtles in the estuaries of Alabama, to potentially identify specific foraging areas. The presence of juvenile sea turtles in estuaries represents a potential conflict for fisheries and coastal development. However, there is little information about this issue for the estuaries of Alabama. The information from this study is critical to developing a prudent management strategy which protects sea turtles while sustaining the productivity of the fisheries. The proposed research is a prerequisite to determining if the estuaries of Alabama represent a developmental habitat for juvenile sea turtles. The applicant proposes to: 1) Identify potential foraging areas by conducting sampling surveys, and measuring and tagging all captured turtles, 2) Perform radio tracking on some of the turtles to determine short term movements, home range, and identify foraging areas, 3) Collect samples of fecal and stomach materials in order to identify and document the diets of juvenile turtles, 4) Collect blood samples to estimate of sex ratio. Permit 1201 was issued on June 11, 1999, and expires February 28, 2001.

Notice was published on March 25, 1999 (64 FR 14432), that an application had been filed by NWFSC for a scientific research permit. Permit 1212 was issued to NWFSC on May 26, 1999, and authorizes takes of juvenile SnR sockeye salmon; juvenile, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile SnR fall chinook salmon; and juvenile, naturally produced and artificially propagated, UCR steelhead associated with four studies at the hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. The goal of Study 1 is to provide up-to-date survival estimates of juvenile salmonids as they migrate past McNary Dam on the Columbia River. The goal of Study 2 is to evaluate the specific trouble areas in the juvenile fish bypass system at Lower Monumental Dam on the Snake River. The goal of Study 3 is to compare the performance of juvenile salmonids tagged with Sham radiotransmitters with juvenile salmonids tagged with passive integrated transponders (PIT) at Lower Granite Dam on the Snake River. The goal of Study 4 is to determine tailrace residence times of radio-tagged hatchery chinook salmon under varying operational conditions at Lower Monumental Dam and to identify spill conditions that utilize the smallest volumes of water to maximize fish passage efficiency at Ice Harbor Dam on the Snake River. The research will provide information that will be used to develop corrective measures to improve juvenile fish passage at the dams. Permit 1212 expires on December 31, 2003.

Notice was published on March 25, 1999 (64 FR 14432), that an application had been filed by NWFSC for a scientific research permit. Permit 1213 was issued to NWFSC on June 3, 1999, and authorizes direct takes of juvenile SnR sockeye salmon; juvenile, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile SnR fall chinook salmon; and adult and juvenile, naturally produced and artificially propagated, UCR steelhead associated with seven studies at the hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. The goal of Study 1 is to evaluate the extended length bar screen at Little Goose Dam on the Snake River. The goal of Study 2 is to evaluate a prototype separator at Ice Harbor Dam. The goal of Study 3 is to establish biological design criteria for the fish passage facility at McNary Dam. The goal of Study 4 is to evaluate an orifice shelter, an outlet-flow control device, and methods of debris control at McNary Dam. The goal of Study 5 is to evaluate the modified extended-length bar screens at John Day Dam on the Columbia River. The goal of Study 6 is to evaluate the juvenile fish bypass system at John Day Dam. The goal of Study 7 is to evaluate the modified juvenile fish bypass system at the second powerhouse of Bonneville Dam on the Columbia River. The research will provide information that will be used to develop corrective measures to improve juvenile fish passage at the dams. Permit 1213 expires on December 31, 1999.

Dated: June 18, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–16084 Filed 6–23–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060299A]

Marine Mammals; File No. 732–1587

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Paul Ponganis, M.D., Ph.D., Associate Research Physiologist, Center for Marine Biotechnology and Biomedicine, Scripps Institute of Oceanography, La Jolla, CA 92093–0204, has been issued a permit to obtain elephant seals, harbor seals and California sea lions from rehabilitated stock for scientific research purposes.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 16, 1999, notice was published in the **Federal Register** (64 FR 13004) that a request for a scientific research permit to take pinnipeds had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: June 18, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–16087 Filed 6–23–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974; Systems of Records; Annual Publication

AGENCY: Commodity Futures Trading Commission.

ACTION: Publication of annual notice of the existence and character of each system of records that the Commodity Futures Trading Commission ("Commission") maintains which contains information about individuals.

SUMMARY: The purpose of this notice is to announce the existence and character of the systems of records of the Commodity Futures Trading Commission as required by the Privacy Act of 1974, Pub. L. 93–579, 5 U.S.C. 552a.

Pursuant to 5 U.S.C. 552a(f), the Commission, on August 8, 1975, promulgated rules relating to records maintained by the Commission concerning individuals (40 FR 41056). The rules as amended (17 CFR part 146) address an individual's rights to know what information the Commission has in its files concerning the individual; to have access to those records; to petition the Commission to have inaccurate or incomplete records amended or corrected; and not to have personal information disseminated to unauthorized persons. The full text of the Commission's rules implementing the Privacy Act can be found in 17 CFR part 146.

Under 17 CFR 146.11(a), the Commission is required to publish annually a notice of the existence and character of each system of records it maintains which contains information about individuals. This notice implements this requirement and, when read together with the Commission's rules, will provide individuals with the information that they need to exercise fully their rights under the Privacy Act.

FOR FURTHER INFORMATION CONTACT: Edward W. Colbert, Assistant Secretary to the Commission, Freedom of Information Act, Privacy Act and Government in the Sunshine Act Compliance Office, (202) 418–5105, or Stacy Dean Yochum, Counsel to the Executive Director, (202) 418–5157, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Content of Systems Notices

Each of the notices contains the following information:

1. The name of the system;
2. The location of the system;
3. The categories of individuals on whom records are maintained in the system;
4. The categories of records maintained in the system;
5. The authority for maintaining the system;
6. The routine uses of records maintained in the system; including the categories of users and the purposes of such uses;
7. The policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system;
8. The title and business address of the system manager, the agency official who is responsible for the system of records;
9. The agency procedures by which an individual can find out whether the system of records contains a record pertaining to him, how he may gain access to any record pertaining to him contained in the system of records, and how he can contest the content of the records; and
10. The categories of sources of records in the system.

The following four systems of records have been exempted, as set forth in the descriptions of these systems of records, from certain requirements of the Privacy Act, as authorized under 5 U.S.C. 552a(k):

CFTC–9 Confidential information obtained during employee background investigations.

CFTC–10 Investigatory materials compiled for law enforcement purposes.

CFTC–31 Information pertaining to individuals discussed as closed Commission meetings.

CFTC–32 Investigatory materials compiled by the Office of the Inspector General.

The Location of Systems of Records

The Commission offices are in the following locations:

- Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, Telephone: (202) 418–5000;
- 300 Riverside Plaza, Suite 1600 North, Chicago, Illinois 60606, Telephone: (312) 353–5990;
- 4900 Main Street, Suite 721, Kansas City, Missouri 64112, Telephone: (816) 931–7600;
- One World Trade Center, Suite 3747, New York, New York 10048, Telephone: (212) 466–2061;
- Murdock Plaza, 10900 Wilshire Blvd, Suite 400, Los Angeles, California 90024, Telephone: (310) 235–6783; and
- 510 Grain Exchange Building, Minneapolis, Minnesota 55415, Telephone: (612) 370–3255.

Where a system of records is stored in multiple locations, the notice merely identifies the offices and refers to this introductory section for each address. The Commission's headquarters office is in Washington, DC, and is referred to in the systems notice as the "principal office." The Commission maintains regional offices in Chicago and New York and smaller offices in Kansas City, Minneapolis and Los Angeles. For purposes of this notice, the regional offices and smaller offices are referred to collectively as the "regional offices," "All CFTC offices" means the headquarters office, the regional offices and the smaller offices.

In many cases, records within a system are not available at each of the offices listed in the system notice. For example, case files are basically maintained in the office where the investigation is conducted, but certain information may be maintained in other offices as well. It is the Commission's responsibility, unless otherwise specified in the system notice, to determine where the particular records being sought are located. However, if the individual seeking the records in fact knows the location, it would be helpful to the Commission if the requester would indicate that location.

Scope and Content of Systems of Records

The Privacy Act applies to personal information about individuals. Personal information subject to the provisions of the Privacy Act may sometimes be found in a system of records that might appear to relate solely to commercial matters. For example, the system of records concerning registration of the various categories of registrants (CFTC–20) contains primarily business information. However, a firm's application for registration contains a few items of personal information concerning key personnel. Since the capability exists through the National Futures Association's computer system to retrieve information from this system of records not only by use of the name of the firm but also by the use of the name of these individuals, this information is within the purview of the Privacy Act. See the definition of system of records in the Privacy Act, 5 U.S.C. 552(a)(5), and § 146.2(g) of the commission's Privacy Act rules, 17 CFR 146.2(g).

Such a capability would generally not exist, however, in a Commission staff investigation of the activities of a firm unless an individual is registered as an FCM, IB, CTA or CPO. That is, if the investigation was opened under the name of the FCM, information would be retrievable only under that name. Accordingly, information about principals of a firm under investigation that might be developed during the investigation would generally not be retrievable by the name of the individual, and the provisions of the Privacy Act would not apply.

General Statement of Routine Uses

A principal purpose of the Privacy Act is to restrict the unauthorized dissemination of personal information concerning an individual. In this connection, the Privacy Act and the Commission's rules prohibit dissemination except for specific purposes. Individuals should refer to the full text of the Privacy Act, 5 U.S.C. 552a(b), and to the Commission's rules, 17 CFR part 146, for a complete list of authorized disclosures. Only those arising most frequently have been mentioned herein.

The Privacy Act and the Commission's rules specifically provide that disclosure may be made with the written consent of the individual to whom the record pertains. Disclosure may also be made to those officers and employees of the Commission who need the record in the performance of their duties. In addition, disclosures are authorized if they are made pursuant to the terms of the Freedom of Information Act, 5 U.S.C. 552.

In addition, the Privacy Act and the Commission's rules permit disclosure of individual records if it is for a "routine use," which is defined as a use of a record that is compatible with the purpose for which it was collected. Unless otherwise indicated, the following routine uses of Commission records are applicable to all CFTC systems. To avoid unnecessary repetition of these routine uses, where they are generally applicable, the system notice refers the reader to the "General State of Routine Uses." The notice for each system of records lists any specific routine uses that are applicable to that system.

1. The information may be used by the Commission in any administrative proceeding before the Commission, in any injunctive action authorized under the Commodity Exchange Act or in any other action or proceeding in which the Commission or its staff participates as a party or the Commission participates as amicus curiae.

2. The information may be given to the Justice Department, the Securities and Exchange Commission, the United States Postal Service, the Internal Revenue Service, the Department of Agriculture, the Office of Personnel Management, and to other Federal, state or local law enforcement or regulatory agencies for use in meeting responsibilities assigned to them under the law, or made available to any member of Congress who is acting in his capacity as a member of Congress.

3. The information may be given to any board of trade designated as a contract market by the Commission if the Commission has reason to believe this will assist the contract market in carrying out its responsibilities under the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, and to any national securities exchange or national securities association registered with the Securities and Exchange Commission, to assist those organizations in carrying out their self-regulatory responsibilities under the Securities Exchange Act of 1935, 15 U.S.C. 78a, *et seq.*

4. At the discretion of the Commission staff, the information may be given or shown to anyone during the course of a Commission investigation if the staff has reason to believe that the person to whom it is disclosed may have further information about the matters discussed therein and those matters appear relevant to the subject of the investigation.

5. The information may be included in a public report issued by the Commission following an investigation, to the extent that this is authorized under Section 8 of the Commodity Exchange Act, 7 U.S.C. 12. Section 8 authorizes publication of such reports but contains restrictions on the publication of certain types of sensitive business developed during an investigation. In certain contexts, some of this information might be considered personal in nature.

6. The information may be disclosed to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, or a grant or other benefit by the requesting agency, to the extent that the information may be relevant to the requesting agency's decision on the matter.

7. The information may be disclosed to a prospective employer in response to its request in connection with the hiring or retention of an employees, to the extent that the information is believed to be relevant to the prospective employer's decision in the matter.

8. The information may be disclosed to any person, pursuant to Section 12(a) of the Commodity Exchange Act, 7 U.S.C. 16(a), when disclosure will further the policies of the Act or of other provisions of law. Section 12(a) authorizes the Commission to cooperate with various other government authorities or with "any person."

System Notices

The Commission's systems of records are set forth below. For further information contact: Freedom of Information Act (FOIA), Privacy Act and Government in the Sunshine Act Compliance Staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Fourth Floor, Washington, DC 20581, (202) 418–5105.

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CFTC–1

SYSTEM NAME:

Matter Register and Matter Indices.

SYSTEM LOCATION:

This system is located in the Division of Enforcement in the Commission's principal office and regional offices. See "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Persons found or alleged to have, or suspected of having, violated the Commodity Exchange Act or the rules, regulations or orders of the Commission adopted thereunder.

b. Persons lodging complaints with the Commission.

c. Agency referrals.

CATEGORIES OF RECORDS IN THE SYSTEM:

An index system to CFTC–10 Exempted Investigatory Records and CFTC–16 Enforcement Case Files, including:

a. The matter register. Records are organized by docket number and/or matter name. The register also indicates the date opened, the disposition and status, the date closed, and the staff member assigned.

b. The matter register also includes reports recommending openings and closings of investigations.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

Section 8 of the commodity Exchange Act, 7 U.S.C. 12.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, loose-leaf binders, computer files, and computer printouts.

RETRIEVABILITY:

By matter name or docket number.

SAFEGUARDS:

General building security. In appropriate cases, the records are maintained in lockable file cabinets. Computer files require password to access.

RETENTION AND DISPOSAL:

The records are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Enforcement in the Commission's principal office and Regional Counsel in New York, Chicago and Los Angeles. See "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

Persons submitting complaints to the Commission, and miscellaneous sources including customers, law enforcement and regulatory agencies, commodity exchanges, National Futures Association, trade sources, and Commission staff generated items.

CFTC–2

SYSTEM NAME:

Correspondence Files.

SYSTEM LOCATION:

This system is located in the Commission's principal offices at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons corresponding with the Commission, directly or through their representatives. Persons discussed in correspondence to or from the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming and outgoing correspondence and indices of correspondence, and certain internal reports and memoranda related to the correspondence. This system includes only those records that are part of a general correspondence file maintained by the office involved. It includes correspondence indexed by subject matter, date or assigned number and, in certain offices, by individual name of the correspondent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, in loose-leaf binders, or index cards, computer files and printouts, and related indices on magnetic disk.

RETRIEVABILITY:

By name of correspondent, subject matter, date or assigned number. The name may be either the name of the person who sent or received the letter, or the person on whose behalf the letter was sent or received. It may also be another person who was the principal subject of the letter, where circumstances appear to justify this treatment. See previous discussion concerning the category of records maintained in this system.

SAFEGUARDS:

Secured rooms or on secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained indefinitely depending on the policies and practices of the offices involved.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Secretariat; Director, Office of Public Affairs; Director, Office of Legislative and Intergovernmental Affairs; Executive Director; General Counsel; Director, Division of Enforcement; Director; Division of Trading and Markets; and, Director, Division of Economic Analysis. All are located at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 518–5105. Specify the system manager, if known.

RECORD SOURCE CATEGORIES:

Persons corresponding with the Commission and correspondence and memoranda prepared by the Commission.

CFTC–3

SYSTEM NAME:

Docket Files.

SYSTEM LOCATION:

This system is located in the Office of Proceedings, Proceedings Clerk's Office, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons involved in any CFTC proceeding.

CATEGORIES OF RECORDS IN THE SYSTEM:

All pleadings, motions, applications, stipulations, affidavits, transcripts and documents introduced as evidence, briefs, orders, findings, opinions, and other matters that are part of the record of an administrative or reparations proceeding. They also include related correspondence and indices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Commission is authorized or required to conduct hearings under several provisions of the Commodity Exchange Act. These files are a necessary concomitant for the conduct of orderly hearings. See also 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are public records unless the Commission or assigned presiding officer determines for good cause to treat them as nonpublic records consistent with the provisions of the Freedom of Information Act. Nonpublic portions may be used for any purpose specifically authorized by the Commission or by the presiding officer who ordered such nonpublic treatment of the records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer files, computer printouts, index cards, and microfiche.

RETRIEVABILITY:

By the docket number and cross-indexed by complainant and respondent names.

SAFEGUARDS:

Only items that the Commission or the presiding officer has directed be kept nonpublic are segregated. Precautions are taken as to these items to assure that access is restricted to authorized personnel only. Access to computer records is limited to authorized personnel and password protected.

RETENTION AND DISPOSAL:

Docket files in reparations cases are maintained for 10 years after final disposition of the case. Docket files in enforcement cases are maintained for 15 years after final disposition of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Fourth Floor, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

Commission staff members; opposing parties and their attorneys; proceeding witnesses; and miscellaneous sources.

CFTC–4

SYSTEM NAME:

Employee Leave, Time and Attendance.

SYSTEM LOCATION:

The information in the system is kept in the CFTC offices in which the employee described by the records is located. Information is also kept centrally on the computer system located in the Department of Agriculture's National Finance Center, New Orleans, Louisiana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various records reflecting CFTC employees' time and attendance and leave status, as well as the allocation of employee time to designated budget account codes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6101–6133; 5 U.S.C. 6301–6326; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. In response to legitimate requests, this information may be provided to other Federal agencies for the purpose of hiring or retaining employees, and may be provided to other prospective employers, to the extent that the information is relevant to the prospective employer's decision in the matter.

b. The information may be provided to the Justice Department or other Federal agencies or used by the Commission in connection with any investigation, or administrative or legal proceeding involving any violation of any Federal law or regulation thereunder.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copies of time and attendance worksheets, leave request slips and signed printouts; diskettes; mainframe computer (NFC).

RETRIEVABILITY:

By the name of the employee or by the employee number, cross-indexed by name.

SAFEGUARDS:

Lock boxes and/or locked file drawers. Password required for access to diskettes and NFC computer system.

RETENTION AND DISPOSAL:

Hard copy records, including leave slips, signed printouts from the PC–TARE system, overtime approval slips and budget account code worksheets are retained for six years, then destroyed. Diskettes are written over on a 12-month rotating cycle.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

RECORD COURCE CATEGORIES:

The individual on whom the record is maintained.

CFTC–5

SYSTEM NAME:

Employee Personnel/Payroll Records.

SYSTEM LOCATION:

This system is located in the Office of Human Resources and the Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 and on a computer system located in the Department of Agriculture's National Finance Center, New Orleans, Louisiana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll related information for current CFTC employees, including payroll and leave data for each employee relating to rate and amount of pay, leave and hours worked, and leave balances, tax and retirement deductions, life insurance and health insurance deductions, savings allotments, savings bonds and

charity deductions, mailing addresses and home addresses, direct deposit information, copies of the CFTC time and attendance reports as well as authorities relating to deductions, including salarly offset under Part 141 of the Commission's rules. The records maintained in the principal office for all employees include: a. Forms required and records maintained under the Commission's rules of conduct and Ethics in Government Act, such as the SF–278 and requests for approval of outside employment (CFTC Form 20); b. Various summary materials received in computer printout form; d. Awards information; and e. Training information.

The official personnel records maintained by the Commission are described in the system notices published by the Office of Personnel Management (OPM/GOVT–1), and are not included with the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 5 U.S.C. APP. (Personnel Financial Disclosure Requirements).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. In response to legitimate request, this information may be provided to other Federal agencies for the purpose of hiring or retaining employees, and may be provided to other prospective employers, to the extent that the information is relevant to the prospective employer's decision in the matter.

b. The information may be provided in the Justice Department, the Office of Personnel Management or other Federal agencies, or used by the Commission in connection with any investigation or administrative or legal proceeding involving any violation of Federal law or regulation thereunder.

c. Certain information will be provided, as required by law, to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System to enable state jurisdiction to locate individuals and identify their income sources to establish paternity, establish and modify orders of support, and the enforcement action.

d. Certain information will be provided, as required by law, to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security number in connection with the operation of the FPLS by the Office of Child Support Enforcement.

e. Certain information will be provided, as required by law, to the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer files, and computer printouts.

RETRIEVABILITY:

By the name or social security number of the employee.

SAFEGUARDS:

Lockable cabinets for paper records. Computer records accessible through password protected security system.

RETENTION AND DISPOSAL:

Maintained according to retention schedules prescribed by the General Records Schedule for each type of personnel/payroll record.

SYSTEM MANAGER(S) AND ADDRESS:

The Office of Human Resources, except for records maintained under the Commission's rules of conduct and the Ethics in Government Act for which the General Counsel is the system manager. See "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; personnel office records; and miscellaneous sources.

CFTC–6

SYSTEM NAME:

Employee Travel Records.

SYSTEM LOCATION:

This system is located in the Commission's office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Commission member, employee, witness, expert, advisory committee member or non-CFTC employee traveling on official business for the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the name, address, destination, itinerary, mode and purpose of travel, dates, expenses, miscellaneous claims, amounts advanced, amounts claimed, and amounts reimbursed. Includes travel authorizations, travel vouchers, requests, receipts, invoices from credit card vendors' receipts, and other records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–5752; 31 U.S.C. 1, *et seq.*; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The information may be provided to the Justice Department or other Federal agencies or used by the Commission in connection with any investigation, or administrative or legal proceeding involving any violation of Federal law or regulation thereunder.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer files and computer printout.

RETRIEVABILITY:

By the name of the Commission member, employee witness, expert, advisory committee member or CFTC employee traveling on official business for the Commission, and by social security number.

SAFEGUARDS:

Access to the computer records is protected by a security system. General building security limits access to paper records kept in files of support staff in the offices of travelers and in the Travel Office.

RETENTION AND DISPOSAL:

Records are retained for six years after the period covered by the account.

SYSTEM MANAGER(S) AND ADDRESS:

Accounting Officer and Network Manager, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

CFTC–7

Deleted—Incorporated into CFTC–4 and CFTC–6.

CFTC–8

SYSTEM NAME:

Employment Applications.

SYSTEM LOCATION:

This system is located in the Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for positions with the CFTC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the application and/or the resume of the applicant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about these records is used in making inquiries concerning the qualifications of the applicant.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By job announcement number. Summary information of applications is also available to staff of the Office of Human Resources through an automated applicant tracking system.

SAFEGUARDS:

Lockable cabinets for paper records. Access to applicant tracking system granted only to appropriate personnel.

RETENTION AND DISPOSAL:

Most applicant records are retained for two years, then destroyed. Job announcements that are filled through examining authority delegated from the Office of Personnel Management (OPM) are kept for 5 years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

CFTC–9

Deleted—covered by OPM/GOVT–1

CFTC–10

SYSTEM NAME:

Exempted Investigatory Records.

SYSTEM LOCATION:

This system is located in the office of General Counsel in the Commission's principal office and the Division of Enforcement in the Commission's principal and regional offices. See "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals whom the staff has reason to believe have violated, are violating, or are about to violate the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

b. Individuals whom the staff has reason to believe may have information concerning violations of the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

c. Individuals involved in investigations authorized by the Commission concerning the activities of members of the Commission or its employees based upon formal complaint or otherwise.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigatory materials compiled for law enforcement purposes whose disclosure the Commission staff has determined could impair the effectiveness and orderly conduct of the Commission's regulatory and enforcement program or compromise Commission investigations. This system may include all or any part of the records developed during the investigation or inquiry, including data from Commission reporting forms, account statements and other trading records, exchange records, bank records and credit information, business records, reports of interviews, transcripts of testimony, exhibits to transcripts, affidavits, statements by witnesses, registration information, contracts and agreements. The system may also contain internal memoranda, reports of investigation, orders of investigation, subpoenas, warning letters, stipulations of compliance, correspondence and other miscellaneous investigatory matters. The nature of the personal information contained in these files varies according to what is considered relevant by the attorney assigned based on the circumstances of the particular case under investigation, and may include personal background information about the individual involved, his education and employment history, information on prior violations, and a wide variety of financial information, as well as a detailed examination of the individual's activities during the period in question.

RETRIEVABILITY:

By assigned matter number or name or by person or firm. A summary index of material is also stored on the computer.

SAFEGUARDS:

In addition to normal office and building security, certain of these records are maintained in locked file cabinets and/or secured file rooms. All employees are made aware of the sensitive nature of investigatory information. Computer access is restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained until exemption is no longer necessary, then filed in the appropriate nonexempt system.

If an investigatory matter is closed without institution of a case, the files, other than opening and closing reports, are shipped to off-site storage within 90 days of closing. Records of preliminary inquiries closed without further action are forwarded to off-site storage within a year following closure. Records are maintained in off-site storage for 5 years, then destroyed.

If the Commission files an injunctive or administrative action or an appellate

matter, the related investigatory files and records are retained in the office conducting the litigation; the files and records remain exempt from disclosure under the Privacy Act. When the case is concluded; the investigatory materials are stored and disposed of on the same schedule as the related non-exempt case files (see CFTC–16 and CFTC–17).

The Office of General Counsel retains copies of certain investigatory materials indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Enforcement in the Commission's principal office or the Regional Counsel of the region where the investigation is being conducted, or the General Counsel. See "The Location of Systems of Records."

RECORD SOURCE CATEGORIES:

a. Reporting forms and other information filed with the Commission; b. self-regulatory organizations; c. persons or firms covered by the Commission's registration requirements; d. Federal, state and local regulatory and law enforcement agencies; e. banks, credit organizations and other institutions; f. corporations; g. individuals having knowledge of the facts; h. attorneys; i. publications; j. courts; and k. miscellaneous sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The records in this system have been exempted by the Commission from certain provisions of the Privacy Act of 1974 pursuant to the terms of the Privacy Act, 5 U.S.C. 552a(k)(2), and the Commission's rules promulgated thereunder, 17 CFR 146.12. These records are exempt from the notification procedures, records access procedures, and record contest procedures set forth in the system notices of other record systems, and from the requirement that the sources of records in the system be described.

CFTC–11

Deleted—Incorporated into CFTC–20.

CFTC–12

SYSTEM NAME:

Fitness Investigations.

SYSTEM LOCATION:

Records for floor brokers and floor traders with respect to matters commenced prior to August 1, 1994: Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Records for futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, their respective associated persons and principals, with active registration status in any capacity on or after October 1, 1983; leverage transaction merchants and their associated persons and principals with active registration status as such on or after August 1, 1994; floor brokers and floor traders with active registration status as such on or after August 1, 1994; and Agricultural Trade Option Merchants (ATOMs) and their associated persons: National Futures Association (NFA), 200 West Madison Street, Suite 1400, Chicago, Illinois 60606–3447. (See also "Retention and Disposal," infra.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied or who may apply for registration as futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants and agricultural trade option merchants; persons listed or who may be listed as principals (as defined in 17 CFR 3.1); persons who have applied or who may apply for registration as associated persons of the foregoing firms; and floor brokers and floor traders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system contains information in computerized images or alpha-numeric format and hardcopy format including registration forms, schedules and supplements, fingerprint cards which are required for registrants except ATOMs, correspondence relating to registration, and reports and memoranda reflecting information developed from various sources. In addition, the system contains records of each fitness investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secs. 4f(1), 4k(4), 4k(5), 4n(1), 8a(1)–(5), 8a(10), 8a(11), 17(o) and 19 of the Commodity Exchange Act as amended, 7 U.S.C. 6f(1), 6k(4), 6k(5), 6m(1), 12a(1)–(5), 12a(10), 12a(11), 21(o) and 23 (1994).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses applicable to all of the Commission's systems of records, including this system, are set forth under the "General Statement of Routine Uses." In addition, the Commission may disclose information contained in this system of records as follows:

1. Information contained in this system of records may be disclosed to any person with whom an applicant or registrant is or plans to be associated as an associated person or affiliated as a principal.

2. Information contained in this system of records may be disclosed to any registered futures commission merchant with whom an applicant or registered introducing broker has or plans to enter into a guarantee agreement in accordance with Commission regulation 1.10 (17 CFR 1.10).

NFA may disclose information contained in those portions of this system of records, but any such disclosure must be made in accordance with NFA rules that have been approved by the Commission or permitted to become effective without Commission approval. The disclosure must be made under circumstances authorized by the Commission as consistent with the Commission's regulations and routine uses. No specific consent is required by an applicant or registered introducing broker to disclosure of information to the futures commission merchant with whom it has or plans to enter a guarantee agreement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer files, computer printouts, index cards, microfiche.

RETRIEVABILITY:

By the name of the individual or firm, or by assigned identification number. Where applicable, the NFA's computer cross-indexes the individual's file to the name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or agricultural trade option merchant with which the individual is associated or affiliated.

SAFEGUARDS:

General office security measures include secured rooms or premises with access limited to persons whose official duties require access. Access to computer systems is password protected and limited to authorized personnel only.

RETENTION AND DISPOSAL:

Since 1991, when a fitness investigation is opened by NFA, applications, biographical supplements, other forms, related documents, correspondence and reports are immediately scanned, indexed and stored using computer imaging software so the information may be retrieved and printed. Both hard copy and imaged records are maintained by NFA for 10 years after the individual becomes inactive or for 10 years after the firm with which the individual is associated becomes inactive. Records retained by CFTC are held for 10 years.

NFA also maintains an index and summary of the hard copy records of this system in a database, the Membership, Registration, Receivables System (MRRS). The MRRS records are maintained permanently by NFA, as applicable, and are updated periodically as long as the individual is active. MRRS records on persons who may apply may be maintained indefinitely; microfiche records produced for back up of MRRS records for 1995 and earlier are maintained permanently by NFA.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Trading and Markets, at the Commission's principal office, or a designee. For records held by NFA, the systems manager is the Vice President for Registration, National Futures Association, 200 West Madison Street, Suite 1400, Chicago, Illinois 60606–3447, or a designee.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records or contesting the content of records about themselves should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

Individuals may also request registration information by telephone directly from the NFA information center at 1–800–621–3570 or 312–781–1410. Inquiries can also be made to NFA by FAX (312–781–1459) or via the Internet at inquiry@nfa.futures.org. NFA will query the MRRS system about current registration status and registration history, and will provide instructions on how to make written requests for copies of records. The Internet may be used to obtain information on current registration status and futures-related regulatory actions at www.nfa.futures.org by selecting "BASIC."

RECORDS SOURCE CATEGORIES:

The individual or firm on whom the record is maintained; the individual's employer; Federal, state and local regulatory and law enforcement agencies; commodities and securities exchanges; National Futures Association; National Association of Securities Dealers; foreign futures and securities authorities and INTERPOL; and other miscellaneous sources. Computer records are prepared from the forms, supplements, attachments and related documents submitted to the Commission or NFA and from information developed during the fitness inquiry.

CFTC–13

SYSTEM NAME:

Interpretative, Exemptive and No-Action Files.

SYSTEM LOCATION:

Most files are prepared by the Division of Trading and Markets and are kept in that Office. Public copies of the interpretative, exemptive and no-action letter, which may be redacted, are also kept in the Secretariat and the Office of Public Affairs. All offices are located at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have requested the Commission or its staff to provide interpretations, exemptions or no-action positions regarding the provisions of the Commodity Exchange Act or the Commission's regulations thereunder. The requests may have been made directly by an individual, or through the individual's attorney or other representative. A request may also be made on behalf of a registrant or other party that contains information about individuals employed by or affiliated with the registrant or other party. Registrants include futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, agricultural trade option merchants, leverage transaction merchants, associated persons, floor brokers and floor traders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for interpretative, exemptive and no-action letters, supplemental correspondence, any related internal memoranda, other supporting documents and the responses to the requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 2(a)(4) of the Commodity Exchange Act, 7 U.S.C. 4a(c), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Pursuant to the Commission's rules, 17 CFR 140.98, substantive interpretative, exemptive and no-action letters are made public and published by the Commission. Portions of such letters or information will be deleted or omitted to the extent necessary to prevent a clearly unwarranted invasion of personal privacy or to the extent they otherwise contain material considered nonpublic under the Freedom of Information Act and the Commission's rules implementing that Act.

b. Information in these files may be used as a reference in responding to later inquiries from the same party, in following up on earlier correspondence involving the same person, or when another person raises the same or similar issues.

c. Also see "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

The Division of Trading and Markets (T&M) has two tracking systems in place. One system is based on information contained in incoming correspondence. It may be search by, among other things, the name of the individual who signed the request letter (the requester) and the firm of which the individual is a partner, owner, or employee (such as a law firm, operating company or registrant.) Searchable fields may also include subject matter information such as the names of the parties and trading entities cited in the document. T&M has a second tracking system which is based on information contained in published and unpublished letters issued by T&M since 1991. This system may be searched by the name of the requester, the firm with which he or she is affiliated and the names of the parties and trading entities involved. Public copy files in the Secretariat and the Office of Public Affairs are filed by the name of the requester, even if another party makes the request on behalf of the requester. If the name of the firm or individual on whose behalf the request is made is not know, the records are maintained in the name of the attorney

or other representative making the request.

SAFEGUARDS:

Access to non-public records is limited to the offices where the records are maintained and is limited to authorized personnel.

RETENTION AND DISPOSAL:

Letters signed by the Commission and unique, precedent-setting letters signed by staff are maintained by CFTC for 20 years, then transferred to the National Archives and records Administration as permanent records. Other letters signed by staff are destroyed after 15 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Trading and Markets; the Secretary to the Commission; and the Director, office of Public Affairs. All system managers are located in the Commission's principal office. See "The Location of Systems of Records."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

Individuals, corporations, limited liability companies, other business organizations, or representatives seeking interpretations of, exemptions from, or no-action opinions on the provisions of the Commodity Exchange Act or Commission rules.

CFTC–14

Deleted—Incorporated in CFTC–10.

CFTC–15

SYSTEM NAME:

Large Trader Report Files.

SYSTEM LOCATION:

The copies of original reports and related correspondence are located in the CFTC office where filed. See further description below. Ancillary records and information (computer printout) may be located in any CFTC office. See "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals holding reportable positions as defined in 17 CFR parts 17, 18 and 19.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Reports filed by the individual holding the reportable position:

a. Statements of Reporting Trader (CFTC Form 40) contains information described in part 18 of the Commission's rules and regulations, including the name, address, number, and principal occupation of the reporting trader, financial interest in and control of commodity futures accounts, and information about the trader's business associations;

b. Large trader reporting form (Series 03 Form). Contains information described in part 18 of the Commission's rules and regulations, including the trader's identifying number, previous open contracts, trades and deliveries that day, open contracts at the end of the day, and classification as to speculation or hedging (available on a non-routine basis by special call);

c. Large trader reporting form (Series 04 Form). Contains information described in part 19 of the Commission's rules and regulations, to be filed by merchants, processors and dealers in commodities that have federally imposed speculative position limits. Includes trader's identifying number, stocks owned, fixed price sale and purchase commitments. These reports are filed in the CFTC office in the city where the reporting trader is located. If there is no CFTC office in that city, the reports are filed according to specific instructions of the CFTC.

2. Reports to be filed by futures commission merchants, members of contract markets, foreign brokers and, for large option traders, by contract markets.

a. Identification of "Special Accounts" (CFTC Form 102). Contains material described in part 17 of the Commission's rules and regulations. Includes the name, address, and occupation of a customer whose accounts have reached the reporting level. Also includes the account number that the futures commission merchant uses to identify this customer on the firm's 01 report (see next paragraph), and whether the customer has control of or financial interest in accounts of other traders.

b. Large trader reporting form (Series 01 Form). Contains material described in part 17 of the Commission's rules and regulations, for each "special account." Shows customer account number, reportable position held in each commodity future and information concerning deliveries and exchanges of futures for physicals by persons with reportable positions. These reports are filed, mostly in machine-readable form, in the CFTC office in the city where the contract market involved is located. If there is no CFTC office in that city, they are filed in the office where the CFTC instructs that they be filed.

3. Computer records prepared from information on the forms described in items (1) and (2) above.

4. Correspondence and memoranda of telephone conversations between the Commission and the individual or between the Commission and other agencies dealing with matters of official business concerning the individual.

5. Other miscellaneous information, including intra-agency correspondence and memoranda concerning the individual and documents relating to official actions taken by the Commission against the individual.

6. Reports from contract markets concerning futures and options:

a. Positions and Transactions of Clearing Member Firms. Information is provided in machine-readable form and contains the data prescribed in part 16 of the Commission's regulations. The information includes an identification number for each clearing member, open contracts at the firm for proprietary and customer accounts and transactions such as trades, exchanges of futures for physicals, delivery notices issued and received, and transfers and option exercises. The information is filed in the city where the exchange is located or as instructed by the Commission. Data is transmitted to the CFTC computer system and printouts are available at all CFTC offices.

b. Large Option Trader Data. Information is provided in machine-readable form and contains the data prescribed in Commission Rule 16.02. Shows customer account number and reportable option positions as specified in Rule 16.02. Machine-readable media is delivered to the Commission office in which the contract market is located or as instructed by the Commission. The data is transmitted to the CFTC computer system and printouts of the data are available in each Commission office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 4g, 4i, and 8 of the Commodity Exchange Act, 7 U.S.C. 6g, 6i, and 12.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses." In addition, information concerning traders and their activities may be disclosed and made public by the Commission to the extent permitted by law when deemed appropriate to further the practices and policies of the Commodity Exchange Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF THE RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer files, and computer printout.

RETRIEVABILITY:

Form 40, Form 102, correspondence and other miscellaneous information are maintained directly under the name of the reporting trader. The series 01, 03, and 04 forms are maintained by identifying code number. However, information from these forms is included in the computer and retrievable by individual identifier.

SAFEGUARDS:

General office security measures, with recent trading reports stored in lockable file cabinets. Access is limited to those whose official duties require access.

RETENTION AND DISPOSAL:

CFTC Form 40, CFTC Form 102, correspondence, memoranda, etc. are retained on the premises until the account has been inactive for 5 years and are then destroyed. Form 01, 03, and 04 reports are maintained for 6 months on the premises and then held in off-site storage for 5 years before being destroyed. The computer file is maintained for 10 years for Form 01, 03, and 04 reports and large trader options data reported by contract markets. Clearing member positions and transactions are maintained for 2 years. Trader code numbers and related information are maintained for 5 years after a trader becomes nonreportable. Account numbers assigned by an FCM are maintained on the system for 1 year after the account is no longer reported.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Surveillance Branch, in the region where the records are located. See "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105. Include the code number assigned by the Commission for filing reports, the name of the futures commission merchant through whom traded, and the time period for which information is sought.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained and futures commission merchants through whom the individual trades. Correspondence and memoranda prepared by the Commission or its staff. Correspondence from firms, agencies, or individuals requested to provide information on the individual.

CFTC–16

SYSTEM NAME:

Enforcement Case Files.

SYSTEM LOCATION:

This system is located in the Commission's principal and regional offices. Pending litigation files may be located in other participating offices. See "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons or firms against whom the Commission has taken enforcement action based on violations of the Commodity Exchange Act or the rules and regulations promulgated thereunder.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of various public papers filed by or with the Commission or the courts in connection with administrative proceedings or injunctive actions brought by the Commission. Records include, as a minimum, a copy of the complaint, motions filed, exhibits and the final decision and order.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These files are necessary for the orderly and effective conduct of litigation authorized under the Commodity Exchange Act and other Federal statutes. See, e.g., section 6c of the Commodity Exchange Act, 7 U.S.C. 13a–1, authorizing injunctive actions, and various provisions in that Act authorizing administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses." The information in these files is generally a matter of public record and may be disclosed without restriction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders or binders, disks, computer files, computer printouts. A summary index of material is also stored on the computer.

RETRIEVABILITY:

By case title or in some instances by docket number.

SAFEGUARDS:

General office security measures including secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

After an action is complete, the complaint and any final decision or dispositive orders are kept indefinitely at the headquarters office. Most case files are destroyed after 15 years; unique, precedent-setting cases are forwarded to the National Archives and Records Administration for permanent retention after 20 years.

SYSTEM MANAGERS AND ADDRESS:

Director, Division of Enforcement at the Commission's principal office and Regional Counsel for the region where the records are located. See "The Location of Systems Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC. 20581.

RECORD SOURCE CATEGORIES:

The parties, their attorneys, the Commission's Proceedings Clerk's Office, the relevant court, and miscellaneous sources.

CFTC–17

SYSTEM NAME:

Litigation Files-OGC.

SYSTEM LOCATION:

This system is located in the Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parties involved in litigation with the Commission or litigation in which the Commission has an interest including, but not limited to:

a. Administrative proceedings before the Commission;

b. Federal court cases to which the Commission is a party;

c. Litigation in which the Commission is participating as amicus curiae; and

d. Other cases involving issues of concern to the Commission, including those brought by other law enforcement and regulatory agencies and those brought by private parties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Public papers filed in litigation as described above, including appellate and amicus curiae briefs, motions, and final decisions and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Commodity Exchange Act, 7 U.S.C. 1, et seq., entrusts the Commission with broad regulatory responsibilities over commodity futures transactions. In this connection, the Commission is authorized to bring both administrative proceedings and injunctive actions where there appear to have been violations of the Act. Furthermore, to effectuate the purposes of the Act, it is necessary that the Commission staff be familiar with developments in other actions brought by others that have implications in the commodity law areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these files is generally a matter of public record and may be disclosed without restriction. Also see "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, as well as disks, computer files and computer printouts.

RETRIEVABILITY:

Alphabetically by caption of the case.

SAFEGUARDS:

General office security measures including secured rooms or premises with access limited to those whose official duties require access. Computer access is also limited to authorized personnel.

RETENTION AND DISPOSAL:

Maintained in the active files until the action is completed, including final review at the appellate level. Thereafter, transferred to the inactive case files, where a skeletal record of pleadings, briefs, findings, and opinions and other particularly relevant papers may be maintained. These records are maintained on premises for five years, then transferred to off-site storage. Most case files are destroyed after 15 years; unique precedent setting cases are destroyed after 20 years. A copy of some of the documents may be kept in precedent files for use in later legal research or preparation of filings in other matters.

SYSTEM MANAGER(S) AND ADDRESS:

The Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

The court or regulatory authority before whom the action is pending, the attorneys for one of the named parties, and miscellaneous sources.

CFTC–18

SYSTEM NAME:

Logbook on Speculative Limit Violations.

SYSTEM LOCATION:

This system is located in the Commission's Chicago and New York regional offices. See "The location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have exceeded speculative limits in a particular fiscal year.

CATEGORIES OF RECORDS IN THE SYSTEM:

A listing, by year, of the violations of speculative limits imposed by the Commission and the exchanges. It includes the trader's assigned code number, the commodity involved, the name of the trader, the type of violation, the date of the violation, the date the violation ceased, and the action taken. Copies of warning letters and replies pertaining to the violation listed are maintained with the logbook.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secs. 4i and 8 of the Commodity Exchange Act, 7 U.S.C. 6i and 12.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By fiscal year, and within each year by the name of the violator.

SAFEGUARDS:

General office security measures including secured rooms or premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained on the premises for 5 years, then held off-site for 15 years before being destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, surveillance Branch, Central Regional Office, Commodity Futures Trading Commission, 300 South Riverside Dr., Suite 1600 North, Chicago, Ilinois 60606; Chief, Surveillance Branch, Eastern Regional Office, Commodity Futures Trading Commission, One World Trade Center, Suite 3747, New York, New York 10048.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves contained in this system or records or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

Series 03 reports filed by traders and series 01 reports filed by FCMs.

Correspondence prepared by the Commission or by the individual or individual's representative.

CFTC–19

Deleted—Incorporated into CFTC–29.

CFTC–20

SYSTEM NAME:

Registration of Floor Brokers, Floor Traders, Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators, Leverage Transaction Merchants, Agricultural Trade Option Merchants and Associated Persons.

SYSTEM LOCATION:

National Futures Association (NFA), 200 West Madison Street, Suite 1400, Chicago, Illinois 60606–3447.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied or who may apply for registration as futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants and agricultural trade option merchants (ATOMs); persons listed or who may be listed as principals (as defined in 17 CFR 3.1); persons who have applied or may apply for registration as associated persons of the foregoing firms; and floor brokers and floor traders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the registration and fitness of the above-described individuals, except ATOMs, to engage in business subject to the Commission's jurisdiction. Information on ATOMs includes only the names and registration status of ATOMs and their associated persons. The system includes registration forms, schedules, and supplements; corresponsence relating to registration; and reports and memoranda reflecting information developed from various sources.

Computerized systems, consisting primarily of information taken from the registration forms, are maintained by NFA. Computer records include the name, date and place of birth, social security number (optional), exchange membership (floor brokers and floor traders only), firm affiliation, and the residence or business address, or both, of each associated person, floor broker, floor trader and principal. Computer records also include information relating to name, trade name, principal office address, records, address, names of principals and branch managers of futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants, and agricultural trade option merchants.

Directories, when produced, list the name, business address, and exchange membership affiliation of all registered floor brokers and the name and firm affiliation of all associated persons and principals. These directories are sold to the public by NFA. Regiatration forms and biographic supplements, except for any confidential information on supplementary attachments to the forms, are publicly available for disclosure, inspection and copying.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secs. 4f(1), 4k(4), 4k(5), 4n(1), 8a(1), 8a(5), 8a(10) and 19 of the Commodity Exchange Act as amended, 7 U.S.C. 6f(1), 6k(4), 6k(5), 6n(1), 12a(1), 12a(5), 12a(10), and 23 (1994).

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses." In addition, the Commission may disclose information contained in this system of records as follows:

1. Information contained in this system of records may be disclosed to any person with whom an applicant or registrant is or plans to be associated as an associated person or affiliated as a principal.

2. Information contained in this system of records may be disclosed to any registered futures commission merchant with whom an applicant or registered introducing broker has entered or plans to enter into a guarantee agreement in accordance with Commission regulation 1.10(17 CFR 1.10).

NFA may disclose information contained in those portions of this system of records maintained by NFA, but any such disclosure must be made in accordance with Commission-approved NFA rules and that have been approved by the Commission or permitted to become effective without Commission approval. Disclosures must be made under circumstances authorized by the Commission as consistent with the Commission's regulations and routine uses. No specific consent is required by an applicant or registered introducing broker to disclosure of information to the futures commission merchant with whom it has or plans to enter a guarantee agreement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer files, computer printouts, indexed cards, and microfiche.

RETRIEVABILITY:

By the name of the individual or firm, or by assigned identification number. Where applicable, the NFA's computer cross-indexes the individual's primary registration file to the name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or agricultural trade option merchant with whom the individual is associated for affiliated.

SAFEGUARDS:

General office security measures including secured rooms or premises with access limited to those whose official duties require access. Access to computer files limited to authorized personnel.

RETENTION AND DISPOSAL:

Hard copies of applications, biographical supplements, other forms, related documents and correspondence are maintained on the NFA's premises, as applicable, for two years after the individual's registration(s), or that of the firm(s) with which the individual is associated as an associated person or affiliated as a principal, becomes inactive. Hard copies of records are then stored at an appropriate site for eight additional years before being destroyed.

NFA also maintains an index and summary of the hard copy records of this system in a database, the Membership, Registration, Receivables System (MRRS). The MRRS records are maintained permanently and are updated periodically as long as the individual has a registration application pending, is registered in any capacity, or is affiliated with any registrant in any capacity. MRRS records on persons who may apply may be maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Trading and Markets, or designee, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, and Vice President for Registration, National Futures Association, 200 West Madison Street, Suite 1400, Chicago, Illinois 60606–3447.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three LaFayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

Individuals may also request registration information by telephone from the NFA information center at 1–800–621–3570 or 312–781–1410. Inquiries can also be made to NFA by FAX (312–781–1459) or via e-mail at inquiry@nfa.futures.org. NFA will query the MRRS system about current registration status and registration and disciplinary history, and will provide instructions on how to make written requests for copies of records. The Internet may be used to obtain information on current registration status and futures-related regulatory actions at www.nfa.futures.org by selecting "BASIC."

RECORD SOURCE CATEGORIES:

The individual or firm on whom the record is maintained; the individual's employer; and other miscellaneous sources. The computer records are prepared from the forms, supplements, attachments and related documents submitted to the NFA.

CFTC–21

Deleted—Incorporated into CFTC–20.

CFTC–22

Deleted—Incorporated into CFTC–20.

CFTC–23

Deleted—Incorporated into CFTC–20.

CFTC–24

Deleted—Incorporated into CFTC–20.

CFTC–25

Deleted.

CFTC–26

Deleted—Incorporated into CFTC–10.

CFTC–27

Deleted.

CFTC–28

SYSTEM NAME:

SRO Disciplinary Action File.

SYSTEM LOCATION:

Records in this system are maintained at the Commission's principal and regional offices. See "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been suspended, expelled, disciplined, or denied access to or by a self-regulatory organization (SRO).

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters of notification of disciplinary or other adverse action taken by an exchange that include the name of the person against whom such action was taken, the action taken and the reasons therefore.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 8c(1)(B) of the Commodity Exchange Act, 7 U.S.C. 12c(1)(B).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Loose-leaf binders, computer files, and computer printouts.

RETRIEVABILITY:

By chronological order according to the self-regulatory organization that took the disciplinary or other adverse action that is the subject of the notice and by the name of the individual.

SAFEGUARDS:

General office security measures. Computer access limited to authorized personnel.

RETENTION AND DISPOSAL:

Retained for ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Contract Markets Section, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

Self-regulatory organizations notifying the Commission of disciplinary or other adverse actions taken.

CFTC–29

SYSTEM NAME:

Reparations Complaints.

SYSTEM LOCATION:

This system is located in the Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing customer reparations complaints, as well as the firms and individuals named in the complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reparations complaints, answers, supporting documentation and correspondence filed with the Office of Proceedings. If the complaint is forwarded for decision by an administrative law judge or proceedings officer, records become part of CFTC–3, Docket Files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 14 of the Commodity Exchange Act, 7 U.S.C. 18.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used in the conduct of the Commission's reparations program. Also see "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer files, computer printouts.

RETRIEVABILITY:

By docket number and cross-indexed by the name of the complainant and respondent.

SAFEGUARDS:

General office security including secured rooms and, in appropriate cases, lockable file cabinets, with access to offices and computers limited to authorized personnel.

RETENTION AND DISPOSAL:

The records are maintained for 10 years after the case is closed, except that complaints, decisions, and Commission opinions and orders, are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Proceedings, Complaints Section, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

Persons filing reparations complaints or answers.

CFTC–30

SYSTEM NAME:

Open Commission Meetings—CFTC.

SYSTEM LOCATION:

This system is located in the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the subject of discussion at a Commission meeting open for public observation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the individuals who are the subject of discussion at an open Commission meeting.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government in the Sunshine Acts, 5 U.S.C. 552b(f) and Commission regulations at 17 CFR 147.7.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these files is a matter of public record and may be disclosed without restriction. Also see "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; computer memory; computer printouts; microfiche; and audiocassette tapes.

RETRIEVABILITY:

The indices to the recordings, transcripts, and minutes of all Commission meetings are organized by year in chronological order. Each yearly index is further indexed in alphabetical order according to subject matter, including the names of individuals, firms, exchanges or other topics that are discussed at the meetings.

SAFEGUARDS:

Maintained in lockable file cabinets on secured premises or password-protected computer systems, with access limited to whose official duties require access.

RETENTION AND DISPOSAL:

Maintained on the premises for at least the statutory period required by the Sunshine Act and Commission regulations (i.e., at least two years after each meeting or at least one year after the conclusion of any agency proceeding with respect to which the meeting or portion of the meeting was held, whichever is later); transferred to the National Archives as permanent records when 20 years old.

SYSTEM MANAGERS(S) AND ADDRESS:

Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOIA, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5105.

RECORD SOURCE CATEGORIES:

1. The information recorded during Commission meetings concerning individuals who are the subject of discussion at the meetings is generated by the staff in one or more Divisions.

2. The indices are prepared from the recordings, transcripts and/or minutes.

CFTC–31

SYSTEM NAME:

Exempted Closed Commission Meetings-CFTC.

SYSTEM LOCATION:

This system is located in the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the subject of discussion at a closed Commission meeting..

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to individuals who are the subject of discussion at a closed Commission meeting. This information consists of (a) investigatory materials compiled for law enforcement purposes whose disclosure the Commission has determined could impair the effectiveness and orderly conduct of the Commission's regulatory, enforcement and contract market surveillance programs or compromise Commission investigations, or (b) investigatory materials compiled solely for the purpose of determining suitability, eligibility, or qualifications for employment with the Commission to the extent that it identifies a confidential source.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government in the Sunshine Act, 5 U.S.C. 552b(f), and Commission regulations at 17 CFR 147.7.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; computer memory; computer printouts; microfiche; and audiocassette tapes.

RETRIEVABILITY:

The indices to the recordings, transcripts, and minutes of all Commission meetings are organized by year in chronological order. Each yearly index is further indexed in alphabetical order according to subject matter, including the names of individuals, firms, exchanges or other topics, which are discussed at the meetings.

SAFEGUARDS:

Maintained in lockable file cabinets on secured premises or passwood-protected computer systems, with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained on the premises for at least the statutory period required by the Sunshine Acts and Commission regulations (i.e., at least two years after each meeting or at least one year after the conclusion of any agency proceeding with respect to which meeting was held, whichever is later); transferred to the National Archives as permanent records when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The records in this system have been exempted by the Commission from certain provisions of the Privacy Act of 1974 pursuant to the terms of the Privacy Act, 5 U.S.C. 552a, and the Commission's rules promulgated thereunder, 17 CFR 146.12. These records are exempted from the notification procedures, record access procedures and record contest procedures set forth in the system notices of other record systems, and from the requirement that the source of records in the system be described.

CFTC–32

SYSTEM NAME:

Office of the Inspector General Investigative Files.

SYSTEM LOCATION:

Office of the Inspector General, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are part of an investigation of fraud and abuse concerning Commission programs or operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

All correspondence relevant to the investigation; all internal staff memoranda, copies of all subpoenas issued during the investigation, affidavits, statement from witnesses, transcripts of testimony taken in the investigation and accompanying exhibits; documents and records or copies obtained during the investigation; opening reports, progress reports and closing reports; and an index of individuals investigated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–452, as amended, 5 U.S.C. App. 3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The information in the system may be used or disclosed by the Commission in any administrative proceeding before the Commission, in any injunctive action, or in any other action or proceeding authorized under the Commodity Exchange Act or the Inspector General Act of 1978 in which the Commission or any member of the Commission or its staff participates as a party or the Commission participates as amicus curiae.

2. In any case in which records in the system indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred to the appropriate agency, whether Federal, foreign, state or local, charged with enforcing or implementing the statute, regulation, rule or order.

3. In any case in which records in the system indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, the relevant records may be referred to the appropriate board of trade designated as a contract market by the Commission or to the appropriate futures association registered with the Commission, if the OIG has reason to believe this will assist the contract market or registered futures association in carrying out its self-regulatory responsibilities under the Commodity Exchange Act, 7 U.S.C. 1 et seq., and regulations, rules or orders issued pursuant thereto, and such records may also be referred to any national securities exchange or national securities association registered with the Securities and Exchange Commission, to assist those organizations in carrying out their self-regulatory responsibilities under the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., and regulations, rules or orders issued pursuant thereto.

4. The information may be given or shown to anyone during the course of an OIG investigation if the staff has reason to believe that disclosure to the person will further the investigation. Information may also be disclosed to Federal, foreign, state or local authorities in order to obtain information or records relevant to an OIG investigation.

5. The information may be given to independent auditors or other private firms with which the OIG has contracted to carry out an independent audit, or to collate, aggregate or otherwise refine data collected in the system of records. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

6. The information may be disclosed to a Federal, foreign, state or local government agency where records in either system of records pertain to an applicant for employment, or to a current employer of that agency where the records are relevant and necessary to an agency decision concerning the hiring or retention of an employee or disciplinary or other administrative action concerning an employee.

7. The information may be disclosed to a Federal, foreign, state, or local government agency in response to its request in connection with the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

8. The information may be disclosed to the Department of Justice or other counsel to the Commission for legal advice or to pursue claims and to government counsel when the defendant in litigation is (a) any component of the Commission or any member or employee of the Commission in his or her official capacity, or (b) the United States or any agency thereof. The information may also be disclosed to counsel for any Commission member or employee in litigation or in anticipation of litigation in his or her individual capacity where the Commission or the Department of Justice agrees to represent such employee or authorizes representation by another.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer diskettes and computer files.

RETRIEVABILITY:

Investigative files are retrieved by the subject matter of the investigation or by case file number. An index provides a cross-reference on individuals investigated.

SAFEGUARDS:

The records are kept in limited access areas during duty hours and in file cabinets in locked offices at all other times. These records are available only to those persons whose official duties require such access. Computer files are available only to authorized personnel.

RETENTION AND DISPOSAL:

The Office of the Inspector General Investigative Files and the index to the files are destroyed twenty years after the case is closed.

SYSTEM MANAGER AND ADDRESS:

Inspector General, Office of the Inspector General, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the systems of records, or contesting the content of records about themselves, should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Wsahington, DC 20581.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by: Individuals including, where practicable, those to whom the information relates; witnesses, corporations, and other entities; records of individuals and of the Commission; records of other entities; Federal, foreign, state or local bodies and law enforcement agencies; documents, correspondence relating to litigation, and transcripts of testimony; and miscellaneous other sources.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Under 5 U.S.C. 552a(j)(2), the Office of the Inspector General Investigative Files are exempted from 5 U.S.C. 552a except subsections (b), (c)(1), and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent the system of records pertains to the enforcement of criminal laws. Under 5 U.S.C. 552(k)(2), the Office of the Inspector General Investigative Files are exempted from 5 U.S.C. 552a except subsections (c)(3), (d), (e)(10), (e)(4)(G), (H), and (I) and (f) to the extent the system of records consists of investigatory material compiled for law enforcement purposes. These exemptions are contained at 17 CFR 146.13.

CFTC–33

SYSTEM NAME:

Electronic Key Card Usage.

SYSTEM LOCATION:

Office of Administrative Services, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authorized key card holders, which may include CFTC employees, on-site contractors, visitors, or representatives of landlords.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer print-outs showing key card number, usage date and time and, in some cases, name of assigned user.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 2(a)(2)(A)(b) and 12(b)(3), Commodity Exchange Act, 7 U.S.C. 4a(e) and 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Commission's "General Statement of Routine Uses," Nos. 1, 2, 6 and 7. In addition, information contained in this system may be disclosed by the Commission (1) to any person in connection with architectural, security or other surveys concerning use of office space and (2) to employees and contractors for the purpose of maintenance or service of data processing systems.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer diskettes and computer files.

RETRIEVABILITY:

By name of the subject, by assigned key card number, by time period and by entry point.

SAFEGUARDS:

Information from the Commission's landlords' data bases may be requested from the landlords only by the Director of the Office of Administrative Services, or his/her designee. The Commission maintains all key card usage records in limited access areas at all times.

RETENTION AND DISPOSAL:

In accordance with the general record schedules and the Commission's record management handbook the records in the system are considered temporary and are destroyed when no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administrative Services, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records or contesting the content of records about themselves should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. The system of records and the notification, access and challenge procedures apply only to records of key card usage in the Commission's actual possession. None of these applies to any information solely in a landlord's possession.

RECORD SOURCE CATEGORIES:

With one exception, information in the system is supplied by the Commission's landlords, typically on request. Information supplied is a record of use of electronic key cards and in that sense the information is obtained directly from the users of the key cards. Information in the database maintained in Chicago by the Commission itself is also merely recorded usage of electronic key cards and similarly is obtained directly from the user of the key card.

CFTC–34

SYSTEM NAME:

Telephone System.

SYSTEM LOCATION:

Monthly billing records for local toll calls, long distance calls, and calling card calls are located in the Office of Administrative Services, Commodity Futures Trading Commission. Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The most current record of the phone numbers and calling card numbers assigned to individual employees and contractors is kept by the administrative office in each regional location except Los Angeles. Los Angeles telephone assignment records are kept in the Washington, DC, Office of Administrative Services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individauls (generally Commission employees and on-site contractor personnel) who make telephone calls from Commission telephones or use government issued calling cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of Commission telephones or calling cards

to place calls; records indicating assignment of telephone or calling card numbers to employees; and records relating to requests for telephone call detail information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 41 CFR part 101–35.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Commission's "General Statement of Routine Uses," Nos. 1 and 2. In addition, records and data may be disclosed as necessary (1) to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 4906; (2) to a telecommunications company or consultant providing telecommunications support to permit servicing the account .

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer printouts.

RETRIEVABILITY:

Records are retrievable by a Commission telephone or calling card number that is assigned to an individual.

SAFEGUARDS:

In addition to general building security, records are maintained in limited access areas at all times.

RETENTION AND DISPOSAL:

In accordance with the general record schedules and the Commission's record management handbook, the records in the system are considered temporary and are destroyed when no longer required, usually every three months.

SYSTEM MANAGERS AND ADDRESS:

Director, Office of Administrative Services, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures," above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures," above.

RECORD SOURCE CATEGORIES:

Telephone and calling card assignment records; call detail listings received from local and long distance service providers; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

CFTC 35

SYSTEM NAME:

Interoffice and Internet E-Mail System.

SYSTEM LOCATION:

File servers in each system location (Washington, DC, Chicago, New York, Kansas City, Minneapolis, and Los Angeles) retain records. Records are backed up nightly onto magnetic tape in all locations except Minneapolis. Records are backed up weekly onto magnetic tape in the Minneapolis office. The most recent two weeks of tapes are kept in locked boxes in the Washington, DC, and Chicago locations. Tapes with information covering the prior two weeks are kept at an off-site storage facility in Washington, DC, and Chicago. Tapes with information covering the most recent four-week period are kept on-site, in a secured area, in the New York, Kansas City, Los Angeles, and Minneapolis locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees and on-site contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on the use of the interoffice and Internet e-mail system, including address of sender and receiver(s), subject, date sent or received, name of attachment and certification status. On a restricted basis, records may include the contents of an individual's mailbox.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and section 12(b)(3) of the Commodity Exchange Act, 7 U.S.C. 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by CFTC network administrators who have a need for the records in the performance of their duties. See also the Commission's "General Statement of Routine Uses," Nos. 1, and 2. In addition, the records and data, other than the content of individual mailboxes, may also be disclosed as necessary to contractors as necessary for assessment, modification, or maintenance of the e-mail system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on the file servers in each CFTC location. Servers are backed up nightly and the information is transferred to magnetic tape. In Washington, DC, and Chicago, the most recent two weeks of magnetic tape are kept in a locked box in the Computer Room. The prior two weeks are kept at an off-site storage facility in Washington, DC, and Chicago. The entire four weeks of magnetic tape information is kept in unlocked boxes in a secured area in the New York, Kansas City, Los Angeles and Minneapolis locations.

RETRIEVABILITY:

The information can be retrieved by assigned interoffice or Internet mail address.

SAFEGUARDS:

Only network administrators have access to the e-mail information. This access is generally limited to the "header" information described under "Categories of Records." The tapes are kept in locked storage boxes in Washington, DC, and Chicago, and only network administrators and OIRM management have keys to the locked boxes. In the New York, Kansas City, Los Angeles and Minneapolis locations, tapes are kept in unlocked boxes, either stored in a fireproof safe or vault. Only designated office personnel have access to the safe or vault.

RETENTION AND DISPOSAL:

Records on magnetic tape are retained for four weeks, then destroyed as the tape is written over with new information. Records are retained on the file server until the sender and receiver delete the information from the e-mail system. Internet e-mail information that is received by the postmaster due to an error in delivery is considered temporary and is destroyed after the problem is corrected.

SYSTEM MANAGER(S) AND ADDRESS:

Network Manager, Commodity Futures Trading Commission, Three Lafayette, Centre, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette, Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORDS PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Internet e-mail, interoffice e-mail.

CFTC 36

SYSTEM NAME:

Internet Website and News Group Browsing System.

SYSTEM LOCATION:

Firewall software, located on a PC in the Office of Information Resources Management, Commodity Futures Trading Commission, Three Lafayette, Centre, 1155 21st Street NW., Washington, DC 20581. Information on use of each personal computer is stored on that computer.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees and on-site contractors who are users of the Internet Website and New Group Browsing capability.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on the websites and news groups visited, as identified by the Internet protocol address assigned to each computer, as well as information on the date and time of the website or news group access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and section 12(b)(3) of the Commodity Exchange Act, 7 U.S.C. 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by CFTC network administrators for maintenance of the firewall system that protects the CFTC from unauthorized access to its data. The network administrators may also use the information to evaluate the level of use of the agency's Internet browsing capability. See also the Commission's "General Statement of Routine Uses," Nos. 1, and 2. Records may also be disclosed as necessary to the agency's Internet service provider or agency contractor to the extent that the information is necessary for maintenance of the agency's Internet access.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETRAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept on the software maintained on the firewall gateway server in the headquarters computer room. In addition, a record of the Internet browsing done on each computer is maintained on that PC. The length of time of storage on the firewall gateway server is governed by available disk space on the server. At current levels of browsing usage, the information is stored on the server for approximately three days. Information on websites visited by each PC is also stored in the PC's history file or cache directory. The information is stored on the individual PC until the cache directory consumes 1% of total disk space. Oldest items are then removed until the directory is equal to or less than 1% of the total disk space. History file records are maintained until 100 URLs are entered. (URL stands for "Uniform Resource Locator" and is the address of the site visited, for example, http://www.cftc.gov.) The oldest URLs are deleted until the total URL count is equal to or less than 100 entities.

RETRIEVABILITY:

The information can be retrieved by Internet protocol address. The network administrators have access to information about the office location and individuals assigned to each computer, as identified by Internet protocol address.

SAFEGUARDS:

Network administrators, through use of a password protection, have access to the Internet web browsing system information that is stored on the firewall gateway server in the headquarters computer room. Access to the computer room is limited to OIRM employees. The Director of OIRM may grant the Commission's Internet service provider access to the Internet web browsing system information for maintenance purposes. However, the provider, would not have access to the information that links Internet protocol addresses to particular computers, locations and individuals.

RETENTION AND DISPOSAL:

Records are retained on the Commission's firewall software for approximately three days, then over written.

SYSTEM MANAGER(S) AND ADDRESS:

Network Manager, Commodity Futures Trading Commission, Three Lafayette, Centre, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCESS:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette, Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORDS PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Internet, website and news group browsing, website access.

CFTC 37

SYSTEM NAME:

Lexis/Westlaw Billing Information System.

SYSTEM LOCATION:

Office of Information Resources Management, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees and on-site contractors who are users of the Lexis/Westlaw research system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on the name, search subject, database searched, date, elapsed time, type of charge, and total charge for a search in the Lexis/Westlaw automatic research system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and sec. 12(b)(3) of the Commodity Exchange Act, 7 U.S.C. 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used primarily by the Administrative Officer, OIRM, to

monitor expenditures and to ensure the availability of funds. The records containing usage information are distributed monthly to the administrative officers in each office for their confirmation that Lexis/Westlaw use was authorized. See the Commission's "General Statement of Routine Uses," Nos. 1 and 2. Lexis/Westlaw can also access the information and uses it for statistical analysis and billing purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Billing information is maintained by the Administrative Officer, OIRM, in a locked file drawer.

RETRIEVABILITY:

By division, by month of use, by database accessed, by user name and user identification number. Retrieval is done manually.

SAFEGUARDS:

Billing information is kept in locked desks at all times. Information is provided only to the Administrative Officer, OIRM, and is circulated to the administrative officer for each office.

RETENTION AND DISPOSAL:

Hard copies of monthly billing statements are retained for two years, then destroyed.

SYSTEM MANAGERS AND ADDRESS:

Administrative Officer, Office of Information Resources Management, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORDS PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Lexis/Westlaw billing information.

CFTC 38

SYSTEM NAME:

Automated Library Circulation System.

SYSTEM LOCATION:

Library, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual CFTC employees who check out books and periodicals from the CFTC Library.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records showing the bar code assigned to employees who use the library, title, due date, and hold information on library materials checked-out by individual CFTC employees; records of overdue materials and of employee notification of overdue materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 41 CFR part 101–27.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Library staff uses the information to track the location of library materials, to provide users on request with a list of materials currently shown as in their possession, and to issue, as necessary, overdue notices for materials. See the Commission's "General Statement of Routine Uses," Nos. 1 and 2. The records may also be disclosed as necessary to agency contractors in connection with assessment, modification or maintenance of the automated circulation system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on the CFTC local area network file server. Records on the identifying bar codes assigned to individuals are stored in the file server on Rolodex cards.

RETRIEVABILITY:

Records are retrievable by employee name or by the employee's bar code number.

SAFEGUARDS:

Records may be assessed only by authorized CFTC staff members, who are principally staff of the Library or the Office of Information Resources Management. Staff members must use an individual password to gain access to the information stored in the computer.

RETENTION AND DISPOSAL:

Records in the system are considered temporary. The records of library transactions are destroyed when an item on loan is returned or reimbursement is made for replacement of the item.

SYSTEM MANAGERS(S) AND ADDRESS:

Administrative Librarian, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORDS PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Library user bar code identifiers; library materials use; overdue notices.

Issued in Washington, DC, on June 15, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–15719 Filed 6–23–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement/Report/Feasibility Study for the White Slough Flood Control Study, City of Vallejo, Solano County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The purpose of the feasibility study is to identify and evaluate alternatives which will lead to flood protection for areas adjacent to White Slough, south of Highway 37 in Vallejo. To fulfill the requirements of Section 102(2)(c) of the National Environmental Policy Act, the Corps of Engineers has determined that the proposed action may have significant effect on the quality of the human environment and

therefore requires the preparation of an Environmental Impact Statement. This document will also serve as the Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA). Lead Agency under CEQA is the Vallejo Sanitation and Flood Control District. This environmental assessment is required by the National Environmental Policy Act of 1969, as amended (PL 91–190). Section 102(2)(A) requires Federal agencies to: "Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment."

FOR FURTHER INFORMATION CONTACT: Written comments and questions regarding the scoping process or preparation of the EIS/EIR/FS may be directed to Craig Vassel, U.S. Army Corps of Engineers, San Francisco District, 333 Market Street, 717P, Seventh Floor, San Francisco, CA 94105–2197, (415) 977–8546, Fax: 415–977–8695, Email: *cvassel@smtp.spd.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Authority

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the California Environmental Quality Act (CEQA), the Department of the Army and Vallejo Sanitation and Flood Control District hereby give notice of intent to prepare a joint Environmental Impact Statement/Environmental Impact Report/Feasibility Study (EIS/EIR/FS) for the White Slough Flood Control Project, Solano County, California.

2. Comments/ Scoping Meetings

Interested parties are requested to express their views concerning the proposed activity. The public is encouraged to provide written comments in addition to or in lieu of, oral comments at the scoping meeting. To be most helpful, scoping comments should clearly describe specific environmental topics or issues, which the commentator believes the document, should address. Oral and written comments receive equal consideration. Two workshop-scoping sessions will be held on Wednesday July 7, 1999. The first 2:30–4:30 is intended primarily for local, state, and federal agencies and organizations. The second 7:00–9:00 is intended for all interested parties. Both meetings will be at the offices of the Vallejo Sanitation and Flood Control District Offices, 450 Ryder Avenue, Vallejo, CA.

3. Availability of EIS/EIR/FS

The Draft EIS/EIR/FS should be available for public review in Fall 1999.

4. Agencies Supporting Project.

The U.S. Army Corps of Engineers and Vallejo Sanitation and Flood Control District will be the lead agencies in preparing the combined EIS/EIR/FS. The EIS/EIR/FS will provide an analysis supporting both the requirements of NEPA and CEQA in addressing impacts to the environment which may result from implementation of flood control measures.

5. Purpose and Need for Project:

This project is intended to reduce the risk of flooding from all sources in the vicinity of White Slough, south of Highway 37 in Vallejo.

6. Study Area Description

White Slough is bisected by Highway 37. The southern portion, south of Highway 37 which is part of the Slough or subject and flooding is the study area for this project.

7. Levee Construction History

a. Located between the Napa River and the City of Vallejo, White Slough receives both tidal flow from the Napa River and fluvial flow from Chabot and Austin Creeks. Around 1900, local interests constructed a levee along the east bank of the Napa River, which allowed for the reclamation of approximately 816 acres of wetlands adjacent to White Slough; 604 acres west of Highway 37 and 212 acres southeast of Highway 37.

b. After floods breached these levees in 1964 and 1969, the Corps of Engineers subsequently repaired them: The 1969 repairs were performed under the authority of Public Law 81–875, which requires that local interests maintain the repaired levees. Floods again breached the levees in the winters of 1976, 1977, and 1978. This time, since inspections indicated that little or no levee maintenance had been done by local interests since they were last repaired in 1969, the Corps of Engineers had no authority to repair the levees. The land owners of property protected by the levees refused to make repairs without a guarantee that they could develop their land. During this period, the Bay Conservation and Development Commission (BCDC) claimed jurisdiction over the White Slough area. Little activity has occurred within the White Slough area in the intervening years.

8. Austin Creek

Austin Creek flows in an unlined channel along the southern perimeter of White Slough. Flow in this channel is carried by three road culverts. Because Austin Creek is separated from White Slough by a low levee (six feet NGVD), it can only be drained by the Austin Creek Pump Station.

9. 1983 Tidal Flooding

In 1983, a tide in excess of the 100-year event, combined with storm runoff, caused extensive flooding in the vicinity of White Slough. The Austin Creek Channel levee was overtopped, and flooding occurred on Sacramento Street, Sonoma Boulevard, and in the Larwin Plaza and K-Mart areas. After this event, the Austin Creek levee was raised by about three feet on the outboard side to protect the Sacramento Street area against tidal flooding. Today, the only tidal flooding protection in the White Slough area is provided by an emergency levee along the northern side of Highway 37, constructed by the City of Vallejo.

10. Fluvial Flooding Problem

Austin Creek's overtopping is the primary cause of fluvial flooding. The Austin Creek Pump Station provides adequate outlet capacity for three to five year fluvial flood events, but the channel and road crossing culverts do not convey flow to the pumps fast enough. During past flood events, the pump station pumped the immediate upstream channel reach nearly dry, while water was still ponding to significant depths behind the Redwood Street and Valle Vista Street culverts. Backwater conditions and obstruction by debris greatly reduce the capacities of the bridge culverts at Redwood Street and Valle Vista Avenue. The 100-year design flow of 1583 cfs significantly exceeds channel and culvert capacities regardless of backwater conditions.

11. Highway 37 Project

Caltrans' will use fill to raise and widen the highway and install additional culverts with tide gates under Highway 37. This will provide limited tidal exchange and tidal flood protection to the highway and the study area south of the highway subject to tidal flooding.

12. Project Alternatives

a. No action. This alternative assumes that no flood control project, structural or non-structural, other than the Highway 37 project, will be

implemented in the project area by the federal government or any other entity. Flooding would continue at the same frequency and intensity as it has in the past. Tidal flooding would be controlled by the Caltrans Highway 37 project. Inadequately protected areas around White Slough would continue to risk flood damage.

b. Flood Control Alternatives. Preliminary flood damage reduction alternatives studied for the White Slough and Austin Creek areas fall into two categories: Tidal and fluvial.

13. Tidal Flood Protection From Highway 37

Tidal flood protection to the highway and to those portions of the study area south of the highway subject to tidal flooding will be provided by Caltrans' Highway 37 improvement project. The project includes using fill to raise and widen Highway 37. Four additional 48-inch diameter culverts with tide gates under Highway 37 will limit tidal exchange to provide tidal flood protection. Levee protection would be required in areas where the existing tidal barrier falls below the 100-year tidal flood event.

14. Fluvial Alternatives.

Several alternatives to control fluvial flooding will be considered:

a. Retention ponds. Two retention ponds, each 10 feet deep, would be constructed on vacant land adjacent to Austin Creek just west of Sonoma Boulevard, creating a total of 60 acre-feet of storage upstream of Valle Vista Avenue. Storage of floodwater does not occur naturally at this site; therefore, any storage would have to be developed through excavation of native material and artificial fill on the property. Flow diverted into the basins would then drain by gravity back into the channel at a slower rate.

b. Bridge improvements. To decrease backwater conditions caused by obstructions; thereby increasing the capacity of Austin Creek, bridge improvements are being considered as well as removal of the abandoned culvert structure between Redwood Street and Highway 37. New pipes could be added to existing culvert bridge structures at Redwood Street and Valle Vista Avenue, or the existing culvert structures replaced with larger box culverts or clear span bridges.

c. Pump station improvements. The pump station at Austin Creek is limited in capacity. Any alternative which increases the capacity of Austin Creek could require an upgrading of the Austin Creek Pump Station, or a diversion of Austin Creek storm flow to a storage facility, such as White Slough, for retention.

d. Austin Creek flow diversion. If excess flows in Austin Creek above the Redwood Street and Valle Vista Avenue bridges are diverted, this could eliminate or reduce the need to upgrade the bridges. To divert these flows, a 2400-foot parallel pipe system would carry flows from the basin above Austin Creek directly into White Slough a clear passage of flow from Austin Creek into White Slough by removal of the levee system along the eastern bank of Austin Creek between Redwood Street and Highway 37, or directly into Austin Creek below Valle Vista Avenue or Redwood Street. This diversion structure could be combined with creation of a confluence between Austin Creek and White Slough. If White Slough received excess flows from Austin Creek during high flow periods, the existing Austin Creek Pump Station could then drain White Slough. The best location for such a confluence appears to be along the levee that separates Austin Creek from White Slough. Controllable gates could be installed within the barrier separating Austin Creek from White Slough.

e. Austin Creek Creekside protection. Levees or floodwalls by themselves or in combination with other improvement options may also be used to increase the capacity of the Austin Creek channel. This alternative does not address the causes of flooding, but merely contains the flow within Austin Creek.

f. Removal of levees/restore confluence of Austin Creek and White Slough. 1000 lineal feet of levee along the east bank and 1000 lineal feet of floodwalls on the west bank of Austin Creek between Redwood Street and Valle Vista and 1500 lineal feet of floodwalls on both banks of Austin Creek extending from Valle Vista Avenue to the upstream?would create a clear passage of flow in Austin Creek from Redwood Street to Highway 37.

g. Perimeter flood protection. 2000 lineal feet of floodwall and 2500 feet of levee along the perimeter of White Slough south of Highway 37, 1000 lineal feet of levee along the east bank and 1000 lineal feet of floodwalls on the west bank of Austin Creek between Redwood Street, and Valle Vista and 1000 lineal feet of floodwalls on both banks of Austin Creek extending from Valle Vista Avenue to the downstream limit of the retention ponds would be constructed.

15. Feasibility Study

The five-phase Feasibility Study will identify and evaluate measures to restore lost tidal prism and reduce the rate of sedimentation as follows:

a. Phase One will investigate existing physical and environmental conditions restoration needs and constraints of the area. The future without-project conditions in the study area will be projected. Input on the ecosystem will be sought from resource agencies and the public. Public scoping workshops will be held both in Vallejo.

b. During Phase Two, hydraulic modeling of the preliminary alternatives will be completed and economics and environmental impacts studied.

c. In Phase Three, preliminary alternatives will be evaluated and benefits of the alternatives will be quantified. A draft Fish and Wildlife Coordination Act Report possibly including a Habitat Evaluation Procedure (HEP) will be prepared to help provide the basis for identifying the most cost-effective alternative acceptable to the agencies and community.

d. Phase Four involves preparing the draft Feasibility Report and Environmental Impact Statement/Report (EIS/R). The EIS/R will analyze all reasonable alternatives and evaluate compliance with federal and state environmental requirements. A formal public review and comment period will be started.

e. The last phase of the study includes preparing the final Feasibility Report recommending a preferred alternative and completing the final EIS/R which will respond to all comments on the draft EIS/R.

16. Other Environmental Review and Consultation Requirements

The DEIS/R will be used as the primary information document to secure concurrence in a Federal Coastal Zone Consistency Determination to comply with Clean Water Act Section 404 (b) (1) guidelines, the Fish and Wildlife Coordination Act, and the Endangered Species Act. The DEIS/R will be used by the local sponsor to meet its responsibilities under the California Environmental Quality Act, and used by the San Francisco Regional Water Quality Control Board to meet its responsibilities under the Porter-Cologne Act. The DEIS/R will be used for "trustee agency" reviews by the State of California.

17. DEIS Availability

The DEIS will be available to the public in Fall 1999.

Peter T. Grass,

LTC, EN, Commanding.

[FR Doc. 99–16145 Filed 6–23–99; 8:45 am]

BILLING CODE 3710–19–P

DEPARTMENT OF DEFENSE

Department of the Navy

Availability of Government-Owned Inventions for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

ADDRESSES: Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

SUPPLEMENTARY INFORMATION: The following patents and patent applications are available for licensing:

Patent 5,763,066: Nonlinear Optical Inclusion Complexes; filed 14 June 1995; patented 9 June 1998.//Patent 5,780,569: Linear Carborane-(Siloxane or Silane)-Acetylene Based Copolymers; filed 7 November 1994; patented 14 July 1998.//Patent 5,781,063: Continuous-Time Adaptive Learning Circuit; filed 6 November 1995; patented 14 July 1998./ /Patent 5,793,787: Type II Quantum Well Laser With Enhanced Optical Matrix; filed 16 January 1996; patented 11 August 1998.//Patent 5,800,123: Bladed Pump Capstan; filed 20 March 1997; patented 1 September 1998.// Patent 5,801,560: System for Determining Time Between Events Using a Voltage Ramp Generator; filed 13 September 1995; patented 1 September 1998.//Patent 5,805,635: Secure Communication System; filed 17 March 1964; patented 8 September 1998.//Patent 5,808,741: Method for Remotely Determining Sea Surface Roughness and Wind Speed at a Water Surface; filed 26 June 1996; patented 15 September 1998.//Patent 5,812,267: Optically Based Position Location System for an Autonomous Guided Vehicle; filed 10 July 1996; patented 22 September 1998.//Patent 5,815,384: Transformer Which Uses Bi-Directional Synchronous Rectification to Transform the Voltage of an Input Signal Into an Output Signal Having a Different Voltage and Method for Effectuating Same; filed 14 May 1997; patented 29 September 1998.//Patent 5,815,803: Wideband High Isolation Circulator Network; filed 8 March 1996; patented 29 September 1998.//Patent 5,816,056: Cooling With the Use of a Cavitating Fluid Flow; filed 26 February 1997; patented 6 October 1998.//Patent 5,816,712: Elastomeric Cartridges for Attenuation of Bearing-Generated Vibration in Electric Motors; filed 14 February 1997; patented 6 October 1998.//Patent 5,818,141: Squirrel Cage Type Electric Motor Rotor Assembly; filed 5 September 1996; patented 6 October 1998.//Patent 5,818,585: Fiber Bragg Grating Interrogation System With Adaptive Calibration; filed 28 February 1997; patented 6 October 1998.//Patent 5,818,601: Wavelength Independent Optical Probe; filed 4 October 1996; patented 6 October 1998.//Patent 5,818,940: Switching Matrix; filed 22 November 1972; patented 6 October 1998.// Patent 5,819,315: Faired Athletic Garment; filed 13 August 1997; patented 13 October 1998.//Patent 5,819,632: Variable-Speed Rotating Drive; filed 28 April 1996; patented 13 October 1998./ /Patent 5,819,676: Underwater Acoustic Search Angle Selection System and Method of Special Utility With Submerged Contacts; filed 30 June 1997; patented 13 October 1998.//Patent, 5,820,109: Remotely Operated Lift System for Underwater Salvage; filed 19 July 1996; patented 13 October 1998.// Patent 5,821,418: Cooled Fixture for High Temperature Accelerometer Measurements; filed 28 April 1996; patented 13 October 1998.// Patent 5,821,447: Safety and Arming Device; filed 24 August 1995; patented 13 October 1998.//Patent 5,821,475: Venturi Muffler With Variable Throat Area; filed 8 May 1996; patented 13 October 1998.//Patent 5,821,659: Homopolar Transformer for Conversion of Electrical Energy; filed 14 August 1997; patented 13 October 1998.//Patent 5,822,047: Modulator Lidar System; filed 29 August 1995; patented 13 October 1998.//Patent 5,822,111: Apparatus and Method for Coherent Acousto-Optic Signal Width Modification; filed 3 May 1995; patented 13 October 1998.//Patent 5,822,271: Submarine Portable Very Low Frequency Acoustic Augmentation System; filed 1 April 1998; patented 13 October 1998.//Patent 5,822,272: Concentric Fluid Acoustic Transponder; filed 13 August 1997; patented 13 October 1998.//Patent 5,824,512: Bacteria Expressing Metallothionein Gene Into the Periplasmic Space, and Method of Using Such Bacteria in Environment Cleanup; filed 22 November 1996; patented 20 October 1998.//Patent 5,824,803: Compounds Labeled With Cyanate or Thiocyanate Metal Complexes for Detection By Infrared Spectroscopy; filed 30 September 1997; patented 20 October 1998.//Patent 5,824,911: Fluid Pressure Measuring Device Interface; filed 10 July 1997; patented 20 October 1998.//Patent 5,824,946: Underwater Search Angle Selection System and Method of Special Utility With Surface Contacts; filed 30 June 1997; patented 20 October 1998.// Patent 5,825,040: Bright Beam Method for Super-Resolution in E-Beam Lithography; filed 23 December 1996; patented 20 October 1998.//Patent 5,825,489: Mandrell Based Embedded Planar Fiber-Optic Interferometric Acoustic Sensor; filed 28 February 1994; patented 20 October 1998.//Patent 5,826,883: Sealing Ring With deformable Tubular Sheath Filled With Permanent Magnetic Granules and Method of Making the Same; filed 16 September 1996; patented 27 October 1998.//Patent 5,827,748: Chemical Sensor Using Two-Dimensional Lens Array; filed 24 January 1997; patented 27 October 1998.//Patent 5,828,118: System Which Uses Porous Silicon for Down Converting Electromagnetic Energy to an Energy Level Within the Bandpass of an Electromagnetic Energy Detector; filed 6 March 1997; patented 27 October 1998.//Patent 5,828,207: Hold-up Circuit With Safety Discharge for Preventing Shutdown By Momentary Power Interruption; filed 20 April 1993; patented 27 October 1998.//Patent 5,828,571: Method and Apparatus for Directing a Pursuing Vehicle to a Target With Evasion Capabilities; filed 30 August 1995; patented 27 October 1998.//Patent 5,828,625: Echo Simulator for Active Sonar; filed 9 October 1997; patented 27 October 1998.//Patent 5,834,057: Method of Making Chemically Engineered Metastable Alloys and Multiple Components Nanoparticles; filed 28 June 1996; patented 10 November 1998.//Patent 5,835,978: Shoulder-Launched Multiple-Purpose Assault Weapon; filed 24 January 1997; patented 10 November

1998.//Patent 5,837,919: Portable Launcher; filed 5 December 1996; patented 17 November 1998.//Patent 5,838,021: Single Electron Digital Circuits; filed 26 December 1996; patented 17 November 1998.//Patent 5,838,428: System and Method for High Resolution Range Imaging With Split Light Source and Pattern Mask; filed 28 February 1997; patented 17 November 1998.//Patent 5,838,675: Channelized Receiver-Front-End Protection Circuit Which Demultiplexes Broadband Signals Into a Plurality of Different Microwave Signals in Respective Contiguous Frequency Channels, Phase Adjusts and Multiplexes Channels; filed 3 July 1996; patented 17 November 1998.//Patent 5,839,177: Pneumatic Rod Loading Apparatus; filed 3 August 1995; patented 24 November 1998.//Patent 5,839,290: Organic/Inorganic Composite Wicks for Capillary Pumped Loops; filed 24 January 1997; patented 24 November 1998.//Patent 5,839,700: Articulated Fin; filed 3 June 1996; patented 24 November 1998.//Patent 5,841,735: Method and System for Processing Acoustic Signals; filed 9 July 1997; patented 24 November 1998.//Patent 5,843,245: Process for Making Superplastic Steel Powder and Flakes; filed 26 March 1996; patented 1 December 1998.//Patent 5,844,052: Linear Metallocene Polymers Containing Acetylenic and Inorganic Units and Thermosets and Ceramics Therefrom; filed 14 March 1997; patented 1 December 1998.//Patent 5,844,161: High Velocity Electromagnetic Mass Launcher Having an Ablation Resistant Insulator; filed 3 April 1998; patented 1 December 1998.//Patent 5,844,709: Multiple Quantum Well Electrically/Optically Addressed Spatial Light Modulator; filed 30 September 1997; patented 1 December 1998.//Patent 5,847,019: Photoactivatable Polymers for Producing Patterned Biomolecular Assemblies; filed 7 March 1997; patented 8 December 1998.//Patent 5,853,888: Surface Modification of Synthetic Diamond for Producing Adherent Thick and Thin Film Metallizations for Electronic Packaging; filed 25 April 1997; patented 29 December 1998.//Patent 5,854,440: Shoulder-Launched Multi-Purpose Assault Weapon; filed 20 June 1996; patented 29 December 1998.//Patent 5,854,587: RExM1-xMNyO Films for Microbolometer-Based IR Focal Plane Arrays; filed 26 June 1997; patented 29 December 1998.//Patent 5,854,865: Method and Apparatus for Side Pumping an Optical Fiber; filed 7 December 1995; patented 29 December 1998.//Patent 5,855,716: Parallel Contact Patterning Using Nanochannel Glass; filed 24 September 1996; patented 5 January 1999.//Patent 5,856,630: High Velocity Electromagnetic Mass Launcher Having an Ablation Resistant Insulator; filed 1 June 1994; patented 5 January 1999.//Patent 5,858,307: Hydrogen Sulfide Analyzer With Protective Barrier; filed 20 December 1995; patented 12 January 1999.//Patent 5,858,513: Channeled Ceramic Structure and Process for Making Same; filed 20 December 1996; patented 12 January 1999.//Patent 5,858,537: Compliant Attachment; filed 31 May 1996; patented 12 January 1999.//Patent application 08/048,101: Submerged Object Detection and Classification System; filed 16 April 1993.//Patent application 08/995,136: Bearing Assembly for Radar Mast; filed 19 December 1997.//Patent application 09/030,008: Preparation of Magnesium-Fluoropolymer Pyrotechnic Material; filed 25 February 1998.//Patent application 09/090,222: Missile Support and Alignment Assembly; filed 22 May 1998.//Patent application 09/156,379: Latency Verification System Within a Multi-Interface Point-to-Point Switching System (MIPPSS); filed 18 September 1998.//Patent application 09/156,614: Multi-Interface Point-to-Point Switching System (MIPPSS) With Hot Swappable Boards; filed 18 September 1998.//Patent application 09/157,002: Multi-Interface Point-to-Point Switching System (MIPPSS) With Rapid Fault Recovery Capability; filed 18 September 1998.//Patent application 09/157,023: Multi-Interface Point-to-Point Switching System (MIPPSS) Having an Internal Universal Signal Format; filed 18 September 1998.//Patent application 09/157,297: Multi-Interface Point-to-Point Switching System (MIPPSS); filed 18 September 1998.//Patent application 09/157,299: Multi-Interface Point-to-Point Switching System ((MIPPSS); filed 18 September 1998.//Patent application 09/162,150: Field Emission Tube for a Mobile X-Ray Unit; filed 29 September 1998.//Patent application 09/170,651: Multi-Warfare Area Launcher; filed 14 October 1998.//Patent application 09/170,971: Penetrating, Dual-Mode Warhead; filed 14 October 1998.//Patent application 09/176,932: Statistical Inference of Electromagnetic Interference Sources Based on a Priori Knowledge of Source and Receiver Parameters; filed 23 October 1998.//Patent application 09/184,636: Drill Guide for Combination Lock Mounting and Method for Using Drill Guide; filed 3 November 1998.//Patent application 09/189,676: High Authority Actuator; filed 13 November 1998.//Patent application 09/197,440: Gallium Arsenide Semiconductor Devices Fabricated With Insulator Layer; filed 23 November 1998.//

FOR FURTHER INFORMATION CONTACT: Mr. John G. Wynn, Staff Patent Attorney, Office of Naval Research (Code 00CC), Arlington, VA 22217–5660, telephone (703) 696–4004.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: June 15, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–16102 Filed 6–23–99; 8:45 am]

BILLING CODE 3810–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is to conduct the final briefing of the Naval Warfare Innovation Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to the use of "Red Teams" and the process of transitioning programs from science and technology to development.

DATES: The meeting will be held on July 15, 1999 from 1:30 p.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute information that relates solely to the internal rules and practices of the agency. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552(b)(2).

Dated: June 9, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 99–16100 Filed 6–23–99; 8:45 am]

BILLING CODE 3810–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.2), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California will meet. All sessions will be open to the public.

DATES: The meeting will be held on 27–28 July 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held in Hermann Hall, Building 220, Naval Postgraduate School, Monterey, California.

FOR FURTHER INFORMATION CONTACT: Ms. Jaye Panza, Naval Postgraduate School, Monterey, California, 93943–5000, Telephone: (408) 656–2514.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to elicit the advice of the board on the Navy's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

Dated: June 15, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–16101 Filed 6–23–99; 8:45 am]

BILLING CODE 3810–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.184H]

Office of Elementary and Secondary Education—Safe and Drug-Free Schools Program

AGENCY: Department of Education.

ACTION: Notice correcting application deadline date for fiscal year 1999.

SUMMARY: The Secretary corrects the deadline date for the receipt of applications for a grant under the State and Regional Coalition Grant Competition To Prevent High-Risk Drinking Among College Students (CFDA No. 84.184H) in the notice published on June 16,1999 at 64 FR 32366.

DATES: The deadline date for receipt of applications under this competition is corrected to be July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6123. Telephone: (202) 260–3954. FAX: (202) 260–7767. Internet: http://www.ed.gov/offices/OESE/SDFS.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g. Braille, large print, audio tape, or computer diskette) upon request to the contact office listed above.

Authority: 20 U.S.C. 7131.

Dated: June 21, 1999.

Judith Johnson,

Acting Assistant Secretary for Elementary and Second Education.

[FR Doc. 99–16144 Filed 6–23–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Availability of Solicitation for Advanced Technologies for Stripper Gas Well Enhancement

AGENCY: The Federal Energy Technology Center, Department of Energy, Pittsburgh.

ACTION: Notice of issuance of financial assistance solicitation.

SUMMARY: The U. S. Department of Energy's (DOE), Federal Energy Technology Center (FETC) announces that it intends to issue a competitive Program Solicitation (PS), No. DE–PS26–99PC40564 for the program entitled "Advanced Technologies for Stripper Gas Well Enhancement". Through this solicitation, DOE seeks to support applications for research and development of techniques, technologies, or methodologies which will improve the production performance of stripper gas wells. The proposed efforts must incorporate innovative field technologies for use in stripper gas wells to increase production, reduce operating costs, increase environmental compliance, or combinations thereof. These techniques or technologies would then be validated/demonstrated in at least two (2) verification wells. Applications will be subjected to a comparative merit review by a DOE technical panel, and awards will be made to a limited number of applicants on the basis of the scientific merit, application of relevant program policy factors, and the availability of funds.

DATES: The solicitation is expected to be ready for release by June 17, 1999 and will have three (3) separate closing dates for submission of applications. The first closing date will be on or about July 17, 1999; the second closing date on or about November 1, 1999; and the third closing date will be on or about March 31, 2000. It should be noted that applications will only be considered for the closing date for which they are submitted. Applications must be prepared and submitted in accordance with the instructions and forms in the Program Solicitation and prior to submitting applications, check for any changes (i.e. closing date of solicitation) and/or amendments, if any, through the Internet at FETC's Home Page <http://www.fetc.doe.gov/business>.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Ann C. Zysk, U.S. Department of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236; (Telephone: (412) 892–6200, FAX: (412) 892–6216, E-mail: zysk@fetc.doe.gov).

ADDRESSES: The solicitation will be available through the Internet at FETC's Home Page <http://www.fetc.doe.gov/business>. Telephone requests will not be accepted for any format version of the solicitation.

SUPPLEMENTARY INFORMATION: Through Program Solicitation No. DE–PS26–99PC40564, the Department of Energy seeks applications for ideas, technologies, or methodologies which would benefit the stripper gas industry; however, the effort must be economically and environmentally viable.

Eligibility

Eligibility for participation in this Program Solicitation is considered to be full and open and all interested parties may apply. Interested parties must also agree that data and information generated during the performance of the project will be transferred to the public. The solicitation will contain a complete

description of the technical evaluation factors and relative importance of each factor.

Areas of Interest

There are three areas of approaches sought: (1) Reservoir remediation; (2) wellbore cleanup; and (3) surface system optimization. Each of these areas could include subcategories. In the reservoir remediation area, such technologies could include: restimulation, explosive/propellants, extended-reach jetting technology, or identifying additional behind-pipe reserves. The wellbore clean-up area could include such things as perforation cleaning/re-opening, fluid removal, solids removal, or scale/salt removal. Under the surface system optimization area, low-pressure compression facilities, collection system optimization, and water disposal are a few ideas. This list is not all inclusive as there are other technologies which have not been mentioned.

Awards

DOE currently has available $287,000 for this solicitation with expectations of additional monies in FY2000. Out-year funding shall depend upon availability of future year appropriations. DOE anticipates multiple awards (i.e., between three (3) and six (6)) with a total project cost between $100,000–$150,000 and a project duration of eighteen (18) months or less. Under the research and development phase, a minimum 20% non-federal cost-share of the total estimated cost is required for all applications. A fifty (50) percent cost-share of total estimated cost is required for the validation/demonstration phase of the project. Collaboration between industry and academia is strongly encouraged.

Issued in Pittsburgh, Pennsylvania on June 16, 1999.

Dale A. Siciliano,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–16080 Filed 6–23–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–37–000]

Boundary Gas, Inc.; Notice of GRI Refund Report

June 18, 1999.

Take notice that on June 16, 1999, Boundary Gas, Inc. (Boundary) tendered for filing a refund report reflecting the flowthrough of the Gas Research Institute (GRI) refund received by Boundary on May 28, 1999.

Boundary states that it has calculated refunds proportionally for its firm customers of non-discounted service based on the GRI surcharges those customers paid during calendar year 1998. Boundary states that it mailed each customer a check for its portion of the refund on or about June 14, 1999.

Boundary also states that copies of this filing were served upon each of Boundary's affected customers and the state commissions of New York, Connecticut, New Jersey, Massachusetts, New Hampshire, and Rhode Island.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 25, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16044 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2730–000 and EL99–67–000]

California Independent System Operator Corporation; Initiation of Proceeding and Refund Effective Date

June 18, 1999.

Take notice that on June 17, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–67–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–67–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Secretary.

[FR Doc. 99–16077 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR99–16–000]

Colonial Pipeline Company; Notice of Petition for Declaratory Order

June 18, 1999.

Take notice that on June 15, 1999, pursuant to Rules 207(a)(2) and 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207.212, Colonial Pipeline Company (Colonial) tendered for filing a petition for a declaratory order regarding the proposed rates for transportation service to be provided through a planned new stub line connecting a point near Talladega, Alabama on Colonial's mainline, with Huntsville, Alabama and Murfressboro, Tennessee (just south of Nashville) (hereafter Talladega-to-Murfreesboro line).

Colonial states that with the Commission's approval of Colonial's rate proposal, the new line will be constructed beginning in the first quarter of 2000, with the goal of commencing service by January 1, 2001. Colonial requests expedited consideration of its petition, by November 1, 1999, in order to meet its projected in-service date. Colonial asserts that the new line will permit direct petroleum products pipeline service to Huntsville for the first time, and will significantly expand Colonial's capacity to serve the growing Nashville market, which is presently subject to substantial capacity constraints.

Colonial requests that the Commission issue an order declaring: (1) That the cancellation of Colonial's pre-existing rates to Nashville will not be subject to challenge when the new Talladega-to-Murfreesboro line goes into service; (2) that its indexed rates from Houston and other origins to Birmingham will not be subject to challenge as the result of the connection to the Talladega-to-Murfreesboro line; . (3) that the Commission will accept the proposed initial joint rates for service to Huntsville and Nashville as listed in Exhibit C, column 5 to the filing; and (4) that the Talladega-to-Murfreesboro cost of service component of the overall rates to Huntsville and Nashville will not be subject to challenge except as provided in the Commission's indexing regulations as applied to that particular segment.

Any person desiring to be heard or to protest filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 15, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16046 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2770–000 and EL99–69–000]

Florida Power & Light Company; Initiation of Proceeding and Refund Effective Date

June 18, 1999.

Take notice that on June 17, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–69–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–69–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Secretary.

[FR Doc. 99–16078 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–171]

Grand River Dam Authority; Notice of Extension of Time

June 18, 1999.

On December 21, 1998, Grand River Dam Authority filed an application for approval of modified marina facilities, in the above-docketed proceeding. The proposed modifications include the relocation of a fuel dock from its approved location, about 845 feet from the northern shoreline to a new (present) location, about 130 feet from the northern shoreline. Further, the permittee proposed to replace four existing boat slips with a building containing a business office, bathhouse, and laundromat. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

On June 4, 1999, the Commission issued a Notice of Availability of Draft Environmental Assessment (DEA) for the proposal (64 FR 31215, pub. June 10, 1999). The DEA was issued as a result of a review by the Office of Hydropower Licensing in accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910). Copies of the DEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. The DEA may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). In the DEA, staff concluded that approval of the proposed action, alternative actions, or the no-action alternative would not constitute a major Federal action significantly affecting the quality of the human environment.

Because of the interest shown by the public in this matter, the Commission is extending the time for the filing of comments on the project. By this notice, the time for the filing of comments is hereby extended to and including July 26, 1999. Comments should be addressed to Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 1494–171 to all comments. For further information, please contact the project manager, Jon Confrancesco at (202) 219–0079.

David P. Boergers,

Secretary.

[FR Doc. 99–16051 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–552–000]

Northern Natural Gas Company; Notice of Application

June 18, 1999.

Take notice that on June 11, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP55–552–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon as nonjurisdictional facilities, by sale to McDay Energy Partners, Ltd. (McDay Energy), certain pipeline facilities, with appurtenances, located in Zavala and Dimmitt Counties, Texas (Zavala Facilities) and certain services rendered thereby. Northern also requests approval, concurrent with the conveyance of the Zavala Facilities, to abandon a rental compressor unit located at the Zavala County #3 Compressor Station, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Northern states that the Zavala Facilities consist of approximately 26 miles of 12-inch pipeline and appurtenant facilities, and that the facilities will be conveyed to McDay Energy for $1,700,000. Northern also states that, concurrent with the conveyance of the Zavala Facilities, Northern is proposing to abandon the 1,100 horsepower rental compressor unit located at the Zavala County #3 Compressor Station in-place.

Northern states that it is currently providing only interruptible transportation service on the Zavala Facilities on a month-to-month basis pursuant to Part 284 of the Commission's Regulations and rate schedules in Northern's FERC Gas Tariff, Fifth Revised Volume No. 1. Northern states that all transportation services related to the Zavala Facilities will be terminated by Northern effective on the effective date of the sale of the subject facilities to the McDay Energy.

Northern states that McDay Energy currently own gathering facilities connected to the Zavala Facilities. Northern further states that the Zavala Facilities, if owned and operated by McDay Energy, would provide an opportunity for the McDay Energy to more efficiently control its gathering operations in the area. In addition, Northern states that McDay Energy intend to file a petition for a declaratory order seeking a determination that the subject Zavala Facilities, once conveyed to McDay Energy, are gathering facilities exempt from the Commission's jurisdiction under Section 1(b) of the NGA.

Any questions regarding the instant application should be directed to either Michele Winckowski at (402) 398–7082 (mwinckko@enron.com) or Glen Hass at (402) 398–7419 (ghass@enron.com), Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124

Any person desiring to be heard or to make any protest with reference to said application should on or before July 9, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–16042 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR99–4–000]

Sinclair Oil Corporation v. Platte Pipe Line Company; Notice of Alternative Dispute Resolution Process

June 18, 1999.

Take notice that pursuant to the Commission's "Order on Complaint" issued on June 1, 1999 in this proceeding, 87 FERC ¶ 61,259 (1999), the parties have met with the Director of the Commission's Office of Dispute Resolution Services (Director), and have agreed upon an Alternative Dispute Resolution (ADR) process to resolve certain issues raised in the complaint of Sinclair Oil Corporation (Sinclair).

A principal goal of the ADR process is to determine whether, and how, to address the impact on Platte Pipe Line Company's (Platte's) common stream shippers who tender crude petroleum that is not mixed with natural gasoline, from receiving deliveries containing crude petroleum tendered by shippers that have mixed natural gasoline into their crude petroleum.

The parties have agreed upon a mediation process and will work toward resolution of this issue through mediation efforts commencing in June 1999 and concluding by the end of August 1999. Pursuant to the parties' agreement, Judge William J. Cowan has been appointed mediator.

At the conclusion of the ADR process, if successful, the parties will submit a settlement incorporating revised rules and regulations in pro forma tariff sheets that would, upon Commission approval, be submitted to the Commission as compliance filings, with general application on Platte's system.

Any person having both an interest in participating in the ADR process and an interest in Platte's rules and regulations within the standards established by 18 CFR 343.2(b) must notify the Director and other parties, in writing, no later than July 2, 1999 in order to participate.[1] Persons joining the ADR process will do so subject to the procedures already established by the mediator and this order.

[1] The Director is Richard L. Miles, who can be contacted at (202) 208–0702.

David P. Boergers,

Secretary.

[FR Doc. 99–16045 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–334–000]

Southern Natural Gas Company; Notice of Petition for Waiver

June 18, 1999.

Take notice that on June 14, 1999, Southern Natural Gas Company (Southern) filed a petition for an interim waiver of Section 14.1(b)(1) and 14.1(c)(1) of the General Terms and Conditions of its Tariff in order to waive cashout premiums incurred during May 1999.

Southern states that copies of the filing have been mailed to all of the shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 25, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16050 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–36–000]

Viking Gas Transmission Company; Notice of Filing GRI Report

June 18, 1999.

Take notice that on June 14, 1999, Viking Gas Transmission Company (Viking) tendered for filing a report of Gas Research Institute (GRI) refunds to Viking for the period from January 1, 1998 to December 31, 1998. Viking states that the reported refunds were credited to Viking's customers on its May invoices that were mailed on June 11, 1999.

Viking states that copies of this filing have been mailed to all of its jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 25, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16043 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–290–005]

Viking Gas Transmission Company; Notice of Filing Crediting Report

June 18, 1999.

Take notice that on June 15, 1999, Viking Gas Transmission Company (Viking) filed its IT Revenue Crediting Report for the period of November 1, 1998 through December 31, 1998.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 25, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16047 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–290–006]

Viking Gas Transmission Company; Notice of Filing

June 18, 1999.

Take notice that on June 15, 1999, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 1999:

Seventh Revised Sheet No. 24
Third Revised Sheet No. 33
Sixth Revised Sheet No. 36
Third Revised Sheet No. 38
Seventh Revised Sheet No. 39
First Revised Sheet No. 87B
First Revised Sheet No. 87C

Viking states that the purpose of this filing is to comply with Article IV and Article V of the Stipulation and Agreement filed by Viking on March 16, 1999 in the above-referenced docket and approved by the Commission by order issued May 12, 1999.

Viking states that copies of this filing have been served on all parties designated on the official service list in this proceeding, on all Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16048 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–290–007]

Viking Gas Transmission Company; Notice of Filing Penalty Report

June 18, 1999.

Take notice that on June 15, 1999, Viking Gas Transmission Company (Viking) filed a report of penalty revenues and credits for the period November 1, 1998 through December 31, 1998.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 25, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16049 File

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–143–000, et al.]

Front Range Energy Associates, L.L.L., et al. Electric Rate and Corporate Regulation Filings

June 15, 1999.

Take notice that the following filings have been made with the Commission:

1. Front Range Energy Associates, L.L.L.

[Docket No. EG99–143–000]

Take notice that on June 11, 1999, Front Range Associates, L.L.C. (Front Range) tendered for filing with the Federal Energy Regulatory Commission an amendment to their application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Front Range is a Delaware limited liability company owned by Quixx Mountain Holdings, L.L.C., a Delaware limited liability company, and FR Holdings, L.L.C., a Colorado limited liability company. Front Range will initially own and operate a natural gas-fired simple cycle electric energy generation facility located on a site in Fort Lupton, Colorado, having a net design power output of approximately 164 MW.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

2. Colorado Energy Management, LLC

[Docket No. ER99–3104–000]

Take notice that on June 10, 1999, Colorado Energy Management, LLC, tendered for filing notice of withdrawal of its May 18, 1999, application for Order Accepting Initial Rate Filing, for Waiver of Regulation for Blanket Approvals and for Waiver of Notice in the above-referenced docket.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER99–3191–000]

Take notice that on June 10, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing executed service agreements for firm point-to-point transmission service and non-firm point-to-point transmission service for Transalta Energy Marketing (U.S.), Inc., under the PJM Open Access Transmission Tariff.

Copies of this filing were served upon the parties to the service agreements.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Electric & Gas Company

[Docket No. ER99–3192–000]

Take notice that on June 10, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing a service agreement establishing Dayton Power and Light as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Dayton Power and Light and the South Carolina Public Service Commission.

5. PJM Interconnection, L.L.C.

[Docket No. ER99–3193–000]

Take notice that on June 10, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing a signature page of Pepco Services, Inc., to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17 listing Pepco Services, Inc., as a party to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including Pepco Services, Inc., and each of the electric regulatory commissions within the PJM Control Area.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. PJM Interconnection, L.L.C.

[Docket No. ER99–3194–000]

Take notice that on June 10, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing a notice that Fina Energy Services Company is withdrawing its membership in PJM.

PJM states that it served a copy of its filing on all of the members of PJM, including the withdrawing company, and each of the electric regulatory commissions within the PJM control area.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER99–3195–000]

Take notice that on June 10, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with FPL Energy Power Marketing, Inc. (FPL), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO requests that the Service Agreement become effective on June 1, 1999.

NUSCO states that a copy of this filing has been mailed to FPL.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER99–3196–000]

Take notice that on June 10, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Second Amendment (Second Amendment) to the Memorandum of Understanding " Pooling of Generation and Transmission among The Connecticut Light and Power Company, Western Massachusetts Electric Company (WMECO), Holyoke Water Power Company and Holyoke Power and Electric Company, dated as of June 1, 1970 and previously amended as of April 2, 1982 and currently on file with the Commission as FERC Rate Schedules CL&P No. 40, WMECO No. 52, and HWP No. 22 (the NUG&T). The NUG&T is an internal cost allocation agreement which allocates the costs and revenues associated with production and transmission costs among the signatory affiliated companies.

NUSCO states that recent changes brought about by restructuring of the New England Power Pool and of electricity markets in Massachusetts and Connecticut led to the need to amend the NUG&T. Specifically, NUSCO states that once WMECO load is served by a third party through a Standard Offer generation service arrangement, the allocation mechanism in the NUG&T will become unworkable.

NUSCO requests waiver of the Commission's Regulations to allow the Second Amendment to become effective on the first day of the month following the date that WMECO begins procuring the source of supply for Standard Offer generation service on a competitive basis.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. BIV Generation Company LLC

[Docket No. ER99–3197–000]

Take notice that on June 10, 1999, BIV Generation Company LLC (BIV), tendered for filing an application with the Federal Energy Regulatory Commission (Commission) requesting acceptance of BIV FERC Electric Rate Schedule Nos. 1 and 2; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

BIV is seeking blanket approval to sell electric energy and capacity at market-based rates from the Brush 4 Cogeneration Facility, located in Brush, Colorado, to Public Service Company of Colorado under BIV FERC Electric Rate Schedule No. 1. BIV also requests that the Commission accept BIV FERC Electric Rate Schedule No. 2 so that BIV may make sales of energy and capacity from the Brush 4 Cogeneration Facility to third parties at market-based rates should the opportunity arise.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. CP Power Sales Fifteen, L.L.C.

[Docket No. ER99–3198–000]

Take notice that on June 10, 1999, CP Power Sales Fifteen, L.L.C., tendered for filing a Notice of Succession on behalf of CL Power Sales Fifteen, L.L.C. Effective May 18, 1999, CL Power Sales Fifteen, L.L.C., changed its name to CP Power Sales Fifteen, L.L.C.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. CP Power Sales Fourteen, L.L.C.

[Docket No. ER99–3199–000]

Take notice that on June 10, 1999, CP Power Sales Fourteen, L.L.C., tendered for filing Notice of Succession on behalf of CL Power Sales Fourteen, L.L.C. Effective May 18, 1999, CL Power Sales Fourteen, L.L.C., changed its name to CP Power Sales Fourteen, L.L.C.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. CP Power Sales Twelve, L.L.C.

[Docket No. ER99–3201–000]

Take notice that on June 10, 1999, CP Power Sales Twelve, L.L.C., tendered for filing a Notice of Succession on behalf of CL Power Sales Twelve, L.L.C. Effective May 18, 1999, CL Power Sales Twelve, L.L.C., changed its name to CP Power Sales Twelve, L.L.C.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Capital Center Generating Company, LLC

[Docket No. ER99–3207–000]

Take notice that on June 11, 1999, Capital Center Generating Company, LLC (Capital Center), tendered for filing with the Federal Energy Regulatory Commission, pursuant to Rule 205, 18 CFR 385.205, and Section 35.12, 18 CFR 35.12 of the Commission's Regulations, an Application for Approval of Rate Schedules For Future Power Sales at Market-Based Rates and Waivers and Preapprovals of Certain Commission Regulations for Capital Center's Initial Rate Schedule FERC No. 1.

The proposed Rate Schedules would authorize Capital Center to engage in the wholesale sales of firm capacity and/or energy and non-firm capacity and/or energy and of ancillary services to eligible customers at market-based rates.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Illinova Power Marketing, Inc.

[Docket No. ER99–3208–000]

Take notice that on June 11, 1999, Illinova Power Marketing, Inc., tendered for filing an application requesting approval of a proposed market-based rate tariff, waiver of certain regulations, and blanket approvals, and for specific approval of a power purchase agreement.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. New York State Electric & Gas Corporation

[Docket No. ER99–3217–000]

Take notice that on June 11, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.15, a notice of cancellation (Cancellation) of NYSEG Rate Schedules with Delmarva Power & Light Company; GPU Service Corporation, as Agent for Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company, d/b/a GPU Energy; Consolidated Edison Co. of New York, Inc.; and New York Power Authority.

NYSEG requests that the Cancellation be deemed effective as of August 10, 1999.

Notice of the proposed cancellation has been served upon each of the affected parties identified above.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16052 Filed 6–23–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6366–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Permit Environmental Data From the Electric Arc Furnace/Steel Mini-Mill, Cement Kiln, and Paper & Pulp Mill Industries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Permit Environmental Data from the Electric Arc Furnace/Steel Mini-Mill, Cement Kiln, and Paper & Pulp Mill Industries, EPA ICR Number 1908.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 23, 1999.

ADDRESSES: Air & Radiation Division, Region 5, United States Environmental Protection Agency, AR–18J, 77 W. Jackson Blvd., Chicago, IL 60604–3590

FOR FURTHER INFORMATION CONTACT: Kushal Som, Telephone Number: (312) 353–5792, E-Mail: som.kushal@epa.gov. Jennifer Lau, E-Mail: lau.jennifer@epa.gov.

SUPPLEMENTARY INFORMATION: Affected entities: Entities potentially affected by

this action are state agencies involved with regulating air emissions released during the production of steel, cement, paper, or pulp. Information not obtained from the states will be obtained from the steel, cement, paper, and pulp industries.

Title: Permit Environmental Data from the Electric Arc Furnace/Steel Mini-Mill, Cement Kiln, & Paper and Pulp Mill Industries, EPA ICR No. 1908.01.

Abstract: The RACT/BACT/LAER Clearinghouse (RBLC), found on the Technology Transfer page of the U.S.E.P.A Internet webpage, is administered by the Office of Air Quality & Planning Standards (OAQPS). This database consists of collected air emissions information based on either the Reasonably Available Control Technology (RACT), Best Available Control Technology (BACT), or Lowest Achievable Emission Rate (LAER). It is used by State, Local and Federal agencies to compare pending RACT, BACT and LAER determination limits and/or control technologies with existing facilities across the country.

While each state agency is requested to regularly update the RBLC, the database has a very limited record of air emission data for each industry. The RBLC database has proven to be an inadequate informational resource for state, local, or federal agencies to develop and review major or minor source permits.

Informational permit databases are essential to give permit writers and reviewers the access to necessary information to compare with their pending permit applications. The information collection will be conducted by Region 5 Air and Radiation Division of the U.S. EPA. The information will be requested through telephone calls and can be provided over the telephone or sent to the EPA by e-mail, U.S. Postal Service, or fax. Response to the information collection is voluntary. All the information will be compiled on databases accessible from Region 5's Air and Radiation Division webpage. Also, new information gathered will be submitted for input into the RBLC.

The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: This ICR has an estimated respondent burden of 68.1 hours and $6075 for the entire three years it is valid. The EPA estimates that approximately 410 respondents will partake in this information collection, with an average respondent burden of 0.5 hours and cost of $22. Responses will be one-time and voluntary, and no capital or start-up expenses will be required. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 15, 1999.

Stephen H. Rothblatt,

Chief, Air Programs Branch.

[FR Doc. 99–16095 Filed 6–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6366–1]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: 100 Metronorth Corporate Center LLC—Parcel B—Industri-Plex Superfund Site; Woburn, MA

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of 100 MetroNorth Corporate Center LLC, NDNE MetroNorth LLC, and NDNE Real Estate, Inc. for injunctive relief or for costs incurred or to be incurred by EPA in conducting response actions at the Industri-Plex Superfund Site in Woburn, Massachusetts.

DATES: Comments must be provided on or before July 26, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02114, and should refer to: Agreement and Covenant Not to Sue Re: 100 MetroNorth Corporate Center LLC—Parcel B, Industri-Plex Superfund Site, Woburn, Massachusetts, U.S. EPA Docket No. CERCLA–I–98–1063.

FOR FURTHER INFORMATION CONTACT: Daniel H. Winograd, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1885.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9601 *et seq.*, notice is hereby given of a proposed prospective purchaser agreement concerning the Industri-Plex Superfund Site in Woburn, MA. The settlement was approved by EPA Region I, and the Department of Justice subject to review by the public pursuant to this Notice. 100 MetroNorth Corporate Center LLC, NDNE MetroNorth LLC, and NDNE Real Estate, Inc. have executed signature pages committing them to participate in the settlement. Under the proposed settlement, 100 MetroNorth Corporate Center LLC, NDNE MetroNorth LLC, and NDNE Real Estate, Inc. will construct and operate a office park, which may include hotel, retail, research and development, and restaurant operations, and parking and related improvements, and pay $30,000 to the Hazardous Substances Superfund. In addition, all of the settling parties agree to abide by institutional controls and to provide access to the property. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of CERCLA Section 101 *et seq.* which provides EPA with authority to consider, compromise, and settle a claim under Sections 106 and 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice has also signed this agreement. EPA will receive written comments relating to this settlement for thirty (30) days1 from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Daniel H. Winograd, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1885.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA–I–98–1063).

Dated: June 3, 1999.

John DeVillars,

Regional Administrator.

[FR Doc. 99–16096 Filed 6–23–99; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan African Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan African Advisory Committee was established by P.L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan African.

Time and Place: Wednesday, July 21, 1999, at 9:30 a.m to 12:00 noon. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

AGENDA: This meeting will include a discussion of the development and implementation of policies and programs designed to support the expansion of Ex-Im Bank's Financial commitments in Sub-Saharan Africa. The discussion will focus on market penetration in Sub-Saharan African countries as experienced by various successful U.S. exporters of goods and services to Sub-Saharan Africa.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to July 14, 1999, Teri Stumpf, Room 1203, Vermont Avenue, NW, Washington, DC 20571 Voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3502.

John M. Niehuss,

General Counsel.

[FR Doc. 99–16132 Filed 6–23–99; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011075–046.
Title: Central America Discussion Agreement.
Parties:
A.P. Moller-Maersk Line
APL Co. PTE Ltd.
Concorde Shipping, Inc.
Crowley American Transport, Inc.
Dole Ocean Liner Express
Interocean Lines, Inc.
King Ocean Central America, S.A.
Lykes Lines Limited, LLC
Sea-Land Service, Inc.
Seaboard Marine, Ltd.
South Pacific Shipping Company, Ltd. d/b/a Ecuadorian Line. S.A.
Synopsis: The proposed amendment would authorize the parties to collectively, or any two or more of them to jointly, enter into service contracts and to adopt voluntary guidelines with respect to the terms and procedures relating to their service contracts.

Agreement No. 202–011353–026.
Title: The Credit Agreement.
Parties:
A.P. Moller-Maersk line
APL Co. PTE Ltd.
Carribbean General Maritime, Ltd.
Crowley American Transport, Inc.
Dole Ocean Liner Express
Evergreen Marine Corporation (Taiwan) Ltd.
King Ocean Central America, S.A.
Lykes Lines Limited,
Mediterranean Shipping Company, S.A.
Sea-Land Service, Inc.
Seaboard Marine, Ltd.
Seaboard Marine of Florida, Inc.
Tecmarine Line, Inc.
Tropical Shipping and Construction Co., Ltd.
Venezuela Container Service
Synopsis: The proposed modification would expand the geographic scope of the agreement worldwide, clarify the Puerto Rico and the U.S. Virgin Islands are included only with respect to the foreign commerce of the United

States, and change the name of a party.

Agreement No.: 202–011528–010.
Title: Japan/United States Eastbound Freight Conference.
Parties:
A.P. Moller-Maersk Line
American President Lines, Ltd.
Hapag-Lloyd Contaienr Line GmbH
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yesen Kaisha
Orient Overseas Container Line, Inc.
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Wilhelmsen Lines AS
Synopsis: The proposed modification would suspend the subject agreement for a period of six months, during which time the parties will not exercise authority in the agreement except for certain administrative functions and duties. The conference will not publish a common tariff or enter into joint or common service contracts while the agreement is suspended; however, indivdiual members may file their own tariffs and enter into individual or joint service contracts during that period.

Agreement No.: 202–011579–009.
Title: Inland Shipping Service Association.
Parties:
Crowley American Transport, Inc.
King Ocean
Sea-Land Service, Inc.
Seaboard Marine, Ltd. and Seaboard Marine of Florida, Inc.
Synopsis: The proposed modification would authorize the parties to adopt voluntary guidelines with respect to the terms and procedures of their individual service contracts.

Agreement No.: 203–011654–002.
Title: The Middle East Indian Subcontinent Agreement.
Parties:
A.P. Moller-Maersk Line
Cho Yang Lines (U.S.A.)
Compagnie Maritime D'Affretement
National Shipping Company of Saudi Arabia
P&O Nedlloyd Limited
Sea-Land Service, Inc.
United Arab Shipping Company (S.A.G.)
Synopsis: The proposed Amendment revises Articles 2 and 5 of the Agreement to reflect the voluntary and non-binding nature of agreements reached under the Agreement. It also revises the voting requirements in Article 8 for amendments to the Agreement from three-fourths of the members to all of the members.

Dated: June 18, 1999.

By Order of the Federal Maritime Commission.
Bryant L. VanBrakle,
Secretary.
[FR Doc. 99–16038 Filed 6–23–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Privacy Act of 1974; Proposed Altered Systems of Records

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed altered systems of records.

SUMMARY: This Notice proposes the amendment of various Privacy Act systems of records maintained by the Commission. The amendments are minor and reflect changes due to Commission organizational changes, and changes to storage and retrievability of systems.

DATES: Comments must be submitted on or before July 26, 1999. The alterations will be effective on August 3, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Comments may be submitted to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725, email: secretary@fmc.gov.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725.

SUPPLEMENTARY INFORMATION: Notice is given that, pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, he Commission proposes to amend various systems of records as described herein. The Commission's latest prior publication updating its system of records was on November 28, 1997 (62 FR 63341).

The amendments proposed herein are minor and reflect Commission organizational changes, as well as the electronic maintenance of certain systems. In addition, system FMC–23 is removed as it is no longer relevant or necessary.

1. In the Commission's system of records designated FMC–2 Non-Attorney Practicioner file, the "Storage," "Retrievability," and "Safeguards" provisions are revised to read as follows:

FMC–2

* * * * *

STORAGE:

Physical records are maintained in file folders. Electronic records are maintained in a database on a computer hard drive.

RETRIEVABILITY:

Physical records are indexed alphabetically by name. Electronic records are retrievable by name, address, company, application date, admission date, or card number.

SAFEGUARDS:

Physical records are maintained in file cabinets under the control of personnel in the Secretary's office. Electronic records are password protected.

* * * * *

2. The Commission's system of records designated FMC–7 Licensed Ocean Freight Forwarders File is amended as follows:

a. In the provisions designated "System location" and "System manager(s) and address," the phrase "Bureau of Domestic Regulation" is revised to read "Bureau of Tariffs, Certification and Licensing" wherever it appears.

b. In the provision designated "Record source categories," "Commission District Offices" is revised to read "Commission Area Representatives."

3. In the Commission's system of records FMC–18 Travel Orders/ Vouchers File, the provisions designated "Authority for maintenance of the system" and "Safeguards" are revised to read as follows:

FMC–18

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Travel Regulation, 41 CFR parts 300–304.

* * * * *

SAFEGUARDS:

Records are maintained in a locking file cabinet and monitored by the Director of the Office of Budget and Financial Management.

* * * * *

4. The Commission's system of records FMC–22 Investigative Records Information System is amended as follows:

a. The provision designated "System name" is revised to read as follows:

FMC–22

SYSTEM NAME:

Records Tracking System.

* * * * *

b. In the provisions designated "Categories of records in the system," "Retrievability," "Retention and disposal," "System Manager(s) and address," and "Record source categories," the phrase "Bureau of Investigations" is revised to read "Bureau of Enforcement" wherever it appears.

5. The Commission's system of records FMC–23 Parking Applications is removed.

6. In the Commission's system of records FMC–24 Informal Inquiries and Complaints Files the provisions designated "Categories of records in the system," "Storage," "Retrievability," "Safeguards," and "Retention and disposal," are revised to read as follows:

FMC–24

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of complaints and correspondence developed in their resolution complaint tracking logs; and complaint tracking electronic summary database.

* * * * *

STORAGE:

Physical records are maintained in file folders; the electronic database is maintained on the Commission's local area network.

RETRIEVABILITY:

Physical and electronic records are serially numbered and indexed by complainant and respondents.

SAFEGUARDS:

Physical records are maintained in locked file cabinets; access to electronic records is password protected.

RETENTION AND DISPOSAL:

Records are maintained by the Federal Maritime Commission for four years and then destroyed. The electronic summary database is permanently maintained.

* * * * *

7. In the Commission's system of records FMC–30 Procurement Integrity Certification Files, in the provision designated "System manager(s) and address", "Bureau of Administration" is revised to read "Office of the Managing Director."

By the Commission.
Bryant L. VanBrakle,
Secretary.
[FR Doc. 99–16037 Filed 6–23–99; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health

Availability of Funds for Grants for Technical Assistance and Capacity Development Demonstration Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities

AGENCY: Office of the Secretary, Office of Minority Health, HHS.

ACTION: Notice of Availability of Funds and Requests for Applications for Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities.

Purpose: The purpose of the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities is to stimulate and foster the development of effective and durable service delivery capacity for HIV prevention and treatment among organizations closely interfaced with the minority populations highly impacted by HIV/AIDS. The grantee will identify minority community-based organizations (CBOs) and small, non-federally funded minority CBOs that are well linked with minority populations highly affected by HIV/AIDS, and which have recognized needs and/or gaps in their capacity to provide HIV/AIDS-related prevention and care services. The goals are to:

- Provide administrative and programmatic technical assistance to enable those organizations to enhance their delivery of necessary services; and
- Assist those CBOs, through an ongoing mentoring relationship, in the development of their capacity as fiscally viable and programmatically effective organizations thereby allowing them to successfully compete for federal and other resources.

This program is intended to demonstrate the impact of technical assistance and capacity development on improving HIV prevention and care among organizations within a circumscribed area in which many minority individuals are in need of HIV/AIDS prevention and/or treatment services. To the extent that selected services such as substance abuse treatment and public health are available within the circumscribed area, linkages with these services will be fostered as part of the technical assistance. The program intends to address HIV/AIDS issues within the context of related socio-economic factors and contribute to overall community empowerment by strengthening indigenous leadership and organizations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement relates to 4 of the 22 priority areas established by Healthy People 2000: (1) Alcohol and other drugs; (2) educational and community-based programs; (3) HIV infection; and (4) sexually transmitted diseases. Potential applicants may obtain a copy of the Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 Midcourse Review and 1995 Revisions (Stock No. 017–001–00526–6) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 or telephone (202) 783–8238.

Background: The Office of Minority Health's (OMH) mission is to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help to address the health disparities and gaps. Consistent with its mission, the role of OMH is to serve as the focal point within the Department for service demonstrations, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities. In keeping with this mission, OMH is establishing the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities to assist in addressing the HIV/AIDS issues facing minority communities in 15 eligible metropolitan statistical areas. This program is based on the hypothesis that providing technical assistance and capacity development to organizations closely linked with the minority populations highly impacted by the disease, will improve their capacity to better serve minority populations with HIV/AIDS prevention and treatment. It is anticipated that this approach will strengthen existing minority CBOs and inexperienced organizations in addressing this health issue by developing and expanding their technical skills and infrastructure capacity. Applicants are encouraged to establish linkages with other federally funded programs supporting HIV/AIDS prevention and care to maximize these efforts.

Disproportionate Effect of HIV/AIDS on Minorities

Current statistics indicate that although advances have been made in the treatment of HIV/AIDS, this epidemic continues as a significant threat to the public health of the United States (U.S.). Despite showing a decline in the past two years, it remains a disproportionate threat to minorities. While African-Americans and Hispanics respectively represent approximately 13% and 10% of the U.S. population, approximately 36% of the more than 640,000 reported total AIDS cases are African-American and 18% are Hispanic.

In 1997, more African-Americans were reported with AIDS than any other racial/ethnic group. Of the total AIDS cases reported that year, 45% (27,075) were reported among African-Americans, 33% (20,197) were reported among whites, and 21% (12,466) were reported among Hispanics. Among women and children with AIDS, African-Americans have been especially affected, representing 60% of all women reported with AIDS in 1997 and 62% of reported pediatric AIDS cases in 1997. During 1997, the rate of new AIDS cases per 100,000 population in the U.S. was 83.7 among African-Americans, 37.7 among Hispanics, 10.4 among whites, 10.4 among American Indians/Alaska Natives, and 4.5 among Asians/Pacific Islanders.

Data from a recent Centers for Disease Control and Prevention study (Trends in the HIV and AIDS Epidemic, 1998) comparing HIV and AIDS diagnoses in 25 states with integrated reporting systems provide a clearer picture of recent shifts in the epidemic. The study indicates that many of the new HIV diagnoses are occurring among African-Americans, women, and people infected heterosexually, with an increase also observed among Hispanics. During the period from January 1994 through June 1997, African-Americans represented 45% of all AIDS diagnoses, but 57% of all HIV diagnoses. Among young people (ages 13 to 24) diagnosed with HIV, 63% were among African-Americans and 5% were among Hispanics. Although some of the states with large Hispanic populations did not have integrated HIV/AIDS reporting and could not be included in this study, HIV diagnoses among Hispanics increased 10% between 1995 and 1996.

Eligible Applicants: The following public and private, nonprofit entities are eligible to apply for this grant: (a) a community coalition consisting of at least three discrete organizations with either a minority CBO or state/local health department as the lead organization; (b) a minority CBO; or (c) a state/local health department. (See definitions of Community Coalition and Minority Community-Based Organization found in this announcement.) The applicant must provide the necessary administrative infrastructure to receive and appropriately manage the federal funds. The coalition may also incorporate other partners such as a hospital, a minority health management group, an AIDS Service Organization, or other CBOs with strong links to the target population.

In order to maximize the use of resources and target efforts where the HIV/AIDS epidemic is most severe in racial and ethnic minority populations, eligible applicants must be located in one of the following 15 metropolitan statistical areas. These are the areas indicated by the Centers for Disease Control and Prevention (CDC) in its HIV/AIDS Surveillance Reports for 1996 and 1997 as having the highest number of newly reported AIDS cases in 1995, 1996, and 1997.

- Atlanta, GA
- Baltimore, MD
- Boston, MA
- Chicago, IL
- Dallas, TX
- Ft. Lauderdale, FL
- Houston, TX
- Los Angeles, CA
- Miami, FL
- New York, NY
- Newark, NJ
- Philadelphia, PA
- San Francisco, CA
- San Juan, PR
- Washington, DC

National organizations, universities and institutions of higher education are not eligible to apply, although they may be members of the coalition. Local affiliates of national organizations which meet the definition of a minority community-based organization however, are eligible.

Project Requirements: The applicant must propose to conduct a model program within the eligible metropolitan statistical area which is designed to carry out the following functions:

(1) Identify the existing capacity for delivering HIV-related services (both HIV prevention and treatment) to minority populations and compare this with available HIV/AIDS surveillance data. The use of geographic information systems and related techniques should be given due consideration as one of the tools to address this area;

(2) Identify high risk minority communities where there are recognized gaps in services for minority populations with HIV/AIDS;

(3) Increase the capacity of existing minority CBOs including small, non-federally funded minority CBOs which are well interfaced with the populations to be served to deliver HIV/AIDS prevention and care by:

(a) providing administrative technical assistance to improve the fiscal and organizational capacity appropriate to their programmatic responsibilities, which may require a mentoring relationship over time; and

(b) identifying programmatic technical assistance from the Department of Health and Human Services' Operating Divisions and linking appropriate CBOs with these resources.

(4) Utilizing consultants, as needed, to provide specific technical assistance beyond the expertise of core staff (e.g., peer-peer technical assistance capability); and

(5) Working with newly identified CBOs to develop strong linkages with other providers of services to complete a continuum of prevention and treatment services, including substance abuse treatment and mental health services for minority HIV/AIDS populations.

Availability of Funds: Approximately $4.5 million is expected to be available for award in FY 1999. It is projected that awards of $1.0 to $1.2 million total costs (direct and indirect) for a 12-month period will be made to four competing applicants.

Use of Grant Funds: Budgets between $1.0 and $1.2 million total costs (direct and indirect) per year may be requested to cover costs of: personnel, consultants, supplies, equipment, and grant related travel. Funds may not be used for medical treatment, construction, building alterations, or renovations. All budget requests must be fully justified in terms of the proposed objectives and activities and include a computational explanation of how costs were determined.

Period of Support: The start date for the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities, is September 30, 1999. Support may be requested for a total project period not to exceed 3 years. Noncompeting continuation awards of $1.0 to $1.2 million will be made subject to satisfactory performance and availability of funds.

Deadline: To receive consideration, grant applications must be received by the Office of Minority Health (OMH) Grants Management Office by July 26, 1999. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

Addresses/Contacts: Applications must be prepared using Form PHS 5161–1 (Revised May 1996 and approved by OMB under control Number 0937–0189). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0758. Completed applications are to be submitted to the same address.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed to Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0769.

Technical assistance is also available through the OMH Regional Minority Health Consultants (RMHCs). A listing of the RMHCs and how they may be contacted will be provided in the grant application kit. Additionally, applicants can contact the OMH Resource Center (OMH–RC) at 1–800–444–6472 for health information.

Criteria for Evaluating Applications

Review of Application

Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive to the announcement or nonconforming will be returned without comment. Each applicant may submit no more than one proposal under this announcement. If an organization submits more than one proposal, all will be deemed ineligible and returned without comment. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Panel chosen for their expertise in minority health, experience relevant to this technical assistance and capacity development program, and their understanding and knowledge of the health problems confronting racial and ethnic minorities in the United States. Applicants are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit.

Application Review Criteria

The technical review of applications will consider the following generic factors.

Factor 1: Background (15%)

Adequacy of demonstrated knowledge of the HIV/AIDS epidemic at the local level. Established level of cultural competence and sensitivity to the issues of minority populations impacted by HIV/AIDS in the service area. Expertise and understanding of HIV/AIDS prevention and treatment service delivery systems especially as related to HIV/AIDS care among minority populations. Demonstrated need for technical assistance and capacity development among the proposed target service organizations. History of long term relationship with the targeted minority community and evidence of support of local agencies and/or organizations.

Extent to which the applicant demonstrates access to targeted organizations, is well-positioned and accepted within the communities to be served, and able to interface with community leadership and existing provider systems in the area. Demonstration of objective outcomes of past efforts/activities with the target population.

Factor 2: Objectives (15%)

Relative merit of the objectives of the demonstration project, their relevance to the program purpose and stated problem, and their attainability in the stated time frames.

Factor 3: Methodology (35%)

Appropriateness of proposed approach including any established organizational linkages for providing administrative and programmatic technical assistance related to HIV/AIDS and assisting with the capacity development of identified CBOs. Appropriateness of specific activities for providing administrative and programmatic technical assistance related to HIV/AIDS and capacity development. Logic and sequencing of the planned approaches in relation to the provision of HIV/AIDS technical assistance and capacity development. Appropriateness of defined roles and resources.

Factor 4: Evaluation (20%)

Thoroughness, feasibility and appropriateness of the evaluation design, data collection, and analysis procedures. For example, number of new CBOs identified, number of new CBOs submitting applications for grants and number of grants awarded, number of CBOs requesting technical assistance and the percentage receiving it, and identification of outcome variables for quality of service. Clarity of the intent and plans to document the activities and their outcomes to establish a model. The potential for replication of the project for similar target populations and communities including the assessment of the utility of the different tools used to implement the program.

Factor 5: Management Plan (15%)

Applicant demonstrates an ability to mobilize a strong administrative technical assistance capacity with onsite knowledge of organizational management skills, diversification of fiscal base, and organizational development. Applicant organization's capability to manage and evaluate the project as determined by: the qualifications of proposed staff or requirements for "to be hired" staff; proposed staff level of effort; and management experience of the applicant.

Award Criteria

Funding decisions will be determined by the Acting Deputy Assistant Secretary for Minority Health of the Office of Minority Health and the Director of the Office of HIV/AIDS Policy and will take under consideration: recommendations/ratings of the review panel and geographic and racial/ethnic distribution. Consideration will also be given to projects proposed to be implemented in Empowerment Zones and Enterprise Communities in the 15 eligible metropolitan statistical areas.

Definitions

For purposes of this grant announcement, the following definitions are provided:

Community-Based Organization—Public and private, nonprofit organizations which are representative of communities or significant segments of communities, and which address health and human services.

Community Coalition—At least three (3) discrete organizations and institutions in a community which

collaborate on specific community concerns, and seeks resolution of those concerns through a formalized relationship documented by written memoranda of understanding/agreement signed by individuals with the authority to represent the organizations (e.g., president, chief executive officer, executive director).

Minority Community-Based Organization—Public and private nonprofit community-based minority organization or a local affiliate of a national minority organization that has: a governing board composed of 51 percent or more racial/ethnic minority members, a significant number of minorities employed in key program positions, and an established record of service to a racial/ethnic minority community.

Minority Populations—American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the Office of Minority Health, in accordance with provisions of the general regulations which apply under CFR 74.50–74.52.

Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS Grants

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) a copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Minority Health's Grants Management Officer.

The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See "Intergovernmental Review of Federal Programs" Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements).

Authority: This program is authorized under section 1707(e)(1) of the Public Health Service Act, as amended by Pub. L. 105–392.

OMB Catalog of Federal Domestic Assistance: The OMB Catalog of Federal Domestic Assistance number for this program is pending.

Dated: June 17, 1999.

Nathan Stinson, Jr.,

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 99–16069 Filed 6–23–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99156]

Cooperative Agreement With a National Organization for Promoting Health, Preventing Disease and Disability, and Managing Chronic Disease in the Workplace; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program with a national organization for promoting health, preventing disease and disability, and managing chronic disease in the workplace. This announcement relates to all areas of "Healthy People 2000." The purpose of this program is to promote the attainment of the objectives outlined in "Healthy People 2000" through the translation of public health principles and practices into easily interpretable and actionable information for the workplace.

B. Eligible Applicants

Applications will be accepted from national, nonprofit organizations who provide documented proof of meeting the following criteria in the "Eligibility" section of the application:

1. Be an established tax-exempt organization (i.e., a non-governmental, tax exempt corporation or association whose net earnings in no way accrue to the benefit of private shareholders or individuals). Tax-exempt status may be confirmed by providing a copy of the relevant pages from the Internal Revenue Service's (IRS) most recent list of 501(c)(3)or(6) tax exempt organizations or a copy of the current IRS Determination Letter. Proof of tax exempt status must be provided with the application.

2. Have a membership composed primarily of large private employers with multi-state and/or national operations and sales.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $350,000 is available in FY 1999 for 1–2 awards. It is expected that the average award will be $175,000, ranging from $75,000 to $275,000. It is expected that awards will begin on or about September 30, 1999, for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by the successful completion of required activities and reports, and by the availability of funds.

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities under 2. CDC Activities.

1. Recipient Activities

a. Develop and implement a needs assessment of members in the areas of health promotion, disease and disability prevention, chronic disease management, wellness and health screening programs, health care quality assessment and improvement, health benefits purchasing, and community outreach.

b. Disseminate information to members concerning health and health-related issues through various methods, not necessarily limited to conferences, meetings, seminars, symposia, and publications.

c. Facilitate communication, information sharing, collaboration, and recognition of achievements on health and health-related issues and activities among members.

d. Work with members to promote broad public and population health objectives.

e. Develop a model(s) for partnerships for health in the workplace.

2. CDC Activities

a. Provide technical assistance and monitor the progress of all aspects of this cooperative agreement.

b. Provide up-to-date scientific information.

E. Application Content

Use the information in the Purpose, Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins and 12-point font.

1. Organizational Profile (Maximum 7 Pages)

a. Provide a narrative on the applicant organization, including: Background information, evidence of relevant experience, and a clear understanding of this announcement's purpose. Provide evidence of an organizational structure and mission that can meet the requirements of this program.

b. Provide a membership listing and an estimate of members' combined total workforce.

c. Include details of past experiences working with members on health and health-related issues.

d. Profile qualified personnel who are available to work under this agreement. Include a global organizational chart which also demonstrates the geographic location(s) and organizational positions of all anticipated personnel.

2. Program Plan (Maximum 18 Pages)

a. Provide clear and concise descriptions of proposed recipient activities; demonstrating your understanding of public health principles, the intent of this announcement, and your members' needs. Include some preliminary ideas on members' needs (in the areas of health promotion, disease and disability prevention, chronic disease management, wellness and health screening programs, health care quality assessment and improvement, health benefits purchasing, and community outreach) and how they relate to this announcement.

b. Include goals and measurable objectives that are specific, time-framed and relevant to the intent of this announcement. Detail the potential benefits of the proposed objectives.

c. Provide an action plan, including a timeline of activities and personnel responsible for implementing each segment of the plan.

d. Include an evaluation plan which encompasses both qualitative and quantitative measures for the achievement of program objectives, as well as a mechanism for mid-course correction when those objectives are not being met.

e. Provide a plan for sharing findings/results indicating when, to whom, and in what format.

f. Provide a plan for obtaining additional resources from non-federal sources to supplement program activities and ensure their continuation after the end of the project period.

3. Budget Information

Provide a detailed budget with justification. The budget proposal should be consistent with the purpose, program requirements, and program plan presented.

F. Submission and Deadline

Submit the original and two copies of PHS–5161–1 (OMB Number 0937–0189). Forms are in the application kit.

On or before August 16, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either: (a) Received on or before the deadline date; or (b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Organizational Profile (15 Points)

The extent to which the applicant's existing organizational structure, mission, goals, objectives, activities, functions and membership composition are consistent with the purpose of this Program Announcement.

2. Capability (25 Points)

The extent to which the applicant appears likely to succeed in implementing the proposed activities as measured by relevant past history, a sound management structure and staff qualifications—including the appropriateness of proposed roles, responsibilities and job descriptions.

3. Program Plan (40 Points)

The extent to which the applicant's program plan meets the required activities specified under "Recipient Activities" in this announcement; and are measurable, specific, time-framed and realistic.

4. Evaluation (20 Points)

The extent to which the applicant has developed mechanisms for evaluating and reevaluating progress toward stated goals and objectives which include feedback from its membership. The extent to which the applicant builds in the capacity for mid-course correction(s) based on those evaluations.

5. Budget (Not Scored)

The extent to which the budget is reasonable in the amount(s) requested, justified by the application content, and consistent with the intentions of this announcement.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317(k)(2) of the Public Health Service Act [42 U.S.C. 241 and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To download this and other CDC Program Announcements, you can go the CDC home page *www.cdc.gov* and click on "funding".

If you do not have Internet access to receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement Number of interest. Please refer to Program Announcement 99156 when you request information. Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99156, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341, Telephone (770) 488–2717, Email address jcw6@cdc.gov.

For program technical assistance, contact:

Kenneth A. Schachter, M.D., M.B.A., Medical Director, Epidemiology Program Office, Office of HealthCare Partnerships, Centers for Disease Control and Prevention (CDC), Telephone 404/639–4449, Email address kbs3@cdc.gov

and

Priscilla B. Holman, M.S. Ed., Health Communication Corporate Liaison, Office of Program Planning and Evaluation, Centers for Disease Control and Prevention (CDC), Telephone: 404/639–1929, E-mail: pbh2@cdc.gov

Dated: June 18, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–16065 Filed 6–23–99; 8:45 am]

BILLING CODE 1463–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1718]

Draft Guidance for Industry on Monoclonal Antibodies Used as Reagents in Drug Manufacturing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Monoclonal Antibodies Used as Reagents in Drug Manufacturing." This draft guidance provides recommendations to sponsors and applicants on the information that should be included in investigational new drug applications (IND's), new drug applications (NDA's), abbreviated new drug applications (ANDA's), biologics license applications (BLA's), and supplements to these applications when monoclonal antibodies are used as reagents in the manufacture of drug substances and drug products that are regulated by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER).

DATES: Written comments on the draft guidance document may be submitted by September 22, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or "http://www.fda.gov/cber/guidelines.htm". Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Eugenia M. Nashed, Office of New Drug Chemistry (HFD–570), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050, or

Kurt A. Brorson, Office of Therapeutics Research and Review (HFM–561), Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, MD 20892–0029, 301–827–0661.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Monoclonal Antibodies Used as Reagents in Drug Manufacturing." This draft guidance focuses on chemistry, manufacturing, and control issues relating to the use of monoclonal antibodies as reagents in drug substance and drug product manufacture that should be addressed in IND's, NDA's, ANDA's, BLA's, and supplements to these applications.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on monoclonal antibodies used as reagents. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 16, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–16139 Filed 6–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1738]

Draft Guidance for Industry on Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action." This draft guidance provides recommendations to applicants intending to provide studies to document bioavailability (BA) or bioequivalence (BE) in support of new drug applications (NDA's), or abbreviated new drug applications (ANDA's) for locally acting nasal aerosols (metered-dose inhalers) and nasal sprays (metered-dose spray pumps).

DATES: Written comments on the draft guidance document may be submitted by September 22, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one-self addressed adhesive label to assist the office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Wallace P. Adams, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5651.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action." This draft guidance provides recommendations to applicants intending to provide studies to document BA or BE in support of NDA's or ANDA's for locally acting nasal aerosols and nasal sprays. This guidance covers prescription corticosteroids, antihistamines, anticholinergic drug products, and the over-the-counter (OTC) mast-cell stabilizer cromolyn sodium. This guidance does not cover studies of nasal sprays included in applicable OTC monographs or studies of: (1) Metered-dose products intended to deliver drug systemically via the nasal route, or (2) drugs in nasal nonmetered dose atomizer (squeeze) bottles that require premarket approval.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on BA and BE product quality information related to nasal inhalation aerosols and nasal metered-dose spray pumps. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Alternative approaches to documentation of BA and BE may be used if such approaches satisfy the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before September 22, 1999, submit to the Dockets Management Branch (address above) written comments with evidence to support or refute approaches on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 16, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–16140 Filed 6–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Draft OIG Compliance Program Guidance for Certain Medicare+Choice Organizations

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice and comment period.

SUMMARY: This **Federal Register** notice seeks the comments of interested parties on draft compliance program guidance developed by the Office of Inspector General for Medicare+Choice Organizations that offer Coordinated Care Plans (M+CO/CCPs). Through this notice, the OIG is setting forth its general views on the value and fundamental principles of M+CO/CCP compliance programs, and the specific elements that each M+CO/CCP should consider when developing and implementing an effective compliance program.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on July 26, 1999.

ADDRESSES: Please mail or deliver written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–4N–CPG, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–4N–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 2 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Susan Lemanski or Barbara Frederickson, (202) 619–2078, Office of Counsel to the Inspector General.

SUPPLEMENTARY INFORMATION:

Background

The creation of compliance program guidance has become a major initiative of the OIG in its efforts to engage the private health care community in addressing and fighting fraud and abuse. In the last several years, the OIG has developed and issued the following compliance program guidance directed at various segments of the health care industry:

- Clinical Laboratories (62 FR 9435; March 3, 1997, as amended in 63 FR 45076; August 24, 1998),
- Hospitals (63 FR 8987; February 23, 1998),
- Home Health Agencies (63 FR 42410; August 7, 1998), and
- Third-Party Medical Billing Companies (63 FR 70138; December 18, 1998).

In addition, the OIG published a draft compliance guidance for Durable Medical Equipment, Prosthetics, Orthotics and Supply Industry (64 FR 4435; January 28, 1999). The guidance can also be found on the OIG web site at http://www.dhhs.gov/progorg/oig.

On September 22, 1998, the OIG published a solicitation notice seeking information and recommendations for developing formal guidance for M+CO/CCPs (63 FR 50577). In response to that solicitation notice, the OIG received 5 comments from various parts of the industry and their representatives. In developing this notice for formal public comment, we have considered those comments, as well as previous OIG publications, such as other compliance program guidances, Special Fraud Alerts, reports issued by the OIG's Office of Audit Services and Office of Evaluation and Inspections. We also took into account past and recent fraud investigations conducted by the OIG's Office of Investigations and the Department of Justice, and have consulted directly with HCFA.

Elements Addressed in the Draft M+CO/CCP Guidance

This draft of M+CO/CCP guidance contains the following 7 elements that the OIG has determined are fundamental to an effective compliance program:

- Implementing written policies, procedures and standards of conduct;
- Designating a compliance officer and compliance committee;
- Conducting effective training and education;
- Developing effective lines of communication;
- Conducting internal monitoring and auditing;
- Enforcing standards through well-publicized disciplinary guidelines; and
- Responding promptly to detected offenses and developing corrective action.

These elements are contained in the other guidances issued by the OIG, indicated above. As with the other guidances, this draft compliance program guidance represents the OIG's suggestions on how M+CO/CCPs can best establish internal controls and monitoring to correct and prevent fraudulent activities. The contents of this guidance should not be viewed as mandatory or as an exclusive discussion of the advisable elements of a compliance program. While elements put forth in this draft compliance guidance are similar to elements HCFA has included in its conditions to contract as an M+C organization, the guidance is intended to present voluntary guidance to the industry, and not represent binding standards for M+CO/CCPs.

Public Input and Comment in Developing Final Guidance

In an effort to ensure that all parties have an opportunity to provide input into the OIG's guidance, we are publishing this guidance in draft form. We welcome any comments from interested parties regarding this guidance.

We will consider all comments that are received within the above-cited time frame, incorporate any recommendations as appropriate, and will prepare and publish a final version of the M+CO/CCP guidance.

Draft Compliance Program Guidance for M+CO/CCPs (June 1999)

I. Introduction

In its ongoing effort to work collaboratively with the health care industry to achieve the mutual goals of quality health care and the elimination of fraud, waste and abuse, the Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) has encouraged voluntarily developed and implemented compliance programs for the health care industry. As a demonstration of the OIG's commitment to compliance, the OIG has issued recommendations, in the form of compliance program guidances, that provide suggestions regarding how specific segments of the industry can best implement compliance programs.[1]

As a result of the changing nature of the health care delivery system and the growing trend toward reliance on the managed care industry in the provision of such health care delivery, the OIG believes it is appropriate to issue a guidance focusing on Medicare+Choice organizations[2] offering coordinated care plans[3] (Medicare+Choice organizations). The OIG believes that the implementation of compliance plans in the managed care industry can provide a mechanism for further improving the quality, productivity and efficiency of the health care industry as a whole. This guidance is intended to assist Medicare+Choice organizations and their agents and subcontractors in developing effective internal controls that promote adherence to applicable Federal and State law and the program requirements of Federal health plans.

While the regulations implementing the Medicare+Choice program, or Part C, require a Medicare+Choice organization to establish a compliance plan,[4] the OIG's program guidance is voluntary and simply is intended to provide assistance for Medicare+Choice organizations looking for additional direction in the development and implementation of a compliance program. As such, this guidance addresses the OIG's view on comprehensive compliance programs pertaining to Medicare+Choice organizations.

The OIG formulated this guidance specifically for Medicare+Choice organizations because these organizations are well-defined and somewhat limited in the statutory and regulatory jurisdiction of the States, as evidenced by the pre-emption

[1] *See* 64 FR 4435 (1/28/99) for the draft compliance program guidance for the durable medical equipment, prosthetics, orthotics and suppliers industry; 63 FR. 70138 (12/18/98) for compliance program guidance for third-party medical billing companies; 63 FR 45076 (8/24/98) for compliance program guidance for clinical laboratories; 63 FR 42410 (8/7/98) for compliance program guidance for home health agencies; and 63 FR 8987 (2/23/98) for compliance program guidance for hospitals. These documents are also located on the Internet at http://www.dhhs.gov/progorg/oig.

[2] A Medicare+Choice organization is defined as a public or private entity organized and licensed by a State as a risk-bearing entity (with the exception of provider-sponsored organizations receiving waivers) that is certified by the Health Care Financing Administration (HCFA) as meeting the Medicare+Choice contract requirements. *See* 42 CFR 422.2.

[3] For the purposes of this compliance program guidance, a "coordinated care plan" is a plan that includes a network of providers that are under contract or arrangement with the organization to deliver the benefit package approved by HCFA. *See* 42 U.S.C. 1395w–28(a)(1); 42 CFR 422.4.

[4] The regulations require that any plan contracting with HCFA implement a compliance plan that encompasses the elements detailed in the Federal Sentencing Guidelines. *See* 42 CFR 422.501(b)(vi). HCFA will release an operational policy letter addressing the compliance requirements detailed in the regulation. In response to concerns from industry representatives on the short time frame for implementing a compliance plan, HCFA delayed the actual implementation date of the compliance plan until January 1, 2000.

provisions.[5] In this guidance, we have focused our attention on Federal health care regulations governing marketing, enrollment, disenrollment, underutilization, data collection, anti-kickback statute and anti-dumping, rather than providing instruction on all aspects of regulatory compliance. The OIG encourages managed care organizations to read the guidance with the whole organization in mind, applying the guidance to whatever departments or divisions, including private-sector managed care areas, that are deemed appropriate. Indeed, many of the suggestions in this guidance can be used by managed care organizations that do not contract with HCFA. In particular, entities that participate in other public health care programs, such as Medicaid, may want to look to the general principles in this document to assist them in developing compliance programs.

Within this document, the OIG first provides its general views on the value and fundamental principles of Medicare+Choice organizations' compliance programs, and then provides specific elements that each Medicare+Choice organization should consider when developing and implementing an effective compliance program.

Fundamentally, compliance efforts are designed to establish a culture within an organization that promotes prevention, detection and resolution of instances of conduct that do not conform to Federal and State law and Federal health care program requirements, as well as the Medicare+Choice organization's ethical and business policies. In practice, the compliance program should effectively articulate and demonstrate the organization's commitment to legal and ethical conduct. Eventually, a compliance program should become part of the fabric of a Medicare+Choice organization's routine operations.

It is incumbent upon a Medicare+Choice organization's officers and managers to provide ethical leadership to the organization and to assure adequate systems and resources are in place to facilitate and promote ethical and legal conduct. Employees, managers and the Government will focus on the words and actions (including decisions made on resources devoted to compliance) of a Medicare+Choice organization's leadership as a measure of the organization's commitment to compliance. Indeed, many organizations have adopted mission statements articulating their commitment to high ethical standards.

Implementing an effective compliance program requires a substantial commitment of time, energy and resources by senior management and the Medicare+Choice organization's governing body. Superficial programs that simply purport to comply with the elements discussed and described in this guidance, or programs hastily constructed and implemented without appropriate ongoing monitoring, will likely be ineffective and could expose the Medicare+Choice organization to greater liability than no program at all. Although an effective compliance program may require significant additional resources or a reallocation of existing resources, the long term benefits of implementing such a program significantly outweigh the costs. Undertaking a compliance program is a beneficial investment that advances the Medicare+Choice organization, the health of Medicare+Choice enrollees and the stability and solvency of the Medicare program.

A. Benefits of a Compliance Program

The OIG believes an effective compliance program provides a mechanism that brings the public and private sectors together to reach mutual goals of reducing fraud and abuse, improving operational quality, improving the quality of health care and reducing the costs of health care. Attaining these goals provides positive results to business, Government, individual citizens and Medicare beneficiaries alike. In addition to fulfilling its legal duty to ensure that it is not submitting false or inaccurate information to the Government or providing substandard care to Medicare beneficiaries, a Medicare+Choice organization may gain numerous additional benefits by implementing an effective compliance program. These benefits may include:

- The formulation of effective internal controls to assure compliance with Federal regulations and internal guidelines;
- Improved collaboration, communication and cooperation between health care providers and the Medicare+Choice organization, as well as within the Medicare+Choice organization itself;
- Improved communication with and satisfaction of Medicare+Choice enrollees;
- The ability to more quickly and accurately react to employees' operational compliance concerns and the capability to effectively target resources to address those concerns;
- A concrete demonstration to employees and the community at large of the Medicare+Choice organization's strong commitment to honest and responsible corporate conduct;
- The ability to obtain an accurate assessment of employee and contractor behavior relating to fraud and abuse;
- Improved (clinical and non-clinical) quality of care and service;
- Improved assessment tools that could affect many or all of the Medicare+Choice organization's divisions or departments;
- Increased likelihood of identification and prevention of unlawful and unethical conduct;
- A centralized source for distributing information on health care statutes, regulations and other program directives related to fraud and abuse;
- An environment that encourages employees to report potential problems;
- Procedures that allow the prompt, thorough investigation of possible misconduct by corporate officers, managers, employees and independent contractors;
- An improved relationship with the Center for Health Plans and Providers (CHPP) at HCFA;
- Early detection and reporting, minimizing the loss to the Government from false claims, and thereby reducing the Medicare+Choice organization's exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusion;[6] and
- An enhancement of the structure of the Medicare+Choice organization's separate business units.

Overall, the OIG believes that an effective compliance program is a sound

[5] *See* 42 U.S.C. 1395w–26(b)(3); 42 CFR 422.402. The Federal preemption provisions in the Medicare+Choice regulations cover: (1) any State statutes, regulations, contract requirements, or any other standards that would otherwise apply to Medicare+Choice organizations only to the extent that such State laws are inconsistent with the standards under 42 CFR part 422; and (2) State laws that are specifically preempted in 42 CFR 422.402(b).

[6] The OIG, for example, will consider the existence of an effective compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative sanctions. However, the burden is on the Medicare+Choice organization to demonstrate the operational effectiveness of a compliance program. Further, the False Claims Act, 31 U.S.C. 3729–3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government within thirty days of detection, in certain circumstances will be subject to not less than double, as opposed to treble, damages. *See* 31 U.S.C. 3729(a). In addition, an organization will receive sentencing credit for an "effective" compliance program under the Federal Sentencing Guidelines. *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8C2.5. Thus, the ability to react quickly when violations of the law are discovered may materially reduce the Medicare+Choice organization's liability.

business investment that has the potential of enhancing the efficiency and effectiveness of the Medicare+Choice organization. It may also improve the Medicare+Choice organization's financial structure by addressing not only fraud and abuse concerns, but efficiency and productivity concerns in other operational areas.

The OIG recognizes the implementation of an effective compliance program may not entirely eliminate fraud, abuse and waste from an organization. However, a sincere effort by a Medicare+Choice organization to comply with applicable Federal and State standards, through the establishment of an effective compliance program, significantly reduces the probability of unlawful or improper conduct.

B. Application of Compliance Program Guidance

Before explaining the specific elements of a compliance program, it is important to emphasize several aspects of this document: its voluntary nature, its applicability to Medicare+Choice organizations that offer coordinated care plans, the collaborative nature by which it was developed, and its evolving nature.

First, it should be re-emphasized that while the regulations implementing the Medicare+Choice program, or Part C, require a Medicare+Choice organization to establish a compliance plan, including specified elements,[7] this program guidance is voluntary. Although this document presents basic procedural and structural guidance for designing a compliance program, it is not in itself a compliance program. Rather, it is a set of guidelines for consideration by a Medicare+Choice organization interested in obtaining specific information on implementing a compliance program. This guidance represents the OIG's suggestions on how a Medicare+Choice organization can establish internal controls and monitor company conduct to correct and prevent fraudulent activities.

It is critical for the Medicare+Choice organization to assess its own organization and determine its needs with regard to compliance with applicable Federal and State statutes and Federal health care program requirements. By no means should the contents of this guidance be viewed as an exclusive discussion of the advisable components of a compliance program. On the contrary, the OIG strongly encourages Medicare+Choice organizations to develop and implement compliance components that uniquely address the individual organization's risk areas.

Implementing a compliance program in the managed care industry is a complicated venture. There are significant variances and complexities among Medicare+Choice organizations in terms of the type of services and the manner in which these services are provided to the respective members. For example, some Medicare+Choice organizations cover broad service areas, while others are focused on a particular geographic region. Similarly, the range of benefits covered differ among plans. Clearly, these differences may give rise to different substantive policies to ensure effective compliance. Furthermore, some Medicare+Choice organizations are relatively small (such as provider-sponsored organizations (PSOs)), while others are fully integrated and offer Medicare+Choice plans[8] in a wide variety of areas. Finally, the availability of resources for any one Medicare+Choice organization can differ vastly.

Notwithstanding these differences, this guidance is pertinent for all Medicare+Choice organizations, large or small, regardless of the type of services provided. The applicability of the recommendations and guidelines provided in this document may depend on the circumstances and resources of each particular Medicare+Choice organization. However, regardless of the organization's size and structure, the OIG believes every Medicare+Choice organization can and should strive to accomplish the objectives and major principles underlying all of the compliance policies and procedures recommended within this guidance.

The OIG recognizes that the success of the compliance program guidance hinges on thoughtful and practical comments from those individuals and organizations that will utilize the tools set forth in this document. In a continuing effort to collaborate closely with the private sector, the OIG solicited input and support from the public in the development of this compliance program guidance.[9] Further, we took into consideration previous OIG publications, such as Special Fraud Alerts, the recent findings and recommendations in reports issued by OIG's Office of Audit Services (OAS) and Office of Evaluation and Inspections (OEI),[10] comments from HCFA, as well as the experience of past and recent fraud investigations related to managed care organizations[11] conducted by OIG's Office of Investigations (OI) and the Department of Justice.

As appropriate, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the law, and in the rules, policies and procedures of the Federal and State plans occur. The OIG understands Medicare+Choice organizations will need adequate time to react to these modifications and expansions and to make any necessary changes to their voluntary compliance programs. New compliance practices may eventually be incorporated into this guidance if the OIG discovers significant enhancements to better ensure an effective compliance program. We recognize the development and implementation of compliance programs in Medicare+Choice organizations often raise sensitive and complex legal and managerial issues.[12] However, the OIG wishes to offer what it believes is critical guidance for those who are sincerely attempting to comply with the relevant health care statutes and regulations.

II. Compliance Program Elements

The elements proposed by these guidelines are similar to those of the other OIG Compliance Program Guidances[13] and our corporate integrity agreements.[14] As noted above, the elements represent a guide that can be tailored to fit the needs and financial realities of a particular Medicare+Choice organization, large or small, regardless of the type of services offered.

Every effective compliance program must begin with a formal commitment[15] by the Medicare+Choice organization's governing body to include *all* of the applicable elements listed below. A good faith and meaningful commitment on the part of the Medicare+Choice organization's administration, especially the governing body and the chief executive officer (CEO), will substantially contribute to the program's successful implementation. These elements are based on the seven steps of the Federal Sentencing Guidelines.[16] We believe every Medicare+Choice organization can implement all of the recommended elements and expand upon them, as appropriate.

At a minimum, comprehensive compliance programs should include the following seven elements:

(1) The development and distribution of written standards of conduct, as well as written policies and procedures, that promote the Medicare+Choice organization's commitment to compliance and that address specific areas of potential fraud (*e.g.*, the marketing process, and underutilization);

(2) The designation of a chief compliance officer and other appropriate bodies, *e.g.*, a corporate compliance committee, charged with the responsibility of operating and monitoring the compliance program and who report directly to the CEO and the governing body;

(3) The development and implementation of regular, effective education and training programs for all affected employees;

(4) The development of effective lines of communication between the compliance officer and all employees, including a process, such as a hotline, to receive complaints (and the adoption of procedures to protect the anonymity of complainants and to protect callers from retaliation);

(5) The use of audits or other risk evaluation techniques to monitor compliance and assist in the reduction of identified problem areas;

(6) The development of disciplinary mechanisms to consistently enforce standards and the development of policies addressing dealings with sanctioned and other specified individuals; and

(7) The development of policies to respond to detected offenses and to initiate corrective action to prevent similar offenses.

A. Written Policies and Procedures

Every compliance program should require the development and distribution of written compliance policies, standards and practices that identify specific areas of risk and vulnerability to the Medicare+Choice organization. These policies should be developed under the direction and supervision of the chief compliance officer and the compliance committee and, at a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the Medicare+Choice organization's agents and independent contractors.[17]

Medicare+Choice organizations maintain ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of their contract with HCFA.[18] It is with this in mind that the OIG strongly recommends that the Medicare+Choice organization coordinate with its first tier and downstream providers to establish compliance responsibilities,[19] in addition to the contractual responsibilities required by HCFA.[20] For example, OIG recommends that the Medicare+Choice organization coordinate with its contracting providers regarding the steps that should be taken by the providers to verify and confirm to the Medicare+Choice organization the accuracy of information and data submitted to the Medicare+Choice organization concerning patient encounters and fee-for-service claims. Once the responsibilities have been clearly delineated, they should be formalized in legally enforceable written arrangement between the health care provider and the Medicare+Choice organization. The OIG recommends this document enumerate those functions that are shared responsibilities and those that are the sole responsibility of the Medicare+Choice organization.

1. Standards of Conduct

Medicare+Choice organizations should develop standards of conduct for all affected employees that include a clearly delineated commitment to compliance by the organization's senior management and its divisions. To help communicate a strong and explicit organizational commitment to compliance goals and standards, the Medicare+Choice organization's governing body, CEO, chief operating officer (COO), general counsel, chief financial officer (CFO) and other senior officials should be directly involved in the development of standards of conduct.

The standards should function in the same fashion as a constitution, *i.e.*, as a foundational document that details the fundamental principles, values and framework for action within an organization, as well as the organization's mission and goals. The standards should also articulate the Medicare+Choice organization's commitment to comply with all Federal and State standards, with an emphasis on preventing fraud and abuse. The standards should not only address compliance with statutes and regulations, but should also set forth broad principles that guide employees in conducting business professionally and properly. In short, the standards should promote integrity, support objectivity and foster trust. Furthermore, a Medicare+Choice organization's standards of conduct should reflect a commitment to the highest quality health care delivery, as evidenced by its quality, reliability and timeliness.

2. Written Policies for Risk Areas

As part of its commitment to compliance, Medicare+Choice organizations should establish a comprehensive set of written policies that address all applicable statutes, rules and program instructions that apply to each function or department of the Medicare+Choice organization.[21] The

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[7] *See* note 4.

[8] A "Medicare+Choice plan," as defined in this guidance, refers to health benefits coverage offered under a policy or contract by a Medicare+Choice organization that includes a specific set of health benefits offered at a uniform premium and uniform level of cost sharing to all Medicare beneficiaries residing in the service area of the Medicare+Choice plan. *See* 42 CFR 422.2.

[9] *See* Solicitation of Information and Recommendations for Developing the OIG Compliance Program Guidance for Certain Medicare+Choice Organizations. 63 FR 50577 (9/22/98).

[10] Special Fraud Alerts are available on the OIG website at http://www.dhhs.gov/progorg/oig. The recent findings and recommendations of OAS and OEI can be located on the Internet at http://www.hhs.gov/progorg/oas/cats/hcfa.html and http://www.hhs.gov/progorg/oei, respectively.

[11] These investigations include findings based upon Medicare risk-based Health Maintenance Organizations as defined in 42 U.S.C. 1395mm.

[12] Nothing stated herein should be substituted for, or used in lieu of, competent legal advice from counsel.

[13] *See* note 1.

[14] Corporate integrity agreements are executed as part of a civil settlement agreement between the health care provider and the Government to resolve a case based on allegations of health care fraud or abuse. These OIG-imposed programs are in effect for a period of three to five years and require many of the elements included in this compliance guidance.

[15] Formal commitment may include a resolution by the board of directors, where applicable. A formal commitment does include the allocation of adequate resources to ensure that each of the elements is addressed.

[16] *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, comment. (n.3(k)). The Federal Sentencing Guidelines are detailed policies and practices for the Federal criminal justice system that prescribe appropriate sanctions for offenders convicted of Federal crimes.

[17] According to the Federal Sentencing Guidelines, an organization must have established compliance standards to be followed by its employees and other agents in order to receive sentencing credit. The Guidelines define "agent" as "any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization." *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(d).

[18] *See* 42 CFR 422.502(i).

[19] At a minimum, the Medicare+Choice organization should send a copy of its compliance program manual to all of its health care providers. The Medicare+Choice organization should also coordinate with its health care providers in the development of a training program, an audit plan and policies for investigating misconduct.

[20] *See* 42 CFR 422.502(i)(3)–(4).

[21] This includes, but is not limited to, the Medicare+Choice provisions and the fraud and abuse provisions of the Balanced Budget Act of 1997, Pub.L. 105–33; the civil False Claims Act, 31 U.S.C. 3729–3733; the criminal false claims statutes, 18 U.S.C. 287, 1001; the fraud and abuse provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub.L. 104–191; and the civil monetary penalties in the Social

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policies should address specific areas of concern, such as marketing practices and data collection and submission processes. In contrast to the standards of conduct, which are designed to be a clear and concise collection of fundamental standards, the written policies should articulate specific procedures personnel should follow when performing their duties.

In order to determine what policies and procedures are needed, the OIG recommends that Medicare+Choice organizations conduct a comprehensive self-administered risk analysis or contract for an independent risk analysis by experienced health care consulting professionals. This risk analysis should identify and rank the various compliance and business risks the company may experience in its daily operations. A Medicare+Choice organization's prior history of noncompliance with applicable statutes, regulations and Federal health care program requirements may indicate additional types of risk areas where the organization may be vulnerable and may require necessary policy measures to prevent avoidable recurrence.[22]

The fact that Medicare+Choice organizations may be both providers and insurers of health care increases the number and type of risk areas to which a Medicare+Choice organization must be attuned, as well as the type of auditing and monitoring procedures that must be implemented, in the development of its compliance efforts. For example, an individual Medicare+Choice organization may contract with a variety of providers with different specialities and, consequently, must consider a variety of different risk areas.

The regulations and operational policies issued by HCFA that implement the Medicare+Choice program are very comprehensive and should serve as the basis for the policies and procedures of a Medicare+Choice organization.[23] The legal and policy requirements that organizations must meet to qualify as a Medicare+Choice organization are articulated in documentation promulgated by HCFA and other Federal agencies and should be considered de facto risk areas. Included among these risk areas are: (1) The election process; (2) benefits and beneficiary protections; (3) quality assurance; (4) premiums and cost sharing; (5) solvency, licensure and other State regulatory issues; (6) claims processing; and (7) appeals and grievance procedures. Given the detailed nature of the rules and regulations, we have not attempted in this document to identify each and every policy that should be established by a Medicare+Choice organization. Rather, based on a review OIG audits, investigations and evaluations, we have identified the following areas of particular concern to OIG that the Medicare+Choice organization should consider in developing its written policies and procedures:[24]

- Marketing materials and personnel;
- Selective marketing and enrollment;
- Disenrollment;
- Underutilization and quality of care;
- Data collection and submission processes;
- Anti-kickback statute and other inducements; and
- Anti-dumping statute.

As note above, the list is not all-encompassing and the Medicare+Choice organization should conduct additional surveys and statistical analysis specifically tailored to the organization's beneficiary population and organizational structure.[25]

The following sections provide specific guidance regarding the types of policies that should be implemented by Medicare+Choice organizations.

a. Marketing Materials and Personnel

While each Medicare+Choice organization must comply with all of HCFA's detailed requirements relating to marketing their plans,[26] OIG is particularly concerned that organizations have policies regarding: (1) the completeness and accuracy of the marketing materials; and (2) marketing personnel.

Accurate and useful information is crucial to the success of the Medicare+Choice program. OIG is very concerned that Medicare+Choice organizations correctly and completely describe plan information in any marketing materials or other materials distributed to individuals once enrolled in the plan. Medicare+Choice organizations that misrepresent or falsify infor nation submitted to HCFA, individuals or entities are subject to civil monetary penalties (CMPs).[27]

The submission of inaccurate or misleading information is of particular concern in light of the recent study conducted by the General Accounting Office (GAO) that examined 16 managed care organizations and found that all organizations had distributed materials containing inaccurate or incomplete benefit information.[28] It should be noted that HCFA had reviewed and approved the materials from all the organizations in the GAO study. Given this finding, Medicare+Choice organizations should take special care to ensure that all marketing materials are accurate, notwithstanding whether the materials have been approved by HCFA.[29]

HCFA considers marketing materials to include any material used by a Medicare+Choice organization to contact a Medicare beneficiary. As such, marketing materials go beyond the public's general conception of marketing materials and include general circulation brochures, leaflets, newspapers, magazines, television, radio, billboards, yellow pages, the Internet, slides and charts, and leaflets for distribution by providers. Such materials also include membership communication materials such as membership rules, subscriber agreements, or confirmation of enrollment.[30] Accordingly,

Security Act, 42 U.S.C. 1320a–7a and 42 U.S.C. 395w–27(g). *See also* 42 CFR 422.1–422.312.

[22] "Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct" and is a significant factor in the assessment of whether a compliance program is effective. *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(7)(ii).

[23] Medicare+Choice organizations should regularly access the HCFA managed care website for updates on operational policies and procedures. Operational Policy Letters can be located on HCFA's website at http://www.hcfa.gov/medicare/mgd-ops.htm.

[24] Medicare+Choice organizations may also want to consult the OIG's Work Plan when conducting the risk assessment. The OIG Work Plan details the various projects the OIG currently intends to address in the fiscal year. It should be noted that the priorities in the Work Plan are subject to modification and revision as the year progresses and the Work Plan does not represent a complete or final list of areas of concern to the OIG. The Work Plan is currently available on the Internet at http://www.dhhs.gov/progorg/oig.

[25] Although many of these areas apply specifically to Medicare+Choice organizations, many of the areas identified below have analogous issues in non-Medicare organizations. Medicare+Choice organizations that provide private managed care products should establish additional policies and procedures for risk areas that apply specifically to those areas. Some overlap with Medicare+Choice policies will likely occur, however Medicare+Choice organizations should segregate any policies and procedures for which HCFA has instituted specific reporting requirements for the Medicare population.

[26] Medicare+Choice organizations should ensure that they conform to fair marketing standards as set forth in the statute, the Medicare Managed Care National Marketing Guide (Marketing Guide)(which can be located on the HCFA Managed Care website at http://www.hcfa.gov/medicare/mgd-ops.htm) and all HCFA Operational Policy Letters affecting marketing matters.

[27] 42 U.S.C. 1395w–27(g).

[28] "Medicare+Choice: New Standards Could Improve Accuracy and Usefulness of Plan Literature." (GAO/HEHS–99–92)(April 1999).

[29] Medicare+Choice organizations may not distribute marketing materials or election forms unless they are approved by HCFA. 42 CFR 422.80.

[30] 42 CFR 422.80(b).

Medicare+Choice organizations should carefully scrutinize all of these materials for completeness, accuracy and compliance with HCFA rules.

In verifying that marketing materials meet all HCFA requirements, Medicare+Choice organizations should ensure that the materials contain an adequate written description of rules, procedures, basic benefits and services, and an explanation of the grievance and appeals process.[31] Of particular concern to HCFA and OIG is that the concept of "lock-in" is clearly explained in all marketing material. Many Medicare beneficiaries are unfamiliar with the notion that managed care may limit their health care provider choices. Describing the process of selecting a primary care physician and the limitations that this places on a Medicare+Choice enrollee's choice of provider will significantly reduce the unmet expectations of Medicare beneficiaries.

Another important concept to include in the marketing materials is the fact that the beneficiary may be terminated from enrollment in the plan due to the decision of the Medicare+Choice organization not to renew its contract with HCFA, or due to HCFA's decision to refuse to renew the contract.[32] This termination can affect the enrollee's[33] eligibility for supplemental insurance and other benefits.

Second, in light of the critical role that marketing personnel play in representing the plan to Medicare enrollees, the Medicare+Choice organization must take all appropriate steps to ensure that marketing personnel are presenting clear, complete and accurate information to potential enrollees. To that end, OIG strongly encourages Medicare+Choice organizations to employ their own marketing personnel, as opposed to contracting these responsibilities to outside entities.[34] This provides the Medicare+Choice organization the necessary control to ensure that these individuals meet all HCFA guidelines. Similarly, it safeguards Medicare beneficiaries from practices that could seriously endanger their access to health care to which they are entitled, and their ability to acquire accurate and complete information regarding their health care options.

Medicare+Choice organizations should also be aware that OIG and HCFA strongly discourage the use of physicians as marketing agents for several reasons: (1) physicians are usually not fully aware of membership plan benefits and costs; (2) physicians may not be the best source of membership information about their patients; (3) when a physician acts outside his or her traditional role as care provider, the physician's patients may be confused as to when the physician is acting as an agent of the plan, and when the physician is acting to further the interests of the patient; and (4) a physician's knowledge of a patient's health status increases the potential for discriminating in favor of Medicare beneficiaries with positive health status when acting as a marketing agent.[35] Therefore, the organization should develop procedures to prevent the use of physicians in this way.

b. Selective Marketing and Enrollment

OIG is very concerned about the practice known as "cherry-picking," or selective marketing,[36] in which Medicare+Choice organizations discriminate in the marketing and enrollment process based upon an enrollee's degree of risk for costly or prolonged treatment.[37] Except for individuals who have been medically determined to have end-stage renal disease, a Medicare+Choice organization may not deny, limit or condition the coverage or furnishing of benefits to individuals eligible to enroll in a Medicare+Choice plan offered by the organization on the basis of any factor that is related to health status, including, but not limited to, the following: (1) Medical condition (including mental illness); (2) claims experience; (3) receipt of health care; (4) medical history; (5) genetic information; (6) evidence of insurability; and (7) disability.[38] Engaging in practices that would reasonably be expected to have the effect of denying or discouraging enrollment by eligible individuals whose medical condition or history indicates the need for substantial future medical services subjects the Medicare+Choice organization to a CMP.[39]

Certain types of practices clearly fall into the category of cherry-picking and Medicare+Choice organizations should implement policies to prohibit such practices. For example, organizations should prohibit employees from conducting medical screening, *i.e.*, asking the beneficiary medical questions prior to enrollment.[40] In a 1996 survey, the OIG found that such screening for health status at application was reported by 18 percent of beneficiaries. While this represented a reduction from the 1993 level of 43 percent, it still represents a potentially serious problem.[41]

Another way in which Medicare+Choice organizations may inappropriately target healthier beneficiaries is by marketing their plans in places where healthy enrollees would be more likely to be present, such as at health and exercise clubs, or in areas that are difficult to access for people with disabilities (*e.g.*, upper floors of buildings that do not have elevators).[42] Similarly, organizations may inappropriately provide inducements to potential enrollees in a way that would encourage younger, healthier beneficiaries to enroll in the plan. For example, the offering of free gym memberships or kayaking or other sporting lessons would appeal to a healthy class of enrollees and discriminate against those who would not be interested in such activities.[43]

[31] 42 CFR 422.80(c).

[32] 42 CFR 422.80(c)(3).

[33] Periodic on-site visits of the Medicare+Choice organization's operations, bulletins with compliance updates and reminders, distribution of audiotapes or videotapes on different risk areas, lectures at management and employee meetings, circulation of recent health care articles covering fraud and abuse and innovative changes to compliance training are various examples of approaches and techniques the compliance officer can employ for the purpose of ensuring continued interest in the compliance program and the Medicare+Choice organization's commitment to its principles and policies.

[34] It should be noted that Medicare+Choice organizations have ultimate responsibility for the acts and omissions of its marketing agents. See 42 CFR 422.502(i).

[35] *See* Marketing Guide, Chapter IV.

[36] OIG is also concerned about a similar problem, known as "gerrymandering," which is an attempt to eliminate certain high dollar risk areas from the Medicare+Choice organization's service area. Medicare+Choice organizations should be sure to have policies in place to prohibit such practices.

[37] Although the Medicare+Choice program has attempted to alleviate many of the selective marketing practices through the use of risk adjustment, the phase-in period for risk-adjustment virtually assures that this will remain a troubling issue at least through 2004.

[38] *See* 42 U.S.C. 1395w–22(b)(1); 42 CFR 422.110.

[39] 42 U.S.C. 1857(g)(1)(D).

[40] This screening can be done in a number of ways, such as by using cards or coupons requesting medical and other information as part of a survey to potential enrollees.

[41] "Beneficiary Perspectives of Medicare Risk HMOs 1996." (OEI–06–95–00430) (March 1998).

[42] In fact, Medicare+Choice organizations are required to allocate part of their resources to marketing to the Medicare population with disabilities and beneficiaries aged 65 and over. 42 CFR 422.80(e)(2)(i).

[43] The statute prohibits the provision of cash or other monetary rebates as an inducement for enrollment in the plan. *See* 42 U.S.C. 1395w–21(h)(4)(A). However, HCFA allows Medicare+Choice organizations to give Medicare beneficiaries nominal value gifts, provided that the plan offers these gifts whether or not the beneficiary enrolls in the plan. HCFA defines nominal value as an item having little or no resale value (generally, less than $10), which cannot be readily converted into cash. *See* Marketing Guide, Chapter II. The use of inducements is also discussed in Section II.B.2.f.—Anti-kickback and Other Inducements.

Other examples of cherry-picking would be: (1) attempts to give enrollment priority to newly eligible Medicare beneficiaries (who are theoretically younger and healthier); (2) the tracking of costs incurred by enrollees who were enrolled in different settings (*e.g.*, at the health fair, or at a health club), which could be used to target healthier enrollees in the future; or (3) re-enrollment campaigns targeting past plan subscribers who had low medical costs. There are many other subtle ways in which a Medicare+Choice organization may try to enroll healthy patient populations and the organization should implement policies to prohibit such practices.

c. Disenrollment

In general, Medicare+Choice organizations are prohibited from disenrolling, or requesting or encouraging (either by action or inaction) an individual to disenroll from any plan it offers.[44] If a Medicare+Choice organization acts to expel or refuses to reenroll an individual in violation of the statute, a civil monetary penalty can be imposed on the organization.[45] OIG is particularly concerned about disenrollment in light of its recent review, which revealed that there was a problem with disenrollment of beneficiaries just prior to receiving expensive inpatient services.[46]

In this review, OIG found that Medicare paid for inpatient hospital services amounting to $224 million in fee-for-service (FFS) payments within three months of beneficiaries' disenrollment from six risk plans during 1991 through 1996. Had these beneficiaries not disenrolled, Medicare would have paid the HMOs $20 million in monthly capitation payments. Had the beneficiaries remained in the HMOs, Medicare would have saved $204 million in expenditures. Included in the Medicare FFS payments were $41 million for beneficiaries who disenrolled, had FFS procedures performed, and then reenrolled into another or the same managed care plan.

While this study did not identify the reasons for the disenrollment as part of this review, one partial explanation of the review is that some managed care plans may be encouraging sicker beneficiaries to disenroll as a way to avert their own costs at a high cost to the Medicare system.

Each Medicare+Choice organization must implement policies to ensure that inappropriate disenrollment does not occur. Such policies should include clarification of when it is appropriate for medical personnel to discuss the concept of disenrollment. Generally speaking, OIG believes it would be inappropriate for medical personnel to initiate discussion of disenrollment or to promote disenrollment except in the rare circumstance where the Medicare+Choice organization cannot provide the covered medical items or services needed by the patient.

d. Underutilization and Quality of Care

Medicare+Choice organizations must ensure that all covered services are available and accessible to all enrollees.[47] OIG views the inappropriate withholding or delay of services, known as underutilization or "stinting," as a serious concern.[48] Examples of practices that can lead to underutilization and poor quality include the failure to employ or contract with sufficient institutional and individual providers to accommodate all enrollees, the failure to provide geographically reachable services to enrollees, the delay in approving or failure to approve referrals for covered services, the establishment of utilization review procedures that are so burdensome that an enrollee could not reasonably be expected to fulfill the requirements, and the categorical denial of payment of claims.

There are a wide variety of policies that a Medicare+Choice organization should implement to be sure it is providing all medically necessary services to its enrollees. The regulations and guidelines that implement the Medicare+Choice program contain numerous provisions that deal with this issue. While we have not attempted to develop a comprehensive list in this document, we would like to highlight three types of policies that Medicare+Choice organizations should develop that may help address underutilization and quality of care.

First, Medicare+Choice organizations should have policies that prohibit interference with health care professionals' advice to enrollees. Also known as the "gag rule," this prohibition extends to advice regarding the patient's health status, medical care, and treatment options, the risks, benefits and consequences of treatment or non-treatment, or the opportunity for the individual to refuse treatment and to express preferences about future treatment options.[49] Failure to comply with this requirement can lead to sanctions.[50]

Second, Medicare+Choice organizations should be sure, to the extent that they utilize physician incentive plans (PIPs) in their payment arrangements with individual physicians or physician groups, that they comply with all applicable regulations. The PIPs raise utilization concerns because they are defined as "any compensation arrangement that may directly or indirectly have the effect of reducing or limiting services provided to plan enrollees."[51] Any PIP operated by a Medicare+Choice organization must comply with the following requirements. First, it may make no payments to physicians (such as offerings of monetary value, including, but not limited to, stock options or waivers of debt[52]) to reduce or limit medically necessary services. Second, if the PIP puts a physician or physician group at "substantial financial risk"[53] for referral services, the Medicare+Choice organization must: (1) survey current and previously enrolled members to assess access to and satisfaction with the quality of services; and (2) assure that there is adequate and appropriate stop-loss protection.[54] Finally, Medicare+Choice organizations must disclose certain information regarding their PIPs. These disclosure requirements apply to direct contracting arrangements, as well as subcontracting arrangements.[55]

In general, Medicare+Choice organizations should take all necessary steps to ensure that they comply with the Guidance on Disclosure of Physician Incentive Plan, the Guidance on Surveys required by the Physician Incentive Plan Regulation and the Physician Incentive Plan Regulation Requirements.[56]

[44] Medicare+Choice organizations are entitled to disenroll individuals under certain circumstances, *e.g.*, failure to pay premiums or engagement in disruptive behavior. 42 CFR 422.74.

[45] 42 U.S.C. 1857(g)(1)(C).

[46] "Review of Inpatient Services Performed on Beneficiaries After Disenrolling from Medicare Managed Care." (A–07098–01256) (May 1999).

[47] 42 U.S.C. 1395w–22.

[48] Medicare+Choice organizations can be subject to sanction for failing substantially to provide medically necessary items and services that are required to be provided, if the failure has adversely affected (or has the substantial likelihood of adversely affecting) the individual. 42 U.S.C. 1395w–27(g)(1)(A).

[49] 42 U.S.C. 1395w–22(j)(3), 42 C.F.R. § 422.206.

[50] 42 U.S.C. 1395w–27(g)(1)(F).

[51] *See* 42 CFR 422.208.

[52] *See* 42 U.S.C. 1395w–22(j)(4); 42 CFR 422.208.

[53] "Substantial financial risk" threshold is set at 25 percent of potential payments for covered services, regardless of the frequency of assessment (*i.e.*, collection) or distribution of payments. *See* 42 CFR 422.208.

[54] *See* 42 CFR 422.208(c).

[55] *See* 42 CFR 422.210(a).

[56] These documents can be found on the HCFA managed care website at http://www.hcfa.gov/medicare/mgd-ops.htm. Disclosure forms can be located at HCFA's website at http://www.hcfa.gov/medicare/physincp/pip-info.htm. Medicare+Choice organizations may elect paperless PIP disclosure.

Finally, OIG is aware of cases in which beneficiaries have received covered services from individuals that were not appropriately licensed. Given the serious quality of care implications of this type of practice, OIG is particularly concerned that Medicare+Choice organizations have procedures for the selection of providers, including criteria for the credentialing of providers. This process should include an application, verification of information and a site visit, where applicable.[57] The information that must be verified includes that the individual has a valid license to practice, clinical privileges in good standing and appropriate educational qualifications.

e. Data Collection and Submission Processes

The regulations implementing the Medicare+Choice program contain numerous requirements relating to the data collection and submission process, ranging from a requirement for an effective system for receiving, controlling, and processing election forms[58] to requirements for the timely submission of disenrollment notices.[59] These requirements cover the gamut of requirements with which a Medicare+Choice organization must comply and are too detailed to enumerate in this document. Medicare+Choice organizations should establish a policy that all required submissions to HCFA be accurate, timely and complete and that all appropriate reporting requirements are met.[60]

OIG is particularly concerned that Medicare+Choice organizations submit accurate information when that data determines the amount of payment received from HCFA. The regulations require that when a Medicare+Choice organization requests payment under the contract, the CEO or CFO must certify the accuracy, completeness and truthfulness of relevant data, including enrollment data, encounter data, and information provided as part of an adjusted community rate (ACR) proposal.[61] When a Medicare+Choice organization submits this type of data to HCFA, it is making a "claim" for capitation payment in the amount dictated by the data submitted, or in the case of the ACR submission, a "claim" to retain the portion of the capitation amount that is under the ACR amount, rather than providing additional benefits. When a Medicare+Choice organization is claiming payment (or the right to retain payment) based upon information submitted to HCFA, it must take responsibility for having taken reasonable steps to assure the accuracy of this information. The attestation forms developed by HCFA for this purpose require certification that the information submitted is true and accurate based on best knowledge, information, and belief.

The requirement that the CEO or CFO certify as to the accuracy, completeness and truthfulness of data, based on best knowledge, information and belief, does not constitute an absolute guarantee of accuracy. Rather, it creates a duty on the Medicare+Choice organization to put in place an information collection and reporting system reasonably designed to yield accurate information. Furthermore, the Medicare+Choice organization must conduct audits and spot checks of this system to verify whether it is yielding accurate information.

The knowing submission of false information to HCFA can lead to serious criminal or civil penalties.[62] Medicare+Choice organizations should be sure to implement policies so that the enrollment, encounter and ACR data submitted to HCFA is accurate, complete and truthful. While information from a variety of sources can affect this data, Medicare+Choice organizations should take note of two reports issued by the OIG that have found problems in two pieces of this data.

First, OIG recommends that Medicare+Choice organizations have policies and procedures in place that ensure that the administrative component of the ACR is calculated accurately.[63] As part of this process, Medicare+Choice organizations should have clearly defined criteria for claiming reimbursement for their administrative costs. These costs should not include any costs that are directly associated with furnishing patient care. All such costs should be allocated to the applicable operating component. The OIG has articulated serious concerns about the methodology used by managed care organizations in computing their administrative rate on the ACR proposal.[64] For example, computing an administrative rate based on the use of a medical utilization factor could generate a payment that is almost three times what would be charged on the commercial side. The OIG believes that the allocation of "administration" should be determined in accordance with the Medicare program's longstanding principle that Medicare only pay its applicable or fair share of needed costs.

Second, OIG recommends that Medicare+Choice organizations have adequate internal controls in place to ensure that the institutional status of beneficiaries is reported accurately.[65] A recent report issued by OIG estimated that risk-based HMOs received Medicare overpayments of $22.2 million for beneficiaries incorrectly classified as institutionalized.[66] The incorrect classification was largely due to deficiencies in the HMOs internal controls in two areas: (1) Verification of beneficiaries' institutional status; and (2) reporting of institutional beneficiaries to HCFA. The results were based on audits of eight statistically selected HMOs.

f. Anti-kickback Statute and Other Inducements

The anti-kickback statute provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration to induce the referral of business reimbursable under a Federal health care program (including Medicare and Medicaid).[67] The anti-

The PIP Data Entry Software is available on the Internet at http://www.fu.com/HPMS.

[57] 42 CFR 422.204.

[58] 42 CFR 422.60(e).

[59] 42 CFR 422.66(b)(3)(i).

[60] On a related topic, Medicare+Choice organizations should also be sure that their computer systems are Year 2000 (Y2K) compliant. A May 1999 OIG report indicates that based on a survey of Medicare managed care organizations, only 22 percent were Y2K ready, with two-thirds of the remainder reporting that they will be ready by December 31, 1999. The majority of the respondents were unaware of the Y2K readiness of their subcontractors. "Y2K Readiness of Managed Care Organizations." (OEI–005–98–00590) (May 1999).

[61] 42 CFR 422.502(l) and (m). *See* Contract for Year 2000, Attachments A, B and C.

[62] Falsification of documentation in any application for any benefit or payment under a Federal health care program is a Federal offense punishable by not more than $25,000 or imprisonment for 5 years, or both. *See* 42 U.S.C. 1320a–7b. In addition, a CMP can be imposed for the misrepresentation or falsification of information submitted to HCFA under Medicare+Choice. *See* 42 U.S.C. 1395w–27(g)(1)(E).

[63] The administrative component of the ACR covers any management, financial or other costs that are incurred by or allocated to a business unit for the management or administration of the business unit as a whole.

[64] *See e.g.*, "Administrative Costs Submitted by Risk-Based Health Maintenance Organizations on the Adjusted Community Rate Proposals are Highly Inflated." (A–14–97–00202) (July 1998).

[65] This will remain a concern until risk adjustment is fully implemented.

[66] "Review of Medicare Managed Care Payments for Beneficiaries with Institutional Status." (A–05–98–00046) (April 1999).

[67] 42 U.S.C. 1320a–7b(b). If it is determined that a party has violated the anti-kickback statute, the individual or entity can be excluded from participation in the Medicare and other Federal health care programs (as defined in 42 U.S.C.

Continued

kickback statute potentially applies to many managed care arrangements because a common strategy of these arrangements is to offer physicians, hospitals and other providers increased patient volume in return for substantial fee discounts. Because discounts to managed care organizations can constitute "remuneration" within the meaning of the anti-kickback statute, a number of health care providers have expressed concern that many relatively innocuous, or even beneficial, commercial managed care arrangements implicate the statute and may subject them to criminal prosecution and administrative sanctions.

The OIG recognizes that when managed care organizations are paid a capitated amount for all of the services they provide regardless of the dates, frequency or type of services, there is no incentive for them to overutilize. In any event, even if overutilization occurs, the Federal health care programs are not at risk for these increased costs. Accordingly, OIG will be issuing a safe harbor from the anti-kickback statute that will provide protection for certain financial arrangements between managed care organizations (including Medicare+Choice organizations offering coordinated care plans) and individuals or entities with whom they contract for the provision of health care items or services, where a Federal health care program pays such organizations on a capitated basis.[68]

In general, the safe harbor protects payments between managed care organizations (including Medicare+Choice organizations offering coordinated care plans) and individuals or entities with which it has direct contracts to provide or arrange for the provision of items or services.[69] While this is a broad exception, there are three important limitations.

The first significant limitation is that there is no protection if the financial arrangements under the managed care agreement are implicitly or explicitly part of a broader agreement to steer fee-for-service Federal health care program business to the entity giving the discount to induce the referral of managed care business. Specifically, we understand that most managed care organizations have multiple relationships with their contractors and subcontractors for the provision of services for various product lines, including non-federal HMOs, preferred provider organizations (PPOs) and point of service networks. Consequently, although neither a managed care organization receiving a capitated payment from a Federal health care program nor its contractors or subcontractors has an incentive to overutilize items or services or pass additional costs back to the Federal health care programs under the capitated arrangement, we are concerned that a managed care organization or contractor may offer (or be offered) a reduced rate for its items or services in the Federal capitated arrangement in order to have the opportunity to participate in other product lines that do not have stringent payment or utilization constraints. This practice is a form of a practice known as "swapping;" in the case of managed care arrangements, low capitation rates could be traded for access to additional fee-for-service lines of business. We are concerned when these discounts are in exchange for access to fee-for-service lines of business, where there is an incentive to overutilize services provided to Federal health care program beneficiaries.

For example, we would have concerns where an HMO with a Medicare risk contract under Medicare Part C also has an employer-sponsored PPO that includes retirees and requires participating providers to accept a low capitation rate for the Medicare HMO risk patients in exchange for access to the Medicare fee-for-service patients in the PPO. Although in such circumstances the cost to the Medicare program for the risk-based HMO beneficiaries will not be increased, there may be increased expenditures for Medicare beneficiaries in the PPO arrangement, because the providers may have an incentive to increase services to the Medicare enrollees in the PPO to offset the discounted rates to the Medicare HMO. Accordingly, such arrangements could violate the anti-kickback statute and should not be protected.

A second limitation on the regulatory safe harbor protection is that it only applies to remuneration for health care items and services and those items or services reasonably related to the provision of health care items and services. It does not cover marketing services or any services provided prior to a beneficiary's enrollment in a health plan.

Finally, the broad protection is limited to risk-based managed care plans that do not claim any payment from a Federal health care program other than the capitated amount set forth in the managed care organization's agreement with the Federal health care program. Where the managed care plan, its contractors or its subcontractors are permitted to seek additional payments from any of the Federal health care programs, the regulatory safe harbor protection is significantly more limited. For example, protection is not extended to arrangements with subcontractors when the contract under section 1876 of the Social Security Act is cost-based or where the prime contract is protected solely because the contracting entity is a Federally-qualified HMO. In the first instance, reimbursement from the Federal health care program is based on costs, and in the latter case, services for Medicare enrollees are reimbursed on a fee-for-services basis. In both instances, reimbursement will increase with utilization, thus providing the same incentive to overutilize as any fee-for-service payment methodology.

While the new safe harbor will provide protection from the anti-kickback statute for most arrangements between Medicare+Choice organizations and their contractors, Medicare+Choice organizations should also have policies in place that ensure that any incentives offered to beneficiaries and potential beneficiaries do not run afoul of the anti-kickback statute or the new civil monetary penalty relating to incentives to beneficiaries.[70] The CMP was enacted in section 231(h) of HIPAA (42 U.S.C. 320a–7a(a)(5)) and imposes sanctions against individuals or entities that offer remuneration to a program beneficiary that they know, or should know, will influence the beneficiary's decision to order or receive items or services from a particular provider, practitioner or supplier reimbursable by Medicare or the State health care programs.

Pending the publication of the final rule implementing this CMP, we can provide the following guidance. It is our view that organizations that provide incentives to Federal health care program beneficiaries to enroll in a *plan* are not offering remuneration to induce the enrollees to use a *particular provider, practitioner or supplier.* Accordingly, we anticipate that organizations that provide incentives to enroll in a plan will not be subject to sanctions under this provision. However, incentives provided by organizations to induce a beneficiary to use a particular provider, practitioner or supplier once the beneficiary has enrolled in a plan are within the purview of this CMP and are prohibited if they do not meet an exception. For example, incentives given to beneficiaries by a particular physician group within the physician panel of a Medicare+Choice organization to encourage the beneficiary to use that physician group over another physician in the panel would be prohibited.

g. Anti-Dumping

The OIG and HCFA believe that there may be special concerns regarding the provision of emergency services to enrollees of Medicare+Choice plans. The anti-dumping statute[71] imposes specific obligations on Medicare-participating hospitals that offer emergency services to individuals presenting themselves at the hospital seeking possible emergency treatment. While the obligations under the anti-dumping statute prohibit a hospital from inquiring into the patient's method of payment or insurance status, it has come to our attention that many hospitals routinely seek authorization from a Medicare+Choice enrollee's primary care physician or from the Medicare+Choice organization when a Medicare+Choice enrollee requests emergency services. The OIG and HCFA are cognizant that many managed care organizations require their enrollees to seek prior authorization for some medical services, including emergency services and that there are circumstances when patients should be informed of their potential financial liability. However, both the OIG and HCFA have concerns that a Medicare+Choice enrollee may be unduly influenced by hospital personnel to leave the hospital without obtaining necessary care.[72]

It is the view of OIG and HCFA that the anti-dumping statute requires that notwithstanding the terms of any managed care contractual arrangements, the provisions of the anti-dumping statute govern the obligations of hospitals to screen and provide stabilizing treatment to any patient presenting at an emergency facility. No contract between a hospital and managed care organization can excuse the hospital from the anti-dumping statute obligations. Once a Medicare+Choice enrollee comes to the hospital that offers emergency services, the law requires that the hospital must provide the services required under the anti-dumping statute without regard to the patient's insurance status or any prior authorization of such insurance. All Medicare+Choice organizations should have policies in place to ensure that these requirements are met.

Medicare+Choice organizations should be particularly careful of these requirements in the event that they participate in the so-called "dual staffing" of emergency departments. Dual staffing refers to the situation where hospitals have entered into arrangements allowing a managed care organization to station its own physicians in the hospital's emergency department for the purpose of screening and treating managed care enrollees. Implementation of dual staffing raises some concerns under the anti-dumping statute, particularly where different procedures and protocols have been established for each staff.

3. Retention of Records and Information Systems

Medicare+Choice organizations' compliance programs should provide for the implementation of a records retention system. This system should establish policies and procedures regarding the creation, distribution, retention, storage, retrieval and destruction of documents. The three types of documents developed under this system should include: (1) All records and documentation required by either Federal or State law and the program requirements of Federal and State health plans; (2) records listing the persons responsible for implementing each part of the compliance plan; and (3) all records necessary to protect the integrity of the Medicare+Choice organization's compliance process and confirm the effectiveness of the program. The documentation necessary to satisfy the third requirement includes: evidence of adequate employee training; reports from the Medicare+Choice organization's hotline; results of any investigation conducted as a consequence of a hotline call; modifications to the compliance program; self-disclosure; all written notifications to providers regarding compliance activities;[73] and the results of the Medicare+Choice organization's auditing and monitoring efforts.

In light of the increasing reliance on electronic data interchange by the health care industry, Medicare+Choice organizations should take particular care in establishing procedures for maintaining the integrity of its data collection systems. This should include procedures for regularly backing-up data (either by diskette, restricted system or tape) collected in connection with all aspects of the Medicare+Choice program requirements.

4. Compliance as an Element of a Performance Plan

Compliance programs should require that the promotion of, and adherence to, the elements of the compliance program be a factor in evaluating the performance of all employees. Employees should be periodically trained in new compliance policies and procedures. Policies should require that managers:

- Discuss with all supervised employees and relevant contractors the compliance policies and legal requirements applicable to their function;
- Inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment; and
- Disclose to all supervised personnel that the Medicare+Choice organization will take disciplinary action up to and including termination for violation of these policies or requirements.

In addition to making performance of these duties an element in evaluations, the compliance officer or company management should include a policy that managers and supervisors will be sanctioned for failure to instruct adequately their subordinates or for failure to detect noncompliance with applicable policies and legal requirements, where reasonable diligence on the part of the manager or supervisor should have led to the discovery of any problems or violations.

1320a–7b(f)). 42 U.S.C. 1320a–7(b)(7). In addition, there is an administrative CMP provision for violating the anti-kickback statute. 42 U.S.C. 1320a–7a(a)(7).

[68] This safe harbor was developed in accordance with section 216 of HIPAA and section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Pub. L. 100–93) through a negotiated rulemaking process that began in the spring of 1997. For a more detailed description of the negotiated rulemaking, see the Committee Statement of the Negotiated Rulemaking Committee on the Shared Risk Exception (January 22, 1998), which can be found on the Internet at http://www.dhhs.gov/progorg/oig.

[69] In addition, arrangements between direct contractors and all subcontractors or successive tiers of subcontractors are protected, as long as the arrangement is for the provision of health care items or services that are covered by the arrangement between the direct contractor and the managed care organization and the arrangement meets the requirements applicable to arrangements between the direct contractor and the managed care organization.

[70] Our concerns regarding the use of inducements in a manner that leads to enrollment of only healthy beneficiaries, such as offering memberships to exercise clubs for purposes of patient screening, is discussed above in Section II.B.2.b.-Selective Marketing and Enrollment.

[71] *See* 42 U.S.C. 1395dd. A separate provision prohibits Medicare+Choice organizations requiring enrollees to obtain prior authorization for emergency services. *See* 42 U.S.C. 1395w–22(d)(1)(E).

[72] OIG and HCFA have issued a proposed Special Advisory Bulletin on this topic. *See* 63 FR. 67486 (12/7/98).

[73] This should include notifications regarding quality of care issues; confusing or inaccurate encounter data; and termination of the contract.

B. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer

Every Medicare+Choice organization should designate a compliance officer to serve as the focal point for compliance activities. This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the Medicare+Choice organization and the complexity of the task.

Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official in the Medicare+Choice organization with direct access to the company's governing body, the CEO and all other senior management and legal counsel.[74] While it is important that the compliance officer have appropriate authority, we are not suggesting that the compliance officer should have programmatic responsibility for the various aspects of the Medicare+Choice program. For example, the compliance officer should have full authority to stop the submission of data that he or she believes is problematic until such time as the issue in question has been resolved. In addition, the compliance officer should be copied on the results of all internal audit reports and work closely with key managers to identify aberrant trends in the areas that require certification. The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, beneficiary records (where appropriate) and records concerning the marketing efforts of the facility and the Medicare+Choice organization arrangements with other parties, including employees, professionals on staff, relevant independent contractors, suppliers, agents, supplemental staffing entities and physicians. This policy enables the compliance officer to review contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment provisions that could violate statutory or regulatory requirements.

Coordination and communication are the key functions of the compliance officer with regard to planning, implementing and monitoring the compliance program. With this in mind, the OIG recommends the Medicare+Choice organization's compliance officer closely coordinate compliance functions with providers' compliance officers.

The compliance officer should have sufficient funding and staff to fully perform his or her responsibilities. These duties should include:

- Overseeing and monitoring the implementation of the compliance program;[75]
- Reporting on a regular basis to the Medicare+Choice organization's governing body, CEO and compliance committee on the progress of implementation and assisting these components in establishing methods to improve the Medicare+Choice organization's efficiency and quality of services and to reduce the Medicare+Choice organization's vulnerability to fraud, abuse and waste;
- Periodically revising the program in light of changes in the organization's needs and in the law and policies and procedures of Government and private payor health plans;
- Reviewing employees' certifications stating that they have received, read and understood the standards of conduct;
- Developing, coordinating and participating in a multifaceted educational and training program that focuses on the elements of the compliance program and seeks to ensure that all appropriate employees and management are knowledgeable of, and comply with, pertinent Federal and State standards;
- Coordinating personnel issues with the Medicare+Choice organization's human resources/personnel office (or its equivalent) to ensure that providers and employees do not appear in the List of Excluded Individuals/Entities and the GSA list of debarred contractors;[76]
- Assisting the Medicare+Choice organization's management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;
- Independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (*e.g.*, responding to reports of problems or suspected violations) and any resulting corrective action with all departments, providers and sub-providers, agents and, if appropriate, independent contractors;
- Developing policies and programs that encourage managers and employees to report suspected fraud and other improprieties without fear of retaliation; and
- Continuing the momentum of the compliance program and the accomplishment of its objectives long after the initial years of implementation.

2. Compliance Committee

The OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[77] When assembling a team of people to serve as the Medicare+Choice organization's compliance committee, the company should include individuals with a variety of skills.[78] The OIG strongly recommends that the compliance officer manage the compliance committee. Once a managed care organization chooses the people that will accept the responsibilities vested in members of the compliance committee, the organization must train these individuals on the policies and procedures of the compliance program.

The committee's responsibilities should include:

- Analyzing the organization's regulatory environment, the legal requirements with which it must comply and specific risk areas;
- Assessing existing policies and procedures that address these areas for possible incorporation into the compliance program;
- Working with appropriate departments, as well as affiliated providers, to develop standards of conduct and policies and procedures that promote allegiance to the organization's compliance program;
- Recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization's standards, policies and procedures as part of its daily operations;
- Determining the appropriate strategy/approach to promote compliance with the program and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms;
- Developing a system to solicit, evaluate and respond to complaints and problems; and
- Monitoring internal and external audits and investigations for the purpose of identifying troublesome issues and deficient areas experienced by the Medicare+Choice organization and implementing corrective and preventive action.

The committee may also address other functions as the compliance concept becomes part of the overall operating structure and daily routine.

C. Conducting Effective Training and Education

The proper education and training of corporate officers, managers, employees and the continual retraining of current personnel at all levels are significant elements of an effective compliance program. Where feasible, the Medicare+Choice organization should afford outside contractors and its provider clients the opportunity to participate in the organization's compliance training and educational programs. The contractors and provider clients should be encouraged to develop their own compliance programs that complement the Medicare+Choice organization's compliance program.

1. Formal Training Programs

In order to ensure the appropriate information is being disseminated to the correct individuals, the Medicare+Choice organization training program should include both a general session and specialized sessions on specific risk areas. All employees should attend the general session on compliance. Employees whose job responsibilities implicate specific risk areas (*e.g.*, marketing or capitated reimbursement rules) should attend the specialized sessions.

The OIG recommends attendance and participation at training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, including possible termination, when such failure is serious. The Medicare+Choice organization should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions. New employees should be targeted for training early in their employment, and to the extent that they perform complicated tasks with greater organizational legal exposure, should be monitored closely until all training is completed.

a. General Sessions

As part of their compliance programs, Medicare+Choice organizations should require all affected employees to attend annual training that emphasizes the organization's commitment to compliance with all Federal and State statutes and requirements, and the policies of private payors. This training should highlight the organization's compliance program, summarize fraud and abuse statutes and regulations, Federal and State health care program requirements, documentation requirements for data submission and marketing practices that reflect current legal and program standards.

As part of the initial training, the standards of conduct should be distributed to all employees. Every employee, as well as contracted consultants, should be required to sign and date a statement that reflects the employee's knowledge of, and commitment to the standards of conduct. This attestation should be retained in the employee's personnel file. For contracted consultants, the attestation should become part of the contract and remain in the file that contains such documentation. To ensure that employees continuously meet the expected high standards set forth in the code of conduct, any employee handbook delineating or expanding upon these standards of conduct should be regularly updated as applicable statutes, regulations and Federal health care program requirements are modified.[79] Medicare+Choice organizations should provide an additional attestation in the modified standards that stipulates the employee's knowledge of, and commitment to, the modifications.

b. Specialized Training

Because Medicare+Choice organizations are responsible for compliance in all of the risk areas mentioned in section II.A. above, the OIG recommends Medicare+Choice organizations require individuals who are involved in the risk areas to receive specialized training. For example, marketing employees should receive training on the marketing, enrollment, disenrollment and anti-kickback policies. All employees who work with beneficiaries or providers regarding medical services should receive appropriate training on the risks associated with under-utilization. Those employees who are involved in developing enrollment, encounter and ACR data should receive training on HCFA policies in these areas. Clarifying and emphasizing these areas of concern through training and educational programs are particularly relevant to a Medicare+Choice organization's marketing and financial personnel, in that the pressure to meet business goals may render these employees particularly vulnerable to engaging in prohibited practices.

The OIG recommends Medicare+Choice organizations' compliance programs address the need for periodic professional education courses for personnel. Such courses would be in addition to the internal training sessions provided by the organization. For example, the Medicare+Choice organization should ensure that data submission personnel receive annual professional training on the updated policies, requirements and directives for the current year.

c. Format of the Training Program

The OIG suggests all relevant levels of personnel be made part of various educational and training programs of the Medicare+Choice organization. Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities. A variety of teaching methods, such as interactive training and training in several different languages (including the translation of standards of conducts and other materials), particularly where a Medicare+Choice organization has a culturally diverse staff, should be implemented so that all affected employees are knowledgeable about the institution's standards of conduct and procedures for alerting senior management to problems and concerns. In addition, the materials should be written at appropriate reading levels for targeted employees. All training

[74] The OIG believes that it is not advisable for the compliance function to be subordinate to the Medicare+Choice organization's general counsel, comptroller or similar company financial officer. Free-standing compliance functions help to ensure independent legal reviews and financial analyses of the institution's compliance activities. By separating the compliance function from the key management positions of general counsel or CFO (where the size and structure of the organization make this a feasible option), a system of checks and balances is established to more effectively achieve the compliance program's goals.

[75] For multi-site Medicare+Choice organizations, the OIG encourages coordination with each facility owned by the Medicare+Choice organization through the use of compliance liaisons at each site.

[76] *See* note 94.

[77] The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, finance, audit, human resources, utilization review, medicine, claims processing, information systems, legal, marketing, enrollment and disenrollment as well as employees and managers of key operating units. These individuals should have the requisite seniority and comprehensive experience within their respective departments to implement any necessary changes in the company's policies and procedures.

[78] A Medicare+Choice organization should expect its compliance committee members and compliance officer to demonstrate high integrity, good judgment, assertiveness and an approachable demeanor, while eliciting the respect and trust of employees of the organization. The compliance committee members should also have significant professional experience in working with quality assurance, enrollment, marketing, clinical records and auditing principles.

[79] While the OIG recognizes that not all standards, policies and procedures need to be communicated to all employees, it believes that the bulk of the standards that relate to complying with fraud and abuse laws and other ethical areas should be addressed and made part of all employees' training.

materials should be designed to take into account the skills, knowledge and experience of the individual trainees. Post-training tests can be used to assess the success of training provided and employee comprehension of the billing company's policies and procedures.

2. Informal and Ongoing Compliance Training

It is essential that compliance issues remain at the forefront of the Medicare+Choice organization's priorities. The organization must demonstrate its commitment by continuing to disseminate the compliance message. One effective mechanism to achieve this goal is to publish a monthly compliance newsletter. This would allow the Medicare+Choice organization to address specific examples of problems the company encountered during its ongoing audits and risk analysis, while reinforcing the company's firm commitment to the general principles of compliance and ethical conduct. The newsletter could also include the risk areas identified in current OIG publications or investigations. Finally, the Medicare+Choice organization could use the newsletter as a mechanism to address areas of ambiguity in the marketing, utilization review and data submission process, and to notify employees of significant legal or regulatory developments. The Medicare+Choice organization should maintain its newsletters in a central location to document the guidance offered and provide new employees with access to guidance previously provided. Other written materials, such as posters, fliers or articles in other company publications, could also be used to disseminate the compliance message.

Another effective method of maintaining the presence of the compliance message is to maintain a website devoted to compliance issues. This could be linked to the homepage of the organization. Many organizations have chosen to maintain these sites internally on the Intranet to alleviate any confidentiality concerns. The Intranet (or Internet) also facilitates the use of hypertext links that allow the organization to maintain a centralized source on statutory, regulatory and other program guidance disseminated by HCFA,[80] the OIG, the Department of Justice and the Congress. These links, along with any other webpages that the Medicare+Choice organization deems pertinent and useful can be assembled on a single site that can, by hypertext link, provide access to all of these useful resources.

D. Developing Effective Lines of Communication

An open line of communication between the compliance officer and Medicare+Choice organization personnel, as well as among the organization, health care providers and enrollees, is critical to the successful implementation of a compliance program and the reduction of any potential for fraud, abuse and waste. Each organization should have in place both a mechanism for the reporting of improper conduct, as well a mechanism for more routine types of communication among the compliance officer and relevant groups.

1. Hotline or Other System for Reports of Potential Misconduct

Each Medicare+Choice organization should have in place a hotline or other mechanism[81] through which employees, enrollees or other parties can report potential violations of the organization's compliance policies or of Federal or State health care program requirements. In any event, several independent reporting paths should be created for an employee to report fraud, waste or abuse so that such reports cannot be diverted by supervisors or other personnel. If the organization establishes a hotline, the telephone number should be made readily available to all employees, enrollees and independent contractors, by circulating the number on wallet cards or conspicuously posting the telephone number in common work areas.[82]

Matters reported through the hotline or other communication sources that suggest violations of compliance policies, Federal and State health care program requirements, regulations or statutes should be documented and investigated promptly to determine their veracity. A log should be maintained by the compliance officer that records such calls, including the nature of any investigation and its results.[83] Such information should be included in reports to the governing body, the CEO and compliance committee.

Employees, enrollees and providers should be permitted to report matters on a confidential basis. To encourage such reporting, written confidentiality and non-retaliation policies should be developed and distributed to all employees, enrollees and providers to encourage communication and the reporting of incidents of potential fraud.[84] While the Medicare+Choice organization should always strive to maintain the confidentiality of the reporter's identity, the policies should explicitly communicate that there may be a point where the individual's identity may become known or may have to be revealed.

The OIG recognizes that assertions of fraud and abuse by those who may have participated in illegal conduct or committed other malfeasance raise numerous complex legal and management issues that should be examined on a case-by-case basis. The compliance officer should work closely with legal counsel to obtain guidance on these issues.

2. Routine Communication/Access to the Compliance Officer

While it is crucial that Medicare+Choice organizations have effective systems in place for the reporting of suspected misconduct, it is equally important that the compliance officer foster more routine communication both among its employees and among its health care providers and enrollees.

With respect to its own employees, the OIG encourages the establishment of procedures for personnel to seek clarification from the compliance officer or members of the compliance committee in the event of any confusion or question regarding a company policy, practice or procedure. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards, policies, practices and procedures can be updated and improved to reflect any

[80] HCFA's Medicare+Choice webpage is located at http://www.hcfa.gov/medicare/mgdcar1.htm.

[81] The OIG recognizes that it may not be financially feasible for a small Medicare+Choice organization to maintain a telephone hotline dedicated to receiving calls solely on compliance issues. These companies may explore alternative methods, e.g., contracting with an independent source to provide hotline services or establishing a written method of confidential disclosure.

[82] Medicare+Choice organizations should also post in a prominent, available area the HHS-OIG Hotline telephone number, 1–800–447–8477 (1–800–HHS–TIPS), in addition to any organization's hotline number that may be posted.

[83] To efficiently and accurately fulfill such an obligation, the Medicare+Choice organization should create an intake form for all compliance issues identified through reporting mechanisms. The form could include information concerning the date the potential problem was reported, the internal investigative methods utilized, the results of any investigation, any corrective action implemented, any disciplinary measures imposed and any overpayments and monies returned.

[84] The OIG believes that whistleblowers should be protected against retaliation, a concept embodied in the provisions of the False Claims Act. See 31 U.S.C. 3730(h). In many cases, employees sue their employers under the False Claims Act's qui tam provisions out of frustration because of the company's failure to take action when a questionable, fraudulent or abusive situation was brought to the attention of senior corporate officials.

necessary changes or clarifications. The compliance officer may want to solicit employee input in developing these communication and reporting systems. The methods discussed above relating to ongoing training and education are an integral part of this communication.[85]

The communication and coordination function of the compliance program serves an even more critical role in the context of the managed care environment because the managed care entity serves as an intermediary between the health care provider and the enrollee.[86] In fact, the raison d'étre of a managed care organization is to coordinate the care of its enrollees. As with providers, communications with beneficiaries and communications with HCFA (and its designees) must demonstrate the highest level of integrity, honesty and judgment. The Medicare+Choice organization should implement methods to encourage communication among its enrollees and providers. For example, a Medicare+Choice organization should communicate the results of audits, disenrollment surveys, utilization data and quality of care determinations to its contracting suppliers and providers in order to facilitate open discussion regarding appropriate health care delivery.

E. Auditing and Monitoring

An ongoing evaluation process is critical to a successful compliance program. The OIG believes an effective program should incorporate thorough monitoring of its implementation and regular reporting to senior company officers.[87] Compliance reports created by this ongoing monitoring, including reports of suspected noncompliance, should be maintained by the compliance officer and reviewed with the Medicare+Choice organization's senior management and the compliance committee. The extent and frequency of the audit function may vary depending on factors such as the size of the company, the resources available to the company, the company's prior history of noncompliance and the risk factors that are prevalent in a particular organization.

Although many monitoring techniques are available, one effective tool to promote and ensure compliance is the performance of regular, periodic compliance audits by internal or external auditors who have expertise in Federal and State health care statutes, regulations and Federal health care program requirements. The audits should focus on the Medicare+Choice organization's programs or divisions, including external relationships with third-party contractors, specifically those with substantive exposure to Government enforcement actions. The audits should be sure to cover the range of programmatic requirements of the Medicare+Choice program. In particular, the audits should focus on the risk areas identified earlier in this document, especially the data and information which affects payments by Medicare. Finally, the Medicare+Choice organization should focus on any areas of specific concern identified within that organization and those that may have been identified by any outside agency, whether Federal or State.

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established baseline.[88] Significant variations from the baseline should trigger a reasonable inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate, explainable reasons, the compliance officer or manager may want to limit any corrective action or take no action. If it is determined that the deviation was caused by improper procedures, misunderstanding of rules, including fraud and systemic problems, the Medicare+Choice organization should take prompt steps to correct the problem.[89] Any overpayments discovered as a result of such deviations should be reported promptly to HCFA (or its designees), with appropriate documentation and a thorough explanation of the reason for the overpayment.[90]

An effective compliance program should also incorporate periodic (at a minimum, annual) reviews of whether the program's compliance elements have been satisfied, *e.g.*, whether there has been appropriate dissemination of the program's standards, training, ongoing educational programs and disciplinary actions.[91] This process will verify actual conformance by all departments with the compliance program. Such reviews may support a determination that appropriate records have been created and maintained to document the implementation of an effective program.

The reviewers involved in any audits should:

- Possess the qualifications and experience necessary to adequately identify potential issues with the subject matter to be reviewed;
- Be independent of line management;
- Have access to existing audit and health care resources, relevant personnel and all relevant areas of operation;
- Resent written evaluative reports on compliance activities to the CEO, governing body members of the compliance committee and its provider clients on a regular basis, but not less than annually; and
- Specifically identify areas where corrective actions are needed.

In the Medicare+Choice context, a variety of different methods will be necessary to adequately monitor and evaluate the ongoing operations of the Medicare+Choice organization. In general, OIG recommends the use of techniques such as on-site visits, questionnaires (for providers, enrollees and employees), and trend analyses, to name just several.[92] Because the

[85] In addition to methods of communication used by current employees, an effective employee exit interview program could be designed to solicit information from departing employees regarding potential misconduct and suspected violations of the Medicare+Choice organization's policy and procedures.

[86] An "enrollee" is defined in this compliance program guidance as any Medicare+Choice eligible individual who has elected a Medicare+Choice plan offered by a Medicare+Choice organizations. See 42 CFR 422.2.

[87] Even when a facility is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual facility must be a key feature in any annual review. Appropriate reports on audit findings should be periodically provided and explained to a parent-organization's senior staff and officers.

[88] The OIG recommends that when a compliance program is established in a Medicare+Choice organization, the compliance officer, with the assistance of department managers, take a "snapshot" of the organization's operations from a compliance perspective. This assessment can be undertaken by outside consultants, law or accounting firms, or internal staff, with authoritative knowledge of health care compliance requirements. This "snapshot," often used as part of bench marking analysis, becomes a baseline for the compliance officer and other managers to judge the Medicare+Choice organization's progress in reducing or eliminating potential areas of vulnerability. Medicare+Choice organizations should track statistical data on utilization review and quality data based on customer satisfaction and renewal data. This will facilitate identification of problem areas and elimination of potential areas of abusive or fraudulent conduct.

[89] Prompt steps to correct the problem include contacting the appropriate provider in situations where the provider's actions contributed to the problem.

[90] In addition, when appropriate, as referenced in section G.2, below, reports of fraud or systemic problems should also be made to the appropriate governmental authority.

[91] One way to assess the knowledge, awareness and perceptions of the Medicare+Choice organization's staff is through the use of a validated survey instrument (*e.g.*, employee questionnaires, interviews or focus groups).

[92] Medicare+Choice organizations may want to consult HCFA's Contractor Performance Monitoring System Manual to get additional ideas for monitoring methods. In addition, organizations may

Continued

auditing and monitoring function is very different and much more complex in the managed care context than in any other segment of the health care industry, we have provided additional guidance on the methods to be used in evaluating selected risk areas.

1. Marketing/Enrollment/Disenrollment

Developing a system for evaluating the compliance of the marketing, enrollment and disenrollment functions of a Medicare+Choice organization requires innovative techniques. Each Medicare+Choice organization will have to develop an individualized method as to how to obtain this data. Some of the methods that the OIG suggests include: the use of secret shoppers; surveying current enrollees; [93] and conducting exit interviews with former enrollees (particularly those that disenrolled just prior to obtaining an expensive service) on their experience with the Medicare+Choice marketing and enrollment process. Once this data is collected, it must be maintained in a format that can be accessed readily.

In an effort to integrate the monitoring function with its training function, Medicare+Choice organizations may wish to test their marketing staff on their knowledge of the company's policies and procedures, as well as the Federal and State statutes that govern the marketing process. This assessment can be developed to take on many formats. Many companies have customized interactive software to test employees' knowledge of relevant policies and procedures. It may also be formulated in the traditional written version.

Methods used to monitor marketing agents include the analysis of disenrollment data to identify marketing agents with high and low percentages of member disenrollments within a set number of days (*e.g.*, 90 days). In addition, Medicare+Choice organizations may want to establish enrollment verification systems requiring that a different individual from the sales agent meet with beneficiaries who have applied for enrollment to ensure that they understand restrictions of the plan, such as the lock-in provision.

Finally, it is essential for all marketing materials to be reviewed by the general counsel's office to ensure that they do not mislead, confuse or misrepresent any aspect of the plan. Similarly, they should also be examined by the claims processing department and utilization review office for consistency with the policies, procedures and practices of these departments.

2. Underutilization and Quality of Care

Procedures for tracking and reporting utilization review data are vital to the success of any compliance endeavor. Medicare+Choice organizations should periodically review the service areas that are part of the Medicare+Choice organization to ensure that enrollees are receiving adequate access to care. In reviewing service areas, Medicare+Choice organizations should collect data on the number of primary care physicians in the service area, the number and type of specialists in the service area, the waiting time for appointments, the telephone access to the Medicare+Choice organization and the problems associated with the coordination of care. All of this data should be maintained in a database in a format that can be used to generate statistical data and analysis.

Medicare+Choice organizations should ensure that there are adequate systems in place to monitor underutilization and inappropriate denials. Such procedures include collecting data on utilization patterns and detecting aberrant patterns. This data should be checked against utilization rates in the industry. This function could be performed by a medical affairs department that is responsible for regular review of claims, the payment system, encounter data and medical record review to assess the degree to which care is under (or over) utilized.

Similarly, the Medicare+Choice organization should survey its enrollees on utilization patterns and whether they felt they were subjected to inadequate health care services or inappropriate denials. Such survey results should be reviewed and investigated, when appropriate. Generally, these may be skewed in favor of the Medicare+Choice organization if the enrollees are current members. Presumably, if an enrollee was truly dissatisfied with the Medicare+Choice organization's attitude toward enrollee rights, the enrollee would have disenrolled from the plan. As a result, a Medicare+Choice organization should evaluate both current enrollee satisfaction surveys and exit interview surveys of former enrollees.

Medicare+Choice organizations have a good source of information regarding utilization issues, simply by tracking the type of appeals and grievances they receive from beneficiaries. This information should be tracked in a database that can be easily accessed by type of grievance or appeal and results.

3. Data Collection and Submission Processes

Given the importance of the enrollment, encounter and ACR data, the Medicare+Choice organization should develop ways to audit this information to assure its accuracy. For example, encounter data should be sampled periodically to determine its accuracy and reliability. As a part of that process, Medicare+Choice organizations must detail in their contractual relationships with providers the access that they will need to the provider's medical record documentation.

4. Anti-Kickback and Other Inducements

Medicare+Choice organizations should periodically review their contractual documents and discussions with providers to ensure that "swapping" is not occurring, which would cause such relationships to fall outside the applicable safe harbor. In addition, contracts with marketing personnel should be reviewed by legal counsel to be sure they do not violate applicable statutes and regulations.

F. Enforcing Standards Through Well-Publicized Disciplinary Guidelines and Policies Regarding Dealings With Ineligible Persons

The OIG recommends that all Medicare +Choice organizations' compliance programs include several key policies in the area of personnel/human resources. The first deals with the establishment and consistent application of appropriate disciplinary policies to deal with improper conduct and the second deals with the employment of certain ineligible individuals.

1. Consistent Enforcement of Disciplinary Policies

An effective compliance program should include guidance regarding disciplinary action for all employees who have failed to comply with the Medicare+Choice organization's standards of conduct, policies and procedures, Federal health care program requirements, or Federal and State laws, or those who have otherwise engaged in wrongdoing. It is vital to publish and disseminate the range of possible disciplinary actions for improper

want to consult the OAS website for information on conducting audits, including information on statistical sampling (RAT–STATS). *See* note 10.

[93] It should be noted, while this method may be less expensive, it may not provide unbiased data, particularly in the area of selective marketing. In fact, in the selective marketing area, the data may be skewed significantly in favor of the Medicare+Choice organization.

conduct and to educate officers and other staff regarding these standards. Employees should be advised that disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. The sanctions could range from oral warnings to suspension, termination or other sanctions, as appropriate. While each situation must be considered on a case-by-case basis to determine the appropriate sanction, intentional or reckless noncompliance should subject transgressors to significant sanctions.

The written standards of conduct should elaborate on the procedures for handling disciplinary problems and identify who will be responsible for taking appropriate action. For example, while disciplinary actions can be handled by department managers, others may have to be resolved by a more senior official of the organization. Personnel should be advised by the organization that disciplinary action will be taken on a fair and equitable basis, that is, all levels of employees should be subject to similar disciplinary action for the commission of similar offenses. Managers and supervisors should be held accountable to implement the disciplinary policy consistently so that the policy will have the required deterrent effect.

2. Employment of and Contracting With Ineligible Persons

All Medicare+Choice organizations should use care when delegating substantial discretionary authority to make decisions that may involve compliance with the law or compliance oversight. In particular, the organization should ensure that it does not delegate such responsibilities to individuals or entities that it knows, or should have known, have a propensity to engage in inappropriate or improper conduct. Pursuant to the compliance program, Medicare+Choice organization's policies should prohibit the employment of or contracting with individuals or entities who have been recently convicted of a criminal offense related to health care or who are listed as debarred, excluded or otherwise ineligible for participation in Federal health care programs. The policies should require the Medicare+Choice organization to utilize Government resources to determine whether such individuals or entities are debarred or excluded. These resources should be used for both potential employees (as part of the employment application process, which should also include a reasonable and prudent background investigation), and should be used to periodically check existing employees and contractors.

Lists of debarred and excluded individuals and entities are currently maintained by both the OIG and the General Services Administration.[94] By approximately January 2000, the Healthcare Integrity Protection Data Bank (HIPDB) will be available to Medicare+Choice organizations (for a nominal fee) to use in conducting these checks on employees and contractors.[95] The HIPDB is an electronic data collection program that will collect, store and disseminate reports on practitioners, providers and suppliers that have been the subject of health care related final adverse actions in criminal, civil and administrative proceedings. The final adverse actions to be reported to the HIPDB include criminal convictions or civil judgments related to the delivery of health care, actions by Federal or State agencies responsible for licensing or certification of health care providers, suppliers and practitioners, and exclusions from Federal or State health care programs.

Pending the resolution of any known criminal charges or proposed debarment or exclusion, the OIG recommends that such individuals should be removed from direct responsibility for, or involvement in, any Federal health care program.[96] Similarly, with regard to current employees or independent contractors, if resolution of the matter results in conviction, debarment or exclusion, then the Medicare+Choice organization should remove the individual from direct responsibility for, or involvement with, the organization's business operations related to Federal health care programs. In addition, they should remove such person from any position for which the person's salary or other items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds, at least until such time as the person is reinstated into participation in the Federal health care programs.

G. Responding to Detected Offenses and Developing Corrective Action Initiatives

Violations of the Medicare+Choice organization's compliance program, failures to comply with applicable Federal or State law, rules and program instructions and other types of misconduct threaten a Medicare+Choice organization's status as a reliable, honest and trustworthy company. Detected but uncorrected misconduct can seriously endanger the mission, reputation and legal status of the organization. Consequently, upon reports or reasonable indications of suspected noncompliance, it is important that the chief compliance officer or other management officials promptly investigate the conduct in question to determine whether a material violation of applicable law, rule or program instruction or the requirements of the compliance program has occurred, and if so, take steps to correct the problem.[97] As appropriate, such steps may include an immediate referral to criminal and/or civil law enforcement authorities, a corrective action plan, a report to the Government,[98] and the notification to the provider of any discrepancies or overpayments, if applicable.

The Medicare+Choice organization should document its efforts to comply with applicable statutes, regulations and Federal health care program requirements. For example, where a Medicare+Choice organization, in its efforts to comply with a particular statute, regulation or program requirement, requests advice from a Government agency charged with administering a Federal health care program, the Medicare+Choice organization should document and retain a record of the request and any written or oral response. This step is extremely important if the Medicare+Choice organization intends to rely on that response to guide it in future decisions, actions or appeals. A log of oral inquiries between the Medicare+Choice organization and third parties will help the organization document its attempts at compliance. In

[94] OIG's List of Excluded Individuals/Entities is available on the Internet at http://www.dhhs.gov/progorg/oig and the General Services Administration list of debarred contractors is available on the Internet at http://www.arnet.gov/epls.

[95] See 42 U.S.C. 1320a–7e.

[96] Prospective employees who have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

[97] Instances of non-compliance must be determined on a case-by-case basis. The existence, or amount, of a *monetary* loss to a health care program is not solely determinative of whether or not the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss at all, but corrective action and reporting are still necessary to protect the integrity of the applicable program and its beneficiaries.

[98] The OIG currently maintains a provider self-disclosure protocol that encourages providers to report suspected fraud. The concept of self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems and work with the Government to resolve these matters. The self-disclosure protocol can be located on the OIG's website at http://www.dhhs.gov/progorg/oig.

addition, the Medicare+Choice organization should maintain records relevant to the issue of whether its reliance was "reasonable," and whether it exercised due diligence in developing procedures to implement the advice.

1. Violations and Investigations

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents. Medicare+Choice organizations should consider engaging outside counsel, auditors or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process (including the objectivity of the investigators and methodologies utilized), copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, e.g., any disciplinary action taken and any corrective action implemented. Although any action taken as the result of an investigation will necessarily vary depending upon the Medicare+Choice organization and the situation, Medicare+Choice organizations should strive for some consistency by utilizing sound practices and disciplinary protocols. Further, after a reasonable period, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered or modifications of the compliance program are necessary to prevent and detect other inappropriate conduct or violations.

If an investigation of an alleged violation is undertaken and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, those subjects should be removed from their current work activity until the investigation is completed (unless an internal or Government-led undercover operation known to the Medicare+Choice organization is in effect). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the Medicare+Choice organization determines disciplinary action is warranted, it should be prompt and imposed in accordance with the organization's written standards of disciplinary action.

2. Reporting

If the compliance officer, compliance committee or a management official discovers credible evidence of misconduct from any source and, after reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil or administrative law,[99] then the Medicare+Choice organization should report the existence of misconduct promptly to the appropriate Government authority [100] within a reasonable period, but not more than 60 days after determining that there is credible evidence of a violation. Prompt reporting will demonstrate the Medicare+Choice organization's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (e.g., penalties, assessments and exclusion), if the reporting company becomes the target of an OIG investigation.[101]

3. Reporting Procedure

When reporting misconduct to the Government, a Medicare+Choice organization should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and any potential cost impact. The compliance officer, with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should be required to notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals criminal, civil or administrative violations have occurred, the appropriate Federal and State officials [102] should be notified immediately.

4. Corrective Actions

As previously stated, Medicare+Choice organizations should take appropriate corrective action, including prompt identification of any overpayment, repayment of the overpayment, modification to policies or manuals and the imposition of proper disciplinary action, if applicable. Failure to notify authorities of an overpayment within a reasonable period of time could be interpreted as an intentional attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the Medicare+Choice organization, as well as any individuals who may have been involved.[103] For this reason, Medicare+Choice compliance programs should ensure that overpayments are identified quickly and promptly return overpayments obtained from Medicare or other Federal health care programs.[104]

[99] When making the determination of credible misconduct, the Medicare+Choice organization should consider, among other statutes, 18 U.S.C. 669 [holding an individual(s) criminally liable for knowingly and willfully embezzling, stealing or otherwise converting to the use of any person other than the rightful owner or intentionally misapplying any of the monies, funds * * * premiums, credits, property or assets of a health care benefit program] and 18 U.S.C. 2 [establishing criminal liability for an individual(s) who commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission as punishable as the principle]. In making this determination, the Medicare+Choice organization should also consider the civil False Claims Act, 31 U.S.C. 3729, which imposes treble damages and penalties on those (including subcontractors) who knowingly submit false claims for Federal funds, or cause their submission, or who knowingly prepare false records or statements to get such false claims paid. Under the civil False Claims Act, "knowingly" means that a person "has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required." 31 U.S.C. 3729.

[100] Appropriate Federal and/or State authorities include the Office of Inspector General of the Department of Health and Human Services, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorneys in the relevant districts, and the other investigative arms for agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs, the Office of Inspector General, U.S. Department of Labor (which has primary criminal jurisdiction over FECA, Black Lung and Longshore programs) and the Office of Inspector General, U.S. Office of Personnel Management (which has primary jurisdiction over the Federal Employees Health Benefit Program).

[101] The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1320a–7(b)(7) for violations of various fraud and abuse laws. See 62 FR 67392 (12/24/97).

[102] *See* note 100.

[103] *See* 42 U.S.C. 1320a–7b(a)(3).

[104] If a Medicare+Choice organization needs further guidance regarding normal repayment channels, the organization should consult with the CHPP. The CHPP may require certain information (*e.g.*, alleged violation or issue causing overpayment, description of overpayment, description of the internal investigative process with methodologies used to determine any overpayments, disciplinary actions taken and corrective actions taken) to be submitted with return of any overpayments, and that such repayment information be submitted to a specific department or individual in the carrier or intermediary's organization. Interest will be assessed, when appropriate. See 42 CFR 405.376.

III. Conclusion

Through this document, the OIG has attempted to provide a foundation for the development of effective and comprehensive Medicare+Choice compliance programs. These principles can also be used by entities to develop compliance programs applicable to other Federal and health care programs, as well as for their private lines of business. As previously stated, however, each program must be tailored to fit the needs and resources of an individual organization, depending upon its particular corporate structure, mission and employee composition. The statutes, regulations and guidelines of the Federal and State health insurance programs, as well as the policies and procedures of the private health plans, should be integrated into every Medicare+Choice organization's compliance program.

The OIG recognizes that the health care industry, which reaches millions of beneficiaries and expends about a trillion dollars annually, is constantly evolving. In no area of the industry is this more evident than in the growing area of managed care, particularly Medicare managed care. As a result, the time is right for Medicare+Choice organizations to implement strong, voluntary compliance programs. Compliance is a dynamic process that helps to ensure Medicare+Choice organizations are better able to fulfill their commitment to ethical behavior and to meet the changes and challenges being imposed upon them by the Congress and private insurers. It is OIG's hope that voluntarily created compliance programs will enable Medicare+Choice organizations to meet their goals of providing efficient and quality health care and at the same time, substantially reduce fraud, waste and abuse.

Dated: June 18, 1999.

June Gibbs Brown,

Inspector General.

[FR Doc. 99–16072 Filed 6–23–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Spore in Ovarian Cancer

Date: June 27–29, 1999.

Time: 6:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Martin H. Goldrosen, PhD., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Room 635 C, Rockville, MD 20852–7408, (301) 496–7930.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 18, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–16062 Filed 6–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: July 13–14, 1999.

Time: 7:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Shan S. Wong, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6 AS 25, National Institutes of Health, Bethesda, MD, (301) 594–7797.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 16, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–16058 Filed 6–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–37, Review of R01.

Date: June 24, 1999.

Time: 11:00 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–54, Review of P01—Applicant Interview.

Date: July 9, 1999.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yong A. Shin, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–37, Review of R01.

Date: July 22–23, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yasaman Shirazi, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Dental and Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–37, Review of R01.

Date: June 22, 1999.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–65, P01, Applicant Interview.

Date: July 25–26, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–67, P01, Applicant Interview.

Date: August 10–11, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yasaman Shirazi, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Dental and Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 16, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–16059 Filed 6–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: July 14–15, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada, 8400 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: July 26, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–16061 Filed 6–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "INFOFAX and Miscellaneous Communications Materials."

Date: July 27, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lylè Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Science Education Materials for Second and Third Grade Students, Teachers and Parents."

Date: August 11, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 18, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–16063 Filed 6–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Behavioral Therapy Development and Behavioral Science.

Date: July 9, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Bringing Drug Abuse Treatment From Research to Practice.

Date: July 15, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 18, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc 99–16064 Filed 6–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel IFCN5–01.

Date: June 22–23, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 28, 1999.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–RPHB–2(1).

Date: June 29–30, 1999.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7848, Bethesda, MD 20892, (301) 435–0682.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG–1 AARR–4(01).

Date: June 29, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Mohindar Poonian, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1168, poonianm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel. ZRG1 AARR–1 (01).

Date: June 29–30, 1999.

Time: 8:30 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 29, 1999.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge II, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William C. Branche, Phd., Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 29, 1999.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7818, Bethesda, MD 20892, (301) 435–1778, khanm@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 29, 1999.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ron Manning, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: June 29, 1999.

Time: 1:00 pm to 3:00 pm.

Agenda: To provide concept review of proposed grant applications.

Place: NIH Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anita Corman Weinblatt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7778, Bethesda, MD 20892, (301) 435–1124.

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group. Hematology Subcommittee 2.

Date: June 30–July 1, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 30, 1999.

Time: 10:00 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: NIH Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, haydenb@csr.nih.gov.

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AARR–1(02).

Date: June 30, 1999.

Time: 11:15 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 30, 1999.

Time: 3:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–HEM–1 (01M).

Date: June 30, 1999.

Time: 4:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–16060 Filed 6–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Estimation Methodology for Adults With Serious Mental Illness (SMI)

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Final notice.

SUMMARY: This notice establishes a final methodology for identifying and estimating the number of adults with serious mental illness (SMI) within each State. This notice is being served as part of the requirement of Public Law 102–321, the ADAMHA Reorganization Act of 1992.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ronald W. Manderscheid, Ph.D., Chief, Survey and Analysis Branch, Center for Mental Health Services, Parklawn Building, Rm 15C–04, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3343 (voice), (301) 443–7926 (fax), rmanders@samhsa.gov (e-mail).

Scope of Application

All individuals whose services are funded through the Federal Community Mental Health Services Block Grant must fall within the definition announced on May 20, 1993, in the **Federal Register**, Volume 58, No. 96, p. 29422. Inclusion or exclusion from the estimates is not intended to confer or deny eligibility for any other service or benefit at the Federal, State, or local level. Additionally, the estimates are not intended to restrict the flexibility or responsibility of State or local governments to tailor publicly-funded systems to meet local needs and priorities. Any ancillary use of these estimates for purposes other than those identified in the legislation is outside the purview and control of CMHS.

Background

Pub. L. 102–321, the ADAMHA Reorganization Act of 1992, amended the Public Health Service Act and created the Substance Abuse and Mental Health Services Administration (SAMHSA). The Center for Mental Health Services (CMHS) was established within SAMHSA to coordinate Federal efforts in the prevention, treatment, and the promotion of mental health. Title II of Pub. L. 102–321 establishes a Block Grant for Community Mental Health Services administered by CMHS, which permits the allocation of funds to States for the provision of community mental health services to children with a serious emotional disturbance (SED) and adults with a serious mental illness (SMI). Pub. L. 102–321 stipulates that States will estimate the incidence (number of new cases in a year) and prevalence (total number of cases in a year) in their applications for Block Grant funds. As part of the process of implementing this new Block Grant, definitions of the terms "children with a serious emotional disturbance and "adults with a serious mental illness" were announced on May 20, 1993, in the **Federal Register**, Volume 58, No. 96, p. 29422. Subsequent to this notice, a group of technical experts was convened by CMHS to develop an estimation methodology to "operationalize the key concepts" in the definition of adults with SMI. A similar group has prepared an estimation methodology for children and adolescents with SED. The final SED estimation methodology was published on July 17, 1998, in the **Federal Register**, Volume 63, No. 137, p. 38661.

Summary of Comments

This final notice reflects a thorough review and analysis of comments received in response to an earlier draft notice published in the **Federal Register**, on March 28, 1997, Volume 62, No. 60, p. 14928.

CMHS received only nine comments expressing opinions about the proposed methodology. Several questions were raised. These questions are summarized in four broad areas: Operational definition of SMI, complexity of the methodology, differences among States, and other related comments.

Operational Definition of SMI

Some comments suggested that the SMI definition was too broad.

The final definition of SMI was published on May 20, 1993, in the **Federal Register**, Volume 58, No 96, p. 29422. This definition cannot be changed by the methodology outlined below.

SMI was defined as the conjunction of a DSM mental disorder and serious role impairment. The Diagnostic Interview Schedule (DIS) estimates were not enhanced. A respondent had to have a DIS/Composite International Diagnostic Interview (CIDI) diagnosis *and* an impairment to qualify for the operational definition of SMI. This means that the estimated annual prevalence of SMI is always equal to or less than the DIS/CIDI estimates of disorder prevalence. The charge to the technical committee was to make what it considered to be the best decisions based on available data about impairment to operationalize the definition of SMI. The report of the committee describes in great detail how and why the technical experts chose specific indicators.

It is important to note that Pub. L. 102–321 explicitly states that SMI includes impairments in functioning. As a result, the technical experts were required to include one component of the operational definition that assesses functioning in social networks. Strict criteria were used, such as reports of extreme deficits in social functioning to qualify for this type of impairment. A respondent must either have one of the following two profiles: (i) Complete social isolation, defined as having absolutely no social contact of any type—telephone, mail, or in-person—with any family member or friend and having no one in his or her personal life with whom he/she has a confiding personal relationship; or (ii) extreme dysfunction in personal relationships, defined as high conflict and no positive interactions and no possibility of intimacy or confiding with any family member or friend. These persons comprise about 10% of those classified as having SMI. The remaining 90% either have a severe disorder like schizophrenia or bipolar disorder, or a disorder and work impairment, or a disorder and report being suicidal.

The rationale for the 57% prevalence estimate of SMI among prison inmates is well documented in the committee's report. A review of epidemiological studies in inmate populations found that the average estimated prevalence of any DIS disorder is 57%. The technical experts concluded that all inmates with one of these disorders, by definition, were functioning inadequately in social roles by virtue of the fact that they were incarcerated.

This definition was adopted for very practical reasons. It is important to remember that the inmate population represents less than one percent of the adult population, and the prevalence estimate of 57% is based on published work.

Some comments urged that the definition of SMI did [illegible] service population [illegible] health services

This fi[illegible] about t[illegible] ication of estim[illegible] nent defines what is and i[illegible] by the definition and the methodology.

Complexity of the Methodology

Some comments noted that the use of the Baltimore sample as a basis for estimating national SMI rates among elderly persons may have introduced errors into the estimates for persons 55 years and older.

The technical experts were mandated to arrive at the best estimate based on currently available data. The Baltimore ECA data were the best currently available for persons 55 years and older. Nationally representative data would have been used if such existed. It will be important in the future to improve the data available to produce estimates for all age groups.

Some comments were made about distortions in State estimates and lack of theory.

The technical experts used all available data on State-level variables that could be obtained readily from the Federal government on an annual basis and explored the effects of these variables in predicting SMI. Such variables were deliberately selected to increase the ease of application of the estimation methodology by the States in the future. The experts believed and continue to believe that they could do no less than exhaustively consider the full range of potentially important predictors of SMI, irrespective of available theory. The analytical iterations are explained in the committee's report. These explanations provide all the detail a specialist in applied statistics or demography would need to evaluate the procedures adopted. These procedures are consistent with currently accepted methods for making small area estimates. Government agencies currently use similar methodologies to make estimates of other State-level social policy variables.

Some comments suggested that confidence intervals were not provided for State prevalence estimates.

Confidence intervals have been provided in this final notice, since estimates are based upon samples rather than a complete enumeration.

Some comments suggested that the estimation methodology paper was difficult to understand and that complex statistical procedures were inadequately explained, with insufficient rationale.

In writing the paper, the authors were sensitive to the importance of being clear about major decisions. The authors have had a great deal of experience writing reports of empirical studies for critical scientific and peer review. By the standards of this scientific review process, the level of documentation presented in the estimation methodology report is quite high.

Some comments indicated that no adjustment was made in the methodology to address the phenomenon of different levels of reporting of psychiatric symptoms by ethnic groups.

The technical experts included information to discriminate nonhispanic whites from all other racial groups in the model. No fine-grained distinctions were made about race/ethnicity because of the small numbers of people in specific race/ethnicity subsamples in the surveys that were analyzed. As part of the analysis, the technical experts obtained all the information that was readily available from the Census Bureau on Census Tract-level, County-level, and State-level demographic variables. All these variables were included in efforts to predict and estimate the prevalence of SMI.

Some comments suggested that the factor analysis was inadequate and that important issues not described (e.g., the number of variables in the analysis or how missing data were handled) could have affected the results.

The factor analysis was carried out on a Census data file containing County-level data from the 1990 Census. The sample size was the number of Counties in the U.S., while the number of variables was over 100 Census characteristics. Some of the characteristics were quite highly correlated across Counties, like median household income and mean household income, or the number of men in a County and the number of women in a County. Factor analysis was used as a way of reducing redundancy prior to performing further analyses. The factor analytic procedures employed represent the state-of-the-art for similar data reduction procedures.

Some comments were made about the use of varimax rather than oblique rotation, the decision to examine only the first ten factors in the solution, and the use of factor-weighted scores.

The group of technical experts explored both oblique and rigid rotations and also looked at the unique factors after the first ten. "Unique factors" refer to factors in which there is only a single variable with a high loading. Variance was noted to be trivial after the first ten factors. No factors after the first ten had more than one variable with high loading. Factor-weighted and factor-based scales are very highly correlated, therefore the choice of one over the other did not affect the results of the analyses.

Some comments noted that Census data are stronly influenced by population size and suggested that this effect could be removed to find a more meaningful structure.

A similar procedure was actually used. All count variables were transformed (e.g., number of vacant houses, number of people on welfare) into population proportions. This procedure removes the effects of population size.

Some comments suggested that users of the public mental health system have low levels of income. However, the key significant income predictor was an interaction term for high income and urbanicity associated with reduced prevalence of SMI.

The technical experts were surprised to find the absence of high income people was a stronger predictor of SMI than the presence of low income people. This was investigated in considerable detail, trying a number of different specifications in search of a low income effect. These included a specification involving the assessment of neighborhoods with a bimodal distribution of high income and low income people, as well as a specification that examined the effect of degree of variation in income in the community (e.g., differentiation between a community with an average income of $30,000 due to all families having this income versus another with an average of $30,000 due to 10% of families making $210,000 and another 90% making $10,000. After a careful review, the technical experts concluded that the data did not support a low income effect or any effect of income variance for SMI. It is important to note that there is a strong low income effect for estimates of persons with severe and persistent mental illness (SPMI), even though such an effect could not be found for SMI.

It is noteworthy that the analysis of income effects was confined to neighborhoods (Census Tracts) due to the fact that the Census Bureau would not release individual-level family income data cross-classified by other Census variables at either the Tract, County, or State levels. The Census Bureau decision was based on the concern to maintain confidentiality of Census records.

Some comments requested future consideration of SMI incidence.

Currently, no nationally representative data are available on incidence of SMI. The group of technical experts has made recommendations to CMHS regarding the need for future data collection to obtain incidence data.

State Differences

Some comments suggested that SMI prevalence was higher in the West and the Southwest, compared with other regions of the US.

The magnitude of the SMI estimates, averaging approximately 5–6% of the adult population in a year, is very plausible. It is generally agreed that 2–3% of the adult population suffer from severe and persistent disorders such as schizophrenia, other nonaffective psychoses, and bipolar disorder. Based upon the estimation methodology, an additional 2–3% of the adult population suffer from serious anxiety, nonbipolar mood disorders, and other disorders, for a total of 5–6%. It would be highly suspicious if the estimates were any less.

In the draft notice of the estimation methodology, point estimates were provided for State SMI prevalence figures. In this final notice, a 95% confidence interval is used to calculate the SMI prevalence rate as a range: State prevalence of SMI is estimated to be between the lower and upper percent limits for each State. Based on these analysis, one cannot conclude that rates differ among States. Hence, the same prevalence rate and percentage standard error are applied to all States to produce the numerical estimates provided in table 1. See the footnote to table 1 for further information on this estimation procedure.

Some comments noted that the inclusion of Alzheimer's disease contributes appreciably to the counts and that, since the definition cannot be changed at this point, the report should clearly note that this is the case.

This is a good suggestion.

Some comments suggested that only 10 States are at or below the national average, and that the majority of these States are quite small, therefore a mathematical explanation of this phenomenon would be appropriate.

This comment does not reflect the nature of the estimation methodology. As stated in the draft **Federal Register** notice of March 23, 1997, Volume 62, No 60, page 14931, the national total estimated number of persons with SMI is derived from direct, weighted counts from the surveys used. However, the State totals were computed from synthetic modeling at the County level, and county estimates were summed to arrive at State totals. These two approaches are not the same. Therefore, they are subject to different types of sampling and non-sampling errors. As a result, the sum of State totals will not necessarily equal the U.S. total, and State estimates cannot be compared directly with the national average.

Some comments suggested that use of national probability estimates did not permit consideration of regional and state differences, which could affect the relationship between key analytical variables.

Because of the difficulty of obtaining data, the technical experts made the assumption that the effects of all the predictor variables were the same across all States. More precise estimates could have been made if representative samples from each State were available.

Other Related Comments

Some comments noted that the exclusion of homeless and institutionalized persons, those living in group quarters, and those without telephones excludes the segments of the population with the highest risk of SMI.

The Epidemiologic Cachement Area (ECA) and the National Commobidity Survey (NCS) studies were both household surveys, so there is no exclusion of non-telephone households. Although national data were used to estimate the overall U.S. prevalence of the omitted population groups, due to lack of data, no attempt was made to estimate how many homeless people or persons in the other excluded segments reside in each State.

Some comments suggested the need to have prevalence estimates for Puerto Rico.

The prevalence estimates for Puerto Rico are included in this notice.

Some comments suggested validity studies that could form the basis for modifications and refinements to the estimation methodology.

Validation studies could help refine the estimation methodology. However, the mandate to the technical experts was to develop the best estimates with currently available data rather than only propose new data collections. As noted earlier, the technical experts have recommended that CMHS carry out a nationally representative survey once each decade in the Census year explicitly designed to assess the prevalence of SMI and SPMI, with oversampling to allow estimation by State. Execution of validation studies as part of this survey would permit the evaluation of and increased precision in State-level estimates.

Some comments urged SAMHSA to increase Block Grant Funds for States to offer services to the number of persons who have SMI.

The first step in such a process is the one currently being undertaken, i.e., using the estimation methodology to produce estimates showing that the number of adults with SMI exceeds the number who can be served with currently available funds.

SMI Estimation Methodology

Data Sources

Data from two major national studies, the NCS and the ECA, were used to estimate the prevalence of adults with SMI. The NCS, a nationally representative sample household survey conducted in 1990–91 assessed the prevalence of DSM–III–R disorders in persons aged 15–54 years old. This sample included over 1,000 census tracts in 174 counties in 34 States. The ECA, a general population survey of five local areas in the U.S., was conducted in 1980–85 to determine the prevalence of DSM III disorders in persons age 18 and older. The ECA data utilized for the present analysis were limited to the Baltimore site because that was the only site that had disability data needed to operationalize the criteria for SMI. Although the Baltimore sample is not nationally representative, it is used in this analysis because the ECA provides a rough replication and check on the NCS data. Also, the NCS does not have data on persons age 55 and older, so the ECA data are used to estimate the prevalence of serious mental illness among persons 55 years and older.

The group of technical experts determined that it is not possible to develop estimates of incidence using currently available data. However, it is important to note that incidence is always a subset of prevalence. In the future, information on both incidence and prevalence data will need to be collected.

Serious Mental Illness (SMI)

As previously defined by CMHS, adults with a serious mental illness are persons 18 years and older who, at any time during a given year, had a diagnosable mental, behavioral, or emotional disorder that met the criteria of DSM–III–R *and* "* * * that has resulted in functional impairment which substantially interferes with or limits one or more major life activities.* * *." The definition states that "* * * adults who would have met functional impairment criteria during the referenced year without the benefit of treatment or other support services are considered to have serious mental illnesses. * * *" DSM–III–R "V" codes, substance use disorders, and developmental disorders are excluded from this definition.

The following criteria were used to operationalize the definition of serious mental illness in the NCS and ECA data:

(1) Persons who met criteria for disorders defined as severe and persistent mental illnesses (SPMI) by the National Institute of Mental Health (NIMH) National Advisory Mental Health Council (National Advisory Mental Health Council, 1993).

To this group were added:

(2) Persons who had another 12-month DSM–III–R mental disorder (with the exclusions noted above), and

—Either planned or attempted suicide at some time during the past 12 months, or

—Lacked any legitimate productive role, or

—Had a serious role impairment in their main productive roles, for example, consistently missing at least one full day of work per month as a direct result of their mental health, or

-Had serious interpersonal impairment as a result of being totally socially isolated, lacking intimacy in social relationships, showing inability to confide in others, and lacking social support.

Estimation Procedures

Two logistic regression models were developed to calculate prevalence estimates for adults with SMI.

(a) A Census Tract Model for years in which the decennial U.S. census is conducted.

(b) A County-Level Model to be used in intercensal years.

In non-censal years, the county-level model will be used to estimate SMI prevalence, after adjusting for its known relationship with the census tract model.

Formula

Census-Tract Model

Using 1990 census data, a logistic regression model was developed to calculate predicted rates of SMI for each cell of an age by sex by race table for each of the 61,253 Census Tracts in the country. Next, the rates were multiplied by cell frequencies and subtotaled to derive tract-level estimates. Finally, the tract-level estimates were aggregated to arrive at county-level and state-level prevalence estimates of adults with SMI. This regression methodology is often used in small area estimation (Ericksen,

1974; Purcell & Kish, 1979). The actual Census Tract Model equation is specified immediately below:

PARAMETER ESTIMATES FOR CENSUS TRACT MODEL

Predictor	Odds ratio	95% Confidence interval
Intercept	*0.02	(0.01–0.04)
Individual-Level Variables		
Age:		
18–24	*1.94	(1.18–3.17)
25–34	1.32	(0.86–2.03)
35–44	1.46	(0.96–2.21)
45–54	1.00	
Sex:		
Female	*2.23	(1.57–3.19)
Male	1.00	
Race:		
Nonhispanic white	1.00	
Black/Hispanic/other	*0.49	(0.28–0.87)
Marital Status:		
Married/Cohabiting	1.00	
Never Married	*3.90	(1.15–3.08)
Separated/Divorced/Widowed	*1.88	(2.41–6.31)
Census Tract Level Variables		
F2 (High socio-economic status)	1.16	(0.90–1.49)
F4 (Immigrants)	0.99	(0.85–1.14)
County-Level Variables		
County Urbanicity:		
Metropolitan	1.12	(0.85–1.49)
Other	1.00	
Interactions Among Variables		
FemaleXSeparated/Divorced/Widowed	*0.47	(0.24–0.91)
FemaleXNever Married	*0.47	(0.28–0.78)
Non WhiteXSeparated/Divorced/Widowed	*2.62	(1.29–5.33)
Non WhiteXNever Married	1.81	(0.95–3.44)
FemaleXF2	*0.70	(0.51–0.96)
UrbanicityXF2	*0.75	(0.52–0.95)
F2XF4	*0.78	(0.64–0.94)

*Significant at the .05 level, two tailed test; F2=Census Tract factor score for high socioeconomic status (SES); F4=Census Tract factor score for immigrants.

The estimate for persons 55 years and older is derived from analysis of ECA data in conjunction with NCS data. The prevalence ratios among ECA respondents ages 55–64 and 65 years and above, were found to be 84 and 31 percent as large, respectively, as the prevalence estimate for NCS respondents 18–54 years old, after controlling for differences in gender and race. NCS State-level estimates were extrapolated using these ratios. These ratios did not differ significantly by sex or race. A factor of .81 was applied to State-level SMI estimates for the age range 18–54 to derive the rate for the age range 55–64, and .31 was used to arrive at the estimate for person 65 and older. A weighted sum (by age distribution of each State) was calculated to determine the final State-level SMI prevalence estimate.

County Model

U.S. Census Bureau tract-level data are available only for years in which the decennial U.S. Census is conducted. To obtain prevalence estimates for adults with SMI during intercensal years, the group of technical experts used biennial individual- and county-level data from the Census Bureau's small area estimation program. Predicted values from the logistic regression equation were used to calculate county-level estimates. In contrast to the Census Tract Model, the initial estimates using this approach were generated at the county level. These county-level estimates are then summed to provide State-level prevalence estimates. The actual county-level model equation is specified immediately below:

PARAMETER ESTIMATES FOR COUNTY-LEVEL MODEL

Predictor	Odds ratio	95% Confidence interval
Intercept	*0.04	(0.02–0.07)

PARAMETER ESTIMATES FOR COUNTY-LEVEL MODEL—Continued

Predictor	Odds ratio	95% Confidence interval
Individual-Level Variables		
Age:		
18–24	1.69	(1.00–2.85)
25–34	1.10	(0.65–1.88)
35–44	1.24	(0.71–2.15)
45–54	1.00	
Sex:		
Female	1.58	(1.17–2.13)
Male	1.00	
County-Level Variables		
Urbanicity:		
Metropolitan	1.35	(0.99–1.85)
Other	1.00	

*Significant at the 0.05 level, two-tailed test.

Adjustment for persons age 55 years and older is carried out as in the Census Tract Model. An adjustment factor (Census Bureau, Fay, 1987; Fay & Herriot, 1979) based on the ratio of County-Level Model estimates for 1990 and Census Tract Model estimates for 1990 can be used to adjust estimates for subsequent years from the County-Level Model. This procedure assumes that the Census Tract Model is more accurate than the County-Level Model.

County and State Estimates

As stated earlier, Census Tract Model prevalence estimates were summed to derive county estimates, and county estimates were summed to arrive at State estimates. The 12-month prevalence of SMI is estimated nationally to be 5.4 percent (with a standard error of 0.9 percent) or 10.2 million people in the adult household population (95 percent confidence interval ranging from 7.0 million to 13.4 million), of which 2.6 percent or 4.8 million adults have SPMI (figure 1). When the standard error is considered, State estimates do not vary. Hence, State estimates are defined as 5.4 percent of the adult population, with a 95 percent confidence interval of plus or minus 1.96 times 0.9 percent.

The above estimates are based on noninstitutionalized persons residing in the community. Limited information currently exists on SMI estimates for persons institutionalized (i.e., persons in correctional institutions, nursing homes, the homeless, persons in military barracks, hospitals/schools/homes for persons who are mentally ill or mentally retarded). Fischer and Breakey (1991) indicate that, on average, the SMI prevalence rate for these groups (including about 5 million people or 2.7 percent of the U.S. adult population) is about 50 percent. The following assumptions were made in deriving rough estimates of SMI prevalence for persons who are institutionalized: (a) For 1.1 million residents of correctional institutions, 100 percent of whom are adults, prevalence of SMI is estimated to be 57 percent; (b) For 1.8 million residents of nursing homes; 100 percent of whom are adults, prevalence of SMI is estimated to be 46 percent; (c) For 0.5 million persons who are homeless, 80 percent of whom are adults, prevalence of SMI is estimated to be 50 percent; (d) For 0.6 million persons in military barracks, all of whom are adults, the SMI prevalence rate is equivalent to that of the adult household population; (e) For 0.4 million persons in hospitals, homes, and schools for persons who are mentally ill, 80 percent of whom are adults, prevalence of SMI is estimated to be 100 percent. (f) For 0.6 million persons in other institutional settings such as chronic disease hospitals, homes and schools for persons with physical disability, and rooming houses, 50 percent of whom are adults, prevalence of SMI is estimated to be 50 percent.

State estimates of each of these populations can be added to the State SMI populations identified below.

Only a portion of adults with SMI seek treatment in any given year. Due to the episodic nature of SMI, some persons may not require mental health service at any particular time.

Provision of Estimates to States

CMHS will provide each State mental health agency with estimates in order to initiate the first cycle of use. Subsequently, CMHS will provide technical assistance to States to implement the methodology using State demographic information.

The intial set of State estimates is provided in table 1 below. Further background information on these estimates can be found in Kessler, et al. (1998).

TABLE 1.—ESTIMATED 12-MONTH NUMBER OF PERSONS WITH SERIOUS MENTAL ILLNESS, AGE 18 AND OLDER

[By State, 1990 *]

State	Point estimate	95% confidence interval	
		Lower limit	Upper limit
Alabama	161,017	110,327	211,708
Alaska	20,396	14,730	26,817
Arizona	144,942	104,680	190,572
Arkansas	93,398	63,995	122,801
California	1,188,502	814,344	1,562,660
Colorado	131,389	90,026	172,752

TABLE 1.—ESTIMATED 12-MONTH NUMBER OF PERSONS WITH SERIOUS MENTAL ILLNESS, AGE 18 AND OLDER—Continued

[By State, 1990 *]

State	Point estimate	95% confidence interval	
		Lower limit	Upper limit
Connecticut	137,027	93,889	180,165
Delaware	27,153	18,605	35,701
District Columbia	26,450	18,123	34,776
Florida	543,871	372,652	715,090
Georgia	256,549	175,784	337,315
Hawaii	44,718	30,640	58,795
Idaho	37,711	27,235	49,582
Illinois	458,149	313,917	602,381
Indiana	220,763	151,263	290,262
Iowa	111,125	76,141	146,109
Kansas	98,062	67,190	128,933
Kentucky	147,485	101,054	193,915
Louisiana	161,606	110,730	212,482
Maine	49,622	34,000	65,244
Maryland	195,438	133,911	256,965
Massachusetts	251,821	172,544	331,098
Michigan	369,173	252,952	485,394
Minnesota	173,249	118,708	227,790
Mississippi	98,629	67,579	129,678
Missouri	205,321	140,683	269,959
Montana	31,156	21,348	40,964
Nebraska	62,066	42,527	81,605
Nevada	48,864	33,481	64,247
New Hampshire	44,847	30,728	58,965
New Jersey	320,259	219,437	421,082
New Mexico	57,690	39,528	75,851
New York	741,469	535,505	974,894
North Carolina	271,214	185,832	356,597
North Dakota	25,024	17,146	32,902
Ohio	434,558	297,753	571,363
Oklahoma	124,663	85,417	163,909
Oregon	114,382	78,373	150,392
Pennsylvania	490,689	336,213	645,165
Puerto Rico	195,719	159,550	231,817
Rhode Island	42,000	28,778	55,222
South Carolina	138,591	94,960	182,221
South Dakota	26,867	18,409	35,325
Texas	656,136	449,575	862,698
Tennessee	197,671	135,441	259,901
Utah	59,152	40,530	77,774
Vermont	22,662	15,528	29,797
Virginia	252,861	173,257	332,466
Washington	194,686	133,396	255,977
West Virginia	72,895	49,946	95,843
Wisconsin	194,550	133,303	255,798
Wyoming	17,175	11,768	22,582
Total	10,191,412	7,043,431	13,374,301

Does not include persons who are homeless or are institutionalized.

*Because there are no differences among States, the estimate for each State is calculated as 5.4 percent of the total State adult population. The size of the 95 percent confidence interval for each State is equal to the percentage estimate plus or minus 1.96x0.9 percent. The percentage estimate and the percentage standard error are identical across States. However, the numeric estimate and numeric standard error vary depending on the State adult population. The percentage standard error (0.9 percent) used to compute the upper and lower 95-percent confidence limits is estimated using jackknife repeated replication (JRR) variance analysis (Kish and Frankel 1974). The JRR calculations assume that the imputation ratios and the population proportions in the different age groups based on the census data are correct. The confidence limits simulate the error introduced into the estimates by imprecision in the prevalence estimates for NCS respondents in the age range 18–54.

Limitations

The ECA and NCS were designed to study lifetime prevalence of mental disorders rather than 12-month prevalence. As a result, the emphasis in diagnostic assessment was on lifetime disorders. In addition, functional impairment was not a primary focus in either the ECA or the NCS.

Current data cannot provide estimates of incidence. Additional information needs to be collected in the future.

It is anticipated that additional work will be done in future years to refine and update the estimation methodology. CMHS will apprise States as this work develops.

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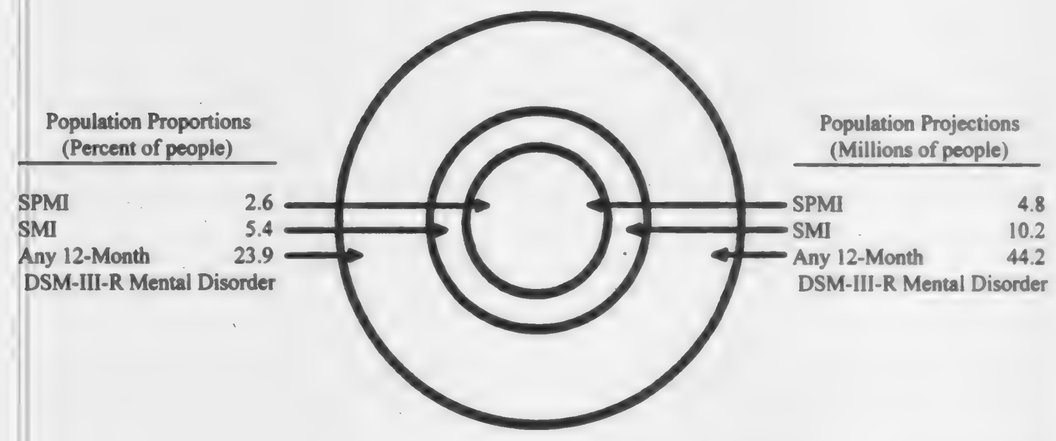
Dated: June 7, 1999.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

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Figure 1. Estimated Total Population (Ages 18+) 12-Month Prevalences and Population Projections of DSM-III-R Severe and Persistent Mental Illness (SPMI), Serious Mental Illness (SMI), and Any Mental Illness Based on Pooled Baltimore ECA/NCS Data



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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment, and Center for Substance Abuse Prevention; Fiscal Year 1999 Funding Opportunity

AGENCIES: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment (CSAT), and Center for Substance Abuse Prevention (CSAP).

ACTION: Notice of availability of funds for grants to support the development of community-based practice/research collaboratives.

SUMMARY: The U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) and the Center for Substance Abuse Prevention (CSAP), announce the availability of FY 1999 funds for grants for the following activity. This activity is discussed in more detail under section 4 of this notice. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Note: SAMHSA also published notices of available funding opportunities for FY 1999 in previous issues of the **Federal Register**.

Activity	Application deadline	Estimated funds available	Estimated Number of awards	Project period
Practice/Research Collaboratives	08/11/99	$2.5 Million	8–10	1 year.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 1999 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 105–277. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001-00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity (i.e., the GFA) described in section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.

(Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines: The deadline for receipt of applications is listed in the table above.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see section 4).

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1999 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1999 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activity in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process.

Other funding criteria may include:

- Availability of funds.

4. Special FY 1999 SAMHSA Activity

4.1. Bridging the Gap: Developing Community-Based Practice/Research Collaboratives (Short Title: Practice/Research Collaboratives, TI 99–006)

- Application Deadline: August 11, 1999.
- Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of grants to support the development of Practice/Research Collaboratives hereinafter referred to as PRCs. The purpose of this program is to improve the quality of substance abuse clinical preventive and treatment services by increasing interaction and knowledge exchange among key community based stakeholders, including substance abuse treatment providers, community-based organizations providing support services to substance abusers, researchers, and policy makers, including health plan managers and purchasers of substance abuse treatment. It is expected that the PRCs will develop the necessary infrastructure and capacity to further knowledge development and to be able to participate effectively in federally-funded knowledge development and applications projects. Through these efforts, the PRCs will be able, over time, to make significant contributions to the field's knowledge and understanding about substance abuse treatment and related clinical preventive practices. SAMHSA's Center for Substance Abuse Prevention is participating with CSAT in this initiative.

  This program is eventually expected to have two types of grants: Development Grants and Implementation Grants. This announcement (GFA No. TI99–006) provides guidelines for Development Grant applications only.
- Priorities: None.
- Eligible Applicants: Applications for Development Grants may be submitted by domestic public and private nonprofit and for-profit entities, such as community-based organizations, public or private universities, colleges, and hospitals, and units of State or local government.
- Grants/Amount: It is estimated that $2.5 million will be available to support approximately 8–10 Development awards under this program in FY 1999. Awards are not expected to exceed $250,000 in total costs (direct+indirect). CSAT anticipates that next fiscal year there will be funds to support both Development and Implementation Grants.
- Period of Support: Support will be available for a period of 12 months to develop full network membership, establish the operational model proposed for the PRC, and develop research and knowledge application plans in preparation for submitting a separate application for an Implementation Grant.
- Catalog of Domestic Federal Assistance: 93.230.
- Program Contact: For programmatic or technical assistance (not for application kits) contact:

Fran Cotter, Office of Managed Care, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8796,
or
Ed Craft, Ph.D., Office of Evaluation, Scientific Analysis and Synthesis, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 840, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3953

- For grants management assistance, contact: Peggy Jones, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 614, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–9666.
- Application kits are available from: National Clearinghouse for Alcohol and Drug Information, PO Box 2345, Rockville, MD 20847–2345, (1–800) 729–6686.

5. Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 1999 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally

recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities, Policy and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: June 18, 1999.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–16141 Filed 6–23–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–02]

Privacy Act; Proposed New System of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Establish a new system of records.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of record is entitled Compliance Case Tracking System (CCTS–F73), HUD/EC–01. This system of records contains information on individuals, corporations, partnerships, associations, unit of government or legal entities who have been suspended, or debarred, or who are ineligible to participate in HUD programs or those whose records of participation in HUD programs are being reviewed for possible administrative actions to exclude them from further participation.

DATES: *Effective date:* This action shall be effective without further notice in 30 calendar days (July 24, 1999) unless comments are received during or before this period that would result in a contrary determination.

Comments due by: July 26, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this new system of records to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374, or Richard Delaubansels, Compliance Analyst, Telephone Number (202) 708–3041 extension 3569.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new system of records identified as HUD/EC–01, Compliance Case Tracking System (CCTS–F73).

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Operations pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Responsibilities for Maintaining Records About Individuals," July 25, 1994; 59 FR 37914.

Authority: 5 U.S.C. 552a 88 Stat. 1896; 342 U.S.C. 3535(d).

Dated: June 14, 1999.

Glorida R. Parker,

Chief Information Officer.

HUD/EC–01

SYSTEM NAME:

Compliance Case Tracking System (CCTS—F73).

SYSTEM LOCATION:

HUD Computer Center, Lanham, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, corporation, partnership, association, unit of government or legal entity, however organized,—except; foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially to foreign governments or foreign governmental entities—proposed for debarment, suspended, debarred, or voluntarily excluded government-wide, unless otherwise noted, from Federal procurement and sales programs, non-procurement programs, and financial benefits. An exclusion may be based on the Federal Acquisition Regulation (FAR) 9.4; Federal Property Management Regulation (FPMR) 101–45.6; Government Printing Office (GPO) Instruction 110.11 A; U.S. Postal Service (PS) Publication 41; the Non-procurement Common rule; or the authority of a statute, Executive Orders 12549 and 12689 or regulation applying to procurement or non-procurement programs. Following are some examples of individuals or persons (proposed for debarment, debarred, suspended, or voluntarily excluded): participants who are direct or indirect recipients of HUD funds; and those who represent entities such as contractors or corporations who are participants in HUD FHA assisted or sponsored programs including mortgage insurance programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The automated database contains pertinent information obtained from hard copy compliance case files. These automated records contain, but are not limited to: Names; addresses of all persons proposed for debarment; persons debarred, suspended, or excluded by a Limited Denial of Participation (LDP) action; cross-references when more than one name is involved in a single action; the type of action; the cause of the action; the scope of the action; any termination date for each listed action; and the agency name and telephone number of the agency point of contact for the action. The system also contains records of referrals for administrative sanction action where action is pending or where no action was taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 12549 and 12689; U.S.C. 31, 41, and 42.

PURPOSE(S):

To the extent permitted by law, executive departments and agencies shall participate in a government-wide system for the following purposes: (1) To exclude from Federal financial and non-financial assistance and benefits under Federal programs and activities those who have been debarred or suspended; and (2) to include in the List of Parties Excluded from Federal Procurement and Nonprocurement Programs all persons proposed for debarment, debarred, suspended, or excluded by a Limited Denial of Participation (LDP).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside of the agency as routine use pursuant to 5 U.SC. 552a(b)(3) as follows, provided that no routine use listed shall be construed to limit or waive any other routine use specified herein:

(a) Internal Revenue Service (IRS)—for the purpose of effecting an administrative offset against the debtor for a delinquent debt owed to the U.S. Government by the debtor.

(b) Department of Justice (DOJ)—for prosecution of fraud, and for the institution of suit or other proceedings to effect collection of claims.

(c) General Accounting Office (GAO)—for further collection action on any delinquent account when circumstances warrant.

(d) Outside collection agencies and credit bureaus—for the purpose of either adding to a credit history file or obtaining a credit history file on an individual for use in the administration of debt collection for further collection action.

(e) U.S. General Services Administration (GSA)—for compilation and maintenance of a List of Parties Excluded From Federal Procurement and Non-procurement Programs in accordance with a recommendation from the Interagency Committee on Debarment and Suspension, and identification and monthly distribution of a list of those parties excluded throughout the U.S. Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and from certain types of federal financial and non-financial assistance and benefits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The automated records are stored and saved in access files in the CCTS (F73 System).

RETRIEVABILITY:

These records are retrieved by names of individuals and companies.

SAFEGUARDS:

The automated records are stored and saved in limited access files in the CCTS (F73 System) and available only to those persons whose official duties require such access.

RETENTION AND DISPOSAL

CCTS (F73 System) users, in accordance with internal retention procedures, maintain records relating to each suspension or debarment action taken by the Agency. Automated records are retained in the CCTS (F73 System) and kept up to date.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Departmental Enforcement Center, 1250 Maryland Avenue, Southwest, Suite 200, Washington, DC 20024.

NOTIFICATION PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at HUD, 451 7th Street, SW, room P8202, Washington, DC 20410, in accordance with the procedures in 24 CFR Part 16.

RECORD ACCESS PROCEDURES:

The Department's rule for providing access to records to the individual concerned appear in 24 CFR, part 16. If additional information or assistance is required, contact the Privacy Act Officer at HUD, 451 7th Street SW, room P8202, Washington, DC 20410.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned appear in 24 CFR, part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at HUD, 451 7th Street, SW, room P8202, Washington, DC 20410; and (ii) in relation to appeals of initial denials, the Department of Housing and Urban Development (HUD), Departmental Privacy Appeals Officer, Office of General Counsel, HUD, 451 Seventh Street, Southwest, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

IInformation in this system of records is obtained from any source which has information to provide concerning the existence of a cause for administrative sanction. Examples of record sources include, but are not limited to HUD employees, Federal government agencies, non-federal government agencies, Federal and state courts, financial institutions, state and local law enforcement offices, and regulatory or licensing agencies.

EXEMPTIONS FOR CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–16135 Filed 6–23–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–03]

Privacy Act; Proposed New System of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Establish a new system of records.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system is entitled Equal Employment Opportunity Monitoring and Analysis System (EEOMAS), HUD/ODEEO/01. EEOMAS is the management information system used to monitor and evaluate the Department's equal employment and affirmative employment efforts and accomplishments. It contains selected personal information on each HUD employee which is essential in conducting demographic analyses between the work force and the civilian labor force and concentration analyses of the dispersion of employees within the work force.

DATES: *Effective Date:* This action shall be effective without further notice in 30 calendar days (July 24, 199) unless comments are received during or before this period that would result in a contrary determination.

Comments due by: July 26, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this new system of records to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street,

SW, Washington, DC 20410–05000. Communications should refer to the above docket number and title. An original and four copies of the comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Department Privacy Act Officer, Telephone Number (202) 708–2374, or Thelma Cockrell, Departmental Affirmative Employment Program Manager, Telephone Number (202) 708–5921, extension 6866.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new system of records identified as HUD/ODEEO/01, Equal Employment Opportunity Monitoring and Analyses system (EEOMAS).

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30–day period in which to comment on the new record system.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Operations pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Responsibilities for Maintaining Records About Individuals," July 25, 1994, 59 FR 37914.

Dated: June 14, 1999.

Gloria R. Parker,

Chief Information Officer.

HUD/ODEEO/01

SYSTEM NAME:

Equal Employment Opportunity Monitoring and Analysis System (EEOMAS).

SYSTEM LOCATION:

Department of Housing and Urban Development, HUD 451 Seventh Street SW, Room 2112, Washington, DC 20410

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personal and employment related data items on each HUD employee, and information on EEO discrimination complaint processing covering both HUD employees and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains "selected" personal information on each employee, depending on the employee's type of appointment with the Department, including the employee's: Full name, Date of Birth, Social Security Number, Race, Sex, Disability Status, Pay Plan, Grade and Step, Annual Salary, Occupational Series, Position Title, Organization Code, GSA Location Code, Duty Station, Veteran Preference, Type of Appointment, Tenure Group, Work Schedule, Type of Employment, FLSA, Bargaining Unit Status, Occupational Category, Type of Position, Supervisory Status, Position Sensitivity, Education Level, Academic Discipline, Year of Degree, Special Employee Code, Special Program Code Performance Rating, Performance Year, Enter on Duty Date w/HUD, Date last Grade Promotion, Target Grade, and Date entered Present Position.

The EEO Discrimination Complaint processing portion of the system contains information on complaints, both formal and informal, filed by HUD employees and applicants for employment. The information in EEOMAS includes, but is not limited to: Complainant's Name, Social Security Number, Complaint Type, Alleged Discriminating Official, Basis/Issues, Witnesses, Related Correspondence, Step-by-Step Processing Record, Final Disposition, and Summary of Complaint

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The legal bases for maintaining the system are:

Section 717 of Title VII of the Civil Rights Act of 1964, as amended, to ensure enforcement of Federal equal employment opportunity policy; to requires Federal agencies to maintain Affirmative Employment Programs apply the same legal standards to prohibit discrimination established for private employers; and to eliminate discrimination that Congress found existing throughout the Federal employment system. The Rehabilitation Act of 1973, as amended, required the same for persons with disabilities;

The Uniform Guidelines on Employee Selection Procedures, dated 8/78, requires records to be maintained which allow determinations to be made of the impact of selection procedures on members of various race, sex and ethnic groups;

The Civil Service Reform Act of 1978, requires Federal agencies to conduct affirmative recruitment for those occupations and grades within their work force in which underrepresentation of women and minorities exists;

Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 702, dated 12/79, required that Federal agencies develop and implement information systems that provide periodical status reports on a statistical work force profiles and on affirmative employment objectives; and

Federal Personnel Manual (FPM) Letters 720–4, dated 1/80 and 720–6, dated 10/80, established broad instructions and procedures for the collection of race, sex, and ethnic origin data on job applicants.

PURPOSE(S):

The Equal Employment Opportunity Monitoring and Analysis System is the management information system used to monitor and evaluate the Department's equal employment opportunity and affirmative employment efforts and accomplishments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

EEOMAS is a LAN based computerized system. The data is updated quarterly using the National Finance Center (NFC) data extracts. The data is downloaded into EEOMAS via mainframe computer.

RETRIEVABILITY:

Since EEOMAS is an internal management information system used to monitor, evaluate, and report the effectiveness of the Department's EEO/AE Program, the data is retrievable by any of the data items listed under "Categories of Records in the System." However, all EEOMAS Users, excluding those in the Office of Departmental Equal Employment Opportunity, have restricted access. Those users cannot retrieve individually identified personal privacy information

SAFEGUARDS:

EEOMAS is a LAN based computerized system and only authorized users have the EEOMAS icon on their computers.

In addition to the icon, only those users who have been entered into EEOMAS as "authorized" and assigned a password can access it. EEOMAS access passwords are assigned and entered by the designated System Administrators in ODEEO.

All EEOMAS Users, excluding "need to know" ODEEO staff, have "Browse Only" access to non-restricted information.

Authorized EEOMAS Users have limited access to their respective organizations (i.e. authorized EEOMAS Users in Housing can view only Housing data, etc.).

All individually identified employee information in EEOMAS for which unauthorized disclosure would constitute an unwarranted invasion of personal privacy (employee name in conjunction with the race, sex, age, date of birth, social security number, etc.) has been deleted or shaded from view by all EEOMAS Users, except ODEEO's "need to know" staff.

All information is stored in a computerized database. Any hard copy reports, not in statistical format, generated from the database are kept in locked offices with restricted access.

RETENTION AND DISPOSAL:

All EEO/AE data must be retained for a period of five (5) years in accordance with HUD's Record Disposition Schedule, after which computerized data is erased. All statistical hard copy reports are recycled. Any reports containing personal privacy data are shredded.

SYSTEM MANGER(S) AND ADDRESS:

Director, Affirmative Employment Division, Director, Equal Opportunity Division, Departmental Affirmative Employment Program, 451 Seventh Street, SW, Room 2112, Washington, DC 20410.

NOTIFICATION PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 7th Street SW, Room P8202, Washington, DC 20410, in accordance with procedures in 24 CFR part 16.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appears in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contests of records, the Privacy Act Officer at the appropriate location, the Department of Housing and Urban Development, 451 Seventh Street, SW, Room P8202, Washington, DC 20410 and (ii) in relation to appeals of initial denials, the Department of Housing and Urban Development, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street, Southwest, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Initial employee personal information is collected when first appointed as HUD employees (i.e. full name, social security, date of birth, disability status, etc.).

Initial position/employment related information for each employee is derived from the type of appointment and specific position (title, series, grade, organization, duty station, etc.) under/for which they were hired.

Updates to information on current employees are the results of personnel actions affecting employees (i.e. promotions, reassignments, etc.) and those self initiated by employees (i.e. changes in disability status/medical condition).

Information on EEO Discrimination Complaint processing is collected and entered directly into EEOMAS by ODEEO staff as complaints are filed and processed.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–16136 Filed 6–23–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–012640

Applicant: The Peregrine Fund, Boise, ID

The applicant requests a permit to import from the United Kingdom up to 30 DNA samples (0.1 to 0.25ml per vial) taken from wild Madagascar sea eagles (*Haliaeetus vociferoides*) for the purpose of scientific research.

PRT–012336

Applicant: Oregon State University, Corvallis, OR

The applicant requests a permit to import from South Africa up to 20 serum samples (5.0 to 7.0ml per vial) taken from wild African elephants (*Loxodonta africana*) for the purpose of enhancement through scientific research.

PRT–002843

Applicant: University of Florida, Gainesville, FL

The applicant requests a permit to import one farm-raised Asian bonytongue (*Scleropages formosus*) from CV. Dua Ikan Selarus, Jakarta, Indonesia for the purpose of enhancement of the species through conservation education.

PRT–012823

Applicant: University of Florida, Ruskin, FL

The applicant requests a permit to import blood samples from captive-bred Siamese crocodile (*Crocodylus siamensis*) from the Sriracha Farm (Asia) Co., Ltd., Chonguri, Thailand, for scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 et seq.) and the regulations governing marine mammals (50 CFR 18).

PRT–013327

Applicant: Victor E. Moss, Winthrop, WA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort sea polar bear population, Northwest Territories, Canada for personal use.

PRT–013352

Applicant: Fred Wiedenfeld, San Antonio, TX

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel Polar population, Northwest Territories, Canada for personal use.

PRT–013353

Applicant: John DeFalco, Fullerton, CA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–013350

Applicant: Timothy Brammer, Fishers, IN

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–011354

Applicant: Jeffrey Gephart, Marguette, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock

Channel Polar population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 18, 1999.

Pamela Hall,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–16057 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Revised Recovery Plan for *Liatris helleri* (Heller's Blazing Star) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for *Liatris helleri* (Heller's blazing star). Heller's blazing star is a perennial herb that grows on high cliffs, rock ledges, and balds in the Blue Ridge Mountains of western North Carolina. We solicit review and comments from the public on this draft revised plan.

DATES: Your comments on the draft revised recovery plan must be received on or before August 23, 1999 in order to receive consideration..

ADDRESSES: If you wish to review the draft revised recovery plan, you may obtain a copy by contacting the Asheville Field Office. U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 828/258–3939). Written comments and materials regarding the plan should be addressed to the State Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the address and telephone number shown in the **ADDRESSES** section (Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to the approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft revised recovery plan is *iatris helleri* (Heller's blazing star). The areas of emphasis for recovery actions are the North Carolina counties of Avery, Caldwell, Burke, and Ashe. Habitat protection, population augmentation and reintroduction, and the preservation of genetic material are the major objectives of this recovery plan.

Public Comments Solicited

We solicit written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the final plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 16, 1999.

Nora A. Murdock,

Acting State Supervisor.

[FR Doc. 99–16103 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Wildlife Refuge System Design Symbol

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice serves to designate the "Blue Goose" as the official design symbol for the National Wildlife Refuge System. We will use this design symbol on boundary markers for National Wildlife Refuges, and in conjunction with the Service shield, on signs at entrances and exits and on refuge-specific and Refuge System-specific publications. This action accomplishes the official designation of the symbol in current use. The Service Sign Committee and Publication Design Standards Committee are drafting specific guidelines for use of the Blue Goose on entrance and exit signs and on publications.

DATES: Effective June 24, 1999.

FOR FURTHER INFORMATION CONTACT: Doug Staller; telephone (703) 358–2029; FAX (703) 358–1826; e-mail Doug__Staller@fws.gov.

SUPPLEMENTARY INFORMATION: We prescribe the "Blue Goose" design symbol as the official symbol of the National Wildlife Refuge System, U.S. Fish and Wildlife Service, Department of the Interior. We intend to use, but not limit the use, of this design symbol to indicate boundary markers for the National Wildlife Refuge System, and in conjunction with the Service shield, on signs at entrances and exits and on refuge-specific and Refuge System-specific publications. We use this symbol in a specified blue color.

In making this prescription, we give notice that whoever manufactures, sells or possesses this design symbol, or any colorable imitation thereof, or photographs, prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this design symbol, or any colorable imitation thereof without authorization from the Director is subject to the penalty provisions of section 701 of title 18 of the United States Code.

We depict the design symbol for the National Wildlife Refuge System below:

BILLING CODE 4310–55–P



Dated: June 17, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–16127 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–8096–03]

Alaska Native Claims Selection

In accordance with Departmental regulations 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, (ANCSA), 43 U.S.C. 1601, 1613(e) will be issued to Chugach Alaska Corporation. The land is described as Lot 1, Sec. 32, T. 8 S., R. 3 E., Copper River Meridian, Alaska, containing 360.23 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* A copy of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, shall have until July 26, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Christine Sitbon,

Land Law Examiner, Branch of 962 Adjudication.

[FR Doc. 99–15633 Filed 6–18–99; 8:45 am]

BILLING CODE 4310–88–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–99–1990–00]

Area Closure to All Unauthorized Public Uses of the Devil's Elbow Recreation Area Located on Hauser Lake, 12 Miles Northeast of Helena, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of immediate area closure to all public uses including motorized travel within the Devil's Elbow Recreation Site while construction work is underway.

SUMMARY: Notice is hereby given that effective immediately all public lands and roads within the Devil's Elbow Site are closed to all public uses in portions of:

Principal Meridian, Montana

T. 11 N., R. 2 W.,
Secs. 14, 23 and 24;

During construction of this new recreation site. Construction activities include roads, toilets, camping units, parking lots, boat ramp, docks, waterbreak, trails, tables and grills, water, electrical and septic systems, day-use picnic and swimming sites, ramadas and an administration site.

This closure shall remain in effect until completion of Phases I and II of the scheduled construction work which is expected to be completed in July, 2000.

Persons exempt from this closure order include contractors, BLM personnel, inspectors and other individuals escorted by BLM employees.

Reasons for the closure are to provide for the safety of the public, expedite construction work, and protect construction equipment and materials. Authority for this closure is cited under 43 CFR, Subpart 8364.1.

FOR FURTHER INFORMATION CONTACT: Merle Good, Field Manager, P.O. Box 3388, Butte, Montana 59702, 406–494–5059.

Dated: June 15, 1999.

Merle Good,

Field Manager.

[FR Doc. 99–16106 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–910–0777–26–262F]

Notice of Relocation/Change of Address/Office Closure; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is given that, on July 28, 1999, the Bureau of Land Management's Montana State Office will collocate with the Billings Field Office and move to a new facility.

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Singer, Deputy State Director, Division of Support Services 406–255–2742, or Trudie Olson, Supervisory Public Affairs Specialist 406 255–2913, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107.

SUPPLEMENTARY INFORMATION: On July 28, 1999, the BLM Montana State Office will relocate to 5001 Southgate Drive, Billings, Montana 59101. This move does not affect the Interagency Fire Center, which will remain located at 1737 Highway 3, Billings, Montana. The following business practices will be in effect from July 12 through August 1, 1999:

(A) The land and mineral records portion of the Information Access Center (Public Room located on second floor) will be closed during the period of July 12 through August 1, 1999. There will be no over-the-counter land transactions or phone business during this interim period. The official records (i.e., case files, plats, etc.) will not be available for public inspection.

Surface Management Edition (SME) maps can be obtained from the Information Access Center July 12 through July 27, 1999. There will be no map sales July 28 through July 30, 1999. Beginning August 2, 1999, map sales will be conducted at the new location, 5001 Southgate Drive, Billings, Montana.

(B) During this interim period, customers are encouraged to conduct official business through the mail, using the following mailing address: P.O. Box 36800, Billings Montana 59107–6800. A drop box will also be made available at the security desk in the lobby at 222 North 32nd Street from July 12 through July 27, 1999. No land or mineral filing transactions will be conducted through the Information Access Center.

(C) Staff persons will be answering the current telephone numbers through noon on July 28, 1999. Between 12:00 noon on July 28, 1999, and 8:00 a.m. on August 2, 1999, emergency calls may be directed to 406–255–2888.

(D) Telephone numbers will change. Effective August 2, 1999, the following numbers will be in place:

(1) General Information—406–896–5000.

(1) Information Access Center—406–896–5004.

(2) Law Enforcement—406–896–5010.

(3) External Affairs—406–896–5011.

(4) State Director's Office—406–896–5012.

(5) Fax Transmittals—406–896–5020 (temporary number).

(E) The post office mailing address will remain the same: P.O. Box 36800, Billings, Montana 59107–6800.

(F) We will resume a full service business on August 2, 1999, at 5001 Southgate Drive, Billings, Montana 59101.

Dated: June 10, 1999.

Greg A. Bergum,

Acting Deputy State Director, Division of Support Services.

[FR Doc. 99–16104 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1040–00, CACA 40800]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of classification for lease.

SUMMARY: The following public land in Humboldt County, California, has been examined and found suitable for classification for lease to the Mattole Salmon Group under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The Mattole Salmon Group, a nonprofit corporation, proposes to construct a salmon research and restoration facility on public land along Lighthouse Road.

Humboldt Base and Meridian

T.2S., R.2W.,
Section 16, NWSENW.
Containing one-half acre, more or less.

The use is consistent with current BLM land use planning and would be in the public interest as it helps meet the goals set forth in the Memorandum of Understanding between the Mattole Salmon Group and the BLM dated July 11, 1985. Detailed information concerning this action is available for review at the Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or classification of the land to Lynda J. Roush, Field Manager, 1695 Heindon Road, Arcata, CA 95521.

Classification Comments

Interested parties may submit comments involving the suitability of the land for development. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific proposed action in the application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for development.

Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the application will be answered by the State Director with the right of appeal to the IBLA.

Lynda J. Roush,

Arcata Field Manager.

[FR Doc. 99–16067 Filed 6–23–99; 8:45 am]

BILLING CODE 4130–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final General Management Plan/ Environmental Impact Statement, Gettysburg National Military Park, Pennsylvania

AGENCY: National Park Service, Department of the Interior

ACTION: Availability of final environmental impact statement and general management plan for Gettysburg National Military Park.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Final General Management Plan/ Environmental Impact Statement (FGMP/EIS) for Gettysburg National Military Park, Pennsylvania.

DATES: A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the FGMP/EIS.

ADDRESSES: Public reading copies of the FGMP/EIS will be available for review at the following locations:

- Office of the Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. (717) 334–1124, ext. 452.
- Department of the Interior Library, Department of the Interior, 18th and C Streets NW, Washington, DC 20240. (202) 208–6843.
- Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington, DC 20240. (202) 208–6843.
- Chesapeake Systems Office, National Park Service, Park Planning, Natural Resources and Special Projects Office, U.S. Customs House, 200 Chestnut Street, Philadelphia, PA 19106–2878. (215) 597–1669.

SUPPLEMENTARY INFORMATION: The FGMP/EIS describes four alternatives for the management of Gettysburg National Military Park, the environment that would be affected by the management prescriptions, and the environmental consequences of implementing those actions. Alternative A continues the existing management direction of the park. Alternative B proposes rehabilitation of large-scale landscape patterns on the 1863 battlefield and in the Soldiers' National Cemetery, the development of a new museum complex, enhanced interpretation and resource management. Alternative C, the proposed plan, proposes the rehabilitation of features significant to the Battle of Gettysburg and to the Soldiers' National Cemetery, a new museum complex, enhanced and expanded interpretation, and enhanced resource management. Alternative D proposes restoration of the 1863 battlefield, the Soldiers' National Cemetery and the commemorative areas of the park, a new museum complex, interpretation using the historic tablets, markers and monuments of the park and enhanced resource management.

The FGMP/EIS in particular evaluates the environmental consequences of the proposed action and the other alternatives on: The historic landscapes of the park; collections and archives; buildings and structures; threatened, endangered and sensitive species; other species; socioeconomics; traffic, parking and transit; and park operations.

FOR FURTHER INFORMATION CONTACT: Superintendent, Gettysburg NMP, at the above address and telephone number.

Dated: June 18, 1999.

John A. Latschar,

Superintendent, Gettysburg NMP.

[FR Doc. 99–16137 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on July 6, 1999, to continue discussion on funding recommendations for 1999. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12:00 noon on Tuesday, July 6, 1999.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1412, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: June 18, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 99–16068 Filed 6–23–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant To the Comprehensive Environmental Response, Compensation and Liability Act and Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 11, 1999 a proposed Consent Decree in *United States* v. *Abitibi Price Corporation, et al.*, Civil Action No. 1:99CV428, was lodged with the United States District Court for the Western District of Michigan.

The Consent Decree resolves certain claims of the United States against 43 companies under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973 at the former Organic Chemical, Inc. facility ("the Site") in Grandville, Kent County, Michigan. The defendants have been

named as companies which arranged for disposal or treatment of hazardous substances at the Site.

The settlement requires the settling defendants to make payment of $3,300,000 for past response costs incurred by the U.S. Environmental Protection Agency in connection with the Site and for certain of the settling defendants to perform the groundwater component of EPA's selected second phase or Operable Unit for the Site's remediation.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *Abitibi Price Corporation, et al.*, Civil Action No. 1:99CV428, and the Department of Justice Reference No. 90–11–3–990/1. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d), by contacting Jerome Kujawa (EPA Region 5) at (312) 886–6731. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Michigan, 330 Ionia Avenue, NW, Suite 501, Grand Rapids, Michigan 49503; the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, telephone no. (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please refer to DJ #90–11–3–990/1, and enclose a check in the amount of $57.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16118 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with Departmental policy and 28 CFR 50.7, please be advised that a proposed Partial Consent Decree ("Decree") was lodged on June 16, 1999, in *United States* v. *Absolute Enterprises, Inc., et al.*, C.A. No. WMN–97–2469, with the United States District Court for the District of Maryland. The Decree resolves litigation brought by the United States under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged violations of the National Emissions Standard for Hazardous Air Pollutants ("NESHAP") regulating emissions of asbestos particles.

Under the Consent Decree, Defendant the State of Maryland Department of General Services ("DGS") will undertake an extensive program to eliminate violations of the asbestos NESHAP, and will pay a civil penalty of $20,000. DGS will require that its asbestos abatement and industrial hygiene contractors comply with the NESHAP and will implement detailed procedures for, among other things, inspecting DGS sites where asbestos is being removed, investigating contractors to determine their records as to NESHAP compliance, training workers at such sites, and performing supervisory oversight at such sites.

Any comments on the proposed Decree should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Absolute Enterprises, Inc., et al.*, DOJ Ref. #90–5–2–1–1983. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Maryland, U.S. Courthouse, Room 604, 101 W. Lombard Street, Baltimore, Maryland 21201, and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. The proposed Consent Decree contains 43 pages, including attachments. To obtain the Consent Decree enclose a check for $10.75. Please make the check payable to the Consent Decree Library, and refer to the case by its title and DOJ Ref. #90–5–2–1–1983.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc 99–16114 Filed 6–23–99; 8:45 am]

BILLING CODE 4110–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on June 11, 1999, a proposed Consent Decree ("Decree") in *United States* v. *Atlantic Richfield Company,* Civil No. 2:95 CV 698S, was lodged with the United States District Court for the District of Utah. The United States filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601, *et seq.*, to recover the past response costs incurred at or in connection with the Bingham Creek Channel Superfund Site (the "Site") southwest of Salt Lake City, Utah.

The Decree resolves claims against Atlantic Richfield Company ("ARCO") under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, as well as Section 7003 of RCRA, 42 U.S.C. 6973, with respect to the Site as specifically defined in the Decree. ARCO will perform certain operation and maintenance activities associated with the so-called Copperton Tailings Property and a portion of the Bingham Creek Channel with respect to work ARCO previously completed in response to various administrative orders issued by the U.S. Environmental Protection Agency. Contribution and other potential claims of ARCO against the United States are also resolved.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *Atlantic Richfield Company,* Civil No. Civil No. 2:95 CV 698S, and D.J. Ref. # 90–11–2–1065. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

The Decree may be examined at the office of the U.S. Attorney for the District of Utah, 185 South State Street, Suite 400, Salt Lake City, UT 84111, at the U.S. EPA Region VIII, 999 18th Street, Superfund Records Center, Suite 500, Denver, CO 80202, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $7.75 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16113 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the National Marine Sanctuaries Act

In accordance with Department policy, 28 CFR § 50.7, notice is hereby given that a proposed Consent Decree in *United States and Board of Trustees of the Internal Trust Fund of the State of Florida* v. *Atlas Shipping, Ltd. and Transportacion Maritima Mexicana S.A. de C.V.* (S.D. Fla.), was lodged with the United States District Court for the Southern District of Florida on June 4, 1999 (Case No. 99–10061). The proposed Consent Decree resolves the claims of the United States and the State of Florida against Atlas Shipping, Ltd. and Transportacion Maritima Mexicana S.A. de C.V. pursuant to Section 1443 of the National Marine Sanctuaries Act, 16 U.S.C. § 1431 *et seq.*, and Florida Statutes § 253.04 for response costs and damages arising out of the grounding of the Contship Houston in the Florida Keys National Marine Sanctuary on February 2, 1997. Defendants have previously undertaken restoration activities to repair injured Sanctuary resources and have partially reimbursed the plaintiffs for response costs. Under the Consent Decree, defendants will pay the United States $1,512,531 in reimbursement for past response costs and for future long term monitoring of the restoration. The defendants will pay the State of Florida $3334 in reimbursement of past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044; and refer to *United States and Board of Trustees of the Internal Trust Fund of the State of Florida* v. *Atlas Shipping, Ltd. and Transportacion Maritima Mexicana S.A. de C.V.*, DOJ # 90–5–1–1–4534.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Southern District of Florida, 99 N.E. 4th Street, Miami, Florida 33132 and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16107 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Oil Pollution Act and the National Park Service Resource Protection Act

Notice is hereby given that the United States, on behalf of the United States Departments of Commerce and Interior, and the State of Hawaii, lodged a proposed Consent Decree in the United States District Court for the District of Hawaii, in *United States* v. *Chevron Products Division*, Civil Action No. 99–00410–DAE–LEK, on June 3, 1999. This Consent Decree resolves the claims of the United States and the State of Hawaii against Chevron Products Division ("Chevron"), pursuant to the Oil Pollution Act, 33 U.S.C. 2701, *et seq.*, the National Park System Resource Protection Act, 16 U.S.C. 19jj, as well as, state laws and regulations. The consent decree concerns Chevron's discharge of approximately 41,000 gallons of number 6 bunker fuel oil from its pipeline on the island of Oahu, Hawaii, into Waiau Marsh, Waiau Stream, and Pearl Harbor on May 14, 1996.

The Consent Decree provides that Chevron will pay a $100,000 penalty to the State of Hawaii and will pay approximately $2.250 million in natural resource damages and restoration projects. As part of the Consent Decree, Chevron has agreed to undertake at the *USS ARIZONA* Memorial Visitors Center in Pearl Harbor, Hawaii. The cost of this work is valued at approximately $1 million. The consent decree further provides for the payment of interest from the date of lodging the decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Chevron Products Division*. DOJ #90–5–1–1–4426.

The proposed Consent Decree may be examined at the following offices: United States Attorney, District of Hawaii, Suite 6100, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the reference number given above and enclose a check in the amount of $5.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16116 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act ("RCRA")

Consistent with the policy set forth in the Department of Justice regulations at 28 C.F.R. 50.7, notice is hereby given that on June 11, 1999, a proposed Consent Decree was lodged with the United States District Court for the Southern District of Indiana, Indianapolis Division, in *United States of America* v. *GK Technologies, Inc. and Indiana Steel & Wire Co.* Cause No. IP 90–2122–C–D/G. The proposed Consent Decree settles claims asserted by the United States, on behalf of the United States Environmental Protection Agency, pursuant to Section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. 6928, against GK Technologies, Inc. ("GK"), involving a wire manufacturing facility formerly operated by Indiana Steel & Wire Co. ("IS&W") on land owned by GK Technologies in Muncie, Indiana.

The Consent Decree requires GK to complete certain environmental investigations and to implement workplans for remediation of the facility upon approval by the Indiana Department of Environmental Management's ("IDEM") Voluntary Remediation Program ("VRP"). Under the proposed decree, the U.S. Environmental Protection Agency will review and have an opportunity to comment on the investigatory reports

and proposed workplans submitted to the IDEM VRP. IS&W is not a party to the proposed consent decree; however, the United States reserves its rights with respect to IS&W and the current operator of the facility.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be directed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *GK Technologies, Inc. and IS&W Co.*, DOJ Reference # 90–7–1–407A.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, U.S. Courthouse, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204, at the Office of the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or my mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $15.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section.

[FR Doc. 99–16111 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Safe Drinking Water Act 40 U.S.C. 300(f), *et seq.*

Notice is hereby given that on May 17, 1999 a proposed Consent Decree ("Decree") in *United States* v. *HF Bar Ranch*, Civil Action No. 98 CV 158J, was lodged with the United States District Court for the District of Wyoming. The United States filed this action pursuant to Section 1414(b) and (g) of the Safe Drinking Water Act, 42 U.S.C. 300g–3(b) and (g), seeking injunctive relief and civil penalties for the Defendant's violations of the Safe Drinking Water Act and EPA's National Primary Drinking Water regulations at its guest Ranch located in Saddlestring, Wyoming.

The proposed Consent Decree requires the Defendants to pay a civil penalty of $15,000 for its violations of the Act. Subsequent to the filing of the Complaint, the HF Bar Branch came into compliance with the Safe Drinking Water Act and EPA's implementing regulations, making additional injunctive relief unnecessary.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice Washington, DC 20530, and should refer to, *United States* v. *HF Bar Ranch*, Civil Action No. 98 CV 158J, and D.J. Ref. #90–5–1–1–4398.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado 80202 and the U.S. EPA Region VIII, 999 18th Street, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $10 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16108 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 10, 1999 a proposed consent decree in *United States* v. *Horsehead Industries, Inc.*, Civil Action No. CV. 98–654, was lodged with the United States District Court for the Middle District of Pennsylvania.

In this action, the United States is seeking more than $12 million in past costs and future costs, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, in connection with the Palmerton Zinc Pile Superfund Site ("Site"), located in Palmerton, Carbon County, Pennsylvania.

The consent decree that was lodged would resolve the United States' claims against 197 parties who transported materials to the Site and whom the United States alleges are de minimis generators. Those parties will pay approximately $4.7 million, in the aggregate, to resolve their claims. The consent decree will not resolve the United States' claims against four other defendants who are current or former owners and operators of the Site.

The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Horsehead Industries, Inc.*, D.J. Ref. 90–11–2–271M. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney, Federal Courthouse Building, 228 Walnut Street, Harrisburg, PA 17108; at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $57.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16115 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 to 9675

Notice is hereby given that a proposed consent decree in the case of *United States* v. *Indiana Department of Correction, et al.*, Civil Action No. 3:99CV0336RM, was lodged on June 11, 1999 with the United States District Court for the Northern District of Indiana, South Bend Division. The proposed consent decree resolves the United States' claims against defendants for natural resource damages resulting from operation and remediation of the Waste, Inc. Superfund Site located in Michigan City, LaPorte County, Indiana, for a total payment of $603,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Indiana Department of Correction, et al.*, DOJ Ref. No. 90–11–3–1376/4.

The proposed consent decree may be examined at the office of the United States Attorney, 204 South Main Street, South Bend, Indiana 46601–2191; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16117 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on June 11, 1999, a proposed Consent Decree ("Decree") in *United States* v. *Kennecott Holdings Corporation et al.*, Civil No. 2:99CV0437K, was lodged with the United States District Court for the District of Utah. The United States filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601, *et seq.*, to recover the past response costs incurred at or in connection with the Bingham Creek Channel Superfund Site southwest of Salt Lake City, Utah.

The proposed Consent Decree resolves claims against Holdings Corporation, formerly Kennecott Corporation, and Utah Copper Company ("Kennecott") under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. 9673, with respect to the Site as specifically defined in the Decree. Under the terms of the Decree the United States will recover response costs in the amount of $265,000. Contribution and other potential claims of Kennecott against the United States are also resolved.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comment should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *Kennecott Holdings Corporation*, Civil No. 2:99CV0437K, and D.H. Ref. # 90–11–2–1065. If requested, the United States will conduct a public meeting in the vicinity of West Jordan, Utah.

The Decree may be examined at the office of the U.S. Attorney for the District of Utah, 185 South State Street, Suite 400, Salt Lake City, UT 84111, at the U.S. EPA Region VIII, 999 18th Street, Superfund Records Center, Suite 500, Denver, CO 80202, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $8.50 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16112 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, notice is hereby given that a proposed Consent Decree in *United States and State of New York* v. *Onondaga County*, Civil Action Number 91 Civ. 477 (HGM), was lodged with the United States District Court for the Northern District of New York on June 9, 1999.

In this action, the United States and State sought injunctive relief and penalties from defendants, Onondaga County, New York and the Commissioner of Onondaga County Department of Drainage and Sanitation, for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the County's State Pollutant Discharge Elimination System ("SPDES") permits. Under the Consent Decree, the County is required to conduct a broad EPA approved pre-treatment compliance program and must fully implement and enforce the provisions of the Pretreatment Program in SPDES permits. The County must also pay a penalty of $624,000 and perform a nonpoint source Supplemental Environmental Project to reduce pollutants into the Onondaga Lake drainage area valued at $750,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States and State of New York* v. *Onondaga County*, D.J. Ref. 90–5–1–1–3597.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of New Jersey, 100 South Clinton Street, 9th Floor, Syracuse, New York, at U.S. EPA, Region II, 290 Broadway, New York, New York (contact Diane Gomes at (212) 637–3235), and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person of by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC. 20005. In requesting a copy, please enclose a check in the amount of $14.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 99–16110 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Pursuant to Section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7, notice is hereby given that

on June 3, 1999, a proposed Consent Decree in *United States* v. *Robert Bosch Corporation*, Civil Action No. 1:99–CV–414, was lodged with the United States District Court for the Western District of Michigan for a period of thirty day to facilitate public comment.

The settlement embodied in the proposed Consent Decree requires Bosch, the only settling party, to reimburse the Environmental Protection Agency ("EPA") all unreimbursed costs associated with, and to perform the remedy selected by EPA for, the Bosch/Bendix Braking Superfund Site located in St. Joseph, Michigan. The remedial action to be performed by Bosch will include soil vapor extraction, natural attenuation of contaminated groundwater together with monitoring of groundwater and a contingent groundwater remediation plan if contamination exceeds defined triggers, and deed restrictions and other institutional controls to assure that contaminated groundwater will not be used as drinking water.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Robert Bosch Corporation* D.J. Ref. No. 90–11–2–06028.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, 3300 Ionia Avenue, Grand Rapids, Michigan 49503, at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please refer to the above-referenced case and enclose a check in the amount of $23.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16109 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/Order No. 168–99]

Privacy Act of 1974; Notice of the Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice is removing a published Privacy Act system of records entitled: "Position Accounting/Control System (PACS), JUSTICE/INS–003" (JUSTICE/INS–003 was most recently published on March 10, 1992 (57 FR 8483).)

JUSTICE/INS–003 is being removed because PACS duplicates JUSTICE/JMD–003, "Department of Justice Payroll System." (JUSTICE/JMB–003 was most recently published on April 13, 1999 (64 FR 18054).)

Therefore, the "PACS," is removed from the Department's compilation of Privacy Act systems.

Dated: June 10, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 99–16119 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Motorola, Inc. and Nextel Communications, Inc.

Notice is hereby given that Nextel Communications, Inc. ("Nextel") has moved to modify the Final Judgment entered by this Court on July 25, 1995. In a stipulation filed with the Court, the Department of Justice ("Department") has tentatively consented to modification of the Judgment, but has reserved the right to withdraw its consent pending receipt of public comments. On October 27, 1994, the United States filed a civil antitrust complaint, *United States* v. *Motorola, Inc. & Nextel Communications, Inc.*, Civil No. 1:94CV02331 (TFH) (D.D.C.), seeking to enjoin a proposed transaction between Nextel and Motorola which, it alleged, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Nextel, then the nation's largest provider of specialized mobile radio("SMR"), or dispatch services, had agreed to acquire most of Motorola's dispatch business. The complaint alleged that the Nextel/Motorola transaction was likely to reduce competition substantially in fifteen (15) major cities in the United States in the market for trunked SMR services.

The Final Judgment, filed contemporaneously with the complaint and entered by the Court on July 25, 1995, after review pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), contained three provisions designed to remedy the anticompetitive effects of the transaction: (1) Nextel and Motorola were required to divest themselves of substantially all of their SMR channels in the 900 MHZ radio band and to release, upon request of the license holders, substantially all the 900 MHZ SMR channels they managed in a number of large cities; (2) Nextel and Motorola, jointly, were prohibited from holding or acquiring more than thirty (30) 900 MHZ channels in Boston, Chicago, Dallas, Houston, Los Angeles, San Francisco, Miami,Orlando, New York, Philadelphia, Denver, and Washington, DC (the "Category A Cities"), and ten (10) 900 MHZ channels in Detroit and Seattle (the "Category B Cities"); and (3) Nextel and Motorola were required to sell 42 800 MHZ channels to an independent service provider in Atlanta, Georgia. These provisions were specifically designed to preserve competition for trunked SMR customers by limiting for ten years the 900 MHZ spectrum Nextel and Motorola would own and control and by ensuring that there would be sufficient 900 MHZ capacity to permit the entry of new trunked SMR service providers.

Many of the 900 MHZ channels divested pursuant to the Final Judgment were acquired by Geotek Communications, Inc. ("Geotek"), which acquired additional 900 MHZ channels and used the spectrum to offer dispatch services in competition with Nextel. However, Geotek's efforts to enter the dispatch market ultimately failed, and its sizable blocks of the 900 MHz licenses in metropolitan areas nationwide will be available for use by some other firm.

On February 16, 1999, Nextel filed a Motion to Vacate Consent Decree, a motion which, if granted, would have allowed Nextel to acquire the Geotek licenses, as well as additional 900 MHZ spectrum. The United States opposed Nextel's request for immediate termination of the decree. The Court scheduled an evidentiary hearing on Nextel's motion to vacate the decree to begin on June 14, 1999. Thereafter, on the eve of that hearing, the United States and Nextel reached agreement on the terms of a proposed modification of the Final Judgment, and signed a Stipulation reflecting that agreement, as well as their agreement that proceedings in connection with Nextel's motion to vacate the decree should be stayed pending final resolution of the motion for proposed modification of the decree.

The terms of the proposed modification would (1) prohibit Nextel from acquiring Geotek's 900 MHZ licenses in the Category A and B Cities; (2) increase the limits on Nextel's and Motorola's 900 MHZ channels, to permit them to hold or acquire up to one hundred eight (108) 900 MHZ channels in the Category A Cities, and fifty-four (54) 900 MHZ channels in the Category B Cities; and (3) terminate the Modified Final Judgment on October 30, 2000. Finally, the proposed modification would vacate the provision of the Final Judgment that alters the standard of review for modification as of July 25, 2000.

The Department and Nextel have filed memoranda with the Court setting forth the reasons why they believe that modification of the Final Judgment would serve the public interest. Copies of Nextel's motion to modify, the stipulation containing the Department's consent, the supporting memoranda, and all additional papers filed with the Court in connection with this motion will be available for inspection at the Antitrust Documents Group of the Antitrust Division, U.S. Department of Justice, Room 215, Liberty Place Building, 325 7th Street, N.W., Washington, D.C. 20004, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the duplicating fee determined by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Judgment to the Department. Such comments must be received by the Antitrust Division within thirty (30) days. The Department will publish in the **Federal Register** and file with the Court any comments and responses thereto. Comments should be addressed to Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20005, telephone (202) 514–6381.

Constance K. Robinson,

Director of Operations and Merger Enforcement.

[FR Doc. 99–16120 Filed 6–23–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 18, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Department Clearance Officer, Ira Mills (202) 219–5096 ext. 143) or by E-mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Current Population Survey (CPS) Basic Labor Force.

OMB Number: 1220–0100.

Frequency: Monthly.

Affected Public: Individuals or households.

Number of Respondents: 48,000.

Estimated Time Per Respondent: 84 minutes annually.

Total Burden Hours: 67,200 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The labor force data collected in the CPS help to determine the employment situation of specific population groups as well as general trends in employment and unemployment.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 99–16071 Filed 6–23–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–4–93]

Underwriters Laboratories Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Underwriters Laboratory Inc. (UL), for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on June 24, 1999 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while UL remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Underwriters Laboratories Inc. (UL) as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion covers the use of additional test standards. OSHA recognizes an organization as an NRTL and processes applications related to such recognitions following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of its final decision on an application.

UL submitted a request, dated February 5, 1996 (see Exhibit 13A), to expand its recognition to use additional test standards. UL then supplemented its request on April 1, 1997 (see Exhibit 13B), for additional test standards. OSHA published the required notice in the **Federal Register** (62 FR 62359, 11/21/97). The notice included a preliminary finding that UL could meet the requirements for expansion of its recognition, and OSHA invited public comment on the application by January 20, 1998. One comment was received, within the time provided, in response to the notice (see Exhibit 15–1). UL responded to this comment in its letter dated December 22, 1998 (see Exhibit 16).

The submitter of the comment expressed five "concerns," and posed a number of questions related to them. Most of the concerns relate to an alleged deficiency in the UL 2161 (Neon Transformers and Power Supplies) test standard. The NRTL Program staff has carefully considered these concerns but has concluded that the comment provides no basis for withholding approval of this test standard for UL or for any other NRTL that has the necessary capabilities.

UL's previous application as an NRTL covered its renewal of recognition (60 FR 16171, 3/29/95), which OSHA granted on 6/29/95 (60 FR 33852).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210, telephone: (202) 693–2350. You should refer to Docket No. NRTL–4–93, the permanent record of public information on the UL recognition.

The current addresses of the testing facilities (sites) that OSHA recognizes for UL are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062

Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York 11747

Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050

Underwriters Laboratories Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709

Underwriters Laboratories Inc., 2600 NW Lake Road, Camas, Washington 98607

UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong

UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou District, Taipei, Taiwan

Final Decision and Order

The NRTL Program staff has examined the application and other pertinent information, and the assessment staff recommended, in a memo dated August 19, 1997 (see Exhibit 14), expansion of UL's recognition to include the additional test standards. Based upon this examination and recommendation, OSHA finds that UL has met the requirements of 29 CFR 1910.7 for expansion of its recognition to use an additional 174 test standards, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of UL, subject to these limitations and conditions. As is the case for any NRTL, UL's recognition is further limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace.

Limitations

OSHA hereby expands the recognition of UL for testing and certification of products to demonstrate compliance to the following 174 standards. OSHA has determined that each standard meets the requirements for an appropriate test standard prescribed in 29 CFR 1910.7(c).

- ANSI/IEEE C37.013 AC High-Voltage Generator Circuit Breakers Rated on a Symmetrical Current Basis
- ANSI/IEEE C37.13 Low Voltage AC Power Circuit Breakers Used in Enclosures
- ANSI/IEEE C37.14 Low Voltage DC Power Circuit Breakers Used in Enclosures
- ANSI C37.17 Trip Devices for AC and General Purpose DC Low-Voltage Power Circuit Breakers
- ANSI/IEEE C37.18 Enclosed Field Discharge Circuit Breakers for Rotating Electric Machinery
- ANSI/IEEE C37.20.1 Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
- ANSI/IEEE C37.20.2 Metal-Clad and Station-Type Cubicle Switchgear
- ANSI/IEEE C37.20.3 Metal-Enclosed Interrupter Switchgear
- ANSI/IEEE C37.21 Control Switchboards
- ANSI/IEEE C37.29 Low-Voltage AC Power Circuit Protectors Used in Enclosures
- ANSI/IEEE C37.38 Gas-Insulated, Metal-Enclosed Disconnecting, Interrupter and Grounding Switches
- ANSI C37.42 Distribution Cutouts and Fuse Links
- ANSI C37.44 Distribution Oil Cutouts and Fuse Links
- ANSI C37.45 Distribution Enclosed Single-Pole Air Switches
- ANSI C37.46 Power Fuses and Fuse Disconnecting Switches
- ANSI C37.47 Distribution Fuse Disconnecting Switches, Fuse Supports, and Current-Limiting Fuses
- ANSI C37.50 Low-Voltage AC Power Circuit Breakers Used in Enclosures—Test Procedures
- ANSI C37.51 Metal-Enclosed Low-Voltage AC Power Circuit-Breaker Switchgear Assemblies—Conformance Test Procedures
- ANSI C37.52 Low-Voltage AC Power Circuit Protectors Used in Enclosures—Test Procedures
- ANSI C37.53.1 High-Voltage Current Motor-Starter Fuses—Conformance Test Procedures
- ANSI C37.54 Indoor Alternating-Current High Voltage Circuit Breakers Applied as Removable Elements in Metal-Enclosed Switchgear Assemblies-Conformance Test Procedures
- ANSI C37.55 Metal-Clad Switchgear Assemblies—Conformance Test Procedures
- ANSI C37.57 Metal-Enclosed Interrupter Switchgear Assemblies—Conformance Testing
- ANSI C37.58 Indoor AC Medium-Voltage Switches for Use in Metal-Enclosed Switchgear—Conformance Test Procedures
- ANSI/IEEE C37.60 Overhead, Pad-Mounted, Dry-Vault, and Submersible Automatic Circuit Reclosers and Fault Interrupters for AC Systems
- ANSI/IEEE C37.66 Oil-Filled Capacitor Switches for Alternating-Current Systems—Requirements
- ANSI/IEEE C37.71 Three Phase, Manually Operated Subsurface Load Interrupting Switches for Alternating-Current Systems
- ANSI C37.72 Manually-Operated Dead-Front, Pad-Mounted Switchgear with Load-Interrupting Switches and Separable Connectors for Alternating-Current System
- ANSI/IEEE C37.90 Relays and Relay Systems Associated with Electric Power Apparatus
- ANSI C37.121 Unit Substations—Requirements
- ANSI/IEEE C37.122 Gas-Insulated Substations
- ANSI/IEEE C57.12.00 Distribution, Power and Regulating Transformers—General Requirements
- ANSI C57.12.13 Liquid-Filled Transformers Used in Unit Installations including Unit Substations—Conformance Requirements
- ANSI C57.12.20 Overhead-Type Distribution Transformers, 500 kVA and Smaller
- ANSI C57.12.21 Pad-Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with High Voltage Bushings; 167 kVA and Smaller
- ANSI C57.12.22 Pad-Mounted Compartmental-Type, Self-Cooled, Three-Phase Distribution Transformers with High Voltage Bushings; 2500 kVA and Smaller
- ANSI C57.12.23 Underground-Type Self-Cooled, Single-Phase Distribution Transformers with Separable Insulated High-Voltage Connectors; 167 kVA and Smaller
- ANSI C57.12.24 Underground-Type Three-Phase Distribution Transformers, 2500 kVA and Smaller

- ANSI C57.12.25 Pad-Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with Separable Insulated High-Voltage Connectors; 167 kVA and Smaller
- ANSI C57.12.26 Pad-Mounted Compartmental-Type, Self-Cooled, Three-Phase Distribution Transformers for use with Separable Insulated High-Voltage Connectors; 2500 kVA and Smaller
- ANSI C57.12.27 Liquid-Filled Distribution Transformers Used in Pad-Mounted Installations, Including Unit Substations—Conformance Requirements
- ANSI C57.12.28 Switchgear and Transformers—Pad-Mounted Equipment—Enclosure Integrity
- ANSI C57.12.40 Three Phase Secondary Network Transformers, Subway and Vault Types (Liquid Immersed); 2500 kVA and Smaller
- ANSI C57.12.50 Ventilated Dry-Type Distribution Transformers, 1 to 500 kVA, Single-Phase; and 15 to 500 kVA, Three Phase
- ANSI C57.12.51 Ventilated Dry-Type Power Transformers 501 kVA and Larger, Three-Phase
- ANSI C57.12.52 Sealed Dry-Type Power Transformers, 501 kVA and Larger, Three-Phase
- ANSI C57.12.55 Dry-Type Transformers in Unit Installations, Including Unit Substations—Conformance Requirements
- ANSI C57.12.57 Ventilated Dry-Type Network Transformers 2500 kVA and Below, Three-Phase
- ANSI/IEEE C57.13 Instrument Transformers—Requirements
- ANSI/IEEE C57.13.2 Instrument Transformers—Conformance Test Procedures
- ANSI/IEEE C57.15 Step-Voltage and Induction-Voltage Regulators
- ANSI/IEEE C57.21 Shunt Reactors Over 500 kVA
- ANSI/IEEE C62.1 Gapped Silicon-Carbide Surge Arresters for AC Power Circuits
- ANSI/IEEE C62.11 Metal Oxide Surge Arresters for AC Power Circuits
- ANSI K61.1 Storage and Handling of Anhydrous Ammonia (CGA G–2.1)
- ANSI/NEMA 250 Enclosures for Electrical Equipment
- ANSI Z21.24 Metal Connectors for Gas Appliances
- ANSI Z21.50 Vented Decorative Gas Appliances
- ANSI Z21.57 Recreational Vehicle Cooking Gas Appliances
- ANSI Z21.60 Decorative Gas Appliances for Installation in Vented Fireplaces
- ANSI Z21.70 Earthquake Actuated Automatic Gas Shutoff Systems
- ANSI Z83.7 Gas-Fired Construction Heater
- UL 5A Nonmetallic Surface Raceways and Fittings
- UL 5B Strut-Type Channel Raceways and Fittings
- UL 201 Standard for Garage Equipment
- UL 218 Fire Pump Controllers
- ANSI/UL 231 Electrical Power Outlets
- ANSI/UL 234 Low Voltage Lighting Fixtures for Use in Recreational Vehicles
- ANSI/UL 248–1 Low-Voltage Fuses—Part 1: General Requirements
- UL 248–2 Low-Voltage Fuses—Part 2: Class C Fuses
- UL 248–3 Low-Voltage Fuses—Part 3: Class CA and CB Fuses
- ANSI/UL 248–4 Low-Voltage Fuses—Part 4: Class CC Fuses
- UL 248–5 Low-Voltage Fuses—Part 5: Class G Fuses
- UL 248–6 Low-Voltage Fuses—Part 6: Class H Non-Renewable Fuses
- UL 248–7 Low-Voltage Fuses—Part 7: Class H Renewable Fuses
- ANSI/UL 248–8 Low-Voltage Fuses—Part 8: Class J Fuses
- UL 248–9 Low-Voltage Fuses—Part 9: Class K Fuses
- ANSI/UL 248–10 Low-Voltage Fuses—Part 10: Class L Fuses
- UL 248–11 Low-Voltage Fuses—Part 11: Plug Fuses
- ANSI/UL 248–12 Low-Voltage Fuses—Part 12: Class R Fuses
- UL 248–13 Low-Voltage Fuses—Part 13: Semiconductor Fuses
- ANSI/UL 248–14 Low-Voltage Fuses—Part 14: Supplemental Fuses
- ANSI/UL 248–15 Low-Voltage Fuses—Part 15: Class T Fuses
- UL 248–16 Low-Voltage Fuses—Part 16: Test Limiters
- ANSI/UL 252A Compressed Gas Regulator Accessories
- UL 300 Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Areas
- UL 307B Gas Burning Heating Appliances for Manufactured Homes and Recreational Vehicles
- ANSI/UL 391 Solid-Fuel and Combination-Fuel Control and Supplementary Furnaces
- UL 508C Power Conversion Equipment
- ANSI/UL 583 Electric-Battery-Powered Industrial Trucks
- ANSI/UL 588 Christmas-Tree and Decorative-Lighting Outfits
- UL 635 Insulating Bushings
- ANSI/UL 668 Hose Valves For Fire Protection Service
- ANSI/UL 745–1 Portable Electric Tools
- ANSI/UL 745–2–1 Particular Requirements of Drills
- ANSI/UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
- ANSI/UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
- ANSI/UL 745–2–4 Particular Requirements for Sanders
- ANSI/UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
- ANSI/UL 745–2–6 Particular Requirements for Hammers
- ANSI/UL 745–2–8 Particular Requirements for Shears and Nibblers
- ANSI/UL 745–2–9 Particular Requirements for Tappers
- ANSI/UL 745–2–11 Particular Requirements for Reciprocating Saws
- ANSI/UL 745–2–12 Particular Requirements for Concrete Vibrators
- ANSI/UL 745–2–14 Particular Requirements for Planers
- ANSI/UL 745–2–17 Particular Requirements for Routers and Trimmers
- ANSI/UL 745–2–30 Particular Requirements for Staplers
- ANSI/UL 745–2–31 Particular Requirements for Diamond Core Drills
- ANSI/UL 745–2–32 Particular Requirements for Magnetic Drill Presses
- ANSI/UL 745–2–33 Particular Requirements for Portable Bandsaws
- ANSI/UL 745–2–34 Particular Requirements for Strapping Tools
- ANSI/UL 745–2–35 Particular Requirements for Drain Cleaners
- ANSI/UL 745–2–36 Particular Requirements for Hand Motor Tools
- ANSI/UL 745–2–37 Particular Requirements for Plate Jointers
- UL 791 Residential Incinerators
- UL 962 Household and Commercial Furnishings
- ANSI/UL 985 Household Fire Warning System Units
- ANSI/UL 1023 Household Burglar-Alarm System Units
- UL 1075 Gas Fired Cooling Appliances for Recreational Vehicles
- ANSI/UL 1247 Diesel Engines for Driving Centrifugal Fire Pumps
- UL 1248 Engine-Generator Assemblies for Use in Recreational Vehicles
- UL 1363 Temporary Power Taps
- ANSI/UL 1419 Professional Video and Audio Equipment
- ANSI/UL 1431 Personal Hygiene and Health Care Appliances
- ANSI/UL 1468 Direct-Acting Pressure-Reducing and Pressure-Control Valves for Fire Protection Service
- UL 1472 Solid-State Dimming Controls
- ANSI/UL 1478 Fire Pump Relief Valves
- ANSI/UL 1581 Reference Standard for Electrical Wires, Cables, and Flexible Cords
- ANSI/UL 1637 Home Health Care Signaling Equipment
- UL 1651 Optical Fiber Cable
- UL 1682 Plugs, Receptacles, and Cable Connectors, of the Pin and Sleeve Type
- UL 1684 Reinforced Thermosetting Resin Conduit
- UL 1690 Data-Processing Cable
- ANSI/UL 1692 Polymeric Materials—Coil Forms
- UL 1693 Electric Radiant Heating Panels and Heating Panel Sets
- UL 1694 Tests for Flammability of Small Polymeric Component
- UL 1730 Smoke Detector Monitors and Accessories for Individual Living Units of Multifamily Residences and Hotel/Motel Rooms
- ANSI/UL 1740 Industrial Robots and Robotic Equipment
- UL 1821 Thermoplastic Sprinkler Pipe and Fittings for Fire Protection
- UL 1838 Low Voltage Landscape Lighting Systems
- UL 1889 Commercial Filters for Cooking Oil
- UL 1951 Electric Plumbing Accessories
- ANSI/UL 1963 Refrigerant Recovery/Recycling Equipment
- ANSI/UL 1971 Signaling Devices for the Hearing Impaired
- UL 1977 Component Connectors for Use in Data, Signal, Control and Power Applications
- ANSI/UL 1981 Central Station Automation Systems
- UL 1993 Self-Ballasted Lamps and Lamp Adapters

UL 1994 Low-Level Path Marking and Lighting Systems
UL 1995 Heating and Cooling Equipment
UL 1996 Duct Heaters
UL 2021 Fixed and Location-Dedicated Electric Room Heaters
UL 2024 Optical Fiber Cable Raceway
UL 2034 Single and Multiple Station Carbon Monoxide Detectors
ANSI/UL 2044 Commercial Closed Circuit Television Equipment
UL 2061 Adapters and Cylinder Connection Devices for Portable LP-Gas Cylinder Assemblies
ANSI/UL 2083 Halon 1301 Recovery/Recycling Equipment
UL 2085 Insulated Aboveground Tanks for Flammable and Combustible Liquids
ANSI/UL 2096 Commercial/Industrial Gas and/or Gas Fired Heating Assemblies with Emission Reduction Equipment
UL 2106 Field Erected Boiler Assemblies
UL 2111 Overheating Protection for Motors
ANSI/UL 2157 Electric Clothes Washing Machines and Extractors
ANSI/UL 2158 Electric Clothes Dryers
UL 2161 Neon Transformers and Power Supplies
UL 2250 Instrumentation Tray Cable
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3044 Surveillance Closed Circuit Television Equipment
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
UL 8730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Note.—Testing and certification of gas operated equipment is limited to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas").

[1] These standards are approved for equipment or materials intended for use in commercial and industrial power system applications. These standards are not approved for equipment or materials intended for use in installations that are excluded by the provisions of Subpart S in 29 CFR 1910, in particular Section 1910.302(a)(2).

The designations and titles of the above standards were current at the time of the preparation of the notice of the preliminary finding.

Conditions

Underwriters Laboratories Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to UL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If UL has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

UL must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, UL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

UL will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

UL will continue to meet the requirements for recognition in all areas where it has been recognized; and

UL will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, DC this 11th day of June, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–16070 Filed 6–23–99; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–091)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Sun-Earth Connection Advisory Subcommittee.

DATES: Wednesday, July 7, 1999, 8:30 a.m. to 5:00 p.m., and Thursday, July 8, 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: NASA Headquarters, Conference Room 5H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. George Withbroe, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Roadmap Issues
—Technology
—Education and Public Outreach
—Flight Programs
—Discipline Reports
—Long Duration Balloon Developments
—Sun Earth Connection Data System

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Lori B. Garver,

Associate Administrator for Policy and Plans.

[FR Doc. 99–16081 Filed 6–23–99; 8:45 am]

BILLING CODE 7510–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482–LT; CLI–99–19]

In the Matter of Kansas Gas and Electric Company, et al. (Wolf Creek Generating Station, Unit 1): Memorandum and Order

Commissioners: Shirley Ann Jackson, Chairman, Greta J. Dicus, Nils J. Diaz, Edward McGaffigan, Jr., Jeffrey S. Merrifield.

I. Introduction

Pending before the Commission is a license transfer application filed on October 27, 1998, by Kansas Gas and Electric Company (KGE) and Kansas City Power and Light Company (KCPL) (Applicants) seeking Commission approval pursuant to 10 C.F.R. 50.80 of a transfer of their possession-only interests in the operating license for the Wolf Creek Generating Station, Unit 1, to a new company, Westar Energy, Inc. Currently Wolf Creek is jointly owned and operated by the Applicants, each of which owns an undivided 47% interest, and Kansas Electric Power Cooperative, Inc. (KEPCo), which owns the remaining 6% interest. The Applicants request that the Commission amend the operating license for Wolf Creek pursuant to 10 C.F.R. 50.90 by deleting KGE and KCPL as licensees and adding Westar Energy in their place.

Pursuant to the Commission's recently-promulgated Subpart M, 10 C.F.R. 2.1300 *et seq.*, KEPCo opposed the transfer on antitrust grounds, claiming, in a February 18, 1999, "Petition to Intervene and Request for Hearing," that the transfer would have "serious adverse and anticompetitive effects" (p. 5), would result in "significant changes" in the competitive market (pp. 15–17), and, therefore, warrants an antitrust review under Section 105c of the Atomic Energy Act, 42 U.S.C. 2135(c). In response to the petition to intervene, on March 1, 1999, Applicants filed an "Answer of Applicants to Petition to Intervene and Request for Hearing of the Kansas Electric Power Cooperative, Inc." Applicants requested that the Commission deny the petition because the issues raised were outside the scope of the license transfer proceeding, the positions taken were not factually supported, and the Commission had not made and should not make a finding of "significant changes" in the activities under the license.

By Memorandum and Order dated March 2, 1999, CLI–99–05, 49 NRC 199 (1999), the Commission indicated that although its staff historically has performed a "significant changes" review in connection with certain kinds of license transfers, it intended to consider in this case whether to depart from that practice and "direct the NRC staff no longer to conduct significant changes reviews in license transfer cases, including the current case." The Commission stated that, in deciding this matter, it expected to consider a number of factors, including its statutory mandate, its expertise, and its resources. Accordingly, the Commission directed the Applicants and KEPCo to file briefs on the single question: "whether as a matter of law or policy the Commission may and should eliminate all antitrust reviews in connection with license transfers and therefore terminate this adjudicatory proceeding forthwith." *Id.* at 200. The Commission also invited *amicus curiae* briefs.

Briefs and reply briefs have been filed by the Applicants and KEPCo. *Amicus* briefs were timely filed by the National Rural Electric Cooperative Association (NRECA), the Nuclear Energy Institute (NEI), the American Public Power Association (APPA), the Florida Municipal Power Agency (FMPA), the National Association of State Utility Consumer Advocates (NASUCA), and the American Antitrust Institute (AAI), and an untimely brief was filed by WML Associates (WML).[1]

Applicants argue that both legal and policy reasons justify the elimination of all antitrust reviews in license transfer proceedings. They state that by the express terms of Section 105 of the Atomic Energy Act, which is the sole source of the Commission's antitrust jurisdiction, antitrust reviews are required only at two stages of the licensing process: when an application for a construction permit is submitted and then when the application for the initial operating license is submitted. Applicants' position is that "Commission antitrust review of a license transfer is not authorized by statute, nor would such a review be consistent with the purpose of section 105c. For these reasons, as a matter of law the Commission should eliminate all antitrust reviews in connection with license transfers." "Initial Brief of Applicants in Response to the NRC's Memorandum and Order Regarding Antitrust Review of License Transfers' (March 16, 1999) (Applicants' Initial Brief) at unnumbered p. 11. Applicants state it clearly another way: "Neither section 105c nor Commission case law supports a finding that the Commission has jurisdiction to review the antitrust implications of a license transfer * * *" *Id.* at unnumbered p. 18. In addition to their argument that the Commission is not authorized to conduct antitrust reviews of transfer applications, Applicants also argue that there are compelling policy reasons why the Commission should not perform such reviews. Finally, and notwithstanding their "lack of authority" argument, Applicants request that the Commission decide this case not on the absence of authority, but rather on the merits of the merger and the antitrust issues (i.e., by finding no "significant changes" in the Applicants' activities).

KEPCo and NRECA, in their "Joint Brief of the Kansas Electric Power Cooperative, Inc., and *Amicus Curiae* National Rural Electric Cooperative Association" (March 16, 1999) (KEPCo Brief), argue that the Commission may not, as a matter of law, eliminate all antitrust reviews in license transfer proceedings. They argue that neither the statutory language nor its legislative history hint that Congress intended to allow the Commission to eliminate administratively any and all antitrust review when a nuclear power facility is sold or transferred. They further argue that even if the Commission had the statutory authority to eliminate such reviews, it cannot do so in this proceeding because applicable regulations "unambiguously" require a threshold "significant changes" determination which can only be changed by notice-and-comment rulemaking, which should not be undertaken for policy reasons.

NEI's position, reflected in the "Amicus Brief of the Nuclear Energy Institute on the Issue of Antitrust Reviews in License Transfer Cases" (March 31, 1999) (NEI Brief), is that the NRC has the legal authority to, and as a matter of policy should, eliminate antitrust reviews in license transfer cases as duplicative of other federal and state agencies with mandates to address competitive issues and because such reviews divert NRC's finite resources from its fundamental health and safety mission and constitute an unnecessary barrier to the completion of beneficial license transfers.

APPA and FMPA, in their "Joint Brief of the American Public Power Association and Florida Municipal Power Agency" (March 31, 1999) (APPA Brief), assert that a license transfer application seeks the issuance of an operating license requiring antitrust review and that this "proposition is so plain it previously has never been challenged." APPA Brief at 3. APPA and FMPA argue that the Act, the Commission's regulations, and its consistent past practices would be unlawfully disregarded were the Commission to abandon antitrust reviews of license transfer applications.

NASUCA supports KEPCo's argument that the Commission may not, as a matter of law, eliminate all antitrust reviews in connection with license

[1] WML's brief was filed approximately five days after the time provided by CLI–99–05. WML's excuse is that the filing date coincided with Passover and the Easter holiday week and created unforeseen scheduling problems for it. Although WML has not satisfied us that it had good cause for the untimely filing, in the circumstances here we have considered WML's comments.

transfers. "Amicus Filing, The National Association of State Utility Consumer Advocates" (March 31, 1999) (NASUCA Brief).

AAI argues that antitrust is a primary statutory function of the Commission which can only be eliminated by Congress, though it can be limited by the Commission. "Motion to Submit Comments and Comments of Amici Curiae of the American Antitrust Institute" (March 31, 1999) (AAI Brief) at 4–5. AAI takes the position that the Commission's role of focusing an antitrust review on electric industry competitive problems cannot be substituted for by other agencies.

WML argues that the "Commission's success in conducting competitive reviews is unchallenged," and that without delaying any construction permit or operating license, NRC antitrust license conditions have saved "disadvantaged" entities millions of dollars in "monopoly rents" and significantly enhanced the competitive environment of the bulk power services markets. *Amicus Curiae* Brief, WML Associates" (April 5, 1999) (WML Brief) at 4. WML points out that Congress has not eliminated the NRC's antitrust function and speculates that, in view of its history, probably would not do so. *Id.* at 5.

II. Analysis

After consideration of the arguments presented in the briefs, and based on a thorough *de novo* review of the scope of the Commission's antitrust authority, we have concluded that the structure, language and history of the Atomic Energy Act cut against our prior practice of conducting antitrust reviews of post-operating license transfers. It now seems clear to us that Congress never contemplated such reviews. On the contrary, Congress carefully set out exactly when and how the Commission should exercise its antitrust authority, and limited the Commission's review responsibilities to the anticipatory, prelicensing stage, prior to the commitment of substantial licensee resources and at a time when the Commission's opportunity to fashion effective antitrust relief was at its maximum. The Act's antitrust provisions nowhere even mention post-operating license transfers.

The statutory scheme is best understood, in our view, as an implied prohibition against additional Commission antitrust reviews beyond those Congress specified. At the least, the statute cannot be viewed as a requirement of such reviews. In these circumstances, and given what we view as strong policy reasons against a continued expansive view of our antitrust authority, we have decided to abandon our prior practice of conducting antitrust reviews of post-operating license transfers and to dismiss KEPCo's antitrust-driven request for a hearing on the proposed Wolf Creek license transfer.

A. The Atomic Energy Act

1. Statutory Framework: The Antitrust Provisions

Analysis of the Commission's statutory authority must begin with the language and structure of the Atomic Energy Act itself. To properly interpret both the specific language and the overall scheme of the Commission's antitrust authority, it is important to understand the background and history of that statutory authority.

In 1954, Congress wished to eliminate the government monopoly over the development of atomic energy for peaceful purposes and provide the incentives of competition and free enterprise in the further development of nuclear power.[2] Since nuclear power technology was developed to a great extent at government (*i.e.*, taxpayer) expense, Congress believed that its benefits should be available to all on fair and equitable terms. Congress was concerned, however, that because the construction of large nuclear generating facilities was expensive and only the largest electric utility companies likely could afford such a capital asset, they could monopolize nuclear power plants and exclude smaller utility companies from sharing in the benefits of nuclear resources and thereby create an anticompetitive situation. It, therefore, was especially concerned that smaller electric systems have access to nuclear power plant electrical output by sharing in their ownership at the outset. Ownership access by itself, however, would be meaningless if the generated electricity could not be effectively transmitted and distributed by the smaller owners, many of whom were "captive" bulk power supply customers of the larger, dominant utilities which would be constructing and operating the nuclear facilities. Thus, ownership access had to be accompanied by other services such as "wheeling" of bulk power.

To alleviate these concerns, Congress amended the Atomic Energy Act of 1946 ("Act") to authorize the Atomic Energy Commission, the NRC's predecessor, to conduct an antitrust review, in consultation with the Attorney General, prior to issuing a license for a nuclear generating facility. As subsequently amended in 1970, Section 105 of the Act, 42 U.S.C. 2135, requires the Commission to determine whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws. The Commission, with its unique authority over the licenses it issues, also was given the authority to remedy such situations by refusing to issue licenses or by amending or conditioning them as it deemed appropriate. With this historical background in mind, the carefully-crafted antitrust review authority given to the Commission can be considered.

Section 105 of the Act is the sole source of the Commission's antitrust authority. Before examining the Commission's specific antitrust authority granted in Section 105, it is important to understand that this authority is not plenary but instead, as a general matter, is limited to certain types of applications or otherwise limited in scope or nature. No other provision of the Act grants any antitrust authority to the Commission. As the Commission stated some years ago:

> We find the specificity and completeness of Section 105 striking. The section is comprehensive; it addresses each occasion on which allegations of anticompetitive behavior in the commercial nuclear power industry may be raised, and provides a procedure to be followed in each instance.

Houston Lighting & Power Company (South Texas Project, Unit Nos. 1 and 2), CLI–77–13, 5 NRC 1303, 1311 (1977). Further, the Commission's antitrust authority is not derived from its broad powers provided by Sections 161 and 186 of the Act. *Id.* at 1317, 1317 n.12. Thus, absent Section 105, the Commission would have no antitrust authority.

Because the prelicensing antitrust reviews described in Section 105c. apply only to applications for certain types of licenses authorized under Section 103, we set out Section 103 before turning to Section 105. Section 103a provides, in relevant part:

> The Commission is authorized to issue to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import or export * * * utilization or production facilities for industrial or commercial purposes.

Section 105 ("Antitrust Provisions") of the Act[3] provides, in relevant part:

> a. Nothing contained in this Act shall relieve any person from the operation of the [antitrust laws]. In the event a licensee is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the laws cited above, to have violated any of the provisions of such laws in the conduct of the licensed activity, the Commission may suspend, revoke, or take such other action as it may deem necessary with respect to any license issued by the Commission under the provisions of this Act.
>
> b. The Commission shall report promptly to the Attorney General any information it may have with respect to any utilization of special nuclear material or atomic energy which appears to violate or tend toward the violation of any of the foregoing Acts, or to restrict free competition in private enterprise.
>
> c. (1) The Commission shall promptly transmit to the Attorney General a copy of any license application provided for in paragraph (2) of this subsection, and a copy of any written request provided for in paragraph (3) of this subsection; and the Attorney General shall, within a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request, render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission pursuant to paragraph (5) of this subsection. Such advice shall include an explanatory statement as to the reasons or basis therefor.
>
> (2) Paragraph (1) of this subsection shall apply to an application for a license to construct or operate a utilization or production facility under section 103: *Provided, however,* That paragraph (1) shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.
>
> * * * * *
>
> (5) * * * The Commission shall give due consideration to the advice received from the Attorney General . . . and shall make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105a.
>
> (6) * * * On the basis of its findings, the Commission shall have the authority to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.
>
> * * * * *

Not surprisingly, the parties' and the amicus briefs focus almost exclusively on Section 105c, which describes the construction permit and operating license antitrust reviews, the antitrust finding the Commission must make, and the licensing remedies available to the Commission in the event of an adverse finding. While the language in Section 105c unquestionably is at the heart of the determination whether an antitrust review is required in connection with post-operating license transfer applications, we find that the scope of antitrust authority granted the Commission in Section 105 as a whole sheds considerable light on the correct interpretation of the specific language in Section 105c. And as will be seen, the structure of the Section 105 scheme, as well as the legislative history of Section 105, support the conclusion that Section 105c does not require, and indeed does not authorize, antitrust reviews of post-operating license transfer applications.[4]

a. Statutory Structure

We start at the beginning, and will examine each portion of Section 105 in turn. At the outset, Section 105a makes clear that nothing in Section 105 relieves any person (e.g., applicant or licensee—*see* Section 11s of the Act) from complying with any of the antitrust laws. Further, if any licensee is found by a court to have violated any antitrust law, then the Commission is empowered to suspend, revoke, or take such other action as it deems necessary, with respect to the license issued. Thus, after issuing an operating license, to the extent that an antitrust violation is found which may warrant some remedy involving the license itself, or "licensed activities," the Commission could order a remedy. Similarly, Section 105b requires the Commission to report to the Attorney General any information it may have with respect to its licensees' anticompetitive practices. As will be seen, these provisions assist in understanding the nature and scope of the prelicensing antitrust reviews required by Section 105c.

Section 105c.(1) provides for transmittal of "any license application provided for in paragraph (2)" and related information to the Attorney General, and for advice, with explanatory reasons, from the Attorney General regarding the antitrust finding to be made by the Commission pursuant to paragraph (5).

Section 105c.(2) states that the review process provided in paragraph (1) "shall apply to an application for a license to construct or operate" a nuclear power facility but that "paragraph (1) shall not apply to an application for a license to operate a * * * facility for which a construction permit was issued * * * unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission * * * in connection with the construction permit for the facility."

Section 105c.(5) requires the Commission, with respect to applications subject to paragraphs (1) and (2), "to make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws * * *." In the case of affirmative findings, Section 105c.(6) grants the Commission authority to refuse to issue the license, to rescind or amend it, or "to issue a license with such conditions as it deems appropriate."

The overall structure of the process designed by Congress to address its concerns about potential antitrust problems arising from the licensing of nuclear generating facilities is evident from the nature of its concerns and the

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[2] *See* Report By The Joint Committee On Atomic Energy: Amending The Atomic Energy Act of 1954, As Amended, To Eliminate The Requirement For A Finding Of Practical Value, To Provide For Prelicensing Antitrust Review Of Production And Utilization Facilities, And To Effectuate Certain Other Purposes Pertaining To Nuclear Facilities, H.R. Rep. No. 91–1470 (also Rep. No. 91–1247), 91st Cong., 2nd Sess. at 8 (1970), 3 U.S. Code and Adm. News 4981 (1970) ("Joint Committee Report") (*quoting* from legislative history of 1954 Act).

[3] A point of clarification is in order concerning "antitrust laws." The "Acts" explicitly cited in Section 105a include the two most basic antitrust laws—the Sherman Act and the Clayton Act—as well as the Federal Trade Commission Act (FTC Act). Whether the FTC Act truly is an "antitrust" law is debatable. Clearly, conduct that violates the Sherman or Clayton Acts is also cognizable under Section 5 of the FTC Act. In *FTC* v. *Cement Institute*, 333 U.S. 683, 690–91 (1948), the Supreme Court specifically rejected the argument that because the price-fixing scheme (which the FTC had held was an "unfair method of competition") was cognizable under the Sherman Act, the FTC lacked jurisdiction. In general, all conduct prohibited by either the Sherman Act or the Clayton Act is within the scope of Section 5 of the FTC Act. *See FTC* v. *Brown Shoe Co.*, 384 U.S. 316 (1966); *FTC* v. *Motion Picture Advertising Service Co.*, 344 U.S. 392, 394 (1953); *Times-Picayune Publishing Co.* v. *United States*, 345 U.S. 594, 609 (1953); *Fashion Originators' Guild of America* v. *FTC*, 312 U.S. 457 (1941). But practices which do not necessarily violate either the letter or spirit of the traditional "antitrust laws" (the Sherman, Clayton and Robinson-Patman Acts) may nevertheless violate Section 5 of the FTC Act as unfair or deceptive acts or practices affecting consumers, regardless of their effect on competition. *FTC v. Sperry & Hutchison Co.*, 405 U.S. 233, 239 (1972). Whether or not purists would consider the FTC Act as an "antitrust law," that act is one of the specific acts enumerated in Section 105a and we hereinafter include it in our use of the phrase "antitrust laws."

[4] The issue of our authority to conduct antitrust reviews of post-operating license transfers has not been explicitly addressed heretofore in any Commission adjudicatory decision (or elsewhere by the Commission). While some briefs contain arguments that certain past Commission adjudicatory decisions can be read to imply that the Commission has asserted such authority, and others suggest the opposite, we conclude that at most they reflect an *assumption* by the Commission of such authority, but certainly not a reasoned conclusion. Accordingly, past adjudicatory decisions provide, at best, marginally useful assistance in resolving this issue.

corresponding scheme provided above. To address the concern over smaller utilities' ability to obtain ownership access to a nuclear facility (and associated services such as "wheeling") before it operates and in order to resolve incipient antitrust problems before any competitors were damaged, a mandatory and "complete" antitrust review was provided at the construction permit stage of the licensing process.[5] At this time, all entities who might wish ownership access to the nuclear facility, and who are in a position to assert that the activities under the license would create or maintain a situation inconsistent with the antitrust laws, are able to seek an appropriate licensing remedy from the Commission prior to actual operation of the facility, thus realizing their fair benefits of nuclear power from the beginning of electrical power generation.

This construction permit review theoretically is the broadest antitrust review provided in the law, not only because it measures the competitive situation against all the antitrust laws, including the FTC Act, but also because the standard of anticompetitive conduct and basis for a remedy is not the traditional one of antitrust violations but the potential for the licensed activities to create or maintain "a situation inconsistent with the antitrust laws."[6] At the time Congress enacted Section 105, it envisioned this broad and comprehensive review at the construction permit phase of licensing a facility but, as we shall see, not at other licensing or post-licensing phases for the facility in question. Congress believed that at the construction phase—before the plant is built and before its operation is authorized by the Commission—the Commission would be peculiarly well-positioned to offer meaningful remedies, such as license conditions, if it found that granting the license would create or maintain a situation inconsistent with the antitrust laws.

The Commission's independent antitrust review responsibilities diminish from plenary reviews prior to initial licensing to passive information-reporting after licensing. Section 105c.(2) explicitly states that the Act's formal antitrust review provisions "shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review * * * in connection with the construction permit for the facility." As suggested in the legislative history (*see* discussion below), Congress added this restriction—in effect, a prohibition of second antitrust reviews at the operating license stage absent a significant changes finding—as part of compromise legislation in 1970 intended both to require vigorous prelicensing antitrust reviews and to avoid undue disruption of utility planning and investment decisions.

Consistent with the progressively diminishing role Congress intended for the Commission regarding the competitive practices of its applicants and licensees, Sections 105a and b preserve traditional antitrust forums to resolve allegedly anticompetitive conduct by Commission licensees. Once a nuclear facility is licensed to operate, traditional antitrust forums—the federal courts and governmental agencies with longstanding antitrust expertise—are better equipped than the Commission to resolve and remedy antitrust violations by NRC licensees. To the extent that a court finds antitrust violations that arguably warrant some unique "licensing" relief that only this Commission can provide, such as by imposing conditions on the operating license, then 105a provides the Commission with remedial (but not review) authority.

From the mandatory and broad construction permit review to the conditional review in connection with the initial operating license, to the constricted review authority after issuance of the initial operating license (limited to information-reporting), Section 105, in concept, describes a logical and progressively more narrow and less active role for a Commission whose primary and almost sole responsibility under the Act is to protect the public health and safety and the common defense and security.[7]

b. Statutory Language

The overarching structure of the Commission's antitrust responsibilities, both the prelicensing construction permit and operating license antitrust reviews, as well as the post-operating license authority to order a remedy for antitrust violations found elsewhere, as described above, is consistent with the very purpose for the Congressional grant of specific and limited antitrust authority to the Commission. We turn now to our analysis and interpretation of the key statutory words and phrases material to the issue of whether Section 105 contemplates antitrust reviews of post-operating license transfer applications.

Although the antitrust laws continue to apply to all Commission licensees after issuance of the facility operating license and the Commission continues to have authority to order licensing type relief, if warranted, based on violations of the antitrust laws found by other forums (Sections 105a and b), the prelicensing antitrust reviews required by Section 105c are limited both in terms of the types of applications subject to the review and the threshold for conducting the review. Section 105c.(1) requires transmittal of antitrust information to the Attorney General only for a "license application provided for in paragraph (2)." Paragraph (2), in turn, applies to "an *application* for a license to *construct or operate* a * * * facility under *section 103*" but limits the review of operating license applications by stating that paragraph (1) "*shall not apply to an application for a license to operate* a * * * facility for which a construction permit was issued under section 103 *unless* the Commission determines such review is advisable on the ground that *significant changes in the licensee's activities* or proposed activities have occurred *subsequent to the previous review by the Attorney General and the Commission * * * in connection with the construction permit for the facility.*" Section 103a provides, in relevant part, that the "Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import or export * * * utilization or production facilities for industrial or commercial purposes."

By its terms, Section 105c.(2) requires a Commission antitrust review of applications for certain activities. The only types of applications the provision explicitly subjects to antitrust review are those for construction permits and operating licenses issued under Section 103. Section 103, however, does not use either "construct" or "operate" to identify the activities for which the Commission is authorized to issue licenses. These two basic terms, which are the hallmarks of the NRC's historical two step licensing process (construction permit followed by operating license), are conspicuously absent from Section 103. To construct a facility, however, is the same as to manufacture or produce a facility. "Construct" in Section 105c.(2), therefore, is equivalent to the Section 103 activities of "manufacture" or "produce." Similarly, to operate a facility is the same as to possess and use the facility. "Operate" in Section 105c.(2) thus is equivalent to the Section 103 activities of "possess" and "use." The only types of applications expressly made subject to antitrust review under Section 105c.(2), therefore, are applications to manufacture or produce ("construct") a facility and applications to "possess" and "use" ("operate") a facility, not applications for any other activities requiring a license under Section 103.

Equally as conspicuous as the absence of the words "construct" and "operate" from Section 103 is the *inclusion* of "acquire" and "transfer" in Section 103 as activities explicitly requiring a license from the Commission. Yet Section 105c.(2) *does not*, explicitly or implicitly, identify applications to either "acquire" or "transfer" facilities as being subject to antitrust review. So the only types of applications explicitly mentioned in Section 105c.(2) as requiring an antitrust review (construction and operation) are not mentioned verbatim in Section 103 but are mentioned using equivalent language, while the type of application which is not mentioned in Section 105c.(2), but for which an antitrust review is urged by some (transfer), is identified verbatim in Section 103 (transfer) as well as in equivalency (acquire).

It would be strange, to say the least, if Congress intended the Commission to perform an antitrust review of post-operating license transfer (or acquisition) applications but did not mention applications for those Section 103 activities, either explicitly or equivalently, in Section 105c.(2), but instead mentioned only applications to "construct" and "operate," two commonly used words for the Section 103 activities of manufacture or produce, and possess and use, respectively. Construing Section 105c.(2) in this fashion would violate the basic canon of construction that where a particular term is used in one section of a statute, neither it nor its equivalent should be implied in another section of the same statute where it is omitted. *See BFP* v. *Resolution Trust Co.*, 511 U.S. 531, 537 (1994); *R. Mayer of Atlanta, Inc.* v. *City of Atlanta*, 158 F.3d 538, 545 (11th Cir. 1998).

The explicit focus of Section 105c.(2) on applications for only two types of Section 103 activities—construction (manufacture or production) and operation (possess and use), coupled with the omission from Section 105c.(2) of any mention, either explicitly or by equivalency, of applications to "transfer" (or "acquire")—strongly suggests that our Section 105c prelicensing antitrust review authority does not include applications for post-operating license transfers. This conclusion is supported both by the overall structure of the Commission's antitrust authority provided in Section 105 and the specific language Congress used to authorize prelicensing antitrust reviews of only certain types of license applications. Congress's grant of limited antitrust review authority to the Commission does not give us free rein to conduct across-the-board reviews of license applications not specified by Congress. "The duty to act under certain carefully defined circumstances simply does not subsume the discretion to act under other, wholly different, circumstances, unless the statute bears such a reading." *Railway Labor Executives' Ass'n* v. *National Mediation Bd.*, 29 F.3d 655, 671 (D.C. Cir. 1994) (*en banc*). *Accord, University of the District of Columbia Faculty Ass'n v. DCFRMAA*, 163 F.3d 616, 621 (D.C. Cir. 1998).

The only conceivable way to interpret Section 105c to require some form of antitrust review of applications to transfer an existing operating license is to construe the application to transfer as an application for an operating license.[8] But if it is so construed, Section 105c.(2) brings our antitrust review responsibility into play only if there is a "significant changes" finding made in accordance with the process described in that section. The mandated significant changes process, however, does not lend itself to reviews of post-operating license transfer applications.

To trigger the Commission's duty to conduct an antitrust review of an operating license application, there must be "significant changes" in the licensee's activities that "have occurred subsequent to the previous review by the Attorney General and the Commission * * * *in connection with the construction permit for the facility*." Section 105c.(2). It is immediately obvious from this language that the statutory "significant changes" inquiry is not compatible with antitrust reviews of post-operating license transfers, for the statutory baseline from which to measure "significant changes" is the facility's construction permit, whereas at the time of post-operating license transfers the facility already would have received its operating license, and undergone a previous "significant changes" review. It would be absurd for the Commission to look back again to the original construction permit and make the "significant changes" inquiry anew.

In short, while the statutory method of making the "significant changes" finding reflects a common sense approach in the case of the initial—original—application for an operating license submitted to the Commission by the construction permit licensee, the approach makes no sense whatever if a post-operating license application for license transfer is construed as the equivalent of an initial operating license application and thus force-fit into the "significant changes" process. A comparison of activities of new licensees with activities of other licensees who underwent *at least* two previous antitrust reviews (there could be a series of post-operating license transfer applications) for any facility that underwent an operating license antitrust review makes no practical sense and also would ignore the significant changes explicitly found to exist between construction and initial operation of the facility. The statutory scheme and language are simply inconsistent with treating post-operating license transfer applications as operating license applications.

Interestingly, the Commission's past practice of conducting "significant changes" reviews of post-operating license transfer applications, now being reconsidered in this case, compared the activities at the time of transfer with those at the time of the previous operating license review, a comparison more logical than that required by the statute. We suspect that no one ever suggested that the Commission should have been using the statutorily-required

[5] The Commission's traditional process for licensing nuclear facilities is known as a two-step licensing process, consisting first of a construction permit followed by an operating license. *See* Section 185 of the Act, 42 U.S.C. 2235.

[6] *But see* note 22, *infra*.

[7] If the Commission has continuing antitrust review responsibility over post-operating license transfers, it conceivably could have to conduct at least a "significant changes" review almost 40 years after the initial operating license is issued, since Section 103 of the Act provides that Section 103 licenses are issued for up to 40 years. Nothing in the Act or in its legislative history—which, as we shall see below, focused on the Commission's "anticipatory," prelicensing antitrust role—suggests that Congress intended to assign the Commission such extensive and long-lasting antitrust review duties.

[8] Such a construction is at odds with reality, since no new license will be issued to effectuate a Commission-approved transfer. Instead, as will be true in this *Wolf Creek* case if the Commission approves the transfer request, a license amendment will be issued to reflect the new licensee. The Commission has characterized such amendments as "essentially administrative in nature" and not involving any significant substantive changes. Streamlined Hearing Process for NRC Approval of License Transfers, 63 FR 66727 (Dec. 3, 1998) (codified at 10 CFR Part 2, Subpart M). An amendment reflecting a license transfer does not require a prior hearing. *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI–92–4, 35 NRC 69, 77 (1992).

construction permit review as the benchmark for its "significant changes", determination for post-operating license transfer applications for the simple reason that it makes no sense in reality if post-operating license transfer applications are deemed to be "operating license" applications for purposes of a Section 105c antitrust review. This, too, strongly suggests that Section 105c cannot be read to require Commission antitrust reviews of post-operating license transfer applications and that the Commission's past practice of reviewing post-operating license transfer applications for significant changes is at odds with the clear language of the statute.

Because the statute does not explicitly address the issue of antitrust authority over post-operating license transfer applications, however, we turn to the legislative history for additional guidance on Congressional intent.

2. Legislative History

Desiring to end the government's monopoly over the development of nuclear power for peaceful purposes, Congress, in 1954, amended the Atomic Energy Act of 1946 to provide for further development by private enterprise. Because the development of nuclear power had theretofore been at government (i.e., taxpayer) expense, Congress wanted to ensure that commercial nuclear facilities were accessible to all types of electric utility systems, large investor-owned, smaller private ones, municipal systems, electric cooperatives, and others, on fair and equitable terms. Although large nuclear generating facilities would be expensive to construct, the non-capital generating costs were expected to be inexpensive (one AEC Chairman erroneously predicted that nuclear-generated electricity would be "too cheap to meter"). This meant that, absent some mandated means to address this situation, large, wealthy, dominant electric utilities could achieve great economies of scale by constructing large, expensive nuclear facilities which the smaller utilities could not afford to do, thereby increasing the already dominant competitive position of the larger utilities in the marketplace. To address these concerns, Congress included in the 1954 Act a requirement that the Atomic Energy Commission (the NRC's predecessor), in consultation with the Attorney General, conduct an antitrust review prior to issuing any license under Section 103 for a nuclear power facility for commercial or industrial purposes.[9]

Because nuclear power plants were being licensed in the years after the 1954 amendments under Section 104b as "research and development" facilities, however, no Section 105 antitrust reviews actually were being conducted. In 1970, the Joint Committee on Atomic Energy identified the Section 105c antitrust review requirement as a major roadblock to "commercial" licensing under Section 103 and in need of clarification and revision. *See* Joint Committee Report at 13. Proponents and opponents of prelicensing antitrust review expressed strong positions and emotions from one extreme to the other. *Id.* at 14. Proponents of prelicensing antitrust review feared that, absent such review, the large, already dominant utilities would further increase their market share and power by monopolizing nuclear power, with its large economies of scale, with the smaller private, municipal and cooperative systems denied their fair share of nuclear power. These proponents, therefore, urged the need and importance of antitrust review "at the outset of the licensing process," "before any competitor was damaged" or "much money and time has been spent." *See* Hearings at 21, 420, 481.[10]

Opponents of prelicensing review, on the other hand, believed that the Commission's Section 105a and b authority (to report anticompetitive conduct of its licensees to the Attorney General and to take licensing action to remedy antitrust violations found by a court) was sufficient by itself. Joint Committee Report at 14. They believed that it would be unreasonable and unwise to delay the construction and operation of nuclear facilities by imposing special antitrust reviews on those willing to invest in nuclear facilities. *Id.*

The AEC proposed an antitrust review at both the construction permit and operating license stages of the licensing process but with no operating license review in cases where antitrust concerns were satisfactorily resolved at the construction permit stage. Hearings at 38, 481. This proposal was met with strong opposition, including that of the Chairman of the Joint Committee. *See* Hearings at 37–38 (remarks of Rep. Holifield). The concern was that after a utility had planned, sized and constructed a facility to meet its customers' power requirements, including any requirements from the construction permit antitrust review, any further review would delay the licensing of the facility and unfairly damage the utility's considerable investment. *Id.* The legislation that resulted—including the limitation of such reviews to construction permit applications and adding the "significant changes" trigger for a second antitrust review of operating license applications—reflects a careful balancing and compromise of the respective concerns and positions. Joint Committee Report at 13. *See also* 116 Cong. Rec. H9449 (Daily Ed., Sept. 30, 1970). The 1970 amendments, which remain in effect today as reflected in Section 105, were passed by Congress after considering the Joint Committee Report.

As is evident from the language of Section 105c, the Commission's antitrust review obligations are triggered by applications for only two types of licenses issued under Section 103: construction permits and operating licenses. As indicated above, applications for activities requiring a license under Section 103 other than enumerated activities equivalent to "construction" or "operation," such as "acquire" and "transfer," are not included in Section 105c.(2). The legislative history is consistent with this reading. In its Report, the Joint Committee [11] made clear that the term "license application" referred only to applications for construction permits or operating licenses filed as part of the "initial" licensing process for a new facility not yet constructed, or for modifications which would result in a substantially different facility:

> The committee recognizes that applications may be amended from time to time, that there may be applications to extend or review [sic'renew] a license, and also that the form of an application for construction permit may be such that, from the applicant's standpoint, it ultimately ripens into the application for an operating license. The phrases "any license application", "an application for a license", and "any application" as used in the clarified and revised subsection 105 c. refer to the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility, as the case may be, as determined by the Commission. The phrases do not include, for purposes of triggering subsection 105 c., other applications which may be filed during the licensing process.

Joint Committee Report at 29. *See generally American Public Power Ass'n v. NRC*, 990 F.2d 1309, 1311–12 (D.C. Cir. 1993). These remarks were made with the narrow issue in mind of clarifying the scope of the terms "license application" and "application for a license" used in Section 105c and thus reasonably can "be said to demonstrate a Congressional desire." *See Chevron U.S.A., Inc.* v. Natural Resources Defense Council, Inc., 467 U.S. 837, 862 (1984). The "other applications which may be filed" but which do not trigger an antitrust review clearly encompass applications for those activities listed in Section 103, such as transfers, that do not constitute construction or operation.[12]

In sum, the legislative history of the Commission's antitrust authority supports the overall scheme of one mandatory antitrust review at the initial construction permit stage of the licensing process and one potential antitrust review at the initial operating license stage if and only if there are significant changes from the previous construction permit review. So, too, does it support the interpretation of the term "license application" to exclude post-operating license transfer applications from an antitrust review based on their being interpreted as applications for an initial operating license.[13] There is no evidence in the statutory text or history that Congress expected the Commission to conduct antitrust reviews of post-operating license transfers. In such a detailed statutory scheme, Congressional silence on such transfers seems to us tantamount to an absence of agency authority. At the least, it cannot be said that Congress *required* antitrust reviews of post-operating license transfers.

B. NRC Regulations, Guidance, and Practice

The Commission's practice has been to perform a "significant changes" review of applications to directly transfer Section 103 construction permit and operating licenses to a new entity, including those applications for post-operating license transfers. While the historical basis for such reviews in the case of post-operating license transfer applications remains cloudy—it does not appear that the Commission ever explicitly focused on the issue of whether such reviews were authorized or required by law, but instead apparently assumed that they were [14]—the reasons, even if known, would have to yield to a determination that such reviews are not authorized by the Act. *See American Telephone & Telegraph Co.* v. FCC, 978 F.2d 727, 733 (D.C. Cir. 1992). We now in fact have concluded, upon a close analysis of the Act, that Commission antitrust reviews of post-operating license transfer applications cannot be squared with the terms or intent of the Act and that we therefore lack authority to conduct them. But even if we are wrong about that, and we possess some general residual authority to continue to undertake such antitrust reviews, it is certainly true that the Act nowhere requires them, and we think it sensible from a legal and policy perspective to no longer conduct them.

It is well established in administrative law that, when a statute is susceptible to more than one permissible interpretation, an agency is free to choose among those interpretations. *Chevron*, 467 U.S. at 842–43. This is so even when a new interpretation at issue represents a sharp departure from prior agency views. *Id.* at 862. As the Supreme Court explained in *Chevron*, agency interpretations and policies are not "carved in stone" but rather must be subject to re-evaluations of their wisdom on a continuing basis. *Id.* 863–64. Agencies "[have] latitude to "adapt [their] to the demands circumst[ances]." *Ve[rizon] Assn. o[f] [C]orp.* v. *[Pe]inc.* v. *State Farm [Mut.] [Au]le Ins. Co.*, 463 U.S. 29, 42 (1983). *[Motor] Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968). An agency may change its interpretation of a statute so long as it justifies its new approach with a "reasoned analysis" supporting a permissible construction. *Rust* v. *Sullivan*, 500 U.S. 173, 186–87 (1991); *Public Lands Council* v. *Babbit*, 154 F.3d 1160, 1175 (10th Cir. 1998); *First City Bank* v. *National Credit Union Admin Bd.*, 111 F.3d 433, 442 (6th Cir. 1997); *see also Atchison, T. & S. F. Ry. Co.* v. *Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973); *Hatch* v. *FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981); *Greater Boston Television Corp.* v. *FCC*, 444 F.2d 841, 852 (D.C. Cir. 1971).

We therefore give due consideration to the Commission's established practice of conducting antitrust reviews of post-operating license transfer applications but appropriately accord

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[9] Only commercial licenses issued under Section 103 of the Act were made subject to the antitrust review provisions. "Research and development" licenses issued under Section 104 were exempt from antitrust review. The 1954 Act authorized the issuance of commercial licenses only upon a written finding that such facilities had been "sufficiently developed to be of practical value for industrial and commercial purposes." For many years after 1954, the Commission made no findings of "practical value" and issued all licenses for the construction and operation of civilian nuclear power plants as "research and development" facilities under Section 104b of the Act.

[10] Prelicensing Antitrust Review of Nuclear Power Plants: Hearings Before the Joint Committee on Atomic Energy, Part I, 91st Cong., 1st Sess. (1969), Part II, 91st Cong., 2d Sess. (1970).

[11] The Joint Committee Report is the best source of legislative history of the 1970 amendments. *See Alabama Power Co. v. NRC*, 692 F.2d, 1362, 1368 (11th Cir. 1982). The Report was considered by both houses in their respective floor deliberations on the antitrust legislation and is entitled to special weight because of the Joint Committee's "peculiar responsibility and place . . in the statutory scheme." *See Power Reactor Development Co. v. International Union*, 367 U.S. 396, 409 (1961).

[12] In *American Public Power Ass'n v. NRC*, 990 F.2d 1309 (D.C. Cir. 1993), the Commission's determination that license renewal applications were not required to undergo a Section 105 antitrust review was upheld because such applications were not "initial" applications or applications for a "new or substantially different facility."

[13] In its Joint Brief (*amicus curiae*) (at 6), the American Public Power Association and the Florida Municipal Power Agency argue that it "could not have been Congress's intention . . . that a utility must undergo an antitrust review if it applies for a construction permit, but not if it induces others to construct the project and then purchases the already-operational nuclear plant. After all, it is the *operation* of the plant, not its *construction*, that most offers the potential of harm to competition." (Emphasis in original.) We find it highly unlikely, to say the least, that one utility could "induce" another to construct a nuclear power plant in a sham scheme to obtain operational control of the completed and operationally-licensed plant without undergoing the *NRC*'s prelicensing antitrust review. Moreover, if that were suspected and could be proven, then it would be strong evidence that the inducing utility had serious concerns that its market position or competitive practices might run afoul of the antitrust laws. In that case, those who arguably have been injured could bring a private antitrust action or bring the matter to the attention of the Justice Department, FERC, the FTC, or other governmental agencies with traditional antitrust authority. And if NRC authority over the license were considered to be necessary to fashion an appropriate remedy, the Commission could exercise its Section 105a authority.

APPA also argues that Sections 184 and 189 of the Act prevent the Commission from foreclosing antitrust hearings on license transfers. APPA Brief at 9–10. Section 184 prohibits license transfers unless, "after securing full information," the Commission finds the transfer in accordance with the Act, and Section 189 provides for hearings in certain licensing proceedings, including transfers. We disagree. If the Act does not require or even authorize antitrust reviews of post-operating license transfers, then antitrust issues associated with the transfer are not material to the license transfer decision and antitrust information is not required to be considered by the Commission, except perhaps to determine the fate of existing antitrust license conditions. We, therefore, do not believe that these provisions provide any obstacle to terminating these antitrust reviews.

[14] Until recently, the Commission's staff applied the "significant changes" review process to both "direct" and "indirect" transfers. Indirect transfers involve corporate restructuring or reorganizations which leave the licensee itself intact as a corporate entity and therefore involve no application for a new operating license. The vast majority of indirect transfers involve the purchase or acquisition of securities of the licensee (*e.g.*, the acquisition of a licensee by a new parent holding company). In this type of transfer, existing antitrust license conditions continue to apply to the same licensee. The Commission recently did focus on antitrust reviews of indirect license transfer applications and approved the staff's proposal to no longer conduct "significant changes" reviews for such applications because there is no effective application for an operating license in such cases. *See* Staff Requirements Memorandum (November 18, 1997) on SECY–97–227, Status Of Staff Actions On Standard Review Plans For Antitrust Reviews And Financial Qualifications And Decommissioning-Funding Assurance Reviews.

little weight to it in evaluating anew the issue of Section 105's scope and whether, even if such reviews are authorized by an interpretation of Section 105, they should continue as a matter of policy. Moreover, as we noted above, the Commission's actual practice of reviewing license transfer applications for significant changes is on its face inconsistent with the statutory requirement regarding how significant changes must be determined. The fact that the statutory method does not lend itself to post-operating license transfer applications, while the different one actually used does logically apply, also must be considered and suggests that such a review is not required by the plain language of the statute and was never intended by Congress.

In support of the arguments advanced in KEPCo's briefs and some of the *amicus* briefs that the Commission must conduct antitrust reviews of transfer applications, various NRC regulations and guidance are cited. Just as the Commission's past practices cannot justify continuation of reviews unauthorized by statute, neither can regulations or guidance to the contrary. Before accepting the argument that our regulations require antitrust reviews of post-operating license transfer applications, however, they warrant close consideration.

Section 50.80 of the Commission's regulations, 10 C.F.R. 50.80, "Transfer of licenses," provides, in relevant part:

> (b) An application for transfer of a license shall include [certain technical and financial information described in sections 50.33 and 50.34 about the proposed transferee] as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 license, the information required by § 50.33a.

Section 50.33a, "Information requested by the Attorney General for antitrust review," which by its terms applies only to applicants for construction permits, requires the submittal of antitrust information in accordance with 10 C.F.R. Part 50, Appendix L. Appendix L, in turn, identifies the information "requested by the Attorney General in connection with his review, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, of certain license applications for nuclear power plants." "Applicant" is defined in Appendix L as "the entity applying for authority to construct or operate subject unit and each corporate parent, subsidiary and affiliate." "Subject unit" is defined as "the nuclear generating unit or units for which application for construction or operation is being made." Appendix L does not explicitly apply to applications to transfer an operating license.

KEPCo argues that the section 50.80(b) requirement, in conjunction with the procedural requirements governing the filing of applications discussed below, requires the submittal of antitrust information in support of post-operating license transfer applications and that the Wolf Creek case cannot lawfully be dismissed without a "significant changes" determination. *See* KEPCo Brief at 11. While we agree that section 50.80 may imply that antitrust information is required for purposes of a "significant changes" review, linguistically it need not be read that way. The Applicants plausibly suggest that the phrase "the license *to be* issued" could be interpreted to apply only to entities that have not yet been issued an initial license. *See* App. Brief at 11.[15] Moreover, neither this regulation nor any other states the purpose of the submittal of antitrust information. For applications to construct or operate a proposed facility, it is clear that section 50.80(b), in conjunction with section 50.33a and Appendix L, requires the information specified in Appendix L for purposes of the Section 105c antitrust review, for construction permits, and for the "significant changes" review for operating licenses. But for applications to transfer an existing operating license, there are other Section 105 purposes which could be served by the information. Such information could be useful, for example, in determining the fate of any existing antitrust license conditions relative to the transferred license, as well as for purposes of the Commission's Section 105b responsibility to report to the Attorney General any information which appears to or tends to indicate a violation of the antitrust laws.

While we acknowledge that information submitted under section 50.80(b) has not been used for these purposes in the past, and has instead been used to develop "significant changes" findings, the important point is that section 50.80(b) is simply an information submission rule. It does not, in and of itself, mandate a "significant changes" review of license transfer applications. No Commission rule imposes such a legal requirement. Nonetheless, in conjunction with this decision, we are directing the NRC staff to initiate a rulemaking to clarify the terms and purpose of section 50.80 (b).[16]

KEPCo also argues that the Commission's procedural requirements governing the filing of license applications supports its position that antitrust review is required in this case. *See* KEPCo Brief at 11–13. The Applicants disagree, arguing that nothing in those regulations states that transfer applications will be subject to antitrust reviews. *See* App. Reply Brief at 3. For the same reasons we believe that the specific language in Section 105c does not support antitrust review of post-operating license transfer applications, we do not read our procedural requirements to indicate that there will be an antitrust review of transfer applications. Indeed, the language in 10 CFR 2.101(e)(1) regarding operating license applications under Section 103 tracks closely the process described in Section 105c. As stated in 10 CFR 2.101(e)(1), the purpose of the antitrust information is to enable the staff to determine "whether significant changes in the licensee's activities or proposed activities have occurred since the completion of the *previous antitrust review in connection with the construction permit.*" (Emphasis added.) As explained above, this description of the process for determining "significant changes" is consistent with an antitrust review of the initial operating license application for a facility but wholly inconsistent with an antitrust review of post-operating license transfer applications.

Nevertheless, clarification of the rules governing the filing of applications by explicitly limiting which types of applications must include antitrust information is appropriate. So too should Regulatory Guide 9.3, "Information Needed by the AEC Regulatory Staff in Connection with Its Antitrust Review of Operating License Applications for Nuclear Power Plants," and NUREG–1574, "Standard Review Plan on Antitrust Reviews," be clarified. In conjunction with this decision, we are directing the NRC staff to initiate an appropriate clarifying rulemaking.

[15] This reading is consistent with the history of section 50.80(b). Its primary purpose appears to have been to address transfers which were to occur before issuance of the initial (original) operating license, transfers which unquestionably fall within the scope of Section 105c. *See Detroit Edison Company* (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP–78–13, 7 NRC 583, 587–88 (1978). When section 50.80(b) was revised in 1973 to require submission of the antitrust information specified in section 50.33a, the stated purpose was to obtain the "*prelicensing* antitrust advice by the Attorney General." 38 FR 3955, 3956 (February 9, 1973) (emphasis added).

[16] In one important respect the language of section 50.80(b), quoted above, in fact supports the Commission's analysis of Section 105 and its legislative history. The phrase "if the application were for an *initial license*" certainly demonstrates that, consistent with the clearly intended focus of Section 105c on antitrust reviews of applications for initial licenses, the Commission has long distinguished initial operating license applications from license transfer applications. Be that as it may, clarification of section 50.80(b) will be appropriate in the wake of our decision that our antitrust authority does not extend to antitrust reviews of post-operating license transfer applications.

C. Policy Considerations; Other Agencies and Other Forums

The parties' and *amicus* briefs, at our invitation, advanced policy reasons why the Commission should, or should not, terminate its practice of reviewing post-operating license transfer applications for antitrust considerations. Presuming that the Commission is free under the Act to continue its prior practice, we would abandon it as largely duplicative of other, more appropriate agencies' responsibilities, and not a sensible use of our limited resources needed to fulfill our primary mission of protecting the public health and safety and the common defense and security, from the hazards of radiation.

At the time of the 1970 antitrust amendments to the Atomic Energy Act, Congress believed that the Commission was in a unique position to ensure that the licensed activities of nuclear utilities could not be used to create or maintain a situation inconsistent with the antitrust laws. As explained above, the focus of the 1970 amendments was on prelicensing antitrust reviews conducted during the pendency of the two-step licensing process comprising applications for construction permits and initial operating licenses. In contrast to the competitive situation which existed in 1970, the current competitive and regulatory climate in which the electric utility industry operates is markedly different. Key statutory changes substantially enhance smaller utilities' ability to compete with the larger generating facilities and gain access to essential transmission services. These differences from 1970 reduce, if not eliminate, the incremental protection of competition that the NRC could provide through its antitrust reviews. To the extent that the Commission can still be considered to be in a unique position vis a vis other governmental authorities to address antitrust concerns, such uniqueness surely ends at the time the facility is granted its initial operating license.

In 1992, Congress passed the Energy Policy Act of 1992, Pub. L. 102–486 (EPAct), substantially enlarging the authority of the Federal Energy Regulatory Commission (FERC) to prevent and mitigate potential and existing abuses of market power by electric utilities, including nuclear utilities. Specifically, the EPAct amended sections 211 and 212 of the Federal Power Act,[17] 16 U.S.C. 824j and 824k, with respect to wholesale transmission services. Pursuant to these amended sections, any electric utility or person generating electricity may apply to FERC for an order requiring a transmission utility to provide transmission services to the applicant at prices recovering just and reasonable costs.

After enactment of the EPAct, FERC issued Orders 888 (April 24, 1996) and 888-A (March 4, 1997) which in part provide for tariffs to be filed regarding transmission service and certain necessary ancillary services.[18] In Order No. 888, FERC exercised its expanded statutory authority and required all public utilities that own, control or operate transmission facilities "to have on file open access non-discriminatory transmission tariffs that contain minimum terms and conditions of non-discriminatory services." [19] Pursuant to these required tariffs, utilities can now enter into arrangements for transmission and ancillary services without instituting proceedings under section 211.

As a result, FERC now possesses statutory authority overlapping that of the NRC under Section 105 to remedy potential and existing anticompetitive conduct by the NRC's nuclear facility licensees, at least with respect to transmission services. As we noted above, transmission services are the services without which access to nuclear power facilities is meaningless and which, therefore, were of great concern to Congress in granting prelicensing antitrust review authority to the Commission. With this expanded FERC authority, however, the NRC cannot be said to be in a unique position to address or remedy antitrust problems involving access to transmission services. To the contrary, NRC antitrust review might even be said to be redundant and unnecessary. As FERC stated in Order 888–A, "unbundled electric transmission service will be the centerpiece of a freely traded commodity market in electricity in which wholesale customers can shop for competitively-priced power." FERC Order 888–A, 62 FR 12,275 (1997). In conjunction with the Department of Justice's broad authority to enforce compliance by NRC licensees with the antitrust laws (*see* subsections 105a and b of the Act), this expanded FERC authority and enhanced competitive climate for the electric utility industry render the NRC's post-operating license antitrust reviews duplicative regulation contrary to the sound objective of a streamlined government.

Since 1970, changes in the Clayton Act also have contributed to eliminating any need for an NRC role in reviewing acquisitions of nuclear power facilities by new owners. The Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1383 (1976), added section 7A to the Clayton Act, 15 U.S.C. 18a, which established a "waiting period" notification process which allows the Department of Justice and the Federal Trade Commission to screen certain commercial transactions such as acquisitions of assets[20] for potential violations of the antitrust laws before the transactions are consummated. Under section 7A(f), DOJ has the authority to institute a court proceeding to enjoin a transaction that it has determined would violate the antitrust laws. Since the Clayton Act standard, like that of Section 105c, is "anticipatory" in nature, designed to permit the correction of anticompetitive problems in their incipiency,[21] the scrutiny of DOJ's pre-acquisition review is comparable at least to the NRC's "significant changes" review.

In summary, the competitive and regulatory landscape has dramatically changed since 1970 in favor of those electric utilities who are the intended beneficiaries of the Section 105 antitrust reviews, especially in connection with acquisitions of nuclear power facilities and access to transmission services. For this Commission to use its scarce resources needed more to fulfill our primary statutory mandate to protect the public health and safety and the common defense and security than to duplicate other antitrust reviews and authorities[22] makes no sense and only

[17] Section 272 of the Atomic Energy Act provides that every NRC nuclear facility licensee is subject to the regulatory provisions of the Federal Power Act.

[18] It is our understanding that these FERC orders are currently undergoing judicial review.

[19] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmission Utilities, 61 FR 21,540 (May 10, 1996), (to be codified at 18 CFR Parts 35 and 385), *reh'g denied in pertinent part*, Order 888–A, 62 FR 12,274 (March 14, 1997), *petitions for review pending, People of New York, supra* n.13.

[20] The transaction must meet certain threshold jurisdictional amounts, but acquisitions of nuclear power facilities always have met, and are expected to meet, the requirement and thus are subject to the screening process.

[21] *See generally Houston Lighting & Power Co.*, CLI–77–13, 5 NRC 1303 (1977).

[22] Theoretically, the Section 105c.(5) standard of "whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws' is broader than any used elsewhere in antitrust law enforcement since no actual violation is required. As a practical matter,

Continued

impedes nationwide efforts to streamline and make more efficient the federal government.

D. Existing Antitrust License Conditions

Whether or not the Commission conducts a "significant changes" review of post-operating license transfer applications, it still must consider the fate of any existing antitrust license conditions under the transferred license. Theoretically, at least, three possibilities exist: (1) The existing license conditions should be attached verbatim to the transferred license, (2) the existing conditions should be rescinded or eliminated in their entirety, or (3) the existing conditions should be modified and attached as modified to the transferred license. We do not believe it is possible in the abstract to generically preordain any one solution for all conceivable cases. The license conditions on their face, the nature of the license transfer, and perhaps the competitive situation as well, would need to be considered to determine what action were warranted in a given case. (For example, and without regard to the competitive situation, (1) it might be appropriate to retain the existing conditions where they apply only to a particular co-owner or co-operator which will remain a licensee under the transferred license, (2) it might be appropriate to remove the conditions where they apply to only one of several licensees and that one will no longer be a licensee after the transfer, and (3) it might be appropriate to remove existing conditions or modify references to licensees in the conditions when existing licensees to whom the conditions apply merge among themselves or with other entities and new corporate licensees will result.)

While the issue of the appropriate treatment of existing antitrust license conditions in the past would have been addressed as part of the "significant changes" review of license transfers, there will need to be some means provided for consideration of the matter in connection with transfers of licenses with existing antitrust license conditions. In such cases, the Commission will entertain submissions by licensees, applicants, and others with the requisite antitrust standing that propose appropriate disposition of existing antitrust license conditions. Here, antitrust license conditions are attached to the Wolf Creek license. We therefore direct all parties to this proceeding (and other persons with an interest in the license conditions) to submit letters to the Commission addressing the disposition of the conditions. Such letters shall be filed within 15 days of this decision and shall not exceed 15 pages.[23]

E. Rulemaking Versus Adjudication

KEPCo argues that the Commission cannot lawfully eliminate antitrust reviews by pronouncement in an adjudicatory decision, either in general or in this Wolf Creek case in particular, without first resorting to notice and comment rulemaking. *See* KEPCo brief at 11–14. KEPCo asserts that to do so would violate the NRC's regulations, *id.*, and such a policy determination could not lawfully be binding in other cases, *id.* at 13. We disagree.

As explained above, no NRC regulation explicitly mandates an antitrust review of post-operating license transfer applications. Not one comma of the Commission's current regulations need be changed in the wake of a cessation of such reviews, although because of the NRC's past practice of conducting such reviews, we have decided that clarification of our rules is warranted. Thus, while a dismissal of this antitrust proceeding based on a new but permissible interpretation of the Commission's authority would be contrary to past practice, it would not be contrary to the explicit language of any Commission rule.

With respect to the propriety of deciding in this proceeding that henceforth there will be no antitrust reviews of post-operating license transfer applications in this or any future cases, "the Supreme Court has repeatedly emphasized that the choice between rulemaking and adjudication "lies primarily in the informed discretion of the administrative agency." *General Am. Transp. Corp.* v. *ICC*, 883 F.2d 1029, 1031 (D.C. Cir. 1989), *quoting SEC* v. *Chenery Corp.*, 332 U.S. 194, 203 (1947). *See also Cassell* v. *FCC*, 154 F.3d 478, 485 (D.C. Cir. 1998).

In fact, what criticism there has been of agencies' use of adjudication to decide new general policy or changes in general policy has focused on the unfairness of doing so without giving nonparties advanced notice and opportunity to comment. *See General Am. Transp. Corp.*, 883 F.2d at 1030, and the authorities cited therein. For the very purpose of avoiding such unfairness, however, the Commission in this case sought *amicus curiae* briefs from "any interested person or entity" and received briefs on the issue from a number of nonparties. CLI–99–05, 49 NRC at 200, n.1. Widespread notice of the Commission's intent to decide this matter in this proceeding was provided by publishing that order on the NRC's web site and in the **Federal Register**, and also by sending copies to organizations known to be active in or interested in the Commission's antitrust activities. *Id.* While KEPCo and others may have preferred that the Commission proceed by rulemaking, the Commission is acting well within its discretion in deciding this matter now in this proceeding.

III. Conclusion

For the foregoing reasons, the Commission has concluded that the Atomic Energy Act does not require or even authorize antitrust reviews of post-operating license transfer applications, and that such reviews are inadvisable from a policy perspective. We therefore dismiss KEPCo's petition to intervene on antitrust grounds. Applicants and KEPCo may submit letters to the Commission suggesting the appropriate disposition of the existing antitrust license conditions due to the planned changes in Wolf Creek ownership and operation. All such letters shall be submitted to the Office of the Secretary no later than 15 days after the date of this Order and shall not exceed 15 pages in length. Any other person with an interest in the Wolf Creek antitrust license conditions also may submit a letter, not to exceed 15 pages, within 15 days of the date of this Order. Finally, the NRC staff will be directed to initiate a rulemaking to clarify the Commission's regulations to remove any ambiguities and ensure that the rules clearly reflect the views set out in this decision.

It is so ordered.

Dated at Rockville, Maryland this 18th day of June, 1999.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–16073 Filed 6–23–99; 8:45 am]

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however, it is difficult at best to even envision a competitive situation which satisfied the Section 105 standard for relief but would not warrant relief under traditional antitrust statutes, which have been broadly construed by the courts. For example, Section 5 of the FTC Act has been held to empower the FTC "to arrest trade restraints in their incipiency without proof that they amount to an outright violation of Section 3 of the Clayton Act or other provisions of the antitrust laws." *FTC* v. *Brown Shoe Co.*, 384 U.S. 316, 322 (1966). Thus, there will be no realistic gap in antitrust law enforcement if the NRC no longer performs antitrust reviews of post-operating license transfer applications.

[23] Consideration of the Wolf Creek antitrust license conditions is not inconsistent with our holding that the NRC need not conduct "significant changes" antitrust reviews of license transfers, for the Wolf Creek conditions were imposed at a licensing stage (initial licensing) when the NRC undoubtedly had antitrust authority. The Commission plainly has continuing authority to modify or revoke its own validly-imposed conditions. *See Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), CLI–92–11, 36 NRC 47, 54–59 (1992).

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of June 21, 28, July 5, and 12, 1999.

PLACE: Commisioners' Conference Room 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 21

Tuesday, June 22

3:00 p.m.
Affirmation Session (Public Meeting). (If needed)

Week of June 28—Tentative

There are no meetings scheduled for the Week of June 28.

Week of July 5—Tentative

There are no meetings scheduled for the Week of July 5.

Week of July 13—Tentative

Tuesday, July 13

9:30 a.m.
Briefing on Treatment of Existing Programs for License Renewal (Public Meeting)

Thursday, July 15

10:00 a.m.
Briefing on Existing Event Response Procedures (Including Federal Response Plan and Coordination of Federal Agencies in Response to Terrorist Activities) (Public Meeting)

11:30 a.m.
Affirmation Session (Public Meeting) (If needed)

Note: The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on June 18, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Kansas Gas & Elec. Co., et al. (Wolf Creek Generating Station, Unit 1), Docket No. 50–482 (Antitrust Issues)" (PUBLIC MEETING) be held on June 18, and on less than one week's notice to the public.

By a vote of 4–1 on June 18, the Commission determined pursuant to U.S.C. 552b(e) and § 9,107(a) of the Commission's rules that "Affirmation of Final Revision To 10 CFR 50.65 To Require Licensees To Perform Assessments Before Performing Maintenance" (PUBLIC MEETING) be held on June 18, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at:http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–16193 Filed 6–22–99; 11:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Implementation of the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) ("FAIR Act")

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: OMB issues final guidance on the implementation of the FAIR Act.

SUMMARY: The Office of Management and Budget (OMB) hereby issues guidance to implement the "Federal Activities Inventory Reform Act of 1998".

To facilitate and ensure agency implementation of the "Federal Activities Inventory Reform Act of 1998" (Public Law 105–270) ("FAIR Act"), OMB is revising its existing guidance on the management of commercial activities through revisions to OMB Circular A–76, "Performance of Commercial Activities," and to its Supplemental Handbook. These revisions inform agencies of the FAIR Act's requirements; implement the statutory requirements of the FAIR Act; avoid duplication and confusion by conforming guidance to the FAIR Act, and place the FAIR Act's requirements in the context of the Federal Government's larger reinvention, competition and privatization efforts.

DATES: This guidance is effective June 24, 1999.

FOR FURTHER INFORMATION CONTACT PERSON: Mr. David Childs, Office of Management and Budget, NEOB Room 6002, 725 17th Street, NW, Washington, DC 20503, telephone: (202) 395–6104, FAX: (202) 395–7230.

AVAILABILITY: Copies of the updated versions of OMB Circular A–76, its Revised Supplemental Handbook and this Transmittal Memorandum 20 are available from OMB on the Internet at: *http://www.whitehouse.gov/OMB/circulars/index-procure.html*

SUPPLEMENTARY INFORMATION:

I. The Federal Activities Inventory Reform Act

On October 12, 1998, President Clinton signed into law the "Federal Activities Inventory Reform Act of 1998" ("FAIR Act" or "Act"). The FAIR Act directs Federal agencies to submit each year an inventory of all their activities that are performed by Federal employees but are not inherently Governmental (i.e., are commercial). OMB is to review each agency's Commercial Activities Inventory and consult with the agency regarding its content. Upon the completion of this review and consultation, the agency must transmit a copy of the inventory to Congress and make it available to the public. The FAIR Act establishes an administrative appeals process under which an interested party may challenge the omission or the inclusion of a particular activity on the inventory. Finally, the FAIR Act requires agencies to review the activities on the inventory. Each time that the head of an executive agency considers contracting with a private sector source for the performance of such an activity, the head of the executive agency shall use a competitive process. When conducting cost comparisons, agencies must ensure that all costs are considered.

In enacting the FAIR Act, Congress did not displace longstanding Executive Branch policy regarding the performance of commercial activities. The Federal Government seeks to achieve economy and enhance productivity and quality through competition to obtain the best service at least cost to the American taxpayer. This Federal policy regarding the performance of commercial activities has been provided by OMB Circular A–76, "Performance of Commercial

Activities." Specific guidance regarding the implementation of this policy is provided by the March 1996 Revised Supplemental Handbook to OMB Circular A–76 and by agency consultation with OMB.

The Act codified some of this guidance in law. In particular, the FAIR Act codified the pre-existing requirement for agencies to inventory their commercial activities, as well as the pre-existing definition of "inherently governmental function."

Each time an agency considers changing from Government employee performance of a commercial activity on the inventory, the FAIR Act requires that a competitive process be used and that cost comparisons "shall ensure that all costs * * * are considered and that the costs considered are realistic and fair". Here, too, the Act codifies or defers to pre-existing Executive Branch policy.

II. Implementation of the FAIR Act

OMB Circulars are a well-established vehicle for directing agencies on the management of their activities. Together, Circular A–76 and its Supplemental Handbook have established the broad principles, individual definitions and specific directives on the management of commercial activities, including the inventory and other items codified by the FAIR Act. OMB wanted to provide the agencies with prompt and clear guidance on how to implement the Act within the short time-frame available. OMB concluded that the best way to provide agencies with clear and prompt guidance on how to implement the FAIR Act was to revise the current circular and handbook so that they conform to the FAIR Act. OMB's goal in drafting these revisions was to ensure that the agencies fully implement the FAIR Act's requirements, and that the agencies do so without confusion, wasted effort or delays caused by uncertainty about the applicability of current guidance.

Accordingly, on March 1, 1999, OMB requested agency and public comments on proposed revisions to the Handbook to implement the FAIR Act (64 FR 10031). The proposed revisions would inform agencies of the FAIR Act requirements and, to avoid confusion, conform the Handbook's provisions so that they cross-reference and parallel relevant FAIR Act provisions.

To implement the FAIR Act's inventory requirement, OMB proposed to make conforming changes to the Handbook's pre-existing inventory requirement. The changes incorporated the statutory due date of June 30th for agency submissions to OMB and added, to the inventory's description of each activity, two new data elements required by the FAIR Act.

In addition, OMB proposed provisions to the Handbook to address the FAIR Act's other requirements. These provisions:

(1) Reiterated the requirements for OMB to review the commercial activity inventories and to consult with the agencies regarding them; for the agencies, after OMB's review-and-consultation is completed, to send the inventories to Congress and to make them available to the public; and for the agencies to hear and decide administrative "challenges" in which interested parties challenge an agency's decision to include an activity in (or exclude an activity from) the inventory; and

(2) Incorporated the FAIR Act's requirement that agencies "review" the activities on the inventory; that an agency, each time it considers contracting with a private sector source for the performance of an activity listed on the inventory, use a competitive process to select the source (unless otherwise provided "in a law other than this Act, an Executive order, regulations, or any Executive Branch circular"); and that, when comparing costs, "all costs * * * are considered and * * * are realistic and fair."

OMB proposed that agencies rely on and implement the existing guidance with respect to the cost-comparison competition requirements of the FAIR Act. These procedures are well-established and direct agencies to create a competitive process that compares costs completely, accurately, and fairly.

OMB received 82 responses to its request for comments: 10 Federal agencies, 61 industry or trade groups, and 8 employee organizations responded, in addition to 4 letters from members of Congress. A discussion of the significant comments, and OMB's responses to those comments, is provided in the Appendix to this notice.

After considering all comments received on the proposed guidance, OMB is issuing final guidance to the agencies for implementing the FAIR Act. The guidance consists of changes to the A–76 Circular, itself, as well as its Supplemental Handbook.

In order to implement the FAIR Act, OMB is making several changes to the guidance as proposed on March 1:

OMB has revised Circular A–76, itself, in addition to the Supplemental Handbook, to conform to the requirements of the FAIR Act;

To ensure that agencies comply with the FAIR Act's requirement for review on an inventory within a reasonable time, OMB will now require annual reports that will, among other things, discuss the implementation, status, and results of the FAIR Act process;

OMB has clarified that agencies should, as appropriate, permit employee involvement in the development of the inventory;

OMB is revising agency reporting requirements so that reporting is clearer on activities that have been converted from contract performance to in-house performance or retained in-house as a result of a cost-comparison.

With the issuance of these revisions, agencies have been provided guidance for implementing the FAIR Act. OMB will continue, as it has in the past, to consult with individual agencies and provide informal guidance as necessary.

III. Executive Branch Management of Commercial Activities Generally

Implementing the FAIR Act is only a part of the Government's reinvention and management responsibilities. Improving the quality, and reducing the cost, of commercial activities is an integral part of managing the Nation's resources. The agencies and OMB have an ongoing responsibility to ensure that these activities are performed in a manner that is cost-effective and in the best interest of the taxpayer. Developing an inventory of each agency's commercial activities is a necessary first step in pursuing this objective, one that has now been codified by the FAIR Act. Once these inventories are developed, they will then be reviewed, by the agencies and OMB, to identify ways to improve the performance of the Federal Government's commercial activities.

Equally important, however, is how the agencies manage these activities after they are identified. In order better to manage commercial activities, OMB revised the Supplemental Handbook in 1996. The Revised Supplemental Handbook seeks the most cost-effective means of obtaining commercial support services and provided new administrative flexibility in the Government's "make or buy" decision process. The revision modified and, in some cases, eliminated cost comparison requirements for recurring commercial activities and the establishment of new or expanded interservice support agreements; reduced reporting and other administrative burdens; provided for enhanced employee participation; eased transition requirements to facilitate employee placement; maintained a level playing field for cost comparisons between Federal, interservice support agreement and private sector offers, and improved accountability and oversight to ensure that the most cost effective decision is implemented.

As part of this guidance, OMB is now taking the additional step of requiring agencies to submit annual reports that will discuss the implementation, status, and results of the FAIR Act process. As we develop experience with the FAIR Act and these procedures, we will consider whether additional guidance is needed, either for implementation of the FAIR Act in particular or on management of commercial activities in general.

Jacob J. Lew,

Director.

June 14, 1999.

Circular No. A–76 (Revised)
Transmittal Memorandum No. 20

To The Heads of Executive Departments and Agencies

Subject: Implementing the Federal Activities Inventory Reform Act Through Conforming Changes to OMB Circular No. A–76 and its March 1996 Revised Supplemental Handbook.

This Transmittal Memorandum implements the statutory requirements of the Federal Activities Inventory Reform Act ("The FAIR Act"), Public Law 105–270. As part of its longstanding role in the review and oversight of agency management and the allocation of resources, OMB has established policies regarding the performance of commercial activities by Federal agencies. These policies are outlined in OMB Circular No. A–76 and its Revised Supplemental Handbook. The FAIR Act reinforced these policies and procedures; codified certain requirements with respect to the development by agencies of an annual commercial activities inventory, and added an opportunity for interested parties to challenge the contents of the annual inventory.

The changes to the Circular's Revised Supplemental Handbook (Attachment 1) inform agencies of the FAIR Act's requirements; implement the statutory requirements of the FAIR Act; avoid duplication and confusion by conforming the Supplemental Handbook to the provisions of the FAIR Act; and place the FAIR Act's requirements in the context of the Federal Government's larger reinvention, competition and privatization efforts. As a result of these changes, the Circular is also being updated with conforming changes necessary to reflect the requirements of the FAIR Act (Attachment 2). The previous OMB Circular A–76 was published in the August 16, 1983, **Federal Register** at pages 37110–37116. The March 1996 Revised Supplemental Handbook was issued through Transmittal Memorandum 15, published in the April 1, 1996, **Federal Register** at pages 14338–14346.

Under the FAIR Act, agencies are required to submit their commercial activity inventories to OMB by June 30th of each year, starting this year. THE FIRST FAIR ACT INVENTORIES ARE, THEREFORE, DUE IN TWO WEEKS. OMB looks forward to working with the agencies during our review of these inventories, and stands ready to assist the agencies as the Executive Branch moves forward in its implementation of the FAIR Act.

Questions regarding the FAIR Act or this guidance may be addressed to Mr. David Childs (phone: (202) 395–6104, Fax: (202) 395–7230).

Jacob J. Lew,

Director.

Attachments

Attachment 1.—Revisions to the OMB Circular A–76 March 1996 Revised Supplemental Handbook

1. The Introduction to the Supplemental Handbook (p. iii) is revised to reflect the fact that challenges to the activities listed in the Commercial Activities Inventory are permitted under the FAIR Act, by adding to the end of the last sentence on page iii the following:

"* * * and as set forth in Appendix 2, Paragraph G, consistent with Section 3 of the Federal Activities Inventory Reform Act of 1998 (FAIR Act, P.L. 105–270)."

2. Part I, Chapter 1, paragraphs A, B.1 and F, of the Supplemental Handbook (pp. 3, 5) are revised to reflect the requirements of the FAIR Act. As revised, paragraphs A, B.1 and F read as follows:

"A. General

This Part sets forth the principles and procedures for managing the Government's acquisition of recurring commercial support activities, implementing the "Federal Activities Inventory Reform Act of 1998" ("The FAIR Act"), P.L. 105–270, and Circular A–76. Exhibit 1 summarizes the conditions that permit conversion to or from in-house, contract or Inter-Service Support Agreement (ISSA) performance. The requirements of the FAIR Act apply to the following executive agencies: (1) An executive department named in 5 U.S.C. 101, (2) a military department named in 5 U.S.C. 102, and (3) an independent establishment as defined in 5 U.S.C. 104. The requirements of the FAIR Act do not apply to: (1) The General Accounting Office, (2) a Government corporation or a Government controlled corporation as defined in 5 U.S.C. 103, (3) a non-appropriated funds instrumentality if all of its employees are referred to in 5 U.S.C. 2105(c), or (4) Depot-level maintenance and repair of the Department of Defense as defined in 10 U.S.C. 2460."

"B. Inherently Governmental Activities

1. Inherently Governmental activities are not subject to the FAIR Act, Circular A–76 or this Supplemental Handbook. As a matter of policy, an inherently Governmental activity is one that is so intimately related to the exercise of the public interest as to mandate performance by Federal employees. The Office of Federal Procurement Policy (OFPP) Policy Letter 92–1, dated September 23, 1992 (**Federal Register**, September 30, 1992, page 45096), provides guidance on the identification of inherently Governmental activities (see Appendix 5). This guidance conforms to the definition provided at Section 5, paragraph 2, of the FAIR Act."

"F. Commercial Activities Inventory

As required by the FAIR Act, Circular A–76 and this Supplemental Handbook, each agency will maintain a detailed inventory of all in-house commercial activities performed by its Government employees. This inventory, as described at Appendix 2 of this Supplement, and any supplemental information requested by OMB, will be submitted not later than June 30 of each year. Agencies should, as appropriate, permit employee involvement in the development of this Commercial Activities Inventory."

3. Part II, Chapter 1, Paragraph A.1 of the Supplemental Handbook (p. 17) is revised by adding a reference to the FAIR Act. As revised, Paragraph A.1 reads as follows:

"1. Part II provides generic and streamlined cost comparison guidance to comply with the provisions of the FAIR Act and Circular A–76. This includes guidance for developing in-house costs based upon the Government's Most Efficient Organization (MEO) and other adjustments to the contract and inter-service support agreement (ISSA) price. It also sets out the principles for development of cost-based performance standards or other measures that are comparable to those used by commercial sources. Appendices 6 and 7 provide sector-specific cost comparison guidance."

4. The title of Appendix 2 of the Supplemental Handbook (p. 38) and the corresponding entry in the Table of Contents are revised from "OMB Circular No. A–76 Inventory" to "Commercial Activities Inventory." Portions of this inventory are now required by the FAIR Act, as a matter or law.

5. Paragraph A of Appendix 2 of the Supplemental Handbook (p. 38) is revised in several ways. The introductory sentences now refer to the FAIR Act's requirements for a Commercial Activities Inventory and incorporate its due date (June 30th) for submission to OMB of each agency's inventory. Two data elements are added to the inventory's description of an activity. These additional data elements (g and h, below) correspond to the new data elements required under Section 2(a) (1) and (3) of the FAIR Act. In addition, the existing data element for "Location / organization unit" is being separated into two elements ("Location" and "Organization Unit"). Finally, a concluding sentence is added to clarify that agencies have the flexibility to automate and structure the inventory so long as all the listed data elements are included. As revised, Paragraph A reads as follows:

"A. Annual Inventory Submission

In accordance with the FAIR Act, Circular A–76 and this Handbook, each agency must submit to OMB, by June 30 of each year, a detailed Commercial Activities Inventory of all commercial activities performed by in-house employees, including, at a minimum, the following:

a. Organization unit.
b. State(s).
c. Location(s).
d. FTE.
e. Activity function code.
f. Reason code.

g. Year the activity first appeared on FAIR Act Commercial Activities Inventory (initial value will be 1999).

h. Name of a Federal employee responsible for the activity or contact person from whom additional information about the activity may be obtained.

i. Year of cost comparison or conversion (if applicable).

j. CIV/FTE savings (if applicable).

k. Estimated annualized Cost Comparison dollar savings (if applicable).

l. Date of completed Post-MEO Performance Review (if applicable).

Agencies have the discretion to automate and to structure the initial submission of the detailed inventory as they believe most appropriate, so long as the inventory includes each of these data elements. Agencies must transmit an electronic version of the inventory to OMB as well as two paper copies. The electronic version should be in a commonly used software format (commercial off-the-shelf spreadsheet, database or word processing format). OMB anticipates issuing additional guidance on the structure and format of future inventory submissions, based on the experience gained from the first annual review and consultation process."

6. To reflect the FAIR Act's requirement that information on full time employees (or its equivalent) be included, paragraph C of Appendix 2 of the Supplemental Handbook (p. 38) has been revised as follows:

"C. FTE

Enter the number of authorized full-time employees or FTE (as applicable) in the commercial activity function or functions as of the date of the inventory. Employees performing inherently Governmental activities are not reported in the Commercial Activities Inventory."

7. Paragraph E "A–76 Reason Codes" of Appendix 2 of the Supplemental Handbook (p. 38) is retitled "Reason Codes." The phrase "agency A–76 inventories" is changed to "Commercial Activities Inventory" and "Reason code E" is revised and a new reason code "I" is added as follows:

"E Indicates that the function is retained in-house as a result of a cost comparison."

"I Indicates the function is being performed in-house as a result of a cost comparison resulting from a decision to convert from contract to in-house performance."

8. Appendix 2 of the Supplemental Handbook (p. 38) is further revised by adding three new paragraphs. New paragraph "G" describes the review and publication of the detailed agency Commercial Activities Inventory and the challenge-and-appeals process pertaining to its content, as required by the FAIR Act. The new paragraph "H" includes the FAIR Act's requirements that agencies review the commercial activities in their inventories and use a competitive process or established cost comparison procedures each time an agency considers contracting with a private-sector source for the performance of an activity on the inventory. New paragraph "I" alerts agencies to the requirement for an annual Report on Agency Management of Commercial Activities. The new paragraphs read as follows:

"G. Inventory Review and Publication; Challenges and Appeals

1. Review and Publication: In accordance with Section 2 of the FAIR Act, OMB will review the agency's Commercial Activities Inventory and consult with the agency regarding its content. After this review is completed, OMB will publish a notice in the **Federal Register** stating that the inventory is are available to the public. Once the notice is published, the agency will transmit a copy of the detailed Commercial Activities Inventory to Congress and make the materials available to the public through its Washington, DC or headquarters offices.

2. Challenges and Appeals: Under Section 3 of the FAIR Act, an agency's decision to include or exclude a particular activity from the Commercial Activities Inventory is subject to administrative challenge and, then, possible appeal by an "interested party." Section 3(b) of the FAIR Act defines "interested party" as:

a. A private sector source that (A) is an actual or prospective offeror for any contract or other form of agreement to perform the activity; and (B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

b. A representative of any business or professional association that includes within its membership private sector sources referred to in a. above.

c. An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

d. The head of any labor organization referred to in section 7103(a) (4) of title 5, United States Code that includes within its membership officers or employees of an organization referred to in c. above.

3. An interested party may submit to an executive agency an initial challenge to the inclusion or exclusion of an activity within 30 calendar days after publication of OMB's **Federal Register** notice stating that the inventory is available. The challenge must set forth the activity being challenged with as much specificity as possible, and the reasons for the interested party's belief that the particular activity should be reclassified as inherently Governmental (and therefore be deleted from the inventory) or as commercial (and therefore be added to the inventory) in accordance with OFPP Policy Letter 92–1 on inherently Governmental functions (see Appendix 5) or as established by precedent (such as when other agencies have contracted for the activity or undergone competitions for this or similar activities).

4. The agency head may delegate the responsibility to designate the appropriate official(s) to receive and decide the initial challenges. As mandated by the FAIR Act, the deciding official must decide the initial challenge and transmit to the interested party a written notification of the decision within 28 calendar days of receiving the challenge. The notification must include a discussion of the rationale for the decision and, if the decision is adverse, an explanation of the party's right to file an appeal.

5. An interested party may appeal an adverse decision to an initial challenge within 10 working days after receiving the written notification of the decision. The agency head may delegate the responsibility to receive and decide appeals to the official identified in paragraph 9.a of the Circular (or an equivalent senior policy official), without further delegation. Within 10 working days of receipt of the appeal, the official must decide the appeal and transmit to the interested party a written notification of the decision together with a discussion of the rationale for the decision. The agency must also transmit to OMB and the Congress a copy of any changes to the inventory that result from this process, make the changes available to the public and publish a notice of public availability in the **Federal Register**."

"H. Agency Review and Use of Inventory

Section 2(d) of the FAIR Act requires that each agency, within a reasonable time after the publication of the notice that its inventories are publicly available, review the activities on the detailed commercial activities inventory. Agencies will report to OMB on this process as part of the Report on Agency Management of Commercial Activities required under Paragraph I, below. In addition, Section 2(d)–(e) of the FAIR Act provides that, each time the head of the executive agency considers contracting with a private-sector source for the performance of an activity included on the inventory, the agency must use a competitive process to select the source and must ensure that, when a cost comparison is used or otherwise required for the comparison of costs, all costs are considered and the costs considered are realistic and fair. In carrying out these requirements, agencies must rely on the guidance contained in Circular A–76 and this Supplemental Handbook to determine if cost comparisons are required and what competitive method is appropriate. All competitive costs of in-house and contract performance are included in the cost comparison, when such comparison is required, including the costs of quality assurance, technical monitoring, liability insurance, retirement benefits, disability benefits and overhead that may be allocated to the function under study or may otherwise be expected to change as a result of changing the method of performance."

"I. Annual Report on Agency Management of Commercial Activities

As part of ongoing agency responsibility to manage their performance of commercial activities and ongoing OMB oversight, OMB will require agencies to report annually on such management. The content of the reports is likely to vary depending upon the progress made by each agency in reviewing their inventory and on the experience OMB gains from the first round of inventory submissions, review, challenges and appeals mandated by the FAIR Act. OMB anticipates issuing subsequent guidance if it determines that supplemental reports or other information is needed for future inventory submissions to assure that agencies have correctly implemented all of the provisions of the FAIR Act and taken advantage of the management information inherent in the detailed Commercial Activities Inventory."

Attachment 2.—Executive Office of the President, Office of Management and Budget, Washington, DC 20503

August 4, 1983 (Revised 1999).

Circular No. A–76

To the Heads of Executive Departments and Establishments

Subject: Performance of Commercial Activities

1. *Purpose.* This Circular establishes Federal policy regarding the performance of commercial activities and implements the statutory requirements of the Federal Activities Inventory Reform Act of 1998, Public Law 105–270. The Supplement to this Circular sets forth the procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel.

2. *Rescission.* OMB Circular No. A–76 (Revised), dated March 29, 1979; and Transmittal Memoranda 1 through 14 and 16 through 18.

3. *Authority.* The Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*), The Office of Federal Procurement Policy Act Amendments of 1979. (41 U.S.C. 401 *et seq.*), and The Federal Activities Inventory Reform Act of 1998. (P. L. 105–270).

4. *Background.*

a. In the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs.

b. This national policy was promulgated through Bureau of the Budget Bulletins issued in 1955, 1957 and 1960. OMB Circular No. A–76 was issued in 1966. The Circular was previously revised in 1967, 1979, and 1983. The Supplement (Revised Supplemental Handbook) was previously revised in March 1996 (Transmittal Memorandum 15).

5. *Policy.* It is the policy of the United States Government to:

a. *Achieve Economy and Enhance Productivity.* Competition enhances quality, economy, and productivity. Whenever commercial sector performance of a Government operated commercial activity is permissible, in accordance with this Circular and its Supplement, comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who will do the work. When conducting cost comparisons, agencies must ensure that all costs are considered and that these costs are realistic and fair.

b. *Retain Governmental Functions In-House.* Certain functions are inherently Governmental in nature, being so intimately related to the public interest as to mandate performance only by Federal employees. These functions are not in competition with the commercial sector. Therefore, these functions shall be performed by Government employees.

c. *Rely on the Commercial Sector.* The Federal Government shall rely on commercially available sources to provide commercial products and services. In accordance with the provisions of this Circular and its Supplement, the Government shall not start or carry on any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.

6. *Definitions.* For purposes of this Circular:

a. A *commercial activity* is one which is operated by a Federal executive agency and which provides a product or service that could be obtained from a commercial source. Activities that meet the definition of an inherently Governmental function provided below are not commercial activities. A representative list of commercial activities is provided in Attachment A. A commercial activity also may be part of an organization or a type of work that is separable from other functions or activities and is suitable for performance by contract.

b. A *conversion to contract* is the changeover of an activity from Government performance to performance under contract by a commercial source.

c. A *conversion to in-house* is the changeover of an activity from performance under contract to Government performance.

d. A *commercial source* is a business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia or the Commonwealth of Puerto Rico, which provides a commercial product or service.

e. An *inherently Governmental function* is a function which is so intimately related to the public interest as to mandate performance by Government employees. Consistent with the definitions provided in the Federal Activities Inventory Reform Act of 1998 and OFPP Policy Letter 92–1, these functions include those activities which require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government. Services or products in support of inherently Governmental functions, such as those listed in Attachment A, are commercial activities and are normally subject to this Circular. Inherently Governmental functions normally fall into two categories:

(1) The *act of governing;* i.e., the discretionary exercise of Government authority. Examples include criminal investigations, prosecutions and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

(2) *Monetary transactions and entitlements,* such as tax collection and revenue disbursements; control of the Treasury accounts and money supply; and the administration of public trusts.

f. A *cost comparison* is the process of developing an estimate of the cost of Government performance of a commercial activity and comparing it, in accordance with the requirements of the Supplement, to the cost to the Government for contract performance of the activity.

g. *Directly affected parties* are Federal employees and their representative organizations and bidders or offerors on the instant solicitation.

h. *Interested parties* for purposes of challenging the contents of an agency's Commercial Activities Inventory under the Federal Activities Inventory Reform Act of 1998 are:

(1) A private sector source that (A) is an actual or prospective offeror for any contract or other form of agreement to perform the activity; and (B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

(2) A representative of any business or professional association that includes within its membership private sector sources referred to in (1) above.

(3) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

(4) The head of any labor organization referred to in section 7103(a)(4) of Title 5, United States Code that includes within its membership officers or employees of an organization referred to in (3) above.

7. *Scope.*

a. Unless otherwise provided by law, this Circular and its Supplement shall apply to all executive agencies and shall provide administrative direction to heads of agencies.

b. This Circular and its Supplement apply to printing and binding only in those agencies or departments which are exempted by law from the provisions of Title 44 of the U.S. Code.

c. This Circular and its Supplement shall not:

(1) Be applicable when contrary to law, Executive Orders, or any treaty or international agreement;

(2) Apply to inherently Governmental functions as defined in paragraph 6.e.;

(3) Apply to the Department of Defense in times of a declared war or military mobilization;

(4) Provide authority to enter into contracts;

(5) Authorize contracts which establish an employer-employee relationship between the Government and contractor employees. An employer-employee relationship involves close, continual supervision of individual contractor employees by Government employees, as distinguished from general oversight of contractor operations. However,

limited and necessary interaction between Government employees and contractor employees, particularly during the transition period of conversion to contract, does not establish an employer-employee relationship.

(6) Be used to justify conversion to contract solely to avoid personnel ceilings or salary limitations;

(7) Apply to the conduct of research and development. However, severable in-house commercial activities in support of research and development, such as those listed in Attachment A, are normally subject to this Circular and its Supplement; or

(8) Establish and shall not be construed to create any substantive or procedural basis for anyone to challenge any agency action or inaction on the basis that such action or inaction was not in accordance with this Circular, except as specifically set forth in Part 1, Chapter 3, paragraph K of the Supplement, "Appeals of Cost Comparison Decisions" and as set forth in Appendix 2, Paragraph G, consistent with Section 3 of the Federal Activities Inventory Reform Act of 1998.

d. The requirements of the Federal Activities Inventory Reform Act of 1998 apply to the following executive agencies:

(1) An executive department named in 5 USC 101,

(2) A military department named in 5 USC 102, and

(3) An independent establishment as defined in 5 USC 104.

e. The requirements of the Federal Activities Inventory Reform Act of 1998 do not apply to the following entities or activities:

(1) The General Accounting Office,

(2) A Government corporation or a Government controlled corporation as defined in 5 USC 103,

(3) A non-appropriated funds instrumentality if all of its employees are referred to in 5 USC 2105(c), or

(4) Depot-level maintenance and repair of the Department of Defense as defined in 10 USC 2460.

8. *Government Performance of a Commercial Activity.* Government performance of a commercial activity is authorized under any of the following conditions:

a. *No Satisfactory Commercial Source Available.* Either no commercial source is capable of providing the needed product or service, or use of such a source would cause unacceptable delay or disruption of an essential program. Findings shall be supported as follows:

(1) If the finding is that no commercial source is capable of providing the needed product or service, the efforts made to find commercial sources must be documented and made available to the public upon request. These efforts shall include, in addition to consideration of preferential procurement programs (see Part I, Chapter 1, paragraph C of the Supplement) at least three notices describing the requirement in the *Commerce Business Daily* over a 90-day period or, in cases of *bona fide* urgency, two notices over a 30-day period. Specifications and requirements in the solicitation shall not be unduly restrictive and shall not exceed those required of in-house Government personnel or operations.

(2) If the finding is that a commercial source would cause unacceptable delay or disruption of an agency program, a written explanation, approved by the assistant secretary or designee in paragraph 9.a. of the Circular, must show the specific impact on an agency mission in terms of cost and performance. Urgency alone is not adequate reason to continue in-house operation of a commercial activity. Temporary disruption resulting from conversion to contract is not sufficient support for such a finding, nor is the possibility of a strike by contract employees. If the commercial activity has ever been performed by contract, an explanation of how the instant circumstances differ must be documented. These decisions must be made available to the public upon request.

(3) Activities may not be justified for in-house performance solely on the basis that the activity involves or supports a classified program or the activity is required to perform an agency's basic mission.

b. *National Defense.*

(1) The Secretary of Defense shall establish criteria for determining when Government performance of a commercial activity is required for national defense reasons. Such criteria shall be furnished to OMB, upon request.

(2) Only the Secretary of Defense or his designee has the authority to exempt commercial activities for national defense reasons.

c. *Patient Care.* Commercial activities performed at hospitals operated by the Government shall be retained in-house if the agency head, in consultation with the agency's chief medical director, determines that in-house performance would be in the best interests of direct patient care.

d. *Lower cost.* Government performance of a commercial activity is authorized if a cost comparison prepared in accordance with the Supplement demonstrates that the Government is operating or can operate the activity on an ongoing basis at an estimated lower cost than a qualified commercial source.

9. *Action Requirements.* To ensure that the provisions of this Circular and its Supplement are followed, each agency head shall:

a. Designate an official at the assistant secretary or equivalent level and officials at a comparable level in major component organizations to have responsibility for implementation of this Circular and its Supplement within the agency.

b. Establish one or more offices as central points of contact to carry out implementation. These offices shall have access to all documents and data pertinent to actions taken under the Circular and its Supplement and will respond in a timely manner to all requests concerning inventories, schedules, reviews, results of cost comparisons and cost comparison data.

c. Be guided by Federal Acquisition Regulation (FAR) Subpart 24.2 (Freedom of Information Act) in considering requests for information.

d. Implement this Circular and its Supplement with a minimum of internal instructions. Cost comparisons shall not be delayed pending issuance of such instructions.

e. Ensure the reviews of all existing in-house commercial activities are completed within a reasonable time in accordance with the Federal Activities Inventory Reform Act of 1998 and the Supplement.

10. *Annual Reporting Requirement.* As required by the Federal Activities Inventory Reform Act of 1998 and Appendix 2 of the Supplement, no later than June 30 of each year, agencies shall submit to OMB a Commercial Activities Inventory and any supplemental information requested by OMB. After review and consultation by OMB, agencies will transmit a copy of the Commercial Activities Inventory to Congress and make the contents of the Inventory available to the public. Agencies will follow the process provided in the Supplement for interested parties to challenge (and appeal) the contents of the inventory.

11. *OMB Responsibility and Contact Point.* All questions or inquiries should be submitted to the Office of Management and Budget, Room 6002 NEOB, Washington, DC 20503. Telephone number (202) 395–6104, FAX (202) 395–7230.

12. *Effective Date.* This Circular and the changes to its Supplement are effective immediately.

Attachment A:—OMB Circular No. A–76, Examples of Commercial Activities

Audiovisual Products and Services

Photography (still, movie, aerial, etc.)
Photographic processing (developing, printing, enlarging, etc.)
Film and videotape production (script writing, direction, animation, editing, acting, etc.)
Microfilming and other microforms
Art and graphics services
Distribution of audiovisual materials
Reproduction and duplication of audiovisual products
Audiovisual facility management and operation
Maintenance of audiovisual equipment

Automatic Data Processing

ADP services—batch processing, time-sharing, facility management, etc.
Programming and systems analysis, design, development, and simulation
Key punching, data entry, transmission, and teleprocessing services
Systems engineering and installation
Equipment installation, operation, and maintenance

Food Services

Operation of cafeterias, mess halls, kitchens, bakeries, dairies, and commissaries
Vending machines
Ice and water

Health Services

Surgical, medical, dental, and psychiatric care
Hospitalization, outpatient, and nursing care
Physical examinations
Eye and hearing examinations and manufacturing and fitting glasses and hearing aids
Medical and dental laboratories
Dispensaries
Preventive medicine
Dietary services
Veterinary services

Industrial Shops and Services

Machine, carpentry, electrical, plumbing, painting, and other shops
Industrial gas production and recharging
Equipment and instrument fabrication, repair and calibration
Plumbing, heating, electrical, and air conditioning services, including repair
Fire protection and prevention services
Custodial and janitorial services
Refuse collection and processing

Maintenance, Overhaul, Repair, and Testing

Aircraft and aircraft components
Ships, boats, and components
Motor vehicles
Combat vehicles
Railway systems
Electronic equipment and systems
Weapons and weapon systems
Medical and dental equipment
Office furniture and equipment
Industrial plant equipment
Photographic equipment
Space systems

Management Support Services

Advertising and public relations services
Financial and payroll services
Debt collection

Manufacturing, Fabrication, Processing, Testing, and Packaging

Ordnance equipment
Clothing and fabric products
Liquid, gaseous, and chemical products
Lumber products
Communications and electronics equipment
Rubber and plastic products
Optical and related products
Sheet metal and foundry products
Machined products
Construction materials
Test and instrumentation equipment

Office and Administrative Services

Library operations
Stenographic recording and transcribing
Word processing/data entry/typing services
Mail/messenger
Translation
Management information systems, products and distribution
Financial auditing and services
Compliance auditing
Court reporting
Material management
Supply services

Other Services

Laundry and dry cleaning
Mapping and charting
Architect and engineer services
Geological surveys
Cataloging
Training—academic, technical, vocational, and specialized Operation of utility systems (power, gas, water steam, and sewage)
Laboratory testing services

Printing and Reproduction

Facility management and operation
Printing and binding—where the agency or department is exempted from the provisions of Title 44 of the U.S. Code
Reproduction, copying, and duplication
Blueprinting

Real Property

Design, engineering, construction, modification, repair, and maintenance of buildings and structures; building mechanical and electrical equipment and systems; elevators; escalators; moving walks
Construction, alteration, repair, and maintenance of roads and other surfaced areas
Landscaping, drainage, mowing and care of grounds
Dredging of waterways

Security

Guard and protective services
Systems engineering, installation, and maintenance of security systems and individual privacy systems
Forensic laboratories

Special Studies and Analyses

Cost benefit analyses
Statistical analyses
Scientific data studies
Regulatory studies
Defense, education, energy studies
Legal/litigation studies
Management studies

Systems Engineering, Installation, Operation, Maintenance, and Testing

Communications systems—voice, message, data, radio, wire, microwave, and satellite
Missile ranges
Satellite tracking and data acquisition
Radar detection and tracking
Television systems—studio and transmission equipment, distribution systems, receivers, antennas, etc.
Recreational areas
Bulk storage facilities

Transportation

Operation of motor pools
Bus service
Vehicle operation and maintenance
Air, water, and land transportation of people and things
Trucking and hauling

Appendix—Summary of Comments Received

OMB received 82 responses to its March 1, 1999, **Federal Register** request for comments: 10 Federal agencies; 61 industry or trade groups, and 8 employee organizations responded, in addition to 4 letters from members of Congress. A discussion of the significant comments, and OMB's responses (including resulting changes that have been made to Circular A–76 and its Supplemental Handbook), is provided below.

1. The Development and Submission of the Commercial Activities Inventory

OMB received a number of comments regarding the proposed revisions to Appendix 2 of the Supplemental Handbook that address the requirement in Section 2(a) of the FAIR Act that agencies develop and submit to OMB, by June 30th of each year, "a list of activities performed by Federal Government sources for the executive agency that, in the judgment of the head of the executive agency, are not inherently Governmental functions."

a. *Comment:* One agency commenter stated that it would be burdensome for the agency to include in the agency's inventory the name of a Federal employee with respect to each listed commercial activity.

Response: This data element is specifically required by Section 2(a)(3) of the FAIR Act itself.

b. *Comment:* Several commenters asked for changes to the data elements to prevent any implication that agency savings could only be achieved by "outsourcing" (converting work from in-house to contract performance) but not by "insourcing" (converting work from contract to in-house performance). Specifically, the commenters asked that OMB delete the commercial activity data element for "CIV/FTE Savings" (item g, of the Supplemental Handbook's Appendix 2). The commenters also asked for savings information to be collected when a conversion is from contract to in-house performance. Finally, the commenters asked that agencies provide, as part of the data that is collected pursuant to paragraph "F" in Appendix 2 of the Handbook, aggregate data on the numbers of contractor employees performing work for the agency.

Response: The cost-comparison process under Circular A–76 provides a level playing field for agencies to determine whether savings would result from a conversion of work, whether that conversion is from in-house to contract performance or from contract to in-house performance. Moreover, the cost-comparison process can result in savings even if no conversion occurs. The commercial activity data element for "CIV/FTE Savings" reflects the number of civilian FTE saved as a result of conducting a cost comparison, whether the function is retained in-house or converted to contract. This data element, therefore, is not meant to suggest that savings can only occur through outsourcing.

With respect to the request for additional information on savings that result from conversions from contract to in-house performance, the inventories will include an additional data element (a "reason code") to identify those commercial activities that are "being performed in-house as a result of a cost comparison resulting in a decision to convert from contract to in-house performance" (new reason code "I"). A corresponding change has been made to limit reason code "E" to functions retained in-house as a result of a cost comparison. The request for information on the aggregate number of agency contractor employees is beyond the scope of the FAIR Act, which is limited to performance of commercial activities by Federal employees.

c. *Comment:* Several commenters suggested that additional "reason codes" be included that would identify commercial functions that, in the agency's view, should not be subject to conversion to contract because of its need for a cadre of highly

skilled employees, in a specialized technical or scientific development area, to ensure that a minimum in-house capability ("core capability") in the area is maintained.

Response: The inclusion of a function on the agency's inventory of commercial activities does not mean that the agency is required to compete the function for outsourcing. Rather, the FAIR Act in Section 2(d) requires each agency to review its inventory of commercial activities. Presumably, this review would include consideration of outsourcing, consolidation, privatization, other reinvention alternatives or maintaining the *status quo*. Not all commercial activities performed by Federal employees should be performed by the private sector, though all such activities should be inventoried under the provisions of the FAIR Act and Circular A–76. The decision as to which commercial functions represent "core capabilities," and thus should be retained in-house, remains with the agency head. Accordingly, a specific reason code for "core capability" was not added to the inventory.

d. *Comment:* A number of commenters requested that the inventory be expanded to include inherently Governmental positions, along the lines of the information requested of the agencies on May 12, 1998 (Memorandum M–98–10, "Inventory of Commercial Activities").

Response: The FAIR Act requires agencies to develop an inventory of the agency activities that "are not inherently Governmental functions." The FAIR Act does not request any information on inherently Governmental activities; its focus is limited to commercial activities.

As part of its pre-FAIR Act oversight function to evaluate how agencies determine what functions performed by Federal employees are classified as commercial, OMB requested summary information from agencies that also included functions they classified as not commercial (i.e., inherently Governmental functions). When OMB conducts its FAIR Act review and consultation on the Commercial Activities Inventory submissions, it will do so in light of the information gained from its review of the agencies' responses to OMB's Memorandum M–98–10.

e. *Comment:* Several commenters expressed their views as to which positions in the Department of Defense should be designated as inherently Governmental and, therefore, excluded from the Commercial Activities Inventory.

Response: Under the FAIR Act, the agency head makes the determination of which activities are to be excluded from the Commercial Activities Inventory because they are "inherently Governmental", as defined by the Act and existing guidance. Part of OMB's review of the agencies' submissions will be to review these judgments, and to consult with the agencies on them.

f. *Comment:* One commenter interpreted the Act's use of the term "full-time employees (or its equivalent)" to mean that the Act applied only to civilian employees and, thus, to exclude military positions from the Act's Commercial Activities Inventory requirement.

Response: All activities of the Federal Government that "are not inherently Governmental" are to be inventoried under the FAIR Act. This requirement is not limited to civilian employees. Accordingly, military personnel performing commercial activities are subject to the FAIR Act and must be inventoried. For clarity, the data element FTE described in Appendix 2, paragraph "C" has been clarified to include "authorized full-time employees or FTE (as applicable)."

g. *Comment:* Several commenters stated that agencies should, in accordance with the principles of Executive Order 12871 ("Labor-Management Partnerships"), permit employee involvement in the development of the agencies' inventories of commercial activities.

Response: Executive Order 12871 does apply. Agencies should seek employee input in the development of the Commercial Activities Inventory, as appropriate, and the guidance has been revised to say so. It remains up to the agency head to make the determination whether a function is commercial or inherently Governmental in nature. The FAIR Act also provides that Federal employees and their representatives are "interested parties" who may challenge the contents of the inventory.

2. OMB's Review of the Commercial Activities Inventory and the Availability of the Inventories to the Public

a. *Comment:* Under Section 2(b) of the FAIR Act, OMB "shall review the executive agency's list for a fiscal year and consult with the head of the executive agency regarding the contents of the final list for that fiscal year." When that review and consultation is completed, the inventory is then made available to the public under Section 2(c), with a notice of availability published by OMB in the **Federal Register**. Several commenters expressed concern that the FAIR Act did not establish a timetable for OMB's review of agency inventories or their availability for public review.

Response: OMB intends to complete its review and consultation in a timely manner. Since this is a new process, OMB cannot set a firm timetable at this time. However, it is anticipated that the review and consultation should take about 60 days after OMB receives the agency inventory and any requested supplemental information. The notice of the inventory's public availability would be published within a few days thereafter.

b. *Comment:* Several commenters stated that, if an employee's activities are considered commercial and are therefore included on the agency's list, the Handbook should require timely notification to those employees.

Response: In accordance with Section 2(c) of the FAIR Act, OMB will publish a notice in the **Federal Register** when the inventories are available to the public (after the completion of OMB's review-and-consultation). The FAIR Act and the revised Handbook require each agency to make its inventory available to the public, which, of course, includes its employees and their representatives.

3. "Competition" and "Cost Comparison" Provisions

a. *Comment:* Section 2(d) of the FAIR Act provides that, "[w]ithin a reasonable time after" an agency's inventory has been made available to the public, the head of the agency "shall review the activities on the list." Several commenters recommended that OMB define what constitutes a "reasonable time" for the agency to review its inventory of commercial activities. One commenter suggested a time frame of 1 to 2 years, depending on the number of commercial activities on an agency's inventory. One commenter also suggested that agencies should be required to publish for public comment their timetable for reviewing the inventory.

Response: The FAIR Act does not provide a definition of the phrase "reasonable time." OMB believes that agencies should conduct such review in conjunction with their larger ongoing review of all functions for possible re-engineering, privatization, consolidation or other reinvention under the NPR and the Government Performance and Results Act. As part of its ongoing oversight of agency management of commercial activities performance, OMB will now require agencies to provide annual reports to OMB on the FAIR Act process, including their review and use of the Commercial Activities Inventory.

b. *Comment:* Several commenters took issue with the statement in the preamble to the proposal that "the FAIR Act requires agencies * * * to review the activities on the list for possible performance by the private sector." (64 FR 10031) They pointed out that Section 2(d) of the FAIR Act does not specify a particular purpose for the review.

Response: The FAIR Act inventory provides information that can assist the agency in considering a wide variety of options for how to satisfy its commercial activity needs that are performed by Federal employees. These options include both the possibility of the private sector fulfilling the need (through such actions as direct conversion, competition, and privatization), as well as continued agency reliance on Federal employees (with, perhaps, improvements that can flow from process changes suggested in the competition).

c. *Comment:* Several commenters interpreted Section 2(d) of the FAIR Act as permitting the direct conversion, without a cost comparison, of any commercial activity on the list (of any size or type) to performance by the private sector. In their view, FAIR does not preclude an agency from utilizing any of the processes allowed by law, including private-private competition as prescribed in FAR Part 8, 15 and 36. Other commenters expressed concern that the proposed revisions to the Supplemental Handbook required public-private cost comparisons in situations where such cost comparisons are not presently required.

Response: The FAIR Act envisions the use of competition to select a source when an agency considers contracting with a private sector source for performance of an activity on the list, but the law did not modify existing policies regarding the conduct of competitions. Existing guidance provides guidelines for determining when cost comparisons are required and, if required, how they are conducted.

d. *Comment:* Several commenters viewed the FAIR Act as prohibiting an agency from converting commercial work from contract to in-house performance under any condition.

Response: The FAIR Act addresses only inventories of commercial activities that are performed by Federal employees. It does not address commercial activities that are performed through contract and, therefore, does not address the conversion of contract work to in-house performance.

e. *Comment:* Several commenters stated their view that the FAIR Act requires substantial changes to the Circular A–76 costing rules so that they incorporate "all costs," and in particular the costs listed in the parenthetical in Section 2(e) (i.e., the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs).

Response: Existing guidance already requires agencies, in conducting cost comparisons, to consider all the fair and reasonable costs addressed in Section 2(e) of the FAIR Act. (See 64 FR 10032). The Supplemental Handbook requires consideration of all costs to the taxpayer that could be expected to change as a result of a conversion to or from performance by in-house or contract employees.

f. *Comment:* Several commenters suggested that public-private competitions must be based on "best-value" principles. They were concerned that OMB's proposed guidance relies on "cost-only competitions," thus ignoring the potential use of the best-value approach in the cost comparison process.

Response: Existing guidance is not limited to "cost-only competitions." It also allows for best value tradeoffs between cost and other factors. The competitive-source selection process outlined at Part 1, Chapter 3, paragraph H of the Supplemental Handbook permits use of the best value source selection approach in the context of public-private competition.

4. The FAIR Act "Challenge" Process

a. *Comment:* Section 3 of the FAIR Act provides for an administrative "challenge" process under which "interested parties" may challenge the agency's omission, or inclusion, of an activity on its FAIR Act inventory. Under this process, an "initial decision" is rendered by an agency official designated by the agency head. The interested party may then file an appeal of an adverse decision to the agency head. Several commenters suggested that, in the case of an appeal, the agency should publish its initial decision and the appeal in the **Federal Register** and request comments of other interested parties so that they may be considered by the agency head. It was further suggested that the final appeal should be reviewed by OMB, the Small Business Administration, the General Accounting Office, and relevant congressional appropriations and authorization committee staff.

Response: The requested procedures would go far beyond the FAIR Act. In addition, since Section 3 provides the agency head with 10 days to decide an appeal, there is not sufficient time for the agency to solicit, receive, and consider public comments.

5. Implementing the FAIR Act Via Revisions to A–76 & the Supplemental Handbook

Comment: A number of commenters suggested that OMB use an alternative vehicle to implement the FAIR Act guidance, such as issuing regulations or a separate circular, rather than making changes to the existing guidance on the performance of commercial activities contained in OMB Circular A–76 and its Supplemental Handbook.

Response: Circulars are a well-established vehicle for directing agencies on management of their activities. Circular A–76 already establishes the broad principles and the Revised Supplemental Handbook provides the specific definitions and direction on management of commercial activities, including the inventory and other activities that are codified by the FAIR Act. For this reason, it makes much more sense to revise the existing guidance than to develop a new circular. More importantly, however, OMB wanted to provide the agencies with prompt and clear guidance on how to implement the Act within the short time frame available and without confusion or wasted effort on the part of the agencies. Without revising the Handbook to conform to the FAIR Act, repetitive and competing guidance would exist in a number of areas. For example, the Handbook already requires agencies to develop an annual inventory of their commercial activities and specifies what information (data elements) is to be included. It also contains guidance for when and how agencies are to conduct cost comparisons and what costs should be included. These are all specific areas addressed by the FAIR Act. Ironically, the confusion that could result from issuing a new circular might slow agencies down rather than speeding them up.

Revising the Circular and Supplemental Handbook so that they conform to the FAIR Act is the best way to provide agencies with clear and prompt guidance on how to implement the Act.

[FR Doc. 99–16129 Filed 6–23–99; 8:45 am]

BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Statement of Authority to Act for Employee; OMB 3220–0034.

Under Section 5(a) of the Railroad Unemployment Insurance Act (RUIA), claims for benefits are to be made in accordance with such regulations as the Railroad Retirement Board (RRB) shall prescribe. The provisions for claiming sickness benefits are provided by Section 2 of the RUIA are prescribed in 20 CFR 335.2. Included in these provisions is the RRB's acceptance of forms executed by someone else on behalf of an employee if the RRB is satisfied that the employee is sick or injured to the extent of being unable to sign forms.

The RRB utilizes Form SI–10, Statement Authority to Act for Employee, to provide the means for an individual apply for authority to act on behalf of an incapacitated employee and also to obtain the information necessary to determine that the delegation should be made. Part I of the form is completed by the applicant for the authority and Part II is completed by the employee's doctor. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes no changes to Form SI–10.

The estimated annual respondent burden is as follows:

Form: SI–10.

Estimate of Annual Responses: 400.

Estimated Completion Time: 6 minutes.

Total Burden House: 40.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–16121 Filed 6–23–99; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Sunshine Act, Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on June 30, 1999, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Occupational Disability—FCE Protocols.
(2) Vested Dual Benefit Project.
(3) Employer Status Determination—Savannah State Docks Railroad Company.
(4) Business Cards.
(5) Electronic and Information Technology Survey.
(6) Request to Fill the Director of Equal Opportunity Position.
(7) Year 2000 Issues.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board. Phone No. 312–751–4920.

Dated: June 21, 1999.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 99–16194 Filed 6–22–99; 1:47 pm]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–4199]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Bestfoods, Common Stock, Par Value $.25)

June 18, 1999.

Bestfoods ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security has been listed for trading on the CHX and the New York Stock Exchange ("NYSE"). The Company, having considered all the direct and indirect costs arising from maintaining these multiple listings, determined to withdraw the Security from listing on the CHX and maintain its listing on the NYSE.

The Company has complied with the rules of the CHX by filing with the Exchange a certified copy of resolutions adopted by the Company's Board of Directors authorizing withdrawal of its Security from listing on the CHX as well as correspondence setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

The Exchange has informed the company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

This application relates solely to the withdrawal of the Security by the Company from listing on the CHX and shall have no effect upon the continued listing of such Security on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and with the NYSE.

Any interested person may, on or before July 9, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–16083 Filed 6–23–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Premier Bancshares, Inc., Common Stock, Par Value $1.00 Per Share) File No. 1–12625

June 18, 1999.

Premier Bancshares, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on May 27, 1999, on the New York Stock Exchange, Inc. ("NYSE"). Trading of the Company's Security on the NYSE commenced at the opening of business on June 1, 1999.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Amex and by setting from in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the determination to withdraw the Security from listing on the Amex in conjunction with its being admitted to trading to the NYSE, the Company sought to provide its Security with enhanced market exposure and institutional support it would receive from listing on the NYSE, as well as to avoid the direct and indirect costs which would have resulted from the simultaneous listing of the Security on both the Amex and the NYSE. The Amex has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

The Company's application relates solely to the withdrawal from listing of the Company's Security from the Amex and shall have no effect upon the continued listing of the Security on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before July 8, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–16040 Filed 6–23–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw from Listing and Registration; (Premier Capital Trust I, Cumulative Trust Preferred Securities) File No. 1–12625–02

June 18, 1999.

Premier Capital Trust I ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on May 28, 1999, on the New York Stock Exchange, Inc. ("NYSE"). Trading of the Company's Security on the NYSE commenced at the opening of business on June 1, 1999.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of premables and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the determination to withdraw the Security from listing on the Amex in conjunction with its being admitted to trading on the NYSE, the Company sought to provide its Security with enhanced market exposure and institutional support it would receive from listing on the NYSE, as well as to avoid the direct and indirect costs which would have resulted from the simultaneous listing of the Security on both the Amex and the NYSE. The Amex has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

The Company's application relates solely to the withdrawal from listing of the Company's Security from the Amex and shall have no effect upon the continued listing of the Security on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before July 8, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–16041 Filed 6–23–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27038]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 18, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declarations(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by July 13, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 13, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc. et al. (70–9483)

Allegheny Energy, Inc. ("Allegheny"), a registered holding company, AYP Energy, Inc. ("AYP Energy"),[1] a wholly owned nonutility subsidiary of Allegheny, and Allegheny Power Service Corporation ("APSC"), a service subsidiary of Allegheny, all located at 10435 Downsville Pike, Hagerstown, MD 21740–1766, and, West Penn Power Company ("West Penn"),[2] a wholly owned public utility electric subsidiary of Allegheny, located at 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, (collectively, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 46, 54, 90 and 91 under the Act.

In August 1997, West Penn was required to file a restructuring plan with the Pennsylvania Public Utility Commission ("PUC"), which, among other things, unbundled generation from transmission and distribution. The restructuring plan was contested and became the subject of hearings. These hearings resulted in a settlement that the Pennsylvania PUC approved on November 19, 1998 ("Settlement Agreement"). The settlement authorized and provided state regulatory pre-approval for West Penn to transfer its generating assets to a new affiliate in the Allegheny system at net book value.

West Penn requests authorization to form and capitalize a single member limited liability corporation ("Energy

[1] AYP Energy owns a 50% interest in Unit No. 1 of the Ft. Martin Power Station located in Monongalia County, Maidsville, West Virginia. AYP Energy is a wholly owned utility subsidiary of AYP Capital, Inc., which is a wholly owned nonutility subsidiary of Allegheny.

[2] In addition to West Penn, the Monongahela Power Company ("Monongahela") and the Potomac Edison Company ("Potomac Edison") are direct, wholly owned public utility subsidiaries of Allegheny. West Penn, Potomac Edison and Monongahela jointly own Allegheny Generating Company ("AGC"), which owns a 40% undivided interest in a pumped-storage hydroelectric generating facility and related transmission facilities located in Bath County, Virginia ("Bath Project").

Subsidiary") as a wholly owned subsidiary and to acquire all of the limited liability interests in Energy Subsidiary. Further, West Penn proposes to transfer utility generating assets ("Generating Assets") and other rights and obligations to Energy Subsidiary in exchange for cash and/or a promissory note, secured by a purchase money mortgage, in an amount not to exceed the Generating Assets' net book value of $990 million ("Promissory Notes"). Additionally, West Penn proposes to engage in the following transactions with Energy Subsidiary: transfer generation related assets and net liabilities and debt, including outstanding pollution control and solid waste disposal notes (collectively, "Associated Liabilities"); make capital contributions (Allegheny may also make capital contributions to Energy Subsidiary);[3] transfer AGC shares; assign its rights to generation from the Bath Project, notes and/or obligations (collectively, "Bath Project Rights and Obligations"); assign rights and responsibilities under joint-owner operating agreements for Ft. Martin Unit No. 1 ("Joint-Owner Operating Agreements"); and, assign rights to electric energy generated by Ohio Valley Electric Corporation ("OVEC")[4] and obligations related to the OVEC Power Agreement (collectively, "OVEC Agreements, Rights and Obligations").

Applicants requests authorization to form and capitalize a wholly owned Subsidiary of Energy Subsidiary for the purpose of holding generating assets, rights, interests and related obligations ("GENCO"). Additionally, Applicants propose to transfer and assign from Energy Subsidiary to GENCO: Generating Assets; OVEC Agreements, Right and Obligations; Bath Project Rights and Obligations; service agreements with APSC ("Service Agreements"); Joint-Owner Operating Agreements; and, Associated Liabilities all in exchange for the limited liability interests in GENCO (collectively, "Energy Subsidiary Assets").[5] West Penn proposes to acquire the Energy Subsidiary Assets in exchange for the Promissory Notes.

AYP Energy proposes to transfer its assets to GENCO[6] in exchange for the assumption of AYP Energy's debt by GENCO; and assign AYP Energy's rights and responsibilities under the Joint-Owner Operating Agreement for Ft. Martin Unit No. 1 to GENCO.

Initially, Allegheny anticipates that Energy Subsidiary and GENCO will not have their own paid employees. Personnel employed by APSC, a service company approved by the Commission under section 13 of the Act will provide a wide range of services on an as-needed basis to those companies under Service Agreements entered into between each of those companies and APSC. The proposed Service Agreements will take effect upon Commission approval and will be similar in all material aspects to those service agreements which APSC has executed APSC will render services to Energy Subsidiary and GENCO in accordance with rules 90 and 91.

Applicants also seek authority to permit GENCO to obtain independent or parent-supported financing using various methods, including, but not limited to, bank financing and/or bank credit support, project financing, commercial paper programs, sales of secured or unsecured debt, notes debentures and issuances of equity, up to $500 million ("General Financing"), in addition to the Promissory Notes. Additionally, Allegheny seeks authority to make loans, guarantees and enter support agreements to and for GENCO and any other type of investments in and for GENCO as deemed necessary, through December 31, 2007, up to an aggregate of $900 million ("Loans, Guarantees and Investment Authority") which would be in addition to the General Financing and Promissory Notes. Loans by Allegheny or West Penn to Energy Subsidiary will have interest rates and maturities that are designed to parallel Allegheny's or West Penn's, as the case may be, effective cost of capital.

West Penn also will enter into a leaseback agreement ("Leaseback Agreement"), through January 2, 2000, with GENCO for approximately one-third of the total electrical energy generating capacity of the Generating Assets. Allegheny's largest service territory is in Pennsylvania. West Penn is incorporated in Pennsylvania and its entire service territory is located within Pennsylvania. Pennsylvania has begun to restructure it electric markets under the state's Electricity Generation Customer Choice and Competition Act of 1996 ("Competition Act").[7] The Competition Act allowed two-thirds of West Penn's generation load to choose its generation supplier beginning January 2, 1999. The remaining one-third will be permitted to choose its generation supplier beginning January 2, 2000. West Penn is obligated to continue to directly supply the generation needs of the remaining one-third customers until January 2, 2000. The Leaseback Agreement fulfills West Penn's service obligation.

Authorization is also requested for GENCO to enter into operating and other agreements, related to the Generating Assets, with West Penn for the operation of all other Generating Assets. Applicants state that the amounts payable by West Penn under the Leaseback Agreement will be computed in accordance with Rules 90 and 91 under the Act and other applicable rules and regulations.

NSTAR (70–9495)

NSTAR, c/o BEC Energy, 800 Boylston Street, Boston, Massachusetts 02199, a Massachusetts business trust not currently subject to the Act, seeks an order under sections 9(a)(2) and 10 authorizing it to acquire all of the outstanding voting securities of BEC Energy and Commonwealth Energy System ("COM Energy"), each a Massachusetts business trust and public utility holding company exempt from registration under section 3(a)(1) of the Act from all provisions of the Act, except section 9(a)(2). NSTAR also requests an exemption under section 3(a)(1) from all of the provisions of the Act, except section 9(a)(2), upon consummation of the proposed transaction.

BEC Energy is an exempt holding company by order of the Commission.[8] BEC Energy's principal subsidiaries are Boston Edison Company ("Boston Edison"), an electric public utility company, and Boston Energy Technology Group, Inc. ("BETG"), a nonutility subsidiary company. BETG, in turn, owns several subsidiaries engaged in various nonutility businesses.

Boston Edison, a Massachusetts corporation, is engaged in the generation,[9] purchase, transmission, distribution, and sale of electric energy in a service territory covering about 590 square miles within 30 miles of Boston, Massachusetts, encompassing the City of Boston and 39 surrounding cities and towns. Boston Edison serves about 663,000 customers at retail, and it also sells electric energy at wholesale to other electric utilities and municipal electric departments. Boston Edison is regulated by the Massachusetts Department of Telecommunications and Energy and the Federal Energy Regulatory Commission ("FERC").

Boston Edison wholly owns Harbor Electric Company ("Harbor Electric"), a Massachusetts corporation that delivers electric energy from Boston Edison to the Massachusetts Water Resources Authority ("MWRA"), a large retail customer. Harbor Electric owns a small distribution system used exclusively for distribution to the MWRA. Harbor Electric has no generation and does not engage in wholesale sales or purchases.

Boston Edison is a member of the New England Power Pool ("NEPOOL"), and it has committed its pool transmission facilities to the operational control of ISO-New England, Inc. ("ISO-New England"). ISO-New England's principal responsibilities include administration of the NEPOOL open access transmission tariff ("NEPOOL Tariff"), the operational control of the New England bulk power system, protection of NEPOOL system reliability, and oversight of the New England Power Exchange. The FERC's order authorizing the establishment of ISO-New England and the transfer of operational control of the NEPOOL grid to that entity was issued on June 25, 1997.[10] On July 1, 1997, ISO-New England was activated. Although Boston Edison continues to own its transmission facilities, pool transmission facilities usage is and will be governed by ISO-New England.

For the year ending December 31, 1998, BEC Energy's operating revenues and assets on a consolidated basis were approximately $1.623 billion and $3.214 billion, respectively. As of December 31, 1998, BEC Energy had 47,184,073 outstanding shares of common stock, $1.00 par value.

COM Energy claims an instrastate exemption by rule 2. COM Energy wholly owns five operating public-utility companies; (1) Cambridge Electric Light Company ("Cambridge Electric"); (2) Canal Electric Company ("Canal Electric"); (3) Commonwealth Electric Company ("COM Electric"); (4) Commonwealth Gas Company ("COM Gas"); and (5) Medical Area Total Energy Plant, Inc. ("MATEP"). COM Energy also wholly owns several subsidiaries engaged in nonutility businesses, including steam distribution, servicing and processing liquefied natural gas, and the sale of energy products.

COM Electric, a Massachusetts corporation, is engaged in the purchase, transmission,[11] distribution and resale of power and energy in a service territory of about 1,100 square miles in 40 communities in southeastern Massachusetts, including Cape Cod, Martha's Vineyard, and the counties of Plymouth, Bristol, Barnstable, and Duke. COM Electric serves about 327,000 electric customers at retail. COM Electric also sells electric energy at wholesale to other electric utilities.

Cambridge Electric, a Massachusetts corporation, is engaged in the purchase, transmission,[12] distribution, and resale of power and energy in a service territory of about seven square miles. Cambridge Electric provides retail services in the City of Cambridge, Massachusetts to about 45,000 electric customers. Cambridge Electric also sells power for resale to the Town of Belmont, Massachusetts, and through the NEPOOL.

Canal Electric, a Massachusetts corporation, is engaged in the purchase and sale of electricity at wholesale to affiliates Cambridge Electric and COM Electric. With the exception of an ownership interest in the Seabrook 1 nuclear power facility, Canal Electric has no generating assets.

MATEP is a Massachusetts corporation and wholly owned subsidiary of Advanced Energy Systems, Inc., which, in turn, is a wholly owned subsidiary of COM Energy. MATEP owns and operates a 62 MW steam, chilled water and electric generating facility located in the Longwood Medical area of Boston ("Facility"). MATEP sells the output of the Facility to MATEP LLC, a Delaware limited liability company wholly owned by MATEP, and MATEP LLC resells the steam, chilled water, and electricity to several teaching hospitals affiliated with Harvard University.

COM Gas, a Massachusetts corporation, is a local gas distribution company serving about 239,000 customers in a service territory of about 1,067 square miles in the Cities of Cambridge and Somerville, a small portion of Boston, and in various other eastern and southeastern Massachusetts municipalities in Bristol, Middlesex, Norfolk, Plymouth, and Worcester counties.

COM Energy also owns several nonutility subsidiaries, including: (1) COM Energy Marketing, Inc., a power marketing subsidiary; (2) Advanced Energy Systems, Inc., which owns and operates energy facilities, including MATEP and MATEP LLC; (3) Hopkinton LNG Corp, which owns and operates facilities for the liquefication, storage, and vaporization of natural gas for COM Gas; (4) COM Energy Steam Company, a steam distribution company; (5) COM Energy Resources, Inc., which engages in the sale of energy and energy services; (6) Energy Investment Services, Inc., which invests the proceeds of Canal Electric's asset generation sales on behalf of utility customers; (7) COM Energy Technologies, Inc., which is engaged in the production, distribution, marketing and sale of energy information and control products and technologies; (8) COM Energy Acushnet Realty, a realty trust that leases land to Hopkinton LNG Corp., described above; (9) COM Energy Cambridge Realty, a realty trust that holds various properties; (10) COM Energy Freetown Realty, a realty trust organized to develop a 600 acre parcel of land that it owns in Freetown, Massachusetts; (11) COM Energy Research Park Realty, a realty trust organized to develop a research complex; (12) COM Energy Services Company, the service company for the COM Energy holding company system; and (13) Darvel Realty Trust, a realty trust that owns, develops, and operates real estate.

For the year ended December 31, 1998, COM Energy's operating revenues and assets on a consolidated basis were $980 million and $1.763 billion, respectively. Also as of December 31, 1998, COM Energy had 21,540,550 outstanding shares of common stock, $2.00 par value.

NSTAR states that the merged electric system will meet the standards of section 2(a)(29)(A) as the electric operations of BEC Energy and COM

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[3] Contributions by Allegheny or West Penn to Energy Subsidiary may take the form of any combination of: (1) purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests; (2) open account advances without interest; (3) loans; and (4) guarantees.

[4] OVEC is an investor-owned utility furnishing electric service in the Ohio River Valley area that was formed for the purpose of providing large electric power requirements for a major uranium enrichment complex built by the Atomic Energy Commission near Portsmouth, Ohio. Allegheny has a 12.5% ownership interest in OVEC. Allegheny OVEC and other investor-owned utilities entered into an Inter-Company Power Agreement, dated July 10, 1953 (the "OVEC Power Agreement") by which the parties thereto allocated each utility's share of the power generated by OVEC and by the Indiana-Kentucky Electric Corporation. Under the OVEC Power Agreement, Allegheny assigned to West Penn, the right to receive 7% of the power participation benefits of OVEC.

[5] Allegheny plans to dissolve Energy Subsidiary after all transfers described in Item 1 are completed an Energy Subsidiary will then hold no assets and GENCO will then be owned directly by Allegheny.

[6] The interest in Ft. Martin Unit No. 1 is AYP Energy's only asset.

[7] The Competition Act requires the unbundling of electric services into separate supply, transmission, and distribution services with open retail competition for supply in connection with the restructuring and unbundling of electric services in Pennsylvania.

[8] *See BEC Energy*, Holding Co. Act Release No. 26874 (May 15, 1998).

[9] Boston Edison voluntarily divested its fossil generation business in Massachusetts restructuring proceedings. Boston Edison's only remaining generation asset is the 670 MW Pilgrim nuclear power plant, which Boston Edison recently agreed to sell to Entergy Nuclear Generation Company.

[10] *See New England Power Pool*, 79 FERC P. 61,374 (1997), reh'g pending.

[11] COM Electric is a member of NEPOOL and COM Electric has committed its pool transmission facilities to the operational control of ISO-New England, Inc.

[12] Cambridge Electric is a member of NEPOOL, and Cambridge Electric has committed its pool transmission facilities to the operational control of ISO-New England, Inc.

Energy will be integrated. NASTAR states that BEC Energy and COM Energy have adjacent electric service territories that are physically interconnected. Boston Edison and Cambridge Electric are directly interconnected at two points. Further, COM Electric and Boston Edison are directly interconnected at five points, and they jointly own a transmission line, which runs from West Medway, Massachusetts to the Massachusetts-Rhode Island border in Uxbridge, Massachusetts. MATEP's 13.8 kV distribution system is physically interconnected with Boston Edison's 13.8 kV distribution system at a number of locations, and there are interconnections between the two systems at each of MATEP's customers' facilities. In addition, with the exception of Harbor Electric and MATEP, the electric utility subsidiaries of both BEC Energy and COM Energy are all members of NEPOOL.

NSTAR was formed to facilitate the merger of BEC Energy and COM Energy. BEC Energy and COM Energy together own all of NSTAR's issued and outstanding shares. NSTAR has three subsidiaries: (1) NSTAR Delaware LLC, a limited liability company organized under Delaware law ("NSTAR Delaware"), of which NSTAR owns 100% of the membership interests; (2) BEC Acquisition LLC, a limited liability company organized under Massachusetts law ("BEC Energy Merger Sub"), of which NSTAR owns 99.99% of the membership interests and NSTAR Delaware owns the remaining 0.01% membership interest; and (3) CES Acquisition LLC, a limited liability company organized under Massachusetts law ("COM Energy Merger Sub"), of which NSTAR owns 99.99% of the membership interests and NSTAR Delaware owns the remaining 0.01% membership interest. (NSTAR Delaware, BEC Energy Merger Sub and COM Energy Merger Sub are collectively the "Merger Subs".) Upon completion of the proposed transaction, both BEC Energy and COM Energy will become wholly owned subsidiaries of NSTAR, and NSTAR will become the new holding company for the combined holding company systems.

Under the Amended and Restated Agreement and Plan of Merger, dated December 5, 1998 and amended and restated May 4, 1999, among NSTAR, BEC Energy, COM Energy, BEC Energy Merger Sub, and COM Energy Merger Sub ("Merger Agreement"), BEC Energy will merge with the BED Energy Merger Sub ("BEC Merger"), with BEC Energy as the surviving entity, and COM Energy will merger with COM Energy Merger Sub ("COM Energy Merger"), with COM Energy as the surviving entity. (The BEC Merger and the COM Energy Merger are the "Mergers".) The Mergers will occur simultaneously. As a result of the Mergers, NSTAR will become the direct and, through NSTAR Delaware, indirect owner of all of the outstanding shares of common stock of BEC Energy and COM Energy. NSTAR Delaware will then be liquidated and its interests in each of BEC Energy and COM Energy will be transferred to NSTAR.

For the BEC Merger, each share of common stock of BEC Energy (other than shares held by BEC Energy, COM Energy, NSTAR or their subsidiaries, which shall be canceled) outstanding immediately prior to the BEC Merger will be converted into the right to receive either $44.10 in cash or one common share of NSTAR, and each 1% membership interest in BEC Merger Sub outstanding immediately prior to the BEC Merger will be converted into 100 shares of the common stock of BEC Energy. Each share of common stock of NSTAR held by BEC Energy will be canceled.

For the COM Energy Merger, each share of common stock of COM Energy (other than shares held by BEC Energy, COM Energy, NSTAR or their subsidiaries, which will be canceled) outstanding immediately prior to the COM Energy Merger will be converted into the right to receive either $44.10 in cash or 1.05 shares of the common stock of NSTAR, and each 1% membership interest in COM Energy Merger Sub outstanding immediately prior to the COM Energy Merger will be converted into 100 shares of the common stock of COM Energy. Each share of the common stock of NSTAR held by COM Energy will be canceled.

NSTAR states that the Mergers will produce benefits to the consumers of electricity and gas in Massachusetts. The respective managements and Board of Trustees of BEC Energy and COM Energy decided, as a result of industry restructuring and the generation plant divestitures by BEC Energy and COM Energy, to focus on their distribution business and to expand geographically through combinations with other electric and gas delivery businesses. NSTAR states that the Mergers will provide a basis for NSTAR to become the premier electric and gas distribution business in the New England region and will provide strategic financial opportunities for both companies and their shareholders. NSTAR also states that the Mergers will provide benefits to its customers and employees, including: improved customer service; cost savings and cost avoidances; an improved competitive and strategic position in the markets for transporting and distributing energy and marketing energy services; and expanded management resources.

The application states that, following the Mergers, NSTAR will meet the requirements for an exemption under section 3(a)(1). It is stated that NSTAR and its public utility subsidiaries will be predominantly intrastate in character and will carry on their business substantially in Massachusetts, the state in which they are organized.

American Electric Power Co. Inc., et al. (70–8693)

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, and its eight electric utility subsidiary companies, Appalachian Power Company ("Appalachian"), Kingsport Power Company ("Kingsport"), both at 40 Franklin Road, S.W., Roanoke, Virginia 24011; Columbia Southern Power Company ("Columbus"), 215 North Front Street, Columbus, Ohio 43215; Indiana Michigan Power Company ("Indiana"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801; Kentucky Power Company ("Kentucky"), 1701 Central Avenue, Ashland, Kentucky 41101; Ohio Power Company ("Ohio"), 301 Cleveland Avenue, S.W., Canton, Ohio 44701; AEP Generating Company ("Generating"), 1 Riverside Plaza, Columbus, Ohio 43215; and Wheeling Power Company ("Wheeling"), 51 Sixteenth St., Wheeling, West Virginia 26003, have filed a post effective amendment to a declaration field under sections 6(a), 7 and 12(b) of the Act and rule 54 under the Act.

By order dated May 4, 1998 (HCAR No. 26867) ("Order"), the Commission authorized AEP, Appalachian, Columbus, Indiana, Kentucky, and Ohio to issue and sell short-term notes to banks and commercial paper through December 31, 2003 ("Authorized Period"). The Order also authorized Generating, Kingsport, and Wheeling to issue and sell short-term notes to banks through the Authorization Period. In addition, applicants were authorized in the Order to issue unsecured promissory notes or other evidence of their reimbursement obligations in respect of letters of credit issued on their behalf by certain banks. The Order authorized this short-term indebtedness in aggregate outstanding amounts not to exceed:

Company	Amount
AEP	$500,000,000
Appalachian	325,000,000
Columbus	300,000,000
Indiana	300,000,000
Kentucy	150,000,000
Generating	100,000,000
Kingsport	30,000,000
Ohio	400,000,000
Wheeling	30,000,000
Total	2,135,000,000

Applicants now request that the Order be amended to authorize short-term indebtedness in the following aggregate outstanding amounts:

Company	Amount
AEP	$500,000,000
Appalachian	325,000,000
Columbus	350,000,000
Indiana	500,000,000
Kentucy	150,000,000
Generating	125,000,000
Kingsport	30,000,000
Ohio	450,000,000
Wheeling	30,000,000
Total	2,460,000,000

The Authorization Period would remain unchanged. All short-term indebtedness would mature within 270 days after the date the debt is incurred.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16082 Filed 6–23–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 28, 1999.

A closed meeting will be held on Monday, June 28, 1999, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Monday, June 28, 1999, will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of Administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: June 21, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–16159 Filed 6–21–99; 4:19 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41536; File No. SR-AMEX–99–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to an Amendment To Amex Rule 901C

June 17, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the Exchange. Amex filed Amendment No. 1 on June 3, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to add Commentary .03 to Exchange Rule 901C to permit the Exchange to split stock indices without having to file a proposed rule change under Section 19(b) of the Act.[4] Proposed additions are in italics.

Designation of Stock Index Options

Rule 901C (a)-(c) No change.
Commentary .01–.02 No change.
.03 *The Exchange may split index values from time to time in response to prevailing market conditions upon reasonable advance written notice to the membership. In effecting an index split, the Exchange will increase the applicable index divisor, proportionally increase the number of contracts outstanding and increase the index option's applicable position and exercise limits. Upon expiration of the furthest non-LEAP index option contract, the position and exercise limit revision to accommodate positions outstanding prior to the index split will revert to their then applicable limit.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to add Commentary .03 to Amex Rule 901C to establish criteria for the splitting of stock indexes. Over the past year, the Exchange submitted, and the Commission approved, three separate proposals to split six stock indexes with two of those indexes split on two occasions.[5] More recently, the Exchange submitted yet another proposal to split the Morgan Stanley High Technology Index to one half its current value[6] and has received additional requests to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation, SEC, on June 4, 1999. In Amendment No. 1, Amex amended the proposed rule text. The amendment is incorporated into this filing.

[4] 15 U.S.C. 78s(b).

[5] *See* Securities Exchange Act Release Nos. 39775 (March 20, 1998), 63 FR 14741 (March 26, 1998) (Securities Broker/Dealer index); 39941 (May 1, 1998), 63 FR 25251 (May 7, 1998) (Amex Airline and de Jager Year 2000 indexes); 39933 (April 30, 1998), 63 FR 25249 (May 7, 1999) (Institutional index); and 41164 (March 12, 1999), 64 FR 13836 (March 22, 1999) (Amex Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer indexes).

[6] *See* Securities Exchange Act Release No., 41472 (June 2, 1999), 64 FR 31331 (June 10, 1999).

submit further proposals to the Commission to split other stock indexes.

In the previous cases, the Exchange handled each of the stock index splits in a similar manner, splitting an index two for one by doubling the index divisor, issuing one additional contract for each outstanding index option contract, and dividing the strike price in half for each series. The Exchange issued an informational circular to the membership with details concerning the index split and the doubling of position and exercise limits until the expiration of the furthest non-LEAP option contract. Position and exercise limits for each index reverted to their then applicable level.

To permit the Exchange to split broad-based and narrow-based stock indexes without submitting a proposed rule change for review by the Commission, the Exchange proposes to add to its trading rules criteria regarding splitting an index.[7] Specifically, the Exchange proposes to add Commentary .03 Exchange Rule 901C to permit various indexes to be split from time to time subsequent to the issuance of an Informational Circular to the Exchange's membership. Position and exercise limits that would be increased to accommodate any outstanding index option positions would revert, following the expiration of the furthest non-LEAP option contract, to their then applicable limit.

The Exchange believes that the proposal is appropriate because its procedures for handling such stock splits are well established and have been consistently applied with prior notice given to Exchange members. Further, the Exchange has experienced no difficulty in, and has not received comments in opposition to, effecting such splits. The Exchange also believes that investors are readily familiar with periodic common stock splits, and adjustments to options overlying such stocks are handled in much the same was as index splits and do not require Commission review or approval. Lastly, the Exchange believes that the proposal raises no new or novel regulatory issues for the Commission, given its prior review and approval of various stock index splits in the past.

[7] The Commission noted in its release adopting new Rule 19b–4(e), 17 CFR 240.19b–4(e), that if the trading rules, procedures and listing standards for the product class include criteria regarding splitting an index, such changes would be permitted without being considered a material change to the derivative securities product and without requiring the filing of a proposed rule change pursuant to Section 19(b) of the Act. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–99–18 and should be submitted by July 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16039 Filed 6–23–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(A)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 26, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Small Business Development Center Project Officer's Review Checklist.

Form No: 59.

Frequency: On occasion.

Description of Respondents: Applicants requesting Disaster Home Loans.

Annual Responses: 228

Annual Burden: 228

Dated: June 15, 1999.

Jacqueline White,

Chief, Administrative Information Branch

[FR Doc. 99–16053 Filed 6–23–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 26, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Prime Contracts Program Quarterly Report, Part A, Traditional PCR and Part B, Breakout PCR.

Form No's: 843 A & B.

Frequency: On occasion.

Description of Respondents: Procurement Center Representatives.

Annual Responses: 63.

Annual Burden: 1,024.

Dated: June 15, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–16054 Filed 6–23–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 7, 1999, [FR 64, page 17055].

DATES: Comments must be submitted on or before July 26, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Application for a Certificate of Waiver or Application.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0027.

Forms(s): FAA Form 7711–2.

Affected Public: Individual airmen, state and local governments and businesses.

Abstract: This request for OMB review and renewal describes the public reporting burden imposed on persons that have a need to deviate from the provisions of the Federal Aviation Regulations that govern use of airspace within the United States. The request also describes and the burden associated with authorizations to make parachute jumps.

Estimated Annual Burden Hours: 12,202 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 18, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–16122 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office Management and Budget (OMB) for extension of currently approved collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 7, 1998, [FR 63, page 67504].

DATES: Comments must be submitted on or before July 26, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Malfunction or Defect Report.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0003.

Forms(s): FAA Form 8010–4.

Affected Public: Repair stations certificated under Part 145.

Abstract: Collection of this information permits the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements since their effectiveness is reflected in the number of equipment failures or the lack thereof. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents.

Estimated Annual Burden Hours: 6935 burden hours annually.

ADDRESSES Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility, the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 18, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–16123 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In May 1999, there were 12 applications approved. This notice also includes information on one application, approved in July 1998, inadvertently left off the July 1998 notice. Additionally, five approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus budget Reconciliation Act of 1990) (Pub. L. No. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Harlingen Airport Board, Harlingen, Texas.

Application Number: 98–01–C–00–HRL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $4,024,979.

Earliest Charge Effective Date: November 1, 1998.

Estimated charge Expiration Date: October 1, 2001.

Class of Air Carriers Not Required to Collect PFC's: All air taxi commercial operators filing AAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Valley International Airport.

Brief Description of Projects Approved for Collection and Use:

Groove runway 13/31.
Airfield signage.
Reconstruct south apron.
Airfield drainage.
Land acquisition.
Part 150 land acquisition.
Reconstruct access roads.
Runway and taxiway improvements.
Aircraft rescue and firefighting (ARFF) suits.
Storm water prevention plan.
Replace access control system.
Reconstruct air freight aprons—north and south.
Replace ARFF vehicles.
Terminal jet bridges.
Overlay runway 17L/35R
Concourse carpet replacement.
Flight information display and public address systems.
PFC development.
Overlay general aviation ramps.
Overlay taxiways B and F.
Joint seal air carrier parking apron.
Part 150 and master plan updates.
Airport entrance road (Iwo Jima Boulevard).
Improve terminal drainage.
Terminal roadway signs.
Terminal upgrade/improvement.
Security fencing.
Roadway sweeper.
Terminal entrance road and arcade sidewalk.

Decision Date: July 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Board of County Commissioners of Washington County, Hagerstown, Maryland.

Application Number: 99–01–C–00–HGR.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $360,000.

Earliest Charge Effective Date: August 1, 1999.

Estimated Charge Expiration Date: November 1, 2003.

Class of Air Carriers Not Required To Collect PFC'S: Air charter.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Hagerstown Regional Airport—Richard A. Henson Field.

Brief Description of Projects Approved for Collection and Use: Acquire snow removal equipment (rotary plow). Acquire automatic wheelchair lift device.

Brief Description of Project Approved for Collection Only: Construct snow equipment and maintenance building.

Decision Date: May 4, 1999.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Washington Airports District Office, (703) 661–1363.

Public Agency: Augusta Aviation Commission, Augusta, Georgia.

Application Number: 99–01–C–00–AGS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $29,169,803.

Earliest Charge Effective Date: September 1, 1999.

Estimated Charge Expiration Date: September 1, 2026.

Class of Air Carriers Not Required To Collect PFC'S: Part 135, nonscheduled, whole-plane charter operations by air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Bush Field Airport.

Brief Description of Projects Approved for Collection and Use: Terminal construction and rehabilitation.

Decision Date: May 5, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel Gaetan, Atlanta Airports District Office, (404) 305–7148.

Public Agency: City of North Bend, Oregon.

Application Number: 99–04–C–00–OTH

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $103,610.

Earliest Charge Effective Date: November 1, 2001.

Estimated Charge Expiration Date: December 1, 2003.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi/commercial operators utilizing aircraft having a seating capacity of less than 20 passengers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at North Bend Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Construct of hangar access, taxiway, and taxilane.
Rehabilitation of main apron.
ARFF equipment purchase.

Decision Date: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: Texas A and M University, College Station, Texas.

Application Number: 99–03–C–00–CLL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $951,400.

Earliest Charge Effective Date: June 1, 2000.

Estimated Charge Expiration Date: May 1, 2004.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Airfield safety improvements—install lights runway 10–28.
Airfield safety improvements—extend taxiway H.
Airfield safety improvements—improve runway 10–28 safety area.
Terminal roof replacement.
Perimeter road (phase 1).
PFC administrative costs.

Decision Date: May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Metropolitan Washington Airports Authority, Alexandria, Virginia.

Application Number: 98–02–C–00–IAD.

Application type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $29,849,777.

Earliest Charge Effective Date: December 1, 2008.

Estimated Charge Expiration Date: Febvruary 1, 2010.

Class of Air Carriers Not Required To Collect PFC's: Part 135 on-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplacements at Washington Dulles International Airport.

Brief Description of Projects Approved for Collection and Use:

Regional airline midfield concourse.
Outbound baggage provisions and automation equipment.

Determination: The approved amount for each project is less than the amounts requested for PFC funding in the application due to the limitations placed on the amount of funding authority available to the Metropolitan Washington Airports Authority (MWAA) under Pub. L. No. 106–6 (1999). The FAA acknowledges the MWAA's intent, as stated in its April 7, 1999, letter, to seek additional PFC funds, to the amounts requested in the application, once the statutory restrictions on further PFC approval are removed.

Brief Description of Project Withdrawn: Interim financing costs.

Determination: This project with withdrawn as a separate project by the MWAA by letter dated July 10, 1998. This letter also redistributed the financing costs to each individual project. Therefore, the FAA will not rule on the financing costs as a separate, stand-alone project in this decision.

Decision Date: May 14, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Page, Washington Airports District Office, (703) 285–2570.

Public Agency: Greater Orlando Aviation Authority, Orlando, Florida.

Application Number: 99–06–C–00–MCO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $95,772,673.

Earliest Charge Effective Date: May 1, 2005.

Estimated Charge Expiration Date: March 1, 2008.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Use:

Cargo road improvements—design.
Cargo road improvements—construction.

Brief Description of Projects Approved for Collection and Use:

South terminal earthwork and site preparation.
FAA receiver/transmitter relocation.
Deisgn midfield road extensions.
Hardstand at Airside 1.
Airsides 1 and 3 ramp replanements.
Runway modifications.
Operations training facility.

Decision Date: May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Vernon Rupinta, Orlando Airports District Office, (407) 812–6331, extension 24.

Public Agency: Dallas-Fort Worth International Airport Board, Dallas-Forth Worth, Texas.

Application Number: 98–04–U–00–DFW.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To be Used in This Decision: $24,815,000.

Charge Effective Date: February 1, 1997.

Estimated Charge Expiration Date: May 1, 2001.

Class of Air Carriers Not Required To Collect PFC'S: No change from previous decision.

Brief Description of Projects Approved for Use:

Runway 17C extension and associated development.
Runways 18R and 18L extensions and associated development.

Decision Date: May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 99–10–U–00–ORD.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To be Used in This Decision: $84,370,000.

Charge Effective Date: November 1, 2011.

Estimated Charge Expiration Date: September 1, 2017.

Class of Air Carriers Not Required To Collect PFC'S: No change from previous decision.

Brief Description of Projects Approved for Use:

Blast mitigation—phase II.

Airport Transit System vehicles acquisition (12 cars).
Bessie Coleman bridge rehabilitation.
Lake O'Hare capacity enhancement.
Runway 9L/27R rehabilitation.
Perimeter intrusion detection system.
Taxiway B rehabilitation at C3/C4.

Brief Description of Project Withdrawn:

Snow dump improvements.

Determination: This project was withdrawn from the PFC application by the City by letter dated March 4, 1999. Therefore, the FAA did not rule on this project in this Record of Decision. This decision does not affect the collection authority approved for this project in the 98–08–C–00–ORD decision.

Decision Date: May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Mark A. McClardy, Chicago Airports District Office, (847) 294–7335.

Public Agency: Pennsylvania State University, University Park, Pennsylvania.

Application Number: 99–02–C–00–UNV.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,448,605.

Earlier Charge Effective Date: September 1, 1999.

Estimated Charge Expiration Date: October 1, 2004.

Class of Air Carriers Not Required To Collect PFC'S: Charter carriers and air taxis.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual emplanements at University Park Airport.

Brief Description of Projects Approved for Collection and Use:

Property acquisition (Spearly), phase I runway 6 approach.
ARFF vehicle modification.
ARFF equipment.
Snow removal equipment storage building.
Acquire snow removal vehicles.
Design and construction of runway 6–24 extension and stormwater management.
Environmental assessment study cost overrun.
Phase I historical/archaeological study.
Security control and access improvements.
Handicapped access lift.
Connect to municipal water.
Taxiway extension for hangar access.
Interior roads.
Part 150 study.
Obstruction removal.
Highway access improvements (deceleration lanes).
Automated weather observation system.
Master plan update.

Brief Description of Projects Approved for Collection Only:

Expand airline terminal apron.
ARFF vehicle.
Snow removal vehicle—blower.
Construct aircraft parking apron.
Extend taxiways to T-hangars.

Brief Description of Project Withdrawn:

Snow dump improvements.

Determination: This project was withdrawn from the PFC application by the public agency by letter dated April 5, 1999. Therefore, the FAA did not rule on this project in this Record of Decision.

Decision Date: May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Roxane Wren, Harrisburg Airports District Office, (717) 730–2831.

Public Agency: City of Worcester, Massachusetts.

Application Number: 99–04–C–00–ORH.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,190,443.

Earliest Charge Effective Date: September 1, 1999.

Estimated Charge Expiration Date: December 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Construct new terminal facilities and related landside/airside improvements.
Design terminal apron and upgrade airports signage, and develop 5-year plan environmental impact statement.
Installation of airfield guidance signs.

Decision Date: May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Port of Portland, Portland, Oregon.

Application Number: 99–07–C–PDX.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $146,483,000.

Earliest Charge Effective Date: June 1, 2012.

Estimated Charge Expiration Date: September 1, 2015.

Class of Air Carriers Not Required To Collect PFC's: Air taxi and commerical operators.

Determination: Approved. Based on the information contained in the public agency's application, the FAA has dtermined that the approved class accounts for less than 1 percent of the total annual enplanements at Portland International Airport (PDX).

Brief Description of Project Approved for Collection and Use:

Airport Max light rail extension to PDX.

Decision Date: May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: City of Cleveland, Ohio.

Application Number: 99–06–C–00–CLE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $182,207,915.

Earliest Charge Effective Date: June 1, 1999.

Estimated Charge Expiration Date: March 1, 2008.

Class of Air Carriers Not Required To Collect PFC's: Air taxi.

Determination: Approved. Based on the information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Cleveland Hopkins International Airport (CLE).

Brief Description of Projects Approved for Collection at CLE and Use at CLE:

Brook Park land transfer.
Residential sound insulation.
Replacement of existing tug road.
Runway 5R/23L extension preliminary engineering and water resource permitting (Section 401/404 permits).
Federal Inspection Services (FIS) facility (design).
Interim commuter ramp.
Site utilities and Concourse D ramp.

Brief Description of Projects Approved in Part for Collection at CLE and Use at CLE:

Expand and renovate baggage claim area and replace baggage claim devices.

Determination: Partially approved. The approved amount has been reduced from that requested to reflect a proposed AIP entitlement grant.

Brief Description of Projects Approved in Part for Collection at CLE and Use at Burke Lakefront Airport:

Runway 6L/24R overlay.

Determination: Partially approved. The approved amount has been reduced from that requested to reflect funding received from an AIP grant.

Brief Description of Projects Approved for Collection Only:

Runway 5R/23L extension—design.
FIS facility (construction).
Analex office building demolition.
Runway 5R/23L extension—construction.
Installation of instrument landing system on runway 6L/24R.

Decision Date: May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Conrad, Detroit Airports District Office, (734) 487–7295.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–02–DSM, Des Moines, IA	03/30/99	$7,875,029	$8,775,029	01/01/05	06/01/05
96–03–C–01–PDX, Portland, OR	05/06/99	55,522,000	160,237,000	04/01/02	02/01/05
95–01–C–02–LEB, Lebanon, NH	05/19/99	556,515	431,515	10/01/99	12/01/99
97–03–C–03–DFW, Dallas-Fort Worth, TX	05/20/99	258,018,427	258,181,427	05/01/01	05/01/01
97–03–C–04–DFW, Dallas-Fort Worth, TX	05/20/99	258,181,427	261,050,427	05/01/01	05/01/01

Issued in Washington, DC on June 18, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–16124 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Washoe County, Nevada

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this Notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed Reno Transportation Rail Access Corridor (ReTRAC) project in Washoe County, Nevada.

FOR FURTHER INFORMATION CONTACT: Daryl James, P.E., Chief, Environmental Services Division, Nevada Department of Transportation, 1263 South Stewart Street, Carson City, NV 89712, Telephone: 775–888–7013

John T. Price, Division Administrator, Federal Highway Administration, Nevada Division, 705 North Plaza St., Suite 220, Carson City, NV 89701, Telephone: 775–687–1204

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Nevada Department of Transportation and the City of Reno will prepare an EIS on the proposal to improve the Reno Transportation Rail Access Corridor in Washoe County, Nevada. The proposed improvement would involve the reconstruction of the Union Pacific rail tracks between West Second and Sutro Streets for a distance of approximately 2.1 miles. The proposed project, would eliminate 11 at-grade street crossings and would include an access road adjacent to the tracks. There will be no turnouts or connections to other tracks within the project area except for the Reno Branch Connection Tracks. Prior to severing the Union Pacific's existing mailine tracks, a shoo-fly temporary track shall be constructed adjacent to the existing mainline tracks. The ReTRAC Project will mitigate the increased rail traffic predicted to significantly impact ground transportation, pedestrian safety and service delivery systems. The EIS will consider the effects of the proposed project, the No Action Alternative option, and other alternatives to the proposed project.

Letters describing the proposed project and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Four public scoping meeting sessions will be held at the times and place noted below:

Scoping Meeting Sessions

Dates: Tuesday and Wednesday, July 13 and 14, 1999.

Times: 2:00 pm–4:30 pm and 6:30 pm–9:00 pm (on both days).

Place: Reno/Sparks Convention Center, North Meeting Room B–1, 4590 South Virginia Street, Reno, Nevada.

In addition to the scoping meeting sessions, a public meeting will be held when the Draft Environmental Impact Statement (DEIS) is completed. The DEIS will be available for public and agency review and comment prior to the public meeting. Public notice will be given of the time and place of the meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed project and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 14, 1999.

John T. Price,

Division Administrator, Federal Highway Administration, Carson City, Nevada.

[FR Doc. 99–16128 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; BMW

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of BMW of North America, Inc., (BMW) for an exemption of a high-theft line, the BMW X5, from the parts-marking requirements of the vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with the 2000 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number

is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In a petition dated March 8, 1999, BMW of North America, Inc. (BMW), requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the BMW X5 vehicle line, beginning with MY 2000. The petition has been filed pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for an entire vehicle line. Based on the evidence submitted by BMW, the agency believes that the antitheft device for the BMW X5 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

BMW's submittal is considered a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, BMW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. BMW will install its antitheft device as standard equipment on the MY 2000 BMW X5 vehicle line. The antitheft device is a passive, electronically-coded vehicle immobilizer (EWS) system. The device will prevent the vehicle from being driven away under its own engine power in the event the ignition lock and doors have been manipulated. The device is automatically activated when the engine is shut off and the vehicle key is removed from the ignition lock cylinder. In addition to the key, the antitheft device can be activated by the use of its radio frequency remote control. Locking the vehicle door and trunk by using the key cylinder or the radio frequency remote control will further secure the vehicle. BMW stated that the frequency codes for the remote control constantly change to prevent an unauthorized person from opening the vehicle by intercepting the signals of its remote control.

The EWS system consists of a key with a transponder, a loop antenna (coil) around the steering lock cylinder, an EWS control unit and an engine control unit (DME/DDE) with encoded start release input.

BMW stated that integrated in the key is a transponder chip that consists of a transponder, a small antenna coil, and a memory which can be written to and read from. The memory contains its own unique key and customer service data. The transponder is a special transmitter/receiver that communicates with the EWS control through the transceiver module.

BMW states that the EWS control unit provides the interface to the loop antenna (coil), engine control unit and starter. The primary tasks of the EWS control unit will consist of querying key data from the transponder and providing the coded release of the engine management for a valid key. BMW also states that the engine control unit with coded start release input has been designed in such a manner that the ignition and the fuel supply are only released when a correct release signal has been sent by the EWS control unit. The EWS control unit inspects the key data for correctness and allows the ignition to operate and fuel supply to be released when a correct signal has been received.

The vehicle is also equipped with a central-locking system which locks all doors, the hood, the trunk and fuel filler lid. To prevent locking the keys in the car upon exiting, the driver door can only be locked with a key or by the radio frequency remote control after it is closed. This also locks the other doors. If the doors are open at the time of locking, they are automatically locked when they are closed.

BMW mentioned the uniqueness of its locks and its ignition key. BMW stated that its vehicle's locks are almost impossible to pick, and its ignition key cannot be duplicated on the open market. BMW also stated that a special key blank, key-cutting machine and owner's individual code are needed to cut a new key and that its key blanks, machines and codes will be closely controlled and new keys will only be issued to authorized persons. Additionally, spare keys can only be obtained through the BMW dealer because they are not a copy of lost originals, but new keys with their original electronic identification. Lost keys can be disabled at the vehicle and enabled again as an additional security measure. Every key request is also documented so that any inquiries by insurance companies and investigative authorities can be followed up on.

The battery for BMW's X5 vehicle line will be inaccessibly located and covered as an additional security measure. Therefore, even if a thief does manage to penetrate and disconnect the battery, it will not unlock the doors. However, in the event of a crash, an inertia switch will automatically unlock all the doors.

BMW also stated that its antitheft device does not incorporate any audible or visual alarms. However, based on the declining theft rate experience of other vehicles equipped with devices that do not have an audio or visual alarm for which NHTSA has already exempted from the parts-marking requirements, the agency has concluded that the data indicate that lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

BMW compared the device proposed for its new line with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of Part 541, and has concluded that the antitheft device proposed for this new line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. The antitheft system that BMW intends to install on its X5 vehicle line for the MY 2000 is exactly the same system that BMW installed on its Carline 5 for MY 1997 and its Carline 3 for MY 1999. The agency granted BMW's petitions for exemption of its Carline 5 beginning with the 1997 model year and its Carline 3 beginning with the 1999 model year in full (see 61 FR 6292, February 16, 1996 and 62 FR 62800, November 25, 1997, respectively).

In order to ensure reliability and durability of the device, BMW conducted performance tests based on its own specified standards. BMW provided a detailed list of the following tests it conducted: climatic tests, high temperature endurance run, thermoshock test in water, chemical resistance, vibrational load, electrical ranges, mechanical shock tests, and electromagnetic field compatibility.

Additionally, BMW stated that its immobilizer system fulfills the requirements of the European vehicle insurance companies which became standard as of January 1995. The requirements prescribe that the vehicle must be equipped with an electronic vehicle immobilizing device which works independently from the mechanical locking system and prevents the operation of the vehicle through the use of coded intervention in the engine management system. In addition, the device must be self-arming (passive), and must become effective upon leaving the vehicle, or not later than the point at which the vehicle is locked, and must deactivate the vehicle only by electronic means and not with the mechanical key. BMW also stated that the doors and ignition locks for the Carline 3 conform to Swedish Regulation F42–1975, which requires a minimum of five minutes resistance to the application of commonly available tools.

Based on evidence submitted by BMW, the agency believes that the antitheft device for the X5 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

The agency believes that the device will provide four of the five types of performance listed in 49 CFR 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The device lacks the ability to attract attention to the efforts of unauthorized persons to enter or operate a vehicle by a means other than a key (§ 541.6(a)(3)(ii).

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full BMW of North America's petition for an exemption for the MY 2000 X5 vehicle line from the parts-marking requirements of 49 CFR part 541.

If BMW decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: June 21, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–16125 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PDA–15(R)]

Preemption Determination No. PD–14(R); Houston, TX, Fire Code Requirements on the Storage, Transportation, and Handling of Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Decision on petition for reconsideration of administrative determination of preemption.

Petitioner: City of Houston, Texas.

State Laws Affected: Houston, Texas, Ordinance No. 96–1249 adopting the 1994 Uniform Fire Code with certain modifications.

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

Modes Affected: Highway.

SUMMARY: RSPA denies the petition for reconsideration submitted by the City of Houston (City), in which the City asked RSPA to defer any determination whether Federal hazardous material transportation law preempts provisions of the Houston Fire Code relating to the transportation of hazardous materials. RSPA clarifies that its December 7, 1998 determination applies only to the transportation of hazardous materials in commerce by motor vehicles. In that determination, RSPA found that the following requirements in the Houston Fire Code are not preempted because they do not apply when the transportation of hazardous materials is governed by DOT's regulations: (1) Permits for vehicles that transport hazardous materials in commerce, including the definition of "hazardous materials" as part of these permit requirements; (2) the design, construction, or operation of tank vehicles used for transporting flammable or combustible liquids; (3) physical bonding during loading of a tank vehicle with a flammable or combustible liquid; (4) unattended parking of a tank vehicle containing a flammable or combustible liquid; and (5) the service rating of the fire extinguisher required to be carried on a tank vehicle used to transport a flammable or combustible liquid.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, telephone 202–366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

In February 1996, the Association of Waste Hazardous Materials Transporters (AWHMT) applied for an administrative determination that Federal hazardous material transportation law preempts certain provisions of the Fire Code of the City of Houston, Texas, as applied to tank vehicles that pick up or deliver hazardous materials within the City of Houston (City).

At that time, the Houston Fire Code consisted of the 1991 edition of the Uniform Fire Code as modified in a "Conversion Document." The requirements challenged by AWHMT involved: (1) Inspections and fees required to obtain an annual permit for a cargo tank motor vehicle to pick up or deliver hazardous materials (including flammable and combustible liquids) within the City; (2) the definition of "hazardous materials" as used in these permit requirements; and (3) design, construction, and operating requirements for tank vehicles used to transport flammable and combustible liquids, including the number and service rating of fire extinguishers required on the vehicle, unattended parking of the vehicle, "FLAMMABLE" and "NO SMOKING" markings on the vehicle, and static protection (or "bonding") during loading of the vehicle. AWHMT separately provided copies of citations that the City had issued to operators of cargo tank motor vehicles for loading or unloading corrosive materials within the City without a permit, despite an exception in Sec. 80.101(a) of the 1991 edition of the Uniform Fire Code for:

Off-site hazardous materials transportation in accordance with DOT requirements.

In Sec. 79.101(a), there was also a similar exception for:

The transportation of flammable and combustible liquids when in accordance with DOT regulations on file and approved by DOT.

In November 1996, the City adopted the 1994 edition of the Uniform Fire Code together with certain "City of Houston Amendments." At this time, the "FLAMMABLE" and "NO SMOKING" marking requirement was eliminated, and the City reduced from two to one the number of fire extinguishers required on a tank vehicle used to transport a flammable or combustible liquid. In all other respects, the provisions in the Houston Fire Code challenged by AWHMT were not substantively changed. The exceptions for the transportation of hazardous materials "in accordance with" DOT's regulations were retained in the Uniform Fire Code. *See* Secs. 7901.1.1 and 8001.1.1, Uniform Fire Code (1994 edition).

RSPA specifically invited detailed comments on "the scope and meaning" of these exceptions in the Uniform Fire Code. *See* the Public Notices published in the **Federal Register** on March 20, 1996, 61 FR 11463, 11465, and April 9, 1997, 62 FR 17281, 17282. In its May 1997 comments, the City stated that it recognizes these exceptions, and permits "are no longer required for vehicles transporting hazardous material or flammable or combustible material if the vehicle meets DOT requirements"; that "the inspection and fee provisions * * * also do not apply to such vehicles"; and that tank vehicle design and construction requirements in the Uniform Fire Code were applied only "to tank vehicles that are used exclusively on-site and to off-site vehicles not meeting DOT specifications." The City argued that other "challenged provisions still in effect are not preempted," and it also requested "[i]n the alternative * * * that a decision on AWHMT's application be postponed until completion" of RSPA's rulemaking proceeding in Docket No. HM–223, "Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage." *See* RSPA's Advance Notice of Proposed Rulemaking, 61 FR 39522 (July 29, 1996), and Supplemental Advance Notice of Proposed Rulemaking, 64 FR 22718 (Apr. 27, 1999).

In PD–14(R), published in the **Federal Register** on December 7, 1998, RSPA indicated it agreed with the City's interpretation of the exceptions in Secs. 7901.1.1 and 8001.1.1, but that RSPA read those exceptions to "apply to the entire contents of Articles 79 and 80—not just the permit requirements." 63 FR 67506, 67510. RSPA stated that it "must assume that the City applies the exceptions in Secs. 7901.1.1 and 8001.1.1 in a consistent manner," to all the requirements in Articles 79 and 80. *Id.* Accordingly, RSPA found that that Federal hazardous material transportation law does not preempt requirements in the following sections of the Houston Fire Code because these requirements do not apply to the transportation of hazardous materials that is subject to the HMR:

Secs. 105.4, 105.8.f.3, 105.h.1, 106.1, 7901.3.1, and 8001.3.1., concerning permits (including the inspections and fees required to obtain a permit);

Secs. 209 and 8001.1.2, concerning the definition of "hazardous materials" (as relevant to the permit requirements in Secs. 105.8.f.3 and 8001.3.1);

Sec. 7904.6.1, concerning requirements for the design and construction of tank vehicles used to transport a flammable or combustible liquid;

Sec. 7904.6.3.4, concerning physical bonding during the loading of a tank vehicle with a flammable or combustible liquid, to prevent the accumulation of static charges;

Sec. 7904.6.5.2.1, prohibiting unattended parking of tank vehicles used for flammable or combustible liquids at specific locations or "at any other place that would, in the opinion of the chief, present an extreme life hazard"; and

Sec. 7904.6.7, requiring a fire extinguisher with a minimum rating of 2–A, 20–B:C on board a tank vehicle used for flammable or combustible liquids.

63 FR at 67511.

In PD–14(R), RSPA declined to consider a separate requirement in the Houston Fire Code that rail tank cars containing flammable or combustible liquids "shall be unloaded as soon as possible after arrival at point of delivery" and within 24 hours of being connected for transfer operations unless otherwise approved by the fire chief. Sec. 7904.5.4.3. RSPA noted that this requirement in the Uniform Fire Code, as adopted by Los Angeles County, had been found to be preempted in PD–9(R), Los Angeles County Requirements Applicable to the Transportation and Handling of Hazardous Materials on Private Property, 60 FR 8774, 8783, 8788 (Feb. 15, 1995). However, AWHMT had not challenged this requirement, as adopted in the Houston Fire Code, until May 1997, fifteen months after its application which, as all parties understood, "challenged requirements in the Houston Fire Code only as applied to motor carriers that pick up or deliver hazardous materials within the City." 63 FR at 67508.

RSPA also declined to defer its decision in PD–14(R) until completion of the rulemaking in HM–223. RSPA noted that other preemption proceedings (PDs 8(R)–11(R)) involve requirements of the Uniform Fire Code (as adopted by Los Angeles County) as applied to the "'on-site' handling and transportation of hazardous materials." 63 FR at 67507. Unlike the issues in those decisions that have been placed "on hold" pending the consideration of the scope of the HMR in HM–223,

no party here disputes that the HMR apply to carriers who pick up or deliver hazardous materials within the City for "off-site" transportation. The main issue in this case is whether the Houston Fire Code applies to those carriers and their vehicles—not whether the HMR apply.

Id. RSPA added that:

AWHMT, the City, and other parties who submitted comments in this proceeding are encouraged to participate fully in HM–223 because of the relationship between the applicability of the HMR and the Uniform Fire Code to transportation-related activities involving hazardous materials.

Id.

In Part I.C. of its decision, RSPA discussed the applicability of Federal hazardous material transportation law to the transportation of hazardous materials in commerce and the standards for making determinations of preemption. 63 FR at 67508–67509. As explained there, unless DOT grants a waiver or there is specific authority in another Federal law, a State (or other non-Federal) requirement is preempted if:

—It is not possible to comply with both the State requirement and a requirement in the Federal hazardous material transportation law or regulations;

—The State requirement, as applied or enforced, is an "obstacle" to the accomplishing and carrying out of the Federal hazardous material transportation law or regulations; or

—The State requirement concerns a "covered subject" and is not "substantively the same as" a provision in the Federal hazardous material transportation law or regulations. Among the five covered subjects are (1) "the designation, description, and classification of hazardous material," and (2) the "packing, repacking, handling, labeling, marking, and placarding of hazardous material."

See 49 U.S.C. 5125 (a) & (b). These preemption provisions stem from congressional findings that State and local laws which vary from Federal hazardous material transportation requirements can create "the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting * * * regulatory requirements," and that safety is advanced by "consistency in laws and regulations governing the transportation of hazardous materials." Pub. L. 101–615 §§ 2(3) & 2(4), 104 Stat. 3244.

In PD–14(R), RSPA also explained its procedures for issuing preemption determinations and the rights to file a petition for reconsideration and/or judicial review. 63 FR at 67509, 67511.

Within the 20-day time period provided in 49 CFR 107.211(a), the City filed a petition for reconsideration of PD–14(R). The City certified that it had mailed a copy of its petition to AWHMT and all others who had submitted comments. AWHMT submitted comments on the City's petition for reconsideration.

II. Petition for Reconsideration

In its petition, the City again acknowledges that the Uniform Fire Code contains "exceptions for areas governed by DOT regulations," but states that "[c]ontrary to DOT's statement at [63 FR] 67506, however, the City's exceptions for DOT-regulated activities apply only to *transportation*." (emphasis in original) The City appears to argue that the requirements challenged by AWHMT that fall within "transportation" are only those "relating to tank vehicle design, construction, and operation and to fire extinguishers." The City asks RSPA to defer considering the other requirements challenged by AWHMT because they are "within the scope of the pending rulemaking [in] Docket No. HM–223" and "not within the intended scope of [the Uniform Fire Code] exception for DOT-regulated transportation activity":

—Permits for the storage, handling * * * dispensing, mixing, blending or using hazardous materials.

—Physical bonding during loading of the vehicle.

—Unattended parking of the vehicle.

According to the City, "[d]eferral is all the more appropriate in light of the recent extension of the HMR during the course of this proceeding to all intrastate transportation of hazardous materials in commerce." The City asserts that

DOT's refusal to defer consideration of Fire Code requirements imposed on carriers at in-transit facilities completely ignores DOT's confirmation that HM–223 is expressly intended to address activities at "transfer and other mid-transportation facilities" which, under any logical construction, would include activities at "in-transit facilities." * * * The City's position is that the activities regulated by the Fire Code are not incidental to transportation. Lacking a rule [in HM–223], DOT should defer its decision altogether.

On February 3, 1999, an official of the Houston Fire Department telephoned RSPA's Office of the Chief Counsel to ask about the status of RSPA's determination in PD–14(R) and the rulemaking in HM–223. Based on that conversation, RSPA understands that the concerns raised in the City's petition for reconsideration relate to the facilities at which hazardous materials are stored, rather than the vehicles that transport hazardous materials and pick up or deliver hazardous materials within the City. According to this official, the interest of the Fire Department is that the same fire protection standards apply to both (1) the buildings and other facilities where hazardous materials are stored for short times in the course of transportation and (2) the facilities where hazardous materials are stored and used outside of transportation.

III. Discussion

The Uniform Fire Code (1994 edition) states that it is primarily directed at "the hazards of fire and explosion arising from the storage, handling, and use of hazardous substances, materials and devices, and from conditions hazardous to life and property in the *use and occupancy of buildings and premises*." Sec. 101.2 ("Scope") (emphasis added); *see* 63 FR at 67507. The specific exceptions in Secs. 7901.1.1 and 8001.1.1 for transportation "in accordance with" DOT's regulations seem to be clear that the Uniform Fire Code is not intended to apply to vehicles when they are transporting hazardous materials subject to the HMR. When the Uniform Fire Code is properly applied in this manner, there is no inconsistency with Federal hazardous material transportation law or the HMR.

AWHMT submitted its application after the City applied permit requirements in the 1991 edition of the Uniform Fire Code (as adopted and amended by the City) to motor carriers that (according to AWHMT) were transporting hazardous materials in accordance with and subject to the HMR. Specifically, the City issued citations to the operators of motor vehicles that loaded or unloaded corrosive materials within the City when the vehicles had not been inspected and issued a permit. *See* the discussion in PD–14(R), 63 FR at 67510, and in RSPA's Notices, 61 FR 11463 (Mar. 20, 1996), and 62 FR 17281 (Apr. 9, 1997). Following the City's adoption of the 1994 edition of the Uniform Fire Code, however, as discussed in PD–14(R), 63 FR at 67510,

the City specifically acknowledged that the "express exceptions for DOT-regulated activities" in Secs. 7901.1.1 and 8001.1.1 mean that "the Fire Code should not be read as applicable to over-the-road (off-site) transportation * * *" The City elaborated that "permits will not be required for DOT-regulated activities"; the "hazardous materials classifications [in the Houston Fire Code] * * * are not applicable to activities regulated by the DOT"; and that provisions in the Fire Code setting design and construction requirements for tank vehicles apply only to "off-road (or on-site) transportation of flammable or combustible liquids not regulated by DOT."

Based on these representations that the City is now interpreting its Fire Code in a manner that is fully consistent with Federal hazardous material transportation law and the HMR, RSPA concluded that Federal hazardous material transportation law does not preempt the requirements in the Houston Fire Code challenged in AWHMT's application. RSPA understood that the City was no longer requiring permits (or inspections) for vehicles that pick up or deliver hazardous materials within the City, which were subject to the HMR. As discussed in Part I, above, RSPA also read the exceptions in Secs. 7901.1.1 and 8001.1.1 to "apply to the entire contents of Articles 79 and 80 [of the Uniform Fire Code]—not just to the permit requirements." *Id.*

The City's petition for reconsideration seems to disagree with this last conclusion. Its statements that requirements challenged by AWHMT, as applied to vehicle operators, concern activities that are not subject to the HMR but are "within the scope of the pending rulemaking Docket No. HM–223," are somewhat confusing. The concept that the exceptions in Secs. 7901.1.1 and 8001.1.1 apply to only some of the requirements in Articles 79 and 80 of the Uniform Fire Code mirrors similar contradictory statements in the City's May 1997 comments that requirements in Article 79 of the Uniform Fire Code concerning physical bonding, unattended parking, and fire extinguishers "are not affected by the [e]xceptions" in Secs. 7901.1.1 and 8001.1.1. *See* 63 FR at 67510. RSPA found this statement to be "in direct conflict with the plain language of these exemptions." *Id.*

More importantly, the City has not shown that its asserted uncertainty about the applicability of the HMR to certain transportation-related activities should cause RSPA to defer its determination on AWHMT's

application. The activities covered by specific requirements challenged by AWHMT seem to clearly fit within the scope of "transportation" subject to the HMR.

Based on AWHMT's application and the comments submitted, RSPA understood that, during 1995–96, the City required a carrier to obtain a vehicle permit (following inspection of the cargo tank motor vehicle) in order for the carrier to deliver hazardous materials within the City—as contrasted to a consignee's unloading of a bulk container over an extended period of time after delivery of the container by the carrier. RSPA stated in PDs 8(R)–11(R) that unloading by the carrier would generally be a part of the delivery to the consignee and incidental to the movement of those materials in commerce, "even when that unloading takes place exclusively at a consignee's facility." 60 FR at 8777.

Similarly, the loading of a tank vehicle with a flammable or combustible liquid, for which static protection (or "bonding") is required by 49 CFR 177.837(c), would ordinarily be considered loading "incidental to the movement" of property off-site (or in commerce) and within the scope of "transportation" subject to the HMR, *see* 49 U.S.C. 5102(12), rather than Sec. 7904.6.1 of the Uniform Fire Code. DOT's parking regulations in 49 CFR 397.7 seem to apply to any tank vehicle in the locations specified in Sec. 7904.6.5.2.1 of the Uniform Fire Code ("residential streets, or within 500 (152.4 m) of a residential area, apartment, or hotel complex, educational facility, hospital or care facility").

In this proceeding, AWHMT did not challenge the City's requirements that apply to a facility that stores hazardous materials, as opposed to the vehicles that move those materials. The City has not raised any specific issues relating to the storage of hazardous materials. Finally, in PD–14(R) RSPA did not consider requirements in the City's Fire Code as they apply to facilities that store hazardous materials.

As a general matter, the transportation of hazardous materials in commerce subject to the Federal hazardous materials transportation law and the HMR includes the storage of those materials "incidental to [their] movement." 49 U.S.C. 5102(12). Accordingly, RSPA has stated that the HMR clearly apply to "transportation-related storage." IR–19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404, 24409 (June 30, 1987), decision on appeal, 53 FR 11600 (Apr. 7, 1988). And RSPA reiterated in PDs 8(R)—11(R) that the HMR apply to "[s]torage that is incidental to transportation," which includes "storage by a carrier that may occur between the time a hazardous material is offered for transportation and the time it reaches its intended destination and is accepted by the consignee." 60 FR at 8778. *See also* PD–12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Wastes Incidental to Transportation, 60 FR 52527, 62541 (Dec. 6, 1995), decision on petition for reconsideration, 62 FR 15970, 15972 (April 3, 1997) ("transportation-related activities" subject to the HMR include the interim storage of hazardous materials at a transfer facility). In contrast, "RSPA does not regulate consignee storage, including the types of containers used to store hazardous materials that are no longer in transportation in commerce." PD–9(R), 60 FR at 8788.

RSPA has long encouraged States and localities to adopt and enforce requirements on the transportation of hazardous materials that are consistent with the HMR. *See, e.g.*, PD–12(R), 60 FR at 62530. This applies to storage that is incidental to the movement of hazardous materials in commerce, as well as the actual movement of those materials. The enforceability of non-Federal requirements on "incidental" storage depends on the consistency of those requirements with the HMR and, of course, the applicability of the requirements themselves in terms of exceptions such as Secs. 7901.1.1 and 8001.1.1 of the Uniform Fire Code.

As stated in PD–14(R), 63 FR at 67510, "a State or local permit requirement is not *per se* preempted; rather, 'a permit itself is inextricably tied to what is required to get it.'" This principle applies to the storage of hazardous materials in transportation as well as to the actual movement of these materials. IR–28, San Jose Restrictions on Storage of Hazardous Materials, 55 FR 8884, 8890 (Mar. 8, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992).

With respect to permits for a facility where hazardous materials are stored in transportation, however, State requirements are preempted when they are "so open-ended and discretionary that they authorize the [State] to approve storage prohibited by the HMR or prohibit storage authorized by the HMR." IR–19, 52 FR at 24410. The Court of Appeals for the Ninth Circuit agreed in *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, 909 F.2d 352, 358 (9th Cir. 1980), that such State requirements create "a separate regulatory regime for these activities [including storage in transportation], fostering confusion and frustrating Congress' goal of developing a uniform national scheme of regulation."

Similarly, in IR–28, RSPA found that "unfettered discretion * * * with respect to approval or disapproval of storage of hazardous materials incidental to the transportation thereof is inconsistent with the HMTA and the HMR." 55 FR at 8890. RSPA also noted that

> detailed information required to be provided concerning the identity and quantity of hazardous materials (and other materials) which a transportation carrier might store at its facility during a given year is impossible to compile and provide in advance because a common carrier is at the mercy of its customers, including the general public, who may without advance notice offer to the carrier virtually any quantity of any of the thousands of hazardous materials listed in, or covered by, the HMR.

Id. at 8891.

To decide this case, however, RSPA need not precisely delineate the incidental storage that is encompassed within the scope of "transportation" (as defined in Federal hazardous material transportation law) from that which is not. In its May 1997 comments, the City asked RSPA to find that the provisions challenged by AWHMT "are not preempted." That is the determination made by RSPA in PD–14(R), and it is unclear that the City is "aggrieved" by RSPA's determination in PD–14(R). *See* 49 CFR 107.211(a). To the extent that the exceptions in Secs. 7901.1.1 and 8001.1.1 mean that provisions in the Uniform Fire Code do not apply to transportation of hazardous materials in commerce, including incidental storage, that result derives from the plain language of the Uniform Fire Code and not from any inconsistency with the HMR. That matter is separate and distinct from issues relating to whether the storage of a hazardous material is "incidental to [its] movement," which will be considered in RSPA's rulemaking in Docket No. HM–223. ANPRM, 61 FR at 38524.

For all the reasons set forth above and in PD–14(R), 63 FR at 67507, there is no basis for RSPA to defer its determination in PD–14(R). Because of the concerns expressed in the City's petition for reconsideration, however, RSPA is clarifying that this determination applies only to the transportation of hazardous materials in commerce by a motor vehicle.

IV. Ruling

RSPA denies the City's petition for reconsideration and affirms its December 7, 1998 determination that Federal hazardous material transportation law does not preempt requirements in the following sections of the Houston Fire Code because these requirements do not apply to the transportation of hazardous materials subject to the HMR:

Secs. 105.4, 105.8.f.3, 105.h.1, 106.1, 7901.3.1, and 8001.3.1., to the extent that these sections require a permit for a vehicle to transport hazardous materials in commerce within the City, including activities (such as loading, unloading, handling, and dispensing) that are encompassed within the scope of transportation, and including the requirements for inspection of the vehicle and payment of a fee in order to obtain a permit;

Secs. 209 and 8001.1.2, concerning the definition of "hazardous materials" as relevant to the permit requirements in Secs. 105.8.f.3 and 8001.3.1;

Sec. 7904.6.1, concerning requirements for the design and construction of tank vehicles used to transport a flammable or combustible liquid;

Sec. 7904.6.3.4, concerning physical bonding during the loading of a tank vehicle with a flammable or combustible liquid, to prevent the accumulation of static charges;

Sec. 7904.6.5.2.1, prohibiting unattended parking of tank vehicles used for flammable or combustible liquids at specific locations or "at any other place that would, in the opinion of the chief, present an extreme life hazard"; and

Sec. 7904.6.7, requiring a fire extinguisher with a minimum rating of 2–A, 20–B:C on board a tank vehicle used for flammable or combustible liquids.

V. Final Agency Action

In accordance with 49 CFR 107.211(d), this decision constitutes RSPA's final agency action on AWHMT's application for a determination of preemption as to certain requirements in the Houston Fire Code concerning the transportation of hazardous materials, including storage and handling that are a part of transportation.

Issued in Washington, DC on June 17, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–16026 Filed 6–23–99; 8:45 am]

BILLING CODE 4910–60–P

UNITED STATES INSTITUTE OF PEACE

Announcement of the Spring Unsolicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency Announces its Upcoming Fall Unsolicited Grant Deadline, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution.

DEADLINE: October 1, 1999.

DATES: Application Material Available Upon Request. Receipt Date for Return of Application: October 1, 1999. Notification of Awards: February 2000.

ADDRESSES: For Application Package: United States Institute of Peace, Grant Program • Unsolicited Grants, 1200 17th Street, NW, • Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 429–6063 (fax), (202) 457–1719 (TTY), Email: grant__program@usip.org.

Applications also available on-line at our web site: www.usip.org.

FOR FURTHER INFORMATION CONTACT: The Grant Program; Phone (202) 429–3842.

Dated: June 19, 1999.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 99–16066 Filed 6–23–99; 8:45 am]

BILLING CODE 6820–AR–M

federal register

Thursday
June 24, 1999

Part II

Environmental Protection Agency

40 CFR Part 52

Interim Final Stay of Action on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport; Interim Final Rule

40 CFR Part 52

Findings of Significant Contribution and Rule-making on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6364–4]

RIN 2060–AH68

Interim Final Stay of Action on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: In today's action, EPA is temporarily staying, until November 30, 1999, the effectiveness of a final rule regarding petitions filed under section 126 of the Clean Air Act (CAA). Eight Northeastern States filed the petitions seeking to mitigate transport of one of the main precursors of ground-level ozone, nitrogen oxides (NO_X), across State boundaries. On April 30, 1999, EPA made final determinations that portions of the petitions are technically meritorious.

Subsequently, two recent rulings of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) have affected EPA's rulemaking under section 126. In one ruling, the court remanded the 8-hour national ambient air quality standard (NAAQS) for ozone, which formed part of the underlying technical basis for certain of EPA's determinations under section 126. In a separate action, the D.C. Circuit granted a motion to stay the State implementation plan (SIP) submission deadlines established in a related EPA action, the NO_X State implementation plan call (NO_X SIP call). In the April 30 notice of final rulemaking (NFR), EPA had deferred making final findings under section 126 as long as States and EPA remained on schedule to meet the requirements of the NO_X SIP call.

In response to these rulings, EPA is today staying the effectiveness of the April 30 NFR for a short period while EPA conducts a notice-and-comment rulemaking to address further issues arising from the court rulings.

EFFECTIVE DATE: This interim final rule is effective on July 26, 1999, until November 30, 1999.

ADDRESSES: Documents relevant to this action are available for inspection at the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548 between 8:00 a.m. and 5:30 p.m., Monday though Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Carla Oldham, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division; MD–15, Research Triangle Park, NC, 27711, telephone (919) 541–3347, e-mail at oldham.carla@epa.gov.

SUPPLEMENTARY INFORMATION:

Availability of Related Information

The official record for the section 126 rulemaking completed April 30, 1999, as well as the public version of the record, has been established under docket number A–97–43 (including comments and data submitted electronically as described below). EPA is adding a new section to that docket for purposes of today's interim final rule. The public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. In addition, the **FEDERAL REGISTER** rulemakings and associated documents are located at http://www.epa.gov/ttn/rto/126.

Outline

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I. Background

A. Findings Under Section 126 Petitions To Reduce Interstate Ozone Transport

On April 30, 1999, EPA took final action on petitions filed by eight Northeastern States seeking to mitigate what they describe as significant transport of one of the main precursors of ground-level ozone, NO_X, across State boundaries (64 FR 28250, May 25, 1999). The eight States (Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania, and Vermont) filed the petitions under section 126 of the CAA. Section 126 provides that if EPA finds that identified stationary sources emit in violation of the section 110(a)(2)(D) prohibition on emissions that significantly contribute to ozone nonattainment or maintenance problems in a petitioning State, EPA is authorized to establish Federal emissions limits for the sources.

In the April 30 NFR, EPA made final determinations that portions of six of these petitions are technically meritorious. Specifically, with respect to the 1-hour and 8-hour NAAQS for ozone, EPA made affirmative technical determinations that certain new and existing emissions sources in certain States emit or would emit NO_X in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, one or more States that submitted petitions in 1997–1998 under section 126. The sources that emit NO_X in amounts that significantly contribute to downwind nonattainment problems are large electric generating units (EGUs) and large non-EGUs for which highly cost-effective controls are available.

All of the eight petitioning States requested findings under section 126 under the 1-hour standard, and five of the petitioning States also requested findings under the 8-hour standard. The EPA took action under the 1-hour and 8-hour standards as specifically requested in each State's petition. The EPA made independent technical determinations for each standard with respect to the individual petitions. (See the part 52 regulatory text in the April 30, 1999 NFR.) Under the 1-hour standard, in aggregate for the 8 petitions, EPA made affirmative technical determinations of significant contribution for sources located in the following States: Delaware, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, and the District of Columbia. Under the 8-hour standard, in aggregate for the five petitions, EPA made affirmative

technical determinations of significant contribution for sources located in the same States as under the 1-hour standard plus seven additional States: Alabama, Connecticut, Illinois, Massachusetts, Missouri, Rhode Island, and Tennessee.

The EPA also provided that the portions of the petitions for which EPA made affirmative technical determinations would be automatically deemed granted or denied at certain later dates pending certain actions by the States and EPA regarding State submittals in response to the final NO_X SIP call. Interpreting the interplay between sections 110 and 126, EPA believes that a State's compliance with the NO_X SIP call would eliminate the basis for a finding under section 126 for sources located in that State, under these petitions. See 64 FR 28271–28274. As a consequence, EPA concluded that it was appropriate to structure its action on the section 126 petitions to account for the existence of the NO_X SIP call, given that it had an explicit and expeditious schedule for compliance. See 64 FR 28274–28277.

Under EPA's interpretation of section 126 of the CAA, a source or group of sources is emitting in violation of the prohibition of section 110(a)(2)(D)(i) where the applicable SIP fails to prohibit (and EPA has not remedied this failure through a FIP) a quantity of emissions from that source or group of sources that EPA has determined contributes significantly to nonattainment or interferes with maintenance in a downwind State. See 64 FR 28271–28274. Under both the section 126 petitions and the NO_X SIP call, EPA was operating on basically the same set of facts regarding the same pollutants and largely the same amounts of upwind reductions affecting the same downwind States. Thus, where a State has complied with the NO_X SIP call and EPA has approved its SIP revision, EPA would not find that sources in that State were emitting in violation of the prohibition of section 110 and therefore would not subject those sources to a Federal remedy under section 126. See 64 FR 28271–28274.

In the absence of the NO_X SIP call, EPA would simply have made a finding under section 126 in the final rule as to whether sources named in the petitions were emitting in violation of the prohibition of section 110. However, under the NO_X SIP call there was both a requirement for States to reduce their contribution to downwind nonattainment problems and an explicit and expeditious schedule for States to do so. In light of this existing requirement and a reasonable expectation that States would comply with it within a short and known time frame, EPA believed it was reasonable to make final only technical determinations as to which sources would be in violation of the prohibition of section 110 if the States or EPA failed to meet a schedule based on the schedule established in the NO_X SIP call. See 64 FR 28274–28277. Deferring the actual findings under section 126 allowed States subject to the NO_X SIP call an opportunity to comply with the NO_X SIP call before triggering the findings.

The EPA coordinated its section 126 findings with the NO_X SIP call compliance schedule in the following manner. EPA provided that for each source for which EPA had made an affirmative technical determination of significant contribution, EPA would be deemed to find that the source emits or would emit NO_X in violation of the prohibition of section 110(a)(2)(D)(i) under the following circumstances. First, the finding was deemed to be made for such sources in a State if by November 30, 1999, EPA had not either (a) proposed to approve a State's SIP revision to comply with the NO_X SIP call or (b) promulgated a FIP for the State. Second, the finding was deemed to be made for such sources in a State if by May 1, 2000, EPA had not either (a) approved a State's SIP revision to comply with the NO_X SIP call or (b) promulgated implementation plan provisions meeting the section 110(a)(2)(D)(i) requirements. Upon EPA's approval of a State's SIP revision to comply with the NO_X SIP call or promulgation of a FIP, the final rule provided that corresponding portions of the petitions would automatically be deemed denied. Also, if a finding is deemed to be made, it would be deemed to be withdrawn, and the corresponding portions of the petitions would also be deemed to be denied, upon EPA's approval of a State's SIP revision to comply with the NO_X SIP call or promulgation of a FIP. See 40 CFR 52.34(i).

B. Effect of Court Decisions

1. 8-Hour Ozone NAAQS

On May, 14, 1999, the D.C. Circuit issued an opinion questioning the constitutionality of the CAA authority to review and revise the NAAQS, as applied in EPA's revision to the ozone and particulate matter NAAQS. The Court stopped short of finding the statutory grant of authority unconstitutional, instead providing EPA with another opportunity to develop a determinate principle for promulgating NAAQS under the statute. The court continued by addressing other issues, including EPA's authority to classify and set attainment dates for a revised ozone standard. Based on the statutory provisions regarding classifications and attainment dates under sections 172(a) and 181(a), the court's ruling curtailed EPA's ability to require States to comply with a more stringent ozone NAAQS. The EPA has recommended to the Department of Justice that the government seek rehearing on this and other portions of the court's opinion. However, EPA also believes that unless and until the court's decision is revised or vacated, EPA should not continue implementation efforts with respect to the 8-hour standard that could be construed as inconsistent with the court's ruling. This reservation would not apply to any EPA actions based on the 1-hour standard.

2. Stay of Compliance Schedule for NO_X SIP Call

On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the NO_X SIP call. The NO_X SIP call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. *Michigan* v. *EPA*, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

II. Interim Final Stay

In light of the change in circumstances created by the court rulings, EPA believes it is appropriate to stay temporarily the section 126 April 30 NFR, while proceeding with a notice-and-comment rulemaking to address the issues raised by the rulings. In particular, with respect to the ruling on the 8-hour NAAQS, although EPA continues to believe that the 8-hour NAAQS has a compelling basis in public health protection, EPA believes that the court decision creates substantial uncertainty concerning the statutory authority both for revising the NAAQS and for implementing any such revised NAAQS. Accordingly, EPA believes that the portion of the section 126 April 30 NFR that requires sources in upwind States to implement controls for the purpose of reducing their impact on downwind 8-hour nonattainment areas should be stayed on an interim basis while EPA takes public comment on, and further considers, the matter.

With respect to the court's decision staying the SIP submission schedule for the NO_X SIP call, EPA believes it is no

longer appropriate to link its findings under section 126 to the compliance schedule for the NO_X SIP call by deferring making final findings as long as States and EPA are meeting that schedule. EPA believed that, while not explicitly contemplated by the statutory language, its initial approach was a reasonable way to address the requirement to act on the section 126 petitions in the same general time frame as that in which States were required to comply with the NO_X SIP call. Under this approach, EPA gave upwind States an opportunity to address the ozone transport problem themselves, but did not delay implementation of the remedy beyond May 1, 2003. The EPA had determined that requiring controls to be in place for the 2003 summer ozone season, i.e., by May 1, 2003, would bring about downwind compliance "as expeditiously as practicable," as required by Title I, and would require sources emitting in violation of the prohibition of section 110 to reduce emissions "as expeditiously as practicable," as required by section 126. Now, in the absence of any requirement that States submit SIP revisions under the NO_X SIP call by September 30, 1999, as previously required, it is unlikely that States will submit such revisions in time for EPA to propose approval by November 30, 1999, and finalize approval by May 1, 2000. It is not possible or appropriate to coordinate the section 126 action with the requirements of the NO_X SIP call without a schedule for compliance with the NO_X SIP call. Absent such action, deferring final action on the petitions and providing an automatic trigger mechanism tied to specific dates for action on the SIP revisions no longer makes sense.

In its upcoming proposal, EPA plans to address the concerns raised by the court rulings in the following manner. First, EPA plans to propose to stay indefinitely the affirmative technical determinations with respect to sources implicated on the basis of the 8-hour standard, pending further developments in the NAAQS litigation.[1] Second, EPA plans to propose to delete the automatic trigger mechanism and simply take final action granting or denying the petitions with respect to the sources for which EPA has made affirmative technical determinations. EPA intends to take final action on proposed changes by November 30, 1999. If necessary, however, as EPA plans to discuss in the proposal, EPA intends to extend this stay to the extent needed to ensure that the stay does not expire before EPA completes final action on the proposed changes.

[1] At this time, in light of the court's order staying the SIP submission deadline under the NO_X SIP call, EPA does not see a need to take similar action for the 8-hour NAAQS portions of the NO_X SIP call rule.

III. Rulemaking Procedures

The EPA is taking this action as an interim final rule without benefit of prior proposal and public comment because EPA finds that the Administrative Procedure Act (APA) good cause exception to the requirement for notice-and-comment rulemaking applies here. See 5 U.S.C. 553(b)(B). EPA believes that providing for notice-and-comment rulemaking before taking this action is impracticable and contrary to the public interest. In light of the impact that the court rulings have on key elements of the April 30 NFR, it would be contrary to the public interest for the rule to remain in effect while EPA conducts rulemaking to address the consequences of the court rulings on the April 30 NFR.

In particular, the April 30 NFR imposes a potential compliance burden on a number of sources based on the 8-hour ozone standard. While EPA disagrees with the holding and expects to take further action to address it, the form of the court's ruling on that standard and the status of the litigation have created substantial uncertainty as to whether and when these sources may become subject to control requirements under section 126 based on the 8-hour standard. Thus, EPA believes it is important to immediately inform these sources of the Agency's intent regarding their potential control obligations. In addition, States may view the automatic trigger mechanism now in place as pressuring them to comply with the NO_X SIP call schedule, even though that schedule has been stayed by the court. The EPA believes that preserving the linkage with the NO_X SIP call deadlines is inappropriate in light of the court's decision staying the submission deadlines, and might be viewed by the court as placing improper pressure on States. Today's action is necessary to immediately eliminate any such concerns. It would be impracticable to achieve these purposes of immediate clarification, and hence, would also be contrary to the public interest, if this action were delayed by providing for prior public notice-and-comment.

In addition, this interim final stay will expire in approximately five months and this action will not have any effect on the ultimate deadlines for control of emissions. EPA will soon follow this action with a proposal requesting comment on changes to the April 30 NFR consistent with the approach taken here to address the court decisions. In light of the short time period that this interim stay is in effect and the imminent rulemaking to take comment on a long-term resolution of the issues this interim stay is intended to address, EPA believes that providing for prior public comment is unnecessary.

This interim final stay is effective as of July 26, 1999. Given the need to provide immediate clarification regarding the effects of the court decisions and the fact that this action relieves a potential burden on certain affected parties, EPA finds good cause to make this rule effective July 26, 1999, which is the effective date of the rule stayed by this action. The EPA believes this is consistent with 5 U.S.C. 553(d)(1) and (3), as well as with 5 U.S.C. 801 and 808. While this interim final stay is effective for a limited period, EPA will also conduct full notice-and-comment rulemaking on similar changes to the April 30 NFR to address the court decisions.

IV. Status of Upcoming Related Actions

A. Section 126 Control Remedy NFR

The EPA proposed to implement a new Federal NO_X Budget Trading Program as the section 126 control remedy (63 FR 56292, October 21, 1998). The program will apply to all sources for which EPA makes a final section 126 finding. The EPA intended to finalize all aspects of the section 126 remedy by April 30, 1999. However, as discussed in the April 30 NFR, EPA needed additional time to evaluate the numerous comments it received on the trading program proposal and the source-specific emission inventory data. In the April 30 NFR, EPA finalized the general parameters of the section 126 remedy, including the decision to implement a capped, market-based trading program, identification of the sources subject to the program, specification of the basis for the total tonnage cap, and specification of the compliance date. The EPA committed to finalizing the details of the trading program, including the unit-by-unit allocations, by July 15, 1999.

As discussed in Section I.E. of the April 30 NFR, EPA entered into a consent decree with the petitioning States that, among other things, committed the EPA to issuing a final section 126 remedy by April 30, 1999. In order to satisfy that consent decree, EPA promulgated, on an interim basis, emission limitations that would be imposed on individual sources only in the event a finding under section 126 was automatically deemed made and EPA had not yet finalized the Federal NO_X Budget Trading Program regulations. The EPA emphasized it did not expect this default remedy, set forth in § 52.34(k), ever to be applied because the trading program would be finalized in July 1999, while the earliest a section 126 finding would be made was November 30 of the same year.

Because of the need to conduct a further rulemaking to address the impact of the recent court decisions on the section 126 rulemaking, EPA will be delaying the promulgation of the Federal NO_X Budget Trading Program for a short period of time. The EPA now intends to finalize the trading program and make the section 126 findings in the same rulemaking action. At that time, EPA would delete the default remedy from the rule. Therefore, under these new circumstances, the default remedy would also never be applied.

B. New Petitions

The EPA has recently received two additional section 126 petitions from the States of New Jersey (dated April 14, 1999) and Maryland (dated April 29, 1999). (See Docket A–99–21.) These petitions seek findings under both the 1-hour and 8-hour standards for large EGUs and large non-EGUs located in specified upwind States. The EPA is currently developing a schedule to take action on at least the 1-hour portions of these new section 126 petitions. Under section 126, EPA is required to take action to grant or deny the petitions within 60 days of receipt. However, section 307(d) of the CAA authorizes EPA to extend the timeframe for action up to 6 months if EPA determines that the extension is necessary to meet the CAA's rulemaking requirements. The EPA is issuing a final rule determining that a 6-month extension is necessary for both of the new petitions to allow EPA adequate time to develop the proposals and to provide the public sufficient time to comment. The EPA is also evaluating these petitions in light of the recent court decisions.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

The EPA believes that this interim final stay of pre-existing regulatory requirements is not a "significant regulatory action" because it relieves, rather than imposes, regulatory requirements, and raises no novel legal or policy issues.

B. Impact on Small Entities

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), provides that whenever an agency is required to publish a general notice of final rulemaking, it must prepare and make available a final Regulatory Flexibility Analysis, unless it certifies that the proposed rule, if promulgated, will not have "a significant economic impact on a substantial number of small entities."

This rule will not have a significant impact on a substantial number of small entities because it does not create any new requirements. Therefore, because this rule does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year." A "Federal mandate" is defined to include a "Federal intergovernmental mandate" and a "Federal private sector mandate" (2 U.S.C. 658(6)). A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments (2 U.S.C. 658(5)(A)(i)), except for, among other things, a duty that is "a condition of Federal assistance (2 U.S.C. 658(5)(A)(i)(I)). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions (2 U.S.C. 658(7)(A)).

The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Paperwork Reduction Act

This interim final rule does not impose any new information collection requirements. Therefore, an Information Collection Request document is not required.

E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

The Executive Order 13045 applies to any rule that EPA determines is (1) "economically significant" as defined under Executive Order 12866, and (2) addressed an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This interim final rule is not subject to Executive Order 13045, entitled "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant under E.O. 12866 and does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of its programs, policies, and activities on minorities and low-income populations. This Federal action imposes no new requirements and will not delay achievement of emissions reductions under existing requirements. Accordingly, no disproportionately high or adverse effects on minorities or low-income populations result from this action.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those Governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This interim final rule does not involve the promulgation of any new technical standards. Therefore, NTTAA requirements are not applicable to today's rule.

J. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

For the reasons discussed in the April 30 NFR, the Administrator determined that final action regarding the section 126 petitions is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of final actions regarding the section 126 rulemaking must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

K. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 of the CRA provides an exception to this requirement. For any rule for which an agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest, the rule may take effect on the date set by the Agency. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. § 804(2). As EPA is finding good cause to promulgate this rule without prior notice and comment, this rule will be effective July 26, 1999.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Emissions trading, Nitrogen oxides, Ozone transport, Reporting and recordkeeping requirements.

Dated: June 11, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52 of chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart A—General Provisions

2. Section 52.34 is amended by adding paragraph (l) to read as follows:

§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.

* * * * *

(l) *Temporary stay of rules.* Notwithstanding any other provisions of this subpart, the effectiveness of 40 CFR 52.34 is stayed from July 26, 1999 until November 30, 1999.

[FR Doc. 99–15712 Filed 6–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6364–7]

Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In today's action, EPA is proposing to amend in two respects a final rule it recently issued under section 126 of the Clean Air Act (CAA), acting on certain petitions related to interstate transport of pollutants. First, EPA is proposing to grant portions of those petitions addressed in that rule. Second, EPA is proposing to stay indefinitely certain affirmative technical determinations made in that rule related to such petitions, pending further developments in ongoing litigation. EPA recently promulgated, and is publishing elsewhere in this issue, an interim final stay of the same rule effective until November 30, 1999. This proposal takes comment on a longer-term resolution of the issues temporarily addressed by the interim final stay.

The final rule addressed petitions filed by eight Northeastern States seeking to mitigate transport of one of the main precursors of ground-level ozone, nitrogen oxides (NO_X), across State boundaries. On April 30, 1999, EPA made final determinations that portions of the petitions are technically meritorious.

Subsequently, two recent rulings of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) have affected EPA's rulemaking under section 126. In one ruling, the court remanded the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone, which formed part of the underlying technical basis for certain of EPA's determinations under section 126. In a separate action, the D.C. Circuit granted a motion to stay the State implementation plan (SIP) submission deadlines established in a related EPA action, the NO_X State implementation plan call (NO_X SIP call). In the April 30 notice of final rulemaking (NFR), EPA had deferred making final findings under section 126 as long as States and EPA stayed on schedule to meet the requirements of the NO_X SIP call.

In response to these rulings, EPA recently promulgated, and is publishing elsewhere in this issue, an interim final stay of the effectiveness of the April 30 NFR until November 30, 1999. With this action, EPA is proposing two changes to the April 30 NFR to address the issues raised by the rulings. EPA is also pursuing additional legal remedies concerning these rulings.

DATES: The comment period on this notice of proposed rulemaking (NPR) ends on August 9, 1999. Comments must be postmarked by the last day of the comment period and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible). A public hearing will be held on July 8, 1999, in Washington, DC. Please refer to **SUPPLEMENTARY INFORMATION:** For additional information on the comment period and public hearing.

ADDRESSES: Comments may be submitted to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information (CBI) should be submitted through e-mail.

Documents relevant to this action are available for inspection at the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548 between 8:00 a.m. and 5:30 p.m., Monday though Friday, excluding legal holidays. A reasonable fee may be charged for copying.

The public hearing will be held at the EPA Auditorium at 401 M Street SW, Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Carla Oldham, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC, 27711, telephone (919) 541–3347, e-mail at oldham.carla@epa.gov.

SUPPLEMENTARY INFORMATION:

Public Hearing

The EPA will conduct a public hearing on this NPR on July 8, 1999, beginning at 9:00 a.m. The hearing will be held at the EPA Auditorium at 401 M Street SW, Washington, DC, 20460. The metro stop is Waterfront, which is on the green line. Persons planning to present oral testimony at the hearings should notify JoAnn Allman, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–1815, e-mail allman.joann@epa.gov, no later than July 6, 1999. Oral testimony will be limited to five minutes each. Any member of the public may file a written statement by the close of the comment period. Written statements (duplicate copies preferred) should be submitted to Docket No. A–97–43 at the above address. The hearing schedule, including lists of speakers, will be posted on EPA's webpage at http://www.epa.gov/airlinks prior to the hearing. A verbatim transcript of the hearing, if held, and written statements will be made available for copying during normal working hours at the Air and Radiation Docket and Information Center at the above address.

Availability of Related Information

The official record for the section 126 rulemaking completed April 30, 1999, as well as the public version of the record, has been established under docket number A–97–43 (including comments and data submitted electronically as described below). EPA has added new sections to that docket for purposes of the interim final stay of that rule and today's proposed rulemaking. The public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. In addition, the **Federal Register** rulemakings and associated documents are located at http://www.epa.gov/ttn/rto/126.

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I. Background

A. Findings Under Section 126 Petitions To Reduce Interstate Ozone Transport

On April 30, 1999, EPA took final action on petitions filed by eight Northeastern States seeking to mitigate what they describe as significant transport of one of the main precursors of ground-level ozone, NO_X, across State boundaries (64 FR 28250, May 25, 1999). The eight States (Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania, and Vermont) filed the petitions under section 126 of the Clean Air Act (CAA). Section 126 provides that if EPA finds that identified stationary sources emit in violation of the section 110(a)(2)(D) prohibition on emissions that significantly contribute to ozone nonattainment or maintenance problems in a petitioning State, EPA is authorized to establish Federal emissions limits for the sources.

In the April 30 NFR, EPA made final determinations that portions of six of these petitions are technically meritorious. Specifically, with respect to the 1-hour and 8-hour NAAQS for ozone, EPA made affirmative technical determinations that certain new and existing emissions sources in certain States emit or would emit NO_X in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, one or more States that submitted petitions in 1997–1998 under section 126. The sources that emit NO_X in amounts that significantly contribute to downwind nonattainment problems are large electric generating units (EGUs) and large non-EGUs for which highly cost-effective controls are available.

All of the eight petitioning States requested findings under section 126 under the 1-hour standard, and five of the petitioning States also requested findings under the 8-hour standard. The EPA took action under the 1-hour and 8-hour standards as specifically requested in each State's petition. The EPA made independent technical determinations for each standard with respect to the individual petitions. (See the part 52 regulatory text in the April 30, 1999 NFR.) Under the 1-hour standard, in aggregate for the 8 petitions, EPA made affirmative technical determinations of significant contribution for sources located in the following States and the District of Columbia: Delaware, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. Under the 8-hour standard, in aggregate for the five petitions, EPA made affirmative technical determinations of significant contribution for sources located in the same States and the District of Columbia as under the 1-hour standard plus seven additional States: Alabama, Connecticut, Illinois, Massachusetts, Missouri, Rhode Island, and Tennessee.

The EPA also provided that the portions of the petitions for which EPA made affirmative technical determinations would be automatically deemed granted or denied at certain later dates pending certain actions by the States and EPA regarding State submittals in response to the final NO_X SIP call. Interpreting the interplay between sections 110 and 126, EPA stated in the April 30 NFR that a State's compliance with the NO_X SIP call would eliminate the basis for a finding under section 126 based on these petitions for sources located in that State. See 64 FR 28271–28274. As a consequence, EPA concluded it was appropriate to structure its action on the section 126 petitions to account for the existence of the NO_X SIP call, given that it had an explicit and expeditious schedule for compliance. See 64 FR 28274–28277.

Under EPA's interpretation of section 126 of the CAA, a source or group of sources is emitting in violation of the prohibition of section 110(a)(2)(D)(i) where the applicable SIP fails to prohibit (and EPA has not remedied this failure through a FIP) a quantity of emissions from that source or group of sources that EPA has determined contributes significantly to nonattainment or interferes with maintenance in a downwind State. See 64 FR 28271–28274. Under both the section 126 petitions and the NO_X SIP call, EPA was operating on basically the same set of facts regarding the same pollutants and largely the same amounts of upwind reductions affecting the same downwind States. Thus, where a State has complied with the NO_X SIP call and EPA has approved its SIP revision, EPA would not find that sources in that State were emitting in violation of the prohibition of section 110 and therefore subject to a Federal remedy under section 126. See 64 FR 28271–28274.

In the absence of the NO_X SIP call, EPA would simply have made a finding under section 126 in the final rule as to whether sources named in the petitions were emitting in violation of the prohibition of section 110. However, under the NO_X SIP call there was both a requirement for States to reduce their contribution to downwind nonattainment problems and an explicit and expeditious schedule for States to do so. In light of this existing requirement and a reasonable expectation that States would comply with it within a short and known timeframe, EPA believed it was reasonable to make final only technical determinations as to which sources would be in violation of the prohibition of section 110 if the States or EPA failed to meet a schedule for action based on the schedule established in the NO_X SIP call. See 64 FR 28274–28277. Deferring the actual findings under section 126 allowed States subject to the NO_X SIP call an opportunity to comply with the NO_X SIP call before triggering the findings.

The EPA coordinated its section 126 findings with the NO_X SIP call compliance schedule in the following manner. EPA provided that for the sources for which EPA had made an affirmative technical determination of significant contribution, EPA would be deemed to find that the sources emit or would emit NO_X in violation of the prohibition of section 110(a)(2)(D)(i) under the following circumstances. First, the finding was deemed to be made for such sources in a State if by November 30, 1999, EPA had not either (a) proposed to approve the State's SIP revision to comply with the NO_X SIP call, or (b) promulgated a FIP for the State. Second, the finding was deemed to be made for such sources in a State if by May 1, 2000, EPA had not either (a) approved the State's SIP revision to comply with the NO_X SIP call, or (b) promulgated implementation plan provisions meeting the section 110(a)(2)(D)(i) requirements. Upon EPA's approval of a State's SIP revision to comply with the NO_X SIP call or promulgation of a FIP, the final rule provided that corresponding portions of the petitions will automatically be deemed denied. Also, if a finding is deemed to be made, it will be deemed to be withdrawn, and the corresponding portions of the petitions will also be deemed to be denied, upon EPA's approval of a State's SIP revision to

comply with the NO_X SIP call or promulgation of a FIP. See 40 CFR 52.34(i).

B. Effect of Court Decisions

1. 8-Hour NAAQS

On May, 14, 1999, the D.C. Circuit issued an opinion questioning the constitutionality of the CAA authority to review and revise the NAAQS, as applied in EPA's revision to the ozone and particulate matter NAAQS. See *American Trucking Ass'ns* v. *EPA* No. 97–1441 and consolidated cases (D.C. Cir. May 14, 1999). The Court stopped short of finding the statutory grant of authority unconstitutional, instead providing EPA with another opportunity to develop a determinate principle for promulgating NAAQS under the statute. The court continued by addressing other issues, including EPA's authority to classify and set attainment dates for a revised ozone standard. Based on the statutory provisions regarding classifications and attainment dates under sections 172(a) and 181(a), the court's ruling curtailed EPA's ability to require States to comply with a more stringent ozone NAAQS. The EPA has recommended to the Department of Justice that the government seek rehearing on this and other portions of the court's opinion. However, EPA also believes that unless and until the court's decision is revised or vacated, EPA should not continue implementation efforts with respect to the 8-hour standard that could be construed as inconsistent with the court's ruling. This reservation would not apply to any EPA actions based on the 1-hour standard.

2. Stay of Compliance Schedule for NO_X SIP Call

On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the NO_X SIP call. The NO_X SIP call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. *Michigan* v. *EPA*, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

II. Proposal

Elsewhere in this issue of the **Federal Register**, EPA is publishing an interim final stay of the April 30 NFR, effective from July 26, 1999, until November 30, 1999, to provide EPA time to address the effects of these two decisions on the April 30 NFR. As discussed below, EPA is proposing in this action to amend the April 30 NFR to address the issues raised by the court's rulings. The EPA is only soliciting comment on the specific changes proposed here in response to the court's rulings. The EPA is not reopening the remainder of the April 30 NFR for public comment and reconsideration.

The EPA expects to promulgate a final rule based on this proposal on or before November 30, 1999, when the interim stay expires. To address the possibility of any delay of this final rulemaking, however, EPA is also taking comment on an extension of the interim final stay of the April 30 NFR in the event that EPA needs more time to complete the final rule. The EPA does not expect to need to promulgate such an extension, but if it were necessary, EPA anticipates that a two- or three-month extension should suffice. Providing for a possible extension, if necessary, ensures that the automatic trigger deadlines now in place will not become effective through a lapse in the stay before EPA completes this rulemaking. Under this schedule, the 3-year compliance schedule for sources subject to an affirmative finding would still be triggered in time to ensure that the intended emissions reductions are achieved by the start of the 2003 ozone season, as described in the April 30 NFR.

A. Indefinite Stay of Technical Determinations Based on the 8-Hour NAAQS Pending Further Litigation Developments

The EPA's belief, as stated above, is that unless and until the court's decision is revised or vacated, EPA should not continue implementation efforts under section 126 with respect to the 8-hour standard that could be construed as inconsistent with the court's ruling. Given this position, EPA believes that the Agency should not now move forward with findings under section 126 based on the 8-hour standard. Thus, EPA is proposing to stay indefinitely the affirmative technical determinations based on the 8-hour standard, pending further developments in the NAAQS litigation.[1] This stay would affect the 8-hour petitions filed by the States of Maine, Massachusetts, Pennsylvania, New Hampshire, and Vermont. This stay would also affect the affirmative technical determinations under the 8-hour NAAQS made for sources located in the following States and the District of Columbia: Alabama, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, and West Virginia. EPA made affirmative technical determinations only under the 8-hour NAAQS, and not under the 1-hour NAAQS for sources located in seven of these States. The seven states are Alabama, Connecticut, Illinois, Massachusetts, Missouri, Rhode Island, and Tennessee. This proposal would not affect EPA's affirmative technical determinations under the 1-hour standard, which apply to sources located in the following twelve States and the District of Columbia: Delaware, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

B. Findings Under Section 126 and Removal of Trigger Mechanism Based on NO_X SIP Call Compliance Deadlines

In light of the court's decision staying the compliance schedule for the NO_X SIP call, EPA believes it is no longer appropriate to link its findings under section 126 to the compliance schedule for the NO_X SIP call by deferring making final findings as long as States and EPA are meeting a schedule based on that schedule. EPA believed that, while not explicitly contemplated by the statutory language, its initial approach was a reasonable way to address the requirement to act on the section 126 petitions in the same general timeframe as that in which States were required to comply with the NO_X SIP call. Under this approach, EPA gave upwind States an opportunity to address the ozone transport problem themselves, but did not delay implementation of the remedy beyond May 1, 2003. The EPA had determined that requiring controls to be in place for the 2003 summer ozone season, i.e., by May 1, 2003, would bring about downwind compliance "as expeditiously as practicable," as required by Title I, and would require sources emitting in violation of the prohibition of section 110 to reduce emissions "as expeditiously as practicable," as required by section 126. Now, in the absence of any requirement that States submit SIP revisions under the NO_X SIP call by September 30, 1999, as previously required, it is highly unlikely that most States will submit such revisions in time for EPA to propose approval by November 30, 1999, and finalize approval by May 1, 2000. Because there is no schedule for compliance with the NO_X SIP call, there is no longer a basis for the automatic trigger deadlines provided in the final rule.

[1] At this time, in light of the court's order staying the SIP submission deadline under the NO_X SIP call, EPA does not see a need to take similar action for the 8-hour portions of the NO_X SIP call rule.

The EPA also does not believe it would be appropriate to further defer action on the section 126 petitions pending resolution of the NO_X SIP call litigation. There is no specific deadline for the court to issue a decision in the litigation. It is possible that the litigation would not be resolved in time for EPA to make findings under section 126 by May 1, 2000, as EPA has determined would be necessary to require sources to comply with the remedy by May 1, 2003. The EPA has determined that sources are able to come into compliance with the section 110 requirement by May 1, 2003. Thus, delay beyond that date would not be consistent either with the section 126 requirement that sources achieve reductions as expeditiously as practicable or with the maximum three year timeframe for sources to achieve reductions contemplated by section 126. In the April 30 NFR EPA explained why it made sense to provide a short delay in making the final findings, given the NO_X SIP call deadlines. This was a practical way to address the overlap between the actions that would be required under the NO_X SIP call and under the section 126 petitions. Under the circumstances, this coordinated approach implemented two separate statutory provisions in a manner that attempted to carry out Congress' intent for each provision, without interpreting one as overriding the other. However, delaying action under section 126 without explicit and expeditious deadlines for making the findings would in effect subordinate section 126 to section 110. This approach would deny downwind States the remedy provided by section 126 within the timeframes clearly specified in that section. The EPA does not believe that the plain language of the statute supports such an approach.

In light of these circumstances, it no longer makes sense to defer final action on the petitions and provide an automatic trigger mechanism tied to a schedule for action on SIP revisions responding to the NO_X SIP call. Thus, EPA is proposing to delete the automatic trigger mechanism for making findings and instead simply take final action making findings and granting or denying the petitions.[2] Specifically, for those sources for which it has made affirmative technical determinations, EPA is proposing to find that the sources are emitting in violation of section 110(a)(2)(D)(i)(I) and grant those portions of the petitions. Consistent with these proposed findings, EPA is proposing to remove the automatic trigger mechanism that provided that EPA would have made a finding that sources were emitting in violation of section 110(a)(2)(D)(i)(I) as of November 30, 1999 or as of May 1, 2000 if EPA had not proposed and finalized approval of SIP revisions complying with the NO_X SIP call (or promulgated a FIP) by those dates.

The EPA is not proposing to change one aspect of the automatic trigger mechanism established in the April 30 NFR. This provision would apply not on any particular date, but in the situation where EPA has made a finding under section 126, but the State has subsequently submitted and EPA has approved a SIP revision complying with the NO_X SIP call (or EPA has promulgated a FIP). This situation would arise if a state voluntarily chooses to revise its SIP consistent with the NO_X SIP call, including using the compliance date of May 1, 2003. The final rule provided that after a finding has been made with respect to a particular source or group of sources, the finding will be deemed to be withdrawn, and the corresponding part of the relevant petitions denied, if EPA approves a SIP revision or promulgates a FIP for the relevant State that complies with the NO_X SIP call, including the compliance dates specified in the NO_X SIP call. The EPA is not proposing to change this provision. See 64 FR 28275 for further discussion.

III. Status of Upcoming Related Actions

A. Section 126 Control Remedy NFR

The EPA proposed to implement a new Federal NO_X Budget Trading Program as the section 126 control remedy (63 FR 56292; October 21, 1998). The program will apply to all sources for which EPA makes a final section 126 finding. The EPA intended to finalize all aspects of the section 126 remedy by April 30, 1999. However, as discussed in the April 30 NFR, EPA needed additional time to evaluate the numerous comments it received on the trading program proposal and the source-specific emission inventory data. In the April 30 NFR, EPA finalized the general parameters of the section 126 remedy, including the decision to implement a capped, market-based trading program, identification of the sources subject to the program, specification of the basis for the total tonnage cap, and specification of the compliance date. The EPA committed to finalizing the details of the trading program, including the unit-by-unit allocations by July 15, 1999.

As discussed in Section I.E. of the April 30 NFR, EPA entered into a consent decree with the petitioning States that, among other things, committed the EPA to issuing a final section 126 remedy by April 30, 1999. In order to satisfy that consent decree, EPA promulgated, on an interim basis, emission limitations that would be imposed on individual sources only in the event a finding under section 126 was automatically deemed made and EPA had not yet finalized the Federal NO_X Budget Trading Program regulations. The EPA emphasized it did not expect this default remedy, set forth in section 52.34(k), ever to be applied because the trading program would be finalized in July 1999, while the earliest a section 126 finding would be made was November 30 of the same year.

Because of the need to conduct this further rulemaking to address the impact of the recent court decisions on the section 126 rulemaking, EPA will be delaying the promulgation of the Federal NO_X Budget Trading Program for a short period of time. The EPA now intends to finalize the trading program and make the section 126 findings in the same rulemaking action. At that time, EPA would delete the default remedy from the rule. Therefore, under these new circumstances, the default remedy would also never be applied.

B. New Petitions

The EPA has recently received three additional section 126 petitions from the States of New Jersey (dated April 14, 1999), Maryland (dated April 29, 1999), and Delaware (dated June 8, 1999). (See Docket A–99–21.) These petitions seek findings under both the 1-hour and 8-hour standards for large EGUs and large non-EGUs located in specified upwind States. The EPA is currently developing a schedule to take action on at least the 1-hour portions of these new section 126 petitions. Under section 126, EPA is required to take action to grant or deny the petitions within 60 days of receipt. However, section 307(d) of the CAA authorizes EPA to extend the timeframe for action up to 6 months if EPA determines that the extension is necessary to meet the CAA's rulemaking requirements. The EPA has issued a final rule determining that a 6-month extension for action on these petitions is necessary to allow EPA adequate time to develop the proposals and to provide the public sufficient time to comment. The EPA is also evaluating these

[2] Under today's proposal, these findings would not be effective with respect to the sources in the seven states for which EPA is proposing to stay the affirmative technical determinations, i.e., those sources for which the determinations were based on the 8-hour standard.

petitions in light of the recent Court decisions.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA believes that this action is not a "significant regulatory action."

B. Impact on Small Entities

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available an initial Regulatory Flexibility Analysis, unless it certifies that the proposed rule, if promulgated, will not have "a significant economic impact on a substantial number of small entities."

This proposal, if promulgated, will not have a significant impact on a substantial number of small entities because it does not create any new requirements.

With respect to the affirmative technical determinations based on the 8-hour standard, this proposal would stay the effectiveness of those determinations, thereby relieving regulatory requirements.

With respect to the deletion of the automatic trigger mechanism for making findings under section 126 for sources for which EPA has made affirmative technical determinations and the replacement of the automatic trigger with findings in the final rule, the regulatory requirements on sources would be unaffected by this proposed action. Because States are no longer subject to schedule for compliance established in the NO_X SIP call, it is extremely likely that under the April 30 NFR, the findings under section 126 for all sources for which EPA has made affirmative technical determinations would be automatically triggered on November 30, 1999. Making a final finding through a separate rulemaking by November 30, 1999, rather than an automatic finding under the existing rule, makes no practical difference whatsoever for the resulting regulatory requirements.

Therefore, because this proposal does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year." A "Federal mandate" is defined to include a "Federal intergovernmental mandate" and a "Federal private sector mandate" (2 U.S.C. 658(6)). A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments (2 U.S.C. 658(5)(A)(i)), except for, among other things, a duty that is "a condition of Federal assistance (2 U.S.C. 658(5)(A)(i)(I)). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions (2 U.S.C. 658(7)(A)).

The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action does not propose any new requirements, as discussed above. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this action.

D. Paperwork Reduction Act

This action does not propose any new information collection requirements. Therefore, an Information Collection Request document is not required.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The Executive Order 13045 applies to any rule that EPA determines is (1) "economically significant" as defined under Executive Order 12866, and (2) addresses an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposal is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant under E.O. 12866 and does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. In the April 30 NFR, the Agency referred to an analysis it conducted in conjunction with the final NO_X SIP call rulemaking. This was a general analysis of the potential changes in ozone and PM levels that may be experienced by minority and low-income populations as a result of the NO_X SIP call. The findings from this analysis are presented in volume 2 of the RIA for the NO_X SIP call. (Office of Air & Radiation Docket, #A–96–56, VI–B–09(vvvv), Regulatory Impact Analysis for the NO_X SIP Call, FIP, and section 126 Petitions. Volume 2, Health and Welfare Benefits. December 1998. EPA–452/R–98–003.)

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's action does not propose a mandate on State, local or tribal governments. The action does not propose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposal does not significantly or uniquely affect the communities of Indian tribal governments. This action does not propose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rulemaking.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not propose any new technical standards. Therefore, NTTAA requirements are not applicable to today's proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Emissions trading, Nitrogen oxides, Ozone transport, Reporting and recordkeeping requirements.

Dated: June 15, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

2. Section 52.34 is amended by revising paragraphs (i) and (k) to read as follows:

§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.

* * * * *

(i) *Action on petitions for section 126(b) findings.*

(1) The Administrator finds that each existing or new major source for which the Administrator has made an affirmative technical determination as described in paragraphs (c) through (h) of this section as to impacts on nonattainment or maintenance of a particular NAAQS for ozone in a particular petitioning State, emits or would emit NO_X in violation of the prohibition of Clean Air Act section 110(a)(2)(D)(i)(I) with respect to nonattainment or maintenance of such standard in such petitioning State.

(2) Notwithstanding any other provision of this paragraph (i), a finding under paragraph (i)(1) of this section as to a particular major source or group of stationary sources in a particular State will be deemed to be withdrawn, and the corresponding part of the relevant petition(s) denied, if the Administrator issues a final action putting in place implementation plan provisions that comply with the requirements of 40 CFR 51.121 and 51.122 for such State.

* * * * *

(k) *Stay of affirmative technical determinations with respect to the 8-hour standard.* Notwithstanding any other provisions of this subpart, the effectiveness of paragraphs (d), (e)(3) and (e)(4), (f), (h)(3) and (h)(4) is stayed.

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federal register

Thursday
June 24, 1999

Part III

Office of Personnel Management

U.S. Naval Research Laboratory (NRL) Personnel Management Demonstration Project; Department of the Navy (DON), Washington, D.C.; Notice

OFFICE OF PERSONNEL MANAGEMENT

U.S. Naval Research Laboratory (NRL) Personnel Management Demonstration Project; Department of the Navy (DON), Washington, DC

(Authority: 5 U.S.C. 4703)

AGENCY: Office of Personnel Management.

ACTION: Notice of approval of a demonstration project final plan.

SUMMARY: Title VI of the Civil Service Reform Act, 5 U.S.C. 4703, authorized the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management. Section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337, October 5, 1994) permits the Department of Defense (DoD), with the approval of the OPM, to carry out personnel demonstration projects at DoD laboratories designated as Science and Technology (S&T) Demonstration Project Reinvention Laboratories. The NRL was designated as one of these laboratories. This notice establishes the personnel management demonstration project designed by NRL, with the participation of, review by, and approval of the DON, the DoD, and the OPM.

DATES: Implementation of this demonstration project will begin no earlier than 90 days after the date of congressional notification.

FOR FURTHER INFORMATION CONTACT: NRL: Ms. Betty A. Duffield, Director, Strategic Workforce Planning, Code 1001.2, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, 202–767–3421. OPM: Mr. John André, Office of Merit Systems Oversight and Effectiveness, Demonstration Project Team, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415–6000, 202–606–1255.

SUPPLEMENTARY INFORMATION:

1. Background

Title VI of the Civil Service Reform Act, 5 U.S.C. 4703, authorized OPM to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management. Section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337, Octqber 5, 1994) permits the DoD, with the approval of the OPM, to carry out personnel demonstration projects at DoD laboratories designated as S&T Demonstration Project Reinvention Laboratories. The NRL was designated as one of these laboratories.

The purpose of the NRL project is to demonstrate a flexible and responsive personnel system that will enhance the Laboratory's ability to attract, retain, and motivate a high-quality workforce. To this end, the project involves:

(1) Streamlined hiring processes,
(2) Broadbanding,
(3) Simplified position classification,
(4) A Contribution-based Compensation System (CCS),
(5) extended probationary period for new employees, and
(6) modified reduction-in-force (RIF) procedures.

2. Overview

On February 23, 1999, OPM published the proposed demonstration project in the **Federal Register**, Volume 64, No. 35, Part III, pages 8964 through 9027. During the public comment period ending April 9, 1999, OPM received comments from seventeen individuals, including two who presented oral comments at a public hearing held on March 25, 1999. All comments were carefully considered.

A few of the commenters made statements concerning or suggested changes to areas that lie outside the project's scope or the demonstration project authority of 5 U.S.C. Chapter 47. These comments are not included in the summary below. Most of the commenters raised questions to clarify the philosophical and procedural aspects of the innovations. In many instances, these comments are more suitably addressed in internal guidance and are not included in the summary below. Several acknowledged that the demonstration did have benefits in many areas. The following summary addresses the comments received appropriate for the **Federal Register**, provides responses, and notes resultant changes to the original project plan in the first **Federal Register** Notice. Most commenters addressed several topics which are counted separately. Thus, the total number of comments exceeds the number of individuals cited earlier.

A. Positive Comments

Five commenters were generally supportive of the demonstration. They saw its various features as beneficial to employees, managers, and the Laboratory. Specific innovations cited included improvements in personnel practices such as streamlined hiring processes, simplified position classification, paybanding, compensation based on contribution to the organization, pay pool panel review of contribution assessments to better assure fairness and accuracy, and better alignment of responsibility, authority, and accountability.

B. General Project Comments

(1) *Comment:* Two commenters addressed the necessity of implementing a demonstration project for NRL considering that the studies cited to evidence the need for change were conducted in the 1980's; that NRL has been able to attract and retain a highly-qualified motivated workforce; and that a "revenue neutral" plan could not improve overall performance of an above-average organization and could only provide more money for top contributors by providing less money to others.

Response: There have been three recent studies (which confirm the findings in 100+ reports issued over the last 30 years) addressing science and engineering salary shortfall, especially for entry-level and senior personnel and those in high-demand disciplines; excessive recruitment delays resulting in loss of top tiered, highly sought after candidates; and inadequate workforce reshaping tools. These studies are: Naval Research Advisory Committee, "Report on the Department of the Navy Science and Technology Base," 1996; FY–98 Defense Authorization Act, Section 912(c) "Technology Leaders" Working Group Reports, February 1999; and A Report from a Panel of the National Academy of Public Administration, "Naval Research Laboratory: Position Management Analysis," March 1999.

Regarding the "revenue neutral" aspects of demonstration projects, NRL has always followed a practice of cost containment being an industrially-funded activity. NRL will try to maintain the demonstration as relatively cost neutral to the degree it can be measured given productivity increases, the effect of workforce reshaping, and other such circumstances.

The demonstration project provides that high contributors should be rewarded more than low contributors as it should be. By combining within grade increases (WGI's), quality step increases (QSI's), and career promotion increases into one merit increase fund, this provides the supervisors the flexibility and means to assign all permanent basic pay increases based on the actual level of contributions made to the

organization's mission, not merely longevity or a combination of longevity and performance.

C. Employee Participation

(1) *Comment:* Two commenters requested clarifying information regarding bargaining unit employee and union participation in the demonstration process.

Response: During the initial design phase, the union representative elected from NRL's bargaining units served on the Staffing Design Team. He attended the staffing design team meetings, participated in discussion of proposed human resource design initiatives, provided recommendations, and voted on the version he felt most beneficial to the Laboratory when several options were on the table. He also served on one of the subcommittees. Also, during development of the proposed design, the decision was made that NRL would not include the guard and trade and craft occupations within the demonstration project. Since NRL's bargaining units are within these occupations, NRL has not negotiated any inclusion. NRL determined that potential inclusion would be better negotiated once actual experience had been gained with proposed initiatives. Unions have been kept informed of the progress of the demonstration efforts as well as any potential impact it may have on bargaining unit employees.

(2) *Comment:* One commenter argues that NRL has failed to meet statutory requirements to consult with employees who will be covered under the demonstration.

Response: In addition to including approximately 60 employees on the initial design teams, NRL consulted with NRL employees in the following ways:

- Met with each NRL division head to brief the initial demonstration proposal. This resulted in substantial changes to the proposed RIF process.
- Prepared and distributed an Employee Briefing Handbook for all NRL employees.
- Conducted a series of briefings in 1996 to which all NRL employees were invited (approximately 1,600, over 50 percent attended). During the early stages of project development, published several articles in NRL publications provided to all employees.
- Conducted trials of CCS in 1995 and 1996, each involving 9 to 10 NRL divisions. Significant changes were made to CCS based on the feedback from those involved in these trials, including reduction in the number of critical elements to reduce redundancy and better reflect the balance of different types of NRL work.
- In the last 2 years as the structure of the project has solidified, NRL has continued to communicate regularly with the workforce about the project. Articles have been written in lab-wide publications, a web site established, supervisory training provided, and briefings given to employees in many NRL divisions.

In all of the above instances, employees were encouraged to provide comments and suggestions, and were given phone numbers, e-mail and mail addresses of individuals to whom they could comment. In addition, input from employees and supervisors continues to mold details of the project in terms of how the automation and standard operating procedures will be developed to best assist and support the operation of the project.

D. Accessions and Internal Placements

(1) *Comment:* Three individuals stated that the hiring of non-citizens should not be allowed.

Response: The goal of the NRL is to locate, hire, and retain the best qualified employees to accomplish the esoteric and highly technical research performed at the Laboratory. In order to attract and hire top notch scientists and engineers and to satisfy merit principles, the NRL advertises most of its science and engineering positions, many times on a nationwide basis, using paid advertisement in major newspapers and scientific journals. In some cases, the advertisement yields only one qualified candidate who is, on occasion, a non-citizen. The Federal government gives strong priority to hiring U.S. citizens and nationals, but allows for hiring of non-citizens in certain circumstances if the requirements of the following are met: immigration law; appropriations act ban on paying certain non-citizens; and executive order restriction on appointing non-citizens in the competitive service. If agencies find no qualified citizens available to fill a competitive service position, and if they meet all of the requirements of the appropriations ban and immigration rules, they may hire a non-citizen under an excepted appointment. It is only under these circumstances that the NRL hires non-citizens. Non-citizens have historically contributed to U.S. military research in very significant ways.

(2) *Comment:* One commenter requested clarification of NRL's maintained pay provision and the reasons for exceptions to this provision, particularly the exception relating to the DoD Priority Placement Program (PPP).

Response: Although participation of all covered employees is mandatory, acceptance of the new system is essential for the success of the project. For this reason, the NRL provided a "grandfather" clause for NRL employees on retained grade and pay immediately prior to implementation of the project by providing indefinite maintained pay entitlement if their rate of basic pay exceeds the maximum rate for their career level. However, if these same employees are in a RIF situation after the demonstration project is implemented, they will be subject to the demonstration project maintained pay rules while employed by NRL under the demonstration.

The PPP is the Defense Department's job assistance program for employees who are facing separation or demotion as a result of a RIF. Individuals placed through the PPP in lower-graded positions, unless otherwise ineligible, are entitled by law to retain their grade for a 2-year period or are entitled to indefinite pay retention. Notwithstanding the requirements of the NRL proposal as it affects its current employees, longstanding DoD policy has been to protect an employee's grade or pay to the maximum extent permitted by law. The NRL's exception to the maintained pay provision as it affects PPP placements affords this statutory entitlement. The same pay protection will be afforded NRL employees at the time they are affected by a RIF and are placed in non-NRL-demonstration positions.

(3) *Comment:* One commenter requested clarification as to whether employees who are failing to contribute enough to justify their existing pay can contribute enough to justify a promotion.

Response: Regarding whether an overcompensated employee may be promoted, overcompensation would typically suggest that an employee should not be promoted from his or her current position because he or she is not contributing at a level that justifies his or her current salary under the demonstration system. However, there may be circumstances under which an overcompensated employee would be an appropriate selectee for a vacancy even into a higher career level. For example, the new position might be in a different career field in which the employee had previously been successful. In addition, employees on maintained pay who are in a career level lower than their target career level, could receive a CCS promotion up to their target career level.

(4) *Comment:* One commenter expressed concern that the plan denies

placement rights to employees in RIF Assessment Category 0 (overcompensated employees who do not receive any portion of a general increase) even though these employees may be satisfactory performers.

Response: NRL agrees with the commenter. It is not NRL's intent to penalize satisfactory performers in a RIF situation. The plan does have a mechanism in place to identify unsatisfactory performers. Thus, only those employees who have been identified as unsatisfactory performers will be denied RIF assignment rights.

(5) *Comment:* One commenter suggested that the conversion plan for movement to a position outside the demonstration project should be simplified.

Response: NRL is required to use the standardized conversion plan the OPM developed for all activities under a demonstration project.

(6) *Comment:* One commenter requested clarification of why the date of the last equivalent pay increase is based on eligibility for a pay raise rather than for actual receipt of a pay raise.

Response: The date of the last equivalent increase is used to determine an employee's date of eligibility for a within-grade increase should they return to a position under the traditional General Schedule (GS) pay system. Unlike the GS pay system, the CCS system does not have a predetermined equivalent increase dollar amount. Under the CCS, an employee could receive a pay increase of $0 up to 20 percent (or more with the Director of Research approval) of their basic pay. Thus, it is reasonable to consider date of eligibility for a pay raise as the date of last equivalent increase.

(7) *Comment:* One commenter questioned whether rating and ranking would occur under the project when rating and ranking is limited to those instances when more than 15 candidates apply.

Response: The plan calls for rating and ranking to be done when there are more than 15 qualified applicants and/or qualified preference eligibles. Being able to refer up to 15 qualified applicants without rating and ranking allows the manager a broader pool of applicants from which to select which is one of the key objectives of this initiative, i.e., to give the manager the broadest possible range of qualified candidates from which to choose. Moreover, under the traditional system, it is conceivable to have 15 qualified applicants with the *same score* after the rating and ranking process. When this happens, we are required to use a tie-breaking method to determine the order in which candidates are listed on the referral certificate and the rule of three governs, i.e., selection must be from the top three candidates and a nonpreference applicant may not be selected over a preference eligible applicant. Thus, under the traditional system, it can be argued that equally qualified candidates are not given an equal opportunity to compete for selection.

E. Compensation

(1) *Comment:* One commenter suggested that Reductions in Pay owing to "Serious Medical Problem or Injury" should be obviated by "Reasonable Accommodation."

Response: Although NRL attemps to accommodate employees with medical impairments in their position of record, this is not always feasible. There are circumstances in which a change to a lower level position is an appropriate way to resolve a situation of medical inability to perform the original job. Such actions are properly taken under 5 CFR Chapter 752.

(2) *Comment:* Two commenters addressed the use of a single action to consolidate various types of pay actions. One commenter felt this could be done without the need to implement CCS and the other commenter was concerned that the different types of pay actions and deductions would not be visible to employees.

Response: The single pay action is not connected to the CCS but to the annual determination of total compensation. The demonstration project consolidates the various compensation decisions currently made at various times during a year into a decision made on an annual basis. (By law, GS WGI's are tied to individual employee service accrual.) As far as visibility of pay actions, each employee will receive a Notice of Personnel Action, SF–50, that will describe the general increase, merit increase, locality pay, award and/or allowance situation. Deductions from salary for health insurance, etc., are reported to employees through the biweekly leave and earnings statement issued by the Defense Finance and Accounting Service.

(3) *Comment:* Three commenters raised questions regarding how NRL would use market references to establish pay under the demonstration project.

Response: NRL managers and supervisors will reference market salary data when making personnel and organizational decisions. As part of the CCS process, managers and supervisors will refer to the market salary data to determine if the proposed salary for an individual is comparable to similar work in the marketplace. In addition, top management may be able to use market salary data as a factor in determining the appropriate budget allocation for the merit increase category for each NRL pay pool. The time after degree (or work experience) of the workforce may be able to be factored into the decision process, using the market salary data. As part of the position management process, managers and supervisors will also consult market salary data to assist in determining the appropriate Career Level for a proposed new position. It is NRL's goal to create and maintain a position and organizational structure that is effective, efficient, and competitive with similar organizations in private industry and academia.

(4) *Comment:* Three commenters raised various issues regarding the operation of the Distinguished Contributions Allowance (DCA). Two commenters indicated that the DCA would not be administered in a uniform fashion particularly if an employee leaves; one other questioned the calculation to fund the DCA pool, asking why this quite generous bonus system is only available to such a limited number of employees.

Response: Before discussing the Distinguished Contributions Allowance, there is some philosophy that needs to be pointed out. It is intended that supervisors and managers utilize fully the base salary ranges of the career levels and merit increases to move employees through the career levels as their level of work and contributions grow to their target career levels or the top of their assigned level. In addition, contribution, time-off, and special act awards are mechanisms by which highly deserving employees can be rewarded and recognized for work accomplished. The Distinguished Contributions Allowance, on the other hand, is designed to provide compensation for those professional employees who have attained the highest levels of their career fields; and because of high grade billet constraints or pay band salary limitations, NRL cannot adequately compensate them (in light of industry standards) for the superior, higher level of work (above their current career level) they are performing and are expected to perform over the next one to three years (S&E Professional Career Track employees could receive an extension up to two years for a total of five years). The DCA is not a part of basic salary; it is not a bonus or award; and the budget allocation for payment of a DCA is separate and apart from the other four pay categories under the demonstration project.

An employee receiving a DCA is required to sign a memorandum of understanding because the DCA is a temporary allowance for higher-level work yet to be performed. If the employee leaves NRL, the DCA would be terminated because the terms of the DCA would no longer be met (i.e., an allocation for contributions made here at NRL). If an employee is no longer performing work at the higher career level; or is no longer working on a special project (which was recognized as the reason for allocating a DCA), the DCA would be terminated. One is only eligible to receive this allocation as long as the terms of the DCA are being met. If the employee is not meeting the terms of the DCA, it may be terminated. This action is not grievable or appealable.

Regarding the funding of the DCA, it was decided that in order to provide a meaningful allowance for the high level of work expected, NRL would need the flexibility to set allowances along a continuum up to 25 percent of basic pay. Since the DCA would be reserved for those who had reached the top of their career levels, it was decided to take a snapshot of the current population to determine how many employees were at this level and what their total annual basic salaries were. Using various percentages of the total annual basic salaries and what the charge would be (depending on the percentage) to establish the budget allocation for DCA's, it was determined that a percentage *never greater than 10%* of the total annual basic salaries of eligible employees on a given date would establish the DCA budget allocation. For information purposes, there were 334 employees at the top of their career levels on the date of the calculation who would be eligible for DCA consideration. This is about 11 percent of the NRL workforce.

The DCA budget allocation was established as never greater than 10 percent of the total annual basic salaries of eligible employees. It was felt that this allocation would provide a pool of funds that could be used to better compensate extremely high-level contributors when their contributions are expected to continue for a short period of time and existing methods do not adequately compensate them (in light of industry standards). The approval of DCA's rests with the Director of Research who can incorporate a global perspective to the level of contributions and allowances being granted. In addition, this initiative will be evaluated as part of the normal demonstration project evaluation process.

(5) *Comment:* One commenter asked why all references to pay throughout the plan are given in "basic pay" without inclusion of locality-based adjustments.

Response: Basic pay is used throughout the plan because it is constant, i.e., it does not vary by locality pay area. It is the rate used government-wide to compute pay actions for employees paid under the General Schedule pay system before locality pay is applied. Basic pay, locality pay, and total salary are recorded separately on the employee's Notification of Personnel Action (SF 50) under the current system. This will not change under the demonstration project. Since the information provided the employee concerning pay under the project will be the same as the information provided under the current system, the wording in the project should not present a problem to employees.

(6) *Comment:* One commenter stated that the rules NRL will establish relating to severance pay for separated employees should be currently available for review as part of the demonstration process public comment period.

Response: The commenter is referring to the criteria NRL will need to define in order to make a reasonable job offer that parallels that now offered under Title 5 in a reduction-in-force situation. This level of detail is generally found in the internal operating documents.

(7) *Comment:* One commenter suggested that NRL should explain whether, under the process to convert special salary rate employees to the demonstration project, there are any combinations of factors that could result in an employee being assigned into a lower equivalent grade.

Response: The special salary rate conversion process explains that GS employees will be moved into the career track and career level which corresponds to their current GS grade and basic pay. Paragraph VI.A.4 further explains that if the new basic pay rate after conversion to the demonstration project pay schedule exceeds the maximum basic pay authorized for the career level, the employee will be granted maintained pay.

(8) *Comment:* One commenter stated that NRL should clarify whether in VI.A.4. example, step b., the digit "1" in the factor "1.0787" is an error.

Response: 1.0787 is correct. To increase an existing quantity (in this case 1.00 for basic salary) by a percentage (in this case .0787 for DC locality pay), and retain the existing quantity (1.00 for basic salary), it is proper to multiply by one, plus the percentage to be increased times the original amount. To increase basic salary by the additional amount of locality pay (for DC), it is therefore proper to multiply 1.0787 times the salary. This is so that the original amount of pay is kept, with the percentage of locality pay added. (This is equivalent to salary+.0787*salary; 1.0787*basic salary is a simple operation.)

(9) *Comment:* Three questions were received on how the 2.4% merit pay allocation would be distributed among the pay pools.

Response: The method(s) to be used to distribute funds among the various pay pools will be defined in the NRL Demonstration Standard Operating Procedures so they may be easily modified throughout the life of the demonstration without having to publish a new **Federal Register**. The actual methodology that will be used for initial implementation of the demonstration is still being determined. During the life of the demonstration the distribution of funds and the method(s) to determine that distribution can be modified as experience dictates. Within the funds available to a pay pool, the pay pool manager can distribute funds among occupational, organizational, or other groups.

F. Classification

(1) *Comment:* One commenter requested detailed information on the "pending position management study."

Response: The National Academy of Public Administration Center for Human Resources Management issued its position management analysis report for NRL in March 1999. The information gained from this report will be considered and addressed in appropriate internal operating guidelines on position management.

(2) *Comment:* One commenter stated that NRL should articulate the rationale and equality of applying different high grade constraints to administrative and technical occupations.

Response: In developing the career tracks and levels for the demonstration project, an analysis was made of the career progression of employees under the traditional classification system. It was found that the science and engineering professionals in the research divisions actually have a normal career progression to the non-supervisory "journeyman" level of GS–13. Therefore, under the demonstration, GS–13 was included in the target career level, with no interim competition or higher-level approval required. At the GS–14 and 15 levels, however, the DoD issues high-grade controls which limit the number of positions NRL may have

at these levels and the competition for these billets is keen. In addition, these positions are beyond the normal progression for the majority of S&E professionals and many of them are supervisory. Thus, the GS–14 and 15 positions were combined into one career level. The Director of Research maintains approval authority over these positions because of their limited number and because these are the positions from which many of the senior managers for NRL are chosen.

In the Administrative Specialist and Professional Career Track, the career progression for employees is generally to the GS–12 level. This is considered the non-supervisory, "journeyman" level for the vast majority of positions covered by this career track. The GS–13 level is normally the supervisory level and forms the applicant pool for filling the senior managerial positions in this career track. While this level is not considered a high-grade level for DoD high-grade controls, it does constitute NRL's pool of applicants for the senior administrative managerial positions and requires Director of Research approval for movement into this level just as for the S&E Professional Career Track level that constitutes the pool of applicants for senior S&E managerial positions. Just as the GS–14 and 15 S&E professional career level is under the DoD high-grade controls, so is the GS–14 and 15 administrative specialist and professional career level; and the Director of Research approval is required for movement into this career level.

(3) *Comment:* One commenter asked if there were no longer controls on movement to the top career level in the Administrative Support Career Track.

Response: Every position at NRL will be assigned a target career level which is the top level to which an incumbent can progress without further competition and Position Management Officer approval. These target career levels vary by occupation and sometimes by position within an occupation and serve as a control just as the current full performance level of a position serves as a control.

(4) *Comment:* Two commenters requested clarification on the Advanced Research Scientists and Engineers, Career Level V of the S&E Professional Career Track. Specifically, one asked why this was a DoD Program and both asked how many positions would be allocated to NRL.

Response: All but one of the current S&T reinvention demonstration project laboratories requested a Level V or equivalent for their S&T professional career track. Since this level would place employees in two of the DoD components in positions equivalent to executive positions which are tightly controlled, the DoD determined that this new category of executive resources should be limited until it could be tested over a 5-year period. Therefore, DoD allocated a total of 40 positions DoD-wide. It is up to NRL (as well as other affected demonstration projects) to submit requests to DoD for approval of these positions. DoD has not made specific number allocations to each demonstration project. It is our understanding that DoD will be allocating these positions based on merit. Therefore, NRL does not know how many positions will be approved.

G. CCS Appraisal Process

A total of fifteen commenters provided over forty comments on the CCS appraisal process. Two commenters praised the process. One believed CCS had the potential to significantly improve productivity and morale at NRL, and the second commenter was looking forward to CCS with optimism. Other comments are related to ten subtopics as follows:

(1) *Comments:* CCS Complexity: Two commenters believed the system to be too complicated. One commenter, who did not believe the system was overly complicated, pointed out that it was based on the current GS grade and step system.

Response: Any new appraisal system requires a "learning curve." NRL has worked to reduce this by training supervisors (including a pay pool panel exercise), and by encouraging and supporting trials of CCS within many NRL pay pools over several years. In addition, NRL conducted a series of briefings in 1996 to which all NRL employees were invited (over 50 percent attended), published articles in NRL publications, provided a handbook to all employees, made available a videotape and training materials to those seeking more information, established a demonstration project web site, conducted additional supervisor and employee briefings in 1998 and 1999, and developed a question and answer guide for frequently asked questions. NRL plans to continue its efforts until managers are satisfied with their understanding of the program.

(2) *Comments:* Longevity: Five commenters noted that CCS eliminates salary growth based on longevity. Two were pleased with this approach. Three viewed this as a negative feature of CCS or at least as having a potential negative impact on employees transitioning into the demonstration. Two commenters pointed out that within CCS, a higher contribution was expected from employees at the 10th step of their grade as compared to employees at the first step. One suggested an approach that would convert GS grades to the CCS system in a manner that would minimize the impact on employees transitioning into the demonstration and retain the effect of rewarding longevity.

Response: This suggestion was not adopted. It is true that CCS does not reward longevity, but neither is it designed to penalize longevity. It is a contribution to organizational mission assessment system, designed to pay employees for the level of work which they are contributing to the mission. Since a step 10 pay level in any GS grade is approximately 30 percent higher than the same grade's step 1 pay level, it is reasonable to expect a higher level or higher quality contribution from the higher paid employee.

(3) *Comments:* Score and Salary Caps: Four commenters expressed concern about the CCS scoring and the resulting salary implications. Three of the commenters believed that if they are currently being paid at the top of their career level, they must score beyond their level in order not to be considered overcompensated and lose their annual inflation increase. The fourth commenter was concerned that the score cap of 80 created a negative psychological impact for those employees who are paid at the GS–15, step 10 level, since the maximum score places the employee at the top of their normal pay range which creates the appearance of the employee being almost overpaid. This commenter suggested a change to the pay and score line which would allow employees at the GS–15, step 10 level, access to a few scores above 80.

Response: Three of the commenters apparently misunderstood the scoring process. Scores within each level encompass the salary spread of the GS-grades banded together for that level. The highest score within each level has a salary equivalent that includes the salary of the top step of the highest GS grade contained in the band. Therefore, an employee earning a salary at the top of his or her band will not be considered overcompensated if he or she earns the top score within the band. All employees who score within their normal pay range will be granted the annual general increase. Even for employees who score below their normal pay range and are determined to be overcompensated, denial of the general increase is not automatic, but is at the discretion of the pay pool manager.

The commenter's suggestion for changing the pay line is not adopted. NRL believes it is necessary to cap the score at 80 to protect the efficacy and integrity of job or pay classification of NRL positions. NRL recognizes the effect on employees at the GS–15, step 10 level, i.e., the score of 80 brings employees paid at this level near the overcompensated range. However, the benefits of protecting the process outweigh any negative psychological impact the capped scoring may create. Further, such negative impact may be overcome through education of the process. The actual monetary impact for employees is no different from the current system where the awards program is used to distinguish performance among the employees at the top of their career level. Also, under CCS, these employees may be eligible (depending upon their performance and contribution level) for a Distinguished Contributions Allowance (DCA).

(4) *Comments:* General Increase Pay: Two commenters believed that placing the general increase pay at risk by including it in the merit pool would help to more fairly compensate NRL employees. Five additional commenters opposed inclusion. One believed that no other demonstration project included the general increase and that any denial of general increase is an adverse action that requires a finding of unsatisfactory performance. Another commenter believed that denial of general increases with its potential for employees to regress into a lower career level could create the problem of appealable actions becoming non-appealable actions.

Response: Several demonstration projects that include denial of general increase have already been approved and implemented. Such denials do not constitute an adverse action under 5 CFR Part 432 or Part 752. NRL considers this to be an important and valuable component of its demonstration project; therefore, no change is made to eliminate this provision.

(5) *Comment:* Yearly Accomplishment Report (YAR): One commenter stated that mandatory YAR's may not be necessary for all positions at NRL and suggested several other alternatives which would limit this requirement.

Response: NRL agrees with the commenter's point and has made a change that will allow pay pool managers to exempt groups of positions from the requirement to submit a YAR, and to allow employees to submit YAR's at their own option in cases where they are not required.

(6) *Comment:* Contribution Awards: One commenter wanted clarification on when a contribution award would be granted to an employee who was in the normal pay range (and therefore already fully compensated) and when an award would be granted to an overcompensated employee. The same commenter also questioned the reasoning behind allowing overcompensated employees on maintained pay to receive awards and not allowing awards to otherwise overcompensated employees.

Response: Contribution awards may be based on many aspects of contributions, including quality, productivity, value to a sponsor, etc., and need not be based solely on the employee's degree of undercompensation. Employees in the normal pay range may do an outstanding job that deserves recognition but not necessarily a higher permanent pay. The project grants pay pool managers and panel members the authority to determine the factors they will consider in granting contribution awards, much the same as the authority exists in the present system.

Overcompensated employees on maintained pay are eligible for contribution awards since they are employees displaced from their original positions unrelated to their own levels of performance or contribution. These employees may be in positions where they do not have access to higher level work equivalent to their maintained pay yet they are outstanding performers in the level of work available to them. Therefore, they should be allowed the opportunity to be recognized for such performance in the new position, even if it is at a lower pay level than the one from which they were displaced.

(7) *Comments:* Fairness: Eight commenters stated several concerns about the equitable application of CCS elements. Some thought the system was too subjective and favoritism would drive the process. Some believed equitable consideration would not be given to research employees working primarily off-site (with non-NRL sponsors or in long-term training). Some expressed concern that more credit would be given to scientific than support personnel. One questioned what would prevent managers from inverting the process, i.e., allowing budgets to dictate appraisals. One commenter was also concerned about the difference in the sizes of the pay pool and two commenters thought that the panel makeup would be a conflict of interest for supervisors competing for the same funds as their subordinates. Three commenters discussed the 360 degree performance evaluation plan; one commented that CCS was contrary to this philosophy as well as other enlightened philosophies. The other two commenters strongly recommended using such a process in connection with CCS.

Response: NRL recognizes the subjective nature of CCS appraisals. By and large, NRL employees are not "widget makers." Meaningful assessment demands consideration of quality, value, customer service and other criteria that are subjective by nature. To reduce favoritism and promote fairness, the CCS process provides for review of employee assessments by a group of supervisory officials who are in the same pool. In the pay pool panel process scores assigned by individual supervisors are reviewed by other supervisors in the same pay pool. The supervisors work to apply the CCS level descriptors consistently within their pay pool, and to identify and correct any inappropriately inflated or deflated scores. The pay pool manager is a further review and ultimate approval level.

CCS contains various mechanisms to ensure employees receive proper credit under the generic elements, descriptors, and discriminators. Critical elements may be weighted, supplemental criteria can be used to identify actual work employees are responsible for carrying out, and discriminators may be considered either separately or in a more integrated manner for groups of employees. Flexibility was deemed necessary for individual divisions to tailor the system to their special needs. Supervisors will continue to determine the value of employees' accomplishments when assessing their contributions. Work valued under the current system will likely continue to be valued under CCS. The CCS elements and level descriptors specifically include expectations regarding sponsor/customer service to recognize the importance of this value at NRL. In addition, supervisors and employees will be encouraged to communicate throughout the appraisal period to avoid misunderstandings at the end of the year.

Supervisors have always been free to solicit feedback from sponsors and other customers to consider in employee appraisals. This will continue to be an option under CCS. However, a formal program providing for 360 degree evaluations has not currently been implemented. NRL may consider some type of 360 degree evaluation pilot in the future and will outline any such plan in the standard operating procedures.

Most pay pools will consist of all employees within an NRL division;

standard operating procedures will identify the pay pools more specifically. A few pay pools, as presently planned, will include fewer than the recommended 35 employees. These pools will consist of about 25 employees each. NRL believes that keeping employees in the same supervisory chain together for comparison purposes outweighs the disadvantage of a smaller pool. Panels are made up of supervisors or managers from the division. While NRL recognizes the possible appearance of a conflict of interest, the risk is deemed minimal since pay pool managers have ultimate approval over appraisal and pay decisions. In addition, pay pool panel members and managers must be able to explain any unusual findings to a third party evaluator who will be monitoring compensation trends.

(8) *Comments:* Team work: Three commenters raised concerns that CCS might serve as a disincentive for scientific collaboration and team work as employees compete for available funds.

Response: The CCS is a "contribution to organizational mission" assessment program which is what team building and Total Quality Leadership espouse. Scientific collaboration, cooperation and team work should be encouraged among all employees. This is why each career track under CCS has a critical element that addresses these values specifically.

(9) *Comments:* Equitable Pay Distribution: Two commenters were concerned that no firm rules existed for increasing employees' pay or denying general increase. One of the commenters wanted clarification on when NRL would *not* award a pay increase to move an undercompensated employee up into the normal pay range, and when it would *not* deny a pay increase to move an overcompensated employee down towards the NPR.

Response: One of the primary objectives of the project is to "provide NRL management with increased authority to manage human resources * * *." While the results of the CCS process provide the framework for pay adjustment decisions, NRL believes it is important that management judgment also be applied in making final decisions. To most effectively accomplish the mission of their organizations, NRL managers need flexibility in managing their most valuable resource, their employees. There are many possible situations in which a pay pool manager might not effect a pay adjustment that moves an over- or undercompensated employee into the normal pay range. One example might be the case of an undercompensated employee who achieved a significant increase in score over the previous year. The pay pool manager may determine that this employee is unlikely to be in a position to repeat this level of contribution the next year (perhaps because of a special project that is ending); therefore, a permanent pay increase that moved the employee all the way into the normal pay range would be inappropriate.

(10) *Comments:* Employee Rights: One commenter asserted that CCS provisions violate merit principles. The same commenter questioned the applicability of performance-based action procedures, requested clarification on what type of actions will no longer have appeal rights, and offered an alternative approach to limiting appeal rights, i.e., allow NRL to recover attorney fees from employees if they lose their appeal and meet certain other conditions. A second commenter believed that NRL's project provides for reducing employees' pay through adverse action by 6 percent and denying appeal rights on such actions. This same commenter suggested merit principles were not being followed and questioned why all avenues of appeal are being removed. A third commenter believes there must be an official grievance procedure for CCS, and suggests that grievances (and decisions to deny the general increase) be reviewed by a committee consisting of employee peers, the head of a different division, and someone from OPM or EEO.

Response: Merit principles provide that "Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector . . ., and appropriate incentives and recognition should be provided for excellence in performance." This is precisely what NRL seeks to do with the merit increase provisions of CCS. Since CCS does not provide for automatic within-grade increases, appeal rights do not exist for denial of any set increase. "Regression" into a lower career level resulting from an employee's pay being frozen is not appealable to the Merit Systems Protection Board (MSPB). Any actual reduction in pay will be taken through adverse or performance-based action procedures and will continue to be appealable to the MSPB. There is precedent for limiting appeal rights when no reduction in pay occurs. Several S&T reinvention laboratory demonstration projects, as well as China Lake, one of the earliest projects tested, have similar pay for performance or contribution to organizational mission methods and do not allow outside appeal rights for regression into a lower pay level. An NRL employee retains his or her grievance rights concerning CCS scores which serve as the basis of pay determinations. Concerning the applicability of performance regulations, CCS critical elements, descriptors, and discriminators do meet the definition of 5 CFR 430 and appropriate steps will be taken before taking any performance-based action under 5 CFR 432. The suggestion to recover attorney fees from employees is not deemed feasible and will not be adopted.

The suggestion regarding the content of a committee to review CCS grievances and general increase denials is not adopted. NRL believes that these tasks properly belong to managers in the employee's chain (particularly the pay pool manager), who are responsible for the effective management of their human resources. The demonstration does include a procedure for complaints regarding CCS appraisals, which requires the pay pool panel and pay pool manager to consider the grievance first. If the employee is not satisfied with the result, he or she may escalate the grievance to the next level supervisor.

3. Demonstration Project Notice Changes

The following is a summary of substantive changes and clarifications which have been made to the project proposal.

A. II. Introduction, E. Participating Organizations and Employees. Wording changed to clarify participation of union representative.

B. III. Accessions and Internal Placement, E. Expanded Detail Authority. Clarified approval authority on details beyond one year and limit on details to higher-level positions.

C. III. Accessions and Internal Placements, G. Definitions, 6. Pay Adjustment. Added a statement that termination of maintained pay is also a pay adjustment.

D. III. Accessions and Internal Placements, G. Definitions, 9. Approving Manager. Clarified definition of approving manager and personnel actions.

E. III. Accessions and Internal Placements, H. Pay Setting Determinations Outside the CCS, 2. Internal Actions. Added a statement to clarify that these actions cover employees within the NRL demonstration.

F. III. Accessions and Internal Placements, J. Expanded Temporary Promotions. Clarified limit on temporary promotions within a 24-month period.

G. IV. Sustainment, B. Integrated Pay Schedule (IPS). Clarified adjusted basic pay cap.

H. IV. Sustainment, C. Contribution-based Compensation System (CCS), 2. CCS Process and 4. Annual CCS Appraisal Process. Modified to clarify that the appropriate discriminators to the position need to be considered in the assessment process.

I. IV. Sustainment, B. IPS, 5. Distinguished Contributions Allowance (DCA). Clarified conditions for which a DCA may be appropriate and clarified eligibility.

J. IV. Sustainment, C. Contribution-based Compensation System (CCS), 4. Annual CCS Appraisal. Modified to allow exceptions to the mandatory yearly accomplishment report requirement.

K. IV. Sustainment, C. Contribution-based Compensation System (CCS), 7. Compensation, c. Locality Increases. Clarified adjusted basic pay cap.

L. V. Separations, B. RIF, 2. RIF Definitions, c. Service Computation Date, (1) CCS Process Results Credit, Figure 11. Clarified eligibility for RIF assessment categories 2. and 3.

M. V. Separations, B. RIF, 3. Displacement Rights, (d) Ineligible for Displacement Rights. Changed to allow displacement rights to individuals in Assessment Category 0.

N. VI. Demonstration Project Transition, A. Initial Conversion or Movement to the Demonstration Project, 3. WGI Buy-in. Clarified eligibility for the WGI buy-in.

O. VI. Demonstration Project Transition, C. Training. Modified to clarify degree of training that will be available to various Laboratory groups.

P. IX. Demonstration Project Costs, A. Transition. Clarified eligibility for the WGI buy-in.

Q. X. Automation Support, D. RIF Support System (RIFSS). Removed reference to an Appendix J.

R. Appendix E, Computation of the IPS and the NPR. Illustrative normal pay range rails redrawn on charts to more accurately reflect scores and salaries.

Dated: June 17, 1999.

Office of Personnel Management.

Janice R. Lachance,

Director.

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I. Executive Summary

Over the last 30 years, many studies of the DoD laboratories have been conducted on laboratory quality and personnel. Virtually all of these studies have recommended improvements in personnel policies, organization, and management. In order to respond to the findings of these studies, this proposed personnel demonstration project encompasses streamlined hiring processes, simplified position classification, the CCS, and modified RIF procedures.

The demonstration project described herein was designed by the NRL, with the participation of and review by the DoN, the DoD, and the OPM. The purpose of the demonstration project is to develop and implement a personnel management system that will enable NRL to obtain, maintain, and retain the highest quality workforce possible to accomplish its mission in support of national defense. There are four primary objectives of the demonstration project:

(1) Provide NRL increased authority to manage human resources,

(2) Enable NRL to hire and retain the best qualified employees,

(3) Enable NRL to compensate its employees equitably at a rate that is more competitive with the labor market, and

(4) Provide a direct link between levels of individual contribution and the compensation received.

Initially, the demonstration project will cover all NRL employees except Senior Executive Service (SES) members, scientific and professional (ST) employees (above GS-15), guards, and trade and craft employees. The guards and trade and craft employees may be included at a later time, after more experience is gained in the operation of the CCS. The project will be reviewed and evaluated throughout its duration by OPM, DoD, DoN, and NRL. In addition to evaluation topics, such as goal attainment and employee and management acceptance, the project will be assessed for cost containment. After 5 years, the project will be evaluated to determine if it is to be made permanent, modified, or terminated. Areas not specifically addressed will use provisions that currently exist in 5 United States Code (U.S.C.) and 5 Code of Federal Regulations (CFR).

II. Introduction

A. Purpose

The goal of this personnel demonstration project is to develop and implement a human resources management system that will enable NRL to obtain, maintain, and retain, into the 21st century, the highest quality workforce possible to accomplish its mission in support of national defense. NRL's mission is to conduct a broadly-based multidisciplinary program of scientific research and advanced technological development directed toward new and improved materials, equipment, techniques, systems, and related operational procedures for the DoN. The human resources management system must enable NRL to attract and retain the best scientists, engineers, and support personnel available in the labor market.

The demonstration project has the following four primary objectives:

a. Provide NRL management with increased authority to manage human resources consistent with its operation under the Navy Working Capital Fund (NWCF) as an industrially-funded activity;

b. Provide a recruitment process, within the context of merit principles, that will enable NRL to hire the best qualified employees at a reasonable cost and for competitive compensation;

c. Provide a compensation system that will enable NRL to compensate its employees equitably at a rate that is commensurate with their levels of responsibility and contribution, and is competitive with those found in the labor market; and

d. Provide a direct link between levels of individual contribution and the compensation received.

B. Problems With the Current System

The demonstration project addresses a set of issues regarding human resources in the Federal laboratory system. These problems have been extensively documented in a long series of reports by blue-ribbon panels. These include the following: the Packard Report,* the Grace Commission Report,** the Fowler Report,*** and other high-level analyses of the state of Federal research capabilities. In all of these reports, there is a common theme * * * that Federal laboratories need more efficient, cost effective, and timely processes and methods to acquire and retain a highly creative, productive, educated, and trained workforce.

The NRL must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant compensation that attracts high-quality employees. Once hired, NRL must have the means to motivate and reward employees for their innovative contributions to ensure that the creative process is continually renewed. Compensation levels must be directly linked to the levels of individual contributions. High contributors must be rewarded both to encourage their continued contributions and to ensure their retention at NRL. Similarly, lower contributing individuals should receive less compensation, or, in some cases, be encouraged to seek other employment.

C. Waivers Required

NRL proposes changes in the following broad areas to address its problems in human resources management: accessions and internal placements, sustainment, and separations. Appendix A lists the laws,

* White House Science Council, "Report of the White House Science Council, Federal Laboratory Review Panel," (Packard Report), May 1983.

** Task Force on Research and Development (R&D), "President's Private Sector Survey on Cost Control, Task Force Report on R&D," (Grace Commission Report), 8 December 1983.

*** Defense Science Board, "Report of the Defense Science Board 1987 Summer Study on Technology Base Management," (Fowler Report), December 1987.

rules and regulations requiring waivers to enable NRL to implement the proposed system.

D. Expected Benefits

The demonstration project is expected to result in:

(1) Maintaining the quality of the NRL workforce in the scientific and engineering disciplines as well as administrative specialist and professional and support professions;

(2) More timely processing of personnel actions;

(3) Increased retention of high-level contributors and wider distribution of salaries; and

(4) increased satisfaction with human resources management processes by employees and managers.

E. Participating Organizations and Employees

Initially, the demonstration project would cover all NRL employees except SES members, ST employees, guards, and trade and craft employees. The guards and trade and craft employees may be included at a later time, after more experience is gained in the operation of the CCS. Figure 1 identifies the employees by group for major geographic locations. NRL sites with less than 10 employees each are identified as "Other" in Figure 1.

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NRL Demonstration Project Employees by Group and Geographic Site

(as of 30 September 1998)

	EMPLOYEES				
	S&E Prof	S&E Tech	Admin Spec and Prof	Admin Suppt	Total
Washington, DC	1531	160	378	470	2543
Chesapeake Beach, MD	1	6	2	2	11
Stennis Space Ctr., MS	148	22	34	62	266
Monterey, CA	52	0	3	7	62
Mobile, AL	3	4	0	2	9
Arlington, VA	5	0	13	4	23
Other	27	9	12	4	52
All Sites	1767	201	442	551	2966

Figure 1. NRL Demonstration Project Employees by Group and Geographic Site

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A union representative elected from the following bargaining units served on the Staffing Design Team and participated in the development of the accession and internal placement interventions proposed in this plan:

Federal Firefighters Association—Firefighters, Chesapeake Beach, MD (as of 6/23/98 this function was transferred to another activity)

Washington Area Metal Trades Council—Trades and Crafts Employees, Washington, DC

International Association of Machinists and Aerospace Workers—Guards, Washington, DC

F. Project Design

In response to the authority granted by Congress to develop a demonstration project, NRL's Director of Research (DOR) set up five design teams to develop the project plan. Each team was led by a senior NRL manager from outside the Human Resources Office (HRO), and was responsible for developing project proposals in one of the five primary functional areas of the project. Each team was comprised of two human resources advisors, an Equal Employment Opportunity (EEO) advisor, several midlevel supervisors or managers, an NRL Administrative Council representative, and several employee representatives (including bargaining unit representatives when appropriate).

III. Accessions and Internal Placements

A. Hiring Authority

1. Background

Private industry and academia are the principal recruiting sources for scientists and engineers at NRL. It is extremely difficult to make timely offers of employment to hard-to-find scientists and engineers. Even when a candidate is identified, he or she often finds another job opportunity before the lengthy recruitment process can be completed.

2. Delegated Examining

a. Competitive service positions within the NRL Demonstration Project will be filled through Merit Staffing or under Delegated Examining.

b. The "Rule of Three" will be eliminated. When there are no more than 15 qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds 15 or there is a mix of preference and nonpreference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required. If the candidates are rated and ranked, a random number selection method using the application control number will be used to determine which applicants will be referred when scores are tied after the rating process. Veterans will be referred ahead of non-veterans with the same score.

B. Legal Authority

For actions taken under the auspices of the NRL Demonstration Project, the legal authority, Public Law 103–337, will be used. For all other actions, NRL will continue to use the nature of action codes and legal authority codes prescribed by OPM, DoD, or DoN.

C. Determining Employee and Applicant Qualifications

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MINIMUM QUALIFICATIONS REQUIREMENTS

Level	Min. Qualifications Requirement Equiv.
S&E Professional	
I	GS-1
II	GS-5
III	GS-11
IV	GS-14
V	Appropriate Exp.
S&E Technical	
I	GS-1
II	GS-5
III	GS-9
IV	GS-11
Administrative Specialist and Professional	
I	GS-1
II	GS-5
III	GS-11
IV	GS-13
V	GS-14
Administrative Support	
I	GS-1
II	GS-5
III	GS-8

Figure 2. Minimum Qualifications Requirements

BILLING CODE 6325–01–C

Special DoN or DoD requirements not covered by the OPM Qualification Standards Operating Manual for GS Positions, such as Defense Acquisition Workforce Improvement Act (DAWIA) qualification requirements for acquisition positions and physical performance requirements for sea duty, work on board aircraft, etc., must be met.

D. Noncitizen Hiring

Where Executive Orders or other regulations limit hiring noncitizens, NRL will have the authority to approve the hiring of noncitizens into competitive service positions when qualified U.S. citizens are not available. Under the demonstration project, as with the current system, a noncitizen may be appointed only if it has been determined there are no qualified U.S. citizens. In order to make this determination, the position will be advertised extensively throughout the nation using paid advertisements in major newspapers or scientific journals, etc., as well as the "normal" recruiting methods. If a noncitizen is the only qualified candidate for the position, the candidate may be appointed. The selection is subject to approval by the NRL approving manager. The demonstration project constitutes a delegated examining agreement from OPM for the purposes of 5 CFR 213.3102(bb).

E. Expanded Detail Authority

Under the demonstration project, NRL's approving manager would have the authority:

(1) To effect details up to 1 year to demonstration project positions without the current 120-day renewal requirement; and

(2) To effect details to a higher level position in the demonstration project up to 1 year within a 24-month period without competition.

Details beyond one-year require the approval of the Commanding Officer (CO), NRL and are not subject to the 120-day renewal requirement.

F. Extended Probationary Period

All current laws and regulations for the current probationary period are retained except that nonstatus candidates hired under the demonstration project in occupations where the nature of the work requires the manager to have more than one year to assess the employee's job performance will serve a 3-year probationary period. Employees with veterans' preference will maintain their rights under current law and regulation.

G. Definitions

1. Basic Pay

The total amount of pay received at the rate fixed through CCS adjustment for the position held by an employee including any merit increase but before any deductions and exclusive of additional pay of any other kind.

2. Maintained Pay

An employee may be entitled to maintain his or her rate of basic pay if that rate exceeds the maximum rate of basic pay for his or her career level as a result of certain personnel actions (as described in this plan). An employee's initial maintained pay rate is equal to the lesser of (1) the basic pay held by the employee at the time an action is taken which entitles the employee to maintain his or her pay or (2) 150 percent of the maximum rate of basic pay of the career level to which assigned. The employee is entitled to maintained pay for 2 years or until the employee's basic pay is equal to or more than the employee's maintained pay, whichever occurs first. Exceptions to the 2-year limit include employees on grade and pay retention "grandfathered" in upon initial conversion into the demonstration project, former special rate employees receiving maintained pay as a result of conversion into the project, and employees placed through the priority placement programs. Employees will receive half of the across-the-board GS percentage increase in basic pay and the full locality pay increase while on maintained pay. Upon termination of maintained pay, the employee's basic pay will be adjusted according to the CCS appraisal process. If the employee's basic pay exceeds the maximum basic pay of his or her career level upon expiration of the 2-year period, the employee's pay will not be reduced; the employee will be in the overcompensated range of basic pay category for CCS pay increase purposes, see Figure 10.

Maintained pay shall cease to apply to an employee who:

(1) has a break in service of 1 workday or more; or

(2) is demoted for personal cause or at the employee's request.

The employee's maintained rate of pay is basic pay for purposes of locality pay (locality pay is basic pay for purposes of retirement, life insurance, premium pay, severance pay, advances in pay, workers' compensation, and lump-sum payments for annual leave but not for computing promotion increases). Employees promoted while on maintained pay may have their basic pay (excluding locality pay) set up to 20 percent greater than the maximum basic pay for their current career level or retain their "maintained pay," whichever is greater.

3. Promotion

The movement of an employee to a higher career level within the same career track or to a different career track and career level in which the new career level has a higher maximum basic salary rate than the career level from which the employee is leaving.

4. Reassignment

The movement of an employee from one position to another position within the same career level in the same career track or to a position in another career track and career level in which the new career level has the same maximum basic salary rate as the career level from which the employee is leaving.

5. Change to Lower Career Level

The movement of an employee to a lower career level within the same career track or to a different career track and career level in which the new career level has a lower maximum basic salary range than the career level from which the employee is leaving.

6. Pay Adjustment

Any increase or decrease in an employee's rate of basic pay where there is no change in the employee's position. Termination of maintained pay is also a pay adjustment.

7. Detail

The temporary assignment of an employee to a different demonstration project position for a specified period when the employee is expected to return to his or her regular duties at the end of the assignment. (An employee who is on detail is considered for pay and strength purposes to be permanently occupying his or her regular position.)

8. Highest Previous Rate

NRL will establish maximum payable rate rules that parallel the rules in 5 CFR 531.202 and 531.203 (c) and (d).

9. Approving Manager

Managers at the directorate, division head, division superintendent, or directorate-level staff offices who have budget allocation/execution; position management; position classification; recruitment; and staffing authorities for their organization.

H. Pay Setting Determinations Outside the CCS

1. External New Hires

a. This includes reinstatements. Initial basic pay for new appointees into the demonstration project may be set at any point within the basic pay range for the career track, occupation, and career level to which appointed that is consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be consideration of education, training, experience, scarcity of qualified applicants, labor market considerations, programmatic urgency, or any combination thereof which is pertinent to the position to which appointed. Highest previous rate may be used to set the pay of new appointees into the demonstration project. (The approving manager authorizes the basic pay.)

b. Transfers from within DoD and other Federal agencies will have their pay set using pay setting policy for internal actions based on the type of pay action.

c. A recruitment or relocation bonus may be paid using the same provisions available for GS employees under 5 U.S.C. 5753. Employees placed through the DoD Priority Placement Program (PPP), the DoN Reemployment Priority List (RPL), or the Federal Interagency Career Transition Assistance Plan are entitled to the last earned rate if they have been separated.

2. Internal Actions

These actions cover employees within the demonstration project, including demonstration project employees who apply and are selected for a position within the project.

a. Promotion. When an employee is promoted, the basic pay after promotion may be up to 20 percent greater than the employee's current basic pay. However, if the minimum rate of the new career level is more than 20 percent greater than the employee's current basic pay, then the minimum rate of the new career level is the new basic pay. The employee's basic pay may not exceed the basic pay range of the new career level. Highest previous rate may be applied, if appropriate. (The approving manager authorizes the basic pay.) Note: Most target career level promotions will be accomplished through the CCS appraisal and pay adjustment process (see section IV.C.8).

b. Pay Adjustment (Voluntary Change to Lower Pay) or Change to Lower Career Level (except RIF). When an employee accepts a voluntary change to lower pay or lower career level, basic pay may be set at any point within the career level to which appointed, except that the new basic pay will not exceed the employee's current basic pay or the maximum basic pay of the career level to which assigned, whichever is lower. Highest previous rate may be applied, if appropriate. (The approving manager authorizes the basic pay.)

(1) Examples of Voluntary Change to a Lower Career Level. An employee in an Administrative Specialist and Professional Career Track, Career Level III, position may decide he or she would prefer a Career Level II position in the Administrative Support Career Track because it offers a different work

schedule or duty station. An employee in Level IV of the Administrative Specialist and Professional Career Track who has a family member with a serious medical problem and wants to be relieved of supervisory responsibilities may request a change to Career Level III.

(2) Example of Pay Adjustment (Voluntary Change to Lower Pay) or Change to a Lower Career Level. An employee may accept a change to lower pay or to a lower career level through a settlement agreement. A Research Physicist who is in Level III and is being paid near the top of Level III, is rated unacceptable in the critical element Research and Development (R&D) Business Management. In settlement of a proposal to remove this employee for unacceptable performance, an agreement is reached which reduces the employee's pay to a rate near the beginning of Level III.

c. Pay Adjustment (Involuntary Change to Lower Pay) or Change to Lower Career Level Due to Adverse or Performance-based Action. When an employee is changed to a lower career level, or receives a change to lower pay due to an adverse or performance-based action, the employee's basic pay will be reduced by at least 6 percent, but will be set at a rate within the rate range for the career level to which assigned. (The approving manager authorizes the basic pay.) Such employees will be afforded appeal rights as provided by 5 U.S.C. 4303 or 7512.

d. Involuntary Change to Lower Career Level or Reassignment to a Career Track with a Lower Salary Range, Other than Adverse or Performance-based. If the change is not a result of an adverse or performance-based action, the basic pay will be preserved to the extent possible within the basic pay range of the new career level. If the pay cannot be set within the rate range of the new career level, it will be set at the maximum rate of the new career level and the employee's pay will be reduced. If the change is a result of a position reclassification resulting in the employee being assigned to a lower career level or reassigned to a different career track with a lower maximum basic salary range, the employee is entitled to maintained pay if the employee's current salary exceeds the maximum rate for the new band.

e. RIF Action (including employees who are offered and accept a vacancy at a lower career level or in a different career track). The employee is entitled to maintained pay, if the employee's current salary exceeds the maximum rate for the new band.

f. Upward Mobility or Other Formal Training Program Selection. The employee is entitled to maintained pay, if the employee's current salary exceeds the maximum rate for the new band.

g. Return to Limited or Light Duty from a Disability as a Result of Occupational Injury to a Position in a Lower Career Level or to a Career Track with Lower Basic Pay Potential than Held Prior to the Injury. The employee is entitled indefinitely to the basic pay held prior to the injury and will receive full general and locality pay increases. If upon reemployment, an employee was not given the higher basic pay (basic pay received at the time of the injury), any retirement annuity or severance pay computation would be based on his or her lower basic pay (salary based on placement in a lower career level). Even though the Department of Labor (DOL) would make up the difference between the lower basic pay and the higher basic pay earned at the time of injury, the DOL portion is not considered in the retirement or severance pay computation.

h. Reassignment. The basic pay normally remains the same. Highest previous rate may be applied, if appropriate. (The approving manager authorizes the basic pay.)

i. Student Educational Employment Program. Initial basic pay for new appointees may be set at any point within the basic pay range for the career track, occupation, and career level to which appointed. Basic pay may be increased upon return to duty (RTD) or conversion to temporary appointment, in consideration of the student's additional education and experience at the time of the action. Students who work under a parallel work study program may have their basic pay increased in consideration of additional education and/or experience. Basic pay for students may be increased based on their CCS appraisal. (The approving manager authorizes the basic pay.)

j. Hazard Pay or Pay for Duty Involving Physical Hardship. Employees under the demonstration project will be paid hazardous duty pay under the provisions of 5 CFR part 550, subpart I.

I. Priority Placement Program (PPP)

Current PPP procedures apply to new hires and internal actions.

J. Expanded Temporary Promotions

Current regulations require that temporary promotions for more than 120 days to a higher level position than previously held must be made competitively. Under the demonstration project, NRL would be able to effect temporary promotions of not more than 1 year within a 24-month period without competition to positions within the demonstration project.

IV. Sustainment

A. Position Classification

The position classification changes are intended to streamline and simplify the process of identifying and categorizing the work done at NRL. NRL will establish an Integrated Pay Schedule (IPS) for all demonstration project positions in covered occupations. The IPS will replace the current GS and extend the pay schedule to the equivalent of the ES–4 level of the "Rates of Basic Pay for the Members of the Senior Executive Service (SES)."

1. Career Tracks and Career Levels

Within the IPS, occupations with similar characteristics will be grouped together into four career tracks. Each career track consists of a number of career levels, representing the phases of career progression that are typical for the respective career track. The career levels within each career track are shown in Figure 3, along with their GS equivalents. The equivalents are based on the levels of responsibility as defined in 5 U.S.C. 5104, and not on current basic pay schedules. Appendix B provides definitions for each of the career tracks and the career levels within them.

The career tracks and career levels were developed based upon administrative, organizational, and position management considerations at NRL. They are designed to enhance pay equity and enable a more seamless career progression to the target career level for an individual position or category of positions. This combination of career tracks and career levels allows for competitive recruitment of quality candidates at differing rates of compensation within the appropriate career track, occupation, and career level. It will also facilitate movement and placement based upon contribution, in conjunction with the CCS described in paragraph IV.C. Other benefits of this arrangement include a dual career track for S&E employees and greater competitiveness with academia and private industry for recruitment. Appendix C identifies the occupational series currently within each of the four career tracks.

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CAREER TRACKS AND CAREER LEVELS WITH EQUIVALENTS

S&E Professional (NP)					
Career Level	I	II	III[b]	IV[b]	V
GS Equiv.	1-4	5-10	11-13	14-15	ARSAE
S&E Technical (NR)					
Career Level	I	II	III	IV	V[a]
GS Equiv.	1-4	5-8	9-10	11-12	13
Administrative Specialist and Professional (NO)					
Career Level	I	II	III[b]	IV[b]	V[b]
GS Equiv.	1-4	5-10	11-12	13	14-15
Administrative Support (NC)					
Career Level	I	II	III		
GS Equiv.	1-4	5-7	8-10		

a Temporary career level to accommodate current incumbents. No additional incumbents will be moved into this level; when no incumbents remain in this career level, it will be abolished.

b Promotion beyond these levels will not occur without proper DOR approval and high grade authorization if needed.

Figure 3. Career Tracks and Career Levels with Equivalents

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a. Target Career Level. Each position will have a designated target career level under the demonstration project. This target career level will be identified as the career level to which an incumbent may be advanced without further competition within a career track. These target career levels will be based upon present full performance levels. Target career levels may vary based upon occupation or career track. Employees' basic pay will be capped at the target career level until other appropriate conditions (competition, availability of a high-grade billet, position management approval, increase in or acquisition of higher level duties, approval of an accretion of duties promotion, etc.) have been met, and the employee has been promoted into the next higher level.

b. Occupational Series and Position Titling. Presently, NRL positions are identified by occupational groups and series of classes in accordance with OPM position classification standards. Under the demonstration project, NRL will continue to use occupational series designators consistent with those currently authorized by OPM to identify positions. This will facilitate related personnel management requirements, such as movement into and out of the demonstration project. Other occupational series may be added or deleted as needed to support the demonstration project. Interdisciplinary positions will be accommodated within the system based upon the qualifications of the individual hired.

Titling practices consistent with those established by OPM classification standards will be used to determine the official title. Such practice will facilitate other personnel management requirements, such as the following: movement into and out of the demonstration project, reduction in force, external reporting requirements, and recruitment. CCS career level descriptors and Requirements Document (RD) (see paragraph IV.A.2) information will be used for specific career track, career level, and titling determinations.

c. Classification Standards. Under the proposed demonstration project, the number of classification standards would be reduced from over 70 to 4 (see Figure 2.) Each standard would align with one of the four career tracks and would cover all positions within that career track. Each career track has two or three elements that are considered in both classifying a position and in judging an individual's contributions for pay setting purposes. Each element has generic descriptors for every career level. These descriptors explain the type of work, degree of responsibility and scope of contributions that need to be ultimately accomplished to reach the highest basic pay potential within each career level. (See Appendix D.) To classify a position, a manager would select the career level which is most indicative overall of the type of duties to be performed and the contributions needed. For example: A supervisor needs a secretarial position for a branch. In reading the elements and descriptors for the Administrative Support Career Track, the supervisor determines that the Level II descriptors illustrate the type of work and contributions needed. Therefore, the position would be classified as a Secretary, Level II.

d. Fair Labor Standards Act (FLSA). Demonstration project positions will be covered under the FLSA and 5 CFR part 551. Determination of their status (exempt or nonexempt) will be made based on the criteria contained in 5 CFR Part 551. The status of each new position under the demonstration project will be determined using computer assisted analysis as part of an automated process for preparing the RD. Those positions for which the computer is unable to make the final FLSA determination will be "flagged" for referral to a human resources specialist for determination.

(1) Guidelines for FLSA Determinations.

a. Supervisory Information: provided through an automated system in a checklist format; results of this checklist have an impact on FLSA determination.

b. FLSA Information: provided through an automated system in a checklist format; results of this checklist in conjunction with the supervisory information provide a basis for the FLSA determination.

c. If required, the section entitled "Purpose of Position" will be used to assist in FLSA determination.

d. RD's requiring additional review before being finalized will be forwarded to a human resources specialist to review the FLSA determination.

(2) Nonsupervisory and Leader Positions. Figure 4 shows the exempt or nonexempt status applicable to nonsupervisory and leader positions in the indicated career track and career level. In those cases where "Review" is indicated, the FLSA status must be determined based on the specific duties and responsibilities of the subject position.

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FLSA Status of Nonsupervisory and Leader Positions[a]

	Career Level I	Career Level II	Career Level III	Career Level IV	Career Level V
S&E and Other Prof	FLSA-covered	Review	Exempt	Exempt	Exempt
S&E Tech	FLSA-covered	FLSA-covered	Review	Exempt	Exempt
Admin Spec and Prof	FLSA-covered	Review	Exempt	Exempt	Exempt
Admin Sppt	FLSA-covered	FLSA-covered	Review		

[a] FLSA exemption and nonexemption determinations will be made consistent with criteria found in 5 CFR part 551. All employees are covered by the FLSA unless they meet the executive, administrative, or professional criteria for exemption. As a general rule, the FLSA status can generally be matched to the occupational families and pay bands found in Table 3. Exceptions to these guidelines include supervisors/managers who meet the definitions outlined in the OPM GS Supervisory Guide. The generic position descriptions will not be the sole basis for the FLSA determination. Each position will be evaluated on a case-by-case basis by comparing the duties and responsibilities assigned and the classification standards for each pay band, under 5 CFR part 551 criteria.

Figure 4. FLSA Status of Nonsupervisory and Leader Positions

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(3) Supervisory Positions. FLSA determination for supervisory positions must be made based on the duties and responsibilities of the particular position involved. As a rule, if a position requires supervision of employees who are exempt under FLSA, the supervisory position is likely to be exempt also.

2. Requirements Document (RD)

An RD will replace the Optional Form 8 and position description used under the current classification system. The RD will be prepared by managers using a menu-driven, automated system. The automated system will enable managers to classify and establish many positions without intervention by a human resources specialist. The abbreviated RD will combine the position information, staffing requirements, and contribution expectations into a 1- or 2-page document. Appendix F provides a sample RD for an Electronics Engineer, Level II.

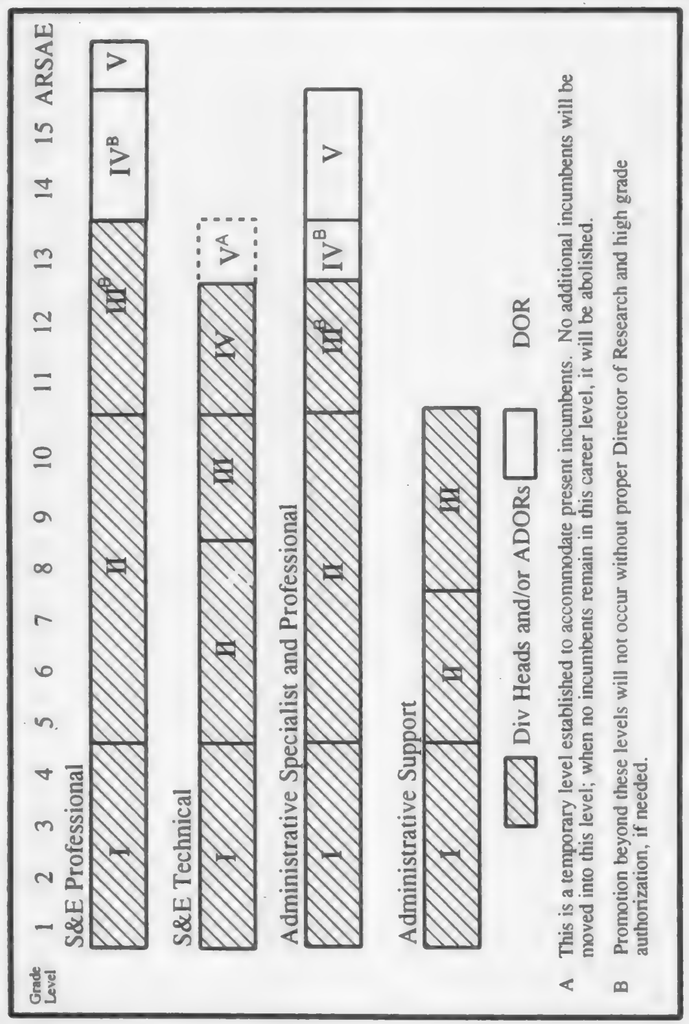
3. Delegation of Classification Authority

Classification authority will be delegated to managers as a means of increasing managerial effectiveness and expediting the classification function. This will be accomplished as follows:

a. Delegated Authority.

1. The NRL Commanding Officer (CO) will delegate classification authority to the management levels shown in Figure 5, i.e., DOR, Associate Directors of Research (ADORS), division superintendents or equivalent levels, and the HRO Director (the HRO Director may further delegate to selected HRO specialists).

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Figure 5. Levels of Delegated Classification Authority

2. The classification approval must be at least one level above the first-level supervisor of the position.

3. First-line supervisors at any level will provide classification recommendations.

4. HRO support will be available for guidance and recommendations concerning the classification process. (Any dispute over the proper classification between a manager and the HRO will be resolved by the Director of Research [DOR].)

b. Position Classification Accountability. Those to whom authority is delegated are accountable to the DOR. The DOR is accountable to the CO. Those with delegated authority are expected to comply with demonstration project guidelines on classification and position management, observe the principle of equal pay for equal work, and ensure that RD's are current. First-line supervisors will develop positions using the automated system. All positions must be approved through the proper chain of command.

B. Integrated Pay Schedule

Under the demonstration project, an IPS will be established which will cover all demonstration project positions at NRL. This IPS, which does not include locality pay, will extend from the basic pay for GS–1, step 1 to the basic pay for ES–4 (from "Rates of Basic Pay for Members of the Senior Executive Service (SES)"). The adjusted basic pay cap, which does include locality pay, is Executive Level IV, currently $118,400, for all demonstration project employees except S&E Professional Career Level V employees. The adjusted basic pay cap for S&E Professional Career Level V employees is Executive Level III, currently $125,900.

1. Annual Pay Action

NRL will eliminate separate pay actions for within-grade increases, general and locality pay increases, performance awards, quality step increases, and most career promotions, and replace them with a single annual pay action (including either permanent or bonus pay or both) linked to the CCS. This will eliminate the paperwork and processing associated with multiple pay actions which average 3 per employee per year.

2. Overtime Pay

Overtime will be paid in accordance with 5 CFR part 550, subpart A. All nonexempt employees will be paid overtime based upon their "hourly regular rate of pay," as defined in existing regulation (5 CFR part 551).

3. Classification Appeals

An employee may appeal the occupational series, title, career track, or career level of his or her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the DoD appellate level. If an employee is not satisfied with the DoD response, he or she may then appeal to the OPM only after DoD has rendered a decision under the provisions of this demonstration project. Since OPM does not accept classification appeals on positions which exceed the equivalent of a GS–15 level, appeal decisions involving Career Level V for Advanced Research Scientists and Engineers (ARSAE) will be rendered by DoD and will be final. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Time periods for case processing under 5 CFR subpart F, sections 511.603, 511.604, and 511.605 apply.

An employee may not appeal the accuracy of the RD, the demonstration project classification criteria, or the pay-setting criteria; the propriety of a basic pay schedule; the assignment of occupational series to the occupational family; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project is based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the HRO and will include copies of appropriate demonstration project criteria.

4. Advanced Research Scientists and Engineers (ARSAE)

The NRL demonstration project includes a Career Level V for the Science and Engineering (S&E) Professional Career Track. Career Level V is created for ARSAE's.

Current legal definitions of SES and ST positions do not fully meet the needs of NRL. The SES designation is appropriate for executive level managerial positions whose classification exceeds the GS–15 grade level. The primary knowledge and abilities of SES positions relate to supervisory and managerial responsibilities. Positions classified as STs are reserved for bench research scientists and engineers; these positions require a [illegible] expertis[illegible] little supervi[illegible]ility.

NRL [illegible] positions (typically branch head, principal investigator or team leaders) that have characteristics of both SES and ST classifications. Most branch heads in NRL are responsible for supervising other GS–15 positions, including non-supervisory research engineers and scientists and, in some cases, ST positions. Most branch heads are classified at the GS–15 level, although their technical expertise warrants classification beyond GS–15. Because of their management responsibilities, these individuals are excluded from the ST system. Because of management considerations, they cannot be placed in the SES. Management considers the primary requirement for branch heads to have knowledge of and expertise in the specific scientific and technology areas related to the mission of their branches. Historically, the incumbents of these positions have been recognized within the community as scientific and engineering leaders who possess primarily scientific or engineering credentials and are considered experts in their field. However, they must also possess strong managerial and supervisory ability. Therefore, although some of these employees have scientific credentials that might compare favorably with ST criteria, classification of these positions as ST is not an option because the managerial and supervisory responsibilities inherent in the positions cannot be ignored.

Current GS–15 branch heads will convert into the demonstration project at Career Level IV. After conversion they will be reviewed against established criteria to determine if they should be reclassified to Career Level V. Other positions possibly meeting criteria for classification to Career Level V will be reviewed on a case-by-case basis. The salary range is a minimum of 120 percent of the minimum rate of basic pay for GS–15 with a maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for SES level 4 (ES–4). Vacant positions in Career Level V will be competitively filled to ensure that selectees are preeminent researchers and technical leaders in the specialty fields who also possess substantial managerial and supervisory abilities.

DoD will test Career Level V for a 5-year period. ARSAE positions established in Career Level V will be subject to limitations imposed by OPM and DoD. Career Level V will be established only in an S&T Reinvention Laboratory which employs scientists,

engineers, or both. ARSAE incumbents of Career Level V positions will work primarily in their professional capacity on basic or applied research and secondarily perform managerial or supervisory duties. The number of Career Level V, or equivalent, positions within the DoD will not exceed 40. These 40 positions will be allocated by Assistant Secretary of Defense (Force Management Policy) and administered by the respective services. The number of ARSAE Career Level V positions will be reviewed periodically to determine appropriate position requirements. Career Level V position allocations will be managed separately from SES, ST, and Senior Level (SL) positions. An evaluation of the Career Level V concept will be performed during the fifth year of the demonstration project.

Specific details regarding the control and management of all Level V assets will be included in the demonstration project's operating procedures. Level V is expected to afford NRL the ability to more effectively and efficiently exercise managerial control at the local level, while adhering to merit staffing, affirmative action, and equal employment opportunity principles.

5. Distinguished Contributions Allowance (DCA)

The DCA is a temporary monetary allowance up to 25 percent of basic pay (which, when added to an employee's rate of basic pay, may not exceed the rate of basic pay for ES–4) paid on either a bi-weekly basis (concurrent with normal pay days) or as a lump sum following completion of a designated contribution period(s), or combination of these, at the discretion of NRL. It is not basic pay for any purpose, i.e., retirement, life insurance, severance pay, promotion, or any other payment or benefit calculated as a percentage of basic pay. The DCA will be available to certain employees at the top of their target career levels, whose present contributions are worthy of scores found at a higher career level, whose level of contribution is expected to continue at the higher career level for at least 1 year, and current market conditions require additional compensation.

Assignment of the DCA rather than a change to a higher career level will generally be appropriate for such employees under the following circumstances: employees have reached the top of their target career levels and (1) when it is not certain that the higher level contributions will continue indefinitely (e.g., a special project expected to be of 1- up to 5-year duration), or (2) when no further promotion or compensation opportunities are available or externally imposed limits (such as high-grade restrictions) make changes to higher career levels unavailable, and in either situation, current market conditions compensate similar contributions at a greater rate in like positions in private industry and academia and there is a history of significant recruitment and retention difficulties associated with such positions.

a. Eligibility.

(1) Employees in Levels III and IV of the S&E Professional Career Track and those in Levels III, IV, and V of the Administrative Specialist and Professional Career Track are eligible for the DCA if they have reached the top CCS score for their target career level with a recommendation for a higher Overall Contribution Score (OCS) for their contributions, they have reached the maximum rate of basic pay available for their target career level, there are externally imposed limits to higher career levels or the higher level contributions are not expected to last indefinitely, and market conditions require greater compensation for these contributions.

(2) Employees may receive a DCA for up to 3 years. The DCA authorization will be reviewed and reauthorized as necessary, but at least annually at the time of the CCS appraisal through nomination by the pay pool manager and approval by the DOR. Employees in the S&E Professional Career Track may receive an extension of up to 2 additional years (for a total of 5 years). The DCA extension authorization will be reviewed and reauthorized as necessary, but at least on an annual basis at the time of the CCS appraisal through nomination by the pay pool manager and approval by the DOR.

(3) Monetary payment may be up to 25 percent of basic pay.

(4) Nominees would be required to sign a memorandum of understanding or a statement indicating they understand that the DCA is a temporary allowance; it is not a part of basic pay for any purpose; it would be subject to review at any time, but at least on an annual basis, and the reduction or termination of the DCA is not appealable or grievable.

b. Nomination. In connection with the annual CCS appraisal process, pay pool managers may nominate eligible employees who meet the criteria for the DCA. Packages containing the recommended amount and method of payment of the DCA and a justification for the allowance will be forwarded through the supervisory chain to the DOR. Details regarding this process will be addressed in standard operating procedures. These details will include time frames for nomination and consideration, payout scheme, justification content and format, budget authority, guidelines for selecting employees for the allowance and for determining the appropriate amount, and documentation required by the employee acknowledging he or she understands the criteria and temporary nature of the DCA.

c. Reduction or Termination of a DCA.

(1) A DCA may be reduced or terminated at any time the NRL deems appropriate (e.g., when the special project upon which the DCA was based ends; if performance or contributions decrease significantly; or if labor market conditions change, etc.). The reduction or termination of a DCA is not appealable or grievable.

(2) If an employee voluntarily separates from NRL before the expiration of the DCA, an employee may be denied DCA payment. Authority to establish conditions and/or penalties will be spelled out in the written authorization of an individual's DCA.

d. Lump-Sum DCA Payments.

(1) When NRL chooses to pay part or all of an employee's DCA as a lump sum payable at the end of a designated period, the employee will accrue entitlement to a growing lump-sum balance each pay period. The percentage rate established for the lump-sum DCA will be multiplied by the employee's biweekly amount of basic pay to determine the lump sum accrual for any pay period. This lump-sum percentage rate is included in applying the 25-percent limitation.

(2) If an employee covered under a lump-sum DCA authorization separates, or the DCA is terminated (see paragraph c), before the end of that designated period, the employee may be entitled to payment of the accrued and unpaid balance under the conditions established by NRL. NRL may establish conditions governing lump-sum payments (including penalties in cases such as voluntary separation or separation for personal cause) in general plan policies or in the individual employee's DCA authorization.

e. DCA Budget Allocation. The DOR may establish a total DCA budget allocation that is never greater than 10 percent of the basic salaries of the employees currently at the cap in the S&E Professional Career Track, Career Levels III and IV, and the Administrative Specialist and Professional Career Track, Career Levels III, IV, and V.

f. Concurrent Monetary Payments. Employees eligible for a DCA may be authorized to receive a DCA and a retention allowance at the same time, up to a combined total of 25 percent of basic pay. A merit increase which raises an employee's pay to the top rate for his or her target career level (thus making the employee eligible for the DCA) may be granted concurrent with the DCA. Receipt of the DCA does not preclude an employee from being granted any award (including a contribution award) for which he or she is otherwise eligible.

C. Contribution-based Compensation System (CCS)

1. General

The purpose of the CCS is to provide an effective means for evaluating and compensating the NRL workforce. It provides management, at the lowest practical level, the authority, control, and flexibility needed to develop a highly competent, motivated, and productive workforce. CCS will promote increased fairness and consistency in the appraisal process, facilitate natural career progression for employees, and provide an understandable basis for career progression by linking contribution to basic pay determinations.

CCS combines performance appraisal and job classification into one annual process. At the end of each CCS appraisal period, basic pay adjustment decisions are made based on each employee's actual contribution to the organization's mission during the period.

A separate function of the process includes comparison of performance in critical elements to acceptable standards to identify unacceptable performance that may warrant corrective action in accordance with 5 CFR part 432. Supervisory officials determine scores to reflect each employee's contribution, considering both how well and at what level the employee is performing. Often the two considerations are inseparable. For example, an employee whose written documents need to be returned for rework more often than those of his or her peers also likely requires a closer level of oversight, an important factor when considering level of pay.

The performance planning and rating portions of the demonstration project's appraisal process constitute a performance appraisal program which complies with 5 CFR part 430 and the DoD Performance Management System, except where waivers have been approved. Performance-related actions initiated prior to implementation of the demonstration project (under DoN performance management regulations) shall continue to be processed in accordance with the provisions of the appropriate system.

2. CCS Process

CCS measures employee contributions by breaking down the jobs in each career track using a common set of "elements." The elements for each career track shown in Figure 6 and described in detail in Appendix D have been initially identified for evaluating the contributions of NRL personnel covered by this initiative. They are designed to capture the highest level of the primary content of the jobs in each career level of each career track. Within specific parameters, elements may be weighted or even determined to be not applicable for certain categories of positions. All elements applicable to the position are critical as defined by 5 CFR part 430.

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CCS ELEMENTS

S&E Professional

- Scientific and Technical Problem Solving
- Cooperation and Supervision
- R&D Business Management

S&E Technical

- Scientific and Technical Problem Solving
- Cooperation, Customer Relations, and Supervision

Administrative Specialist and Professional

- Problem Solving and Program Management
- Cooperation and Customer Relations
- Supervision and Resources Management

Administrative Support

- Problem Solving and Office Administration
- Cooperation, Supervision, and Customer Relations

Figure 6. CCS Elements

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For each element, "Discriminators" and "Descriptors" are provided to assist in distinguishing low to high contributions. The discriminators (2–4 for each element) break down aspects of work to be measured within the element. The descriptors (one for each career level for each discriminator) define the expected level of contribution at the top of the related career level for that element.

Scores currently range between 0 and 89; specific relationships between scores and career levels are different for each career track. (See Figure 7.) Basic pay adjustments are based on a comparison of the employee's level of contribution to the normal pay range for that contribution and the employee's present rate of basic pay.

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CCS Career Level Scores and Basic Pay Ranges*

LEVEL	SCORE	CCS $K
S&E Professional		
I	0 - 21	13,362 - 24,456
II	18 - 47	20,356 - 44,924
III	44 - 66	37,393 - 70,060
IV	66 - 80	62,553 - 97,201
V	81 - 89	89,728 - 118,000**
S&E Technical		
I	0 - 21	13,362 - 24,456
II	18 - 39	20,356 - 37,258
III	36 - 47	31,012 - 44,924
IV	44 - 59	37,393 - 59,480
V***	59 - 66	53,107 - 70,060
Administrative Specialist and Professional		
I	0 - 21	13,362 - 24,456
II	18 - 47	20,356 - 44,924
III	44 - 59	37,393 - 59,480
IV	59 - 66	53,107 - 70,060
V	66 - 80	62,553 - 97,201
Administrative Support		
I	0 - 21	13,362 - 24,456
II	18 - 34	20,356 - 33,146
III	31 - 47	27,590 - 44,924

*Basic pay based on 1999 GS with no locality adjustment.

**Equivalent to the minimum rate of basic pay for Salary Table 1999-SL/ST, and for Salary Table 1999-ES for ES-4 with no locality adjustment.

*** Temporary career level to accommodate current incumbents.

Figure 7. CCS Career Level Scores and Basic Pay Ranges

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Supervisors and pay pool panels determine an employee's contribution level for each element considering the discriminators as appropriate to the position. A contribution score, available to that level, is assigned accordingly. For example, a scientist whose contribution in the Technical Problem Solving element for S&E Professionals is determined to be at Level II may be assigned a score of 18 to 47. Eighteen reflects the lowest level of responsibility, exercise of independent judgment, and scope of contribution; and 47 reflects the highest. For Level III contributions, a value of 44 to 66 may be assigned. Each higher career level equates to a higher range of values up to a total of 89 points for S&E professionals. The maximum score of (currently) 89 provides for S&E Professional Level V employees the potential for basic pay of SES Level 4, currently $118,000, plus locality pay up to a cap of Executive Level III, currently $125,900. Each element is judged separately and level of work may vary for different elements. The scores for each element are then averaged to determine the Overall Contribution Score (OCS).

The CCS process will be carried out within a pay pool that typically consists of all employees in an NRL division. Pay pools should have a minimum size of about 35 employees; the largest pay pool may have about 300 employees. To facilitate equity and consistency, element weights and applicability and CCS score adjustments are determined by a pay pool panel, rather than by individual supervisors. Basic pay adjustments, contribution awards, and DCA's may be recommended by the pay pool panel or by individual supervisors. Pay pool panels will consist of supervisory officials or other individuals who are familiar with the organization's work and the contributions of its employees. In most cases division heads (mostly SES members) function as pay pool managers, with final authority to decide weights, scores, basic pay adjustments, and awards.

3. Pay Pool Annual Planning

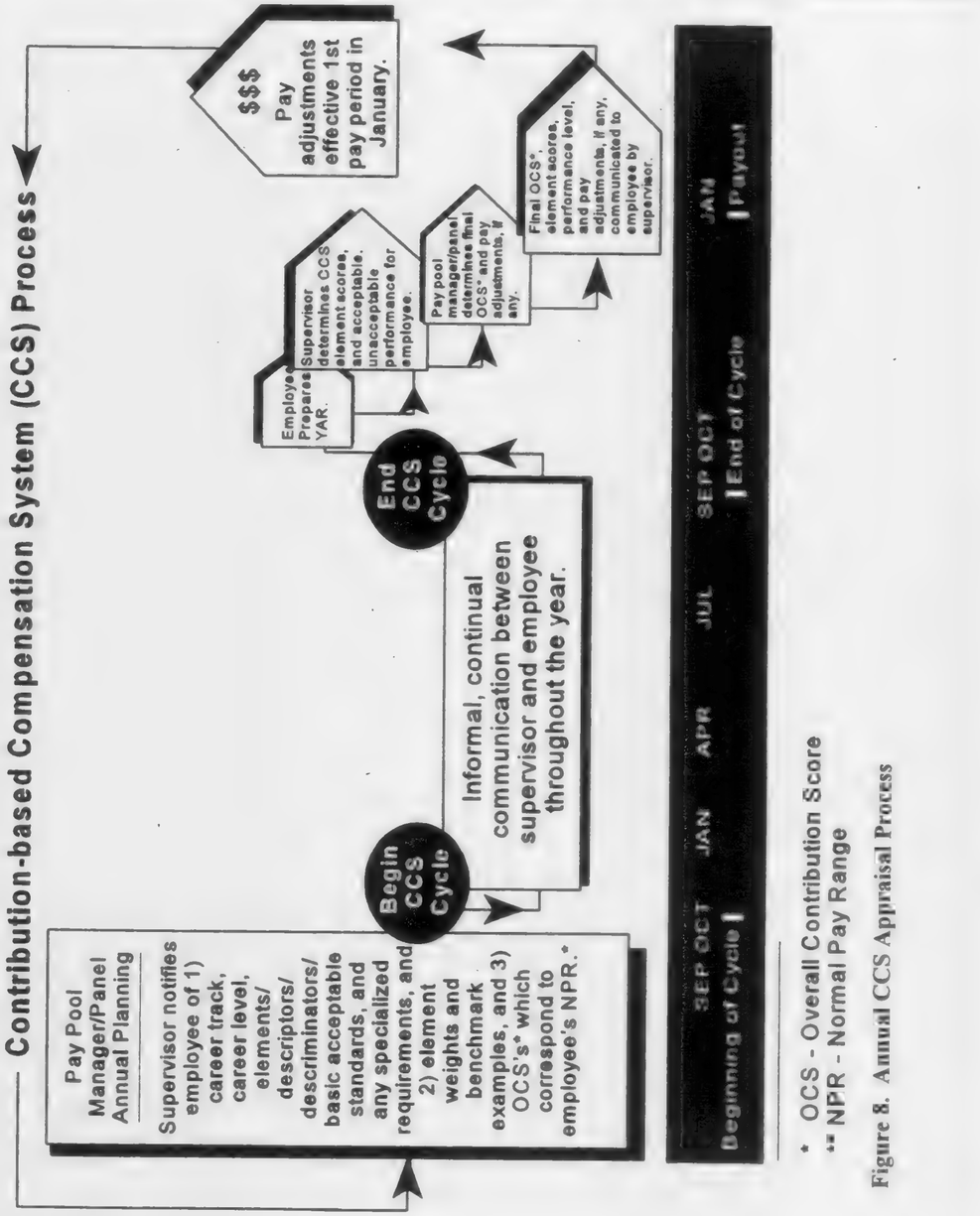
Prior to the beginning of each annual appraisal period, the pay pool manager and panel will review pay pool-wide expectations in the areas described below.

a. Element Weights and Applicability. As written, all elements are weighted equally. If pay pool panels and managers decide that some elements are more important than others or that some do not apply at all to the effective accomplishment of the organization's mission, they may establish element weights including a weight of zero which renders the element not applicable. Element weights are not intended for application to individual employees. Instead, they may be established only for subcategories of positions, not to exceed a maximum of five subcategories in each career track. Subcategories for S&E Professionals might be: Bench Level S&E, Supervisor, Program Manager, and Support S&E. Subcategories should include a minimum of five positions, when possible. Weights must be consistent within the subcategory.

b. Supplemental Criteria. The CCS level descriptors are designed to be general so that they may be applied to all employees in the career track. Supervisors and pay pool panels may establish supplemental criteria to further inform employees of expected contributions. This may include (but is not limited to) examples of contributions which reflect work at each level for each element, taskings, objectives, and/or standards.

4. Annual CCS Appraisal Process (See Figure 8)

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* OCS - Overall Contribution Score
** NPR - Normal Pay Range

Figure 8. Annual CCS Appraisal Process

The NRL appraisal period will be 1 year, with a minimum appraisal period of 90 days. At the beginning of the appraisal period, or upon an employee's arrival at NRL or into a new position, the following information will be communicated to employees so that they are informed of the basis on which their performance and contributions will be assessed: their career track and career level; applicable elements, descriptors and discriminators; element weights; any established supplemental criteria; OCS's which correspond to each employee's NPR (see section IV.C.6); and basic acceptable performance standards. The CCS Summary Form (Appendix D) will be used to facilitate and document this communication. All employees will be provided this information; however, employees in some situations may not receive CCS scores. These situations are described in section IV.C.5, Exceptions. The communication of information described by this paragraph constitutes performance planning as required by 5 CFR 430.206(b).

Supervisor and employee discussion of organizational objectives, specific work assignments, and individual performance expectations (as needed), should be conducted on an ongoing basis. Either the supervisor or the employee may request a formal review during the appraisal period; otherwise, a documented review is required only at the end of the appraisal period.

At the end of the appraisal period, employees will provide input describing their contributions by preparing a Yearly Accomplishment Report (YAR). Pay pool managers may exempt groups of positions from the requirement to submit YARs; in cases where YARs are not required, employees may submit them at their own discretion. Standard operating procedures will provide guidance for pay pools and employees on the content and format of YARs, and on other types of information about employee contributions which should be developed and considered by supervisors. This will include procedures for capturing contribution information regarding employees who serve on details, who change positions during the appraisal period, who are new to NRL, and other such circumstances.

Supervisors will review the employee's YAR and other available information about the employee's contributions during the appraisal period and determine an initial CCS score for each element considering the discriminators as appropriate to the position. In addition, supervisors will determine whether the employee's performance was acceptable or unacceptable in each element when compared against the basic acceptable performance standards. The rating of the elements (all that are applicable are designated critical as defined by 5 CFR part 430) will serve as the basis for assignment of a summary level of Acceptable or Unacceptable. If any element is rated unacceptable, the summary level will be Unacceptable; otherwise the summary level will be Acceptable. Unacceptable ratings must be reviewed and approved by a higher level than the first-level supervisor.

If an employee changes positions during the last 90 days of the appraisal period, the losing supervisor will conduct a performance rating (i.e., rate each element Acceptable or Unacceptable and determine the summary level) at the time the employee moves to the new position. This will serve as the employee's rating of record. For employees who report to NRL during the last 90 days of the appraisal period, any close-out rating of Acceptable (or its equivalent) or better from another Government agency will serve as the employee's rating of record (the employee will be rated Acceptable). The determination of CCS scores and application of related pay adjustments for such employees is set forth in section IV.C.5, "Exceptions".

The pay pool panel will meet to compare scores, make appropriate adjustments, and determine the final OCS for each employee. Final approval of CCS scores and element and summary ratings will rest with the pay pool manager (unless higher level approval is requested or deemed necessary). Supervisors will communicate the element scores, ratings, summary level, and OCS to each employee, and discuss the results and plans for continuing growth. Employees rated Unacceptable will be provided assistance to improve their performance (see paragraph V.A).

The CCS process will be facilitated by an automated system, the CCSDS. During the appraisal process, all scores and supervisory comments will be entered into the CCSDS. The CCSDS will provide supervisors, pay pool panel members, and pay pool managers with background information (e.g., YARS, employees' prior year scores and current basic pay) and spreadsheets to assist them in comparing contributions and determining scores. Records of employee appraisals will be maintained in the CCSDS, and the system will be able to produce a hard copy document for each employee which reflects his or her final approved score.

5. Exceptions

All employees who have worked 90 days or more by the end of the appraisal period will receive a performance rating of record. However, in certain situations NRL does not consider the actual determination of CCS scores to be necessary. In other situations, it may not be feasible to determine a meaningful CCS score. Therefore, the determination of CCS scores will not be required for the following types of employees:

a. Employees on intermittent work schedules;

b. Those on temporary appointments of 1 year or less;

c. Those who work less than 6 months in an appraisal period (e.g., on extended absence due to illness);

d. Those on long-term training for all or much of the appraisal period;

e. Employees who have reported to NRL or to a new position during the 90 days prior to the end of the appraisal period; and

f. Student Educational Employment Program employees.

If supervisors believe that the nature of such an employee's contributions provide a meaningful basis to determine a CCS score, they may appraise employees in the categories listed above, provided that the employee has worked at least 90 days in an NRL position during the appraisal period.

Those employees mentioned above who are not appraised under CCS will not be eligible for merit increases or contribution awards. (This will affect the calculation of service credit for RIF (see section V.C.). All employees listed above will be given full general and locality increases (as described in sections IV.C.7.a, "General Increases," and IV.C.7.c, "Locality Increases"). All employees are eligible for awards under NRL's Incentive Awards Program, such as "On-the-Spot" and Special Act Awards, as appropriate.

6. Normal Pay Range (NPR)—Basic Pay Versus Contribution

The NRL CCS assumes a relationship between the assessed contribution of the employee and a normal range of pay. For all possible contribution scores available to employees, the NPR spans a basic pay range of 12 percent. Employees who are compensated below the NPR for their assessed score are considered "undercompensated," while employees compensated above the NPR are considered "overcompensated."

The lower boundary of the NPR is initially established by fixing the basic pay equivalent to GS–1, step 1 of the General Schedule (without locality pay), with a CCS score of zero. The upper boundary is fixed at the basic pay equivalent to GS–15, step 10 of the General Schedule (without locality pay), with a CCS score of 80. The distance between these upper and lower boundaries for a given overall contribution score is 12 percent of basic pay for all available CCS scores. Using these constraints, the interval between scores is approximately 2.37 percent through the entire range of pay. The lines were extended using the same interval so that the upper boundary of the normal range of basic pay accommodates the basic pay for SES Level IV. This currently occurs at a contribution score near 90. (The actual end point will vary depending on any pay adjustment factors, e.g., general increase.) The formula used to derive the NPR may be adjusted in future years of the demonstration project. See Appendix E for further details regarding the formulation of the NPR.

Each year the boundaries for the NPR plus the minimum and maximum rate of basic pay for each career level (except the maximum rate for Level V of the S&E Professional Career Track) will be adjusted by the amount of the across-the-board GS percentage increase granted to the Federal workforce. At the end of each annual appraisal period, employees' contribution scores will be determined by the CCS process described above, then their overall contribution scores and current rates of basic pay will be plotted as a point on a graph along with the NPR. The position of the point relative to the NPR gives a relative measure of the degree of over-or undercompensation of the employee, as shown in Figure 9. Points which fall below the NPR indicate undercompensation; points which fall above the NPR indicate overcompensation.

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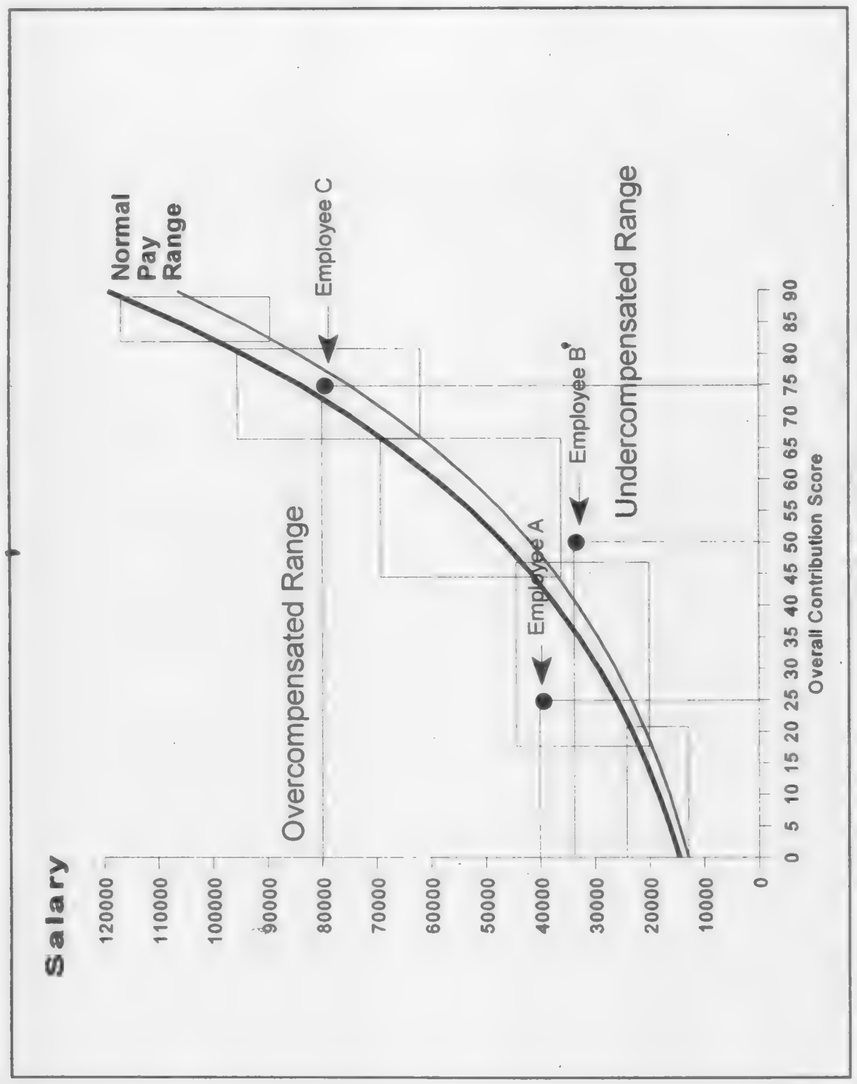


Figure 9. Plotting OCS and Basic Pay on the NPR for S&E Professionals

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7. Compensation

Presently, employee pay is established, adjusted, and/or augmented in a variety of ways, including general pay increases, locality pay increases, special rate adjustments, within-grade increases (WGI's), quality step increases (QSI's), performance awards, and promotions. Multiple pay changes in any given year (averaging 3 per employee) are costly to process and do not consider comprehensively the employee's contributions to the organization. Under the demonstration project, NRL will distribute the budget authority from the sources listed above into 4 pay categories: (1) general increase, (2) locality increase, (3) merit increase, and (4) contribution awards. From these pay categories, a single annual pay action would be authorized based primarily on employees' contributions. Competitive promotions will still be processed under a separate pay action; most career promotions will be processed under the CCS.

In general, the goal of CCS is to pay in a manner consistent with employee contribution or, in other words, migrate employees' basic pay closer to the NPR. One result may be a wider distribution of pay among employees for a given level of duties.

After the CCS appraisal process has been completed and the employees' standing relative to the NPR has been determined, the pay pool manager, in consultation with the pay pool panel or other pay pool supervisory and staff officials, will determine the appropriate basic pay change and contribution award, if appropriate, for each employee. Standard operating procedures will provide guidance, including market salary reference data, to assist pay pool managers in making pay determinations. In most cases, the pay pool manager will approve basic pay changes and awards. In some cases, however, approval of a higher level official will be required. Figure 10 summarizes the eligibility criteria and applicable limits for each pay category.

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Eligibility Chart for Pay Increases

Range of Basic Pay	General Increase	Merit Increase	Contribution Award	Locality Pay
Over-compensated	Could be reduced or denied	No	No[f]	Yes-Full[d]
Normal Range	Yes-Full	Yes[c]-Up to 6%	Yes[a]	Yes-Full[d]
Under-compensated	Yes-Full	Yes[b,c]	Yes[a]	Yes-Full[d]

[a] Up to $10K, over $10K requires DOR approval.
[b] Over 20 percent requires DOR approval.
[c] May not exceed upper rail of normal pay range for employee's OCS score or maximum rate of the employee's career level.
[d] Employees will be entitled to the full locality pay approved for their area subject to applicable limitations.
[e] May not exceed 6% above lower rail of normal pay range or maximum rate of the employee's career level.
[f] Employees on maintained pay are eligible for a contribution award.[a]

Figure 10. Eligibility Chart for Pay Increases

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The Contribution-based Compensation System Data System (CCSDS) will calculate each employee's OCS and his or her standing in relation to the NPR. The system will provide a framework to assist pay pool officials in selecting and implementing a payout scheme. It will alert management to certain formal limits in granting pay increases; e.g., an employee may not receive a permanent increase above the maximum rate of basic pay for his or her career level until a corresponding level change has been effected. Once basic pay and award decisions have been finalized and approved, the CCSDS will prepare the data file for processing the pay actions, and maintain a consolidated record of CCS pay actions for all NRL demonstration project employees.

a. General Increases. General increase budget authority will be available to pay pools as a straight percentage of employee salaries, as derived under 5 U.S.C. 5303 or similar authority. Pay pool panels or managers may reduce or deny general pay increases for employees whose contributions are in the overcompensated category. (See Figure 10.) Such reduction or denial may not place an employee in the

undercompensated category. An employee receiving maintained pay (except one receiving maintained pay for an occupational injury who receives a full general pay increase) will receive half of the across-the-board GS percentage increase in basic pay until the employee's basic pay is within the basic pay range assigned for their current position or for 2 years, whichever is less. NRL employees on pay retention at the time of demonstration project implementation or as a result of placement through the DoN RPL, DoD PPP or the Federal Interagency Career Transition Assistance Plan will receive half of the across-the-board GS percentage increase until the employee's maintained pay is exceeded by the maximum rate for the employee's career level or the maintained pay is ended due to a promotion. General increase authority not expended is available to either the merit increase or contribution award pay categories or both.

b. Merit Increases. Merit increases will be calculated after the determination of employees' general increases. Merit increases may be granted to employees whose contribution places them in the "normal" or "undercompensated" categories. (See Figure 10.) In general, the higher the range in which the employee is contributing compared to his or her basic pay, the higher the merit increase should be. However, the following limitations apply: a merit increase may not place any employee's basic pay (1) in the "overcompensated" category (as established by the NPR for the upcoming year, which has been adjusted by the amount of the new general increase); (2) in excess of SES Level IV; (3) in excess of the maximum rate of basic pay for the individual's career level (unless the employee is being concurrently advanced to the higher career level); or (4) above any outside-imposed dollar limit (e.g., high-grade ceiling). Merit increases for employees in the NPR will be limited to 6 percent of basic pay, not to exceed the upper limit of the NPR for the employee's score. In addition, merit increases for employees in the undercompensated range may not exceed 6 percent above the lower rail of the NPR, or 20 percent of basic pay without DOR approval.

The NRL merit increase category will include what is now WGI's, QSI's, and career ladder promotions. This category will be set each year near 2.4 percent of total NRL basic pay rates (including the general increase rate approved for the coming year). This is close to the average of NRL's expenditures for step increases and promotions over the last 3 years. This percentage has been used by other demonstration projects in the past. The 2.4 percent figure will be adjusted as necessary to facilitate cost containment over the life of the demonstration project.

The amount of budget authority available to each pay pool will be determined annually by the DOR. Factors to be considered by the DOR in determining annual budget authority may include market salaries, mission priorities, and organizational growth. Because statistical variations will occur in year-to-year personnel growth, any unexpended merit increase authorities may be carried over for use in the next cycle or transferred to the Contribution Awards Category. Any unexpended merit increase authority must be used no later than the payout for the next rating cycle.

c. Locality Increases. All employees will be entitled to the locality pay increase authorized by law for their official duty station. In addition, the locality-adjusted pay of any employee may not exceed the rate for Executive Level IV, currently $118,400, except that, for employees in Career Level V of the S&E Professional Career Track, the locality-adjusted pay cap is Level III of the Executive Schedule (currently $125,900 from "Rates of Pay for the Executive Schedule," effective since January 1998).

d. Contribution Awards. Authority to pay contribution awards (lump-sum payments recognizing significant contributions) will be initially available to pay pools as a straight 1.5 percent of employees' basic pay (similar to the amount currently available for performance awards). The percentage rate may be adjusted in future years of the demonstration project. In addition, unexpended general increase and merit increase budget authorities may be used to augment the award category. Contribution awards may be granted to those employees whose contributions place them in the "normal" or "undercompensated" category, and to employees in the "overcompensated" category who are on maintained pay. Standard operating procedures will provide guidance to pay pool managers in establishing and applying criteria to determine significant contributions which warrant awards. An award exceeding $10,000 requires DOR approval. (See Figure 10.) Any unexpended contribution award authority must be used at the payout for the next rating cycle. Pay pools may also grant time-off as a contribution award, in lieu of or in addition to cash.

8. Career Movement Based on CCS

Movement through the career levels will be determined by contribution and basic pay at the time of the annual CCS appraisal process.

The NRL demonstration project is an integrated system that links level of work to be accomplished (as defined by a career track and career level) with individual achievement of that work (as defined by an OCS) to establish the rate of appropriate compensation (as defined by the career track pay schedule), and to determine progression through the career track. This section addresses only changes in level which relate directly to the CCS determination.

When an employee's OCS falls within 3 scores of the top score available to his or her current career level, supervisors should consider whether it is appropriate to advance the employee to the next higher level (refer to IV.A.1.a for other criteria). If progression to the next higher level is deemed warranted, supporting documentation would be included with the CCS appraisal and forwarded through the appropriate channels for approval. If advancement is not considered appropriate at this time, the employee would remain in his or her current career level. Future basic pay raises would be capped by the top of the employee's current career level unless the employee progresses to the next higher career level through a CCS-related promotion, an accretion of duties promotion, or a competitive promotion.

a. Advancements in Level Which May be Approved by the Pay Pool Manager. Advancements to all levels except Levels IV and V of the S&E Professional and the Administrative Specialist and Professional Career Tracks may be approved by the pay pool manager (this may be changed in future years of the demonstration project if there are changes in the way high-grade positions are defined).

b. Advancements in Level Which Must be Approved by the Director of Research (DOR). Advancement to (1) levels outside target career levels or established position management criteria; (2) Levels IV and V of the S&E Professional Career Track; and (3) Levels IV and V of the Administrative Specialist and Professional Career Track require approval by the DOR or his or her designee. These levels include (presently) all of NRL's high-grade billets. Details regarding the process for nomination and consideration, format, selection criteria, and other aspects of this process will be addressed in the standard operating procedures. In the event that unanticipated high-grade turnover results in vacancies prior to the end of the appraisal period, NRL may carry out this process at other times of the year.

c. Advancement to Level V of the Science and Engineering (S&E) Professional Career Track. Vacancies in the billets allotted to NRL in this level will be filled as described in section IV.B.4.

d. Regression to Lower Level. (See Figure 9, "Employee A"). If an employee is contributing less than expected for the level at which he or she is being paid, the individual may regress into a lower career level through reduction or denial of general increases and ineligibility for merit increases. (This is possible because the NPR plus the minimum and maximum pay rates for each career level will be adjusted upwards each year by the across-the-board GS percentage increase in basic pay.) If the employee's basic pay regresses to a point below the pay overlap area between his or her level and the next lower level, it will no longer be appropriate to designate him or her as being in the higher level. Therefore, the employee will be formally changed to the lower level. The employee will be informed of this change in writing, but procedural and appeal rights provided by 5 U.S.C. 4303 and 7512 (and related OPM regulations) will not apply (except in the case of employees who have veterans' preference). NRL is providing for waivers of the statute and regulations for such actions. Further, because a change to lower level under such circumstances is not discretionary, the change may not be grieved under NRL's administrative grievance procedures.

9. CCS Grievance Procedures

An employee may grieve the appraisal received under CCS using procedures specifically designed for CCS appraisals. Under these procedures, the employee's grievance will first be considered by the pay pool panel, who will recommend a decision to the pay pool manager. If the employee is not satisfied with the pay pool manager's decision, he or she may file a second-step grievance with the next higher level management official. This official will render a final NRL decision on the grievance.

The following are not grievable: pay actions resulting from CCS (receipt, non-receipt or amount of general increase, merit increase, DCA or contribution award); reductions in level without reduction in pay due to regression (see section IV.C.8.d); any action for which another appeal or complaint process exists.

V. Separations

A. Performance-Based Reduction in Pay or Removal Actions

This section applies to reduction in pay or removal of demonstration project employees based solely on unacceptable performance. Adverse action procedures under 5 CFR part 752 remain unchanged.

When a supervisor determines during or at the end of the appraisal period that the employee is not completing work assignments satisfactorily, the supervisor must make a determination as to whether the employee is performing unacceptably in one or more of the critical elements. All CCS elements applicable to the employee's position are critical as defined by 5 CFR part 430.

Unacceptable performance determinations must be made by comparing the employee's performance to the acceptable performance standards established for elements.

At any time during or at the end of the appraisal period that an employee's performance is determined to be unacceptable in one or more critical elements, the employee will be provided assistance in improving his or her performance. This will normally include clarifying (or further clarifying) the meaning of terms used in the acceptable performance standards (e.g., "timely" "thorough research" and "overall high quality") as they relate to the employee's specific responsibilities and assignments. An employee whose performance is unacceptable after he or she has been given a reasonable opportunity to improve may be removed or reduced in grade or level, in accordance with the provisions of 5 U.S.C. 4303 and related OPM regulations. Employees may also be removed or reduced in grade or level based on unacceptable performance under the provisions of 5 U.S.C. 7512. All procedural and appeal rights set forth in the applicable statute and related OPM regulations will be afforded to demonstration project employees removed or reduced in grade or level for unacceptable performance.

B. RIF

1. RIF Authority

Under the demonstration project, NRL would be delegated authority to approve RIF as defined in Secretary of the Navy Instruction 12351.5E and the use of separation pay incentives.

2. RIF Definitions

a. Competitive Area. A separate competitive area will be established by geographic location for all personnel included in the demonstration project.

b. Competitive Level. Positions in the same occupational career level, which are similar enough in duties and qualifications that employees can perform the duties and responsibilities including the selective placement factor, if any, of any other position in the competitive level upon assignment to it, without any loss of productivity beyond what is normally expected.

c. Service Computation Date (SCD). The employee's basic Federal SCD would be adjusted for CCS results credit.

(1) CCS Process Results Credit.

a. An employee's basic Federal SCD may be credited with up to 20 years credit based on the results of the CCS process. The CCS RIF Assessment Category would be used to determine the number of RIF years credited. The CCS RIF Assessment Category is the combination of the employee's standing under the CCS relative to the NPR and any merit increase, DCA, contribution award or promotion. Figure 11 shows the RIF years available for each CCS RIF Assessment Category.

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Assessment Category		RIF Years Available
0 =	Employees within the over-compensated range without any portion of a general increase.	0
1 =	Employees receiving maintained pay or any portion of a general increase but no merit increase or contribution award.	12
2 =	Employees receiving a merit increase or contribution award or promotion.	16
3 =	Employees receiving (1) a combination (at least two) of a merit increase, contribution award or promotion, or (2) with a capped salary and receiving a contribution award, DCA, or promotion.	20
Final RIF Credit: Average of the three most recent CCS Process Results received during the 4-year period prior to the cutoff date.		

Figure 11. CCS RIF Assessment Categories

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b. If an employee has fewer than three CCS process results, the value (RIF years available) of the actual number of process results on record will be divided by the number of actual process results on record. In cases where an employee has no actual CCS process results, the employee will be given the additional RIF CCS process results credit for the most common, or "modal" NRL demonstration project CCS RIF Assessment Category for the most recent CCS appraisal period.

(2) Credit from Other Rating Systems. Employees who have been rated under different patterns of summary rating levels will receive RIF appraisal credit as follows:

—If there are any ratings to be credited for the RIF given under a rating system which includes one or more levels above fully successful (Level 3), employees will receive credit as follows: 12 years for Level 3, 16 years for Level 4, 20 years for Level 5; or

—If an employee comes from a system with no levels above Fully Successful (Level 3), they will receive credit based on the demonstration project's modal CCS RIF assessment category.

(3) RIF Cutoff Date. To provide adequate time to properly determine employee retention standing, the cutoff date for use of new CCS process results is set at 30 days prior to the date of issuance of RIF notices.

3. Displacement Rights

(a) Displacement Process. Once the position to be abolished has been identified, the incumbent of that position may displace another employee within the incumbent's current career track and career level when the incumbent has a higher retention standing and is fully qualified for the position occupied by an employee with a lower standing. If there are no displacement rights within the incumbent's current career track and career level, the incumbent may exercise his or her displacement rights to any position previously held in the next lower career level, regardless of career track, when the position is held by an employee with a lower retention standing. In the case of all preference eligibles, they may displace up to the equivalent of 3 grades or intervals below the highest equivalent grade of their current career level in the same or a different career track regardless of whether they previously held the position provided they are fully qualified for the position and the position is occupied by an employee with a lower retention standing. Preference eligibles with a compensable service connected disability of 30 percent or more may displace an additional 2 GS grades or intervals (total of 5 grades) below the highest equivalent grade of their current career level provided they have previously held the position and the position is occupied by an employee in the same subgroup with a later RIF service computation date.

(b) Retention Standing. Retention standing is based on tenure, veterans' preference, length of service, and contribution.

(c) Vacant Positions. Assignment may be made to any available vacant position including those with promotion potential in the competitive area.

(d) Ineligible for Displacement Rights. Employees who have been notified in writing that their performance is considered to be unacceptable.

(e) Change to Lower Level due to an Adverse or Performance-based Action. An employee who has received a written decision to change him or her to a lower level due to adverse or performance based action will compete from the position to which he or she will be or has been demoted.

3. Notice Period

The notice period and procedures in 5 CFR subpart H, section 351.801 will be followed.

4. RIF Appeals

Under the demonstration project, employees affected by a RIF action, other than a reassignment, maintain their right to appeal to the Merit Systems Protection Board if they feel the reason for the RIF is not valid or if they think the process or procedures were not properly applied.

5. Separation Incentives

NRL will have delegated authority to approve separation incentives and will use the current calculation methodology of a lump sum payment equal to an employee's severance pay calculation or $25,000, whichever is less.

6. Severance Pay

Employees will be covered by the severance pay rules in 5 CFR part 550, subpart G, except that NRL will establish rules for determining a "reasonable offer" that parallel Title 5 rules.

7. Outplacement Assistance

All outplacement assistance currently available would be continued under the demonstration project.

VI. Demonstration Project Transition

A. Initial Conversion or Movement to the Demonstration Project

1. Placement into Career Tracks and Career Levels

Conversion or movement of GS employees into the demonstration project will be into the career track and career level which corresponds to the employee's current GS grade and basic pay. If conversion into the demonstration project is accompanied by a simultaneous change in the geographic location of the employee's duty station, the employee's overall GS pay entitlements (including locality rate) in the new area will be determined before converting the employee's pay to the demonstration project pay system. Employees will be assured of placement within the new system without loss in total pay. Once under the demonstration project, employee progression through the career tracks and career levels up to their target career level is dependent upon contribution score, not upon previous methods (e.g., WGI's, QSI's, or career promotions as previously defined).

2. Conversion of Retained Grade and Pay Employees

NRL's workforce will be grouped into career tracks and associated pay levels with designated pay ranges rather than the traditional grade and step. Therefore, grade and pay retention will be eliminated. NRL will grant "maintained pay" (as defined in section III.G.2, "Maintained Pay"), which is related to the current meaning of "retained pay" but does not provide for indefinite retention of pay except in certain situations. Employees currently on grade or pay retention will be immediately placed on maintained pay at their current rate of basic pay if this rate exceeds the maximum rate for their career level and "grandfathered" in the appropriate career level. Employees on grade retention will be placed in the career level encompassing the grade of their current position. Employees will receive half of the across-the-board GS percentage increase in basic pay and the full locality pay increase until their basic pay is within the appropriate basic pay range for their current position without time limitation.

3. WGI Buy-In

The participation of all covered NRL employees in the demonstration project is mandatory. However, acceptance of the system by NRL employees is essential to the success of the demonstration project. Therefore, on the date that employees are converted to the project pay plan, they will be given a permanent increase in pay equal to the earned (time spent in step) portion of their next WGI based on the value of the WGI at the time of conversion so that they will not feel they are losing a pay entitlement accrued under the GS system. Employees will not be eligible for this basic pay increase if their current rating of record is unacceptable at the time of conversion. There will be no prorated payment for employees who are at step 10 or receiving a retained rate at the time of conversion into the demonstration project.

4. Conversion of Special Salary Rate Employees

Employees who are in positions covered by a special salary rate prior to the demonstration project will no longer be considered a special salary rate employee under the demonstration project. These employees will, therefore, be eligible for full locality pay. The adjusted salaries of these employees will not change. Rather, the employees will receive a new basic rate of pay computed by dividing their basic adjusted pay (higher of special salary rate or locality rate) by the locality pay factor for their area. A full locality adjustment will then be added to the new basic pay rate. Adverse action will not apply to the conversion process as there will be no change in total salary. However, if an employee's new basic pay rate after conversion to the demonstration project pay schedule exceeds the maximum basic pay authorized for the career level, then the employee will be granted maintained pay under paragraph III.G.2 until the employee's salary is within the range of the career level.

For example, an Electronics Engineer, GS–855–9, step 5, is paid $44,715 per annum in accordance with special GS salary rates as of January 1999 for Table Number: 0422. The employee is located in the locality area of Washington-Baltimore, DC-MD-VA-WV. Under the demonstration project, the computation of the engineer's new basic rate of pay with a full locality adjustment and WGI buy-in is computed as follows:

a. Basic adjusted pay divided by locality pay factor=new basic rate of pay

b. New basic rate of pay multiplied by the full locality adjustment for current area=full locality adjustment amount for special rate employees.

c. New basic rate of pay + WGI buy-in amount × locality pay factor = demonstration special rate for conversion.

EXAMPLE:

a. $44,715 (basic adjusted pay) divided by 1.0787 (locality pay factor) = $41,453 (new basic rate of pay)

b. $41,453 (new basic rate of pay) × .0787 (full locality adjustment factor for current area) = $3,262 (full locality adjustment amount)

c. $41,453 (new basic rate of pay) + $500 (example WGI buy-in amount) = $41,953 (new conversion basic rate of pay) × 1.0787 (locality pay factor) = $45,254 (demonstration special rate for conversion)

B. CCS Startup

CCS elements, descriptors, discriminators and standards have been established as the appraisal criteria for the 1998–1999 cycle which began June 1, 1998. Except for its compensation components, CCS is consistent with DoN's two-level appraisal program, which was effected in 1998. The CCS process will be used to appraise employees at the end of the 1998–1999 cycle on September 30, 1999. The first CCS payout is expected to occur at the beginning of the first full pay period in January 2000.

C. Training

An extensive training program is planned for everyone in the demonstration project including the supervisors, managers, and administrative staff. Training will be tailored, as discussed below, to fit the requirements of every employee included in the demonstration project and will address employee concerns and as well as the benefits to employees. In addition, leadership training will be provided, as needed, to managers and supervisors as the new system places more responsibility and decision making authority on them.

NRL training personnel will provide local coordination and facilities, supplemented by contractor support as needed. Training will be provided at the appropriate stage of the implementation process.

1. Types of Training

Training packages will be developed to encompass all aspects of the project and validated prior to training the workforce. Specifically, training packages will be developed for the following groups of employees:

a. NRL Employees. NRL demonstration project employees will be provided an overview of the demonstration project and employee processes and responsibilities.

b. Supervisors and Managers. Supervisors and managers under the demonstration project will be provided training in supervisory and managerial processes and responsibilities under the demonstration project.

c. Support Personnel. Administrative support personnel, HRO personnel, financial management personnel, and Management Information Systems Staff will be provided training on administrative processes and responsibilities under the demonstration project.

D. New Hires Into the Demonstration Project

The following steps will be followed to place employees (new hires) entering the system:

a. The career track and career level will be determined based upon the employee's education and experience in relation to the duties and responsibilities of the position in which he or she is being placed, consistent with OPM qualification standards.

b. Basic pay will be set based upon available labor market considerations relative to special qualifications requirements, scarcity of qualified candidates, programmatic urgency, and education and experience of the new candidate.

c. Employees placed through the DoN RPL, the DoD PPP, or the Federal Interagency Career Transition Assistance Plan who are eligible for maintained pay will receive one half of the across-the-board GS percentage increase in basic pay and the full locality pay increase until the employee's basic pay is within the basic pay range of the career track and career level to which assigned. Employees are eligible for maintained pay as long as there is no break in service and if the employee's rate of pay exceeds the maximum rate of his or her career level.

E. Conversion or Movement From Demonstration Project

In the event the demonstration project is terminated or employees leave the demonstration project through promotion, change to lower grade, reassignment or transfer, conversion back to the GS system may be necessary. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. An employee will not be converted at a level which is lower than the GS grade held immediately prior to entering the Demonstration project, unless, since that time, the employee has undergone a reduction in career level. The converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project and will be used to determine the pay action and GS pay administration rules for employees who leave the project to accept a position in the traditional Civil Service system. The following procedures will be used to convert the employee's demonstration project career level to a GS equivalent grade and the employee's demonstration project rate of pay to the GS equivalent rate of pay.

1. Grade Determination

Employees will be converted to a GS grade based on a comparison of the employee's current adjusted rate of basic pay to the highest GS applicable rate range considering only those grade levels that are included in the employee's current career level. The highest GS applicable rate range includes GS basic rates, locality rates, and special salary rates. Once a grade range is determined, the following procedures will be used to determine the GS grade:

a. Identify the highest GS grade within the current career level that accommodates the employee's adjusted rate of basic pay (including any locality payment).

b. If the employee's adjusted rate of basic pay equals or exceeds the applicable step 4 rate of the identified highest GS grade, the employee is converted to that grade.

c. If the employee's adjusted rate of basic pay is lower than the applicable step 4 of the highest grade, the employee is converted to the next lower grade.

d. If under the above-described "step 4" rule, the employee's adjusted project rate exceeds the maximum rate of the grade assigned but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to the next higher applicable grade.

e. For two-grade interval occupations, conversion should not be made to an intervening (even) grade level below GS–11.

f. Employees in Level IV of the Administrative Specialist and Professional Career Track will convert to the GS–13 level.

2. Pay Setting

Pay conversion will be done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project. The employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to a GS rate of pay as follows:

a. The employee's demonstration project adjusted rate of pay (including locality) is converted to a rate on the highest applicable adjusted rate range for the converted GS grade. For example, if the highest applicable GS rate range for the employee is a special salary rate range, the applicable special rate salary table is used to convert the employee's pay.

b. When converting an employee's pay, if the rate of pay falls between two steps of the conversion grade, the rate must be set at the higher step.

c. Employees whose basic pay exceeds the maximum basic pay of the highest GS grade for their career level will be converted to the highest grade in their career level. NRL will coordinate with OPM to prescribe a procedure for determining the GS-equivalent pay rate for employees whose rate of pay exceeds the maximum rate of basic pay for their converted grade.

3. ARSAE

Employees in Career Level V of the S&E Professional Career Track will convert to the GS–15 grade level. NRL will develop a procedure to ensure that S&E employees entering Career Level V understand that if they leave the demonstration project and their adjusted pay exceeds the GS–15, step 10 rate, there is no entitlement to retained pay. Their GS-equivalent rate will be deemed to be the rate for GS–15, step 10. For those Career Level V employees paid below the adjusted GS–15, step 10 rate, the post-conversion rates will be set using the converted rates in applying the highest previous rate rule.

4. Determining Date of Last Equivalent Increase

The last equivalent increase will be the date the employee received a CCS pay increase, was eligible to receive a CCS pay increase, or received a promotion, whichever occurred last.

VII. Demonstration Project Duration

A. General

Section 342 of the National Defense Authorization Act for fiscal year 1995 (Public Law 103–337) does not require a mandatory expiration date for this demonstration project. The project evaluation plan addresses how each intervention will be comprehensively evaluated for at least the first 5 years of the demonstration project. Major changes and modifications to the interventions can be made through another announcement in the **Federal Register** and would be made if formal evaluation data warrant a change.

B. 5-Year Reexamination

At the 5-year point, the entire demonstration will be reexamined for either: (a) permanent implementation, (b) modification and another test period, or (c) termination of the project.

VIII. Demonstration Project Evaluation Plan

A. Overview

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the proposed laboratory demonstration project, and its impact on improving public management. A comprehensive evaluation plan for the entire laboratory demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved (see *Proposed Plan for Evaluation of the Department of Defense S&T Laboratory Demonstration Program*, Office of Merit Systems Oversight and Effectiveness, June 1995). The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (i.e., laboratory effectiveness, mission accomplishment, and customer satisfaction). In March 1996, the Director of Defense Research & Engineering (DDR&E), who is responsible for laboratory management, entered into an agreement with OPM's Personnel Resources and Development Center (PRDC) to conduct the external evaluation of the project from FY1996 to FY2001. NRL will make arrangements for the continued evaluation of the project beyond the PRDC evaluation period and throughout the life of the demonstration project so as to fulfill the requirements of 5 U.S.C. Chapter 47.

B. Evaluation Models

Figure 12 shows a general model for the evaluation of the demonstration program. The model is designated to evaluate two levels of laboratory performance: intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (i.e., cost, quality, timeliness). The ultimate outcomes are determined through improved laboratory performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

Organizational performance measures established by the laboratories will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given laboratory will take into account the influence of three factors on laboratory performance: context, degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (i.e., downsizing, changes in mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers: (1) the extent to which the proposed HR changes are given a fair trial period; (2) the extent to which the proposed changes are implemented; and (3) the extent to which the proposed changes conform to the HR interventions as planned. The support of implementation factor accounts for the impact that factors such as training, internal regulations and automated support systems have on the support available for program implementation. The support for program implementation factor can also be affected by the personal characteristics (e.g., attitudes) of individuals who are implementing the program.

The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes, as well as any unintended outcomes which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other EEO groups, the Merit Systems Principles, and the Prohibited Personnel Practices. Additional measures will be added to the model in the event that changes or modifications are made to the demonstration plan.

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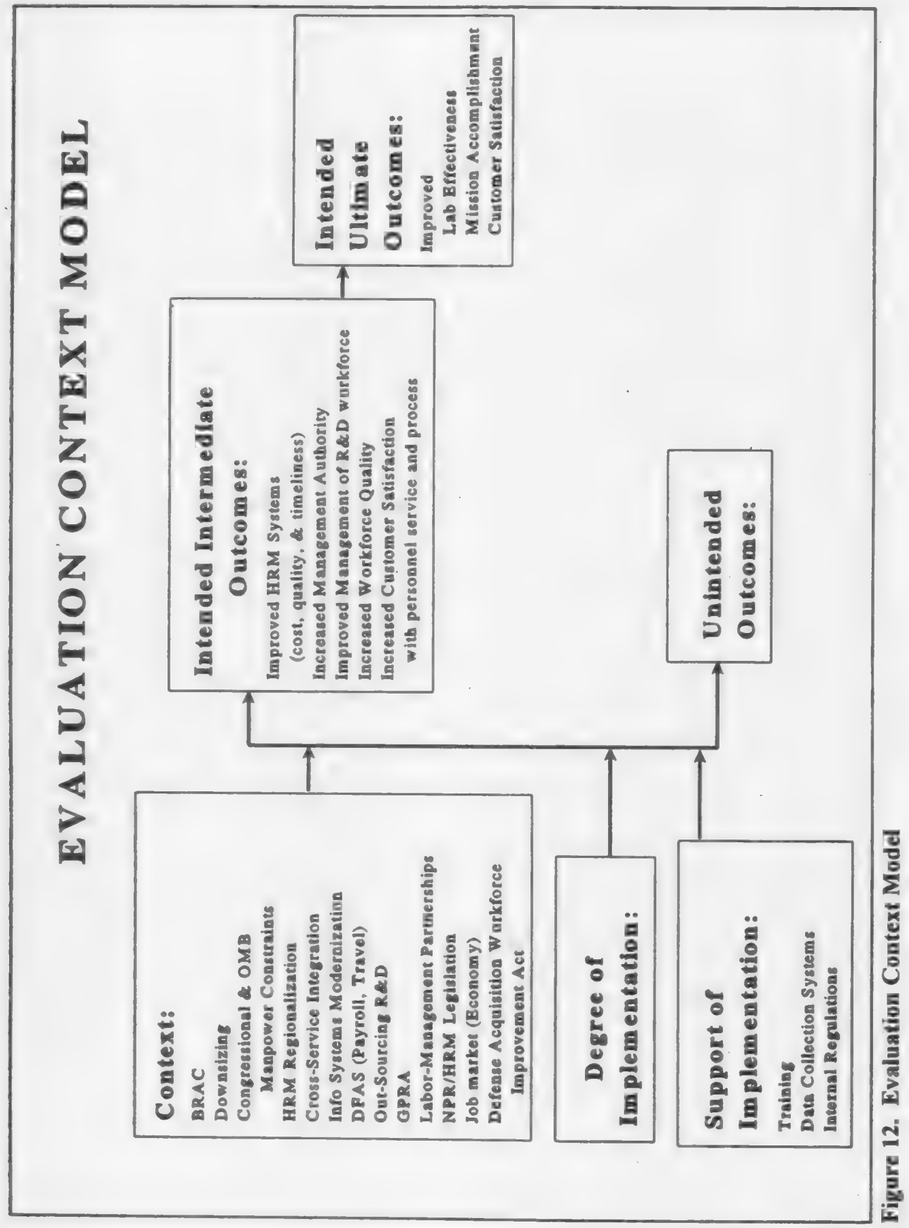


Figure 12. Evaluation Context Model

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An intervention impact model will be used to measure the effectiveness of the personnel system interventions implemented at NRL (see Appendix G). The intervention impact model specifies each personnel system change or "intervention" will be measured and shows: (1) the expected effects of the intervention, (2) the corresponding measures, and (3) the data sources for obtaining the measures. Although the model makes predictions about the outcomes of specific interventions, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (e.g., the job market, legislation, and internal support systems) or support factors (e.g., training, automated support systems).

C. Evaluation

A modified quasi-experimental design will be used for the evaluation of the S&T Laboratory Demonstration Program. Because most of the eligible laboratories are participating in the program, a Title 5 U.S.C. comparison group will be compiled from the Civilian Personnel Data File (CPDF). This comparison group will consist of workforce data from Governmentwide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of broadbanding costs and turnover rates.

The original "China Lake" project will serve as a second comparison group which can be used as a benchmark representing a stable broadbanding system. The two original Navy demonstration laboratories (Naval Air Warfare Center—Weapons Division in China Lake, CA and Naval Command Control and Ocean Surveillance Center in San Diego, CA) will participate in the employee survey and will also provide workforce data.

Given that some of the interventions are used only in selected laboratories, there will be additional comparison groups created for the specific interventions. The staggered implementation of the demonstration program across laboratories will also allow for time series analyses using multiple baselines. NRL is expected to implement its demonstration proposal in 1999 and will have several years of pre-demonstration baseline data.

D. Method of Data Collection

Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from S&T employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected: (1) workforce data; (2) personnel office and other data on quality and timeliness; (3) employee attitude surveys; (4) a survey of HR officers on results orientation; (5) research ratings for scientists and engineers to be used in turnover analysis; (6) structured interviews and focus group data; (7) local site historian logs and implementation information; and (8) core results measures of laboratory performance.

The evaluation effort will consist of two phases, formative and summative evaluation, covering at least 5 years to permit inter-and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation, and current information on impact of the project on veterans and EEO groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results are generalizable to other Federal installations.

The external evaluation will be supplemented by an internal evaluation conducted by NRL (see Appendix H) to meet individual laboratory needs. Periodic reports and annual summaries will be prepared to document the findings. The summative evaluation will focus on an overall assessment of project outcomes after five years.

IX. Demonstration Project Costs

A. Transition

There will be no grades or steps in the broadband classification system as there are under the GS. NRL will provide GS employees with a permanent pay change that is equivalent to the proportion of the WGI earned at the time of implementation. For example, the employee 1 year past the last WGI in a 3-year waiting period would receive a permanent pay change equivalent to one third of the current value of the WGI. Employees will not be eligible for this basic pay increase if their current rating of record is unacceptable at the time of conversion. There will be no prorated payment for employees who are at step 10 or receiving a retained rate at the time of conversion into the demonstration project. This permanent pay increase will occur at the time the demonstration project is implemented.

The first official annual appraisal cycle under the CCS will be the 1998–1999 appraisal cycle, with the payout occurring the first full pay period in January 2000. Future CCS pay adjustments will be effective the beginning of the first full pay period in January each year.

B. Cost Containment and Controls

It is required that the demonstration project be "relatively cost neutral." This is defined to mean that the NRL demonstration project will not increase the average personnel costs above what would have been expected under the previous 5 U.S.C. based system. Since NRL operates under the NWCF which requires cost efficiency so that NRL's technical programs can be marketed competitively, internal controls are in effect to ensure that costs are controlled.

NRL's Research Advisory Committee (RAC), comprising the CO, the DOR, the Chief Staff Officer, and the ADOR's will oversee the administration of the demonstration project. Because the RAC is the same management team that critically reviews the technical programs and the cost to operate NRL, the costs associated with this system will come under the same critical review. NRL is an innovative organization shaped by its mission and operating environment, and it exists in a highly dynamic and challenging climate. To be a vigorous and creative performer in such an environment, NRL must possess high quality personnel, challenging programs, and sound management practices. Broadbanding and CCS are designed to encourage the creative performer and to provide appropriate compensation. It does not automatically provide increases for

those who are already being paid commensurate with their contribution level.

NRL has established pay pool managers at the division level or equivalent. The CCS design includes a pay pool review panel responsible for evaluating the contribution scores for their pay pool and making adjustments, as required. The CCSDS will be designed to provide assistance to the pay pool manager in selecting the appropriate basic pay increase for an individual, based on that individual's contribution score. The CCSDS will contain controls on the amount of permanent and nonpermanent money available to the pay pool.

C. Implementation Costs

Costs associated with implementing the demonstration project are shown in Figure 13. These include automation of systems such as the CCSDS, training, and project evaluation. The automation and training costs are startup costs. Transition costs are one-time costs. Costs for project evaluation will be ongoing for at least 5 years.

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Projected Implementation Costs

	FY98	FY99	FY00	FY01	FY 02
Transition	$100K	$1.5M			
Training	$279K	$279K			
Automation	$862K	$450K			
Project Eval	$17K	$39.5K	$39.5K	$39.5K	$39.5K
Totals	$1.258M	$2.468M	$39.5K	$39.5K	$39.5K

Figure 13. Projected Implementation Costs

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X. Automation Support

A. General

One of the major goals of the demonstration project is to streamline the personnel processes to increase cost effectiveness. Automation must play an integral role in achieving that goal. Without the necessary automation to support the interventions proposed for the demonstration project, optimal cost benefit cannot be realized. In addition, adequate information to support decisionmaking must be available to managers if line management is to assume greater authority and responsibility for human resources management.

Automation to support the demonstration project is required at two distinct levels. At the DoN and DoD level, automation support [in the form of changes to the DCPDS] is required to facilitate processing and reporting of demonstration project personnel actions. At the NRL level, automation support (in the form of local processing applications) is required to facilitate management processes and decisionmaking.

B. Defense Civilian Personnel Data System (DCPDS)

Since DCPDS is a legacy system, efforts have been made to minimize changes to the system, and, therefore, the resources required to make the necessary changes. The following is a compendium of the proposed DCPDS modifications. The detailed specifications for required changes to DCPDS are provided in the System Change Request (SCR), Form 804.

C. Core Document (COREDOC)

The COREDOC application is a DoD system which will require modification to accommodate the interventions in this demonstration project. Specifically, there will be an RD that will replace the position description in the basic application; career tracks and career levels will replace GS grades; and a CCS Assessment Form that will replace performance elements.

D. RIF Support System (RIFSS)

The RIFSS is an automated tool used by human resources specialists to support RIF processing. Under the demonstration project, RIF rules will be modified to increase the credit for contributions and limit the rounds of competition. The AutoRIF application, developed by DoD, could be used if it were modified to accommodate these process changes.

E. Contribution-based Compensation System Data System

This automated system is required as an internal control and as a mechanism to equate contribution scores to appropriate rates of basic pay. This system will allow pay pool managers to develop a spreadsheet that will assist them in determining an appropriate merit increase or contribution award or both based on the overall contribution score for each individual. It will also be used as an internal control to ensure that the permanent and nonpermanent money allotted to each pay pool is not exceeded. It will further allow pay pool managers to visualize the effects of giving large basic pay increases or awards to high contributors, and the effects of withholding either the general or merit increase or both of those who are low contributors, or in the overcompensated range.

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Appendix A: Required Waivers to Laws and Regulations

Title 5, United States Code	Title 5, Code of Federal Regulations
	Part 300, subpart F, sections 300.601 to 300.605 - Time-in-grade Restrictions. Waive in entirety. Part 315, subpart H, section 315.801(a) - Career and Career-conditional Employment, Probationary Period Information. Waive to allow for the first three years to be the probationary period. Part 315, subpart H, section 315.802 - Length of Probationary Period. Waive to allow probationary period to be extended to three years.
Chapter 33, subchapter 1, section 3318(a) - Competitive Service; Selection from Certificate. Waive.	Part 332, subpart D, section 332.404 - Order of Selection from Certificates. Waive in entirety. Part 335, subpart A, section 335.103(c)(I), (ii) - Agency Promotion Program. Waive to allow temporary promotions and details to a higher level position of not more than one year to be effected without competition. Part 335, subpart A, section 335.104 - Eligibility for Career Ladder Promotion. Waive in entirety. Part 337, subpart A, section 337.101(a) - Rating Applicants. Waive when 15 or fewer qualified candidates.
Chapter 33, subchapter III, section 3341(b) Details - Within Executive or Military Departments. Waive in entirety.	

NAVAL RESEARCH LABORATORY
CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY
S&E (Professional)

Employee_____ Pay Pool Code_____ Appraisal Period Ending_____
Title_____ Pay Plan/Series_____ Career Level_____
SSN_____ Supervisor_____

Most Recent OCS_____ Present Salary_____ Scores within NPR Equivalent to Present Salary _____

CRITICAL ELEMENTS	*WEIGHT	SCORE	NET SCORE	RATING OF RECORD ACCEPTABLE OR UNACCEPTABLE
1. Scientific and Technical Problem Solving	_____	_____	_____	_____
2. R&D Business Management	_____	_____	_____	_____
3. Cooperation and Supervision	_____	_____	_____	_____

*If zero, element not applicable.

Basic Pay Increase %_____ Summary Rating A (Acceptable) or U (Unacceptable) _____
Must be U if any critical element is rated U

Contribution Award $_____

Hours_____ OVERALL CONTRIBUTION SCORE (Weighted Average)_____

SUPPLEMENTAL CRITERIA (OPTIONAL): FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:

REMARKS:

Signatures and Date	CCS PLAN	INTERIM REVIEW	APPRAISAL
Employee			
Supervisor			

NOTE: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this form and has a copy of the Elements, Descriptors, Discriminators and Standards applicable to his or her career track

Title 5, United States Code	Title 5, Code of Federal Regulations
	Part 351, subpart G, section 351.701 - Assignment Involving Displacement. (a) Waive to allow minimally successful or equivalent to be defined as an employee whose current CCS RIF Assessment Category score is 12 or better and does not have a current written notification of unacceptable performance. (b) and (c) Assignment rights (bump and retreat). Waive to the extent that the distinction between bump and retreat is eliminated and to allow displacement to be limited to the employee's current career track and career level or, if there are no displacement rights in the employee's current career level, to any position previously held in the next lower career level regardless of career track. Preference eligibles may displace up to the equivalent of 3 grades or intervals below the highest equivalent grade of their current career level in the same or a different career track regardless of whether they previously held the position provided they are fully qualified for the position and the position is occupied by an employee with a lower retention standing, Preference eligibles with a compensable service connected disability of 30 percent or more may displace an additional 2 GS grades or intervals (total of 5 grades) below the highest equivalent grade of their current career level provided they previously held the position and the position is occupied by an employee in the same subgroup with a later RIF service computation date. (d) Limitation. Waive. (e)(1) Waive

Title 5, United States Code	Title 5, Code of Federal Regulations
	Part 430, subpart B, section 430.207(b) - Waive to the extent this section requires one or more progress reviews during each appraisal period. Part 430, subpart B, section 430.210 - OPM Responsibilities. Waive in entirety.
Chapter 43, subchapter I, section 4303 - Actions Based on Unacceptable Performance. Waive to allow coverage of "reduction in pay level based on unacceptable performance". Waive to exclude from coverage (procedural and appeal rights) reductions in career level with no reduction in pay, when such actions result from regression of pay into a lower career level through reductions and denials of general increase ("slippage"). This exclusion will not apply to employees with veterans' preference. Chapter 43, subchapter I, section 4303(f)(3) - Waive to allow exclusion of employees in the excepted service who have not completed a trial period, except those with veterans' preference. Chapter 43, subchapter I, section 4304(b) (1) and (3) - Responsibilities of OPM. Waive in entirety.	Part 432, section 432.101 to 432.107 - Performance Reduction in Grade and Removal Actions. Waive to allow coverage of "reduction in pay level based on unacceptable performance". Waive to exclude from coverage (procedural and appeal rights) reductions in career level with no reduction in pay, when such actions result from regression of pay into a lower career level through reductions and denials of general increase ("slippage"). This exclusion will not apply to employees with veterans' preference.
Chapter 45, subchapter I, section 4502(a) and (b) - Waive to permit NRL to approve awards up to $25,000 for individual employees.	Part 451, subpart A, section 451.103(c)(2) - Waive with respect to contribution awards under the NRL CCS. Part 451, subpart A, sections 451.106(b) and 451.107(a) -Waive to permit NRL to approve awards up to $25,000 for individual employees.

Title 5, United States Code	Title 5, Code of Federal Regulations
Chapter 51, sections 5101 to 5113 - Classification. Waive in entirety except section 5104 to the extent needed to permit classification of career levels and CCS descriptors into logically defined level groupings.	Part 511- Classification Under the GS. Waive in entirety with an exception for appeal rights and time constraints under subpart F, sections 511.603, 604 and 605.
Chapter 53, subchapter I, section 5301 - Pay Policy. Waive in entirety. Chapter 53, subchapter 1, section 5302(8) and (9) - Pay Definition and section 5304 - Locality-Based Comparability Payments. Waive to the extent necessary to allow demonstration project employees to be treated as GS employees and basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay. Employees in Career Level V for the S&E Professional Track are to be treated as ST employees for the purposes of these provisions. Chapter 53, subchapter I, section 5303 - Annual Adjustments to Pay Schedules. Waive in entirety. Chapter 53, subchapter I, section 5305 - Special Pay Authority. Waive in entirety.	

Title 5, United States Code	Title 5, Code of Federal Regulations
Chapter 53, subchapter III, sections 5331 to 5336 - GS Pay Rates. Waive in entirety.	Part 530, subpart C - Special Salary Rate Schedules. Waive in entirety. Part 531, subpart B - Determining Rate of Basic Pay. Waive in entirety. Part 531, subpart D - Within Grade Increases. Waive in entirety. Part 531, subpart E - Quality Step Increases. Waive in entirety. Part 531, subpart F - Locality-Based Comparability Payments. Waive to the extent necessary to allow demonstration project employees to be treated as GS employees, employees in Career Level V of the S&E Professional Career Track to be treated as ST employees, and basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay.
Chapter 53, subchapter VI, sections 5361 to 5366 - Grade and Pay Retention. Waive in entirety.	Part 536 - Grade and Pay Retention. Waive in entirety.
Chapter 55, section 5455 (d) - Hazardous Duty Differential. Waive to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to emplyees in Career Level V of the S&E Professional Career Track.	Part 550, subpart G - Severance Pay. Waive to the extent necessary to allow NRL to define reasonable offer. Part 550, subpart I - Pay for Duty Involving Physical Hardship or Hazard. Waive to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Career Level V of the S&E Professional Career Track.

Title 5, United States Code	Title 5, Code of Federal Regulations
Chapter 57, subchapter IV, section 5753 to 5755 - Recruitment and Relocation Bonuses, Retention Allowances, and Supervisory Differential. Waive to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the GS and (2) employees in Level V of the S&E Professional career track to be treated as ST employees for these purposes.	Part 575, subparts A, B, C and D - Recruitment and Relocation Bonuses, Retention Allowances, and Supervisory Differential. Waive to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the GS and (2) employees in Level V of the S&E Professional career track to be treated as ST employees for these purposes.
Chapter 59, subchapter III, section 5924 - Cost-of-living Allowances. Waive to the extent necessary to provide that COLA's paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).	Part 591, subpart B - Cost-of-living Allowance and Post Differential - non-foreign areas. Waive to the extent necessary to allow demonstration project employees to be treated as GS employees and employees in Career Level V of the S&E Professional Career Track to be treated as ST employees.
Chapter 75, subchapter II, section 7511 (a)(1)(A)(ii) - Removal Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough. Waive except for employees with veterans' preference to allow for a three-year probationary period. 7511(a)(1)(C)(ii) - Waive.	

Title 5, United States Code	Title 5, Code of Federal Regulations
Chapter 75, subchapter II, section 7512 - Adverse Actions. Waive to replace "grade" with "career level"; provide that adverse action provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and exclude from coverage (procedural and appeal rights) reductions in career level with no reduction in pay, when such actions result from regression of pay into a lower career level through reductions or denials of general increase ("slippage"). This exclusion will not apply to employees with veterans' preference.	Part 752, subpart A - Adverse Actions. Waive to exclude from coverage (procedural and appeal rights) reductions in career level with no reduction in pay, when such actions result from regression of pay into a lower career level through reductions and denials of general increase ("slippage"). This exclusion will not apply to employees with veterans' preference. Part 752, section 752.401 (a)(3) - Adverse Actions. Waive to replace "grade" with "career level". Part 752, section 752.401 (a)(4) - Adverse Actions. Waive to provide that adverse action provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced.

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Appendix B: Definitions of Career Tracks and Career Levels

Career Track: S&E Professional

Includes professional positions in S&E occupations such as physics, electronics engineering, chemistry, and student positions associated with these professions.

Level I: This includes student trainees. The education and employment must be part of a formal student employment program. Specific, clear, and detailed instructions and supervision are given to complement education. The level of education and experience completed is a major consideration in establishing the level of on-the-job training and work assignments.

Level II: This is the entry or developmental stage, preparing S&E's for the full and independent performance of their work. Performs supporting work in science or engineering requiring professional training but little experience. Conducts activities with objectives and priorities identified by supervisor or team leader; assistance given on new or unusual projects; completed work reviewed for technical soundness.

Level III: This is the advanced developmental, or typically, target career level, of this career track. Conceives and defines solutions to technical problems of moderate complexity; plans, analyzes, interprets, and reports findings of projects; guides technical and programmatic work of team members in comparable or junior grades; completed work and reports are reviewed to evaluate overall results.

Level IV: S&E's at this level are authorities within their professional areas or key program administrators. Conducts or directs technical activities or assists higher levels on challenging and innovative projects or technical program development with only general guidance on policy, resources and planning; develops solutions to complex problems requiring various disciplines; responsible for fulfilling program objectives.

Level V: ARSAE at this level are renowned experts in their fields. Independently defines and leads most challenging technical programs consistent with general guidance and/or independently directs overall R&D program managerial and/or supervisory aspects; conceives and develops elegant solutions to very difficult problems requiring highly specialized areas of technical expertise; recognized within DoD and other agencies for broad technical area expertise and has established professional reputation in technical community nationally and internationally. The primary requirement for Level V positions is the knowledge of and expertise in specific scientific and technology areas related to the mission of their organization. However, the ability to manage and/or supervise R&D operations or programs is also considered a necessity. May direct the work of an organizational unit; may be held accountable for the success of one or more specific programs or projects; monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals; supervises the work of employees; or otherwise exercises important policy-making, policy-determining, or other managerial functions.

Career Track: S&E Technical

Includes nonprofessional positions which support S&E activities through application of various skills in areas such as the following: engineering, computer, physical, chemical, biological, mathematical sciences; and student trainees.

Level I: This includes trainees who develop technical support knowledge gained through actual work experience. Performs repetitive tasks using knowledge of standardized procedures and operations. Receives specific, clear and detailed instruction and supervision. Completed work is reviewed for technical soundness.

Level II: Technicians at this entry level require a practical knowledge of standard procedures in a technical field. Skill in applying knowledge of basic principles, concepts and methodology of occupational and technical methods is required. Carries out prescribed procedures and relies heavily on precedent methods. Work is reviewed for technical adequacy and accuracy, and adherence to instructions.

Level III: This is the advanced developmental level of this career track, requiring extensive training or experience. Work requires some adapting of existing precedents or techniques. Receives outline of objectives desired and description of operating characteristics and theory involved. Completed assignments are reviewed for compliance with instructions, adequacy, judgment, and satisfaction of requirements.

Level IV: Technicians at this level are considered to have professional level knowledge of a specific field and may serve as a member of a research team. Receives general guidance on overall objectives and resources. Conceives, recommends, and tests new techniques or methods. Completed work is reviewed for overall soundness and compliance with overall project objectives; results are usually accepted as authoritative.

Level V: Technicians at this level are experts within their technical area, or are key program administrators. Develop solutions to complex problems; responsible for fulfilling program objectives; and receive general guidance on policy, resources and planning. (This is a temporary career level, established for demonstration project transition purposes only. No new positions will be classified at this level.)

Career Track: Administrative Specialist and Professional

Professional and specialist positions in areas such as the following: safety and health, personnel, finance, budget, procurement, librarianship, legal, business, facilities management and student positions associated with these professions.

Level I: Includes student trainees. The education and employment must be part of a formal student employment program. Specific, clear, and detailed instructions and supervision are given to complement education. The level of education and experience completed is a major consideration in establishing the level of on-the-job training and work assignments.

Level II: This is the developmental stage preparing Administrative Specialists and Professionals for the full and independent performance of their work. Specific, clear and detailed instruction and supervision are given upon entry; recurring assignments are carried out independently. Situations not covered by instructions are referred to supervisor. Finished work is reviewed to ensure accuracy.

Level III: This is the advanced developmental, or typically, target level, of this career track. Employee plans and carries out assignments independently, resolving conflicts that arise, coordinates work with others and interprets policy on own initiative. Completed work is reviewed for feasibility, compatibility with other work or effectiveness in meeting requirements or expected results.

Level IV: At this level, Administrative Specialists and Professionals are authorities within their professional areas or key program administrators or supervisors. They conduct or direct activities in an administrative and professional area with only general guidance on policy, resources and planning; develop solutions to complex problems requiring various disciplines; and are responsible for fulfilling program objectives.

Level V: Administrative Specialists and Professionals at this level are experts within their broad administrative area or professional field who serve as leaders, heads of branches or divisions, or key program administrators. Receives general guidance on policy, resources and planning having an affect on public policies or programs; responsible for fulfilling program objectives. Results are authoritative and affect administrative programs or the well-being of substantial numbers of people.

Career Track: Administrative Support

Includes clerical, secretarial and assistant work in nonscientific and engineering occupations.

Level I: This includes student trainees as well as advanced entry level which requires a fundamental knowledge of a clerical or administrative field. Developmental assignments may be given which lead to duties at a higher group level. Performs repetitive tasks, specific, clear and detailed instruction and supervision; with more experience utilizes knowledge of standardized procedures and operations, assistance is given on new or unusual projects. Completed work is reviewed for technical soundness.

Level II: This level requires a knowledge of standardized rules, procedures or operations requiring considerable training. General guidance is received on overall objectives and resources. Completed assignments may be reviewed for overall soundness or meeting expected results.

Level III: This is the senior level which requires knowledge of extensive procedures and operations requiring extensive training. Receives general guidance on overall resources and objectives. Skilled in applying knowledge of basic principles, concepts, and methodology of profession or administrative occupation and technical methods. Results are accepted as authoritative and are normally accepted without significant change.

Appendix C: Table of Occupational Series Within Career Tracks

Note: As new series are needed or current ones are discontinued, this table will be updated.

S&E Professional—Includes all scientist and engineer work.

0101—Social Science Series
0180—Psychology Series
0401—General Biological Science Series
0403—Microbiology Series
0801—General Engineering Series
0804—Fire Protection Engineering Series
0806—Materials Engineering Series
0808—Architecture Series
0810—Civil Engineering Series
0819—Environmental Engineering Series
0830—Mechanical Engineering Series
0840—Nuclear Engineering Series
0850—Electrical Engineering Series
0854—Computer Engineering Series
0855—Electronics Engineering Series
0861—Aerospace Engineering Series
0892—Ceramic Engineering Series
0893—Chemical Engineering Series
0899—Engineering and Architecture Student Trainee Series
1301—General Physical Science Series
1306—Health Physics Series
1310—Physics Series
1313—Geophysics Series
1320—Chemistry Series
1321—Metallurgy Series
1330—Astronomy and Space Science Series
1340—Meteorology Series
1350—Geology Series
1360—Oceanography Series
1370—Cartography Series
1399—Physical Science Student Trainee Series
1515—Operations Research Series
1520—Mathematics Series
1550—Computer Science Series
1599—Mathematics and Statistics Student Trainee Series

S&E Technical—Includes S&E technical support work typically requiring specialized training in the particular discipline.

0802—Engineering Technician Series
0809—Construction Control Series
0818—Engineering Drafting Series
0856—Electronics Technician Series
0895—Industrial Engineering Technician Series
1152—Production Control Series
1311—Physical Science Technician Series
1371—Cartographic Technician Series
1521—Mathematics Technician Series

Administrative Specialist and Professional—Includes analyst, specialist, and professional work in nonscientific and engineering occupations.

0018—Safety and Occupational Health Management Series
0028—Environmental Protection Specialist Series
0080—Security Administration Series
0170—History Series
0201—Personnel Management Series
0212—Personnel Staffing Series
0221—Position Classification Series
0230—Employee Relations Series
0233—Labor Relations Series
0235—Employee Development Series
0260—Equal Employment Opportunity Series
0299—Personnel Management Student Trainee Series
0301—Miscellaneous Administration and Program Series
0334—Computer Specialist Series
0340—Program Management Series
0341—Administrative Officer Series
0342—Support Services Administration Series
0343—Management and Program Analysis Series
0391—Telecommunications Processing Series
0505—Financial Management Series
0510—Accounting Series
0560—Budget Analyst Series
0690—Industrial Hygiene Series
0904—Law Clerk Series
0905—General Attorney Series
0950—Paralegal Specialist Series
1001—General Arts and Information Series
1020—Illustrating Series
1035—Public Affairs Series
1060—Photography Series
1071—Audiovisual Production Series
1082—Writing and Editing Series
1083—Technical Writer and Editing Series
1084—Visual Information Series
1101—General Business and Industry Series
1102—Contracting Series
1104—Property Disposal Series

1176—Building Management Series
1199—Business and Industry Student Trainee Series
1222—Patent Attorney Series
1410—Librarian Series
1412—Technical Information Series
1420—Archivist Series
1601—General Facilities and Equipment Series
1640—Facility Management Series
1670—Equipment Specialist Series
1801—General Inspection, Investigation, and Compliance Series
1910—Quality Assurance Series
2001—General Supply Series
2003—Supply Program Management Series
2030—Distribution Facilities and Storage Management Series
2130—Traffic Management Series

Administrative Support—Includes clerical, secretarial and assistant work in nonscientific and engineering occupations.

0019—Safety Technician Series
0086—Security Clerical and Assistance Series
0181—Psychology Aid and Technician Series
0203—Personnel Clerical and Assistance Series
0302—Messenger Series
0303—Miscellaneous Clerk and Assistance Series
0305—Mail and File Series
0312—Clerk-Stenographer and Reporter Series
0318—Secretary Series
0322—Clerk-Typist Series
0326—Office Automation Clerical and Assistance Series
0332—Computer Operation Series
0335—Computer Clerk and Assistant Series
0344—Management and Program Clerical and Assistance Series
0351—Printing Clerical Series
0361—Equal Opportunity Assistance Series
0390—Telecommunications Processing Series
0394—Communications Clerical Series
0399—Administration and Office Support Student Trainee Series
0503—Financial Clerical and Assistance Series
0525—Accounting Technician Series
0540—Voucher Examining Series
0544—Civilian Pay Series
0561—Budget Clerical and Assistance Series
0986—Legal Clerical and Assistance Series
1001—General Arts and Information Series
1087—Editorial Assistance Series
1105—Purchasing Series
1106—Procurement Clerical and Technician Series
1107—Property Disposal Clerical and Technician Series
1411—Library Technician Series
2005—Supply Clerical and Technician Series
2102—Transportation Clerk and Assistant Series
2131—Freight Rate Series

Appendix D: Classification and CCS Elements

Part I. S&E Professionals
Part II. Administrative Specialist and Professional
Part III. Adminstrative Support
Part IV. S&E Technical

The CCS Summary Forms shown in this appendix are draft forms intended to provide an understanding of what the forms will cover. Under the demonstration project, the forms will be generated by the CCSDS. They may be changed during the project to require additional information, to make them easier to use, or for other reasons.

The contents of the CCS elements, descriptors, discriminators and basic acceptable standards may similarly be changed during the life of the demonstration project.

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NAVAL RESEARCH LABORATORY
CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY
S&E Professional

Employee_____ Pay Pool Code_____ Appraisal Period Ending_____

Title_____ Pay Plan/Series_____ Career Level_____

SSN_____ Supervisor_____

Most Recent OCS_____ Present Salary_____ Scores within NPR Equivalent to Present Salary _____

CRITICAL ELEMENTS	*WEIGHT	SCORE	NET SCORE	RATING OF RECORD ACCEPTABLE OR UNACCEPTABLE
1. Scientific and Technical Problem Solving	_____	_____	_____	_____
2. R&D Business Management	_____	_____	_____	_____
3. Cooperation and Supervision	_____	_____	_____	_____

*If zero, element not applicable.

Basic Pay Increase %_____

Summary Rating A (Acceptable) or U (Unacceptable) _____
Must be U if any critical element is rated U

Contribution Award $_____

Hours_____ OVERALL CONTRIBUTION SCORE (Weighted Average)_____

SUPPLEMENTAL CRITERIA (OPTIONAL): FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:

REMARKS:

Signatures and Date	CCS PLAN	INTERIM REVIEW	APPRAISAL
Employee			
Supervisor			

NOTE: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this form and has a copy of the Elements, Descriptors, Discriminators and Standards applicable to his or her career track.

ELEMENT 1. SCIENTIFIC AND TECHNICAL PROBLEM SOLVING

Instructions: Assign a value (0 - 89) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

		Discriminators				Descriptors
Level	Point Range	Scope of Project and Level of Oversight	Scientific and Technical Complexity and Creativity	Scientific and Technical Communications and Reporting	Impact and Recognition	
I (Student)	0 - 21	Performs tasks specifically assigned by researcher under close supervision; resolves recurring problems independently.	Performs tasks which are non-complex or include detailed instructions, requiring limited knowledge of subject matter.	Writes in-house documents to convey information about his or her tasks or for similar purposes as assigned	Recognized by personnel in own unit for providing high quality support and increasing subject matter knowledge	
II	18 - 47	Conducts in-house technical activities and/or may provide contract technical direction with guidance from supervisor or higher-level scientist or engineer.	Works closely with peers in collectively solving problems of moderate complexity, involving limited variables, precedents established in related projects, and minor adaptations to well-established methods and techniques.	Provides data and written analysis for input to scientific papers, journal articles and reports and/or assists in preparing contractual documents or reviews technical reports. Presents technical results of own work orally or in writing, within own organization or to limited external contacts. Work acknowledged in team publications.	Recognized within own organization for technical ability in assigned areas.	
III	44 - 66	Conducts in-house technical activities or provides contract technical direction on projects and programs where the problem must typically be approached through a series of complete and conceptually related studies. Work requires minimal oversight.	Conceives and defines solutions to technical problems which are typically difficult to define, require unconventional or novel approaches, require application of engineering and/ or scientific principles in significant areas or research or development for which no closely related precedents exist, and/or present other features of more than average difficulty.	Writes or is major contributing author on scientific papers, journal articles or reports and/or prepares contract documents and reviews reports pertaining to area of technical expertise OR contributes inventions, new designs or techniques which are of material significance in the solution of problems. Prepares and presents own and/or team technical results, orally or in writing, to varied laboratory, scientific, industry and other government audiences.	Recognized internally and externally by peers, both in governmental and industrial activities, for technical expertise. Is sought out by colleagues who are themselves professionally mature scientists and engineers.	
IV	66- 80	Independently defines, leads and manages highly challenging and innovative technical activities consistent with general guidance, or independently directs overall R&D program. Interpretations made are accepted as technically authoritative.	Formulates and guides solutions to very difficult problems in advancing technology and research. Problems resolved have been recognized as critical obstacles to progress or development in areas of exceptional interest	Lead or sole author on scientific papers, journal articles, or review articles documenting major advances and resolutions in the technical area, some of which had a major impact on advancing the field or are accepted as definitive of important areas, and/or has contributed inventions, new designs or techniques which are regarded as major advances in basic or applied research, and have opened the way for extensive new developments or solved problems of great importance to the scientific field, agency or public; and/or reviews, approves and ensures overall quality of reporting of all technical products of mission area. Prepares and delivers invited or contributed presentations and papers at national and international conferences on technical area; or gives policy-level briefings.	Recognized within the laboratory, DoD and other agencies in broad, or narrow but intensely specialized, technical area; contributions are of such importance and magnitude they serve to move the state of the art forward so that other colleagues must take notice to keep abreast of development in the field; has established professional reputation in the technical and scientific community.	
V	81 - 89	Leads broad-scale attack in frontier areas of research which will lead to major modification or important extension of current theory. Leadership influences shaping of agency program goals, advancement of programs and understanding in the total field, and planned activities of numerous scientists in government, academia and private industry.	Areas of research are so complex they must be subdivided into areas at least some of which have a major impact on advancing the field or are accepted as definitive of important areas of the field. Develops new hypotheses, concepts and techniques which are required before substantial progress can be made on areas of extraordinary difficulty	Scientific articles are published in the most prestigious journals, introduce new research which significantly enhances knowledge in the technical area, and are of such high quality that they set standards for the scientific community. Serves as a senior reviewer and editor of technical literature produced in his/her area of expertise. Prepares and delivers invited or contributed presentations and papers in national and international forums, representing the scientific community as leading expert in his or her field.	Recognized as a leader and authority in an area of wide-spread scientific interest or applied problems of great importance. Sought by members of the national and international scientific community as advisor and consultant in his or her field.	

ACCEPTABLE PERFORMANCE STANDARDS. With minor exceptions, work is performed in a timely, efficient, and cooperative manner, and work products demonstrate thorough research, completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and overall high quality as deemed by supervisor or appropriate peer group.
SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

ELEMENT 2. R&D BUSINESS MANAGEMENT

Instructions: Assign a value (0 - 89) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

		Discriminators			DESCRIPTORS
Level	Point Range	Corporate Resource Management (Time and Money)	R&D Business Development	Technology Transition and Transfer	
I (Student)	0 - 21	Uses personal and assigned resources efficiently; deviations from the usual are referred to supervisor or other appropriate personnel.	Provides, obtains, or clarifies pre-defined or non-complex information to and from customers as assigned.	Not applicable.	
II	18 - 47	Manages elements of in-house work units or assists in managing a scientific or support contract. Aware of and makes appropriate use of available resources. Uses personal and assigned resources efficiently under guidance of supervisor or team leader.	As a team member, communicates with customers to understand customer requirements. Stays current in areas of expertise and contributes to new program development. Collects information or provides other technical assistance to proposal marketing activities.	Participates as a team member in demonstrating technology to customers. Contributes technically to development of technology that is transitioned. With guidance, contributes to technical content of partnerships for technology transition and/or transfer (ATD's, MOU's, JDL and Reliance, CRADA's and other dual-use vehicles). Seeks out and uses relevant outside technologies in assigned projects.	
III	44 - 66	Manages technically complex in-house work units or one or more contractual efforts in assigned program area. Plans and controls all assigned resources; makes effective use of facilities to optimize operations; exploits fallout money. Participates in strategic planning at team level, taking cognizance of complementary projects elsewhere to ensure optimal use of resources.	Initiates interactions with customers to understand customer needs. Generates key ideas for program development based on such understanding and knowledge of technical area. Pursues near term business opportunities through proposal preparation.	Develops and presents demonstrations of technology to customers. As a team member, implements partnerships for technology transition and/or transfer (ATD's, MOU's, JDL and Reliance, CRADA's and other dual-use vehicles). Evaluates and incorporates appropriate outside technology in individual or team activities.	
IV	66 - 80	Defines technology area strategy and resource allocations for in-house and contractual programs. For multiple technical areas, conducts overall program planning and coordination and/or program documentation (master plans, roadmaps, Joint Director of Lab/Reliance, etc.). Advocates to higher headquarters on budgetary and programmatic issues for resources. Leads strategic planning and prioritization. Develops strategy to leverage resources from other agencies.	Works at senior level to stimulate development of customer alliances for several research and/or development areas. Generates strategic research objectives and/or business plans for core technical areas. Recognizes warfighting trends, relates business opportunities and convinces lab management to develop and acquire expertise and commit funds. Ensures overall proposal quality.	Organizes, leads and markets overall technology transition and transfer activities for organization at senior executive and command levels. Leads in formulation and oversight of ATD's, MOU's, JDL and Reliance, CRADA's and other dual-use vehicles. Creates an environment that encourages widespread exploitation of both national and international technologies.	
V	81 - 89	Serves as an advisor to NRL, ONR, DoN, and DoD on issues of resource management related to his or her area of research, including effective use of equipment, facilities, and scientific talent both within and outside NRL.	NRL's opportunities for new business are substantially enhanced by his or her established reputation and on-going professional activities (participation in professional societies, scientific collaborations). Personal stature is a major consideration in agency sponsorship of programs in his or her field.	Because of his or her professional relationships and exceptional knowledge, discerns opportunities for research which will lead to technology transition and transfer and encourages NRL to focus in such areas.	

ACCEPTABLE PERFORMANCE STANDARDS. With minor exceptions, makes and/o ne and budget estimates on assigned projects or takes appropriate corrective action; communications are logical, clear, complete and appropriately influe ion process; decisions and strategies contribute to the appropriate outcome of business dealings; and work products demonstrate thorough r pletion of established objectives, adherence to instructions and guidance of supervisor and team leader, and overall high quality as deemed by supe te peer group.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUN D EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

ELEMENT 3. COOPERATION AND SUPERVISION

Instructions: Assign a value (0 - 69) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

	Discriminators		DESCRIPTORS
Level	Point Range	Team Role and Breadth of Influence	Supervision and Subordinate Development (consider only if employee is a supervisor)
I (Student)	0 - 21	Provides assistance to team members consistent with his or her level of education and experience.	Not applicable.
II	18 - 47	Contributes as a technical researcher or team member to all aspects of team's responsibilities. May technically guide or mentor technician and/or less experienced and more junior level personnel.	Not applicable.
III	44 - 66	Contributes in a major team role either as a senior scientist and technician or as a task or team leader. Is sought for consultation by peers and mentors team members. If a team leader, guides team to ensure that project goals and charters are adhered to through team effort.	Carries out full range of supervisory duties with respect to lower level staff, including one or more subordinate professionals. Identifies and resolves developmental needs and problems, completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties.
IV	66 - 80	Manages all aspects of personnel, teams and/or branches with accountability for mission and programmatic success. Selects research team leaders and establishes team charters. Provides technical expertise and leadership to subordinate team leaders. Ensures that various teams work as cohesive units to achieve the respective charter and goals	Plans, directs and timely executes R&D programs and problems of such difficulty, scope, and complexity that they must be subdivided into separate areas or phases and carried out through subordinate organizational units. Manages policy changes, organizational changes, and changes to structure and content of program(s) directed. Requires substantial coordination and integration of major work assignments, projects, or program segments; exercises final technical authority over the work directed. Carries out full range of supervisory duties with respect to subordinates: Identifies and resolves developmental needs and problems; completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies. Provides leadership in developing, implementing, evaluating, and improving processes and procedures for enhancing performance of subordinates. Hires staff and develops future team leaders and supervisors.
V	81 - 89	Plays a major role in team efforts as team's scientific and technical advisor and mentor. Provides high-level scientific and/or technical information and guidance in his/her area of expertise. Suggests, influences and directs the R&D efforts of such teams. Serves as a recruiting attraction for recent graduates who seek opportunities to work under his or her inspiration and guidance in order to catch some of his or her imaginative fire, critical judgment, and research technique.	Provides consultation and leadership in highly specialized areas. Provides input on research and development teams outside NRL. Leads own research team consisting of scientific and engineering personnel. Serves as an example; mentors and encourages junior scientists.

ACCEPTABLE PERFORMANCE STANDARDS. With minor exceptions, carries out duties in a professional and responsive manner; personal interactions foster cooperation and teamwork; **and, if employee is a supervisor,** treatment of subordinates is based on merit and fitness considerations, is consistent with law/rules/regulations/policies, is judged fair and equitable by superiors, and fosters commitment/cooperation/teamwork amongst subordinates.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

NAVAL RESEARCH LABORATORY
CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY
Administrative Specialist and Professional

Employee_____ Pay Pool Code_____ Appraisal Period Ending_____

Title_____ Pay Plan and Series_____ Career Level_____

SSN_____ Supervisor_____

Most Recent OCS_____ Present Salary_____ Scores within NPR Equivalent to Present Salary _____

CRITICAL ELEMENTS	*WEIGHT	SCORE	NET SCORE	RATING OF RECORD ACCEPTABLE OR UNACCEPTABLE
1. Problem Solving and Program Management	_____	_____	_____	_____
2. Cooperation and Customer Relations	_____	_____	_____	_____
3. Supervision and Resources Management (Supervisory Personnel Only)	_____	_____	_____	_____

*If zero, element not applicable.

Basic Pay Increase %_____

Contribution Award $_____

Hours _____

Summary Rating A (Acceptable) or U (Unacceptable) _____
Must be U if any critical element is rated U

OVERALL CONTRIBUTION SCORE (Weighted Average) _____

SUPPLEMENTAL CRITERIA (OPTIONAL): FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:

REMARKS:

Signatures and Dates	CCS PLAN	INTERIM REVIEW	APPRAISAL
Employee			
Supervisor			

NOTE: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this form and has a copy of the Elements, Descriptors, Discriminator, and Standards applicable to his or her career track.

ELEMENT 1: PROBLEM SOLVING AND PROGRAM MANAGEMENT

Instructions: Assign a value (0 - 80) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

		Discriminators			
Level	Point Range	Complexity/Scope	Applicability of Guidelines	Level of Oversight	DESCRIPTORS
I (Student)	0	Applies standardized rules, procedures, and operations in an administrative or technical program area to resolve standard or recurring problems.	Locates and selects the most appropriate guidelines and procedures from established sources; makes minor deviations applicable to specific cases.	Independently carries out assigned work following supervisor's direction.	
II	18 - 47	Applies knowledge of an administrative or technical program area to analyze and resolve problems which are difficult but for which there are established patterns and methods for solution. Includes refinement of methods or development of new ones.	Uses judgment in selecting, interpreting and adapting guidelines which are available but not completely applicable, or which have gaps in specificity.	Independently plans and carries out work, based on guidelines and precedents and supervisor's definition of objectives, priorities and deadlines. Completed work is evaluated for technical soundness, appropriateness, and conformity to policy and requirements.	
III	44 - 59	Applies substantial expertise in an administrative or technical program area to analyze and resolve the most highly complex, controversial, sensitive issues, and/or problems; and where applicable to administer one or more complex programs within a functional area. Substantially modifies or adapts standard and traditional methods and approaches to address unusual circumstances and highly complex issues and to develop new methods, criteria, policies or precedents that have NRL-wide impact.	Uses initiative and resourcefulness in interpreting and applying administrative or technical policies, precedents and guidelines which are applicable but are scarce, conflicting, of limited use, or stated only in general terms. Uses considerable judgment and originality in developing innovative approaches to define and resolve highly complex situations.	Consults with supervisor to develop deadlines, priorities and overall objectives. Independently plans and carries out work. Complex issues are resolved without reference to supervisor, except for matters of a policy nature. Completed work reviewed only from an overall standpoint in terms of feasibility, compatibility with other work, and overall effectiveness in meeting requirements or expected results.	
IV	59 - 66	Performs varied duties requiring many different and unrelated processes and methods applied to a broad range of activities or substantial depth of analysis for an administrative or professional field. Uses judgment and ingenuity in making decisions in major areas of uncertainty in methodology, interpretation and/or evaluation resulting from such things as continuing changes in program, unknown phenomena or conflicting requirements. Must isolate and define unknown conditions, resolving critical problems, or develop new theories for work products or services which affect the work of other experts, development of major aspects of administrative programs or missions, or the well being of substantial numbers of people.	Uses guidelines which require interpretation and are of limited use. Uses initiative and resourcefulness in interpreting guidelines, in deviating from traditional methods or researching trends and patterns to develop new methods, criteria or proposed new policies.	Supervisor outlines overall objectives. Employee then independently plans and carries out the work. Complex issues are resolved without reference to supervisor except for matters of a policy nature. Results of work are considered technically authoritative and are normally accepted without significant changes.	
V	66 - 80	Defines, leads and manages an overall administrative or technical program area which includes a range of complex functional areas. Makes or recommends decisions which significantly change, interpret or develop important agency policies and programs.	Guidelines are broadly stated and non-specific. Applies considerable judgment and ingenuity in interpreting guidelines that do exist and in developing applications to broadly based projects and programs.	Independently plans, designs and carries out programs, projects, studies, etc., such that overall program objectives are met. Supervisor provides only broadly defined missions and functions. Results of work are considered technically authoritative and are normally accepted without significant changes.	

ACCEPTABLE PERFORMANCE STANDARDS. With minor exceptions, work is performed in a timely, efficient, and cooperative manner; and work products demonstrate thorough research, completion of established objectives for the assignment, adherence to instructions and guidance of supervisor/team leader, and acceptable quality as deemed by supervisor.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

ELEMENT 2: COOPERATION AND CUSTOMER RELATIONS

Instructions: Assign a value (0 - 80) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

		Discriminators			
Level	Point Range	Cooperation	Level and Purpose of Customer Interactions	Effectiveness in Developing, Executing, and Marketing Customer-Oriented Support Services	DESCRIPTORS
I (Student)	0	Develops and maintains successful working relationships with others inside and outside own organization to effectively carry out assigned work.	Interacts with customers to carry out requests within area of responsibility; refers deviations or non-recurring problems to appropriate personnel.	Carries out services in a manner which fosters customer satisfaction and confidence in employee's organization.	
II	18 - 47	Develops/maintains successful working relationships with others inside and outside own organization to work out problems between own group and others, coordinate joint actions, and gain understanding of other areas sufficient to make appropriate recommendations to customers.	Interacts with customers to understand customer needs, communicate information and coordinate actions; independently carries out actions or delegates/refers to appropriate personnel.	Contributes ideas for improvement of established services based on knowledge of a variety of administrative or technical programs, systems, or equipment, and an understanding of customer needs.	
III	44 - 59	Seeks and fosters successful working relationships with others inside and outside own organization to coordinate highly complex, controversial, sensitive situations, work out problems or improve processes of own group or between own group and others, and gain understanding of other areas sufficient to effectively carry out integrated advisory and program work. Leads, mentors, and provides technical oversight to specialists at same or lower level. Regularly consulted by branch/division head and other journey-level specialists on highly complex issues due to depth and breadth of expertise and cooperative manner.	Works jointly with customers to define highly complex or controversial problems or program needs; and to develop and carry out unique strategies, techniques or criteria for resolving problems and meeting needs.	Generates key ideas and/or strategies for development/implementation/marketing of new and improved programs or services applicable to a specific administrative or technical functional area serving Lab-wide customers, or to a range of programs serving customers at division-wide level. OR effectively carries out and maintains such programs and services at a high level of customer awareness and satisfaction.	
IV	59 - 66	Seeks and fosters successful working relationship with others inside and outside own organization to coordinate highly complex and controversial and sensitive situations, work out problems or improve processes of own group or between own group and others, and gain understanding of other areas sufficient to effectively carry out integrated advisory and program work. Leads, mentors, and provides technical oversight to specialists at same or lower level. Regularly consulted by branch and division head and others on highly complex issues due to depth and breadth of expertise and cooperative manner.	Works jointly with customers to define highly complex or controversial problems or program needs; develops and carry out unique strategies, techniques or criteria for resolving problems and meeting needs of customers both inside and outside the organization.	Generates key ideas and/or strategies for development and implementation and marketing of highly complex new and improved programs or services which affect a broad administrative or professional program or technical functional area serving NRL-wide customers; or to a highly complex programs serving customers division-wide; OR effectively carries out and maintains such programs and services at a high level of customer awareness and satisfaction.	
V	66 - 80	Fosters successful working relationships with high-level officials both inside and outside NRL, thereby enhancing NRL's ability to meet organizational goals. Seeks and builds coalitions with other support organizations to establish integrated approaches to meeting NRL's needs. Sets and maintains, throughout own organization, a tone of cooperation, cohesion and teamwork.	Works at senior executive level to understand political, fiscal and other factors affecting customer and program needs, to develop and establish concepts, theories, or programs to meet service needs or resolve unyielding problems. Negotiates and resolves conflicts among senior managers regarding activity-wide policy decisions.	Generates strategic objectives and plans for development, implementation, and marketing of broadly-based programs and services to meet Lab-wide needs. Ensures overall effectiveness and customer-oriented focus of division programs and services.	

ACCEPTABLE PERFORMANCE STANDARDS. With minor exceptions, personal interactions foster cooperation and teamwork, and enhance the ability of self and organization to effectively serve customers; timely, accurate and acceptable quality service is provided to customers; and customer interactions demonstrate appropriate knowledge for level of interaction required by the position.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

ELEMENT 3: SUPERVISION AND RESOURCES MANAGEMENT

Instructions: Assign a value (0 - 80) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

Level	Point Range	Discriminators	DESCRIPTORS
		Resources Management: Size and Complexity of Area of Responsibility; Level of Efficiency, Creativity and Initiative	Supervision and Subordinate Development (consider only if employee is a supervisor)
I (Student)	0	Uses personal and assigned resources efficiently under guidance of supervisor. Contributes ideas for streamlining procedures or for more efficiently using office and program resources.	Not applicable.
II	18 - 47	Generates and implements ideas for effectively streamlining handling of moderately complex projects and programs which are difficult but for which there are established guidelines, patterns or methods for solution. This streamlining results in savings of time, money, and administrative burden for organization or customer; AND/OR maintains an organization/program already so streamlined.	Carries out full range of supervisory duties with respect to support personnel (technicians, assistants or clerks). Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties.
III	44 - 59	Generates and implements ideas for effectively streamlining handling of complex projects and problems, or programs involving analysis and resolution of highly complex, or controversial issues, problems, or programs involving subordinates, which result in savings of : ne. money, and administrative burden for organization or customer; AND/OR maintains an organization/program already so streamlined.	Carries out full range of supervisory duties with respect to lower level staff including one or more subordinate professionals. Identifies and resolves developmental needs and problems, completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties.
IV	59 - 66	Generate and implements ideas for effectively streamlining handling of highly complex projects and controversial issues, complex or controversial issues/problems involving subordinates, which result in savings of time, ne. money, and administrative burden for organization/program and program already so organized or streamlined.	Carries out full range of supervisory duties with respect to lower level staff including one or more subordinate professionals. Identifies and resolves developmental needs and problems, completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties.
V	66 - 80	Manages human, material, and financial resources of a division (or organization of comparable size, diversity and complexity) encompassing a range of complex functional areas. Defines resource allocations required for in-house and contractual programs. Advocates to Lab and/or higher headquarters for resources. Generates and implements creative ideas for increasing overall efficiency of organization.	Oversees the overall planning, direction, and timely execution of an administrative program, including development, assignment, and higher level clearance of goals and objectives for supervisors of subordinate units. Manages policy and organizational changes, and changes to the structure and content of the program directed. Carries out full range of supervisory duties with respect to subordinates: identifies and resolves developmental needs and problems, completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies. Provides leadership in developing, implementing, evaluating and improving processes for enhancing performance of subordinates

ACCEPTABLE PERFORMANCE STANDARDS. With minor exceptions, work is performed in a timely, efficient and cooperative manner; work products demonstrate thorough research, completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and acceptable quality as deemed by supervisor or appropriate peer group; and if an employee is a supervisor, treatment of subordinates is based on merit and fitness considerations, is consistent with law/rules/regulations/policies, is judged fair and equitable by superiors, and fosters commitment/cooperation/teamwork amongst subordinates.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

NAVAL RESEARCH LABORATORY
CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY
Administrative Support

Employee_____ Pay Pool Code_____ Appraisal Period Ending_____

Title_____ Pay Plan and Series_____ Career Level_____

SSN_____ Supervisor_____

Most Recent OCS_____ Present Salary_____ Scores within NPR Equivalent to Present Salary _____

CRITICAL ELEMENTS	*WEIGHT	SCORE	NET SCORE	RATING OF RECORD ACCEPTABLE OR UNACCEPTABLE
1. Problem Solving and Office Administration	_____	_____	_____	_____
2. Cooperation, Customer Relations, and Supervision	_____	_____	_____	_____

*If zero, element not applicable.

Basic Pay Increase %_____ Summary Rating A (Acceptable) or U (Unacceptable) _____
Must be U if any critical element is rated U

Contribution Award $_____

Hours _____ OVERALL CONTRIBUTION SCORE (Weighted Average)_____

SUPPLEMENTAL CRITERIA (OPTIONAL): FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:

REMARKS:

Signatures and Dates	CCS PLAN	INTERIM REVIEW	APPRAISAL
Employee			
Supervisor			

NOTE: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this form and has a copy of the Elements, Descriptors, Discriminators, and Standards applicable to his or her career track.

ELEMENT 1: PROBLEM SOLVING AND OFFICE ADMINISTRATION

Instructions: Assign a value (0 - 47) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

		Discriminators		DESCRIPTORS
Level	Point Range	Complexity	Level of Oversight and Applicability of Guidelines	
I	0 - 21	Performs clerical or technical work involving application of a body of standardized rules, procedures or operations to resolve a full range of standard or recurring clerical/technical problems.	Independently carries out recurring and non-complex work, following supervisor's direction regarding work to be done, priorities, and specific procedures and guidelines to be followed. Locates and selects the most appropriate guidelines and procedures from established sources; makes minor deviations applicable to specific cases.	
II	18 - 34	Performs clerical or technical work involving application of an extensive body of rules, procedures or operations to resolve a wide-variety of interrelated or nonstandard problems.	Independently plans and carries out steps required to complete assignments, handles problems and deviations. Supervisor defines objectives, overall priorities and deadlines. Selects, interprets and applies guidelines which are available but not completely applicable or have gaps in specificity.	
III	31 - 47	Performs clerical or technical work involving: - application of principles, concepts and methodologies of a professional and administrative occupation to accomplishment of particularly challenging assignments, operations or procedures; or - application of a wide range of highly technical principles, processes and methods, including refinement of methods or development of difficult but well precedented projects	Independently determines the approach and methodology used to accomplish work, plans and carries out work and resolves related conflicts. Supervisor sets overall objectives, broad priorities and resources available. Applies considerable judgment and analysis in selecting, interpreting and applying guidelines which are available but not completely applicable or have gaps in specificity.	

ACCEPTABLE PERFORMANCE STANDARDS. With minor exceptions work is performed in a timely, efficient, and cooperative manner; and work products demonstrate completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and acceptable quality as deemed by supervisor.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

ELEMENT 2: COOPERATION AND CUSTOMER RELATIONS/SUPERVISION

Instructions: Assign a value (0 - 47) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

		Discriminators			DESCRIPTORS
Level	Point Range	Supervision and Subordinate Development (consider only if employee is a supervisor)	Cooperation	Customer Relations	
I	0 - 21	Not applicable.	Interacts under established circumstances to obtain or give factual information within the immediate organization, office, project, or in related support units.	Independently carries out customer requests within area of responsibility or refers to other appropriate personnel.	
II	18 - 34	Carries out full range of supervisory duties with respect to Level I or junior Level II employees. Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties.	Initiates, engages in, and facilitates cooperative interactions with others inside and outside own organization to: coordinate joint actions, work out problems between own group and others, or gain understanding of other functions sufficient to recommend options to customers.	Interacts with customers to understand customer needs; determines appropriate services to meet needs; and independently carries out such actions or delegates and refers to appropriate personnel. Actively promotes rapport with customers.	
III	31 - 47	Carries out full range of supervisory duties with respect to lower level staff including one or more who is a senior Level II. Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties.	Meets descriptor for Level 2. In addition, is relied upon and consulted by team leader and members as a critical contributor to meeting overall goals. Serves as an example of high level administrative and technical knowledge, and ability to gain cooperation and compliance by persuasion or negotiation.	Works jointly with customers to define organizational needs and problems; establishes customer alliances and translates customer needs to programs and services OR applies knowledge of protocol to assisting particularly high-level customers of his or her organization.	

ACCEPTABLE PERFORMANCE STANDARDS. With minor exceptions, personal interactions foster cooperation and teamwork; timely, accurate and acceptable quality service is provided to customers; customer interactions demonstrate appropriate knowledge for level of interaction required by the position; and **if employee is a supervisor,** treatment of subordinates is based on merit and fitness considerations, is consistent with law/rules/regulations/policies, is judged fair and equitable by superiors, and fosters commitment/cooperation/teamwork amongst subordinates.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

NAVAL RESEARCH LABORATORY
CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY
S&E Technical

Employee_____ Pay Pool Code_____ Appraisal Period Ending_____

Title_____ Pay Plan and Series_____ Career

Level_____

SSN_____ Supervisor_____

Most Recent OCS_____ Present Salary_____ Scores within NPR Equivalent to Present Salary _____

CRITICAL ELEMENTS	*WEIGHT	SCORE	NET SCORE	RATING OF RECORD ACCEPTABLE OR UNACCEPTABLE
1. Scientific and Technical Problem Solving	_____	_____	_____	_____
2. Cooperation and Customer Relations and Supervision	_____	_____	_____	_____

*If zero, element not applicable.

Basic Pay Increase %_____ Summary Rating A (Acceptable) or U (Unacceptable) _____
Must be U if any critical element is rated U

Contribution Award $_____

Hours_____ OVERALL CONTRIBUTION SCORE (Weighted Average)_____

SUPPLEMENTAL CRITERIA (OPTIONAL): FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:

REMARKS:

Signatures and Dates	CCS PLAN	INTERIM REVIEW	APPRAISAL
Employee			
Supervisor			

NOTE: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this form and has a copy of the Elements, Descriptors, Discriminators and Standards applicable to his or her career track.

ELEMENT 1. SCIENTIFIC AND TECHNICAL PROBLEM SOLVING

Instructions: Assign a value (0 -66) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

		Discriminators		DESCRIPTORS
Level	Point Range	Scope of Project	Scientific and Technical Complexity and Creativity	Level of Oversight
I	0 - 21	Performs specific procedures which are typically a segment of a project of broader scope. Work affects the accuracy, reliability or acceptability of further processes. Resolves recurring routine problems independently. Operates and adjusts varied equipment to perform standardized tests or operations involved in testing, data analysis and presentation.	Performs duties that involve related and established steps, processes or methods. Determines what needs to be done by choosing among a few different but easily recognizable situations. Recognizes readily apparent errors requiring limited knowledge of the subject matter. Uses judgment in locating and selecting most appropriate procedures, making minor deviations to adapt the guidelines to specific cases.	Receives routine assignments in terms of objectives to be achieved and without explicit instructions as to work methods, if standard work methods can be used. Resolves routine technical problems in terms of previous experience without reference to supervisor. Explicit instructions for solving technical problems involving unfamiliar conditions, methods, or concepts are provided by the supervisor.
II	18 - 39	Independently plans and conducts a block of work which is a complete and conventional project of relatively limited scope or a portion of a large and more diverse project. Work affects the design or operation of systems, equipment, testing operations, research conclusions, or similar activities.	Applies a practical knowledge of technical methods, principles and practices within a narrow area of R&D and program and project to assignments involved with design and planning of moderately complex, well-precedented projects. Assignments require analyses of several possible courses of action, techniques and/or designs; and selection of most appropriate. Considers precedents in carrying out work and makes some adaptations of previous plans and techniques.	Receives guidance and instructions in dealing with unfamiliar practices and problems. On familiar types of assignments, completes work without explicit instructions as to work methods and precedents. Significant deviations from guides requires approval.
III	36 - 47	Independently plans and conducts a block of work which is a complete and conventional project of relatively limited scope or portion of a large and more diverse project. Work affects the design or operation of systems, equipment, testing operations, research conclusions, or similar activities.	Applies a practical knowledge of a wide range of different but established technical methods, principles and practices within a narrow area of research/development programs/project to design and planning of difficult but well-precedented projects. Assignments require study, analysis, and selection of several possible courses of action, techniques and/or designs, and selection of most appropriate. Considers pre-cedents in carrying out work which may be conflicting or are not directly applicable. Adapts previous plans and techniques to fit new situations.	Supervisor outlines overall requirements, providing information on any related work being performed and furnishing general instructions regarding objectives, time limitations, priorities, and similar issues. Plans and carries out successive steps and handles problems and deviations in the work assignments in accordance with accepted practices, policy or instructions. Completed work is evaluated for technical soundness, appropriateness, and conformity to policy and requirements.

ACCEPTABLE PERFORMANCE STANDARDS. With minor exceptions, work is performed in a timely, efficient, and cooperative manner; and work products demonstrate completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and acceptable quality as deemed by supervisor.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

ELEMENT 1. SCIENTIFIC AND TECHNICAL PROBLEM SOLVING Continued

Instructions: Assign a value (0 -66) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

		Discriminators			
Level	Point Range	Scope of Project	Scientific and Technical Complexity and Creativity	Level of Oversight	DESCRIPTORS
IV	44 - 59	Establishes criteria; formulates projects; assesses program effectiveness, investigates or analyzes a variety of unusual conditions, problems, or questions in areas which affect a wide range of major activities. Points out areas for investigation or improvement in their area of expertise.	Applies deep and diversified knowledge to atypical or highly difficult assignments. Thoroughly evaluates various alternatives for meeting objectives, considering applicable technical factors as well as related factors, and recommends the best one. Reviews, analyzes and integrates work performed by others and changes in technology as they relate to the possible impact on projects or programs, systems or processes in employee's area of expertise. Assignments are frequently complicated by many operations which equipment or systems must perform, and many variables that must be considered. Precedents are sometimes absent, but more commonly, the relationships of precedents to particular assignments is obscure. Must deal with conflicting issues.	Supervisor outlines requirements, objectives and operational requirements. Technicians must then analyze problems and develop own approaches and work plans; receives little technical advice or guidance; technical decisions and recommendations are usually accepted by higher authority except when policy, program, or budgetary considerations are overriding.	
V	59 - 66	Must plan, organize and direct extensive development efforts including broad programs of applied R&D. Uses judgment and ingenuity in converting overall objectives into programs or policies for others to use. Must adjust broad activities carried out to the latest advances in technology and to the changing program needs of an area of research/development.	Provides expert advisory services and leadership for broad and complex programs that advance the state of the art. Programs span various disciplines, are greatly affected by advances in technology and are characterized by highly complex problems for which precedents are lacking in areas critical to the overall effort. Work requires originating new techniques, establishing criteria, or developing new information. Research/development approach is not easily determined and considerable modification of existing techniques is required. Produces documentable modification of existing theories or existing technology.	Supervisor outlines only broad policy and operational objectives and requirements. Technician determines the general R&D approach. Technical supervision is limited to reviewing broad hypotheses and overall approach. Interpretations made by the technician are reviewed but are generally accepted as technically accurate. Supervisor is kept informed and only broad changes in the direction of the work require clearance.	

ACCEPTABLE PERFORMANCE STANDARDS. With minor exceptions, work is performed in a timely, efficient, and cooperative manner; and work products demonstrate completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and acceptable quality as deemed by supervisor.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

BILLING CODE 6325-01-C

ELEMENT 2. COOPERATION AND CUSTOMER RELATIONS/SUPERVISION

Instructions: Assign a value (0 -66) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

		Discriminators		
Level	Point Range	Teamwork/Customer Relations	Supervision and Subordinate Development (consider only if employee is a supervisor)	DESCRIPTORS
I	0 - 21	Provides work product which affects the accuracy, reliability, or acceptability of assignments, projects or equipment of broader scope. Independently carries out requests within limited area of responsibility or refers to other appropriate personnel.	Not applicable.	
II	18 - 39	Provides work product which is a complete project of relatively conventional and limited scope or a portion of a larger project. Work requires a limited degree of coordination and integration of diverse phases carried out by others. Refers to others the more complex and critical aspects of problem exploration, evaluation of approaches, and development or new solutions.	Carries out full range of supervisory duties with respect to Level I or lower Level II employees. Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties.	
III	36 - 47	Provides work product which is a complete conventional project of relatively limited scope, or a portion of a larger and more diverse project. Project requires coordination of several parts, each requiring independent analysis and solution. Technician reviews, analyzes and integrates work performed by other groups or individuals outside the organization.	Carries out full range of supervisory duties with respect to lower level staff including one or more who is a senior Level II. Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties.	
IV	44 - 59	Applies deep and diversified knowledge to atypical or highly difficult assignments in a subject matter or functional area. Acts as spokesperson for their activities; authorize important modifications which conform to broad policy. Coordinate assignments with those of engineers in other disciplines or subject matter areas; represent their offices in the exchange of data and discussion of technical problems at meetings.	Carries out full range of supervisory duties with respect to lower level staff, including one or more who is a senior Level III. Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO and Safety and other regulations and policies. Develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties.	
V	59 - 66	Recognized as a significant contributor to a scientific or engineering field as a leader of a productive R&D team or a leader in the conception and formulation of productive R&D ideas. Recognized as an expert in own field and is regularly sought out for consultation and/or takes leadership on important committees dealing with technical matters.	Oversees the overall planning, direction, and timely execution of a technical support program, including development, assignment, and higher level clearance of goals and objectives for subordinates. Carries out full range of supervisory duties with respect to subordinates: identifies and resolves developmental needs and problems; completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies; develops and maintains resources and processes which enhance ability of subordinates to effectively carry out their duties. Manages policy and organizational changes, and changes to the structure and content of the program directed. Provides leadership in developing, implementing, evaluating, and improving processes and procedures for enhancing performance of subordinates.	

ACCEPTABLE PERFORMANCE STANDARDS. With minor exceptions, personal interactions foster cooperation and teamwork; timely, accurate and acceptable quality service is provided to customers; customer interactions demonstrate appropriate knowledge for level of interaction required by the position, and **if employee is a supervisor,** treatment of subordinates is based on merit and fitness considerations, is consistent with law/rules/regulations/policies, is judged fair and equitable by superiors, and fosters commitment/cooperation/teamwork amongst subordinates.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS FORM OR OTHER APPROPRIATE MEANS

Appendix E: Computation of the IPS and the NPR

The NRL demonstration project will use an IPS which links basic pay to contribution scores determined by the CCS process. The area where basic pay and level of contribution are assumed to be properly related is called the NPR. An employee whose CCS score and rate of basic pay plot within the NPR is considered to be contributing at a level consistent with pay. Employees whose pay plots below the NPR for their assessed score are considered "undercompensated," while employees whose score and pay plot above the NPR are considered "overcompensated."

The purpose of this scoring and pay structure is to spread the full range of basic pay provided by the GS, between GS–1, step 1 and GS–15, step 10, into 80 intervals (scores and pay above those points are related using the same parameters). Each interval is a fixed percentage of the pay associated with the previous point.

For each possible contribution score available to employees, the NPR spans a basic pay range of 12 percent. The lower boundary (or "rail") is established by fixing the basic pay equivalent to GS–1, step 1, with a CCS score of zero. The upper boundary is fixed at the basic pay equivalent to GS–15, step 10, with a CCS score of 80. The distance between these upper and lower rails for a given overall contribution score is then computed to ensure the range of 12 percent of basic pay for each available CCS score.

The middle rail of the NPR is computed as 6 percent above the lower rail. This point is used in connection with certain limits established for pay increases (see section IV.C.7).

From the above considerations, five variables, or inputs, were identified. They are as follows:

1. Variable A: GS–1, step 1 (lowest salary)
2. Variable B: GS–15, step 10 (highest salary)
3. Variable C: Current C-values
4. Variable M: 6 percent (middle rail computation above the low rail)
5. Variable H: 12 percent (high rail computation above low rail)

Other variables are as follows:

1. Variable N: Number of C-value steps at GS–15, step 10
2. Variable P (step increase): Salary value for each C-value equal to 1 + percentage increase

From these variables, the following formula definitions were developed:

Low rail = A*(P^C)
Mid rail = (1+M)*A*(P^C)
High rail = (1+H)*A*(P^C)
Where P = (B/(A*(1+H)))^(1/N)

As an example, a result of the above computation, using the 1999 GS Salary Table, P (step increase) equals 1.023663611. Attachment (1) is a complete list of CCS career level scores and basic pay ranges. Attachment (2) contains graphic representations of these tables for each career track.

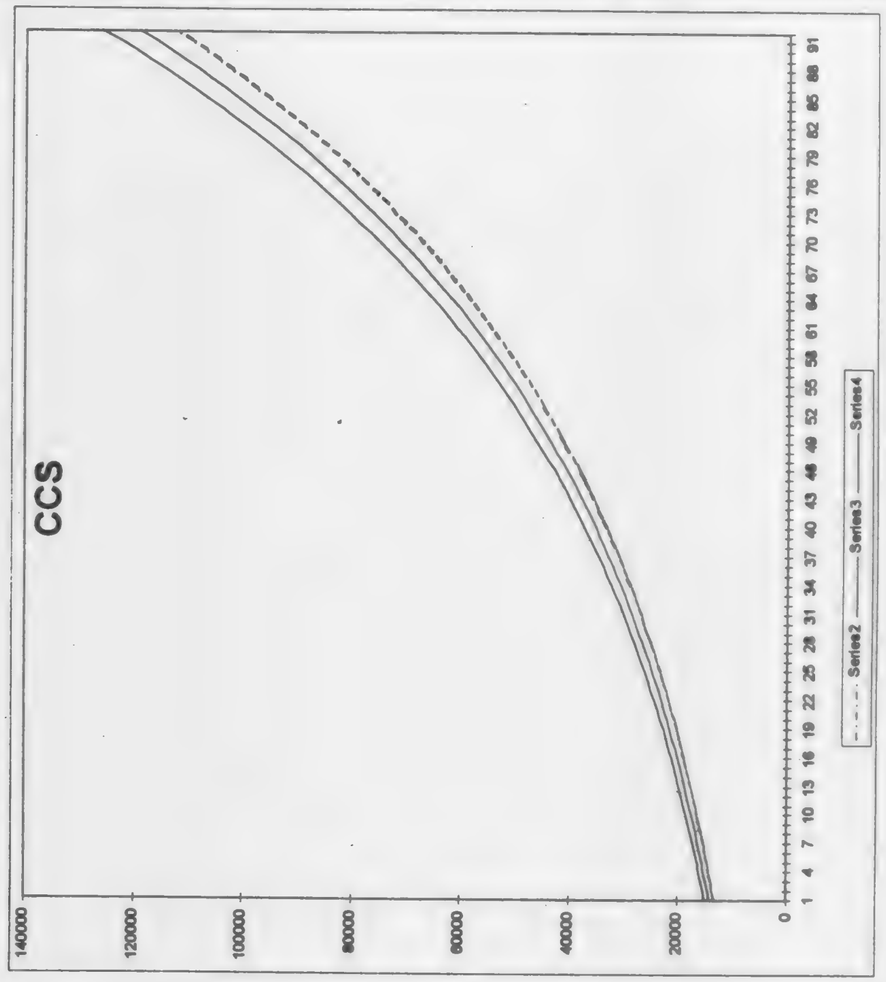
Once the C-values (0–80) are determined, the CCS career levels and scores are extended at the same percentage increments as were computed for the step increase above. These C-values are extended to encompass the equivalent of ES–4 effective January 1999. In the example, SES Level ES–4 is equal to basic pay of $118,000 and is encompassed by the C-value 89 ($107,119 to $119,974).

Attachment to Appendix E: 1999 Inputs

GS 1-Step 1: 13,362
GS 15-Step 10: 97,201
C values: 80
Mid%: 6.00%
Hi%: 12.00%

C value	Low rail	Mid rail	Hi rail
0	13362	14164	14965
1	13678	14499	15320
2	14002	14842	15682
3	14333	15193	16053
4	14672	15553	16433
5	15020	15921	16822
6	15375	16297	17220
7	15739	16683	17627
8	16111	17078	18045
9	16493	17482	18472
10	16883	17896	18909
11	17282	18319	19356
12	17691	18753	19814
13	18110	19196	20283
14	18538	19651	20763
15	18977	20116	21254
16	19426	20592	21757
17	19886	21079	22272
18	20356	21578	22799
19	20836	22086	23339
20	21331	22611	23891
21	21836	23146	24456
22	22353	23694	25035
23	22882	24255	25628
24	23423	24829	26234
25	23977	25416	26855
26	24545	26018	27490
27	25126	26633	28141
28	25720	27263	28807
29	26329	27909	29488
30	26952	28569	30186
31	27590	29245	30900
32	28243	29937	31632
33	28911	30646	32380
34	29595	31371	33146
35	30295	32113	33931
36	31012	32873	34734
37	31746	33651	35556
38	32497	34447	36397
39	33266	35262	37258
40	34054	36097	38140
41	34859	36951	39042
42	35684	37825	39966
43	36529	38720	40912
44	37393	39637	41880
45	38278	40575	42871
46	39184	41535	43886
47	40111	42518	44924
48	41060	43524	45987
49	42032	44554	47076
50	43026	45608	48190
51	44045	46687	49330
52	45087	47792	50497
53	46154	48923	51692
54	47246	50081	52915
55	48364	51266	54168
56	49508	52479	55449
57	50680	53721	56761
58	51879	54992	58105
59	53107	56293	59480
60	54363	57625	60887
61	55650	58989	62328
62	56967	60385	63803
63	58315	61814	65313
64	59695	63276	66858
65	61107	64774	68440
66	62553	66307	70060
67	64034	67876	71718
68	65549	69482	73415
69	67100	71126	75152
70	68686	72809	76930
71	70313	74532	78751
72	71977	76296	80614
73	73680	78101	82522
74	75424	79949	84475
75	77209	81841	86474
76	79036	83778	88520
77	80906	85760	90615
78	82821	87790	92759
79	84780	89867	94954
80	86787	91994	97201
81	88840	94171	99501
82	90943	96399	101856
83	93095	98680	104266
84	95298	101015	106733
85	97553	103406	109259
86	99861	105853	111844
87	102224	108356	114491
88	104643	110922	117200
89	107119	113547	119974
90	109654	116233	122813
91	112249	118984	125719

BILLING CODE 6325-01-P



Formula Definitions:

Low Rail = A*(P^C)
Mid Rail = (1+M)*A*(P^C)
Hi Rail = (1+H)*A*(P^C)

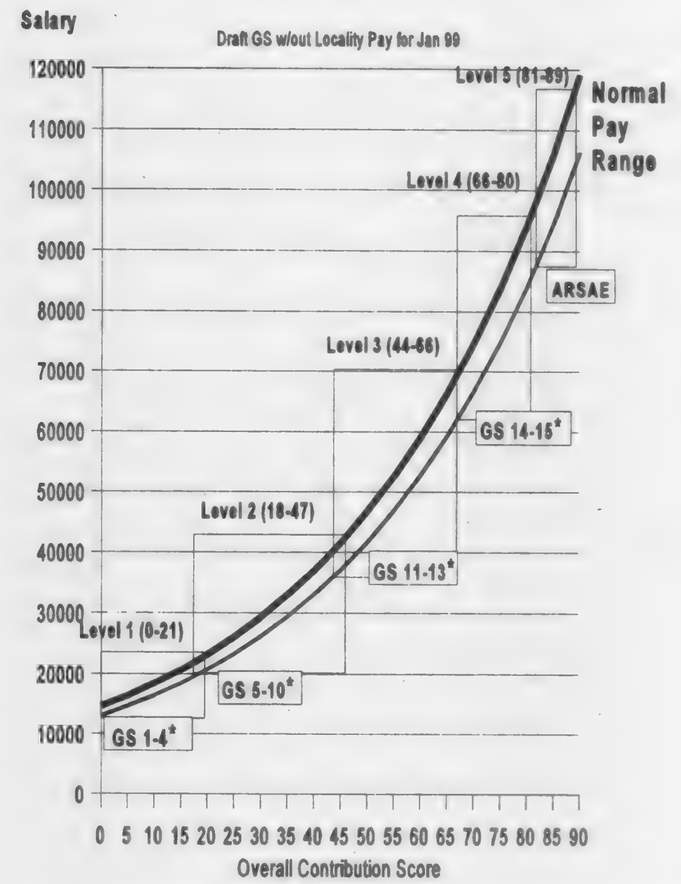
where

P = (B/(A*(1+H)))^(1/N)
(Step Increase)
Step Increase 1.023663611

Variable Definitions:

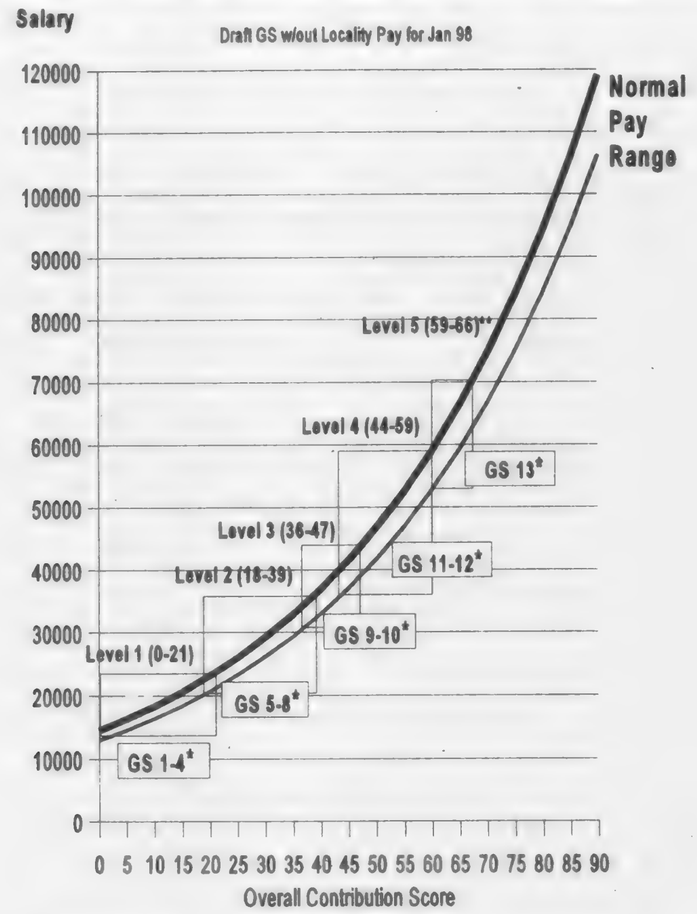
A = Salary for GS-1 Step-1
B = Salary for GS-15 Step-10
C = Current C Value (column A)
H = percentage increase of Hi Rail above Lo Rail
M = percentage increase of Mid Rail above Lo Rail
N = # of C-value steps at GS-15 Step-10
P = percentage increase in salary for each C-value (Step Increase)

NRL Integrated Pay



*GS-Equivalent

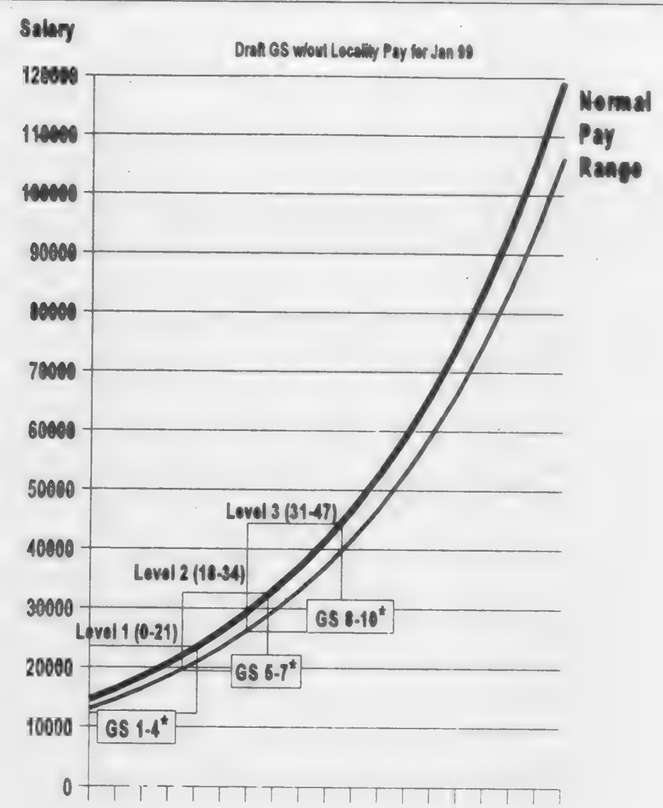
NRL Integrated Pay Schedule in Relation to S&E Professional Career Track



* GS-Equivalent

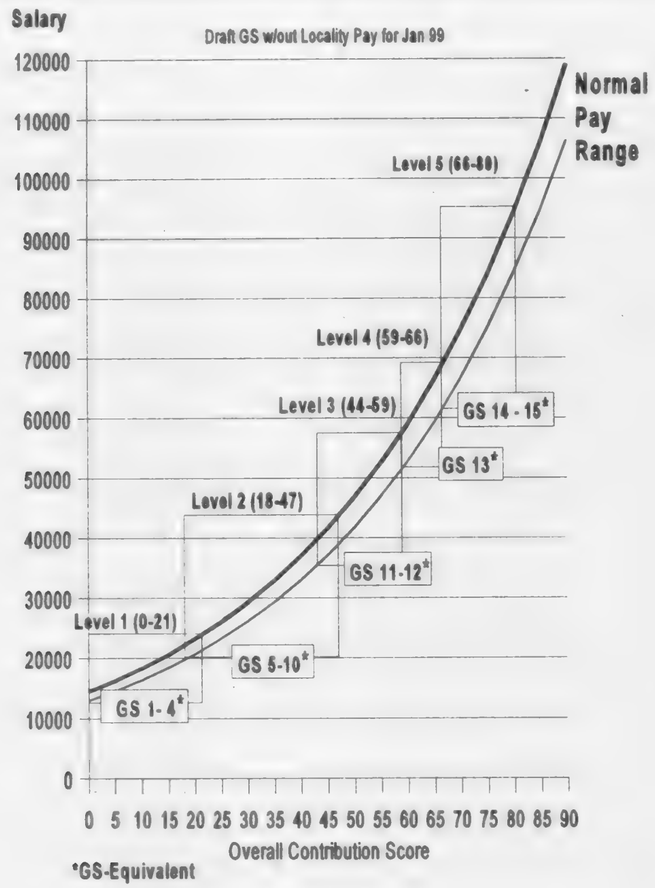
** Temporary level to be discontinued when current incumbents have left.

NRL Integrated Pay Schedule in Relation to S&E Technical Career Track



*GS-Equivalent

NRL Integrated Pay Schedule in Relation to Administrative Support Career Track



NRL Integrated Pay Schedule in Relation to Administrative Specialist and Professional Career Track

Appendix F: Requirements Document Sample

INCUMBENT:

DATE: 4/18/96
DOC#: K900000000

I. POSITION AND ORGANIZATION INFORMATION

Position: S&E Professional, Career Level II
Specialization: Electronics Engineer, 855
Organizational Location: Electronics S&T Division, Code 6899
Organizational Mission: The Division plays a central role in the source of technical expertise for various agencies within the Navy and the Department of Defense. The Division is composed of Branches which form a broad multi-disciplinary approach to electronic R&D of electronic components and circuits technologies which are relevant to Navy electronic system requirements.
Purpose of Position: Designs devices, systems and circuitry for R&D applications, and constructs digital and microprocessor prototypes. Participates with other engineers and scientists in schematics of circuits; establishes design specifications; and constructs or directs the construction and assembly of prototype equipment. The incumbent possesses a professional knowledge of engineering including the design and development of microprocessor circuitry required to perform hardware and software integration; to design digital and microprocessor-based circuits; to test and debug digital and microprocessor-based circuits. The selective placement factor is demonstrated experience in microprocessor-based circuits

II. CERTIFICATIONS:
Supervisory Certification: I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships, and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.

Name and Title of Immediate Supervisor _____ Signature and Date _____

Name and Title of Higher-level Supervisor _____ Signature and Date _____

Classification Certification: I certify that this position has been classified and graded as required by Title 5 U.S. Code in conformance with the standards applicable to the NRL Demonstration Project.

Name and Title of Classification Official _____ Signature and Date _____

III. DUTIES AND RESPONSIBILITIES:

Scientific and Technical Problem Solving: Conducts inhouse technical activities or may provide contract technical support with minimal oversight. Works closely with peers in collectively solving problems of moderate complexity. Accomplishes small tasks independently or assists higher-level scientists and engineers. Recognized internally for technical expertise. Provides data and written analysis to contractual documents, reports and papers and/or reviews contractual reports; work is acknowledged in team publications. Presents oral material effectively to other team members, supervisors and external contractors. Disseminates technical results of own studies, tasks or contract results. Conducts activities under guidance of supervisor and/or team leader.

Cooperation and Supervision: Contributes as a technical researcher or team member to all aspects of team's responsibilities. May technically guide or mentor technician and/or less experienced and junior-level personnel. Receives guidance from supervisor and/or team leader and carries out duties in a professional, responsive and cooperative manner. No supervisory responsibilities are required.

R&D Business Management: As a team member meets with customers to understand customer requirements and demonstrate expertise. Stays current in areas of expertise and contributes as a team member to new program development. Collects information for proposal marketing activities. Manages elements of inhouse work units or assists in managing a scientific or support contract. Uses personal resources efficiently under guidance of supervisor or team leader. Aware of and makes appropriate

use of available resources. Participate as a team member in demonstrating technology and in interacting with customers. With guidance, contributes to technical content of partnerships for transition or transfer (ATD's, MOU's, JDL and Reliance, CRADA's, and other dual-use vehicles).

IV. STAFFING KNOWLEDGE, SKILLS and ABILITIES: Ability to communicate orally and in writing. Ability to recognize and analyze problems, conduct research, summarize results and recommendations. Ability to plan and organize work and set priorities. Professional knowledge of a specialized area of science and/or engineering.

V. OTHER POSITION REQUIREMENTS:
Security Clearance Requirement: Top Secret
FLSA: Non-exempt
Drug Testing Requirement: Testing Designated Position
Financial Disclosure Requirement: None
Sea and Flight Duty: None

VI. REMARKS:
Target Career Level:
Comp Level:
Skills Codes:
Salary Comparison Code:

Revised 11/4/97

Appendix G: Sample OPM Intervention Impact Evaluation Model

INTERVENTIONS COVERAGE	EXPECTED EFFECTS	MEASURES	DATA SOURCES
1. Contribution-based Compensation			
a. broad-banding	- increased organizational flexibility	- perceived flexibility	attitude survey
	- reduced administrative work load, paperwork reduction	- actual/perceived timesaving, length of PDs	personnel office data, PME results, attitude survey
	- advanced in-hire rates	- starting salaries of banded vs. non-banded employees	workforce data
	- slower pay progression at entry levels	- progression of new hires over time by band, career path	
	- increased pay potential	- mean salaries by band, career path, demographics	
	- higher average salaries	- total payroll cost	
	- increased satisfaction with advancement	- employee perceptions of advancement	attitude survey
	- increased pay satisfaction	- pay satisfaction, internal/ external equity	
	- improved recruitment	- offer/acceptance ratios	personnel office data
no change in high-grade (GS-14 +) distribution		- number/percentage of white collar employees at hi-grade salaries pre/post banding	workforce data
		- number/percentage of white collar employees at SL/ST pre/post banding	
		- percent declinations	
2. Contribution/Performance Management			
a. cash awards/bonuses	- reward performance	- number and average amounts of contribution awards by career path, demographics, performance	workforce data
	- pay-performance link	-perceived fairness of awards	
	- support fair and appropriate distribution of awards	-satisfaction with monetary awards	attitude survey

b. Performance/ contribution-based pay progression	- increased pay-performance link -improved performance feedback, communication - increased retention of high performers/turnover of low performers -differential pay progression of high/low performers - reduced pay for low performers - alignment of organizational and individual performance expectations and results -increased employee involvement in performance planning and assessment	- pay-performance correlations - perceived pay-performance link - perceived fairness of OCS - satisfaction with OCS - employee trust in supervisors - adequacy of performance feedback, communication of expectations - turnover by OCS's -OCS distribution - pay progression by OCS's , career path, demographics - number of employees with reduced pay - linkage of performance plans to strategic plans/goals - performance expectations - perceived involvement - procedures	workforce data attitude survey workforce data performance plans, strategic plans attitude survey/focus groups personnel regulations
c. Supervisory panel review	- increased consistency of OCS's	- perceived fairness of OCS's	attitude survey/focus groups
d. New appraisal process	-reduced administrative burden -improved communication	- employee and supervisor perception of revised procedures	personnel regulations/ performance plans/ attitude survey/ focus groups
e. Performance development	- better communication of performance expectations -improved satisfaction with development	-perceived feedback and communication -organizational commitment -perceived workforce quality -time, funds spent on training by demographics	attitude survey focus groups personnel office data/training records

Appendix H: NRL Internal Evaluation

Interventions	Expected effects	Measures	Data sources
1. Staffing and recruitment	- less recruitment time for general, noncitizen and armed forces members - less recruitment cost - less cost for promotion of noncitizens - increased desire to recruit armed forces members	- management satisfaction with hiring process - time to hire - time to hire - time to promote - number of recruitment actions	survey, focus groups personnel office data personnel office data personnel office data personnel office data
2. Retention	- retain high performing employees with needed skills	- turnover rate by demonstration project category, minority code, females, age, reason for leaving and CCS rating - management satisfaction	personnel office data management survey
3. RIF	- reduced work and cost - minimized adverse effect on women, - minorities and veterans'	- time to conduct RIF - number of people impacted and separated - number of separation incentives - number of women, minorities and veterans' impacted	personnel office data personnel office data
4. Details	- less time to process details	- number and length of time of details	personnel office data
5. PPP	- correct skills imbalances - make major work adjustments - manage downsizing more effectively - reduce need to conduct RIF	- number of internal actions - reason for internal placements - time to recruit for internal placements - management satisfaction	personnel office data management survey

Interventions	Expected effects	Measures	Data sources
6. Salary increases	- wider distribution of pay for contribution - improved external equity	- cost of merit increases - cost of incentive pay - amount of comparability withheld	CCSDS
7. Separations	- retain high performing employees with needed skills	- number separated - reason for separation - CCS rating - percent of low performers separated - percent of high performers separated	personnel office data
8. Personnel action processing	- less time to process personnel actions	- number of actions processed - average time to process actions	personnel office data

[FR Doc. 99–15984 Filed 6–23–99; 8:45 am]
BILLING CODE 6325–01–C

federal register

Thursday
June 24, 1999

Part IV

Department of Education

34 CFR Part 300
Assistance to States for the Education of Children With Disabilities; Final Rule

DEPARTMENT OF EDUCATION

34 CFR part 300

RIN 1820–AB40

Assistance to States for the Education of Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On March 12, 1999, final regulations were published for the Assistance to States for the Education of Children with Disabilities program at 64 FR 12406–12674. Appendix B to the regulations, entitled "Index for IDEA—Part B Regulations," has been revised as described in the Supplementary Information that follows.

DATES: These regulations are effective June 24, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas B. Irvin or JoLeta Reynolds (202) 205–5507. Individuals who use a telecommunication device for the deaf (TDD) may call (202) 205–5465.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mimcey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: On March 12, 1999 (64 FR 12406), the Secretary published final regulations for the Assistance to States for the Education of Children with Disabilities program. Appendix B to those regulations, entitled "Index for IDEA—Part B Regulations," was included as a technical assistance document to enable readers to locate quickly (by section number and paragraph) the specific requirements related to key topics in the regulations.

The index included in this publication has been revised to: (1) Make needed corrections to certain regulatory citations; (2) change the format of the document in order to enhance its readability; and (3) make other technical changes.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory document will not have significant economic impact on a substantial number of small entities. The document includes only technical changes to Appendix B of the final Part B regulations that were published in the **Federal Register** on March 12, 1999.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

We have determined that these regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://gcs.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number: 84.027 Assistance to States for the Education of Children with Disabilities.)

List of Subjects in 34 CFR part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: June 21, 1999.

Richard W. Riley,

Secretary of Education.

In the final rule published on March 12, 1999 (64 FR 12406), make the following correction. Beginning on page 12481, correct Appendix B to Part 300 to read as follows:

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APPENDIX B
INDEX FOR IDEA— PART B REGULATIONS
(34 CFR Part 300)

Topic	Section
A-AD	
ACCESS (TO)	
--Access rights (confidentiality—right to inspect and review education records)	300.562
• See also "Opportunity to examine records"	300.501(a)(1)
--Assistive technology devices in child's home	300.308(b)
--Education records (prior notice requirement)	300.504(b)(4)
--General curriculum (ensure access to)	300.26(b)(3)(ii)
--List of employees who may have access to records	300.572(d)
--Parent's private insurance proceeds	300.142(f)
--Policies and procedures	300.284
--Record of access (confidentiality)	300.563
ACCESSIBILITY STANDARDS (Construction)—Comply with:	
--Americans with Disabilities Guidelines for Buildings and Facilities	300.756(b)(1)
--Uniform Federal Accessibility Standards	300.756(b)(2)
ACCOMMODATIONS	
--In assessments	300.138(a)
--Specific accommodations (IEP—teachers informed of)	300.342(b)
ACCOUNTABILITY	
--Coordinated services system (accountability for results)	300.244(b)(1)
--IEP—accountability	300.350(b)
ACT (definition)	300.4
ADD (Attention deficit disorder)	300.7(c)(9)(i)
--ADHD (Attention deficit hyperactivity disorder)	300.7(c)(9)(i)
ADDITIONAL DISCLOSURE OF INFORMATION REQUIREMENT	300.509(b)(1)
ADULT CORRECTIONAL FACILITIES (see "Correctional facilities")	–
ADULT PRISONS (students with disabilities in) (A-F)	
--Divided State agency responsibility	300.587(e)
--FAPE requirements	
• Exception to FAPE	300.311
• Modifications of IEP or placement	300.311(c)
• Requirements that do not apply	300.311(b)

AD-AM	
ADULT PRISONS (students with disabilities) (G-Z)	
--Governor	300.600(d)
--IEP (special rules)	300.347(d)
--Public agency responsibility	300.600(d)
--State advisory panel function (advise on)	300.652(b)
ADVERSELY AFFECTS EDUCATIONAL PERFORMANCE (see "Child with a disability," §300.7(c)(1), (3), (4), (5), (6), and (8)-(13))	--
ADVISORY BOARD (Secretary of the Interior)	300.262
ADVISORY PANEL (see "State advisory panel")	--
AGGREGATED DATA	300.139(b)(1)
ALLOCATION(S)	
--Former Chapter 1 State agencies	300.713
--Outlying areas (see §§300.717-300.720)	--
--Secretary of Interior (payments to—see §§300.715-300.716)	--
--To LEAs	300.712
--To States (see §300.703 and §§300.706-300.710)	--
ALLOWABLE COSTS (by SEA for State administration)	300.621
ALTERATION OF FACILITIES	300.756
ALTERNATE ASSESSMENTS	300.138(b)
--Conducted (not later than July 1, 2000)	300.138(b)(3)
--Guidelines for	300.138(b)(1)
--Reports (number of children in and performance on)	300.139(a)
--State or LEA develops	300.138(b)(2)
ALTERNATIVE EDUCATIONAL SETTING (see "Interim setting")	--
ALTERNATIVE PLACEMENTS (LRE-continuum)	300.551
--State eligibility requirement	300.130(a)
ALTERNATIVE PROGRAMMING for children expelled; in correctional facilities; State schools; and charter schools (Subgrants to LEAs for capacity building)	300.622(a)
ALTERNATIVE STRATEGIES to meet transition objectives	300.348(a)
AMENDMENTS	
--To State policies and procedures	300.112
--To LEA policies and procedures	300.182

AM-AS	
ANNUAL GOALS (IEPs)	
--FAPE for children suspended or expelled	300.121(d)(3)
--IEP accountability	300.350
--IEP content:	
• How progress toward goals will be measured	300.347(a)(7)
• Special education and related services	300.347(a)(3)(i)
• Statement of measurable annual goals	300.347(a)(2)
--Review and revision of IEP	300.343(c)
--Review of existing evaluation data	300.533(a)(2)(iv)
ANNUAL REPORT	
--Advisory board on education of Indian children	300.266
• Report to the Secretary	300.266(b)
--State advisory panel report to the SEA	300.653(b)
ANNUAL REPORT OF CHILDREN SERVED (see §§300.750-300.754)	--
APPLICABILITY OF THIS PART to State, local, and private agencies	300.2
APPLICATION	
--For initial admission to special education (pendency)	300.514(b)
--Freely-associated States	300.719(c)
--School-based improvement plan	300.247(e)
--Term defined in EDGAR (34 CFR 77.1)	300.36
APPROPRIATE ACCOMMODATIONS (in assessments)	300.138(a)
APPROPRIATE PROFESSIONAL REQUIREMENTS in the State (definition --Personnel standards)	300.136(a)(1)
ASSESSMENT(S)	
--Assessment plan (discipline)	300.520(b)(1)(i)
--Functional behavioral assessment	300.520(b)(1)
--In evaluation (see §300.532(b), (c)(2), (j) and §300.533(a)(1)(ii), (d)(1)(ii), (d)(2))	--
--Of leisure function (in "recreation")	300.24(b)(10)(i)
ASSESSMENT --STATE AND DISTRICT-WIDE	
--Accommodations in	300.138(a)
--Alternate assessments	300.138(b)
--Basic requirement	300.138
--LEA information on assessments (for SEA)	300.240
--Modification in administration of	300.138(a)
• IEP content	300.347(a)(5)(i)
--Performance of children on	300.139(a)(2)
• Performance indicators	300.137(b)
--Reports relating to	300.139
--See "Reports"	--

AS-BE	
ASSISTIVE TECHNOLOGY (AT)	
--Definition (AT devices and services—see §§300.5-300.6)	–
--IEP team (consideration of special factors)	300.346(a)(2)(v)
--Requirement	
• Ensure availability of	300.308(a)
• Use of AT in child's home	300.308(b)
ASTHMA	300.7(c)(9)(i)
ATTENTION DEFICIT DISORDER (ADD)	300.7(c)(9)(i)
ATTENTION DEFICIT HYPERACTIVITY DISORDER (ADHD)	300.7(c)(9)(i)
ATTORNEY'S FEES	300.513
AUDIOLOGY	300.24(b)(1)
AUTHORITY	
--Foster parent (parent's authority extinguished)	300.20(b)(1)
--Of hearing officer (discipline)	300.521
--Of LEA (school-based improvement plan (see §§300.245(b) and 300.247)	–
--Of school personnel (discipline)	300.520
--Parental authority to inspect and review records	300.562(c)
--State complaint procedures	300.660(b)
--Waiver request (signed by person with authority)	300.589(c)(2)
AUTISM	300.7(c)(1)
AVERAGE PER PUPIL EXPENDITURE (definition)	300.702
AWARD (term defined in EDGAR—34 CFR 77.1)	300.30
BASE PAYMENTS (to LEAs)	300.712(b)(1)
BASE YEAR (State allocation—permanent formula)	300.706
BASIS OF KNOWLEDGE (Protection for children not yet eligible—see §300.527(b)-(d))	–
BEHAVIORAL ASSESSMENT	300.520(b)(1)
BEHAVIORAL INTERVENTION(S)	
--Assist in developing (see §300.24(b)(9)(vi), 13(v))	–
--Behavioral intervention plan (see §300.520(b)(1)(i), (2), (c)(1))	–
--Enhance abilities of teachers to use	300.382(f)
--IEP team (consider)	300.346(a)(2)(i)
--Regular education teacher (determination of)	300.346(d)
--Suspension and expulsion rates	300.146(b)
BEHAVIOR NOT A MANIFESTATION OF DISABILITY	300.524

BE-CH	
BENCHMARKS OR SHORT-TERM OBJECTIVES (see §§300.347(a)(2) and 300.350(a)(2), (b))	–
BENEFITS TO NONDISABLED (permissive use of funds)	300.235(a)(1)
BIA (see Bureau of Indian Affairs)	–
BLIND(NESS)—under "visual impairment"	
--Definition	300.7(c)(13)
--IEP team (consideration of special factors)	300.346(b)(2)(iv)
BRAILLE (see §§300.19(b) and 300.346 (a)(2)(iii))	–
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Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3400

Special Research Grants Program; Final Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3400

Special Research Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Special Research Grants Program Administrative Regulations to replace references to section 2 of the Act of August 4, 1965, with references to the Competitive, Special, and Facilities Research Grant Act (CSFRGA), to apply to competitive and noncompetitive grants, to include extension and educational activities under the regulation, to shorten the maximum potential grant award period, to require grantees to arrange for scientific peer review of their proposed research activities and merit review of their proposed extension and education activities prior to award, in accordance with subsection (c)(5) of CSFRGA, as amended by section 212 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 450i(c)(5)), and to require an annual report of the results of the research, extension, or education activity and the merit of the results.

EFFECTIVE DATE: June 24, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Sally Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, USDA Cooperative State Research, Education, and Extension Service, Mail Stop 2240, 1400 Independence Avenue, SW, Washington, DC 20250–2240; telephone, (202) 401–1761; e-mail, srockey@reeusda.gov.

SUPPLEMENTARY INFORMATION: The Cooperative State Research, Education, and Extension Service (CSREES) published a Notice of Proposed Rulemaking (NPRM) to amend the administrative provisions to the Special Research Grants Program in the **Federal Register** on March 24, 1999 (64 FR 14348).

Background and Purpose

Under the authority of subsections (c)(1)(A) and (B) of the Competitive, Special, and Facilities Research Grants Act, as amended (7 U.S.C. 450i), the Secretary of Agriculture is authorized to make special grants for the conduct of research, extension or education activities to facilitate or expand promising breakthroughs in areas of food and agricultural sciences; promote excellence in research, extension or education on a regional and national level; promote the development of regional research centers; promote the research partnership between the Department of Agriculture, colleges and universities, research foundations, and State agricultural experiment stations for regional research efforts; and facilitate coordination and cooperation of research, extension, or education among States through regional grants.

On June 23, 1998, President Clinton signed into law the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (Pub. L. No. 105–185). The Competitive, Special, and Facilities Research Grants Act, CSFRGA (formerly section 2 of the Act of August 4, 1965, Pub. L. No. 89–106, as retitled by Section 401(a) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (FACT Act Amendments), Pub. L. No. 102–237), as amended by section 212(2) of AREERA, states in subsection (c)(5) that the Secretary shall make a grant under this authority for a research activity only if the activity has undergone scientific peer review arranged by the grantee in accordance with regulations promulgated by the Secretary. Likewise, subsection (c)(5) of CSFRGA, as amended by section 212(2) of AREERA, states that the Secretary shall make a grant under this authority for an extension or education activity only if the activity has undergone merit review arranged by the grantee in accordance with regulations promulgated by the Secretary.

This rule revises section 3400.1 to expand the scope of the current regulations to apply to all subsection (c) awards, including both competitive and noncompetitive awards made under this authority. The rule also revises these regulations to address extension and education activities in addition to research activities.

Subpart C of the rule specifies the basic parameters for scientific peer and merit review, and not detailed procedures, to provide applicants with maximum flexibility in determining the timing and use of resources. Applicants are free to change peer or merit review protocols as deemed appropriate, as long as the peer or merit review continues to meet the requirements of this rule. CSREES, however, has reserved the right under this rule to specify the timing of submission of the notice of completion of review.

Section 3400.20 requires that applicants provide notice acting as certification prior to an award by CSREES that the review has been completed. Having applicants submit only a notice of compliance, and not the actual review documentation or results, aims to minimize the administrative burden on the applicants. The regulations, however, do require that the applicant retain the review documentation and, consistent with agency assistance regulations, such documentation may be subject to agency inspection.

Subpart D of the rule requires that recipients submit annual reports describing the results of the research, extension, or education activity. The agency currently requires that recipients submit annual and final performance reports as a term and condition of each award. The agency believes that this meets the reporting requirements added by section 212 of AREERA.

This rule also makes technical amendments to Part 3400 to change references to the Act of August 4, 1965, to the Competitive, Special, and Facilities Research Grant Act as retitled by Section 401(a) of the FACT Act Amendments. The rule also changes the maximum potential award period for Special Grants from five (5) years to three (3) years to conform with the amendments in section 212 of AREERA.

Public Comments and Statutory Changes

In the NPRM, CSREES invited comments on the proposed regulations for consideration in the formulation of a final rule. Three commenters responded.

One commenter supported efforts aimed at ensuring accountability and the best possible return on research investments. The commenter also encouraged the development of appropriate review mechanisms for all U.S. agricultural research efforts. CSREES believes the rule establishes the necessary accountability requirements to ensure that the proposed work is reviewed for technical quality and relevance while still allowing applicants latitude and flexibility in determining who performs the review.

One commenter questioned the necessity of implementing many of the requirements being imposed under the regulation, i.e., the inclusion of extension and educational activities under the rule; the shortening of the maximum grant period from five to three years; the requirement to have grantees arrange for scientific peer review of proposed research activities and merit review of proposed extension and educational activities; and the necessity to submit an annual report within 30 days of the project's anniversary date. The regulation promulgates the legislatively mandated requirements added by the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA); therefore the imposed requirements are mandatory. Although the program authority now requires recipients to submit annual reports, the timing and nature of the reports are not legislatively specified, consequently the requirement in the final rule has been changed to be consistent with current agency policy as set forth in the terms and conditions of the grant.

One commenter requested that the requirement for peer or merit review not apply to competitive special grant programs since such a review would duplicate efforts at the agency level. The statute makes no provision distinguishing competitive and non-competitive grants; therefore the agency has no discretion. However, if the institution believes that their established organizational review process meets the CSREES definition of peer review, then the institution may certify that requirements for peer review have been met. The commenter suggested that in lieu of requiring a separate notice of completion of review, the regulation be changed so that approval by an applicant's authorized organizational representative constitutes notice of completion of institutional review. CSREES believes that at this point in time it should retain the ability to designate when the notice of completion should be submitted. However, the suggestion has merit, and CSREES intends to facilitate the submission of the notice of completion process by incorporating procedures into program requests for proposals. Finally, the commenter suggested that the proposed rule at § 3400.20 be revised to allow recipients to delegate to the agency the conduct of peer review. The legislation requires that recipients arrange for the performance of a distinct and separate review; consequently, CSREES cannot assume that responsibility on behalf of the applicants.

Classification

Executive Order No. 12866

This rule has been reviewed under Executive Order No. 12866, and it has been determined that it is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866. In addition, the Department certifies that the rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–354 (5 U.S.C. 601–612).

Executive Order No. 12988

This rule has been reviewed under Executive Order No. 12988, Civil Justice Reform. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

National Environmental Policy Act

This rule does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. chapter 35, and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, the collection of information requirements for research activities contained in this rule have been approved under OMB Document Nos. 0524–0022 and 0524–0033. When appropriations are made available for extension and education activities under this program, CSREES will fully comply with the Paperwork Reduction Act and submit a revision to the collection of information requirements to include these activities. Comments from potential applicants on the collection of information may be submitted to CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Mail Stop 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299 by June 23, 1999, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20502. Reference should be made to the volume, page, and date of this **Federal Register** publication.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 3400

Grants programs—agriculture, Grants administration.

For the reasons set forth above, Part 3400 of Chapter XXXIV of Title 7 of the Code of Federal Regulations is amended as follows:

PART 3400—SPECIAL RESEARCH GRANTS PROGRAM

1. The authority citation for part 3400 is revised to read as follows:

Authority: 7 U.S.C. 450i(c);

2. Revise § 3400.1 to read as follows:

§ 3400.1 Applicability of regulations.

(a) The regulations of this part apply to special research grants awarded under the authority of subsection (c) of the Competitive, Special, and Facilities Research Grant Act, as amended (7 U.S.C. 450i (c)), to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States. Subparts A and B, excepting this section, apply only to special research grants awarded under subsection (c)(1)(A). Subpart C, Peer and Merit Review Arranged by Grantees, and Subpart D, Annual Reports, apply to all grants awarded under subsection (c).

(b) Each year the Administrator of CSREES shall determine and announce through publication of a Notice in such publications as the **Federal Register**, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, research program areas for which proposals will be solicited competitively, to the extent that funds are available.

(c) The regulations of this part do not apply to research, extension or education grants awarded by the Department of Agriculture under any other authority.

3. Revise § 3400.7(c) to read as follows:

§ 3400. Use of funds; changes.

* * * * *

(c) *Changes in project period.* The project period determined pursuant to § 3400.5(b) may be extended by the

Administrator without additional financial support for such additional period(s) as the Administrator determines may be necessary to complete or fulfill the purposes of an approved project. Any extension, when combined with the originally approved or amended project period shall not exceed three (3) years (the limitation established by statute) and shall be further conditioned upon prior request by the grantee and approval in writing by the Department, unless prescribed otherwise in the terms and conditions of a grant award.

* * * * *

4. Subpart C of Part 3400 is added to read as follows:

Subpart C—Peer and Merit Review Arranged by Grantees

3400.20 Grantee review prior to award.
3400.21 Scientific peer review for research activities.
3400.22 Merit review for education and extension activities.

Subpart C—Peer and Merit Review Arranged by Grantees

§ 3400.20 Grantee review prior to award.

(a) *Review requirement.* Prior to the award of a standard or continuation grant by CSREES, any proposed project shall have undergone a review arranged by the grantee as specified in this subpart. For research projects, such review must be a scientific peer review conducted in accordance with § 3400.21. For education and extension projects, such review must be a merit review conducted in accordance with § 3400.22.

(b) *Credible and independent.* Review arranged by the grantee must provide for a credible and independent assessment of the proposed project. A credible review is one that provides an appraisal of technical quality and relevance sufficient for an organizational representative to make an informed judgment as to whether the proposal is appropriate for submission for Federal support. To provide for an independent review, such review may include USDA employees, but should not be conducted solely by USDA employees.

(c) *Notice of completion and retention of records.* A notice of completion of review shall be conveyed in writing to CSREES either as part of the submitted proposal or prior to the issuance of an award, at the option of CSREES. The written notice constitutes certification by the applicant that a review in compliance with these regulations has occurred. Applicants are not required to submit results of the review to CSREES; however, proper documentation of the review process and results should be retained by the applicant.

(d) *Renewal and supplemental grants.* Review by the grantee is not automatically required for renewal or supplemental grants as defined in § 3400.6. A subsequent grant award will require a new review if, according to CSREES, either the funded project has changed significantly, other scientific discoveries have affected the project, or the need for the project has changed. Note that a new review is necessary when applying for another standard or continuation grant after expiration of the grant term.

§ 3400.21 Scientific peer review for research activities.

Scientific peer review is an evaluation of a proposed project for technical quality and relevance to regional or national goals performed by experts with the scientific knowledge and technical skills to conduct the proposed research work. Peer reviewers may be selected from an applicant organization or from outside the organization, but shall not include principals, collaborators or others involved in the preparation of the application under review.

§ 3400.22 Merit review for education and extension activities.

Merit review is an evaluation of a proposed project or elements of a proposed program whereby the technical quality and relevance to regional or national goals are assessed. The merit review shall be performed by peers and other individuals with expertise appropriate to evaluate the proposed project. Merit reviewers may not include principals, collaborators or others involved in the preparation of the application under review.

5. Subpart D of Part 3400 is added to read as follows:

Subpart D—Annual Reports

3400.23 Annual reports.

Subpart D—Annual Reports

§ 3400.23 Annual reports.

(a) *Reporting requirement.* The recipient shall submit an annual report describing the results of the research, extension, or education activity and the merit of the results.

(b) *Report type and content.* Unless otherwise stipulated, grant recipients will have met the reporting requirement under this subpart by complying with the reporting requirements as set forth in the terms and conditions of the grant at the time of award.

Done at Washington, D.C., on this 3rd day of June, 1999.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 99–16016 Filed 6–23–99; 8:45 am]

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federal register

Thursday
June 24, 1999

Part VI

Department of Housing and Urban Development

24 CFR Part 320

Ginnie Mae MBS Program: Book-Entry Securities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 320

[Docket No. FR–4331–F–02]

RIN 2503–AA12

Ginnie Mae MBS Program: Book-Entry Securities

AGENCY: Government National Mortgage Association, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final the interim rule published on September 24, 1998, which revised the security issuance procedures for the Government National Mortgage Association ("Ginnie Mae"). Under the revised procedures, a certificated security is no longer issued for a book-entry security. Currently, certificated securities are issued only upon the request of the registered holder. The interim rule revised two sections of part 320 to reflect this change. This final rule accommodates the one public comment received.

DATES: Effective Date: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas R. Weakland, Vice President, Office of Program Administration, Government National Mortgage Association, Room 6204, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500. Telephone (202) 708–2884 (voice). For hearing-and speech-impaired persons, this number may be accessed via TTY by calling the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Government National Mortgage Association ("Ginnie Mae") guarantees mortgage-backed securities of approved issuers. On September 24, 1998, Ginnie Mae published an interim rule which revised Ginnie Mae's security issuance procedures to adopt a true book-entry system for the securities that it guarantees, instead of the current system under which a certificated security is issued and stored. Accordingly, the interim rule revised § 320.5 to: (1) Revise paragraph (a) to indicate that only physical securities will specify payment and maturity dates; (2) indicate the date on and after which physical securities will be issued only at the request of the registered holder; and (3) establish when Ginnie Mae considers a book-entry security to be guaranteed. The interim rule also revised the language of § 320.13 to conform with the book-entry system. The interim rule was effective for securities issued on or after November 1, 1998.

The September 24, 1998 interim rule received one public comment. The commenter, a depository, pointed out the need for certainty in determining when delivery of uncertificated book-entry securities occurs. This final rule revises the interim rule to accommodate the public comment and to make other minor language changes. In addition, Ginnie Mae is delaying the uncertificated book-entry process for serial notes and securities backed by multifamily mortgage pools.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Ginnie Mae's designated depository is the only entity affected by this revision, and the designated depository is not a small entity. The final rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under 24 CFR 50.19(c)(1) which pertains to "the approval of policy documents that do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out to provide for standards for construction or construction materials, manufactured housing, or occupancy." This rulemaking simply amends existing regulations regarding the form of guaranteed securities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this final rule that would affect the relationship between the Federal Government and State and local governments.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) ("UMRA") establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects for 24 CFR Part 320

Mortgages.

Accordingly, the interim rule published at 63 FR 51250, amending 24 CFR part 320 is adopted as final with the following changes:

PART 320—GUARANTY OF MORTGAGE-BACKED SECURITIES

1. The authority citation for 24 CFR part 320 continues to read as follows:

Authority: 12 U.S.C. 1721(g) and 1723a(a); and 42 U.S.C. 3535(d).

2. Section 320.5 is amended by revising the last sentence of paragraph (a), paragraphs (e) and (f), and by adding paragraph (g) to read as follows:

§ 320.5 Securities.

(a) * * * The securities, if issued in certificated form, must specify the dates by which payments are to be made to the holders thereof, and must indicate the accounting period for collections on the pool's mortgages relating to each such payment, and the securities, if issued in certificated form, must also specify a date on which the entire principal will have been paid or will be payable.

* * * * *

(e) *Issue date.* Securities with issue dates of October 1, 1998, or before, have been issued in certificated form. Except for serial note securities and securities backed by multifamily mortgage pools, securities with issue dates of November 1, 1998, or thereafter, will be issued initially in uncertificated, book-entry form. Following initial issuance, certificated securities will be issued in exchange for uncertificated securities at the request of the registered holder and upon payment of any required fee. Serial notes and securities backed by multifamily mortgage pools will continue to be issued in certificated form until the applicable MBS Guide provides otherwise.

(f) *Delivery.* Delivery of uncertificated securities occurs when the book-entry depository's nominee is registered as the registered owner of the securities on Ginnie Mae's central registry.

(g) *Guaranty.* The Ginnie Mae guaranty of uncertificated securities becomes effective when the book-entry depository's nominee is registered as the registered owner of the securities on Ginnie Mae's central registry.

(Approved by the Office of Management and Budget under control number 2503–0009)

3. Section 320.13 is revised to read as follows:

§ 320.13 Guaranty.

The Association guarantees the timely payment, whether or not collected, of the interest on the outstanding balance and the specified principal installments on securities that are registered on Ginnie Mae's central registry. The Association's guaranty is backed by the full faith and credit of the United States.

Dated: June 18, 1999.

George S. Anderson,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 99–16133 Filed 6–23–99; 8:45 am]

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Federal Register
Vol. 64, No. 122
Friday, June 25, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–35]

RIN 0579–AA83

Karnal Bunt; Compensation for the 1997–1998 Crop Season

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Karnal bunt regulations to provide compensation for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incur losses and expenses because of Karnal bunt in the 1997–1998 crop season. The payment of compensation is necessary in order to reduce the economic impact of the Karnal bunt regulations on affected wheat growers and other individuals, and to help obtain cooperation from affected individuals in efforts to contain and reduce the prevalence of Karnal bunt.

EFFECTIVE DATE: June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247; or e-mail: michael.b.stefan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations). Among other things, the regulations define areas regulated for Karnal bunt and restrict the movement of certain regulated articles, including wheat seed and grain, from the regulated areas.

On December 17, 1998, we published a proposed rule in the **Federal Register** (63 FR 69563–69569, Docket No. 96–016–31), to amend the regulations to provide compensation for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incurred losses and expenses because of Karnal bunt in the 1997–1998 crop season. The compensation we proposed was the same as we provided in the 1996–1997 crop season.

For areas under the first crop season of regulation in 1997–1998, we proposed that growers, handlers, and seed companies would be eligible for a maximum of $1.80 per bushel of positive-testing wheat. For areas that were regulated in previous crop seasons, we proposed that growers, handlers, and seed companies would be eligible for $.60 per bushel of positive-testing wheat. For owners of grain storage facilities, we proposed to compensate for up to 50 percent of the direct cost of decontamination of a grain storage facility, but compensation would not exceed $20,000 per facility. For flour millers, we proposed to compensate for the treatment of millfeed at the rate of $35.00 per short ton of millfeed if APHIS required the millfeed to be treated. For National Karnal Bunt Survey participants, we proposed to compensate for positive-testing wheat at a maximum of $1.80 per bushel, and for up to 50 percent of the direct cost of decontamination of grain storage facilities, but not exceeding $20,000 per facility.

We solicited comments concerning our proposal for 60 days ending February 16, 1999. We received seven comments by that date. They were from wheat industry associations, wheat producers and handlers, State departments of agriculture, and a food manufacturer. All of the commenters recommended additions or revisions to the proposed compensation. The comments are discussed below by topic.

In the proposed rule, we said that all regulated areas in the 1997–1998 crop season were previously regulated areas, and would, therefore, be eligible for the $.60 per bushel compensation rate. Two commenters said that (1) the "certification are" established by APHIS in August 1998 is a "first regulated crop season" area and positive wheat from that area should get at least $1.80 per bushel compensation, and (2) the maximum $1.80 per bushel will not cover their losses, and we should offer the same maximum of $2.50 per bushel that we offered in the 1995–1996 crop season (the first year we regulated for Karnal bunt).

We are not making any changes to the proposed rule based on these comments. However, we agree with the commenters that wheat from the certification area that tested positive for Karnal bunt should be eligible for up to $1.80 per bushel compensation under the provisions for first regulated crop season areas. The certification area was established by APHIS as an emergency measure in August 1998 when random sampling of fields in Arizona showed there was a concentration of positive fields in a specific area. APHIS drew a boundary around the positive fields and called it a "certification area." All of the certification area was within the regulated area in Arizona. Most of the fields within the certification area were classified as restricted areas for seed; the remaining fields were classified as surveillance areas. Under the regulations, wheat grain may move from restricted areas for seed without testing. Wheat grain from surveillance areas must be tested before movement from the area. When the certification area was established in August 1998, APHIS required all wheat grain that had not already moved out of the certification area to be tested for bunted kernels before movement from the area.

Wheat grain growers and handlers from the portion of the certification area

that was outside the surveillance areas did not expect restrictions on the movement of their wheat grain at the time they made their planting and contract decisions. It is consistent with the intent of the compensation regulations to consider the certification area outside of the surveillance areas to be under the first regulated crop season for 1997–1998. Therefore, growers, handlers, and seed companies who sold positive-testing wheat from the certification area outside of the surveillance areas will be eligible for up to $1.80 per bushel compensation. Positive-testing wheat grain from the surveillance areas within the certification area would be eligible for $.60 per bushel. This decision does not require any change to the proposed regulations.

One commenter said that $.60 per bushel is inadequate to compensate for losses from positive-testing breeder or foundation seed. Breeder and foundation seed are stages in the seed production process that come before the final stage of certified seed (certified seed is the seed sold for planting). The commenter said that seed companies lost future royalties from not being able to use positive-testing breeder or foundation seed as stock for producing large quantities of certified seed. The commenter also said that the contract price for foundation seed is normally $27.00 per bushel. The commenter asked us to offer higher compensation for breeder and foundation seed to cover these losses.

We are not making any changes to the proposed rule based on this comment. We have not compensated in the past for losses in future royalties or for other losses at the early stages of seed production. The loss in value of certified, market-ready seed is the most quantifiable and direct loss associated with actions taken by APHIS to prevent the spread of Karnal bunt. Many losses connected with seed in other stages of production are less quantifiable and may have been otherwise imposed by market forces, such as market demand and prices over the long term.

One commenter said that we should offer the same $1.80 per bushel compensation for all positive wheat, and not offer less ($.60 per bushel) for wheat from previously regulated areas. We are not making any changes based on this comment. We continue to believe it is appropriate to provide a lower level of compensation to growers, handlers, and seed companies from previously regulated areas. Growers, handlers, and seed companies in areas under the first regulated crop season would not have known that their area was to become regulated at the time they made their planting and many of their contracting decisions, and would not have been prepared for the loss in value of their wheat due to Karnal bunt. Growers, handlers, and seed companies in previously regulated areas knew they were in an area regulated for Karnal bunt at the time they made planting and contracting decisions for the 1997–1998 crop season. Understanding the restrictions, and realizing they were planting in a higher risk area, they could have chosen to alter their planting and contracting decisions to avoid losses from positive wheat. We believe the proposed compensation amounts are appropriate for the circumstances in each area.

Several commenters requested compensation for losses not addressed in the proposed rule, such as demurrage charges, the cost of cleaning contaminated railcars, and losses due to transportation delays caused by the Karnal bunt regulations. We are not making any changes to the proposed rule in response to these comments. We have not offered compensation for these costs and losses in past crop seasons. However, we have made a decision to provide some compensation for railcar cleaning and demurrage costs that were incurred in the 1995–1996 crop season due to the presence of Karnal bunt spores found in wheat in railcars. We are not offering compensation for railcar cleaning and demurrage costs for other crop seasons. Unlike handlers in later crop seasons, handlers in the 1995–1996 crop season would not have been prepared for potential costs associated with shipping wheat from the newly quarantined area. At the time of the 1995–1996 wheat harvest in Arizona, California, and New Mexico, the extent of Karnal bunt infestation was not completely known. In addition, even though samples were taken at the field level for testing, the testing did not reveal all the positive wheat in the affected area. The result was that significant quantities of positive wheat were commingled with negative wheat in railcars, and, when samples were taken from railcars for testing, high numbers of railcars with positive wheat were found. In subsequent crop seasons, the areas at higher risk for Karnal bunt were known, and handlers were able to take precautions to not commingle wheat from higher risk areas with wheat from other areas or to not move wheat from higher risk areas out of the regulated area.

During the 1995–1996 crop season, wheat in 22 railcars in California and 416 railcars in Arizona tested positive for Karnal bunt and the railcars were required to be cleaned, at an estimated cost of $50 per car. The time taken to remove the positive wheat from and clean the railcars often resulted in several days of demurrage charges, at a cost of about $50 per car per day (demurrage is charged by a railcar company to compensate for delays, such as if a handler fails to load or unload freight within the time allowed) . We estimate that the total cost of railcar cleaning and demurrage in the 1995–1996 crop season was $750,000. APHIS will contact all eligible claimants with information on how to submit claims.

The following comments did not address compensation and, therefore, are not within the scope of the proposed rule. Nevertheless, they are addressed below.

Two commenters said that Karnal bunt is not a dangerous plant pest, and asked that we work with trading partners to advocate international deregulation of Karnal bunt. We agree with the commenters that Karnal bunt is a minor crop pest in that it produces little direct economic loss to agricultural production. Research and information from USDA's Agricultural Research Service and international scientists support this view. However, international trading partners continue to consider Karnal bunt a quarantine issue, jeopardizing exports of U.S. wheat. Therefore, we continue to regulate the movement of wheat from areas affected by Karnal bunt to protect our export markets, although we are relieving restrictions on growers, handlers, and seed companies as appropriate.

We have taken steps to address international views on appropriate levels of protection against minor crop pests like Karnal bunt. In cooperation with the North American Plant Protection Organization (NAPPO), APHIS hosted an international symposium in 1997 to assess the importance of bunt and smut diseases of wheat for quarantine purposes. Following this symposium, at the request of NAPPO, the International Plant Protection Convention Secretariat convened a science panel in June 1998 to evaluate the issue of categorizing regulated pests that have minor biological impacts, like Karnal bunt, for the purpose of determining the appropriate strength of protective measures for these types of pests. The science panel concluded that it was unnecessary and inappropriate to create a specific category for pests that have minor biological impact and that countries should rely on the current pest risk analysis process (under the World Trade Organization "Agreement on the Application of Sanitary and Phytosanitary Measures") as the basis for determining the strength of protective measures. We are continuing to work with our international trading partners to minimize the impact of Karnal bunt on wheat trade.

One commenter asked that we deregulate the Bard-Winterhaven area in California. One commenter asked that we address the issue of Mexico not accepting wheat from parts of California outside the regulated areas. We recently published a final rule that removes the Bard-Winterhaven area in Imperial County, CA, from the regulations (see Docket No. 96–016–36, 64 FR 23749–23754, published in the **Federal Register** on May 4, 1999). In regard to wheat exports to Mexico, we are working with the Government of Mexico to establish mutually recognized criteria for considering areas as free of Karnal bunt.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that provides compensation to persons who experienced economic losses in the 1997–1998 crop season because of the Karnal bunt regulations and emergency actions. Immediate action is necessary to compensate for these losses. Therefore, pursuant to the provisions of 5 U.S.C. 553, the Administrator of the Animal and Plant Health Inspection Service finds good cause for making this rule effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This final rule establishes compensation provisions for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey to mitigate losses and expenses incurred in the 1997–1998 crop season because of the Karnal bunt regulations and emergency actions.

In accordance with Executive Order 12866, this analysis examines the economic costs and benefits of providing such compensation. The wheat industry within the regulated area is largely composed of businesses that can be considered "small" according to guidelines established by the Small Business Administration. Therefore, this analysis also fulfills the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), which require agencies to consider the economic effects of rules on small entities.

Upon detection of Karnal bunt in Arizona in March 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat producing areas in the United States. The unexpected discovery of Karnal bunt and subsequent Federal emergency actions disrupted the production and marketing flows of wheat in the quarantined areas. We estimate that the impact of Karnal bunt and subsequent Federal actions on the wheat industry totaled $44 million in the 1995–1996 crop season.

In order to alleviate some of the economic hardships and to ensure full and effective compliance with the regulatory program, we offered compensation in the 1995–1996 and 1996–1997 crop seasons to mitigate certain losses to growers, handlers, seed companies, and other affected persons in the areas regulated for Karnal bunt. The payment of compensation is in recognition of the fact that, while benefits from regulation accrue to a large portion of the wheat industry outside the regulated areas, the regulatory burden falls predominately on a small segment of the affected wheat industry within the regulated areas. The compensation in this final rule for the 1997–1998 crop season is the same as the compensation offered in the 1996–1997 crop season.

Under this final rule, growers, handlers, and seed companies will be eligible for compensation for losses in the 1997–1998 crop season due to wheat grain or seed that tested positive for Karnal bunt. Only positive-testing wheat will be eligible for compensation because of the lack of restrictions on the movement of negative-testing wheat. As in the 1996–1997 crop season, we are offering different levels of compensation depending on whether the wheat was grown in an area under the first regulated crop season or in a previously regulated area. An area in the first regulated crop season is an area that became regulated for Karnal bunt after the 1997–1998 crop was planted. A previously regulated area is an area that became regulated for Karnal bunt before the 1997–1998 crop was planted.

For growers, handlers, and seed companies in previously regulated areas, compensation for positive grain or seed will be $.60 per bushel. Growers, handlers, and seed companies in areas under the first regulated crop season will be eligible for compensation at a rate not to exceed $1.80 per bushel. These compensation rates apply to both wheat grain and seed. The difference in compensation rates reflects the fact that affected entities in areas under the first regulated crop season would not have known that their area was to become regulated for Karnal bunt at the time that they made planting and contracting decisions, and would not have been prepared for the loss in value of their wheat due to Karnal bunt. Growers and handlers in previously regulated areas knew they were in an area regulated for Karnal bunt at the time that they made planting and contracting decisions for the 1997–1998 crop season. Given the restrictions, growers and handlers could have chosen to alter planting or contract decisions to avoid experiencing potential losses due to Karnal bunt.

We have completed testing of 1997–1998 harvest wheat from the surveillance areas in Arizona, California, New Mexico, and Texas. The amount of positive wheat from the surveillance areas is shown in the table below. The table also shows levels of positive wheat from an area called the certification area. The certification area was established by APHIS as an emergency measure in August of 1998 when random sampling of fields in Arizona showed there was a concentration of positive fields in a specific area. As discussed in the response to comments in this final rule, growers, handlers, and seed companies with positive wheat from the certification area (not including surveillance areas within the certification area) will be eligible for first regulated crop season compensation (maximum of $1.80 per bushel). We have not completed testing of wheat from the certification area outside of the surveillance areas. Therefore, the amounts shown in the table below are estimated based on the rate of infection we have found to date from the certification area. It should be noted that, in the proposed rule, we estimated that compensation for wheat grain and seed in the 1997–1998 crop season would total $87,000. The estimated total compensation in the table below is significantly higher due to a higher than expected infection rate and the higher rate of compensation for growers, handlers, and seed companies in the certification area.

COMPENSATION FOR POSITIVE-TESTING WHEAT IN THE 1997–1998 CROP SEASON

	Total bushels of wheat harvested	Positive wheat, bushels	Maximum compensation per bushel	Estimated total compensation
Arizona, surveillance area	1,577,858	284,042	$.60	$170,425
Arizona, certification area[1]	3,328,234	977,482 (estimated)	1.80	1,759,468
California	1,910,792	10,302	.60	6,181
New Mexico	318,000	0	.60	0
Texas	784,200	0	.60	0
Totals	7,919,084	1,271,826		1,936,074

[1] We estimate that the field infection rate in the Arizona certification area in 1998 was 6.45 percent. The amount of positive bushels in the Arizona certification area shown in this table does not reflect the field infection rate in this area. This is due to the fact that positive wheat was commingled with negative wheat in grain storage facilities in the certification area before it was known that the wheat was positive, resulting in a higher infection rate per bushel.

This final rule also provides compensation for the decontamination of grain storage facilities found with positive wheat, the treatment of millfeed, and participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found to be positive for Karnal bunt.

Compensation for decontamination of grain storage facilities will be on a one-time-only basis for up to 50 percent of the cost of decontamination, not to exceed $20,000 per facility. In the 1997–1998 crop season, only one grain storage facility was required to be decontaminated.

Compensation for the cost of heat treating millfeed that APHIS requires to be treated is at the rate of $35.00 per short ton of millfeed. Under current regulations, APHIS requires heat treatment of millfeed made from wheat that tested positive for Karnal bunt. In the 1997–1998 crop season, no positive wheat was used for milling; therefore, no heat treatment of millfeed was required.

No new areas were regulated in the 1997–1998 crop season as a result of the National Karnal Bunt Survey. Therefore, no one will be eligible for compensation for National Karnal Bunt Survey participants under this final rule. (As discussed previously, although no new areas were regulated in the 1997–1998 crop season as a result of the National Karnal Bunt Survey, producers within the certification area in Arizona will be eligible for first regulated crop season compensation. The additional restrictions imposed in the certification area in the 1997–1998 crop season were not as a result of testing done for the National Karnal Bunt Survey.)

There are approximately 18,000 acres within the areas regulated for Karnal bunt where planting of wheat was prohibited in the 1997–1998 crop season. This rule does not contain provisions for compensating growers in areas where wheat planting is prohibited, since many of these growers rotate wheat with other crops that are not prohibited from being planted. These growers generate revenue from these other crops, effectively minimizing the impact of the prohibition on planting wheat.

Growers and handlers of wheat grain and seed, and wheat seed companies, are the entities most affected by this rule. We estimate that there are a total of 712 wheat growers in the regulated areas: 378 in Arizona, 48 in California, 200 in New Mexico, and 86 in Texas. There are 149 growers in surveillance areas, and 563 growers in regulated areas lying beyond surveillance areas.[1] Most of these entities have total sales of less than $0.5 million, the Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, the economic effects of this rule will largely be on small entities.

We expect this rule will have a positive economic effect on all affected entities, large and small. Compensation for the loss in value of wheat that tests positive for Karnal bunt serves to encourage compliance with testing requirements within the regulated area, thereby aiding in the preservation of an important wheat growing region in the United States. It also serves to encourage participation in the National Karnal Bunt Survey.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

[1] The 149 growers in surveillance areas are distributed as follows: 54 in Arizona, 27 in California, 68 in Texas, and none in New Mexico. The 563 growers in regulated areas lying beyond surveillance areas are distributed as follows: 324 in Arizona, 21 in California, 200 in New Mexico, and 18 in Texas.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0140.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 301.89–15 is amended by revising the section heading, the introductory text to the section, the introductory text to paragraph (a), all of paragraph (b), the introductory text to paragraph (c), and the last sentence of paragraph (c)(2), to read as follows:

§ 301.89–15 Compensation for growers, handlers, and seed companies in the 1996–1997 and 1997–1998 crop seasons.

Growers, handlers, and seed companies are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1996–1997 and 1997–1998 crop seasons to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Growers, handlers, and seed companies in areas under first regulated crop season.* Growers, handlers, and seed companies are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (a)(1) and (a)(2) of this section if: the wheat was grown in a State where the Secretary has declared an extraordinary emergency; and, the wheat was grown in an area of that State that became regulated for Karnal bunt after the crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued after the crop was planted; and, the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers, handlers, and seed companies in areas under the first regulated crop season are eligible for compensation for 1996–1997 crop season wheat or 1997–1998 crop season wheat (as appropriate) and for wheat inventories in their possession that were unsold at the time the area became regulated. The compensation provided in this section is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

* * * * *

(b) *Growers, handlers, and seed companies in previously regulated areas.* Growers, handlers, and seed companies are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (b)(1) and (b)(2) of this section if: the wheat was grown in a State where the Secretary has declared an extraordinary emergency; and, the wheat was grown in an area of that State that became regulated for Karnal bunt before the crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued before the crop was planted; and, the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers, handlers, and seed companies in previously regulated areas are eligible for compensation only for 1996–1997 or 1997–1998 crop season wheat. The compensation provided in this section is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

(1) *Growers.* Growers of wheat in a previously regulated area who sell wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or that was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation at the rate of $.60 per bushel of positive testing wheat.

(2) *Handlers and seed companies.* Handlers and seed companies who sell wheat grown in a previously regulated area are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler or seed company, as long as the price to be paid by the handler or seed company is not contingent on the test results. Compensation will be at the rate of $.60 per bushel of positive testing wheat.

(c) *To claim compensation.* Compensation payments to growers, handlers, and seed companies under paragraphs (a) and (b) of this section will be issued by the Farm Service Agency (FSA). Claims for compensation for the 1996–1997 crop season must be received by FSA on or before October 8, 1998. Claims for compensation for the 1997–1998 crop season must be received by FSA on or before October 25, 1999. The Administrator may extend the deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before these dates. To claim compensation, a grower, handler, or seed company must complete and submit to the local FSA county office the following documents:

* * * * *

(2) *Growers.* * * * Growers compensated under paragraph (b)(1) of this section (previously regulated areas) whose wheat was not tested prior to sale must submit documentation showing that the price paid to the grower was contingent on test results (such as a copy of the receipt for the final sale of the wheat or a copy of the contract the grower has for the wheat, if this information appears on those documents).

* * * * *

§ 301.89–16 [Amended]

3. Section 301.89–16 is amended as follows:

a. In the heading, by removing the words "1996–1997 crop season" and adding the words "1996–1997 and 1997–1998 crop seasons" in their place.

b. In the introductory text, by removing the words "1996–1997 crop season" and adding the words "1996–1997 and 1997–1998 crop seasons" in their place.

c. In paragraphs (a), (b), (c)(1), and (c)(2), by removing the last two sentences in each paragraph and by adding three sentences in their place to read as follows: "Claims for compensation for the 1996–1997 crop season must be received by APHIS on or before October 8, 1998. Claims for compensation for the 1997–1998 crop season must be received by APHIS on or before October 25, 1999. The Administrator may extend these deadlines upon written request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before these dates."

Done in Washington, DC, this 18th day of June 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–16167 Filed 6–24–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV99–947–1 IFR]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, Except Malheur County; Temporary Suspension of Handling Regulations and Establishment of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends, for the 1999–2000 season only, the minimum grade, size, quality, maturity, pack, inspection, and other related requirements currently prescribed under the Oregon-California potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in

Oregon, except Malheur County, and is administered locally by the Oregon-California Potato Committee (Committee). During this suspension of the handling regulations, reports from handlers will be required to obtain information necessary to administer the marketing order. This rule is expected to reduce industry expenses.

DATES: Effective July 1, 1999, through June 30, 2000; comments received by August 24, 1999 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440 or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Marketing Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California, and in all counties in Oregon, except Malheur County, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule suspends the handling and related regulations currently prescribed under the order from July 1, 1999, to June 30, 2000. This rule allows the Oregon-California potato industry to market potatoes without minimum grade, size, quality, maturity, pack, and inspection requirements. These regulations will resume July 1, 2000, for the 2000–2001 season and future seasons. This rule also establishes handler reporting requirements during the same time period. Reporting requirements will allow the Committee to obtain information from handlers necessary to administer the order.

Section 947.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety of potatoes grown in the production area during any period. Section 947.51 authorizes the modification, suspension, or termination of regulations issued under § 947.52.

Section 947.60 provides that whenever potatoes are regulated pursuant to § 947.52, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of inspection and certification is borne by handlers.

Section 947.80 authorizes the Committee, with the approval of the Secretary, to require reports and other information from handlers that are necessary for the Committee to perform its duties.

Minimum grade, size, quality, maturity, and pack requirements for potatoes regulated under the order are specified in § 947.340 *Handling Regulation* [7 CFR 947.340]. This regulation, with modifications and exemptions for different varieties and types of shipments, provides that all potatoes grade at least U.S. No. 2; be at least 2 inches in diameter or weigh at least 4 ounces; and be not more than moderately skinned. Additionally, potatoes packed in cartons must be U.S. No. 1 grade or better, with an additional tolerance allowed for internal defects, or U.S. No. 2 grade weighing at least 10 ounces. Section 947.340 also includes waivers of inspection procedures, reporting and safeguard requirements for special purpose shipments, and a minimum quantity exemption of 19 hundredweight per day. Related provisions appear in the regulations at § 947.130, *Special Purpose Certificates—application and issuance*; § 947.132 *Reports*; § 947.133 *Denial and appeals*; and § 847.134 *Establishment of list of manufacturers of potato products.*

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Oregon-California potatoes which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its February 23, 1999, meeting, the Committee unanimously recommended suspending the handling regulations and related sections and establishing handler reporting requirements for the 1999–2000 season. The Committee met again on May 14, 1999, to review the recommendation made at the earlier meeting. After extensive discussion, the Committee decided not to rescind or modify their earlier recommendation to suspend handling regulations and related sections. The Committee requested that this rule be effective at the beginning of the next fiscal period, July 1, 1999, which is also the date shipments of the 1999 Oregon-California potato crop are expected to begin.

The objective of the handling and inspection requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee has been discussing the possibility of reducing costs through the elimination of mandatory inspection. The Committee is concerned, however, that the elimination of current requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there is some concern that the Oregon-California potato industry could lose sales to other potato producing areas that are covered by quality and inspection requirements. For these reasons, the Committee recommended that the suspension of the requirements be effective for the 1999–2000 season only. This will enable the Committee to study the impacts of the suspension and consider appropriate actions for ensuing seasons.

This rule will enable handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, and inspection requirements for the 1999–2000 season only. This rule will allow handlers to decrease costs by eliminating the costs associated with inspection. This rule will not restrict handlers from seeking inspection on a voluntary basis. The Committee will evaluate the effects of removing the minimum requirements on marketing and on producer returns at its meeting next spring.

The suspension action also will result in the elimination of the monthly inspection report from the Federal-State Inspection Service which the Committee used as a basis for the collection of assessments from handlers. This inspection report was compiled by the Federal-State Inspection Service from inspection certificates. During the suspension of the regulations, reports from handlers will be needed for the Committee to obtain information on which to collect assessments. Therefore, a new § 947.180 *Reports* is established which requires each handler to submit a monthly assessment report to the Committee containing the following information: (a) The date and quantity of fresh potatoes sold including identification numbers; (b) the name and address of the producers; (c) the assessment payment due; and (d) the name and address of the handler. Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. Although adding reporting requirements, this rule through the elimination of inspection and certification and other related requirements is expected to reduce industry expenses.

Consistent with the suspension of § 947.340, this rule also suspends §§ 947.120, 947.123, 947.130, 947.132, 947.133, and 947.134 of the rules and regulations in effect under the order. Sections 947.120 and 947.123 provide authority for hardship exemptions from inspection and certification, and establish reporting and recordkeeping requirements when such exemptions are in place. Sections 947.130, 947.132, 947.133, and 947.134 are safeguard and reporting provisions of the order that are applicable to special purpose shipments when inspection and certification requirements are in place.

Contained within § 947.340(i) of the current handling regulations is a minimum quantity exemption under which a handler may ship not more than 19 hundredweight of potatoes on any day without regard to the inspection and assessment requirements issued under the order. The suspension of the handling regulations removes all inspection requirements. To continue the current minimum quantity exemption for assessments, a new § 947.125 *Minimum quantity exemption* is established. This section simply continues the current minimum quantity exemption under which a handler may ship not more than 19 hundredweight of potatoes on any day without regard to the assessment requirements issued under the order.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of Oregon-California potatoes who are subject to regulation under the marketing order and approximately 450 potato producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 83 percent of the Oregon-California potato handlers ship less that $5,000,000 worth of potatoes and 17 percent ship more than $5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Oregon-California potato producers, average annual producer receipts are approximately $285,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of Oregon-California potatoes may be classified as small entities.

This rule suspends the handling and related regulations and establishes reporting requirements from July 1, 1999, through June 30, 2000. This rule will allow the Oregon-California potato industry to market potatoes without minimum grade, size, quality, maturity, pack, and inspection requirements. The handling regulations currently specified in § 947.340 and-in other related sections will resume July 1, 2000, for the 2000–2001 season and future seasons. New reporting requirements will allow the Committee to obtain information from handlers necessary to collect assessments during the period of suspension.

At its February 23, 1999, meeting, the Committee unanimously recommended suspending the handling and related regulations and establishing reporting requirements for the 1999–2000 season. The Committee met again on May 14, 1999, to review the recommendation made at the earlier meeting. After extensive discussion, the Committee decided not to rescind or modify their earlier recommendation to suspend the regulations. The Committee requested that this rule be effective at the beginning of the next fiscal period, July 1, 1999, which is also the date shipments of the 1999 Oregon-California potato crop are expected to begin.

The objective of the handling requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring

consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee has been discussing the possibility of reducing costs through the elimination of mandatory inspection. The Committee is concerned, however, that the elimination of current requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there is some concern that the Oregon-California potato industry could lose sales to other potato producing areas that are covered by quality and inspection requirements. For these reasons, the Committee recommended that the suspension of the requirements be effective for the 1999–2000 season only. This will enable the Committee to study the impacts of the suspension and consider appropriate actions for ensuing seasons.

This rule will enable handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, inspection, and related requirements for the 1999–2000 season only. This rule will allow handlers to decrease costs by eliminating the costs associated with inspection. This rule will not restrict handlers from seeking inspection on a voluntary basis. The Committee will evaluate the effects of removing the minimum requirements on marketing and on producer returns at its meeting next spring.

The suspension action also will result in the elimination of the monthly inspection report from the Federal-State Inspection Service which the Committee used for billing purposes. This inspection report was compiled by the Federal-State Inspection Service from inspection certificates. During this suspension of the regulations, reports from handlers will be necessary for the Committee to obtain information on which to collect assessments. This rule establishes a new § 947.180 *Reports* which requires each handler to submit a monthly assessment report to the Committee containing the following information: (a) The date and quantity of fresh potatoes sold including identification numbers; (b) the name and address of the producers; (c) the assessment payment due; and (d) the name and address of the handler. Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. Although adding reporting requirements, this rule through the elimination of inspection and certification and other related requirements is expected to reduce industry expenses.

Contained within § 947.340(i) of the current handling regulations is a minimum quantity exemption under which a handler may ship not more than 19 hundredweight of potatoes on any day without regard to the inspection and assessment requirements issued under the order. The suspension of the handling regulations removes all inspection requirements. To continue the current minimum quantity exemption for assessments, a new § 947.125 *Minimum quantity exemption* is established. This section simply continues the current minimum quantity exemption under which a handler may ship not more than 19 hundredweight of potatoes on any day without regard to the assessment requirements issued under the order.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will suspend minimum grade, size, quality, maturity, pack, and inspection requirements. Further, this rule will allow handlers and producers the choice to obtain inspection for potatoes, as needed, thereby reducing costs for producers and handlers. The total cost of inspection and certification for fresh shipments of Oregon-California potatoes during the 1998–99 marketing season is estimated at $600,000. This is approximately $20,000 per handler. The Committee expects, however, that most handlers will continue to have some of their potatoes inspected and certified by the Federal-State Inspection Service.

The Committee investigated the use of other types of inspection programs as another option to reduce the cost of inspection, but believed they were not viable at this time. With the suspension of handling regulations, there are no alternatives to reporting requirements to ensure the collection of assessments needed to administer the order.

This rule will require monthly reports from handlers to obtain information necessary to collect assessments. Although this rule establishes new reporting requirements, the suspension of the handling regulations eliminates the more frequent reporting requirements that were included under the safeguard provisions of the order.

Therefore, any additional reporting or recordkeeping requirements on either small or large potato handlers are expected to be offset by the elimination of reporting requirements currently in effect. In addition, the elimination of inspection and certification requirements is expected to further reduce industry expenses. Finally, as with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178. It is estimated that it will take a handler 20 minutes to complete a monthly assessment report, and that each handler will fill out 12 monthly assessment reports each year. This creates an estimated total industry burden of approximately 120 hours. It is estimated that it currently takes a handler 5 minutes to complete a safeguard reporting form. With an estimated 2,000 safeguard reports completed each year, the estimated decrease in burden because of the suspension of safeguard reporting requirements is estimated to be 167 hours. Five other miscellaneous forms are also being suspended. With an estimated 31 responses each year, the estimated decrease in burden because of the suspension of these forms is estimated to be 6.5 hours.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. Further, the Committee's meetings were widely publicized throughout the Oregon-California potato industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the February 23, 1999, and May 14, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 14 members, of which 5 are handlers and 9 are producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that (1) The regulations suspended by this action for a specified period no longer tend to effectuate the declared policy of the Act and (2) the addition of new regulations, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on suspension of the handling regulations and establishment of reporting requirements under the Oregon-California potato marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule suspends the current handling and related regulations and establishes reporting requirements for Oregon-California potatoes for the 1999–2000 marketing year which begins July 1, 1999; (2) this rule was unanimously recommended by the Committee at open public meetings and all interested persons had an opportunity to express their views and provide input; (3) Oregon-California potato handlers are aware of this rule and need no additional time to comply with the relaxed requirements; (4) this rule should be in effect by July 1, 1999, the date 1999–2000 season shipments of the Oregon-California potato crop are expected to begin, and this action should apply to the entire season's shipments; and (5) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In Part 947, §§ 947.120, 947.123, 947.130, 947.132, 947.133, 947.134 and 947.340 are suspended in their entirety effective July 1, 1999, through June 30, 2000.

3. In Subpart—Rules and Regulations, under the undesignated center heading "Exemptions", a new § 947.125 is added, and a new undesignated center heading and §194.180 are added to read as follows:

§ 947.125 Minimum quantity exemption.

From July 1, 1999, through June 30, 2000, any person may handle not more than 19 hundredweight of potatoes on any day without regard to the assessment requirements of § 947.41 of this part. This exemption shall not apply to any part of a shipment which exceeds 19 hundredweight.

Reports

§ 947.180 Reports.

From July 1, 1999, through June 30, 2000, each person handling potatoes shall submit a Monthly Assessment Report to the Committee containing the following information:

(a) The date and quantity of fresh potatoes sold including identification numbers;

(b) the name and address of the producers;

(c) the assessment payment due; and

(d) the name and address of such handler.

Dated: June 18, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–16056 Filed 6–24–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM98–3–000; Order No. 605]

Open Access Same-Time Information System

Issued May 27, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to: Extend the retention period and availability of information on curtailments and interruptions; allow the Commission staff and the public to access the supporting information on curtailments and interruptions, upon request; codify that OASIS users are allowed to make file transfers and queries as defined in the Standards and Communications Protocols (S&CP) Document; clarify that Responsible Parties are required to provide access to their OASIS sites for OASIS users making automated queries for extensive amounts of data; add a provision to allow Responsible Parties, under certain circumstances, to limit a user's access to an OASIS node; and add a provision to require OASIS users to notify Responsible Parties one month in advance of initiating a significant amount, or significantly increasing the use, of automated queries. The Commission believes that additional information about the state of the transmission system will enable customers to make better decisions about the quality of the transmission service they intend to purchase.

EFFECTIVE DATE: This final rule is effective on July 26, 1999.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, (202) 208–1283

Paul Robb (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, (202) 219–2702

Andrea Weinstein (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, (202) 208–1017

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or

remotely via Internet through FERC's Home page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

Background

This proceeding began with the issuance of a Notice of Proposed Rulemaking (NOPR) on July 29, 1998.[1] The NOPR addressed three main Open Access Same-Time Information System (OASIS)[2] issues: (1) The retention period and availability of information about curtailments and interruptions; (2) the ability of OASIS users to make file transfers and automated computer-to-computer file transfers and queries; and (3) limiting a user's access to an OASIS node.

We invited comments on enumerated issues, along with general comments. Comments were filed by 16 commenters. These comments were generally favorable to the proposed changes, although numerous disagreements remained as to the details. The comments will be discussed below on an issue-by-issue basis.[3]

This final rule is being issued after a review of the comments filed in response to the Commission's NOPR issued in this proceeding on July 29, 1998. The final rule becomes effective on July 26, 1999.

Discussion

In this final rule, we are making revisions to 18 CFR Part 37. These revisions include: (1) Amending the retention period for supporting information about curtailments and interruptions in § 37.6(e)(3)(ii); (2) amending § 37.6(e)(3)(ii) to allow the Commission staff and the public access to the supporting information on curtailments and interruptions, upon request; (3) amending § 37.6(a)(6) to allow OASIS users to make file transfers and queries as defined in the S&CP Document; (4) adding § 37.5(c) to require Responsible Parties to provide access to their OASIS sites for OASIS users making automated queries for extensive amounts of data; (5) adding § 37.5(d) and § 37.5(e) to allow Responsible Parties, under certain circumstances, to limit a user's access to an OASIS node; and (6) adding § 37.8(a) to require OASIS users to notify Responsible Parties one month in advance of initiating a significant amount, or significantly increasing the use, of automated queries.

A. Access to, and Retention of Supporting Information on Curtailments and Interruptions

1. Retention Period

The first issue is whether to extend the retention period of supporting information on curtailments and interruptions. Currently, our regulations at 18 CFR 37.6(e)(ii) require that Transmission Providers make available supporting information about curtailments and interruptions for 60 days after the occurrence of the curtailment or interruption, upon request by the affected customer. Our regulations at § 37.6(e)(i) require that a Transmission Provider post notice of the curtailment or interruption on the OASIS and state why the transaction could not be continued or completed. Furthermore, § 37.6(e)(ii) required that information to support the curtailment and the operating status of the facilities involved in the constraint must be maintained.

In the NOPR, we noted that issues concerning curtailments and interruptions have been the subject of a number of informal complaints to the FERC Enforcement Hotline. Accordingly, we proposed to revise our regulations to require that Transmission Providers retain supporting information about curtailments and interruptions for three years.

Comments

A number of commenters supported the Commission's proposal to require Transmission Providers to retain the supporting information about curtailments and interruptions for three years. Numerous commenters believe that several aspects of the Commission's proposal need clarification.

The How Group[4] recognizes that supporting data can be voluminous and it recommends the following clarification: OASIS systems are still required to provide curtailment information on-line in the current templates for ninety (90) days [18 CFR 37.6(e)(3)(i)], and supporting information must be retained off-line for three years.[5] The How Group notes that their recommendation is consistent with the retention requirements for audit data. Cal ISO, MAIN and Southwest support the How Group's proposal.[6]

Cinergy is unclear as to where the information needs to be maintained. Cinergy requests that, if storage of the supporting information is to be off-line, then the Commission should require the Transmission Providers to provide near-term curtailment and interruption data on-line for at least 120 days.[7]

EPSA supports the Commission's proposal to amend its regulations to require that Transmission Providers retain supporting information about curtailments and interruptions for three years. EPSA, however, argues that three years may be insufficient in some circumstances. EPSA argues that Transmission Providers should be required to maintain the supporting data for so long as necessary if such data relates to a complaint pending before the Commission, or otherwise is needed to resolve issues in an ongoing proceeding.[8]

CSW and VEPCO argue that a three-year retention period is too long and that Transmission Providers would be transformed into archivists.[9] CSW asserts that a one-year retention period is a more cost-effective approach. VEPCO recommends that the Commission keep the 60-day retention requirement. However, VEPCO notes that at a maximum, requiring retention for one year might be useful in comparing curtailments and interruptions on a seasonal basis.

Commission Conclusion

After considering the comments, we continue to believe that three years is an appropriate period for maintaining supporting information about curtailments and interruptions. As the How Group notes, the proposed three-year retention period for supporting curtailment and interruption data is consistent with the retention period for audit data.[10] Therefore, we will modify the regulations at 18 CFR 37.6(e)(3)(ii) to require that the information to support a curtailment or interruption must be retained off-line for three years. In our judgment, a three-year retention period is useful in comparing curtailments and interruptions over time.

In response to EPSA, we note that under the Federal Power Act, public utilities have record-keeping and reporting obligations and are subject to the Commission's investigation and enforcement powers.[11] These requirements provide safeguards for the handling of documents during pending cases. In any event, we see no need at this time to adopt regulations specifically on retention of information relevant to pending proceedings on curtailments or interruptions.

2. Access to and Availability of Supporting Information

Currently, our regulations at § 37.6(e)(3)(ii) give access to the supporting curtailment and interruption information to affected customers, upon request. In the NOPR, we expressed concern that the regulations did not allow the Commission staff and the public access to the supporting information. We noted that lack of access to the supporting information limits the Commission's ability to audit the circumstances under which a curtailment or interruption occurs, as well as the Commission's ability to identify compliance problems and resolve complaints. Therefore, we proposed to make the supporting information about curtailments and interruptions available on request, not only to affected customers, but also to the Commission staff and the public.

Comments

EPMI strongly supports the Commission's proposal to require Transmission Providers to make the supporting information relating to curtailments and interruptions available to affected customers, the Commission Staff and the public. Due to the commercial sensitivity of the supporting curtailment and interruption information, however, EPMI proposes that the information not be made available for at least 30 days after the end of the month in which the curtailment or interruption was imposed.

EEI recommends that access to information on curtailments and interruptions should only be available to Transmission Customers. EEI argues that there are serious risks to the reliability of the interconnected transmission system that could result from disclosure to the general public. EEI recommends that the Commission modify § 37.6(e)(3)(ii) to provide the information to "any other transmission customer who: (i) Demonstrates a legitimate basis for requesting the information and (ii) agrees to keep the information on curtailment or interruptions confidential, provided that the information may be disclosed to the Commission pursuant to 18 CFR 388.112."[12] VEPCO recommends the same modifications to this section of our regulations.

Commission Conclusion

First, disclosure of supporting curtailment and interruption data to the Commission will provide useful information for discerning patterns of undue discrimination. With access to the additional information, the Commission will have a greater ability to examine the circumstances under which a curtailment or interruption occurred. This in turn, will lead to early identification of compliance problems and faster resolution of complaints. Accordingly, we will revise § 37.6(3)(ii) to include the Commission staff.

Second, commenters raised two types of arguments concerning the Commission's proposal to allow the public access to the supporting information on curtailments and interruptions, upon request: (1) Commercial sensitivity; and (2) reliability of the transmission system.

We have given careful consideration to the possible harmful commercial effects of disclosing supporting curtailment and interruption information to the public. We believe that the disclosure of this information to the public will provide useful information to the public for discerning any patterns of undue discrimination in the rendering of transmission services. Thus, disclosure to the public should promote non-discrimination and lead to better competitive utilization of transmission systems.

The Commission considers the reliability of the interconnected transmission system to be of utmost importance. NERC and the industry have made significant efforts to ensure that reliability of the transmission system is maintained and that reliability criteria are compatible with competitive markets.[13] NERC and its member Regional Reliability Councils have worked cooperatively and effectively to provide reliability standards for public utilities. Furthermore, these entities have not cited any risks to reliability from disclosure of this information. Currently, Transmission Providers already post curtailment-related information on the OASIS including the Available Transmission Capacity for a constrained path. Also, section 213(b) of the Federal Power Act requires transmitting utilities to make annual filings informing the "public of potentially available transmission capacity and known constraints."[14] However, we are taking the precaution of requesting the Market Interface Committee (MIC)[15] to review and specify the supporting information about curtailments and interruptions that should be maintained.[16] In these circumstances, the Commission believes that the disclosure of information on curtailments and interruptions to the public is appropriate at this time.

3. Additional Information on the Congested Path

In the NOPR, we proposed that the information under 18 CFR 37.6(e)(3)(ii) should include information on any other uses of the congested path at the time of the curtailment or interruption. We noted that it would be helpful to know whether the curtailment or interruption was imposed on other

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[1] Open Access Same-Time Information System, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,531 (1998); 63 FR 42296, August 7, 1998.

[2] Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889–B, 81 FERC ¶ 61,253 (1997).

[3] In the discussion that follows, our references to comments are illustrative and not exhaustive. While we have identified all of the major issues raised by the commenters, we have not attempted to identify all commenters in instances where more than one comment makes the same point.

[4] During a technical conference held by the Commission's staff in July 1995, a consensus developed that two industry groups should be formed, one dealing with "what" information should be posted on the network and the other dealing with "how" to design the OASIS. The "what" group would be facilitated by the North American Electric Reliability Council (NERC) and the "how" group would be facilitated by the Electric Power Research Institute. *See* Real-Time Information Networks, Notice of Timetable and Opportunity for Participation in Industry Working Groups, FERC Stats. & Regs. ¶ 35,029 (1995).

[5] How Group comments at 2.

[6] A list of Commenters' full names and corresponding abbreviations is contained in Attachment 1.

[7] *See* Cinergy comments at 2.

[8] EPSA comments at 4.

[9] *See* CSW comments at 2; VEPCO comments at 5–6.

[10] *See* 18 CFR 37.7 (1998).

[11] *See* Federal Power Act, Section 301 (making and preservation of accounts, records, and memoranda; Commission's right to inspect and examine); Section 304 (periodic and special reports; obstruction of the making or keeping of required information unlawful); Section 307 (investigations) and Section 314 (enforcement). These Sections are codified at 16 U.S.C. 825, 825c, 825f and 825m.

[12] EEI comments at 3–4.

[13] *See* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,185 (1997).

[14] 16 U.S.C. 8241 (1994).

[15] The Commercial Practices Working Group (CPWG) was an independent industry-initiated and managed group committed to providing an open forum dedicated to the development and consensus-based business practices in support of reliable and competitive bulk electricity markets. CPWG's membership included members from various segments of the wholesale electric industry, including Transmission Providers and Customers. Recently, the CPWG has been reconstituted and its functions taken over by a replacement group, the MIC, sponsored by NERC.

[16] *See infra* section 3.

users. Furthermore, information on any other uses of the congested path at the time of the curtailment or interruption would not be burdensome to assemble.

Comments

Many commenters supported the Commission's proposal to include additional information on other uses of the congested path at the time of curtailment or interruption. Many commenters argued that the supporting information must be clearly defined and consistent across all nodes.

Cinergy asserts that it is not always possible for Transmission Providers to know all of the uses of a given path due to the dynamic nature of the power system.[17] Cinergy recommends that the Commission clarify that the information furnished for congested paths be scheduled uses only.

Dynegy states that OASIS operators should be required to provide information with respect to the depth of transmission loading relief (TLR) cuts, *i.e.*, whether transactions are being cut hourly or daily, as well as the number of transactions and the total amount in megawatts of each curtailment.[18]

EPMI proposes that the Commission require hourly load data and generation output levels. EPMI further proposes that the names of impacted parties to the curtailment and the magnitude of the curtailment should be disclosed.[19]

PECO submits that each Transmission Provider's OASIS site should identify, for each incident for which transmission TLR procedures are invoked, resulting in a halting or curtailment: (1) Each transaction that is halted or curtailed; (2) the time at which halting or curtailment commenced; (3) the time at which the halting or curtailment terminated; (4) which Security Coordinator instituted the TLR procedures that led to such a halt or curtailment; (5) the name of the transmission facility or flowgate for which the TLR procedures were instituted; (6) what level in the TLR procedures has been called; (7) what paths are affected by the TLR procedures; (8) the quantity of megawatts per hour necessary to halt or curtail in order to achieve the desired relief for the constrained transmission facility or flowgate; (9) the total aggregate of megawatts per hour halted or curtailed; and (10) the quantity of megawatts per hour that are made available as a result of such halt or curtailment that would not have otherwise been available.[20]

Commission Conclusion

We believe that additional information about the state of the transmission system will enable customers to make better decisions about the quality of the transmission service they intend to purchase. We further believe that additional supporting information concerning curtailments and interruptions will make it easier to document unduly discriminatory practices concerning facilities critical to transmission capacity. However, a thorough consideration of this issue necessitates a more extensive record than we have before us at this time. To this end, we conclude that the industry is best situated to identify what other supporting information concerning curtailments and interruptions would be helpful and appropriate. We request that the MIC and the How Group prepare a report within three months from the date of publication of this final rule in the **Federal Register** outlining what additional supporting information about curtailments and interruptions should be posted on the OASIS and available for query. This report should address the scope of the information to support curtailments and interruptions and also include templates for queries of the additional information and for responses containing the information.

B. File Transfers, Automated Queries, and Extensive Requests for Data

When the Commission first proposed OASIS, it envisioned two primary methods of accessing information on OASIS. First, small customers would generally retrieve and post information using the interactive features of OASIS. Second, medium and large customers would generally use computer-to-computer communications to upload and download files. Using computer-to-computer communications, a customer could send a request (automated query) to an OASIS node's computer and the node's computer would respond with the requested files (download). To facilitate these file uploads and downloads, the Commission previously requested that the How Group develop standardized templates for OASIS transactions.

1. File Transfers and Automated Queries

In the NOPR, the Commission noted that it received Hotline calls showing misunderstandings about the use of file transfers and automated queries. In the NOPR, we proposed to add 18 CFR 37.6(a)(6) to allow OASIS users to make file transfers and automated computer-to-computer file transfers and queries of the nodes.

Comments

Cal ISO, MAPP and the How Group submitted comments on this issue. All three note that the S&CP Document has definitions and standards for "file transfers" and they recommend that the Commission replace references to "file transfers" with references to the upload and download specifications in the S&CP.

Commission Conclusion

At the outset, we note that the commenters correctly recognize that the S&CP Document contains definitions and standardized procedures for file transfers. The Commission did not intend to propose file transfers that were not defined in the S&CP Document. Accordingly, we will amend § 37.6 (a)(6) to clarify that OASIS nodes must allow OASIS users to make file transfers and queries as defined in the S&CP Document.

2. Extensive Requests for Data and Limits on OASIS Use

In the NOPR, we proposed to add a provision, 18 CFR § 37.5(c), to clarify that Responsible Parties are required to provide access to their OASIS sites for OASIS users making automated queries and extensive requests for data. In the NOPR, we also proposed to add a provision, 18 CFR 37.5(d), to permit Responsible Parties, under certain circumstances, to restrict access by OASIS users who use the system in a grossly inefficient manner and degrade the performance of the node. We suggested that if a Responsible Party and an OASIS user could not resolve the matter informally, the Responsible Party would be able to seek Commission approval to limit the grossly inefficient use of the system. Comments on this issue fall into three categories: (a) Disagreements with the proposal to require Commission approval before limits can be placed on individual OASIS users; (b) limits on heavy OASIS usage; and (c) the meaning of grossly inefficient use.

a. *Prior Commission Approval for OASIS Limits.* In the NOPR, we proposed that Commission approval be needed for imposition of limits on a user's access to OASIS because we wanted to avoid unwarranted limits on access. Furthermore, we wished to assure OASIS users that they would not be disconnected without cause.

[17] *See* Cinergy comments at 2–3.
[18] *See* Dynegy comments at 2.
[19] *See* EPMI comments at 3–4.
[20] *See* PECO comments at 2.

Comments

All commenters recognize that there are circumstances under which a user's automated query capability should be limited. However, commenters disagree over whether limits should be imposed before or after notification and concurrence by the Commission.

EPSA, EPMI and Power Navigator agree with the Commission's proposal to require Transmission Providers to obtain Commission approval before limiting a user's access to an OASIS node for grossly inefficient usage. Dynegy cautions that permitting Transmission Providers to limit OASIS use presents the potential for abuse and Transmission Providers could punish certain customers.[21]

The How Group, Cal ISO, Cinergy, MAPP, VEPCO, Southern Company and Southwest support allowing Responsible Parties to limit access to an OASIS node prior to Commission notification and approval. The How Group states that because OASIS nodes operate 24 hours a day, seven days a week and process transmission requests as they are received, the nodes are vulnerable to excessive demands by individual customers and therefore, limits on access should be available without Commission authorization.[22]

Furthermore, MAPP, MAIN, Cinergy, VEPCO and the How Group argue that mistakes and bugs in computer programs used to make the automated requests can inadvertently result in a request for more information than the user desires or the same data is repeatedly requested. These commenters argue that node performance could be seriously impaired unless Responsible Parties have the ability to limit a user's access before obtaining Commission concurrence. MAPP further cites the rapid responses associated with computer-to-computer communications and claims that a delay in disconnecting requests due to mistakes or bugs can inadvertently bring down a whole OASIS node.[23] Cinergy proposes that requests be terminated when it is clear that computer bugs or mistakes have occurred.

MAIN proposes that when a user's request seriously impacts node performance, the Responsible Party administering the node and the user should try to resolve the problem together. Cal ISO proposes that Responsible Parties should follow specific procedures, including promptly notifying the Commission about OASIS limits, working with the user to solve the problem and providing the Commission with a closure report that describes the problem and the resolution.[24] The How Group and MAPP also propose specific procedures for Responsible Parties to follow when they block access to OASIS nodes.

Commission Conclusion

We are persuaded that Responsible Parties should be permitted, without prior Commission concurrence, to limit access by users who seriously degrade node performance. At the same time, we must ensure that limits on usage are imposed for good reason and that reasonable efforts are made by both parties to resolve problems. Restrictions and disconnections from OASIS should occur in only very limited circumstances. When a problem arises due to grossly inefficient use, all parties should first attempt to resolve the problem in a cooperative manner without OASIS restriction or limitation. If the problem is not resolved in a timely fashion, a Responsible Party can limit a user's access without prior Commission approval. Notification of the restriction must be made to the Commission within two business days of the incident and include a description of the problem and whether a resolution was reached. A closure report describing how the problem was resolved must be filed with the Commission within one week of the incident.

If the problem requires Commission resolution, the Responsible Party will have the obligation to demonstrate to the Commission that the limited user seriously impacted the performance of the node, the node is properly sized for the number of users and types of customers and that the Responsible Party made a good faith effort to resolve the problem. In response, the user will have the obligation of demonstrating to the Commission that its queries were efficient and were the result of reasonable business needs. We anticipate in cases where a Responsible Party has no interest in generation that these types of disputes can be resolved without resort to Commission processes.

Similarly, for errors in queries, the Responsible Party can block the affected query and notify the user of the nature of the error. Users should correct the error before making any additional query. If there is a dispute over whether an error occurred, then the rules for grossly inefficient use would apply.

b. *Limits on Heavy Use of OASIS.* In the NOPR, the Commission proposed not to limit heavy use of automated computer-to-computer uploads and downloads (queries and responses) that arise from legitimate ordinary course of business needs. The NOPR distinguished between heavy use in the ordinary course of business and grossly inefficient use.

Comments

Detroit Edison, Southern Company, EPMI and EPSA agree with the Commission that heavy use alone should not justify disconnection from an OASIS node. Southern Company notes that the Commission's requirements regarding automated queries are consistent with the industry's movement toward conducting business on a moment-to-moment basis. Southern Company argues that moment-to-moment transactions can only be accommodated if large volumes of automated information can be transmitted by an OASIS node. Southern requests that the Commission emphasize automated query access over browser access.[25]

Power Navigator describes its experiences with OASIS nodes when using automated queries. Power Navigator states that it has been disconnected from an OASIS node, as a punitive measure after a problem was resolved and also, Power Navigator has been restricted by a node to only one automated query a day.[26] Furthermore, Power Navigator was disconnected from an OASIS node because of queries deemed inefficient without notice and the opportunity to make the query more efficient.

Southern Company reports that it has also experienced problems using automated queries and file transfers on several OASIS nodes. Southern argues that the "inability of these OASIS nodes to meet the minimum requirements of the S&CP Document regarding automated queries and file transfers increases the transaction costs of market participants by increasing manpower and the time required to gather and analyze information."[27] Southern notes that the Commission has not sufficiently defined "minimum performance requirements" and that the lack of specificity has resulted in some OASIS nodes lacking sufficient capacity to accommodate bulk transactions. Southern Company requests that the Commission develop, or encourage the industry to develop, a benchmark program to determine if a node satisfies

[21] *See* Dynegy comments at 4.
[22] *See* How Group comments at 3–4.
[23] *See* MAPP comments at 4.
[24] *See* Cal ISO comments at 7–8.
[25] *See* Comments of Southern Company at 7.
[26] *See* Comments of Power Navigator at 1–2.
[27] Comments of Southern Company at 6–7.

the minimum performance requirements.

MAIN argues that even well-designed automated queries can significantly degrade OASIS performance. MAIN states that OASIS requires a substantial database and MAIN maintains the database on a daily basis. During periods of maintenance, the ability of computer systems to respond to queries and requests is inherently limited. Thus, MAIN claims that even well-designed automated queries can significantly degrade OASIS performance during periods of database maintenance.[28] MAIN notes that it was forced to put limits on "traffic from particular Internet addresses that sent repeated and multiple queries to the MAIN OASIS node."[29] The result is that MAIN restricts access by automated queries ten and one-half hours a day. MAIN suggests that some problems caused by automated queries could be reduced if users were required to furnish Transmission Providers with adequate and timely advance notice of usage requirements. MAIN would use this information in planning for system upgrades and other system modifications.

The How Group raises the question of what constitutes basic service and disagrees with the Commission's interpretation that the basic service level agreement allows large volume, computer-to-computer usage of OASIS to meet ordinary legitimate business needs of users. The How Group argues that the basic service level agreement only provides for average or normal uses of the system. The How Group further argues that the performance requirements in the S&CP Document are based on average, expected usage levels and cover average or normal users of the system.[30]

Commission Conclusion

We continue to believe that large volume usage and automated computer-to-computer file transfers and queries do not constitute the kind of excessive use of resources warranting limitation or disconnection, as discussed in the previous section. Thus, a particular user's heavy use of an OASIS node, even if it would require the node to be upgraded, would not, by itself, be a basis for limitation or disconnection.

However, based on the comments, we are convinced that the standards for node performance and bandwidth need refinement. We therefore request the MIC and the How Group to develop standards for node response time, node capabilities and the bandwidth of the node's connection to the Internet. We further request that the MIC and the How Group report back to the Commission within three months from the date of publication of this final rule in the **Federal Register**. The standards should explicitly incorporate the concept of requiring nodes to meet the legitimate, ordinary course of business needs of users.

The new standards should take into account the industry's experience with OASIS. The MIC and How Group have the option of proposing a redefinition of the existing standards[31] or if appropriate, they can develop a new approach. If the existing approach is used, the MIC and the How Group should consider that the assumption in the existing standard of 5 percent of customers in communication with a node at any time was developed before OASIS was implemented. The MIC should determine if a higher or lower percentage is more appropriate. Furthermore, the 28,800 bps/customer, used in the existing standards was a relatively fast modem speed in 1996 when the OASIS standards were formulated.[32] Today, many customers use faster connections to the Internet.

Furthermore, we agree with MAIN's suggestion that OASIS nodes would better meet user needs for automated queries if users notify Responsible Parties prior to increasing their demands significantly. We will, therefore, require users to notify a node of anticipated usage one month in advance of initiating a significant amount of queries or when users expect their use of automated queries to increase significantly. We believe it is appropriate to allow each node to determine reasonable criteria for such notification because nodes have varying requirements. Responsible Parties will post on their OASIS nodes the criteria under which users must notify them of increased usage of automated queries.

c. *"Grossly Inefficient" Usage of OASIS.* In the NOPR, we proposed to not limit heavy use of automated queries that arose from legitimate, ordinary business needs. We distinguished between legitimate OASIS uses and grossly inefficient uses. By using the term grossly inefficient, we intended to address situations where a user fails to adopt more efficient methods of accessing a node or obtaining information in favor of very inefficient methods that may needlessly degrade or damage the node.

Comments

Cinergy, Detroit Edison, MAIN, Southern Company and VEPCO argue that unless the Commission clarifies the definition of "grossly inefficient" and what constitutes degradation of service on an OASIS node, there will be continued disputes over automated queries.

Commission Conclusion

We continue to believe that it would be impracticable to delineate all instances of "gross inefficiency". At the same time, we have narrowed the definition of grossly inefficient use by adding the new error category, by clarifying that heavy volume usage and automated computer-to-computer file transfers and queries do not constitute grossly inefficient use and by requiring OASIS users to notify Responsible Parties in advance of substantial increases in automated query usage. We believe that these actions reduce the areas of dispute.

Examples of grossly inefficient use include: (1) When a user seeks data in a resource-intensive wasteful way even though the same data could be obtained as quickly in a far less resource-consuming manner; and (2) when an OASIS user seeks updates more frequently than information on the OASIS is updated. This list, however, is not exhaustive and questions as to whether a particular user's access or use of the node is "grossly inefficient" will be resolved on a case-by-case basis. We also believe that Responsible Parties should use the disconnection procedures as a last resort.

[28] *See* comments of MAIN at 6–7.

[29] *Id.* at 7.

[30] *See* comments of How Group at 6.

[31] The existing standards are as follows:

Transmission Services Information Providers can only be responsible for the response capabilities of two portions of the Internet-based OASIS network:

- The response capabilities of the OASIS node server to process interactions with users; and
- The bandwidth of the connection(s) between the OASIS node server and the Internet.

Therefore, the OASIS response time requirements are as follows:

a. OASIS Node Server Response Time: The OASIS node server shall be capable of supporting its connection(s) to users with an average aggregate data rate of at least "A" bits per second. "A" is defined as follows:

A = N * R bits/sec

Where: N = 5% of registered Customers and R = 28,800 bits/sec per Customer.

b. OASIS Node Network Connection Bandwidth: The bandwidth "B" of the OASIS node connection(s) to the Internet shall be at least:

See Standards & Communications Protocol Document (Version 1.3) at section 5.3 (1998). Version 1.3 of the S&CP Document is posted on the Commission Issuance Posting System (accessed through the Commission's Internet Home Page at http://ferc.fed.us) or may be inspected in the Commission's Public Reference Room.

[32] See Order No. 889, FERC Stats & Regs. at 31,623.

C. Other Issues

MAIN proposed that users of automated query systems be charged for their use.[33] Similarly, CSW proposes an industry-wide OASIS usage charge whereby subscribers pay more when they use an OASIS node continuously and/or intensively.

We note that the issue of OASIS cost recovery was addressed in Orders No. 889[34] and 889–A.[35] In those orders, we concluded that the cost of developing an OASIS should be included in unbundled transmission rates and that variable costs of operating an OASIS should be recovered, to the extent possible, in usage fees. We left it to individual rate proceedings to determine which OASIS costs can be identified as varying with usage and how to set the recovery of these fees. However, the concept of automated queries has been a basic part of the functionality of OASIS since its inception and special charges for legitimate, ordinary course of business queries should not be imposed.[36]

A few other commenters raised issues that were not discussed in the NOPR. For example, Dynegy asks the Commission to revisit the posting of generator run status on OASIS nodes.[37] In addition, Southern Company complains that some Transmission Providers require users of their system to purchase expensive proprietary security software from third party vendors and that this practice imposes limits on OASIS. EPMI requests that the Commission require Transmission Providers to acknowledge receipt of faxed or electronically transferred OASIS requests when the request is received.[38]

All of these issues are beyond the scope of this proceeding and therefore, we will not address them at this time. Commenters will have the opportunity to raise these issues, as well as submit comments on additional issues, during the OASIS Phase II proceedings.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[39] requires any proposed or final rule issued by the Commission to contain a description and analysis of the impact that the proposed or final rule would have on small entities or to contain a certification that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Order No. 889 contained a certification under section 605(b) of the RFA that the OASIS Final Rule would not have a significant economic impact on small entities within the meaning of the RFA.[40]

As discussed above, this final rule will make minor revisions to Part 37. Given that we do not expect these minor revisions to have any significant economic impact and given that we have granted waivers from the requirements of the OASIS Final Rule to small entities where appropriate, and will continue to do so, we hereby certify that the changes in 18 CFR Part 37 will not have a significant economic impact on a substantial number of small entities and that no regulatory flexibility analysis is required pursuant to 5 U.S.C. 603.

Environmental Statement

As explained in Order Nos. 888–A and 889–A, Order Nos. 888 and 889 were the joint subjects of the Final Environmental Impact Statement issued in Docket Nos. RM95–8–000 and RM94–7–001 on April 12, 1996. Given that this final rule makes only minor changes in the regulations, none of which would have any environmental impact, no separate environmental assessment or environmental impact statement is being prepared for this final rule.

Public Reporting Burden

As discussed previously, this final rule makes minor revisions to 18 CFR 37.6(e)(3)(ii). We do not believe that extending the retention period or extending the category of persons who may request the information on curtailments or interruptions will measurably increase the public reporting burden.

Nor do we believe our rule to amend 18 CFR 37.5 and 37.6 to clarify the required minimum access that Responsible Parties must provide to OASIS users, or to allow (under certain circumstances) limitations on access by grossly inefficient users, will increase the public reporting burden.

Consequently, the public reporting burden associated with issuance of this final rule is unchanged from our estimation in Order Nos. 889, 889–A, and 889–B.[41] The Commission has conducted an internal review of this conclusion and thereby has assured itself that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information required by Order Nos. 889, 889–A, and 889–B, and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in those prior orders, for the collection, efficient management, and use of the required information.

Information Collection Statement

As explained in Order Nos. 889–A and 889–B, Order No. 889 contained an information collection statement for which the Commission obtained approval from the Office of Management and Budget (OMB).[42] Given that the changes on curtailments and interruptions make only minor revisions to the regulations, we do not believe that these changes would require any revision to the information collection statement approved by OMB for Order No. 889. Nor do we believe that our revisions to 18 CFR 37.5 and 37.6, to clarify the required minimum access Responsible Parties must provide to OASIS users, or to allow (under certain circumstances) limitations on access by grossly inefficient users, would require any revision to the information collection statement approved by OMB for Order No. 889. Accordingly, we conclude that OMB approval for this final rule will not be necessary. However, the Commission will send a copy of this final rule to OMB, for informational purposes only.

Interested persons may obtain information on the reporting requirements and associated burden estimates by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Office of the Chief Information Officer, (202) 208–1415], and the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395–3087 (telephone), 202–395–7285 (facsimile)]. In addition, interested persons may file written comments on the collections of information required by this rule and associated burden estimates by sending written comments to the Desk Officer for FERC at: Office of Management and Budget, Room 10202 NEOB, Washington, D.C. 20503, within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address: Secretary,

[33] MAIN comments at 12.

[34] *See* Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,624–26.

[35] *See* Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,576–77.

[36] This would also include automated queries by the public.

[37] Dynegy comments at 5.

[38] EPMI comments at 4.

[39] 5 U.S.C. 601–612.

[40] *See* Order No. 889, FERC State. & Regs. at 31,628.

[41] Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,587–88, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,549–50, Order No. 889–B, 81 FERC ¶ 61,253 at 62,171 (1998).

[42] OMB Control No. 1902–0173.

Federal Energy Regulatory Commission, Room 1A, 888 First Street, N.E., Washington, D.C. 20426.

Effective Date and Congressional Notification

This rule will take effect on July 26, 1999. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[43] The Commission will submit the rule to both houses of Congress and the Comptroller General prior to its publication in the **Federal Register**.

This final rule will not have an adverse effect on Year 2000 readiness. This rule makes only minor revisions to our regulations and no major system changes to OASIS are required. Furthermore, commenters did not cite any adverse effects of the rule on their Year 2000 preparation.

In this rule, we are extending the retention period and the availability of supporting information on curtailments and interruptions. These changes will not jeopardize work on the Year 2000 problem. Currently, our regulations require that the supporting information about curtailments and interruptions be maintained for 60 days and available to affected customers. We are extending the retention period to three years and we are allowing the Commission Staff and the public access to the information. Because Transmission Providers already must maintain information on curtailments and interruptions, extending the retention period and the access to this information will not affect Year 2000 preparations.

In addition, we are asking the How Group/MIC to prepare a report outlining what additional supporting information about curtailments and interruptions should be posted on the OASIS. We request that the report be prepared within 3 months from the date of publication of this final rule in the **Federal Register**. Therefore, the report will be received by the Commission in early September and final implementation, including the adoption of new templates, will not occur until after January 2000.

We also believe that the provision to allow (under certain circumstances) limitations on OASIS access by grossly inefficient users will not have any effect on Year 2000 readiness. The procedures we are adopting in 18 CFR 37.5(d) and 37.5(e) will not add any new information technology requirements. Instead, these regulations enable Responsible Parties to disconnect or limit an OASIS user's access to the node.

Finally, we are adopting a new procedure whereby OASIS users notify Responsible Parties one month prior to increasing their automated query demands. Each OASIS node will determine reasonable criteria for such notification and the methods for notification will be posted on the OASIS. We believe that this new provision will not hinder Year 2000 efforts. Posting the notification criteria on the OASIS is only a minor administrative change and this requirement should not divert resources from Year 2000 efforts.

List of Subjects in 18 CFR Part 37

Conflict of interests, Electric power plants, Electric utilities, Reporting and recordkeeping requirements.

By the Commission. Commissioner Bailey concurred with a separate statement attached.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends part 37 in chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS AND STANDARDS OF CONDUCT FOR PUBLIC UTILITIES

1. The authority citation for part 37 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 37.5 is amended by redesignating paragraph (c) as paragraph (f), and by adding paragraphs (c), (d) and (e) to read as follows:

§ 37.5 Obligations of Transmission Providers and Responsible Parties.

* * * * *

(c) A Responsible Party may not deny or restrict access to an OASIS user merely because that user makes automated computer-to-computer file transfers or queries, or extensive requests for data.

(d) In the event that an OASIS user's grossly inefficient method of accessing an OASIS node or obtaining information from the node seriously degrades the performance of the node, a Responsible Party may limit a user's access to the OASIS node without prior Commission approval. The Responsible Party must immediately contact the OASIS user to resolve the problem. Notification of the restriction must be made to the Commission within two business days of the incident and include a description of the problem. A closure report describing how the problem was resolved must be filed with the Commission within one week of the incident.

(e) In the event that an OASIS user makes an error in a query, the Responsible Party can block the affected query and notify the user of the nature of the error. The OASIS user must correct the error before making any additional queries. If there is a dispute over whether an error has occurred, the procedures in paragraph (d) of this section apply.

* * * * *

3. Section 37.6 is amended by revising the section heading and paragraphs (a) introductory text, (a)(4), (a)(5), and (e)(3)(ii), and adding paragraph (a)(6) to read as follows:

§ 37.6 Information to be posted on the OASIS.

(a) The information posted on the OASIS must be in such detail and the OASIS must have such capabilities as to allow Transmission Customers to:

* * * * *

(4) Clearly identify the degree to which transmission service requests or schedules were denied or interrupted;

(5) Obtain access, in electronic format, to information to support available transmission capability calculations and historical transmission service requests and schedules for various audit purposes; and

(6) Make file transfers and automated computer-to-computer file transfers and queries as defined by the Standards and Communications Protocols Document.

* * * * *

(e) * * *

(3) * * *

(ii) Information to support any such curtailment or interruption, including the operating status of the facilities involved in the constraint or interruption, must be maintained and made available upon request, to the curtailed or interrupted customer, the Commission's Staff, and any other person who requests it, for three years.

* * * * *

4. Section 37.8 is added to read as follows:

§ 37.8 Obligations of OASIS users.

Each OASIS user must notify the Responsible Party one month in advance of initiating a significant amount of automated queries. The OASIS user must also notify the Responsible Party one month in advance of expected significant increases in the volume of automated queries.

[43] 5 U.S.C. 804(2).

Note: The following attachments will not appear in the Code of Federal Regulations.

ATTACHMENT 1.—LIST OF COMMENTERS TO THE NOPR

Number/Commenter name	Abbreviation
(1) California Independent System Operator, Corp	(Cal ISO).
(2) Cinergy Services, Inc	(Cinergy).
(3) CSW Operating Companies	(CSW).
(4) Detroit Edison Company	(Detroit Edison).
(5) Dynegy, Inc	(Dynegy).
(6) Edison Electric Institute	(EEI).
(7) Electric Power Supply Association	(EPSA).
(8) Enron Power Marketing, Inc	(EPMI).
(9) Mid-America Interconnected Network, Inc	(MAIN).
(10) Mid-Continent Area Power Pool	(MAPP).
(11) OASIS How Working Group	(How Group).
(12) PECO Energy Co-Power Team	(PECO).
(13) Power Navigator	(Power Navigator).
(14) Southern Company Services, Inc	(Southern Company).
(15) Southwest Power Pool	(Southwest).
(16) Virginia Electric & Power Co	(VEPCO).

Attachment 2—Concurring Statement by Commissioner Bailey

Issued May 27, 1999.

Bailey, Commissioner, *concurring*

I support this rulemaking, which amends the Commission's regulations to improve in several respects the operation and effectiveness of OASIS sites. I write separately only to explain my support for one aspect of the final rule.

The Commission revises its OASIS regulations to allow access to supporting information on curtailments and interruptions, upon request, to Commission staff and the public, as well as to affected customers. Slip op. at 8–10. The Commission makes this revision despite the articulated concern of two intervenors—EPMI and EEI—that this type of information is commercially sensitive (EPMI) and, if disclosed, might impair the reliability of the interconnected transmission system (EEI).

In my judgment, the Commission's and the public's need for this type of information—for the purpose of detecting any undue discrimination in any pattern or practice of transmission curtailment—outweighs the articulated concern for the commercial and reliability implications of disclosure. Significantly, intervenor concerns of commercial and reliability sensitivity here are presented with little explanation and vigor.

In contrast, I have dissented in other cases where the commercial and competitive implications of information disclosure have been well defined and vigorously argued. *See Open Access Same-Time Information System and Standards of Conduct*, 83 FERC ¶ 61,360 at 62,467–69 (1998), *reh'g denied*, 85 FERC ¶ 61,139 at 61,493 (1999); *American Electric Power Company and Central and South West Corp.*, 86 FERC ¶ 61,091 at 61,334 (1999). I continue to believe that it is important for the Commission, when confronted with concern for the competitive implications of information disclosure, to balance carefully those concerns against the usefulness of that information in fulfilling the Commission's regulatory responsibilities. Here, unlike in other cases in which I have dissented, I am comfortable with the Commission's conclusion that the balance tips in favor of immediate disclosure.

Vicky A. Bailey,

Commissioner.

[FR Doc. 99–15061 Filed 6–24–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 99N–1979]

Apple Cider Food Safety Control; Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a workshop on food safety controls for the apple cider industry. The workshop will clarify issues related to the implementation of the agency's regulations requiring a warning statement for certain juice products. Specifically, the workshop will address pathogen reduction interventions that may be effective for apple cider production and the methods used to measure and validate such interventions. Results of research conducted by Federal, State, private, and academic institutions will be presented.

DATES: The workshop will be held on Thursday, July 15, 1999, from 9 a.m. to 4 p.m., and Friday, July 16, 1999, from 9 a.m. to noon. Written comments and requests to distribute materials and scientific studies at the meeting will be accepted until Friday, July 2, 1999. Submit written notices of registration by July 8, 1999.

ADDRESSES: The workshop will be held at the Department of Health and Human Services, Hubert Humphrey Bldg., conference room 705–A, 200 Independence Ave. SW., Washington, DC 20201. Submit registration and written notices of participation to Darrell J. Schwalm (address below). Submit written comments, written requests to distribute materials, and materials regarding relevant scientific studies to be distributed at the workshop to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments and materials to be distributed are to be submitted, except that individuals may submit one copy. Comments and materials to be distributed are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Darrell J. Schwalm, Center for Food Safety and Applied Nutrition (HFS–625), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, 202–205–4040, FAX 202–205–4121 or e-mail "dschwalm@bangate.fda.gov".

Registration for the workshop will be provided on a first come first served basis. Persons interested in attending this workshop should, by Friday, July 8, 1999, fax their name, title, firm name,

address, telephone and fax number, and e-mail address to Darrell J. Schwalm (fax number above). If you need special accommodations due to a disability, please contact Darrell J. Schwalm (address above) at least 7 days in advance.

Interested persons should note that additional information regarding the workshop will be posted on FDA's web site "www.cfsan.fda.gov", as it becomes available. Accordingly, such persons are encouraged to visit that web site on a regular basis until the workshop convenes.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 8, 1998 (63 FR 37030), FDA published a final regulation that required a warning statement on fruit and vegetable juice products that have not been processed to prevent, reduce, or eliminate pathogenic microorganisms that may be present in such juices. The regulation provides that the warning statement requirement does not apply to a juice that has been processed in a manner that will result in, at a minimum, a reduction in the pertinent microorganism of at least a 5-log magnitude (i.e., 100,000 fold). In the preamble to the proposed rule (63 FR 20486, April 24, 1998), FDA recognized that pasteurization is a process that can produce the 5-log reduction. The agency also noted that manufacturers may be able to use other technologies and practices, individually or in combination, to achieve the 5-log reduction, provided that the manufacturer's process is validated to achieve the 5-log reduction in the target microorganism.

In the preamble to the final regulation, FDA indicated it would be willing to meet with manufacturers or groups of manufacturers to discuss and evaluate their proposed processes. FDA also stated that in order to help processors meet the pathogen reduction standard, the agency would make available, in accordance with part 20 (21 CFR part 20) of its regulations, information received by the agency regarding processes that have been validated to achieve a 5-log reduction.

The July 15 and 16, 1999, workshop will include a discussion of the control measures, that FDA is aware of, that can be used for apple cider production and of the methods for measuring and validating the effectiveness of measures in reducing pathogens. At the beginning of the workshop, a proceedings document will be provided to registered participants.

FDA believes that this workshop will also provide an opportunity for industry representatives and other members of the public to discuss information regarding control measures that are believed to achieve the 5-log reduction. Participants are requested to bring to the workshop at least 50 copies of any written or published materials they wish to distribute. Agency experts will be available to answer technical food safety questions.

A video recording of the proceedings will be prepared; copies of the video may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15-working days after the meeting. The video recording of the meeting, submitted comments, and materials for distribution will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 21, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–16188 Filed 6–22–99; 12:38 pm]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–155; FRL 6366–3]

Partial Withdrawal of Direct Final Rule for Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the addition of a paragraph that was included as part of a direct final rule for the approval of revisions to the California State Implementation Plan. EPA published the direct final rule on May 4, 1999 (64 FR 23774), approving revisions of rules from the South Coast Air Quality Management District (SCAQMD). As stated in that **Federal Register** document, if adverse or critical comments were received by June 3, 1999, the rule would be withdrawn and it would not take effect. EPA subsequently received one adverse comment on one provision of that direct final rule and is withdrawing that provision. EPA will address the comment received in a subsequent final action in the near future. EPA will not institute a second comment period on this action.

DATES: The addition of 40 CFR 52.220(c)(254)(i)(D)(*2*) is withdrawn as of June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the May 4, 1999 **Federal Register**, and in the proposed rule published in the May 4, 1999 (64 FR 23813) **Federal Register**. EPA received an adverse comment only on the addition of § 52.220(c)(254)(i)(D)(*2*), and we are withdrawing only that provision of the direct final rule. The other actions in the May 4, 1999 **Federal Register** are not affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 19, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Accordingly, the addition of § 52.220(c)(254)(i)(D)(*2*) is withdrawn as of June 25, 1999.

[FR Doc. 99–16094 Filed 6–24–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[FRL–6367–1]

State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is granting areas of Alaska served by the Federal Aid Highway System a temporary exemption from EPA's sulfur and dye requirements for highway diesel fuel until January 1, 2004. EPA is not making a final decision at this time on Alaska's request for a permanent exemption. Additional time is needed to consider Alaska's request for a permanent exemption because of the need to coordinate the decision with an upcoming nationwide rule on diesel fuel quality, lead-time considerations, and fuel dyeing requirements of another federal agency.

This decision is not expected to have a significant impact on the ability of Alaska's communities to attain the National Ambient Air Quality Standards for carbon monoxide or particulate matter, due to the limited contribution of emissions from diesel highway vehicles in those areas and the sulfur level currently found in highway vehicle diesel fuel used in Alaska.

DATES: This final rule is effective on July 1, 1999.

ADDRESSES: Copies of information relevant to this final rule are available for inspection in public docket A–96–26 at the Air Docket of the EPA, first floor, Waterside Mall, room M–1500, 401 M Street SW., Washington, D.C. 20460, (202) 260–7548, between the hours of 8:00 a.m. to 5:30 p.m. Monday through Friday. A duplicate public docket has been established at EPA Alaska Operations Office-Anchorage, Federal Building, Room 537, 222 W. Seventh Avenue, #19, Anchorage, AK 99513–7588, and is available from 8:00 a.m. to 5:00 p.m. Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Babst, Environmental Engineer, Fuels Implementation Group, Fuels and Energy Division (6406-J), 401 M Street SW., Washington, D.C. 20460, Telephone (202) 564–9473, Telefax 202–565–2085, Internet address babst.richard@epa.gov.

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I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

I. Regulated Entities

Entities potentially regulated by this action are refiners, marketers, distributors, retailers and wholesale purchaser-consumers of diesel fuel for use in the state of Alaska. Regulated categories and entities include:

Category	NAICS codes	SIC codes	Examples of potentially regulated entities
Industry	32411 48691 42271 42272 48422 48423 44711 44719	2911 4613 5171 5172 4212 4213 5541	Petroleum distributors, marketers, retailers (service station owners and operators), wholesale purchaser consumers (fleet managers who operate a refueling facility to refuel highway vehicles).
Individuals			Any owner or operator of a diesel highway vehicle.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the criteria contained in § 69.51, § 80.29 and § 80.30 of title 40 of the Code of Federal Regulations as modified by today's action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Electronic Copies of Rulemaking Documents

The preamble and regulatory language are also available electronically from the Government Printing Office Web sites. This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic Federal Register version is made available on the day of publication on the Web site listed below.

http://www.access.gpo.gov/nara/cfr/ (either select desired date or use Search feature)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

III. Statutory Background for Alaska Exemption

Section 211(i)(1) of the Clean Air Act prohibits the manufacture, sale, supply, offering for sale or supply, dispensing, transport, or introduction into commerce of motor (highway) vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent by weight, or which fails to meet a cetane index minimum of 40, beginning October 1, 1993. Section 211(i)(2) requires the Administrator to promulgate regulations to implement and enforce the requirements of paragraph (1), and authorizes the Administrator to require that diesel fuel not intended for highway vehicles be dyed in order to segregate that fuel from highway vehicle diesel fuel. Section 211(i)(4) provides that the states of Alaska and Hawaii may seek an exemption from the requirements of subsection 211(i) in the same manner as provided in section 325 [1] of the Act, and

[1] Section 211(i)(4) mistakenly refers to exemptions under Section 324 of the Act ("Vapor Recovery for Small Business Marketers of Petroleum Products"). The proper reference is to section 325, and Congress clearly intended to refer to section 325, as shown by the language used in section 211(i)(4), and the United States Code

Continued

requires the Administrator to take final action on any petition filed under this subsection, which seeks exemption from the requirements of section 211(i), within 12 months of the date of such petition.

Section 325 of the Act provides that upon application by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source, or class of persons or sources, in such territory from any requirement of the Act, with some specific exceptions. Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.

IV. Petition by Alaska for Exemption

On February 12, 1993, the Honorable Walter J. Hickel, then Governor of the State of Alaska, submitted a petition to exempt highway vehicle diesel fuel in Alaska from paragraphs (1) and (2) of section 211(i), except the minimum cetane index requirement of 40. Paragraph (1) prohibits highway vehicle diesel fuel from having a sulfur concentration greater than 0.05 percent by weight, or failing to meet a minimum cetane index of 40. Paragraph (2) requires the Administrator to promulgate regulations to implement and enforce the requirements of paragraph (1), and authorizes the Administrator to require that diesel fuel not intended for highway vehicles be dyed in order to segregate that diesel fuel from highway vehicle diesel fuel. The petition requested that the Environmental Protection Agency (EPA) temporarily exempt highway vehicle diesel fuel manufactured for sale, sold, supplied, or transported within the Federal Aid Highway System from meeting the sulfur content requirement specified in section 211(i) until October 1, 1996. The petition also requested a permanent exemption from such requirements for those areas of Alaska not reachable by the Federal Aid Highway System. The petition was based on geographical, meteorological, air quality, and economic factors unique to the State of Alaska.

EPA's decision on the petition was published on March 22, 1994 (59 FR 13610), and applied to all persons in Alaska subject to section 211(i) and related provisions in section 211(g) of the Act and EPA's low-sulfur requirement for highway vehicle diesel fuel in 40 CFR 80.29. Persons in communities served by the Federal Aid Highway System were exempted from compliance with the diesel fuel sulfur content requirement until October 1, 1996. Persons in communities that are not served by the Federal Aid Highway System were permanently exempted from compliance with the diesel fuel sulfur content requirement. Both the permanent and temporary exemptions apply to all persons who manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce, in the State of Alaska, highway vehicle diesel fuel. Alaska's exemptions do not apply to the minimum cetane requirement for highway vehicle diesel fuel.

On December 12, 1995, the Honorable Governor Tony Knowles, Governor of the State of Alaska, petitioned the Administrator for a permanent exemption (Petition) for all areas of the state served by the Federal Aid Highway System, that is, those areas covered only by the temporary exemption. On August 19, 1996, EPA published an extension to the temporary exemption until October 1, 1998 (61 FR 42812), to give ample time for EPA to consider comments to that petition that were subsequently submitted. On April 28, 1998 (63 FR 23241) EPA published a proposal to grant the Petition for a permanent exemption for all areas of the state served by the Federal Aid Highway System. Substantial public comments and substantive new information was submitted in response to the proposal. On September 16, 1998 (63 FR 49459) EPA extended the temporary exemption for another nine months until July 1, 1999, to give ample time for EPA to consider and evaluate that new information and to promulgate a final decision.

V. Decision To Grant Alaska Temporary Exemption

A. Description of Temporary Exemption

In this action, the Agency is granting a temporary exemption until January 1, 2004 from the diesel fuel sulfur content requirement of 0.05 percent by weight to those areas in Alaska served by the Federal Aid Highway System. For the same reasons, the Agency also is granting a temporary exemption until January 1, 2004 from those provisions of section 211(g)(2)[2] of the Act that prohibit the fueling of highway vehicles with high-sulfur diesel fuel. Sections 211(g) and 211(i) restrict the use of high-sulfur diesel fuel in highway vehicles.

Further, consistent with the March 22, 1994 Notice of Final Decision (59 FR 13610), and September 15, 1998 Notice of Final Decision (63 FR 49459), dyeing diesel fuel to be used in applications other than highway vehicles will be unnecessary in Alaska during the exemption period as long as that diesel fuel has a minimum cetane index of 40. The highway vehicle diesel fuel regulations, codified at 40 CFR 80.29, specifies that any diesel fuel that does not show visible evidence of the dye solvent red 164 is considered to be available for use in highway vehicles and subject to the sulfur and cetane index requirements. The Alaska Department of Environmental Conservation and refiners in Alaska have indicated to EPA that all diesel fuel produced for sale and marketed in Alaska meets the minimum cetane requirement for highway vehicle diesel fuel.

B. Justification for Temporary Exemption

Section 325 of the Clean Air Act provides that an exemption from the requirements of the Act may be granted upon petition of a governor of the territories if the Administrator determines that compliance with such requirement is "not feasible or is unreasonable, due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant." Section 211(i) of the Act extends this authority to Alaska for purposes of exemption from the low-sulfur diesel fuel requirements of that provision.

Parts of Alaska have operated under temporary exemptions from the low-sulfur diesel fuel requirements since 1993, and the current exemption expires on July 1, 1999. For the reasons described later in this section, EPA will not make a final decision on a

citation used in § 806 of the Clean Air Act Amendments of 1990, Public Law No. 101–549. Section 806 of the Amendments, which added paragraph (i) to section 211 of the Act, used 42 U.S.C. 7625–1 as the United States Code designation, the proper designation for section 325 of the Act. Also see 136 Cong. Rec. S17236 (daily ed. October 26, 1990) (statement of Sen. Murkowski).

[2] This subsection makes it unlawful for any person to introduce or cause or allow the introduction into any highway vehicle of diesel fuel which they know or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). It would clearly be impossible to hold persons liable for misfueling with diesel fuel with a sulfur content higher than 0.05 percent by weight when such fuel is permitted to be sold or dispensed for use in highway vehicles. The final action of this document includes an exemption from this prohibition, but does not include an exemption from the prohibitions in Section 211(g)(2) relating to the minimum cetane index or alternative aromatic level.

permanent exemption prior to the expiration of the current temporary exemption. EPA believes that it would be unreasonable to require compliance in Alaska with the low-sulfur diesel fuel requirements as of July 1, 1999. The prior history of temporary exemptions for Alaska, the need to coordinate the decision on Alaska's petition for a permanent exemption with an upcoming nationwide rule on diesel fuel quality, lead-time considerations, and fuel dyeing requirements are significant local factors that are the basis for granting Alaska this extension to the current temporary exemption.

Prior History of Temporary Exemptions

On February 12, 1993, the Governor of Alaska petitioned EPA under sections 211(i) and 325 for a temporary exemption from diesel fuel sulfur requirements for areas served by the FAHS. EPA granted Alaska the temporary exemption until October 1, 1996. Because the State of Alaska planned to establish a Task Force (in which an EPA representative participated) to evaluate the need for a permanent exemption, EPA provided Alaska with "adequate time to prepare and submit another exemption request." 59 FR 13613 (March 22, 1994). "If a new exemption request is submitted, EPA will publish another notice in the **Federal Register** and re-examine the issue of an exemption." *Id.*

On December 12, 1995, the Governor petitioned EPA for a permanent exemption from the diesel sulfur requirements for the areas served by the FAHS. EPA "reserv[ed] the decision on the state's request for a permanent exemption, so the agency may consider possible alternatives for a longer period" than the two years granted. 61 FR 42814 (August 19, 1996). EPA extended the exemption for another period of 24 months "or until such time as a decision is made on the permanent exemption, whichever is shorter." (61 FR 42816, August 19, 1996). EPA also stated that "areas in Alaska served by the Federal Aid Highway System are also exempt from the related 211(g)(2) provisions until such time as a decision has been made on the state's petition for a permanent exemption." *Id.* The Agency stated it would propose a decision on Alaska's request for a permanent waiver. *Id.*

On April 28, 1998, EPA published a proposed decision to grant Alaska a permanent exemption. 63 FR 23241 (April 28, 1998.) On September 16, 1998, EPA granted another temporary extension until July 1, 1999 to provide EPA and the State of Alaska more time to evaluate the public comments submitted in response to the proposal, specifically regarding the use of high-sulfur diesel fuel in engines manufactured to meet future more stringent emissions standards. 63 FR 49459 (September 16, 1998).

Subsequent to granting the last temporary exemption, EPA issued an Advance Notice of Proposed Rulemaking summarizing the issues and inviting comment on whether EPA should set new nationwide requirements for fuel used in diesel engines under section 211(c) of the Clean Air Act, in order to bring about large environmental benefits through the enabling of a new generation of diesel emission control technologies. 64 FR 26142, May 13, 1999. EPA expects that the section 211(c) rulemaking will also address the issue of the appropriate level of diesel sulfur in Alaska in the context of the proposed Tier 2 emission standards for light-duty vehicles and possible future more stringent emission standards for heavy-duty vehicles and non-road equipment.

Lead-Time Considerations

EPA believes that in this situation lead-time considerations are also a significant local factor as provided under section 325. Requiring Alaska to comply with low-sulfur diesel fuel requirements as of July 1, 1999 when the current temporary exemption expires, is unreasonable due to lead-time considerations. Because of the temporary status of the previous and current exemptions, EPA did not intend that Alaska would be required to comply prior to a final decision on a permanent exemption. Therefore, the affected parties in Alaska are not in a position to reasonably comply as of July 1, 1999, as EPA has not made a decision on a permanent exemption. Alaska has recently indicated to EPA that at least three years would be needed to implement any new requirements once a final decision has been reached by EPA.

Need To Coordinate Decision With Upcoming Nationwide Rule

The need to coordinate a decision on a permanent exemption with the upcoming section 211(c) rulemaking presents a significant local factor. In effect, there are two rulemakings involving almost the same question of the appropriate level of diesel sulfur in Alaska. EPA believes that coordination between the final decision on the exemption and the section 211(c) rulemaking is important, and EPA plans to make a final decision on Alaska's petition for a permanent exemption in the section 211(c) rulemaking.

Failure to coordin[illegible] exemption from th[illegible] requirements rulema[illegible] signifi[illegible] costs for regu[illegible] Alaska. For examp[illegible] to deny Alaska's petition for a permanent exemption, fuel in Alaska would have to meet the 0.05 percent sulfur requirement. EPA would provide necessary lead-time as part of setting the termination date for an exemption, and regulated parties in Alaska would have to make investments to refine, distribute and sell the low-sulfur diesel fuel. If EPA were to promulgate even lower sulfur standards in the section 211(c) rulemaking, the regulated parties in Alaska would be subject to a two-tiered implementation. Because EPA has not determined what, if any, lower sulfur level would be required, parties in Alaska are not able to prepare in advance for a possible second tier. The costs associated with a two-tiered implementation could be substantially higher than the cost of a single implementation, based on a single coordinated decision in the section 211(c) rulemaking about the level of sulfur for diesel fuel in Alaska.

Fuel Dyeing Requirements

Any expiration of the low-sulfur exemption has implications under the Internal Revenue Code. Section 4081 of the Internal Revenue Code (26 U.S.C. 4081) imposes a tax on the removal of diesel fuel from a terminal at the terminal rack. However, a tax is not imposed if, among other conditions, the diesel fuel is indelibly dyed in accordance with Treasury regulations. Dyed diesel fuel can be used legally (for tax purposes) in nontaxable uses such as for heating oil, fuel in stationary engines, or fuel in non-highway vehicles. A substantial penalty applies if dyed diesel fuel is used for taxable purposes such as in registered highway vehicles.

In 1996, Congress enacted an exception to the dyeing requirement so that undyed diesel fuel could be removed from a terminal tax free if, among other requirements, the fuel is removed for ultimate sale or use in an area of Alaska during the period the area is exempt from EPA's sulfur content requirements under section 211(i)(4) of the Clean Air Act. Treasury regulations (26 CFR 46.4082–5) generally establish a system for collecting the federal diesel fuel tax at the wholesale level in Alaska. This system is similar to the system used by the State of Alaska for state fuel tax. The person liable for the federal tax generally is the person who is licensed by Alaska as a qualified dealer or a

retailer that has been registered by the Internal Revenue Service (IRS).

If EPA's temporary exemption for the FAHS areas of Alaska were to expire on July 1, 1999, then under Treasury regulations, the federal fuel tax would be imposed on all undyed diesel fuel that is removed from any terminal in the FAHS areas, regardless of the use that is later made of the fuel. Removals from these terminals would be exempt from the tax only if the fuel contains a dye of a prescribed color and composition. Consequently, Alaska would be required by the Treasury regulations to either dye the non-road tax-exempt fuel or pay the on-road tax at the current rate of 24.4 cents per gallon.

According to an attachment to the comments submitted by the Trustees for Alaska, Alaska used approximately 600 million gallons of distillate each year (excluding fuel used for aviation) for the fiscal years ending June 30, 1996 and June 30, 1997. If none of that fuel were dyed and the sulfur exemption were to expire, the tax liability for Alaska (at 24.4 cents per gallon) would be approximately $146.4 million per year, compared to only $19.4 million per year if only that fuel used for highway purposes were taxed. The taxed parties could later file for refunds for the fuel they could show was not used in highway vehicles. Alternatively, Alaska could comply with the Treasury regulations by dyeing the approximately 86 percent of that fuel intended for non-highway use. However, to implement such capacity by July 1, 1999 would be a significant and unreasonable burden for refiners, distributors and consumers of diesel fuel. Comments received in response to the proposal indicated that each additional storage tank needed to segregate the dyed and undyed fuels with supporting infrastructure may cost $600,000, and there are over 80 tank farms in Alaska that would require additional tankage. Similarly each additional tanker truck required to avoid cross-contamination of dyed and undyed fuels costs approximately $250,000. Finally, those comments indicated that significant lead-time would be needed.

Conclusion That EPA Should Grant Temporary Exemption Until 2004

Based on all of these significant local factors, it is unreasonable to mandate that low-sulfur highway vehicle diesel fuel be available for use in Alaska for areas served by the Federal Aid Highway System after the current temporary exemption expires on July 1, 1999. Instead, EPA is extending the temporary exemption until January 1, 2004.

The section 211(c) rulemaking discussed above will make a coordinated and final decision on the level of motor vehicle diesel sulfur that will be required in Alaska. EPA therefore does not expect that there would be any further extensions of the temporary exemption. EPA expects final action in the upcoming section 211(c) rulemaking to be in 2000.

The January 1, 2004 date in today's final rule would provide Alaska approximately four years lead time, and approximately three years lead time from the section 211(c) rulemaking. If appropriate, EPA will re-evaluate the January 1, 2004 date for expiration of the exemption during the section 211(c) rulemaking, for example when considering in detail the impacts of any two-tiered implementation for Alaska. EPA will also evaluate whether it is appropriate to shorten the timeframe of the exemption, as part of the process of coordinating a final decision on these matters in that rulemaking.

C. Guidance Regarding Compliance Under Temporary Exemption

Since today's rule exempts diesel fuel in Alaska from the sulfur requirement until January 1, 2004, dyeing diesel fuel under EPA's regulations to be used in applications other than highway vehicles will be unnecessary in Alaska until January 1, 2004. However, in the event high-sulfur diesel fuel is shipped from Alaska to the lower-48 states, it would be necessary for the producer or shipping facility to add dye to the noncomplying fuel before it is introduced into commerce in the lower-48 states. In addition, supporting documentation (e.g., product transfer documents) must clearly indicate the fuel may not comply with the sulfur standard for highway vehicle diesel fuel and is not to be used as a highway vehicle fuel. Conversely, EPA will not require high-sulfur diesel fuel to be dyed if it is being shipped from the lower-48 states to Alaska, but supporting documentation must substantiate that the fuel is only for shipment to Alaska and that it may not comply with the sulfur standard for highway vehicle diesel fuel.

EPA will assume that all undyed diesel fuel found in any state, except in the state of Alaska, is intended for sale in any state and subject to the diesel fuel standards, unless the supporting documentation clearly specifies the fuel is to be shipped only to Alaska. The documentation should further clearly state that the fuel may not comply with the Federal diesel fuel standards. If such product enters the market of any state, other than Alaska, (e.g., is on route to or at a dispensing facility in a state other than Alaska) and is found to exceed the applicable sulfur content standard, all parties will be presumed liable, as set forth in the regulations. However, EPA will consider the appropriate evidence in determining whether a party caused the violation.

With regard to the storage of diesel fuel in any state other than Alaska, a refiner or transporter will not be held liable for diesel fuel that does not comply with the applicable sulfur content standard and dye requirement if it can show that the diesel fuel is truly being stored and is not being sold, offered for sale, supplied, offered for supply, transported or dispensed. However, once diesel fuel leaves a refinery or transporter facility, a party can no longer escape liability by claiming that the diesel fuel was simply in storage. Although diesel fuel may temporarily come to rest at some point after leaving a refinery or transporter facility, the intent of the regulations is to cover all diesel fuel being distributed in the marketplace. Once diesel fuel leaves a refinery or shipping facility it is in the marketplace and as such is in the process of being sold, supplied, offered for sale or supply, or transported.

D. Impact of Exemption on Engine Warranty, Recall and Tampering

EPA previously addressed the impact of an exemption from the low-sulfur diesel fuel requirements on engine recall liability, warranty and tampering issues in the American Samoa decision,[3] Guam decision,[4] and initial Alaska decision.[5] For this final rule, EPA is addressing the recall liability and warranty issues in a manner consistent with those earlier decisions. The tampering issue is treated in a somewhat different manner.

Impact of Exemption on Recall Liability

If EPA determines that a substantial number of any class or category of heavy-duty engines do not comply with the federal emission requirements, although properly used and maintained, the engine manufacturer is responsible for recalling and repairing the engines. EPA typically determines whether engines comply with applicable federal emission standards by testing in-use

[3] The Agency granted American Samoa's petition for a permanent exemption from the diesel sulfur requirements on July 20, 1992, 57 FR 32010.

[4] The Agency granted Guam's petition for a permanent exemption from the diesel sulfur requirements on September 21, 1993, 58 FR 48968.

[5] The Agency granted the State of Alaska's petition for a temporary exemption from the diesel sulfur requirements on March 22, 1994, 59 FR 13610.

engines which have been properly maintained and used. If an engine fueled with exempted diesel fuel (such as the high-sulfur fuel supplied in Alaska) was included in such testing, and the testing showed exceedance of the applicable emission standards, EPA will determine, on a case-by-case basis, if the exceedance is the result of the use of exempted fuel. If EPA determines that the use of exempted diesel fuel is the sole cause why a substantial number of the class or category of heavy-duty engines fails to meet the applicable emission standards, EPA would not seek a recall of the class or category of engines based on these data.

For Alaska, as in the Guam and American Samoa decisions, EPA does not intend to use test results (emissions levels) from engines used and operated in Alaska that utilize high-sulfur diesel fuel (over 0.05 percent by weight) to show noncompliance by those engines for the purpose of recalling an engine class. However, in cases in which it is determined that the overall class is subject to recall for reasons other than the use of exempted fuel in Alaska, individual engines will not be excluded from repair on the basis of the fuel used. Manufacturers are responsible for repairing any engine in the recalled class regardless of its history of tampering or improper maintenance.

Impact of Exemption on the Manufacturers' Emission Warranty and on the Durability of New Technology Engines

The Agency acknowledges that engines that were certified to meet the federal emission standards using low-sulfur diesel fuel may in some cases be unable to meet those federal emissions standards if they use high-sulfur diesel fuel. However, EPA believes an exemption from the general warranty provisions of section 207 of the Act is unnecessary to protect manufacturers from unreasonable warranty recoveries by purchasers. The emission defect warranty requirements under section 207(a) require an engine manufacturer to warrant that the engine shall conform at the time of sale to applicable emission regulations and that the engine is free from defects that cause the engine to fail to conform with applicable regulations for its useful life. In practice, this warranty is applicable to a specific list of emissions and emissions-related engine components.

It has been consistent EPA policy that misuse or improper maintenance of a vehicle or engine by the purchaser, including misfueling, may create a reasonable basis for denying warranty coverage for the specific emissions and emissions-related engine components affected by the misuse. In Alaska, while use of fuel exempted from the sulfur content limitation cannot be considered "misfueling," it will have the same adverse effect on emissions control components. Thus, EPA believes that where the use of exempted diesel fuel in fact has an adverse impact on the emissions durability of specific engine parts or systems, such as a catalyst, the manufacturer has a reasonable basis for denying warranty coverage on that part or other related parts. As has consistently been EPA's policy, those components not adversely affected by the use of exempted diesel fuel should continue to receive full emissions warranty coverage.

EPA anticipates that many on-highway, heavy-duty diesel engines will utilize some form of cooled EGR technology in order to meet the 2004 emission standards. Further, the Agency recognizes that under the recent Consent Decrees entered into by the majority of diesel engine manufacturers, diesel engines will have to meet the 2004 emission standards beginning in October of 2002. Finally, the Agency recognizes that the use of cooled EGR systems with high-sulfur fuel may contribute to engine durability problems, requiring owners to overhaul their engines more frequently than the intervals for which they were designed. EPA believes, however, that within the time frame of this temporary exemption, engine durability problems will not likely be a significant problem for heavy-duty engine owners.

Because the new engine technology is not expected to be marketed until late 2002, and because of the slow turnover rate of new heavy-duty diesel vehicles in Alaska, EPA estimates that during the temporary exemption less then five percent of the total Alaska diesel fleet will incorporate the new engine technology, and only during the last 15 months of the exemption. Additionally, the State of Alaska expects that during the temporary exemption adequate low-sulfur fuel will be supplied to the Alaska market to meet the market demands created by operators of the new technology diesel engines. EPA and the State of Alaska have been informed that diesel fuel with sulfur levels near or below the low sulfur limit of 500 ppm currently is being produced at one refinery in Alaska. Further, the State of Alaska has committed to work with the petroleum industry in Alaska to make low sulfur fuel available to truck owners with new technology heavy-duty diesel engines.

EPA will address the durability issue when making the final decision on Alaska's section 211(i) petition for permanent exemption as part of the upcoming nationwide rule on diesel fuel quality. However, if subsequent to today's document, the Administrator determines that supplies of low sulfur diesel fuel are inadequate to meet the requirements of new technology diesel engines and that significant environmental harm is resulting from adverse impacts of high sulfur diesel fuel on these vehicles, this exemption may be reconsidered.

Impact of Exemption on Tampering Liability

Subsequent to the 1995 petition for a permanent exemption from the diesel fuel sulfur requirements, the Engine Manufacturers Association (EMA) requested enforcement discretion regarding the removal of catalytic converters because of an indicated plugging problem caused by the high-sulfur diesel fuel in Alaska. However, information subsequently collected by EPA from several heavy-duty engine manufacturers demonstrates that catalyst plugging is mainly a cold weather problem and not a high-sulfur fuel issue. EPA is also aware that the majority of the plugged catalysts have been eliminated. In a letter to EPA of September 19, 1997, the EMA indicated that the immediate problems that led to EMA's earlier request have been resolved. Accordingly, EPA sees no need for an exemption that allows the removal of catalysts in the field, or that permits manufacturers to introduce into commerce catalyzed-engines without catalysts.

VI. Judicial Review of Today's Decision

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of local or regional applicability. Accordingly, judicial review of this action is available only in the United States Court of Appeals for the circuit applicable to Alaska within 60 days of publication.

VII. Public Participation in Today's Decision

The Agency received Alaska's request for a permanent exemption for the Federal Aid Highway System areas in December of 1995. Soon afterwards, the Agency received comments on the petition from the Alaska Center for the Environment, the Alaska Clean Air Coalition, and the Engine Manufacturers of America. EPA believed the issues raised by those comments and possible tightening of heavy-duty highway vehicle engine standards in 2004 necessitated further consideration before the Agency made a decision on

Alaska's request for a permanent exemption.

The Agency published a proposed rule for a permanent exemption to allow interested parties an additional opportunity to request a hearing or to submit comments. EPA subsequently received a request for a public hearing, but that request was soon withdrawn. EPA extended the comment period until June 12, 1998, and received comments before and after that date.

EPA's decision to extend the exemption until January 1, 2004 is not a decision based on the merits of those comments. Instead, EPA's decision is based on the unreasonableness of imposing the low-sulfur diesel fuel requirement as of July 1, 1999, based on the significant local factors supporting this decision are described herein.

VIII. Statutory Authority For Today's Decision

Authority for the action in this final rule is in sections 211 (42 U.S.C. 7545) and 325(a)(1) (42 U.S.C. 7625–1(a)(1)) of the Clean Air Act, as amended.

The effective date of this rule is July 1, 1999. If the effective date of this rule were any later, there would be some period of time when Alaska would lose its current exemption from low-sulfur diesel fuel and dye requirements because the current exemption expires on July 1, 1999. "EPA did not intend that parties in Alaska would be required to comply with low sulfur diesel fuel or dye requirements prior to the effective date of this final rule. EPA therefore finds that there is good cause under 5 U.S.C. 553(d) to make this rule effective on July 1, 1999."

IX. Administrative Requirements for Today's Decision

A. Executive Order 12866: Administrative Designation and Regulatory Analysis

Under Executive Order 12866[6], the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[7]

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because today's action to continue the current temporary exemption of the low-sulfur diesel fuel requirements in the State of Alaska for four and a half more years, will not result in any additional economic burden on any of the affected parties, including small entities involved in the oil industry, the automotive industry and the automotive service industry. EPA is not imposing any new requirements on regulated entities, but instead is continuing an exemption from a requirement, which makes it less restrictive and less burdensome. Therefore, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 544 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

D. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 1, 1999.

E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate with estimated costs to the private sector of $100 million or more, or to state, local, or tribal governments of $100 million or more in the aggregate. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this final rule imposes no new federal requirements and does not include any federal mandate with costs to the private sector or to state, local, or tribal governments. Therefore, the Administrator certifies that this rule does not require a budgetary impact statement.

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. It only extends an existing temporary exemption of the low-sulfur diesel fuel requirements in the State of Alaska. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. EPA has determined that this final rule imposes no new federal requirements, but rather extends an existing temporary exemption of the low-sulfur diesel fuel requirements in the State of Alaska. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. Executive Order 13045: Children's Health Protection

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This State of Alaska Petition from Exemption from Diesel Fuel Sulfur Requirements rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because in the circumstances present in this rulemaking, the analysis required under section 5–501 of the Order would not have the potential to influence the regulation. The decision to extend the exemption in this rulemaking is based primarily on factors other than health and safety, because those factors will be addressed separately in a related national rulemaking that will address the appropriate level of sulfur in diesel fuel. EPA has issued an Advanced Notice of Proposed Rulemaking (64 FR 26142, May 13, 1999) involving the appropriate level of diesel sulfur nationwide. This national rulemaking will include any analysis that is required under Executive Order 13045.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 69

Environmental protection, Air pollution control, Alaska.

Dated: June 18, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 69—SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLEAN AIR ACT

1. The authority citation for part 69 continues to read as follows:

Authority: 42 U.S.C. 7545(1) and (g), 7625–1.

Subpart E—[Amended]

2. Section 69.51 is amended by revising paragraph (c) to read as follows:

§ 69.51 Exemptions.

* * * * *

(c) Beginning January 1, 2004, the exemptions provided in paragraphs (a) and (b) of this section are applicable only to fuel used in those areas of Alaska that are not served by the Federal Aid Highway System.

[FR Doc. 99–16228 Filed 6–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6364–2]

Idaho: Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the EPA may grant States Final Authorization to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that are part of the authorized State program. The purpose of this action is to codify Idaho's authorized hazardous waste program in 40 CFR part 272. This rule incorporates by reference provisions of Idaho's hazardous waste statutes and regulations and clarifies which of these provisions are authorized and federally enforceable. Unless adverse written comments are received, the EPA's

[6] 58 FR 51736 (October 4, 1993).

[7] *Id.* at section 3(f)(1)–(4).

decision to incorporate by reference Idaho's authorized hazardous waste program will take effect as provided below.

DATES: This incorporation by reference of the approved state hazardous waste management program for Idaho will become effective on August 24, 1999, if EPA receives no adverse comment. Should EPA receive such comments, EPA will withdraw this rule before its effective date by publishing a notice of withdrawal in the FR. Any comments on Idaho's incorporation by reference of the approved state hazardous waste management program must be filed by July 26, 1999.

ADDRESSES: Mail written comments to Jeff Hunt, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail stop WCM–122, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail stop WCM–122, Seattle, WA 98101, phone number (206) 553–0256.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of RCRA, 42 U.S.C. 6926 *et seq.*, allows the EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. EPA provides notice of its authorization of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that are a part of the authorized State program under RCRA. This effort provides clearer notice to the public of the scope of the authorized programs. The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority.

Effective February 4, 1991 (55 FR 50327) and subsequently revised effective August 10, 1992 (57 FR 24757), EPA incorporated by reference Idaho's then authorized hazardous waste program, including all HSWA and non-HSWA Federal requirements promulgated as of June 30, 1990. The purpose of today's **Federal Register** document is to incorporate by reference EPA's authorization of Idaho's subsequent two revisions to that program. This rule incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program.

B. Idaho Authorized Hazardous Waste Program

Idaho received Final Authorization for its RCRA hazardous waste base program on March 26, 1990, effective April 9, 1990 (55 FR 11015). EPA incorporated by reference the then authorized hazardous waste program in Subpart N of 40 CFR part 272. The State statutes and regulations are incorporated by reference at Sec. 272.651(a), and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 272.651(b), 272.651(c) and 272.651(d), respectively.

Since the most recent codification, Idaho has received authorization for revisions to its program on April 12, 1995, effective June 11, 1995 (60 FR 18549) and on October 21, 1998, effective January 19, 1999 (63 FR 56086). In this document EPA is revising the incorporation by reference of Idaho's authorized hazardous waste program in Subpart N of 40 CFR part 272, to include these revisions.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Idaho enforcement authorities. Section 272.651(a)(1) of 40 CFR lists those enforcement authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of a State's hazardous waste management program are not part of the Federally authorized State program. These nonauthorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal provisions which the State incorporated into its regulations when the State adopted Federal regulations by reference, but for which the State is not authorized;

(3) Unauthorized amendments to authorized State provisions.

State provisions that are "broader in scope" than the Federal program are not part of the RCRA authorized program and EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, section 272.651(a)(3) of 40 CFR lists the Idaho statutory and regulatory provisions which are "broader in scope" than the Federal program. Although EPA will not enforce these provisions, the State may enforce them under State law.

C. HSWA Provisions

The Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) take effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985). EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implement by EPA. However, until EPA authorizes those State requirements, EPA can only enforce the HSWA requirements and not the State analogs. EPA will not codify those State requirements until the State receives authorization for those requirements.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The section 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of $100 million or more for State, local and/or tribal governments in the aggregate, or the private sector. Today's action contains no Federal mandates for State, local or tribal governments or the private sector because it does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector. This rule merely incorporates by reference existing requirements with which regulated entities must already comply under State and Federal law. For this same reason, this action will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because it incorporates by reference an existing State program that EPA previously authorized. Costs to the State, local and/or tribal governments, and to regulated entities already exist under the authorized program. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because it contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate treatment, storage, and disposal facilities, this codification incorporates into the CFR Idaho's requirements which EPA already authorized under 40 CFR part 271. Small governments are not subject to any additional significant or unique requirements by virtue of this action.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate treatment, storage, or disposal facilities are already subject to the State requirements authorized by EPA under 40 CFR part 271. The EPA's codification does not impose any additional burdens on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates Idaho's requirements which have been authorized by EPA under 40 CFR part 271 into the CFR. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from this today's action. This rule merely incorporates by reference existing requirements with which regulated entities must already comply under State and Federal law. Accordingly, the requirements of

Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affects the communities of Indian tribal governments. Idaho is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 272

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 9, 1999.

Chuck Findley,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 10.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart N—[Amended]

§ 272.650 [Amended]

2. Section 272.650 is removed and reserved.

3. Section 272.651 is revised to read as follows:

§ 272.651 Idaho State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Idaho has final authorization for the following elements as submitted to EPA in Idaho's base program application for final authorization which was approved by EPA effective on April 9, 1990. Subsequent program revision applications were approved effective on June 5, 1992, August 10, 1992, June 11, 1995, and January 19, 1999.

(b) *State statutes and regulations.* (1) The Idaho statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) The EPA Approved Idaho Statutory Requirements Applicable to the Hazardous Waste Management Program, dated April 1999.

(ii) The EPA Approved Idaho Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated April 1999.

(2) The following statutes and regulations concerning State procedures and enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Volume 7A, Title 39, Chapter 44, "Hazardous Waste Management", published in 1993 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 39–4404; 39–4405 (except 39–4405(8)); 39–4406; 39–4407; 39–4408(4); 39–4409(2) (except first sentence); 39–4409(3); 39–4409(4) (first sentence); 39–4410; 39–4412 through 39–4416; 39–4418; 39–4419; 39–4421; 39–4422; and 39–4423(3) (a)&(b).

(ii) 1996 Cumulative Pocket Supplement to the Idaho Code, Volume 7A, Title 39, Chapter 44, "Hazardous Waste Management", published in 1996 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 39–4411(1); 39–4411(3); and 39–4411(6).

(iii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Volume 7A, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 1993 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 39–5804; 39–5809; 39–5810; 39–5813(2); 39–5814; 39–5816; 39–5817; and 39–5818(1).

(iv) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Volume 2, Title 9, Chapter 3, "Public Writings", published in 1990 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9–337(10); 9–337(11); 9–338; 9–339; and 9–344(2).

(v) 1994 Cumulative Pocket Supplement to the Idaho Code (I.C.), Volume 2, Title 9, Chapter 3, "Public Writing", published in 1994 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9–340 and 9–343.

(vi) Idaho Department of Health and Welfare Rules and Regulations, Idaho Administrative Code, IDAPA 16, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published on July 1, 1997: sections 16.01.05.000; 16.01.05.356.02 through 16.01.05.356.05; 16.01.05.800; 16.01.05.850; 16.01.05.996; 16.01.05.997; and 16.01.05.999.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Idaho Code containing the General Laws of Idaho Annotated, Volume 7A, Title 39, Chapter 44, "Hazardous Waste Management", published in 1993 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 39–4428 and 39–4429.

(ii) 1996 Cumulative Pocket Supplement to the Idaho Code, Volume 7A, Title 39, Chapter 44, "Hazardous Waste Management", published in 1994 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 39–4403 (6)&(14) and 39–4427.

(iii) Idaho Code containing the General Laws of Idaho Annotated, Volume 7A, Title 39, Chapter 58, "Hazardous Waste Siting Act", published in 1993 by the Michie Company, Law Publishers, Charlottesville, Virginia: section 39–5813(3).

(iv) Idaho Department of Health and Welfare Rules and Regulations, Idaho Administrative Code, IDAPA 16, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published on July 1, 1997: sections 16.01.05.355; and 16.01.05.500.

(4) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 10 and the Division of Environmental Quality, signed by the EPA Regional Administrator on October 6, 1998, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(5) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of Idaho on July 5, 1988 and revisions, supplements and addenda to that Statement dated July 3, 1989, February 13, 1992, December 29, 1994, September 16, 1996, and October 3, 1997 are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

4. Appendix A to part 272, State Requirements, is amended by adding in alphabetical order the listing for "Idaho" to read as follows:

* * * * *

Idaho

The statutory provisions include:

Idaho Code containing the General Laws of Idaho Annotated, Volume 7A, Title 39, Chapter 44, "Hazardous Waste Management", 1993: sections 39–4402; 39–4408 (1)–(3); 39–4409(1) (except fourth and fifth sentences); 39–4409(2) (first sentence); 39–4409(4) (except first sentence); 39–4409(5); 39–4409(6); 39–4409(7); 39–4409(8); 39–4423 (except 39–4423(3)(a)&(b)); and 39–4424.

1996 Cumulative Pocket Supplement to the Idaho Code, Volume 7A, Title 39, Chapter 44, "Hazardous Waste Management", 1996: sections 39–4403 (except 39–4403 (6)&(14)); 39–4411(2); 39–4411(4); and 39–4411(5).

Idaho Code containing the General Laws of Idaho Annotated, Volume 7A, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 1993 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 39–5802; 39–5803; 39–5808; 39–5811; 39–5813(1); and 39–5818(2).

Copies of the Idaho statutes that are incorporated by reference are available from Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, VA 22906–7587.

The regulatory provisions include:

Idaho Department of Health and Welfare Rules and Regulations, Idaho Administrative Code, IDAPA 16, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published on July 1, 1997: sections 16.01.05.001; 16.01.05.002; 16.01.05.003; 16.01.05.004; 16.01.05.005; 16.01.05.006; 16.01.05.007; 16.01.05.008; 16.01.05.009; 16.01.05.010; 16.01.05.011; 16.01.05.012; 16.01.05.013; 16.01.05.014; 16.01.05.015; 16.01.05.016; 16.01.05.356.01; and 16.01.05.998.

Note: The 1997 Idaho Code, section 16.01.05.011, contains a typographical error discovered during codification. The reference to "39–4403(16)" should read "39–4403(17)". Idaho has subsequently corrected this typographical error in the 1998 Idaho Code and will submit the corrected version in the next authorization package.

* * * * *

[FR Doc. 99–16088 Filed 6–24–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147]

Deployment of Wireline Services Offering Advanced Telecommunications Capability; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the announcement of effective date of a final rule relating to local competition published in the **Federal Register** on June 2, 1999.

EFECTIVE DATE: The amendment to 47 CFR 51.321 (f) and (h) and 51.323 (b) and (i)(3) published at 64 FR 23229 (April 30, 1999) are effective June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Staci Pies, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580 or via the Internet at *spies@fcc. gov.* Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484.

SUPPLEMENTARY INFORMATION:

Background

The Commission amended its rules relating to local competition. See 63 FR

23229, April 30, 1999. Sections 51.321 (f) and (h) and 51.323 (b) and (i)(3) of these rules contain new and modified information collection requirements. We stated that these sections "contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections."

Correction

The announcement of effective date contained the wrong date. We inadvertently announced that the collections of information were effective on May 13, 1999. In the **Federal Register** of June 2, 1999, on page 29599, in the first column, the effective date should be changed to read: "The amendments to 47 CFR 51.321 (f) and (h) and 51.323 (b) and (i)(3) published at 64 FR 23229 (April 30, 1999) are effective on June 1, 1999."

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16183 Filed 6–24–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285 and 635

[Docket No. 990618163–9163–01; I.D. 052799D]

RIN 0648–AM81

Atlantic Highly Migratory Species; Bluefin Tuna Catch Reporting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; determination of state jurisdiction.

SUMMARY: NMFS has determined that the State of Maryland has implemented regulations for reporting of Atlantic bluefin tuna (BFT) landings in the recreational fishery that are mandatory, at least as restrictive as the Federal reporting requirements, and effectively enforced. Therefore, participants in the recreational fishery who land BFT in the State of Maryland are exempt from calling in their catch through NMFS' automated catch reporting system and must report their catch via the Maryland BFT landing tag program. All other Federal regulations applicable to Atlantic tunas still apply within the boundary of the State of Maryland.

DATES: Effective June 22,1999 through November 27, 1999.

ADDRESSES: Requests for copies of the final rule and information on Atlantic tunas catch reporting should be directed to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirement contained in this rule to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Maria Uitterhoeve, 301–713–2347; Pat Scida, 978–281–9208.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic Tunas Convention Act (ATCA), codified at 16 U.S.C. 971 *et seq.*, provides for U.S. participation in the conduct of scientific research programs and regulation of fishing operations by the International Commission for the Conservation of Atlantic Tunas (ICCAT). Section 971g.(d)(2)(B) of ATCA provides that Federal regulations promulgated to implement ICCAT recommendations shall apply within the boundary of any state bordering on any convention area if the Secretary of Commerce determines that any such state has laws or regulations that are less restrictive than the Federal regulations or, if not less restrictive, are not effectively enforced.

Regulations implemented under the authority of ATCA governing the harvest of Atlantic highly migratory species by persons and vessels subject to U.S. jurisdiction presently appear at 50 CFR part 285. Effective July 1, 1999, these regulations will be replaced by consolidated regulations at 50 CFR part 635 (64 FR 29090, May 28, 1999). Specifically, regulations limiting the harvest of BFT and requiring reporting of BFT landings implement ICCAT recommendations regarding country catch quotas and catch reporting. In the case of the U.S. recreational fishery for young (pre-spawning) BFT, ICCAT has recommended that landings of fish 27 to 47 inches (69 to 119 cm) in fork length be limited to 8 percent of the country quota. BFT of this size are the target of a popular summertime recreational fishery off the mid-Atlantic and southern New England coasts, and the potential catch far exceeds the available quota. Consequently, NMFS must restrict harvest of BFT through annual quotas and trip limits and must monitor landings in real-time.

Automated Catch Reporting System

NMFS has set up an automated catch reporting system (ACRS), and regulations at 50 CFR 285.29(f) (consolidated at 50 CFR 635.5(c), effective July 1, 1999) require that anglers who land BFT call a toll-free number (1–888–USA-TUNA) to report the number and size of fish. NMFS also conducts dockside and telephone surveys of permitted anglers to estimate fishing effort and collect more detailed scientific information on catch. Recognizing that the states also have an interest in collecting information on the economically important fisheries for Atlantic highly migratory species, NMFS has cooperated with the states to minimize duplication of effort and reduce the reporting burden while ensuring that BFT catch information is collected as quickly as possible. In the event that NMFS determines a state reporting system to be equally effective as the ACRS, NMFS will notify participating anglers that compliance with the state system satisfies the reporting requirement of 50 CFR 285.29(f) (50 CFR 635.5(c) after June 30, 1999).

Maryland BFT Landing Tag Program

State regulations promulgated under Natural Resources Article § #4–2A–03 of the Annotated Code of Maryland (COMAR) regarding landing of BFT in Maryland are found at COMAR 08.02.05.23. An emergency regulation to be published in the *Maryland Register*, allows BFT to be landed in the State of Maryland only if consistent with the applicable fishing seasons, size limits and retention limits specified in the Code of Federal Regulations at 50 CFR part 285 (50 CFR part 635 after July 1, 1999). Further, the State regulation requires that, effective June 1, 1999, through November 27, 1999, all BFT landed in Maryland be landed in whole form and have a landing tag affixed before removal of the fish from the vessel. If the BFT is on board a vessel on a trailer, a landing tag must be affixed before such vessel is removed from the water. A landing tag can be obtained only from officially designated reporting stations and only after the angler completes a catch reporting card for each BFT.

The catch reporting and landing tag regulations of the State of Maryland are enforced by the Maryland Natural Resources Police. Violations of the Maryland BFT catch reporting regulations are subject to a fine. Anglers may obtain further information on the Maryland BFT landing tag program and on the locations of reporting stations from Al Wesche of the Maryland Department of Natural Resources at 410–213–1531.

Determination of State Jurisdiction

NMFS has determined that the State of Maryland has implemented regulations for reporting BFT landings that are at least as restrictive as the Federal reporting requirements and are effectively enforced. Therefore, participants in the recreational fishery who land BFT in the State of Maryland are exempt from calling in their catch through the NMFS ACRS. Under State of Maryland regulations, recreational fishermen must report all BFT landings through the Maryland BFT landing tag program. This exemption applies only to ACRS catch reporting; all other Federal regulations for BFT (e.g., seasons, quotas, catch limits, permit requirements, survey participation) continue to apply within the boundary of the State of Maryland. Information on applicable Federal regulations may be obtained by calling 1–888–USA-TUNA or through the internet at: www.usatuna.com.

Classification

This action is taken under 50 CFR 285.29(f), and after June 30, 1999, will continue in effect under 50 CFR 635.5(c).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule involves a collection of information requirement subject to the PRA and approved by OMB under control number 0648–0328. The burden associated with Atlantic BFT catch reporting is estimated at 5 minutes per report, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of E.O. 12866.

The AA has determined that under 5 U.S.C. 553(b)(B) there is good cause to waive the requirement for prior notice and opportunity for public comment because delaying the final rule to provide for such procedures would be contrary to the public interest in that it would subject recreational fishermen landing BFT in Maryland to duplicative federal and state regulations. This determination of state jurisdiction relieves a restriction by exempting recreational anglers landing BFT in Maryland from the federal requirement to report BFT catch since they are now subject to an effective State reporting requirement that fulfills the same purpose. Under 5 U.S.C. 553(d)(1), because this action relieves a restriction, it is not subject to a 30-day delay in effective date.

Because prior notice and opportunity for public comment is not required for this action by 5 U.S.C. 553 or by any other law, under 5 U.S.C. 603 it is not subject to the analytical requirements of the Regulatory Flexibility Act. Accordingly, no regulatory flexibility analysis was prepared.

Dated: June 21, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16166 Filed 6–22–99; 9:10 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981106278–8336–02; I.D. 050999A]

RIN 0648–AL75

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 1999 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment of *Illex* squid annual specifications.

SUMMARY: NMFS issues this notification to announce that the Administrator, Northeast Region, NMFS (Regional Administrator), is adjusting the annual specifications for *Illex* squid (*Illex illecebrosus*), including allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH) and domestic annual processing (DAP), from 19,000 metric tons (mt) to 22,800 mt. The regulations for the Atlantic mackerel, squid and butterfish fisheries require publication of this announcement to provide interested parties the opportunity to comment on the adjustments.

DATES: Effective June 25, 1999. Comments on this notification must be received by July 26, 1999.

ADDRESSES: Comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Adjustment of *Illex* Squid Annual Specifications."

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Management Specialist, at 978–281–9288.

SUPPLEMENTARY INFORMATION: Final 1999 initial specifications for the Atlantic mackerel, squid, and butterfish fisheries were published in the **Federal Register** at 64 FR 1139, January 8, 1999. The *Illex* squid specifications were established as follows: 24,000 mt maximum optimum yield (Max OY); 19,000 mt ABC, IOY, DAH and DAP; 0 mt joint venture processing (JVP); and 0 mt total allowable level of foreign fishing (TALFF).

The Mid-Atlantic Fishery Management Council (Council) submitted Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) on October 6, 1998, to bring the FMP into accord with the Magnuson-Stevens Fishery Conservation Management Act as amended by the Sustainable Fisheries Act. The new overfishing definition for *Illex* squid in Amendment 8 included a target yield associated with 75 percent of the fishing mortality at maximum sustainable yield (F_{MSY}). The yield was calculated to be 18,000 mt in the Amendment. However, upon review of the new overfishing definition, the Northeast Fishery Science Center (Center) discovered an error in the calculation of the 18,000 mt target yield. The Center's review identified that the Council had calculated the 18,000 mt target yield as 75 percent of maximum sustainable yield, rather than 75 percent of F_{MSY}. Further, the overfishing definition had inadvertently cited the draft version of the 21st Stock Assessment Workshop stock assessment of *Illex*. The Center determined that the actual yield associated with F_{MSY} in the overfishing definition should be 22,800 mt.

Amendment 8 to the FMP and the associated overfishing definitions were approved on April 28, 1999. The Council chose not to lower the *Illex* squid specifications to the 18,000 mt target yield indicated in Amendment 8

so that the maximum amount of *Illex* squid could be harvested within the goals of the existing FMP. However, the Council, notified of the error in the determination of the 18,000 mt target yield in the Amendment, recommended at its April 29, 1999, meeting that the specifications for *Illex* squid fishery be adjusted to 22,800 mt to allow the maximum amount of harvest allowed by the amended FMP and the new overfishing definition.

The Council requested that NMFS process an emergency action "...or any other action deemed necessary..." to change the specifications. While an emergency action would not be appropriate, the regulations at § 648.21(e) for Atlantic mackerel, squid, and butterfish allow the Regional Administrator to process an inseason action to adjust the specifications. There is no justifiable reason to limit the industry to 19,000 mt since the target yield to prevent overfishing has been determined to be 22,800 mt. The 22,800 mt specifications would provide the industry with the maximum amount of harvest based on the overfishing definition for *Illex* squid. Therefore, 22,800 mt is specified as the allowed for ABC, IOY, DAH, and DAP. This action is warranted by the new overfishing definition for *Illex* squid. Max OY would remain at 24,000 mt, and JVP and TALFF would remain at 0 mt.

1999 Final Specifications

The following table contains the final initial specifications for the 1999 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries as recommended by the Council.

FINAL INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1999.

[mt]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY	26,000	24,000	[1]N/A	16,000
ABC	21,000	22,800	383,000	7,200
IOY	21,000	22,800	[2]75,000	5,900
DAH	21,000	22,800	[3]75,000	5,900
DAP	21,000	22,800	50,000	5,900
JVP	0	0	10,000	0
TALFF	0	0	0	0

[1]Not applicable.
[2]OY may be increased during the year, but the total will not exceed 383,000 mt.
[3]Includes 15,000 mt of Atlantic mackerel recreational allocation.

Authority: 16 U.S.C. 1801 *et seq.*

Dated; June 21, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16204 Filed 6–24–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 122
Friday, June 25, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 99–020–1]

Mexican Hass Avocado Import Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations governing the importation of Hass avocados from Mexico to require handlers and distributors to enter into compliance agreements with the Animal and Plant Health Inspection Service. We would also amend the stickering requirement for the avocados and add requirements regarding the repackaging of the avocados after their entry into the United States. These proposed amendments are necessary to ensure that distributors and handlers are familiar with the distribution restrictions and other requirements of the regulations and to strengthen the effectiveness of the marking requirements used to identify the avocados and allow them to be tracked back to their grove of origin. These proposed amendments would serve to reinforce the existing safeguards of the avocado import program.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by August 24, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–020–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–020–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. to be sure someone is there to help you please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Ms. Donna West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; e-mail: Donna.L.West@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

The regulations in § 319.56–2ff allow fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, to be imported into certain areas of the United States subject to certain conditions. Those conditions, which include pest surveys and pest risk-reducing cultural practices, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year (November through February) that shipments may enter the United States, are designed to reduce the risk of pest introduction to a negligible level. Further, the regulations in § 319.56–2ff limit the distribution of the avocados to 19 northeastern States and the District of Columbia, where climatic conditions preclude the establishment in the United States of any of the exotic plant pests that may attack avocados in Michoacan. Mexico. In this document, we are proposing to make several changes to the regulations.

Compliance Agreements

The regulations in § 319.56–2ff became effective in March 1997. During the first shipping season (November 1997 through February 1998), we found that one distributor had shipped Mexican Hass avocados to Georgia, Iowa, Missouri, North Carolina, South Carolina, and Tennessee, none of which are among the 19 approved States. In the second shipping season (November 1998 through February 1999), we found that five other distributors had allowed Mexican Hass avocados to be shipped those same six States as well as to the non-approved States of Florida, Minnesota, Mississippi, Nebraska, and South Dakota.

In order to help prevent recurrences of such unauthorized shipments in future shipping seasons, we are proposing to amend the regulations to require all handlers and distributors of Mexican Hass avocados to enter into a compliance agreement with the Animal and Plant Health Inspection Service (APHIS). The compliance agreement would serve both as an educational tool to ensure that all handlers and distributors have been fully informed about the limitations that the regulations place on the movement of the avocados and as an enforcement tool that would provide a greater measure of accountability for handlers or distributors who may violate the distribution restrictions of the regulations. This proposed compliance agreement requirement would be added to the regulations in § 319.56–2ff as a new paragraph (k), "Compliance agreements."

Specifically, proposed paragraph (k)(1) would state that any person other than the person who received a permit to import the avocados (the permittee) who moves or distributes Mexican Hass avocados following their importation into the United States must enter into a compliance agreement with APHIS. In that compliance agreement, the person moving or distributing the avocados would have to acknowledge, and agree to observe, the restrictions found in § 319.56–2ff regarding the movement of the avocados in the United States. Those restrictions, a copy of which would be provided to the person entering into the compliance agreement, are found in § 319.56–2ff in paragraph (a), "Shipping restrictions;" paragraph (f), "Ports;" paragraph (g), "Shipping areas;"

paragraph (h), "Shipping requirements;" and paragraph (i), "Inspection;" as well as in proposed new paragraph (j), "Repackaging" (which is explained later in this document) and proposed paragraph (k), "Compliance agreements."

By requiring handlers and distributors to sign a compliance agreement, we would be able to document that they have received a copy of the regulations and have had those regulations explained to them. This would effectively eliminate any uncertainty or misunderstanding that they may have regarding their responsibilities under the regulations. Paragraph (k)(1) would conclude by stating that compliance agreements forms are available free of charge, from local offices of Plant Protection and Quarantine, which are listed in local telephone directories.

Proposed paragraph (k)(2) would state that the permittee would have to ensure that any person to whom he or she released the avocados for movement or distribution (i.e., a second-party handler) has entered into a compliance agreement with APHIS. While the importers themselves must acknowledge the requirements of the regulations before they receive a permit to import Mexican Hass avocados, it is possible that a second-party handler might fail to fully familiarize himself or herself with the distribution limitations and other restrictions associated with the Avocados. We believe requiring permittees to confirm that the person to whom they are releasing the avocados for distribution has entered into a compliance agreement with APHIS would ensure that second-party handlers are made aware of their responsibilities under the regulations. This proposed requirement would also be made a condition of the permit that the permittee must obtain prior to importing Mexican Hass avocados, and failure to observe the conditions of a permit is grounds for its revocation. Therefore, paragraph (k)(2) would also state that APHIS may revoke an import permit for the remainder of the current shipping season if the permittee failed to confirm that the second-party handler had entered into a compliance agreement.

For the same reasons that we would address the transfer of avocados from the permittee to a second-party handler, as described in the previous paragraph, we are also proposing to require that any second-party or subsequent handler who releases the avocados to another person for movement or distribution must ensure that the person receiving the avocados has entered into a compliance agreement with APHIS. This proposed requirement would be stated in paragraph (k)(3). Again, the compliance agreement would ensure that persons receiving the avocados from second-party or subsequent handlers are made aware of their responsibilities under the regulations. Further, the compliance agreement would serve to establish a chain of custody that would indicate at what point this proposed compliance agreement requirement was disregarded. Because a compliance agreement would be required for persons moving or distributing the avocados, paragraph (k)(3) would also state that APHIS may revoke a second-party or subsequent handler's compliance agreement for the remainder of the current shipping season if that second-party or subsequent handler failed to confirm that the person to whom he or she released the avocados had entered into a compliance agreement.

Finally, in order to help prevent repeated violations of the proposed compliance agreement requirement, paragraph (k)(4) would provide that APHIS may deny an import permit application from, or refuse to enter into a compliance agreement with, a person who has had his or her import permit or compliance agreement revoked twice within any 5-year period. This would prevent permittees or handlers who repeatedly disregard or violate the compliance agreement requirement from receiving or moving shipments of Mexican Hass avocados.

Stickers

The regulations in § 319.56–2ff(c)(3)(vi) require, among other things, that prior to being packed in boxes at the packinghouse in Mexico, each avocado fruit must be labeled with a sticker that bears the Sanidad Vegetal registration number of the packinghouse. This requirement is intended to make it easier to identify Mexican-origin avocados at terminal markets and presents an additional obstacle to transshipment of the fruit to non-approved States.

It has come to our attention that some packinghouses in Mexico may be using the same sticker required by the regulations for "program fruit" (i.e., avocados that meet the requirements of § 319.56–2ff for export to the northeastern United States) on "non-program fruit" shipped to Canada or used for domestic consumption in Mexico. While using the sticker for non-program fruit is not currently prohibited by the regulations, we believe that such uses of the sticker dilute the effectiveness of the stickers as a tool for identifying Mexican avocados in the United States and for differentiating program fruit from non-program fruit that may have been smuggled into the United States.

Therefore, we are proposing to amend § 319.56–2ff(c)(3)(vi) to require that the stickers used for program fruit not only bear the Sanidad Vegetal registration number of the packinghouse, but that they also bear the letters "M/US" after that number, and that those stickers be used only for fruit produced in accordance with § 319.56–2ff for export to the United States. These proposed amendments to the stickering requirement would ensure that the stickers will serve their intended purpose of making it easier to identify Mexican-origin avocados at terminal markets and would further allow us to differentiate between program fruit and non-program fruit that may have been smuggled into the United States.

Repackaging

The regulations in § 319.56–2ff(c)(3)(vii) require that, at the packinghouse in Mexico, the avocados must be packed in clean, new boxes, and the boxes must be clearly marked with the identity of the grower, packinghouse, and exporter, and the statement "Distribution limited to the following States: CT, DC, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and WI." This requirement ensures that the avocados can be traced back to their grove of origin in the event that pests are detected at any time after the avocados are placed in boxes at the packinghouse.

We acknowledge that there may be instances where the avocados may have to be packed in new boxes after their entry into the United States due to damage to the original shipping box or some other legitimate reason. It is also possible that a person may attempt to conceal the origin of the avocados by repackaging them into unmarked boxes or removing the stickers that are required by § 319.56–2ff(c)(3)(vi). The regulations, however, currently do not address the removal of stickers or the repackaging of avocados after their arrival in the United States.

Therefore, we are proposing to add a new paragraph (j) to § 319.56–2ff that would clearly state that if any avocados are removed from their original shipping boxes and repackaged, the stickers may not be removed or obscured and the new boxes must be clearly marked with the same information that must be placed on the original boxes at the packinghouse. Adding these provisions to the regulations would help ensure these identifying measures would be maintained in the event that repackaging became necessary, thus preserving the important information regarding the identity and origin of the avocados that those measures provide.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend our regulations governing the importation of Hass avocados from Mexico to require handlers and distributors to enter into compliance agreements with APHIS. This proposed rule would also amend the stickering requirement for the avocados and add requirements regarding the repackaging of the avocados after their entry into the United States. These proposed amendments would ensure that distributors and handlers are familiar with the distribution restrictions and other requirements of the regulations and would strengthen the effectiveness of the marking requirements used to identify the avocados and allow them to be traced back to their grove of origin.

During the first shipping season for Mexican Hass avocados (November 1997 through February 1998), Mexico exported 13.296 million pounds of fresh avocados to the northeastern United States (U.S. Department of Agriculture, Foreign Agricultural Service, GAIN Report No. MX8140, November 24, 1998). During the second shipping season (November 1998 through February 1999), Mexico exported approximately 22 million pounds of fresh avocados to the northeastern United States.

Although it was anticipated that the importation of fresh Hass avocados from Mexico into the northeastern United States would result in lower prices for consumers and losses for domestic avocado producers, there has, to date, been little or no price change. The average wholesale price for avocados in the approved 19 northeastern States and the District of Columbia before the first shipping season began in November 1997 was $1.47 per pound, while after the shipping season began, the average wholesale price was $1.60 per pound. For the non-approved States, the average wholesale prices were $1.46 before November 1997 and $1.57 after the first shipping season began. (The wholesale prices in the approved States are based on averages in Baltimore, Boston, Chicago, Detroit, New York, and Philadelphia; the wholesale prices for the non-approved States are based on averages in Atlanta, Dallas, Los Angeles, Miami, San Francisco, and Seattle.) There was no statistically significant difference between the wholesale prices in the approved States and the non-approved States before or after Mexican Hass avocados entered the domestic market. It should be noted that the average wholesale prices for fresh avocados in Mexico were only about $0.33 and $0.32 per pound in 1997 and 1998, respectively.

As discussed in the background section of this proposed rule, compliance agreements are available from APHIS free of charge and the stickering of individual avocados in Mexico is already required under the regulations. Therefore, the only aspect of this proposed rule that could be expected to result in additional costs for any U.S. entities, large or small, would be the proposed requirement for the marking of new boxes in cases where the avocados are repackaged after their entry into the United States.

According to industry sources, the cost of the current box marking and fruit stickering requirements of the regulations is approximately $0.06 per pound. This cost is borne at the Mexican production/export end of the Hass avocado export program. If 20 percent of all shipments had to be repackaged following their arrival in the United States due to damage to original shipping boxes or for other reasons, the proposed requirement for the marking of new boxes could result in additional costs to U.S. importers or distributors of approximately $160,000 to $264,000. This estimate was arrived at using 20 percent of the total volume of Mexican Hass avocados shipped to the northeastern United States during the two export seasons of 1997–1998 (13.296 million pounds × $0.06 × 0.2=$159,552) and 1998–1999 (22 million pounds × $0.06 ×0.2=$264,000). However, because the $0.06 figure used includes the costs of stickering as well as box marking, it is likely that the costs to U.S. importers or distributors of marking new boxes in the United States would actually be less than that estimate. Since, as noted above, the price spread between domestic and Mexican wholesale prices is so large, U.S. importers and distributors may be able to absorb any additional costs resulting from the proposed requirement for marking new boxes without passing those costs on to consumers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 99–020–1. Please send a copy of your comments to: (1) Docket No. 99–020–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Our regulations currently allow fresh Hass avocado fruit grown in approved orchards in Michoacan, Mexico, to be imported into the United States under certain conditions. In this document, we are proposing to amend our regulations governing the importation of Hass avocados from Mexico to require handlers and distributors to enter into compliance agreements with APHIS. We are also proposing to amend the existing stickering requirement for the avocados and to add requirements regarding the marking of new boxes when avocados are repackaged after their entry into the United States.

These proposed amendments would require the use of several information collection procedures, including a compliance agreement, enhanced product identification, and additional container marking requirements. We are asking OMB to approve our use of these information collections in connection with our efforts to ensure that fresh Hass avocados from Mexico pose a negligible risk of introducing exotic insect pests into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.195 hours per response.

Respondents: Packinghouse owner/operators in Mexico and importers, shippers, distributors, and handlers of fresh Hass avocados imported into the United States.

Estimated annual number of respondents: 210.

Estimated annual number of responses per respondent: 1.195.

Estimated annual number of responses: 210.

Estimated total annual burden on respondents: 251 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.56–2ff, paragraph (c)(3)(vi) would be revised and new paragraphs (j) and (k) would be added to read as follows:

§ 319.56–ff Administrative instructions governing movement of Hass avocados from Mexico to the Northeastern United States.

* * * * *

(c) * * *

(3) * * *

(vi) Prior to being packed in boxes, each avocado fruit must be cleaned of all stems, leaves, and other portions of plants and labeled with a sticker that bears the Sanidad Vegetal registration number of the packinghouse followed by the letters "M/US." The stickers may be used only for fruit produced in accordance with this section for export to the United States.

* * * * *

(j) *Repackaging.* If any avocados are removed from their original shipping boxes and repackaged, the stickers required by paragraph (c)(3)(vi) of this section may not be removed or obscured and the new boxes must be clearly marked with all the information required by paragraph (c)(3)(vii) of this section.

(k) *Compliance agreements.* (1) Any person other than the permittee (i.e., a second-party or subsequent handler) who moves or distributes the avocados following their importation into the United States must enter into a compliance agreement with APHIS. In the compliance agreement, the person must acknowledge, and agree to observe, the requirements of paragraph (a) and paragraphs (f) through (k) of this section. Compliance agreement forms are available, free of charge, from local offices of Plant Protection and Quarantine, which are listed in local telephone directories.

(2) Before transferring the avocados to any person (i.e., a second-party handler) for movement or distribution, the permittee must confirm that the second-party handler has entered into a compliance agreement with APHIS as required by paragraph (k)(1) of this section. If the permittee transfers the avocados to a second-party handler who has not entered into a compliance agreement, APHIS may revoke the permittee's import permit for the remainder of the current shipping season.

(3) Any second-party or subsequent handler who transfers the avocados to another person for movement or distribution must confirm that the person receiving the avocados has entered into a compliance agreement with APHIS as required by paragraph (k)(1) of this section. If the second-party or subsequent handler transfers the avocados to a person who has not entered into a compliance agreement, APHIS may revoke the handler's compliance agreement for the remainder of the current shipping season.

(4) *Action on repeat violators.* APHIS may deny an application for an import permit from, or refuse to enter into a compliance agreement with, any person who has had his or her import permit or compliance agreement revoked under paragraph (k)(2) or (k)(3) of this section twice within any 5-year period.

Done in Washington, DC, this 21st day of June 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–16173 Filed 6–24–99; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV98–920–4 PR]

Kiwifruit Grown in California; Changes in Minimum Size, Pack, Container, and Inspection Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on proposed changes to the minimum size, pack, container, and inspection requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule would specify minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and make minor changes to clarify pack and container marking requirements for several containers. In addition, this rule proposes to continue, for the 1999–2000 season, the suspension of minimum net weight requirements for kiwifruit tray packs scheduled to expire at the end of the 1998–1999 season. Also, proposed to be continued for the 1999–2000 season is

the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates. These changes would clarify the minimum size, pack, and container requirements, and are expected to reduce handler packing costs, increase producer returns, and enable handlers to compete more effectively in the marketplace.

DATES: Comments must be received by July 15, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation or obtain a guide on complying with fruit, vegetable, and speciality crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on changes to minimum size, pack, container, and inspection requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Committee.

This rule would specify the minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and make minor changes to clarify pack and container marking requirements for several containers.

In addition, this rule proposes to continue, for the 1999–2000 season, the suspension of the minimum net weight requirements in § 920.302 (a)(4)(iii) for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays scheduled to expire at the end of the 1998–1999 season. This suspension action was implemented by an interim final rule published last September (63 FR 46861; September 3, 1998). No comments were received pursuant to the request for comments in the interim final rule. A final rule published last August suspended the requirement in § 920.155 that fruit must be reinspected if it has not been shipped by specified dates for the 1998–1999 season (63 FR 41390 August 4, 1998). This rule also proposes to continue the suspension of this requirement for the 1999–2000 season. The proposed changes were unanimously recommended by the Committee. These changes would clarify the minimum size, pack, and container requirements, and are expected to reduce handler packing costs, increase producer returns, and enable handlers to compete more effectively in the marketplace.

The interim final rule published last September also increased the size variation tolerance, from 10 percent, by count, in any one container, to 25 percent, by count, for Size 42 kiwifruit, and the maximum number of fruit per 8-pound sample for Sizes 42, 39, 36, 33, and 30 of kiwifruit packed in bags, volume fill, or bulk containers for the 1998–1999 and future seasons. No changes to these provisions are proposed in this action.

In early November 1998, the Department determined that suspending the minimum net weight requirements as specified in § 920.302(a)(4)(iii) without redefining the size designation definition in § 920.302 (b)(2) had inadvertently limited application of the minimum size requirements to volume fill packs.

The Committee met on November 19, 1998, and clarified that its original intent had been to maintain the minimum size requirement on all kiwifruit regardless of pack style. The Committee discussed changing the regulatory language so that minimum size would apply to all pack styles for the remainder of the 1998–1999 season, but concluded that it would be unfair to growers and handlers to change this requirement in mid-season. The Committee believed that orderly marketing would continue as harvest was nearly completed at the time of the November 1998 meeting and because a small amount of minimum size kiwifruit had been packed in trays.

The Committee met again on January 13, 1999, to discuss industry issues and to make preliminary recommendations for the 1999–2000 season. The Committee concluded that the recommended changes made for the 1998–1999 season had benefitted the industry. Both small and large handlers were able to reduce packing costs and compete more effectively in the marketplace because of the relaxations made to the requirements.

The Committee made the following preliminary recommendations for the 1999–2000 season: (1) Specify that minimum size requirements apply to all kiwifruit regardless of pack style and define Size 45 in terms of weight and

not pack requirements; (2) make minor changes to clarify pack and container marking requirements for several containers; (3) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season; and (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season.

Later in January, the kiwifruit industry held meetings in Northern and Southern California to further study the minimum size issue. Studies showed that while Size 45 fruit filled Size 45 cell cups well during the 1998–1999 season, the fruit packed would not have met the suspended minimum net weight requirement of 6.5 pounds because of an outdated cup size used in the Size 45 tray. A Size 45 tray of kiwifruit weighing a minimum of 6.5 pounds is equivalent to a maximum of 55 pieces of fruit in an 8-pound sample. Based on these findings, the Committee determined that the minimum net weight requirements for Size 45 should be studied further.

The Committee met on February 25, 1999, and unanimously recommended the following changes and clarifications for the 1999–2000 season: (1) Specify that the minimum size requirements be defined as a maximum of 55 pieces of fruit in an 8-pound sample and that the minimum size requirements should apply to all kiwifruit regardless of pack style; (2) require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; (3) make minor changes to clarify pack and container marking requirements for several containers; (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season; and (5) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season. The Committee further recommended that all rules and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

New Proposed Changes for the 1999–2000 Season

Clarification of the Minimum Size Requirements

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of minimum size, pack, and container requirements. Section 920.302(a)(2) of the order's rules and regulations outlines the minimum size requirements for fresh shipments of California kiwifruit and provides that such kiwifruit shall be at least a minimum Size 45.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Section 920.302(b)(2) of the order's rules and regulations defines size designation to mean the same as defined in the table in paragraph (a)(4)(iii) of this section.

As previously mentioned, the Committee unanimously recommended suspending the minimum net weight requirements specified in § 920.302(a)(4)(iii) for the 1998–1999 season. This recommendation was implemented through an interim final rule published September 3, 1998 (63 FR 46861).

In early November 1998, the Department determined that suspending § 920.302(a)(4)(iii) without redefining the size designation definition in § 920.302(b)(2) had inadvertently limited application of the minimum size requirements to volume fill packs.

The Committee members attended a meeting in November 1998 and again in January 1999 wherein they clarified their initial intent, and set preliminary recommendations for the 1999–2000 season.

The Committee met on February 25, 1999, unanimously recommended that kiwifruit be at least a minimum Size 45, and that Size 45 be defined in terms of weight and not pack requirements. Size 45 was defined as a maximum of 55 pieces of fruit in an 8-pound sample. This recommendation reflects the Committee's original intent to apply uniform minimum size requirements to all kiwifruit regardless of pack style. To further clarify its intent, the Committee recommended adding the size definition to the size requirements in § 920.302(a)(2), deleting the size designation definition in § 920.302(b)(2), and defining Size 45 in terms of weight and not pack.

The Committee considered establishing a count of 58 or 59 pieces of slightly smaller fruit for the Size 45 trays, but concluded that the count should remain a maximum of 55 pieces of fruit per 8-pound sample because the current minimum size continues to prevent shipments of low-quality, undersized fruit, and because repacking problems during the 1998–1999 season resulted from an outdated cup size in the Size 45 tray and not from the current minimum size.

Over the years, the size designation for Size 45 has changed, but the tray inserts for this size fruit have not changed. In 1989, the size designation for Size 45 was changed to 57 pieces of fruit per 8-pound sample and remained there until 1994, when Size 45 became the minimum size and was defined as 55 pieces of fruit per 8-pound sample.

Kiwifruit was not packed in Size 45 trays during the three seasons preceding the 1998–1999 season as it was not profitable for growers. A small amount of kiwifruit was packed during the 1998–1999 season. The Committee believes the molded trays utilized during the 1998–1999 season were manufactured prior to 1994, that the cell cups of these molded trays were designed to fit smaller fruit, and that the size of the cups contributed to the packing problems associated with Size 45 trays during the 1998–1999 season.

Tray manufacturers attending Committee meetings in January and February 1999 expressed interest in working with the industry in developing molded tray inserts with slightly larger cell cups for Size 45 trays. These slightly larger cell cups would allow slightly larger fruit to be packed and thus enable the minimum size requirements to be met.

As a result, the Committee unanimously recommended that the minimum size for all pack styles be established as a maximum of 55 pieces of fruit in an 8-pound sample. These changes would not impact the kiwifruit import regulation implemented under section 8e of the Act, because this recommendation would only clarify that the minimum size requirements apply to all shipments.

The Committee further recommended that all rules and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

Lot Stamp Requirement

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(d) requires all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. Individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service are not subject to these requirements.

Prior to the 1998–1999 season, handlers did not place individual consumer packages directly on pallets for shipping. Individual consumer packages were placed in master containers and the master containers bore the container marking requirements.

During the 1998–1999 season, new individual consumer packages that interlock and fit on a pallet were utilized. These individual consumer packages are stacked six packages by six packages on a pallet resulting in 36 individual consumer packages per layer. Pallets are normally stacked 8–10 layers high. The Committee determined that this style of container would not meet the current marking requirements of not less than 75 percent of the total containers on a pallet being plainly marked with the lot stamp number. Due to the size and configuration of the interlocking individual consumer packages, approximately 57 percent of the individual consumer packages would be marked if all exposed or outside containers are marked with the lot stamp number.

Therefore, when the Committee met on February 25, 1999, they unanimously recommended adding language to § 920.303(d) that would require individual consumer packages placed directly on a pallet to have all exposed containers plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or that a total of four placards be applied to the pallet of kiwifruit. The Committee believes that relaxing the requirement to have all exposed or outside containers and at least 75 percent of the containers on the pallet marked with the lot stamp number, would allow handlers to ship individual consumer packages without incurring the additional costs of marking containers that are not exposed, and slowing down the packing line to mark the containers.

Changes to Clarify Pack and Container Marking Requirements

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(c)(3) establishes how the quantity shall be marked on bulk bins and requires the quantity to be indicated in terms of the size designation and net weight; or in terms of the size designation, net weight, and count.

Section 920.303(c)(5) establishes how the quantity shall be marked on individual consumer packages and requires that the quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages. It further requires that if count is used, it must be accompanied by the size designation.

At the February 25, 1999, meeting, the Committee recommended the following changes to pack requirements in §§ 920.302(a)(4)(ii) and (iv): (1) Change language in the first table of § 920.302(a)(4)(ii) as follows: Change "Sizes" to "Count," change "30 or larger" to "30 or less," and change "39 or smaller" to "39 or more"; (2) add language to § 920.302(a)(4)(ii) to exclude individual consumer packages from the list of containers that utilize the size variation tolerance table for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays; (3) change language in the second table of § 920.302(a)(4)(ii) from "Sizes" to "Size Designation"; (4) change language in § 920.302(a)(4)(ii) to add individual consumer packages to the list of containers which specifies size variation tolerances for kiwifruit packed in bags, volume fill, or bulk containers; and (5) change language in § 920.302(a)(4)(iv) by adding "individual consumer packages" to the list of containers in the table specifying the numerical size and maximum number of fruit per 8-pound sample; delete the word "numerical" when describing size; and delete the words "Column 1," "Column 2," and "Numerical Count" from the size designation table in § 920.302(a)(4)(iv) as they are not necessary.

These changes would: (1) Reflect current industry practices; (2) clarify that the size variation tolerances which are applied to fruit packed in volume fill containers are also applied to individual consumer packages; (3) clarify that the size designation chart is utilized to determine the maximum number of fruit per 8-pound sample for individual consumer packages; and (4) delete unnecessary language.

The Committee also recommended the following changes to container requirements in §§ 920.303(c)(3) and (5) as follows: (1) Change language in § 920.303(c)(3) by adding "individual consumer packages not within a master container" to the list of containers in the size designation table specifying the size and maximum number of fruit per 8-pound sample; (2) delete the word "bins" and replace it with "containers"; (3) delete the words "net weight" as they are not necessary; and (4) change language in § 920.302(a)(5) by adding "within a master container" after individual consumer packages.

These changes would ensure that marking requirements are clearly defined for individual consumer packages placed directly on a pallet as well as those packed within a master container.

Continuation of 1998–1999 Season Suspended Actions for the 1999–2000 Season

Continued Suspension of Minimum Net Weight Requirements for Trays

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Prior to the 1989–1990 season, there were no minimum tray weight requirements although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was packed into molded trays and less than 1 percent of this fruit was rejected for failure to meet minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

Count designation of fruit	Minimum net weight of fruit (Pounds)
34 or larger	7.5
35 to 37	7.25
38 to 40	6.875
41 to 43	6.75
44 and smaller	6.5

The Committee met on July 8, 1998, and unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season.

Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule published September 3, 1998 (63 FR 14861).

As previously mentioned, both small and large handlers were able to reduce packing costs and to compete more effectively in the market during the 1998-1999 season because of the relaxation in packing requirements. The industry continued to pack well filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays.

Therefore, when the Committee met on January 13, 1999, to consider its preliminary recommendations for the season, it concluded that minimum net weight requirements for trays should continue to be suspended for the 1999–2000 season.

The Committee met on February 25, 1999, and unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for the 1999–2000 season. The 1999–2000 season ends July 31, 2000. The Committee plans to further evaluate the benefits during the 1999–2000 season.

Continued Suspension of Reinspection Requirement

Section 920.55 of the order requires that prior to handling any variety of California kiwifruit, such kiwifruit shall be inspected by the Federal or Federal-State Inspection Service (inspection service) and certified as meeting the applicable grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Section 920.55(b) provides authority for the establishment, through the order's rules and regulations, of a period prior to shipment during which inspections must be performed.

Prior to its suspension for 1998–1999 season, § 920.155 of the order's rules and regulations specified that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year is valid until December 31 of such year or 21 days from the date of inspection, whichever is later. Any inspected kiwifruit to be shipped after the certification period lapses was required to be reinspected and recertified before shipment.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 1, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provides. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. This enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. The Committee had estimated that handlers would save $50,000 by conducting their own reinspection during the 1998–1999 season.

At the February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The Committee still believes that handlers saved $50,000 by conducting their own reinspection during the 1998–1999 season even though the marketed crop was less than projected, more fruit was in-line inspected than projected, and shipments had started later during the 1998–1999 season than anticipated.

Although freezing temperatures and winds during the spring may reduce the size of the 1999–2000 crop, the Committee believes the industry would continue to benefit from conducting its own reinspection.

The Committee would like to evaluate this suspension one more season before making a decision to permanently remove this requirement from the rules and regulations. Thus, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The 1999–2000 season ends July 31, 2000.

Maintaining Current Regulatory Changes

Maintaining the Current Size Variation Tolerance for Size 42 Kiwifruit

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(ii) specifies size variation ranges in terms of fruit diameter for each size of kiwifruit and size variation tolerances.

Section 920.302(a)(4)(ii) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision to increase the size variation tolerance for Size 42 kiwifruit from 10 percent, by count, to 25 percent, by count.

During the 1998–1999 season a significantly smaller amount of kiwifruit was packed into the 40 series sizes than anticipated. Only 7 percent of the fruit was packed into Size 42 containers, and only 15.3 percent was packed into Size 42 and 45 containers. This is significantly less than the previous two years when 35 percent of the fruit was packed into the 40 series sizes.

In addition, size variation was not a problem for Size 42 fruit during the 1998–1999 season, as the majority of the fruit was round and short and not a mixture of round and flat fruit. A typical crop has a mixture of round and flat fruit. A mixture of round and flat fruit is difficult to pack and slows down the packing line.

The Committee believes that maintaining the increased size variation tolerance for Size 42 kiwifruit for the 1999–2000 season would continue to benefit the industry by easing the packing burden and reducing costs, while maintaining uniform looking boxes of fruit desired by customers.

Maintaining the Current Maximum Number of Fruit per 8-Pound Sample for Kiwifruit Packed in Bags, Volume Fill, or Bulk Containers

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iv) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

Section 920.302(a)(4)(iv) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision that increased the maximum number of fruit per 8-pound sample for Sizes 42 through 30. Size 42 fruit is smaller than Size 30 fruit. The size designation chart below depicts these changes:

Size designation	Maximum number of fruit Per 8 pound sample
21	22
25	27
27/28	30
30	33
33	36
36	42
39	48
42	53
45	55

Currently, under the rules and regulations, kiwifruit packed in bags, volume fill, or bulk containers, must not exceed the maximum number of fruit per an 8-pound sample for each size designation.

Under the current regulations, handlers are better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. California handlers are applying weight standards that are similar to those used by importers, thereby lessening confusion in the marketplace and facilitating the marketing of California kiwifruit.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of California kiwifruit subject to regulation under the marketing order and approximately 450 producers in the production area. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. One of the 60 handlers subject to regulation has annual kiwifruit receipts of at least $5,000,000. This figure excludes receipts from any other sources. The remaining 59 handlers have annual receipts less than $5,000,000, excluding receipts from other sources. In addition, 10 of the 450 producers subject to regulation have annual sales of at least $500,000, excluding receipts from any other sources. The remaining 440 producers have annual sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of the kiwifruit handlers and producers may be classified as small entities.

This proposal invites comments on changes to minimum size, pack, container, and inspection requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Committee.

This rule would specify the minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and make minor changes to clarify pack and container marking requirements for several containers.

In addition, this rule proposes to continue, for the 1999–2000 season, the suspension of the minimum net weight requirements in § 920.302(a)(4)(iii) for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays scheduled to expire at the end of the 1998–1999 season. This suspension action was implemented by an interim final rule published last September (63 FR 46861; September 3, 1998). A final rule published last August suspended, for the 1998–1999 season, the requirement in § 920.155 that fruit must be reinspected if it has not been shipped by specified dates (63 FR 41390; August 4, 1998). This rule also proposes to continue the suspension of this requirement for the 1999–2000 season.

The proposed changes were unanimously recommended by the Committee. These changes would clarify the minimum size, pack, and container requirements, and are expected to reduce handler packing costs, increase producer returns, and enable handlers to compete more effectively in the marketplace.

The interim final rule published last September also increased the size variation tolerance for Size 42 kiwifruit and the maximum number of fruit for the 8-pound sample for the 1998–1999 and future seasons. No changes to these provisions are proposed in this action.

In early November 1998, the Department determined that suspending the minimum net weight requirements as specified in § 920.302(a)(4)(iii) without redefining the size designation definition in § 920.302(b)(2) had inadvertently limited application of the minimum size requirements to volume fill packs.

The Committee met on November 19, 1998, and clarified that the intent of its July 8, 1998, recommendation had been to maintain the minimum size requirement on all kiwifruit regardless of pack style. The Committee discussed changing the regulatory language so that minimum size would apply to all pack styles for the remainder of the 1998–1999 season, but concluded that it would be unfair to growers and handlers to change this requirement in mid-season. The Committee believed that orderly marketing would continue as harvest was nearly completed at the time of the November 1998 meeting and because a small amount of minimum size kiwifruit had been packed in trays.

The Committee met again on January 13, 1999, to discuss industry issues and to make preliminary recommendations for the 1999–2000 season. The Committee concluded that the recommended changes made for the season had benefitted the industry. Both small and large handlers were able to reduce packing costs and compete more effectively in the marketplace in the 1998–1999 season because of the relaxations made to the requirements.

The Committee made the following preliminary recommendations for the 1999–2000 season: (1) Specify that minimum size requirements apply to all kiwifruit regardless of pack style and define Size 45 in terms of weight and not pack requirements; (2) make minor changes to clarify pack and container marking requirements for several containers; (3) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season; and (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season.

Later in January the kiwifruit industry held meetings in Northern and Southern California to further study the minimum size issue. Studies showed that while Size 45 fruit filled Size 45 cell cups well during the 1998–1999 season, the fruit would not have met the suspended minimum net weight requirement of 6.5 pounds because of an outdated cup size used in the Size 45 tray. A Size 45 tray of kiwifruit weighing a minimum of 6.5 pounds is equivalent to a maximum of 55 pieces of fruit in an 8-pound sample. Based on these findings, the Committee determined that the minimum net weight requirements for Size 45 should be further evaluated.

The Committee met on February 25, 1999, and unanimously recommended the following changes and clarifications for the 1999–2000 season: (1) Specify that the minimum size requirements be defined as a maximum of 55 pieces of fruit in an 8-pound sample and that the minimum size requirements should apply to all kiwifruit regardless of pack style; (2) require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; (3) make minor changes to clarify pack and container

marking requirements for several containers; (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season; and (5) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season. The Committee further recommended that all rules and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

New Proposed Changes for the 1999–2000 Season

Clarification of the Minimum Size Requirement

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of minimum size, pack, and container requirements. Section 920.302(a)(2) of the order's rules and regulations outlines the minimum size requirements for fresh shipments of California kiwifruit and provides that such kiwifruit shall be at least a minimum Size 45.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Section 920.302(b)(2) of the order's rules and regulations defines size designation to mean the same as defined in the table in paragraph (a)(4)(iii) of this section.

Prior to the 1998–1999 season, the minimum size for kiwifruit was defined as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style. As previously mentioned, a change of pack requirements recommended by the Committee last summer and implemented by an interim final rule published on September 3, 1998 (63 FR 46861) unintentionally limited application of minimum size requirements to volume fill containers. The Committee members attended a meeting in November 1998 and again in January 1999 wherein they clarified their initial intent, and set preliminary recommendations for the 1999–2000 season.

On February 25, 1999, the Committee unanimously recommended that kiwifruit be at least a minimum Size 45, and that Size 45 be defined in terms of weight and not pack requirements. The Committee recommended that Size 45 be defined as a maximum of 55 pieces of fruit in an 8-pound sample. This recommendation reflects the Committee's original intent to apply uniform minimum size requirements to all kiwifruit regardless of pack style. To further clarify its intent, the Committee recommended adding the size definition to the size requirements in § 920.302(a)(2), deleting the size designation definition in § 920.302(b)(2), and defining Size 45 in terms of weight and not pack.

The Committee considered other alternatives to maintaining Size 45, defined as a maximum of 55 pieces of fruit in an 8-pound sample, as the minimum size, but determined that these alternatives would not adequately address the industry's problems. The Committee discussed establishing two minimum net weight requirements, a lower net weight requirement for Size 45 fruit packed into trays and a higher net weight requirement for Size 45 kiwifruit packed into volume fill containers. This suggestion was not acceptable as the Committee believes pack style should not be the deciding factor in what size fruit is acceptable and that lower weights on trays would discriminate against Size 45 kiwifruit packed into containers other than trays. In addition, members commented that packers of volume fill containers might then have to meet a more restrictive minimum size requirement than importers of kiwifruit, and that two different minimum size requirements could cause confusion in the marketplace and result in disorderly marketing.

The Committee also considered establishing a count of 58 or 59 pieces of fruit for the Size 45 trays, but concluded that the count should remain a maximum of 55 pieces of fruit per 8-pound sample because the current minimum size continues to prevent shipments of low-quality, undersized fruit, and because repacking problems during the 1998–1999 season resulted from an outdated cup size in the Size 45 tray and not from the current minimum size.

Over the years, the size designation (pieces of fruit) for Size 45 has changed, but the tray inserts for this size fruit have not changed. In 1989, the size designation for Size 45 was changed to 57 pieces of fruit per 8-pound sample and remained there until 1994, when Size 45 became the minimum size and was defined as 55 pieces of fruit per 8-pound sample.

Kiwifruit was not packed in Size 45 trays during the three seasons preceding the 1998–1999 season as it was not profitable for growers. A small amount of kiwifruit was packed during the 1998–1999 season. The Committee believes that the molded trays utilized during the 1998–1999 season were manufactured prior to 1994, that the cell cups of these molded trays were designed to fit smaller fruit, and that the size of the cups contributed to the packing problems associated with Size 45 trays during the 1998–1999 season.

Tray manufacturers attending Committee meetings in January and February 1999 expressed interest in working with the industry in developing molded tray inserts with slightly larger cell cups for Size 45 trays. These slightly larger cell cups would allow slightly larger fruit to be packed and thus enable the minimum size requirements to be met.

As a result, the Committee unanimously recommended that the minimum size for all pack styles be established as a maximum of 55 pieces of fruit in an 8-pound sample. These changes would not impact the kiwifruit import regulation implemented under section 8e of the Act, because this recommendation would only clarify that the minimum size requirement applies to all shipments regardless of pack style.

The Committee further recommended that all rules and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

Lot Stamp Requirement

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(d) requires all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. Individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service are not subject to this requirement.

Prior to the 1998–1999 season, handlers did not place individual consumer packages directly on pallets for shipping. Individual consumer packages were placed in master containers and the master containers bore the container marking requirements.

During the 1998–1999 season, new individual consumer packages that interlock and fit on a pallet were utilized. These individual consumer packages are stacked six packages by six packages on a pallet resulting in 36 individual consumer packages per layer. Pallets are normally stacked 8–10 layers high. The Committee determined that this style of container would not meet the current marking requirements of not less than 75 percent of the total containers on a pallet being plainly marked with the lot stamp number. Due to the size and configuration of the interlocking individual consumer packages, approximately 57 percent of the individual consumer packages would be marked if all exposed or outside containers are marked with the lot stamp number.

Therefore, when the Committee met on February 25, 1999, it unanimously recommended adding language to § 920.303(d) that would require individual consumer packages placed directly on a pallet to have all exposed containers plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or that a total of four placards be applied to the pallet of kiwifruit. The Committee believes that relaxing the requirement to have all exposed or outside containers and at least 75 percent of the containers on the pallet marked with the lot stamp number, would allow handlers to ship individual consumer packages without incurring the additional costs of marking containers that are not exposed, and slowing down the packing line to mark the containers.

The Committee considered other alternatives to the requirement to stamp all exposed or outside containers, or to attach four placards to the pallet, but determined that these suggestions would not adequately address the positive lot identification requirements.

One suggestion was to utilize one or two placards, but the industry believed that four placards (one on each side) would be a more adequate means of ensuring that the pallet met the positive lot identification (PLI) requirements.

Another suggestion was to identify each package in such a way that it could be traced back to the original inspection certificate. Placing date codes or other types of codes on every container prior to palletizing and using that as PLI on the inspection certificate was discussed. The Committee did not adopt this suggestion as it believed that all containers, including those in the center stacks would have to be marked with a special code, and that this would be more restrictive than current requirements for other containers placed on pallets. The Committee also believed that this might slow down the packing process, thus resulting in increased packing costs.

After considering the alternatives, the Committee unanimously recommended that individual consumer packages placed directly on a pallet have all exposed containers plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or that a total of four placards be applied to the pallet of kiwifruit.

Changes To Clarify Pack and Container Marking Requirements

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(c)(3) establishes how the quantity shall be marked on bulk bins and requires the quantity to be indicated in terms of the size designation and net weight, or in terms of the size designation, net weight, and count.

Section 920.303(c)(5) establishes how the quantity shall be marked on individual consumer packages and requires that the quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages. It further requires that if count is used, it must be accompanied by the size designation.

At the February 25, 1999, meeting, the Committee recommended the following changes to pack requirements in §§ 920.302(a)(4)(ii) and (iv): (1) Change language in the first table of § 920.302(a)(4)(ii) as follows: Change "Sizes" to "Count," change "30 or larger" to "30 or less," and change "39 or smaller" to "39 or more'; (2) add language to § 920.302(a)(4)(ii) to exclude individual consumer packages from the list of containers that utilize the size variation tolerance table for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays; (3) change language in the second table of § 920.302(a)(4)(ii) from "Sizes" to "Size Designation'; (4) change language in § 920.302(a)(4)(ii) to add individual consumer packages to the list of containers which specifies size variation tolerances for kiwifruit packed in bags, volume fill, or bulk containers; and (5) change language in § 920.302(a)(4)(iv) by adding "individual consumer packages" to the list of containers that utilize the table which specifies the numerical size and maximum number of fruit per 8-pound sample; delete the word "numerical" when describing size; and delete the words "Column 1," "Column 2," and "Numerical Count" from the size designation table in § 920.302(a)(4)(iv) as they are not necessary.

These changes would: (1) Reflect current industry practices; (2) clarify that the size variation tolerances which are applied to fruit packed in volume fill containers are also applied to individual consumer packages; (3) clarify that the size designation chart is utilized to determine the maximum number of fruit per 8-pound sample for individual consumer packages; and (4) delete unnecessary language.

The Committee also recommended the following changes to container requirements in §§ 920.303(c)(3) and (5) as follows: (1) Change language in § 920.303(c)(3) by adding "individual consumer packages not within a master container" to the list of containers in the size designation table specifying the size and maximum number of fruit per 8-pound sample; (2) delete the word "bins" and replace it with "containers'; (3) delete the words "net weight" as they are not necessary; and (4) change language in § 920.302(a)(5) by adding "within a master container" after individual consumer packages.

These changes would ensure that marking requirements are clearly defined for individual consumer packages placed directly on a pallet as well as those packed within a master container.

Continuation of 1998–1999 Season Suspended Actions for the 1999–2000 Season

Continued Suspension of Minimum Net Weight Requirements for Trays

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Before the suspension action last September, § 920.302(a)(4)(iii) specified minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Prior to the 1989–1990 season, there were no minimum tray weight requirements although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was packed into molded trays and less than 1 percent of this fruit was rejected for failure to meet

minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

Count designation of fruit	Minimum net weight of fruit (Pounds)
34 or larger	7.5
35 to 37	7.25
38 to 40	6.875
41 to 43	6.75
44 and smaller	6.5

The Committee met on July 8, 1998, and unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season. Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule published September 3, 1998 (63 FR 46861).

As previously mentioned, both small and large handlers were able to reduce packing costs and to compete more effectively in the market during the 1998–1999 season because of the relaxation in packing requirements. The industry continued to pack well filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays.

Therefore, when the Committee met on January 13, 1999, to consider its preliminary recommendations for the season, it concluded that minimum net weight requirements for trays should continue to be suspended for the 1999–2000 season.

The Committee met on February 25, 1999, and unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for the 1999–2000 season. The 1999–2000 season ends July 31, 2000. The Committee plans to further evaluate the benefits during the 1999–2000 season.

Continued Suspension of Reinspection Requirements

Section 920.55 of the order requires that prior to handling any variety of California kiwifruit, such kiwifruit shall be inspected by the Federal or Federal-State Inspection Service (inspection service) and certified as meeting the applicable grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Section 920.55(b) provides authority for the establishment, through the order's rules and regulations, of a period prior to shipment during which inspections must be performed.

Prior to the 1998–1999 season, § 920.155 of the order's rules and regulations prescribed that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year was valid until December 31 of such year or 21 days from the date of inspection, whichever was later. Any inspected kiwifruit to be shipped after the certification period lapses was required to be reinspected and recertified before shipping.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 4, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provides. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. This enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. The Committee had estimated that handlers would save $50,000 by conducting their own reinspection during the 1998–1999 season.

At the February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The Committee still believes that handlers saved $50,000 by conducting their own reinspection during the 1998–1999 season even though the marketed crop was less than projected, more fruit was in-line inspected than projected, and shipments had started later during the 1998–1999 season than anticipated.

Although freezing temperatures and winds during the spring may reduce the 1999–2000 crop estimate, the Committee believes the industry would continue to benefit from conducting its own reinspection.

The Committee would like to evaluate this suspension one more season before making a decision to permanently remove this requirement from the rules and regulations. Thus, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The 1999–2000 season ends July 31, 2000.

Maintaining Current Regulatory Changes

Maintaining the Current Size Variation Tolerance for Size 42 Kiwifruit

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(ii) specifies size variation ranges in terms of fruit diameter for each size of kiwifruit and size variation tolerances.

Section 920.302(a)(4)(ii) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision to increase the size variation tolerance for Size 42 kiwifruit from 10 percent, by count, to 25 percent, by count.

During the 1998–1999 season, a significantly smaller amount of kiwifruit was packed into the 40 series sizes than anticipated. Only 7 percent of the fruit was packed into Size 42 containers, and only 15.3 percent was packed into Size 42 and 45 containers. This is significantly less than the previous two years when 35 percent of the fruit was packed into the 40 series sizes.

In addition, size variation was not a problem for Size 42 fruit during the 1998–1999 season, as the majority of the fruit was round and short and not a mixture of round and flat fruit. A typical crop has a mixture of round and flat fruit. A mixture of round and flat fruit is difficult to pack and slows down the packing line.

The Committee believes that maintaining the increased size variation tolerance for Size 42 kiwifruit for the 1999–2000 season would continue to benefit the industry by easing the packing burden and reducing costs, while maintaining uniform looking boxes of fruit desired by customers.

Maintaining the Current Maximum Number of Fruit per 8-Pound Sample for Kiwifruit Packed in Bags, Volume Fill, or Bulk Containers

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iv) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

Section 920.302(a)(4)(iv) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision that increased the maximum number of fruit per 8-pound sample for Sizes 42 through 30. Size 42 fruit is smaller than Size 30 fruit. The size designation chart below depicts these changes:

Size designation	Maximum number of fruit per 8 pound sample
21	22
25	27
27/28	30
30	33
33	36
36	42
39	48
42	53
45	55

Currently, under the rules and regulations, kiwifruit packed in bags, volume fill, or bulk containers, must not exceed the maximum number of fruit per an 8-pound sample for each size designation.

Under the current regulations, handlers are better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. California handlers are applying weight standards that are similar to those used by importers, thereby lessening confusion in the marketplace and facilitating the marketing of California kiwifruit.

The proposed changes address the marketing and shipping needs of the kiwifruit industry and are in the interest of handlers, producers, buyers, and consumers. The impact of these changes on producers and handlers is expected to be beneficial for all levels of business.

This action would not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the February 25, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members. Three of these members are handlers and producers, eight are producers only, and one is a public member. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate because: (1) The changes proposed in this rule, if adopted, should be in place as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 season which begins August 1; and (2) this action was unanimously recommended by the Committee at a public meeting and is not expected to be controversial. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 920.155 [Suspended]

2. In part 920, § 920.155 is suspended in its entirety effective August 1, 1999, through July 31, 2000.

3. Section 920.302 is amended by revising paragraphs (a)(2), (a)(4)(ii), and (a)(4)(iv), suspending paragraph (a)(4)(iii),effective August 1, 1999, through July 31, 2000, removing the phrase "Definitions. (1) The term KAC No." in paragraph (b) and adding in its place the phrase "Definitions. The term Kac No.", and removing paragraph (b)(2) to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(2) Size Requirements. Such kiwifruit shall be at least a minimum Size 45. Size 45 is defined as a maximum of 55 pieces of fruit in an 8-pound sample.

* * * * *

(4) * * *

(ii) Kiwifruit packed in cell compartments, cardboard fillers or molded trays (excluding individual consumer packages) may not vary in diameter more than:

Count	Diameter
30 or less	½ inch (12.7 mm).
31–38	⅜ inch (9.5 mm).
39 or more	¼ inch (6.4 mm).

Kiwifruit packed in individual consumer packages, bags, volume fill, or bulk containers, fruit may not vary more than:

Size Designation	Diameter
30 or larger	½ inch (12.7 mm).
33, 36, 39, and 42	⅜ inch (9.5 mm).
45 or smaller	¼ inch (6.4 mm).

Not more than 10 percent, by count of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Sizes 42 and 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 25 percent) may fail to meet the requirements of this paragraph.

* * * * *

(iv) When kiwifruit is packed in individual consumer packages, bags, volume fill or bulk containers, the following table specifying the size designation and maximum number of fruit per 8-pound sample is to be used.

Size designation	Maximum number of fruit Per 8-pound sample
21	22
25	27
27/28	30
30	33
33	36
36	42
39	48
42	53
45	55

* * * * *

4. In § 920.303, paragraphs (c)(3), (c)(5), and (d) are revised to read as follows:

§ 920.303 Container marking regulations.

* * * * *

(c) * * *

(3) For bulk containers or individual consumer packages not within a master container, the quantity shall be indicated in terms of the size designation and net weight; or in terms of the size designation and count.

* * * * *

(5) The quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages within a master container. If count is used, it must be accompanied by the size designation.

* * * * *

(d) All exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except for individual consumer packages within a master container and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service. Individual consumer packages of kiwifruit placed directly on a pallet shall have all outside or exposed packages on a pallet plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet.

* * * * *

Dated: June 21, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–16209 Filed 6–24–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AF79

Production Flexibility Contracts for Wheat, Feed Grains, Rice, and Upland Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Advance notice of proposed rulemaking—Additional comments.

SUMMARY: The Commodity Credit Corporation (CCC) is re-issuing this Advance Notice of Proposed Rulemaking (ANPRM) to invite comment from all interested parties on reductions of Production Flexibility Contract (PFC) payments that were affected by the planting of fruits or vegetables in violation of section 118(b)(1) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7218(b)(1)). Comment was previously requested by a Notice published on May 5, 1999 (64 FR 24091) for which the comment period closed on June 2, 1999. This notice will allow for an extension of the comment period.

DATES: Comments must be received at the address below by July 23, 1999.

ADDRESSES: Comments should be directed to Sharon Biastock, Farm Service Agency (FSA), STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Sharon Biastock, (202) 720–6336.

SUPPLEMENTARY INFORMATION:

Background

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) provided producers the opportunity to enter into Production Flexibility Contracts (PFC's). The 1996 Act prohibited the planting of fruits and vegetables on PFC acreage except as provided by specific exceptions. Two exceptions require the application of an acre-for-acre payment reduction for each acre of fruit or vegetables planted on PFC acreage. A violation of the PFC occurs when producers do not comply with the fruit and vegetable provisions and the exceptions unless it is determined that the violation is not serious enough to warrant termination of the PFC. The 1996 Act provides that if the Secretary determines that a violation does not warrant termination of the PFC, the Secretary may require the owner or producer subject to the contract to: (1) Refund to the Secretary that part of the contract payments received by the owner or producer during the period of the violation, together with interest on the contract payments as determined by the Secretary; or (2) to accept a reduction in the amount of future contract payments that is proportionate to the severity of the violation, as determined by the Secretary.

Under current regulations, if the county FSA committee determines that a planting violation does not warrant termination of the PFC, a reduction may be made in the current or future contract payments, proportionate to the severity of the violation and equal to the sum of either or both: (1) The market value of the fruits and vegetables planted on contract acreage, and (2) the contract payment for each contract acre. The market value is determined by the State committee for the specific fruit or vegetable without any adjustment to reflect costs associated with planting, cultivating or harvesting the fruit or vegetable. If the number of acres on the farm planted to fruits or vegetables exceeds the total PFC acreage and more than one fruit or vegetable has been planted on the farm, the calculation is based on the fruit or vegetable determined to have the highest value. If the acreage of fruit or vegetable with the highest value is less than the acres in violation, the calculation for the remaining acres in violation is based on the fruit or vegetable with the next highest value. The payment reduction is applied to current PFC payments and any future PFC payments for the farm on which the violation occurred and any other farm in which the producers who share in PFC payments on the violating farm have an interest.

For example, if the county committee determines that 25 acres of fruit or vegetables were planted on PFC acreage in violation of the PFC, but the violation did not warrant termination of the PFC, a payment reduction for the planting violation would be assessed in addition to an acre-for-acre reduction for each of the 25 acres. If, on the farm in this example, the producer planted 100 acres of green peas, which the State committee determined had a value of $500 per acre, and one acre of celery, which the State committee determined had a value of $3,000 per acre, the payment reduction for the planting violation in this example would be $15,000 plus a PFC payment reduction for 25 acres. The $15,000 payment reduction for the planting violation represents the value of the one acre of celery and 24 acres of green peas, as determined by the State committee. This payment reduction would be applied to the current year PFC payments and any future PFC payments for the farm on which the planting violation occurred and any other farm in which the producers sharing in the PFC payments for the farm on which the planting violation occurred have an interest.

The payment reductions calculated in accordance with the current implementing regulations and procedure are viewed by some to be out of proportion to the severity of the fruit or vegetable planting violation. Accordingly, as indicated below, the public is invited to comment on PFC violations for planting fruits and vegetables.

Purpose

The purpose of this ANPRM is to seek comments on: (1) The appropriateness of the current method of calculating PFC payment reductions as a result of a fruit or vegetable planting violation as set forth in 7 CFR 1412.401; (2) alternative methods for calculating PFC payment reductions for fruit or vegetable planting violations, if the current method of calculation is considered inappropriate; (3) the retroactivity of any change in the method of calculating payment reductions; and (4) the effect any change in the method of calculating payment reductions should have on PFC's which have been terminated, or for which contract acreage was reduced, because of the current method of calculating payment reductions for fruit or vegetable planting violations.

Signed at Washington, DC, on June 17, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–16168 Filed 6–24–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92, 94 and 98

[Docket No. 98–090–1]

RIN 0579–AB03

Recognition of Animal Disease Status of Regions in the European Union

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of animals and animal products to recognize a region in the European Union as a region in which hog cholera is not known to exist, and from which breeding swine, swine semen, and pork and pork products may be imported into the United States under certain conditions. Additionally, we are proposing to recognize Greece as free of foot-and-mouth disease and swine vesicular disease, and to recognize eight Regions in Italy as free of swine vesicular disease. These proposed actions are based on a request from the European Commission's Directorate General for Agriculture and on our analysis of the supporting documentation supplied by the European Commission and individual Member States. These proposed actions would relieve some restrictions on the importation into the United States of certain animals and animal products from those regions. However, because of the status of those regions with respect to other diseases, and, in some cases, because of other factors that could result in an increased risk of introducing animal diseases into the United States, the importation of animals and animal products into the United States from those regions would continue to be subject to certain restrictions. We invite you to comment on this docket. We also invite you to comment on the related risk assessments.

DATES: We will consider all comments that we receive by August 24, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–090–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comments refer to Docket No. 98–090–1.

You may read any comments that we receive on this docket or its related risk assessments in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export (NCIE), VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8364; or e-mail: gary.s.colgrove@usda.gov.

The full risk assessments associated with this rule can be obtained by calling Dr. Gary Colgrove at (301) 734–8364 or, in the case of the quantitative disease risk assessment, electronically at http://www.aphis.usda.gov/vs/reg-request.html.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (the Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

Until recently, the regulations in parts 91 through 99 (referred to below as the regulations) governed the importation of animals and animal products according to the recognized disease status of the exporting country. In general, if a disease occurred anywhere within a country's borders, the entire country was considered to be affected with the disease, and importations of animals and animal products from anywhere in the country were regulated accordingly. However, international trade agreements entered into by the United States—specifically, the North American Free Trade Agreement and the World Trade Organization Agreement on Sanitary and Phytosanitary Measures—require APHIS to recognize regions, rather than only countries, and to recognize levels of risk, for the purpose of regulating the importation of animals and animal products into the United States.

Consequently, on October 28, 1997, we published in the **Federal Register** a final rule (62 FR 56000–56026, Docket No. 94–106–9, effective November 28, 1997) and a policy statement (62 FR 56027–56033, Docket No. 94–106–8) that established procedures for recognizing regions and levels of risk (referred to below as "regionalization") for the purpose of regulating the importation of animals and animal products. With the establishment of those procedures, APHIS can now consider requests to allow importations from regions based on levels of risk, as well as to recognize entire countries free of a disease.

In July 1997, APHIS received requests from the European Commission's (EC's) Directorate General for Agriculture to do the following: (1) Recognize certain Member States of the European Union (EU) as free in their entirety of certain specified diseases; and (2) recognize certain regions of EU countries as free of specified diseases, consistent with the disease status of those regions as recognized by the EC.

In response to the first request, and based on our review of supporting documentation accompanying the request, we published a proposed rule in the **Federal Register** (62 FR 61036–61041, Docket No. 97–086–1) on November 14, 1997, to declare Luxembourg and Portugal free of rinderpest and foot-and-mouth disease (FMD); Greece free of rinderpest; France, Greece, Luxembourg, and Spain free of exotic Newcastle disease; Portugal free of African swine fever; and Belgium, France, and Portugal free of swine vesicular disease (SVD). We solicited comments concerning our proposed rule for 60 days ending January 13, 1998. We received one comment by that date. The comment was from a veterinary association and fully supported the proposed rule. As noted, the proposed rule addressed part of the request submitted by the EC. Following publication of the proposed rule, we continued to review the remainder of the EC's request, including information we received following the initial request. (Our regulations establishing procedures for regionalization became effective after the initial request was received from the EC.) On December 8, 1998, we published a final rule in the **Federal Register** (63 FR 67573–67575, Docket

No. 97–086–2), which made final the provisions we had proposed in November 1997. Our determinations regarding the EC's request with regard to hog cholera in the EU, FMD and SVD in Greece, and SVD in Italy are set forth in this document.

Summary of Proposed Changes

In this document, we are proposing to add Greece to the list of regions recognized as free of FMD. We are also proposing to add Greece to the list of FMD-free regions whose exports of ruminant and swine meat and products to the United States are subject to certain restrictions to ensure a negligible risk of introducing FMD into this country.

We are also proposing to add Greece and eight Regions in northern Italy (listed below) to the list of regions recognized as free of SVD, and to the list of SVD-free regions whose exports of pork and pork products to the United States are subject to certain restrictions to ensure a negligible risk of introducing SVD into this country. The following Regions in northern Italy would be added to these lists: Abruzzi, Emilia Romagna, Friuli, Liguria, Marche, Molise, Piemonte, and Valle d'Aosta.

Additionally, with the exception of specified regions in Germany and Italy, we are proposing to recognize Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, The Netherlands, Portugal, and Spain as a region in which hog cholera is not known to exist, and from which breeding swine, swine semen, and pork and pork products may be imported into the United States under certain conditions (discussed below). The regions that would be excepted from this recognition and that would continue to be considered regions in which hog cholera is known to exist are the following: In Germany, the Kreis Vechta in the Land of Lower Saxony, the Kreis Warendorf in the Land of Northrhine Westfalia, and the Kreis Altmarkkreis Salzwedel in the Land of Saxony-Anhalt; and in Italy, the Island of Sardinia and the Regions of Emilia Romagna and Piemonte..

We discuss each of the proposed changes at greater length below.

Greece Free of FMD and SVD; Certain Regions in Italy Free of SVD

We are proposing to recognize Greece as free of both FMD and SVD, and to recognize eight Regions of Italy as free of SVD. Regulations concerning FMD and SVD are as follows.

FMD: In § 94.1 of the regulations, paragraph (a)(1) provides that rinderpest or FMD exists in all regions of the world except those listed in § 94.1(a)(2), which have been declared to be free of those diseases. The regulations in § 94.1(b) prohibit, with specified exceptions, the importation into the United States of any ruminant or swine, or any fresh (chilled or frozen) meat of any ruminant or swine, that is from any region where rinderpest or FMD exists, or that has entered a port in, or otherwise transited, a region where rinderpest or FMD exists. Furthermore, the regulations in § 94.2 restrict the importation of fresh (chilled or frozen) products other than meat, and milk and milk products, of ruminants or swine that originate in or transit a region where rinderpest or FMD exists. Additionally, the importation of organs, glands, extracts, and secretions of ruminants or swine originating in a region where rinderpest or FMD exists is restricted under the regulations in § 94.3, and the importation of cured or cooked meat from a region where rinderpest or FMD exists is restricted under the regulations in § 94.4. Finally, the regulations in part 98 restrict the importation of ruminant and swine embryos and animal semen from a region where rinderpest or FMD exists.

SVD: In § 94.12 of the regulations, paragraph (a) provides that SVD is considered to exist in all regions of the world except those listed in § 94.12(a), which have been declared to be free of SVD. Paragraph (b) of § 94.12 provides that no pork or pork products may be imported into the United States from a region where SVD exists unless the pork or pork product meets specified conditions and is not otherwise prohibited importation into the United States by the regulations.

Proposed Recognition of Greece as Free of FMD and SVD

As indicated above, § 94.1 (a)(1) and (a)(2) categorize countries or other regions regarding their freedom from both rinderpest and FMD. Regions that are recognized as free of only one of the diseases are subject to the same restrictions as those in which both diseases exist. In our December 8, 1998, final rule, we recognized Greece as free of rinderpest. In this document, based on the information submitted to us by the EC's Directorate General for Agriculture, we are proposing to recognize Greece as free of FMD. Additionally, based on the information submitted, we are proposing to recognize Greece as free of SVD. Because a number of the criteria we examined with regard to Greece were common to our review concerning both FMD and SVD, we have combined the discussion of the two diseases. Based on the information submitted to us, we have concluded the following:

Veterinary infrastructure: The veterinary services authorities in Greece have the legal authority, organization, and infrastructure to control and eradicate FMD and SVD. The official veterinary force includes approximately 810 veterinarians located at the country's Veterinary Service headquarters and in the field, 70 laboratory veterinarians, and 190 lay assistants organized under the national Veterinary Service. The field force is distributed among 51 Local Disease Control Centers, each of which reports to the National Disease Control Center in Athens. In the event of an animal disease emergency, the national Veterinary Service has the authority to call on police and local authorities to provide support in depopulating infected premises, disposing of animal carcasses, controlling and restricting animal movements, and closing markets and abattoirs.

Disease History and Surveillance

FMD: The last outbreak of FMD in Greece was diagnosed in 1996 and was confined to the Prefecture of Evros. Surveillance for FMD is primarily passive at present, but active surveillance was carried out during and after the 1996 outbreak.

SVD: The last case of SVD in Greece was diagnosed in 1979. Surveillance for SVD is passive. Any suspected case of vesicular disease in swine is first investigated to determine if it is FMD. If FMD is ruled out, SVD is included in the differential diagnosis.

Diagnostic capabilities: Greece has diagnostic capabilities for both SVD and FMD. Diagnoses are carried out in accordance with the recommendations of the EC's Standing Veterinary Committee, which reflect international standards established by the Office International des Epizooties (OIE).

Vaccination: No vaccination is practiced in Greece for either FMD or SVD. Vaccination for FMD has been prohibited since 1991 and no vaccination for SVD has ever been practiced.

Adjacent regions: Greece is bordered by Albania, Macedonia, Bulgaria, and Turkey, none of which are recognized by the Department as being free of FMD or SVD.

Border controls: Although parts of its borders are mountainous, Greece is not separated from regions of higher risk by a uniform physical barrier. However, because of active FMD infection in Turkey, which is bordered by the Prefecture of Evros, Greece has implemented requirements in that Prefecture for inspection of animals, along with serological testing of animals moved out of the Prefecture for fattening or breeding.

Under EC requirements, swine are not permitted into Greece from regions where SVD exists without first testing negative for SVD.

Movement across borders: The movement of animals and animal products into Greece from regions of higher disease risk is strictly controlled. The primary outbreaks of FMD that occurred during 1996 were associated with the illegal movement of immigrants into Greece from Turkey. Greece has subsequently tightened security and increased the presence of police and armed forces along the border. The border patrols are assisted by dogs. In addition, the movement controls that have been implemented in Evros create, in effect, a buffer that further mitigates the risk of FMD spreading into other Greek territories should the disease be reintroduced into Evros.

Demographics: According to a 1997 census, the ruminant and swine populations of Greece were as follows: 541,700 head of cattle, 9,244,000 sheep, 5,668,000 goats, and 904,000 pigs. Most production units in Greece can be characterized as small holdings, and there is no known feature of livestock production (e.g., extreme density of livestock) that increases the risk of disease spread.

Detection and eradication of disease: Both FMD and SVD are compulsorily notifiable diseases in Greece. The State Veterinary Service of Greece has the authority, diagnostic capability, and experience to rapidly detect, contain, and eradicate any incursion of FMD and SVD that might occur.

The findings described above are set forth in greater detail in a descriptive risk evaluation that we prepared. The risk evaluation may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

In addition to proposing to include Greece in the lists in §§ 94.1(a)(2) and 94.12(a) of regions declared free of both rinderpest and FMD, and of SVD, respectively, we are also proposing to add Greece to two other lists: The list in § 94.11(a) of regions declared free of rinderpest and FMD whose exports of meat and other animal products to the United States are nevertheless subject to certain restrictions, and to the list in § 94.13 of regions declared free of SVD whose exports of pork and pork products are also subject to restrictions.

Meat and other animal products from regions listed in § 94.11(a) are subject to those restrictions because the regions: (1) Supplement their national meat supply by importing fresh (chilled or frozen) meat of ruminants or swine from regions where rinderpest or FMD exists; (2) have a common land border with regions where rinderpest or FMD exists; or (3) import ruminants or swine from regions where rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

The regions listed in § 94.13 have risk conditions regarding SVD that are similar to those in § 94.11(a) regarding rinderpest and FMD.

Because Greece meets each of the criteria described above that constitutes additional risk for FMD and SVD, we are proposing to include Greece in the lists of regions in §§ 94.11(a) and 94.13.

Section 94.11 applies to meat and other animal products of ruminants and swine and to ship stores, airplane meals, and baggage containing these meat or animal products. Section 94.11 generally requires that meat and other animal products of ruminants and swine: (1) Be prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) be accompanied by an additional certificate, issued by a full-time salaried veterinary official of the national government that is responsible for the health of the animals within the exporting region, assuring that the meat or other animal products have not been commingled with or exposed to meat or other animal products originating in, imported from, or transported through a region where rinderpest or FMD exists. Section 94.11 also requires that these articles meet applicable requirements of the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) at 9 CFR chapter III.

The requirements in § 94.13, concerning SVD, are generally the same as those in § 94.11, which addresses risks associated with rinderpest and FMD. Proposed Recognition of Regions in Italy as Free of SVD

We are also proposing to recognize eight Regions in Italy as free of SVD. An Italian "Region" is the largest administrative unit within the country. The Regions that we would recognize as SVD-free are: Abruzzi, Emilia Romagna, Friuli, Liguria, Marche, Molise, Piemonte, and Valle d'Aosta. Based on the information submitted to us, we have concluded the following:

Veterinary infrastructure: The National Veterinary Services of Italy is well-organized and adequately staffed. Animal health programs are organized under the Italian Ministry of Health. Field services are delivered through 21 Regions, each with a regional veterinary chief. There are approximately 220 health units, each headed by a veterinary chief having responsibility for animal health and welfare and public health. The chief of each local unit reports to the regional chief on animal health matters in general, and reports directly to the Ministry of Health in Rome on matters relating to trade in the EU. Approximately 5,000 veterinarians are employed in an official capacity at either the Federal, Regional, or local level.

Disease history and surveillance: The SVD virus is not known to exist in any of the eight Regions. The last cases of SVD that occurred in any of these Regions were in 1996 in Abruzzi and Molise. In the other Regions, the last cases occurred in 1995 or earlier. An active surveillance program for SVD is conducted in each of the eight Regions, as well as in the rest of Italy. Each of the eight Regions has achieved SVD-accredited status in Italy through an established testing and accreditation program.

Diagnostic capabilities: Animal health laboratory services are provided by 10 Regional laboratories and a National Institute in Rome. Each laboratory has a specialized area of competence. The laboratory in Brescia is the national reference laboratory for vesicular diseases. All suspected cases of vesicular disease are forwarded to the Brescia laboratory, which has full competency in conducting serological and virological procedures for SVD. Diagnoses are carried out in accordance with the recommendations of the EC's Standing Veterinary Committee, which reflect international standards established by the OIE.

Vaccination: No vaccination for SVD is carried out in any of the eight Regions or anywhere else in Italy.

Adjacent regions: The Regions under consideration lie in the north of Italy, extending southward into the west-central portion of the country bordering the Adriatic Sea. To the north, several of the Regions are bordered by France, Switzerland, Austria, and/or Yugoslavia. Switzerland, Austria, and Yugoslavia are recognized by the Department as free of SVD. In our December 8, 1998, final rule (discussed above), we recognized France as free of SVD. The Regions of Friuli and Emilia Romagna are bordered by Regions (Lombardia, Trentino Alto Adige and/or Veneto) within Italy that have experienced limited outbreaks of SVD in 1998. The Regions of Emilia Romagna, Marche, Abruzzi, and Molise are bordered by Regions that experienced

outbreaks in 1997. As noted above, all Regions in Italy conduct active surveillance for SVD.

Border controls: The Regions of Italy are administrative units that, in association with Federal authorities, have local responsibility to control animal diseases. The eight Regions in question are delineated, in some areas, by physical features that present a barrier to the movement of animals. In general, however, the introduction of SVD into these Regions is prevented more by the control measures implemented in affected areas than by physical separation of Regions.

Movement across borders: In accordance with the Italian SVD accreditation program, swine can enter an accredited Region only if they originate from accredited premises. In the broader sense, the eight Regions rely on control measures imposed within Regions of higher risk to prevent SVD from entering free areas. Regionalization of affected areas in the EU, including Italy, is based on strict controls being exercised over the movement of animals and animal products within the region where an outbreak occurs. A 3-kilometer protection zone, surrounded by a 7-kilometer surveillance zone, is established around the affected premises or area. All movement of swine and swine products is prohibited from the protection and surveillance zones. The infected herd(s) and all contact herds are depopulated and the carcasses are either rendered or buried. Movement controls are lifted only after clinical examinations and serology indicate the swine remaining in the area are free of SVD.

If it is evident that the disease is not under control in an affected region, the EC's Standing Veterinary Committee may require that control measures be extended to include a buffer zone outside the surveillance zone. In addition, Member States are free to impose additional controls, above and beyond those prescribed by the EC, on affected regions within their territory.

Demographics: Swine raising within the eight Regions is typified by small holdings in which the swine are raised for the owner's consumption. Although commercial operations exist, these are not, in general, regions of high swine density.

Disease detection and surveillance: SVD is a compulsorily notifiable disease in Italy. The Italian Veterinary Services has the diagnostic capability, authority, and experience to rapidly detect, contain, and eradicate any incursion of SVD into these Regions that might occur.

The findings described above are set forth in greater detail in a descriptive risk evaluation that we prepared. The risk evaluation may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Although we are adding the Italian Regions of Abruzzi, Emilia Romagna, Friuli, Liguria, Marche, Molise, Piemonte, and Valle d'Aosta to the list of regions in § 94.12(a) in which SVD is considered not to exist, we are also proposing to add each of the eight Regions to the list in § 94.13 of regions declared free of SVD that are subject to special restrictions on the exportation of meat and other animal products to the United States.

As noted above in our discussion regarding Greece's freedom from SVD, pork and pork products from regions listed in § 94.13 are subject to restrictions because the regions: (1) Supplement their national pork supply by importing fresh (chilled or frozen) pork from regions where SVD is considered to exist; or (2) have a common land border with regions designated as regions in which SVD is considered to exist; or (3) have certain import requirements that are less restrictive than are acceptable to the United States.

We are proposing to include in the list in § 94.13 the eight Regions in question because they each meet criteria 1 and 3, and all, except for Valle D'Aosta meet criterion 2 (assuming that Piemonte is recognized as free of SVD as provided in this proposed rule).

Request for Regionalization with Regard to Hog Cholera

In its July 1997 request to the Department, the EC's Directorate General for Agriculture requested that APHIS both recognize certain EU countries as free of specified diseases, and recognize as free from disease (where freedom is not currently recognized) "all regions of the Community which are not subject to restrictions either in accordance with the provisions of relevant Directives or with decisions taken as safeguard measures * * *"

As discussed above, we have evaluated and are proposing regulatory changes to the disease status of Greece with regard to FMD and SVD, and to the status of eight Regions in Italy with regard to SVD. One of the other diseases specifically addressed by the EC in its request was classical swine fever (referred to in the current regulations and in this proposed rule as hog cholera).

Consistent with procedures for requesting regionalization that were established in our October 28, 1997, final rule, the request from the EC's Directorate General for Agriculture was that APHIS consider the hog cholera status of one region of the EC consisting of multiple member States. (Under the definitions in § 92.1, a region can be "a group of national entities (countries) combined into a single area.")

Certain countries or states in the EU are already listed in the regulations at § 94.10 as individual regions in which hog cholera is not known to exist. These countries or states are: Denmark; Finland; Great Britain; Northern Ireland; The Republic of Ireland; and Sweden. The application for regionalization from the EC's Directorate General for Agriculture does not address these Member States of the EU and we are proposing no change to their hog cholera status.

The EC's Directorate General for Agriculture stated that its application with regard to hog cholera was on behalf of the following Member States: Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, The Netherlands, Portugal, and Spain. In its letter of request for regionalization, the EC's Directorate General of Agriculture referred to a veterinary equivalency agreement under discussion between the EC and the United States. The request for regionalization stated that "[a]n objective of the equivalency agreement is that products which are free to circulate within the territory of one of the Parties to the agreement may be exported to the other Party. On this basis, therefore, animals and products which are derived from the free area of a Member State which is affected by one of these diseases should be eligible for export to the USA."

The EC requested that we consider all of the EU free of hog cholera except for those regions for which the EC had restrictions in place because of outbreaks of hog cholera. At the time of the request, there were areas under such EC restrictions in Belgium, Germany, Italy, The Netherlands, and Spain.

We reviewed all of the information submitted to us by the EC's Directorate General for Agriculture. Following our receipt of the initial request, we requested and received additional information from the EC and from individual Member States. In addition, in December 1997, we conducted a site visit to and met with veterinary officials in Belgium, Germany, Spain, and The Netherlands—four of the five EC Member States that had experienced outbreaks of hog cholera in 1997. The purpose of the site visit was to gather additional information necessary for APHIS to reach a decision on the EC's request. (A report on the site visit can be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.** Additional information on the fifth affected Member State, Italy, was provided by EC officials during meetings with APHIS representatives. During the period we were collecting and reviewing information, the areas subject to EC restrictions changed due to eradication efforts in the affected countries, and, in some cases, additional outbreaks. As of the publication date of this proposal, at least 6 months (the OIE standard for qualifying for freedom from hog cholera) have elapsed since the most recent outbreaks in Belgium (July 1997), The Netherlands (March 1998), and Spain (July 1998).

Based on the information available to us, we believe that, with the exception of specified regions in Germany and Italy, a region consisting of Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, The Netherlands, Portugal, and Spain can be recognized as a region in which hog cholera is not known to exist. Therefore, we are proposing to amend the regulations at §§ 94.9(a) and 94.10(a) to reflect that recognition.

We are proposing to make this change based on the following conclusions—(Please note: Because the request from the EC was for the recognition of one region consisting of multiple countries, where appropriate, we have evaluated the following factors for the region as a whole):

Authority, organization, and veterinary infrastructure: Control is shared between the national services of the individual Member States and the EC. In terms of exports to the United States, the Member States are responsible for control of the production circumstances and requirements, including inspections required by statute, and for issuing health certification attesting to standards and requirements. The EC is responsible for overall coordination of the shared control of animal health, inspections and audits of inspection systems, and the legislative action necessary to ensure uniform application of standards and requirements within the single European Market.

Disease status: The most recent hog cholera outbreaks in the countries addressed in the EC's request occurred as follows: Austria, 1996 (in wild boars); Belgium, 1997; France, 1993; Germany, November 1998; Greece, 1985; Italy, March 1999; Luxembourg, 1987; The Netherlands, March 1998; Portugal, 1985; and Spain, July 1998.

Adjacent regions: Outbreaks of hog cholera occur sporadically in the neighboring border countries of Albania, the Czech Republic, Slovenia, Poland, and Slovakia. Although there have been no outbreaks in the Czech Republic since early 1995, serological tests still show positive results in wild boar.

Extent of an active disease control program: All measures for the control of hog cholera are harmonized within the EU. The EC imposes animal quarantine measures and movement controls for livestock. It also prohibits the importation of swine from any region within the EU or country outside of the EU in which hog cholera is known to exist, unless animals imported from outside the EU are accompanied by a declaration that the animals tested negative for hog cholera. The EC has a "stamping out" policy for hog cholera. Eradication is carried out by compulsory slaughter and destruction, by burning, burial, or rendering of all susceptible species on the affected premises and any adjacent premises where animals may have been exposed to hog cholera. Contaminated material is also destroyed.

If an outbreak of hog cholera occurs, a quarantine is placed on the affected premises. Additionally, a protection zone with a radius of at least 3 kilometers and a surveillance zone with a radius of at least 10 kilometers is placed around the affected premises. An immediate stop on movement from the zone is placed on all premises within the protection zone and the surveillance zone for at least 30 days and 15 days, respectively, after depopulation and cleaning and disinfection of the affected premises.

Measures taken within the protection zone, in addition to depopulation of affected premises, include: Serological testing and clinical examination of all remaining swine herds; a ban on transporting swine into or out of the zone; and a movement ban for swine within the zone for the first 21 days after establishment of the protection zone. The veterinary services of the national government of the EU Member State in which the zone is located may grant permission for swine movement for immediate slaughter, immediate destruction of swine, and diagnostic killing. Also, swine markets, auctions, and like events are prohibited.

Measures taken within the surveillance zone include: The serological testing and clinical examination of all swine herds, and a movement ban for all swine within the zone for 7 days following establishment of the zone. The veterinary services of the national government of the EU Member State in which the zone is located may grant permission for swine movement for immediate slaughter, immediate destruction of pigs, and diagnostic killing.

Vaccination: Member States in the EU are prohibited from using hog cholera vaccine and use, instead, purely sanitary measures. All Member States had discontinued vaccination by January 1990.

Movement of animals and animal products: Veterinary checks are conducted at the point of origin and point of destination for swine movements within the EU. With regard to hog cholera within the EU, swine may move to other Member States from regions considered free of hog cholera, and the importation of swine from third countries (countries outside the EU) is allowed with certain conditions if the animals are accompanied by a declaration that the countries are free of hog cholera, or the animals tested negative for hog cholera. Details on movement controls are described in EU Council Directives 90/425/EEC, 89/662/EEC, 97/12/EEC, 64/432/EEC, 91/496/EEC, 90/675/EEC, and others.

Historically, the spread of the hog cholera virus among EU Member States has reflected the complex marketing practices within the EU:

- Swine born in one Member State are commonly fattened or slaughtered in another. For example, in 1995, approximately 3.8 million piglets moved from one Member State to another for fattening. Approximately 3.9 million finished pigs moved from one Member State to another for slaughter.
- Animals moving from one Member State to another are not inspected at the border. Border controls were abolished with the formation of the Internal Market and were replaced with a system of veterinary checks at the points of origin and destination described in EU Council Directives 90/425/EEC, 89/662/EEC, 97/12/EEC, 64/432/EEC, 91/496/EEC, 90/675/EEC, and others.
- Document checks, identity checks, and sanitary inspections may be conducted at the farm of destination.

Livestock are individually tagged prior to movement so that tracebacks to the farm of origin can be done.

There is essentially no control over passenger baggage moving within the EU, although spot checks may be conducted on the baggage of passengers arriving from third countries.

Livestock demographics and marketing practices: The EU has a total of 1,272,631 hog farms. Of those, 845,559 are fattening farms.

Disease surveillance: OIE List A diseases of swine (and other species) are compulsorily notifiable in the EU. (List A diseases are those that have the

potential for very serious and rapid spread, irrespective of national borders, that are of serious socio-economic or public health consequence, and that are of major importance in the international trade of animals and animal products.) Suspicion of such diseases must be reported to the veterinary services of the national government of the EU Member State in question, which must ensure official investigation by an official veterinarian. Veterinary laboratories are available to all Member States to investigate outbreaks of any animal disease. All the laboratories are qualified to recognize and diagnose List A diseases. Laboratory tests for hog cholera are run on all sick swine if hog cholera or another notifiable disease of swine is suspected.

Tests are required for wild boar that are shot or found dead.

Diagnostic laboratories: National reference laboratories are responsible for coordinating the standards and diagnostic methods in other national laboratories in the Member State concerned. Liaison among the national reference laboratories is the responsibility of the Institute for Virology of the Veterinary College, Hanover, Germany, which is the Community Reference Laboratory for hog cholera.

Regions Where Hog Cholera Is Known to Exist

As noted above, the request from the EC's Directorate General for Agriculture that swine and swine products be eligible for import to the United States from most of the EU excluded certain specified areas. We concur that certain areas in the EU must continue to be considered as those in which hog cholera is known to exist.

In delineating such regions, we began with those identified as such by the EC. However, we had to take into account continued outbreaks in certain areas of the EU, and the fact that the EC released certain areas from restrictions prior to the completion of a 6-month waiting period. (According to OIE standards, areas can be recognized as free of hog cholera 6 months after the last case of the disease when "stamping out" is practiced.) Therefore, we used the following criteria in identifying those regions where hog cholera is known to exist: (1) The region experienced one or more outbreaks of hog cholera in domestic swine within the past 6 months; or (2) evidence exists that hog cholera exists in wild swine in the region and that the wild swine have been a source of infection in domestic swine.

In establishing geographic boundaries for the regions, we used the boundaries of the smallest administrative jurisdiction that has effective oversight of normal animal movements into, out of, and within that jurisdiction, and that, in association with national authorities if necessary, has the responsibility for controlling animal disease locally. In Germany, this administrative unit is a Kreis; in Italy, it is a Region. Veterinary infrastructures exist within the units we chose and are capable of controlling the movement of swine and pork products in the event of an outbreak of hog cholera.

Based on the above criteria, we are proposing to continue to consider the following regions of the EU as regions in which hog cholera is known to exist:

1. In Germany, the Kreis Vechta in the Land of Lower Saxony, the Kreis Warendorf in the Land of Northrhine Westfalia, and the Kreis Altmarkkreis Salzwedel in the Land of Saxony-Anhalt.

2. In Italy, the Island of Sardinia and the Regions of Emilia Romagna and Piemonte.

Because imports of swine, swine semen, and pork and pork products into the United States from the regions in Germany and Italy described above would pose such a high risk of introducing hog cholera into the United States, such imports would continue to be subject to the current mitigation measures in parts 94 and 98 of the regulations. As such, imports of live swine or swine semen would continue to be prohibited from those regions, as would pork or pork products that have not been treated in accordance with part 94.

Importation Conditions Based on Risk Factors

Although we are proposing to recognize a region consisting of Austria, Belgium, France, Greece, Luxembourg, The Netherlands, Portugal, Spain, and most of Germany and Italy as one in which hog cholera is not known to exist, it should be noted that such a designation does not presume negligible risk. A country or other region may, at a given moment, be one in which a disease does not exist, but if the probability of disease reintroduction is high, the risk of disease in animals and products exported from that country or other region cannot automatically be classified as acceptable. Therefore, import restrictions may have to imposed before exports from that country or region will be allowed into the United States.

In responding to the application for regionalization submitted by the EC's Directorate General for Agriculture, we assessed the disease risk under current EU regulations of the importation of live breeding swine, swine semen, and pork and pork products into the United States from the region described above. In conducting our assessment, we evaluated the risk by means of both a descriptive (formerly referred to as "qualitative") and quantitative approach. Each of these assessments is discussed below. (The full risk assessments are available from the person listed under **FOR FURTHER INFORMATION CONTACT**, or, in the case of the quantitative disease risk assessment, electronically at http://www.aphis.usda.gov/vs/reg-request.html).

Descriptive Risk Assessment

In preparing the descriptive assessment, we considered the information described above, and particularly the following facts:

1. The EU system of internal controls on the movement of animals and animal products includes veterinary checks at the points of origin and points of destination (EU Council Directives 90/425/EEC, 89/662/EEC, 97/12/EEC, 64/432/EEC, 91/496/EEC, 90/675/EEC, and others). This system replaced the prior system of veterinary checks at the borders of individual Member States. A "stamping out" policy is in effect for hog cholera. In the case of outbreaks, protection zones with a radius of at least 3 kilometers and surveillance zones with a radius of at least 10 kilometers are established to prevent the disease from spreading to other areas. Immediate "stop movements" are placed on all premises within the two zones for at least 30 and 15 days, respectively, after depopulation and cleaning and disinfection of an affected premises. In practice, the size and duration of these zones frequently exceed these minimum requirements. The EU practices extensive tracing and preventive slaughter in the event of an outbreak.

2. The EU is known to have endemic hog cholera in wild boar populations in northern Germany, and perhaps also in some alpine areas in Austria, France, and Italy. We have not included some of these endemic areas as high-risk areas in this proposed rule, because there have been no recent hog cholera outbreaks in domestic swine in these areas.

3. Outbreaks of hog cholera in domestic swine have occurred in the EU every year for the past 6 years. In 1993, outbreaks occurred in Belgium, France, Germany, and Italy. In 1994, outbreaks occurred in Austria, Belgium, Germany, and Italy. In 1995 and 1996, outbreaks occurred in Austria, Germany, and Italy. In 1997, outbreaks occurred in Belgium, Germany, Italy, Spain, and The Netherlands. In 1998, outbreaks occurred in Germany, Italy, Spain, and the Netherlands. In 1999, an outbreak occurred in Italy. Some of these outbreaks have been epidemiologically related to disease in wild boar populations. Secondary and tertiary spread is known to have occurred.

4. In 1997, an estimated 103 of 611 outbreaks in the EU occurred outside any zones that were under restrictions because of hog cholera. Of these 103, only one was a swine semen collection center approved for export, and only one was a breeding operation that engaged in export sales. The remainder were fattening farms, mixed operations, or feeder pig operations. No other export-oriented swine semen collection center or breeding operation outside of restricted zones became infected in 1998. Epidemiological evidence suggests the disease was present in various regions for 7 days to nearly 8 weeks before it was detected and the region was placed under restrictions.

5. Outbreaks of hog cholera occur sporadically in countries adjacent to the EU. Adjacent countries known to have had outbreaks of hog cholera in the past several years include Albania, the Czech Republic, Slovenia, Poland, Bulgaria, and Slovakia. Many of these countries have wild boar populations that commingle with wild boar populations in the EU.

6. APHIS's data indicate that an average of approximately 1,500 breeding swine and 700–1,800 doses of semen were imported into the United States each year from 1994 to 1997 from the EU Member States recognized as free from hog cholera.

Quantitative Risk Assessment

In addition to the descriptive assessment of risk described above, we conducted a quantitative assessment of the probability of the introduction of hog cholera into the United States from the region in question. While we based our proposed consideration of the hog cholera status of the region in question on the descriptive assessment, the quantitative assessment enabled us to assess the likelihood of the introduction of hog cholera from the region into the United States under certain conditions, and to determine what, if any, mitigating measures we considered necessary to reduce any risk to a negligible level.

In conducting our quantitative assessment, we made some starting point assumptions. These assumptions are listed below and are described in more detail in "Biological Risk Analysis: Risk Assessment and Risk Management Options for Imports of Swine and Swine Products from the European Union, USDA Animal and Plant Health Inspection Service, June 2, 1999." (Please note: The Quantitative Risk Assessment methodology is under independent review. We welcome comments on the methodology applied to import questions.)

In general, we made the following starting point assumptions:

- That the region of export adheres to the current APHIS regulations that require that veterinary authorities of the exporting country provide certification of the origin of an animal or animal product to be exported and ensure that the animal or animal product has not been exposed to a contagious disease during shipment from the point of origin to the point of embarkation, and, additionally, that OIE export guidelines are applied to movement of animals and animal products within the EU.
- That 1996 and 1997 outbreaks of hog cholera in the Netherlands should be used as a "worst case" scenario of an undetected outbreak of hog cholera occurring outside of an established protection or surveillance zone.
- That the following routine procedures for swine semen currently in place in the EU are adhered to. Specifically, the EU regulations require that animals must have been accompanied to a semen collection center by a veterinary certificate of origin, that they have not been given the opportunity to commingle with swine from hog cholera-affected areas, and that the semen originate from a collection center approved for export by the veterinary services of the national government of the EU Member State in which the collection center is located. In addition, donor boars are held in isolation for at least 30 days prior to entering the semen collection center, and test results for hog cholera using a test approved by the OIE and performed during that 30-day period must be negative.
- That all swine slaughtered to produce pork for export to the United States from the EU are handled in compliance with EU regulations for the control and eradication of hog cholera, and that pork for export to the United States is produced using the EU's standard operating procedures for pork production.
- That if a hog cholera-infected animal is slaughtered, all of the meat from that animal is contaminated with virus. This is a worst case assumption that magnifies the probability of a hog cholera outbreak.

In addition to these starting assumptions for the risk assessment, we assumed that swine slaughtered to produce pork for export to the United States are slaughtered in compliance with the requirements of the United States Department of Agriculture's Food Safety and Inspection Service. These requirements include ante-mortem and post-mortem inspection. Although the impact of these requirements was not considered in the risk assessment, we believe that the requirements would further reduce the quantity of contaminated pork likely to be exported to the United States.

The results of the quantitative risk assessment suggest that unmitigated importation of breeding swine into the United States from the region in question would likely result in one or more outbreaks of hog cholera in this country every 33,670 years; the unmitigated importation of swine [illegible] would likely result [illegible] outbreaks in this c[illegible] years; and the [illegible] of fresh [illegible] likely r[illegible] more outbreaks in this c[illegible],676 years. By unmitigated [illegible] tion, we mean no additional import requirements beyond certification of the origin of the product, the areas it has transited, and the lack of commingling, as well as the biosecurity measures in place in the EU as discussed above and described in EU Council Directives 90/425/EEC, 89/662/EEC, 97/12/EEC, 64/432/EEC, and 91/496/EEC. Some of these biosecurity measures are set out in our proposed conditions for importation and are described below.

Results of the Risk Assessments

The results of both our descriptive and quantitative assessments suggest that the risk of introduction of hog cholera into the United States due to the importation under the conditions described in the preceding paragraph of fresh (chilled or frozen) pork, and breeding swine would be expected to present negligible hog cholera risk levels. Because importation of live swine other than breeding swine would not be cost-effective, we limited our risk assessment to breeding swine. In the future, if we receive requests to import live swine other than breeding swine, we will conduct a separate assessment of the risk of importing those swine. We are proposing additional import requirements for swine semen, over and above those biosecurity measures required by directive in the EU. Our proposed requirements for pork and

pork products, breeding swine, and swine semen are discussed below.

Importation of Pork and Pork Products

Our conclusion is that, based on the likelihood of importation of the disease agent, the destination of the imported articles and their usage, and disposal of waste, pork and pork products could be imported into the United States from the region in question with negligible risk of introducing hog cholera, provided the pork or pork products meet all other applicable import requirements in the regulations and provided they are accompanied by a certificate of origin certifying the following: (1) That the articles have not been commingled with pork or pork products produced from swine from regions in which hog cholera is known to exist; and (2) that the swine from which the pork or pork products were produced have not lived in a region listed at that time as one in which hog cholera is known to exist and have not transited such a region unless moved directly through such a region in a sealed means of conveyance with the seal determined to be intact upon arrival at the point of destination.

Importation of Live Swine and Semen from Swine

We believe that the risk of the introduction of hog cholera from the importation of live swine and swine semen from the region in question would be negligible if the following risk mitigation measures are taken:

The swine, which would have to be breeding swine, and swine semen would have to meet all import requirements in the regulations and be accompanied by a certificate of origin certifying that the swine or donor boars have never lived in a region listed at that time as a region in which hog cholera is known to exist, have never transited such a region unless moved directly through such a region in a sealed means of conveyance with the seal determined to be intact upon arrival at the point of destination, and have never been commingled with swine that have been in a region listed at that time as one in which hog cholera is known to exist.

Additionally, we are proposing to require that no equipment or materials used in transporting the swine or donor boars under this rule may have previously been used for transporting animals ineligible for export to the United States under the rule, unless they have been cleaned and disinfected following such previous use. This requirement would apply to movement of donor boars from the farm of origin to the semen collection center, and to the movement of other swine from the farm of origin to the point of entry into the United States.

We would not allow swine semen to be imported into the United States from the region unless the semen comes from a semen collection center approved for export by the veterinary services of the national government of the EU Member State in which the collection center is located. Additionally, we would require that the donor boar be held in isolation for at least 30 days prior to entering the semen collection center, and, no more than 30 days prior to being held in isolation, be tested with negative results with a hog cholera test approved by the International Office of Epizootics. We would also require that the semen shipment not be exported to the United States unless the donor boar is observed by the semen collection center veterinarian while the donor boar is at the collection center, including at least a 40-day holding period at the semen collection center following collection of the semen, and, along with all other swine at the center, exhibits no clinical signs of hog cholera.

We are proposing to add these requirements to the regulations, even though the current import requirements regarding certain other diseases already require a quarantine period for donor boars in the country of export. In considering the risk of the introduction of hog cholera into the United States through swine semen, we believe it is necessary to assume that quarantine periods do not exist for other diseases, because it is possible that regions currently affected by these other diseases could one day be considered free of them.

On a practical level, the quarantine requirements we are proposing with regard to swine semen and hog cholera would have minimal current effect on the holding of swine. Currently, quarantine and testing of swine is required for semen imported from regions affected with tuberculosis, brucellosis, and pseudorabies, and each of the diseases is considered to exist in each of the countries included in the region proposed in this document. The current regulations with regard to these diseases require that donor boars be quarantined for a minimum of 60 days before collection of semen for export to the United States (compared to a proposed 30-day minimum quarantine prior to entry into the semen collection center under the hog cholera provisions of this proposal), and that they be tested twice with negative results for tuberculosis, brucellosis, and pseudorabies, as applicable to the region of origin. Tuberculin tests must be conducted with an interval of at least 60 days between tests, and the second test must be conducted no sooner than 30 days following collection of the semen (compared to a minimum holding period of 40 days following collection of semen under the proposed hog cholera regulations).

The requirements pertaining to pork and pork products and live swine would be added to the regulations in a new § 94.22. The requirements pertaining to swine semen would be added to the regulations in a new § 98.38.

Movement Restrictions

We are also proposing to establish a new § 92.3 to provide that whenever the EC establishes a disease quarantine in a region that we have recognized as one in which the disease is not known to exist, the importation of animals and animal products prohibited or restricted movement from the quarantined area in the EU would also be prohibited importation into the United States. We believe this provision, which would be set forth in a new § 92.3, would protect livestock in the United States by establishing a regulatory mechanism that goes into effect as soon as a quarantine is established in the EU and that does not require promulgation of a rule and its publication in the **Federal Register** each time there is a limited disease outbreak in a free area. The proposed provisions would apply only to those disease outbreaks in the EU for which the region where the outbreak occurs had been recognized by the Department as one in which the disease is not known to exist at the time of the outbreak. We would also add a definition of *European Union* in § 92.1.

Miscellaneous

Additionally, we are proposing to make several nonsubstantive changes to the regulations. In §§ 94.9 through 94.13, we would combine the references to "Great Britain" and "Northern Ireland" to read instead "the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland)." We are also proposing to change the reference to "Central American regions" in § 94.12 to read instead "Central American countries." The word "countries" was inadvertently changed to "regions" in earlier rulemaking.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

The Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction or dissemination of any contagious, infectious, or communicable disease of animals from a foreign country into the United States. This proposed rule would recognize certain regions in the EU as those in which hog cholera is not known to exist, and from which breeding swine, swine semen, and pork and pork products may be imported into the United States under certain conditions. Additionally, we are proposing to recognize Greece as free of FMD and SVD, and to recognize eight Regions in Italy as free of SVD. These proposed actions are based on a request from the EC's Directorate General for Agriculture and on our review of the supporting documentation supplied by the EC and individual Member States. These proposed actions would relieve some restrictions on the importation into the United States of certain animals and animal products from those regions.

In considering this proposed rulemaking, we considered three options. The first, which we could have applied to all the diseases addressed by this proposed rule, was to retain the current regulations and make no changes. We did not consider this an acceptable option because it was not warranted by the disease status of the regions in question and such inaction would have been contrary to U.S. obligations under international trade agreements. A second option, specific to hog cholera, was to allow free movement of swine, swine semen, and pork from the region we are proposing to recognize as one in which hog cholera does not exist. Based on our risk assessments, however, we concluded that adopting that option would lead to an unacceptable risk of introducing hog cholera into the United States. Therefore, we chose to propose the provisions of this proposed rule, based on the information discussed in this document.

Below is a summary of the economic analysis for the changes in the import regulations proposed in this document. The economic analysis provides a cost-benefit analysis as required by E.O. 12866 and the analysis of impacts on small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis is available for review at the location listed in the **ADDRESSES** section at the beginning of this document

We do not have enough data for a comprehensive analysis of the economic impact of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and the economic impact of those benefits or costs.

Recognition of Certain EU Regions as Those in Which Hog Cholera Does Not Exist

The analyses with regard to hog cholera examine the economic impact of the potential importation of fresh (chilled or frozen) pork, breeding swine and swine semen from regions in the EU that would be recognized by this proposed rule as those in which hog cholera does not exist. This proposed rule is in response to a request received in July 1997 from the European Commission's Directorate General for Agriculture to do the following: (1) Recognize certain EU Member States as free in their entirety of certain specified diseases; and (2) recognize certain regions of EU Member States as free of specified diseases, consistent with the disease status of those regions as recognized by the European Union.

This proposed rule is in accordance with the policy of "regionalization," whereby import requirements are tailored to regions determined by science-based risk factors, rather than being restricted to political boundaries.

Only certain regions in Germany and Italy would not be recognized by this proposed rule as those in which hog cholera is not known to exist. Five EU Member States that are already recognized in the current regulations as those in which hog cholera is not known to exist are excluded from this analysis, because the regulations governing hog cholera do not currently restrict their pork, live swine, and swine semen exports to the United States.

Potential exports to the United States from the 10 EU Member States of concern (Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, and Spain) constitute the trade volumes used in the analysis, assuming no risk of disease introduction. For pork, the quantities are based on the proportion of Denmark's global pork exports that are imported into the United States. It is assumed that a similar percentage of the global pork exports of each of the Member States of concern could be exported to the United States. The total quantity of pork assumed is about 137,800 metric tons. For breeding swine and swine semen imports, quantities that might be imported are based on historical data and prior U.S. demand for EU swine genetic stock.

It should be noted that present high levels of U.S. pork production and depressed pork prices imply that imports resulting from this regulatory change are likely to be minimal. The import quantities used in the analysis allow assessment of poténtial impacts if market conditions were to change in favor of U.S. imports of EU swine and swine products. Estimated effects on producers and consumers reflect the expected effects of these imports assuming no disease risks. Net trade benefits are then compared to the likelihood that hog cholera would be introduced into the United States and the projected costs that would arise from such introduction.

Although we expect that the proposed impact from the regulatory changes would be minimal, we used a net trade benefit model to evaluate what would happen should trade occur. The economic model used to evaluate pork imports is a net trade welfare model. Benefits to the United States of pork imports from the EU Member States of concern are calculated as the net change in consumer surplus and producer surplus. Assuming an import volume of 138,000 metric tons of pork, the annual net trade benefit is estimated to be about $5.5 million (1997 dollars). Based on pork data for the period 1993–97, the welfare changes in consumer surplus and producer surplus would represent about a 0.9 percent decrease in U.S. pork production, a 0.8 percent increase in pork consumption, and a 1.0 percent decline in the farmgate price of pork.

The annual value of breeding boar imports is assumed to be zero for the minimum and most likely import volume, and $0.9 million for the maximum import volume. For breeding gilt imports, it is assumed that the annual values are zero for the minimum and most likely import volume, and $1.2 million for the maximum import volume. The reason breeding swine are unlikely to be imported is because of the minimal marginal benefits that would be gained, given the genetic characteristics of many EU swine breeds already incorporated by U.S. breeders. Based on historical data, the annual value of swine semen imports is assumed to be zero, $46,000, and $102,000 for the minimum, most likely, and maximum import volumes, respectively.

The import quantities used to estimate trade impacts are also used to examine the consequences and

likelihoods of hog cholera introduction due to the effects of this proposed rule. Four biological consequence scenarios (low, moderate, high, and very high) are considered for each commodity group (pork, live swine, and swine semen). The consequence scenarios are weighted separately for each commodity group, based on their assumed likelihoods of occurrence. The low and moderate scenarios are considered most likely for pork, due to the expectation that any initial exposure that might occur would be in a small to medium-sized waste feeding operation in a low-density area. Waste feeding is generally considered the most likely means by which a foreign animal disease such as hog cholera could be introduced into the United States via contaminated pork. However, if hog cholera were introduced through breeding swine or swine semen, the first herds affected would most likely be large commercial herds. We invite public comment on the assumed weighting factors for pork, breeding swine, and swine semen. (The quantitative disease risk assessment associated with this rule can be obtained by calling Dr. Gary Colgrove at (301) 734–8364, or electronically at http://www.aphis.usda.gov/vs/reg-request.html.)

Under conservative assumptions, net consequences of any hog cholera introduction under the four biological consequence scenarios are estimated to range from $24 million (1997 dollars) to $355 million for pork, and from $91 million to $958 million for live swine and swine semen.

Despite the serious consequences that could result from a hog cholera outbreak, extremely small likelihoods of hog cholera introduction when risk mitigation measures are taken make overall disease risks insignificant. For pork, assuming no risk mitigation measures other than certification of origin and handling, and the mitigating measures already in place in the EU, the expected frequency of hog cholera introduction was found to be only one or more outbreaks in 22,676 years. For breeding swine, the likelihood of hog cholera introduction, assuming no additional mitigation measures, was estimated to be one or more outbreaks in 33,670 years. Certification of origin and handling is universally accepted in international animal and animal product trade agreements as integral to disease prevention, and is therefore included in the starting analysis.

Swine semen imports would satisfy acceptable levels of risk if they were conducted in accordance with EU provisions for semen collection, with the additional mitigating measure of a 40-day hold on donor boars prior to shipment of the semen to the United States. Again, for this determination of risk, we are assuming that no other regulations are in place that require a holding period after semen collection. This 40-day holding period would allow for observation of the donor animals and other animals in the semen collection center for potential clinical signs of hog cholera. We determined that the most likely expected frequency of simulation distributions of hog cholera introduction without application of the 40-day holding period would be one or more outbreaks in 1,842 years, compared to a most likely expected frequency of one or more outbreaks in 257.7 million years with the 40-day hold.

In our economic analysis, we compared potential trade benefits and disease costs. We expect that pork, breeding swine, and swine semen imports from the region in question would be unlikely to be significantly affected by these proposed regulatory changes, given current hog and pork market conditions. Nevertheless, for purposes of the comparison, we assumed that a certain level of trade in these commodities would occur. We conducted simulations assuming imports of 137,779 metric tons of pork, 800 doses of swine semen, and 1,592 breeding swine, based on historical volumes of imports from countries in the EU in which hog cholera is not known to exist. For each commodity, the simulations generated probability distributions of the annual net benefits of trade minus the product of the annual likelihood of hog cholera introduction and the discounted net economic consequences of hog cholera introduction. The most likely value of the distribution, given the assumed import levels, is $3.4 million for pork imports and $1.22 million for breeding swine imports. For swine semen, the most likely value of the distribution is negative $19,074 without the 40-day hold, and positive $28,714 when the 40-day hold mitigation is included. We emphasize again, however, that we do not expect significant levels of imports as a result of these proposed regulatory changes, but the simulation results are presented to provide some insight into the potential impact of the proposed regulatory changes should market conditions change in the future.

Regarding effects of the proposed rule on small entities, more than 88 percent of all U.S. hog farms meet the Small Business Administration size criterion for small entities of annual revenues of less than $500,000. It is unlikely that any producers, large or small, would be significantly affected. Pork, breeding swine, and swine semen imports from the region in question would be unlikely to be significantly affected by this proposed regulatory change, given current market conditions.

Even if EU pork exports to the United States were to eventually grow to levels that have been assumed in the trade analysis, potential economic effects on small producers would amount to less than 1 percent of average revenues. Therefore, we do not believe this proposed rule would have a significant economic impact on small entities, even if the U.S. pork market were more attractive for EU exports.

Recognition of Greece as Free of FMD and SVD

We are also proposing to recognize Greece as free of FMD and SVD. In the absence of any other restrictions due to other diseases of concern, recognizing Greece as free of FMD and SVD would eliminate certain restrictions on the importation of ruminants, swine, and their products into the United States from that country.

Historically, Greece's exports of hoofed farm animals, meat and meat products, and milk have been very small compared to the amounts and values of these commodities traded by the United States. The average annual value of hoofed farm animals exported by Greece during the period from 1994–1997 was only 0.05 percent of the average value of these animals imported by the United States over the same period. Comparable percentages for meat and meat products and for milk were 0.5 percent and 1.9 percent, respectively. In other words, in the unlikely event that all of Greece's exports of these commodities were diverted to the United States, they would comprise only extremely small portions of U.S. imports.

Entities potentially directly affected by this proposed rule—assuming no other overriding disease restrictions—are brokers, agents, and others in the United States who would be directly involved in the importation and sale of hoofed farm animals, meat and meat products, and milk from Greece. In theory, U.S. producers of these commodities could be indirectly affected if imports were substantial enough to influence prices. As indicated above, this possibility is extremely remote.

The number and sizes of entities that might be directly involved in the importation and sale of hoofed farm animals, meat and meat products, and milk from Greece is not known. Nevertheless, it is reasonable to assume that most of these entities would be small, based on criteria established by the Small Business Administration.

To the extent that the proposed rule would reduce restrictions on imports from Greece of hoofed farm animals, meat and meat products, and milk, it could have a positive economic effect on U.S. importers. However, imports are likely to be of extremely small amounts compared to U.S. trade overall, and the economic impact on U.S. entities, large and small, is expected to be negligible. Likewise, indirect economic impacts on U.S. producers are expected to be insignificant.

Recognition of Regions in Italy as Free of SVD

We are also proposing to recognize eight Regions in northern Italy as free of SVD. Due to the unavailability of trade statistics for the eight Regions in question, we based our analysis on swine and pork trade for Italy as a whole.

Italy's breeding swine imports far outweigh its exports. The average annual value of such exports during the period 1994–97 was only $4,000, compared to annual imports valued at over $2 million. In contrast, the United States is a net exporter of breeding swine, with the average value of exports, $6.5 million, six times the average value of imports, $1.1 million. For other swine, Italy, again, is a net importer, with imports valued at an annual average of about $135 million, compared to exports valued at less than $2 million. The United States is also a net importer of other swine, with average annual imports of $204 million and exports of $4 million.

Italy is a net importer of pork, with average annual imports of over $1.5 billion, compared to exports of $55 million. The United States is a net exporter of pork, with average annual exports of over $770 million, compared to imports of $466 million. In only one category of pork, "hams, shoulders with bone," is Italy a net exporter. Its annual exports in that category have averaged about $30 million, compared to imports of about $6 million. The United States is also a net exporter of hams, although its trade is more balanced; the average annual value of such exports from 1994–97 was about $6 million, compared to imports valued at about $4 million.

Italy's trade in edible swine offal was fairly balanced during the period 1994–97, with imports slightly outweighing exports. In 1997, however, exports surged to become 40 percent greater than imports. The United States is a strong net exporter of edible swine offal, with exports averaging $94 million annually over the 4-year period, compared to an annual average for imports of $7 million.

Overall, then, Italy's imports of swine and pork outweigh its exports, while the opposite is true for the United States (except in the case of live swine other than breeding swine, a U.S. import market dominated by Canada). The notable exception to this pattern for Italy is the category "hams, shoulders with bones," for which Italy has a sizable export industry. It is not known what percentage of these commodities are produced in the eight Regions of Italy addressed by this proposed rule. Clearly, trade consequences for the United States would be smaller than those indicated by Italy's national statistics, and, thus it is assumed to be insignificant. U.S. imports of "hams, shoulders with bone" originating in the eight Regions would compete as much with imports of these products from other countries as they would with those produced in the United States.

Small entities that could be directly affected by the proposed rule change would be buyers and wholesalers of swine and pork products. Pork and swine imports from the eight Regions of Italy would likely be very minor, and economic impacts on U.S. entities, large and small, would be insignificant. Current low pork prices in the United States make it all the more probable that pork imports from the eight Regions in Italy, if they were to occur, would be extremely limited.

This proposed rule contains information collection and recordkeeping requirements. These requirements are described in the section of this document entitled "Paperwork Reduction Act."

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

We are preparing an environmental assessment in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). When the environmental assessment is completed, we will inform the public through a notice in the **Federal Register** that it is available.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–090–1. Please send a copy of your comments to: (1) Docket No. 98–090–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Under this proposed rule, importers of breeding swine, pork and pork products, and swine semen from the region in the EU that we would recognize as one in which hog cholera is not known to exist would be required to include origin and movement certification with the imported commodity. Additionally, importers of breeding swine or swine semen would have to include the results of tests conducted on the imported swine or donor boars.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic,

mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Importers of swine, swine semen, and pork and pork products.

Estimated annual number of respondents: 30.

Estimated annual number of responses per respondent: 10.

Estimated annual number of responses: 300.

Estimate total annual burden on respondents: 300 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

9 CFR Part 92

Animal diseases, Imports.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, we are proposing to amend 9 CFR parts 92, 94, and 98, as follows:

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 92.1, a definition of *European Union* would be added, in alphabetical order, to read as follows:

§ 92.1 Definitions.

* * * * *

European Union. The organization of Member States consisting of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, The Netherlands, Portugal, Republic of Ireland, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

3. A new § 92.3 would be added to read as follows:

§ 92.3 Movement restrictions.

Whenever the European Commission (EC) establishes a quarantine in the European Union in a region the Animal and Plant Health Inspection Service recognizes as one in which the disease is not known to exist and the EC imposes prohibitions or other restrictions on the movement of animals or animal products from the quarantined area in the European Union, such animals and animal products are prohibited importation into the United States.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY; PROHIBITED AND RESTRICTED IMPORTATIONS

4. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

5. In § 94.1, paragraph (a)(2) would be amended by adding the word "Greece," immediately after the words "Isle of Man)," and paragraph (a)(3) would be revised to read as follows:

§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

(a) * * *

(3) The following regions are declared to be free of rinderpest but not foot-and-mouth disease: None.

* * * * *

6. In § 94.9, paragraph (a) would be revised to read as follows:

§ 94.9 Pork and pork products from regions where hog cholera exists.

(a) Hog cholera is known to exist in all regions of the world except Australia; Canada; Denmark; Fiji; Finland; Iceland; New Zealand; Norway; the Republic of Ireland; Sweden; Trust Territory of the Pacific Islands; the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland); and a single region in the European Union consisting of Austria, Belgium, France, Greece, Luxembourg, The Netherlands, Portugal, Spain, the country of Germany except for the Kreis Vechta in the Land of Lower Saxony, the Kreis Warendorf in the Land of Northrhine Westfalia, and the Kreis Altmarkkreis Salzwedel in the Land of Saxony-Anhalt, and the country of Italy except for the Island of Sardinia and the Regions of Emilia Romagna and Piemonte.[9]

* * * * *

7. In § 94.10, paragraph (a) would be amended by revising the first sentence to read as follows:

§ 94.10 Swine from regions where hog cholera exists.

(a) Hog cholera is known to exist in all regions of the world except Australia; Canada; Denmark; Fiji; Finland; Iceland; New Zealand; Norway; the Republic of Ireland; Sweden; Trust Territory of the Pacific Islands; the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland); and a single region in the European Union consisting of Austria, Belgium, France, Greece, Luxembourg, The Netherlands, Portugal, Spain, the country of Germany except for the Kreis Vechta in the Land of Lower Saxony, the Kreis Warendorf in the Land of Northrhine Westfalia, and the Kreis Altmarkkreis Salzwedel in the Land of Saxony-Anhalt, and the country of Italy except for the Island of Sardinia and the Regions of Emilia Romagna and Piemonte. * * *

* * * * *

§ 94.11 [Amended]

8. In § 94.11, paragraph (a) would be amended by adding the word "Greece," immediately after the word "Germany,", by removing the words "Great Britain (England, Scotland, Wales, and Isle of Man)," and "Northern Ireland,", and by adding the words "the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland)," immediately after the word "Switzerland,".

9. In 94.12, paragraph (a) would be revised to read as follows:

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

(a) Swine vesicular disease is considered to exist in all regions of the world except Australia; Austria; The Bahamas; Belgium; Bulgaria; Canada; Central American countries; Chile; Denmark; Dominican Republic; Fiji; Finland; France; Germany; Greece; Greenland; Haiti; Hungary; Iceland; Luxembourg; Mexico; The Netherlands; New Zealand; Norway; Panama; Portugal; Republic of Ireland; Romania; Spain; Sweden; Switzerland; Trust Territories of the Pacific; the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland);

[9] See also other provisions of this part, parts 92, 95, and 96 of this chapter, and part 327 of this title for other prohibitions and restrictions on the importation of swine and swine products.

Yugoslavia; and the Regions in Italy of Abruzzi, Emilia Romagna, Friuli, Liguria, Marche, Molise, Piemonte, and Valle d'Aosta.

* * * * *

10. In § 94.13, the introductory text would be revised to read as follows:

§ 94.13 Restrictions on importation of pork or pork products from specified regions.

Austria; The Bahamas; Belgium; Bulgaria; Chile; Denmark; France; Germany; Hungary; Luxembourg; The Netherlands; Portugal; Republic of Ireland; Spain; Switzerland; the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland); Yugoslavia; and the Regions in Italy of Abruzzi, Emilia Romagna, Friuli, Liguria, Marche, Molise, Piemonte, and Valle d'Aosta are declared free of swine vesicular disease in § 94.12(a) of this part. These regions either supplement their national pork supply by the importation of fresh (chilled or frozen) pork from regions where swine vesicular disease is considered to exist; have a common border with such regions; or have trade practices that are less restrictive than are acceptable to the United States. Thus, the pork or pork products produced in such regions may be commingled with fresh (chilled or frozen) meat of animals from a region where swine vesicular disease is considered to exist, resulting in an undue risk of swine vesicular disease introduction into the United States. Therefore, pork or pork products and shipstores, airplane meals, and baggage containing such pork other than those articles regulated under part 95 or part 96 of this chapter, produced in such regions shall not be brought into the United States unless the following requirements are met in addition to other applicable requirements of part 327 of this title:

* * * * *

11. A new § 94.22 would be added to read as follows:

§ 94.22 Restrictions on the importation of swine, pork, and pork products from parts of the European Union.

In addition to meeting all other applicable provisions of this part, live swine, pork, and pork products imported from the region of the European Union consisting of Austria, Belgium, France, Greece, Luxembourg, The Netherlands, Portugal, Spain, the country of Germany except for the Kreis Vechta in the Land of Lower Saxony, the Kreis Warendorf in the Land of Northrhine Westfalia, and the Kreis Altmarkkreis Salzwedel in the Land of Saxony-Anhalt, and the country of Italy except for the Island of Sardinia and the Regions of Emilia Romagna and Piemonte must meet the following conditions:

(a) *Pork and pork products.* (1) The pork or pork products must not have been commingled with pork or pork products produced from swine from any region listed at that time in § 94.10(a) as a region in which hog cholera is known to exist;

(2) The swine from which the pork or pork products were produced must not have lived in a region listed at that time as one in which hog cholera is known to exist, and must not have transited such a region unless moved directly through such a region in a sealed means of conveyance with the seal determined to be intact upon arrival at the point of destination; and

(3) The pork and pork products must be accompanied by a certificate issued by an official of the national government for the region of origin who is authorized to issue the foreign meat inspection certificate required by § 327.4 of this title, stating that the provisions of paragraphs (a)(1) and (a)(2) of this section have been met.[17]

(b) *Live swine.* (1) The swine must be breeding swine and must not have lived in a region listed at that time in § 94.10(a) as a region in which hog cholera is known to exist, and must not have transited such a region unless moved directly through such a region in a sealed means of conveyance with the seal determined to be intact upon arrival at the point of destination;

(2) The swine must never have been commingled with swine that have been in a region listed at that time as one in which cholera is known to exist;

(3) No equipment or materials used in transporting the swine may have previously been used for transporting swine that do not meet the requirements of this section, unless the equipment or materials have first been cleaned and disinfected; and

(4) The swine must be accompanied by a certificate issued by a salaried veterinary officer of the national government of the country of origin, stating that the provisions of paragraphs (b)(1) through (b)(3) of this section have been met.[18]

(c) The certificates required by paragraphs (a)(3) and (b)(4) of this section must be presented by the importer or his or her agent to the collector of customs at the port of arrival, upon arrival of the swine, pork, or pork products at the port, for the use of the veterinary inspector at the port of entry.

[17] The certification required may be placed on the foreign meat inspection certificate required by § 327.4 of this title or may be contained in a separate document.

[18] The certification required may be placed on the certificate required by § 93.505(a) of this chapter or may be contained in a separate document.

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

12. The authority citation for part 98 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 103–105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

13. In part 98, a new § 98.38 would be added to read as follows:

§ 98.38 Restrictions on the importation of swine semen from parts of the European Union.

In addition to meeting all other applicable provisions of this part, swine semen imported from the region of the European Union consisting of Austria, Belgium, France, Greece, Luxembourg, The Netherlands, Portugal, Spain, the country of Germany except for the Kreis Vechta in the Land of Lower Saxony, the Kreis Warendorf in the Land of Northrhine Westfalia, and the Kreis Altmarkkreis Salzwedel in the Land of Saxony-Anhalt, and the country of Italy except for the Island of Sardinia and the Regions of Emilia Romagna and Piemonte must meet the following conditions:

(a) The semen must come only from a semen collection center approved for export by the veterinary services of the national government of the country of origin;

(b) The donor boar must not have lived in a region listed at that time in § 94.10 as one in which hog cholera is known to exist, and must not have transited such a region unless moved directly through such a region in a sealed means of conveyance with the seal determined to be intact upon arrival at the point of destination;

(c) The donor boar must never have been commingled with swine that have been in a region listed at that time as a region in which hog cholera is known to exist;

(d) The donor boar must be held in isolation for at least 30 days prior to entering the semen collection center;

(e) No more than 30 days prior to being held in isolation as required by paragraph (b) of this section, the donor boar must be tested with negative results with a hog cholera test approved by the International Office of Epizootics;

(f) No equipment or materials used in transporting the donor boar from the farm of origin to the semen collection center may have been used previously

for transporting swine that do not meet the requirements of this section, unless such equipment or materials has first been cleaned and disinfected;

(g) The donor boar must be observed at the semen collection center by the center veterinarian, and exhibit no clinical signs of hog cholera;

(h) Before the semen is exported to the United States, the donor boar must be held at the semen collection center for at least 40 days following collection of the semen, and, along with all other swine at the semen collection center, exhibit no clinical signs of hog cholera; and

(i) The semen must be accompanied to the United States by a certificate issued by a salaried veterinary officer of the national government of the country of origin, stating that the provisions of paragraphs (a) through (h) of this section have been met.[3]

Done in Washington, DC, the 21st day of June 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–16172 Filed 6–22–99; 4:06 pm]

BILLING CODE 3410–34–P

[3] The certification required may be placed on the certificate required under § 98.35(c) or may be contained in a separate document.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–53–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes. This proposal would require repetitive structural inspections of certain aging airplanes, and repair, if necessary. This proposal also provides for optional terminating action for the repetitive inspections. This proposal is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design service goal. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes. This proposal relates to the recommendations of the Airworthiness Assurance Task Force assigned to review Model 727 series airplanes, which indicate that, to assure long term continued operational safety, various structural inspections should be accomplished.

DATES: Comments must be received by August 9, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–53–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. This incident prompted the FAA to sponsor a conference on aging airplanes, which was attended by members of the aviation industry, other regulatory authorities, and the general public. The conferees agreed that, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, operators will continue to fly aging airplanes rather than retire them. Because of the problems revealed by the accident described above, the consensus was that this aging fleet needed more attention and maintenance to ensure its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes,
2. Develop corrosion-directed inspections and prevention programs,
3. Review the adequacy of each operator's structural maintenance program,
4. Review and update the Supplemental Structural Inspection Documents (SSID), and
5. Assess repair quality.

The Working Group assigned to review the Boeing Model 727 series airplanes completed its work on Item (2) in July 1989 and developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 727 fleet. This program is contained in Boeing Document Number D6–54929, "Aging Airplane Corrosion Prevention and Control Program—Model 727," dated July 28, 1989. The FAA issued AD 90–25–03, Amendment 39–6787 (55 FR 49258, November 27, 1990), which requires implementation of a corrosion prevention and control program.

The Working Group completed a portion of its work on Item (1), above, in March 1989. The Working Group's proposal is contained in Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification Program—Model 727," Revision C, dated December 11, 1989. The FAA issued AD 90–06–09, Amendment 39–6488 (55 FR 8370, March 7, 1990), which requires the installation of the structural modifications identified in that document.

The action being proposed herein follows from the ongoing activities of the Working Group relative to Item (1). The Working Group has identified certain service difficulties that warrant mandatory inspections of the airplane. The Working Group considers that these service difficulties can be controlled safely in aging airplanes by inspections and that because of the safety implications, the inspections should be mandatory to assure that all operators perform them. Typically, the addressed unsafe conditions have occurred infrequently on aging airplanes, and the Working Group has a very high degree of confidence in the ability of an inspection program to detect the damage before it adversely affects safety.

The Working Group reviewed 286 service bulletins related to the long term operation of the Model 727 series airplanes. Twelve of these service bulletins were recommended to the FAA for mandatory inspection action to ensure the successful long term operation of Model 727 series airplanes. The conditions addressed by these service bulletins, if not corrected, could result in degradation of the structural capabilities of the affected airplanes. The FAA has concurred with the Working Group's recommendations and has determined that AD action to mandate the inspections is warranted to assure the continued airworthiness of the Model 727 fleet.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989, which describes procedures for repetitive dye penetrant inspections of certain wing ribs at the rib-to-stringer attachment, and repair, if necessary. The service bulletin also describes procedures for the accomplishment of a preventative modification, which would eliminate the need for the repetitive inspections.

Boeing Standard Overhaul Practices Manual D6–51702, Chapter 20–20–02, Revision 79, dated March 1, 1999, also describes procedures for the accomplishment of the dye penetrant inspections.

Boeing Commercial Jet Nondestructive Test Manual, Chapter 51–00–00, Part 6, dated August 5, 1997, describes procedures for a high frequency eddy current inspection to detect cracking of certain wing ribs at the rib-to-stringer attachment.

Accomplishment of the actions specified in the service bulletin, the overhaul manual, and the NDT Manual is intended to adequately address the identified unsafe condition.

Other Relevant Rulemaking

AD 94–07–08, amendment 39–8866 (59 FR 14545, March 29, 1994) currently requires initial structural inspections only of certain wing ribs at the rib-to-stringer attachment, as specified in the Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993. That AD inadvertently omitted the requirement to mandate repetitive inspections of certain wing ribs at the rib-to-stringer attachment. This proposed AD would mandate those repetitive inspections to detect cracks of certain structural components. In addition, the repetitive inspection requirement in this proposal would be terminated following accomplishment of the modification required by AD 94–05–04, amendment 39–8842 (59 FR 13442, March 22, 1994) as specified in Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989. That AD requires incorporation of certain structural modifications. This proposed AD would not affect the current requirements of the AD's described previously.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the repetitive inspections, and repair, if necessary, as specified in the overhaul manual, NDT manual, and service bulletin described previously, except as discussed below. The proposed AD also provides for optional terminating action, which would terminate the repetitive inspections.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, unlike the procedures described in the service bulletin, this proposed AD would require the applicable inspection to be repeated at intervals not to exceed 14,000 flight cycles, regardless of detection of cracking. The FAA has determined that, because of the safety implications and consequences associated with fatigue cracking, repetitive inspections are necessary until accomplishment of the modification required by AD 94–05–04, in order to adequately ensure the safety of the transport airplane fleet.

Operators also should note that, although the service bulletin describes procedures for accomplishment of a dye penetrant inspection only, this proposed AD would include the option of accomplishment of a either a dye penetrant inspection or a high frequency eddy current inspection to detect cracking of certain wing ribs at the rib-to-stringer attachment. This option gives operators greater flexibility for detecting cracking in a timely manner.

Cost Impact

There are approximately 975 airplanes of the affected design in the worldwide fleet. The FAA estimates that 538 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 300 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $9,684,000, or $18,000 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 900 work hours per

airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $31,144 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $85,144 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–53–AD.

Applicability: Model 727–100, –100C, and –200 series airplanes, line numbers 1 through 1214 inclusive; certificated in any category; on which the modification required by AD 94–05–04, amendment 39–8842, as specified in Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989, has not been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capabilities of the affected airplanes, accomplish the following:

Initial Inspection

(a) Within 2,000 flight cycles after the effective date of this AD, unless accomplished within the last 12,000 flight cycles in accordance with AD 94–07–08, amendment 39–8866; accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) Perform a dye penetrant inspection to detect cracking of certain wing ribs at the rib-to-stringer attachment, in accordance with Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989; and Boeing Standard Overhaul Practices Manual D6–51702, Chapter 20–20–02, Revision 79, dated March 1, 1999.

(2) Perform a high frequency eddy current inspection to detect cracking of certain wing ribs at the rib-to-stringer attachment, as specified in Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989; in accordance with the procedures specified in Boeing Commercial Jet Nondestructive Test Manual, Chapter 51–00–00, Part 6, dated August 5, 1997.

Repetitive Inspections and Corrective Action

(b) If no crack is detected during any inspection required by paragraph (a) of this AD, repeat the applicable inspection thereafter at intervals not to exceed 14,000 flight cycles.

(c) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989. Repeat the applicable inspection thereafter at intervals not to exceed 14,000 flight cycles, following accomplishment of the repair.

Terminating Action

(d) Accomplishment of the structural modification required by paragraph (a) of AD 94–05–04, amendment 39–8842, as specified in Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 18, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16158 Filed 6–24–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–35–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes. This proposal would require repetitive inspections to detect corrosion or fatigue cracking of certain structural elements of the airplane; corrective action, if necessary; and incorporation of certain structural modifications. This proposal is prompted by new recommendations related to incidents of fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. The actions specified by the proposed AD are intended to prevent corrosion or fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by August 9, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–35–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–35–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–35–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a transport category airplane managed to land after tiny cracks in rivet holes in the upper fuselage linked together, causing structural failure and explosive decompression. An 18-foot section ripped from the fuselage. This accident focused greater attention on the problem of aging aircraft.

Subsequently, in June 1988, the FAA sponsored a conference on aging airplane issues, which was attended by representatives of the aviation industry from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. The Airworthiness Assurance Working Group (AAWG), with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was originally established in August 1988. The objective of the AAWG was to sponsor "Task Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes,
2. Develop corrosion-directed inspections and prevention programs,
3. Review the adequacy of each operator's structural maintenance program,
4. Review and update the Supplemental Structural Inspection Documents (SSID),
5. Assess repair quality.

The Structures Task Group (STG) assigned to review the Lockheed Model L–1011–385 series airplanes was formed in 1988, and included operators of Model L–1011–385 series airplanes, Lockheed, the FAA, and observers from regulatory agencies. Certain recommendations made by the STG (pursuant to Item 1., described previously) are contained in Lockheed Service Bulletin 093–51–035, Revision 1, dated December 16, 1991. The FAA previously issued AD 94–05–01, amendment 39–8839 (59 FR 10275, March 4, 1994), to require the structural inspections and the modifications recommended in that document.

Since the issuance of that AD, the STG has recommended accomplishment of certain other structural inspections to detect corrosion or fatigue cracking of certain structural elements of the airplane, and incorporation of certain structural modifications. Corrosion or fatigue cracking of certain structural elements, if not detected and corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Lockheed has issued Service Bulletin 093–51–040, Revision 1, dated October 1, 1997 (hereinafter referred to as the "Collector Service Bulletin"). The Collector Service Bulletin describes certain repetitive inspections to detect corrosion or fatigue cracking of certain structural elements of the airplane, including the area around the two aft passengers doors and the fuselage-to-underwing longeron area at butt line 94.5. The Collector Service Bulletin also describes structural modifications of various elements of the airplane that have been recommended by the STG, including modification of the retract actuators of the main landing gear, modification of the bulkhead at fuselage station 1363, and replacement of the wing rear spar web (for Model L–1011–385–3 series airplanes). The Collector Service Bulletin also references appropriate sources of accomplishment instructions for the structural inspections and modifications.

The FAA has reviewed and approved the Collector Service Bulletin. Accomplishment of the actions specified in the Collector Service Bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Other Relevant Rulemaking

The FAA previously has issued AD 98–10–14, amendment 39–10526 (63 FR 26966, May 15, 1998), applicable to all Lockheed Model L–1011–385 series airplanes, to require various inspections to detect cracking of certain areas of the rear spar caps, web, skin, and certain fastener holes; and follow-on actions. Accomplishment of the terminating modification listed in Lockheed Service Bulletin 093–57–215 (referenced in Table II of the Collector Service Bulletin), as required by paragraph (e) of this proposed AD; would constitute terminating action for the inspection requirements of AD 98–10–14 for the affected airplanes.

Differences Between This Proposed Rule and the Service Bulletin

Operators should note that Table II of the Collector Service Bulletin references structural inspections specified in Lockheed Service Bulletins 093–53–268, Revision 1, dated July 2, 1996, and 093–53–272, Revision 1, dated March 17, 1997. However, the FAA previously issued AD 99–08–20, amendment 39–11128 (64 FR 18324, April 14, 1999), applicable to all Lockheed Model L–1011–385 series airplanes, to require the structural inspections specified in Lockheed Service Bulletins 093–53–268, Revision 1, and 093–53–272, dated November 12, 1996. The FAA has determined that the procedures described in Lockheed Service Bulletin 093–53–272, Revision 1, are substantially similar to those specified in the original issue of that service bulletin. Therefore, paragraph (b) of this proposed AD specifies that structural inspections in accordance with Lockheed Service Bulletins 093–53–268, Revision 1, and 093–53–272, Revision 1, would not be required by this AD.

Operators also should note that the Collector Service Bulletin specifies that installation of the modifications in Lockheed Service Bulletins 093–53–268, Revision 1, and 093–53–272, terminates the inspections specified in Lockheed Service Bulletins 093–53–268, Revision 1, and 093–53–272, Revision 1. However, this proposed AD specifies that installation of those modifications does not constitute terminating action for the subject inspections. AD 99–08–20 does not provide for termination of the inspections by installation of the modifications, though that AD does specify that inspections may be deferred for 18,000 landings, if modifications in accordance with Lockheed Service Bulletins 093–53–268, Revision 1, and 093–53–272 are accomplished.

Operators also should note that, for airplanes that have exceeded the later of the inspection thresholds specified in Lockheed Service Bulletin 093–57–203, Revision 5, dated April 22, 1996, the Collector Service Bulletin specifies a grace period of 5 years or 5,000 flight cycles after April 11, 1996 (the initial release date of Lockheed Service Bulletin 093–57–215), for accomplishment of the terminating modification described in Lockheed Service Bulletin 093–57–215, dated April 11, 1996. This proposed rule specifies a grace period for that modification of 2 years or 2,000 flight cycles after the effective date of this AD. The proposed grace period was developed by taking into account the manufacturer's recommended grace period of five years after April 11, 1996, as well as the length of time that is normally required for the rulemaking process to be completed. In consideration of both of these factors, the FAA finds that a grace period of 2 years or 2,000 flight cycles after the effective date of the AD is adequate to ensure the continued safety of the transport airplane fleet. The FAA also finds that such a grace period will provide operators with slightly more time than what was specified in the Collector Service Bulletin to accomplish the terminating modification.

Cost Impact

There are approximately 214 airplanes of the affected design in the worldwide fleet. The FAA estimates that 107 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 315 work hours per airplane to accomplish the proposed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $2,022,300, or $18,900 per airplane, per inspection cycle.

It would take approximately 3,385 work hours per airplane to accomplish the proposed modifications, at an average labor rate of $60 per work hour. Required parts would cost approximately $242,000 per airplane. Based on these figures, the cost impact of the modifications proposed by this AD on U.S. operators is estimated to be $47,625,700, or $445,100 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed: Docket 98–NM–35–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion or fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspections

(a) Except as provided by paragraph (b) of this AD, perform structural inspections to detect corrosion or fatigue cracking of certain structural elements of the airplane, in accordance with the applicable service bulletins listed under "Service Bulletin Number, Revision, and Date" in Tables I and II of Lockheed Service Bulletin 093–51–040, Revision 1, dated October 1, 1997. Perform the initial inspections at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Thereafter, repeat each inspection at an interval not to exceed that specified in the applicable service bulletin.

(1) Prior to the threshold specified in the individual service bulletin listed in Table I or II of Lockheed Service Bulletin 093–51–040, Revision 1, as applicable.

(2) Within one repetitive interval after the effective date of this AD, as specified in the individual service bulletin listed in Table I or II of Lockheed Service Bulletin 093–51–040, Revision 1, as applicable.

(b) The structural inspections specified in Lockheed Service Bulletins 093–53–268, Revision 1, dated July 2, 1996, and 093–53–272, Revision 1, dated March 17, 1997; as listed in Table II of Lockheed Service Bulletin 093–51–040, Revision 1, dated October 1, 1997; are not required by this AD. The inspections specified in these service bulletins are required by AD 99–08–20, amendment 39–11128.

Corrective Action

(c) If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the actions specified in paragraph (c)(1), (c)(2), (c)(3), or (c)(4) of this AD.

(1) Repair in accordance with the applicable service bulletin referenced in Table I or II of Lockheed Service Bulletin 093–51–040, Revision 1, dated October 1, 1997.

(2) Repair in accordance with the applicable section of the Lockheed L–1011 Structural Repair Manual.

(3) Accomplish the terminating modification in accordance with the applicable service bulletin referenced in Table I or II of Lockheed Service Bulletin 093–51–040, Revision 1, dated October 1, 1997.

(4) Repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

Terminating Action

(d) Install the terminating modification referenced in each service bulletin listed in Table II of Lockheed Service Bulletin 093–51–040, Revision 1, dated October 1, 1997; in accordance with the applicable service bulletin listed under "Service Bulletin Number, Revision, and Date" in Table II of Lockheed Service Bulletin 093–51–040, Revision 1. Except as provided by paragraph (e) of this AD, install each modification at the later of the times specified in paragraphs (d)(1) and (d)(2) of this AD. Such installation constitutes terminating action for the applicable structural inspection required by paragraph (a) of this AD.

Note 2: Installation of the terminating modifications specified in Lockheed Service Bulletin 093–53–268, Revision 1, dated July 2, 1996, and Lockheed Service Bulletin 093–53–272, dated November 12, 1996, does not constitute terminating action for the repetitive inspection requirements of AD 99–08–20, amendment 39–11128.

(1) Prior to the threshold specified in the applicable service bulletin listed in Table II of Lockheed Service Bulletin 093–51–040, Revision 1.

(2) Within 5 years or 5,000 flight cycles after the effective date of this AD, whichever occurs first.

(e) At the later of the times specified in paragraphs (e)(1) and (e)(2) of this AD: Install the terminating modification listed in Lockheed Service Bulletin 093–57–215, as referenced in Table II of Lockheed Service Bulletin 093–51–040, Revision 1, dated October 1, 1997. Such installation constitutes terminating action for the inspections required by AD 98–10–14, amendment 39–10526.

(1) Prior to the threshold specified in Lockheed Service Bulletin 093–57–203, Revision 5, dated April 22, 1996.

(2) Within 2 years or 2,000 flight cycles after the effective date of this AD, whichever occurs first.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 18, 1999.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16157 Filed 6–24–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 20

RIN 1076–AD85

Financial Assistance and Social Services Programs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The comment period on the Bureau of Indian Affairs' proposed rule to govern the Financial Assistance and Social Services Program is hereby extended to provide additional opportunity for public comment. In response to tribal requests for additional time, the comment period is extended for 60 days. The proposed rule was published in the **Federal Register** on May 6, 1999 (64 FR 24296).

DATES: The comment period is extended from July 6, 1999 to September 7, 1999.

ADDRESSES: Send comments to Bureau of Indian Affairs, Division of Social Services, 1849 C Street, NW, MS–4660–MIB, Washington, DC 20240, or telephone number (202) 208–2479.

FOR FURTHER INFORMATION CONTACT: Larry Blair, Chief, Division of Social Services, Bureau of Indian Affairs, 202–208–2479.

Dated: June 19, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–16251 Filed 6–24–99; 8:45 am]

BILLING CODE 4310–02–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–221–158; FRL–6366–6]

Approval and Promulgation of Implementation Plans; California—Owens Valley Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) submitted by the State of California for attaining the particulate matter (PM–10) national ambient air quality standards (NAAQS) in the Owens Valley Planning Area, along with the State's request for an extension to December 31, 2006 to attain the PM–10 NAAQS in the area.

EPA is proposing to approve the SIP revision and extension request under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary standards, and plan requirements for nonattainment areas.

DATES: Written comments on this proposal must be received by July 9, 1999.

ADDRESSES: Comments should be addressed to the EPA contact below. Copies of the State's submittal and other information are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the following location:

U. S. Environmental Protection Agency, Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, P.O. Box 2815, Sacramento, CA 95814.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514.

FOR FURTHER INFORMATION CONTACT: Larry Biland, U. S. Environmental Protection Agency, Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1227.

SUPPLEMENTARY INFORMATION:

I. Background

A. Executive Summary

1. The Particulate Matter Problem in Owens Valley

Owens Lake is located in Inyo County in eastern-central California. The lake is part of a chain of lakes formed during the late Pleistocene Epoch. In 1913, the Los Angeles Department of Water and Power (LADWP) completed an aqueduct system and began diverting the waters of the Owens River to the City of Los Angeles. By 1930, these diversions had drained Owens Lake almost completely dry.

Strong winds over the dry, alkaline bed of Owens Lake have produced among the highest measured concentrations of PM–10 ever recorded, more than 25 times the federal 24–hour standard.[1] Analysis of meteorological data and PM–10 samples in the Owens Valley Planning Area during days when violations are recorded shows that 94 percent of PM–10 concentrations come from the Owens Lake bed and another 5 percent come from reentrained Owens Lake dust already deposited in the area. Annual PM–10 emissions from Owens Lake may exceed 400,000 tons, and dust transport from the Lake can result in violations of the 24–hour PM–10 NAAQS more than 40 miles to the South.[2]

Approximately 40,000 permanent residents live in the area affected by Owens Lake particulate emissions. Included in this number are members of 4 tribes: the Lone Pine Paiute/Shoshone Tribe, the Fort Independence Tribe, the Big Pine Tribe, and the Bishop Tribe. Residents and visitors to the area suffer the health effects from high PM–10 concentrations, including lung damage, increased respiratory disease, and premature death. Children, the elderly, and people suffering from heart and lung disease, such as asthma, are especially at risk. Moreover, the dust from the lake bed contains carcinogenic compounds, including arsenic, nickel, and cadmium.[3]

Elevated levels of Owens Valley particulate matter harm visibility and vegetation as far as 150 miles away. Included in the impact area are 3 national parks (Death Valley, Kings Canyon, and Sequoia), 4 wilderness areas (Domeland, Golden Trout, John Muir, and South Sierra), 1 national historic site (Manzanar), and 2 national forests (Inyo and Sequoia). Finally, Owens Lake dust events adversely affect operations at China Lake Naval Air Weapons Station, since many of the Navy's operations require good visibility.[4]

2. The Owens Valley PM–10 Plan

On November 16, 1998, after over a decade of planning, research, analysis, and negotiation, the Governing Board of the Great Basin Unified Air Pollution Control District ("the District") unanimously adopted the 1998 Revision to the Owens Valley PM–10 Planning Area Demonstration of Attainment State Implementation Plan ("the 1998 SIP" or "the plan"). While the District was principally responsible for the plan, there were many participants in the planning process, including the California Air Resources Board (CARB), LADWP, the City of Los Angeles, the tribal governments, Federal land managers, the Navy, the State Lands Commission, and members of the public.

In preparing the 1998 SIP, the District and the other plan participants confronted one of the most challenging air quality problems: how to reduce peak PM–10 concentrations from almost 4000 micrograms per cubic meter (ug/m3) to the 24-hour NAAQS of 150 ug/m3.[5] While the origin of the PM–10 problem was well understood—the draining of Owens Lake by the City of Los Angeles in the early part of this century, and continued LADWP withdrawals from Owens River—the solution to the problem, particularly over the relatively short time allowed under the CAA, proved controversial.

Among the unique complexities of the Owens Valley PM–10 planning process are the competing authorities and responsibilities of the District to protect Owens Valley residents from the harmful effects of air pollution and the City of Los Angeles to provide its residents with an adequate water supply.

In 1983, the California Legislature attempted to resolve these contentious issues by enacting Senate Bill 270 (California Health and Safety Code section 42316). This law has the following provisions:

(a) it exempts water-gathering operations from State air quality permit regulations;

(b) it provides that the City of Los Angeles must fund control measure development and must implement reasonable measures ordered by the District to mitigate the impacts of its water diversion activities at Owens Lake, on the basis of substantial evidence establishing that the City's activities cause or contribute to violations of federal or State air quality standards;

(c) it prevents the District from mandating measures that affect the City's right to produce, divert, store, or convey water; and

(d) it provides opportunities for the City to appeal to CARB any measures or fees imposed by the District.

Before settling on the 3 primary control measures in the plan, the District examined many strategies but found them not to be feasible or effective in significantly reducing dust emissions from the lake bed. Rejected measures include use of sprinklers, chemical dust suppressants, surface compaction, sand fences, and brush fences.

In cooperation with LADWP, the District designed and issued a unique order to the City.[6] The order requires the City to implement 3 measures: shallow flooding, managed vegetation, and application of gravel cover. The order further provides that implementation will proceed in 2 increments, each divided into 3 phases, and covering the period 1999 through 2006.

Although small scale tests have been performed, the plan's technically difficult dust controls have never been applied over an area the size of the Owens Lake project—a 35-square mile control area within the 110-square mile lake bed.[7] For this reason, the order provides that the District will periodically assess the actual effectiveness of the controls, and will revise the SIP by December 31, 2003, to incorporate the knowledge gained by previous implementation of control measures, in order to ensure sufficient reductions to attain the NAAQS by 2006. EPA agrees with the District and the City that this empirical approach is appropriate in view of the area's challenging control strategies and unique emission reduction requirements.

As discussed below, EPA proposes to approve this SIP as a critically important blueprint for clean air in one of the country's most difficult PM–10 nonattainment areas. Primary credit for this remarkable achievement is shared by the District and LADWP, and successful plan implementation will require that both agencies continue to work effectively together. However, the other participating members of the public and the State's air pollution professionals should also be commended for assisting in the identification and refinement of the control approaches included in the plan, and their continued involvement will be vital as the plan is carried forward and evolves in the future.

B. CAA Requirements

The Federal CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. The most fundamental of these nonattainment area provisions applicable to Owens Valley is the requirement that the State submit a SIP demonstrating attainment of the PM–10 NAAQS. This demonstration must be based upon enforceable measures to achieve emission reductions leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area. The measures must meet the standard for Best Available Control Measures (BACM), and the measures must be implemented expeditiously and ensure attainment no later than the applicable CAA deadline.

EPA has issued a "General Preamble" describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. See 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992). EPA later issued an Addendum to the General Preamble providing guidance on SIP requirements for serious PM–10 areas. 59 FR 41998 (August 16, 1994). The reader should refer to these documents for a more detailed discussion of EPA's preliminary interpretations of Title I requirements. In this proposed rulemaking action, EPA applies these policies to the Owens Valley PM–10 SIP submittal, taking into consideration the specific factual issues presented.

C. Designation and Classification

On the date of enactment of the 1990 CAA Amendments, PM–10 areas, including the Owens Valley Planning Area, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. See 56 FR 11101 (March 15, 1991). The boundaries of the Owens Valley nonattainment area (Hydrologic Unit #18090103) are codified at 40 CFR 81.305.

Once an area is designated nonattainment, section 188 of the CAA outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including Owens Valley, were initially classified as moderate by operation of law. Section 188(b)(1) of the Act further provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot "practicably" attain the PM–10 NAAQS by this attainment date.

CARB submitted a moderate area PM–10 SIP for Owens Valley on January 9, 1992. Based on this submittal, EPA determined on January 8, 1993, that Owens Valley could not practicably attain by the applicable attainment deadline for moderate areas (December 31, 1994, per section 188(c)(1) of the Act), and reclassified Owens Valley as serious (58 FR 3334). In accordance with section 189(b)(2) of the Act, the applicable deadline for submittal of a SIP for Owens Valley addressing the requirements for serious PM–10 nonattainment areas in section 189(b) and (c) of the Act is February 8, 1997—4 years after the effective date of the reclassification (58 FR 3340–1).

D. Adoption and Submittal of the 1998 SIP

Because of controversy regarding appropriate control requirements, the plan was not adopted until November 16, 1998. Following adoption by the District, CARB also adopted the 1998 SIP and submitted it to EPA on December 10, 1998. On February 2, 1999, EPA deemed the submittal complete.[8]

Both the District and CARB satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption of the plan. The District conducted numerous public workshops and properly noticed the public hearing at which the plan was adopted. The SIP submittal includes proof of publication for notices of the public hearing. Therefore, EPA proposes to approve the 1998 SIP as meeting the public notice and involvement requirements of section 110(a)(1) of the CAA.

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[1] EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic mean of the 24–hour samples averaged over a 3-year period does not exceed 50 micrograms per cubic meter (ug/m3). The 24–hour PM–10 standard of 150 ug/m3 is attained if samples taken for 24–hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997, EPA reaffirmed the annual PM–10 standard, and slightly revised the 24–hour PM–10 standard (62 FR 38651). In the same action, EPA also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5).

This SIP submittal addresses the 24–hour and annual PM–10 standards as originally promulgated. A recent opinion issued by the U.S. Court of Appeals for the D.C. Circuit in American Trucking Assoc., Inc., et al. v. USEPA, No. 97–1440 (May 14, 1999), among other things, vacated the new standards for PM–10 that were published on July 18, 1997 and became effective September 16, 1997. However, the PM–10 standards promulgated on July 1, 1987 were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards in this area. Codification of those standards continues to be recorded at 40 CFR 50.6. In the notice promulgating the new PM–10 standards, the EPA Administrator decided that the previous PM–10 standards that were promulgated on July 1, 1987, and provisions associated with them, would continue to apply in areas subject to the 1987 PM–10 standards until certain conditions specified in 40 CFR 50.6(d) are met. See 62 FR 38701. EPA has not taken any action under 40 CFR 50.6(d) for the Owens Valley Planning Area.

[2] Owens Valley PM–10 Planning Area Demonstration of Attainment State Implementation Plan ("1998 SIP"), pp. S–5 and S–3.

[3] 1998 SIP, pp. S–3 and 3–12.

[4] 1998 SIP, pp. 3–13 through 3–15.

[5] A 24-hour PM–10 concentration of 3,929 ug/m3 was recorded at Keeler on April 13, 1995 (1998 SIP, p. A1–27).

[6] Great Basin Unified Air Pollution Control District Board Order #981116–01, November 16, 1998, adopted as part of Governing Board Resolution No. 98–05. The order and control measures are discussed in more detail below, in section I.F.

[7] The SIP control measures are discussed in detail in section I.F., below.

[8] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

E. Emissions Inventories

The plan includes 1995 baseline emissions inventories for peak 24-hour and annual emissions in tons per day. The inventory covers the expected control area for the plan, the southern half of the nonattainment area, which includes all sources that have been found to contribute to PM–10 violations. Because future emissions are not expected to change significantly in this rural and relatively undeveloped area, the attainment year inventories are assumed to be identical to the 1995 inventories.

The peak 24-hour PM–10 inventory includes 8,346 tons per day (tpd) from wind erosion on the exposed Owens dry lake bed; 516 tpd from off-lake sources of lake bed dust; and 42 tpd from prescribed burning. The Owens Valley inventory has insignificant emissions from major source categories in typical PM–10 nonattainment areas, including reentrained dust from motor vehicles (0.15 tpd unpaved roads, 0.19 paved roads), residential wood burning (0.24 tpd), and industrial facilities (0.23 tpd, plus a proposed soda ash project projected to emit 0.51 tpd). Secondary aerosols are also insignificant PM–10 sources in Owens Valley, and so the inventories are for primary particulate only.

Where appropriate, the District used EPA emission factors (Compilation of Air Pollution Emissions Factors, AP–42, USEPA, 1985). The District relied on permitted emissions for the area's 4 industrial facilities. Finally, the District developed specific emission algorithms for wind erosion based on wind tunnel studies (1998 SIP, section 4–3). The plan provides adequate documentation of the wind erosion emission factor development and validation.

EPA concludes that the emissions inventories are comprehensive, accurate, and current, and that they are consistent with EPA's guidance.[9] EPA proposes to approve the emissions inventories as meeting the requirements of section 172(c)(3) of the CAA.

F. Control Measures

1. Description of Control Measures

The plan includes 3 control measures, each of which is designed to reduce emissions from the Owens Lake bed. They are shallow flooding, managed vegetation, and gravel cover. The following is a brief summary of each of the measures, which are described at more length in Chapter 5 of the 1998 SIP.

[9] PM–10 Emission Inventory Requirements (EPA–450/2–93), USEPA 1993.

a. Shallow Flooding

This control measure consists of releasing water along the upper edge of the Owens Lake bed and allowing it to spread and flow down-gradient toward the center of the lake. To attain the required PM–10 control efficiency, the District concludes that at least 75 percent of each square mile of the control area must be wetted to produce standing water or surface saturated soil, between September 15 and June 15 of each year. The District estimates that a maximum of 4 acre-feet of water is required annually to control PM–10 emissions from an acre of lake bed.

To maximize project water use efficiency, flows to the control area will be precisely regulated so that only the exact amount of water is released to keep the soil wet. Although the quantity of excess water will be minimized through system operation, any water that does reach the lower end of the control area will be collected in berms keyed into lake bed sediments and pumped back to the outlets to be reused.

Shallow flooding will require the City to construct a large-scale water transmission, distribution, and outlet infrastructure; electrical power lines; access roads; and water control berms. The City will take appropriate steps to minimize adverse environmental impacts during this construction and after flooding. The project will include a program to remove any salt cedar (*Tamarix ramosissima*) and other undesirable non-native plant and grass species that invade wet playa areas. The City must also prevent disruption of shorebird breeding activities when water delivery is reduced on June 15 of each year. Finally, the City will design and implement mosquito abatement programs, including the erection of bat roosting structures, and will monitor the impact of any pesticide usage to ensure that mosquito control activities do not result in unacceptable rates of egg thinning and failure.

b. Managed Vegetation

This control measure consists of creating a farm-like environment containing a mosaic of small (approximately 4 to 20 acre) confined fields constructed of saltgrass (*Distichlis spicata*) that are irrigated with shallow pulses of water. The City will need to carefully monitor release of water to leach soils to within a level suitable for saltgrass. Saltgrass will be the only plant species to be introduced to the fields. It is tolerant of relatively high soil salinity, spreads rapidly via rhizomes, and provides good protective cover year-round even when dead or dormant. Saltgrass stands can subsist with minimal amounts of applied water during the summer. Dust control effectiveness should remain undiminished, provided that adequate irrigation has stimulated plant growth and has delivered stored water in the rooting zone during the spring months. Biological, mechanical, and chemical control methods will be used to remove pest plants and noxious grasses.

Program implementation will require construction of earthen infrastructure for water distribution, including ditches, berms, channels, and reservoirs that allow for level border irrigation strategies that leach and drain readily through the fractured structure of the soil. The drainage system will be designed and constructed to allow for mixing of fresh water and saline drain water to achieve an ideal irrigation salinity. This will serve to maintain a downward gradient of salts in the rooting column of the soil in order to prevent salt from the shallow water table from rising into the rooting zone by capillary action. The drainage system must also be managed to prevent the rise of the water table into the rooting zone. Finally, the project will involve construction of special areas for saturated evaporite deposits.

c. Gravel Cover

A 4-inch layer of coarse gravel laid on the surface of the Owens Lake playa will prevent PM–10 emissions by: (1) preventing the formation of efflorescent evaporite salt crusts, because the large spaces between the gravel particles interfere with the capillary forces that transport the saline water to the surface where it evaporates and deposits salts; and (2) raising the threshold wind velocity required to lift the large gravel particles so that transport of the particles is not possible by wind speeds typical of the Owens Lake area.

Gravel blankets can work effectively on essentially any type of soil surface. Under certain limited conditions of sandy soils combined with high groundwater levels, it may be possible for some of the gravel blanket to settle into lake bed soils and thereby lose effectiveness in controlling PM–10 emissions. To prevent the loss of any protective gravel material into lake bed soils, a permeable geotextile fabric may be placed between the soil and the gravel where necessary. This will prevent the loss of any gravel.

Gravel areas must be protected from water- and wind-borne soil and dust. The gravel blanket will be the last control measure to be implemented in order to eliminate wind-borne depositions. Gravel areas will be protected from flood deposits with flood control berms, drainage channels and desiltation and retention basins, which will ensure that the gravel blanket will remain an effective PM–10 control measure for many years.

To attain the required PM–10 control efficiency, 100 percent of all areas designated for gravel must be covered with a layer of gravel 4 inches thick. All gravel material shall be screened to a size greater than ⅜-inch in diameter.

d. Additional Measures

In addition to these three control measures, the City is authorized to implement one or more control measures of its choosing on 3.5 square miles of the lake bed in the "Dirty Socks" area, at the southern boundary of the lake and near State Highway 190. The controls placed in this area may be one of the 3 identified measures, modified versions of these measures, or other unidentified measures. The control measures placed in this area do not need to be approved by the District. However, if the City elects to apply controls in the Dirty Socks area, the City is responsible for assuring that the Dirty Socks control measures are integrated into an entire control strategy that meets the PM–10 NAAQS by December 31, 2006.

2. Implementation Schedule

The proposed control strategy will be implemented in 2 increments. The first increment will take place between November 16, 1998, and December 31, 2003. This requires the implementation of control measures on 16.5 square miles of the Owens Lake bed, unless the District finds that attainment is achieved by placing controls on a smaller area. During this time the emphasis will be on controlling those portions of the lake bed that are most emissive in terms of the frequency and severity of emissions. The focus will be on improving control measure efficiencies and on identifying those remaining areas of the lake bed that will continue to contribute to PM–10 NAAQS violations, if any.

The second increment will take place between January 1, 2004 and December 31, 2006. This will require implementation of any additional control measures necessary to provide for attainment of the PM–10 NAAQS by December 31, 2006.

The District commits to revise the SIP in 2003 to incorporate new knowledge and provide for attainment of the PM–10 NAAQS by December 31, 2006. If the District determines that additional or fewer controls are required to meet the NAAQS by December 31, 2006, the 2003 SIP will provide for implementation of the appropriate control measures for the final step of the control strategy.

3. BACM Requirement

The Owens Valley serious area SIP must include control measures consistent with the requirements for Reasonably Available Control Measures (RACM), Reasonably Available Control Technology (RACT), BACM, and Best Available Control Technology (BACT). RACM and RACT are control technology requirements applicable to moderate areas. The requirements for RACT and BACT, which apply to stationary and area sources, are generally not applicable within the Owens Valley area, in which all PM–10 sources except for wind erosion are *de minimis*. The 1998 SIP's BACM provision for wind erosion sources is more stringent than the RACM mandate.

EPA defines BACM as "the maximum degree of emissions reduction of PM–10 and PM–10 precursors from a source * * * which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant." General Preamble Addendum, 59 FR 42010 (August 16, 1994). EPA exempts from the BACM requirement *de minimis* source categories, which do not contribute significantly to nonattainment. 59 FR 42011. CAA section 189(b)(1)(B) requires that the plan contain provisions to assure that BACM for the control of PM–10 shall be implemented 4 years after the effective date of the reclassification, or by February 8, 1997.[10]

In the plan and in the appendices to the plan, the District has provided extensive documentation on both the control measures included in the plan and those rejected. The documentation quantifies the costs of construction, materials, operation, and maintenance, and examines other factors, including energy and environmental impacts. EPA agrees that adequate time must be allowed to carry out the control measures successfully, since the measures are uniquely vast in scale, materiel, and required construction activity. The District's order to the City establishes an aggressive, but phased, implementation schedule, which is shown to be as expeditious as practicable.

[10] Because the statutory BACM implementation deadline has passed, the plan must assure that BACM will be implemented "as soon as possible." *Delaney* v. *EPA*, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be "as soon as practicable." 55 FR 36458, 36505 (September 9, 1990).

4. EPA Proposed Action on Control Measures

EPA concludes that the plan demonstrates that:

(a) Only wind erosion emissions from the lake bed cause or contribute to PM–10 violations in the area and, hence, applying BACM to other source categories would not contribute significantly to achieving the NAAQS as expeditiously as practicable;

(b) The plan's 3 control measures for wind erosion are consistent with the BACM requirement in terms of the timing, degree, and extent of the control program; and

(c) There is insufficient evidence, at this time, to support the economic and technological feasibility of any alternative or additional measures for the control of wind erosion emissions in Owens Valley, even assuming the high degree of control stringency associated with the BACM requirement.

EPA therefore proposes to approve the control measures contained in the SIP under CAA section 110(k)(3), as meeting the requirements of CAA sections 110(a) and 189(b)(1)(B).

G. Reasonable Further Progress (RFP)

The plan must also include measurable milestones which are to be achieved every 3 years and show RFP toward attainment by the applicable attainment deadline. The District order to the City includes enforceable schedules for annual implementation of the specified control measures, beginning with the completion, by December 31, 2001, of the phase 1 control of 10 square miles. The order requires control of an additional 3.5 square miles by 2002; 3 square miles by 2003; and 2 square miles in each of the remaining 3 years through 2006.

EPA proposes to approve this aggressive and enforceable annual schedule as meeting the RFP requirements of CAA section 189(c).

H. Contingency Measures

The CAA requires that the SIP include contingency measures to be implemented if the area fails to meet progress requirements or to attain the NAAQS by the applicable deadline. As discussed above, the District commits to revise the SIP in 2003 to implement additional controls if necessary to attain the NAAQS by 2006. If in 2006 the District determines that the area will not attain by the end of that year, the District order requires the City to

implement controls on an additional 2 square miles of the Owens Lake bed each year. Implementation of this contingency measure is automatic, and requires no further action by the District or any other agency.

EPA concludes that the plan satisfies the contingency requirements, and proposes to approve the SIP's contingency provisions under section 172(c)(9).

I. Extension of the Attainment Deadline

CAA section 188(e) allows states to apply for up to a 5-year extension of the serious area attainment deadline of December 31, 2001. In order to obtain the extension, there must be a showing that: (1) Attainment by 2001 would be impracticable, (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area, and (3) the state demonstrates that the plan for the area includes the most stringent measures that are included in the SIP of any state or are achieved in practice in any state, and can feasibly be implemented in the area.

The 1998 SIP has demonstrated that the plan includes all feasible and effective control measures for wind erosion, and that the implementation schedule for the control measures is as expeditious as practicable, considering the massive projects that must be undertaken. EPA agrees that no other SIP contains measures and no other area implements measures for control of wind erosion that would be feasible and effective in the Owens Valley area. Finally, EPA believes that attainment could not feasibly be achieved before 2006. Therefore, EPA proposes to grant, under CAA section 188(e), a 5-year attainment date extension to December 31, 2006.

J. Attainment Demonstration

The SIP must provide a detailed demonstration (including air quality modeling) that the specified control strategy will reduce PM–10 emissions so that the standards will be attained as soon as practicable but no later than December 31, 2006, assuming final EPA approval of the attainment deadline extension. CAA section 189(b)(1)(A). EPA considers the area to be in attainment of the NAAQS if 24-hour concentrations are 150 ug/m3 or less and the annual arithmetic mean is 50 ug/m3 or less. See footnote 1. The attainment demonstration in the Owens Valley area focuses on the 24-hour NAAQS, since the area does not violate the annual NAAQS. The 3-year annual arithmetic mean for the most recent period (1996–1998) is 37.0 ug/m3.[11]

Air quality modeling techniques were applied to assess control scenarios developed by the District to reduce PM–10 concentrations and bring the airshed into attainment. The specific computer model used by the District is called the Industrial Source Complex Short-Term Version 3 model or ISCST3. ISCST3 is the EPA recommended dispersion model for regulatory assessment of fugitive dust sources (40 CFR part 51, appendix W). The modeling analysis itself comports with existing modeling guidelines.[12]

A performance evaluation was also conducted to determine the uncertainty and reliability of these modeling methods based on a comparison of model predictions with ambient PM–10 measurements. Chapter 6 of the 1998 SIP contains a detailed description of the air quality modeling used for the Owens Valley.

The objectives of the air quality modeling are:

(1) To conduct the dispersion modeling in accordance with the regulatory guidance for PM–10 SIPs using EPA recommended modeling tools and procedures.

(2) To perform an evaluation of the proposed dispersion modeling techniques using 2 years of ambient data and focus the evaluation on the higher observed 24-hour PM–10 concentrations. The performance evaluation was used to assess model uncertainty and aid in the selection of several aspects of the modeling procedures.

(3) To assess and refine control strategies until the modeling approach demonstrates attainment of the PM–10 NAAQS.

The air quality model shows that the proposed set of control strategies would reduce ambient PM–10 impacts at shoreline almost 97 percent. After implementation of the control strategies, the number of PM–10 exceedances at the shoreline will be less than one per year, which complies with the PM–10 standard.

To achieve the emission reductions necessary to meet the PM–10 standard, the controlled emission rate must be 1.25 metric tons of PM–10 per square kilometer per day (approximately 1.4 tons per 250 acres per day). This is based on the emissions for the design day meteorology on March 12, 1994. The 3 control measures (shallow flooding, managed vegetation and gravel) each would result in emissions below this controlled emission rate.

EPA concludes that the air quality modeling and attainment demonstration contained in the 1998 SIP are consistent with existing EPA guidelines. EPA proposes to approve the attainment demonstration under CAA section 189(b)(1)(A).

II. Summary of EPA's Proposed Action

EPA is proposing to approve the serious area PM–10 SIP submitted by the State of California for the Owens Valley PM–10 nonattainment area. Specifically, EPA is proposing to approve the 1998 SIP with respect to the CAA requirements for public notice and involvement under section 110(a)(1); emissions inventories under section 172(c)(3); control measures under section 110(k)(3), as meeting the requirements of sections 110(a) and 189(b)(1)(B); RFP and rate-of-progress milestones under section 189(c); contingency measure(s) under section 172(c)(9); and demonstration of attainment under section 189(b)(1)(A). EPA is also proposing to approve the State's request for an extension of the attainment date from December 31, 2001 to December 31, 2006, under CAA section 188(e).

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 18, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–16227 Filed 6–24–99; 8:45 am]

BILLING CODE 6560–50–P

[11] Preliminary information from EPA's Aerometric Information Retrieval System (AIRS). The 1998 SIP's wind erosion control measures should be effective in reducing not only 24-hour PM–10 concentrations but also annual concentrations, since primary and secondary wind erosion is 99 percent of the anthropogenic PM–10 emissions on an annual basis, and 99.5 percent on a 24-hour basis.

[12] PM–10 SIP Development Guideline (USEPA 450/2–86–001, 6/87); Guideline on Air Quality Models (Revised); Memorandum from Joseph Tikvart and Robert Bauman dated July 5, 1990.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–6367–2]

List of Regulated Substances and Thresholds for Accidental Release Prevention; Flammable Hydrocarbon Fuel Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 28, 1999, the Environmental Protection Agency proposed to modify the rule listing regulated substances and threshold quantities for the Risk Management Program (RMP) issued under section 112(r) of the Clean Air Act as amended. EPA proposed that regulated flammable hydrocarbon substances need not be considered in determining whether more than a threshold quantity is present when the substance is intended for use as a fuel and does not exceed 67,000 pounds in a process that is not manufacturing the fuel, does not contain greater than a threshold quantity of another regulated substance, and is not collocated or interconnected to another covered process. This notice extends the public comment period for the proposed rule.

DATES: The comment period for the proposed rule is extended from the

original closing date of June 28, 1999 to July 28, 1999.

ADDRESSES: Comments on the proposed rule should be mailed or submitted to: Environmental Protection Agency, Air Docket (6102), Attn: Docket No. A–99–18, Waterside Mall, 401 M St. SW, Washington, DC 20460. Comments must be submitted in duplicate. Comments may be submitted on disk in WordPerfect or Word formats.

FOR FURTHER INFORMATION CONTACT: James Belke, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, 401 M St. SW (5104), Washington, DC 20460, (202) 260–7314.

Dated: June 18, 1999.

Jim Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 99–16236 Filed 6–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6364–1]

Idaho: Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to codify in part 272 of Title 40 of the Code of Federal Regulations (CFR) Idaho's authorized hazardous waste program. EPA will incorporate by reference into the CFR those provisions of the State statutes and regulations that are authorized and federally enforceable. In the "Rules and Regulations" section of this **Federal Register**, the EPA is codifying and incorporating by reference the State's hazardous waste program as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this codification and incorporation by reference in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before July 26, 1999.

ADDRESSES: Mail written comments to Jeff Hunt, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail stop WCM–122, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail stop WCM–122, Seattle, WA 98101, phone number (206) 553–0256.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: June 9, 1999.

Chuck Findley,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 10.

[FR Doc. 99–16089 Filed 6–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6365–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

ACTION: Notice of intent to delete the Munisport Landfill Superfund Site from the National Priorities List (NPL); request for comments.

SUMMARY: EPA, Region IV, announces its intent to delete the Munisport Landfill Superfund (Site) in North Miami, Dade County, Florida, from the NPL and requests public comment on this action. The NPL constitutes Appendix B, 40 CFR Part 300; the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) promulgated by the United States Environmental Protection Agency (EPA) pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that all appropriate response actions under CERCLA have been implemented by the Potentially Responsible Party, the City of North Miami, and that no further response actions under CERCLA are needed. Moreover, EPA and the FDEP have determined that the remedial actions conducted at the Site to date are protective of human health and the environment, such that further federal response under CERCLA is not warranted.

DATES: Comments on the proposed deletion from the NPL should be submitted on or before July 26, 1999.

ADDRESSES: Comments may be mailed to: Kevin S. Misenheimer, Remedial Project Manager, South Site Management Branch, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 61 Forsyth St., SW, Atlanta, Georgia 30303.

Comprehensive information on this Site is available through the EPA, Region IV, public docket located at the regional office. The deletion docket is available for viewing, by appointment, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the EPA regional office should be directed to Debbie Jourdan, EPA, Region IV, docket office at 61 Forsyth St, SW, Atlanta, Georgia 30303. Ms. Jourdan may also be contacted by telephone at (404) 562–8862.

The Deletion Docket and background information from the regional public docket is also available for viewing at the Site information repository located at Florida International University, North Campus Library, 3000 NE 145th St, North Miami, FL 33181–3601. Appointments can be scheduled to review the documents locally by contacting the library at (305) 919–5726.

FOR FURTHER INFORMATION CONTACT: Kevin S. Misenheimer, Remedial Project Manager, EPA, Region IV, 61 Forsyth St. SW, Atlanta, Georgia 30303, (404) 562–8922.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA, Region IV, announces its intent to delete the Munisport Landfill Superfund Site from the NPL (Appendix B of the NCP), and requests public comment on this proposed action. EPA identifies sites that pose a significant threat to public health, welfare, or the environment and maintains an inventory of these sites through the NPL. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to 40 CFR 300.66(c) (8), any site deleted

from the NPL remains eligible for Fund-financed remedial actions if new or changing conditions warrant such actions.

In view of EPA's findings from the Remedial Investigation (RI) and Baseline Risk Assessment, and based on the results from the 1996 reassessment of the Preserve, there is nothing that would prevent unlimited use and unrestricted exposure at the site pursuant to CERCLA. Therefore, no five-year review of the site is needed. EPA believes data used to make this determination is consistent with, and in some cases exceeds, the database used to develop the original Record of Decision (ROD). EPA will accept comments concerning the proposed deletion of this site from the NPL until July 26, 1999.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the Munisport Landfill Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), releases may be deleted from the NPL where no further response is appropriate. In making this determination, EPA shall consider, in consultation with the State, whether any of the following criteria are met:

- Responsible or other parties have implemented all appropriate actions required; or
- All appropriate Fund-financed responses under CERCLA have been implemented, and no further cleanup by responsible parties is appropriate, or
- The remedial investigation has shown that the release poses no significant threat to public health, welfare, or the environment, and therefore, the taking of additional remedial measures is not appropriate.

III. Deletion Procedures

EPA, Region IV, will accept and evaluate public comments before making a final decision to delete this Site from the NPL. Comments from the local community may be the most pertinent to the deletion decision. The following procedures were used for the intended deletion of this Site:

- All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate.
- EPA, Region IV, has recommended deletion and has prepared the relevant documents.
- The State has concurred with the proposed deletion decision.
- Concurrent with this National Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete.
- The Region has made all relevant documents available in the Regional Office and local site information repository.

Deletion of a site from the NPL does not itself, create, alter, or revoke an individual's rights or obligations. The NPL is designed primarily for information purposes and to assist Agency management. As mentioned in Section II of this document, 40 CFR 300.425(e)(3) provides that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions nor does it preclude future State action pursuant to State law.

The comments received on EPA's Notice of Intent to Delete during the notice and comment period will be evaluated by EPA before making the final decision to delete. The Region will prepare a Responsiveness Summary, if necessary, to address any comments received during the public comment period.

A deletion occurs when the EPA Regional Administrator publishes a final document in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following this Notice of Intent. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region IV.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this site from the NPL.

The Munisport Landfill is the location of a former municipal landfill that operated from 1974 to 1981. The landfill resulted from the filling of low-lying wetland areas with construction debris and solid waste in an effort to raise the elevation of the land for the construction of a cultural and trade center known as Interama. Failure of the Interama project led to subsequent municipal development efforts by Munisport, Inc. The United States Environmental Protection Agency (EPA) first became involved with this project in the late 1970's when it opposed the Army Corps of Engineers' plans for a modification of the developer's dredge and fill permit to allow for the use of solid waste as fill material, in addition to the already permitted construction debris. Due to the potential for the release of hazardous substances, pollutants, or contaminants to the environment, EPA placed the Site on the National Priorities List (NPL) in 1983 for cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

EPA's thorough investigation of the site during the late 1980's led EPA to the conclusion that, although the Site did not pose a threat to human health, the migration of landfill-leachate to the underlying groundwater and adjacent wetland posed a significant threat to the environment. This was due to the fact that the leachate-contaminated groundwater contained elevated levels of un-ionized ammonia which is highly toxic to aquatic organisms. Although other chemicals were detected in the leachate, concentrations of these chemicals were below levels that would present a threat to the environment. In an effort to abate the threat posed by the ammonia-contaminated leachate, EPA issued a Record of Decision (ROD) for the Munisport Landfill Superfund Site in July 1990. The ROD provided for the interception of leachate-contaminated groundwater through a hydraulic barrier prior to its discharge to the adjacent wetlands. The remedy also provided for the tidal restoration of a portion of wetlands that are a part of the Biscayne Bay Aquatic Preserve (i.e., State Mangrove Preserve) and a portion of wetlands that were hydrologically altered by the former construction of a dike during the landfill operations (i.e., altered wetlands). The City of North Miami subsequently entered into a Consent Decree with the United States of America in 1991 to perform the cleanup prescribed in the ROD. The Superfund Site was defined in the ROD as the release of hazardous substances from the landfill into the Mangrove Preserve and that portion of the landfill needed to implement the CERCLA remedy.

Through the mid-1990s, the City completed the tidal restoration of the State Mangrove Preserve, construction of a service road, and installation of the wells for the hydraulic barrier. Removal of two 40-foot wide sections of the causeway and 60-inch culverts originally installed in the late-1960's was completed in 1995, thus restoring the tidal flow from Biscayne Bay with the State Mangrove Preserve. Monitoring of the surface water quality in Biscayne Bay and the Preserve was conducted both before and after the removal of the two sections of the causeway. Results of the water sampling conducted as part of the surface water

monitoring indicated that the tidal restoration of the Mangrove Preserve had a greater affect on the mitigation of the toxicity of the landfill leachate to aquatic organisms in the preserve than originally anticipated.

Reassessment of water quality and toxicity in the Mangrove Preserve showed that there has been a significant reduction in the ammonia contamination and toxicity formerly documented by EPA in the *Water Quality and Toxic Assessment Study, Mangrove Preserve, 1989*, report. The scope of the reassessment incorporated critical elements of the 1989 study and was refined based on information collected during the remedial design studies and treatability studies. Most importantly, EPA concluded that these studies established the cause of the toxicity documented in the 1989 study. Concerns had been expressed by EPA, other agencies, and members of the community that not all of the toxicity documented in 1989 may have been the result of elevated levels of ammonia and that some of the toxicity may be associated with elevated levels of metals, organic compounds, or other toxicants. However, EPA has concluded that data collected during the design and treatability study show that the toxicity documented in the 1989 studies was the result of elevated levels of ammonia, potentially compounded by low levels of dissolved oxygen in the water.

The 1996 reassessment included screening of 12 sampling locations, which were monitored in the 1989 study, for the presence of ammonia and other water quality parameters. Four samples were collected from the Preserve that represented a range of high to low ammonia concentrations. Samples were also collected from the confluence of the east and west causeway breaches in Biscayne Bay and three reference points in Biscayne Bay. Samples were collected from these stations during high and low tides. The samples were analyzed for ammonia, organic compounds, metals, pesticides, and polychlorinated biphenyls. Toxicity tests were also conducted using a coastal minnow, *Menidia beryllina*, and a single cell species of algae, *Minutocellus polymorphus*. Changes in the hydrology of the Mangrove Preserve were also evaluated. Results from the 1996 reassessment confirmed that implementation of the Mangrove Preserve tidal restoration component of the remedy substantially reduced the ammonia concentrations and toxicity formerly documented in the surface waters of the Preserve. Due to concerns that the ammonia levels and toxicity may have been masked by summer rainfall, EPA resampled the Preserve locations on March 6, 1997, during an extended dry period. The samples were analyzed for ammonia and were consistent with the data collected in August 1996.

EPA believes that results from the August 1996 and March 1997 studies confirm that indeed there has been a significant reduction in the ammonia levels and toxicity originally documented in the 1989 study, such that no further action under Superfund is warranted. A copy of the *Water Quality and Toxicity Reassessment Study, Mangrove Preserve, Munisport Landfill, April 1997*, report, which provides a detailed discussion of the results, is available for review in the Deletion Docket for this site.

As a result of this determination, a no further action amendment to the ROD under CERCLA was signed September 5, 1997. Therefore, cleanup of the site under CERCLA is now complete. Issuance of the ROD Amendment serves as certification of completion of all remedial activities at the Munisport Landfill Site, as well as, a final Site Close-Out Report. No institutional controls, long-term groundwater monitoring, or Five-Year Reviews, are required under CERCLA, because no hazardous substances remain at the Site as defined in the ROD that would result in unlimited use and restricted exposures.

Community Involvement

The Munisport Landfill Superfund project has involved extensive community participation dating back to the early 1980's. Over the years various community-based organizations such as homeowner associations and activist groups, as well as, local chapters of national environmental organizations have commented on various aspects of the project. Sections 5.0 and 3.0 of the ROD and ROD Amendment, respectively, describe the extensive community involvement that has occurred over the years.

After the issuance of the ROD, EPA continued to involve the community in the remedial process. The community's main group is the Munisport Dump Coalition (MDC), the recipient of a Technical Assistance Grant (TAG) from EPA. Through the MDC, the community has had an opportunity to comment on documents required by the National Contingency Plan (NCP), and other documents relating to the design and construction of components of the remedy set forth in the ROD. In an effort to encourage community participation throughout the process, EPA has issued several deviations from the original $50,000 grant, bringing the total funding for the TAG to $150,000.

In addition to the coordination with the MDC, EPA has also worked with representatives of local groups such as the Friends of the Oleta River, Keystone Point Homeowners Association, Highland Village Homeowners Association, Florida and Tropical Audubon Societies, and Concerned Citizens for the Public Use of Munisport. EPA has also held numerous public and technical meetings and issued numerous fact sheets to keep the community apprized of the progress and to solicit input during the design and construction process.

The community has also been involved in this project through the Consent Decree entered by the United States District Court in 1992. Although the only parties to the Consent Decree are the United States of America and the City of North Miami, the District Court has allowed interested non-parties in the community to file information and express concerns with regard to the implementation of the remedy set forth in the ROD.

Applicable Deletion Criteria

One of the three criteria for site deletion, 40 CFR 300.425(e)(l)(ii), specifies that EPA may delete a site from the NPL if "all appropriate Fund-Financed Response under CERCLA has been implemented, and no further response action by responsible parties is appropriate". EPA, with the concurrence of FDEP, believes that this criterion for deletion has been met and the site is protective of human health and the environment. Subsequently, EPA is proposing the deletion of this site from the NPL. Documents supporting this action are available for review in the docket.

State Concurrence

The Florida Department of Environmental Protection concurs with the proposed deletion of the Munisport Landfill Superfund Site from the NPL. Although EPA issued an amendment to the ROD in September 1997 that provided for no further action under CERCLA, proper closure of the landfill and response to groundwater contamination is warranted in accordance with State and local regulations. EPA continues to encourage the State and County in this effort. Reports that contain extensive Site characterization information are available for review, along with the ROD and ROD Amendment, in the Administrative Record for this Site and are located with the deletion docket.

Dated: May 26, 1999.

John H. Hankinson, Jr.,

Regional Administrator, Region IV.

[FR Doc. 99–15976 Filed 6–24–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 515, 520, 530 and 535

[Docket No. 99–10]

Ocean Common Carriers Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations implementing the Shipping Act of 1984 to clarify the definition of "ocean common carrier" to reflect the Commission's current interpretation of the term. As a result, only ocean common carriers that operate vessels in at least one United States trade will be subject to these rules.

DATES: Comments due August 24, 1999.

ADDRESSES: Send comments (original and fifteen copies) to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: In one of its several rulemaking proceedings to implement the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902 ("OSRA"), the Federal Maritime Commission ("FMC" or "Commission") proposed to amend its regulations governing agreements among ocean common carriers and marine terminal operators. Docket No. 98–26, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984*, 64 FR 11236, March 8, 1999. One of the proposed changes was a new definition of "ocean common carrier" to address perceived deficiencies in the definition of that term contained in section 3(16) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1702(16), ("a vessel-operating common carrier"), and to clarify the dividing line between ocean common carriers and non-vessel-operating common carriers ("NVOCCs"). The proposed rule sated that:

> *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

The Commission received comments on this particular aspect of the proposed rule from Croatia Line and the Council of European & Japanese National Shipowners Association ("CENSA"). While generally supporting the Commission's proposed definition, CENSA suggested that it be further clarified to include a carrier that provides part of a vessel service in a U.S. trade. In addition, Croatia Line claimed that the Commission failed to disclose the facts necessitating such a change, and failed to discuss the effects of the changes on regulated parties. Croatia Line also argued that the proposed definition would adversely affect it, since it is party to two space charter agreements and does not operate vessels making direct calls at U.S. ports. It further argued that the proposal was contrary to the clear language of the 1984 Act and well-established precedent. Croatia Line suggested that changes not required by OSRA should not be subject to such a short comment period.

In light of these comments, and the absence of additional comments from other potentially affected parties, the Commission decided to provide an additional opportunity to comment, 64 FR 11236, March 8, 1999. Accordingly, the Commission is initiating this rulemaking proceeding to further consider the definition of "ocean common carrier." In addition, because the definition of ocean common carrier appears not only in the agreement rules but also in the rules governing ocean transportation intermediaries (part 515), tariffs (part 520), and service contracts (part 530), the Commission is proposing to adopt a definition that is consistent for all rules.

As explained in the preamble to the proposed rule in Docket No. 98–26, the amended definition of "ocean common carrier" is proposed to resolve uncertainty generated by the 1984 Act's definition, which is simply "a vessel-operating common carrier." At issue is how to distinguish between ocean common carriers and NVOCCs. The distinction, which was first codified in 1984, has significant implications, inasmuch as the 1984 Act affords ocean carriers, but not NVOCCs, antitrust immunity and other rights and responsibilities, including the ability to offer service contracts. The need for clarity in this area is continued by OSRA, which continues to differentiate between vessel-operating and non-vessel-operating lines with regard to service contracting and other areas.

At first glance, it is difficult to see the ambiguity in the phrase "vessel-operating." However, the Commission's staff has encountered a number of complex situations regarding where and when vessels are operated, and what types of vessels are involved. In this regard, various bureaus have taken the position that an "ocean common carrier" is a common carrier that, in providing a common carrier service, operates a vessel calling at a U.S. port. Moreover, if a carrier is an ocean common carrier in one U.S. trade, it has been reasoned, it is an ocean common carrier for all U.S. trades. For example, if a carrier operates vessels from the U.S. East Coast to northern Europe, it has the legal "status" of ocean common carrier to enter into space charter agreements for any U.S.-foreign trade.

The proposed definition codifies this approach. It would continue the practice of determining status on a multi-trade basis (*i.e.*, an ocean common carrier in one U.S. trade has that status in all U.S. trades). Any interpretation of the statute requiring status determinations to be made on a trade-by-trade basis would be administratively impractical and might prompt less than efficient redeployment of vessels in the U.S. trades solely to meet regulatory requirements.

The proposed definition would also clarify the issue of whether companies that operate vessels only outside the U.S.—*i.e.*, they have no vessel operations to U.S. ports—can be deemed "ocean common carriers." It appears from the legislative intent of the 1984 Act that Congress viewed vessel operators as those whose vessels call at U.S. ports and classified all other common carriers in U.S. commerce as non-vessel-operating common carriers. For example, in its report on the 1984 Act, the Senate Commerce, Science, and Transportation Committee observed:

> The Committee strongly believes that it is in our national interest to permit cooperation among carriers serving our foreign trades to permit efficient and reliable service. * * * Our carriers need; a stable, predictable, and profitable trade with a rate of return that warrants reinvestment and a commitment to serve the trade; greater security in investment * * *.

S. Rep. No. 3, 98th Cong., 1st Sess. 9 (1983). We do not believe that Congress intended to provide special privileges or protections to carriers that have not made the financial commitment to providing vessel service to the United States.

A definition of ocean common carrier that encompassed companies that operate vessels only in foreign-to-foreign trades would substantially broaden the scope of antitrust immunity potentially to include a number of small operators whose wholly foreign vessel operations would be difficult for the Commission to monitor or verify. Such a finding would remove such companies from the scope of the Act's NVOCC bonding requirements, even though they have no vessels or assets in the United States that can be attached to satisfy a Commission or U.S. court judgment. Such an approach would also seem to contravene the longstanding judicial policy of narrowly construing antitrust exemptions. *See, e.g., Federal Maritime Commission* v. *Seatrain Lines, Inc.*, 411 U.S. 726, 733 (1973). In addition, from the text of the Act, it appears likely that when Congress used the unadorned term "vessel" in the definition of ocean common carrier, it was referring to the vessels specified in the definition of common carrier, *i.e.*, those that operate on the high seas or Great Lakes between the United States and a foreign country.

The proposed definition would continue the policy that the vessels in question must be used in a common carrier service. If an NVOCC operates tankers or tramp vessels, wholly apart from its common carrier service, it does not secure ocean common carrier status from those vessel operations.

The Chairman certifies, pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that the proposed rules will not, if promulgated, have a significant impact on a substantial number of small entities. The affected universe of parties is limited to ocean common carriers or passenger vessel operators. The Commission has determined that these entities do not come under the programs and policies mandated by the Small Business Regulatory Enforcement Fairness Act as they typically exceed the threshold figures for number of employees and/or annual receipts to qualify as a small entity under Small Business Administration Guidelines.

List of Subjects

46 CFR Part 515

Exports; Freight forwarders; Non-vessel-operating common carriers; Ocean transportation intermediaries; Licensing requirements; Financial responsibility requirements; Reporting and recordkeeping requirements.

46 CFR Part 520

Common carrier; Freight; Intermodal transportation; Maritime carriers; Reporting and recordkeeping requirements.

46 CFR Part 530

Freight; Maritime carriers; Reporting and recordkeeping requirements.

46 CFR Part 535

Administrative practice and procedure; Maritime carriers; Reporting and recordkeeping requirements.

Therefore, for the reasons set forth above, Parts 515, 520, 530, and 535 of Subchapter C of Title 46 Code of Federal Regulations, are proposed to be amended as follows:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1710, 1712, 1714, 1716, and 1718, 21 U.S.C. 862; Pub. L. 105–383, 112 Stat. 3411.

2. In § 515.2 revise paragraph (m) to read as follows:

§ 515.2 Definitions

* * * * *

(m) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

PART 520—CARRIER AUTOMATED TARIFF SYSTEMS

1. The authority citation for part 520, is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1702, 1707–1709, 1712, 1716; sec. 424 of Pub. L. 105–383, 112 Stat. 3411.

2. In § 520.2 revise the definitions of ocean common carrier to read as follows:

§ 520.2 Definitions

* * * * *

Ocean common carrier means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lake between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

PART 530—SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1704, 1705, 1716.

2. In § 530.3 revise paragraph (n) to read as follows:

§ 530.3 Definitions.

(n) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

PART 535—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHERS SUBJECT TO THE SHIPPING ACT OF 1984.

1. The authority citation for part 535 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1704, 1706–1707; 1709–1710, 1712 and 1714–1717.

2 Revise § 535.101 to read as follows:

§ 535.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (5 U.S.C. 553), sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, and 17 of the Shipping Act of 1984 ("the Act"), and the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902.

3. In § 535.104 revise paragraph (u) to read as follows:

§ 535.104 Definitions.

* * * * *

(u) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

By the Commission.

Byrant L. VanBrakle,

Secretary.

[FR Doc. 99–16036 Filed 6–24–99; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 1121

[STB Ex Parte No. 527 (Sub-No. 2)]

Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) is proposing to modify the regulations concerning exemption and revocation proceedings. The proposal would clarify when additional information or public comment will be sought in response to a petition for a class exemption or a petition for an individual exemption.

DATES: Comments are due July 26, 1999.

ADDRESSES: Send comments referring to STB Ex Parte No. 527 (Sub-No. 2) to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 565–1567. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: The Board's predecessor, the Interstate Commerce Commission (ICC), issued rules concerning exemption and revocation proceedings in *Rail Exemption Procedures*, 8 I.C.C.2d 114 (1991). These rules generally codified the procedures for handling rail exemption petitions issued in *Modification of Procedure for Handling Exemptions Filed under 49 U.S.C. 10505*, Ex Parte No. 400 (ICC served Dec. 29, 1980, and Jan. 21, 1981).

In response to changes resulting from the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995) (ICCTA), the Board modified its rail exemption procedures in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, Ex Parte No. 527 (STB served Oct. 1, 1996) *(Expedited Procedures)*, modified by decision served Nov. 15, 1996, *aff'd sub nom. United Transp. Union-Ill. Legis. Bd.* v. Surface Transp. Bd., 132 F.3d 71 (D.C. Cir. 1998). As relevant here, the current regulations (49 CFR 1121.4(c))] state:

> If the impact of the proposed exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, or a class exemption is sought, the Board will:
>
> (1) Direct that additional information be filed; or
>
> (2) Publish a notice in the **Federal Register** requesting public comments.

Other than updating the language to refer to the Board rather than the ICC, this rule is identical to the former rule at 49 CFR 1121.4(d) except that it specifically states that the Board will seek additional information or public comments when a class exemption is sought, and it does not contain the phrase "in its discretion" but rather states that the agency "will," rather than "may," seek additional information or public comment.[1]

In our decision in *San Joaquin Valley Railroad Company—Abandonment Exemption—In Kings and Fresno Counties, CA*, STB Docket No. AB–398 (Sub-No. 4X) (STB served Mar. 5, 1999) (*San Joaquin*), slip op. at 7 (emphasis supplied), we noted that "(s)ection 1121.4(c)(1) * * * can be interpreted as mandating that the Board seek comments in situations where a class exemption is sought, and whenever the impact of a proposed individual exemption cannot be determined or if there would be significant adverse impacts if an exemption were granted." But we stated that, while the filing of additional comments would be sought for class exemption requests, we have the discretion to determine whether additional evidence would be necessary in individual exemption proceedings:

> Our discussion of this matter in Expedited Procedures at 14 and n.23 does not state that we wished to cede our discretion to seek comments in individual exemption requests, and we could not have intended such a result in modifying §1121.4(c)(1). While the rule and the language might be literally read to require solicitation of comments, it cannot be logically interpreted to do so. To follow such an interpretation, the Board could never deny a petition if it believed that significant adverse impacts would result from the grant of an individual exemption. Instead, we would be required to continually seek additional information where a petitioner had failed to show that the applicable statutory requirements had been met, unless, at some point, the petitioner were to actually make the necessary showing. *Id.*

We indicated in San Joaquin that we would clarify the § 1121.4(c)(1) issue in a separate proceeding. *Id.*

Accordingly, we propose to modify §1121.4(c) to make clear the treatment that will be accorded petitions for class exemptions and individual exemptions. Class exemptions are codified in the Code of Federal Regulations and are rules of general applicability and, accordingly, public comment is necessary before such an exemption is granted. Thus, when a class exemption is sought, we will require that additional information or public comments be filed before granting the new class exemption. This is consistent with our statement in *Expedited Procedures* at 14 (footnote omitted) that we would "provide for public comment in all class exemption requests." We also propose to modify the rule to state that seeking public comment is not required to deny the petition. Petitioners have an initial burden of showing that a class exemption proceeding is warranted, and if they fail to meet this burden, it serves no purpose to require us to seek additional evidence (although we retain the discretion to do so.)

We are also proposing to modify the rule to make clear that where the impact of an individual exemption cannot be ascertained from the petition or if significant adverse impacts might occur if the individual exemption were granted, we have the discretion to seek additional information or comment. In light of our discussion in *San Joaquin* (indicating the possibility of our repeatedly seeking additional evidence), this revision would rationalize the rule.

In most situations involving individual exemptions, the record will be sufficient to enable us to determine whether to grant or deny the petition. In cases where the determination to grant or deny a petition is not clear-cut, the modification we are proposing would allow us, in our discretion, to seek further information. The proposed rule comports with traditional ICC and Board practice.

Because these proposed modifications are simply clarifications of the rule and do not entail any substantive changes to Board procedures, we believe that we could adopt the modifications without notice and comment.[2] Nevertheless, we will allow interested persons to comment on our proposal.

The Regulatory Flexibility Act does not apply to this action, because, as noted above, the Board is not required to publish a notice of proposed rulemaking. See 5 U.S.C. 603.

[1] Former 49 CFR 1121.4(d) read:

> If the impact of the proposed exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Commission, in its discretion, may:
>
> (1) Direct that additional information be filed; or
>
> (2) Publish a notice in the **Federal Register** requesting public comments.

[2] Under the Administrative Procedure Act, "interpretative rules, general statements of policy and rules of agency organization, procedure, or practice" are exempted from requirement of notice and comment. 5 U.S.C. 553(b)(A).

Nevertheless, we certify that the proposed rule will not have a significant economic impact on a substantial number of small entities, because it constitutes no substantive change to Board procedures.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1121

Administrative practice and procedure, Rail exemption procedures, Railroads.

Decided: June 15, 1999

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1121 of the Code of Federal Regulations is amended to read as follows:

PART 1121—RAIL EXEMPTION PROCEDURES

1. The authority citation for part 1121 is revised to read as follows:

Authority: 49 U.S.C. 10502 and 10704.

2. In § 1121.4, paragraph (c) is proposed to be revised to read as follows:

§ 1121.4 Procedures.

* * * * *

(c)(1) If the impact of the proposed individual exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Board may, in its discretion:

(i) Direct that additional information be filed; or

(ii) Publish a notice in the **Federal Register** requesting public comments.

(2) If a class exemption is sought, the Board will publish a notice in the **Federal Register** requesting public comments before granting the class exemption. The Board may deny a request for a class exemption without seeking public comments.

* * * * *

[FR Doc. 99–16130 Filed 6–24–99; 8:45 am]

BILLING CODE 4915–00–P

Notices

Federal Register

Vol. 64, No. 122

Friday, June 25, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to limit the number of licenses granted for U.S. Patent Nos. 4,871,615 (S.N. 06/818,567), 4,851,291 (S.N. 07/055,476) and 4,908,238 (S.N. 07/371,779), all entitled, "Temperature Adaptable Textile Fibers and Method of Preparing Same," to the two licenses previously granted to Wisconsin Global Technologies, Ltd. of Black River Falls, Wisconsin and to Bayshore Absorbent Products, Inc. of New York, New York. The Agricultural Research Service intends to grant no additional licenses for these patents. Notice of Availability for Serial Nos. 06/818,567 and 07/055,476 was published in the **Federal Register** on July 18, 1990. Serial No. 07/371,779 is a division of Serial No. 07/055,476.

DATES: Comments must be received on or before August 24, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Wisconsin Global Technologies, Ltd. and Bayshore Absorbent Products, Inc. have each submitted complete and sufficient applications for a license. The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive licenses may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 99–16211 Filed 6–24–99; 8:45 am]

BILLING CODE 3410–03–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 26, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Food Service

Fort Lee, Virginia
NPA: Goodwill Services, Inc., Richmond, Virginia

Grounds Maintenance

U.S. Environmental Protection Agency, Western Ecology Division, Environmental Effects Laboratory, 200 SW 35th Street, Willamette Research Station, 1350 SE Goodnight Avenue, Corvallis, Oregon
NPA: Willamette Valley Rehabilitation Center, Lebanon, Oregon

Janitorial/Custodial

DLA Gadsden Depot, Gadsden, Alabama
NPA: Darden Rehabilitation Foundation, Gadsden, Alabama

Janitorial/Custodial

U.S. Army Reserve Center, Danbury, Connecticut
NPA: Greater Enfield Allied Rehabilitation Centers, Inc., Enfield, Connecticut

Janitorial/Custodial

Centers for Disease Control and Prevention, Chamblee and Lawrenceville, Georgia
NPA: Goodwill Industries of Atlanta, Inc., Atlanta, Georgia

Janitorial/Custodial

U.S. Fish and Wildlife Service, Wallkill River National Wildlife Refuge Office, 1547 County Rte 565, Sussex, New Jersey
NPA: SCARC, Inc., Augusta, New Jersey

Janitorial/Custodial

Basewide (excluding Gymnasium), Fort Sam Houston, Texas
NPA: Development Resources, Inc., San Antonio, Texas

Laundry and Dry Cleaning Services

Fort Belvoir, Virginia
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia

Mailroom Operation

Department of Housing and Urban Development, Russell Federal Building, Atlanta, Georgia
NPA: Nobis Enterprises, Inc., Marietta, Georgia

Management Services

U.S. Department of Housing & Urban Development, 1600 North Broadway, Santa Ana, California
NPA: Pacific Coast Community Services, Alameda, California

Operation of Postal Service Center

MacDill Air Force Base, Florida
NPA: JobWorks, Inc. St. Petersburg, Florida

Recycling Service

Davis-Monthan Air Force Base, Arizona
NPA: Arizona Training Program at Tucson, Tucson, Arizona

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodities to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Pillowcase, Disposable
6532–01–125–3269
Blanket, Bed/Bath (Flame Resistant)
7210–01–141–2458
Cover, Mattress (Plastic)
7210–00–082–5739

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–16212 Filed 6–24–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 26, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 29, April 16 and May 7, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 F.R. 4638, 18877 and 24570) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services

GSA Regional Emergency Management Control Center, GSA Complex, Auburn, Washington

Commissary Shelf Stocking, Custodial and Warehousing

McChord Air Force Base, Washington

Janitorial/Custodial

Basewide, Fort Carson, Colorado

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot

Deputy Director (Operations).

[FR Doc. 99–16213 Filed 6–24–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1042]

Expansion of Foreign-Trade Zone 15; Kansas City, MO

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 15, submitted an application to the Board for authority to expand FTZ 15 to include eight sites in Chillicothe, Missouri, within the Kansas City Customs port of entry (FTZ Docket 82–97, filed 12/15/97; amended 11/8/98 to withdraw three of the proposed sites);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 205, 1/5/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is limited to three sites subject to certain conditions;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 15 is approved in part, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the following limitations and restrictions:

1. Approval is limited to Sites 7a (MidWest Quality Gloves, Inc.), 7b (Chillicothe-Brunswick Rail Yard), and 7c (Chillicothe Industrial Park);

2. Site 7a is approved for a period ending May 31, 2002;

3. Authority for each of Sites 7b and 7c shall be subject to a sunset provision that terminates the authority for the site on May 31, 2004, unless the site is activated pursuant to 19 CFR Part 146 of the U.S. Customs Service regulations;

4. Sites 7d, 7e, 7f, 7g and 7h are not approved; and,

5. The overall zone project is subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 17th day of June, 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–16246 Filed 6–24–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1038]

Grant of Authority for Subzone Status; Borg-Warner Automotive Powertrain Systems Corporation (Automotive Transfer Cases); Seneca, SC; Correction

The **Federal Register** notice (64 FR 32845, 6–18–99) describing Foreign-Trade Zones Board Order 1038 (approved 6–3–99) authorizing special-purpose subzone status for the automotive transfer case manufacturing plant of Borg-Warner Automotive Powertrain Systems Corporation (Inc.) (Subzone 38B), located in Seneca, South Carolina, is corrected as follows:

Paragraph 4, Sentence 1, should read "* * * (FTZ Docket 33–98, filed 6–23–98);"

Dated: June 21, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–16247 Filed 6–24–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 31–99]

Foreign-Trade Zone 149—Freeport, Texas; Application for Foreign-Trade Subzone Status; Dow Chemical Company (Petrochemical Complex), Brazoria County, Texas

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Brazos River Harbor Navigation District, grantee of FTZ 149, requesting special-purpose subzone status for the petrochemical complex of Dow Chemical Company (Dow), located in Brazoria County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 15, 1999.

The Dow petrochemical complex (8,555 acres, 5,300 employees) consists of five sites in Brazoria County, Texas: *Site 1:* Plant A petrochemical manufacturing facility and marine terminal (1,571 acres) located adjacent to Port Freeport at FM 1495; *Site 2:* Plant B petrochemical manufacturing facility (3,077 acres) located at State Hwy. 288–B and State Hwy. 332, north of the Brazos River; *Site 3:* Oyster Creek petrochemical manufacturing facility (825 acres) located at the intersection of State Hwy. 332 and Route FM 523; *Site 4:* Oyster Creek expansion site (904 acres) located adjacent to Site 3 south of the intersection of State Hwy. 332 and east of Route FM 523; and *Site 5:* Stratton Ridge storage facility (13 underground caverns with 15.3 billion-pound storage capacity on 2,178 acres) located south of Route FM 523 and intersected by County Road 226. The olefins plants (5,300 employees) produce a variety of petrochemical feedstocks and fuel products, including ethylene (3.3 billion-lb. capacity), propylene (865 million-lb. capacity), butadiene (425 million-lb. capacity) and pyrolysis gasoline (875 million-lb. capacity), propane, benzene, and naphtha. Some 37 percent of the inputs, including fuel oil, naphtha, condensate, and natural gasoline, are sourced abroad.

Zone procedures would exempt the petrochemical complex from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks (duty-free) by admitting incoming foreign inputs (e.g. naphtha, fuel oil, and condensates) in non-privileged foreign status. The duty rates on inputs range from 5.2¢/barrel to 10.5¢/barrel. Under the FTZ Act, certain merchandise in FTZ status is exempt from *ad valorem* inventory-type taxes. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 24, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 8, 1999).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 500 Dallas, Suite 1160, Houston, Texas 77002
Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: June 17, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–16245 Filed 6–24–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Industrial Phosphoric Acid from Israel (C–508–605) and Industrial Phosphoric Acid From Belgium (A–423–602): Extension of Time Limit for Final Results of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of five-year ("sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the sunset reviews on the antidumping duty order on industrial phosphoric acid from Belgium and the countervailing duty order on industrial phosphoric acid from Israel. Based on adequate

responses from domestic interested parties and respondent interested parties, the Department is conducting full sunset reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy. As a result of this extension, the Department intends to issue its preliminary results not later than September 17, 1999.

EFFECTIVE DATE: June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith, Martha V. Douthit or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; telephone: (202) 482–6397, (202) 482–3207 or (202) 482–1560 respectively.

Extension of Final Results

The Department has determined that the sunset reviews of the antidumping duty order on industrial phosphoric acid from Belgium and the countervailing duty order on industrial phosphoric acid from Israel are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the preliminary results of these reviews until not later than September 17, 1999, in accordance with section 751(c)(5)(B) of the Act. The final results of these reviews will, therefore, be due not later than January 25, 2000.

Dated: June 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–16248 Filed 6–24–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Reviews; and Partial Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and partial revocation.

SUMMARY: In response to a request by one respondent, the Department of Commerce (the Department) is conducting two administrative reviews of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico (A–201–805). These reviews cover one manufacturer/exporter of the subject merchandise to the United States during two periods of review (POR): April 28, 1992, through October 31, 1993, (the 92/93 POR) and November 1, 1993, through October 31, 1994 (the 93/94 POR).

We have preliminarily determined that sales have been made below the foreign market value (FMV) for the first period of review (POR). If these preliminary results are adopted in our final results of administrative reviews, we will instruct U.S. Customs to assess antidumping duties based upon the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATES: June 25, 1999.

FOR FURTHER INFORMATION CONTACT: John Drury, Nancy Decker or Linda Ludwig, Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–0195 (Drury), (202) 482–0196 (Decker), or (202) 482–3833 (Ludwig).

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order for the 92/93 POR on November 3, 1993 (58 FR 58682). On November 19, 1993, respondent Hylsa S.A. de C.V. ("Hylsa") requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. On November 30, 1993, respondent Tuberia Nacional S.A. de C.V. ("TUNA") requested that the Department conduct an administrative review of this order. We initiated this review on January 18, 1994. *See* 59 FR 2593 (January 18, 1994).

The Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order for the 93/94 POR on November 10, 1994 (59 FR 56034). On November 29, 1994, respondent Hylsa S.A. de C.V. ("Hylsa") requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. On November 30, 1994, respondent Western American Manufacturing, Inc. ("Western American") requested that the Department conduct an administrative review of this order. We initiated this review on December 15, 1994. *See* 59 FR 64650 (December 15, 1994).

The Department is conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Partial Termination of Review

On November 30, 1995, TUNA withdrew its request for administrative review for the 92/93 POR, pursuant to 19 CFR 353.22(a)(5). Ordinarily, parties have 90 days from the date of publication of notice of initiation within which to withdraw a request for review. In this case, the record indicates that petitioners have no objection to the withdrawal and in fact had previously requested that the Department terminate the review of TUNA (*See* Letter to Secretary of Commerce from R. Alan Luberda, dated May 11, 1994). In addition, the review of TUNA has not progressed substantially and there would be no undue burden on the parties or the Department as a result of said withdrawal. Therefore, the Department has determined that it would be reasonable to grant the withdrawal at this time. In accordance with section 353.22(a)(5) of the Department's regulations, the Department has terminated the 92/93 administrative review insofar as it regards TUNA.

On March 14, 1995, Western American withdrew its request for administrative review for the 93/94 POR, pursuant to 19 CFR 353.22(a)(5). Ordinarily, parties have 90 days from the date of publication of notice of initiation within which to withdraw a request for review. In this case, the record indicates that petitioners have no objection to the withdrawal. In addition, the review of Western American has not progressed substantially and there would be no undue burden on the parties or the Department as a result of said withdrawal. Therefore, the Department has determined that it would be reasonable to grant the withdrawal at this time. In accordance with section 353.22(a)(5) of the Department's regulations, the Department has terminated the 93/94 administrative review insofar as it regards to Western American.

Scope of the Review

The review of "circular welded non-alloy steel pipe and tube" covers products of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this review, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. In accordance with the Final Negative Determination of Scope Inquiry (56 FR 11608, March 21, 1996), pipe certified to the API 5L line pipe specification, or pipe certified to both the API 5L line pipe specifications and the less-stringent ASTM A–53 standard pipe specifications, which fall within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines, are outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.3010.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

The 92/93 POR is April 28, 1992 through October 31, 1993, and the 93/94 POR is November 1, 1993 through October 31, 1994. Subsequent to the partial terminations above, these reviews cover sales of circular welded non-alloy steel pipe and tube by Hylsa.

Verification

As provided in section 782(i)(3) of the Act, we verified information provided by the respondent using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Use of Best Information Available (92/93 POR)

Section 776(b) of the Tariff Act provides that, in making a final determination in an administrative review, if the Department "is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its action. * * *" In addition, section 776(c) of the Act requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation. * * *"

In deciding what to use as BIA, section 353.37(b) of our regulations provides that we may take into account whether a party refuses to provide information. For purposes of these reviews, and in accordance with our practice, we have used the more adverse BIA—generally the highest rate for any company for the same class or kind of merchandise from the same country from this or any prior segment of the proceeding, including the less-than-fair-value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. When a company substantially cooperated with our requests for information, but we were unable to verify information it provided or it failed to provide all information requested in a timely manner or in the form requested, we used as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the same class or kind of merchandise from the same country.

We preliminarily determine that the use of best information available (BIA), in accordance with section 776(c) of the Act, is appropriate for Hylsa for the 92/93 POR. We have assigned a cooperative (second-tier) BIA rate to the company for these preliminary results, which is the rate assigned to Hylsa during the original investigation. When a company substantially cooperates with our requests for information but we are unable to verify the information it provided or the company fails to provide complete or accurate information, we assign that company second-tier BIA. (*See Allied Signal* v. *United States*, 996 F.2d 1185 (Fed. Cia. 1993) (concluding that the Department's two-tiered BIA methodology, under which cooperating companies are assigned the lower, "second tier" BIA rate, is reasonable).)

Hylsa cooperated with our requests for information and agreed to verification. However, the multiple and pervasive nature of errors and omissions in the information provided by Hylsa prevented the Department from relying on Hylsa's response for these preliminary results. For example, despite our attempts, we were unable to verify either Hylsa's total quantity and value of home-market sales or its value of U.S. sales of subject merchandise. In addition, we found a significant discrepancy between reported and actual third-country sales of subject merchandise. (*See* verification report.)

Establishing the completeness of the response with respect to the quantity and value of sales in both the home and U.S. markets is a very significant element of verification. However, as a result of verification, Hylsa subsequently acknowledged that it had failed to report approximately 10% of its sales of subject merchandise in the home market for the period of review. Moreover, Hylsa did not retain the complete database used to develop its response to the Department. As a result, we were unable to reconcile the quantity and value figures for the home market reported to the Department with the company's audited financial statements. In addition, Hylsa failed to prepare a detailed analysis of home market sales in a pre-selected month of the POR as requested in our verification outline. Finally, Hylsa was unable to

explain the discrepancy in U.S. sales value. (*See* verification report.)

The completeness of both the home market and U.S. sales databases is essential because both are used to calculate the dumping duties. As the Department stated in *Silicon Metal From Brazil: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 62 FR 1954 (January 14, 1996), it is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to analyze fully the information and other parties are able to review and comment on it. Verification is intended to establish the accuracy and completeness of a response rather than to supplement and reconstruct the information to fit the requirements of the Department. "Establishing the completeness of the response with respect to the sales of the subject merchandise in the United States is a very significant element of the verification." *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66742 (December 17, 1996). "The completeness of the U.S. sales database is essential because it is used to calculate the dumping duties." *Id.* It is our practice at verification to examine a selected portion of both databases, rather than the entire database, to test the accuracy and completeness of information that the company provided. The CIT has upheld this practice. *See Bomont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990) ("verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally an audit entails selective examination rather than testing of an entire universe."); *See also Monsanto Co.* v. *United States*, 698 F.Supp. 275, 281 (CIT 1988) ("verification is a spot check and is not intended to be an exhaustive examination of the respondent's business"). Where the Department finds discrepancies in the portion which it examines, it must judge the effect on the unexamined portion of the response. In the instant case, the loss of a database used to prepare the original response to the Department prevented Hylsa from reconciling aggregate total figures reported to the Department with the company's financial statements. While the company was generally able to tie monthly financial statements to a monthly sales statistics database, it had no explanation as to the remaining discrepancies between this database and the information submitted to the Department.

In addition, the company's admission that it had failed to report approximately 10 percent of home market sales of subject merchandise further throws the reported quantity and value figures into doubt. Since the Department was unable to reconcile aggregate totals, we requested (as we did in the verification outline) that Hylsa prepare a worksheet tying the pre-selected month to the response submitted to the Department. The pre-selected month corresponded to the month when most of the U.S. sales occurred and most likely would have been used in the calculation of the dumping duties. The company stated that it could not prepare the requested worksheet without the missing database for that month. Department officials then requested a listing of sales from a different month in an attempt to tie it to the sales statistics database. When a Department official selected a particular sale and requested supporting documentation, the company was unable to produce it at that time. Late on the last day, Hylsa indicated that it could provide the supporting documentation. By that time, however, there was insufficient time for Department officials to verify and establish the accuracy of the documents. (*See* verification report.)

We believe that the use of total BIA is warranted. The inability of Hylsa to reconcile aggregate quantities and values to its financial statements throws into doubt the accuracy of Hylsa's reported transaction-specific sales. Since such sales are used to calculate FMV on a monthly basis, the addition or omission of home-market sales can have a large impact on the final margin. If there are a small number of sales to the U.S. in relation to the home-market, or sales are bunched in particular months, or certain products are only sold in a limited number of months, or other conditions exist, the potential for distortion or manipulation by omitting or creating home-market sales is particularly great. We must be certain that all sales are reported accurately and completely to address this concern, and reconciling quantity and value is one of the most fundamental ways of ensuring accuracy and completeness. Without that certainty, we do not believe that it is possible to calculate an accurate margin for this POR.

As explained above, the multiple and pervasive nature of errors and omissions in the information provided by Hylsa prevented the Department's reliance on its submissions for these preliminary results. *See, e.g. Yamaha Motor Co., Ltd.* v. *United States*, 910 F.Supp. 679 (CIT 1995) (upholding the Department's use of second-tier BIA where the Department found that respondent's errors and omissions were multiple and pervasive); *National Steel Corp.* v. *United States*, 870 F.Supp. 1130 (CIT 1994) (approving the Department's use of BIA where respondent omitted significant information from submissions); *Tatung Co.* v. *United States*, 18 C.I.T. 1137 (1994) (upholding the Department's use of BIA due to omissions and errors in respondent's submission). Therefore, in accordance with section 776(b) of the Tariff Act, the inability to verify aggregate quantity and value figures was the determining factor in our decision to apply BIA to the company's response for the 92/93 POR. See decision memorandum, February 28, 1997.

Product Comparisons

In accordance with section 771(16) of the Act, for the 93/94 POR, we considered each circular welded non-alloy steel pipe and tube product produced by Hylsa, covered by the descriptions in the "Scope of the Review" section of this notice, *supra*, and sold in the home market during the POR, to be such or similar merchandise for purposes of determining appropriate product comparisons to U.S. sales of circular welded non-alloy steel pipe and tube. For each of the products produced by Hylsa within the scope of the A–201–805 order, we examined the categories of merchandise listed in Section 771 (16) of the Act for purposes of model matching. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix VI of the Department's April 24, 1996 antidumping questionnaire. In making the product comparisons, we matched each foreign like product based on the physical characteristics reported by the respondent and verified by the Department. Where sales were made in the home market on a different weight basis from the U.S. market (e.g. theoretical versus actual weight), we converted all quantities to the same weight basis, using the conversion factors supplied by Hylsa, before making our fair-value comparisons. We compared individual U.S. transactions to monthly weighted average FMVs.

Date of Sale

For the 93/94 POR, depending on the channel of trade and on the date after which the key terms of sale could not be changed, we treated one of the following dates as the date of the sale: The date of the invoice or the date of shipment.

United States Price

All of Hylsa's U.S. sales in the 93/94 POR were based on the price to the first unrelated purchaser in the United States. The Department determined that purchase price, as defined in section 772 of the Tariff Act, was the appropriate basis for calculating USP. We made adjustments to purchase price, where appropriate, for foreign inland freight, foreign brokerage and handling, international freight, insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. Customs duties.

Foreign Market Value

Based on a comparison of the volume of home market and third country sales, we determined that the home market was viable. Therefore, in accordance with section 773(a)(1)(A) of the Act, we based FMV on the packed, delivered price to unrelated purchasers in the home market. Based on our verification of home-market sales responses, we are disallowing an adjustment for a steel supplier rebate. We have previously outlined our reasons for rejecting this adjustment. *See Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Determination of Sales at Less Than Fair Value*, 57 FR 42953 (September 17, 1992) ("this rebate program does not qualify for a circumstance of sale adjustment because it reflects a difference in production costs, rather than a difference in selling expenses. Adjustments for circumstance of sale are, by definition, limited to consideration of a seller's marketing practices and expenses, and are unaffected by conditions affecting production"); *See also Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 68708 (December 30, 1996).

We made adjustments to FMV for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(4)(C) of the Act.

Cost-of-Production Analysis

Petitioners alleged, on July 23, 1996 with respect to the 93/94 POR, that Hylsa sold circular welded non-alloy steel pipes and tubes in the home market at prices below COP. Based on this allegation, in accordance with Section 773(b) of the Act, the Department determined, on September 30, 1996, that it had reasonable grounds to believe or suspect that Hylsa had sold the subject merchandise in the home market at prices below its COP. *See* Letter to Shearman and Sterling and Decision Memorandum (September 30, 1996). We therefore initiated a cost investigation with regard to Hylsa for the 93/94 POR in order to determine whether the respondent made home-market sales during the 93/94 POR at prices below its COP within the meaning of section 773(b) of the Act.

In accordance with 19 CFR 353.51(c), we calculated COP for Hylsa as the sum of reported materials, labor, factory overhead, and general expenses. We compared COP to home market prices, net of price adjustments, discounts, and movement expenses.

In accordance with section 773(b) of the Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

In accordance with our normal practice, for each model for which less than 10 percent, by quantity, of the home market sales during the POR were made at prices below COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home market sales during the POR were priced below COP, we excluded those sales priced below COP, provided that they were made over an extended period of time. For each model for which 90 percent or more of the home market sales during the POR were priced below COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 773(b) of the Tariff Act, we used the constructed value (CV) of those models, as described below. *See, e.g., Mechanical Transfer Presses From Japan, Final Results of Antidumping Duty Administrative Review*, 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 58 FR 64720, 64729 (December 8, 1993).

Because Hylsa provided no indication that its below-cost sales of models within the "greater than 90 percent" and the "between 10 and 90 percent" categories were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded those sales of models within the "10 to 90 percent" category which were made below cost over an extended period of time. In addition, as a result of our COP test for home market sales of models within the "greater than 90 percent" category, we based FMV on CV for all U.S. sales for which more than 90 percent of sales of the comparison home market model occurred below COP. Finally, where we found, for certain of Hylsa's models, home market sales for which less than 10 percent were made below COP, we used all home market sales of these models in our comparisons.

We also used CV as FMV for those U.S. sales for which there was no sale of such or similar merchandise in the home market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials, labor, and factory overhead in our calculations. Where the general expenses were less than the statutory minimum of 10 percent of the cost of manufacture (COM), we calculated general expenses as 10 percent of the COM. Where the actual profits were less than the statutory minimum of 8 percent of the COM plus general expenses, we calculated profit as 8 percent of COM plus general expenses. In our verification we adjusted reported CV as appropriate.

Consistent with our written instructions from the Department, we found that Hylsa failed to report weighted-average costs by product for the entire POR. Instead, Hylsa reported six months of costs by product which were not weight-averaged. As best information available, we made the following changes. Since respondent did not provide twelve months of

weighted-average cost data, we used as best information available the highest monthly cost by product as the actual cost for the POR. We segregated home-market sales by finish into galvanized and non-galvanized products. As best information available, we took the highest product cost in each of these two groups and applied it to all products within the specific groups.

In accordance with section 773 of the Act, for those U.S. models for which we were able to find a home market such or similar match that had sufficient above-cost sales, we calculated FMV based on the packed, F.O.B., ex-factory, or delivered prices to unrelated purchasers in the home market. We made adjustments, where applicable, for post-sale inland freight and for home market direct expenses. We also adjusted FMV for differences in circumstances of sale based on direct selling expenses.

Reimbursement

Petitioners requested that the Department examine the issue of reimbursement where the producer/exporter is the importer of record. Section 353.26 of the Department's regulations states that "[i]n calculating the United States price, the Secretary will deduct the amount of any antidumping duty which the producer or reseller: (i) [P]aid directly on behalf of the importer; or (ii) [r]eimbursed to the importer." 19 CFR 353.26(a)(1). The Department's interpretation of the regulation is that it anticipates that separate corporate entities must exist as producer/reseller and importer in order to invoke the regulation. In the present case, the U.S. importer of record, Hylsa, is also the same corporate entity that produces and exports the subject merchandise. In such a case, there is no separate company or separate U.S. subsidiary, wholly owned or otherwise, that acts as the importer of record. Rather, the importer and exporter are one and the same corporate entity. In this case, there can be no payment made to, or on behalf of, the importer within the meaning of the regulation. Accordingly, the Department interprets its reimbursement regulation as inapplicable in this case.

Preliminary Results of Review

As a result of our comparison of USP to FMV we preliminarily determine that the following margin exists:

CIRCULAR WELDED NON-ALLOY STEEL PIPES AND TUBES

Producer/manufacturer/exporter	Weighted-average margin (percent)
Hylsa 92/93	32.62
Hylsa 93/94	27.66

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and FMV may vary from the percentages stated above.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act:

(1) The cash deposit rate for the reviewed company will be the rate established in the final results of the 93/94 review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 32.62 percent. This is the "all others" rate from the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Mexico*, 57 FR 42953 (September 17, 1992).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–16244 Filed 6–24–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–811, A–351–830, A–570–854, A–560–807, A–588–849, A–821–810, A–859–801, A–791–807, A–583–834, A–549–814, A–489–808, A–307–815]

Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Rick Johnson (Russian Federation, South Africa) at (202) 482–3818; Jim Doyle (People's Republic of China) at (202) 482–0159; John Kugelman (Turkey) at (202) 482–0649; Linda Ludwig (Brazil, Venezuela), at (202) 482–3833; and Steven Presing or Kris Campbell (Argentina, Indonesia, Japan, Thailand, Taiwan, Slovakia) at (202) 482–0194 and (202) 482–3813, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995,

the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998).

The Petitions

On June 2, 1999, the Department of Commerce ("the Department") received petitions filed in proper form by Bethlehem Steel Corporation, Gulf States Steel, Ispat Inland Steel, LTV Steel Company Inc., National Steel Corporation,[1] Steel Dynamics, U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and United Steelworkers of America (collectively "petitioners"). On June 8, 1999, the Independent Steelworkers Union joined as a co-petitioner. The Department received supplemental information to the petitions since June 2, 1999.

In accordance with section 732(b) of the Act, petitioners allege that imports of certain cold-rolled flat-rolled carbon-quality steel products ("cold-rolled steel") from Argentina, Brazil, the People's Republic of China ("China"), Indonesia, Japan, the Russian Federation ("Russia"), Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations they are requesting the Department to initiate (*see Determination of Industry Support for the Petitions below*).

Scope of Investigations

For purposes of these investigations, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedules of the United States ("HTSUS"), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these investigations unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of these investigations:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

The merchandise subject to these investigations is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8015, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. In particular, we seek comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded by example from the scope, and the physical and chemical description of the product coverage. The Department encourages all parties to submit such comments by July 12, 1999. Comments should be

[1] National Steel is not a petitioner in the Japan case.

addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petitions is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Moreover, the Department has determined that the petitions (and subsequent amendments) and supplemental information obtained through the Department's research contain adequate evidence of industry support; therefore, polling is unnecessary (*see Attachment to the Initiation Checklist, Re: Industry Support*, June 21, 1999). For Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, petitioners established industry support representing over 50 percent of total production of the domestic like product. Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decision to initiate these investigations is based. Petitioners, in determining normal value ("NV") for Argentina, Brazil, Indonesia, Japan, South Africa, Taiwan, Thailand, Turkey, and Venezuela, relied upon price data contained in confidential market research reports filed with the Department. At the Department's request, petitioners arranged for the Department to contact the authors of the reports to verify the accuracy of the data, the methodology used to collect the data, and the credentials of those gathering the market research. The Department's discussions with the authors of the market research reports are summarized in *Memorandum to the File: Re—Foreign Market Research Reports*, dated June 21, 1999. For a more detailed discussion of the deductions and adjustments relating to home market price, U.S. price and factors of production and sources of data for each country named in the petition, *see Initiation Checklist*, dated June 21, 1999. Should the need arise to use as facts available under section 776 of the Act any of this information in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Argentina

Petitioners identified Siderar Limited ("Siderar") as the only producer and exporter of cold-rolled steel from Argentina. Petitioners based export price ("EP") on a written price quote from a trading company not affiliated with Siderar. While the quote contains various products, petitioners chose one example, which falls within the HTSUS number (7209.16.00.90) that accounts for 66.57 percent of total imports of cold-rolled steel from Argentina during the period March 1998 through February 1999. Because the terms of the U.S. sale included delivery to the United States, petitioners calculated a net U.S. price by subtracting estimated costs for international freight, barge freight, and unloading and wharfage. In addition, petitioners subtracted a U.S. trading company mark-up, based on an industry expert's affidavit, and the U.S. customs duty.

With respect to normal value ("NV"), petitioners obtained gross unit prices, contemporaneous with the pricing information used as the basis for EP, for the products offered for sale to customers in Argentina that are either identical or similar to those sold to the United States. The prices used in the calculation of NV were ex-factory prices. Therefore, no adjustments for movement were required. The only deduction made to the starting price was for credit expense.

The estimated dumping margin in the petition, based on a comparison between Siderar's U.S. prices and NV, is 24.53 percent.

Brazil

Petitioners identified six Brazilian producers and exporters of cold-rolled steel. Based on their information, petitioners concluded that Companhia Siderurgica Nacional ("CSN"), Usinas Siderurgicas de Minal Gerais ("USIMINAS"), and Companhia Siderurgica Paulista ("COSIPA") are the principal Brazilian producers of subject merchandise.[3]

Petitioners based EP on two separate methods for both CSN and USIMINAS/COSIPA. First, export price was determined based on the import average unit value ("AUV") for the three ten-digit categories of the HTSUS accounting for 90 percent of in-scope imports from Brazil during the fourth quarter of 1998. Petitioners presumed that the customs values used to calculate the AUV for each HTSUS category reflect the actual "transaction value" of the merchandise being shipped by Brazilian mills. Second, export price was determined based on Brazilian producers' offers for sale of cold-rolled steel in the United States. Petitioners obtained this information from industry sources in the United States. Petitioners made deductions from each quoted offer price for movement-related charges and expenses, particularly international freight, international insurance, and U.S. import duties, based on 1998 U.S. import statistics and the 1998 HTSUS schedule. No adjustments were made for discounts, rebates, credit terms, warranties, foreign inland freight, foreign brokerage and handling or U.S. brokerage and handling, as there was insufficient information available.

With respect to NV, petitioners used market research to determine a gross unit price for sales in December 1998/January 1999 to customers in Brazil of products that are either identical or similar to those sold in the United States. The home market price employed was the average of the range of Brazilian transaction prices reported by petitioners' market research report.

Petitioners provided information demonstrating reasonable grounds to believe or suspect that all of the home market sales of cold-rolled steel provided in the petition were made at prices below the cost of production ("COP"), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales below cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing ("COM"), selling, general, and administrative expenses ("SG&A") expenses. To calculate COP, petitioners relied on their own production experience, adjusted for known differences between costs incurred to produce the merchandise in the United States and in the foreign market. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on our analysis, all of the home market sales reported in the petition were shown to be made at prices below the cost of production. Therefore, petitioners based NV on the constructed value ("CV") of the merchandise, pursuant to sections 773(a)(4) and 773(e) of the Act. Petitioners compared U.S. sales to the fully-absorbed cost of production for the product, calculated using petitioners' manufacturing costs, adjusted for known cost differences between the United States and Brazil, and non-manufacturing expenses obtained from Brazilian producers' financial statements. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A, and profit of the merchandise. To calculate COM and SG&A, petitioners followed the same methodology used to determine COP. Accordingly, we relied on this methodology after adjusting certain cost elements as noted above. Petitioners derived profit based on amounts reported in CSN's, USIMINAS' and COSIPA's 1997 financial statements.

Based on comparisons of import AUV to adjusted CV, estimated margins range from 37.53 to 63.32 percent. Based on comparisons of price quotes to adjusted CV, estimated margins range from 31.48 to 56.66 percent.

China

Petitioners identified Baoshan Iron & Steel Corporation ("Bao Steel") as a possible exporter of cold-rolled steel from China, and stated that Bao Steel is believed to be responsible for the majority (65.3 percent) of Chinese exports during the period.

Petitioners based EP on two models derived from a sales quote for subject merchandise from Bao Steel. However, because this sales quote was not within the anticipated period of investigation, the Department has not considered this quote for the purposes of initiation. Nevertheless, on June 11, 1999, petitioners submitted a calculation of U.S. price based on average unit values based on U.S. import statistics. Petitioners utilized import data from October 1, 1998 through March 31, 1999, using HTSUS numbers 7209.16.00.90 and 7209.17.00.90. The AUVs were calculated by dividing the free along side values by net tons. Petitioners made no deductions from these calculated AUVs.

Petitioners asserted that China is an NME country to the extent that sales or offers for sale of such or similar merchandise in China or to third countries do not permit calculation of normal value under 19 CFR 351.404. Petitioners, therefore, constructed a normal value based on the factors of production methodology pursuant to section 773(c) of the Act. In previous investigations, the Department has determined that China is an NME. *See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China*, 64 FR 5770, 5773 (Feb. 5, 1999). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for China has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product is based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of China's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994).

For the normal value calculation, petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, and energy), for cold-rolled steel on the quantities of inputs used by petitioners. Petitioners asserted that detailed information is not available regarding the quantities of inputs used by cold-rolled producers in China. Thus, they have assumed, for purposes of the petition, that the main producer in China (Bao Steel) uses the same inputs in the same quantities as petitioners. Petitioners have used one U.S. producer's factors of production through the hot-rolled production stage, and another U.S. producer's factors of production for the additional processing stages necessary to produce cold-rolled steel. Petitioners argued that the use of petitioners' factors is conservative because the U.S. steel industry is more efficient than the Russian steel industry. Based on the information provided by petitioners, we believe that petitioners' use of their own adjusted factors of production represents information reasonably available to petitioners and is appropriate for purposes of initiation of this investigation.

Petitioners selected India as the appropriate surrogate country. Petitioners stated that every antidumping determination published by the Department within the last twelve months involving Chinese products has utilized India as the surrogate country. Petitioners further cite to *Certain Preserved Mushrooms from the PRC*, 63 FR 72255 (December 31, 1998), where the Department

2 *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

3 The Department recently concluded that USIMINAS and COSIPA are affiliated and that those producers should be collapsed (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 8299, February 19, 1999).

determined that India is at a comparable level of development with China. Petitioners maintain that India is the most suitable surrogate among the potential surrogates, because: (1) It is at a comparable stage of economic development; (2) of the five most suitable countries, India is the largest producer of comparable merchandise; and (3) because information regarding unit factor costs in India is readily available. Based on the information provided by petitioners and Department practice, we believe that petitioners' use of India as a surrogate country is appropriate for purposes of initiation of this investigation.

In accordance with section 773(c)(4) of the Act, petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. Materials were valued based on India's import values, as published in the *Monthly Statistics of the Foreign Trade of India*. Labor was valued using the regression-based wage rate for the PRC, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using the rate for India published in *Performance Review Iron & Steel*. Natural gas was valued using natural gas prices in India.

For depreciation, overhead, SG&A, financial expenses and profit, petitioners applied rates derived from the financial statements of an Indian producer of subject merchandise, Steel Authority of India Limited ("SAIL"), and have applied these ratios to the COM derived for Bao Steel. Based on the information provided by petitioners, we believe that their surrogate values represent information reasonably available to petitioners and are acceptable for purposes of initiation of this investigation.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the calculated dumping margins for cold-rolled steel from China range from 21.33 to 23.72 percent.

Indonesia

Petitioners identified PT Krakatau Steel ("Krakatau") as the primary producer and exporter of cold-rolled steel from Indonesia, accounting for virtually all exports to the United States between March 1998 and February 1999. Petitioners based EP for Krakatau on a U.S. price for a sale of one product from a range of products encompassed by an offer from a U.S. trading company to an unaffiliated customer. They chose an offer for a product that falls within HTSUS category 7209.16.00.90 (imports under this category amounted to approximately 62.2 percent of subject imports between March 1998 and February 1999). Because the terms of the offer were delivered to the United States, petitioners calculated a net U.S. price by subtracting estimated costs for shipment from the factory in Indonesia to the port of export, and for brokerage and port charges. In addition, petitioners subtracted a U.S. trading company mark-up, and estimated customs duties and import fees, derived from the 1999 HTSUS schedule.

Petitioners based normal value on gross unit prices, based on foreign market research and contemporaneous with the pricing information used as the basis for EP, for products offered for sale to customers in Indonesia that are either identical or similar to those products sold to the United States. They adjusted these prices by subtracting estimated average delivery costs. In addition, petitioners adjusted normal value for differences in circumstances of sale by subtracting average home market packing expenses and credit expenses, and adding average U.S. packing expenses and credit expenses.

The estimated dumping margin in the petition, based on a comparison of Krakatau's U.S. price and its home market prices, is 43.90 percent.

Japan

Petitioners identified Kawasaki Steel Corporation, Kobe Steel, Ltd., Nippon Steel Corporation, Nisshin Steel Co., Ltd., NKK Corporation, and Sumitomo Metal Industries, Ltd. ("Sumitomo") as the major producers and exporters of subject merchandise from Japan to the United States. Petitioners based EP for Sumitomo on a November 1998 U.S. price offering for a sale to an unaffiliated purchaser. Petitioners selected two products encompassed in the offer, which fall under HTSUS numbers (7209.16.00.90 and 7209.17.00.90) that represent 62.6 percent of total imports of cold-rolled carbon steel flat products from Japan during the period March 1998 through February 1999. Because the prices stated in the offer are for products delivered to the United States, petitioners calculated a net U.S. price for each product by subtracting estimated costs for shipment from the factory in Japan to the port of export and Japanese trading company mark-ups. In addition, petitioners subtracted unloading and wharfage charges, ocean freight and insurance, and U.S. Customs duties.

With respect to NV, petitioners obtained Sumitomo's prices from foreign market research, contemporaneous with the pricing information used as the basis for EP, for the products offered for sale to customers in Japan which are either identical or similar to those sold to the United States. Petitioners adjusted these prices by subtracting foreign movement charges, packaging expenses, and credit expenses.

In addition, petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A and packing. To calculate COP, petitioners based COM on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and in Japan using publicly available data. To calculate SG&A, including financial expenses, petitioners relied upon the fiscal year 1998 audited financial statements of a Japanese steel producer. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(I) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to section 773 of the Act, petitioners also based normal value for sales in Japan on CV. Because home market prices are suspected to be below COP, for this initiation, we are accepting CV as the appropriate basis for normal value. Petitioners calculated CV using the same COM and SG&A expense figures used to compute Japanese home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based upon the aforementioned Japanese producer's fiscal year 1998 financial statements.

The estimated dumping margins in the petition, based on a comparison between Sumitomo's U.S. prices and CV, range from 48.92 to 53.04 percent. The estimated dumping margins, based on a comparison of Sumitomo's U.S. and home market prices, range from 26.60 to 28.57 percent.

Russia

Petitioners identified AmurSteel, Novo Lipetsk Met Kombinat ("Novolipetsk"), Magnitogorskiy Kalibrovochniy Zavod, Magnitogorskiy Metallurgischeskiy Kombinat ("Magnitogorsk"), Mechel, Novosibprokat Joint-Stock Co., Severstal, St. Petersburg Steel Rolling Mill, and Volgograd Steel Works ("Red October") as possible exporters of cold-rolled steel from Russia. Petitioners further asserted that two of these producers, Severstal and Magnitogorsk, are the primary producers of subject merchandise in Russia.

Petitioners based EP for these two companies on two methods: (1) Import values declared to U.S. Customs; and (2) an actual U.S. selling price known to petitioners based on a sales offer from a trading company. In calculating import values declared to U.S. Customs, petitioners used the HTSUS categories which petitioners claim to represent the import categories with the largest volumes of imports from Russia, and which contained only subject merchandise (*i.e.*, 7209.16.0060, 7209.17.0060, and 7209.17.0090). Petitioners deducted foreign inland freight from the customs values in order to obtain ex-factory prices. In order to calculate foreign inland freight, petitioners used transportation rates from Poland as they were the most appropriate public figures reasonably available to the petitioners. Petitioners used the Polish rail transport rate because the per-capita GNP of Poland is much closer to Russia's GNP than U.S. GNP, and because the transportation rates for Poland revealed the information needed to permit calculation of a rate in dollars-per-ton. Based on the information presented by petitioners, we believe that the use of Polish rail rates represents information reasonably available to petitioners and is acceptable for purposes of initiation of this investigation.

In order to calculate actual U.S. selling prices known to petitioners, petitioners relied on a single U.S. sales offering to an unaffiliated purchaser in the United States. Petitioners derived a net U.S. price by subtracting amounts attributed to foreign inland freight (*see* paragraph above for a description of the methodology), cost-insurance-freight ("CIF") charges, and duties, where appropriate.

Petitioners asserted that Russia is an NME country to the extent that sales or offers for sale of such or similar merchandise in Russia or to third countries do not permit calculation of normal value under 19 CFR 351.404. Petitioners, therefore, constructed a normal value based on the factors of production methodology pursuant to section 773(c) of the Act. In previous investigations, the Department has determined that Russia is an NME. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation* ("*Russian Hot-Rolled Steel*"), 64 FR 9312 (February 25, 1999) and *Ferrovanadium and Nitrided Vanadium From the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review*, 62 FR 65656 (December 15, 1997). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for Russia has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product is based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of Russia's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the PRC*, 59 FR 22585 (May 2, 1994).

For the normal value calculation, petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, and energy), for cold-rolled steel on the quantities of inputs used by petitioners. Petitioners asserted that detailed information is not available regarding the quantities of inputs used by cold-rolled steel producers in Russia. Thus, they have assumed, for purposes of the petition, that producers in Russia use the same inputs in the same quantities as petitioners. The only exception to this assumption is that petitioners have also included an "open hearth cost adjustment" to account for the relatively poorer efficiency of the open hearth furnaces which are still used to some degree by Russian steel producers. Petitioners have used one U.S. producer's factors of production through the hot-rolling production stage, and another U.S. producer's factors of production for the additional processing stages necessary to produce cold-rolled steel. Petitioners argued that the use of petitioners' factors is conservative because the U.S. steel industry is more efficient than the Russian steel industry. Based on the information provided by petitioners, we believe that petitioners' use of their own adjusted factors of production represents information reasonably available to petitioners and is appropriate for purposes of initiation of this investigation. Petitioners selected Turkey as the primary surrogate market economy country. Petitioners assert that Turkey is the most suitable among the potential surrogates, because: (1) It is at a comparable stage of economic development; (2) the per-capita GNP of Turkey differs only slightly from that of Russia; and (3) Turkey is a significant producer of comparable merchandise (in accordance with section 773(c)(4) of the Act). Based on the information provided by petitioners, we believe that petitioners' use of Turkey as a surrogate country is appropriate for purposes of initiation of this investigation.

In accordance with section 773(c)(4) of the Act, petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. Materials were valued based on Turkish import values reported in U.S. dollars, as published in the 1996 and 1997 United Nations Trade Commodity Statistics ("U.N. Trade Commodity Statistics"), and inflated based on U.S. inflation rates. Labor was valued using the regression-based wage rate for Russia provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity and natural gas were valued using the rate for Turkey published in a quarterly report of the OECD's International Energy Agency from the third quarter of 1998.

Petitioners' calculation of scrap recovery costs at different stages of production included an adjustment to the surrogate value which was derived from petitioners' recorded scrap costs. However, given the statutory requirement to value, to the extent possible, all elements of CV using information from a country at a comparable level of economic development, we have rejected petitioners' calculation of NV with respect to scrap. Instead, we have simply applied a scrap value based on the 1997 U.N. Trade Commodity Statistics value for scrap from Turkey. For depreciation, overhead, SG&A, financial expenses, and profit, petitioners applied rates derived from the financial statements of a Turkish producer of subject merchandise, Eregli Demir ve Celik Fabrikalari T.A.S. ("Erdemir"), and have applied these ratios to the COM derived for two Russian producers, Magnitogorsk and Severstal. Based on the information provided by petitioners, we believe that their surrogate values represent information reasonably available to petitioners and are acceptable for purposes of initiation of this investigation.

Based on comparisons of EP to NV, calculated in accordance with section

773(c) of the Act, the calculated dumping margins for cold-rolled steel from Russia range from 56.80 to 73.98 percent.

Slovakia

Petitioners identified VSZ, a.s. ("VSZ") as the only producer of subject merchandise in Slovakia exporting to the United States. Petitioners based EP on a U.S. price offering for a sale to an unaffiliated purchaser. Petitioners selected two products encompassed in the offer which fall under HTSUS numbers 7209.16.00.90 and 7209.17.00.90. These HTSUS numbers represent 89.5 percent of total imports of cold-rolled carbon steel from Slovakia during the period September 1998 through February 1999. Petitioners calculated net U.S. price by taking gross price to U.S. customers, and then subtracting U.S. trading company mark-ups, unloading and wharfage charges, ocean freight and insurance, based on official U.S. import statistics, estimated costs for U.S. import duties and fees, and estimated costs for shipment from the VSZ factory in Slovakia to the port of export (based on a rate quote in Mexico, the petitioners' preferred surrogate country).

Petitioners noted that the Department has never had occasion to determine whether Slovakia is an NME country to the extent that sales or offers for sale of such or similar merchandise in Slovakia do not permit calculation of NV under 19 CFR 351.404. In previous investigations, however, the Department has determined that Czechoslovakia, the predecessor of both the Czech Republic and Slovakia, was an NME. *See e.g., Final Determination of Sales at Less Than Fair Value: Carbon Steel Wire Rod From Czechoslovakia*, 49 FR 19370 (May 7, 1984). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for Slovakia has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, pursuant to section 773(c) of the Act, petitioners construct NV of the product based on factors of production valued in a surrogate market economy country. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of Slovakia's NME status and the granting of separate rates to individual exporters. *See e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the PRC*, 59 FR 22585 (May 2, 1994).

Petitioners selected Mexico as the most appropriate surrogate market economy. Petitioners stated that: (1) The per-capita GNP of Mexico is virtually identical to that of Slovakia; (2) the economies of Mexico and Slovakia are similar in terms of GDP composition by sector, and that the two economies had similar rates of GDP growth in 1997 and 1998; and (3) Mexico is a significant producer of the subject merchandise. Petitioners believe Mexico is a suitable surrogate because it is at a comparable level of economic development and is a significant producer of comparable merchandise (in accordance with section 773(c)(4) of the Act). Based on the information provided by petitioners, we believe their use of Mexico as a surrogate country is appropriate for purposes of initiation of this investigation.

For the NV calculation, petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, and energy), for cold-rolled steel on the quantities of inputs used by the petitioners. Petitioners asserted that detailed information is not available regarding the quantity of inputs used by VSZ. Thus, they have assumed, for purposes of the petition, that VSZ uses the same inputs in the same quantities as petitioners. Specifically, petitioners have used one U.S. producer's factors of production through the hot-rolling production stage, and another U.S. producer's factors of production for the additional processing stages necessary to produce cold-rolled steel. Petitioners contend that the use of petitioners' factors is conservative because the U.S. steel industry is more efficient than the steel industry in Slovakia.

In accordance with section 773(c)(4) of the Act, petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. Materials were valued based on Mexican import statistics as published in the *World Trade Atlas* for the period January 1998 through November 1998 and in the 1996 reports of the United Nations Statistical Division (adjusted for the effects of deflation in the U.S. producer price index). Labor was valued using a regression-based wage rate for Slovakia provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity and natural gas were valued using the rates for Mexico published in a quarterly report of the OECD's International Energy Agency. For interest expense, depreciation, SG&A, and profit, petitioners applied rates derived from the 1997 financial statements of AHMSA, a Mexican producer of the subject merchandise. However, claiming that AHMSA's financial statements lacked the specificity necessary to determine an accurate overhead rate, the petitioners calculated an overhead rate using information from the1997 financial statements of Sendzimira, a Polish producer of the subject merchandise. (Poland, like Mexico, is at a level of economic development comparable to that of Slovakia.) The Petitioners applied this ratio to the sum of all discrete material, energy, and labor components included in the cost model. Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiation of this investigation.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margins for cold-rolled steel from Slovakia range from 61.28 to 63.45 percent.

South Africa

Petitioners identified Iscor Limited ("Iscor") as a producer and exporter of cold-rolled steel from South Africa. Petitioners based EP for Iscor on a U.S. price offering for the first sale to an unaffiliated purchaser during the period April 1, 1998 through March 31, 1999. According to petitioners, all imports of South African cold-rolled steel since March 1998 were produced by Iscor. The product encompassed in the offer falls under HTS number 7209.17.00.90, which represents 45 percent of total imports of cold-rolled carbon steel flat products from South Africa during the period April 1, 1998 through March 31, 1999. Petitioners calculated a net U.S. price by subtracting ocean freight and insurance, unloading and wharfage charges, and estimated costs for U.S. import duties and fees.

With respect to NV, petitioners obtained home market prices for a product offered for sale in South Africa which is comparable to the product used as the basis for the U.S. price offer. The home market prices were contemporaneous with the U.S. price offer. Petitioners used the simple average of the range of prices to establish a normal value. Petitioners made several adjustments to the home market price including a circumstance of sale adjustment for credit expenses.

The estimated dumping margin in the petition, based on a comparison between Iscor's U.S. price and NV, is 16.65 percent.

Taiwan

Petitioners identified China Steel Corporation ("CSC"), Kao Hsing Chang Iron and Steel Corporation, Ornatube Enterprise Co. Ltd., Sheng Yu Steel Co. Ltd., Yieh Hsing Enterprise Co. Ltd., Yieh Loong Enterprise Co. Ltd., Yieh Phui Enterprise Co. Ltd., and Tung Mung Development Co. as possible exporters of cold-rolled steel from Taiwan. CSC was identified as the major producer of subject merchandise in Taiwan and the principal exporter of subject merchandise to the United States. Petitioners determined EP using two different methods. First, petitioners based EP on the AUV for the three HTSUS categories (7209.16.0090, 7209.17.0090, and 7209.18.6000) that encompass the largest volume of subject merchandise imports from Taiwan during the fourth quarter of 1998. For each of the three HTSUS categories, petitioners relied on official U.S. import statistics to arrive at a calculated import AUV using reported import quantity and value.

Second, petitioners based EP on a U.S. price offering for a sale of subject merchandise to an unaffiliated purchaser in December 1998. To calculate an ex-factory EP for merchandise delivered to the United States, petitioners made deductions from the quoted price for international freight, international insurance, and U.S. import duties based on the CIF charges associated with Taiwanese imports of HTSUS category 7209.16.00.90, the category containing the products covered by the price quote, during 1998.

With respect to NV, petitioners established a home market price by averaging the range of Taiwanese transaction prices, contemporaneous with the pricing information used as the basis for EP. The home market price is ex-factory and, therefore, no adjustments for movement were required.

In addition, petitioners alleged pursuant to section 773(b) of the Act that sales in the home market were made at prices below the fully absorbed COP, and requested that the Department conduct a country-wide sales-below-cost investigation. Petitioners provided information that demonstrated reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP.

Pursuant to section 773(b)(3) of the Act, COP includes COM, SG&A expenses and packing expenses. Petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and in Taiwan using publically available data. To calculate fixed overhead and SG&A, including financial expenses, the petitioners relied upon the 1997 audited financial statements of CSC. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(I) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

In light of the above, for this initiation, we are accepting CV as the appropriate basis for NV. Petitioners calculated CV pursuant to sections 773(a)(4) and 773(e) of the Act. Petitioners calculated CV for Taiwanese producers based on publicly available data and the petitioners' own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and in Taiwan. Petitioners calculated CV using the same COM and SG&A expense figures used to compute Taiwanese home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based upon CSC's 1997 financial statements.

The estimated dumping margins in the petition range from 38.20 to 54.54 percent.

Thailand

Petitioners identified Sahaviriya Steel Industries Public Co. Ltd., The Siam United Steel Co. Ltd., and BHP Steel (Thailand) Ltd. as the primary producers and exporters of cold-rolled steel from Thailand. Petitioners determined EP using two different methods. They first calculated EP based on the AUV for 7209.16.00.90, 7209.17.00.90 and 7209.18.15.30, the three ten-digit categories of the HTSUS accounting for the largest volume of in-scope imports from Thailand during the fourth quarter of 1998. For each of these HTSUS categories, petitioners calculated the AUV using the reported quantity and customs value for imports as recorded in offical U.S. import statistics for the fourth quarter of 1998.

Second, the petitioners determined EP based on offers for sale of cold-rolled steel in the United States. The petitioners obtained this information from industry sources in the United States. The petitioners made deductions for international freight, international insurance, and U.S. import duties based on the CIF charges associated with Thai imports of HTSUS category 7209.16.00.90, the category containing the products covered by the price quotes, derived from official U.S. import statistics for the fourth quarter of 1998.

With respect to NV, petitioners obtained a home market price, contemporaneous with the pricing information used as the basis for EP, for the products offered for sale to customers in Thailand that are either identical or similar to those sold in the United States. This price was based on the average of the range of Thai transaction prices provided in petitioners' market research report for products offered for sale to customers in Thailand that are either identical or similar to those products sold to the United States. The price used by petitioners is ex-factory, exclusive of all taxes. Therefore, no adjustments were required.

In addition, petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A and packing expenses. To calculate COP, petitioners based COM on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled carbon steel flat products in the United States and in Thailand using publicly available data. To calculate fixed overhead and SG&A, including financial expenses, petitioners relied upon the 1998 audited financial statements of a Thai steel producer. Based upon the comparison of the adjusted price of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

In light of the above, and pursuant to sections 773(a)(4) and 773(e) of the Act, petitioners based normal value for sales in Thailand on CV. Petitioners calculated CV using the same COM and SG&A expense figures used to compute Thai home market costs. Petitioners added to CV no amount for profit, because the Thai steel producer reported a loss in its 1998 financial statements.

The estimated dumping margins in the petition range from 57.57 percent to 80.67 percent.

Turkey

Petitioners identified two firms, Eregli Demir ve Celik Fabrikalari, TAS ("Erdemir") and Borusan Birlesik Boru Fabrikalari, AS and Borcelik Celik Sanayii ve Ticaret, AS ("Borusan"), as possible exporters of cold-rolled steel from Turkey. Petitioners further identified Erdemir as the single largest producer, accounting for nearly 80 percent of the production of subject merchandise in Turkey. EP for Erdemir was based on prices at which the merchandise was offered for sale by an unaffiliated trading company in the United States. The product selected for EP falls within HTSUS number 7209.16.0090, which comprised 57.07 percent of all the subject merchandise imported between March 1998 and February 1999. Petitioners calculated the FOB price for this sale by subtracting amounts for U.S. inland freight, international freight, wharfage and handling charges incurred in unloading the merchandise from the vessel to a barge and later unloading the barge onto a flatbed truck. Prices for U.S. inland freight, wharfage and handling charges were obtained from a quote provided by a freight forwarder. Petitioners calculated a weighted-average per-ton amount for international freight by comparing the total CIF value and the total free-along-side ("FAS") value for the specific HTSUS item covering this merchandise. In addition, petitioners deducted applicable U.S. customs duties. To obtain the price of Erdemir's first sale in the United States to an unaffiliated person, *i.e.*, the trading company, petitioners lowered the offered price from the trading company by three percent to account for the trader's mark-up.

With respect to NV, petitioners obtained gross unit prices, based on foreign market research and contemporaneous with the pricing information used as the basis for EP, for products offered for sale in Turkey which were virtually identical to those upon which EP was based. As the price offers were on "ex-works" terms, petitioners made no adjustments to obtain NV, with the exception of circumstance-of-sale ("COS") adjustments as provided under section 773(a)(6)(C) of the Act. Petitioners adjusted the gross home market price by deducting home market credit expenses and adding U.S. credit expenses.

In addition, petitioners alleged pursuant to section 773(b) of the Act that sales in the home market were made at prices below the fully absorbed COP, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Tariff Act, COP includes the COM, SG&A, and packing expenses. Petitioners calculated COP for Turkish producers based on publicly available data and one petitioning company's own production experience, adjusted for known differences between costs incurred to produce cold-rolled carbon steel flat products in the United States and in Turkey. To calculate unit factor costs for certain materials and SG&A expenses, petitioners relied upon Erdemir's 1997 audited financial statements. Petitioners adjusted all unit factor costs that were denominated in Turkish lira to account for the effects of inflation in Turkey. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

In addition to their price-to-price comparison, petitioners provided a CV comparison. Petitioners calculated CV for sales in Turkey pursuant to sections 773(a)(4) and 773(e) of the Act, using the same COM and SG&A expense figures used to compute Turkish home market COP. Consistent with section 773(e)(2) of the Act, petitioners also added to CV an amount for profit, using data drawn from Erdemir's 1997 financial statements.

The estimated dumping margin based on a price-to-price comparison was 13.85 percent. Relying on a price-to-CV comparison, the resulting margin was 32.91 percent.

Venezuela

Petitioners identified Siderurgica del Orinoco CA ("SIDOR") as a possible exporter of cold-rolled steel from Venezuela. Petitioners further identified this company as the primary producer of the subject merchandise in Venezuela. Petitioners based EP for this company on two methods: (1) Two price quotes dated December 1998 and January 1999 from trading companies for sale to unaffiliated U.S. purchasers; and (2) import values declared to U.S. Customs. Because the terms for the first U.S. sale were delivered to the U.S. customer, petitioners calculated a net U.S. price by subtracting U.S. inland freight. The terms of sale for the second price quote were CIF, duty paid ex-dock. In addition, for both U.S. sales offers, petitioners subtracted ocean freight and insurance and estimated costs for U.S. import duties and fees. In calculating import values declared to U.S. Customs, petitioners used three HTSUS categories which accounted for all imports from Venezuela of the subject merchandise (*i.e.*, 7209.16.00.90, 7209.17.00.90 and 7209.18.15.60).

With respect to NV, petitioners used home market ex-factory prices, contemporaneous with the pricing information used as the basis for EP, for cold-rolled steel in commercial grades in standard. Petitioners provided information in the petition demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a sales below cost investigation. Because the entire range of home market prices was below the producer's COP, petitioners based NV on CV, pursuant to sections 773(a)(4) and 773(e) of the Act. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A, and profit. To calculate COM, petitioners relied on one U.S. producer's COM of manufacturing cold-rolled steel during calendar year 1998. The sole exception was for costs associated with the electric arc furnace ("EAF") production of liquid steel, which were based on the costs of a different U.S. plant because the producer's plant does not have an EAF. Where appropriate, the U.S. producer's costs were adjusted for known differences between manufacturing costs in the United States and Venezuela. Petitioners valued the major inputs in cold-rolled steel production based on the per unit values reported in publications of international agencies. Whenever possible, petitioners used unit factor prices paid by Venezuelan producers during 1998. When these were unavailable, petitioners used the most recent prices available and adjusted them for inflation. The calculated average processing cost was adjusted for unique costs associated with producing different product categories used in the price quotes and average unit values. Petitioners estimated SIDOR's per-unit depreciation expense using the ratio of depreciation expenses to cost of goods sold ("COGS") minus SIDOR's reported depreciation during 1997, as reported in the audited financial statements for 1997. The calculated ratio was applied to SIDOR's total manufacturing costs minus depreciation to arrive at the estimated depreciation expense. Petitioners multiplied SIDOR's ratio of SG&A expenses to COGS, as reported in the audited financial statements for 1997, by its estimated COM inclusive of product-specific adjustments, period costs and depreciation to arrive at an estimate of per-unit SG&A expenses. Petitioners did not include financial expenses in COP, as SIDOR reported a net monetary gain in 1997. As SIDOR experienced a loss in 1997, petitioners also did not include any profit in the estimated CV.

Petitioners calculated product-specific CV for matching to U.S. price quotes and average unit import values. The estimated dumping margins based on comparison of CV to U.S. price quotes is 32.23 percent to 52.61 percent. The estimated dumping margins based on comparison of CV to import average unit values is 25.54 percent to 56.72 percent.

Initiation of Cost Investigations

As noted above, pursuant to section 773(b) of the Act, petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of Brazil, Japan, Taiwan, Thailand, Turkey and Venezuela were made at prices below the fully allocated COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigations for these countries. The Statement of Administrative Action ("SAA"), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316 at 833 (1994). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have' reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their costs of production, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in Brazil, Japan, Taiwan, Thailand, Turkey, and Venezuela were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations.

Fair Value Comparisons

Based on the data provided by petitioners, there is reason to believe that imports of cold-rolled steel from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold at less than fair value.

Critical Circumstances

The petitioners have alleged that critical circumstances exist with regard to imports of cold-rolled steel from Brazil, Japan, Thailand and Venezuela, and have supported their allegations with the following information.

First, the petitioners claim that the importers knew, or should have known, that the cold-rolled steel was being sold at less than normal value. Specifically, the petitioners allege that the margins calculated in the petition for each of the four countries exceed the 25 percent threshold used by the Department to impute importer knowledge of dumping.

The petitioners also have alleged that imports from these four countries have been massive over a relatively short period. Alleging that there was sufficient pre-filing notice of these antidumping petitions, the petitioners contend that the Department should compare imports during October-December 1998 to imports during July-September 1998 for purposes of this determination. Specifically, petitioners supported this allegation with copies of news articles discussing the likelihood of filing antidumping complaints against producers of cold-rolled steel. For example, petitioners cite to an international trade publication in September 1998 that carried an article discussing the likelihood that U.S. steel producers would file unfair trade cases related to cold-rolled steel. In addition, petitioners cite to comments made in September 1998 by the Chairman of Bethlehem Steel Corporation, who discussed the rise of cold-rolled steel imports and the possibility that antidumping cases would be filed. The Department concludes that this level of press coverage provided foreign producers of cold-rolled steel with prior knowledge of pending antidumping investigations. Therefore, the Department considered import statistics contained in the petition for the periods October-December 1998 and July-September 1998. Based on this comparison, imports of cold-rolled steel from Brazil increased by 150 percent, imports from Japan increased by 37 percent, while imports from Thailand increased by 114 percent, and imports of cold-rolled steel from Venezuela increased by 44 percent.

Although the ITC has not yet made a preliminary decision with respect to injury, petitioners note that in the past the Department has also considered the extent of the increase in the volume of imports of the subject merchandise as one indicator of whether a reasonable basis exists to impute knowledge that material injury was likely. In the cases involving Brazil, Japan, Thailand, and Venezuela, the increases in imports were more than double the amount considered "massive." Taking into consideration the foregoing, we find that the petitioners have alleged the elements of critical circumstances and supported them with information reasonably available for purposes of initiating a critical circumstances inquiry. For these reasons, we will investigate this matter further and will make a preliminary determination at the appropriate time, in accordance with section 735(e)(1) of the Act and Department practice (*see* Policy Bulletin 98/4 (63 FR 55364, October 15, 1998)).

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Attachments to Initiation Checklist, Re: Material Injury, June 21, 1999*).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on cold-rolled steel and petitioners' responses to our supplemental questionnaire clarifying the petitions, as well as our discussions with the authors of the foreign market research reports supporting the petitions on June 16, 1999 and other measures to confirm the information contained in these reports (*see Memorandum to the File; Re: Foreign Market Research*, dated June 21, 1999), we have found that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain cold-rolled carbon steel flat products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, by no later than July 17, 1999, whether there is a reasonable indication that imports of cold-rolled steel from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: June 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–16243 Filed 6–24–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–831, C–560–808, C–549–815, C–307–816]

Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Indonesia, Thailand, and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Javier Barrientos (Brazil), at (202) 482–2786; Rosa Jeong (Indonesia), at (202) 482–3853; Eva Temkin (Thailand), at (202) 482–1167; and Dana Mermelstein or Sean Carey (Venezuela), at (202) 482–2786, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

INITIATION OF INVESTIGATIONS:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348).

The Petitions

On June 2, 1999, the Department of Commerce (the Department) received petitions filed in proper form on behalf of Bethlehem Steel Corporation, Gulf States Steel, Inc., Ispat Inland, Inc., LTV Steel Co., Inc., National Steel Corporation, Steel Dynamics, Inc., U.S. Steel Group, a Unit of USX Corporation, Weirton Steel Corporation, and United Steelworkers of America, (collectively, "the petitioners"). On June 8, 1999, the Independent Steelworkers Union joined as a co-petitioner. Supplements to the petitions were filed on June 8, 10, 11, 14, and 15, 1999.

In accordance with section 702(b)(1) of the Act, petitioners allege that manufacturers, producers, or exporters of certain cold-rolled flat-rolled carbon-quality steel products (cold-rolled or subject merchandise) in Brazil, Indonesia, Thailand, and Venezuela receive countervailable subsidies within the meaning of section 701 of the Act. Petitioners also allege that "critical circumstances" exist within the meaning of section 703(e) of the Act, with respect to imports of subject merchandise from Thailand and Venezuela.

The Department finds that petitioners are interested parties as defined under sections 771(9)(C) and (D) of the Act, and have filed the petitions on behalf of the domestic industry. The petitioners have demonstrated sufficient industry support with respect to each of the countervailing duty investigations, which they are requesting the Department to initiate (*see Determination of Industry Support for the Petitions below*).

Scope of the Investigations

For purposes of these investigations, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedules of the United States ("HTSUS"), are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these investigations unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of these investigations:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

The merchandise subject to these investigations is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8015, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. In particular, we seek comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded by example from the scope, and the physical and chemical description of the product coverage. The Department encourages all parties to submit such comments by July 7, 1999. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the relevant foreign governments for consultations with respect to the petitions filed. On June 16, 1999, the Department held consultations with representatives of the Royal Thai Government (RTG). Also on June 16, 1999, the Department held consultations with representatives of the Government of Brazil (GOB). On June 18, 1999, the Department held consultations with representatives of the Government of Venezuela (GOV). *See* the June 21, 1999, memoranda to the file regarding these consultations (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

The domestic like product referred to in the petitions is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Moreover, the Department has determined that the petitions (and subsequent amendments) and supplemental information obtained through the Department's research, contain adequate evidence of industry support; therefore, polling is unnecessary (*see Attachment to the Initiation Checklist, Re: Industry Support,* June 21, 1999). For all countries, petitioners established industry support representing over 50 percent of total production of the domestic like product. Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Injury Test

Because Brazil, Indonesia, Thailand, and Venezuela are "Subsidies Agreement Countries" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from these countries materially injure, or threaten material injury to, a U.S. industry.

In our consultations with the Government of Venezuela , the GOV stated that Article 27.10(b) of the SCM Agreement requires that the Department decline to initiate a countervailing duty investigation of certain cold-rolled carbon steel flat products from Venezuela or to terminate any countervailing duty investigation, if initiated. The GOV noted that the volume of imports as described in the petition does not reach the thresholds required by Article 27(10)(b): the volume of imports of the subject merchandise from Venezuela is less than four percent of total U.S. imports of the like product, and, when aggregated with imports from the other developing countries named in the petition whose individual exports constitute less than four percent of total imports (Thailand and Indonesia), less than nine percent of total U.S. imports (by volume) of the like product. Article 27.10(b) is given effect by Section 771(24)(B) of the Act, which directs the International Trade Commission to apply a particular standard to developing countries' imports when considering whether those imports are "negligible." Thus, the applicability of Article 27(10)(b) will be properly considered by the International Trade Commission during its investigation pursuant to section 703(a) of the Act. The ITC is scheduled to make its preliminary determination by July 16, 1999.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated subsidized imports of the subject merchandise. The petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and industry employment level. The allegations of injury and causation are supported by relevant evidence including business proprietary data from the petitioning firms and U.S. Customs import data. The Department assessed the allegations and supporting evidence regarding material injury and causation, and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* the June 21, 1999, memoranda to the file (for each country) regarding the initiation of each investigation (public versions on file in the Central Records Unit of the Department of Commerce, Room B–099).

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

Initiation of Countervailing Duty Investigations

The Department has examined the petitions on certain cold-rolled flat-rolled carbon-quality steel products from Brazil, Indonesia, Thailand, and Venezuela, and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of cold-rolled from these countries receive subsidies. *See* the June 21, 1999, memoranda to the file (for each country) regarding the initiation of each investigation (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099). We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise from Thailand and Venezuela no later than the date of our preliminary determination.

A. Brazil

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Brazil:

1. *GOB Equity Infusions*
   a. *Pre-1992 Equity Infusions*
   b. *GOB Equity Infusions to Companhia Siderurgica Paulista (COSIPA) in 1992 and 1993*
   c. *GOB Equity Infusion to Companhia Siderugica Nacional (CSN) in 1992*
2. *GOB Tax Deferrals*
   a. *COFINS, IPI, Social Contribution, Finsocial, PIS and IRPJ Arrears to the National Tax Authority;*
   b. *INSS and FNDE Arrears to the Federal Social Security Administration;*
   c. *ICMS Arrears to the State of Sao Paulo;*
   d. *IPTU Arrears to the City of Cubatao.*

Based of the information contained in the petition, we are also investigating whether COSIPA was uncreditworthy in the years from 1984 to 1989 and from 1991 to 1993, whether CSN was uncreditworthy in the years from 1984 to 1992, and whether Usinas Siderugicas de Minas Gerais (USIMINAS) was uncreditworthy in the years from 1984 to 1988. Further, we will investigate whether the producers of subject merchandise were unequityworthy to the extent that they received government equity infusions.

B. Indonesia

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Indonesia:

1. *1995 Equity Infusion to PT Krakatau Steel (Krakatau).*
2. *Pre-1993 Equity Infusions to Krakatau.*
3. *Equity Infusions to PT Cold-Rolled Mill Indonesia (CRMI).*
4. *Two-Step Loan.*
5. *Bank of Indonesia Rediscount Loans.*
6. *Reduction in Electricity Tariffs.*

Based in the information in the petition, we are also investigating whether Krakatau was uncreditworthy in 1995, whether Krakatau was unequityworthy during the years from 1988 to 1992, and in 1995, and whether CRMI was unequityworthy in 1989 and 1990.

C. Thailand

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Thailand:

1. *Duty Exemptions on Imports of Raw and Essential Materials Under Section 30 of the Investment Promotion Act (IPA).*
2. *Duty Exemption on Imports of Machinery Under IPA Section 28.*
3. *Exemptions from VAT Under Section 21(4) of the VAT Act.*
4. *Corporate Income Tax Exemptions Under IPA Section 31.*
5. *Tax Benefits from Revaluation.*
6. *Additional Tax Deductions Under IPA Section 35.*
7. *Loan Guarantees on 1996 Loan to Thai Cold-rolled Steel Sheet Plc (TCRSS).*
8. *Subsidy on the 1996 Loan from RTG-Banks and Commercial Thai Banks.*
9. *Loans from the IFCT and the Thai Export-Import Bank.*
10. *Investment Inducements.*
11. *Loans from Banks Owned, Controlled, or Influenced by the RTG.*
12. *Packing Credits.*
13. *Pre-Shipment Finance Facilities.*
14. *Export Insurance Program.*
15. *Trust Receipt Financing for Raw Materials.*
16. *Tax Certificates for Export.*
17. *Import Duty Exemptions for Industrial Estates.*
18. *Export Processing Zone Incentives.*
19. *IPA Subsidies for Building and Operating the Prachuap Port.*
20. *Subsidized Waterworks from Eastern Water.*
21. *Plant Construction Subsidies for Sahaviriya's Power Plant.*

Based on the information in the petition, we are also investigating whether TCRSS was uncreditworthy during the period from 1996 to the POI. Petitioners also alleged that SUS was uncreditworthy and unequityworthy during this period. However, no evidence was provided to substantiate this allegation. Thus, we are not initiating an investigation of these allegations.

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in Thailand:

1. Subsidized Transport, Electricity, and Water Charges From the BoI

Petitioners allege that, since 1995, the Board of Investment (BoI) has awarded projects of certain industries customized incentives for investments of particular strategic importance. In particular, petitioners allege that since the BoI has bestowed benefits upon the Thai auto industry, and in light of the BoI's history of promoting the steel industry, the Department should investigate whether the BOI is also offering exclusive transport, electricity, and water discounts to the steel industry. However, petitioners have not provided information showing that the Thai steel industry is eligible for any benefits in this capacity. Therefore, we are not initiating an investigation of this subsidy allegation.

2. Regional Electricity Subsidies From EGAT

The Petitioners assert that the RTG is providing a countervailable subsidy to producers of subject merchandise through the pricing policy of the state-owned electric company. Petitioners argue that because the Thai electric company (EGAT) charges all customers of the same type the same rate for electricity, regardless of where they live or operate, EGAT is subsidizing electricity users (including TCRSS) in regions with much higher operating costs.

We are not initiating an investigation into this subsidy allegation. Petitioners have not provided information to support their allegation that RTG charged TCRSS electricity rates for less than adequate remuneration.

3. Fuel Subsidies for SSI's On-Site Power Plant

Petitioners allege that PTT, Thailand's national oil company, which has a monopoly on petroleum based fuels, normally charges monopoly premiums but charged international market level prices to SSI. Petitioners allege that TCRSS would receive a benefit if it pays for fuel at less than adequate remuneration. Thus, petitioners argue that the Department should investigate whether SSI's Bangsaphan steel complex has its own generation facility, what price that facility pays for fuel, and what amounts TCRSS pays for use of electricity generated from the plant. However, the information in the petition does not support the claim that PTT charges monopoly premiums to all users of petroleum based fuels in Thailand. Because petitioners have failed to substantiate their allegation of discriminatory pricing in favor of TCRSS, we are not initiating an investigation of this subsidy allegation.

D. Venezuela

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Venezuela:

1. *Government Equity Infusions into Siderúrgica del Orinoco C.A. (SIDOR), Conversion of SIDOR'S Debt to Equity.*
2. *Dividend Advances from Hacienda.*
3. *Debt Assistance as Part of the Privatization of SIDOR.*
4. *GOV Provision of Iron Ore for Less than Adequate Remuneration.*
5. *Export Bond Program.*
6. *FINEXPO.*
7. *Government of Venezuela Port Concession.*
8. *Preferential Tax Incentives under Decree 1477.*
9. *1988 Grant from the National Executive of the Government of Venezuela.*
10. *Discounted Prepayment of SIDOR Debt.*

Based on the information in the petition, we are also investigating whether SIDOR was uncreditworthy during the period from 1979 to 1991, with the exception of 1988, and during the period from 1995 to 1998. Further, we will investigate whether SIDOR was unequityworthy to the extent that it received government equity infusions.

We are not including in our investigation at this time the following program alleged to be benefitting producers and exporters of the subject merchandise in Venezuela:

1. Provision of Electricity, Water, Gas and Other Fuels for Less Than Adequate Remuneration

Petitioners allege that the GOV provides to SIDOR electricity, water, gas, and other fuels, for less than adequate remuneration. Petitioners cite to an August 1997, press report which states "the contract guarantees the winning consortium the necessary supply of electricity, water, and gas to operate the company." Petitioners also cite to the *Final Affirmative Countervailing Duty Determination; Ferrosilicon from Venezuela; and Countervailing Duty Order for Certain Ferrosilicon from Venezuela,* 58 FR 27539 (May 10, 1993) (*Ferrosilicon from Venezuela*), in which the Department found countervailable benefits from the preferential government provision of electricity. Petitioners contest the Department's finding in *Final Affirmative Countervailing Duty Determination; Steel Wire Rod From*

Venezuela, 62 FR 55014 (October 22, 1997) (*Steel Wire Rod*) that electricity was not provided for less than adequate remuneration. Further, in petitioners' view, SIDOR's privatization provides new information which warrants the reexamination of the GOV provision of electricity, and the examination of the GOV provision of water and gas.

Notwithstanding the Department's negative determination with respect to the provision of electricity for less than adequate remuneration in *Steel Wire Rod* (62 FR at 55022), petitioners have failed to provide adequate information that electricity, water and gas are being provided to SIDOR for less than adequate remuneration. We disagree with petitioners that a press report of the GOV's intent to continue providing these utilities to SIDOR after privatization suggests that those utilities are being provided for less than adequate remuneration. Petitioners have not provided any information about pricing policies or cost data that would indicate that the rates that SIDOR pays are not based upon market principles. Neither have petitioners provided any new information which would warrant reexamining our finding in *Steel Wire Rod*. Thus, we are not including this program in our initiation.

2. GOV-Induced Contribution

Petitioners alleged that, as part of the privatization, the Amazonia Consortium was required to invest $300 million in plant modernization, and $74 million in environmental control and clean-up. SIDOR's financial statement indicates that the Consortium committed to make a minimum investment of $300 million within three years. Petitioners alleged that this committed investment constitutes revenue foregone by the GOV in its privatization of SIDOR. Petitioners also contended that in the absence of a GOV-induced equity infusion, the benefit may have taken the form of a direct reimbursement to, or credit against the purchase price.

While petitioners have documented the committed investment element of SIDOR's privatization, a simple assertion that the investment was a condition of SIDOR's sale is insufficient to demonstrate the existence of a direct or indirect financial contribution by the GOV to SIDOR. Thus, we are not investigating the investment commitments which were made as part of the privatization of SIDOR.

3. Grant Given Through the Reduction of Sale Price

Petitioners alleged that SIDOR's purchasers received a discount on the purchase price of SIDOR in return for agreeing to a one-year worker layoff prohibition and a two-year retraining program. Petitioners alleged that this discount constitutes revenue foregone by the GOV in its sale of SIDOR and it confers a benefit which is specific to SIDOR.

While petitioners have documented their allegation that the terms of SIDOR's sale may have included a payment of cash and commitments with respect to employee retention and worker retraining, they have not provided evidence that demonstrates that the terms give rise to a direct or indirect financial contribution by the GOV to SIDOR. Thus, we are not investigating whether the purchase price was discounted in exchange for other commitments by SIDOR's purchasers.

Petitioners have also alleged that SIDOR was uncreditworthy from 1993 to 1998 and unequityworthy from 1996 to 1998. However, petitioners did not provide information to indicate that the company was uncreditworthy or unequityworthy during these years. Thus, we are not investigating these allegations.

Critical Circumstances

The petitioners have alleged that critical circumstances exist with regard to imports of cold-rolled steel from Thailand and Venezuela, and have supported their allegations with the following information.

As discussed above, petitioners have provided documentation supporting allegations of countervailable subsidies which are inconsistent with the Subsidies Agreement, including export subsidies that are similar to those contained in Annex I of the Subsidies Agreement.

The petitioners also have alleged that imports from Thailand and Venezuela have been massive over a relatively short period. Alleging that there was sufficient pre-filing notice of these countervailing duty petitions, the petitioners contend that the Department should compare imports during October-December 1998 to imports during July-September 1998 for purposes of this determination. Specifically, petitioners supported this allegation with copies of news articles discussing the likelihood of filing unfair trade complaints against producers of cold-rolled steel. For example, petitioners cite to an international trade publication in September 1998 that carried an article discussing the likelihood that U.S. steel producers would file unfair trade cases related to cold-rolled steel. In addition, petitioners cite to comments made in September 1998 by the Chairman of Bethlehem Steel Corporation, who discussed the rise of cold-rolled steel imports and the possibility that trade remedy cases would be filed. The Department concludes that this level of press coverage provided foreign producers of cold-rolled steel with prior knowledge of pending unfair trade investigations. Therefore, the Department considered import statistics contained in the petition for the periods October-December 1998 and July-September 1998. Based on this comparison, imports of cold-rolled steel from Thailand increased by 114 percent, and imports of cold-rolled steel from Venezuela increased by 44 percent.

Although the ITC has not yet made a preliminary decision with respect to injury, petitioners note that in the past the Department has also considered the extent of the increase in the volume of imports of the subject merchandise as one indicator of whether a reasonable basis exists to impute knowledge that material injury was likely. In the cases involving Thailand, and Venezuela, the increases in imports were more than double the amount considered "massive." Taking into consideration the foregoing, we find that the petitioners have alleged the elements of critical circumstances and supported them with information reasonably available for purposes of initiating a critical circumstances inquiry. For these reasons, we will investigate this matter further and will make a preliminary determination at the appropriate time, in accordance with section 735(e)(1) of the Act and Department practice (see Policy Bulletin 98/4 (63 FR 55364, October 15, 1998)).

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the governmental representatives of Brazil, Indonesia, Thailand, and Venezuela. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determination by the ITC

The ITC will determine by July 16, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by

reason of imports of certain cold-rolled flat-rolled carbon-quality steel products from Brazil, Indonesia, Thailand, and Venezuela. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Date: June 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–16249 Filed 6–24–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–404]

Preliminary Results of Full Sunset Review: Live Swine From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: Live swine from Canada.

SUMMARY: On December 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on live swine from Canada (63 FR 66527) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of a domestic interested party and substantive comments filed on behalf of a domestic interested party and three respondent interested parties, the Department is conducting a full (240 day) review. As a result of this review, the Department preliminarily finds that termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Preliminary Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: June 25, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in 19 C.F.R. Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this countervailing duty order is shipments of live swine, except U.S. Department of Agriculture ("USDA") certified purebred breeding swine, slaughter sows and boars, and weanlings from Canada.[1] Weanlings are swine weighing up to 27 kilograms or 59.5 pounds.[2]

The merchandise subject to the order is currently classifiable under the Harmonized Tariff Schedule ("HTS") item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Background

On December 2, 1998, the Department initiated a sunset review of the countervailing duty order on live swine from Canada (63 FR 66527), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the National Pork Producers Council ("NPPC")[3] on December 17, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The NPPC claimed interested party status under 19 U.S.C. 1677(9)(C) and (F), as an association whose members are producers of live swine. In addition, the NPPC notes that it was the original petitioner in the underlying investigation. We received complete substantive responses from the NPPC, the Gouvernement du Quebec ("GOQ"), the Government of Canada ("GOC") and the Canadian Pork Council and its Members ("CPC") on January 6, 1999, within the deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i).

In their substantive responses, the GOQ and the GOC claimed interested party status under 19 U.S.C. 1677(9)(B), as a provincial and national government, respectively, of the country in which the subject merchandise is produced and from which it is exported. The GOQ also claimed interested party status under 19 U.S.C. 1677(3). The CPC claimed interested party status, under 19 U.S.C. 1677(9)(A), as a council whose members are hog producing organizations whose registered members are producers of the subject merchandise. The CPC also stated that a majority of its member organizations also serve as importers of record of the subject merchandise, whose imports are supplied by their registered producers. The Department, on January 13, 1999, received timely rebuttals from the NPPC, the GOQ, the GOC, and the CPC.

Because the Department received complete substantive responses from a domestic interested party and from the Canadian Government (both the GOC and the GOQ), and the CPC, and in accordance with section 351.218(e)(2)(i) of the *Sunset Regulations*, the Department is conducting a full (240 day) sunset review.

The Department determined that the sunset review of the countervailing duty order on live swine from Canada is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on March 22, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than June 21,

[1] On August 29, 1996, the Department issued the final results of a changed circumstances review revoking the order, in part, with respect to slaughter sows and boars. The revocation became effective on April 1, 1991 (*see Live Swine from Canada; Final Results of Changed Circumstances Countervailing Duty Administrative Review, and Partial Revocation In Part of Countervailing Duty Order*, 61 FR 45402 (August 29, 1996).

[2] In the *Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled and Frozen Pork Products from Canada*, 50 FR 25097 (June 17, 1985), the Department also calculated a net subsidy for dressed-weight swine. However, the Department terminated its investigation with respect to fresh, chilled, and frozen pork products from Canada based on a finding by the Commission that no material injury, threat of material injury, or retardation of an infant industry existed.

[3] The NPPC is a trade organization representing U.S. hog and pork producers through a federation of 44 affiliated state pork producer associations with a total membership of 85,000. NPPC's membership consists of small family farms and large hog operations.

1999, in accordance with section 751(c)(5)(B) of the Act.[4]

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the Commission information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, parties' comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Party Comments

In its substantive response, the NPPC states that there is a strong likelihood that, were the countervailing duty order on live swine from Canada revoked, a countervailable subsidy would continue or recur. The NPPC claims that there are a number of Canadian hog subsidies currently in place and there is evidence that suggests the possibility of additional subsidies in the future. Further, the NPPC argues that the Canadian government has a history of replacing terminated programs with new ones and, for these reasons, the Department should not revoke the order on live swine from Canada.

The NPPC argues that the history and scope of subsidization of live swine from Canada demonstrates that subsidies will recur absent continuation of the order. The NPPC asserts that the Canadian federal and provincial governments have maintained a large number of subsidies intended to benefit pork producers and that the number of subsidies have increased over time. Further, the NPPC argues, as indicated in the Statement of Administrative Action ("the SAA") H.R. Doc. No. 103–316, vol. 1 at 888 (1994), that continuation of a program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies. Given the continued maintenance of a number of subsidy programs, the NPPC argues that the Department should conclude that a CVD order is necessary to prevent subsidies from continuing.

The NPPC also questions the method with which the Canadian federal and provincial governments terminate pork subsidy programs and, more importantly, the permanence of such terminations. The NPPC states, citing the *Sunset Policy Bulletin*, that the Department should consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. The NPPC claims that the governments have demonstrated a pattern of eliminating and then replacing pork subsidy programs with new ones (*e.g.*, according to the NPPC, the National Tripartite Stabilization Plan was terminated and then replaced, for all intents and purposes, with the National Transition Scheme). The NPPC claims that, due to this factor, the small number of programs that have been eliminated have had little, if any, effect on the overall subsidization of the Canadian pork industry. The NPPC argues that as long as programs exist there is a real possibility of continued subsidization. The NPPC further claims that termination through administrative action, rather than through legislative means, is insufficient for the Department to determine that the program has indeed been terminated (*e.g.*, the Ontario Export Sales Program). In addition, the Department should not find programs terminated that have simply not been funded for a particular period or have expired (*e.g.*, the Alberta Livestock and Beeyard Compensation Program and the Canada/Ontario Western Agribition Livestock Transportation Assistance Program, respectively).

The NPPC also argues that there is a possibility of additional subsidies for Canadian hog producers that further supports the likelihood of continued subsidization. The NPPC notes that extremely low hog prices currently exist in North America and that the Department has recognized this situation as a trigger for subsidies. Further, the NPPC provided Canadian newspaper articles which suggest that the Canadian federal and provincial governments are discussing the possibility of establishing new subsidies for Canadian swine producers.

In addition, the NPPC claims that the Department should examine certain subsidies given to Canadian cattle producers in the context of swine subsidization. The NPPC argues that there are several programs being investigated by the Department in the ongoing investigation of cattle from Canada which may be applicable to swine. However, the NPPC notes that the Department has not yet made any determination on whether these programs confer countervailable benefits to cattle or swine. Nevertheless, the NPPC argues that Department should consider the existence of these programs in its sunset determination of live swine from Canada.

The NPPC notes that, over the life of this order, the level of subsidization for subject merchandise has reached a *de minimis* level on three occasions. It argues that three instances of *de minimis* subsidy rates, out of thirteen, are insufficient to determine that subsidies have permanently reached *de minimis* levels and that the CVD order is unneeded.

In their substantive responses, the GOC, GOQ, and the CPC argue that the likely effect of revocation is that the value of any countervailable subsidy would continue to be *de minimis*, or, effectively zero. The three respondents argue collectively that net benefits conferred by any remaining countervailable subsidies are so small as to be effectively non-existent.

The GOC and the CPC claim that the Department has reviewed 43 different federal and provincial subsidy programs since the original investigation in 1985. Of these, 28 have been found by the Department to have been terminated, with no residual benefits or replacement programs. Of the remaining 15 programs, eight have been determined not to provide countervailable benefits to live swine. Finally, of the remaining seven programs, four have been found in the most recently completed administrative review of the order (63 FR 47235, September 4, 1998) to convey *de minimis* benefits. The last three programs, according to the respondents, were found by the Department to have not been used. The GOC and the CPC assert that the *de minimis* benefits conferred on producers and the non-use of the remaining three programs

[4] *See Live Swine From Canada: Extension of Time Limit for Preliminary Results of Five-Year Review*, 64 FR 14884 (March 29, 1999).

indicate that revocation of the order would not lead to continuation or recurrence of countervailable subsidies.

The GOC and the CPC also argue that the programs terminated over the life of the order accounted for nearly all of the subsidization applicable to live swine. Termination of these and other programs led to the *de minimis* deposit and subsidy rates in the most recently completed reviews.

The GOQ echoes many of the same arguments as the GOC and the CPC. The submissions of the GOQ, however, deal more directly with the subsidy programs of Quebec. The GOQ asserts that, of the seven programs found by the Department to confer countervailable subsidies in the final results of the latest administrative review (63 FR 47235, September 4, 1998), none was a Quebec program and only one was a national program (the National Transition Scheme for Hogs Program). According to the GOQ, this last remaining national program was terminated prior to the completion of the latest administrative review and has now been found to confer no benefits to hog producers.

The GOQ also claims that three other programs, two of which were created by the GOQ, were found to have no impact on the net subsidy rate from the latest administrative review because the benefits conveyed were too small. These two programs were the Technology Innovations Program and the Support for Strategic Alliances Program.[5] According to the GOQ, hog producers, as of March 31, 1998, can no longer apply for benefits under the Technology Innovations Program. As for the Support for Strategic Alliances Program, the GOQ states that it expired on March 31, 1998.

Finally, the GOQ notes that the Department examined another Quebec program in the latest administrative review—Quebec's Farm Income Stabilization Insurance program ("FISI"). The GOQ states that the Department found this program not to be used because no hogs benefiting from FISI were exported to the United States. Moreover, the GOQ claims that FISI has not been used with respect to hogs exported to the United States, from April 1, 1996 to the present.

Collectively, the GOQ, GOC, and CPC argue that, in light of the criterion for revocation as outlined in the *Sunset Policy Bulletin*, the termination without replacement of all major countervailed programs, combined with the findings of non-countervailability, non-usage, and no impact of the remaining programs, compels the conclusion that subsidies would not be likely to continue or recur were the order to be revoked (*see* January 6, 1999, Substantive Response of the GOC).

Parties' Rebuttal Comments

In its rebuttal, the NPPC argues that the GOC, GOQ, and CPC assessments of the likelihood of continued subsidization is flawed because it focuses on active, "non-terminated" countervailable subsidy programs and ignores those subsidies that continue to exist, but have been found to be "not used." The NPPC asserts that such an assessment is invalid with respect to the Department's determination of whether subsidization will continue. They argue that a program determined to confer benefits in one period may provide benefits in another and that the distinction between these "sets" of programs is irrelevant.

The NPPC also argues that the GOC and CPC are incorrect in claiming that there have been no replacements for programs that have been terminated over the life of the order. The NPPC asserts that the fact that some programs have been terminated while other new countervailable programs have been created demonstrates that there has been replacement of terminated programs.

The CPC, GOQ, and GOC assert that the NPPC has incorrectly reported the most recent administrative review as covering 27 subsidy programs. The respondents argue that the NPPC has reported that 27 countervailable programs continue to exist, but has ignored the fact that many of these programs never existed, were never used by hog producers, or never provided countervailable benefits. Further, the CPC argues that the NPPC's attempts to discredit the Department's findings concerning program terminations is not only unfounded, but has already been resolved in the most recent administrative review (63 FR 47235, September 4, 1998).

The GOQ, GOC, and CPC argue that the NPPC's allegations concerning the possible future creation of countervailable subsidies is irrelevant. First, the respondents' argue that there is no credible evidence to suggest that new countervailable subsidy and/or price stabilization programs are likely to be created. Second, respondents argue that the NPPC has failed to provide "good cause" for the Department to consider any programs not previously examined by the Department. Therefore, such accusations should play no part in the Department's likelihood and net subsidy determinations.

Department's Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the SAA, H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin)*. Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

In its final affirmative countervailing duty determination (50 FR 25097, June 17, 1985), the Department determined that the net subsidy from the 23 programs investigated for live swine from Canada was Can$0.02602/lb. (bonding rate Can$0.04390/lb.).[6] Since

[5] Despite the Department's treatment of these two programs as separate, the GOQ claims that these programs are not separate programs but represent two of the three components of the Canada/Quebec Subsidiary Agreement on Agri-Food Development.

[6] In the *Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled and Frozen Pork Products from Canada*, 50 FR 25097 (June 17, 1985), the Department also calculated a net subsidy for dressed-weight swine of Can$0.03272/lb. (bonding rate Can$0.025523/lb.). However, the Department terminated its investigation with respect to fresh, chilled, and frozen pork products from Canada based on a finding by the Commission that no material injury, threat of material injury, or retardation of an infant industry existed. Further, on August 29, 1996, the Department issued the final results of a changed circumstances review revoking the order, in part, with respect to slaughter sows and boars. The revocation became effective on April 1, 1991 (*see Live Swine from Canada; Final Results of Changed Circumstances Countervailing Duty Administrative Review, and Partial Revocation In Part of Countervailing Duty Order*, 61 FR 46402 (August 29, 1996). The programs determined by the Department in the original investigation to confer, or have the potential to confer, countervailable subsidies were:

1. Agricultural Stabilization Act
2. Record of Performance Program
3. Quebec Special Credits for Hog Producers
4. Prince Edward Island Interest Payments on Assembly Yard Loan
5. Saskatchewan Hog Assured Returns

Continued

the original investigation in 1985, the Department has determined, during various administrative reviews of this order, that a number of the programs examined in the original investigation have been terminated.[7] Furthermore, the Department has determined, in the final results of administrative reviews, that some of the remaining programs from the original investigation do not confer countervailable benefits.[8] The Department finds that there are four countervailable subsidy programs from the original investigation which continue to exist.[9]

In addition, the Department can confirm, through the final results of administrative reviews, that there are several countervailable subsidy programs created by the national and provincial governments of Canada after the original investigation. A number of these programs are also still in existence.[10]

As claimed by the GOQ, one countervailable subsidization program examined in the original investigation, the Quebec Farm Income Stabilization Insurance Program, is not currently being used. In addition, two subsidy programs created after the imposition of the order are also not currently being used. However, current use is not the standard employed by the Department in sunset reviews. As stated in the *Sunset Policy Bulletin*, "where a company has a long track record of not using a program, including during the investigation, the Department normally will determine that the mere availability of the program does not, by itself, indicate likelihood of continuation or recurrence of a countervailable subsidy." Therefore, with respect to the three programs addressed by the GOQ, the Department preliminarily determines that these three programs do not have a "long track record" of non-use.[11]

With respect to the termination of programs, the Department has preliminarily determined, in this case, to follow prior administrative review determinations concerning terminated programs. In these prior determinations, the Department addressed evidence demonstrating that programs were terminated and not merely suspended. In addition, the Department addressed the NPPC's arguments concerning the Department's criteria and/or methodology in determining whether a program had been terminated (*see Live Swine from Canada; Final Results of Countervailing Duty Administrative Review*, 63 FR 47235 (September 4, 1998)).

With respect to the NPPC's argument that certain programs were terminated solely through administrative action, the Department agrees that the elimination of a program administratively is not as strong a basis for termination as elimination through legislative action (*see Sunset Policy Bulletin*). However, where a program was put in place administratively, it is reasonable to expect that the government would terminate the program in the same manner (*see Final Results of Expedited Sunset Review: Heavy Iron Construction Castings from Brazil*, 64 FR 30313 (June 7, 1999). In these circumstances, unless there is a basis for concluding that the government is likely to reinstate the program, we believe it is appropriate to treat the program as terminated. The NPPC has argued that reinstatement will be likely in this case because many new programs have been put in place during the life of the order. In this case, the record does not indicate a connection between the programs that have been terminated and the new programs. Therefore, the Department does not view the creation of new programs as supporting the conclusion that terminated programs will be reinstated.

The Department finds that the continued existence of countervailable subsidies is highly probative of the likelihood of continuation or recurrence of countervailable subsidies. Because the Government of Canada currently maintains countervailable subsidy programs, as acknowledged by the GOC, the GOQ, and the CPC, and as evidenced by the most recent administrative review, because there are programs that have not been officially terminated, and because no program has a "long track record" of non-use, the Department finds that there is a likelihood of continuation or recurrence of a countervailable subsidy if the order were to be revoked. As noted above, there are countervailable subsidy programs created after the imposition of the order which continue to exist.[12] The Department finds that the creation and maintenance of countervailable subsidies after the imposition of the order strongly suggests and supports the conclusion that revocation of the order would likely lead to continuation or recurrence of countervailable subsidies.

Because the Department is basing its likelihood determination on the current existence and maintenance of countervailable subsidy programs benefitting, or potentially benefitting, swine producers and/or exporters by the federal and provincial governments of Canada, the Department finds no reason to examine programs which have not been previously reviewed by the Department.

Net Countervailable Subsidy

Party Comments

The NPPC argues that the net subsidy calculated in the original investigation of live swine from Canada is not representative of the net subsidy likely to prevail if the order were revoked. Instead, the NPPC asks that, as stipulated in the *Sunset Policy Bulletin*, the Department use a more recently calculated rate. The NPPC states that there are several factors that require adjustment of the original subsidy rate (*see* Substantive Response of NPPC at 16). The NPPC argues that the chief subsidy programs driving this order have always been stabilization programs. These programs are designed to increase payments to producers when market prices fall below support prices. The NPPC claims that, as hog prices are at historically low levels, subsidy payments will be at historically high levels. Furthermore, the NPPC states that Canadian federal and provincial governments are currently considering additional subsidy programs in response to the hog crisis. Lastly, the NPPC argues that a review of the case history indicates that only a few of the programs from the original investigation continue to exist and the majority of the countervailable programs which exist at present are programs created after the imposition of the order.

For these reasons, the NPPC argues that the Department should not use the net subsidy from the original investigation, but instead should use the net subsidy rate from the seventh or eighth administrative review.[13] The NPPC argues that these reviews cover the largest number of programs ever investigated and also resulted in high net subsidy rates as a result of price stabilization programs. Alternatively, the NPPC suggests the Department use the net subsidy from the fifth administrative review as it represents the highest rate ever calculated.[14]

The GOC and CPC agree with the NPPC about the use of a net subsidy rate other than that calculated in the original investigation. The GOC and CPC argue, collectively, that the net subsidy from the original investigation is not reflective of the rate likely to prevail if the order were revoked. They point out that a number of the programs examined in the original investigation have since been terminated or deemed non-countervailable, and that adjustments would need to be made to this rate to reflect these changes. Collectively, the respondents argue that the net subsidy likely to prevail, after these corrections have been made, will be *de minimis* or, effectively zero.

The GOQ also argues that the net subsidy likely to prevail will be *de minimis* and, therefore, the order should be revoked. The GOQ argues that as subsidy programs have been terminated, consistently not used, determined to be non-countervailable, and created throughout the life of the order, the rate from the investigation as well as from any final results of administrative review would not accurately reflect the net subsidy likely to prevail if the order were revoked.

Parties' Rebuttal Comments

With respect to the net countervailable subsidy likely to prevail, the NPPC argues that the GOC, GOQ, and CPC incorrectly focus on the most recent subsidy rates calculated for the order. According to the NPPC, the Department's regulations clearly state that the original investigation should be the starting point for predicting future subsidy rates as these are the only rates that reflect the behavior of exporters and foreign governments without the discipline of the order. In their focus on this most recent rate, the NPPC argues, the respondents have ignored the fluctuations in the benefit levels which have occurred over the life of order.

The CPC claims that the NPPC's suggested choice of net subsidy rates for the Department are unsupported by the record. The CPC argues that several of the programs included in the calculation of these rates have since been terminated and, therefore, the net subsidy rates from the NPPC's suggestions are invalid. Lastly, the GOC reiterates its argument that the net

6. British Columbia Farm Income Insurance Plan
7. Manitoba Hog Income Stabilization Plan
8. New Brunswick Hog Price Stabilization Plan
9. Newfoundland Hog Price Support Program
10. Nova Scotia Pork Price Stabilization Program
11. Prince Edward Island Price Stabilization Program
12. Quebec Farm Income Stabilization Insurance Programs
13. New Brunswick Swine Assistance Program
14. New Brunswick Livestock Incentives Program
15. New Brunswick Hog Marketing Program
16. Saskatchewan Financial Assistance for Livestock and Irrigation
17. Nova Scotia Swine Herd Health Policy
18. Nova Scotia Transportation Assistance
19. Ontario Farm Tax Reduction Program
20. Ontario (Northern) Livestock Programs
21. Prince Edward Island Hog Marketing and Transportation Subsidies
22. Quebec Meat Sector Rationalization Program
23. Price Edward Island Swine Development Program

[7] The Department has determined that the following programs, examined in the original investigation, have been terminated with no present residual benefits:

1. Hog Stabilization Payments under Agricultural Stabilization Act (Tripartite Agreement) (terminated prior to April 1, 1994) (62 FR 18087, April 14, 1997)
2. Ontario (Northern) Livestock Programs (terminated April 1, 1991) (58 FR 54112, October 20, 1993)
3. Prince Edward Island Interest Payments on Assembly Yard Loan (terminated prior to April 1, 1991)(61 FR 26879, May 29, 1996)
4. Saskatchewan Hog Assured Returns (terminated March 31, 1991) (62 FR 47460, September 9, 1997)
5. British Columbia Farm Income Insurance Plan (terminated July 2, 1994)(61 FR 52426, October 7, 1996)
6. Manitoba Hog Income Stabilization Plan (terminated June 28, 1986)(53 FR 22189, June 14, 1988)
7. New Brunswick Hog Price Stabilization Plan (terminated March 31, 1991)(61 FR 26889, May 29, 1996)
8. Nova Scotia Pork Price Stabilization Program (terminated prior to March 31, 1991)(58 FR 54112, October 20, 1993)
9. Prince Edward Island Price Stabilization Program (terminated prior to March 31, 1991)(59 FR 12243, March 16, 1994)
10. New Brunswick Swine Assistance Program (program transferred to New Brunswick Swine Industry Financial Restructuring Program; 62 FR 47460, September 9, 1997 (*see* footnote [8]11))
11. Nova Scotia Swine Herd Health Policy (terminated March 31, 1996)(62 FR 47460, September 9, 1997)

[8] Of the 23 programs originally investigated, the following have been determined by the Department not to confer countervailable benefits:

1. New Brunswick Hog Marketing Program (determination 55 FR 20812, May 21, 1990)
2. Ontario Farm Tax Reduction Program (determination 61 FR 26888, May 29, 1996)
3. Quebec Meat Sector Rationalization Program (determination 50 FR 25097, June 17, 1985; 50 FR 32880, August 15, 1985))
4. Prince Edward Island Hog Marketing and Transportation Subsidies (determination 55 FR 20812, May 21, 1990)
5. Record of Performance Program (determination 54 FR 651, January 9, 1989)
6. Nova Scotia Transportation Assistance Program (determination 53 FR 22189, June 14, 1988)
7. Prince Edward Island Swine Development Program (determination 55 FR 20812, May 21, 1990)
8. Saskatchewan Financial Assistance for Livestock and Irrigation (determination 53 FR 22189, June 14, 1988)
9. Quebec Special Credits for Hog Producers (determination 53 FR 22189, June 14, 1988)

In the original investigation (50 FR 25097, June 17, 1985), the Department determined that the Quebec Meat Sector Rationalization Program conferred benefits for the establishment, standardization, expansion, or modernization of slaughterhouses, processing plants, or plants preparing foods that contain meat. Because this program only confers benefits to those producers/exporters of fresh, chilled and frozen pork products, it is not applicable to producers/exporters of live swine.

[9] Of the 23 programs originally investigated, the following countervailable programs continue to exist:

1. Ontario Sales Swine Assistance (determined to confer benefits in the original investigation; 50 FR 25097, June 17, 1985)
2. Quebec Farm Income Stabilization Program (determined to confer benefits in original investigation; 50 FR 25097, June 17, 1985)
3. New Brunswick Livestock Incentives Program (determined to confer benefits in original investigation; 50 FR 25097, June 17, 1985)
4. Newfoundland Hog Price Support Program (determined to confer benefits in the original investigation; 50 FR 25097, June 17, 1985)

[10] The following are countervailable subsidy programs still in existence and created after the imposition of the order, which have not been officially terminated, and which confer, or have the potential to confer, countervailable benefits:

1. Nova Scotia Improved Sire Program (identified in 86/87 review; 56 FR 10410, March 12, 1991)
2. Technology Innovation Program Under the Agri-Food Agreement (identified in 94/95 review; 62 FR 18087, April 14, 1997)
3. Ontario Livestock and Poultry and Honeybee Compensation Program (identified in 89/90 review; 56 FR 50560, October 7, 1991)
4. Ontario Bear Damage to Livestock Compensation Program (identified in 94/95 review; 62 FR 18087, April 14, 1997)
5. Ontario Rabies Indemnification Program (identified in 89/90 review; 56 FR 29224, June 26, 1991)
6. New Brunswick Swine Industry Financial Restructuring Program (identified in the 85/86 review; 53 FR 22189, June 14, 1988)
7. Western Diversification Program (identified in 89/90 review; 56 FR 50560, October 7, 1991)
8. Support for Strategic Alliances Program Under the Agri-Food Agreement (determined to confer benefits prior to 94/95 review; 62 FR 18087, April 14, 1997)
9. Agricultural Products Board Program (identified in 91/92 review; 61 FR 52408, October 7, 1996)
10. Newfoundland Weanling Bonus Incentive Policy (identified in 86/87 review; 56 FR 10410, March 12, 1991)
11. Newfoundland Hog Price Stabilization Program (determined to confer benefits in April 1985)
12. Federal Atlantic Livestock Feed Initiative (identified in 91/92 review; 61 FR 52408, October 7, 1996)
13. Newfoundland Farm Products Corporation Hog Price Support Program (identified in 96/97 review; 63 FR 23723, April 30, 1998 and 63 FR 47235, September 4, 1998)

[11] The three programs are: (1) The Ontario Bear Damage to Livestock Compensation Program, (2) the Ontario Rabies Indemnification Program and (3) the Quebec Income Stabilization Program. The last known use of the Ontario Bear Damage to Livestock Compensation Program was during the 1994/1995 Administrative Review (63 FR 2204, January 14, 1998). The last known use of the Quebec Farm Income Stabilization Insurance Program was April 1, 1996 (*see* Substantive Response of GOQ at 11). The last known use of the Ontario Rabies Indemnification Program was during the 1993/1994 Administrative Review (61 FR 52408, October 7, 1996; Amended, 61 FR 58383, November 14, 1996). The Department finds the recent use of these three programs does not constitute a long track record of non-use.

[12] *See supra* n.11. and accompanying text.

[13] The net subsidy from the seventh administrative review is Can$0.0587/lb. and the net subsidy from the eighth administrative review is Can$0.0611/lb. (*See Live Swine from Canada; Final Results of Countervailing Duty Administrative Review*, 61 FR 52408 (October 7, 1996) and *Live Swine from Canada; Amended Final Results of Countervailing Duty Administrative Review*, 61 FR 58383 (November 14, 1996)).

[14] The net subsidy from the fifth administrative review is Can$0.0927/lb. (*See Live Swine from Canada; Final Results of Countervailing Duty Administrative Review*, 56 FR 50560 (October 7, 1991) and *Live Swine from Canada; Amended Final Results of Countervailing Duty Administrative Review*, 58 FR 47123 (September 7, 1993)).

subsidy rate from the original investigation is an inappropriate choice as the rate likely to prevail if the order were revoked.

Department's Determination

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department noted that this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.[15]

The Department agrees with all parties that the net countervailable subsidy rate from the original investigation is not probative of the net countervailable subsidy rate likely to prevail if the order were to be revoked. As noted above, sections III.B.3.a and III.B.3.c of the *Sunset Policy Bulletin* provide that the Department may adjust the net countervailable subsidy where, "* * * the Department has conducted an administrative review of the order * * * and found that a program was terminated with no residual benefits and no likelihood of reinstatement * * *" or where, "* * * the Department has conducted an administrative review of the order * * * and found a new countervailable program, or found a program previously not used but subsequently found to be countervailable. * * *"[16]

Several programs from the investigation have been terminated, found not to confer countervailable subsidies, or have never been used. These terminated programs provide no residual benefits which persist. Additionally, several new programs have been created since the imposition of the order. Of these new programs, the Department has determined that some have been terminated. Therefore, pursuant to the *Sunset Policy Bulletin*, the net countervailable subsidy from the original investigation has been adjusted to reflect the termination of programs, as well as the identification of new programs found to be countervailable in subsequent administrative reviews. Consequently, the Department preliminarily determines that the net subsidy rate that would be likely to prevail in the event of revocation of the order would be Can$0.01802234/lb.[17] *See* Memorandum to File Regarding Calculation of the Net Countervailable Subsidy, June 21, 1999.

In determining the net countervailable subsidy rate likely to prevail, the Department combined the benefits from ten programs that continue to exist.[18] The individual subsidy rates for these ten programs, consistent with the *Sunset Policy Bulletin*, were those calculated in the original investigation because these are the only rates that reflect the behavior of exporters and/or foreign governments without the discipline of the order. For subsidy programs established after the imposition of the order, we have included in this calculation, the subsidy rates from the final results of the first administrative review in which rates were calculated. We note that a review of the countervailable subsidy rates, for each of post-order established programs, does not demonstrate a pattern of increased usage after introduction.

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

Given that receipt of benefits under any of the programs included in our calculation are not contingent upon export. Therefore, none of these programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

Each of these programs are, however, programs that could be found inconsistent with Article 6 if the net countervailable subsidy exceeds 5 percent, as measured in accordance with Annex IV of the Subsidies Agreement.[19] The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such calculation in the course of a sunset review. Rather, we intend to provide to the Commission the following program descriptions.

Subsidy Programs

The subsidy programs identified by the Department and used in its determination of the net subsidy likely to prevail if the order were revoked are listed below. A description of each is also included.

New Brunswick Livestock Incentives Program

This program provides loan guarantees to livestock producers purchasing cattle, sheep, swine, foxes, and mink for breeding purposes, and for feeding and finishing livestock for slaughter.

Ontario Bear Damage to Livestock Compensation Program

This program provides compensation for the destruction of, or injury to, certain types of livestock by bears.

Ontario Livestock and Poultry and Honeybee Compensation Program

This program provides grants to compensate producers for livestock and poultry injured or killed by wolves, coyotes, or dogs.

Ontario Rabies Indemnification Program

This program compensates livestock producers, including producers of cattle, horses, sheep, swine, and goats, for damage caused by rabies.

Quebec Farm Income Stabilization Insurance Program

Schemes under this program guarantee a positive net annual income to participants when their income falls below the stabilized net annual income.

Technology Innovation Program Under the Agri-Food Agreement

This program provides grants to producers within a designated geographical region of Canada (i.e., Quebec) for technology innovation.

New Brunswick Swine Industry Financial Restructuring Program

This program provides subsidies on medium-term loans to hog producers. This program was available to hog producers who entered production or underwent expansion after 1979.

Newfoundland Hog Price Support Program

This program is a price stabilization program which provides pork producers interest-free loans from the provincial government equal to the difference between a stabilization price based on the cost of production and the market price for hogs.

Nova Scotia Improved Sire Program

This program provides grants to purebred and commercial swine producers for the purchase of boars.

Support for Strategic Alliances Under the Agri-Food Agreement

The purpose of this program area is stimulate cooperation and promote strategic activities intended to improve competitiveness in domestic and foreign markets.

Preliminary Results of Review

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on August 18, 1999. Interested parties may submit case briefs no later than August 9, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than August 16, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than October 28, 1999.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–16250 Filed 6–24–99; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See* Section III.B.3 of the *Sunset Policy Bulletin*.

[16] *See* Section III.B.3.a and Section III.B.3.c of the *Sunset Policy Bulletin*.

[17] Please note that the Department considers anything less than 0.5 percent (or Can$0.0030/lb.) to be de minimis. *See Live Swine From Canada; Final Results of Countervailing Duty Administrative Review*, 56 FR 50560 (October 7, 1991).

[18] The following countervailable programs have been determined by the Department not to have been officially terminated by administrative decree or legislative repeal. The programs are:

1. Nova Scotia Improved Sire Program (Can$0.0002/lb., first rate calculated in 95/96 review; 62 FR 47460, September 9, 1997)
2. Technology Innovation Program Under the Agri-Food Agreement (Can$0.0002/lb., found to be used in the 94/95 review; 62 FR 18087, April 14, 1997 (used most recently in 96/97 review))
3. Ontario Livestock and Poultry and Honeybee Compensation Program (Can$0.0002/lb., found to be used in 89/90 review; 56 FR 29224 (first rate calculated in 93/94 review; 61 FR 26879, May 29, 1996) (used most recently in 96/97 review))
4. Ontario Bear Damage to Livestock Compensation Program (Can$0.0002/lb., found to be used in the 94/95 review; 62 FR 18087, April 14, 1997 (used most recently in 94/95 review))
5. Ontario Rabies Indemnification Program (Can$0.0001/lb., found to be used in the 89/90 review; 56 FR 29224 (used most recently in 93/94 review))
6. Support for Strategic Alliances Program Under the Agri-Food Agreement
7. Newfoundland Hog Price Support Program (Can$0.00013/lb., found to be used in investigation; 50 FR 25097 (used most recently in 85/86 review))
8. New Brunswick Swine Industry Financial Restructuring Program (Can$0.00000154/lb.,
9. Quebec Farm Income Stabilization Program (Can$0.01696/lb., found to be used in the investigation; 50 FR 25097 (used most recently in the 95/96 review)) and
10. New Brunswick Livestock Incentives Program (Can$0.00003/lb., found to be used in investigation; 50 FR 25097 (used most recently in 96/97 review) found to be used 85/86 review; 53 FR 22189 (used most recently in 96/97 review).

For six additional programs, no subsidy rate has ever been calculated by the Department. Therefore, although these programs have not been determined to be terminated, we have not included them in our calculation.

1. Newfoundland Farm Products Corporation Hog Price Support Program (not used or published)
2. Western Diversification Program (not used or published) (Can$0.0000008/lb., first rate calculated in 96/97 review; 63 FR 23723, April 30, 1998)
3. Agricultural Products Board Program (not used or published)
4. Newfoundland Weanling Bonus Incentive Policy (not used or published)
5. Federal Atlantic Livestock Feed Initiative (not used or published)
6. Ontario Sales Swine Assistance (not used or published).

[19] The GOC and the GOQ have previously requested "green box" treatment for the Support for Strategic Alliances and Technology Innovation programs under the Agri-Food Agreement. However, the Department has not made a determination on whether benefits from these programs are non-countervailable as "green box" subsidies pursuant to section 771(5B)(F) of the Act. *See Live Swine from Canada; Final Results of Countervailing Duty Administrative Review*, 63 FR 47235 (September 4, 1998) and *Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review*, 63 FR 23723 (April 30, 1998).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062199B]

The GLOBE Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 24, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Harriet Chesi, 744 Jackson Place, Washington, D.C. 20503, 202–395–7600.

SUPPLEMENTARY INFORMATION:

I. Abstract

The GLOBE (Global Learning and Observations to Benefit the Environment) Program is an international science and environment education program involving elementary and secondary students. Feedback from participating teachers and students is necessary to guide necessary program changes, to help the program meet its goals, and to aid the continued growth of the program.

II. Method of Collection

Annual surveys of teachers and students involved in the GLOBE Program will be conducted through the World Wide Web, with hard copies of the survey instruments available as needed.

III. Data

OMB Number: 0648–0310
Form Number: None
Type of Review: Regular submission
Affected public: Individuals
Estimated Number of Respondents: 1,153
Estimated Time Per Response: 20 minutes for teacher surveys, 80 minutes for student surveys
Estimated Total Annual Burden Hours: 709
Estimated Total Annual Cost to Public: $0

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 18, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–16203 Filed 6–24–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration National Marine Fisheries Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 061099C]

Notice of Application to Amend an Endangered Species Act Incidental Take Permit to Include Canada Lynx and Puget Sound/Coastal Bull Trout on the Plum Creek Timber Company Permit for Timber Harvest in the State of Washington, and to Issue an Incidental Take Permit for Middle Columbia River Steelhead, and Puget Sound Chinook to Plum Creek Timber Company in the State of Washington.

AGENCIES: National Marine Fisheries Service (NMFS), Nationl Oceanic and Atmospheric Administration, Commerce. U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Receipt of applications to amend an incidental take permit (PRT–808398) and to issue an incidental take permit (1220).

SUMMARY: This notice advises the public that FWS has received a request to add Canada lynx (*Lynx canadensis*) and Puget Sound/Coastal bull trout (*Salvelinus confluentus*) to the species covered by incidental take permit PRT–808398, issued to the Plum Creek Timber Company on June 27, 1996. NMFS has received a request for an incidental take permit (1220) for the Middle Columbia River (MCR) steelhead (*Oncorhynchus mykiss*) and Puget Sound (PuS) chinook salmon (*O. tshawytscha*). These requests have been submitted to FWS and NMFS (the Services) pursuant to the Implementation Agreement for the Habitat Conservation Plan (Plan) accompanying the incidental take permit. FWS is proposing to add Canada Lynx and Puget Sound/Coastal bull trout to Plum Creek's permit, and NMFS is proposing to issue an incidental take permit for the MCR steelhead and PuS chinook salmon. The purpose of this notice is to seek public comment on FWS' proposed permit amendment and NMFS' permit issuance.

DATES: Written comments regarding FWS' proposal to add Canada lynx and Coastal/Puget Sound bull trout to the Plum Creek permit or on NMFS' proposal to issue a permit for MCR steelhead and PuS chinook must be received on or before July 26, 1999.

ADDRESSES: Written comments on lynx and bull trout should be addressed to William Vogel, FWS; 510 Desmond Drive, S.E; Suite 101; Lacey, Washington 98503; and written comments on steelhead and chinook should be addressed to Dennis Carlson, NMFS; 510 Desmond Drive, S.E; Suite 103; Lacey, Washington 98503. Comments addressing general issues and all four species may be sent to either of the Services. Documents cited in this notice and comments received will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: William Vogel, Wildlife Biologist; FWS; 510 Desmond Drive, S.E; Suite 101; Lacey, Washington 98503, (360) 753-4367 or Dennis Carlson, Fisheries Biologist; NMFS; 510 Desmond Drive, S.E; Suite 101; Lacey, Washington 98503, (360) 753-5828.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 1996, FWS issued an incidental take permit (PRT–808398) to Plum Creek Timber Company, L.P., pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1532 et seq.). The permit authorized the incidental take of the threatened northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus marmoratus*), and grizzly bear (*Ursus arctos=U.a. horribilis*), and the endangered gray wolf (*Canis lupus*), in the course of the otherwise lawful forest management and related land-use activities on Plum Creek lands in portions of King and Kittitas Counties, Washington. NMFS did not issue a permit as no species under NMFS' jurisdiction on the Plum Creek lands were listed under the ESA at the time the FWS permit was issued. Pursuant to the Plan and the Implementation Agreement, Plum Creek received assurances from the Services that then-unlisted vertebrate species, which may occur on Plum Creek lands would be added to the permit upon listing of those species in accordance with the ESA, the Implementation Agreement, and the Plan. On September 11, 1997, Plum Creek requested the addition of buli trout to their permit. On July 14, 1998, following the completion of a public comment period, Biological Opinion, and Set of Findings, FWS amended incidental take permit PRT–808398 to include the Columbia River Basin population of bull trout on the permit.

On July 8, 1998, FWS proposed to list the Canada lynx as threatened throughout its range in the contiguous United States, (63 FR 36994). On June 10, 1998, FWS proposed to list the Puget Sound/Coastal population of bull trout as threatened, (63 FR 31693).

On March 25, 1999, NMFS published a final rule listing the MCR and Upper Willamette River evolutionary significant units (ESUs) of steelhead as threatened species (64 FR 14517). In addition, on February 5, 1999, NMFS proposed to designate critical habitat for nine ESUs of steelhead previously listed and currently proposed for listing under the ESA, including Washington ESUs (64 FR 5740). Also on March 24, 1999, NMFS published a final rule listing the PuS chinook salmon as threatened (63 FR 11482).

The September 11, 1997, request from Plum Creek to add bull trout to the permit was partially fulfilled when FWS included the Columbia River Basin population of bull trout on the permit. That request is still effective with regard to the Puget Sound/Coastal population of bull trout. On May 20, 1998, Plum Creek requested that the MCR steelhead be added to the permit. On August 7, 1998, Plum Creek also requested that Canada lynx be added to the permit. On December 15, 1998, Plum Creek requested that PuS chinook be added to their permit as well. While FWS has not yet made final listing decisions for the Puget Sound/Coastal population of bull trout or Canada lynx, it is proposing to respond to Plum Creek's request and determine if addition of these species to the permit is appropriate.

Implementation Agreement Provisions

The Implementation Agreement is a legal document describing the roles and responsibilities of the Services and Plum Creek during the permit period. Under the Implementation Agreement, plan species are those vertebrate species dependent on the various habitat types analyzed in the Plan. The Implementation Agreement specifies that should any of the plan species that were unlisted at the time of permit issuance subsequently become listed under the ESA, Plum Creek may request a permit amendment to have that species added to their permit.

Plum Creek received assurances, absent extraordinary circumstances (as defined in the Implementation Agreement), that plan species would be added to the permit without requiring additional mitigation from Plum Creek if the Services determined that such action would not appreciably reduce the likelihood of the survival and recovery of the affected species, or any other species, in the wild and that adding the species to the permit would be consistent with the Services' other responsibilities.

To determine whether adding Canada lynx and bull trout to Plum Creek's permit and issuing a permit for steelhead and chinook would appreciably reduce the likelihood of the survival and recovery of those species, or any other species, the Services will follow the Section 7 process under the ESA. The Services will also determine whether the permit amendment meets each of the issuance criteria described in section 10(a)(2)(B) of the ESA and that a substantial and material adverse change in the status of Canada lynx, bull trout, steelhead, or chinook has not occurred since initial permit issuance.

Summary

At the time of initial permit issuance, the Services made a preliminary determination that the Plan adequately provided protection for lynx, bull trout, steelhead, and chinook. Based on that analysis, it appeared that the Plan would have minimal adverse impacts on lynx, bull trout, steelhead, and chinook.

With respect to lynx, use of edge habitat as a surrogate for "classic" lynx foraging habitat definitions, the Services predict a decrease in foraging habitat. Should lynx occur in the planning area, they would most likely use edges for foraging and would most likely rely on secondary prey items. The Plan is expected to maintain as conducive a landscape for lynx as is possible given the geographic province.

The Plan generally provides for improving conditions for bull trout, steelhead, and chinook. Buffers on fishbearing and other perennial streams are expected to provide for the natural processes and functions that steelhead and chinook rely on such as large woody debris inputs, detrital and litter input, root strength and bank stability. The Services expect to see reductions in delivery of fine sediment from roads and recovery of forest stand structures to improve hydrologic conditions, and reduce peak flows and mass-wasting risks.

Significant public comments and data were received by the Services on the proposals to list lynx, bull trout, steelhead, and chinook as threatened or endangered under the ESA. The Services are reviewing that information to determine if the Services' initial lynx, bull trout, steelhead, and chinook determinations for the Plum Creek permit remain valid.

The Environmental Impact Statement developed for the initial permit decision analyzed the effects that implementing the Plan would have on lynx, bull trout, steelhead, chinook, and other species. The effects of a proposed land exchange with the U.S. Forest Service and incorporation of that new land base into the Plan are also addressed in a Draft Supplemental Environmental Impact Statement, and will be further addressed in the Final Supplemental Environmental Impact Statement.

Dated: June 8, 1999.

Cynthia U. Barry,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

Dated: June 21, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–16206 Filed 6–24–99; 8:45 am]

BILLING CODE 3510–22–F and 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990514132–9132–01; I.D. 032999A]

Taking and Importing of Marine Mammals; Italy as a Large-Scale High Seas Driftnet Nation

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Identification of Italy as a Large-Scale High Seas Driftnet Nation.

SUMMARY: The U.S. Court of International Trade ordered the Secretary of Commerce to identify Italy as a country for which there is reason to believe its nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation. The Secretary did so on March 19, 1999. As a result, the President is required to enter into consultations with Italy within 30 days after the identification to obtain an agreement that will effect the immediate termination of high seas large-scale driftnetting by Italian vessels and nationals. If consultations with Italy are not satisfactorily concluded, the importation into the United States of fish, fish products, and sportfishing equipment from Italy will be prohibited under the High Seas Driftnet Fisheries Enforcement Act (HSDFEA). Further, the Secretary of the Treasury has been directed to deny entry of Italian large-scale driftnet vessels to U.S. ports and navigable waters. In addition, pursuant to the Dolphin Protection Consumer Information Act (DPCIA), the importation of certain fish and fish products into the United States from Italy is prohibited, unless Italy certifies that such fish and fish products were not caught with large-scale driftnets anywhere on the high seas. This action furthers the U.S. policy to support a United Nations moratorium on high seas driftnet fishing, in part because of the harmful effects that such driftnets have on marine mammals, including dolphins.

DATES: Effective March 19, 1999.

FOR FURTHER INFORMATION CONTACT: Cathy L. Eisele, Fishery Biologist; telephone: 301–713–2322, or fax: 301–713–4060; or Paul Niemeier, Foreign Affairs Specialist; telephone: 301–713–2276, or fax: 301–713–2313.

SUPPLEMENTARY INFORMATION:

The HSDFEA furthers the purposes of United Nations General Assembly Resolution 46/215, which called for a worldwide ban on large-scale high seas driftnet fishing beginning December 31, 1992. On March 5, 1999, the U.S. Court of International Trade ordered the Secretary of Commerce to identify Italy as a country for which there is reason to believe its nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation, pursuant to the HSDFEA (16 U.S.C. 1826a). On March 19, 1999, the Secretary notified the President that he had identified Italy as such a country. Italian officials were notified by the Department of State on March 22, 1999.

Pursuant to the HSDFEA, a chain of actions is triggered once the Secretary of Commerce notifies Italy that it has been identified as a large-scale high seas driftnet nation. If the consultations with Italy, described in the **SUMMARY,** are not satisfactorily concluded within 90 days, the President must direct the Secretary of the Treasury to prohibit the importation into the United States of fish, fish products, and sport fishing equipment from Italy. The Secretary of the Treasury is required to implement such prohibitions within 45 days of the President's direction.

If the above sanctions are insufficient to persuade Italy to cease large-scale high seas driftnet fishing within 6 months, or Italy retaliates against the United States during that time as a result of the sanctions, the Secretary of Commerce is required to certify this fact to the President. Such a certification is deemed to be a certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a), also known as the Pelly Amendment). This authorizes the President to restrict imports of "any products from the offending country for

any duration" to achieve compliance with the driftnet moratorium, so long as such action is consistent with U.S. obligations under the General Agreement on Tariffs and Trade.

The DPCIA (16 U.S.C. 1371(a)(2)(E)) requires that an exporting nation whose fishing vessels engage in high seas driftnet fishing provide documentary evidence that certain fish or fish products it wishes to export to the United States were not harvested with a large-scale driftnet on the high seas. Importers are being reminded that, as has been in effect since May 29, 1996 (61 FR 18722), all shipments from Italy containing fish and fish products specified in regulations at 50 CFR 216.24(e)(2) are subject to the importation requirements of the DPCIA. As required by 50 CFR 216.24(e)(2), the Fisheries Certificate of Origin (NOAA Form 370) must accompany all imported shipments of an item with a Harmonized Tariff Schedule number for fish harvested by or imported from a large-scale driftnet nation. As part of those requirements, an official of the Government of Italy must certify that any such import does not contain fish harvested with large-scale driftnets anywhere on the high seas.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number. The collection of information required by the Fisheries Certificate of Origin (NOAA Form 370) has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0040.

Dated: June 16, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16205 Filed 6–24–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–06]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DOD).

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–06, with attached transmittal, policy justification, Sensitivity of Technology, and Section 620C(d) of the Foreign Assistance Act of 1961.

Dated: June 21, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

11 JUN 1999
In reply refer to:
I-99/00480

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-06, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $111 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

. Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-06

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$ 80 million
Other	$ 31 million
TOTAL	$111 million

(iii) Description of Articles or Services Offered:
Four AH-64A APACHE attack helicopters, spare and repair parts, support equipment, M130 chaff dispenser, Integrated Helmet and Display Sight System, publications, personnel training and training equipment, U.S. Government and contractor engineering and technical services, Quality Assurance Team (QAT), and other related elements of logistics support.

(iv) Military Department: Army (XIX)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 11 JUN 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - AH-64A APACHE Attack Helicopters

The Government of Greece has requested a possible sale of four AH-64A APACHE attack helicopters, spare and repair parts, support equipment, M130 chaff dispenser, Integrated Helmet and Display Sight System, publications, personnel training and training equipment, U.S. Government and contractor engineering and technical services, Quality Assurance Team (QAT), and other related elements of logistics support. The estimated cost is $111 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Greece and furthering NATO rationalization, standardization and interoperability.

This proposed sale will enable Greece to upgrade its anti-armor day/night missile capability, provide for the defense of vital installations and provide close air support for the military ground forces. The helicopters will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question. Greece, which already has 20 AH-64A APACHE attack helicopters in its inventory, will have no difficulty absorbing these additional helicopters.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be McDonnel Douglas Helicopter Systems, Mesa, Arizona; Lockheed-Martin Electronics and Missiles Group, Orlando, Florida; and General Electric, Lynn, Massachusetts. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment in-country of four U.S. Government Quality Assurance Team personnel for a period up to two weeks.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-06

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AH-64A APACHE Attack Helicopter includes the following classified or sensitive components:

a. Chaff-flare Dispenser (M130) - a multi-purpose system which dispenses decoys to confuse threat radars and missile IR seekers. Radar cross section and frequency coverage are sensitive elements. Hardware is Unclassified. Technical publications for authorized maintenance levels are Unclassified. Aircraft optimization is the critical element; reverse engineering is not a major concern.

b. Infrared Countermeasure Set AN/ALQ-144A(V)3 - an active, continuous operating, omni-directional, electrically fired infrared jammer system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. Hardware is classified Confidential. Technical manuals for authorized maintenance levels are classified Secret. Reverse engineering and development of counter-countermeasures are concerns if the hardware and releasable technical data were compromised.

c. Radar Warning Receiver AN/APR-39A(V)1 - provides warning of a radar directed air defense threat to permit appropriate countermeasures. Hardware is classified Confidential. Technical manuals for the maintenance levels are classified Confidential. Technical performance data are classified Secret. Aircraft optimization is the critical element. Reverse engineering is not a major concern.

d. Radar Jammer AN/ALQ-136(V)5 - an omni-directional radar jammer which provides protection against threat radar detecting devices. Equipment is programmed with appropriate threat data provided by purchasing country. Hardware is classified Confidential. Releasable technical manuals for the maintenance levels are classified Secret; releasable technical performance data is classified Secret. Technology involved in design, manufacturing and testing of the jammer is sensitive. Reverse engineering is a primary concern.

e. The Target Acquisition and Designation Sight/Pilot Night Vision Sensor (TADS/PNVS) system provides day, night, limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), television, and Forward Looking Infrared (FLIR) (without optical improvements) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified. Reverse engineering is not a major concern.

2. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

Certification Under $ 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to $ 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (Sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Greece of four AH-64A attack helicopters, spare and repair parts, support equipment, M130 chaff dispenser, Integrated helmet and Display Sight System, publications, personnel training and training equipment, U.S. Government and contractor engineering and technical services, Quality Assurance Team (QAT), and other related elements of logistics support, at an estimated cost of $111 million, is consistent with the principles contained in $ 620C(b) of the Act.

This certification will be made part of the notification to Congress under $ 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Senior Adviser
for Arms Control and
International Security
Affairs

[FR Doc. 99–16178 Filed 6–24–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Senior Advisory Board on National Security

AGENCY: Department of Defense, Office of the Undersecretary of Defense (Policy).

ACTION: Notice of closed meeting.

SUMMARY: The Senior Advisory Board on National Security will meet in closed session on July 7–8, 1999. The Board was chartered by the Secretary of Defense on 1 July 1998 to conduct a comprehensive review of the early twenty-first century global security environment; develop appropriate national security objectives and a strategy to attain these objectives; and recommend concomitant changes to the national security apparatus as necessary.

The Senior Advisory Board will meet in this closed session to review its Phase One report. By Charter, the Phase One report is to be delivered to the Secretary of Defense on August 15, 1999. The report is based on classified material concerning U.S. domestic trends, global and regional trends, and possible conflict situations. The Board also plans to meet with former National Security Advisor and Secretary of State Henry Kissinger for part of the afternoon of 8 July.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II], it is anticipated that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1988), will be presented throughout the meeting, and that, accordingly, the meeting will be closed to the public.

DATES: Wednesday, 7 July 8:30 a.m.–5:00 p.m.; Thursday, 8 July 8:30 a.m.–4:00 p.m.

ADDRESSES: Marriott-Gateway, 1700 Jefferson Davis Hwy, Arlington, VA 22202.

FOR FURTHER INFORMATION: Contact Dr. Keith A. Dunn, National Security Study Group, Suite 532, Crystal Mall 3, 1931 Jefferson Davis Highway, Arlington, VA 22203–3805. Telephone 703–602–4175.

Dated: June 18, 1999.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–16179 Filed 6–24–99; 8:45 am]
BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice of membership of the Defense Contract Audit Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Dale R. Collins, Chief, Human Resources Management, Defense Contract Audit Agency, Department of Defense, Ft. Belvoir, Virginia 22060–6219, 703–767–1236.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. Larry Uhlfelder, Assistant Director, Policy and Plans, Defense Contract Audit Agency, Chairperson
Mr. Earl Newman, Assistant Director, Operations, Defense Contract Audit Agency member
Mr. Kirk Moberley, General Counsel, Defense Contract Audit Agency, member.

Regional Performance Review Board

Mr. David Dzivak, Regional Director, Northeastern, Defense Contract Audit Agency, Chairperson
Ms. Barbara Reilly, Regional Director, Mid-Atlantic, Defense Contract Audit Agency, member
Mr. William Serafine, Deputy Regional Director, Western, Defense Contract Audit Agency, member.

Dated: June 21, 1999.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–16180 Filed 6–24–99; 8:45 am]
BILLING CODE 5000–10–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.314B]

Even Start Statewide Family Literacy Initiative Grants

AGENCY: Department of Education

ACTION: Notice to extend deadline for applications for assistance under the Even Start Statewide Family Literacy Initiative grant authority, and information on cost issues involving those grants.

SUMMARY: The Secretary of Education announces an extension of the deadline for States to apply for a fiscal year (FY) 1999 new award under the Even Start Statewide Family Literacy Initiative grant authority. In addition, the Secretary will authorize certain pre-award costs for grant recipients, and consider State requests for waivers of the requirement that only non-Federal funds be used as matching resources for the grant under the waiver authority in section 14401 of the Elementary and Secondary Education Act (ESEA).

DATES: The new deadline for State offices and agencies to submit their Even Start Statewide Family Literacy Initiative applications for the second stage of this grant competition is October 15, 1999.

FOR FURTHER INFORMATION CONTACT: To obtain further information, contact Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–6132; telephone (202) 260–0826; or e-mail address *patricia__mckee@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Department published the FY 1999 application for Even Start Statewide Family Literacy Initiative competitive grants in the **Federal Register** on February 24, 1999 (64 FR 9229). The Department also published a notice of final priority for those grants on the same date (64 FR 9228). The application established an original deadline for transmittal of applications for the second stage of applications of August 20, 1999.

First, because of the need to prepare competitive grant applications for other Department programs, such as those under the Reading Excellence Act, some States have not been able to convene the consortium that is required to create the Statewide Initiative plan for the Even Start competitive grant application. In recognition of the competing demands on States, and in the interest of giving States sufficient planning time to prepare high-quality applications and to benefit from further technical assistance that the Department will provide, the Secretary extends the deadline for the second stage of applications for these grants to October 15, 1999.

Second, the Department's regulations already authorize grant recipients to incur allowable pre-award costs up to 90 calendar days before the grant award (34 CFR 75.263 and 74.25(e)(1)). In addition, for this competition, the Secretary will authorize grant recipients to use grant funds to pay certain pre-award costs incurred more than 90 days before the date of the grant award but no earlier than the date of the initial notice soliciting grant applications (February 24, 1999). Those authorized pre-award costs are the necessary and reasonable costs to establish, convene, and facilitate the required consortium's work in creating the plan for the proposed Statewide family literacy initiative. All pre-award costs are incurred at the recipient's risk. That is, the Secretary is under no obligation to reimburse these costs if for any reason the applicant does not receive an award or if the award is less than anticipated and inadequate to cover these costs.

Third, under this grant competition, a State that receives a grant for an Even Start Statewide Family Literacy Initiative must contribute an amount from non-Federal sources, in cash or in kind, at least equal to the Federal funds awarded under the grant. Drawing on

non-Federal contributions is important to building successful collaborative Statewide efforts to strengthen and expand family literacy services. However, identifying sufficient resources to meet this requirement may be difficult in some instances. In those cases, if the State educational agency (SEA) is the applicant State office or agency, the SEA may request from the Secretary a waiver under section 14401 of the ESEA of the requirement that only non-Federal funds may be used to match the Federal award. Such a waiver, if approved, would allow that State to use Federal resources (such as Head Start, Title I, Adult Education Act, Individuals with Disabilities Education Act, and Reading Excellence Act resources), in addition to non-Federal resources, to meet the matching requirement.

Any waiver request must meet the required criteria in section 14401 by, among other things, identifying how the waiver would contribute to improvements in teaching and learning. Applicants seeking a waiver of the requirement for non-Federal matching resources should include their waiver request with their application. To receive assistance concerning a waiver request, potential waiver applicants may call the Department's Waiver Assistance Line at (202) 401–7801 or 1–800–USA–LEARN, or the program contact above. Waiver guidance, including information about preparing a request, is also available in the Department's on-line library at http://www.ed.gov/flexibility.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pdf, you must have the Adobe Acrobat Reader Program, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Program Authority: 20 U.S.C. 6362(c).

Dated: June 22, 1999.

Judith Johnson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99–16196 Filed 6–24–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Availability of Solicitation for Awards of Financial Assistance

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of Availability of Solicitation Number DE–PS07–99ID13812—Boxed Waste Form Nondestructive Assay Development and Demonstration

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office, is seeking applications for cost-shared research, development and demonstration of innovative technologies which will enhance economic competitiveness, increase technical capability, and minimize resource expenditure associated with the characterization of radioactive material constituents in large volume (boxed) waste forms via nondestructive assay (NDA) techniques. Characterization shall include constituents entrained in both low level, alpha contaminated low-level, and transuranic contaminated boxed wastes. The proposed techniques must constitute an innovative system that accommodates the majority of waste forms residing in the inventory, including plutonium, uranium and fission products. The nondestructive assay technique must be able to quantify these radioactive material species in various mixtures over the spectrum of waste matrix configurations, e.g., high density matrices, heterogenous matrix compositions, etc. The three major phases include 1) design, 2) fabrication of the system and software development, and 3) testing and demonstration. The technology holder must cost share a minimum of 40% of the development phase of the project.

DATES: The deadline for receipt of applications is 2:00 p.m. Mountain Time July 22, 1999.

ADDRESSES: Applications should be submitted to: Trudy A. Thorne, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Trudy Thorne, Contract Specialist at *Thorneta@id.doe.gov*, Dallas Hoffer, Contracting Officer at *hofferdl@id.doe.gov*, or Janet Surrusco at *surrusjk@id.doe.gov* (for questions related to accessing the solicitation).

SUPPLEMENTARY INFORMATION: The solicitation was issued pursuant to 10 CFR 600.6(b). DOE anticipates awarding a cooperative agreement with a project period of two years. The awardee is required to provide a minimum of 40% cost share on the development phase of the project.

The statutory authority for this program is Public Law 95–91 and Public Law 105–245. The issuance date of Solicitation No. DE–PS07–99ID13812 is on or about June 21, 1999. The solicitation is available in full text via the Internet at the following address: *http://www.id.doe.gov/doeid/PSD/proc-div.html*. Technical and non-technical questions should be submitted in writing to Trudy Thorne by e-mail *thorneta@id.doe.gov*, or facsimile at 208–526–5548 no later than July 7, 1999.

Issued in Idaho Falls on June 17, 1999.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 99–16207 Filed 6–24–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; ANP Blackstone Energy Company, Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

[Docket No. FE C&E 99–11—Certification Notice—174]

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing

SUMMARY: ANP Blackstone Energy Company has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner & Operator: ANP Blackstone Energy Company.

Location: Blackstone, MA.

Plant Configuration: Combined-cycle.

Capacity: 580 megawatts.

Fuel: Natural gas.

Purchasing Utilities: Wholesale purchasers in New England.

Expected In-Service Date: 2nd quarter, 2001.

Issued in Washington, D.C., June 21, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–16208 Filed 6–24–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3301–000]

California Independent System Operator Corporation; Notice of Filing

June 21, 1999.

Take notice that on June 18, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a proposed amendment (Amendment No. 18) to the ISO Tariff and a request for waiver of the 60-day prior notice requirement. Amendment No. 18 would modify the Tariff to address flaws in the current market rules for managing Intra-Zonal Congestion in real-time.

The ISO requests that Amendment No. 18 be made effective as of June 20, 1999 and that the Commission take expedited action with request to Amendment No. 18.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 1, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16221 Filed 6–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2300–000, ER99–2541–000, ER99–2602–000, ER99–2769–000, ER99–2858–000, and ER99–2895–000, (Not consolidated)]

Cleco Trading & Marketing LLC, Carthage Energy, LLC, LSP-Kendall Energy, LLC, Foote Creek III, LLC, MEP Pleasant Hill, LLC, and Amoco Energy Trading Corporation; Notice of Issuance of Order

June 21, 1999.

Cleco Trading & Marketing LLC, Carthage Energy, LLC, LSP-Kendall Energy LLC, Foote Creek III, LLC, MEP Pleasant Hill, LLC, and Amoco Energy Trading Corporation (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On June 17, 1999, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's June 17, 1999 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 19, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–16217 Filed 6–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3262–000]

Consolidated Edison Company of New York, Inc; Notice of Filing

June 21, 1999.

Take notice that June 16, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to Con Edison Rate

Schedule FERC No. 112, for transmission service for New York State Electric & Gas Corporation (NYSEG).

Con Edison has requested a waiver so that the supplement can be effective as of April, 1999, consistent with the terms of Rate Schedule 112.

Con Edison states that a copy of this filing has been served by mail upon NYSEG.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 6, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.)

David P. Boergers,

Secretary.

[FR Doc. 99–16219 Filed 6–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2915–000]

Indeck-Olean Limited Partnership; Notice of Issuance of Order

June 21, 1999.

Indeck-Olean Limited Partnership (Indeck-Olean), a Delaware limited partnership, created for the purpose of owning an 80 MW cogeneration facility located in Olean, New York (hereafter, Indeck-Olean) filed a proposed rate schedule that would allow it to make sales of power at market-based rates, and for certain waivers and authorizations. In particular, Indeck-Olean requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Indeck-Olean. On June 17, 1999, the commission issued an Order Accepting For Filing Proposed Rate Schedule for Sales Of Capacity, Energy And Ancillary Services At Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's June 17, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Indeck-Olean should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Wahsington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Indeck-Olean is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect to any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Indeck-Olean, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public or private interests will be adversely affected by continued Commission approval of Indeck-Olean's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 19, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–16218 Filed 6–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–72–000]

Indiana Municipal Power Agency Complainant, vs. American Electric Power Service Corporation Respondent. Notice of Filing

June 21, 1999.

Take notice that on July 18, 1999, Indiana Municipal Power Agency (IMPA) filed a complaint against American Electric Power Service Corporation (AEP), alleging that AEP's transmission rates and revenue requirements are unjust and unreasonable because historical costs have changed dramatically and AEP's revenues from use of its transmission system by third parties and by AEP for off-system sales have substantially increased.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 8, 1999. Protests will considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to the complaint shall also be due on or before July 8, 1999.

David P. Boergers,

Secretary.

[FR Doc. 99–16220 Filed 6–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC99–34–000 and ER99–1764–000]

Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.; Notice of Issuance of Order

June 21, 1999.

Niagara Mohawk Power Corporation (Niagara Mohawk) and Erie Boulevard Hydropower, L.P. (Erie Boulevard) filed a joint application pursuant to section 203 of the Federal Power Act requesting Commission authorization for Niagara Mohawk to sell, and for Erie Boulevard to purchase, certain jurisdictional transmission facilities. Erie Boulevard is a limited partnership formed for the purpose of purchasing, owning and operating the hydroelectric generating plants it is purchasing from Niagara Mohawk. Erie Boulevard also requested market-based rate authority, and certain waivers and authorizations. In particular, Erie Boulevard requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Erie Boulevard. On June 17, 1999, the Commission issued an Order Approving Disposition Of Jurisdictional Facilities, Granting Waiver Of Notice, Denying Motions For Stay, Accepting Answer, Conditionally Accepting For Filing Tariff For Market-Based Power Sales and Interconnection Agreement And Granting Request For Confidential Treatment (Order), in the above-docketed proceedings.

The Commission's June 17, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (M), (N), and (P):

(M) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Erie Boulevard Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(N) Absent a request to be heard within the period set forth in Ordering Paragraph (M) above, Erie Boulevard is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Erie Boulevard, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(P) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Erie Boulevard's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 19, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–16222 Filed 6–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–146–000, et al.]

Phelps Dodge Energy Services, LLC, et al.; Electric Rate and Corporate Regulation Filings

June 17, 1999.

Take notice that the following filings have been made with the Commission:

1. Phelps Dodge Energy Services, LLC

[Docket No. EG99–146–000]

Take notice that on June 10, 1999, Phelps Dodge Energy Services, LLC (PDES) filed with the Federal Energy Regulatory Commission an amendment to its Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations filed with the Commission on May 13, 1999.

The amendment was filed to clarify that PDES will not sell scheduling and dispatching services. Instead, PDES will assist potential customers in arranging for transmission services from utilities (including necessary ancillary services such as scheduling and dispatching) in order to sell power from PDES' facilities or power that PDES obtained from other resources.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Bell/Harbert Energy, L.L.C.

[Docket No. EG99–169–000]

Take notice that on June 14, 1999, Bell/Harbert Energy, L.L.C., 1340 Lexington Avenue, Rochester, New York 14606, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Bell/Harbert Energy, L.L.C. will lease a 60 MW gas fired combined-cycle generating facility located in Hume, Allegheny County, New York from Rochester Gas and Electric Corporation. Bell-Harbert Energy, L.L.C. will be engaged directly and exclusively in the business of owning or operating all or part of an eligible facility (as defined in section 32(a)(1) of the Public Utility Holding Company Act of 1935) and selling electricity at wholesale.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Williams Energy Marketing & Trading Company; Strategic Energy L.L.C.; and SCANA Energy Marketing, Inc.

[Docket Nos. ER95–305–020; ER96–3107–009 and ER96–3107–010; and ER96–1086–012]

Take notice that on June 14, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. Interstate Power Company

[Docket Nos. ER96–1208–003; ER96–1208–002; and OA96–213–000]

Take notice that on June 11 , 1999, the Interstate Power Company tendered for filing a Refund Report in response to the Commission's Letter Order dated April 29, 1999 in the above named dockets.

A copy of this filing has been served upon all affected customers, the Illinois Commerce Commission, the Iowa Utilities Board, the Minnesota Public Utilities Commission and the Public Service Commission of Wisconsin.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Mid-Power Services Corp.

[Docket No. ER97–4257–009]

Take notice that on June 10, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. Alpha Energy Corporation

[Docket No. ER97–4730–004]

Take notice that on June 11, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

7. Kansas City Power & Light Company

[Docket No. ER99–2202–000]

Take notice that on June 14, 1999, Kansas City Power & Light Company

(KCPL), tendered for filing amendments to its filings in this docket for a Service Agreement dated March 2, 1999 by KCPL. The amendment provides additional information regarding ancillary services on the Specifications for Firm Point-To-Point Transmission Service.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Sierra Pacific Power Company; Sierra Pacific Power Company and Nevada Power Company

[Docket No. ER99–2339–001; Docket No. ER99–34–002 (Not Consolidated)]

Take notice that on June 14, 1999, Sierra Pacific Power Company (Sierra Pacific), tendered its compliance filing in accordance with the Commission's May 28, 1999 order in the above-captioned dockets.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. KeySpan-Ravenswood, Inc.

[Docket No. ER99–3209–000]

Take notice that on June 10, 1999, KeySpan-Ravenswood, Inc. (KeySpan-Ravenswood) filed an informational filing with the Federal Energy Regulatory Commission under Rate Schedule 1, an Energy Service Agreement dated as of June 9, 1999, between KeySpan-Ravenswood and KeySpan-Ravenswood Services Corp. (KRSC).

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. American Electric Power Service Corporation

[Docket No. ER99–3210–000]

Take notice that on June 11, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing blanket service agreements by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff) and letters of assignment under the Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit the service agreements and assignments to be made effective as specified in the submittal letter to the Commission with this filing.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Corporation

[Docket No. ER99–3211–000]

Take notice that on June 11, 1999, Ameren Corporation tendered for filing notice that effective January 1, 1998, Service Agreement FERC No. T3–139, dated June 6, 1997, between Union Electric Company (UE) and Vastar Power Marketing, Inc. (VPM), now Southern Company Energy Marketing, Inc., in Docket No. ER97–3301–000 filed with the Federal Energy Regulatory Commission by Union Electric Company is to be canceled.

Notice of the proposed cancellation has been served upon Southern Company Energy Marketing, Inc., for Vastar Power Marketing, Inc.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3212–000]

Take notice that on June 11, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 78, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for a decrease in the annual revenues under the Rate Schedule of $12,389.00.

Con Edison has requested that the increase take effect on July 1, 1999.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3213–000]

Take notice that on June 11, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 94 for transmission service for the Long Island Power Authority (LIPA). The Rate Schedule provides for transmission of power and energy from the New York Power Authority's Blenheim-Gilboa station. The Supplement provides for a decrease in annual revenues under the Rate Schedule.

Con Edison has requested that this increase take effect on July 1, 1999.

Con Edison states that a copy of this filing has been served by mail upon LIPA.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3214–000]

Take notice that on June 11, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 102, an agreement to provide transmission service for the New York Power Authority (the Authority). The Supplement provides for a decrease in the annual revenues under the Rate Schedule of $33,348.90.

Con Edison has requested that the increase take effect on July 1, 1999.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Public Service Corporation

[Docket No. ER99–3215–000]

Take notice that on June 11, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 2, to its partial requirements service agreement with Upper Peninsula Power Company (UPPCO). Supplement No. 2, provides UPPCO's contract demand nominations for January 2000—December 2000, under WPSC's W–2A partial requirements tariff and UPPCO's applicable service agreement.

The company states that copies of this filing have been served upon UPPCO and to the State Commissions where WPSC serves at retail.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Public Service Corporation

[Docket No. ER99–3216–000]

Take notice that on June 11, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing executed Service Agreements with DukeSolutions, Inc., providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreements be accepted for filing and made effective on May 18, 1999.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Long Sault, Inc.

[Docket No. ER99–3218–000]

Take notice that on June 11, 1999, Long Sault, Inc. (Long Sault), tendered for filing a Second Revised Tariff Sheet No. 119, to its open access transmission tariff to accurately reflect the settlement rates approved in Docket No. OA96–11–000 on March 13, 1997 and Long Sault's Long Sault's Order No. 888–A compliance filing approved January 19, 1999 in Docket No. OA97–624–000.

Long Sault states that it has served copies of the compliance filing on the New York Public Service Commission and on Long Sault's present transmission customers (who take service under other transmission agreements).

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Alpha Energy Corporation

[Docket No. ER99–3219–000]

Take notice that on June 11, 1999, Alpha Energy Corporation tendered for filing notice that effective August 13, 1999, the Rate Schedule under Docket No. ER97–4730–001, effective January 20, 1998, and filed with the Federal Energy Regulatory Commission by Alpha Energy Corporation is to be canceled.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Delmarva Power & Light Company

[Docket No. ER99–3220–000]

Take notice that on June 11, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with Orange and Rockland Utilities, Inc., under Delmarva's market rate sales tariff.

Delmarva requests an effective date of June 11, 1999.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Consumers Energy Company

[Docket No. ER99–3221–000]

Take notice that on June 11, 1999, Consumers Energy Company (Consumers), tendered for filing an executed transmission service agreement with Thumb Electric Cooperative (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreement has an effective date of May 14, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER99–3222–000]

Take notice that on June 14, 1999, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission executed a form Service Agreement between NMPC and PP&L EnergyPlus Co., (Purchaser). The Service Agreement specifies that the Purchaser has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and the Purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence for the Purchaser.

NMPC is: (a) Generally requesting an effective date of May 5, 1999 for the agreement, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission, and the companies included in a Service List enclosed with the filing.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Delmarva Power & Light Company

[Docket No. ER99–3223–000]

Take notice that on June 14, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with Old Dominion Electric Cooperative under Delmarva's market rate sales tariff.

Delmarva requests an effective date of June 14, 1999.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Delmarva Power & Light Company

[Docket No. ER99–3224–000]

Take notice that on June 14, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with Southern Indiana Gas and Electric Company under Delmarva's market rate sales tariff.

Delmarva requests an effective date of June 14, 1999.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ER99–3225–000]

Take notice that on June 14, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Arkansas Electric Cooperative will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 24, 1999.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER99–3226–000]

Take notice that on June 14, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated May 5, 1999 with Borough of Madison, New Jersey (MADISON) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds MADISON as a customer under the Tariff.

PECO requests an effective date of May 5, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to MADISON and to the Pennsylvania Public Utility Commission.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. PECO Energy Company

[Docket No. ER99–3227–000]

Take notice that on June 14, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated May 5, 1999 with Borough of Pemberton, New Jersey (PEMBERTON) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds PEMBERTON as a customer under the Tariff.

PECO requests an effective date of May 5, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to PEMBERTON and to the Pennsylvania Public Utility Commission.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. PECO Energy Company

[Docket No. ER99–3228–000]

Take notice that on June 14, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated May 12, 1999 with Borough of Lavallette, New Jersey (LAVALLETTE) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds LAVALLETTE as a customer under the Tariff.

PECO requests an effective date of May 12, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to LAVALLETTE and to the Pennsylvania Public Utility Commission.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. PECO Energy Company

[Docket No. ER99–3229–000]

Take notice that on June 14, 1999, PECO Energy Company (PECO) tendered for filing a Service Agreement dated May 5, 1999 with Borough of Seaside Heights, New Jersey (Seaside Heights) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Seaside Heights as a customer under the Tariff.

PECO requests an effective date of May 5, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to Seaside Heights and to the Pennsylvania Public Utility Commission.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Public Service Company of New Mexico

[Docket No. ER99–3230–000]

Take notice that on June 14, 1999, Public Service Company of New Mexico (PNM) tendered for filing an executed copy of Amendment Number Two to the December 16, 1992, Contract for Electric Service between PNM and the City of Gallup, New Mexico.

PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Northeast Utilities Service Company

[Docket No. ER99–3231–000]

Take notice that on June 14, 1999, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement with Griffin Energy Marketing, L.L.C. (Griffin), under the NU System Companies' System Sale For Resale Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to Griffin.

NUSCO requests that the Service Agreement become effective on June 1, 1999.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. New England Power Company

[Docket No. ER99–3232–000]

Take notice that on June 14, 1999, New England Power Company (NEP) tendered for filing service agreements under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 9, between NEP and (i) DukeSolutions, Inc. (DukeSolutions); and (ii) HQ Energy Services (U.S.) Inc. (HQ Energy). Under the service agreements, NEP will provide Non-Firm Point-To-Point Transmission Service to DukeSolutions and HQ Energy.

NEP requests an effective date of May 15, 1999 for the filing.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Duke Energy Corporation

[Docket No. ER99–3233–000]

Take notice that on June 14, 1999, Duke Energy Corporation (Duke) tendered for filing a Service Agreement with Columbia Energy Power Marketing Corporation, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective April 22, 1999 or upon acceptance by the Commission.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Duke Energy Corporation

[Docket No. ER99–3234–000]

Take notice that on June 14, 1999, Duke Energy Corporation (Duke) tendered for filing a Service Agreement with Columbia Energy Power Marketing Corporation for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on April 22, 1999, or upon acceptance by the Commission.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Northeast Utilities Service Company

[Docket No. ER99–3235–000]

Take notice that on June 14, 1999, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement with Griffin Energy Marketing, L.L.C. (Griffin) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Griffin.

NUSCO requests that the Service Agreement become effective on June 1, 1999.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Boston Edison Company

[Docket No. OA96–70–000]

Take notice that on June 14, 1999, Boston Edison Company filed its refund report in compliance with the Commission's April 29, 1999 order in this docket.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Baltimore Gas and Electric Company and Niagara Mohawk Power Company

[Docket Nos. OA97–456–004 and OA97–158–008]

Take notice that Baltimore Gas and Electric Company and Niagara Mohawk Power Company each filed revised standards of conduct on June 14, 1999 in response to the Commission's May 14, 1999 Order. 87 FERC ¶ 61,186 (1999).

Baltimore Gas and Electric Company and Niagara Mohawk Power Company each state that it served copies of the filing on all parties in the respective proceedings.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Champion International Corporation

[Docket No. QF87–83–001]

Take notice that on June 10, 1999, Champion International Corporation (Champion) filed with the Federal Energy Regulatory Commission an amendment to its application for recertification of a facility as a qualifying cogeneration facility pursuant to 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing. The facility is a topping-cycle cogeneration facility located within the Champion paper manufacturing facility at Bucksport, Maine (the Facility), which uses as its primary energy source a mix of wood bark, sawmill waste, wood pellets, treatment sludge and No. 6 oil. The Facility was granted qualifying facility status by the Commission on May 21, 1987 in Docket No. QF87–83–000].

The Facility presently produces electric power through two turbine generators, with total current net electric power production capacity of 83.2 MW. The Application was submitted on February 24, 1999 to reflect planned changes in the operation of the Facility which will occur on or about October 1, 2000, the on-line date for the Champion Clean Energy Facility (Clean Energy), a natural gas-fired combined cycle facility to be constructed adjacent to the Champion paper manufacturing facility in Bucksport, Maine. After the on-line date of the Clean Energy Facility, the electric production of the Facility will be reduced to 39.4 MW net under normal operating conditions, but under some conditions may revert to the operational levels certified in QF97–83–000. The amendment submitted responds to requests for information from the Commission, and reflects ownership by the Facility of certain generation leads and related transmission facilities. The Facility presently sells power under long-term contract to Central Maine Power Company (CMP) and will continue to do so after October 1, 2000.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the Comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16155 Filed 6–24–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–84–000, et al.]

Somerset Power LLC, et al.; Electric Rate and Corporate Regulation Filings

June 16, 1999.

Take notice that the following filings have been made with the Commission:

1. Somerset Power LLC

[Docket No. EC99–84–000]

Take notice that on June 10, 1999, Somerset Power LLC (Somerset), filed a request for approval of the disposition of jurisdictional assets that may result from the transfer of Somerset's limited liability company membership interests among Somerset's upstream affiliates.

Comment date: July 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Storm Lake Power Partners I LLC

[Docket No. EC99–85–000]

Take notice that on June 11, 1999, Storm Lake Power Partners I LLC (Storm Lake Power Partners) filed an application under Section 203 of the Federal Power Act for approval to transfer an indirect membership interest in and to providing funding for Storm Lake Power Partners to Edison Capital, an indirect wholly-owned subsidiary of Edison International. Storm Lake I is developing a wind power generation project located in or near Alta, Iowa. All of the power from the project will be sold to MidAmerican Energy Company.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Nuclear Generation Company

[Docket No. EC99–86–000]

Take notice that on June 11, 1999, pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, Entergy Nuclear Generation Company (the Applicant) filed an application for approval of a corporate reorganization. The Applicant intends to purchase an electric generation facility located in the State of Massachusetts. The proposed corporate reorganization will not change the ultimate ownership or control of the facility.

A copy of the application has been served on the Massachusetts Department of Telecommunications and Energy, the utility regulatory commissions of the states in which Energy operates and all parties in Docket Nos. EC99–18 et al.

The Applicant has requested waivers of the Commission's regulations so that the filing may become effective at the earliest possible date, but no later than July 9, 1999.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Keyspan-Ravenswood, Inc.

[Docket No. EG99–166–000]

Take notice that on June 9, 1999, KeySpan-Ravenswood, Inc. (KeySpan-Ravenswood) filed with the Federal Energy Regulatory Commission (FERC or the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

KeySpan-Ravenswood is a New York corporation that will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities located in Queens, New York. The eligible facilities will consist of approximately 2,168 MW of gas and/or oil fired electric generation facilities and related interconnection facilities. The output of the eligible facilities will be sold exclusively at wholesale.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. BIV Generation Company LLC

[Docket No. EG99–168–000]

Take notice that on June 10, 1999, BIV Generation Company LLC (BIV), 350 Indiana Street, Suite 300, Golden, Colorado 80401, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act, as amended.

BIV, upon acquisition of a newly constructed 60 megawatt gas-fired generation plant located in Brush, Colorado, will be directly and exclusively engaged in the business of owning an eligible facility and selling

electric energy at wholesale. Retail sales of electricity within the meaning of Section 32 of PUHCA will not be made from the Facility. The Facility will be operated, under the direction of BIV, by Colorado Cogen Operators LLC, pursuant to an operation and maintenance agreement. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992. Copies of this application have been served upon the Colorado Public Utility Commission and the Securities and Exchange Commission.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Northeast Utilities Service Company

[Docket No. ER99–1459–002]

Take notice that on June 11, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a report in compliance with the Commission's May 18, 1999 Order in Docket No. ER99–1459–001. NUSCO respectfully requests that the Commission waive the requirements of the above-referenced order to allow the submittal of this filing out of time.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Consumers Energy Company

[Docket No. ER99–2184–001]

Take notice that on June 11, 1999, Consumers Energy Company submitted a compliance filing relating to the amendment to its Open Access Transmission Tariff which adds a new Ancillary Service entitled Delivery Scheduling and Balancing Service. This Ancillary Service addresses deviations between deliveries from a generator and the transmission customer's energy schedule which are not classified as Energy Imbalance Service.

Copies of the filing were served upon Consumers' transmission customers, Michigan Public Service Commission and the service list in this proceeding.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER99–2311–001]

Take notice that on June 11, 1999, Carolina Power & Light Company tendered for filing its compliance filing as required by the Commission's May 27, 1999, order in this proceeding.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Monroe Power Company

[Docket No. ER99–2324–001]

Take notice that on June 11, 1999, Monroe Power Company tendered for its compliance filing of its revised code of conduct as required by the Commission's May 27, 1999, order in this proceeding.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Colorado

[Docket No. ER99–2327–000]

Take notice that on June 11, 1999, Public Service Company of Colorado (PS Colorado), tendered for filing a request to withdraw its Operating Reserve Supply Agreement between PS Colorado and Basin Electric Power Cooperative, filed on May 31, 1999.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER99–3084–000]

Take notice that on June 11, 1999, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., Entergy Louisiana Inc., and Entergy Gulf States, Inc., requests that four Interconnection Agreement amendments filed on May 28, 1999, in the above-referenced docket be withdrawn.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER99–3093–000]

Take notice that on June 11, 1999, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., Entergy Louisiana Inc., and Entergy Gulf States, Inc., requests that four Generator Imbalance Agreements filed on May 28, 1999, in the above-referenced docket be withdrawn.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Nevada Power Company

[Docket No. ER99–3110–000]

Take notice that on June 14, 1999, Nevada Power Company (Nevada Power), tendered for filing pursuant to section 205 of the Federal Power Act revisions to its transmission service rates under its open-access transmission tariff, FERC Revised Volume No. 3. Nevada Power also has filed corresponding changes to its pro forma merger transmission tariff in Docket No. ER99–34–000.

Nevada Power has requested an effective date of October 1, 1999.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER99–3203–000]

Take notice that on June 11, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to sections 35.16 and 131.51 of the Commission's Rules of Practice and Procedure, 18 CFR 35.16 and 131.51, a Notice of Succession for the transfer, effective May 14, 1999, of a restated power sales tariff (originally NGE Generation, Inc. Electric Power Sales Tariff, FERC Electric Rate Schedule, Original Volume No. 1) (Tariff) and five jurisdictional power sales agreements from NGE Generation, Inc. (NGE Gen) to NYSEG, together with amendments and restated agreements substituting NYSEG for NGE Gen. The five power sales agreements being restated are with Delmarva Power & Light Co. (Rate Schedule No. 51.6), GPU Service Corporation, as Agent for Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (Rate Schedule No. 5.5), Consolidated Edison Co. of New York, Inc. (Rate Schedule No. 6.7), New York Power Authority (Rate Schedule No. 2.4), and NYSEG Solutions, Inc. (Rate Schedule No. 105).

The Commission approved the Notice of Succession and the restated Tariff and Agreements to become effective as of the transfer date, which occurred on May 14, 1999. NYSEG requests a waiver of any Commission requirement necessary to allow the transfer and the restated Tariff and Agreements to become effective as set forth in its filing, without modification or condition.

NYSEG served copies of the filing upon the New York State Public Service Commission, each of the purchasers under the above-listed rate schedules and each of the customers under the Tariff.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. The Dayton Power and Light Company

[Docket No. ER99–3204–000]

Take notice that on June 11, 1999, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing Illinova Energy Partners, Inc., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Illinova Energy Partners, Inc., and the Public Utilities Commission of Ohio.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Western Systems Power Pool

[Docket No. ER99–3205–000]

Take notice that on June 11, 1999, the Western Systems Power Pool (WSPP), tendered for filing certain changes to the WSPP Agreement intended to revise one portion of that agreement to allow for increased flexibility and better reflect common commercial purposes.

WSPP seeks an effective date of June 12, 1999, for the change reflected in the June 11, 1999, filing.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. ISO New England Inc.

[Docket No. ER99–3206–000]

Take notice that on June 11, 1999, ISO New England Inc. (the ISO), tendered for filing, pursuant to Section 205 of the Federal Power Act, revisions to Market Rule 6 together with a request that the Commission accept the revisions to Market Rule 6 on an expedited basis.

The ISO and the NEPOOL Executive Committee state that copies of these materials were sent to the Participants in the New England Power Pool, non-Participant transmission customers and to the New England state governors and regulatory commissions.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. NorthWestern Corporation

[Docket No. ES99–41–000]

Take notice that on June 9, 1999, NorthWestern Corporation submitted an application under Section 204 of the Federal Power Act for authorization to issue indebtedness of the Corporation pursuant to a credit facility (the term of which may not extend beyond three years at any point in time) to be established and maintained with one or more financial institutions pursuant to one or more agreements pursuant to which the Corporation may borrow funds from time to time during such term, on a revolving credit basis or otherwise, up to a maximum principal amount of $250,000,000 outstanding at any one time, which indebtedness may be evidence by one or more promissory notes issued by the Corporation to such financial institutions. The Applicant also requested exemption from the competitive bidding and negotiated offer requirements.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Citizens Utilities Company

[Docket Nos. OA97–520–003 & OA97–610–003]

Take notice that Citizens Utilities Company (Citizens) filed revised standards of conduct on June 9, 1999. Citizens states that the revised standards replace the standards that it filed on May 11, 1999, which Citizens wishes to withdraw.

Citizens states that it served copies of the filing on all parties in this proceeding.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. CP Power Sales Thirteen, L.L.C.

[Docket No. ER99–3200–000]

Take notice that on June 10, 1999, CP Power Sales Thirteen, L.L.C., tendered for filing Notice of Succession filed on behalf of CL Power Sales Thirteen, L.L.C. effective May 18, 1999, CL Power Sales Thirteen, L.L.C., changed its name to CP Power Sales Thirteen, L.L.C.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16156 Filed 6–24–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6243–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed June 14, 1999 Through June 18, 1999

Pursuant to 40 CFR 1506.9.

EIS No. 990195, FINAL EIS, AFS, ID, WA, Douglas-fir Beetle Project, Harvest Tree, Regenerated Forest, Aquatic Restoration and Fuels Reduction, Idaho Panhandle National Forest, Coeur d'Alene River and Priest Lake Ranger District and Colville National Forest, Newport Ranger District, Kootenai, Shoshone and Bonner Counties, ID and Pend Orielle County, WA, Due: July 26, 1999, Contact: Brad Gilbert (208) 765–7438.

EIS No. 990196, DRAFT EIS, NPS, VA, Booker T. Washington National Monument (BOWA), General Management Plan, Implementation, Franklin County, VA, Due: August 09, 1999, Contact: Fred Herling (315) 597–1782.

EIS No. 990197, FINAL SUPPLEMENT, AFS, CO, Upper Elk River Access Analysis, Implementation, Proposal to Remove and/or Treat Blowdown Trees, Routt Divide Blowdown, Medicine Bow-Routt-National Forests, Hahn Peak/Bears Ears Ranger District, Routt County, CO, Due: July 26, 1999, Contact: Andy Cadenhead (970) 870–2220.

EIS No. 990198, FINAL EIS, BIA, NM, High Mesa Environmental Facility, Construction and Operation, Approval of Lease for Disposal of Municipal Solid Waste, Nambi Indian Reservation, Santa Fe County, New Mexico, Due: July 26, 1999, Contact: Allen Sedick (505) 766–1039.

EIS No. 990199, REVISED DRAFT EIS, BIA, CA, Programmatic—Cabazon Resource Recovery Park Section 6 General Plan, Cabazon Indian Reservation, Implementation, Approval of Master Lease and NPDES Permit, the City of Mecca, Riverside County, CA, Due: August 09, 1999,

Contact: Ronald M. Jaeger (916) 978–6000.

EIS No. 990200, DRAFT EIS, AFS, UT, Wasatch Powderbird Guides Permit Renewal, Proposal to Conduct Guided Helicopter Skiing Activities on National Forest System Land, Issuance of a Special-Use-Permit, Wasatch-Cache National Forest, Uinta National Forest, Salt Lake County, UT, Due: August 09, 1999, Contact: Rob Cruz (801) 733–2685.

EIS No. 990201, FINAL EIS, BLM, NV, Caliente Management Framework Plan Amendment, Implementation, Management of Desert Tortoise Habitat (Gopherus agassizii), Northeastern Mojave Recovery Unit, Lincoln County, NV, Due: July 26, 1999, Contact: Gene L. Drais (775) 289–1880.

EIS No. 990202, FINAL EIS, BLM, AZ, Ray Land Exchange/Plan Amendment, Implementation, Exchange of Federal Lands for Public Lands, Pinal, Gila and Mohave Counties, AZ, Due: July 26, 1999, Contact: Shelia McFarlin (602) 417–9568.

EIS No. 990203, DRAFT EIS, USN, NC, Introduction of the V–22 "Osprey" a new Type of Tiltrotor Aircraft, Replacement or Renovation of the facilities used to house Aircraft, Full Basing at MCAS Cherry Point and/or Partial Basing at both MCAS New River and Cherry Point, COE Section 404 Permit, NC, Due: August 09, 1999, Contact: James Haluska (757) 322–4889.

EIS No. 990204, REVISED FINAL EIS, AFS; UT, South Spruce Ecosystem Rehabilitation Project, Implementation, Revised Information, Dixie National Forest, Cedar City Ranger District, Iron and Kane Counties, UT, Due: July 26, 1999, Contact: Phillip Eisenhauser (435) 865–3200.

EIS No. 990205, DRAFT EIS, FTA, WA, Everett-to-Seattle Commuter Rail Project, Construction and Operation, To Link the Cities of Everett, Mukilteo, Edmonds, Shoreline, and the Seattle Waterfront, U.S. Coast Guard, COE Section 10 and 404 Permits, Snohomish County, WA, Due: August 09, 1999, Contact: David Phillip Beal (206) 684–1883.

EIS No. 990206, FINAL EIS, NOA, MI, Thunder Bay National Marine Sanctuary Management Plan, Comprehensive and Long-Term Management for Shipwrecks and other Underwater Cultural Resources, extending from Presque Isle Harbor to Sturgeon Paint and eastward into Lake Huron, Alpena, Alconia and Presque Isle Counties, MI, Due: July 26, 1999, Contact: Sherrard Foster (301) 713–3125.

EIS No. 990207, FINAL EIS, NOA, Atlantic Bluefish Fishery Management, Fishery Management Plan, Implementation, Nova Scotia to Florida, Northwestern Atlantic Ocean, Due: July 26, 1999, Contact: Kathie Rodrigues (202) 482–5916.

EIS No. 990208, FINAL EIS, NPS, PA, Gettysburg National Military Park, General Management Plan, Implementation, Develop a Partnership with the Gettysburg National Battlefield Museum Foundation, Gettysburg, PA, Due: July 26, 1999, Contact: Katie Lawhon (717) 334–1124.

EIS No. 990209, SECOND DRAFT SUPPLE, NIH, MD, National Institutes of Health Bethesda Main Campus Comprehensive Master Plan, Updated and Additional Information for the Revision to the Northwest Sector Plan, Montgomery County, MD, Due: August 09, 1999, Contact: Stella Serras Fiotes (301) 496–5037.

The above DSEIS is a Supplement to a Final EIS in 1996, which Due to an Administrative Error by the National Institutes of Health, was not Properly Filed with the U.S. Environmental Protection Agency. NIH has Confirmed that distribution of the (FEIS) was made Available to all Federal Agencies and Interested Parties for the 30-Day Wait Period. For Further Information Contact Stella Serras-Fiotes, AIA at (301) 496–5037.

Dated: June 22, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–16259 Filed 6–24–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6367–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Science Advisory Board's (SAB) Environmental Economics Advisory Committee (EEAC) will conduct a public teleconference meeting on Tuesday, July 27, 1999, between the hours of 10:00 am and 12:00 noon, Eastern Time.

The meeting will be coordinated through a conference call connection in Room 3709 of the Waterside Mall, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Dorothy Clark at (202) 260–6555, or via e-mail at: <clark.dorothy@epa.gov> by July 16, 1999. During this meeting the EEAC plans to complete its review of the EPA's economic analysis guidelines.

Background Information on Economic Analysis Guidelines

The Environmental Economics Advisory Committee (EEAC or the Committee) was asked to review the revised Guidelines for Preparing Economic Analyses, a document produced under the direction of the EPA's Regulatory Policy Council. The guidelines are designed to reflect Agency policy on the conduct of the economic analyses called for under applicable legislative and administrative requirements, including, but not limited to Executive Order 12866. These guidelines are intended to provide EPA analysts with a concise but thorough treatment of mainstream thinking on important technical issues so that they can conduct credible and consistent economic analyses. The guidelines refer to methods and practices that are commonly accepted in the environmental economics profession; however, they are not intended to preclude new or innovative forms of analysis. The guidelines are shaped by administrative and statutory requirements that contain direct references to the development of economic information during the development of regulations (e.g., evaluations of economic achievability).

The EEAC was first briefed on the draft guidelines at its August 19, 1998 meeting. Additional discussions occurred on the guidelines at the Committee's November 18, 1998 and April 20, 1999 meetings. At those meetings, the Agency presented information on, and then discussed with EEAC members, each section of the draft guidelines. (Please see 63 FR 41821, August 5, 1998; 63 FR 57296, October 27, 1998; and 64 FR 14232, March 24, 1999 for further details.)

For Further Information

Any member of the public wishing further information concerning the meeting or wishing to submit comments should contact Mr. Thomas O. Miller, Designated Federal Officer for the Environmental Economics Advisory Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; telephone (202) 260–5886; FAX (202) 260–7118; or via e-mail at: <miller.tom@epa.gov>. Single copies of the guidelines information provided to the Committee can be obtained by contacting Mr. Brett Snyder, Director, Economy and Environment Division (2172), Office of Policy, US Environmental Protection Agency, 401 M Street SW., Washington DC 20460, telephone (202) 260–5610, fax (202) 260-2685; or via email at: <snyder.brett@epa.gov>.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889.

Meeting Access

Individuals requiring special accommodation at this teleconference meeting, including wheelchair access to the conference room, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 16, 1999.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 99–16234 Filed 6–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6367–4]

Science Advisory Board; Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee (EC) will meet on Tuesday, July 13, and Wednesday, July 14, 1999. The meeting will convene each day at 8:30 am, in the Administrator's Conference Room 1103 West Tower of the U.S. Environmental Protection Agency Headquarters Building at 401 M Street, SW, Washington, DC 20460, and adjourn no later than 5:30 pm on each day. All times noted are Eastern Time. The meeting is open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

At this meeting, the Executive Committee will receive updates from its committees and subcommittees concerning their recent and planned activities. As part of these updates, some committees will present draft reports for Executive Committee review and approval. Copies of these drafts will be available on the SAB Website (see below for site address) two weeks prior to the meeting or may be obtained from Ms. Tillery-Gadson (see address below).

In addition, the Board anticipates interacting with various senior Agency officials on issues of general interest, as well as issues currently before or proposed for future Board consideration.

For Further Information—Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. John R. Fowle, III, Acting Designated Federal Officer for the Executive Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202) 260–8325; fax (202) 260–7118; or via e-mail at: <fowle.jack@epa.gov>. Copies of the draft meeting agenda and the draft reports will be available on the SAB Website (www.epa.gov/sab) approximately two weeks prior to the meeting. Alternatively, these materials can be obtained from Ms. Priscilla Tillery-Gadson at the above address and fax number or via phone (202) 260–4126 or via e-mail: <tillery.priscilla@epa.gov>.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to the meeting date, may be mailed to the Committee prior to its meeting; comments received too close to the meeting date will normally be provided to the Committee at its meeting. Written comments may be provided to the Committee up until the time of the meeting.

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in The FY1998 Annual Report of the Staff Director which is available from the SAB Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, 401 M Street, SW, Washington, DC 20460 or via fax (202) 260–1889. Additional information concerning the SAB can be found on the SAB Website at: http://www.epa.gov/sab

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Dr. Fowle at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 17, 1999.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 99–16235 Filed 6–24–99 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–788A and PF–848A; FRL–6076–9]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of pesticide petitions 1F3989, and 7F4900, proposing the

establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–788A, and PF–848A, must be received on or before July 26, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 247, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7740; e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–788A], and [PF–848A] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–788A), and (PF–848A) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 9, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Rohm and Haas Company

PP 1F3989 and 7F4900

Amended Petitions

In the **Federal Registers** of January 30, 1998 (63 FR 4631) (FRL–5766–2), and December 7, 1998 (63 FR 67476) (FRL–6047–2), EPA issued a notice of filing announcing that it had received pesticide petitions (PP) 1F3989, and 7F4900 from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–2399, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) proposing to amend 40 CFR part 180. In petition 1F3989, Rohm and Haas Company proposed among other things, to establish a time-limited tolerance for residues of fenbuconazole (α-(2-[4-chlorophenyl]-ethyl)-α-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] in or on stone fruits (except plums and prunes) at 2.0 ppm. In petition 7F4900, Rohm and Haas Company proposed, among other things, to establish permanent tolerances for fenbuconazole in or on grapefruit at 1.0 ppm, citrus oil (grapefruit) at 35.0 ppm, and grapefruit pulp, dried at 4.0 ppm.

Today's notice of filing announces the receipt of pesticide petitions from Rohm and Haas Company proposing to amend PP 1F3989 and 7F4900 by establishing tolerances for residues of fenbuconazole (α-(2-[4-chlorophenyl]-ethyl)-α-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] plus RH-9129 and RH-9130, the diastereomeric lactone metabolites of fenbuconazole [5-(4-chlorophenyl)-dihydro-3-phenyl-3-(methyl-1*H*-1,2,4-triazole-1-yl)-2-3*H*-furanone) in or on the raw agricultural commodities plums at 2.0 parts per million (ppm), plums, dried (prunes) at 7.0 ppm (PP 1F3989), and for oranges at 1.0 ppm, orange, dry pulp at 4.0 ppm, and orange, citrus oil at 16 ppm (7F4900). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of fenbuconazole in plants (wheat, peaches, and sugar beets) is adequately understood for the purpose of these tolerances. The metabolism of fenbuconazole in all crops was similar and involves oxidation of the benzylic position alpha to the chlorophenyl ring. The metabolites which result from this

path are the benzylic alcohols and their conjugates, including sulfates and glucuronides, the iminolactones, the lactones, and the ketoacid, all resulting from intramolecular cyclization. A second pathway is oxidation of the unchlorinated ring to produce the 3- and 4-phenols and their conjugates. Combinations of the above two pathways produce phenel-lactones and their conjugates. A third pathway is cleavage of the triazole moiety, which produces free triazole and its conjugates.

2. *Analytical method.* An adequate enforcement method is available to enforce the established and proposed tolerances. Quantitation of fenbuconazole residues (parent plus lactones) at an analytical sensitivity of 0.01 milligrams/kilogram (mg/kg) is accomplished by soxhlet extraction of samples in methanol, partitioning into methylene chloride, redissolving in toluene, clean up on silica gel, and gas liquid chromatography using nitrogen specific thermionic detection.

3. *Magnitude of residues.* Field residue trials were conducted with an aqueous flowable formulation of fenbuconazole in geographically representative regions of the United States. The results from these studies support the proposed tolerances, and clearly indicate that the lactone metabolites (RH–9129 and RH–9130) are minor contributors to the total residue.

i. *Oranges.* A total of 16 field residue trials were conducted in oranges. Three applications were made at 0.25 pounds active ingredient/acre (lb ai/A), twice the maximum use rate of 0.125 lb ai/A, and whole fruit was harvested on the same day as the last application. The highest field residue value in whole fruit was 0.752 ppm. The average field residue value in whole fruit was 0.276 ppm. The highest field residue value in the edible pulp from five field trials was 0.0104 ppm. The average field residue value in pulp was 0.005 ppm. Residues were measured in orange process fractions including, juice, dried pulp, and cold press (citrus) oil. In the processing study, three applications were made at 0.25 lb ai/A, twice the maximum use rate of 0.125 lb ai/A, and the fruit were harvested seven days after the last application. Fruit was processed into multiple components. No residues (<0.01 ppm) were detected in juice, thus were was no concentration of residues in fresh juice. The average residues in dried pulp (cattle feed) and citrus oil (defined as a non-ready-to-eat processed commodity) were 4.1- and 32.1-times the amount of residues in fresh oranges, respectively.

ii. *Plums.* A total of 10 field residue trials were conducted in plums. Six to nine applications were made at the maximum use rate of 0.1 lb ai/A, and whole fruit was harvested on the same day as the last application. The highest field residue value in whole fruit was 0.315 ppm; the next highest field residue value was 0.071 ppm. The average field residue value in whole fruit was 0.062 ppm. Residues were measured in dried plums (prunes) in three residue trials. Six applications were made at the maximum use rate of 0.1 lb ai/A, and whole fruit was harvested on the same day as the last application. Dried plums contained residues of 0.0244, 0.04, and 0.139 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Fenbuconazole is practically non-toxic after administration by the oral and dermal routes, and was not significantly toxic to rats after a 4–hour inhalation exposure. Fenbuconazole is classified as not irritating to skin and inconsequentially irritating to the eyes. It is not a skin sensitizer.

2. *Genotoxicity.* Fenbuconazole was negative (non-mutagenic) in an Ames assay with and without hepatic enzyme activation. Fenbuconazole was negative in a hypoxanthine guanine phosphoribosyl transferase (HGPRT) gene mutation assay using Chinese hamster ovary (CHO) cells in culture when tested with and without hepatic enzyme activation. In isolated rat hepatocytes, fenbuconazole did not induce unscheduled DNA synthesis (UDS) or repair. Fenbuconazole did not produce chromosome effects in rats *in vivo*. On the basis of the results from this battery of tests, it is concluded that fenbuconazole is not mutagenic or genotoxic.

3. *Reproductive and developmental toxicity*—i. *Rat developmental toxicity.* In the developmental study in rats, the maternal (systemic) no-observed adverse effect level (NOAEL) was 30 mg/kg/day based on decreases in body weight (bwt) and body weight gain at the lowest-observed adverse effect level (LOAEL) of 75 mg/kg/day. The developmental (fetal) NOAEL was 30 mg/kg/day based on an increase in post implantation loss and a significant decrease in the number of live fetuses per dam at the LOAEL of 75 mg/kg/day.

ii. *Rabbit developmental toxicity.* In the developmental study in rabbits, the maternal (systemic) NOAEL was 10 mg/kg/day based on decreased bwt gain at the LOAEL of 30 mg/kg/day. The developmental (fetal) NOAEL was 30 mg/kg/day based on increased resorptions at the LOAEL of 60 mg/kg/day.

iii. *Rat reproduction.* In the 2-generation reproduction toxicity study in rats, the maternal (systemic) NOAEL was 4 mg/kg/day based on decreased bwt and food consumption, increased number of dams delivering nonviable offspring, and increases in adrenal and thyroid weights at the LOAEL of 40 mg/kg/day. The reproductive (pup) NOAEL was 40 mg/kg/day, the highest dose tested (HDT).

4. *Subchronic toxicity*—i. *Rat 90–day oral study.* A subchronic feeding study in rats conducted for 13–weeks resulted in a NOAEL of 20 ppm (1.3 and 1.5 mg/kg/day in males and females, respectively). Minimal liver hypertrophy was observed in males at the LOAEL of 80 ppm. Increased liver weight, hepatic hypertrophy, thyroid hypertrophy, and decreased bwt were observed at the higher doses (400 and 1,600 ppm).

ii. *Mouse 90–day oral study.* A subchronic feeding study in mice conducted for 13–weeks resulted in a NOAEL of 60 ppm (11.1 and 17.6 mg/kg/day in males and females, respectively). Increased liver weight, hypertrophy in the liver (males), and increases in clinical chemistry parameters (males) were observed at the LOAEL of 180 ppm. These effects were all observed in females at 540 ppm in addition to males.

iii. *Dog 90–day oral study.* A subchronic feeding study in dogs conducted for 13–weeks resulted in a NOAEL of 100 ppm (3.3 and 3.5 mg/kg/day in males and females, respectively). At the LOAEL of 400 ppm, increased liver weight, clinical chemistry parameters, and liver hypertrophy (males) were observed.

iv. *Rat 4–week dermal study.* In a 21–day dermal toxicity study in the rat, the NOAEL was greater than 1,000 mg/kg/day, with no effects seen at this limit dose.

5. *Chronic toxicity*—i. *Dog.* A 1–year feeding study in dogs resulted in a NOAEL of 15 ppm (0.62 mg/kg/day) for females and 150 ppm (5.2 mg/kg/day) for males. Decreased bwt, increased liver weight, liver hypertrophy, and pigment in the liver were observed at the LOAEL of 150 and 1,200 ppm in females and males, respectively.

ii. *Mouse.* A 78–week chronic/oncogenicity study was conducted in male and female mice at 0, 10, 200 (males only), 650, and 1,300 ppm (females only). The NOAEL was 10 ppm (1.4 mg/kg/day), and the LOAEL was 200 ppm (26.3 mg/kg/day) for males and 650 ppm (104.6 mg/kg/day) for females based on increased liver weight and

histopathological effects on the liver, which were consistent with chronic enzyme induction. There was no statistically significant increase of any tumor type in males, however, there was a statistically significant increase in combined liver adenomas and carcinomas in females at the high dose only (1,300 ppm; 208.8 mg/kg/day). There were no liver tumors in the control females, and liver tumor incidences in treated females just exceeded the historical control range. In ancillary mode-of-action studies in female mice, the increased tumor incidence was associated with changes in several parameters in mouse liver following high doses of fenbuconazole, including an increase in P450 enzymes (predominately of the CYP 2B type), an increase in cell proliferation, an increase in hepatocyte hypertrophy, and an increase in liver weight. Changes in these liver parameters as well as the occurrence of the low incidence of liver tumors were non-linear with respect to dose (i.e., were observed only at high dietary doses of fenbuconazole). Similar findings have been shown with several pharmaceuticals, including phenobarbital which is not carcinogenic in humans. The non-linear dose response relationship observed with respect to liver changes (including the low incidence of tumors) in the mouse indicates that these findings should be carefully considered in deciding the relevance of high-dose animal tumors to human dietary exposure.

iii. *Rat.* A 24-month chronic/oncogenicity study in male and female rats was conducted at 0, 8, 80, and 800 ppm fenbuconazole, and a second 24-month chronic/oncogenicity was conducted in male rats at 0, 800, and 1,600 ppm. The NOAEL was 80 ppm (3 and 4 mg/kg/day in males and females, respectively), and the LOAEL was 800 ppm (31 and 43 mg/kg/day in males and females, respectively) based on decreased bwt, increased liver and thyroid weights, and liver and thyroid hypertrophy. Fenbuconazole produced a minimal but statistically significant increase in the incidence of combined thyroid follicular cell benign and malignant tumors. These findings occurred only in male rats following life-time ingestion of very high levels (800 and 1,600 ppm in the diet) of fenbuconazole. Ancillary mode-of-action studies demonstrated that the increased incidence of thyroid tumors was secondary to increased liver metabolism and biliary excretion of thyroid hormone in the rat. This mode of action is a non-linear phenomenon in that thyroid tumors occur only at high doses where there is an increase in liver weight and metabolic capacity of the liver. At lower doses of fenbuconazole in rats, the liver is unaffected and there is no occurrence of the secondary thyroid tumors. Worst-case estimates of dietary intake of fenbuconazole in human adults and children indicate effects on the liver or thyroid, including thyroid tumors, will not occur, and that there is a reasonable certainty of no harm.

In support of the findings above, EPA's Science Advisory Board has approved a final thyroid tumor policy, confirming that it is reasonable to regulate chemicals on the basis that there exists a threshold level for thyroid tumor formation, conditional upon providing plausible evidence that a secondary mode of action is operative. This decision supports a widely-held and internationally respected scientific position.

The reference dose (RfD) of 0.03 mg/kg/day was established by the Agency based on the NOAEL of 3.0 mg/kg/day in the chronic rat feeding study and an uncertainty factor of 100.

The Carcinogenicity Peer Review Committee (CPRC) of the Health Effects Division (HED) of EPA has classified fenbuconazole as a Group C tumorigen (possible human carcinogen with limited evidence of carcinogenicity in animals). The Committee has decided that it is appropriate to use a low-dose extrapolation model based on the mouse data with the Q_1^* of 0.359×10^{-2} $(mg/kg/day)^{-1}$ and surface area estimated by $(bwt)^{3/4}$. All estimates of dietary oncogenic risk are based on this risk factor.

6. *Animal metabolism.* The absorption, distribution, excretion, and metabolism of fenbuconazole in rats, goats, and hens were investigated. Following oral administration, fenbuconazole was completely and rapidly absorbed, extensively metabolized by oxidation/hydroxylation and conjugation, and rapidly and essentially completely excreted predominately in the feces. Fenbuconazole did not accumulate in tissues.

7. *Metabolite toxicology.* Common metabolic pathways for fenbuconazole have been identified in both plants (wheat, peaches, and sugar beets) and animals (rat, goat, and hen). The metabolic pathway common to both plants and animals involves oxidation of the benzylic position alpha to the chlorophenyl ring. The metabolites which result from this path are the benzylic alcohols and their conjugates, including sulfates and glucuronides, the iminolactones, the lactones, and the ketoacid, all resulting from intramolecular cyclization. A second pathway is oxidation of the unchlorinated ring to produce the 3- and 4-phenols and their conjugates. Combinations of the above two pathways produce phenol-lactones and their conjugates. A third pathway is cleavage of the triazole moiety, which produces free triazole and its conjugates. Extensive degradation and elimination of polar metabolites occurs in animals such that residues are unlikely to accumulate in humans or animals exposed to these residues through the diet.

8. *Endocrine disruption.* The mammalian endocrine system includes estrogen and androgens as well as other hormonal systems. Fenbuconazole is not known to interfere with reproductive hormones; thus, fenbuconazole should not be considered to be estrogenic or androgenic. There are no known instances of proven or alleged adverse reproductive or developmental effects to people, domestic animals, or wildlife as a result of exposure to fenbuconazole or its residues.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* Permanent tolerances have been established (40 CFR 180.480) or proposed for the residues of fenbuconazole in or on a variety of raw agricultural commodities:

Commodity	Tolerance (ppm)
Almond nutmeat	0.05 (P)[1]
Almond hulls	3.0 (P)
Apples	0.4 (P)
Apple pomace, wet	1.0 (P)
Banana (whole fruit)	4.0
Banana (pulp)	0.05

Commodity	Tolerance (ppm)
Blueberry	0.3 (P)
Cattle, fat	0.05 (P)[3]
Cattle, liver	0.1 (P)[4]
Citrus oil (grapefruit)	35.0 (P)
Grapefruit	1.0 (P)
Grapefruit juice	N/R[2]
Molasses (beet)	0.4[5]
Pecans	0.1
Pulp, dried (beet)	1.0
Pulp, dry (grapefruit)	4.0 (P)
Refined sugar	N/R[2]
Stone Fruit (except plum/prune)	2.0
Sugar beet (root)	0.2 (P)
Sugar beet (top)	9.0 (P)
Wheat (grain)	0.05 (P)
Wheat (straw)	10.0 (P)

[1] (P): Proposed tolerance;
[2] Tolerance not required because concentration factor is < 1 in processing study;
[3] An identical tolerance is pending for fat in poultry, hogs, horses, sheep, and goats;
[4] An identical tolerance is pending for liver in poultry, hogs, horses, sheep, and goats;
[5] For livestock feed; not a human dietary component.

Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from fenbuconazole as follows:

a. *Acute exposure and risk.* No acute endpoint was identified for fenbuconazole, and no acute risk assessment is required.

b. *Chronic exposure and risk.* Risk associated with chronic dietary exposure from fenbuconazole was assessed on four levels. In the first assessment, tolerance level residues and 100% crop treated were assumed. In the second assessment, tolerance level residues and Rohm and Haas Company's conservative estimates of the highest achievable percent crop treated refinements were assumed. Rohm and Haas Company's percent of crop treated estimates used in the assessments are almonds = 50%, blueberry = 30%, grapefruit = 30%, bananas = 20%, apples = 15%, oranges = 15%, pecans = 11%, sugar beets = 3%, and wheat = 0.3%. In the third assessment, average field trial (anticipated) residues and 100% crop treated were assumed. In the fourth assessment, average field trial residues and Rohm and Haas Company's percent of crop treated estimates indicated above were assumed. Rohm and Haas Company's processing factors for apple, orange, and grapefruit juice were assumed in all four assessments. One hundred percent crop treated was assumed when calculating the dietary burden from which secondary residue tolerances in meat and fat were derived. A 12.8% crop treated refinement was used for stone fruit in all four assessments June 10, 1998 (FR 63 31636) (FRL 5791–5). The Anticipated Residue Contribution (ARC) from all proposed and existing food uses of fenbuconazole was assessed.

The RfD used for the chronic dietary analysis is 0.03 mg/kg/day. Potential chronic exposures were estimated using NOVIGEN'S Dietary Exposure Evaluation Model (DEEM™, Version 5.31), which uses USDA food consumption data from the 1989–1992 survey. The existing and proposed fenbuconazole tolerances, and average fenbuconazole residues result in ARCs that are equivalent to the following percentages of the RfD:

Population Subgroup	DEEM[1] %RfD	DEEM[2] %RfD	DEEM[3] %RfD	DEEM[4] %RfD
U.S. Population (48 States)	2.7	0.9	0.4	0.1
Non-Hispanic Other than Black or White	3.5	1.0	0.5	0.2
All Infants (< 1-year old)	6.1	3.5	1.0	0.4
Nursing Infants (< 1-year old)	2.2	0.8	0.5	0.1
Non-Nursing Infants (< 1-year old)	7.7	4.7	1.3	0.5
Children (1-6 years old)	6.4	1.8	1.1	0.3
Children (7-12 years old)	4.2	1.2	0.7	0.2
Females (13+ / Nursing)	3.2	0.8	0.5	0.1

[1] Assumes residues are present at tolerance levels and 100% crop treated (12.8% stone fruit);
[2] Assumes residues are present at tolerance levels and includes percent crop treated refinements;
[3] Assumes residues are present at their average field trial residue levels and 100% crop treated (12.8% stone fruit); and
[4] Assumes residues are present at their average field trial residue levels, and includes percent crop treated refinements.

c. *Aggregate cancer risk for U.S. population.* Fenbuconazole has been classified as a Group C Carcinogen with a Q_1^* value of 0.00359 $mg/kg/day^{-1}$. Cancer risk assessments for all existing and proposed food uses for the U.S. population are as follows:

Assumptions/Refinements	All Crops	Orange & Proc. Frac.	Plums/Prunes
Tolerance residue levels and 100% crop treated (12.8% stone fruit) assumed:	2.90E-06	1.05E-06	1.46E-07
Tolerance residue levels and percent crop treated refinements assumed:	9.24E-07	1.57E-07	1.46E-07
Anticipated residue levels and 100% crop treated (12.8% stone fruit) assumed:	4.65E-07	1.6E-08	3E-09
Anticipated residue levels and percent crop treated refinements assumed:	1.44E-07	2E-09	3E-09

2. *Drinking water.* Fenbuconazole has minimal tendency to contaminate groundwater or drinking water because of its adsorptive properties on soil, solubility in water, and degradation rate. Computer modeling of laboratory and field dissipation data using EPA's Pesticide Root Zone Model (PRZM) and USDA's Groundwater Loading Effects of Agricultural Management Systems (GLEAMS) models predict that fenbuconazole will not leach into groundwater, even if heavy rainfall is simulated. The modeling predictions are consistent with the data from environmental studies in the laboratory and the results of actual field dissipation studies. There is no established Maximum Concentration Level (MCL) for residues of fenbuconazole in drinking water. No drinking water health advisory levels have been established for fenbuconazole. There is no entry for fenbuconazole in the "Pesticides in Groundwater Database" (EPA 734–12–92–001; September, 1992).

3. *Non-dietary exposure.* Fenbuconazole is not currently registered for any indoor or outdoor residential uses; therefore, no non-dietary residential exposure is anticipated.

D. Cumulative Effects

The potential for cumulative effects of fenbuconazole with other substances that have a common mechanism of toxicity was considered. Fenbuconazole belongs to the class of fungicide chemicals known as triazoles, which have demethylase inhibition capability. The toxicological effects of fenbuconazole are related to its effects on rodent thyroid and liver. Extensive data are available on the biochemical mode of action by which fenbuconazole produces animal tumors in rats and mice. These data indicate that the initiating events do not occur below a given dose, and that the processes are reversible. There are no data which suggest that the mode of action by which fenbuconazole produces these animal tumors or any other toxicological effect is common to all fungicides of this class. In fact, the closest structural analog to fenbuconazole among registered fungicides of this class is not tumorigenic in animals even at maximally tolerated doses and has a different spectrum of toxicological effects.

E. Safety Determination

1. *U.S. population—i. Acute exposure and risk.* Since no acute endpoint was identified for fenbuconazole, no acute risk assessment is required.

ii. *Chronic exposure and risk.* Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of fenbuconazole from existing, pending, and proposed tolerances is 2.7% for the U.S. population, assuming residues are present at their tolerance levels and 100% crop treated (12.8% for stone fruit). Aggregate exposure is not expected to exceed 100%. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenbuconazole residues to the U.S. population.

2. *Infants and children—Safety factor for Infants and children—i. General.* In assessing the potential for additional sensitivity of infants and children to residues of fenbuconazole, data from developmental toxicity studies in the rat and rabbit, and 2-generation reproduction studies in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

ii. *Developmental toxicity studies—a. Rat.* In the developmental study in rats, the maternal (systemic) NOAEL was 30 mg/kg/day based on decreases in bwt and bwt gain at the LOAEL of 75 mg/kg/day. The developmental (fetal) NOAEL was 30 mg/kg/day based on an increase in post implantation loss and a significant decrease in the number of live fetuses per dam at the LOAEL of 75 mg/kg/day.

b. *Rabbit.* In the developmental study in rabbits, the maternal (systemic) NOAEL was 10 mg/kg/day based on decreased bwt gain at the LOAEL of 30 mg/kg/day. The developmental (fetal) NOAEL was 30 mg/kg/day based on increased resorptions at the LOAEL of 60 mg/kg/day.

iii. *Reproductive toxicity study.* In the 2–generation reproduction toxicity study in rats, the maternal (systemic) NOAEL was 4 mg/kg/day based on decreased bwt and food consumption, increased number of dams delivering nonviable offspring, and increases in adrenal and thyroid weights at the LOAEL of 40 mg/kg/day. The reproductive (pup) NOAEL was 40 mg/kg/day, the highest dose tested (HDT).

iv. *Pre- and Post-Natal sensitivity.* The pre- and post-natal toxicology database for fenbuconazole is complete with respect to current toxicological data requirements. There is a 10-fold difference between the developmental NOAEL of 30 mg/kg/day from the rat and rabbit developmental toxicity studies and the NOAEL of 3 mg/kg/day from the chronic rat feeding study which is the basis of the RfD. It is further noted that in the rabbit and rat developmental toxicity studies, the developmental NOAELs are similar to or greater than the respective maternal NOAELs. In the rat reproduction study, the maternal NOAEL (4 mg/kg/day) was ten times lower than the developmental (pup) and reproductive NOAEL (40 mg/kg/day, the HDT). These studies indicate that there is no additional sensitivity for infants and children in the absence of maternal toxicity for fenbuconazole.

v. *Acute risk.* No acute dietary risk has been identified for fenbuconazole.

vi. *Chronic risk.* Using the exposure assumptions described above, the exposure to fenbuconazole from food will utilize 7.7% (non-nursing infants < 1–year old) and 2.2% (nursing infants < 1–year old) of the RfD assuming residues are present at tolerance levels and 100% crop treated (12.8% for stone fruit), and will utilize 1.3% (non-nursing infants < 1–year old) and 0.5% (nursing infants < 1–year old) of the RfD assuming residues are present at their average field residue levels and 100% crop treated (12.8% for stone fruit). The percent of the RfD that will be used by the food exposure for children 1–6 years old is 6.4 and 1.1% assuming residues are present at tolerance and average field residue levels, respectively, and 100% crop treated (12.8% for stone fruit). The percent of the RfD that will be used by the food exposure for children 7–12 years old is 4.2 and 0.7% assuming residues are present at tolerance and average field residue levels, respectively, and 100% crop treated (12.8% for stone fruit). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

vii. *Conclusion.* It is concluded that reliable and complete data support the use of the 100–fold uncertainty factor, and that an additional 10–fold factor is not needed to ensure the safety of infants and children from dietary exposure.

F. International Tolerances

There are no Codex Maximum Residue Levels (MRLs) for fenbuconazole, but the fenbuconazole database was evaluated by the World Health Organization (WHO) and the Food and Agriculture Organization (FAO) Expert Panels at the Joint Meeting on Pesticide Residues (JMPR) in September 1997. An Allowable Daily Intake (ADI (same as the RfD) of 0.03 mg/kg/day and a total of 32 Codex MRLs were proposed in the JMPR report.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6365–5]

Final NPDES General Permit for Discharges From Petroleum Bulk Stations and Terminals in Texas (TXG340000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Issuance of NPDES general permit.

SUMMARY: EPA Region 6 today issues a National Pollutant Discharge Elimination System (NPDES) general permit authorizing discharges of facility waste water and contact storm water from petroleum bulk stations and terminals in Texas. This permit covers facilities having Standard Industrial Classification (SIC) Code 5171.

The permit has limits on Total Petroleum Hydrocarbons, benzene, Total BTEX (sum of benzene, toluene, ethyl benzene and xylene), Total Lead and pH. There is also a requirement of no acute toxicity as determined by requiring greater than 50% survival in 100% effluent using a 24 hour acute test. In addition, the permit has limits on arsenic, barium, cadmium, chromium, copper, manganese, mercury, nickel, selenium, silver and zinc as contained in Texas Natural Resource Conservation Commission (TNRCC) Regulations for Hazardous Metals (30 TAC 319, Subchapter B), as well as requirements for no discharge of floating solids or visible foam in other than trace amounts, and no discharge of visible oil. There is also the requirement to develop and implement a pollution prevention plan for the storm water discharges authorized by this permit.

DATES: The limits and monitoring requirements in this permit shall become effective on July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Wilma Turner, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7516. Copies of the complete response to comments may be obtained from Ms. Turner. The complete response to comments and final permit can also be found on the Internet at http://www.epa.gov/earth1r6/6wq/6wq.htm.

SUPPLEMENTARY INFORMATION: Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Operators of petroleum bulk stations and terminals.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in Part I, Section A.1 of this permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. section 1342, EPA proposed and solicited public comment on NPDES General Permit TXG340000 at 63 FR 41848 (August 5, 1998). The comment period closed on October 5, 1998. Region 6 received written comments from Texas Natural Resources Conservation Commission, Texas Oil and Gas Association, Chevron Products Company, and DynMcDermott Petroleum Operations Company.

EPA Region 6 has considered all comments received. In response to the comments, EPA agrees to extend the time for existing dischargers from no later than 30 days to no later than 90 days from the permit effective date to submit Notices of Intent to be covered by the permit. In addition, EPA agrees to reduce the monitoring frequency for the 24 hour acute toxicity requirement from twice per year to once per year, and to allow a facility with multiple storm water outfalls discharging substantially identical storm water effluents to collect and analyze an effluent sample for one of those outfalls and report that the data also applies to the other substantially identical outfalls.

Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. The Region has received certification, dated August 14, 1998, from the Texas Natural Resources Conservation Commission for NPDES General Permit TXG340000.

B. Endangered Species Act

EPA has determined that issuance of this general permit is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA sought written concurrence from the United States Fish and Wildlife Service on this determination. In a letter dated September 2, 1998, the United States Fish and Wildlife Service concurred with EPA's finding that issuance of this general permit is not likely to adversely affect any federally listed species, provided that two general concerns were addressed in the permit. The first concern was in regard to the 24-hour acute testing requirement. The Service was concerned that the permit language does not specify as to how test

organisms, daphnia pulex and the fathead minnow, are used in testing. The Service stated that the permit should state that testing of the effluent requires both species and that failure with either species beyond the 50% survival in 100% effluent would constitute failure. The second concern was that the permit should include language that permittees located in counties overlying the San Antonio and Barton Springs portion of the Edwards Aquifer (Kinney, Travis, Williamson, Uvalde, Medina, Bexar, Blanco, Hays, and Comal Counties) must consult the Edwards Aquifer Rules (30 TAC Chapter 213) and its amendments. In response to the Service's concerns, a requirement has been added to the Part I.C of the final permit requiring compliance with 30 TAC 213 (Edwards Aquifer Rules). The requirements for 24-hour acute testing contained in Part I.C and I.F of the permit already address the Service's concern regarding the 24 hour acute testing requirement.

C. Coastal Coordination Act

Pursuant to Section 506.20 of 31 TAC of the Coastal Coordination Act, the Texas Coastal Coordination Council has reviewed the permit for consistency with the Texas Coastal Management Program. The Council has determined that the permit is consistent with the Texas Coastal Management Program goals and policies.

D. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

E. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12866.

F. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

G. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), P.L. 104-4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (*See*, e.g., UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law * * *"

NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

EPA thinks it is unlikely that this permit issuance would contain a Federal requirement that might result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the permit issuance would not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (*See* UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The permit issuance also will not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.

H. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. Compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by this permit. EPA Region 6 therefore concludes that issuance of this permit will not have a significant impact on a substantial number of small entities.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*: the "Act"), this permit authorizes discharges to Waters of the United States of facility waste water and contact storm water from petroleum bulk stations and terminals in Texas. The discharges are authorized in accordance with effluent limitations and other conditions set forth in Parts I and II of this permit.

In order for discharges to be authorized by this permit, operators of facilities discharging waste waters from petroleum bulk stations and terminals must submit written notification to the Regional Administrator that they intend to be covered (See Part I.A.2). For existing discharges, the notification must be submitted no later than 90 days after the effective date of this permit. For new dischargers, the notification must be submitted at least 30 days prior to the beginning of a discharge. Unless otherwise notified in writing by the Regional Administrator after submission of the notification, operators requesting coverage are authorized to discharge under this general permit. Operators who fail to notify the Regional Administrator of intent to be covered are not authorized to discharge under this general permit.

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historic Places are not authorized to discharge under this permit.

This permit shall become effective at midnight, Central Time on July 26, 1999.

This permit and the authorization to discharge shall expire at midnight, Central Time on July 26, 2004.

Signed this 3rd day of June, 1999.

Oscar Ramirez, Jr.,

Acting Director, Water Quality Protection Division, EPA Region 6.

Part I

Section A. Permit Applicability and Coverage Conditions

1. Discharges Covered

This permit covers discharges of facility waste water and contact storm water from petroleum bulk stations and terminals to Waters of the United States in Texas. This permit covers facilities having Standard Industrial Classification (SIC) Code 5171. This permit does not authorize the discharge of domestic sewage.

2. Notice of Intent (NOI) To Be Covered

Dischargers desiring coverage under this general NPDES permit must submit a Notice of Intent (NOI) which shall include the legal name and address of the operator, the location of the discharge (including the street address, if applicable, and the county of the facility for which the notification is submitted), the name of the receiving water, and a description of the facility(s) (including the types of petroleum products or fuels being distributed, whether contact storm water is discharged). This NOI must be submitted no later than 90 days after the effective date of this permit for existing discharges and, for new discharges, at least 30 days before beginning the discharge.

All notifications of intent to be covered and any subsequent reports shall be sent to the following address: Water Enforcement Branch (6EN–WC), U.S. Environmental Protection Agency, Region 6, P.O. Box 50625, Dallas, TX 75250.

Upon receipt of the notification, EPA will notify the facility of its specific facility identification number that must be used on all correspondence with the Agency.

3. Termination of Operations

When all discharges associated with activities authorized by this permit are eliminated, or when the operator of the discharge associated with activity at a facility changes, the operator of the facility must submit a Notice of Termination that is signed in accordance with Part II.D.11 of this permit. The Notice of Termination shall include the following information: legal name, mailing address and telephone number of the operator; the facility identification number assigned by the Agency; and the location of the discharge.

Section B. Individual Permits

1. Any operator authorized by this permit may request to be excluded from the coverage under this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator.

2. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of the general permit to the permittee is automatically terminated on the effective date of the individual permit.

Section C. General Permit Limits

Parameter	Daily max limit	Sample type	Monitoring frequency
Flow	N/A	Estimate	Daily
Total Petroleum Hydrocarbons	15 mg/l	Grab	1/week (3)
Benzene	0.05 mg/l	Grab	1/week (3)
Total BTEX (1)	0.5 mg/l	Grab	1/week (3)
Total Lead (2)	0.25 mg/l	Grab	1/week (3)
pH	6.0—9.0 Std. Units	Grab	1/week (3)

Notes to table:

If discharge occurs less frequently than the minimum monitoring frequency, monitoring shall be conducted for each discharge event. For a discharge consisting of contact storm water only, the sample shall be obtained within 60 minutes after discharge begins.

(1) The sum of benzene, toluene, ethyl benzene and xylene.

(2) The monitoring requirements for lead will be once per year upon the permittee's submission of a certification that none of the substances stored at the facility include refined petroleum products or petroleum fuels containing lead or lead additives. If at a later date, refined petroleum products or petroleum fuels containing lead or lead additives are stored, the permittee must notify the regulatory agency and the lead monitoring frequency will become once per week.

(3) If compliance with a limit is demonstrated for a period of two years, the minimum frequency shall be reduced to once per two weeks upon the permittee's submission of a certification of such compliance. If a subsequent non compliance occurs, the frequency shall revert to once per week.

	Monthly average Limit (mg/l)	Daily max Limit (mg/l)	Single grab Limit (mg/l)
Arsenic*	.1	.2	.3
Barium*	1.0	2.0	4.0
Cadmium* (Inland Waters)	.05	.1	.2
Cadmium* (Tidal Waters)	.1	.2	.3
Chromium*	.5	1.0	5.0
Copper*	.5	1.0	2.0
Manganese*	1.0	2.0	3.0
Mercury*	.005	.005	.01
Nickel*	1.0	2.0	3.0
Selenium* (Inland Waters)	.05	.1	.2
Selenium* (Tidal Waters)	.1	.2	.3
Silver*	.05	.1	.2
Zinc*	1.0	2.0	6.0

*Monitoring frequency shall be a minimum of once per year using grab samples.

There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

There shall be no acute toxicity as determined by requiring greater than 50% survival in 100% effluent using a 24 hour acute test. See Section I.F of this permit. Monitoring shall be a minimum of once per year using grab samples. See Section I.D of this permit.

Permittees are prohibited from causing or allowing any activity pursuant to this permit which would be in violation of Title 30 Texas Administrative Code, Chapter 213 (Edwards Aquifer Rules).

Section D. Monitoring at Substantially Identical Storm Water Outfalls

Note: The requirements of this section apply to storm water only outfalls. They do not apply to outfalls containing facility waste water.

When a facility has two or more storm water outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the examination data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40%), medium (40 to 65%), or high (above 65%)) shall be provided in the plan.

Section E. Pollution Prevention Plan

A Pollution Prevention Plan shall be prepared and implemented for each facility covered by this permit. The plan shall identify potential sources of pollution that may reasonably be expected to affect the quality of contact storm water discharges from the facility. In addition, the plan shall describe and ensure the implementation of practices that are to be used to reduce the pollutants in contact storm water discharges at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan as a condition of this permit.

The plan shall be signed in accordance with Part II of the permit (Signatory Requirements) and be retained onsite at the facility that generates the storm water discharge in accordance with Part II (Retention of Records) of the permit.

The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit that are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this part. Within 30 days of such notification, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, that has a significant effect on the potential for the discharge of pollutants to waters of the United States or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified in the contents of the plan, or in otherwise achieving the general objectives of controlling pollutants in the contact storm water discharges.

The plan shall include, at a minimum, the following items:

1. Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources that may reasonably be expected to add significant amounts of pollutants to storm water discharges or that may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials that may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage. A site map indicating the location of each point of discharge of storm water associated with industrial activity, an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries with a prediction of the direction of flow, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part C (Spills and Leaks), below, have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, storage areas for vehicles and equipment with actual or potential fluid leaks, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas, storage areas and all monitoring locations. The site map must also indicate the types of discharges contained in the drainage areas of the outfalls. In order to increase the readability of the map, the inventory of the types of discharges contained in each outfall may be kept as an attachment to the site map.

b. Inventory of Exposed Materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the submission of a Notice of Intent (NOI) to be covered under this permit and the present; method and location of onsite storage or disposal; dirt or gravel parking areas for storage of vehicles to be maintained; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the submission of a Notice of Intent (NOI) to be covered under this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. Spills and Leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the date of the submission of a Notice of Intent (NOI) to be covered under this permit.

Such list shall be updated as appropriate during the term of the permit.

d. Sampling Data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. Risk Identification and Summary of Potential Pollutant Sources. A narrative description of the potential pollutant sources from the following activities associated with vehicle and equipment maintenance and equipment cleaning: fueling stations; maintenance shops; equipment or vehicle cleaning areas; paved dirt or gravel parking areas for vehicles to be maintained; loading and unloading operations, outdoor storage activities, outdoor manufacturing or processing activities, significant dust or particulate generating processes, and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and, for each potential source, any pollutant or pollutant parameter (for example, oil and grease, etc.) of concern shall be identified.

3. Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. Good Housekeeping. Good housekeeping requires the maintenance of areas that may contribute pollutants to storm water discharges in a clean, orderly manner. The following areas must be specifically addressed:

(i) Vehicle and Equipment Storage Areas—The storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks must be confined to designated areas (delineated on the site map). The plan must describe measures that prevent or minimize contamination of the storm water runoff from these areas. The facility shall consider the use of drip pans under vehicles and equipment, indoor storage of the vehicles and equipment, installation of berming and diking of this area, use of absorbents, roofing or covering storage areas, cleaning pavement surface to remove oil and grease, or other equivalent methods.

(ii) fueling Areas—The plan must describe measures to prevent or minimize contamination of the storm water runoff from fueling areas. The facility shall consider covering the fueling area, using spill and overflow protection and cleanup equipment, minimizing runon/runoff of storm water to the fueling area, using dry cleanup methods, collecting the storm water runoff and providing treatment or recycling, or other equivalent measures.

(iii) Material Storage Areas—Storage units of all materials must be maintained in good condition, so as to prevent contamination of storm water, and plainly labeled. The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. The facility shall consider indoor storage of the materials, installation of berming and diking of the areas, minimizing runon/runoff of storm water to the areas, using dry cleanup methods, collecting the storm water runoff and providing treatment or other equivalent methods.

(iv) Vehicle and Equipment Cleaning Areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle and equipment cleaning. The facility shall consider performing all cleaning operations indoors, covering the cleaning operation, ensuring that all washwaters drain to the intended collection system, collecting the storm water runoff from the cleaning area and providing treatment or recycling or other equivalent measures.

(v) Vehicle and Equipment Maintenance Areas—The plan must describe measures to prevent or minimize contamination of the storm water runoff from all areas used for vehicle and equipment maintenance. The facility shall consider performing all maintenance activities indoors, using drip pans, maintaining an organized inventory of materials used in the ship, draining all parts of fluids prior to disposal, prohibiting wet clean up practices where the practices would result in the discharge of pollutants to storm water drainage systems, using dry cleanup methods, collecting the storm water runoff from the maintenance area and providing treatment or recycling, minimizing runon/runoff of storm water areas or other equivalent measures.

b. Preventive Maintenance. A preventive maintenance program shall involve routine inspection and maintenance of storm water management devices (for example, cleaning oil/water separators, catch basins, drip pans, vehicle-mounted drip containment devices) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. Spill Prevention and Response Procedures. Areas where potential spills that can contribute pollutants to storm water discharges can occur, and their accompanying drainage points, shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. Inspections. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility on a quarterly basis. The following areas shall be included in all inspections: storage area for vehicles and equipment awaiting maintenance, fueling areas, vehicle and equipment maintenance areas (both indoors and outdoors), material storage areas, vehicle and equipment cleaning areas, and loading and unloading areas. Follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained. The use of a checklist should be considered by the facility.

e. Employee Training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping, and material management practices. The pollution prevention plan shall identify how often training will take place; at a minimum, training must be held annually (once per calendar year).

f. Record Keeping and Internal Reporting Procedures. A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. Sediment and Erosion Control. The plan shall identify areas that, due to

topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

h. Management of Runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those that control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges (see Item 2 of this section—Description of Potential Pollutant Sources) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. Such evaluations shall provide:

a. Areas contributing to contact storm water discharges shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures, such as recycle ponds, identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the evaluation, the description of potential pollutant sources identified in the plan in accordance with Item 2 of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with Item 3 of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such evaluation and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the evaluation.

c. A report summarizing the scope of the evaluation, personnel making the evaluation, the date(s) of the evaluation, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with Item 4.b, above, shall be made and retained as part of the storm water pollution prevention plan for at least 3 years after the date of the evaluation. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with signatory requirements of the permit.

d. Where compliance evaluation schedules overlap with inspections required under Item 3.d, above, the compliance evaluation may be conducted in place of one such inspection.

Section F. Whole Effluent Toxicity Testing

24-Hour Acute Testing for Discharges Into Fresh Receiving Waters

1. Scope and Methodology

a. The following test species shall be used:

Daphnia pulex and *pimephales promelas* (Fathead minnow) acute static nonrenewal 24-hour toxicity tests. Use "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms" (EPA/600/4–90/027F) or the latest update thereof. A minimum of 5 replicates with 8 organisms per replicate must be used in the control and in each effluent dilution of this test.

b. The permittee shall test the effluent for lethality in accordance with the provisions of this section. Such testing will determine if an effluent sample meets the requirement of greater than 50% survival of the appropriate test organisms in 100% effluent for a 24-hour period.

c. The permittee shall submit the results of these tests on the Discharge Monitoring Report.

d. In addition to an appropriate control (0% effluent), a 100% effluent concentration shall be used in the toxicity tests.

2. Required Toxicity Testing Conditions

a. Control/dilution water—Control and/or dilution water used in the test shall normally consist of a standard, synthetic, moderately hard, reconstituted water of similar pH and alkalinity to the closest downstream perennial water.

b. Control Survival—If more than 10% of the test organisms in any control die within 24 hours, that test including the control and the 100% effluent shall be repeated with all results from both tests reported as required in Item 3, below, of this section.

c. The permittee shall repeat a test, including the control and all effluent dilutions, if the procedures and quality assurance requirements defined in the test methods or in this permit are not satisfied. A repeat test shall be conducted within the required reporting period of any test determined to be invalid, in accordance with Item 2.b of this section.

d. Sample Collection and Preservation—Samples shall be collected at a point following the last treatment unit. One flow-weighted composite sample representative of normal operating flows will be collected from each outfall, and a discrete test will be run on each composite sample. Samples shall be chilled to 4 degrees Centigrade during collection, shipping, and/or storage. The toxicity tests must be initiated within 36 hours after collection of the sample. The composite sample must be collected such that the sample is representative of any periodic episode of chlorination, biocide usage, or other potentially toxic substance discharged on an intermittent basis.

3. Reporting

a. The permittee shall prepare a full report of the results of all tests conducted pursuant to this Part in accordance with the Report Preparation section of EPA/600/4–90/027F for every valid or invalid toxicity test initiated, whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of Part II.C.3 of this permit. The permittee shall submit the information contained in any full report upon the specific request of the Agency.

b. The permittee shall report the following results of each toxicity test on the DMR in accordance with Part II.D.4 of this permit:

For *pimephales promelas* (Parameter No. TIE6D) and for daphnia pulex (Parameter No. TIE3D) enter the following codes on the DMR:

"0" if mean survival at 24 hours is greater than 50% in 100% effluent;

"1" if the mean survival at 24 hours is less than or equal to 50% in 100% effluent.

24-Hour Acute Testing for Discharges Into Marine Receiving Waters

1. Scope and Methodology

a. The following test species shall be used:

Mysidopsis bahia (Mysid shrimp) and *menidia beryllina* (Inland Silverside minnow) acute static nonrenewal 24-hour toxicity test. Use "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms" (EPA/600/4–90/027F) or the latest update thereof. A minimum of 5 replicates with 8 organisms per replicate must be used in the control and in each effluent dilution of this test.

b. The permittee shall test the effluent for lethality in accordance with the provisions of this section. Such testing will determine if an effluent sample meets the requirement of greater than 50% survival of the appropriate test organisms in 100% effluent for a 24-hour period.

c. The permittee shall submit the results of these tests on the Discharge Monitoring Report.

d. In addition to an appropriate control (0% effluent), a 100% effluent concentration shall be used in the toxicity tests.

2. Required Toxicity Testing Conditions

a. Control/dilution water—Control and/or dilution water used in the test shall normally consist of a standard, synthetic, reconstituted seawater.

b. Control Survival—If more than 10% of the test organisms in any control die within 24 hours, that test including the control and the 100% effluent shall be repeated with all results from both tests reported as required in Item 3, below, of this section.

c. Repeat Test—the permittee shall repeat a test, including the control and all effluent dilutions, if the procedures and quality assurance requirements defined in the test methods or in this permit are not satisfied. A repeat test shall be conducted within the required reporting period of any test determined to be invalid, in accordance with Item 2.b of this section.

d. Sample Collection and Preservation—Samples shall be collected at a point following the last treatment unit. One flow-weighted composite sample representative of normal operating flows will be collected from each outfall, and a discrete test will be run on each composite sample. Samples shall be chilled to 4 degrees Centigrade during collection, shipping, and/or storage. The toxicity tests must be initiated within 36 hours after collection of the sample. The composite sample must be collected such that the sample is representative of any periodic episode of chlorination, biocide usage, or other potentially toxic substance discharged on an intermittent basis.

3. Reporting

a. The permittee shall prepare a full report of the results of all tests conducted pursuant to this Part in accordance with the Report Preparation section of EPA/600/4–90/027F for every valid or invalid toxicity test initiated, whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of Part II.C.3 of this permit. The permittee shall submit the information contained in any full report upon the specific request of the Agency.

b. The permittee shall report the following results of each toxicity test on the DMR in accordance with Part II.D.4 of this permit:

For menidia beryllina (Parameter No. TIE6B) and mysidopsis bahia (Parameter No. TIE3E), enter the following codes on the DMR:

"0" if mean survival at 24 hours is greater than 50% in 100% effluent;

"1" if the mean survival at 24 hours is less than or equal to 50% in 100% effluent.

Part II

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as ALL applicable regulations.

2. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for terminating coverage under this permit, or for requiring a permittee to apply for and obtain an individual NPDES permit.

3. Toxic Pollutants

a. Notwithstanding Part II.A.4, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

b. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62–64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6. Duty To Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

7. Criminal and Civil Liability

Except as provided in permit conditions on "Bypassing" and "Upsets", nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the Permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

8. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or

may be subject under Section 311 of the Act.

9. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act.

10. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Section B. Proper Operation and Maintenance

1. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

2. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

4. Bypass of Treatment Facilities

a. Bypass Not Exceeding Limitations

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.B.4.b. and 4.c.

b. Notice

(1) Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated Bypass. The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part II.D.7.

c. Prohibition of Bypass

(1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part II.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part II.B.4.c(1).

5. Upset Conditions

a. Effect of an Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part II.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. Conditions Necessary For a Demonstration of Upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part II.D.7; and,

(4) The permittee complied with any remedial measures required by Part II.B.2.

c. Burden of Proof

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Unless otherwise authorized, solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or waste water control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

Section C. Monitoring and Records

1. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

4. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

5. Monitoring Procedures

a. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.

b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.

c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

Section D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR Part 122.29(b); or,

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part II.D.10.a.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

Coverage under these permits is not transferable to any person except after notice to the Director.

4. Discharge Monitoring Reports and Other Reports

Monitoring results obtained during the previous 12 months for all discharges at a facility shall be summarized and reported to EPA and the appropriate State agency on the 28th day of the month following the end of the twelve month period on Discharge Monitoring Report (DMR) Form EPA No. 3320–1 in accordance with the "General Instructions" provided on the form. The permittee shall submit the original DMR signed and certified as required by Part II.D.11 and all other reports required by Part II.D. to the EPA at the address below: Compliance Assurance and Enforcement Division, Water Enforcement Branch (6EN–W), U.S. Environmental Protection Agency, Region 6, P.O. Box 50625, Dallas, TX 75250.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

7. Twenty-four Hour Reporting

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally to the EPA Region 6 24-hour voice mail box telephone number 214–665–6593 within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, (3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and,

(3) Violation of a maximum daily discharge limitation for any pollutants listed by the Director in Part II of the permit to be reported within 24 hours.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Parts II.D.4 and D.7 and Part I.C at the time monitoring reports are submitted. The reports shall contain the information listed at Part II.D.7.

9. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Director as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 ug/L);

(2) Two hundred micrograms per liter (200 ug/L) for acrolein and acrylonitrile;

five hundred micrograms per liter (500 ug/L) for 2,4-dinitro-phenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;

(3) Five (5) times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the Director.

b. That any activity has occurred or will occur which would result in any discharge, on a non routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 ug/L);

(2) One milligram per liter (1 mg/L) for antimony;

(3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the Director.

11. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified.

a. All Permit Applications Shall Be Signed as Follows

(1) by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

(b) For a Corporation—The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a Partnership or Sole Proprietorship—by a general partner or the proprietor, respectively.

b. All Reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Director.

c. Certification

Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

12. Availability of Reports

Except for applications, effluent data, permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

Section E. Penalties for Violations of Permit Conditions

1. Criminal

a. Negligent Violations

The Act provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. Knowing Violations

The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. Knowing Endangerment

The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

d. False Statements

The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See section 309.c.4 of the Clean Water Act)

2. Civil Penalties

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $27,500 per day for each violation.

3. Administrative Penalties

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

a. Class I Penalty

Not to exceed $11,000 per violation nor shall the maximum amount exceed $27,500.

b. Class II Penalty

Not to exceed $11,000 per day for each day during which the violation continues nor shall the maximum amount exceed $137,500.

Section F. Definitions

All definitions contained in Section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. *Act* means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

2. *Administrator* means the Administrator of the U.S. Environmental Protection Agency.

3. *Applicable Effluent Standards and Limitations* means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards or performance, toxic effluent standards and prohibitions, and pretreatment standards.

4. *Applicable Water Quality Standards* means all water quality standards to which a discharge is subject under the Act.

5. *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.

6. *Contact Storm Water* means storm water which comes in contact with any raw material, product, by-product, co-product intermediate, petroleum fuel, or waste material.

7. *Daily Max* discharge limitation means the highest allowable "daily discharge" during the calendar month.

8. *Director* means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.

9. *Domestic Sewage* means waterborne human or animal waste and waste from domestic activities, such as washing, bathing and food preparation.

10. *Environmental Protection Agency* means the U.S. Environmental Protection Agency.

12. *Facility* (as defined in 40 CFR 122.2) means any NPDES "point source" or any other facility or activity that is subject to regulation under the NPDES program.

13. *Facility Waste Water* means any liquids which are accidentally released from storage, transfer or loading facilities, liquids from equipment cleaning or vehicle maintenance, any water and hydrocarbon mixtures drawn from waste water associated with petroleum fuel handling. Facility waste water shall not include domestic sewage.

14. *Grab Sample* means an individual sample collected in less than 15 minutes.

15. *National Pollutant Discharge Elimination System* means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of the Act.

16. *Petroleum Bulk Stations and Terminals* mean establishments primarily engaged in the cooperative or wholesale distribution of refined petroleum products or petroleum fuels from bulk liquid storage facilities.

17. *Petroleum Fuel* means gasoline, diesel fuel, fuel oil, fuel additives, kerosene and jet fuel, or any other petroleum-based material having physical and chemical properties similar to the listed materials.

18. *Severe Property Damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

19. *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

20. The term "MGD" shall mean million gallons per day.

21. The term "mg/L" shall mean milligrams per liter or parts per million (ppm).

[FR Doc. 99–15977 Filed 6–24–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–98; DA 99–1198]

Requests for Additional Authority To Implement Telecommunications Numbering Conservation Measures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 22, 1999, the Commission released a public notice requesting public comment on several petitions from state utility commissions requesting additional authority to implement measures related to conservation of telecommunications numbering resources. The intended effect of this action is to make the public aware of, and to seek public comment on, these requests.

FOR FURTHER INFORMATION CONTACT: Al McCloud at (202) 418–2320 or amccloud@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Suite 6–A320, Washington, D.C. 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: June 22, 1999.

On September 28, 1998, the Federal Communications Commission ("Commission") released an order in the matter of a Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Memorandum Opinion and Order and Order on Reconsideration*, FCC 98–224, CC Docket No. 96–98, 63 FR 63613, NSD File No. L–97–42 (rel. September 28, 1998) ("Pennsylvania Numbering Order"). The Pennsylvania Numbering Order delegated additional authority to state public utility commissions to order NXX code rationing, under certain circumstances, in jeopardy situations and encouraged state commissions to seek further limited delegations of authority to implement other innovative number conservation methods.

Several state utility commissions have filed requests for additional delegations of authority to implement number conservation methods in their states. *See* Common Carrier Bureau Seeks Comment on a Petition of the California Public Utilities Commission and the People of the State of California for an Additional Delegation of Authority to Conduct NXX Code Rationing, *Public Notice*, NSD File No. L–98–136, DA 99–108 (rel. Jan. 6, 1999); Common Carrier Bureau Seeks Comment on Massachusetts Department of Telecommunications and Energy Request for Additional Authority to Implement Various Area Code Conservation Measures in the 508, 617, 781, and 978 Area Codes, *Public Notice*, NSD File No. L–99–19, DA 99–461 (rel. Mar. 5, 1999); Common Carrier Bureau Seeks Comment on New York Department of Public Service Petition for Additional Authority to Implement Number Conservation Measures, *Public Notice*, NSD File No. L–99–21, DA 99–462 (rel. Mar. 5, 1999); Common Carrier Bureau Seeks Comment on the Maine Public Utilities Commission's Petition for Additional Authority to Implement Number Conservation Measures, *Public*

Notice, NSD File No. L–99–27, DA 99–638 (rel. Apr. 1, 1999); Common Carrier Bureau Seeks Comment on the Florida Public Service Commission's Petition for Authority to Implement Number Conservation Measures, *Public Notice*, NSD File No. 99–33, DA 99–725 (rel. Apr. 15, 1999); Common Carrier Bureau Seeks Comment on a Petition of the California Public Utilities Commission and the People of the State of California for a Delegation of Additional Authority Pertaining to Area Code Relief and to NXX Code Conservation Measures, *Public Notice*, NSD File No. L–98–928, DA 99–108 (rel. May 14, 1999).

Among other things, the state commissions have sought authority to implement number pooling trials in their states (thousands-block pooling, individual telephone number pooling, and unassigned number porting); to adopt number-assignment standards (including establishing fill rates as a criterion for the allocation of NXX codes, assigning numbers sequentially, certifying the readiness of carriers' facilities prior to assigning NXX codes, and engaging in audits to assure carriers are abiding by these standards as well as industry number-assignment guidelines); to maintain rationing of NXX codes for a period of six months following NPA relief; to hear and address claims of carriers seeking numbering resources outside of NXX rationing plans; to order the return of unused or reserved NXX codes to the NANPA; to implement extended local calling areas, inconsistent rate centers, and NXX code sharing; and to expand the deployment of permanent local number portability. The comment periods for all of the proceedings referenced above have closed, except for the second petition from the California Commission, for which the comment period closes on June 28, 1999.

Many of the delegations of authority sought by the state commissions relate to issues under consideration in the *Numbering Resource Optimization Notice*. Numbering Resource Optimization, *Notice of Proposed Rulemaking*, CC Docket No. 99–200, FCC 99–122 (rel. June 2, 1999), 64 FR 32471. Because the state utility commissions which have petitioned us face immediate concerns regarding the administration of telecommunication numbering resources in their states, we find it to be in the public interest to address these petitions as expeditiously as possible, prior to completing the rulemaking proceeding.

We hereby seek comment on the issues raised in the state utility commissions' petitions for delegated authority to implement various number conservation measures. A copy of these petitions will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, S.W., Suite CY–A257, Washington, D.C. 20554, (202) 418–0267.

We will give full consideration to the comments and replies already filed on these matters. Therefore, parties which have already filed comments need not re-file their comments or replies.

Interested parties may file comments concerning these matters on or before July 16, 1999. All filings must reference the NSD File Number of the state petition which the commenting party wishes to address, and CC Docket 96–98. Send an original and four copies to the Commission Secretary, Magalie Roman Salas, Portals II, 445 12th Street, S.W., Suite TW–A325, Washington, D.C. 20554 and two copies to Al McCloud, Network Services Division, Portals II, 445 12th Street, S.W., Suite 6A–320, Washington, D.C. 20554.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, including "get form <your e-mail address>" in the body of the message. A sample form and directions will be sent in reply. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

This is a "permit but disclose" proceeding for purposes of the Commission's *ex parte* rules. *See generally* 47 CFR 1.1200–1.1216. As a "permit but disclose" proceeding, *ex parte* presentations will be governed by the procedures set forth in section 1.1206 of the Commission's rules applicable to non-restricted proceedings. 47 CFR 1.1206.

Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well. For further information contact Al McCloud of the Common Carrier Bureau, Network Services Division, at (202) 418–2320 or amccloud@fcc.gov. The TTY number is (202) 418–0484.

Federal Communications Commission.

Blaise A. Scinto,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–16225 Filed 6–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2338]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

June 10, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by July 12, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject:

Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services (CC Docket No. 95–20)

1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements (CC Docket No. 98–10)

Number of Petitions Filed: 1.

Subject:

Development of Wireless Services Offering Advanced Telecommunications Services (CC Docket No. 98–147).

Number of Petitions Filed: 1.

Subject:

Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses (MM Docket No. 97–234)

Reexamination of the Policy Statement on Comparative Broadcast Hearings (GC Docket No. 92–52)

Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases (GEN. Docket No. 90–264)

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16253 Filed 6–24–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of a new information collection. This request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by June 18, 1999 for the use through December 1999 due to the hurricane season that began June 1.

FEMA plans to follow this emergency request with a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 (c)(2)(A)). It seeks comments concerning the collection of information to be used to establish a settlement on the amount the insured will receive under a National Flood Insurance Program (NFIP) policy for the cost of bringing a structure into compliance with floodplain management requirements. It will also be used to identify whether or not the insured qualifies for coverage under the Increased Cost of Compliance (ICC).

SUPPLEMENTARY INFORMATION. This collection is in accordance with FEMA responsibilities under Section 555 of Public Law 103–325 and is part of all NFIP policies newly issued or renewed on or after June 1, 1997. ICC coverage pays for expenses a property owner must incur above and beyond the cost to repair the physical damage the structure actually sustained from a flooding event to comply with State or local floodplain management ordinances or laws. Such expenses may include the cost of building elevation, floodproofing, relocation, demolition, or any combination. Policyholders with 3-year policies have the option of canceling their flood insurance policies on the anniversary date and obtaining ICC coverage under rewritten policies.

Collection of Information:

Title: Increased Cost of Compliance.

Type of Information Collection: New.

OMB Number: None.

Form Numbers. FEMA Form 81–99, Increased Cost of Compliance Proof of Loss; and FEMA Form 81–42A, Increased Cost of Compliance Adjuster Report.

Abstract. The National Flood Insurance Program, (NFIP) authorized by P.L. 90–448 (1968) and expanded by P.L. 93–234 (1973) provides low-cost Federally subsidized flood insurance for existing buildings exposed to flood risk. In return, communities must enact and administer construction safeguards to ensure that new construction in the floodplain will be built to eliminate or minimize future flood damage. In accordance with P.L. 93–234, the purchase of flood insurance is mandatory when Federal or Federally-related financial assistance is being provided for acquisition or construction of buildings located or to be located within FEMA-identified Special Flood Hazard Areas of communities which are participating in the Program. Section 555 of the National Flood Insurance Reform Act of 1994, Title V of the Riegle Community Development and Investment Act of 1994 (Public Law 103–325), requires the NFIP to provide the coverage under the Standard Flood Insurance Policy for the increased costs of complying with the land use and control measures established under section 1361 of the National Flood Insurance Act of 1968, as amended. FEMA Form 81–99, Increased Cost of Compliance (ICC) Proof of Loss will be used by the insured and adjuster to establish a settlement on the amount the insured will receive. FEMA Form 81–42A, Increased Cost of Compliance Adjuster Report will be used by the Adjuster to identify whether or not the insured qualifies for coverage under ICC. These forms are necessary for the continued proper performance of the Agency's functions related to indemnifying policyholders for flood damages to their properties.

Affected public: Individuals and households; Business or other for-profit; Not-for-profit institutions, and Farms.

Estimated Total Annual Burden Hours: 7,895.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
81–99	3,500	On Occasion	.25	875
81–42A	3,500	On Occasion	2	7,000
Total	3,500		2.25	7,875

Estimated Cost. $1,750,000.

Comments

Written comments are solicited to:

(a) evaluate whether the proposed data collections and reporting requirements are necessary for the proper performance of FEMA's functions and program activities, including whether the data have practical utility;

(b) evaluate the accuracy of the agency's estimate of the burden of the proposed data collections and reporting requirements;

(c) determine an estimated cost of the proposed data collections and reporting requirements to the respondents;

(d) enhance the quality, utility, and clarity of the information to be collected; and,

(e) minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

OMB should receive comments concerning the approval of this collection of information under OMB's emergency processing procedures within 30 days of the date of this notice. FEMA will, however, continue to accept comments concerning this collection of information through August 24, 1999.

ADDRESSEE: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for FEMA, 725 17th Street, NW, Room 10102, Washington DC 20503, or to the Federal Emergency Management Agency, ATTN: Information Collections Officer, 500 C Street, SW, Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: For additional information contact Timothy P. Johnson, Federal Insurance Administration, at (202) 646–3418. For copies of the proposed collection of information contact Muriel B. Anderson at (202) 646–2625, FAX (202) 646–3524, or e-mail: muriel.anderson@fema.gov.

Dated: June 11, 1999.

Muriel B. Anderson,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–16216 Filed 6–24–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Public Meeting: Application by Fleet Financial Group, Inc., Boston, Massachusetts, To Merge With BankBoston Corporation, Boston, MA

AGENCY: Federal Reserve System.

ACTION: Notice of Meeting.

SUMMARY: On July 7, 1999, a public meeting will be held regarding the notice submitted by the Fleet Financial Group, Inc., Boston, Massachusetts (Fleet Financial), to acquire BankBoston Corporation, Boston, Massachusetts (BankBoston), and its banking and nonbanking subsidiaries pursuant to the Bank Holding Company Act (BHC Act) and related statutes. The purpose of the public meeting is to collect information relating to factors the Board is required to consider under the BHC Act.

DATES: The Meeting will be held on Wednesday, July 7, 1999, at 9:00 a.m. EDT.

ADDRESSES: Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert M. Brady, Vice President, Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts. Facsimile: 617/973–3219.

SUPPLEMENTARY INFORMATION: On May 17, 1999, Fleet Financial requested the Board's approval to merge with BankBoston under the BHC Act (12 U.S.C. 1841 *et seq.*) and related statutes. The factors the Board must consider in evaluating the proposal under the BHC Act are: the effects of the proposal on the financial and managerial resources and future prospects of the companies and banks involved in the proposal; competition in the relevant markets; and the convenience and needs of the communities to be served. With respect to competition, the proposal involves the merger of the two largest banking organizations in new England and will involve sizable divestitures throughout the region. Convenience and needs considerations include a review of the records of performance of Fleet Financial and BankBoston under the Community Reinvestment Act, which requires the Board to take into account in its review of a bank acquisition or merger proposal each institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution. 12 U.S.C. 2903.

The transaction also involves the proposed acquisition of a number of nonbanking companies engaged in activities permissible for bank holding companies. The Board must determine whether conducting the proposed nonbanking activities can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

Procedures for Hearing

Testimony at the public meeting will be presented to a panel consisting of a Presiding Officer and other panel members appointed by the Presiding Officer. In conducting the public meeting, the Presiding Officer will have the authority and discretion to ensure that the meeting proceeds in a fair and orderly manner. In contrast to a formal administrative hearing, the rules for taking evidence in an administrative proceeding will not apply to this public meeting. Panel members may question witnesses, but no cross-examination of witnesses will be permitted. The public meeting will be transcribed and information regarding procedures for obtaining a copy of the transcript will be announced at the public meeting.

On the basis of the requests received, the Presiding Officer will prepare a schedule for persons wishing to testify and establish the order of presentation. To ensure an opportunity for all interested commenters to present their views, the Presiding Officer may limit the time for presentation. Persons not listed on the schedule may be permitted to speak at the public meeting if time permits at the conclusion of the schedule of witnesses at the discretion of the Presiding Officer. Copies of testimony may, but need not, be filed with the Presiding Officer before a person's presentation.

Request To Testify

All persons wishing to testify at the public meeting must submit a written request to Robert M. Brady, Vice President, Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts 02106 (facsimile: 617/973–3219), not later than 5:00 p.m. EDT, Wednesday, June 30, 1999. The request must include the following information: (i) A brief statement of the nature of the expected testimony and the estimated time required for the presentation; (ii) Address and telephone number (and facsimile number, if available) of the person testifying; and (iii) Identification of any special needs, such as from persons desiring translation services, persons with a physical disability who may need assistance, or persons requiring visual aids for their presentation. To the extent available, translators will be provided to persons wishing to present their views in a language other than English if this information is included in the request to testify. Persons interested only in attending the meeting do not need to submit a written request to attend.

By order of the Board of Governors of the Federal Reserve System, June 22, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16299 Filed 6–24–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 9, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Mary M. Covington, Carrollton, Georgia; to retain voting shares of First Haralson Corporation, Buchanan, Georgia, and thereby indirectly retain voting shares of First National Bank of Georgia, Buchanan, Georgia.

Board of Governors of the Federal Reserve System, June 21, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16169 Filed 6–24–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 19, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Pilot Grove Savings Bank Employee Stock Ownership Plan, Pilot Grove, Iowa; to acquire an additional 1.82 percent of the voting shares of Pilot Bancorp, Inc., Pilot Grove, Iowa, and thereby indirectly acquire additional shares of Pilot Grove Savings Bank, Pilot Grove, Iowa.

Board of Governors of the Federal Reserve System, June 21, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16171 Filed 6–24–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Credit Lyonnais, Paris, France; to engage *de novo* through its subsidiary, Credit Lyonnais/PK Airfinance, Senningerberg, Luxembourg, in asset management, servicing and collection activities, pursuant to § 225.28(b)(2)(vi) of Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; and data processing activities, pursuant to § 225.28(b)(14) of Regulation Y.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Mahaska Investment Company, Oskaloosa, Iowa; to acquire Midwest Bancshares, Inc., Burlington, Iowa, and thereby indirectly acquire Midwest Federal Savings & Loan Association, Burlington, Iowa, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan; to acquire Yasuda Bank and Trust Company (U.S.A), Toronto, Canada, and thereby engage in performing functions or activities that may be performed by a trust company, pursuant to § 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, June 21, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16170 Filed 6–24–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of a Cooperative Agreement With Minority Access, Inc.

The Office of Minority Health (OMH), Office of Public Health and Science (OPHS) announces that it will enter into an umbrella cooperative agreement with the Minority Access, Inc., a national organization whose mission is to support individuals, institutions, Federal agencies, and corporations to diversify their campuses and work sites by improving the recruitment, retention, and enhancement of opportunities for minorities. This cooperative agreement

will establish the broad programmatic framework in which specific projects can be supported by various agencies during the project period.

The purpose of this cooperative agreement is to support the Minority Access, Inc. in providing assistance to minorities and minority-serving institutions in order to improve the higher educational, professional, and managerial employment of minorities.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other Government agencies and non-governmental agencies.

Authorizing Legislation

This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will be provided only to Minority Access, Inc. No other applications are being solicited under this announcement. The Minority Access, Inc., is uniquely qualified to accomplish the objectives of this cooperative agreement because it has the following combination of factors:

- This is the only organization whose mission is to serve minority-serving institutions, majority universities, as well as public and private entities with a large minority constituency.
- The organization has represented majority institutions and corporations in diversifying their campuses and work sites by improving the recruitment, retention, and enhancement of opportunities for minorities.
- The organization has established mutually beneficial partnerships between minority-serving institutions, majority institutions, and corporations.
- The organization has provided technical assistance to minorities and minority-serving institutions in order to improve the higher educational, professional, and managerial employment of minorities.
- The organization has developed strategies to enhance and develop minorities' educational skills to enter under-represented fields such as bio-medical research.

This cooperative agreement will be awarded for a 12-month budget period within a project period of five years. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will receive approximately $50,000 to $100,000. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

Dated: June 9, 1999.

Nathan Stinson, Jr.,

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 99–16186 Filed 6–24–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0482]

Agency Information Collection Activities; Announcement of OMB Approval; Adverse Experience Reporting for Licensed Biological Products, and General Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Adverse Experience Reporting for Licensed Biological Products, and General Records" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1999 (64 FR 11920), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0308. The approval expires on May 31, 2001. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: June 18, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–16148 Filed 6–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1912]

California Day-Fresh Foods, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that California Day-Fresh Foods, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ultraviolet light for the reduction of pathogens and other microorganisms in juice products.

FOR FURTHER INFORMATION CONTACT: William J. Trotter, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3088.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9M4676) has been filed by California Day-Fresh Foods, Inc., 533 West Foothill Blvd., Glendora, CA 91741. The petition proposes that the food additive regulations in 21 CFR part 179—Irradiation in the Production, Processing, and Handling of Food be amended to provide for the safe use of ultraviolet light for the reduction of pathogens and other microorganisms in juice products.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 9, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–16146 Filed 6–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0444]

International Conference on Harmonisation; Guidance on the Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled "S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) and is intended to provide guidance on the duration of chronic toxicity testing in rodents and nonrodents as part of the safety evaluation of a drug product. FDA is also noting circumstances in which it may accept durations of chronic toxicity testing in nonrodents that differ from the duration generally recommended by ICH.

DATES: Effective June 25, 1999. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the guidance may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of November 18, 1997 (62 FR 61513), FDA published a draft tripartite guidance entitled "S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)." The notice gave interested persons an opportunity to submit comments by January 20, 1998.

There were no comments received and no revisions to the guidance. A final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on September 2, 1998.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

The document provides guidance on the duration of chronic toxicity testing in rodents and nonrodents as part of the safety evaluation of a drug product. The guidance is intended to help eliminate or reduce the need for pharmaceutical companies to duplicate testing in animals during the development of new drug products. The guidance is based on information currently available to the agency, and this information is available to the public in Docket No. 97D–0444.

This guidance represents the agency's current thinking on the duration of chronic toxicity tests (rodent and nonrodent). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

For guidance on biotechnology-derived pharmaceuticals, interested parties are advised to consult the ICH guidance "S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals" (62 FR 61515, November 18, 1997).

FDA note on duration of chronic toxicity testing in nonrodents: The ICH guidance recommends 9-month chronic toxicity studies in nonrodents. FDA considers 9-month studies in nonrodents acceptable for most drug development programs, shorter studies may be equally acceptable in some circumstances and longer studies may be more appropriate in others, as follows:

- Six-month studies may be acceptable for indications of chronic conditions associated with short-term, intermittent drug exposure, such as bacterial infections, migraine, erectile dysfunction, and herpes.
- Six-month studies may be acceptable for drugs intended for indications for life-threatening diseases for which substantial long-term human clinical data are available, such as cancer chemotherapy in advanced disease or in adjuvant use.
- Twelve-month studies may be more appropriate for chronically used drugs to be approved on the basis of short-term clinical trials employing efficacy surrogate markers where safety data from humans are limited to short-term exposure, such as some acquired immunodeficiency syndrome (AIDS) therapies.

• Twelve-month studies may be more appropriate for new molecular entities acting at new molecular targets where postmarketing experience is not available for the pharmacological class. Thus, the therapeutic is the first in a pharmacological class for which there is limited human or animal experience on its long-term toxic potential.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or at CBER's World Wide Web site at "http://www.fda.gov/cber/publications.htm".

The text of the guidance follows:

S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)[1]

1. Objective

The objective of this guidance is to set out the considerations that apply to chronic toxicity testing in rodents and nonrodents as part of the safety evaluation of a medicinal product. Since guidance is not legally binding, an applicant may submit justification for an alternative approach.

2. Scope

This guidance has been prepared for the development of medicinal products with the exception of those already covered by the ICH guidance "S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals" (62 FR 61515, November 18, 1997), e.g., monoclonal antibodies, recombinant DNA proteins.

3. Background

During the first International Conference on Harmonisation in 1991, the practices for the testing of chronic toxicity in the three regions (the European Union, Japan, and the United States) were reviewed. Arising from this, it emerged that there was a scientific consensus on the approach for chronic testing in rodents, supporting the harmonized duration of testing of 6 months. However, for chronic toxicity testing in nonrodents, there were different approaches to the duration of testing.

The lack of harmonized duration led to the need for pharmaceutical companies to perform partially duplicative studies for both 6 and 12 months' duration when developing new medicinal products. As the objective of ICH is to reduce or eliminate the need to duplicate testing during development of medicinal products and to ensure a more economical use of material, animal, and human resources, while at the same time maintaining safeguards to protect public health, further scientific evaluation was undertaken.

Each of the regulatory authorities in the European Union, Japan, and the United States undertook a review to determine whether a single duration for chronic toxicity testing in nonrodents could be identified. From this analysis, it emerged that in 16 cases a more detailed evaluation of 6 versus 12 months' data should be undertaken.

This evaluation was conducted as a joint exercise by the competent authorities in the three regions.

In some of the cases analyzed at the tripartite meetings, there were no additional findings at 12 months. For some other cases, there was not complete agreement among the regulators with respect to the comparability in study design and conduct to allow assessment of whether there were differences in the findings at 6 and 12 months due to duration of treatment alone.

In a number of cases there were findings observed by 12 months, but not by 6 months. It was concluded that these would, or could, have been detected in a study of 9 months' duration. Varying degrees of concern for the differences in findings detected between the studies of different durations were expressed. An agreement on the clinical relevance of these findings could not be reached.

Studies of 12 months' duration are usually not necessary, and studies of shorter than 9 months' duration may be sufficient.

In the European Union, studies of 6 months' duration in nonrodents are acceptable according to Council Directive 75/318/EEC, as amended. To avoid duplication, where studies with a longer duration have been conducted, it would not be necessary to conduct a study of 6 months.

4. Guidance on Duration of Chronic Toxicity Testing for Tripartite Development Plan

Arising from the extensive analysis and review of the above mentioned data in nonrodents and based upon the achievements of ICH 1 for testing in rodents, and so as to avoid duplication and follow a single development plan for chronic toxicity testing of new medicinal products, the following studies are considered acceptable for submission in the three regions:

(1) *Rodents*:A study of 6 months' duration;

(2) *Nonrodents*: A study of 9 months' duration.

[1] This guidance represents the agency's current thinking on the duration of chronic toxicity testing in animals (rodent and nonrodent toxicity testing). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisifes the requirements of the applicable statute, regulations, or both.

Dated: June 17, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–16189 Filed 6–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Donor Suitability Workshop: Donor History of Hepatitis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled "Blood Donor Suitability Workshop: Donor History of Hepatitis." The purpose of the workshop is to discuss whether prospective blood donors with a history of viral hepatitis should be deferred from donating blood.

Date and Time: The workshop will be held on Wednesday, July 21, 1999, 8:30 a.m. to 5 p.m.

Location: The workshop will be held at Natcher Auditorium, Bldg. 45, 45 Center Dr., National Institutes of Health, 8800 Rockville Pike, Bethesda, MD.

Contact: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6129, FAX 301–827–2843.

Registration: Early registration is recommended. Mail or fax registration information (including name, title, firm name, address, telephone, and fax number), to the contact person on or before Friday, July 2, 1999.

Registration at the site will be done on a space available basis on the day of the workshop beginning at 7:30 a.m. There is no registration fee for the workshop.

If you need special accommodations due to disability, please contact Joseph Wilczek at least 7 days in advance.

Agenda: The public workshop is intended to discuss a variety of issues concerning blood donor deferrals based on a history of viral hepatitis. These issues include, but are not limited to, the following: (1) Definitions and clarification of terms such as "history of hepatitis" and "history of jaundice" in the context of blood donation; (2) whether a prospective blood donor with a history of hepatitis A, who is anti-HAV IgG positive, is an unacceptable donor; (3) whether deferrals are appropriate for individuals with a history of viral hepatitis that was documented to be due to some other virus other than hepatitis A through G; and (4) whether a history of hepatitis in the absence of positive viral marker tests for hepatitis preclude blood donations.

Transcripts: Transcripts of the workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 days after the workshop at a cost of 10 cents per page. The workshop transcript will also be available on the Center for Biologics Evaluation and Research website at "http://www.fda.gov/cber/minutes/workshop-min.htm".

Dated: June 18, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–16147 Filed 6–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Electric and Magnetic Fields Research and Public Information Dissemination Program (EMFRAPID Program)

AGENCY: Environmental Toxicology Program, Office of Special Programs, National Institute of Environmental Health Sciences, National Institutes of Health.

Notice: Release of NIEHS Report on Electric and Magnetic Fields.

Background

The National Institute of Environmental Health Sciences (NIEHS) and the Department of Energy (DOE) coordinated implementation of the Electric and Magnetic Fields Research and Public Information Dissemination Program (EMF*RAPID* Program). This six-year program was mandated in the 1992 Energy Policy Act (PL 102–486, section 2118) and is designed to determine the potential effects on human disease from exposure to 60 Hz electric and magnetic fields (EMF). These fields are invisible lines of force that surround any wire or device that uses electricity. Additional details about the EMF*RAPID* Program are found in **Federal Register**, December 16, 1997 (Volume 62, No. 241, pp. 65814–65815).

Under this program, the NIEHS conducted a two-year review and analysis of the existing scientific data on EMF and prepared a report for the U.S. Congress that contains its conclusions from the health assessment. This assessment included an evaluation of the evidence by scientists both within and outside the field of EMF research as well as an opportunity for public comment through sponsorship of public meetings and solicitation written comments. The NIEHS report was released on June 15, 1999 and is available free-of-charge to the public and other interested parties.

The report is available in both PDF and HTML formats at the EMF*RAPID* Program world wide website, www.niehs.nih.gov/emfrapid/home.htm. Copies of the report can also be obtained by sending a request by fax: 919–541–0144 or mail: EMF–RAPID Program, NIEHS/NIH, P.O. Box 12233 MD EC–16, Research Triangle Park, NC 27709; or by calling 919–541–7534.

Dated: June 18, 1999.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 99–16255 Filed 6–24–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Treatment Outcomes and Performance Pilot Studies (TOPPS)—(OMB No. 0930–0182; Extension)

The TOPPS program awarded contracts to 14 States to develop and pilot test performance and outcomes measures for substance abuse treatment services. The pilot studies are collecting data from substance abuse clients, including pregnant women, women with dependent children, adolescents, and managed care clients. Measures of addiction severity and other outcomes are being obtained at admission, discharge and post-discharge. These States were granted OMB clearance on data collection until September 30, 1999. SAMHSA is requesting an extension of OMB approval for one of these States, Utah, to allow them to complete data collection. The estimated burden for this extension is summarized below.

	Number of respondents	Responses/respondent	Average burden/response (hrs.)	Annualized total burden (hrs.)
All States, currently approved (includes Utah)	(6,419)	2.0	.51	(6,551)
Utah—extension	420	2.9	.20	246
Revised Total	420			246

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 19, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–16174 Filed 6–24–99; 8:45 am]

BILLING CODE 4163–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–25]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1998 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses. AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–0515; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington, Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: June 17, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 6/25/99

Suitable/Available Properties

Buildings (by State)

Indiana

Former Army Reserve Center
White Oak Park
LaPorte Co: Laporte IN 00000–
Landholding Agency: GSA
Propert6y Number: 54199920003
Status: Excess
Comment: Two—1600 sq. ft. picnic shelters, 4358 sq. ft. paved road, 200 sq. ft. rest room
GSA Number: 1–GR(1)–IN–430E

Kentucky

Site 11
Cannelton Locks and Dams
Brandenburg Co: Meade KY 40108–
Landholding Agency: GSA
Property Number: 54199920004
Status: Surplus
Comment: 320 sq. ft. comfort station on approx. 33.40 acres, most recent use—recreation/park, subject to complete flooding
GSA Number: 4–D–KY–539

New York

Bldgs. 1106 & 184 acres
Forestport Test Annex
Forestport Co: Oneida NY 13338–
Landholding Agency: Air Force
Property Number: 18199920028
Status: Unutilized

Comment: 11,760 sq. ft. on 184 acres, most recent use—research lab, presence of asbestos/lead paint/endangered species
Bldg. 1105
Forestport Test Annex
Forestport Co: Oneida NY 13338–
Landholding Agency: Air Force
Property Number: 18199920029
Status: Unutilized
Comment: 1920 sq. ft., most recent use—cold rsch. equip. storage, presence of asbestos/lead paint
Bldg. 1452 & 297 acres
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Landholding Agency: Air Force
Property Number: 18199920030
Status: Unutilized
Comment: 11,000 sq. ft. on 297 acres (67 acres of wetland), most recent use—electronic research testing, presence of asbestos/lead paint
Bldg. 1453
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Landholding Agency: Air Force
Property Number: 18199920031
Status: Unutilized
Comment: 266 sq. ft., most recent use—generator bldg., presence of asbestos
Bldg. 1454
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Landholding Agency: Air Force
Property Number: 18199920032
Status: Unutilized
Comment: 53 sq. ft., most recent use—switch station, presence of asbestos

Virginia

Structure NH–201
Atlantic Fleet Hdqts.
Support Activity
Norfolk Co: Va 23511–
Landholding Agency: Navy
Property Number: 77199920149
Status: Excess
Comment: 4922 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only
Structure NH–203
Atlantic Fleet Hdqts.
Support Activity
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199920150
Status: Excess
Comment: 1974 sq. ft., presence of asbestos/lead paint, most recent use—maint. shop, off-site use only
Structure NH–213
Atlantic Fleet Hdqts.
Support Activity
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199920151
Status: Excess
Comment: 7840 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Land (by State)

New York

Caleville Army Training Site
Shawangunk Co: Ulster NY 12589–
Landholding Agency: GSA
Property Number: 21199510128
Status: Excess
Comment: 55 acres of 622 acres are available, improved w/inactive runways, 234 acres is wetlands and habitat for threatened species
GSA Number: 2–D–NY–807

Unsuitable Properties

Buildings (by State)

California

Soil & Materials Testing Lab
Sausalito Co: CA 00000–
Landholding Agency: COE
Property Number: 31199920002
Status: Excess
Reason: Contamination

Hawaii

Facility 5
Naval Computer & Telecommunications Area Master Station
Lualualei Co: HI 96792–
Landholding Agency: Navy
Property Number: 77199920138
Status: Excess
Reasons: Secured Area; Extensive deterioration
Facility 31
Naval Computer & Telecommunication Area Master Station
Lualualei Co: HI 96792–
Landholding Agency: Navy
Property Number: 77199920139
Status: Excess
Reasons: Secured Area; Extensive deterioration
Facility 429
Naval Computer & Telecommunication Area Master Station
Lualualei Co: HI 96792–
Landholding Agency: Navy
Property Number: 77199920140
Status: Excess
Reasons: Secured Area; Extensive deterioration
Facility 430
Naval Computer & Telecommunication Area Master Station
Lualualei Co: HI 96792–
Landholding Agency: Navy
Property Number: 77199920141
Status: Excess
Reasons: Secured Area; Extensive deterioration
Bldg. T48
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199920142
Status: Unutilized
Reasons: Secured area; Extensive deterioration
Bldg. T8
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199920143
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured area; Extensive deterioration
Structure S1133
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199920144
Status: Excess
Reason: Secured area
Structure 1448
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199920145
Status: Excess
Reasons: Secured area; Extensive deterioration

North Carolina

Bldg. 2159
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number: 77199920146
Status: Excess
Reasons: Secured Area; Extensive deterioration
Structure 3758
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number: 77199920147
Status: Excess
Reasons: Secured Area; Extensive deterioration

Pennsylvania

Bldg. 714
Naval Surface Warfare Center,
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77199920148
Status: Unutilized
Reason: Extensive deterioration

Washington

Bldg. 73
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number 77199920152
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Land (by State)

California

Parcel 3
Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy
Property Number: 77199920137
Status: Underulized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

[FR Doc. 99–15837 Filed 6–24–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Proposed Cabazon Section 6 General Plan, Cabazon Indian Reservation, Indio, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Draft Environmental Impact Statement (DEIS) for a proposed general plan and master lease of approximately 590 acres held in trust by the federal government for the Cabazon Band of Mission Indians in Riverside County, California, is now available for public review and comment. The DEIS, prepared by the Bureau of Indian Affairs (BIA) in cooperation with the Cabazon Band of Mission Indians, describes a proposed resource recovery park and industrial area for the recycling, reuse and transformation of various types of waste. A description of the proposed project location and of the environmental issues addressed in the DEIS follow as supplementary information. This notice also announces a public hearing, to be co-hosted by the BIA and the Cabazon Band, to receive public comments on the DEIS.

DATES: Comments must be received on or before August 27, 1999. Please put the following caption on the first page of all correspondence: "DEIS Comments, Cabazon Section 6 General Plan, Cabazon Indian Reservation, Indio, California." The public hearing will be on July 21, 1999, from 6 to 8 p.m.

ADDRESSES: Send comments to Ronald M. Jaeger, Area Director, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825–1846. The public hearing will be held at the Cabazon Band Council Chambers, 84245 Indio Springs Drive, Indio, California.

The DEIS is available for review at the Cabazon Band of Mission Indians' Administrative Offices, 84245 Indio Springs Drive, Indio, California 92203. To obtain a copy of the DEIS, please write or call William Allan, Environmental Protection Specialist, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825–1846, telephone (916) 979–2575, extension 254.

FOR FURTHER INFORMATION CONTACT: William Allan (916) 979–2575, extension 254.

SUPPLEMENTARY INFORMATION: The proposed action is to approve (1) a general plan of development, called the Cabazon Resource Recovery Park (CRRP), for the majority of Section 6, and (2) a master lease of the land from the Cabazon Band of Mission Indians to a tribally-owned corporation. Section 6 is located in the Coachella Valley, California, approximately one mile northwest of the unincorporated town of Mecca. It is characterized by smooth topography, ranging in elevation from 180 feet below to 146 feet below mean sea level. Section 6 is adjacent on its west and south sides to the Coachella Valley Enterprise Zone, a 27,000 acre area established by the California State Legislature to create jobs and economic development.

The industrial and commercial facilities planned for the CRRP will be environmentally responsible industries which individually and collectively implement practical solutions to a variety of environmental and waste management problems. The various types of facilities will be integrated such that the output of some would provide input to others, thus enhancing the overall efficiency and effectiveness both of waste management and manufacturing projects.

Existing facilities and those in development or proposed are as follows: (1) biomass power plant, (2) bio-solids recycling plant, (3) contaminated soil recycling plant, (4) tire recycling and re-manufacturing plant, (5) nickel wire recycling and manufacturing plant, (6) waste food and green waste recycling facility, (7) aquaculture facility, (8) materials recovery facility, (9) metals reclamation facility, (10) gasification facility, (11) catalytic converter, platinum recovery facility, (12) construction and demolition materials recovery facility, (13) fuels and chemicals storage and distribution facility, (14) used oil recovery refinery, (15) plant making speciality glass products from reclaimed glass, (16) hazardous waste and hazardous commodity processing and transfer facility, and (17) associated supporting infrastructure (rail yards, sewage treatment, etc.). The CRRP project will meet all applicable environmental standards and regulations.

The DEIS addresses the issues identified during scoping. An earlier version of the DEIS was issued on June 12, 1998 (63 FR 32238), but withdrawn on January 15, 1999 (64 FR 2657). Comments received on the earlier version were treated as comments on scoping. Alternatives to the proposed project that are considered in the DEIS include the no action alternative and a reduced project, which is the preferred alternative. The environmental issues addressed in the DEIS include land and water resources, air quality, living resources, cultural and socioeconomic resources, land use, traffic, noise, public safety and health, and visual resources.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: June 21, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–16257 Filed 6–24–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Environmental Impact Statement for the Proposed High Mesa Environmental Facility on the Pueblo of Nambe, Santa Fe County, New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement (FEIS) for the proposed approval of a lease of approximately 100 acres held in trust by the federal government for the Pueblo of Nambe in Santa Fe County, New Mexico, is now available for public review and comment. The FEIS, prepared by the Bureau of Indian Affairs (BIA), describes the High Mesa Environmental Facility, proposed for construction and operation on the leased land. The facility would receive construction and demolition (C&W) waste and municipal solid waste (MSW) from the Pueblo of Nambe and the surrounding area. A description of the proposed project location and of the environmental issues addressed in the FEIS follow as supplementary information.

DATES: Comments must be received on or before July 26, 1999.

ADDRESSES: Send comments to Allen Sedik, Environmental Scientist, Albuquerque Area Office, Bureau of Indian Affairs, P.O. Box 26567, Albuquerque, New Mexico 87125–6567.

Copies of the FEIS may be obtained from Allen Sedik at the above address, or by calling (505) 346–7109. The FEIS is also available for review at this address, and at four other locations, as follows: Pueblo of Nambe, Department of Environment and Natural Resources, Route 1, Box 117–BB, Pueblo of Nambe, New Mexico 87501; Allen Clark, Reference Services, Albuquerque Public Library, 501 Copper Avenue NW, Albuquerque, New Mexico 87102; Bambi Adams, Reference Services, Santa Fe Public Library, 145 Washington Avenue, Santa Fe, New Mexico 87501; and Espanola Public Library, 314–A Onate Street, Espanola, New Mexico 87532.

FOR FURTHER INFORMATION CONTACT: Allen Sedik, (505) 346–7109.

SUPPLEMENTARY INFORMATION: The proposed action would lease 100 acres of the Pueblo of Nambe to High Mesa Environmental LLC for the purposes of constructing and operating a combined MSW and C&D waste facility for a variety of nonhazardous wastes. Approximately 200 to 400 tons per day of waste material would be delivered to the facility by truck. The purpose of the action is to help meet the northern New Mexico Pueblos' solid waste management needs, and to provide a foundation for economic development for the Pueblo of Nambe.

The proposed project includes an initial C&D-only waste cell, with an operations area and a site well. The facility will ultimately include five additional lined cells for combined MSW and C&D waste, two collection ponds, monitoring wells, a leachate evaporation pond, and offsite roadway improvements. The project will meet all applicable environmental standards and regulations.

The project area is in the central portion of the Espanola Basin, part of the Alamosa-Santa Fe segment of the Rio Grande rift, 17 miles northwest of Santa Fe, New Mexico. It is an isolated site located three miles from the Pueblo proper, with no infrastructure such as water, power, or roads. The terrain in this area is steep and mostly clay, with little to no vegetation. The area is considered badlands.

Alternatives to the proposed project that are considered in the FEIS include: (1) Limited development; (2) use of an old landfill site; (3) alternate sites on the Pueblo of Nambe; (4) alternate sites off of the Pueblo; (5) use of the site for recreation; (6) use of the site for agriculture; and (7) no action. The environmental issues addressed in the FEIS include geology, topography, soils, water resources, air quality, living resources, cultural resources, traffic, land use, visual resources, socioeconomic, public health and safety, and noise.

Public participation in the preparation of this FEIS consisted of a public scoping meeting on September 25, 1997, plus two public meetings, one on March 17, and the other on April 21, 1998, to inform the public about the Draft Environmental Impact Statement (DEIS) and provide participants an opportunity for comment. The public was also afforded a 60-day period for comment on the DEIS. The availability of the DEIS for comment for this period was published in the **Federal Register** (63 FR 16569, April 3, 1998), the Rio Grande Sun, and the Santa Fe New Mexican.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: June 21, 1999.

Michael J. Anderson,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 99–16258 Filed 6–24–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of availability of Final Environmental Impact Statement for the Ray Land Exchange/Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability, Final Environmental Impact Statement (FEIS)/Plan Amendment.

SUMMARY: The Bureau of Land Management (BLM), Arizona State Office and Tucson Field Office, in response to a land exchange proposal from ASARCO Incorporated (Asarco) has prepared a FEIS in compliance with the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Federal Land Exchange Facilitation Act, and the National Environmental Policy Act of 1969. The land exchange FEIS is combined with a proposed plan amendment to change the Phoenix and Safford District Resource Management Plans (RMPs) under BLM planning regulations (43 CFR 1600) for the purpose of exchanging public lands pursuant to Section 206 of FLPMA. Asarco has proposed to exchange 10,976 acres of federal lands or minerals in Pinal and Gila counties for 7,300 acres of private lands in Mohave and Pinal counties. The FEIS analyzes four alternatives. A plan amendment is required for all but 637 acres since prior land tenure decisions were to retain these parcels or mineral estate in federal ownership.

DATES: This Notice initiates a 30-day comment period for the FEIS and a 30-day protest period for the proposed plan amendment.

FOR FURTHER INFORMATION CONTACT: Shela McFarlin, Project Manager, BLM, Arizona State Office, 222 N. Central, Phoenix, AZ 85004, or by telephone (602) 417–9568.

SUPPLEMENTARY INFORMATION:

Description of the Proposed Action. Public lands (in Pinal and Gila counties) analyzed for exchange include federal mineral estate (2,780 acres) and federal surface and mineral estate (8,196 acres). Most parcels surround the Ray Mine and Hayden Complex operated by Asarco; or, these consist of future prospects for mineral development or support, including 637 acres near Casa Grande. The 7,300 acres of non-federal lands offered to the BLM include high resource values such as: inholdings or adjacent lands to the Mt. Tipton Wilderness and Sacramento Valley Wilderness; riparian zones along the Gila River and Big Sandy River; occupied habitat for the southwestern willow flycatcher, American peregrine falcon and bald eagle; proposed critical habitat for cactus ferruginous pygmy owl; desert tortoise category I and II habitat; and, checkerboard inholdings within the McCracken Area of Critical Environmental Concern. These parcels are located within Mohave (mainly) and Gila counties.

Alternatives Analyzed

Four alternatives are analyzed in the FEIS. The Proposed Action (Agency Preferred Alternative) would exchange 10,976 acres of public lands or mineral estate for 7,300 acres of private, would provide for continuing public access through the White Canyon-Copper Butte area, and result in a donation of 480 acres along Walnut Creek (if Asarco is successful in purchasing this parcel from the state of Arizona). Under the Buckeye Alternative, the exchange would consist only of 10,176 acres of public lands or minerals for 6,659 acres of offered lands and continued public access. The Copper Butte Alternative

reduces the action to exchanging 9,161 public acres for 5,601 acres of offered lands. Under the No Action Alternative, an exchange would not occur; federal lands and minerals would remain under BLM management.

Comments on the FEIS

Comments will be considered in preparing the record of decision on the land exchange. All comments on the FEIS must be received within 30 days of this Notice. Send FEIS comments to: Shela McFarlin, BLM, Arizona State Office, 222 N. Central Avenue, Phoenix, AZ 85004.

Please note that comments, including names and street addresses of respondents, are available for public review and/or release under the Freedom of Information Act (FOIA). Individual respondents may request confidentiality. If you wish to withhold your name and street address from public review or from disclosure under FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Protest of the Proposed Plan Amendment

This FEIS combines the analysis of the exchange proposal with a proposed plan amendment. The amendment would change the existing land tenure decision in the Phoenix and Safford District Resource Management Plans to retain much of the selected lands, to a decision to dispose of these lands. The plan amendment process offers an opportunity for administrative review by filing a protest with the BLM Director. This applies only to the proposed plan amendment, not the exchange itself. The protest must be received at the address below by close of business within 30 days of this Notice. Protest letters must be sent to: Director, BLM; Attention: Ms. Brenda Williams, Protests Coordinator WO–210/LS–1075; Department of the Interior, Washington, DC 20240. The overnight mail address for protests is: Director, BLM; Attention: Ms. Brenda Williams, Protests Coordinator (WO–210), 1620 L. Street NW, Room 1075, Washington, DC 20036. At a minimum, protest letters must include: (1) The name, mailing address, telephone number and interest of the person filing the protest. (2) A statement of which parcel or parcels (by township, range and section) or issues are being protested. (3) A statement of the part or parts of the plan amendment being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables and maps included within the proposed plan amendment. (4) A copy of all documents addressing the issues or parcels that you submitted during the planning process or a reference to the date the issue or issues were discussed by you for the record. (5) A statement of reasons explaining why the BLM State Director's proposed decision is believed to be incorrect. All relevant facts need to be included in the statement of reasons. These facts, reasons, and documentation are very important to understand the protest rather than merely expressing disagreement with the proposed decision.

Copies of the FEIS may be requested from: Shela McFarlin, (address above), (602) 417–9568, or from these offices: BLM Phoenix Field Office, 2015 West Deer Valley Rd., Phoenix, AZ. 85027; BLM Tucson Field Office, 12661 East Broadway, Tucson, AZ. 85748; and, BLM Kingman Field Office, 2475 Beverly Avenue, Kingman, AZ. 86401. Review copies are available at public libraries in Mesa, Kingman and Kearny; and the Arizona State University, Hayden Library, Tempe, AZ.

Dated: June 16, 1999.

Gary Bauer,

Acting State Director.

[FR Doc. 99–15920 Filed 6–24–99; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–015–1610–00]

Notice of Availability of Proposed Owyhee Resource Management Plan and Final Environmental Impact Statement (RMP/EIS); and Proposed Area of Critical Environmental Concern (ACEC) Designations

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management and section 102(2)(c) of the National Environmental Policy Act, the Bureau of Land Management (BLM) has prepared a proposed Resource Management Plan (RMP) and associated final Environmental Impact Statement (EIS) for the Owyhee Resource Area. The RMP/EIS addresses alternatives for management on 1.3 million acres of BLM administered public lands in southwest Idaho. Consideration of 20 areas for Area of Critical Environmental Concern (ACEC) designation is also addressed in the document. This notice, therefore, is also issued pursuant to 43 CFR Part 1610.7–2(b) of the BLM Planning Regulations. The RMP/EIS also addresses suitability of wild, scenic and recreational designations on 223 miles of stream segments determined to be eligible for such designations under the Wild and Scenic Rivers Act. The public has the opportunity to protest the Owyhee Proposed Resource Management Plan, which is Alternative E in the final EIS. The BLM Planning Regulations, 43 CFR 1610.5–2, state that any person who participated in the planning process and has an interest which may be adversely affected may protest. A protest may raise only those issues which were submitted for the record during the planning process. The protest shall be filed within 30 days of the date the Environmental Protection Agency publishes the notice of receipt of the final EIS in the **Federal Register**.

DATES: The 30-day protest period provided for in the BLM Planning Regulations will begin on July 2, 1999 and end on August 2, 1999. Written protests may be submitted at any time during the protest period and must be filed (postmarked) by August 2, 1999 at the address below.

ADDRESSES: Written protests must be sent to: Director, Bureau of Land Management, Attention: Ms Brenda Williams, Protests Coordinator, WO–210/LS–1075, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Daryl Albiston, Area Manager; or Fred Minckler, Team Leader at the address above. Telephone (208) 384–3300. Copies of the RMP/EIS are available for inspection at the BLM, Boise Field Office, 3948 Development Avenue, Boise, ID 83705.

SUPPLEMENTARY INFORMATION: The Owyhee Resource Area includes 1,320,032 acres of BLM administered public lands in western Owyhee County, Idaho and encompasses 1,779,492 acres including State and private lands. The Owyhee RMP/EIS describes and analyzes five alternatives for managing these public lands. The land use planning effort addresses a broad spectrum of land uses and allocations including wild horse management, land tenure adjustments, off-highway motorized vehicle (OHMV) designations, wild, scenic and recreational river designations, and areas of critical environmental concern (ACECs). Twenty areas ranging in size from 114 acres to 141,796 acres totaling 293,133 acres are being considered for ACEC designation. Resource use limitations vary among alternatives for each area and pertain to OHMV designations, rights-of-way, livestock management, juniper control, fire management and minerals activities.

Dated: June 14, 1999.

Howard Hedrick,

Associate District Manager.

[FR Doc. 99–16154 Filed 6–24–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–1220–00/G–010–G9–0255]

Notice of Availability of a Draft Rio Puerco Resource Management Plan Amendment/Environmental Impact Statement (RMP Amendment/EIS) for El Malpais National Conservation Area (NCA) and Chain of Craters Wilderness Study Area (WSA)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Albuquerque Field Office has completed a Draft Resource Management Plan (RMP) Amendment/ Environmental Impact Statement (EIS). If approved, the RMP Amendment would alter some decisions in the Rio Puerco RMP for the NCA and add decisions for lands recently acquired. The document establishes planning to the activity level for many of the issues addressed.

The EIS provides environmental analysis of the impacts of four alternative ways of managing the NCA and adjoining lands. Alternative A is the Existing Management (No Action) Alternative. It would be a continuation of current management and establishes the baseline for impact analysis. Management under Alternative B, the Resource Use Alternative, would support direct human action. Under Alternative C (Natural Processes), management would minimize human activity. Alternative D (Balanced Management) is the BLM's Preferred Alternative, which proposes to balance use and conservation. The document also addresses a legislative requirement to recommend for or against the designation of the Chain of Craters Wilderness Study Area as wilderness.

DATES: Written comments must be postmarked no later than September 24, 1999.

Formal verbal comments will be received at the following public hearings, which will begin at 7:00 p.m. and continue until those signed up to speak have had an opportunity to do so:

(1) Monday, July 26.

(2) Tuesday, July 27.

(3) Wednesday, July 28.

ADDRESSES: Written comments should be sent to: El Malpais Plan Team Leader, BLM Albuquerque Field Office, 435 Montaño Road NE, Albuquerque, NM 87107–4935. The public hearings will be held at the following locations:

(1) Grants High School, 500 Mountain Road, Grants, NM.

(2) Quemado High School, Highway 60, Quemado, NM.

(3) Del Norte High School, 5323 Montgomery Blvd. NE, Albuquerque, NM.

Copies are available for review at public libraries in Albuquerque and Grants, New Mexico and at the following address on the Internet: www.nm.blm.gov. Additional copies are available at the following BLM New Mexico offices: New Mexico State Office, 1474 Rodeo Road, Santa Fe; Albuquerque Field Office, 435 Montaño Road NE, Albuquerque; Grants Field Station, 2001 Santa Fe Ave., Grants; and Socorro Field Office, 198 Neel Ave. NW, Socorro.

FOR FURTHER INFORMATION CONTACT: Kent Hamilton, El Malpais Plan Team Leader, BLM Albuquerque Field Office, 435 Montaño Road NE, Albuquerque, NM 87107–4935; phone (505) 761–8746.

SUPPLEMENTARY INFORMATION: The Draft RMP Amendment includes revised planning for the following four issues: (1) Recreation (including Visual Resource Management), (2) Access and Transportation, (3) Wilderness Suitability, and (4) Boundary and Land Ownership Adjustments. If approved, these amendments would only affect the NCA and adjoining areas as specified. Decisions for other issues and geographic areas addressed in the Rio Puerco RMP would not be changed.

The following issues have been addressed in the environmental analysis: (1) Recreation, (2) Facility Development, (3) Access and Transportation, (4) Wilderness Management, (5) Wilderness Suitability, (6) American Indian Uses and Traditional Cultural Practices, (7) Cultural Resources, (8) Wildlife Habitat, (9) Vegetation, and (10) Boundary and Land Ownership Adjustments.

Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except holidays), and may be published as part of the Proposed Resource Management Plan Amendment/Final Environmental Impact Statement. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Mike O'Neill,

Acting Albuquerque Field Office Manager.

[FR Doc. 99–14966 Filed 6–24–99; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of information collection request.

SUMMARY: To comply with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we are notifying you that an information collection request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before July 26, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (OMB Control Number 1010–0120), 725 17th Street, NW, Washington, DC 20503; telephone (202) 395–7340. You should also send copies of these comments to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado, 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e:Mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the proposed information collection and related explanatory material, contact Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION:

Title: Solid Minerals Reengineering Operational Model.

OMB Control Number: 1010–0120.

Abstract: The Secretary of the Interior is responsible for collecting royalties from leases producing minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands and Federal onshore and offshore leases, to collect the royalties due, and to distribute the funds in accordance with those laws; we perform these royalty management functions for the Secretary.

When a company or an individual enters into a contract or lease to develop, mine, and dispose of Federal or Indian minerals, that company or individual (the respondent) agrees to pay the appropriate royalty due based upon gross proceeds received from the sale of production from the leased lands. Royalty rates are specified in the lease agreement. Specific lease language varies; however, respondents agree by the lease terms to furnish statements providing the details of all operations conducted on a lease and the quantity and quality of all production from the lease at such times and in such form as the Secretary may prescribe. Rules require respondents to provide accurate, complete, and timely reports for all minerals produced, in the manner and form prescribed by MMS in 30 CFR Part 210, Subpart E, and Part 216, Subpart A.

We currently require respondents to submit eight separate forms to collect the above information. We also require respondents to resubmit each of these forms to correct any errors which may have occurred on previous submissions of required information. The Solid Minerals Operational Model will focus on collecting production, royalty, and valuation data, while streamlining reporting requirements. The participating companies will continue to submit the eight currently required forms and will also submit the required information using new reporting guidelines for this operational model.

We will collect the production, royalty, and valuation data using information technology. We will use the information collected to support:

• Distribution and Disbursement. We must match the royalty payment submitted on the Report of Sales and Royalty Remittances (Form MMS–2014) to the Production and Royalty Report (Form MMS–4430), maintain lease accounts of payments, and ensure the distribution of data and disbursement of monies to our revenue recipients.

• Compliance and Asset Management Processes. We must determine areas not in compliance for a lease or mine sooner than the current processes allow. The Production and Royalty Report form is designed to give us the basic volume and valuation information necessary to begin these compliance activities so that we may compare it to the Remote Storage and Washing Plant and Market Profile data formats.

• Monitoring Allowances and Off-site Activity. We must monitor allowance deductions and off-site inventory and sales. Companies maintain electronic data files of this information as a normal course of business. We propose to download the data from these company-maintained files to our compliance data systems. Our intent is to minimize the information collection burden on industry respondents as well as ourselves.

• BLM Production Verification, Diligent Development, and Recoverable Reserves Calculations. We must make facility data available on-line to all BLM, BIA, Tribal, and State Audit offices. During the operational model, we will refine the Remote Storage and Washing Plant data to ensure BLM can perform these processes, including monitoring plant efficiencies, maximum recovery, and secondary product inventories.

• Compliance and Asset Management Processes. We will require the submission of supplemental information (Market Profile) for the compliance aspect of our reengineering efforts. The Market Profile data will be an integral part of the Compliance and Asset Management process being developed in the operational model. We will use this information to verify royalty value and augment monitoring and detection of compliance problems on those mines. This information will only be collected from those reporters whose royalties are based on gross proceeds or who sell products beyond the mine site.

Respondents/Affected Entities: Solid Minerals Mining Companies.

Frequency of Response: Monthly and quarterly.

Estimated Number of Respondents: 8.

Estimated Total Annual Reporting and Recordkeeping Burden: 463 hours.

Comments: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. * * *" Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by July 26, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 18, 1999.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 99–16192 Filed 6–24–99; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 2, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–201–69 (Certain Steel Wire Rod) (Remedy Phase)—briefing and vote. (The Commission will transmit its recommendations to the President on July 12, 1999.)
5. Outstanding action jackets:

(1.) Document No. GC–99–057: Regarding Inv. No. 337–TA–412 (Certain Video Graphics Display Controllers and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 22, 1999.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16368 Filed 6–23–99; 2:43 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services (CJIS) Division; Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice of information collection under review; Reinstatement, with change, of a previously approved collection for which approval has expired; Age, sex, and race of persons arrested (18 years of age and over) and age, sex, and race of persons arrested (under 18 Years of age).

The Department of Justice, Federal Bureau of Investigation has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 2, 1999, allowing for a 60-day public comment period. No comments were received by the FBI or the Justice Department.

The purpose of this notice is to allow an additional 30 days for public comment until July 26, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC, 20503.

Overview of this information collection:

(1) Type of information collection: Reinstatement, with change of a previously approved collection for which approval has expired.

(2) The title of the form/collection: Age, Sex, and Race of Persons Arrested (18 Years of Age and Over) and Age, Sex, and Race of Persons Arrested (Under 18 Years of Age).

(3) The agency form number, if any, and applicable component of the department sponsoring the collection. Form: 1–708; 1–708a. Federal Bureau of Investigation, Federal Bureau of Justice.

(4) Affected public who will be asked or required to respond, as well as brief abstract. Primary: Local and State Law Enforcement Agencies. This collection is needed to collect information on the age, sex, and race of all persons arrested throughout the United States. Data are tabulated and published in the annual *Crime in the United States.*

(5) The FBI UCR Program is currently reviewing its race and ethnicity data collection in compliance with the Office of Management and Budget's *Revisions for the Standards for the Classification of Federal Data on Race and Ethnicity.*

(6) An estimate of the total number of respondents and the amount of time estimated for an average respondent to reply: 17,145 agencies with 411,480 responses (including zero reports); and with an average of 30 minutes a month devoted to compilation of data for this information collection.

(7) An estimate of the total public burden (in hours) associated with this collection: 205,740 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, D.C. 20530.

Dated: June 22, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–16177 Filed 6–24–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

Summary: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 1999 for a cooperative agreement to fund the "Development of a Training Video on Staff Sexual Misconduct."

The National Institute of Corrections (NIC) invites application for a cooperative agreement to develop a training video and companion facilitator's manual on the prevention of staff sexual misconduct with inmates. To expand the Institute's capacity to assist correctional agencies in working with line staff, the award recipient will develop a video to be used by agency training personnel. The video will emphasize state and federal laws that address sexual misconduct, case histories demonstrating the dynamics of staff sexual misconduct, and preventative remedies for avoiding misconduct. The companion manual will guide trainers in delivering the training through interactive discussion with trainees on key points in the video and applying the training to the state or local setting.

The award recipient will become familiar with the work currently being done at NIC on issues related to staff sexual misconduct and will develop strategies for capturing this information in video and training formats. The recipient will refine training outcomes for the video and training guide in collaboration with NIC.

This will be collaborative venture with the NIC Prisons Division. A total of $80,000 is reserved for the project which will support one cooperative agreement for a 12 month period. The recipient of the award will be selected through a competitive solicitation process. Andie Moss is the designated NIC project manager.

Background

The fine balance in the relationships of staff and inmates is critical to the well being of both staff and offenders. Even so, the opportunities have been limited for effective line staff training that addresses the difficult situations of

an emotional or sexual nature that can occur between staff and inmates. Since the mid nineties NIC has provided leadership in addressing the issues of staff sexual misconduct through training seminars and on-site technical assistance and local departments of corrections. The Institute has developed training materials for state prison systems that address policy and practice, the importance of state law, the investigative process, staff training and responses to the media. Through this work, NIC recognizes the need for training tools/teaching aids that increase the capacity of agency trainers of deliver effective, consistent training to multiple sites with large number of staff.

Purpose

This project is intended to provide agency trainers with:

- A training video with a strong emphasis on staff's understanding of their role in the prevention of staff sexual misconduct.
- A companion trainer's guide to address the major points in the video with opportunities for group discussion.

Project Content

The proposal should demonstrate and understanding of key content areas such as: definitions of staff sexual misconduct, and overview of federal and state laws that impact staff, case examples and remedies for prevention of staff sexual misconduct, and the impact of the professional and emotional damage created in sexual misconduct cases. It should demonstrate an understanding of the imblance of power between staff and inmates. While it has been the experience of the Institute that a video presentation of 12–15 minutes allows for flexibility in the training design and delivery in correctional setting, proposers are encouraged to offer their own recommendations regarding length of video and format.

A. Required Activity

- Initial meeting with NIC staff for an overview of the Institute's training and technical assistance activities that are relvant to the development of the video and training guide.

B. Other Possible Activities

- Interviews with key personnel in state and local jurisdictions with experience in the management of or investigative response to sexual misconduct; i.e., commissioners, investigators, and wardens.
- Interviews with line staff and institutional supervisors.
- Interviews with former inmates and/or staff involved in incidents of staff sexual misconduct.
- Interviews with persons with particular interest in addressing staff sexual conduct; *i.e.*, family members, psychologists, legislators, and legal community.
- Examination of the current federal and state law that addresses staff sexual misconduct.
- Development and presentation of case examples involving staff misconduct that lead to or conclude with inappropriate involvement with inmates.
- Identification of "red flags" that can alert a staff member to the danger signs for themselves or for co-workers.

Authority: Public Law 93–415.

Funds Available

The award will be limited to a maximum total of $80,000 (direct and indirect costs) and project activity must be completed within 8 months of the date of the award. Funds may only be used for the activities that are linked to the desired outcomes of the project. This project will be a collaborative venture with the NIC Prisons Division.

All products from this funding effort will be in the public domain and available to interested agencies through the National Institute of Corrections.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on Tuesday, August 3, 1999. They should be addressed to: National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, D.C. 20534, Attention: Director. Hand delivered applications can be brought to 500 First Street, NW, Washington, D.C. 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Addresses and Further Information: Requests for the application kit, which consists of a copy of this announcement and copies of the forms and instructions for filing, should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, N.W., Room 5007, Washington, D.C. 20534 or by calling (800) 995–6423, extension 159 or (202) 307–3106, extension 159. She can also be contacted by E-mail via *jevens@bop.gov*. All technical and/or programmatic questions concerning this announcement should be directed to Andie Moss at the above address or by calling (800) 995–6423, or (202) 307–3106, extension 140, or by E-mail via *amoss@bob.gov*. Application forms may also be obtained through the NIC website: *http://www.nicic.org*.

Eligible Applicants

An eligible applicant is any private or non-profit organization, institution, individual, or team with expertise in production of training videos and related training materials.

Review Considerations

Applications received under this announcement will be subjected to an NIC three to five member Peer Review Process.

Number of Awards: One (1).

NIC application Number: 99P12 This number should appear as a reference line in the over letter and also in box 11 of Standard Form 424.

The Catalog of Federal Domestic Assistance number is: 16.601.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 99–16175 Filed 6–24–99; 8:45 am]

BILLING CODE 4410–36–M

PAROLE COMMISSION

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10:30 a.m., Tuesday, June 29, 1999.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Proposed Changes to the Interim Rules for District of Columbia Code offenders and Approval of Rules as Final Rules.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: June 22, 1999.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 99–16300 Filed 6–23–99; 10:08 am]

BILLING CODE 4410–31–M

PAROLE COMMISSION

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Tuesday, June 29, 1999.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately two cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: June 22, 1999.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 99–16301 Filed 6–23–99; 10:08 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

National Institute of Corrections; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of Information Collection Under Review; Reinstatement, without change, of a previously approved collection for which approval has expired; Data base of Offender Job Training and Placement Service Providers.

The Department of Justice, Federal Bureau of Prisons, National Institute of Corrections (NIC) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 7, 1999 (64 FR 17014), allowing for a 60-day public comment period. No comments were received by the NIC or the Justice Department.

The purpose of this notice is to allow an additional 30 days for public comment until July 26, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions, regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Office, Room 10235, Washington, DC 20530. Written comments and suggestion from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Data base of Offender Job Training and Placement Service Providers.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Department of Justice, Bureau of Prisons, National Institute of Corrections, Office of Correctional Job Training and Placement.

(4) *Affected public who will be asked or required to respond, well as a brief abstract:* Agencies and organizations involved in providing job counseling, training in job readiness skills, job development, and job placement services for offenders and/or ex-offenders to include public corrections, *i.e.* State and local Prison Systems; Jails; Departments of Probation and Parole; and Private For Profit and Private Not For Profit Agencies and Organizations. Other: None Information gathered from the survey will be placed in a data base to be used primarily as a mailing list of service providers. The database is being used by the Office of Correctional Job Training and Placement to build a network of professionals providing these services, and it will Facilitate the sharing of timely information to include notices of available training opportunities, publications, and technical assistance.

(5) *An estimate of the total number of respondents and the amount of time estimated for any average respondent too respond/reply:* It is estimated that approximately 75 surveys per year will be forwarded to programs for return and inclusion into the data base. The time burden of the 75 surveys is 10 minutes per survey.

(6) *An estimate of the total public (in hours) associated with the collection:* The total burden hour to complete the applications is 12 hrs. & 45 minutes annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, D.C. 20530.

Dated: June 22, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–16256 Filed 6–24–99; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Participation in School-To-Work

AGENCIES: Employment and Training Administration, Department of Labor.

ACTION: Notice inviting proposals to develop, identify and disseminate replicable models of labor participation in the development and implementation of School-to-Work (STW) systems in sectors of the economy that represent high skill, high wage employment opportunities. The Departments are seeking innovative approaches to utilizing the workplace for all learners. These awards will provide support to labor organizations with national memberships to undertake outreach, technical assistance and other activities

to increase the number of work-based learning opportunities for students.

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The Departments of Labor and Education jointly invite proposals for approximately 2–3 new awards in PY 1998 as authorized under section 403 of the School-to-Work Opportunities Act of 1994 (the Act). These awards will provide support to national labor unions to undertake outreach and technical assistance to their memberships. These activities are intended to engage and build the capacity of their affiliates and private sector partners to participate in activities that will result in an increase in the number of work based learning opportunities for students. As a result of the products developed and activities and systems implemented, awardees will be required to provide clear, quantifiable evidence of increased numbers of regional and local unions engaged in STW activities, with supporting documentation that clearly illustrates an increase in the number of students engaged in work-based learning activities.

DATES: Applications for grant awards will be accepted commencing June 25, 1999. The closing date for receipt of applications is August 24, 1999 at 4 P.M. (eastern time) at the address below. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Ms. Denise Roach, Reference: SGA/DFA 99–016, 200 Constitution Avenue, N.W., Room S–4203, Washington, D.C., 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Denise Roach, Grants Management Specialist, Division of Federal Assistance, fax: (202) 219–8739 (this is not a toll free number). All inquiries should include the SGA number (DFA 99–016) and a contact name, fax and phone number. This solicitation will also be published on the Internet, on the Employment and Training Administration's Home Page at http://www.doleta.gov. Award notifications will also be published on this Homepage.

Labor Participation in School-To-Work System Building

I. Purpose

Data and preliminary evidence suggest that strategic investments directed at national organizations to develop and disseminate information and provide technical assistance to their membership nationwide is necessary if the entire STW system is to be brought to scale and confidently sustained. Therefore, this solicitation is inviting labor unions in collaboration with business, trade associations, education and labor partners to identify STW practices within their organizations, to expand upon those practices through technical assistance and disseminate that information throughout their network. It is further expected that these practices will be replicable by their affiliated local organizations and information will be disseminated beyond their organization to the greater labor community and STW grantees.

II. Background

The School-to-Work Opportunities Act was signed into law by President Clinton on May 4, 1994. Jointly administered by the Departments of Labor and Education, this Act seeks to better prepare all American youth for careers in high skill, high wage jobs and to strengthen the linkages between school and work. Under the Act, venture capital funds are provided to States and local communities to develop a STW system for transitioning youth from school to college and careers. STW grants are for a limited duration with the Federal investment declining over time. These investments are intended to support the one-time costs of States and local communities to enhance learning experiences for all students. All fifty States including Puerto Rico and the District of Columbia have received implementation awards. The Act also provides a set-aside of funds for national activities to support School-to-Work system building, outreach and research and evaluation efforts. Section 403 of the Act, relating to training and technical assistance, specifically directs the Secretaries to assist STW partnerships "* * * to increase their capacity to develop and implement effective school-to-work opportunities programs."

III. Statement of Work

Labor Participation in STW Systems. The School-to-Work Opportunities Act stipulates the importance of participation by key stakeholders at state and local levels, including labor. Labor unions can play a pivotal role in accessing the workplace as a learning environment for students. They have long standing relationships with employers through collective bargaining agreements in communities across the country. Many unions have played major roles in the development of training for their membership through joint labor-management funds. Many are working in collaboration with industry groups in developing voluntary skill standards appropriate to their respective industry.

Prior to this year, the two Departments through the National School-to-Work Office, have made a number of investments to support labor's involvement in aspects of emerging STW systems. A major investment included the National School-to-Work's support of efforts developed by the Human Resource Development Institute (HRDI), recently renamed the Working for America Institute (WAI). WAI developed and disseminated information about STW and labor's role in the development and implementation of STW. It has highlighted labor's STW activities and has helped to recruit labor representatives on State and local partnerships.

In addition, the National School-to-Work Office has worked with members of the building and construction trades, the Bureau of Apprenticeship and Training at the U.S. Department of Labor and the National Association of State and Territorial Apprenticeship Directors to develop and expand upon linkages to registered apprenticeship programs. Many local unions in collaboration with local educational systems are introducing students to the trades in a variety of ways prior to high school graduation.

However, it is evident that in order for STW to be sustained, a broad range of work-based learning opportunities has to be created. National approaches must be developed that will assist and promote STW activities in communities across the country. During FY 1997, the Departments made awards to four entities representing the following industry and trade areas; manufacturing, retail, information technology and utilities. These competitive awards provide support to industry groups and trade associations to undertake outreach, technical assistance and other activities to engage and to build the capacity of employers to participate in STW systems. These investments are underway and appear to represent a promising strategy for increasing employer involvement in STW. For example, the Utility Business Education Coalition, Inc. (UBEC), representing the utility industry, has allocated much of its funding for technical assistance to be provided to 50 communities in 28 states to support local school-to-work systems and workforce development initiatives. UBEC is supporting local and regional efforts to raise academic achievement while integrating academic, technical

and employability skills into curriculum for all students. Whereas, the National Retail Institute, the world's largest retail trade association has begun to replicate its Youth Opportunities in Retail program model in 4 states. The manufacturing project led by the National Association for Manufacturers are in the process of infusing industry skill standards into the manufacturing curriculum at 12 high schools. Finally, the Information Technology Association of America has selected 30 national sites as Centers of Excellence. These sites represent a broad range of education partnerships that will identify and strengthen innovative approaches to increase work-based learning opportunities for students nationally.

The Departments are expecting to make similar industry specific awards in PY 98 and are particularly interested in applications that focus on high growth, high wage industries in communications, transportation, business/finance, and health services.

As a result of these current and future investments, including a more targeted approach to utilizing labor organizations, the Departments expect to significantly increase the number of workplaces offering STW activities and more specifically work-based learning opportunities for all learners. These strategic investments are necessary if the entire STW system is to be brought to scale and sustained.

Required Areas of Effort

The successful applicants will assume the lead responsibility to coordinate and provide technical support to build the capacity of their organization to engage in STW activities. Information regarding the following activities must be described in detail:

1. *A description of at least 15 ongoing STW activities in a minimum of 5 regional or local unions affiliated with the applicant.* These examples must be collaborative and include the education and business communities. They must encompass a broad continuum of STW activities that include mentoring, work-based learning, high academic standards and curriculum collaboration in high wage, high skill occupations. Applicants should describe how they will organize the task of identifying and selecting effective STW activities, how effectiveness will be assessed and how the critical common features of each will be identified to inform the development of a replicable framework. In addition, the applicant should describe how the information would be presented and disseminated to its membership and STW grantees.

2. *Develop a model framework for STW activities in a local union.* Based on identified STW practices from a sample of local unions described above, the Departments are interested in the development of a replicable framework that can be disseminated to the applicant's local affiliates. At minimum, the framework should include a description of STW activities, how these activities were developed and implemented and the key stakeholders necessary for development and sustainability of the effort. Collaboration with existing STW local partnerships, workforce development councils or private industry councils should be included in the framework. In addition, the Departments are looking for how these STW activities fit in to a seamless system of education for learners.

Post secondary education must be included in the design framework. Effectiveness of the activities presented and how the needs of diverse student populations are addressed are critical to the application.

3. *A strategic plan of how information will be disseminated to the applicant's membership, and the greater labor community.* Include what formats will be utilized to distribute the design framework and STW activities collected under #1. The successful applicant will also be expected to actively disseminate the design framework including targeted training sessions, electronic media, publications, conferences, workshops, and other related means. In addition, the applicant should describe the target audience and describe the products to be developed.

4. *A description of high skill, high wage opportunities available for learners that includes options for education beyond secondary school.* The successful applicant will provide detailed information concerning opportunities within their respective industries, including present trends and future forecasts and the salary range expected for occupations affected. In addition, the applicant shall describe the range of work based learning opportunities available to students. Include information concerning post secondary options for learners and examples of successful articulation agreements with post secondary institutions. This information should be designed for distribution to students.

IV. Application Process

Eligible Applicants

National labor organizations representing employees in high skill, high wage occupations that have the experience and the capacity to build STW systems nationally. These applicants must demonstrate the ability to enlist the support and active participation of employers and/or trade associations related to the industry sector. In addition, key STW stakeholders, such as representatives from the education and labor communities, community-based organizations, parents and other related organizations must be included. Potential applicants however, should note the Departments' priority in seeking a labor organization or consortium with a thorough knowledge of STW and experience working with key STW stakeholders.

In preparing the proposal, please use the following headings and respond to the information in each of the following categories.

1. *Project Description.* Summarize the scope of the project, outline how its activities will relate to the four required areas of activity as described in the previous section, and provide succinct and measurable project objectives.

2. *Operational Plan.* Provide a detailed work plan that includes a description of proposed activities matched to the objectives presented in the Project Description, with accompanying time lines and individuals responsible. Provide an organizational structure and clear management plan detailing the staff and organizational resources devoted to the project. The applicant should clearly and in detail show how the proposed work will address each of the activities that are described in the section entitled *Required Areas of Effort.* The time lines should indicate what activities and related results are anticipated for the 12-month funding period.

3. *Results.* The applicant should provide specific and quantifiable outcomes that are anticipated from the proposed plan of activities. In identifying outcomes, the offeror should also explain how it will collect data, document results and use these results to inform its ongoing work plan.

4. *Capability.* The applicant should demonstrate the capability of the organization or consortium and the key staff assigned to undertake the work plan, including examples of prior efforts that demonstrate accomplishment in developing, implementing, managing and evaluating STW related activities. The offeror should also show knowledge and experience in working with trade associations, employers or employer associations.

V. Application Submittal

Applicants must submit four (4) copies of their proposal, with original

signatures. The applications shall be divided into two distinct parts: Part I—which contains Standard Form (SF) 424, Application for Federal Assistance," (Appendix A) and Budget Information Sheet," (Appendix B). All copies of the (SF) 424 MUST have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the (SF) 424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c)4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The Catalog of Federal Domestic Assistance number is 17.249. In addition, the budget shall include—on a separate page(s)—a detailed cost breakout of each line item on the Budget Information Sheet. Part II shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this notice. Applicants MUST limit the program narrative section to no more than 30 double-spaced pages, on one side only. This includes any attachments. Applications that fail to meet the page limitation requirement will not be considered.

VI. Late Applications

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/postmarked by the 15th of that month); or (b) was sent by the U.S. Postal Service Express Mail Next Day Service to addresses not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and federal holidays. The term "postmarked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

VII. Hand Delivered Proposals

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:00 P.M. (Eastern Time), on the closing date at the specified address.

TELEGRAPHED AND/FAXED APPLICATIONS WILL NOT BE HONORED. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand delivered applications and must be received by the above specified date and time.

VIII. Funding Availability and Period of Performance

The Departments expect to make 2 to 3 awards with a total investment of approximately $900,000. The period of performance will be for 12 months from the date the grant is awarded. The Departments may at their option, provide additional funding for another 12 months depending upon fund availability and performance of the offeror.

Estimated Range of Awards. The Departments expect the total award amounts to range from approximately $250,000 to $450,000, for the total 12-month period.

IX. Review Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

The criteria used to rate all proposals submitted are:

1. The extent to which the applicant outlines a clear and detailed plan of operation (40 points).

- Is the plan specific as to the activities proposed and how these activities will result in the identification of STW practices and the creation of a replicable design framework in local and regional union affiliates that represent workers in high skill, high wage occupations?
- Do the activities directly relate to the 4 areas of required effort?
- How will the proposed activities lead to sustainability of the federal investment to engage employers and unions in STW systems?
- Does the applicant describe strategies to provide opportunities for all students, including learners with disabilities?
- Does the applicant provide a detailed work plan including goals, objectives, timelines, person responsible and expected outcomes or products?
- Does the plan have clear numerical goals for increasing the number of local unions who will begin to be engaged in STW and for increasing the number of work-based learning positions for students?

2. The extent to which the applicant demonstrates the capability and capacity to meet the requirements of the solicitation (30 points).

- Does the applicant represent membership in high growth sectors of the economy?
- Does the industry sector represented by the applicant offer paid work-based learning opportunities for STW learners?
- Does the industry sector represented by the applicant offer high skill, high wage career opportunities for STW learners?
- Does the organization provide examples and documentation of prior related accomplishments in developing and implementing training initiatives for its membership?
- Does the applicant demonstrate the capacity to perform the range of required activities on a national scale including a comprehensive dissemination strategy that reaches the applicant's membership, key partners and the greater labor community?

3. The extent to which the applicant demonstrates the willingness and ability to engage and convene other organizations that are critical to the success of creating workbased learning opportunities for STW learners. (30 points)

- Does the applicant demonstrate a history of working with employers on workforce development and training programs for its membership?
- Does the applicant propose specific activities that are likely to result in strategic alliances with trade associations, education entities, employers and employer associations representing the specified industry?
- Does the applicant demonstrate a history of collaborating with a variety of partners at the national, state and community levels?
- Does the applicant present a strategy for informing STW grantees of its' activities and findings?

The grants will be awarded based on applicant response to the above mentioned criteria and that which is otherwise advantageous to the Departments.

X. Reporting Requirements

The Departments are interested in insuring that grantees share lessons learned and products developed. To facilitate exchange of information, the Departments may occasionally convene grantees for meetings of approximately one-day duration. Grantees will also be asked to submit periodic progress reports in a format to be determined and on a quarterly-basis. After awards are made, identification of STW activities and the design framework are to be submitted to the National School-to-Work Office for approval before commencing activities related to this proposal. Conference plans and all products including publications shall be submitted for review to the National School-to-Work Office to ensure alignment and collaboration with ongoing national activities.

Signed in Washington, D.C., this 22nd day of June, 1999.

Laura Cesario,

Grant Officer.

APPENDIX A: (SF)424—Application Form
APPENDIX B: Budget Information Form

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX A

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipa J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

1 7 - 2 4 9

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: **Entry:**

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item: **Entry:**

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION — APPENDIX B

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.

5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Costs: Add lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. Training /Stipend Cost: (If allowable)

11. Total Federal funds Requested: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 99–16226 Filed 6–24–99; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1493, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA990001 (Mar. 12, 1999)
MA990002 (Mar. 12, 1999)
MA990005 (Mar. 12, 1999)
MA990007 (Mar. 12, 1999)
MA990009 (Mar. 12, 1999)
MA990017 (Mar. 12, 1999)
MA990018 (Mar. 12, 1999)
MA990019 (Mar. 12, 1999)
MA990020 (Mar. 12, 1999)
MA990021 (Mar. 12, 1999)
Rhode Island
RI990001 (Mar. 12, 1999)
RI990002 (Mar. 12, 1999)

Volume II

Pennsylvania
PA990007 (Mar. 12, 1999)
PA990010 (Mar. 12, 1999)
PA990012 (Mar. 12, 1999)
PA990014 (Mar. 12, 1999)
PA990023 (Mar. 12, 1999)
PA990024 (Mar. 12, 1999)
PA990051 (Mar. 12, 1999)
PA990062 (Mar. 12, 1999)
PA990065 (Mar. 12, 1999)

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KY990002 (Mar. 12, 1999)
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KY990006 (Mar. 12, 1999)
KY990007 (Mar. 12, 1999)
KY990025 (Mar. 12, 1999)
KY990027 (Mar. 12, 1999)
KY990028 (Mar. 12, 1999)
KY990029 (Mar. 12, 1999)
KY990035 (Mar. 12, 1999)
KY990039 (Mar. 12, 1999)
KY990044 (Mar. 12, 1999)

Volume IV

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Wisconsin
WI990019 (Mar. 12, 1999)

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Iowa
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IA990010 (Mar. 12, 1999)
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IA990071 (Mar. 12, 1999)
IA990072 (Mar. 12, 1999)
IA990078 (Mar. 12, 1999)
IA990079 (Mar. 12, 1999)
Nebraska
NE990002 (Mar. 12, 1999)
NE990057 (Mar. 12, 1999)

Volume VI

Oregon
OR990001 (Mar. 12, 1999)
OR990004 (Mar. 12, 1999)
OR990017 (Mar. 12, 1999)
Washington
WA990001 (Mar. 12, 1999)
WA990002 (Mar. 12, 1999)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

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Signed at Washington, DC This 18th Day of June 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10694, et al.]

Proposed Exemptions; The Chase Manhattan Bank (CMB)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Chase Manhattan Bank (CMB); Located in New York, NY

[Application No. D–10694]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code [1] and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Covered Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of securities to affiliates of The Chase Manhattan Corporation (CMC), which are engaged in CMC's capital markets line of business (Global Capital Markets), by employee benefit plans (the Client Plans), including commingled investment funds holding Client Plan assets, for which CMC, through its Global Investor Services line of Business, as operated through CMB and its affiliates (GIS), acts as directed trustee or custodian, and for which CMC through its Global Securities Lending Division or any other similar division of CMB or a U.S. affiliate of CMC (collectively, GSL) acts as securities lending agent or sub-agent and (2) to the receipt of compensation by GSL in connection with the proposed transactions, provided the general conditions set forth below in Section II are met.

Section II. General Conditions

(a) This exemption applies to loans of securities to Global Capital Markets, as operated through CMB in the United States (Global Capital Markets/U.S. or the U.S. Affiliated Borrower) and in the following foreign countries: the United Kingdom (Global Capital Markets/U.K.), Canada (Global Capital Markets/Canada), Australia (Global Capital Markets/Australia), Japan (Global Capital Markets/Japan) (collectively, the Foreign Affiliated Borrowers). Global Capital Markets will also include other companies or their successors which are affiliated with either CMB or CMC within these countries. [2]

(b) For each Client Plan, neither GIS, Global Capital Markets, GSL, nor any other division or affiliate of CMC has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the lending of securities designated by an independent fiduciary of a Client Plan as being available to lend and the investment of cash collateral after securities have been loaned and

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] Unless otherwise noted, Global Capital Markets will consist collectively of the above referenced entities.

collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition and disposition of securities available for loan.

(c) Before a Client Plan participates in a securities lending program and before any loan of securities to Global Capital Markets is effected, a Client Plan fiduciary which is independent of Global Capital Markets must have—

(1) Authorized and approved a securities lending authorization agreement (the Agency Agreement) with GSL, where GSL is acting as the securities lending agent;

(2) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent where GSL is lending securities under a sub-agency agreement (the Sub-Agency Agreement) with the primary lending agent; [3] and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between such Client Plan and Global Capital Markets, the specific terms of which are negotiated and entered into by GSL.

(d) Each loan of securities by a Client Plan to Global Capital Markets is at market rates and terms which are at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party.

(e) The Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Client Plan on five business days notice whereupon Global Capital Markets delivers securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within—

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan and Global Capital Markets, whichever is less.

(f) The Client Plan receives from Global Capital Markets (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Global Capital Markets, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a U.S. bank, which is a person other than Global Capital Markets or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6 (as amended from time to time or, alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans), having, as of the close of business on the preceding business day, a market value (or, in the case of a letter of credit, a stated amount) initially equal to at least 102 percent of the market value of the loaned securities.

(g) If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of business on that day, Global Capital Markets delivers additional collateral on the following day such that the market value of the collateral again equals 102 percent.

(h) The Loan Agreement gives the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral and GSL monitors the level of the collateral daily.

(i) Before entering into a Loan Agreement, Global Capital Markets furnishes GSL the most recently available audited and unaudited statements of the financial condition of the applicable borrower within Global Capital Markets. Such statements are, in turn, provided by GSL to the Client Plan. At the time of the loan, Global Capital Markets gives prompt notice to the Client Plan fiduciary of any material adverse change in the borrower's financial condition since the date of the most recent financial statement furnished to the Client Plan. In the event of any such changes, GSL requests approval of the Client Plan to continue lending to Global Capital Markets before making any such additional loans. No new securities loans will be made until approval is received and each loan constitutes a representation by Global Capital Markets that there has been no such material adverse change.

(j) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to Global Capital Markets if such fee is not greater than the fee the Client Plan would pay an unrelated party in a comparable arm's length transaction.)

(k) All procedures regarding the securities lending activities conform to the applicable provisions of PTEs 81–6 and PTE 82–63 (as amended from time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans).

(l) If Global Capital Markets defaults on the securities loan or enters bankruptcy, the collateral will not be available to Global Capital Markets or its creditors, but will be used to make the Client Plan whole. In this regard,

(1) In the event a Foreign Affiliated Borrower defaults on a loan, CMB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, CMB will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, the GSL will pay the Client Plan cash equal to—

(i) The market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus

(ii) All the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus;

(iii) Interest from such date to the date of payment. The lending Client Plans will be indemnified in the United States for any loans to the Foreign Affiliated Borrowers.

(2) In the event the U.S. Affiliated Borrower defaults on a loan, CMB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, either CMB or the U.S. Affiliated Borrower will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify property under this provision).

[3] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than GSL, beyond that provided pursuant to Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82–63 (47 FR 14804, April 6, 1982).

(m) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including all interest, dividends and distributions on the loaned securities during the loan period.

(n) Prior to any Client Plan's approval of the lending of its securities to Global Capital Markets, copies of the notice of proposed exemption and the final exemption, if granted, are provided to the Client Plan.

(o) Each Client Plan receives a monthly report with respect to its securities lending transactions, including but not limited to the information described in Representation 24 of the proposed exemption, so that an independent fiduciary of the Client Plan may monitor the securities lending transactions with Global Capital Markets.

(p) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to Global Capital Markets; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(q) With respect to each successive two week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans by GSL, in the aggregate, will be to unrelated borrowers.

(r) In addition to the above, all loans involving Foreign Affiliated Borrowers within Global Capital Markets have the following supplemental requirements:

(1) Such Foreign Affiliated Borrower is registered as a bank or broker-dealer with—

(i) The Financial Services Authority or the Securities and Futures Authority, in the case of Global Capital Markets/U.K.;

(ii) The Office of the Superintendent of Financial Institutions (OSFI), or the Ontario Securities Commission and/or the Investment Dealers Association, in the case of Global Capital Markets/Canada;

(iii) The Australian Prudential Regulation Authority (APRA), or the Australian Securities & Investments Commission and/or the Australian Stock Exchange Limited, in the case of Global Capital Markets/Australia; and

(iv) The Ministry of Finance and/or the Tokyo Stock Exchange, in the case of Global Capital Markets/Japan.

(2) Such broker-dealer or bank is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of credit of U.S. banks or any combination thereof, or other collateral permitted under PTE 81–6 (as amended from time to time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans);

(4) All collateral is held in the United States;

(5) The situs of the Loan Agreement is maintained in the United States;

(6) The lending Client Plans are indemnified by CMB in the United States for any transactions covered by this exemption with the Foreign Affiliated Borrower so that the Client Plans do not have to litigate in a foreign jurisdiction nor sue the Foreign Affiliated Borrower to realize on the indemnification; and

(7) Prior to the transaction, each Foreign Affiliated Borrower enters into a written agreement with GSL on behalf of the Client Plan whereby the Foreign Affiliated Borrower consents to service of process in the United States and to the jurisdiction of the courts of the United States with respect to the transactions described herein.

(s) CMB or Chase Securities Inc. (CSI) maintains, or causes to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of CMB or CSI, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than CMB or CSI shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(ii) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(t)(2) None of the persons described above in paragraphs (t)(1)(ii)–(t)(1)(iv) of this paragraph (t)(1) are authorized to examine the trade secrets of CMB, the U.S. Affiliated Borrowers, or the Foreign Affiliated Borrowers or commercial or financial information which is privileged or confidential.

III. Definitions

For purposes of this proposed exemption,

(a) The terms "CMB" and "CMC" as referred to herein in Sections I and II, refer to The Chase Manhattan Bank and its parent, The Chase Manhattan Corporation.

(b) The term "affiliate" means any entity now or in the future, directly or indirectly, controlling, controlled by, or under common control with CMC or its successors. (For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(c) The term "U.S. Affiliated Borrower" means an affiliate of CMC that is a bank supervised by the United States or a State, or a broker-dealer registered under the 1934 Act.

(d) The term "Foreign Affiliated Borrower" means an affiliate of CMC that is a bank or a broker-dealer which is supervised by—

(1) The Financial Services Authority or the Securities and Futures Authority in the United Kingdom;

(2) OSFI, or the Ontario Securities Commission and/or the Investment Dealers Association in Canada;

(3) APRA, or the Australian Securities & Investments commission and/or the Australian Stock Exchange in Australia; and

(4) The Ministry of Finance and/or the Tokyo Stock Exchange in Japan.

Summary of Facts and Representations

1. *CMB* is a wholly owned subsidiary of CMC, a bank holding company organized under the laws of the State of Delaware. As a New York bank and a member of the Federal Reserve System, CMB is a "bank" as defined in both section 202(a)(2) of the Investment Advisers Act of 1940 (the Advisers Act) and section 581 of the Code.[4] As of March 31, 1998, CMB's total assets were $299 billion, of which $93.5 billion (or 31 percent) represented investment securities and money market assets and $125 billion (or 42 percent) represented loans.

2. *GIS*, the investor services line of business of CMC, as operated through CMB and certain of its affiliates, provides custodial services, trustee and related services to its customers. In this regard, GIS had more than $4.45 trillion of assets under custody and directed trusteeship as of December 31, 1997. As directed trustee or custodian, GIS services $412 billion of assets for U.S. pension plans, government plans, endowments and foundations. In addition, GIS currently acts as custodian for $751 billion of mutual fund assets.

3. *GSL*, which is comprised collectively of similar divisions of CMB or U.S. affiliates of CMC, is the securities lending line of business of CMC. It provides securities lending services to many of CMB's institutional clients. In this regard, GSL, on behalf of CMB's securities lending agents, negotiates the terms of loans with borrowers pursuant to a client-approved form of loan agreement, the terms of which may be modified from time to time with the approval of the client, and otherwise acts as a liaison between the lender and the borrower to facilitate the lending transaction. As securities lending agent, GSL has responsibility for monitoring receipt of all required collateral and for marking such collateral to market daily so that adequate levels of collateral are maintained. Further, to the extent agreed upon with the client, GSL is responsible for investing the cash collateral after securities have been loaned and cash collateral received. Finally, GSL monitors and evaluates, on a continuing basis, the performance and creditworthiness of the borrowers of securities.

In addition, GSL may be retained from time to time by other primary securities lending agents to provide securities lending services in a sub-agency capacity with respect to portfolio securities of the clients of such primary lending agents. As securities lending agent, GSL's role in the lending transaction (i.e., negotiating the terms of loans with borrowers pursuant to a client-approved form of loan agreement, the terms of which may be modified from time to time with the approval of the client, monitoring receipt of collateral, marking to market required collateral, and investing cash collateral) parallels the role under lending transactions in which GSL acts as primary lending agent on behalf of its clients.[5]

The borrowers with whom GSL usually transacts business as agent for the lender are typically U.S. broker-dealers who use borrowed securities to satisfy their trading requirements or to "re-lend" securities to other broker-dealers and others who need a particular security for various periods of time. All such borrowings by U.S. broker-dealers are required to conform to the Federal Reserve Board's Regulation T, to the extent applicable.

4. *Global Capital Markets* is one of the principal lines of business of CMC and its affiliates. Global Capital Markets acts through CMB and certain of its affiliates located in the United States as well as through certain Foreign Affiliated Borrowers that are located abroad. In other words, Global Capital Markets conducts its business through these different legal entities depending upon the jurisdiction and the specific product being sold. The entities currently comprising Global Capital Markets are Global Capital Markets/U.S., Global Capital Markets/U.K., Global Capital Markets/Canada, Global Capital Markets/Australia and Global Capital Markets/Japan. A description of each of these entities is presented below.

(a) *Global Capital Markets/U.S.* currently includes CMB and CSI, a U.S. broker-dealer registered with the SEC and located in New York, New York. However, in the future, it may include other broker-dealer entities that Global Capital Markets has established or acquired in the United States and operates as separate companies.

(b) *Global Capital Markets/U.K.* currently consists of Chase Manhattan International Limited (CMIL) and CMB's London branch (CMB/London). CMIL is a merchant bank based in London, England and it is supervised by the Financial Services Authority. CMIL is also a member of the Securities and Futures Authority and is subject to regulation by this organization with respect to its broker-dealer activities.

CMB/London is an office of CMB which was authorized by the former Bank of England to accept deposits in the United Kingdom. CMB/London is a listed institution under Section 43 of the Financial Services Act, the Money Market Regulations. In addition, CMB/London is regulated by the Securities and Futures Authority in the conduct of investment business in the United Kingdom. In mid-1997, the Financial Services Authority took over the supervision of banks in the United Kingdom including the Money Market Regulations. CMB/London is also subject to annual examination by bank examiners from the Federal Reserve Bank of New York and the State of New York.

(c) *Global Capital Markets/Canada* currently consists of Chase Securities Canada Inc. (CSCI), a broker-dealer located in Toronto. This entity is subject to regulation by the Ontario Securities Commission and the Investment Dealers Association.[6] In the future, Global Capital Markets Canada may be expanded to include CMB's banking affiliates that are based in Canada. These entities are subject to regulation in Canada by OSFI.

(d) *Global Capital Markets/Australia* currently consists of Chase Securities Australia, Limited (CSA), which is a broker-dealer located in Sydney. CSA holds a dealers license and is regulated by the Australian Securities & Investments Commission. In the future, Global Capital Markets/Australia may be expanded to include CMB's banking affiliates that are based in Australia. These entities will be subject to regulation by APRA.

(e) *Global Capital Markets/Japan* currently consists of Chase Securities Japan Limited (CSJL), a broker-dealer based in Tokyo, Japan. CSJL is subject to regulation by Japan's Ministry of Finance and the Tokyo Stock Exchange. In the future, Global Capital Markets/Japan may be expanded to include CMB's banking affiliates that are based in Japan. These entities will be subject to regulation by the Ministry of Finance.

Global Capital Markets also is a borrower of securities and acts in this capacity after full disclosure and consent with respect to many of its institutional clients that included public pension plans which are not covered by the Act. Global Capital Markets, as borrower, uses borrowed securities to meet its obligations to deliver securities in connection with its short sales, trade fails[7] or other similar situations and to engage in repurchase transactions with third parties. Acting as principal, Global Capital Markets actively engages in the borrowing and lending of securities with an outstanding loan volume of $48 billion as of May 31, 1998.

GSL currently does not lend to Global Capital Markets the securities of any of CMB's trust or custody clients covered under the Act. Although as noted above, after full disclosure and consent, GSL does lend securities to Global Capital Markets for certain of its clients which are not covered by the Act. Global Capital Markets and GSL have each developed an accounting system and safeguards to service the needs of their respective client bases. Whenever trades are effected between GSL, acting as securities lending agent, and Global Capital Markets, as borrower, such trades are accomplished in the same manner as between non-affiliated, independent third parties. In this regard, such trades take place pursuant to an established protocol, primarily over the telephone and through computer trading screens used by all participants in the industry in accordance with established protocol.[8]

5. GSL would like to offer employee benefit plans that are covered under the provisions of the Act and for which GSL serves as securities lending agent (i.e., the Client Plans)[9] the opportunity to participate in a securities lending program including Global Capital Markets as a potential borrower. In addition, CMB proposes that GSL and Global Capital Markets receive compensation in connection with such securities lending transactions. In this regard, CMB would like to offer Client Plans the opportunity to add as potential borrowers Global Capital Markets/U.S., Global Capital Markets/U.K., Global Capital Markets/Canada, Global Capital Markets/Australia and Global Capital Markets/Japan.

For each Client Plan, neither CMB, Global Capital Markets, GSL nor any other division or affiliate of CMB will have or exercise discretionary authority or control with respect to the investment of Client Plan assets in the transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received) or render investment advice [within the meaning of 29 CFR 2510.3–12(c)] with respect to those assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan. Accordingly, GSL will not be in a position to influence the portfolio holdings of Client Plans in a manner that might increase or decrease the securities available for lending to Global Capital Markets (or any other borrower). Thus, GSL's discretion will be limited to activities such as negotiating the terms of the securities loans with Global Capital Markets and (to the extent granted by the Client Plan fiduciary) investing any cash collateral received in respect of the loans.

Because, under the proposed arrangement, GSL would have discretion to lend Client Plan securities to Global Capital Markets, and because both GSL and parts of Global Capital Markets are divisions of CMB, the lending of securities to Global Capital Markets by a Client Plan for which GSL serves as securities lending agent (or sub-agent) may be outside the scope of relief provided by PTE 81–6 and PTE 82–63.[10] Further, loans to Foreign Affiliated Borrowers within Global Capital Markets would be outside of the relief granted in PTE 81–6.

Therefore, several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the Client Plan assets involved in the transactions. In addition, the applicants represent that the proposed lending program incorporates the conditions contained in PTE 81–6 and PTE 82–63 and will be in compliance with all applicable securities laws of the United States.

6. Although not registered with the United States SEC as broker-dealers, the Foreign Affiliated Borrowers within Global Capital Markets are subject to the rules, regulations and membership requirements of their respective regulatory entities identified above. For example, CMIL, the broker-dealer entity within Global Capital Markets/U.K. is

[4] In relevant part, section 202(a)(2) of the Advisers Act and section 581 of the Code state that a "bank" is a banking institution, bank or trust company incorporated and doing business under the laws of the United States.

[5] As noted previously, the Department is not providing exemptive relief herein for securities lending transactions that are engaged in by primary lending agents, other than GSL and its affiliates beyond that provided by PTEs 81–6 and 82–63.

[6] CMB represents that Chase Securities Canada Inc., which is currently inactive, is the likely Canadian vehicle to participate in Global Capital Markets if it resumes business in Canada.

[7] According to CMB, a trade fail occurs when the seller of a security is unable to deliver the security to the buyer on the settlement date. Typically, this may occur when a security being sold is on loan or held by another custodian at the time a sale is executed and cannot be delivered to the seller before the settlement date. Under these circumstances, it is common for the seller of the security to borrow the security being sold in order to avoid a breach of its obligation to deliver securities to the buyer on the settlement date.

[8] In this regard, CMB maintains a set of procedures and policies designed to eliminate any sharing of client portfolio information between the personnel in its commercial banking and trust departments.

[9] For the sake of simplicity, future references to GSL's performance of services as securities lending agent should be deemed to include its activities as securities lending sub-agent and references to Client Plans should be deemed to refer to plans for which GSL is acting as sub-agent.

[10] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

PTE 82–63 provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities.

subject to the rules, regulations and membership requirements of the Securities and Futures Authority. CSCI, the broker-dealer entity within Global Capital Markets/Canada is governed by the rules, regulations and membership requirements of the Ontario Securities Commission and the Investment Dealers Association. CSA, the broker-dealer entity within Global Capital Markets/Australia is governed by the licensing requirements of the Australian Securities & Investments Commission. CSJL, the broker-dealer entity within Global Capital Markets/Japan is governed by the rules, regulations and membership requirements of the Ministry of Finance and the Tokyo Stock Exchange.[11]

The Foreign Affiliated Borrowers within Global Capital Markets which are broker-dealers are subject to rules relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules and books and records requirements with respect to client accounts. These rules and regulations set forth by the Foreign Broker-Dealer Regulatory Entities and the SEC share a common objective: The protection of the investor by the regulation of the securities industry. The rules promulgated by the Foreign Broker-Dealer Regulatory Entities require each firm which employs registered representatives or registered traders to have a positive tangible net worth and be able to meet its obligations as they may fall due. In addition, the rules of the Foreign Broker-Dealer Regulatory Entities set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the rules of the Foreign Broker-Dealer Regulatory Entities impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements to the effect that required records must be produced at the request of the Foreign Broker-Dealer Regulatory Entities. Finally, the rules and regulations of the Foreign Broker-Dealer Regulatory Entities impose potential fines and penalties on broker-dealers which establish a comprehensive disciplinary system.

7. Similarly, Global Capital Markets/U.K. is also subject to regulation in the United Kingdom by the Financial Services Authority, the successor regulator to the Bank of England. The Financial Services Authority issues licenses to banks in the United Kingdom, issues directives to address violations by or irregularities involving such banks, requires information from a bank or its auditor regarding supervisory matters and revokes bank licenses. The Financial Services Authority has established procedures for monitoring the activities of CMB in the United Kingdom through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight and administration. On a recurring basis, CMB will be required to provide the Financial Services Authority with information regarding its activities in the United Kingdom, profit and loss, balance sheet, large exposures, foreign exchange exposures and country risk exposure. The regulator responsible for CMB's capital adequacy is the Board of Governors of the Federal Reserve System (the Board).

In addition, banks which may comprise Global Capital Markets/Canada will be subject to the rules of OSFI, an entity that licenses and regulates banks established in Canada as deposit-taking subsidiaries. OSFI licenses banks, issues directives to address violations by or irregularities involving a bank, requires information from the bank or its auditors regarding supervisory matters and revokes bank licenses.

Moreover, OSFI has established procedures for monitoring the activities of Canadian banks through various statutory and regulatory standards. Among those standards are requirements for capital adequacy, adequate internal controls, oversight and administration. On a recurring basis, a bank comprising Global Capital Markets/Canada will be required to provide OSFI with information regarding its activities in Canada, profit and loss, balance sheet, large exposures and foreign exchange exposures.

Legislation is pending in Canada which would permit a foreign bank to establish a branch in Canada. Under the proposed rule, the Minister of Finance would authorize the establishment of the branch and OSFI would license the bank branch to carry on business and may revoke the license. The bank branch would be required to have a minimum amount of unencumbered assets in Canada equal to a percentage of branch liabilities and must satisfy capital adequacy rules. Branches accepting deposits would be subject to a yearly audit by an external auditor and examination by OSFI.

APRA, which has taken over the bank supervisory duties of the Reserve Bank of Australia, will license and regulate banks comprising Global Capital Markets/Australia. APRA has the power to issue and revoke bank licenses. In addition, APRA may issue directives to address violations by or irregularities involving banks and it requires information from a bank or its auditors regarding supervisory matters. APRA has established procedures for monitoring the activities of banks that will comprise Global Capital Markets/Australia through various statutory and regulatory standards. Among those standards are requirements for capital adequacy, internal controls, oversight and administration. On a recurring basis, banks comprising Global Capital Markets/Australia will be required to provide APRA with information regarding their activities in Australia, profit and loss, balance sheets and large exposures.

APRA's licensing and supervision of Global Capital Markets/Australia foreign bank branches is similar to that of locally-incorporated banks. While APRA monitors credit risk concentrations of foreign bank branches, endowed capital in Australia and capital-based large risk exposure limits are the responsibility of the home supervisor which is the Board.[12]

8. Aside from the protections afforded by the Foreign Broker-Dealer Regulatory Entities and in the case of Global Capital Markets/U.K., the Financial Services Authority, CMB represents that the Foreign Affiliated Borrowers will comply with all applicable provisions of Rule 15a–6 of the 1934 Act. Rule 15a–6 provides foreign broker-dealers with a limited exemption from SEC registration requirements and, as described below, offers additional protections.[13]

[11] The Securities and Futures Authority, the Ministry of Finance, the Tokyo Stock Exchange, the Australian Securities & Investments Commission, the Australian Stock Exchange Limited, the Ontario Securities Commission and the Investment Dealers Association are collectively referred to herein as the Foreign Broker-Dealer Regulatory Entities.

[12] For a description of the Ministry of Finance, which regulates both banks and broker-dealers in Japan, see Representations 3 and 4 of the Notice of Proposed Exemption for the Union Bank of Switzerland and UBS Securities, LLC (63 FR 15452, 15455, March 31, 1998).

[13] According to the applicants, section 3(a)(4) of the 1934 Act defines "broker" to mean "any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank. Section 3(a)(5) of the 1934 Act provides a similar exclusion for "banks" in the definition of the term "dealer." However, section 3(a)(6) of the 1934 Act defines "bank" to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15(a)(6)(b)(2) provides that the term "foreign broker or dealer" means "any non-U.S. resident person * * * whose securities activities, if conducted in the United States, would be described by the definition of "broker" or "dealer" in sections 3(a)(4) or 3(a)(5) of the [1934] Act." Therefore, the test of whether an entity is a "foreign broker" or "dealer" is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term "broker" or "dealer." Thus, for purposes of this exemption request, the applicants are willing to represent that they will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6.

[14] See also SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (hereinafter, the April 9, No-Action Letter), expanding the definition of the term "Major U.S. Institutional Investor."

Specifically, Rule 15a–6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term "U.S. institutional investor," as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended. The term "major U.S. institutional investor" is defined in Rule 15a–6(b)(4) as a person that is a U.S. institutional investor that has total assets in excess of $100 million or an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.[14]

9. CMB represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or a major U.S. institutional investor must, among other things—

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, and the SEC or the U.S. Government) with any information or documents within the possession, custody or control of the foreign broker-dealer, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer[15] through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); [16] and

(6) Participate in certain oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the major U.S. institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major U.S. institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.[17]

10. Where GSL is the direct securities lending agent, a fiduciary of a Client Plan which is independent of CMB, GSL, Global Capital Markets, and any other division or affiliate of CMB will sign a securities lending authorization agreement with GSL (i.e., the Agency Agreement) before that Client Plan participates in a securities lending program. The Agency Agreement will, among other things, describe the operation of the lending program, prescribe the form of securities Loan Agreement to be entered into on behalf of the Client Plan with borrowers, specify the securities which are available to be loaned and prescribe that a borrower (including Global Capital Markets) is required to deliver collateral having a value in excess of the value of the loaned securities (i.e., not less than 102 percent or, in some cases, a higher agreed-upon percentage). In addition, the Agency Agreement will provide that the securities will be marked to market daily and incorporate a list of permissible borrowers, including the specified legal entities within Global Capital Markets.

The Agency Agreement will also set forth the basis and rate for GSL's compensation from a Client Plan for the performance of securities lending services. As set forth more fully below, in the case of loans secured by cash collateral, the basis for GSL's compensation will be an agreed-upon fixed percentage share of return, if any on cash collateral plus an investment management fee for investing the cash collateral. The actual income that will be divided between the Client Plan and GSL will vary each day according to the investment performance from each loan of securities. With respect to loans secured by non-cash collateral, GSL's compensation will be an agreed-upon fixed percentage share of the securities lending fee. GSL's share of the return on cash collateral and the securities lending fees with respect to any Client Plan will be negotiated with that Client Plan and thereafter set forth in the Agency Agreement on the date such agreement is executed.

The Agency Agreement will contain provisions to the effect that if Global Capital Markets is designated by a Client Plan as an approved borrower (a) the Client Plan will acknowledge that certain segments of Global Capital Markets, GSL and GIS are, or may be deemed to be, the same legal entity, and (b) GSL will represent to the Client Plan that each and every loan made to Global Capital Markets on behalf of such Client Plan will be at market rates and will, in no event, be less favorable to the Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unaffiliated borrower.

A Client Plan may terminate the Agency Agreement at any time, without penalty to such plan, on five business days' notice.[18]

[15] The Foreign Affiliated Borrowers, in lieu of relying on a U.S. broker-dealer and to the extent permitted by applicable U.S. securities law, may rely on a U.S. bank or trust company, including GSL, to perform this role.

[16] Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between the Client Plan and a Foreign Affiliated Borrower. CMB notes that in such situations, the U.S. registered broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

[17] Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. Institutional Investor. See April 9 SEC No-Action Letter.

[18] CMB represents that if investments of cash collateral must be terminated or liquidated prematurely due to a Client Plan's termination of the Agency Agreement, penalties might be chargeable by issuers of the investments (or

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11. When GSL is lending securities under a sub-agency arrangement, the primary lending agent will enter into a Primary Lending Agreement with a fiduciary of a Client Plan that is independent of such primary lending agent, GSL or Global Capital Markets, before the Client Plan participates in the securities lending program. Under the terms of the sub-agency arrangement, it is the responsibility of the primary lending agent to obtain the approval of the fiduciary of the Client Plan to such Primary Lending Agreement. The primary lending agent will be independent of GSL and Global Capital Markets. As CMB will not be a party to the Primary Lending Agreement, the sub-agency arrangement between GSL and the primary lending agent will obligate the primary lending agent to provide assurance that the primary lending agent was independent of the fiduciary of the Client Plan.

The Primary Lending Agreement will contain substantive provisions akin to those in the Agency Agreement relating to the description of the operation of the lending program, use of an approved form of Loan Agreement, specification of securities which are available to be loaned, prescription that a borrower is required to deliver collateral having a specified value in excess of the value of the loaned securities and a list of approved borrowers (including the various legal entities comprising Global Capital Markets). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, including GSL, to facilitate the performance of securities lending agency functions. Where GSL is appointed to act as a sub-agent, GSL will require that the primary lending agent represent to GSL that the primary lending agent has received prior approval of, or has the authority to make the decision to hire GSL.

The Primary Lending Agreement also will set forth the basis and the method for the primary lending agent's compensation from the Client Plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such agreement. Each Primary Lending Agreement will be subject to a termination provision similar to that contained in the Agency Agreement if the primary lending agent is relying on PTE 81–6.

counterparties on the investments) in accordance with the investment terms.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (i.e., the Sub-Agency Agreement) with GSL under which the primary lending agent will retain and authorize GSL, as sub-agent, to lend securities of the primary lending agent's Client Plans, in a manner consistent with the terms and conditions as specified in the Primary Lending Agreement. The Primary Lending Agreement and the Sub-Agency Agreement will not necessarily have identical terms because the procedures that CMB uses in operating its lending program will be spelled out in its form agreement and these may not be identical to how the primary lending agent operates its own program. For example, CMB may require that its Sub-Agency Agreement contain certain specific provisions which the primary lending agent may not have requested from the Client Plan. One such requirement is that the collateral initially equal 102 percent of the value of the loaned securities, whereas the primary lending agent may have been authorized to make loans of securities at less than 102 percent collateral. CMB may also require recordkeeping in addition to that specified in the Primary Lending Agreement and may require different notice provisions.

Each Sub-Agency Agreement will contain provisions which are in substance comparable to those described above, which would appear in an Agency Agreement in situations where GSL is the primary lending agent. In this regard, GSL will make the same representation in the Sub-Agency Agreement, as described above, with respect to arm's length dealings with Global Capital Markets. The Sub-Agency Agreement will also set forth the basis and rate for GSL's compensation to be paid by the primary lending agent.

12. GSL, on behalf of the Client Plans, will enter into a Loan Agreement with each applicable entity within Global Capital Markets that is in substantially similar form to the one used from time to time with all other borrowers. The Loan Agreement will not be identical to that used with an unrelated party, in part, because special disclosures must be made to the Client Plans regarding the relationship between GSL and certain parts of Global Capital Markets and GIS. However, the economic terms and procedures required by the Loan Agreement will be identical to those negotiated with unrelated borrowers.

The form of the Loan Agreement also will be the industry or the market standard for loans to the borrowers in the country where the borrower is domiciled. It will describe the lender's rights against the borrower in the country of the borrower's domicile and represent that these rights will be equivalent under U.S. law.[19] The independent fiduciary for each Client Plan will approve the terms of the Loan Agreement through its authorization of the lending program and such fiduciary will be provided a copy of the applicable Loan Agreement from GSL upon request.

The Loan Agreement will specify, among other things, the right of GSL, as lending agent on behalf of the Client Plan, to terminate a loan at any time on not more than five business days' notice and the lending agent's rights in the event of any default by the borrower. In addition, the Loan Agreement will contain a requirement that Global Capital Markets must pay all transfer fees and transfer taxes related to loans of securities. Further, the Loan Agreement will describe the basis for compensation to the Client Plan for lending securities to Global Capital Markets under each category of collateral.

Before entering into the Loan Agreement, Global Capital Markets will furnish GSL the most recently available audited and unaudited statements of the financial condition of the applicable borrower within Global Capital Markets. In turn, such statements will be provided by GSL to the Client Plan before such plan is asked to approve the terms of the Loan Agreement. The Loan Agreement will contain a requirement that Global Capital Markets must provide to the Client Plan prompt notice, at the time of a loan by such Client Plan, of any material adverse changes in the borrower's financial condition since the date of the most recently furnished financial statements.[20] If any such changes have

[19] For example, the form of Loan Agreement between GSL and a Foreign Affiliated Borrower differs from the standard U.S. loan agreement. Under the Global Capital Markets/U.K. Loan Agreement, the Client Plan receives title to (rather than a pledge of or a security interest in) the collateral.

[20] Like broker-dealers registered with the SEC, the broker-dealer entities within Global Capital Markets/U.K., Global Capital Markets/Japan and Global Capital Markets/Australia will be subject to capital adequacy provisions of their respective regulatory entities. It is represented that such rules require the Foreign Affiliated Borrowers to maintain, at all times, financial resources in excess of its financial resources requirement (the Financial Resources Requirement). For this purpose, financial resources include equity capital, approved subordinated debt and retained earnings, less deductions for illiquid assets. The Financial Resources Requirement includes capital requirements for market risk, credit risk, foreign exchange risk and large exposures. The rules of each applicable Foreign Broker-Dealer Regulatory Entity, require that if a firm's financial resources fall below a certain percentage (e.g., 120 percent with respect to the Securities and Futures Authority and 140 percent with respect to the Ministry of Finance and the Tokyo Stock Exchange) of its Financial Resources Requirement, the Foreign Broker-Dealer Regulatory Entity must be notified so that it can examine the terms of the firm's financial position and require an infusion of more capital, if needed. In addition, a breach of the requirement to maintain financial resources in excess of the Financial Resources Requirement may lead to sanctions by the applicable Foreign Broker-Dealer Regulatory Entity. If the breach is not promptly resolved, such Foreign Broker-Dealer Regulatory Entity may restrict the firm's activities.

[21] The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTE 82–63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary." In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in condition (f) of PTE 82–63 will be satisfied.

taken place, GSL will not make any further loans to Global Capital Markets unless an independent fiduciary of that Client Plan has approved the loan in view of the changed financial condition. Conversely, if the borrower within Global Capital Markets fails to provide notice of such a change in its financial condition, such failure will trigger an event of default under the Loan Agreement.

13. As noted above, the agreement by GSL to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and GSL will, prior to the commencement of any lending activity, agree to the arrangement, as described above, under which GSL will be compensated for its services as lending agent. The agreed-upon fee arrangement will be set forth in the Agency Agreement and thereby will be subject to the prior written approval of a fiduciary of the Client Plan which is independent of Global Capital Markets and GSL.

Similarly, with respect to arrangements under which GSL is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of such fee, as the primary lending agent determines in its sole discretion, to any sub-agent, including GSL, which is to provide securities lending services to the Client Plans.[21] A Client Plan will be provided with any reasonably available information which is necessary for the Client Plan's independent fiduciary to make a determination whether to enter into or continue to participate under the Agency Agreement (or the Primary Lending Agreement) and any other reasonably available information which such fiduciary may reasonably request.

14. Each time a Client Plan lends securities to Global Capital Markets pursuant to the Loan Agreement, GSL will reflect in its records, the material terms of the loan, including the securities to be loaned, the required level of collateral and the fee receivable or rebate payable. When a loan is collateralized with cash, the cash will be invested for the benefit of and at the risk of the Client Plan, and resulting earnings (net of a rebate to the borrower and the fee to the lending agent) comprise the compensation to the Client Plan with respect to such loan. Where collateral consists of obligations other than cash, the borrower will pay a fee (loan premium) directly to the lending Client Plan, which fee will be shared with GSL as agreed under the Agency Agreement. The terms of each loan will be at least as favorable to the Client Plan as those of a comparable arm's length transaction between unrelated parties.

15. The Client Plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of any loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities or other distributions. The Loan Agreement will provide that the Client Plan may terminate any loan at any time. Upon a termination, Global Capital Markets will be contractually obligated to return the loaned securities to the Client Plan within five business days of notification (or such longer period of time permitted under PTE 81–6, as amended or superseded). If Global Capital Markets fails to return the securities within the designated time, the Client Plan will have the right under the Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Client Plan associated with the sale and/or purchase.

16. The Client Plan will receive collateral from Global Capital Markets (by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Global Capital Markets. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by a person other than CMB or its affiliates) or any combination thereof, of such other types of collateral which might be permitted by the Department under PTE 81–6, as amended or superseded, relating to securities lending activities. The market value of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Loan Agreement will give the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. GSL will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (or such greater percentage as agreed to by the parties) of that of the loaned securities, GSL will require Global Capital Markets to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

17. As securities lending agent for the Client Plans, GSL also provides ancillary services such as investing the cash collateral received with respect to such securities loans. Such investment management services can be provided on a separate account basis or through CMB's commingled funds. For these services, GSL is paid an investment management fee by the Client Plans, either through a direct charge to the Client Plan for individually-managed accounts and some commingled funds, or, in the case of other commingled funds, through an investment management fee charged against the commingled fund's assets. Retaining GSL to provide such investment management services is optional and within the total discretion of the Client Plan. Alternatively, the independent fiduciary of the Client Plan may select its own manager, an unrelated mutual or collective fund, or another vehicle of his choice. The selected investment vehicle must be acceptable to GSL. GSL neither selects the collateral investment vehicle nor has any authority or responsibility to do so. To further protect the Client Plans' assets in these transactions, GSL's procedures for lending securities will comply with the applicable conditions of PTE 81–6 and PTE 82–63 (including with respect to any commingled funds that may participate in the securities lending program).

18. GSL will establish each day separate written schedules of lending fees and rebate rates to assure uniformity of treatment among borrowing brokers and to limit the discretion that GSL would have in negotiating securities loans to Global Capital Markets. Comparable loans to all borrowers of a given security on that day will be made at rates or lending fees

on the relevant daily schedules or at rates or lending fees which may be more advantageous to the Client Plans. In no case will loans be made to Global Capital Markets at rates or lending fees that are less advantageous to the Client Plans than those on the schedule. The daily schedule of rebate rates will be based on the current value of the clients' reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than Global Capital Markets. As with rebate rates, the daily schedule of lending fees will also be based on market conditions, as reflected by demand for securities by borrowers other than Global Capital Markets, and will generally track the rebate rates with respect to the same security or class of security.

GSL will adopt maximum daily rebate rates for cash collateral payable to Global Capital Markets on behalf of a lending Client Plan. Separate maximum daily rebate rates will be established with respect to securities loans of designated securities classes of securities such as U.S. Government securities, U.S. equities and corporate bonds, international fixed income securities and international equities. With respect to each designated class of securities, the maximum rebate rate will be the lower of (a) a rate based upon an agreed-upon interest rate index (such as one month LIBOR for Fed funds) and (b) the client's initial or expected reinvestment rate for the relevant cash collateral, minus a stated percentage of such reinvestment rate, as pre-approved by the independent fiduciary of the Client Plan. Thus, when cash is used as collateral, at least initially, the daily rebate rate will always be lower than the rate of return to the Client Plans from authorized investments for cash collateral by such stated percentage as shall be pre-approved by the independent fiduciary. GSL will submit the formula for determining the maximum daily rebate rate to an independent fiduciary of the Client Plan for approval before lending any securities to Global Capital Markets on behalf of such plan.

GSL will also adopt minimum daily lending fees for non-cash collateral payable by Global Capital Markets to GSL on behalf of the Client Plan and GSL. Separate minimum daily gross lending fees will be established with respect to loans of designated classes of securities such as U.S. Government securities, U.S. equities and corporate bonds, international fixed income securities and international equities. With respect to each designated class of securities, the minimum lending fee will be stated as a percentage of the principal value of the loaned securities. GSL will submit such gross minimum daily lending fees to an independent fiduciary of a Client Plan for approval before initially lending any securities to Global Capital Markets on behalf of such Client Plan.

19. For collateral other than cash, the lending fees charged the previous day will be reviewed by GSL for competitiveness. Based on the demand of the marketplace, this daily fee historically has remained relatively constant although it may be subject to fluctuation due to market conditions.[22] Because during any successive two week period, on average, at least 50 percent or more of securities loans negotiated on behalf of Client Plans, in the aggregate, will be to unrelated brokers or dealers, the competitiveness of GSL's fee schedule will be continuously tested in the marketplace.[23] Accordingly, loans to Global Capital Markets should result in competitive rate income to the lending Client Plan.

20. The method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by Global Capital Markets and the maximum rebate payable to Global Capital Markets will be specified in an exhibit attached to the Agency Agreement to be executed between the independent fiduciary of the Client Plan and GSL in cases where GSL is the direct securities lending agent.

21. Should GSL recognize prior to the end of a business day that, with respect to new and/or existing loans, it must change the rebate rate or lending fee formula in the best interest of the Client Plans, it may do so with respect to Global Capital Markets.[24] If GSL changes the lending fee formula or the rebate rate formula on any outstanding loan to Global Capital Markets (except for any change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated, or if the formula will always be beneficial to the Client Plan), GSL, by the close of business on the date of such adjustment, will provide the independent fiduciary of the Client Plan with notice that it has changed such fee formula or rebate rate formula with respect to such loan and that the Client Plan may terminate such loan at any time. Allowing GSL to request a modification to the lending fee or the rebate rate formula with respect to an existing loan to Global Capital Markets when market conditions change will be beneficial to the Client Plans. In the absence of the ability to make such modification, Global Capital Markets may be forced by market conditions to terminate the loan and seek better terms elsewhere. Such termination may then force the Client Plan to seek new borrowers for its securities who, in light of the changed market conditions, are likely to negotiate for the lending fee or rebate rate which Global Capital Markets would have received or paid had GSL had the written authority from the independent fiduciary of the Client Plan to decrease the lending fee or increase the rebate rate.

22. Although GSL will normally lend securities to requesting borrowers and include for these purposes Global Capital Markets on a "first come, first served" basis as a means of assuring uniformity of treatment among borrowers, the applicants recognize that, in some cases, it may not be possible to adhere to a "first come, first served" allocation. This can occur, for instance where (a) the credit limit established for such borrower by GSL and/or the Client Plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular Client Plan whose securities are sought to be borrowed; and (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different GSL representatives at or about the same time with respect to the same security. In situations (a) and (b), loans would normally be effected with the "second in line." In situation (c), securities would be allocated equitably among all eligible borrowers.

23. The Client Plans will be indemnified by CMB or CSI in the event Global Capital Markets fails to return borrowed securities. In the event a Foreign Affiliated Borrower within Global Capital Markets defaults on a loan, CMB will liquidate the loan collateral to purchase identical securities for the Client Plan. In the event the collateral is insufficient to accomplish such purchase, CMB will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, CMB will pay the Client Plan cash equal to the market value of the borrowed securities as of the date they would have been returned to the Client Plan plus all the accrued financial benefits derived from the beneficial ownership of such loaned securities. The lending Client Plans will be indemnified by CMB in the United States for any loans to the Foreign Affiliated Borrower.

When the U.S. Affiliated Borrower is CSI, a U.S. registered broker-dealer, either CMB or CSI will indemnify the Client Plan against losses. CMB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, either CMB or CSI will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this provision.)

24. Each Client Plan participating in the lending program will be sent a monthly transaction report which will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case may be) at which the security is loaned, and the number of days the security has been on loan. In order to provide the means for monitoring lending activity, rates on loans to Global Capital Markets compared with loans to other brokers and the level of collateral on the loans, the monthly report will show, on a daily basis, the market value of all outstanding securities loans to Global Capital Markets and to other borrowers as compared to the total collateral held for both categories of loans. In addition, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. Further, the monthly report will state, on a daily basis, the rates at which securities are loaned to Global Capital Markets as compared with those at which securities are loaned to other brokers. This statement will give the Client Plan's independent fiduciary information which can be compared to that contained in the daily rebate schedule.

25. In all cases, GSL will maintain records sufficient to assure compliance with its representation that all loans to Global Capital Markets are effectively at arm's length terms. These records will be provided to the appropriate independent fiduciary of a Client Plan in the manner and format agreed to with such fiduciary and without charge to that Client Plan. With respect to the proposed transactions, GSL will make and retain for six months, tape recordings evidencing all securities loan transactions with Global Capital Markets. Also, if requested by the lending customer, GSL will provide daily confirmations of securities lending transactions. Further, if requested by the customer, GSL will provide weekly or daily reports setting forth for each transaction made or outstanding during the relevant reporting period the following information: The loaned securities, the related collateral, the rebates and loan premiums and such other information in such format as is agreed to by the parties. Finally, prior to a Client Plan's approval of a securities lending program, GSL will provide a Client Plan fiduciary with a copy of the proposed exemption and the notice granting the exemption.

26. Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to Global Capital Markets. In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation), which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing $50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million. However, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing $50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Client Plan or an employee organization whose members are covered by such Client Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity (a) must have full investment responsibility with respect to plan assets invested therein[25]; and (b) must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.

27. With respect to loans involving the Foreign Affiliated Borrowers within Global Capital Markets, the following additional safeguards will be applicable: (a) All collateral will be maintained in U.S. dollars, U.S. dollar-denominated securities or letters of credit of U.S. banks; (b) all collateral will be held in the United States;[26] (c) the situs of the Loan Agreement will be maintained in the United States; and (d) CMB will indemnify the lending Client Plan United States for any Affiliated Borrower Plan will not h jurisdict Fo. Affiliat ealize on the indem. rior to the transaction, the For gn Affiliated Borrower will enter into a written agreement with GSL on behalf of the Client Plan whereby the Foreign Affiliated Borrower consents to the

[22] With respect to domestic securities and international debt securities the daily lending fee is currently at least 1/2oth of one percent of the principal value of the loaned securities. With respect to international equity securities, the daily fee is currently 1/5th of one percent of the principal value of the loaned securities.

[23] This 50 percent requirement will apply regardless of the type of collateral used to secure the loan.

[24] GSL will not initiate any modification in such rates or fees which would be detrimental to Client Plans.

[25] For purposes of this proposed exemption, the term "full investment responsibility" means that the fudiciary responsible for making investment decisions on behalf of the group trust or other form of entity, has and exercises discretionary management authority over all of the assets of the group trust or other plan assets entity.

[26] Under United Kingdom law, the securities lending agreement between GSL and CMIL provides, among other things, that all title and interest in the loaned securities passes to the borrower and all rights, title and interest in the collateral passes to the lending Client Plan.

jurisdiction of the courts of the United States with respect to the transactions described herein; and (f) each Foreign Affiliated Borrower will be (1)(i) a deposit taking or merchant banking institution supervised by the banking authorities of the jurisdiction in which it is located; or (ii) a broker-dealer supervised by a regulatory authority in the country in which it is located; and (2) in compliance with all applicable provisions of Rule 15a–6 under the 1934 Act.

28. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The form of the Loan Agreement pursuant to which any securities loan is effected will be approved by a fiduciary of the Client Plan which is independent of GSL before a Client Plan lends any securities to Global Capital Markets.

(b) The lending arrangements (1) will permit the Client Plans to lend to Global Capital Markets and (2) will enable the Client Plans to diversify the list of eligible borrowers and earn additional income from the loaned securities on a secured basis, while continuing to receive any dividends, interest payments and other distributions due on those securities.

(c) The Client Plans will receive sufficient information concerning the financial condition of the borrowers within Global Capital Markets before the Client Plan lends any securities to any of those entities.

(d) The collateral on each loan to Global Capital Markets initially will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81–6, and will be monitored daily by GSL.

(e) The Client Plans will receive a monthly report which provides an independent fiduciary of the Client Plans with information on loan activity, fees, loan return/yield and the rates on loans to Global Capital Markets as compared with loans to other brokers and the level of collateral on the loans.

(f) Neither GSL, GIS, Global Capital Markets nor any other division or affiliate of CMC will have discretionary authority or control over a Client Plan's assets, including the acquisition or disposition of securities available for loan.

(g) The terms of each loan will be at least as favorable to a Client Plan as those of a comparable arm's length transaction with an unrelated party.

(h) The fee payable by Global Capital Markets to the Client Plan for the use of the securities (or the loan rebate fee payable by the Client Plan to Global Capital Markets if the loan is collateralized with cash) will be set forth in the applicable report provided to the independent fiduciary of the Client Plan.

(i) The Client Plan will be able to terminate the lending arrangement without penalty within five business days after providing written notice of termination to GSL.

(j) All of the procedures under the transactions will conform to the applicable provisions of PTE 81–6 and PTE 82–63 and also will be in compliance with the applicable banking or securities laws of the United States, the United Kingdom, Canada, Australia and Japan.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Henry H. Borland III and Pat Borland; Located in Downers Grove, IL

[Exemption Application No. D–10707]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975 (c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32826, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of certain improved real property (the Property) by the H.H. Borland, Inc. Profit Sharing Plan (the Plan) to the trustees of the Plan, Henry H. Borland III (Mr. Borland) and Pat Borland (collectively, the Trustees), disqualified persons with respect to the Plan,[27] provided that the following conditions are met:

(a) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) The Trustees will purchase the Property from the Plan for the greater of $200,000 or the fair market value of the Property as of the date of the transaction as determined by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash; and

(d) The Plan will pay no fees or commissions in connection with the Sale.

Summary of Facts and Representations

1. H.H. Borland, Inc. (H.H. Borland) is an Illinois corporation engaged in the purchase and sale of real estate. H.H. Borland is the sponsor of the Plan which is a defined contribution profit sharing plan located in Downers Grove, Illinois. The Plan had one participant, Mr. Borland, and approximately $1,100,000 in total assets as of November 21, 1998. The trustees of the Plan are Mr. Borland and Pat Borland (collectively, the Trustees). Among the Plan's assets is the Property which is a single family residence located at 1213 Red Silver Court, Downers Grove, Illinois. The Property was acquired by the Plan from the estate of Wilma L. Winterfield, a party unrelated to the Plan, for $160,875 on January 30, 1991.

2. The applicants represent that, since its acquisition, the Property has generated rental income (the Rental Income) for the Plan. In this regard, the applicants represent that the Plan rented the Property to unrelated third parties from January 30, 1991 until November 30, 1998 and received rental income (the Rental Income) totaling $132,404.25. The applicants represent that from November 30, 1998 to present, the Plan has not rented the Property and the Property has not generated any income for the Plan. The applicants additionally represent that at no time have the Trustees occupied or otherwise benefitted from the Plan's ownership of the Property.

3. The applicants represent that the Plan has incurred certain expenses (the Expenses) as a result of the Plan's ownership of the Property. In this regard, the applicants represent that the Plan has incurred a total of $47,648.72 in real estate taxes and insurance costs associated with the Plan's ownership of the Property. The applicants represent that, after deducting the Expenses from the Rental Income, the Plan has received an annual yield of 6.6% relative to the Property's acquisition price due to the Plan's ownership of the Property.

3. The Property was appraised on January 25, 1999 by David M. Benacke (Mr. Benacke) for Appraisal Resources, Ltd., an appraisal company independent of the Plan and the Trustees. Mr. Benacke, an Illinois certified real estate appraiser, used the sales comparison approach to evaluate the fair market value of the Property. Mr. Benacke represents that he compared the Property to three similar properties which were the subject of recent sales. Based on these comparisons, Mr. Benacke represents that the fair market value of the Property was $200,000, as of January 25, 1999.

4. The applicants propose a sale of the Property (i.e., the Sale) by the Plan to the Trustees for $200,000, the Property's current fair market value. The applicants represent that the Sale is administratively feasible in that it will be a one-time transaction for cash in which the Plan will pay no fees or commissions. The applicants also represent that the Sale is in the best interest of the Plan since the Property is currently vacant and any future rental of the Property to unrelated parties will require substantial Plan expenditures for renovations. In addition, the applicants represent that the Sale is protective of the Plan since the Plan will receive cash for the Property which the Plan can invest in assets appropriate for the Plan's sole participant.

5. In summary, the applicant represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

(a) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) The Trustees will purchase the Property from the Plan for the greater of $200,000 or the fair market value of the Property as of the date of the transaction as determined by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash; and

(d) The Plan will pay no fees or commissions in connection with the Sale.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 219–8883 (This is not a toll free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 22nd day of June 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–16215 Filed 6–24–99; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–23; Exemption Application No. D–10021, et al.]

Grant of Individual Exemptions; First Security Corporation (FSC), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

First Security Corporation (FSC), Located in Salt Lake City, UT

[Prohibited Transaction Exemption 99–23; Exemption Application No. D–10021]

Exemption

Section I. Exemption for the IN-KIND Transfer of Assets

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of

[27] Since Mr. Borland is the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR § 2510.3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

section 4975(c)(1)(A) through (F) shall not apply to the in-kind transfers, that occurred on December 28, 1994, to any open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the Investment Company Act) to which FSC or any of its affiliates (collectively, First Security) serves as investment adviser and/or may provide other services, of the assets of various employee benefit plans (the Plan or Plans) that are held in certain collective investment funds (the CIF or CIFs) maintained by First Security, in exchange for shares of such Funds, provided that the following conditions were met:

(a) A fiduciary (the Second Fiduciary) which was acting on behalf of each affected Plan and which was independent of and unrelated to First Security, as defined in paragraph (g) of Section II below, received advance written notice of the in-kind transfer of assets of the CIFs in exchange for shares of the Funds, a full and detailed written disclosure of information concerning any such Fund including, but not limited to—

(1) A current prospectus for each of the Funds in which such Plan considered investing;

(2) A statement describing the fees for investment management, investment advisory, or other similar services, any fees for secondary services (Secondary Services), as defined in paragraph (h) of Section II below, and all other fees charged to or paid by the Plan and by the Funds to First Security, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why First Security considered such investment to be appropriate for the Plan;

(4) A statement describing whether there were any limitations applicable to First Security with respect to which assets of a Plan may be invested in the Funds, and, if so, the nature of such limitations; and

(5) When available, upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption.

(b) On the basis of the information described above in paragraph (a) of this Section I, the Second Fiduciary authorized in writing—

(1) The investment of assets of the Plans in shares of the Fund, in connection with the transactions set forth in Section I;

(2) The investment portfolios of the Funds in which the assets of the Plans were invested; and

(3) The fees received by First Security in connection with its services to the Funds. Such authorization by the Second Fiduciary was consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) All transferred assets were securities for which market quotations were readily available, or cash.

(d) No sales commissions or redemption fees, including fees that are payable pursuant to Rule 12b-1 of the Investment Company Act, were paid by the Plans in connection with the in-kind transfers of the assets of the CIFs in exchange for shares of the Funds.

(e) Neither First Security nor its affiliates, including any officers or directors, would be permitted to purchase from or sell to any of the Plans shares of any of the Funds.

(f) The Plans were not sponsored or maintained by First Security.

(g) The transferred assets in exchange for shares of such Funds constituted the Plan's *pro rata* portion of all assets that were held by the CIFs prior to the transfer. A Plan not electing to invest in the Fund received a cash payment representing a *pro rata* portion of the assets of the terminating CIF before the final liquidation took place.

(h) The CIFs received shares of the Funds that had a total net asset value equal to the value of the transferred assets of the CIFs exchanged for such shares on the date of transfer.

(i) The current market value of the assets of the CIFs transferred in-kind in exchange for shares of the Funds was determined in a single valuation performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures set forth in Rule 17a–7(b) (Rule 17a–7) under the Investment Company Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established pursuant to Rule 17a–7 for the valuation of such assets. Such procedures required that all securities for which a current market price could not be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ were to be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of First Security.

(j) Not later than 30 days after completion of each in-kind transfer of assets of the CIFs in exchange for shares of the Funds, First Security sent by regular mail to the Second Fiduciary, which was acting on behalf of each affected Plan and which was independent of and unrelated to First Security, as defined in paragraph (g) of Section II below, a written confirmation that contained the following information:

(1) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the Investment Company Act;

(2) The current market price, as of the date of the transfer, of each such security involved in the purchase of Fund shares; and

(3) The identity of each pricing service or market maker consulted in determining the value of such assets.

(k) Not later than 90 days after completion of each in-kind transfer of assets of the CIFs in exchange for shares of the Funds, First Security sent by regular mail to the Second Fiduciary, which was acting on behalf of each affected Plan and which was independent of and unrelated to First Security, as defined in paragraph (g) of Section II below, a written confirmation that contained the following information:

(1) The number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred); and

(2) The number of shares in the Funds that were held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(l) As to each individual Plan, the combined total of all fees received by First Security for the provision of services to the Plans, and in connection with the provision of services to any of the Funds in which the Plans hold shares acquired in connection with an in-kind transfer transaction, was not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(m) On an ongoing basis, First Security has provided and will continue to provide a Plan investing in a Fund—

(1) At least annually with a copy of an updated prospectus of such Fund; and

(2) At least annually with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to First Security, upon the request of such Second Fiduciary.

(n) All dealings between the Plans and any of the Funds have been and will remain on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Plans.

(o) First Security has maintained and will maintain for a period of 6 years the records necessary to enable the persons, as described below in paragraph (p)(1) of this Section I, to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of First Security, the records are lost or destroyed prior to the end of the 6 year period; and

(2) No party in interest, other than First Security, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (p) of this Section I.

(p)(1) Except as provided in paragraph (p)(2) of this Section I and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (o) of Section II above are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (p)(1)(B) and (p)(1)(C) of this Section I shall be authorized to examine trade secrets of First Security, or commercial or financial information which is privileged or confidential.

Section II. Definitions

For purposes of this exemption,

(a) The term "First Security" means FSC and any affiliate of FSC, as defined in paragraph (b) of this Section II.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund," "Funds" or "Affiliated Funds" means any open-end management investment company or companies registered under the Investment Company Act for which First Security serves as investment adviser and/or provides any Secondary Service as approved by such Funds. As noted in the Preamble, the Funds are also referred to as the "Affiliated Funds" to distinguish them from certain third party funds for which First Security and its affiliates provide subadministrative services and which are not involved in conversion transactions that are described herein.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a plan who is independent of and unrelated to First Security. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to First Security if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with First Security;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of First Security (or is a relative of such persons); or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with the transactions described in this proposed exemption.

If an officer, director, partner, or employee of First Security (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser or (B) the approval of any purchase or sale by the Plan of shares of the Funds, in connection with the transactions described in Section I, then paragraph (g)(2) of this Section II, shall not apply.

(h) The term "Secondary Service" means a service, other than an investment management, investment advisory, or similar service, which is provided by First Security to the Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

EFFECTIVE DATE: This exemption is effective as of December 28, 1994.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on April 22, 1999 at 64 FR 19808.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

San Diego Electrical Pension Trust (the Pension Plan); and San Diego Joint Apprenticeship and Training Trust (the Training Plan; collectively, the Plans), Located in San Diego, California

[Prohibited Transaction Exemption 99–24; Exemption Application Nos. D–10581 and L–10582]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed purchase by the Training Plan from the Pension Plan of a minority interest (the Minority Interest) in certain improved real property jointly owned by the Plans, provided that the following conditions are satisfied:

(1) The purchase is a one-time transaction for cash;

(2) The terms and conditions of the transaction are not less favorable to either Plan than those each could obtain in a comparable arm's length transaction with an unrelated party;

(3) The Training Plan pays no more, and the Pension Plan receives no less, than the fair market value of the Minority Interest, as of the date of the transaction, as determined by a qualified, independent appraiser;

(4) Neither the Pension Plan nor the Training Plan pays any commissions or fees in connection with the transaction;

(5) The trustees of the Plans (other than their common trustees), the Pension Plan's investment manager, and

a qualified, independent fiduciary that has been retained to represent the Training Plan, have reviewed the terms and conditions of the transaction and determined that such terms and conditions are in the best interests of, and appropriate for, their respective Plans; and

(6) The independent fiduciary for the Training Plan monitors the proposed transaction and takes whatever actions necessary to safeguard the interests of the Training Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 22, 1999 at 64 FR 19813.

Written Comments

The Department received no written comments or requests for a public hearing with respect to the notice of proposed exemption (the Notice). However, in a letter dated April 19, 1999, the Department was informed that Washington Capital Management (WCM), an investment management firm located in San Diego, California, has purchased the business of AMRESCO Advisors, Inc. (AMRESCO) and succeeded to all of AMRESCO's rights and obligations under its client contracts. Like AMRESCO, WCM is a registered investment adviser and "qualified professional asset manager", as defined in Prohibited Transaction Class Exemption 84–14 (49 FR 9494, March 13, 1984). Therefore, all duties and responsibilities of AMRESCO as the independent fiduciary for the Training Plan, which are described in the Summary of Facts and Representations in the Notice, shall now apply to WCM.

Accordingly, based upon the information contained in the entire record, the Department has determined to grant the proposed exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Daniel N. Cunningham IRA (the Cunningham IRA); Sidney B. Cox IRA (the Cox IRA) (collectively, the IRAs), Located in Fresno, California

[Prohibited Transaction Exemption 99–25; Exemption Application Numbers: D–10723 and D–10724]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase (the Purchase) by each IRA [1] of certain shares of Clovis Community Bank common stock (the Stock) from Mr. Daniel N. Cunningham and Mr. Sidney B. Cox (the Account Holders), disqualified persons with respect to the IRAs, provided that the following conditions are met:

(a) The Purchase of the Stock by each IRA is a one-time transaction for cash;

(b) Each IRA purchases the Stock for a price not exceeding the fair market value of the Stock at the time of each Purchase;

(c) The terms and conditions of each Purchase are at least as favorable as those available in an arm's length transaction with an unrelated third party;

(d) Each IRA does not pay any commissions or other expenses in connection with each Purchase;

(e) The IRA assets invested in the Stock do not exceed 25% of the total assets of each IRA at the time of the transaction; and

(f) Each IRA, at all times, will hold less than one percent (1%) of the outstanding shares of the Stock.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the proposed exemption published on Thursday, May 13, 1999 at 64 FR 25924 (the Prior Notice).

Correction: The Prior Notice was published with an effective date. Because the applicants represent that each Purchase will take place only after the grant of this exemption, the effective date has been removed.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 22nd day of June, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–16214 Filed 6–24–99; 8:45 pm]

BILLING CODE 4510–29–P

[1] Because each IRA has only one participant, there is no jurisdiction under 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Issues Surrounding the Trend in the Defined Benefit Plan Market With a Focus on Employer-Sponsored Hybrid Plans Advisory Council on Employee Welfare and Pension benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Wednesday, July 14, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study issues surrounding trends in the defined benefit market with a focus on employer-sponsored hybrid plans.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately 2:30 p.m., with a one-hour lunch break at noon, in Room S–4215 A–B, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, DC 20210, is for working group members to continue taking testimony on cash balance and other hybrid plans.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 7, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 7, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 7.

Signed at Washington, D.C. this 20th day of June 1999.

Richard McGahey,

Assistance Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–16199 Filed 6–24–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Exploring the Possibility of Using Surplus Pension Assets To Secure Retiree Health Benefits Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Tuesday, July 13, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to explore the possibility of using surplus pension assets to secure retiree health benefits.

The session will take place in Room S–4215 A–B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210. the purpose of the open meeting, which will run from 1:00 p.m. to approximately 4:00 p.m., is for working group members to hear testimony on the accessibility of surplus pension plan assets currently and on policy considerations surrounding accessibility. The work group's intent is engage a diverse set of witnesses for testimonies.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 7, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 7, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 7.

Signed at Washington, D.C. this 20 day of June 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–16200 Filed 6–24–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Benefit Implications Due to the Growth of a Contingent Workforce Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study what the benefit implications are due to the growth of a contingent workforce will hold an open public meeting on Tuesday, July 13, 1999, in Room S–4215 A–B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon is for Working Group members to receive testimony from witnesses providing temporary staff employees to employers throughout the United States, including persons representing associations of such providers.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 7, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 7, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 7.

Signed at Washington, D.C. this 20th day of June, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–16201 Filed 6–24–99; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 9, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML),. National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Headquarters, U.S. Air Force (N1-AFU–99–1, 2 items, 2 temporary items). Air Force litigation case files stored at the Washington National Records Center that did not establish major precedents or policy changes and/or did not attract widespread public or Congressional attention. Records document legal actions involving the Air Force, its personnel, or contractors, along with administrative proceedings, investigations, and legal processing. Files that relate to environmental matters are proposed for disposal 50 years after case is closed.

2. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–99–6, 3 items, 3 temporary items). Audit case files of internal agency programs, operations, and procedures, and external audits of agency contractors and grantees. Records consist of audit reports, correspondence, memorandums, comments, and supporting work papers. Also included are electronic copies of documents created using electronic mail and word processing.

3. Department of Justice, Office of Professional Responsibility (N1–60–99–6, 5 items, 4 temporary items). Files relating to investigations of alleged misconduct by attorneys and other employees of the Department of Justice. Included are original complaints or allegations, attorney's notes and evaluations, investigative reports, collected documents, and statements of case disposition. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of significant investigative case files are proposed for permanent retention.

4. Department of Labor, Bureau of Labor Statistics (N1–257–99–1, 2 items, 2 temporary items). Survey Of Occupational Injuries and Illness data collection booklets and related word processing and electronic mail copies. The data, which is collected by states, is tabulated by BLS and included in a Census of Fatal Occupational Injuries (CFOI) survey report, which was previously approved for permanent retention.

5. Department of Transportation, Federal Highway Administration (N1–406–99–1, 3 items, 2 temporary items). Records relating to highway construction and rehabilitation projects on Federal property. Included are such records as contracts, inspection reports, field notebooks, work orders, and project reports. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of final construction reports, project tracings, and reconnaissance reports are proposed for permanent retention.

6. Department of the Treasury, Internal Revenue Service (N1–58–99–3, 26 items, 18 temporary items). Copies of Service-wide directives other than recordkeeping copies. Included are electronic copies created using office automation, paper copies that have been

microfilmed, CD-ROM copies, and reference copies. Recordkeeping copies are proposed for permanent retention.

7. Corporation for National Service, Office of the Inspector General (N1–362–99–1, 5 items, 5 temporary items). Investigative case files and audit case files relating to agency personnel, volunteers, contractors, programs, procedures and operations. Included are complaints, allegations, investigations, audit reports, correspondence, memorandums, work papers, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of significant investigative case files were scheduled for permanent retention in a previously approved schedule.

8. Nuclear Regulatory Commission, Office of International Programs (N1–431–99–3, 57 items, 41 temporary items). Electronic records in the Commission's Agencywide Document Access and Management System (ADAMS) pertaining to international programs, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. Records, which were previously authorized for disposal in paper form, include files relating to committees and conferences for which the Commission is not the sponsor, copies of Department of State cables, foreign visitor files, routine correspondence files, and representation fund files. Proposed for permanent retention are electronic recordkeeping copies of files pertaining to committees and conferences sponsored by the Commission, records relating to the export/import of nuclear materials, international agreements, formal arrangements, program correspondence files at the office director level, international organization files, and regulatory history files.

9. Nuclear Regulatory Commission, Office of State Programs, (N1–431–99–4, 24 items, 18 temporary items). Electronic records in the Commission's Agencywide Document Access and Management System (ADAMS) pertaining to state programs, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. Records, which were previously authorized for disposal in paper form, include such files as low-level and routine program correspondence, training files, and files pertaining to states with which the Commission has not made agreements. The electronic recordkeeping copies of the state agreement files, integrated materials performance evaluation program records, and general program correspondence files are proposed for permanent retention.

10. Nuclear Regulatory Commission, Office of Public Affairs (N1–431–99–6, 14 items, 10 temporary items). Electronic records in the Commission's Agencywide Document Access and Management System (ADAMS) pertaining to public affairs, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. Records consist of low-level and routine program correspondence files which were previously authorized for disposal in paper form. The electronic recordkeeping copies of general program correspondence files at the Office Director level, press releases, official speeches, and other informational releases and publications are proposed for permanent retention.

11. U.S. Office of Government Ethics, Financial Disclosure Division (N1–522–99–2, 30 items, 30 temporary items). Records of the Financial Disclosure Division relating primarily to the filing of disclosure reports. Included are such records as reading files, requests for filing extensions and exemptions, late filing fee waivers, delinquent filer correspondence, delinquent agency submissions, notifications of conflict of interest, ethics agreement correspondence, monthly ethics agreement status reports, announcements of presidential nominations, logs documenting review of disclosure reports, and requests to inspect copies of completed financial disclosure reports. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: June 17, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–16176 Filed 6–24–99; 8:45 am]

BILLING CODE 7515–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1999.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of June 1, 1999, of three rescission proposals and three deferrals contained in two special messages for FY 1999. These messages were transmitted to Congress on October 22, 1998, and February 1, 1999.

Rescissions (Attachments A and C)

As of June 1, 1999, three rescission proposals totaling $35 million have been transmitted to the Congress. Attachment C shows the status of the FY 1999 rescission proposals.

Deferrals (Attachments B and D)

As of June 1, 1999, $658 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1999.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

63 FR 63949, Tuesday, November 17, 1998

64 FR 6721, Wednesday, February 10, 1999

Jacob J. Lew,

Director.

Attachment A

Status of FY 1999 Rescissions (in Millions of Dollars)

	Budgetary resources
Rescissions proposed by the President	35.0
Rejected by the Congress	
Amounts rescinded by P.L. 106–31, the FY 1999 Emergency Supplemental Appropriations and Rescissions Act	–16.8
Currently before the Congress	18.2

Attachment B

Status of FY 1999 Deferrals (in Millions of Dollars)

	Budgetary resources
Deferrals proposed by the President	1,680.7
Routine Executive releases through April 1999 (OMB/Agency releases of $1,023.6 million, partially offset by a cumulative positive adjustment of $0.9 million)	–1,022.7
Overturned by the Congress	
Currently before the Congress	658.0

BILLING CODE 3110–01–P

ATTACHMENT C
Status of FY 1999 Rescission Proposals - As of June 1, 1999
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Management of Lands and Resources	R99-1		6,800	2-1-99	*		6,800	P.L. 106-31
EXECUTIVE OFFICE OF THE PRESIDENT								
Unanticipated Needs								
Unanticipated Needs for Natural Disasters	R99-2		10,000	2-1-99	*		10,000	P.L. 106-31
INTERNATIONAL ASSISTANCE PROGRAMS								
International Security Assistance								
Foreign Military Financing Loan Program Account	R99-3		18,240	2-1-99	*			
TOTAL, RESCISSIONS			**35,040**				**16,800**	

* No funds were withheld.

[FR Doc. 99-16187 Filed 6-24-99; 8:45 am]
BILLING CODE 3110-01-C

ATTACHMENT D
Status of FY 1999 Deferrals - As of June 1, 1999
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-99
DEPARTMENT OF STATE									
Other									
United States Emergency Refugee and Migration Assistance Fund	D99-1	82,858	17,724	10-22-98 2-1-99	92,724				7,858
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance									
Economic Support Fund	D99-2	84,777	1,310,376	10-22-98 2-1-99	760,963			881	635,072
Agency for International Development									
International Disaster Assistance	D99-3	185,000		2-1-99	169,900				15,100
TOTAL, DEFERRALS		**352,635**	**1,328,100**		**1,023,587**			**881**	**658,029**

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 92–22

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 92–22, Annuity Supplement Earnings Report, is used annually to obtain the amount of personal earnings from annuity supplement recipients to determine if there should be a reduction in benefits paid to the annuitant.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management; and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 2,500 RI 92–22 forms are completed annually. Each form requires approximately 15 minutes to complete. The annual estimated burden is 625 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before August 24, 1999.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Patricia M. Worsham, Management Analyst, Budget & Administrative Services Division, (202) 606–0623,

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–16150 Filed 6–24–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of Data Collection Forms

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for clearance of an information collection. The Establishment Information Form, the Wage Data Collection Form, and the Wage Data Collection Continuation Form are wage survey forms developed by OPM for use by the Department of Defense to establish prevailing wage rates for Federal Wage System employees.

The Department of Defense contacts approximately 21,200 businesses annually to determine the level of wages paid by private enterprise establishments for representative jobs common to both private industry and the Federal Government. Each survey collection requires 1–4 hours of respondent burden, resulting in a total yearly burden of approximately 75,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or send an email message to mbtoomey@opm.gov.

DATES: Comments on this proposal must be received on or before July 26, 1999.

ADDRESSES: Send or deliver written comments to:

Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, U.S. Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mark A. Allen, Salary and Wage Systems Division, Office of Compensation Administration, (202) 606–2848.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–16151 Filed 6–24–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 34–1 and RI 34–3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 34–1, Financial Resources Questionnaire, collects detailed financial information for use by OPM in determining whether to agree to a waiver, compromise, or adjustment of the collection of erroneous payments from the Civil Service Retirement and Disability Fund. RI 34–3, Notice of Amount Due Because of Annuity Overpayment, informs the annuitant about the overpayment and collects information.

Approximately 520 RI 34–1 and 1,561 RI 34–3 forms will be completed per year. Each form requires approximately 1 hour to complete. The annual burden is 520 hours and 1,561 hours respectively.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before July 26, 1999.

ADDRESSES: Send or deliver comments to:

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management,

Janice R. Lachance,

Director.

[FR Doc. 99–16152 Filed 6–24–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review: Comment Request; Review of a Revised Information Collection: Declaration for Federal Employment, Optional Form 306

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of a revised information collection.

To streamline the application process and reduce paperwork, we are planning to eliminate the Applicant's Statement of Selective Service Registration Form (64 FR 59) and add a question about Selective Service registration to the OF 306. We plan to add the following question about Selective Service Registration, which is currently on the Applicant's Statement of Selective Service Registration to the Optional Form 306: "If you are a male born after December 31, 1959, and are at least 18 years of age, civil service employment law (5 U.S.C. 3328) requires that you must be registered with the Selective Service System, unless you meet certain exemptions. Have you registered with the Selective Service? Yes ____ No ____. If No, describe your reason(s) in item ____."

The OF 306 is completed by applicants who are under serious consideration for employment. It is completed early enough in the employment process that if an agency encounters an applicant who did not register with the Selective Service, the agency would have sufficient time to determine if non-registration was knowing and willful prior to making a final employment decision.

DATES: Comments on this proposal should be received on or before August 24, 1999.

ADDRESSES: Send or deliver written comments to Richard A. Ferris, Associate Director for Investigations, Office of Personnel Management, Room 5416, 1900 E Street NW, Washington, DC 20415–4000.

FOR FURTHER INFORMATION CONTACT: Kristen Jenkinson-McDermott on (202) 606–2133, or FAX (202) 606–2390, or e-mail KJMCDERM@OPM.GOV.

SUPPLEMENTARY INFORMATION: OPM's current regulations, written in 1987, contain a self-certification statement of Selective Service registration to be completed by applicants and employees. Agencies reproduce this statement on a separate form. In 1987, the application for Federal Employment, Standard Form 171, did not contain a question about Selective Service registration. Therefore, a separate form was necessary to collect the information required by 5 U.S.C. 3328. Today, agencies use many different forms when considering employees for Federal jobs: The resume or the Optional Application for Federal Employment (OF 612), used to determine basic qualifications for positions, and a Declaration for Federal Employment (OF 306), used to determine an applicant's acceptability and suitability for Federal positions.

It is estimated that 474,000 individuals will respond annually for a total burden of 118,500 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management.

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal please contact Mary Beth Smith-Toomey at (202) 606–8358, or Fax (202) 418–3251, or by e-mail to mbtoomey@mail.opm.gov.

Janice R. Lachance,

Director.

[FR Doc. 99–16153 Filed 6–24–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:

Rule 15g–2 [17 CFR 240.15g–2], SEC File No. 270–381, OMB Control No. 3235–0434

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The "Penny Stock Disclosure Rules" (Rule 15g–2, 17 CFR 240.15g–2) require broker-dealers to provide their customers with a risk disclosure document, as set forth in Schedule 15G, prior to their first non-exempt transaction in a "penny stock." As amended, the rule requires broker-dealers to obtain written acknowledgement from the customer that he or she has received the required risk disclosure document. The amended rule also requires broker-dealers to maintain a copy of the customer's written acknowledgement for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place.

The risk disclosure documents are for the benefit of the customers, to assure that they are aware of the risks of trading in "penny stocks" before they enter into a transaction. The risk disclosure documents are maintained by the broker-dealers and may be reviewed during the course of an examination by the Commission. The Commission estimates that there are approximately 270 broker-dealers subject to Rule 15g–2, and that each one of these firms will process an average of three new customers for "penny stocks" per week. Thus each respondent will process approximately 156 risk disclosure documents per year. The staff calculates that (a) the copying and mailing of the risk disclosure document should take no more than two minutes per customer, and (b) each customer should take no more than eight minutes to review, sign, and return the risk disclosure document. Thus, the total ongoing respondent burden is approximately 10 minutes per response, or an aggregate total of 1,560 minutes per respondent. Since there are 270 respondents, the annual burden is 421,200 minutes (1,560 minutes per each of the 270 respondents), or 7,020 hours. In addition, broker-dealers will incur a recordkeeping burden of approximately

two minutes per response. Thus each respondent will incur a recordkeeping burden of 312 (156×312/60). Accordingly, the aggregate annual hour burden associated with Rule 15g–2 is 8,424 hours (7,020+1,404).

The Commission does not maintain the risk disclosure document, however, it must be retained by the broker-dealer for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place. The collection of information required by the rule is mandatory. The risk disclosure document is otherwise governed by the internal policies of the broker-dealer regarding confidentiality, etc.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 21, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16202 Filed 6–24–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3076]

Policy on Munitions Export Licenses to Nigeria

AGENCY: Bureau of Political-Military Affairs, Department of State.

ACTION: Public Notice.

SUMMARY: Pursuant to Sections 38 and 42 of the Arms Export Control Act, notice is hereby given that it is no longer the policy of the United States to deny all requests for licenses and other approvals to export defense articles or defense services to Nigeria. Therefore, U.S. persons registered with the Department of State's Office of Defense Trade Controls may henceforth submit requests that will be reviewed on a case-by-case basis.

EFFECTIVE DATE: May 30, 1999.

FOR FURTHER INFORMATION CONTACT: William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703) 875–6644 or FAX (703) 875–6647.

SUPPLEMENTARY INFORMATION: Effective immediately, it is no longer the policy of the U.S. Government to deny all requests for licenses and other approvals to authorize the export of defense articles and defense services to Nigeria. Since the death of General Sani Abacha in June 1998, Head of State Abubakar has made significant and steady contributions toward Nigeria's transition to a democratically elected government and to human rights reform, and a democratic election was held in February 1999. Nigeria has reversed many of the policies of the Abacha regime and inaugurated the democratically elected administration of Olusegun Obasanjo. It is because of these changes that U.S. persons registered with the Department of State's Office of Defense Trade Controls may henceforth submit requests that will be reviewed on a case-by-case basis. Reinstatement of Nigeria to the sales territory of any manufacturing license and/or technical assistance agreement should be addressed through an amendment to the agreement to be submitted to the Office of Defense Trade Controls.

This action has been taken pursuant to Sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2791) and Section 126.7 of the International Traffic in Arms Regulations in furtherance of the foreign policy of the United States.

Dated: June 18, 1999.

Eric D. Newsom,

Assistant Secretary, Bureau of Political-Military Affairs.

[FR Doc. 99–16254 Filed 6–24–99; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

COUNCIL ON ENVIRONMENTAL QUALITY

Request for Public Comment Regarding the Economic and Environmental Effects of Tariff Elimination in the Forest Products Sector

AGENCY: Office of the United States Trade Representative and Council on Environmental Quality.

ACTION: Request for written public comment.

SUMMARY: The Office of the United States Trade Representative (USTR) and the Council on Environmental Quality (CEQ) are seeking public comment about the economic and environmental effects of the initiative to eliminate remaining tariffs on forest products. These comments are sought in the context of a written analysis which CEQ and USTR are undertaking of that initiative. The initiative, which is now the subject on negotiations within the World Trade Organization (WTO), is part of an eight sector accelerated tariff liberalization (ATL) proposal. The other ATL sectors are environmental goods and services, gems and jewelry, medical equipment and scientific instruments, chemicals, energy, fish and toys.

The ATL proposal in forest products covers all of Chapters 44, 46, 47, 48, 49 on the HTS as well as portions of chapter 38 (certain wood chemicals), and 94 (furniture and prefabricated buildings.)

The complete list of tariff lines included in the initiative can be found in the **Federal Register** notice announcing ITC Investigation No. 332–392, Advice Concerning APEC Sectoral Trade Liberalization, (Federal Register, April 1, 1998, Vol. 63, No. 62).

The analysis will address the following broad subject areas: the history of the initiative, a description of how the forest products ATL relates to other U.S. government goals and objectives in the forest policy arena, the likely economic impact of tariff elimination in terms of shifts in production and consumption of forest products and the reasonably foreseeable environmental impacts of these shifts, and appropriate policy responses. The report is intended to focus on the effects of the ATL initiative on the United States but will also address broader global implications of the initiative. Specific information regarding, or empirical studies of, the economic and environmental impacts of past trade liberalization in this sector which interested parties may have would be particularly welcome.

Testimony related to the subject of this request which has been submitted in response to the following will be made a part of the record of this study and does not need to be resubmitted: ITC Investigation No. 332–392, "Advice Concerning APEC Sectoral Trade Liberalization" (**Federal Register**, April 1, 1998, Vol 63, No. 62); USTR Notice "Negotiation of Sectoral Market Opening Agreements" (**Federal Register**, May 15, 1998, Vol. 63, No. 94); USTR Trade Policy Staff Committee Notice "Request for Public Comment Regarding Negotiations on Market Access and Other Issues in the World Trade Organization and Under the Free Trade Area of the Americas" (**Federal Register**, April 14, 1999, Vol. 64, No. 71); and ITC Investigation 332–400,"Conditions of Competition in U.S. Forest Products Trade".

FOR FURTHER INFORMATION CONTACT: Office of the U.S. Trade Representative, Environment and Natural Resources Section, telephone 202–395–7320 or the Council on Environmental Quality, International Affairs, telephone 202–456–6224.

SUPPLEMENTARY INFORMATION:

1. Background

A. History of Tariff Liberalization in the Forest Products Sector

The United States sought elimination of all tariffs in the forest products sector during the Uruguay Round. The round resulted in a "zero for zero" (reciprocal tariff elimination) agreement which included the United States, Canada, Finland, Austria, Singapore, Hong Kong, Japan, EU, Korea and New Zealand for paper products (chapters 47, 48 and 49 of the HTS) by 2004. At the same time there was agreement to reduce, over five years, tariffs on wood products. In the United States, such reductions amounted to just over a one-third cut in average tariff levels from an average tariff level of 3.1% to an average tariff level of 1.8%. Under the Uruguay Round Agreements Act and its accompanying Statement of Administrative Action, Congress listed a number of industrial or agricultural sectors in which complete tariff elimination was not achieved in the Uruguay Round but for which Congress determined that obtaining further reductions and elimination of tariffs was a priority objective. Under section 11(b) of the Uruguay Round Agreements Act, Congress provided the Administration with ongoing authority to seek reductions in tariffs on wood products, among other sectors.

B. Initiative Begun in APEC

In mid 1997, APEC Ministers called for the nomination of sectors for Early Voluntary Sectoral Liberalization (EVSL) among APEC economies. Four nominations were received in the forest product area from the United States, Canada, Indonesia and New Zealand. These four proposals were merged together in September 1997, with New Zealand agreeing to act as coordinator for the proposal. Indonesia, the United States and Canada have remained active proponents of the proposal in a co-sponsor role. At the APEC summit in Kuala Lumpur in November 1998, APEC leaders agreed to move the tariff portions of the EVSL initiative to the WTO in order to seek a critical mass of support for concluding an agreement on all eight sectors by the end of 1999. The non-tariff, building standards and economic and technical cooperation areas of the proposal continue to be worked on within APEC.

C. Major global importers and exporters of forest products, 1996:

Importers	1000 US$	Exporters	1000 US$
USA	$22,558,540	Canada	$25,333,160
Japan	18,890,400	USA	16,939,900
Germany	11,926,820	Sweden	10,996,200
United Kingdom	8,476,689	Finland	10,301,020
Italy	6,148,593	Germany	9,438,751
France	5,356,351	Indonesia	5,206,522
Netherlands	4,489,773	France	4,193,914
Korea, Republic of	4,425,527	Malaysia	4,161,279
China (excl. Hong Kong)	3,858,254	Austria	4,149,678
Spain	3,552,249	Brazil	3,233,476
Belgium-Luxembourg	3,544,574	Russian Federation	2,995,568
Hong Kong, China	3,488,083	Italy	2,486,782
Taiwan	3,040,661	Netherlands	2,406,430
Canada	2,622,203	Belgium-Luxembourg	2,180,694
Switzerland	2,501,957	Norway	2,059,960
World	138,652,200	World	134,656,400

Source: FAO

D. Trade Barriers Faced by Sector

The sector faces a range of barriers. Tariffs remain particularly significant barriers. The 1998 FAO publication *Trade Restrictions and Their Impact on International Trade in Forest Products* which is available in hard copy and on the FAO website [www.fao.org/ur] provides a detailed explanation of the barriers faced in this sector.

Applied tariffs in OECD economies for these products, in general, are relatively low, however, tariffs for specific products remain high. This is especially true for wood panel products, builders' woodwork items, and furniture for those countries that did not agree to the zero for zero on furniture rates for particular products are higher, commonly 10–15%. Tariffs in other countries are higher than this, with rates commonly falling between 10 and 60%.

Tariffs, Selected Countries

HTS Product Chapters: 44, 47, 48, 49, 94 (part).

	Tariff % MFN average
Australia	2.88
Canada	3.88
Chile	11
China	20.86
Taiwan	3.22
Hong Kong, China	0
Indonesia	9.7
Japan	1.14
Korea	4.98
Malaysia	12.26
Mexico	11.32
New Zealand	6.06
Singapore	0
Thailand	20.04
USA	1.4
EU	5.26

Source: FAOSTAT Website

E. Scope

The ATL proposal covers all forest products—from rosin (ex 3804), to logs and wood products (ch44), ratan products (ex 46), pulp, paper and paper products (ch 47, 48 and 49), wooden furniture (ex 9401, ex 9403) and prefabricated buildings made of wood (ex 9406).

F. The Tariff Proposal Target

Existing parties to the Uruguay Round zero for zero agreement to accelerated removal of tariffs in chapters 47, 48 and 49 of the HTS (pulp, paper and paperboard and printed material) would agree to move up the elimination of tariffs in these sectors from 1 January 2004 to 1 January 2000. Others would attempt to remove tariffs by the same date but countries could delay tariff removal until 1 January 2002 on a case by case basis for a limited number of specific products.

The proposal calls for the commencement to tariff cuts on all other products with the goal of eliminating tariffs by 1 January 2002, but accepts that in special circumstances and on a case by case basis elimination could be delayed to 1 January 2004.

G. Non-Tariff Measures

As part of the original APEC EVSL agreed to in November 1997, APEC economies agreed to hire a consultant to undertake a study of non-tariff measures which may be affecting trade in the forest products sector. This past April, APEC issued a request for proposals for the study. The United States is the APEC coordinator for the study. Under the terms of reference, the study will include:

—A comprehensive inventory of non-tariff measures and other policies affecting trade in forest products;
—An identification of the most frequently used measures and policies;
—A qualitative and quantitative analysis of the impact of these measures/policies on trade, including a broader analysis of the policy goals underlying those measures/policies and the economic and environmental costs and benefits stemming from their application.

APEC members have been asked to notify and cross notify on NTMs in effect in their own economies and the economies of other APEC members. The study is to be completed by August 30, 1999, after which an APEC forest experts groups will formulate appropriate recommendations for the voluntary elimination of any unjustified measures identified in the report. APEC economies are then to submit individual, voluntary reports on timetables for the implementation of those recommendations.

H. Economic and Technical Cooperation

Four proposals have been received to date for projects under the environmental and technical cooperation (Ecotech) portion of the APEC EVSL. APEC economies have agreed that Ecotech cooperation projects in support of the forestry initiative should be focused on programs which further environmental goals, such as forest fire prevention, pest control, and adoption of sound phytosanitary standards. The four Ecotech projects under consideration are

—Projects to increase communities' forestry knowledge and their ability to develop solutions to such issues as forest resource assessment using criteria and indicators;
—Enhancement of local industry development in a sustainable manner through training programs on sustainable forest management;
—Cooperation to enhance collaborative work on forest fire prevention and management systems and development of fire monitoring and information systems; and
—Cooperation in such areas as (1) enhanced infrastructure, personnel and exchange of information on standards and technical regulations in the sector; (2) making information and training programs available on paper making, paper stock collection and utilization, recycling and waste reduction, panel production, furniture design, finishing and packaging, and builder's carpentry and joinery design; (3) enhancing transparency in customs procedures applied to the forestry sector through the Subcommittee on Customs Procedures of the APEC Committee on Trade and Investment; (4) promoting exchange of market information through cooperation among relevant organizations; and (5) improving information and monitoring systems associated with harmful pests.

2. Written Comments

Persons wishing to submit written comments in response to this notice should provide 20 copies no later than 30 days from the date of this notice to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, ATTN: Forest Products ATL, Office of the U.S. Trade Representative, Room 122, 600 Seventeenth Street, NW, Washington, DC 20508. Any business confidential submissions must be clearly marked as such on cover page and succeeding page. Such submission must be accompanied by a non-confidential summary thereof.

Non-confidential submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the U.S. Trade Representative, 600 Seventeenth Street, NW, Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.
Dinah Bear,
General Counsel, Council on Environmental Quality.

[FR Doc. 99–16242 Filed 6–24–99; 8:45 am]
BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5863]

Decision That Certain Nonconforming Motor Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: These decisions are effective as of June 25, 1999.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. § 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 22, 1999.

Marilynne Jacobs,
Director, Office of Vehicle Safety Compliance.

Annex A—Nonconforming Motor Vehicles Decided To Be Eligible for Importation

1. Docket No. NHTSA–98–4547
   Nonconforming Vehicle: 1996 Chrysler LHS manufactured for sale in Mexico
   Substantially similar U.S.-certified vehicle: 1996 Chrysler LHS
   Notice of Petition published at: 63 FR 56063 (October 20, 1998)
   Vehicle Eligibility Number: VSP–276
2. Docket No. NHTSA–98–4575
   Nonconforming Vehicles: 1995–1998 Mercedes-Benz E200
   Substantially similar U.S.-certified vehicles: 1995–1998 Mercedes-Benz E220
   Notice of Petition published at: 63 FR 58091 (October 29, 1998)
   Vehicle Eligibility Number: VSP–278
3. Docket No. NHTSA–98–4576
   Nonconforming Vehicles: 1998 Mercedes-Benz CL500
   Substantially similar U.S.-certified vehicles: 1998 Mercedes-Benz CL500
   Notice of Petition published at: 63 FR 58092 (October 29, 1998)
   Vehicle Eligibility Number: VSP–277
4. Docket No. NHTSA–98–4578
   Nonconforming Vehicles: 1987–1995 Mazda RX–7
   Substantially similar U.S.-certified vehicles: 1994–1997 Mazda RX–7
   Notice of Petition published at: 63 FR 58090 (October 29, 1998)
   Vehicle Eligibility Number: VSP–279
5. Docket No. NHTSA–98–4800
   Nonconforming Vehicles: 1984–1992 BMW K100 Motorcycles
   Substantially similar U.S.-certified vehicles: 1984–1992 BMW K100 Motorcycles
   Notice of Petition published at: 63 FR 67984 (December 9, 1998)
   Vehicle Eligibility Number: VSP–285
6. Docket No. NHTSA–98–4801
   Nonconforming Vehicles: 1990–1991 BMW 320I
   Substantially similar U.S.-certified vehicles: 1990–1991 BMW 320I
   Notice of Petition published at: 63 FR 67982 (December 9, 1998)
   Vehicle Eligibility Number: VSP–283
7. Docket No. NHTSA–98–4802
   Nonconforming Vehicle: 1995 Mercedes-Benz SL320
   Substantially similar U.S.-certified vehicle: 1995 Mercedes-Benz SL320
   Notice of Petition published at: 63 FR 67983 (December 9, 1998)
   Vehicle Eligibility Number: VSP–282
8. Docket No. NHTSA–98–4803
   Nonconforming Vehicles: 1988–1989 Volkswagen Transporter
   Substantially similar U.S.-certified vehicles: 1988–1989 Volkswagen Vanagon
   Notice of Petition published at: 63 FR 67981 (December 9, 1998)
   Vehicle Eligibility Number: VSP–284
9. Docket No. NHTSA–98–4804
   Nonconforming Vehicles: 1991 Honda Accord
   Substantially similar U.S.-certified vehicles: 1991 Honda Accord
   Notice of Petition published at: 63 FR 66231 (December 1, 1998)
   Vehicle Eligibility Number: VSP–280
10. Docket No. NHTSA–98–4805
    Nonconforming Vehicles: 1999 Harley Davidson FX, FL, and XL Motorcycles
    Substantially similar U.S.-certified vehicles: 1999 Harley Davidson FX, FL, and XL Motorcycles
    Notice of Petition published at: 63 FR 66230 (December 1, 1998)
    Vehicle Eligibility Number: VSP–281
11. Docket No. NHTSA–98–4863
    Nonconforming Vehicles: 1995–1998 Volvo 850 Turbo
    Substantially similar U.S.-certified vehicles: 1995–1998 Volvo 850 Turbo
    Notice of Petition published at: 63 FR 68502 (December 11, 1998)
    Vehicle Eligibility Number: VSP–286
12. Docket No. NHTSA–99–5068
    Nonconforming Vehicles: 1996–1998 Suzuki GSF 750 Motorcycles
    Substantially similar U.S.-certified vehicles: 1996–1998 Suzuki GSF 600 Motorcycles
    Notice of Petition published at: 64 FR 7684 (February 16, 1999)
    Vehicle Eligibility Number: VSP–287
13. Docket No. NHTSA–99–5068–1
    Nonconforming Vehicles: 1994–1998 Honda VF750 Motorcycles
    Substantially similar U.S.-certified vehicles: 1994–1998 Honda VF750 Motorcycles
    Notice of Petition published at: 64 FR 7684 (February 16, 1999)
    Vehicle Eligibility Number: VSP–290
14. Docket No. NHTSA–99–5069
    Nonconforming Vehicles: 1994–1998 Mercedes-Benz C190
    Substantially similar U.S.-certified vehicles: 1994–1998 Mercedes-Benz C220
    Notice of Petition published at: 64 FR 7685 (February 16, 1999)
    Vehicle Eligibility Number: VSP–289
15. Docket No. NHTSA–99–5070
    Nonconforming Vehicles: 1985–1998 Kawasaki ZX600 Motorcycles
    Substantially similar U.S.-certified vehicles: 1985–1998 Kawasaki ZX600 Motorcycles
    Notice of Petition published at: 64 FR 7687 (February 16, 1999)
    Vehicle Eligibility Number: VSP–288
16. Docket No. NHTSA–99–5197
    Nonconforming Vehicles: 1993–1996 Lexus GS300
    Substantially similar U.S.-certified vehicles: 1993–1996 Lexus GS300
    Notice of Petition published at: 64 FR 13247 (March 17, 1999)
    Vehicle Eligibility Number: VSP–293
17. Docket No. NHTSA–99–5208
    Nonconforming Vehicles: 1997–1999 Ferrari Maranello 550
    Substantially similar U.S.-certified vehicles: 1997–1999 Ferrari Maranello 550
    Notice of Petition published at: 64 FR 13248 (March 17, 1999)
    Vehicle Eligibility Number: VSP–292
18. Docket No. NHTSA–99–5209

Nonconforming Vehicles: 1992–1993 Bentley Turbo R
Substantially similar U.S.-certified vehicles: 1992–1993 Bentley Turbo R
Notice of Petition published at: 64 FR 13245 (March 17, 1999)
Vehicle Eligibility Number: VSP–291

[FR Doc. 99–16184 Filed 6–24–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5864]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: These decisions are effective as of June 25, 1999.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 22, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex A—Nonconforming Motor Vehicles Decided to be Eligible for Importation

1. Docket No. NHTSA–99–5207
Nonconforming Vehicle: 1986–1995 BMW R80 and R100 Motorcycles
Substantially similar U.S.—certified vehicle: 1986–1995 BMW R80 and R100 Motorcycles
Notice of Petition published at: 64 FR 13244 (March 17, 1999)
Vehicle Eligibility Number: VSP–295
2. Docket No. NHTSA–99–5402
Nonconforming Vehicles: 1993–1998 BMW K1100 and K1200 Motorcycles
Substantially similar U.S.—certified vehicles: 1993–1998 BMW K1100 and K1200 Motorcycles
Notice of Petition published at: 64 FR 19212 (April 19, 1999)
Vehicle Eligibility Number: VSP–303
3. Docket No. NHTSA–99–5495–1
Nonconforming Vehicles: 1995–1997 Mercedes-Benz E500
Substantially similar U.S.—certified vehicles: 1995–1997 Mercedes-Benz E500
Notice of Petition published at: 64 FR 18477 (April 14, 1999)
Vehicle Eligibility Number: VSP–304
4. Docket No. NHTSA–99–5496
Nonconforming Vehicles: 1995–1999 Mercedes-Benz S600
Substantially similar U.S.—certified vehicles: 1995–1999 Mercedes-Benz S600
Notice of Petition published at: 64 FR 18479 (April 14, 1999)
Vehicle Eligibility Number: VSP–297
5. Docket No. NHTSA–99–5497
Nonconforming Vehicles: 1994–1999 Cadillac DeVille
Substantially similar U.S.—certified vehicles: 1994–1999 Cadillac DeVille
Notice of Petition published at: 64 FR 18478 (April 14, 1999)
Vehicle Eligibility Number: VSP–300
6. Docket No. NHTSA–99–5498
Nonconforming Vehicles: 1997 Chevrolet Astro Van
Substantially similar U.S.—certified vehicles: 1997 Chevrolet Astro Van
Notice of Petition published at: 64 FR 18962 (April 16, 1999)
Vehicle Eligibility Number: VSP–298
7. Docket No. NHTSA–99–5499
Nonconforming Vehicle: 1992–1994 Mercedes-Benz 400SE
Substantially similar U.S.—certified vehicle: 1992–1994 Mercedes-Benz 500SEL
Notice of Petition published at: 64 FR 18961 (April 16, 1999)
Vehicle Eligibility Number: VSP–296
8. Docket No. NHTSA–99–5500
Nonconforming Vehicles: 1990–1998 Yamaha Virago Motorcycles
Substantially similar U.S.—certified vehicles: 1990–1998 Yamaha Virago Motorcycles
Notice of Petition published at: 64 FR 18960 (April 16, 1999)
Vehicle Eligibility Number: VSP–301
9. Docket No. NHTSA–99–5530
Nonconforming Vehicles: 1993–1997 Toyota Previa
Substantially similar U.S.—certified vehicles: 1993–1997 Toyota Previa
Notice of Petition published at: 64 FR 19581 (April 21, 1999)
Vehicle Eligibility Number: VSP–302
10. Docket No. NHTSA–99–5531
Nonconforming Vehicles: 1990–1991 and 1993–1994 BMW 7 Series
Substantially similar U.S.—certified vehicles: 1990–1991 and 1993–1994 BMW 7 Series
Notice of Petition published at: 64 FR 19580 (April 21, 1999)
Vehicle Eligibility Number: VSP–299

[FR Doc. 99–16185 Filed 6–24–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5862; Notice 1]

General Motors Corp.; Receipt of Application for Determination of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, has applied to be exempted for the notification and remedy requirements of 49 U.S.C. Chapter 301 "Motor Vehicle Safety" because of a noncompliance with, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection." The basis of the application is that the noncompliance is inconsequential to motor vehicle safety. GM has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Information Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Description of Noncompliance

On February 2, 1999, NHTSA tested a 1999 Chevrolet Tahoe to the performance requirements of S13 of FMVSS No. 208 *Alternative unbelted test for vehicles manufactured before September 1, 2001.* The test was conducted at the Transportation Research Center of Ohio and the right front passenger Anthropomorphic Test Dummy (ATD) registered a neck extension moment of 67 Nm. This value exceeds the maximum limit of 57 Nm specified by S13.2(b) of the standard.

In response to the test failure, GM conducted an investigation to understand the subject test results and to determine the cause of the resultant neck extension moment of 67 Nm. After examining all the relevant information and conducting additional tests, GM estimates that 50 percent of the 1999 model year (MY) Chevrolet and GMC C/K vehicles manufactured between September 1, 1998 and May 5, 1999, may produce similar results if all the subject vehicles were subjected to the 30 mph Sled Test in accordance with S13.1 of FMVSS No. 208.

Supporting Information as Submitted by GM

There were 279,132 subject vehicles manufactured between September 1, 1998 and May 5, 1999, with right front passenger restraint systems that may not consistently meet the neck extension moment prescribed in S13.2(b) of the standard. A neck extension moment is produced during the test as a result of the reaction to forces acting on the head in such a way as to rotate the head rearward at the top of the neck. GM's analysis indicates that, due to test and/or product variations, approximately 50 percent of the right front passenger air bags could contribute to ATD kinematics that could allow the passenger ATD to exceed the 57 Nm neck extension value limit.

The prescribed Sled Test pulse is of a longer duration than a typical 30 mph rigid barrier pulse for the subject vehicles (125 msec versus approximately 80 msec). Because of this, the air bag must stay inflated longer during a test using the sled pulse to allow the unbelted ATD's torso energy to dissipate over a longer time period. Two design interventions involving the air bag system could be used to address this. It would be possible to increase the gas output into the deploying bag by adding more propellant to the inflator. However, this would be counter to the reasons the agency permitted less forceful air bags, and for the FMVSS 208 Sled Test being allowed as an alternative test method with an unbelted, 50th percentile ATD. The intent of the Sled Test provision, and the ongoing rulemaking to address air bag aggressivity, is to allow and encourage less aggressive air bag inflators in motor vehicles to reduce the inflation induced injury risks to out-of-position small adults and children.

A second possible approach is to reduce the venting capacity of the air bag. By reducing the venting capacity, the inflation gas is retained in the bag for a longer period of time resulting in bag pressure being retained over a longer period. GM test results (provided to NHTSA–OVSC in USG 3433; Part 5, dated May 7, 1999) consistently provided neck extension moments well below the 57 Nm limit when conducted with air bags having each of the two vent holes reduced from a 60 mm diameter to a 30 mm diameter. Considering all these resultant test values and the consistency of the neck extension measurements from these tests, GM implemented this vent size change in the subject vehicle production to further assure compliance. The implementation of this change was completed in GM's vehicle production facilities on May 5, 1999.

GM has examined the effect on motor vehicle safety involved in this noncompliance and the appropriateness of field action. This evaluation utilizes the total of 279,132 1999 MY Chevrolet and GMC C/K vehicles that were manufactured between September 1, 1998 and May 5, 1999 with the right front passenger air bag systems in question and very conservative estimates for the remainder of the analysis's multipliers. Approximately 50 percent of the subject vehicles, or 139,566 vehicles, may have a passenger air bag that could contribute to ATD kinematics that could allow the passenger ATD to exceed the 57 Nm neck extension requirement if tested to the S13 requirements of the standard. Projecting 5,700 deployments per 1 million car years for a 10 year vehicle life cycle, a total of 7,960 deployments can be expected. It is anticipated that one third of these deployments (2,653) would have a right front passenger present. Using the recognized current national seat belt use rate of 70 percent, 30 percent (or 796 occupants) of these deployments may involve an unbelted occupant. Approximately 20 percent of the deployments would be at a crash pulse similar to or more severe than used for the FMVSS 208 Sled Test, resulting in the potential that 159 of the passengers may be involved in such a deployment. Assuming 60 percent of these passengers are the same size or larger than the 50th percentile male ATD, 95 right front occupants could be large enough that sufficient torso energy may not be dissipated to meet the specific neck extension requirement of the standard.

The risk of neck injury to these 95 occupants can be estimated using the neck extension moment injury risk curve submitted to the agency during the referenced rulemaking and provided as Attachment A. It was also provided as Figure 4 of Attachment C—Proposal for Dummy Response Limits for FMVSS 208 Compliance Testing—in the AAMA response S98–13 to Docket No. NHTSA 98–4405; Notice 1 dated December 17, 1998. The risks of an AIS≥3 neck injury for the 50th percentile adult male experiencing a neck extension moment of 57 Nm (current FMVSS 208 requirement) and 67 Nm (measured during the subject agency enforcement test) for both a relaxed and tensed occupant are given in Table 1. Also shown are the estimated number of the 95 occupants who may experience an AIS≥3 neck injury.

TABLE 1.—INJURY RISK VALUE FOR AN AIS≥3 NECK INJURY OF NECK EXTENSION MOMENTS FOR NO MUSCLE TONE AND FOR 80 PERCENT MUSCLE TONE MEASURED WITH THE 50TH PERCENTILE ADULT MALE ATD

	Neck extension moment (Nm)	% Risk of AIS≥3 Neck Injury		Potential number of occupants with AIS≥3 neck injury	
		No muscle tone	80% muscle tone	No muscle tone	80% muscle tone
MVSS Req'mt	57	0.8	0.09	<1 (0.76)	0 (0.09)
TRC Test	67	2.2	0.3	2 (2.09)	0 (0.29)

Therefore, if corrective action is not implemented for the 279,132 subject vehicles, the increase in the estimated number of occupants that may be exposed to an AIS≥3 neck injury would be no more than one occupant, but more likely would be close to zero depending on the degree of muscle tone involved. The reason this increase is so small is that the current FMVSS 208 neck extension moment limit of 57 Nm is an extremely conservative limit. This value corresponds to only a 0.8 percent risk of an AIS≥3 neck injury with no muscle tone assumed and only a 0.09 percent risk if 80 percent muscle tone is assumed.

As part of the aforementioned ongoing rulemaking, the agency is currently considering the AAMA recommendation that an injury risk level of 5 percent be used for setting regulated injury criteria limits. This includes the recommendation that the neck extension limit be set at a 5 percent risk of an AIS≥3 neck injury. For out-of-position occupant measurements with the 50th percentile male ATD, this would be a 77 Nm limit without consideration for muscle tone, and the neck extension limit for in-position occupants would be 96 Nm considering 80 percent muscle tone. For either case, the resultant 67 Nm measurement from the agency's test is substantially below these recommended limits.

These recommended neck extension limits of 77 and 96 Nm are also exceptionally conservative compared to the risk level associated with brain injury that is currently comprehended in FMVSS 208. The current head injury criteria (HIC) limit of 1000 allows for a 16 percent risk of an AIS≥4 brain injury. Furthermore, the current FMVSS 208 injury criteria for chest displacement and femur loads are regulated at even higher risk levels than HIC. In fact, the rigid *barrier* test methods prescribed in FMVSS 208 for *both* belted and unbelted ATDs currently include these HIC, chest displacement and femur injury criteria, but do *not* currently specify any of the neck criteria associated with the Sled Test.

The current neck extension limit of 57 Nm is a very conservative limit, especially when compared to the current HIC, chest displacement and femur load limits required by FMVSS 208. Because of this and because of no more that one occupant and possible zero occupants may be at risk of an AIS ≥ 3 neck injury if corrective action is not implemented for 279,132 subject vehicles, GM believes this noncompliance is inconsequential as it relates to motor vehicle safety. Therefore, GM requests the affected vehicles be exempted from the recall and remedy provisions of Section 30120 of the Safety Act.

The agency is aware that significant controversy continues with regard to the injury criteria currently specified for the neck. This is a continuing topic of discussion between the agency and others in the ongoing rulemaking regarding air bag related injuries and fatalities to unbelted and out-of-position occupants. These ongoing rulemaking discussions support GM's belief that the current limit of 57 Nm for the specified neck extension criteria is well below the level necessary to meet the need for motor vehicle safety.

Interested persons are invited to submit written data, views and arguments on the petition of GM, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 26, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: June 21, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–16165 Filed 6–24–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33757]

Delaware Transportation Group, Inc.—Corporate Family Exemption—Diamond State Port Railway Company, Inc., and Gettysburg Railway Company, Inc.

Delaware Transportation Group, Inc. (DTGI), a Class III rail common carrier, has filed a notice of exemption. The exempt transaction involves restructuring of the corporate family. John H. Marino owns a controlling interest in DTGI and Gettysburg Railway Company, Inc. (GRCI).[1] Through the transaction covered by this filing, the relationship between DTGI and GRCI would change from one between corporate siblings to one where DTGI would become the parent company of GRCI. DTGI would also control Diamond State Port Railway Company. Inc. (DSPR).

The transaction was scheduled to be consummated on or shortly after June 4, 1999.

This transaction is related to two simultaneously filed notices of exemption in STB Finance Docket No. 33755, *Diamond State Port Railway, Inc.—Lease and Operation Exemption—Diamond State Corporation and F.A. Potts & Company International, Inc.*, wherein DSPR seeks to lease and operate certain rail lines of the Diamond State Port Corporation and F.A. Potts & Company International, Inc., and STB Finance Docket No. 33756, *Delaware Transportation Group, Inc.*—Continuance in Control Exemption—Diamond State Port Railway Company, Inc., wherein DTGI seeks to continue in control of DSPR, upon its becoming a Class III rail carrier as well as to control one existing railroad (GRCI).[2]

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33757, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Rea, Cross, & Auchincloss, 1707 L Street, NW., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 21, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16239 Filed 6–24–99; 8:45 am]

BILLING CODE 4915–00–P

[1] *See John H. Marino—Continuance in Control Exemption—Delaware Transportation Group, Inc., Gettysburg Railway Company, Inc., and Evansville Terminal Company, Inc.*, STB Finance Docket No. 33505 (STB served Nov. 21, 1997). As indicated in DTGI's notice, Mr. Marino never acquired any controlling interest in the Evansville Terminal Company, Inc.

[2] *See Gettysburg Railway Company, Inc.—Lease and Operation Exemption—Delaware Transportation Group, Inc.*, STB Finance Docket No. 33504 (STB served Nov. 21, 1997).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33756]

Delaware Transportation Group, Inc.—Continuance in Control Exemption—Diamond State Port Railway Company, Inc.

Delaware Transportation Group, Inc. (DTGI), has filed a notice of exemption to continue in control of Diamond State Port Railway Company, Inc. (DSPR), upon DSPR's becoming a Class III railroad.

The transaction was scheduled to be consummated on or shortly after June 4, 1999.

This transaction is related to two simultaneously filed verified notices of exemption in STB Finance Docket No. 33755, *Diamond State Port Railway, Inc.—Lease and Operation Exemption—Diamond State Corporation and F.A. Potts & Company International, Inc.*, wherein DSPR seeks to lease and operate certain rail lines of Diamond State Port Corporation and F.A. Potts & Company International, Inc., and STB Finance Docket No. 33757, *Delaware Transportation Group, Inc.—Corporate Family Exemption—Diamond State Port Railway Company, Inc., and Gettysburg Railway Company, Inc.*, wherein DTGI will become the parent company for its affiliates Gettysburg Railway Company, Inc., (GRCI) and DSPR.

In addition to its control of DSPR, DTGI will control one previously existing Class III railroad: GRCI, operating in the State of Pennsylvania.[1]

DTGI states that: (i) The railroads will not connect with each other or any railroad in their corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33756, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Rea, Cross & Auchincloss, 1707 L Street, NW, Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 21, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16241 Filed 6–24–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33755]

Diamond State Port Railway Company, Inc.—Lease and Operation Exemption—Diamond State Port Corporation and F.A. Potts & Company International, Inc.

Diamond State Port Railway Company, Inc. (DSPR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to lease and operate approximately 1.1 miles of certain rail lines owned by the Diamond State Port Corporation (DPC), a political subdivision of the State of Delaware, and F.A. Potts & Company International, Inc. (FAPC), located adjacent to and within the Port of Wilmington in the State of Delaware. The lines involved consist of the following: (1) Approximately 0.5 miles of DPC's rail line (the Diamond Line) extending from a connection with Consolidated Rail Corporation's (Conrail) New Castle Secondary Track at approximately Conrail milepost 2.0, to the vicinity of Gist Road in Wilmington, DE; and (2) approximately 3,000 feet of FAPC's trackage (the Potts Line) extending from a connection with Conrail (approximately 300 feet north of the

[1] *See Gettsyburg Railway Company, Inc.—Lease and Operate Exemption—Delaware Transportation Group, Inc.*, STB Finance Docket No. 33504 (STB served Nov. 21, 1997).

Diamond Line's connection with Conrail's New Castle Secondary Track) to the vicinity of Christiana Ave., and U.S. Interstate 495.[1] Upon exercising the authority granted in this exemption, DSPR will become a Class III rail carrier.[2]

DSPR will continue rail service formerly provided by Conrail to existing rail customers located in the above-described area.[3]

The transaction was scheduled to be consummated on or shortly after June 4, 1999.

This transaction is related to two simultaneously filed notices of exemption in STB Finance Docket No. 33756, *Delaware Transportation Group, Inc.—Continuance in Control Exemption—Diamond State Port Railway Company, Inc.*, wherein Delaware Transportation Group, Inc. (DGTI) seeks to continue in control of DSPR, upon DSPR's becoming a Class III rail carrier and one existing Class III railroad,[4] and STB Finance Docket No. 33757, *Delaware Transportation Group, Inc.—Corporate Family Exemption—Diamond State Port Railway Company, Inc., and Gettysburg Railway Company, Inc.*, wherein DTGI will become the parent company of Gettysburg Railway Company, Inc., and DSPR.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33755, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert A. Wimbish, Rea, Cross & Auchincloss, 1707 L Street, NW, Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 21, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16240 Filed 6–24–99; 8:45 am]

BILLING CODE [illegible]

[1] As indicated by DSPR in its notice, because both of the lines described above have been operated until now as spur, industrial, switching or terminal trackage, the lines in question have never, to DSPR's knowledge, been assigned milepost numbers or valuation station numbers. The property descriptions provided are offered in lieu of the milepost or valuation station data typically provided to define the origination and termination points on rail lines.

[2] DSPR states that its revenues will not exceed those that would qualify it as a Class III rail carrier and its revenues are not projected to exceed $5 million.

[3] Norfolk Southern Railway has assumed service previously provided by Conrail on connecting main lines into the Wilmington, DE area. *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail, Inc., and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998).

[4] *See Gettsyburg Railway Company, Inc.—Lease and Operation Exemption—Delaware Transportation Group, Inc.*, STB Finance Docket No. 33504 (STB served Nov. 21, 1997).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33764]

Rock & Rail, Inc.—Acquisition and Operation Exemption—Railroad Lines Near Kelker, El Paso County, CO

Rock & Rail, Inc. (R&R), a Class III rail common carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate sections of track it has purchased from several non-railroad owners.[1] The railroad lines are approximately a mile in length, beginning at a turnout from a siding paralleling the line of The Burlington Northern Santa Fe Railway Company at milepost 658.45, near Kelker, El Paso County, CO.

The transaction is scheduled to be consummated on or after June 17, 1999.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33764, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1100 New York Avenue, NW, Suite 750 West, Washington, DC 20005–3934.

Decided: June 17, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16131 Filed 6–24–99; 8:45 am]

BILLING CODE 4915–00–P

[1] R&R represents that the sellers of the track are Kappa Sizma's Gamma-O Educational Foundation, First United Methodist Church, and Ochs Brothers, a Partnership.

Corrections

Federal Register
Vol. 64, No. 122
Friday, June 25, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[FRL 6308–6]

RIN 2060–AE29

Phase 2 Emission Standards for New Nonroad Spark-Ignition Nonhandheld Engines At or Below 19 Kilowatts

Correction

In rule document 99–6175, beginning on page 15208, in the issue of Tuesday, March 30, 1999, make the following correction:

§ 90.706 [Corrected]

On page 15247, in the second column, in § 90.706 (b)(7), the equation is corrected to read as set forth below:

G:\GRAPHICS\ER30MR99.001

[FR Doc. C9–6175 Filed 6–24–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–165]

RIN 2121–AA97

Regulated Navigation Area: Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey

Correction

In rule document 99–9431, beginning on page 18577, in the issue of Thursday, April 15, 1999, make the following correction:

§ 165.165 [Corrected]

On page 18580, in the first column, in § 165.165, paragraph designation "(e)" should read "(c)".

[FR Doc. C9–9431 Filed 6–24–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Friday
June 25, 1999

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 417 and 420

Licensing and Safety Requirements for Operation of a Launch Site; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 417, 420

[Docket No. FAA–1999–5833; Notice No. 99–07]

RIN 2120–AG15

Licensing and Safety Requirements for Operation of a Launch Site

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Transportation's (DOT or the Department) Federal Aviation Administration (FAA) is proposing to amend its commercial space transportation licensing regulations to add licensing and safety requirements for the operation of a launch site. To date, commercial launches have occurred principally at federal launch ranges under safety procedures developed by federal launch range operators. To enable the development and use of launch sites that are not operated by a federal launch range, rules are needed to establish specific licensing and safety requirements for operating a launch site, whether that site located on or off of a federal launch range. These proposed rules would provide licensed launch site operators with licensing and safety requirements to protect the public from the risks associated with activities at a launch site.

A separate rulemaking will address licensing and safety requirements for operation of a reentry site.

DATES: Comments on the proposed regulations must be submitted on or before September 23, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–5833, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: J. Randall Repcheck, Licensing and Safety Division (AST–200), Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591; telephone (202) 267–8602; or Laura Montgomery, Office of the Chief Counsel (AGC–250), FAA, 800 Independence Avenue, Washington, DC 20591; telephone (202) 267–3150.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the FAA before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable, and consistent with statutory deadlines. The proposals contained in this Notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–1999–5833." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

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Outline of Notice of Proposed Rulemaking:

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I. Background

The Commercial Space Launch Act of 1984, as codified at 49 U.S.C. Subtitle IX—Commercial Space Transportation, ch. 701, Commercial Space Launch Activities, 49 U.S.C. 70101–70121 (the Act), authorizes the Secretary of Transportation to license a launch or the operation of a lunch site carried out by a U.S. citizen or within the United States. 49 U.S.C. 70104, 70105. The Act directs the Secretary to exercise this responsibility in the interests of public health and safety, safety of property, and the national security and foreign policy interests of the United States 49 U.S.C. 70105. On August 4, 1994, a National Space Transportation Policy reaffirmed the government's commitment to the commercial space transportation industry and the critical role of the Department of Transportation (DOT) in encouraging and facilitating private sector launch activities. A National Space Policy released on September 19, 1996, notes and reaffirms that DOT is responsible as the lead agency for regulatory guidance pertaining to commercial space transportation activities.

A. The FAA's Commercial Space Transportation Licensing Role

On November 15, 1995, the Secretary of Transportation delegated commercial space licensing authority to the Federal Aviation Administration. The FAA licenses commercial launches and the operation of launch sites pursuant to the Act and implementing regulations at 14 CFR Ch. III. The commercial launch licensing regulations were issued in April 1988, when no commercial launches had yet taken place. Accordingly, DOT established a flexible licensing process intended to be responsive to an emerging industry while ensuring public safety. The Department noted that it would "continue to evaluate and, when necessary, reshape its program in response to growth, innovation, and diversity in this critically important industry." "Commercial Space Transportation; Licensing Regulations," 53 FR 11,004, 11,006 (Apr. 4, 1988).

Under the 1988 regulations, DOT implemented a case-by-case approach to evaluating launch and launch site operator license applications. At the time, it was envisioned that most commercial launches would take place from federal launch ranges, which imposed extensive ground and flight safety requirements on launch operators, pending the development of commercial launch sites. The Federal launch ranges provided commercial launch operators with facilities and launch support, including flight safety services.

Since 1988, DOT and now the FAA have taken steps designed to simplify further the licensing process for launch operators. The regulatory and licensing emphasis during the past decade has been on launch operators. The emergence of a commercial launch site sector has only become a reality during the past few years.

B. Growth and Current Status of Launch Site Industry

The commercial space transportation industry continues to grow and diversify. Between the first licensed commercial launch in August 1989, and June 1999, 113 licensed launches have taken place from five different federal launch ranges, one from a launch site operated by a licensed launch site operator and one has taken place from Spain. The vehicles have included traditional orbital expendable launch vehicles, such as the Atlas, Titan, and Delta, sub-orbital launch vehicles such as the Starfire, new expendable launch vehicles using traditional launch techniques, such as Athena and Conestoga, and unique vehicles, such as the air-borne Pegasus. In a notice of proposed rulemaking issued on March 19, 1997, 62 FR 13216, the FAA discussed how the commercial launch industry has evolved from one relying on traditional orbital and suborbital launch vehicles to one with a diverse mix of vehicles using new technology and new concepts. A number of international ventures involving U.S. companies have also formed, further adding to this diversity.

Development in cost savings and innovation are not confined to the launch industry. The launch site industry, the focus of this NPRM, has also made progress. Commercial launch site operations are coming on line with the stated goal of providing flexible and cost-effective facilities both for existing launch vehicles and for new vehicles. When the commercial launch industry began, commercial launch companies based their launch operations chiefly at federal launch ranges operated by the Department of Defense (DOD) and the National Aeronautics and Space Administration (NASA). Federal launch ranges that have supported licensed launches include the Eastern Range, located at Cape Canaveral Air Station in Florida (CCAS), and the Western Range located at Vandenberg Air Force Base (VAFB), in California, both operated by the U.S. Air Force; Wallops Flight Facility in Virginia, operated by NASA; White Sands Missile Range (WSMR) in New Mexico, operated by the U.S. Army; and the Kauai Test Facility in Hawaii, operated by the U.S. Navy. Federal launch ranges provide the advantage of existing launch infrastructure and range safety services. Launch companies are able to obtain a number of services from a federal launch range, including radar, tracking and telemetry, flight termination and other launch services.

Today, most commercial launches still take place from federal launch ranges; however, this pattern may change as other launch sites become more prevalent. On September 19, 1996, the FAA granted the first license to operate a launch site to Spaceport Systems International to operate California Spaceport. That launch site is located within VAFB. Three other launch site operators have received licenses. Spaceport Florida Authority (SEA) received an FAA license to operate Launch Complex 46 at CCAS as a launch site. Virginia Commercial Space Flight Authority (VCSFA) received a license to operate Virginia Spaceflight Center (VSC) within NASA's Wallops Flight Facility. Most recently, Alaska Aerospace Development Corporation (AADC) received a license to operate Kodiak Launch Complex (KLC) as a launch site on Kodiak Island, Alaska. The New Mexico Office of Space Commercialization (NMOSC) proposes to operate Southwest Regional Spaceport (SRS) adjacent to the White Sands Missile Range as a site for reusable launch vehicles. It is evident from this list that federal launch ranges still play a role in the licensed operation of a number of launch sites. California Spaceport, Spaceport Florida and VSC are located on federal launch range property.

Whether launching from a federal launch range, a launch site located on a federal launch range, or a non-federal launch site, a launch operator is responsible for ground and flight safety under its FAA license. At a federal launch range a launch operator must comply with the rules and procedures of the federal launch range. The safety rules, procedures and practice, in concert with the safety functions of the federal launch ranges, have been assessed by the FAA, and found to satisfy the majority of the FAA's safety concerns. In contrast, when launching from a non-federal launch site, a launch operator's responsibility for ground and flight safety takes on added importance. In the absence of federal launch range oversight, it will be incumbent upon each launch operator to demonstrate the adequacy of its ground and flight safety to the FAA.

C. Current Practices

Because of the time and investment involved in bringing a commercial launch facility into being, several entities that have been planning to establish these facilities asked the DOT for guidance concerning the information that might be requested as part of an application for a license to operate a launch site. In response to these requests. DOT's then Office of Commercial Space Transportation (Office) published "Site Operators License, Guidelines for Applicants," on August 8, 1995, as guidance for potential launch site operators. The guidelines describe the information that DOT, and now the FAA, expects from an applicant for a license to operate a commercial launch site. This information includes launch site location information, a hazard analysis, and a launch site safety operations document that governs how the facility should be operated to ensure public safety and the safety of property. The Office intended that the guidelines would assist an applicant with the parts of the application that are critical to assuring the suitability of the launch site location, the applicant's organization, and the facility for providing safe operations.

The Office issued the guidelines as an interim measure for potential developers of launch sites pending this

rulemaking, and the guidelines describe the information that the FAA requests of an applicant as part of its application for a license to operate a launch site. The pace of development of the launch site industry has resulted in the FAA describing the process and requirements for applications for launch site operator licenses under the guidelines. As noted above, the FAA issued its first license to operate a launch site to Spaceport Systems International for the operation of California Spaceport. The FAA issued this license under its general authority under 49 U.S.C. 70104 and 70105 and 14 CFR Ch. III to license the operation of a launch site. Because the operation of California Spaceport as a launch site occurs at a federal launch range, the U.S. Air Force is expected to play a significant role in California Spaceports's safety process. In fact, the FAA was able to review the Spaceport Systems International application expeditiously because the applicant certified its intention to observe the safety requirements currently applied by the Western Range and contained in "Eastern and Western Range 127–1. Range Safety Requirements (EWR 127–1)," (Mar. 1995).[1] The FAA determined that applicant compliance with EWR 127–1, together with Air Force approval of other important elements of the operation of a launch site protected public health and safety and the safety of property. In general, the FAA deems the compliance by a licensed launch site operator with these requirements in combination with other safety practices imposed by a federal launch range as acceptable for purposes of protecting the public and property from hazards associated with launch site activities at a licensed launch site operator's facilities. In 1997, the FAA entered into a Memorandum of Agreement with Department of Defense and National Aeronautics and Space Administration regarding safety oversight of licensed launch site operators located on federal launch ranges.

Until these proposed rules become final, the guidelines provide the only published criteria for guiding a prospective license applicant and in identifying the criteria that the FAA uses in determining whether a proposed commercial launch site is acceptable.

Comparison of the Guidelines and the Proposed Regulations

The existing guidelines will no longer be in effect once the proposed regulations are issued as final rules. A comparison of some of the similarities and differences may therefore prove of assistance. The FAA will issue a license to operate a launch site under either the guidelines or the proposed rules only if the operation of the launch site will not jeopardize the public health and safety, the safety of property, or national security or foreign policy interests of the United States. The guidelines are flexible and are intended to identify the major elements of an application and lead the applicant through the application process with the FAA. The proposed rules would codify the requirements that must be met before a license will be issued.

The guidelines and the proposed rules share some common elements, namely, the need for the applicant to supply information to support the FAA's environmental determination under the National Environmental Policy Act (NEPA) and the FAA's policy review that addresses national security and foreign policy issues. These requirements are discussed in detail below, in the description of the proposed regulations. Under the proposed regulations, the information requirements for these reviews remain for the most part unchanged from the guidelines.

A review of the suitability of the proposed location of the launch site is an important component of both the guidelines and the proposed regulations. Although both approaches call for a site location review, the reviews differ in breadth and specificity. The guidelines request an applicant to provide information regarding geographic characteristics, flight paths and impact areas and the meteorological environment. To describe a launch site's geographic characteristics, an applicant is requested to provide information regarding the launch site location, size, and shape, its topographic and geological characteristics, its proximity to populated areas, and any local commercial and recreational activities that may be affected by launches such as air traffic, shipping, hunting, and offshore fishing. An applicant also provides planned possible flight paths and general impact areas designated for launch. If planned flight corridors overfly land, the guidelines request that an applicant provide flight safety analyses for generic sets of launch vehicles and describe, where applicable, any arrangements made to clear the land of people prior to launch vehicle flight. With respect to the meteorological environment, the guidelines request an applicant to provide data regarding temperature, surface and upper wind direction and velocity, temperature inversions, and extreme conditions that may affect the safety of launch site operations. Under the guidelines, an application should include the frequency (average number of days for each month) of extremes in wind or temperature inversion that could have an impact on launch.

In contrast, the proposed rules would require an applicant to use specified methods to demonstrate the suitability of the launch site location for launching at least one type of launch vehicle, including orbital, guided sub-orbital, or unguided sub-orbital expendable launch vehicles, and reusable launch vehicles. Each proposed launch point on the launch site must be evaluated for each type of launch vehicle that the applicant wishes to have launched from the launch point. An applicant would be provided with a choice of methods to develop a flight corridor for a representative launch of an orbital or guided sub-orbital expendable launch vehicle, or to develop a set of impact dispersion areas for a representative launch of an unguided sub-orbital expendable launch vehicle. If a flight corridor or set of impact dispersion areas exists that does not encompass populated areas, no additional analysis would be required. Otherwise, an applicant would be required to conduct a risk analysis to demonstrate that the risk to the public from a representative launch would not exceed a casualty expectation (E_c) of $30 \times 10_{-6}$. The FAA would review the applicant's analyses to ensure the applicant's process was correct, and would approve the launch site location if the E_c risk criteria were met.

Under either the guidelines or the proposed regulations, little or no launch site location review would be needed if the applicant proposed to locate a launch site at a federal launch range. The fundamental purpose of the FAA's proposed launch site location review—to assure that a launch may potentially take place safely from the proposed launch site—has been amply demonstrated at each of the ranges. Exceptions may occur if a prospective launch site operator plans to use a launch site at a federal launch range for launches markedly different from past federal launch range launches, or if an applicant proposes a new launch point from which no launch has taken place.

The guidelines and proposed regulations differ markedly in their approach to ground and flight safety. For ground safety under the guidelines, applicants perform a hazard analysis and develop a comprehensive ground safety plan and a safety organization. Explosive safety is part of the analysis and safety plan. In contrast, the proposed regulations require the submission of an explosive site plan, but impose fewer operational ground safety responsibilities on a launch site operator. For flight safety, under the guidelines and proposed rules, a launch site operator license contains minimal flight safety responsibilities. The FAA assigns almost all responsibility for flight safety and significant ground safety responsibility to a licensed launch operator. Extensive ground and flight safety requirements will accompany a launch license. This does not mean a launch site operator cannot offer flight safety services or equipment to its customers. However, the adequacy of such service and equipment typically will be assessed in the FAA's review of a launch license application.

[1] EWR 127–1 is updated on an ongoing basis. The latest version of these requirements may be found at http://www.pafb.af.mil/45SW/.

II. Discussion of Proposed Regulations

The proposed regulations specify who must obtain a license to operate a launch site, application requirements and licensee responsibilities. Because a launch licensee's license covers ground operations as well as the flight of a launch vehicle, a launch operator is not required to obtain a license to operate a launch site. The FAA is aware that a launch operator may select a launch site for its own launches. In that event, a launch operator requires a license to launch. Only if a prospective launch site operator proposes to offer its launch site to others, need that person obtain a license to operate a launch site.

By means of operational, location, and site layout constraints, the FAA intends its regulations to ensure that the public is not harmed by launches that take place from a launch site whose operation the FAA has licensed. Additionally, in the course of a license review, the FAA will ensure that environmental and international obligations are addressed, and that national security interests are reviewed by the appropriate agencies. To further these objectives, the FAA proposes to create in 14 CFR Chapter III a new part 420 to contain the requirements for obtaining and possessing a license to operate a launch site. The FAA's proposed part 420 would require an applicant to obtain certain FAA approvals in order to receive a license to operate a launch site. These required approvals consist of policy, explosive site plan, and location approvals. Environmental review may precede or be concurrent with the licensing process.

The grant of a license to operate a launch site will not guarantee that a launch license will be granted for any particular launch proposed for the site. All launches will be subject to separate FAA review and licensing.

A. Licensing and Safety Requirements for Operation of a Launch Site

The FAA's proposed approach to licensing the operation of a launch site would focus on four areas of concern critical to ensuring that operation of a launch site would not jeopardize public health and safety, the safety of property or foreign policy and other U.S. interests. These reviews would encompass the environment, policy, siting of explosives, and site location. Under the proposed regulations, an applicant would be required to provide the FAA with information sufficient to conduct environmental and policy reviews and determinations. An applicant would also be required to submit an explosive site plan that shows the location of all explosive hazard facilities and distances between them, and the distances to public areas.

In the case of launch site location approval, the proposed regulations would provide an applicant options for proving to the FAA that a launch could be conducted from the site without jeopardizing public health and safety. The requirement for a launch site location approval would not normally apply to an applicant who proposes to operate an existing launch point at a federal launch range, unless the applicant plans to use a launch point different than used previously by the federal launch range, or to use an existing launch point for a different type or larger launch vehicle than used in the past. The fact that launches have taken place safely from any particular launch point at a federal launch range may provide the same demonstration that would be accomplished by the FAA's proposed location review: Namely, a showing that launch may occur safely from the site.

The FAA is proposing to impose specific ground safety responsibilities on a licensed launch site operator, and will require that an applicant demonstrate how those requirements will be met. A launch site operator licensee's responsibilities would include: Preventing unauthorized public access to the site; properly preparing the public and customers to visit the site; informing customers of limitations on use of the site; scheduling and coordinating hazardous activities conducted by customers; and arranging for the clearing of air and sea routes and notifying adjacent property owners and local jurisdictions of the pending flight of a launch vehicle. Part 420 would also contain launch site operator responsibilities with regard to recordkeeping, license transfer, compliance monitoring, accident investigation and explosives. Other federal government agencies have jurisdiction over a number of ground safety issues, and the FAA does not intend to duplicate their efforts.[2] [3] The FAA will revisit ground safety issues in its development of rules for launches from non-federal launch sites.

Environmental

Licensing the operation of a launch site is a major federal action for purposes of the National Environmental Policy Act, 42 U.S.C. 4321 et seq. As a result, the FAA is required to assess the environmental impacts of constructing and operating a proposed launch site to determine whether these activities will significantly affect the quality of the environment. Although the FAA is responsible under NEPA regulations for preparing an environmental assessment or environmental impact statement, the proposed rules continue to require a license applicant to provide the FAA with sufficient information to conduct an analysis in accordance with the requirements of the Council on Environmental Quality (CEQ) Regulations Implementing the Procedural Provisions of NEPA, 40 CFR parts 1500–1508, and the FAA's Procedures for Considering Environmental Impacts, FAA Order

[2] The U.S. Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (EPA) play a role in regulating ground activities at a launch site. OSHA regulations cover worker safety issues, and may, as a by-product, help protect public safety as well. One provision of particular note is 29 CFR 1910.119, process safety management of highly hazardous chemicals (PSM). The requirements of the PSM standard are intended to eliminate or mitigate the consequences of releases of highly hazardous chemicals that may be toxic, reactive, flammable, or explosive. Management controls are emphasized to address the risks associated with handling or working near hazardous chemicals. These requirements may apply to some launch site and launch operators. EPA regulations are designed to protect the public health and safety from releases of chemicals. One regulation of note is 40 CFR part 68, Accidental release prevention provisions. It applies to an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, and requires the owner or operator to develop and implement a risk management program to prevent accidents and limit the severity of any accidents that occur. The EPA rule further requires sources to conduct an offsite consequence analysis to define the potential impacts of worst-case releases and other release scenarios. For any process whose worst-case release would reach the public, the source must develop and implement a prevention program and an emergency response program. Both the EPA and OSHA prevention rules require regulated entities to conduct formal analyses of the risks involved in the use and storage of covered substances and consider all possible ways in which existing systems could fail and result in accidental release.

[3] ATF regulations cover the long-term storage of explosives.

1050.1D. An applicant will typically engage a contractor with specialized experience in the NEPA process to conduct the study underpinning the FAA's environmental analysis. This rulemaking marks no change in the environmental requirements attendant to obtaining a license to operate a launch site.

The FAA encourages an applicant to begin the environmental review, including the gathering of pertinent information to perform the assessment, early in the planning process, but after the applicant has defined its proposed action and considered feasible alternatives. The FAA will determine whether a finding of no significant impact (FONSI) may be issued after an environmental assessment, or whether an environmental impact statement followed by a record of decision is necessary. An applicant may be subject to restrictions on activities at a proposed launch site. An applicant may acquire property for future use as a launch site; however, absent a FONSI, the FAA must prepare an environmental review that includes consideration of reasonable alternatives to the site. According to the CEQ regulations as interpreted by the courts, an applicant may not use the purchase of a site or construction at the site to limit the array of reasonable alternatives. As a result, an applicant must complete the environmental process before construction or improvement of the site. The FAA will not issue a license if an environmental review in accordance with all applicable regulations and guidelines is not concluded.

Policy

Under current practice, the FAA conducts a policy review of an application for a license to operate a launch site to determine whether operation of the proposed launch site would jeopardize national security, foreign policy interests, or international obligations of the United States. The FAA conducts the policy review in coordination with other federal agencies that have responsibility for national and international interests. The Department of Defense is consulted to determine whether a license application presents any issues affecting national security. The Department of State reviews an application for issues affecting foreign policy or international obligations. Other agencies, such as NASA, are consulted as appropriate. By this rulemaking, the regulations would require an applicant to supply information relevant to the FAA's policy approval, including, for example, identification of foreign ownership of the applicant. The FAA will obtain other information required for a policy review from information submitted by an applicant in other parts of the application. During a policy review, the FAA would consult with an applicant regarding any question or issues before making a final determination. An applicant would have the opportunity to address any questions before completion of the review.

B. Explosive Site Plan Review

Proposed subpart B would establish criteria and procedures for the siting of facilities at a launch site where solid and liquid propellants are to be located to prepare launch vehicles and payloads for flight. Subpart B also would establish application procedures for an applicant to demonstrate compliance with the siting criteria. The requirements in subpart B are commonly referred to as quantity-distance (Q–D) requirements because they provide minimum separation distances between explosive hazard facilities, surrounding facilities and locations where the public may be present on the basis of the type and quantity of explosive material to be located within the area. Minimum prescribed separation distances are necessary to protect the public from explosive hazards on a launch site so that the effects of an explosion does not reach the public.

An applicant would provide the FAA an explosive site plan that demonstrates compliance with the proposed Q–D requirements. the FAA must approve this plan, so applicants are cautioned not to begin construction of facilities requiring an explosives site plan until obtaining FAA approval. Note also that the proposed Q–D requirements do not address any toxic hazards. Toxic hazards may be mitigated through procedural means, and the FAA will address toxic hazards in a separate rulemaking. If a toxic hazard is a controlling factor in siting, it should be considered along with the explosives hazards when the site plan is prepared.

The FAA proposes to adopt the explosive safety practice in use at federal launch ranges today, namely, the application of quantity-distance criteria. Prescribed distances provide for a separation of an explosive source from people and property that may otherwise be exposed to explosive events. These criteria have long been used to mitigate explosive hazards to an acceptable level. Q–D criteria address only the consequences. The underlying assumption of quantity-distance criteria is that an accidental explosion will occur for any explosive material operation.

The quantity-distance criteria in the proposed regulations are a critical mitigation measure required in a launch site operator application to provide the public protection from ground operations at a launch site. The proposed rules have other mitigation measures, including launch site operator responsibilities that address accident prevention measures, and procedural requirements to protect visitors and other launch site customers on the launch site. Any other procedural requirements necessary to protect the public from explosive hazards will be the responsibility of a launch operator under a launch license. The scope of a launch license encompasses ground activities, including the explosive operations involved with the handling and assembly of launch vehicles at a launch site.

The requirement to submit an explosive site plan to the FAA would not apply to an applicant applying for a license to operate a launch site at a federal launch range. Federal launch ranges have separate rules which are either identical or similar to the rules proposed, or permit mitigation measures which otherwise ensure safety.

What follows is a discussion of launch site explosive hazards, the reason the FAA is proposing explosive siting criteria, current Q–D standards, the FAA's proposed use of NASA and DOD Q–D standards, other approaches to explosive safety, application of ATF, DOD or NASA standards, future changes in liquid propellant requirements, and solid and liquid bi-propellants at launch pads.

Explosive Hazards on a Launch Site

The hazards associated with launch vehicle pre-flight operations involving large quantities of propellants may typically be broken down into phases, including storage, handling, assembly, checkout, ordnance installation, propellant loading, and final launch preparations. Each of these are covered below, for liquid and solid propellants.

During storage, liquid propellant hazards include leaking or ruptured propellant tanks causes by loss of pressure or mechanical failure. If fuels and oxidizers are stored separately any potentially harmful event would be limited to fire or tank pressure rupture. Solid propellant hazards include accidental ordnance initiation caused by stray electrical energy or dropping a motor with sufficient impact force to initiate the propellant. Long term storage of solid rocket motors, although not within the scope of this rulemaking,[3] presents its own unique hazards. As solid rocket motors age, chemical changes in the binder within the motor cause ammonium perchlorate to form on the outside of the motor. This is a hazardous condition. The shelf life of solid rocket motors can be extended by a carefully controlled environment in the storage facility.

The handling phase may include the transfer of liquid propellants from one holding tank to another. Explosive reactions may occur if fuels and oxidizers mix due to under or overpressurization, or if improper connections cause propellant tanks, transfer lines, or fittings to leak or rupture. If fuels and oxidizers are handled separately no explosive reactions should occur. Hazardous handling operations of solid rocket motors includes transporting and lifting with cranes at the launch pad or other facility. Any impact during these activities could cause propellant ignition.

During assembly, liquid propellant operations include the assembly and encapsulation of spacecraft and upper stages. Assembly and encapsulation may involve loading hypergolic propellants such as nitrogen tetroxide (N_2O_4) and hydrazine. Tank punctures, impacts caused by lifting, and over- or under-pressurization could cause fuels and oxidizers to come in contact with one another, causing fire and fragmentation hazards. This phase includes the final assembly of solid rocket motors at a launch pad or other facility. Any motor impact on the ground during these activities could cause propellant ignition.

Checkout at a launch pad may involve a number of hazards due to the presence of solid propellant and hypergolic propellant stages. Any accident causing interaction between hypergolic and solid propellants can result in fires, pressure ruptures, and propulsive flight.

During ordnance installation, inadvertent initiation of electro-explosive devices (EEDs) is possible. This does not pose a threat to the public (although it does to the vehicle and personnel) because EEDs have a small quantity of explosive and are not, by design, capable of detonating propellants.

The main hazard during propellant loading is over or under-pressurization of liquid propellant tanks, which may cause major spills of fuels and oxidizers. These events could lead to significant explosive yield, which is the energy released by an explosion.

[3] ATF regulations cover the long-term storage of explosives.

Final launch preparations, which begin just prior to flight, involve a fully fueled launch vehicle. Systems are switched to internal power, and liquid propellant systems are brought to flight pressure. A mishap here could lead to significant explosive yield. The explosive yield of a launch vehicle exploding on a launch pad is based on shock impact for solid propellants, and non-dynamic mixing of liquid propellants by, for example, the failure or interior bulkheads in the launch vehicle.

Reason for Proposing Explosive Siting Criteria

After careful consideration, the FAA decided it had to propose explosive siting criteria to protect the public from explosive hazards associated with the operation of a launch site. Although the FAA places much of the responsibility for safety of hazardous ground operations on the launch operator, the FAA believes that the siting requirements would be better addressed by a launch site operator. This is because the siting requirements will more efficiently be satisfied prior to construction of launch site facilities rather than afterwards. The FAA does not intend to duplicate or supercede existing regulatory frameworks. Although both the Bureau of Alcohol, Tobacco and Firearms (ATF) and the Occupational Safety and Health Administration (OSHA) have regulations on explosives, neither provides all the quantity-distance criteria applicable to launch site necessary to protect the public.[4]

ATF has jurisdiction over the storage of commercial explosives in order to provide for public safety. The storage requirements in 27 CFR part 55, Commerce in Explosives, include construction, separation distances, and some storage compatibility provisions. They also cover items such as licensing, records, and other administrative procedures.

Two gaps in coverage require FAA involvement, namely, the handling of explosives and the treatment of liquid bi-propellants. In the first instance, ATF regulations are limited to storage, not the use or handling of an explosive. Many of the activities that occur on a launch site will not constitute storage. These activities include moving or handling solid rocket motors and other ordnance for the purpose of preparing a launch vehicle for flight, and the build-up and checkout of a launch vehicle on a launch pad. The FAA's proposed regulations are required to ensure the safety of the public from these activities. Additionally, ATF regulations only address solid explosives and liquid mono-propellants. Large quantities of liquid by-propellants are often used on existing launch sites, and many of these bi-propellants pose an explosive hazard to the public. The FAA is proposing rules to ensure the safe use and storage of liquid bi-propellants.

OSHA explosives requirements are contained in 29 CFR 1910.109, Explosives and Blasting Agents. These requirements apply to the manufacture, keeping, having, storage, sale, transportation, and use of explosives, blasting agents and pyrotechnics. OSHA regulations do not address public safety. For example, 29 CFR 1910.109 only includes Q–D requirements for the separation of magazines from each other. OSHA requirements do not address public areas such as inhabited buildings, passenger railways, and public highways. The FAA believes Q–D requirements that adequately separate the public from the effects of an explosion are necessary to protect the public.

The FAA recognizes that procedural measures may also be employed to achieve explosive safety. For example, if two customers of a launch site operator intend to conduct explosive handling operations in adjacent facilities that are not sited for public area distances, a launch site operator may schedule their operations at different times and keep one facility vacant to maintain safety. A licensee who proposed such measures as a substitute for the siting criteria proposed in this rulemaking would have to anticipate license terms and conditions that achieve an equivalent level for safety.

Current Q–D Standards

Current standards effectively mitigate explosive hazards on federal launch ranges. The FAA, therefore, studied these standards in order to adopt the most relevant parts in its proposed Q–D standards. DOD, NASA, and, for storage, AFT, have explosive standards designed to protect the public.

The DOD standard, "DOD STD 6055.9, DOD Ammunition and Explosives Safety Standards," (Aug. 1997), is the standard used for explosive siting on DOD launch sites and for commercial launch sites located on DOD property. DOD 6055.9–STD defines general explosive safety criteria for use throughout the DOD, and

[4] Another agency, the Research and Special Programs Administration (RSPA), DOT, has regulations for the commercial shipment of explosives (and other hazardous material) by rail, motor vehicle, cargo aircraft and ship within the United States. The regulations are found in Title 49 of the Code of Federal Regulations.

establishes protection criteria for personnel and assets such as facilities, equipment, and munitions. The DOD standard provides quantity-distance criteria to protect against overpressure and fragments, and permissible exposure levels to protect against thermal hazards.

The Q–D criteria in DOD STD 6055.90 constitute a refinement of the American Table of Distances (ATD), originally published in 1910 by the Institute of Makers of Explosives. Authors of the ATD criteria acknowledged very early that listed separation distances do not provide absolute safety. The magnitude of the hazard is simply mitigated to a level the ATD authors deemed to be acceptable. Because of this, the FAA encourages license applicants to use greater distances where practicable.

DOD STD 6055.9 also provides information relating to the construction and siting of facilities that are potential explosive sites or that may be exposed to the damaging effects of explosions. The effects of potential explosions may be altered significantly by construction features that limit the amount of explosives involved, attenuate resultant blast overpressure or thermal radiation, and reduce the quantity and range of hazardous fragments and debris. DOD also includes additional criteria for electrical safety and lightning.

ATF also adopted the ATD in its approach to facility siting. ATF regulations provide procedural and substantive requirements regarding, in relevant part, the issuance of user permits and the storage of explosive materials. AFT specifies tables of distances for high explosives, low explosives, and blasting agents. The tables governing high explosives and low explosives are very pertinent to launch site operations.

As noted, the scope of operations within a launch site goes beyond the on-site receipt, transfer and storage of explosives within ATF jurisdiction. A launch site may have a number of launch vehicle and payload customers on site who posses liquid and solid propellants that are being used for incorporation into a launch vehicle or payload.

NASA's safety standards and policy for operations involving explosives are contained in "Safety Standard for Explosives, Propellants, and Pyrotechnics," NSS 1740.12 (Aug. 12, 1993) (NASA Standard). This document contains a uniform set of standards for all NASA facilities engaged in the development, manufacture, handling, storage, transportation, processing, or testing of explosives. Like the DOD standard, the NASA standard contains guidelines and standards for explosives operations in order to safeguard not only the public, but personnel and property. It covers not only Q-D criteria, but personnel training, operating procedures, and other policies such as the use of all available advances in protective construction to provide the safety work environment to prevent or minimize the exposure of personnel and facilities to explosives hazards when performing NASA program activities.

FAA's Proposed Use of NASA and DOD Q-D Standards for Licensed Operation of a Launch Site

Because the NASA and DOD standards are similar, and because both the NASA and DOD standards comprehensively cover explosive hazards at a launch site, the FAA has used both as a guide in proposing the rules in subpart B. However, the FAA proposes to employ the tables and many of the definitions of the NASA standard specifically.

The relevant differences for solid explosives between NASA, DOD, and ATF are not significant. The NASA and ATF table for division 1.3 explosives (discussed below) are identical except that ATF requirements stop at 300,000 pounds. The NASA division 1.3 table is also the same as the DOD standard except that the DOD standard has more increments.

The relevant differences for liquid propellants between the NASA and DOD standards are also minor.[5] The hazard groups that liquid propellants fall into, discussed below, are identical in the two standards. The values in the table used for explosive equivalents are also identical for quantities greater than 35,000 pounds. A discrepancy exists under 35,000 pounds because the DOD requirement is based on a table used for division 1.1 solid explosives.[6] The distance specified below 35,000 pounds in the DOD table is based on the ranges of hazardous fragments and firebrands from an explosion. This is appropriate for solid explosives but is not necessary for liquid propellant explosive equivalents. The NASA standard, on the other hand, has separate tables for division 1.1 solid explosives and liquid propellant explosive equivalents. The NASA table for division 1.1 solid explosives takes fragments and firebrands into account, as appropriate. NASA's table for liquid propellants does not take fragmentation into account.

Other Approaches to Explosive Safety

The FAA has taken a number of measures in order to simplify the proposed Q-D standards. The proposed requirements do not account for the use of hardening or barricades, or for any other solid propellant other than division 1.3. The proposed rules also reflect that only two liquid propellant compatibility groups are necessary. These are discussed below.

The proposed requirements do not account for hardening. Both NASA and DOD have standards for using protective construction to harden an explosive hazard facility to suppress explosion effects, and to harden an area potentially exposed to explosive hazards. In the NASA and DOD standards, the use of hardening may reduce the required distance between an explosive hazard facility and a public area. The proposed rules do not explicitly address hardening. The distances required between explosive hazard facilities and public areas assume that neither the explosive hazard facilities nor the public areas are hardened. Because of the complexity of hardening standards, the FAA believes hardening is better left to case-by-case approval. If an applicant plans to use hardening, the applicant should plan on demonstrating an equivalent level of safety to justify a reduction in applicable Q-D requirements.

Similarly, the proposed requirements do not account for the use of barricades and other protective measures to mitigate the effect of an explosion on exposed areas. An applicant proposing to use such measures in order to deviate from the proposed siting rules may apply for a waiver to the FAA, accompanied with a demonstration that the applicant achieves an equivalent level of safety.

The proposed requirements govern only one type of solid explosive, division 1.3. To classify solid propellants, the FAA is proposing to adopt the United Nations Organization (UNO) classification system for transport of dangerous goods. This classification system is reflected in DOD and NASA standards, and standards of the Department of Transportation's Research and Special Programs Administration. Propellants will be assigned the appropriate DOT class in accordance with 49 CFR part 173. The hazard classification system used by all three agencies consists of nine classes for dangerous goods with ammunition and explosives included in UNO "Class 1, Explosives." Class 1 explosives are

[5] ATF does not regulate liquid propellants, other than mono-propellants.

[6] Solid explosives, like liquid explosives, may be measured in terms of explosive equivalency. The explosive equivalency of a certain weight of solid explosive is the weight of trinitrotoluene that would provide an equivalent blast effect.

further subdivided into "divisions" based on the character and predominance of the associated hazards and on the potential for causing casualties or property damage. As defined in 49 CFR 173.50:

- *Division 1.1*—consists of explosives that have a mass explosion hazard. A mass explosion is one which affects almost the entire load instantaneously.
- *Division 1.2*—consists of explosives that have a projection hazard but not a mass explosion hazard.
- *Division 1.3*—consists of explosives that have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard.
- *Division 1.4*—consists of explosives that present a minor explosion hazard.
- *Division 1.5*—consists of very insensitive explosives.
- *Division 1.6*—consists of extremely insensitive articles which do not have a mass explosion hazard.

The FAA proposes criteria only for division 1.3. The only solid explosives for commercial launches that will likely affect separation distances on a launch site are division 1.3 propellants. Although launch vehicles frequently have components incorporating division 1.1 explosives, such as those used to initiate flight termination systems, the quantity is small. Division 1.1 explosives will not likely be present in sufficient quantities to affect the application of Q–D criteria. The only division 1.1 solid rocket motors existing today are from old military missiles which are not likely to be used at a commercial launch site. When liquid fuels and oxidizers are located together, as they would be during a fueling test, the combination has an explosive potential equal to a percentage of division 1.1 explosives. The proposed rules take such activities into account, but address liquid propellants separately from solid propellants.

The proposed regulations would not assign compatibility groups for solid propellants. The NASA and DOD standards assign solid explosives to compatibility groups. Explosives are assigned to the same group when they can be stored together without significantly increasing either the probability of an accident or, for a given quantity, the magnitude of the effects of such an accident. Because division 1.3 solid propellants are all compatible, the proposed regulations do not incorporate compatibility groups for solid propellants.

Like the DOD and NASA standards, the proposed rules classify each liquid propellant into one hazard group and one compatibility group. Classifying each liquid propellant into a hazard group is necessary because the hazards associated with different liquid propellants vary widely, and the quantity-distance relationship varies accordingly. Hazard group 1 individually represents a fire hazard, hazard group 2 individually represents a more serious fire hazard, and hazard group 3 individually represents a fragmentation hazard because propellants in this category can cause rupture of a storage container.

The proposed rules classify current launch vehicle liquid propellants, namely, liquid hydrogen (LH2), RP–1, hydrazine (N2H4) and its variants (e.g. UDMH and Aerozine–50), hydrogen peroxide, liquid oxygen (LO2), and nitrogen tetroxide (N2O4). RP–1 and N2O4 fall into hazard group 1, hydrogen peroxide and LO2 fall into hazard group 2, and LH2 and N2H4 fall into hazard group 3. Other propellants will be classified on a case-by-case basis.

Like the NASA and DOD standards, the proposed rules also assign each liquid propellant into a compatibility group. However, unlike those standards which cover many different types of propellants, only two compatibility groups are represented in the proposed rules, group A and group C. Group A represents oxidizers, such as LO2, N2O4, and hydrogen peroxide, and group C represents fuels. Whenever propellants of different compatibility groups are not separated by the minimum distance requirements, that is, when fuels and oxidizers are close enough to each other to potentially mix and explode, the explosive equivalency of the explosive mixture must be calculated.

Application of ATF, DOD, or NASA Standards

The storage of solid propellant and liquid mono-propellant on a launch site is covered by ATF regulations, and therefore not addressed in the FAA's proposed requirements. ATF has a permit process for the storage of solid propellants and liquid mono-propellants. The FAA's proposed rules, therefore, do not cover the separation distance between magazines, or between magazines and public areas. However, an applicant must show any magazines in its explosive site plan and their location in relation to other explosive hazard facilities. Applicants should note that on federal launch ranges DOD or NASA standards apply. These launch sites may have Q–D requirements that are different than the FAA's proposed rules.

Future Change in Liquid Propellant Requirements

The DOD Explosive Safety Board (DDESB) has initiated a DOD Explosive Safety Standard for Energetic Liquids Program, and has established an interagency advisory board called the Liquid Propellants Working Group (LPWG). The FAA is a member of this group. A number of possible inconsistencies and irregularities have been identified in the current approach to siting liquid propellants. These include Q–D criteria for most liquid propellants, possible inconsistencies in hazard group and compatibility group definitions, and possible inaccurate characterization of blast over pressure hazards of liquid propellant explosions. The purpose of the LPWG is to address issues of explosive equivalence, compatibility mixing, and quantity-distance criteria, and to develop recommended revisions to DOD STD 6055.9 addressing liquid propellants and other liquid energetic materials. The LPWG is currently consolidating all available test and accident data, and non-DOD regulatory information to provide a basis for the revisions.

Because the DDESB is possibly the best equipped group in the country to address these issues, the FAA will carefully consider its recommendations. The basic approach outlined in the proposed rule should not change. However, the DDESB is likely to specify new hazard and compatibility groups, distance values, and equivalency values, and the public may anticipate their eventual consideration and possible adoption by the FAA.

Solid and Liquid Bi-propellants at Launch Pads

The FAA is proposing a special requirement at launch pads for launch vehicles that use liquid bi-propellant and solid propellant components. The required separation distance shall be the greater of the distance determined by the explosive equivalent of the liquid propellant alone or the solid propellant alone. An applicant does not have to add the separation distances of both. This notice assumes that generally, no credible scenario exists that could produce a simultaneous explosion reaction of both liquid propellant tanks and solid propellant motors. Although not reflected in the published DOD and NASA standards, the proposed requirement constitutes current practice at federal launch ranges. The FAA is interested in the public's view on this approach.

C. Explosive Mishap Prevention Measures

Application of the proposed quantity-distance rules alone will not prevent mishaps from occurring on a launch site. The proposed Q–D rules merely reduce the risk to the public to an acceptable level if a mishap occurs, and if the public is kept away from the mishap by a distance that is at least as great as the public area distance. Safe facility design and prudent procedural measure are critical to preventing a mishap from occurring in the first place. Because visitors to a launch site cannot be protected by prudent site planning alone, the FAA has proposed launch site operator responsibilities to prevent mishaps involving propellants.

The FAA considered measures taken at federal launch ranges to prevent inadvertent initiation of propellants. For this notice the FAA focused on those measures that are appropriate to be taken by a launch site operator. For the most part, the FAA considers it prudent to place the responsibility on a launch site operator for those measures that must be built into facilities. Requirements of a more operational nature will be covered in another rulemaking.

The FAA focused on construction measures intended to prevent inadvertent initiation of propellant from electricity. These are particularly important for electro-explosive devices. Electric hazards include electrostatic discharge such as lightning, static electricity, electric supply systems, and electromagnetic radiation. As discussed below, the FAA is proposing launch site operator requirements for two of these electric hazards: Lightning and electric supply systems. Other measures were considered but rejected because the FAA's planned rulemaking on launches from non-federal launch sites will cover other procedural measures to guard against inadvertent initiation of propellants from electricity. Moreover, the FAA believes launch and launch site operators will implement prudent design and construction measures to comply with local, state, and other federal law, such as OSHA requirements. The FAA is interested in public views on this approach and any need to address other facility requirements.

Lighting Protection

Rocket motors may be energized to dangerous levels by lightning. The primary method of protecting against damage from lightning is to provide a means to direct a lightning discharge directly to the earth without causing harm to people or property. A lightning protection system consists of a system of air terminals such as lightning rods, a system of ground terminals, and a conductor system connecting the air terminals to the ground terminals. These systems are typically installed during construction.

The FAA proposes to impose certain requirements on launch site operators involving lightning protection. The requirements are based on current industry practice, namely, DOD STD 6055.9, chapter 7, and the NASA standard's chapter 5. Each of those standards define, in detail, minimum explosives safety criteria for the design, maintenance, testing and inspection of lightning protection systems. The FAA's proposed rules are not as detailed as those standards so that an applicant may have more flexibility in meeting performance standards. The FAA expects applicants to achieve the level of safety represented by the DOD and NASA standard.

The FAA's proposed rules were derived from the DOD and NASA standards, which are similar to each other. Like NASA and DOD, the proposed rules require lightning protection for all explosives hazard facilities. The design of lightning protection systems includes air terminals, low impedance paths to the ground, referred to as down conductors, and earth electrode systems. An air terminal is a component of a lightning protection system that is able to safely intercept lightning strikes. Air terminals may include overhead wires or grids, vertical spikes, or a building's grounded structural elements. Air terminals must be capable of safely conducting a lighting strike. Down conductors, such as wires or structural elements having high current capacity, provide low impedance paths from the air terminals described above to an earth ground system. Earth electrode systems dissipate the current from a lightning strike to ground.

Bonding and surge protection are other important considerations for lightning protection systems. Metallic bodies, such as fences and railroad tracks near an explosive hazard facility, should be bonded to ensure that voltage potentials due to lightning are equal everywhere in the explosive hazard facility. Lightning protection systems should also include surge protection for all incoming conductors, such as metallic power, communication, and instrumentation lines coming into an explosive hazard facility, so as to reduce transient voltages due to lightning to a harmless level.

The FAA proposes to adopt a provision of DOD STD 6055.9 that exempts the need for a lightning protection system when a local lightning warning system is used to permit operations to be terminated before the incidence of an electrical storm, if all personnel can and will be provided with protection equivalent to a public traffic route distance, which is equivalent to the FAA's proposed public area distance. The FAA is interested in views on this exception, and whether it is sensible in light of the small chance that lightning may cause inadvertent solid rocket motor flight. The FAA is also interested in views on whether other exceptions should be added.

The National Fire Protection Association (NFPA), Batterymarch Park, Quincy, Massachusetts, has published a Lightning Protection Code, NFPA 780 (1995). The FAA is interested in the public's views on the use and applicability of this code.

Static Electricity

Rocket motors may be energized to dangerous levels by extraneous electricity such as static electricity, fields around electric supply lines, and radio frequency emissions from radio, radar, and television transmitters.

Static electricity is generally created by a transfer of electrons from one substance to another caused by friction or rubbing. The generation of static electricity is not in itself a hazard. The hazard arises when static electricity is allowed to accumulate, subsequently discharging as a spark across an air gap in the presence of highly flammable materials or energetic materials such as propellants. The NASA standard states that:

> In order for static to be a source of ignition, five conditions must be fulfilled: (1) A mechanism for generating static electricity must be present, (2) a means of accumulating or storing the charge so generated must exist, (3) a suitable gap across which the spark can develop must be present, (4) a voltage difference sufficient to cause electrical breakdown or dielectric breakdown must develop across the gap, and (5) a sufficient amount of energy must be present in the spark to exceed the minimum ignition energy requirements of the flammable mixture.[7]

Electro-explosive devices are particularly susceptible to static discharge. The primary method used to neutralize static potential is to create an electrical path between the objects so that the potential charges will be equalized. This path can be generated by bonding potential charged objects to each other and humidifying or ionizing

[7] NASA Standard at 5–29.

the air to create a path for the charge to bleed off.

Both NASA and DOD have standards to control static electricity. For example, they have standards[8] to prevent static electricity accumulations that are capable of initiating combustible dusts, gases, flammable vapors, or exposed electroexplosive devices. The standards build on the National Electrical Code, published by the National Fire Protection Association as NFPA 70, which establishes standards for the design and installation of electrical equipment and wiring in hazardous locations containing combustible dusts, flammable vapors and gases.

These standards require personnel and equipment in hazardous locations and locations where static sensitive EEDs are exposed to be grounded in a manner to effectively discharge static electricity. For example, the NASA standard requires personnel to wear static dissipation devices such as legstats and wriststats. Conductive shoes are required when handling, installing, or connecting or disconnecting EEDs.

Solid rocket motors may also be initiated by static electricity. Material contact, specifically, the rubbing or removing of one material from another, such as removing tooling from a motor, can produce a static charge buildup in solid rocket motors. This energy, when released under appropriate conditions, may lead to a cascade discharge and propellant ignition. A number of incidents have occurred due to static electricity, including a Pershing II missile burn in West Germany, a Stage I Peacekeeper missile initiation at a manufacturing facility (due to the pulling of a tool), and a Minuteman State II missile ignition on the rapid pulling of the core.[9]

Although the control of static electricity is important for public safety, the FAA is not proposing any requirements in this rulemaking. The FAA believes that the control of static electricity in launch operations is primarily procedural in nature, and is best covered by the FAA in a future rulemaking on launches. The FAA is interested in the public's view on whether requirements should be placed on launch site operators.

Electric Supply Systems

As noted above, rocket motors may be energized to dangerous levels by extraneous electricity such as fields around high tension wires. Both the NASA standard, chapter 5, and DOD STD 6055.9, chapter 6, have similar standards to address the hazards from fields around high tension wires.

The FAA proposes rules that are similar to both the NASA and DOD standard. As in those standards, the proposed rules require electric power lines to be no closer to an explosive hazard facility than the length of the lines between the poles or towers that support the lines, unless effective means is provided to ensure that energized lines cannot, on breaking, come in contact with the explosive hazard facility. The proposed rules also require towers or poles supporting electric distribution lines that carry between 15 and 69 KV, or electrical transmission lines that carry 69 KV or more, to be no closer to an explosive hazard facility than the public area distance for that explosive hazard facility.

Electromagnetic Radiation

Rocket motors may be energized to dangerous levels by extraneous electricity such as radio frequency emissions from radio, radar, and television transmitters. Radio frequency (RF) emitters may present a hazard to the public by direct exposure to high levels of RF energy. The levels of RF energy that are hazardous are dependent on frequency. For instance, "ANSI C95.1–1991 Electromagnetic Fields, Safety Levels With Respect to Human Exposure to Radio Frequency" defines the maximum safe level for personnel for frequencies between 0.003 and 0.1 MHz at 100mWcm^2, and a level of 180 mW/Cm^2 for frequencies between 1.34 and 3.0 MHz. More importantly for this proposal, RF emitters may present hazard to ordnance. At launch sites today, design and procedural methods are used to mitigate risks to personnel and ordnance. Separation distances are also used to ensure personnel and ordancne are not exposed to hazardous levels.

One hazard of particular importance on a launch site is the accidental firing of electroexplosvie devices by stray electromagnetic energy. A large number of these devices are initiated by low levels of electrical energy and are susceptible to unintentional ignition by many forms of direct or induced stray electrical energy, such as from lightning discharges, static electricity, and radio frequency due to ground and airborne emitters.

One federal launch site operator, the U.S. Air Force, defines its RF requirements in "Air Force Manual (AFM) 91–201, Explosives Safety Standards," (Jan. 1998). Safe separation distance criteria are contained in section 2.58. A table is provided that gives minimum separation distances between EEDs (within explosive hazard facilities) and the transmitting antenna of all RF emitters. The distances are based on the frequency, transmitter power, and power ratio of the transmitting antenna. For worst-case situations, safe separation distances are based on frequency and effective radiated power. "Worst-case" is defined as EEDs that are the most sensitive in the Air Force inventory, unshielded, having leads or circuitry which could inadvertently be formed into a resonant dipole, loop or other antenna. Where EEDs are in less hazardous configurations, the standard allows for shorter distances. The standard also allows for the conduct of power density surveys to ensure safety, in lieu of using the minimum safe separation distances defined from the table and figure. Power density surveys measure the actual conditions in an area here EEDs may be located, and are appropriate when the minimum distances cannot be complied with, for whatever reason, and when more than one transmitter is operating in a certain area at different frequencies.

The FAA has not chosen to specifically address RF hazards in this proposal. OSHA covers direct exposure of personnel to RF.[10] Although the FAA is not aware of any other federal regulations that specifically protect the public from the accidental firing of electroexplosive devices by stray electromagnetic energy, the FAA with this proposal is focussing on those measures that a launch site operator must build into its facilities. The distance requirements discussed above were considered by the FAA but other procedural means exist to mitigate RF hazards, including the FAA's proposed scheduling and coordination requirement for launch site operators. The procedural requirements of launch operators, covered in a separate rulemaking, in conjunction with the requirement in proposed § 420.5 for a licensee to develop and implement procedures to coordinate operations carried out by launch site customers and their contractors, should prove adequate to address RF hazards. The FAA is interested in the public's view on whether other requirements, such as distance requirements, should be placed on launch site operators.

D. Launch Site Location Review

The FAA intends a launch site location review to determine whether the location of a proposed launch site

[8] DOD Standard, chapter 6, NASA Standard, chapter 5.

[9] "JANNAF Propulsion Systems Hazards Subcommittee Electrostatic Discharge Panel Report," CPIA Publication 510 (Mar. 1989).

[10] 29 CFR 1910.97.

would jeopardize public health and safety. To that end, the FAA proposes to determine whether at least one hypothetical launch could take place safely from a launch point at the proposed site. The FAA does not intend to license the operation of a launch site from which a launch could never safely take place. An applicant should, however, bear in mind that an FAA license to operate a launch site does not guarantee that a launch license would be issued for any particular launch proposed from that site. Accordingly, much of the decision making with respect to whether a particular site will be economically successful will rest, as it should, with a launch site operator, who will have to determine whether the site possesses sufficient flight corridors for economic viability. The FAA seeks through a location review only to ensure that at least one flight corridor exists that may be used safely for a hypothetical launch.

Accordingly, prior to issuing a license to operate a launch site at the proposed location, the FAA will ascertain whether it is possible to launch at least one type of launch vehicle on at least one trajectory from each launch point at the proposed site while meeting the FAA's collective risk criteria. The FAA wants to ensure that there exists at least one flight corridor or set of impact dispersion areas from a proposed launch site that would contain debris away from population. Launch is a dangerous activity that the FAA will allow to occur only when the risk to people is below an expected casualty (E_c) of 30×10^{-6}. In other words, if there are too many people around a launch site or in a flight corridor the FAA will not license the site. The FAA's proposed methods for determining flight corridors and impact dispersion areas and estimating E_c are designed to ascertain whether a hypothetical flight corridor would avoid creating too much risk.

All this is not to say that the FAA proposed to require an applicant for a license to operate a launch site to perform a complete flight safety analysis for a particular launch. The FAA recognizes that an applicant may or may not yet have customers or a particular launch vehicle in mind. Accordingly, the FAA's proposed launch site location review methods only approximate, on the basis of certain assumptions and recognizing that not all factors need to be taken into account, a full flight safety analysis that would be normally be performed for an actual launch. Of course, if an applicant does have a customer who satisfies the FAA's flight safety criteria for launch and obtains a license for launch from the site, that showing would also demonstrate to the FAA that a launch may occur safely from the proposed site, and the FAA could issue a license to operate the launch site on the basis of the actual launch proposed.

Bear in mind also that the focus of FAA's proposed launch site location review methods is on expendable launch vehicles with a flight history. The reusable launch vehicles (RLV) currently proposed by industry vary quite a bit. Accordingly, the FAA considered it unwise to define a detailed analytical method for determining the suitability of a launch site location for RLVs. An applicant proposed a launch site limited to the launch of reusable launch vehicles would still need to define a flight corridor and conduct a risk analysis if population were present within the flight corridor, but the FAA will review such an analysis on a case-by-case basis consistent with the principles discussed in this rulemaking.

Similarly, the FAA has chosen not to define a detailed analytical method for determining the suitability of a launch site location for unproven launch vehicles. An applicant proposing a launch site limited to the launch of unproven launch vehicles would have to demonstrate to the FAA that the launch site is safe for the activity planned.

A launch site location review would provide an applicant with alternative methods for demonstrating that a proposed launch site satisfies FAA safety requirements. Specifically, the applicant must demonstrate that a flight corridor or set of impact dispersion areas exist that do not encompass populated areas or that do not give rise to an E_c risk of greater than 30×10^{-6}. Each proposed launch point must be evaluated for each type of launch vehicle, whether expendable orbital, guided sub-orbital or unguided sub-orbital, or reusable, that an applicant proposes would be launched from each point.

Each of the three methods the FAA proposes for evaluating the acceptability of a launch site's location require an applicant to identify an area, whether a flight corridor or a set of impact dispersion areas, emanating from a proposed launch site. That area identifies the public that the applicant must analyze for risk of impact and harm. The FAA proposes to have an applicant who anticipates customers who use guided orbital launch vehicles define a flight corridor for a class of vehicles launched from a specific point along a specified trajectory, that extends 5,000 nautical miles from the launch point or until the launch vehicle's instantaneous impact point leaves the earth's surface, whichever is sooner. For guided sub-orbital launch vehicles, the flight corridor would end at an impact dispersion area of a final stage. An applicant would have to demonstrate either that there are no populated areas within the flight corridor or that the risk to any population in the corridor does not exceed the FAA's risk criteria. Similarly, for the sub-orbital launch of an unguided vehicle, an applicant would analyze the risks associated with a series of impact dispersion areas around the impact points for spent stages. If there are people in the dispersion areas, the applicant must demonstrate that the expected casualties from stage impacts do not exceed the FAA's risk criteria.

E_c, or casualty expectancy, represents the FAA's measure of the collective risk to a population exposed to the launch of a launch vehicle. The measure represents the expected average number of casualties for a specific launch mission. In other words, if there were thousands of the same mission conducted and all the casualties were added up and the sum divided by the number of missions, the answer and the mission's expected casualty should statistically be the same. This E_c value defines the acceptable collective risk associated with a hypothetical launch from a launch point at a launch site, and, as prescribed by the proposed regulations, shall not exceed an expected average number of casualties of 0.00003 (30×10^{-6}) for each launch point at an applicant's proposed launch site. This E_c value defines acceptable collective risk. In contrast to individual risk, which describes the probability of serious injury or death to a single person, the launch industry's common measure of risk is collective risk. The E_c value proposed originated with the Air Force's measure of acceptable risk. "EWR 127–1," Sec. 1.4, 1–12. Relying on the Air Force measure, the FAA proposed the adoption of collective risk and a risk level of 30×10^{-6} for licensed launches in an earlier proceeding. "Commercial Space Transportation Licensing Regulations," (62 FR 13216, 13229–30 (Mar. 19, 1997). The FAA now proposes to use the same measure for evaluating the suitability of a proposed launch site location.

Collective risk reflects the probability of injury or death to all members of a defined population set—in this case, those located within the flight corridor or set of impact dispersion areas being analyzed—placed at risk by a launch event. Collective risk constitutes the sum total launch related risk, that is, the probability of injury or death, to that part of the public exposed to a launch. Collective risk is analogous to an estimate of the average number of people hit by lightning each year, while individual annual risk would be an individual's likelihood of being hit by lightning in any given year. Collective risk may be expressed in terms of individual risk if certain factors associated with any given launch are taken into account. Collective risk may be expressed in terms of individual risk when the exposed population consists of one person. Also, individual risk may be—and will be, in most instances—less than collective risk, depending on the size of the population exposed. For example, a collective E_c risk of 30×10^{-6} for a defined population of one hundred thousand people exposed to a particular launch results (assuming the risk is spread equally throughout the defined population) in a probability of injury or death to any one exposed individual of 3×10^{-10} (three per ten billion).

The FAA's proposed methods for identifying a flight corridor or impact dispersion areas distinguish between guided orbital launch vehicles with a flight termination system (FTS), guided sub-orbital launch vehicles with an FTS, and unguided sub-orbital launch vehicles without an FTS.[11] For purposes of this proposal, references to a guided launch vehicle, whether orbital or sub-orbital, may be taken to mean that the vehicle has an FTS. References to an unguided sub-orbital may be understood to mean that the vehicle does not possess an FTS.

The FAA's proposed regulations divide guided orbital launch vehicles into four classes, with each class defined by its payload weight capability, as shown in table 1. Sub-orbital launch vehicles are not divided into classes by payload weight, but are categorized as either guided or unguided. Table 2 shows the payload weight and corresponding classes of existing orbital launch vehicles. For a launch site intended for the use of orbital launch vehicles, an applicant would define a hypothetical flight corridor from a launch point at the proposed launch site for the largest launch vehicle class anticipated—which the FAA anticipates would be based on expected customers.

TABLE 1.—CLASS OF LAUNCH VEHICLES BY PAYLOAD WEIGHT

[LBS]

	Orbital launch vehicles			
100 nm orbit	Small	Medium	Medium large	Large
28° inc.[1]	≤4,400	>4,400 to ≤11,100	>11,100 to <18,500	>18,500
90° inc.[2]	≤3,300	>3,330 to ≤8,400	>8,400 to ≤15,000	>15,000

[1] 28° inclination orbit from a launch point at 28° latitude.
[1] 90° inclination orbit.

TABLE 2.—CLASSIFICATION OF COMMON GUIDED ORBITAL EXPENDABLE LAUNCH VEHICLES

Vehicle	Payload weight (lbs) 100 nm Orbit 29° inc.	Payload weight (lbs) 100 nm Orbit 90° inc.	Class
Conestoga 1229	500	450	Small.
Conestoga 1620	2,250	1,750	Small.
LML V–1	1,755	1,140	Small.
LML V–2	4,390	3,290	Small.
Pegasus	700	N/A	Small.
Pegasus XL	1,015	769	Small.
Scout	550	460	Small.
Taurus	3,100	2,340	Small.
Atlas II	14,500	12,150	Medium.
Atlas 2A	16,050	13,600	Medium.
Delta 6920	8,780	6,490	Medium.
Delta 7920	11,220	8,575	Medium.
Titan II	N/A	4,200	Medium.
Atlas 2AS	19,050	16,100	Medium/Large.
Titan III	31,200	N/A	Medium/Large.
Titan IV	47,400	41,000	Large.

Methods for estimating the risk posed by the operation of a launch site for guided orbital and sub-orbital launch vehicles are presented in proposed appendices A, B and C. Appendix A contains instructions for creating a flight corridor for guided orbital and sub-orbital launch vehicles. Appendix B provides an alternative method to appendix A. Appendix B also instructs an applicant how to create a flight corridor for guided launch vehicles, but provides more detailed calculations to employ so that, although an appendix B flight corridor is typically less conservative than that of appendix A, it should provide more representative of actual vehicle behavior. Appendix C

[11] This proposal does not propose a means for analyzing risks posed by a launch site for the launch of unguided suborbital launch vehicles that employ FTS. Historically, few of these vehicles have been launched. In the event an applicant for a license to operate a launch site wishes to operate a launch site only for such vehicles, the FAA will handle the request on a case by case basis. The FAA does note, however, that unguided suborbital launch vehicles that in the past have been launched with an FTS were usually launched with the FTS because the launch was otherwise too close to populated areas for the type of vehicle and trajectory flown.

contains the FAA's proposed method for applicants to analyze the risk posed by guided launch vehicles within a flight corridor created under appendix A or B. Unguided sub-orbital launch vehicles are presented in appendix D, which describes how an applicant should estimate impact dispersion areas and analyze the risk in those areas.

Appendix A is less complex, but generates a larger flight corridor, than the methodology of appendix B. No local meteorological or vehicle trajectory data are required to estimate a flight corridor under appendix A. Because it is a simpler methodology, an applicant may want to use it as a screening tool. If an applicant can define a flight corridor for a single trajectory, using appendix A, that does not overfly populated areas, the applicant may satisfy the launch site location review requirements with the least effort. If, however, the corridor includes populated areas, the applicant has the choice of creating an appendix B flight corridor, which may be more narrow, or conducting a casualty expectancy analysis. An applicant is not required to try appendix A before employing appendix B.

The FAA's proposed location review reflects a number of assumptions designed to keep the review general rather than oriented toward or addressing a particular launch. These assumptions are discussed more fully below, but may be summarized briefly. The location reviews for appendices A and B flight corridors reflect an attempt to ensure that launch failure debris would be contained within a safe area. Successful containment must assume a perfectly functioning flight termination system. A perfectly functioning flight termination system would ensure that any debris created by a launch failure would be contained within a flight corridor. When the high risk event is not launch failure but launch success, as tends to be the case with an unguided sub-orbital launch vehicle that does not employ an FTS, the FAA still proposes a location review based on an assumption of containment.

The approaches provided in the four proposed location review appendices are based on some comment assumptions that reflect limitations of the launch site location review analysis. The FAA is not requiring an application to analyze the risks posed to the public by toxic materials that might be handled at the proposed site, nor the risk to ships or aircraft from launch debris or planned jettisoning of stages. The FAA recognizes that these assumptions represent a limitation in the launch site location review. The FAA intends that these three risks will be dealt with through pre-launch operational controls and launch commit criteria which will be better identified as part of a launch license review. All launches that take place from an approved U.S. launch site will either be regulated by the FAA through a launch license or will be U.S. government launches that the government carries out for the government.

The two methods for creating guided launch vehicle flight corridors are intended to account for launch vehicle failure rate, malfunction turn capability, and the launch vehicle guidance accuracy as defined by the impact dispersions of these vehicles. The premise undergirding each of these proposed methods is that debris would be contained within the defined flight corridor or impact dispersion areas. Accordingly, for purposes of a launch site location review, only the populations within the defined areas need to be analyzed for risk. The FAA recognizes that were a flight termination system fail to destroy a vehicle as intended, a launch vehicle could stray outside its planned flight corridor. That concern will be better accommodated through another forum, namely, the licensing of a launch operator and the review of that launch operator's flight safety system. Because a containment analysis only looks at how far debris would travel in the event an errant vehicle were destroyed, the containment analysis has to assume a perfectly functioning flight termination system. In other words, for purposes of analyzing the acceptability of a launch site's location for launching guided expendable launch vehicles, the FAA will assume that a malfunctioning vehicle will be destroyed and debris will always impact within acceptable boundaries. Accordingly, the FAA does not propose to explore, for purposes of determining the acceptability of a launch site's location, the possibility that a vehicle's flight termination system may fail and that the vehicle could continue to travel toward populated areas. Any proposed site may present such risks—indeed, any proposed launch presents such risks—but they are best addressed in the context of individual launch systems. This working assumption of a perfectly reliable flight termination system will not, of course, apply to the licensing of a launch of a launch vehicle. The FAA will consider the reliability of any particular launch vehicle's FTS in the course of a launch license review. From a practical standpoint, this means that for the launch site location review, both nominal and failure-produced debris would be contained within a flight corridor, obviating the need for risk analyses that address risk outside of a defined flight corridor or set of impact dispersion areas.

Additionally, the FAA does not propose to require an applicant to analyze separately the risks posed by the planned impact of normally jettisoned stages from a guided expendable launch vehicle, except for the final stage of a guided sub-orbital launch vehicle. The FAA does not consider intermediate stage impact analysis necessary to assess the general suitability of a launch point for guided expendable launch vehicles because the impact location of stages is inherently launch vehicle-specific, and the trajectory and timing for a guided launch vehicle can normally be designed so that the risks from nominally jettisoned stages will be kept to acceptable levels. A launch license review will have to ensure that vehicle stages are not going to impact in densely populated areas. Risk calculations performed for launches from federal launch ranges demonstrate a relatively low risk posed by controlled disposition of stages in comparison to the risk posed by wide-spread dispersion of debris due to vehicle failure.

Each of the FAA's proposed approaches to defining flight corridors or impact dispersion areas is designed to analyze the highest risk launch event associated with a particular vehicle technology. This is not meant to imply that lower risk launch events are necessarily acceptable; only that they will not be considered in the course of this review. For a guided orbital launch vehicle, that event is vehicle failure. For an unguided sub-orbital launch vehicle, the launch event of highest risk is vehicle success, namely, the predicted impact of stages. For a guided launch vehicle the overflight risk, which results from a vehicle failure followed by its destruction (assuming no FTS failure), is the dominant risk. Risks from nominally jettisoned debris are subsumed in the overflight risk assessment. For an unguided sub-orbital launch vehicle, the FAA proposes that risk due to stage impact be analyzed instead of the overflight risk. This distinction is necessitated by the fact that the failure rate during thrust is historically significantly lower for unguided vehicles than for guided vehicles. Current unguided launch vehicles with many years of use are highly reliable. They do not employ an FTS; therefore, debris pieces usually consist of vehicle components that are not broken up. Another reason for the difference between analyses is that unguided vehicle stage impact dispersions are significantly larger than guided vehicle impact dispersions. These differences add up to greater risk within an unguided launch vehicle stage impact dispersion area than the areas outside the dispersion areas. Therefore, a risk assessment is only performed on those populations within an unguided launch vehicle stage impact dispersion area.

An applicant must define an area called an overflight exclusion zone (OEZ) around each launch point, and the applicant must demonstrate that the OEZ can be clear of the public during a launch. An OEZ defines the area where the public risk criteria of 30×10^{-6} would be exceeded if one person were present in the open. The overflight exclusion zone was estimated from risk computations for each launch vehicle type and class. An applicant must define an OEZ because launch vehicle range rates are slow in the launch area, launch vehicle effective casualty areas, the area within which all casualties are assumed to occur through exposure to debris, are large, and impact dispersion areas are dense with debris so that the presence of one person inside this hazardous area is expected to produce E_c values exceeding the public risk criteria. Accordingly, an applicant would either have to own the property, demonstrate to the FAA that there are times when people are not present, or that it could clear the public from the overflight exclusion zone prior to a launch. Evacuating an overflight exclusion zone for an inland site, might, for example, require an applicant to demonstrate that agreements have been reached with local officials to close any public roads during a launch. The FAA seeks comments on the feasibility of evacuating areas inland and on the impact of the OEZ requirement on the ability to gain a license for an inland site.

E. License Conditions

A license may contain conditions flowing from the various reviews conducted during the application process. For example, a license granted following approval of a launch site location would be limited to the launch points analyzed, and the type and class of vehicle used in the demonstration of site location safety. An applicant may choose to analyze all three types of launch vehicles in its application. An FAA launch site operator license authorizing the operation of a launch site for launch of an orbital expendable launch vehicle would allow the launch of vehicles from the site that were less than or equal to the class of launch vehicle, based on payload weight, used to demonstrate the safety of the site location. If a licensee later wanted to offer the launch site for the launch of a larger class of vehicles or a different type of launch vehicle, such as an unguided sub-orbital launch vehicle, the licensee would be required to request a license modification and demonstrate that the larger vehicle or different type of vehicle could be safely launched from the launch site. Likewise, the addition of a new launch point would require a license modification. The demonstration would be based on the same kinds of analyses used for the original license. In some cases, a licensee might be able to use the safety analyses performed by a launch operator to meet location review requirements.

Although the authority granted by the launch site operator license would be limited to certain types or classes of vehicles, the license would not represent a guarantee that the FAA would necessarily license any particular launch from an approved launch site. The demonstration is intended to ensure that the location of the launch site can safely support at least some type of vehicle, launched on a specific trajectory. The planned launch of an actual vehicle may differ from the hypothetical trajectory or vehicle characteristics used for the launch site location demonstration, potentially posing different risks to the public than those used in the site location demonstration. In addition to the protection provided by a safe launch site location, the safety of any actual flight of a launch vehicle will be dependent on the safety procedures, personnel qualifications, safety systems, and other elements of the proposed launch. Consequently, each launch operator, other than the U.S. Government, must obtain a launch license for its specific operations.

F. Operational Responsibilities

The FAA is proposing to impose certain operational responsibilities on an operator of a launch site. In addition, the FAA proposes to distinguish between activities covered by a license to operate a launch site and those covered by a launch license. Any activity that will be approved as part of a launch license will not be covered in a launch site operator license even if the launch site operator provides the service. For example, because a launch licensee will need to assure the adequacy of ground tracking, approval of ground tracking systems will be handled in the launch license process even if a launch site operator provides the service. Similarly, in the case of ground safety, a launch site operator may provide fueling for a launch licensee, but safe procedures for fueling will be addressed in the launch license.

The operational requirements being proposed for the operator of a launch site addresses control of public access, scheduling of operations at the site, notifications, recordkeeping, launch site accident response and investigation, and explosive safety. A launch site operator licensee would be required to control access to the site. Security guards, fences, or other physical barriers may be used. Anyone entering the site must, on first entry, be informed of the site's safety and emergency response procedures. Alarms or other warning signals would be required to alert persons on the launch site of any emergency that might occur when they are on site. If a launch site licensee has multiple launch customers on site at one time, the licensee must have procedures for scheduling their operations so that the activities of one customer do not create hazards for others.

Because it is more efficient to have a single point of contact for launches conducted at a site, the FAA is proposing that the launch site operator be responsible for all initial coordination with the appropriate FAA regional office having jurisdiction over the airspace where launches will take place and the U.S. Coast Guard (where applicable) through a written agreement. The FAA's Air Traffic Service and the Coast Guard issues Notice to Airmen and Mariners, respectively, to ensure that they avoid hazardous areas. An FAA Air Route Traffic Control Center also closes airways during a launch window, if necessary. A launch site operator would be required to obtain an agreement regarding procedures for coordinating contacts with these agencies for launches from the site. The requirement for coordinating with the Coast Guard might not, of course, always be applicable, for example, for an inland launch site. A launch site operator licensee would also have to notify local officials with an interest in the launch. These would include officials with responsibilities that might be called into play by a launch mishap, such as fire and emergency response personnel.

Another operational requirement being proposed is for the operator of a launch site to develop and implement a launch site accident investigation plan containing procedures for investigating and reporting a launch site accident. This would extend similar reporting, investigation and response procedures

currently applicable to launch related accidents and incidents to accidents occurring during ground activities at a launch site. Lastly, an operator of a launch site would have responsibilities regarding explosives, specifically, those dealing with lightning and electric power lines. This has been discussed above.

III. Part Analysis

Part 417—License to Operate a Launch Site

The FAA removes and reserves part 417 and creates part 420 to address licensing and operation of a launch site.

Part 420—License to Operate a Launch Site

Proposed § 420.1 would describe the scope of proposed part 420. Part 420 would encompass the requirements for obtaining a license to operate a launch site and with which a licensee must comply.

Proposed § 420.3 would specify the person who must apply for a license to operate a launch site, and the person who must comply with regulations that apply to a licensed launch site operator. Because a launch site operator is someone who offers a launch site to others for launch, only someone proposing such an offer need obtain a license to operate a launch site. A launch operator proposing to launch from its own launch site need only obtain a launch license because a launch license will address safety issues related to a specific launch and because a launch license encompasses ground operations.

Proposed § 420.5 would add terms that have not been previously defined by the FAA. These definitions would apply in the context of part 420, which governs the licensing and safety requirements for operation of a launch site. These terms do not apply outside part 420. Specifically, the following terms would be defined:

Ballistic Coefficient (β) means the weight (W) of an object divided by the quantity product of the coefficient of drag (C_d) of the object and the area (A) of the object.

$$\beta = \frac{W}{(C_d \cdot A)}$$

A ballistic coefficient is a parameter used to describe flight characteristics of an object.

Compatibility means the chemical property of materials that may be located together without adverse reaction. Compatibility in storage exists when storing materials together does not increase the probability of an accident or, for a given quantity, the magnitude of the effects of such an accident. Compatibility determines whether materials require segregation. The FAA derived this definition from a NASA definition, which states that compatibility is "the chemical property of materials to coexist without adverse reaction for an acceptable period of time. Compatibility in storage exists when storing materials together does not increase the probability of an accident or, for a given quantity, the magnitude of the effects of such an accident. Storage compatibility groups are assigned to provide for segregated storage." [12] The FAA proposes to adapt the NASA definition in order to describe coexistence with greater specificity.

Debris dispersion radius (D_{max}) means the estimated maximum distance from a launch point that debris travels given a worst-case launch vehicle failure and flight termination at 10 seconds into flight. If a launch vehicle failure occurs shortly after ignition, and a flight termination system is employed, the FAA expects the debris to be contained within an area described by D_{max}.

Division 1.3 explosive means an explosive as defined in 49 CFR 173.50. That provision is part of the hazardous materials regulations of the Research and Special Programs Administration (RSPA) of the Department of Transportation. Section 173.50 defines a division 1.3 explosive as ". . . consist(ing) of explosives that have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard." This classification is identical to the United Nations Organization classification, and is also used by NASA and the Department of Defense.

Downrange area means a portion of a flight corridor beginning where a launch area ends and ending 5,000 nautical miles (nm) from the launch point for an orbital launch vehicle, and ending with an impact dispersion area for a guided sub-orbital launch vehicle.

E,F,G coordinate system means an orthogonal, Earth-fixed, geocentric, right-handed system. The origin of the coordinate system is at the center of an ellipsoidal Earth model. The E-axis is positive directed through the Greenwich meridian. The F-axis is positive directed through 90 degrees east longitude. The EF-plane is coincident with the ellipsoidal Earth model's equatorial plane. The G-axis is normal to the EF-plane and positive directed through the north pole.

[12] NASA Standard at A–2.

E,N,U coordinate system means an orthogonal, Earth-fixed, topocentric, right-handed system. The origin of the coordinate system is at a launch point. The E-axis is positive directed east. The N-axis is positive directed north. The En-plane is tangent to an ellipsoidal Earth model's surface at the origin and perpendicular to the geodetic vertical. The U-axis is normal to the EN-plane and positive directed away from the Earth.

Effective casualty area (A_c) means the aggregate casualty area of each piece of debris created by a launch vehicle failure at a particular point on its trajectory. The effective casualty area for each piece of debris is the area within which 100 percent of the unprotected population on the ground are assumed to be a casualty, and outside of which 100 percent of the population are assumed not to be a casualty. This area is based on the characteristics of the debris piece including its size, the path angle of its trajectory, impact explosions, and debris skip, splatter, and bounce.

Explosive means any chemical compound or mechanical mixture that, when subjected to heat, impact, friction, detonation or other suitable initiation, undergoes a rapid chemical change that releases large volumes of highly heated gases that exert pressure in the surrounding medium. The term applies to materials that either detonate or deflagrate. With the exception of a minor editorial change, this proposed definition is identical to that of NASA.[13] For comparison, 49 CFR 173.50 of RSPA's regulations defines an explosive as, ". . . any substance or article . . . which is designed to function by explosion . . . or which, by chemical reaction within itself, is able to function in a similar manner even if not designed to function by explosion. . . ." Both definitions are consistent with each other, and the FAA proposes to use the NASA definition because it is more descriptive.

Explosive equivalent means a measure of the blast effects from explosion of a given quantity of material expressed in terms of the weight of trinitrotoluene (TNT) that would produce the same blast effects when detonated. This proposed definition is identical to the NASA definition for "TNT equivalent," and similar to the DOD definition of "explosive equivalent" which defines the term, in relevant part, as "(t)he amount of a standard explosive that, when detonated, will produce a blast effect comparable to that which results at the same distances from the

[13] NASA Standard at A–4.

detonation or explosion of a given amount of the material for which performance is being evaluated." [14] DOD uses TNT as the standard explosive, thus rendering the NASA and DOD terms interchangeable. FAA proposes to use the more general term "explosive equivalent" instead of "TNT equivalent."

Explosive hazard facility means a facility at a launch site where solid or liquid propellant is stored or handled. The FAA proposes to define this term for the purpose of identifying specific hazard facilities on a launch site that present potential explosive hazards. NASA and DOD use the more general term "potential explosive site," which is defined, in part, as "the location of a quantity of explosives that will create a blast fragment, thermal, or debris hazard in the event of an accidental explosion of its contents. . . ." [15] As proposed, an explosive hazard facility may include a location where explosives are either handled or stored.

Flight azimuth means the initial direction in which a launch vehicle flies relative to true north expressed in degrees-decimal-degrees. For example, due east is 90 degrees.

Flight corridor means an area on the earth's surface estimated to contain the majority of hazardous debris from nominal and non-nominal flight of an orbital or guided sub-orbital launch vehicle.

Guided sub-orbital launch vehicle means a sub: orbital rocket that employs an active guidance system.

Impact dispersion area means an area representing an estimated five standard deviation dispersion about a nominal impact point of an intermediate or final stage of a sub-orbital launch vehicle. The definition is confined to proposed part 420, and should not be confused with other impact dispersion areas that may be defined by the federal launch ranges for their particular launch safety programs.

Impact dispersion factor means a constant used to estimate, using a stage apogee, a five standard deviation dispersion about a nominal impact point of an intermediate or final stage of a sub-orbital launch vehicle. Intermediate stages include all stages up to the final stage.

Impact dispersion radius (R) means a radius that defines an impact dispersion area. It applies to all launch vehicle stages.

Impact range means the distance between a launch point and the impact point of a sub-orbital launch vehicle stage.

Impact range factor means a constant used to estimate, with the use of a launch vehicle stage apogee, the nominal impact point of an intermediate or final stage of a sub-orbital launch vehicle.

Instantaneous impact point (IIP) means an impact point, following thrust termination of a launch vehicle, calculated in the absence of atmospheric drag effects, that is, a vacuum. This shows the point at which launch vehicle debris would land in the event thrust was terminated. In this proposal, the IIP calculations would assume a vacuum.

Instantaneous impact point (IIP) range rate means a launch vehicle's estimated IIP velocity along the Earth's surface. It is typically abbreviated as Ṙ, or R-dot.

Intraline distance means the minimum distance permitted between any two explosive hazard facilities in the ownership, possession or control of one launch site customer. Intraline distance prevents the propagation of an explosion. In other words, with an appropriate intraline distance, an explosive mishap at one explosive hazard facility would not cause an explosive event at another explosive hazard facility. The FAA anticipates that worker safety requirements will dictate protection of employees and anticipates that all licensees will familiarize themselves with those requirements and conform to them in accordance with the law. Unlike distances used to protect the public, intraline distance will not protect workers with the same level of protection as the public. NASA defines intraline distance as "(t)he distance to be maintained between any two operating buildings and sites within an operating line, of which at least one contains or is designed to contain explosives, . . .".[16] Thus, for NASA, the criteria for using intraline distance is whether the areas are within an operating line. An operating line is a "group of buildings used to perform the consecutive steps in the loading, assembling, modification, normal maintenance, renovation, or salvaging of an item or in the manufacture of an explosive or explosive device." [17] The FAA's proposed definition is more suitable to its statutory obligation to protect public safety because public safety dictates only that explosive hazard facilities of one launch operator be sited in a manner to prevent the propagation of an explosion. If intraline distances are not maintained between two explosive hazard facilities, then the larger area encompassing both quantities must be used for Q–D purposes when determining prescribed distances to the public.

Launch area means, for a flight corridor defined using appendix A, the portion of a flight corridor from the launch point to a point 100 nm in the direction of the flight azimuth. For a flight corridor defined using appendix B, a launch site is the portion of a flight corridor from the launch point to the enveloping line enclosing the outer boundary of the last D_i dispersion circle.

Launch point means a point on the earth from which the flight of a launch vehicle begins, and is defined by the point's geodetic latitude, longitude and height on an ellipsoidal Earth model.

Launch site accident means an unplanned event occurring during a ground activity at a launch site resulting in a fatality or serious injury (as defined in 49 CFR 830.2) to any person who is not associated with the activity, or any damage estimated to exceed $25,000 to property not associated with the activity. The FAA considers any licensee or its employees, or any licensee customer, contractor, or subcontractor or the employees of any of these persons to be associated with a ground activity. Property not associated with the activity will typically include any property belonging to members of the public or personal property of employees. Property associated with the activity includes the property of a launch site operator or launch licensee, or either licensee's customers, contractors or subcontractors.

Net explosive weight (NEW) means the total weight, expressed in pounds, of explosive material or explosive equivalency contained in an item. This term is used for applying Q–D criteria to solid propellants, and for liquid propellants when explosive equivalency applies. Explosive equivalency applies to liquid propellants when a liquid fuel and a liquid oxidizer are close enough together that their explosive potential combined must be used when determining prescribed distances to the public.

Nominal means, in reference to launch vehicle performance, trajectory, or stage impact point, a launch vehicle flight where all launch vehicle aerodynamic parameters are as expected, all vehicle internal and external systems perform exactly as planned, and there are no external perturbing influences (e.g., winds) other than atmospheric drag and gravity.

Nominal trajectory means the position and velocity components of a nominally

[14] DOD Standard at A–4.

[15] DOD Standard at A–7; NASA Standard at A–9.

[16] NASA Standard at A–7.

[17] NASA Standard at A–8.

performing launch vehicle relative to an x,y,z, coordinate system, expressed in $x,y,z,\dot{x},\dot{y},\dot{z}$. The x,y,z coordinates describe the position of the vehicle both for projecting the proposed flight path and during actual flight. The $\dot{x},\dot{y},\dot{z}$ variables describe the velocity of the vehicle.

Overflight dwell time means the period of time it takes for a launch vehicle's IIP to move past a populated area. For a given populated area, the overflight dwell time is the time period measure along the nominal trajectory IIP ground trace from the time point whose normal with the trajectory intersects the most uprange part of the populated area to the time point whose normal with the trajectory intersects the most downrange part of the populated area.

Overflight exclusion zone means a portion of a flight corridor which must remain clear of the public during the flight of a launch vehicle.

Populated area means a land area with population. For a part 420 site location risk analysis of a populated area within the first 100 nm of a launch point, a populated area is no greater than a census block group in the U.S., and an equivalent size outside the U.S. For analysis of a part 420 flight corridor more than 100 nm downrange from the launch point, a populated area is no greater than a 1° X 1° latitude/longitude grid, whether in the United States or not.

Population density means the number of people per unit area in a populated area.

Position data means data referring to the current position of a launch vehicle with respect to time using the X, Y, Z coordinate system.

Public area means any area outside an explosive hazard facility and is an area that is not in the possession, ownership or other control of a launch site operator or of a launch site customer who possesses, owns or otherwise controls that explosive hazard facility. For purposes of Q–D criteria, the proposed rules treat any location outside a launch site boundary as a public area for any activity at a launch site. Certain areas within a launch site are also considered public areas for purposes of applying Q–D criteria. With respect to any given launch operator, areas where other launch operators are located, or where the launch site operator Commission is located, are public areas.

Public area distance means the minimum separation distance permitted between a public area and an explosive hazard facility. Although NASA and DoD differentiate between areas that contain inhabited buildings and areas that contain public traffic routes, with inhabited buildings requiring greater separation distances, the FAA's proposed requirements does not make the same differentiation.[18] The FAA proposes to use NASA's and DoD's more conservative inhabited building distance as the required distance between an explosive hazard facility and all public areas. This is because a public area is not in the control of the applicant, and can, therefore, contain anything from open land to groups of office buildings. This is consistent with the approach taken by NASA and DoD for areas outside a launch site. For example, NASA defines inhabited building distance as "(t)he minimum allowable distance between an inhabited building and an explosive area. Inhabited building distances are used between explosives areas and administrative areas, also between operating lines with dissimilar hazards and between explosive locations and other exposures. Inhabited building distances will also be provided between explosive areas and Center boundaries."[19]

Unguided sub-orbital launch vehicle means a sub-orbital rocket that does not have a guidance system.

X,Y,Z coordinate system means an orthogonal, Earth-fixed, topocentric, right-handed system. The origin of the coordinate system is at a launch point. The X-axis coincides with the initial launch azimuth and is positive in the downrange direction. The Y-axis is positive to the left looking downrange. The XY-plane is tangent to the ellipsoidal earth model's surface at the origin and perpendicular to the geodetic vertical. The Z-axis is normal to the XY-plane and positive directed away from the earth.

ϕ_o, λ_o, h_o means a latitude, longitude, height system where ϕ_0 is the geodetic latitude of a launch point, λ_o is the east longitude of the launch point, and h is the height of the launch point above a reference ellipsoid. ϕ_0 and λ_0 are expressed in degrees decimal degrees, which is abbreviated as DDD.

Proposed subpart B would contain the criteria and information requirements for obtaining a license to operate a launch site. Section 420.15 would specify the information that an applicant for a launch site license would have to submit as part of its license application. The FAA requires this information to evaluate environmental impacts, whether the launch site location could safely be used to conduct launches, issues affecting national security and foreign policy, explosive site safety, and whether the applicant will operate safely.

Proposed § 420.15(a) contains the environmental review requirements currently located at § 417.105–107.

Proposed § 420.15(b) would provide the information necessary for a location review. It would also require foreign ownership information and an explosive site plan.

Proposed § 420.15(c) requires an applicant to demonstrate how it will satisfy its subpart D responsibilities. Specifically, a license applicant must show how the applicant proposes to control public access pursuant to § 420.53, how it proposes to comply with the scheduling requirements of § 420.55, and how it proposes to satisfy the notification obligations of § 420.57. The FAA requires this information to ascertain whether an applicant will be able to satisfy the subpart D performance requirements and for compliance monitoring purposes. With regard to the notification obligations of § 420.57, an applicant must submit its agreements with the U.S. Coast Guard district and the FAA regional office for air traffic services to demonstrate satisfaction of the requirements of § 420.57(b) and (c). A license applicant must also show how it proposes to comply with the accident investigation requirements in § 420.59 and requirements on explosives in § 420.63.

Proposed § 420.15(d) provides that an applicant who is proposing to locate a launch site at an existing launch point at a federal launch range is not required to perform a location review if a launch vehicle of the same type and class as proposed for the launch point has been safely launched from the launch point. An applicant who is proposing to locate at a federal launch range is not required to submit an explosive site plan.

Section 420.17 would establish the bases upon which the FAA will make its license determination. This includes the FAA's determination of the adequacy of information provided by the applicant, the conclusions of the environmental and policy reviews, the adequacy of the explosive site plan, and satisfaction of site location requirements. The FAA will notify the applicant of, and allow the applicant to address, any deficiencies in the application.

Section 420.19 would require an applicant to demonstrate that its proposed launch site location will allow for the safe launch of at least one type of launch vehicle by defining flight corridors or impact dispersion areas and estimating casualty expectancy.

[18] Nor does the FAA attempt to protect inhabited buildings that are not considered property of the public.

[19] NASA Standard at A–7.

Section 420.21 would require an applicant to specify which launch vehicle type and class would be launched from each launch point at the proposed launch site. This section also proposes to define the minimum distance from each launch point to a launch site boundary.[20] The three types of expendable launch vehicle proposed account for the critical distinctions between launch vehicles designed for orbital or sub-orbital flight, and between those with and without guidance systems. Guided orbital expendable launch vehicles typically require an FTS, which means that the greatest risk to the public stems from debris caused by destruction of a vehicle. Guided sub-orbital launch vehicles will be treated similarly to orbital launch vehicles, except for the nominal impact of the final stage. In contrast, unguided sub-orbital launch vehicles generally have high reliability levels, and therefore crate the greatest public risk through nominal stage impact. The methods proposed in the appendices are designed to account for these differences in public risk. Orbital expendable launch vehicles are also sorted by class, which is determined by payload weight capacity. Minimum distances are based on actual computations for each of the launch vehicle types and classes. The safety of launch points for reusable launch vehicles will be evaluated on a case-by-case basis in a manner consistent with the principles expressed here.

Section 420.23 would state that the FAA will evaluate the adequacy of a launch site location for unproven launch vehicles on a case-by-case basis.

Subpart B also contains the FAA's proposed explosive facility siting standards for the protection of the public from launch site explosive hazards created by liquid and solid propellants. These standards would be used by an applicant to site facilities that support activities involving liquid and solid propellants, or facilities potentially exposed to such activities, and to document the layout of these facilities.[21]

In order to comply with proposed subpart B, an applicant would first determine those areas at its proposed launch site where solid or liquid propellant would be stored or handled, and which the FAA proposes to designate as explosive hazard facilities. They may include payload processing facilities, launch pads, propellant storage or transfer tanks, and solid rocket motor assembly buildings. An applicant must then determine the types and maximum quantity of propellants to be located at each explosive hazard facility. For solid propellants, the applicant would determine the total weight, expressed in pounds, of division 1.3 explosive material to be contained in the items that will be located at each explosive hazard facility. For liquid propellants, the applicant would determine either the explosive equivalency of a fuel and oxidizer combination if fuels and oxidizers would be located together at, what is referred to as, incompatible distances; or, if fuels and oxidizers would not be located together, an applicant would determine the net weight in pounds of liquid propellant in each explosive hazard facility.

The next step for an applicant would be to determine the minimum allowable separation distance between each explosive hazard facility and all other explosive hazard facilities, the launch site boundary, and other public areas such as the launch complex of another launch operator, public railways and highways running through the launch site, and any visitor centers. The distances between explosive hazard facilities are important to ensure that an explosive event in one explosive hazard facility would not cause an explosive event in another explosive hazard facility. The distances between explosive hazard facilities and public areas are important to ensure that the public is protected from blast, debris, and thermal hazards. Exact distances must be given between the wall or corner of the facility closest to the closest wall or corner of other explosive hazard facilities and public areas. Minimum allowable distances based on the type and quantity of propellant to be located within an explosive hazard facility. Determining the minimum allowable distance between two explosive hazard facilities is accomplished by applying the applicable criteria to each and then separating them by at least the greater distance prescribed for each explosive hazard facility. For example, if a certain amount of division 1.3 solid propellant would be located at explosive hazard facility A, and twice as much division 1.3 solid propellant would be located at explosive hazard facility B, the prescribed distance generated by explosive hazard facility B would serve as the minimum distance permitted between explosive hazard facility A and explosive hazard facility B.

Proposed § 420.31(a) would require an applicant to provide the FAA an explosive site plan that establishes that the applicant's proposed distances satisfy the explosive siting criteria. The explosive site plan must include a scaled map or maps that show the location of all proposed explosive hazard facilities where solid and liquid propellants would be stored or handled.[22] An applicant must include the class and division for each solid propellant and the hazard and compatibility group for each liquid propellant.

In addition to the location of explosive hazard facilities, the map or maps would indicate actual and minimum allowable distances between each explosive hazard facility and other explosive hazard facilities and each public area, including the launch site boundary. One means by which an applicant could show that the distances are at least the minimum required in the proposed rules would be by drawing a circle or arc with a radius equal to the minimum allowed distance centered on each explosive hazard facility.

Unlike the DOD and NASA standards, which both define numerous separation distances, the proposed rules define only two distances for solid propellants, namely, a public area distance and an intraline distance. Public area distance would serve as the minimum distance permitted between a public area and an explosive hazard facility. Facilities and other infrastructure such as roads, railways, and inhabited buildings may or may not be public areas, depending on whether the public has access at the time explosives are present in the explosive hazard facility. Examples include a public road or railroad running through a launch site, and a visitor center where members of the public would be located.[23] Likewise,

[20] The FAA also proposed minimum distances between a launch point and a launch site boundary in its explosive site plan requirements in subpart B. Because both requirements apply, an applicant must apply the greater of the D_{max} or Q–D distance to accommodate the greater of the hazards.

[21] An analysis may include evaluations of blast hazards; fragment hazards; protective construction; grounding, bounding and lighting protection systems; electrical installations; natural or man-made terrain features; or other mission or local requirements.

[22] Areas where solid propellants would be stored would be included in the plan even though ATF requirements apply. Applicants with magazines where solid propellants are to be stored must obtain an ATF permit and meet ATF quantity-distance requirements. The FAA will use the information to ensure that those of its requirements unrelated to storage are satisfied and to coordinate with ATF when necessary.

[23] A launch site operator who does not wish to employ the appropriate public area distance between an explosive hazard facility and public areas such as, for example, a visitor center, must propose operational limitations in its application. These would consist of such strictures as not allowing members of the public in the visitor center while explosives are present in the explosive

Continued

different launch site customers are also considered the public with respect to each other. Intraline distance would provide the minimum distance permitted between any two explosive hazard facilities used by one launch site customer. In this regard, for planning purposes, an applicant should bear in mind that using the greater public area distance would avoid later operational constraints when different customers wanted to use facilities sited at intraline distances.

In addition to containing maps, an explosive site plan would also describe, through tables or lists, the maximum quantities of liquid and solid propellants to be located at each explosive hazard facility, and the activities to be conducted within each explosive hazard facility.

Pursuant to proposed § 420.31(b), the requirement to submit an explosive site plan to the FAA would not apply to an applicant applying for a license to operate a launch site at a federal launch range. Federal launch ranges have separate rules which are either identical or similar to the rules proposed, or require mitigation measures which otherwise ensure safety.

The criteria for determining the minimum required distances between each explosive hazard facility and all other explosive hazard facilities and each public area, including the launch site boundary, are proposed in § 420.33 for solid propellants and § 420.35 for liquid propellants. Proposed § 420.37 includes rules for when liquid and solid propellants are located together.

Proposed § 420.33 covers quantity determinations and minimum required distances for explosive hazard facilities where solid propellants would be handled. Under proposed § 420.33(a), an applicant would first determine the maximum total quantity of explosive in each explosive hazard facility where solid propellants would be handled. The total quantity of explosives in an explosive hazard facility shall be the maximum total weight, expressed in pounds, of division 1.3 explosive material in the contents of the explosive hazard facility. For example, if a facility could hold up to ten solid rocket motors of a particular type, even though it might only rarely hold that many motors, the applicant would calculate the total weight of division 1.3 explosive material in the ten motors.

The proposed rules are based on an assumption that only division 1.3 solid propellant will be located at a launch site in sufficient quantities to affect facility location. The FAA is aware that the launch vehicle used for the first launch from Kodiak Launch Complex, a launch site operated by the recently licensed Alaska Aerospace Development Corporation (AADC), had a second stage motor with division 1.1 propellant. The FAA believes this will be a rare occurrence in the future. The FAA realizes that 1.1 explosives, such as those used in launch operator's flight termination system, will also likely be located at a launch site. However, current practice is to design such components so as not to be able to initiate division 1.3 components when installed on a vehicle. The FAA anticipates that it will require any licensed launch operator to demonstrate that its 1.1 devices do not initiate 1.3 components as is the current practice at federal launch ranges. Therefore, the amount of such ordnance used with division 1.3 explosives may be disregarded for Q–D purposes. The total quantity of explosives shall be the NEW of the division 1.3 components.

Once an applicant has determined the total quantity of solid propellants in each explosive hazard facility, proposed § 420.33(b) would require an applicant to separate each explosive hazard facility where solid propellants will be handled from all other explosive hazard facilities and each public area, including the launch site boundary, in accordance with the minimum separation distances contained in proposed table E–1 in appendix E. Table E–1 provides two distances for each quantity level. The first, a public area distance, is the minimum distance permitted between a public area and an explosive hazard facility. The second, an intraline distance, is the minimum distance permitted between any two explosive hazard facilities used by one launch site customer. Other explosive hazard facilities may constitute public areas, because the definition of public area includes any area in the possession or ownership, or otherwise under the control of a launch site operator's other customers. Distance calculations would be made accordingly. Table E–1 contains the same distances as the NASA and DOD standards, except that the DOD standard has more increments. An applicant may use linear interpolation for quantity values between those provided in the table. Additionally, because table E–1 does not include quantities greater than 1,000,000 pounds, an applicant with an explosive hazard facility where solid propellants in quantities greater than 1,000,000 pounds would be handled would use the equations proposed in § 420.33(b) to obtain separation distances.

An applicant would measure a separation distance from the closest source of debris or hazard under proposed § 420.33(c). For example, for a building, an applicant would use for measurement the wall or corner of the facility closet to the closest wall or corner of other explosive hazard facilities and public areas. When solid rocket motors or motor segments are freestanding, an applicant would measure from the closest motor or motor segment. An acceptable way to demonstrate that minimum distance requirements are met is to draw a circle or arc centered on the closest source of debris or hazard showing that no other explosive hazard facility or public area is within the distance permitted.

Note that Q–D requirements address siting of facilities, not operational control of hazard areas. During actual operations, the existence and size of a hazard area is dependent on the actual amount of explosive material in an explosive hazard facility.

Proposed § 420.35 covers quantity determinations and distance requirements for explosive hazard facilities that support the storage or handling of liquid propellants. In addition to applying to distances between an explosive hazard facility and other explosive hazard facilities and public areas, distance requirements may apply within an explosive hazard facility as well.

Liquid propellants are classified and separated differently than solid propellants. Where solid propellants are classified by class and division, each liquid propellant is assigned to one of three hazard groups and one of two compatibility groups. A hazard group categorizes liquid propellants according to the hazards they cause. Hazard group 1 represents a fire hazard, hazard group 2 represents a more serious fire hazard, and, because a liquid propellant in hazard group 3 can rupture a storage container, it represents a fragmentation hazard. Each liquid propellant also falls into one of two compatibility groups. Liquid propellants are compatible when storing them together does not increase the probability of an accident or, for a given quantity of propellant, the magnitude of the effects of such an accident. Propellants in the same compatibility group do not increase the probability or magnitude of an accident. The two proposed compatibility groups consist of fuels and oxidizers, and are what the NASA and DOD standards label A and C. The FAA proposes to use the same labeling to provide continuity. Proposed group A represents oxidizers such as LO2 and N2O4, and proposed group C represents fuels such as RP–1 and LH2. Proposed appendix E provides the hazard and compatibility groups for current launch vehicle liquid propellants in table E–3.

Explosive equivalency serves as another source of difference between the treatment of solid and liquid propellants. Only if fuels and oxidizers are to be located within certain distances of each other would the separation requirements designed to account for the hazardous consequences of their potential combination apply. That combination is measured in terms of explosive equivalency. Explosive equivalency for liquid propellants is a measure of the blast effects from explosion of a given quantity of fuel and oxidizer mixture expressed in terms of the weight of TNT that would produce the same blast effects when detonated. Fuels should not be located near oxidizers if possible. The significance of the hazard groups and compatibility groups is that if fuels are located far enough from oxidizers, the minimum distance requirements to public areas and other explosive hazard facilities depend only on the quantity and hazard group of the individual liquid propellants. If operational requirements require fuels and oxidizers to be located near each other, that is, at less than the minimum public area and incompatible distances proposed in tables E–4, E–5 and E–6, the explosive equivalency of the incompatible propellants must be calculated and used to determine the distances proposed in table E–7 to other explosive hazard facilities and public areas.

Appendix E contains four distance tables with separation requirements for liquid propellants. Tables E–4, E–5 and E–6 contain separation distances for hazard group 1, 2, and 3, respectively. Table E–7 contains separation distances for when fuels and oxidizers are located less than prescribed distances apart so that explosive equivalency applies. Table E–7 contains distances similar to those for 1.1 solid explosives. This is because the "explosive equivalency" of a fuel and oxidizer mixture is measured in terms of its equivalent explosive blast effect to TNT, which is a class 1.1 explosive. Table E–7 also prescribes public area and intraline distances.

Tables E–4, E–5, and E–6 have two distances listed for each quantity of liquid propellant by hazard group. The first, a "public area and incompatible" distance, is the minimum distance permitted between a given quantity of liquid propellant and a public area. The distance is also the same distance by which incompatible propellants must be separated (e.g. the minimum distance between a fuel and an oxidizer) for explosive equivalency and Table E–7 not to apply to the distance calculations. The second, an "intragroup and compatible" distance, is the distance by which propellants in the same hazard group, or propellants in the same compatibility group must be separated (e.g. the minimum distance between two fuels) to avoid adding the quantity of each propellant container being separated in calculating distances. This is simply because if two propellant tanks are far enough apart, they cannot react with one another, even were a mishap to occur. This introduces the third difference between liquid propellant separation requirements and the requirements for solid propellants.

The third area where liquid propellant separation requirements are different than those for solid propellants may be found in calculations of the quantity of liquid propellant that determines the distance relationship with other explosive hazard facilities and public areas. Quantity calculations may depend on distance. As an example, suppose one was determining the minimum distance required between a tank farm having many containers of fuel, and a launch site boundary. If the containers were all close together the applicant would simply take the total amount of fuel, look up the "public area and incompatible" distance in the table that corresponded to the hazard group of the fuel, and ensure that the distance between the closest wall or corner of the explosive hazard facility and the launch site boundary was at least the distance listed in the table. However, if the containers were separated from each other so that the distance between each container met the minimum "intragroup and compatible"[24] distance in the table, the total quantity of propellant to be used for the "public area" distance determination is only the quantity in each container. Therefore, as discussed below, although quantity determination requirements may be found in proposed § 420.35(a) and proposed § 420.35(b) contains distance determination requirements, quantity determinations for liquid propellants may depend on distances between containers.

Like the procedure for solid propellant quantity and distance determinations, an applicant's first step in siting liquid propellants would be to determine the quantity of liquid propellant or, if applicable, the explosive equivalent of the liquid propellant to be located in each explosive hazard facility. An applicant determines this through three steps specified in proposed § 420.35(a). First, proposed § 420.35(a)(1) states that the quantity of propellant in a tank, drum, cylinder, or other container is the net weight in pounds of the propellant in that container. The weight of liquid propellant in associated piping must be included in the determination of quantity to any point where positive means, such as shutoff valves, are provided for interrupting the flow through the pipe, or for interrupting a reaction in the pipe in the event of a mishap.

Next, proposed § 420.35(a)(2) applies when two or more containers of compatible propellants are stored together in an explosive hazard facility. When liquid propellants are compatible, the quantity of propellant used to determine the minimum separation distance between the explosive hazard facility and other explosive hazard facilities and public areas shall be the total quantity of liquid propellant in all containers unless either the containers are separated one from the other by the "intragroup and compatible" distance contained in appendix E, table E–4, E–5 or E–6, depending on the hazard group, or the containers are subdivided by intervening barriers to prevent their mixing. In those two cases, the quantity of propellant in the explosive hazard facility requiring the greatest separation distance must be used to determine the minimum separation distance between the explosive hazard facility and all other explosive hazard facilities and public areas.

Finally, proposed § 420.35(a)(3) applies to quantity determinations when two or more containers of incompatible liquid propellants are stored together in an explosive hazard facility. If each container is not separated from every other container by the "public area and incompatible" distances identified in appendix E, tables E–4, E–5 and E–6, an applicant must determine the total quantity of explosives by calculating the explosive equivalent in pounds of the combined liquids, using NASA formulas contained in table E–2, to determine the minimum separation distance between the explosive hazard facility and other explosive hazard facilities and public areas. If the containers are, in fact, to be separated one from the other by the appropriate "incompatible" distance, an applicant would determine the minimum separation distance to another explosive hazard facility or public area using the quantity of propellant within the explosive hazard facility requiring the greatest separation distance. For

hazard facility not sited according to the proposed requirements.

[24] The category is called "intragroup and compatible" to cover propellants that are in different hazard groups but are still compatible.

example, if 50 pounds of hazard group 1 fuel were 31 feet from 150 pounds of hazard group 1 fuel, the minimum required distance to a public area would be 35 feet, reflecting the public area distance required by the greater quantity of fuel.

Proposed § 420.35(a)(4) requires an applicant to convert liquid propellant quantities from gallons to pounds using conversion factors in table E–3, and the equation provided. The proposed requirement reflects a NASA standard.[25]

After an applicant has determined the quantity of liquid propellant or, if applicable, the explosive equivalent of the liquid propellants to be located in each explosive hazard facility, an applicant must then determine the separation distances between each explosive hazard facility and public areas. Proposed § 420.35(b) specifies the rules by which an applicant determines the separation distances between propellants within explosive hazard facilities, and between explosive hazard facilities and public areas. An applicant would first use table E–3 to determine hazard and compatibility groups. An applicant would then separate propellants from each other and from each public area using at least the distances provided in tables E–4 through E–7. With one exception, as discussed below, tables E–1 and E–7 reflect the NASA standard.

Proposed § 420.35(b)(1) would require that an applicant measure minimum separation distances from the container, building, or positive cutoff point in piping which is closet to each public area or explosive hazard facility requiring separation.

Proposed § 420.35(b)(2) would impose a minimum separation distance between compatible propellants. An applicant would measure the separation distance between compatible propellants using the "intragroup and compatible" distance for the propellant quantity and group that requires the greater distance prescribed in tables E–4, E–5, and E–6. The distance between any two propellants is computed by first determining what the minimum required distances is for each propellant based on the quantity and hazard group of that propellant. The one requiring the greater distance is controlling for the pair.

Proposed § 420.35(b)(3) would apply to the minimum separation distance between incompatible propellants. An applicant would have to measure the separation distance between propellants of different compatibility groups using the "public area and incompatible" distance from the propellant quantity and group that requires the greater distance prescribed by tables E–4, E–5, and E–6, unless the propellants of different compatibility groups are subdivided by intervening barriers to prevent their mixing. If intervening barriers are to be present, the minimum separation distance shall then be the "intragroup and compatible" distance for the propellant quantity and group that requires the greater distance prescribed by tables E–4, E–5, and E–6.

Proposed § 420.35(b)(4) would apply to the separation of liquid propellants from public areas. An applicant shall separate these propellants from public areas using no less than the "public area" distance prescribed by tables E–4, E–5, and E–6.

Proposed § 420.35(b)(5) would apply to propellants where explosive equivalents apply prescribed by subparagraph (a)(3). An applicant shall separate each explosive hazard facility that will contain propellants where explosive equivalents apply from all other explosive hazard facilities that are under the control of the same customer public areas is the public area distance in table E–7. Table E–7 is a revised form of the NASA standard.

Proposed § 420.37 would specify the rules to be used when solid and liquid propellants are located together, such as at launch pads and test stands. For applicants proposing an explosive hazard facility where solid and liquid propellants are to be located together, § 420.37 provides three steps that an applicant should use to determine the minimum separation distances between the explosive hazard facility and other explosive hazard facilities and public areas. An applicant would first determine the minimum separation distances between the explosive hazard facility and other explosive hazard facilities and public areas required for the solid propellants alone, in accordance with proposed § 420.33. An applicant would then determine the minimum separation distances between the explosive hazard facility and other explosive hazard facilities and public areas required for the liquid propellants alone, in accordance with § 420.35. If explosive equivalents apply, an applicant would determine the minimum separation distances between the explosive hazard facility and other explosive hazard facilities and public areas required for the liquid propellants using appendix E, table E–7F, in accordance with § 420.35. An applicant would then apply the greater of the distances determined by the liquid propellant alone or the solid propellant alone.

Subpart C contains license term and conditions. Section 420.41 would specify the authority granted to a launch site operator by a license and the licensee's obligation to comply with representations contained in the license application as well as the FAA's license terms and conditions. The provision limits a licensee's authority to the launch points on the launch site and to the types of launch vehicles used to demonstrate the safety of the launch site location, and, for orbital launch vehicles, to vehicles no larger than the class analyzed. The provision would also clarify the licensee's obligation to comply with any other laws or regulations applicable to its licensed activities and identifies certain rights that are not conveyed by a launch site operator license.

Section 420.43 would specify the duration of a license to operate a launch site, the grounds for shortening the term, and that a license may be renewed.

Section 420.45 would provide the procedures that an applicant must follow to obtain FAA approval for the transfer of an existing license to operate a launch site.

Section 420.47 would specify the procedures that the FAA would allow to modify a license through a license order or written approval, and the procedures that a launch site operator licensee must follow to obtain an FAA license modification. A licensee must obtain a license modification if the licensee proposes to operate the launch site in a manner not authorized by its license. This means, among other things, that if a representation in the license application regarding an issue material to public safety is no longer accurate or does not describe the licensee's operation or intended operation of the site, a licensee must obtain a license modification. This is because the representations a licensee makes in its application become part of the terms and conditions of its license.

A licensee must obtain FAA approval prior to modifying its operations. For example, a licensee whose application stated that it would prevent unauthorized access to its launch site through the use of security personnel might decide, in the course of its operation, that physical barriers might better serve to accomplish this goal. The FAA considered that, on the one hand, the ability to immediately institute a change might best control public access because if a licensee has to wait for its license to be modified prior to instituting a change, needed safety improvements might be unnecessarily delayed. On the other hand, the FAA's mandate requires that it first ascertain whether the proposed change is indeed acceptable. Accordingly, the FAA decided that it must first be advised of a proposed change and must approve its implementation. In the event of special circumstances and where safety warrants, the FAA will work with a licensee to accommodate any timing problems.

Proposed § 420.47 also specifies the procedures for a licensee to obtain and the FAA to issue a license modification. The FAA could modify a license using a written approval rather than a license order in cases where the change addresses an activity or condition that was represented in the license application but not spelled out in a license order.

Section 420.49 would impose an obligation on a launch site operator licensee, its customers, and its contractors to cooperate with the FAA in compliance monitoring of licensed activities. This requirement recognizes an FAA compliance monitor's need to observe operations conducted by all parties at the site and to have access to records and personnel if the FAA is to be assured that public safety is being protected.

Subpart D contains the responsibilities of a licensees. Section 420.51 would describe a licensee's obligation to operate its launch site in accordance with the representations in its license application, 49 U.S.C. Subtitle IX, ch. 701 and the FAA's regulations.

Section 420.53 would require a launch site operator licensee to control public access to the launch site and to protect the public present at the launch site. The proposed regulation seeks to protect the public from the consequences of flight and pre-flight activities by separating the public from hazardous launch procedures. The public could also be at risk if allowed to enter the launch site or move about without adequate safeguards. This provision would require the licensee to prevent the public from gaining unauthorized access to the launch site. The applicant would be given broad discretion in selecting the method for controlling access. The provision would also hold the licensee responsible for informing members of the public of safety precautions before entry and for warning of emergencies on-site. A licensee would also be responsible for escorting the public between harzard areas not otherwise controlled by a launch operator at the launch site, and employing warning signals or alarms to notify persons on the launch site of any emergency.

Section 420.55 would require a licensee to develop and implement procedures to coordinate operations carried out by launch site customers, including launch operators, and their contractors. This requirement is necessary to ensure that the operations of one launch site customer do not interact with the operations of another customer to create a public safety hazard at the launch site or beyond. For example, the testing of equipment using radio frequency transmissions could trigger ordnance used by someone elsewhere on the site, if the two launch preparation activities are not coordinated or warnings issued. Likewise, hazardous operations by one customer with the potential to reach another customer must be coordinated by the launch site operator. A launch site licensee would be required to ensure that all customers at the site are informed of procedures and adhere to scheduling requirements before commencing operations at the launch site.

Section 420.57 would establish notification requirements for a licensee. The licensee would be responsible for notifying customers of any limitations on use of the site. This provision would ensure that customer activities re compatible with other activities at the launch site. It would also ensure that limitations on the use of facilities provided to customers by a launch site operator are communicated to the customer. The licensee will be responsible for possessing agreements with the Coast Guard to arrange for issuance of Notices to Mariners during launches and with the regional FAA office for Notice to Airmen and closure of air routes. In addition, the licensee will notify local officials and landowners adjacent to the launch site of the flight schedule. This provision places an on-going responsibility on the site operator licensee for establishing notification procedures, rather than on the numerous launch licensees whose involvement with the launch site may be more sporadic and temporary. The proposed requirement would, however, leave open the option of a launch licensee implementing the procedures established by the launch site operator.

Section 420.59 would require a licensee to development and implement a launch site accident investigation plan containing procedures for reporting, investigating and responding to a launch site accident. The provision would extend reporting, investigation and response procedures currently applicable to launch related accidents and incidents to accidents occurring during round activities at a launch site. The proposed rule allows launch site operators to satisfy the requirements of § 420.59 by using accident investigation procedures developed in accordance with the requirements of the U.S. Occupational Safety and Health Administration (OSHA) at 29 CFR 1910.119 and 120, and the U.S. Environmental Protection Agency (EPA) at 40 CFR part 68, to the extent that the procedures include the elements provided § 420.59.[26] The FAA wishes to ease the regulatory burden here and in other parts of the proposed rules where other federal regulatory agencies impose requirements on launch site operators.

OSHA's standard at 29 CFR 1910.119 includes provisions for investigating incidents and emergency response. *See* 29 CFR 1910.119(m) and (n). In addition, 29 CFR 1910.120, hazardous waste operations and emergency response (HAZWOPER), provides for emergency response planning for operations involving hazardous materials, including those listed by the Department of Transportation under 49 CFR 172.101.[27] Launch operators and launch site operator in compliance with these requirements will be taking steps to protect the public as well as their workers.

EPA's requirements at 40 CFR part 68 also include standards for incident investigation and emergency response. *See* 40 CFR 68.60, 68.81, 68.90, and 68.180. for both the OSHA and EPA requirements, compliance with 42 U.S.C. 11003, Emergency Planning and Community Right-to-Know, satisfies many of the emergency response provisions.

The FAA is interested in the public's view of proposed § 420.59, particularly the extent to which other regulatory agency requirements such as OSHA and EPA help to ensure launch site operators respond to an investigate launch site accidents.

Section 420.61 would provide the requirements for launch site operator retention or records, data, and other material needed to verify that launch site operator operations are conducted in accordance with representations contained in the licensee, and for recorded production in the event of

[25] NASA Standard at 7–7.

[26] The EPA's requirements in 40 CFR part 68 apply to "incidents which resulted in, or could reasonably have resulted in a catastrophic release." 40 CFR 68.60(a). OSHA's requirements in 29 CFR 1910.119 are similar, applying to "each incident which resulted in, or could reasonably have resulted in a catastrophic release of a highly hazardous chemical in the workplace." 29 CFR 1910.119(m)(l).

[27] Hazardous materials in AST regulations, § 401.5, are defined as hazardous materials as defined in 49 CFR 172.101.

launch site accident investigation, or compliance monitoring.

Section 420.63 would provide responsibilities of a launch site operator regarding explosives. Section 420.63(a) would require a launch site operator to ensure that the configuration of the launch site is in accordance with the licensee's explosive site plan, and that its explosive site plan is in compliance with the requirements in §§ 420.31–420.37.

Section 420.63(b) would require a launch site operator to ensure that the public is not exposed to hazards due to the initiation of explosives by lightning. Unless an explosive hazard facility has a lightning warning system to permit termination of operations and withdrawal of the public to public area distance prior to the incidence of an electrical storm, or the explosive hazard facility is to contain explosives that cannot be initiated by lightning, it must have a lightning protection system to ensure explosives are not initiated by lightning. A lightning protection system shall include an air terminal to intentionally attract a lightning strike, a low impedance path—called a down conductor—connecting an air terminal to an earth electrode system, and an earth electrode system to dissipate the current from a lightning strike to ground.

Because no lightning protection system is necessary if a launch site operator has a lightning warning system to permit termination of operations and withdrawal of the public to public area distance prior to the incidence of an electrical storm, proposed § 420.63 does not explicitly protect the public from the inadvertent flight of a solid rocket motor. The FAA is interested in public views on this point.

A lightning protection system shall also include measures for bonding and surge protection. For bonding, all metallic bodies shall be bonded to ensure that voltage potentials due to lightning are equal everywhere in the explosive hazard facility. Fences within six feet of the lightning protection system shall have bonds across gates and other discontinuations and shall be bonded to the lightning protection system. Railroad tracks that run within six feet of the lightning protection system shall be bonded to the lightning protection system. For surge protection, a lightning protection system shall include surge protection for all metallic power, communication, and instrumentation lines coming into an explosive hazard facility to reduce transient voltages due to lightning to a harmless level.

Lightning protection systems shall be visually inspected semiannually and shall be tested once each year for electrical continuity and adequacy of grounding. A record of results obtained from the tests, including action taken to correct deficiencies noted, must be maintained at the explosive hazard facility.

Section 420.63(c) would require a launch site operator to ensure that electric power lines on the launch site meet the distance requirements provided. A full discussion of explosive hazard mitigation measures is provided in the general preamble above.

Appendix A

Of the two methods the FAA proposes for allowing an applicant to demonstrate the existence of a guided launch vehicle flight corridor that satisfies the FAA's risk criteria, appendix A typically offers the more conservative approach in that it produces a larger area as well as the more simple of the options available for guided orbital and suborbital launch vehicles. In order to achieve the simplicity this approach offers, the FAA based certain decisions regarding the methodology on a series of what it intends as conservative assumptions and on hazard areas previously developed by the federal launch ranges for the guided launch vehicles listed in table 1 of § 420.21.

The greater simplicity of the approach derives from the fact that, unlike the method of appendix B, an applicant need obtain no meteorological data and need not plot the trajectory of a particular launch vehicle. Instead, recognizing that a typical flight corridor consists of a series of fans of decreasing angle extending out from a launch point, the FAA proposes, with certain modifications, to employ a variation on that typical corridor for its proposed appendix A analysis.

The FAA's proposed appendix A flight corridor estimation contains a number of elements, each of which an applicant must define for each of its proposed launch points. An appendix A flight corridor consists of a circular area around a selected launch point, an overflight exclusion zone, a launch area and a downrange area. A flight corridor for a guided orbital launch vehicle ends 5,000 nautical miles from the launch point, and, for a guided suborbital launch vehicle, the flight corridor ends with the impact dispersion area of the launch vehicle's final stage.

Once an applicant has produced an appendix A flight corridor, the applicant must ascertain whether the flight corridor contains population, and, if so, whether the use of the corridor would present unacceptable risk to that population. If so, whether the use of the corridor would present unacceptable risk to that population. If no members of the public reside within the corridor, the FAA would approve the proposed location of the site.[28] If the flight corridor is populated, the FAA proposes to require an applicant to perform a risk analysis as set forth in appendix C. If the proposed corridor satisfies the FAA's risk criteria, the FAA will approve the location of the site. If, however, the proposed corridor fails to satisfy the FAA's risk criteria, an applicant has certain options. The applicant may attempt another appendix A flight corridor by selecting a different flight azimuth or by selecting a different launch point at the proposed launch site, or by selecting a different launch vehicle type or class. Or, the applicant may, using the more accurate but more complicated calculations of appendix B, narrow its flight corridor and determine whether that flight corridor satisfies the FAA's risk criteria.

To create a hypothetical flight corridor under proposed appendix A an applicant must first determine from where on the launch site a guided launch vehicle would take flight. That position is defined as a launch point. An applicant must determine the geodetic latitude and longitude of each launch point that it proposes to offer for launch, and select a flight azimuth for each launch point. An applicant should know whether it plans to offer the site for the launch of guided orbital or sub-orbital launch vehicles. If planning for the launch of guided orbital launch vehicles, the applicant must decide what launch vehicle class, as described by payload weight in proposed § 420.21, table 1, best represents the largest launch vehicle class the launch site would support.

Once an applicant has made the necessary decisions regarding location and vehicle class, the next step in creating an appendix A flight corridor is to look up the maximum distance (D_{max}) that debris is expected to travel from a launch point if a worst-case launch vehicle failure were to occur and flight termination action destroyed the launch vehicle at 10 seconds into flight. D_{max} serves as a radius that defines a circular area around the launch point. The FAA has estimated, on the basis of federal launch range experience, the D_{max} for a guided suborbital launch vehicle and for each guided orbital launch vehicle class and provided the results that an applicant should employ in table A–1, appendix A.

[28] An applicant must still obtain written agreements with the FAA regional office having jurisdiction over the airspace where launches will take place and, if appropriate, with the U.S. Coast guard regarding procedures for coordinating launches from the launch site.

The circular area, defined by D_{max}, is part of an overflight exclusion zone. An overflight exclusion zone in an appendix A flight corridor consists of a rectangular area of the length prescribed by table A–2, capped up-range by a semi-circle with radius D_{max}, centered on the launch point. Its downrange boundary is defined by an identical semi-circular arc with a radium D_{max}, centered on the endpoint prescribed by table A–2. The cross-range boundaries consist of two lines parallel to and to either side of the flight azimuth. Each line is tangent to the upgrade and downgrade D_{max}, circles as shown in appendix A, figure A–1.

An appendix A flight corridor also contains a launch area. The launch area extends from the uprange boundary, which is coextensive with the circle created by the radius D_{max}, to a line drawn perpendicular to the flight azimuth one hundred nautical miles down range of the launch point. The launch area's cross-range boundaries are a function of the lengths of two lines perpendicular to the flight azimuth: one drawn ten nautical miles down range from the launch point and the other line drawn one hundred nautical miles down range from the launch point. Table A–3 provides the lengths of the line segments.

Adjacent to the launch area is the downrange area. For purposes of appendix A, a corridor's downrange area extends from the one hundred nautical miles line to a line, perpendicular to the flight azimuth, that is 5,000 nautical miles downrange from the launch point for the guided orbital launch vehicle classes, and to an impact dispersion area for a guided suborbital launch vehicle corridor. The down range area's cross-range boundaries connect the prescribed endpoints of the perpendicular lines at one hundred nautical miles and 5,000 nautical miles. Table A–3 provides the lengths of the line segments.

All applicants must determine whether the public resides within this flight corridor. If no populated areas exist, an applicant may submit its analysis for the FAA's launch site location review. If there is population located within the flight corridor, the applicant must calculate the risk to the public following the criteria provided in appendix C. The expected casualty (E_c) result for the flight corridor must not exceed 30×10^{-6} for the applicant to satisfy the proposed location requirements.

Map Requirements and Plotting Methods

To describe a flight corridor and any populated areas within that corridor, an applicant must observe data and methodology requirements for mapping a flight corridor and analyzing populations. These requirements apply to all appendices.

The FAA proposes to require certain geographical data for use in describing flight corridors for each appendix. The geographical data must include the latitude and longitude of each proposed launch point at a launch site, and all populated areas in a flight corridor. The accuracy requirement for the launch area portion of the analyses calls for map scales of no smaller than 1:250,000 inches per inch. The actual map scale will depend on the smallest census block group size in a launch area. The FAA bases its proposed scale requirement on average range rates in the launch area, because range rates have a direct impact on dwell times over populated areas. While in the launch area of a flight corridor, the instantaneous impact point (IIP) ground trace would tend to linger over any populated areas, which increases the E_c for an individual populated area. The map scale required by the FAA is large enough to allow an applicant to determine the dwell time and size for each applicable populated area.

Using a similar approach, the FAA proposes to establish an accuracy requirement for the downrange area of a flight corridor. A map scale may be no smaller than 1:20,000,000 inches per inch. The scale would be smaller than that required for the launch area because the dwell times over downrange populated areas is small and the map scale must only be large enough to allow an applicant to determine the dwell time and the size of each populated area downrange. Maps satisfying these accuracy requirements are readily available. For example, civil aeronautical charts are published and distributed by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), and are also published by the Defense Mapping Agency and distributed by NOAA.

Besides scale, the FAA has proposed requirements for projections, depending on the plotting method used. Proposed appendices A, B, C and D would require an applicant to use cylindrical, conic, and plane map projections. The FAA proposes these map projections for the analyses because they produce only small error with straight line measurements. Maps may be produced using several different map projections depending on the map scale, geographic region being depicted, and the application. A map projection, according to the U.S. Geological Survey,[29] is a device for producing all or part of a round body on a flat sheet. All map projections have inherent distortions. The distortions are virtually unavoidable and are directly, related to the techniques for displaying latitude and longitude lines on a flat surface area. Therefore, many maps are developed for specific applications requiring that some map characteristics be shown more accurately at the expense of others. The flight corridor methods are primarily sensitive to azimuthal direction and geodetic length of the flight corridor line segments. Therefore, it is important to use map projections that preserve scale and direction accuracy. Cylindrical, conic, and plane map projections have been reviewed by the FAA and are most appropriate types for the launch site application analyses.

The regular cylindrical projections consist of meridians, which are equidistant parallel straight lines, crossed at right angles by straight parallel lines of latitude, generally not equidistant. Geometrically, cylindrical projections can be partially developed by unrolling a cylinder which has been wrapped around a globe representing the Earth, with the inside of the cylinder touching at the equator, and on which meridians have been projected from the center of the globe. When the cylinder is wrapped around the globe in a different direction, so that it is no longer tangent along the equator, an oblique or transverse projection results, and neither the meridians nor the parallels will generally be straight lines.

Normal conic projections are distinguished by the use of arcs of concentric circles for parallels of latitude and equally spaced straight radii of those circles for meridians. The angles between the meridians on the map are smaller than the actual differences in longitude. The circular arcs may or may not be equally spaced, depending on the projection. The name "conic" originatd from the fact that the more elementary conic projections may be derived by placing a cone on the top of a globe representing the Earth, the apex or tip in line with the axis of the globe, and the sides of the cone touching or tangent to the globe along a specified "standard" latitude which is true to scale and without distortion.

[29] Map Projections used by the "U.S. Geological Survey," U.S. Geological Survey Bulletin 1532, 1982.

Meridians are drawn on the cone from the apex to the points at which the corresponding meridians on the globe cross the standard parallel. Other parallels are then drawn as arcs centered on the apex in a manner depending on the projection. If the cone is cut along one meridian and unrolled, a conic projection results.

The azimuthal projections are formed onto a plane which is usually tangent to the globe at either pole, the equator, or any intermediate point. These variations are called the polar, equatorial (or meridian or meridional), and oblique (or horizon) aspects, respectively. Some azimuthals are true perspective projections. Azimuthal projections are characterized by the fact that the direction, or azimuth, from the center of the projection to every other point on the map is shown correctly. The simplest forms of the azimuthal projections are the polar aspects, in which all meridians are shown as straight lines radiating at their true angles from the center, while parallels of latitude are circles concentric about the pole. Most azimuthal maps do not have standard parallels or standard meridians. Each map has only one standard point, the center. Thus, the azimuthals are suitable for minimizing distortion in a somewhat circular region such as Antarctica, but not for an era with predominant length in one direction.

Scale requirements, geographic location of the launch site, and plotting method are the main considerations for choosing a map projection. Of these considerations, the plotting method selected for development and depiction of the flight corridor line segments is the most important. Three plotting methods are provided in appendix A.

The "mechanical method" is the least complex, least costly, but also the least accurate of the methods suggested here. Selecting an appropriate map scale and using a map projection that minimizes inherent scale and direction distortions can minimize coordinate plotting errors. The "Lambert-Conformal" conic projection is acceptable because it has characteristics that preserve angles and scales from any point on the map.[30]

The "semi-automated method" provides more accurate techniques for determining the endpoint coordinates of each flight corridor line segment. Errors associated with measuring devices and the mapping medium tend to be the same as those associated with the mechanical method. Engineering judgment and some map errors are reduced through the use of range and bearing equations. These equations also allow the applicant to choose from a wider variety of map projections. The "Mercator" and "Oblique Mercator" are adequate cylindrical projections. "Lambert-Conformal" and "Albers Equal-Area" are adequate conic projections. The "Lambert Azimuthal Equal-Area" and "Azimuthal Equidistant" are adequate plane projections. An applicant may use other maps in support of its application, but the applicant would be required to demonstrate an equivalent level of accuracy over the required distances, and would have to describe the consequences of any mapping errors associated with the proposed map projection.

Each of these projections possesses a number of attributes, which make some better suited for some parts of the global than others. Typically, most projections preserve scale and direction when measured from a point of tangency or along a standard parallel or meridian. A Mercator projection is cylindrical and conformal, that is, all angles presented correctly , and for small areas, true shape of features is maintained. In a Mercator projection, meridians are equally spaced straight lines and parallels are unequally spaced straight lines, closest near the equator, cutting meridians at right angles. Scale is true along the equator, or along two parallels equidistant from the equator. The Mercator projection may produce great distortion of area in polar regions.

The Oblique Mercator is cylindrical (oblique) and conformal. It contains two meridians, 180° apart, which are straight lines. Other meridians and parallels are complex curves. Scale on the spherical form is true along a chosen central line, a great circle at an oblique angle, or along two straight lines parallel to central line. The scale on the ellipsoidal form is similar, but varies slightly from this pattern. Scale becomes infinite 90° from the central line.

The Lambert Conformal is conic and conformal. Its parallels are unequally spaced arcs of concentric circles, more closely spaced near the center of the map. Meridians are equally spaced radii of the same circles, and consequently cut parallels at right angles. Scale is true along two standard parallels normally, or along just one. A pole in the same hemisphere as standard parallels is a point. The other pole is at infinity.

The Albers Equal-Area is conic. Parallels are unequally spaced arcs of concentric circles, more closely spaced at the north and south edges of the map. Meridians are equally spaced radii of the same circles, cutting parallels at right angles. There is no distortion in scale or shape along two standard parallels normally, or along just one. Poles are arcs of circles.

The Lambert Azimuthal Equal-Area is azimuthal. All meridian in the polar aspect, the central meridian in other aspects, and the equator in the equatorial aspect are straight lines. The outer meridian of the hemisphere in the equatorial aspect, for the sphere, and the parallels in the polar aspect for sphere or ellipsoid are circles. All other meridians and parallels are complex curves. Scale decreases radially as the distance increases from the center, the only point without distortion.

The Azimuthal Equidistant is azimuthal. Distances measured from the center are true. Distances not measured along radii from the center are not correct. The center of projection is the only point without distortion. Directions from the center are true except on some oblique and equatorial ellipsoidal forms. All meridians on the polar aspect, the central meridian on the other aspects, and the equator on the equatorial aspect are straight lines. Parallels on the polar projection are circles spaced at true intervals equidistant for the sphere. The outer meridian of the hemisphere on the equatorial aspect for the sphere is a circle. All other meridians and parallels are complex curves.

All of these map projections, with the exception of the "Lambert-Conformal" conic, preserve scale and direction when measured along a standard parallel or meridian. Because range and bearing computations are relative to a particular ellipsoid of revolution—a geoid, not the projection of the geoid, the computed latitude and longitude placement will be correct for any projection assuming the map datum and the range and bearing datum are the same.

The FAA will not accept straight lines of long distances that result in significant distortions of the flight corridor. Attempting to draw straight lines for distances greater than 7.5 times the map scale on map scales greater than or equal to 1:1,000,000 will result in unacceptable errors. The distance factor of 7.5 was determined by plotting several hundred trajectory IIP points and finding equi-distant straight line segments that adequately represent the trajectory curve over a 5,000 nm range.

Appendix A provides an applicant with the equations the FAA proposes to require to perform range and bearing computations for the purpose of plotting a flight corridor on a map. The range and bearing from a launch point are used to determine the latitude and longitude coordinates of a point on the flight corridor. Range and bearing equations are standard geodesic computations which can be found in most geodesy text books. A geodesic is a curve describing the minimum length between two points on the surface of an ellipsoid such as the WGS–84 ellipsoid discussed below. The range and bearing computations are sometimes referred to as great circle math routines. Sodano's direct geodetic method is proposed here. The algorithm was developed in 1963 by Emanuel M. Sodano for the U.S. Army. The computations provide accuracy to less than a foot for ranges up to 6,000 nm and less than 1/100th of a second (0.000002778 degrees) for all azimuth angles.[31]

An applicant may create line segments to describe a flight corridor by using range and bearings from the launch point along various azimuths. Appendix A provides equations to calculate geodetic latitude (+N) and longitude (+E) given the launch point geodetic latitude (+N), longitude (+E), range (nm), and bearing (degrees, positive clockwise from North). The same equations may also be used to calculate an impact dispersion area by substituting a final stage impact point for the launch point. Appendix A also provides equations to calculate the distance of a geodesic between two points.

An alternative to range and bearing computations is to use geographic information system (GIS) software with global mapping data. GIS software is an effective tool for constructing and evaluating a flight corridor, and has the advantage of allowing an applicant to create maps of varying scales in the launch and downrange areas. Commercially available GIS products are acceptable to the FAA for use in Appendices A, B, C and D if they meet the map and plotting method requirements in paragraph (b) of appendix A. An applicant should note, however, that maps of different scales in GIS software may not match each other. For instance, the coastline of Florida on a U.S. map may not match the coastline on a world map. Applicants shall resolve such contradictions by referring to more accurate maps such as NOAA maps.

Once an applicant has selected a map for displaying a flight corridor's launch area, the line segment lengths may be scaled to the chosen map. Map scale units are actual distance units measured along the Earth's surface per unit of map distance. Most map scale units are given in terms of inches per inch (in/in). An applicant converts appendix A flight corridor line segment distances to the map scale distance by dividing the launch area flight corridor line segment length (inches) by the map scale (in/in). If, for example, an applicant selected a map scale of 250,000 in/in and the line segment for the launch area flight corridor was 1677008 inches, the equivalent scaled length of the line segment for constructing an appendix A launch area is (1677008/250,000)=6.7 inches of map distance. An applicant would then plot the line segment on the map for display purposes using the scaled line segment length of 6.7 inches. If an applicant were to choose a map with scale units other than inches per inch, the FAA would require a description of the conversion algorithm to inches per inch and sample computations. Also note that the FAA proposes to accept straight lines for distances less than or equal to 7.5 times the map scale on map scales greater than or equal to 1:1,000,000 inches per inch; or straight lines representing 100 nm or less on map scales less than 1:1,000,000in/in.

Weight Classes for Guided Orbital Launch Vehicles

Proposed appendix A distinguishes between the guided orbital launch vehicles represented in the appendix on the basis of weight class. The FAA does not propose to distinguish among guided suborbital launch vehicles on the basis of weight class for purposes of appendix A. For guided orbital launch vehicles, the FAA proposes to create four separate weight classes. These are used to determine the size of the debris dispersion radius around a launch point, and the size of an Appendix A flight corridor. The FAA selected the four launch vehicle classes based on the size and characteristics of launch vehicles that currently exist in the U.S. commercial inventory and that should approximate any proposed new launch vehicle as well. An applicant planning to support the launch of guided orbital launch vehicles should choose the largest launch vehicle class anticipated for launch from the chosen launch point. This maximizes the area of the flight corridor. Also, selection of the largest class anticipated lessens the possibility of having to obtain a license modification to accommodate a larger customer than an application may have originally encompassed.

The FAA proposes to rely on a 100-nm orbit as the standard for inter-class launch vehicle comparison purposes. It is a standard reference orbit used by launch vehicle manufacturers for descriptive purposes and allows the uniform comparison of launch vehicle throw weight capability. The FAA obtained the payload weights for the 28° and 90° orbital inclinations from the "International Reference Guide to Space Launch Systems," S.J. Isakowitz, 2d Ed. (1995). They represent capabilities from CCAS and VAFB, respectively.

D_{max} Circle

A radius, maximum distance (D_{max}), is employed to define a circular area about a launch point. The circular area indicates the limits for both flight control and explosive containment following a worst-case launch vehicle failure and flight termination system activation at 10 seconds into flight. The worst-case failure represents a failure response, immediately following first motion, which causes the launch vehicle to fly in the up-range direction on a trajectory that maximizes the impact range. The ten second flight time represents a conservative estimate of the earliest elapsed time after launch that a flight safety officer would be able to detect the malfunction, initiate flight termination action, and actuate the flight termination system on the launch vehicle. The radius is the estimate D_{max} from the launch point that inert debris is expected to travel and beyond which the overpressure from explosive debris is not expected to exceed 0.5 pounds per square inch (psi). D_{max} accounts for the public risk posed by the greater of the wind-induced impact distance of a hazardous piece of inert debris, or the sum of the wind-induced impact distance of an explosive piece of debris and the debris 0.5 psi overpressure radius from the explosion. The values for DG_{max} in table A–1 appendix A, were derived from guided suborbital launch vehicles and guided orbital launch vehicles of the classes identified in table 1, § 420.21.

Overflight Exclusion Zone

Table A–2 and figure A–1 define an overflight exclusion zone. Because of the risks the early stages of flight create, the FAA proposes to require an applicant to demonstrate that the public

[30] The projections suggested below for the semi-automated method are accurate in scale and direction only from a point of tangency or the standard parallels. These limitations would produce additional errors when the using mechanical method.

[31] The FAA developed a software tool to perform the appendix A calculations for guided orbital launch vehicles. This software tool has been developed in the FORTRAN computer language using Microsoft's Fortran Powerstation. All of the assumptions and equations explained here and contained in appendix A are implemented in the program. The applicant must provide the geodetic latitude, longitude, launch azimuth, and D_{max} from table A–1 as input to the program. The software outputs an ASCII text file of geodetic latitude and longitudes that describe the fight corridor boundary. The FORTRAN code listing and example intput/output may be obtained from the FAA.

will not be present in this area during a launch. An overflight exclusion zone is an area in close promimity to a launch point where the mission risk is greater than an E_c of 30×10^{-6} if one member of the public is present in the open. The FAA derived the data for table A–2 using high fidelity risk assessment computer models to estimate the E_c for the different vehicle classes in table 1, § 420.21.

Early in the flight phase launch vehicles have large explosive potential, a low IIP range rate, and an historically higher probability of failure relative to the rest of preorbital flight. The relatively simple risk estimation analysis defined in appendix C does not adequately model the true risk during this stage of flight, and does not serve as the basis for determining that the overflight exclusion zone represents an area where the FAA's risk threshold is not satisfied. Instead, the FAA derived the overflight exclusion zone using a high fidelity risk assessment computer program is use by the national ranges. The program is a launch area risk analysis program called DAMP (facility DAMage and Personal injury). DAMP relies on information about a launch vehicle, its trajectory and failure responses, and facilities and populations in the launch area to estimate hit probabilities and casualty expectation. The hazards analyzed by DAMP include impacting inert debris, and blast overpressures and debris projected from impact explosions.

For the purpose of the FAA's site location assessment, the proposed overflight exclusion zone downrange distances (D_{OEZ}) in table A–2 were derived by computing the downrange drag impact point distance for a ballisitic coefficient of 3 lbs/ft^2 at the first major staging event time for each of the expendable launch vehicle classes in table 1, § 420.21. The effective casually area used in the analysis was the average effective casualty area for the period of flight up to the first major staging event time. *See* table C–3. The DAMP risk assessment results showed that E_c values exceeded 30×10^{-6} for the time up to the first major staging event for each of the launch vehicle classes in table 1, § 420.21.

Risk assessments were also conducted for the time of flight immediately after the first major staging event. The results showed a significant decrease in the E_c estimates, and those estimates were within the E_c criteria of 30×10^{-6}. The decrease results from a combination of decreasing dwell times and a signficant reduction in the size of an effective casualty area following a major staging event.

The FAA compared the results obtained using the high fidelity risk models to the estimated casualty expectancy calculated using the risk analysis method from appendix C. The results from the appendix C method also show unacceptable risk inside the overflight exclusion zone, as shown in table "3" and "4" below. An appendix A flight corridor was applied to an appendix C risk analysis and the following variables were input as constants for the guided launch vehicle classes:

P_f=0.10
C=643 seconds
R-dot=.91 nm/s (from table C–2)
N_k=0.5 persons

As described in appendix C, when a populated area is split by a trajectory ground trace, each part of the populated area is evaluated separately and the E_c results of each part are summed to estimate the total E_c for the whole populated area. Hence, for this comparison a value of N_k=0.5 was used in each of the OEZ sections so the total E_c after summation would represent the risk for one person. Tables 3 and 4 show that the E_c inside the OEZ does not meet FAA criteria and does meet those criteria outside the OEZ.

TABLE 3.—PRIOR TO FIRST MAJOR STAGING EVENT

Class	X1 (mi)	X2(nm)	Y1(nm)	Y2(nm)	Sigma (nm)	Ac(nm2)	Ak(nm2)	Pi	E_c
Small	0.00	3.70	0.00	1.20	1.62	0.32	6.70	1.71E–04	40.9E–06
Medium	0.00	4.58	0.00	1.53	1.82	0.40	8.99	2.35E–04	52.3E–06
Med-Lrg	0.00	9.67	0.00	1.83	3.56	0.54	12.23	3.25E–04	71.7E–06
Large	0.00	14.76	0.00	2.14	5.31	1.46	34.66	3.95E–04	83.2E–06
		Med-Lrg values for table "3" and "4" were interpolated from the bounding classes.							
		Ac=average value up to first major staging event.							

TABLE 4.—AFTER FIRST MAJOR STAGING EVENT

Class	X1 (mi)	X2 (nm)	Y1 (nm)	Y2 (nm)	Sigma (nm)	Ac (nm2)	Ak (nm2)	Pi	E_c
Small	0.00	3.70	0.00	1.20	1.62	0.0982	6.70	1.71E–04	12.5E–06
Medium	0.00	4.58	0.00	1.53	1.82	0.0017	8.98	2.35E–04	22.2E–06
Med-Lrg	0.00	9.67	0.00	1.83	3.56	0.0831	12.23	3.25E–04	11.0E–06
Large	0.00	14.76	0.00	2.14	5.31	0.4662	34.66	3.95E–04	26.7E–06
		Med-Lrg values for tables "3" and "4" were interpolated from the bounding classes.							
		Ac = value after first major staging event.							

The FAA believes that it is efficient to address keeping an overflight exclusion zone clear of the public through a license to operate a launch site so that the licensee better able to address the issue does so. Moreover, although the FAA is willing to license the operation of a launch site from which a limited number or kind of launches may take place, the FAA does not want to license the operation of a launch site from which launch may never occur. The FAA proposes, therefore, to require that an applicant demonstrate either that the overflight exclusion zone is unpopulated, that there are times when no one is present, or that the public can be excluded from this area during launch. Although a determination of this nature encompasses issues that will be addressed in a launch license, a launch site cannot support safe launches unless overflight of the highest risk area in close proximity to a launch point takes place without the public present. The FAA considered as an alternative permitting a prospective launch site operator to show that it would be able to clear resident population for one launch. For example, a prospective launch site operator might have a potential customer who has made arrangements for evacuation for a single launch. The FAA, however, wants to be assured that an OEZ would be clear for any launch that takes place from that site, and would, accordingly, require that, if the public does reside in an OEZ, or have other means of access to the OEZ, an applicant show that it has made arrangements for their absence during a launch.[32]

An applicant must display an overflight exclusion zone on maps using the requirements described in paragraph (b) of appendix A.

Launch Area

As noted at the beginning of this discussion, the FAA proposes to employ a series of fans as the shape of the foundation of its appendix A flight corridor. The FAA proposes the flight corridor fans to account for the turning capabilities and wind dispersed debris of a guided launch vehicle. The launch area fans have been divided into two regions, of 60 and 30 degrees, representing the malfunction turn capability of the launch vehicle relative to its velocity in the downtown direction. Each region is represented by the estimated maximum turning capability over a ground-range interval. These angles are the FAA's estimates for the maximum angles that the launch vehicle velocity vector may turn within a five second time period. The initial fan area is described by a 60° half angle extending ten nautical miles downrange from a launch point. The ten nautical mile threshold represents the FAA's estimate of where a vehicle's maximum turning rate capability is reduced to approximately 30 degrees due to increasing velocity in the downrange direction. The FAA obtained these estimates on the basis of a Delta II launch vehicle trajectory, and by employing an annualized wind speed within one standard deviation[33] and a debris ballistic coefficient of three. The FAA employed a Delta in its analysis because its thrust profile fell between Atlas and Titan and thus provided a representation of the mean performance parameters of launch vehicles at Cape Canaveral Air Station. This data and use of the appendix B methodology corroborated the selection of 60 and 30 degree half angles.

In the early stages of flight, but past the 100 nautical mile range, a guided launch vehicle is capable of malfunction turns up to 30°. Therefore, a 30° half angle was used to define the secondary fan area beginning 10 nautical mile downrange and ending 100 nautical mile downrange. Once a launch vehicle has reached the 100 nautical mile downrange point, the increasing velocity in the downrange direction continues to reduce the launch vehicle's ability to maneuver through a large malfunction turn.

The FAA proposes a 100 nautical mile distance as a delimiter between the launch area and the downrange area. From the launch point out to approximately the point where the IIP is 100 nautical miles downrange, most launch vehicles will be subjected to the aerodynamic forces of wind and drag. Once a launch vehicle's IIP has cleared the 100 nm limit, the FAA is willing to assume for purposes of appendix A that most launch vehicles are outside the atmosphere.

Figure 1 in appendix A depicts the launch area of a flight corridor. Figure 1 shows the relative placement of the line segments comprising the launch area of a flight corridor. The left and right sides of the flight corridor are mirror images, with the flight azimuth serving as the line between the two sides. Table A–3 in appendix A tabulates the lengths of the perpendicular line segments comprising the launch area.

[32] The FAA recognizes that this requirement would protect persons within an OEZ during a launch but not their property. For the time being, the FAA would not address risks to the property of the public in an OEZ but leave the matter to be accommodated through private financial arrangements.

[33] The FAA employed the wind speeds from the Global Gridded Upper Air Statistics database for grid point 27.5 North geodetic latitude and 280.0 East longitude. The database covers the period 1980 through 1995.

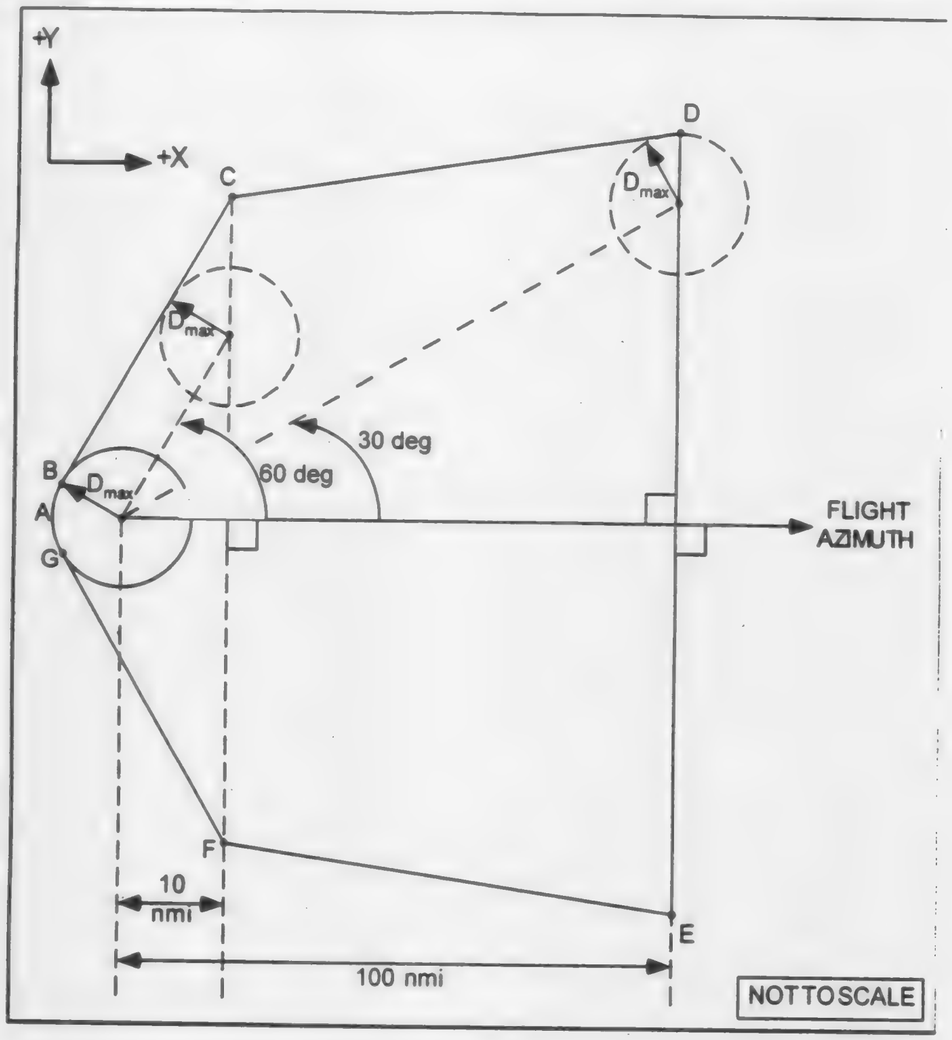


Figure 1
Flight Corridor Launch Area

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Downrange Area

The FAA derived the proposed appendix A flight corridor's downrange area from hazard areas previously developed by federal launch ranges for the classes of launch vehicles defined in table 1 of § 420.21. The downrange fan area of the flight corridor, as shown in figure 2, is based on turning capabilities and impact dispersions of guided expendable launch vehicles. The size of the fan area is necessary for containing launch vehicle debris in the event that a launch vehicle failure initiates a maximum-rate malfunction turn and the flight termination system must be activated. In the later stages of flight a guided launch vehicle's capability to turn is reduced due to increasing velocities in the downrange direction. Therefore, a 10° half angle was used to define the downrange area, which reflects a combination of normal vehicle dispersions and malfunction turns.

The downrange area of a flight corridor begins 100 nm from a launch point and, for the guided orbital launch vehicle classes, extends 5,000 nm downrange from the launch point. The FAA proposes 5,000 nm as the end of an appendix A flight corridor because overflight dwell times for the remaining flight time result in an insignificant risk to the public. In general, after an orbital launch vehicle IIP has passed the 5,000 nm point its IIP range rates increase very rapidly as the launch vehicle approaches orbital insertion. As a result, the dwell times decrease significantly, reducing the overflight risk to insignificant levels. For an applicant employing a guided suborbital launch vehicle, a flight corridor would end with the impact dispersion area of a final stage.

Figure 2 depicts the downrange area of a flight corridor. The figure depicts the relative placement of the line segments comprising the downrange area of a flight corridor. The left and right sides of a flight corridor are mirror images, with the flight azimuth serving as the line between the two sides. Table A–3 in appendix A provides the lengths of the line segments comprising the downrange area. The scaling information discussed above with respect to the launch area applies to the downrange area as well. If an applicant chooses a map with scale units other than inches per inch the FAA will require the applicant to describe the conversion algorithm to inches per inch and to provide example computations.

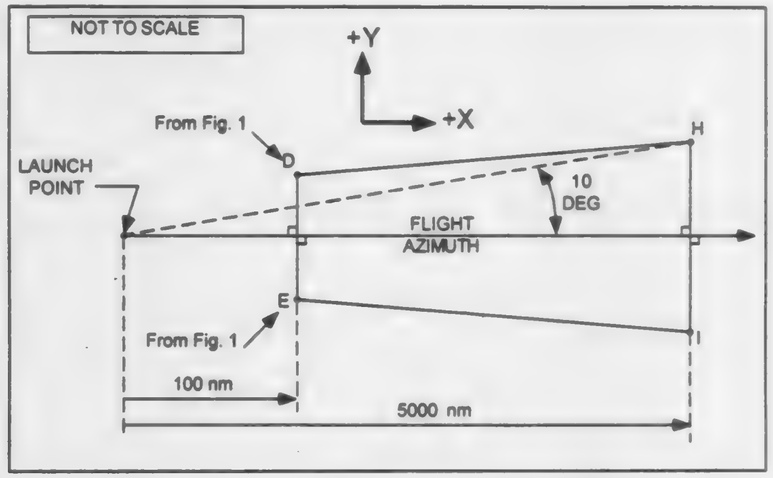


Figure 2
Downrange Area of Flight Corridor

Appendix B

Appendix B provides another means for creating a hypothetical flight corridor from an applicant's proposed launch site. As with a flight corridor created pursuant to appendix A, an appendix B corridor would identify the populations, those within the defined flight corridor, that must be analyzed for risk. An appendix B analysis offers an applicant a means to demonstrate whether a flight corridor from its launch site satisfies the FAA's risk criteria for a guided orbital or suborbital launch vehicle. Appendix B allows an applicant to perform a more individualized containment analysis rather than relying on the more conservative estimates the FAA derived for appendix A. Because an appendix B analysis uses actual meteorological data and a trajectory, whether actual or computer simulated, of a real launch vehicle, it produces a flight corridor of greater accuracy than one created under appendix A. The FAA derived the methodology from techniques developed for federal launch ranges to calculate the distance that debris would travel as a function of perturbing forces. The FAA's derived the assumptions and simplifications in the appendix B analysis from launch vehicle data

representing historical launch vehicle malfunction behavior.

A flight corridor created using appendix B contains, on its face, the same elements as an appendix A flight corridor, including a circular area around a launch point with a radius of D_{max}, an overflight exclusion zone, a launch area and a downrange area. Appendix B, however, produces and configures the last two elements differently than appendix A. The launch area of an appendix B flight corridor shows where launch vehicle debris would impact in the event of a vehicle failure, and takes into account local meteorological conditions. The downrange area of a flight corridor also shows where launch vehicle debris would impact given a vehicle failure, but takes into account vehicle imparted velocity, malfunctions turns, and vehicle guidance and performance dispersions. Also, like an appendix A flight corridor, the uprange portion of the flight corridor is described by a semi-circle arc that is a portion of either the most uprange dispersion circle, or the overflight exclusion zone, whichever is further uprange.

The FAA's proposed appendix B launch area analysis assumes a vehicle failure and destruction at one second intervals along a trajectory z value, which denotes height as measured from the launch point, up to 50,000 feet. An applicant must determine the maximum distance a hazardous piece of debris would travel under local meteorological conditions. The distances that the debris travels provide the boundaries of an appendix B flight corridor's launch area. After a height of 50,000 feet, which is where the FAA estimates, for purposes of this analysis, that debris created by a launch vehicle's destruction has less exposure to atmospheric forces, an applicant shall determine how far harmful debris created by destruction of a launch vehicle would travel based only on malfunction imparted velocity and vehicle dispersion in order to create a downrange area. Although the effects of wind above 50,000 feet are not, in reality, non-existent, they are sufficiently diminished when compared to the effects of malfunction imparted velocity and launch vehicle dispersion for purposes of this estimation.

D_{max} Circle

As with an appendix A flight corridor, an applicant must select each launch point at its proposed launch site from which it expects a guided expendable launch vehicle to take flight. An applicant must obtain the latitude and longitude of the launch point to four decimal places. If relying on a guided orbital launch vehicle, the applicant must also select a launch vehicle class from § 420.21, table 1, that best represents the largest class each proposed launch point would support. With the information, the applicant then ascertains the D_{max} that debris is expected to travel from a launch point if a mishap were to occur in the first 10 seconds of flight by employing table A–1, appendix A. Table A–1 also provides a maximum distance for sub-orbital launch vehicles. The D_{max} distance provided by table A–1 defines a circular area around the launch point.

Overflight Exclusion Zone

That circular area is part of an overflight exclusion zone. Again, an applicant uses information from appendix A to create an overflight exclusion zone, although an appendix B flight corridor's uprange boundary may extend further than its overflight exclusion zone. An overflight exclusion zone consists of the circular area defined by the radius D_{max} at the launch point and a corridor of the length prescribed by table A–2. Its downrange boundary is defined by an arc with a radius D_{max} centered on the endpoint prescribed by table A–2. The cross-range boundaries consist of two lines parallel to and to either side of the flight azimuth. Each line is tangent to the upgrade and downrange D_{max} circles as shown in appendix A, figure A–1. Creation of an overflight exclusion zone is predetermined by the requirements of appendix A and does not require a trajectory for an actual launch vehicle. As with an appendix A overflight exclusion zone, and for the reasons described in this notice's discussion of appendix A, the FAA proposes to require that the public be excluded from this area during launch.

Launch Vehicle Trajectory

An applicant must also obtain or generate a launch vehicle trajectory. The applicant may use either commercially available software or a trajectory provided by the launch vehicle's manufacturer. Because appendix B is based on equations of motion in three dimensions, the appendix B analysis requires that the trajectory be described using a three axis coordinate system. The FAA recommends that an applicant used a WGS–84 ellipsoidal earth model [34] as the trajectory coordinate system reference ellipsoid in the appendices, because of its general applicability to the analyses that the FAA proposes in appendices B, C and D, the model's wide availability and its development in accordance with military standards and requirements. The WGS–84 model reflects the most current and the most accurate Department of Defense standards for earth models. WGS–84 provides a basic reference frame and geometric figure for the Earth and provides a means for relating positions on various local geodetic coordinate systems, including XYZ, to an Earth-centered, Earth-fixed coordinate system such as the EFG system employed in the appendix B analysis.

The FAA proposes to require time intervals used in the trajectory analysis of no greater than one second for both launch and downrange areas. Data frequency of one second is a compromise a between the low data frequency requirements of the launch area, where dwell times are relatively long, and the high frequency requirements of the downrange area, where dwell times are correspondingly shorter. Accordingly, one second time intervals are sufficient to accommodate linear interpolation between trajectory time points, in the launch and downrange areas, and not degrade the accuracy requirements of the analysis.

In the launch area, an applicant's trajectory must include position data in terms of time after liftoff in right-handed XYZ coordinates centered on the proposed launch point, with the X-axis aligned with the flight azimuth. In the downrange area, the applicant's trajectory must show state vector data in terms of time after liftoff in right-handed $x, y, z, \dot{x}, \dot{y}, \dot{z}$ coordinates, centered on the proposed launch point, with the X-axis aligned with the flight azimuth.

The FAA proposes to require certain technical information to be used to compute an appendix B trajectory. The proposed appendix B parameters comprise the minimum information needed to create a three axis trajectory with 3-degrees-of-freedom (DOF). The 3-DOF are the trajectory positions in each of the three axes of the XYZ coordinate system and it is impossible to adequately describe the launch vehicle position with less than 3-DOF. Any software used to compute a trajectory must incorporate the data required by appendix B, paragraph (b)(1)(ii)(A)–(I).[35]

Launch Area

A launch area contains a launch point and an overflight exclusion zone, and constitutes the part of the flight corridor calculated using the effects of

[34] Department of Defense World Geodetic System, Military Standard 2401 (Jan. 11, 1994).

[35] Software for creating a 3-DOF trajectory with the accuracy required for an appendix B analysis is commercially available.

atmospheric drag forces on debris produced by a series of hypothetical destructions of a launch vehicle at one second intervals along that trajectory. For purposes of an appendix B analysis, a launch area extends from the further uprange of an OEZ arc or dispersion circle arc downrange to a point on the surface of the earth that corresponds to the debris impact locations, assuming a failure of the vehicle in flight at a height of 50,000 feet. Typically, federal launch ranges account for five major parameters to estimate the size of a flight corridor. These include the effects of vehicle-imparted velocity on debris, the change in launch vehicle position and velocity due to a malfunction turn, guidance errors, the ballistic coefficient of debris, and wind. However, imparted velocity, malfunction turn, and trajectory dispersion, although not insignificant, do not play as great a role early in flight as the wind effects on debris. The wind effect on debris, in turn, depends on the ballistic coefficient of the debris. The FAA determined that for purposes of the launch area, of these parameters, launch vehicle debris and meteorological conditions constitute the most significant, and the FAA therefore proposes to focus on these two factors in the launch area.[36]

The FAA proposes to require an applicant to calculate circles that approximate the debris dispersion for each one second time point on a launch vehicle trajectory. The cross-range lines tangent to those circles provide the borders of a launch area. Calculating the circles consists, in general terms, of a two step process. An applicant must first define 15 mean geometric height intervals along the proposed trajectory in order to obtain data, in accordance with subparagraph (c)(4) of appendix B, regarding the mean atmospheric density, maximum wind speed, fall times and debris dispersions in each of those height intervals. An applicant must then use that data in the calculations proposed in subparagraphs (c)(5) to derive the radius applicable to each height interval (Z_i). Having obtained that radius, an applicant uses it to describe, pursuant to subparagraph (c)(6), a circle referred to as a debris dispersion circle (D_i), around each one second time interval along the vehicle's trajectory, starting at the launch point. An applicant will then ascertain the cross-range boundaries of a flight corridor's launch area by drawing lines that are tangent to all dispersion circles. The final D_i dispersion circle forms the downrange boundary of a flight corridor's launch area.

The launch area represents the effects of meteorological conditions on how far inert debris with a ballistic coefficient of 3 lb/ft.^{2} would travel. Debris comes in many sizes and shapes, but the FAA does not propose to require an applicant's location review analysis to take all such possibilities into account. A complete analysis for an actual launch would entail the determination of the type and size of debris created by each credible failure mode, and the velocity imparted to each piece of debris due to the failure. Instead, for purposes of the appendix B analysis, the FAA proposes to categorize launch vehicle debris by a ballistic coefficient that accounts for the smallest inert debris that may cause harm and that also accounts for the debris most sensitive to wind. A ballistic coefficient reflects the sensitivity of weight and area ratios to drag forces, such as wind dispersion effect. The FAA evaluated wind drift effects on a piece of debris with the smallest hazardous ballistic coefficient. A debris piece with the smallest hazardous ballistic coefficient will play the largest role in ascertaining the total debris dispersion in a launch area. Low beta debris, namely, debris with a ballistic coefficient less than or equal to three pounds per square foot, will have a lower terminal velocity than high ballistic coefficient debris and will spend more time being dispersed by wind forces on descent. Therefore, low ballistic coefficient debris will disperse farther than high ballistic coefficient debris. The FAA proposes a debris piece with a ballistic coefficient of three pounds per square foot for launch area calculations because it is the most wind sensitive debris piece with a potential for harm of reasonable significance. Experience at federal launch ranges has shown that, on average, a debris piece that has a ballistic coefficient of less than three pounds per square foot is not significant in terms of its potential to harm a person in the open.

Although the FAA proposes to assume a ballistic coefficient of three as the smallest piece of wind sensitive debris hazardous to the public, ballistic coefficient is not directly related to fatality criteria based on the kinetic energy of debris. The ballistic coefficient of three is related to a kinetic energy of 58 ft/lbs which represents a probability of fatality of 50 percent for a standing person. It is therefore possible that fatalities could occur for a lower ballistic coefficient and that no fatalities may occur for a higher ballistic coefficient. The FAA proposes to incorporate neither of these conditions into this analysis, and invites comment.

In addition to knowing what debris is of concern, an applicant must know the local meteorological conditions. The FAA proposes that an applicant obtain meteorological data for 15 height intervals in a launch area up to 50,000 feet. The FAA proposes an upper limit of 50,000 feet in the launch area containment analysis of debris because winds above this altitude contribute little to drift distance. Also, once a launch vehicle reaches an altitude of 50,000 feet its velocity vector has pitched down range so that a malfunction turn and explosion velocity, rather than atmospheric drag and wind effects, play the dominant role in determining the dispersion of debris as the debris falls to the surface. The combination of these two factors significantly reduces the effect of winds on uprange and crossrange dispersion after a launch vehicle reaches 50,000 feet. For altitudes less than 50,000 feet, at the same time as low ballistic coefficient debris pieces are highly sensitive to drag forces, the velocity of an explosion caused by destroying a launch vehicle contributes relatively little to the dispersion effect because the drag produced on these light weight pieces results in a high deceleration so they achieve terminal velocity almost instantaneously and drift with the wind. Therefore, launch vehicle induced explosion-velocities are not considered for the launch area of an appendix B containment analysis. Instead, the FAA proposes to require an applicant to use local statistical wind data by altitude for fifteen height intervals. The data must include altitude, atmospheric density, mean East/West meridianal (u) and North/South zonal wind (v), the standard deviation of u and v wind, a correlation coefficient, the number of observations and the wind percentile.

Data acceptable to the FAA is available from NOAA's National Climatic Data Center (NCDC). NOAA Data Centers, of which the NCDC is the largest, provide long-term preservation of, management, and ready accessibility to environmental data. The Centers are part of the National Environmental Satellite, Data and Information Service. The NCDC data set acceptable to the FAA is the "Global Gridded Upper Air Statistics, 1980–1995, CV1.1, March 1996 (CD–ROM)." The Global Gridded Upper Air Statistics (GGUAS) CD–ROM data set describes the atmosphere for each month of the represented year on a 2.5 degree global grid at 15 standard pressure levels. NCDC provides compiled mean and standard deviation values for sea level pressure, wind

[36] Note that the determination of the size of D_{max} included considerations of malfunction turns as well.

speed, air temperature, dew point, height and density. GGUAS also complies eight-point wind roses. The spatial resolution is a 73×144 grid spaced at 2.5 degrees and the temporal resolution is one month. Monthly data have been statistically combined for the period of record 1980–1995.

To simplify the containment analysis, the FAA proposes to allow an applicant to use a mean wind (50%). The FAA proposes to further simplify the analysis by assuming that an applicant's launch pad height is equal to the surface level of the wind measurements provided by the NCDC data base. The actual pad height could be lower or higher than the surface level wind measurement height. The difference between the actual pad height and the surface level measurement height is considered insignificant in terms of its effect on the impact dispersion radius.

The FAA notes that the NCDC database will not necessarily contain measurements of winds for any particular launch site proposed. If a launch point is located in the center of a 2.5 degree NCDC weather grid cell, the farthest distance to a grid cell corner would be along a diagonal from the center of the grid cell to a corner of the grid cell. The wind measurements will be no more than approximately 106 nm from the launch point. This distance is close enough for purposes of a location review containment analysis, and occurs only for a grid located on the equator. In general, the topography within approximately 106 nm of a launch point is assumed to be relatively similar with respect to height above mean-sea-level. As the launch point latitude increases the distance from the wind measurement grid point will decrease, which will reduce errors introduced by this assumption.

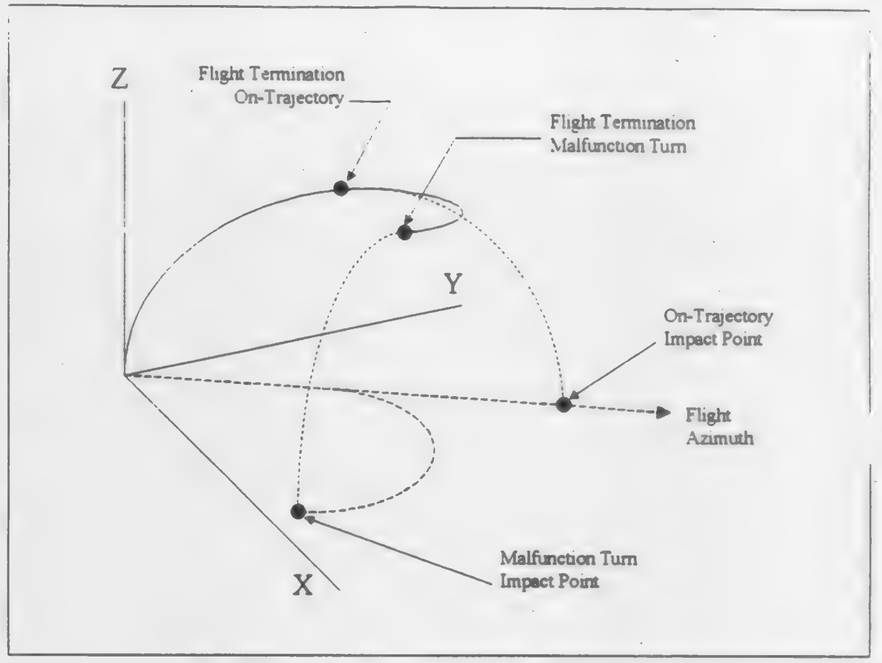
Having obtained the necessary meteorological data, an applicant would use data from the GGUAS CD–ROM to estimate the mean atmospheric density, maximum wind speed, height interval fall times, and height interval debris dispersions for 15 mean geometric height intervals. Altitude intervals are denoted by the subscript "j". An applicant would then calculate the debris dispersion radius (D_i) for each trajectory position whose "Z" values, are less than 50,000 ft. Each trajectory time considered is denoted by the variable subscript "i". The initial value of "i" is one and the value is increased by increments of one for each subsequent "Z" value evaluated. The major dispersion factors are a combination of wind velocity and debris fall time. Because the atmospheric density is a function of altitude and effects the resultant fall time, D_i is estimated by summing the radial dispersions computed for each altitude interval the debris intersects on its descent trajectory. Once all the debris dispersion radii have been calculated, the flight corridor's launch area is produced by plotting each debris dispersion circle on a map, and drawing enveloping lines that enclose the outer boundary of the debris dispersion circles. The uprange portion of the flight corridor is described by a semi-circle arc that is a portion of either the most uprange D_i dispersion circle, or the overflight exclusion zone, whichever is further uprange. The enveloping lines that enclose the final D_i dispersion circle forms the downrange boundary of a flight corridor's launch area.

Downrange Area Containment Analysis

A containment analysis also describes the dimensions of a flight corridor's downrange area. The FAA designed the downrange area analysis to accommodate launch vehicle imparted velocity, malfunction turns, and vehicle guidance and performance dispersions. The analysis to obtain the downrange area of a flight corridor for guided orbital and suborbital launch vehicle trajectories starts with trajectory positions with heights greater than 50,000 feet, that is, the point where the launch area analysis ends. A downrange area for a guided orbital launch vehicle ends 5,000 nautical miles from the launch point. If an applicant has chosen a guided suborbital launch vehicle for the analysis, the analysis must define the impact dispersion area for the final stage, and that impact dispersion area marks the end of a downrange area.

An applicant computes the cross-range boundaries of the downrange area of a flight corridor by calculating the launch vehicle position after a simulated worst-case four second turn, rotating the launch vehicle state vector to account for vehicle guidance and performance dispersions, and then computing an instantaneous impact point. The locus of IIPs describes the impact boundary.

As a first step, an applicant computes a reduction ratio factor that decreases with increasing launch vehicle range. Secondly, an applicant computes the launch vehicle position after a simulated worst-case four-second malfunction turn for each altitude interval along a trajectory. For purposes of the launch site location review, the FAA proposes to rely on a velocity vector malfunction turn angle set at 45° and to decrease this turn angle using the reduction ratio factor, as a function of downrange distance to simulate the constraining effects of increasing velocity in the downrange direction on malfunction turn capability. See figure B–2. The FAA assumes this worst-case delay result in order to account for the maximum dispersion of the vehicle during the time necessary for a person in charge of destroying a launch vehicle to detect a vehicle failure and cause the vehicle's destruction. Figure B–2 in appendix B depicts the velocity vector movement in the yaw plane of the vehicle body axis coordinate system. The figure below depicts the state vector axes and impact locations for a malfunction turn failure and for an on-trajectory failure.



The second step described above assumes perfect performance of the launch vehicle up until the beginning of the malfunction turn. In order, however, to account for normal five sigma (5σ) performance and guidance dispersions of the launch vehicle prior to the malfunction turn, the applicant next rotates the trajectory state vector. The trajectory state-vector rotation is accomplished in conjunction with a XYZ to ENU coordinate system transformation. This transformation rotates the X and Y axes about the Z axis. The Z and U axes are coincident. Both position and velocity components are rotated. The FAA intends the trajectory azimuth rotation to account for the normal 5-sigma launch vehicle performance and guidance dispersions that may exist at the beginning of a malfunction turn. The rotation angle decreases from three degrees to one degree as the vehicle proceeds downrange, and the rate of decrease is a function of distance from the launch point. This is done because the trajectory azimuth of a launch vehicle with 5-sigma performance and guidance dispersions early in flight could be approximately ±3 degrees from the nominal flight azimuth. Since this azimuth offset is not considered a failure response, the guidance, navigation, and control system is expected to achieve steering corrections. These corrections will eventually reduce the angular offset later in flight as the launch vehicle targets the mission objectives for orbital insertion. If a launch vehicle has 5-sigma performance and guidance dispersions later in flight, the effects of increasing velocity in the downrange direction limits a launch vehicle's capability to alter the trajectory's azimuth. Launch vehicles in the four launch vehicle classes were reviewed to determine the typical range of malfunction-turning rates in the downrange area. The FAA found these rates to be relatively small compared to launch area rates. The FAA proposes the three and one degree turn rates because they encompass the turn rates found during the review process.

Before initiating the IIP computations, an applicant must transform the ENU coordinate system to an EFG coordinate system. This EFG coordinate transformation is employed to simplify the IIP computation.

The IIP computation proposed in appendix B are used for demanding the IIPs to either side of a trajectory by creating latitude and longitude pairs for the left and right flight corridor boundaries. Connecting the latitude and longitude pairs describes the boundary of the downrange area of a flight corridor. The launch site location review IIP calculations assume the absence of atmospheric drag effects. Equations B46–B69 implement an iterative solution to the problem of determining an impact point. This iterative technique includes checks for conditions that will not result in impact point solutions. The conditions prohibiting impact solutions are: (1) An initial launch vehicle position below the earth's surface, (2) a trajectory orbit that is not elliptical, but, parabolic or hyperbolic, (3) a positive perigee height, where the trajectory orbit does not intersect the earth, and (4) the iterative solution does not converge. Any one of the conditions given above will prohibit the computation of an impact point. The iterative approach in equations B46–B69 solves these problems.

Software

The FAA has developed a software tool that performs the flight corridor calculations required by appendix B for a guided orbital launch vehicle. The

software was developed in FORTRAN. All of the assumptions and equations contained in appendix B are implemented in the program. An applicant must provide the geodetic latitude, longitude, launch azimuth, desired wind percentile, D_{max} from table A–1 and D_{oez} from table A–2 as input to the program. The software outputs an ASCII text file of geodetic latitudes and longitudes that describe a flight corridor boundary.

Estimating Public Risk

Upon completing a flight corridor, an applicant must estimate the risk to the public within the flight corridor to determine whether that risk falls within acceptable levels. If an applicant demonstrates that no part of the flight corridor is over a populated area, the flight corridor satisfies the FAA's risk thresholds, and an applicant's application may rely on its appendix B analysis. If a flight corridor includes a populated area, an applicant has the option of rotating an appendix B flight corridor using a different launch point or azimuth to avoid population, or of conducting an overflight risk analysis as provided in appendix C.

Appendix C

Under a launch site location review, once an applicant has created a flight corridor employing either appendix A or B, the applicant must ascertain whether there is population within the flight corridor. If there is no population, the FAA will approve the location of the proposed launch point for the type and class of launch vehicle analyzed. If there is population, an applicant must employ appendix C to perform an overflight risk analysis for the corridor. An appendix C risk analysis determines whether or not the risk to the public from a hypothetical launch exceeds the FAA's risk threshold of an estimated expected casualty (E_c) of no more than 30×10^{-6} per launch. An appendix C risk analysis estimates the E_c overflight contribution from a single hypothetical launch whose flight termination system is assumed to work perfectly. The analysis takes into account the probability of a vehicle failing throughout its trajectory, dwell times [37] over individual populated areas, and the probability of impact within those areas. The analysis also takes into account the effective casualty area of a vehicle class, the size of the populated area, and the population density of the exposed population.

Estimating E_c for an actual launch takes a large number of variables and considerations into account. The risk analysis provided in appendix C provides a somewhat simpler approach to estimating E_c within the boundaries of a flight corridor than might be necessary in performing a risk analysis for an actual launch. The FAA proposes, for purposes of determining the acceptability of a launch site's location, to rely only on variables relevant to ensuring that the site itself offers at least one flight corridor sufficiently isolated from population for safety. Accordingly, many of the factors that a launch operator will take into account will not be reflected here.

In brief, in order for an applicant to perform an appendix C risk analysis, the applicant must first determine whether any populated areas are present within an appendix A or B flight corridor. If so, the applicant must obtain area and population data. At this point an applicant has a choice. Appendix C requires that an applicant calculate the probability of impact for each populated area, and then determine an E_c value for each populated area. To obtain the estimated E_c for an entire flight corridor, the applicant adds—or sums—the E_c results for each populated area. If the population within the flight corridor is relatively small, an applicant may wish to conduct a less rigorous analysis by making conservative assumptions. Appendix C also offers the option of analyzing a worst-case flight corridor for those flight corridors where such an approach might save time and analysis. Examples of such simplifications are provided.

Identification and Location of Population

In order to perform an E_c analysis, an applicant must first identify the populated areas within a flight corridor. For the first 100 nautical miles from a launch point downrange a U.S. census block group serves as the maximum size of an individual populated areas permitted under an appendix C analysis. The proposed maximum permitted size of an individual populated area beyond 100 nautical mile downrange is a 1 degree latitude x 1 degree longitude grid. The size of that area analyzed will play out differently depending on the location of the proposed launch site. For example, if an applicant proposed a coastal site, the applicant would presumably present the FAA with a flight corridor mostly over water. Population may be limited to that of a few islands, minimizing the amount of data and analysis necessary. If an applicant proposes a launch site located further inland, the applicant would need to obtain the area and population of each census block group in the first 100 nm of the flight corridor. This may prove time consuming, although the FAA has proposed alternative approach that may simplify the process for such applicants. An applicant may also propose to operate a launch site on foreign territory, where U.S. census data would not apply. In that event, the FAA would apply the principles underlying a launch site location review to the available data on a case-by-case basis.

The proposed regulations require the analysis of populations at the census block group level for the first 100 nm from the launch point in the flight corridor. An applicant shall employ data from the latest census.[38] An applicant must also include population that may not be included in the U.S. census, such as military base personnel. The FAA recognizes a census block group to be a reasonable populated area for analysis because the risk early in flight is greatest due to long dwell times. IIP range rates in a launch area are relatively show, which exposes the launch area populations to launch vehicle risks for a longer period of time when compared to similar populations in the downrange area. Depending on the launch site and launch vehicle, a census block group could be exposed to launch vehicle risks for tens of seconds. In contrast to the size of a populated area in the downrange area, the increased risk due to longer dwell times requires a more detailed evaluation of the launch area for E_c purposes. A census block group is an appropriate size for analysis because it is small enough to accommodate the assumption that a populated area contains homogeneously distributed population without grossly distorting the outcome of the E_c estimates, and because the data is readily available for populations in the United States. Although a census block is smaller and therefore even more accurate, only census block centroids, rather than the more useful geographic area, are available from the U.S. Census Bureau. The FAA also proposes to allow the census block group to serve as the smallest unit addressed because electronic data is available at the census block group level, which will allow for more efficient execution of the computations. Although not as accurate as a census block, a census block group is also sufficiently accurate to serve as the smallest populated area for a launch site location review because the launch licensing process will mandate the more thorough risk analysis necessary for a particular launch. An applicant may find the need to use only a portion of a census block group, such as when a populated area is divided by a flight corridor boundary. In that case an applicant should use the population density of the block group to reflect the population in that portion of the census block group.

FAA proposes to allow an applicant to evaluate the presence of people in larger increments of area in the downrange area of a flight corridor than in the launch area of a flight corridor. Populations in the downrange area of a flight corridor must be analyzed in area no greater than 1° x 1° latitude and longitude grid coordinates. Because dwell times downrange are shorter, the risk to the individual populated areas is less and, therefore, the FAA is willing to accept a different degree of accuracy. IIP range rates in the downrange area can achieve speeds of 500 nm/second. Because the longest distance in a grid space would be approximately 85 nm for a grid on the equator, which is where the largest grid area will be found, the launch vehicle IIP dwell time would be less than 0.20 seconds over the grid. This reduces the risk to population in that grid significantly compared with population in the launch area.

The data needed for a downrange area analysis is also readily available. One source for population data in an area no greater than 1° x 1° latitude and longitude grid coordinates in a database of the Carbon Dioxide Information Analysis Center (CDIAC), Oak Ridge National Laboratory. The CDIAC database is "Global Population Distribution (1990), Terrestrial Area and Country Name Information on a One by One Degree Grid Cell Basis." This database contains one degree by one degree grid information on the world-wide distribution of population for 1990 and country specific information on the percentage of a country's population present to each grid cell.

The CDIAC obtained its population estimates from the United Nations FAO Yearbook,[39] the Guinness World Data Book,[40] and the Rand McNally World Atlas [41] for approximately 6,000 cities with populations greater than 50,000 inhabitants. The population data was updated by CDIAC to 1990 values with available census data. For the rural population allocation, the CDIAC developed global rural population distribution factors based on national population data, data on approximately 90,000 cities and towns, and the assumption that rural population is proportional to the number of cities and towns within each grid cell for each country.

Probability of Impact

The next step in the process would be to ascertain the probability of impact for each populated area. In other words, an applicant must find the probability that debris will land in each populated area within the flight corridor under analysis. For this, the applicant must find the probability of impact in both the cross-range and downrange directions, by employing equation C1 for an appendix A flight corridor for an orbital launch or equations C2 through C4 for an appendix A corridor that describes a suborbital launch. For an analysis based on an appendix B flight corridor, an applicant will employ equation C5 for an orbital launch or equations C6 and C8 for a suborbital launch. For both appendix A and B corridors, the probability of impact (P_i) within a particular populated area is equal to the product of the probability of impact in the downrange (P_x) and cross range (P_y) directions, and the probability of vehicle failure (P_r).

$$P_i = P_y * P_x * P_f$$

The analysis applicable to both appendix A and B flight corridors is the same for the cross-range direction,[42] but employs a different equation to determine the probability of impact in the downrange direction. For an appendix A corridor, the FAA proposes to specify a constant in equation C1 to approximate dwell time for the downrange direction. In equation C5 an applicant will employ actual dwell times obtained from the trajectory generated pursuant to appendix B.

An applicant who relies on an appendix A flight corridor will use equation C1 to determine the probability of impact for a particular populated area in the downrange direction by finding the range rate and assuming a total thrusting time of 643 seconds. Equation C1 reflects the fact that appendix A does not employ trajectory data, and therefore, employs a technique for estimating dwell times as a function of range and range-rate to determine the probability of impact in the downrange direction. Proposed table C–2 provides the appendix A flight corridor IIP range intervals and corresponding IIP range rates for use in Equation C1.

To create proposed table C–2, the FAA employed actual trajectory data to determine individual range rates for Atlas, Delta and Titan launch vehicles. The FAA computed the IIP for each trajectory time point, and the range rates were determined by subtracting IIP ranges (RIIP) over one-second intervals. This provided a per second range rate, referred to below at R-dot. The average range rates over the range intervals, shown in the table below, were estimated by dividing the difference of

[37] Although an applicant who calculates an appendix B flight corridor will know actual dwell times for its E_c analysis, the FAA proposes to supply a constant to approximate dwell time for an applicant who relies on an appendix A flight corridor.

[38] Some geographic information software has the capacity to import U.S. Census Bureau demographic and geographic data.

[39] United Nations FAO Yearbook, Vol. 47, Rome, 1993.

[40] The Guinness World Data Book, Guinness Pub. Ltd., Middlesex, England, 1993.

[41] Rand McNally World Atlas, Rand McNally, New York, 1991.

[42] See above text for footnote 42

[42] For Equations C–1, C–3, C–5 and C–7 the FAA approximated the probability of impact in the cross-range direction (P_y) by applying Simpson's Normal Probability Function. The FAA employed Simpson's rule to derive the following equation:

$$P_y = \frac{\left(\frac{|y_2 - y_1|}{\sigma_y}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left(-\frac{\left(\gamma_1/\sigma_\gamma\right)^2}{2}\right) + 4 \cdot \exp\left[-\frac{\left(\frac{y_1 + y_2}{2\sigma_y}\right)^2}{2}\right] + \exp\left(-\frac{\left(\gamma_2/\sigma_\gamma\right)^2}{2}\right) \right)$$

Simpson's approximation of the Elliptical Normal Probability Function is described in General Motors Corporation Defense System Division's Elliptical Normal Probability Function, (Apr. 6, 1960).

the upper value of adjacent IIP ranges by the elapsed trajectory time over the range interval. For example, the following Delta launch vehicle data was used to determine the IIP range rate from 101 through 500 nm:

RIIP1 = 100 nm
TALO1 (time after lift-off 1) = 97 sec
RIIP2 = 500 nm
TALO2 = 217 sec
(RIIP2 − RIIP1) (TALO2 − TALO1) = 3.33 nm/s

The FAA derived the total average thrusting time of 643 seconds from the data in table 5 by dividing the difference of the upper value of adjacent IIP ranges by the average IIP range rate corresponding to the largest IIP range and summing the results over the set of IIP ranges. The following computations are given as examples of how the FAA reached this determination.

Let:
RIIP1 = 100 nm
RIIP2 = 500 nm
R-dot = 3.00 nm/s
(RIIP2 − RIIP1)/R-dot = 133.33 sec

TABLE 5.—DATA TO DERIVE TOTAL THRUSTING TIME

IIP range (nm)	IIP range rate (nm/s)				Δt(s)
	Delta	Atlas	Titan	Avg.	
0–100	1.03	085	0.96	0.91	110.50
100–500	3.33	3.77	2.23	3.00	133.33
500–1500	4.27	3.66	2.73	3.20	312.99
1500–2500	9.01	21.74	12.99	17.37	57.59
2501–3000	33.33	50.00	41.67	45.84	10.91
3001–4000	66.67	90.91	83.33	87.12	11.48
4001–5000	166.67	142.86	166.67	154.77	6.46
Total-Δt					643.26

The "X" distances were measured directly off the mapping information source.

An applicant who relies on an appendix B flight corridor will employ proposed equation C5 or equations C6 through C8 depending on whether the flight corridor culminates in an impact dispersion area or not. Equation C5 reflects the fact that, unlike an appendix A flight corridor, the trajectory data used to create an appendix B flight corridor provides downrange instantaneous impact points (IIPs). Accordingly, the dwell time associated with a populated area may be ascertained for the difference between the closest and furthest downrange distances of the populated area. *See* figure C–2.

An applicant may find the following six step procedure helpful in determining the dwell time for individual populated areas that equation C5 calls for. The subscripts to not correspond to subscripts in the appendix.

Step 1: Determine the trajectory time (t_1) associated with the trajectory IIP position (x_1), that immediately precedes the uprange point on the populated area boundary. This is a accomplished by locating the IIP points in the vicinity of the populated area, drawing lines normal to the trajectory IIP ground trace, and choosing the trajectory time for the IIP point whose normal is closest to the uprange boundary of the populated area but does not intersect it. The distance from the launch point to x_1 may be determined using the range and bearing equations in appendix A, paragraph (b).

Step 2: Determine the trajectory time (t_2) associated with the trajectory IIP position (x_2) that just exceeds the downrange point on the populated area boundary. This is accomplished by locating the IIP point in the vicinity of the populated area, drawing lines normal to the trajectory IIP ground trace, and choosing the trajectory time for the IIP point whose normal is closest to the downrange boundary of the populated area but does not intersect it. The distance from the launch point to x_2 may be determined using the range and bearing equations in Appendix A, section (b).

Step 3: Determines the average IIP range rate (R) for the flight period determined in Steps 1 and 2 above.

$$\bar{R} = \frac{(x_2 - x_1)}{(t_2 - t_1)} \text{ (units in nm / s)}$$

Step 4: Determine the distance along the nominal trajectory to the uprange point (x_3) on the populated area boundary. This is accomplished by drawing a line normal to the trajectory IIP ground trace and tangent to the uprange boundary of the populated area, and determining the distance along the nominal trajectory IIP ground trace from the launch point to the intersection of the normal and the ground trace.

Step 5: Determine the distance along the nominal trajectory to the downrange point (x_4) on the populated area boundary. This is accomplished by drawing a line normal to the trajectory IIP ground trace and tangent to the downrange boundary of the populated area, and determining the distance along the nominal trajectory IIP ground trace from the launch point to the intersection of the normal and the ground trace.

Step 6: The dwell time (t_d) is estimated by the following equation.

$$t_d = \frac{(x_4 - x_3)}{\bar{R}} \text{ (units in seconds)}$$

For either type of flight corridor, an applicant determines the probability of impact in the cross range direction, (P_y), through a series of steps, of which the first is measuring the distance from the nominal trajectory IIP ground trace to the closest and furthest points in the cross range direction of the area that contains population. The populated area may consist of a census block group or a 1 degree latitude by 1 degree longitude grid. *See* figure C–1. To determine the distribution of the debris pattern in that populated area, the applicant needs to estimate the standard deviation of debris impacts. The FAA proposes that, for purposes of an appendix C analysis, that the cross-range boundaries of a flight corridor represent five standard deviations 5δ of all debris impacts form normal and malfunction trajectories.[43] To apply this to a populated area, an applicant must first find the distance

[43] Five sigma should represent 99.9999426% of all debris impacts from normal and malfunction trajectories assuming a functioning FTS. The one-sided-tail percentage area under the Gaussian Normal Probability curve beyond five-sigma is approximately 0.000000287%. Since the normal curve is symmetric this value can be doubled and subtracted from one (1) to determine the percentage area between the plus-and-minus five sigma limits. This results in the 99.9999426% value. *See*, Frederick E. Croxton, *Elementary Statistics with Applications in Medicine*, 323 (1953).

from the nominal trajectory to the cross-range boundary, measured on a line normal to the trajectory through the geographic center of the populated area, and then divide that distance by five.

Finally, the probability of failure is also an element in calculating the probability of impact. The FAA proposes for the launch site location analysis to assign a failure probability (P_f) constant of P_f=0.10 for guided launch vehicles. This represents a conservative estimate of the failure percentage of current launch vehicles, since many current launch vehicles are more reliable. The appendix C process assumes that the probability of impacting within the corridor is one, and the probability of impacting outside the corridor is zero. The flight termination system is assumed to function perfectly in all failure scenarios.

A final variation on computing the probability of impact for a particular populated area is used when computing the probability of impact (P_i) within the impact dispersion area of a guided suborbital launch vehicle. In this case, the probability of success (P_s) is substituted for the probability of failure (P_f), and an applicant shall employ a method similar to that used in appendix D to calculate the probability of impact for any populated areas inside the impact dispersion area. This divergence, the use of probability of success rather than probability of failure, from the variable used for an orbital launch vehicle arises out of the relative risk associated with an impact dispersion area of a guided suborbital launch vehicle. The same risks associated with a guided orbital launch are also associated with a guided sub-orbital launch except for the final stage of the guided suborbital mission, which is intended to return to earth rather than to enter orbit. On the basis of past history, the FAA has concluded that the final stage has a high reliability and will impact in the designated impact dispersion area, as intended from a successful mission. The FAA intends through its proposed launch site location review to analyze high risk events, and because the risk due to a planned impact in the dispersion area would be much higher than an unplanned impact, the FAA proposes to use P_s inside the impact dispersion area rather the P_f for determining the probability of impact in a guided suborbital launch vehicle's impact dispersion area.[44]

[44] The actual probability used in the analysis is 0.98.

Totaling Risk of All Populated Areas in Flight Corridor

The E_c estimate for a flight corridor is a summation of the risk to each populated area and results in an estimate of E_c inside the corridor, E_c (Corridor). This means that an applicant would estimate E_c for each individual populated area within a flight corridor, using the following equation:

$$E_{ck} = P_i \cdot \left(\frac{A_c}{A_k}\right) \cdot N_k$$

P_i is the probability of hitting the populated area. A_C is the effective casualty area of the vehicle and may be obtained from table C–3. A_k is the area of the populated area. N_k is the population in A_k, and is obtained from census data. The label "k" is used to identify the individual populated area. The summed E_c for all populated areas added together is the E_c (Corridor).

The FAA proposes to require an applicant to use an effective casualty area specific to a launch vehicle class and range when performing the E_c calculation. An effective casualty area (A_c) means the aggregate casualty area of each piece of debris created by a launch vehicle failure at a particular points on its trajectory. The casualty area for each piece of debris is the area within which 100 percent of the unprotected population on the ground is assumed to be a casualty. This area is based on the characteristics of the debris piece including its size, the path angle of its trajectory, impact explosions, and debris skip, splatter, and bounce. In each of the vehicle classes, the A_c decreases, resulting in a smaller casualty area, as a function of distance downrange because vehicle size and explosive potential decreases as explosive propellant is consumed and expended stages are ejected during vehicle flight.

An effective casualty area is a function of time-after-liftoff is proposed in table C–3 for launch vehicle classes listed in table 1 of § 420.21. The FAA derived the effective casualty areas in table C–3 from DAMP, a series of risk estimation computer programs used at federal launch ranges, to evaluate the vehicle classes described in table 1, § 420.21. DAMP considers other factors besides debris characteristics, such as the size of a standing person, which increases the casualty area, and sheltering, which would tend to decrease the casualty area. Because considering sheltering has a greater effect than considering the size of a standing person, and was not assumed in table C–3, the effective casualty areas in table C–3 are conservative.

An applicant calculates casualty expectancy for each populated area within a flight corridor. After the casualty expectancies have been estimated for all populated areas, the E_c values are summed to obtain the total corridor risk. The total is multiplied by two to estimate the final value for E_c(Corridor). The FAA is proposing this multiplier to account for the error introduced by the risk estimation approach of the launch site location review. Both the method used to construct a flight corridor and the method used to analyze risk contributes error. For example, an appendix A flight corridor is not based on actual wind data, and even though its size is conservative in nature, this size alone can cause the risk to be underestimated in appendix C. In other words, what the analysis gains in conservatism with the greater size of an appendix A corridor it may, on occasion, lose in conservatism due to the corresponding decrease in population density relative to an appendix B corridor. Conversely, an appendix B corridor, which may result in a higher E_c total due to the greater density attributable to the smaller corridor, may not encompass a populated area that would otherwise be analyzed for risk as part of an appendix A corridor. In addition, these calculations do not account for any secondary effects such as fire and collapsing structures that may result from impacting debris. Accordingly, to compensate for these inherent discrepancies, a safety factor is advisable in order to guard against licensing the operation of a launch site which may never be able to support a licensed launch. Also, an appendix B flight corridor is based on a number of approximations, including the descent rate of a piece of debris, the variability of a nominal launch vehicle trajectory prior to a failure, and a malfunction turn. Both the appendix A and B flight corridors for orbital launch vehicles end at 5,000 am, leaving out a large area of overflight, albeit with an IIP with very high velocity and extremely small dwell times. Additionally, the E_c analysis in appendix C itself can underestimate risk to the population within a flight corridor due to certain approximations, including the probability of impact in the cross-range direction (P_y), which uses Simpson's approximation of the Elliptical Normal Probability Function, and the determination that the width of a flight corridor is assumed to represent a 5-sigma normal distribution. Cities present in a flight corridor can also cause the risk to be underestimated because the appendix C method

averages population over areas that may be as large as a 1° × 1° grid. Perhaps the most important factor in contributing to possible error is the fact that the proposed location review assumes a perfectly functioning flight termination system. Accordingly, the FAA has chosen a multiplier of two to balance its intent to only approve launch sites that are safe for the launches intended to be launched from the launch site, and to minimize the burden on applicants.

The FAA will not approve the proposed launch site location if the estimated expected casualty exceeds 30×10^{-6}. An applicant may either modify its proposal, or if the flight corridor used was generated by the method proposed in appendix A, use the typically less conservative but more accurate method proposed in appendix B to narrow the flight corridor and perform another appendix C overflight risk analysis. An applicant may employ specified variations to the analysis described above. Six variations are identified in appendix C. The first four variations permit an application to make conservative assumptions that would lead to an overestimation of the corridor E_c compared with the more detailed process described. Although appendix C's approach simplifies a typical launch safety analysis somewhat by providing conservative default parameters to use, it may also prove unnecessarily complex for applicants proposing launch sites with launch corridors encompassing extremely few people. For those situations, appendix C provides the option for an applicant to further simplify the estimation of casualty expectancy by making worst-case assumptions that would produce a higher value of the corridor E_c compared with the analysis defined in appendix C, subparagraphs (c)(1)–(8). This may be particularly useful when an applicant believes E_c is well below the acceptable value.[45]

These variations would allow an applicant to assume that P_x and P_y have a value of 1.0 for all populated areas, or combine populated areas into one or more larger populated areas and use the greatest population density of the component populated areas for the combined area or areas. An applicant may also assume P_y has a value of one for any given populated area, or, for any given P_x sector, assume P_y has a value of one and use a worst case population density for the sector. A P_x sector is an area spanning the width of a flight corridor and bounded by two time points on the trajectory IIP ground trace. All four of these reduce the number of calculations required for applicants with little population within a flight corridor.

Another option, permitted in appendix C, is for an applicant who would otherwise fail the baseline analysis to perform a more refined E_c analysis by negating the baseline approach's overestimation of the probability of impact in each populated area. If the flight corridor includes populated areas that are irregular in shape, the equations for probability of impact in appendix C may cause E_c to be overestimated. This is because the result of the P_i computation for each populated area represents the probability of impacting within a rectangular area that bounds the populated area. As shown in figure C–1 in appendix C, the length of two sides of the rectangle would be $x_2 - x_1$, and the length of the other two sides would be $y_2 - y_1$. Populated areas used to support the appendix C analysis must be no bigger than a U.S. census block group for the first 100 nautical miles from a launch point and no bigger than a 1 degree latitude × 1 degree longitude grid (1° × 1° grid) beyond 100 nautical miles downrange. Whether the populated area is a census block group, a 1° × 1° grid, or a land mass such as a small island, it will not likely be a rectangle. Even a 1° × 1° grid near the equator, which approximates a rectangle, will not line up with the trajectory ground trace. Thus, a portion of the P_i rectangle includes area outside the populated area being evaluated. The probability of impacting in the rectangle is higher than impacting just in the populated area being evaluated. The value of the probability of impact calculated in accordance with appendix C will thus likely be overestimated.

One approach permitted in appendix C is to divide any given populated area into smaller rectangles, determine P_i for each individual rectangle, and sum the individual impact probabilities to determine P_i for the entire populated area. A second approach permitted in appendix C is, for a given populated area, to use the ratio of the populated area to the area of the original P_i rectangle.

If the estimated expected casualty still exceeds 30×10^{-6}, the FAA will not approve the proposed launch site location. In that event, the only remaining options for an applicant would be to rely on one of its potential customers obtaining a launch license for launch from the proposed site.

The FAA considered the option of increasing the accuracy of appendix C by employing a procedure that ensures individual populated areas have homogeneous population densities. The FAA considered this because the probability of impact equations in appendix C can cause the E_c for an individual populated area to be underestimated when unequal population densities occur within the area. This can occur, for example, when a populated area contains one or more densely populated cities interspersed with large land mass areas with rural population. The proposed E_c equation distributes the population evenly throughout the populated area. Accordingly, the E_c may be somewhat underestimated or over-estimated for portions of the populated area. The FAA considered requiring applicants to use smaller areas with homogeneous population densities in order to more accurately estimate the E_c, but chose not to because any error should be accounted for with the multiplier of two discussed above.

Appendix D

Appendix D contains the FAA's proposed method for determining the acceptability of the location of a launch site for launching unguided suborbital launch vehicles. Appendix D describes how to define an overflight exclusion zone and each impact dispersion area to be analyzed for risk for a representative launch vehicle. Proposed appendix D also describes how to estimate whether risk to the public, measured by expected casualty, falls within the FAA's threshold of acceptable risk. In short, the proposed approach requires an applicant to define an overflight exclusion zone around a launch point, determine the impact point for each spent stage and then define an impact dispersion area around each impact point. If populated areas are located in the impact dispersion areas and cannot be excluded by altering the launch azimuth, the FAA would require a risk analysis that demonstrates that risk to the public remains within acceptable levels.

As a first step, an applicant would select which launch points at the proposed launch site would be used for the launch of unguided suborbital launch vehicles. An applicant must also then select an existing launch vehicle, for which apogee data is available, whose final stage apogee represents the maximum altitude of any intended unguided suborbital launch vehicle intended for launch from that launch point. The applicant would then plot the distance, which is referred to as the impact range, from the launch point to the nominal impact point on the azimuth for each stage. Employing the impact dispersion radius of each stage, the applicant would define an impact dispersion area around each nominal impact point.

The FAA's proposed methodology for its proposed impact dispersion area requirements is grounded in three assumptions which reflect current practice. For purposes of this location review, the FAA assumes that unguided suborbital launch vehicles are not equipped with a flight termination system, and that public risk criteria are accordingly met through the implementation of a wind weighting system, launch procedures and restrictions, and the proper selection of a launch azimuth and elevation angles.[46] These aspects are currently reflected in FAA guidelines and will be addressed in its regulations for launches from non-federal launch sites. The cumulative launch experience in unguided suborbital launch vehicles demonstrates that risk to the public from launches of these vehicles is attributable to planned stage impact during a successful flight. Controlling these risks solely through measures implemented prior to flight rather than relying on active measures during flight, as is the case for a vehicle equipped with an FTS, has proved historically an acceptable approach to assuring protection of the public. Accordingly, the appendix D analysis should adequately address the general suitability of each launch point for unguided suborbital launch vehicle launches up to the altitude proposed. Operational requirements imposed on a launch licensee through license conditions should adequately address risks posed by the actual launch of unguided suborbital launch vehicles.

The proposed location review for a launch point that will support unguided suborbital launch vehicles also assume that intermediate and final stages impact the earth within five standard deviations 5σ of each nominal, no wind, impact point. This means that an appendix D analysis does not account for failures outside of five standard deviations from each intended impact point.

It also means that an appendix D analysis does not simulate an actual launch in actual wind conditions. For actual launches, wind weighting can be used to obtain the nominal, no wind, impact point for the final stage only. In order to ensure that the launch meets E_c, ship hit, and aircraft hit probabilities, launch operators compute the wind drifted impact points of all stages using the launcher settings determined through wind weighting so that intermediate stage impacts are determined prior to launch. Although appendix D does not address this fact directly, it does show that at least some launches can be conducted depending on the wind conditions.

Defining an Overflight Exclusion Zone and Impact Dispersion Areas

The areas an applicant will analyze for risk to the public posed by the launch of an unguided suborbital launch vehicle consist of an overflight exclusion zone and state impact dispersion areas. Having selected a launch point and a launch vehicle for which empirical data is available, an applicant defines each zone and area using the methodology provided. An overflight exclusion zone shall consist of a circle with a radius of 1600 feet centered on a launch point. An overflight exclusion zone is the area which must be free of the public during a launch. Creation of each impact dispersion area involves several more steps. For each stage of the analyzed vehicle an applicant must identify the nominal stage impact point on the azimuth where the stage is supposed to land, and draw a circle around that point, using the range and bearing equations of appendix A or GIS software. That circle describes the impact dispersion area, and an applicant defines an impact dispersion area for each stage.

An applicant must at the outset provide the geodetic latitude and longitude of a launch point that is proposes to offer for launch, and select a flight azimuth. Once an applicant has selected a launch point location and azimuth, the next step is to determine a 1600 foot radius overflight exclusion zone for that launch point. As with an overflight exclusion zone created pursuant to appendices A and B, an applicant must show that the public would be cleared from its overflight exclusion zone prior to launch. Although suborbital vehicles have a very low likelihood of failure, failure is more likely to occur in the early stages of the launch. Consequently, the FAA proposes to guard against that risk through requiring an applicant to show the ability to evacuate an overflight exclusion zone. As with the flight corridors of appendices A and B, the FAA proposes to base the size of the overflight exclusion zone on the maximum distance that debris is expected to travel from a launch point if a mishap were to occur very early in flight. The FAA has estimated the D_{max} for an unguided suborbital launch vehicle, and the result is 1600 feet. Accordingly, an applicant would define an appendix D overflight exclusion zone as a circle with a radius of 1600 feet.

Because an applicant must choose the maximum latitude anticipated of a

[45] The purpose of the E_c analysis as part of the launch site location review is not to determine a value of E_c but rather to confidently demonstrate that E_c is less than the acceptable threshold value.

[46] The flight safety program of an unguided suborbital launch vehicle without a flight termination system typically takes place and is concluded prior to flight. A launch operator achieves flight safety by implementing a flight based on launch vehicle performance parameters, launch vehicle dispersion parameters and other sources of error, such as wind measurement errors. A launch operator will offset the effects of winds measured on the day of launch by adjusting the azimuth and elevation of the launch vehicle's launcher accordingly. The methodology for correcting for actual wind conditions on the day of launch is called wind weighting. The products of a wind weighting analysis determine launcher azimuth and elevation settings that correct for wind effects on an unguided launch vehicle.

During preflight planning a launch operator determines launch vehicle dispersion, which is the potential change in the location of impact, by modeling the known causes of systematic errors. Variations in thrust, stage weight, payload weight and stage ignition time may produce errors, and will typically be included in any error model. Thrust misalignment, and the misalignment of nozzles or fins must also be modeled because of their capacity to contribute to error. A model also incorporates the error created by separation of the launch vehicle from the launcher, and accounts for any errors in motor impulse, drag estimate and launcher setting. Most significantly, a model analyzes wind error. Wind error modeling accounts for the measurement errors in the measuring system employed and the time elapsed between the time of measurement and the time of launch. Once these elements have been determined, wind error will be incorporated into the model to obtain the predicted impact points and total launch vehicle dispersion.

Historically, one of three methods have been used to correct for actual wind conditions on the day of launch. Both NASA at Wallops Flight Facility and the US Army at White Sands Missile Range have developed and improved methods of predicting the wind effects over the years. The three wind weighting methods that have evolved include: (1) The manual method, (2) the Lewis method, and (3) the 5-Degree-Of-Freedom (DOF) method. The difference between the methods is one of complexity and accuracy. The manual method is the least complex, but produces the largest error. The 5-DOF method is the most complex, produces the least error, and is currently employed by safety offices at Wallops Flight Facility and White Sands Missile Range.

Each of the wind weighting methods produce launch vehicle elevation and azimuth settings.

Other launch factors that play a role, however, may be necessary to ensure the wind weighting solutions are within the assumptions made in the pre-flight dispersion analysis. These factors may include the required height and period of wind measurements, limitations on the maximum ballistic wind and wind variability at which launch would be permitted, and a determination regarding maximum launcher setting angles.

The FAA derived the methods for defining an impact dispersion area proposed in appendix D by assuming that a launch operator would use a 5-DOF method of wind weighting. This does not preclude an applicant for a launch license from using another wind weighting method to develop impact dispersion areas, but the FAA proposes to address such issues in a rulemaking concerning launch licensing requirements.

suborbital launch vehicle for launch from its site, an applicant needs to acquire the apogee of each stage of a representative vehicle. An applicant need not possess full information regarding a specific representative launch vehicle. All that is necessary is the apogee of each stage. The apogee height must be obtained from an actual launch conducted at an 84° elevation angle. If needed, data is available from the FAA. The FAA has compiled apogee data from past launches from Wallops Flight Facility for a range of launch vehicles and payloads. This data will be provided to an applicant upon request and may be used to perform the analysis.

An applicant then defines impact dispersion areas for each stage's nominal impact point. Having selected a launch vehicle most representative of what the applicant intends for launch from the proposed launch point, an applicant will use either its own empirical apogee data or data from one of the vehicles in the FAA's data base. Whether an applicant uses vehicle apogee data obtained from the FAA or from elsewhere, the applicant must employ the FAA's proposed range and dispersion factors to determine the location of each nominal impact point and the size of each impact dispersion area.

The FAA proposes a means of estimating the distances of both an impact range and an impact dispersion radius. Under proposed appendix D, an applicant would estimate the impact range and dispersion parameters by multiplying the apogee of a launch vehicle intended for the prospective launch site by the FAA's proposed factors. The FAA proposes impact range and impact dispersion factors, which it derived from launch vehicle pedigrees of sounding rockets used by NASA Wallops Flight Facility in its sounding rocket program.[47] The proposed factors provide estimators of staging data for an unguided vehicle launched at a standard launcher elevation, which is the angle between the launch vehicle's major axis (x) and the ground, of 84°. the appendix defines the relationship between the apogee of a launch vehicle stage, an impact range and a 5σ dispersion radius of a stage. This relationship is expressed as two constants, which vary with the altitude of the apogee, an impact range factor and an impact dispersion factor.

[47] These vehicles include Nike Orion, Black Brant IX, Black Brant XI, and Black Brant XII. They are representative of the current launch vehicle inventory and should approximate any proposed new launch vehicle.

To locate each nominal impact point, an applicant will calculate the impact range for the final stage and each intermediate state. An impact range describes the distance between an applicant's proposed launch point and the nominal impact point of a stage, or, in other words, its estimated landing spot along the azimuth selected for analysis. For this estimation, an applicant would employ the FAA's proposed impact range factors of 0.4 or 0.7 as multipliers for the apogee of the stage. If an apogee is less than 100 kilometers, the applicant shall employ 0.4 as the impact range factor for that stage. If the apogee of a stage is 100 kilometers or more, the applicant shall use 0.7 as a multiplier. In plotting the impact points on a map, an applicant shall employ the methods provided in appendix A.

An impact dispersion radius descries the impact dispersion area of a stage. The FAA proposes to rely on an estimated impact dispersion radius of five standard deviations 5σ because significant population, such as a densely populated city, in areas within distances up to 5σ of the impact point could cause significant public risk. An applicant shall obtain the radius of the impact dispersion area by multiplying the stage apogee by the FAA's proposed impact dispersion factor of 0.4 for an apogee less than 100 kilometers and of 0.7 for an apogee of 100 kilometers or more. The final stage would typically produce the largest impact dispersion area.

Once an applicant determines the impact dispersion radii, the applicant must plot each impact dispersion area on a map in accordance with the requirements of paragraph (b). This is shown in figure D–1. An applicant may then determine if flight azimuths exist which do not affect populated areas. If all potential flight azimuths contain impact dispersion areas which encompass populated areas, then the FAA would require an E_c estimation of risk.

Public Risk E_c Estimation

The FAA will approve a launch point for suborbital launch vehicles if there exists a set of impact dispersion areas for a representative launch vehicle in which the sum of risk to the public does not exceed the FAA's acceptable risk threshold. An overflight exclusion zone must contain no people. If a populated area is present within the impact dispersion areas, the proposed rules require an applicant to estimate the risk to the public posed by possible stage impact. An applicant must then determine whether its estimated risk satisfies the FAA requirement of an E_c of no more than 30×10^{-6}. The E_c estimation is performed by computing the sum of the risk for the impact of each stage and accounting for each populated area located within a 5σ dispersion of an impact point. The equation used to accomplish this is the same as that used in the impact probability computation in appendix C. Unlike, however, the method in appendix C, which accounts for an impact due to a failure, the probability of a stage impact occurring is $P_s = 1\text{-}P_f$, where P_s is the probability of success, and P_f is the probability of failure. The FAA proposes, for the purposes of the launch site location review, a constant of 0.98 for the probability of success for unguided suborbital launch vehicles. The probability of success is used in place of P_f in calculating both the cross-range and downrange probability of impact.

The proposed location review for launch points intended for the launch of unguided suborbital launch vehicles differs from the approach proposed for reviewing the location of launch points intended for the launch of guided orbital and suborbital launch vehicles. In analyzing whether risk remains at acceptable levels, E_c equations in appendix D rely on the probability of success rather than the probability of failure. The use of stage impact probability, typified as the probability of success (P_s), for suborbital launch vehicles is necessary because stage impacts are high probability events which occur near the launch point with dispersions which may overlap or be adjacent to the launch point. The difference between the methods of appendices A, B and C and that proposed in appendix D reflects the fundamental differences between the likely dominant source of risk to the public guided and unguided vehicles and the methods that have been developed for guarding public safety against the risks created by each type of vehicle. In other words, the methods for defining impact dispersion areas and for conducting an impact risk assessment for an unguided vehicle are premised on the risks posed by a successful flight, that is, the planned deposition of stages and debris. In contrast, the methodology for developing a flight corridor and associated risk methodology for guided vehicles assumes that the likely major source of risk to the public arises out of a failure of a mission and the ensuing destruction of the vehicle. Failures are less probable and debris impacts are spread throughout a flight trajectory.

The high degree of success recorded for unguided launch vehicles renders the probability of success the greater source of risk. Because of their relative simplicity of operation, the failure rate, over time, for unguided launch vehicles is between one and two percent. At this level of reliability, the FAA believes that its primary focus of concern for assessing the safety of a launch site should be the more likely event, namely, the public's exposure to the planned impact of vehicle stages and other vehicle components, such as fairings, rather than the risk posed by exposure to debris resulting from a failure. Success is the high risk event. Although failure rates are low for unguided launch vehicles, their spent stages have large impact dispersions. Moreover, the FAA's proposed impact dispersion area estimations generally produce impact dispersion areas large enough to encompass most of the populations exposed to a possible failure as well as to a nominal flight, thus ensuring the inclusion of any large, densely populated area in the analysis. Thus, all but a small percentage of populated area will be analyzed to some extent, albeit using impact probabilities based on success. This fact plus a multiplier of five should provide a reasonable, conservative estimation of the risks associated with the launch point.

This is true of unguided sub-orbital launch vehicles because their impact dispersions are much larger than those for guided vehicles and they occur closer to the launch point.

In appendix D, the FAA assumes that the stage impact dispersion in both the downrange and cross range directions are equal. This is a valid assumption for suborbital launch vehicle rockets because their trajectories produce near circular dispersions. NASA data on sounding rocket impact dispersion supports this conclusion.

The impact dispersion area is based on a 5 σ dispersion. Appendix D uses the effective casualty area data, the table D–1, which contains information similar to appendix C, table C–3. This data represents the estimation of the area produced by both suborbital launch vehicle inert pieces. The baseline risk estimation approach in appendix D has the applicant calculate the probability of impact for each populated area, and then determining an E_c value for each populated area. To obtain the estimated E_c for an entire impact dispersion area, the applicant adds the E_c results for each populated area. If the population within the impact dispersion area is relatively small, an applicant may wish to conduct a less rigorous analysis by making conservative assumptions. Appendix D offers the option of analyzing a worst-case impact dispersion area for those where such an approach might save time and analysis, similar to the approach in appendix C.

Paperwork Reduction Act

This proposal contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)), the Department of Transportation has submitted the information collection requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Licensing and Safety Requirements for Operation of a Launch Site.

The FAA is proposing to amend its commercial space transportation licensing regulations to add licensing and safety requirements for the operation of a launch site. In the past, commercial launches have occurred principally at federal launch ranges under safety procedures developed by federal launch range operators. To enable the development and use of launch sites that are not operated by a federal launch ranges, rules are needed to establish specific licensing and safety requirements for operating a launch site, whether that site is located on or off of a federal launch range. These proposed rules would provide licensed launch site operators with licensing and safety requirements to protect the public from the risks associated with activities at launch site.

The required information will be used to determine whether applicants satisfy requirements for obtaining a license to protect the public from risks associated with operations at a launch site. The information to be collected includes data required for performing launch site location analyses. A launch site license is valid for a period of five years, and it is assumed that all licenses would be renewed after five years. The frequency of required submissions, therefore, will depend upon the number of prospective launch site operators seeking a license and the renewal of site licenses.

The respondents are all licensees authorized to conduct licensed launch site activities. It is estimated that there will be two respondents annually at 796 hours per respondent for an estimated annual burden hours of 1592 hours.

The agency is soliciting comments to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will be practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and, clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submission of responses).

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Accordi o th egulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person is not required to respond to a collection of informaiton unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after it is approved by the Office of Management and Budget.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits. This evaluation was conducted in accordance with Executive Order 12866, which directs that each Federal agency can propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. This document also includes an initial regulatory flexibility determination required by the Regulatory Flexibility Act of 1980, and an international trade impact assessment, required by the Office of Management and Budget. This proposal is not considered a significant regulatory action under section 3(f) of Executive Order 12866. In addition, under Regulatory Policies and Precedures of the Department of Transportation (44 FR 11034; February 26, 1979), this proposal is considered significant because there is substantial public interest in the rulemaking.

The Federal Aviation Administration proposes to amend its commercial space licensing regulations to add licensing requirements for the operation of a launch site. The proposal would provide launch site operators with licensing and operating requirements to protect the public from the risks

associated with operations at a launch site. The FAA currently issues licenses to launch site operators on a case-by case-approach. Elements of that approach are reflected in the guidelines, "Site Operators License Guidelines for Applicants," which describe the information that applicants provide the FAA for a license to operate a launch site. The FAA's interpretation and implementation of the guidelines constitute another element of the case-by-case approach and additional elements, such as policy review, not reflected in the guidelines.

The proposal represents quantifiable changes in costs compared to the guidelines (current practice) in the following two areas. They are the launch site location review and approval and the launch site operations review and approval. The FAA has estimated the costs and cost savings of these changes under two different cost scenarios over a 10-year period discounted at 7 percent in 1997 dollars. The total 10-year undiscounted cost savings is estimated to be between $84,000 and $160,000 (or between $53,000 and $105,000, discounted). The most burdensome cost scenario (where net cost savings is the least) to the industry would result in the costs to the launch site operators of $3,000 (or $2,000, discounted) for the launch site location reviews and approval provisions and a cost savings of $11,000 (or $8,000, discounted) for the launch site operations review and approval provisions. Although there would be no cost impact to the FAA, there would be a cost savings to the FAA from the most burdensome cost scenario of $104,000 or $70,000 discounted.

There are significant nonquantifiable benefits in two areas. First, the proposal eliminates overlapping responsibilities. Second, the proposal provides increased details and specificity, which are not present in the guidelines.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency must so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Potentially Affected Entities

Entities who are licensed, or have begun the licensing process, were contacted to determine their size and to gain insight into the impacts of the proposed regulations on the licensing process. Spaceport Florida Authority (SFA), Spaceport Systems International, L.P. (SSI), the Virginia Commonwealth Space Flight Authority (VCSFA) and the Alaska Aerospace Development Corporation (AADC) are all licensed to operate launch sites. The New Mexico Office of Space Commercialization (NMOSC) is mentioned briefly below although it is only in the pre-application consultation phase.

The Virginia Commonwealth Space Flight Authority (VCSFA) is a not-for-profit subdivision of the Commonwealth of Virginia, responsible for oversight of the activities of the Virginia Commercial Space Flight Center (VCSFC). The VCSFC is located within the boundaries of the Wallops Flight Facility (WFF). As a subdivision of the Commonwealth of Virginia, the VCSFA is empowered by the Acts of the General Assembly to do all things necessary to carry out its mission of stimulating economic growth and education through commercial aerospace activities.

The Spaceport Florida Authority (SFA) was created by Florida's Governor and Legislature as the nation's first state government space agency. The authority was established to develop space-related enterprise, including launch activities, industrial development and education-related projects. SFA operate Spaceport Florida (SPF), located on Cape Canaveral Air Station.

Launch site operator California Spaceport is located on Vandenberg Air Force Base. The launch site is operated and managed by Spaceport Systems International, L.P. who is in partnership with ITT Federal Services Corporation (ITT FSC). ITT FSC is one of the largest U.S.-based technical and support services contractors in the world.

The Kodiak Launch Complex is being built by the Alaska Aerospace Development Corporation. AADC is a public corporation created by the State of Alaska to develop aerospace related economic and technical opportunities for the state.

The Southwest Regional Spaceport (SRS) is to be operated by the New Mexico Office of Space Commercialization (NMOSC). The NMOSC is a division of the State's New Mexico Economic Development Department. Commencement of space flight operations is not expected until early the next decade.

Definition of Small Entities

The Small Business Administration has defined small business entities relating to space vehicles (SIC codes 3761, 3764 and 3769) as entities comprising fewer than 1000 employees. Although the above mentioned entities have fewer than 1000 employees in their immediate segment of the business, they are affiliated with/or funded by state governments and large parent companies. The VCSFA is a not-for-profit subdivision of the Commonwealth of Virginia; the SFA is a government space agency; the SSI is affiliated with ITT FSC; and AADC is a government sponsored corporation.

Under 5 U.S.C. 605, the FAA concludes that this proposal would impose little or no additional cost on this industry and certifies that it will not have a significant economic impact on a substantial number of small entities. The FAA nevertheless requests comments on any potential impacts associated with this proposal.

International Trade Impact Assessment

Licensing and Safety Requirements for Operation of a Launch Site (14 CFR part 420) would not constitute a barrier to international trade, including the export of U.S. goods and services out of the United States. The proposal affects operation of launch sites that are currently located or being proposed within the United States or operated by U.S. citizens.

The proposal is not expected to affect the trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. The FAA requests information on the effect that this proposal would have on international trade.

Federalism Implications

The regulations proposed herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed does not meet the cost thresholds described above. Furthermore, this proposal would not impose a significant cost or uniquely affect small governments. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Assessment

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(i), regulatory documents which cover administrative or procedural requirements qualify for a categorical exclusion. Proposed sections in subpart B of part 420 would require an applicant to submit sufficient environmental information for the FAA to comply with NEPA and other applicable environmental laws and regulations during the processing of each license application. Accordingly, the FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from the finalization or implementation of its administrative provisions for licensing.

Energy Impact

The energy impact of the rulemaking action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR 417 and 420

Confidential business information. Environmental protection, Organization and functions, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter III of Title 14 of the Code of Federal Regulations to read as follows:

PART 417—[REMOVED AND RESERVED]

1. Part 417 is removed and reserved.

2. Subchapter C of Chapter III, title 14, Code of Federal Regulations, is amended by adding a new part 420 to read as follows:

PART 420—LICENSE TO OPERATE A LAUNCH SITE

Subpart A—General

Sec.
420.1 Scope.
420.3 Applicability.
420.5 Definitions.
420.6–420.14 [Reserved]

Subpart B—Criteria and Information Requirements for Obtaining a License

420.15 Information requirements.
420.17 Bases for issuance of a license.
420.19 Launch site location review.
420.21 Launch site criteria for expendable launch vehicles.
420.23 Launch site location review for unproven launch vehicles.
420.31 Explosive site plan.
420.33 Handling of solid propellants.
420.35 Storage or handling of liquid propellants.
420.37 Solid and liquid propellants located together.
420.38–420.40 [Reserved]

Subpart C—License Terms and Conditions

420.41 License to operate a launch site-general.
420.43 Duration.
420.45 Transfer of a license to operate a launch site.
420.47 License modification.
420.49 Compliance monitoring.

Subpart D—Responsibilities of a Licensee

420.51 Responsibilities—general.
420.53 Control of public access.
420.55 Scheduling of launch site operations.
420.57 Notifications.
420.59 Launch site accident investigation plan.
420.61 Records.
420.63 Explosives.
Appendix A to Part 420—Method for Defining a Flight Corridor
Appendix B to Part 420—Method for Defining a Flight Corridor
Appendix C to Part 420—Risk Analysis
Appendix D to Part 420—Impact Dispersion Areas and Casualty Expectancy Estimate for Unguided Suborbital Launch Vehicles
Appendix E to Part 420—Tables for Explosive Site Plan

Authority: 49 U.S.C. 70101–70121.

Subpart A—General

§ 420.1 Scope.

This part prescribes the information and demonstrations that must be submitted as part of a license application, the bases for license approval, license terms and conditions, and post-licensing requirements with which a licensee shall comply to remain licensed. Requirements for preparing a license application are also contained in part 413 of this subchapter.

§ 420.3 Applicability.

This part applies to any person seeking a license to operate a launch site or to a person licensed under this part.

§ 420.5 Definitions.

For the purpose of this part, *Ballistic coefficient* means the weight of an object divided by the quantity product of the coefficient of drag of the object and the area of the object.

Compatibility means the chemical property of materials that may be located together without increasing the probability of an accident or, for a given quantity, the magnitude of the effects of such an accident.

Debris dispersion radius (D_{max}) means the estimated maximum distance from a launch point that debris travels given a worst-case launch vehicle failure and flight termination at 10 seconds into flight.

Divison 1.3 explosive means an explosive as defined in 49 CFR 173.50.

Downrange area means a portion of a flight corridor beginning where a launch area ends and ending 5,000 nautical miles from the launch point for an orbital launch vehicle, and ending with an impact dispersion area for a guided sub-orbital launch vehicle.

E,F,G coordinate system means an orthgonal, Earth-fixed, geocentric, right-handed system. The origin of the coordinate system is at the center of an ellipsoidal earth model. The E-axis is positive directed through the Greenwich meridian. The F-axis is positive directed through 90 degrees east longitude. The EF-plane is coincident with the ellipsoidal Earth model's equatorial plane. The G-axis is normal to the EF-plane and positive directed through the north pole.

E,N,U. coordinate system means an orthogonal, Earth-fixed, topocentric, right-handed system. The origin of the coordinate system is at a launch point. The E-axis is positive directed east. The N-axis is positive directed north. The EN-plane is tangent to an ellipsoidal Earth model's surface at the origin and perpendicular to the geodetic vertical. The U-axis is normal to the EN-plane and positive directed away from the Earth.

Effective casualty area (A_c) means the aggregate casualty area of each piece of debris created by a launch vehicle failure at a particular point on its trajectory. The effective casualty area for each piece of debris is the area within which 100 percent of the unprotected population on the ground are assumed to be a casualty, and outside of which 100 percent of the population are assumed not to be a casualty. This area is based on the characteristics of the debris piece including its size, the path angle of its trajectory, impact explosions, the size of a person, and debris skip, splatter, and bounce.

Explosive means any chemical compound or mechanical mixture that, when subjected to heat, impact, friction, detonation or other suitable initiation, undergoes a rapid chemical change that releases large volumes of highly heated gases that exert pressure in the surrounding medium. The term applies to materials that either detonate or deflagrate.

Explosive equivalent means a measure of the blast effects from explosion of a given quantity of material expressed in terms of the weight of trinitrotoluene (TNT) that would produce the same blast effects when detonated.

Explosive hazard facility means a facility at a launch site where solid or liquid propellant is stored or handled.

Flight azimuth means the initial direction in which a launch vehicle flies relative to true north expressed in degrees-decimal-degrees.

Flight corridor means an area on the earth's surface estimated to contain the majority of hazardous debris from nominal and non-nominal flight of an orbital or guided suborbital launch vehicle.

Guided suborbital launch vehicle means a suborbital rocket that employs an active guidance system.

Impact dispersion area means an area representing and estimated five standard deviation dispersion about a nominal impact point of an intermediate or final stage of a suborbital launch vehicle.

Impact dispersion factor means a constant used to estimate, using a stage apogee, a five standard deviation dispersion about a nominal impact point of an intermediate or final stage of a suborbital launch vehicle.

Impact dispersion radius (R_i) means a radius that defines an impact dispersion area.

Impact range means the distance between a launch point and the impact point of a suborbital launch vehicle stage.

Impact range factor means a constant used to estimate, using the stage apogee, the nominal impact point of an intermediate or final stage of a suborbital launch vehicle.

Instantaneous impact point (IIP means an impact point, following thrust termination of a launch vehicle, calculated in the absence of atmospheric drag effects.

Instantaneous impact point (IIP) range rate means a launch vehicle's estimated IIP velocity along the Earth's surface.

Intraline distance means the minimum distance permitted between any two explosive hazard facilities in the ownership, possession or control of one launch site customer.

Launch area means, for a flight corridor defined using appendix A to this part, the portion of a flight corridor from the launch point to a point 100 nautical miles in the direction of the flight azimuth. For a flight corridor defined using appendix B to this part, a launch area is the portion of a flight corridor from the launch point to the enveloping line enclosing the outer boundary of he last debris dispersion circle.

Launch point means a point on the Earth from which the flight of a launch vehicle begins, and is defined by its geodetic latitude, longitude and height on an ellipsoidal Earth model.

Launch site accident means an unplanned event occurring during a ground activity at a launch site resulting in a fatality or serious injury (as defined in 49 CFR 830.2) to any person who is not associated with the activity, or any damage estimated to exceed $25,000 to property not associated with the activity.

Net explosive weight (NEW) means the total weight, expressed in pounds, of explosive material or explosive equivalency contained in an item.

Nominal means, in reference to launch vehicle performance, trajectory, or stage impact point, a launch vehicle flight where all launch vehicle aerodynamic parameters are as expected, all vehicle internal and external systems perform as planned, and there are no external perturbing influences (e.g., winds) other than atmospheric drag and gravity.

Nominal trajectory means the position and velocity components of a nominally performing launch vehicle relative to an x, y, z coordinate system, expressed in x, y, z, $\dot{x}_0$, $\dot{y}_0$, $\dot{z}_0$.

Overflight dwell time means the period of time it takes for a launch vehicle's IIP to move past a populated area. For a given populated area, the overflight dwell time is the time period measured along the nominal trajectory IIP ground trace from the time point whose normal with the trajectory intersects the most uprange part of the populated area to the time point whose normal with the trajectory intersects the most downrange part of the populated area.

Overflight exclusion zone means a portion of a flight corridor which must remain clear of the public during the flight of a launch vehicle.

Populated area means a land area with population.

Population density means the number of people per unit area in a populated area.

Position data means data referring to the current position of a launch vehicle with respect to flight time expressed through the x, y, z coordinate system.

Public area means any area outside a hazard area and is an area that is not in the possession, ownership or other control of a launch site operator or of a launch site customer who possess, owns or otherwise controls that hazard area.

Public area distance means the minimum distance permitted between a public area and an explosive hazard facility.

Unguided sub-orbital launch vehicle means a sub-orbital rocket that does not have a guidance system.

x,y,z coordinate system means an orthogonal, Earth-fixed, topocentric, right-handed system. This origin of the coordinate system is at a launch point. The x-axis coincides with the initial launch azimuth and is positive in the downrange direction. The y-axis is positive to the left looking downrange. The xy-plane is tangent to the ellipsoidal earth model's surface at the origin and perpendicular to the geodetic vertical. The z-axis is normal to the xy-plane and positive directed away from the earth.

ϕ_0,λ_0,h_0 means a latitude, longitude, height system where ϕ_0 is the geodetic latitude of a launch point, λ_0 is the east longitude of the launch point, and h_0 is the height of the launch point above the reference ellipsoid. ϕ_0 and λ_0 are expressed in degrees-decimal-degrees.

§§ 420.6–420.14 [Reserved]

Subpart B—Criteria and Information Requirements for Obtaining a License

§ 420.15 Information requirements.

(a) An applicant shall provide the FAA with information for the FAA to analyze the environmental impacts associated with operation of a proposed launch site. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environment Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR parts 1500–1508, and the FAA's Procedures for Considering Environmental Impacts, FAA Order 1050.1D. An applicant shall submit environmental information concerning a proposed launch site not covered by existing environmental documentation and other factors as determined by the FAA.

(b) An applicant shall:

(1) Provide the information necessary to demonstrate compliance with §§ 420.19, 420.21, and 420.23. For launch sites analyzed for expendable launch vehicles, an applicant shall provide the following information:

(i) A map or maps showing the location of each launch point proposed, and the flight azimuth, overflight exclusion zone, flight corridor, and each impact dispersion area for each launch point;

(ii) Each launch vehicle type and any launch vehicle class proposed for each launch point;

(iii) Each month and any percent wind data used in the analysis;

(iv) Any launch vehicle apogee used in the analysis;

(v) If populated areas are located within an overflight exclusion zone, a demonstration that there are times when the public is not present or that the applicant has an agreement in place to evacuate the public from the overflight exclusion zone during a launch;

(vi) Each populated area located within a flight corridor or impact dispersion area;

(vii) The estimated casualty expectancy calculated for each populated area within a flight corridor or impact dispersion area; and

(vii) The estimated casualty expectancy for each flight corridor or set of impact dispersion areas.

(2) Identify foreign ownership of the applicant, as follows:

(i) For a sole proprietorship or partnership, all foreign owners or partners;

(ii) For a corporation, any foreign ownership interest of 10 percent or more; and

(iii) For a joint venture, association, or other entity, any foreign entities participating in the entity.

(3) Provide an explosive site plan in accordance with §§ 420.31, 420.33, 420.35 and 420.37.

(c) An applicant shall provide the information necessary to demonstrate compliance with the requirements of §§ 420.53, 420.55, 420.57, 420.59 and 420.63.

(d) An applicant who is proposing to locate a launch site at an existing launch point at a federal launch range is not required to comply with paragraph (b)(1) of this section if a launch vehicle of the same type and class as proposed for the launch point has been safely launched from the launch point. An applicant who is proposing to locate a launch site at a federal launch range is not required to comply with paragraph (b)(3) of this section.

§ 420.17 Bases for issuance of a license.

(a) The FAA will issue a license under this part when the FAA determines that:

(1) The application provides the information required under § 420.15;

(2) The National Environmental Policy Act review is completed;

(3) The launch site location meets the criteria provided in §§ 420.19, 420.21, and 420.23;

(4) The explosive site plan meets the criteria provided in §§ 420.31, 420.33, 420.35 and 420.37;

(5) The application demonstrates that the applicant shall satisfy the requirements of subpart D of this part; and

(6) Issuing a license would not jeopardize foreign policy or national security interests of the United States.

(b) The FAA advises an applicant, in writing, of any issue arising during an application review that would lead to denial. The applicant may respond in writing, submit additional information, or revise its license application.

§ 420.19 Launch site location review.

(a) To gain approval for a launch site location, an applicant shall demonstrate that for at least one type of expendable launch vehicle—orbital, guided sub-orbital or unguided sub-orbital—or a reusable launch vehicle, a flight corridor or set of impact dispersion areas exists that does not exceed an estimated expected average number of 0.00003 casualties (E_c) to the collective member of the public exposed to hazards from any one flight ($E_c \leq 30 \times 10^{-6}$). For an orbital expendable launch vehicle, an applicant shall choose a weight class as defined in table 1.

(b) For a guided orbital or guided sub-orbital expendable launch vehicle, an applicant shall define a flight corridor using one of the methodologies provided in appendices A or B to this part. If a defined flight corridor contains a populated area, the applicant shall use appendix C to this part to estimate the casualty expectation associated with the flight corridor.

(c) For an unguided sub-orbital expendable launch vehicle, an applicant shall define impact dispersion areas as provided by appendix D to this part. If a defined impact dispersion area contains any populated areas, the applicant shall use appendix D to this part to estimate the casualty expectation associated with the set of impact dispersion areas.

(d) For a reusable launch vehicle, an applicant shall define a flight corridor that the applicant estimates to contain the hazardous debris from nominal and non-nominal flight of a reusable launch vehicle. If the defined flight corridor contains a populated area, the applicant shall estimate the casualty expectation associated with a reusable launch vehicle mission. An applicant shall demonstrate that the estimated expected average number of casualties (E_c) to the collective member of the public exposed to hazards from any one mission is less than 0.00003. The FAA will evaluate the adequacy of the flight corridor and

casualty expectancy analysis on a case-by-case basis.

§ 420.21 Launch site criteria for expendable launch vehicles.

(a) For each launch point proposed for expendable launch vehicles, an applicant shall use each type of expendable launch vehicle proposed to be launched from that launch point as the basis of its demonstration of compliance with the criteria provided in paragraph (b) of this section and for the analyses provided in appendices A through D to this part.

(b) For each type of expendable launch vehicle selected under paragraph (a) of this section, the distance from the proposed launch point to the launch site boundary must be at least as great as the minimum distance listed in table 2 for that type and any class of launch vehicle.

§ 420.23 Launch site location review for unproven launch vehicles.

The FA will evaluate the adequacy of a launch site location for unproven launch vehicles including all new launch vehicles, whether expendable or reusable, on a case-by-case basis.

TABLE 1 TO § 420.21.—ORBITAL LAUNCH VEHICLE CLASSES BY PAYLOAD WEIGHT (LBS)

	Orbital Launch Vehicles			
100 nm orbit	Small	Medium	Medium large	Large
28 degrees inclination [1]	≤440	>4400 to ≤11100	>11100 to ≤18500	>18500
90 degrees inclination [2]	≤3300	>3300 to ≤8400	>8400 to ≤15000	>15000

[1] 28 degrees inclination orbit from a launch point at 28 degrees latitude.
[2] 90 degrees inclination orbit.

TABLE 2 TO § 420.21.—MINIMUM DISTANCE FROM LAUNCH POINT TO LAUNCH SITE BOUNDARY (FEET)

Orbital launch vehicles				Suborbital launch vehicles	
Small	Medium	Medium large	Large	Guided suborbital launch vehicle	Unguided suborbital launch vehicle
7300	9300	10600	13000	8000	1600

§ 420.13 Explosvie site plan.

(a) An applicant shall submit an explosive site plan that establishes compliance with §§ 420.33, 420.35, and 420.37. The explosive site plan shall include:

(1) A scaled map that shows the location of all proposed explosive hazard facilities at the proposed launch site and that shows actual and minimal allowable distances between each explosive hazard facility and all other explosive hazard facilities and each public area, including the launch site boundary.

(2) A listing of the maximum quantities of liquid and solid propellants to be located at each explosive hazard facility, including the class and division for each solid propellant and the hazard and compatibility group for each liquid propellant; and

(3) A description of each activity to be conducted in each explosive hazard facility.

(b) An applicant applying for a license to operate a launch site at a federal launch range need not submit an explosive site plan to the FAA.

§ 420.33 Handling of solid propellants.

(a) An applicant shall determine the total quantity of solid propellant explosives by class and division in each explosive hazard facility where solid propellants will be handled. The total quantity of explosives in an explosive hazard facility shall be measured as the net explosive weight (NEW) of the solid propellants. When division 1.1 explosives, designed to be installed on launch vehicles and designed not to detonate division 1.3 components, are located with division 1.3 explosives, that total quantity of explosives shall be the NEW of the division 1.3 components.

(b) An applicant shall separate each explosive hazard facility where solid propellants will be handled from all other explosive hazard facilities, each public area and the launch site boundary by a distance no less than those provided for each quantity in appendix E, table E–1. An applicant shall employ no less than the applicable public area distance to separate an explosive hazard facility from each public area and from the launch site boundary. An applicant shall employ no less than an intraline distance to separate an explosive hazard facility from all other explosive hazard facilities that will be used by a single customer. An applicant may use linear interpolation for NEW quantities between table entries. For every explosive hazard facility where solid propellants in quantities greater than 1,000,000 pounds will be handled, an applicant shall separate the explosive hazard facility from all other explosive hazard facilities, each public area and the launch site boundary in accordance with the minimum separation distances derived from the following relationships:

(1) For a public area distance:

$D = 8W^{1/3}$

where "D" equals the minimum separation distance in feet and "W" equals the NEW of propellant.

(2) For an intraline distance:

$D = 5W^{1/3}$

where "D" equals the minimum separation distance in feet and "W" equals the NEW of propellant.

(c) An applicant shall measure separation distance from the closest debris or explosive hazard source in an explosive hazard facility.

§ 420.35 Storage or handling of liquid propellants.

(a) For an explosive hazard facility where liquid propellants are handled or stored, an applicant shall determine the total quantity of liquid propellant and, if applicable pursuant to paragraph (a)(3) of this section, the explosive equivalent of liquid propellant in each explosive hazard facility in accordance with the following:

(1) The quantity of liquid propellant in a tank, drum, cylinder, or other container is the net weight in pounds of the propellant in the container. The determination of quantity shall include any liquid propellant in associated piping to any point where positive means are provided for interrupting the flow through the pipe, or interrupting a reaction in the pipe in the event of a mishap.

(2) Where two or more containers of compatible liquid propellants will be handled or stored together in an explosive hazard facility, the total quantity of propellant to determine the minimum separation distance between the explosive hazard facility and all other explosive hazard facilities and each public area shall be the total quantity of liquid propellant in all containers, unless:

(i) The containers are separated one from the other by the appropriate distance as provided in paragraph (b)(2) of this section; or

(ii) The containers are subdivided by intervening barriers, such as diking, that prevent mixing.

(iii) If paragraph (a)(2) (i) or (ii) of this section apply, an applicant shall use the quantity of propellant requiring the greatest separation distance pursuant to paragraph (b) of this section to determine the minimum separation distance between the explosive hazard facility and all other explosive hazard facilities and each public area.

(3) Where two or more containers of incompatible liquid propellants will be handled or stored together in an explosive hazard facility, an applicant shall determine the explosive equivalent in pounds of the combined liquids, using the formulas provided in appendix E, table E–2, to determine the minimum separation distance between the explosive hazard facility and other explosive hazard facilities and public areas unless the containers are separated one from the other by the appropriate distance as determined in paragraph (b)(3) of this section. An applicant shall then use the quantity of liquid propellant requiring the greatest separation distance to determine the minimum separation distance between the explosive hazard facility and all other explosive hazard facilities and each public area.

(4) An applicant shall convert quantities of liquid propellants from gallons to pounds using the conversion factors provided in appendix E, table E–3 and the following equation:

Pounds of propellant = gallons × density of propellant (pounds per gallon).

(b) An applicant shall use appendix E, table E–3 to determine hazard and compatibility groups and shall separate liquid propellants from each other and from each public area using distances no less than those provided in appendix E, tables E–4 through E–7 in accordance with the following:

(1) An applicant shall measure minimum separation distances from the hazard source in an explosive hazard facility, such as a container, building, segment, or positive cutoff point in piping, closest to each explosive hazard facility.

(2) An applicant shall measure the minimum separation distance between compatible liquid propellants using the "intragroup and compatible" distance for the propellant quantity and hazard group that requires the greater distance prescribed by appendix E, tables E–4, E–5, and E–6.

(3) An applicant shall measure the minimum separation distance between liquid propellants of different compatibility groups using the "public area and incompatible" distance for the propellant quantity and hazard group that requires the greater distance provided in appendix E, tables E–4, E–5, and E–6, unless the propellants of different compatibility groups are subdivided by intervening barriers that prevent mixing. If such barriers are present, the minimum separation distance shall be the "intragroup and compatible" distance for the propellant quantity and group that requires the greater distance provided in appendix E, tables E–4, E–5, and E–6.

(4) An applicant shall separate liquid propellants from each public area using a distance no less than the "public area and incompatible" distance provided in appendix E, tables E–4, E–5, and E–6.

(5) An applicant shall separate each explosive hazard facility that will contain liquid propellants where explosive equivalents apply pursuant to paragraph (a)(3) of this section from all other explosive hazard facilities of a single customer using the intraline distance provided in appendix E, table E–7, and from each public area using the public area distance provided in appendix E, table E–7.

§ 420.37 Solid and liquid propellants located together.

An applicant proposing an explosive hazard facility where solid and liquid propellants are to be located together shall determine the minimum separation distances between the explosive hazard facility and other explosive hazard facilities and public areas in accordance with the following. An applicant shall determine the minimum separation distances between the explosive hazard facility and all other explosive hazard facilities and public areas required for the solid propellants in accordnace with § 420.33. An applicant shall then apply the greater of the separation distances determined by the liquid propellant alone or the solid propellant alone.

§§ 420.38–420.40 [Reserved]

Subpart C—License Terms and Conditions

§420.41 License to operate a launch site—general.

(a) A license to operate a launch site authorizes a licensee to operate a launch site in accordance with the representations contained in the licensee's application, with terms and conditions contained in any license order accompanying the license, subject to the licensee's compliance with 49 U.S.C. subtitle IX, ch. 701 and this chapter.

(b) A license to operate a launch site authorizes a licensee to offer its launch site to a launch operator for each launch point for the type and any class of launch vehicle identified in the license application and upon which the licensing determination is based.

(c) Issuance of a license to operate a launch site does not relieve a licensee of its obligation to compy with any other laws or regulations, nor does it confer any proprietary, property, or exclusive right in the use of airspace or outer space.

§420.43 Duration.

A license to operate a launch site remains in effect for five years from the date of issuance unless surrendered, suspended, or revoked before the expiration of the term and is renewable upon application by the licensee.

§420.45 Transfer of a license to operate a launch site.

(a) Only the FAA may transfer a license to operate a launch site.

(b) The FAA will transfer a license to an applicant who has submitted an application in accordance with 14 CFR part 413, satisfied the requirements of § 420.15, and obtained each approval required under § 420.17 for a license.

(c) The FAA may incorporate by reference any findings made part of the record to support a prior related licensing determination.

§ 420.47 License modification.

(a) Upon application or upon its own initiative, the FAA may modify a license to operate a launch site at any time by issuing a license order that adds, removes, or modifies a license term or condition to ensure compliance with the Act and the requirements of this chapter.

(b) After a license to operate a launch site has been issued, a licensee shall apply to the FAA for modification of its license if:

(1) The licensee proposes to operate the launch site in a manner that is not authorized by the license; or

(2) Any representation contained in the license application that is material to public health and safety or safety of property is no longer accurate and complete or does not reflect the licensee's actual operation of the launch site.

(c) An application to modify a license must meet the requirements of part 413 of this chapter. The licensee shall indicate any part of its license or license application that would be changed or affected by the proposed modification.

(d) The FAA will approve a request for modification that satisfies the requirements set forth in this part.

(e) Upon approval of a request for modification, the FAA will issue either a written approval to the licensee or a license order modifying the license if a term or condition of the license is changed, added, or deleted. A written approval has the full force and effect of a license order and is part of the licensing record.

§ 420.49 Compliance monitoring.

A licensee shall allow access by and cooperate with federal officers or employees or other individuals authorized by the FAA to observe any activities of the licensee, its customers, its contractors, or subcontractors, associated with licensed operation of the licensee's launch site.

Subpart D—Responsibilities of a Licensee

§ 420.51 Responsibilities—general.

(a) A licensee shall operate its launch site in accordance with the representations in the application upon which the licensing determination is based.

(b) A licensee is responsible for compliance with 49 U.S.C. Subtitle IX, ch. 701 and for meeting the requirements of this chapter.

§ 420.53 Control of public access.

(a) A licensee shall prevent unauthorized access to the launch site, and unauthorized, unescorted access to explosive hazard facilities or other hazard areas not otherwise controlled by a launch operator, through the use of security personnel, surveillance systems, physical barriers, or other means approved as part of the licensing process.

(b) A licensee shall notify anyone entering the launch site of safety rules and emergency and evacuation procedures prior to that person's entry unless that person has received a briefing on those rules and procedures within the previous year.

(c) A licensee shall employ warning signals or alarms to notify any persons at the launch site of any emergency.

§ 420.55 Scheduling of launch site operations.

(a) A licensee shall develop and implement procedures to schedule operations to ensure that each operation carried out by a customer, including a launch operator, at the launch site does not create the potential for a mishap that could result in harm to the public because of the proximity of the operations, in time or place, to operations of any other customer at the launch site.

(b) A licensee shall provide its launch site scheduling requirements to each customer before the customer begins operations at the launch site.

§ 420.57 Notifications.

(a) A licensee shall notify a launch operator of any limitations on the operations conducted at the launch site that arise out of its license to operate a launch site.

(b) A licensee shall complete an agreement with the local U.S. Coast Guard district to establish procedures for the issuance of a Notice to Mariners prior to launch and other such measures as the Coast Guard deems necessary to protect public health and safety.

(c) A licensee shall complete an agreement with the FAA regional office having jurisdiction over the airspace through which launches will take place, to establish procedures for the issuance of a Notice to Airmen prior to a launch and for closing of air routes during the launch window and other such measures as the FAA regional office deems necessary to protect public health and safety.

(d) At least two days prior to flight of a launch vehicle, the licensee shall notify local officials and all owners of land adjacent to the launch site of the schedule.

§ 420.59 Launch site accident investigation plan.

(a) *General.* A licensee shall develop and implement a launch site accident investigation plan that contains the licensee's procedures for reporting, responding to, and investigating launch site accidents, as defined in § 420.5. The launch site accident investigation plan must be signed by an individual authorized to sign and certify the application in accordance with § 413.7(c) of this chapter.

(b) *Reporting requirements.* A launch site accident investigation plan shall provide for—

(1) Immediate notification to the Federal Aviation Administration (FAA) Washington Operations Center in the event of a launch site accident.

(2) Submission of a written preliminary report to the FAA, Associate Administrator for Commercial Space Transportation, within five days of any launch site accident. The report must include the following information:

(i) Date and time of occurrence;

(ii) Location of the event;

(iii) Description of the event;

(iv) Number of injuries, if any, and general description of types of injury suffered;

(v) Property damage, if any, and an estimate of its value;

(vi) Identification of hazardous materials, as defined in § 401.5 of this chapter, involved in the event;

(vii) Any action taken to contain the consequences of the event; and

(viii) Weather conditions at the time of the event.

(c) *Response plan.* A launch site accident investigation plan shall contain procedures that—

(1) Ensure the consequences of a launch site accident are contained and minimized;

(2) Ensure data and physical evidence are preserved;

((3) Require the licensee to report to and cooperate with FAA or National Transportation Safety Board (NTSB) investigations and designate one or more points of contact for the FAA or NTSB; and

(4) Require the licensee to identify and adopt preventive measures for avoiding recurrence of the event.

(d) *Investigation plan.* A launch site accident investigation plan shall contain—

(1) Procedures for investigating the cause of a launch site accident, and participating in an investigation of a launch accident for launches launched from the launch site;

(2) Procedures for reporting launch site accident investigation results to the FAA; and

(3) Delineated responsibilities, including responsibilities for personnel assigned to conduct investigations and for any one retained by the licensee to conduct or participate in investigations.

(e) *Applicability of other accident investigation procedures.* Accident investigation procedures developed under 29 CFR 1910.119 and 40 CFR part 68 will satisfy the requirements of paragraphs (c) and (d) of this section to the extent that they include the elements provided in paragraphs (c) and (d) of this section.

§ 420.61 Records.

(a) A licensee shall maintain all records, data, and other material needed to verify that its operations are conducted in accordance with representation contained in the licensee's application. A licensee shall retain records for three years.

(b) In the event of a launch site accident, a licensee shall preserve all records related to the event. Records shall be retained until completion of any federal investigation and the FAA advises the licensee that the records need not be retained.

(c) A licensee shall make available to federal officials for inspection and copying all records required to be maintained under the regulations.

§ 420.63 Explosives.

(a) *Explosive siting.* A licensee shall ensure that the configuration of the launch-site is in acccordance with the licensee's explosive site plan, and that the licensee's explosive site plan is in compliance with the requirements in §§ 420.31–420.37.

(b) *Lightning protection.* A licensee shall ensure that the public is not exposed to hazards due to the initiation of explosives by lightning.

(1) *Elements of a lighting protection system.* Unless an explosive hazard facility meets the conditions of paragraph (b)(3) of this section, all explosive hazard facilities shall have a lightning protection system to ensure explosives are not initiated by lightning. A lightning protection system shall meet the requirements of paragraph (b)(2) of this section and include the following:

(i) *Air terminal.* An air terminal to intentionally attract a lightning strike.

(ii) *Down conductor.* A low impedance path connecting an air terminal to an earth electrode system.

(ii) *Earth electrode system.* An earth electrode system to dissipate the current from a lightning strike to ground.

(2) *Bonding and surge protection.*—(i) *Bonding.* All metallic bodies shall be bonded to ensure that voltage potentials due to lightning are equal everywhere in the explosive hazard facility. Any fence within six feet of a lightning protection system shall have a bond across each gate and other discontinuations and shall be bonded to the lightning protection system. Railroad tracks that run within six feet of the lightning protection system shall be bonded to the lighting protection system.

(ii) *Surge protection.* A lightning protection system shall include surge protection to reduce transient voltages due to lightning to a harmless level for all metallic power, communication, and instrumentation lines coming into an explosive hazard facility.

(3) *Circumtances where no lightning protection system is required.* No lightning protection system is required for an explosive hazard facility when a lightning warning system is available to permit termination of operations and withdrawal of the public to public area distance prior to an electrical storm, or for an explosive hazard facility containing explosives that cannot be initiated by lightning. If no lightning protection system is required, a licensee must ensure the withdrawal of the public to a public area distance prior to an electrical storm.

(4) *Testing and inspection.* Lightning protection systems shall be visually inspected semiannually and shall be tested once each year for electrical continuity and adequacy of grounding. A licensee shall maintain at the explosive hazard facility a record of results obtained from the tests, including any action taken to correct deficiencies noted.

(c) *Electrical Power Lines.* A licensee shall ensure that electric power lines at its launch site meet the following requirements:

(1) Electric power lines shall be no closer to an explosive hazard facility than the length of the lines between the poles or towers than support the lines unless an effective means is provided to ensure that energized lines cannot, on breaking, come in contact with the explosive hazard facility.

(2) Towers or poles supporting electrical distribution lines that carry between 15 and 69 KV, and unmanned electrical substations shall be no closer to an explosive hazard facility than the public area distance for that explosive hazard facility.

(3) Towers or poles supporting electrical transmission lines that carry 69 KV or more, shall be no closer to an explosive hazard facility than the public area distance for that explosive hazard facility.

Issued in Washington, DC on June 10, 1999.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

Appendix A to Part 420—Method for Defining a Flight Corridor

(a) Introduction

(1) This appendix provides a method to construct a flight corridor from a launch point for a guided suborbital launch vehicle or any one of the four classes of guided orbital launch vehicles from table 1, § 420.21, without the use of local meteorological data or a launch vehicle trajectory.

(2) A flight corridor includes an overflight exclusion zone in a launch area and, for a guided suborbital launch vehicle, an impact dispersion area in a downrange area. A flight corridor for a guided suborbital launch vehicle ends with the impact dispersion area, and, for the four classes of guided orbital launch vehicles, 5,000 nautical miles from the launch point.

(b) Data Requirements

(1) Maps. An applicant shall use any map for the launch site region with a scale not less than 1:250,000 inches per inch in the launch area and 1:20,000,000 inches per inch in the downrange area. As described in paragraph (b)(2), an applicant shall use a mechanical method, a semi-automated method, or a fully-automated method to plot a flight corridor on maps. A source for paper maps acceptable to the FAA is the U.S. Dept. of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service.

(i) Projections for mechanical plotting method. An applicant shall use a conic projection. The FAA will accept a "Lambert-Conformal" conic projection. A polar aspect of a plane-azimuthal projection may also be used for far northern launch sites.

(ii) Projections for semi-automated plotting method. An applicant shall use cylindrical, conic, or plane projections for semi-automated plotting. The FAA will accept "Mercator" and "Oblique Mercator" cylindrical projections. The FAA will accept "Lambert-Conformal" and "Albers Equal-Area" conic projections. The FAA will accept "Lambert Azimuthal Equal-Area" and "Azimuthal Equidistant" plane projections.

(iii) Projections for fully-automated plotting method. The FAA will accept map projections used by geographical information system software scaleable pursuant to the requirements of paragraph (b)(1).

(2) Plotting Methods.

(i) Mechanical method. An applicant may use mechanical drafting equipment such as pencil, straight edge, ruler, protractor, and compass to plot the location of a flight corridor on a map. The FAA will accept straight lines for distances less than or equal to 7.5 times the map scale on map scales greater than or equal to 1:1,000,000 inches per inch (in/in); or straight lines representing 100 nm or less on map scales less than 1:1,000,000 in/in.

(ii) Semi-Automated method. An applicant may employ the range and bearing techniques in paragraph (b)(3) to create latitude and longitude points on a map. The FAA will accept straight lines for distances less than or equal to 7.5 times the map scale on map scales greater than or equal to 1:1,000,000 inches per inch (in/in); or straight lines representing 100 nm or less on map scales less than 1:1,000,000 in/in.

(iii) Fully-Automated method. An applicant may use geographical information system software with global mapping data scaleable in accordance with paragraph (b)(1).

(3) Range and bearing computations on an ellipsoidal earth model.

(i) To create latitude and longitude pairs on an ellipsoidal earth model, an applicant shall use the following equations to calculate geodetic latitude (+N) and longitude (+E) given the launch point geodetic latitude (+N),

longitude (+E) range (nm), and bearing (degrees, positive clockwise from North).

(A) Input. An applicant shall use the following input in making range and bearing computations:

ϕ_1 = Geodetic latitude of launch point (DDD)
λ_1 = Longitude of launch point (DDD)
S = Range from launch point (nm)
α_{12} = Azimuth bearing from launch point (deg)

(B) Computations. An applicant shall use the following equations to determine the latitude (ϕ_2) and longitude (λ_2) of a target point situated "S" nm from the launch point on an azimuth bearing α_{12} degrees.

$$f = 1 - \frac{b}{a} \quad \text{(Equation A1)}$$

Where:
a = WGS–84 semi-major axis (3443.91846652 nmi)
b = WGS–84 semi-minor axis (3432.37165994 nmi)

$$\varepsilon^2 = \frac{\left(a^2 - b^2\right)}{b^2} \quad \text{(Equation A2)}$$

$$\theta = \frac{S}{b} \text{ (radians)} \quad \text{(Equation A3)}$$

$$g = \left(\cos\beta_1\right)\left(\cos\alpha_{12}\right) \quad \text{(Equation A5)}$$

$$h = \left(\cos\beta_1\right)\left(\sin\alpha_{12}\right) \quad \text{(Equation A6)}$$

$$\beta_1 = \tan^{-1}\left[\frac{\left(b \cdot \sin\phi_1\right)}{\left(a \cdot \cos\phi_1\right)}\right] \quad \text{(Equation A4)}$$

$$m = \frac{\left[1 + \left(\frac{\varepsilon^2}{2}\right)\sin^2\beta_1\right]\left[1 - h^2\right]}{2} \quad \text{(Equation A7)}$$

$$n = \frac{\left[1 + \left(\frac{\varepsilon^2}{2}\right)\sin^2\beta_1\right]\left[\left(\sin^2\beta_1\right)\left(\cos\theta\right) + g \cdot \left(\sin\beta_1\right)\left(\sin\theta\right)\right]}{2} \quad \text{(Equation A8)}$$

$$L = h \cdot \left[-f \cdot \theta + 3 \cdot f^2 \cdot n \cdot \sin\theta + \frac{3 \cdot f^2 \cdot m \cdot \left(\theta - \sin\theta \cdot \cos\theta\right)}{2}\right] \text{ (radians)} \quad \text{(Equation A9)}$$

$$M = m \cdot \varepsilon^2 \quad \text{(Equation A10)}$$

$$N = n \cdot \varepsilon^2 \quad \text{(Equation A11)}$$

$$A_1 = N \cdot \sin\theta \quad \text{(Equation A12)}$$

$$A_2 = \left(\frac{M}{2}\right)\left(\sin\theta \cdot \cos\theta - \theta\right) \quad \text{(Equation A13)}$$

$$A_3 = \left(\frac{5}{2}\right)\left(N^2 \cdot \sin\theta \cdot \cos\theta\right) \quad \text{(Equation A14)}$$

$$A_4 = \left(\frac{M^2}{16}\right)\left(11 \cdot \theta - 13 \cdot \sin\theta \cdot \cos\theta - 8 \cdot \theta \cdot \cos^2\theta + 10 \cdot \sin\theta \cdot \cos^3\theta\right) \quad \text{(Equation A15)}$$

$$A_5 = \left(\frac{M \cdot N}{2}\right)\left(3 \cdot \sin\theta + 2 \cdot \theta \cdot \cos\theta - 5 \cdot \sin\theta \cdot \cos^2\theta\right) \quad \text{(Equation A16)}$$

$$\delta = \theta - A_1 + A_2 + A_3 + A_4 + A_5 \text{ (radians)} \quad \text{(Equation A17)}$$

$$\sin\beta_2 = \sin\beta_1 \cdot \cos\delta + g \cdot \sin\delta \quad \text{(Equation A18)}$$

$$\cos\beta_2 = \left[h^2 + \left(g \cdot \cos\delta - \sin\beta_1 \cdot \sin\delta\right)^2\right]^{\frac{1}{2}} \quad \text{(Equation A19)}$$

$$\phi_2 = \left\{\tan^{-1}\left[\frac{\left(a \cdot \sin\beta_2\right)}{\left(b \cdot \cos\beta_2\right)}\right]\right\} \cdot \left(\frac{180}{\pi}\right) \text{ (geodetic latitude of target point, DDD)} \quad \text{(Equation A20)}$$

$$\Lambda = \tan^{-1}\left[\frac{\left(\sin\delta \cdot \sin\alpha_{12}\right)}{\left(\cos\beta_1 \cdot \cos\delta - \sin\beta_1 \cdot \sin\delta \cdot \cos\alpha_{12}\right)}\right] \quad \text{(Equation A21)}$$

$$\lambda_2 = \left(\lambda_1 + \Lambda + L\right)\left(\frac{180}{\pi}\right) \text{ (longitude of target point, DDD)} \quad \text{(Equation A22)}$$

(ii) To create latitude and longitude pairs on an ellipsoidal earth model, an applicant shall use the following equations to calculate the distance (S) of the geodesic between two points P_1 and P_2), the forward azimuth (α_{12}) of the geodesic at P_1, and the back azimuth (α_{21}) of the geodesic at P_2, given the geodetic latitude (+N), longitude (+E) of P_1 and P_2. Azimuth is measured positively clockwise form the North.

(A) Input. An applicant shall use the following input:

ϕ_1 = Geodetic latitude of point P_1 (DDD)
λ_1 = Longitude of point P_1 (DDD)
ϕ_2 = Geodetic latitude of point P_2 (DDD)
λ_2 = Longitude of point P_2 (DDD)

(B) Computations. An applicant shall use the following equations to determine the distance (S), the forward azimuth (α_{12}) of the geodesic at P_1, and the back azimuth (α_{21}) of the geodesic at P_2,

$$f = 1 - \frac{b}{a} \quad \text{(Equation A23)}$$

Where:
a = WGS–84 semi-major axis (3443.91846652 nmi)
b = WGS–84 semi-minor axis (3432.37165994 nmi)

$$L = \lambda_2 - \lambda_1 \quad \text{(Equation A24)}$$

$$\beta_1 = \tan^{-1}\left[\frac{\left(b \cdot \sin\phi_1\right)}{a \cdot \cos\phi_1}\right] \quad \text{(Equation A25)}$$

$$\beta_2 = \tan^{-1}\left[\frac{\left(b \cdot \sin\phi_2\right)}{a \cdot \cos\phi_2}\right] \quad \text{(Equation A26)}$$

$$A = \sin\beta_1 \cdot \sin\beta_2 \quad \text{(Equation A27)}$$

$$B = \cos\beta_1 \cdot \cos\beta_2 \quad \text{(Equation A28)}$$

$$\cos\delta = A + B \cdot \cos L \quad \text{(Equation A29)}$$

$$n = \frac{(a-b)}{(a+b)} \quad \text{(Equation A30)}$$

$$\left(\beta_2 - \beta_1\right) = \left(\phi_2 - \phi_1\right) + 2 \cdot \left[A \cdot \left(n + n^2 + n^3\right) - B \cdot \left(n + n^2 + n^3\right)\right] \cdot \sin\left(\phi_2 - \phi_1\right) \text{ radians} \quad \text{(Equation A31)}$$

$$\sin\delta = \left\{\left(\sin L \cdot \cos\beta_2\right)^2 + \left[\sin\left(\beta_2 - \beta_1\right) + 2 \cdot \cos\beta_2 \cdot \sin\beta_1 \cdot \sin^2\left(L/2\right)\right]^2\right\}^{\frac{1}{2}} \quad \text{(Equation A32)}$$

$$\delta = \tan^{-1}\left(\frac{\sin\delta}{\cos\delta}\right) \text{ evaluated in positve radians } \leq \pi \quad \text{(Equation A33)}$$

$$c = \frac{B \cdot \sin L}{\sin \delta} \quad \text{(Equation A34)} \qquad m = 1 - c^2 \quad \text{(Equation A35)}$$

$$S = b \cdot \left\{ \begin{array}{l} \delta \cdot \left[1 + f + f^2\right] + A \cdot \left[\left(f + f^2\right) \cdot \sin\delta - \left(f^2 \cdot \delta^2\right)/(2 \cdot \sin\delta)\right] \\ -(m/2)\left[\left(f + f^2\right)\left(\delta + \sin\delta \cdot \cos\delta\right) - \left(f^2 \cdot \delta^2\right)/(\tan\delta)\right] \\ -\left(A^2 \cdot f^2/2\right) \cdot \sin\delta \cdot \cos\delta \\ +\left(f^2 \cdot m^2/16\right)\left[\delta + \sin\delta \cdot \cos\delta - 2 \cdot \sin\delta \cdot \cos^3\delta - 8\delta^2/(\tan\delta)\right] \\ +\left(A^2 \cdot m \cdot f^2/2\right)\left[\sin\delta \cdot \cos^2\delta + \delta^2/(\sin\delta)\right] \end{array} \right\} \quad \text{(Equation A36)}$$

in the same units as "a" and "b"

$$\Lambda = L + c \cdot \left\{ \begin{array}{l} \delta \cdot \left(f + f^2\right) - \left(A \cdot f^2/2\right)\left[\sin\delta + 2\delta^2/(\sin\delta)\right] \\ +\left(m \cdot f^2/4\right)\left[\sin\delta\cos\delta - 5\delta + 4\delta^2/(\tan\delta)\right] \end{array} \right\} \text{ radians} \quad \text{(Equation A37)}$$

$$\alpha_{12} = \tan^{-1}\left\{\frac{(\cos\beta_2 \cdot \sin\Lambda)}{\left[\sin(\beta_2 - \beta_1) + 2 \cdot \cos\beta_2 \cdot \sin\beta_1 \cdot \sin^2(\Lambda/2)\right]}\right\} \cdot \left(\frac{180}{\pi}\right) \text{degrees} \quad \text{(Equation A38)}$$

$$\alpha_{21} = \tan^{-1}\left\{\frac{(-\cos\beta_1 \cdot \sin\Lambda)}{\left[2 \cdot \cos\beta_1 \cdot \sin\beta_2 \cdot \sin^2(\Lambda/2) - \sin(\beta_2 - \beta_1)\right]}\right\} \cdot \left(\frac{180}{\pi}\right) \text{degrees} \quad \text{(Equation A39)}$$

(c) Creation of a Flight Corridor

(1) To define a flight corridor, an applicant shall:

(i) Select a guided suborbital or orbital launch vehicle, and, for an orbital launch vehicle, select from table 1 in § 420.21 a launch vehicle class that best represents the type of launch vehicle the applicant plans to support at its launch point:

(ii) Select a debris dispersion radius (D_{max}) from table A–1 corresponding to the guided suborbital launch vehicle or orbital launch vehicle class selected in paragraph (c)(1)(i);

(iii) Select a launch point geodetic latitude and longitude; and

(iv) Select a flight azimuth.

(2) An applicant shall define and map an overflight exclusion zone using the following method:

(i) Select a debris dispersion radius (D_{max}) from table A–1 and a downrange distance (D_{OEZ}) from table A–2 to define an overflight exclusion zone for the guided suborbital launch vehicle or orbital launch vehicle class selected in paragraph (c)(1)(i).

(ii) An overflight exclusion zone is described by the intersection of the following boundaries, which are depicted in figure A1:

(A) An applicant shall define an uprange boundary with a half-circle arc of radius D_{max} and a chord of length twice D_{max} connecting the half-circle arc endpoints. the uprange boundary placement on a map has the chord midpoint positioned on the launch point with the chord oriented along an azimuth ±90° from the launch azimuth and the half-circle arc located uprange from the launch point.

(B) An applicant shall define the downrange boundary with a half-circle arc of radius D_{max} and a chord of length twice D_{max} connecting the half-circle arc endpoints. The downrange boundary placement on a map has the chord midpoint intersecting the nominal flight azimuth line at a distance D_{OEZ} inches downrange with the chord oriented along an azimuth ±90° from the launch azimuth and the half-circle arc located downrange from the intersection of the chord and the flight azimuth line.

(C) Crossrange boundaries of an overflight exclusion zone are defined by two lines segments. Each is parallel to the flight azimuth with one to the left side and one to the right side of the flight azimuth line. Each line connects an uprange half-circle arc endpoint to a downrange half-circle arc endpoint as shown in figure A–1.

(iii) An applicant shall identify the overflight exclusion zone on a map meeting the requirements specified in paragraph (b).

(3) An applicant shall define and map a flight corridor using the following method:

(i) In accordance with paragraph (b), an applicant shall draw a flight corridor on a map(s) with the D_{max} origin centered on the intended launch point and the flight corridor centerline (in the downrange direction) aligned with the initial flight azimuth. The flight corridor is depicted in figure A–2 and its line segment lengths are tabulated in table A–3.

(ii) An applicant shall define the flight corridor using the following boundary definitions:

(A) An applicant shall draw an uprange boundary, which is defined by an arc-line GB (figure A–2), directly uprange from and centered on the intended launch point with radius D_{max}.

(B) An applicant shall draw line CF perpendicular to and centered on the flight azimuth line, and positioned 10 nm downrange from the launch point. The applicant shall use the length of line CF provided in table A–3 corresponding to the guided suborbital launch vehicle or orbital launch vehicle class selected in paragraph (d)(1)(i).

(C) An applicant shall draw line DE perpendicular to and centered on the flight azimuth line, and positioned 100 nm downrange from the launch point. The applicant shall use the length of line DE provided in table A–3 corresponding to the guided suborbital launch vehicle or orbital launch vehicle class selected in paragraph (c)(1)(i).

(D) Except for a guided suborbital launch vehicle, an applicant shall draw a downrange boundary, which is defined by line HI and is drawn perpendicular to and centered on the flight azimuth line, and positioned 5,000 nm downrange from the launch point. The applicant shall use the length of line HI provided in table A–3 corresponding to the orbital launch vehicle class selected in paragraph (c)(1)(i).

(E) An applicant shall draw crossrange boundaries, which are defined by three lines on the left side and three lines on the right side of the flight azimuth. An applicant shall construct the left flight corridor boundary according to the following, and as depicted in figure A–3;

(1) The first line (line BC in figure A–3) is tangent to the uprange boundary arc, and ends at endpoint C of line CF, as depicted in figure A–3;

(2) The second line (line CD in figure A–3) begins at endpoint C of line BC and ends at endpoint D of line DH, as depicted in figure A–3;

(3) For all orbital launch vehicles, the third line (line DH in figure A–3) begins at endpoint D of line CD and ends at endpoint H of line HI, as depicted in figure A–3; and

(4) For a guided suborbital launch vehicle, the line DH begins at endpoint D of line CD and ends at a point tangent to the impact dispersion area drawn in accordance with paragraph (c)(4) and as depicted in figure A–4.

(F) An applicant shall repeat the procedure in paragraph (c)(3)(ii)(E) for the right side boundary.

(iii) An applicant shall identify the flight corridor on a map meeting the requirements specified in paragraph (b).

(4) For a guided suborbital launch vehicle, an applicant shall define a final stage impact dispersion area as part of the flight corridor and show the impact dispersion area on a map, as depicted in figure A–3, in accordance with the following:

(i) An applicant shall select an apogee altitude (H_{ap}) for the launch vehicle final stage. The apogee altitude should equal the highest altitude intended to be reached by a guided suborbital launch vehicle launched from the launch point.

(ii) An applicant shall define the impact dispersion area by using an impact range factor [$IP(H_{ap})$] and a dispersion factor [$DISP(H_{ap})$] as shown below:

(A) An applicant shall calculate the impact range (D) for the final launch vehicle stage. An applicant shall set D equal to the maximum apogee altitude (H_{ap}) multiplied by the impact range factor as shown below:

$$D = H_{ap} \cdot IP\left(H_{ap}\right) \quad \text{(Equation A40)}$$

Where:

$IP(H_{ap}) = 0.4$ for an apogee less than 100 km; and

$ip(H_{ap}) = 0.7$ for an apogee 100 km or greater.

(B) An applicant shall calculate the impact dispersion radius (R) for the final launch vehicle stage. An applicant shall set R equal to the maximum apogee altitude (H_{ap}) multiplied by the dispersion factor as shown below:

$$R = H_{ap} \cdot DISP\left(H_{ap}\right) \quad \text{(Equation A41)}$$

Where:

$DISPH(H_{ap}) = 0.05$

(iii) An applicant shall draw the impact dispersion area on a map with its center on the predicted impact point. An applicant shall then draw line DH in accordance with paragraph (c)(3)(ii)(E)(4).

(d) Evaluate the Flight Corridor

(1) An applicant shall evaluate the flight corridor for the presence of any populated areas. If an applicant determines that no populated area is located within the flight corridor, then no additional steps are necessary.

(2) If a populated area is located in an overflight exclusion zone, an applicant may modify its proposal or demonstrate that there are times when no people are present or that the applicant has an agreement in place to evacuate the public from the overflight exclusion zone during a launch.

(3) If a populated area is located within the flight corridor, an applicant may modify its proposal and create another flight corridor pursuant to appendix A, use appendix B to narrow the flight corridor, or complete a risk analysis as provided in appendix C.

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Table A-1: Debris Dispersion Radius (D_{max}) (in)

Orbital Launch Vehicles				Suborbital Launch Vehicles
Small	Medium	Medium Large	Large	Guided
87,600 (1.20 nm)	111,600 (1.53 nm)	127,200 (1.74 nm)	156,000 (2.14 nm)	96,000 (1.32 nm)

Table A-2: Overflight Exclusion Zone Downrange Distance (D_{OEZ}) (in)

Orbital Launch Vehicles				Suborbital Launch Vehicles
Small	Medium	Medium Large	Large	Guided
240,500 (3.30 nm)	253,000 (3.47 nm)	310,300 (4.26 nm)	937,700 (12.86 nm)	232,100 (3.18 nm)

Table A-3: Flight Corridor Line Segment Lengths

D_{max} (in)		Line Segment Lengths (x 10^6 inches)		
Orbital Launch Vehicles		$\overline{CF}$	$\overline{DE}$	$\overline{HI}$
Small	87600 (1.20 nm)	2.87620 (39.45 nm)	8.59452 (117.87 nm)	128.566 (1763.27 nm)
Medium	111,600 (1.53 nm)	2.97220 (40.76 nm)	8.64252 (118.53 nm)	128.566 (1763.27 nm)
Med-Large	127,200 (1.74 nm)	3.03460 (41.62 nm)	8.67372 (118.96 nm)	128.566 (1763.27 nm)
Large	156,000 (2.14 nm)	3.14979 (43.20 nm)	8.73131 (119.75 nm)	128.566 (1763.27 nm)
Suborbital Launch Vehicles		$\overline{CF}$	$\overline{DE}$	$\overline{HI}$
Guided	96,000 (1.32 nm)	2.90980 (39.91 nm)	8.61132 (118.10 nm)	N/A

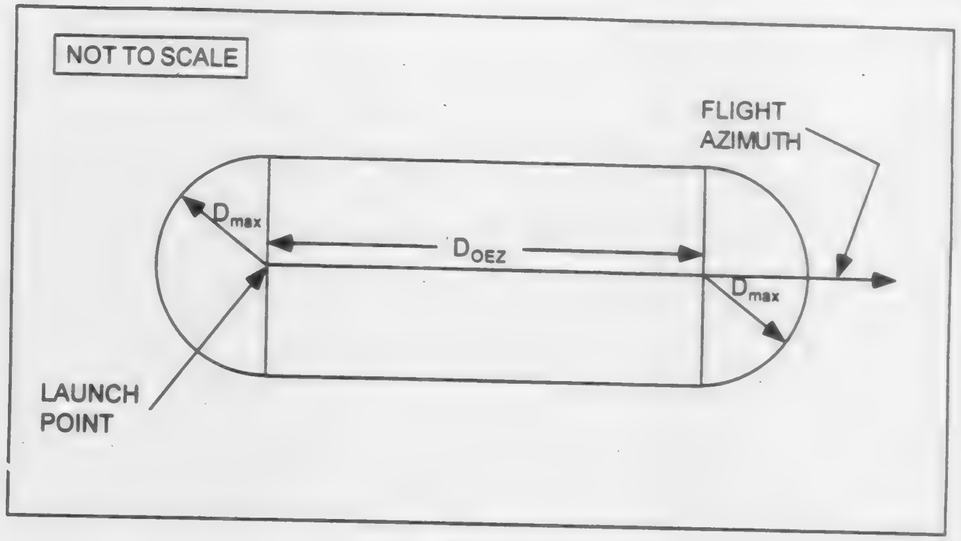


Figure A-1
Overflight Exclusion Zone

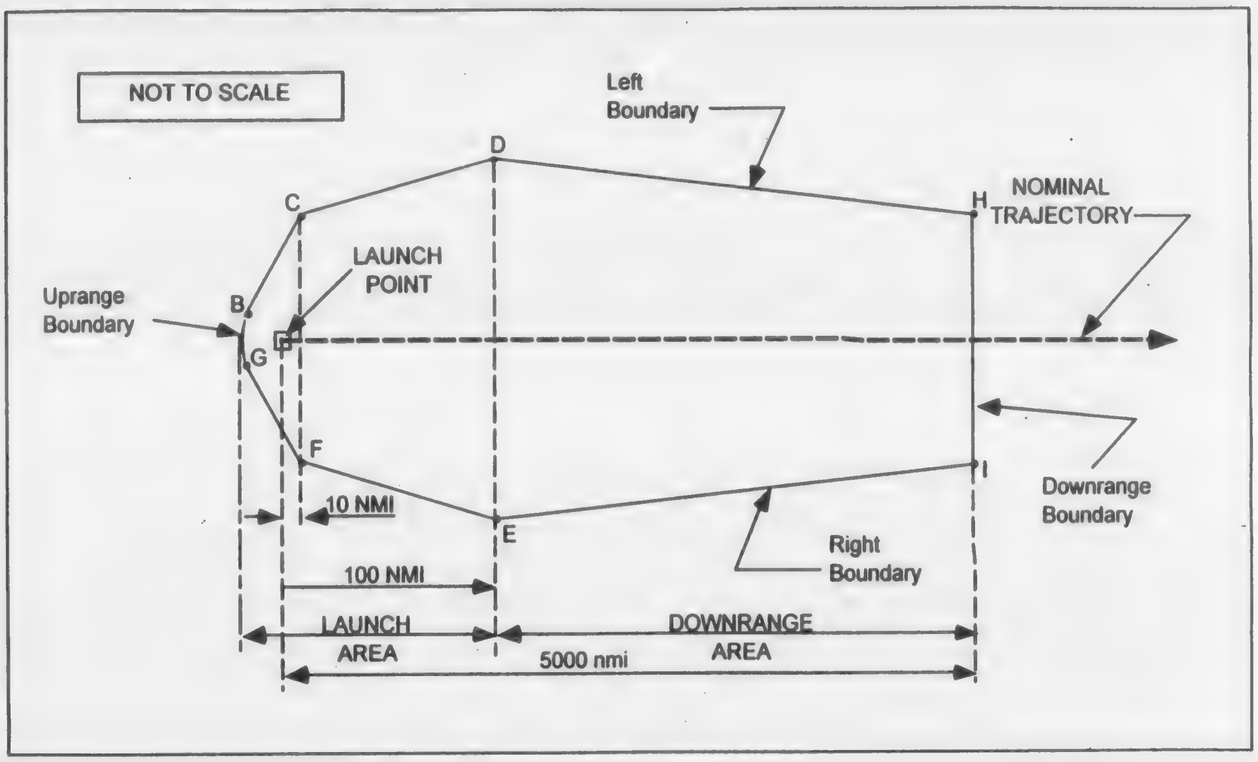


Figure A-2
Flight Corridor

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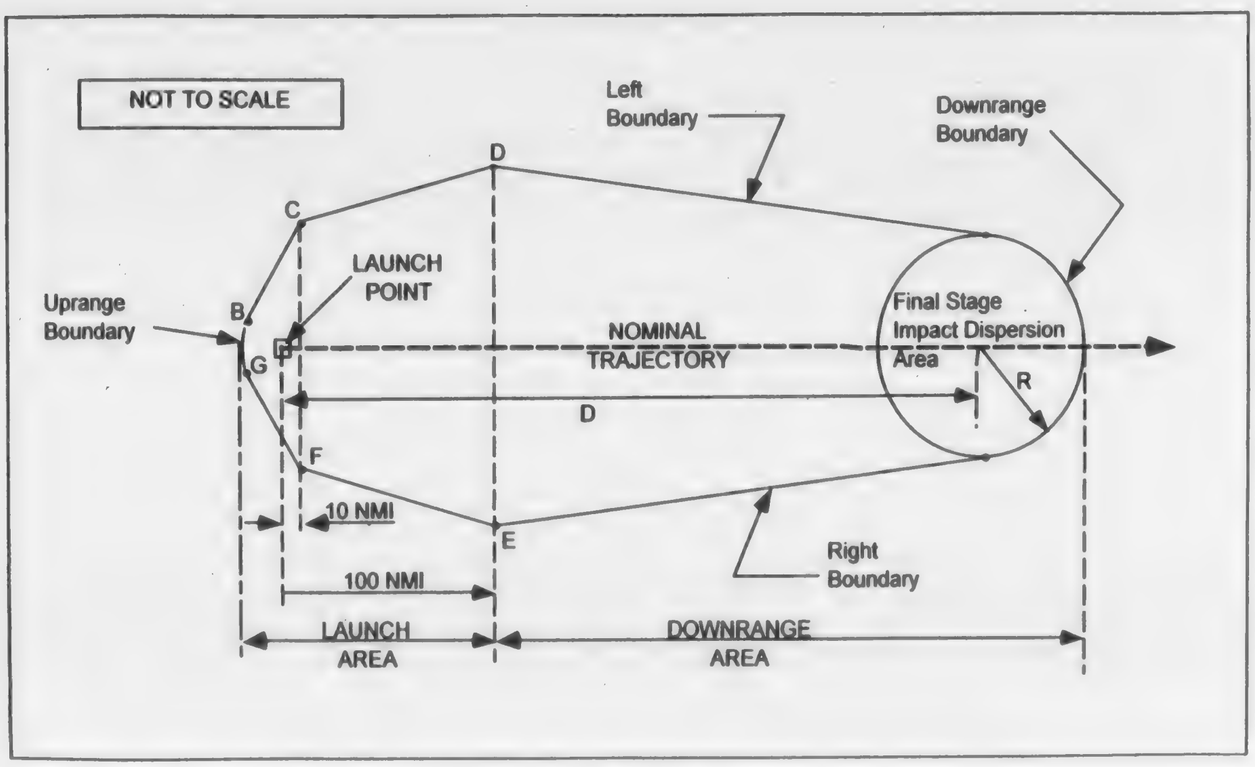


Figure A-4
Flight Corridor for Guided Sub-Orbital Launch Vehicles

Appendix B to Part 420—Method for Defining a Flight Corridor

(a) Introduction

(1) This appendix provides a method to construct a flight corridor from a launch point for a guided suborbital launch vehicle or any one of the four classes of guided orbital launch vehicles from table 1, § 420.21, using local meteorological data and a launch vehicle trajectory.

(2) A flight corridor is constructed in two sections—one section comprising a launch area and one section comprising a downrange area. The launch area of a flight corridor reflects the extent of launch vehicle debris impacts in the event of a launch vehicle failure and applying local meteorological conditions. The downrange area reflects the extent of launch vehicle debris impacts in the event of a launch vehicle failure and applying vehicle imparted velocity, malfunctions turns, and vehicle guidance and performance dispersions.

(3) A flight corridor includes an overflight exclusion zone in the launch area and, for a guided suborbital launch vehicle, an impact dispersion area in the downrange area. A flight corridor for a guided suborbital launch vehicle ends with an impact dispersion area and, for the four classes of guided orbital launch vehicles, 5,000 nautical miles (nm) from the launch point.

(b) Data Requirements

(1) Launch area data requirements. An applicant shall satisfy the following data requirements to perform the launch area analysis of this appendix. The data requirements are identified in table B–1 along with sources where data acceptable to the FAA may be obtained.

(i) An applicant must select meteorological data for the proposed launch site that meet the specifications in table B–1.

TABLE B–1.—LAUNCH AREA DATA REQUIREMENTS

Data category	Data item	Data source
Meteorological Data.	Local statistical wind data versus altitude up to 50,000 feet. Required data are: altitude (ft), atmospheric density (slugs/ft³), mean East/West meridianal (u) and North/South zonal (v) wind (ft/sec), standard deviation of u and v wind (ft/sec), correlation coefficient, number of observations and wind percentile (%)	These data may be obtained from: Global Gridded Upper Air Statistics, Climate Applications Branch, National Climatic Data Center.
Nominal Trajectory Data.	State vector data versus time after liftoff in topocentric launch point centered X,Y,Z,X,Y,Z coordinates with the X-axis aligned with the flight azimuth. Trajectory time intervals shall not be greater than one second. XYZ units are in feet and X,Y,Z units are in ft/sec	Actual launch vehicle trajectory data; or trajectory generation software meeting requirements in paragraph (b)(1)(ii).
Debris Data	A fixed ballistic coefficient equal to 3 lbs/ft² is used for the launch area	N/A.
Geographical Data.	Launch point geodetic latitude on the WGS–84 ellipsoidal earth model Launch point longitude on an ellipsoidal earth model Maps using scales of not less than 1:250,000 inches per inch within 100 nm of a launch point and 1:20,000,000 inches per inch for distances greater than 100 nm from a launch point	Geographical surveys or Global Positioning System. Map types with scale and projection information are listed in the Defense Mapping Agency, Public Sale, Aeronautical Charts and Publications Catalog. The catalog and maps may be ordered through the U.S. Dept. of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service.

(ii) For a guided orbital launch vehicle, an applicant shall obtain or create a launch vehicle nominal trajectory. An applicant may use trajectory data from a launch vehicle manufacturer or generate a trajectory using trajectory simulation software. Trajectory time intervals shall be no greater than one second. If an applicant uses a trajectory computed with commercially available software products, the software must calculate the trajectory using the following parameters, or demonstrated equivalents:

(A) Launch location:
(1) Launch point, using geodetic latitude and longitude to four decimal places; and
(2) Launch point height above sea level.
(B) Ellipsoidal earth:
(1) Mass of earth;
(2) Radius of earth;
(3) Earth flattening factor; and
(4) Gravitational harmonic constants (J2, J3, J4).
(C) Vehicle characteristics:
(1) Mass, as a function of time;
(2) Thrust, as a function of time;
(3) Specific impulse (I_{SP}), as a function of time; and
(4) Stage dimensions.
(D) Launch events:
(1) Stage burn times; and
(2) Stage drop-off times.
(E) Atmosphere:
(1) Density vs. altitude;
(2) Pressure vs. altitude;
(3) Speed of sound vs. altitude; and
(4) Temperature vs. altitude.
(F) Winds:
(1) Wind direction vs. altitude; and
(2) Wind magnitude vs. altitude.
(I) Aerodynamics; drag coefficient vs. mach number for each stage of flight showing subsonic, transonic and supersonic mach regions for each stage.

(iii) An applicant shall use a ballistic coefficient (β) of 3 lbs/ft² for debris impact computations.

(iv) An applicant shall satisfy the map and plotting requirements for a launch area in appendix A, paragraph (b).

(2) Downrange area data requirements. An applicant shall satisfy the following data requirements to perform the downrange area analysis of this appendix.

(i) The launch vehicle class and method of generating a trajectory used in the launch area shall be used by an applicant in the downrange area as well. Trajectory time intervals must not be greater than one second.

(ii) An applicant shall satisfy the map and plotting data requirements for a downrange area in appendix A, paragraph (b).

(c) Construction of a Launch Area of a Flight Corridor

(1) An applicant shall construct a launch area of a flight corridor using the processes and equations of this paragraph for a single trajectory position. An applicant shall repeat these processes at time points on the launch vehicle trajectory in time intervals no greater than one second. When choosing wind data, an applicant shall select a time period between one and 12 months.

(2) A launch area analysis must include all trajectory positions whose Z-values are less than or equal to 50,000 ft.

(3) Each trajectory time is denoted by the subscript "i". Height intervals for a given atmospheric pressure level are denoted by the subscript "j".

(4) Using data from the GGUAS CD-ROM, an applicant shall estimate the mean atmospheric density, maximum wind speed, height interval fall times and height interval debris dispersions for 15 mean geometric height intervals.

(i) The height intervals in the GGUAS source data vary as a function of the following 15 atmospheric pressure levels (milibars): Surface, 1000, 850, 700, 500, 400, 300, 250, 200, 150, 100, 70, 50, 30, 10. The actual geometric height associated with each pressure level varies depending on the time of year. An applicant shall estimate the mean geometric height over the period of months selected in subparagraph (1) of this paragraph for each of the 15 pressure levels as shown in equation B1.

$$\overline{H}_j = \frac{\sum_{m=1}^{k} h_m \cdot n_m}{\sum_{m=1}^{k} n_m} \qquad \text{(Equation B1)}$$

Where:
$\bar{H}_j$=mean geometric height
h_m=geometric height for a given month
n_m=number of observations for a given month
k=number of wind months of interest

(ii) The atmospheric densities in the source data also vary as a function of the 15 atmospheric pressure levels. The actual atmospheric density associated with each pressure level varies depending on the time of year. An applicant shall estimate the mean atmospheric density over the period of months selected in subparagraph (1) of this paragraph for each of the 15 pressure levels as shown in equation B2.

$$\overline{P}_j = \frac{\sum_{m=1}^{k} P_m \cdot n_m}{\sum_{m=1}^{k} n_m} \qquad \text{(Equation B2)}$$

Where:
$\bar{p}_j$=mean atmospheric density
ρ_m=atmospheric density for a given month
n_m=number of observation for a given month
k=number of wind months of interest

(iii) An applicant shall estimate the algebraic maximum wind speed at a given pressure level as follows and shall repeat the process for each pressure level.

(A) For each month, an applicant shall calculate the monthly mean wind speed ($\bar{W}_{az}$) for 360 azimuths using equation B3;

(B) An applicant shall select the maximum monthly mean wind speed from the 360 azimuths;

(C) An applicant shall repeat subparagraphs (c)(4)(iii)(A) and (B) for each month of interest; and

(D) An applicant shall select the maximum mean wind speed from the range of months. The absolute value of this wind is designated W_{max} for the current pressure level.

(iv) An applicant shall calculate speed using the means for winds from the West (u) and winds from the North (v). An applicant shall use equation B3 to resolve the winds to a specific azimuth bearing.

$$\overline{W}_{az} = \underline{u} \cdot \cos(90 - az) + v \cdot \sin(90 - az) \qquad \text{(Equation B3)}$$

Where:
az=wind azimuth
u=West zonal wind component
v=North zonal wind component
$\bar{W}_{az}$=mean wind speed at azimuth for each month

(v) An applicant shall estimate the interval fall time over a height interval assuming the initial descent velocity is equal to the terminal velocity (V_T). An applicant shall use equations B4 through B6 to estimate the fall time over a given height interval.

$$\Delta H_j = \overline{H}_{j+1} - \overline{H}_j \qquad \text{(Equation B4)}$$

$$V_{Tj} = \left[\frac{2 \cdot \beta}{\left(\bar{\rho}_{j+1} + \bar{\rho}_j\right)/2}\right]^{0.5} \qquad \text{(Equation B5)}$$

$$t_j = \frac{\Delta H_j}{V_{T_j}} \qquad \text{(Equation B6)}$$

Where:
ΔH_j=height difference between two mean geometric heights
β=ballistic coefficient
$\bar{p}_x$=mean atmospheric density for the corresponding mean geometric heights
v_{Tj}=terminal velocity

(vi) An applicant shall estimate the interval debris dispersion (D_j) by multiplying the interval fall time by the algebraic maximum mean wind speed (W_{max}) as shown in equation B7.

$$D_j = t_j \cdot W_{max} \qquad \text{(Equation B7)}$$

(5) Once the D_j are estimated for each height interval, an applicant shall determine the total debris dispersion (D_i) for each Z_i using a linear interpolation and summation exercise. An applicant shall use a launch point height of zero equal to the surface level of the nearest GGUAS grid location and is shown below in equation B8.

$$D_i = D_j \cdot \left(\frac{Z_i - \overline{H}_j}{\overline{H}_{j+1} - \overline{H}_j}\right) + \sum_{n=1}^{j-1} D_n \qquad \text{(Equation B8)}$$

Where:
n=number of height intervals below j^{th} height interval

(6) Once all the D_i radii have been calculated, an applicant shall produce a launch area flight corridor according to instructions in subparagraphs (c)(6)(i)–(iv).

(i) On a map meeting the requirements of appendix A, paragraph (b), an applicant shall plot the X_i position location on the flight azimuth for the corresponding Z_i position;

(ii) An applicant shall draw a circle of radius D_i centered on the corresponding X_i position; and

(iii) An applicant shall repeat the instructions in subparagraphs (c)(6)(i)–(ii) for each D_i radius.

(iv) The launch area of a flight corridor is the enveloping line that encloses the outer boundary of the D_i circles as shown in Fig. B–1. The uprange portion of a flight corridor is described by a semi-circle arc that is a portion of either the most uprange D_i dispersion circle, or the overflight exclusion zone (defined in subparagraph (c)(7)), whichever is further uprange.

(7) An applicant shall define an overflight exclusion zone in the launch area pursuant to the instructions provided in appendix A, subparagraph (c)(2).

(8) An applicant shall draw the launch area flight corridor and overflight exclusion zone on a map(s) meeting the requirements of table B–1.

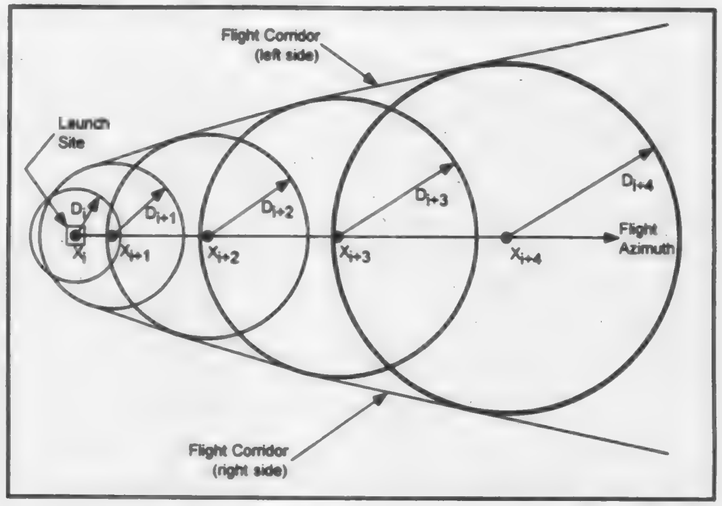


Figure B - 1: Launch Area of a Flight Corridor

(d) Construction of a downrange area of a flight corridor

(1) The downrange area analysis estimates the debris dispersion for the downrange time points on a launch vehicle trajectory. An applicant shall perform the downrange area analysis using the processes and equations of this paragraph.

(2) The downrange area analysis shall include trajectory positions at a height (the Z_i-values) greater than 50,000 feet and nominal trajectory IIP values less than or equal to 5,000 nm. For a guided suborbital launch vehicle, the final IIP value that an applicant must consider is the launch vehicle final stage impact point. Each trajectory time shall be one second or less and is denoted by the subscript "i".

(3) An applicant shall compute the downrange area of a flight corridor boundary in four steps, from each trajectory time increment: Determine a reduction ratio factor; calculate the launch vehicle position after simulating a malfunction turn; rotate the state vector after the malfunction turn in the range of three degrees to one degree as a function of X_i distance downrange; and compute the IIP of the resulting trajectory. The locus of IIPs describes the boundary of the downrange area of a flight corridor. An applicant shall use the following subparagraphs, (d)(3)(i)–(v), to compute the downrange area of the flight corridor boundary:

(i) Compute the downrange distance to the final IIP position for a nominal trajectory as follows:

(A) Using equations B30 through B69, determine the IIP coordinates (ϕ_{max}, λ_{max}) for the nominal state vector before the launch vehicle enters orbit where α in equation B30 is the nominal flight azimuth angle measured from True North.

(B) Using the range and bearing equations in appendix A, paragraph (b)(3), determine the distance (S_{max}) from the launch point coordinates (ϕ_{lp}, λ_{lp}) to the IIP coordinates (ϕ_{max}, λ_{max}) computed in (3)(i)(A) of this paragraph.

(C) The distance for S_{max} may not exceed 5000 mm. In cases when the actual value exceeds 5000 nm the applicant shall use 5000 nm for S_{max}.

(ii) Compute the reduction ratio factor (F_{ri}) for each trajectory time increment as follows:

(A) Using equations B30 through B69, determine the IIP coordinates (ϕ_i, λ_i) for the nominal state vector where α in equation B30 is the nominal flight azimuth angle measured from True North.

(B) Using the range and bearing equations in appendix A, paragraph (b)(3), determine the distance (S_i) from the launch point coordinates (ϕ_{lp}, λ_{lp}) to the IIP coordinates (ϕ_i, λ_i) computed in (3)(ii)(A) of this paragraph.

(C) The reduction ratio factor is:

$$F_{ri} = \left(1 - \frac{S_i}{S_{max}}\right) \quad \text{(Equation B9)}$$

(iii) An applicant shall compute the launch vehicle position and velocity components after a simulated malfunction turn for each X_i, using the following method.

(A) Turn duration (Δt)= 4 sec.

(B) Turn angle (Θ).

$\Theta = (F_{ri}) * 45$ degrees.

The turn angle equations perform a turn in the launch vehicle's yaw plane, as depicted in figure B–2.

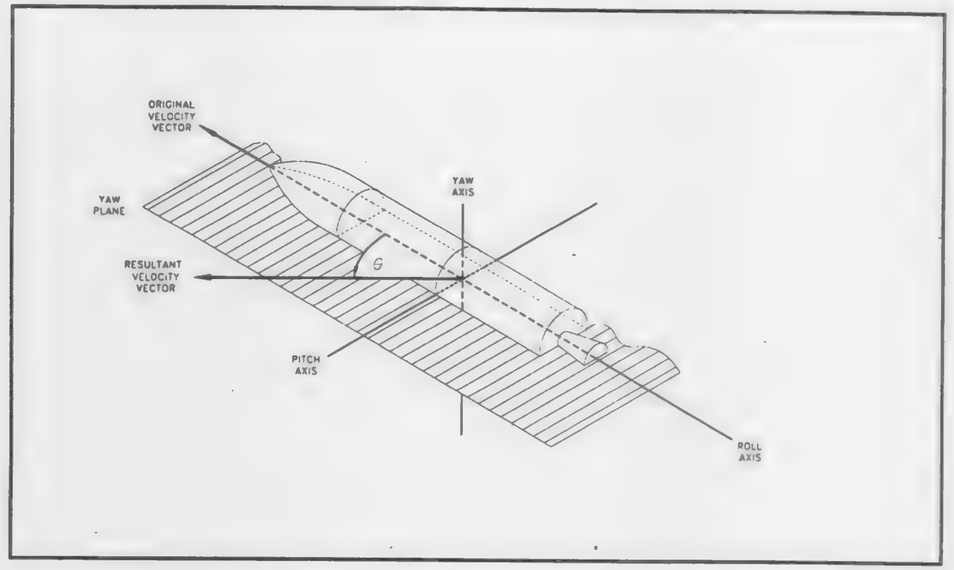


Figure B-2: Velocity Vector Turn Angle in Yaw Plane

(C) Launch vehicle velocity magnitude at the beginning of the turn (V_b) and velocity magnitude at the end of the turn (V_e).

$$\theta = (F_{ri}) * 45 \text{ degrees.} \quad \text{(Equation B10)}$$

$$V_b = \left(\dot{X}_i^2 + \dot{Y}_i^2 + \dot{Z}_i^2\right)^{0.5} \text{ ft/sec} \quad \text{(Equation B11)}$$

(D) Average velocity magnitude over the turn duration (V).

$$\overline{V}_i = \frac{(V_b + V_e)}{2} \text{ ft/sec} \quad \text{(Equation B13)}$$

(E) Velocity vector path angle (γ_i) at turn epoch.

$$\gamma_i = \tan^{-1}\left[\frac{\dot{Z}_i}{\left(\dot{X}_i^2 + \dot{Y}_i^2\right)^{0.5}}\right] \quad \text{(Equation B14)}$$

(F) Launch vehicle position components at the end of turn duration.

$$X_{90L} = X_i + \nabla_i \cdot \Delta t \cdot \cos\left(\frac{-\theta}{2}\right) \cdot \cos(\gamma_i)$$

$$X_{90R} = X_i + \nabla_i \cdot \Delta t \cdot \cos\left(\frac{\theta}{2}\right) \cdot \cos(\gamma_i)$$

$$Y_{90L} = Y_i + \nabla_i \cdot \Delta t \cdot \sin\left(\frac{-\theta}{2}\right)$$

$$Y_{90R} = Y_i + \nabla_i \cdot \Delta t \cdot \sin\left(\frac{\theta}{2}\right)$$

$$Z_{90L} = Z_i + \nabla_i \cdot \Delta t \cdot \cos\left(\frac{-\theta}{2}\right) \cdot \sin(\gamma_i) - \left(\frac{1}{2}\right) \cdot g_1 \cdot \Delta t^2$$

$$Z_{90R} = Z_i + \nabla_i \cdot \Delta t \cdot \cos\left(\frac{\theta}{2}\right) \cdot \sin(\gamma_i) - \left(\frac{1}{2}\right) \cdot g_1 \cdot \Delta t^2 \quad \text{(Equations B15 – B20)}$$

Where:
g_i=32.17405 ft/sec.^{2}

(G) Launch vehicle velocity components at the end of turn duration.

$$\dot{X}_{90L} = (X_{90L} - X_i) / \Delta t$$

$$\dot{X}_{90R} = (X_{90R} - X_i) / \Delta t$$

$$\dot{X}_{90L} = \left|(X_{90L} - X_i) / \Delta t\right|$$

$$\dot{Y}_{90R} = (-1) \cdot \left|(Y_{90R} - Y_i) / \Delta t\right| \quad \text{(Equations B21 – B26)}$$

$$\dot{Z}_{90L} = (Z_{90L} - Z_i) / \Delta t$$

$$\dot{Z}_{90R} = (Z_{90R} - Z_i) / \Delta t$$

(iv) An applicant shall rotate the trajectory state vector at the end of the turn duration to the right and left to define the right-lateral flight corridor boundary and the left-lateral flight corridor boundary, respectively. An applicant shall perform perform the trajectory rotation in conjunction with a trajectory transformation from the X_{90}, Y_{90}, Z_{90}, $\dot{X}_{90}$, $\dot{Y}_{90}$, $\dot{Z}_{90}$ components to E,N,U,$\dot{E}$,$\dot{N}$,$\dot{U}$. The trajectory subscripts "R" and "L" from equations B15 and B26 have been discarded to reduce the number of equations. An applicant shall transform from E,N,U,$\dot{E}$,$\dot{N}$,$\dot{U}$ to E,F,G,$\dot{E}$,$\dot{F}$,$\dot{G}$. An applicant shall use the equations of paragraph (d)(3)(iv)(A)–(F) to produce the EFG components necessary to estimate each instantaneous impact point.

(A) An applicant must calculate the flight angle (α).

$$\Delta\alpha_i = 3 - 2 \cdot f_l \cdot (1 - F_{ri}) \quad \text{(Equation B27)}$$

$$\alpha_{Li} = (\text{Flight Azimuth} - \Delta\alpha_i)$$

for left lateral boundary computations (Equation B28)

III

$$\alpha_{Ri} = (\text{Flight Azimuth} + \Delta\alpha_i)$$

for right lateral boundary computations

$$f_l = \begin{cases} 0.0 : F_{ri} \geq 0.8 \\ 1.0 : F_{ri} < 0.8 \end{cases} \quad \text{(Equation B29)}$$

(B) An applicant shall transform X_{90}, Y_{90}, Z_{90} to E,N,U.

$$E = X_{90} \sin(\alpha) - Y_{90} \cos(\alpha)$$

$$N = X_{90} \cos(\alpha) + Y_{90} \sin(\alpha)$$

$$U = Z_{90} \quad \text{(Equation B30-32)}$$

(C) An applicant shall transform $\dot{X}_{90}$, $\dot{Y}_{90}$, $\dot{Z}_{90}$ to $\dot{E}_{90}$ to $\dot{E}$,$\dot{N}$,$\dot{U}$.

$$\dot{E} = \dot{X}_{90} \sin(\alpha) - \dot{Y}_{90} \cos(\alpha)$$

$$\dot{N} = \dot{X}_{90} \cos(\alpha) + \dot{Y}_{90} \sin(\alpha) \quad \text{(Equation B33-B35)}$$

$$\dot{U} = \dot{Z}_{90}$$

(D) An applicant shall transform the launch point coordinates (Φ_o, λ_o, h_o) to E_o, F_o, G_o.

$$R = \alpha_E \left\{1 - e^2 \left[\sin^2(\phi_0)\right]\right\}^{-0.5}$$

where: a_E = 20925646.3255 ft

e^2 = 0.00669437999013 (Equation B36-B39)

$$E_0 = (R + h_0)\cos(\phi_0)\cos(\lambda_0)$$

$$F_0 = (R + h_0)\cos(\phi_0)\sin(\lambda_0)$$

$$G_0 = \left[R(1 - e^2) + h_0\right]\sin(\phi_0)$$

(E) An applicant shall transform E,N,U to E_{90}, F_{90}, G_{90}.

$$E_{90} = E\cos(270 - \lambda_0) + N\cos(90 - \phi_0)\sin(270 - \lambda_0) - U\sin(90 - \phi_0)\sin(270 - \lambda_0) + E_0$$

$$F_{90} = E\sin(270 - \lambda_0) + N\cos(90 - \phi_0)\cos(270 - \lambda_0) - U\sin(90 - \phi_0)\cos(270 - \lambda_0) + F_0$$

$$G_{90} = N\sin(90 - \phi_0) + U\cos(90 - \phi_0) + G_0 \quad \text{(Equation B40-B42)}$$

(F) An applicant shall transform $\dot{E}$,$\dot{N}$,$\dot{U}$ to $\dot{E}$,$\dot{F}$,$\dot{G}$.

$$\dot{E}_{90} = \dot{E}\cos(270 - \lambda_0) + \dot{N}\cos(90 - \phi_0)\sin(270 - \lambda_0) - \dot{U}\sin(90 - \phi_0)\sin(270 - \lambda_0)$$

$$\dot{F}_{90} = \dot{E}\sin(270 - \lambda_0) + \dot{N}\cos(90 - \phi_0)\cos(270 - \lambda_0) - \dot{U}\sin(90 - \phi_0)\cos(270 - \lambda_0)$$

$$\dot{G}_{90} = \dot{N}\sin(90 - \phi_0) + \dot{U}\cos(90 - \phi_0) \quad \text{(Equation B43-B45)}$$

(v) The IIP computation implements an iterative solution to the impact point problem. An applicant shall solve Equations B46 to B69, with the appropriate substitutions, up to a maximum of five times. Each repetition of the equations provides a more accurate prediction of the IIP. The required IIP computations are shown in subsection (d)(3)(v)(A)–(W) below. An applicant shall use this computation for both the left- and right-lateral offsets. The IIP computations will result in latitude and longitude pairs for the left-lateral flight corridor boundary and the right-lateral flight corridor boundary. An applicant shall use the lines connecting the latitude and longitude pairs to describe the entire downrange area boundary of the flight corridor up to 5000 nm or a final stage impact dispersion area.

(A) An applicant shall approximate the radial distance (Γ_{k-1}) from the geocenter to the IIP. The distance from the center of the earth ellipsoid to the launch point shall be used for the initial approximation of r_{k-1} as shown in equation B46.

$$r_{k-1} = \left(E_0^2 + F_0^2 + G_0^2\right)^{0.5} \quad \text{(Equation B46)}$$

(B) An applicant shall compute the radial distance (r) from the geocenter to the launch vehicle position.

$$r = \left(E_{90}^2 + F_{90}^2 + G_{90}^2\right)^{0.5} \quad \text{(Equation B47)}$$

If $r < r_{k-1}$ then the launch vehicle position is below the Earth's surface and an impact point cannot be computed. An applicant

must restart the calcuations with the next trajectory state vector.

(C) An applicant shall compute the inertial velocity components.

$$\dot{E}I_{90} = \dot{E}_{90} - \omega \cdot F_{90}$$
$$\dot{F}I_{90} = \dot{F}_{90} + \omega \cdot E_{90} \quad \text{(Equation B48 - 49)}$$

Where:

$\omega = 4.178074 \times 10^{-3}$ deg/sec

(D) An applicant shall compute the magnitude of the inertial velocity vector.

$$v_0 = \left(\dot{E}I_{90}^2 + \dot{F}I_{90}^2 + \dot{G}_{90}^2\right)^{0.5} \quad \text{(Equation B50)}$$

(E) An applicant shall compute the eccentricity of the trajectory ellipse multiplied by the cosine of the eccentric anomaly at epoch. (ε_c).

$$\varepsilon_c = \left(\frac{r \cdot v_0^2}{K}\right) - 1 \quad \text{(Equation B51)}$$

Where:

$K = 1.407644 \times 10^{16}$ ft^3/sec^2

(F) An applicant shall compute the semi-major axis of the trajectory ellipse (a_t).

$$a_t = \frac{r}{(1 - \varepsilon_c)} \quad \text{(Equation B52)}$$

If $a_t < 0$ or $a_t > \infty$ then the trajectory orbit is not elliptical, but is hyperbolic or parabolic, and an impact point cannot be computed. The launch vehicle has achieved escape velocity and the applicant may terminate computations.

(G) An applicant shall compute the eccentricity of the trajectory ellipse multipled by the sine of the eccentric anomaly at epoch (ε_s).

$$\varepsilon_s = \frac{\left(E_{90}\dot{E}I_{90} + F_{90}\dot{F}I_{90} + G_{90}\dot{G}_{90}\right)}{\left(K \cdot a_t\right)^{0.5}} \quad \text{(Equation B53)}$$

(H) An applicant shall compute the eccentricity of the trajectory ellipse squared (ε^2).

$$\varepsilon^2 = \left(\varepsilon_c^2 + \varepsilon_s^2\right) \quad \text{(Equation B54)}$$

If $[a\varepsilon(1-\varepsilon)-a\varepsilon]>0$ and $\varepsilon \geq 0$ then the trajectory perigee height is positive and an impact point cannot be computed. The launch vehicle has achieved earth orbit and the applicant may terminate computations.

(I) An applicant shall computer the eccentricity of the trajectory ellipse multiplied by the cosine of the eccentric anomaly at impact (ε_{c_k}).

$$\varepsilon_{c_k} = \frac{\left(a_t - r_{k,1}\right)}{a_t} \quad \text{(Equation B55)}$$

(J) An applicant shall compute the eccentrity of the trajectory ellipse multiplied by the sine of the eccentric anomaly at impact (ε_{s_k}).

$$\varepsilon_{s_k} = -\left(\varepsilon^2 - \varepsilon_{C_k}^2\right)^{0.5} \quad \text{(Equation B56)}$$

If $\varepsilon_{s_k} < 0$ then the trajectory orbit does not intersect the Earth's surface and an impact point cannot be computed. The launch vehicle has achieved earth orbit and the applicant may terminate computations.

(K) An applicant shall compute the cosine of the difference between the eccentric anomaly at impact and the eccentric anomaly at epoch ($\Delta\varepsilon_{c_k}$).

$$\Delta\varepsilon_{c_k} = \frac{\left(\varepsilon_{c_k} \cdot \varepsilon_c\right) + \left(\varepsilon_{s_k} \cdot \varepsilon_s\right)}{\varepsilon^2} \quad \text{(Equation B57)}$$

(L) An applicant shall compute the sine of the difference between the eccentric anomaly at impact and the eccentric anomaly at epoch ($\Delta\varepsilon_{s_k}$).

$$\Delta\varepsilon_{s_k} = \frac{\left(\varepsilon_{s_k} \cdot \varepsilon_c\right) - \left(\varepsilon_{c_k} \cdot \varepsilon_s\right)}{\varepsilon^2} \quad \text{(Equation B58)}$$

(M) An applicant shall compute the f-series expansion of Kepler's equations.

$$f_2 = \frac{\left(\Delta\varepsilon_{c_k} - \varepsilon_c\right)}{\left(1 - \varepsilon_c\right)} \quad \text{(Equation B59)}$$

(N) An applicant shall compute the g-series expansion of Kepler's equations.

$$g_2 = \left(\Delta\varepsilon_{s_k} + \varepsilon_s - \varepsilon_{s_k}\right)\left(\frac{a_t^3}{K}\right)^{0.5} \quad \text{(Equation B60)}$$

(O) An applicant shall compute the E,F,G coordinates at impact (E_i,F_i,G_i).

$$E_k = f_2 \cdot E_{90} + g_2 \cdot \dot{E}I_{90}$$
$$F_k = f_2 \cdot F_{90} + g_2 \cdot \dot{F}I_{90}$$
$$G_k = f_2 \cdot G_{90} + g_2 \cdot \dot{G}_{90} \quad \text{(Equation B61 - B63)}$$

(P) An applicant shall approximate the distance from the geocenter to the launch vehicle position at impact ($r_{k,2}$).

$$r_{k,2} = \frac{a_E}{\left[\left(\frac{e^2}{1-e^2}\right)\left(\frac{G_k}{r_{k,1}}\right)^2 + 1\right]^{0.5}} \quad \text{(Equation B64)}$$

Where:

$a_E = 20925646.3255$ ft

$e^2 = 0.00669437999013$

(Q) An applicant shall let $r_{k+1,1} = r_{k,2}$, substitute $r_{k+1,1}$ for $r_{k,1}$ in equation B55 and repeat equations B55–B64 up to four more times incrementing "k" by one on each loop (e.g. $\kappa \varepsilon \{1, 2, 3, 4, 5\}$). If $|r_{5,1} - r_{5,2}| > 1$ then the iterative solution does not converge and an impact point does not meet the accuracy tolerance of plus or minus one foot. An applicant must try more iterations, or restart the calculations with the next trajectory state vector.

(R) An applicant shall compute the difference between the eccentric anomaly at impact and the eccentric anomaly at epoch ($\Delta\varepsilon$).

$$\Delta\varepsilon = \tan^{-1}\left(\frac{\Delta\varepsilon_{v_5}}{\Delta\varepsilon_{c_5}}\right) \quad \text{(Equation B65)}$$

(S) An applicant shall compute the time of flight from epoch to impact (t).

$$t = \left(\Delta\varepsilon + \varepsilon_s - \varepsilon_{s_5}\right)\left(\frac{\alpha_t^3}{K}\right)^{0.5} \quad \text{(Equation B66)}$$

(T) An applicant shall compute the geocentric latitude at impact (ϕ').

$$\phi_i' = \sin^{-1}\left(\frac{G_5}{r_{5,2}}\right) \quad \text{(Equation B67)}$$

Where:

$+90° \geq \phi'^{\circ}_i \geq -90°$

(U) An applicant shall compute the deodetic latitude at impact (ϕ).

$$\phi_i = \tan^{-1}\left[\frac{\tan\left(\phi_i'\right)}{\left(1 - e^2\right)}\right] \quad \text{(Equation B68)}$$

Where:

$+90° \geq \phi'^{\circ}_i \geq -90°$

(V) An applicant shall compute the East longitude at impact (λ).

$$\lambda_i = \tan^{-1}\left(\frac{F_5}{E_5}\right) - \omega t \quad \text{(Equation B69)}$$

(W) If the range from the launch point to the impact point is equal to or greater than 5000nm, an applicant shall terminate IIP computations.

(4) For a guided suborbital launch vehicle, an applicant shall define a final stage impact dispersion area as part of the flight corridor and show the area on a map using the following procedure:

(i) For equation B70 below, an applicant shall use an apogee altitude (H_{ap}) corresponding to the highest altitude reached by the launch vehicle final stage in the applicant's launch vehicle trajectory analysis done in accordance with paragraph (b)(1)(ii).

(ii) An applicant shall define the final stage impact dispersion area by using a dispersion factor [DISP(H_{ap})] as shown below. An applicant shall calculate the impact dispersion radius (R) for the final launch vehicle stage. An applicant shall set R equal to the maximum apogee altitude (H_{ap}) multiplied by the dispersion factor as shown below:

$$R = H_{ap} \cdot \text{DISP}\left(H_{ap}\right) \quad \text{(Equation B70)}$$

Where:

DISP(H_{ap}) =0.05

(5) An applicant shall combine the launch area and downrange area flight corridor and any final stage impact dispersion area for a guided suborbital launch vehicle.

(i) On the same map with the launch area flight corridor, an applicant shall plot the latitude and longitude positions of the left and right sides of the downrange area of the flight corridor calculated in subparagraph (d)(3).

(ii) An applicant shall connect the latitude and longitude positions of the left side of the downrange area of the flight corridor sequentially starting with the last IIP calculated on the left side and ending with the first IIP calculated on the left side. An applicant shall repeat this procedure for the right side.

(iii) An applicant shall connect the left sides of the launch area and downrange portions of the flight corridor. An applicant shall repeat this procedure for the right side.

(iv) An applicant shall plot the overflight exclusion zone defined in subparagraph (c)(7).

(v) An applicant shall draw any impact dispersion area on the downrange map with the center of the impact dispersion area on the launch vehicle final stage point obtained from the applicant's launch vehicle trajectory analysis done in accordance with subparagraph (b)(1)(ii).

(e) Evaluate the Launch Site

(1) An applicant shall evaluate the flight corridor for the presence of populated areas. If no populated area is located within the flight corridor, then no additional steps are necessary.

(2) If a populated area is located in an overflight exclusion zone, an applicant may modify its proposal or demonstrate that there are times when no people are present or that the applicant has an agreement in place to evacuate the public from the overflight exclusion zone during a launch.

(3) If a populated area is located within the flight corridor, an applicant may modify its proposal or complete an overflight risk analysis as provided in appendix C.

Appendix C to Part 420—Risk Analysis

(a) Introduction

(1) This appendix provides a method for an applicant to estimate the expected casualty (E_c) for a launch of a guided launch vehicle using a flight corridor generated either by appendix A or appendix B. This appendix also provides an applicant options to simplify the method where population at risk is minimal.

(2) An applicant shall perform a risk analysis when a populated area is located within a flight corridor defined by either

appendix A or appendix B. If the estimated expected casualty exceeds 30×10^{-6}, an applicant may either modify its proposal, or if the flight corridor used was generated by the appendix A method, use the appendix B method to narrow the flight corridor and then redo the overflight risk analysis pursuant to this appendix C. If the estimated expected casualty still exceeds 30×10^{-6}, the FAA will not approve the location of the proposed launch point.

(b) Data Requirements

(1) An applicant shall obtain the data specified in subparagraphs (b)(2) and (3) and summarized in table C–1, Table C–1 provides sources where an applicant may obtain data acceptable to the FAA. An applicant will also employ the flight corridor information from appendix A or B, including flight azimuth and, for an appendix B flight corridor, trajectory information.

(2) Population Data. Total population (N) and the total landmass area within a populated area (A) are required. Population data up to and including 100 nm from the launch point are required at the U.S. census block group level. Population data downrange from 100 nm are required at no greater than 1°×1° latitude/longitude grid coordinates.

(3) Launch Vehicle Data. These data consist of the launch vehicle failure probability (P_f), the launch vehicle effective casualty area (A_c), trajectory position data, and the overflight dwell time (t_d). The failure probability is a constant (P_f=0.10) for a guided orbital or suborbital launch vehicle. Table C–3 provides effective casualty area data based on IIP range. Trajectory position information is provided from distance computations given in this appendix for an appendix A flight corridor, or trajectory data used in appendix B for an appendix B flight corridor. The dwell time (t_d) may be determined from trajectory data produced when creating an appendix B flight corridor.

TABLE C–1.—OVERFLIGHT ANALYSIS DATA REQUIREMENTS

Data category	Data item	Data source
Population Data	Total population within a populated area (N).	Within 100 nm of the launch point: U.S. census data at the census block-group level. Downrange from 100 nm beyond the launch point, world population data are available from:
	Total landmass area within the populated area (A).	Carbon Dioxide Information Analysis Center (CDIAC). Oak Ridge National Laboratory. Database—Global Population Distribution (1990), Terrestrial Area and Country Name Information on a One by One Degree Grid Cell Basis (DB1016 (8–1996)).
Launch Vehicle Data	Failure probability—P_f=0.10	N/A.
	Effective casualty area (A_c)	See table C–3.
	Overflight dwell time	Determined by range from the launch point or trajectory used by applicant.
	Nominal Trajectory Data (for an appendix B flight corridor only).	See appendix B, table B–1.

(c) Estimating Corridor Casualty Expectation

(1) A corridor casualty expectation [E(Corridor)] estimate is the sum of the expected casualty measurement of each populated area inside a flight corridor.

(2) An applicant shall identify and locate each populated area in the proposed flight corridor.

(3) An applicant shall determine the probability of impact in each populated area using the procedures in subparagraphs (5) or (6) of this paragraph. Figures C–1 and C–2 show an area considered for probability of impact (P_i) computations by the dashed-lined box around the populated area within a flight corridor, and figure C–3 shows a populated area in a final stage impact dispersion area. An applicant shall then estimate the E_c for each populated area using the procedures in subparagraphs (7) and (8) of this paragraph.

(4) The P_i computations do not directly account for populated areas whose areas are bisected by an appendix A flight corridor centerline or an appendix B nominal trajectory ground trace. Accordingly, an applicant must evaluate P_i for each of the bisections as two separate populated area, as shown in figure C–4, which shows one bisection to the left of an appendix A flight corridor's centerline and one on its right.

(5) Probability of Impact (P_i) Computations for a Populated Area in an appendix A Flight Corridor. An applicant shall computer P_i, for each populated area using the following method:

(i) For the launch and downrange areas, but not a final stage impact dispersion area for a guided suborbital launch vehicle, an applicant shall compute P_i, for each populated area using the following equation:

$$P_i = \frac{\left(\frac{|y_2 - y_1|}{\sigma_y}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left[\frac{-\left(\gamma_1/\sigma_\gamma\right)^2}{2}\right] + 4 \cdot \exp\left[\frac{-\left(\frac{y_1+y_2}{2\sigma_y}\right)^2}{2}\right] + \exp\left[\frac{-\left(\gamma_2/\sigma_\gamma\right)^2}{2}\right] \right) \cdot \left[\frac{P_f}{C} \cdot \frac{(x_2 - x_1)}{R}\right] \quad \text{(Equation C1)}$$

Where:

x_1, x_2 = closest and farthest downrange distance (nm) along the flight corridor centerline to the populated area (see figure C–1)

y_1, y_2 = closest and farthest cross range distance (nm) to the populated area measured from the flight corridor centerline (see figure C–1)

σ_y = one-fifth of the cross range distance from the centerline to the flight corridor boundary (see figure C–1)

exp = exponential function (e^x)

P_f = probability of failure = 0.10

R = IIP range rate (nm/sec) (see table C-2)

C = 643 seconds (constant)

TABLE C–2.—IIP RANGE RATE VS. IIP RANGE

IIP range (nm)	IIP range rate (nm/s)
0–75	0.75
76–300	1.73
301–900	4.25
901–1700	9.85
1701–2600	19.75
2601–3500	42.45
3500–4500	84.85
4501–5250	154.95

TABLE C–2.—IIP RANGE RATE VS. IIP RANGE—Continued

IIP range (nm)	IIP range rate (nm/s)
2601–3500	42.45
3500–4500	84.85
4501–5250	154.95

(ii) For each populated area within a final stage impact dispersion area, an applicant shall compute P_i using the following method:

(A) An applicant shall estimate the probability of final stage impact in the x and y sectors of each populated area within the final stage impact dispersion area using equations C2 and C3:

$$P_x = \frac{\left(\frac{|x_2 - x_1|}{\sigma_x}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left[\frac{-\left(x_1/\sigma_x\right)^2}{2}\right] + 4 \cdot \exp\left[\frac{-\left(\frac{x_1+x_2}{2\sigma_x}\right)^2}{2}\right] + \exp\left[\frac{-\left(x_2/\sigma_x\right)^2}{2}\right] \right) \quad \text{(Equation C2)}$$

Where:

x_1, x_2 = closest and farthest downrange distance, measured along the flight corridor centerline, measured from the nominal impact point to the populated area (see figure C–3)

σ_x = one-fifth of the impact dispersion radius (see figure C–3)

exp = exponential function (e^x)

$$P_y = \frac{\left(\frac{|y_2 - y_1|}{\sigma_y}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left[\frac{-\left(\gamma_1/\sigma_\gamma\right)^2}{2}\right] + 4 \cdot \exp\left[\frac{-\left(\frac{y_1+y_2}{2\sigma_y}\right)^2}{2}\right] + \exp\left[\frac{-\left(\gamma_2/\sigma_\gamma\right)^2}{2}\right] \right) \quad \text{(Equation C3)}$$

Where:

y_1, y_2 = closest and farthest cross range distance to the populated area measured from the flight corridor centerline (see figure C–3)

σ_y = one-fifth of the impact dispersion radius (see figure C–3)

exp = exponential function (e^x)

(B) If a populated area intersects the impact dispersion area boundary so that the x_2 or y_2 distance would otherwise extend outside the impact dispersion area, the x_2 or y_2 distance should be set equal to the impact dispersion area radius. The x_2 distance for populated area A in figure C–3 is an example, If a populated area intersects the flight azimuth, an applicant shall solve equation C3 by obtaining the solution in two parts. An applicant shall determine, first, the probability between y_1 = 0 and y_2 = a and, second, the probability between y_1 = 0 and y_2 = b, as depicted in figure C–4. The probability P_y is then equal to the sum of the probabilities of the two parts. If a populated area interests the line that is normal to the flight azimuth on the impact point, an applicant shall solve equation C2 by obtaining the solution in two parts in a similar manner with the values of x.

(C) An applicant shall calculate the probability of impact for each populated area using equation C4 below:

$$P_i = P_s \cdot P_x \cdot P_y \quad \text{(Equation C4)}$$

Where:

$P_s = 1 - P_f = 0.90$

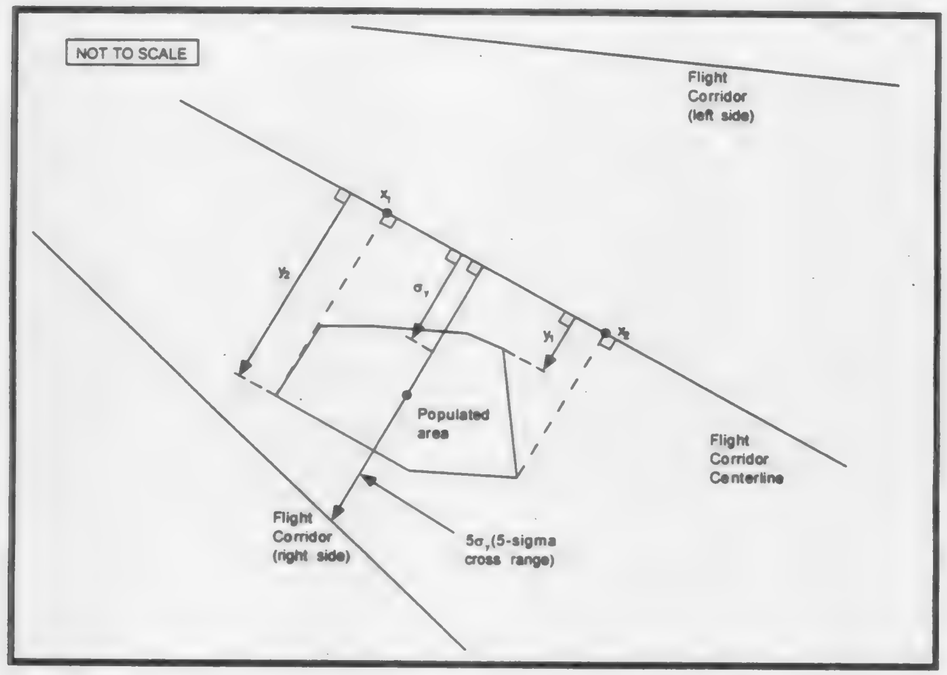


Figure C-1: Analysis of an Appendix A Flight Corridor

(6) Probability of Impact Computations for a Populated Area in an appendix B Flight Corridor. An applicant shall compute P_i using the following method:

(i) For the launch and downrange areas, but not a final stage impact dispersion area for a guided suborbital launch vehicle, an applicant shall compute P_i for each populated area using the following equation:

$$P_i = \frac{\left(\frac{|y_2 - y_1|}{\sigma_y}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left[\frac{-\left(\frac{y_1}{\sigma_y}\right)^2}{2}\right] + 4 \cdot \exp\left[\frac{-\left(\frac{y_1 + y_2}{2\sigma_y}\right)^2}{2}\right] + \exp\left[\frac{-\left(\frac{y_2}{\sigma_y}\right)^2}{2}\right] \right) \cdot \left(\frac{P_f}{t} \cdot t_d\right) \quad \text{(Equation C5)}$$

Where:

y_1, y_2 = closest and farthest cross range distance (nm) to a populated area measured from the nominal trajectory IIP ground trace (see figure C–2)

σ_y = one-fifth of the cross range distance (nm) from nominal trajectory to the flight corridor boundary (see figure C–2)

exp = exponential function (e^x)

P_f = probability of failure = 0.10

t = flight time from lift-off to orbital insertion (seconds)

t_d = overflight dwell time (seconds)

(ii) For each populated area within a final stage impact dispersion area, an applicant shall compute P_i using the following method:

(A) An applicant shall estimate the probability of final stage impact in the x and y sectors of each populated area within the final stage impact dispersion area using equations C6 and C7:

$$P_x = \frac{\left(\frac{|x_2 - x_1|}{\sigma_x}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left[\frac{-\left(\frac{x_1}{\sigma_x}\right)^2}{2}\right] + 4 \cdot \exp\left[\frac{-\left(\frac{x_1 + x_2}{2\sigma_x}\right)^2}{2}\right] + \exp\left[\frac{-\left(\frac{x_2}{\sigma_x}\right)^2}{2}\right] \right) \quad \text{(Equation C6)}$$

Where:

x_1, x_2 = closest and farthest downrange distance, measured along nominal trajectory IIP ground trace, measured from the nominal impact point to the populated area (see figure C–3)

σ_x = one-fifth of the impact dispersion radius (see figure C–3)

exp = exponential function (e^x)

$$P_y = \frac{\left(\frac{|y_2 - y_1|}{\sigma_y}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left[\frac{-\left(\frac{y_1}{\sigma_y}\right)^2}{2}\right] + 4 \cdot \exp\left[\frac{-\left(\frac{y_1 + y_2}{2\sigma_y}\right)^2}{2}\right] + \exp\left[\frac{-\left(\frac{y_2}{\sigma_y}\right)^2}{2}\right] \right) \quad \text{(Equation C7)}$$

Where:

y_1, y_2 = closest and farthest cross range distance to the populated area measured form the nominal trajectory IIP ground trace (see figure C–3)

σ_y = one-fifth of the impact dispersion radius (see figure C–3)

exp = exponential function (e^x)

(B) If a populated area intersects the impact dispersion area boundary so that the x_2 or y_2 distance would otherwise extend outside the impact dispersion area, the x_2 or y_2 distance should be set equal to the impact dispersion area radius. The x_2 distance for populated area A in figure C–3 is an example. If a populated area intersects the flight azimuth, an applicant shall solve equation C7 by obtaining the solution in two parts. An applicant shall determine, first, the probability between $y_1 = 0$ and $y_2 = a$ and, second, the probability between $y_1 = 0$ and $y_2 = b$, as depicted in figure C–4. The probability P_y is then equal to the sum of the probabilities of the two parts. If a populated area interests the line that is normal to the flight azimuth on the impact point, an applicant shall solve equation C6 by obtaining the solution in two parts in a similar manner with the values of x.

(C) An applicant shall calculate the probability of impact for each populated area using equation C8 below:

$$P_i = P_s \cdot P_x \cdot P_y \quad \text{(Equation C8)}$$

Where:

$P_s = 1 - P_f \geq 0.90$

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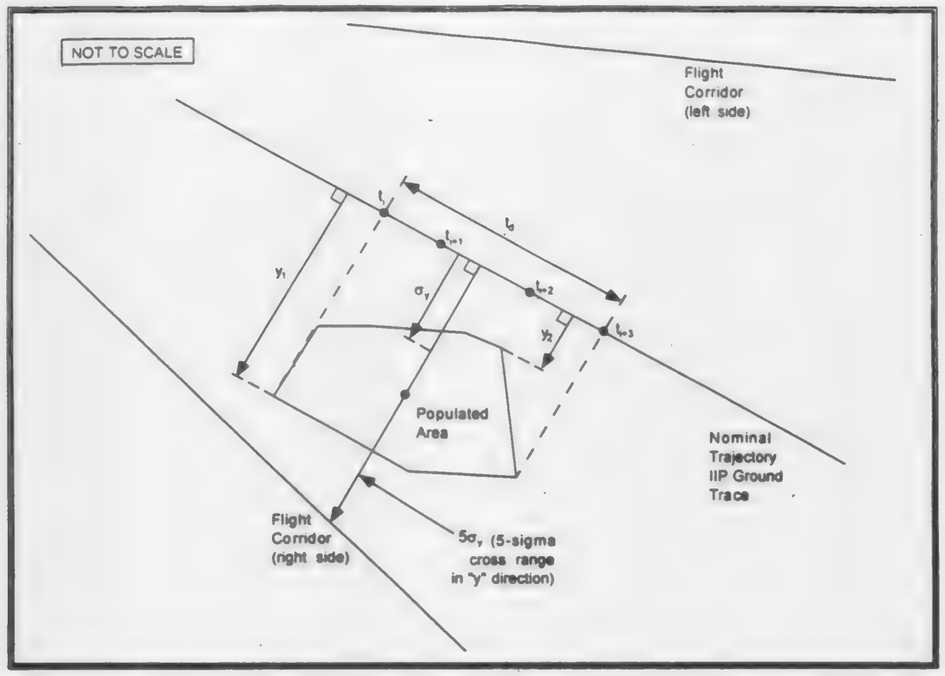


Figure C-2: Analysis of an Appendix B Flight Corridor

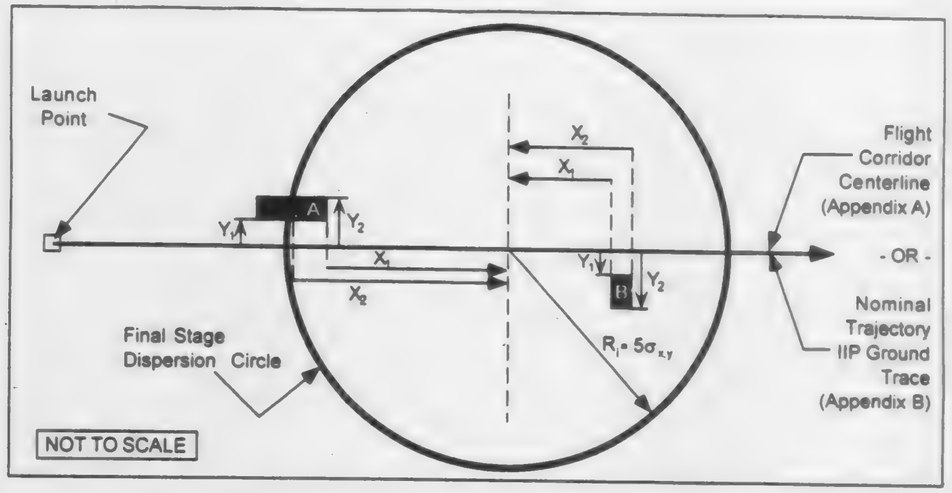


Figure C-3: Appendix A and B Final Stage Impact Risk Analysis

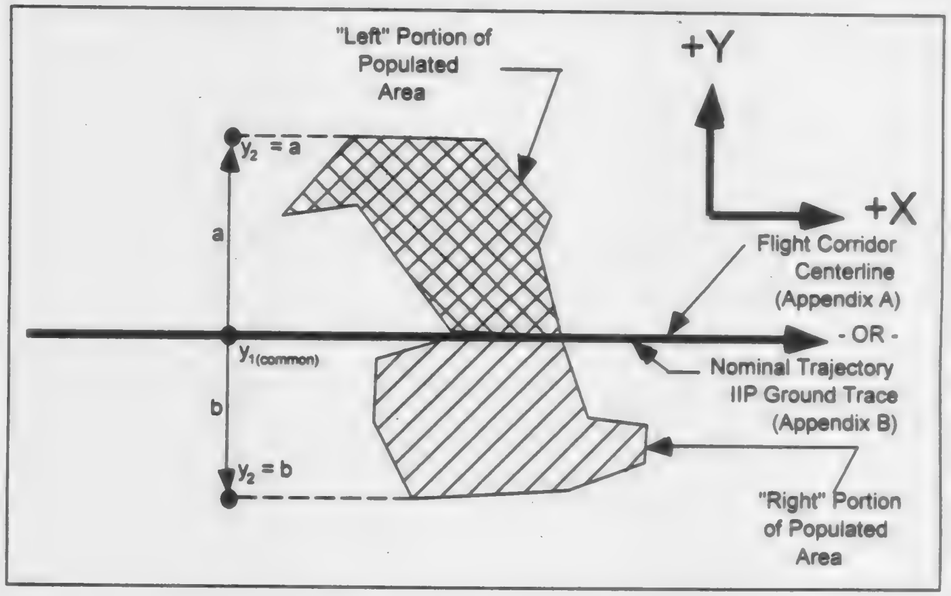


Figure C-4: Flight Azimuth Intersecting a Populated Area

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(7) Using the P_i calculated in either subparagraph (c)(5) or (6) of this paragraph, an applicant shall calculate the casualty expectancy for each populated area within the flight corridor. E_{ck} is the casualty expectancy for a given populated area as shown in equation C9, where individual populated areas are designated with the subscript "k".

$$E_{ck} = P_i \cdot \left(\frac{A_c}{A_k}\right) \cdot N_k \qquad \text{(Equation C9)}$$

Where:
A_c = casualty area (from table C–3)
A_k = populated area
N_k = population in A_k

TABLE C–3—EFFECTIVE CASUALTY AREA (MILES²) vs. IIP Range (nm)

IIP Range (nmi)	Orbital launch vehicles				Suborbital launch vehicles
	Small	Medium	Medium large	Large	Guided
0–49	0.43	0.53	0.71	1.94	0.43
50–1749	0.13	0.0022	0.11	0.62	0.13
1750–5000	3.59×10^{-6}	8.3×10^{-4}	1.08×10^{-1}	7.17×10^{-1}	3.59×10^{-6}

(8) An applicant shall estimate the total corridor risk using the following summation of risk, including a multiplier of two, as shown in equation C10.

$$Ec(\text{Corridor}) = 2 \cdot \left(\sum_{k=1}^{n} E_{c_k}\right) \qquad \text{(Equation C10)}$$

(9) Alternative Casualty Expectancy (E_c) Analyses. An applicant may employ specified variations to the analysis defined in subparagraphs (c)(1)–(8). Those variations are identified in subparagraphs (9)(i) through (vi) of this paragraph. Subparagraphs (i) through (iv) permits an applicant to make conservative assumptions that would lead to an overestimation of the corridor E_c compared with the analysis defined in subparagraphs (c)(1)–(8). In subparagraphs (v) and (vi), an applicant that would otherwise fail the analysis prescribed by subparagraphs (c)(1)–(8) may avoid (c)(1)–(8)'s overestimation of the probability of impact in each populated area. An applicant employing a variation shall identify the variation used, show and discuss the specific assumptions made to a modify the analysis defined in subparagraphs (c)(1)–(8), and demonstrate how each assumption leads to overestimation of the corridor E_c compared with the analysis defined in subparagraphs (c)(1)–(c)(8).

(i) Assume that P_x and P_y have a value of 1.0 for all populated areas.

(ii) Combine populated areas into one or more larger populated areas, and use a population density for the combined area or areas equal to the most dense populated area.

(iii) for any given populated area, assume P_y has a value of one.

(iv) For any given P_x sector (an area spanning the width of a flight corridor and bounded by two time points on the trajectory IIP ground trace) P_y has a value of one and use a population density for the sector equal to the most dense populated area.

(v) For a given populated area, divided the populated area into smaller rectangles, determined P_i for each individual rectangle, and sum the individual impact probabilities to determine P_i for thee entire populated area.

(vi) For a given populated area, use the ratio of the populated area to the area of the P_i rectangle from the subparagraph (c)(1)–(8) analysis.

(d) Evaluation of Results

(1) If the estimated expected casualty does not exceed 30×10^{-6}, the FAA will approve the launch site location.

(2) If the estimated expected casualty exceeds 30×10^{-6}, then an applicant may either modify its proposal, or, if the flight corridor used was generated by the appendix A method, use the appendix B method to narrow the flight corridor and then perform another appendix C risk analysis.

Appendix D to Part 420—Impact Dispersion Area and Casualty Expectancy Estimate for an Unguided Suborbital Launch Vehicle

(a) Introduction

(1) This appendix provides an method for determining the acceptability of the location of a launch point from which an unguided suborbital launch vehicle would be launched. The appendix describes how to define an overflight exclusion zone and impact dispersion areas, and how to evaluate whether the public risk presented by the launch of an unguided suborbital launch vehicle remains at acceptable levels.

(2) An applicant shall base its analysis on an unguided suborbital launch vehicle whose final launch vehicle stage apogee represents the intended use of the launch point.

(3) An applicant shall use the apogee of each stage of an existing unguided suborbital launch vehicle with a final launch vehicle stage apogee equal to the one proposed, and calculate each impact range and dispersion area using the equations provided.

(4) This appendix also provides a method of performing an impact risk analysis that estimates the expected casualty (E_c) within each impact dispersion area. This appendix provides an applicant options to simplify the method where population at risk is minimal.

(5) If the E_c is less than or equal to 30×10^{-6}, the FAA will approve the launch point for unguided suborbital launch vehicles. If the E_c exceeds 30×10^{-6}, the proposed launch point will fail the launch site location review.

(b) Data Requirements

(1) An applicant shall employ the apogee of each stage of an existing unguided suborbital launch vehicle whose final stage apogee represents the maximum altitude to be reached by unguided suborbital launch vehicles launched from the launch point. The apogee shall be obtained from one or more actual flights of an unguided suborbital launch vehicle launched at an 84 degree elevation.

(2) An applicant shall satisfy the map and plotting data requirements in appendix A, paragraph (b).

(3) Population Data. An applicant shall use total population (N) and the total landmass are within a populated area (A) for all populated areas within an impact dispersion area. Population data up to and including 100 nm from the launch point are required at the U.S. census block group level. Population data downrange from 100 nm are required at no greater than $1° \times 1°$ latitude/longitude grid coordinates.

(c) Overflight Exclusion Zone and Impact Dispersion Area

(1) An applicant shall choose a flight azimuth from a launch point.

(2) An applicant shall define an overflight exclusion zone as a circle with a radius of 1600 feet centered on the launch point.

(3) An applicant shall define an impact dispersion area for each stage of the suborbital launch vehicle chosen in subparagraph (b)(1) as provided below:

(i) An applicant shall calculate the impact range for the final launch vehicle stage (D_n). An applicant shall set D_n equal to the last stage apogee altitude (H_n) multiplied by an impact range factor [$IP(H_n)$] as shown below:

$$D_n = H_n \cdot IP(H_n) \qquad \text{(Equation D1)}$$

Where:
$IP(H_n)$=0.4 for an apogee less than 100 km, and
$IP(H_n)$=0.7 for an apogee 100 km or greater.

(ii) An applicant shall calculate the impact range for each intermediate stage (D_i), where $i \varepsilon \{1, 2, 3, \ldots (n-1)\}$, and where n is the total number of launch vehicle stages. Using the apogee altitude (H_i) of each intermediate stage, an applicant shall used equation D1 to compute the impact range of each stage by substituting H_i for H_n. An applicant shall use the impact range factors provided in equation D1.

(iii) An applicant shall calculate the impact dispersion radius for the final launch vehicle stage (R_n). An applicant shall set R_n equal to the last stage apogee altitude (H_n) multiplied by an impact dispersion factor [$DISP(H_n)$] as shown below:

$$R_n = H_n \cdot DISP(H_n) \qquad \text{(Equation D2)}$$

Where:
$DISP(H_n)$=0.4 for an apogee less than 100 km, and
$DISP(H_n)$=0.7 for an apogee 100 km or greater

(iv) An applicant shall calculate the impact range for each intermediate stage (R_i), where $i \varepsilon \{1,2,3, \ldots (n-1)\}$. and where n is the total number of launch vehicle stages. Using the apogee altitude (H_i) of each intermediate stage, an applicant shall used equation D2 to compute impact dispression radius of each stage by substituting H_i for H_n. An applicant shall use the dispersion factors provided in equation D2.

(4) An applicant shall display an oversflight exclusion zone, each intermediate and final stage impact point (D_i through D_n), and each impact dispersion area for the intermediate and final launch vehicle stages on maps in accordance with paragraph (b)(2).

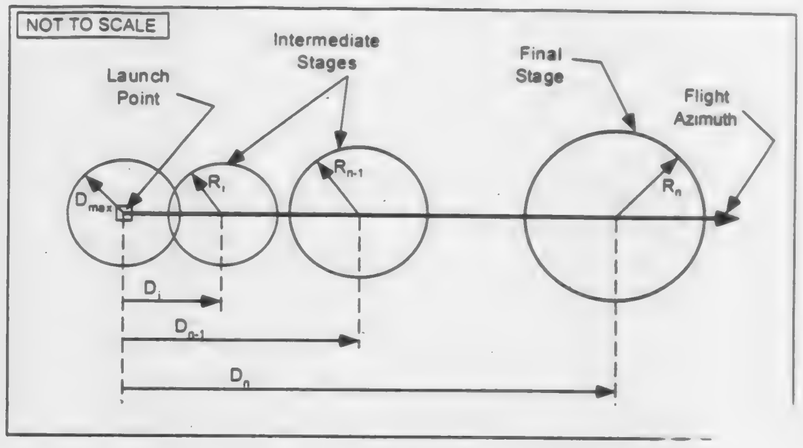


Figure D-1
Unguided Suborbital Launch Vehicle Overflight Exclusion Zone a Dispersion Areas

(d) Evaluate the Overflight Exclusion Zone and Impact Dispersion Areas

(1) An applicant shall evaluate the overflight exclusion zone and each impact dispersion area for the presence of any populated areas. If an applicant determines that no populated area is located within the overflight exclusion zone or any impact dispersion area, then no additional steps are necessary.

(2) If a populated area is located in an overflight exclusion zone, an applicant may modify its proposal or demonstrate that there are times when no people are present or that the applicant has an agreement in place to evacuate the public from the overflight exclusion zone during a launch.

(3) If a populated area is located within any impact dispersion area, an applicant may modify its proposal and defined a new exclusion zone and new impact dispersion areas, or perform an impact risk analysis as provided in paragraph (e).

(e) Impact Risk Analysis

(1) An applicant shall estimate the expected average number of casualties, E_C, within the impact dispersion areas according to the following method:

(i) An applicant shall calculate the E_c by summing the impact risk for the impact dispersion areas of the final launch vehicle stage and all intermediate stages. An applicant shall estimate E_c for the impact dispersion area of each stage by using equation D3 through D7 for each of the populated areas located within the impact dispersion areas.

(ii) An applicant shall estimate the probability of impacting inside the X and Y sectors of each populated area within each impact dispersion area using equations D3 and D4 below:

$$P_x = \frac{\left(\frac{x_2 - x_1}{\sigma_x}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left(\frac{-\left(\frac{x_1}{\sigma_x}\right)^2}{2} \right) + 4 \cdot \exp\left[\frac{-\left(\frac{x_1 + x_2}{2\sigma_x}\right)^2}{2} \right] + \exp\left(\frac{-\left(\frac{x_2}{\sigma_x}\right)^2}{2} \right) \right) \quad \text{(Equation D3)}$$

Where:

x_1, x_2=closest and farthest downrange distance to populated area (see figure D–2)

σ_x=one-fifth of the impact dispersion radius (see figure D–2)
exp=exponential function (e^x)

$$P_y = \frac{\left(\frac{|y_2|}{\sigma_y} - \frac{|y_1|}{\sigma_y}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left(\frac{-\left(\gamma_1/\sigma_\gamma\right)^2}{2} \right) + 4 \cdot \exp\left[\frac{\left(\frac{y_1 + y_2}{2\sigma_y}\right)^2}{2} \right] + \exp\left(\frac{-\left(\gamma_2/\sigma_\gamma\right)^2}{2} \right) \right) \quad \text{(Equation D4)}$$

Where:

y_1, y_2=closest and farthest cross range distance to the populated area (see figure D–2)

σ_y=one-fifth of the impact dispersion radius (see figure D–2)
exp=exponential function (e^x)

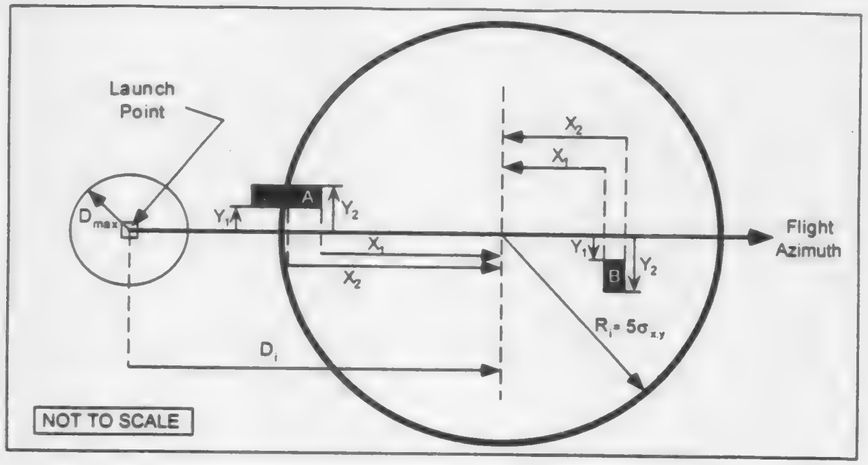


Figure D-2
Intermediate and Final Stage Impact Risk Analysis

(iii) If a populated area intersects the impact dispersion area boundary so that the x_2 or y_2 distance would otherwise extend outside the impact dispersion area, the x_2 or y_2 distance should be set equal to the impact dispersion area radius. The x_2 distance for populated area A in figure D–2 is an example.

(iv) If a populated area intersects the flight azimuth, an applicant shall solve equation D4 by obtaining the solution in two parts. An applicant shall determine, first, the probability between y_1=0 and y_2=a and, second, the probability between y_1=0 and y_2=b, as depicted in figure D–3. The probability P_y is then equal to the sum of the probabilities of the two parts. If a populated area intersects the line that is normal to the flight azimuth on the impact point, an applicant shall solve equation D3 by obtaining the solution in two parts in the same manner as with the values of x.

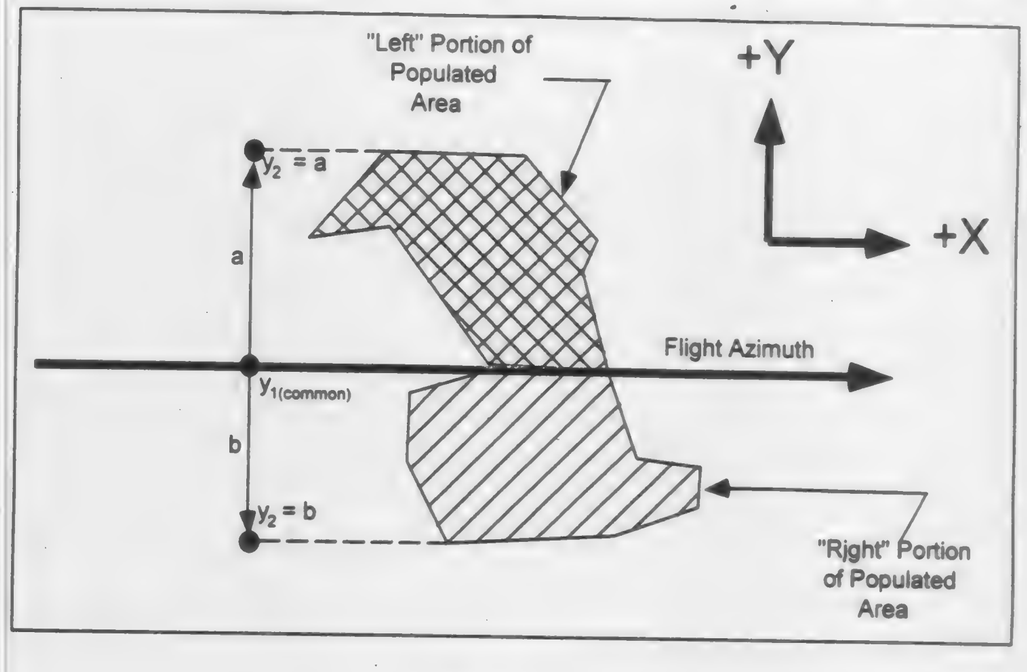


Figure D-3
Flight Azimuth Intersecting a Populated Area

(v) An applicant shall calculate the probability of impact (P_i) for each populated area using the following equation;

$$P_i = P_s \cdot P_x \cdot P_y \quad \text{(Equation D5)}$$

Where:
P_s=probability of success=0.98

(vi) An applicant shall calculate the casualty expectancy for each populated area. E_{ck} is the casualty expectancy for a given populated area as shown in equation D6, where individual populated areas are designated with the subscript "k".

$$E_{ck} = P_i \cdot \left(\frac{A_c}{A_k}\right) \cdot N_k \quad \text{(Equation D6)}$$

Where $\kappa \varepsilon \{1, 2, 3, \ldots n\}$
A_c=casualty area (from table D–1)
A_k=populated area
N_k=population in A_k

TABLE D–1.—EFFECTIVE CASUALTY AREA (A_c) VS. IMPACT RANGE

Impact range (nm)	Effective casualty area (miles²)
0–4	9×10^{-3}
5–49	9×10^{-3}
50–1,749	1.1×10^{-3}
1,750–4,999	3.6×10^{-6}
5,000–more	3.6×10^{-6}

(vii) An applicant shall estimate the total risk using the following summation of risk, including a multiplier of five, as shown in equation D7.

$$Ec(Corridor) = 5 \cdot \left(\sum_{k=1}^{n} E_{c_k} \right) \quad \text{(Equation D7)}$$

(viii) Alternative Casualty Expectancy (E_C) Analysis. An applicant may employ specified variations to the analysis defined in subparagraphs (d)(1)(i)–(vii). Those variations are identified in subparagraphs (viii)(A) through (F) of this paragraph.

Subparagraphs (A) through (D) permit an applicant to make conservative assumptions that would lead to an overestimation of E_c compared with the analysis defined in subparagraphs (d)(1)(i)–(vii). In subparagraphs (E) and (F), an applicant that would otherwise fail the analysis prescribed by subparagraphs (d)(1)(i)–(vii) may avoid (d)(1)(i)–(vii)'s overestimation of the probability of impact on each populated area. An applicant employing a variation shall identify the variation used, show an discuss

the specific assumptions made to modify the analysis defined in subparagraphs (d)(1)(i)–(vii), and justify how each assumption leads to overestimation of the corridor E_c compared with the analysis defined in subparagraphs (d)(1)(i)–(vii).

(A) Assume that P_x and P_y have a valve of 1.0 for all populated areas.

(B) Combine populated areas into one or more larger populated areas, and use a population density for the combined area or areas equal to the most dense populated area.

(C) For any given populated area, assume P_x has a value of one.

(D) For any given populated area, assume P_y has a value of one.

(E) For a given populated area, divide the populated area into small rectangles, determine P_i for each individual rectangle, and sum the individual impact probabilities to determine P_i for the entire populated area.

(F) For a given populated area, use the ratio of the populated area to the area of the P_i rectangle from the subparagraph (d)(1)(i)–(vii) analysis.

(2) If the estimated expected casualty does not exceed 30×10^{-6}, then no additional steps are necessary.

(3) If the estimated expected casualty exceeds 30×10^{-6}, then an applicant may modify its proposal and then repeat the impact risk analysis per this appendix D. If no set of impact dispersion areas exist which satisfy the FAA's risk threshold, the applicant's proposed launch site will fail the launch site location review.

Appendix E to Part 420.—Tables for Explosive Site Plan

TABLE E–1 QUANTITY DISTANCE REQUIREMENTS FOR DIVISION 1.3 SOLID PROPELLANTS

Quantity (lbs.) (over)	Qhantity (lbs.) (not over)	Public area distance (ft.)	Intraline distance (ft.)
0	1,000	75	50
1,000	5,000	115	75
5,000	10,000	150	100
10,000	20,000	190	125
20,000	30,000	215	145
30,000	40,000	235	155
40,000	50,000	250	165
50,000	60,000	260	175
60,000	70,000	270	185
70,000	80,000	280	190
80,000	90,000	195	195
90,000	100,000	300	200
100,000	200,000	375	250
200,000	300,000	450	300
300,000	400,000	525	350
400,000	500,000	600	400
500,000	1,000,000	800	500

TABLE E–2: LIQUID PROPELLANT EXPLOSIVE EQUIVALENTS

Propelland combinations	Explosive equivalent
LO_2/LH_2	The larger of: $8W^{2/3}$ where W is the weight of LO2/LH2, or 14% of W.
$LO_2/LH_2+LO_2/RP–1$	Sum of (20% for $LO_2/RP–1$)+the larger of: $8W^{2/3}$ where W is the weight of LO2/LH2, or 14% of W.
$LO_2/RP–1$	20% of W up to 500,000 pounds plus 10% of W over 500,000 pounds, where W is the weight of LO2/RP–1.
$N_2O_4N_2H_4$ (or UDMH OR $UDMH/N_2H_4$ Mixture)	10% of W, where W is the weight of the propellant.

TABLE E–3: PROPELLANT HAZARD AND COMPATIBILITY GROUPINGS AND FACTORS TO BE USED WHEN CONVERTING GALLONS OF PROPELLANT INTO POUNDS

Propellant	Hazard group	Compatibility group	Pounds/gallon	At temperature °F
Hydrogen Perioxide	II	A	11.6	68
Hydrazine	III	C	8.4	68
Liquid Hydrogen	III	C	0.59	−423
Liquid Oxygen	II	A	9.5	−297
Nitrogen Tetroxide	I	A	12.1	68
RP-1	I	C	6.8	68
UDMH	III	C	6.6	68
UDHM/Hydrazine	III	C	7.5	68

TABLE E–4:—HAZARD GROUP I

Pounds of propellant		Public area and incompatible	Intragroup and compatible
Over	Not over	Distance in feet	Distance in feet
Column 1	Column 2	Column 3	Column 4
0	100	30	25
100	200	35	30
200	300	40	35
300	400	45	35

TABLE E–4.—HAZARD GROUP I—Continued

Pounds of propellant		Public area and incompatible	Intragroup and compatible
Over	Not over	Distance in feet	Distance in feet
Column 1	Column 2	Column 3	Column 4
400	500	50	40
500	600	50	40
600	700	55	40
700	800	55	45
800	900	50	45
900	1,000	60	45
1,000	2,000	65	50
2,000	3,000	70	55
3,000	4,000	75	55
4,000	5,000	80	60
5,000	6,000	80	60
6,000	7,000	85	65
7,000	8,000	85	65
8,000	9,000	90	70
9,000	10,000	90	70
10,000	15,000	95	75
15,000	20,000	100	80
20,000	25,000	105	80
25,000	30,000	110	85
30,000	35,000	110	85
35,000	40,000	115	85
40,000	45,000	120	90
45,000	50,000	120	90
50,000	60,000	125	95
60,000	70,000	130	95
70,000	80,000	130	100
80,000	90,000	135	100
90,000	100,000	135	105
100,000	125,000	140	110
125,000	150,000	145	110
150,000	175,000	150	115
175,000	200,000	155	115
200,000	250,000	160	120
250,000	300,000	165	125
300,000	350,000	170	130
350,000	400,000	175	130
400,000	450,000	180	135
450,000	500,000	180	135
500,000	600,000	185	140
600,000	700,000	190	145
700,000	800,000	195	150
800,000	900,000	200	150
900,000	1,000,000	205	155
1,000,000	2,000,000	235	175
2,000,000	3,000,000	255	190
3,000,000	4,000,000	265	200
4,000,000	5,000,000	275	210
5,000,000	6,000,000	285	215
6,000,000	7,000,000	295	220
7,000,000	8,000,000	300	225
8,000,000	9,000,000	305	230
9,000,000	10,000,000	310	235

TABLE E–5: HAZARD GROUP II

Pounds of propellant		Public area and incompatible	Intragroup and compatible
Over	Not over	Distance in feet	Distance in feet
Column 1	Column 2	Column 3	Column 4
0	100	50	30
100	200	75	35
200	300	85	40
300	400	90	45
400	500	100	50
500	600	100	50
600	700	105	55

TABLE E–5: HAZARD GROUP II—Continued

Pounds of propellant		Public area and incompatible	Intragroup and compatible
Over	Not over	Distance in feet	Distance in feet
Column 1	Column 2	Column 3	Column 4
700	800	110	55
800	900	115	60
900	1,000	120	60
1,000	2,000	130	65
2,000	3,000	145	70
3,000	4,000	150	75
4,000	5,000	160	80
5,000	6,000	165	80
6,000	7,000	170	85
7,000	8,000	175	85
8,000	9,000	175	90
9,000	10,000	180	90
10,000	15,000	195	95
15,000	20,000	205	100
20,000	25,000	215	105
25,000	30,000	220	110
30,000	35,000	225	110
35,000	40,000	230	115
40,000	45,000	235	120
45,000	50,000	240	120
50,000	60,000	250	125
60,000	70,000	255	130
70,000	80,000	260	130
80,000	90,000	265	135
90,000	100,000	270	135
100,000	125,000	285	140
125,000	150,000	295	145
150,000	175,000	305	150
175,000	200,000	310	155
200,000	250,000	320	160
250,000	300,000	330	165
300,000	350,000	340	170
350,000	400,000	350	175
400,000	450,000	355	180
450,000	500,000	360	180
500,000	600,000	375	185
600,000	700,000	385	190
700,000	800,000	395	195
800,000	900,000	405	200
900,000	1,000,000	410	205
1,000,000	2,000,000	470	235
2,000,000	3,000,000	505	255
3,000,000	4,000,000	535	265
4,000,000	5,000,000	555	275
5,000,000	6,000,000	570	285
6,000,000	7,000,000	585	295
7,000,000	8,000,000	600	300
8,000,000	9,000,000	610	305
9,000,000	10,000,000	620	310

TABLE E–6:—HAZARD GROUP III

Pounds of propellant		Public area and incompatible	Intragroup and compatible
Over	Not over	Distance in feet	Distance in feet
Column 1	Column 2	Column 3	Column 4
0	100	600	30
100	200	600	35
200	300	600	40
300	400	600	45
400	500	600	50
500	600	600	50
600	700	600	55
700	800	600	55
800	900	600	60
900	1,000	600	60

TABLE E–6:—HAZARD GROUP III—Continued

Pounds of propellant		Public area and incompatible	Intragroup and compatible
Over	Not over	Distance in feet	Distance in feet
Column 1	Column 2	Column 3	Column 4
1,000	2,000	600	65
2,000	3,000	600	70
3,000	4,000	600	75
4,000	5,000	600	80
5,000	6,000	600	80
6,000	7,000	600	85
7,000	8,000	600	85
8,000	9,000	600	90
9,000	10,000	600	90
10,000	15,000	1,200	95
15,000	20,000	1,200	100
20,000	25,000	1,200	105
25,000	30,000	1,200	110
30,000	35,000	1,200	110
35,000	40,000	1,200	115
40,000	45,000	1,200	120
45,000	50,000	1,200	120
50,000	60,000	1,200	125
60,000	70,000	1,200	130
70,000	80,000	1,200	130
80,000	90,000	1,200	135
90,000	100,000	1,200	135
100,000	125,000	1,800	140
125,000	150,000	1,800	145
150,000	175,000	1,800	150
175,000	200,000	1,800	155
200,000	250,000	1,800	160
250,000	300,000	1,800	165
300,000	350,000	1,800	170
350,000	400,000	1,800	175
400,000	450,000	1,800	180
450,000	500,000	1,800	180
500,000	600,000	1,800	185
600,000	700,000	1,800	190
700,000	800,000	1,800	195
800,000	900,000	1,800	200
900,000	1,000,000	1,800	205
1,000,000	2,000,000	1,800	235
2,000,000	3,000,000	1,800	255
3,000,000	4,000,000	1,800	265
4,000,000	5,000,000	1,800	275
5,000,000	6,000,000	1,800	285
6,000,000	7,000,000	1,800	295
7,000,000	8,000,000	1,800	300
8,000,000	9,000,000	1,800	300
9,000,000	10,000,000	1,800	310

TABLE E–7:—DISTANCES WHEN EXPLOSIVE EQUIVALENTS APPLY

TNT equivalent weight of propellants	Distance in feet	
	To public area	Intraline
Column 1	Column 2	Column 3
Not Over:		Unbarricaded
100	1,250	80
200	1,250	100
300	1,250	120
400	1,250	130
500	1,250	140
600	1,250	150
700	1,250	160
800	1,250	170
900	1,250	180
1,000	1,250	190
1,500	1,250	210
2,000	1,250	230

TABLE E–7.—DISTANCES WHEN EXPLOSIVE EQUIVALENTS APPLY—Continued

TNT equivalent weight of propellants	Distance in feet	
	To public area	Intraline
Column 1	Column 2	Column 3
3,000	1,250	260
4,000	1,250	280
5,000	1,250	300
6,000	1,250	320
7,000	1,250	340
8,000	1,250	360
9,000	1,250	380
10,000	1,250	400
15,000	1,250	450
20,000	1,250	490
25,000	1,250	530
30,000	1,250	560
35,000	1,310	590
40,000	1,370	620
45,000	1,425	640
50,000	1,475	660
55,000	1,520	680
60,000	1,565	700
65,000	1,610	720
70,000	1,650	740
75,000	1,685	770
80,000	1,725	780
85,000	1,760	790
90,000	1,795	800
95,000	1,825	820
100,000	1,855	830
125,000	2,115	900
150,000	2,350	950
175,000	2,565	1,000
200,000	2,770	1,050

[FR Doc. 99–15384 Filed 6–24–99; 8:45 am]
BILLING CODE 4810–15–M

federal register

Friday
June 25, 1999

Part III

Department of Energy

Western Area Power Administration

Application of the Energy Planning and Management Program Power Marketing Initiative to the Salt Lake Area Integrated Projects; Notice

2004 Power Market Plan; Notice

Power Allocation Issues; Notice

DEPARTMENT OF ENERGY

Western Area Power Administration

Application of the Energy Planning and Management Program Power Marketing Initiative to the Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of decision.

SUMMARY: The Western Area Power Administration (Western) is applying the Energy Planning and Management Program (EPAMP) Power Marketing Initiative (PMI) to the Salt Lake City Area Integrated Projects (SLCA/IP), as modified and discussed herein. For most of the current customers, Western will extend 93 percent of the customer's pro rata share of the SLCA/IP power resource available on October 1, 2004. Effective on that same date, Western will make allocations of SLCA/IP power to eligible new customers. Application procedures for new customers will be set forth in a separate **Federal Register** notice in the near future.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Sabo, CRSP Manager, Western Area Power Administration, PO Box 11606, Salt Lake City, UT 84147–0606, telephone (801) 524–6372, email sabo@wapa.gov.

DATES: Western's decision to apply the PMI, as modified herein, to the SLCA/IP will become effective on July 26, 1999.

SUPPLEMENTARY INFORMATION:

Authorities

This decision about the future marketing of the SLCA/IP power resources was made pursuant to the Department of Energy (DOE) Organization Act (42 U.S.C. 7101–7352); and the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts specifically applicable to the projects involved.

Background

Western published its proposal to apply the EPAMP PMI to the SLCA/IP on February 26, 1997 (62 FR 8709–8710). Western proposed to extend 96 percent of the SLCA/IP firm Federal resources available on October 1, 2004, to its current firm-power customers for 20 years. The remaining 4 percent of resources was proposed to be made available for new customers. Further resource reductions of 1-percent each were proposed to be made available to new customers on October 1, 2009, and October 1, 2014.

In its February 26, 1997, notice, Western requested comments on its proposal. Interested parties were given until May 27, 1997, to comment in writing. In addition, public information and comment meetings were held in Sandy, Utah; Golden, Colorado; Albuquerque, New Mexico; and Phoenix, Arizona. Comments were received from firm-power customers, Native American tribes, environmental organizations, and members of Congress.

In a separate public process that started on December 1, 1998, at 63 FR 66166, Western published a Notice of Inquiry to explore the impact of electric utility industry restructuring on Western's power allocation policies. A forum was held in Denver, Colorado, on January 6, 1999, to receive public comment on this matter, and written comments were accepted from the public until the end of a 45-day consultation and comment period. The comments received during this process are being addressed in a separate **Federal Register** notice published concurrently with this notice.

Several of the comments Western received on the Notice of Inquiry concerned the size of the proposed new customer power pool, particularly the adequacy of the pool to meet the needs of Native American tribes. Consequently, on January 29, 1999, at 64 FR 4646, Western published a notice of an additional opportunity to comment on the appropriate size of the new customer power pool and to consider the needs of eligible Native American tribes. Western accepted comments on this topic until March 1, 1999. Informational meetings were held on the SLCA/IP resources in Phoenix, Arizona, and Albuquerque, New Mexico, to better explain to potential new customers the opportunities available to them under the proposal. Several comments were received from Native American tribes, Native American organizations, and current Western customers.

Availability of Information

All documents made or kept by Western for the purpose of developing this decision are available for public review, inspection, and copying at the CRSP Customer Service Center, at 257 East 200 South, Suite 475, Salt Lake City, Utah.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), considerable environmental documentation has been prepared addressing EPAMP, and the marketing of SLCA/IP power. Western completed an environmental impact statement (EIS) on EPAMP. The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995). Western also completed the SLCA/IP Electric Power Marketing EIS, and the Record of Decision was published in the **Federal Register** (61 FR 56534, November 1, 1996). In the Marketing EIS, Western stated that when EPAMP was applied to the SLCA/IP that if further environmental review was required it would be completed at that time. Since then, Western has determined that this action is categorically excluded from preparation of an additional environmental assessment or EIS. Accordingly, no further environmental review will be conducted.

Major Comments and Western's Responses

Western has considered the comments presented by all parties on the proposal. The major comments received and Western's responses to those comments are summarized below.

1. The Extension of Existing Commitments to Current Customers

Existing firm-power customers and Native American tribes were generally supportive of Western's proposal. Many customers pointed out that EPAMP had two components: a requirement that Western's firm-power customers must prepare integrated resource plans (IRP), and that Western extend a major percentage of the existing Federal resources to Western's existing firm-power customers through the PMI, with the exact amount to be determined on a project-specific basis. The customers stated they have complied with the IRP requirement and believe that Western is now obliged to extend resource commitments. The customers further argued that in order to prepare meaningful IRPs, they reasonably had to assume that a stable Federal resource would continue to be available to them since an uncertain Federal resource would make it very difficult to determine future resource needs.

Several customers also suggested that Federal power has become more expensive in recent years; and, if the trend continued, Federal power would soon become a noncompetitive resource. They commented that revenues from the sale of power also repay up to 90 percent of the Federal Government's investment in the irrigation features of the SLCA/IP water development projects. These customers argued that Western should offer contract extensions while customers are willing to enter into longer term arrangements, thus assuring the Federal Government of a stable revenue stream to repay its investment in power and irrigation facilities. Further argument was made that the electric industry is undergoing many changes and that an extension of resources would help stabilize volatile resource markets.

Other arguments were made that this is not an appropriate time to extend resource commitments. According to these other commentors, changes in the electrical industry create uncertainties about who should be Western's future customers and that Western should wait until it has better knowledge of the marketplace. Concern was also expressed that the extension would impede the progress of legislation to privatize power marketing administration assets.

Western's Response

After consideration of the comments received and in light of the broad discretion Congress has provided Western to implement policy changes when warranted, Western has decided to modify its proposal. For most of the current customers, Western will extend 93 percent of the customer's pro rata share of the SLCA/IP power resource available on October 1, 2004. No further reductions will be made in subsequent years to meet the needs of new customers. Western will amend current contracts to extend the term for 20 years effective October 1, 2004.

Western has decided it is appropriate to proceed now with application of the PMI to the SLCA/IP. Western's determination about whether to apply the PMI to the SLCA/IP was delayed until the EIS on the Post 1989 SLCA/IP Power Marketing Plan was completed and the associated marketing criteria were finalized and implemented. That EIS was completed in October 1996, and the associated post-1989 marketing criteria were finalized and implemented April 1, 1997. Customers have already completed IRPs in compliance with the requirements of EPAMP and should be able to rely on Western's resources. Western also believes that it is in the best interest of the United States to help ensure that the Federal Government's investment in the Federal power projects be repaid. All of the investment in power facilities, as well as up to 90 percent of the irrigation investment and substantial new environmental expenses, is being repaid by revenues received from the sale of electricity. Extending resource commitments provides relative assurance to the United States of a continued revenue stream to repay these expenses and obligations.

Western also believes that although the electric industry is undergoing many changes, it is important to extend resource commitments now. These changes are affecting not only the competitiveness of Western's customers, but also the diversity of energy providers in the marketplace. Western must be able to operate in the new utility environment in order to fulfill its mission of marketing Federal power. Western's mission under current statutes is ongoing.

For many of Western's customers, Federal power is an essential component of their resource mix, and a resource extension is critical to planning strategies for dealing with the utility restructuring. Western recognizes the need for flexibility to respond to the changing utility industry and to changing dam operations. Recently, Western and its SLCA/IP customers entered into an amendment to power sales contracts which provides great flexibility for dealing with changing hydropower situations.

Western recognizes that the Bureau of Reclamation is under a continuing obligation to ensure that the operation of the hydroelectric facilities comply with Federal environmental laws. Western may revise the amount of power marketed by the SLCA/IP as required to respond to changes in hydrology and river operations, upon 5 years' notice to customers. Any such changes will be applied on a pro rata basis among all customers.

2. Allocations to Native American Tribes

Native American tribes commented that they should be entitled to an allocation of Federal power to help compensate them for the impacts to their lands and lifestyles caused by the construction of the Federal dams and power facilities. The tribes argued that the proposed power pool of 4 percent of the SLCA/IP marketable resources was inadequate to meet their current or future needs. Several comments were received that the pool should be increased to 10–30 percent and if the tribes did not use the total amount it could be returned to the current customers after the reallocation process. The tribes were also concerned that the 30-day comment period was not adequate for them to determine their loads and to make a reasonable recommendation of pool size.

Some commentors suggested that Western should provide enough power to supply 100 percent of tribal loads as well as meet future needs. Others commented that it is not appropriate or even possible for Western to do this.

Western's current customers commented that the proposed power pool was adequate to give tribes and other new customers a fair share of the resource. They suggested that Western consider advancing the 2009 and 2014 resource pools to enhance the initial pool in 2004, with no further changes in allocations for the term of the contracts, to allow Native American tribes to make appropriate resource decisions. Both tribes and customers commented that Western should work out arrangements for tribes to receive the benefits of Federal power through bill crediting or other beneficial arrangements.

A comment was also made that Western should commission a study to determine tribal loads within the SLCA/IP marketing area.

Western's Response

Effective October 1, 2004, Western will make allocations of SLCA/IP power to eligible new customers which apply for SLCA/IP power. The source of electricity for allocations to the new customers will be a resource pool of SLCA/IP power not extended to existing customers and available beginning October 1, 2004. Western has determined that a resource pool size of 7 percent of resources available on October 1, 2004, combined with an additional reduction to Tri-State Generation and Transmission

Association's (Tri-State) SLCA/IP resource commitment, will enable Western to supply up to 12.5 percent of the current load of new utility applicants and 65 percent of the load of Native American entities that apply.

Western believes that it would be in the best interests of both current customers and potential customers including Native Americans to establish one resource pool of a definite size at this time. Western performed a study of tribal loads within the SLCA/IP marketing area. Western received information on loads from tribes and serving utilities for many potential customers. Others were estimated using data about the size of the tribe and use of electricity in the local area. Western determined that a power pool that would provide Native American tribes enough power to serve 65 percent of their current loads would be equitable to the tribes and to current customers. Serving tribal load at this level would be consistent with DOE policy and the trust responsibility that exists between Native Americans and the Federal Government. Western's study indicates that a resource pool of the size described in this **Federal Register** notice would be sufficient to meet a fair share of Native American loads as well as those of other potential new customers.

In an exemption to the general policy, the four existing firm-power customers of the SLCA/IP that are Native American entities—the Navajo Tribal Utility Authority, the Ak Chin Indian Community, the Bureau of Indian Affairs' Colorado River Agency, and the San Carlos Irrigation Project—will be extended 100 percent of their pro rata share of the SLCA/IP resource available on October 1, 2004. In addition, Western will, if necessary, allocate additional SLCA/IP resources from a resource pool to these or other Native American organizations such that a minimum of 65 percent of the current load of each is served by Federal power resources.

For Native American tribes which currently receive power from utilities that have allocations of Federal power, Western will take into account the benefit received through the existing supplier when determining the power allocation to the tribe.

During the process of allocating the resource pool to customers, which will begin after conclusion of this process, further information on actual loads will be collected and used to determine the final allocations from the resource pool. Western, to the extent it is able, will provide technical assistance to tribes requesting assistance in preparation of their applications and load data. After applications are received and power allocated, unallocated power remaining in the pool may be returned to current customers. If a tribe receives an allocation but is unable to accept power on October 1, 2004, the power allocated to the tribe will be provided to existing customers until such time as the tribe is able to use the power.

Western has also decided that the interest shown by tribes and other potential new customers indicates that the resource pool should be used to serve these loads rather than, as proposed in February 1997, for encouragement of new technologies, conservation, or renewable resources, or held in reserve by Western for contingencies. Other eligibility criteria for allocations of SLCA/IP resources will be addressed in subsequent **Federal Register** notices and mailings to interested parties about the availability of SLCA/IP resources to new customers. Western will initiate a separate public process soon to accept applications from Native American tribes and potential new customers for firm electric service of SLCA/IP power from October 1, 2004, through September 30, 2024.

Finally, Western has agreed to work out arrangements for tribes to receive the benefits of Federal power through bill crediting or other beneficial arrangements.

3. Other Comments

A comment was received that the prices charged by Western for its power sales are too low and that the price should be raised to finance development of alternative forms of energy. Although comments about the pricing of Western power are outside the scope of Western's proposal, Western has a long record of encouraging its customers to conserve energy and develop renewable resources without the need to introduce changes in how its rates are set. Additionally, Western prohibits its customers from profiteering by reselling their Federal power to entities other than their end users. Comments on Western's rates may be addressed when Western issues notices of proposed rate changes. Comments on actions Western might take to further encourage its customers to conserve energy and to develop renewable resources may be addressed later this year when Western begins a formal public process to reconsider its regulations concerning its customers' IRPs.

Another comment suggested that Western should provide an official public comment forum or official public record. Western has provided adequate opportunity for formal comment. Four information and comment forums were held in 1997, and an additional public comment forum was held in Denver, Colorado, on January 6, 1999. Interested parties also were encouraged during each of the three informational meetings, held in early February of 1999, to comment in writing. Letters submitted in response to the January 29, 1999, **Federal Register** notice on resource pool size are part of Western's formal and official record. Western has considered the comments presented by all parties on the proposed 2004 marketing plan. Western has also responded in detail to the comments received as a result of the Notice of Inquiry in a separate document published separately in the **Federal Register**. Those additional comments are incorporated herein by reference.

Several comment letters were received regarding the impact of a pending merger between Tri-State and Plains Electric Generation and Transmission Cooperative (Plains). One member of Plains, Navopache Electric Cooperative (Navopache), is choosing not to participate in the merger and cannot receive a portion of the SLCA/IP power allocated to Plains under the terms of the currently effective power sales contract between Western and Plains. Navopache has asked to receive an independent allocation of power in 2004 to remediate the "overallocation" to Tri-State.

In another exception to the general policy concerning the allocation to Tri-State, Western has decided to allocate to Tri-State 7 megawatts less than 93 percent of Tri-State's pro rata share of the SLCA/IP resource available on October 1, 2004. The 7 mega-watts will be part of the resource pool to be made available to new customers. This additional reduction to Tri-State's allocation is being taken in recognition of the fact that Tri-State would otherwise receive a post-2004 resource commitment based on all of the SLCA/IP power allocation of Plains, even though Navopache has chosen not to use Tri-State as its power supplier. Navopache is welcome to apply for power from the resource pool as a new customer.

In order to provide additional flexibility in addressing changing conditions, the new contracts will have language that gives the Administrator the discretion to adjust a customer's power allocation in the event the customer merges with another organizational entity, acquires or "spins off" another utility, joins or withdraws from a membership-based organization, or adds members from a membership organization.

Dated: June 10, 1999.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 99–16017 Filed 6–24–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

2004 Power Marketing Plan

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of the final 2004 Power Marketing Plan.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing administration of DOE, announces its 2004 Power Marketing Plan (Marketing Plan) for the Sierra Nevada Customer Service Region (Sierra Nevada Region). On December 31, 2004, all of the Sierra Nevada Region's long-term firm Central Valley Project (CVP) power sales contracts will expire. This notice responds to the comments received on the Proposed 2004 Power Marketing Plan (Proposed Plan) and sets forth the final Marketing Plan. The Marketing Plan specifies the terms and conditions under which Western will market power from the CVP and the Washoe Project beginning January 1, 2005. This Marketing Plan supersedes all previous marketing plans for these projects.

Western plans to amend existing customers' power sales contracts to provide them with the right to purchase a percentage of the Sierra Nevada Region's power resources beginning January 1, 2005. After Western more fully develops products and services, it will offer new contracts for the sale of power under the Marketing Plan. Western will request entities who meet the criteria defined in the Marketing Plan, and who wish to apply for a new allocation of power from Western, to submit formal applications. Application procedures will be set forth in the Call for 2005 Resource Pool Applications in a separate **Federal Register** notice.

DATES: The Marketing Plan will become effective July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Power Marketing Manager, Western Area Power Administration, Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, CA 95630, telephone (916) 353–4416.

SUPPLEMENTARY INFORMATION:

Authorities

The Marketing Plan for marketing power after 2004 by the Sierra Nevada Region is being established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c)); and other acts specifically applicable to the projects involved.

Development of the 2004 Power Marketing Plan

Western began developing the Marketing Plan with a series of three informal public information meetings. These meetings helped Western identify pertinent issues and possible marketing options, including types of products and services, and eligibility and allocation criteria. During that process, Western evaluated several options for marketing power after existing contracts expire.

Western began the Administrative Procedure Act process with its Notice of Proposed Plan in the **Federal Register** (62 FR 8710, February 26, 1997). Western held a public information forum on April 8, 1997, to present the Proposed Plan and answer questions. On April 24, 1997, Western held a public comment forum to accept verbal comments on the Proposed Plan. In addition, Western accepted written comments from the public through May 27, 1997. Western considered the comments received in developing the Marketing Plan.

In a separate public process, Western explored the impact of electric utility industry restructuring on Western's power allocation policies. A Notice of Inquiry for this process was published in the **Federal Register** (63 FR 66166, December 1, 1998). Western held a public comment forum on January 6, 1999, and accepted written comments through January 15, 1999. The results of this process will be published in a separate **Federal Register** notice.

Western opened an additional comment period focused solely on the size of project-specific resource pools because several Native American tribes commented on the size of these pools. The Notice of Public Process on Resource Pool Size was published in the **Federal Register** (64 FR 4646, January 29, 1999). Western held informational meetings on its resource pool size proposals and the requirements for receiving an allocation of power in Phoenix, Arizona, on February 3, 1999; Albuquerque, New Mexico, on February 5, 1999; and Folsom, California, on February 9, 1999. Western accepted written comments from the public through March 1, 1999. Western also considered the comments related to the Sierra Nevada Region's resource pool received during this comment period in developing the Marketing Plan.

Western will market the Sierra Nevada Region's power resources consistent with the Power Marketing Initiative under the Energy Planning and Management Program (EPAMP) (60 FR 54151, October 20, 1995). Western will initially offer 96 percent of the Sierra Nevada Region's power resources to existing customers and allocate, under a separate process, the remaining resources using the criteria in the Marketing Plan. Under a separate process, Western will reduce all customers' allocation percentages by up to 2 percent and establish a 2015 Resource Pool. The Marketing Plan provides a balance between existing and new customers, including Native American tribes, while meeting Western's contractual obligations that continue beyond 2004. If unexpected circumstances cause early termination of existing electric service contracts, Western may market its power resources under the Marketing Plan before January 1, 2005.

Background

CVP power facilities include 11 powerplants with a maximum operating capability of about 2,044 megawatts (MW), and an estimated average annual generation of 4.6 million megawatthours (MWh). Western markets and transmits the power available from the CVP.

Western owns the 94 circuit-mile Malin-Round Mountain 500-kilovolt (kV) transmission line (an integral section of the Pacific Northwest-Pacific Southwest Intertie (Pacific Intertie)), 803 circuit miles of 230-kV transmission line, 7 circuit miles of 115-kV transmission line, and 44 circuit miles of 69-kV and below transmission line. Western also has part ownership in the 342-mile California-Oregon Transmission Project. Many of Western's existing customers have no direct access to Western's transmission lines and receive service over transmission lines owned by other utilities.

The Washoe Project, Stampede Powerplant, has a maximum operating capability of 3.65 MW with an estimated annual generation of 10,000 MWh. Sierra Pacific Power Company owns and operates the only transmission system available for access to Stampede Powerplant.

The following table lists estimates of CVP power resources and adjustments. This table is for informational purposes only, and does not imply that the power resources and adjustments shown will

be the actual amounts available or adjustments applied.

ESTIMATED CVP POWER RESOURCES AND ADJUSTMENTS

Power resources/adjustment	Range/value
Annual energy generation	2,400,000–8,600,000 MWh.
Monthly energy generation	100,000–1,100,000 MWh.
Monthly capacity	1,100–1,900 MW.
Annual project use	670,000–1,670,000 MWh.
Monthly project use	10,000–180,000 MWh.
Monthly project use (on peak)	30–230 MW.
Monthly maintenance	0–300 MW.
Reserves—hydro	Minimum 5% of monthly capacity
CVP transmission and transformation losses from the generator bus to a 230-kV load bus	1.8% (currently).

Legal Analysis

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving services applicable to public property.

Environmental Compliance

In compliance with National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*), Council on Environmental Quality NEPA implementing regulations (40 CFR parts 1500–1508), and DOE NEPA implementing regulations (10 CFR part 1021), Western completed an environmental impact statement (EIS) on EPAMP. The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995). Western also completed the 2004 Power Marketing Program EIS (2004 EIS), and the Record of Decision was published in the **Federal Register** (62 FR 22934, April 28, 1997). The Marketing Plan falls within the range of alternatives considered in the 2004 EIS. This NEPA review identified and analyzed environmental effects related to the Marketing Plan.

Marketable CVP and Washoe Project electrical capacity and energy is influenced by available reservoir storage and water releases controlled by the U.S. Department of the Interior, Bureau of Reclamation (Reclamation). Pursuant to the CVP Improvement Act of 1992 (Pub. L. 102–575, Title 34) (CVPIA), Reclamation prepared a programmatic EIS (PEIS) addressing improvements to fish and wildlife habitat stipulated therein, and potential changes in CVP operations and water allocations to meet those obligations. Actions based on the PEIS may result in modifications to CVP facilities and operations that would affect the timing and quantity of electric power generated by the CVP. Such changes may, in turn, affect electric power products and services to be marketed by Western. The Marketing Plan is designed to accommodate these changes. Western is a cooperating agency in Reclamation's PEIS.

Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), Western has received approval from the Office of Management and Budget for the collection of customer information in this rule, under control number 1910–0100.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to services and involves matters of procedure.

Responses to Comments Received on the Notice of Proposed Plan (62 FR 8710, February 26, 1997)

During the public consultation and comment period, Western received 26 letters commenting on the Proposed Plan. In addition, 12 customer and interested party representatives commented during the April 8 and April 24, 1997, public forums. Western reviewed and considered all comments received by the end of the public consultation and comment period, May 27, 1997, in preparing the Marketing Plan.

The following is a summary of the comments received during the consultation and comment period, and Western's responses to those comments. Comments are grouped by subject and paraphrased for brevity. Specific comments are used for clarification where necessary.

I. Public Participation and Process Implementation

Comment: Commentors supported the process Western used in developing the Marketing Plan. One comment expressed concern about the lack of opportunity for public participation.

Response: Western provided opportunities for public participation in preparing the Marketing Plan, 2004 EIS, and EPAMP, as described in this notice.

Comment: Some commentors said that since the contracts do not expire until 2004, Western should delay the Marketing Plan process. This delay would allow time to resolve uncertainty about the future of the industry, and allow other interests time to make arrangements to share power revenues with environmental and clean power goals. Other comments supported developing the Marketing Plan on the proposed schedule to provide customers with lead time for planning purposes.

Response: Because electric utility industry restructuring is already underway, delaying decisions may foreclose options for Western and its customers. To be an active participant in the newly restructured industry, Western needs to identify and work with its future customers to develop specific products to meet their needs. For many of Western's customers, Federal hydropower is a critical component of their resource mix, and knowledge of CVP resource availability is crucial to planning strategies for dealing with utility restructuring. It is important that the Marketing Plan is not delayed because it takes time to develop contracts and arrange for transmission service. Western recognizes the need for flexibility in the changing utility industry and will offer Custom Products, such as firming power and ancillary services, to meet customers' needs. The Marketing Plan will not impact existing arrangements concerning funding of environmental restoration or advancement of clean power goals. These items are discussed more thoroughly in our responses to other comments.

II. Environmental Issues

Comment: Commentors stated that there are unresolved environmental issues associated with the operation of CVP dams, and that environmental protection mechanisms are insufficient or outdated. A commentor stated that if a contract extension decision is part of the Marketing Plan, new environmental protection mechanisms must be developed. Western was urged to create a trust fund(s) in which a portion of Western's existing power revenues would be set aside to mitigate environmental damage associated with operation of the Federal dams and to support the development of energy efficiency and renewable energy. Also, questions were raised as to whether Western has complied with NEPA in developing the Marketing Plan.

Response: Western completed the 2004 EIS in accordance with NEPA, the Council on Environmental Quality NEPA implementing regulations, and DOE's NEPA implementing regulations. The 2004 EIS examined the environmental impacts and identified no significant impacts to the human environment from marketing power from the CVP and Washoe Project. The Marketing Plan falls within the parameters analyzed in the 2004 EIS. The operation of CVP dams is dictated by other authorized project purposes such as flood control, navigation, water supply, and fish and wildlife. Environmental issues associated with the operation of CVP dams are being addressed by the CVPIA PEIS, including direct and indirect impacts on all fish, wildlife, and habitat restoration actions and the potential renewal of existing CVP water contracts. Western is a cooperating agency in Reclamation's PEIS process.

CVP power customers contribute significant revenue to the Restoration Fund, established under the CVPIA, which is designed to mitigate environmental consequences of the operation of Federal dams. Western supports renewable energy through its Policy for the Purchase of Non-Hydropower Renewable Resources (61 FR 43051, August 20, 1996). In accordance with the Energy Policy Act of 1992, Western encourages energy efficiency by requiring all firm power customers to prepare and keep current integrated resource plans.

III. Products and Services

A. Base Resource

Comment: Several commentors requested that Western reconsider its proposal to market power on an as-available basis. Suggestions were made that the Base Resource be further developed, including evaluation of purchasing energy, especially in dry years, to provide some minimum level of firm power and maximize use of the transmission assets available to Western, including the Pacific Intertie. Comments included requests for more information on firm availability, pricing, timing of commitment to purchase the Base Resource, and reliability of the Base Resource.

Response: CVP generation is expected to vary hourly, daily, monthly, and annually, based on hydrological conditions and other constraints that govern CVP operations; therefore, Western cannot accurately predict future availability. However, Western is willing to purchase energy to maintain some firm level of service to all customers. The amount of firming and the use of Western's transmission resources will be further developed by Western through a collaborative process with customers prior to product commitment by a customer. Because Western's rates will be determined through a separate public process, product pricing is outside the scope of the Marketing Plan. However, the costs associated with the hydropower system may be discussed during the collaborative process.

Comment: A commentor stated that the Base Resource concept will require a new and much closer working relationship with Reclamation, Federal water users, and other stakeholders.

Response: Western will continue to develop close working relationships with Reclamation, Federal water users, and other stakeholders.

Comment: One commentor asked if Western will include reserves or other ancillary services in the Base Resource.

Response: The Base Resource may be used in a manner the customer deems most beneficial, within operational constraints. Operating reserves and other ancillary services will be consistent with industry standards or may be provided with the Base Resource or the Custom Product on an as-requested basis. Provision of ancillary services, including reserves, will be developed with customer input.

B. Custom Product

Comment: Commentors suggested that Western develop some "standardized" Custom Products to allow customers to select a more firm service, similar to what is currently marketed. A commentor stated that negotiating with customers individually for firming the Base Resource would be more difficult, less transparent, and would increase risk. One commentor questioned whether the design of Custom Products would potentially cause cost-shifting among customers.

Response: Western designed the Marketing Plan to provide maximum flexibility to its customers. Development of "standardized" Custom Products for a customer or group of customers is not precluded by the Marketing Plan. The Marketing Plan was designed with this possibility in mind. Prior to product commitments, using a collaborative process, Western will develop Custom Products that most closely match customer needs. Using this collaborative approach will help ensure that information about Custom Product options will be available to everyone to minimize the risk of inequities. Also, by considering the needs of all similarly situated customers, due to economies of scale, Western may obtain better prices in the electric utility market when making firming purchases or obtaining other related services. Because all customers will equitably share in the cost of the Base Resource and each customer will pay only for the Custom Products which it specifically requests, any potential for cost-shifting is minimal.

Comment: A commentor suggested that Western needs to consider potential ramping rates if a customer chooses to schedule power deliveries.

Response: Under the Marketing Plan, all customers will be required to schedule power deliveries. Information on ramping rates applicable to the hydropower system will be made available prior to beginning service.

Comment: One commentor stated that preference customers should be allowed to help provide the products and services needed to firm the Base Resource for other customers wanting a firm Custom Product.

Response: The Marketing Plan does not preclude Western or customers from purchasing products and services from any supplier.

C. Exchange Program

Comment: Commentors supported and recommended further development of the concept of the Western-managed exchange program.

Response: Western will complete development of the exchange program through a collaborative process with customers.

D. Energy Banking Arrangements

Comment: A commentor said Western should begin planning now for termination of existing banking arrangements with Pacific Gas & Electric Company (PG&E) under Contract 14–06–200–2948A. If the existing account is "cashed out," the benefits should be shared with all customers. Commentors suggested that Western pursue energy banking and firming arrangements beyond 2004, even though it may be difficult.

Response: Since existing banking arrangements will expire on December 31, 2004, they are outside the scope of the Marketing Plan. Western is willing to explore banking arrangements and other options during further development of the exchange program and Custom Products.

IV. Proposed Resource Percentages/ Pools

A. Allocation Methodology

Comment: A commentor requested that Western accommodate the seasonal nature of agricultural loads.

Response: The Base Resource depends on the generation pattern of the CVP, which is similar to the pattern of agricultural loads. If the Base Resource does not accommodate the seasonal nature of agricultural loads, Western will work with customers to develop Custom Products that will meet the customers' needs to the extent possible.

Comment: One commentor stated the Marketing Plan should not affect its contractual rights through 2004 to increase its contract rate of delivery (CRD) up to 50 MW.

Response: The Marketing Plan does not affect current contractual rights. If necessary, Western will accommodate these CRD increases and will effectuate related CRD decreases as provided for in certain existing contracts.

Comment: A suggestion was made that both energy and capacity should be used to determine customer resource extensions instead of the proposed CRD methodology. A comment further suggested that not using energy penalized customers with higher load factors for maintaining good load shapes. If rates are to be based on a split between capacity and energy, then the allocation should be based on capacity and energy.

Response: Existing customers' current allocations are based on capacity. Western believes that it is equitable to base the existing customers' resource allocation percentages on existing capacity commitments because, under existing contracts, Western's capacity obligation is fixed but the energy obligation is not. Many customer CVP energy purchases are based on economics, not on their load shape or energy entitlement. Unlike the current allocation methodology, the resources available under the Marketing Plan are based on generation rather than load. Basing the right to purchase generation output, which is limited by the capacity of the plants, on a CRD does not penalize customers with high load factors, rather it gives them no greater consideration. Allocating the power resources based on a rate design is not appropriate because the rate design for power sold under the Marketing Plan has not been determined and may be different from today's rate design.

B. Allocation Amounts

Comment: Western was requested to increase the 2005 Resource Pool percentage. Another comment requested withholding application of the Power Marketing Initiative, particularly during the period from 2005 through 2014 (when the Sacramento Municipal Utility District (SMUD) settlement is in effect).

Response: Comments received did not provide rationale for changing the resource pool percentages. However, Western considered many factors in determining the magnitude of the resource pools. Those factors included: (1) The loads of preference entities that applied for but did not receive power under the 1994 Power Marketing Plan; (2) impacts of restructuring and open transmission access; (3) the potential for new loads, including those of Native American tribes; and, (4) existing customer loads with limited Federal power compared to their needs. After careful consideration, Western determined that the combined resource pools in 2005 and 2015, totaling up to 6 percent of the Base Resource, would be equitable for potential new customers as well as existing customers. Withholding application of the Power Marketing Initiative (establishment of the resource pools) would potentially eliminate the ability of Western to serve new customers that may benefit from a Federal power allocation.

Comment: Some commentors stated that Western should maximize the global value of its Base Resource by minimizing both reductions and increases in the allocations that Western's current customers receive.

Response: The Marketing Plan provides for minimal increases or reductions in the pro rata amount of the power resources available to existing customers. However, due to the expiration of Contract 14–06–200–2948A with PG&E, and the associated firming arrangements, the Sierra Nevada Region may not be able to market power at the same level as in the past. Under the Marketing Plan allocation method, each allottee will receive a percentage of actual generation. The amount of power associated with an allocation percentage will vary, based on hydrological conditions and other constraints that govern CVP operations. The Marketing Plan attempts to mitigate reductions in availability or usability of the power resources for meeting customers' loads by offering the Custom Product, which could include a level of firming purchases.

Comment: A comment requested that allocation amounts reflect a customer's CRD as opposed to actual load.

Response: Western has decided that an existing customer's allocation percentage will be based on the customer's extension CRD. Western will adjust the existing customer's percentage if its actual load is less than the extension CRD. This criteria was adopted because Western does not believe it is sound business practice to allocate power based on a historical CRD that has never been fully used.

Comment: Commentors requested that temporary allocation increases remain with the current recipients.

Response: Contracts implementing the temporary reallocations provide that the original CRD be returned to the original customer.

Comment: One commentor suggested that the minimum load requirement for the resource pools be 500 kW instead of 1 MW.

Response: To avoid precluding smaller entities from receiving allocations from the resource pools, Western has modified the Marketing Plan to allow requests to serve loads that are less than 1 MW, but at least 500 kW, if they can be aggregated so Western can schedule and deliver to a minimum load of 1 MW.

Comment: A commentor objected to Western's approach regarding SMUD's rights under the 1983 Settlement Agreement in the Proposed Plan. The commentor urged Western to reach an accommodation with SMUD that would provide for SMUD's resource extension to be made on the same basis as all other existing customers, and questioned the logical basis for the fraction 360/1,152.

Public participation and joinder in regard to the SMUD settlement were also questioned. Further, it was recommended that if SMUD does not voluntarily agree to a reasonable accommodation, Western should recoup the over-allocation during the second 10-year period. Another commentor supported Western's approach.

Response: Contract DE–MS65–83WP59070 (Settlement Agreement) between Western and SMUD, dated April 15, 1983, provides that SMUD has a right to purchase 360/1,152 of all power allocated or sold by Western on or after January 1, 2005, through December 31, 2014. This Settlement Agreement was reached to resolve a lawsuit, *United States of America* v. *Sacramento Municipal Utility District*, Civil No. S–75–277, United States District Court for the Eastern District of California. The Marketing Plan is designed to mitigate the impacts of the Settlement Agreement on other customers by offering an Optional Purchase, which is equal to the additional amount of power allocated to SMUD. Western will adjust SMUD's percentage of the available resources after 2014 to put it on the same basis as other existing customers. The adjustment will include the amount that would have been contributed to the 2005 Resource Pool by SMUD in absence of the Settlement Agreement. Western does not agree that SMUD will receive an over-allocation for the first 10 years under the Marketing Plan because SMUD's percentage allocation is specified in the Settlement Agreement. Therefore, SMUD should not be penalized during the second 10 years of the Marketing Plan. The fraction 360/1,152 referenced in the Settlement Agreement represents SMUD's CRD of 360 MW and Western's maximum simultaneous load level of 1,152 MW at the time of the settlement.

Allowing public participation in litigation would severely undermine Western's ability to protect the Government's interest. Western is not required to join every preference customer or every potential preference customer in a lawsuit in which Western is a party. Upon proper motion, the court determines when and if joinder of a person is needed for just adjudication.

C. Allocations Due to Special Circumstances

Comment: Commentors requested that CVP power continue to be available at cost to long-term customers. If these customers do not receive a power allocation under the Marketing Plan, the economic consequences would be significant.

Response: Western will offer the greater portion of the CVP resources to existing customers. The economic analyses done for the 2004 EIS showed that the greatest socioeconomic benefits would be expected to occur if Western's existing customers continued to receive power from Western.

Comment: A few commentors stated that Federal hydroelectric power should be used to benefit the public. They suggested that Western give priority to those who meet certain additional criteria, including, demonstrating environmental responsibility in mitigating any damages associated with Federal dams; developing and/or integrating solar and other renewable energy and energy efficiency into their resource mix; supporting educational institutions; and not requiring supplemental purchases.

Response: Western markets power in a manner that will encourage the most widespread use at the lowest possible rates consistent with sound business principles. Within broad statutory guidelines and operational constraints of the CVP, Western has wide discretion as to whom and under what terms it will contract for the sale of Federal power, as long as preference is accorded to statutorily defined public bodies. Western cannot measure the value of the public benefits provided by an entity when allocating its power and, therefore, will not base an allocation on an entity's mission. Although not specifically addressed in the Marketing Plan, Western supports programs for the public good.

Western supports renewable energy through its Policy for the Purchase of Non-Hydropower Renewable Resources, and encourages energy efficiency by requiring all firm power customers to prepare and keep current integrated resource plans. Further, CVP power customers contribute significant revenue to the Restoration Fund, established under the CVPIA, which is designed to mitigate environmental consequences of the operation of Federal dams.

Comment: A comment suggested that priority be given to entities with longstanding requests.

Response: Previous requests were considered in determining the size of the resource pool. Western receives numerous requests for power and does not believe a previous request should be given a higher priority over requests by qualified entities that have not applied previously.

Comment: A commentor suggested Western give higher priority to entities that can readily accept an allocation.

Response: The Marketing Plan includes eligibility criteria requiring that all applicants requesting power must be ready, willing, and able to receive and use or distribute Federal power.

Comment: Western was requested to extend the spirit and concept of the National Defense Authorization (NDA) Act. Several comments requested that the definition of extension CRD be modified so that NDA Act power used for economic development is not excluded. By doing so, entities receiving allocations of NDA Act power for economic development purposes would be eligible for resource extensions under the Marketing Plan. One comment stated that the definition of extension CRD violates the provisions of the NDA Act because the legislation requires that NDA Act power be reserved for allocation for a 10-year period (commencing November 30, 1993). This commentor contends that the legislation provides for allocations made during this 10-year period to extend past December 31, 2004. Commentors requested that NDA Act power extend through the completion of economic development. Another commentor requested that Western not extend the provisions of the NDA Act past December 31, 2004.

Response: The Proposed Plan is consistent with the NDA Act. However, Western has reconsidered its position regarding allocations for NDA Act customers. Western has decided to extend the spirit and concepts of the NDA Act to those existing customers receiving NDA Act power for economic development purposes, provided those customers continue to meet the eligibility requirements for an allocation under the Marketing Plan. The Marketing Plan has been modified to reflect this change.

V. General Criteria and Contract Principles

Comment: A commentor suggested that, under take-or-pay provisions, the resale (remarketing) prohibition should be eliminated. Other commentors stated that, in the competitive environment, Western will not be able to enforce the resale prohibition, and customers will receive an unfair advantage with the ability to "profiteer" in regional electricity markets.

Response: Western is not convinced that the prohibition on reselling Federal power should be eliminated due to the take-or-pay provisions. Customers' loads are expected to be sufficient to use all available Western power most of the time. Western realizes that, at times, due to the variability of CVP generation,

some customers may not be able to use their full power allocation. Therefore, Western will establish and manage an exchange program. Any Western power that cannot be used on a real-time basis must be offered to Western or to other preference customers under this program.

Comment: A comment suggested Western consider marketing a portion of CVP capacity to the California Power Exchange or other marketers.

Response: Western markets power first to preference entities under Reclamation laws. However, if Western is unable to market all of its power to preference entities, it may be sold to others.

Comment: Many commentors supported the 20-year contract term, citing the additional value of a long-term contract which allows customers who purchase Federal power greater stability in planning for future resources than would exist with a shorter contract term.

Other comments objected to a 20-year contract term citing reasons for a shorter contract term. One commentor suggested contract terms of no more than 5 years or auctioning contracts to qualified bidders.

Response: The 20-year contract term provides greater resource certainty for Western customers in a restructured industry, and greater certainty of revenues for project repayment by Western. Shorter contract terms degrade the marketability of the resource and create an administrative burden. An EIS, which included a significant amount of analysis as well as a public involvement process, was conducted on the provisions of EPAMP, including a 20-year term. The EPAMP EIS found that longer contract terms were positive for the environment, as customers were more likely to invest in renewable resources if they had a stable foundation of Federal hydropower. Short-term contracts could lead customers to develop resources that are cheaper in the short term but more environmentally adverse. Future load requirements are not a significant consideration as Western is a partial requirements provider and is generally not responsible for meeting customer load growth.

Contract extensions would not preclude any Congressional or administrative actions because contracts or rate changes could be included as part of a sale or restructuring package. The Marketing Plan does not impact or preclude future operational changes at Federal dams because Western will market only the available power generation. Because Western is required to market power at cost-based rates, auctioning contracts is not practical. Power must be sold to preference entities first and not just to the highest bidder. Western has included the 20-year contract term in the Marketing Plan.

VI. First Preference

Comment: A comment supported using 20-year average historical generation to calculate the maximum entitlement of first preference customers (MEFPC), rather than a 5-year average. Other commentors stated using 20-year average historical generation to calculate the MEFPC is inappropriate because it does not account for generation lost due to fishery restoration operations and other environmental factors, would unfairly penalize other preference customers, and would exceed statutory requirements. A commentor stated that first preference customers should not be immune to the vagaries of generation. Some comments requested a floor MEFPC be established, based on generation prior to CVPIA operations. Using all historic generation before fishery restoration was also suggested.

Response: The New Melones Project provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192) and the Trinity River Division (TRD) Act (69 Stat. 719) (Acts) specify that first preference customers are entitled to up to 25 percent of the power generated as a result of the construction of the New Melones Project and the Trinity River Division (first preference projects). Under its discretionary authority, Western determines how the entitlements are to be calculated. Western believes the most recent 20-year average historical generation is consistent with the Acts because it accounts for generation resulting from the first preference projects under a variety of hydrological conditions, and takes into consideration impacts of changing operations such as those contemplated under the CVPIA. The Acts do not guarantee a minimum amount of power to the counties of origin; therefore, Western does not believe a floor MEFPC is appropriate.

Comment: A commentor requested more information on the calculations used to determine the MEFPC.

Response: The Marketing Plan specifies the data to be used and how the MEFPC will be calculated.

Comment: A commentor questioned why the MEFPC will only be adjusted if, upon recalculation, it is 10 percent above or below the currently effective MEFPC.

Response: To eliminate minor or short-term fluctuations, Western has decided to adjust only for a 10 percent or greater difference in the MEFPC.

Comment: Comments were received both in favor of and in opposition to the first preference customers' full requirements option at the Base Resource rate, without the take-or-pay provision. One commentor stated that all customers should be treated economically the same.

Response: The full requirements option will be supplied from the same power resources as the Base Resource; therefore, it is reasonable to apply the Base Resource rate. It is not appropriate to apply the take-or-pay provision to the full requirements option because the first preference customers will not have a fixed percentage amount under this option. Western will continue to offer the full requirements option to the first preference customers.

Comment: A commentor said he assumed that the load factor referred to in the full requirements option is intended to apply only to those first preference customers who cannot measure their demand.

Response: In the future it may be necessary to determine a maximum capacity from the MEFPC. This calculation will require use of a load factor for each first preference customer. However, it will not be necessary to provide a load factor in the contracts, and the Marketing Plan now reflects this clarification.

Comment: Some commentors who opposed the full requirements option stated that it is beyond Western's statutory requirements and is unfair to the other customers. It was suggested that a daily entitlement be established based on actual generation. First preference customers should be provided with the Base Resource and should pay the cost of creating a Custom Product in the same manner as all other customers.

Response: The Acts specify that first preference customers are entitled to receive up to 25 percent of the additional power generated as a result of construction of the first preference projects. Western has discretion in how it fulfills the requirements of the Acts. When Congress authorized construction of the first preference projects, it balanced the concerns of the counties of origin and the benefits the first preference projects would have to the entire CVP. Western believes that Congress attempted to provide a fair remedy to all parties involved. It is within the spirit of the Acts to make the maximum amount of the MEFPC available to the first preference customers to the extent it can be used to meet their loads. Power deliveries under this option would be nearly identical to what they are today. Western believes this arrangement will have minimal impact on the other customers; therefore, we will continue to offer the full requirements option.

Comment: Comments requested that first preference customers who choose the percentage option be allowed to participate in the exchange program, using some or all of their MEFPC.

Response: Under the percentage option, first preference customers would be allowed to participate in the exchange program to the same extent as the other customers.

Comment: A commentor suggested that the Marketing Plan should provide for first preference customers to receive 25 percent of the energy generated from the TRD, exactly as the legislation provides, at the cost to produce that energy.

Western was requested to provide additional options that would allow first preference customers to schedule up to 25 percent of the energy produced as a result of the first preference projects, at prices that reflect the cost to produce first preference project energy. Options should provide for first preference customers to call upon historic generation that they did not use during times when 25 percent of first preference project energy is less than their load. If first preference customers are not allowed to call upon historic generation that they did not use, Western should allow them to trade or bank some of the 25 percent of what is produced by the first preference projects in the future.

Other comments recommended that the Marketing Plan should reflect past legal resolution of issues regarding use and pricing of first preference power.

Response: The Acts do not provide for Western to furnish more power than can actually be used by the first preference customers within the counties of origin. First preference customers are not entitled to historic generation they were unable to use. Also, the Acts do not provide for energy banking arrangements. With respect to providing the energy at the cost to generate power at the first preference projects, both Acts state,

> * * * contracts for the sale and delivery of the additional electric energy available from the Central Valley Project power system as a result of the construction of the plants * * *

In *Trinity County Public Utilities District vs. Harrington* (781 F.2d 163 (9th Cir. 1986)), the court held that since the first preference projects are operationally and financially integrated with the CVP, the first preference customers should pay rates based on the operating costs of the CVP system.

Comment: It was requested that a menu of services be offered to the first preference customers, coupled with certain first preference rights, like the sale of energy at first preference project cost.

Response: First preference customers are offered two options—the full requirements option and the percentage option. Under the percentage option, first preference customers may choose to customize their allocation with the Custom Product and participate in the exchange program. See Western's response above concerning rates for first preference customers.

Comment: One commentor stated that the percentage option could not be used by first preference customers to gain greater benefits than would be available under the full requirements option, even though they are entitled to greater benefits. The commentor suggested that, other than a few differences, the percentage option makes first preference customers almost equal to other customers.

Response: The principal benefit granted to first preference customers under the Acts is the first right to purchase a portion of the additional generation made available to the CVP as a result of the construction of the first preference projects, for use in the counties of origin. Under the percentage option, the first preference customers' allocations will be determined similarly to the other customers. However, first preference customers' allocation percentages will be based on their actual loads, not on a CRD. First preference customers will not be subject to adjustments in their allocation percentages for the resource pools. Additionally, first preference customers will have the opportunity to adjust their allocation percentages, with a 7-month notice to and approval by Western, up to their share of the MEFPC. Western believes that both the percentage option and the full requirements option provide the benefits required under the Acts.

Comment: One commentor stated that 12 months of load data is not reflective of actual usage, and requested that Western modify the factors used in the calculation to determine a first preference customer's percentage.

Response: Western has modified the Marketing Plan to provide for the maximum demand during the previous 4 years to be used in determining an allocation percentage under the percentage option.

Comment: A few commentors stated that Western is required under both Acts to provide transmission services to first preference customers. Additionally, Western was requested to commit to provide transmission service with the basic service at the basic rate to the first preference customers. One commentor suggested that first preference customers should be exempt from Section V.G.

Response: The TRD Act authorizes Western to provide electric transmission facilities as may be necessary to furnish energy to Trinity County. Western owns transmission facilities in Trinity County. Should additional facilities be required, appropriations or customer advancement of funds would be necessary before such facilities could be constructed. There is no similar clause in the New Melones Project provisions of the Flood Control Act of 1962 with respect to Calaveras and Tuolumne Counties. Western will assist in providing transmission service to the first preference customers. Although Western is willing to assist, all customers are ultimately responsible to provide for the delivery of Federal power to their loads. Accordingly, Section V.G, requiring customers to obtain their own third-party transmission service, is applicable to all customers.

Western has voluntarily filed an Open Access Tariff consistent with FERC Order No. 888. Transmission costs will be identified separately from power costs, and all transmission users will bear an equitable share of those costs.

Comment: Comments were received both in favor of and in opposition to the provisions of the Proposed Plan relating to the first preference customers. Those in favor of the provisions stated they are appropriate and encouraging. Those in opposition stated the provisions exceed Western's requirements under the Acts and provide the first preference customers with better products than those offered to the other customers. Some first preference customers indicated dissatisfaction with the benefits they are currently receiving under their respective Acts in comparison to the sacrifices they made to allow construction of the first preference projects.

Response: To compensate the counties of origin for their sacrifices, both Acts require Western to provide the counties of origin with the amount of energy they can use, up to 25 percent of the additional energy generated by the CVP as a result of the construction of the respective first preference projects. Under its discretionary authority, Western determines the manner in which this energy is made

available to first preference customers. Western believes it is appropriate to continue to provide these customers with the opportunity to choose between the two options in the Marketing Plan. This will allow those customers to decide how to make the best use of the benefits they are entitled to receive. Whether either of the options results in a "better" product than that received by other customers would depend on many factors outside of Western's control, such as future energy prices, and is secondary to meeting the spirit and intent of the Acts.

Comment: A comment requested that Western provide a summary supporting the Marketing Plan's compliance with the TRD Act.

Response: Section 4 of the TRD Act of 1955 states,

> Contracts for the sale and delivery of the additional electric energy available from the Central Valley Project power system as a result of the construction of the plants herein authorized and their integration with that system shall be made in accordance with preferences expressed in the Federal reclamation laws: *Provided*, That a first preference, to the extent of 25 per centum of such additional energy, shall be given, under Reclamation law, to preference customers in Trinity County, California, for use in that county, who are ready, able, and willing within 12 months after notice of availability by the Secretary, to enter into contracts for the energy: *Provided further*, That Trinity County preference customers may exercise their option on the same date in each successive fifth year providing written notice of their intention to use the energy is given to the Secretary not less than 18 months prior to said date.

In accordance with the TRD Act, Section VI of the Marketing Plan provides that Western will calculate and make available to preference customers/entities in Trinity County, to the extent they can use it within that county, 25 percent of the additional energy made available to the CVP as a result of the construction of the TRD. These first preference customers have the right to this power before it is made available to other preference customers. Both options provide that the power be made available to these first preference customers to meet their needs, and the amount of power can be increased until it reaches the limit set forth in the TRD Act. A first preference entity may exercise its rights to use a portion of the MEFPC by providing written notice to Western at least 18 months prior to the anniversary date of the first preference project located in its county.

Comment: A commentor supported dividing the MEFPC from the New Melones Project between Calaveras and Tuolumne Counties. That commentor requested a provision be added to the Marketing Plan, allowing the counties of Calaveras and Tuolumne to combine their allocations for the purpose of joint load management.

Response: Western is willing to consider combining allocations for the New Melones' counties of origin if it is requested by the affected parties. Such an arrangement is an operational procedure and does not need to be specified in the Marketing Plan.

Comment: A comment suggested that Western should share the revenue received from sales of unused first preference power with the first preference customers.

Response: Under applicable legislation, there is no basis to share revenues with the first preference customers.

Comment: Some first preference customers stated that they are assuming that they will not be charged for scheduling services. Western was requested to clarify the phrase "scheduling arrangements" (Proposed Plan Section V.C).

Response: The phrase "scheduling arrangement" as used in Section V.C of the Proposed Plan was included because Western anticipates that power deliveries will no longer be determined after the fact, which is allowed under Contract 14–06–200–2948A. Schedules will be agreed upon prior to delivery. Scheduling is required under both options for the first preference customers, as well as for all other customers. Under the restructured electric utility industry in California, Western or the customer's scheduling agent will be required to provide schedules for all power deliveries within the California Independent System Operator (ISO) control area. The first preference customers may perform their own scheduling or contract with Western or a third party to perform scheduling services. If Western is requested to perform scheduling services, the cost will be borne by each customer requesting such service. This cost will be identified separately from the Base Resource rate.

Comment: Commentors requested that Western clarify the phrase "power requirements" (Proposed Plan Section VI.D.1).

Response: The reference to "power requirements" as used in Section VI.D.1 of the Proposed Plan means the capacity and energy necessary to serve a first preference customer's load from that first preference customer's share of the MEFPC. The statement concerning power requirements has been clarified in the Marketing Plan.

Comment: A commentor requested that Western clarify the statement in Section VI.B of the Proposed Plan that Western may purchase power on behalf of the first preference customers to compensate for any power loss due to recalculation of the MEFPC.

Response: This provision has been clarified in the Marketing Plan.

Comment: Comments were received stating that priority should be given to first preference entities that are wholly located within the counties of origin. Also, if a contract extension is granted to a first preference customer or a new contract is executed with a first preference entity that is not entirely located within a county of origin, it should be for power withdrawable to serve first preference customers/entities that are wholly located within that county of origin. A comment also requested the definition of a first preference customer/entity include the following language,

> one which serves and provides a direct and measurable benefit to the residents of the counties of Trinity, Calaveras, and Tuolumne.

Response: The definition of a first preference customer/entity must be consistent with the Acts and Reclamation law. Both Acts provide for electric service to be made available to entities who qualify for preference under Reclamation law and are located in their respective counties. Therefore, entities located in Tuolumne, Calaveras, or Trinity Counties who are preference entities qualify for first preference rights. The Marketing Plan is consistent with the Acts.

Comment: A commentor said he assumed that Section VI.E of the Proposed Plan is applicable only to new first preference customers.

Response: Section VI.E of the Proposed Plan, regarding applications for first preference power, applies only to first preference entities. First preference entities are entities who are qualified to use, but are not currently using, preference power within a county of origin. They are qualified to be first preference customers but are not yet customers.

Comment: One commentor suggested that first preference customers had been inappropriately exempted from Section V.B, allocation percentage adjustment clause, as referenced in Section VI.J of the Proposed Plan.

Response: Western has determined that Section V.B will be applicable to the first preference customers, and the Marketing Plan has been so modified.

VII. Transmission

Comment: One commentor stated that Western's transmission obligations under separate transmission contracts must be honored. Another commentor asked how Western plans to deal with the DOE Labs' 100 MW entitlement on the California-Oregon Transmission Project and their capacity entitlement on the Tracy Tie Line.

Response: The Marketing Plan does not modify Western's existing contractual transmission rights or obligations, including DOE's entitlements.

Comment: A commentor expressed concern that the unbundling of transmission service from power services would have an adverse impact on Western's customers, and Western should not require customers to go through a separate process to obtain transmission. It was suggested that Western make a "delivered" product available, or otherwise use transmission assets to firm the Base Resource, particularly in dry years. It was further suggested that, if customers use the transmission systems of others for delivery of CVP power, they should still be responsible for a portion of Western's transmission system costs.

Response: Western is not a FERC jurisdictional utility, but has agreed to comply with the spirit and intent of FERC Order No. 888, to the extent it does not conflict with Western's legislative mandates. If it is feasible in the restructured electric utility industry, Western is willing to evaluate bundled services, including use of its transmission access to the Northwest, during further development of the Base Resource, Optional Purchase, and Custom Products. All customers who use Western's transmission system will share cost responsibility for the transmission system.

Comment: One commentor stated that Western's current Pacific Intertie transmission service level does not fully reflect Western's ownership of its portion of the Pacific Intertie.

Response: Western's current level of Pacific Intertie transmission is outside the scope of the Marketing Plan.

Comment: One commentor stated that Western needs to consider its products' impacts on other customers, particularly Western's direct-connect customers who rely on Western's transmission system.

Response: Western considered the potential impacts of its products on all customers, including direct-connect customers. It is Western's intent to offer products which are useful and beneficial to all customers.

Comment: One commentor objected to Western's proposal to assess transmission losses to customers that are directly connected to Western's transmission system.

Response: Under the Marketing Plan, power will be available as a system sale, not from specific points of generation. It is necessary to account for the power that is lost between generation and load. Therefore, all power deliveries using the CVP transmission system will be subject to loss assessments.

Comment: One commentor requested Western assume a position of advocacy on its customers' behalf in regard to access and pricing of third-party transmission. Western was urged to reserve sufficient capacity on its transmission system to accommodate its customers' requirements for wheeling of both CVP and purchased firming power. Western was encouraged to explore ways in which its customers will have a superior entitlement to schedule capacity on Western's transmission system, while avoiding the problem of double-billing for transactions utilizing both the Federal and non-Federal systems.

Response: Access to and pricing of third-party transmission is outside the scope of the Marketing Plan. Western will provide transmission services as appropriate in conjunction with its power sales in a manner consistent with FERC Orders and legislated mandates. Use of Western's transmission resources will be determined as the products and services to be provided by Western are further developed.

VIII. Pricing and Rates

Comment: Commentors expressed concerns that, in order to commit to a long-term Marketing Plan, a clear idea of prices and availability of power is needed. They stated that the bulk power market is often trading below Western's current price range, and uncertainties such as the Restoration Fund make it even more unattractive to choose Western.

Response: Western will sell the Base Resource at a cost-based rate, and the Custom Product at a pass-through cost. The ratemaking process is separate from the Marketing Plan; however, as in all Administrative Procedure Act processes, public participation will be encouraged. Costs and availability will be more clearly identified by the time commitments are required for the Base Resource.

Western has no control over Restoration Fund costs; however, Western is striving to minimize Western components of power costs and customize products in an attempt to provide the best possible service at the lowest possible rates consistent with sound business principles. Western expects its prices to be at or below the bulk market by the time the Marketing Plan goes into effect.

Comment: Although the take-or-pay method was commented upon favorably, some commentors stated take-or-pay contracts require details on prices and products, and are unrealistic unless they are for short terms. A comment was received favoring cost-of-service ratemaking with a take-or-pay provision for "must-run power."

Response: The take-or-pay approach is expected to provide adequate revenues to ensure project repayment. The Base Resource will be sold at a cost-based rate that will be developed in a public process in which customers and interested parties may participate. Other products will be sold on a pass-through-cost basis. By the time product commitments are required, individual customer need and pricing and availability information will be more clearly defined.

Comment: A commentor requested that Western negotiate for firming resources on behalf of its entire customer base so that certain customers will not be competing in the bulk power market against Western.

Response: The Marketing Plan reflects the option for Western to negotiate for firming as part of the Custom Product on behalf of its entire customer base, a group of customers, or individual customers, if requested by those customers.

Comment: Western should postpone a decision on Washoe Project cost recovery until more definitive information can be provided.

Response: Western believes all necessary information concerning the marketing of Washoe Project power is available and has been considered. Western sees no benefit in delaying the decision to market Washoe Project power with the CVP resource.

IX. Industry Restructuring

Comment: A commentor stated that restructuring has changed the rules of the game to the point that Western's proposals are inconsistent with public interests. Another commentor encouraged Western to retain flexibility to accommodate changes in the industry.

Response: Western believes it is in the public interest to provide some resource certainty to its customers and to protect the Federal investment in project facilities. The Marketing Plan is designed to be flexible enough to respond to changes in CVP operations and the industry, and to provide the

greatest value to customers and the Federal Government.

Comment: A commentor asked if joining the California ISO will pose any problems for Western.

Response: Whether Western will join the California ISO is a separate decision from development of the Marketing Plan. The Marketing Plan does not preclude Western's participation in the California ISO.

Comment: A commentor suggested that Western should recognize the new competitive market and help its preference customers wherever possible with competition transition charge problems.

Response: Western designed the Marketing Plan to be flexible to respond to changes in the industry and provide the greatest value to its customers. Products and services available under the Marketing Plan can be customized to meet individual customer's needs in the new competitive market.

Competition transition charges are outside the scope of the Marketing Plan.

Responses to Comments Received on the Notice of Public Process on Resource Pool Size (64 FR 4646, January 29, 1999)

During the public consultation and comment period, Western received five letters commenting on the Sierra Nevada Region's resource pool size. No comments were received during the February 9, 1999, public meeting in Folsom, California. Western reviewed and considered all comments received by the end of the public consultation and comment period, March 1, 1999, in preparation of the Marketing Plan.

The following is a summary of the comments received during the consultation and comment period, and Western's responses to those comments.

Comment: Some comments stated that the proposed sizes of the resource pools were adequate to meet the needs of new customers, including the fair share needs of eligible Native American tribes.

Response: Western considered the needs of new customers, including Native American tribes, when determining the sizes of the resource pools during development of the Marketing Plan. Western concurs with this comment.

Comment: A commentor stated that a larger allocation percentage, such as 30 percent, would be necessary for certain Native American tribes in Southern California. That commentor also suggested that an allocation be set aside for them and dedicated to tribal economic development.

Response: Southern California is outside the primary marketing area of the Sierra Nevada Region. The Desert Southwest Customer Service Region of Western serves Southern California and will develop its marketing program prior to the expiration of its current electric service contracts.

Comment: As Western's Marketing Plan becomes more definitive, it would be beneficial for PG&E to review the Marketing Plan in advance to assure consistency with any possible post-Contract 14–06–200–2948A (integration contract with PG&E) contractual relationship.

Response: Under the Administrative Procedure Act, Western cannot discuss the final Marketing Plan with any entities prior to publication.

Comment: In determining the level of benefits to Native Americans, Western should take into account the benefits currently received through rural electric cooperatives serving the reservations. Western should attempt to fairly distribute the benefits of low-cost Federal hydropower, ensuring equity among all eligible tribes and existing customers.

Response: The allocation and eligibility criteria in the Marketing Plan were developed to ensure the benefits of Federal power were equitably distributed among new customers, including eligible Native American tribes, and existing customers.

Comment: Power could be provided to a utility to serve a tribe; however, the tribe would actually hold the allocation. By way of a bill crediting system, the Federal power benefits could be passed on to the tribe through a credit on its utility bill.

Response: Western intends to allocate power directly to any eligible Native American tribes that apply for power. The Sierra Nevada Region will work with tribes to receive power under the California direct access rules or other applicable arrangements, which may include bill crediting.

Comment: If a Native American tribe establishes a utility and seeks an allocation from the resource pool, that tribal utility should be treated as a utility applicant and subject to the same qualifications and provisions to which all Federal power customers are subject.

Response: Native American tribal utility applicants will be treated similarly to other utility applicants.

Summary of Revisions to the Proposed Plan

Western revised the Marketing Plan as a result of the comments received during the comment period and public forums. Additionally, some changes have been made to more clearly define the intent, but do not change the original proposal. The major revisions are summarized as follows.

The definitions of administrator, curtailable power, diversity power, load factor, long-term, NDA Act power, peaking, power marketing initiative, unbundled, and withdrawable have been deleted. These definitions were deleted because they are not necessary terms in the final Marketing Plan. The definition of customer was deleted and will be used as a generic term to refer to new allottees and/or existing customers. A definition for the Optional Purchase was added to assist in understanding that product. These modifications appear in Section J, and are used throughout the Marketing Plan.

In the formulas in Section IV.A.1 and IV.A.2, Western will base an existing customer's allocation percentage on its extension CRD as of December 31, 2003, rather than December 31, 2001. Western will adjust an existing customer's percentage on December 31, 2003, if its maximum monthly peak load for the previous 3 years is less than its extension CRD, rather than basing the existing customer's extension CRD on 104 percent of its load during the previous 4 years. This modification also appears in Appendix A.

Extension CRD was modified to include NDA Act power used for economic development. This modification appears in Section I and Appendix A.

Western has decided not to market unused first preference power on a withdrawable basis. Unused first preference power will be included as part of the Base Resource and available to all other customers. Sections I and III were modified. Section V.F of the Proposed Plan has been deleted.

The commitment date has been changed to December 31, 2000, for the Base Resource and Optional Purchase, and to December 31, 2002, for the Custom Product. Additionally, Western may extend the commitment dates for the Base Resource, Optional Purchase, and Custom Product if Western determines it is in the best interest of Western and the customers. This modification appears in Sections III and V.

Unused power resources may be marketed outside the primary marketing area. This modification appears in Section III.

Existing customers must commit to the Optional Purchase for a 10-year period, from January 1, 2005, through December 31, 2014, rather than an annual or greater period. This modification appears in Section III.

The Call for Resource Pool Applications will be published in a separate **Federal Register** notice. This modification appears in Section IV.B.2.e.

Existing customers may apply for a resource pool allocation if their extension CRD is not more than 15 percent of their peak load in the calendar year prior to the Call for Applications, rather than calendar year 1996. This modification appears in Section IV.B.2.g.

Requests to serve new loads that are less than 1 MW, but at least 500 kW, will be allowed if they can be aggregated so Western can schedule and deliver to a minimum load of 1 MW. This modification appears in Section IV.B.2.h.

Western will base a resource pool allocation on an applicant's peak demand during the calendar year prior to publication of the Call for Applications. The amount used to determine a resource pool allottee's allocation percentage will not be rounded up to the nearest 100 kW. This modification appears in Section IV.B.3.b.

Eligible Native American entities will receive greater consideration for an allocation of up to 65 percent of their peak load in the calendar year prior to the Call for Applications. This modification appears in Section IV.B.3.e.

First preference customers will be subject to Section V.B, which clarifies that allocation percentages provided for in the Marketing Plan and the electric service contracts shall be subject to adjustment. This modification appears in Sections V.B and VI.K.

Contracts will include a clause specifying criteria that customers must meet on an ongoing basis to be eligible to continue receiving electric service from Western. This modification appears in Section V.F.

Although Western may assist, each customer will be responsible for obtaining its own delivery arrangements to its load. This modification appears in Section V.G.

Western may reduce or rescind a customer's allocation percentage, upon 90-days notice, if Western determines that the customer is not using the power to serve its own loads or the allocation amount is consistently greater than the customer's maximum peak load. This modification appears in Section V.K.

Contracts may include a clause providing for alternative funding arrangements, including net billing, bill crediting, reimbursable financing, and advance payment. This modification appears in Section V.N.

The initial recalculation of the MEFPC pertaining to this Marketing Plan will be completed by June 1, 2004. This modification appears in Section VI.A.

The commitment date for first preference customers to commit to the percentage option has been changed to December 31, 2002. This modification appears in Section VI.D.

Under the full requirements option, if there is more than one first preference customer in a county of origin, or a first preference entity in that county makes a request for power, Western reserves the right to establish a maximum amount of power available to each first preference customer from the MEFPC. This modification appears in Section VI.D.1.

For first preference customers, Western will use the maximum demand during the previous 4 years, rather than the last 12 months, in determining an allocation percentage under the percentage option. This modification appears in Section VI.D.2.

A first preference customer's request for an increase in its allocation percentage under the percentage option must be accompanied by justification for the increase. This modification appears in Section VI.D.2.c.

First preference customers will be subject to Section V.L, which states that any power not under contract may be allocated at any time, at Western's sole discretion, or sold as deemed appropriate by Western. This modification appears in Section VI.K.

Western will provide bundled or unbundled transmission services with its power sales, consistent with FERC Orders, legislated mandates, or California ISO Agreements. This modification appears in Section VII.

Appendix A was updated to reflect new customers and changes in CRD.

2004 Power Marketing Plan

This Marketing Plan addresses: (1) The power to be marketed after December 31, 2004, which is the termination date for all Central Valley Project (CVP) electric service contracts; (2) the general terms and conditions under which the power will be marketed; (3) the resources available to existing customers; and (4) the criteria to determine who will receive allocations from the resource pools.

The Western Area Power Administration (Western) will continue a collaborative process in implementing the terms set forth in this Marketing Plan.

Within broad statutory guidelines and operational constraints of the CVP and the Washoe Project, Western has wide discretion as to whom and under what terms it will contract for the sale of Federal power, as long as preference is accorded to statutorily defined public bodies. Western markets power in a manner that will encourage the most widespread use at the lowest possible rates consistent with sound business principles. All products and services provided under this Marketing Plan will be subject to operational requirements and constraints of the CVP and Washoe Project, transmission availability, purchase power limitations, and Federal authorities.

I. Acronyms and Definitions

As used herein, the following acronyms and terms, whether singular or plural, shall have the following meanings:

Allocation: An offer from Western to sell Federal power for a certain period of time, that will convert to a right to purchase after execution of a contract.

Allocation Criteria: Conditions applied to all applicants who receive an allocation.

Allottee: An entity receiving an allocation percentage under this Marketing Plan.

Ancillary Services: Those services necessary to support the transfer of electricity while maintaining reliable operation of the transmission provider's transmission system in accordance with good utility practice. Ancillary services are generally described in Federal Energy Regulatory Commission (FERC) Order No. 888 (Docket Nos. RM95–8–000 and RM94–7–001), issued April 24, 1996.

Base Resource: CVP and Washoe Project power output and existing power purchase contracts extending beyond 2004, determined by Western to be available for marketing, after meeting the requirements of project use and first preference customers, and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services.

Capacity: The electrical capability of a generator, transformer, transmission circuit or other equipment.

Central Valley Project (CVP): A multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River, south of the City of Bakersfield.

Contract Principles: Provisions of the electric service contracts, including Western's General Power Contract Provisions.

Contract Rate of Delivery (CRD): The maximum amount of capacity made available to a customer for a period specified under a contract.

Custom Product: A combination of products and services, excluding

provisions for load growth, which may be made available by Western per customer request, using the customer's Base Resource and supplemental purchases made by Western.

Eligibility Criteria: Conditions that must be met to qualify for an allocation.

Energy: Measured in terms of the work it is capable of doing over a period of time; electric energy is usually measured in kilowatthours or megawatthours.

Existing Customer: A preference customer with a contract to purchase firm power, offered under a previous allocation process or marketing plan, that extends through December 31, 2004.

Extension CRD: An existing customer's CRD exclusive of diversity and curtailable power, and peaking/excess capacity, as it may be adjusted in accordance with this Marketing Plan.

Firm: A type of product and/or service that is available to a customer at the times it is required.

First Preference Customer/Entity: A preference customer and/or a preference entity (an entity qualified to use, but not using preference power) within a county of origin (Trinity, Calaveras, and Tuolumne) as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones project provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

General Power Contract Provisions (GPCP): Standard terms and conditions which are included in Western's electric service contracts.

Integrated Resource Plan (IRP): A process and framework within which the costs and benefits of both demand and supply-side resources are evaluated to develop the least total cost mix of utility resource options.

Kilowatt (kW): A unit measuring the rate of production of electricity; one kilowatt equals one thousand watts.

Marketing Plan: Western's final 2004 Power Marketing Plan for the Sierra Nevada Region.

Megawatt (MW): A unit measuring the rate of production of electricity; one megawatt equals one million watts.

National Defense Authorization Act (NDA Act): Section 2929 of the National Defense Authorization Act, Pub. L. 103–160, 107 Stat. 1547, 1935 (1993), which provides that, for a 10-year period (starting in 1993), the CVP electric power allocations to military installations in the State of California, which have been closed or approved for closure, shall be reserved for sale through long-term contracts to preference entities which agree to use such power to promote economic development at the military installations closed or approved for closure.

Optional Purchase: An additional increment of power purchased by the Sierra Nevada Region at the request of an eligible existing customer on a pass-through-cost basis. Such power will be made available as a replacement for the Base Resource that is unavailable to that existing customer due to the Sacramento Municipal Utility District's (SMUD) percentage right of 360/1,152 of the Base Resource provided for under the SMUD Settlement Agreement. The Optional Purchase will terminate on December 31, 2014.

Power: Capacity and energy.

Preference: The requirements of Reclamation law which provide that preference in the sale of Federal power be given to certain entities, such as municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (Reclamation Project Act of 1939, section 9(c), 43 U.S.C. 485h(c)).

Primary Marketing Area: The area which generally encompasses northern and central California extending from the Cascade Range to the Tehachapi Mountains, and west-central Nevada.

Project Use: Power as defined by Reclamation law and/or used to operate CVP and Washoe Project facilities.

Reclamation Law: Refers to a series of Federal laws with a lineage dating back to the turn of the century. Viewed as a whole, those laws create the framework under which Western markets power.

Sierra Nevada Region: The Sierra Nevada Customer Service Region of the Western Area Power Administration.

Washoe Project: A Federal water project located in the Lahontan Basin in west-central Nevada and east-central California.

Western: Western Area Power Administration, United States Department of Energy, a Federal power marketing administration responsible for marketing and transmitting of Federal power pursuant to Reclamation law and the DOE Organization Act (42 U.S.C. 7101–7352).

II. Base Resource

The Base Resource, as defined in Section I, will include CVP and Washoe Project generation supported by certain power purchases. CVP generation (energy and capacity) will vary hourly, daily, monthly, and annually, because it is subject to hydrological conditions and other constraints that may govern CVP operations. CVP generation must be adjusted for project use, maintenance, reserves, transformation losses, and certain ancillary services before CVP generation is available for marketing. The power resources will be further adjusted for transmission losses to the point of delivery. The power resources may also be adjusted for first preference customers, when first preference customers' needs increase, up to the maximum entitlement of first preference customers.

Western will market part of the 3.65 MW and estimated annual energy generation of 10,000 MWh available from the Washoe Project as part of the Base Resource. The U.S. Department of the Interior, Fish and Wildlife Service Lahontan National Fish Hatchery and Marble Bluff Fish Facility are project use loads of the Washoe Project and have first call on those power resources. The generation available after serving the Fish and Wildlife Service needs will be marketed with the CVP power resources. The Washoe Project is subject to the same variability and constraints as the CVP.

Western will also include any power available from existing power purchase contracts with terms extending beyond 2004 in the Base Resource. Currently, Western has a contract with Enron Power Marketing, Inc., that has a final termination date of December 31, 2014.

The adjustments and variables discussed above will influence the amount of Base Resource available to customers. During some critically dry months, purchases may be required to meet project use and obligations to first preference customers, and only a minimal amount of Base Resource will be available during such months. The usability of the Base Resource for meeting customers' loads will be directly related to the amount of firming provided by Western and a customer's ability to integrate this power resource into its power resource mix.

III. Products and Services

Western will market its Base Resource alone or in combination with the Optional Purchase and/or Custom Product, which could include purchasing some level of firming power on behalf of all customers, a group of customers, or individual customers. All costs incurred by Western in providing additional services to customers will be paid by those customers using the services. The degree to which Western continues to purchase power will depend on customer requests and Federal authorities. After the effective date of this Marketing Plan, Western will determine, in a collaborative process with the customers, the best use of Western's power and transmission resources to provide the Base Resource, Optional Purchase, and Custom Products.

Each allottee will be allocated a percentage of the Base Resource. All customers will be required to commit to the Base Resource no later than December 31, 2000.

Upon request, Western will provide a qualified existing customer with the Optional Purchase. Commitments to the Optional Purchase must be made by December 31, 2000. Existing customers requesting the Optional Purchase must commit to the Optional Purchase at the time a commitment is made for the Base Resource, through December 31, 2014.

Upon request, Western may develop a Custom Product for any customer. A Custom Product may include ancillary services, reserves, etc., or may include Western purchasing additional resources, including firming power, to provide some of these services. Commitments to purchase a Custom Product must be made by December 31, 2002, for a period of no less than 5 years of service, beginning January 1, 2005. Thereafter, the Custom Product will be offered for periods as agreed to by Western.

Western may extend the commitment dates for the Base Resource, Optional Purchase, and Custom Product if Western determines it is in the best interest of Western and the customers.

Any unused power resources may be marketed under terms and conditions and for periods of time as determined by Western, and may be marketed outside the primary marketing area.

Western will establish and manage an exchange program to allow all customers to fully and efficiently use their power allocations. The exchange program will be further developed by Western through a collaborative process with all customers. Specific criteria for the exchange program will be included in electric service contracts. Any power under contract that cannot be used on a real-time basis, due to a customer's load profile, must be offered under this exchange program to Western or other preference customers.

IV. Resource Available to Existing Customers and Resource Pool Allocations

Western will allocate a portion of the Base Resource to existing customers and set aside a portion for new allocations. Effective January 1, 2015, Western will reduce all customers' allocation percentages by up to 2 percent to establish a 2015 Resource Pool. Initially, an existing customer, except first preference customers and the Sacramento Municipal Utility District (SMUD), will be allocated 96 percent of its pro rata share of the Base Resource based on the ratio of the existing customer's extension CRD to the total existing customers' extension CRD. First preference customers are subject to specific legislation and are addressed in Section VI. SMUD will have a specific allocation through 2014 based on a prior settlement agreement.

Effective January 1, 2015, Western will recalculate the percentages for all existing customers, including SMUD and customers receiving an allocation from the 2005 Resource Pool. Western will derive each customer's new percentage based on the change in SMUD's percentage described later in this section and the reduction for the 2015 Resource Pool. The new percentages will be applicable from 2015 through 2024.

A. Resource Available to Existing Customers

Existing customers, excluding SMUD, will have a right to purchase a percentage of the Base Resource based on the ratio of each existing customer's extension CRD to the total of all existing customers' extension CRD, excluding SMUD, under the terms of this section. Current extension CRD are set forth in appendix A. From 2005 through 2014, SMUD will have a right to purchase 360/1,152 of the Base Resource, as referenced in the Settlement Agreement with SMUD, Contract DE–MS65–83WP59070, dated April 15, 1983. All other existing customers have a right to purchase the Base Resource amount remaining after Western adjusts it to accommodate SMUD's rights and the 2005 Resource Pool. After 2014, Western will adjust SMUD's right to purchase the Base Resource to reflect the ratio of SMUD's extension CRD to the total of all existing customers' extension CRD. SMUD's right will also be adjusted by 4 percent (2005 Resource Pool adjustment) and up to an additional 2 percent to accommodate the 2015 Resource Pool.

Due to the diversity among existing customers' loads, including SMUD's load, existing customers' total extension CRD exceeds the 1,152 MW referenced in the SMUD Settlement Agreement. This Marketing Plan will result in SMUD receiving a proportionately greater share of the Base Resource than other existing customers if the total extension CRD remains at a level greater than 1,152 MW. Therefore, existing customers, excluding SMUD and first preference customers, have the right to request the Optional Purchase.

The following extension formulas are used to determine existing customers' purchase rights to the Base Resource. Application of these formulas also determines each existing customer's right to the Optional Purchase. No allocation percentage will be based on an extension CRD greater than an existing customer's load.

1. For the period 2005 through 2014, existing customers' purchase rights to the CVP resource are calculated as follows:

a. SMUD's purchase right = (360/1,152) × BR

b. Other existing customers' purchase rights = (A/B) × ABR

Where:

A = An individual existing customer's extension CRD. Western may adjust "A", if Western determines that, as of December 31, 2003, the extension CRD is greater than the existing customer's maximum monthly peak load for the previous 3 years or if the existing customer's extension CRD has been changed from the amount set forth in Appendix A of this Marketing Plan.

B = The sum of all values for "A", excluding SMUD.

BR = Base Resource.

ABR = Adjusted Base Resource = {BR—[(360/1,152) × BR]} × (100%—RP%). After 2014, the SMUD adjustment of [(360/1,152) × BR] will be deleted.

RP% = 2005 Resource Pool percentage.

2. Existing customers' rights to the Optional Purchase will be calculated as follows:

Individual existing customer's Optional Purchase = (A/B) × TOP

Where:

TOP = Total Optional Purchase = [(360/1,152)—(361/C)] × BR × (100%—RP%).

C = The sum of all existing customers' extension CRD, including SMUD.

B. Resource Pool Allocations

Western will reserve a portion of the power available after 2004 for allocation to eligible applicants.

1. Resource Pool Amount:

The 2005 Resource Pool consists of up to 4 percent of the power resources available after 2004. Western will also establish a 2015 Resource Pool. The 2015 Resource Pool will consist of up to 2 percent of the power resource available after 2014, plus a portion of the resource that becomes available from adjusting SMUD's percentage. That portion will be equal to what SMUD would have been required to contribute to the 2005 Resource Pool. SMUD will also be subject to the 2015 Resource Pool adjustment of up to 2 percent.

Western will, at its discretion, allocate a percentage of the 2005 Resource Pool to each applicant that meets the eligibility and allocation criteria. This allocation percentage will be multiplied by the 2005 Resource Pool percentage to determine the applicant's percentage of the Base Resource. Allocations from the 2015 Resource Pool will be determined through a separate public process conducted prior to 2015.

2. Eligibility Criteria:

Western will apply the following eligibility criteria to all applicants seeking a resource pool allocation under this Marketing Plan.

a. Applicants must meet the preference requirements of Reclamation law.

b. Applicants should be located within Sierra Nevada Region's primary marketing area. If the Sierra Nevada Region's power resources are not fully subscribed, Western may market its resource outside the primary marketing area.

c. Applicants that require power for their own use must be ready, willing, and able to receive and use Federal power. Federal power shall not be resold to others.

d. Applicants that provide retail electric service must be ready, willing, and able to receive and use the Federal power to provide electric service to their customers, not for resale to others.

e. Applicants must submit an application in response to the Call for Resource Pool Applications under a separate **Federal Register** notice.

f. Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975 (25 U.S.C. 450b, as amended).

g. Existing customers may apply for a resource pool allocation if their extension CRD, set forth in Appendix A, is not more than 15 percent of their peak load in the calendar year prior to the Call for Applications, and not more than 10 MW.

h. Western will normally not allocate power to applicants with loads of less than 1 MW; however, allocations to applicants with loads which are at least 500 kW may be considered, provided the loads can be aggregated with other allottees' loads to schedule and deliver to a minimum load of 1 MW.

3. Allocation Criteria:

Western will apply the following allocation criteria to all applicants receiving a resource pool allocation under this Marketing Plan.

a. Allocations will be made in amounts as determined solely by Western in exercise of its discretion under Reclamation law and considered to be in the best interest of the U.S. Government.

b. Allocations will be based on the applicant's peak demand during the calendar year prior to the Call for Applications or the amount requested, whichever is less.

c. An allottee will have the right to purchase power from Western only upon the execution of an electric service contract between Western and the allottee, and satisfaction of all conditions in that contract.

d. All customers, including those receiving an allocation from the 2005 Resource Pool, will be subject to the 2015 Resource Pool adjustment.

e. Eligible Native American entities will receive greater consideration for an allocation of up to 65 percent of their peak load in the calendar year prior to the Call for Applications.

V. General Criteria and Contract Principles

Western will initially offer existing customers a contract amendment for the right to purchase a percentage of the Base Resource after 2004. After allocations are final, resource pool allottees will be offered a contract to set forth their allocation percentage. In order to finalize the electric service arrangements, new contracts will be offered to new and existing customers subsequent to the date product commitments are required, as set forth in this Marketing Plan. The following criteria and contract principles will apply to all contracts executed under this Marketing Plan, except that certain criteria may not apply to first preference customers' contracts and 2015 Resource Pool allottees' contracts:

A. Electric service contracts and amendments shall be executed within 6 months of a contract offer, unless otherwise agreed to in writing by Western.

B. Allocation percentages provided for in this Marketing Plan and the electric service contracts shall be subject to adjustment.

C. All power supplied by Western will be delivered pursuant to a scheduling arrangement.

D. All power will be provided on a take-or-pay basis. All costs associated with the products and services provided, including costs associated with ancillary services, Optional Purchases, Custom Products, and transmission will be passed on to the customer(s) using the product or service.

E. Contract amendments and contracts shall require a written commitment to a percentage of the Base Resource and the Optional Purchase on or before December 31, 2000, and the Custom Product on or before December 31, 2002. Western may extend the final commitment dates for the Base Resource, Custom Product, and Optional Purchase.

F. Contracts will include a clause specifying criteria that customers must meet on a continuous basis to be eligible to receive electric service from Western.

G. Upon request, Western shall provide, or assist each new and existing customer in obtaining, transmission arrangements for delivery of power marketed under this Marketing Plan; nonetheless, each entity is ultimately responsible for obtaining its own delivery arrangements to its load. Transmission service over the CVP system will be provided in accordance with Section VII of this Marketing Plan.

H. Contracts shall provide for Western to furnish electric service effective January 1, 2005, through December 31, 2024.

I. Specific products and services may be provided for periods of time as agreed to in the electric service contract.

J. Contracts shall incorporate Western's standard provisions for electric service contracts, integrated resource plans, and General Power Contract Provisions, as determined by Western.

K. Contracts will include a clause that allows Western to reduce or rescind a customer's allocation percentage, upon 90-days notice, if Western determines that (1) the customer is not using this power to serve its own loads, except as otherwise specified in Section III; or (2) the allocation amounts are consistently greater than the customer's maximum peak load.

L. Any power not under contract may be allocated at any time, at Western's sole discretion, or sold as deemed appropriate by Western.

M. Contracts will include a clause providing for Western to adjust the customers' allocation percentage for the 2015 Resource Pool.

N. Contracts may include a clause providing for alternative funding arrangements, including net billing, bill crediting, reimbursable financing, and advance payment.

VI. First Preference Entitlement and Allocation

The Trinity River Division Act and the New Melones Project provisions of the Flood Control Act of 1962 (Acts) specify that contracts for the sale and delivery of the additional electric energy, available from the CVP power system as a result of the construction of the plants authorized by these Acts and their integration into the CVP system,

shall be made in accordance with preferences expressed in Federal Reclamation laws. These Acts also provide that a first preference of up to 25 percent of the additional energy shall be given, under Reclamation law, to preference customers in the counties of origin (Trinity, Tuolumne, and Calaveras), for use in those counties, who are ready, willing, and able to enter into contracts for the energy.

To meet the requirements of the Acts, Western published the Final Withdrawal Procedures (51 FR 7702, March 5, 1986). This Marketing Plan supersedes the Final Withdrawal Procedures, or any successor procedures, as of January 1, 2005.

Western will calculate and allocate the maximum entitlements of first preference customers (MEFPC). The MEFPC is the maximum amount of energy available to first preference customers/entities, in accordance with the following:

A. The MEFPC will be calculated separately for the New Melones Project, Calaveras and Tuolumne Counties, and the Trinity River Division (TRD), Trinity County (first preference projects). To determine the 25 percent of additional energy made available to the CVP as a result of the construction of each of these projects, Western will use the average of the previous 20 years of historical annual generation. The TRD MEFPC includes generation from Trinity, Carr, and Spring Creek Powerplants and a portion of the Keswick Powerplant generation. The MEFPC will be recalculated every 5 years, with the initial recalculation pertaining to this Marketing Plan completed by June 1, 2004.

B. Upon recalculation, if the MEFPC from a first preference project is 10 percent above or below the currently effective MEFPC from that first preference project, the MEFPC will be adjusted to reflect that increase or decrease. Western will notify affected first preference customers at least 6 months before making an adjustment to the MEFPC. If recalculation reduces the MEFPC to an amount less than the load previously served, Western may, upon request and at its discretion, make purchases necessary to replace that amount of power no longer available. The costs for all such purchases made on behalf of a first preference customer will be passed on to that first preference customer.

C. An allocation made to a first preference customer/entity under this Marketing Plan will be based on the power requirements of that first preference customer/entity. The sum of allocations of first preference power, including losses, shall not exceed the MEFPC from each first preference project, or a county of origin's share of the MEFPC, except as allowed under Section VI.G below.

D. Western will work with each first preference customer/entity to identify its power requirements and the best use of its first preference entitlement. Each first preference customer/entity may elect one of the product and service options set forth below. A commitment to one of these options must be made in writing no later than December 31, 2002. If a commitment is not made by December 31, 2002, the full requirements option will be deemed chosen.

Under each option, the first preference customer will be responsible for transformation and transmission losses to the first preference customer delivery point. Transmission losses shall include losses for CVP transmission and third-party transmission.

1. *Full Requirements:* Western will provide the first preference customer with its full power requirements (capacity and energy) up to its right to the MEFPC at the Base Resource rate. If there is more than one first preference customer in a county of origin, or a first preference entity in that county makes a request for power, Western reserves the right to establish a maximum amount of power available to each first preference customer from the MEFPC. Payment under this option will be based on usage.

2. *Percentage:* Western will determine the allocation percentage in a manner similar to that of the other customers receiving a power allocation. The first preference customer's maximum demand during the previous 4 years will be used in determining an allocation percentage of the power resource under this option. Power will be provided on a take-or-pay basis under this option. The following will apply to each first preference customer selecting this percentage option.

a. First preference customers will not be subject to adjustments for the resource pool or the SMUD settlement, and will not be eligible for the Optional Purchase. Under this option, first preference customers are eligible for the Custom Product as defined in Section III.

b. The allocation percentage made available to each first preference customer under this Marketing Plan will be applied to the power resources which have been adjusted for project use.

c. First preference customers will have the opportunity to have their allocation percentage adjusted, as agreed to by Western. Increases, up to a first preference customer's share of the MEFPC, will require a written notice 7 months in advance of the first day of the month in which the increase is requested to become effective. Justification for the increase must accompany the request.

E. A first preference entity may exercise its right to use a portion of the MEFPC by providing written notice to Western at least 18 months prior to the anniversary date of the first preference project located in its county. The anniversary date is the successive fifth year anniversary of the date the Secretary of the Interior declared the availability of power from the powerplants in the counties of origin. New applications for service to begin on January 1, 2005, under this Marketing Plan must be received 18 months prior to January 1, 2002 (i.e., July 1, 2000) for Trinity County and 18 months prior to April 5, 2002 (i.e., October 5, 2000) for Calaveras and Tuolumne Counties. Other anniversary years applicable to this Marketing Plan are 2007, 2012, 2017, and 2022.

F. If the request of a first preference customer/entity for power, including adjustment for losses, is greater than the remaining MEFPC from that county's first preference project, then Western will allocate the remaining MEFPC to the first preference customer/entity first making a request for a power allocation or a justified increase in its allocation percentage.

G. Power allocated to first preference customers/entities in Tuolumne and Calaveras Counties will be subject to the following additional conditions:

1. Tuolumne and Calaveras Counties shall each be entitled to one-half of the New Melones Project MEFPC.

2. If first preference customers in either Tuolumne County or Calaveras County are not using their county's full one-half share, and a first preference customer/entity in the other county requests power in an amount exceeding that county's one-half share, then Western will allocate the unused power, on a withdrawable basis, to the requesting first preference customer/entity. Such power may be withdrawn for use by a first preference customer/entity in the county not using its full one-half share upon 6-months written notice from Western.

H. Trinity Public Utilities District is currently the sole recipient of the TRD's first preference rights.

I. Transmission service will be provided in accordance with applicable laws and Section VII of this Marketing Plan.

J. For planning purposes, first preference customers may be required to provide forecasts and other information required by Western as set forth in the electric service contract.

K. The general criteria and contract principles set forth in Sections V.A through C, F through L, and N of this Marketing Plan will apply to first preference customers.

VII. Transmission Service

Western will provide bundled or unbundled transmission services as appropriate in conjunction with its power sales in a manner consistent with FERC Orders, legislated mandates, or California ISO Agreements, as appropriate. Western will determine the use of its transmission resources concurrently with further development of the products and services under this Marketing Plan. Specific terms and conditions for transmission will be provided for in future service agreements.

Dated: June 10, 1999.

Michael S. Hacskaylo,

Administrator.

Appendix A

This Appendix lists the existing customers' CRD amounts and extension percentages as of May 1, 1999. Final percentages will be available after December 31, 2003.

Existing customers	CRD [1] (kW)	Extension CRD (CRD [1] [2] less excluded types of power) [3] (kW)	Percentage of base resource (2005–2014)
Air Force—Beale	21,575	21,575	1.42461
Air Force—McClellan [4]	12,000	12,000	0.79237
Air Force—Onizuka [4]	1,500	1,500	0.09905
Air Force—Travis	12,651	12,651	0.83535
Air Force—Travis/David Grant Medical Center [4]	4,000	4,000	0.26412
Air Force—Travis Wherry Housing	1,400	1,400	0.09244
Alameda, City of [5]	21,145	21,145	1.39622
Arvin-Edison Water Storage District	30,000	30,000	1.98092
Avenal, City of	622	622	0.04107
Banta-Carbona Irrigation District	3,700	3,700	0.24431
Bay Area Rapid Transit District	4,000	4,000	0.26412
Biggs, City of	4,200	4,200	0.27733
Broadview Water District	500	500	0.03302
Byron-Bethany Irrigation District	2,200	2,200	0.14527
Calaveras Public Power Agency	8,000	.....	.....
California State University, Sacramento—Nimbus	40	40	0.00264
Cawelo Water District	500	500	0.03302
Corrections—California State Prison—Sacramento	2,300	2,300	0.15187
Corrections—Deuel Vocational Institute	1,700	1,700	0.11225
Corrections—Northern California Youth Center	1,700	1,700	0.11225
Corrections—Sierra Conservation Center	3,000	.....	.....
Corrections—Vacaville Medical Facility	1,800	1,800	0.11886
Defense Logistics Agency—Sharpe Facility	4,000	4,000	0.26412
Defense Logistics Agency—Tracy Facility	3,800	3,800	0.25092
East Bay Municipal Utility District [5]	1,965	1,965	0.12975
East Contra Costa Irrigation District	2,500	2,500	0.16508
Eastside Power Authority [5]	2,961	2,961	0.19552
Energy—Lawrence Berkeley National Laboratory	9,000	9,000	0.59428
Energy—Lawrence Livermore National Laboratory	44,711	44,711	2.95229
Energy—Lawrence Livermore, Site 300	2,000	2,000	0.13206
Energy—Stanford Linear Accelerator Center	21,903	12,903	0.85199
Glenn-Colusa Irrigation District	3,343	3,343	0.22074
Gridley, City of	9,400	9,400	0.62069
Healdsburg, City of [5]	3,241	3,241	0.21401
James Irrigation District [5]	987	987	0.06517
Kern-Tulare Water District [5]	987	987	0.06517
Lassen Municipal Utility District	3,000	3,000	0.19809
Lodi, City of [5]	13,236	13,236	0.87398
Lompoc, City of [5]	5,197	5,197	0.34316
Lower Tule River Irrigation District [5]	1,965	1,965	0.12975
Merced Irrigation District [4]	5,000	5,000	0.33015
Modesto Irrigation District [5]	10,805	10,805	0.71346
NASA—Ames Research Center	80,000	80,000	5.28245
NASA—Moffett Federal Airfield [4]	5,009	5,009	0.33075
Navy—Naval Weapons Station, Concord [4]	2,898	2,898	0.19136
Navy—Naval Radio Station, Dixon	915	915	0.06042
Navy—Naval Air Station, Lemoore [4]	23,000	23,000	1.51870
Navy—Naval Communications Station, Stockton	3,700	3,700	0.24431
Oakland Army Base	2,275	2,275	0.15022
Oakland, Port of [4]	1,000	1,000	0.06503
Palo Alto, City of	175,000	175,000	11.55535
Parks & Recreation, California Department of	100	100	0.00660
Parks Reserve Forces Training Area	500	500	0.03302
Patterson Water District	2,000	2,000	0.13206
Pittsburg Power Company [4]	5,000	5,000	0.33015
Plumas-Sierra Rural Electric Cooperative	25,000	25,000	1.65076

Existing customers	CRD [1] (kW)	Extension CRD (CRD [1] [2] less excluded types of power) [3] (kW)	Percentage of base resource (2005–2014)
Provident Irrigation District	750	750	0.04952
Rag Gulch Water District	500	500	0.03302
Reclamation District 2035	1,600	1,600	0.10565
Redding, City of	116,000	116,000	7.65955
Roseville, City of	69,000	69,000	4.55611
Sacramento Municipal Utility District [7]	361,000	361,000	31.25000
Sacramento Municipal Utility District	100,000	.....	.....
San Francisco, City and County of [4]	2,600	2,600	0.17168
San Juan Water District	1,000	1,000	0.06603
San Luis Water District	6,650	6,650	0.43910
Santa Clara Valley Water District [5]	987	987	0.06517
Shasta Lake, City of	11,450	11,450	0.75605
Silicon Valley Power	216,532	136,532	9.01529
Sonoma County Water Agency	1,500	1,500	0.09905
Trinity Public Utilities District	17,000	.....	.....
Tuolumne Public Power Agency	7,000	.....	.....
Turlock Irrigation District [5]	3,941	3,941	0.26023
Ukiah, City of [5]	8,773	8,773	0.57929
University of California, Davis	14,682	14,682	0.96946
West Side Irrigation District	2,000	2,000	0.13206
West Stanislaus Irrigation District	5,200	5,200	0.34336
Westlands Water District [5]	21,441	21,441	1.41576
2005 Resource Pool [6]	.....	.....	2.75000
Total	1,584,537	1,360,537	100.00000

Notes:

[1] CRD temporarily laid off and temporarily allocated to other existing customers is reflected in this Appendix A, under both CRD and extension CRD, as being returned to the existing customer who received the original allocation.

[2] Western will reduce the extension CRD if Western determines that, as of December 31, 2003, the extension CRD is greater than the existing customer's load.

[3] Exclusions are diversity, curtailable, and first preference power; and peaking and excess capacity.

[4] These extension CRD could be adjusted as a result of the NDA Act procedures. Also, new NDA Act customers could be added through November 30, 2003.

[5] Westlands Water District has a right to 50 MW through December 31, 2004. Certain existing customers have been allocated a portion of the 50 MW, subject to withdrawal for use by Westlands Water District. Allocation percentages effective after December 31, 2004, will be adjusted to reflect changes made as a result of Westlands Water District's use and withdrawals, in accordance with Section IV.A.1.b.

[6] The 4 percent 2005 Resource Pool is adjusted for SMUD's non-participation due to the Settlement Agreement.

[7] 31.25 percent reflects the 360/1,152 ratio in the SMUD Settlement Agreement. After December 31, 2014, SMUD's percentage will be based on its extension CRD.

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DEPARTMENT OF ENERGY

Western Area Power Administration

Power Allocation Issues

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Western Area Power Administration (Western) has completed its inquiry regarding the impact of electric utility industry restructuring on Western's power allocation policies. This **Federal Register** (FR) notice contains Western's responses to comments on the issues raised by the inquiry. Contemporaneously, Western is publishing the final 2004 Power Marketing Plan for the Sierra Nevada Customer Service Region (SNR) and the final Salt Lake City Area Integrated Projects (SLCA/IP) Marketing Criteria.

FOR FURTHER INFORMATION CONTACT:

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Gerald C. Wegner, Regional Manager, Upper Great Plains Region, Western Area Power Administration, PO Box 35800, Billings, MT 59107–5800, telephone (406) 247–7405, email: wegner@wapa.gov.

SUPPLEMENTARY INFORMATION:

Authorities

This public process is being conducted pursuant to the Department of Energy (DOE) Organization Act (42 U.S.C. 7101, *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 371, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and

other acts specifically applicable to the projects involved.

Background

Western is a Federal power marketing administration (PMA), charged with the responsibility of marketing electricity generated by power plants operated by the Bureau of Reclamation (Reclamation), the Corps of Engineers, and the International Boundary and Water Commission. Created in 1977, Western markets on a wholesale basis and transmits Federal hydroelectric power throughout 1.3 million square miles to more than 600 customers, including rural electric cooperatives, municipal utilities, public utility districts, Federal and State agencies, irrigation districts, and Native American tribes. Western's power customers, in turn, provide service to millions of consumers in 15 western States.

Western markets power on a project-specific basis. A marketing plan for each project is developed through a public process, with opportunity for comment on a marketing proposal before publication of the final marketing plan in the **Federal Register**. Reclamation law governs how Western markets electricity, including the requirement that Western offer power first to certain nonprofit entities such as rural electric cooperatives and municipalities.

On December 1, 1998, Western published in the **Federal Register** a Notice of Inquiry to explore the impact of electric utility industry restructuring on Western's power allocation policies (63 FR 66166). A forum was held in Denver on January 6, 1999, to receive public comment on this matter, and written comments were accepted from the public until the end of the 45-day consultation and comment period. In this **Federal Register** notice, Western is addressing comments received during the electric utility industry restructuring inquiry.

Western received a number of comments on the size of project-specific resource pools in response to our Notice of Inquiry. Because of these comments and expressions of interest in an allocation of Federal power from several Indian tribes, Western decided to open an additional 30-day comment period focused solely on the issue of the size of project-specific resource pools. Informational meetings on Western's resource pool size proposals and the requirements for receiving an allocation of power were held in Phoenix, Arizona, Albuquerque, New Mexico and Folsom, California. Resource pool size comments are being addressed in the 2004 marketing plans for the Central Valley, Washoe, and Salt Lake City Area Integrated Projects.

As some comments and responses use certain project names interchangeably, some definition is needed in order to avoid confusion. Western's 2004 Power Marketing Plan for the Sierra Nevada Customer Service Region governs marketing from the Central Valley Project (CVP) and the Washoe Project. Western's Salt Lake City Area Integrated Projects Marketing Criteria cover power marketing from the Colorado River Storage Project (CRSP), the Collbran Project, and the Rio Grande Project.

Summary of Western's Response to the Notice of Inquiry

In response to changes in the utility industry, Western's power allocation policies have been altered in a responsible and proactive manner. More flexibility has been added to Western's power sales contracts, and Western has made significant changes to our marketing policies that emphasize customer choice and diminish Western's future need for appropriations to purchase power. Western's contracts will accommodate, rather than impede, environmentally beneficial changes in operations at large Federal dams in the west. Widespread benefit will be achieved through power allocations to Native American tribes without the need for formation of tribal utilities. Contractual provisions will continue to prohibit inappropriate resale of Western's power and assure that consumers receive the benefits of cost-based Federal hydroelectricity. Although no additional changes to Western's power marketing policies will be adopted at this time, Western likely will evaluate the impact of electric utility industry restructuring on a periodic basis to assure that our policies continue to be responsive to public needs.

Legal Analysis

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a policy inquiry rather than a rulemaking, and the subject of the inquiry involves policies applicable to public property.

Environmental Compliance

DOE National Environmental Policy Act (NEPA) regulations categorically exclude marketing plans from NEPA documentation unless they involve new generation, new transmission, or a change in operations. Therefore, Western will not conduct further evaluation under NEPA as part of this power allocation issues notice of inquiry. Considerable environmental evaluation has already occurred under the Energy Planning and Management Program (EPAMP) and during project-specific marketing plan development.

Review Under Paperwork Reduction Act

As no collection of information will take place as a result of this **Federal Register** notice, no review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) is necessary.

Review Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this **Federal Register** notice is exempt from congressional notification requirements under 5 U.S.C. 801 because it is a policy inquiry rather than a rulemaking, and the subject of the inquiry involves procedures and policies applicable to public property.

Federalism Assessment

This **Federal Register** notice will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Orders 12612 and 13083, it is determined that this notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Response to Comments on Notice of Inquiry

Western has received extensive public comment on the impact of electric utility industry restructuring on Western's power allocation policies. These comments relate to six questions that were posed during the public process, which address the impact of State retail competition statutes on how we sell electricity. Public comments, and Western's responses to those comments, are set forth below and organized under each of the six questions.

Question

1. Should Western's power allocations system, including the term of firm power contract renewals, be modified to take into account changes in electricity markets that have occurred, and are expected to occur in the future, due to the enactment of California Assembly Bill 1890 and other State retail competition statutes? If so, please explain what modifications would be desirable. If not, please explain why the present system should be preserved.

A. Goals of Restructuring

Comment: The intended goal of electric utility restructuring is to promote competition, so as to lower power costs to the consumer. That goal is already being met by Western's existing power allocation system. Loss of the resource will increase costs to and punish the retail consumer, a result that is contrary to the intended results of retail competition.

Response: Lower power cost to consumers is the ultimate goal of utility restructuring. Western's power allocations promote yardstick competition in the electricity industry and result in lower power costs to the consumers served by Western's customers.

B. Federalism

Comments: Western should give a great deal of deference to federalism. Many of the suggested changes in Western's Notice of Inquiry would insert Western into State policy determinations. To date, the United States Congress has been extremely careful in respecting State jurisdiction in matters as extensive and complex as those within the power industry. Western should not tread where Congress has chosen not to go.

We appreciate your efforts to assure that the Federal power program's policies are contemporaneous with the needs of customers and the changes in the industry. However, we do not believe that the six issues posed in this inquiry will strengthen the program or increase the value of the Federal power resources. We believe these issues should be addressed at the State level.

Response: Issues of retail service, retail rates and consumer choice in power supply have been addressed at the State and local levels in the past. As Congress has not identified what Federal purpose would be served by modification of this historic responsibility, Western believes these issues are better addressed at the State level. The Clinton Administration's electric utility restructuring bill encourages States to take the lead on these issues.

Comment: Why should the Federal policy on power allocations be changed due to State legislative action? State interests should not supersede Federal interests.

Response: As a matter of policy and practicality, Western views the establishment of Federal policy through mirroring of State legislative or regulatory action as problematic.

Comment: Western should not interfere with the federalism that has served our nation well in accommodating the different needs of each region.

Response: Accommodating regional needs is important to Western. As a PMA, our mission is very much regional in nature. Western markets power on a project-specific basis, which allows the crafting of marketing plans that are responsive to regional needs.

Comment: We understand that the Clinton Administration supports State implementation of electric utility restructuring, and we are concerned that Western not impose requirements beyond those required by California law.

Response: Western has no desire to impose requirements beyond those required by California law.

C. Policy Diversity

Comments: Retail access has not been uniformly implemented among the States in Western's service territory. Retail access and utility restructuring are being addressed to varying degrees on varying timetables. Restructuring is an evolutionary process and substantial discretion is left to each State to determine how best to serve their interests.

Because of the wide variety of approaches being considered or implemented by the various States in which Western currently has responsibility for marketing Federal resources, it will be impossible for Western to have a uniform or equitable approach in each jurisdiction, even setting aside the issue of Federal/State relationships.

The States should mold their restructuring plans around Western rather than Western trying to mold their allocation system around each State.

Response: Western agrees that adopting a policy that mirrors evolving State action would be difficult.

Comment: No modification should take place in Western's power allocations to satisfy the needs created by California's electric deregulation.

Response: Western does not intend to force California standards on customers elsewhere in our service territory.

Comment: Western should not set national standards for all of its projects. The regional nature of Western's projects should be recognized.

Response: Western will continue to market power on a project-specific basis, in a manner that is sensitive to regional needs.

D. Yardstick Competition or Distortion of Markets?

Comments: Western's current allocation system should be changed because competitive wholesale and retail electricity markets make the inherent market distortions caused by PMA power even greater. It is patently unfair for the Federal Government to subsidize a few select players in a competitive market, to be picking winners and losers among electricity suppliers.

Western's power allocation system should be modified to take into account industry changes. Under the current scheme, the Federal Government is essentially stacking the deck against private, taxpaying utilities and other power generators in favor of subsidized customers who provide low cost power to a select few. Because the wholesale market today is already competitive, such a stacking of the deck is incongruous with the nation's goals as set forth in the Energy Policy Act of 1992.

Response: Marketing of Federal hydropower to nonprofit public bodies first is in accordance with law. Although many changes have taken place in the utility industry in recent years, the policy of not allowing profit to be made on Federal power resources constructed with taxpayer dollars remains relevant today.

All successful competitors in the electricity marketplace have certain competitive advantages, including investor-owned utilities. Some investor-owned utilities (IOUs) have such attributes as size, access to capital, economies of scale, greater customer density, use of investment tax credits, access to tax-exempt bonds for purposes such as financing pollution control equipment, and favorable tax treatment of depreciation. Some jurisdictions allow recovery of stranded costs on favorable terms for IOUs.

Comments: One of the original intents of the Federal power program was and still is to provide a yardstick to measure competition and provide a counterbalance to private sector interests. At this time of restructuring and volatile wholesale prices,

abandoning that yardstick will leave consumer-owned electric utilities and their consumers no means of assessing the conditions of the marketplace.

Equity and a level playing field for all types of utilities clearly points to a prompt renewal of CVP and CRSP contracts under the 2004 marketing plans at high percentage levels.

Western's allocation policies have helped promote "yardstick" competition among utility suppliers. Existing allocation policies have in large part supported the continued ability of our small municipal utility systems to provide competitively priced power to all our consumers, not just a few of the larger consumers as we believe will be the inevitable result if industry restructuring is mandated at the Federal or State level.

A recommitment to the original purposes of the Federal power program will better serve the country and Western's customers. The need for a yardstick to measure competition is more important than ever. There has yet to be a demonstration that industry restructuring will benefit all consumers. Developments in industry restructuring to date have only benefited a narrow class of customers-large industrial and commercial loads. Small communities and rural areas—Western's customer base—may be distinctly disadvantaged by some of the industry changes that have been proposed.

Response: Western's power allocation policies preserve stability and competitive balance in the utility business. As small communities and rural areas are served by a significant portion of our customer base, Western is cautious about changing its policies to the possible detriment of consumers in less populated areas.

E. Policy Basis

Comments: Western would be grossly premature in making changes to address nonexistent or moving targets in restructuring. In addition, the form of the present California market is undergoing rapid and unpredictable changes. To modify the present 2004 marketing plan would be a futile exercise.

Modifying Western's power allocation system based on possible developments in State legislatures is conjectural and represents a bad model for policy development. There is no reason to change Western's power allocation system because of development in the States. State actions do not compromise Western's role in the electric utility industry, and in fact may make Western's role more important.

Western should not take into account changes it expects to occur because of State statutes allowing retail competition. Some States will not adopt statutes and the statutes that are adopted will not be the same. Speculation on what the future may hold is not a sound business practice.

Any initiative which results in Western reducing power allocations on the speculative assumption that industry restructuring will be mandated in our State or that it will be good for all consumers in our State simply exacerbates the seriousness of the resource stability issue that small municipal utilities are vitally concerned about.

Response: The scope and pace of changes in the utility industry cannot be predicted with certainty. Adopting significant additional policy changes today, when the policy debate is fluid and the outcome is far from certain, is imprudent.

Comment: Changing Western's power allocation policies as suggested by the question will impede competition and not promote it. The current merger mania is being fueled by the debate on industry restructuring. Investor-owned utilities realize that maximizing profits in restructured markets is dependent on their ability to increase market share. Any action by Western that detrimentally impacts the ability of small municipal and rural-based systems to survive and continue to offer first-rate service at a competitive price will lead to increased concentration of electric supply in the hands of a few, larger companies. This does not foster competition, it discourages it. Confirmation of existing policies and extension of resources will promote and preserve competition in electric supply markets.

Response: Yardstick competition has added value to the electricity marketplace. Competition is not served if Western adopts policies that undermine the diversity of the industry by accelerating the consolidation of power supply.

Comment: Notwithstanding our belief that Federal law would need to be changed, we do not believe the policy changes suggested by these questions are prudent on their face. In general, these policies would add both instability to and disrupt what is already much uncertainty related to the future of power supply resources in a time of deregulation.

Response: Adding instability and disruption to power supply resources is not sound policy.

Comment: Policy decisions on Western's power should not be made in a vacuum. Western's policies should be examined in light of other Federal actions which affect the electric utility industry.

Response: Many public power entities do not purchase power from Western, so changes in Western's allocation policies have a limited impact nationally.

Comment: The customers who purchase power from the Southeastern Power Administration are concerned that DOE would modify the policies governing the Federal power program to accommodate nascent changes in retail utility markets in a handful of States. We are unaware of any evidence that the Federal power program has impeded implementation of retail competition.

Response: Western believes that the sale of cost-based hydropower to not-for-profit utilities aids competition in the industry. Far from undermining competition, diversity of participation stimulates and strengthens the marketplace.

Comment: The world has changed since the adoption of the Energy Planning and Management Program in 1995. Modest changes to the rules would meet the need to address retail wheeling.

Response: Western believes that the changes to its past marketing and allocation policies, as set forth in the 2004 marketing plans for the CVP, Washoe, and SLCA/IP, are responsive to changes in the utility industry.

Comments: Western's Notice of Inquiry has the appearance of searching for a rationale or justification for changing policy.

We were disappointed to receive the inquiry from Western, as it seems to be just another attack on public power cloaked in the shroud of industry restructuring. The questions overlook the fact that public power and the historical distribution of Western power have fostered more competition than will likely occur from restructuring.

Response: Western agrees that public power and the marketing of power by Western have promoted competition in the past, to the benefit of consumers.

Comments: Western should change its allocation policies, as the original purpose for preference allocations has changed, and the West has been electrified. Restructuring demands changes to the existing allocation scheme.

The PMAs and Tennessee Valley Authority were originally established during the Great Depression to speed the delivery of electricity to farms and rural areas and to service municipal utilities. Only 11 percent of rural citizens were receiving the benefits of electric service at that time. Virtually no

competition existed among utilities. At that time, IOUs were unable to finance rural electrification because of the lack of available capital at affordable rates.

Cost-based PMA power was reserved first for preference entities, with subsidies seen as tools for promoting economic development. Economic circumstances in many of these areas have improved dramatically and the original reasons for creating such subsidized sales of power no longer exist. Rural America is no longer without electricity, nor is rural America any poorer than urban America.

Congress established the current allocation system based on the diversity in electric markets, the cost of owning, operating and maintaining electric facilities, and the need for the region to access affordable electric energy. The basis for that decision is as valid today as when the lights first came on. Electric utility restructuring will provide little benefit to remote, sparsely populated, and economically depressed rural areas. The lack of economic activity, which initially served as a vital deterrent to conventional electric utility development, is more pervasive today than it was when rural areas were first evaluated as potential markets for electric energy.

Response: Although electrification of rural America has been largely accomplished, it is not universal. For example, Western has received comments during this public process that thousands of residents on the Navajo Reservation in northern Arizona do not have electrical service.

As is the case with every utility in the United States, consumers in Western's service territory vary in their prosperity. Many of Western's customers serve areas that are economically depressed. Allocations of Western power are important to economic development in those regions.

Comment: Western and the other PMAs are in need of an overhaul. America's needs are different today than they were at the time historic Reclamation laws were enacted. While the burdens of Federal preference allocations continue to be shared by all, the benefits appear to flow only to a few. At a time when both government and industry are trying to do more with less, it is difficult to find the public interest in a program where the electricity bills of one select group of citizens are subsidized to the exclusion of others. At a time when energy conservation has never been more important, it is difficult to find the public interest in a scheme where the United States sells electricity at below market rates, thereby encouraging inefficient use, waste and unnecessary adverse impacts to our country's natural resources. And at a time in which the Congress has mandated wholesale competition of electricity and functional unbundling of generation and transmission, it is difficult to find the public interest in a program that depends on vertical integration to support its continuation.

Response: As a regional PMA, the economic benefit of the power sold by Western is enjoyed by entities in the region. This is not a unique situation. The economic benefit of other Federal programs is often also regional in scope, whether the investment is in military bases, mass transit, national parks, or locks and dams that promote commerce on the Nation's rivers.

Western is doing more with less. Our staffing levels have been cut 25 percent over the last several years in order to assure that our power rates remain stable and our goods and services remain marketable. Moreover, Western's rates are not subsidized. Western markets cost-based hydroelectric resources, which are relatively inflation resistant as compared to non-hydro generation due to the absence of fuel costs. In addition, Western has no responsibility to meet load growth with relatively expensive additional power. Western's hydropower resources are reasonably priced due to these factors, and not because of subsidies.

Western is proud of its record, and the record of its customers, in conservation and renewable resources. According to the annual reports from customers pursuant to Western's Integrated Resource Planning (IRP) regulations, Western's customers avoided in 1998 the equivalent of over 555 megawatts (MW) of supply side resource acquisition due to investment in demand-side management. Also in 1998, over 1140 MW of renewable resources were acquired by customers.

The Federal power program does not depend on continuation of vertical integration. For those customers that embrace separation of functions, Western will market its power to the function responsible for service to retail consumers. Yardstick competition will continue to play an important role in enhancing competition in the marketplace, with the goal of lowering rates to all consumers.

Comment: We are concerned that any significant changes to Western's 2004 marketing plan may increase uncertainty at a critical time and lead to increasing government bureaucracy. Changes to Western's existing power allocation system would likely decrease allocations to existing customers and cause power rates to consumers served by Western's customers to rise. Higher electric rates are contrary to the goals of retail competition.

Response: Western is committed to carrying out its mission in a businesslike and cost conscious manner. Creation of a government bureaucracy which adds no value to our programs is inappropriate and puts upward pressure on Western's rates.

F. Western's Role

Comments: Western has already demonstrated and continues to work to adapt both its organization and the renewals it is making on contracts for Federal power, recognizing changes in the industry while at the same time preserving and respecting its Federally mandated mission.

Western's marketing policies are keeping pace with industry restructuring. The extensive public process utilized by Western to develop marketing policy has served its purpose very well.

We feel that the present 2004 CVP marketing plan is the logical evolution of several predecessor marketing plans. With each stage of the evolution, the Western system has gained the flexibility which was sorely needed.

Western's marketing plans already have provisions to adapt Western to the new marketplace. For example, the CVP 2004 marketing plan offers unbundled services and allows customers to choose what they need. The marketing plan is optimized for who Western is and the role they play in the marketplace.

Western is already responding to industry changes as a wholesale power supplier. By separating its transmission function from its power marketing function, posting its surplus transmission on an open access same time information system site, and participating on the California Independent System Operator (ISO) governing board, Western has demonstrated its forward looking approach.

Electricity restructuring is an evolutionary process that will take many years to complete, and the eventual outcome is uncertain. Western has taken into account industry restructuring changes in its proposed marketing plans, which would sell a significantly different resource from what is marketed today.

Western's power allocation system should be retained in order to preserve consistency between the past and future.

Response: Contin
policies
changes

unwise. Western agrees there is risk in predicting the future actions of Congress, State legislatures, and regulators. However, there is also risk in not adjusting business practices until there is absolute certainty.

Western has taken significant steps to respond to industry changes. Even though Western is not under the jurisdiction of FERC for this purpose, functional separation of its merchant and reliability functions has proceeded. Western is actively involved in the formation of independent system operators, and has taken on the roles of security coordination in the Rocky Mountain subregion of the Western Systems Coordinating Council and schedule coordination in northern California. Open access transmission rates and rates for ancillary services have been developed. Western has also pursued efficiencies in its operations and cut its staffing level and associated costs in order to assure that our rates are stable and our power remains marketable. Western is committed to being businesslike and responding to the changes in the utility industry in a responsible and proactive manner.

In recent years, Western has added more flexibility to its power marketing policies and power sales contracts than has existed in the past. Contracts recently signed for the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects contain withdrawal opportunities at 5 and 10 years to meet the needs of potential new customers and other purposes as determined by Western. Western also reserved the contractual ability to adjust power commitments in response to changes in operations and hydrology. In addition, Western has the full flexibility to adjust its power rates under the terms of the contracts. Resource pools of up to 6 percent of the marketable resource were set aside to meet the needs of new customers, including Indian tribes. These changes demonstrate Western's commitment to adjusting its marketing policies as changes take place in the utility industry.

Western has also made significant additional changes in the way power is marketed in its most recent marketing plans. Under the 2004 Power Marketing Plan for the SNR, Western will no longer market a resource that anticipates significant purchasing of power to meet contractual commitments. Instead, Western plans to market the hydroelectric resource as a base resource, which can be enhanced by custom products (such as firming power and ancillary services) at the election of the customer. Similarly, the marketing plan for the SLCA/IP will allow the customer to choose whether Western should purchase firming power. These changes promote customer choice and will significantly impact Western's future need for purchase power appropriations.

Comments: Western appears to be pursuing a course of promoting retail wheeling indirectly even though its sister Federal agency, the Federal Energy Regulatory Commission, has been prohibited by Congress from pursuing this course directly in section 212(h) of the Federal Power Act.

The questions posed by Western appear to be predicated on assumptions that it has a broad regulatory and legislative authority and that the impacts of its decisions will be limited. Neither predicate is accurate. Western's authority is not one of a regulator, but of a marketer with limited authority.

Do not lose sight of Western's limited statutory role. Investor-owned utilities and marketers would undoubtedly oppose a shift in mission from a wholesale supplier to a retail utility.

Industry changes do not justify a more "activist" role for the PMAs. A more active role runs counter to the belief that exists in the Pacific Northwest, where the four governors engaged in a comprehensive regional review of the future role of the Bonneville Power Administration (BPA). The regional review rejected the notion of a more activist BPA, and made several recommendations to limit the role of BPA, including a preclusion of direct retail sales beyond existing direct service customers.

Expanding Western's role to include direct retail sales, rate regulatory review of consumer-owned utilities and load profile analysis is unnecessary and inconsistent with the desired reduction in the role of the PMAs in a competitive marketplace.

Affirmative answers to the six questions would launch Western into activities that vastly exceed its statutory authority. In the past, Congress has been clear when it directs an expansion of Western's role beyond that of a wholesale supplier (such as the IRP) requirement for Western customers. Congress has not directed Western to take on the role suggested in the Notice of Inquiry. While BPA has statutory responsibilities that are greater than Western's, BPA cannot undertake many of the activities contemplated by the Notice. Moreover, the Public Power Council would oppose BPA attempting to engage in such activities.

We believe Western's function is for the benefit of the region it serves. Restructuring along the lines of this Notice of Inquiry could lead Western to operate outside its boundaries to the detriment of existing customers and perhaps even create a situation where Federal agency competes with Federal agency. Western's current responsibilities for supplying power take into account a number of State and regional issues dealing with power, but also extend beyond power delivery to other resource issues such as water management and impacts on the environment.

Response: Western is persuaded by these comments, and will not change its general role in the manner suggested by the Allocation Issues Inquiry. Although Western has broad statutory authority, there is no compelling policy rationale for Western to become more activist in its role. The goal of the Clinton Administration, which is to have a smaller government that works better and costs less, would be undercut if Western adopts the wide ranging new responsibilities suggested by the Inquiry.

Comment: Western should not build resources.

Response: Western has no plans to construct new power resources.

Comments: Federal power is marketed in accordance with Reclamation law. Consequently, the allocation and rate-setting policies of Western are not identical to the practices of other electric utilities. Federal Reclamation projects were developed not as a means for the generation of electricity, but as a means of generating revenues to repay Federal investment in these projects, including irrigation assistance.

Multipurpose Federal project operation is unique as compared to other resources that have more flexibility in a competitive power market to meet individual loads.

Response: Western has less flexibility than other participants in the competitive marketplace due to the multipurpose nature of the resources we market. Western agrees that our role is to market power in such a manner as to repay Federal investment.

Comment: As an agency of the Federal Government, Western is not subject to deregulation rules promulgated by the FERC. Nor is Western subject to the jurisdiction of State legislatures or public utility commissions.

Response: Although the Clinton Administration's restructuring bill would make Western's transmission rates subject to FERC review as a matter of law, Western is not a public utility and therefore is not presently subject to FERC jurisdiction under section 205 and section 206 of the Federal Power Act. However, as a transmitting utility, Western is subject to sections 211–213 of the Federal Power Act. Western is not subject to the jurisdiction of State legislatures or public utility commissions.

C. Customer Support, Leadership and Reliance

Comment: The Natural Resources Defense Council (NRDC) applauds the good stewardship example that has been set by northern California customers of the Central Valley Project. In our judgment, that record justifies both renewal of these customers' contracts and your insistence that other customers meet the same high standard in return for contract extensions.

In an increasingly competitive and environmentally constrained industry, access to inexpensive power supplies should be limited to distribution companies that make convincing commitments to use electricity efficiently and to expand inventories of relatively benign production. This is precisely what we have seen from the Sacramento Municipal Utility District (SMUD), City of Redding Electric Department, Silicon Valley Power, City of Palo Alto Department of Utilities, and the Northern California Power Agency. These institutions have made three overriding commitments: (1) Through 2001 at least, they will devote at least 3 percent of retail electric revenues to long-term investments in energy efficiency, renewable energy, and low-income energy services; (2) after 2001, they will at least match California investor-owned utilities' investments in these categories as a fraction of retail sales; and (3) they will annually underwrite and publish independent experts' reviews of all such investments. Those commitments place these northern California institutions in the forefront of public power nationally and amply justify a contract extension.

Response: Western appreciates the support of the SNR 2004 marketing plan by NRDC.

Comment: Central Valley Project customers have paid for substantial environmental restoration on the CVP. Moreover, the consumer-owned municipal utilities served by the CVP have paid more than $20 million to repair and upgrade the Federally owned power generating facilities (including the funding of the Shasta temperature control device, the Shasta rewind project, and CVP maintenance) to ensure their continued reliability and value without the need for Federal appropriations. The availability of this resource has been vital to the implementation of many cutting edge environmental improvements that currently benefit the citizens of California.

Response: Western agrees that CVP customers have paid for substantial environmental restoration and improvement in northern California. The 2004 marketing plan provides stability in the collection of mitigation funds for the benefit of environmental resources in California's Central Valley.

Comments: The CVP allocation is essential to SMUD's ability to continue providing reliable, affordable electricity to its consumers. It also makes possible SMUD's leadership role in energy efficiency and renewable resource programs. The assurance of CVP allocations has also been critical to the implementation of many cutting edge environmental improvements that benefit citizens of my congressional district.

Along with other Northern California Power Agency (NCPA) customers, we have made significant commitments to renewable resources that would not have been feasible without the CVP contracts. Loss of these contracts would make further commitments unlikely as well as jeopardize the stability of existing commitments.

Response: Western's power customers in northern California are leaders in the development of energy efficiency and renewable resources. Western agrees that renewable resource commitments might be adversely impacted if CVP contracts with existing customers did not continue.

Comments: Current CRSP power customers have contributed substantially to environmental protection programs and providing revenues for the Glen Canyon Monitoring and Research Center (GCMRC). Approximately 8–10 percent of CRSP rates fund environmental programs, such as the Upper Basin Recovery Implementation Plan and the GCMRC. This significant contribution, as well as customer commitments to integrated resource plans, demonstrates the commitment of CRSP firm power customers to environmental mitigation.

We could support the extension of SLCA/IP resources to existing customers if they were to support such ideas as renewable and energy efficiency investments, embracing green marketing to interested retail customers, supporting codification of funding commitments for mitigating the environmental impacts associated with the operation of Federal hydroelectric facilities, and agreeing to provisions that ensure that contract extension language will not impede dam reoperation.

Response: Western agrees that a significant portion of CRSP power revenues are used for environmental mitigation, monitoring, and research, all of which benefit the environment. Over $160 million in environmental costs, including purchased power required by experimental flows, have been funded by CRSP power customers through 1998. Now that operations at Glen Canyon Dam have been permanently changed to benefit downstream natural resources, the cost to replace the lost electrical power caused by this change is estimated to be in excess of $44 million annually, and could approach double that amount. In addition to the cost associated with lost electric power, there is a long-term monitoring and research program funded by power revenues which is anticipated to cost about $7,600,000 annually.

Capital funding of Upper Colorado River Basin endangered fish recovery is expected to cost about $17 million. Research funding for these same fish species is expected to cost $6 million per year. These costs are funded by CRSP power contractors. Moreover, additional purchase power expenses resulting from operational changes at Flaming Gorge Dam to benefit these fish are expected to total about $15 million over the next 5 years.

Purchasers of CRSP power have also had a positive record in energy efficiency and renewables. In 1998, CRSP customers realized over 138,000 megawatthours (MWh) in energy savings due to demand-side management investment. In excess of 692,000 MWh were generated from renewable resources in 1998 due to the investments of CRSP customers.

In addition, contract language has been developed to assure that dam reoperation will not be impeded by the extension of SLCA/IP resources. Firm power contracts will flexibly accommodate changes in operations, pursuant to the principles set forth in the EPAMP, 10 CFR part 905.

CRSP customers have supported environmental goals in the upper Colorado River Basin through significant direct funding and have paid, through higher power rates, for the loss of revenues attributable to environmentally beneficial changes in dam operations. In addition, their support of energy efficiency and renewable resources has been significant.

Comment: Existing customers have done IRP, now the Federal government should recognize the quid pro quo.

Response: Western agrees that existing customers have achieved environmental and economic benefits through preparation and implementation of integrated resource

plans as well as historic conservation and renewable energy activities.

Comment: Federal power allocations are the cornerstone of many consumer-owned electric systems. Many entities have acquired their entire complement of resources assuming the long-term availability of the core hydropower resource. Customers have planned their resource portfolios around their Western allocations. Some customers have made significant investments in transmission to deliver Western's power.

Response: Western agrees that economic dislocation would occur if resource commitments to existing customers were substantially withdrawn. Western and its customers have constructed high-voltage transmission to deliver power to existing customers, which could not be used for delivery of Federal power if allocation patterns were significantly changed.

Comment: Each resource from which Western allocates power should be analyzed separately with due consideration given to original participants. The history of purchases and the past level of commitment by existing customers need to be recognized.

Response: Through its project-specific marketing plans, Western analyzes how power should best be sold to meet regional needs. The past level of commitment is being recognized through the extension of a major portion of the resource to existing customers.

Comment: Western's historical power users have an equitable, if not a legal, interest in the hydroelectric systems providing the capacity and energy that Western markets. Just as the Bureau of Reclamation's water customers earn an equitable interest in the water rights held by Reclamation by paying for the irrigation systems, Western's historical customers have developed an equitable right to rely on the supply of power for which they have paid. Before the DOE attempts to reallocate the benefits of the Federal power system according to any of the new policies discussed in the Notice of Inquiry, it ought to reallocate system costs to reflect the contribution of current power users.

Response: Western's existing customers have no right to purchase power from Western in the absence of a contract. While equity is a consideration in the marketing of power by Western, customers have no equitable or legal right to purchase power beyond the term of existing power sales arrangements. There is no need to reallocate system costs, as the new policies suggested in the Notice of Inquiry are not being generally adopted by Western.

Comment: CRSP hydropower is a clean, renewable resource in which we invested when coal-fired generation was less expensive, but CRSP participation was needed.

Response: Western recognizes that many customers committed to the Federal power program at a time when other alternatives were less expensive. This historic support is appreciated.

Comments: Western's preference customers meet or exceed the goals of California's deregulation law and Federal proposals, which address reliability issues, independent system operator formation, market power issues, environmental mitigation, and open access. Peer review by NRDC of our public goods and environmental investments has demonstrated the progressive nature of public power in northern California.

Consumer-owned utilities have provided competition and impetus for open transmission access, and continue to be leaders in renewable and efficiency accomplishments in the utility industry. It would be inappropriate to threaten these worthy achievements by making adverse changes to their Western power supply, and thus upset the competitive balance that now exists between municipal utilities and other energy providers.

Our power authority continues to be a leader in environmentally friendly power generation, with a nationally recognized wind power project, a photovoltaic demonstration project and one of the nation's cleanest coal-fired power plants.

Response: Western agrees that many of its customers have been leaders in the deregulation of the electric power industry and have demonstrated their concern for the environment through action despite the increasingly competitive nature of the electricity marketplace.

Comments: The CVP has been a model to emulate in the utilization of the public's natural resources for the public good. The partnership between the United States and local entities has been mutually beneficial and should be continued. Continued access to the CVP power resources is essential to achieving the goals of electric industry restructuring—low electric rates for consumers.

Our water district and customers have worked in partnership with Western to promote economic and environmental interests. Any changes to the proposed 2004 marketing plan will only increase government costs and bureaucracy.

Response: Partnerships with customers have been invaluable to the success of the Federal power program.

H. Small Customer/Rural Impact

Comments: Under the State restructuring statutes adopted to date, there has been no indication that small customers have benefitted other than by legislatively mandated rate reductions required in the legislation itself, rather than as a consequence of restructuring itself. To the contrary, indications are that retail residential and small business customers are not being pursued by energy marketers.

Experience with deregulation in other industries has shown that smaller communities and rural areas generally do not share in the benefits of deregulation and are often harmed through the loss of service providers. This has clearly been the case with the airlines, trucking, railroad, and long-haul bus services. Telecommunications is another area where urban consumers have enjoyed the benefits of new technology before rural areas. Because of their population densities, a restructured electric industry may present smaller communities and rural areas with the same types of defection by service providers and/or absence of competitive benefits.

Every indication to date is that State restructuring has not achieved the anticipated benefits. It has instead led to mergers of large utilities, the sale of generating assets based on a belief that only large utilities can successfully compete in the marketplace, and a lack of interest by new energy suppliers in serving retail residential and small business markets.

Response: Part of Western's mission is to provide the economic benefits of cost-based Federal hydropower to rural America. Western declines to change its policies in a manner that has significant adverse impacts on public power customers.

I. FERC Licenses

Comment: FERC recently renewed the hydroelectric licenses in the Feather River Canyon held by investor-owned utilities without any competitive process. As a matter of fairness and equity, we would hope the customer-owned systems are treated in the same fashion. Renewals of the CVP contracts as proposed will help maintain the balance between investor and customer owned utilities in the region.

Response: The renewal of a FERC license appears to be comparable to the situation facing Western's existing customers at the end of their contracts for the purchase of power from Western. The extension of FERC licenses lacks the flexibilities contained in Western's 2004 marketing plans, such as the reservation of power for new customers.

Comment: We think it very important to note that the investor-owned utilities were granted virtually perpetual FERC licenses in 1986 through the poorly named "Ratepayer Protection Act." The theory was that the savings were being passed on to the ratepayers. In 1998, Pacific Gas & Electric Company (PG&E) announced plans to sell off these plants for close to $2 billion. PG&E is asking to be allowed to keep massive benefits that were supposed to be passed on to ratepayers. At the same time, CVP and CRSP customers are being challenged on our use of Western power, when we are passing on the benefits to our member-owners in a nonprofit fashion.

Response: Hydropower is a very capital-intensive resource that has no fuel costs, so it tends to be an economical and desirable resource in a utility's resource mix. FERC-licensed hydropower is a low cost resource, but its value is not always apparent as it is blended with other power resources of the licensee rather than being marketed on a stand-alone basis.

J. Term of Contract

Comment: A 20-year contract term is appropriate. Twenty year contracts have already been offered from the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects. Regional equity calls for contract renewal for the remaining Federal hydropower projects. Twenty years is shorter than the 30-year contract term for the Boulder Canyon Project.

Response: In addition to the precedent cited in public comments, contracts for the sale of Central Valley Project power have variable terms, with the longest contract approaching 40 years in length.

Precedent exists within Western that supports 20-year contract terms. Regional equity is served by offering 20-year resource extensions to existing customers of the CVP and SLCA/IP.

Comment: The Southeastern Power Administration recently entered into 20-year power contracts. FERC licenses for hydropower generation have historically been granted for 30–50 years, a much longer time period than what Western is proposing here. We note that the Bonneville Power Administration has recently proposed a 20-year term for its post 2001 contracts.

Response: Precedent exists outside of Western for 20-year or longer power commitments, both for the Southeastern Power Administration and FERC licensees. The term of contract for Bonneville Power Administration power varies depending on the type of service a customer selects.

Comment: Contract terms under EPAMP, and as described in the December 1 **Federal Register** notice, are sufficiently flexible to justify a 20-year contract term. Western has already shown the flexibility necessary to accommodate changes in the industry while preserving its traditional mission. A 20-year contract term, with some flexibility for Western and its customers, would provide an adequate and stable environment for power marketing.

Response: Western's power sales contracts under the proposed 2004 marketing plans offer more flexibility to Western and its customers than in the past.

Comments: Twenty-year contracts represent a meaningful planning horizon and support the customer preparation of substantive integrated resource plans. Shortening the contract term would undermine our members' ability to do necessary resource planning, including further development of renewable resources. Western's Environmental Impact Statement (EIS) on EPAMP demonstrated that longer term contracts have a positive impact on the environment.

The proposed 20-year contract term for contract renewals is appropriate. Our town has planned its resource portfolio around the CVP allocation, and shortening the contract term would undermine our ability to perform quality planning, including further development of renewable resources. Certainty of the CVP resource has become even more crucial as we make the transition into the restructured industry.

Response: The EPAMP EIS predicted environmental benefits from longer term contracts, as customer investments in renewable resources and energy efficiency are more likely to occur when a stable foundation of Western hydropower exists. Integrated resource planning is enhanced when contracts provide a meaningful planning horizon. Many customers have planned their resource mix around Western's allocations.

Comment: Not one of the hosts of compromises and consensuses made during the development of the industry's restructuring in California included a change in Western's allocation process, nor did they include the possibility of Western's contracts being short term. With the expectation of long-term contracts, as promised in the EPAMP process, many public power utilities participated in and supported the restructuring effort.

Response: Western has no reason to doubt this statement.

Comment: Western may want to consider shorter terms for future contracts, or off ramps at set periods of time, where the option exists for portions of the contract to be open for renegotiation.

Response: Shorter term contracts would increase the amount of Western, customer, and public time and resources spent on marketing plan development. Given the recent history of lengthy public processes in the development of Western's marketing plans, the better policy direction is to decrease the time spent on marketing plans.

Western has built flexibility into its contracts already by allowing for resource adjustments in response to changes in power operations, hydrology, and project use development, which is typically water pumping load. Power can be withdrawn to meet the needs of potential new customers for most of Western's projects. Rates can be adjusted without limitation. Given this flexibility, Western sees no need to enter into contracts with a shorter term.

Comment: The contract term should be shortened to reflect the new marketplace. New entrants to the electricity market and the increased ability and desire of customers to choose their own supplier—or be their own supplier—means Western should be prepared to keep its options open and allow its customers to do the same. Long-term supply contracts prevent Western from responding to changing conditions. Offering contracts with varying terms may offer the best deal for Western and its customers.

Response: Western's customers have the flexibility to terminate purchases from Western when a rate adjustment takes place. This preserves customer flexibility. Western has withdrawn power from existing customers to meet the needs of new customers, and has reserved the right to withdraw additional power for new customers and other purposes even after its power sales contracts become effective. In addition, Western's power sales contracts already expire on different dates, depending on the project from which Western is marketing power. CVP and SLCA/IP contracts expire in the year 2004, while Parker-Davis Project contracts expire in 2008, Boulder Canyon Project contracts expire in 2017, Pick-Sloan Missouri Basin Program-Eastern Division contracts expire in the year 2020 and Loveland Area Projects contracts expire in the year 2024.

Comments: The current allocation system should be changed. The development of competitive wholesale and retail electricity markets as a result of electric restructuring increases the inherent market distortions caused by low-cost hydroelectric power provided by the PMAs. We believe that no PMA firm power contract should be longer than 5 years.

Since today's electricity market is in flux and is being restructured, it makes no sense for the Federal Government, or even any business, to sign 20-year contracts. The uncertain size and nature of future electric loads have led the private sector to accept contracts lasting no more than 5 years. Even if its contracts have withdrawal opportunities and rate flexibility, Western should not tie up its resources for any period longer than that done by the private sector. Protecting the status quo is unresponsive to the new electricity industry and the Federal taxpayer.

Response: Western notes that at least one power marketer has identified a competitive advantage in longer term contracts, and has run advertising promising peace of mind with a decade of locked-in, long-term energy prices. As is the case in the competitive marketplace, our customers can choose to enter into long-term arrangements (albeit without any guarantee of price from Western) or acquire power from others under either long-term or short-term arrangements. Far from protecting the status quo, Western is building flexibility into its contracts and marketing policies.

Comments: Lengthy Western contracts would ignore the very inequities posed by taxpayer subsidies to select electricity users. Those subsidies to Western, which are substantial according to the General Accounting Office and the Congressional Budget Office, distort the market, discourage efficiency, and waste taxpayer dollars. To extend power sales contracts for 20 years would compromise the ability of Congress and the administration to reform Western's operations and/or to spin Western assets off to non-Federal interests.

We urge you to consider changes in the electric utility industry as marketing plans are developed. Congress is actively considering legislation that would restructure the industry. Competition in this industry is vibrant and expanding. To date, 18 States have approved plans for retail competition, and every State is considering these issues. In this environment, Western and the other PMAs should not enter into long-term contracts that would deprive both Congress and the States of the flexibility to shape the emerging competitive electricity market.

Response: Western's rates are not subsidized. Current interest rates are charged on new investment, and recovery of costs that are not used in the production of power (such as salinity control and irrigation assistance) is required in Western's rates. Western's rates are reasonable because hydroelectric generation has no fuel costs. As the generation marketed by Western has been in service for many years, much of the original investment has been repaid. Moreover, Western does not have the responsibility to meet load growth through acquisition of more expensive additional resources.

Congress certainly has the ability to consider changes to Western's business p actices or privatization. However, Western needs to carry out its mission and market power in accordance with existing law. Waiting for Congress to enact legislation deregulating the electric utility industry, let alone dealing with the future of the PMAs, is imprudent. There is no way to accurately predict whether and when any changes might take place.

Comment: Operation, maintenance, and repayment of Reclamation projects are critical items. Recognizing that power revenues are a significant source of revenue, it is imperative that the power contracts have a term of sufficient length to assure orderly repayment and support appropriate operation and maintenance decisions. An adequate time period is required to implement decisions and recover the costs associated with major maintenance work that incurs significant cost. Otherwise the work is vulnerable without commitments for funding and assurance to the power contractor that they will recover their investment during the contract period.

Response: Western agrees that shorter term contracts jeopardize customer financing of project operation and maintenance. Without customer financing, requests for appropriations will likely increase.

Comment: The Energy Planning and Management Program established 20 years as a floor.

Response: EPAMP established 20-year power sales contracts as a precedent, not a floor.

Comment: Twenty years is too long for tribes to be condemned to wait.

Response: Tribes are not being asked to wait. They can start receiving the benefits of cost-based hydroelectric power in 2000 from the Pick-Sloan Missouri Basin Program-Eastern Division and in 2004 from the Loveland Area Projects, the Salt Lake City Area Integrated Projects, and the Central Valley and Washoe Projects. Additional resource pool increments will be available for allocation to new customers 5 and 10 years into the 20-year contract terms for the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects, and 10 years into the 20-year contract term for the Central Valley and Washoe Projects.

Comment: Adjusting the length of power contracts in an effort to affect retail markets may have unintended consequences. Shorter power contract terms, which increase the frequency by which customers can compare Western's cost-based products with market alternatives, may result in marketing volatility that threatens its ability to meet Treasury obligations if near or above-market Western rates encourage customer flight.

Response: Western agrees that marketing volatility and risk of nonrepayment to the Treasury increases with shorter term contracts.

Comment: Long-term resource and rate stability is important not only to our customers, but also to our ability to meet the environmentally important integrated resource planning requirements of Western.

Response: The EPAMP EIS found that long-term contracts are beneficial to the environment. Short-term contracts cause customers to focus on the uncertainty surrounding the Western resource, rather than looking to implementation of cost-effective energy efficiency and demand-side management to meet future needs. Short-term contracts could be a disincentive to the implementation of environmentally beneficial project improvements in support of the Clinton Administration's climate control action plan. Twenty-year contracts balance the environmental benefits associated with long-term resource certainty against the need for flexibility to respond to changing circumstances over time.

K. Legal Issues

Comment: Until such time as Congress enacts Federal retail competition legislation, Western should not change its existing policies. The Clinton Administration has not proposed to change Western's existing mission in its electric utility industry restructuring bill.

Response: Western's core mission remains unchanged in the absence of legislation from Congress.

Comment: Western's Energy Planning and Management Program has already received congressional scrutiny. Some members of Congress opposed the contract extension portion of Western's program and unsuccessfully attempted to have it legislatively curtailed or erased. Therefore, there is no barrier to the extension of resource commitments to existing customers in accordance with EPAMP.

Response: The Energy Policy Act of 1992 contains no congressional barrier to the extension of resource commitments to existing customers.

Comment: Western's allocation policies are far too important to be substantially altered—as this **Federal Register** notice strongly suggests—without congressional action. Indeed, much of the policy might not be able to be changed without congressional action.

Response: No policy changes will be made that are not allowed by existing law.

Comment: Western has no authority to compete at the retail level.

Response: Western has broad legal authority to sell Federal power pursuant to statutory and case law. No Federal law prohibits Western from selling directly to nonutilities.

Comment: As the Second Circuit Court of Appeals has held, Congress believed that all interests can best be served by giving the local entities the right to decide on the ultimate retail distribution of the preference power sold to them. This belief was founded in the so-called "yardstick competition" principle, which assumes that if municipal entities are supplied with cheap hydropower, their lower competitive rates will force the private utilities to reduce their rates, with resulting benefits for all. It is not for FERC or the courts to second guess that basic determination.

Response: The cited Second Circuit case interprets the Niagara Project Power Act, which gives preference to public bodies and nonprofit cooperatives within economic transmission distance of certain hydroelectric facilities in the State of New York. In that litigation, the court limited the statutory definition of "public body" to publicly-owned entities capable of selling and distributing power directly to consumers.

Western's marketing authority is broader than that defined by the Niagara Project Power Act. Reclamation law allows Western to market to municipal utilities, rural electric cooperatives, public corporations and agencies, nonprofit organizations, Federal agencies, State agencies, and Native American tribes.

Comment: The legal problems associated with a change from the existing power allocation system are numerous. If changes are attempted, legal challenges lasting for years will be triggered. As the EPAMP and 2004 marketing plan processes have already been ongoing for years, there is a need to adopt a lawful marketing plan and allocations expeditiously.

Response: Western's marketing plans will be lawful.

Comment: Under the Trinity River Division Act of 1955, Congress intended to provide the Trinity Public Utilities District a perpetual right to certain Western energy. The draft 2004 CVP marketing plan contains provisions toward that end, and should be approved.

Response: The Trinity River Division Act of 1955 provides certain rights to preference customers in California's Trinity County. The 2004 marketing plan for the Central Valley and Washoe Projects will carry out the requirements of this law.

Comment: Congress has not been receptive to fundamental changes to the PMAs. For example, Congress recently reaffirmed its ban on studying the sale of the power marketing administrations.

Response: While some members of Congress have proposed the sale of the PMAs or significant changes to their missions, many others support the continuation of the PMAs and their existing programs.

Comment: The enactment of California AB 1890 did not, and was specifically not meant to, disrupt the long-term contractual relationship that California entities have for hydropower. The CVP marketing plan was developed at the same time as the California public utility commission restructuring plans which were incorporated into AB 1890. In fact, provisions of AB 1890 specifically provide for the delivery of preference power purchased from the Federal PMAs. Retail competition is just the most recent in a long line of changes to the increasingly competitive electric industry. The present power allocation system has been very effective in keeping pace with those changes.

Response: As a Federal entity, Western is not bound by the provisions of AB 1890. Western agrees that AB 1890 did not intend to impact Western's preexisting power sales contracts for the Central Valley Project.

Comment: California municipal utilities already fully comply with the requirements of AB 1890 and have even voluntarily agreed to independent verification of their programs. Western should not superimpose additional conditions on California public power utilities that were not intended when AB 1890 was enacted.

Response: Western agrees that many public power utilities are voluntarily complying with AB 1890. Adding conditions not intended by the California State Legislature would not be consistent with the policy of the Clinton Administration.

L. Existing Contracts

Comment: Western should honor existing obligations and contracts. Western should assure that the distribution of costs and benefits remains equitable and does not inadvertently harm existing contract holders. For example, distribution of costs based upon some criteria contained in existing contracts but not applicable to new participants may require amendments to those contracts, to avoid an inequitable distribution of costs.

Response: Western has every intention of honoring existing obligations and contracts. Western also intends to assure that the equitable distribution of costs and benefits will continue.

Comment: A basic element of the State of California's restructuring legislation, AB 1890, was that existing contractual relationships, such as CVP power contracts, would not be impacted.

Response: Western agrees that AB 1890 did not intend to impact Western's preexisting power sales contracts for the Central Valley Project.

M. Need To Complete Process Quickly

Comments: The 2004 marketing plans should be approved in a timely manner. Western has already invested considerable time and effort in lengthy public processes and environmental evaluations for the Energy Planning and Management Program and the project-specific marketing efforts for the Salt Lake City Area Integrated Projects, the Central Valley Project, and the Washoe Project. There is no compelling reason to undertake another lengthy process prior to approval of the plans.

Our tribal utility would greatly benefit from an extension of Western's resources as quickly as possible.

Western needs to approve the marketing plans quickly, as it takes time to negotiate contracts and acquire replacement resources. The contractual process for Pick-Sloan Missouri Basin Program-Eastern Division power started in 1995, and is still incomplete.

CVP customers are eager to sign power contracts, as they need to know the status of future resources to make choices on issues such as stranded costs, adoption of customer choice, and planning for replacement power.

Marketing plans should not be held up while the restructuring evolution takes place across the several States served by CRSP and CVP power. Five years' notice is necessary to allow resource plan adjustments if significant changes are planned.

Swift approval of the 2004 marketing plans and renewal of the contracts will ensure that the "win-win" relationship between Western and its customers will continue. Western's customers need sufficient advance notice of power allocations to allow for electric resource planning.

We support the approval of the 2004 marketing plan as a document reflecting significant compromise and feel that DOE should recognize the long public process conducted in its development.

Reopening the public process seems not only duplicative but places in question the credibility of such processes and perhaps even Western itself. It is essential that public processes be respected rather than manipulated. Any further review would be redundant and waste the taxpayer's money.

We are extremely disappointed that Western must regress to this unnecessary process, as we believe Western adequately addressed restructuring in preparing its 2004 power marketing plan. The CVP 2004 marketing plan is significantly different from the current plan and is fully adaptable to the newly restructured utility industry.

If Western would spend as much time developing new resources or resource improvement as it does on public processes, maybe they would have something to market without withdrawing from existing, long-served preference customers.

Response: Western agrees that the time has come to finish pending marketing plans for the Central Valley, Washoe, and Salt Lake City Area Integrated Projects.

Comments: The delay in approval of Western's 2004 marketing plan is resulting in negative impacts to the relationship that Reclamation and Western have worked to achieve and maintain with the public power industry. Western and Reclamation entered into funding arrangements with the long-term firm power customers in order to reduce the level of appropriations needed from Congress. Delay of marketing plan approval may cause customers to withdraw from funding long-term projects. Power customers would also be unwilling to fund long-term capital improvement projects if they cannot be assured that they will receive the benefits of the improvements. This would negatively impact repayment and the overall power marketing function.

The contract uncertainty created by lack of approval of the CVP marketing plan is manifesting itself in customer reluctance to fund improvements with payback periods beyond the current contract term. The result is lost economic opportunities and lost opportunities to reduce greenhouse gas emissions.

Response: Western does not want to jeopardize customer funding of long-term projects beneficial to the operation of power generation.

N. Ability To Compete

Comments: Hidden in this question is the thought that Western should dabble in retail markets and participate in a bidding war. Western is not a big enough player to be effective in the retail market. Since Western has little, if any, energy to sell in the open market to other than preference entities, there should be no change in Western's power allocation approach.

The majority of CRSP wholesale customers are small, rural and often Indian communities with marginal economic situations that will add nothing to enhance regional competition.

Response: Western's ability to impact the marketplace is limited due to our relatively narrow mission and the size of our resources as compared to the size of the electricity marketplace. Western has no intent to enter the retail marketplace in a substantial manner.

O. Repayment

Comments: CRSP power customers are repaying their debt ahead of schedule under long-term contracts that were negotiated at a time when CRSP power was higher than other sources. A shorter contract term increases the risk that the Federal investment will not be repaid on time.

Power revenues repay Federal debt for CRSP hydropower facilities, pay for the CRSP power program's annual operation, interest and replacement costs, and assist in the repayment of 95 percent of the project's irrigation costs.

CVP power sales have repaid over 70 percent of the Federal debt allocated to power so far, and will completely repay the power debt in the upcoming contract term, allowing Western to commence repayment of Federal debt allocated to irrigation which may otherwise not be repaid. Clearly the public interest is best served by renewing this partnership, not disturbing it.

Long-term contracts offer stability and value to both Western and its customers. Preference customers have repaid Federal debt ahead of schedule, furnished irrigation assistance, adopted and promoted environmental programs, and provided up-front funding of O&M expense.

Response: Western agrees that debt for both the Central Valley Project and the Salt Lake City Area Integrated Projects is being repaid ahead of schedule. Shorter term contracts increase Western's exposure to the volatility of the marketplace and may increase the risk of nonrepayment to the Treasury.

Comments: Given current uncertainties in the electricity marketplace, and the tremendous financial exposure to the taxpayers that unrepaid investment represents, it is responsible and beneficial for the United States to secure the repayment of investment with a long-term extension of Western's firm electric service contracts. The existing power allocation system works well, and has proven to provide a reliable revenue stream that assures repayment of multipurpose water projects, including irrigation aid. Do not jeopardize the repayment guarantee under existing contracts.

Western should not pursue a role that would create economic risk for the Federal Government (such as becoming a competitive generating agency) or would position the Federal Government to compete at retail against publicly and privately-owned utilities and other market participants.

The Federal Government also benefits from long-term, 20-year contracts by assuring revenues for project repayment with well-established customers without exposure to the volatility of the evolving marketplace.

Response: Western agrees that long-term contracts mitigate the market volatility that would otherwise exist.

There is no repayment guarantee under existing power sales contracts, as customers have the right to opt out whenever a rate adjustment occurs. However, few customers have exercised this contractual right, due in part to Western's control of costs and commitment to rate stability. Although power revenues associated with hydroelectric resources vary depending on water availability, power sales contract certainty has contributed to relatively steady repayment to the Treasury.

Western believes there are advantages to marketing power to well-established customers with a positive record for payment of bills in a timely manner. Some new participants in the deregulated industry have defaulted on their obligations. In addition, Western believes that retail customers are more likely to switch power suppliers than wholesale customers, which would cause fluctuations in the revenue stream that is used to repay the multipurpose projects from which Western markets power.

P. Tribal Issues

Comment: Tribes are eligible preference customers. Most tribes are interested in receiving an allocation of power from Western. A useable allocation of Western power makes the difference in accomplishing economic development.

Response: Western agrees that tribes are eligible preference entities.

Comment: Western has a trust responsibility to the Indian tribes within its service territory. This is a different and greater responsibility than Western has to its current customers. In destroying traditional tribal economies, the Federal Government accepted a responsibility to assist and allow tribes to create new economies that are equal to the standards of living of other Americans.

Response: Western supports the DOE's Indian policy, which stresses the need for a government-to-government, trust-based relationship. The key theme throughout the Department's policy is consultation with tribal governments so that tribal rights and concerns are considered prior to action being taken. Western has met with Indian tribes and tribal representatives throughout the Energy Planning and Management Program's public process. Western also has met informally on a number of occasions with tribes since completion of EPAMP, both in the Missouri River Basin and in New Mexico and Arizona. In February of 1999, Western held informational meetings in Phoenix, Arizona, Albuquerque, New Mexico, and Folsom, California, to engage in dialogue with Native Americans on Western's power marketing programs. A 30-day comment period also took place in February to receive additional public input on the size of project-specific resource pools necessary to meet the fair share needs of new customers, including Native Americans. An informal meeting in Albuquerque in May of 1999 allowed additional consultation between Western and the Council of Energy Resource Tribes. Western believes that its consultation with tribes has been meaningful and substantive, and will continue at a high level in the future.

Comment: Western must help tribes to become ready, willing, and able. Western should help tribes to negotiate to obtain electric utility status.

Response: Western plans to allocate power to tribes and assist the tribes in obtaining delivery of the benefits of their allocations. As tribes need not form utilities to receive an allocation of power, Western is neutral on whether tribes should form utilities to meet electricity needs on the reservation. Technical and financial assistance to a tribe in support of utility formation may be available from the DOE or some other agency of the United States Government.

Comments: Access to electric service is a major issue for tribes and the people living within reservation boundaries. Some reservation residents have no electric service, while others have service that is high priced and of lower reliability than service off the reservation.

Western's power allocation system should be modified to take into account all regulatory changes, including those which allow Indian tribes and others open access to transmission and, therefore, greater access to Western's power and the power of others.

Response: Open transmission access at the wholesale level should make it easier for Western's allocations of power to be delivered to customers. Western is committed to working with the tribes and interested third parties to assure that Native Americans receive the benefit of allocations from Western.

Comment: Tribes are in the process of establishing vehicles for making utility choices. These vehicles will sometimes be utilities, and should be given full recognition by Western in its policy making and power allocations. Even if tribes do not form utilities, Western should allocate power directly to Indian tribal governmental loads such as government buildings, tribally owned economic activities, and public tribal housing and schools.

Response: Western intends to allocate power to eligible tribes whether they form utilities or not.

Comment: We believe that the historic marketing plans of Western are too lengthy, expensive and, therefore, too preclusive for small entities such as tribes.

Response: Under the Administrative Procedure Act, Western seeks public involvement and input on its marketing plans. Western agrees that its recent public processes have been lengthy. However, we believe it important that our processes allow for the involvement of small entities such as Native American tribes.

Comments: We believe the current power allocation program would greatly assist our five tribes in attaining an allocation of CRSP power and having certainty of that power as a resource in the future once an allocation is attained.

The current program with the specific language provided in the final EPAMP regulations, which provides for preference to small Indian communities, is more than adequate to assure our Indian communities can attain some of this power efficiently. Our tribes believe the contract extension policy is a sound business practice because once we receive an allocation, we should be able to plan on receiving it for many years to come. This would allow small Indian communities to receive a tremendous economic benefit.

Response: Western agrees that a potentially large economic benefit can be derived from an allocation of Federal hydropower, especially over the term of a 20-year firm-power contract. However, other costs associated with the delivery of Western's power could have a considerable impact on the size of any benefit, such as the cost of transmission service, supplemental power supply, and ancillary services.

Comment: The present power allocation system should be modified substantially to recognize the needs of the Indian tribes and its agencies the same as that accorded the States, municipalities, irrigation or power districts, and Federal entities.

Response: The 2004 marketing plans provide the same or better treatment for tribes as compared to other customers.

Comment: The history of energy development and use in general and Federal hydroelectric development in specific is a history of injustice and abuse of power on the part of the Federal Government. Many of the Federal dams were built from Indian lands and the resultant economic and social benefits from those projects were denied to Indian tribes. In many cases, tribes were inadequately compensated for the loss of whole communities, valuable farmland and cultural/religious/spiritual resources.

Response: Just compensation for the taking of lands to construct Federal dams is not an issue that is appropriately addressed through an allocation of power by Western.

Comment: The tribes request that Western, in performance of its trust responsibility, provide tribes with technical assistance to ensure the tribes receive the maximum economic benefits of low-cost Federally generated hydropower through management agreements with distribution utilities.

Response: To the extent that a tribe does not form a utility, Western intends to assist the tribes in obtaining the

economic benefit of allocations through bill crediting or some other appropriate mechanism involving the distribution utility. Western is committed to providing an appropriate level of technical assistance to tribes.

Comment: Policy and practice have discouraged tribes from developing the institutional, management, and technical capabilities as well as the physical infrastructure and financing to access the power.

Response: Western's allocation of power to tribes, without a requirement for utility status, should enable the tribes to access the benefits of Federal hydropower more easily. Historic assistance to the Navajo Nation by Western has resulted in tribal access to photovoltaic power in northern Arizona.

Comment: It could be argued that the Indian tribes' unused water, such as the Navajo Agricultural Products Industry which is 20 years behind schedule, is being utilized to generate Federal power over and over while it travels down river. While other entities have enjoyed the benefits derived from Federal power, Indian tribes and their agencies have yet to see equal benefits.

Response: Rights to the water that passes through turbines at Federal hydroelectric facilities are vested in different entities and/or are reserved for certain in-stream purposes. Possession of water rights does not mean a right to hydroelectric power generated by that water also exists.

Comment: A tribal utility could provide tribal government with the opportunity and means to use tribal borrowing and bonding status to improve utility infrastructure, improving the quality of life on very poor reservations. If done in conjunction with systemwide planning, tribal infrastructure development could very well reduce physical constraints in the transmission systems that would benefit everyone.

Response: Many of Western's customers have found utility formation to be beneficial.

Comment: We request that Western abide by the preference customer status provided to the tribes as described in the Energy Policy Act of 1992. The tribes would request the "right of first refusal" be provided to tribes and would remain in effect until the tribes receive their fair share of unobligated Western power.

Response: Western is unaware of any provision in the Energy Policy Act of 1992 that confers preference status on tribes. Western's treatment of tribes as preference entities is due to our interpretation of Reclamation law, taking into account DOE's Indian policy and the government-to-government relationship that exists between the Department of Energy/Western and tribes. Western believes that it can successfully meet the fair share needs of Native Americans without adopting a "right of first refusal" policy.

Comments: Issues of transmission and distribution must be addressed to allow tribes to access power. It has been Western's past history to build transmission to serve its customers. The new regulatory structure provides the opportunity to wheel power over existing systems. Tribes know they must negotiate with current service providers for access to distribution facilities and services. These negotiations can create win-win situations that are acceptable and even favorable to both parties. The degree by which Western's policies reward cooperation over conflict should be the standard by which its policies are judged.

Our greatest issue is communication and understanding. Tribes could be assisted to know how best to access the parties and individuals within the industry to make power allocations and utility operations workable.

Response: Western believes that cooperation, communication, and understanding are far preferable to conflict in achieving policy goals.

Q. Water Supply

Comments: Any changes in Western's allocations that are based on electricity industry restructuring should impact only distribution utilities and not water supply agencies.

Nothing in the California restructuring plan warrants fundamental departure from the 2004 marketing plan, especially with regard to service for end-use irrigation pumping loads.

Program purposes and the statutory intent underlying Pick-Sloan and the Flood Control Act have not changed and commitments must continue to be honored, particularly in view of the fact that actual irrigation development was substantially less than what was promised.

Western should continue to provide low-cost power to irrigation, and should not enter retail markets.

Response: Western intends to abide by Reclamation law requirements, including the requirement that hydroelectric power be reserved first for project-use loads. As there is no convincing rationale to do otherwise, policies regarding reductions in commitments of power to existing customers will be uniform. To the extent irrigators receive allocations of power from Western that are not project use in nature, they will not be exempt from equitable contribution by existing customers to project-specific resource pools.

R. Need for Power

Comments: Long-term reliability is critical to farmers who raise crops. The benefits derived from our power contract with Western have a direct impact on the local economy and produce far-reaching benefits, such as groundwater improvement, efficient water exchanges, and a vibrant local agricultural economy.

The State of New Mexico is sparsely populated and relatively poor. Western's CRSP power means a lot to us. There are a substantial number of customers who have contributed to the repayment of Federally-owned generation facilities for over 30 years. If those customers had built generation plants in the '60s rather than purchased the output of Federal facilities built for the primary purpose of irrigation, flood control and recreation, these generation facilities would now be paid for and competitively priced.

Resource uncertainty is especially critical in rural areas which have limited access to resource opportunities. To deny utilities with low customer density access to Federal power would be devastating to rural consumers and small businesses who are already paying much higher rates for distribution and transmission services than urban customers.

Share the benefits of cost-based hydropower with the taxpayers by extending contracts with the Air Force.

Significant reductions in or the loss of the CRSP resource would necessitate acquiring alternative power supply at dates later than prudent from a long-term planning standpoint. The cost of replacement power would be passed on directly to the retail consumer.

Western's allocation of CRSP power to our electrical district is integral to the long-term groundwater management plan in Arizona, including the goal of reducing groundwater pumping within the State as documented in our integrated resource plan. CRSP power is also key in maintaining the viability of the Central Arizona Project for future generations. The long-term bonding and financing of our canal system is also based on the continued economics of preference power.

Continued access to the CVP resource is necessary to ensure affordable future improvements. It would be inappropriate to threaten these worthy achievements by making adverse changes to customers' CVP power supply, and upset the competitive balance that now exists between

municipal utilities and other energy providers.

Western's power allocation is very important to our rural electric cooperative in Wyoming, as we have a consumer density of 2.2 consumers per mile of line. Our neighboring investor-owned utility has a density of 26 consumers per mile of line. For each cooperative customer, more than 11 times the facilities are required. Because of the rural nature of the area we serve, we are already at a price disadvantage in a competitive marketplace.

Most entities, including the investor owned utilities, continue to serve their customer base reliably, efficiently, and at lower rates than previously existed. As California emerges from the imposition of transition costs after 2002, rates will further decline and customers will likely be less inclined to switch providers. Western's customers must have an assurance of long term, 20-year contracts to remain in this competitive mix.

Regarding the effect on the University of California, Davis of AB 1890 and the deregulation of the electric power market in California, no clear conclusions can be drawn. The UC Davis campus has joined with the other University of California campuses, and the California State University system, to contract for purchase on the open market for our power requiremcnts not met by Western. This is a short 4-year contract with an independent power marketer. While this contract is expected to save the campus money compared to the cost of power purchased directly through the California Power Exchange, it is more expensive than Western's hydropower, and the term of the contract is short. Adoption of the proposed 2004 marketing plan will benefit us by protecting our cornerstone of Western power, while at the same time, for our remaining power needs, allowing the pursuit of future benefits that may come available through deregulation of the California electric power market.

Both the Black and Hispanic Chambers of Commerce for the City of Sacramento urge the expeditious approval of the CVP 2004 marketing plan. Access to low cost, clean, renewable public power is an essential prerequisite for continued economic development and growth of communities in northern California.

With regard to the Ames Research Center, National Aeronautics and Space Administration, our allocation needs to be maintained in order to minimize the cost of operating two national wind tunnel complexes. There is an urgent need for our wind tunnel data, as it enables aircraft manufacturers to design transports that can fly with greater energy efficiency. Estimates of fuel savings as a result of our research are in the hundreds of millions of dollars per year. In addition, our research enables American aircraft manufacturers to maintain a trade surplus of $15 billion per year.

Response: These representative comments from existing customers demonstrate the widespread need for Western's power.

Comment: Extending Western contracts would further the discrepancy between the preference clause's intent of advancing "municipal purposes" and the distribution of Western power to some of the nation's wealthiest communities. As you know, Western does no means testing for the distribution of its low cost and subsidized electricity, nor does it provide any preference to public schools or other public purposes. Power marketing administrations, if they are to continue to exist, need to focus on end users and offer true public benefits only to those in need.

Response: As is the case with any utility, some customers purchasing electricity are more affluent than others. The same is true for the customers served by a PMA. However, the great majority of Western's customers are in genuine need of Western's resources, as evidenced by the comments previously set forth. Western already allocates power to universities and a variety of State and Federal loads. Western's intent to sell power from project-specific resource pools to Native American tribes is clear evidence of our intent to assure that the benefits of Western's cost-based hydroelectric resources are available to economically disadvantaged entities.

Comment: Today, preference power is being used in ways that Congress did not originally intend. For example, power generated from facilities owned by the American public is being allocated to provide below market electric service to wealthy communities such as Vail, Colorado, and Palm Springs, California. Other customers, such as the Salt River Project, have formed a for-profit marketing entity whose mission is to compete against private, taxpaying, and often highly regulated energy companies.

Response: Western does not market power to Palm Springs. The ski resort of Vail is served by Holy Cross Energy, which also has within its service territory many rural consumers and small communities that do not enjoy economic benefits from ski resorts. Both the Department of Energy and the Department of the Interior have formally issued opinions finding no violation of law or contract in the efforts by the Salt River Project to compete in the rapidly changing utility industry, as the Salt River Project is not reselling Federal power.

Comment: Rather than going to customers based upon their geographic location, allocations from the Federal power facilities should be based on means testing. Only those who truly cannot afford to pay market rates should be the beneficiaries of continued preference allocations. This class of citizens obviously includes more than just rural western or southern America. Federal preference power should be targeted only to State and Federal buildings and facilities where the taxpayer is paying the energy bill. We cannot legitimately continue to act as a Nation to provide wealthy ranchers and owners of posh ski resorts with preference power to the exclusion of poor families located in Toledo, Hartford, or St. Paul.

Response: Congress has by statute authorized Western to sell firm power in its 15-State service territory. The other Federal PMAs also market power in the territory adjacent to their power and transmission resources. Well over half of the country is within the marketing areas of the PMAs.

According to the latest estimates of the United States Census Bureau on national income and poverty, the poverty rate in the western States is 14.6 percent. Both the Northeast States (12.6 percent poverty level) and the Midwest States (10.4 percent poverty level) enjoy higher prosperity. Also of interest is the Census Bureau's conclusion, based on 1997 data, that 12.6 percent of residences inside metropolitan areas are in poverty, while 15.9 percent of residences outside of metropolitan areas are below the poverty line. This information suggests that the greater need for cost-based Federal power exists in the western United States and in rural areas.

Even if Western had the legal flexibility to sell power to needy entities throughout the Nation, the cost of delivering the power would erode any cost savings. Acquiring rights over intervening transmission systems would be a significant expense. Losses in energy due to resistance in the transmission line conductors would also diminish the economic benefit.

Western already markets its power to many State and Federal facilities that meet existing allocation criteria. Allocating more power to these entities could give them disproportionate

benefits and cause power resource dislocations for existing customers.

S. Supplemental Suppliers

Comment: The impacts of any change in policy would fall primarily on supplemental suppliers. Western should move cautiously when the impact of its decisions may be to undermine or damage contractual relationships between its preference customers and their supplemental power suppliers.

Response: Western agrees that the impacts of its policies on supplemental suppliers must be taken into account before decisions are made.

T. Dam Operations

Comments: There are a number of aquatic environmental issues associated with the operation of the Federal hydroelectric facilities that produce SLCA/IP power. The Aspinall unit on the Gunnison River and the Flaming Gorge unit on the Green River dramatically affect downstream flow conditions and habitat for fish species. We believe the Endangered Species Act requires Western to evaluate the effects of contract extension on conservation and recovery of listed species. If Western believes that, either as a policy or legal matter, the extension of SLCA/IP contracts could limit the Bureau of Reclamation's discretion in operating facilities like Aspinall and Flaming Gorge, Western must prepare a site-specific assessment of the environmental impacts of contract extension.

We are aware that Western contends that DOE regulations categorically exclude marketing plans from NEPA documentation unless they involve new generation, new transmission, or a change in operations. However, we believe the regulations are illegal if their effect is to excuse Western from assessing the impact of contract extensions that circumscribe the ability of the Bureau to reoperate a project.

We have concerns, legal and otherwise, regarding the relationship between contract extensions and programs to recover endangered fish and otherwise protect the aquatic environment.

Response: Under EPAMP, the extension of resources to existing customers is based on the marketable resource determined to be available at the time future resource extensions begin. If the Bureau of Reclamation reoperates power generation facilities such as Flaming Gorge and Aspinall before September 30, 2004, that change in operations will be reflected in the power commitments to existing customers. In addition, Western's contracts allow for changes in our contractual commitments attributable to changes in operations after 2004. Given this flexibility, there is no need for site-specific assessments of the impacts of contract extensions. The extension of firm power commitments does not limit the ability of the Bureau of Reclamation to reoperate power generation facilities.

U. Integrated Resource Planning

Comments: If retail competition expands, key resource acquisition decisions will shift away from today's utilities and toward private generation markets and retail customers. In this environment, the role of EPAMP's IRP requirement is unclear. We have heard from a number of Western's customers that they are not interested in pursuing IRP given the competitive changes in the industry. We are concerned that EPAMP no longer represents responsible environmental stewardship in a changing utility industry.

We oppose contract extensions for SLCA/IP power until EPAMP regulations are made consistent with the evolving industry structure.

The State of South Dakota encourages Western to amend EPAMP's IRP regulations to allow the most flexible requirements possible.

IRP no longer makes sense in a retail environment.

Response: Western's integrated resource planning regulations are outside the scope of this notice of inquiry, which deals only with power allocation issues. Western intends to start a public process to consider revision of our IRP criteria later in 1999.

V. Preference

Comment: Preference should be examined carefully in a full NEPA review considering both the economic and environmental impacts on preference and nonpreference customers. Western should mitigate for any serious effects and proper mitigation may include eliminating or drastically altering preference.

Response: Preference in the sale of Western's power is mandated by law. As Western does not have the authority to eliminate or drastically alter preference, a full NEPA review of the issue would not be fruitful.

Comment: As electric restructuring moves forward and the paradigms governing electric distribution and financial risk are changed, we must consider how the existing Federal system is managed. Equally important is how we distribute the benefits of the Federal system. In the upcoming year the Congress will be reviewing some of the fundamental issues that are raised in allocating Federal power. What were the characteristics of the group originally intended to be benefitted by defining them as preference customers? Why did one group of Americans receive the benefits while others did not? Do the criteria remain the same today? Are we still benefitting fundamentally the same people? Since the Federal allocation system was designed to benefit a particular group, do we need to respond to changes in the larger electric utility industry to make sure the same beneficiaries are reached? Do the changes in the electric utility industry that have occurred since the Federal system was originally established eliminate the need for the historic distribution/allocation scheme? And finally, if there is going to be a change, how can we best protect the legitimate needs of existing PMA customers?

Response: Western lacks the legislative authority to make fundamental changes to preference in the sale of our hydroelectric resources. However, allocations are not limited strictly to municipal utilities and rural electric cooperatives. Western has allocated power and/or transmission rights to such diverse public loads as wildlife refuges, universities, and a mass transit system. Native American tribes are also treated as preference entities without the need for utility status. These allocations to nontraditional customers were made while still meeting the needs of existing customers, and contribute to the widespread use of Western's resources.

W. Rates

Comment: Western's ratesetting must be cost-based. Western lacks authority to introduce new rate components or to reinterpret 60 years of statutory construction. Western also lacks authority to charge rates based on a newly conceived formulation intended to effectuate a redistribution of its electricity among electric consumers.

Response: While ratesetting is outside the scope of the power allocation issues inquiry, Western agrees that our firm power rates must be cost-based.

Comments: The real implication of this first question is that Western should sell its resources in a short-term fashion to the highest bidder.

We support legislation that mandates a bidding system in which preference power is allocated to the highest bidder, or one in which the high bid sets the contract price for such power. Under such a scheme, the preference customer would be given a right of first refusal to purchase the power at high bid, thus preserving traditional preference. This approach has the advantage of eliminating the inequities now incumbent in Federal power allocations, prevents further under recovery of PMA costs, and maximizes revenue to the Treasury.

Western should adopt a tiered, marginal cost rate structure to reflect appropriate market rates and eliminate the subsidy inherent in the existing system. Offering low rates encourages Western's customers to use electricity wastefully and forces other consumers to develop excessively expensive supply resources to meet electricity needs.

We congratulate Western on recognizing the need to consider the impact of electric utility industry restructuring on the way Western allocates power. A level playing field among all electric suppliers is mandatory in an open access retail electric marketplace. All competitors should have the opportunity to bid for low-cost power allocations. A bid system would lessen the anti-competitive impact of PMA power.

Response: Pursuant to law, Western sets its firm-power rates to recover costs. FERC's review of Western's rates is based upon whether the rates are the lowest possible consistent with sound business principles.

Western has no leeway to adopt a generic bid-based method for marketing firm power, even if a preference customer has the ability to buy the power by matching the high bid. If Congress mandates the sale of power at market-based rates, Western has the flexibility to comply pursuant to the rate adjustment provisions in its firm-power contracts.

PMA power is not anti-competitive in its impact. Western markets cost-based hydroelectric resources, which are relatively inflation resistant as compared to non-hydro generation due to the absence of fuel costs. In addition, Western has no responsibility to meet load growth with relatively expensive additional power. Western's hydropower resources are reasonably priced due to these factors, and promote yardstick competition.

Western's customers do not waste electricity. Pursuant to Western's integrated resource planning regulations, customers have established an impressive record of investment in energy efficiency, demand-side management, and renewable resources.

Comment: Even under existing statutes, Western should re-prioritize its allocation of preference power to better reflect competitive market principles. Specifically, Western should adopt a system under which Federal electricity is auctioned to bidders in the same way as is Federal coal, oil, and natural gas. Revenues so garnered could be used for worthy purposes in Western's service territory.

Response: Bidding for Western's firm power to generate revenues in excess of those needed for project repayment is not allowed under Federal law.

Comment: Western has a cost problem due to the increasingly competitive regional power market and the social costs (e.g., environmental costs and irrigation assistance) that have been mandated for inclusion in CRSP rates. Western has a finite window within which it can contract into the future to protect its congressionally mandated repayment mission. Western is ill-equipped because of its role as a Government sales agent and its congressionally mandated responsibilities to compete in future markets.

Response: Western will continue to make every effort to assure that CRSP power remains marketable.

Comment: Is it fair for neighbors to pay different rates for their electricity because of their race?

Response: Western's wholesale rates are the same for all long-term firm customers. Many different factors influence retail rate levels, including the cost of other power, transmission cost, and distribution expense.

Comment: Western should move to unbundle its firm power rate to accelerate Western's movement into an open access environment.

Response: Western has developed rates to implement its open access tariff.

X. Delivery Changes

Comment: Western currently requires concurrence from all affected parties before the State of South Dakota is allowed to redistribute power from one State load to another. This policy places veto power in the hands of supplemental power and transmission suppliers with the effect that the State's use of Western power and other power available under open transmission access principles is constrained. The present policy should be replaced. Western should be willing to move allocations upon proof of a legitimate load and adequate billing mechanisms. IRP stabilization arguments that benefit supplemental suppliers should be rejected in the face of the State's interest in wholesale open access consistent with FERC's actions.

Response: Western's requirement of concurrence by the transmission provider and supplemental power supplier is a contractual and policy issue that does not conflict with FERC Order No. 888, which preserves existing contracts. Western has experienced instances where allocations were made, but the allottee was unable to take delivery because existing power supply contracts did not allow additional power suppliers. Requiring concurrence avoids this situation, and recognizes that transmission arrangements also need to be amended when power deliveries change. It also avoids conflict with mandated franchise service territories, as South Dakota has not yet mandated open access for end users. Concurrence has been a policy requirement for over two decades, and has yet to have been unreasonably withheld. IRP stabilization arguments, based on the premise that load stability promotes better resource planning, are secondary to the contractual considerations.

Question

2. To the extent a utility with an allocation of preference power loses load due to retail competition, should it receive the same allocation as it received previously or should its allocation be reduced proportionately?

A. Disincentive to Retail Wheeling

Comment: Adoption of this policy would discourage retail wheeling, as the risk would be a disincentive for a utility to open up its load to competition.

Response: Utilities might see the potential loss of an allocation as a disincentive to adopting retail wheeling.

B. Administrative Issues

Comments: A real time, load based allocation process is complex from both a policy and an administrative basis. There is no guarantee that the change would lead to an improved outcome.

Administration of this policy would be time-consuming and costly. As retail customers make choices and come and go, Western would be required to address daily, weekly, or even monthly load fluctuations for the many preference customers who currently receive hydroelectric resources from Western.

What if a retail customer has a business downturn and their power usage is reduced by half? How would Western reallocate the power from this reduced usage? Would Western reallocate the power if the retail customer's business returns to normal at some later date? It seems that Western is opening up a can of worms that could have unintended consequences.

Western cannot possibly know whether the lost load is due to a temporary problem on the part of the wholesale customer, a problem resulting from demographic trends or economic cycles, or whether it is a permanent loss

due to restructuring of the utility industry. At the very least, Western should not attempt a reallocation from existing users to new customers without developing a record of the factors underlying such a move and offering existing contractors the opportunity to review and comment on the record.

Response: Western believes that the administrative complexities of adopting such a policy are significant. The policy benefits of monitoring load losses and gains, if any, are minor as compared to the cost and administrative burden associated with a change in policy as suggested by this issue.

C. Increase in Allocation

Comments: The utility should receive the same allocation. As a preference utility does not receive an increase in its allocation if its electric load increases, why should there be a loss of allocation if load declines? If Western does not strive to achieve a sound and balanced basis for adjustment of allocations, it appears that the purpose of the suggested change in policy is to find ways to reduce allocations to preference customers using State restructuring legislation as an excuse.

Western is a sales agent, not a utility. Western did not increase our allocation when our load outgrew the original commitment of Federal power, so we were forced to acquire supplemental power elsewhere.

If energy is freed up as a result of a preference power entity allowing retail access in its traditional service territory, then this power can be made available on a temporary basis to other preference entities as withdrawable power. Since the entity offering retail access will remain as the default energy provider, and would be required to serve customers returning to its system, a permanent reduction of an allocation may not be prudent.

Response: Western has a finite resource to market. Unless power is withdrawn from a customer pursuant to the terms of a firm power contract, Western does not have additional electricity to market on a firm basis. Western agrees that there are many administrative complexities associated with reducing, restoring, and reallocating power in the manner suggested by this issue.

D. Local Decision Making

Comment: The local utility is best positioned to distribute Western's power among the remaining customers.

Response: Public power utilities are well positioned to distribute power among consumers. Western's firm-power contracts address this responsibility. The most recent provision of Western's general power contract provisions states: "The contractor agrees that the benefits of firm electric power or energy supplied under the contract shall be made available to its consumers at rates that are established at the lowest possible level consistent with sound business principles, and that these rates will be established in an open and public manner."

E. Policy

Comment: Federal power is only a fraction of the total resource needs of Western's customers. Even if significant load is lost, the Federal power allocation will still be needed to serve remaining load.

Response: With only minor exceptions, Western agrees that its power only meets a portion of the load of its customers.

Comments: Allowing preference customers to retain the same allocation of preference power would be anti-competitive.

When a utility with a preference allocation loses load due to retail competition, that preference customer's allocation should be reduced proportionately and indefinitely.

It is unclear what Western plans to do with any power withdrawn under this proposed policy. If the power is to be redistributed among preference entities that have experienced gains in load, this only serves to increase the competitiveness of those utilities which are already competitive and further weaken those without as competitive a resource mix or higher unit costs.

Response: Western normally serves only a portion of a customer's load. As the marginal resource necessary to meet the rest of a customer's load is typically higher in cost, it is more appropriate to reduce the non-Western resource when load is lost due to retail competition.

Comments: Current policy requires that unused allocations revert back to Western for sale to other preference entities, therefore preventing the resale of power. Western has built in adequate safeguards that limit use of an allocation to the retail load that we serve, and Western has retained the requirement that Federal power not be sold for resale.

Western's 2004 marketing plan for the CVP addresses recall of any allocation beyond a customer's demand.

Response: Western agrees with these comments. Currently applicable language in Western's firm power sales contracts prohibits the sale for resale of Western's power.

Comment: Customers who choose to leave a utility that has a power allocation from Western also have elected to leave their "share" of Western power to the customers who do not leave.

Response: Western agrees that this may be the result, depending on applicable contractual language.

Comments: Western should only withdraw power if the customer load exceeds the Western allocation. If a contractor loses so much load that it cannot use all the Western power it has under contract, it will advise Western and reduce its obligation. Otherwise, it will pay for a resource it cannot use.

Customers are prohibited from resale of Western power pursuant to contract. As a result, there is no ability for a customer to use Western power in excess of its load. Allocations of power in excess of a customer's load must be returned to Western for reallocation, pursuant to the applicable project-specific marketing plan.

Response: Western's 2004 marketing plans and contracts will not allow for the resale of hydroelectric power if a customer loses load and their Western allocation exceeds the remaining load.

Comment: Should preference distribution customers split away from a generation and transmission cooperative, and form new aggregations, Western should follow the preference distribution customers upon whose load profiles the allocations were originally given.

Response: When an existing customer merges with another customer, or members of a customer want to leave a parent entity such as a generation and transmission cooperative, disposition of allocations must take place in accordance with applicable marketing plans and contractual provisions. Each situation must be addressed on a case-by-case basis. New contracts executed under the Sierra Nevada Region and Salt Lake City Area Integrated Projects 2004 marketing plans will give the Administrator the discretion to adjust a customer's power allocation in the event the customer merges with another organizational entity, acquires or "spins off" another utility, joins or withdraws from a membership-based organization, or adds members from a membership organization.

Comments: Why would Western want to punish a small customer who has no market clout by reducing its allocation of preference power because a larger retail customer, by its own choice, decided to receive its power and energy from someone else?

Reducing the Western allocation would be like trying to put out a fire by throwing gasoline on it. Our cooperative is a perfect example of what happens when you lose load. We lost load due to the bankruptcy of our largest user, a mining company. We had to raise rates by 32 percent early this year to compensate for the loss of fixed cost and revenue. Can you imagine what would happen to the remaining consumers if Western notified us that because we lost 60 percent of our load, we should lose 60 percent of our allocation? Western's allocation is the one stable foundation we have left.

Retail competition has not benefitted residential customers in States that have opted for retail access. Those customers who leave the system are typically larger customers who have the expertise and business sophistication to negotiate and bear the risks of arranging for power supply service from alternate suppliers. If a small municipal customer loses a commercial or industrial load and also loses a share of its Federal allocation, it will be a double whammy to residential customers who stay on the system.

Power marketers are interested in achieving market share, and later reducing competition to maximize profits. A change in Western's policy could accelerate this process by penalizing cooperatives that lose load. If large industrial customers with good load factor are removed from a local cooperative's customer base, the impact will be devastating enough without Western's policy adding more momentum to a process that seriously damages remaining customers.

Loss of any portion of the Western allocation would unfairly penalize existing customers and decrease our competitive position in the marketplace. Such a policy would also eliminate the very important "yardstick" vehicle which consumers can use in determining their power supplier in a competitive marketplace.

Reducing our allocation if some retail customers choose other suppliers could cause a cascading effect and serious economic consequences to our community and burden remaining customers.

To reduce allocations because of retail competition losses could initiate a "death spiral" for the affected utility and penalize remaining customers, mostly residential, rural, and small business in nature.

Response: Western agrees that no policy purpose is served by withdrawing allocations from customers that have recently lost load due to retail competition.

F. Public Power and Competition

Comments: Although this question is academic at present, when it becomes reality preference power allocations should be reduced proportionately. The larger issue is what to do with large public power entities that are entering competitive markets and winning new load, while at the same time being subsidized by taxpayers through preference allocations and favorable tax treatment. Western customers like Salt River Project who are competing for and winning new load should have their allocations stripped or, at the very least, offset on a megawatt-for-megawatt basis.

The more important question is why a utility that receives preference power should be allowed to compete for retail load in the first place. Western has some of the lowest power costs in the nation. Preference utilities receive other Federal preferences, either through tax-exempt municipal financing, low interest loan programs, and clemency from income taxes. The more likely scenario is that these preference utilities will be adding customers, not losing them.

Response: The Department of Energy has reviewed allegations that the Salt River Project inappropriately used Western hydropower to enhance its competitive position in seeking new customers. DOE found that those allegations had no merit, and that the Salt River Project was acting in accordance with the law. The Department of the Interior recently issued a similar finding. Under these circumstances, Western sees no reason to diminish its hydropower allocations to the Salt River Project.

As Western's customers cannot resell Western's power, they have no competitive advantage from a Federal hydropower allocation in the utility marketplace.

G. Reason for Load-Decline

Comments: There is little substantive difference between consumers who move out of the area or close down a business, and those who decide to use a different energy supplier. We see no rational basis to penalize loss of load due to retail competition but not loss of load for any other reason.

If a utility receiving preference power from Western loses load due to retail competition, or any other reason, the resulting allocation amount should be reduced accordingly. To do otherwise would change the allocation process to introduce artificial, and probably arbitrary, factors necessary to compensate for lost load, rendering the process inconsistent. In States that have adopted retail access, preference customers have the option to opt in or not participate. Thus, load loss is due to the choice of Western's customers. Judgment by Western's customers, like any other business enterprise, results in the stakeholders being rewarded either positively or negatively.

This approach is contrary to the manner in which electric utilities acquire and maintain commitments for resources that are an essential portion of the stability of wholesale power supply.

The alteration of allocations to accommodate fluctuations in retail load would diminish the certainty of a power supply source which many preference customers have incorporated into their forecasting for power supply.

What if a customer has undertaken a program to encourage conservation at the same time competition has come to its service territory? Will Western penalize its customer because load has been reduced due to conservation?

Response: Western's historic allocations to customers have been principally based on the load of applicants. Those loads are dynamic over time, as some consumers leave and others move to a utility's service territory. However, these are not the only factors that influence electricity usage. Adoption of conservation and energy efficiency measures, changes of service territories between utility providers, weather, improvements in industrial processing, fuel switching due to price or availability, construction of cogeneration, and improvements in distribution system losses all can impact a utility's load. Tracing a change in load to a particular cause, such as the impact of implementation of retail wheeling, might present some difficulties. Western certainly does not want to punish utilities that have implemented conservation and energy efficiencies.

Western has not monitored load growth and adjusted its allocations in the past. As loads have grown for certain customers over time, Western's allocations became a smaller portion of those customers' resource mixes. Other customers have not experienced load growth, or the pace of growth has been slower. Western's allocations have not been adjusted in response to load changes for a variety of reasons. First, resource planning for Western's customers would be disrupted. Second, continually adjusting firm power contracts is not a standard practice in the utility industry. Third, if load decreases, Western's customers adjust their resource mix in a manner that results in the lowest cost to the ultimate consumer. As other resources are typically more expensive than Western power, consumers are best served if

other resources are cut first as opposed to Western's hydropower. Fourth, Western does not want to increase its budget to monitor load changes, as there is no clear policy benefit that would warrant the additional cost, which would put upward pressure on our rates.

Adoption of this policy would fundamentally change the nature of the service Western currently provides under firm-power contracts. Continuous adjustments to the quantities of power sold by Western would convert a very valuable class of service, firm power, to a more contingent resource.

Western does have the ability, when existing contracts expire, to consider the percentage of our power that existing customers receive. An example is the 2004 marketing plan for the Central Valley and Washoe Projects, which has proposed to increase allocations to existing customers who enjoy a relatively small allocation of Western power as a percentage of load.

H. Stability

Comment: The threat of reductions in allocations would make it difficult for Western's customers to offer stable products and services to their consumers on other than a short-term basis. This lack of resource and administrative stability would be a significant competitive disadvantage for CRSP customers.

Response: Western agrees with this comment.

I. Tribal Issues

Comments: If a utility with an allocation of preference power loses load due to retail competition, its allocation should be reduced proportionately. The resulting savings should go back into the pool for reallocation to Indian tribes who have historically enjoyed the least benefit from national resources.

Our tribes request that any Western power that becomes available through the power allocation system restructuring process be directed to address the inequity of the system to provide tribes with a fair share of available power. The tribes request a "right of first refusal" option be incorporated into the restructuring system.

Response: For the reasons outlined earlier, Western will not reduce allocations to customers, whether Native American or not, who lose load specifically due to retail competition. Therefore, there is no power available for this reason to allocate to tribes.

J. Unintended Consequences

Comment: If a utility were to be stripped of its allocation in proportion to its loss of load resulting from voluntarily allowing its customer-owners retail access, that utility would be tempted to cut deals to retain the large customers that competitors would pursue. This would tend to distribute the benefits of preference power away from small customers. Energy efficiency programs might also suffer if a utility were tempted to focus instead on acquiring new load.

Response: Western agrees that a utility might take steps in response to a change in policy that adversely impacts energy efficiency investment and small customers.

K. Western's Role

Comment: This question mischaracterizes Western's function. Western's power allocation decisions have not been made on load growth or loss analyses. Western is not a utility, it is a marketing agent with a finite and declining resource to market. It is in no position to accommodate load growth and in even less position to monitor load loss.

Response: Western agrees that its role is to market power to repay the U.S. Treasury for investments financed by taxpayers. Adopting the policy suggested by the question would blur Western's focus on its primary mission.

Comment: If Western's decisions with respect to power allocations will have the effect of making it more difficult for municipal governments to attract new business, the purpose of the municipal preference will be entirely thwarted.

Response: Western has no desire to impede the economic development efforts of municipal governments.

Question

3. Should Western allocate power directly to electricity end-users that are preference entities such as publicly-owned schools in States or localities that permit retail access? If so, how much power should be allocated for this purpose? Alternatively, should Western continue to allocate power primarily to its traditional customers such as municipal and cooperative utilities and Federal and State agencies?

A. Administrative Issues

Comments: Making Western a retail provider would change Western's business structure. Western would have to organize its workforce to deal with hundreds or thousands of customers, with significant start up and ongoing costs to Western and its customers.

Allocating power to thousands of end users, as opposed to the current 600 customers Western serves, is not economically warranted or practical, and would result in a paperwork nightmare for Western.

Response: The benefit of a Federal power marketing administration gearing up to play a major role in the retail marketplace is unclear. The cost of adding staff to carry out this role would be considerable.

Comments: While direct retail sales by Western may appear to spread the benefits of Western power more broadly, most retail customers are poorly equipped to handle the vagaries of fluctuating hydropower production or sharp reductions in available power due to changes in operations of CRSP facilities required by law. Retail service involves much more than a simple allocation of power and energy. Load following and other intricate ancillary problems of electric service become involved.

Adoption of this policy would be an administrative nightmare. Direct retail sales would be less efficient, as retail allottees would be required to seek additional power resources, combine those resources, and schedule them in the most economical manner. Transmission, distribution, metering, reserves, energy imbalance, and other services would have to be obtained to deliver electricity. Most end-use consumers are not sophisticated enough to provide for such services themselves. Alternatively, they would need the services of a scheduling agent or an existing utility to provide these services, with an increase in cost to the end-use consumer.

If Western were to serve an end user directly (such as a school), what would Western do with the power generated at night when a school cannot use it? How would Western meet the school's air conditioning load in September during drought years? Such a proposal would likely lead to increased profits for those wanting to absorb the excesses, and make up for the deficiencies, by dismantling public power.

Response: Western agrees that allocation of power to end users presents a number of complex problems.

Comment: If Western were to single out its utility customers for allocation reductions that would be transferred to end use preference entities in States that allow retail access, Western would incur increased administrative costs and need to raise rates while reducing the benefits of preference power to existing customers.

Response: Western agrees that one impact of allocating power to public schools directly could be an increase in costs to existing customers.

Comment: No new contracts should be written at less than a 100 kilowatt allocation.

Response: Minimum allocation amounts are often appropriate, but are best determined in project-specific marketing plans.

Comments: Changing allocation policies also raises the question of assuring equity among States. How will Western compare different States' programs for retail electric competition? Allocating Federal power to customers based on State laws will result in unequal access to such resources. Some States have now created quasi-public schools by allocating tax moneys to charter schools and private schools. Some States have proposed adoption of school voucher programs to allow students to use tax dollars to go to the school of their choice. The definition of a public school is becoming less clear every year. Every educational institution from home schooling to correspondence classes that can show Federal or State tax support will want to apply for an allotment of Western power.

Response: Western agrees that it could be difficult to compare the different approaches to retail wheeling among the States within our service territory and incorporate them into a cohesive overall policy. Western also agrees that the definition of a public school is not straightforward.

B. Allocation Priorities

Comment: End-use customers, although previously excluded because of a lack of access, should be treated at least on a basis comparable to traditional Western customers. An enhanced priority should be considered for these customers, since any economic benefits would accrue to all segments of the public.

Response: Western has allocated power to large Federal and State installations in the past, as they are public bodies. The economic benefits derived by these installations are to the benefit of the public. These installations typically take delivery at transmission voltage and operate their own system for distributing power to load. This approach avoids the complications of delivering Federal power to numerous smaller end users and the associated administrative burden.

Comments: Western should make its allocations based on the nature of the end use customer served, and should not be made simply to the cooperative or municipal utility. To the extent that Western's power is not priced at market rates but instead continues to be subsidized, we believe that allocations should only be made to public facilities that are supported by taxpayer moneys, such as military bases, State universities, hospitals, and prisons.

Providing power directly to end users such as public schools and other Government entities is far more consistent with the spirit and intent of the preference clause than providing allocations to wholesale customers who use preference power to engage in their own competitive efforts.

Response: Western already allocates power to military bases, State universities, hospitals, and prisons. Exclusively serving these entities would dislocate existing power supply for cooperatives and municipal utilities.

Comment: Allocations of Pick-Sloan preference power should not be distributed to retail competition loads but rather to its current contract customers who are not receiving their full allocation from Western. Our current allocation would have been larger during the original allocation if not for the fact that formation of our municipal utility was delayed by years of litigation by the IOU that served our city.

Response: This comment was raised by a customer of the Pick-Sloan Missouri Basin Program-Eastern Division. As power from the Pick-Sloan has already been allocated and in most cases placed under contract through the year 2020, Western has no immediate ability to respond positively to this comment. A resource pool increment of up to 20 MW will be available from the Eastern Division of Pick-Sloan in the year 2005. How this power will be distributed will be determined on a project-specific basis in a future allocation process.

Comment: Western should consider widening the eligibility for Western power to include retail cooperatives.

Response: Western will consider any application for Federal power in accordance with Reclamation law and project-specific allocation criteria.

C. Dilution of Benefits

Comments: Changing Western from a wholesale provider to a retail provider raises the very real risk of diluting this resource to the point where it is of no value to the end-user.

Current policies spread the benefits to end users. Broader distribution of Federal resources would further dilute the benefits of hydropower. The CRSP annually meets less than 4 percent of the total load in the marketing area. The CRSP is increasingly an insignificant market factor from a commercial or competitive standpoint. Any broader distribution or allocation would simply further dilute the resource.

Response: Western agrees that this is a concern. However, part of Western's responsibility is to distribute power on widespread basis. Western needs to consider the needs of new preference entities, as well as the continuing reliance of existing customers on the Western resource.

D. Duplication of Resources

Comments: We do not believe that it would be appropriate for Western to jump into the retail sales business when selling power to preference customers at the wholesale level is a very efficient and effective way for Western to carry out its legislative requirements. Western should not compete with its customers, who already provide benefits of cost-based Federal hydropower to end users.

If Western were to expand its role into the retail end of the industry, the result would be an inefficient duplication of distribution, rate making, billing, and ancillary services that would most likely more than offset any benefit to Western or the end user of the power.

Response: Western agrees that it is more efficient to continue to distribute the benefits of Federal power through its customers. Western has no desire to duplicate services already provided by its customers.

E. Favoritism

Comment: Adoption of this policy would penalize consumers served by public power distributing utilities in States that choose not to engage in competition, while favoring schools and localities in States that permit competition.

Response: Penalizing consumers served by Western's customers, based solely on their State of residence, is not equitable.

Comment: There should be no favoritism among preference entities.

Response: Western makes every effort to assure that its power is allocated in an equitable manner.

F. Legal

Comment: Allocating power to end use loads is far beyond the intent of the preference laws. Western is a wholesaler of power.

Response: There is nothing in Reclamation law that prohibits Western from allocating power at wholesale to nonutilities, such as Federal and State agencies. Congress has recognized this on many occasions. For example, in authorizing the California-Oregon Transmission project, Congress recognized that Western markets to loads such as the Department of Energy

laboratories in California. Hearings have also been held regarding Western's marketing policies. In June of 1994, the Deputy Secretary of Energy testified before the House Subcommittee on Oversight and Investigations, Committee on Natural Resources, on a variety of marketing issues, including the status of Native American tribes as preference customers.

Comment: Western cannot market to publicly owned schools, as they are not preference entities. In its post-89 marketing criteria for the CRSP, Western interpreted section 9(c) of the Reclamation Project Act of 1939 as requiring any new preference entities to have utility responsibility.

Response: The Post-1989 General Power Marketing Criteria for the SLCA/IP were published in the **Federal Register** on February 7, 1986 at 51 FR 4866. At page 4870 of that notice, Western stated that power would be allocated to a State or Federal agency with an ultimate consumer type load, to utilities, and to existing contractors that did not otherwise qualify for an allocation. Under these project-specific criteria, Western allocated power to a number of nonutilities, including the University of Utah. However, these criteria represent policy specific to SLCA/IP power, which is narrower than the parameters of preference law generally. Criteria for marketing to new customers after 2004 will be broader than those existing in the 1989–2004 time frame, in order to assure that Native American tribes are eligible to receive allocations, regardless whether utility status exists.

Comment: Western is prohibited by law to sell power to nonutility customers while there are preference utilities who are willing to purchase the power. Western's sales are subject to a statutory preference requiring it to sell power to municipal utilities and cooperatives.

Response: Reclamation law requires Western to offer to sell power first to preference customers. Among preference customers, Western has discretion to whom it sells. Pursuant to law, Western has allocated power to State and Federal entities, which are not utilities.

Comment: The concept of allocating preference power to entities such as schools has been firmly rejected as conflicting with the promotion of yardstick competition required by Federal preference acts. The Second Circuit Court of Appeals has ruled that yardstick competition would exist if publicly-owned utilities competed against privately-owned utilities in selling of power to ultimate consumers. If the "public body" used the preference power itself, the privately-owned utilities would not face any pressure to reduce the prices they charge other customers. If preference power were made available to all government bodies, whether or not they distributed that power to consumers, every town and local library would be entitled to claim a direct share. Hydropower would be spread so thin that any competitive effect it might have had would be lost. *Metropolitan Transportation Authority* v. *FERC*. 796 F.2d 584, 592 (2d Cir. 1986).

Response: This case is based on the Niagara Project Power Act, and a FERC license issued to the Power Authority of the State of New York, pursuant to that act. Neither the Act, which contains a narrow definition of preference entity as compared to Reclamation law, nor the terms of the FERC license are applicable to Western.

Comment: Regardless of electric utility industry restructuring, Reclamation has the legal responsibility to deliver irrigation pumping power to existing irrigation pump units prior to any other use.

Response: Western markets Federal power which is surplus to the needs of the project, and may not execute contracts which impair the efficiency of the project.

Comment: This issue raises significant questions of the legal authority of the PMAs to participate in retail electric markets. Reclamation law does not authorize such a result, and the Federal Power Act has provided for local jurisdiction over retail markets.

Response: Western agrees that decisions regarding retail markets are local in nature, and that the Federal Power Act only gives FERC regulatory authority over wholesale transactions by public utilities in interstate commerce.

G. Need for Power

Comment: In order to promote a competitive open power market, Western must explore alternatives to its traditional power allocation criteria and select customers. Such alternatives should include Indian communities such as Shiprock, Kayenta, Chinle, Tuba City, Window Rock, and Ramah on the Navajo Reservation. Allocations of Federal power to these communities may enable them to attract and establish economic development within their areas. Currently, unemployment among Indian communities is the highest in the Nation.

Response: While Western intends to market power to tribes without requiring utility formation, Western does not market electricity to municipalities unless they have utility status.

H. Partnership

Comments: It is unlikely that end use customers would band together, as existing customers have, to fund and finance deferred maintenance and efficiency improvements such as the new runners at Shasta or to lobby for the Shasta Temperature Control Device. Either appropriations for maintenance would need to be increased, or environmental and economic opportunities would be squandered. Energy expenses are a large and important fraction of a Western distribution customer's budget, but only account for a small portion of a typical end user's budget. Pragmatically, this means that Western is much more able to influence and gain attention from distribution customers than from end use customers.

Allocation of power in this manner will undermine existing environmental commitments, as hydroelectric power would not be available for integration with other renewable resources.

Response: Western agrees that end users are much less likely to have the resources to integrate Federal hydropower with renewable resource development. Customer financing of project maintenance and improvements is also much more achievable with a smaller number of entities, such as has been the case with Western's existing customers.

I. Policy

Comments: Allocation of power directly to end users such as schools would require them to administer a new resource contract and convert their prior utility relationship to multiple electric contract management. For schools with loads under about 4 MW (all but college campuses) the administrative costs would overwhelm the bill reduction. Schools in existing preference customer territory would suffer higher rates as resources were taken away from their existing utilities to be allocated to schools outside of their utilities.

Our school district is a customer of a Utah municipal utility that receives an allocation of CRSP power. The CRSP allocation is an integral part of the resource portfolio of our consumer-owned utility and is essential to its ability to continue providing reliable, affordable electricity to our citizens and businesses. It is of paramount importance to our community and local economy that the marketing proposal be approved as quickly as possible to provide certainty to our utility and to the consumers it serves.

Expanding direct access to Western's resources by an ever-widening list of end users at the consumer level will become discriminatory, litigious, unmanageable, and bad policy.

Response: Western agrees with these comments. Administrative costs would likely offset the bill reduction for small school loads. Schools that receive the benefits of Western hydropower would be adversely impacted if the communities they serve did not continue to have access to Federal electricity.

Comment: Western's current marketing approach benefits publicly owned schools in those communities receiving Western allocations. In addition, both the University of California at Davis and the Radiation Laboratory at the University of California at Berkeley receive allocations. Further allocations to publicly owned schools would be unnecessary.

Response: Western agrees that many schools and universities already receive the benefits of power allocations from Western.

Comment: It is unclear what national policy objective would be served by the change in policy suggested by this question. Assuming Western has a policy objective in mind, it would be helpful if Western would articulate it and seek comment on the goal. It is also unclear how present practice does not serve a policy of widespread use of Western's hydropower.

Response: The question was posed to see if further extension of widespread use to retail loads was feasible and practicable. Western believes that widespread use is being achieved under its present allocation practices.

Comment: Adoption of this policy would favor school districts in high power cost States at the expense of school districts in low power cost States which have done a good job throughout the years in holding rates down and see no need to restructure their electric utility industry.

Response: Western agrees that this might be the result of a change in policy.

Comment: Western should consider giving allocation priority or credits to customers that undertake aggressive energy conservation and/or demand-side management efforts.

Response: Pursuant to the Energy Planning and Management Program, Western has reserved the right to allocate power from project-specific resource pools for this purpose. However, decisions on how to allocate power from resource pools will be made on a project-specific basis.

Comment: Western should continue to allocate power to its traditional customers so they can continue to serve end users and ensure that the benefits of Federal power are broadly and efficiently distributed. Public schools get their pro rata share of preference power through municipal utilities and cooperatives. Western was created to conduct wholesale sales of Federal hydropower, with certain limited exceptions for direct Federal loads. Western is not a retail distributor and there is no reason to change its role. Western should focus on what it does best and not enter the retail market.

Response: Western's expertise is as a wholesaler of power.

Comments: Participation by the Federal government in the business of producing electricity is no longer warranted. The conditions under which the Federal government entered the electricity business due to widespread areas of the country being in need of electrification no longer exist.

Should the Federal government remain in the electricity business under current law, the question becomes how best to allocate the electricity produced at government-owned dams. Western should not be a retail marketer of electricity to end-use customers. However, today's economic and competitive realities also are against continued power allocations to cooperatives and other traditional preference customers other than for historic purposes.

The National Rural Electric Cooperative Association's (NRECA) own website proclaims cooperatives to be "the electric utility industry's most powerful, strongest and fastest growing markets with a growth rate that is nearly three times that of investor-owned utilities." NRECA further states that cooperatives "are affecting retention, expansion and growth by offering incentive rates to large consumers of electricity." Rural electric cooperatives have moved away from their purpose of serving sparsely populated rural areas. Cooperatives can offer lower incentive rates to large consumers in significant part because of allocations of low-priced Western hydroelectric power which is not available to their for-profit competitors. Continued subsidization of cooperatives by such means is obviously no longer required and only will help drive private utilities and marketers from the marketplace through subsidization of Western hydropower.

Response: Only Congress can decide to remove the PMAs from the electricity business.

Comment: The priority should be in developing criteria that assure preference allocations only go to those actually deserving.

Response: Developing an allocation system based solely on who is deserving would be difficult, as virtually every customer and potential customer that has commented during this process has argued that their need is greater than others.

Comment: How would Western handle States partially covered by the marketing plan wherein some retail preference entities would receive preference power and others would not because they were outside the marketing area?

Response: Western only markets power within its established marketing area. If the suggested policy were adopted, only those retail loads within the marketing area would receive an allocation.

Comment: Western should continue to allocate power to its traditional preference entity utilities. There is no indication whatsoever in the emerging retail markets, however slowly they are emerging, that these nonprofit utilities will not continue to give their customers the benefits of this resource.

Response: Western expects that nonprofit utility customers will continue to pass through the benefits of cost-based hydroelectric power to consumers. Preference customers were formed by its member-owners for just this purpose. Moreover, Western's contracts require that the economic benefits of allocations be distributed to consumers.

Comments: During the collaborative process that led to restructuring and customer choice legislation in Montana, all investor-owned utilities were hostile to the PMAs migrating from a wholesale role to one of a retail supplier.

Allocation of power to retail loads such as public schools would set up friction with other power suppliers. The Federal Government should not compete with other retail power suppliers.

Western is a marketer of a finite amount of wholesale power and should not enter the retail market. This reality is underlined by the uncertainties of hydroelectric generation. Allocations directly to retail customers would disrupt local and regional utility markets.

Response: Past efforts by Western to deliver hydropower to Federal agencies, such as Department of Defense installations, have met with resistance from existing power suppliers. Based on the comments received in this public process, there is little public support for Western taking on the role of a competitor for retail load.

Comment: It would be virtually impossible for Western to selectively serve individual schools throughout California and would be a disaster for many existing smaller preference power entities. We believe that schools within territory served by investor-owned utilities have already received rate decreases and further decreases will occur when stranded costs have been recovered.

Response: Western agrees that the State of California has mandated rate decreases to IOU-served electric consumers in the State, and that school districts have been among those paying decreased rates. California consumers served by IOUs are expected to receive additional rate relief once stranded costs have been recouped.

Comment: As the power supply function of the dams from which Western markets power is secondary to the water supply function, market pricing and direct access for retail customers cannot be applied to the Federal power program.

Response: Western's mission is not the same as that of a retail power marketer or other competitor in serving retail load.

Comments: If end-users are preference entities, why has Western not contracted with them directly in the past? If Western does decide to serve end users, an extension of the existing load-based allocation methodology should be used. The entity losing the load should be allowed to recover a wheeling charge for transmitting the Western power over its low-voltage distribution system.

Our water agency uses Western power to provide water supply to our customers. We are an end user of electricity and as such believe that Western should continue to make allocations to us and others who are similarly situated.

Direct sales to end users, such as schools, would be inconsistent with the longstanding practice of marketing Federal power only to public and cooperative wholesale distribution utility customers and Federal and State government installations.

Response: Western has served certain end users in the past, such as irrigation districts and Federal and State installations. However, Western sells power to all of its customers at wholesale and typically delivers power to our customers' distribution systems. If a utility loses load due to an allocation by Western, it is appropriate for that utility to charge a wheeling fee for transmission of Western power utilizing its system to the load receiving the allocation.

Comment: Western's current nonprofit preference customers are better suited to integrate the variability of the hydro resource into a resource portfolio to serve end users. Western has already achieved the goal of widespread use, as embodied in Reclamation law, by marketing to a very diverse set of nonprofit entities.

Response: Marketing to a diverse group of customers serves Western's policy goal of achieving widespread use.

Comment: There is a high degree of diversity existing in the nature and operating characteristics of the rural electric systems owned by the customers we serve. Local choice and decision making are important in recognizing that diversity.

Response: Western agrees that its power is already marketed to a wide variety of customers in a broad geographic area. Widespread use is being achieved without the need for Western to serve retail load directly.

Comment: The proposed withdrawal of 6 percent of existing CVP customers' current allocations to provide a resource pool for new customers achieves the proper balance of not overburdening the existing customers, who have planned their utility around the CVP resource, while also providing a meaningful pool for reallocation. This is especially true for CVP customers, whose Western allocation will be changing from the firm energy supply to receiving only a pro rata share of the CVP base resource. In our members' cases, they will be losing not only the 6 percent of their capacity, but are also losing about 50 percent of the energy that is currently being supplied by Western.

Response: Under the 2004 marketing plans, Western is scaling back its role as a provider of power and not increasing it. Western's SNR is offering a hydro-based resource unsupplemented by purchase power, with firming purchases being made by the customer or by Western only at the customer's request. While some purchasing of power will continue for the SLCA/IP, the level of purchases is expected to be lower and driven by customer choice.

Comment: BPA's pending subscription proposal for post-2001 power sales contemplates sales to regional IOUs with targeted delivery to residential and small farm customers. This proposal differs substantially from the direct sales suggested Western. First, BPA has an express statutory responsibility under the Northwest Power Act to deliver benefits to residential and small farm customers of Northwest IOUs. Second, BPA would make the sale to the distribution utility serving those customers—not to the end user. Third, the sales would only take place after the full contract requests of preference customers were satisfied. The Public Power Council would oppose direct sales to end users by PMAs as contemplated in Western's Notice.

Response: Western understands that customers of other power marketing administrations are concerned about the precedent that would be set by an expansion of Western's role in the utility industry.

J. Preference

Comment: If Western keeps preference, even after NEPA review, it should distribute power to eligible preference entities. One of the major problems with preference is its arbitrary nature. A school on one side of a line may get preference power, while a school on the other side does not. Western should market its power to those willing to pay market rates for power.

Response: The boundary between two utilities is no more arbitrary than any other boundary, such as that separating a higher tax jurisdiction from a lower one. A consumer of electricity on one side of the street may have lower rates than a consumer on the other side of the street for many reasons other than access to PMA power. Such factors as the price of other sources of power, the cost of transmission, customer density, access to capital, and strength of management can all bear directly on the cost of power.

K. Rates

Comment: As an alternative, the economic benefits associated with a modified bid process should be used to directly subsidize government agency end-users.

Response: Western has no authority to adopt this comment in the absence of legislation.

L. Risk

Comment: Direct allocation to retail customers would likely inject more risk into Western's power marketing program.

Response: Western agrees. In addition to the exposure to market volatility and the risk of not obtaining customer funding for project maintenance and improvements, marketing of power to retail customers would raise the likelihood of delinquent payment of bills. This risk is considerably lower when Western markets power to a smaller number of established customers with a history of prompt payment.

M. Source of Power

Comments: While our irrigation district does not oppose additional end users receiving allocations from the resource pool, such allocations should not come at the expense of existing long-term CVP preference power customers.

Power allocated to retail consumers should be derived from utilities presently serving those consumers.

Many end users are already served by Western, such as irrigation districts, Federal and State agencies, prisons, universities, and military installations. If a resource pool is to be formed for allocations of power to new end-use customers, such allocations should not be at the expense of existing end-use customers.

Response: Western believes equity is best served by forming resource pools through withdrawal of power from existing customers on a pro rata basis. These resource pools will be made available to new customers, including Native American tribes, on a project-specific basis.

Question

4. In a retail choice environment, what additional steps, if any, should Western take to ensure that the full economic benefits of preference power are passed through to end-users served by the distribution utility that receives a power allocation from Western?

A. Administrative Issues

Comment: Please do not add additional reporting and oversight requirements, which will lead to the creation of an additional and unnecessary layer of bureaucracy and expense.

Response: Western is striving to be as businesslike as possible in its activities. Unless an important benefit results, Western has no desire to add bureaucracy and associated expense to our agency.

B. Experience and Staffing

Comments: Western should not attempt to engage in ratesetting or rate review by comparing rates among utilities. Such comparisons would be enormously time consuming and could easily overwhelm Western's staff.

We do not believe Western has the expertise or the staffing to evaluate and compare one preference customer's retail rate structure against another's to determine whether either appropriately conveys the "full economic benefit" of preference power to all or even selected classes of end users.

Response: Western agrees that active monitoring of each customer's efforts to pass through the benefits of its hydroelectric power would not be time well spent. Contractual provisions already require customers to provide the benefits of firm power to consumers. If misuse of Western's electricity occurs, a breach of contract remedy already exists to address the situation.

C. Legal

Comment: An affirmative answer to this question would interfere with States' rights and violate the Tenth Amendment of the United States Constitution.

Response: The Tenth Amendment to the Constitution provides that the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people. Article 4, section 3 of the Constitution provides that Congress shall have the power to dispose of and make all needful rules and regulations respecting property belonging to the United States. The sale of power is the sale of government property, and Western has the ability to place conditions on the sale of its power. Since Article 4 of the Constitution delegates to the United States the power to sell government property, it does not violate the Tenth Amendment.

Comment: Western's statutory mandate is to market power and energy "in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers." Congress clearly contemplated that the focus of Western's marketing efforts should be on low consumer cost, and not restructuring incentives or disincentives.

Response: Western's policy is to market power in such a manner as to encourage the most widespread use thereof at the lowest possible rates consistent with sound business principles. This policy has its origin in the Flood Control Act of 1944, which became law many years before legislative consideration of restructuring of the utility industry began. However, applicable law does not preclude consideration of the impact of restructuring on Western's policies.

D. Policy

Comments: Current policies spread the benefits to end users. Existing customers are nonprofit, and already have every incentive to pass the economic benefits of Western's power on to ratepayers. Western should not assume the role of traffic cop. Western's goals and the goals of existing customers are the same—pass the economic benefits of preference power on to end users. Existing contracts restrict the use of Western power appropriately, so there is no need to expand the provisions of those contracts.

Western's power cannot be resold pursuant to contract, and Western's customers are already nonprofit by definition. There is nowhere for economic benefits to go but to the end use customers.

Our municipal utility is governed by representatives of its customers. These customers appreciate the value of the economic benefit of preference power and ensure that such value stays within the municipal utility's service territory borders.

Why should the Department of Energy micro-manage local decisions, when in the past there has been an excellent history of passing the full economic benefits on to end users?

Western, by contract, already requires its contractors to pass on the benefits of CRSP power to consumers. Since these are nonprofit entities, it is hard to imagine how they would not do so. Indeed, the concept of mandating the pass-through benefits originated at a time when private for-profit entities contracted for some of this resource because there were insufficient preference entities to do so. In that situation, those economic benefits could have been passed on to shareholders. That is not now the case.

Response: Western agrees there is no need for additional steps to assure that the economic benefits of preference power are passed through to the end user.

Comments: If a preference entity offers direct access, the amount of preference power available to that entity should be capped at the entity's native load. The purpose of this is to ensure that preference power is not retailed or exchanged for profit.

Preference power should only serve native load. Otherwise, utilities may abuse the system.

With extended contracts, Western power recipients seeking new customers would increase their unfair advantage. At a minimum, Western must be far more diligent in ensuring that its preference power participants do not use the low-cost Federal electricity to obtain an advantage in the competitive marketplace.

Response: Typically, Western only serves a portion of its customers' needs. Safeguards against the inappropriate use of Federal hydropower already exist, as Western's contracts forbid the sale for resale of Federal power and require that the economic benefits of Western's power be distributed to consumers. How a customer markets non-Western power

is not appropriately a concern for Western.

Comment: Not all public power utilities have the option to opt in or out of competition for retail load. Salt River Project was required by State law to make retail competition available to 20 percent of its load at the end of 1998.

Response: Legislation on this point varies from State to State.

Comments: In a deregulated electric industry, the organizational structure of the distribution utility should not be a determinative factor in disposing of Federal preference power. The distribution utility should be treated simply as a poles and wires entity with no ability to manipulate the supply side of electric service. It seems unfair that existing utilities holding preference power allocations could use their Federal preference power to attract new customers in ways that do not provide benefits to their existing service territory or their current base of retail customers. One potential way to handle this issue is to vest the contractual right to preference power in the wires or distribution portion of the existing preference utility. In effect, this would lock the preference power allocation into the preexisting service territory and the current retail customer base even in a retail competition environment.

The government subsidies inherent in sales of preference power can distort the operations of markets and give unfair competitive advantages to certain recipients of this low cost power. Some preference customers are seeking to enter competitive markets, and they should not be able to use such subsidized power to gain an unfair competitive advantage.

Response: Western's customers are unable to resell their Federal preference power, as existing contractual provisions prevent sale for resale of Federal power. Given this existing safeguard, Western sees no need to vest the allocation in the distribution portion of a customer's system.

Comments: Our city charter already requires that retail rates must be cost-based and approved at an open, public hearing where public comment is solicited. Aware citizens are the best safeguard against inappropriate distribution of the benefits of Western power.

Western's requirements under the Energy Planning and Management Program assure that the economic benefits of preference power are passed through to end users and that end users have the opportunity to know how this arrangement benefits them. The requirements for IRP involve a public process, which provides additional assurance for end users to understand the benefits of the preference allocation process. The information provided in a distribution utility's IRP filed with Western satisfies the question on the ultimate beneficiary of a preference power allocation.

Response: Western agrees that information provided to the public during local rate setting and integrated resource planning efforts strongly supports the policy of assuring that the economic benefits of Western's power are appropriately distributed.

Comment: Western should condition its allocations by requiring municipal utilities to offer cheaper electricity in poorer parts of their service territory.

Response: Most of Western's customers do not serve wealthy areas. However, Western is sensitive to the issue of need for reasonably priced power. Western is devoting considerable effort to delivering the benefits of its power to Native American tribes in need of lower priced electricity.

Utilities already have programs to assist consumers who cannot readily pay their utility bills, such as lifeline rates and assistance programs for low-income consumers. The Federal Government already addresses this issue through funding of the Low Income Home Energy Assistance Program. Conditioning of Western's allocations by requiring customers to offer less expensive electricity in poorer areas appears to duplicate programs that already exist that serve the same function.

Comment: State law prohibits discriminatory rate treatment by assigning the lowest cost resource to some consumers, but not to others.

Response: Western does not want to implement policy that conflicts with State law.

Comments: Preference distribution utilities should be permitted to use Federal power as is most economically useful in benefitting all their customers. However, the status quo allocations to current preference utilities should be reconsidered to fairly distribute the use of Federal power.

Market conditions should be allowed to establish the sensitive equilibrium between power cost and value. The establishment of more rules would slow adoption of open access power market principles.

No additional steps need be taken. The customer assumes responsibility for its own destiny when deregulation occurs. Neither the regulator nor the distribution utility have an obligation to protect the financial integrity of the customer.

Response: The use of Federal hydropower should not be as unfettered as suggested in these comments. Sale for resale of Federal power is prohibited under Western policy as reflected in power sales contracts. Allowing sale for resale would distort the intent underlying Western's allocations. Allowing the resale of Western's power at a profit would be totally inappropriate, as it would allow for private gain on a taxpayer financed and publicly owned resource.

Comment: If Western is concerned about additional assurance, ask each distribution utility to verify the amount of electric power and energy supplied at retail within its area and require that this amount is equal to or greater than that delivered by Western to the distribution utility.

Response: Western already has the right under existing contracts to ask its customers to demonstrate whether the benefits of cost-based hydroelectric power are being passed through to consumers and whether resale is occurring.

Comment: In a retail choice environment, Western must take additional steps to ensure that the full economic benefit of preference power is passed on to end users. The considerable tax subsidy Western receives, price subsidy Western conveys, and environmental costs Western exacts on the Sacramento and Colorado Rivers means Western is granting excess economic benefits at the expense of taxpayers, other electricity users and the Sacramento and Colorado Rivers. Western must seize the opportunity and correct its costly practices. Western must pursue river flows and dam operations—or removal—to protect the environment and restore the well being of those species threatened or endangered by the dams. Western must also offer tiered, market-based rates to eliminate the unfairness and inefficiency in the current system.

Response: As previously noted, Western's rates are not subsidized. Western markets cost-based hydroelectric resources, which are relatively inflation resistant as compared to non-hydro generation due to the absence of fuel costs. In addition, Western has no responsibility to meet load growth with relatively expensive additional power. Western's hydropower resources are reasonably priced due to these factors, and promote yardstick competition.

The generating agencies, such as the Bureau of Reclamation and the Corps of Engineers, have the responsibility to pursue changes in river flows and dam operations and to consider dam removal. Western has anticipated the possible reoperation of dams which impact threatened and endangered species by reserving the right to adjust our marketable resources in response to changes in hydroelectric operations. In addition, Western's customers have funded millions of dollars in environmental mitigation and study expenses.

Western does not have the legal ability to depart from cost-based rates in the manner suggested.

Comment: For our distribution cooperative, in years where we have a positive margin, that margin is allocated to the member-owners and placed in the member's capital credit account. The Board of Directors annually reviews that account and the financial condition of the cooperative to determine the appropriate amount of capital that should be returned to the membership.

Response: This comment demonstrates how the economic benefits of a locally-owned public power cooperative are returned to consumers rather than flowing to other beneficiaries.

Comment: The Sierra Nevada Region analyzes each preference customer's rates on an ongoing basis and continually stresses the requirement that rates be held as low as possible. In addition, Western requires an annual update of each entity's integrated resource plan and provides valuable feedback on resource utilization and optimization. The SNR also conducts several customer meetings annually, where such topics as customer rate setting are discussed.

Response: This comment is accurate. Western's CRSP Customer Service Center also provides similar services except that more individual customer meetings are held, as opposed to several meetings each year with all customers.

Comment: Western's notice does not explain what is meant by "full economic benefits of preference power." Is it Western's goal to ensure that the difference between the rate that Western charges and the costs of replacement power remains with the end users served by the utility? If that is the case, we generally agree that it is appropriate that the full economic benefits of preference power should be reserved for Western's customers' native load.

Response: This comment accurately reflects Western's goal.

Comment: Western should require all successful bidders for preference power to pass on to qualified end users (based on income or their nature as public institutions) the savings, if any, associated with the purchase of Western power as compared to other power supply sources.

Response: Western agrees that the benefits of the hydroelectric resources we market should flow to the consumer. This occurs almost by definition, as Western's firm power customers are nonprofit and have no shareholders.

Comment: Those customers who qualify as end use preference entities should at a minimum be guaranteed a "most favored" customer economic treatment.

Response: As no rationale has been advanced in support of this comment, Western will not adopt it.

Comment: Once vertical disaggregation occurs, Western must have procedures in place to ensure that end users—not distribution cooperatives or municipals—receive these allocations.

Response: Distribution cooperatives and municipal utilities are preference entities eligible to purchase power from Western. Should the form of these customers change, in response to industry deregulation or for other reasons, Western will be able to address issues of who should receive the allocation at that time. In the meantime, cooperatives and municipal utilities are required by contract to distribute the benefit of Western's power to consumers.

Comment: Western's mission is not one of being a consumer advocate.

Response: Western is concerned that consumers receive the benefit of our allocations.

Question

5. Should a distribution utility be permitted to transmit the economic benefits of preference power exclusively to industrial and/or commercial end-users? Conversely, should a distribution utility be required to pass on the benefits of preference power exclusively to a certain class of customers such as residential or small business?

A. Administrative/Staffing Experience

Comments: Western does not have the staffing or historic expertise to do retail rate design. Rate design issues are complex, controversial and disruptive and are best addressed locally and not by the Federal Government. Western should not change its role from that of a wholesaler of power.

Adding onerous restrictions and compliance requirements does nothing to promote Western's mission and adds additional costs to the rates.

The resources that we purchase from our generation and transmission cooperative consist of Western power and as well as other sources of power supply. The rate we are charged is a blend. Distribution of the benefits of Western hydropower exclusively to a particular class of consumers would be complicated by this existing billing practice.

Response: Western has no broad expertise in the diverse retail rate design laws and policies within our 15-State service territory, as our role is one of a wholesaler of power. Even if Western wanted to monitor retail rate design, there is no guarantee that Congress would provide the funding necessary to carry out Western's new role.

B. Discrimination

Comments: A distribution utility should not be permitted, or required, to transmit the economic benefits of preference power exclusively to industrial and/or commercial end users. The intent underlying preference power was for the benefits to flow equally to all the customers served by the entity receiving the allocation. Rural communities will not survive in an atmosphere of fragmentation.

Allocations of Federal power exclusively to a particular customer class would conflict with nondiscriminatory rate making principles used by consumer-owned utilities.

Western should not start a class war. Teddy Roosevelt would sit upright in his grave if he thought public resources would be devoted to big business. No volume discounts should be provided to large corporations.

There does not seem to be any policy basis for discriminating between residential, small business, and commercial end users, so long as the allocation serves the historic purposes of preference law.

Western's policy prohibits discrimination among classes. Western's existing customers have adhered to the longstanding policy of no discrimination.

Response: Western has no definite policy on retail rate design. Nor does Western require that the benefits of an allocation of Federal power be provided to one class of consumers at the expense of others. Retail rate design is typically done at the local level, in accordance with a cost of service study or other State or local policy goal. Western sees no need to dictate matters that are best determined at the local level.

C. Legal

Comment: Adoption of the policy suggested by this question interferes with States rights and violates the Tenth Amendment.

Response: For the same reasons set forth in response to a similar comment

on the fourth Notice of Inquiry question, no violation of the Tenth Amendment would take place.

Comment: Western's authorizing statutes grant it no power to review the rates of its customers or to identify some consumers as being more or less deserving of the benefits of Western's power.

Response: Applicable policy requires that power be sold at "the lowest possible rates to consumers" without direction to favor one customer class over another. As Western does not believe it to be good policy for a Federal agency to get involved in local decision making on rate design issues, there is no need to address the question of whether Western possesses the legal authority to do so.

Comment: The Second Circuit Court of Appeals has faced the argument that preference power should be furnished to municipal utilities for resale to only domestic and rural consumers, not to industrial or commercial consumers. The Court ruled that if "Congress had wanted to restrict resale to domestic and rural consumers it could easily have done so simply by stating that the power was to be made available to public bodies 'for resale only' to such consumers." The Court also held that Congress "believed that all interests could best be served by giving the local entities the right to decide on the ultimate retail distribution of the preference power sold to them." *Port Authority of the State of New York* v. *FERC*, 743 F. 2d 93, 104–05 (2d Cir. 1984).

Response: This case is based on the Niagara Project Power Act, and a FERC license issued to the Power Authority of the State of New York, pursuant to that act. Neither the Act, which contains a narrow definition of preference entity as compared to Reclamation Law, nor the terms of the FERC license are applicable to Western.

Comment: DOE cannot legally impose such restrictions on the end user's consumption of power delivered by a preference customer. Congress has already spoken to this issue, and determined that decisions about how power should be allocated within a preference customer's community are local in nature.

Response: While Western has broad authority to determine the conditions under which power will be sold, Western agrees that the decision is appropriately local in nature.

D. Local Control

Comments: Local rates are set in an open public process. Local government already addresses the issue of equity between small and large customers by its very structure. These institutions have a relatively small electorate, easy and direct access to their representatives and periodic elections. The effect of this democratic structure is that residents tend to have a much larger say in the decision-making process of their local utility than a customer of an IOU. If an issue arose about rates or cost allocations, residents would have to be convinced of the merits of a particular resolution to the issue. This is a more considered and responsive way to address the implications of the open market.

One of the benefits of public power is local control. Our utility is a relatively new public power entity and our customers have a keen memory of how badly they were treated when decisions about their services were made remotely. If Western ever elected to get involved in this level of detail, the customers our board serves would be disadvantaged. Most of those customers could not afford the time and expense to travel to Sacramento, much less Denver or Washington, DC, to voice their concerns.

Distribution utilities that receive preference power are governed by either elected boards or councils. Rates are currently set pursuant to cost-of-service studies, and customer classes are assigned costs on this basis. If a distribution utility were to change their rate design method, open, public rate hearings must be held as part of the rate approval process.

Since Western is not accountable to local voters, Western should not strive to intervene in local decision making. Given a choice, I cannot imagine that our residents or business owners would prefer to have rates established by a Federal agency.

Response: Western agrees that retail rate design is appropriately a local decision.

Comment: Western should not become a Federal public utilities commission. Federal regulations simply cannot embrace the wide variety of local conditions that exist in Western's service territory. Why should DOE micro-manage local decisions, when in the past there has been an excellent history of passing the full economic benefits on to end users? Absent a clear showing of abuse, Western should not involve itself in these uniquely local issues.

Response: It is not good policy for a Federal power wholesaler to make decisions on retail rate design.

E. Policy

Comment: Western is in no position to allocate benefits or force a distribution utility to allocate benefits among customer classes. Each distribution utility has a varied mix of customer classes and economic situations. Each of them has different statutory mandates as creatures of the States in which they were created. Western is ill-equipped to compile and absorb the nuances of State law in 15 States concerning local government and electric cooperative mandates. To the extent that adoption of any change in Western policy would interfere with State and local mandates, Western does not have the authority to do so and should not seek it.

Response: The design of retail rates is appropriately determined at the local level. The diversity and complexity of State and local standards and policy on this issue would make the establishment of a cohesive Federal policy difficult.

Comments: Western should ensure that the full economic benefits of preference power are passed to residential and small business. In a competitive market, these two classes of customers will not have the expertise to locate and arrange for delivery of least cost power.

Preference should remain as originally designated, for the primary use of residential and small business consumers.

The benefits of Federal power should be passed on to residences and small businesses by the distribution utility. Traditionally, distribution utilities have melded their low-cost Federal power with other sources and most times, through rate structures, the big power users received most of the benefits.

The economic benefits of preference power should be enjoyed by all customer classes equally based on the cost to provide service to the customer.

The distribution utility should not slight or reward any class of customers. Preference power benefits should be shared and shared alike throughout the customer classes.

Rate structures vary from cooperative to cooperative, and reflect what is appropriate for that cooperative and that community. A centralized, one-size-fits-all approach from Western, however well intentioned, is a poor substitute for a deliberative democratic approach exercised by locally elected officials.

Response: Rate design is appropriately a local choice.

Comment: An underlying concern appears to be that Federal power creates a competitive advantage for its consumer-owned recipients. However, many of Western's customers, due to their size or location, pose no competitive threat to other market participants.

Response: Western agrees.

Comment: Western should only require distribution utilities to show the economic benefit of preference power as well as other sources of power in their retail rate making criteria.

Response: Western's contracts contain language dealing with the distribution of the benefits of Western's power. Under current standard language in Western's contracts, the customer "agrees that the benefits of firm electric power or energy supplied under the contract shall be made available to its consumers at rates that are established at the lowest possible level consistent with sound business principles, and that these rates will be established in an open and public manner. The Contractor further agrees that it will identify the costs of firm electric power or energy supplied under the contract and power from other sources to its consumers upon request. The Contractor will demonstrate compliance with the requirements of this provision to Western upon request."

Comment: The purpose of the preference law is to provide power for public purposes and to help provide economic development for under served populations. Each preference customer should be required to show Western how it is carrying out the historic preference power mission in order to be eligible for an allocation.

Response: As our customers are already carrying out the purposes of preference law, Western sees no reason to adopt a litmus test for its customers as a condition for receipt of an allocation. If a customer is not acting in accordance with law or contractual provisions, Western has the remedy to address the situation.

Comment: Federal intervention is not necessary because of market pressure to prevent "cost shifting" among customer classes.

Response: Competition in the marketplace could well influence rate design decisions made by local utilities.

Comment: The Energy Policy Act clearly set forth a Federal intent to functionally separate generation from distribution. As a result, cooperative or municipal systems should no longer be the recipients of Federal preference allocations or involved in determining how Federal benefits from power sales are allocated to the end use customer.

Response: The Energy Policy Act opened up the regulated transmission grid to wholesale access, but did not mandate functional separation or modify preference law. Some unregulated entities (such as Western) have proceeded with separation of merchant and reliability functions because it serves their policy goals. However, public power utilities are not subject to any requirement to separate their functions unless Congress amends existing law.

Even if public power utilities were to separate functions, as a matter of law or local policy choice, there is no reason why this would impact continued purchase of power from Western. The negotiation of contracts and administration of the sale of power would be the responsibility of employees within the customer's function responsible for sales to retail consumers.

Comments: Preference should be altered precisely because it creates a nonsensical distinction among different groups of Americans. The decision to confer preference benefits on one class of customers rather than another is arbitrary and inappropriate for a government agency. Western should no longer stand against more than 200 years of economic research clearly demonstrating that the public is best served by free markets.

We support the extension of CVP resources to existing customers notwithstanding our general skepticism about electricity prices that fail to internalize key economic and environmental costs. In electricity markets, decades of empirical evidence indicate that price signals are not the only nor necessarily the most effective way to elicit long-term societal benefits.

Response: Selling power generated from public assets to consumer-owned public entities is neither arbitrary nor nonsensical. The statement about 200 years of economic research is unsupported by any specific citations, so Western cannot evaluate the merit of any such research. Western agrees that societal benefits may not be addressed appropriately by the marketplace.

F. Western's Role

Comments: Western's involvement in designating retail customer recipients could give it regulatory authority that is not warranted. The basic purpose of retail access is to allow decisions to be made at the local and consumer level, not to create a Federal template.

AB 1890 recognized that retail rate making for nonprofit utilities is best left to the local governing body that answers to its own citizens. This is not the time nor is there reason to replace the efficiency and responsiveness of local control with the inefficient command and control of the Federal Government.

Response: The better policy is to retain retail rate design at the local level, where State and local issues can be best addressed.

Question

6. Should a distribution utility be required to offer retail access to its distribution customers as a condition of receiving a preference power allocation in the future?

A. California Law

Comments: Such a policy would be inconsistent with AB 1890 that establishes industry deregulation in the State of California. AB 1890 allows the retail access decision to be made at the local level. Northern California customers are complying with this State law.

California restructuring legislation encouraged consumer-owned utilities to offer retail access, but left the decision up to the local governing body that is elected by those very same consumers. Intervention by the Federal Government on this matter would undermine the democratic process.

AB 1890 adequately addresses retail access in California and the Federal Government should not attempt to usurp the retail competition already in place. We strongly oppose Western's intervention into our municipal utility's prerogatives under California State law.

Response: The policy of the Clinton Administration, as reflected in the Administration's proposed electric utility restructuring legislation, allows each State and unregulated utility to opt out of retail competition. Western will not adopt a policy that is inconsistent with this proposed legislation.

B. Direct/Indirect

Comment: Imposing such a condition attempts to accomplish indirectly what cannot be achieved directly under existing law. Congress has not forced retail choice on States directly.

Response: The Clinton Administration has proposed legislation to deal with this situation that preserves State and unregulated utility choice. Western will not require retail competition indirectly as a condition of its power sales contracts.

Comment: As a matter of State law, some preference customers will not be able to impose a retail competition plan in order to obtain an allocation.

Response: Western recognizes that some of its customers cannot legally adopt retail access as a matter of State law. Attempting to require such a policy as a condition of Western's power sales contracts would place some customers in an untenable position.

C. Equity

Comment: A retail access mandate for customers now seeking a contract extension is discriminatory, because it violates the precedent set in the Pick-Sloan renewals and would apply currently only to customers of the Colorado River Storage Project and the Central Valley Project.

Response: Western often implements new policies in a staged manner, as its marketing plans and contracts are effective for different time periods.

D. Legal

Comment: This restriction would be a violation of existing Federal law and is beyond the reach of Western absent congressional authorization. It would also interfere with decision making by both State and local policy makers. For example, Montana law allows cooperatives the option to decide whether to "opt in." Adoption of this policy by Western would undermine the policy choice made by the State of Montana.

Response: While Western has broad authority to determine the conditions under which power will be sold, Western agrees that the decision to embrace retail wheeling has historically been local in nature. Western's policies should neither force retail wheeling in States that have rejected it nor impede the adoption of retail wheeling in jurisdictions that have embraced it.

Comments: Do not set up a conflict between Federal law and California law. This would be the epitome of big brotherism. An affirmative answer to this question would interfere with States' rights and violate the Tenth Amendment to the United States Constitution.

In some instances, any attempt to force a Federal retail access template on Western customers would be unconstitutional as a violation of the Tenth Amendment to the United States Constitution. In particular, Western cannot interfere with the governmental mission of its customers as defined in State laws and constitutions.

Response: For the same reasons set forth in response to a similar comment on the fourth Notice of Inquiry question, no violation of the Tenth Amendment would take place.

Comment: Such a requirement would be inconsistent with the intent of California's AB 1890 and with the current Administration policy of flexible mandate.

Response: Western agrees with this comment.

Comment: Imposition of such a requirement would constitute a "taking" of property that would result in a liability for compensation by the Federal Government.

Response: There is no entitlement to Federal power in the absence of a contract. Since the sale of power is a sale of government property, no taking will occur.

Comment: The Energy Policy Act of 1992 makes it clear that the U.S. Congress did not intend for retail issues to be dealt with at the Federal level. The FERC was denied jurisdiction over transmission access at the retail level in favor of State jurisdiction. There has been no significant indication that the Congress has changed its mind. Moreover, legislation drafted by the DOE and introduced in the 105th Congress would continue the State's dominant role in retail access considerations. Western does not now have, and probably will not get, authority to attempt to leverage retail access.

Congress has given local entities "the right to decide on the ultimate retail distribution of the preference power sold to them."

Response: FERC has limited jurisdiction to order retail wheeling under the Energy Policy Act of 1992. The policy of the Clinton Administration, as reflected in the Administration's proposed electric utility restructuring legislation, allows each State and unregulated utility to opt out of retail competition. Western will not adopt a policy that is inconsistent with this proposed legislation.

E. Local Control

Comment: Let communities decide whether, when, and how they will manage direct access. Our municipal utility is planning to open up direct access because it is good for the community. Each community faces a similar choice, and they will act in the best interests of those they serve.

Response: The policy of the Clinton Administration, as reflected in the Administration's proposed electric utility restructuring legislation, allows each State and unregulated utility to opt out of retail competition. Western will not adopt a policy that is inconsistent with this proposed legislation.

F. Policy

Comment: There is no logical nexus between Federal power allocations and retail access. The Congress has not determined that retail access is a sine qua non of electric utility industry restructuring.

Response: Congress has not established such a nexus.

Comment: Federal intervention in local access matters as a condition of receiving a power allocation would not be beneficial. Federal intrusion into decision making aspects of retail access determinations smacks of Federal social central planning, which Western and DOE should not promote. Intervention by the Federal Government on this matter, especially on a piecemeal basis through a marketing plan of a limited Federal resource, would be totally inappropriate.

Response: A comprehensive approach to this issue is preferable to a piecemeal approach.

Comment: The elected governing body of a distribution utility receiving an allocation from Western may decide that it is in the best interests of its customers to not offer retail access until some time in the future, or not at all. The newly formed markets for power are still immature and it may be some time before truly competitive markets are accessible to all customers. In our case, the decision will be made in an open, public forum where retail customers can voice their opinion to an elected city council. If the city council decides that it is in the best interests of a city's customers for it to remain a full service public power utility, the customers of this utility should not be penalized by not being eligible for future power allocations.

Response: The decision to open up markets to retail competition is best made locally. Western's policies should neither force retail wheeling in States that have rejected it nor impede the adoption of retail wheeling in jurisdictions that have embraced it.

Comment: Adoption of this policy would have unintended consequences, such as migration of power out of States that decline to adopt retail access. Preference customers in States that do not permit retail access could lose their preference power, even if those customers are using their allocations to service the types of end users that the Notice indicates should be receiving the full economic benefit of preference power.

Response: Western agrees that the effect of the policy suggested by the question could cause power to migrate to customers in States that have adopted retail access.

Comment: Whether retail access is good or bad remains to be seen. We believe that in the final analysis it will depend on the size and location of the end user. Western's power allocations should neither help nor hurt retail access. The draft 2004 CVP marketing plan provides enough flexibility for the benefits of CVP power to be realized, regardless how retail wheeling evolves. We urge Western to rise above those who seek to destroy public power, or who seek to restructure the electric industry so that profits can be made off the public's resources.

Response: The policy of the Clinton Administration, as reflected in the Administration's proposed electric utility restructuring legislation, allows each State and unregulated utility to opt out of retail competition. Western will not adopt a policy that is inconsistent with this proposed legislation.

Comment: The impact of adoption of this proposed change in policy would impact supplemental suppliers much more than Western or Western's preference customers.

Response: Western needs to be aware of the impact of its policies on supplemental suppliers.

Comments: There are many legitimate reasons why retail competition might not be adopted by a State, including a concern that losers are likely to be residential, low income, senior citizens and other small users. Market power concerns and availability of reliable power supply also may cause a State to reject retail competition. These legitimate concerns should not be held hostage by a threat of losing a Federal power allocation.

There is no evidence that small customers have benefitted from retail wheeling. We don't understand why Western would want to force retail access where it is not allowed to the potential detriment of our small customers.

Response: The policy of the Clinton Administration, as reflected in the Administration's proposed electric utility restructuring legislation, allows each State and unregulated utility to opt out of retail competition. Western will not adopt a policy that is inconsistent with this proposed legislation.

Comments: Mandating retail access by preference customers now seeking a contract extension is inconsistent with the restructuring policy of the Clinton Administration, which advocates a flexible mandate for States and nonregulated utilities. Western should not force retail wheeling in States that have rejected it.

This should only be done by an act of Congress which would mandate retail access. What logic would there be to force retail access if neither the State nor Federal law requires such action?

Response: Western agrees that the question suggests an approach that goes further than the Clinton Administration's policy.

Comment: Regulation by independent commission or elected body has been a widely accepted substitute for regulation by market forces in the electricity business for nearly 100 years. Although there are experiments being conducted in a very limited number of States and locales concerning the reintroduction of the market as a form of regulation, the wisdom of this approach is far from proven.

Response: Although open access to high voltage transmission and competition in the sale of wholesale power are prevalent, Western agrees that many States have not extended these policies to retail load.

Comment: It is the stated policy of the Clinton Administration that customers should be allowed to benefit from the ability to choose their own electricity supplier, but also permit States and unregulated utilities to opt out of the competition mandate if they find that consumers would be better served by an alternative policy. Western should engage in the same balancing act. Customers that operate in States where there is no barrier under State law to retail competition should be required to open up their systems to retail competition as a condition of receiving future allocations. End users of preference power should see their rates remain the same or go down as a result of competition.

Response: Adoption of this comment would not be akin to engaging in the same balancing act as the stated policy of the Clinton Administration. The Administration's policy allows States and unregulated utilities the freedom to choose, while this comment asks Western to deny that right to unregulated utilities within States that adopt retail wheeling for regulated utilities. It is more appropriate for the individual States, and not Western, to consider whether public power utilities should lose their historic right to make decisions locally.

Comments: Distribution utilities serving Indian reservations should be required to offer retail access to it customers within the reservation as a condition of receiving a preference power allocation in the future. Western must not allow the tribes to become landlocked or to be held hostage by others who may have adverse interests to those of a tribe.

A distribution utility should be required to offer retail access to its distribution customers as a condition of receiving a preference power allocation in the future. We believe this requirement will encourage open access for retail distribution customers the same as the transmission and generation customers under the FERC rule. The Navajo Agricultural Products Industry has tried unsuccessfully to have its distribution utility wheel other power to its sprinkler irrigation equipment and a proposed food processing plant. The argument used to discourage open access is that the State of New Mexico legislature has not enacted an open access law similar to AB 1890.

Response: Western plans to allocate power to tribes from project-specific resource pools. If the tribe already is or plans to become a utility, transmission will be available under wholesale transmission access principles. Should the tribe choose not to form a utility, Western is committed to providing the benefits of Federal hydropower to the tribes through other means. This could include retail wheeling where the distribution utility offers this service, or alternatives such as bill crediting when retail access is unavailable. Western has adequate flexibility to deliver the benefits of Federal hydropower to tribes without mandating retail access as a contractual condition for existing customers. In addition, adoption of this policy would be incomplete in its scope in States that have not adopted retail wheeling, as it would provide no benefits to tribes served by entities that are not Western customers.

Comment: Wherever a utility receiving preference power seeks to sell retail power to new customers in service territories and communities presently being served by other utilities, that utility should be required to offer retail access to its distribution customers.

Response: The policy of the Clinton Administration, as reflected in the Administration's proposed electric utility restructuring legislation, allows each State and unregulated utility to opt out of retail competition. Western will not adopt a policy that is inconsistent with this proposed legislation.

Comment: The opening of retail access for preference customers is far more complex than suggested by this question. The reasons why no municipalities have joined the California ISO are (1) existing tax exemptions on already existing bonds could be jeopardized, and (2) municipalities would receive little or no credit for turning over to the ISO transmission assets that are not directly connected to their load centers, such as the municipal interest in the California-Oregon transmission system. A municipal utility joining the California ISO could be risking great damage to their system. This is not an outcome to be furthered by Western as the price for an allocation of preference power.

Response: The complexities of this issue must be taken into account.

Comment: Western should attempt to maintain comparability with regulated utilities in the area.

Response: This is a role more properly exercised by the States.

Comment: We believe that customers with distribution systems should be encouraged to share their facilities with other customers whenever it is mutually beneficial.

Response: Western agrees.

Comment: All distribution entities, including cooperative and municipal utilities, must be required to offer retail access, whether they receive an allocation of preference power or not. We must begin to view the industry not in a way that asks which entity gets what preference, but rather in terms that power supply has been mandated to be a competitive enterprise while distribution ought to remain a regulated monopoly.

Response: Western has no ability to accomplish this suggestion. Only Congress or State legislatures have the power to adopt a broad policy of widespread applicability.

Comment: If Western only made allocations to distribution utilities that offer retail access, it would speed the adoption of retail access and free up some allocations from distribution utilities who chose to forego their Western allocations rather than provide retail access. However, making Western allocation renewal conditional on distribution utilities' offers of retail access would only offer a level playing field if FERC hydro license holders nationwide were also stripped of their licenses if they did not offer direct access by 2005.

Response: Western understands this issue of equity in implementing retail access.

Comment: This question suggests that Western allocations ought to be held as ransom for retail access. Our utility began offering retail access to all customers in January of 1998. Our access is not restricted by competitive transmission charges or similar charges imposed virtually every time retail access has been offered or contemplated by IOUs. To date, not one of our customers has switched suppliers. Our customers are small and sparsely distributed. Those seeking to gain by providing retail access and attacking public power know they cannot profit by providing our customers a better deal than we provide.

Response: Western believes this comment demonstrates that small rural consumers may not benefit from adoption of retail access.

G. States

Comment: The issue of retail access has always been one for the States to decide. If the decision of the State is to be overridden, the entity that must do so is Congress, not Western.

Response: Western agrees that it should not act inconsistently with the decision making of States.

Comment: A vast majority of the States located within Western's marketing area have not yet elected to proceed with restructuring. Congress has adopted no legislation encouraging, much less mandating, restructuring of the utility business. The only Federal activity to date has been by FERC, an independent regulatory agency whose authority to order restructuring of the wholesale electric energy market is currently under legal challenge.

Response: Western agrees.

Comment: Requiring a retail access mandate assumes retail access is good for all consumers. This is not true, as 23 State Public Utility Commissions wrote to Congress recently urging retail access not be mandated because they believe retail rates in their States would increase significantly as a result. What about States like Idaho/Oregon that already have low rates and want to keep it that way by rejecting retail wheeling?

Response: States that already enjoy low cost power may be cautious about adopting retail access laws that might place upward pressure on local power rates.

H. Western's Role

Comment: The Public Power Council opposes any effort to expand the authority of the PMAs and encroach on the local decision-making authority of PMA customers. In the Northwest, the local autonomy of consumer-owned utilities is appropriately respected. BPA does not regulate customer rates or rate design. Similarly, BPA does not micro-manage the conservation activities of its customers—activities that are required by contract. We are particularly concerned that the Notice contemplates tying contract allocations to implementation of retail competition. This proposal runs counter to the "flexible mandate" endorsed by the Clinton Administration that respects the local autonomy of consumer-owned utilities.

Response: Western agrees that the local autonomy of consumer-owned utilities must be respected.

Dated: June 10, 1999.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 99–16019 Filed 6–24–99; 8:45 am]

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federal register

Friday
June 25, 1999

Part IV

Department of Education

34 CFR Part 602

The Secretary's Recognition of Accrediting Agencies; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 602

RIN 1840–AC80

The Secretary's Recognition of Accrediting Agencies

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Secretary's recognition of accrediting agencies to implement provisions added to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998. The Secretary recognizes accrediting agencies to assure that those agencies are, for HEA and other Federal purposes, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit.

DATES: We must receive your comments on or before August 24, 1999.

ADDRESSES: Address all comments about these proposed regulations to Karen W. Kershenstein, U.S. Department of Education, 400 Maryland Avenue, SW., room 3915, ROB–3, Washington, DC 20202–5244. If you prefer to send your comments through the Internet, use the following address:
karen__kershenstein@ed.gov

If you want to comment on the information collection requirements in these proposed regulations, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein. Telephone: (202) 708–7417. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment:

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the accrediting agency recognition process.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3915, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call FIRS at 1–800–877–8339.

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals web site (http://www.ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, each negotiating committee met to develop proposed regulations for several days each month, from January through May.

The proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of the negotiating committee, which was made up of the following members:

American Association of Collegiate Registrars and Admissions Officers.
American Association of Community Colleges.
American Association of Cosmetology Schools.
American Association of State Colleges and Universities.
American Council on Education.
Association of American Universities.
Association of Jesuit Colleges and Universities.
Career College Association.
Council for Higher Education Accreditation.

Council of Recognized National Accrediting Agencies, consisting of the Accrediting Bureau of Health Education Schools, the Accrediting Commission of Career Schools and Colleges of Technology, the Accrediting Council for Continuing Education and Training, the Accrediting Council of Independent Colleges and Schools, the Council on Occupational Education, the Distance Education and Training Council, and the National Accrediting Commission of Cosmetology Arts & Sciences.
Council of Regional Accrediting Commissions, consisting of the Commission on Higher Education of the Middle States Association of Colleges and Schools, the Commission on Institutions of Higher Education and the Commission on Technical and Career Institutions of the New England Association of Schools and Colleges, the Commission on Institutions of Higher Education of the North Central Association of Colleges and Schools, the Commission on Colleges of the Northwest Association of Schools and Colleges, the Commission on Colleges of the Southern Association of Colleges and Schools, and the Accrediting Commission for Senior Colleges and Universities and the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges.
Education Finance Council.
Legal Services Counsel (a coalition).
National Association for Equal Opportunity in Higher Education.
National Association of College and University Business Officers.
National Association of Independent Colleges and Universities.
National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs (a coalition).
National Association of State Universities and Land-Grant Colleges.
National Association of Student Financial Aid Administrators.
National Direct Student Loan Coalition.
National Women's Law Center.
State Higher Education Executive Officers Association.
The College Board.
The College Fund/United Negro College Fund.
United States Department of Education.
United States Student Association.
US Public Interest Research Group.

Under committee protocols, consensus meant that there was no dissent by any member of the committee. Thus, the proposed regulations in this document have been agreed to by each of the organizations and groups listed as members of the committee.

To expedite its work, the negotiating committee established an accreditation subcommittee, which was made up of the following members, in addition to any members of the full committee:

Accrediting Association of Bible Colleges.
Accrediting Commission of Career Schools and Colleges of Technology.
Association of Specialized and Professional Accreditors.
Commission on Higher Education of the Middle States Association of Colleges and Schools.
Commission on Colleges of the Southern Association of Colleges and Schools.

The subcommittee made recommendations to the full negotiating committee, which in turn reached final consensus on the proposed regulations in this document.

Changes From Existing Regulations

The following discussion reflects proposed changes to the existing regulations governing the Secretary's recognition of accrediting agencies. Some of the proposed changes incorporate provisions contained in the Higher Education Amendments of 1998, the most significant of which concern the standards accrediting agencies must have, the timeframe for agencies to come into compliance with the criteria for recognition, and distance education. Other proposed changes are the result of discussion and subsequent consensus among negotiators about how to improve the current regulations by clarifying existing regulatory language and eliminating redundancies. All of the changes are discussed in the order in which they appear in the proposed regulations.

Please note that the proposed regulations differ organizationally from the current regulations because we have rewritten them to comply with Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing." For your convenience, the Appendix contains a distribution table listing the sections contained in the current regulations and where they may be found in the proposed regulations.

Subpart A—General (§§ 602.1 Through 602.3)

Subpart A of the current regulations contains basic information describing the purpose of the regulations and the definitions that apply. It also contains some requirements agencies must meet if they wish to be recognized. Subpart A of the proposed regulations contains only the basic information about the purpose of the regulations and the definitions that apply. The only significant changes proposed in subpart A relate to some of the definitions contained in § 602.3. These are discussed in the next section.

Section 602.3 What Definitions Apply to This Part?

Most of the definitions in the proposed regulations are the same as the ones in the current regulations. Substantive changes are proposed for two definitions, however, and the proposed regulations contain three new definitions.

Adverse accrediting action. The proposed regulations exclude probation and show cause from the type of action currently included in the term "adverse action." Like § 602.26(c) of the current regulations, § 602.20 of the proposed regulations requires recognized agencies to take adverse action within a specified timeframe if their review of an institution or program indicates that it is not in compliance with agency standards. Including interim actions such as probation and show cause as "adverse actions" permits noncompliant institutions and programs to retain accreditation or preaccreditation well beyond the maximum timeframes the regulations prescribe. Under the proposed regulations, failure to achieve compliance within the prescribed timeframe would result in denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation unless the agency extends the timeframe for good cause.

Branch campus. Section 496(c)(3) of the HEA requires an institutional accrediting agency whose accreditation enables the institutions it accredits to establish eligibility to participate in Title IV, HEA programs to conduct a site visit within six months to each branch campus an institution establishes. While the 1998 amendments did not change the requirement for site visits within six months of the establishment of a branch campus, the House-Senate Conference Report noted that the definition of the term "should not be so broad as to be overly burdensome on agencies and institutions."

The current regulations define "branch campus" to include "any location of an institution, other than the main campus, at which the institution offers at least 50 percent of an educational program." A significant number of locations met this definition. Consequently, agencies had to conduct a site visit within six months of the

establishment of each of these locations, even if the institution had a proven track record in establishing additional locations that met or exceeded the agency's standards. This proved to be burdensome and costly to both agencies and institutions. In addition, this portion of the definition of "branch campus" diverged from the definition of the same term in the institutional eligibility regulations contained in 34 CFR part 600.

The proposed regulations change the definition of "branch campus" used in 34 CFR part 602 to conform to the definition of the term in 34 CFR part 600 and require agencies to conduct site visits to additional locations that offer at least 50 percent of an educational program under certain circumstances. The specific circumstances are discussed under § 602.22.

Distance education. The current regulations do not use this term. In the accreditation section of the 1998 amendments, however, there are two references to distance education. The first, found in section 496(a)(4) of the HEA, requires that an agency consistently apply and enforce standards that ensure that the courses or programs offered by an institution, "including distance education courses or programs," are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which they are offered. The second, found in section 496(n)(3) of the HEA, refers to the scope of recognition the Secretary grants to an agency and states, "If the agency or association reviews institutions offering distance education courses or programs and the Secretary determines that the agency or association meets the requirements of this section, then the agency shall be recognized and the scope of recognition shall include the accreditation of institutions offering distance education courses or programs."

The proposed regulations adopt the same definition of "distance education" as is used in establishing the Distance Education Demonstration Programs in section 488 of the Higher Education Amendments of 1998. The negotiating committee considered whether use of the term "courses" in the statutory definition could be misread to exclude programs offered through distance education. The committee concluded, however, that a fair reading of "courses" includes programs and is not limited to individual courses. The Secretary agrees with this interpretation.

Scope of recognition. The proposed regulations define a new term, "scope of recognition." The definition would include the description contained in § 602.13(e) of the current regulations about the Secretary's recognition decision. The definition would also address the provision contained in section 496(n)(3) of the Higher Education Amendments of 1998 by adding the agency's accrediting activities related to distance education to the list of items to be referenced by the Secretary in the scope of recognition awarded to an agency. The proposed definition also states that the Secretary may place a limitation on the scope of an agency's recognition for Title IV, HEA purposes.

Senior Department official. Not used in the current regulations, this term is defined in the proposed regulations as "the senior official in the Department of Education who reports directly to the Secretary regarding accrediting agency recognition." The current regulations use another term, "designated Department official," but in various places this term has meant the Assistant Secretary for Postsecondary Education or, more recently, the Chief Operating Officer; in others, it has meant a member of that individual's staff to whom he or she has delegated certain responsibilities. The use of the term "designated Department official" to describe different individuals in the Department has caused some confusion in the current regulations. For this reason, the proposed regulations do not use the term at all. Rather, they establish the responsibilities of Department staff, the National Advisory Committee on Institutional Quality and Integrity, and the senior Department official in different stages of the recognition process. Subparts C and D of the proposed regulations describe the specific circumstances under which the senior Department official makes recommendations regarding an agency's recognition.

Subpart B—The Criteria for Recognition (§§ 602.10 Through 602.28)

With a few exceptions, subpart B of the proposed regulations follows prior law in establishing the criteria for recognition. However, the criteria have been grouped into several subheadings to improve readability. A discussion of each group follows.

Basic Eligibility Requirements (§§ 602.10 through 602.13)

The proposed regulations group under this heading the recognition requirements found in §§ 602.1(b), 602.20, and 602.22 of the current regulations. If an agency seeking initial recognition fails to meet one or more of these basic eligibility requirements, § 602.31 of the proposed regulations authorizes Department staff to recommend to the agency that it withdraw its application for recognition.

Section 602.12 of the proposed regulations changes current requirements related to accrediting experience so that the requirements apply only to agencies seeking either initial recognition or an expansion of their scope of recognition. A recognized agency, by virtue of the fact that the Secretary has recognized it, has already demonstrated its compliance with these requirements and need not be burdened with demonstrating it again if it seeks continued recognition. A new agency, on the other hand, needs to demonstrate that it has accrediting experience in order to be recognized. Similarly, an agency that seeks to expand its scope of recognition needs to demonstrate its experience in the area for which it seeks the expansion.

The proposed regulations also specify the amount of experience required for initial recognition. Specifically, they require a new agency to have conducted accrediting activities, including making accrediting decisions, for at least two years prior to seeking recognition.

In conjunction with the issue of accrediting experience, the Secretary notes that 1998 amendments replace the phrase "accrediting agency approval" with "accrediting agency recognition" and generally refer to agencies as "recognized" rather than "approved." The Secretary believes these changes simply clarify that the Secretary does not "approve" agencies; i.e., grant them permission to operate, conduct accrediting activities, and make accrediting decisions. Rather, the Secretary "recognizes" them for having demonstrated, as a result of their accrediting experience, that they are in fact reliable authorities regarding the quality of education or training provided by the institutions or programs they accredit.

Organizational and Administrative Requirements (§§ 602.14 and 602.15)

Included under this heading are §§ 602.3 and 602.21 of the current regulations. There are no significant changes to either of these sections in the proposed regulations, although some requirements are either combined to eliminate redundancy or reworded for clarity. For example, the current regulations require agencies to have adequate administrative staff to carry out their accrediting responsibilities effectively and to manage their finances effectively; they also require agencies to have adequate financial resources to carry out their accrediting responsibilities. These requirements are combined and simplified in the proposed regulations to state that agencies must have adequate administrative staff and financial resources to carry out their accrediting responsibilities.

In another instance, the current regulations require agencies to have "competent and knowledgeable individuals, qualified by experience and training, responsible for on-site evaluation, policy-making, and decision-making regarding accreditation and preaccreditation status." This provision implements the statutory requirement contained in section 496(c)(1) of the HEA that agencies must ensure "that accreditation team members are well-trained and knowledgeable with respect to their responsibilities." However, agencies have not always understood the language in the current regulations to mean that those involved in the accreditation process must be well-trained in agency standards, policies, and procedures. Consequently, the proposed regulations restate the requirement explicitly by calling for agencies to have "competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on its standards, policies, and procedures, to conduct its on-site evaluations, establish its policies, and make its accrediting decisions."

Required Standards and Their Application (§§ 602.16 Through 602.21)

Included under this heading are all of §§ 602.24 and 602.26 of the current regulations and some sections in § 602.23. The significant changes in this group of criteria are discussed in the description of each proposed section that follows.

Section 602.16 Accreditation and Preaccreditation Standards

The proposed regulations revise and reorder the list of required accreditation standards found in § 602.26(b) of the current regulations to conform to the list found in section 496(a)(5) of the 1998 amendments. Specifically, the proposed regulations require agencies to have accreditation standards that effectively address the quality of an institution or program in the following areas: (1) Success with respect to student achievement in relation to the institution's mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates; (2) curricula; (3) faculty; (4) facilities, equipment, and supplies; (5) fiscal and administrative capacity as appropriate to the specified scale of operations; (6) student support services; (7) recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising; (8) measures of program length and the objectives of the degrees or credentials offered; (9) the record of student complaints received by, or available to, the agency; and (10) the institution's record of compliance with its program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information the Secretary may provide to the agency.

The significant changes the proposed regulations make to the list of required accreditation standards include the placement of success with respect to student achievement first rather than ninth, the elimination of the standard related to tuition and fees, the inclusion of default rates in the standard related to institutions' compliance with their Title IV responsibilities rather than in a separate standard, and the combination of the two standards that dealt with aspects of program length into a single standard.

In light of the statute's placement of success with respect to student achievement as the first of the required standards, the Secretary believes some discussion of the issue is warranted in this NPRM. Section 496(a) of the HEA requires the Secretary to establish the criteria for recognition and states that those criteria must include "an appropriate measure or measures of student achievement." The Secretary believes that the standards specified in § 602.26(b)(9) of the current regulations and § 602.16(a)(1)(i) of the proposed regulations, which require agencies to have a standard that effectively addresses the success of an institution or program with respect to student achievement, fulfill this statutory requirement.

The Secretary believes that any determination by an accrediting agency that an institution or program it accredits provides quality education or training must be based, in part, on an assessment of the achievement of students enrolled in the institution or program, because the true success of an institution or program is measured by the success of its students. The Secretary further believes that success with respect to student achievement, a measure of educational outcomes, is an important indicator of educational quality, on a par with or even surpassing the more traditional focus on educational "inputs."

In concluding this discussion of the required accreditation standard related to success with respect to student achievement, the Secretary wishes to reiterate the comments made on this issue in the appendix to the 1994 regulations:

> An accrediting agency's standard for assessing this area should generally address the success of an institution or program in meeting its educational objectives, as measured by the achievement of its students. Typically under this standard, an agency should require the institution or program to document and assess the educational achievement of students in verifiable and consistent ways, such as student grades, grade point averages, theses or portfolios, the results of admissions tests for graduate or professional school or other standardized tests, transfer rates to institutions offering higher level programs, job placement rates, completion rates, results of licensing examinations, evaluations by employers, follow-up studies of alumni, and other recognized measures of educational outcomes. The agency should also typically require the institution or program to use effectively the information obtained in this manner to improve student achievement with respect to the degrees or certificates offered. Finally, the agency should typically monitor in a systematic way the institution's or program's performance with respect to student achievement, including, as appropriate, completion rates, job placement rates, and pass rates on State licensing examinations, or other appropriate measures of occupational competency, to determine if performance is consistent with both the institution's or program's mission and objectives and any measures the agency may have for institutions' or programs' performance with respect to student achievement. For programs that provide vocational education, agencies should establish quantitative standards for completion rates, job placement rates, and pass rates on State licensing examinations.

Section 602.17 Application of Standards in Reaching an Accrediting Decision

There are no significant changes to this section of the proposed regulations, which basically repeats §§ 602.24(b)(1) and 602.24(b)(2) of the current regulations.

Section 602.18 Ensuring Consistency in Decision-Making

There are no significant changes to this section of the proposed regulations, which basically repeats §§ 602.23(b)(3), 602.23(b)(4), and 602.26(d) of the current regulations.

Section 602.19 Monitoring and Reevaluation of Accredited Institutions and Programs

There are no significant changes to this section of the proposed regulations, which basically repeats §§ 602.24(b)(4)

and 602.24(b)(5) of the current regulations. However, the Secretary wishes to emphasize that accrediting agencies have a responsibility to monitor institutions and programs throughout their accreditation period to ensure that educational quality is maintained. While an agency may determine the policies and procedures it will use to monitor its institutions and programs, those procedures must provide for prompt and appropriate action by the agency whenever it receives substantial, credible evidence from any reliable source that indicates a systemic problem with an accredited institution or program that calls into question the ability of the institution or program to meet the agency's standards. Furthermore, the Secretary expects those policies and procedures to provide an agency with unambiguous authority to act if educational quality is at issue, even if the matters are being reviewed by other bodies, including courts. It is unacceptable for an agency to have as its policy that it will not look into, and take appropriate action based upon, information that comes to its attention through pending third-party litigation.

Section 602.20 Enforcement of standards

There are no significant changes to this section of the proposed regulations, which basically repeats § 602.26(c) of the current regulations.

Section 602.21 Review of Standards

The Secretary's criteria for the recognition of accrediting agencies have long required agencies to maintain a systematic program of review of their accrediting standards. The present statement of the requirement is contained in § 602.23(b)(5) and (b)(6) of the current regulations and emphasizes the need for agencies to carry out a program of review that ensures their standards are valid and reliable indicators of educational quality and relevant to the needs of students. The current regulations do not, however, define "validity" and "reliability," and various technical interpretations exist for these terms that, when applied in the context of accrediting agency standards, are frequently misunderstood. Non-Federal negotiators expressed concern that because "valid" and "reliable" have established meanings in the field of statistics, the current regulations arguably imply that a systematic program of review must inevitably, or even usually, take the form of an extensive statistical analysis. Another problem with the current regulations is that they imply a well-defined conclusion to an agency's systematic program of review, at which point the agency can state with certainty that all of its standards are valid and reliable, when in fact a good systematic program of review is ongoing.

The proposed regulations include two significant changes to address these concerns. First, they avoid altogether the use of the terms "valid" and "reliable" in describing the requirements for a systematic program of review. Instead, the proposed regulations require agencies to maintain a systematic program of review that demonstrates their standards are adequate to evaluate the quality of education or training provided by the institutions and programs they accredit and relevant to the needs of students. Second, while the proposed regulations leave agencies free to determine the procedures they will follow in evaluating their standards, they require agencies to ensure that their program of review is comprehensive, occurs at regular intervals or on an ongoing basis, examines each standard and the standards as a whole, involves all of the relevant constituencies in the review, and affords those constituencies a meaningful opportunity to provide input into the review.

In proposing to eliminate the word "reliable" from this section, the Secretary notes that sections 496(a) and 496(c) of the HEA use the word "reliable" in describing agencies that may qualify for recognition. Accordingly, the Secretary has incorporated this concept into § 602.16(a)(i) of the proposed regulations, which describes as "reliable" an agency that has standards that effectively address each of the areas the statute requires agencies to address. The Secretary views § 602.16(a)(i) as a crucial provision of the proposed regulations and as accurately conveying the substance of the word "reliable" as used in the statute. Because the concept of reliability is already incorporated in § 602.16(a)(i) and because, as previously stated, it has had misleading connotations when used in the context of an agency's review of its standards, the word "reliable" has been deleted from § 602.21.

The proposed terminology for § 602.21 strikes a balance between overly prescriptive regulation of agency standards and processes and a requirement that looks only to the agency's review process and not to the substance of the standards. As proposed, § 602.21 places a burden on agencies to demonstrate that their standards are adequate to evaluate quality and relevant to the needs of students. At the same time, the proposed section would eliminate any implication that the program of review must take the form of a statistical analysis.

One other feature of the proposed review process is a requirement that if an agency determines at any point in its systematic program of review that it needs to make changes to its standards, it would have to initiate action within 12 months to make the changes and would have to complete that action within a reasonable period of time. This feature reflects the 1998 amendment to the HEA that sets a general deadline of 12 months for agencies to remedy identified areas of noncompliance.

The proposed procedures for making changes to an agency's standards also provide a more focused description of the notice an agency must provide about its proposed changes and ensure the opportunity for timely input by any person wishing to participate in the process.

Required Operating Policies and Procedures (§§ 602.22 Through 602.28)

Included under this heading are §§ 602.4, 602.25. 602.27, 602.28, 602.29, and 602.30 of the current regulations. The proposed regulations contain several significant changes, as discussed in the following sections.

Site Visits to Additional Locations

As discussed previously under § 602.3, the definition of "branch campus" in the current regulations is quite broad. This results in a significant burden being placed on agencies by requiring them to conduct a site visit within six months to each branch campus an institution established. It also places a significant burden, particularly in terms of costs, on institutions that established large numbers of sites that met the broad definition of branch campus.

The negotiating committee discussed at length how to modify the site visit requirement to ease the burden on agencies and institutions and still provide adequate protections to the Department and, ultimately, the students who attend the institutions. The consensus that was reached is reflected in these proposed regulations. Specifically, the proposed regulations redefine branch campus to match the narrow definition in the institutional eligibility regulations in 34 CFR part 600, and current site visit requirements would remain applicable to all locations that meet this definition. However, the proposed regulations provide relief from the burden of the current requirements for site visits to other newly-established locations that offer 50 percent or more of an educational program by making them subject to evaluation under an agency's substantive change policies. Specifically, the proposed regulations require agencies to have a substantive change policy that addresses the establishment by an institution of these types of additional locations and that includes an analysis of the effect of the additional location or locations on the overall fiscal and administrative capacity of the institution.

Under the proposed regulations, an agency's substantive change policy would have to require the agency to conduct a site visit within six months to an additional location offering 50 percent or more of an educational program if any of three conditions is met. First, the agency would have to conduct a site visit to each additional location if the institution has a total of three or fewer additional locations. The proposed regulations contain this requirement because of the need for an agency to monitor an institution very closely as it begins to operate more than just the main campus; the need for such close monitoring diminishes once the institution has gained experience in establishing effective systems for the administration of multiple sites.

The proposed regulations also require an agency to conduct a site visit within six months of the establishment of an additional location if the agency has any serious concerns about the institution; e.g., if the institution has been placed on warning, probation, or show cause by the agency or is subject to some type of limitation on its accreditation. Finally, the proposed regulations require a site visit within six months to an additional location if the institution has failed to demonstrate that it has either the administrative and fiscal capacity to operate the additional locations it has already established or a proven record of effective educational oversight of additional locations.

Beyond these situations that require agencies to conduct site visits to each additional location an institution seeks to establish, the proposed regulations give agencies flexibility in deciding when to conduct site visits to additional locations. Specifically, they require agencies to have an effective mechanism for conducting additional site visits at reasonable intervals to those institutions that operate more than three additional locations. They also require agencies to have an effective mechanism, which may include site visits, for ensuring that institutions that experience rapid growth in the number of additional locations maintain educational quality.

The negotiating committee believed the proposed approach to the site visit requirement provided relief from the burden some agencies, particularly those that accredit State institutions, have experienced as a result of the requirement in the current regulations. Yet they also believed this approach retained a reasonable degree of protection by requiring site visits if circumstances warrant them.

Substantive Change

Except for the provisions related to site visits to additional locations that were discussed in the previous section, § 602.22 of the proposed regulations basically repeats § 602.25 of the current regulations. However, there are a few changes. For example, under the proposed regulations, agencies' substantive change policies would no longer need to address changes from credit to clock hours or a substantial increase in the length of a program. The former requirement was deleted because few, if any, institutions ever changed from credit to clock hours, while the latter was deleted because it duplicated another requirement.

Unannounced Inspections

The Higher Education Amendments of 1998 changed the requirement contained in § 602.24(b)(3) of the current regulations that agencies must conduct unannounced inspections of institutions that provide vocational education, making it optional rather than mandatory. Accordingly, § 602.23(f) of the proposed regulations permits an agency to establish any additional operating procedures it deems appropriate, including unannounced inspections, but it does not require the agency to conduct unannounced inspections.

Change in Ownership

While there has been no significant change to this provision in the proposed accreditation regulations, the Secretary wishes to clarify that it is the agency's definition of what constitutes a change in control, not the Department's definition, that would govern this section of the regulations. In conjunction with the statutory requirement for standards that address Title IV compliance, however, agencies whose accreditation enables the institutions they accredit to establish eligibility to participate in Title IV programs would need to take due note in their definition of "change in control" of those instances that are covered by the Department's definition of the term.

Teach-Out Agreements

The proposed regulations address two particular concerns with the current regulations. First, they appear to require agencies to have a substantive situation in which control of an institution already exists, they appear to imply that they can only approve teach-out agreements if the teach-out institution is geographically close to the closed institution and offers a program that is compatible in program structure and scheduling to that offered by the closed institution.

The proposed regulations clarify that the role of the accrediting agency is to ensure that the teach-out institution has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality, is reasonably similar in content, structure, and scheduling to that provided by the closed institution, and can provide students access to the program and services without requiring them to move or travel substantial distances.

The proposed regulations also require an agency to work with the Department and the appropriate State agency, to the extent feasible, to ensure that students are given reasonable opportunities to complete their education without additional charge.

Notification of Accrediting Decisions

Section 602.26 of the proposed regulations basically repeats § 602.29 of the current regulations, with one addition. The proposed regulations require an agency to provide the appropriate State licensing or authorizing agency and the appropriate accrediting agencies written notice of any final adverse decision at the same time it notifies the institution or program of the decision and to provide notice to the public within 24 hours of notifying the institution or program of the decision.

The proposed regulations mirror section 496(a)(7) of the statute in requiring agencies to report only final adverse decisions. However, the Secretary wishes to encourage all agencies to share information with the Secretary on adverse decisions that are still appealable within the agency if the information would help preserve the integrity of the Title IV, HEA programs. The Secretary believes that sharing this type of information is consistent with section 487(a)(15) of the HEA, which requires an institution that participates in the Title IV, HEA programs to acknowledge in its Program Participation Agreement the authority of

the Secretary, guarantee agencies, lenders, accrediting agencies, the Secretary of Veterans Affairs, and State licensing and authorizing agencies to share with each other any information pertaining to the institution's eligibility to participate in the Title IV, HEA programs. The Secretary notes that many agencies already share this information and hopes that more will do so, particularly in those instances in which students could be harmed if the information were not shared with the Secretary.

Subpart C—The Recognition Process (§§ 602.30 Through 602.36)

This subpart basically contains the recognition procedures found in subpart C of the current regulations. The significant changes that are proposed for the recognition process are discussed in the following sections.

Application and Review by Department Staff (§§ 602.30 and 602.31)

The proposed regulations basically repeat §§ 602.10 and 602.11 of the current regulations. There are, however, three significant changes proposed for the review of an agency's application by Department staff.

First, the proposed regulations amend the procedures Department staff follows in reviewing an agency's application for initial recognition to allow staff to return the application if the agency fails to meet one or more of the basic eligibility requirements contained in §§ 602.10 through 602.13. Under the proposed procedures, staff would provide the agency with an explanation of the deficiencies resulting in its decision to return the agency's application and would recommend that the agency withdraw its application and reapply if it can demonstrate that it has corrected the deficiencies.

The second change in the proposed regulations concerns the submission of written comments by third parties and codifies the Department's current practice. Specifically, proposed § 602.31(b), (e), and(i) clarify that Department staff will consider, and forward to the Advisory Committee for consideration, only those written third-party comments received by the deadline the Department establishes in the **Federal Register** notice.

The third change concerns the provision in § 602.11(g) of the current regulations that requires Department staff to send its analysis of an agency's application to the agency at least 45 days before the Advisory Committee meeting and allows the agency the right to request that the Advisory Committee defer action on its application if Department staff fails to meet the 45-day deadline. There have been instances in recent years in which staff has been unable to meet the deadline, not through any fault of its own but rather because it was unable to complete its work due to an agency's failure to submit a required report by the deadline the Secretary established. Under § 602.31 of the proposed regulations, the agency would forfeit its right to request a deferral in those situations in which the Department's inability to meet the deadline was due to the agency's failure to respond in a timely manner to departmental requests.

Review by the National Advisory Committee on Institutional Quality and Integrity (§§ 602.32 and 602.33)

Included under this heading is § 602.12 of the current regulations and that portion of § 602.13(b) that deals with an appeal of the Advisory Committee's recommendation. The proposed regulations include three significant changes from the current regulations, two of which address what has been called the "12-month rule." The third clarifies the role of the senior Department official in forwarding the Advisory Committee's recommendations to the Secretary.

The "12-Month Rule"

The 1998 amendments require the Secretary to limit, suspend, or terminate an agency's recognition, after notice and opportunity for a hearing, if the Secretary determines that an accrediting agency has failed to perform effectively with respect to the criteria for recognition or is otherwise not in compliance with the criteria. Alternatively, the Secretary may require the agency to bring itself into compliance within a timeframe the Secretary specifies, but the timeframe may not exceed 12 months. The 1998 amendments also specify that the Secretary must, after notice and opportunity for a hearing, limit, suspend, or terminate the agency's recognition if the agency fails to bring itself into compliance within the timeframe specified by the Secretary unless the Secretary extends the timeframe for good cause.

The proposed regulations make two changes to the Advisory Committee's procedures to reflect this "12-month rule." First, if the Advisory Committee, as part of its review of a recognized agency for continued recognition, determines that the agency fails to meet the criteria for recognition or is ineffective in its performance with respect to the criteria, § 602.32(b) of the proposed regulations calls for the Advisory Committee to take one of two actions. The Advisory Committee would have to recommend either (1) denial of recognition or (2) deferral of a decision on recognition for a period not to exceed 12 months, during which period the agency would have to come into compliance or face a limitation, suspension, or termination action at the conclusion of the specified timeframe.

Second, the proposed regulations delete § 602.12(c)(2) of the current regulations, which allows the Advisory Committee to recommend recognition even if the agency fails to comply with all of the criteria for recognition.

The Role of the Senior Department Official

It has been Department practice, except in cases of contested appeals of Advisory Committee recommendations, for the senior Department official to transmit the Advisory Committee's recommendations to the Secretary along with his or her own recommendations and comments on the Advisory Committee's recommendations. The language found in §§ 602.32(d) and 602.34(b) of the proposed regulations reflects this practice.

Review and Decision by the Secretary (§§ 602.34 Through 602.36)

Included under this heading are § 602.15 of the current regulations and that portion of § 602.13 that deals with the Secretary's decision. The only significant change proposed concerns the "12-month rule." Under the proposed regulations, if the Secretary, as part of the review of a recognized agency for continued recognition, determines that the agency fails to meet the criteria for recognition or is otherwise not effective in its performance with respect to those criteria, the Secretary may either deny recognition or defer a decision on recognition for a period not to exceed 12 months. During the 12-month period, the agency would have to come into compliance or face a limitation, suspension, or termination action at the conclusion of the specified period. The proposed regulations allow the Secretary to extend the timeframe for the agency to come into compliance upon application by the agency for good cause shown.

The negotiating committee carefully considered whether the regulations should define "good cause." In the end, the committee concluded that it was best not to define this term. Instead, the burden rests with an agency that has failed to meet the statutory deadline to demonstrate that good cause exists for the Secretary to grant a request for an extension of time.

Section 602.35 of the proposed regulations, which describes the information that is included in the Secretary's recognition decision, differs from § 602.13(e) of the current regulations, which defines the scope of recognition the Secretary grants to an agency, and should be read in conjunction with the proposed addition regarding distance education in § 602.3 of a definition of "scope of recognition."

Subpart D—Limitation, Suspension, or Termination of Recognition (§§ 602.40 Through 602.45)

Included in this subpart is § 602.14 of the current regulations. The significant changes deal with the "12-month rule" and the hearing procedures. They are discussed in the next section.

Limitation, Suspension, and Termination Procedures (§§ 602.40 Through 602.43)

As previously mentioned, the 1998 amendments require the Secretary to limit, suspend, or terminate an agency's recognition, if after notice and opportunity for a hearing the Secretary determines that the agency has failed to effectively apply the criteria for recognition or is otherwise not in compliance with the criteria. Alternatively, the Secretary may require the agency to bring itself into compliance within a timeframe the Secretary specifies, but the timeframe may not exceed 12 months unless the Secretary extends the timeframe for good cause shown.

As previously discussed, §§ 602.32 through 602.36 of the proposed regulations implement the "12-month rule" in those instances in which an agency's noncompliance with the criteria for recognition comes to the Department's attention as a result of a regularly scheduled review of the agency for continued recognition. Sections 602.40 through 602.43 of the proposed regulations implement the "12-month rule" if the Department learns of an agency's noncompliance at any point during a previously granted period of recognition. In these latter instances, the proposed regulations permit, but do not require, the Secretary to provide a noncompliant agency up to 12 months to achieve compliance. They also permit the Secretary to extend the timeframe for achieving compliance on the basis of good cause shown.

The proposed regulations carry over the hearing procedures for a limitation, suspension, or termination of recognition action contained in § 602.14 of the current regulations with only one change. While the current procedures allow for the hearing to be held before either the full Advisory Committee or a subcommittee, the proposed regulations allow a hearing only before a subcommittee of the Advisory Committee. The principal reason for the proposed change is one of timing; i.e., to conform to the "12-month rule." As the full Advisory Committee meets only twice a year, waiting to hold the hearing at one of those meetings could mean a delay of almost six months in bringing closure to the issue. Accordingly, the proposed regulations would limit the hearing to a subcommittee, which can be convened much more quickly.

Appeal Rights and Procedures (§§ 602.44 and 602.45)

There are no significant changes to these sections of the proposed regulations, which basically repeat § 602.14(f) of the current regulations.

Subpart E—Department Responsibilities (§ 602.50)

There are no significant changes to this section of the proposed regulations, which basically repeats § 602.5 of the current regulations.

Other Changes

To comply with some terminology changes to the HEA resulting from the Higher Education Amendments of 1998, the proposed regulations contain some other changes. First, they would replace the State Postsecondary Review entities with State licensing or authorizing agencies. Second, they would consistently use the term "standards" rather than "criteria" or "standards and criteria" to refer to requirements institutions or programs must meet in order to become accredited or preaccredited by an agency.

Finally, the proposed regulations have been written in "plain language." Further discussion of this change is in the Executive Order 12866 section under the heading "Clarity of the Regulations."

General Comments on the Recognition Process

The Secretary acknowledges that the application for recognition constitutes a significant burden on agencies that seek recognition. For this reason, the Secretary is considering ways to reduce the burden. One approach under consideration is to allow a recognized agency applying for continued recognition to provide a simple statement of assurance, along with some supporting documentation, that it continues to meet each of the criteria for recognition. The supporting documentation might include a complete set of the agency's standards, policies, procedures, and by-laws.

Another approach under consideration is to have Department staff conduct a site visit to agency headquarters for the purpose of determining, through reviews of agency files and interviews with agency staff, any significant changes that might affect the agency's ability to meet certain requirements for recognition. The Secretary estimates that at least two-thirds of the requirements in the proposed regulations might be amenable to this type of approach, and the resultant savings in time, effort, and cost to prepare an application for recognition would be significant.

Still another approach under consideration is to identify other sections of the regulations, similar to § 602.12 of the proposed regulations, that recognized agencies would not need to address in their application for continued recognition.

The Secretary invites comments on these approaches and suggestions for alternative methods for reducing the burden of the application process on agencies without adversely affecting the Secretary's ability to conduct a thorough evaluation of the agency.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for a determination that an accrediting agency that seeks recognition is in fact a reliable authority regarding the quality of education or training provided by the institutions or programs it accredits. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading "Paperwork Reduction Act of 1995."

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits justify the costs. We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the

various requirements were discussed thoroughly by negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit. Elsewhere in this preamble we discuss the potential costs and benefits of the various requirements in the proposed regulations under the heading "Regulatory Flexibility Act Certification."

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, tables, etc.) aid or reduce clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A section is preceded by the symbol "§" and a numbered heading; for example, § 602.16 Accreditation and preaccreditation standards.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations will affect accrediting agencies that apply for Secretarial recognition and the institutions they accredit or that house the programs they accredit. The proposed regulations reduce the burden on both agencies and institutions by eliminating the requirement that agencies conduct unannounced inspections of institutions that offer vocational education and by greatly reducing the number of site visits agencies must make if institutions establish additional locations. The proposed regulations impose the minimum requirements needed to ensure the proper implementation of the Secretary's statutory mandate to recognize only those accrediting agencies that are reliable authorities regarding the quality of education or training provided by the institutions or programs they accredit.

Paperwork Reduction Act of 1995

Sections 602.16, 602.24, 602.26, 602.27, and 602.30 contain information collection requirements. In addition, §§ 602.15(b) and 602.23(a) contain specific record retention requirements, and §§ 602.23(e) and 602.28(e) contain third party disclosure requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

These proposed regulations contain significant information collection requirements for accrediting agencies applying for recognition by the Secretary, as well as additional requirements for recognized agencies during their recognition period. The Department needs and uses the information collected to determine whether an agency seeking recognition by the Secretary meets the requirements for recognition and whether, if the agency is recognized, it continues to operate in compliance with the requirements for recognition throughout its recognition period.

Collection of Information: The Secretary's Recognition of Accrediting Agencies

Each accrediting agency that seeks initial or continued recognition is required by § 602.30 to submit an application for recognition demonstrating how it meets each of the criteria for recognition. We estimate that it takes an agency approximately 80 hours to complete its application, including time for reviewing instructions, searching existing data bases, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total burden on the 61 agencies recognized under the current regulations to submit an application for continued recognition would be 4,880 hours. As agencies must submit an application for recognition only once every five years, this represents a total annual burden of 976 hours.

We also estimate that the burden on an agency to provide to the Department on an annual basis the various documents and reports required under §§ 602.26 and 602.27 would be one hour. Thus, the total annual reporting requirement for the 61 recognized agencies would be 61 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
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To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number does not apply)

List of Subjects in 34 CFR Part 602

Colleges and universities, Education, Reporting and recordkeeping requirements.

Dated: June 16, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 602 to read as follows:

PART 602—THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES

Subpart A—General

Sec.

602.1 Why does the Secretary recognize accrediting agencies?
602.2 How do I know which agencies the Secretary recognizes?
602.3 What definitions apply to this part?

Subpart B—The Criteria for Recognition

Basic Eligibility Requirements

602.10 Link to Federal programs.
602.11 Geographic scope of accrediting activities.
602.12 Accrediting experience.
602.13 Acceptance of the agency by others.

Organizational and Administrative Requirements

602.14 Purpose and organization.
602.15 Administrative and fiscal responsibilities.

Required Standards and Their Application

602.16 Accreditation and preaccreditation standards.
602.17 Application of standards in reaching an accrediting decision.
602.18 Ensuring consistency in decision-making.
602.19 Monitoring and reevaluation of accredited institutions and programs.
602.20 Enforcement of standards.
602.21 Review of standards.

Required Operating Policies and Procedures

602.22 Substantive change.
602.23 Operating procedures all agencies must have.
602.24 Additional procedures certain institutional accreditors must have.
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602.26 Notification of accrediting decisions.
602.27 Other information an agency must provide the Department.
602.28 Regard for decisions of States and other accrediting agencies.

Subpart C—The Recognition Process

Application and Review by Department Staff

602.30 How does an agency apply for recognition?
602.31 How does Department staff review an agency's application?

Review by the National Advisory Committee on Institutional Quality and Integrity

602.32 What is the role of the Advisory Committee and the senior Department official in the review of an agency's application?
602.33 How may an agency appeal a recommendation of the Advisory Committee?

Review and Decision by the Secretary

602.34 What does the Secretary consider when making a recognition decision?
602.35 What information does the Secretary's recognition decision include?
602.36 May an agency appeal the Secretary's final recognition decision?

Subpart D—Limitation, Suspension, or Termination of Recognition

Limitation, Suspension, and Termination Procedures

602.40 How may the Secretary limit, suspend, or terminate an agency's recognition?
602.41 What are the notice procedures?
602.42 What are the response and hearing procedures?
602.43 How is a decision on limitation, suspension, or termination of recognition reached?

Appeal Rights and Procedures

602.44 How may an agency appeal the subcommittee's recommendation?
602.45 May an agency appeal the Secretary's final decision to limit, suspend, or terminate its recognition?

Subpart E—Department Responsibilities

602.50 What information does the Department share with a recognized agency about its accredited institutions and programs?

Authority: 20 U.S.C. 1099b, unless otherwise noted.

Subpart A—General

§ 602.1 Why does the Secretary recognize accrediting agencies?

(a) The Secretary recognizes accrediting agencies to ensure that these agencies are, for the purposes of the Higher Education Act of 1965, as amended (HEA), or for other Federal purposes, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit.

(b) The Secretary lists an agency as a nationally recognized accrediting agency if the agency meets the criteria for recognition listed in subpart B of this part.

(Authority: 20 U.S.C. 1099b)

§ 602.2 How do I know which agencies the Secretary recognizes?

(a) Periodically, the Secretary publishes a list of recognized agencies in the **Federal Register**, together with each agency's scope of recognition. You may obtain a copy of the list from the Department at any time. The list is also available on the Department's web site.

(b) If the Secretary denies continued recognition to a previously recognized agency, or if the Secretary limits, suspends, or terminates the agency's recognition before the end of its recognition period, the Secretary publishes a notice of that action in the **Federal Register**. The Secretary also makes the reasons for the action available to the public, on request.

(Authority: 20 U.S.C. 1099b)

§ 602.3 What definitions apply to this part?

The following definitions apply to this part:

Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's standards and requirements.

Accrediting agency or *agency* means a legal entity, or that part of a legal entity, that conducts accrediting activities through voluntary, non-Federal peer review and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both.

Act means the Higher Education Act of 1965, as amended.

Adverse accrediting action or *adverse action* means the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program.

Advisory Committee means the National Advisory Committee on Institutional Quality and Integrity.

Branch campus means a location of an institution that meets the definition of branch campus in 34 CFR 600.2.

Distance education means an educational process that is characterized by the separation, in time or place, between instructor and student. The term includes courses offered principally through the use of—

(1) Television, audio, or computer transmission, such as open broadcast, closed circuit, cable, microwave, or satellite transmission;

(2) Audio or computer conferencing;

(3) Video cassettes or disks; or

(4) Correspondence.

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program. A final accrediting action is not appealable within the agency.

Institution of higher education or *institution* means an educational institution that qualifies, or may qualify, as an eligible institution under 34 CFR part 600.

Institutional accrediting agency means an agency that accredits institutions of higher education.

Nationally recognized accrediting agency, nationally recognized agency, or *recognized agency* means an accrediting agency that the Secretary recognizes under this part.

Preaccreditation means the status of public recognition that an accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing towards accreditation and is likely to attain accreditation before the expiration of that limited period of time.

Program means a postsecondary educational program offered by an institution of higher education that leads to an academic or professional degree, certificate, or other recognized educational credential.

Programmatic accrediting agency means an agency that accredits specific educational programs that prepare students for entry into a profession, occupation, or vocation.

Representative of the public means a person who is not—

(1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited or preaccredited by the agency or has applied for accreditation or preaccreditation;

(2) A member of any trade association or membership organization related to, affiliated with, or associated with the agency; or

(3) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) of this definition.

Scope of recognition or *scope* means the range of accrediting activities for which the Secretary recognizes an agency. The Secretary may place a limitation on the scope of an agency's recognition for Title IV, HEA purposes. The Secretary's designation of scope defines the recognition granted according to—

(1) Geographic area of accrediting activities;

(2) Types of degrees and certificates covered;

(3) Types of institutions and programs covered;

(4) Types of preaccreditation status covered, if any; and

(5) Coverage of accrediting activities related to distance education, if any.

Secretary means the Secretary of the U.S. Department of Education or any official or employee of the Department acting for the Secretary under a delegation of authority.

Senior Department official means the senior official in the U.S. Department of Education who reports directly to the Secretary regarding accrediting agency recognition.

State means a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

Teach-out agreement means a written agreement between institutions that provides for the equitable treatment of students if one of those institutions stops offering an educational program before all students enrolled in that program have completed the program.

(Authority: 20 U.S.C. 1099b)

Subpart B—The Criteria for Recognition

Basic Eligibility Requirements

§ 602.10 Link to Federal programs.

The agency must demonstrate that—

(a) If the agency accredits institutions of higher education, its accreditation is a required element in enabling at least one of those institutions to establish eligibility to participate in HEA programs; or

(b) If the agency accredits institutions of higher education or higher education programs, or both, its accreditation is a required element in enabling at least one of those entities to establish eligibility to participate in non-HEA Federal programs.

(Authority: 20 U.S.C. 1099b)

§ 602.11 Geographic scope of accrediting activities.

The agency must demonstrate that its accrediting activities cover—

(a) A State, if the agency is part of a State government;

(b) A region of the United States that includes at least three States that are reasonably close to one another; or

(c) The United States.

(Authority: 20 U.S.C. 1099b)

§ 602.12 Accrediting experience.

(a) An agency seeking initial recognition must demonstrate that it has—

(1) Granted accreditation or preaccreditation—

(i) To one or more institutions if it is requesting recognition as an institutional accrediting agency and to one or more programs if it is requesting recognition as a programmatic accrediting agency;

(ii) That covers the range of the specific degrees, certificates, institutions, and programs for which it seeks recognition; and

(iii) In the geographic area for which it seeks recognition; and

(2) Conducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition.

(b) A recognized agency seeking an expansion of its scope of recognition must demonstrate that it has granted accreditation or preaccreditation covering the range of the specific degrees, certificates, institutions, and programs for which it seeks the expansion of scope.

(Authority: 20 U.S.C. 1099b)

§ 602.13 Acceptance of the agency by others.

The agency must demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted in the United States by—

(a) Educators and educational institutions; and

(b) Licensing bodies, practitioners, and employers in the professional or vocational fields for which the educational institutions or programs within the agency's jurisdiction prepare their students.

(Authority: 20 U.S.C. 1099b)

Organizational and Administrative Requirements

§ 602.14 Purpose and organization.

(a) The Secretary recognizes only the following four categories of agencies:

The Secretary recognizes . . .	that . . .
(1) An accrediting agency	(i) Has a voluntary membership of institutions of higher education; (ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in HEA programs; and (iii) Satisfies the "separate and independent" requirements in paragraph (b) of this section.
(2) An accrediting agency	(i) Has a voluntary membership; and (ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education, and that accreditation is a required element in enabling those entities to participate in non-HEA Federal programs.
(3) An accrediting agency	For purposes of determining eligibility for Title IV, HEA programs— (i) Either has a voluntary membership of individuals participating in a profession or has as its principal purpose the accrediting of programs within institutions that are accredited by a nationally recognized accrediting agency; and (ii) Either satisfies the "separate and independent" requirements in paragraph (b) of this section or obtains a waiver of those requirements under paragraphs (d) and (e) of this section.
(4) A State agency	(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and (ii) The Secretary listed as a nationally recognized accrediting agency on or before October 1, 1991 and has recognized continuously since that date.

(b) For purposes of this section, the term *separate and independent* means that—

(1) The members of the agency's decision-making body—who decide the accreditation or preaccreditation status of institutions or programs, establish the agency's accreditation policies, or both—are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, and at least one-seventh of that body consists of representatives of the public;

(3) The agency has established and implemented guide lines for each member of the decision-making body to avoid conflicts of interest in making decisions;

(4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.

(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an agency and a related, associated, or affiliated trade association or membership organization does not violate the "separate and independent" requirements in paragraph (b) of this section if—

(1) The agency pays the fair market value for its proportionate share of the joint use; and

(2) The joint use does not compromise the independence and confidentiality of the accreditation process.

(d) For purposes of paragraph (a)(3) of this section, the Secretary may waive the "separate and independent" requirements in paragraph (b) of this section if the agency demonstrates that—

(1) The Secretary listed the agency as a nationally recognized agency on or before October 1, 1991 and has recognized it continuously since that date;

(2) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying either the accrediting or policy decisions of the agency;

(3) The agency has sufficient budgetary and administrative autonomy to carry out its accrediting functions independently; and

(4) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.

(e) An agency seeking a waiver of the "separate and independent" requirements under paragraph (d) of this section must apply for the waiver each time the agency seeks recognition or continued recognition.

(Authority: 20 U.S.C. 1099b)

§ 602.15 Administrative and fiscal responsibilities.

The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition. The agency meets this requirement if the agency demonstrates that—

(a) The agency has—

(1) Adequate administrative staff and financial resources to carry out its accrediting responsibilities;

(2) Competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on its standards, policies, and procedures, to conduct its on-site evaluations, establish its policies, and make its accrediting and preaccrediting decisions;

(3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;

(4) Educators and practitioners on its evaluation, policy, and decision-making bodies, if the agency accredits programs;

(5) Representatives of the public on all decision-making bodies; and

(6) Clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, by the agency's—

(i) Board members;

(ii) Commissioners;

(iii) Evaluation team members;

(iv) Consultants;

(v) Administrative staff; and

(vi) Other agency representatives; and

(b) The agency maintains complete and accurate records of—

(1) Its last two full accreditation or preaccreditation reviews of each institution or program, including on-site evaluation team reports, the institution's or program's responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution's or program's most recent self-study; and

(2) All decisions regarding the accreditation and preaccreditation of any institution or program, including all correspondence that is significantly related to those decisions.

(Authority: 20 U.S.C. 1099b)

Required Standards and Their Application

§ 602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if—

(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:

(i) Success with respect to student achievement in relation to the institution's mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates.

(ii) Curricula.

(iii) Faculty.

(iv) Facilities, equipment, and supplies.

(v) Fiscal and administrative capacity as appropriate to the specified scale of operations.

(vi) Student support services.

(vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

(viii) Measures of program length and the objectives of the degrees or credentials offered.

(ix) Record of student complaints received by, or available to, the agency.

(x) Record of compliance with the institution's program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency; and

(2) The agency's preaccreditation standards, if offered, are appropriately related to the agency's accreditation standards and do not permit the institution or program to hold preaccreditation status for more than five years.

(b) If the agency only accredits programs and does not serve as an institutional accrediting agency for any of those programs, its accreditation standards must address the areas in paragraph (a)(1) of this section in terms of the type and level of the program rather than in terms of the institution.

(c) If none of the institutions an agency accredits participates in any Title IV, HEA program, or if the agency only accredits programs within institutions that are accredited by a nationally recognized institutional accrediting agency, the agency is not required to have the accreditation standards described in paragraphs (a)(1)(viii) and (a)(1)(x) of this section.

(d) An agency that has established and applies the standards in paragraph (a) of this section may establish any additional accreditation standards it deems appropriate.

(Authority: 20 U.S.C. 1099b)

§ 602.17 Application of standards in reaching an accrediting decision.

The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it—

(a) Evaluates whether an institution or program—

(1) Maintains clearly specified educational objectives that are consistent with its mission and appropriate in light of the degrees or certificates awarded;

(2) Is successful in achieving its stated objectives; and

(3) Maintains degree and certificate requirements that at least conform to commonly accepted standards;

(b) Requires the institution or program to prepare, following guidance provided by the agency, an in-depth self-study that includes the assessment of educational quality and the institution's or program's continuing efforts to improve educational quality;

(c) Conducts at least one on-site review of the institution or program during which it obtains sufficient information to determine if the institution or program complies with the agency's standards;

(d) Allows the institution or program the opportunity to respond in writing to the report of the on-site review;

(e) Conducts its own analysis of the self-study and supporting documentation furnished by the institution or program, the report of the on-site review, the institution's or program's response to the report, and any other appropriate information from other sources to determine whether the institution or program complies with the agency's standards; and

(f) Provides the institution or program with a detailed written report that assesses—

(1) The institution's or program's compliance with the agency's standards, including areas needing improvement; and

(2) The institution's or program's performance with respect to student achievement.

(Authority: 20 U.S.C. 1099b)

§ 602.18 Ensuring consistency in decision-making.

The agency must consistently apply and enforce its standards to ensure that the education or training offered by an institution or program, including any offered through distance education, is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency. The agency meets this requirement if the agency—

(a) Has effective controls against the inconsistent application of the agency's standards;

(b) Bases decisions regarding accreditation and preaccreditation on the agency's published standards; and

(c) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate.

(Authority: 20 U.S.C. 1099b)

§ 602.19 Monitoring and reevaluation of accredited institutions and programs.

(a) The agency must reevaluate, at regularly established intervals, the institutions or programs it has accredited or preaccredited.

(b) The agency must monitor institutions or programs throughout their accreditation or preaccreditation period to ensure that they remain in compliance with the agency's standards. This includes conducting special evaluations or site visits, as necessary.

(Authority: 20 U.S.C. 1099b)

§ 602.20 Enforcement of standards.

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must—

(1) Immediately initiate adverse action against the institution or program; or

(2) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within a time period that must not exceed—

(i) Twelve months, if the program, or the longest program offered by the institution, is less than one year in length;

(ii) Eighteen months, if the program, or the longest program offered by the institution, is at least one year, but less than two years, in length; or

(iii) Two years, if the program, or the longest program offered by the institution, is at least two years in length.

(b) If the institution or program does not bring itself into compliance within the specified period, the agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance.

(Authority: 20 U.S.C. 1099b)

§ 602.21 Review of standards.

(a) The agency must maintain a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the needs of students.

(b) The agency determines the specific procedures it follows in evaluating its standards, but the agency must ensure that its program of review—

(1) Is comprehensive;

(2) Occurs at regular, yet reasonable, intervals or on an ongoing basis;

(3) Examines each of the agency's standards and the standards as a whole; and

(4) Involves all of the agency's relevant constituencies in the review and affords them a meaningful opportunity to provide input into the review.

(c) If the agency determines, at any point during its systematic program of review, that it needs to make changes to its standards, the agency must initiate action within 12 months to make the changes and must complete that action within a reasonable period of time. Before finalizing any changes to its standards, the agency must—

(1) Provide notice to all of the agency's relevant constituencies of the changes the agency proposes to make;

(2) Give the constituencies and other interested parties adequate opportunity to comment on the proposed changes; and

(3) Take into account any comments on the proposed changes submitted timely by the relevant constituencies and by other interested parties.

(Authority: 20 U.S.C. 1099b)

Required Operating Policies and Procedures

§ 602.22 Substantive change.

(a) If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if—

(1) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution; and

(2) The agency's definition of substantive change includes at least the following types of change:

(i) Any change in the established mission or objectives of the institution.

(ii) Any change in the legal status, form of control, or ownership of the institution.

(iii) The addition of courses or programs that represent a significant departure, in either content or method of delivery, from those that were offered when the agency last evaluated the institution.

(iv) The addition of courses or programs at a degree or credential level above that which is included in the institution's current accreditation or preaccreditation.

(v) A change from clock hours to credit hours.

(vi) A substantial increase in the number of clock or credit hours awarded for successful completion of a program.

(vii) The establishment of an additional location geographically apart from the main campus at which the institution offers at least 50 percent of an educational program.

(b) The agency may determine the procedures it uses to grant prior approval of the substantive change. Except as provided in paragraph (c) of this section, these may, but need not, require a visit by the agency.

(c) If the agency's accreditation of an institution enables the institution to seek eligibility to participate in Title IV, HEA programs, the agency's procedures for the approval of an additional location described in paragraph (a)(2)(vii) of this section must determine if the institution has the fiscal and administrative capacity to operate the additional location. In addition, the agency's procedures must include—

(1) A visit, within six months, to each additional location the institution establishes, if the institution—

(i) Has a total of three or fewer additional locations;

(ii) Has not demonstrated, to the agency's satisfaction, that it has a proven record of effective educational oversight of additional locations; or

(iii) Has been placed on warning, probation, or show cause by the agency, or is subject to some limitation by the agency on its accreditation or preaccreditation status;

(2) An effective mechanism for conducting, at reasonable intervals, visits to additional locations of institutions that operate more than three additional locations; and

(3) An effective mechanism, which may, at the agency's discretion, include visits to additional locations, for ensuring that accredited and preaccredited institutions that experience rapid growth in the number of additional locations maintain educational quality.

(d) The purpose of the visits described in paragraph (c) of this section is to verify that the additional location has the personnel, facilities, and resources it claimed to have in its application to the agency for approval of the additional location.

(Authority: 20 U.S.C. 1099b)

§ 602.23 Operating procedures all agencies must have.

(a) The agency must maintain and make available to the public, upon request, written materials describing—

(1) Each type of accreditation and preaccreditation it grants;

(2) The procedures that institutions or programs must follow in applying for accreditation or preaccreditation;

(3) The standards and procedures it uses to determine whether to grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any other action related to each type of accreditation and preaccreditation that the agency grants;

(4) The institutions and programs that the agency currently accredits or preaccredits and, for each institution and program, the year the agency will next review or reconsider it for accreditation or preaccreditation; and

(5) The names, academic and professional qualifications, and relevant employment and organizational affiliations of—

(i) The members of the agency's policy and decision-making bodies; and

(ii) The agency's principal administrative staff.

(b) In providing public notice that an institution or program subject to its jurisdiction is being considered for

accreditation or preaccreditation, the agency must provide an opportunity for third-party comment concerning the institution's or program's qualifications for accreditation or preaccreditation. At the agency's discretion, third-party comment may be received either in writing or at a public hearing, or both.

(c) The accrediting agency must—

(1) Review in a timely, fair, and equitable manner any complaint it receives against an accredited institution or program that is related to the agency's standards or procedures;

(2) Take follow-up action, as necessary, including enforcement action, if necessary, based on the results of its review; and

(3) Review in a timely, fair, and equitable manner, and apply unbiased judgment to, any complaints against itself and take follow-up action, as appropriate, based on the results of its review.

(d) If an institution or program elects to make a public disclosure of its accreditation or preaccreditation status, the agency must ensure that the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status and the name, address, and telephone number of the agency.

(e) The accrediting agency must provide for the public correction of incorrect or misleading information an accredited or preaccredited institution or program releases about—

(1) The accreditation or preaccreditation status of the institution or program;

(2) The contents of reports of on-site reviews; and

(3) The agency's accrediting or preaccrediting actions with respect to the institution or program.

(f) The agency may establish any additional operating procedures it deems appropriate. At the agency's discretion, these may include unannounced inspections.

(Authority: 20 U.S.C. 1099b)

§ 602.24 Additional procedures certain institutional accreditors must have.

If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in Title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures:

(a) Branch campus. (1) The agency must require the institution to notify the agency if it plans to establish a branch campus and to submit a business plan for the branch campus that describes—

(i) The educational program to be offered at the branch campus;

(ii) The projected revenues and expenditures and cash flow at the branch campus; and

(iii) The operation, management, and physical resources at the branch campus.

(2) The agency may extend accreditation to the branch campus only after it evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has sufficient educational, financial, operational, management, and physical resources to meet the agency's standards.

(3) The agency must undertake a site visit to the branch campus as soon as practicable, but no later than six months after the establishment of that campus.

(b) Change in ownership. The agency must undertake a site visit to an institution that has undergone a change of ownership that resulted in a change of control as soon as practicable, but no later than six months after the change of ownership.

(c) Teach-out agreements. (1) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement with another institution to submit that teach-out agreement to the agency for approval.

(2) The agency may approve the teach-out agreement only if the agreement is between institutions that are accredited or preaccredited by a nationally recognized accrediting agency, is consistent with applicable standards and regulations, and provides for the equitable treatment of students by ensuring that—

(i) The teach-out institution has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality and reasonably similar in content, structure, and scheduling to that provided by the closed institution; and

(ii) The teach-out institution demonstrates that it can provide students access to the program and services without requiring them to move or travel substantial distances.

(3) If an institution the agency accredits or preaccredits closes, the agency must work with the Department and the appropriate State agency, to the extent feasible, to ensure that students are given reasonable opportunities to complete their education without additional charge.

(Authority: 20 U.S.C. 1099b)

§ 602.25 Due process.

The agency must demonstrate that the procedures it uses throughout the accrediting process satisfy due process. The agency meets this requirement if the agency does the following:

(a) The agency uses procedures that afford an institution or program a reasonable period of time to comply with the agency's requests for information and documents.

(b) The agency notifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.

(c) The agency permits the institution or program the opportunity to appeal an adverse action and the right to be represented by counsel during that appeal. If the agency allows institutions or programs the right to appeal other types of actions, the agency has the discretion to limit the appeal to a written appeal.

(d) The agency notifies the institution or program in writing of the result of its appeal and the basis for that result.

(Authority: 20 U.S.C. 1099b)

§ 602.26 Notification of accrediting decisions.

The agency must demonstrate that it has established and follows written procedures requiring it to provide written notice of its accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public. The agency meets this requirement if the agency, following its written procedures—

(a) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public no later than 30 days after it makes the decision:

(1) A decision to award initial accreditation or preaccreditation to an institution or program.

(2) A decision to renew an institution's or program's accreditation or preaccreditation;

(b) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision, but no later than 30 days after it reaches the decision:

(1) A final decision to place an institution or program on probation or an equivalent status.

(2) A final decision to deny, withdraw, suspend, revoke, or terminate the accreditation or preaccreditation of an institution or program;

(c) Provides written notice to the public of the decisions listed in paragraphs (b)(1) and (b)(2) of this section within 24 hours of its notice to the institution or program;

(d) For any decision listed in paragraph (b)(2) of this section, makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public upon request, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the comments, if any, that the affected institution or program may wish to make with regard to that decision; and

(e) Notifies the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and, upon request, the public if an accredited or preaccredited institution or program—

(1) Decides to withdraw voluntarily from accreditation or preaccreditation, within 30 days of receiving notification from the institution or program that it is withdrawing voluntarily from accreditation or preaccreditation; or

(2) Lets its accreditation or preaccreditation lapse, within 30 days of the date on which accreditation or preaccreditation lapses.

(Authority: 20 U.S.C. 1099b)

§ 602.27 Other information an agency must provide the Department.

The agency must submit to the Department—

(a) A copy of any annual report it prepares;

(b) A copy, updated annually, of its directory of accredited and preaccredited institutions and programs;

(c) A summary of the agency's major accrediting activities during the previous year (an annual data summary), if requested by the Secretary to carry out the Secretary's responsibilities related to this part;

(d) Any proposed change in the agency's policies, procedures, or accreditation or preaccreditation standards that might alter its—

(1) Scope of recognition; or

(2) Compliance with the criteria for recognition;

(e) The name of any institution or program it accredits that the agency has reason to believe is failing to meet its Title IV, HEA program responsibilities or is engaged in fraud or abuse, along with the agency's reasons for concern about the institution or program; and

(f) If the Secretary requests, information that may bear upon an accredited or preaccredited institution's compliance with its Title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in Title IV, HEA programs. The Secretary may ask for this information to assist the Department in resolving problems with the institution's participation in the Title IV, HEA programs.

(Authority: 20 U.S.C. 1099b)

§ 602.28 Regard for decisions of States and other accrediting agencies.

(a) If the agency is an institutional accrediting agency, it may not accredit or preaccredit institutions that lack legal authorization under applicable State law to provide a program of education beyond the secondary level.

(b) Except as provided in paragraph (c) of this section, the agency may not grant initial or renewed accreditation or preaccreditation to an institution, or a program offered by an institution, if the agency knows, or has reasonable cause to know, that the institution is the subject of—

(1) A pending or final action brought by a State agency to suspend, revoke, withdraw, or terminate the institution's legal authority to provide postsecondary education in the State;

(2) A decision by a recognized agency to deny accreditation or preaccreditation;

(3) A pending or final action brought by a recognized accrediting agency to suspend, revoke, withdraw, or terminate the institution's accreditation or preaccreditation; or

(4) Probation or an equivalent status imposed by a recognized agency.

(c) The agency may grant accreditation or preaccreditation to an institution or program described in paragraph (b) of this section only if it provides to the Secretary, within 30 days of its action, a thorough and reasonable explanation, consistent with its standards, why the action of the other body does not preclude the agency's grant of accreditation or preaccreditation.

(d) If the agency learns that an institution it accredits or preaccredits, or an institution that offers a program it accredits or preaccredits, is the subject of an adverse action by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the agency must promptly review its accreditation or preaccreditation of the institution or program to determine if it should also take adverse action or place the institution or program on probation or show cause.

(e) The agency must, upon request, share with other appropriate recognized accrediting agencies and recognized State approval agencies information about the accreditation or preaccreditation status of an institution or program and any adverse actions it has taken against an accredited or preaccredited institution or program.

(Authority: 20 U.S.C. 1099b)

Subpart C—The Recognition Process

Application and Review by Department Staff

§ 602.30 How does an agency apply for recognition?

(a) An accrediting agency seeking initial or continued recognition must submit a written application to the Secretary. The application must consist of—

(1) A statement of the agency's requested scope of recognition;

(2) Evidence that the agency complies with the criteria for recognition listed in subpart B of this part; and

(3) Supporting documentation.

(b) By submitting an application for recognition, the agency authorizes Department staff to observe its site visits and decision meetings and to gain access to agency records, personnel, and facilities on an announced or unannounced basis.

(c) The Secretary does not make available to the public any confidential agency materials a Department employee reviews during the evaluation of either the agency's application for recognition or the agency's compliance with the criteria for recognition.

(Authority: 20 U.S.C. 1099b)

§ 602.31 How does Department staff review an agency's application?

(a) Upon receipt of an agency's application for either initial or continued recognition, Department staff—

(1) Establishes a schedule for the review of the agency by Department staff, the National Advisory Committee on Institutional Quality and Integrity, and the Secretary;

(2) Publishes a notice of the agency's application in the **Federal Register**, inviting the public to comment on the agency's compliance with the criteria for recognition and establishing a deadline for receipt of public comment; and

(3) Provides State licensing or authorizing agencies, all currently recognized accrediting agencies, and other appropriate organizations with copies of the **Federal Register** notice.

(b) Department staff analyzes the agency's application to determine

whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and any deficiencies in the agency's performance with respect to the criteria. The analysis in cludes—

(1) Site visits, on an announced or unannounced basis, to the agency and, at the Secretary's discretion, to some of the institutions or programs it accredits or preaccredits;

(2) Review of the public comments and other third-party information the Department staff receives by the established deadline, as well as any other information Department staff assembles for purposes of evaluating the agency under this part; and

(3) Review of complaints or legal actions involving the agency.

(c) Department staff's evaluation may also include a review of information directly related to institutions or programs accredited or preaccredited by the agency relative to their compliance with the agency's standards, the effectiveness of the standards, and the agency's application of those standards.

(d) If, at any point in its evaluation of an agency seeking initial recognition, Department staff determines that the agency fails to demonstrate substantial compliance with the basic eligibility requirements in §§ 602.10 through 602.13, the staff—

(1) Returns the agency's application and provides the agency with an explanation of the deficiencies that caused staff to take that action; and

(2) Recommends that the agency withdraw its application and reapply when the agency can demonstrate compliance.

(e) Except with respect to an application that is withdrawn under paragraph (d) of this section, when Department staff completes its evaluation of the agency, the staff—

(1) Prepares a written analysis of the agency, which includes a recognition recommendation;

(2) Sends the analysis and all supporting documentation, including all third-party comments the Department received by the established deadline, to the agency no later than 45 days before the Advisory Committee meeting; and

(3) Invites the agency to provide a written response to the staff analysis and third-party comments, specifying a deadline for the response that is at least two weeks before the Advisory Committee meeting.

(f) If Department staff fails to provide the agency with the materials described in paragraph (e)(2) of this section at least 45 days before the Advisory Committee meeting, the agency may request that the Advisory Committee defer acting on the application at that meeting. If Department staff's failure to send the materials at least 45 days before the Advisory Committee meeting is due to the failure of the agency to submit reports or other information the Secretary requested by the deadline the Secretary established, the agency forfeits its right to request a deferral.

(g) Department staff reviews any response to the staff analysis that the agency submits. If necessary, Department staff prepares an addendum to the staff analysis and provides the agency with a copy.

(h) Before the Advisory Committee meeting, Department staff provides the Advisory Committee with the following information:

(1) The agency's application for recognition and supporting documentation.

(2) The Department staff analysis of the agency.

(3) Any written third-party comments the Department received about the agency on or before the established deadline.

(4) Any agency response to either the Department staff analysis or third-party comments.

(5) Any addendum to the Department staff analysis.

(6) Any other information Department staff relied on in developing its analysis.

(i) At least 30 days before the Advisory Committee meeting, the Department publishes a notice of the meeting in the **Federal Register** inviting interested parties, including those who submitted third-party comments concerning the agency's compliance with the criteria for recognition, to make oral presentations before the Advisory Committee.

(Authority: 20 U.S.C. 1099b)

Review by the National Advisory Committee on Institutional Quality and Integrity

§ 602.32 What is the role of the Advisory Committee and the senior Department official in the review of an agency's application?

(a) The Advisory Committee considers an agency's application for recognition at a public meeting and invites Department staff, the agency, and other interested parties to make oral presentations at the meeting. A transcript is made of each Advisory Committee meeting.

(b) When it concludes its review, the Advisory Committee recommends that the Secretary either approve or deny recognition or that the Secretary defer a decision on the agency's application for recognition.

(1)(i) The Advisory Committee recommends approval of recognition if the agency complies with the criteria for recognition listed in subpart B of this part and if the agency is effective in its performance with respect to those criteria.

(ii) If the Advisory Committee recommends approval, the Advisory Committee also recommends a recognition period and a scope of recognition.

(iii) If the recommended scope or period of recognition is less than that requested by the agency, the Advisory Committee explains its reasons for recommending the lesser scope or recognition period.

(2)(i) If the agency fails to comply with the criteria for recognition in subpart B of this part, or if the agency is not effective in its performance with respect to those criteria, the Advisory Committee recommends denial of recognition, unless the Advisory Committee concludes that a deferral under paragraph (b)(3) of this section is warranted.

(ii) If the Advisory Committee recommends denial, the Advisory Committee specifies the reasons for its recommendation, including all criteria the agency fails to meet and all areas in which the agency fails to perform effectively.

(3)(i) The Advisory Committee may recommend deferral of a decision on recognition if it concludes that the agency's deficiencies do not warrant immediate loss of recognition and if it concludes that the agency will demonstrate or achieve compliance with the criteria for recognition and effective performance with respect to those criteria before the expiration of the deferral period.

(ii) In its deferral recommendation, the Advisory Committee states the bases for its conclusions, specifies any criteria for recognition the agency fails to meet, and identifies any areas in which the agency fails to perform effectively with respect to the criteria.

(iii) The Advisory Committee also recommends a deferral period, which may not exceed 12 months, either alone or in combination with any expiring deferral period in which similar deficiencies in compliance or performance were cited by the Secretary.

(c) At the conclusion of its meeting, the Advisory Committee forwards its recommendations to the Secretary through the senior Department official.

(d) For any Advisory Committee recommendation not appealed under § 602.33, the senior Department official includes with the Advisory Committee materials forwarded to the Secretary a memorandum containing the senior Department official's recommendations regarding the actions proposed by the Advisory Committee.

(Authority: 20 U.S.C. 1099b and 1145)

§ 602.33 How may an agency appeal a recommendation of the Advisory Committee?

(a) Either the agency or the senior Department official may appeal the Advisory Committee's recommendation. If a party wishes to appeal, that party must—

(1) Notify the Secretary and the other party in writing of its intent to appeal the recommendation no later than 10 days after the Advisory Committee meeting;

(2) Submit its appeal in writing to the Secretary no later than 30 days after the Advisory Committee meeting; and

(3) Provide the other party with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The non-appealing party may file a written response to the appeal. If that party wishes to do so, it must—

(1) Submit its response to the Secretary no later than 30 days after receiving its copy of the appeal; and

(2) Provide the appealing party with a copy of its response at the same time it submits its response to the Secretary.

(c) Neither the agency nor the senior Department official may include any new evidence in its submission; i.e., evidence it did not previously submit to the Advisory Committee.

(Authority: 20 U.S.C. 1099b and 1145)

Review and Decision by the Secretary

§ 602.34 What does the Secretary consider when making a recognition decision?

The Secretary makes the decision regarding recognition of an agency based on the entire record of the agency's application, including the following:

(a) The Advisory Committee's recommendation.

(b) The senior Department official's recommendation, if any.

(c) The agency's application and supporting documentation.

(d) The Department staff analysis of the agency.

(e) All written third-party comments forwarded by Department staff to the Advisory Committee for consideration at the meeting.

(f) Any agency response to the Department staff analysis and third-party comments.

(g) Any addendum to the Department staff analysis.

(h) All oral presentations at the Advisory Committee meeting.

(i) Any materials submitted by the parties, within the established timeframes, in an appeal taken in accordance with § 602.33.

(Authority: 20 U.S.C. 1099b)

§ 602.35 What information does the Secretary's recognition decision include?

(a) The Secretary notifies the agency in writing of the Secretary's decision regarding the agency's application for recognition.

(b) The Secretary either approves or denies recognition or defers a decision on the agency's application for recognition.

(1)(i) The Secretary approves recognition if the agency complies with the criteria for recognition listed in subpart B of this part and if the agency is effective in its performance with respect to those criteria.

(ii) If the Secretary approves recognition, the Secretary's recognition decision defines the scope of recognition and the recognition period.

(iii) If the scope or period of recognition is less than that requested by the agency, the Secretary explains the reasons for approving a lesser scope or recognition period.

(2)(i) If the agency fails to comply with the criteria for recognition in subpart B of this part, or if the agency is not effective in its performance with respect to those criteria, the Secretary denies recognition, unless the Secretary concludes that a deferral under paragraph (b)(3) of this section is warranted.

(ii) If the Secretary denies recognition, the Secretary specifies the reasons for this decision, including all criteria the agency fails to meet and all areas in which the agency fails to perform effectively.

(3)(i) The Secretary may defer a decision on recognition if the Secretary concludes that the agency's deficiencies do not warrant immediate loss of recognition and if the Secretary concludes that the agency will demonstrate or achieve compliance with the criteria for recognition and effective performance with respect to those criteria before the expiration of the deferral period.

(ii) In the deferral decision, the Secretary states the bases for the Secretary's conclusions, specifies any criteria for recognition the agency fails to meet, and identifies any areas in which the agency fails to perform effectively with respect to the criteria.

(iii) The Secretary also establishes a deferral period, which does not exceed 12 months, either alone or in combination with any expiring deferral period in which similar deficiencies in compliance or performance were cited by the Secretary, except that the Secretary may grant an extension of an expiring deferral period at the request of the agency for good cause shown.

(c) The recognition period may not exceed five years.

(d) If the Secretary does not reach a final decision on an agency's application for continued recognition before the expiration of its recognition period, the Secretary automatically extends the recognition period until the final decision is reached.

(Authority: 20 U.S.C. 1099b)

§ 602.36 May an agency appeal the Secretary's final recognition decision?

An agency may appeal the Secretary's decision under this part in the Federal courts as a final decision in accordance with applicable Federal law.

(Authority: 20 U.S.C. 1099b)

Subpart D—Limitation, Suspension, or Termination of Recognition

Limitation, Suspension, and Termination Procedures

§ 602.40 How may the Secretary limit, suspend, or terminate an agency's recognition?

(a) If the Secretary determines, after notice and an opportunity for a hearing, that a recognized agency does not comply with the criteria for recognition in subpart B of this part or that the agency is not effective in its performance with respect to those criteria, the Secretary—

(1) Limits, suspends, or terminates the agency's recognition; or

(2) Requires the agency to take appropriate action to bring itself into compliance with the criteria and achieve effectiveness within a timeframe that may not exceed 12 months.

(b) If, at the conclusion of the timeframe specified in paragraph (a)(2) of this section, the Secretary determines, after notice and an opportunity for a hearing, that the agency has failed to bring itself into compliance or has failed to achieve effectiveness, the Secretary limits, suspends, or terminates recognition, unless the Secretary extends the timeframe, on request by the agency for good cause shown.

(Authority: 20 U.S.C. 1099b)

§ 602.41 What are the notice procedures?

(a) Department staff initiates an action to limit, suspend, or terminate an agency's recognition by notifying the agency in writing of the Secretary's

intent to limit, suspend, or terminate recognition. The notice—

(1) Describes the specific action the Secretary seeks to take against the agency and the reasons for that action, including the criteria with which the agency has failed to comply;

(2) Specifies the effective date of the action; and (3) Informs the agency of its right to respond to the notice and request a hearing.

(b) Department staff may send the notice described in paragraph (a) of this section at any time the staff concludes that the agency fails to comply with the criteria for recognition in subpart B of this part or is not effective in its performance with respect to those criteria.

(Authority: 20 U.S.C. 1099b)

§ 602.42 What are the response and hearing procedures?

(a) If the agency wishes either to respond to the notice or request a hearing, or both, it must do so in writing no later than 30 days after it receives the notice of the Secretary's intent to limit, suspend, or terminate recognition.

(1) The agency's submission must identify the issues and facts in dispute and the agency's position on them.

(2) If neither a response nor a request for a hearing is filed by the deadline, the notice of intent becomes a final decision by the Secretary.

(b)(1) After receiving the agency's response and hearing request, if any, the Secretary chooses a subcommittee composed of five members of the Advisory Committee to adjudicate the matter and notifies the agency of the subcommittee's membership.

(2) The agency may challenge membership of the subcommittee on grounds of conflict of interest on the part of one or more members and, if the agency's challenge is successful, the Secretary will replace the member or members challenged.

(c) After the subcommittee has been selected, Department staff sends the members of the subcommittee copies of the notice to limit, suspend, or terminate recognition, along with the agency's response, if any.

(d)(1) If a hearing is requested, it is held in Washington, DC, at a date and time set by Department staff.

(2) A transcript is made of the hearing.

(3) Except as provided in paragraph (e) of this section, the subcommittee allows Department staff, the agency, and any interested party to make an oral or written presentation, which may include the introduction of written and oral evidence.

(e) On agreement by Department staff and the agency, the subcommittee review may be based solely on the written materials submitted.

(Authority: 20 U.S.C. 1099b)

§ 602.43 How is a decision on limitation, suspension, or termination of recognition reached?

(a) After consideration of the notice of intent to limit, suspend, or terminate recognition, the agency's response, if any, and all submissions and presentations made at the hearing, if any, the subcommittee issues a written opinion and sends it to the Secretary, with copies to the agency and the senior Department official. The opinion includes—

(1) Findings of fact, based on consideration of all the evidence, presentations, and submissions before the subcommittee;

(2) A recommendation as to whether a limitation, suspension, or termination of the agency's recognition is warranted; and

(3) The reasons supporting the subcommittee's recommendation.

(b) Unless the subcommittee's recommendation is appealed under § 602.44, the Secretary issues a final decision on whether to limit, suspend, or terminate the agency's recognition. The Secretary bases the decision on consideration of the full record before the subcommittee and the subcommittee's opinion.

(Authority: 20 U.S.C. 1099b)

Appeal Rights and Procedures

§ 602.44 How may an agency appeal the subcommittee's recommendation?

(a) Either the agency or the senior Department official may appeal the subcommittee's recommendation. If a party wishes to appeal, that party must—

(1) Notify the Secretary and the other party in writing of its intent to appeal the recommendation no later than 10 days after receipt of the recommendation;

(2) Submit its appeal to the Secretary in writing no later than 30 days after receipt of the recommendation; and

(3) Provide the other party with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The non-appealing party may file a written response to the appeal. If that party wishes to do so, it must—

(1) Submit its response to the Secretary no later than 30 days after receiving its copy of the appeal; and

(2) Provide the appealing party with a copy of its response at the same time it submits its response to the Secretary.

(c) Neither the agency nor the senior Department official may include any new evidence in its submission, i.e., evidence it did not previously submit to the subcommittee.

(d) If the subcommittee's recommendation is appealed, the Secretary renders a final decision after taking into account that recommendation and the parties' written submissions on appeal, as well as the entire record before the subcommittee and the subcommittee's opinion.

(Authority: 20 U.S.C. 1099b)

§ 602.45 May an agency appeal the Secretary's final decision to limit, suspend, or terminate its recognition?

An agency may appeal the Secretary's final decision limiting, suspending, or terminating its recognition to the Federal courts as a final decision in accordance with applicable Federal law.

(Authority: 20 U.S.C. 1099b)

Subpart E—Department Responsibilities

§ 602.50 What information does the Department share with a recognized agency about its accredited institutions and programs?

(a) If the Department takes an action against an institution or program accredited by the agency, it notifies the agency no later than 10 days after taking that action.

(b) If another Federal agency or a State agency notifies the Department that it has taken an action against an institution or program accredited by the agency, the Department notifies the agency as soon as possible but no later than 10 days after receiving the written notice from the other Government agency.

(Authority: 20 U.S.C. 1099b)

Appendix—Distribution Table Showing The Reorganization of The Current Regulations

Note: The following appendix will not appear in the Code of Federal Regulations.

The following table shows where each section of the current regulations is found in the proposed regulations.

Section in current regulations	Location in proposed regulations
§ 602.1	§§ 602.1 and 602.10.
§ 602.2	§ 602.3.
§ 602.3	§ 602.14.
§ 602.4	§§ 602.26 and 602.27.
§ 602.5	§ 602.50.
§ 602.10	§ 602.30.
§ 602.11	§ 602.31.
§ 602.12	§§ 602.32 and 602.33.
§ 602.13	§§ 602.3, 602.34, and 602.35.

Section in current regulations	Location in proposed regulations
§ 602.14	§§ 602.40 through 602.44.
§ 602.15	§§ 602.36 and 602.45.
§ 602.16	§ 602.2.
§ 602.20	§ 602.11.
§ 602.21	§ 602.15.
§ 602.22	§§ 602.12 and 602.13.
§ 602.23	§§ 602.18, 602.21, and 602.23.
§ 602.24	§§ 602.17, 602.19, and 602.23.
§ 602.25	§ 602.22.
§ 602.26	§§ 602.16, 602.18, and 602.20.
§ 602.27	§§ 602.23 and 602.24.
§ 602.28	§ 602.25.
§ 602.29	§ 602.26.
§ 602.30	§ 602.28.

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Part V

Federal Communications Commission

47 CFR Part 64

Truth-in-Billing and Billing Format; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 98–170; FCC 99–72]

Truth-in-Billing and Billing Format

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This document establishes common-sense billing principles to ensure that consumers are provided with basic information they need to make informed choices among telecommunications services and providers. First, consumer telephone bills must be clearly organized, clearly identify the service provider, and highlight any new providers. Second, bills must contain full and non-misleading descriptions of charges that appear therein. Third, bills must contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill. These requirements are intended to protect consumers against inaccurate and unfair billing practices. More specifically, the principles adopted herein will enhance consumers' ability to detect cramming and slamming.

DATES: These rules which contain information collection requirements are effective upon OMB approval, but no sooner than thirty (30) days after publication in the Federal Register. The Commission will publish a document in the Federal Register announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Enforcement Division, Common Carrier Bureau. (202) 418–0960.

SUPPLEMENTARY INFORMATION:

I. The Importance of Clear and Informative Bills in Competitive Telecommunications Markets

1. In this Order, we undertake common-sense steps to ensure that consumers are provided with basic information they need to make informed choices in a competitive telecommunications marketplace, while at the same time protecting themselves from unscrupulous competitors. We believe that the "truth-in-billing" principles adopted herein will significantly further consumers' opportunity to reap fully the benefits envisioned by the Telecommunications Act of 1996 (1996 Act), which amended the Communications Act of 1934 (Act).

2. In this Order, we adopt generally the "truth-in-billing" principles proposed in the Proposed Rules, 63 FR 55077, in order to ensure that consumers receive thorough, accurate, and understandable bills from their telecommunications carriers. Specifically, we will require:

(1) That consumer telephone bills be clearly organized, clearly identify the service provider, and highlight any new providers;

(2) That bills contain full and non-misleading descriptions of charges that appear therein; and,

(3) That bills contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill.

Additionally, we adopt minimal, basic guidelines that explicate carriers' binding obligations pursuant to these broad principles. These principles and guidelines are designed to prevent the types of consumer fraud and confusion evidenced in the tens of thousands of complaints we have received. Moreover, we believe that they represent fundamental principles of fairness to consumers and just and reasonable practices by carriers.

3. By implementing these principles through broad, binding guidelines as described more fully below, we allow carriers considerable discretion to satisfy their obligations in a manner that best suits their needs and those of their customers. Thus, carriers that wish to distinguish themselves through creative and consumer-friendly billing formats have wide latitude to compete in this manner (*i.e.*, by producing bills on 8½×11 inch paper).

II. Truth-in-Billing Principles

A. Adoption of Guidelines

4. Through this Order, we adopt broad, binding principles to promote truth-in-billing, rather than mandate detailed rules that would rigidly govern the details or format of carrier billing practices. We envision that carriers may satisfy these obligations in widely divergent manners that best fit their own specific needs and those of their customers. Indeed, our decision to adopt broad, binding principles, rather than detailed, comprehensive rules, reflects a recognition that there are typically many ways to convey important information to consumers in a clear and accurate manner.

5. Yet purely voluntary guidelines would be insufficient to combat misleading bills that facilitate slamming and cramming. The extent of the current problem shows that voluntary action alone is inadequate for many carriers. Failure to codify these principles and implementing guidelines might result in carriers ignoring our requirements, to the detriment of consumers. Our Order permits carriers to render bills using the format of their choice, so long as the bills comply with the implementing guidelines that we adopt today. We consider our principles and guidelines to be flexible enough that carriers will be able to comply with them without incurring unnecessary expense. In fact, we note that many carriers commented that their current practices already comport with proposals we outlined in the Proposed Rules.

6. *Commercial Mobile Radio Service (CMRS) Carriers.* We believe that the broad principles we adopt to promote truth-in-billing should apply to all telecommunications carriers, both wireline and wireless. The principles we adopt today represent fundamental statements of fair and reasonable practices. Like wireline carriers, wireless carriers also should be fair, clear, and truthful in their billing practices.

7. The record does not, however, reflect the same high volume of customer complaints in the CMRS context, nor does the record indicate that CMRS billing practices fail to provide consumers with the clear and non-misleading information they need to make informed choices. If current CMRS billing practices are clear and non-misleading to consumers, then it might be appropriate either to forbear from specific wireline rules or not to apply them in the first instance. Furthermore, in some instances, the rules we have adopted might simply be inapplicable in the wireless context.

8. Despite the fact that some rules may be inapplicable or unnecessary in the CMRS context, there are two rules that we think are so fundamental that they should apply to all telecommunications common carriers: (1) that the name of the service provider associated with each charge be clearly identified on the bill; and (2) that each bill should prominently display a telephone number that customers may call free-of-charge in order to inquire or dispute any charge contained on the bill.

9. We also intend to require CMRS carriers to comply with standardized labels for charges resulting from Federal regulatory action, if and when such requirements are adopted. As a practical matter, this rule will not apply until we issue an order that adopts the standard labels for federal line-item charges. We expect to apply the same rule to both wireline and CMRS carriers, however, because we believe that labels assigned to charges related to federal regulatory

action should be consistent, understandable, and should not confuse or mislead customers.

B. Legal Authority

10. We find that our authority to enact the truth-in-billing guidelines set forth herein stems from both section 201(b) and section 258 of the Act. Section 201(b) requires that all carrier charges, practices, classifications, and regulations "for and in connection with" interstate communications service be just and reasonable, and gives the Commission jurisdiction to enact rules to implement that requirement. Section 258 of the Act further authorizes the Commission to adopt verification requirements to deter slamming in both the interstate and the intrastate markets. The Supreme Court has ruled that section 201(b) provides the Commission with authority to implement all of the provisions of the Act, including those that apply to intrastate communications. As explained in this Order, with the exception of the guideline discussed at section II(C)(2)(c) of this Order, which involves standardized labels for charges relating to federal regulatory action, the truth-in-billing principles and guidelines adopted herein are justified as slamming verification requirements pursuant to section 258, and thus can be applied to both interstate and intrastate services. We recognize, however, that the standardized label guideline rests exclusively on our authority under section 201(b) and therefore is limited to interstate services.

C. Specific Truth-in-Billing Guidelines

1. Clear Organization and Highlighting New Service Provider Information

11. We adopt the threshold principle set forth in the Proposed Rules that telephone bills must be clearly organized and highlight new service provider information. We conclude that such a basic principle is essential to facilitate consumers' understanding of services for which they are being charged, and thereby discourage consumer fraud such as slamming. The goal of these requirements is to deter slamming, as well as cramming, and accordingly, we possess jurisdiction to impose these requirements under sections 201(b) and 258 of the Act. Based on our review of the record and experience handling consumer complaints of fraudulent carrier practices, we further conclude that implementation of this principle translates into three broad, binding guidelines on which we sought comment in the Proposed Rules: (1) The name of the service provider associated with each charge must be clearly identified; (2) charges must be separated by service provider; and (3) clear and conspicuous notification of any change in service provider must be made manifest. Through ensuring that the billed information concerning service providers is clear and conspicuous, these guidelines enhance consumers' ability to review individual charges contained in their telephone bills and detect unwarranted charges or unauthorized changes in their service arrangements.

12. In our view, a clear description of the name of the service provider is both rudimentary to any reasonable billing practice and essential to combat unfair carrier practices, including slamming and cramming. Consumers will be able to detect whether or when they have been slammed, crammed, or even overcharged only if they can readily identify their current service providers. Clear identification of service providers is also an essential predicate for consumers to be able to communicate complaints and dispute billed charges. Indeed, our complaint experience suggests that consumers are both confused and potentially hampered in obtaining information about billed charges or lodging complaints when the only entity name associated with a charge is, for example, that of a "billing aggregator." Regardless of whether the billing aggregator can handle the consumer inquiry or complaint on behalf of the service provider, we believe that identification of the service provider is essential to enable consumers to monitor their service arrangements and judge the accuracy of the charges levied. Accordingly, we find that the name of the service provider must be clearly listed on the bill in connection with that entity's charges to the consumer.

13. We conclude that, where telephone bills include charges from more than one service provider, the charges should be displayed according to service provider with clear visual separation—although not necessarily separate pages—to distinguish the different providers. We believe that listing charges by service provider should produce bills that can be reviewed by consumers more easily than those that would list charges by service type, and facilitate the prompt detection of unreasonable and fraudulent carrier practices. For instance, if a consumer were slammed, a bill segregated by provider would show, in a distinct portion of the bill, all the charges billed on behalf of the unauthorized carrier. A bill segregated by service type, on the other hand, could list together long distance charges from the unauthorized carrier, the authorized carrier, and any carrier that was used to place dial-around calls. This intermingling of authorized and unauthorized charges could make it more difficult for a consumer to realize that he or she has been slammed.

14. As a final corollary to our guidelines concerning providers, we conclude that new service providers must be clearly and conspicuously identified on the bill. We contemplate that such clear and conspicuous identification would involve all service providers that did not bill for services on the previous billing statement, and would describe, where applicable, any new presubscribed or continuing relationship with the customer. Clear identification of new service providers will improve consumers' ability to detect slamming and cramming. For instance, consumers' discovery of fraudulent charges would be prompted by noticing that an unfamiliar service provider has charges appearing on the bill. Indeed, because cramming complaints most commonly emanate from charges levied by service providers that do not have a pre-existing business relationship with the consumer, highlighting the name of a new service provider should prompt a subscriber to examine closely the particular charges billed by that provider and facilitate detection of cramming.

15. Carriers have discretion to determine the best means to highlight the required information; we do not require that separate bill pages be used to show the charges billed by each service provider. Again, we are cognizant of commenters' concerns that any rigid formatting rule that required separate pages, or produced "dead space" on the bill, may frustrate consumers and substantially, or even prohibitively, increase carriers' billing expenses. Accordingly, we do not mandate any particular means of complying with the guidelines set forth herein, but rather permit and contemplate that carriers will employ a variety of practices that would be consistent with this Order. In adopting a provider-based guideline and affording wide latitude to determine the most efficient way to convey the service provider information, we have balanced consumers' need for clear, logical, and easily understood charges against concerns that rigid formatting and disclosure requirements would inhibit innovation and greatly increase carrier costs.

2. Full and Non-Misleading Billed Charges

16. We adopt the second core principle set forth in the Proposed Rules that bills should contain full and non-misleading descriptions of the service charges that appear therein. In our view, providing clear communication and disclosure of the nature of the service for which payment is expected is fundamental to a carrier's obligation of reasonable charges and practices. Indeed, we find it difficult to imagine any scenario where payment could be lawfully demanded on the basis of inaccurate, incomplete, or misleading information. Moreover, to permit such practices in the context of telecommunications services is particularly troublesome in light of the rapid technological and market developments, and associated new terminology, that can confuse even the most informed and savvy telecommunications consumer. Accordingly, as discussed below, we adopt three guidelines that implement this core disclosure principle.

a. Billing Descriptions

17. We conclude that services included on the telephone bill must be accompanied by a brief, clear, plain language description of the services rendered. The description of the charge must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged. Requiring clear descriptions of billed charges will assist consumers in understanding their bills, and thereby, deter slamming, as well as cramming.

18. We contemplate that sufficient descriptions will convey enough information to enable a customer reasonably to identify and to understand the service for which the customer is being charged. Conversely, descriptions that convey ambiguous or vague information, such as, for example, charges identified as "miscellaneous," would not conform to our guideline. Similarly, in our view, a charge described by what it is *not*, such as, for example, "service not regulated by the Public Service Commission" is inherently ambiguous and does not disclose sufficient information. There is no way for a consumer to discern from this description that the charge refers to, for example, inside wiring maintenance insurance.

19. Although carriers must provide sufficient information, we emphasize that full descriptions do not mean redundant or unnecessary explanations. In particular, carriers need not define those terms that are already generally understood by consumers, such as "local service" or "long distance service." Similarly, carriers need not identify every long distance call as being a long distance call. Rather, they may simply identify a section of the telephone bill as "long distance service," followed by an itemized description of calls showing the destination cities, the numbers dialed, the date, and the charge for each call. We do not prescribe any particular methods of presentation, organization, or language, but rather encourage carriers to be innovative in designing bills that provide clear descriptions of services rendered.

20. Although we decline to formulate standardized descriptions, we encourage carriers to develop uniform terminology. We believe that industry is better equipped than the Commission to develop, in conjunction with consumer focus groups, standardized descriptions that are compatible with the character limitations for text messages and other operational restrictions found in the systems currently used for billing. Adopting understandable common descriptions for services offered could enable consumers to comparison shop more readily, and thereby take full advantage of the benefits of a competitive telecommunications market.

b. "Deniable" and "Non-Deniable" Charges

21. We further conclude that, where additional carrier charges are billed along with local wireline service, reasonable practice necessitates that carriers clarify when non-payment for service would not result in the termination of the consumer's basic local service. More specifically, we adopt the guideline we proposed in the Proposed Rules that telephone bills differentiate between what are commonly referred to as "deniable" and "non-deniable" charges. A "deniable" charge is a charge that, if not paid, may result in the termination—"denial"—of the customer's local exchange service. Conversely, a "non-deniable" charge is a charge that will not result in the termination of the customer's basic service for non-payment, even though the particular service for which the charge has been levied, *e.g.*, paging service, could be terminated. We agree with the comments of state regulatory agencies and consumer advocacy groups that distinguishing between such charges on consumers' bills protects consumers from paying contestable, unauthorized charges out of fear of losing basic telephone service for non-payment. We agree that consumers should not be intimidated into paying contestable charges because of fear that they will lose telephone service. We likewise believe that consumers must be fully empowered and apprised of their right to refuse to pay for unauthorized charges. Accordingly, we conclude that carriers must clearly identify on bills those charges for which non-payment will not result in disconnection of basic, local service.

22. We agree with those commenters who state that the terms "deniable" and "non-deniable" are inherently confusing, if not counter-intuitive, and therefore fail to achieve the basic goal of signalling to consumers their rights with respect to such charges. Rather than mandate any particular means for accomplishing this goal, however, we merely require that carriers clearly and conspicuously identify those charges for which nonpayment will not result in termination of local service.

23. We emphasize, however, that this guideline only applies where carriers include in a single bill both "deniable" and "non-deniable" charges. Accordingly, a carrier that bills directly for service that includes no charges for basic, local wireline service would not have a disclosure obligation. In this direct billing circumstance, we are persuaded that consumers understand that, for example, their wireless or interexchange service may be disconnected should they fail to pay the bill for the specific service involved, but that their basic local service, billed on a separate invoice, will not be disconnected. Accordingly, requiring carriers to disclose such information on direct bills that contain no basic local service charges would place a burden on carriers without any corresponding consumer benefit. We further note that, whether a charge is or is not "deniable" varies according to state law. Our requirement is not meant to preempt states that have yet to adopt such a distinction.

24. We are unpersuaded by some commenters that customers should be informed of these rights through a "dunning message" issued prior to termination of service for non-payment, rather than through the telephone bill. Such an approach does not protect those consumers who pay charges that they did not authorize out of the mistaken fear that their service will be disconnected if they fail to pay. The complaints we receive demonstrate that many consumers pay disputable charges immediately, even if they believe the charge is unauthorized, out of fear of losing local service. These consumers would not receive any dunning notice and, thus, would remain unaware of their rights with regard to these charges.

c. Standardized Labels For Charges Resulting from Federal Regulatory Action

25. We conclude that the principle of full and non-misleading descriptions also extends to carrier charges purportedly associated with federal regulatory action. Consistent with our core principle that charges should be clearly described in a manner that allows consumers to understand them, we expressed concern in the Proposed Rules that consumers may be less likely to engage in comparative shopping among service providers if they are led erroneously to believe that certain rates or charges are federally mandated amounts from which individual carriers may not deviate. Moreover, we noted that complaints received by the Commission indicate considerable consumer confusion with regard to various line item charges appearing on their monthly service bills that are assessed by carriers ostensibly to recover costs incurred as a result of specific government action. Charges resulting from federal regulatory action are "charges, practices [or] classifications * * * for and in connection with" interstate communication service pursuant to section 201(b), and accordingly, we possess jurisdiction to require carriers to employ standardized labels for such charges.

26. We find that the substantial record on this issue supports our adoption of guidelines to address customers' confusion and potential for misunderstanding concerning the nature of these charges. Specifically, for the reasons discussed more fully below, we adopt our proposals that require carriers to identify line item charges associated with federal regulatory action through a standard industry-wide label and provide full, clear and non-misleading descriptions of the nature of the charges, and display a toll-free number associated with the charge for customer inquiries. While we adopt guidelines to facilitate consumer understanding of these charges and comparison among service providers, we decline the recommendations of those that would urge us to limit the manner in which carriers recover these costs of doing business.

27. We focus particularly on three types of line items that have appeared on consumers' bills. Specifically, the 1996 Act instructed the Commission to establish support mechanisms to ensure that all Americans have access to affordable telecommunications services. Pursuant to this directive, the Commission is in the process of fundamentally altering the manner in which long distance carriers pay for access to the networks of local carriers and for supporting the universal availability of telecommunications services at just, reasonable, and affordable rates. Although the Commission did not direct the manner in which carriers could recover their universal service contributions or access fees directly from their customers, and substantially reduced the access rates charged to long distance carriers to offset their new universal service obligations, some carriers began including on their customers' bills line item charges purportedly intended to recover these costs. These fees have been charged in connection with consumers' long distance service. The amounts charged and the name describing the universal service-related fees, however, have varied considerably among carriers. For example, some carriers have labelled the fee as "Universal Connectivity Charge," "Federal Universal Service Fee," "Carrier Universal Service Charge," and even "Local Service Subsidy," and charges have ranged from $.93 per bill to 5% of the customers' net interstate and international charges. Access related charges and associated names have likewise varied by carrier. The nature of these charges is, in some instances, further confused because different charges may be assessed on the consumer's "primary," or first line, than on a consumer's subsequent or "non-primary" lines.

28. Local exchange carriers have also chosen to assess various line item charges associated with federal regulatory action. Since 1985, the Commission has allowed local exchange carriers to assess a "subscriber line charge," (SLC), also known as the end-user common line charge. This charge allows local exchange carriers to recover a portion of the costs for providing local loops. More recently, pursuant to the dictates of the 1996 Act, the Commission permitted local exchange carriers to recover through a line-item charge on end-user bills the costs associated with implementing local number portability, which allows a consumer to retain the same phone number when changing local phone companies. This local number portability charge first appeared on some consumers' bills in February, 1999. The amount of the charge, however, as well as the name describing it varies by carrier (*e.g.*, "number portability surcharge;" "local number portability service charge;" "federal charge—service provider number portability").

29. The record in this proceeding supports our concern that the failure of carriers to label and accurately describe certain line item charges on their bills has led to increased consumer confusion about the nature of these changes. Several factors appear to have contributed to this confusion. The names associated with these charges as well as accompanying descriptions (or entire lack thereof) may convince consumers that all of these fees are federally mandated. In addition, a lack of consistency in the way such charges are labelled by carriers makes it difficult for consumers accurately to compare the price of telecommunications services offered by competing carriers.

30. We adopt the guideline proposed in our Proposed Rules that line-item charges associated with federal regulatory action should be identified through standard and uniform labels across the industry. We agree that standardized labels will promote consumers' ability to understand their bills, thus facilitating their ability to compare rates and packages among competing providers. Such comparisons are very difficult when carriers choose different names for the same charge. In considering which specific labels would be most accurate, descriptive and consumer-friendly, however, we believe that consumer groups are particularly well suited to assist in the development of the uniform terms. Accordingly, through a Further Notice of Proposed Rules in this proceeding, we encourage consumer and industry groups to come together, conduct consumer focus groups, and propose jointly to the Commission standard labels for these line item charges. We will choose the standard labels based on the suggestions we receive in response to our Further Notice of Proposed Rules.

31. We decline to take a more prescriptive approach as to how carriers may recover these costs. We recognize that several commenters assert that service providers should be required to combine all regulatory fees into one charge, or should be prohibited from separating out any fees resulting from regulatory action. Other commenters urge us to go even farther and require carriers to include on bills per-minute rates that include all fees associated with the service. We decline at this time to mandate such requirements, but rather prefer to afford carriers the

freedom to respond to consumer and market forces individually, and consider whether to include these charges as part of their rates, or to list the charges in separate line items. We believe that so long as we ensure that consumers are readily able to understand and compare these charges, competition should ensure that they are recovered in an appropriate manner. Moreover, we are concerned that precluding a breakdown of line item charges would facilitate carriers' ability to bury costs in lump figures. Insofar as the regulatory-related charges have different origins, and are applied to different service and provider offerings, we also question whether implementation of a lump-sum figure for all charges resulting from federal regulatory action could be presented in a manner in which consumers could clearly understand the origin of such a charge. On the other hand, we recognize that consumers may benefit from a simplified, total charge approach. As a result, we encourage industry and consumer groups to consider further whether some categorization and aggregation of charges would be advisable. For example, we seek further comment on whether the line item charges associated with long distance service could be or should be identified as a single, uniformly described, charge, while those charges associated with local service be identified by a separate standardized term.

32. Although we adopt the guideline that charges be identified through standard labels, carriers may nevertheless choose to include additional language further describing the charges. We are persuaded by the record not to adopt any particular "safe-harbor" language, as set forth in the Proposed Rules, or mandate specific disclosures. Rather, we believe carriers should have broad discretion in fashioning their additional descriptions, provided only that they are factually accurate and non-misleading. For example, for purposes of good customer relations, a carrier may wish to elaborate on the nature and origin of its universal service charge. A full, accurate and non-misleading description of the charge would be fully consistent with our guideline. In contrast, we would not consider a description of that charge as being "mandated" by the Commission or the Federal Government to be accurate. Instead, it is the carriers' business decision whether, how, and how much of such costs they choose to recover directly from consumers through separately identifiable charges. Accordingly, to state or imply that the carrier has no choice regarding whether or not such a charge must be included on the bill or the amount of the charge would be misleading.

33. In the Proposed Rules, we sought comment on whether it is a violation of section 201(b) for a carrier to bill customers for more than their *pro rata* share of universal service and access fees. We decline to adopt specific rules addressing these concerns. Some commenters assert that it may be impractical accurately to allocate some line-item charges to an individual customer on a per-bill basis. For example, a carrier's universal service contributions may depend on variables whose values are not known at the time the carrier issues a bill, such as the total revenue contribution base of all carriers and the high-cost and low-income projections for universal service support. At least one commenter argues that carriers should be allowed to account for uncollectibles, billing expenses, and administrative expenses in setting the amount of their line item assessments for universal service. Although we decline to adopt specific rules here, we caution that we will not hesitate to take action on a case-by-case basis under section 201(b) of the Act against carriers who impose unjust or unreasonable line-item charges.

34. We also decline suggestions to require carriers to provide a detailed breakdown of their costs and cost reductions on their customer bills. The purpose behind these proposals in the Proposed Rules was to enhance consumers' understanding of the costs of telecommunications services, thereby increasing their ability to determine whether such services are fairly priced. We agree, however, that long explanations of a carrier's cost calculations may add complexity to telephone bills, creating confusion that outweighs the benefits of providing such descriptions. For these reasons, we also decline to adopt specific language describing the distinction between primary and non-primary residential lines. We conclude that LECs may craft their own descriptions to convey the Commission's primary/non-primary definition to their customers, provided that the information is conveyed truthfully and accurately. We believe, however, that our purpose of enhancing consumers' understanding will be adequately met through the guidelines adopted herein.

35. We decline to specify any periodic notification to consumers providing additional explanation of any charges resulting from federal regulatory action. We believe our guideline requiring standard labels for such charges should, even without further non-misleading description, provide consumers with, at minimum, notice of these charges. In this regard, we point out that such line-item charges, like all other charges on the bill, are subject to our guideline requiring the prominent display of a toll-free number for consumer inquiries and disputes. We emphasize that carriers' customer service representatives must be prepared to explain fully the nature and purpose of these charges if asked to do so.

36. In balancing the legitimate interest of consumers and carriers, we reject suggestions that standardized labels would violate the First Amendment. We therefore disagree with ACTA's comment that the Commission cannot discourage use of other line-item labels "as a matter of constitutional law," if such descriptions are accurate. We emphasize that we have not mandated or limited specific language that carriers utilize to describe the nature and purpose of these charges; each carrier may develop its own language to describe these charges in detail. Commercial speech that is misleading is not protected speech and may be prohibited. Furthermore, commercial speech that is only potentially misleading may be restricted if the restrictions directly advance a substantial governmental interest and are no more extensive than necessary to serve that interest. Finally, commercial speech that is neither actually nor potentially misleading may be regulated if the government satisfies a three-pronged test: first, the government must assert a substantial interest in support of its regulation; second, the government must demonstrate that the restriction on commercial speech directly and materially advances that interest; and third, the regulation must be "narrowly drawn." We concluded that our requirement that carriers use standard terms to label charges resulting from federal regulatory action passes this three-prong test.

3. Clear and Conspicuous Disclosure of Inquiry Contacts

37. The final fundamental truth-in-billing principle we adopt is that consumers must have the necessary tools to challenge charges for unauthorized services. We conclude that carriers must prominently display on their monthly bill a toll-free number or numbers by which customers may inquire or dispute any change on that bill. This telephone number shall be provided in a clear and conspicuous manner, so that the customer can easily identify the appropriate number to use to inquire about each charge. We are cognizant, however, that the service provider is not necessarily the most appropriate entity for consumers to call. A service provider may, for example, contract with the LEC or an independent billing aggregator to provide inquiry and dispute resolution services for charges billed through the local telephone bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve consumer complaints on the carrier's behalf. This will enable customers to avoid feeling that they are "getting the run around." We decline to require carriers to provide a business address on each telephone bill for the receipt of consumer inquiries and complaints. As several commenters have noted, most customers call when they have questions—they do not write. Accordingly, the inclusion of a business address will not significantly enhance consumers' ability to contact the billing entity. We do require, however, that each carrier make its business address available upon request to consumers through its toll-free number, for those consumers who wish to follow up their complaint or inquiry in writing.

38. We conclude that conspicuous display of a toll-free inquiry and dispute resolution number is an essential linchpin to consumers' exercise of the rights we seek to protect in this Order, as well as in other proceedings such as our new slamming rules. Consumers often experience considerable difficulty in contacting the entity whose charges appear on the telephone bill. This results in delayed resolution of billing problems, often necessitating the intervention of other parties such as the LEC, the state public service commission, or the Commission. Requiring that each telephone bill include at a minimum a toll-free telephone number for the receipt of consumer inquiries and complaints will minimize customer confusion regarding charges on telephone bills and enable consumers to resolve their billing disputes easily and promptly.

39. We decline at this time to adopt standards for the provision of accurate information by carrier customer service representatives. We expect such personnel to be well-trained and that the number of employees is sufficient to handle call volumes, and we assume that competition will provide a strong incentive for each carrier to set appropriate standards on its own initiative. Although we decline to mandate any particular standards for customer service, we remind carriers that the intentional provision of untruthful or misleading information to a customer regarding the nature and purpose of charges or fees would constitute a violation of section 201(b) of the Act.

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Proposed Rules in Truth-in-Billing and Billing Format. The Commission sought written public comment on the proposals in the Proposed Rules, including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for and Objectives of this Order and the Rules Adopted Herein

41. Section 258 of the Act makes it unlawful for any telecommunications carrier "to submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." Accordingly, the Commission adopts in this Order principles to ensure that consumers receive thorough, accurate, and understandable bills from their telecommunications carriers. First, consumer telephone bills must be clearly organized, clearly identify the service provider, and highlight any new providers; second, bills must contain full and non-misleading descriptions of charges that appear therein; and third, bills must contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill. Additionally, the Commission adopts minimal, basic guidelines that explicate carriers' obligations pursuant to these broad principles. These principles and guidelines are designed to prevent the types of consumer fraud and confusion evidenced in the tens of thousands of complaints that this Commission, and state commissions, receive each year. In enacting the principles and guidelines contained in this Order, our goal is to implement the provisions of sections 201(b) and 258 to prevent telecommunications fraud, as well as to encourage full and fair competition among telecommunications carriers in the marketplace.

2. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

42. In the IRFA, we found that the rules we proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses as defined by 5 U.S.C. 601(3). The IRFA solicited comment on the number of small businesses that would be affected by the proposed rules and on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.

43. PCIA, Liberty, RTG and others argue that the cost of compliance faced by smaller carriers would be particularly burdensome. PCIA asserts that medium- and small-sized carriers will be less likely to have billing systems in place that "can simply be 'tweaked' to produce the required modifications." Indeed, PCIA states that smaller carriers may be forced to replace their entire billing systems in order to comply with the format and content mandates of the proposed rules. RTG agrees, arguing that rural carriers are particularly sensitive to increased regulatory requirements with significant costs.

44. The Office of Management and Budget (OMB) received a large number of comments in response to the Proposed Rules. The commenters generally agree that new charges or services need to be easily identifiable on customer bills; that definitions of services and other terms are difficult to reach and could be counterproductive; that more information, including point of contact toll-free numbers for service providers or billing agents needs to be included in billing materials; that materials should be clear, concise, and relatively simple; that the Commission must account for costs of any changes to bills that will be passed on to consumers in making decisions; that CMRS and other wireless firms that provide services only to businesses should be exempt from most new requirements that would be imposed on wireline carriers; that every effort should be made so that billing standards are uniform across the nation; that reseller information should be included; and that, where possible, market-based solutions should be adopted unless there is conclusory evidence that the Commission must enact regulations that affect billing practices. As a result, OMB recommends that we not impose undue burdens on wireless providers and small wireline services, and urges that flexibility be given to small companies that may experience significant cost and

managerial issues related to implementation of billing requirements. Moreover, OMB recommends that the Commission allow companies sufficient time to address their necessary Year 2000-related modifications to their computer systems as well as modifying their billing systems to meet any new requirements. OMB also recommends that the Commission make a concerted effort to work with the industry to establish voluntary guidelines in lieu of mandatory requirements that restrict the ability of firms to tailor their billing to meet the needs of customers.

45. We have considered these comments and believe we appropriately balanced the concerns of carriers that detailed rules may increase their costs against our goal of protecting consumers against fraud. We have exempted CMRS carriers from certain of our requirements on ground that the requirements may be inapplicable or unnecessary in the CMRS context. Moreover, we consider our principles and guidelines to be flexible enough that carriers will be able to comply with them without incurring unnecessary expense.

3. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in the Order in CC Docket No. 98–170 May Apply

46. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

47. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 3,459 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

48. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

49. Although some affected incumbent LECs may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."

50. Total Number of Telephone Companies Affected. The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by our principles and guidelines.

51. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by our principles and guidelines.

52. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by our principles and guidelines.

53. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 143 carriers reported that they were engaged in the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by our principles and guidelines.

54. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services. We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by our principles and guidelines.

55. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by our principles and guidelines.

56. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

57. International Services. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million. The Census report does not provide more precise data.

58. Telex. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to telex. The most reliable source of information regarding the number of telegraph service providers of which we are aware is the data the Commission collects in connection with the *International Telecommunications Data*. According to our most recent data, 5 facilities based and 2 resale provider reported that they engaged in telex service. Consequently, we estimate that there are fewer than 7 telex providers that may be affected by our principles and guidelines.

59. Message Telephone Service. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to message telephone service. The most reliable source of information regarding the number of message telephone service providers of which we are aware is the data the Commission collects in connection with the *International Telecommunications Data*. According to our most recent data, 1,092 carriers reported that they engaged in message telephone service. Consequently, we estimate that there are fewer than 1,092 message telephone service providers that may be affected by our principles and guidelines.

60. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the final rules.

61. 220 Mhz Radio Services. Because the Commission has not yet defined a small business with respect to 220 MHz services, we will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. With respect to 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Given that nearly all radiotelephone companies under the SBA definition employ no more than 1,500 employees (as noted *supra*), we will consider the approximately 1,500 incumbent licensees in this service as small businesses under the SBA definition.

62. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the final rules. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

63. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies, and the most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services. Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the final rules.

64. Broadband Personal Communications Service. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

65. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

66. Specialized Mobile Radio (SMR). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

67. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses awarded to winning bidders, of which 38 were won by small or very small entities.

68. Cable Service Providers. The SBA has developed a definition of small entities for cable and other pay television services that includes all such companies generating no more than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We note that cable system operators are included in our analysis due to their ability to provide telephony.

4. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

69. Our binding principles require that all telecommunications carriers, both wireline and wireless, ensure (1) that consumer telephone bills be clearly organized, clearly identify the service provider, and highlight any new providers; (2) that bills contain full and non-misleading descriptions of charges that appear therein; and (3) that bills contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill. In addition, carriers must comply with the Commission's rules found below under "Rule Changes."

5. Steps Taken To Minimize the Significant Economic Impact of This Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered

70. In this Order, we decline to adopt many of the proposals made in the Proposed Rules that would be most costly for subject carriers to implement. For example, we decline to adopt our proposal to require carriers to indicate each new service ordered by a customer each month. We also decline to require that carriers provide a detailed breakdown of their costs incurred due to federal regulatory action, and instead permit carriers to use their discretion to describe the nature and purpose of these charges to their customers. We have adopted general principles rather than stringent rules governing the organization of, and information included in, customer bills. We also exempt CMRS carriers from certain of our requirements. By implementing principles through broad guidelines, we allow carriers considerable discretion to satisfy their obligation in a manner that best suits their needs and those of their customers, thus minimizing the economic impact on small carriers to the greatest possible extent. The principles adopted here are common-sense requirements that make good business sense, and we believe that many, if not most, subject carriers already conform to these requirements. Many carriers will therefore find that little or no change to their existing billing practices will be needed.

71. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Final Paperwork Reduction Act of 1995 Analysis

72. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pubic Law 104–13, and the Office of Management and Budget (OMB) has approved some of its requirements in OMB No. 3060–0854. Among its recommendations, OMB "strongly encourage[d]" us not to adopt an approach that imposes undue burden on wireless carriers, and "urges flexibility be given to small companies that may experience significant cost" as a result of our proposals. In this Order, we have exempted CMRS carriers from certain of the requirements we adopt to promote truth-in-billing. Moreover, we have established general principles and guidelines, rather than rigid formatting rules, which provide sufficient flexibility to small carriers to meet these requirements without incurring undue cost. Some of the proposals have been modified or added, however, and therefore some of the information collection requirements in this item are contingent upon approval by the OMB.

C. Further Information

73. For further information concerning this proceeding, contact David Konuch, Enforcement Division, Common Carrier Bureau at (202) 418–0199 (voice), (202) 418–0485 (TTY).

74. Alternate formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 (voice), (202) 418–2555 (TTY), or at mcontee@fcc.gov. The First Report and Order and Further Notice of Proposed Rules can be downloaded in WP or ASCII text at: http//www.fcc.gov/dtf/.

V. Ordering Clauses

75. Accordingly, *it is ordered*, pursuant to sections 1, 4(i) and (j), 201–209, 254, 258, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 254, 258, and 403 that this First Report and Order *is hereby adopted*, effective 30 days after publication of a summary in the **Federal Register**. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

76. *It is further ordered* that 47 CFR part 64, *is amended* as set forth in Rule Changes.

77. *It is further ordered* that, to the extent issues from CC Docket No. 97–181, *Defining Primary Lines*, are resolved here, we incorporate the relevant portions of the record in that docket.

78. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this First Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Consumer protection, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 47 U.S.C. 10, 201, 218, 226, 228, 332, unless otherwise noted.

2. Section 64.2000 is added to read as follows:

§ 64.2000 Purpose and scope.

(a) The purpose of these rules is to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service. These rules are also intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service.

(b) These rules shall apply to all telecommunications common carriers, except that §§ 64.2001(a)(2), 64.2001(b), and 64.2001(c) shall not apply to providers of Commercial Mobile Radio Service as defined in § 20.9 of this chapter, or to other providers of mobile service as defined in § 20.7 of this chapter, unless the Commission determines otherwise in a further rulemaking.

(c) *Preemptive effect of rules.* The requirements contained in this subpart are not intended to preempt the adoption or enforcement of consistent truth-in-billing requirements by the states.

3. Section 64.2001 is revised to read as follows:

§ 64.2001 Truth-in-Billing Requirements.

(a) *Bill organization.* Telephone bills shall be clearly organized, and must comply with the following requirements:

(1) The name of the service provider associated with each charge must be clearly identified on the telephone bill.

(2) Where charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider, and the telephone bill must provide clear and conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service.

(i) "Clear and conspicuous notification" means notice that would be apparent to a reasonable consumer.

(ii) "New service provider" is any provider that did not bill for services on the previous billing statement. The notification should describe the nature of the relationship with the customer, including a description of whether the new service provider is the presubscribed local exchange or interexchange carrier.

(b) *Descriptions of billed charges.* Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.

(c) *"Deniable" and "Non-Deniable" Charges.* Where a bill contains charges for basic local service, in addition to other charges, the bill must distinguish between charges for which non-payment will result in disconnection of basic, local service, and charges for which non-payment will not result in such disconnection. The carrier must explain this distinction to the customer, and must clearly and conspicuously identify on the bill those charges for which non-payment will not result in disconnection of basic, local service. Carriers may also elect to devise other methods of informing consumers on the bill that they may contest charges prior to payment.

(d) *Clear and Conspicuous Disclosure of Inquiry Contacts.* Telephone bills must contain clear and conspicuous disclosure of any information that the customer may need to make inquiries about, or contest charges, on the bill. Common carriers must prominently display on each bill a toll-free number or numbers by which customers may inquire or dispute any charge contained on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve consumer complaints on the carrier's behalf. Each carrier must make its business address available upon request to consumers through its toll-free number.

[FR Doc. 99–16223 Filed 6–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 98–170; FCC 99–72]

Truth-in-Billing and Billing Format

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: This document seeks comment on whether several of its truth-in-billing requirements should apply to wireless carriers, and what uniform labels should be used to identify line-item charges resulting from federal regulatory action. This document derives from our order adopting truth-in-billing requirements, released jointly, establishing common-sense billing principles to ensure that consumers are provided with basic information they need to make informed choices among telecommunications services and providers.

DATES: Written comments by the public concerning the standardized labels for charges relating to federal regulatory action are due on or before July 9, 1999. Written comments by the public concerning the application of the truth-in-billing principles and guidelines to CMRS carriers are due on or before July 26, 1999. Reply comments concerning the standardized labels for charges relating to federal regulatory action are due July 16, 1999. Reply comments concerning the application of the truth-in-billing principles and guidelines to CMRS carriers are due on or before August 9, 1999. Written comments by the public on the proposed information collections are due July 26, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before August 24, 1999.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D.C. 20554, with a copy to David Konuch, Federal Communications Commission, Common Carrier Bureau, Enforcement Division, Formal Complaints and Investigations Branch, 445 Twelfth Street, S.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 Twelfth Street, S.W., Room CY-B400, Washington, D.C. 20554. Comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to tfain@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: David Konuch, Enforcement Division, Common Carrier Bureau. (202) 418–0960. For additional information concerning the information collections contained in this Further Notice of Proposed Rules contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rules in CC Docket No. 98–170, adopted on April 15, 1999 and released on May 11, 1999. The full text of the Further Notice of Proposed Rules, including the Commissioners' statements, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Room CY–257, Washington, D.C. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription services, Inc., 445 Twelfth Street, S.W., Room CY-B400, Washington, D.C. 20554.

Paperwork Reduction Act

1. This Further Notice of Proposed Rules contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Further Notice of Proposed Rules, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Further Notice of Proposed Rules; OMB notification of action is due 60 days from date of publication of this Further Notice of Proposed Rules in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None

TITLE: Standard labels for Charges Associated with Federal Regulatory Requirements/CMRS Carriers' Truth-in-Billing Requirements.

FORM NO.: N/A.

TYPE OF REVIEW: New collection.

RESPONDENTS: Business or other for-profit.

NUMBER OF RESPONDENTS: 3,099.

Collection	Number of respondents	Hours per response	Total annual burden
Standard Labels for Charges Associated with Federal Regulatory Requirements	3099	.5	1549.5
CMRS Truth-in Billing Requirements	804	81	65,124

Total Annual Burden: 66,673.5.

Estimated costs per respondent: $0.

Needs and Uses: This information collection reflects two discrete aspects. First, the collection includes third party disclosure requirements associated with the Commission's requirement that telephone bills use standard industry-wide labels to describe any line-item charges associated with federal regulatory action. Uniform labelling will ensure that consumers are able to understand the nature of the charges and enable them to compare accurately the price of telecommunications services offered by competing carriers. The estimated time per response associated with standard labels is .5 hours.

This collection also reflects third party disclosure requirements that may be imposed on CMRS carriers if the Commission decides to end these carriers' exemption from certain Truth-in-Billing rules. The estimated time per response associated with the information collection requirements that might be extended to CMRS carriers is 81 hours.

Initial Regulatory Flexibility Analysis

As required by the RFA, the Commission has prepared this present

IRFA of the possible, significant, economic impact on small entities of the policies and rules proposed in this Further Notice of Proposed Rules. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rules provided below in section IV(E). The Commission will send a copy of this Further Notice of Proposed Rules, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Further Notice of Proposed Rules and IRFA (or summaries thereof) will be published in the **Federal Register**.

2. *Need for, and Objectives of, the Proposed Rules.* This Further Notice of Proposed Rules seeks comment on a specific proposed rule concerning labelling of charges relating to federal regulatory action. In addition, the Further Notice of Proposed Rules seeks comment on whether certain of our truth-in-billing requirements should be applicable to CMRS carriers. The proposals made in this Further Notice of Proposed Rules are necessary to ensure that consumers receive clear and accurate telecommunications bills.

3. *Legal Basis.* The proposed action is authorized under sections 4(i) and 4(j), 201, 208, 254 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201, 208, 254, and 303(r).

4. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* For purposes of this Further Notice of Proposed Rules, the Regulatory Flexibility Act defines a "small business" to be the same as a "small business concern" under the Small Business Act (SBA), 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the SBA, "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. In the FRFA pertaining to this action, we described in detail the small entities potentially subject to the rules adopted in this Order. These same entities possibly would be affected by the proposal made in this Further Notice of Proposed Rules. For purposes of this IRFA, therefore, we incorporate the list of potentially affected entities contained in section IV(A)(3).

5. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* We seek comment on a proposal designed to increase the accuracy and understandability of telephone bills to consumers. Comment is requested on a proposal to require uniform labels on line-item charges resulting from federal regulatory action.

6. *Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rule.* None.

7. *Any significant alternatives minimizing impact on small entities and are consistent with stated objectives.* None.

Summary of Further Notice of Proposed Rules

I. Application of Rules to CMRS Carriers

8. As we indicated in the Order, we seek comment on whether the remaining truth-in-billing rules we adopt in the wireline context should apply to CMRS carriers. More specifically, we seek comment on whether such rules should be imposed on CMRS carriers in order to protect consumers. As we stated in the Order, we believe that all consumers expect and should receive bills that are fair, clear, and truthful. However, absent evidence that there is a problem with wireless bills, it might not be necessary to apply the remaining rules in the CMRS context. Commenters may wish to address the applicability of a section 10 forbearance analysis. Those commenters who wish to apply such an analysis should address the specific elements of the standard set forth in section 10. We also seek comment on the extent to which the presence of a competitive market is relevant to consumers' ability to protect themselves from the harms we address here.

9. We also note growing evidence that some consumers are substituting wireless for wireline service. To what extent does this phenomenon affect our application of our guidelines to wireless providers? We also seek comment more generally on the benefit that consumers would derive from application of certain of the guidelines relative to the burden that such application would impose on CMRS carriers. First, as we indicated in the Order, all consumers are entitled to fair, clear, and reasonable practices. We seek comment on how to implement this principle in the CMRS context. For instance, we seek comment on the current billing practices of CMRS providers, including the types and descriptions of charges CMRS providers include in their bills.

10. Second, we seek comment on whether identifying new service providers and "deniable" charges makes sense in the wireless context. For example, because CMRS carriers are excluded from equal access obligations, it appears that CMRS carriers will rarely if ever be required to indicate a new long distance service provider on the bill. Similarly, CMRS carriers indicate in their comments that, unlike the practice in connection with billing for wireline carriers that can give rise to cramming, CMRS carriers do not at this time include charges for services rendered by third party entities. We seek comment on these assertions. Do CMRS providers bill for any other service providers? If so, for what types of services and how pervasive are these billing practices? Likewise, CMRS carriers, as non-LECs, that do their own billing do not have to distinguish between "deniable" and "nondeniable" charges because non payment of charges on a CMRS bill would not result in termination of basic local wireline service. Therefore, our guideline to identify "deniable" charges may have no relevance, and add no benefit, to consumers' CMRS bills.

II. Standard Labels for Line-Item Charges

11. As discussed in section II(C)(2)(c), we adopt the guideline that carriers must use standardized labels to refer to certain charges relating to federal regulatory action. We seek comment, however, on the specific labels that carriers should adopt. We tentatively conclude that the following labels would be appropriate: "Long Distance Access" to identify charges related to interexchange carriers" costs for access to the networks of local exchange carriers; "Federal Universal Service" to describe line items seeking to recover from customers carriers' universal service contributions; and "Number Portability" to describe charges relating to local number portability. We tentatively conclude that such labels will adequately identify the charges and provide consumers with a basis for comparison among carriers, while at the same time be sufficiently succinct such that most carriers will be able to use them without requiring that they modify the field lengths of their current billing systems. We seek comment on these tentative conclusions. In addition, we seek comment on alternative labels, or appropriate abbreviations for the labeling of these charges. For example, the Florida Commission suggests the terms "Federal Long Distance Access Fee," "FCC Long Distance Access Fee," or "Interstate Long Distance Access Fee" to identify access charges, and "Federal Universal Service Fee," "FCC Universal Service Fee," or "Interstate Universal Service Fee" for universal service related charges. Commenters should explain the merit and basis for their proposed labels, including, for example whether their proposals were chosen or evaluated by consumer focus groups. Indeed, we believe that consumer groups, with input from industry, can contribute greatly to our consideration of the appropriate labels. Finally, we seek comment on how carriers should identify line items that combine two or all of these charges into a single charge. We encourage parties to attempt to reach consensus on the appropriate labels.

III. Procedural Matters

12. Interested parties may file comments concerning the standardized labels for charges relating to federal regulatory action no later than 14 days after publication of this Further Notice of Proposed Rules in the **Federal Register**. Parties shall file comments concerning application of the truth-in-billing principles and guidelines to CMRS carriers no later than 30 days after publication of the Further Notice of Proposed Rules in the **Federal Register**. Parties may file reply comments no later than 21 days after publication of the Further Notice of Proposed Rules in the **Federal Register** concerning charges relating to federal regulatory action, and no later than 45 days after **Federal Register** publication concerning the CMRS issues raised in the Further Notice of Proposed Rules. Comments will be limited to 15 pages, not including appendices. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

13. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

14. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Washington, D.C. 20554.

15. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to David Konuch of the Common Carrier Bureau's Enforcement Division, The Portals, 445 Twelfth Street, S.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. Spreadsheets should be saved in an Excel 4.0 format. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number in this case [CC Docket No. 98–170]), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., The Portals, Rm. CY–B400, 445 Twelfth Street, S.W., Washington, D.C. 20554.

16. For further information concerning this proceeding, contact David Konuch, Enforcement Division, Common Carrier Bureau at (202) 418–0199 (voice), (202) 418–0485 (TTY).

17. Alternate formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 (voice), (202) 418–2555 (TTY), or at mcontee@fcc.gov. The First Report and Order and Further Notice of Proposed Rules can be downloaded in WP or ASCII text at: http//www.fcc.gov/dtf/.

IV. Ordering Clauses

18. Accordingly, *It is ordered*, pursuant to sections 1, 4(i) and (j), 201–209, 254, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201–209, 254, and 403, that this Further Notice of Proposed Rules *Is hereby adopted* and comments *Are requested* as described above.

19. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *Shall send* a copy of this Further Notice of Proposed Rules, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Consumer protection, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16224 Filed 6–24–99; 8:45 am]

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federal register

Friday
June 25, 1999

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Training and Technical Assistance for the Life Skills Training Drug Prevention Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1237]

RIN 1121–ZB70

Training and Technical Assistance for the Life Skills Training Drug Prevention Program

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Announcement of discretionary competitive technical assistance support.

SUMMARY: This program is authorized under the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, October 19, 1998 (Pub. L. 105–277). OJJDP invites applications from schools, local education agencies, local public health agencies, and public agencies or private organizations involved with drug prevention activities. Joint applications between schools or local education agencies and nonschool applicants are welcome.

DATES: Applications must be received by August 9, 1999.

ADDRESSES: Interested applicants can obtain an application kit from the Juvenile Justice Clearinghouse at 800–638–8736. The application kit is also available on OJJDP's Web site at www.ojjdp.ncjrs.org.

FOR FURTHER INFORMATION CONTACT: Eric Stansbury Program Manager, Office of Juvenile Justice and Delinquency Prevention, 202–307–5914. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: This is a follow on to a previous OJJDP program announcement of the availability of training and technical assistance for the Life Skills Training drug prevention program, originally announced in the **Federal Register** on December 4, 1998, 63 FR 67136. Under this program announcement, additional OJJDP-funded training and technical assistance is being offered to 50 or more new program sites.

Purpose

The purpose of this program is to support the development and implementation of drug abuse prevention programs that help reduce risk factors and enhance protective factors among adolescents in middle and junior high school. The program will provide training and technical assistance to schools and/or local education agencies to implement the Life Skills Training drug prevention program. It will also provide the program support and implementation materials needed to implement and evaluate replication of this proven effective drug prevention program model that addresses a community's identified substance abuse reduction needs. The broad goal of the program is to reduce youth drug use by encouraging the promotion of multiple approaches to educating and motivating younger adolescents to make healthy lifestyle decisions.

Background

National survey data of adolescent drug use illustrate that the 1980's downward trend in the use of many drugs was reversed in 1993 (U.S. Department of Health and Human Services, 1997); increases in the prevalence of use among 8th, 10th, and 12th grade students were observed through 1996. In 1997, the data indicated a leveling off for some drug categories among some age groups, but in general, the trends for the mid-1990's show escalating rates of use for students in the three grades examined.

Age-related normative expectations for substance use generally place older children at greater risk for substance use initiation than younger children. Among preadolescent children, the use of illegal substances is relatively rare. The transition to middle school or junior high school is viewed as a major risk period for experimentation with gateway substances. The 1997 Monitoring the Future survey data indicate that by 8th grade, 47 percent of students had tried cigarettes at least once, 19 percent had smoked in the past month, and 9 percent were daily smokers (University of Michigan Institute for Social Research, 1997). For 10th grade students, these figures jump to 60 percent, 30 percent, and 18 percent, respectively, and for 12th grade students they jump to 65 percent, 35 percent, and 25 percent, respectively. Similarly, a large number of students reported having tried alcohol at least once during their lifetimes: 54 percent of 8th graders, 72 percent of 10th graders, and 82 percent of 12th graders admitted having used alcohol at least once, and 25 percent, 49 percent, and 64 percent, respectively, admitted having been drunk. Prevalence of marijuana use was lower than for tobacco and alcohol, but still high. Annual and 30-day use rates for those in 8th grade were 18 percent and 10 percent; in 10th grade, these rates were 35 percent and 20 percent; and in 12th grade, they were 39 percent and 24 percent.

Among youth who use drugs, a fairly predictable sequence has been observed, beginning with substances legal for adult consumption and then moving on to marijuana and eventually other illegal drugs (Kandel and Yamaguchi, 1999). This pattern of use is largely consistent with social attitudes and norms and the availability of drugs.

In fiscal year 1998, Congress appropriated $5 million to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) "to develop, demonstrate and test programs to increase the perception among children and youth that drug use is risky, harmful, and unattractive * * * [through an initiative that is] consistent with existing research findings on effective prevention methods against teenage drug abuse" (Conference Report 105–405 for Pub. L. 105–119, November 13, 1997).

A number of theories, models, and frameworks have been tested to identify possible explanatory mechanisms of youth substance use initiation. The results of these tests also have created a basis for developing strategies for deterring initiation, use, and progression to abuse. Interventions based on these different theories, models, and frameworks may be more or less applicable to different target groups. Target audiences for drug abuse prevention interventions are grouped into three categories; different types of interventions are used for each. Universal interventions reach the general population (*e.g.*, all students in a school), selected programs target groups or subsets of the general population at risk (*e.g.*, children of drug users), and indicated interventions are designed for individuals who are already experimenting with drugs or who exhibit other related risks that foreshadow the use of drugs. The majority of interventions that have been developed and rigorously tested are of the universal type (National Institute on Drug Abuse, 1997).

Botvin, Schinke, and Orlandi (1995: 170–172) described common approaches to drug prevention:

> The most common prevention approach used by schools relies on teaching students factual information about drugs and drug abuse. Typically, students are taught about the dangers of tobacco, alcohol, or drug use in terms of the adverse health, social, and legal consequences. * * * Programs that rely exclusively on providing students with facts about drugs and drug abuse are conceptually based on a cognitive model of drug use/abuse. Such a model assumes that individuals make a more or less rational decision to use drugs or not to use drugs. * * * This model of drug abuse assumes that once armed with the necessary facts, students will make a rational and informed decision not to use drugs.

Another common approach to drug abuse prevention has been referred to as affective education. This prevention strategy [is] based on the belief that the risk of using drugs [can] be reduced through programs designed to promote affective development. * * * Instead of focusing on cognitive factors, affective education emphasizes the personal and social development of students. Affective education takes a somewhat broader approach to the problem of drug abuse than information dissemination by implicitly recognizing the role of psychosocial factors. * * * For example, components of affective education approaches that are used in some prevention programs include decisionmaking, effective communication, and assertiveness.

Subsequently developed approaches have been designed to target the psychosocial factors believed to promote the use of drugs. Emphasis was placed on teaching students the skills needed to resist influences such as those from peers and the media (Botvin, Schinke, and Orlandi, 1995).

Perhaps the theory most widely applied to the problem of substance use is the Social Learning Theory (Bandura, 1977). This theory posits that people learn behaviors through processes of modeling and reinforcement. A model derived from this theoretical perspective is the Social Influence Model. According to this model, youth's perceptions that deviant behaviors are standard practices among their peers promote deviance through the establishment of negative normative beliefs and reinforcement of behaviors that confirm those beliefs (Botvin et al., 1995). Thus, the onset of substance use can be viewed as behavior acquired through modeling, social pressure, and reinforcement by friends, family, the media, and community norms and practices. These same factors can be applied in a positive manner to change behavior.

Epidemiologic and etiologic studies have identified various factors that predict youth drug involvement (Bentler, 1992). A number of frameworks have been developed for classifying these factors into conceptual domains that may contribute to an understanding of how these factors cluster and operate singly and together for individuals and groups (for a review, see Hawkins, Catalano, and Miller, 1992). Perhaps the most commonly used framework is the ecological perspective, which groups factors into individual, family, peer group, community, and sociopolitical contextual domains (Bronfenbrenner and Ceci, 1994). Information about risks within these domains can then be used to focus prevention programming and strategies.

Recently, there has been a concentration on the identification of factors that may protect at-risk individuals and groups from the initiation of substance use and other problem behaviors such as violence (Cicchetti and Garmezy, 1993: Garmezy, 1993; Masten and Coatsworth, 1998; Werner, 1995). These protective or resiliency factors have been demonstrated to reduce the initiation of substance use under some circumstances. However, they appear to be less potent when there is an accumulation of risk factors in an individual's life or community (Hawkins, 1998). Moreover, risk and protective factors are not static; their potency and meaning change with a person's developmental status and circumstance (Glantz and Sloboda, in press). For example, epidemiologic studies have documented an association between changing beliefs about social responsibility and perceived risks of marijuana use on the prevalence of use among high school seniors (U.S. Department of Health and Human Services, 1997). That is, increases in social disapproval of use and an increased perception of risk associated with use were followed by a reduction in the prevalence of use from the mid-1980's to 1992. Perceived risk began to drop in 1992, and prevalence of use began to increase in 1993. Thus, it appears that a change in social norms can function as either a risk or a protective factor.

Despite these caveats, the use of risk and protective factors as a framework for the selection of community prevention programs has become widespread, and a number of studies have demonstrated the utility of the model for this purpose (Hawkins, 1998). In general, the more risk factors present in a community, the greater the likelihood that an individual will become involved with drug and alcohol use and other problem behaviors. Knowledge of the specific risk factors present in a community and among youth within that community provides policy makers, practitioners, and implementers with information critical for comprehensive, communitywide prevention planning.

The Center for the Study and Prevention of Violence (CSPV) at the University of Colorado, Boulder, has identified 10 prevention and intervention programs that meet the highest scientific standards of program effectiveness. CSPV has described these programs and provided the documentation necessary for their replication in a series of publications called *Blueprints*. The Life Skills Training (LST) program is an effective drug abuse program model documented in the *Blueprint* series. Developed by Dr. Gil Botvin, this program has empirically demonstrated, across settings, that it reduces gateway drug use among youth. Although this model has been tested in a number of jurisdictions, the training and technical assistance offered under this program announcement is designed to foster its replication in more and diverse jurisdictions, including urban, rural, and tribal settings. This whole school immersion drug prevention program targets middle and junior high school students with initial intervention in sixth or seventh grades, depending on school structure. For a more complete explanation of the LST program, see the appendix.

Goal

The specific goal of the training and technical assistance program is to reduce drug use among younger adolescents (middle and junior high school students) by increasing the perception among children and youth that drug use is risky, harmful, and unattractive.

Objectives

- To adapt, implement, and monitor the implementation of the Life Skills Training program.
- To reduce youth vulnerability to prodrug social influences.
- To decrease risk factors for drug use and associated behaviors by enhancing personal and social competencies and other protective factors among youth.

Program Strategy

Training and technical assistance for the replication of the LST model has been awarded to CSPV, which will, in turn, provide technical assistance to individual schools and local education agencies. CSPV will also assist in the selection of schools and local education agencies for the replication of the LST model and support the training, technical assistance, and process evaluation components of the program in each of the selected schools and local education agencies. In conjunction with CSPV, the LST training team, led by Dr. Botvin, will work with each selected site, providing training, technical assistance, and program and curriculum materials over a 3-year period.

The training and technical assistance will be provided by CSPV and the LST training team through a four-step process:

• Determine the suitability of applicant organizations (sites) to conduct the planned replication of LST (after being deemed qualified by an OJJDP review panel). CSPV and LST will determine suitability by reviewing applications, holding conference calls, and making site visits, where necessary.

• Facilitate the delivery of curriculum materials during the 3-year program to the selected sites, an essential step because the LST program requires strict adherence to a core curriculum.

• Provide technical assistance and training sessions during the course of the 3-year program.

• Monitor implementation at the local level and conduct a process evaluation to assess how well the program is being implemented and is serving the selected sites. (This step will be carried out by CSPV only.)

Evaluation

Evaluation of the program will consist of both a process evaluation and an outcome evaluation. In conjunction with its monitoring function, CSPV will conduct a process evaluation that will focus on the individual project's adherence to the model. CSPV will collect data through observing project functions, examining project documents, and interviewing staff to determine whether the program is reaching the target population and whether the program is being implemented as designed. Information regarding the findings of the process evaluation will be provided periodically to the projects for use in making project management decisions.

Also, in cooperation with OJJDP, the National Institute on Drug Abuse will conduct an outcome evaluation to assess the extent to which a large-scale replication program in schools and local education agencies with diverse characteristics is able to effectively implement the LST model across multiple sites and reduce substance abuse. To facilitate the evaluation, applicant schools and/or local education agencies, as appropriate, must agree to and/or arrange for the following conditions:

• Applicants must document the cooperation and assurance of the school or local education agency's administration to:

—Provide documentation of cooperation and assurance for sites for random assignment to either intervention or control schools (it is anticipated that up to 30 sites (grantees) will be randomly selected to participate in an outcome evaluation). Interviews with students receiving the LST program and their matched counterparts in the control schools (not receiving LST) will be conducted over a 5-year period in sites selected to participate in the outcome evaluation.

—Assist in obtaining informed consent from parents for their children's participation in the project (to include the administration of surveys) in the intervention (treatment) and nontreatment control schools.

—Cooperate with the administration of pretests, posttests, and annual follow-up school surveys through the students' high school years to assess the impact of the implementation over time. The surveys will be done in both the intervention schools and the nontreatment control schools.

• Applicants must agree to collaborate with the researchers in designing and administering surveys to assess risk and protective factors and potential mediators of program effectiveness such as school environment (school policies, school behavioral norms), drug use behaviors, perceptions of risk, and changes over time in skill development and/or other essential intervention components.

• Applicants must agree to allow researchers access to all process evaluation data, including those data that monitor the fidelity of implementation across sites, participation rates, and barriers to implementation.

• Over the course of the project, the researchers conducting the outcome evaluation will provide feedback to participating schools and agencies on the outcome evaluation, including interim and final reports.

Eligibility Requirements

OJJDP invites applications from schools, local education agencies, local public health agencies, and public and private drug prevention agencies. Joint applications between schools or local education agencies and nonschool applicants are welcome. If the applicant is not a school or local education agency, the application must include a memorandum of understanding that documents the local education agency's formal commitment to cooperate with the applicant, participate in all training, and provide all necessary data over the course of the project.

Selection Criteria

Because sites will not receive funding directly, but instead will receive training, curriculum materials, and technical assistance, OJJDP has modified its standard selection criteria.

Applicants will be reviewed to determine that they are qualified based on the following criteria:

• Applicants' assessment of the juvenile drug use problem in their communities, particularly whether specific problem areas coincide with the requirements of the LST model.

• Applicants' understanding of the program's specific goals and objectives.

• Applicants' ability to restate the objectives in measurable terms.

• The local structure established to implement the project.

Prior to the CSPV and LST team review process described above, applicants will be evaluated and rated by a review panel according to the criteria outlined below.

Problems To Be Addressed (15 points)

Applicants must describe the targeted school or local education agency and explain why it would be a suitable site for replication of the LST program. This description should include the number of schools and students that will participate in the LST program and must explain the community assessment process, including the procedures used, the types and sources of data, and the relationship of the data to the target population. Emphasis should be placed on establishing baseline data that describe community risk and protective factors and general characteristics of the population to be served. Applicants should also describe other drug prevention programs (e.g., efforts to reduce underage drinking and community-based coalitions designed to reduce substance abuse by youth) in the community and explain how this program will be coordinated with them.

Goals and Objectives (5 points)

Applicants must provide succinct statements demonstrating an understanding of the goals, objectives, and tasks associated with the project (see, for example, sections regarding evaluation and implementation design and also the appendix). Objectives must be quantifiable and measurable, and applicants must convey a clear understanding of the purpose, implementation, evaluation requirements, and expected results of the project.

Implementation Design (40 points)

The LST program is a school-based intervention designed to be implemented in the classroom.

Applicants must demonstrate that the LST program meets the drug prevention needs of the target population of students within the specific community. They must also provide a detailed description of the processes for planning and implementing the project and for cooperating with the outcome evaluation grantee.

Because successful prevention programs change students, schools, neighborhoods, and families in ways that reduce drug use by youth, proposals must be based on local objective data that identify characteristics and risk factors that need to be addressed and protective factors that show potential. Data collected about populations other than the specific populations that will receive direct services under the program (for example, national or State data on youth drug use) are not considered sufficient evidence that the program responds to the community-level needs of the target population. Applicants should provide evidence that they will work with the LST training and technical assistance provider to make the program culturally relevant to the target community and its population.

Applicant schools and agencies also should consider that greater effectiveness is achieved when the core elements of the original research-based model are retained. Core elements are the basic structure, content, and delivery of the program. For example, the structure of the program includes the number of sessions during year 1 and booster sessions during years 2 and 3 required to achieve the desired effect; the content includes the critical components such as normative education, refusal skills, and social skills training; and delivery includes the provision of appropriate staff training and resources to assist in implementation.

Applicants must detail the number of schools and students within each school that will be involved in the replication effort during the 3-year period. LST is ideally meant to begin in sixth or seventh grade (middle or junior high school) with booster sessions in each of the following 2 years. However, in the 2 years following the initial implementation, two new sixth grade cohorts may begin implementing LST, so that eventually the entire school is implementing the program. Although applicants may submit proposals with any number of participating schools and students, OJJDP reserves the right to hold sites to a limited number of participating students. Applicants must identify an equal number of students in nontreatment school sites to serve as control groups. Documentation for each participating school of a commitment to implement the program or serve as a control school for the participating schools should be included. Because the evaluation may involve random assignment to treatment or control groups, schools must be willing to commit to participate in either group.

Management and Organizational Capability (35 points)

Applicants must demonstrate that their management structure and staffing are adequate for the successful implementation of the project. They must present a workplan that identifies responsible individuals, major tasks, and milestones (timeline) for implementing the LST model in their school(s), with training beginning in late summer or early fall 1999 and implementation beginning in spring 2000. Applicants should specifically describe coordination and collaboration efforts related to the project.

Applicants must demonstrate any existing programs or partnerships related to substance abuse prevention by submitting project descriptions or memorandums of understanding, interagency agreements, or other documentation. These materials may be attached as appendixes. However, the collaborative relationship must be clearly described in the application. Staff résumés or job descriptions should also be attached as an appendix.

Budget (5 points)

Training and technical assistance funds for the replication of the LST model will not be awarded to individual schools and local education agencies, but rather to CSPV, which will use the money to provide all materials, training, technical assistance, and a process evaluation. Thus, applicants are required to submit budgets detailing only the in-kind contributions they will make to ensure sufficient onsite coordination of and support for replication of the model. Examples of in-kind contributions include, but are not limited to, office space, an appropriate location for provider training and onsite technical assistance, personnel to serve as liaison with LST and CSPV and coordinate local site activities, and equipment that will be used to support the project.

Applicants must provide as an in-kind contribution a mechanism for coordinating onsite training and technical assistance such as providing a suitable location for provider training by LST staff. Applicants should describe this mechanism. For example, a school might designate one or more individuals as training and technical assistance coordinator(s). Applicants should list and total the value of those in-kind contributions required to implement this project and describe plans for institutionalizing the project. Applicants are advised that they must document the in-kind costs in accord with OMB Circular A–110 or A–102.

Format

The narrative portion of this application must not exceed 25 pages (excluding the budget narrative, forms, assurances, and appendixes) and must be submitted on 8½- by 11-inch paper, double-spaced on one side of the paper in a standard 12-point font. These standards are necessary to maintain a fair and uniform standard among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

Project Period

Sites selected will be provided technical assistance, program implementation training, and LST curriculum materials over a 3-year project period.

Project Sites and Level of Support

Up to 50 projects will be selected to replicate the LST model locally over 3 years. Successful applicants will receive the training, curriculum materials, and technical assistance from CSPV and LST. In making final selections, the OJJDP Administrator will consider geographic distribution and balance in the number of each type of jurisdiction (urban, rural, and tribal) selected.

Catalog of Federal Domestic Assistance Number

For this program, the Catalog of Federal Domestic Assistance (CFDA) number, which is required on Standard Form 424, Application for Federal Assistance, is 16.729. This form is included in OJJDP's Application Kit, which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The kit also is available online at www.ojjdp.ncjrs.org.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from the U.S. Department of Justice; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application.

For each Federal award, applicants must include the program or project title, the Federal grantor agency, the

amount of the award, and a brief description of its purpose.

"Related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (i.e., the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (e.g., to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).
- Services of some kind (e.g., technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, Maryland 20850; 301–519–5535.

Note: In the lower left-hand corner of the envelope, the applicant must clearly write "Training and Technical Assistance for the Life Skills Training Drug Prevention Program."

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on August 9, 1999.

Contact

For further information, call Eric Stansbury, Program Manager, Special Emphasis Division, at 202–307–5914, or send an e-mail inquiry to stansbur@ojp.usdoj.gov.

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Appendix

Applicants should contact The Center for the Study and Prevention of Violence, Institute of Behavioral Science, University of Colorado at Boulder, Campus Box 442, Boulder, Colorado 80309–0442; 303–492–8465, to obtain copies of the Life Skills Training Blueprint. The cost is $10.

Following is a brief description of the LST model, summarized from *Blueprints for Violence Prevention, Book 5: Life Skills Training.*

The Life Skills Training Program

The LST program is a primary prevention program that targets individuals who have not yet developed drug abuse problems. The goal of the program is to prevent gateway substance use among adolescents by making an impact on risk factors associated with tobacco, alcohol, and marijuana use, particularly occasional and experimental use. This goal is accomplished by providing adolescents with the knowledge and skills to:

- Resist peer and media pressure to smoke, drink, or use drugs.
- Develop a positive self-image.
- Make decisions and solve problems on their own.
- Manage anxiety.
- Communicate effectively and avoid misunderstandings.
- Build healthy relationships.
- Handle social situations with confidence.

The LST program is a school-based intervention designed to be implemented in the classroom. This intervention often is referred to as a universal intervention in that it is designed for all individuals in a given setting. The program was developed to have an impact on drug-related knowledge, attitudes, and norms; teach skills for resisting social influences to use drugs; and promote the development of general personal self-management skills and social skills. The LST prevention program comprises three major components. The first component is designed to teach students a set of general self-management skills. The second component focuses on teaching general social skills. The third component includes information and skills that are specifically related to the problem of gateway substance use. The first two components are designed to enhance overall personal competence and decrease the motivation to use drugs and vulnerability to social influences. The problem-specific component is designed to provide students with material that relates directly to drug use (drug resistance skills, antidrug attitudes, and antidrug norms). Skills are taught using training techniques such as instruction, demonstration, feedback, reinforcement, and practice. In school districts that have a middle school structure, the program is implemented with sixth, seventh, and eighth graders. Where there is a junior high school structure, the program is implemented with seventh, eighth, and ninth graders.

The LST prevention program is a 3-year intervention designed to prevent or reduce gateway drug use. The program comprises 15 sessions in year 1, 10 booster sessions in year 2, and 5 booster sessions in year 3. The most natural and logical provider for a school-based prevention program is a regular classroom teacher. In addition to their availability, teachers are a logical choice because of their teaching experience and classroom management skills. Selection of program providers should be based on their interest, experience, enthusiasm, and commitment to drug abuse prevention; the extent to which they will be positive role models; and their willingness to attend the training workshop and implement the intervention carefully and completely according to the provider's guide.

The LST program provides project personnel 1- or 2-day initial training on the curriculum. This training is designed to familiarize intervention providers with the prevention program, its rationale, and the results of prior studies and to provide them with the opportunity to learn and practice the skills needed to successfully implement the program. Onsite and telephone technical assistance also are available to school personnel implementing the program in the respective project sites. In addition, LST provides booster training sessions during the second and third years.

There are two ways to implement LST in the classroom. The program can be scheduled so that it is taught at a rate of one class per week, or it can be programmed as a curriculum module or minicourse so that the entire program is conducted on consecutive class days. LST is a prescribed prevention program but has some implementation flexibility. It can be implemented in a number of different curriculum slots such as health education or drug education, if available, or through a major subject area such as science or social studies. Generally, it is implemented in a single subject area and taught by one teacher. However, some schools have implemented the program through more than one subject area where students are being taught by a team of teachers.

Individual or district-level school sites may implement the school-based program, which is designed to serve between 330 and 1,000 students in the school/district population who enter the program over a 3-year period in groups of equal size.

LST is based on an understanding of the causes of gateway substance use. LST interventions are designed to target the psychosocial factors associated with the onset of drug involvement. The initiation of drug use is the result of a complex combination of diverse factors; there is no single pathway or single variable that serves as a necessary and sufficient condition for initiating drug use. The LST approach to drug abuse prevention is based on an interactive model of drug abuse; drug abuse is thought of as resulting from a dynamic interaction of an individual and his or her environment. Social influences to use drugs (along with the availability of drugs) interact with individual vulnerability. Some individuals may be influenced to use drugs by the media (television and movies that glamorize drug use or suggest that drug use is normal or socially acceptable and advertising efforts that promote the sale of alcohol and tobacco products), family members who use drugs or convey prodrug attitudes, and friends or acquaintances who use drugs or hold attitudes and beliefs supportive of drug use. Others may be propelled toward drug use or a drug-using peer group because of intrapersonal factors such as low self-esteem, high anxiety, other negative feelings, or the desire for excitement.

The program focuses on drug-related expectancies (knowledge, attitudes, and norms), drug-related resistance skills, and general competence (personal self-management skills and social skills). Increasing prevention-related drug knowledge and resistance skills can provide adolescents with the information and skills needed to develop antidrug attitudes and norms and to resist peer and media pressure to use drugs. Teaching effective self-management and social skills (improving personal and social competence) can produce an impact on a set of psychological factors associated with decreased drug abuse risk (by reducing intrapersonal motivations to use drugs and by reducing vulnerability to prodrug social influences).

Examples of the types of personal and social skills typically included in this prevention approach are decisionmaking and problem-solving skills, cognitive skills for resisting interpersonal and media influences, goal setting and self-directed, behavior-change techniques, adaptive coping strategies for dealing with stress and anxiety, general social skills, and general assertiveness skills. This prevention approach teaches both these general skills and their application to situations related directly to tobacco, alcohol, or drug use. Building knowledge and skills in these areas can provide adolescents with the resources they need to resist peer and media pressures to use drugs and aid in developing a school climate in which drug use is not acceptable.

More than one-and-a-half decades of research with the LST program have consistently shown that it can cut drug use in half. These reductions (relative to controls) in both the prevalence (i.e., proportion of persons in a population who have reported some involvement in a particular offense) and incidence (i.e., the number of offenses that occur in a given population during a specified time interval) of drug use have been reported primarily in tobacco, alcohol, and marijuana use. These studies have demonstrated that this prevention approach can produce reductions in drug use that are long lasting and clinically meaningful. For example, long-term follow-up data indicate that reductions in drug use by seventh graders can last up to the end of high school. Evaluation research has demonstrated that this prevention approach is effective with a broad range of students including white middle-class youth and poor, inner-city minority (African-American and Hispanic) youth. Not only has this approach demonstrated reductions in alcohol and marijuana use of up to 80 percent, but evaluation studies have shown that LST also can reduce more serious forms of drug involvement such as the weekly use of multiple drugs or the prevalence of heavy smoking (a pack a day), heavy drinking, and episodes of drunkenness.

Dated: June 21, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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Monday, June 28, 1999

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1301

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Final rule.

SUMMARY: The Northeast Dairy Compact Commission extends the exemption from the over-order obligation for fluid milk sold in eight-ounce containers distributed by handlers under open and competitive bid contracts and sold by School Food Authorities in New England through the operation of the Over-order Price Regulation. The prior regulation authorizing the school milk exemption will expire at the conclusion of the 1998–1999 school year.

EFFECTIVE DATE: July 1, 1999.

ADDRESSES: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission ("Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and adopted a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation, including the adoption of the school milk exemption regulation and the establishment of a reserve account for reimbursement to School Food Authorities.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII. The school milk exemption is codified at 7 CFR 1301.13(e).[4]

Article V, Section 11 of the Compact delineates the administrative procedure the Commission must follow in deciding whether to adopt or amend a price regulation. That section requires the Commission to conduct an informal rulemaking proceeding governed by section four of the federal Administrative Procedures Act ("APA"), as amended, 5 U.S.C. 553, to provide interested persons with an opportunity to present data and views. The informal rulemaking proceeding must include public notice and opportunity to participate in a public hearing and to present written comment. In addition, section 553(d) of the APA provides that "publication or service of a substantive rule shall be made not less than 30 days before its effective date," subject to several enumerated exceptions, including situations where the agency finds "good cause" for dispensing with this requirement. *See*, 5 U.S.C. 553(d)(3). The Commission finds that there is good cause for dispensing with the 30-day waiting period of § 553(d) because compliance is impracticable, unnecessary, and contrary to the public interest.

The Commission emphasizes that this rule merely extends the current exemption adopted by the Commission after a comprehensive administrative process, including public hearing, notice-and-comment rulemaking, and a producer referendum, as well as a full 30-day notice period prior to the effective date. *See*, 63 FR 10104 (Feb. 27, 1998).

The Commission extends the exemption of school milk sold by School Food Authorities in eight-ounce containers through the operation of the Over-order Price Regulation, to be effective July 1, 1999, the beginning of the next school year. As with the exemption for the 1998–1999 school year, the extension will be implemented through a memorandum of understanding between the Commission and the appropriate state agencies. Continuation of the memorandum of understanding process allows the Commission and the state agencies to make any improvements in the implementation of the reimbursement program based on the experience of the current year.

The Commission held a public hearing to receive testimony on the proposal to extend the regulation exempting school milk from the over-order obligation on April 7, 1999 and additional comments were received until April 21, 1999.[5] The Commission held a deliberative meeting on May 5, 1999 to consider the testimony and

[1] 62 FR 29626 (May 30, 1997).

[2] 62 FR 62810 (Nov. 25, 1997).

[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).

[4] The regulation provides: "Effective April 1, 1998, all fluid milk distributed by handlers in eight-ounce containers under open and competitive bid contracts for the 1998–1999 contract year with School Food Authorities in New England, as defined by 7 C.F.R. 210.2, to the extent that the school authorities can demonstrate and document that the costs of such milk have been increased by operation of the Compact Over-order Price Regulation. In no event shall such increase exceed the amount of the Compact over-order obligation. Documentation of increased costs shall be in accordance with a memorandum of understanding entered into between the Compact Commission and the appropriate state agencies not later than May 1, 1998. The memorandum of understanding shall include provisions for certification by supplying vendor/processors that their bid and contract cost structures do in fact incorporate the over-order price obligation, in whole or in part, and provisions for defining the components of cost structure to be provided in support of such certification. The memorandum shall also establish the procedure for providing reimbursement to the school food service programs, including the scheduling of payments and the amount to be escrowed by the Commission to account for such payments." 7 CFR 1301.13(e).

[5] 64 FR 12769 (March 15, 1999).

comments received.[6] Based on the oral testimony and written comments received, the Commission hereby amends the current Over-order Price Regulation to extend the exemption for fluid milk sold in eight-ounce containers distributed by handlers under open and competitive bid contracts and sold by School Food Authorities in New England through operation of the price regulation.

II. Summary and Analysis of Issues and Comments

The Commission's Regulations Administrator, Carmen Ross, testified at the public hearing on April 7, 1999 and explained the issue and why the proposed amendment was needed. Mr. Ross testified that the current exemption regulation will expire at the end of the 1998–1999 school year.[7] The current regulation exempts fluid milk "sold by School Food Authorities in New England in eight-ounce containers, distributed by handlers under open and competitive bid contracts" for the 1998–1999 contract year.[8] Mr. Ross further explained that no other provision of the exemption regulation would be altered.[9]

A total of three individuals submitted oral and/or written public comments and all commenters generally supported the proposed extension of the school milk exemption.[10] One commenter expressed support for the continuation of the exemption for the school milk program.[11]

Another commenter emphasized the importance of the school lunch programs in providing proper nutrition to children.[12] This commenter also noted that the "stability in price that the Compact provides should assist school lunch programs in providing milk as part of the School Breakfast and Lunch programs."[13] Finally, this commenter referenced his prior testimony in the original school milk exemption rulemaking process in January 1998 and reiterated his support for the exemption to the extent the costs can be documented and attributable to the Compact Over-order Price Regulation.[14]

The third commenter also expressed general support for the continuation of the school milk exemption program.[15] This commenter referenced his prior testimony in the original school milk exemption rulemaking proceeding and reiterated the concerns expressed at that time.[16] This commenter explained that "the Compact price only becomes effective when farm milk prices have collapsed well below the costs of milk production for most farmers. A school lunch exemption mandates that farmers will then be subsidizing milk to all school children at below their costs" and recommended that the "Commission consider developing a program that specifically targets the neediest children rather than a broad exemption that subsidizes all children at all income levels."[17]

The Commission concludes that extension of the school milk exemption program, without further modification, is appropriate for all the same reasons the program was instituted initially.[18] The Commission notes that the extension of the exemption regulation retains the requirement that eligible school food authorities demonstrate and document that the costs of milk in eight-ounce containers has been increased by operation of the Compact Over-order Price Regulation. The Commission extends the exemption, without reference to the student's income, due to the revenue structure of the school food service programs. In the original findings accompanying the school milk exemption, this decision was explained as follows:

> The exemption is made applicable to all milk sold by school food service programs, rather than only milk qualified for reimbursement under federal child nutrition programs. According to the comment, the reimbursements are imbedded into the revenue structure for the school food service programs. The degree to which the reimbursements reduce program costs for milk, as opposed to the total food costs, cannot thereby be readily identified. As a result, to accomplish its purpose, all milk [sold in eight-ounce containers] must be covered by the exemption.[19]

III. Summary and Explanation of Findings

Article V, Section 12 of the Compact directs the Commission to make four findings of fact before an amendment of the Over-order Price Regulation can become effective. Each required finding is discussed below.

a. Whether the Public Interest Will Be Served by the Amendments

The first finding considers whether the amendment of the Compact Over-order Price Regulation to establish a reserve fund for the reimbursement to school food authorities serves the public interest. The Commission reaffirms its prior finding that an exemption mechanism for milk sold in eight-ounce containers by school food service programs serves the public interest.[20] For all of the same reasons the Commission adopted the previous regulation,[21] the Commission finds that the public interest will be served by amending the Over-order Price Regulation to extend the exemption through operation of the Over-order Price Regulation.

b. The Impact on the Price Level Needed to Assure a Sufficient Price to Producers and an Adequate Local Supply of Milk

The second finding considers the impact of the amendment on the level of producer price needed to cover the costs of production and to assure an adequate local supply of milk for the inhabitants of the regulated area and for manufacturing purposes.[22] The Commission reaffirms its prior findings regarding the sufficiency of pay prices for milk needed to meet the New England market demand.[23] The Commission previously concluded that, although amending the Compact Over-order Price Regulation to exempt certain milk sold by school food authorities would decrease the producer pay price, the price regulation would nevertheless remain at a sufficient level to assure that producer costs of production are covered and to elicit an adequate supply of fluid milk for the region.[24] The Commission now reaffirms this finding.

c. Whether the Major Provisions of the Order, Other Than Those Fixing Minimum Milk Prices, Are in the Public Interest and Are Reasonably Designed to Achieve the Purposes of the Order

The third finding requires a determination of whether the provisions of the regulation other than those establishing minimum milk prices are in the public interest. The amendment serves to extend the prior regulation establishing an exemption from the price regulation for certain milk sold by school food authorities. Therefore, the matter of the public interest is addressed under the first required finding and not under this finding. In any event, the Commission concludes that the price regulation, as hereby amended, remains in the public interest in the manner contemplated by this finding.

d. Whether the Terms of the Proposed Amendment Are Approved by Producers.

The fourth finding, requiring the determination of whether the amendment has been approved by producer referendum pursuant to Article V, Section 13 of the Compact is invoked in this instance given that the amendment will affect the level of the price regulation on the producer side. In this final rule, as in the previous final rules, the Commission makes this finding premised upon certification of the results of the producer referendum. The procedure for the producer referendum and certification of the results is set forth in 7 CFR Part 1371.

Pursuant to 7 CFR 1371.3 and the referendum procedure certified by the Commission, a referendum was held during the period of June 11 through June 21, 1999. All producers who were producing milk pooled in Federal Order #1 or for consumption in New England, during January 1999, the representative period determined by the Commission, were deemed eligible to vote. Ballots were mailed to these producers on or before June 11, 1999 by the Federal Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by 5:00 p.m. on June 21, 1999. The ballots were opened and counted in the Commission offices on June 22, 1999 under the direction and supervision of Mae S. Schmidle, Chair of the Commission and designated "Referendum Agent."

Ten Cooperative Associations were qualified to cast block votes and notified of the procedures necessary to block vote by letter dated June 4, 1999. Cooperatives were required to provide prior written notice of their intention to block vote to all members on a form provided by the Commission, and to certify to the Commission that (1) timely notice was provided, and (2) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that the Cooperative Association block vote had to be received in the Commission office by 5:00 p.m. on June 21, 1999. Certified and notarized notification to its members of the Cooperative's intent to block vote or not to block vote had to be mailed by June 15, 1999 with notice mailed to the Commission offices no later than June 17, 1999.

Notice

On June 22, 1999, the duly authorized referendum agent verified all ballots according to procedures and criteria established by the Commission. A total of 3,975 ballots were mailed to eligible producers. All producer ballots and cooperative block vote ballots received by the Commission were opened and counted. Producer ballots and cooperative block vote ballots were verified or disqualified based on criteria established by the Commission, including timeliness, completeness, appearance of authenticity, appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid were marked "disqualified" with a notation as to the reason.

Block votes cast by Cooperative Associations were then counted. Producer votes against their cooperative associations block vote were then counted for each cooperative association. These votes were deducted from the cooperative association's total and were counted appropriately. Ballots returned by cooperative members who cast votes in agreement with their cooperative block vote were disqualified as duplicative of the cooperative block vote.

Votes of independent producers not members of any cooperative association were then counted.

The referendum agent then certified the following:

A total of 3975 ballots were mailed to eligible producers.

A total of 3,156 ballots were returned to the Commission.

A total of 25 ballots were disqualified—late, incomplete or duplicate.

A total of 3,120 ballots were verified.

A total of 3,076 verified ballots were cast in favor of the price regulation.

A total of 44 verified ballots were cast in opposition to the price regulation.

Accordingly, notice is hereby provided that of the 3,120 verified ballots cast, 98.6%, or 3,076, a minimum of two-thirds were in the affirmative.

Therefore, the Commission concludes that the terms of the proposed amendment are approved by producers.

IV. Good Cause for Effective Date Within 30-Day Notice Period

The Administrative Procedure Act, 5 U.S.C. 553(d), requires that the Compact Commission publish a substantive rule not less than 30 days before its effective date, except that this time period is not required for a substantive rule which grants or recognizes an exemption or relieves a restriction or as otherwise provided by the agency for good cause found and published with the rule. The Commission concludes that there is good cause for non-compliance with the 30-day advance publication provision of § 553(d) and publishes this final rule on June 28, 1999, with an effective date of July 1, 1999.

The Commission previously adopted a regulation exempting certain milk sold by school food authorities under the Compact Over-order Price Regulation and published in the Federal Register on February 27, 1998 with an effective date of April 1, 1998 (no less than 30 days after its publication) that exemption was duly promulgated with full compliance of all applicable notice, hearing and comment provisions of the Administrative Procedure Act.[26] In addition, the prior exemption regulation was approved by producers pursuant to a producer referendum conducted in February 1998. The producer referendum procedure[27] requires the Compact Commission to distribute a ballot to each producer eligible to cast a ballot in the referendum. The ballot must include a description of the terms and conditions of the referendum and an official copy of the proposed regulation or amendment. This final rule merely extends the previously approved regulation and this final rule was also approved by producer referendum conducted in June 1999.

The commission determines that compliance with the 30-day waiting period, in this instance, is excused for three separate reasons: it is (1)impracticable, (2) unnecessary, and (3) contrary to the public interest. *See, e.g., Service Employees Intern. Union, Local 102* v. *County of San Diego*, 60 F.3d 1346 (9th Cir. 1994) (good cause exemption to § 553(d) includes situations where compliance is impracticable, unnecessary, or contrary to the public interest); *Buschmann* v. *Schweiker*, 676 F.2d 352 (9th Cir. 1982) (same).

(1) It would be impracticable to provide the thirty-day interval because the previously published amendment exempting certain school milk for the 1998–1999 school year expires on June 30, 1999. The full thirty-day notice

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[6] 64 FR 19552 (April 21, 1999).
[7] Ross, Transcript ("Tr.") at 9.
[8] Ross, Tr. at 8–9.
[9] Ross, Tr. at 9.
[10] DiMento, Tr. at 11–12; Berthiaume, Tr. at 15; and Wellington, Tr. at 16.
[11] DiMento, Tr. at 11.
[12] Berthiaume, Tr. at 15.
[13] Berthiaume, Tr. at 15.
[14] Berthiaume, Tr. at 15.
[15] Wellington, Tr. at 16.
[16] Wellington, Tr. at 16.
[17] Wellington, Tr. at 16.
[18] See, 63 FR 10104 (Feb. 27, 1998).
[19] 63 FR 10108 (Feb. 27, 1998) (footnote omitted).
[20] 63 FR 10106–10110 (Feb. 27, 1998).
[21] *See*, footnote 4 for text of the regulation.
[22] As noted in prior rulemaking proceedings, the Commission limits its assessment to issues relating to the fluid milk market. 62 FR 29632 (May 30, 1997); 62 FR 62812 (Nov. 25, 1997); and 63 FR 10109 (Feb. 27, 1998).
[23] 62 FR 29632–29637 (May 30, 1997); 62 FR 62812–62817 (Nov. 25, 1997); and 63 FR 10109–10110 (Feb. 27, 1998).
[24] 63 FR 10110 (Feb. 27, 1998).
[25] 63 FR 10104 (February 27, 1998).
[26] *See*, 63 FR 10104, 10105 (February 27, 1998) (describing administrative proceedings culminating in the adoption of the rule exempting certain school milk from the operation of the Over-order Price Regulation.)
[27] Compact Commission Bylaws, Article VI, section I, 7 CFR Part 1371.

would not allow the Commission to implement the exemption extension at the beginning of the 1999–2000 school year, which begins on July 1, 1999; and

(2) The full thirty-day notice is unnecessary because this amendment merely extends the existing rule exempting school milk from the Compact Over-order obligation; and

(3) The full thirty-day notice requirement would be contrary to the public interest, as found by the Commission in adopting both the underlying school milk exemption regulation, and this extension of that regulation, because the Commission could not implement the extension at the start of the 1999–2000 school year. Thus, the otherwise required thirty-day notice procedure would seriously impair the effectiveness of the amendment.

Finally, the purpose of the procedural requirement that a rule be published thirty days prior to its effective date is to permit those affected by the amendment a reasonable amount of time to prepare to take whatever action is prompted by the final rule. In this instance, the amendment merely extends a rule that all affected people have had notice of since publication of the school milk exemption regulation on February 27, 1998. The action required by the amendment is to be taken by the Commission through the extension of the exemption program and the development of a Memorandum of Understanding with the appropriate state agencies in the six New England states. Those most affected by the amendment are (1) the school food authorities whose interests are best served by the Commission extending the exemption regulation, and (2) the producers, all of whom have received ballots in February 1998 and June 1999 to vote on, and approve, the adoption of the school milk exemption and its extension. For all of these reasons, the full thirty-day notice period is not required.

IV. Required Findings of Fact

Pursuant to Compact Article V. Section 12, the Compact Commission hereby finds:

(1) That the public interest will be served by the amendment of the Over-order Price Regulation to dairy farmers under Article IV to extend the exemption of milk sold in eight-ounce containers by school food authorities in New England.

(2) That a level price of $16.94 (Zone 1) to dairy farmers under Article IV will assure that producers supplying the New England market receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) That the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) That the terms of the proposed amendments are approved by producers pursuant to a producer referendum as required by Article V. section 13.

List of Subjects in 7 CFR Part 1301

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission proposes to amend 7 CFR Part 1301 as follows:

PART 1301—DEFINITIONS

1. The authority citation for part 1301 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1301.13 is amended by revising paragraph (e) to read as follows:

§ 1301.13 Exempt milk.

* * * * *

(e) All fluid milk distributed by handlers in eight-ounce containers under open and competitive bid contracts for the school milk contract year with School Food Authorities in New England, as defined by 7 CFR 210.2, to the extent that the school authorities can demonstrate and document that the costs of such milk have been increased by operation of the Compact over-order obligation. In no event shall such increase exceed the amount of the Compact over-order obligation. Documentation of increased costs shall be in accordance with a memorandum of understanding entered into between the Compact Commission and the appropriate state agencies for the school milk contract year. The memorandum of understanding shall include provisions for certification by supplying vendor/processors that their bid and contract cost structures do in fact incorporate the over-order obligation, in whole or in part, and provisions for defining the components of cost structure to be provided in support of such certification. The memorandum shall also establish the procedure for providing reimbursement to the school food authorities, including the scheduling of payments and the amount to be escrowed by the Commission to account for such payments.

Dated: June 22, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–16296 Filed 6–25–99; 8:45 am]

BILLING CODE 1650–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 616, 618, and 621

RIN 3052–AB63

Loan Policies and Operations; Leasing; General Provisions; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This final rule clarifies existing regulations and provides Farm Credit System (FCS or System) institutions with more regulatory guidance about leasing activities. The rule reflects comments received from two public comment periods.

EFFECTIVE DATE: These regulations will become effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. We will publish a document announcing the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On October 15, 1997, we published a proposed rule to replace the existing regulatory guidance about System institutions' leasing activities (62 FR 53581). After considering the six comment letters received, we made revisions and asked for additional comment on a reproposed rule (63 FR 56873, Oct. 23, 1998).

We received five comment letters on the reproposed rule; four from System banks and one from the Farm Credit Leasing Services Corporation (Leasing Corporation). The commenters commented about borrower rights, notice of action on applications, stock purchase requirements, and out-of-territory leasing.

I. Discussion of Comments

A. Borrower Rights

One commenter requested clarification of our interpretation that statutory borrower rights requirements do not apply to leasing. As stated in the preamble to the original proposal (62 FR 53581, Oct. 15, 1997), borrower rights do not apply to lease transactions.

B. Notice of Action on the Application

We received two comments on reproposed § 616.6800, which requires that each institution provide the applicant written notice of its decision on a lease application. The first comment suggested the rule should allow verbal notice. The second comment suggested the notice could be either express or implied, allowing the lessor to notify an applicant of approval by delivering lease documents to the applicant without a separate written notice of approval.

We believe that a written notice is appropriate to protect the interests of a lease applicant and to document that an institution has complied with this requirement. However, the notice does not have to be in a particular form and the delivery of written lease documents would satisfy the notice requirement.

C. Stock Purchase Requirements

One bank requested a clarification of § 614.4232, which requires that a lessee be a "voting stockholder" for a loan to a domestic lessor for leases on equipment or facilities (leveraged leases). Under § 616.6700, an institution may satisfy the requirement that an equipment lessee be a stockholder by issuing either one share of stock or one participation certificate. The final regulation makes a conforming amendment to § 614.4232 by removing the term "voting" to clarify that the bylaws could provide that a person owning one share of stock or one participation certificate would be considered a "stockholder" for purposes of this section.

D. Out-of-Territory Leasing

Final § 616.6200 provides farmers, ranchers, cooperatives, and other FCS customers flexibility to choose an FCS lessor regardless of whether they are located within that lessor's "territory." Section 616.6200 does not require an FCS lessor to satisfy any notice or concurrence requirements to serve lessees beyond the lessor's territory.

We received two comments on § 616.6200. One Farm Credit Bank (FCB) commented: "We commend you for removing territorial challenges through the addition of § 616.6200. This will contribute toward System institutions being able to more effectively serve lease customers." While expressing appreciation for "the efforts of the FCA to improve the regulatory environment in which System institutions operate," a second FCB suggested that "any elimination of geographic operating territories with respect to leasing should be coordinated with the review of the proposed elimination of geographic boundaries with respect to lending activities under § 614.4070, and action on this aspect of the leasing regulation should be deferred until such time as FCA has reviewed all comments on the proposed revision to section 614.4070." We do not believe that action on the reproposed leasing rule must be delayed until we consider proposed amendments to § 614.4070, the customer choice rule. Our adoption of § 616.6200, allowing potential customers to choose an FCS lessor regardless of whether they are located within that lessor's territory, neither depends on nor determines the fate of the proposed out-of-territory lending rule. *See* 63 FR 60219 (Nov. 9, 1998); 63 FR 69229 (Dec. 16, 1998).

It is clear in the Farm Credit Act of 1971, as amended (Act) that the express statutory authority to lease is separate and distinct from the authority to lend. Section 2.4(b)(4) of the Act expressly authorizes production credit associations (PCAs) (and agricultural credit associations (ACAs) pursuant to section 7.8) to own and lease equipment, or lease with option to purchase. Section 1.11(c)(2) expressly authorizes FCBs (and agricultural credit banks (ACBs) pursuant to section 7.2) to own and lease equipment or facilities, or lease with option to purchase, and authorizes Federal land credit associations pursuant to section 7.6 to own and lease facilities, or lease with option to purchase. Section 3.7(a) expressly authorizes banks for cooperatives (BCs) (and ACBs pursuant to section 7.2) to own and lease equipment, or lease with option to purchase. The Act clearly creates express leasing authorities separate from lending authorities, and in no case does the Act expressly restrict the geographic location of lease customers.

The Farm Credit Administration (FCA) and the Farm Credit banks have long recognized the distinct nature of loans and leases in connection with the creation of the Leasing Corporation. Section 4.25 of the Act, which authorizes the establishment of service corporations, provides that a service corporation cannot "extend credit." Our interpretation is that this provision does not apply to leases. Thus, the chartering of the Leasing Corporation was authorized because leases are not extensions of credit.

The second FCB commented that "FCA has * * correctly * * * analyzed the statutory basis for leasing authorities as being independent of that for lending authorities," but indicates concern that "the operational impact of out-of-territory leasing activity would be comparable to the impact of out-of-territory lending." For more than 10 years, the Leasing Corporation has had authority to compete nationwide with all other FCS lessors for all types of leasing business. Section 616.6200 establishes that other FCS lessors have the ability to compete nationwide with the Leasing Corporation on a level playing field.

II. Summary of Significant Provisions of Final Rule

A. Purchase and Sale of Interests in Leases

The final regulation authorizes a System institution to purchase from any lessor any interest (including a participation interest) in a lease for equipment or facilities used in the operations of eligible borrowers. Specifically, the final regulation:

(1) Eliminates distinctions concerning the authority to purchase "lease interests" and "lease participation interests." The definition of "lease" limits the types of leases in which System institutions can buy an interest, that is, leases of equipment or facilities used in the operations of eligible borrowers;

(2) Eliminates cross-title restrictions on the purchase of lease interests to provide more flexibility because there is no statutory restriction; and

(3) Eliminates the retention requirement concerning the purchase of lease interests from outside the System. Requiring the servicer to have an ownership interest is not necessary to manage risk and is not required by law.

The following two provisions are parallel to provisions that apply to loans: (1) Permit lease transactions through agents on the same basis that is permitted for loans; and (2) provide for the purchase of participations in leases made to similar entities on generally the same basis as the purchase of participations in similar entity loans.

B. Lending and Leasing Limit

The final rule takes a consistent approach to limiting concentration of risk in individual System institutions. Limits on the financing (whether in the form of loans or leases) a System institution can provide to any one

customer protect against unnecessarily large risks to an institution's capital. Therefore, all loans and leases to a single customer will be measured against an institution's lending and leasing limit. The leasing limit for the Leasing Corporation under the final rule will limit its risk exposure in a manner similar to the lending and leasing limit that will apply to other System institutions.

- The definition of "borrower" includes any customer to whom an institution has made a lease or a commitment to make a lease.
- The definition of "loan" includes all types of leases (operating, financing, and lease interests).
- The rule prohibits a System institution from making a lease or a loan if the consolidated amount of all loans and leases to a single borrower exceeds 25 percent of the institution's lending and leasing limit base (except for loans made under title III of the Act, which vary between 10 percent and 50 percent depending on the type of loan and associated risk).
- The rule prohibits the Leasing Corporation from making leases to a single lessee or any related entities that exceed 25 percent of the Leasing Corporation's lending and leasing limit base.
- The rule adds the outstanding lease balances to the items included in the computation of obligations.
- All leases, except those permitted under § 614.4361, must comply with the leasing and lending limit at all times.

C. Out-of-Territory Leasing

The final rule provides System institutions with more flexibility to make leases outside their chartered territory. A System lessor is not required to satisfy any notice or concurrence requirements in order to serve lessees beyond the lessor's territory.

D. Leasing Policies, Procedures, and Underwriting Standards

The final regulation provides only a basic framework for leasing policies, procedures, and underwriting standards. From a safety and soundness perspective, System institutions engaged in leasing need to have adequate policies and procedures that address both loan and lease underwriting to ensure prudent management of both activities. From a payment risk perspective, we require institutions engaged in leasing to comply with the minimum loan underwriting standards in § 614.4150 regarding the minimum amount of financial information required of the applicant since the risks are very similar for loans and leases. The loan underwriting regulations require written policies and procedures to address underwriting standards such as the minimum supporting credit and financial information required, credit analysis procedures, and repayment capacity of the applicant. The complexity and depth of the policies and underwriting standards should be consistent with the current or planned leasing activities and the institution's risk-bearing ability.

E. Documentation

We require each institution to document that the leased equipment or facility is authorized to be leased under its leasing authorities. Equipment ordinarily is considered to be movable personal property. Facilities include property that is attached, often permanently, to real estate. Certain agricultural property may have attributes of both. We do not provide a specific regulatory definition of equipment and facility. We expect each System institution involved in leasing to have the necessary expertise to make such a determination, and we will review such determinations during the course of our examination process.

F. Investment in Leased Assets

Section 616.6500 authorizes an institution to buy property to lease, if buying such property is consistent with the type of leasing activity being conducted or planned in the future. The purpose of this provision is to prohibit System institutions from speculating in the acquisition of property or facilities.

G. Stock Purchase Requirements

We read the Act to impose a stock purchase requirement in connection with some leases, but not others. Lessees who lease equipment from PCAs, ACAs, BCs, or ACBs, under titles II or III of the Act, must be stockholders. Because cooperatives operate on a one-person, one-vote basis, the number of shares of stock does not affect membership rights. Therefore, the purchase of a single share of stock is sufficient to satisfy the stockholder requirement. Institutions may also satisfy the stock requirement by counting outstanding shares stockholders already own. An institution may also issue one participation certificate to satisfy the stock purchase requirement if authorized by the institution's bylaws. The stock requirement does not apply to the Leasing Corporation because its stockholders are System banks, rather than its lease customers. The disclosure requirements for equities issued as a condition to obtain a lease would be the same as disclosure requirements for equities issued as a condition to obtain a loan as required under § 615.5250(a) and (b).

H. Disclosure Requirements

The final regulation contains two disclosure requirements designed to protect an applicant's interest. The first requires that lease applicants be provided a copy of all lease documents signed by the lessee within a reasonable time following lease closing. The second requires a System institution to render its decision on the lease application in as expeditious a manner as is practical and provide prompt written notice of its decision to the applicant.

I. Portfolio Limitations

We have concluded that the Act does not impose portfolio limitations on leases to processing and marketing operations. In the absence of a statutory requirement or a safety and soundness concern, we do not believe such a limitation on leasing activity is necessary.

III. Conforming Changes

The existing leasing regulations in §§ 618.8050 and 618.8060 will be deleted upon the effective date of the final rule. The final rule makes conforming technical changes to §§ 614.4710 and 621.7. The final rule also makes a technical change in § 614.4351 and § 618.8440 to correct erroneous citations. We also clarify in § 616.6300 that although a board of directors sets policy, it must direct management to develop procedures that reflect lease practices that control risk.

List of Subjects

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 616

Agriculture, Banks, banking, leasing.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 621

Accounting, Agriculture, Banks, banking, Penalties, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 614, 618 and 621 are amended and part 616 is added to

chapter VI, title 12 of the Code of Federal Regulations to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart E—Loan Terms and Conditions

2. Section 614.4232 is amended by removing the word "voting" from the introductory text, and revising paragraph (c) to read as follows:

§ 614.4232 Loans to domestic lessors.

* * * * *

(c) The lessee must hold at least one share of stock or one participation certificate; and

* * * * *

Subpart H—Loan Purchases and Sales

§ 614.4325 [Amended]

3. Section 614.4325 is amended by removing the word "leases," from paragraph (a)(3).

4. The heading of subpart J is revised to read as follows:

Subpart J—Lending and Leasing Limits

5. Section 614.4350 is amended by revising paragraphs (a) and (c) to read as follows:

§ 614.4350 Definitions.

* * * * *

(a) *Borrower* means an individual, partnership, joint venture, trust, corporation, or other business entity to which an institution has made a loan or a commitment to make a loan either directly or indirectly. Excluded are a Farm Credit System association or other financing institution that comply with the criteria in section 1.7(b) of the Act and the regulations in subpart P of this part. For the purposes of this subpart, the term "borrower" includes any customer to whom an institution has made a lease or a commitment to make a lease.

* * * * *

(c) *Loan* means any extension of, or commitment to extend, credit authorized under the Act whether it results from direct negotiations between a lender and a borrower or is purchased from or discounted for another lender. This includes participation interests. The term "loan" includes loans and leases outstanding, obligated but undisbursed commitments to lend or lease, contracts of sale, notes receivable, other similar obligations, guarantees, and all types of leases. An institution "makes a loan or lease" when it enters into a commitment to lend or lease, advances new funds, substitutes a different borrower or lessee for a borrower or lessee who is released, or where any other person's liability is added to the outstanding loan, lease or commitment.

* * * * *

§ 614.4351 [Amended]

6. Section 614.4351 is amended by adding the words "and leasing" between the words "lending" and "limit base" each place they appear in the heading and in the entire section; and by removing the reference "§ 615.5201(j)" and adding in its place the reference "§ 615.5201(l) in paragraph (a).

§ 614.4352 [Amended]

7. Section 614.4352 is amended by adding the words "and leasing" between the words "lending" and "limit base" in paragraphs (a) and (b)(1); and by adding the words "and leasing" between the words "lending" and "limits" in paragraph (b)(2).

§ 614.4353 [Amended]

8. Section 614.4353 is amended by adding the words "and leasing" between the words "lending" and "limit base".

§ 614.4354 [Amended]

9. Section 614.4354 is amended by adding the words "and leasing" between the words "lending" and "limit base".

§ 614.4355 [Amended]

10. Section 614.4355 is amended by adding the words "and leasing" between the words "lending" and "limit base" in the introductory paragraph; and by removing the word "lending" in the headings of paragraphs (a) and (b).

§§ 614.4356–614.4360 [Redesignated]

11. Sections 614.4356 through 614.4360 are redesignated as §§ 614.4357 through 614.4361; and a new § 614.4356 is added to read as follows:

§ 614.4356 Farm Credit Leasing Services Corporation.

The Farm Credit Leasing Services Corporation may enter into a lease agreement with a lessee if the consolidated amount of all leases and undisbursed commitments to that lessee or any related entities does not exceed 25 percent of its lending and leasing limit base.

12. Newly designated § 614.4358 is amended by adding the words "and leasing" between the words "lending" and "limit" in the introductory text of paragraphs (a) and (b); by adding the words "and lease balances outstanding" after the word "loans" the first place it appears in paragraph (a)(1); by removing the reference "§ 614.4358" and adding in its place the reference "§ 614.4359" in paragraph (a)(3); by redesignating existing paragraph (b)(5) as paragraph (b)(6); and by adding a new paragraph (b)(5) to read as follows:

§ 614.4358 Computation of obligations.

* * * * *

(b) * * *

(5) Interests in leases sold when the sale agreement provides that:

(i) The interest sold must be:

(A) An undivided interest in all the lease payments or the residual value of all the leased property; or

(B) A fractional undivided interest in the total lease transaction;

(ii) The interest must be sold without recourse; and

(iii) Sharing of all lease payments must be on a pro rata basis according to the percentage interest in the lease payments.

* * * * *

§ 614.4359 [Amended]

13. Newly designated § 614.4359 is amended by adding the words "and leasing" between the words "lending" and "limit" in paragraphs (a) introductory text, (b), and (c); by removing the reference "§ 614.4356" and adding in its place, the reference "§ 614.4357" in paragraph (a)(1)(iii); and by removing the reference "§ 614.4358" and adding in its place, the reference "§ 614.4359" in the heading for column two in Table 1.

14. Newly designated § 614.4360 is amended by adding the words "and leasing" between the words "lending" and "limit" in the heading and each place they appear in paragraphs (a), (b), (c), and (d); by removing the reference "§ 614.4360" and adding in its place, the reference "§ 614.4361" in paragraph

(a); by removing the reference "§ 614.4359(b)(3)" and adding in its place, the reference "§ 614.4360(b)(3)" in paragraph (c); by redesignating paragraph (d) as paragraph (e); and by adding a new paragraph (d) to read as follows:

§ 614.4360 Lending and leasing limit violations.

* * * * *

(d) All leases, except those permitted under § 614.4361, reading "effective date of this subpart" in § 614.4361(a) and "effective date of these regulations" in § 614.4361(b) as "effective date of this amendment," must comply with the lending and leasing limit on the date the lease is made, and at all times after that.

* * * * *

§ 614.4361 [Amended]

15. Newly designated § 614.4361 is amended by adding the words "and leasing" between the words "lending" and "limits" in each place they appear in paragraphs (a) and (b); and by removing the reference "§ 614.4359" and adding in its place, the reference "§ 614.4360" in paragraph (b).

Subpart Q—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

§ 614.4710 [Amended]

16. Section 614.4710 is amended by adding the words "and leasing" between the words "lending" and "limits" in the last sentence of the introductory paragraph and in paragraphs (a)(2) and (a)(3).

17. A new part 616 is added to read as follows:

PART 616—LEASING

Sec.

616.6000 Definitions.
616.6100 Purchase and sale of interests in leases.
616.6200 Out-of-territory leasing.
616.6300 Leasing policies, procedures, and underwriting standards.
616.6400 Documentation.
616.6500 Investment in leased assets.
616.6600 Leasing limit.
616.6700 Stock purchase requirements.
616.6800 Disclosure requirements.

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.9, 3.10, 3.20, 3.28, 4.3, 4.3A, 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.3, 7.6, 7.8, 7.12, 7.13 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2130, 2131, 2141, 2149, 2154, 2154a, 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279a–3, 2279b, 2279c–1, 2279f, 2279f–1).

§ 616.600 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Interests in leases* means ownership interests in any aspect of a lease transaction, including, but not limited to, servicing rights.

(b) *Lease* means any contractual obligation to own and lease, or lease with the option to purchase, equipment or facilities used in the operations of persons eligible to borrow under part 613 of this chapter.

(c) *Sale with recourse* means a sale of a lease or an interest in a lease in which the seller:

(1) Retains some risk of loss from the transferred asset for any cause except the seller's breach of usual and customary warranties or representations designed to protect the purchaser against fraud or misrepresentation; or

(2) Has an obligation to make payments to any party resulting from:

(i) Default on the lease by the lessee or guarantor or any other deficiencies in the lessee's performance;

(ii) Changes in the market value of the assets after transfer;

(iii) Any contractual relationship between the seller and purchaser incident to the transfer that, by its terms, could continue even after final payment, default, or other termination of the assets transferred; or

(iv) Any other cause, except that the retention of servicing rights alone shall not constitute recourse.

§ 616.6100 Purchase and sale of interests in leases.

(a) *Authority to buy interests in leases.* A Farm Credit System institution may buy leases and interests in leases.

(b) *Policies.* Each Farm Credit System institution that sells or buys interests in leases must do so only under a policy adopted by its board of directors that addresses the following:

(1) The types of leases in which the institution may buy or sell an interest and the types of interests which may be bought or sold;

(2) The underwriting standards for the purchase of interests in leases;

(3) Such limits on the aggregate lease payments and residual amount of interests in leases that the institution may buy from a single institution as are necessary to diversify risk, and such limits on the aggregate amounts the institution may buy from all institutions as are necessary to assure that service to the territory is not impeded;

(4) Identification and reporting of leases in which interests are sold or bought;

(5) Requirements for securing from the selling lessor in a timely manner adequate financial and other information about the lessee needed to make an independent judgment; and

(6) Any limits or conditions to which sales or purchases are subject that the board considers appropriate, including arbitration.

(c) *Purchase and sale agreements.* Each agreement to buy or sell an interest in a lease must, at a minimum:

(1) Identify the particular lease(s) to be covered by the agreement;

(2) Provide for the transfer of lessee information on a timely and continuing basis;

(3) Identify the nature of the interest(s) sold or bought;

(4) Specify the rights and obligations of the parties and the terms and conditions of the sale;

(5) Contain any terms necessary for the appropriate administration of the lease, including lease servicing and monitoring of the servicer and authorization and conditions for action in the event of lessee distress or default;

(6) Provide for a method of resolution of disagreements arising under the agreement;

(7) Specify whether the contract is assignable by either party; and

(8) In the case of lease transactions through agents, comply with § 614.4325(h) of this chapter, reading the term "lease" or "leases" in place of the term "loan" or "loans," as applicable.

(d) *Independent judgment.* Each institution that buys an interest in a lease must make a judgment on the payment ability of the lessee that is independent of the originating or lead lessor and any intermediary seller or broker. This must occur before the purchase of the interest and before any servicing action that alters the terms of the original agreement. The institution must not delegate such judgment to any person(s) not employed by the institution. A Farm Credit System institution that buys a lease or any interest in a lease may use information, such as appraisals or inspections, provided by the originating or lead lessor, or any intermediary seller or broker; however, the buying Farm Credit System institution must independently evaluate such information when exercising its judgment. The independent judgment must be documented by a payment analysis that considers factors set forth in § 616.6300. The payment analysis must consider such financial and other lessee information as would be required by a prudent lessor and must include an evaluation of the capacity and reliability of the servicer. Boards of directors of jointly managed institutions must adopt procedures to ensure the interests of their respective shareholders are protected in participation between such institutions.

(e) *Sales with recourse.* When a lease or interest in a lease is sold with recourse:

(1) For the purpose of determining the lending and leasing limit in subpart J of part 614 of this chapter, the lease must be considered, to the extent of the recourse or guaranty, a lease by the buyer to the seller, and in addition, the seller must aggregate the lease with other obligations of the lessee; and

(2) The lease subject to the recourse agreement must be considered an asset sold with recourse for the purpose of computing capital ratios.

(f) *Similar entity lease transactions.* The provisions of § 613.3300 of this chapter that apply to interests in loans made to similar entities apply to interests in leases made to similar entities. In applying these provisions, the term "loan" shall be read to include the term "lease" and the term "principal amount" shall be read to include the term "lease amount."

§ 616.6200 Out-of-territory leasing.

A System institution may make leases outside its chartered territory.

§ 616.6300 Leasing policies, procedures, and underwriting standards.

The board of each institution engaged in lease underwriting must adopt a written policy (or policies). Management, at the direction of the board, must develop procedures that reflect lease practices that control risk and comply with all applicable laws and regulations. Any leasing activity must comply with the lending policies and loan underwriting requirements in § 614.4150 of this chapter. An institution engaged in the making, buying, or syndicating of leases also must adopt written policies and procedures that address the additional risks associated with leasing. Written policies and procedures must address the following, if applicable:

(a) Appropriateness of the lease amount, purpose, and terms and conditions, including the residual value established at the inception of the lease;

(b) Process for estimating the leased asset's market value during the lease term;

(c) Types of equipment and facilities the institution will lease;

(d) Remarketing of leased property and associated risks;

(e) Property tax and sales tax reporting;

(f) Title and ownership of leased assets;

(g) Title and licensing for motor vehicles;

(h) Liability associated with ownership, including any environmental hazards or risks;

(i) Insurance requirements for both the lessor and lessee;

(j) Classification of leases in accordance with generally accepted accounting principles; and

(k) Tax treatment of lease transactions and associated risks.

§ 616.6400 Documentation.

Each institution must document that any asset it leases is within its statutory authority.

§ 616.6500 Investment in leased assets.

An institution may acquire property to be leased that is consistent with current or planned leasing programs.

§ 616.6600 Leasing limit.

All leases made by Farm Credit System institutions shall be subject to the lending and leasing limit in subpart J of part 614 of this chapter.

§ 616.6700 Stock purchase requirements.

(a) Each System institution, except the Farm Credit Leasing Services Corporation, making an equipment lease under titles II or III of the Act must require the lessee to buy or own at least one share of stock or one participation certificate in the institution making the lease, in accordance with its bylaws.

(b) The disclosure requirements of § 615.5250(a) and (b) of this chapter apply to stock (or participation certificates) bought as a condition for obtaining a lease.

§ 616.6800 Disclosure requirements.

(a) Each System institution must give to each lessee a copy of all lease documents signed by the lessee within a reasonable time following lease closing.

(b) Each System institution must make its decision on a lease application as soon as possible and provide prompt written notice of its decision to the applicant.

PART 618—GENERAL PROVISIONS

18. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart C—[Removed and Reserved]

19. Subpart C, consisting of §§ 618.8050 and 618.8060, is removed and reserved.

Subpart J—Internal Controls

§ 618.8440 [Amended]

20. Section 618.8440 is amended by removing the reference "or (d)" in paragraph (b)(6).

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

21. The authority citation for part 621 continues to read as follows:

Authority: Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11).

Subpart C—Loan Performance and Valuation Assessment

§ 621.7 [Amended]

22. Section 621.7 is amended by removing the reference "§ 614.4358(a)(2)" and adding in its place, the reference "§ 614.4359(a)(2)" in paragraph (a)(2)(iii).

Dated: June 18, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–16149 Filed 6–25–99; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–147–AD; Amendment 39–11208; AD 99–13–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes; Model MD–88 Airplanes; and Model MD–90 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes; Model MD–88 airplanes; and Model MD–90 airplanes, that requires a one-time inspection of the forward attach pins of the outboard flight spoiler actuators to determine whether the pins are of correct length, and follow-on corrective actions. This amendment is prompted by a report that forward attach pins of

incorrect length were found to be installed in the flight spoiler actuators on several in-service and in-production airplanes. The actions specified by this AD are intended to prevent failure of the piston of the flight spoiler actuator and consequent puncturing of the aft spar web, which could result in fuel leakage and reduced structural integrity of the wings.

DATES: Effective August 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 2, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes; Model MD–88 airplanes; and Model MD–90 airplanes was published in the **Federal Register** on July 13, 1998 (63 FR 37508). That action proposed to require a one-time inspection of the forward attach pins of the outboard flight spoiler actuators to determine whether the pins are of correct length, and follow-on corrective actions.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed Rule

One commenter supports the proposed rule.

Requests To Revise or Delete Paragraph (c) of the Proposed AD

One commenter requests that the FAA revise paragraph (c) of the proposed AD to read, "As of the effective date of this AD, no person shall install a forward attach pin of the flight spoiler actuator, P/N 4935329–1 or 4935329–501 to be used on piston P/N 4913415–505 or P/N 4913415–507, on any airplane." The commenter states, as paragraph (c) of the proposed AD is currently worded, it may create confusion that a forward attach pin, P/N 4935329–1, must be installed on actuators with a piston, P/N 4913415–501. Actuators with a piston, P/N 4913415–501, are eligible for installation as long as the aircraft has been modified in accordance with "S/B 27–300 Option #1." The commenter also states that, due to the stack up of tolerances, the use of a forward attach pin, P/N 4935329–503, on a piston, P/N 4913415–501, could eliminate the anti-rotation attribute of the pin, and consequently, could cause the pin to bind in the bushings. Such binding would translate to the rotation of the bushings in the lugs and cause scoring and wear of the piston lugs, which would create stress risers that could greatly reduce the strength of the piston lugs.

One commenter requests that the FAA revise paragraph (c) of the proposed AD to take into account that the –1 pin may still be required on the aircraft. The commenter notes that P/N 5913900–5523 actuators are still acceptable for use in the inboard positions, and that all outboard positions may not have been reworked in accordance with AD 97–02–08, amendment 39–9893 (62 FR 3985, January 28, 1997), by the time this new AD is released. The proper pin for use with the P/N 5913900–5523 actuators is the P/N 4935329–1 pin.

One commenter requests that paragraph (c) of the proposed AD be revised to include a note that reads, "NOTE: The –1 pin is still used on other than 4913415–505 and 4913415–507 piston assemblies." The commenter provides no justification for its request.

One commenter requests that the FAA delete paragraph (c) of the proposed AD. The commenter states that the P/N 4913415–501 piston is a legal assembly in accordance with AD 97–02–08 R1, amendment 39–9928 (62 FR 6708, February 13, 1997), provided that aft spar web protective doublers are installed in accordance with McDonnell Douglas Service Bulletin DC9–27–355, dated February 24, 1998 (which is referenced in this AD as an appropriate source of service information for accomplishment of the requirements of this AD).

One commenter states that the forward attach pins identified in paragraph (c) of the proposed AD may be used in flight spoilers other than those installed in the outboard position. The commenter points out that, if only the outboard positions are inspected in accordance with the proposed AD, those pins that are on the actuators in the inboard positions having other part number pistons would go uninspected. This would appear to conflict with the requirements of paragraph (c) of the proposed AD.

The FAA acknowledges that clarification of the requirements of paragraph (c) of the proposed AD is necessary. The FAA's intent was that no person shall install a forward attach pin (P/N 4935329–1 or P/N 4935329–501) in piston assembly (P/N 4913415–505 or P/N 4913415–507) of the outboard flight spoiler actuator on any airplane. However, because paragraph (c) of the proposed AD is confusing and because operators will be remarking correct length pins and reidentifying them with P/N 4935329–503, the FAA has determined not to retain paragraph (c) of the proposed AD in the final rule.

In addition, the FAA finds that further clarification is necessary. The FAA's concern is about the outboard flight spoiler actuator because only at the outboard location can a failed piston lug puncture the aft spar web and result in fuel leakage. (The inboard location of the aft spar web is thick enough to prevent such puncturing.) The requirements of both AD 97–02–08 R1 and this final rule are intended to prevent puncturing of the aft spar web and resultant fuel leakage.

Requests To Revise the Applicability Statement

One commenter requests that the applicability statement of the proposed AD be revised to exclude airplanes that have incorporated Option 1 of McDonnell Douglas Service Bulletin DC9–27–300, dated June 16, 1997 (referenced in AD 97–02–08 R1 as the appropriate source of service information for accomplishment of the requirements of that AD), or that a note be included in the final rule that acknowledges Option 1 as an alternative method of compliance. The commenter states that airplanes on which Option 1 of the subject service bulletin has been accomplished, or on which the old piston, P/N 4913415–501 (or prior), has been installed, are safe to fly with the existing spoiler attach pins installed and do not require incorporation of McDonnell Douglas Service Bulletin DC9–27–355.

From this comment, the FAA infers that this commenter is requesting that the applicability statement be revised due to confusion over the requirements of paragraph (c) of the proposed AD. The FAA does not concur. As discussed previously, the FAA has determined not to retain paragraph (c) of the proposed AD in the final rule. The FAA notes that airplanes on which only a piston assembly having P/N 4913415–505 or P/N 4913415–507 of the outboard flight spoiler actuator has been installed are subject to the addressed unsafe condition of this AD. Therefore, the FAA finds that no change to applicability statement of the final rule is necessary.

One commenter states that under the heading "Concurrent Requirements" of McDonnell Douglas Service Bulletin DC9–27–355, the text reads "Aircraft with Service Bulletin DC9–27–300 Option 1 accomplished * * * are not affected." The commenter contends that an operator may accomplish Option 1 of Service Bulletin DC9–27–300, which involves installing doublers. However, the FAA notes that at anytime, piston P/N 4913415–505 or P/N 4913415–507 may have been installed. This creates a situation where Option 1 of Service Bulletin DC9–27–300 has been accomplished but the installed piston and pin are still suspect. The commenter also states that Option II of Service Bulletin DC9–27–300 gives no definitive actuator identification instructions. This creates a situation where any dash number actuator assembly may have a suspect piston and pin installed. The commenter suggests that a possible solution would be to require measurement of the piston lugs to determine which piston has been installed.

From this comment, the FAA infers that the commenter is requesting that the applicability statement of the proposed AD be revised to exclude airplanes equipped with external protective doublers between the outboard flight spoiler actuator and the aft spar webs. The FAA does not concur. Airplanes on which only Option 1 of Service Bulletin DC9–27–300 (which is required by AD 97–02–08 R1) has been accomplished are not subject to the requirements of this AD. As indicated in the applicability statement, this AD applies to certain airplanes on which a piston assembly having P/N 4913415–505 or 4913415–507 is installed. In addition, the FAA finds that a measurement to determine which piston is installed is unnecessary because this AD specifically identifies the dash number of the affected pin assembly.

Requests To Extend Compliance Time

Several commenters request that the compliance time for accomplishing the removal and one-time visual inspection required by paragraph (a) of the proposed AD be extended from the proposed 18 months. One commenter states that the removal of actuators will require extensive maintenance requirements. One commenter states that, as paragraph (c) of the proposed AD is currently worded, it would have to inspect twice as many units as initially proposed. Another commenter states that an 18-month extension would minimize the impact on its operation and aid in scheduling of the inspection/modification.

The FAA does not concur with the commenters' request. As discussed previously under the heading "Requests to Revise or Delete Paragraph (c) of the Proposed AD," operators are required to inspect the forward attach pins of only the outboard flight spoiler actuators, not both the outboard and inboard as suggested by some of the commenters. Because stress corrosion is time dependent rather than landing dependent, the FAA finds that a 5,000-landing compliance time, as suggested by one of the commenters, would be inappropriate. In developing an appropriate compliance time for these actions, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the removal and inspection. In consideration of these factors, the FAA has determined that the 18-month initial compliance time, as proposed, is appropriate. However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Allow Replacement of Pins With Serviceable or Reidentified Pins

One commenter requests that paragraph (a)(2)(i) of the proposed AD be revised to allow the use of serviceable and reidentified forward attach pins as well as new pins. The commenter notes that some operators may elect to send pins to the shop for length inspection and reidentification, which could result in the pins being reinstalled on another aircraft. The FAA concurs. The FAA finds that installing serviceable and reidentified, as well as new, forward attach pins is acceptable for compliance with the requirements of paragraphs (a)(2)(i), (a)(2)(ii)(A), and (a)(2)(ii)(B) of the final rule. Therefore, the final rule has been revised accordingly.

Request To Use a New Tool

One commenter states that it recently has developed a tool which will allow gauging the pins to differentiate between the short pins and the proper length pins. The commenter also states that the use of this tool would eliminate the requirement for removing the pin for measurement. An alternative method of identification also could be used such as the application of paint to the end of the pin, which is accessible. The commenter notes that the use of this tool would greatly minimize the economic impact of the proposed AD.

The FAA does not concur. The commenter did not provide sufficient information to the FAA to justify the use of such a tool. However, paragraph (c) of the final rule does provide affected operators the opportunity to apply for an alternative method of compliance, such as the use of a new tool or application of paint.

Request to Delete Reporting Requirement

One commenter requests that paragraph (b) of the proposed AD be deleted. The commenter states that a reporting requirement places an additional burden on the operator and has no useful purpose since all discrepant parts are being removed from service. The FAA does not concur. When the unsafe condition addressed by an AD action appears to be attributed to a manufacturer's quality control (QC) problem (such as this AD), such a reporting requirement is instrumental in ensuring that the FAA is able to gather as much information as possible as to the extent and nature of the QC problem or QC breakdown, especially in cases where such data may not be available through other established means. This information is necessary to ensure that proper corrective action is implemented.

Request to Revise Reporting Requirement

One commenter requests that the compliance time for the reporting requirement in paragraph (b) of the proposed AD be revised from 10 days to 30 days. The commenter states that such an extension will allow time to receive paperwork from the inspection stations, review and analyze the results, and compile the data. The FAA does not concur. In developing an appropriate compliance time, the FAA considered

the time necessary for submitting a report of the inspection results to the FAA in a timely manner. The FAA has determined that a 10-day compliance time is appropriate. However, paragraph (c) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

Requests to Revise Cost Impact

Two commenters note that the economic impact of the proposed rule has been underestimated. In order to gain access to the flight spoiler forward attach pin to conduct the required inspection, these commenters state that it is necessary to remove the actuator. One commenter estimates that it will take approximately six work hours per aircraft to accomplish the pin inspection (including removal and reinstallation of the forward attach pin), as compared to the five work hours estimated in the proposed rule. The other commenter estimates that it will take 16 work hours.

From these comments, the FAA infers that the commenters are requesting that the Cost Impact section of the proposed AD be revised. The FAA does not concur. The cost impact information, below, describes only the "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions, specified as 5 in the cost impact information, below, was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

Request to Revise Descriptive Language in Discussion Section of Proposed AD

One commenter points out that, in addition to McDonnell Douglas Model DC–9–80 and Model MD–90 airplanes, the incorrect length pins were found on Model DC–9 and MD–88 series airplanes. From this comment, the FAA infers that the commenter is requesting that the FAA revise the wording of the reported incident that appeared in the Discussion Section of the AD.

The same commenter requests that the word "nut" be replaced with "washer" in the sentence in the Discussion Section of the proposed AD that reads "If a forward attach pin is too short, the pin and nut * * *"

The FAA finds that no revision to this final rule in the manner suggested by the commenter is necessary, since the Discussion section of the proposed AD does not reappear in the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,700 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,134 airplanes of U.S. registry will be affected by this AD.

It will take approximately 5 work hours per airplane (including removal and reinstallation of the forward attach pin) to accomplish the required one-time visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection required by this AD on U.S. operators is estimated to be $340,200, or $300 per airplane.

If the forward attach pin is determined to be of correct length, it will take approximately 1 work hour per airplane to accomplish the necessary modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $60 per airplane.

If the forward attach pin is determined to be of incorrect length, it will take approximately 1 work hour per airplane to accomplish the follow-on visual inspection and replacement of the pin, at an average labor rate of $60 per work hour. New pins will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the follow-on visual inspection and replacement is estimated to be $60 per airplane.

Should an operator be required to accomplish the HFEC inspection, it will take approximately 11 work hours per airplane to accomplish (including removal and reinstallation of the flight spoiler actuator), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the HFEC inspection is estimated to be $660 per airplane.

Should an operator be required to accomplish the replacement of the piston assembly of the flight spoiler actuator, it will take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,590 per airplane. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $2,890 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–13 McDonnell Douglas: Amendment 39–11208. Docket 98–NM–147–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes, as listed in McDonnell Douglas Service Bulletin DC9–27–355, dated February 24, 1998; and Model MD–90 airplanes, as listed in McDonnell Douglas Service Bulletin MD90–27–024, dated February 24, 1998; on which a piston assembly of the flight spoiler actuator having part number (P/N) 4913415–505 or 4913415–507 is installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the piston of the flight spoiler actuator and consequent puncturing of the aft spar web, which could result in fuel leakage and reduced structural integrity of the wings, accomplish the following:

(a) Within 18 months after the effective date of this AD, remove the forward attach pin of the outboard flight spoiler actuator of the left and right wings of the airplane, and perform a one-time visual inspection of the pin to determine whether it is of correct length, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–27–355 (for Model DC–9–10, –20, –30, –40, –50 series airplanes; Model C–9 (military) series airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) series airplanes; and Model MD–88 airplanes), or MD90–27–024 (for Model MD–90 airplanes), both dated February 24, 1998, as applicable.

(1) *Condition 1 (Correct Length).* If the forward attach pin is of correct length, prior to further flight, modify the pin by reidentifying it with P/N 4935329–503, in accordance with the applicable service bulletin.

(2) *Condition 2 (Incorrect Length).* If the forward attach pin is of incorrect length, prior to further flight, perform a follow-on visual inspection of the piston lugs of the flight spoiler actuator for corrosion at the outer transition radii, or discrepancies of the cadmium plating of the lugs, in accordance with the applicable service bulletin.

(i) If no corrosion or discrepancy of the cadmium plating of the lugs is detected, prior to further flight, install a forward attach pin, P/N 4935329–503, that is new, serviceable, or reidentified in accordance with paragraph (a)(1) of this AD, and install a new washer and nut; in accordance with the applicable service bulletin.

(ii) If any corrosion or discrepancy of the cadmium plating of the lugs is detected, prior to further flight, remove the actuator and attaching parts, and perform a high frequency eddy current inspection for cracking of the lugs of the actuator, in accordance with the applicable service bulletin.

(A) If no cracking of the lugs is detected, prior to further flight, reinstall the flight spoiler actuator and attaching parts, and install a forward attach pin, P/N 4935329–503, that is new, serviceable, or reidentified in accordance with paragraph (a)(1) of this AD, and install a new washer and nut; in accordance with the applicable service bulletin.

(B) If any cracking of the lugs is detected, prior to further flight, replace the existing piston assembly of the flight spoiler actuator with a new piston assembly having the same P/N; reinstall the flight spoiler actuator and attaching parts; and install a forward attach pin, P/N 4935329–503, that is new, serviceable, or reidentified in accordance with paragraph (a)(1) of this AD, and install a new washer and nut; in accordance with the applicable service bulletin.

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9–27–355, dated February 24, 1998; or McDonnell Douglas Service Bulletin MD90–27–024, dated February 24, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 2, 1999.

Issued in Renton, Washington, on June 17, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR-Doc. 99–15926 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–36–AD; Amendment 39–11206; AD 97–21–01 R1]

RIN 2120–AA64

Airworthiness Directives; MT-Propeller Entwicklung GMBH Model MTV–3–B–C Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to MT-Propeller Entwicklung GMBH Model MTV–3–B–C propellers, that currently requires initial and repetitive dye penetrant or eddy current inspections for cracks in the propeller hub, and rework of the propeller hub or replacement with a new model propeller hub. This amendment allows the repetitive dye penetrant inspections to be performed on-wing as opposed to at approved propeller repair stations, and to mark B–050 propeller hubs that have been modified in accordance with

the current AD or this revision. This amendment is prompted by issuance of a revised service bulletin that describes procedures for on-wing inspections. The actions specified by this AD are intended to detect and prevent propeller hub cracks, which could result in propeller blade separation and possible loss of control of the airplane.

DATES: Effective August 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 27, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet: "propeller@aol.com". This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, 7th Floor, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising airworthiness directive (AD) 97–21–01, Amendment 39–62 FR 52225, October 7, 1997), which is applicable to MT-Propeller Entwicklung GMBH Model MTV–3–B–C propellers, was published in the **Federal Register** on December 1, 1998 (63 FR 66078). The action proposed to allow repetitive dye penetrant inspections to be performed on-wing as opposed to at approved propeller repair stations, and to mark B–050 propeller hubs that have been modified in accordance with the current AD or this revised AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 122 propellers of the affected design in the worldwide fleet. The FAA estimates that 57 propellers installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per propeller to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,100.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-10154 (62 FR 52225, October 7, 1997) and by adding a new airworthiness directive, Amendment 39–11206, to read as follows:

97–21–01 R1 MT-Propeller Entwicklung GMBH: Amendment 39–11206. Docket 97–ANE–36–AD. Revises AD 97–21–01, Amendment 39–10154.

Applicability: MT-Propeller Entwicklung GMBH Model MTV–3–B–C/L250–21 propellers. These propellers are installed on but not limited to Sukhoi 29 aircraft.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller hub cracks, which could result in propeller blade separation and possible loss of control of the airplane, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD, accomplish the following:

(1) Perform an initial dye penetrant or eddy current inspection of propeller hub, part number (P/N) B–050 or A–909–A, in accordance with paragraph (a) of MT-Propeller Entwicklung GMBH Service Bulletin (SB) No. 12C, dated March 4, 1998. The dye penetrant inspection may be done on-wing, but the eddy current inspection must be performed in an FAA-approved propeller repair station.

(2) If the propeller hub is found to be cracked, prior to further flight, remove the existing propeller hub and replace with a serviceable propeller hub.

(3) Rework propeller hubs, P/N B–050, by chamfering the hub bore to 0.08 inch x 45 degrees (for further information, see Detail Y of MT-Propeller Entwicklung GMBH SB No. 12C, dated March 4, 1998). Mark hubs that have been reworked in accordance with AD 97–21–01, or this revised AD, with the letters SB12C using a metal impression stamp (1/8 inch round bottom characters) above the propeller hub serial number and part number, located in the transition area between propeller blades 1 and 2 and the pitch change cylinder.

(b) Thereafter, perform dye penetrant or eddy current inspections, in accordance with paragraph (a) of MT-Propeller Entwicklung GMBH SB No. 12C, dated March 4, 1998. The dye penetrant inspection may be done on-wing, but the eddy current inspection must be performed in an FAA-approved propeller repair station:

(1) For propellers with hubs, P/N B–050, inspect at intervals not to exceed 50 hours TIS, or 6 months since last inspection, whichever occurs first.

(2) For propellers with hubs, P/N A–909–A, inspect at intervals not to exceed 200 hours TIS, or 12 months since last inspection, whichever occurs first.

(3) If the propeller hub is found to be cracked, prior to further flight, remove the existing propeller hub and replace with a serviceable propeller hub.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

(e) The actions required by this AD shall be accomplished in accordance with the following MT-Propeller Entwicklung GMBH SB:

Document No.	Pages	Date
12C ..... Total pages: 3.	1–3	March 4, 1998.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D-94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet: "propeller@aol.com". Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on August 27, 1999.

Issued in Burlington, Massachusetts, on June 16, 1999.

Jorge Fernandez,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–15924 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–62–AD; Amendment 39–11203; AD 99–13–10]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 206L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to BHTC Model 206L–4 helicopters, that requires replacing certain hydraulic relief valves (valves) with airworthy valves. This amendment is prompted by a pilot's report of intermittent hydraulic pressure in the flight controls that was caused by a defective hydraulic relief valve. The actions specified by this AD are intended to prevent intermittent hydraulic pressure to the flight controls and subsequent loss of control of the helicopter.

DATES: Effective August 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 2, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Flora, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5172, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to BHTC Model 206L–4 helicopters was published in the **Federal Register** on March 9, 1999 (64 FR 11401). That action proposed to require replacing certain valves with airworthy valves.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 78 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,380. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $112,320 to replace the valve in the entire fleet.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–13–10 Bell Helicopter Textron Canada: Amendment 39–11203. Docket No. 98–SW–62–AD.

Applicability: Model 206L–4 helicopters, serial numbers 52001 through 52208, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 300 hours time-in-service, unless accomplished previously.

To prevent intermittent hydraulic pressure to the flight controls and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove hydraulic relief valve, part number (P/N) 206–076–036–101, and replace it with an improved hydraulic relief valve, P/N 206–076–036–105, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 206L–98–111, dated July 24, 1998.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) Replacement of the valve shall be done in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 206L–98–111, dated July 24, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 2, 1999.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–34, dated September 10, 1998.

Issued in Fort Worth, Texas, on June 15, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–15902 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–122–AD; Amendment 39–11211; AD 99–14–03]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 98–13–08, which currently requires replacing and re-routing the power return cables on the starter generator and the generator 2 on certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. AD 98–13–08 also requires inserting a temporary revision to the pilot operating handbook (POH), and installing a placard near the standby magnetic compass. This AD retains the actions currently required by AD 98–13–08 on all airplanes affected by that AD, and requires replacing the temporary revision to the POH and the placard near the standby magnetic compass with an improved procedural POH revision and placard. This AD also requires the placard and the temporary revision to the POH for additional manufacturer serial number Models PC–12 and PC–12/45 airplanes; and requires accomplishing improved Standby Magnetic Compass Swing procedures and incorporating a temporary revision to the maintenance manual on all of the affected airplanes. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent directional deviation on the standby magnetic compass caused by modifications made to the airplane since manufacture, which could result in flight-path deviation during critical phases of flight.

DATES: Effective August 17, 1999.

The incorporation by reference of Pilatus PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998, as specified in Pilatus Service Bulletin No. 34–006, dated September 3, 1998, as listed in the regulations is approved by the Director of the Federal Register as of August 17, 1999.

The incorporation by reference of Pilatus PC XII Service Bulletin No. 24–002, Rev. No. 1, dated September 20, 1996, as listed in the regulations was previously approved by the Director of Federal Register as of July 31, 1998 (63 FR 32975, July 17, 1998).

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–122–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 14, 1999 (64 FR 18382). The NPRM proposed to supersede AD 98–13–08, Amendment 39–10596 (63 FR 32975, June 17, 1998). AD 98–13–08 currently requires replacing and re-routing the power return cables on the starter generator and generator 2; inserting a temporary revision to the POH; and installing a placard near the standby magnetic compass, using at least ⅛inch letters, with the following words:

"STANDBY COMPASS FOR CORRECT READING CHECK: WINDSHIELD DE–ICE LH & RH HEAVY & COOLING SYSTEM OFF."

The NPRM proposed to retain the actions currently required by AD 98–13–08 on all airplanes affected by that AD (manufacturer serial numbers 101 through 147), and would require replacing the temporary revision to the POH and the placard near the standby magnetic compass with an improved procedural POH revision and placard. The NPRM also proposed to require the placard and the temporary revision to the POH for additional manufacturer serial number Models PC–12 and PC–12/45 airplanes; and would require accomplishing improved Standby Magnetic Compass Swing procedures and incorporating a temporary revision to the maintenance manual on all of the affected airplanes. The placard will incorporate the following language:

"STANDBY COMPASS FOR CORRECT READING SWITCH: AVIONICS ON NAV & INSTRUMENT LIGHTING AS REQUIRED WINDSHIELD DE–ICE LH & RH OFF AUXILIARY HEATING SYSTEMS OFF AUXILIARY COOLING SYSTEM OFF"

Accomplishment of the proposed replacement and re-routing of the power return cables as specified in the NPRM would be required in accordance with Pilatus PC XII Service Bulletin No. 24–002, Rev. No. 1, dated September 20, 1996.

The proposed Standby Magnetic Compass Swing procedures as specified in the NPRM would be accomplished in accordance with PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998, as specified in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 70 airplanes in the U.S. registry will be affected by this AD.

Approximately 40 of these airplanes are affected by the power return cable replacement and re-routing requirements that are being retained from AD 98–13–08. The FAA estimates that it will take approximately 12 workhours per airplane to accomplish these actions, and that the average labor rate is approximately $60 an hour. Pilatus will provide parts at no cost to the owners/operators of the affected airplanes. Based on these figures, the cost impact of the replacement and re-routing requirements on U.S. operators is $28,800, or $720 per airplane. This AD imposes no additional replacement and re-routing cost impact upon U.S. operators of the affected airplanes over that currently required by AD 98–13–08.

Accomplishing the improved Standby Magnetic Compass Check Swing procedures will be required for approximately 70 airplanes and will take approximately 3 workhours per airplane to accomplish at an average labor rate of $60 per hour. Based on these figures, the cost impact on U.S. operators to accomplish the improved Standby Magnetic Compass Check Swing procedures will be $12,600, or $180 per airplane.

The POH revision and placard requirements will be required for approximately 70 airplanes. Incorporating the POH revisions and fabricating and installing a placard may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact the placard and POH revision requirements impose is the time it will take each owner/operator of the affected airplanes to incorporate this information into the POH and fabricate and install the placard.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–13–08, Amendment 39–10596 (63 FR 32975, June 17, 1998), and by adding a new AD to read as follows:

99–14–03 Pilatus Aircraft LTD.: Amendment 39–11211; Docket No. 98–CE–122–AD, Supersedes AD 98–13–08, Amendment 39–10596.

Applicability: Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers 101 through 230, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent directional deviation on the standby magnetic compass caused by modifications made to the airplane since manufacture, which could result in flight-path deviation during critical phases of flight, accomplish the following:

(a) For airplanes incorporating manufacturer serial numbers 101 through 147, within the next 100 hours time-in-service (TIS) after July 31, 1998 (the effective date of AD 98–13–08), accomplish the following:

(1) Replace the starter generator cable and the generator 2 power return cables with new cables of improved design and re-route these cables, in accordance with the Accomplishment Instructions section in Pilatus PC XII Service Bulletin (SB) No. 24–002, Rev. No. 1, dated September 20, 1996.

(2) Remove the temporary revision titled "Electrical Cables," dated March 7, 1996, from the Pilot Operating Handbook (POH) and insert a temporary revision titled "Electrical Cables" Rev. 1, dated July 12, 1996. Accomplish this action in accordance with the Accomplishment Instructions section in Pilatus PC XII SB No. 24–002, Rev. No. 1, dated September 20, 1996.

(b) For airplanes incorporating manufacturer serial numbers 101 through 147, within the next 50 hours TIS after the effective date of this AD, replace the placard installed near the standby magnetic compass that is required by AD 98–13–08, with a new placard that incorporates the following words (using at least ⅛inch letters):

STANDBY COMPASS FOR CORRECT READING SWITCH: AVIONICS ON NAV & INSTRUMENT LIGHTING AS REQUIRED WINDSHIELD DE–ICE LH & RH OFF AUXILIARY HEATING SYSTEMS OFF AUXILIARY COOLING SYSTEM OFF

This placard is referenced in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

(c) For airplanes incorporating manufacturer serial numbers 148 through 230, within the next 50 hours TIS after the effective date of this AD, install a placard with the following words (using at least 1/8-inch letters) near the standby magnetic compass:

STANDBY COMPASS FOR CORRECT READING SWITCH: AVIONICS ON NAV & INSTRUMENT LIGHTING AS REQUIRED WINDSHIELD DE–ICE LH & RH OFF AUXILIARY HEATING SYSTEMS OFF AUXILIARY COOLING SYSTEM OFF

This placard is referenced in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

(d) For all affected manufacturer serial number airplanes, within the next 50 hours TIS after the effective date of this AD, accomplish the following:

(1) Insert Pilatus Report No. 01973–001, Temporary Revision, Standby Compass, dated July 16, 1998, into the Pilot Operating Handbook (POH).

(2) Accomplish the improved Standby Magnetic Compass Check Swing procedures in accordance with Pilatus PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998, as specified in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

(3) Insert Pilatus PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998, in chapter 34–21–00 facing page 502 of the maintenance manual. Disregard existing pages 502 through 506.

(e) Accomplishment of the POH revision, maintenance manual insertions, and placard fabrication and installation, as required by paragraphs (a)(2), (b), (c), (d)(1), and (d)(3) of this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 98–13–08 are not considered approved as alternative methods of compliance for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(h) Questions or technical information related to the service information referenced in this AD should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6370 Stans, Switzerland; telephone: +41 41 6196 233; facsimile: +41 41 6103 351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) The replacement and modification of the starter generator cable and the generator 2 power return cable and the POH revision replacement required by this AD shall be done in accordance with Pilatus PC XII Service Bulletin No. 24–002, Rev. No. 1, dated September 20, 1996. The Standby Magnetic Compass Check Swing procedures required by this AD shall be done in accordance with Pilatus PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998, as specified in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

(1) The incorporation by reference of Pilatus PC XII Service Bulletin No. 24–002, Rev. No. 1, dated September 20, 1996, was previously approved by the Director of the Federal Register in accordance with 5 U.S.C.. 552(a) and 1CFR part 51, as of July 31, 1998 (63 FR 32975, July 17, 1998).

(2) The incorporation by reference of Pilatus PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998, as specified in Pilatus Service Bulletin No. 34–006, dated September 3, 1998, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(3) Copies may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6370 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swiss AD HB–98–426, dated November 6, 1998.

(j) This amendment supersedes AD 98–13–08, Amendment 39–10596.

(k) This amendment becomes effective on August 17, 1999.

Issued in Kansas City, Missouri, on June 18, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16277 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–120–AD; Amendment 39–11210; AD 99–14–02]

RIN 2120–AA64

Airworthiness Directives; LET Aeronautical Works Model L33 SOLO Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain LET Aeronautical Works (LET) Model L33 SOLO sailplanes. This AD requires replacing the main wing attachment and wing spar root pins and modifying the corresponding area. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by this AD are intended to prevent structural failure of the wing attachments caused by the current design configuration, which could result in the wing separating from the sailplane with consequent loss of control.

DATES: Effective August 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from LET Aeronautical Works, 686 04 Kunovice, Czech Republic; telephone: +420 632 51 11 11; facsimile: +420 632 613 52. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–120–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain LET Model L33 SOLO sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 14, 1999 (64 FR 18384). The NPRM proposed to require replacing the main wing attachment and wing spar root pins and modifying the corresponding area. Accomplishment of the proposed actions as specified in the NPRM would be in accordance with LET Mandatory Bulletin Number L33/008a, dated January 20, 1998.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 20 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 35 work hours per sailplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $900 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $60,000, or $3,000 per sailplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–14–02 Let Aeronautical Works: Amendment 39–11210; Docket No. 98–CE–120–AD.

Applicability: The following serial numbers of Model L33 SOLO sailplanes, certificated in any category:

930101 through 930205; 940206 through 940308;
940310 through 940316; 950318 through 950401;
950405 and 950406; 960402 through 960404; 960407, 960408, and 960410

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent structural failure of the wing attachments caused by the current design configuration, which could result in the wing separating from the sailplane with consequent loss of control, accomplish the following:

(a) Upon accumulating 1,500 hours time-in-service (TIS) on each wing attachment or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, replace the main wing attachment and wing spar root pins and modify the corresponding area. Accomplish these actions in accordance with the Work Procedure section of Mandatory Bulletin Number L33/008a, dated January 20, 1998.

Note 2: When shipping the parts required to accomplish the actions of this AD, LET Aeronautical Works will also send a service technician to train or assist mechanics within the geographic locations of the Model L33 SOLO sailplane owners.

(b) As of the effective date of this AD, no person may install, on any of the affected sailplanes, main wing attachments or wing spar root pins without accomplishing the modification specified in paragraph (a) of this AD, in accordance with the Work Procedure section of Mandatory Bulletin Number L33/008a, dated January 20, 1998.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to LET Mandatory Bulletin Number L33/008a, dated January 20, 1998, should be directed to LET Aeronautical Works, 686 04 Kunovice, Czech Republic; telephone: +420 632 51 11 11; facsimile: +420 632 613 52. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The replacements and modification required by this AD shall be done in

accordance with LET Mandatory Bulletin Number L33/008a, dated January 20, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from LET Aeronautical Works, 686 04 Kunovice, Czech Republic. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Czech Republic AD CCA–T–AD–1–024/98, dated March 23, 1998.

(g) This amendment becomes effective on August 17, 1999.

Issued in Kansas City, Missouri, on June 18, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16279 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–77–AD; Amendment 39–11209; AD 99–14–01]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA–23, PA–30, PA–31, PA–34, PA–39, PA–40, and PA–42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 98–04–27, which currently requires incorporating certain icing information into the FAA-approved airplane flight manual (AFM) of The New Piper Aircraft, Inc. (Piper) PA–23, PA–30, PA–31, PA–34, PA–39, PA–40, and PA–42 series airplanes. The Federal Aviation Administration (FAA) inadvertently omitted Piper Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31P–350 airplanes from the Applicability section of AD 98–04–27. This AD retains the requirement of incorporating the icing information into the AFM for all airplanes affected by AD 98–04–27, and adds Piper Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31P–350 airplanes to the Applicability section of the AD. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective August 17, 1999.

ADDRESSES: This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–77–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper PA–23, PA–30, PA–31, PA–34, PA–39, PA–40, and PA–42 series airplanes was published in the **Federal Register** on September 24, 1998 (63 FR 51045). The NPRM proposed to supersede AD 98–04–27, Amendment 39–10339 (63 FR 7668, February 17, 1998). AD 98–04–27 currently requires revising the Limitations Section of the FAA-approved airplane flight manual (AFM) to specify procedures that would specify the following for PA–23, PA–30, PA–31, PA–34, PA–39, PA–40, and PA–42 series airplanes:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

AD 98–04–27 also required revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

The NPRM proposed to retain from AD 98–04–27 the requirement of incorporating certain icing information into the FAA-approved AFM for the affected airplanes, and would add Piper Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31P–350 airplanes to the Applicability section of the AD.

The NPRM was the result of the FAA inadvertently omitting Piper Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31P–350 airplanes from the Applicability section of AD 98–04–27

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 5,265 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 47.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate the AFM revisions.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish these actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–04–27, Amendment 39-10339 (63 FR 7668, February 17, 1998), and by adding a new AD to read as follows:

99–14–01 The New Piper Aircraft, Inc.: Amendment 39–11209; Docket No. 98–CE–77–AD; Supersedes AD 98–04–27, Amendment 39–10339.

Applicability: Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31P–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, and PA–42–1000 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as follows, unless already accomplished:

1. *For all affected airplanes, except for Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31P–350 airplanes:* Within 30 days after March 13, 1997 (the effective date of AD 98–04–27).

2. *For all Models PA–31P, PA–31T, PA–31T1, PA-31T2, and PA–31P–350 airplanes:* Within the next 30 days after the effective date of this AD.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) At the applicable compliance time presented in the Compliance section of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

- During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing, aft of the protected area.
—Accumulation of ice on the engine nacel es and propeller spinners farther aft than normally observed.

- Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.
- All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [**Note:** This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

- Visible rain at temperatures below 0 degrees Celsius ambient air temperature.
- Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

Procedures for Exiting the Severe Icing Environment

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

- Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.
- Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.
- Do not engage the autopilot.
- If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.
- If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.
- Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.
- If the flaps are extended, do not retract them until the airframe is clear of ice.
- Report these weather conditions to Air Traffic Control.

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in

accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 98–04–27, Amendment 39–10339.

(g) This amendment becomes effective on August 17, 1999.

Issued in Kansas City, Missouri, on June 18, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16278 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 901

Procedures for State Application for Exemption From the Provisions of the Fair Debt Collection Practices Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This document amends the procedures by which a State may request that the Commission exempt certain debt collection practices within that State from the provisions of the Fair Debt Collection Practices Act. The amendments are intended to make the procedures more convenient and less burdensome by permitting supporting documents to be submitted in either paper or electronic form, and by eliminating the requirement that States submit certain information.

EFFECTIVE DATE: June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas E. Kane, Attorney, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, N.W. Washington, D.C. 20580, (202) 326–3224, E-mail [tkane@ftc.gov.].

SUPPLEMENTARY INFORMATION: The Fair Debt Collection Practices Act, 15 U.S.C. 1692 ("FDCPA"), prohibits the use of deceptive, unfair and unfair and abusive practices by third-party debt collectors. Section 817 of the FDCPA, 15 U.S.C. 1692o, requires that the Commission, by regulation, exempt from its requirements "any class of debt collection practices within any State if the Commission determines that under the law of that State, the class of debt collection practices is subject to requirements substantially similar to those imposed by [the FDCPA], and that there is adequate provision for enforcement." Pursuant to that requirement, the Commission promulgated procedures for State applications for exemption from the provisions of the FDCPA ("Procedures"), 44 FR 21005 (Apr. 9, 1979). The Procedures, codified in 16 CFR Part 901, provide that any State may apply to the Commission for a determination that, under the laws of that State: (1) a class of debt collection practices within that State is subject to requirements that are substantially similar to, or provide greater protection for consumers than, those imposed under sections 803 through 812 of the FDCPA; and (2) there is adequate provision for State enforcement of such requirements. Since the adoption of these Procedures, the Commission has received one application for exemption, from the State of Maine, and granted that exemption.[1]

In accordance with the FDCPA and the Commission's plan for Periodic Review of Commission Rules,[2] the Commission published a document in the **Federal Register** on April 22, 1998, requesting public comments regarding the overall costs and benefits and continuing need for the Procedures.[3] The Commission received comments from the Maine Department of Professional and Financial Regulation ("Maine"), the Massachusetts Commission of Banks ("Massachusetts"), and the Credit Union National Association, Inc. ("CUNA").

Comments Received and Amendments Adopted

Maine urged the Commission to maintain the Procedures in their current form. Massachusetts suggested that the Commission streamline the Procedures to make them less burdensome for states applying for an exemption. As noted below, the Commission has adopted several amendments that serve to streamline the Procedures.

CUNA recommended that the Procedures be amended to permit electronic applications over the Internet. The Commission agrees that the Procedures can be made more convenient for States by incorporating the use of current technology in the application process to the extent possible. Accordingly, the Commission is amending § 901.3 to clarify that States may submit documents supporting their applications in either paper or electronic form, thus allowing States to submit supporting documents, for example, by electronic mail over the Internet or on a floppy disk if they prefer that method to mailing paper copies of the documents. The Commission, however, has determined not to amend § 901.2 of the Procedures to permit States to file the exemption application itself electronically because that document must be signed, and the Commission's Rules of Practice require a hand signed signature. *See* 16 CFR 4.2(e) (filing requirements).

The Commission is also amending the Procedures to correct a technical inconsistency and eliminate the need for States to submit information not essential to the Commission in determining, for purposes of an exemption application, that State law and administrative enforcement offers at least as much protection as the FDCPA does. Specifically, § 901.3(d)(2) and (3) require States to submit documents showing that civil liabilities for a failure to comply with their State law are substantially similar to, or more extensive than, civil liabilities provided for under section 813 of the FDCPA. Section 901.4(b)(2) and (3) of the Procedures require that the Commission then compare the State civil liability provisions to the section 813 provisions. At the same time, however, § 901.6(d) provides that no exemption, if any, granted by the Commission shall extend to the civil liability provisions of section 813. This prohibition renders the results of the § 901.3(d)(2)–(3) and section 813 comparison superfluous. Although the Commission received no response to its request for comments on this issue,[4] it has deleted §§ 901.3(d)(2) and (3) and 901.4(b)(2) and (3) because they serve no critical purpose in light of the paragraph 901.6(d) limitation. Moreover, removing these paragraphs will benefit States that apply for FDCPA exemptions as well as the Commission by reducing the number of documents that the states must produce and the number of statutory comparisons that the Commission must conduct.

Consistent with the Administrative Procedure Act, the Commission is adopting these amendments as final without further notice or public comment. *See* 5 U.S.C. 553(A), (B). To the extent these Procedures involve a "collection of information" within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520, that collection has already been approved by the Office of Management and Budget (OMB) and assigned control number 3084–0047. The present amendments do not modify the existing requirements to require any new or additional collection of information. Furthermore, the requirements of the Regulatory Flexibility Act also do not apply to these amendments, which will not have a significant economic impact on a substantial number of small entities within the meaning of that Act. *See* 5 U.S.C. 601, 605(b).

List of Subjects in 16 CFR Part 901

Administrative practice and procedure, Consumer protection, Credit, Intergovernmental relations.

For the reasons set forth in the preamble, Part 901 of Chapter I of Title 16 of the Code of Federal Regulations is amended as follows:

PART 901—PROCEDURES FOR STATE APPLICATION FOR EXEMPTION FROM THE PROVISIONS OF THE ACT

1. The authority citation for part 901 continues to read as follows:

Authority: Pub. L. 95–109, 91 Stat. 874, 15 U.S.C. 1692o; 5 U.S.C. 552.

2. Section 901.3 is amended by revising the introductory text and paragraph (d) to read as follows:

§ 901.3 Supporting documents.

The application shall be accompanied by the following, which may be submitted in paper or electronic form:

* * * * *

(d) A comparison of the provisions of the State law that provides for enforcement with the provisions of section 814 of the Act, together with reasons supporting the claim that such State law provides for administrative enforcement of the State law referred to in paragraph (a) of this section that is substantially similar to, or more extensive than, the enforcement provided under section 814 of the Act.

* * * * *

3. Section 901.4 is amended by revising paragraph (b) to read as follows:

§ 901.4 Criteria for determination.

* * * * *

(b) In determining whether provisions for enforcement of the State law referred to in § 901.3(a) are adequate, consideration will be given to the extent to which, under State law, provision is made for administrative enforcement, including necessary facilities, personnel, and funding.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–15841 Filed 6–25–99; 8:45 am]

BILLING CODE 6750–01–M

[1] Notice of Maine Exemption from the Fair Debt Collection Practices Act, 60 FR 68173 (Dec. 27, 1995).

[2] 46 FR 35118 (July 7, 1981).

[3] 63 FR 19859.

[4] 63 FR at 19860 n.7.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1615

Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is amending the standard for the flammability of children's sleepwear sizes 0 through 6X to correct several references to a paragraph that was redesignated when the Commission amended the standard in 1996. In this document, the Commission is also clarifying the definition of infant garments.

DATES: The corrections become effective on June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0400, extension 1370.

SUPPLEMENTARY INFORMATION: This document corrects several references in the children's sleepwear standard for sizes 0 through 6X that were not changed when the Commission amended the standard in 1996.[1] When the standard was amended to exempt infant garments, paragraph 1615.1(c), which defined "item," was changed to 1615.1(d). Several references to this paragraph elsewhere in the standard were not changed to refer to the redesignated paragraph. This notice corrects those references. This notice also corrects the definition of infant garments in paragraph 1615.1(c). As currently worded, the language seems to apply to children aged 9 months or younger, rather than garments sized 9 months or smaller. Garments sized 9 months are typically worn by children who are actually 5 or 6 months old. This notice clarifies the definition by defining an infant garment as "a garment that is sized nine months or smaller," rather than by defining it as "a garment that is sized for a child nine months of age or younger." Because these are technical corrections rather than substantive rules, there is no need to delay the effective date. 5 U.S.C. 553(d).

List of Subjects in 16 CFR Part 1615

Clothing, Consumer protection, Flammable materials, Infants and children, Labeling, Reporting and recordkeeping requirements, Sleepwear, Textiles, Warranties.

Accordingly, 16 CFR part 1615 is corrected by making the following correcting amendments:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X

1. The authority citation for part 1615 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

§ 1615.1 [Corrected]

2. In § 1615.1(c)(1) remove the words "Is sized for a child nine months of age or younger" and add, in their place "Is sized nine months or smaller".

§ 1615.2 [Corrected]

3. In § 1615.2(a), (b) and (c) remove the words "§ 1615.1(c)" and add, in their place "§ 1615.1(d)".

§ 1615.64 [Corrected]

4. In § 1615.64(a)(1) and (b) remove the words "§ 1615.1(c)" and add, in their place "§ 1615.1(d)".

Dated: June 22, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–16321 Filed 6–25–99; 8:45 am]

BILLING CODE 6355–01–P

[1] Commissioners Mary Gall and Thomas Moore voted to issue this correction notice. Chairman Ann Brown abstained.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Final Rule; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In accordance with the fiscal year 1999 appropriations legislation for the Consumer Product Safety Commission, the Commission is modifying certain amendments to the standards for the flammability of children's sleepwear, sizes 0 through 6X and sizes 7 through 14. As the appropriations legislation directed, the Commission previously proposed to revoke these amendments. Elsewhere in this issue of the **Federal Register**, the Commission is withdrawing that proposed revocation. The Commission is modifying the amendments to require that tight-fitting sleepwear bear a label and hangtag informing consumers why the garments should fit snugly. Also, elsewhere in this issue of the **Federal Register**, the Commission is correcting several references to a paragraph that was redesignated when the standards were amended in 1996. In that notice, the Commission is also clarifying the definition of infant garments.

DATES: The rule will become effective on June 28, 2000 and will apply to garments manufactured or imported after that date. The incorporation by reference of certain publications in the regulations is approved by the Director of the Federal Register as of June 28, 2000.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0400, extension 1370.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission is modifying exemptions from its standards for the flammability of children's sleepwear to require certain labels and hangtags. The Commission administers two flammability standards for children's sleepwear. 16 CFR part 1615 and part 1616. In 1996, the Commission amended these standards to exempt infant garments sized nine months or smaller and tight-fitting garments larger than size nine months. To qualify as tight-fitting, garments must not exceed the maximum dimensions specified for each size. 61 FR 47634, September 9, 1996. Technical amendments issued on January 19, 1999 made slight adjustments to certain measurement locations. 64 FR 2833, January 19, 1999.

On October 21, 1998, Congress enacted fiscal year 1999 appropriations for the Commission. Public Law 105–276. Section 429 of that law required the Commission to propose to revoke the 1996 amendments to the sleepwear standards. The Commission issued the proposed revocation on January 19, 1999. 64 FR 2867, January 19, 1999. The appropriations legislation directed the Commission to issue a final rule revoking, maintaining or modifying the 1996 amendments and any later amendments by July 1, 1999. The legislation further directed the Commission to consider reports by the General Accounting Office ("GAO") and other available information in making its decision on the amendments. Congress stated that the rulemaking conducted with respect to this matter is not subject to (1) the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, (2) the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.*, (3) the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (4) the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (5) the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, or (6) any other statute or Executive order.

After reviewing the GAO reports, comments submitted in response to the proposed revocation and other available information, the Commission has decided to modify the 1996 amendments to require certain labels and hangtags.[1] Elsewhere in this issue of the **Federal Register**, the Commission withdraws the proposed revocation and explains why the exemptions should be retained.[2] Also, elsewhere in this issue of the **Federal Register**, the Commission is correcting several references to a paragraph that was redesignated when the standards were amended in 1996.[3]

B. Existing Information and Education

When the Commission proposed amendments in 1994 to exempt tight-fitting garments from the children's sleepwear flammability standards it proposed that these garments bear a label stating: "Garment is not flame resistant. For child's safety, garment should be tight-fitting. Loose-fitting clothing is more likely to contact an ignition source and burn." 59 FR 53624, October 25, 1994. Some comments to the proposed rule criticized the proposed labeling as too lengthy and too negative. Some comments suggested that an educational effort informing consumers about tight-fitting sleepwear would be more appropriate. 61 FR 47639–40, September 9, 1996. The Commission considered these comments and decided not to require labeling in the final amendments. The preamble to the final rule stated:

> The Commission concludes that a well-designed and broadly disseminated information and education campaign, developed with guidance from the Commission, will be a better means to inform consumers about appropriate selection and use of the tight-fitting garments exempted from the sleepwear standards * * *

Id. 47640. The Commission envisioned a broad information and education ("I&E") campaign that would include point of sale materials such as hangtags, labeling statements on packages, consumer brochures, and store signs as well as a national media campaign. *Id.* Commission staff worked with industry through the American Apparel Manufacturers Association ("AAMA") to develop such materials. There were some initial delays in implementing the I&E campaign due to technical changes needed in the amendments. In part as a result of this, the industry never fully implemented the coordinated, consistent safety message campaign the Commission envisioned. Thus, the type of full-scale voluntary campaign that would reliably inform consumers of the importance of snug fit for these garments has not materialized.

The Commission held a public hearing on April 22, 1999 to obtain additional information about the proposed revocation. Through both the written comments on the proposed revocation and oral testimony the Commission heard criticisms of the existing I&E effort. These commenters stated that when consumers purchase sleepwear they often have little or no information to guide them. According to commenters, informal surveys conducted at various retailers in different parts of the country revealed that some tight-fitting sleepwear did not have hangtags or labels. When tags and labels were present they were sometimes obscured by other tags, stickers or promotional information. Labels might identify a sleepwear garment as 100% cotton, but would not say anything about how the garment should fit or its flammability. Some stores had confusing signs and intermingled sleepwear with non-sleepwear items. (Testimony of Mary Weitzel, Marcia Mabee.)

C. The GAO Report on I&E

The Conference Committee Report on the appropriations bill that required the Commission to propose to revoke the sleepwear amendments directed GAO to assess the information and education ("I&E") campaign that industry and the

[1] Commissioners Mary Gall and Thomas Moore voted to require labeling. Chairman Ann Brown abstained.

[2] Commissioners Mary Gall and Thomas Moore voted to withdraw the proposed revocation. Chairman Ann Brown voted against withdrawal.

[3] Commissioners Mary Gall and Thomas Moore voted to issue the corrections. Chairman Ann Brown abstained.

Commission conducted (H.R. Rep. No. 769, 105th Cong., 2d Sess. 267 (1998)).

GAO visited more than 70 retail stores in 14 metropolitan areas across the country. It found hangtags on 73 percent of tight-fitting sleepwear garments. The most common hangtags were the ones that AAMA designed in conjunction with CPSC. The other types of hangtags varied greatly in design but had similar language. Fewer than 16 percent of stores displayed consumer education brochures or signs about sleepwear safety. About 63 percent of stores mixed other clothing (such as long underwear and loose-fitting shirts) along with sleepwear in retail displays. GAO concluded that consumers generally get some information from point of sale materials, but not to the extent the Commission had envisioned. GAO found that concerns about the initial acceptance of tight-fitting sleepwear and fears that the standards might change made industry reluctant to provide more I&E. (70)

The Commission believes that consumers need information to choose appropriate sleepwear. The GAO report confirms that some information, particularly on hangtags, is available, but more needs to be done. The labeling rule the Commission is adding to the standards should ensure that consumers have the information they need about the importance of fit for tight-fitting sleepwear.

D. The Labeling Rule

Without the comprehensive I&E campaign the Commission envisioned, consumers do not have the information necessary to choose appropriate sleepwear. Because not all members of the industry have presented a consistent, clear message to consumers, the Commission believes that it is necessary to modify the amendments to require standardized information in clearly visible labels and hangtags.

Testimony at the public hearing and comments to the proposed revocation indicate that some sleepwear manufacturers do provide hangtags and/or labels indicating that garments are tight-fitting. Many others do not. If a label is present, text, format, and size of the labels or hangtags vary. Because of these variations, consumers may not recognize that these garments should be worn to fit snugly. Consumers may mistake some of these labels and hangtags as promotional literature, and therefore may not read the safety message. In contrast, mandatory labels and hangtags will present information in a consistent and conspicuous style. (65)

Hangtags on each garment will inform consumers at the point-of-purchase that the garment should be worn snug-fitting because it is not flame-resistant. The hangtag states: "For child's safety, garment should fit snugly. This garment is not flame resistant. Loose-fitting garment is more likely to catch fire." The rule specifies the size, font and text of the hangtag. The tags must have black lettering against a yellow background. Specifying these requirements will ensure that the hangtags are distinctive and will not be confused with other tags on the garment. If garments are sold in packages, the packages must display the information that would otherwise be on the hangtag. (65)

The permanent label will provide a shorter message. Because it will remain with the garment, consumers will be able to distinguish between tight-fitting and flame-resistant sleepwear over the garment's life. The label states: "Wear Snug-fitting, Not Flame Resistant." It must appear on the front of the sizing label immediately below the size designation. The text must contrast with the background color of the label. (65)

E. Effective Date

Although Congress stated that the Flammable Fabrics Act ("FFA") does not apply to this proceeding, the FFA provides some guidance for an appropriate effective date. The FFA requires a twelve-month effective date unless there is good cause for a different date. 15 U.S.C. 1193(b). The Commission concludes that twelve months is appropriate for the labeling rule. This should allow manufacturers time to print and apply new labels. One year will allow them to make these changes in the course of their usual production schedules. (61) To minimize disruption the rule will apply only to garments manufactured or imported after the effective date.

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer protection, Flammable materials, Incorporation by reference, Infants and children,. Labeling, Reporting and recordkeeping requirements, Textiles, Warranties.

Pursuant to Public Law 105–276, and for the reasons given above, the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter D, Parts 1615 and 1616 as follows:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X

1. The authority citation for part 1615 is revised to read as follows:

Authority: Sec. 429, Pub. L. 105–276; Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1615.1 is amended to add new paragraphs (o)(10) and (o)(11) to read as follows:

§ 1615.1 Definitions.

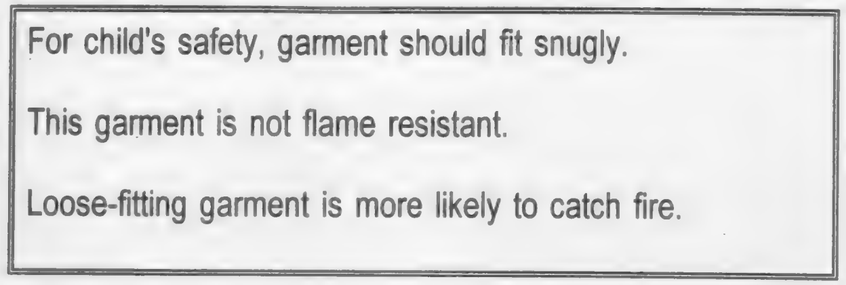
* * * * *

(o) * * *

(10)(i) *Hangtags.* Bears a hangtag as shown following this paragraph stating "For child's safety, garment should fit snugly. This garment is not flame resistant. Loose-fitting garment is more likely to catch fire." The hangtag must measure 1½" × 6¼". The text must be enclosed in a text box that measures 1" × 5¾" and must be in 18 point Arial font. The hangtag must have a yellow background and black lettering. The color yellow must meet the specifications for Standard Safety Yellow (Hue 5.0Y; Value/Chroma 8.0/12) as described in American National Standard ANSI Z535.1–1998, Safety Color Code, p.6, under Munsell Notation.[2] One side of the hangtag must display only this message. The reverse side of the hangtag may display sizing information, but otherwise must be blank. The text must not be obscured by the hole provided for attaching the hangtag to the garment. The hangtag must be prominently displayed on the garment.

BILLING CODE 6355–01–P

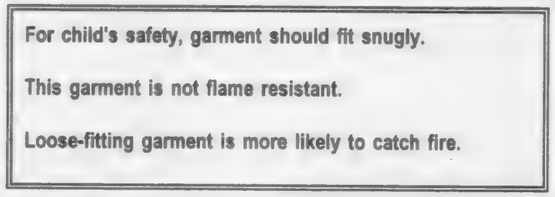
[2] ANSI Z535.1–1998, Standard for Safety Color Code, p.6, published by National Electrical Manufacturers Association is incorporated by reference. Copies of this document are available from the National Electrical Manufacturers Association, 1300 N. 17th Street, Suite 1847, Rossylyn, Virginia 22209. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.



BILLING CODE 6355-C

(ii) *Packages.* If the garments are sold in packages, the package must have a label as shown following this paragraph with the same language that would appear on the hangtag. The label must have a text box that measures ¾″ x 3¾″. The text must be 11 point Arial in black lettering against a yellow background. The packages must be prominently, conspicuously, and legibly labeled with the required message. The package label may be adhesive.

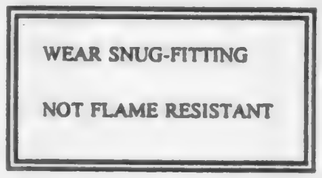
BILLING CODE 6355–01–P



BILLING CODE 6355-C

(11) Bears a label as shown following this paragraph stating "Wear Snug-fitting, Not Flame Resistant." The text must be printed on the front of the sizing label located on the center back of the garment and must be immediately below the size designation. The text must be a minimum of 5 point sans serif font in all capital letters and must be set apart from other label text by a line border. The text must contrast with the background color of the label. The label must not be covered by any other label or tag.

BILLING CODE 6355–01–P



BILLING CODE 6355–01–C

3. In § 1615.4, footnotes 2 through 4 are redesignated as footnotes 3 through 5 respectively.

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14

1. The authority citation for part 1616 is revised to read as follows:

Authority: Sec. 429, Pub. L. 105–276; Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1616.2 is amended to add new paragraphs (m)(10) and (m)(11) to read as follows:

§ 1616.2 Definitions.

* * * * *

(m) * * *

(10)(i) *Hangtags.* Bears a hangtag as shown following this paragraph stating "For child's safety, garment should fit snugly. This garment is not flame resistant. Loose-fitting garment is more likely to catch fire." The hangtag must measure 1½″ × 6¼″. The text must be enclosed in a text box that measures 1″ × 5¾″ and must be in 18 point Arial font. The hangtag must have a yellow background and black lettering. The color yellow must meet the specifications for Standard Safety Yellow (Hue 5.OY; Value/Chroma 8.0/12) as described in American National Standard ANSI Z535.1–1998, Safety Color Code, p.6, under Munsell Notation.[2] One side of the hangtag must display only this message. The reverse side of the hangtag may display sizing information, but otherwise must be blank. The text must not be obscured by the hole provided for attaching the hangtag to the garment. The hangtag must be prominently displayed on the garment.

BILLING CODE 6355–01–P

[2] ANSI Z535.1–1998, Standard for Safety Color Code, p.6, published by National Electrical Manufacturers Association is incorporated by reference. Copies of this document are available from the National Electrical Manufacturers Association, 1300 N. 17th Street, Suite 1847, Rossylyn, Virginia 22209. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

For child's safety, garment should fit snugly.
This garment is not flame resistant.
Loose-fitting garment is more likely to catch fire.

BILLING CODE 6355-01-C

(ii) *Packages.* If the garments are sold in packages, the package must have a label as shown following this paragraph with the same language that would appear on the hangtag. The label must have a text box that measures ¾″ × 3¾″. The text must be 11 point Arial in black lettering against a yellow background. The packages must be prominently, conspicuously, and legibly labeled with the required message. The package label may be adhesive.

BILLING CODE 6355–01–P

For child's safety, garment should fit snugly.
This garment is not flame resistant.
Loose-fitting garment is more likely to catch fire.

BILLING CODE 6355-01-C

(11) Bears a label as shown following this paragraph stating "Wear Snug-fitting, Not Flame Resistant." The text must be printed on the front of the sizing label located on the center back of the garment and must be immediately below the size designation. The text must be a minimum of 5 point sans serif font in all capital letters and must be set apart from other label text by a line border. The text must contrast with the background color of the label. The label must not be covered by any other label or tag.

BILLING CODE 6355–01–P

WEAR SNUG-FITTING
NOT FLAME RESISTANT

BILLING CODE 6355-01-C

3. In § 1616.5, redesignate footnotes 2 through 6 as footnotes 3 through 7 respectively.

Dated: June 22, 1999.

Sadye E. Dunn,

Secretary Consumer Product Safety Commission.

(**Note:** Not to be printed in Code of Federal Regulations)

List of Relevant Documents

(**Note:** Not to be printed in Code of Federal Regulations)

1. Memorandum from Liz Gomilla, Division of Regulatory Management and Eric Stone, Division of Administrative Litigation, to Terance R. Karels, Project Manager, dated March 13, 1992, entitled "Problems Associated with Enforcement of the Children's Sleepwear Standards."

2. Memorandum from Bea Harwood and Terry L Kissinger, EPHA, to Terrance R. Karels, Project Manager, dated April 20, 1992, entitled "Injury Data Related to the Sleepwear Flammability Standards and Information on Surveys of Burn Treatment Centers."

3. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, dated May 6, 1992, entitled "Final Report, Children's Sleepwear Project."

4. Memorandum from Anthony C. Homan, ECPA, to Terrance R. Karels, Project Manager, dated March 25, 1992, entitled "Market Sketch—Children's Sleepwear."

5. Briefing Memorandum from Terrance R. Karels to the Commission, dated November 3, 1992.

6. **Federal Register** notice "Standards for the Flammability of Children's Sleepwear: Sizes 0 Through 6X and 7 Through 14; Advance Notice of Proposed Rulemaking," published by the Consumer Product Safety Commission; January 13, 1993 (58 FR 4111).

7. **Federal Register** notice "Standards for the Flammability of Children's Sleepwear: Sizes 0 Through 6X and 7 Through 14; Stay of Enforcement," published by the Consumer Product Safety Commission; January 13, 1993 (58 FR 4078).

8. Tabular summaries of comments and staff responses to comments to the Advance Notice of Proposed Rulemaking; 50 pages; July 19, 1994.

9. "Statement by The Children's Sleepwear Coalition In Response to the Consumer Product Safety Commission's Advance Notice of Proposed Rulemaking"; March 25, 1993.

10. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, entitled "Technical Rationale Supporting Tight-Fitting Children's Sleepwear Garments"; March 14, 1994.

11. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, entitled "Recent Conversation Between Staff of Consumer and Corporate Affairs Canada and Commission Staff"; July 17, 1992.

12. Memorandum from Dr. Terry L. Kissinger, EPHA, to Terrance R. Karels, ECPA, entitled "Injury Data Related to the Children's Sleepwear Standards"; February 8, 1994.

13. Memorandum from Dr. Terry L. Kissinger, EPHA, to Terrance R. Karels, ECPA, entitled "Results of Review of Available Literature," and attachments; April 1, 1994.

14. Memorandum from George Sweet, EPHF, to Terrance R. Karels, ECPA, entitled "Human Factors Issues Regarding Sleepwear," and attachment; March 8, 1994.

15. Memorandum from George Sweet, EPHF, to Terrance R. Karels, ECPA, entitled "Garments Intended for Infants"; July 8, 1994.

16. "Preliminary Regulatory and Regulatory Flexibility Analyses for the Proposed Amendments to the Children's Flammability Standards," by Anthony C. Homan, Directorate for Economic Analysis; June, 1994.

17. "Market Sketch—Children's Sleepwear," by Anthony C. Homan, Directorate for Economic Analysis; March, 1992.

18. Memorandum from Eva S. Lehman, HSPS, to Terrance R. Karels, ECPA, entitled "Toxicological Evaluation of Fabrics Used in Children's Sleepwear"; June 7, 1994.

19. Memorandum from Patricia Fairall, CERM, to Terrance Karels, ECPA, entitled "Compliance History—Enforcement of Children's Sleepwear"; 6 pages; April 20, 1994.

20. Memorandum from James F. Hoebel, Acting Director, ESME, to Terrance R. Karels, ECPA, entitled "Amendments to Children's Sleepwear Standards"; July 7, 1994.

21. Memorandum from Dr. Terry L. Kissinger, EPHA, to Terrance R. Karels, ECPA, entitled "Proposed Amendment to Children's Sleepwear Standards"; July 15, 1994.

22. **Federal Register** notice "Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14; Proposed amendments" published by the Consumer Product Safety Commission; October 25, 1994 (59 FR 53616).

23. **Federal Register** notice "Continuation of Stay of Enforcement of Standards for the Flammability of Children's Sleepwear, Sizes 0 Through 6X and 7 Through 14" published by the Consumer Product Safety Commission; October 25, 1994 (59 FR 53584).

24. Comments on proposed amendments.

25. Memorandum from Terry L. Kissinger, Ph.D., EHHA, to Terrance R. Karels, ECPA, entitled "Injury Data Related to the Children's Sleepwear Standards"; July 12, 1995.

26. Letter from Carole LaCombe, Director, Product Safety Canada, to Eric C. Peterson, Executive Director, Consumer Product Safety Commission, concerning Canadian standards for the flammability of children's sleepwear; September 13, 1993.

27. Memorandum from Linda Fansler, ES, concerning telephone conversation between staff of the Consumer Product Safety Commission and staff of Consumer and Corporate Affairs Canada on June 18, 1992, concerning the Canadian standards for the flammability of children's sleepwear.

28. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, entitled "Tight Fitting Children's Sleepwear"; July 14, 1995.

29. Memorandum from Terrance R. Karels, Project Manager, to Warren J. Prunella, Associate Executive Director for Economic Analysis, entitled "Sleepwear Market Update"; October 6, 1995.

30. Final Regulatory Analysis for amendments of the children's sleepwear standards by Terrance R. Karels; July 1995.

31. Memorandum from David Schmeltzer, Assistant Executive Director for Compliance, to Terrance Karels, Project Manager, entitled "Sleepwear Briefing Package"; August 24, 1995.

32. Memorandum from Patricia Fairall, Compliance Officer, to Terrance Karels, Project Manager, entitled "Compliance Discussion of the Proposed Amendments to the Children's Sleepwear Standards"; June 26, 1995.

33. Memorandum from Terry L. Kissinger, Ph.D., EHHA, to Terrance R. Karels, ECPA, entitled "Response to Public Comments Received after Publication of the Notice of Proposed Rulemaking"; July 12, 1995.

34. Memorandum from George Sweet, EPHF, to Terrance R. Karels, ECPA, entitled "Human Factors Responses to Sleepwear NPR Comments"; May 5, 1995.

35. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, entitled "Response to Comments"; July 14, 1995.

36. Memorandum from Suad Nakamura, Ph.D., EHPS, to Terrance R. Karels, Project Manager, entitled "Children's Sleepwear—Response to Comments on the Notice of Proposed Rulemaking"; July 19, 1995.

37. Memorandum from Patricia Fairall, Compliance Officer, to Terrance R. Karels, Program Manager, entitled "Response to Comments from Proposed Amendments to the Children's Sleepwear Standards published in the **Federal Register** on October 25, 1994"; June 26, 1995.

38. Memorandum from Terry L. Kissinger, Ph.D., EHHA, to Terrance R. Karels, ECPA, entitled "Response to Letter from John Krasny to James Hoebel"; August 3, 1995.

39. Memorandum from George Sweet, ESHA, to Terrance R. Karels, ECPA, entitled "Issues involved in amendment the sleepwear flammability regulation: Sizing and Labeling"; September 20, 1995.

40. Memorandum from Karen G. Krushaar, OIPA, to Terrance R. Karels, ECPA, entitled "Children's Sleepwear Informational Campaign"; July 11, 1995.

41. Position statement of the National Fire Protection Association and the Learn Not to Burn Foundation in Opposition to the Proposed Amendment of the Children's Sleepwear Standards; July 1995.

42. Letter from John F. Krasny to J. F. Hoebel concerning paper by Vickers, Krasny, and Tovey entitled "Some Apparel Fire Hazard Parameters"; July 17, 1995.

43. Memorandum from Linda Fansler, ESME, concerning telephone conversation with John Krasny on September 20, 1995.

44. Log of public meeting conducted on April 25, 1995, concerning proposed amendments of the children's sleepwear flammability standards.

45. Memorandum from James F. Hoebel, Chief Engineer for Fire Hazards, to Terrance R. Karels, Project Manager, entitled "Children's Sleepwear"; October 10, 1995.

46. Memorandum from Warren J. Prunella, Associate Executive Director for Economic Analysis, to file concerning small business effects of proposed amendments to the children's sleepwear flammability standards; February 17, 1995.

47. Memorandum from Warren J. Prunella, Associate Executive Director for Economic Analysis, to Eric A. Rubel, General Counsel, concerning requirements for Congressional review of final amendments to the children's sleepwear standards; undated.

48. Vote sheet to accompany briefing package on children's sleepwear flammability standards; October 11, 1995.

49. Memorandum from Terrance R. Karels, Project Manager, and Ronald L. Medford, Assistant Executive Director for Hazard Identification and Reduction entitled "Questions Regarding Children's Sleepwear Amendments," with attachments; January 30, 1996.

50. **Federal Register** notice "Proposed Technical Changes; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear; sizes 7 Through 14" published by the Consumer Product Safety Commission, May 21, 1998 (63 FR 27877). Corrected on June 11, 1998 (63 FR 31950).

51. **Federal Register** notice "Proposed Clarification of Statement of Policy; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear; sizes 7 Through 14" published by the Consumer Product Safety Commission, May 21, 1998 (63 FR 27885).

52. **Federal Register** notice "Final Technical Changes; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear; sizes 7 Through 14" published by the Consumer Product Safety Commission, January 19, 1999 (64 FR 2833).

53. **Federal Register** notice "Final Clarification of Statement of Policy; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear; sizes 7 Through 14" published by the Consumer Product Safety Commission, January 19, 1999 (64 FR 2832).

54. **Federal Register** notice "Proposed Revocation of Amendments; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear; sizes 7 Through 14" published by the Consumer Product Safety Commission, January 19, 1999 (64 FR 2867).

55. United States General Accounting Office Report to Congressional Committees and the Consumer Product Safety commission, "Injury Data Insufficient to Assess the Effect of the Changes to the Children's Sleepwear Safety Standard," GAO/HEHS–99–64, April 1999.

56. Memorandum from Martha A. Kosh, OS, to Sadye E. Dunn, Secretary, OS, "Sleepwear Revocation," list of comments on CF99–1, March 17, 1999.

57. Memorandum from Martha A. Kosh, OS, to Sadye E. Dunn, Secretary, OS, "Sleepwear Revocation," list of additional comments on CF99–1, March 29, 1999.

58. U.S. Consumer Product Safety Commission Public Hearing on Proposed Revocation of Amendments to Children's Sleepwear Standards, agenda with presenters, April 22, 1999.

59. Memorandum from Marilyn Borsari, Office of Compliance to Margaret Neily, Directorate for Engineering Sciences, "Enforcement History of Children's Sleepwear Standards," May 12, 1999.

60. Memorandum from Terence R. Karels, EC, to Margaret Neily, ES, "Children's Sleepwear Revocation Project," May 27, 1999.

61. Memorandum from Terence R. Karels, EC, to Margaret Neily, ES, "Children's Sleepwear—Issues Related to Proposed Revocation," May 27, 1999.

62. Memorandum from C. Craig Morris, EHHA, to Margaret Neily, ESME, "Sleepwear-Related Thermal Burns in Children under 15 Years Old," June 1, 1999.

63. Memorandum from C. Craig Morris, EHHA, to Margaret Neily, ESME, "Response to Public Comments Related to the Children's Sleepwear Flammability Requirements for sizes 0 to 9 Months," May 28, 1999.

64. Memorandum from Carolyn Meiers, ES, to Margaret Neily, ES, "Human Factors Issues in Sleepwear," May 27, 1999.

65. Memorandum from Carolyn Meters, ES, to Margaret Neily, ES, "Labeling of Tight-Fitting Sleepwear," May 27, 1999.

66. Memorandum from Linda Fansler, ES, to Margaret Neily, ES, "Review of Foreign Flammability Standards for Children's Sleepwear," May 25, 1999.

67. Memorandum from Linda Fansler, ES, to Margaret Neily, ES, "Response to Comments Received as a Result of Publishing the Children's Sleepwear Revocation Proposal," May 28, 1999.

68. Log of Telephone Call, Linda Fansler, LSE, with Ms. Christine Simpson, Health Canada, Product Safety Bureau, March 31, 1999.

69. Memorandum from Margaret L. Neily, ES, to File, "Analysis of Public Comments on Proposed Revocation of the 1996 and Subsequent Amendments to the Children's Sleepwear Flammability Standards," May 27, 1999.

70. United States General Accounting Office Report to Congressional Committees and the Consumer Product Safety Commission, "Consumer Education Efforts for Revised Children's Sleepwear Safety Standard" June 1999.

71. Memorandum from Carolyn Meiers, ES, to Margaret Neily, ES, "Summary of GAO report, "Consumer Education Efforts for Revised Children's Sleepwear Safety Standard," May 27, 1999.

72. Briefing Memorandum from Ronald L. Medford, Office of Hazard Identification and Reduction and Margaret L. Neily, ES, to the Commission, "Children's Sleepwear Flammability Standards—Analysis of Public Comments on the Proposed Revocation of the September 1996 and Subsequent Amendments," June 3, 1999.

[FR Doc. 99–16320 Filed 6–25–99; 8:45 am]

BILLING CODE 6355–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. IA–1804]

Delegation of Authority to Cancel Registration of Certain Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its rules to delegate its authority to the Director of the Division of Investment Management to cancel the registration of any investment adviser that is not eligible for Commission registration. This amendment updates the staff's delegated authority to reflect recent amendments to the Investment Advisers Act of 1940, and is intended to conserve Commission resources by permitting the staff to cancel, when appropriate, the registration of investment advisers that are not eligible to be registered with the Commission.

EFFECTIVE DATE: The rule will become effective June 28, 1999.

FOR FURTHER INFORMATION CONTACT: J. David Fielder, Senior Counsel, at (202) 942–0530, Task Force on Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The National Securities Market Improvement Act of 1996 ("Improvement Act")[1] amended the Investment Advisers Act of 1940 ("Advisers Act") to reallocate federal and state regulatory responsibility for investment advisers. Under section 203A of the Advisers Act, the Commission has regulatory responsibility for advisers with at least $25 million of assets under management and advisers to a registered investment company.[2] Section 203A prohibits all other advisers from registering with the Commission.[3]

Section 203(h) of the Advisers Act authorizes us to cancel the registration of certain investment advisers.[4] Before enactment of the Improvement Act, we had authority to cancel the registration

[1] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[2] 15 U.S.C. 80b–3a(a).

[3] 15 U.S.C. 80b–3a(a). The Commission has adopted a rule that exempts certain types of advisers from this prohibition. 17 CFR 275.203A–2.

[4] 15 U.S.C. 80b–3(h).

of advisers that were no longer in business, and we delegated this authority to the staff.[5] The Improvement Act amended Section 203(h) and gave us additional authority to cancel the registration of investment advisers that are "prohibited from registering as an investment adviser under section 203A. * * *"[6] Today, we are delegating this authority to the staff as well.

We expect the staff periodically to identify advisers whose registration should be canceled because they are not eligible for Commission registration. The staff may submit matters to the Commission for consideration as it deems appropriate. Before the staff cancels the registration of any adviser, the staff will notify the adviser and provide an opportunity to dispute the basis for the proposed cancellation, and any investment adviser whose registration is canceled by the staff may appeal that decision directly to the Commission.[7]

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act, that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule.[8] Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment 30 days before its effective date is also unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–5 is amended by revising paragraph (e)(2) to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(e) * * *

(2) Pursuant to section 203(h) of the Act (15 U.S.C. 80b–3(h)), to authorize the issuance of orders canceling registration of investment advisers, or applications for registration, if such investment advisers or applicants for registration are no longer in existence, not engaged in business as investment advisers, or are prohibited from registering as investment advisers under Section 203A of the Act (15 U.S.C. 80b–3a).

* * * * *

Dated: June 22, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16316 Filed 6–25–99; 8:45 am]

BILLING CODE 8010–01–P

[5] We have delegated this authority to the Division of Investment Management (17 CFR 200.30–5(e)(2)), the Office of Filings and Information Services (17 CFR 200.30–11(b)(2)(i)), and the Office of Compliance, Inspections and Examinations (17 CFR 200.30–18(h)(1)).

[6] 15 U.S.C. 80b–3(h).

[7] 17 CFR 201.430.

[8] 5 U.S.C. 553(b)(3)(A).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 20

46 CFR Part 5

[USCG–1998–3472]

RIN 2115–AF59

Rules of Practice, Procedure, and Evidence for Administrative Proceedings of the Coast Guard

AGENCY: Coast Guard, DOT.

ACTION: Correction to interim rule.

SUMMARY: This document corrects the interim rule (USCG–1998–3472) as published on May 24, 1999. The rule revises the rules for Practice, Procedure, and Evidence for Administrative Proceedings.

EFFECTIVE DATE: This correction is effective June 28, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility (USCG–1998–3472), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. They are also available over the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call George J. Jordan, Attorney-Advisor, Office of the Chief Administrative Law Judge, telephone 202–267–0006. For questions on viewing, or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking was necessary as part of a Coast Guard effort to improve both (1) the administrative efficiency of Coast Guard adjudicative procedures in general and (2) proceedings against merchant mariners' credentials in particular. It follows an overall Coast Guard initiative to streamline its resources, yet maintain effectiveness in all affected areas.

The Coast Guard maintains two separate sets of procedural rules that govern administrative adjudication. 46 CFR part 5 contains the rules for Suspension and Revocation (S&R). These rules have their basis in criminal procedure. 33 CFR part 20 contains the rules for class II civil penalties. These rules have their basis in the Model Rules of Administrative Procedure and in other modern rules for civil procedures. Both sets of rules, however, contain outdated and inefficient procedures, many of which are not effective in the adjudication of Coast Guard actions.

This rulemaking consolidates both sets of rules in 33 CFR part 20. It removes those procedures that impede the efficient handling of cases. In addition, it revises those rules that are not consistent with relevant legal standards and practices.

Need for Correction

As published, the interim rule contained both a table that may prove to be misleading and a misnumbering. In the table, the acceptable methods of service did not correspond unambiguously to the types of filed documents. The misnumbering employed a roman numeral instead of an Arabic one.

Correction of Publication

Accordingly, correct the interim rule as published on May 24, 1999 (USCG–1998–3472), which is the subject of FR Doc. 99–12750, to read as follows:

§ 20.304 [Corrected]

1. On pages 28064 and 28065, correct TABLE 20.304(D) to read as follows:

* * * * *

TABLE 20.304 (D).—HOW TO SERVE FILED DOCUMENTS

Type of filed document	Acceptable methods of service
(1) Complaint.	(i) Certified mail, return receipt requested.

TABLE 20.304 (D).—HOW TO SERVE FILED DOCUMENTS—Continued

Type of filed document	Acceptable methods of service
(2) Default Motion.	(ii) Personal delivery. (iii) Express-courier service that has receipt capability.
(3) Answer.	(i) Mail. (ii) Personal delivery. (iii) Express-courier service. (iv) Fax.
(4) Any other filed document.	(i) Mail. (ii) Personal delivery. (iii) Express-courier service. (iv) Fax. (v) Other electronic means (at the discretion of the ALJ).

§ 20.304 [Corrected]

2. On page 28065, correct paragraph "(e)(i)" to read "(e)(1)".

* * * * *

Dated: June 22, 1999.

J E Shkor,

Chief Counsel.

[FR Doc. 99–16358 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07 99–036]

RIN 2115–AE47

Special Local Regulations: Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special Local Regulations are being adopted for the Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC. The event will be held from 9 p.m. to 9:30 p.m. Eastern Daylight Time (EDT) on July 4, 1999 in Calibogue Sound, Hilton Head, SC. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective at 8:30 p.m. and terminate at 9:30 p.m. AST on July 4, 1999.

FOR FURTHER INFORMATION CONTACT: LTJG Angela Cooper at (843) 720–7748.

SUPPLEMENTARY INFORMATION:

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of the inherent danger of fireworks that will be exploded during the Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC. In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication, as information concerning the exact date and times of the event were only recently received.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulated policies and procedures of DOT is unnecessary. The regulated area only encompasses a 1000 foot radius around the fireworks barge in approximate position of 32°08′2″N, 080°49′2″W. Further, the regulations will be in effect for only one hour.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. Small entities include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 6705(b) that this rule will not have a significant economic impact on a substantial number of small entities, as the regulations will only be in effect for approximately 1 hour in a limited area of Calibogue Sound.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Add temporary § 100.35T–07–036 to read as follows:

§ 100.35T–07–036 Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC.

(a) *Regulated Area.* A regulated area is established for the waters in Calibogue Sound, Hilton Head, SC, encompassing an area within a 1000 foot radius of the fireworks barge in position 32°08′2″N, 080°49′2″W. All coordinates referenced use Datum: NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Group Charleston, SC.

(c) *Special Local Regulations.* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft are required to remain in a spectator area to be established by the event sponsor, The Club Group, LTD.

(d) *Dates.* These regulations become effective at 8:30 p.m. and terminate at 9:30 p.m. EDT on July 4, 1999.

Dated: June 16, 1999.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 99–16359 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 100

[CGD08–99–042]

RIN 2115–AE46

Special Local Regulations; 4th of July Celebration; Ohio River Mile 469.2—470.5, Cincinnati, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary Final Rule.

SUMMARY: Special local regulations are being adopted for the 4th of July Celebration. This event will be held on July 3, 1999 from 8 p.m. until 11 p.m. at Cincinnati, Ohio along the Ohio River. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations are effective from 8 p.m. until 11 p.m. on July 3, 1999.

ADDRESSES: Unless otherwise indicated, all documents referred to in this regulation are available for review at Marine Safety Office, Louisville, 600 Martin Luther King Jr. Place, Room 360, Louisville, KY 40202–2230.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeff Johnson, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY at (502) 582–5194, ext. 39.

SUPPLEMENTARY INFORMATION:

Drafting information. The drafters of this regulation are Lieutenant Jeff Johnson, Project Officer, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a fireworks display. The event is sponsored by the JACOR Events. The fireworks will be launched from a deck barge in the Ohio River at approximately mile 469.9, mid-channel. Non-participating vessels will be able to transit the area after the river is reopened.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T08–041 is added to read as follows: [1]

§ 100.35–T08–041 Ohio River at Cincinnati, Ohio.

(a) *Regulated area.* A regulated area is established on the Ohio River from mile 469.2 to 470.5.

(b) *Special Local Regulation.* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. "Participants" are those persons and/or vessels identified by the sponsor as taking part in the event. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessel assigned to patrol the event. The Coast Guard "Patrol Commander" is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commanding Officer, Coast Guard Marine Safety Office Louisville.

(1) No vessel shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and/or property and can be reached on VHF–FM Channel 16 by using the call sign "PATCOM".

(c) *Effective date:* This section is effective from 8 p.m. to 11 p.m. July 3, 1999.

Dated: June 14, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 99–16364 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–99–009]

RIN 2115–AE46

Special Local Regulation: Fireworks Displays Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the special local regulation for annual fireworks displays in the First Coast Guard District. The final rule includes additional fireworks displays and arranges the events by month, date and location in an easy-to-read Table. This regulation is necessary to control vessel traffic within the immediate vicinity of the fireworks launch sites and to ensure the safety of life and property during each event.

DATES: This Final Rule becomes effective on June 28, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Office of Search and Rescue, First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Petty Officer William M. Anderson, Office of Search and Rescue, First Coast Guard District, (617) 223–8460.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 15, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Fireworks Displays Within the First Coast Guard District in the **Federal Register** (64 FR 18587). The Coast Guard received no comments on the NPRM rulemaking. A public hearing was not requested and none was held.

Background and Purpose

Each year, organizations in the First District sponsor fireworks displays in the same general location and time period. The table in 33 CFR 100.114 contains information that has been provided to the Coast Guard by the event sponsors. The event table description provides dates and location for events that take place annually. Each event uses a barge or on-shore site as the fireworks launch platform. The special local regulations control vessel movement within a 500-yard radius around the launch platforms to ensure the safety of persons and property. Coast Guard personnel on-scene may allow persons within the 500-yard radius should conditions permit. The Coast Guard may publish notices in the **Federal Register**, if an event sponsor reports a change to the listed event venue or date.

In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. It is imperative this regulation is in effect for events celebrated on the Fourth of July, which has the most display occurrences of the year. Any delay encountered in making this rule effective would be contrary to the public interest, as the rule is needed to ensure the safety of the boating public during these events.

Discussion of Changes

No comments were received in response to the NPRM. Due to an administrative oversight, one event from the preceding Special Local Regulation was not included in the NPRM, but should have been. The Hempstead New York Salute to Veterans Fireworks Display has been added to this final rule as event number 7.16 in the table. Also, the Coast Guard has deleted events, added new events and updated all event descriptions, as reported by the sponsor of the event.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. This final rule is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be minimal by reason of the late evening start times of each event, the short duration of each event, the advance notice provided to the marine community, and the location and small size of each regulated area. A full Regulatory assessment, under paragraph 10e of the regulatory policies and procedures of DOT, has been determined unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in *Regulatory Evaluation*, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect your organization or business.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please call Petty Officer William M. Anderson, telephone 617–223–8460.

The Small Business and Agriculture Regulatory enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Unfunded Mandates

Under section 201 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), the Coast Guard assessed the effects of this rule on State, local, and tribal governments, in the aggregate, and the private sector. The Coast Guard determined that this regulatory action requires no written statement under section 202 of the UMRA (2 U.S.C. 1532) because it will not result in the expenditure of $100,000,000 in any one year by State, local, or tribal governments, in the aggregate, or the private sector.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this rule and concluded that under figure 2–1, paragraph 34(h), COMDTINST 16475.1C, this rule is categorically excluded from further environmental documentation.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this rule and reached the following conclusions.

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This rule will not impose, on any State, Local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Records and recordkeeping requirements, Waterways.

Final Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. Revise § 100.114 to read as follows:

§ 100.114 Fireworks displays within the First Coast Guard District.

(a) *Regulated area.* That area of navigable waters within a 500-year radius of the launch platform for each fireworks display listed in the following table.

FIREWORKS DISPLAY TABLE

May		
New York:		
5.1	First and Second Saturday in May.	Name: Ellis Island Medals of Honor Ceremony. Sponsor: The Forum. Time: 10:00 p.m. to 12:00 a.m. Location: New York Harbor, Upper Bay. A barge approximately 360 yards east of Ellis Island. 40°41′15″/074°02′09″W (NAD 1983).
New York:		
5.2	Friday before Memorial Day	Name: Hempstead Harbor. Sponsor: Town of North Hempstead, NY. Time: 8:30 p.m. to 10:30 p.m. Location: Hempstead Harbor. A barge approximately 335 yards north of Bar Beach. 40°49′54″N/073°39′14″W (NAD 1983).
New York:		
5.3	Memorial Day	Name: South Street Seaport Memorial Day. Sponsor: South Street Seaport Marketplace. Time: 8:00 p.m. to 10:00 p.m. Location: East River Manhattan. A barge approximately 475 yards south of the Brooklyn Bridge 40°42′10″N/074°00′01″W (NAD 1983).
Massachusetts:		
5.4	A night during Memorial Day Weekend.	Name: Hull Memorial Day Festival. Sponsor: Town of Hull. Time: 8:00 p.m. to 10:00 p.m. Location: Barge located 200 yards off Nantasket Beach, Hull, MA.
June		
New York:		
6.1	The last two Tuesdays in June.	Name: Staten Island Summer. Sponsor: Borough of Staten Island. Time: 8:30 p.m. to 10:30 p.m. Location: New York Harbor, Lower Bay—approximately 350 yards east of South Beach, Staten Island. 40°35′11″N/074°03′42W (NAD 1983).
Maine:		
6.2	A night during the last week in June.	Name: Windjammer Days Fireworks. Sponsor: Boothbay Harbor Chamber or Commerce. Time: 9:00 p.m. to 11:00 p.m. Location: Mcfarland Island, Boothbay Harbor, ME. 43°50′48″N/069°37′36″W (NAD 1983).
Connecticut:		

FIREWORKS DISPLAY TABLE—Continued

6.3	A night during the Last week in June.	Name: Barnum Festival Fireworks. Sponsor: The Barnum Foundation. Time: 8:00 p.m. to 10:00 p.m. Location: Seaside Park—Bridgeport Harbor, Bridgeport, CT. 43°11′30″N/072°00′30″W (NAD 1983).
Connecticut:		
6.4	A night during the Last week in June (or First week in July).	Name: American Legion Post 83 Fireworks. Sponsor: Town of Branford American Legion Post. Time: 9:00 p.m. to 10:00 p.m. Location: Branford Point, Branford, CT. 41°21′N/072°05′20″W (NAD 1983).
New York:		
6.5	Last Sunday in June	Name: Heritage of Pride. Sponsor: Heritage of Pride Inc. Time: 9:30 p.m. to 11:30 p.m. Location: Hudson River, Manhattan, NY. A barge approximately 400 years west of Pier 54. 40°44′31″N/074°01′00″W (NAD 1983).
Massachusetts:		
6.6	Thursday prior to July 4th	Name: Boston Harborfeast Fireworks. Sponsor: Harborfest Committee. Time: 9:30 p.m. to 10:30 p.m. Location: Just Off Coast Guard Base, Boston Harbor, MA 42°22′53″N/71°02′56″W (NAD 1983).
July		
New York:		
7.1	Each Tuesday in July	Name: Staten Island Summer. Sponsor: Borough of Staten Island. Time: 8:30 p.m. to 10:30 p.m. Location: New York Harbor, Lower Bay—approximately 350 yards east of South Beach, Staten Island. 40°35′11″N/074°03′42″W (NAD 1983).
Massachusetts:		
7.2	Thursday prior to July 4th	Name: Boston Harborfest Fireworks. Sponsor: Harborfest Committee. Time: 9:30 p.m. to 10:30 p.m. Location: Just Off Coast Guard Base, Boston Harbor, MA 42°22′53″N/71°02′56″W (NAD 1983).
Connecticut:		
7.3	A night during the First week in July (or Last week in June).	Name: American Legion Post 83 Fireworks. Sponsor: Town of Branford American Legion Post. Time: 9:00 p.m. to 10:00 p.m. Location: Branford Point, Branford, CT. 41°21′N/072°05′20″W (NAD 1983).
New York:		
7.4	A night during the First week in July.	Name: Devon Yacht Club Fireworks. Sponsor: Devon Yacht Club, Amagansett, NY Time: 9:30 p.m. to 10:00 p.m. Location: Devon Yacht Club, Amagansett 1983).
New York:		
7.5	July 1st	Name: Wards Island. Sponsor: New York Power Authority. Time: 8:30 p.m. to 10:30 p.m. Location: East River, Wards Island, NY. A land shoot approximately 200 yards northeast of the Triboro Bridge. 40°46′55.5″N/073°55′33″W (NAD 1983).
New York:		
7.6	July 2nd, 3rd and 4th	Name: Playland Park. Sponsor: Playland Park. Time: 9 p.m. to 11 p.m. Location: Western Long Island Sound, a barge anchored in approximate position 40°57′47″N/073°40′06″W (NAD 1983), approximately 400 yards northeast of Rye Beach Breakwater.
Maine:		
7.7	A night during the First two weeks in July.	Name: Schooner Days Fireworks. Sponsor: Town of Rockland Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Rockland Harbor, Rockland, ME.
Connecticut:		
7.8	A night during the First two weeks in July.	Name: Stamford Fireworks. Sponsor: City of Stamford. Time: 8:00 p.m. to 10:00 p.m. Location: Westcott Cove, Stamford, CT. 41°02′01″N/73°30′3″W (NAD 1983).
New York:		

FIREWORKS DISPLAY TABLE—Continued

7.9	A night during the First two weeks in July.	Name: Town of Babylon Fireworks. Sponsor: Town of Babylon, NY. Time: 8:00 p.m. to 10:00 p.m. Location: Nezeras Island, Babylon, NY.
Massachusetts:		
7.10	Friday or Saturday prior to July 4th.	Name: Hingham 4th of July Fireworks. Sponsor: Town of Hingham, MA. Time: 8:00 p.m. to 10:00 p.m. Location: Hingham Harbor, Hingham, MA. 42°15′30″N/70°53′2″W (NAD 1983).
Massachusetts		
7.11	Friday or Saturday prior to July 4th.	Name: Weymouth 4th of July Fireworks. Sponsor: Town of Weymouth Harbormaster. Time: 8:30 p.m. to 10:45 p.m. Location: Weymouth Fore River, Weymouth, MA. 42°15′30″N/70°56′6″W (NAD 1983).
Vermont:		
7.12	July 3rd	Name: Burlington Fireworks Display. Sponsor: City of Burlington, VT. Time: 8:30 p.m. to 11:00 p.m. Location: Lake Champlain, Burlington Bay, VT. A barge beside the Burlington Bay Breakwater. 44°28′30.5″N/073°13′32″W (NAD 1983).
Massachusetts:		
7.13	July 3rd	Name: Gloucester Fireworks. Sponsor: Gloucester Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Gloucester Harbor, Stage Fort Park. Gloucester, MA.
Connecticut:		
7.14	July 3rd	Name: Summer Music Fireworks. Sponsor: Summer Music, Inc. Time: 8:00 p.m. to 10:00 p.m. Location: Off of Harkness Park, Long Island Sound, Waterford, CT. 41°18′00″N/072°06′42″W.
New Jersey:		
7.15	July 3th	Name: Fireworks on the Navesink. Sponsor: Red Bank Fireworks Committee. Time: 8:30 p.m. to 10:30 p.m. Location: Navesink River, a barge approximately 360 yards northwest of Red Bank Reach, NJ. 40°21′20″N/074°04′10″W (NAD 1983).
New York:		
7.16	July 3th	Name: Salute to Veterans. Sponsor: Town of North Hempstead, NY Time: 9:00 p.m. to 10:00 p.m. Location: Hempstead, NY. Point Lookout 40°35′34″N/073°35′24″W (NAD 1983).
Maine:		
7.17	July 4th (Rain date: July 5th).	Name: Bangor Fireworks. Sponsor: Bangor 4th of July Corporation. Time: 9:30 p.m. to 10 p.m. Location: Bangor/Brewer waterfront, ME. 44°47′6″N/068°11′8″W (NAD 1983).
Maine:		
7.18	July 4th	Name: Bar Harbor Fireworks. Sponsor: Bar Harbor Chamber of Commerce. Time: 8:30 p.m. to 9:30 p.m. Location: Bar Habor/Bar Island, ME. 44°23′6″N/068°11′8″W (NAD 1983).
Maine:		
7.19	July 4th	Name: Stewart's 4th of July Fireworks Display. Sponsor: W.P. Stewart. Time: 9:00 p.m. to 9:30 p.m. Location: Somes Sound, Northeast Harbor, ME. 44°18′3″N/068°18′2″W (NAD 1983).
Maine:		
7.20	July 4th	Name: Walsh's Fireworks. Sponsor: Mr. Patrick Walsh. Time: 8:30 p.m. to 9:30 p.m. Location: Union River, Bay, ME. 44°23′5″N/068°27′2″W (NAD 1983).
Massachusetts:		
7.21	July 4th	Name: Town of Barnstable Fireworks. Sponsor: Town of Barnstable. Time: 8:00 p.m. to 10:00 p.m. Location: Dunbar Point/Kalmus Beach, Barnstable, MA. 41°38′30″N/070°16′W (NAD 1983).
Massachusetts:		

FIREWORKS DISPLAY TABLE—Continued

7.22	July 4th	Name: Beverly Farms Fireworks. Sponsor: Farms-Pride 4th of July Committee, Inc. Time: 8:00 p.m. to 10:00 p.m. Location: West Beach, Manchester Bay, Beverly Farms, MA. 42°33′51″N/070°48′29″W (NAD 1983).
Massachusetts:		
7.23	July 4th	Name: Edgartown Fireworks. Sponsor: Edgartown Firefighters Association. Time: 9:00 p.m. to 10:00 p.m. Location: Edgartown Harbor, Edgartown, MA. 41°23′25″N/070°29′45″W (NAD 1983).
Massachusetts:		
7.24	July 4th	Name: Falmouth Fireworks. Sponsor: Falmouth Fireworks Committee Time: 9:00 p.m. to 10:00 p.m. Location: Falmouth Harbor, .25 NM east of buoy #16, Falmouth, MA. 41° – 23′12″N/070°29′45″W (NAD 1983).
Massachusetts:		
7.25	July 4th	Name: Marion Fireworks. Sponsor: Town of Marion Harbormaster. Time: 8:00 p.m. to 10:00 p.m. Location: Silver Shell Beach, Marion, MA. 41°45′30″N/070°45′24″W (NAD 1983).
Massachusetts:		
7.26	July 4th	Name: City of New Bedford Fireworks. Sponsor: City of New Bedford. Time: 9:00 p.m. to 10:30 p.m. Location: New Bedford Harbor, New Bedford, MA. 41°41′N/070°40′W (NAD 1983).
Massachusetts:		
7.27	July 4th	Name: Onset Fireworks. Sponsor: Town of Wareham, MA. Time: 9 p.m. to 10 p.m. Location: Onset Harbor, Onset, MA. 41°38′N/071°55′W (NAD 1983).
Massachusetts:		
7.28	July 4th	Name: Plymouth Fireworks Display. Sponsor: July Four Plymouth Inc. Time: 8:00 p.m. to 10:00 p.m. Location: Plymouth Harbor, Plymouth, MA. 41°57′20″N/070°38′20″W (NAD 1983).
Massachusetts:		
7.29	July 4th	Name: Lewis Bay Fireworks. Sponsor: Town of Yarmouth, MA. Time: 9:30 p.m. to 10:00 p.m. Location: Great Island, Lewis Bay. 41°38′30″N/071°17′06″W (NAD 1983).
Rhode Island:		
7.30	July 4th	Name: Bristol 4th of July Fireworks. Sponsor: Bristol 4th of July Committee. Time: 9:30 p.m. to 10:00 p.m. Location: Bristol Harbor, Bristol, RI. 41°39′54″N/071°20′18″W (NAD 1983).
Rhode Island:		
7.31	July 4th	Name: City of Newport Fireworks. Sponsor: City of Newport Time: 9:15 p.m. to 10:00 p.m Location: 41°28′48″N/071°20′18″W (NAD 1983).
Rhode Island:		
7.32	July 4th	Name: Oyster Harbor Club Fourth of July Festival. Sponsor: Oyster Harbor Club, Inc. Time: 6:00 p.m. to 10:00 p.m. Location: Tim's Cove, North Bay, Osterville, RI. 41°37′30″N/070°23′21″W (NAD 1983).
Rhode Island:		
7.33	July 4th	Name: Slade Farms Fireworks. Sponsor: Slade Farm, Somerset, RI. Time: 9:00 p.m. to 11:00 p.m. Location: 41°43′36″N/071°09′18″W (NAD 1983).
Connecticut:		
7.34	July 4th	Name: Fairfield Aerial Fireworks. Sponsor: Fairfield Park Commission. Time: 8:00 p.m. to 10:00 p.m. Location: Jennings Beach, Long Island Sound, Fairfield, CT. 41°08′22″N/073°14′02″W.
Connecticut:		
7.35	July 4th	Name: Subfest Fireworks. Sponsor: U.S. Naval Submarine Base. Time: 8:00 p.m. to 10:00 p.m. Location: Thames River, Groton, CT.

FIREWORKS DISPLAY TABLE—Continued

Connecticut: 7.36	July 4th	Name: Hartford Riverfest. Sponsor: July 4th Riverfest, Inc. Time: 8:00 p.m. to 10:00 p.m. Location: Connecticut River, Hartford, CT.
Connecticut: 7.37	July 4th	Name: Middletown Fireworks. Sponsor: City of Middletown. Time: 8:00 p.m. to 10:00 p.m. Location: Connecticut River, Middletown Harbor, Middletown, CT. 41°33′79″N/ 073°38′83″W (NAD 1983)
Connecticut: 7.38	July 4th	Name: Norwich American Wharf Fireworks. Sponsor: American Wharf Marina. Time: 8:00 p.m. to 10:00 p.m. Location: Norwich Harbor, Norwich, CT.
Connecticut: 7.39	July 4th	Name: City of Norwalk Fireworks. Sponsor: Norwalk Recreation and Parks Department. Time: 9:15 p.m. to 10:15 p.m. Location: Calf Pastrue Beach, Long Island, Sound, Norwalk, CT. 41°04′50″N/ 073°23′22″W (NAD 1983).
Connecticut: 7.40	July 4th	Name: Old Lyme Fireworks. Sponsor: Mr. James R. Rice. Time: 8:00 p.m. to 10:00 p.m. Location: Sound View Beach, Long Island Sound, Old Lyme, CT.
Connecticut: 7.41	July 4th	Name: Stratford Fireworks. Sponsor: Town of Stratford. Time: 8:00 p.m. to 10:00 p.m. Location: Short Beach, Stratford, CT. 41°09′5″N/073°06′5″W (NAD 1983).
Connecticut: 7.42	July 4th	Name: Westport P.A.L. Fireworks. Sponsor: Westport Police Athletic League. Time: 8:00 p.m. to 10:00 p.m. Location: Compo Beach, Westport, CT. 41°06′6″N/073°20′31″W (NAD 1983).
New York: 7.43	July 4th	Name: Bayville Crescent Club Fireworks. Sponsor: Bayville Crescent Club, Bayville, NY. Time: 8:00 p.m. to 10:00 p.m. Location: Cooper Bluff, Cove Neck, NY.
New York: 7.44	July 4th	Name: Mantauk Independence Day. Sponsor: Montauk Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Montauk Town Beach, Montauk, NY.
New York: 7.45	July 4th	Name: Jones Beach State Park Fireworks. Sponsor: Long Island State Park Adminsitration Headquarters. Time: 9:00 p.m. to 10:15 p.m. Location: Fishing Pier, Jones Beach State Park, Wantagh, NY. 40°35′7″N/ 073°30′6″W (NAD 1983).
New York: 7.46	July 4th	Name: Dolan Family Fireworks. Sponsor: Mr. Charles F. Dolan. Time: 8:00 p.m. to 10:00 p.m. Location: Cove Point, Oyster Bay, NY.
New York: 7.47	July 4th	Name: City of Yonkers. Sponsor: City of Yonkers, NY. Time: 8:30 p.m. to 10:30 p.m. Location: Hudson River, a barge approximately 335 yards northwest of Yonkers Municipal Pier. 40°56′14″N/073°54′28″W (NAD 1983).
Massachusetts 7.48	July 4th	Name: Wellfleet Fireworks. Sponsor: Wellfleet Fireworks Committee. Time: 8:00 p.m. to 11:00 p.m. Location: Indian Neck Jetty, Wellfleet, MA. 41°55′24″N/070°02′06″W (NAD 1983).
Connecticut: 7.49	Weekend following July 4th	Name: Thames River Fireworks. Sponsor: Town of Groton. Time: 8:00 p.m. to 10:00 p.m. Location: Thames River, off Electric Boat, Groton, CT.

FIREWORKS DISPLAY TABLE—Continued

New York: 7.50	A night during the Second or third weekend in July.	Name: Boys Harbor Fireworks Extravaganza. Sponsor: Boys Harbor Inc. Time: 9:00 p.m. to 10 p.m. Location: Three Mile Harbor, East Hampton, NY. 41°15′N/070°11′91″W (NAD 1983).
Maine: 7.51	Third Saturday in July	Name: Belfast Fireworks. Sponsor: Belfast Bay Festival Committee. Time: 8:00 p.m. to 10:00 p.m. Location: Belfast Bay, ME.
August		
New York: 8.1	Each Tuesday in August	Name: Staten Island Summer. Sponsor: Borough of Staten Island. Time: 8:30 p.m. to 10:30 p.m. Location: New York Harbor, Lower Bay—approximately 350 yards east of South Beach, Staten Island. 40°35′11″N/074°03′42″W (NAD 1983)
New York: 8.2	First Tuesday in August	Name: National Night Out Against Crime. Sponsor: National Night Out Against Crime. Time: 8:30 p.m. to 10:30 p.m. Location: Atlantic Ocean, a barge approximately 335 yards off Rockaway Beach at 116th Street. 40°34′29″N/073°50′00″W (NAD 1983).
Connecticut: 8.3	A night during the First week of August.	Name: Summer Music Fireworks. Sponsor: Summer Music Inc. Time: 8:00 p.m. to 10:00 p.m. Location: Niantic River, Harkness Park, Waterford, CT.
Massachusetts: 8.4	A night during the First weekend in August.	Name: Fall River Celebrates America Fireworks. Sponsor: Fall River Chamber of Commerce. Time: 9:15 p.m. to 10:00 p.m. Location: Taunton River, vicinity of buoy #17, Fall River, MA 41°43′4″N/ 071°09′48″W (NAD 1983).
New York: 8.5	First Saturday in August	Name: Peekskill Summerfest. Sponsor: Charles Point Business Association. Time: 8:30 p.m. to 10:30 p.m. Location: Hudson River, Peekskill Bay, a barge approximately 500 yards northeast of Peekskill Bay South Channel Buoy 3 (LLNR) 37955). 41°17′16″N/ 073°56′18″W (NAD 1983).
New York: 8.6	First and second Saturday in August.	Name: City of Rensselaer. Sponsor: City of Rensselaer. Time: 9:00 p.m. to 11:00 p.m. Location: Hudson River, a barge approximately 500 yards south of the Dunn Memorial Bridge (river mile 145.4). 42°38′23″N/073°45′00″W (NAD 1983).
Connecticut: 8.7	A night during the First two weeks in August.	Name: Hartford Riverfront Regatta. Sponsor: Riverfront Recapture Inc. Time: 8:00 p.m. to 10:00 p.m. Location: Connecticut River, Hartford, CT.
Connecticut: 8.8	A night during the Third week in August.	Name: Summer Music Fireworks. Sponsor: Summer Music Inc. Time: 8:00 p.m. to 10:00 p.m. Location: Niantic River, Harkness Park, Waterford, CT.
Massachusetts: 8.9	Last weekend in August	Name: Oaks Bluff Fireworks. Sponsor: Oaks Bluff Fireman's Civic Association. Time: 8:00 p.m. to 10:00 p.m. Location: Oaks Bluff Beach, Oaks Bluff, MA.
Connecticut: 8.10	Last Sunday in August	Name: Norwich Harbor Day Fireworks. Sponsor: Harbor Day Committee. Time: 8:00 p.m. to 10:00 p.m. Location: Norwich Harbor, off American, Wharf Marina, Norwich, CT.
Massachusetts:		

FIREWORKS DISPLAY TABLE—Continued

8.11	A night during Labor day weekend.	Name: Gloucester Fireworks. Sponsor: Gloucester Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Gloucester Harbor, Stage Fort, Gloucester, MA.
Maine:		
8.12	A night during Labor day weekend.	Name: Camden Fireworks Display. Sponsor: Town of Camden Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Camden Harbor, Camden, ME.
September		
Massachusetts:		
9.1	A night during Labor day weekend.	Name: Gloucester Fireworks. Sponsor: Gloucester Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Gloucester Harbor, Stage Fort Park, Gloucester, MA.
Maine:		
9.2	A night during Labor day weekend.	Name: Camden Fireworks Display. Sponsor: Town of Camden Chamber of Commerce. Time: 8:00 p.m. to 10:00 p.m. Location: Camden Harbor, Camden, ME.
New York:		
9.3	Labor Day	Name: South Street Seaport Labor Day. Sponsor: South Street Seaport Marketplace. Time: 8:30 p.m. to 10:30 p.m. Location: East River, Manhattan, a barge approximately 475 yards south of the Brooklyn Bridge. 40°42′10″N/074°00′01″W (NAD 1983).
New York:		
9.4	First Saturday following Labor day.	Name: Grand Fiesta Italiana. Sponsor: Sons of Italy, Port Washington, NY. Time: 8:30 p.m. to 11:00 p.m. Location: Hempstead Harbor, a barge approximately 300 yards north of Bar Beach, Port Washington, Long Island. 40°49′52″N/073°39′10″W (NAD 1983).
Connecticut:		
9.5	A night during the weekend following Labor day.	Name: Taste of Italy. Sponsor: Italian Heritage Committee. Time: 8:00 p.m. to 10:00 p.m. Location: Norwich Harbor, off Norwich Marina, Norwich, CT. 41°31′20″N/073°04′83″W (NAD 1983).
Rhode Island:		
9.6	A night during the First weekend in September.	Name: Newport Salute to Summer. Sponsor: Naval Education and Training Center. Time: 8:30 p.m. to 10:00 p.m. Location: Narragansett Bay, East Passage, off Coasters Harbor Island, New port, RI. 41°25′N/071°20′W (NAD 1983).
Connecticut:		
9.7	First or second Saturday in September.	Name: Norwalk Oyster Festival Fireworks. Sponsor: Norwalk Seaport Association. Time: 8:00 p.m. to 10:00 p.m. Location: Norwalk Harbor, Norwalk, CT.
New York:		
9.8	A night during the last two weekends in September.	Name: Cow Harbor Day Fireworks. Sponsor: Village of Northport Harbor. Time: 8:00 p.m. to 10:00 p.m. Location: Sand Pit, Northport Harbor, Northport, NY.
October		
New York:		
10.1	First Sunday in October	Name: Deepavali Festival. Sponsor: Assocation of Indians in America. Time: 6:45 to 8:45 Location: East River, Manhattan, a barge approximately 200 yards east of Pier 16. 40°42′12.5″N/074°00′02″W (NAD 1983).
Massachusetts:		
10.2	A night during the Second weekend of October.	Name: Yarmouth Seaside Festival Fireworks. Sponsor: Yarmouth Seaside Festival. Time: 8:00 p.m. to 9:00 p.m. Location: Seagull Beach, W. Yarmouth, MA 41°38′06″N/070°13′13″W (NAD 1983).
December		
Massachusetts:		

FIREWORKS DISPLAY TABLE—Continued

12.1	December 31st	Name: First Night Fireworks. Sponsor: First Night Inc. Time: 11:45 p.m. to 12:30 a.m. Location: Center of Boston Inner Harbor, Boston, MA 42°21′42.4″N/071°02′36.5″W (NAD 1983).
Massachusetts:		
12.2	December 31st	Name: First Night Martha's Vineyard. Sponsor: Town of Martha's Vineyard Chamber of Commerce. Time: 10:00 p.m. to 12:30 a.m. Location: Vineyard Haven Harbor, Martha's Vineyard, MA 41°27′6″N/070°35′8″W (NAD 1983).
Massachusetts:		
12.3	December 31st	Name: City of New Bedford First Night. Sponsor: City of New Bedford. Time: 11:45 p.m. to 12:30 a.m. Location: New Bedford Harbor, New Bedford, MA 41°38′.2″N/070°55′0″W (NAD 1983).
Connecticut:		
12.4	December 31st	Name: First night Mystic. Sponsor: Mystic Community Center. Time: 11:45 p.m. to 12:30 a.m. Location: Mystic River, Mystic, CT.
New York:		
12.5	December 31st	Name: South Street Seaport New Year's Eve. Sponsor: South Street Seaport Marketplace. Time: 11:00 p.m. to 1:00 a.m. Location: East River, Manhattan, a barge approximately 475 yards south of the Brooklyn Bridge. 40°42′10″N/074°00′01″W (NAD 1983).
New York:		
12.6	December 31st	Name: First Night New York City Sponsor: Grand Central Partnership. Time: 11:00 p.m. to 1:00 a.m. Location: Hudson River, Manhattan, a barge approximately 450 yards southwest of the entrance to North Cove Yacht Harbor. 40°42′39″N/074°01′19″W (NAD 1983).
Rhode Island:		
12.7	December 31st	Name: Newport Fireworks. Sponsor: Newport Cultural Commission. Time: 11:00 p.m. to 1:00 a.m. Location: 41°28′48″N/071°20′18″W (NAD 1983).

(b) *Special local regulations.*

(1) No person or vessel may enter, transit, or remain within the regulated area during the effective period of regulation unless authorized by the Coast Guard patrol commander.

(2) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(3) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel may include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective dates.* This rule is in effect from one hour before the scheduled start of the event until thirty minutes after the last firework is exploded for each event listed in the Table. For those events listed without a specific time or date, an annual **Federal Register** document will be published indicating event dates and times.

Dated: June 18, 1999.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 99–16360 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–061]

RIN 2115–AA97

Safety Zone: Mashantucket Pequot Fireworks Display, Thames River, Groton, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Mashantucket Pequot Fireworks Display to be held on the Thames River, Groton, CT, on July 10, 1999. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective on July 10, 1999, from 8:55 p.m. until 10:10

p.m. In case of inclement weather, July 11, 1999 is the scheduled rain date for this event.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. The fax number is (203) 468–4445.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after **Federal Register** publication. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Thames River Fireworks Committee, of Groton, CT, is sponsoring a 30 minute fireworks display in the Thames River, Groton, CT. The fireworks display will occur on July 10, 1999, from 9:25 p.m. until 9:55 p.m. The safety zone covers all waters of the Thames River within a 1200 foot radius of the fireworks launching barges which will be located off Groton, CT, in approximate positions; barge one, 41°–21′01.5″N, 072°–05′25″W, barge two, 41°–20′58″N, 072°–05′23″W and barge three, 41°–20′53.5″N, 072°–05′21″W (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of the Thames River and entry into this zone will be restricted for 75 minutes on July 10, 1999. Although this regulation prevents traffic from transiting this section of Thames River, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed under the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LCDR T.J. Walker, telephone (203) 468–4444.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture, and 10 Regional Fairness Boards, were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under Addresses.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec, 311, Pub.L. 105–383.

2. Add temporary § 165.T01–CGD1–061 to read as follows:

§ 165.T01–CGD1–061; Mashantucket Pequot Fireworks Display, Thames River, Groton, CT.

(a) *Location.* The safety zone includes all waters of Thames River within a 1200 foot radius of the launch site located on the Thames River, Groton, CT, in approximate position 41°–21′01.5″N, 072°–05′25″W, 41°–20′58″N, 072°-05′23″W and 41°-20′53.5″N, 072°–05′21″W (NAD 1983).

(b) *Effective date.* This section is effective on July 10, 1999 from 8:55 p.m. until 10:10 p.m. In case of inclement weather, July 11, 1999, is the scheduled rain date for this event.

(c)(1) *Regulations.* The general regulations covering safety zones contained in section 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

P.K. Mitchell,

Captain, U.S. Coast Guard Captain of the Port, Long Island Sound.

[FR Doc. 99–16363 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–081]

RIN 2115–AA97

Safety Zone: Rowayton Fireworks Display, Bayley Beach, Rowayton, CT.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Rowayton Fireworks Display to be held off of Bayley Beach, Rowayton, CT., in Long Island Sound on July 2, 1999. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective on July 2, 1999, from 9 p.m. until 10:30 p.m. In the event of inclement weather, the rain date will be July 9, 1999.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. the fax number is (203) 468–4445.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T. J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after **Federal Register** publication. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Rowayton Civic Association is sponsoring a fireworks display off of Bayley Beach, Rowayton, CT. The fireworks display will occur on July 2, 1999, from 9:00 pm until 10:30 pm. The safety zone covers all waters of Long Island Sound within a 1000 foot radius of the fireworks launching barge which will be located 1000 feet off of Bayley Beach, Rowayton, CT, in approximate position; 41°–03.3′N, 073°–26.8′W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3).of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of Long Island Sound and entry into this zone will be restricted for only 1 hour and 30 minutes on July 2, 1999. Although this regulation prevents traffic from transiting this section of Long Island Sound, the effect of this regulation will not be significant for several reasons; the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses

that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed under the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 USC 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LCDR T.J. Walker, telephone (203) 468–4444.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture, and 10 Regional Fairness Boards, were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under Addresses.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–CGD1–081 to read as follows:

§ 165.T01–CGD1–081 Rowayton Fireworks Display, Bayley Beach, Rowayton, CT.

(a) *Location.* The safety zone includes all waters of Long Island Sound within a 1,000 foot radius of the launch barge located off of Bayley Beach, Rowayton, CT, in approximate position 41°03.3′N, 073°26.8′W (NAD 1983).

(b) *Effective date.* This section is effective on July 2, 1999 from 9:00 p.m. until 10:30 p.m. In case of inclement weather, the rain date will be 9 July, 1999.

(c)(1) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

P.K. Mitchell,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 99–16365 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–074]

RIN 2115–AA97

Safety Zone: Saybrook Summer Pops Concert, Saybrook Point, Connecticut River, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Saybrook Summer Pops Concert fireworks display to be held at Saybrook Point, on the Connecticut River on August 8, 1999. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks dispaly. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation is effective on August 8, 1999, from 9 p.m. until 10:10 p.m.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. The fax number is (203) 468–4445.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after **Federal Register** publication. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Old Saybrook Chamber of Commerce, of Old Saybrook, CT is sponsoring a fireworks display after the Saybrook Summer Pops concert. The fireworks will be shot from Saybrook Point on the Connecticut River, Old Saybrook, CT. The fireworks display will occur on August 8, 1999, following the concern from 9 pm until 10:10 pm. The safety zone covers all waters of the Connecticut River within a 400-foot radius of the fireworks launching area which will be located north of the dock on Saybrook Point, Connecticut River, CT, in approximate position 41°17′35″ N. 072°21′20″ W. (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of the Connecticut River and entry into this zone will be restricted for only 1 hour and 10 minutes on August 8, 1999. Although this regulation prevents traffic from transiting this section of the Connecticut River, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed under the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LCDR T.J. Walker, telephone (203) 468–4444.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture, and 10 Regional Fairness Boards, were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction, M16475.C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(e) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children From Environmental Health Risks and

Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–CGD1–074 to read as follows:

§ 165.T01–CGD1–074 Saybrook Summer Pops Concert, Saybrook Point, Connecticut River, Old Saybrook, CT

(a) *Location.* The safety zone includes all waters of the Connecticut River within a 400 foot radius of the launch site located in Saybrook Point, Old Saybrook, CR, in approximate position 41°17′35″N, 072°21′20″W. (NAD 1983).

(b) *Effective date.* This section is effective on August 8, 1999 from 9 p.m. until 10:10 p.m.

(c) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port of the designated on-scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

P. K. Mitchell,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 99–16366 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–072]

RIN 2115–AA97

Safety Zone: Sag Harbor Fireworks Display, Sag Harbor Bay, Sag Harbor, NY.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Sag Harbor Fireworks Display to be held outside the breakwater in Sag Harbor Bay, Sag Harbor, NY, on July 2, 1999. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective on July 2, 1999 and on July 3, 1999 from 9 p.m. until 10:20 p.m. For rain dates, refer to the regulatory text set out in this rule.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. The fax number is (203) 468–4445.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T. J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this effective in less than 30 days after **Federal Register** publication. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Say Harbor Yacht Club, of Sag Harbor, NY. is sponsoring a 35 minute fireworks display in Sag Harbor, Sag Harbor, NY. The fireworks display will occur on July 2, 1999, from 9 pm until 10:20 pm. The safety zone covers all waters of Sag Harbor Bay within a 1,200 foot radius of the fireworks launching barge which will be located outside the breakwater in Sag Harbor Bay, Sag Harbor, NY, in approximate position; 41°–00′51.2″ N, 072°–17′57.8″ W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted form review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of Sag Harbor Bay and entry into this zone will be restricted for only 1 hour and 20 minutes on July 2, 1999. Although this regulation prevents traffic from transiting this section of Sag Harbor Bay, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexiblitiy Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include indepndtly owned and operated small businesses that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed under the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LCDR T.J. Walker, telephone (203) 468–4444.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture, and 10 Regional Fairness Boards, were established to received comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247)

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 604–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–CGD1–072 to read as follows:

§ 165.T01–CGD1–072; Sag Harbor Fireworks Display, Sag Harbor Bay, Sag Harbor, NY.

(a) *Location.* The safety zone includes all waters of Sag Harbor within a 1200 foot radius of the launch site located in Sag Harbor Bay, Sag Harbor, NY in approximate position 41°–00′51.2″N, 072°–17′57.8″W (NAD 1983).

(b) *Effective date.* This section is effective on July 2, 1999 from 9:00 p.m. until 10:20 p.m. In case of inclement weather, this section is effective July 3, 1999 at the same time and place.

(c)(1) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

P. K. Mitchell,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 99–16361 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME61–7010c; A–1–FRL–6366–9]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Approval of Fuel Control Program Under Section 211(c)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: On May 14, 1999, EPA published a direct final rule (64 FR 26306) approving, and an accompanying proposed rule (64 FR 26352) proposing to approve, a State Implementation Plan (SIP) revision submitted by the State of Maine on March 10, 1999. This revision establishes and requires that all gasoline sold in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln counties meet certain summertime volatility limits, as measured by the Reid Vapor Pressure (RVP). We are withdrawing this final rule due to adverse comment received from the Oxygenated Fuels Association. In a subsequent final rule, we will summarize and respond to any comments received and take final rulemaking action on this requested Maine SIP revision.

DATES: As of June 28, 1999, we withdraw the direct final rulemaking published on May 14, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosytem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

List of Subjects on 40 CFR Part 52

Environmental Protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen Dioxide, Ozone, Reporting and recordkeeping requirements

Dated: June 16, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–16237 Filed 6–25–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 210–147a; FRL–6362–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District, Monterey Bay Unified Air Pollution Control District, Placer County Air Pollution Control District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). This action revises the definitions in Bay Area Air Quality Management District (BAAQMD) Regulation 1; Monterey Bay Unified Air Pollution Control (MBUAPCD) Rule 101; Placer County Air Pollution Control District (PCAPCD) Rule 102; and Ventura County Air Pollution Control District (VCAPCD) Rule 2. The intended effect of approving this action is to incorporate changes to the definitions for clarity and consistency and to update the Exempt Compound list in MBUAPCD, PCAPCD, and VCAPCD rules to be consistent with the revised federal and state VOC definitions.

DATES: This rule is effective on August 27, 1999 without further notice, unless EPA receives adverse comments by July 28, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109–7714

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

Placer County Air Pollution Control District, DeWitt Center, 11464 "B" Ave., Auburn, CA 95603–2603

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003–5417

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1189

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: BAAQMD Regulation 1, General Provisions and Definitions; MBUAPCD Rule 101, Definitions; PCAPCD Rule 102, Definitions, and VCAPCD 2, Definitions. These rules were submitted by the California Air Resources Board to EPA on February 16, 1999 (Bay Area and Ventura); January 12, 1999 (Monterey); and May 18, 1998 (Placer).

II. Background

On March 3, 1978, EPA promulgated a list of nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included BAAQMD, MBUAPCD, PCAPCD, and VCAPCD. 43 FR 8964, 49 CFR 81.305. In response to Section 110(a) of the Act and other requirements, the BAAQMD, MBUAPCD, PCAPCD, and VCAPCD submitted many rules which EPA approved into the SIP.

On February 7, 1996 (61 FR 4588) EPA published a final rule excluding perchloroethylene from the definition of VOC. On October 8, 1996 (61 FR 52848) EPA published a final rule excluding HFC 43–10mee and HCFC–225ca and cb from the definition of VOC. On August 25, 1997 (62 FR 44900) EPA published a final rule excluding HFC–32, HFC–161, HFC–236ea and fa, HFC–245ca, ea, eb, and fa, HFC–365mfc, HCFC–31, HCFC–123a, HCFC–151a, $C_4F_9OCH_3$, $CF_{32}CFCF_2OCH_3$, $C_4F_9OC_2H_5$, $CF_{32}CFCF_2OC_2H_5$. On April 9, 1998 (63 FR 17331) EPA published a final rule excluding methyl acetate from the definition of VOC. These compounds were determined to have negligible photochemical reactivity and thus, were added to the Agency's list of Exempt Compounds.

This document addresses EPA's direct-final action for BAAQMD Regulation 1, General Provisions and Definitions; MBUAPCD Rule 101, Definitions; PCAPCD Rule 102, Definitions; and VCAPCD Rule 2, Definitions. These rules were adopted by BAAQMD on October 7, 1998; by MBUAPCD on November 12, 1998; by PCAPCD on June 19, 1997; and by VCAPCD on November 10, 1998. These rules were submitted by the California Air Resources Board to EPA on February 16, 1999 (Bay Area and Ventura); January 12, 1999 (Monterey); and May 18, 1998 (Placer). These submitted rules were found to be complete on May,1999 (Bay Area and Ventura); March 19, 1999 (Monterey); July 17, 1998 (Placer), pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [1] and is being finalized for approval into the SIP.

The following are EPA's summary and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.[2]

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

This action is necessary to make the VOC definition in the MBUAPCD, PCAPCD, and VCAPCD rules consistent with federal and state definitions of VOC. This action will result in more accurate assessment of ozone formation potential, will remove unnecessary control requirements and will assist States in avoiding exceedences of the ozone health standard by focusing control efforts on compounds which are actual ozone precursors.

BAAQMD Regulation 1, General Provisions and Definitions, has been amended to add and/or revise the following definitions: 1–234, Organic Compound, Non-Precursor; 1–238, Parametric Monitor; 1–239, Continuous Emission Monitor; 1–522, Continuous Emission Monitoring and Recordingkeeping; and 1–523, Parametric Monitoring and Recordkeeping Procedures.

MBUAPCD Rule 101, Definitions, is being amended to update the definition of "Exempt Compounds." In addition, this amendment adds and/or revises the following definitions: Effective Dates; Household Rubbish; Permissive Burn Day, and Multiple-Chamber Incinerator.

PCAPCD Rule 102, Definitions, is being amended to update the definition of "Exempt Compounds." The entire Rule 102 is reformatted for clarity and consistency. In addition, this amendment revises the definition of "Air Pollution Control Officer."

VCAPCD Rule 2, Definitions, is being amended to update the definition of "Exempt Compounds" to include 21 compounds.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD Regulation 1, General Provisions and Definitions; MBUAPCD Rule 101, Definitions; PCAPCD Rule 102, Definitions; and VCAPCD Rule 2, Definitions, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 27, 1999 without further notice unless the Agency receives adverse comments by July 28, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 27, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any

rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 27, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 21, 1999.

Laura K. Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(255)(i)(E), (261) and (262) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(255) * * *

(i) * * *

(E) Placer County Air Pollution Control District.

(*1*) Rule 102, adopted June 19, 1997.

* * * * *

(261) New and amended regulations for the following APCDs were submitted on January 12, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 101, adopted November 12, 1998.

* * * * *

(262) New and amended regulations for the following APCDs were submitted on February 16, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Regulation 1, adopted on October 7, 1998.

(B) Ventura County Air Pollution Control District.

(*1*) Rule 2, adopted November 10, 1998.

* * * * *

[FR Doc. 99–16229 Filed 6–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6366–8]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Pima County Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to delegate the authority to implement and enforce specific national emission standards for hazardous air pollutants (NESHAPs) to the Pima County Department of Environmental Quality (PDEQ) in Arizona. The preamble outlines the process that PDEQ will use to receive delegation of any future NESHAP, and identifies the NESHAP categories to be delegated by today's action. EPA has reviewed PDEQ's request for delegation and has found that this request satisfies all of the requirements necessary to qualify for approval. Thus, EPA is hereby granting PDEQ the authority to implement and enforce the unchanged NESHAP categories listed in this rule.

DATES: This rule is effective on August 27, 1999 without further notice, unless EPA receives adverse comments by July 28, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the request for delegation and other supporting documentation are available for public inspection (docket number A–96–25) at the following location: U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, California 94105–3901.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to state or local air pollution control agencies the authority to implement and enforce the standards set out in 40 CFR part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, subpart E (hereinafter referred to as "subpart E"), establishing procedures for EPA's approval of state rules or programs under section 112(l) (*see* 58 FR 62262).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and 40 CFR part 63, subpart E. To streamline the approval process for future applications, a state or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the state or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

On October 30, 1996, EPA approved the Pima County Department of Environmental Quality (PDEQ's) program for accepting delegation of section 112 standards that are unchanged from Federal standards as promulgated (*see* 61 FR 55910). Additional revisions to that program were approved on September 23, 1998 (*see* 63 FR 50769). The approved program reflects an adequate demonstration by PDEQ of general resources and authorities to implement and enforce section 112 standards. However, formal delegation for an individual standard does not occur until PDEQ obtains the necessary regulatory authority to implement and enforce that particular standard, and EPA approves PDEQ's formal delegation request for that standard.

PDEQ informed EPA that it intends to obtain the regulatory authority necessary to accept delegation of section 112 standards by incorporating section 112 standards into the Pima County Code. The details of this delegation mechanism are set forth in a Memorandum of Agreement (MOA) between PDEQ and EPA, and are available for public inspection at the U.S. EPA Region IX office (docket No. A–96–25).

On May 12, 1999, PDEQ requested delegation for several individual section 112 standards that have been incorporated by reference into the Pima County Code. The standards that are being delegated by today's action are listed in a table at the end of this rule.

II. EPA Action

A. Delegation for Specific Standards

After reviewing PDEQ's request for delegation of various national emissions standards for hazardous air pollutants (NESHAPs), EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91. Accordingly, PDEQ is granted the authority to implement and enforce the requested NESHAPs. These delegations will be effective on August 27, 1999. A table of the NESHAP categories that will be delegated to PDEQ is shown at the end of this rule. Although PDEQ will have primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. In addition, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112.

After a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency becomes the primary point of contact with respect to that NESHAP. Pursuant to 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA Region IX waives the requirement that notifications and reports for delegated standards be submitted to EPA as well as to PDEQ.

In its May 12, 1999 request, PDEQ included a request for delegation of the regulations implementing CAA section 112(i)(5), codified at 40 CFR part 63, subpart D. These requirements apply to state or local agencies that have a permit program approved under title V of the Act (*see* 40 CFR 63.70). PDEQ received final interim approval of its title V operating permits program on October 30, 1996 (see 61 FR 55910). State or local agencies implementing the requirements under subpart D do not need approval under section 112(l). Therefore, EPA is not taking action to delegate 40 CFR part 63, subpart D to PDEQ.

PDEQ also included a request for delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR part 63, subpart B. These requirements apply to major sources only, and need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing section 112(g), EPA stated its view that "the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)" (see 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that "section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements" (see 59 FR 26447). Therefore, state or local agencies implementing the requirements under sections 112(g) and 112(j) do not need approval under section 112(l). As a result, EPA is not taking action to delegate 40 CFR part 63, subpart B to PDEQ.

B. Delegation Mechanism for Future Standards

Today's document serves to notify the public of the details of PDEQ's procedure for receiving delegation of future NESHAPs. As set forth in the MOA, PDEQ intends to incorporate by reference, into the Pima County Code, each newly promulgated NESHAP for which it intends to seek delegation. PDEQ will then submit a letter to EPA Region IX, along with proof of regulatory authority, requesting delegation for each individual NESHAP. Region IX will respond in writing that delegation is either granted or denied. If a request is approved, the delegation of authorities will be considered effective upon the date of the response letter from Region IX. Periodically, EPA will publish in the **Federal Register** a listing of the standards that have been delegated. Although EPA reserves its right, pursuant to 40 CFR 63.96, to review the appropriateness of any future delegation request, EPA will not institute any additional comment periods on these future delegation actions. Any parties interested in commenting on this procedure for delegating future unchanged NESHAPs should do so at this time.

C. Opportunity for Public Comment

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this action should adverse comments be filed. This rule will be effective August 27, 1999 without further notice unless the Agency receives adverse comments by July 28, 1999.

If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 27, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, "Enhancing the Intergovernmental Partnership," EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, "Consultation and Coordination with Indian Tribal Governments," EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because delegations of authority to implement and enforce unchanged Federal standards under section 112(l) of the Clean Air Act do not create any new requirements but simply transfer primary implementation authorities to the state or local agency. Therefore, because this action does not impose any new requirements, I certify that this action will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the delegation action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 27, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: June 10, 1999.

David P. Howekamp,

Director, Air Division, Region IX.

Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by revising paragraph (a)(3) to read as follows:

§ 63.99 Delegated Federal Authorities

(a) * * *

(3) *Arizona.* The following table lists the specific part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Arizona. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA

Subpart	Description	ADEQ [1]	MCESD [2]	PDEQ [3]	PCAQCD [4]
A	General Provisions	X		X	X
F	Synthetic Organic Chemical Manufacturing Industry	X		X	X
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X		X	X
H	Organic Hazardous Air Pollutants: Equipment Leaks	X		X	X
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment.	X		X	X
L	Coke Oven Batteries	X		X	X
M	Perchloroethylene Dry Cleaning	X		X	X
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X		X	X
O	Ethylene Oxide Sterilization Facilities	X		X	X
Q	Industrial Process Cooling Towers	X		X	X
R	Gasoline Distribution Facilities	X		X	X
T	Halogenated Solvent Cleaning	X		X	X
U	Group I Polymers and Resins	X		X	X
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X		X	X
X	Secondary Lead Smelting	X		X	X
CC	Petroleum Refineries	X		X	X
DD	Off-Site Waste and Recovery Operations	X		X	X
EE	Magnetic Tape Manufacturing Operations	X		X	X
GG	Aerospace Manufacturing and Rework Facilities	X		X	X
JJ	Wood Furniture Manufacturing Operations	X		X	X
KK	Printing and Publishing Industry	X		X	X
OO	Tanks—Level 1	X			X
PP	Containers	X			X
QQ	Surface Impoundments	X			X
RR	Individual Drain Systems	X			X
VV	Oil-Water Separators and Organic-Water Separators	X			X
JJJ	Group IV Polymers and Resins	X			X

[1] Arizona Department of Environmental Quality.
[2] Maricopa County Environmental Services Department.
[3] Pima County Department of Environmental Quality.
[4] Pinal County Air Quality Control District.

* * * * *

[FR Doc. 99–16231 Filed 6–25–99; 8:45 am]

BILLING CODE 8960–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 94–102; FCC 99–96]

Compatibility of Wireless Services With Enhanced 911

AGENCY: Federal Communications Commission.

ACTION: Final rule

SUMMARY: This document creates rules that will improve the ability of cellular phone users to complete wireless 911 calls. The action is taken to improve the security and safety of analog cellular users, especially in rural and suburban areas. The primary goal of this action is to ensure that reliable, effective 911 and E911 service is available to wireless users by approving three mechanisms any of which will result in more wireless 911 calls being completed than occurs today. This document contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for an emergency review under PRA. The general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

DATES: Effective July 28, 1999. This document contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA), which are pending OMB approval. A notice will be placed in the **Federal Register** when OMB approval for these information collections is received. Written comments by the public and by other Government agencies on the information collections are due August 27, 1999.

ADDRESSES: Comments on the information collections should be submitted to Les Smith, Federal Communications Commission, Room 1A–804, 445 12th Street, S.W., Washington DC 20554, or via the Internet at lesmith@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, S.W., Washington, DC 20503, or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Won Kim or Dan Grosh, Policy Division, Wireless Telecommunications Bureau, at (202) 428–1310. For additional information concerning the information collection aspects contained in the document, contact Les Smith, Federal Communications Commission, Room 1A–804, 445 12th Street, S.W., Washington DC 20554, or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Second Report and Order (Second R&O) in CC Docket NO. 94–102, FCC 99–96, adopted May 13, 1999, and released June 9, 1999. The complete text of this Second R&O is available for the inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, D.C. 20054, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), (202) 857–3800. CY-B400, 445 12th Street, S.W., Washington, D.C. 20054.

Synopsis of the Second Report and Order

1. In this Second R&O, the Commission approves three approaches to facilitate the completion of more wireless 911 calls. The Commission believes that the action taken in the Second R&O will have a significant positive impact on the security and safety of analog cellular subscribers, especially in rural and suburban areas, and result in the successful completion of significantly more wireless calls to 911 than occurs today. Thus the Commission is responding to a public need for confidence that wireless calls to 911 will in fact go through.

2. Specifically, the Second R&O requires that analog cellular phones include a separate capability for processing 911 calls that permits those calls to be handled, where necessary, by either cellular carrier in the area. This separate capability is intended to improve 911 reliability, increase the probability that 911 calls will be efficiently and successfully transmitted to public safety agencies, and help ensure that wireless service will be maintained for the duration of the 911 calls. The rule applies to new handsets manufactured more than nine months after the adoption date of the Second R&O. The Second R&O also sets out guidelines for 911 call completion methods that satisfy the Commission's rule, approving three methods that have been proposed in this proceeding, (1) Automatic A/B Roaming-Intelligent Retry (IR), (2) Adequate/Strongest Signal, and (3) Selective Retry.

3. While the actions taken in the Second R&O should represent an important improvement in completing 911 calls, especially in areas where cellular coverage is less complete, it is also important to recognize the problems and limits that remain in completing 911 calls. The full text of the Second R&O thus addresses the comparative advantages and disadvantages of the three approved methods and notes that the present limits of technology deprive the Commission of the opportunity to craft perfect solutions. Each of the approved methods, while improving the current situation regarding 911 call completion, is subject to some disadvantages in certain situations. Moreover, the new rule only applies to new analog cellular handsets, not to existing handsets or to digital services such as Personal Communications Service (PCS) or Enhanced Specialized Radio (ESMR).

4. The origin of the Second R&O may be found in the Second Notice of Proposed Rulemaking (Second NPRM) in this proceeding (61 FR 40374, August 2, 1996) which sought ways to enable mobile users to complete 911 calls without regard to the availability of the system or technology used by their wireless service in the area in which they seek to place the call. The Second NPRM sought comment on one proposal in this area and also sought comment on any other ways to enable wireless telephone users to complete 911 calls wherever a mobile system providing 911 service is present.

5. One reason access to emergency 911 systems is not always available for wireless handsets is that there are gaps in the signal coverage provided by wireless carriers. A wireless telephone user who happens to be located in a coverage gap or "blank spot" where his or her carrier's signal is inadequate may find that it is not possible to establish and maintain adequate communications over the wireless system accessed by the handset. Moreover, if the preferred carrier provides a weak or inadequate signal in response to analog cellular 911 calls, the handset may nonetheless lock onto that carrier even if sustained voice communications between the handset and the preferred carrier's system is not possible.

6. One option for improving 911 call completion is to initially program handsets to a calling mode termed A over B, B over A (A/B, B/A) default approach. The A/B, B/A approach would switch all analog cellular calls—including 911 calls—to the customer's preferred carrier if a usable channel is available. If a channel is not available, the handset would automatically switch to a usable channel on the other cellular carrier's system. As an initial measure to improve accessibility to all services by wireless users, the Commission supports this A/B, B/A default setting as a voluntary industry practice. Setting the default in this way does, however, permit the handset to place calls with non-preferred carriers, and in the case of ordinary calls, this could result in unexpected and unwanted roaming charges. The industry program to educate users should inform customers of the possibility of a roaming charge so that they can decide whether to make such calls. This program might include information in the handset manuals and in materials provided to the customer at the time of activation that will help users understand the operation of the handset and the charges that will apply, including possible roaming charges. Customers will have the option of setting a different default if they prefer.

7. While useful, the A/B, B/A default approach, standing alone, is of limited value because all calls, including regular calls, will be switched to the other carrier. Non-emergency calls make up the vast majority of calls, so consumers will face substantial incentives to reprogram their handsets back to A only, B only, or some other mode that best meets their needs for non-emergency calls. To the extent that they do so, the benefits of the A/B approach 911 calls will vanish. This operational mode is also subject to lock-in problems. These limitations could reduce the availability of the A/B, B/A mode substantially.

8. The Second R&O, in order to address some of these problems, concludes that 911 call completion for cellular phones operating in the analog mode should be further enhanced by requiring that handset include separate programming for 911 calls. By providing cellular phone users with a program for 911 calls separate from that used for their other calls, the Commission will equip each user with an operational mode, or possibly a choice of modes, that will best enhance 911 calls. This will enable users to select both the calling mode that is likely to be most reliable and effective for them in emergencies and a different mode, if they prefer, for ordinary calls.

9. Three 911-only call processing modes have been proposed in this proceeding. Two of these, Automatic A/B Roaming—IR and Adequate/Strongest Signal, are based on earlier proposals, but have been modified significantly to address concerns raised in the record. Selective Retry was proposed as another method to address such concerns. Although the Commission recognizes that each approach has certain limitations that are pertinent to our objective of maximizing 911 call completions, it also believes that each of three proposals represents a substantial improvement toward meeting this objective. The Commission has also concluded, moreover, that each approach offers benefits under certain circumstances, as compared to the *status quo*, and may also suit different user preferences. Finally, the Commission believes that each of the three call processing modes may also provide a foundation for future improvements in 911 call Completion, reflecting actual operating experience, innovation, or adaptation to technologies other than analog cellular.

10. The Commission, based on analysis of the record, believes that any reasonable analog cellular 911 call processing mode should satisfy certain basic principles. First, the most basic goal is to improve the 911 call completion rate so far as practicable, including in circumstances where the caller's preferred carrier is unable to complete a call that can be completed by another carrier. Second, it is often desirable to complete 911 calls, where possible, via the preferred cellular carrier. This routing minimizes delay in setting up the call and encourages competition among carriers in the most effective provision of 911 service, including E911 features.

11. Third, a 911 call processing mode should not disrupt overall operation of 911 service, including the networks of both wireless carriers and public safety organization. Fourth, the 911 call processing mode should address the lock-in problem in a reasonable and effective way that substantially reduces or eliminates the likelihood that a 911 call might be locked in on the system of a cellular carrier that is unable to provide a usable voice communications channel. And, fifth, the benefits of the calling mode to public safety should outweigh any additional costs. These principles represent general criteria for evaluating 911 call processing modes. In this Second R&O, the Commission applies them to evaluate the three 911-only modes that have been presented in the record. In doing so, the Commission notes that it is not our intent to limit the development and improvement of 911 call completion modes, so long as they meet the criteria established. The Commission wishes to encourage the development of new and improved methods of making wireless technology enhance public safety.

12. The first approved method for 911-only call processing is Automatic A/B Roaming-IR. With this mode, when a consumer dials 911 the handset would seek to complete the call with the consumer's preferred carrier, if possible. If the handset fails to receive a signal, the handset would attempt to complete the call to the non-preferred carrier and would continue to rescan and reattempt the call until it is completed, the user terminates the call, or the handset loses power. The Commission believes that, in most respects, it should improve 911 call completion and satisfy the criteria as detailed in the Second R&O.

13. The Second R&O does, however, express concerns regarding Automatic A/B Roaming-IR. One significant disadvantage involves the length of set-up times. For most 911 calls, which would be completed via the preferred carrier, the call set-up time should be no longer than for any other call. However, the IR approach could lengthen set-up for calls not completed via the preferred carrier, in some cases by many seconds. The Commission is concerned that long delays in set-up time may induce callers in an emergency situation to sign off before the process has had adequate time to run, even if the call could have been completed with the non-preferred carrier. Because the same call completion algorithm would be implemented for each new call attempt, callers might be repeatedly frustrated if they mistakenly interpreted the long set-up time as an indication that the call had failed. Even if the caller persevered, any lengthy delay in completing emergency calls would also delay the dispatch of help.

14. Based on the record, the Second R&O requires that Automatic A/B Roaming-IR meet two conditions to address delays in set-up times. First, the handset must provide effective feedback to inform the user when 911 call processing is underway and has not finished. This could take the form of an audible tone or message in addition to a visual status report on the handset's screen. Second, the IR algorithm should be such that, in any case, the handset would not spend more than a reasonable amount of time seeking to complete the call with the preferred carrier before reattempting the call with the other cellular carrier. The Second R&O, to minimize the possibility that delays in processing 911 calls will lead callers to terminate 911 calls that eventually would have been completed, placed a time limit of 17 seconds from the time the call is sent for the handset to either

complete the call to the preferred carrier or seek to complete the call to the non-preferred carrier. The feedback information should reassure callers that they should continue waiting for this amount of time, so that abandonment of 911 calls that could have been completed should very infrequent or nonexistent. Handset manufacturers may elect to set an even briefer period to further minimize 911 call set-up delays.

15. The Second R&O notes that Automatic A/B Roaming-IR is currently under review by an industry standards body, Telecommunications Industry Association (TIA). The Second R&O asks that TIA, as part of this review, consider whether and to what extent the 17 second time limit might be further reduced in order to further minimize call set-up delays and lock-in. The Commission also encourages wireless carriers and mobile phone manufacturers to be active in addressing this request so that future revisions to industry cellular standards and generations of mobile phones provide for further reductions in call set-up delays for 911 calls where feasible. The Commission looks forward to receiving the results of TIA's review and will continue monitoring TIA's progress with respect to these issues. In the meantime, the Second R&O finds that Automatic A/B Roaming-IR, as conditioned in the Second R&O meets the Commission's basic objectives and will serve to improve the *status quo* regarding 911 call completion, and thus improves this method as one means of complying with the Commission's 911 call completion rules.

16. The second approved approach is the Adequate/Strongest signal. The initial proposal provided that the handset would scan for all available lines and select the carrier with the strongest control channel signal. Further, strongest signal capability would be required for all new analog cellular phones and would be enabled as the default setting, but could easily be disabled by consumers choosing to do so. In response to the initial proposal, the public safety community and the wireless industry raised concerns that strongest signal would have unintended and adverse consequences. In response to these concerns, a revised Adequate/Strongest Signal proposal was submitted stating that analog 911 calls would be routed to the preferred carrier if that carrier provides an "adequate" channel of communication as measured in the handset by its forward control channel signal strength. The Second R&O adopts a definition of adequate control channel signal as one with a strength of at least -85 dBm. If the preferred carrier does not have an adequate signal, then the call would be routed to whichever analog carrier had the strongest forwarding control channel signal.

17. The Second R&O recognizes that Adequate/Strongest Signal is not a perfect or ultimate solution to 911 call completion problems,[1] but finds that overall, it will substantially improve 911 call completion and otherwise satisfies the Commission's criteria for an acceptable 911 call completion mode. In particular, the Second R&O concludes that Adequate/Strongest Signal is likely to improve 911 call completion in rural and suburban areas for portable phones. Accordingly, the Second R&O approves its use by handset manufacturers as one method of complying with the Commission's Rules.

18. The final approach approved by the Second R&O is Selective Retry, which employs a separate 911 button on the handset to route 911 calls. This is an option that could also be adopted with other 911 calling modes. This method initially uses the A/B, B/A program, which routes calls to the preferred carrier unless that carrier provides no signal, in which case the call would be routed to the other cellular carrier. What Selective Retry adds is the ability for a caller to route a call to the other carrier by pressing the 911 button if and when the caller judges this to be necessary. Use of Selective Retry could occur both during call set-up and after a caller is in conversation. At a minimum, the Commission believes that it should be made available as a third 911 call set-up procedure manufacturers can incorporate in handsets.

19. The Second R&O recognizes that handsets with 911 buttons may seem vulnerable to accidental, false alarm calls. The Commission believes that, once alerted to this problem, handset manufacturers will be able to design 911 buttons that are much less vulnerable to accidental dialing. To the extent that effective designs are put in service, users will no longer need to program a speed dial button to 911, which should help reduce accidental dialing of 911. While the Second R&O does not adopt specific requirements for 911 buttons, the Commission encourages manufacturers to consider and address this issue in their designs. If necessary, the Commission is prepared to adopt specific rules to reduce accidental 911 calls, in order to assist the public safety organizations which must process such calls.

20. The Commission finds no reason why dual-mode and multi-mode handsets when operating in the analog mode cannot and should not be subject to the same 911 call completion principles and rules as analog-only handsets. The analog functions of these handsets are subject to the same standards and rules and the Commission believes that should continue to be the case in this critical public safety area. The Second R&O thus adopts the same rule and schedule for all handsets that operate in the analog cellular modes, including dual-mode and multi-mode handsets when they are operating in the analog cellular mode. Dual and multi-mode handsets may operate in a digital mode in routing 911 calls, but when the handset operates in analog mode, it should do so in compliance with the rules the Commission adopted in the Second R&O.

21. The Second R&O, to allow a reasonable time for cellular handset manufacturers to comply with these requirements to implement a separate 911 call menu that includes an approved 911 call completion mode, establishes a deadline nine months from the adoption date of this Second R&O. The Commission believes that this nine month period will allow carriers and PSAPs sufficient time to plan for changes in 911 calling patterns and make any other needed adjustments.

22. The Commission will implement this rule through an equipment manufacturing requirement and through the Commission's equipment authorization process. As of the date nine months from the adoption date of this Second R&O, any mobile unit manufactured with analog cellular capability will be expected to incorporate at least one of the three approved 911 call processing mode. Any application for equipment authorization of an analog cellular telephone submitted six months after the adoption date of this Second R&O must include a statement and a description of the approved 911 call processing method used by the device. The Commission will consider the incorporation of modifications to existing authorized equipment to Class I permissive changes that do not require a filing with the Commission.

[1] Several commenters suggested various disadvantages they found in an Adequate/Strongest Signal approach to 911 call completion problems. These disadvantages and the Commission's decision to approve Adequate/Strongest Signal as a mode of complying with the 911 call completion rules are discussed in the full text of the Second R&O in paragraphs 43–68.

Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act, (RFA),[2] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking in this proceeding. The Commission sought written public comments on the proposals in the Second NPRM, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Second Report and Order (Second R&0) conforms to the RFA.[3]

I. Need for and Objectives of Action

24. The Second NPRM in this proceeding raised several issues of importance to improving E911 service. One issue in the Second NPRM considered proposals to help improve the transmission of 911 calls, particularly in geographic areas where a wireless 911 call could be delayed by "blank spots" where the system's radio signal is very weak or non-existent. A petition filed by the Ad Hoc Alliance for Public Access, proposing that the Commission require that all 911 calls be sent to the cellular system with the strongest control channel signal, was put out for comment at that time. The Commission sought comment on the Alliance's proposal and, more broadly, on ways to enable mobile users to complete 911 calls without regard to the geographic availability of the system or technology used by their wireless service. The Second R&O is needed to resolve these issues raised in the Second NPRM and is intended as an additional step toward improving both basic and enhance 911 wireless services and to ensure that critical 911 wireless service is offered in the most efficient, dependable way technologically feasible.

II. Summary of Significant Issues Raised by the Public Comments in Response to Initial Regulatory Flexibility Statement

25. No comments were submitted in direct response to the Initial Regulatory Flexibility Act. However, the Commission made every effort to gather as much data as possible on the issues considered in the Second R&O, and general comments received in response to the Second NPRM established an extensive record on which the decisions reached in the Second R&O were based.

[2] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847(1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[3] *See* 5 U.S.C. 604.

The Commission does not believe that a large number of manufacturers affected by the actions adopted in the Second R&O would be considered small businesses as defined by the Small Business Administration.

III. Description and Estimate of Small Entities Subject to the Rules

26. To estimate the number of small entities that may be affected by the possible significant economic impact of our present action, we first consider the definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

27. *Cellular Equipment Manufacturers.* The actions taken in the Second R&O will chiefly apply to manufacturers of cellular equipment offering analog services or digital equipment also offering analog services. The Commission does not know how many cellular equipment manufacturers are in the current market, or how many equipment manufacturers are developing dual-mode handsets that can operate as an analog as well as a digital set. The 1994 County Business Patterns Report of the Bureau of the Census estimates that there are 920 companies that make communications subscriber equipment. This category includes not only cellular equipment manufacturers, but television and AM/FM radio manufacturers as well. Thus the number of cellular equipment manufacturers is considerably lower than 920, and the number of cellular manufacturers producing equipment that can be used in analog mode is lower than that. Under SBA regulations, a "communications equipment manufacturer," which includes not only U.S. cellular equipment manufacturers but also firms that manufacture radio and television broadcasting and other communications equipment, must have a total of 750 or fewer employees in order to qualify as a small business concern. Census Bureau data from 1992 indicate that at that time there were an estimated 858 such U.S. manufacturers and that 778 (91%) of these firms had 750 or fewer employees and would therefore be classified as small entities.[7] Using our current estimate of cellular equipment manufacturers and the previous percentage estimate of small entities, we estimate that our current action may affect approximately 837 small cellular equipment manufacturers.

28. *Cellular Carriers.* Cellular carriers are also impacted by the Commission's decision in this proceeding. The Commission has also not developed a definition of small entities applicable to cellular licensees. Again, the definition of small entity is the definition under the SBA rules this time applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[8]

29. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 804 companies reported that they are engaged in the provision of cellular services . Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Cellular Service Carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 804 small entity Cellular Service Carriers that might be affected by the actions taken in this Second R&O.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

30. The Second R&O adopts a rule requiring that analog cellular phone, manufactured more than nine months after the adoption date of the Order, include a separate capability for

[4] *Id.* 601(6).

[5] *Id.* 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[6] Small Business Act, 15 U.S.C. 632.

[7] U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC code 3663 (estimate created by the Census Bureau under contract to the Office of Advocacy, SBA).

[8] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

processing 911 calls that permits those calls to be handled, where necessary, by either cellular carrier in the area. The Second R&O also sets out guidelines for 911 call completion methods that satisfy our rule, approving three methods that have been proposed in the record, Automatic A/B Roaming-Intelligent Retry, Adequate/Strongest Signal, and Selective Retry. Any one of the three may be used. Alternative methods may be used to satisfy the Commission's Rules, provided that Commission approval is received for the alternative method. In this way, the Commission hopes to keep abreast of changing technology and alter its 911 rules whenever necessary to optimize the benefits of technology. Implementation of the rule will be achieved through an equipment manufacturing requirement and the Commission's equipment authorization process. The Second R&O also requires that any application for equipment authorization of an analog cellular telephone submitted six months after the adoption date of the Second R&O must include a statement and a description of the approved 911 call processing method used by the device.

31. Finally, the Second R&O suggests a voluntary program to educate users of analog phones with regard to capabilities of the A/B, B/A logic for 911 calls. The voluntary industry education program should also inform the users of the possibility that setting A/B, B/A as the default for analog handset could produce roaming charges.

V. Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

32. Three 911-only call processing modes were proposed in this proceeding. Two of these, Automatic A/B Roaming-Intelligent Retry (IR) and Adequate/Strongest Signal have been modified significantly to address concerns raised in the record. For example, to avoid critical delays in transmission time under the Automatic A/B Roaming-IR proposal, the Second R&O establishes time limits for providing customer feedback that 911 call processing is underway but not completed. The handset should seek to complete the call with the non-preferred cellular carrier if the preferred cellular carrier has not successfully deliver the call to the landline carrier within 17 seconds after the call is placed. To reduce the possibility of consumers abandoning their 911 calls, the Second R&O indicates that the feedback information should advise callers to continue waiting for this amount of time. The Commission could have adopted a mandatory program to educate users of analog phones with regard to capabilities of the A/B, B/A logic for 911 calls, but instead made this provision voluntary.

33. Also, the Commission considered specific requirements for 911 buttons to avoid accidental dialing of 911, but declined to take regulatory action and encouraged manufacturers to consider and address this issue in their designs.

34. One commenter proposed that if the Commission adopted both Adequate/Signal and Automatic A/B Roaming-IR, that handset manufacturers be required to offer both choices in each handset. The Commission denied this proposal, finding such a requirement unwarranted and costly. The Second R&O, while not barring manufacturers from electing to incorporate more than one calling mode, or some combination of modes, indicates that implementation of any one of the approved 911 calling modes would improve 911 call completion.

35. Another commenter proposed a six month deadline for compliance with these regulations to implement a separate 911 call menu that includes an approved 911 call completion mode. The Second R&O adopted a nine month deadline to provide enough time for product and standards development or for thorough testing.

36. Finally, while approving the three 911 call completion modes, A/B Roaming-Intelligent Retry, Adequate Strongest Signal, and Selective Retry, the Second R&O also provided that carriers may incorporate a new or modified 911 call processing mode provided that they submit such requests to the Commission for approval.

Authority

37. This action is taken pursuant to sections 1, 4(i), 201, 303, 309, and 332 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 201, 303, 309, 332.

Ordering Clauses

38. Accordingly, *it is ordered* that part 22 of the Commission's Rules is amended as set forth in this Second R&O.

39. *It is further ordered* that the rule amendments made by this Second R&O shall become effective July 28, 1999.

40. *It is further ordered* that authority is delegated to the Wireless Telecommunications Bureau to consider and approve, deny, or approve with modifications new or revised 911 call processing modes.

41. *It is further ordered* that, the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Second Report and Order, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat., 5 U.S.C. 601–612 (1980).

Paperwork Reduction Act

The Second R&O contains a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and Agency comments are due on or before August 27, 1999. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

List of Subjects in 47 CFR Part 22

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

Rule Changes

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

2. New § 22.921 is added to read as follows:

§ 22.921 911 Call Processing Procedures; 911-Only Calling Mode.

All mobile phones manufactured after February 13, 2000, and capable of operating in an analog mode, *i.e.*, in compliance with "Cellular System Mobile Station—Land Station Compatibility Specification" (April 1981 Ed.) Office of Engineering and Technology Bulletin No. 53, referenced in § 22.933 must incorporate a special procedure for processing "9–1–1" calls. Such procedure must recognize when a "9–1–1" call is made and, at such time, must override any programming in the mobile unit that determines the handling of a non-911 call and permit the call to be handled by other analog carriers. This special procedure must incorporate any one or more of the 9–1–1 call system selection processes endorsed or approved by the Commission.

[FR Doc. 99–16484 Filed 6–25–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 23 and 26

[Docket OST–97–2550]

RIN 2105–AB92

Participation by Disadvantaged Business Enterprises in Department of Transportation Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; correction.

SUMMARY: In its final disadvantaged business enterprise (DBE) rule, the Department intended to ensure the confidentiality of personal financial information submitted to recipients by owners of DBE firms. The Department inadvertently omitted the regulatory text language on this point. This correction document remedies this omission. In addition, this document corrects minor omissions concerning the threshold for Federal Transit Administration recipients to establish DBE programs and a requirement for transit vehicle manufacturers to have DBE programs, removes a potentially confusing word from the rule's provisions concerning DOT review of recipients' overall goals, clarifies language concerning the certification and personal net worth of airport concessionaires and others, and clarifies that a lease is viewed as a contract for purposes of the rule.

DATES: This rule is effective June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, phone numbers (202) 366–9306 (voice), (202) 366–9313 (fax), (202) 755–7687 (TDD), bob.ashby@ost.dot.gov (email).

SUPPLEMENTARY INFORMATION:

Privacy

In discussing the requirement of the DBE final rule that owners of DBE firms submit a statement of personal net worth, with supporting documentation, the Department addressed commenters' concerns about the confidentiality of the information. The preamble to the rule said the following:

> One of the primary concerns of DBE firms commenting about submitting personal financial information is ensuring that the information remains confidential. In response to this concern, the rule explicitly requires that this material be kept confidential. It may be provided to a third party only with the written consent of the individual to whom the information pertains. This provision is specifically intended to pre-empt any contrary application of state or local law (e.g., a state freedom of information act that might be interpreted to require a state transportation agency to provide to a requesting party the personal income tax return of a DBE applicant who had provided the return as supporting documentation for his PNW statement). There is one exception to this confidentiality requirement. If there is a certification appeal in which the economic disadvantage of an individual is at issue (e.g., the recipient has determined that he or she is not economically disadvantaged and the individual seeks DOT review of the decision), the personal financial information would have to be provided to DOT as part of the administrative record. The Department would treat the information as confidential. (64 FR 5117; February 2, 1999).

Unfortunately, through editorial error on the Department's part, the regulatory text provision referred to was omitted from the final rule. We regret any confusion that this omission may have caused, and we are correcting the error by inserting the language in a new paragraph (a)(2)(iii) of § 26.67 of the rule.

FTA Requirements for DBE Programs

In § 26.21(a)(2) of the rule, the Department states that FTA recipients who receive more than $250,000 in various forms of FTA assistance must have a DBE program. The phrase "exclusive of transit vehicle purchases" was inadvertently omitted from this paragraph. This omission has raised questions from some recipients, and we are reinserting the omitted language to avoid confusion. In addition, this provision did not make explicit that transit vehicle manufacturers must have DBE programs, so we are adding language to make this clear.

Review of Overall Goals

While operating administrations review recipients' overall goal submissions, recipients are not required to obtain prior concurrence by operating administrations with their overall goals (see § 26.45(f)(4)).

However, as the result of an editorial oversight, § 26.21(b)(1) of the rule makes a reference to overall goals being "approved" by operating administrations. Because prior concurrence is not required, this reference is incorrect and could be misleading. Therefore, we are removing it.

Concessionaires

In the February 2, 1999, final DBE rule, the Department removed all of former part 23 except the portion concerning airport concessionaires. The airport concession provisions were modified for consistency with the new 49 CFR part 26. In one respect, however, the amendment of the airport concessions provision failed to delete language concerning certification procedures that referred to the (now deleted) certification provisions of former part 23. While we have provided guidance to airports that they should follow part 26 procedures, we believe it would be useful to delete the language referring to former part 23's procedures. Therefore, this rule eliminates two paragraphs in § 23.95. Recipients should follow part 26 certification procedures for concessionaires as well as for other contractors.

Airports have expressed concern that the rule is unclear concerning the application to concessionaires of the $750,000 personal net worth (PNW) cap and PNW statement requirements of § 26.67. The Department is currently working to complete a final rule concerning airport concessions. The PNW cap applicable to concessionaires is one of the matters being considered in this rulemaking. The PNW cap amount that the Department applies to concessionaires may or may not be $750,000. Pending completion of the final rule on airport concessions, the Department believes it best to resolve the current uncertainty by making the $750,000 cap amount and PNW statement requirement of § 26.67 inapplicable to airport concessionaires.

We are amending § 26.67(a)(2)(i) to specify that disadvantaged owners of airport concessionaires are not required to submit PNW statements. Consequently, the rebuttal of the presumption of economic disadvantage based on a PNW statement an individual is required to submit (see § 26.67(b)(1)) also does not apply to airport concessionaires.

Definition of "Contract"

The 49 CFR part 23 definition of "contract" specified that a lease was

viewed as a contract. The part 26 definition inadvertently omitted this sentence. To avoid any potential confusion on this point, this correction document adds a sentence on leases.

Clarification Concerning Personal Net Worth Documentation

The Department has received a number of questions and expressions of concern about the documentation it is appropriate for recipients to require in ascertaining the personal net worth of owners of DBE firms. The Department believes that it is important to clarify the rule to state that this documentation, and the PNW statement itself, should not be unduly lengthy, burdensome or intrusive.

The Department uses the Small Business Administration's implementation of its PNW requirements as a model for recipients' practices. SBA requires a two-page form, supported by two years' of personal and business tax returns. With respect to the information routinely collected from applicants or owners of currently certified DBEs for purposes of ascertaining PNW, the Department believes that recipients should not exceed the information sought by SBA in its programs. Consequently, while recipients are not required to use the SBA form verbatim, they should use a form of similar length and content. Recipients may appropriately collect and retain copies of two years' of the individuals personal and business tax returns.

On the other hand, the Department regards as unduly lengthy, burdensome, or intrusive such practices as using a form significantly longer or more complex than the SBA form (e.g., a multipage PNW form), requiring inventories of personal property or appraisals of real property. Such practices are contrary to part 26.

Regulatory Analyses and Notices

This set of amendments correcting part 26 is not a significant rule under Executive Order 12866 or the Department's Regulatory Policies and Procedures. The Department certifies that the amendments will not have significant economic impacts on a substantial number of small entities. This is because the amendments are technical corrections that will not impose costs on entities, regardless of their size. They do not have Federalism impacts sufficient to warrant the preparation of a Federalism impact statement. They do not impose information collection requirements.

These amendments relate to regulatory provisions that have already been the subject of notice and comment (as part of the Department's May 1997 supplemental notice of proposed rulemaking concerning the DBE program).

Because the amendments merely correct accidental omissions from the regulatory text or remove a potentially confusing reference, we do not believe that additional notice and comment would be productive. Therefore, the Department has determined that further notice and comment would be impracticable, unnecessary, and contrary to the public interest. The Department has good cause to make the corrections effective immediately in order to avoid confusion and any adverse effects on DBEs or recipients from the absence of the omitted language.

List of Subjects

49 CFR Part 23

Administrative practice and procedure, Airports, Civil rights, Concessions, Government contracts, Grant programs—transportation, Minority businesses, Reporting and recordkeeping requirements.

49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs—transportation, Highways and roads, Mass transportation, Minority businesses, Reporting and recordkeeping requirements.

Issued this 11th day of June, 1999, at Washington, D.C.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 49 CFR parts 23 and 26 as follows:

PART 23—[AMENDED]

1. The authority citation for part 23 continues to read as follows:

Authority: 42 U.S.C. 200d *et seq.*; 49 U.S.C. 47107 and 47123; Executive Order 12138, 3 CFR, 1979 Comp., p. 393.

§ 23.95 [Amended]

2. In § 23.95, remove and reserve paragraphs (f)(2) and (f)(3).

PART 26—[AMENDED]

3. The authority citation for part 26 is revised to read as follows:

Authority: 23 U.S.C. 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107, 113.

4. In the definition of the term "Contract" in § 26.5, add a sentence at the end of the definition, to read as follows:

§ 26.5 What do the terms used in this part mean?

* * * * *

Contract * * * For purposes of this part, a lease is considered to be a contract.

* * * * *

5. In § 26.21, revise paragraph (a)(2) to read as follows:

§ 26.21 Who must have a DBE program?

(a) * * *

(2) FTA recipients that receive $250,000 in FTA planning, capital, and/or operating assistance in a Federal fiscal year, exclusive of transit vehicle purchases, and transit vehicle manufacturers who must submit an overall goal under § 26.49;

* * * * *

§ 26.21 [Amended]

5. In § 26.21(b)(1), in the parenthetical phrase, remove the words "and approved" following the word "reviewed".

§ 26.45 [Amended]

6. In § 26.45(c)(5), remove the words "Subject to the approval of the DOT operating administration, you" and add "You" in its place.

7. Amend § 26.67 as follows:

a. Revise paragraph (a)(2)(i); and

b. Redesignate paragraph (a)(2)(ii) as paragraph (a)(2)(iii), and add a new paragraph (a)(2)(ii), to read as follows:

§ 26.67 What rules determine social and economic disadvantage?

(a) * * *

(2)(i) You must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(ii) Notwithstanding any provision of state law, you must not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. *Provided,* that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

* * * * *

[FR Doc. 99–15866 Filed 6–24–99; 8:45 am]

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Proposed Rules

Federal Register

Vol. 64, No. 123

Monday, June 28, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV99–989–4 PR]

Raisins Produced From Grapes Grown in California; Use of Estimated Trade Demand to Compute Volume Regulation Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on using an estimated trade demand figure to compute volume regulation percentages for 1999–2000 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This rule would provide parameters for implementing volume regulation for 1999–2000 crop NS raisins if supplies are short for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market.

DATES: Comments must be received by July 19, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule invites comments on using an estimated trade demand figure to compute volume regulation percentages for 1999–2000 crop NS raisins covered under the order. This rule would provide parameters for implementing volume regulation for 1999–2000 crop NS raisins if supplies are short for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market. This action was recommended by the Committee at a meeting on April 13, 1999.

Volume Regulation Authority

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation for each crop year, which runs from August 1 through July 31. The Committee must meet by August 15 to review data regarding raisin supplies. At that time, the Committee computes a trade demand for each varietal type for

which a free tonnage percentage might be recommended. Trade demand is equal to 90 percent of the prior year's domestic and export shipments, adjusted by subtracting carryin inventory from the prior year, and adding a desirable carryout inventory for the end of the current year.

By October 5, the Committee must announce preliminary crop estimates and determine whether volume regulation is warranted for the varietal types for which it computed trade demands. Preliminary volume regulation percentages are then computed to release 85 percent of the computed trade demand if a field price has been established, or 65 percent of the trade demand if no field price has been established. Field price is the price that handlers pay for raisins from producers. By February 15, the Committee must recommend final free and reserve percentages which release the full trade demand.

The order also requires that, when volume regulation is in effect, two offers of reserve raisins must be made available to handlers for free use. These offers are known as the "10 plus 10" offers. Each offer consists of a quantity of reserve raisins equal to 10 percent of the prior year's shipments. The order also specifies that "10 plus 10" raisins must be sold to handlers at the current field price plus a 3 percent surcharge and Committee costs.

Development of Export Markets

With the exception of 10 crop years, volume regulation has been utilized for NS raisins since the order's inception in 1949. The procedures for determining volume regulation percentages have been modified over the years to address the industry's needs. In the past, volume regulation has been utilized primarily to help the industry manage an oversupply of raisins. Through the use of various marketing programs operated through reserve pools and other industry promotional activities, the industry has also developed its export markets which now account for almost 40 percent of the industry's shipments.

Between 1980–85, exports of California NS raisins averaged about 26 percent (53,700 packed tons, or raisins which have been processed) of the industry's total NS raisin shipments (207,600 packed tons, excluding government purchases) per year. Between 1993–97, NS raisin exports increased to average about 37 percent (112,000 packed tons) of the industry's total NS raisin shipments (300,000 packed tons, excluding government purchases) per year.

Export Replacement Offer

One market development program operated through reserve pools, the Export Replacement Offer (ERO), has helped U.S. raisins to be price competitive in export markets. Prices in export markets are generally lower than the domestic market. The ERO began in the early 1980's as a "raisin-back" program whereby handlers who exported California raisins could purchase, at a reduced price, reserve raisins for free use. This effectively blended down the cost of the raisins which were exported. The NS raisin ERO was changed to a "cash-back" program in 1996 whereby handlers could receive cash from the reserve pool for export shipments.

Over the past 5 years, an average of 43,000 natural condition tons (unprocessed raisins) of reserve raisins have been utilized per year to fund the ERO. Financing for the cash-back ERO program has been generated primarily from the Committee's "10 plus 10" sales of reserve raisins to handlers for free use. Under the 1996 and 1997 cash-back ERO programs, an average of $57 million of reserve pool funds were utilized to support the export of about 113,000 packed tons of NS raisins.

Current Industry Situation—Potential of Two, Consecutive Short Crops

The Committee is concerned with maintaining the ERO program through potentially two, consecutive short crop years. The 1998–99 California raisin crop was much smaller than average due to the combined effect of adverse crop conditions created by the weather phenomenon known as El Niño, scattered rain during the fall harvest, and a shortage of labor once the grapes were ready for harvest. The 1998–99 NS raisin crop is estimated at 235,000 natural condition tons, about 35 percent lower than the 10-year average of 360,183 natural condition tons. Volume regulation was not implemented for 1998–99 NS raisins, the major varietal type of California raisin, for the first time in 16 years. However, about 60,000 natural condition tons of 1997–98 reserve raisins were available to maintain the industry's ERO program.

The Committee is concerned that the 1999–2000 California raisin crop may also be short due to an April 1999 frost and anticipated high demand for raisin-variety grapes from wineries next fall. If no 1999–2000 reserve were established, the industry would not be able to continue the ERO program. Without a program to support its export sales, the Committee is concerned that the industry could lose a significant portion, perhaps 50 percent, of those markets. Further, handlers who could not sell their raisins in export may sell their raisins domestically. Annual domestic shipments of NS raisins for the past 5 years have averaged about 188,000 packed tons. The Committee is concerned that additional raisins sold into the domestic market could create instability.

Thus, the Committee formed a working group to review this issue and consider options to continue to support its export sales while maintaining stability in the domestic market. After several meetings, the working group presented its recommendation to a subcommittee, and then in turn to the Committee. At a meeting on April 13, 1999, the Committee recommended adding a new paragraph to § 989.154 of the order's administrative rules and regulations that would provide parameters for implementing volume regulation for 1999–2000 crop NS raisins if supplies are short. Section 989.154 would be divided into two paragraphs, (a) and (b). Paragraph (a) would pertain to an existing regulation regarding desirable carryout levels, and paragraph (b) would pertain to estimated trade demand.

Implementing Volume Regulation if Supplies are Short To Maintain the ERO

Section 989.54(e) contains a list of factors that the Committee must consider when computing volume regulation percentages. Factor (4) states that the Committee must consider, if different than the computed trade demand, the estimated trade demand for raisins in free tonnage outlets. The Committee recommended using an estimated trade demand figure for 1999–2000 crop NS raisins, or a figure different than the computed trade demand, to compute volume regulation percentages to create a reserve if supplies are short. This would allow the Committee to continue its ERO program thereby maintaining a portion of its export sales and stabilizing the domestic market.

Specifically, the Committee recommended that an estimated trade demand be utilized to compute preliminary, interim, and final free and reserve percentages for 1999–2000 crop NS raisins if the crop estimate is equal to, less than or no more than 10 percent greater that the trade demand as computed according to the formula specified in § 989.54(a) of the order. If an estimated trade demand figure is utilized, the final reserve percentage would be no more than 10 percent. Finally, volume regulation would not be implemented if the 1999–2000 crop estimate is below 235,000 natural condition tons.

To illustrate how this would work, the Committee would compute a trade demand for NS raisins by August 15 (as an example, 260,000 natural condition tons). At that time, the Committee would also announce its intention to use an estimated trade demand of 235,000 natural condition tons to compute volume regulation percentages for the 1999–2000 crop.

Crop Estimate Below 235,000 Tons—No Regulation

The Committee would meet by October 5 to announce a NS crop estimate and determine whether volume regulation was warranted. Under the Committee's proposal, if the 1999–2000 crop estimate is under 235,000 natural condition tons, volume regulation would not be recommended. With a crop of 235,000 natural condition tons, and about 82,000 natural condition tons of NS raisins projected to be carried forward from the 1998–99 crop year, a supply of about 317,000 natural condition tons of raisins would be available for the 1999–2000 crop year. As previously mentioned, annual NS raisin shipments average about 300,000 packed tons (about 320,000 natural condition tons), excluding government purchases.

With an available supply of only 317,000 natural condition tons of NS raisins, the Committee believes that the industry's first priority would be to satisfy the needs of the domestic market, which absorbs annually an average of about 188,000 packed tons (200,000 natural condition tons). Assuming that 200,000 natural condition tons were shipped domestically, the Committee estimates that, with no ERO program to help U.S. raisins be price competitive in export markets, the industry would export about half of its usual tonnage, or about 60,000 natural condition tons. The remaining 57,000 natural condition tons would likely be held in inventory for the following 2000–2001 crop year. Annual carryout inventory for NS raisins for the past 5 years has averaged about 100,000 natural condition tons.

Crop Estimate Between 235,000 Tons and 10 Percent Above the Computed Trade Demand—Volume Regulation

If the October 1999–2000 crop estimate for NS raisins falls between 235,000 natural condition tons and 10 percent above the computed trade demand, the Committee would use an estimated trade demand figure to compute preliminary free and reserve percentages for the 1999–2000 crop. Thus, using the 260,000 natural condition ton computed trade demand figure, an estimated trade demand would be used to compute volume regulation percentages if the crop estimate falls between 235,000 and 286,000 natural condition tons.

The order specifies that preliminary percentages compute to release 85 percent of the computed trade demand as free tonnage once a field price is established. Producers are paid the field price for their free tonnage. Normally, when preliminary percentages are computed, producers receive an initial payment from handlers for 85 percent of the computed trade demand (or 65 percent of the trade demand if no field price has been established). Using the 260,000 natural condition ton computed trade demand figure, this would equate to 238,000 natural condition tons. However, if the lower, 235,000 natural condition ton estimated trade demand figure were utilized to compute preliminary percentages, producers would receive an initial payment from handlers for only 199,750 natural condition tons, or 71 percent of the computed trade demand.

The Committee is concerned with the preliminary percentage computation using an estimated trade demand and its impact on producer returns. The Committee wants to ensure that producers receive the field price for as much of their crop as possible early in the season while still establishing a small pool of reserve raisins to maintain the ERO. Thus, the Committee recommended that, if an estimated trade demand figure is utilized, preliminary percentages be computed to release 85 percent of the crop estimate. However, the order specifies that preliminary percentages be computed to release 85 percent of the trade demand, not the crop estimate, once a field price is established.

To achieve the same objective but remain within the order's parameters, the Committee could compute interim percentages to equal 85 percent free and 15 percent reserve. Pursuant to § 989.54(c), interim percentages may be computed prior to February 15 to release less than the trade demand. As an example, with a crop estimate of 265,000 natural condition tons and an estimated trade demand of 238,500 natural condition tons, a free percentage of 85 percent of the crop estimate would release 225,250 natural condition tons of raisins, or 94 percent of the estimated trade demand. This action would mollify the impact of implementing volume regulation when supplies are short on producers by allowing them to be paid for as much of their free tonnage raisins as possible early in the season.

Finally, the Committee would meet by February 15 to compute final free and reserve percentages. The Committee recommended that if an estimated trade demand figure is used to compute percentages, the final reserve percentage be computed to equal no more than 10 percent. Producers would ultimately be paid the field price for 90 percent of their crop, or their free tonnage.

The remaining 10 percent of the crop would be held in reserve and offered for sale to handlers in the "10 plus 10" offers. As previously described, the "10 plus 10" offers are two offers of reserve raisins that are made available to handlers for free use. The order specifies that each offer consists of a quantity of reserve raisins equal to 10 percent of the prior year's shipments. This requirement would not be met if volume regulation were implemented when raisin supplies were short. However, all of the raisins held in reserve would be made available to handlers for free use. Handlers would pay the Committee for the "10 plus 10" raisins and that money would be utilized to fund a 1999–2000 ERO program. Any unused 1999–2000 reserve pool funds could be loaned forward to initiate a 2000–2001 ERO program. However, the Committee recommended that such funds be paid back to the 1999–2000 reserve pool and ultimately be returned to 1999–2000 equity holders.

Crop Estimate More Than 10 Percent Above the Computed Trade Demand

Finally, the Committee recommended that, if the 1999–2000 crop estimate is more than 10 percent greater than the computed trade demand (or above 286,000 natural condition tons in the earlier example), the computed trade demand (as an example, 260,000 natural condition tons) would be utilized to compute volume regulation percentages. Under this scenario, enough raisins (over 28,000 natural condition tons) would be available in reserve to continue the ERO program.

It is anticipated that allowing the use of an estimated trade demand figure to compute volume regulation percentages for 1999–2000 crop NS raisins if supplies are short would assist the industry in maintaining a portion of its export markets and stabilize the domestic market. If the crop estimate is below 235,000 natural condition tons, no volume regulation would be implemented. If this occurs, it is anticipated that domestic market needs would be met, while export markets would likely not be satisfied.

However, if the crop falls between 235,000 natural condition tons and slightly higher than the computed trade demand, establishing a small reserve pool would allow the industry to not only satisfy the needs of the domestic market, but also maintain a portion of its export sales, which now account for almost 40 percent of the industry's annual shipments. By maintaining an ERO program, even at a reduced level, exporters could continue to be price competitive and sell their raisins abroad. The domestic market would remain stable because it would not have to absorb any additional raisins that handlers could not afford to sell in export markets.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources.

This rule would add a new paragraph to § 989.154 of the order's administrative rules and regulations that would provide parameters for using an estimated trade demand figure specified in § 989.54(e)(4) of the order to compute volume regulation percentages for 1999–2000 crop NS raisins. This rule would provide guidelines for the use of volume regulation if 1999–2000 NS raisin supplies are short for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market.

Regarding the impact of the action on producers and handlers, under the Committee's proposal, if an estimated trade demand figure was used to compute volume regulation percentages, the final reserve percentage would compute to no more than 10 percent. Producers would thus be paid the field price for at least 90 percent of their crop, but would lose being paid the field price for about 10 percent of their crop that would go into a reserve pool. The field price for NS raisins for the past 5 years has averaged $1,216 per ton. Handlers in turn would purchase 90 percent of their raisins directly from producers at the field price, but would have to buy remaining raisins out of the reserve pool at a higher price (field price plus 3 percent and Committee costs). The "10 plus 10" price of NS reserve raisins has averaged about $100 higher than the field price for the past 5 years, or $1,316 per ton. Proceeds from the "10 plus 10" sales would be used to support export sales.

While there may be some initial costs for both producers and handlers, the long term benefits of this action far outweigh the costs. The Committee believes that with no reserve pool and hence no ERO program, export sales would decline dramatically, perhaps up to 50 percent. Handlers would likely sell into the domestic market raisins that they were unable to sell into lower priced export markets. Additional NS raisins sold into the domestic market, which typically absorbs about 188,000 packed tons, could create instability. The industry would likely lose a substantial portion of its export markets, which now account for about 37 percent (112,000 packed tons) of the industry's annual shipments (300,000 packed tons, excluding government purchases). Committee members have also commented that, once export markets were lost, it would be difficult and costly for the industry to recover those sales.

Maintaining the industry's export markets would, in turn, help the industry maximize its 1999–2000 total shipments and prevent handlers from carrying forward large quantities of inventory into the 2000–2001 crop year. If the industry is unable to maximize its 1999–2000 shipments, carryin inventory could be high which would result in a lower computed trade demand figure for the 2000–2001 crop year. If the industry returns to its pattern of relatively large crops in 2000–2001, a low trade demand and large crop estimate would compute to a low free tonnage percentage. Since producers are paid significantly more for their free tonnage than for reserve tonnage, this would mean reduced returns to producers. Projected reduced 2000–2001 returns to raisin producers, coupled with the risks of rain and labor shortages during harvest, may influence producers to "go green," or sell their raisin-variety grapes to the fresh-grape, wine, or juice concentrate markets. Additional supplies to those outlets could potentially reduce "green" returns as well.

A similar scenario occurred in the California raisin industry in the early 1980's where the industry experienced two consecutive, short crop years. The 1981–82 and 1982–83 crops were short followed by relatively large crops for the remainder of the 1980's. The producer field price for NS raisins was $1,275 per ton for 1981–82 crop raisins, and $1,300 per ton for 1982–83 crop raisins. No volume regulation was implemented in 1982–83. However, a large inventory of high-priced raisins was carried forward into the 1983–84 crop year. When coupled with the largest crop on record at the time, volume regulation was implemented for the 1983–84 crop with the free tonnage percentage at a historically low 37.5 percent. By 1984, the producer field price for free tonnage raisins fell to $700 per ton, causing producers to experience large financial losses. Thus, the industry wants to help avoid a repeat of what happened in the 1980's by utilizing the Federal order to maintain export sales and provide stability in the domestic market.

Several alternatives to the proposed action were considered by the industry. As previously mentioned, the Committee formed a working group to address its concerns. The working group considered utilizing money remaining in the 1997–98 reserve pool to fund some portion of an ERO. About $22 million would be available. However, because there was no 1998–99 reserve, the 1997–98 pool will ultimately fund at least 16 months of an ERO program. Ideally, the Committee would like to see each reserve pool support one year of an ERO program. Unfortunately, because of variances in crop size, the spread in price between the domestic and export markets, and other factors, this goal is not always met. In any event, the Committee agreed that any remaining 1997–98 reserve pool funds could be loaned forward to initiate a 1999–2000 ERO program, but those funds would have to be paid back and ultimately returned to the 1997–98 equity holders.

A second alternative considered by the working group was to fund the ERO through an increased assessment rate. The current assessment rate is $8.50 per ton for raisins acquired by handlers. The Committee estimated that the rate would need to be increased to at least $60 per ton for acquired raisins. The Department had concerns with such an increase as well as whether the ERO could be funded through the order's assessment authority.

A third alternative considered by the working group was to change the order's desirable carryout formula. Desirable carryout is part of the order's trade demand formula and is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available for shipment. Desirable carryout is specified in the order's regulations and is equal to 2½ months of the prior year's shipments. Changing the desirable carryout changes the trade demand computation. The working group considered developing a sliding scale which would match crop estimates with levels of carryout inventory. However, after much discussion, the working group ultimately recommended to the Committee using an estimated trade demand to compute volume regulation percentages next year if NS raisin supplies are short.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. If volume regulation were implemented next year using an estimated trade demand figure, the requirements on handlers would be identical to those requirements imposed in past seasons when volume regulation was implemented. As previously stated, volume regulation has been utilized in all but 10 seasons for NS raisins since the inception of the order in 1949. Thus, handlers are familiar with the requirements.

Furthermore, this action would not impose any additional reporting or recordkeeping burden on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's working group meetings held on February 24, March 10, March 18, April 6, 1999, and the subcommittee and Committee meetings on April 13, 1999, where this action was deliberated were all public meetings widely publicized throughout the raisin industry. The Committee held a follow-up meeting on June 10, 1999, to further educate the industry on its recommendation. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

Further, two major industry organizations, Sun-Maid Growers of California (Sun-Maid) and the Raisin Bargaining Association (RBA), have held meetings to provide additional information to their members on the Committee's recommendation. Sun-Maid and the RBA represent about 70 percent of the California raisin industry. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate because this action, if adopted, should be in place by the beginning of the 1999–2000 crop year, August 1. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 989.154 [Amended]

2. The undesignated center heading preceding § 989.154 is revised to read "Marketing Policy."

3. Section 989.154 is revised to read as follows:

§ 989.154 Marketing policy computations.

(a) *Desirable carryout levels.* The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to total shipments of free tonnage of the prior crop year during August, September, and one-half of October, for each varietal type, converted to a natural condition basis: *Provided,* That, should the prior year's shipments be limited because of crop conditions, the Committee may select the total shipments during the months of August, September, and one-half of October during one of the three crop years preceding the prior crop year.

(b) *Estimated trade demand.* Pursuant to § 989.54, paragraph (e)(4), estimated trade demand is a figure different than the trade demand computed according to the formula in § 989.54, paragraph (a). The Committee shall use an estimated trade demand to compute preliminary and interim free and reserve percentages, or determine such final percentages for recommendation to the Secretary for 1999–2000 crop Natural (sun-dried) Seedless (NS) raisins if the crop estimate is equal to, less than, or no more than 10 percent greater than the computed trade demand: *Provided,* That the final reserve percentage computed using such estimated trade demand shall be no more than 10 percent, and no reserve shall be established if the final 1999–2000 NS raisin crop estimate is less than 235,000 natural condition tons.

4. A new undesignated center heading is added preceding § 989.157 to read "Quality Control."

Dated: June 23, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–16329 Filed 6–23–99; 2:48 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–369–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60

series airplanes. This proposal would require a one-time visual inspection of the emergency brake accumulator mounting structure for evidence of cracking; and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the mounting angle that supports the emergency brake system due to cracking, which could result in loss of the emergency brake system.

DATES: Comments must be received by July 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–369–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–369–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–369–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes. The CAA advises that cracking was detected on the emergency brake accumulator mounting structure. The exact cause of the cracking has not been determined at this time. This condition, if not corrected, could result in failure of the mounting angle that supports the emergency brake system, and consequent loss of the emergency brake system.

Explanation of Relevant Service Information

Bombardier has issued Short Brothers Service Bulletins SD3 SHERPA–29–2 (for Model SD3–SHERPA series airplanes), SD360 SHERPA–29–1 (for Model SD3–60 SHERPA series airplanes), SD330–29–19 (for Model SD3–30 series airplanes), and SD360–29–06 (for Model SD3–60 series airplanes); all dated October 22, 1998. These service bulletins describe procedures for inspecting the emergency brake accumulator mounting angle for cracks; replacing the mounting angle with a new or serviceable mounting angle, if necessary; and reporting the results of the inspection findings to Short Brothers.

The CAA has classified these service bulletins as mandatory and issued British airworthiness directives 009–10–98 (for Model SD3–SHERPA series airplanes), 011–10–98 (for Model SD3–60 SHERPA series airplanes), 008–10–98 (for Model SD3–30 series airplanes), and 010–10–98 (for Model SD3–60 series airplanes) in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 56 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,360, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers PLC: Docket 98–NM–369–AD.

Applicability: All Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the mounting angle that supports the emergency brake system due to cracking, which could result in loss of the emergency brake system, accomplish the following:

Inspection

(a) Within 3 months after the effective date of this AD, perform a visual inspection of the emergency brake accumulator mounting angle for evidence of cracking in accordance with Shorts Service Bulletin SD3 SHERPA–29–2 (for Model SD3–SHERPA series airplanes); SD360 SHERPA–29–1 (for Model SD3–60 SHERPA series airplanes); SD330–29–19 (for Model SD3–30 series airplanes); or SD360–29–06 (for Model SD3–60 series airplanes); all dated October 22, 1998; as applicable. If any cracking is found, prior to further flight, remove and replace the mounting angle with a new or serviceable part in accordance with the applicable service bulletin.

Reporting

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to Short Brothers PLC, Mel Smith, Team Leader Customer Support, facsimile number: 44–1232–733024. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directives 009–10–98 (for Model SD3–SHERPA series airplanes), 011–10–98 (for Model SD3–60 SHERPA series airplanes), 008–10–98 (for Model SD3–30 series airplanes), and 010–10–98 (for Model SD3–60 series airplanes).

Issued in Renton, Washington, on June 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16336 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–349–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–30 series airplanes. This proposal would require modification of electrical wiring associated with heater components. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the autofeather system, which could result in reduced controllability of the airplane in the event of engine failure during takeoff.

DATES: Comments must be received by July 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–349–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA,

Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–349–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–349–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain Short Brothers Model SD3–30 series airplanes. The CAA advises that modifications of Model SD3–30 series airplanes accomplished in accordance with Shorts Service Bulletin SD330–30–30, dated June 1988, may inhibit the autofeather system. That service bulletin describes the actions necessary to modify electrical wiring and remove equipment associated with component heaters. However, that service bulletin provided insufficient information to adequately accomplish the wiring changes and equipment removal. Performing the modification as described in Shorts Service Bulletin SD330–30–30, dated June 1988, could result in the failure of the autofeather system and consequent reduced controllability of the airplane in the event of engine failure during takeoff.

Explanation of Relevant Service Information

The manufacturer has issued Shorts Service Bulletin SD330–30–33, dated June 1998. That service bulletin references Shorts Service Bulletin SD330–30–30, Revision 1, dated September 1997, which describes procedures for modifying electrical wiring, and removing circuit breakers, an ammeter, ammeter shunts, and plugs associated with component heaters. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 003–06–98 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 27 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions and that the average labor rate is $60 per work hour. The cost for required parts would be minimal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,720, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers PLC: Docket 98–NM–349–AD.

Applicability: Model SD3–30 series airplanes that have been modified in accordance with Shorts Service Bulletin SD330–30–30, dated June 1988; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the autofeather system, which could result in reduced controllability of the airplane in the event of engine failure during takeoff, accomplish the following:

Required Modification

(a) Within 60 days after the effective date of this AD, modify electrical wiring associated with component heaters in accordance with Shorts Service Bulletin SD330–30–33, dated June 1998.

Note 2: Shorts Service Bulletin SD330–30–33, dated June 1998, references Shorts Service Bulletin SD330–30–30, Revision 1, dated September 1997, as an additional source of service information for modifying the electrical wiring and removing equipment associated with component heaters. Operators should note that Shorts Service Bulletin SD330–30–30, Revision 1, dated September 1997, requires that Pratt & Whitney Service Bulletin No. 3222, Revision No. 2, be incorporated prior to or in conjunction with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in British airworthiness directive 003–06–98.

Issued in Renton, Washington, on June 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16335 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–106–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus A319, A320, and A321 series airplanes. This proposal would require modification of the electro-distributor for the nose wheel steering servo-control. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent uncommanded nose landing gear wheel rotation, due to defective seals in the wheel steering selector valve of the hydraulic control unit for the nose landing gear, which could result in reduced controllability of the airplane.

DATES: Comments must be received by July 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–106–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Gorale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that there have been several cases of uncommanded nose landing gear wheel rotation on in-service airplanes. Such uncommanded rotation was caused by defective seals in the wheel steering selector valve of the hydraulic control unit for the nose landing gear, which resulted in failure of the nose landing gear wheel steering system. The seals

were found to be extruded due to aging or the absence of a backup ring. Uncommanded nose landing gear wheel rotation, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–32–1197, Revision 01, dated February 11, 1999, which describes procedures for modification of the electro-distributor for the nose wheel steering servo-control. The modification involves replacing the O-ring seals fitted to the electro-distributor with new "GREENE TWEED" seals with a back-up ring. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 1999–124–129(B), dated March 24, 1999, in order to assure the continued airworthiness of these airplanes in France.

Airbus Service Bulletin A320–32–1197 references MESSIER-BUGATTI Service Bulletin C24736–32–3166, dated December 4, 1998, as an additional source of service information for accomplishment of the modification.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the action specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 208 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $335 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $157,040, or $755 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–106–AD.

Applicability: Model A319, A320, and A321 series airplanes; except those airplanes on which Airbus Modification 23740 was accomplished during production, and those airplanes on which Airbus Service Bulletin A320–32–1197, dated October 9, 1998, or Revision 01, dated February 11, 1999, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded nose landing gear wheel rotation, due to defective seals in the wheel steering selector valve of the hydraulic control unit for the nose landing gear, which could result in reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 12 months after the effective date of this AD, modify the electro-distributor for the nose wheel steering servo-control in accordance with Airbus Industrie Service Bulletin A320–32–1197, Revision 01, dated February 11, 1999.

Note 2: Airbus Service Bulletin A320–32–1197 references MESSIER-BUGATTI Service Bulletin C24736–32–3166, dated December 4, 1998, as an additional source of service information for accomplishment of the modification.

Note 3: Replacement of the by-pass valve in accordance with MESSIER-BUGATTI Service Bulletin C24736–32–3126, dated February 15, 1995, as revised by Change Notice Number 1, dated March 16, 1999, is considered acceptable for compliance with the action specified in paragraph (a) of this AD.

Spares

(b) As of the effective date of this AD, no person shall install a hydraulic control unit, part number C24736000 or C24736001, on any airplane, unless it has been modified in accordance with the actions required by paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–124–129(B), dated March 24, 1999.

Issued in Renton, Washington, on June 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16334 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–12–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes. This proposal would require replacement of the existing bolts that secure the elevator control torque tube bearing housing retaining plate with hex head bolts. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent reduced movement of the elevator controls and consequent reduced controllability of the airplane, as a result of bolts coming loose on the elevator control torque tube bearing housing retaining plate.

DATES: Comments must be received by July 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes. The CAA advises that the bolts that secure the elevator control torque tube bearing housing retaining plate to the pilots seat pedestal were found loose. The bolts became loose due to the existing design of the bolts, which does not allow for proper torquing upon installation. This condition, if not corrected, could result in bolts coming loose on the elevator control torque tube bearing housing retaining plate which could result in reduced movement of the elevator controls and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Short Brothers has issued the following service bulletins:

- SD3 Sherpa-27–3, Revision 1, dated November 23, 1998 (for Model SD3–SHERPA series airplanes);
- SD3–60 Sherpa-27–3, Revision 1, dated November 23, 1998 (for Model SD3–60 SHERPA series airplanes);
- SD330–27–37, Revision 1, dated November 23, 1998 (for Model SD3–30 series airplanes); and
- SD360–27–28, Revision 1, dated November 23, 1998 (for Model SD3–60 series airplanes).

These service bulletins describe procedures for replacement of the existing bolts that secure the elevator control torque tube bearing housing retaining plate with hex head bolts. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The CAA classified these service bulletins as mandatory and issued British airworthiness directives 009–11–98, 010–11–98, 013–11–98, and 017–11–98, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom

and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously.

Cost Impact

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would come from the operator's existing supply. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $11,040, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers PLC: Docket 99–NM–12–AD.

Applicability: All Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced movement of the elevator controls and consequent reduced controllability of the airplane, as a result of bolts coming loose on the elevator control torque tube bearing housing retaining plate, accomplish the following:

Replacement

(a) Within 6 months after the effective date of this AD, replace the existing bolts of the elevator control torque tube bearing housing retaining plate with hex head bolts torqued to a value of 35 lb-ins, in accordance with Shorts Service Bulletins SD3 Sherpa–27–3, Revision 1, dated November 23, 1998 (for Model SD3–SHERPA series airplanes); SD3–60 Sherpa–27–3, Revision 1, dated November 23, 1998 (for Model SD3–60 SHERPA series airplanes); SD330–27–37, Revision 1, dated November 23, 1998 (for Model SD3–30 series airplanes); or SD360–27–28, Revision 1, dated November 23, 1998 (for Model SD3–60 series airplanes); as applicable.

Alternative Method of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directives 009–11–98, 010–11–98, 013–11–98, and 017–11–98.

Issued in Renton, Washington, on June 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16333 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–29–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes. This proposal would require detailed visual and borescopic inspections to detect corrosion of the engine mounting tube assembly, and replacement of corroded parts with new or serviceable parts. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the engine mounting tube assembly, which could result in loss of the engine in flight.

DATES: Comments must be received by July 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–29–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes. The CAA advises that corrosion has been found on and in the engine mounting tube assembly of two Model SD3–60 series airplanes. Specifically, corrosion was found on the internal surface of the engine mounting tubes, and on the tube end fittings, taper pins, and foot fittings. This condition may exist on all four Short Brothers models due to the similarity in design of the engine mounting asssembly for each model. Such corrosion, if not corrected, could result in failure of the engine mounting tube assembly and consequent loss of the engine in flight.

Explanation of Relevant Service Information

The manufacturer has issued Shorts Service Bulletins SD330–71–23, dated November 20, 1998, and Revision 1, dated April 26, 1999 (for Model SD3–30 series airplanes); SD3 SHERPA 71–1, Revision 1, dated February 3, 1999, and Revision 2, dated April 26, 1999 (for Model SD3–SHERPA series airplanes); SD360 SHERPA 71–1, Revision 1, dated February 3, 1999, and Revision 2, dated April 26, 1999 (for Model SD3–60 SHERPA series airplanes); and SD360–71–18, Revision 1, dated February 3, 1999, and Revision 2, dated April 26, 1999 (for Model SD3–60 series airplanes). These service bulletins describe procedures for detailed visual and borescopic inspections to detect corrosion of the engine mounting tube assembly, and replacement of corroded parts with new or serviceable parts. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The CAA classified these service bulletins as mandatory and issued British airworthiness directives 014–11–98, 018–11–98, 011–11–98, and 012–11–98 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between Proposed Rule and Foreign AD's

The proposed AD would differ from the parallel CAA airworthiness directives in that it does not require the operator to submit the inspection results to the manufacturer. Because the manufacturer has provided a terminating action, the FAA has determined that reporting inspection results is not necessary. However, the operator at its discretion may choose otherwise.

Differences Between Proposed Rule and Service Bulletins

The compliance times proposed by this AD would differ from those specified by the most recent versions of the referenced service bulletins. Those revised service bulletins recommend a 9-month compliance time; the proposed AD would require a 6-month compliance time, which is the same as that required by the parallel CAA airworthiness directives. The FAA is not aware of any information that would justify a 9-month compliance time.

Cost Impact

The FAA estimates that 137 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 25 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $205,500, or $1,500 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers PLC: Docket 99–NM–29–AD.

Applicability: All Model SD3–30, SD3–60, SD3-SHERPA, and SD3–60 SHERPA series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine mounting tube assembly, which could result in loss of the engine in flight, accomplish the following:

Inspections

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection of the taper pins of the engine mounting tube assembly for corrosion, in accordance with Shorts Service Bulletin SD330–71–23, dated November 20, 1998, or Revision 1, dated April 26, 1999 (for Model SD3–30 series airplanes); SD 3 SHERPA—71–1, Revision 1, dated February 3, 1999, or Revision 2, dated April 26, 1999 (for Model SD3–SHERPA series airplanes); SD360 SHERPA 71–1, Revision 1, dated February 3, 1999, or Revision 2, dated April 26, 1999 (for Model SD3–60 SHERPA series airplanes); or SD360–71–18, Revision 1, dated February 3, 1999, or Revision 2, dated April 26, 1999 (for Model SD3–60 series airplanes); as applicable. If corrosion is found on any taper pin, prior to further flight, replace all three pins with new or serviceable pins, in accordance with the applicable service bulletin.

(b) Within 6 months after the effective date of this AD, perform a borescopic inspection of the internal surface of the engine mounting tubes and fittings for corrosion, in accordance with Shorts Service Bulletin SD330–71–23, dated November 20, 1998, or Revision 1, dated April 26, 1999 (for Model SD3–30 series airplanes); SD3 SHERPA—71–1, Revision 1, dated February 3, 1999, or Revision 2, dated April 26, 1999 (for Model SD3–SHERPA series airplanes); SD360 SHERPA 71–1, Revision 1, dated February 3, 1999, or Revision 2, dated April 26, 1999 (for Model SD3–60 SHERPA series airplanes); or SD360–71–18, Revision 1, dated February 3, 1999, or Revision 2, dated April 26, 1999 (for Model SD3–60 series airplanes); as applicable.

(1) If no corrosion is found on the internal surface of the engine mounting tubes and fittings, no further action is required by this paragraph.

(2) If corrosion is found that is within the limits as defined in the applicable service bulletin, repeat the borescopic inspection thereafter at intervals not to exceed 6 months. Replacement of all corroded parts with new or serviceable parts in accordance with the applicable service bulletin constitutes terminating action for the repetitive borescopic inspections required by this AD.

(3) If corrosion is found that is outside the limits as defined in the applicable service bulletin, prior to further flight, replace the corroded parts with new or serviceable parts, in accordance with the applicable service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with § § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directives 014–11–98, 018–11–98, 011–11–98, and 012–11–98.

Issued in Renton, Washington, on June 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16332 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–11–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 series airplanes. This proposal would require replacement of the elevator auxiliary artificial feel unit (AFU) with a new elevator auxiliary AFU. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the elevator auxiliary AFU. Failure of an AFU, coupled with a control linkage disconnection, could result in reduced controllability of the airplane.

DATES: Comments must be received by July 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–11–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 series airplanes. The DGAC advises that, during an inspection, the bushing of the elevator auxiliary artificial feel unit (AFU), was found broken due to fatigue. The DGAC also advises that the elevator auxiliary AFU failure could affect the elevator neutral position return if linkage disconnection upstream of the servo actuator occurs. Such elevator auxiliary AFU failure, coupled with a control linkage disconnection, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Dassault has issued Service Bulletins F900–235, dated October 13, 1998 (for Model Mystere-Falcon 900 series airplanes), F900EX–88, dated October 20, 1998 (for Model Falcon 900EX series airplanes), and F2000–175, dated October 20, 1998 (for Model Falcon 2000 series airplanes). These service bulletins describe procedures for replacement of the elevator auxiliary AFU with a new elevator auxiliary AFU that has improved fatigue properties. Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 98–429–023(B) and 98–428–007(B), both dated November 4, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 186 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $33,480, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 99–NM–11–AD.

Applicability: Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 series airplanes, equipped with an elevator auxiliary artificial feel unit (AFU), part number 105045–10; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the elevator auxiliary AFU, coupled with a control linkage disconnection, which could result in reduced controllability of the airplane, accomplish the following:

Replacement

(a) Prior to the accumulation of 2,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, replace the elevator auxiliary AFU, part number 105045–10, with an elevator auxiliary AFU, part number 105045–13, in accordance with Dassault Service Bulletin F900–235, dated October 13, 1998 (for Model Mystere-Falcon 900 series airplanes); F900EX–88, dated October 20, 1998 (for Model Falcon 900EX series airplanes); or F2000–175, dated October 20, 1998 (for Model Falcon 2000 series airplanes); as applicable.

Spares

(b) As of the effective date of this AD, no person shall install an elevator auxiliary AFU, part number 105045–10, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 98–429–023(B) and 98–428–007(B), both dated November 4, 1998.

Issued in Renton, Washington, on June 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16331 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–331–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 series airplanes and certain British Aerospace Model Avro 146–RJ series airplanes. This proposal would require repetitive eddy current inspections to detect fatigue cracking along the face of the retraction attachment boss in the nose landing gear sidewall; and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil aviation authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking along the face of the retraction attachment boss in the nose landing gear sidewall, which could result in failure of the nose landing gear during takeoff and landing.

DATES: Comments must be received by July 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–331–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–331–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–331–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace Model BAe 146 series airplanes and certain British Aerospace Model Avro 146–RJ series airplanes. The CAA advises that it has received reports of fatigue cracking in the retraction jack attachment boss on the left-hand nose landing gear sidewall on several in-service aircraft, which in some circumstances has led to replacement of the sidewall. Such fatigue cracking, if not corrected, could result in failure of the nose landing gear during takeoff and landing.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin SB.53–152, dated October 8, 1998, which describes procedures for repetitive eddy current inspections to detect cracking along the face of the retraction attachment boss in the nose landing gear sidewall, and repair, if necessary. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 015–10–98 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed Rule and the Relevant Service Information

Operators should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of cracks, this proposal would require the repair of those cracks to be accomplished in accordance with a method approved by either the FAA, or the CAA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the CAA would be acceptable for compliance with this proposed AD.

Interim Action

This is considered to be an interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,640, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 98–NM–331–AD.

Applicability: Model BAe 146 and Avro 146–RJ series airplanes, as listed in British Aerospace Service Bulletin SB.53–152, dated October 8, 1998, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking along the face of the retraction attachment boss in the nose landing gear sidewall, which could result in failure of the nose landing gear during takeoff and landing, accomplish the following:

Repetitive Inspection

(a) Prior to the accumulation of 8,000 total flight cycles, or within 200 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracking along the face of the retraction attachment boss in the nose landing gear sidewall, in accordance with British Aerospace Service Bulletin SB.53–152, dated October 8, 1998. Thereafter, repeat the eddy current inspection at intervals not to exceed 2,600 flight cycles.

Repair

(b) If any crack is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 015–10–98.

Issued in Renton, Washington, on June 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16330 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–48–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes. This proposal would require replacement of the disc valve and spring in the low pressure non-return valve of the airborne ground check module (AGCM) of the ram air turbine (RAT). This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent malfunction of the low pressure non-return valve in the AGCM. If the RAT is being used due to the loss of other systems, a malfunction of the valve could result in loss of the blue hydraulic system, and consequent loss of certain flight control and electrical systems of the airplane.

DATES: Comments must be received by July 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The Airbus Industrie service bulletin referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. The Sundstrand service bulletin referenced in the proposed rule may be obtained from Sundstrand Aerospace, 4747 Harrison Avenue, P.O. Box 7002, Rockford, Illinois 61125–7002. These service bulletins may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–48–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The DGAC advises that, during two in-flight events and during one functional test of the airborne ground check module (AGCM) of the ram air turbine (RAT), a blockage of the low pressure check valve was observed. Investigation revealed that the blockage was caused by a malfunction of the low pressure non-return valve in the AGCM. If the RAT is being used due to the loss of other systems, the malfunction of the valve could result in loss of the blue hydraulic system, and consequent loss of certain flight control and electrical systems of the airplane.

Explanation of Relevant Service Information

Airbus Industrie has issued Service Bulletin A320–29–1086, dated October 19, 1998, and Revision 01, dated March 9, 1999, which describes procedures for replacement of the disc valve and spring in the low pressure non-return valve of the AGCM of the RAT. This service bulletin references Sundstrand Service Bulletin ERPS13GCM–29–3, dated June 24, 1998, as an additional source of service information for accomplishment of the replacement.

Accomplishment of the action specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified the Airbus Industrie service bulletin as mandatory and issued French airworthiness directive 98–537–124(B), dated December 30, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the action specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 165 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,900, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–48–AD.

Applicability: Model A320 series airplanes, except those airplanes on which Airbus Industrie modification 27728 has been installed in production, or on which Airbus Industrie Service Bulletin A320–29–1086 has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the low pressure non-return valve in the airborne ground check module (AGCM) of the ram air turbine (RAT), which could result in loss of the blue hydraulic system, and consequent loss of certain flight control and electrical systems, accomplish the following:

Replacement

(a) Within 12 months after the effective date of this AD, replace the disc valve and spring in the low pressure non-return valve in the AGCM with a new poppet, and re-identify the AGCM name plate, in accordance with Airbus Industrie Service Bulletin A320–29–1086, dated October 19, 1998, or Revision 01, dated March 9, 1999; and Sundstrand Service Bulletin ERPS13GCM–29–3, dated June 24, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 98–537–124(B), dated December 30, 1998.

Issued in Renton, Washington, on June 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16328 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–102–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require a revision to the FAA-approved Airplane Flight Manual (AFM) to prohibit in-flight operation of the auxiliary power unit (APU). This proposal would require inspection of the APU fire extinguisher discharge cartridge for corrosion, and replacement of the discharge cartridge with a new cartridge, if necessary; and modification of the fire extinguishing system tube assembly. Accomplishment of these actions would terminate the AFM revision. This proposal is promoted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct contamination of the APU fire extinguisher discharge cartridge, which could result in operational failure of the APU fire extinguisher.

DATES: Comments must be received by July 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 277–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–102–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that, during maintenance of a Dornier Model 328–100 series airplane, the auxiliary power unit (APU) fire extinguisher could not be activated due to contamination of the discharge cartridge with fluids. The existing design of the fire extinguishing system does not allow for adequate fluid drainage. This condition, if not corrected, could result in operational failure of the APU fire extinguisher.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin (ASB–328–26–026, dated February 1, 1999, which describes procedures for prohibiting in-flight operation of the APU until accomplishment of an inspection of the APU fire extinguisher discharge cartridge and modification of the fire extinguishing system tube assembly. The service bulletin also describes procedures for inspection of the APU fire extinguisher discharge cartridge for corrosion, and replacement of the discharge cartridge with a new cartridge, if necessary; and modification of the fire extinguishing system tube assembly. The modification involves drilling a drain hole in the deepest point of the fire extinguishing system tube assembly. Accomplishment of the actions specified in the Dornier service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 1999–057, dated February 24, 1999, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certified for operation in the United States under the provisions of § 21.219 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of this situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. The proposed AD also would require a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit in-flight operation of the APU.

Cost Impact

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed revision to the AFM, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $2,760, or $60 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection and modification, at an average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection and modification proposed by this AD on U.S. operators is estimated to be $2,760, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significantly regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GmbH: Docket 99–NM–102–AD.

Applicability: Model 328–100 series airplanes, as listed in Dornier Alert Service Bulletin ASB–328–26–026, dated February 1, 1999, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct contamination of the auxiliary power unit (APU) fire extinguisher discharge cartridge, which could result in operational failure of the APU fire extinguisher, accomplish the following:

Airplane Flight Manual Revision

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Dornier 328–100 Airplane Flight Manual (AFM), Supplement 001, to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"In-flight operation of the APU is prohibited."

Inspection and Modification

(b) Within 2 months after the effective date of this AD, accomplish the actions specified in paragraphs (b)(1) and (b)(2) of this AD in accordance with Dornier Alert Service Bulletin ASB–328–26–026, dated February 1, 1999. After accomplishment of those actions, the AFM revision required by paragraph (a) of this AD may be removed, except as provided by paragraph (b)(1)(ii) of this AD.

(1) Inspect the APU fire extinguisher discharge cartridge for signs of corrosion.

(i) If no corrosion is detected, prior to further flight, clean and dry the discharge cartridge for re-installation.

(ii) If any corrosion is detected, prior to further flight, replace the discharge cartridge with a new part; except, if a new part is not available, the discharge cartridge may be re-installed and the AFM revision required by paragraph (a) of this AD may NOT be removed.

(2) Modify the fire extinguishing system tube assembly by drilling a drain hole.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The inspection, replacement, and modification requirements of this AD are addressed in German airworthiness directive 1999–057, dated February 24, 1999.

Issued in Renton, Washington, on June 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16327 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Modification of the Salt Lake City Class B Airspace Area, UT; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces three fact-finding informal airspace meetings. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal to modify the Salt Lake City Class B Airspace Area. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

DATES: *Meetings.* These informal airspace meetings will be held on Thursday, August 26, at 7:00 pm; Wednesday, September 1, at 7:00 pm; and Thursday, September 16, at 7:00 pm. Comments must be received on or before October 31, 1999.

ADDRESSES: On August 26, 1999, the meeting will be held at the Ogden-Hinckley Airport in the Terminal Building Lobby; the September 1 meeting will be held at Utah Valley State College, Science Building Room 202, Orem, UT; and the September 16 meeting will be held at the Westminster College, Gore School of Business Auditorium 1840 South 1300 East, Salt Lake City, UT.

Comments: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Federal Aviation Administration, 1601 Lind Avenue, Renton, WA 98055–4056.

FOR FURTHER INFORMATION CONTACT: George Orr, Air Traffic Division,ANM–520, FAA, Northwest Mountain Regional Office, telephone (425) 227–2530.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by a representative of the FAA Northwest Mountain Region. A representative from the FAA will present a formal briefing on the proposed airspace classification changes. Each participant will be given an opportunity to deliver comments or make a presentation.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(d) These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) These meetings will not be formally recorded.

Agenda for the Meetings

Opening Remarks and Discussion of Meeting Procedures.
Briefing on Background for Proposals.
Public Presentations.
Closing Comments.

Issued in Washington, DC, on June 22, 1999.

Joseph C. White,

Acting Manager, Airspace and Rules Division.

[FR Doc. 99–16406 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 254

[Docket No. OST–1996–1340, formerly Docket 41690]

RIN 2105–AC07

Domestic Baggage Liability

AGENCY: Office of the Secretary, DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (SNPRM).

SUMMARY: The Department is proposing to amend its rule governing the amount to which certain U.S. air carriers may limit their liability to passengers for lost, damaged, and delayed baggage in interstate and overseas air transportation. This action continues the proceeding initiated by a petition from Public Citizen and Aviation Consumer Action Project to increase the minimum domestic baggage liability limit. This SNPRM reports and evaluates aggregate baggage data submitted by certain air carriers in response to the Department's 1994 NPRM and responds to comments received from various parties subsequent to the issuance of the NPRM. DOT now requests comment on raising the minimum liability limit to $2,500 with a mechanism that would provide for periodic updates every two years.

DATES: Comments are requested by August 27, 1999; late-filed comments will be considered only to the extent practicable.

ADDRESSES: Address comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW., PL–401, Washington, D.C. 20590–0001. Comments should identify the docket number and two copies should be submitted. Persons wishing to receive confirmation of receipt of their written comments should include a self-addressed, stamped postcard. The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. Public dockets may be reviewed there between the hours of 9:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Comments also may be reviewed on-line at the DOT Dockets Management System web site, http://dms.dot.gov/.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of Regulation and Enforcement, Office of General Counsel, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION:

Background

Lost, damaged and delayed baggage ranks as one of the top sources of aviation consumer complaints filed with the Department of Transportation and is a major source of consumer dissatisfaction. In the Air Travel Consumer Report published by the Department, major U.S. air carriers reported the following number of domestic mishandled-baggage reports per year:

Year	Number of mishandled baggage reports
1993	2,282,903
1994	2,321,524
1995	2,227,599
1996	2,460,487
1997	2,278,841
1998	2,484,841

14 CFR Part 254 sets forth the minimum level for permissible limitations of air carrier liability for loss, damage or delay in the carriage of passenger baggage in domestic air transportation. The rule applies to both charter and scheduled service. It provides, "[i]n any flight segment using large aircraft [any aircraft designed to have a maximum passenger capacity of more than 60 seats], or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $1,250 for each passenger."

In addition, Part 254 requires a carrier to provide certain types of notice to passengers. It provides, "[i]n any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket, either: (a) notice of any monetary limitation on its baggage liability to passengers; or (b) the following notice: "Federal rules require any limit on an airline's baggage liability to be at least $1,250 per passenger."

The amount of the minimum liability limit was last amended by a final rule (ER–1374, 49 FR 5065, February 10, 1984), issued by the Civil Aeronautics Board (CAB) before its "sunset," in 1984. The $1,250 figure was calculated based upon the percentage increase in the "Consumer Price Index for all Urban Consumers" (CPI–U) between the date of the previous amendment in May 1977 and September 1983. When setting the limit, the CAB attempted to balance the amount necessary to cover the value of passengers' baggage while still allowing the air carriers to protect themselves from extraordinary claims.

Petition for Rulemaking

On December 21, 1993, Public Citizen and Aviation Consumer Action Project (ACAP) petitioned the Department to raise the minimum limit to $1,850, which was calculated by factoring in the increase in the CPI–U from the previous amendment of September 1983 and compensating for inflation changes until the implementation of the final rule (estimated to be one year from the date of the petition). In support of the formula, ACAP conducted a study that concluded that the CPI–U increase was a good proxy for the price increases for specific consumer goods cited in the study. ACAP stated that, if the rulemaking process proceeded past one year or if the inflation rate changed unexpectedly during this time, the Department should recalculate a new figure using the same methodology.

The NPRM

On September 30, 1994, in response to ACAP's petition, the Department issued an NPRM, requesting comment on three proposals (59 FR 49868). First, based on a 46.4 percent increase in the CPI–U calculated from September 1983 until April 1994, the Department proposed to raise the limit to ACAP's proposal of $1,850. The Department stated that this calculated figure should compensate passengers based on the present value of money and constructively influence air carriers to remedy the causes of baggage problems. To assess the economic effects of this figure on the industry, air carriers were requested to submit annual data on 1993 domestic baggage claims, specifically: (1) The total number of domestic baggage claims (defined in the NPRM) for reimbursement and the total amount claimed (i.e., the amount that the claimants requested); (2) the total amount paid by the carrier in settling those claims; and (3) the number and total dollar amount of claims that exceeded $1,250, and the number and total dollar amount that exceeded $1,850.

As additional alternatives, the Department proposed: (1) To raise the minimum limit to $1,850 with a mechanism that automatically provides for periodic future increases, or (2) to raise the minimum liability limit to $2,000. The first alternative proposal would have provided for an automatic increase of the minimum liability limit every other year based on changes in the CPI–U. DOT asked commenters on the first alternative proposal to address the administrative burden on the airline industry of a periodic update, evaluate current technology, and state their opinions concerning the best method of notice for each rate change. Commenters on the second alternative proposal were asked to focus on the benefits of a fixed minimum liability limit in terms of advance planning and administrative costs. Finally, the Department asked for comment on several proposed time frames for the implementation of the final rule and future automatic adjustments, taking into account ticket stock procurement procedures in the industry. The Department suggested that the new minimum dollar limit go into effect 30 days after issuance of the final rule, but that the revised notice requirement be implemented 60 days after the final rule is issued. In conjunction with these proposals, the Department asked the public and the industry to consider and address several options, such as electronic tickets, a ticket addendum, and ticket stickers. If the automatic adjustment proposal were selected, the Department requested comment on whether a 30-day effective date would be sufficient for future adjustments. Comments and baggage data were due on November 29, 1994.

Request for Extension of Comment Period

On November 10, 1994, the Air Transport Association (ATA) asked for an extension of the November 29, 1994 deadline. ATA requested that the baggage data be published in aggregate form and asked for the comment period to be extended to 60 days after the Department publishes the aggregate baggage data in the docket. ATA cited a critical need for sufficient time for the public to analyze and comment on the baggage data, as well as the need for the Department to fulfill its procedural responsibilities and make a decision based on the most complete information. In response, the Department partially granted ATA's request. The Department stated in a document issued in the **Federal Register** (59 FR 60926, November 29, 1994) that carrier data would be due November 29, 1994 and the aggregated information would be published in the docket, followed by a 30-day comment period.

Comments Received

Comments were received from American Trans Air, Atlantic Southeast Airlines, North American Airlines, Michael Kees, and ACAP. The three air carriers agreed that the minimum liability limit should not exceed $2,000. North American believed that the limit should not be adjusted at all, because the excess liability is covered through excess value insurance offered by airlines for a fee, homeowners insurance, or supplemental baggage coverage provided by some credit cards. If the minimum level is raised, North American claimed carriers would be forced to devote more financial resources to paying and scrutinizing claims, resulting in higher fares. North American believed that carriers

themselves should set the minimum level based on market forces and consumer choice. Additionally, North American stated that if the level were raised, the level should not exceed $1,600. It argued that that the all-item index of the CPI–U no longer realistically reflects changes in individual indices, such as apparel. (The Department interprets this comment as saying that the all-item CPI–U index is disproportionately influenced by particular items other than items that passengers would normally pack in their baggage when flying domestically, such as food and gas.) North American proposed that the methodology utilize the lower apparel index, rather than the higher CPI–U all-item index. North American objected to the automatic adjustment proposal, claiming that the rate for baggage mishaps only increased slightly from the last rate amendment and that the NAFTA and GATT agreements might affect future apparel index ratings.

American Trans Air favored a fixed liability limit of $2,000 and 90 days advance notice before implementation of a final rule.

ASA stated that the Department's claim that a low liability limit will simply prompt the air carriers to pay damages rather than fix their baggage system is a "disservice" to the industry. It argued that because baggage claims result in profit erosion and customer dissatisfaction, air carriers have operational incentives to improve baggage service and do not need monetary incentives from liability limitations. For example, ASA noted that airlines are purchasing and using enhanced baggage tracing systems. ASA believed that a comparison should be made to the passenger bus and rail industries, which have kept their liability limits relatively low in comparison to the air carrier industry. ASA also believed that an $1,850 minimum limit is not necessary because of supplemental insurance offered to the passenger by credit card companies, air carriers and homeowner policies for a modest premium. ASA objected to the proposal for regular future increases, stating that the periodic-increase provision is not applied to other transportation modes and is costly and burdensome, especially to smaller carriers that cannot invest as heavily in cost-saving technology. Finally, ASA suggested that an increase in the liability limit would place air carriers at risk for an increasing number of fraudulent baggage claims.

Mr. Michael Kees, a passenger affected by baggage problems, believed that the limit should be raised to $2,500. Alternatively, he also proposed adding an unlimited-compensation provision, enabling passengers to replace lost items at current costs. Mr. Kees believed it is unfair to compel passengers who want additional insurance to utilize their homeowners policy. According to this commenter, a passenger should not have to pay a deductible and file a claim with the passenger's insurance policy because of the actions of an air carrier.

The Department also received confidential 1993 baggage data from American Airlines, American Trans Air, Atlantic Southeast Airlines, Delta Air Lines, Northwest Airlines, Southwest Airlines, United Airlines, USAir (now US Airways), and Trans World Airlines. Although the carriers' individual data are confidential, the aggregated industry data are not. The air carriers were asked to send data responding to: (1) The total number of domestic baggage claims for reimbursement and the total amount claimed; (2) the total amount paid by the carrier in settling those claims; and (3) the number and total dollar amount of such claims that exceeded $1,250, and the number and total dollar amount that exceeded $1,850. The Department offered the opportunity to air carriers through their industry groups to submit updated material on June 12, 1998. No updates were provided. As a result, the Department will proceed with reporting baggage data submitted in 1993. Because some air carriers did not submit data for certain categories, the Department can only report limited information. In 1993, the submitting air carriers reported 819,480 baggage claims for reimbursement. Reimbursement claims that exceeded $1,250 constituted 3.2% of the aggregate baggage claim total and reimbursement claims that exceeded $1,850 constituted 1.4% of this total, according to the carriers.

Second ACAP Petition

ACAP submitted an updated petition on May 1, 1998, requesting that the Department raise the minimum domestic baggage liability level to $2,100. ACAP calculated a $2,005.47 limit using the CPI–U index, with an additional $94.53 that provides an incentive for the airlines to provide improved baggage facilities and services.

The Current Proposal

After reviewing the comments and baggage data, the Department now proposes to increase the minimum domestic baggage liability limit to $2,500. This figure is based on the Administration's "Airline Passenger Fair Treatment Initiative," as well as the minimum liability limitation being considered by Congress in H.R 780. This figure was based on doubling the current $1,250 regulatory minimum liability limitation and reflects both the Administration's and a Congressional judgment about fairness and the current value of some claims.

Future increases would be based on any increase to the Consumer Price Index for all Urban Consumers from the time the final rule in this proceeding is issued. The Department believes the CPI–U is a proper measuring tool for price changes. The CPI–U is an index of price change, reflecting spending patterns for approximately 80% of the total U.S. population. The index encompasses expenditures reported by persons living in urban areas, including professional employees, the self-employed, the poor, the unemployed, retired persons, urban wage earners, and clerical workers. The CPI–U is considered by many to be the best measure for adjusting payments to consumers when the payer's intent is to allow the consumer to purchase the same items in current dollars. The index includes all goods for consumption by urban households and reflects sales tax. The apparel index, which was advocated by North American, does not accurately represent the wide variety of items passengers pack in their luggage. Because of the impossibility of identifying an individual index covering all items in a traveler's checked baggage, the aggregate CPI–U index is the best indicator.

In order to keep the liability limitation current, the Department would review the Consumer Price Index for All Urban Consumers every two years following the issuance of a final rule in this proceeding. The minimum baggage liability limitation would be increased, if necessary, based on the July CPI–U rounded to the nearest $100 for simplicity. Under this process, the Department would publish a final rule in the **Federal Register** in early fall of the second year following the previous amendment. Because this would be a mathematical computation of the CPI–U on the liability limit in accordance with this proposed rule, the Department would not need to publish a proposed rule first. The liability limitation and the revised notice requirement would be effective on the following January 1. We are proposing January 1 for simplicity and to tie in with publication cycle of Title 14 of the *Code of Federal Regulations*. Consequently, if this rule is issued in 1999, the first adjustment would be calculated in 2001 and would go into effect on January 1, 2002.

The Department believes that these biyearly adjustments are in the public interest because they will keep the liability limitation in line with inflation. This is particularly important in light of decreasing opportunities for passengers to carry luggage into the cabin. In addition, this periodic update is consistent with a similar recent statutory requirement, the Federal Civil Penalties Inflation Adjustment Act of 1990 amended by the Debt Collection Improvement Act of 1996.

In September of 1983, when the $1,250 rule was issued, the CPI–U was 100.7. The May 1999 CPI–U is 166.2. If the current limitation were adjusted solely based on the change in the CPI–U during this period, the minimum baggage liability limitation would be $2,063, and likely higher before the final rule is issued. Although we are proposing to raise the baseline to $2,500, we note that the two numbers are very close.

The escalator provision we are proposing today would use the most recent CPI–U figure that is available at the time the final rule is issued as the baseline. For clarity, we would state exactly what that number is. The formula for these biyearly increases would be as follows:

1x (a–b)/(b) x ($2,500)
a= July CPI–U of year of new adjustment
b= the most current CPI–U figure when final rule is issued

[The numerical result would be rounded to the nearest $100.]

Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. A regulatory evaluation that examines the projected costs and impacts of the proposal has been placed in the docket.

The Department certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. There were no comments on small entity impacts in response to the NPRM. By its express terms, the rule only applies to flight segments using large aircraft, or on any flight segment that is included on the same ticket as another flight segments that uses large aircraft. Few, if any, air carriers operating large aircraft would qualify as small entities. The rule could apply to some air carriers that might be considered small entities to the extent that they interline or codeshare with large air carriers. Based on our analysis, we do not believe this rule would have a significant economic impact because most claim payments are currently well below $1,250. Aggrieved passengers still need to document their loss and are not automatically entitled to compensation at the higher level. Nevertheless, the Department seeks comment on whether there are further unidentified small entity impacts that should be considered. If comments provide information that there are significant small-entity impacts, the Department will prepare a regulatory flexibility analysis at the final rule stage. The Department does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment. The proposal would not result in an unfunded mandate.

List of Subjects in 14 CFR Part 254

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, the Department proposes to amend 14 CFR part 254, as follows:

PART 254—DOMESTIC BAGGAGE LIABILITY

1. The authority citation for part 254 would be revised to read as follows:

Authority: 49 U.S.C. 40113, 41501, 41504, 41510, 41702, and 41707.

§ 254.1 [Amended]

2. In § 254.1, the phrase "and overseas" would be removed and the phrase "and intrastate" would be added in its place.

§ 254.2 [Amended]

3. In § 254.2, the phrase "or overseas" would be removed and the phrase "or intrastate" would be added in its place.

4. Section 254.4 would be revised to read as follows:

§ 254.4 Carrier liability.

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $2,500 for each passenger.

§ 254.5 [Amended]

5. In § 254.5(b), the amount "$1250" would be revised to read "$2,500".

6. Section 254.6 would be added to read as follows

§ 254.6 Periodic adjustments.

The minimum limit of liability prescribed in this part will be reviewed every two years by the Department of Transportation based on changes in the Consumer Price Index for All Urban Consumers. The Consumer Price Index for All Urban Consumers as of July will be used to calculate the revised liability limit pursuant to the following formula:

1x (a–b/b) x ($2,500) rounded to the nearest $100

Where:

a= July CPI–U of year of current adjustment.
b= The most current CPI–U figure when final rule is issued.

Issued in Washington, DC on June 17, 1999, under authority delegated by 49 CFR 1.56a(h)2.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

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FEDERAL TRADE COMMISSION

16 CFR Part 312

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission.

ACTION: Public workshop on proposed regulations implementing the Children's Online Privacy Protection Act.

SUMMARY: On April 27, 1999, the Commission published a **Federal Register** document seeking public comments on its proposed regulations under the Children's Online Privacy Protection Act. As part of its review of the issues raised by the comments in preparation for publishing final regulations, the Commission has scheduled a public workshop to obtain additional comment regarding the issue of appropriate mechanisms for obtaining verifiable parental consent under the regulations. Today's **Federal Register** document outlines the topics to be discussed at the workshop and the procedures to be followed by those who wish to participate in the workshop.

DATES: Requests to participate in the workshop must be submitted by July 6, 1999. The workshop will be held on July 20, 1999, at the Commission's headquarters at 600 Pennsylvania Ave., NW., Washington, DC.

ADDRESSES: All requests to participate should be sent either to the Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-

mail to <*childprivacy@ftc.gov*>. Requests should include the requestor's name, affiliation, if any, address, telephone number and, if available, FAX number and e-mail address. All requests should be captioned "Children's Online Privacy Protection Rule—FTC File No. P994504."

FOR FURTHER INFORMATION CONTACT: Toby Milgrom Levin, Attorney, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–3156, e-mail <*tlevin@ftc.gov*>; Loren G. Thompson, Attorney, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–2049, e-mail <*lthompson@ftc.gov*>; or Jill Samuels, Attorney, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–2066, e-mail <*jsamuels@ftc.gov*>.

SUPPLEMENTARY INFORMATION:

I. Background

On April 20, 1999, the Commission issued proposed regulations implementing the Children's Online Privacy Protection Act (COPPA), 64 FR 22750, April 27, 1999. Of particular importance is the COPPA requirement that, with certain exceptions, websites obtain "verifiable parental consent" before collecting, using, or disclosing personal information from children. Section 312.5 of the proposed rule sets forth this requirement along with the following performance standard:

> An operator must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent. (64 FR 22756)

In its discussion of this section, the Commission identified a number of methods an operator might use to obtain verifiable parental consent, including a print-and-send form signed by the parent and mailed or faxed to the website; a credit-card transaction initiated by the parent; a call made by the parent to a toll-free number; or an e-mail accompanied by the parent's valid digital signature. The Commission also solicited comment on whether there are other e-mail based mechanisms that could provide sufficient assurance that the person providing consent is the child's parent. (64 FR 22756, 22762)

The Commission received over 120 comments on the proposed regulations.[1] A significant number of those comments addressed the issue of verifiable parental consent. The Commission has concluded that a workshop will afford Commission staff and interested parties an opportunity to explore appropriate mechanisms for obtaining verifiable parental consent. The Commission will consider the views and suggestions made during the workshop, in addition to the written comments received, in formulating its final regulations on this topic.

II. Date, Time and Location of Workshop

The one-day workshop will be held in the FTC headquarters building, 600 Pennsylvania Avenue, NW., Washington, DC, on July 20, 1999.

III. Workshop Sessions

The workshop will be divided into three sections designed to elicit further information regarding mechanisms for verifiable parental consent. The first session will be a discussion of websites' actual experiences with regard to obtaining "verifiable parental consent." The second session will explore the availability and adequacy of e-mail based mechanisms designed to provide verifiable parental consent. The third session will examine other technologies and services that are available or under development to implement the verifiable parental consent requirement.

Session I: What methods are websites currently using to obtain "verifiable parental consent?"

(a) Do these methods comply with the requirements of the statute and the proposed rule for verifiable parental consent, i.e., do they provide sufficient assurance that the person providing the consent is the child's parent?

(b) What are the costs and/or benefits to parents and to websites of these methods?

Session II: Do e-mail based mechanisms comply with the requirements of the statute and the proposed rule for verifiable parental consent, i.e., do they provide sufficient assurance that the person providing the consent is the child's parent?

(a) What e-mail based products or services are currently available or under development that websites could use to obtain verifiable parental consent?

(b) What are the cost and/or benefits to parents and to websites of such products or services?

Session III: Are these examples of other technologies, products, or services that websites can use to obtain verifiable parental consent?

(a) What other technologies, products, or services are available or under development that websites could use to obtain verifiable parental consent?

(b) What are the costs and/or benefits to parents and to websites of such products or services?

IV. Request To Participate

Parties interested in participating in the workshop must file a request to participate by July 6, 1999. The request should specify the workshop sessions in which the requester seeks to participate. Parties who wish to participate in the workshop but did not submit written comments should submit a short statement of their views. If the number of parties who request to participate in the workshop is so large that include all requesters would inhibit effective discussion among the participants, Commission staff will select as participants a limited number of parties to represent the relevant interests. Selection will be based on the following criteria:

1. The Party submitted a request to participate by July 6, 1999.

2. The party's participation would promote the representative of a balance of interests at the workshop.

3. The party's participation would promote the consideration and discussion of the issues presented in the workshop.

4. The party has expertise in issues raised in the workshop.

5. The party adequately reflects the view of the affected interest(s) which it purports to represent.

If it is necessary to limit the number of participants, those who requested to participate but were not selected will be afforded an opportunity, if at all possible, to present statements during a limited time period at the conclusion of one or more sessions. The time allotted for these statements will be based on the amount of time necessary for discussion of the issues by the selected parties, and on the number of persons who wish to make statements.

Requesters will be notified as soon as possible after July 6, 1999 if they have been selected to participate.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

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[1] The comments are available for viewing at the Commission's headquarters, 600 Pennsylvania Ave., NW., Room 130, Washington, DC 20580. They are also available on the Commission's website at <http://www.ftc.gov>.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14; Withdrawal of Proposed Revocation of Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Commission withdraws its proposed revocation of certain amendments to the standards for the flammability of children's sleepwear, sizes 0 through 6X and sizes 7 through 14. As directed by the fiscal year 1999 appropriations legislation for the Departments of Veterans Affairs and Housing and Urban Development, and several independent agencies, including the Consumer Product Safety Commission, the Commission previously proposed to revoke the sleepwear amendments. In accordance with the appropriations legislation, the Commission has considered all relevant comments and information and has determined not to revoke the amendments. Elsewhere in this issue of the **Federal Register** the Commission is modifying the amendments to require that tight-fitting sleepwear bear a label and hangtag informing consumers that the garments should fit snugly. Also in this issue of the **Federal Register** the Commission corrects some misidentified references in the amendments. In that notice the Commission is also clarifying the definition of infant garments.

DATES: The proposed rule is withdrawn on June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0400, extension 1370.

SUPPLEMENTARY INFORMATION:

A. The Decision

After considering reports issued by the General Accounting Office and available information and comments, the Commission has decided to withdraw the January 19, 1999 proposed revocation of exemptions from the Commission's sleepwear standards. As explained in detail below, the Commission believes the reasons for the exemptions remain sound.[1] In a separate notice published elsewhere in the **Federal Register**, the Commission is issuing a rule modifying the 1996 amendments to require labeling and hangtags on tight-fitting sleepwear.[2] The labels and hangtags will inform consumers that these garments are intended to be worn with a snug fit for safety. Also in this issue of the **Federal Register** the Commission corrects some misidentified references in the amendments.[3]

B. Background

1. The Original Standards

Since the 1970's there have been federal flammability standards to protect children whose sleepwear becomes ignited by a small open flame. The Department of Commerce ("DOC") issued the flammability standard for children's sleepwear in sizes 0 through 6X (16 CFR Part 1615) in 1971. The Consumer Product Safety Commission issued the flammability standard for children's sleepwear in sizes 7 through 14 (16 CFR Part 1616) in 1974.

Both of these standards were issued under section 4 of the Flammable Fabrics Act ("FFA"), which authorizes flammability standards for a fabric, related material or product when necessary to "protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage." 15 U.S.C. 1193(a).

When the DOC issued the original standard in 1971, it relied upon reports of cases in which people suffered burns from such activities as cooking, smoking, burning trash, lighting furnaces, and while children were playing with matches and lighters or contacting stove burners. (DOC Analysis of Data from Apparel Burn Cases for Children's Sleepwear Standard DOC PFC 3–70.) The flammability test that DOC issued focused on burns resulting from these kinds of ignitions. It was not intended to address all fires in which sleepwear happened to burn. For example, the DOC excluded incidents involved wearing apparel contaminated by flammable liquids when developing the standard because of the variability and complexities involved. Rather, the purpose was to "provide a high and effective level of protection to children approximately 5 years of age and younger against unreasonable risk of death or injury suffered as a result of ignition and continued burning of sleepwear garments." 36 FR 14063 (July 29, 1971).

Once the Commission was established it took over administration of the FFA and standards set under it. 15 U.S.C. 2079(b). In 1974, the Commission issued a flammability standard for children's sleepwear in sizes 7–14. 39 FR 15210. This standard was nearly identical to the standard for smaller sized sleepwear.

Under both standards a specimen is exposed for 3 seconds to a small open flame ignition source that resembles the type of flame that would result from a child playing with matches or a lighter. The specimens must self-extinguish, that is, they must stop burning when the ignition source is removed. 16 CFR 1615.3 and 1616.3. Seams and trim of sleepwear garments must also pass this test.

This is a performance test and does not require or prohibit any type of fabric or mandate any flame-retardant treatment. Due to the characteristics of certain fabrics, however, untreated cotton fabrics generally will not pass the flammability test while some synthetic ones do.

The standards apply to "children's sleepwear," which before the exemptions was defined as "any product of wearing apparel" in the sizes covered by the standard "such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping." The standards exclude diapers and underwear. 16 CFR 1615.1(a) and 1616.2 (a). The definition has long engendered questions of what garments are intended for sleeping or related activities.(59)[4]

2. The Exemptions

In the 1990's the Commission began considering whether the standards could be amended so that close-fitting sleepwear could be made out of cotton without increasing the risk of fire with such garments. The Commission started this inquiry for several reasons. The staff noticed increased marketing of non-sleepwear to be used for sleeping, particularly cotton long underwear-syle garments. This marketing was confusing for consumers and Commission staff as the line between sleepwear and underwear (daywear) became increasingly blurred.(6) The Commission staff developed

[1] The Commission voted to withdraw the proposed revocation by two to one. Commissioners Mary Gall and Thomas Moore voted in favor of withdrawal while Chairman Ann Brown voted against it.

[2] Commissioners Mary Gall and Thomas Moore voted to require labeling. Chairman Ann Brown abstained.

[3] Commissioners Mary Gall and Thomas Moore voted to issue the corrections. Chairman Ann Brown abstained.

[4] Numbers in parentheses refer to documents in the List of Relevant Documents at the end of this notice.

enforcement guidelines to try to distinguish between sleepwear and non-sleepwear garments. However, frequent fashion changes required numerous revisions of these guidelines. The Commission staff believed that this confusion was difficult both for consumers attempting to put their children in suitable sleeping garments and for Commission staff trying to enforce the existing standard.

Moreover, the Commission staff was concerned that to the extent consumers were turning to long underwear-style cotton garments to satisfy a desire for cotton sleepwear, this could be placing children at an increased risk of injury. The Commission staff believed that, without reducing safety, specific exemptions from the standards could respond to marketing practices responding to consumer demands for cotton, and reduce market confusion and compliance and enforcement problems.

The Commission published an advance notice of proposed rulemaking ("ANPR") on January 13, 1993 that began the process of amending the children's sleepwear standards. 58 FR 4111. The ANPR discussed the regulatory alternatives being considered and stated that the Commission could amend the standards to exempt tight-fitting sleepwear and garments intended for infants. The ANPR discussed existing standards and requested comments. On the same date the Commission published the ANPR it also issued a stay of enforcement stating that it would not enforce the sleepwear requirements against garments being used as sleepwear that are labeled and marketed as underwear if those garments are skin-tight or nearly skin-tight, relatively free of ornamentation, and made from fabrics such as rib knit, interlock knit or waffle knit. 58 FR 4078.

In response to the ANPR the Commission received 2,173 comments. The comments were overwhelmingly in favor of the exemption (2,121 in favor, 52 opposed). Many of these responses were form letters. Many letters came from parents who wanted to have cotton sleepwear for their children.(8)

The Commission continued its consideration, and on October 25, 1994 issued a notice of proposed rulemaking ("NPR") proposing to exempt tight-fitting garments and infant garments from the sleepwear standards.(22) The Commission proposed to do this by amending the definition of "children's sleepwear" in the standards. For purposes of the proposed exemption, "infant garments" were defined as those labeled 0–6 months; less than 21 inches in length (for a one piece garment) or with no pieces longer than 14½ inches (for a two piece garment); and less than 19 inches at the chest. "Tight-fitting garments" were defined by specifying maximum dimensions for the chest, waist, seat, upper arm, thigh, wrist and ankle for each size. These dimensions were based on ASTM standards and an anthropometric study of children conducted in 1977 by the University of Michigan. 59 FR 53621. All exempt garments would still have to meet the flammability standards for clothing textiles and vinyl plastic film (16 CFR parts 1610 and 1611). The Commission considered the 39 comments it received in response to the NPR as well as the views expressed in a public meeting held on April 25, 1995 attended by sleepwear manufacturers and importers, consumers and other interested persons.

On September 9, 1996, the Commission issued a final rule amending the flammability standards for children's sleepwear to exclude from the definition of "children's sleepwear," (1) infant garments sized 9 months or smaller, and if a one piece garment, does not exceed 25.75 inches in length; if a two-piece garment, has no piece exceeding 15.75 inches in length, and (2) tight-fitting garments sized larger than 9 months (meeting maximum dimensions specified for each size). 61 FR 47634. The Commission stated that the amendments would take effect on January 1, 1997. The Commission also continued the stay of enforcement on certain underwear garments until March 9, 1998 (it was subsequently extended until June 9, 1998). 61 FR 47412.

Once manufacturers began to design sleepwear that would meet the tight-fitting exemption they encountered some design and construction problems. The staff met with industry members to discuss these problems. The Commission proposed (63 FR 27877) and then on January 19, 1999 issued in final (64 FR 2833), technical amendments to adjust the points of measurement for the upper arm, seat and thigh to make a more practical, wearable garment and to clarify how the sleeve must taper. The Commission also clarified its policy statements so that infant garments and tight-fitting garments could be marketed and promoted with other sleepwear. 64 FR 2832.

3. Legislation and Proposed Revocation

On October 21, 1998, Congress enacted fiscal year 1999 appropriations for the Commission. Public Law 105–276. Section 429 of that law required the Commission to propose to revoke the 1996 amendments to the sleepwear standards. The law also required the General Accounting Office ("GAO") to review burn incident data from the ignition of children's sleepwear from small open-flame sources for the period July 1, 1997 through January 1, 1999. As required by the legislation, GAO completed this review by April 1, 1999. The Conference Report also directed GAO to assess the information and education campaign conducted by industry and the Commission (H.R. Rep. No. 769, 105th Cong., 2d Sess. 267 (1998)). The appropriations measure requires the Commission to issue a final rule revoking, maintaining or modifying the 1996 amendments and any later amendments by July 1, 1999. The Commission must consider and substantively address the findings of the GAO and other information available to the Commission. Congress specified that the rulemaking conducted with respect to this matter is not subject to (1) the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, (2) the Flammable Fabrics Act, 15 U.S.C 1191 *et seq.*, (3) the Regulatory Flexibility Act, 5 U.S.C 601 *et seq.*, (4) the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (5) the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, or (6) any other statute or Executive order.

As directed, on January 19, 1999, the Commission issued a notice proposing to revoke the September 9, 1996 amendments, and subsequent amendments, including the technical amendments and the amendment to the policy statements. 64 FR 2867. The Commission received over 3,400 comments responding to the proposed revocation. These comments and the Commission's responses to the principal issues they raised are discussed in section G below. Although not required by the appropriations measure, the Commission held a public hearing on April 22, 1999, for interested persons to present their views on the proposed revocation orally. Twenty-one people provided testimony.

The Commission has considered GAO's reports, written comments submitted in response to the proposed revocation, oral testimony before the Commission, and other available information and has determined to maintain the exemptions. The basis for this decision is discussed below.

C. The Basis for the Exemptions Still Stands

The comments and testimony indicate that people appear to have the false impression that the 1996 amendments abolished all standards for sleepwear. In fact, the Commission's action was narrowly tailored. The Commission's review of research and injury data indicates that the principal risk from sleepwear is posed by loose-fitting garments. The sleepwear standard continues to cover these types of garments. They must pass the standard's flammability test, that is, they must self-extinguish when exposed to a small open flame. Thus, the flammability standards still cover nightgowns and looser fitting pajamas and robes—the types of sleepwear most often involved in clothing-ignited fires.

Considerable confusion also exists concerning the purpose of the flammability standards and their ability to reduce injuries and deaths due to fires. The original flammability standard was intended to address fires in which clothing was ignited by a small open flame such as matches or lighters. Thus, the original standard was not designed to reduce injuries sustained in whole house or bedding fires. The occurrence of such incidents does not undermine the exemptions because even absent the exemptions, the standard would not address such incidents.

The Commission has determined to maintain the 1996 amendments because the basis for them remains sound. As discussed in sections E through G below, GAO's reports, as well as comments and information received since the amendments, present no new evidence that would change the rationale for the 1996 exemptions. A brief review of the basis for the 1996 amendments follows.

1. Technical Research Supports Tight-Fit

Before issuing the proposed and final exemptions, the Commission conducted an extensive review of technical research and information considering the effect garment design can have on clothing fires. The Commission found that garment design is a major factor; it influences the probability of ignition, flame spread, duration of burning, and the amount of heat transferred to the body. (10)

The idea that tight-fitting garments may be less hazardous than loose-fitting ones did not originate with the Commission's work in the early 1990's. Numerous studies from the 1970's and 1980's examined the issue. Several studies in the 1970's placed loose and tighter-fitting garments on manikins to observe their performance when ignited. For example, in a 1971 study, when sleepwear garments were burned on toddler-size manikins the researchers found that a full, loose garment made of a relatively flammable lightweight fabric is more hazardous than a close-fitting one made of a heavier cotton. Two manikin studies from the later 1970's found that closer-fitting cotton ski pajamas were likely to produce less extensive injuries than looser fitting nightgowns. A manikin study in 1986 compared five different fabrics and found that, for each of the fabrics, nightgowns were more hazardous than pajamas. These are just some of the studies the Commission considered.(10)

After reviewing all the available literature on the issue of garment fit and safety, the staff concluded:

> The reduced probability of ignition of tight fitting clothing is related to three factors: the limited supply of oxygen from underneath the garment, the role the skin plays as a heat sink and reduced likelihood of contacting the flame source.
>
> Garment configurations in which large air spaces are created between the body and the garment act as chimneys in which the flame spread accelerates as it travels an unrestricted path. The resultant rapid burning is characterized by large flames. The excess fabric also serves as a fuel supply that makes it difficult for the flames to be extinguished. Ignition of tight fitting clothing or sections of tight fitting clothing is characterized by both lower flame spread and smaller flames, allowing the wearer to take action sooner. Because tight fitting clothing is less likely to support propagation, it is often easier to extinguish the flames.

(10) The Commission is not aware of any studies conducted since the 1996 amendments that invalidate these findings.

2. Data Support Exemptions

Tight-fitting. When it issued the 1996 exemptions, the Commission reviewed available injury data from the period 1980–1994. During that period, there were an estimated annual average 90 hospital emergency room-treated thermal burn injuries to children involving sleepwear. (The corresponding average annual estimate involving daywear was 850.) Significantly, injuries associated with sleepwear predominantly involved females (71 percent) while burn injuries from daywear usually involved males (69 percent). (25) This tendency for sleepwear-related burns to involve females was true even when the Department of Commerce developed the original standard (DOC Analysis of Data for standard). Females are more likely to have been wearing nightgowns or looser fitting garments for sleeping. Of the 20 nightwear-related cases involving children under 15 years reported to NEISS during the 1980–1994 period, 11 involved nightgowns, six involved pajamas (not tight-fitting), two involved nightshirts, and one involved a polyester blanket sleeper.(25)

The Commission conducted in-depth investigations of incidents reported from 1992–1994 involving sleepwear or daywear used as sleepwear. Summaries of these investigations were included in staff memos that were part of the briefing packages for the proposed and final amendments.(12 and 25) Most of the incidents involved loose-fitting clothing such as nightgowns, nightshirts and tee shirts. Ignition sources were items such as cigarette lighters, stoves, matches, and fireplaces. Based on its investigations of NEISS cases, the staff estimated that about 200 thermal burn injuries involving daywear used as sleepwear were treated in hospital emergency rooms during 1994.(25)

In 1993, when the Commission began the rulemaking proceeding that resulted in the 1996 amendments, the Commission issued a stay of enforcement for garments that were marketed and labeled as underwear and were skin-tight or nearly skin-tight. These garments are closer fitting than traditional pajamas but looser than garments allowed under the 1996 exemption. The Commission is not aware of any burn incidents involving such stay garments.(62) If tight-fitting garments posed an increased risk of fire, one would expect to see an increase in clothing-related incidents after these stay garments were allowed since they are even looser than exempt garments. This has not been the case. When the Commission issued the tight-fitting exemption, the NEISS estimate for clothing-related incidents involving children under 15 was about the same as before the stay.(25) When the staff reviewed the data for the current proceeding it found no increase in fatalities in the last 20 years and no trends in injuries since before the stay.(62) According to National Purchase Diary data, purchases of cotton sleepwear garments have increased from 9.7 percent in 1992 to 27.5 percent in 1998. More cotton garments are on the market, but there has not been a corresponding increase in incidents.(61)

In fact, relatively close-fitting garments resembling underwear have been available long before the stay of enforcement. In 1979, the Commission received a petition from a sleepwear manufacturer who was concerned about thermal underwear being marketed and worn as sleepwear. Beginning in 1984, the Commission staff developed a series of enforcement pamphlets to try to distinguish between these types of cotton underwear garments and sleepwear.(59) Throughout this time, sleepwear-related burn incidents have continued to involve primarily loose-fitting garments such as nightgowns,

traditional (loose) pajamas, and oversized tee-shirts.(25)

Complementing the research discussed above and the data, the staff also conducted a review of literature concerning the association of closeness of fit and burn severity.(13) For example, a 1985 study reviewed the Canadian experience with clothing-ignited injuries involving children under 9 years old. There were 192 cases reported with statistical analyses performed on 174 cases. The study found that the two significant predictors of burn severity were the style of garment and the ignition situation; burns tended to be more severe when the victims wore loose-fitting clothing and when no adult was present.(13)

A study published in 1973 used data from the Flammable Fabric Accident Case and Testing System ("FFACTS") to determine that close-fitting garments were associated with less severe burn injuries. The study concluded that closeness of fit had a stronger influence than fiber content on burn severity in incidents where the clothing was the first to ignite.(13)

Infants. Very few incidents involving infants under one year have been reported. The original standard was only intended to address incidents in which an infant's clothing was ignited from a brief exposure to a small open flame. Flame-resistant fabrics burn or char until the ignition source is removed. Flame retardant sleepwear will not protect a baby whose crib becomes engulfed in flames. This is the type of scenario that most often occurs when an infant suffers burn injuries.(15) Industry representatives reported that infant sizing is not true to age. As a common rule, according to the retail industry, parents buy infants' sleepwear at double the age (i.e., for 6 month old infants, purchasing the 12 month size). The exemption applies to garments in sizes 9 months and smaller. As the preamble to the final rule noted, these garments are frequently purchased for babies 6 months of age and younger. 61 FR 47638. (See also oral testimony of Julie Goldschneider and Commissioner Moore's April 30, 1996 statement.)

A 1973 review of the FFACTS data base found 434 incidents up to that date involving persons of any age clothed in sleepwear. Of these, only three involved children under one year of age. Two of these involved house or trailer fires and the third was a bedding fire.(13) A 1978 study of 66 burn injuries to children under one year old associated with clothing found similar results. "In ten cases, the clothing involved was specifically identified as sleepwear. Nine of those cases involved whole-house fires; the other involved a home-made garment. The Commission concluded that none of these cases involved risks of injury which the sleepwear standard was intended to address." 61 FR 47637.

The Commission previously considered exempting infants from the sleepwear standard. In 1977, the Commission proposed to delete coverage of sleepwear in sizes below size one. 42 FR 56568. In 1978, the Commission withdrew this proposal. 43 FR 31348. In the twenty years since that decision, clothing-ignited fires involving infants have remained a rare event.

In its review of data for the 1996 exemptions, the staff found only three reported cases involving children under one year old between 1980 and 1994. Only one of these involved nightwear, and it was a house fire.(25 and 12) In its review of incidents reported since 1996, the staff found two involving children under one year old. Both incidents were house fires. It was difficult to determine what type of clothing the children were wearing.(62)

3. Experiences of Other Countries Support Exemptions

The experiences of several other countries, particularly Canada, bolster the Commission's conclusion that the exemptions would not reduce the level of protection for children.

In 1971 Canada issued flammability regulations for children's sleepwear that established a minimal standard similar to CPSC's general wearing apparel standard. However, sleepwear-related burn injuries and deaths continued, and studies showed that garment style was a major factor. Thus, in 1987, Canada revised its sleepwear regulations so that there are essentially two regulations; one applies to sleepwear considered to be a high fire hazard—such as nightgowns, nightshirts, robes and loose-fitting pajamas—the other to sleepwear posing a low fire hazard. Garments presenting a high fire hazard must meet a flammability test similar to the U.S. sleepwear standard for non-exempt garments. Sleepwear posing a low fire hazard must meet a test similar to the Commission's general wearing apparel flammability test. Canada considers sleepwear of the following types to present a low fire hazard: polo pajamas and sleepers in sizes 0–14x, sleepwear designed for infants up to 7 kg (15.4 lbs.), and sleepwear designed for hospital use in sizes 0–14. Polo pajamas and sleepers have tight waists, ankles and wrists.(26)

In a 1993 letter, the director of Canada's Office of Product Safety told CPSC that the standard has been a success.(26) The rationale for provisions concerning infants and closer-fitting garments was similar to CPSC's. She stated: "Infants up to 7 kg (about 5 months old) are usually under the close supervision of their parents and they are not crawling, walking or climbing at this age." As for polo pajamas and sleepers: "Studies have demonstrated that garment style play [sic] a major role in the flammability of sleepwear. Snug fitting garments with tight waists, ankles and wrists as polo pajamas and sleepers, are safer as they are less likely to come into contact with ignition sources, and burn slowly." She stated that no deaths had been reported after the 1987 standard. A five year study to assess the effectiveness of the regulations was initiated, but because there were so few injuries reported, the study was discontinued. The Director concluded: "Since the Regulations, injuries due to the ignition of children's sleepwear are no longer an issue in Canada."(26) As of May 1999, Canada reports that it still has no reported fire deaths related to children's sleepwear since 1987.(68)

Several other countries distinguish between loose-fitting sleepwear such as nightgowns and closer-fitting sleepwear such as pajamas and make exceptions for infant garments.(13) Australian standards have three categories: (1) Low fire hazard type fabric, (2) form fitting clothing designed to reduce fire hazard, and (3) garments not complying with either of these categories and perceived to be of greater risk. Garments must be labeled as to their fire hazard category.

The United Kingdom has sleepwear regulations issued in 1987 that require nightdresses, dressing gowns and similar garments commonly worn for sleeping by children between 3 months and 13 years to meet flammability performance requirements. Other garments—such as pajamas, cotton terry bath robes and garments for babies under 3 months—do not have to comply with the flammability standard, but must have a permanent label indicating whether they meet the flammability standard.(13)

New Zealand's sleepwear standards went into effect in 1980. They require that sleepwear for children from 1 to 14 years old be made from fabrics defined as "low fire risk" or be made of a closer-fitting pajama style.(13)

These other countries do not have the extensive death and injury databases that the U.S. does. Therefore, it is difficult to make statistical comparisons between burn deaths and injuries before their standards and after. However, the fact that these other countries have also distinguished between safer close-fitting garments and more hazardous loose ones bolsters the Commission's conclusions based on its review of research and incident data. Notably, these other countries all allow garment dimensions larger than those CPSC specifies.

D. Statutory Provisions

1. Authority for the Exemptions

The original children's sleepwear standards were issued under the Flammable Fabrics Act ("FFA"), which allows the Commission (previously the Secretary of Commerce) to issue a flammability standard for a fabric or product if needed to protect the public against unreasonable risk of the occurrence of fire leading to death, personal injury or significant property damage. 15 U.S.C. 1193(a). The Commission issued the 1996 amendments under the same authority. In accordance with the procedures in the FFA, 15 U.S.C. 1193(g), the Commission first issued an ANPR beginning the rulemaking process. 58 FR 4111. After considering the thousands of comments responding to the ANPR, the Commission issued a notice of proposed rulemaking as required by the FFA, 15 U.S.C. 1193(i). 59 FR 53616. The Commission issued the final standard in accordance with section 4(j) of the FFA, 15 U.S.C. 1193(j). 61 FR 47634.

As discussed above, section 429 of the legislation that provided the Commission's appropriations for fiscal year 1999 required the Commission to propose to revoke the 1996 sleepwear exemptions and to issue a rule by July 1 revoking, maintaining or modifying the amendments. Public Law 105–276. The legislation states that neither the FFA, the Consumer Product Safety Act, nor any other statute applies to this proceeding. Thus, the Commission is not required to follow the process or make the findings the FFA directs. Rather, in determining what action to take on the 1996 exemptions, Congress instructed the Commission to "consider[] and substantively address[] the findings of the General Accounting Office and other information available to the Commission." *Id.* As discussed above, the Commission has reconsidered the information on which the 1996 amendments were based and believes that information still supports the exemptions. The following sections discuss the Commission's consideration of the GAO reports and the comments presented to the Commission.

E. The GAO Report on Incident Data

Congress directed GAO to review "incident data relating to burns from the ignition of children's sleepwear from small open flame sources for the period July 1, 1997 through January 1, 1999." P.L. 105–276. In its report GAO said it addressed the questions: "(1) how many burn injuries involving children's sleepwear occurred annually before and after the amendments? and (2) what conclusions, if any, can be drawn from these data about the effect of the changes to the sleepwear standard on the risk of injury?"(55)

1. Summary of Report

GAO concluded that data were not sufficient to clearly answer either of these questions. The report states that "[t]he exact number of burn injuries associated with children's sleepwear before and after CPSC amended its standard is uncertain." *Id.* Because few sleepwear-related injuries are reported annually to CPSC's sample hospital emergency rooms, GAO concludes that "precise national estimates" are not possible, and it is therefore difficult to observe injury trends. *Id.* The report notes that over the period 1990 to 1998, NEISS reported only 13 cases and in some years, such as 1998, no cases were reported at all. The report also asserts that, because multiple factors are involved in burn injuries, additional information would be necessary to reach firm conclusions about the effect of the changes. In particular, the report asserts that without data concerning the numbers of consumers who use each type of sleepwear it is not possible to determine the type of sleepwear most likely to be associated with injuries. *Id.*

2. Data Are Sufficient To Support Exemption

The GAO report correctly notes that few burn incidents involving sleepwear have been reported through NEISS over the period 1990 to 1998. However, the fact that only 13 cases have been reported during this period does not invalidate that data. One can correctly conclude, as GAO acknowledges, that the risk of injury from such incidents is small.(55) These data are sufficient to provide an estimate of injuries, which is the purpose of NEISS.

The GAO report underemphasizes an important part of the Commission's examination of incident data. Because it is difficult to obtain details from information in NEISS reports, the Commission conducts in-depth investigations of selected incidents. The staff conducted 40 such investigations of clothing-related incidents that appeared to involve sleepwear or garments used as sleepwear occurring between 1993 and 1998. As GAO notes, 28 of the 40 cases involved loose-fitting tee shirts, six cases involved nightgowns or nightshirts, three involved traditional flame-resistant sleepwear, one involved a tight-fitting tee-shirt and two involved cotton pajamas. While these investigations do not provide a statistical analysis, they confirm what the research shows and what other countries have found. In a footnote, GAO acknowledges that the patterns from these investigations "are consistent with data from other sources." The footnote continues:

> For example, we reviewed case files from one burn center that was not included in CPSC's NEISS sample. These cases involved 12 injuries to children younger than 15 in 1997 and 1998 that the staff at the burn center identified as involving sleepwear. * * * Although burn center staff did not have information on the fabric content of the children's sleepwear for nine cases they noted the general type of sleepwear. The results from this small group were similar to those CPSC found—six of the nine cases involved loose-fitting nightgowns or shirts.

(55). Thus, the only additional data GAO discusses affirm the Commission's assessment that it is looser garments that pose a risk. The fact that conclusions are based on few cases does not undermine those conclusions when all available information supports them.

GAO's criticism that more information on the factors involved in burn injuries is necessary to determine risk is unjustified. GAO's example in its report illustrates this. The report states that GAO reviewed a case in which a 6-year-old girl wearing a nightgown backed into a space heater. From this example, GAO concludes: "It is uncertain whether either reducing the flammability of the nightgown or improving the design or performance of the space heater could have prevented her injury."(55) This example confirms the Commission's conclusions. The girl was wearing a nightgown, precisely the type of clothing the Commission's analysis shows is most likely to be involved in burn injuries. Nightgowns continue to be covered by the sleepwear standard as amended by the 1996 exemptions. Thus, the example is not relevant to the question of risk posed by exempt garments.

More information concerning the use of different types of sleepwear (for example from a use survey) is not necessary to an informed and supported Commission decision, as the report itself illustrates. As GAO acknowledges, the patterns the Commission has

observed that loose clothing is more likely to be involved in burn incidents "are consistent with data from other sources."(55) These patterns have been consistent before the standards were promulgated in 1971 to the present time. They are consistent with research, and they are consistent with other countries' experiences. With this consistent information, a use survey is unnecessary.

The report states that tight-fitting pajamas designed to meet the exemption have only been available for a short period of time so one cannot determine if they are more hazardous. However, close-fitting underwear similar to sleepwear has been available under the stay of enforcement since 1993. For as far back as 15 years prior to the stay of enforcement, Compliance staff took action against the companies marketing these garments in violation of the standard. There have not been any reports of incidents involving these types of garments.

The GAO report looks at sleepwear incident data in isolation. However, the Commission's decision on the exemptions was based on all available information since 1971. The NEISS incident data constituted just one part of this information. The Commission continues to believe that the incident data support the conclusion that the exempt garments do not pose an unreasonable risk of burn injuries.

F. The GAO Report on the Information and Education Campaign

The Conference Committee Report on the appropriations bill that required the Commission to propose to revoke the sleepwear amendments directed GAO to assess the information and education ("I&E") campaign that industry and the Commission conducted (H.R. Rep. No. 769, 105th Cong., 2d Sess. 267 (1998)). When the Commission issued the 1996 amendments it recognized that consumers needed information about the changes. The industry, particularly the American Apparel Manufacturers Association ("AAMA"), volunteered to work with the Commission in developing appropriate materials and making them available to consumers. The GAO report assessed the availability of such I&E materials.

GAO visited more than 70 retail stores in 14 metropolitan areas across the country. It found hangtags on 73 percent of tight-fitting sleepwear garments. The most common hangtags were the ones that AAMA designed. The other types of hangtags varied greatly in design but had similar language. Fewer than 16 percent of stores displayed consumer education brochures or signs about sleepwear safety. About 63 percent of stores mixed other clothing (such as long underwear and loose-fitting shirts) along with sleepwear in retail displays. GAO concluded that consumers generally get some information from point of sale materials, but not to the extent the Commission had envisioned. GAO found that concerns about the initial acceptance of tight-fitting sleepwear and fears that the standards might change made industry reluctant to provide more I&E.(70)

The Commission believes that consumers need information to choose appropriate sleepwear. The GAO report confirms that some information, particularly on hangtags, is available, but more needs to be done. The labeling rule the Commission is adding to the standards should ensure that consumers have the information they need about the importance of fit for tight-fitting sleepwear.

G. Comments on the Proposed Revocation

In accordance with the appropriations legislation, on January 19, 1999 the Commission proposed to revoke the 1996 amendments. 64 FR 2867. The Commission received over 3,400 comments in response. The Commission heard from fire safety professionals, physicians, parents, farmers, sleepwear manufacturers and retailers, consumer advocates, and members of Congress. Although not required by the appropriations language, the Commission held a public hearing on April 22, 1999. Twenty-one people testified. Many of these had also sent written comments responding to the proposed revocation.

Below is a summary of the principal issues the written comments and the hearing testimony raised, along with the Commission's responses.

1. General Comments

Scope of the Standards and Exemptions

Comment: Some commenters had the impression that the exemption eliminated all clothing flammability requirements for children's sleepwear. Others believed that the amendments did not affect loose pajamas, nightgowns, and robes, which are the kind of nightwear involved in burn injuries and fatalities.

Response: The Commission exempted infant sleepwear and only one limited style of sleepwear (defined as tight fitting) in larger sizes. Other sleepwear garments like nightgowns, robes, and looser-fitting pajamas remain subject to the requirements for flame resistance. Exempted children's sleepwear (including infant sizes 0 to 9 months and tight-fitting sleepwear in larger sizes) must still meet the less stringent general clothing textile flammability requirements of 16 CFR 1610.

Comment: A number of commenters believed that the Commission issued the 1996 amendments with the expectation that consumers would switch to tight-fitting sleepwear from loose-fitting tee-shirts.

Response: The 1996 amendments were intended to provide consumers who prefer natural fibers (cotton) with a safer alternative to the loose-fitting, non-complying garments used frequently as sleepwear, such as long underwear. While the staff did not necessarily expect consumers using tee-shirts to switch to the tight-fitting garments, they did anticipate that any such substitutions by consumers could reduce the number and severity of burn injuries should they occur.

Motive for Amendments

Comment: Some commenters suggested the Commission had an economic motive, responding to influence by the cotton industry, for amending the sleepwear standards.

Response: The amendments were not based on pressure from any outside interests, but on two principles: (1) safety and (2) enforcement. As discussed above, the Commission studied this issue for several years, relying on laboratory and other analytical data, including injury and death data, to arrive at its conclusions. The Commission believed that the exemptions would allow more effective enforcement of the sleepwear standards and would provide a safer cotton alternative.

Findings Supporting the Amendments

Comment: Two commenters argued that the amendments were issued without the proper findings of unreasonable risk required by the Flammable Fabrics Act. One commenter stated that CPSC never showed that the net effect of the amended standards on all affected children would be beneficial.

Response: The 1996 amendments exempted specified garments from the children's flammability standard. Because they were exemptions, the correct question was not whether these garments posed an unreasonable risk of fire, but whether taking those garments out of the standard would reduce the level of safety and expose the public to an unreasonable risk. As explained in the preamble to the 1996 amendments, the original 1971 and 1974 flammability standards reached farther than necessary to protect the public. Inclusion of infant garments and tight-fitting garments meant the standards were not reasonably necessary to protect the public; the standards were not limited to garments that present an unreasonable risk of injury.

2. Children's Sleepwear Marketing Issues

Availability of Tight-Fitting Sleepwear

Comment: Several commenters thought that tight-fitting garments have only been available since the exemption became effective in January 1997, and, therefore, it would be difficult to determine their safety.

Response: As discussed above, non-flame resistant garments of this style (skin-tight or nearly skin-tight) have been used as sleepwear with increasing frequency for at least 20 years. During the 1980's the Compliance staff saw an increase in the number of cotton garments labeled as "long underwear" or "playwear" that appeared to be sleepwear.

Industry sources estimate that, before the staff started work on the amendments in 1992, the share of total sleepwear purchases accounted for by complying cotton garments was about 1–2%. According to National Purchase Diary data, cotton sleepwear (the consumer's intended use) purchases have increased from 9.7% to 27.5% of the total sleepwear purchases from 1992 to 1998.

Effect of Cotton Sleepwear Sales on FR (Polyester) Sales

Comment: One commenter suggested that with the emergence of cotton garments, flame-resistant children's sleepwear would be forced out of the market and manufacturers would find that they could not sell flame-resistant sleepwear.

The American Apparel Manufacturers Association stated that "polyester garments still dominate the market for children's sleepwear. Sales of synthetic pajamas are very strong and are expected to remain so for the foreseeable future."

Response: Information from the National Purchase Diary shows that purchases of children's sleepwear are increasing. While the proportion of cotton sleepwear purchases is growing, the market for other sleepwear (flame-resistant) has steadily increased in volume from 106.6 million in 1992 to 112.5 million garments in 1998. Flame-resistant polyester garments reportedly represented over 70% of the total children's sleepwear purchases in 1998.

Garment Returns From Retail Sales

Comment: One commenter, a major retailer of children's clothing, noted that it has experienced returns of tight-fitting sleepwear at about 8% of sales, which it describes as high.

Response: The Commission expected some consumer returns of tight-fitting sleepwear during the transition period following the exemption of these garments. Manufacturers contacted by the Commission staff late in 1998 indicated returns ranging from "negligible" to 5%, considered high. The retailer in the current comment noted that consumers were not seeking refunds, but rather were exchanging the garments for a larger size. Except for some marginal costs associated with the transaction costs of the exchange, retailers are not likely to bear a significant cost burden associated with returns. With the clarification of measurements, availability of stretchable fabrics, manufacturer adjustments to new design and production demands, increasing consumer familiarity with the fit of this style of garment, returns and exchanges should decrease.

Costs of Revocation

Comment: Commenters noted that manufacturers and others have borne significant costs in order to produce and market tight-fitting sleepwear garments under the exemption. A trade group noted that firms changed their business practices as a result of the amendments, but they did not quantify the associated costs. A retail chain reported that revocation would cost that firm approximately $7 million.

Response: The Commission agrees that there would be some costs to manufacturers and others associated with revocation, but does not have information to quantify those costs. The Commission is not basing its withdrawal of the proposed revocation on the fact that industry would incur some costs if the amendments were withdrawn.

3. Death/Injury Data Involving Children's Sleepwear

Trend in Clothing-Related Burn Fatalities

Comment: Some commenters asserted that enactment of the sleepwear standard in 1972 reduced the number of annual sleepwear-related burn deaths from 60 to 4. Others have expressed this in reverse—there would be ten times as many deaths without the sleepwear standard.

Response: These assertions are incorrect because they refer to all *clothing-related* burn deaths reported by the National Center for Health Statistics ("NCHS"). The NCHS mortality files providing these data do not distinguish sleepwear-related burn cases from other clothing-related burn cases. There are no reliable data on the number of sleepwear-related deaths before the standards were issued that could be compared with data assembled thereafter.

Mobility of Infants Wearing Sizes 0–9

Comment: Many commenters rejected the contention that infants wearing sizes 0–9 months are immobile. "These children may not be able to walk; however, they certainly can crawl or roll, which may put them in a situation where they may be exposed to open flame."

An industry commenter stated at the April 22 hearing that infant sizing is not true to age (it is not standardized by regulation). She stated that an infant who is six months of age wears a 12 month size, and an infant who is 5 months of age probably wears a 9 month size, and would not likely be mobile.

Response: In 1993, CPSC staff reported from the literature that infants' first ambulatory motions usually consist of crawling-type movements, which begin around 7 to 8 months of age. Industry representatives had previously reported, as above, that infant sizing is not true to age. Most likely, an infant six months or younger would be wearing garments sized 9 months and under. These children are typically not yet walking or crawling. The definition of infant garment in section 1615.1(c)(2) accommodates all but the largest 6 month old infants. (ASTM Standard D 4910–95.)

Relationship of Mobility to the Risk of Burn Injury

Comments: Many commenters rejected the claim that the risk of burn injury to infants is minimal because of their immobility. Commenters note that infants are less able to remove themselves from a potentially dangerous situation. Ignition sources also come to them. Many commenters argued that the relative immobility of infants puts them at greater risk, not less, of being severely burned in an otherwise minor conflagration.

Response: CPSC knows of several incidents in which a fire started by another child or source approached and ignited the clothing of a pre-ambulatory infant who thereby sustained severe burns from burning clothing. However, analyses of over 150 potentially survivable fire and thermal burn cases involving infants 0–9 months old from

January 1990 to May 1999 in CPSC files revealed insufficient information about the type of clothing involved in these cases to determine whether the type of clothing would affect the likelihood or severity of injury.

Validity of CPSC Data

Comment: Many commenters questioned the validity of CPSC data indicating a low, stable frequency of sleepwear-related thermal burn injuries. They asserted that "problems in the reporting of burn injuries" are a partial explanation that some argue there has been no increase in the number of burn injuries and deaths since the standard changed. The GAO report asserted that CPSC's sleepwear burn data were both too sparse to provide reliable national estimates and subject to coding biases possibly leading to underestimation of sleepwear-related burns.

Response: There is no reason to believe that the number of burn injuries in the U.S. is underestimated by CPSC's National Electronic Injury Surveillance System. The NEISS sample of 101 hospitals, 2.2% of the universe of 5,387 U.S. emergency-room hospitals, includes 4 or 4% of the 119 hospitals that are self-identified burn treatment centers. Although some severely burned children may be admitted directly to burn treatment facilities, more often such victims are taken to the nearest hospital emergency room for stabilization and later transferred to burn treatment facilities. These transfer cases would be reported through NEISS. Although estimates of infrequent occurrences are subject to relatively large variances, NEISS does provide a powerful case-finding tool with 101 hospitals searching for sleepwear burns. Each case is carefully reviewed and any serious burn cases are quickly identified and investigated. A change in frequency of sleepwear-related pediatric burn injuries would be readily detected, while a change in severity would be more difficult because of the few sleepwear-related burn cases reported in NEISS.

Infant Exemption's Likely Effect on Burn Injuries

Comment: Several commenters (physicians) gave accounts of cases where they believe flame-resistant sleepwear could or did, in their opinion, reduce the severity of the injuries sustained by infants and other children in fires. In some of these cases, they said children had burns on the exposed portions of their bodies while those areas covered by the flame retarded clothing were not injured. A surgeon heading a burn treatment facility, estimated that burn units across the country have treated approximately 472 sleepwear-related thermal burn injuries to victims 0–9 months old since January of 1997. He argued that the severity of cases like these could be positively affected by a return to flame-resistant sleepwear for infants.

Response: The typical scenarios involving infants are bedding or larger room/house fires. The children's sleepwear standards were not intended to address the risk of death and injury from exposure to a whole house or bedding fire. The test method in the standards uses a three second exposure to a moderate sized flame and a requirement that the fabric self-extinguish. The ignition source in the fire scenarios mentioned by commenters is larger and more intense and sustained well beyond three seconds. The heat released and temperatures produced in larger fire scenarios easily exceed the temperatures produced by the small open flame sources. Because of the fabrics' melting and ignition temperatures and the high temperatures and sustained fire growth that occurs in these larger fire scenarios, and the many other factors affecting the outcome of an incident, flame-resistant sleepwear garments cannot be counted on to provide enough protection to prevent life-threatening burn injury from occurring in these scenarios.

Comment: Burn centers, burn victims, and others shared information on various burn injury cases arguing that the exemptions should be revoked to prevent an increase in burn injuries.

Response: The CPSC staff investigated all cases possible within the time constraints of this proceeding. Four Shriners burn hospitals referred 134 cases involving thermal burns from children's clothing to the CPSC staff. Most of these involved garments or fire scenarios not addressed by the sleepwear standard. The staff requested for investigation 30 cases meeting certain criteria relevant to this proceeding. With permission from the hospitals and victims' families, the staff completed analysis of 21 cases. The CPSC in-depth investigations revealed that none of these cases involved garments exempted from the standard by the 1996 amendments or garments previously subject to the stay of enforcement.

Several commenters were burn victims or parents of burn victims. Two of the garments involved in these incidents were nightgowns. These garments must still be flame-resistant under the 1996 amendments. Another case involved an infant wearing a cotton sleeper injured in a bedding fire, a scenario that the standard does not address. One commenter was a burn victim whose only injury was singed hair when his "tight-fitting" (by his description) thermal underwear ignited from a stove burner. This case and another involving a tight-fitting tee-shirt illustrate how the fit of a garment can minimize injury severity when exposed to a small ignition source.

4. Safety-Related Technical Information

Fires Addressed by the Standards

Comment: A number of commenters expressed concerns that the exemptions would eliminate protection of children from a variety of fire scenarios, including house fires and bedding/mattress fires. Others claimed that injuries would be less severe in these cases had victims been wearing flame-resistant sleepwear. Other commenters argued that although these cases are tragic and still occur, the standard (flame-resistance) does not protect against injuries from house fires or the rare infant crib/bedding fires.

Response: As discussed above, the children's sleepwear standards were not intended to address the risk of a whole house or bedding fire. The intent of the sleepwear standards is to eliminate the risk of serious personal injury or death from fire as a result of contact between the sleepwear garment and a small ignition source. Even flame-resistant sleepwear may not prevent burn injury in a whole house or bedding fire.

Importance of Fit

Comment: A number of commenters expressed concerns that the combination of non-flame resistant material and loose fit are dangerous. Others argued that tight fit is a reasonable choice with reduced likelihood of ignition.

Response: As discussed above, garment fit, along with fiber content can influence a garment's flammability. Children's sleepwear made from cotton fabric needs to fit close to the body, to provide an acceptable level of risk. There is a great deal of information in the literature discussing the concept of tight-fitting garments being less hazardous than loose-fitting garments. The ease of ignition increases when the wearer's clothing stands away from the body and the excess fabric functions as a connector to the ignition source. Without a tight fit, if ignition occurs, the oxygen under the garment and the absence of a heat sink (the body) increase the opportunity for sustained burning. Research indicates that reasonably safe sleepwear garments can be made from cotton fabrics that do not meet the flammability requirements of the children's sleepwear standards, i.e. they do not self-extinguish. Comfortable, practical, tight-fitting sleepwear can and is being produced that is acceptable to consumers.

Fire Safety

Comment: One commenter asserted that non-flame resistant cotton sleepwear is dangerous based on a local fire department demonstration in which two sleepwear garments, one flame-resistant and the other untreated cotton were burned.

Response: It is not surprising that the commenter observed that the cotton sleepwear "flamed up and burned very quickly." Light weight, cellulosic fabrics usually ignite readily when in contact with an ignition source, burn steadily, and are often difficult to extinguish. Flame-resistant fabrics made from thermoplastic fibers are not as easily ignited and have a tendency to shrink away from the heat source. These fabrics self-extinguish when the flame source is removed.

The fire department demonstration did not take into account garment design, one of the major factors influencing a garment's flammability. A tight fit reduces the possibility of ignition occurring. If ignition of tight-fitting clothing occurs, flame spread is slower and less intense, allowing the wearer to take action sooner. Because tight-fitting clothing is less likely to support flame propagation, it is often easier to extinguish the flames.

Comment: Commenters presented differing views concerning the relative protection offered by cotton and flame-resistant garments in house and bedding fires. Medical professionals noted cases where exposed portions of a child's body were burned but portions covered by flame-resistant garments were not. The National Cotton Council stated that cotton sleepwear may be slightly more protective than flame-resistant garments in a crib or house fire.

Response: The fire scenarios described above are not addressed by the children's sleepwear standards that define the protection provided in terms of self-extinguishment after a 3 second exposure to a small gas burner flame. A number of variables contribute to the outcome of burn injury such as the circumstances surrounding the incident, the victim's reaction/activity, the fabric characteristics (weight, weave, finishes/treatments applied, fiber content, dyes, etc.), size of the flame and the garment location contacted by the flame, flame propagation, rate of heat transfer, presence of undergarments, etc. Much of this data cannot be obtained through investigations. The staff cannot conclude based on available data that there are substantial benefits associated with the sleepwear standards beyond those represented by the test method.

Upsizing Practices

Comment: Commenters noted that parents may "upsize," that is, buy sleepwear in sizes larger than their children's current size, because they will get longer wear from the garments. In store interviews, customers indicated that if they were to purchase tight-fitting sleepwear, they would buy a larger size. Others added concerns that handing down clothes to younger children and second hand sales will interfere with parents using the correct garment size.

Response: Commenters provided no information about whether parents are actually buying larger sizes for tight-fitting sleepwear. The staff contacted manufacturers and retailers for this perspective. A representative of a sleepwear retailer, based on discussions with parents during garment fittings, believes that parents would probably purchase only one size larger, otherwise the garment would be too large (i.e. the legs and sleeves would be too long). A manufacturer/retailer of successful tight-fitting sleepwear does not believe their customers are upsizing.

During the development of the technical amendments in 1997, the staff observed that garments using fabrics with adequate stretch provided children with ample room for movement and comfort while maintaining the tight fit required by the exemption. The staff also observed children wearing garments one size larger than their age-appropriate size. The differences in garment dimensions between sizes are small. The larger garments still conformed to the contours of the children's bodies, touching them at many points, thus reducing the likelihood of ignition.

Informational labeling is important for tight-fitting children's sleepwear to help consumers distinguish among flame-resistant and non-flame-resistant (tight-fitting) garments. Consumers need to be informed that certain sleepwear is no longer flame-resistant and that proper fit is necessary for safety.

5. Information and Education Campaign

Confusion in the Market Place

Comment: Many commenters criticized the voluntary information and education program as inadequate and confusing in the market place. Several commenters surveyed retail stores and reported on the mixing of garment types, inconspicuity and inconsistency of label messages, and absence of information for the consumer.

Response: Many of these criticisms appear valid. Commenters reported that the current labeling on the hangtags is not distinctive or conspicuous but is mixed with promotional and brand literature. The hangtags are not consistent, and wording on permanently-affixed labels is indistinguishable from size and washing instructions. The Commission's labeling requirement will address these concerns.

6. Garment Design and Production Issues

Expansion of Tight-Fitting Dimensions

Comment: Several commenters recommended increasing slightly the dimensions, especially the upper arm, that define a tight-fitting garment exempt from children's sleepwear flammability standards. They argued that this may make the garments more attractive to parents currently avoiding tight-fitting sleepwear without compromising the garment's safety. A slightly larger garment, they argued, is far safer than an oversized tee shirt.

Response: Commission staff carefully considered the option to allow a less than tight fit for exempted children's sleepwear when amending the sleepwear standards. The reduced probability of ignition of tighter-fitting clothing is related to three factors: the limited supply of oxygen from underneath the garment, the role that the body plays as a heat sink, and reduced likelihood of contacting the flame source. However, while a tighter-fitting garment can reduce the possibility of the garment coming in contact with a source of ignition, a review of the literature did not reveal a specific safe level or range of fit. The Commission concluded that for tight-fitting garments to be exempt from the children's sleepwear standards, the garment must touch the body at all critical locations. To do this, children's sleepwear garments must be equal to or less than the body dimension at these locations. Comfortable, tight-fitting sleepwear garments are currently being manufactured and successfully marketed without making additional dimensional adjustments with a questionable impact on safety.

Sewing Tolerances

Comment: An industry commenter again requested that the standard be amended to allow specific tolerances to accommodate mass-production variances and sewing errors. Such tolerances, a long-recognized practice in

the apparel industry, would provide sleepwear makers and retailers with a workable margin of error.

Response: The Commission recognizes that tolerances are normally used in the production of all garments and allow for permissible variations to the pattern specifications that can occur during cutting or sewing of the garment. However, adding a production tolerance which would increase the garment dimensions from those specified in the amended children's sleepwear standards, would result in a less than tight-fitting garment. The importance of a tight fit has been stated earlier. Knit fabrics are available with a sufficient degree of stretch so that the garment would still fit the intended size child even if the manufacturer undercuts the fabric somewhat. Sleepwear garments manufactured to the dimensions specified in the sleepwear standards using such knit fabrics are currently being sold to consumers.

7. Compliance Issues

Comment: One commenter questioned the Commission's efforts to enforce the amended standards that exempt tight-fitting sleepwear garments.

Response: Earlier this year, the Commission staff initiated a program for CPSC investigators to inspect retail stores throughout the United States to determine whether sleepwear marketed and promoted as being tight-fitting meets the measurements required for an exemption. This program is continuing, and the staff is conducting full investigations of firms found to be selling or manufacturing violative merchandise. The staff also learns of potential violations from firm inspections, incident investigations, and trade complaints.

H. Date of Withdrawal

The proposed revocation of the 1996 amendments is withdrawn on the date of publication. Because revocation was proposed but never finalized, withdrawal of the proposal does not make any substantive change. Therefore, it is unnecessary to delay the withdrawal of the proposed revocation.

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer Protection, Flammable materials, Infants and children, Labeling, Reporting and recordkeeping requirements, Sleepwear, Textiles, Warranties.

Conclusion

Pursuant to Public Law 105–276, the Commission withdraws the proposed revocation of January 19, 1999, 64 FR 2867.

Dated: June 22, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Memorandum from Liz Gomilla, Division of Regulatory Management and Eric Stone, Division of Administrative Litigation, to Terrance R. Karels, Project Manager, dated March 13, 1992, entitled "Problems Associated with Enforcement of the Children's Sleepwear Standards."

2. Memorandum from Bea Harwood and Terry L Kissinger, EPHA, to Terrance R. Karels, Project Manager, dated April 20, 1992, entitled "Injury Data Related to the Sleepwear Flammability Standards and Information on Surveys of Burn Treatment Centers."

3. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, dated May 6, 1992, entitled "Final Report, Children's Sleepwear Project."

4. Memorandum from Anthony C. Homan, ECPA, to Terrance R. Karels, Project Manager, dated March 25, 1992, entitled "Market Sketch—Children's Sleepwear."

5. Briefing Memorandum from Terrance R. Karels to the Commission, dated November 3, 1992.

6. **Federal Register** notice "Standards for the Flammability of Children's Sleepwear: Sizes 0 Through 6X and 7 Through 14; Advance Notice of Proposed Rulemaking," published by the Consumer Product Safety Commission; January 13, 1993 (58 FR 4111).

7. **Federal Register** notice "Standards for the Flammability of Children's Sleepwear: Sizes 0 Through 6X and 7 Through 14; Stay of Enforcement," published by the Consumer Product Safety Commission; January 13, 1993 (58 FR 4078).

8. Tabular summaries of comments and staff responses to comments to the Advance Notice of Proposed Rulemaking; 50 pages; July 19, 1994.

9. "Statement by The Children's Sleepwear Coalition In Response to the Consumer Product Safety Commission's Advance Notice of Proposed Rulemaking"; March 25, 1993.

10. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, entitled "Technical Rationale Supporting Tight-Fitting Children's Sleepwear Garments"; March 14, 1994.

11. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, entitled "Recent Conversation Between Staff of Consumer and Corporate Affairs Canada and Commission Staff"; July 17, 1992.

12. Memorandum from Dr. Terry L. Kissinger, EPHA, to Terrance R. Karels, ECPA, entitled "Injury Data Related to the Children's Sleepwear Standards"; February 8, 1994.

13. Memorandum from Dr. Terry L. Kissinger, EPHA, to Terrance R. Karels, ECPA, entitled "Results of Review of Available Literature," and attachments; April 1, 1994.

14. Memorandum from George Sweet, EPHF, to Terrance R. Karels, ECPA, entitled "Human Factors Issues Regarding Sleepwear," and attachment; March 8, 1994.

15. Memorandum from George Sweet, EPHF, to Terrance R. Karels, ECPA, entitled "Garments Intended for Infants"; July 8, 1994.

16. "Preliminary Regulatory and Regulatory Flexibility Analyses for the Proposed Amendments to the Children's Flammability Standards," by Anthony C. Homan, Directorate for Economic Analysis; June, 1994.

17. "Market Sketch—Children's Sleepwear," by Anthony C. Homan, Directorate for Economic Analysis; March, 1992.

18. Memorandum from Eva S. Lehman, HSPS, to Terrance R. Karels, ECPA, entitled "Toxicological Evaluation of Fabrics Used in Children's Sleepwear"; June 7, 1994.

19. Memorandum from Patricia Fairall, CERM, to Terrance Karels, ECPA, entitled "Compliance History—Enforcement of Children's Sleepwear"; 6-pages; April 20, 1994.

20. Memorandum from James F. Hoebel, Acting Director, ESME, to Terrance R. Karels, ECPA, entitled "Amendments to Children's Sleepwear Standards"; July 7, 1994.

21. Memorandum from Dr. Terry L. Kissinger, EPHA, to Terrance R. Karels, ECPA, entitled "Proposed Amendment to Children's Sleepwear Standards"; July 15, 1994.

22. **Federal Register** notice "Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14; Proposed amendments" published by the Consumer Product Safety Commission; October 25, 1994 (59 FR 53616).

23. **Federal Register** notice "Continuation of Stay of Enforcement of Standards for the Flammability of Children's Sleepwear, Sizes 0 Through 6X and 7 Through 14" published by the Consumer Product Safety Commission; October 25, 1994 (59 FR 53584).

24. Comments on proposed amendments.

25. Memorandum from Terry L. Kissinger, Ph.D., EHHA, to Terrance R. Karels, ECPA, entitled "Injury Data Related to the Children's Sleepwear Standards"; July 12, 1995.

26. Letter from Carole LaCombe, Director, Product Safety Canada, to Eric C. Peterson, Executive Director, Consumer Product Safety Commission, concerning Canadian standards for the flammability of children's sleepwear; September 13, 1993.

27. Memorandum from Linda Fansler, ES, concerning telephone conversation between staff of the Consumer Product Safety Commission and staff of Consumer and Corporate Affairs Canada on June 18, 1992, concerning the Canadian standards for the flammability of children's sleepwear.

28. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, entitled "Tight Fitting Children's Sleepwear"; July 14, 1995.

29. Memorandum from Terrance R. Karels, Project Manager, to Warren J. Prunella, Associate Executive Director for Economic Analysis, entitled "Sleepwear Market Update"; October 6, 1995.

30. Final Regulatory Analysis for amendments of the children's sleepwear standards by Terrance R. Karels; July 1995.

31. Memorandum from David Schmeltzer, Assistant Executive Director for Compliance, to Terrance Karels, Project Manager, entitled "Sleepwear Briefing Package"; August 24, 1995.

32. Memorandum from Patricia Fairall, Compliance Officer, to Terrance Karels, Project Manager, entitled "Compliance-Discussion of the Proposed Amendments to the Children's Sleepwear Standards"; June 26, 1995.

33. Memorandum from Terry L. Kissinger, Ph.D., EHHA, to Terrance R. Karels, ECPA, entitled "Response to Public Comments Received after Publication of the Notice of Proposed Rulemaking"; July 12, 1995.

34. Memorandum from George Sweet, EPHF, to Terrance R. Karels, ECPA, entitled "Human Factors Responses to Sleepwear NPR Comments"; May 5, 1995.

35. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, entitled "Response to Comments"; July 14, 1995.

36. Memorandum from Suad Nakamura, Ph.D., EHPS, to Terrance R. Karels, Project Manager, entitled "Children's Sleepwear—Response to Comments on the Notice of Proposed Rulemaking"; July 19, 1995.

37. Memorandum from Patricia Fairall, Compliance Officer, to Terrance R. Karels, Program Manager, entitled "Response to Comments from Proposed Amendments to the Children's Sleepwear Standards published in the **Federal Register** on October 25, 1994"; June 26, 1995.

38. Memorandum from Terry L. Kissinger, Ph.D., EHHA, to Terrance R. Karels, ECPA, entitled "Response to Letter from John Krasny to James Hoebel"; August 3, 1995.

39. Memorandum from George Sweet, ESHA, to Terrance R. Karels, ECPA, entitled "Issues involved in amendment the sleepwear flammability regulation: Sizing and Labeling"; September 20, 1995.

40. Memorandum from Karen G. Krushaar, OIPA, to Terrance R. Karels, ECPA, entitled "Children's Sleepwear Informational Campaign"; July 11, 1995.

41. Position statement of the National Fire Protection Association and the Learn Not to Burn Foundation in Opposition to the Proposed Amendment of the Children's Sleepwear Standards; July 1995.

42. Letter from John F. Krasny to J.F. Hoebel concerning paper by Vickers, Krasny, and Tovey entitled "Some Apparel Fire Hazard Parameters"; July 17, 1995.

43. Memorandum from Linda Fansler, ESME, concerning telephone conversation with John Krasny on September 20, 1995.

44. Log of public meeting conducted on April 25, 1995, concerning proposed amendments of the children's sleepwear flammability standards.

45. Memorandum from James F. Hoebel, Chief Engineer for Fire Hazards, to Terrance R. Karels, Project Manager, entitled "Children's Sleepwear"; October 10, 1995.

46. Memorandum from Warren J. Prunella, Associate Executive Director for Economic Analysis, to file concerning small business effects of proposed amendments to the children's sleepwear flammability standards; February 17, 1995.

47. Memorandum from Warren J. Prunella, Associate Executive Director for Economic Analysis, to Eric A. Rubel, General Counsel, concerning requirements for Congressional review of final amendments to the children's sleepwear standards; undated.

48. Vote sheet to accompany briefing package on children's sleepwear flammability standards; October 11, 1995.

49. Memorandum from Terrance R. Karels, Project Manager, and Ronald L. Medford, Assistant Executive Director for Hazard Identification and Reduction entitled "Questions Regarding Children's Sleepwear Amendments," with attachments; January 30, 1996.

50. **Federal Register** notice "Proposed Technical Changes; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear; sizes 7 Through 14" published by the Consumer Product Safety Commission, May 21, 1998 (63 FR 27877). Corrected on June 11, 1998 (63 FR 31950).

51. **Federal Register** notice "Proposed Clarification of Statement of Policy; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear; sizes 7 Through 14" published by the Consumer Product Safety Commission, May 21, 1998 (63 FR 27885).

52. **Federal Register** notice "Final Technical Changes; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear; sizes 7 Through 14" published by the Consumer Product Safety Commission, January 19, 1999 (64 FR 2833).

53. **Federal Register** notice "Final Clarification of Statement of Policy; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear; sizes 7 Through 14" published by the Consumer Product Safety Commission, January 19, 1999 (64 FR 2832).

54. **Federal Register** notice "Proposed Revocation of Amendments; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear; sizes 7 Through 14" published by the Consumer Product Safety Commission, January 19, 1999 (64 FR 2867).

55. United States General Accounting Office Report to Congressional Committees and the Consumer Product Safety Commission, "Injury Data Insufficient to Assess the Effect of the Changes to the Children's Sleepwear Safety Standard," GAO/HEHS–99–64, April 1999.

56. Memorandum from Martha A. Kosh, OS, to Sadye E. Dunn, Secretary, OS, "Sleepwear Revocation," list of comments on CF99–1, March 17, 1999.

57. Memorandum from Martha A. Kosh, OS, to Sadye E. Dunn, Secretary, OS, "Sleepwear Revocation," list of additional comments on CF99–1, March 29, 1999.

58. U.S. Consumer Product Safety Commission Public Hearing on Proposed Revocation of Amendments to Children's Sleepwear Standards, agenda with presenters, April 22, 1999.

59. Memorandum from Marilyn Borsari, Office of Compliance to Margaret Neily, Directorate for Engineering Sciences, "Enforcement History of Children's Sleepwear Standards," May 12, 1999.

60. Memorandum from Terence R. Karels, EC, to Margaret Neily, ES, "Children's Sleepwear Revocation Project," May 27, 1999.

61. Memorandum from Terence R. Karels, EC, to Margaret Neily, ES, "Children's Sleepwear—Issues Related to Proposed Revocation," May 27, 1999.

62. Memorandum from C. Craig Morris, EHHA, to Margaret Neily, ESME, "Sleepwear-Related Thermal Burns in Children under 15 Years Old," June 1, 1999.

63. Memorandum from C. Craig Morris, EHHA, to Margaret Neily, ESME, "Response to Public Comments Related to the Children's Sleepwear Flammability Requirements for sizes 0 to 9 Months," May 28, 1999.

64. Memorandum from Carolyn Meiers, ES, to Margaret Neily, ES, "Human Factors Issues in Sleepwear," May 27, 1999.

65. Memorandum from Carolyn Meters, ES, to Margaret Neily, ES, "Labeling of Tight-Fitting Sleepwear," May 27, 1999.

66. Memorandum from Linda Fansler, ES, to Margaret Neily, ES, "Review of Foreign Flammability Standards for Children's Sleepwear," May 25, 1999.

67. Memorandum from Linda Fansler, ES, to Margaret Neily, ES, "Response to Comments Received as a Result of Publishing the Children's Sleepwear Revocation Proposal," May 28, 1999.

68. Log of Telephone Call, Linda Fansler, LSE, with Ms. Christine Simpson, Health Canada, Product Safety Bureau, March 31, 1999.

69. Memorandum from Margaret L. Neily, ES, to File, "Analysis of Public Comments on Proposed Revocation of the 1996 and Subsequent Amendments to the Children's Sleepwear Flammability Standards," May 27, 1999.

70. United States General Accounting Office Report to Congressional Committees and the Consumer Product Safety Commission, "Consumer Education Efforts for Revised Children's Sleepwear Safety Standard" June 1999.

71. Memorandum from Carolyn Meiers, ES, to Margaret Neily, ES, "Summary of GAO report, "Consumer Education Efforts for Revised Children's Sleepwear Safety Standard," May 27, 1999.

72. Briefing Memorandum from Ronald L. Medford, Office of Hazard Identification and Reduction and Margaret L. Neily, ES, to the Commission, "Children's Sleepwear Flammability Standards—Analysis of Public Comments on the Proposed Revocation of the September 1996 and Subsequent Amendments," June 3, 1999.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5, 206, 250, 314, 600, and 601

[Docket No. 99N–0193]

RIN 0910–AB61

Supplements and Other Changes to an Approved Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations on supplements and other changes to an approved application to implement the manufacturing changes provision of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). The proposed rule would require manufacturers to validate the effect of any manufacturing change on the identity, strength, quality, purity, and potency of a drug or biological product as those factors relate to the safety or effectiveness of the product. The proposal sets forth requirements for changes requiring supplement submission and approval prior to the distribution of the product made using the change, changes requiring supplement submission at least 30 days prior to the distribution of the product, changes requiring supplement submission at the time of distribution, and changes to be described in an annual report.

DATES: Written comments by September 13, 1999. Comments on the collection of information by July 28, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT:
Eric B. Sheinin, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918, or
Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 21, 1997, the President signed the Modernization Act (Pub. L. 105–115) into law. Section 116 of the Modernization Act amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506A (21 U.S.C. 356a), which describes requirements and procedures for making and reporting manufacturing changes to approved new drug and abbreviated new drug applications, to new and abbreviated animal drug applications, and to license applications for biological products. This proposed rule sets forth regulations to implement section 506A of the act for human new drug and abbreviated new drug applications and for licensed biological products. The Center for Veterinary Medicine is developing separate regulations regarding manufacturing changes for new and abbreviated animal drug applications.

This proposed rule will update and replace current § 314.70 (21 CFR 314.70), which provides the requirements for manufacturing changes for human drug applications. This proposal also proposes changes to § 601.12 (21 CFR 601.12), which provides the requirements for manufacturing changes for licensed biological products. Although the current § 601.12 for licensed biological products is in full compliance with the new provisions in the Modernization Act, FDA is making the proposed changes in order to maintain harmonization with proposed § 314.70 for human drug applications.

II. Background

The requirements for reporting manufacturing changes under current § 314.70 were developed originally as part of a comprehensive effort to improve the investigational new drug application (IND) and the new drug application (NDA) processes. This effort began in October 1982 (47 FR 46622, October 19, 1982) and consisted of three phases. The first phase, termed the NDA rewrite (50 FR 7452, February 22, 1985), finalized procedures in part 314 (21 CFR part 314), including § 314.70, for FDA review of new drug and antibiotic applications. The NDA rewrite of § 314.70 created three mechanisms for reporting manufacturing changes: Supplements requiring prior approval, supplements not requiring prior approval, and annual reports. The rationale behind the need for three mechanisms to report manufacturing and controls changes is that some changes have a significant potential to affect the safety or effectiveness of a final drug product and should be reviewed and approved by FDA prior to distribution of the product made with the change. Other changes have a lesser potential to affect safety or effectiveness and could be implemented by a firm with notification to FDA concurrently (changes being effected supplement). A third category of changes has a minimal potential to affect safety or effectiveness and could, therefore, be submitted in the next annual report without compromising drug safety or effectiveness.

The second phase of the effort to improve the IND and NDA process, termed the IND rewrite (52 FR 8831, March 19, 1987), finalized FDA procedures in 21 CFR part 312 for reviewing IND's. The third phase involved preparation of a series of agency guidances that elaborated on the concepts contained in the IND and NDA regulations and provided more detail concerning application formats and how to fulfill testing and other regulatory requirements.

In implementing § 314.70, the agency recognized both the need for greater consistency in the approaches FDA recommended for application holders making postapproval manufacturing and controls changes as well as a need to reduce regulatory burden consistent with the public health. Accordingly, FDA formed the Scale-up and Postapproval Changes (SUPAC) Task Force. This SUPAC Task Force, which was established by the Center for Drug Evaluation and Research (CDER) Chemistry, Manufacturing, and Controls Coordinating Committee, oversaw the acquisition of data on the effects of postapproval changes on the quality and performance of drugs. Based on the data and CDER's experience reviewing thousands of manufacturing change supplements, CDER developed guidance documents designed to ease preapproval requirements by categorizing certain manufacturing changes according to whether they had a minor, moderate, or major potential to affect product quality and performance. The SUPAC guidance documents were issued under § 314.70(a), which stated that holders of an approved application shall make changes to the application in accordance with a guideline, notice, or regulation published in the **Federal Register** that provides for a less burdensome notification of the change.

The existing postapproval change guidances are based on the concept that the identity, strength, quality, purity, and potency of an approved drug should remain unchanged in any important aspect as a result of any postapproval change in manufacturing and controls. A change in any important aspect may thus require redemonstration of pharmaceutical equivalence and/or bioequivalence as defined in 21 CFR 320.1.

Regulations governing manufacturing changes to licensed biological products were similar to § 314.70, although they did not include the three categories of changes provided in § 314.70. In 1997, as part of an agency initiative to reduce regulatory burden, FDA revised § 601.12 to add three categories of manufacturing changes for licensed biological products with different reporting requirements for each category. In addition, because certain biotechnology products were regulated as drugs under section 505 of the act (21 U.S.C. 355), FDA sought to harmonize regulatory approaches for those biotechnology products that were regulated as drugs by adding new § 314.70(g) that addressed reporting changes to an approved application for certain biotechnology products (see 61 FR 2739, January 29, 1996, and 62 FR 39890, July 24, 1997). Revised §§ 601.12 and 314.70(g), like the original § 314.70, provided for three risk-based filing categories: (1) Those having a substantial potential to have an adverse effect on the identity, strength, quality, purity, and potency of a drug as those factors relate to the safety or effectiveness of the product; (2) those having a moderate potential to have these types of effects; and (3) those with minimal potential to have such effects. In addition, §§ 601.12 and 314.70(g) provided for four different reporting categories instead of the three originally provided in § 314.70. These categories were: (1) Prior approval supplement; (2) 30-day wait changes being effected supplement; (3) no-wait changes being effected supplement; and (4) annual report.

Sections 601.12 and 314.70(g) also provided that applicants could submit as a preapproval supplement a comparability protocol that described the specific tests and validation studies and acceptable limits to be achieved to demonstrate the lack of adverse effect for specified types of manufacturing changes on the identity, strength, quality, purity, or potency of a product as they may relate to the safety or effectiveness of the product. If approved, such a protocol could justify a reduced reporting category for the particular change described because the use of the protocol for the change could reduce the potential risk of an adverse effect associated with the change.

III. Summary of the Legislation

Section 116 of the Modernization Act amended the act by adding section 506A, which built upon the concepts embodied in the IND/NDA rewrite, the SUPAC program, and the changes to §§ 601.12 and 314.70(g). Section 506A of the act includes the following provisions:

1. A drug made with a manufacturing change, whether a major manufacturing change or otherwise, may be distributed only after the applicant validates the effects of the change on the identity, strength, quality, purity, and potency of the drug as these factors may relate to the safety or effectiveness of the drug (sections 506A(a)(1) and (b) of the act). This section recognizes that additional testing, beyond testing to ensure that an approved specification is met, is required to ensure unchanged identity, strength, quality, purity, or potency as these factors may relate to the safety or effectiveness of the drug.

2. A drug made with a major manufacturing change may be distributed only after the applicant submits a supplemental application to FDA and the supplemental application is approved by the agency. The application is required to contain information determined to be appropriate by FDA and include the information developed by the applicant when "validating the effects of the change" (section 506A(c)(1) of the act). The phrase "validating the effects of the change," as used in this proposed rule, is not the same as "validation" required in FDA's current good manufacturing practice (CGMP) regulations (parts 210 and 211 (21 CFR parts 210 and 211)). Unless otherwise specified by FDA, some CGMP validation (e.g., process, equipment) data need not be filed in an NDA, abbreviated new drug application (ANDA), or license application for a biological product but should be retained at the facility and be available for review by FDA at its discretion. Some other CGMP validation information, in addition to the information validating the effects of the change specified in section 506A(c)(1) of the act, should be submitted in an NDA, ANDA, or license application for a biological product (e.g., sterilization and advantageous agent removal process validation).

3. A major manufacturing change is a manufacturing change determined by FDA to have substantial potential to adversely affect the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug. Such changes include: (1) A change made in the qualitative or quantitative formulation of the drug involved or in the specifications in the approved application or license unless exempted by FDA by regulation or guidance; (2) a change determined by FDA by regulation or guidance to require completion of an appropriate clinical study demonstrating equivalence of the drug to the drug manufactured without the change; and (3) other changes determined by FDA by regulation or guidance to have a substantial potential to adversely affect the safety or effectiveness of the drug (section 506A(c)(2) of the act).

4. FDA may require submission of a supplemental application for drugs made with manufacturing changes that are not major (section 506A(d)(1)(B) of the act) and establish categories of manufacturing changes for which a supplemental application is required (section 506A(d)(1)(C) of the act). In such a case the applicant may begin distribution of the drug 30 days after FDA receives a supplemental application unless the agency notifies the applicant within the 30-day period that prior approval of the application is required (section 506A(d)(3)(B)(i) of the act). FDA may also designate a category of manufacturing changes that permit the applicant to begin distributing a drug made with such changes upon receipt by the agency of a supplemental application for the change (section 506A(d)(3)(B)(ii) of the act). If FDA disapproves a supplemental application, the agency may order the manufacturer to cease the distribution of drugs that have been made with the disapproved change (section 506A(d)(3)(B)(iii) of the act).

5. FDA may authorize applicants to distribute drugs without submitting a supplemental application (section 506A(d)(1)(A) of the act) and may establish categories of manufacturing changes that may be made without submitting a supplemental application (section 506A(d)(1)(C) of the act). The applicant is required to submit a report to FDA on such a change and the report is required to contain information the agency deems to be appropriate and information developed by the applicant when validating the effects of the change. FDA may also specify the date on which the report is to be submitted (section 506A(d)(2)(A) of the act). If during a single year an applicant makes more than one manufacturing change subject to an annual reporting requirement, FDA may authorize the applicant to submit a single report containing the required information for all the changes made during the year

(annual report) (section 506A(d)(2)(B) of the act).

Section 506A of the act provides FDA with considerable flexibility to determine the information and filing mechanism required for the agency to assess the effect of manufacturing changes in the safety and effectiveness of the product. There is a corresponding need to retain such flexibility in the proposed regulations implementing section 506A of the act to ensure that the least burdensome means for reporting changes are available. FDA believes that such flexibility will allow it to be responsive to increasing knowledge of and experience with certain types of changes and help ensure the efficacy and safety of the products involved. For example, a change that may currently be considered to have a substantial potential to have an adverse effect on the safety or effectiveness of the product may, at a later date, based on new information or advances in technology, be determined to have a lesser potential to have such an adverse effect. Conversely, a change originally considered to have a minimal or moderate potential to have an adverse effect on the safety or effectiveness of the product may later, as a result of new information; be found to have an increased, substantial potential to adversely affect the product.

The agency believes it can more readily respond to knowledge gained from manufacturing experience, further research and data collection, and advances in technology by issuing regulations that set out broad, general categories of manufacturing changes and by using guidance documents to provide FDA's current thinking on the specific changes that fall into those general categories. The proposed rule would, therefore, help reduce the number of manufacturing changes specifically identified as requiring supplements.

The agency also understands that applicants expect some predictability on what type of reporting will be expected for specific changes. FDA intends to make available guidance documents to describe the agency's current interpretation of specific changes falling into the four filing categories and to modify the documents as needed to reflect changes based on new information. Section 506A of the act explicitly provides FDA the authority to use guidance documents to determine the type of changes that do or do not have a substantial potential to adversely affect the safety or effectiveness of the drug product. The use of guidance documents will allow FDA to more easily and quickly modify and update important information. (FDA's use of guidance documents under current §§ 314.70(a) and 601.12 has proven effective in accomplishing this goal.) Guidance documents will be developed according to the procedures set out in FDA's "Good Guidance Practices" published in the **Federal Register** of February 27, 1997 (62 FR 8961 at 8967 through 8972). A notice of availability of a draft guidance entitled "Guidance for Industry: Changes to an Approved NDA or ANDA" is published elsewhere in this issue of the **Federal Register**. This draft guidance covers recommended reporting categories for various postapproval manufacturing changes. Previously published guidances, including the SUPAC guidances, provide recommendations on reporting categories as well as the type of information that should be developed by the applicant to validate the effect of the change on the identity, strength, quality, purity, or potency of a product as they may relate to the safety or effectiveness of the product. To the extent that the recommendations on reporting categories in this guidance, when finalized, are inconsistent with previously published guidance, such as the SUPAC guidances, the recommended reporting categories in such prior guidance will be superseded by this new guidance upon its publication in final form. CDER intends to update the previously published guidances to make them consistent with this guidance.

FDA has also published a guidance entitled "Changes to an Approved Application for Specified Biotechnology and Specified Synthetic Biological Products" (62 FR 39904, July 24, 1997). FDA intends to update this guidance as appropriate based on any final rule that may issue as a result of this proposal.

IV. Description of the Proposed Rule

A. Definitions

FDA is proposing to amend the "Definitions" sections of the regulations on applications for FDA approval to market a new drug (§ 314.3) and a biological product (21 CFR 600.3) by adding definitions for "specification" and "validate the effects of the change." These definitions are necessary to implement the provisions of section 506A of the act.

FDA is proposing to define "specification" as the quality standard (i.e., tests, analytical procedures, and acceptance criteria) provided in an approved application to confirm the quality of drug substances, drug products, intermediates, raw materials, reagents, and other components including container closure systems, and in-process materials. FDA is proposing to define "specification" because under section 506A of the act a "major change" includes a change "in the specifications in the approved application or license."

To clarify the meaning of the term "acceptance criteria" as used in the definition of "specification," FDA is including in the proposed definition of "specification" the statement that "acceptance criteria" refers to numerical limits, ranges, or other criteria for the tests described. To determine if a material being tested complies with a specification, there must be predetermined criteria. These criteria may include numerical limits or ranges (e.g., not more than 1 percent) or other criteria (e.g., white to off-white in color).

FDA is proposing to define "validate the effects of the change" as an assessment of the effect of a manufacturing change on the identity, strength, quality, purity, or potency of a drug as these factors relate to the safety or effectiveness of the drug. FDA is proposing to define this phrase because section 506A of the act includes a requirement that a drug made with a manufacturing change may only be distributed after the applicant "validates the effects of the change." Validating the effects of the change is important in determining whether manufacturing changes alter the identity, strength, quality, purity, or potency of a drug product as they relate to drug safety or effectiveness, and may require testing beyond that in an approved specification, such as testing to ensure pharmaceutical equivalence and/or bioequivalence.

B. Changes to an Approved Application

Current § 314.70(a) sets forth general requirements under which an applicant must notify FDA when making a change to an approved application. This section states that an applicant must notify FDA about each change in each condition established in an approved application beyond the variations already provided for in the application, and that the notice is required to describe the change fully. It also states that, depending on the type of change, the applicant must notify FDA of it in a supplement under current § 314.70(b) or (c) or by inclusion of the information in an annual report under current § 314.70(d). FDA is proposing to retain these general requirements under proposed § 314.70(a)(1). A similar provision is included in the regulations on changes to an approved application for biological products under current § 601.12(a). FDA is proposing to redesignate this requirement as § 601.12(a)(1).

Proposed § 314.70(a)(2) would require the holder of an approved application under section 505 of the act to validate the effects of manufacturing changes on the identity, strength (e.g., assay and content uniformity), quality (e.g., physical, chemical, and biological properties), purity (e.g., impurities and degradation products) or potency (e.g., biological activity, bioavailability, and bioequivalence) of a drug as these factors may relate to the safety and effectiveness of the drug. These validation requirements must be met before a product made with a manufacturing change may be distributed. This amendment implements section 506A(a)(1) and (b) of the act. A similar provision is included in the regulations on changes to an approved application for biological products under current § 601.12(a). FDA is proposing to add minor wording changes for consistency with revised § 314.70 and to redesignate this requirement as § 601.12(a)(2). In addition, applicants continue to be subject to the validation requirements of parts 210 and 211 as mentioned previously.

Current § 314.70(a) states that notwithstanding the supplement submission requirements of current § 314.70(b) and (c), an applicant shall make a manufacturing change in accordance with "a guideline, notice, or regulation published in the **Federal Register** that provides for a less burdensome notification of the change." For example, a type of manufacturing change subject to prior approval by FDA under current § 314.70(b) might be identified in a "guideline, notice, or regulation" as a change that could be reported in a supplement not requiring prior approval or in an annual report. In the SUPAC guidance documents, CDER used this provision to reduce the regulatory burden for submission of supplements for manufacturing changes that were not likely to adversely affect drug product quality or performance.

FDA is proposing to retain this requirement under proposed § 314.70(a)(3) and to add it to the regulations on changes to an approved application for biological products as proposed § 601.12(a)(3). This exception may be used as pharmaceutical science evolves for those changes that FDA no longer considers to have a substantial potential to have an adverse effect on the product. However, to ensure consistency with the principles of FDA's good guidance practices, proposed §§ 314.70(a)(3) and 601.12(a)(3) would eliminate the reference to a **Federal Register** "notice" and change the word "guideline" to "guidance." Proposed § 314.70(a)(3) is expressly sanctioned in section 506A(c)(2)(A), (c)(2)(B), and (c)(2)(C) of the act which permit FDA to categorize manufacturing changes "by regulation or guidance."

Current § 314.70(c) states, in the introductory paragraph, that the applicant who submits a change being effected supplement to FDA must promptly revise all promotional labeling and drug advertising to make it consistent with any change in the labeling. FDA is proposing to retain this provision as proposed § 314.70(a)(4) and to add it to the regulations on changes to an approved application for biological products as proposed § 601.12(a)(4). Because the prompt revision of all promotional labeling and product advertising applies equally to all labeling changes (see § 314.81(b)(3)), FDA is proposing that this provision expressly apply to labeling changes requiring approval prior to the distribution of the product, labeling changes that may be submitted in a changes being effected supplement, and those changes that may be filed in an annual report.

Current § 314.70(a) also requires that, except for a supplemental application providing for a change in the labeling, the applicant, other than a foreign applicant, shall include in each supplemental application providing for a change under paragraph (b) or (c) of current § 314.70, a statement certifying that a field copy of the supplement has been provided to the applicant's home FDA district office. FDA is proposing to retain this requirement as proposed § 314.70(a)(5). However, as proposed, this section would omit the phrase "other than a foreign applicant" because foreign applicants now routinely supply field copies of supplements to the agency.

Proposed §§ 314.70(a)(6) and 601.12(a)(5) would add a requirement that a list of all changes contained in the supplement or annual report must be included in the cover letter for the supplement or annual report. For many years, most supplements and annual reports have routinely included such cover letters. Including a list of all changes in the cover letters will enable FDA to more efficiently locate and evaluate changes in what are often substantial documents, thus facilitating FDA review of supplements and annual reports.

C. Changes Requiring Supplement Submission and Approval Prior to Distribution of the Product Made Using the Change (Major Changes)

Certain drug or biological product manufacturing steps [illegible] changes in these [illegible] submitted in a [illegible] approv[illegible] of the [illegible] using th[illegible] Simi[illegible] beling changes must be app[illegible] distribution of the product with the new labeling. Current regulations at §§ 314.70(b) and (g)(1) and 601.12(b) set forth prior approval requirements. FDA is proposing to revise these regulations to implement section 506A of the act. Proposed § 314.70(b)(1) would implement section 506A(c)(1) and (c)(2) of the act and would require that a preapproval supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product.

Sometimes, during assessment of a change, an applicant will find that the manufacturing change will have an adverse effect on the identity, strength, quality, purity, or potency of the drug product. In many cases, the applicant will not implement this manufacturing change, but in some cases may still wish to do so. If an assessment concludes that a manufacturing change has adversely affected the identity, strength, quality, purity, or potency of the drug product, the change should be filed in a prior approval supplement, regardless of whether the change is one that normally does not need FDA approval prior to distribution of the product made with the change. The applicant could submit this change in a prior approval supplement with appropriate information to support the continued safety and effectiveness of the product. The agency will assess the effect of any adverse change in a drug product, as the change may relate to the safety or effectiveness of the product, during the review of the prior approval supplement.

Proposed § 314.70(b)(4) would retain the provision in current § 314.70(b) that provides that an applicant may request an expedited review of a supplement if a delay in making the change would impose an extraordinary hardship. Proposed § 314.70(b)(4) would also permit a request for an expedited review of a supplement for public health reasons. FDA is retaining the provision

for expedited review for extraordinary hardship reasons but wishes to clarify that these requests should be reserved for manufacturing changes made necessary by catastrophic events (e.g., fire) or by events that could not be reasonably foreseen and for which the applicant could not plan. FDA is also proposing to add this provision for expedited review, as proposed in § 314.70(b)(4), to the regulations on changes to an approved application for biological products as proposed § 601.12(b)(4). Requests for expedited review will be assessed on a case-by-case basis. All requests may not be granted.

Proposed § 314.70(b)(2) lists changes requiring supplement submission and FDA approval prior to distribution, including changes designated as major manufacturing changes in section 506A(c)(2) of the act and changes to certain biotechnology products that are currently subject to prior approval requirements under current § 314.70(g)(1). These changes have a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. The agency believes that the filing mechanism for these significant changes is unlikely to vary with technological advances or due to differences among products, and that these changes should be enumerated in the proposed regulations. The agency's continued prior review and approval of such changes is necessary to protect the public from products for which safety or effectiveness may have been compromised. The changes in proposed § 314.70(b)(2) would include but are not limited to the following changes.

1. Changes in the qualitative or quantitative formulation of the drug, including inactive ingredients, or in the specifications in the approved application or license, except as provided in proposed § 314.70(c) and (d) (proposed § 314.70(b)(2)(i)). Section 506A(c)(2)(A) of the act specifically requires that this change be submitted in a supplement requiring FDA approval prior to distribution. These types of changes are included under current § 314.70(b) and (g) as requiring a prior approval supplement. FDA is also proposing to revise current § 601.12(b)(2)(i) in the regulations on changes to an approved application for biological products to be consistent with proposed § 314.70(b)(2)(i).

2. Changes requiring completion of studies in accordance with part 320 (21 CFR part 320) to demonstrate the equivalence of the drug to the drug as manufactured without the change or to the reference listed drug (proposed § 314.70(b)(2)(ii)). A similar change is included under current § 314.70(g)(1) as requiring a prior approval supplement. FDA is proposing that these changes be submitted in a supplement requiring prior approval because section 506A of the act provides that a major manufacturing change shall include a change "determined by the Secretary by regulation or guidance to require completion of an appropriate clinical study demonstrating equivalence of the drug to the drug as manufactured without the change"(section 506A(c)(2)(B) of the act). The studies most likely to be conducted to support a manufacturing change would be bioavailability or bioequivalence studies conducted in humans in accordance with FDA regulations at part 320. Well-controlled clinical trials or nonclinical tests may also be used to establish bioavailability or bioequivalence (§ 320.24). These are the types of studies the statute refers to as demonstrating the equivalence of one drug to another. FDA proposes interpreting "Appropriate clinical stud[ies]," referenced in section 506A(c)(2)(B) of the act for NDA products, to be "studies in accordance with part 320 of this chapter" to clarify the types of studies triggering a prior approval supplement. This phrase is used in the proposed regulation at § 314.70(b)(2)(ii).

Section 506A of the act also states in part that "equivalence of the drug to the drug as manufactured without the change" should be demonstrated. FDA is including in proposed § 314.70(b)(2)(ii) the statement that the equivalence of the drug may sometimes be demonstrated by comparison to a reference listed drug. This is consistent with the drug approval requirements for generic drugs because, at the time of approval, a generic drug applicant is required to show equivalence between the proposed generic drug and a reference listed drug, and a proposed manufacturing change should not significantly change the equivalence demonstrated at the time of approval (§ 320.21(b)). For the more significant manufacturing changes for generic drugs, the applicant is required to conduct a bioequivalence study comparing the drug product made with the change to the reference listed drug. FDA is not proposing the same changes to § 601.12 because biological products are not subject to part 320 and have unique properties. Therefore, the agency will retain the wording in current § 601.12(b)(2)(ii).

3. Changes that may affect product sterility assurance, such as changes in product or component sterilization method(s) or an addition, deletion, or substitution of steps in an aseptic processing operation (proposed § 314.70(b)(2)(iii)). Current §§ 314.70(g)(1) and 601.12(b)(2)(vi) require a prior approval supplement for this change.

4. Changes in the synthesis or manufacture of the drug substance that may affect the impurity profile and/or the physical, chemical, or biological properties of the drug substance (proposed § 314.70(b)(2)(iv)). A similar change in current § 314.70(b)(1) requires a prior approval supplement.

5. Changes in labeling, except those described in proposed § 314.70(c)(6)(iii) (changes to add or strengthen certain warnings or statements), § 314.70(d)(2)(ix) (certain changes in the description or information about a drug), and § 314.70(d)(2)(x) (certain editorial or minor changes) (proposed § 314.70(b)(2)(v)). This change requires a prior approval supplement under current § 314.70(b)(3).

6. Changes in a container closure system that controls drug delivery or that may affect the impurity profile of the drug product (proposed § 314.70(b)(2)(vi)). Significant changes in container closure systems require a prior approval supplement under current § 314.70(b)(2).

7. Changes solely affecting a natural product, a recombinant deoxyribonucleic acid (DNA)-derived protein/polypeptide product, or a complex or conjugate of a drug with a monoclonal antibody for: (1) Changes in the virus or adventitious agent removal or inactivation method(s); (2) changes in the source material or cell line; and (3) establishment of a new master cell bank or seed (proposed § 314.70(b)(2)(vii)). This change requires a prior approval supplement under current § 314.70(g)(1).

8. Changes to a product under an application subject to a validity assessment because of significant questions regarding the integrity of the data supporting that application (proposed § 314.70(b)(2)(viii)). Until questions about the integrity of the data in the application have been resolved, there are inadequate assurances that any change will not adversely affect the safety or effectiveness of the product. Moreover, a change to a product cannot be validated, as required under 506A(b) of the act, until the integrity of the underlying data in such application is validated. Consequently, there is a significant potential that the change will have an adverse effect on the identity, strength, quality, purity, or potency of the product. After a validity assessment has been completed, and data integrity questions resolved, the holder of an approved application may submit supplements for manufacturing changes as otherwise provided in § 314.70.

FDA is proposing to describe additional specific examples of changes that have substantial, moderate, and minimal potential to adversely affect a product in guidance documents rather than enumerate them in this proposed regulation. As discussed previously, section 116 of the Modernization Act expressly states that the agency may through guidance categorize the manufacturing changes. FDA anticipates that scientific advances and future experience may reduce the need for premarket approval of certain changes, and the agency will respond to changed circumstances by revising the guidance documents. A notice of availability of a draft guidance document entitled "Guidance for Industry: Changes to an Approved NDA or ANDA" that provides more detailed recommendations on how to report proposed changes is being published elsewhere in this issue of the **Federal Register**, and the agency is soliciting comments on the guidance as well as on the proposed rule.

Current § 314.70(b)(1) requires that supplements requiring prior approval be submitted for the following changes in a drug substance: (1) Relaxing the limits for a specification (§ 314.70(b)(1)(i)); (2) establishing a new regulatory analytical method (§ 314.70(b)(1)(ii)); (3) deleting a specification or regulatory analytical method (§ 314.70(b)(1)(iii)); (4) changing the synthesis of the drug substance, including a change in solvents and a change in the route of synthesis (§ 314.70(b)(1)(iv)); and (5) using a different facility or establishment to manufacture the drug substance (§ 314.70(b)(1)(v)). FDA is proposing to revoke current § 314.70(b)(1)(i), (b)(1)(ii), and (b)(1)(iii) because these relate to a change in a specification which is already covered under proposed § 314.70(b)(1). FDA is proposing to revoke current § 314.70(b)(1)(iv) and (b)(1)(v) because some of these changes would fall into the proposed major manufacturing change category while others would fall into other proposed categories depending on whether the change is considered to have a substantial, moderate, or minimal potential to adversely affect the identity, strength, quality, purity, or potency of the drug as they may relate to the safety or effectiveness of the drug. FDA has decided not to include these changes in this proposed rule, but plans to provide recommendations on the filing mechanisms for these types of changes in the guidance documents discussed previously.

Current § 314.70(b)(2) requires that supplements requiring prior approval be submitted for the following changes in a drug product: (1) Adding or deleting an ingredient, or otherwise changing the composition of the drug product, other than deletion of an ingredient intended only to affect the color of the drug product (§ 314.70(b)(2)(i)); (2) relaxing the limits for a specification (§ 314.70(b)(2)(ii)); (3) establishing a new regulatory analytical method (§ 314.70(b)(2)(iii)); (4) deleting a specification or regulatory analytical method (§ 314.70(b)(2)(iv)); (5) changing the method of manufacture of the drug product, including changing or relaxing an in-process control (§ 314.70(b)(2)(v)); (6) using a different facility or establishment, including a different contract laboratory or labeler, to manufacture, process, or pack the drug product (§ 314.70(b)(2)(vi)); (7) changing the container and closure system for the drug product or changing a specification or regulatory analytical method for the container and closure system (§ 314.70(b)(2)(vii)); (8) changing the size of the container, except for solid dosage forms, without a change in the container and closure system (§ 314.70(b)(2)(viii)); (9) extending the expiration date of the drug product based on data obtained under a new or revised stability testing protocol that has not been approved in the application (§ 314.70(b)(2)(ix)); (10) establishing a new procedure for reprocessing a batch of the drug product that fails to meet specifications (§ 314.70(b)(2)(x)); (11) adding a code imprint by printing with ink on a solid oral dosage form drug product (§ 314.70(b)(2)(xi)); (12) adding a code imprint by embossing, debossing, or engraving on a modified release solid oral dosage form drug product (§ 314.70(b)(2)(xii)). FDA is proposing to revoke § 314.70(b)(2)(i) through (b)(2)(iv) because these provisions relate to a change in qualitative or quantitative formulation or a specification that is already covered under proposed § 314.70(b)(1). FDA is proposing to revoke current § 314.70(b)(2)(v) through (b)(2)(xii) because some changes would fall into the proposed major manufacturing changes category while others would fall into other proposed categories. FDA plans to provide recommendations on the filing mechanism for these changes in the guidance documents discussed previously.

Proposed § 314.70(b)(3) states that the applicant must obtain approval of a supplement from FDA before distributing a product using a change under § 314.70(b), and specifies information to be included in the supplement. The supplement must include: (1) A detailed description of the proposed change; (2) the product(s) involved; (3) the manufacturing site(s) or area(s) affected; (4) a description of the methods used and studies performed to evaluate the effect of the change on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product (validating the effects of the change); (5) data derived from such studies; (6) for a natural product, a recombinant DNA-derived protein/polypeptide product, or a complex or conjugate of a drug with a monoclonal antibody, relevant validation protocols must be provided in addition to the requirements under § 314.70(b)(3)(iv) and (b)(3)(v); (7) for sterilization process and test methodologies, relevant validation protocols must be provided in addition to the requirements under § 314.70(b)(3)(iv) and (b)(3)(v); and (8) if applicable, a reference list of relevant standard operating procedures (SOP's). These supplement content requirements are already required under current §§ 314.70(g)(1)(iii) and 601.12(b)(3), and FDA is proposing to retain the requirements in this rule, except that the proposal specifies that relevant validation protocols and data apply to a natural product, a recombinant DNA-derived protein/polypeptide product, or a complex or conjugate of a drug with a monoclonal antibody, as well as protocols and data for sterilization processes and test methodologies.

Current § 314.70(g)(1)(iii) only applies to recombinant DNA-derived protein/polypeptide products or complexes or conjugates of a drug with a monoclonal antibody. Some information requirements listed under current § 314.70(g)(1)(iii) are not applicable to all CDER drug products. FDA is proposing to clarify the requirements in current § 314.70(g)(1)(iii) to describe the limited circumstances under which certain information would be required.

D. Changes Requiring Supplement Submission at Least 30 Days Prior to Distribution of the Drug Product Made Using the Change (Moderate Changes)

Current § 314.70(c) describes changes that may be made before FDA approval of a supplement. These include changes to enhance the safe use of a drug by adding specifications to strengthen warnings, or to delete false, misleading, or unsupported indications for use. Current § 314.70(g)(2) describes changes requiring supplement submission at least 30 days prior to distribution of the

product made using the change. These include changes in the site of testing from one facility to another, an increase or decrease in production scale during finishing steps that involves new or different equipment, and replacement of equipment with that of similar, but not identical, design and operating principle that does not affect the process methodology or process operating parameters. FDA recognizes that the public health can be adequately protected without requiring approval of certain manufacturing changes prior to distribution of the product made with the change. FDA continues to believe that it is important that such changes be documented and validated so there is a mechanism for assessing the consequences of the change and that the agency approve such changes. Ready access to information regarding such changes through submission of a supplement 30 days before distribution of the product would protect against the distribution of unsafe or ineffective products while speeding the availability of improved products.

Proposed § 314.70(c) implements section 506A(d)(1)(B) and (d)(3)(B)(i) of the act and provides that products made using changes listed under this section may be distributed not sooner than 30 days after receipt of a supplement by FDA. Proposed § 314.70(c)(1) would require that a supplement be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a moderate potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. Proposed § 314.70(c)(3) states that a supplement submitted under paragraph (c)(1) is required to give a full explanation of the basis for the change and identify the date on which the change is to be made, and that the supplement must be labeled "Supplement—Changes Being Effected in 30 Days" or, if applicable under paragraph (c)(6) of this section, "Supplement—Changes Being Effected."

Proposed § 314.70(c)(2) describes the types of changes that would be included under this section:

1. A change in the container closure system that does not affect the quality of the final drug product (proposed § 314.70(c)(2)(i)).

2. Changes solely affecting a natural protein product, a recombinant DNA-derived protein/polypeptide product or a complex or conjugate of a drug with a monoclonal antibody, including: (1) An increase or decrease in production scale during finishing steps that involves new or different equipment and (2) replacement of equipment with that of similar, but not identical, design and operating principle that does not affect the process methodology or process operating parameters (proposed § 314.70(c)(2)(ii)). These changes are listed in current § 314.70(g)(2) as requiring the submission of a supplement at least 30 days prior to distribution.

Current § 314.70(g)(2) lists a change in the site of testing from one facility to another as a change that must be filed in a supplement submitted at least 30 days prior to distribution. FDA has decided not to include a similar change in proposed § 314.70(c) and is proposing to delete this change from current § 601.12(c)(2)(i). FDA plans to provide recommendations on the filing mechanism for this change in the guidance documents discussed previously.

Proposed § 314.70(c)(4) states that distribution of a product made using a change under this section may begin not less than 30 days after receipt of a supplement by FDA. This section would also require that the same information listed in paragraph (b)(3), discussed previously, must be contained in the supplement required under proposed § 314.70(c).

Proposed § 314.70(c)(5) states that during the 30-day period following receipt of the supplement, FDA would perform a preliminary review to determine whether the supplement is complete and whether the type of change is appropriate for review as a supplement under proposed § 314.70(c). If the proposed change is determined to be a major change that should be submitted under proposed § 314.70(b), the agency would inform the applicant and the applicant would be required to receive FDA approval before a product produced with the change could be distributed. If FDA determines that the change is properly submitted as a supplement under § 314.70(c), but the required information is incomplete, the applicant would be required to supply the missing information and wait until FDA has determined that the supplement is in compliance before distributing the product. These provisions are provided in section 506A(d)(3) of the act. These requirements are included under current §§ 314.70(g)(2)(iv) and 601.12(c)(4) and FDA is retaining and expanding this requirement to cover all drugs.

Under proposed § 314.70(c)(7), if FDA disapproves a supplemental application under this section, the agency may order the manufacturer to cease distribution of the drug products made with the manufacturing change. This amendment would implement section 506A(d)(3)(B)(iii) of the act. FDA is also proposing to add this provision to the regulations on changes to an approved application for biological products as proposed § 601.12(c)(6).

E. Changes That May Be Implemented When FDA Receives a Supplement (Moderate Changes)

Under proposed § 314.70(c)(6), FDA may designate a category of changes for which the holder of an approved application making such a change may begin distribution of the drug upon receipt by FDA of a supplemental application for the change. This provision implements section 506A(d)(3)(B)(ii) of the act. FDA recognizes that the public health can be adequately protected without requiring approval of certain manufacturing changes prior to distribution of the product made with the change. FDA continues to believe that it is important that such changes be documented and validated so there is a mechanism for assessing the consequences of the changes and for the agency to approve such changes. However, based on FDA's experience, certain changes may be implemented when FDA receives the supplement, rather than delaying distribution for 30 days. In general, these changes provide the same or increased assurance that the product will have the characteristics of identity, strength, quality, purity, or potency that it purports or is represented to have. Ready access to information by FDA regarding such changes, through the submission of a supplement, would protect against the distribution of unsafe or ineffective products while speeding the availability of improved products.

These changes include, but are not limited to:

1. The addition to a specification or changes in the methods or controls to provide increased assurance that the drug will have the characteristics of identity, strength, quality, purity, or potency that it purports or is represented to possess (proposed § 314.70(c)(6)(i)). A similar change is listed under current § 314.70(c). Proposed § 314.70(c)(6)(i) revises current § 314.70(c) to provide clarification based on the proposed definition of specification and to delete the reference to facilities. FDA plans to provide recommendations on the filing mechanism for facility changes in the guidance documents discussed previously.

2. A change in the size and/or shape of a container (containing the same labeled amount of product) for a nonsterile drug product, except for solid dosage forms, without a change from one container closure system to another (proposed § 314.70(c)(6)(ii)). A similar change is listed under current § 314.70(b) as requiring prior approval. The proposal differs from the existing rule in that it only applies to nonsterile drug products, thereby reducing the potential risks and eliminating the need for a prior approval requirement. FDA is also clarifying that changes in container size relate to changes in the physical size of the container and do not include changes in the labeled amount of the drug.

3. Changes in the labeling to add or strengthen a contraindication, warning, precaution, or adverse reaction, or to add or strengthen a statement about drug abuse, dependence, psychological effect, or overdosage, or to add or strengthen an instruction about dosage and administration that is intended to increase the safe use of the product (proposed § 314.70(c)(6)(iii)(A), (c)(6)(iii)(B), and (c)(6)(iii)(C)). These changes are required under current § 314.70(c)(2), except that FDA is proposing to include labeling changes relating to adding or strengthening a statement about psychological effects to maintain consistency with current § 601.12(f)(2)(B).

4. The deletion of false, misleading, or unsupported indications for use or claims for effectiveness (proposed § 314.70(c)(6)(iii)(D)). This change is required under current § 314.70(c)(2).

5. Any other labeling changes specifically requested by FDA (proposed § 314.70(c)(6)(iii)(E)). FDA is proposing to include this change under this section to enable the agency to allow for labeling changes that normally require prior approval to be submitted in a changes being effected supplement when FDA specifically requests the change. FDA is also proposing to add this requirement to the regulations on changes to an approved application for biological products as proposed § 601.12(f)(2)(i)(E).

Current § 314.70(c)(3) lists the following changes to use a different facility or establishment to manufacture the drug substance that may be made before FDA approval: (1) Where the manufacturing process in the new facility or establishment does not differ materially from that in the former facility or establishment, and (2) where the new facility or establishment has received a satisfactory CGMP inspection within the previous 2 years covering that manufacturing process. FDA is proposing not to include these changes in this proposed rule but plans to provide recommendations on the filing mechanism for these changes in the guidance documents discussed previously.

F. Changes To Be Described in the Next Annual Report (Minor Changes)

Proposed § 314.70(d) would provide that changes to the product, production process, quality controls, equipment, or facilities that have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product would be documented by the applicant in the next annual report in accordance with current § 314.81(b)(2). This provision is provided in section 506A(d)(2) of the act. FDA recognizes that there are manufacturing changes that have minimal potential to have an adverse effect on a product's safety or effectiveness. FDA believes that prior agency approval of these changes is unnecessary and is proposing in § 314.70(d) that such changes would not be required to be approved by the agency. FDA continues to believe that it is important that such changes be documented and validated so there is a mechanism for assessing the consequences of the change. FDA can effectively assess compliance with § 314.70(d) and CGMP requirements for changes that have a minimal potential to adversely affect the product's safety or effectiveness by having ready access to information regarding such changes through submission of an annual report and by inspection.

Under proposed § 314.70(d)(2), these changes would include, but are not limited to:

1. Any change made to comply with an official compendium that is consistent with FDA requirements and provides increased assurance that the drug will have the characteristics of identity, strength, quality, purity, or potency that it purports or is represented to possess (proposed § 314.70(d)(2)(i)). Similar changes are listed in current § 314.70(d) and (g) as changes to be described in the next annual report. FDA is limiting the situations in which these changes can be submitted in an annual report because certain changes in a specification (e.g., deleting a test, relaxing acceptance criteria) are not considered to have minimal potential to effect a product's safety or effectiveness. FDA is also proposing to revise current § 601.12(d)(2)(i) in the regulations on changes to an approved application for biological products to be consistent with proposed § 314.70(d)(2)(i).

2. The deletion or reduction of an ingredient intended only to affect the color of the product (proposed § 314.70(d)(2)(ii)). A similar change is listed in current § 314.70(d) and (g)(3) which states that the deletion of an ingredient intended only to affect the color of the drug product should be submitted in an annual report. FDA is proposing to broaden this provision to include changes that reduce the quantity of an ingredient intended only to affect the color of the product. FDA is also proposing to revise current § 601.12(d)(2)(ii) in the regulations on changes to an approved application for biological products to be consistent with proposed § 314.70(d)(2)(ii).

3. The replacement of equipment with that of the same design and operating principles except for equipment used with a natural protein product, a recombinant DNA-derived protein/polypeptide product, or a complex or conjugate of a drug with a monoclonal antibody (proposed § 314.70(d)(2)(iii)). FDA is proposing to add this change to clarify when certain changes in equipment could be reported in an annual report. In general, under current regulations (e.g., § 314.70(b)(2)(v)), changes in process, which may include changes in equipment, require a prior approval supplement and this proposal would reduce the regulatory burden without adversely affecting the quality of the drug product.

4. A change in the size and/or shape of a container containing the same number of dose units for a nonsterile solid dosage form, without a change from one container closure system to another (proposed § 314.70(d)(2)(iv)). A similar change is listed in current § 314.70(d) and (g)(3) which states that a change in the size of a container for a solid dosage form without a change from one container and closure system to another must be filed in an annual report. FDA is proposing to broaden this provision to include a change in the shape of the container. FDA is also clarifying that a change in container size relates to a change in the physical size of the container and does not include a change involving the number of dosage units. FDA is also proposing to revise current § 601.12(d)(2)(v) in the regulations on changes to an approved application for biological products to be consistent with proposed § 314.70(d)(2)(iv).

5. A change within the container closure system for a nonsterile drug product, based upon a showing of equivalency to the approved system under a protocol approved in the application or published in an official

compendium (proposed § 314.70(d)(2)(v)). A similar change is listed in current § 314.70(d) and (g)(3) which states that a change within the container and closure system for the drug product (for example, a change from one high density polyethylene (HDPE) to another HDPE), except a change in container size for nonsolid dosage forms, based upon a showing of equivalency to the approved system under a protocol approved in the application or published in an official compendium, should be submitted in an annual report. The current regulations limit this provision by excluding a change in container size for nonsolid dosage forms. FDA is proposing to broaden this provision to allow such changes for all nonsterile drug products. FDA is also proposing to revise current § 601.12(d)(2)(iv) in the regulations on changes to an approved application for biological products to be consistent with proposed § 314.70(d)(2)(v).

6. An extension of an expiration dating period based upon full shelf life data on full production batches obtained from a protocol approved in the application (proposed § 314.70(d)(2)(vi)). A similar change is listed under current § 314.70(d) and (g)(3) as one to be filed in an annual report. FDA is clarifying that the extension of an expiration date in an annual report should be based on data from full production batches. FDA is also proposing to revise current § 601.12(d)(2)(iii) regarding changes to an approved application for biological products to be consistent with proposed § 314.70(d)(2)(vi).

7. The addition, deletion, or revision of an alternate analytical procedure that provides the same or increased assurance of the identity, strength, quality, purity, or potency of the material being tested as the analytical procedure described in the approved application (proposed § 314.70(d)(2)(vii)). A similar change is listed in current § 314.70(d) and (g)(3) which state that the addition or deletion of an alternate analytical method should be filed in an annual report. FDA is proposing to broaden this provision to include revisions of alternate analytical procedures. FDA is also clarifying that any changes in alternate analytical procedures should provide the same or increased assurance of the identity, strength, quality, purity, or potency of the material being tested as the analytical procedure described in the approved application. FDA is also proposing to revise current § 601.12(d)(2)(vii) in the regulations on changes to an approved application for biological products to be consistent with proposed § 314.70(d)(2)(vii).

8. The addition by embossing, debossing, or engraving of a code imprint to a solid oral dosage form drug product other than a modified release dosage form, or a minor change in an existing code imprint (proposed § 314.70(d)(2)(viii)). These changes are listed in current § 314.70(d) and (g)(3) as changes to be described in the next annual report.

9. A change in the labeling concerning the description of the drug product or in the information about how the drug is supplied, that does not involve a change in the dosage strength or dosage form (proposed § 314.70(d)(2)(ix)). These changes are listed in current § 314.70(d) as changes to be described in the next annual report.

10. An editorial or similar minor change in labeling (proposed § 314.70(d)(2)(x)). These changes are listed in current § 314.70(d) as changes to be described in the next annual report.

Under proposed § 314.70(d)(3), an applicant must submit in the annual report a list of all products involved and: (1) A statement by the holder of the approved application that the effects of the change have been validated; (2) a full description of the manufacturing and controls changes, including the manufacturing site(s) or area(s) involved; and (3) the date each change was made, a cross-reference to relevant validation protocol(s) and/or SOP's, and relevant data from studies and tests performed to evaluate the effect of the change on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product (validating the effects of the change). FDA is also proposing to revise current § 601.12(d)(3) in the regulations on changes to an approved application for biological products to add, as proposed § 601.12(d)(3)(iii), the requirement that the applicant must submit a statement that the effects of the change have been validated.

G. Other Information

Under proposed § 314.70(e), an applicant may submit one or more protocols describing specific tests, validation studies, and acceptable limits to be achieved to demonstrate the lack of an adverse effect for specified types of manufacturing changes on the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug. Such protocols, or changes to a protocol, would be submitted as a supplement requiring prior approval from FDA prior to distribution of the drug. If the supplement is approved, the use of such a protocol in making the specified changes may justify a reduced reporting category for the change because of the reduced risk of an adverse effect. This proposed requirement is provided for in current §§ 314.70(g)(4) and 601.12(e).

Generally, when considering a change in the manufacture of a product, the manufacturer will prepare a protocol, often called a "comparability protocol," identifying tests to be performed in evaluating the change and its effect on the product and defining the criteria against which the impact of the change will be evaluated. By providing FDA an opportunity to review and approve the comparability protocol before it is used by the applicant to evaluate a change, FDA can have greater assurance that the change is being properly evaluated and there is, therefore, less potential for the change to have an adverse effect on the safety or effectiveness of the product.

Under proposed § 314.70(f), an applicant would be required to comply with the patent information requirements under section 505(c)(2) of the act. This proposed requirement is identical to the current requirement at § 314.70(e).

Proposed § 314.70(g) would require an applicant claiming exclusivity under § 314.108 to include, with the supplemental application, information required under § 314.50(j). This proposed requirement is identical to the current requirement at § 314.70(f).

In addition to section 506A of the act, other sections of the act authorize FDA to revise §§ 314.70 and 601.12. Sections 301 and 501 of the act (21 U.S.C. 331 and 351) prohibit the manufacture, processing, packing, or holding of drugs that do not conform to CGMP; the use of unsafe color additives in or on a drug under section 721 of the act (21 U.S.C. 379e); and the distribution of a drug that differs in the strength, purity, or quality that it purports or is represented to possess. Sections 301 and 502 of the act (21 U.S.C. 352) prohibit false or misleading labeling of drugs, including, under section 201(n) of the act (21 U.S.C. 321(n)), failure to reveal material facts relating to potential consequences under customary conditions of use; drugs that lack adequate directions for use and adequate warnings; and the distribution of drugs that are dangerous to health when used in the manner suggested in their labeling. Under section 505 of the act, FDA will approve an NDA if the drug is shown to be safe and effective for its intended use and if, among other things, the methods used in, and the facilities and controls used for, the manufacture, processing and packing of the drug are adequate to preserve its identity, strength, quality, and purity. Section 701 of the act (21 U.S.C. 371) authorizes FDA to issue regulations for the efficient enforcement of the act.

The Public Health Service Act (the PHS Act) provides additional authority for FDA to revise § 601.12. Section 351(a) of the PHS Act (42 U.S.C. 262(a)) provides that license applications for biological products may be approved upon a showing that the product is safe, pure, and potent and that the manufacturing facility meets standards designed to ensure continued safety, purity, and potency of the product. In addition, under section 351(b) of the PHS Act, biological products and their containers or packages may not be falsely labeled or marked.

V. Conforming Amendments

The regulations on supplements and changes to an approved application or license are cited throughout FDA's regulations. Because FDA is proposing to revise these regulations, the agency is taking this opportunity to make conforming amendments to 21 CFR parts 5, 206, 250, 314, 600, and 601 to reflect these proposed regulations. These conforming amendments will ensure the accuracy and consistency of the regulations.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act (in section 202) requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866 and in these two statutes. As shown in the following paragraphs, the rule will not be significant as defined by the Executive Order and the Unfunded Mandates Reform Act, and the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The purpose of the proposed rule is to implement section 506A of the act and to reduce the number of manufacturing changes subject to supplements requiring FDA approval prior to product distribution. The proposed rule would affect all drug manufacturers that submit manufacturing supplements and would result in a substantial reduction in burdens to applicants making manufacturing changes subject to the proposed regulation. The proposed rule would permit earlier implementation of the changes and quicker marketing of products improved by manufacturing or labeling modifications. Faster implementation can result in marked gains in production efficiency, and generally reduces the paperwork burden associated with reporting the changes to the agency. For example, a report by the Eastern Research Group (ERG), an FDA contractor, on the effects of the SUPAC guidance for immediate release solid oral dosage forms (SUPAC–IR) found that reducing the number of changes that require preapproval gives companies greater control over their production resources, which could lead to significant net savings to industry (Eastern Research Group, *Pharmaceutical Industry Cost Savings Through Use of the Scale-Up and Post-Approval Guidance for Immediate Release Solid Oral Dosage Forms (SUPAC–IR)*, January 7, 1998, Contract No. 223–94–8301). Such economic incentives may encourage manufacturers to improve their products, product labeling, and methods of manufacture.

Due to the multiplicity of products and manufacturing changes, the agency has not estimated the total savings to industry as a result of this rule, but anticipates that they would increase over time. New information and technology will allow a greater number of changes to be reported in supplements that do not require prior approval or in annual reports. ERG estimated that companies may already have saved $71 million in 1997 due to the agency's implementation of more flexible reporting procedures for chemistry, manufacturing, and control changes. This proposed rule would broaden the potential scope of such savings. Because the proposal would benefit manufacturers regardless of size and impose no additional costs, the agency certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act of 1995

This proposed rule contains collections of information that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). "Collection of information" includes any request or requirement that persons obtain, maintain, retain, or report information to the agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). The title, description, and respondent description of the information collection are shown under this section VII with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Supplements and Other Changes to an Approved Application.

Description: The proposed rule would implement the manufacturing changes provision of section 116 of the Modernization Act and require manufacturers to validate the effect of any manufacturing change on the identity, strength, quality, purity, and potency of a drug or biological product as those factors relate to the safety or effectiveness of the product. The respondent would report the change to

FDA in one of the following ways depending on the potential for the change to have an adverse effect on the safety or effectiveness of the product: (1) Changes that have a substantial potential to have an adverse effect on a product would be submitted in a supplement requiring prior approval by FDA before distribution of the product made using the change; (2) changes that have a moderate potential to have an adverse effect on a product would be submitted to FDA in a supplement not less than 30 days prior to distribution of the product made using the change; (3) changes that have a moderate potential to have an adverse effect on a product would be submitted to FDA in a supplement at the time of distribution of the product made using the change ; and (4) changes that have a minimal potential to have an adverse effect on a product would be documented by the respondent in the next annual report.

Proposed §§ 314.70(a)(2) and 601.12(a)(2) would require the holder of an approved application to validate the effects of a manufacturing change on the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug before distributing a drug made with the change. This proposed requirement implements the statutory requirement for information collection under section 506A(a) and (b) of the act and, therefore, no burden estimate has been calculated for this regulation.

Proposed §§ 314.70(a)(4) and 601.12(a)(4) would require the applicant to promptly revise all promotional labeling and advertising to make it consistent with any labeling change implemented. The transmittal to FDA of advertisements and promotional labeling for drugs and biologics is accompanied by Form FDA 2253 and regulated by §§ 314.81(b)(3)(i) and 601.12(f)(4). This information collection is approved by OMB until August 31, 2001, under OMB control number 0910–0376. Therefore, this requirement is not estimated in Table 1 of this document.

Proposed § 314.70(a)(5) would require that the applicant include in each supplement (except for a supplement providing for a change in the labeling) a statement certifying that a field copy of the supplement has been provided to the applicant's home FDA district office. Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 4,278 certifications and field copies will be submitted annually as required by proposed § 314.70(a)(5). FDA estimates that approximately 594 applicants will submit these certifications and field copies. Preparation of a field copy would involve copying material already prepared for the supplement, and FDA estimates that it will take an average of 1 hour for applicants to include an additional field copy for FDA.

Proposed §§ 314.70(a)(6) and 601.12(a)(5) would require the applicant to include in the cover letter a list of all changes contained in the supplement or annual report. Based on data concerning the number of supplements and annual reports received by the agency, FDA estimates that approximately 11,913 lists of all changes in the supplement or annual report will be submitted annually as required by proposed § 314.70(a)(6). FDA estimates that approximately 704 applicants will submit these lists. Because the information required would be generated in preparing the supplement or annual report, the agency estimates that, under proposed § 314.70(a)(6), it will take approximately 1 hour to include a list of changes in a cover letter for a supplement or an annual report. FDA estimates that approximately 2,983 lists of all changes in the supplement or annual report will be submitted annually as required by proposed § 601.12(a)(5). FDA estimates that approximately 190 applicants will submit these lists. Because the information required would be generated in preparing the supplement or annual report, the agency estimates that, under proposed § 601.12(a)(5), it will take approximately 1 hour to include a list of changes in a cover letter for a supplement or an annual report.

Proposed § 314.70(b) and current § 601.12(b) set forth requirements for changes requiring supplement submission and approval prior to distribution of the product made using the change (major changes). Proposed § 314.70(b)(1) and current § 601.12(b)(1) state that a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product.

Under proposed § 314.70(b)(3) and current § 601.12(b)(3), the applicant must obtain approval of a supplement from FDA prior to distribution of a product made using the change, and the following must be contained in the supplement: (i) A detailed description of the proposed change; (ii) The product(s) involved; (iii) The manufacturing site(s) or area(s) affected; (iv) A description of the methods used and studies performed to evaluate the effect of the change on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product (validating the effects of the change); (v) The data derived from such studies; (vi) For a natural product, a recombinant DNA-derived protein/polypeptide product, or a complex or conjugate of a drug with a monoclonal antibody, relevant validation protocols must be provided; (vii) For sterilization process and test methodologies, relevant validation protocols must be provided; and (viii) A reference list of relevant standard operating procedures when applicable.

The changes requiring supplement submission and approval prior to distribution of the product made using the change (major changes) are listed in proposed § 314.70(b)(2) and current § 601.12(b)(2) (including proposed § 601.12(b)(2)(i)): (i) Changes in the qualitative or quantitative formulation of the drug, including inactive ingredients, or in the specifications provided in the approved application; (ii) Changes requiring completion of studies in accordance with 21 CFR part 320 to demonstrate the equivalence of the drug to the drug as manufactured without the change or to the reference listed drug; (iii) Changes that may affect product sterility assurance, such as changes in product or component sterilization method(s) or an addition, deletion, or substitution of steps in an aseptic processing operation; (iv) Changes in the synthesis or manufacture of the drug substance that may affect the impurity profile and/or the physical, chemical, or biological properties of the drug substance; (v) Certain changes in labeling; (vi) Changes in a container closure system that controls drug delivery or that may affect the impurity profile of the drug product; (vii) Changes solely affecting a natural product, a recombinant DNA-derived protein/polypeptide product, or a complex or conjugate of a drug with a monoclonal antibody for the following: (A) Changes in the virus or adventitious agent removal or inactivation method(s); (B) Changes in the source material or cell line; and (C) Establishment of a new master cell bank or seed; (viii) Changes to a product under an application that is subject to a validity assessment because of significant questions regarding the integrity of the data supporting that application.

Under proposed §§ 314.70(b)(4) and 601.12(b)(4), an applicant may ask FDA to expedite its review of a supplement for public health reasons or if a delay in making the change described in it would impose an extraordinary hardship on the applicant. Such a supplement and its mailing cover should be marked: "Prior Approval Supplement-Expedited Review Requested."

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 1,744 supplements will be submitted annually under proposed § 314.70(b)(1) and (b)(3). FDA estimates that approximately 594 applicants will submit such supplements, and that it will take approximately 80 hours to prepare and submit to FDA each supplement. FDA estimates that approximately 903 supplements are submitted annually under § 601.12(b)(1) and (b)(3). FDA estimates that approximately 190 applicants submit such supplements, and that it takes approximately 80 hours to prepare and submit to FDA each supplement. The burden for an applicant's request, under proposed §§ 314.70(b)(4) and 601.12(b)(4), for FDA to expedite its review of a supplement is negligible and has not been estimated in Table 1 of this document.

Proposed § 314.70(c) and current § 601.12(c) set forth requirements for changes requiring supplement submission at least 30 days prior to distribution of the product made using the change (moderate changes). Proposed § 314.70(c)(1) and current § 601.12(c)(1) state that a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a moderate potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. Under proposed § 314.70(c)(1), the applicant must submit 12 copies of final printed labeling for all labeling changes.

Under proposed § 314.70(c)(3) and current § 601.12(c)(1), the supplement must set forth a full explanation of the basis for the change and identify the date on which the change is to be made. The supplement must be labeled "Supplement—Changes Being Effected in 30 Days." Under proposed § 314.70(c)(4) and current § 601.12(c)(3), distribution of the product made using the change may begin not less than 30 days after receipt of the supplement by FDA. The information listed previously for proposed § 314.70(b)(3) and current § 601.12(b)(3) must be contained in the supplement.

The changes requiring supplement submission at least 30 days prior to distribution of the product made using the change (moderate changes) are listed in proposed § 314.70(c)(2) (the changes in § 314.70(c)(2)(ii)(A) and (c)(2)(ii)(B) are also listed in current § 601.12(c)(2)): (i) A change in the container closure system that does not affect the quality of the final drug product; and (ii) Changes solely affecting a natural protein product, a recombinant DNA-derived protein/polypeptide product or a complex or conjugate of a drug with a monoclonal antibody, including: (A) An increase or decrease in production scale during finishing steps that involves new or different equipment; and (B) Replacement of equipment with that of similar, but not identical, design and operating principle that does not affect the process methodology or process operating parameters.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 2,754 supplements will be submitted annually under proposed § 314.70(c)(1), (c)(3), and (c)(4). FDA estimates that approximately 594 applicants will submit such supplements, and that it will take approximately 50 hours to prepare and submit to FDA each supplement. FDA estimates that approximately 255 supplements are submitted annually under § 601.12(c)(1) and (c)(3). FDA estimates that approximately 98 applicants submit such supplements, and that it takes approximately 50 hours to prepare and submit to FDA each supplement.

Under proposed § 314.70(c)(6) and current § 601.12(c)(5), FDA may designate a category of changes for the purpose of providing that, in the case of a change in such category, the holder of an approved application may commence distribution of the drug upon receipt by the agency of a supplement for the change. These changes include: (i) Addition to a specification or changes in the methods or controls to provide increased assurance that the drug will have the characteristics of identity, strength, quality, purity, or potency that it purports or is represented to possess; (ii) A change in the size and/or shape of a container for a nonsterile drug product, except for solid dosage forms, without a change in the labeled amount of product or from one container closure system to another; (iii) Changes in the labeling to accomplish any of the following: (A) To add or strengthen a contraindication, warning, precaution, or adverse reaction; (B) To add or strengthen a statement about drug abuse, dependence, psychological effect, or overdosage; (C) To add or strengthen an instruction about dosage and administration that is intended to increase the safe use of the product; (D) To delete false, misleading, or unsupported indications for use or claims for effectiveness; or (E) Any other changes specifically requested by FDA. Under proposed § 314.70(c)(3) and current § 601.12(c)(1), the supplement must be labeled "Supplement—Changes Being Effected."

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 486 supplements will be submitted annually under proposed § 314.70(c)(6). FDA estimates that approximately 486 applicants will submit such supplements, and that it will take approximately 50 hours to prepare and submit to FDA each supplement. FDA estimates that approximately 47 supplements are submitted annually under § 601.12(c)(5). FDA estimates that approximately 34 applicants submit such supplements, and that it takes approximately 50 hours to prepare and submit to FDA each supplement.

Proposed § 314.70(d) and current § 601.12(d) set forth requirements for changes to be described in an annual report (minor changes). Proposed § 314.70(d)(1) and current § 601.12(d)(1) state that changes in the product, production process, quality controls, equipment, or facilities that have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product must be documented by the applicant in the next annual report.

Under proposed § 314.70(d)(3) and current § 601.12(d)(3) (including proposed § 601.12(d)(3)(iii)), the applicant must submit in the annual report a list of all products involved; and (i) A statement by the holder of the approved application that the effects of the change have been validated; (ii) A full description of the manufacturing and controls changes, including the manufacturing site(s) or area(s) involved; and (iii) The date each change was made, a cross-reference to relevant validation protocols and/or SOP's, and relevant data from studies and tests performed to evaluate the effect of the change on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product (validation).

The changes to be described in an annual report (minor changes) are listed in proposed § 314.70(d)(2) and current § 601.12(d)(2) (including proposed § 601.12(d)(2)(i) through (d)(2)(v) and (d)(2)(vii)): (i) Any change made to comply with an official compendium that is consistent with FDA requirements and provides increased assurance that the drug will have the

characteristics of identity, strength, quality, purity, or potency that it purports or is represented to possess; (ii) The deletion or reduction of an ingredient intended to affect only the color of the product; (iii) Replacement of equipment with that of the same design and operating principles except for equipment used with a natural protein product, a recombinant DNA-derived protein/polypeptide product, or a complex or conjugate of a drug with a monoclonal antibody; (iv) A change in the size and/or shape of a container containing the same number of dosage units for a nonsterile solid dosage form, without a change from one container closure system to another; (v) A change within the container closure system for a nonsterile drug product, based upon a showing of equivalency to the approved system under a protocol approved in the application or published in an official compendium; (vi) An extension of an expiration dating period based upon full shelf-life data obtained from a protocol approved in the application; (vii) The addition, deletion, or revision of an alternate analytical procedure that provides the same or increased assurance of the identity, strength, quality, purity, or potency of the material being tested as the analytical procedure described in the approved application; (viii) The addition by embossing, debossing, or engraving of a code imprint to a solid oral dosage form drug product other than a modified release dosage form, or a minor change in an existing code imprint; (ix) A change in the labeling concerning the description of the drug product or in the information about how the drug is supplied, that does not involve a change in the dosage strength or dosage form; and (x) An editorial or similar minor change in labeling.

Based on data concerning the number of supplements and annual reports received by the agency, FDA estimates that approximately 6,929 annual reports will include documentation of certain manufacturing changes as required under proposed § 314.70(d)(1) and (d)(3). FDA estimates that approximately 704 applicants will submit such information, and that it will take approximately 10 hours to prepare and submit to FDA the information for each annual report. FDA estimates that approximately 227 annual reports include documentation of certain manufacturing changes as required under current § 601.12(d)(1) and (d)(3). FDA estimates that approximately 166 applicants submit such information, and that it takes approximately 10 hours to prepare and submit to FDA the information for each annual report. Proposed § 314.70(d)(3) and current § 601.12(d)(3) require a statement by the applicant that the effects of the change have been validated. This information is developed by the applicant to validate the effects of the change regarding identity, strength, quality, purity, and potency, and is expressly required to be submitted under section 506A(d)(3)(A) of the act. Therefore, the burden associated with such collection of information is not included in the estimates of Table 1 of this document.

The proposed regulation would reduce the overall number of manufacturing changes subject to supplements, particularly those requiring FDA approval prior to product distribution. Many changes that are currently reported in supplements would be reported in annual reports. Supplement submissions contain more burdensome reporting requirements than a submission through an annual report. The proposed regulation would not increase the number of annual reports but would allow applicants to include in an annual report information currently required to be reported to the agency in a supplemental application. The number of manufacturing changes currently reported in supplements that would be reported in annual reports is approximately 1,283.

Proposed § 314.70(e) and current § 601.12(e) state that an applicant may submit one or more protocols describing the specific tests and validation studies and acceptable limits to be achieved to demonstrate the lack of adverse effect for specified types of manufacturing changes on the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug. Any such protocols, or changes to a protocol, must be submitted as a supplement requiring approval from FDA prior to distribution of a drug produced with the manufacturing change. The supplement, if approved, may subsequently justify a reduced reporting category for the particular change because the use of the protocol for that type of change reduces the potential risk of an adverse effect.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 50 protocols will be submitted annually under proposed § 314.70(e). FDA estimates that approximately 50 applicants will submit such protocols, and that it will take approximately 20 hours to prepare and submit to FDA each protocol. FDA estimates that approximately 20 protocols are submitted annually under § 601.12(e). FDA estimates that approximately 14 applicants submit such protocols, and that it takes approximately 20 hours to prepare and submit to FDA each protocol.

Current § 601.12(f) sets forth the requirements for supplement submission for labeling changes for biological products. Current § 601.12(f)(2)(i)(A) through (f)(2)(i)(D) specify those labeling changes for which an applicant must submit a supplement to FDA at the time the change is made. Proposed § 601.12(f)(2)(i)(E) would add "any other changes specifically requested by FDA" to these types of changes. FDA estimates that approximately 12 labeling supplements are submitted annually under current § 601.12(f)(1). FDA estimates that approximately 12 applicants submit these supplements, and that it takes approximately 40 hours to prepare and submit to FDA each supplement. FDA estimates that approximately 10 labeling supplements are submitted annually under current § 601.12(f)(2), including those that would be submitted under proposed § 601.12(f)(2)(i)(E). FDA estimates that approximately 10 applicants submit these supplements, and that it takes approximately 20 hours to prepare and submit to FDA each supplement. FDA estimates that approximately 100 annual reports for labeling changes are submitted under current § 601.12(f)(3). FDA estimates that approximately 70 applicants submit these reports, and that it takes approximately 10 hours to prepare and submit to FDA each report. FDA estimates that approximately 1,495 labeling supplements are submitted annually under current § 601.12(f)(4). FDA estimates that approximately 61 applicants submit these supplements, and that it takes approximately 10 hours to prepare and submit to FDA each supplement.

Proposed § 314.70(f) states that an applicant must comply with the patent information requirements under section 505(c)(2) of the act. Proposed § 314.70(g) states that an applicant must include any applicable exclusivity information with a supplement as required under § 314.50(j). Patent and exclusivity information collection requirements are approved by OMB until May 31, 2001, under OMB control number 0910–0305. Therefore, this requirement is not estimated in Table 1 of this document.

Description of Respondents: Business or other for-profit organizations.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), the agency has submitted a copy of this proposed rule to OMB for its review and approval of these information collections.

Interested persons are requested to send comments regarding this collection of information, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, OMB (address above), Attn: Wendy Taylor, Desk Officer for FDA. Submit written comments on the collection of information by July 28, 1999.

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
314.70(a)(5)	594	7	4,278	1	4,278
314.70(a)(6)	704	17	11,913	1	11,913
314.70(b)(1) and (b)(3)	594	3	1,744	80	139,520
314.70(c)(1),(c)(3), and (c)(4)	594	5	2,754	50	137,700
314.70(c)(6)	486	1	486	50	24,300
314.70(d)(1) and (d)(3)	704	10	6,929	10	69,290
314.70(e)	50	1	50	20	1,000
601.12(a)(5)	190	16	2,983	1	2,983
601.12(b)(1) and (b)(3)	190	5	903	80	72,240
601.12(c)(1) and (c)(3)	85	3	255	50	12,750
601.12(c)(5)	34	1	47	50	2,350
601.12(d)(1) and (d)(3) 6	1	227	10	2,270	
601.12(e)	14	1	20	20	400
601.12(f)(1)	12	1	12	40	480
601.12(f)(2)	10	1	10	20	200
601.12(f)(3)	70	1	100	10	1,000
601.12(f)(4)	61	25	1,495	10	14,950
Total					497,624

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Request for Comments

Interested persons may, on or before September 13, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Submit written comments on the information collection requirements as described in paragraph VII of this document by July 28, 1999.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Parts 206 and 250

Drugs.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 5, 206, 250, 314, 600, and 601 be amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008, E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

§ 5.80 [Amended]

2. Section 5.80 *Approval of new drug applications and their supplements* is amended in the first sentence of paragraphs (d) and (f) by removing the phrase "§§ 314.70(b)(1), (b)(2)(ii) through (b)(2)(x), (c)(1), and (c)(3)" and by adding in its place the phrase "§ 314.70(b)(1), (b)(2)(i) excluding changes in qualitative or quantitative formulation, (b)(2)(iii), (b)(2)(iv), (b)(2)(vi), (b)(2)(vii), (c)(2)(i), (c)(2)(ii), (c)(6)(i), and (c)(6)(ii)"; and in the first sentence of paragraph (e) by removing the phrase "§§ 314.70(b)(3) and (c)(2)(i) through (c)(2)(iv)" and by adding in its place the phrase "§ 314.70(b)(2)(v) and (c)(6)(iii)".

PART 206—IMPRINTING OF SOLID ORAL DOSAGE FORM DRUG PRODUCTS FOR HUMAN USE

3. The authority citation for 21 CFR part 206 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 371; 42 U.S.C. 262.

§ 206.10 [Amended]

4. Section 206.10 *Code imprint required* is amended in the first sentence of paragraph (b) by removing the phrase "§ 314.70(b)(2)(xi) or (b)(2)(xii)" and by adding in its place the phrase "§ 314.70(b)".

PART 250—SPECIAL REQUIREMENTS FOR SPECIFIC HUMAN DRUGS

5. The authority citation for 21 CFR part 250 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 342, 352, 353, 355, 361(a), 362(a) and (c), 371, 375(b).

§ 250.250 [Amended]

6. Section 250.250 *Hexachlorophene, as a component of drug and cosmetic products* is amended in the last sentence of paragraph (c)(4)(ii) by removing the phrase "§ 314.70(c)(2)" and by adding in its place the phrase "§ 314.70(c)(6)(iii)".

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

7. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356a, 371, 374, 379e.

8. Section 314.3 is amended in paragraph (b) by alphabetically adding the definitions for "Specification" and "Validate the effects of the change" to read as follows:

§ 314.3 Definitions.

* * * * *

(b) * * *

Specification means the quality standard (i.e., tests, analytical procedures, and acceptance criteria) provided in an approved application to confirm the quality of drug substances, drug products, intermediates, raw materials, reagents, and other components including container closure systems, and in-process materials. For the purpose of this definition, *acceptance criteria* means numerical limits, ranges, or other criteria for the tests described.

* * * * *

Validate the effects of the change means to assess the effect of a manufacturing change on the identity, strength, quality, purity, or potency of a drug as these factors relate to the safety or effectiveness of the drug.

9. Section 314.50 is amended in paragraph (d)(1)(ii)(*b*) by removing the phrase "specifications and test procedures" and by adding in its place the word "specification"; in paragraph (d)(1)(v) by removing the phrase "Except for a foreign applicant, the" and by adding in its place the word "The"; in paragraph (d)(3)(i) by adding the word "procedures" after the word "analytical"; in paragraph (d)(3)(ii) by removing the phrases "specifications or analytical methods" and "specification or analytical methods" each time they appear and by adding in their places the phrase "tests, analytical procedures, and acceptance criteria"; in paragraph (d)(4)(iv) by removing the word "methods" and by adding in its place the word "procedures"; in the last sentence of paragraph (e)(1) introductory text and in the first sentence of paragraph (e)(2)(i) by removing the word "methods" each time it appears and by adding in its place the word "procedures"; and by revising the first two sentences of paragraphs (d)(1)(i) and (d)(1)(ii)(*a*) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(d) * * *

(1) * * *

(i) *Drug substance.* A full description of the drug substance including its physical and chemical characteristics and stability; the name and address of its manufacturer; the method of synthesis (or isolation) and purification of the drug substance; the process controls used during manufacture and packaging; and the specifications necessary to ensure the identity, strength, quality, and purity of the drug substance and the bioavailability of the drug products made from the substance, including, for example, tests, analytical procedures, and acceptance criteria relating to stability, sterility, particle size, and crystalline form. The application may provide additionally for the use of alternatives to meet any of these requirements, including alternative sources, process controls, and analytical procedures. * * *

(ii)(*a*) *Drug product.* A list of all components used in the manufacture of the drug product (regardless of whether they appear in the drug product) and a statement of the composition of the drug product; the specifications for each component; the name and address of each manufacturer of the drug product; a description of the manufacturing and packaging procedures and in-process controls for the drug product; the specifications necessary to ensure the identity, strength, quality, purity, potency, and bioavailability of the drug product, including, for example, tests, analytical procedures, and acceptance criteria relating to sterility, dissolution rate, containers and closure systems; and stability data with proposed expiration dating. The application may provide additionally for the use of alternatives to meet any of these requirements, including alternative components, manufacturing and packaging procedures, in-process controls, and analytical procedures. * * *

* * * * *

§ 314.60 [Amended]

10. Section 314.60 *Amendments to an unapproved application* is amended in paragraph (c) by removing the phrase ", other than a foreign applicant,".

11. Section 314.70 is revised to read as follows:

§ 314.70 Supplements and other changes to an approved application.

(a) *Changes to an approved application.* (1) The applicant shall notify FDA about each change in each condition established in an approved application beyond the variations already provided for in the application. The notice is required to describe the change fully. Depending on the type of change, the applicant shall notify FDA about it in a supplement under paragraph (b) or (c) of this section or by inclusion of the information in the annual report to the application under paragraph (d) of this section.

(2) The holder of an approved application under section 505 of the act shall validate the effects of the change on the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug before distributing a drug made with a manufacturing change.

(3) Notwithstanding the requirements of paragraphs (b) and (c) of this section, an applicant shall make a change provided for in those paragraphs in accordance with a regulation or guidance that provides for a less burdensome notification of the change (for example, by submission of a supplement that does not require approval prior to distribution of the product or in an annual report).

(4) The applicant shall promptly revise all promotional labeling and advertising to make it consistent with any labeling change implemented in accordance with this section.

(5) Except for a supplement providing for a change in the labeling, the applicant shall include in each supplemental application providing for a change under paragraph (b) or (c) of this section a statement certifying that a field copy of the supplement has been provided to the applicant's home FDA district office.

(6) A supplement or annual report shall include in the cover letter a list of all changes contained in the supplement or annual report.

(b) *Changes requiring supplement submission and approval prior to distribution of the product made using the change (major changes).* (1) A supplement shall be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product.

(2) These changes include, but are not limited to:

(i) Except as provided in paragraphs (c) and (d) of this section, changes in the qualitative or quantitative formulation of the drug, including inactive ingredients, or in the specifications provided in the approved application;

(ii) Changes requiring completion of studies in accordance with part 320 of this chapter to demonstrate the equivalence of the drug to the drug as manufactured without the change or to the reference listed drug;

(iii) Changes that may affect product sterility assurance, such as changes in product or component sterilization method(s) or an addition, deletion, or substitution of steps in an aseptic processing operation;

(iv) Changes in the synthesis or manufacture of the drug substance that may affect the impurity profile and/or the physical, chemical, or biological properties of the drug substance;

(v) Changes in labeling, except those described in paragraphs (c)(6)(iii), (d)(2)(ix), or (d)(2)(x) of this section;

(vi) Changes in a container closure system that controls drug delivery or that may affect the impurity profile of the drug product;

(vii) Changes solely affecting a natural product, a recombinant DNA-derived protein/polypeptide product, or a complex or conjugate of a drug with a monoclonal antibody for the following:

(A) Changes in the virus or adventitious agent removal or inactivation method(s);

(B) Changes in the source material or cell line; and

(C) Establishment of a new master cell bank or seed.

(viii) Changes to a product under an application that is subject to a validity assessment because of significant questions regarding the integrity of the data supporting that application.

(3) The applicant must obtain approval of a supplement from FDA prior to distribution of a product made using a change under paragraph (b) of this section. Except for submissions under paragraph (e) of this section, the following shall be contained in the supplement:

(i) A detailed description of the proposed change;

(ii) The product(s) involved;

(iii) The manufacturing site(s) or area(s) affected;

(iv) A description of the methods used and studies performed to evaluate the effect of the change on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product (validating the effects of the change);

(v) The data derived from such studies;

(vi) For a natural product, a recombinant DNA-derived protein/polypeptide product, or a complex or conjugate of a drug with a monoclonal antibody, relevant validation protocols shall be provided in addition to the requirements in paragraphs (b)(3)(iv) and (b)(3)(v) of this section; and

(vii) For sterilization process and test methodologies, relevant validation protocols shall be provided in addition to the requirements in paragraphs (b)(3)(iv) and (b)(3)(v) of this section; and

(viii) A reference list of relevant standard operating procedures (SOP's) when applicable.

(4) An applicant may ask FDA to expedite its review of a supplement for public health reasons or if a delay in making the change described in it would impose an extraordinary hardship on the applicant. Such a supplement and its mailing cover should be plainly marked: "Prior Approval Supplement-Expedited Review Requested."

(c) *Changes requiring supplement submission at least 30 days prior to distribution of the drug product made using the change (moderate changes).* (1) A supplement shall be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a moderate potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. If the change concerns labeling, include 12 copies of final printed labeling.

(2) These changes include, but are not limited to:

(i) A change in the container closure system that does not affect the quality of the final drug product; and

(ii) Changes solely affecting a natural protein product, a recombinant DNA-derived protein/polypeptide product or a complex or conjugate of a drug with a monoclonal antibody, including:

(A) An increase or decrease in production scale during finishing steps that involves new or different equipment; and

(B) Replacement of equipment with that of similar, but not identical, design and operating principle that does not affect the process methodology or process operating parameters.

(3) A supplement submitted under paragraph (c)(1) of this section is required to give a full explanation of the basis for the change and identify the date on which the change is to be made. The supplement shall be labeled "Supplement—Changes Being Effected in 30 Days" or, if applicable under paragraph (c)(6) of this section, "Supplement—Changes Being Effected."

(4) Pending approval of the supplement by FDA, except as provided in paragraph (c)(6) of this section, distribution of the product made using the change may begin not less than 30 days after receipt of the supplement by FDA. The information listed in paragraphs (b)(3)(i) through (b)(3)(viii) of this section shall be contained in the supplement.

(5) The applicant shall not distribute the product made using the change if within 30 days following FDA's receipt of the supplement, FDA informs the applicant that either:

(i) The change requires approval prior to distribution of the product in accordance with paragraph (b) of this section; or

(ii) Any of the information required under paragraph (c)(4) of this section is missing; the applicant shall not distribute the product made using the change until FDA determines that compliance with this section is achieved.

(6) The agency may designate a category of changes for the purpose of providing that, in the case of a change in such category, the holder of an approved application may commence distribution of the drug involved upon receipt by the agency of a supplement for the change. These changes include, but are not limited to:

(i) Addition to a specification or changes in the methods or controls to provide increased assurance that the drug will have the characteristics of identity, strength, quality, purity, or potency that it purports or is represented to possess;

(ii) A change in the size and/or shape of a container for a nonsterile drug product, except for solid dosage forms, without a change in the labeled amount of product or from one container closure system to another;

(iii) Changes in the labeling to accomplish any of the following:

(A) To add or strengthen a contraindication, warning, precaution, or adverse reaction;

(B) To add or strengthen a statement about drug abuse, dependence, psychological effect, or overdosage;

(C) To add or strengthen an instruction about dosage and administration that is intended to increase the safe use of the product;

(D) To delete false, misleading, or unsupported indications for use or claims for effectiveness; or

(E) Any other changes specifically requested by FDA.

(7) If the agency disapproves the supplemental application, it may order the manufacturer to cease distribution of the drug products made with the manufacturing change.

(d) *Changes to be described in an annual report (minor changes).* (1) Changes in the product, production process, quality controls, equipment, or facilities that have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product shall be documented by the applicant in the next annual report in accordance with § 314.81(b)(2).

(2) These changes include, but are not limited to:

(i) Any change made to comply with an official compendium that is consistent with FDA requirements and provides increased assurance that the drug will have the characteristics of identity, strength, quality, purity, or potency that it purports or is represented to possess;

(ii) The deletion or reduction of an ingredient intended to affect only the color of the product;

(iii) Replacement of equipment with that of the same design and operating principles except for equipment used with a natural protein product, a recombinant DNA-derived protein/polypeptide product, or a complex or conjugate of a drug with a monoclonal antibody;

(iv) A change in the size and/or shape of a container containing the same number of dosage units for a nonsterile solid dosage form, without a change from one container closure system to another;

(v) A change within the container closure system for a nonsterile drug product, based upon a showing of equivalency to the approved system under a protocol approved in the application or published in an official compendium;

(vi) An extension of an expiration dating period based upon full shelf life data on full production batches obtained from a protocol approved in the application;

(vii) The addition, deletion, or revision of an alternate analytical procedure that provides the same or increased assurance of the identity, strength, quality, purity, or potency of the material being tested as the analytical procedure described in the approved application;

(viii) The addition by embossing, debossing, or engraving of a code imprint to a solid oral dosage form drug product other than a modified release dosage form, or a minor change in an existing code imprint;

(ix) A change in the labeling concerning the description of the drug product or in the information about how the drug is supplied, that does not involve a change in the dosage strength or dosage form; and

(x) An editorial or similar minor change in labeling.

(3) For changes under this category, the applicant is required to submit in the annual report a list of all products involved; and

(i) A statement by the holder of the approved application that the effects of the change have been validated;

(ii) A full description of the manufacturing and controls changes, including the manufacturing site(s) or area(s) involved; and

(iii) The date each change was made, a cross-reference to relevant validation protocols and/or SOP's, and relevant data from studies and tests performed to evaluate the effect of the change on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product (validation).

(e) *Protocols.* An applicant may submit one or more protocols describing the specific tests and validation studies and acceptable limits to be achieved to demonstrate the lack of adverse effect for specified types of manufacturing changes on the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug. Any such protocols, or changes to a protocol, shall be submitted as a supplement requiring approval from FDA prior to distribution of a drug produced with the manufacturing change. The supplement, if approved, may subsequently justify a reduced reporting category for the particular change because the use of the protocol for that type of change reduces the potential risk of an adverse effect.

(f) *Patent information.* The applicant shall comply with the patent information requirements under section 505(c)(2) of the act.

(g) *Claimed exclusivity.* If an applicant claims exclusivity under § 314.108 upon approval of a supplement for change to its previously approved drug product, the applicant shall include with its supplement the information required under § 314.50(j).

§ 314.81 [Amended]

12. Section 314.81 *Other postmarketing reports* is amended in paragraph (b)(1)(ii) by removing the word "specifications" and by adding in its place the word "specification".

§ 314.94 [Amended]

13. Section 314.94 *Content and format of an abbreviated application* is amended in the second sentence of paragraph (d)(2) by removing the word "methods" each time it appears and by adding in its place the word "procedures".

§ 314.410 [Amended]

14. Section 314.410 *Imports and exports of new drugs* is amended in paragraph (b)(2) by removing the word "specifications" and by adding in its place the word "specification".

§ 314.430 [Amended]

15. Section 314.430 *Availability for public disclosure of data and information in an application or abbreviated application* is amended in paragraph (e)(6) by removing the word "method" and by adding in its place the word "procedure".

PART 600—BIOLOGICAL PRODUCTS: GENERAL

16. The authority citation for 21 CFR part 600 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 356a, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

17. Section 600.3 is amended by adding paragraphs (hh) and (ii) to read as follows:

§ 600.3 Definitions.

* * * * *

(hh) *Specification*, as used in § 601.12 of this chapter, means the quality standard (i.e., tests, analytical procedures, and acceptance criteria) provided in an approved application to confirm the quality of drug substances, drug products, intermediates, raw materials, reagents, and other components including container closure systems, and in-process materials. For the purpose of this definition, *acceptance criteria* means numerical limits, ranges, or other criteria for the tests described.

(ii) *Validate the effects of the change*, as used in § 601.12 of this chapter, means to assess the effect of a manufacturing change on the identity, strength, quality, purity, or potency of a drug as these factors relate to the safety or effectiveness of the drug.

PART 601—LICENSING

18. The authority citation for 21 CFR part 601 is revised to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356a, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263.

19. Section 601.12 is amended by revising paragraphs (a), (b)(2)(i), (d)(2)(i) through (d)(2)(v), and (d)(2)(vii); by adding paragraph (b)(4), (c)(6), (d)(3)(iii), and (f)(2)(i)(E); and by removing and reserving paragraph (c)(2)(i) to read as follows:

§ 601.12 Changes to an approved application.

(a) *General.* (1) As provided by this section, an applicant shall inform the Food and Drug Administration (FDA) about each change in the product, production process, quality controls, equipment, facilities, responsible personnel, or labeling established in the approved license application(s).

(2) Before distributing a product made using a change, an applicant shall validate the effects of the change and demonstrate through appropriate validation and/or other clinical and/or nonclinical laboratory studies the lack of adverse effect of the change on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product.

(3) Notwithstanding the requirements of paragraphs (b), (c), and (f) of this section, an applicant shall make a change provided for in those paragraphs in accordance with a regulation or guidance that provides for a less burdensome notification of the change (for example, by submission of a supplement that does not require approval prior to distribution of the product or in an annual report).

(4) The applicant shall promptly revise all promotional labeling and advertising to make it consistent with any labeling change implemented in accordance with this section.

(5) A supplement or annual report shall include in the cover letter a list of all changes contained in the supplement or annual report.

(b) * * *

(2) * * *

(i) Except as provided in paragraphs (c) and (d) of this section, changes in the qualitative or quantitative formulation, including inactive ingredients, or in the specifications provided in the approved application;

* * * * * *

(4) An applicant may ask FDA to expedite its review of a supplement for public health reasons or if a delay in making the change described in it would impose an extraordinary hardship on the applicant. Such a supplement and its mailing cover should be plainly marked: "Prior Approval Supplement-Expedited Review Requested."

(c) * * *

(2) * * *

(i) [Reserved]

* * * * * *

(6) If the agency disapproves the supplemental application, it may order the manufacturer to cease distribution of the products made with the manufacturing change.

(d) * * *

(2) * * *

(i) Any change made to comply with an official compendium that is consistent with FDA requirements and provides increased assurance that the drug will have the characteristics of identity, strength, quality, purity, or potency that it purports or is represented to possess;

(ii) The deletion or reduction of an ingredient intended only to affect the color of the product, except that a change intended only to affect Blood Grouping Reagents requires supplement submission and approval prior to distribution of the product made using the change in accordance with the requirements set forth in paragraph (b) of this section;

(iii) An extension of an expiration dating period based upon full shelf life data on full production batches obtained from a protocol approved in the application;

(iv) A change within the container closure system for a nonsterile drug product, based upon a showing of equivalency to the approved system under a protocol approved in the application or published in an official compendium;

(v) A change in the size and/or shape of a container containing the same number of dosage units for a nonsterile solid dosage form, without a change from one container closure system to another;

* * * * * *

(vii) The addition, deletion, or revision of an alternate analytical procedure that provides the same or increased assurance of the identity, strength, quality, purity, or potency of the material being tested as the analytical procedure described in the approved application.

(3) * * *

(iii) A statement by the holder of the approved application or license that the effects of the change have been validated.

* * * * * *

(f) * * *

(2) * * *

(i) * * *

(E) Any other changes specifically requested by FDA.

* * * * * *

Dated: June 18, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–16191 Filed 6-25-99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of limited reopening of rulemaking record on preliminary risk assessment.

SUMMARY: On October 17, 1997, OSHA published its proposed standard to regulate occupational exposure to tuberculosis (TB) (62 FR 54160). Public hearings on the proposal were held in Washington, DC, Los Angeles, CA, New York City, NY, and Chicago, IL between April 7 and June 4, 1998. The post-hearing comment period closed on October 5, 1998. OSHA re-opened the rulemaking record on June 17, 1999 (64 FR 32447) to submit to the record the Agency's report on practices to protect workers from TB in homeless shelter settings and several other studies that had become available after the close of the rulemaking record and to request comments on these studies. In addition to the information requested in the record re-opening published on June 17, 1999, OSHA now requests additional comment and information on issues related to the Agency's preliminary risk assessment for occupational exposure to tuberculosis.

DATES: Comments and data from interested parties should be postmarked no later than August 2, 1999.

ADDRESSES: Send two copies of your comments to: Docket Office, Docket H–371, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Comments limited to 10 pages or fewer may also be transmitted by FAX to: 202–693–1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter.

Comments may also be submitted electronically through OSHA's Internet

site at URL, *http://www/osha-slc.gov/e-comments/e-comments-tb2.html*. Information such as studies and journal articles cannot be attached to electronic submissions and must be submitted in duplicate to the above address. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

The entire record for the TB rulemaking is available for inspection and copying in the Docket Office, Docket H–371, telephone 202–693–2350.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone (202) 693–1999, FAX (202) 693–1634.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1997, OSHA published its proposed standard for occupational exposure to TB (62 FR 54160). Based on a review of the data, OSHA made a preliminary determination that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings are at significant risk of incurring TB infection while performing certain procedures or caring for their patients and clients. OSHA proposed a standard that would require employers to protect TB-exposed workers by means of infection prevention and control measures that have been demonstrated to be highly effective in reducing or eliminating job-related TB infections.

During the comment period and the public hearing, several commenters suggested that OSHA's estimates of the risk of TB infection, activation to TB disease, and subsequent deaths for health care workers were too high. Although OSHA's risk assessment methodology received little challenge, some commenters objected to OSHA's use of studies showing increased risk to workers in both hospitals and long-term care facilities for the elderly.

Request for Comments

In order to obtain the best, most recent data for the purpose of providing the most accurate risk estimates, OSHA requests public comment on any new data or studies that will assist the Agency in determining occupational risk and the reasons why a particular study or set of data should be used. OSHA especially wishes to obtain studies that could provide estimates of TB infection rates for workers in hospitals, long-term care facilities, in-home health care operations, homeless shelters, and correctional facilities.

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC, this 22nd day of June, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–16291 Filed 6–25–99; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 210–147b; FRL–6363–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District, Monterey Bay Unified Air Pollution Control District, Placer County Air Pollution Control District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP). This action revises the definitions in Bay Area Air Quality Management District (BAAQMD); Monterey Bay Unified Air Pollution Control (MBUAPCD); Placer County Air Pollution Control District (PCAPCD); and Ventura County Air Pollution Control District (VCAPCD).

The intended effect of approving this action is to incorporate changes to the definitions for clarity and consistency and to update the Exempt Compound list in MBUAPCD, PCAPCD, and VCAPCD rules to be consistent with the revised federal and state VOC definitions. EPA is proposing approval of these revisions to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by July 28, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109–7714

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

Placer County Air Pollution Control District, DeWitt Center, 11464 "B" Ave., Auburn, CA 95603–2603

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003–5417

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office [A–4], Air Division, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION: This document concerns Bay Area Air Quality Management District (BAAQMD) Regulation 1, General Provisions and Definitions; Monterey Bay Unified Air Pollution Control (MBUAPCD) Rule 101, Definitions; Placer County Air Pollution Control District (PCAPCD) Rule 102, Definitions; and Ventura County Air Pollution Control District (VCAPCD) Rule 2, Definitions. These rules were submitted by the California Air Resources Board to EPA on February 16, 1999 (Bay Area and Ventura); January 12, 1999 (Monterey); and May 18, 1998 (Placer). For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: May 21, 1999.

Laura K. Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–16230 Filed 6–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6366–7]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Pima County Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act (CAA), the Pima County Department of Environmental Quality (PDEQ) requested delegation of specific national emission standards for hazardous air pollutants (NESHAPs). In the Rules section of this **Federal Register**, EPA is granting PDEQ the authority to implement and enforce specified NESHAPs. The direct final rule also explains the procedure for future delegation of NESHAPs to PDEQ. EPA is taking direct final action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by July 28, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted requests are available for public inspection at EPA's Region IX office during normal business hours (docket number A–96–25).

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns delegation of unchanged NESHAPs to the Pima County Department of Environmental Quality. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: June 10, 1999.

David P. Howekamp,

Director, Air Division, Region IX.

[FR Doc. 99–16232 Filed 6–25–99; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 64, No. 123
Monday, June 28, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–99–301]

Request for Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intent to request approval for information collection for a Federal-State Shipping Point Inspection Program Customer Service Survey.

DATES: Comments on this notice must be received by August 27, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rob Huttenlocker, Program Support Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2049-South, Washington, D.C. 20090–6456; telephone (202) 720–0297, Fax (202) 720–5136, and Email *FPB.DocketClerk@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Federal-State Shipping Point Inspection Program Customer Service Survey.

OMB Number: 0581–[ ].

Expiration Date of Approval: 3 years from date of approval.

Type of Request: Approval for information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 USC 1621–1627) (Act) directs the U.S. Department of Agriculture (USDA) to promote the marketing of agricultural products. Under the Act, AMS offers grading, quality assurance, and certification services for a fee for fresh fruits, vegetables, and other products based on U.S. grade standards and other contract specifications. The use of grading services and grade standards is voluntary unless required by Federal Marketing Order or Agreement Regulations governing domestic, import, or export shipments.

There are about 9,000 current users of the AMS Fresh Products Branch's shipping point grading services and about the same number of potential users. These customers are located at shipping point locations nationwide and represent a diverse mixture of small, medium and large harvesting, packing and shipping companies and cooperatives. These companies request product grading and certification services from the Federal-State Inspection (FSI) programs located in their areas. The FSI programs are supervised and audited by USDA Federal-State Shipping Point Supervisors and/or Federal Program Managers with national program coordination provided by the Fresh Products Branch in Washington, D.C.

Customer feedback is a vital component of successfully completing the Fresh Products Branch's mission. This customer survey would be conducted to evaluate how well the Fresh Products Branch, in cooperation with various state shipping point grading services, is meeting its commitment to customer service. The survey would not be continuous over the 3 year approval period but would be done in two parts, first current users, then potential users.

Information requested in the survey includes meeting levels of satisfaction with program services, including those services provided by state personnel; rating program oversight provided by USDA; providing input regarding shipping point inspection fees; and providing levels of interest in new quality, certification and related services that may be offered by USDA.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .1667 hours per response (10 minutes).

Respondents: Growers, packers, shippers, and brokers of fresh fruits, vegetables, nuts, and speciality crops, and financially interested parties.

Estimated Number of Respondents: 18,000

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 3,000 hours

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Rob Huttenlocker, Program Support Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2049-South, Washington, D.C. 20090–6456. Comments may also be sent via Email to FPB.DocketClerk@usda.gov. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 21, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–16210 Filed 6–25–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–99–006]

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for a currently approved information collection in support of the shell egg surveillance portion of the Regulations for the Inspection of Eggs—7 CFR 57.

DATES: Comments on this notice must be received by August 27, 1999.

ADDITIONAL INFORMATION: Contact Shields Jones, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0259, Washington, DC 20250–0259, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Title: Regulations for the Inspection of Eggs (Egg Products Inspection Act).

OMB Number: 0581–0113.

Expiration Date of Approval: February 28, 2000.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Congress enacted the Egg Products Inspection Act (21 U.S.C. 1031–1056) (EPIA) to provide, in part, a mandatory inspection program to control the disposition of dirty and checked shell eggs; to control unwholesome, adulterated, and inedible shell eggs that are unfit for human consumption; and to control the movement and disposition of imported shell eggs.

The Act authorizes the Department to issue regulations, which provide requirements and guidelines, for both the USDA and industry to use as the basis for common understanding to assure that only eggs fit for human food are used for such purpose.

Under the shell egg surveillance program shell egg handlers are required to register with USDA. Quarterly, a State or Federal surveillance inspector visits each registered handler to verify that shell eggs packed for consumer use are in compliance, that restricted eggs are being disposed of properly, and that adequate records are being maintained.

The information collection and record keeping requirements in this request are essential to carry out the intent of Congress, to administer the mandatory inspection program, and to take regulatory action, in accordance with the regulations and the Act. The forms covered under this collection require the minimum information necessary to effectively carry out the requirements of the regulations, and their use is necessary to fulfill the intent of the Act.

The information collected is used only by authorized representatives: AMS, Poultry Programs' national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies. The information is used to assure compliance with the Act and the regulations and to take regulatory action. The Agency is the primary user of the information, with the secondary user is each authorized State agency which has a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.30 hours per response.

Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 1134.

Estimated Number of Responses per Respondent: 4.96.

Estimated Total Annual Burden on Respondents: 1,922 hours.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility , and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technical collection techniques or other forms of information. Comments may be sent to:

Douglas C. Bailey, Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0259, Washington, DC 20250–0259.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 7, 1999.

D. Michael Holbrook,

Deputy Administrator, Poultry Programs.

[FR Doc. 99–16370 Filed 6–25–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Report of School Program Operations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is a revision of a collection currently approved for the National School Lunch Program, the School Breakfast Program, the Commodity Schools Program, and the Special Milk Program.

DATES: Comments on this notice must be received by August 27, 1999 to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Alan Rich, Data Base Monitoring Branch, Budget Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of FNS, including whether the information will have practical utility; (b) the accuracy of FNS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Alan Rich, (703) 305–2113.

SUPPLEMENTARY INFORMATION:

Title: Report of School Program Operations.

OMB Number: 0584–0002.

Expiration Date: January 31, 2000.

Type of Request: Revision of a currently approved collection.

Abstract: The National School Lunch Program, the School Breakfast Program,

the Commodity Schools Program, and the Special Milk Program are mandated by the National School Lunch Act, 42 U.S.C. 1751, *et seq.*, and the Child Nutrition Act of 1966, 42 U.S.C. 1771, *et seq.* Program implementing regulations are contained in 7 CFR Parts 210, 215, and 220. In accordance with 7 CFR § 210.5(d)(1), § 215.11(c)(2), and § 220.13(b)(2), State agencies must submit a monthly report of program activity in order to receive Federal reimbursement for meals served to eligible participants. As a result of the William F. Goodling Child Nutrition Reauthorization Act of 1998, Public Law 105–336, the current monthly report is being revised to collect information on snacks served to children in National School Lunch Program schools who participate in programs organized to provide after school care.

Respondents: State agencies that administer the National School Lunch Program, the School Breakfast Program, the Commodity Schools Program, and the Special Milk Program.

Number of Respondents: 62.

Estimated Number of Responses per Respondent: The number of responses includes initial, revised, and final reports submitted each month. The overall average is four submissions per State agency per reporting month for a total of 48 per year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 32 hours per respondent.

Estimated Total Annual Burden on Respondents: 95,232 hours.

Dated: June 14, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–16353 Filed 6–25–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Report of the Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is a revision of a collection currently approved for the Child and Adult Care Food Program.

DATES: Comments on this notice must be received by August 27, 1999 to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Alan Rich, Data Base Monitoring Branch, Budget Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Alan Rich, (703) 305–2113.

SUPPLEMENTARY INFORMATION:

Title: Report of the Child and Adult Care Food Program.

MB Number: 0584–0078.

Expiration Date: October 31, 1999.

Type of Request: Revision of a currently approved collection.

Abstract: The Child and Adult Care Food Program is mandated by Section 17 of the National School Lunch Act (42 U.S.C. 1766). Program implementing regulations are contained in 7 CFR Part 226. In accordance with § 226.7(d), State agencies must submit a monthly report of program activity in order to receive Federal reimbursement for meals served to eligible participants on FNS 44. As a result of the William F. Goodling Child Nutrition Reauthorization Act of 1998, Public Law 105–336, the FNS 44 is being revised to collect information on snacks served to children who participate in programs organized to provide after school care.

Respondents: State agencies that administer the Child and Adult Care Food Program.

Number of Respondents: 53.

Estimated Number of Responses per Respondent: The number of responses includes initial, revised, and final reports submitted each month. The overall average is three submissions per State agency per reporting month for a total of 36 per year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average three hours per respondent for each submission.

Estimated Total Annual Burden on Respondents: 5,724 hours.

Dated: June 14, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–16354 Filed 6–25–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the Third Quarter of 1999

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the third quarter of 1999.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the third calendar quarter of 1999.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning July 1, 1999, and ending September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Carolyn Dotson, Loan Funds Control Assistant, U.S. Department of Agriculture, Rural Utilities Service, Room 0227–S, Stop 1524, 1400 Independence Avenue, SW, Washington, DC 20250–1500. Telephone: 202–720–1928. FAX: 202–690–2268. E-mail: CDotson@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the third calendar quarter of 1999 for municipal rate electric loans. RUS regulations at § 1714.4 state that each advance of funds on a municipal rate loan shall bear interest at a single rate for each interest rate term. Pursuant to § 1714.5, the interest rates on these advances are based on indexes published in the "Bond Buyer" for the four weeks prior to the third Friday of the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in § 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of "Municipal Market Data—General Obligation Yields" or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 1999 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under § 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.125 percent.

In accordance with § 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the third calendar quarter of 1999.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2020 or later	5.125
2019	5.125
2018	5.125
2017	5.125
2016	5.000
2015	5.000
2014	5.000
2013	5.875
2012	4.875
2011	4.750
2010	4.625
2009	4.625
2008	4.500
2007	4.375
2006	4.250
2005	4.250
2004	4.125
2003	3.875
2002	3.625
2001	3.375
2000	3.125

Dated: June 15, 1999.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 99–16388 Filed 6–25–99; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 1:30 p.m. on July 19, 1999, at the East End Baptist Tabernacle Church, Deacon's Room, 548 Central Avenue, Bridgeport, Connecticut 06607. The planning subcommittee will meet with community and civil rights leaders to examine police-community relations and racial problems in public schools and plan for a community forum in fall 1999.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Neil Macy, 860–242–7287, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 22, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–16283 Filed 6–25–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 10:00 a.m. and recess at 12:00 p.m.; reconvene at 1:00 p.m. and adjourn at 3:00 p.m. on August 6, 1999, at the Radisson Hotel, 445 Mount Rushmore Road, Rapid City, South Dakota 57701. The purpose of the meeting is to plan future programs and activities, discuss civil rights issues in South Dakota, and update on Commission and regional programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 22, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–16282 Filed 6–25–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Census 2000 Accuracy and Coverage Evaluation—Housing Unit and Person Activities

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 27, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Magdalena Ramos, Bureau of the Census, Room 2126A/SFC2, Washington, DC 20233, (301) 457–4295.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of the Census developed the Accuracy and Coverage Evaluation approach for measuring coverage of the population in the decennial census. In the Accuracy and Coverage Evaluation, we independently count a sample of housing units and the people living in those units, then compare those results to the census. We then use this comparative information to produce final estimates of the coverage for Census 2000. The Accuracy and Coverage Evaluation approach was tested during the Census 2000 Dress Rehearsal in Columbia, South Carolina. The Accuracy and Coverage Evaluation was formerly referred to as the Post-

Enumeration Survey in the Census 2000 Dress Rehearsal.

The Independent Listing Operation is the first step in the Accuracy and Coverage Evaluation process. During the Independent Listing, the Bureau of the Census will obtain a complete housing inventory of all addresses within the Census 2000 Accuracy and Coverage Evaluation sample of block clusters before the Census 2000 enumeration commences. The materials for the Independent Listing have been submitted to the Office of Management and Budget and are awaiting approval.

The address listings will be matched to the address list used in the census; the unmatched cases will be sent to the field for reconciliation during the Accuracy and Coverage Evaluation Housing Unit Follow-up Operation using the Housing Unit Follow-up Questionnaires, Forms D–1303 and D–1303 PR. The D–1303 is the English language version and will be used in the Accuracy and Coverage Evaluation sample areas in the 50 states and the District of Columbia; the D–1303 PR is the Spanish language version of the follow-up form and will be used only in sample areas in Puerto Rico. For quality assurance purposes, a sample of the housing unit follow-up cases will be verified to ensure that the follow-up enumerators visit the block clusters, resolve the cases, and correctly follow procedures. The information obtained using the D–1303 and D–1303 PR will be used to resolve match status for unmatched cases and to assign final match codes. The results from the matching will be used to identify clusters for the Targeted Extended Search (TES) Operation.

The TES attempts to correct erroneous enumerations and nonmatches caused by census geocoding errors. A geocoding error occurs when a housing unit is counted in the wrong Accuracy and Coverage Evaluation sample cluster. Because of geocoding errors, the people in the housing units can be counted in the incorrect block and, as a result, may be counted more than once. The housing units in the TES clusters are sent to the field for resolution using the Targeted Extended Search Field Followup Questionnaires, Forms D–1360 and D–1360 PR. The D–1360 is the English language version and will be used in the Accuracy and Coverage Evaluation sample areas in the 50 states and the District of Columbia; the D–1360 PR is the Spanish language version and will be used only in sample areas in Puerto Rico. The goal of the TES field follow-up is to determine the correct geographic location of the housing units in the cluster. The results of TES field follow-up will be used during person matching to allow the clerical matchers to correctly code the people in the TES clusters. The TES will be conducted during the same time period as the Person Interview. The resultant address listing from the Housing Unit Follow-up Operation will be used in the Person Interview.

The Person Interview will be conducted using a Computer Assisted Personal Interviewing (CAPI) instrument. During the initial phase of this operation, the Census Bureau will target sample cases for telephone interviews. This is done to allow interviewing to start since personal visits cannot be done until Nonresponse Follow-up for Census is 90 percent complete. Telephone cases will be city style addresses selected from households that returned their census questionnaires and provided their telephone numbers. After the conclusion of the Nonresponse Follow-up Operation for a sample block cluster, all remaining sample cases will be interviewed using a person-to-person approach. Telephone interviews may also be used later in the process for hard to enumerate areas or situations.

Intensive probing techniques will be used to reconstruct a roster of the sample housing unit. The interviewer will attempt to determine the status of the sample units and their occupants on Census Day, April 1, 2000. For households where the Census Day residents have moved out, we will obtain a proxy interview from the current residents or another reliable proxy. When combined with our efforts to match responses to the results of the census count, the interview data will identify persons missed or incorrectly included in the census as well as persons correctly enumerated. For quality assurance, a sample of respondents in the Accuracy and Coverage Evaluation sample will be reinterviewed using the CAPI instrument. There will be a Spanish language version of the instrument that will be available for use in the 50 states, District of Columbia, and Puerto Rico.

After the person interview, person matching for input into dual system estimation (DSE) processing will be conducted. The estimation is called DSE because two independent sources of information or systems are used. The people enumerated during the Person Interview Operation will be matched to the people enumerated in the census for the same addresses. Unresolved cases will be reconciled in the field during the Accuracy and Coverage Evaluation Person Follow-up Interview using the Person Follow-up Questionnaires, Forms D–1301, D–1301(S), and D–1301 PR. The D–1301 is the English language version and will be used in the sample areas in the 50 states and the District of Columbia except in selected areas; the D–1301(S) and D–1301 PR are Spanish language versions of the follow-up form. The D–1301(S) will be used in sample areas, where needed, in the 50 states and the District of Columbia; the D–1301 PR will be used only in sample areas in Puerto Rico. The completed follow-up interview files will be reviewed and used to resolve a person's residence status and match status. The person follow-up interview will undergo a quality assurance operation to ensure that the interviewer contacted the household and conducted an interview. The information from the person interview will be used in the Census 2000 coverage estimates.

Because the initial housing unit operations (matching and field follow-up) are conducted before the inventory of census housing units is final, a final housing unit match and field reconciliation are needed for selected cases that were not followed up during the original housing unit operations. The field reconciliation will be conducted using the Final Housing Unit Follow-up Questionnaires, Forms D–1340 and D–1340 PR. The D–1340 is the English language version and will be used in the Accuracy and Coverage Evaluation sample areas in the 50 states and the District of Columbia; the D–1340 PR is the Spanish language version of the follow-up form and will be used only in sample areas in Puerto Rico. As in the initial Housing Unit operation, a sample of the housing unit follow-up cases will be verified to ensure that the follow-up enumerators visit the block clusters, resolve the cases, and correctly follow procedures. The results of the final housing match are needed to produce housing unit coverage estimates.

II. Method of Collection

Telephone and person to person interview.

III. Data

OMB Number: Not available.
Form Number:
Housing Unit Follow-up Interview—D–1303, D–1303 PR
Housing Unit Follow-up Quality Assurance Interview—D–1303, D–1303 PR
CAPI Person Interview—No form number
CAPI Nonresponse Conversion—No form number
CAPI Person Quality Assurance Interview—No form number
Targeted Extended Search—D–1360, D–1360 PR
Person Follow-up Interview—D–1301, D–1301(S), D–1301 PR
Person Follow-up Quality Assurance Interview—D–1301, D–1301(S)
Final Housing Unit Follow-up Interview D–1340, D–1340 PR
Final Housing Unit Follow-up Quality Assurance Interview—D–1340, D–1340 PR

Type of Review: Regular.
Affected Public: Individuals or households.
Estimated Number of Respondents: 325,486 Housing units (HUs)
Estimated Time Per Response:
Housing Unit Follow-up Interview—3 minutes
Housing Unit Follow-up Quality Assurance Interview—3 minutes
CAPI Person Interview—20 minutes
CAPI Nonresponse Conversion—20 minutes
CAPI Person Quality Assurance Interview—10 minutes
Targeted Extended Search—2 minutes
Person Follow-up Interview—15 minutes
Person Follow-up Quality Assurance Interview—15 minutes
Final Housing Unit Follow-up Interview—3 minutes
Final Housing Unit Follow-up Quality Assurance Interview—3 minutes
Estimated Total Annual Burden Hours: Total = 195,042 Hours.
Housing Unit Follow-up Interview=13,983 Hours (279,664 HUs x 3 minutes)
Housing Unit Follow-up Quality Assurance Interview=2,331 Hours (46,610 HUs×3 minutes)
CAPI Person Interview=108,495 Hours (325,486 HUs×20 minutes)
CAPI Nonresponse Conversion=21,699 Hours (65,097 HUs×20 minutes)
CAPI Person Quality Assurance Interview=6,781 Hours (40,686 HUs×10 minutes)
Targeted Extended Search=1,460 Hours (43,800 HUs×2 minutes)
Person Follow-up Interview=32,549 Hours (130,194 HUs×15 minutes)
Person Follow-up Quality Assurance Interview=5,425 Hours (21,699 HUs×15 minutes)
Final Housing Unit Follow-up Interview=1,988 Hours (39,758 HUs×3 minutes)
Final Housing Unit Follow-up Quality Assurance Interview=331 Hours (6,626 HUs×3 minutes)
Estimated Total Annual Cost: No cost to the respondents except for their time to respond.
Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141, 193, and 221.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 23, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–16403 Filed 6–25–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Kenneth Broder; Order Amending the Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Kenneth Broder, Calle Rafael Agusto Sanchez No. 22 Torre, Don Roberto Ens. Piantini, Apartado (Post Office Box) 30298, Santo Domingo, Dominican Republic.

On February 2, 1999, I entered an order against Kenneth Broder (Broder) denying his export privileges until February 2, 2007, based upon his February 2, 1998, conviction in the United States District Court for the Southern District of Florida of violating the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)) (IEEPA). The Order was issued under the authority of Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1999)) (the Act),[1] and Sections 766.25 and 750.8(a) of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (the Regulations).

On March 19, 1999, Broder, through counsel, filed an appeal from the Order with the Under Secretary for Export Administration (Under Secretary), pursuant to Part 756 of the Regulations. On June 10, 1999, the Under Secretary issued his final decision on that appeal and granted partial relief from the terms of the Order by allowing Border to participate in transactions involving EAR99 items for use or consumption in the Dominican Republic. In order to give effect to his decision, the Under Secretary directed that I amend my February 2, 1999 Order to suspend its application to EAR99 items that are exported or reexported to the Dominican Republic by Broder or on his behalf for use or consumption there.

Accordingly, the February 2, 1999 Order is hereby amended to read as follows:

Ordered

I. Until February 2, 2007, Kenneth Broder, Calle Rafael Agusto Sanchez No. 22 Torre, Don Roberto Ens. Piantini, Apartado (Post Office Box) 30298, Santo Domingo, Dominican Republic, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the Untied States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)), continued the Export Administration Regulations in effect under IEEPA.

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Broder by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provision of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. As directed by the Under Secretary in his decision on Broder's appeal, all of the provisions denying Broder's export privileges set forth above are suspended with respect to Broder's participation, directly or indirectly, in any transaction involving any item classified as EAR99 that is exported or reexported to the Dominican Republic for use or consumption therein, from the date of entry of this order until February 2, 2007, and shall thereafter be waived, provided that, during the period of suspension, Broder has committed no violation of the Act, or any regulation, order, or license thereunder.

VI. This Order is effective immediately and shall remain in effect until February 2, 2007.

VII. A copy of this Order shall be delivered to Broder. This Order shall be published in the **Federal Register**.

Dated: June 18, 1999.

Hillary Hess,

Acting Director, Office of Exporter Services.

[FR Doc. 99–16267 Filed 6–25–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping and Countervailing Duties, Procedures for Initiation of Downstream Product Monitoring

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 27, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Lynn Barden, Import Administration, Office of Policy, Room 3713, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–3173, and fax number: (202) 482–2308.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's (ITA), Import Administration, AD/CVD Enforcement, administers the U.S. antidumping and countervailing duty law. Under section 780 of the Tariff Act of 1930, as amended (19 U.S.C. 1677i), a domestic producer of an article that is like a component part or a downstream product may petition the Department of Commerce to designate the downstream product for monitoring. Such a petition must allege and support the proposition that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of such downstream product. Section 780, and the Department's regulation (19 CFR 351.223), require that the petition, among other things, identify the downstream product to be monitored, the relevant component part, and the likely diversion of foreign exports of the component part into increased exports of the downstream product to the United States. ITA will evaluate the petition and will issue either an affirmative or negative "monitoring" determination.

II. Method of Collection

Form ITA–4119P is sent by request to potential U.S. petitioners.

III. Data

OMB Number: 0625–0200.
Form Number: ITA–4119P.
Type of Review: Reinstatement.
Affected Public: U.S. companies or industries that suspect the presence of unfair competition from foreign firms selling merchandise in the United States below fair value.
Estimated Number of Respondents: 1.
Estimated Time Per Response: 15 hours.
Estimated Total Annual Burden Hours: 15 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $3,450 ($2,250 for respondents and $1,400 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 23, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–16402 Filed 6–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Announcement of Public Meeting of the National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: The 84th Annual Meeting of the National Conference on Weights and Measures will be held July 25 through July 29, 1999, at the Sheraton Burlington Hotel and Conference Center, Burlington, Vermont. The meeting is open to the public. The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the states, counties, and cities of the United States, other government officials and representatives of business, industry, trade associations and consumer organizations. Conference members meet twice a year to develop weights and measures laws and to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to (15 U.S.C. 272 (B)(6)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the states in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the states of commercial weighing and measuring.

DATES: The meeting will be held July 25–July 29, 1999, 8:00 a.m.–5:00 p.m.

ADDRESSES: Sheraton Burlington Hotel and Conference Center located at 870 Williston Road, Burlington, Vermont 05403.

FOR FURTHER INFORMATION CONTACT: Gilbert M. Ugiansky, Chief, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2350 Gaithersburg, Maryland 20899–2350. Telephone (301) 975–4004, or E-mail owm@nist.gov.

Dated: June 21, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–16318 Filed 6–25–99; 8:45 am]

BILLING CODE 3510–13–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35)). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Office of Evaluation, Susan Labin, (202) 606–5000, Extension 160. Individuals who use a telecommunications device for the deaf (TTY/TTD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Mr. Daniel Werfel, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the data collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: New.
Agency: Corporation for National and Community Service.
Title: Longitudinal Research on AmeriCorps Member Outcomes.
OMB Number: None.
Agency Number: None.
Affected Public: AmeriCorps Members and Respondents in Comparison Groups.
Total Respondents: Approximately 10,350.
Frequency: One time.
Average Time Per Response: AmeriCorps Members: 30 minutes; Comparison Group Respondents: 45 minutes.
Estimated Total Burden Hours: 3,606 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Description: The Corporation seeks approval of baseline survey forms for the longitudinal study of outcomes associated with participation in AmeriCorps, the national service program. A central purpose of the agency and its programs is to foster citizenship and development for those who serve in AmeriCorps. The proposed study includes members in the State/National and the National Civilian Community Corps AmeriCorps programs, and their counterparts in comparison groups. There were no comments received during the initial 60-day public comment period. Since our original submission, there has been a change in both the number of respondents and the overall burden hours. The number of respondents appears to have increased substantially but this is due to a screening phone call that will be made to approximately 4,850 potential respondents for less than five minutes. Thus, not including this brief call, the number of true respondents (5,550) is actually lower than originally anticipated.

This decrease in the number of respondents is due to two changes: (1) Exclusion of the Volunteers in Service to America (VISTA) participation in the study; and (2) elimination of the Retrospective Study of AmeriCorps members. These studies are not part of the final design. Thus, the overall response in burden hours has decreased. Also contributing to a decrease in the burden hours is the change to a self-administered baseline for members rather than a phone interview.

Even though the net burden is lower, the decreases are somewhat offset by an increase in the number of comparison respondents for the State and National programs. A national comparison group of those who have inquired about serving in AmeriCorps has been identified. This will strengthen the design and the ability of the study to address causality for the national study.

Dated: June 22, 1999.
Thomas L. Bryant,
Associate General Counsel.
[FR Doc. 99–16411 Filed 6–25–99; 8:45 am]
BILLING CODE 5060–23–P

DEPARTMENT OF DEFENSE

Department of the Army

Addition to MTMC Freight Traffic Rules Publication No. 1A

AGENCY: Military Traffic Management Command, DOD.
ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Department of Defense (DOD) Traffic Manager for surface and surface intermodal traffic management services (DTR vol. 1, pg. 101–113), hereby adds a new rule, entitled "Electronic Spot Bid Application," as a new item (Item 6) to MFTRP No. 1A. The purpose of the change is to establish a rule for a new process (Electronic Spot Bid) of soliciting and awarding freight shipments. Information about this new process was published in the **Federal Register,** vol. 64, no. 14, pages 3488–3490, Friday, January 22, 1999.
DATES: This change is effective July 1, 1999.
ADDRESSES: Points of Contact: Headquarters, Military Traffic Management Command, ATTN: MTOP–JF, Room 608, 5611 Columbia Pike, Falls Church, VA 22041–5050, fax: 703–681–9871 atn: Jerome Colton, e-mail: coltonj@mtmc.army.mil.
FOR FURTHER INFORMATION CONTACT: For additional information contact Mr. Jerome Colton at (703) 681–1417.
SUPPLEMENTARY INFORMATION: Effective July 1, 1999, MFTRP 1A will contain a new item (Item 6), entitled "Electronic Spot Bid Application," with the following text:.

1. The single-factor rate for Spot Bid shipments includes both the line haul and all required accessorial/protective services identified by the shipper at the time of solicitation. This single-factor rate does not alternate with any other rates or tenders. This non-alternation for Spot Bid takes precedence over any alternation rule found elsewhere in this publication.

2. If a requirement for any additional accessorial/protective service(s) is identified:

a. after solicitation but before pickup: the solicitation (and award, if applicable) will be canceled, and the shipment resolicited to include the additional services.

b. during/after pickup: the charges for the additional requirements will be negotiated with the carrier by MTMC and/or the TO. A basis for comparison for such negotiations may be rates on file for accessorial/protective services shown in current approved carrier voluntary tenders.

3. If the need for fewer accessorial/protective services is identified after solicitation but before pickup, DOD reserves the right to cancel the award and resolicit the shipment based on the new requirements.

4. The rules in this publication will apply to shipments awarded via the Electronic Spot Bid process.

5. Spot Bids will be processed through the Deployment Support Command (DSC) on behalf of those TOs who are unable to do so electronically.

Thomas M. Ogles,
Chief, Freight Services Division, Joint Traffic Management Office.
[FR Doc. 99–16400 Filed 6–25–99; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Revision of MTMC Freight Traffic Rules Publication No. 1A, Item 5, "Purpose and Application"

AGENCY: Military Traffic Management Command, DOD.
ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Department of Defense (DOD) Traffic Manager for surface and surface intermodal traffic management services (DTR vol. 1, pg. 101–113), hereby adds language to the text of the existing rule, entitled "Purpose and Application", in MFTRP No. 1A, Item 5. The purpose of the change is to allow DOD tenders for the shipment of ammunition to be utilized by the United States Coast Guard.
DATES: This change is effective August 1, 1999.
ADDRESSES: Point of Contact: Headquarters, Military Traffic Management Command, ATTN: MTOP–JF, Room 608, 5611 Columbia Pike, Falls Church, VA 22041–5050, fax: 703–681–9871 attn: Jerome Colton, e-mail: coltonj@mtmc.army.mil.
FOR FURTHER INFORMATION CONTACT: For additional information contact Mr. Jerome Colton at (703) 681–1417.
SUPPLEMENTARY INFORMATION: The effective date for the change will be August 1, 1999. This change will affect the amounts that ammunition carriers are reimbursed for ammunition shipments made to, by, for, or on behalf of the United States Coast Guard. Ammunition carriers wishing to modify their existing tenders or offer new tenders prior to August 1, 1999, to include the United States Coast Guard may do so.

The current regulation (Item 5, Paragraph 1) reads: "Purpose. The purpose of this publication is to articulate the motor transportation service needs of the Department of Defense (DOD) for the movement of its freight traffic; to ensure that motor freight carriers providing that transportation have both the willingness and the capability to meet those needs; and to provide the standardization necessary for achieving a fully automated system for routing DOD freight traffic."

The additional sentence (to be added at the end of the paragraph) will read: "Movements of ammunition to, by, for, or on behalf of the United States Coast Guard (USCG) are also covered by this publication. References throughout this publication to DOD shall be understood to include such shipments for the United States Coast Guard as well."

Thomas M. Ogles,
Chief, Freight Services Division, Joint Traffic Management Office.
[FR Doc. 99–16401 Filed 6–25–99; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.
DATES: Interested persons are invited to submit comments on or before August 27, 1999.
SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 22, 1999.
William E. Burrow,
Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Annual Supported Employment Caseload Report.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 81.
Burden Hours: 162.
Abstract: This form collects data required by Sections 626 and 101(a)(10) of the Rehabilitation Act, as amended. The RSA Commissioner must collect data separately on persons who receive supported employment services under Title I and Title VI, Part B, of the Act and submit an annual report to the President and Congress as required by Section 13.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Vivian T3Reese@ed.gov,* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–16289 Filed 6–25–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.
SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.
DATES: Interested persons are invited to submit comments on or before July 28, 1999.
ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.
SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 22, 1999.
William E. Burrow,
Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.
Title: Early Childhood Longitudinal Study—Birth Cohort 2000, Field Test and Full Scale Data Collection.
Frequency: On occasion.
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 2,280.
Burden Hours: 3,082.
Abstract: The Early Childhood Longitudinal Study—Birth Cohort 2000 (ECLS–B) is a component of the Early Childhood Longitudinal Studies Program. Studies also include the Kindergarten Class of 1998–1999, currently under way. The ECLS program responds to increased policy interest in a critical period in the development of children, the years from zero to three. The principal purposes of the study are to assess chidlren's health status and their growth and development in a variety of key domains that are critical for later school readiness and academic achievement. The key domains include physical health and growth, motor development, and social and emotional maturation. The data set will provide a comprehensive and reliable longitudinal data set describing the growth of children from birth through first grade. The data can also be used by a wide range of federal agencies on topics such as maternal and child health; childhood illnesses and disabilities; nonparental child care and early childhood education; health intervention; family economics and composition; welfare dependency; cultural diversity; and food and nutrition.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Vivian Reese@ed.gov,* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements,

contact Joe Schubart at 202–708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–16290 Filed 6–25–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.116X]

Office of Postsecondary Education, Fund for the Improvement of Postsecondary Education and the Office of Elementary and Secondary Education, Safe and Drug-Free Schools and Communities—Alcohol and Other Drug Prevention Models on College Campuses

AGENCY: Department of Education.

ACTION: Notice Inviting Applications for New Awards for Fiscal Year 1999.

Purpose of the Program: This competition seeks to identify and disseminate models of alcohol and other drug prevention at institutions of higher education.

Eligible Applicants: Institutions of higher education.

Applications Available: June 28, 1999.

Deadline for Receipt of Applications: July 28, 1999.

Note: All applications must be received on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted. Applications by mail should be sent to the U.S. Department of Education, c/o The Higher Education Center for Alcohol and Other Drug Prevention, Education Development Center, Inc., 55 Chapel Street, Newton, MA 02458–1060. Attention: CFDA #84.116X, Alcohol and Other Drug Prevention Models on College Campuses.

Deadline for Intergovernmental Review: September 26, 1999.

Available Funds: $500,000.

Estimated Range of Awards: $40,000–$75,000.

Estimated Average Size of Awards: $50,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86;

(b) 34 CFR parts 98 and 99; and

(c) The notice of final priority and selection criteria for FY 1999 published elsewhere in this issue of the **Federal Register**.

FOR APPLICATIONS OR INFORMATION CONTACT: Kimberly Light, Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW, Washington, DC 20202–6123. Telephone: (202) 260–3954. By FAX: (202) 260–7767. Internet: *http://www.ed.gov/OESE/SDSF*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape, or computer diskette) upon request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1138–1138d; Public Law 105–277, 112 Stat. 2681, 2681–371.

Dated: June 23, 1999.

Judith Johnson,

Acting Assistant Secretary, Office of Elementary and Secondary Education.

Claudio R. Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–16407 Filed 6–25–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Postsecondary Education, Fund for the Improvement of Postsecondary Education and the Office of Elementary and Secondary Education, Safe and Drug-Free Schools and Communities—Alcohol and Other Drug Prevention Models on College Campuses Grant Competition

AGENCY: Department of Education.

ACTION: Notice of final priority and selection criteria for fiscal year 1999.

SUMMARY: The Secretary announces a final priority and selection criteria for fiscal year (FY) 1999 under the Office of Postsecondary Education, Fund for the Improvement of Postsecondary Education and the Office of Elementary and Secondary Education, Safe and Drug-Free Schools and Communities—Alcohol and Other Drug Prevention Models on College Campuses Grant Competition. The Secretary takes this action to use Federal financial assistance to identify and disseminate models of alcohol and other drug (AOD) prevention at institutions of higher education (IHEs). Alcohol and other drug use are closely related problems that are frequently addressed together as part of comprehensive AOD prevention efforts. However, for the purposes of this competition, the Secretary is interested in making awards to five (5) IHEs that have innovative programs aimed at alcohol prevention and five (5) IHEs that have innovative programs aimed at other drug prevention. These specific programs should be implemented within the context of a comprehensive AOD prevention effort on campus. IHEs that receive awards will use the funds to maintain, improve, or further evaluate their innovative programs and disseminate information about these innovative programs to other IHEs.

EFFECTIVE DATE: This priority takes effect on June 28, 1999.

FOR FURTHER INFORMATION CONTACT: For further information about this priority, contact Kimberly Light at the Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6123. Telephone: 202–260–3954. Fax: 202–260–7767. *Internet: http://www.ed.gov/offices/OESE/SDFS.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) upon request to the contact person listed above.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: This notice contains the final priority and selection criteria for FY 1999. Under the absolute priority, the Secretary may make awards for up to 12 months to institutions of higher education.

Applications for this competition must be received at the address specified in the notice inviting applications for this competition no later than 4:30 p.m. on the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

Absolute Priority

Under 34 CFR 75.105(c)(3), Title VII, Part B of the Higher Education Act of 1965, as amended, and the Department of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 1999, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition *only* applications that meet this absolute priority.

Under the absolute funding priority for this grant competition, an IHE that wishes to be considered for an award as a model under this competition must identify, propose to maintain, improve, or further evaluate, and propose to disseminate information about an innovative and effective alcohol or other drug prevention program being used on its campus. Applications must:

(1) Describe an innovative alcohol or other drug prevention program, and indicate how that program is integrated within a comprehensive approach to reducing alcohol and other drug-related problems on campus;

(2) Provide evidence of the effectiveness of the innovative program in reducing either alcohol or other drug use, in reducing the problems resulting from either alcohol or other drug use, or in meeting outcome objectives that are associated with reductions in alcohol or other drug use or resulting problems;

(3) Provide a plan to maintain, improve, or further evaluate the program during the year following award; and

(4) Provide a plan to disseminate information to assist other IHEs in implementing a similar innovative program.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution and the diversity of activities addressed by the projects in addition to the rank order of applicants.

Selection Criteria

The following selection criteria will be used to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points.

(1) *Significance* (30 points).

In determining the significance of the model, the Secretary considers the following factors:

(A) The extent to which the program involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (20 points)

(B) The potential replicability of the program, including, as appropriate, the potential for implementation in a variety of settings. (5 points)

(C) The extent to which the results of the program are to be disseminated in ways that will enable others to use the information or strategies. (5 points)

(2) *Quality of the program design* (40 points).

In determining the quality of the design of the program, the Secretary considers the following factors:

(A) The extent to which the design of the program reflects up-to-date knowledge from research and effective practice. (20 points)

(B) The extent to which the goals, objectives, and outcomes of the program are clearly specified and measurable. (5 points)

(C) The extent to which the design of the program is appropriate to, and successfully addresses, the needs of the target population or other identified needs. (10 points)

(D) The quality of the plan to maintain, improve, or further evaluate the program. (5 points)

In applying the above criteria, the Secretary considers the following information:

(1) The quality of the needs assessment and how well this assessment relates to the goals and objectives of the innovative program;

(2) How well the innovative program is integrated within a comprehensive alcohol and other drug prevention effort;

(3) The level of institutional commitment, leadership and support for alcohol and other drug prevention efforts;

(4) The clarity and strength of the institution's alcohol or other drug policies and the extent to which those policies are broadly disseminated and consistently enforced;

(5) The extent to which students and employees are involved in the program design and implementation process;

(6) The extent to which the institution has joined with community leaders to address AOD issues; and (7) If applying to be considered as an alcohol prevention model, what steps the institution is taking to limit alcoholic beverage sponsorship, advertising, and marketing on campus; and what steps are being taken to establish or expand upon alcohol-free living arrangements for students.

(3) *Quality of the project evaluation* (30 points).

In determining the quality of the evaluation, the Secretary considers the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives and outcomes of the program. (10 points)

(B) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the program and produce quantitative and qualitative data to the extent possible. (20 points)

In applying the above criteria, the Secretary considers the following information:

(1) The quality of the evaluation methodology and evaluation instruments;

(2) Whether both process (formative) and outcome (summative) data are included for each year that the alcohol or other drug prevention program has been implemented, including data collected both before and after initiation of the program; and

(3) How evaluation information has been used for continuous improvement of the institution's approach to alcohol or other drug prevention.

Waiver of Proposed Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. Funding was provided for this new initiative in the FY 1999 appropriations act enacted October 21, 1998. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely awards.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local government for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Electronic Access to This Document

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on the World Wide Web at either of the following sites:
http://www.ocfo.ed.gov/fedreg.htm
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Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 USC 1138–1138d; Public Law 105–277, 112 Stat. 2681, 2681–371.

(Catalogue of Federal Domestic Assistance Number 84.116X, Office of Postsecondary Education, Fund for the Improvement of Postsecondary Education and the Safe and Drug-Free Schools and Communities—Alcohol and Other Drug Prevention Models on College Campuses Grant Competition)

Dated: June 23, 1999.

Judith Johnson,

Acting Assistant Secretary, Office of Elementary and Secondary Education.

Claudio R. Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–16408 Filed 6–25–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Clean Power From Integrated Coal/Ore Reduction (CPICOR) Project

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, et seq.), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Parts 1500–1508), and the DOE NEPA regulations (10 CFR Part 1021), to assess the potential environmental and human health impacts of a proposed project under the Clean Coal Technology Program that would integrate the production of molten iron for steelmaking with the production of electricity. The Clean Power from Integrated Coal/Ore Reduction (CPICOR) project, proposed to be located within the Geneva Steel Company's existing plant at Vineyard, Utah, would demonstrate the integration of the High Intensity Smelting (HIsmelt®) ironmaking process with technology to generate electricity using steam heated by combustion gas from the HIsmelt® process. The EIS will help DOE decide whether to provide 15% of the funding for the $1 billion proposed project.

The purpose of this Notice of Intent is to inform the public about the proposed action; present the schedule for the action; announce the plans for a public scoping meeting; invite public participation in (and explain) the scoping process that DOE will follow to comply with the requirements of NEPA; and solicit public comments for consideration in establishing the proposed scope and content of the EIS. The EIS will evaluate the potential impacts of the proposed project and reasonable alternatives.

DATES: To ensure that the full range of issues related to this proposal is addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. All comments must be received by August 16, 1999, to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone, DOE will conduct a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The scoping meeting will be held at the Council Chambers of the Provo City Center, 351 W. Center Street, Provo, Utah, at 7 p.m. on Thursday, July 15, 1999. In addition, DOE will host an informational session for interested parties from 5 p.m. until 7 p.m. on the day of the meeting at the Council Chambers. Displays and other forms of information about the proposed project and its location will be available, and DOE personnel will be available to answer questions. The public is invited to this informal session to learn more about the proposed project.

ADDRESSES: Written comments and requests to participate in the public scoping process should be addressed to: Mr. Joseph Renk, NEPA Document Manager, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236–0940.

Individuals who would like to provide comments and/or otherwise participate in the public scoping process should contact Mr. Renk directly at telephone 412–892–6249; fax 412–892–4775; e-mail renk@fetc.doe.gov; or by recorded message at toll-free number 1–800–276–9851.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this project or to receive a copy of the draft EIS when it is issued, contact Mr. Joseph Renk at the address provided above. For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119, 202–586–4600; or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Under Public Law 102–154, the U.S. Congress provided authorization and funds to DOE for conducting cost-shared Clean Coal Technology (CCT) Program projects for the design, construction, and operation of facilities that "* * * shall advance significantly the efficiency and environmental performance of coal-using technologies and be applicable to either new or existing facilities * * *" Under a solicitation in 1992 pursuant to this law (Round V of the CCT Program) and a subsequent appropriation (Public Law 101–512), DOE selected for further consideration for cost-shared funding a proposal from the CPICOR Management Company for design, construction, and operation of a process to integrate production of molten iron for steelmaking with production of electricity for utility distribution.

The demonstration of the CPICOR project under the CCT Program would fulfill an existing programmatic need. Although substantial deposits of coal exist as a resource suitable for and capable of resolving critical energy issues, there are a number of obstacles that present barriers to its increased use. These impediments include: (1) Concerns about environmental issues, such as acid deposition, global climate change, polycyclic aromatic hydrocarbon emissions, and solid waste; (2) commercial demonstration of acceptable coal use technologies; and (3) technical and economic performance of the technologies. Thus, since the early 1970's, DOE and its predecessor agencies have pursued research and development programs that have included long-term, high-risk activities to support the development of a wide variety of innovative coal technologies through the proof-of-concept stage.

However, the availability of a technology at the proof-of-concept stage is not sufficient to ensure its continued development and subsequent commercialization. Before any technology can be seriously considered for commercialization, it must be demonstrated. The financial risk associated with technology demonstration is, in general, too high for the private sector to assume without strong incentives or legal requirements. The CCT Program was established by Congress and endorsed by the private sector as a way to accelerate the development of innovative technologies to meet the nation's near-term energy and environmental goals, to reduce the business community's investment risk to an acceptable level, and to provide incentives for the private sector to pursue innovative research and development directed at providing solutions to long-range energy supply problems.

Proposed Action

The proposed action is for DOE to provide, through a cooperative agreement with the CPICOR Management Company, cost-shared financial assistance for the design, construction, and operation of the proposed project as described below. The project would cost approximately $1 billion; DOE's share would be nearly $150 million (15%). The proposed project would be located at the existing Geneva Steel Company facilities in Vineyard, Utah.

The CPICOR project would demonstrate the integration of the HIsmelt® ironmaking process with technology for power generation. The HIsmelt® process produces molten iron directly from iron ore and coal in a single integrated operation without any intermediate steps. In contrast, conventional ironmaking technology practiced today requires two separate processes: (1) Initial production of coke from coal in sequential coal charging, coking (heating coal in the absence of air to drive off volatile organic compounds), and coke removal and quenching operations, which result in emissions of particulate matter and hazardous air pollutants (e.g., polycyclic aromatic hydrocarbons); and (2) subsequent use of the produced coke as both a heat source and a reducing agent in a blast furnace with iron ore and limestone to reduce the iron ore to molten iron.

The CPICOR project would produce 3,300 tons per day of molten iron and up to 160 megawatts of electricity (MWe). To produce molten iron, iron ore, coal, and oxygen-enriched hot air would be injected into a closed HIsmelt® molten-bath reactor, which would minimize hazardous air pollutant emissions. The metal bath is the primary reaction medium in which carbon from the coal would reduce iron ore to iron. Molten iron that collects in the bottom of the bath would be continuously tapped from the vessel to maintain a constant level of iron inside the vessel. Slag, would be tapped periodically and used to coat and control the internal cooling system and reduce heat loss.

Based on equivalent production of iron, the HIsmelt® technology is capable of reducing sulfur dioxide emissions by over 85%, oxides of nitrogen by 35%, and particulate matter by over 85%, when compared to conventional ironmaking technology. Desulfurization would occur through reaction of sulfur in the reducing gas with limestone/dolomite additives. The reducing atmosphere in the HIsmelt® process would minimize the formation of oxides of nitrogen. Another environmental benefit of the HIsmelt® process is its ability to process iron oxide wastes (called reverts) produced from conventional iron and steel production. The Geneva Steel site, as well as many other U.S. ironmaking sites, currently houses large inventories of reverts.

In addition to the HIsmelt® unit, the plant would include such new facilities as: an air separation unit to provide approximately 1,000 tons of oxygen per day; a boiler to generate steam; a steam turbine generator to produce electricity; a wet scrubber gas cleaning system to remove particulate matter; and all necessary auxiliary systems. Gas produced in the HIsmelt® unit would be combusted in the boiler to produce: (1) 5,500 tons per day of steam for in-plant use by Geneva Steel and (2) additional steam required to drive a 160-MWe steam turbine. About 140 MWe would be used for internal process needs at the Geneva Steel facilities and the remaining 20 MWe would be available for export to the existing power grid. Following a successful demonstration of the CPICOR project, it is anticipated that the existing coke ovens at the Geneva Steel site would not be replaced as they reach the end of their useful life.

The CPICOR project would occupy approximately 17 acres of previously disturbed land at the Geneva Steel site, and an additional 8 acres of previously disturbed land would be used during construction for laydown, fabrication, and storage areas. Most construction would be related to the HIsmelt® unit, the air separation unit, and the power plant unit. Extension of conveyors to transport coal and other feedstocks to the HIsmelt® unit would be required, along with a new raw material storage facility. Control rooms for the HIsmelt®, air separation, and power plant units would be required. Wherever possible, existing facilities and infrastructure located at the Geneva Steel site would be used for the CPICOR project. These include railway lines/spurs, coal rotary dumpsters, conveyors, day bins, slag handling facilities, and water distribution and wastewater treatment systems.

Project activities would include engineering and design, permitting, procurement, construction, start-up, and demonstration. Assuming timely delivery from the CPICOR project team of the environmental information necessary for developing the EIS, DOE anticipates a 15-month schedule (from date of publication of this Notice of Intent) to complete the EIS and issue a Record of Decision. Upon completing its NEPA review, if DOE decides to implement the proposed action, construction would commence in the year 2001 and demonstration would begin in the year 2003. Verification of the commercial feasibility of the technology would be accomplished through a 30-month test program, during which the plant would be operated on several different types of coal, to test and demonstrate the viability of the technology. Upon completing the demonstration program for DOE, the facility would continue to operate as part of Geneva Steel's commercial plant. The facility would be designed for a lifetime of 30 years.

Alternatives

Section 102(2)(C) of NEPA requires that agencies discuss the reasonable alternatives to the proposed action in an EIS. The purpose for agency action determines the range of reasonable alternatives. Congress established the CCT Program and directed DOE to pursue the goals of the legislation by soliciting proposals and partially funding (cost sharing) projects owned and controlled by non-Federal government sponsors. This statutory requirement places DOE in a much more limited role than if the Federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives. However, in dealing with an applicant, the scope of alternatives is necessarily more restricted. It is appropriate in such cases for DOE to give substantial weight to the applicant's needs in establishing a project's reasonable alternatives.

An overall strategy for compliance with NEPA was developed for the CCT Program that includes consideration of both programmatic and project-specific

environmental impacts during and after the process of selecting a project. As part of the NEPA strategy, the EIS for the proposed CPICOR project will tier off the Program's final Programmatic Environmental Impact Statement (PEIS) that was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) the no-action alternative, which assumed that the CCT Program was not continued and that conventional coal-fired technologies with flue gas desulfurization and nitrogen oxide controls to meet New Source Performance Standards would continue to be used; and (2) the proposed action, which assumed that the clean coal projects would be selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

The range of reasonable alternatives to be considered in the EIS for the proposed CPICOR project is also narrowed in accordance with the overall NEPA strategy. The EIS will include an analysis of the no-action alternative as a reasonable alternative to the proposed action of providing cost-shared funding support for the proposed project. DOE will consider other reasonable alternatives that may be suggested during the public scoping period.

Under the no-action alternative, DOE would not provide partial funding for the design, construction, and operation of the CPICOR project. In the absence of DOE funding, the CPICOR project probably would not be constructed; therefore, potential environmental impacts or benefits related to its demonstration would not be realized. In addition, the project would not contribute to the general objective of the CCT Program, which is to make available to the U.S. energy marketplace a number of advanced, more efficient, economically feasible, and environmentally acceptable coal technologies.

If the CPICOR facility is not built, other reasonable alternatives for producing coke and molten iron would need to be adopted by Geneva Steel. While the option to do nothing (i.e., continue to operate the blast furnaces using coke) is perhaps the most likely, especially in the near future, it is undesirable because Geneva Steel's coke-making capacity is declining, which would eventually lead to a total dependence on imported coke for iron production. Another option would be to modernize existing blast furnaces to lessen the requirements for coke and to install new coke-making facilities with state-of-the-art pollution controls that are needed to comply with the National Emissions Standards for Hazardous Air Pollutants. In the EIS, DOE will consider both of these options under the no-action alternative.

Because of DOE's limited role of providing cost-shared funding for the proposed CPICOR project, and because of the advantages associated with the proposed location, DOE does not plan to evaluate alternative sites for the proposed project. The project participants initially considered additional sites during their site selection process. Site selection was governed primarily by benefits that could be realized by the companies participating in the project. An existing plant site was preferred because the cost associated with construction of the project at a "greenfield" site in an undisturbed area would be much higher and the environmental impacts likely would be much greater than at an existing facility. The site selected for the project had to provide the maximum benefit to the companies by closely meeting the project's technical needs and integrating with existing infrastructure. Because Geneva Steel Company's only facility is located at Vineyard, Utah, no other sites were considered after Geneva Steel was selected as the ironmaking partner for the project.

The existing Geneva Steel plant has several advantages because it is an operating plant with land available for installation of new facilities, and likely would have less impact associated with construction and operation of the facilities. Much of the infrastructure needed for the facilities, including the electric transmission lines and towers, is already in place at the Geneva Steel plant. The molten iron produced by the project can be used in its liquid form at the steel mill. If not sited at a steel mill location, pig iron would need to be produced, which would add a processing step and increase costs. Since pig iron is not a finished product, it would need to be remelted, thus decreasing overall energy efficiency.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. This list is not intended to be all inclusive or a predetermined set of potential impacts, but is presented to facilitate public comment on the scope of the EIS. Additions to or deletions from this list may occur as a result of the scoping process. The issues include:

(1) Atmospheric Resources: potential air quality and human health impacts on areas and populations surrounding the site resulting from emissions during current and future facility operations;

(2) Water Resources: potential effects on surface water and groundwater resources consumed and discharged;

(3) Infrastructure and Land Use: potential consequences to land, utilities, transportation routes, and traffic patterns resulting from the proposed project, in particular, due to changes in the amounts of coal and iron ore required;

(4) Solid Waste: pollution prevention and waste management practices, including impacts caused by the generation, treatment, transport, storage, and disposal of solid wastes;

(5) Construction: impacts associated with noise, traffic patterns, and construction-related emissions;

(6) Environmental Justice: potential for disproportionately high and adverse impacts on low-income and minority populations in the surrounding community;

(7) Visual: impacts associated with new structures associated with the proposed project; and

(8) Cumulative effects: incremental impacts of the proposed project when added to other past, present, and reasonably foreseeable future actions (e.g., incremental air emissions affecting air quality and human health).

Public Scoping Process

To ensure that all issues related to this proposal are addressed, DOE will conduct an open process to define the scope of the EIS. The public scoping period will run until August 16, 1999. Interested agencies, organizations, and the general public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts to be addressed in the EIS, and the alternatives that should be analyzed. Scoping comments should clearly describe specific issues or topics that the EIS should address in order to assist DOE in identifying significant issues.

Written, e-mailed, faxed, or telephoned comments should be communicated by August 16, 1999 (see **ADDRESSES** in this Notice).

A public scoping meeting to be conducted by DOE will be held in the Council Chambers of the Provo City Center, 351 W. Center Street, Provo, Utah, on Thursday, July 15, 1999, at 7 p.m. In addition, DOE will hold an informational session at the same location from 5 p.m. to 7 p.m. on the day of the meeting. Displays and other materials and DOE personnel will be available to provide information about the proposed project.

DOE requests that anyone who wishes to speak at this public scoping meeting contact Mr. Joseph Renk, either by phone, fax, computer, or in writing (see **ADDRESSES** in this Notice). Individuals who do not make advance arrangements to speak may register at the meeting (preferably at the beginning of the meeting) and will be given the opportunity to speak after all previously scheduled speakers have made their presentations. Speakers who wish to make presentations longer than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, it may be necessary to limit speakers to five-minute presentations initially, with the opportunity for additional presentations as time permits. Speakers can also provide additional written information to supplement their presentations. Oral and written comments will be given equal consideration.

DOE will begin the meeting with overviews of the proposed CPICOR project and the NEPA process. A presiding officer will be designated by DOE to chair the meeting. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked to clarify their statements to ensure that DOE fully understands the comments or suggestions. The presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting.

Issued in Washington, D.C., this 22nd day of June, 1999.

David Michaels,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 99–16355 Filed 6–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–556–000]

Columbia Gas Transmission Corporation; Request Under Blanket Authorization

June 22, 1999.

Take notice that on June 14, 1999, Columbia Gas Transmission Corporation (Columbia), 1201 Fair Lakes Parkway, Fairfax, Virginia 22030–1046, filed in Docket No. CP99–556–000 a request pursuant to Sections 157.205, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain natural gas facilities consisting of 1,772 points of delivery to Columbia Gas of Ohio, Inc. (COH) under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–0400 for assistance).

The points of delivery to be abandoned are located on non-jurisdictional pipeline in northern Ohio that are being sold to Gatherco, Inc (Gatherco). Columbia states that Gatherco has agreed to continue providing the service supplied to these points of delivery. Columbia does not propose a reduction or termination of service as a result of the abandonment. COH will instead shift these volumes to other delivery points.

Any questions regarding the application should be directed to Fredric George at (304) 357–2359 or Larry Willeke at (202) 216–9764, Columbia Gas Transmission Corporation, 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–1046.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–16341 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–337–000]

Discovery Gas Transmission LLC; Tariff Filing

June 22, 1999.

Take notice that on June 17, 1999, Discovery Gas Transmission LLC, (Discovery), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 131, and Third Revised Sheet No. 196, to become effective August 1, 1999.

Discovery states that the purpose of this filing is to comply with the Commission's order issued April 2, 1999, in Docket No. RM96–1–011.

Discovery states that the instant filing reflects changes to the General Terms and Conditions of its Tariff required to implement standards issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in Order No. 587–K issued April 2, 1999, in Docket No. RM 96–1–011. This filing implements changes required by Commission Regulations Section 284.10(b)(1) (i through v), relating to electronic communication with interstate natural gas pipelines promulgated by the Commission.

Discovery states that copies of the filing were served on all jurisdictional customers and state regulatory agencies and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16351 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–563–000]

Eastern Shore Natural Gas Company; Request Under Blanket Authorization

June 22, 1999.

Take notice that on June 14, 1999, Eastern Shore Natural Gas Company (Eastern Shore), P.O. Box 1769, Dover, Delaware 19903–1769, tendered for filing in Docket No. CP99–563–000, request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate new delivery point for E.I. DuPont de Nemours and Company (DuPont), a new customer, under Eastern Shore's blanket certificate issued in Docket No. CP83–40–000 pursuant to Part 157 Subpart F of the Commission's Regulations, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at: www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Eastern Shore would construct and operate metering and regulating facilities and 500 feet of 6-inch service lateral to serve DuPont's Stine-Haskell facility in Newark, Delaware. Eastern Shore states that the facility is currently served by Delmarva Power and Light Company. It is further stated that Eastern Shore will use the facility to deliver up to 250,000 dt per year year on an interruptible basis (Eastern Shore's Rate Schedule IT) and that the shipper will reimburse Eastern shore for the facility costs. Eastern Shore states that the total estimated cost of the proposed facilities is $110,000.

Any questions regarding the application should be directed to Mark Foresman, Engineering Manager, at (302) 734–6710 Ex. 6751, Eastern Shore Natural Gas Company, 417 Bank Lane, Dover, Delaware 19904.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. It no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–16343 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–280–003]

Mid Louisiana Gas Company; Proposed Changes in FERC Gas Tariff

June 22, 1999.

Take notice that on June 17, 1999, Mid Louisiana Gas Company (Mid Louisiana), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be May 10, 1999:

Substitute Fifth Revised Sheet No. 78

Mid Louisiana states that the purpose of this filing is to tender a substitute sheet for Fifth Revised Sheet No. 78. The sheet was filed April 6, 1999 with incorrect pagination, designating it as "Fourth Revised" in FERC Docket No. RP99–280–000. The incorrect designation occurred due to the fact that Fourth Revised Sheet No. 78 had been submitted March 29, 1999 in FERC Docket No. RP99–268–000, but had not yet been approved and made effective by the Commission.

As instructed in OPR letter dated May 3, 1999, Mid Louisiana re-filed the sheet in Docket No. RP99–280–002 on May 17, 1999 and corrected the pagination to reflect "Fifth Revised". However, Mid Louisiana failed to include, in any filings in the RP99–280 docket, on sheet 78, the appropriate textual modifications as had been submitted on the "Fourth Revised" version which version had subsequently been approved by the Commission in OPR Letter Order dated April 27, 1999 in FERC Docket RP99–268–000.

The Substitute Fifth Revised Sheet No. 78 in intended to include all approved textual modifications to Sheet No. 78 as approved by the FERC to date, in both the RPC99–268 and RP99–280 dockets.

Pursuant to Section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any additional requirement of the Regulations in order to permit the tendered tariff sheet to become effective May 10, 1999 as submitted.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16347 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–332–001]

OkTex Pipeline Company; Proposed Changes in FERC Gas Tariff

June 22, 1999.

Take notice that on June 16, 1999, OkTex Pipeline Company (OkTex), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute 1st Revised Sheet No. 29A, with an effective date of July 1, 1999.

OkTex states that the substitute tariff sheet is being filed in compliance with the Commission's directives in Order No. 587–K.

Due to an oversight OkTex failed to adopt standards 1.3.14, 1.3.24, and 1.3.27 in its June 8, 1999 filing and is filing a substitution to correct for the oversight. OkTex states that this correction includes changes to OkTex's tariff that resulted from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in its April 2, 1999 Order No. 587–K in Docket No. RM96–1–011.

OkTex further states that Order No. 587–K contemplates that OkTex will implement the GISB consensus standards for July 1999 business, and that the tariff sheet therefore reflects an effective date of July 1, 1999.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16348 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–336–000]

Questar Pipeline Company; Tariff Filing

June 22, 1999.

Take notice that on June 17, 1999, Questar Pipeline Company (Questar), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with an effective date of August 1, 1999:

Fifth Revised Sheet No. 46B
Third Revised Sheet No. 84
Fourth Revised Sheet Nos. 99A, 99B, 99C, 99D
First Revised Sheet No. 99E
Original Sheet No. 99F

Questar states that the filing is being made in compliance with the Commission's April 2, 1999, Order (the April 2 Order) in Docket No. RM96–1–011, Order No. 587–K.

In the April 2 order, the Commission amended 18 CFR.284.10 governing standards for conducting business practices and electronic communication with interstate natural-gas pipelines. The Commission incorporated by reference, into § 284.10(b)(1)(i)–(v) of its regulations, Version 1.3 of the Gas Industry Standards Board. The regulations incorporated in this filing govern confirmation practices, pipeline internet web sites and revisions to the data sets. The effective date of these standards is August 1, 1999. This tariff filing is tendered as required by the Commission's directives.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the seb at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16352 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–336–000]

Sabine Pipe Line Company; Tariff Filing

June 22, 1999.

Take notice that on June 17, 1999, Sabine Pipe Line Company (Sabine), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to become effective August 1, 1999:

Second Revised Sheet No. 231A
Sixth Revised Sheet No. 297
Third Revised Sheet No. 298

Sabine states that the purpose of this filing is to comply with the Commission's Order issued April 2, 1999, in Docket No. RM96–1–011.

Sabine states that the instant filing reflects changes to the General Terms and Conditions of its Tariff required to implement standards issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in Order No. 587–K issued April 2, 1999, in Docket No. RM 96–1–011. This filing implements changes required by Commission Regulations Section 284.10(b)(1) (i through v), relating to electronic communication with interstate natural gas pipelines promulgated July 31, 1998, by GISB.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16350 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–560–000]

Transcontinental Gas Pipe Line Corporation; Application

June 22, 1999.

Take notice that on June 16, 1999, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and convert a portion of its individually certificated Rate Schedule WSS firm storage service in the Washington Storage Field located in St. Landry Parish, Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Transco proposes to abandon 1,461 Dt equivalent of withdrawal capacity and 124,200 Dt of total storage capacity rendered on behalf of Columbia Gas of Virginia, Inc. (CGV), effective July 31, 1999. It is stated that the storage service

is presently provided under Part 157 of the Commission's regulations pursuant to authorization in Docket No. CP74–33, as amended. It is asserted that CGV has notified Transco by letter dated February 23, 1999, of its intention to terminate its storage service effective July 31, 1999. Transco explains that it held an open season for the capacity, and agreed to provide storage service under its Part 284 blanket certificate for Koch Energy Trading, which submitted a binding nomination for the capacity. It is asserted that no facilities would be abandoned as a result of the proposal and no customers would lose service.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 13, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–16342 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–335–000]

Transwestern Pipeline Company; Proposed Changes in FERC Gas Tariff

June 22, 1999.

Take notice that on June 16, 1999, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective July 17, 1999:

Sixth Revised Sheet No. 95A
Fifth Revised Sheet No. 95B
Fifth Revised Sheet No. 95H
Second Revised Sheet No. 95J

Transwestern is proposing to amend the General Terms and Conditions section of its Tariff to provide additional flexibility in the billing and crediting of demand charges for Releasing Shippers involved in capacity release transactions on Transwestern's system and to update its Tariff to reflect current FERC Regulations.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16349 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–689–005, et al.]

Zapco Power Marketers, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 18, 1999.

Take notice that the following filings have been made with the Commission:

1. Zapco Power Marketers, Inc.

[Docket No. ER98–689–005]

Take notice that on June 15, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

2. Energy Transfer Group, L.L.C. and CU Power Canada Limited

[Docket No. ER96–280–013 and Docket No. ER98–4582–002]

Take notice that on June 14, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Commonwealth Edison Company and Commonwealth Edison Company of Indiana

[Docket No. ER99–1967–001]

Take notice that on June 11, 1999, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd) filed to comply with the Commission's May 12, 1999 "Order on Interim Procedures" issued in the above-referenced proceeding.

Copies of the filing were served upon all parties to the proceeding.

Comment date: July 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. CP Power Sales Eleven, L.L.C.

[Docket No. ER99–3202–000]

Take notice that on June 10, 1999, CP Power Sales Eleven, L.L.C., tendered for filing a Notice of Succession on behalf of CL Power Sales Eleven, L.L.C. Effective May 18, 1999, CL Power Sales Eleven, L.L.C., changed its name to CP Power Sales Eleven, L.L.C.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER99–3236–000]

Take notice that on June 14, 1999, Cinergy Services, Inc. (Cinergy), on behalf of its operating affiliates PSI Energy, Inc., and The Cincinnati Gas & Electric Company, tendered for filing (1) an unexecuted Service Agreement between Cinergy and the Blue Ridge Power Agency (BRPA) that provides for the sale of certain ancillary services to certain cities that are members of the BRPA; and (2) a Letter Agreement which on an interim basis provides similar ancillary services to BRPA as provided under the Service Agreement. An executed copy of the Service Agreement will be filed as soon as it is available.

Cinergy has requested waivers of the Commission's regulations in order that the Letter Agreement become effective as of December 14, 1998, and the Service Agreement becomes effective at the earliest possible date.

Copies of this filing have been served upon the public utility commissions of Indiana, Ohio, Kentucky, and Virginia, the BRPA and the American Electric Power Company.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Rochester Gas and Electric Corporation

[Docket No. ER99–3237–000]

Take notice that on June 14, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and. Dayton Power & Light Company (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of June 11, 1999, for Dayton Power & Light's Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Minnesota Power, Inc.

[Docket No. ER99–3238–000]

Take notice that on June 14, 1999, Minnesota Power, Inc. (MP), tendered for filing signed Service Agreements with Central Illinois Light Company, and Merchant Energy Group of the Americas, Inc., under MP's cost-based Wholesale Coordination Sales Tariff WCS–1 to satisfy its filing requirements under this tariff.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Vermont Electric Power Company, Inc.

[Docket No. ER99–3239–000]

Take notice that on June 14, 1999, Vermont Electric Power Company, Inc. (VELCO), tendered for filing a non-firm point-to-point service agreement with FPL Energy Power Marketing, Inc., as a customer under the terms of VELCO's Local Open Access Transmission Tariff. VELCO also filed a revised List of Customers With Active Service Agreements.

VELCO asks that this agreement and the revised List of Customers become effective as of the date of filing. Accordingly, VELCO requests a waiver of the Commission's notice requirements.

Copies of this filing were served on the customer, the Vermont Department of Public Service, and the Vermont Public Service Board.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. ISO New England Inc.

[Docket No. ER99–3240–000]

Take notice that on June 15, 1999, ISO New England Inc. (the ISO), tendered for filing, pursuant to Section 205 of the Federal Power Act, revisions to Appendix 5–C to NEPOOL Market Rule 5 together with a request that the Commission accept the revisions on an expedited basis.

The ISO and the NEPOOL Executive Committee state that copies of these materials were sent to the Participants in the New England Power Pool, non-Participant transmission customers and to the New England state governors and regulatory commissions.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Public Service Company) Docket No. ER99–3241–000

Take notice that on June 15, 1999, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credits resulting from its merger with Public Service company of Colorado required in its agreement with Golden Spread Electric Cooperative, Inc. (Golden Spread), filed in Docket No ER97–47–000.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Public Service Company

[Docket No. ER99–3242–000]

Take notice that on June 15, 1999, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Central Valley Electric Cooperative, Inc. (Central Valley), filed in Docket No ER97–3904–000.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Public Service Company

[Docket No. ER99–3243–000]

Take notice that on June 15, 1999, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with New Corp Resources, Inc. (New Corp), filed in Docket No ER97–3903–000.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Southwestern Public Service Company

[Docket No. ER99–3244–000]

Take notice that on June 15, 1999, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Roosevelt Electric Cooperative, Inc. (Roosevelt), filed in Docket No ER97–3902–000.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Southwestern Public Service Company

[Docket No. ER99–3245–000]

Take notice that on June 15, 1999, Southwestern Public Service Company

(Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Lyntegar Electric Cooperative, Inc. (Lyntegar), filed in Docket No ER97–3906–000.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Southwestern Public Service Company

[Docket No. ER99–3246–000]

Take notice that on June 15, 1999, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Farmers' Electric Cooperative, Inc. (Farmers), filed in Docket No ER97–3901–000.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Northeast Utilities Service Company

[Docket No. ER99–3247–000]

Take notice that on June 15, 1999, Northeast Utilities Service Company tendered for filing notice that effective June 30, 1999 at hour ending 2400, CL&P Rate Schedule FERC No. 281 and WMECO Rate Schedule FERC No. 220 and supplements thereto, filed with the Federal Energy Commission by Northeast Utilities Service Company affiliates, The Connecticut Light and Power Company, and Western Massachusetts Electric Company in FERC Docket No. ER93–358–000, are to be terminated in accordance with their terms and by notice to the parties thereto.

Notice of the proposed termination has been served upon Massachusetts Municipal Wholesale Electric Company, the sole customer served under this rate schedule.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Energy Massachusetts, Inc.

[Docket No. ER99–3248–000]

Take notice that on June 15, 1999, Consolidated Edison Energy Massachusetts, Inc. (CEEMI), tendered for filing CEEMI Electric Rate Schedule No. 1, for the wholesale sale of electric energy, capacity and ancillary services at market-based rates.

CEEMI states that a copy of this filing has been served by mail upon The New York State Public Service Commission.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Avista Corporation

[Docket No. ER99–3249–000]

Take notice that on June 15, 1999, Avista Corporation (AVA), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an executed Interconnection and Operating Agreement between AVA and Public Utility District No. 1 of Pend Oreille County.

AVA requests an effective date of February 14, 1999.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. California Independent System Operator Corporation

[Docket No. ER99–3250–000]

Take notice that on June 15, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Green Power Partners I LLC—WECS 98, for acceptance by the Commission.

The ISO states that this filing has been served on Green Power Partners I LLC—WECS 98 and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of May 28, 1999.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Southwestern Public Service Company

[Docket No. ER99–3251–000]

Take notice that on June 15, 1999, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Lea County Electric Cooperative, Inc. (Lea County), filed in Docket No ER97–3905–000.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Entergy Services, Inc.

[Docket No. ER99–3252–000]

Take notice that on June 15, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (EGSI), tendered for filing an Interconnection and Operating Agreement between Entergy Gulf States and Exxon Company, U.S.A. (Exxon).

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. California Independent System Operator Corporation

[Docket Nos. ER99–3254–000]

Take notice that on June 15, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Green Power Partners I LLC (Green Power) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Green Power and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of May 28, 1999.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. PJM Interconnection, L.L.C.

[Docket No. ER99–3255–000]

Take notice that on June 15, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing four signature pages of parties to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17 listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including each of the parties for which a signature page is being tendered with this filing, and each of the electric regulatory commissions within the PJM Control Area.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. PJM Interconnection, L.L.C.

[Docket No. ER99–3256–000]

Take notice that on June 15, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed service agreement for Network Integration Transmission Service between PJM and UGI Utilities, Inc.

Copies of this filing were served upon all PJM Members UGI Utilities, Inc., and the Pennsylvania Public Utilities Commission.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Colockum Transmission Company, Inc.

[Docket No. ER99–3257–000]

Take notice that on June 15, 1999, pursuant to Section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, Colockum Transmission Company, Inc. (Colockum) tendered for filing with the Federal Energy Regulatory Commission a Notice of Termination of the 1988 Exchange Agreement between Colockum and PacifiCorp, effective date July 1, 1988, designated as Colockum Rate Schedule FERC No. 2.

Additionally, pursuant to Section 35.15(a) of the Commission's Regulations, Colockum requests an effective date for this termination 60 days from the date of filing or August 14, 1999.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. California Independent System Operator Corporation

[Docket No. ER99–3258–000]

Take notice that on June 15, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Green Power Partners I LLC—WECS 67 for acceptance by the Commission.

The ISO states that this filing has been served on Green Power Partners I LLC—WECS 67 and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of May 28, 1999.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. California Independent System Operator Corporation

[Docket No. ER99–3259–000]

Take notice that on June 15, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Sempra Energy Trading Corp. (Sempra Energy) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Sempra Energy and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of June 1, 1999.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. California Independent System Operator Corporation

[Docket No. ER99–3260–000]

Take notice that on June 15, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Green Power Partners I LLC—WECS 28 for acceptance by the Commission.

The ISO states that this filing has been served on Green Power Partners I LLC—WECS 28 and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of May 28, 1999.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Vermont Electric Power Company, Inc.

[Docket No. ER99–3261–000]

Take notice that on June 14, 1999, Vermont Electric Power Company, Inc. (VELCO), tendered for filing a firm point-to-point service agreement with FPL Energy Power Marketing, Inc., as a customer under the terms of VELCO's Local Open Access Transmission Tariff. VELCO also filed a revised List of Customers With Active Service Agreements.

VELCO asks that this agreement and the revised List of Customers become effective as of the date of filing. Accordingly, VELCO requests a waiver of the Commission's notice requirements.

Copies of this filing were served on the customer, the Vermont Department of Public Service, and the Vermont Public Service Board.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Boston Edison Company

[Docket No. ER99–3269–000]

Take notice that on June 15, 1999, Boston Edison Company (Edison) of Boston, Massachusetts, joined and supported by Montaup Electric Company (Montaup), tendered for filing the Fifth Amendment to its FERC Electric Rate Schedule No. 69. The Fifth Amendment was executed by Edison and Montaup for the purpose of extending the time for Montaup to make its Closing Payments to Edison in connection with the sale of Edison's Pilgrim nuclear power plant to Entergy Nuclear Generation Company. The Fifth Amendment has no rate change effects. Edison and Montaup request a July 8, 1999, effective date of the amendment.

Edison states that copies of the filing have been served on the Massachusetts and Rhode Island attorney generals and on the service list compiled in Docket Nos. EC99–18–000, et al.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. UtiliCorp United Inc.

[Docket No. ES99–42–000]

Take notice that on June 14, 1999, UtiliCorp United Inc. (UtiliCorp), tendered for filing an application, under Section 204 of the Federal Power Act, for authorization to issue up to $500 million of debt securities to be issued from time to time in one or more series.

UtiliCorp also requested exemption from compliance with the Commission's competitive bidding or negotiated placement requirements at 18 CFR 34.2.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Portland General Electric Company

[Docket No. ES99–43–000]

Take notice that on June 16, 1999, Portland General Electric Company (PGE) filed an application with the Federal Energy Regulatory Commission, under Section 204 of the Federal Power Act requesting authorization to issue not more than $350 million of short-term debt from time to time through July 31, 2001.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://

www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16280 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Temporary Variance Request and Soliciting Comments, Motions To Intervene, and Protests

June 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Temporary Variance.

b. *Project No.:* 2210–028

c. *Date filed:* June 17, 1999.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Smith Mountain Project.

f. *Location:* On the Roanoke River, Bedford, Franklin, Campbell, Pittsylvania, and Roanoke Counties, Virginia. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Frank M. Simms, American Electric Power, 1 Riverside Plaza, Columbus, OH 43215–2973, (614) 223–2918.

i. *FERC Contact:* Robert Fletcher, robert.fletcher@ferc.fed.us, 202–219–1206.

j. *Deadline for filing comments, motions to intervene and protest:* 14 days from the issuance date of this notice. Please include the project number (2210–028) on any comments or motions filed. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

k. *Description of Application:* On June 17, 1999, the Commission approved an emergency 45-day variance (which will expire on August 1, 1999) to reduce the minimum flow requirements of article 29 from 650 cubic feet per second (cfs) to 400 cfs during the drought conditions occurring at the Smith Mountain Project. The licensee continues to consult with the various resource agencies and stakeholders upstream and downstream of the project. The current situation is similar to that which existed last year for the project whereby the Commission granted a 45-day emergency variance to article 29 and a subsequent 45-day extension after a public notice. In anticipation of no immediate relief to the low inflow situation at the Smith Mountain Project again this year and the distinct possibility that relief will not be forthcoming by August 1, 1999, the licensee is requesting to continue the temporary variance to license article 29 through September 30, 1999.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in the item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents) Any filings must bear in all capital letters the title "COMMENTS", RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–16344 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11745–000.

c. *Date Filed:* May 24, 1999.

d. *Applicant.* Universal Electric Power Corporation.

e. *Name of Project:* Toad Suck Ferry L&D #8.

f. *Location:* On the Arkansas River, near the town of Conway, Faulkner County, Arkansas, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp. 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a coy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Toad Suck Ferry L&D #8 and would consist of: (1) Five new 40-foot-long, 114-inch-diameter steel penstocks; (2) a new 300-foot-long, 30-foot-wide, 30-foot-high powerhouse containing five generating units having a total installed capacity of 9,000-kW; (3) a new exhaust apron; (4) a new 4-mile-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 55 GWh and that the cost of the studies to be performed under the terms of the permit would be $2,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance.). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–16345 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11746–000.

c. *Date Filed:* May 24, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* David Terry L&D #6.

f. *Location:* On the Arkansas River, near the town of Pine Bluff, Pulaski County, Arkansas, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' David Terry L&D #6 and

would consist of: (1) 15 new 40-foot-long, 114-inch-diameter steel penstocks; (2) a new, 1,000-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 16 generating units having a total installed capacity of 30,600–kW; (3) a new exhaust apron; (4) a new 500-foot-long, 14.7–kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 188 GWh and that the cost of the studies to be performed under the terms of the permit would be $3,500,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent of submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–16346 Filed 6–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

June 23, 1999.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 30, 1999, 10:00 A.M.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers Secretary, Telephone (202) 208–0400 for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 722nd Meeting—June 30, 1999, Regular Meeting (10:00 A.M.)

CAH–1.
DOCKET# P–2311 029, CROWN-VANTAGE-NEW HAMPSHIRE ELECTRIC, INC.
CAH–2.
OMITTED
CAH–3.
DOCKET# P–9423 025, SUMMIT ENERGY STORAGE, INC.
CAH–4.
DOCKET# P–10536 004, PUBLIC UTILITY DISTRICT NO. 1 OF OKANOGAN COUNTY, WASHINGTON
OTHER#S P–10536 005, PUBLIC UTILITY DISTRICT NO. 1 OF OKANOGAN COUNTY, WASHINGTON
CAH–5.
DOCKET# P–10703 005, CITY OF CENTRALIA (WASHINGTON) LIGHT DEPARTMENT
CAH–6.
DOCKET# UL98–1 001, GREAT NORTHERN PAPER, INC.

OTHER#S P–2634 006, GREAT NORTHERN PAPER, INC.
CAH–7.
DOCKET# P–2114 070, PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON

Consent Agenda—Electric

CAE–1.
OMITTED
CAE–2.
DOCKET# ER99–2762 000, SAN DIEGO GAS & ELECTRIC COMPANY
CAE–3.
DOCKET# ER99–2893 000, PJM INTERCONNECTION, L.L.C.
CAE–4.
DOCKET# ER99–2914 000, PJM INTERCONNECTION, L.L.C.
CAE–5.
DOCKET# ER99–2776 000, AMEREN OPERATING COMPANIES
CAE–6.
DOCKET# ER99–2833 000, MEP PLEASANT HILL, LLC
CAE–7.
DOCKET# ER99–2900 000, WISCONSIN ELECTRIC POWER COMPANY
CAE–8.
DOCKET# ER99–2884 000, PACIFIC GAS AND ELECTRIC COMPANY
CAE–9.
DOCKET# ER99–2609 000, FIRSTENERGY OPERATING COMPANIES
OTHER#S EL99–71 000, FIRSTENERGY OPERATING COMPANIES
CAE–10.
DOCKET# ER99–2822 000, GREEN POWER PARTNERS I LLC
OTHER#S ER99–2388 000, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
ER99–2404 000, SITHE MARYLAND HOLDINGS LLC, SITHE KEYSTONE LLC, SITHE CONEMAUGH LLC, SITHE HUNTERSTOWN LLC AND SITHE ORRTANNA LLC, ET AL.
ER99–2817 000, UGI DEVELOPMENT COMPANY
ER99–2917 000, FPL ENERGY MH50, L.P.
ER99–2923 000, PHELPS DODGE ENERGY SERVICES, LLC
ER99–2928 000, CLECO EVANGELINE LLC
ER99–2948 000, BALTIMORE GAS AND ELECTRIC COMPANY
ER99–2973 000, FIBERTEK ENERGY, LLC
CAE–11.
DOCKET# ER99–2852 000, ARIZONA PUBLIC SERVICE COMPANY
CAE–12.
DOCKET# ER99–2847 000, SOUTHERN CALIFORNIA EDISON COMPANY
CAE–13.
DOCKET# ER99–2941 000, MONTAUP ELECTRIC COMPANY
CAE–14.
DOCKET# EC98–50 002, CAMBRIDGE ELECTRIC LIGHT COMPANY
OTHER#S EC98–50 001, CAMBRIDGE ELECTRIC LIGHT COMPANY
ER98–1522 002, CAMBRIDGE ELECTRIC LIGHT COMPANY
CAE–15.
DOCKET# QF95–61 002, GEYSERS POWER COMPANY, LLC
CAE–16.
DOCKET# OA97–237 005, NEW ENGLAND POWER POOL
OTHER#S ER97–1079 004, NEW ENGLAND POWER POOL
ER97–3574 003, NEW ENGLAND POWER POOL
ER97–4421 003, NEW ENGLAND POWER POOL
ER98–499 002, NEW ENGLAND POWER POOL
OA97–608 003, NEW ENGLAND POWER POOL
CAE–17.
OMITTED
CAE–18.
DOCKET# ER97–3729 000, PJM INTERCONNECTION, L.L.C.
OTHER#S ER97–3729 001, PJM INTERCONNECTION, L.L.C.
CAE–19.
DOCKET# ER99–2012 001, NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL
CAE–20.
DOCKET# EC99–33 000, BEC ENERGY AND COMMONWEALTH ENERGY SYSTEM
CAE–21.
DOCKET# ER98–2382 003, MONTANA POWER COMPANY
CAE–22.
DOCKET# ER98–2028 000, ENTERGY SERVICES, INC.
CAE–23.
DOCKET# ER98–2184 002, AES HUNTINGTON BEACH, L.L.C.
OTHER#S ER98–2184 003, AES HUNTINGTON BEACH, L.L.C.
ER98–2185 002, AES ALAMITOS, L.L.C.
ER98–2185 003, AES ALAMITOS, L.L.C.
ER98–2186 002, AES REDONDO BEACH, L.L.C.
ER98–2186 003, AES REDONDO BEACH, L.L.C.
CAE–24.
DOCKET # RM87–3035, ANNUAL CHARGES UNDER THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986
OTHER #S RM87–3036, ANNUAL CHARGES UNDER THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986
RM87–3037, ANNUAL CHARGES UNDER THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986
CAE–25.
DOCKET # RM95–9008, OPEN-ACCESS SAME-TIME INFORMATION SYSTEM AND STANDARDS OF CONDUCT
CAE–26.
DOCKET # EL98–35000, NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC. V. PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
CAE–27.
DOCKET # EL99–63000, CITY OF ANAHEIM, CALIFORNIA
OTHER #S EL99–64000, CITY OF RIVERSIDE, CALIFORNIA
CAE–28.
DOCKET # NJ98–4002, LONG ISLAND POWER AUTHORITY AND LONG ISLAND LIGHTING COMPANY
OTHER #S NJ97–8004, SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

Consent Agenda—Gas and Oil

CAG–1.
DOCKET # RP99–311000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–2.
DOCKET # RP99–312000, ALGONQUIN GAS TRANSMISSION COMPANY
CAG–3.
DOCKET # RP99–325000, TENNESSEE GAS PIPELINE COMPANY
CAG–4.
DOCKET # RP99–326000, TENNESSEE GAS PIPELINE COMPANY
CAG–5.
DOCKET # RP99–327000, TEXAS GAS TRANSMISSION CORPORATION
CAG–6.
DOCKET # RP99–328000, TENNESSEE GAS PIPELINE COMPANY
CAG–7.
DOCKET # TM99–1–8000, SOUTH GEORGIA NATURAL GAS COMPANY
CAG–8.
OMITTED
CAG–9.
DOCKET # RP99–308000, NORTHWEST ALASKAN PIPELINE COMPANY
OTHER #S RP99–308001, NORTHWEST ALASKAN PIPELINE COMPANY
CAG–10.
DOCKET # RP99–315000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–11.
DOCKET # RP99–322000, NORTHERN BORDER PIPELINE COMPANY
CAG–12.
DOCKET # TM99–2–53000, K N INTERSTATE GAS TRANSMISSION COMPANY
CAG–13.
DOCKET # TM99–1–160000, DISCOVERY GAS TRANSMISSION LLC
CAG–14.
DOCKET # RP99–310000, SOUTHERN NATURAL GAS COMPANY
CAG–15.
DOCKET # RP97–151009, MID LOUISIANA GAS COMPANY
CAG–16.
OMITTED
CAG–17.
DOCKET # RP98–388000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–18.
DOCKET # RP99–303000, WESTERN GAS INTERSTATE COMPANY
CAG–19.
DOCKET # RP99–305000, NORTHERN BORDER PIPELINE COMPANY
CAG–20.
DOCKET # PR99–4002, CONSUMERS ENERGY COMPANY
CAG–21.
DOCKET # RP98–391003, COLORADO INTERSTATE GAS COMPANY
CAG–22.
DOCKET # OR96–18000, WILLIAMS PIPE LINE COMPANY
CAG–23.
DOCKET #-IS99–37000, PLATTE PIPE LINE COMPANY
CAG–24.

DOCKET # IS99–268000, AMOCO PIPELINE COMPANY
OTHER #S IS99–268001, AMOCO PIPELINE COMPANY
CAG–25.
DOCKET # OR99–7000, TE PRODUCTS PIPELINE COMPANY, L.P.
CAG–26.
DOCKET # OR99–1000, EXPLORER PIPELINE COMPANY
OTHER #S OR99–1001, EXPLORER PIPELINE COMPANY
CAG–27.
DOCKET # OR99–12000, CONOCO PIPE LINE COMPANY
OTHER #S OR99–9000, PLATTE PIPE LINE COMPANY
OR99–10000, PLANTATION PIPE LINE COMPANY
OR99–11000, PIONEER PIPE LINE COMPANY
OR99–13000, YELLOWSTONE PIPE LINE COMPANY
OR99–14000, EQUILON PIPELINE COMPANY LLC
CAG–28.
DOCKET # MG99–12001, TOTAL PEAKING SERVICES, L.L.C.
CAG–29.
DOCKET # MG99–16000, OZARK GAS TRANSMISSION SYSTEM AND OZARK GAS TRANSMISSION, L.L.C.
CAG–30.
DOCKET # MG99–17000, ARKANSAS WESTERN PIPELINE, L.L.C.
CAG–31.
DOCKET # CP99–138000, ANR PIPELINE COMPANY
CAG–32.
DOCKET # CP99–56000, LBU JOINT VENTURE
CAG–33.
DOCKET # CP99–233000, FLORIDA GAS TRANSMISSION COMPANY
CAG–34.
DOCKET # CP99–277000, NORTHWEST PIPELINE CORPORATION
CAG–35.
DOCKET # CP95–168002, SEA ROBIN PIPELINE COMPANY
CAG–36.
DOCKET # TM99–3–59002, NORTHERN NATURAL GAS COMPANY
CAG–37.
DOCKET # OR99–15001, WOLVERINE PIPE LINE COMPANY

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Regular Agenda—Miscellaneous

M–1.
OMITTED

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
RESERVED

II. Pipeline Certificate Matters

PC–1.
DOCKET # RM99–5000, REGULATIONS UNDER THE OCSLA GOVERNING THE MOVEMENT OF NATURAL GAS ON FACILITIES ON THE OUTER CONTINENTAL SHELF, NOTICE OF PROPOSED RULEMAKING.

David P. Boergers,

Secretary.

[FR Doc. 99–16561 Filed 6–24–99; 3:48 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6368–3]

Proposed CERCLA Administrative Cost Recovery Settlement; Standard Scrap Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Standard Scrap site (a/k/a Standard Scrap Metal/Chicago International Exporting Site) in Chicago, Cook County, Illinois with Samuels Recycling Company. The settlement requires the settling party to pay $74,771.45 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before July 28, 1999.

ADDRESSES: The proposed settlement is available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951. Comments should reference the Standard Scrap Site, Chicago, Cook County, Illinois and EPA Docket No. V–W–'99–C–550 and should be addressed to Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

FOR FURTHER INFORMATION CONTACT: Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

Dated: May 28, 1999.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–16378 Filed 6–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6367–8]

Proposed CERCLA Administrative Cost Recovery Settlement; Standard Scrap Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Standard Scrap site (a/k/a Standard Scrap Metal/Chicago International Exporting Site) in Chicago, Cook County, Illinois with GNB Technologies Inc. The settlement requires the settling party to pay $57,270.13 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before July 28, 1999.

ADDRESSES: The proposed settlement is available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951. Comments should reference the Standard Scrap Site, Chicago, Cook County, Illinois and EPA Docket No. V–W–'99–C–548 and should be addressed to Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

FOR FURTHER INFORMATION CONTACT: Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

Dated: May 28, 1999.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–16379 Filed 6–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6367–9]

Proposed CERCLA Administrative Cost Recovery Settlement; Standard Scrap Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Standard Scrap site (a/k/a Standard Scrap Metal/Chicago International Exporting Site) in Chicago, Cook County, Illinois with the following settling parties: Universal Scrap Metals, Inc.; Cozzi Iron & Metal, Inc./Scrap Processing, Inc./Balco Metals, Inc.; H. Diamond Iron & Metal Co.; Sadoff & Rudoy Industries d/b/a Sadoff Iron & Metal Company, Gus Holman Company, and Alfred Muchin Company; H. Kramer & Co.; Azcon Corporation; Mandel Metals Inc.; General Motors Corporation; Brandenburg Industrial Service Co.; and Southern Scrap Material Co., Limited (through its successor company Southern Scrap Material Co., L.L.C.), its member Southern Recycling, L.L.C., and its member Southern Holdings, Inc. The settlement requires the settling parties to pay $370,400 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before July 28, 1999.

ADDRESSES: The proposed settlement is available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951. Comments should reference the Standard Scrap Site, Chicago, Cook County, Illinois and EPA Docket No. V–W–'99–C–549 and should be addressed to Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

FOR FURTHER INFORMATION CONTACT: Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

Dated: May 28, 1999.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–16380 Filed 6–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6368–1]

Proposed CERCLA Administrative Cost Recovery Settlement; Standard Scrap Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Standard Scrap site (a/k/a Standard Scrap Metal/Chicago International Exporting Site) in Chicago, Cook County, Illinois with Indiana Iron & Metal Company, Inc. and Nathan Burnstein. The settlement requires the settling parties to pay $5,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before July 28, 1999.

ADDRESSES: The proposed settlement is available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951. Comments should reference the Standard Scrap Site, Chicago, Cook County, Illinois and EPA Docket No. V–W–'99–C–551 and should be addressed to Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

FOR FURTHER INFORMATION CONTACT: Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

Dated: May 28, 1999.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–16381 Filed 6–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6367–7]

Proposed CERCLA Administrative Cost Recovery Settlement; Standard Scrap Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Standard Scrap site (a/k/a Standard Scrap Metal/Chicago International Exporting Site) in Chicago, Cook County, Illinois with Consumers Recycling, Inc. The settlement requires the settling party to pay $26,101.61 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before July 28, 1999.

ADDRESSES: The proposed settlement is available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951. Comments should reference the Standard Scrap Site, Chicago, Cook County, Illinois and EPA Docket No. V–W–'99–C–547 and should be addressed to Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

FOR FURTHER INFORMATION CONTACT: Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

Dated: May 28, 1999.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–16382 Filed 6–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6368–2]

Proposed CERCLA Administrative Cost Recovery Settlement; Standard Scrap Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Standard Scrap site (a/k/a Standard Scrap Metal/Chicago International Exporting Site) in Chicago, Cook County, Illinois with Parks Pioneer Corporation. The settlement requires the settling party to pay $22,316.36 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before July 28, 1999.

ADDRESSES: The proposed settlement is available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951. Comments should reference the Standard Scrap Site, Chicago, Cook County, Illinois and EPA Docket No. V–W–'99–C–552 and should be addressed to Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

FOR FURTHER INFORMATION CONTACT: Mike Anastasio, U.S. Environmental Protection Agency, Office of Regional Counsel, Mail Code C–14J, 77 W. Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–7951.

Dated: May 28, 1999.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–16383 Filed 6–25–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

June 21, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 28, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0812.

Title: Assessment and Collection of Regulatory Fees.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, and not-for-profit institutions.

Number of Respondents: 635,738.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.

Total Annual Burden: 63,574 hours.

Total Annual Cost: N/A.

Needs and Uses: The Federal Communications Commission, in accordance with the Communications Act of 1934, as amended, is required to assess and collect regulatory fees from its licensees and regulatees in order to recover its costs incurred in conducting enforcement, policy and rulemaking, international and user information activities. The purpose for the requirements are to: (1) Facilitate the statutory provision that non-profit entities may be exempt from payment of regulatory fees, and (2) facilitate the FCC's ability to audit regulatory fee payment compliance in the Commercial Mobile Radio Services (CMRS) industry.

In order to develop a Schedule of Regulatory Fees, the FCC must as accurately as possible, estimate the number of payment units and distribute the costs. These estimates must be adjusted to account for any licensees or regulatees that are exempt from payment of regulatory fees. Therefore, the FCC is requiring all licensees and regulatees that claim exemption as a non-profit entity to provide one-time documentation sufficient to establish their non-profit status. Additionally, any newly licensed or operating non-profit entities must submit their documentation of their exempt status within 60 days of receipt of license, authorization, permit or of commencing operation. Further, the FCC is requesting that it be similarly notified if for any reason that status changes. This documentation will likely take the form of an Internal Revenue Service (IRS) Determination Letter, a state charter indicating non-profit status, proof of church affiliation, *et al.*

In order to facilitate audits of regulatory fee payment compliance in the CMRS industry, the FCC must require these licensees to submit, upon request, business data they relied upon to calculate the amount of the aggregate regulatory fees owed.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16338 Filed 6–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee; Notice of Public Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of a meeting of the Network Reliability and Interoperability Council ("Council"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: July 14, 1999 at 2:00 p.m.–4:00 p.m.

ADDRESS: Federal Communications Commission, Commission Meeting Room, Room TW–C305, 445 12th St. SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marsha MacBride, Executive Director of the FCC Year 2000 Task Force and Designated Federal Officer of the Council, 445 12th St. SW, Washington, DC 20554; telephone (202) 418–2379, e-mail year2000@fcc.gov.

Press Contact, Audrey Spivak, Office of Public Affairs, 202–418–0512, aspivak@fcc.gov.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that would enhance network reliability. One of the current issues before the Council is the risk that the Year 2000 date conversion problem presents for the telecommunications networks.

The agenda for the meeting is as follows: The Council will review assessment and testing reports from Focus Groups 1 and 2. Focus Group 3 will provide initial recommendations on Subcommittee 1. Finally, the Network Reliability Steering Committee will provide its quarterly report.

Information concerning the activities of NRIC can be reviewed at the Council's website <www.nric.org>. Material relevant to the July 14, 1999 meeting will be posted there.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. A live RealAudio feed will be available over the Internet; information on how to tune in can be found at the Commission's website <www.fcc.gov≤.

The public may submit written comments to the Council's designated Federal Officer before the meeting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16319 Filed 6–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their

views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 12, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Robert Cary McNair, Houston, Texas; to acquire additional voting shares of Southwest Bancorporation of Texas, Inc., Houston, Texas, and thereby indirectly acquire additional voting shares of Southwest Bank of Texas, N.A., Houston, Texas.

Board of Governors of the Federal Reserve System, June 22, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16284 Filed 6–25–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Westdeutsche Landesbank Girozentrale, Dusseldorf, Germany; to acquire through its subsidiary, Criterion Investment Management, Houston, Texas, certain assets of Nicholas-Applegate Capital Management, Houston, Texas, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, June 22, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16285 Filed 6–25–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Friday, July 2, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve Ssytem employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of a bank and bank holding company applications scheduled for the meeting; ro you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 24, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16560 Filed 2–24–99; 3:42 pm]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention, Food and Drug Administration, and National Institutes of Health

Development of a Public Health Action Plan to Combat Antimicrobial Resistance

The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH) announce an open meeting concerning antimicrobial resistance.

Name: Development of a Public Health Action Plan to Combat Antimicrobial Resistance.

Times and Dates: 10:30 a.m.–6 p.m., July 19, 1999. 8a.m.–6 p.m., July 20, 1999. 8a.m.–3:30 p.m., July 21, 1999.

Place: Sheraton Atlanta Hotel, 165 Courtland at International Boulevard, Atlanta, Georgia 30303.

Status: Open to the public, limited only by the space available.

Purpose: To solicit input from invited consultants regarding items to be included in a Public Health Action Plan that, when published, will serve as a blueprint for activities of Federal agencies to combat antimicrobial resistance. The Plan is being developed by a Task Force composed of Federal personnel from several Federal agencies and departments, co-chaired by CDC, FDA, and NIH. The focus of the Plan will be on domestic activities.

Matters To Be Discussed: The agenda will focus on the following topics related to antimicrobial resistance:

1. Surveillance
2. Prevention and control
3. Research
4. Product development

Comments and suggestions from the consultants for specific action items for Federal agencies related to each of these topics will be taken under advisement by the task force. The Task Force may also utilize other sources of information in developing the Action Plan. The agenda does not include development of consensus positions, guidelines, or discussions or endorsements of specific commercial products.

Agenda items are subject to change as priorities dictate.

Limited time will be available for oral comments and suggestions from the public. Written comments and suggestions from the public are encouraged and should be received by the contact person listed below by August 22, 1999.

Persons anticipating attending the meeting are requested to send written notification by July 12, 1999, including name, organization (if applicable), address, phone, fax, and email addresses to the contact below.

FOR FURTHER INFORMATION CONTACT: Minnie Johnson, Antibiotic Resistance, NCID, CDC, M/S C–20, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–2603, fax 404/639–4139, E-mail: mlj2@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 21, 1999.

Carolyn J. Russell,

Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–16298 Filed 6–25–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Prevention Research Centers

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Prevention Research Centers, Program Announcement #98047, meeting.

Times and Dates:

9 a.m.–5 p.m., July 12, 1999 (Closed).
8 a.m.–9 a.m., July 13, 1999 (Open).
9 a.m.–5 p.m., July 13, 1999 (Closed).
8 a.m.–5 p.m., July 14, 1999 (Closed).
8 a.m.–5 p.m., July 15, 1999 (Closed).
8 a.m.–5 p.m., July 16, 1999 (Closed).

Place: Sheraton Colony Square Hotel, 188 14th St., NE, Atlanta, GA. Telephone 404/892–6000.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #98047.

This notice is being published less than 15 days prior to the meeting, due to administrative delays.

Contact Person for More Information: Marshall Kreuter, Ph.D., Associate Director for Health Promotion, Policy and Program Development, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, 3005 Chamblee Tucker Rd., Atlanta, GA., 30341–4133. Telephone 770/488–5832. E-mail *mak2@cdc.gov.*

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 21, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 99–16297 Filed 6–25–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 21, 1999, 8 a.m. to 5 p.m.

Location: Holiday Inn, Walker/Whetstone Salons, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or email reedyk@cder.fda.gov or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the evidence needed to establish that a drug product has a beneficial effect on joint structure in patients with osteoarthritis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 12, 1999. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 12, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 18, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–16314 Filed 6–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 26, 1999, 10:30 a.m. to 5 p.m., and July 27, 1999, 7:30 a.m. to 2:30 p.m.

Location: Hilton Hotel, Salons B and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Hany W. Demian or Mark N. Melkerson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12521. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 27, 1999, the committee will discuss and make recommendations on the classification of bone dowel devices of human origin.

Procedure: On July 27, 1999, from 7:30 a.m. to 2:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 16, 1999. Oral presentations from the public regarding the classification of bone dowel devices will be scheduled between approximately 8:45 a.m. and 9:45 a.m. on July 27, 1999. Near the end of committee deliberations, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by July 16, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On July 26, 1999, from 10:30 a.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information on a product development protocol. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 22, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–16315 Filed 6–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0529]

Draft Guidance for Industry on Changes to an Approved NDA or ANDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Changes to an Approved NDA or ANDA." This draft guidance is intended to assist applicants in determining how they should report changes to an approved NDA or ANDA under the proposed revision to the drug regulations pertaining to supplements and other changes to an approved application published elsewhere in this issue of the **Federal Register**.

DATES: Written comments may be submitted on the draft guidance document by August 27, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nancy B. Sager, Center for Drug Evaluation and Research (HFD–357), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5633.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Changes to an Approved New Drug (NDA) or Abbreviated New Drug (ANDA) Application."

On November 21, 1997, the President signed the Food and Drug Administration Modernization Act (the Modernization Act) (Pub. L. 105–115). Section 116 of the Modernization Act amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506A (21 U.S.C. 356a), which provides requirements for making and reporting manufacturing changes to an approved application and for distributing a drug product made with such changes. FDA is proposing to amend its regulations entitled *Supplements and other changes to an approved application* at § 314.70 (21 CFR 314.70) to conform to section 506A of the act. This proposed rule is published elsewhere in this issue of the **Federal Register**.

The purpose of this draft guidance is to provide recommendations to holders of NDA's and ANDA's who intend to make postapproval changes in accordance with section 506A of the act and the proposed amended regulations at § 314.70. This draft guidance covers recommended reporting categories for postapproval changes for drugs, other than specified biotechnology and specified synthetic biological products. Recommendations are provided for postapproval changes in: (1) Components and composition, (2) sites, (3) manufacturing process, (4) specification(s), (5) package, (6) labeling, and (7) miscellaneous changes. This guidance does not provide recommendations on the specific information that should be developed by the applicant to validate the effect of the change on the identity, strength (e.g., assay, content uniformity), quality (e.g., physical, chemical, and biological properties), purity (e.g., impurities and degradation products), or potency (e.g., biological activity, bioavailability, bioequivalence) of a product as they may relate to the safety or effectiveness of the product.

The guidance document, which cites the proposed rule for amending § 314.70, will be revised based on public comments and implemented for use as a companion document to § 314.70 when the rule is finalized. FDA welcomes comments that provide additional examples of major, moderate, and minor changes.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). This guidance document represents the agency's current thinking on reporting categories for postapproval changes of drugs, other than specified biotechnology and specified synthetic biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 25, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–16190 Filed 6–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–222]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Independent Rural Health Center/Freestanding Federally Qualified Health Center Cost Report and Supporting Regulations in 42 CFR, Section 413.20 and 413.24;

Form No.: HCFA–222;

Use: The independent rural health clinic/freestanding federally qualified health center (RHC/FQHC) cost report is the cost report to be used by the mentioned clinics/centers to submit annual information to achieve a settlement of costs for health care services rendered to Medicare beneficiaries. This form is used to collect the pertinent information from the RHC's and FQHC's in order to determine their Medicare cost reimbursement;

Frequency: Annually;

Affected Public: Not-for-profit institutions, State, local or tribal government, and business or other for-profit;

Number of Respondents: 3,000;

Total Annual Responses: 3,000;

Total Annual Hours Requested: 150,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 21, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–16395 Filed 6–25–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier HCFA–R–286]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity of the utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. The fact that this collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320, will cause public harm. We are requesting an emergency review.

If HCFA cannot disseminate information in a timely manner to partners who work with Medicare beneficiaries, as benefits counselors, the beneficiaries will not be able to make informed choices. The present request is for OMB authorization to collect data on the reactions of users of the web site, www.medicare.gov/nmep. We will use the data to improve the web site so that it can best serve the needs of the users. The designers of the web site are preparing new sections, functionality, and updates and will introduce changes to the site by the end of July 1999. Expedited review of this submission is requested so that pending enhancements and updates incorporate information collected from users. With an expedited review, the staff of the web site will have evaluation findings in sufficient time to guide the revisions planned for the site. In addition to the need for having feedback to implement anticipated changes in the web site, the World Wide Web site was created through Federal law and requires a systematic assessment. Under the 1997 Balanced Budget Act, a provision was established to provide information to beneficiaries in order to promote informed choice. One activity for widely disseminating information on coverage options, that was required, was the creation of "an Internet site through which individuals may electronically obtain information on such options and Medicare+ Choice (MEDICARE+CHOICE) plans in states which MEDICARE+CHOICE plans are offered." As a result, the medicare.gov/nmep site was created to provide Medicare beneficiaries, their caregivers, and partners with an official source for Medicare information on the Internet. This site, medicare.gov, was designed for partners in the national Alliance network and for others interested in providing and disseminating up-to-date

and timely information on the National Medicare Education Program to Medicare beneficiaries. The Alliance Network was "designed as a proactive alliance that helps each member organization improve program outcomes." Comprehensive information for partners involved in helping Medicare beneficiaries with their health care decisions is available on the medicare.gov/nmep web site. We need to receive quick feedback from our partners about the usefulness of the site to ensure that we are meeting their needs. Given that we are in the middle of the National Medicare Education campaign, without an expedited clearance, we would be unable to make changes to the medicare.gov/nmep web site based on feedback from Alliance members and other consumers and to conduct an ongoing review.

The purpose of this submission is to request approval to collect information from Internet users as they exit from the web site medicare.gov/nmep which is provided by the Health Care Financing Administration. It is critical to obtain feedback from users of this web site so that the agency can continually revise the site to respond to the needs of the partners and Medicare beneficiaries. As part of the effort to determine how the web site can serve the partners best, we request approval from OMB of "bounceback" form. Internet users will fill out a bounceback form after visiting the web site. The results of the form will be compiled and studied so that future revisions to the web site are guided by the needs and preferences of the people who use the web sites.

HCFA is requesting OMB review and approval of this collection by July 7, 1999, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below, by July 6, 1999.

During this 180-period, HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR 1320.

Type of Information Collection Request: New Collection;

Title of Information Collection: Collection of Assessment Information on the HCFA website: www.medicare.gov/nmep;

Form Nos.: HCFA–R–0286;

Use: The purpose of the bounceback forms is to provide feedback to HCFA. The information collected through the bounceback form will be used in conjunction with other information collected about the web sites through focus groups and interviews with members of the Alliance Network. The combined information will guide future improvements to the web sites. There is no plan to disseminate the information, other than through public health, medical, or other professional journals, in which we may report the results.

Frequency: Users will have the opportunity to complete the bounceback form whenever they exit the web site.

Affected Public: Individuals or households, business or other for profit, and not for profit institutions;

Number of Respondents: 49,300;

Total Annual Responses: 49,300;

Total Annual Hours: 5,752;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designee referenced below by July 6, 1999:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262 Attn: Louis Blank HCFA–R–0286

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: June 17, 1999.

John Parmigiani,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–16268 Filed 6–25–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

Administration for Children and Families (ACF)

Program Announcement CFDA #93.576: Refugee Resettlement Program; Community and Family Strengthening

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS

ACTION: Notice of Availability of FY 1999 discretionary social service funds for refugee [1] community and family strengthening and integration.

SUMMARY: The Office of Refugee Resettlement invites eligible entities to submit competitive grant applications for community and family strengthening and integration services. Applications will be screened and evaluated based on criteria as indicated in this program announcement and the availability of funds.

CLOSING DATE: For submission of applications is July 27, 1999. For more application information, see Part IV of this announcement.

ANNOUNCEMENT AVAILABILITY: This announcement is published on the ORR website at: http://www.acf.dhhs.gov/programs/orr/.

FOR FURTHER INFORMATION CONTACT: Anna Mary Portz, Program Manager, ACF/ORR Division of Community Resettlement, 370 L'Enfant Promenade, SW, 6th Floor, Washington, DC 20447 telephone (202) 401–1196, or e-mail: aportz@acf.dhhs.gov.

SUPPLEMENTARY INFORMATION: This announcement consists of four parts: Part I. Background—Legislative Authority, Funding Availability, Purpose and Objectives; Part II. Project and Applicant Eligibility—Eligible Applicants, Project Period; Part III. The Review Process—Intergovernmental Review, Initial ACF Screening, Competitive Review, Review Criteria;

[1] In addition to persons who meet all requirements of 45 CFR 400.43, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167) and 1991 (Pub. L. No. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

and, Part IV. The Application—Application Development, Guidelines for Preparing a Project Description, Application Submission, Regulations and Reporting.

Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collections are included in the program announcement: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD), which expires 10/31/2000, and OMB Approval No. 0970–0036, ORR Quarterly Performance Report (QPR). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I. Background

Legislative Authority:

Section 412(c)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1522, authorizes the Director of ORR "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—* * *(iii) to provide where specific needs have been shown and recognized by the Director,* * * social services, educational and other services." Projects funded through ORR discretionary programs are not restricted to serving refugees who have arrived within the last five years.

Funding Availability

ORR expects to award $3 million in FY 1999 discretionary social service funds through approximately 15 grants ranging in amounts from $150,000 to $350,000.

The Director may award more or less than the funds described in the announcement. Applicants may be required to reduce the scope of selected projects based on the amount of the approved grant award.

Purpose and Objectives

This program announcement governs the availability of and award procedures for the FY 1999 Community and Family Strengthening and Integration (CFSI) Program and provides an opportunity for States and nonprofit organizations to request funding for activities which supplement and complement employment-related services by strengthening refugee families and communities and by enhancing their integration into mainstream society.

Cultural and Linguistic Compatibility

In all cases, regardless of the nature of the organization proposed to provide services or conduct activities funded under this announcement, the services/activities should be conducted by staff linguistically and culturally compatible with the refugee families or communities to be served. In addition, the applicant must describe how proposed providers will have access to the families and to the community to be served.

Project planners must consult with representatives of the target population. For example, a project designed to assist refugee single mothers needs to be designed in consultation with them.

Furthermore, if interpreters are proposed in the first budget period, applicants must demonstrate how these staff will be used in subsequent years of the project, and whether they will be trained to assume an integral role in the project, such as to become service providers.

Applicants and all private partners should provide evidence that their governing bodies, boards of directors, or advisory bodies are representative of the refugee communities being served, and have both male and female representation.

Cost-sharing

This announcement is intended to encourage service planners and providers to address the various unmet needs of refugee families and communities relative to existing services, the capacity of the service-providing network, and ultimately the community's capacity to continue the activity without additional ORR resources beyond the three-year project period of this announcement. Long-range viability may depend on: Linkages to activities funded by other sources, the availability of expertise in the community, the likelihood of tangible results, the relatedness of proposed activities to existing activities, and the willingness of the community to participate actively in assuring the success of the project including volunteer commitment.

Because funding under this program announcement is limited, applicants are urged to plan for the use of these funds together with other Federal, State, and private funds available to assist the target populations and to carry out similar programs and activities. To this end, successful applicants will propose and commit to a minimum cost-sharing (cash or in-kind) of ten percent of the initial budget period (first year) costs. In subsequent continuation applications, the grantee will be asked to document receipt of non-ORR funds from other sources. The requirement will be not less than 25 percent of the full budget for the second year award and not less than 40 percent for the third year. For example, if the original budget is $150,000, the federal share for that year may be $135,000 (90%). In the second year, the federal award might be $112,500, and the grantee would be required to provide, at a minimum, cost-sharing of $37,500, or 25 percent of the full budget, in cash or in-kind support. Only in unusual circumstances will the Director of ORR entertain a request from the grantee to reduce or waive the cost-sharing requirement.

Allowable Activities

ORR will consider applications for services which an applicant justifies, based on an analysis of service needs and available resources to address the social and economic problems and integration needs of refugee families and of the refugee community. It should be clear what is the goal or expected outcome of the activity, how it responds to the particular needs of families in that community or to a broader need of the community of families, who is committed to do what in order to accomplish this goal, and how the proposed activity fits into the existing network of services.

The specific services proposed may be as diverse as the refugee populations and the resettlement communities themselves. Proposed activities and services should be planned in conjunction with existing service providers and should supplement and complement their services. Special attention should be placed on enhancing refugee access to services available to all citizens, such as those for the elderly, youth or special needs populations.

Some examples of allowable activities:

Integration Into U.S. Communities

Activities designed to inform the refugee community about issues essential to effective participation in the new society.

Assistance to parents in connecting with the school system and other local community organizations.

Continuing education programs for U.S.-recognized recertification or skill-building.

Classes in parenting skills, including information about U.S. cultural and legal issues, e.g., corporal punishment, generational conflict, and child abuse.

Providing immigration-related services, e.g., adjustment of status,

family reunification, and naturalization, through Board of Immigration Appeals (BIA) accredited agencies.

Facilitating assimilation of refugee groups through skill-building workshops or technical assistance services.

Information and community involvement that will ensure that refugees are accurately counted in the Year 2000 Census.

Mentoring Programs and Peer Support

Pairing participant individuals or families with community volunteers. Programs should target refugees who are past the initial resettlement phase, and mentoring should target needs they identify.

Assisting subgroups to form a common bond for resolution of peer-specific problems. The purposes are to solve individual, family, and community problems with the support of peers and to solve common problems through group action.

Promoting pride and self-confidence in personal identity.

Specialized English Language Training

Specialized classes for groups outside the regular classes, e.g., homebound women, or elderly. Use of volunteers is encouraged. Accessibility of site and time is important.

Combating Violence in Families

Information and training against domestic violence, child abuse, sexual harassment and coercion, roles of men and women in U.S. culture, and techniques for protection.

Linkages to mainstream service providers to ensure access to culturally appropriate services.

Training and/or bilingual staff for women's shelters.

Crime Prevention/Victimization

Activities designed to improve relations between refugees and the law enforcement communities: (a) Public service officers or community liaisons; (b) neighborhood storefronts and/or watch programs; (c) gang prevention programs; (d) cross cultural training for the law enforcement community (police departments, court system, mediation or dispute management centers).

Note: Law enforcement activities, such as hiring sworn police officers (except those who are public service officers or community liaison officers), fingerprinting, incarceration, etc., are outside the scope of allowable services under the Refugee Act and will not be considered for funding. Other unallowable activities are those limited to, or principally focused on, parole counseling, court advocacy, and child protection services.

Refugee Community Centers and Organizing

Operating community centers for the delivery of services to refugee individuals and families. Centers may also be used for recreation, information and referral services, childcare, community gatherings, and documentation and analysis of refugee success stories and best practices in successful integration. (Costs related to construction or renovation will not be considered, and costs for food or beverages are not allowable).

Communities may be organized for housing or consumer cooperatives, for youth activities, for services to elderly refugees, for volunteer mentoring services, and for crime prevention.

The above are only examples of services. They are not intended to limit potential applicants in community planning. They are listed and generically described without regard to the population to be served. It will be necessary in the application to describe more specifically the target population. For example, one activity might appropriately be designed to serve only homebound women. Another might be designed for teenagers and their parents; another for elderly. Some might be targeted for all members of the family. Applications should correlate a planned activity with specific target audiences and discuss the relationship between the proposed activities and the target population.

Non-Allowable Activities

Funds will not be awarded to applicants who propose to engage in activities which are designed primarily to promote the preservation of cultural heritage or which have an international or political objective. ORR encourages refugee community efforts to preserve cultural heritage, but believes communities should support these activities with alternative funding.

Part II. Project and Applicant Eligibility

Eligible Applicants

Public and private nonprofit organizations, including current CFS grantees whose projects end on September 30, 1999, are eligible to apply for ORR grants.

Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission. The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Coalitions

Refugee programs and local organizations, which have not already done so, are encouraged to build coalitions for the purpose of providing services funded under this announcement. The activities funded by these grants are intended to serve as a catalyst to bring the community together to address the economic and social problems of refugee families and the refugee community. The goal in all cases should be to build and strengthen the community's capacity to serve its members in improving the quality of life and standard of living for refugee families.

ORR strongly encourages single applications from partnerships or consortia of three or more eligible organizations. Applicants must demonstrate that wherever potential partners for collaboration exist, the applicant, at a minimum, has planned the proposed activities in collaboration with these potential partners. Partners may be in the refugee services provider community of organizations and institutions, or in mainstream services organizations, e.g., adult basic education providers, child care coalitions, or women's shelters. Collaboration may also include the Mayor's office, school parent-teacher groups, local police departments, and other mainstream community service organizations. All applicants should demonstrate existing refugee community support for their agency and their proposed project. If the applicant is located in an area where no other organizations work with refugees, and a coalition with other organizations is not possible, the applicant should demonstrate how the proposed services will be effectively provided by a single agency.

The process of coalition-building is key to strengthening cooperation and coordination among the local service providers, community leaders, Mutual Assistance Associations, voluntary agencies, churches, and other public and private organizations involved in refugee resettlement or community service. ORR intends that this process will be part of local efforts to build strategic partnerships among these groups to expand their capacity to serve the social and economic needs of refugees and to give support and direction to ethnic communities facing problems in economic independence and social adjustment. In this context, ORR is defining partnership as a formal negotiated arrangement among organizations that provides for a substantive collaborative role for each of the partners in the planning and conduct of the project. Applications which represent a coalition of providers should include a signed partnership agreement stating a commitment or an intent to commit or receive resources from the prospective partner(s) contingent upon receipt of ORR funds. The agreement should state how the partnership arrangement relates to the objectives of the project. The applicant should also include: Supporting documentation identifying the resources, experience, and expertise of the partner(s); evidence that the partner(s) has been involved in the planning of the project; and a discussion of the role of the partner(s) in the implementation and conduct of the project.

Project Period

This announcement invites applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for subsequent year continuation grants funded under these awards will be entertained on a noncompetitive basis, subject to: availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

Part III: The Review Process

Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/territory participation in the Intergovernmental review process does not signify applicant eligibility for financial assistance under A program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its single point of contact (SPOC), if applicable, or to ACF.

As of November 20, 1998, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, American Samoa, Colorado, Connecticut, Kansas, Hawaii, Idaho, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility criteria of the program may still apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Further, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, ORR Grants Officer, 370 L'Enfant Promenade, SW, Sixth Floor East, Washington, DC 20447. A list of the Single Points of Contact for each State and Territory is included with this program announcement.

Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

Competitive Review and Review Criteria

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel.

The review criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the criteria within the context of this program announcement. Applicants are encouraged to organize their narrative accordingly. Proposed projects will be reviewed based on the following criteria.

1. Objectives and Need for Assistance (25 points)

Profile of refugee community and target population by geographic area or ethnic group of the refugee community to be served, including numbers, ethnicity, welfare utilization pattern, number of refugee families in the community, family characteristics, and an assessment of attitudes of the refugees and the general community toward each other. Clarity of description and soundness of rationale for selection of targeted community or population.

Adequacy and quality of data provided and quality of the analysis of data provided in the application with special regard to ethnic group, refugee families, women, or youth. Clarity and comprehensiveness of needs identification and problem statement and of the description of the local context in which grant activities are proposed. Comprehensiveness of description of existing services and community network and explanation of how the proposed services complement what is already in place. Evidence of consultation with target population.

2. Approach and Results Expected (30 points)

Soundness of strategy and program design for meeting identified needs. Identification of projected performance outcomes and proposed milestones measuring progress, as appropriate to the services proposed by the end of the first budget period and over the entire requested project period. (ORR encourages applicants, to the extent possible, to develop innovative quantifiable measures related to the desired service impact for purposes of monitoring and project assessment.)

The tangibility of the outcomes proposed and the potential for achieving the outcomes within the grant's project period. The potential of the project to have a positive impact on the quality of the lives of refugee families and communities (1) by improving refugees'

abilities: To access services, to provide mutual assistance, and to demand or create services where they are not already available; and (2) by instituting changes among service providers to make them more accessible to refugees.

Adequate detail in the description of linkages with other providers and roles of collaborating agencies in project implementation.

Extent to which the need described is expected to be met and to which the services will be augmented, supplemented, or integrated with existing services.

3. Applicant/Coalition Capability (25 points)

Validity and reasonableness of the proposed coalition arrangement to perform the proposed activities. Commitment of coalition partners in implementing the activities as demonstrated by letters or the terms of the signed agreement among participants. (Where potential coalition partners are documented to be unavailable, the applicant will not be penalized under this criteria. However, the applicant should describe any consultation efforts undertaken and consultation with the refugee community.)

Experience of the applicant coalition in performing the proposed services. Adequacy of gender balance and constituent representatives of board members of participant organizations or of the proposed project's advisory board. Adequacy of assurance that proposed services will be delivered by staff linguistically and culturally appropriate to the target population.

Qualifications of the individual organization staff and any volunteers. Detailed description of the administrative and management features of the project including a plan for fiscal and programmatic management of each activity, proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. A description of information collection (participant and outcome data) and monitoring proposed.

4. Budget And Financial Management (20 points)

Reasonableness of budget and narrative justification in relation to the proposed activities and anticipated results.

Adequacy of proposed monitoring and information collection. Realistic plan for the continuation of services with a phase-out of ORR grant funding over the multi-year project period. Extent to which the application makes provision for cost-sharing (i.e. leveraging ORR funds with non-Federal funds or in-kind support) to maintain the full budget during the overall project. If available, the value of such leveraged funds or in-kind support and any preliminary commitments.

The extent to which the award is projected to be augmented or supplemented by other funding during and beyond (i.e. in the second and any subsequent year of) the grant period, or can be integrated into other existing service systems.

Part IV. The Application

Application Development

In order to be considered for a grant under this program announcement, an original application and two copies must be submitted on the Standard Form 424 and in the manner prescribed by ACF. Applicants are encouraged to limit project descriptions to 15 *pages* (typewritten, double-spaced on standard, letter-size paper) *plus no more than 20 pages of appended material.* These limitations should be considered as a *maximum*, and not necessarily a goal to be achieved. Applicants are advised to use standard (12 point) font size for the application narrative. Standard Federal application forms and instructions are available from the contact named in the preamble of this announcement.

Guidelines for Preparing a Project Description

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly.

Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

General Instructions

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. Program income from activities funded under this program may be added to the funds committed to the project (if any income is expected to be generated from this project).

Non-competing Continuations

For subsequent budget periods within the three-year project period, a full project description will not be required unless requested in writing by the Director of ORR, an ACF Program Official.

Supplemental Applications

For a supplemental assistance request, explain the reason for the request and justify the need for additional funding. Provide a budget and budget justification *only* for those costs for which additional funds are requested.

Application Submission

1. Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: DHHS, ACF, Office of Refugee Resettlement, Attention: Shirley B. Parker, ORR Grants Officer, 370 L'Enfant Promenade, SW, Sixth Floor, Washington, DC 20447.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine-produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always reflect the date of mailing on the package or deliver as agreed.)

Applications hand-carried by applicants, couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, ACF Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Shirley B. Parker, ORR Grants Officer."

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

2. Late applications. Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of deadlines. ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there is widespread disruption of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Regulations and Reporting

Applicable HHS regulations can be found in 45 CFR Parts 74 and 92.

Grantees under this program announcement will be required to provide semi-annual program performance reports on the ORR Quarterly Performance Report (QPR—OMB Approval No. 0970–0036) including appropriate reports on Schedule C. Grantees will submit semi-annual financial reports using the Financial Status Report form (SF–269). A Final Financial and Program Report shall be due 90 days after the end of the Grant Project Period (i.e. only after the final budget period).

Dated: June 22, 1999.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 99–16281 Filed 6–25–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Settlement

Administration for Children and Families (ACF); Community Service Employment Opportunities

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Notice of Availability of FY 1999 discretionary funds to provide Community Service Employment opportunities for refugees [1] who have experienced long-term difficulties with assimilation.

SUMMARY: This program announcement governs the availability of social services funds and award procedures for $3 million in FY 1999 discretionary grants to provide community service employment opportunities for refugees who have experienced long-term difficulties with assimilation. These grants, which will be awarded on a competitive basis, are for localities with large concentrations of refugees who have experienced difficulty integrating socially and economically into local communities. Eligible grantees are private, non-profit organizations and agencies of State government that are responsible for the refugee program under 45 CFR 400.5. Applications may include project periods of up to three years, with an initial budget period of one year. Where awards are made for a multiple year project period, continuation grant applications will be entertained in subsequent years on a noncompetitive basis, subject to the availability of funds, successful progress of the project, and ACF/ORR's determination that this would be in the best interest of the government.

DATES: The closing date for applications is July 30, 1999.

ADDRESSES: Address applications to: Shirley Parker, Grants Officer, Office of Refugee Resettlement, 6th Floor East, Aerospace Building, 370 L'Enfant Promenade, SW, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Carolyn Plummer, Program Analyst, Division of Community Resettlement (DCR), ORR, Administration for Children and Families (ACF), Telephone: (202) 401–5449; Fax: (202) 401–5487; E-mail: CPlummer@acf.dhhs.gov).

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background—program purpose, program objectives, legislative authority, funding availability, CFDA number, definition of terms

Part II: Project and Applicant Eligibility—funding priorities, preferences, eligible applicants, project and budget periods, multiple applications, treatment of program income

Part III: The Review Process—intergovernmental review, initial ACF screening, evaluation criteria and competitive review

Part IV: The Application—application materials application development, application submission

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average fourteen hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The following information collection is included in the program announcement: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD), which expires 10/31/2000. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I. Background

Program Purpose and Objectives: There are communities across this

[1] In addition to persons who meet all requirements of 45 CFR 400.43, "Requirements for documentation of refugee status," eligibility for targeted assistance includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

country with large concentrations of refugees, many of whom entered the United States over a decade ago. For some refugees, language skills, cultural barriers, the lack of financial resources, and years of relying on public assistance, have isolated them from the mainstream, limited their employment opportunities and hindered integration into American communities. Their rate of assimilation has been documented in many localities on such key indicators as poverty levels, welfare utilization, car and home ownership, high school completion, college attendance or graduation, language fluency, employment rates, household income, per capita income, and naturalization rates.

In some of these communities, refugees represent a significant percentage of the population and, relative to non-refugee groups, have a sizeable impact on local services, medical clinics, and school systems.

The purpose of this announcement is to improve refugee rates of assimilation in heavily impacted communities by providing funding for workforce experience, earned income for refugees and their families, and increased access to needed services for refugees.

Legislative Authority: This program is authorized by Section 412(c)(1)of the Immigration and Nationality Act (8 U.S.C. 1522(c)(1), as amended. Section 412(c)(1)(A) of the INA authorizes the Director of ORR "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services."

Grant awards are also subject to the following federal regulations: 45 CFR part 74—Uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations; and certain grants and agreements with States, local governments and Indian tribal governments and 45 CFR part 92, Uniform administrative requirements for grants and cooperative agreements to State and local governments.

Funding Availability: Approximately $3 million will be available for awards. It is expected that most grant awards will be between $300,000 and $500,000. ORR anticipates making 6 to 10 awards with these funds for projects that will secure employment for approximately 100 eligible participants during the approved project period.

The Director of ORR will make final award decisions based on such factors as: the geographic distribution of the competitive applications; the extent to which the grants reflect a reasonable distribution of funds across the areas impacted by refugees, and the availability of funds. Successful applicants will receive grants to identify and develop subsidized employment opportunities for unemployed refugees at local organizations. Applicants must demonstrate a specific need for supplementation of available resources to provide these services for refugees.

Projects funded under this announcement will be designed to (a) Connect refugees to the labor force, (b) provide earned income to refugees and their households, and eventual transition to unsubsidized employment; and (c) through the presence and assistance of a refugee employee in these agencies, give refugee communities greater access to local community services. Grantees must establish a network of relationships with appropriate public or private employers to identify and develop suitable subsidized community service employment positions. Grant funds may be used to reimburse employers for up to 100% of the employment wage (including fringe benefits), for a maximum of 12 months, under the terms of a contract. In exchange for the salary subsidy, the employer agrees to provide the refugee employee additional supervisory assistance in learning the job and to retain the refugee employee in this position after the wage subsidy has ended. If insufficient funds are available to continue the position, it is expected that the employer will assist the refugee employee in securing other employment. Refugee employees should be eligible for all benefits available to all other employees at the work site. Applicants should identify the types and number of employment positions targeted in their project, including job descriptions, qualifications, and salary levels. Project participants must be paid an hourly wage equivalent to the prevailing rates of pay for persons employed in similar occupations by the same employer. No wage should be lower than the federal minimum wage.

Approximately 75–80% of grant funds should be designated for salary subsidies. Applicants may include 5% for employer incentives.

Within the remaining 15–20% of available funds, grantees may provide supportive services to assist project participants in retaining successful community service employment. Such supportive services may include: on-site technical assistance; employment counseling; work-related incidental expenses for such items as work shoes, uniforms, glasses, public transportation passes, etc. if these are not available from other sources.

If projects are designed and implemented by coalitions of local community agencies and refugee organizations, clear respective roles and responsibilities for each participating agency within the coalition must be identified and stipulated in a signed written agreement. Applicants must also provide for the creation of an advisory board, delineating the roles and responsibilities of each member, compensation, if any, to members, a definitive and measurable work plan, and a schedule of meetings. The advisory board must include members of the refugee community.

Funds may not be used for union-related activities, with the exception of union dues required in order for refugees to become employed; nor may funds be used for politically related employment as a form of political patronage. Wage subsidies must be used for a net increase in the number of positions within a given agency, not to replace currently funded positions. Refugees employed as a result of this project may not displace employed workers or workers on layoff. CFDA: The Catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.576.

Part II. Project and Applicant Eligibility

Under this announcement, the Office of Refugee Resettlement solicits applications from eligible applicants who wish to compete for funds to provide community service employment for refugees who have experienced long-term difficulties with assimilation into American communities.

Community service employment offers a job for the individual, household income for refugee families, community participation, cross-cultural exposure for public and private agencies, and access to community services for refugee communities. For these reasons, ORR is providing funding under this announcement to be used primarily for employer subsidies to create or increase the number of community work experience jobs for refugees.

Community service employment may be in the public or private sector; however, given the emphasis of this announcement on gaining refugee access to community services, ORR anticipates that most successful applicants will target these subsidies to public and private nonprofit organizations that may not otherwise have the resources to provide this type of employment. Eligible grantees are private, nonprofit organizations and agencies of State and local governments that are responsible for the refugee program under 45 CFR 400.5.

Refugees eligible to participate in projects funded under this announcement must be at least 21 years of age. Eligible participants must also either be unemployed, without earned income, or members of families receiving public assistance.

Refugees are eligible to participate in these projects if they have resided in the U.S. for a minimum of three years and residents of their communities for a minimum of six months. Refugees who have become U.S. citizens are ineligible to participate in this program. ORR anticipates that refugees targeted for these positions would be long-term welfare recipients (12 months or more) or those who face termination from Temporary Assistance for Needy Families (TANF) within the 12 month period following enrollment in this project.

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered being relevant. The Office of Refugee Resettlement uses this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must dintinguish between resources directly related to the proposed project from those that will not be used in support of the specified project for which funds are requested.

A. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

The Office of Refugee Resettlement is particularly interested in the following:

A description, with documentation, of the need for services within the proposed target area, including documentation of the number of refugees in the target area and the ratio between refugees and the non-refugee population in the community. Data and analyses of family and community needs, including the implications of welfare reform and employment patterns on family needs for child care and other support services. A discussion of how the targeted refugees have the most need of the proposed services. Submit evidence of poor assimilation of refugees relative to the community at-large. Indicators may include: poverty levels, public assistance utilization, unemployment, low rates of high school completion, college attendance, car and homeownership, and attainment of citizenship.

B. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Describe how community service employment positions will be developed with local employers; how these employers will be encouraged to customize the jobs and provide supervisory support to the employees under this project; identify any local employers who have made commitments to the project and describe them (e.g., number and types of jobs, supportive services and training, qualifications and salary levels, etc.).

Include a description of the proposed target area(s) for services, recruitment strategies, and priorities for selecting refugee clients for participation; and availability of other community services and resources for refugee employment.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target date. Identify the kinds of data to be collected, maintained and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF/ORR. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Note: ORR expects that all applicants funded under this announcement will begin serving refugees and their families no later than March, 2000.

C. Results or Benefits Expected

Identify the results and benefits to be derived for refugees and their families as well as for the community. Based on the stated program objectives, a discussion of the specific results or benefits that could be expected for the refugees and families participating in the program. A discussion of the specific community-wide results or benefits including those resulting from collaborative partnership with other community agencies including the agencies which employ refugees. The qualitative and quantitative data the program will collect to measure progress toward the stated results or benefits. A discussion of how the program will determine the extent to which it has achieved its stated objectives.

Applicants are encouraged to use ORR standards under the Government Performance And Result Act (GPRA) to measure project results. These are:

- The number of refugees who entered employment.
- Cash assistance terminations due to earnings.
- Average hourly wage at placement.
- Employment retention.
- Employment with health benefits.

The Office of Refugee Resettlement is particularly interested in the following: Numbers, types and average salaries of refugees to be employed in community service employment positions; the degree to which employee benefits, including medical coverage, are available for these jobs; expectations for job or employment retention after one year; expected average earnings one year

after placement into subsidized employment; cost per placement into subsidized community service employment.

The application may include other performance outcomes, as appropriate.

D. Organization Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501© (3) of the IRS code, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Describe the staff and systems capacity for managing the project, to include: key staff resumes or position descriptions; a project organizational chart identifying all agencies involved in the project and their respective roles and responsibilities; Identify the critical activities, time frames, and responsibilities for implementing the project.

Local Collaboration and Sustainability

Identify a coalition of key agencies, respective roles and responsibilities, and agreements. Describe the local partnerships and each member's contribution to the project; the extent to which the project is coordinated with key community activities; the commitment and integration of other community resources; any involvement of, or participation by, local employers; and the extent to which the community and the coalition have developed plans to maintain and expand the capacity to serve the targeted refugee population.

Identify and Submit Position Descriptions or Resumes for Advisory Board Positions.

The Office of Refugee Resettlement is particularly interested in the following:

Evidence of the applicant's ability and experience to administer an employment program and to manage a community service employment program. Include a discussion of any proposed changes and improvements in program management.

A description of the applicant's experience in management of employment services for refugees who have had a protracted history of unemployment. A description of the applicant's experience in management of community, State and Federal partnerships. A description of the applicant's history and relationship with the target community. Include a complete discussion of the program's financial status and program operations. Include an organizational chart of the program.

A Description of the Mechanisms for Recruiting and Hiring Well-Trained and Appropriately Credentialed staff Members

A discussion of all proposed key staff or managerial positions, their proposed salary rates, the length of time they would be employed each year and the applicant's plans for ongoing monitoring and supervision of other staff including refugees employed under the community employment service program if appropriate. Applicants who are electing to create partnerships with other agencies, providers, or funding sources should provide: letters of commitment from partner agencies and providers, including documentation of any additional resources such as child care, health care or transportation subsidies, etc. that will enhance the program. Explain and itemize these resources or services, and state whether or not these costs are included as part of the non-Federal share. Plans for managing, coordinating or monitoring, and assisting the efforts of partnering agencies and other forms of collaborative arrangements in meeting the goals of the project.

A description of the experience of the applicant and the proposed partnering agencies in collaborating to deliver effective employment services and in managing multiple sources of funding.

A description of how the applicant will track, manage and account for refugee employment costs and, if applicable, the availability of other funding sources.

E. Budget and Budget Justification

Provide line items and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The Office of Refugee Resettlement is particularly interested in the following:

A description of how your proposed budget is reasonable, appropriate and cost effective in view of the proposed services, strategies and anticipated outcomes.

A description of the extent to which your proposal includes significant other resources to complement the ORR funds.

General Instructions

ORR is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a Table of Contents should be included for easy reference.

The Office of Refugee Resettlement is also requesting that applicants provide a summary of the project description which includes:

The name and address of the applicant agency.

The total number of employment placements when the program is completed.

The total ORR funds requested for a 12 month period.

The amount and source of any additional funding that will help support the project (*i.e.,* funds that are in addition to Federal ORR funds.)

The community to be served (name of town(s), city(ies) and county(ies) and the targeted refugee groups.

The proposed type of jobs, hours per week and wages.

The target date for beginning full services to refugees.

Additional Information

Following is a description of additional information that should be placed in the appendix of the application.

1. *Staff and Position Data:* Provide a biographical sketch for each key person appointed and a job description for each vacant position. A biographical sketch will also be required for new key staff as appointed.

2. *Organizational Profile:* Provide information on the applicant organization and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, contact persons and telephone numbers, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Part III. The Review Process

A. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-four jurisdictions need not take action regarding Executive Order 12372. Applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. When comments are submitted directly to the ORR, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, 6th Floor East, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20447.

B. Competitive Review and Evaluation Criteria

Information provided in response to this announcement will be used to review and evaluation applications using the following criteria:

a. Need for Assistance To Increase Assimilation (20 points)

Quality of description and documentation with regard to the target refugee groups and their needs.

Program Design and Approach (15 points)

Soundness of and innovation in program design and methodology for securing community service employment for refugees, including evidence of prospects for placement and permanent employment opportunities.

Results and Benefits (30 points)

Employment results which are timely, appropriate, and measurable using ORR standards for outcome performance under GPRA.

Project Management and Implementation (15 points)

The extent of demonstrated capacity of the applicant organization, key leaders and managers and, where appropriate, proposed partnering organizations in managing the proposed community employment services in a timely, cost effective manner. Evidence of successful partnership with the targeted refugee communities, families, and other community organizations, institutions and agencies.

Cost Effectiveness and Budget Appropriateness (20 points)

The extent to which the project's costs are reasonable and cost-effective in view of the activities to be carried out and the anticipated outcomes. The extent to which proposed salaries and fringe benefits reflect appropriate levels of compensation for the responsibilities of staff and the Advisory Board (if compensation is necessary). The extent to which costs for refugee wages in community service employment are reasonable and equitable.

Part IV: The Application

A. Required Forms

Applicants interested in applying for funds must submit a complete application including the required forms—Standard Form 424 and attachments. In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget (OMB) under Control Number 0348–0043), a copy of which is available through the Administration for Children and Families/ORR website at: *http://www.acf.dhhs.gov/programs/orr* (at "Informational Materials" choose HHS application forms). Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, Assurances: Non-Construction Programs (approved by the Office of Management and Budget under Control Number 0348–0040). Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification concerning lobbying. Applicants must provide information consistent with ACF's approved Uniform Project Description (OMB # 0970–0139), as found in Part II of this Program Announcement. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under Control Number 0348–0046). Applicants must sign and return the certification with their application. Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application. Applicants must make the

appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application. Applicants must also understand that they will be held accountable for the smoking prohibition included within Public Law 103–227, Part C Environmental Tobacco Smoke (also known as Pro-Children's Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

B. Application Submission

One signed original and two complete copies of the grant application, including all attachments, are required. Each application must be limited to no more than 20 double-spaced pages of program narrative (not including the Project Summary and the forms which make up the SF–424A and Budget Justification).

If the narrative portion of the application is more than 20 double-spaced pages, the other pages will be removed from the application and not considered by the reviewers. The attachments/appendices to each application must be limited to no more than 15 pages, (in addition to the 20 pages permitted for the narrative portion of the application). If the attachments/appendices to each application are more than 15 pages, the other pages will be removed from the application and not considered by the reviewers.

C. Application Considerations

Applicants will be scored against the evaluation criteria described above. The review will be conducted by a panel consisting of experts in the areas of refugee and employment services. The results of the competitive review will be taken into consideration by the Director, Office of Refugee Resettlement, in determining the projects to be funded. The Director of ORR will make the final selection of the applicants to be funded. An application may be funded in whole or in part, depending on the relative need for services, applicant ranking, geographic location, proposed costs, and funds available.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, and the total project period for which support is provided.

D. Checklist for a Complete Application

A complete application consists of the following items in this order:

Introductory Material:

- Cover letter.
- Table of Contents.
- Project Description Summary.

(1) Application for Federal Assistance (SF424).

(2) Budget Information—Non-Construction Programs (SF 424 A and B).

(3) Budget Justification.

(4) Project Description and Appendices.

(5) Proof of non-profit status as appropriate.

(6) Assurances Non-Construction Programs.

(7) Certification Regarding Lobbying.

(8) Where appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424.

Applicants are reminded that the narrative portion of the application cannot exceed 20 double-spaced pages in a 12-pitch font with 1½ inch margins at the top and 1 inch at the bottom and both sides and that attachments/Appendices to the application can not exceed 15 pages. Attachments and appendices should be used only to provide supporting documentation such as maps, administration charts, position descriptions, resumes, and letters of intent/agreement. Please do not include books or videotapes as they are not easily reproduced and are, therefore, not accessible to the reviewers. Each page should be numbered sequentially.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. According to the instructions for completing the SF–424A and the preparation of the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel: Costs of employee salaries and wages. Justification—Identify the project director and for each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies.

Fringe Benefits: Costs of employee fringe benefits unless treated as part of approved indirect cost rate. Justification—Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). Justification—For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF/ORR-sponsored meetings should be detailed in the budget.

Equipment: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Justification—For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies: Costs of all tangible personal property other than that included under the Equipment category. Justification—Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, etc. Contracts with secondary recipient organizations, including delegate agencies (if applicable), should be included under this category. Justification—All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if procurement without competition is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Justify any anticipated procurement action that is expected to be awarded without competition and to exceed the simplified acquisition threshold fixed at 41 USC 403(11). Recipients might be required to make available to ACF pre-award review and procurement documents, such as requests for proposal or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development, and administrative costs. Justification—Provide computations, a narrative description and a justification for each cost under this category.

Indirect Costs: This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency. Justification—An applicant proposing to charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the agreement, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income: The estimated amount of income, if any, expected to be generated from this project. Justification—Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Non-Federal Resources: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424. Justification—The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process.

E. Due Date for the Receipt of Applications

Deadlines: The closing date for submission of applications is 4:30 p.m. (EDT) on July 30, 1999. Mailed applications shall be considered as meeting the deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ORR in time for the independent review. Applications should be mailed to: Ms. Shirley B. Parker, Grant Officer, Office of Refugee Resettlement, 6th Floor East, Aerospace Building 370 L'Enfant Promenade, SW., Washington, DC 20447.

Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand carried by applicants, courier services, or by overnight/express mail couriers shall be considered as meeting the announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., at the above stated address, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services may not always deliver as agreed. In addition, some non-postal service carriers will only deliver to ORR's street address which is 901 D Street SW. instead of 370 L'Enfant Promenade, SW.) ORR cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ORR electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ORR shall notify each late applicant that its application will not be considered.

Extension of deadlines: ORR may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ORR does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

Reporting Requirements—Grantees are required to file the Financial Status Report (SF–269) semi-annually and Program Progress Reports on a quarterly basis. Although ORR does not expect the proposed components/projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on expenditures by budget line item, project outcomes and participant demographics information which may include but is not limited to: date of birth, sex, country of birth, date of entry, education, employment history, marital status and number of children.

The official receipt point for all reports and correspondence is the Grant Officer, Office of the Director. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period. The mailing address is: Office of Refugee Resettlement, Sixth Floor East, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20447. A final Financial and Program Report shall be due 90 days after the budget expiration date or termination of grant support.

Dated: June 15, 1999.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 99–16337 Filed 6–25–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4366–FA–02]

Fiscal Year 1998 Public and Indian Housing Service Coordinator Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the FY 1998 Notice of Funding Availability (NOFA) for the Service Coordinator Program. This announcement contains the consolidated names and addresses of those award recipients under the

Service Coordinator Program and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Office of Public and Indian Housing's Grant Management Center Director Michael E. Diggs, Department of Housing and Urban Development, Washington, DC, telephone (202) 358–0221.

SUPPLEMENTARY INFORMATION: The Service Coordinator program is authorized by section 808 of the Cranston-Gonzalaz National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), as amended by sections 671, 676, and 677 of the Housing and Community Development Act of 1992 (Pub L. 102–550, approved October 28, 1992) and section 673 of the Housing and Community Development Act of 1992 (42 U.S.C. 1437g).

The 1998 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on June 1, 1998 (63 FR 29874). Applications were scored and selected for funding based on the selection criteria in that Notice.

A total of $6,500,000 was awarded to 80 Service Coordinator grantees who have submitted comprehensive implementation plans with specific measurable goals to promote self sufficiency of public and Native American housing residents. In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards provided in Appendix A to this document.

Dated: June 22, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—GRANTEES FOR THE SERVICE COORDINATOR PROGRAM, FISCAL YEAR 1998

Grantees	Amount
Florence Housing Authority, 303 North Pine Street, Florence, AL 35630	$38,576
Phenix City Housing Authority, 200 16th Street, Phenix City, AL 36868–0338	34,027
North Little Rock Housing Authority, 22nd and Division, North Little Rock, AR 72114	52,050
San Diego Housing Commission, 1625 Newton Avenue, San Diego, CA 92113–1038	54,888
Kern County Housing Authority, 525 Roberts Lane, Bakersfield, CA 93308	45,700
Housing Authority of the City of Norwalk, P.O. Box 508; 24½ Monroe Street, Norwalk, CT 06856	36,900
Housing Authority of the City of Hartford, 475 Flatbush Avenue, Hartford, CT 06016	44,840
East Hartford Housing Authority, 546 Burnside Avenue, East Hartford, CT 06108	45,000
West Haven Housing Authority, 15 Glade Street, West Haven, CT 06516	52,600
Miami Dade Housing Agency, 1401 N.W. 7th Street, Miami, FL 33125	230,000
Fort Pierce Housing Authority, 707 North 7th Street, Fort Pierce, FL 34950	45,550
Jacksonville Housing Authority, 1300 Broad Street, Jacksonsville, FL 32202	53,820
Housing Authority of the City of of Des Moines, Iowa, 1101 Crocker Street, Des Moines, IA 50308–1199	94,612
Chicago Housing Authority, 626 West Jackson Blvd. Chicago, IL 60661–5601	600,000
Decatur Housing Authority, 1808 East Locust Street, Decatur, IL 62521	38,856
Joliet Housing Authority, 6 South Broadway Street, Joliet, IL 60434	62,405
Lake County Housing Authority, 33928 N. Route 45, Grayslake, IL 60030	27,000
Rockford.Housing Authority, 223 South Winnebago Street, Rockford, IL 61102	55,335
Kokomo Housing Authority, 210 East Taylor, Kokomo, IN 46903–1207	34,586
Hammond Housing Authority, 7329 Columbia Circle West, Hammond, IN 46324–2831	50,000
Indianapolis Housing Authority, Five Indiana Square, Indianapolis, IN 46204	181,160
Housing Authority of the City of Lawrence, KS, 1600 Haskell Avenue, Lawrence, KS 66044	31,402
HA of Glasgow, P.O. Box 1745, Glasgow, KY 42141	27,209
HA of Paducah, 2330 Ohio Street, Paducah, KY 42003	42,294
HA of Henderson, 111 S. Adams St., Henderson, KY 42420	33,519
Lynn Housing Authority, 174 South Common Street, Lynn, MA 01905	44,000
Boston Housing Authority, 125 Amory Street, Boston, MA 02119	222,569
New Bedford Housing Authority, 134 S. Second Street, New Bedford, MA 02741	42,644
Fall River Housing Authority, 85 Morgan Street, Fall River, MA 02722	46,670
Worcester Housing Authority, 40 Belmont Street, Worcester, MA 01605	232,704
Housing Authority of Baltimore City, 417 E. Fayette Street, P.O. Box 1917, Baltimore, MD 21202	287,946
HOC of Montgomery County, 10400 Detrick Avenue, Kensington, MD 20895	47,553
Portland Housing Authority, 14 Baxter Boulevard, Portland, ME 04101	80.262
Flint Housing Commission, 3820 Richfield Road, Flint, MI 48506	55,000
Plymouth Housing Commission, 1160 Sheridan, Plymouth, MI 48170	32,000
Port Huron Housing Commision, 905 Seveth St., Port Huron, MI 84060	31,750
Inkster Housing Commision, 4500 Inkster Rd, Inkster, MI 48141	37,856
Minneapolis Public Housing Agency, 1001 Washington Ave, North, Minneapolis, MN 55401	225,000
Duluth HRA, 222 East 2nd Street, P.O. Box 16900, Duluth, MN 55816–0900	50.662
South St. Paul HRA, 125 3rd Avenue North, South St. Paul, MN 55075	53,469
Housing Authority of Kansas City, Missouri, 299 Paseo, Kansas City, MO 64106	60,907
Housing Authority of the City of St. Joseph Missouri, 502 South 10th Street, St. Joseph, MO 64502	36,500
Housing Authority, City of Raleigh, 600 Tucker Street, Raleigh, NC 27611	36,650
Minot Housing Authority, 310 Second Street SE, Minot, ND 58701	38,535
Laconia Housing and Redevelopment Authority, 25 Union Avenue, Laconia, NH 03246	30,888
Manchester Housing and Redevelopment Authority, 198 Street, Manchester, NH 03104	23,932
Millville Housing Authority, P.O. Box 803, 122 E. Main Street, Millville, NJ 08332	33,500
Secaucus Housing Authority, 700 County Avenue, Secaucus, NJ 07094	30,000
Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202	63,517
Town of Ramapo Housing Authority, Pondview Drive, Suffern, NY 10901	35,000
Schenectady Housing Authority, 372 Broadway, Schenectady, NY 12305	50,000
Elmira Housing Authority, 346 Woodlawn Avenue, Elmira, NY 14901	41,070
Jamestown Housing Authority, 110 West Third Street, Jamestown, NY 14701	50,276

APPENDIX A.—GRANTEES FOR THE SERVICE COORDINATOR PROGRAM, FISCAL YEAR 1998—Continued

Grantees	Amount
Ashtabula Metropolitan Housing Authority, 3526 Lake Avenue, Ashtabula, OH 44005	41,900
Miami PHA, 205 B Street, NE, Miami, OK 74354	34,440
Housing Authority and Urban Renewal Agency of Polk County, 204 SW, Walnut, Dallas OR 97338	35,105
Housing Authority of Portland, 135 SW Ash, Portland, OR 97204–3540	182,440
Northumberland County Housing Authority, 50 Mahoning Street, Milton, PA 17847	32,480
Newport Housing Authority, One York Street, Newport, RI 02840	30,000
Pawtucket Housing Authority, 214 Roosevelt Avenue, Pawtucket, RI 02862	78,750
Charleston H.A., 20 Franklin Street, Charleston, SC 29401	55,000
Metropolitan Development & Housing Agency, 701 South 6th Street, Nashville, TN 37206	117,086
Knoxville Community Development Corporation, 901 Broadway, Knoxville, TN 37927	351,648
Chattanooga Housing Authority, 505 West ML King Jr., Blvd, Chattanooga, TN 37401	241,370
Memphis Housing Authority, 700 Adams Avenue, Memphis, TN 38103	150,808
Housing Authority of the City of Austin, 1640–13 East Second Street, Austin, TX 78702	61,790
Laredo Housing Authority, 2000 San Francisco Avenue, Laredo, TX 78040	34,880
Housing Authority of the City of San Antonio, 818 South Flores, San Antonio, TX 78207	283,936
Dallas Housing Authority, 3939 N. Hampton Road, Dallas, TX 75212	55,851
Temple Housing Authority, 700 East Calhoun, Temple, TX 76503	31,304
Beaumont Housing Authority, 4925 Concord Road, Beaumont, TX 77708	46,150
Ft. Worth Housing Authority, 1201 East 13th Street, Ft. Worth, TX 76102	46,648
Waco Housing Authority, 1001 Washington, Waco, TX 76703	30,559
Richmond Redevelopment and Housing Authority, 901 Chamberlayne Parkway, Richmond, VA 23220	277,688
Norfolk Redevelopment and Housing Authority, P.O. Box 968, Norfolk, VA 23501	61,616
Housing Authority of the City of Everett, 3107 Colby, Everett, WA 98206–1547	35,052
Housing Authority of City of Tacoma, 902 South "L" Street, Tacoma, WA 98405	59,389
Oshkosh Housing Authority, 600 Merrit Avenue, Oshkosh, WI 54901	38,030
Appleton Housing Authority, 525 N Oneida Street, Appleton, WI 54911	20,000
The Huntington West Virginia Housing Authority, 30 Nothcott Court, Huntington, WV 25722	32,891

[FR Doc. 99–16389 Filed 6–25–99; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988) and 41 CFR 101–6.1015(b). The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum to be held on Tuesday, July 6, 1999, beginning at 9:15 a.m. It will take place in Room 114 of the South Kaloa Building, 1689 C Street, Anchorage, Alaska. This meeting will be held to receive and discuss work group reports on recreation and tourism. The agenda will also include several briefing items.

FOR FURTHER INFORMATION CONTACT: Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 465–4084.

Marilyn Heiman,

Special Assistant to the Secretary for Alaska, Department of the Interior, Office of the Secretary.

[FR Doc. 99–16476 Filed 6–25–99; 8:45 am]

BILLING CODE 4310–RP–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with Section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27), notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry activities have been issued to the following companies:

Company	Activity	Date issued
BP Exploration (Alaska) Inc..	Exploration	June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Rosa Meehan or Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammal Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3800.

SUPPLEMENTARY INFORMATION: All Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rule and Regulations "Marine Mammals; Incidental Take During Specified Activities" [64 FR 4328].

Dated: June 16, 1999.

David B. Allen,

Regional Director.

[FR Doc. 99–16269 Filed 6–25–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Biological Resources Division; Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number [illegible] has up to 60 days t[illegible] disappro[illegible]e the [illegible] but may [illegible] public [illegible]d be submitted to OM[illegible]vs in order to assure their [illegible]n consideration. Comments and suggestions on the requirement should be made directly to

the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to the Bureau Clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192. A request extending the information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive., Reston, Virginia, 20192, telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Frogwatch USA.

Current OMB Approval Number: 1028–0072.

Summary: The collection of information referred herein applies to a World-Wide Web site that permits individuals to submit records of the number of calling amphibians at wetlands. The Web site is terms Frogwatch USA. Information will be used by scientists and federal, state, and local agencies to identify wetlands showing significant declines in populations of amphibians.

Estimated Annual Number of Respondents: 500.

Estimated Annual Burden Hours: 3,625 hours.

Affected Public: Primarily U.S. residents.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313, or see the website at www.mp2-pwrc.usgs.gov/frogwatch/.

Dated: June 16, 1999.

Denny Fenn,

Chief Biologist.

[FR Doc. 99–16270 Filed 6–25–99; 8:45 am]

BILLING CODE 4310–81–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–1610–00]

Public Notification of the Release of the Red Rock Canyon National Conservation Area Proposed General Management Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, DOI.

ACTION: The Las Vegas Field Office of the Bureau of Land Management announces the availability of, and 90 day comment period on, the Proposed General Management Plan (GMP) and Draft Environmental Impact Statement (DEIS) for the Red Rock Canyon National Conservation Area (NCA).

SUMMARY: The GMP/DEIS has been prepared in accordance with Public Laws 101–621 and 103–450 which designated and amended the NCA and required preparation of a management plan. The GMP/DEIS covers the 196,000 acres in the NCA as expanded in 1994. When completed, the Final GMP will replace the Interim GMP adopted in 1995.

Copies of the plan may be acquired by calling (702) 647–5000 or writing the address listed below. The GMP/DEIS may also be found on the U.S. Department of the Interior, Bureau of Land Management, Nevada web site at http://www.nv.blm.gov.

DATES: This announcement initiates a 90 day public comment period on the GMP/DEIS starting on July 1, 1999 and ending on September 30, 1999.

ADDRESSES: Comments should be sent to Bureau of Land Management, Attention: Field Office Manager, 4765 W. Vegas Drive., Las Vegas, NV 89108. Comments may also be hand delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Gene Arnesen, GMP Team Leader, at (702)–647–5000.

SUPPLEMENTARY INFORMATION: Open houses will be held to provide the public an opportunity to discuss the Proposed GMP with BLM staff and management and have specific questions or concerns addressed. Open houses have been scheduled for July 14, 1999 from 1 to 4 pm; July 15, 1999 from 7 to 10 pm; and July 17, 1999 from 2 to 5 pm at the BLM Field Office, 4765 West Vegas Drive, and at the Red Rock Canyon Visitor Center on July 18, 1999 from 4 to 8 pm.

Dated: June 15, 1999.

Michael F. Dwyer,

Field Office Manager, Las Vegas.

[FR Doc. 99–16272 Filed 6–25–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Tuesday August 3, 1999, at the Bureau of Land Management Office in Craig, Colorado.

DATES: Tuesday, August 3, 1999.

ADDRESSES: For further information, contact David Atkins, Bureau of Land Management (BLM), Northwest Center, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3074.

SUPPLEMENTARY INFORMATION: The Northwest Resource Advisory Council will meet on August 3, 1999, at the Bureau of Land Management Office, 455 Emerson Street, Craig, Colorado. The meeting will start at 9 a.m. and include discussions of fire planning, the proposed statewide recreation guidelines, Service First, grazing permit renewals, and wilderness review.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained at the Bureau of Land Management Office in Grand Junction. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: June 21, 1999.

Mark T. Morse,

Center Manager, Northwest Center.

[FR Doc. 99–16276 Filed 6–25–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00: GP9–0225]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 27 S., R. 9 W., accepted April 13, 1999
T. 18 S., R. 7 W., accepted April 30, 1999
T. 16 S., R. 1 W., accepted June 7, 1999
T. 27 S., R. 12 W., accepted June 7, 1999
T. 27 S., R. 11 W., accepted June 7, 1999
T. 8 S., R. 3 W., accepted June 14, 1999

Washington

T. 12 N., R. 6 E., accepted April 7, 1999
T. 4 N., R. 7 E., accepted May 28, 1999

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: June 14, 1999.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 99–16271 Filed 6–25–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES 99–19]

Draft Programmatic Environmental Impact Statement/Environmental Impact Report (Draft Programmatic EIS/EIR), CALFED Bay-Delta Program, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the California Environmental Quality Act (CEQA), the Bureau of Reclamation, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, Natural Resources Conservation Service, Army Corps of Engineers, and the California Resources Agency, as joint lead agencies, have prepared a Draft Programmatic EIS/EIR for the CALFED Bay-Delta Program. The CALFED Bay-Delta Program is a cooperative effort of 15 State and Federal agencies with regulatory and management responsibilities in the San Francisco Bay-Sacramento/San Joaquin River Bay-Delta to develop a long-term plan to restore ecosystem health and improve water management for beneficial uses of the Bay-Delta system. This Draft Programmatic EIS/EIR is a result of this collaborative planning process and identifies comprehensive solutions to the problems of ecosystem quality, water supply reliability, water quality, and Delta levee and channel integrity. The Draft Programmatic EIS/EIR identifies four alternatives to implement these solutions and programmatically analyzes the environmental impacts of each of those alternatives. Public hearings will be held in 15 cities throughout California to receive comments on the Draft Programmatic EIS/EIR from interested organizations and individuals concerning the environmental impacts of the proposal.

An earlier version of the Draft Programmatic EIS/EIR was released in March 1998. A Preferred Program Alternative was subsequently identified, and the current Draft Programmatic EIS/EIR includes this revision. In addition, the analysis for each of the alternatives has been updated, and the comments received on the March 1998 draft have been identified or addressed, as appropriate, in the current document.

DATES: Written comments on the Draft Programmatic EIS/EIR should be submitted by September 23, 1999. Public hearings to receive oral comments on the Draft Programmatic EIS/EIR will be held in various locations in California. See Supplementary Information section for hearing dates.

ADDRESSES: Written comments on the Draft Programmatic EIS/EIR should be addressed to Mr. Rick Breitenbach, CALFED Bay-Delta Program, 1416 Ninth Street, Suite 1155, Sacramento, California 95814. Requests for a copy of the Draft Programmatic EIS/EIR may be addressed to Mr. Breitenbach at the address above. See the Supplemental Information section for a listing of the available documents and formats in which they may be obtained. Copies of the Draft Programmatic EIS/EIR are also available for public inspection and review. See Supplementary Information section for locations.

FOR FURTHER INFORMATION CONTACT: To request printed or electronic copies of the Draft Programmatic EIS/EIR or for additional information, contact Mr. Rick Breitenbach, telephone: (800) 900–3587.

SUPPLEMENTARY INFORMATION:

Hearing Dates and Locations

- August 18, 1999, in Stockton, California.
- August 19, 1999, in San Bernardino, California.
- August 24, 1999, in Los Angeles, California.
- August 25, 1999, in Salinas, California.
- August 26, 1999, in Oakland, California.
- August 31, 1999, in Pasadena, California.
- September 1, 1999, in San Diego, California.
- September 2, 1999, in Costa Mesa, California.
- September 7, 1999, in San Jose, California.
- September 8, 1999, in Antioch, California.
- September 9, 1999, in Santa Rosa, California.
- September 14, 1999, in Visalia, California.
- September 15, 1999, in Chico, California.
- September 21, 1999, in Redding, California.

• September 22, 1999, in Sacramento, California.

The specific location and times for the hearings are not available at this time. A separate notice providing this information will be placed in the **Federal Register** at a later date.

Available Formats

1. CALFED Bay-Delta Program Website

http://calfed.ca.gov—The Draft Programmatic EIS/EIR is posted on the CALFED website. The website also provides several other documents released by CALFED since August 1996. Sections or pages of all these documents can be copied and pasted into any word processing application or e-mail to make reviewing and sharing the documents easier and faster.

2. CD–ROM

The CD–ROM contains all of the documents, which are listed below, that are part of the Draft Programmatic EIS/EIR and appendices package. The CD–ROM is easy to use and indexed for easy navigation. The software required to view the documents is free and included with instructions on the CD. The search capability is one of the CD's most desirable features. For example, if you enter a word, such as "watershed," the search function will find every reference to "watershed" in the document. The complete document, or portions of it, can be copied or printed from the CD.

3. Printed Documents

The Draft Programmatic EIS/EIR and appendices are printed in 14 individual volumes totaling approximately 3,000 pages. Either individual documents or the entire package can be requested. The following documents are part of the Draft Programmatic EIS/EIR package:

• Draft Programmatic EIS/EIR Main Document (Impact Analysis).
• Executive Summary.
• Revised Phase II Report, June 1999.
• Implementation Plan.
• Ecosystem Restoration Program Plan, 3 Volumes.
• Levee System Integrity Program Plan.
• Water Quality Program Plan.
• Water Use Efficiency Program Plan.
• Water Transfer Program Plan.
• Watershed Program Plan.
• Multi-species Conservation Strategy.
• Comprehensive Monitoring Assessment and Review Program Report.

Copies of the Draft Programmatic EIS/EIR are available for public inspection at:

• Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street, NW, Washington DC; telephone: (202) 208–4662.
• Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO; telephone: (303) 236–6963.
• Bureau of Reclamation, Public Affairs Office, Attention: MP–140, 2800 Cottage Way, Sacramento CA; telephone: (916) 978–5100.
• Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW, Main Interior Building, Washington DC.

Copies will also be available for inspection at the following libraries:

Amador County Library; Auburn-Placer County Library; Berkeley Public Library; Butte County Library; Calaveras County Library; California State Archives; California State Library; California State Polytechnic University, Pomona; California State Resources Library; California State University, Bakersfield; California State University, Chico; California State University, Fresno; California State University, Long Beach; California State University, Sacramento; California State University, San Diego; California State University, San Francisco; California State University, San Jose; California State University, Stanislaus; Colusa County Free Library; Contra Costa County Library; The Council of State Governments; County of Los Angeles Public Library, Government Publications; County of Los Angeles Public Library, Lancaster Library; Dixon Unified School District Library; El Dorado County Library; Fresno County Public Library; Golden Gate University; Grass Valley Library, Nevada County Library; Humboldt County Library; Inyo County Free Library; Kern County Library; Kings County Library; Lake County Library; Library of Congress; Lodi Public Library; Los Angeles County Law Library; Los Angeles Public Library; Los Banos Branch Library, Merced County Library; Madera County Library; Marin County Library; Mariposa County Library; Mendicino County Library; Merced County Library; Mono County Free Library; Monterey County Free Libraries; Napa City-County Library; Natural Resources Library; Nevada County Library; Oakland Public Library; Orange County Public Library; Orland Free Library; Plumas County Library; Quincy Library Group; Sacramento County Law Library; Sacramento Public Library; San Diego County Library; San Diego Public Library; San Diego State University, Malcolm A. Love Library; San Francisco Public Library; San Jose Public Library; San Luis Obispo City-County Library; Santa Barbara Public Library; Santa Clara County Library; Santa Cruz Public Library; Shasta County Library; Solano County Library; Sonoma County Library; Stanford University, Green Library; Stanislaus County Free Library; Stockton-San Joaquin County Public Library; Sutter County Library; Tehama County Library; Tulare County Free Library; Tulare Public Library; Tuolumne County Free Library; University of California, Berkeley; University of California, Davis, Shields Library; University of California, Los Angeles, Bruman Library; University of California, San Diego; University of California, Santa Barbara; Willows Public Library; Yolo County Library; Yuba County Library.

Dated: June 10, 1999.

Kirk C. Rodgers,

Acting Regional Director.

[FR Doc. 99–16195 Filed 6–25–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–423]

Certain Conductive Coated Abrasives; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 25, 1999, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Minnesota Mining Manufacturing Company of St. Paul Minnesota. A supplement to the complaint was filed on June 16, 1999. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain conductive coated abrasives by reason of infringement of claims 1, 15, 17, and 36 of U.S. Letters Patent 5,108,463, as amended by Reexamination Certificate B1 5,108,463. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent limited exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1998).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on June 21, 1999, *ordered* that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain conductive coated abrasives by reason of infringement of claims 1,15, 17, or 36 of U.S. Letters Patent 5,108,463, as amended by Reexamination Certificate B1 5,108,463, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Minnesota Mining and Manufacturing Company, 3M Center, P.O. Box 33427, St. Paul, Minnesota 55133.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:
KWH Mirka Ab Oy, Pensalant 210, Jepua FI–66850, FINLAND
Mirka Abrasives, Inc., 7950 Bavaria Road, Twinsburg, Ohio 44087, USA

(c) Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–M, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: June 22, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16404 Filed 6–25–99; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–E and 202 (Review) and 731–TA–103 and 514 (Review)]

Cotton Shop Towels From Bangladesh, China, Pakistan, and Peru [1]

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the countervailing duty orders and antidumping duty orders on cotton shop towels from Bangladesh, China, Pakistan, and Peru.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty orders and the antidumping duty orders on cotton shop towels from Bangladesh, China, Pakistan, and Peru would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 15, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1999, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (64 FR 19195, April 19, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[1] The investigation numbers are as follows: Bangladesh is 731–TA–514 (Review), China is 731–TA–103 (Review), Pakistan is 701–TA–202 (Review), and Peru is 701–TA–E (Review).

Participation in the Review and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the review will be placed in the nonpublic record on October 25, 1999, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on November 18, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 9, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 15, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is November 3, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is November 30, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before November 30, 1999. On December 22, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 27, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 22, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16405 Filed 6–25–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated August 21, 1998, and published in the **Federal Register** on September 4, 1998, (63 FR 47320), Fort Dodge Laboratories, 141 E. Riverside Drive, Fort Dodge, Iowa 50501, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of pentobarbital (2270), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture a product for distribution to its customers.

A registered bulk manufacturer of pentobarbital filed written comments and an objection in response to the notice of application. The objector argues, in part, that granting the registration would not be in the public interest because of possible diversion risks. The arguments of the objector were considered, however, DEA has reviewed the firm's safeguards to prevent the theft and diversion of pentobarbital and found that the firm has met the regulatory requirements and public interest factors of the Controlled Substances Act (CSA).

Fort Dodge Laboratories has been investigated by DEA to determine if the firm maintains effective controls against diversion and has found the firm to be in compliance with the CSA and its implementing regulations.

After reviewing all the evidence and the factors in Title 21, United States Code, Section 823(a), DEA has determined that the registration of Fort Dodge Laboratories to import pentobarbital is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations,

§ 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–16260 Filed 6–25–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated March 18, 1999, and published in the **Federal Register** on April 1, 1999, (64 FR 15807), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances in bulk to supply final dosage form manufacturers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Johnson Matthey, Inc. to manufacture listed controlled substances is consistent with the public interest at this time. DEA has investigated Johnson Matthey, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–16261 Filed 6–25–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated March 1, 1999, and published in the **Federal Register** on April 1, 1999, (64 FR 15808), Lilly Del Caribe, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00680, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of dextropropoxyphene (9273), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture bulk product for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Lilly Del Caribe, Inc. to manufacture dextropropoxyphene is consistent with the public interest at this time. DEA has investigated Lilly Del Caribe, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 15, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–16262 Filed 6–25–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated February 5, 1999, and published in the **Federal Register** on February 26, 1999, (64 FR 9541), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm is importing the phenylacetone to manufacture dextroamphetamine sulfate.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Lonza Riverside to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Lonza Riverside on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 15, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–16263 Filed 6–25–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated April 12, 1999, and published in the **Federal Register** on April 27, 1999, (64 FR 22645), Mallinckrodt Chemical Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

The firm plans to import the listed controlled substances to manufacture bulk finished products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Mallinckrodt Chemical Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Mallinckrodt Chemical Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 15, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–16264 Filed 6–25–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated February 5, 1999, and published in the **Federal Register** on February 26, 1999, (64 FR 9542), Novartis Pharmaceuticals Corp., 59 Route 10, East Hanoever, New Jersey 07936, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture finished product for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Novartis Pharmaceuticals Corp. to manufacture methylphenidate is consistent with the public interest at this time. DEA has investigated Novartis Pharmaceuticals Corp. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR sections 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 15, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–16265 Filed 6–25–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated April 9, 1999, and published in the **Federal Register** on April 27, 1999, (64 FR 22646), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

The firm plans to import coca leaves to manufacture bulk controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Stepan Company to import coca leaves is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Stepan Company on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 15, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–16266 Filed 6–25–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,762 and TA–W–34,762D]

Dresser Oil Tools, Dallas, Texas, Axelson, Inc., Div. of Dresser Industries, Inc., Production and Sales Representatives Operating at Various Locations in Texas and Operating at Various Locations in Louisiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 18, 1998 applicable to all workers of Dresser Oil Tools, Dallas, Texas and operating at various locations in Texas (TA–W–34,762) and Louisiana (TA–W–34,762D). The notice was published in the **Federal Register** on October 9, 1998 (63 FR 54495).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of oilfield equipment and provide office, administration, management and sales services.

New information shows that Dresser Oil Tools, a Div. of Dresser Industries, Inc. purchased Axelson, Inc. in 1994. Worker separations occurred at Axelson, Inc. when it closed in March, 1999. The workers are engaged in the production of oilfield equipment. The State reports that some workers separated at Axelson, Inc., had their wages reported under a separate unemployment insurance (UI) tax account for Dresser Industries, Inc., Dallas, Texas.

Based on these findings, the Department is amending the certification to include workers of Axelson, Inc.

The intent of the Department's certification is to include all workers of Dresser Tools who were adversely affected by increased imports of oilfield equipment.

The amended notice applicable to TA–W–34,762 is hereby issued as follows:

All workers of Dresser Oil Tools, Dallas, Texas, Axelson, Inc., Div. of Dresser Industries, Inc., and operating at various locations in the following States: Texas (TA–W–34,762) and Louisiana (TA–W–34,762D), who became totally or partially separated from employment on or after July 6, 1997 through September 18, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–16305 Filed 6–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,003]

E.I. Dupont De Nemours Performance Coatings, Rochester, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on June 4, 1999, applicable to workers of E.I. Dupont de Nemours, Performance Coatings located in Rochester, New York. The notice will soon be published in the **Federal Register**.

At the request of a company official, the Department reviewed the determination for workers of the subject firm. The workers of the subject firm engaged in employment related to the production of photochemistry for x-ray film were determined eligible to apply for TAA, whereas the workers producing photographic film and printing plate chemistry were denied eligibility. New information provided by the company indicates the workers at the subject firm are not separately identifiable by product line; workers are interchangeable and routinely perform work on all product lines. Based on this new information, the Department is amending the notice of determination to expand coverage to all workers of E.I. Dupont de Nemours, Performance Coatings, Rochester, New York.

The amended notice applicable to TA–W–36,003 is hereby issued as follows:

All workers of E.I. Dupont De Nemours, Performance Coatings, Rochester, New York, who became totally or partially separated from employment on or after March 27, 1998 through June 4, 2001, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–16303 Filed 6–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners of any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 8, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 8, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC, this 24th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

TA–W	Subject firm (petitioners)	Location	Date of petition	Product's
36,255	KCS Resources, Inc (Comp)	Worland, WY	05/19,1999	Exploration and Prod. of Oil and Gas.
36,256	Charles Komar and Sons (Comp)	McAlester, OK	05/14/1999	Ladies' Sleepwear.
36,257	Castalia Apparel (Comp)	Castalia, NC	03/26/1999	Girl's Dresses.

APPENDIX—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product's
36,258	Burlen Corporation (Co.)	Fitzgerald, GA	05/14/1999	Ladies' Undergarments.
36,259	Reef Chemical Co., Inc (Co.)	Midland, TX	05/11/1999	Oilfield Chemicals.
36,260	Oilgear Company (The) (Wkrs)	Longview, TX	05/04/1999	Flow Meters.
36,261	Avondale Mills (Wkrs)	New York City, NY	05/05/1999	Sales Office (Yarn).
36,262	Allsop, Inc. (Co.)	Laramie, WY	05/07/1999	Plastic Molded Computer Accessories.
36,263	Imation Corporation (Wkrs)	Vadnais Heights, MN	04/28/1999	Optical Discs.
36,264	Bahs, Inc (Co.)	Zeeland, MI	05/03/1999	Plastic Molding.
36,265	Ingersoll Dresser Pumps (USWA)	Phillipsburg, NJ	05/03/1999	Engineered Pumps.
36,266	Spenco Manufacturing (Co.)	Glenville, WV	05/04/1999	Car Seat Liners.
36,267	Batesville Casket Co. (Wkrs)	Campbellsville, KY	05/07/1999	Burial Caskets.
36,268	Briggs Manufacturing (GMP)	Robinson, IL	04/26/1999	Toilets, Sinks, etc.
36,269	Continental Apparel (Co.)	DeFuniak Spring, FL	05/04/1999	Children's Jeans and Shorts.
36,270	Applied Molded Products (LETC)	Watertown, WI	05/05/1999	Fiberglass Parts.
36,271	Oneita Industries, Inc. (Wkrs)	Cullman, AL	04/14/1999	Infants Apparel.
36,272	3m Company (Co.)	Hinsdale, IL	05/11/1999	Heart Monitoring Electrodes.
36,273	McCulloch Corp. (Co.)	Lake Havasu, AZ	05/12/1999	Components for Lawn and Garden.
36,274	Dupont Newport (Co.)	Newport, DE	05/03/1999	Chromium Dioxide.
36,275	Marianna Downtown Sewing (Co).	Marianna, FL	05/07/1999	Sew Fleece and Jersey Garments.
36,276	Allergan Lenior (Co.)	Lenoir, NC	05/11/1999	Cataract Eye Surgery Kits.
36,277	Indigo Jean (UNITE)	Lehighton, PA	04/15/1999	Ladies' Pants (Slacks).
36,278	Mannor Corp. (Wkrs)	Bay Minette, AL	05/10/1999	Men's Dress Trousers.
36,279	Hazleton Knitwear (Wkrs)	Hazleton, PA	05/08/1999	Sportswear.
36,280	Eagle Ottawa Leather (Wkrs)	Grand Haven, MI	05/06/1999	Finished Hides for Auto Industry.
36,281	Rich Bar Processing, Inc (Wkrs)	Bethlehem, PA	05/12/1999	Fabric Dyeing and Finishing.
36,282	Banner Elk Glove (Co.)	Banner Elk, NC	05/11/1999	Cotton Work Gloves.
36,283	Hevi Duty Electric (Co.)	Mt. Vernon, IL	05/14/1999	Scrap Copper, Scrap Aluminum.
36,284	Livingston Rebuild Cener (Co.)	Livingston, MT	05/10/1999	Rebuild Locomotives.
36,285	Pilling Weck Surgical (Co.)	Ft. Washington, PA	05/12/1999	Surgical Instruments.
36,286	Perennial Print (UNITE)	Paterson, NJ	04/23/1999	Dye, Finish & Print Fabrics.
36,287	Western Gas Resources (Wkrs)	Giddings, TX	05/07/1999	Natural Gas.
36,288	Excel Energy Co (Co.)	Sprigfield, IL	05/07/1999	Activities To Produce Crude Oil.
36,289	Marathon Oil (Co.)	Houston, TX	05/07/1999	Oil and Gas.
36,290	St. Paul Companies (The) (Co.)	St. Paul, MN	05/03/1999	Oil and Gas.
36,291A ..	Rosel Co (The) (Wrks)	Liberal, KS	05/07/1999	Exploration, Drilling of Oil and Gas.
36,291	Rosel Company (The) (Wkrs)	Oklahoma City, OK	05/07/1999	Exploration and Drilling of Oil and Gas.
36,292	Santa Fe Energy Resources (Co.)	Houston, TX	05/10/1999	Oil and Gas.
36,293	Leamco Rutcho (Wkrs)	Perryton, TX	04/22/1999	Repair, Maintenance of Pumping Units.
36,294	Lankford Oil and Gas (Co.)	Graham, TX	05/06/1999	Oil and Gas.
36,295	Chevron USA Production (Wkrs)	Midland, TX	04/27/1999	Oil and Gas.
36,296	Yale E. Key (Co.)	Midland, TX	04/28/1999	Service Oilwells.

[FR Doc. 99–16310 Filed 6–25–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,201]

Lighting Resources International Bellevue, Ohio; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 1999 in response to a worker petition which was filed on April 28, 1999 on behalf of workers at Lighting Resources International, Bellevue, Ohio.

A negative determination applicable to the petitioning group of workers was issued on May 6, 1999 (TA–W–36,004). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 11th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–16302 Filed 6–25–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,109 and TA–W–35,109A]

MKE Quantum Components, Shrewsbury, Massachusetts and Louisville, Colorado; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on January 13, 1999, applicable to workers of MKE Quantum Components located in Shrewsbury, Massachusetts. The notice was published in the **Federal Register** on January 29, 1999 (64 FR 4712).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of components for disk drives. New information shows that worker separations occurred at the Louisville, Colorado location of MKE Quantum Components when it closed in March, 1999.

Accordingly, the Department is amending the certification to cover the workers of MKE Quantum Components, Louisville, Colorado.

The intent of the Department's certification is to include all workers of MKE Quantum Components who were adversely affected by increased imports.

The amended notice applicable to TA–W–35,109 is hereby issued as follows:

All workers of MKE Quantum Components, Shrewsbury, Massachusetts (TA–W–35,109) and Louisville, Colorado (TA–W–35,109A) who became totally or partially separated from employment on or after September 21, 1997 through January 13, 2001 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–16307 Filed 6–25–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,842]

MKE Quantum Components, Louisville, CO; Termination of Certification

This notice terminates the Determination Regarding Eligibility to Apply for Worker Adjustment Assistance issued by the Department on May 4, 1999, applicable to workers of MKE Quantum Components located in Louisville, Colorado. The notice was published in the **Federal Register** on May 21, 1999 (64 FR 27811).

The Department, on its own motion, reviewed the worker certification. Findings show that the workers were engaged in the production of components for disk drives. On June 4, 1999, the Department issued an amended certification of eligibility applicable to workers of MKE Components, Louisville, Colorado, TA–W–35,109A. Workers separated from employment with the subject firm on or after September 21, 1997 through January 13, 2001, are eligible to apply for worker adjustment assistance program benefits.

Based on this new information, the Department is terminating the certification for petition number TA–W–35,841. Further coverage for workers under this certification would serve no purpose, and the certification has been terminated.

Signed at Washington, DC, this 7th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–16308 Filed 6–25–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,405 and TA–W–35,405A]

Snyder Oil Corp. Headquartered in Fort Worth, TX, Operating Throughout the State of Texas and Denver, CO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 16, 1999, applicable to workers of Snyder Oil Corporation, Headquartered in Fort Worth, Texas and operating throughout the State of Texas. The notice was published in the **Federal Register** on April 27, 1999 (64 FR 22648).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of crude oil and natural gas. New information provided by the company reveals that worker separations have occurred at the subject firm's Denver, Colorado location. The intent of the Department's certification is to include all workers of Snyder Oil Corporation who were affected by increased imports. Accordingly, the Department is amending the worker certification to include workers of Snyder Oil Corporation in Denver, Colorado.

The amended notice applicable to TA–W–35,405 is hereby issued as follows:

All workers of Snyder Oil Corporation, headquartered in Fort Worth, Texas, and operating at various locations throughout the State of Texas (TA–W–35,405) and Denver, Colorado (TA–W–35,405A), who became totally or partially separated from employment on or after February 3, 1998 through February 16, 2001, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–16306 Filed 6–25–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,711, etc.]

Sperry-Sun Drilling Services, et al; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–35,711, Sperry-Sun Drilling Services Div. of Dresser Industries, Inc., headquartered in Houston, Texas operating out of other locations in the following states: TA–W–35,711A Alaska, TA–W–35,711B California, TA–W–35,711C Louisiana, TA–W–35,711D Michigan, TA–W–35,711E Oklahoma, TA–W–35,711F Texas, TA–W–35,711G Wyoming; TA–W–35,711AA Baroid Drilling Fluids, Div. of Dresser Industries, Inc., headquartered Houston, Texas, operating out of other locations in the following states: TA–W–35,711AB Alaska, TA–W–35,711AC Arkansas, TA–W–35,711AD Arizona, TA–W–35,711AE California, TA–W–35,711AF Colorado, TA–W–35,711AG Georgia, TA–W–35,711AH Iowa, TA–W–35,711AI Kansas, TA–W–35,711AJ Louisiana, TA–W–35,711AK Missouri, TA–W–35,711AL New Mexico, TA–W–35,711AM Nevada, TA–W–35,711AN Ohio, TA–W–35,711AO Oklahoma, TA–W–35,711AP Pennsylvania, TA–W–35,711AQ Texas, TA–W–35,711AR Wyoming, TA–W–35,711AS Mississippi, TA–W–35,711AT Alabama; TA–W–35,711BA Security DBS Div. of Dresser Industries, Inc., headquartered in Dallas, Texas, operating out of other locations in the following states: TA–W–35,711BB Colorado, TA–W–35,711BC Louisiana, TA–W–35,711BD Oklahoma, TA–W–35,711BE Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for

Worker Adjustment Assistance on March 22, 1999, applicable to all workers of Baroid Drilling Fluids headquartered in Houston, Texas. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25372).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in various activities related to the drilling for crude oil and natural gas. New findings show that Dresser Industries, Inc. is the parent firm of Sperry-Sun Drilling Services, headquartered in Houston, Texas, Baroid Drilling Fluids, headquartered in Houston, Texas and Security DBS, headquartered in Dallas, Texas and operating at various locations in the above cited states. New information provided by the State shows that some workers separated from employment at Sperry-Sun Drilling Services, Baroid Drilling Fluids and Security DBS had their wages reported under a separate unemployment insurance (UI) tax account for Dresser Industries, Inc., Dallas Texas.

Accordingly, the Department is amending the certification to properly reflect this matter.

In accordance with the provisions of the Act, I make the following certification:

All workers of Sperry-Sun Drilling Services, a Div. of Dresser Industries, Inc., Houston, Texas (TA–W–35,711) and operating out of other locations in the following states Alaska (TA–W–35,711A), California (TA–W–35,711B), Louisiana (TA–W–35,711C), Michigan (TA–W–35,711D), Oklahoma (TA–W–35,711E), Texas (TA–W–35,711F) and Wyoming (TA–W–35,711G); Baroid Drilling Fluids, a Div. of Dresser Industries, Inc., Houston, Texas (TA–W–35,711AA) and operating out of other locations in the following states Alaska (TA–W–35,711AB), Arkansas (TA–W–35,711AC), Arizona (TA–W–35,711AD), California (TA–W–35,711AE), Colorado (TA–W–35,711AF), Georgia (TA–W–35,711AG), Iowa (TA–W–35,711AH), Kansas (TA–W–35,711AI), Louisiana (TA–W–35,711AJ), Missouri (TA–W–35,711AK), New Mexico (TA–W–35,711AL), Nevada (TA–W–35,711AM), Ohio (TA–W–35,711AN), Oklahoma (TA–W–35,711AO), Pennsylvania (TA–W–35,711AP), Texas (TA–W–35,711AQ), and Arkansas (TA–W–35,711AR) and Security DBS, a Div. of Dresser Industries, Inc., Dallas, Texas (TA–W–35,711BA) and operating out of other locations in the following states: Colorado (TA–W–35,711BB), Louisiana (TA–W–35,711BC), Oklahoma (TA–W–35,711BD) and Texas (TA–W–35,711BE) who became totally or partially separated from employment on or after February 17, 1998, through March 22, 2001 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–16304 Filed 6–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Computer Scannable Versions of 1999 Form 5500 Annual Return/Report of Employee Benefit Plan; Request for Public Comment

AGENCY: Pension Benefit Guaranty Corporation, Department of Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public comments on computer scannable versions of the 1999 Form 5500 Annual Return/Report of Employee Benefit Plan developed by two competing firms for use with a new computerized form processing system (the ERISA Filing Acceptance System, or "EFAST"), beginning with filings for 1999 plan years.

DATES: Written comments must be submitted to the address specified below on or before July 28, 1999.

ADDRESSES: Interested persons are invited to submit written comments (preferably three copies) concerning the scannable formats to: EFAST Scannable Form 5500, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–5459, Washington, D.C. 20210. Written comments may also be sent by Internet to the following address: comments—form5500@pwba.dol.gov. All submissions will be shared among the Agencies and will be open to public inspection and copying in the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–5638, Washington, DC, from 8 a.m. to 4:30 p.m., E.S.T.

FOR FURTHER INFORMATION CONTACT: John Helms, EFAST Project Director, Pension and Welfare Benefits Administration, U.S. Department of Labor, at (202) 219–2623 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under part 1 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), Title IV or ERISA, and the Internal Revenue Code of 1986, as amended (the Code), administrators of pension and welfare benefit plans (collectively, employee benefit plans) subject to those provisions, and employers sponsoring certain fringe benefit plans and other plans of deferred compensation, are required to file returns/reports annually concerning the financial condition and operation of the plans. These reporting requirements are satisfied generally by filing the Form 5500 Series in accordance with its instructions and related regulations. The Form 5500 is the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans.

On September 3, 1997, the Agencies published a Notice of Proposed Revision of Annual Information Return/Reports in the **Federal Register** (62 FR 46556). The Agencies' proposal replaced the Form 5500, Form 5500–C and Form 5500–R with one Form 5500 intended to streamline the report and the methods by which it is filed. A public hearing on the proposed forms revisions was held on November 17, 1997, and written comments on the proposal were received until the public record was closed on December 3, 1997.

Concurrent with the development of the new forms, the Agencies are also developing a new computerized system to process the Form 5500 ("EFAST"). The new computerized processing system is designed to simplify and expedite the receipt and processing of the new Form 5500 by relying on computer scannable forms and electronic filing technologies.

Contracts were awarded to two national computer firms to competitively develop this system and computer scannable versions of the new Form 5500. When the firms have completed their "small scale" system assignments, one of the two firms will be chosen to "scale-up" its system and process the new Form 5500 for five years. The firm chosen will receive the forms, process the data into machine-readable format, conduct specified edit tests for validity and completeness, correspond with filers whose filings fail one or more edit tests, attempt to perfect the data using filer responses and, finally, provide the data to the Agencies.

On June 24, 1998, a Notice was published in the **Federal Register** (63 FR 34493) that stated that the Agencies had submitted a public information collection request (ICR) for the revised Form 5500 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). The new Form 5500 submitted as part of the ICR was made available to the public through the Department of Labor's Internet site. The Notice announced that the Agencies intended to solicit public comments on the computer scannable versions of the new forms developed as part of the EFAST project. Following its Paperwork Reduction Act review, OMB gave Paperwork Reduction Act approval to the new Form 5500 on August 26, 1998, provided certain minor technical adjustments were made to the forms and the Agencies solicited public comments on the computer scannable formats developed by the competing firms as part of the EFAST project.[1] Both firms have now developed computer scannable versions of the new Form 5500.

By this notice, the Agencies are soliciting public comments on the computer scannable formats developed as part of the EFAST project. One firm (Vendor #1) designed a computer scannable Form 5500 to be completed by all filers. The other firm (Vendor #2) designed two versions, one for filers printing the computer scannable Form 5500 by a computer printer (printer version) and the other for filers completing the form by hand or typewriter (hand/typewriter version). These mock-up versions of the computer scannable Form 5500 are available for viewing and downloading through the Department of Labor's Internet site (www.dol.gov/dol/pwba).

The final computer scannable version of the forms will be published in the **Federal Register** following the selection of the firm that will process the new Form 5500 under the EFAST system. Except for those who file electronically, the use of computer scannable forms will be mandatory for 1999 plan year filings.

Dated: June 21, 1999.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Department of Labor.

Carol D. Gold,

Director, Employee Plans Division, Internal Revenue Service, Department of the Treasury.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–16198 Filed 6–25–99; 8:45 am]

BILLING CODE 4510–29–M

[1] The Department of Labor also proposed on December 10, 1998, in the **Federal Register** (63 FR 68370), and requested comments on, revision to the Department's annual reporting regulations that would implement the new Form 5500 requirements.

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), this notice announces that the Merit Systems Protection Board's request for a three year extension of approval of its optional appeal form, Optional Form 283 (Rev. 10/94) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The appeal form is currently displayed in 5 CFR Part 1201, Appendix I, and on the MSPB Web Page at http://www.mspb.gov/merit009.html

In this regard, we are soliciting comments on the public reporting burden. The reporting burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual number of respondents	Frequency per responses	Total annual responses	Hours per response (average)	Total hours
1201 and 1209	9,000	1	9,000	.5	4,500

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the address shown below. Please refer to OMB Control No. 3124–0009 in any correspondence.

DATES: Comments must be received on or before July 28, 1999.

ADDRESSES: Copies of the appeal form may be obtained from Arlin Winefordner, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419 or by calling (202) 653–7200. Comments concerning the paperwork burden should also be addressed to Mr. Winefordner and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSPB, 725 17th Street NW, Washington, DC 20503.

Dated: June 21, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–16286 Filed 6–25–99; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to renew the information collections described in this notice, which are used in the National Historical Publications and Records Commission (NHPRC) grant program. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before August 27, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or

electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

1. *Title:* Application for attendance at the Institute for the Editing of Historical Documents.
   OMB number: 3095–0012.
   Agency form number: None.
   Type of review: Regular.
   Affected public: Individuals, often already working on documentary editing projects, who wish to apply to attend the annual one-week Institute for the Editing of Historical Documents, an intensive seminar in all aspects of modern documentary editing techniques taught by visiting editors and specialists.
   Estimated number of respondents: 25.
   Estimated time per response: 1.5 hours.
   Frequency of response: On occasion, no more than annually (when respondent wishes to apply for attendance at the Institute).
   Estimated total annual burden hours: 37.5 hours.
   Abstract: The application is used by the NHPRC staff to establish the applicants' qualifications and to permit selection of those individuals best qualified to attend the Institute jointly sponsored by the NHPRC, the State Historical Society of Wisconsin, and the University of Wisconsin. Selected applicants' forms are forwarded to the resident advisors of the Institute, who use them to determine what areas of instruction would be most useful to the applicants.

2. *Title:* National Historical Publications and Records Commission Grant Program.
   OMB number: 3095–0013.
   Agency form number: None.
   Type of review: Regular.
   Affected public: Nonprofit organizations and institutions, state and local government agencies, Federally acknowledged or state-recognized Native American tribes or groups, and individuals who apply for NHPRC grants for support of historical documentary editions, archival preservation and planning projects, and other records projects.
   Estimated number of respondents: 134 per year submit applications; approximately 100 grantees among the applicant respondents also submit semiannual narrative performance reports.
   Estimated time per response: 54 hours per application; 2 hours per narrative report.
   Frequency of response: On occasion for the application; semiannually for the narrative report. Currently, the NHPRC considers grant applications 2 times per year; respondents usually submit no more than one application per year.
   Estimated total annual burden hours: 7,636 hours.
   Abstract: The application is used by the NHPRC staff, reviewers, and the Commission to determine if the applicant and proposed project are eligible for an NHPRC grant, and whether the proposed project is methodologically sound and suitable for support. The narrative report is used by the NHPRC staff to monitor the performance of grants.

3. *Title:* Applications for Archival Administration and Historical Documentary Editing Fellowships.
   OMB number: 3095–0014.
   Agency form number: None.
   Type of review: Regular.
   Affected public: Individuals who wish to apply for an NHPRC fellowship in archival administration or historical documentary editing. Applicants for the archival administration fellowship must have at least two years' professional archival work experience; applicants for the editing fellowship must hold a Ph.D. or have completed all requirement for the degree except the dissertation.
   Estimated number of respondents: 9.
   Estimated time per response: 8 hours.
   Frequency of response: Generally one-time.
   Estimated total annual burden hours: 72 hours.
   Abstract: The application is used by the NHPRC staff to establish the applicants' qualifications and to permit selection by the host institution of those individuals best qualified for the fellowships. One fellowship in archival administration and one fellowship in historical editing are awarded each year.

4. *Title:* Application for host institutions of archival administration and historical editing fellowships.
   OMB number: 3095–0015.
   Agency form number: None.
   Type of review: Regular.
   Affected public: Nonprofit institutions or organizations that have active archival or special collections programs, and historical documentary publication projects that have received an NHPRC grant.
   Estimated number of respondents: 9.
   Estimated time per response: 17 hours.
   Frequency of response: Generally, one-time although an institution may apply in subsequent years.
   Estimated total annual burden hours: 153 hours.
   Abstract: The application is used by the NHPRC staff to select applicants to serve as host institutions for the two fellowships supported by the NHPRC each year.

Dated: June 22, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–16317 Filed 6–25–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States code.

1. *Date:* July 12, 1999.
   Time: 8:30 a.m. to 6:00 p.m.
   Room: 420.
   Program: This meeting will review applications for History Museums, Historical Societies, Historic Sites, submitted to the Office of Challenge Grants at the May 1, 1999 deadline.

2. *Date:* July 19, 1999.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   Program: This meeting will review applications for Fellowships for University Teachers in Anthropology I, submitted to the Division of Research at the May 1, 1999 deadline.

3. *Date:* July 19, 1999.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415.
   Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in European History, submitted to the Division of Research at the May 1, 1999 deadline.

4. *Date:* July 20, 1999.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   Program: This meeting will review applications for Fellowships for University Teachers in American History and Studies I, submitted to the Division of Research at the May 1, 1999 deadline.

5. *Date:* July 20, 1999.
   Time: 8:30 a.m. to 6:00 p.m.
   Room: 420.
   Program: This meeting will review applications for Colleges and Universities II, submitted to the Office of Challenge Grants at the May 1, 1999 deadline.

6. *Date:* July 21, 1999.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   Program: This meeting will review applications for Fellowships for University Teachers in European History, submitted to the Division of Research at the May 1, 1999 deadline.

7. *Date:* July 22, 1999.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415.
   Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Religious Studies, submitted to the Division of Research at the May 1, 1999 deadline.

8. *Date:* July 22, 1999.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars, in American Literature, submitted to the Division of Research at the May 1, 1999 deadline.

9. *Date:* July 23, 1999.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   Program: This meeting will review applications for Fellowships for University Teachers in Philosophy, submitted to the Division of Research at the May 1, 1999 deadline.

10. *Date:* July 23, 1999.
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 415.
    Program: This meeting will review applications for Fellowships for University Teachers in Anthropology II, submitted to the Division of Research at the May 1, 1999 deadline.

11. *Date:* July 23, 1999.
    Time: 8:30 a.m. to 6:00 p.m.
    Room: 420.
    Program: This meeting will review applications for Libraries, submitted to the Office of Challenge Grants at the May 1, 1999 deadline.

12. *Date:* July 26, 1999.
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 315.
    Program: This meeting will review applications for Fellowships for College Teachers in Independent Scholars in Music, Dance, and Film, submitted to the Division of Research at the May 1, 1999 deadline.

13. *Date:* July 27, 1999.
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 415.
    Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in African, Asian, and Latin American History, submitted to the Division of Research at the May 1, 1999 deadline.

14. *Date:* July 27, 1999.
    Time: 8:30 a.m. to 6:00 p.m.
    Room: 420.
    Program: This meeting will review applications for Research Institutions and Programs, submitted to the Office of Challenge Grants at the May 1, 1999 deadline.

15. *Date:* July 28, 1999.
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 415.
    Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in American History I, submitted to the Division of Research at the May 1, 1999 deadline.

16. *Date:* July 28, 1999.
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 315.
    Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in American History II, submitted to the Division of Research at the May 1, 1999 deadline.

17. *Date:* July 29, 1999.
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 315.
    Program: This meeting will review applications for Fellowships for University Teachers in African, Asian, and Near Eastern Studies, submitted to the Division of Research at the May 1, 1999 deadline.

18. *Date:* July 30, 1999.
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 415.
    Program: This meeting will review applications for Fellowships for University Teachers in British Literature, submitted to the Division of Research at the May 1, 1999 deadline.

19. *Date:* July 30, 1999.
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 315.
    Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in British Literature, submitted to the Division of Research at the May 1, 1999 deadline.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 99–16396 Filed 6–25–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemistry (1191).

Date & Time: July 12–13, 1999; 8:00 AM to 5:00 PM each day.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Richard Hilderbrandt, Program Officer, National Science Foundation, Room 1055, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1844.

Purpose of Meeting: Reviewing proposals submitted to the Knowledge and Distributed Intelligence (KDI) Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: June 22, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–16293 Filed 6–25–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: July 26–28, 8:00 a.m.—5:00 p.m.

Place: Room 770, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Stephen Nelson, Program Director, Mesoscale Dynamic Meteorology Program, Room 775, Division of Atmospheric Sciences, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1526.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the U.S. Weather Research Program (USWRP) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated; June 22, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–16292 Filed 6–25–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Polar Programs.

Date/Time: August 10–12, 1999 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, Room 375, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Charles Myers, Program Manager, Head, Interagency for Arctic Staff, Office of Polar Programs, National Science Foundation, Room 755, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1029.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for Environmental observatories Remote/Autonomous Instruments Sample Repositories.

Agenda: To review and evaluate Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: June 22, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–16294 Filed 6–25–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–34610–ML, ASLBP No. 99–768–02–ML]

Department of the Army; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and §§ 2.1201 and 2.1207 of part 2 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

U.S. Department of the Army (Request for Materials License)

The hearing, if granted, will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted by the U.S. Department of the Army in response to a denial by the NRC staff of the Army's application for registration and licensing of the model M22/GID–3 Automatic Chemical Agent Detector/Alarm for distribution under 10 CFR 32.26 to users exempt from the regulations in accordance with 10 CFR 30.20.

The Presiding Officer in this proceeding is Administrative Judge Charles Bechhoefer. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Linda W. Little has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judge Bechhoefer and Judge Little in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Charles Bechhoefer, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Linda W. Little, Special Assistant, 5000 Hermitage Drive, Raleigh, NC 27612

Issued at Rockville, Md., this 22nd day of June 1999.

G. Paul Bollwerk III,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–16392 Filed 6–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee meeting on Planning and Procedures scheduled to start at 1:00 p.m. on Tuesday, July 13, 1999, has been changed to start at 9:30 a.m. Notice of this meeting was published in the **Federal Register** on Tuesday, June 15, 1999 (64 FR 32070). All other items pertaining to this meeting remain the same as previously published.

For further information contact: Dr. John T. Larkins, cognizant ACRS staff person (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: June 22, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–16390 Filed 6–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 14–16, 1999, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 18, 1998 (63 FR 64105).

Wednesday, July 14, 1999

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:45 A.M.–10:15 A.M.: Electric Power Research Institute (EPRI) RETRAN–3D Thermal-Hydraulic Transient Analysis Code (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of the review of the EPRI RETRAN–3D thermal-hydraulic transient analysis code.

10:30 A.M.–11:30 A.M.: Proposed Revision to Appendix K of 10 CFR Part 50 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revision to Appendix K, "ECCS Evaluation Models," to allow minor power level increases, and related matters.

12:30 P.M.—2:00 P.M.: Options for Crediting Existing Programs for License Renewal (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute regarding the proposed options for crediting existing NRC-approved programs for license renewal.

2:15 P.M.–3:45 P.M.: Proposed Revision 3 to Regulatory Guide 1.160 (DG–1082), "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed revision 3 to Regulatory Guide 1.160.

4:00 P.M.–5:00 P.M.: Proposed Approach for Revising 10 CFR 50.61, Pressurized Thermal Shock Rule (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's proposed approach for revising the Pressurized Thermal Shock Rule.

5:00 P.M.–6:00 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

6:00 P.M.–7:15 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Thursday, July 15, 1999

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:00 A.M.: Proposed Final Regulatory Guide for Updating Final Safety Analysis Reports (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute regarding proposed final Regulatory Guide for Updating the Final Safety Analysis Reports, and related matters.

10:15 A.M.–12:00 Noon: Control Room Habitability (Open)—The Committee will hear presentations by and hold discussions with: Dr. Kovach, an invited expert, on control room habitability issues; representatives of the NRC staff on staff activities associated with resolving control room habitability issues; and representatives of the Nuclear Energy Institute regarding industry activities related to control room habitability.

1:00 P.M.–2:30 P.M.: Proposed Amendment to 10 CFR 50.55a "Codes and Standards" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, the Nuclear Energy Institute, and the American Society of Mechanical Engineers regarding the proposed amendment to 10 CFR 50.55a, including the proposed staff position on eliminating the regulatory requirement for licensees to update their inservice inspection and inservice testing programs every 120 months, and related matters.

2:30 P.M.–2:45 P.M.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Regulatory Policies and Practices regarding matters discussed at the July 13, 1999 joint meeting, including the development of risk-informed revisions to 10 CFR Part 50, proposed definitions and scope changes related to structures, systems, and components, as well as policy issues, special studies, and related matters.

3:00 P.M.–3:45 P.M.: Proposed Plan for Preparation of the Annual ACRS Report to the Commission (Open)—The Committee will discuss proposed plan for preparing the next annual ACRS report to the Commission on the NRC Safety Research Program.

3:45 P.M.–4:45 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

4:45 P.M.–7:15 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, July 16, 1999

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:00 A.M.: Highlights from Incident Reporting System (Closed)—The Committee will hear a presentation by and hold discussions with representatives from the NRC staff regarding highlights of events that occurred at foreign nuclear plants during 1997 and 1998 and associated safety significance.

Note: This session will be closed to discuss information provided in confidence by a foreign source.

10:15 A.M.–10:30 A.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

10:30 A.M.–10:45 A.M.: Report of the Planning and Procedures

Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS. [Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:45 A.M.–11:00 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters, including the EDO response to the ACRS reports on proposed final revision to 10 CFR 50.65, dated April 14 and May 11, 1999.

11:00 A.M.–5:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

5:00 P.M.–5:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51968). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Sam Duraiswamy prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Sam Duraiswamy if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), to discuss information provided in confidence by a foreign source per 5 U.S.C. 552b(c)(4), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: June 22, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–16391 Filed 6–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

On June 16, 1999 (64 FR 32284), the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration. On page 32284, the paragraph starting "By July 19, 1999, the licensee may file" should read "By July 16, 1999, the licensee may file."

Dated at Rockville, Maryland, this 22nd day of June 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–16394 Filed 6–25–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5760]

Merchant Marine Personnel Advisory Committee; Vacancies; Correction

AGENCY: Coast Guard, DOT.

ACTION: Request for applications; correction.

SUMMARY: This document contains a correction to the request for applications notice (USCG–1999–5760) which was published June 8, 1999. The notice sought applicants for the Coast Guard's Merchant Marine Personnel Advisory Committee (MERPAC).

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–1999–5760), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. You may also access docket materials over the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this correction notice, contact.Mr. Mark Gould, telephone 202–267–6890. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard is seeking applicants to fill six vacant positions on MERPAC. Applications must reach the Coast Guard on or before August 1, 1999.

Need for Correction

As published, the notice contains an incorrect website address that may prove to be misleading and therefore needs to be corrected. The notice also inaccurately states that there are five vacancies when, in fact there are six.

Correction of Publication

Accordingly, the **Federal Register** publication on June 8, 1999, of the request for applications in FR Doc. 99–14509 is corrected as follows:

1. On page 30556, in the second column, under **ADDRESSES**, line 10, the website address "http://dms.dos.gov" should read "http://dms.dot.gov".

2. On page 30556, in the second column, under **SUPPLEMENTARY INFORMATION**, line 1 of the second paragraph, the first word "MERPCAS" should read "MERPAC".

3. On page 30556, in the second column, under **SUPPLEMENTARY INFORMATION**, line 2 of the third paragraph, "applications for five positions that" should read "applications for six positions that".

4. On page 30556, in the third column, under **SUPPLEMENTARY INFORMATION**, line 4 "(d) Marine Educator associated with a" should read "(d) Two Marine Educators associated with a".

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–16362 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 7, 1999 [FR 64, page 17055].

DATES: Comments must be submitted on or before July 28, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aviation Safety Counselor of the Year Award Competition.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0574.

Forms(s): FAA Form 8740–14.

Affected Public: Individuals involved in aviation.

Abstract: The form is used to nominate private citizens for recognition of their volunteer services to the FAA. The agency will use the information on the form to select nine regional winners and one national winner.

Estimated Annual Burden Hours: 180 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 21, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–16274 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Closure of FAA Workspace Located in Billings, MT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration announces the closure of workspace provided for Aviation Safety Inspectors in Billings, MT.

EFFECTIVE DATE: This notice is effective as of July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Pile, Manager, Resource Management Branch, Flight Standards Division, Northwest Mountain Region, ANM–210, 1601 Lind Avenue SW, Renton, WA 98055–4056, telephone number (425) 227–2210.

SUPPLEMENTARY INFORMATION: Currently, six Flight Standards Aviation Safety Inspectors, traveling from the Helena Flight Standards District Office, deliver service to the aviation industry and public in Montana. The Billings workspace was provided for use by these traveling Inspectors. However, the actual utilization of this workspace has been minimal. Furthermore, no Flight Standards personnel have been based in Billings for the past five years. Thus, closure of this workspace became appropriate in the interest of eficient use of taxpayer dollars. After this workspace is closed, the Flight Standards Aviation Safety Inspectors will continue to provide the same level of service.

Issued in Washington, DC, on June 21, 1999.

Angela B. Elgee,

Acting Manager, Flight Standards Division, ANM–200.

[FR Doc. 99–16275 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

International Mass Transportation Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This Notice announces the establishment of a new International Mass Transportation Program (IMTP) by the Federal Transit Administration (FTA). The purpose of the IMTP, which

was authorized by Congress at FTA's request, is to strengthen the domestic transit industry by providing it with greater access to information about technological innovations and business opportunities in the global marketplace. This notice describes the statutory basis and proposed structure of the program, and solicits public comments and expressions of interest.

DATES: August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Edward L. Thomas, Associate Administrator for Research, Demonstration and Innovation (TRI–1), at (202) 366–4052, or Rita Daguillard, International Program Manager, at (202) 366–0955, or in writing at Room 9401, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The increasing globalization of the world economy has presented great new opportunities and challenges for the mass transportation industry. The vast array of technological innovations available worldwide allows transit providers to offer quicker and better service, attract new ridership, and maximize use of their equipment and infrastructure. Moreover, the lowering of political and economic barriers and the growth of information technology has created an integrated and interconnected global marketplace.

In order to enhance its abilities to help the domestic transit industry take advantage of this new technology and gain greater access to international markets, FTA requested from Congress authorization to establish an international program. On June 9, 1998, President Clinton signed into law the Transportation Equity Act for the 21st Century (TEA–21). Section 3015 of TEA–21 creates a new Section 5312(e) in Title 49, United States Code, which authorizes the Secretary of Transportation to inform the United States domestic mass transportation community about technological innovations available in the international marketplace and to undertake activities that may afford domestic businesses the opportunity to become globally competitive in the export of mass transportation products and services. That section provides:

1. Authority. Title 49 United States Code Section 3015(e) International Mass Transportation Program provides broad authority including:

a. *Activities* The Secretary is authorized to engage in activities to inform the United States domestic mass transportation community about technological innovations available in the international marketplace and activities that may afford domestic businesses the opportunity to become globally competitive in the export of mass transportation products and services. Such activities may include—

(1) Development, monitoring, assessment, and dissemination domestically information about worldwide mass transportation market opportunities;

(2) Cooperation with foreign public sector entities in research, development, demonstration, training, and other forms of technology transfer and exchange of experts and information;

(3) Advocating, in international mass transportation markets of firms, products and services available from the United States;

(4) Informing the international market about the technical quality of mass transportation products and services through participation in seminars, expositions, and similar activities; and

(5) Offering those Federal Transit Administration technical services which cannot be readily obtained from the United States private sector to foreign public authorities planning or undertaking mass transportation projects if the cost of these services will be recovered under the terms of each project.

b. *Cooperation.* The Secretary may carry out activities in cooperation with other Federal agencies, State or local agencies, public and private nonprofit institutions, government laboratories, foreign governments, or any other organization the Secretary determines is appropriate.

c. *Funding.* Funds available to carry out the IMTP include revenues paid to the Secretary by any cooperating organization or person, and may be used to carry out authorized activities, including necessary promotional materials, travel, reception and representation expenses.

II. Program Structure

Both the FTA and U.S. Department of Transportation Strategic Plans include advancing America's economic growth and competitiveness domestically and internationally as a primary goal. This goal is the product of extensive public outreach and reflects the input of both public and private sectors of the U.S. mass transportation industry on the proper role of the Federal Government in this area. The overall structure of the IMTP has been designed with this goal in mind, consistent with Congressional intent for the IMTP. Initially the program has been divided into four basic functional categories:

- Intergovernmental Cooperation Agreements
- Technology/Information Exchange
- Human Capacity Building
- U. S. Industry Trade Support

Activities and outcomes envisioned for each area are discussed further below. FTA seeks comments from the U.S. domestic mass transportation industry and other interested parties on the proper roles of FTA and other potential participants in each functional area. FTA also seeks views and comments on the appropriateness of the functional areas selected and whether additional functional areas should be included in keeping with the strategic goals of the IMTP.

A. Intergovernmental Cooperation Agreements

Active government support for domestic industries is well recognized as a key ingredient to success in the international trade arena. Such support can take many forms as suggested below under the functional category of U.S. Industry Trade Support. A distinctly separate but interrelated function involves the mutual support of the U.S. Government in carrying out its international relations provided to foreign governments and international organizations. FTA and other elements of the U.S. Department of Transportation have entered into a variety of intergovernmental agreements involving technical assistance, technology transfer, international standards, and the like with numerous foreign governments. Implementation of the terms of these agreements is likely to present a variety of trade opportunities for the U.S. domestic transportation industry.

A principal outcome goal of the IMTP, consistent with the statutory mandate, will be to increase activities in cooperation with other Federal agencies, State or local agencies, public and private nonprofit institutions, government laboratories, foreign governments, or industry associations such as the American Public Transit Association and the Intelligent Transportation Society of America.

B. Technology/Information Exchange

Over the past two decades, we have entered an Information Age that has created social and economic changes as profound as those brought about by the Industrial Revolution two centuries earlier. New information technologies in the areas of fleet management, traveler information, and electronic payment have greatly affected the delivery of transportation services. A principal outcome goal of the IMTP is to increase the availability of information to the U.S. domestic transportation industry in the areas of global transportation innovation and trade. In this Information Age it is impractical to think in terms of any one agency serving as the single source of information for any industry. However, given FTA's experience in international technology transfer and information exchange, FTA can play a pivotal role. A primary example is FTA's participation in the Transportation Research Information Service (TRIS) and the international database, TRANSPORT, which is the result of international cooperation among the U.S. Department of Transportation, Transportation Research Board, Road Transport Research Program of the Organization for Economic Cooperation and Development, and the European Conference of Ministers of Transport.

FTA is aware of complaints from the U.S. domestic transportation industry that technology transfer and information exchange is heavily weighted towards the outflow of U.S. know-how in dealings with certain foreign government agencies and organizations, to the distinct disadvantage of the U.S. domestic transportation industry. It is a basic tenet of the IMTP that technology transfer and information exchange be a two-way communication at all levels. Like intergovernmental agreements, this area holds the potential for offering additional trade opportunities for the U.S. domestic transportation industry. It also serves as a major resource for advancing FTA's goals in the area of human capacity building.

C. Human Capacity Building

This functional area includes a variety of activities directed towards two primary outcome goals (1) increasing the capacity of the U.S. domestic mass transportation industry to compete internationally; and (2) increasing the technical capacity of foreign mass transportation providers, both public and private, to meet the mobility needs of their traveling publics.

Towards the first goal, FTA will offer basic and advanced training to the U.S. domestic transportation industry in fundamentals of international trade and finance. Such training would include a full range of subjects such as U.S. Department of Commerce, State, and Defense regulations affecting export of goods and services to regulatory requirements applicable to foreign importers such as the International Standards Organization (ISO) standards for quality control (ISO 9000) and environmental protection (ISO 14000). FTA can facilitate briefings by other Federal agencies such as U.S. Agency for International Development for knowledge on the roles and resources offered by such agencies to assist the U.S. domestic transportation industry in the international arena. In carrying out these activities, FTA will work closely with representatives of the U.S. domestic mass transportation industry, such as the Business Members Board of Governors of the American Public Transit Association, to identify and prioritize industry needs.

Towards the second goal, FTA will assist foreign mass transit providers, both public and private, in building the human capacity necessary to plan, design, build and operate their own domestic transportation systems. In so doing, FTA will showcase U.S. transportation technology and innovative practices. To the maximum extent practicable, this effort will be carried out through the promotion and use of products and services offered by the U.S. domestic mass transportation industry.

D. U.S. Industry Trade Support

The U.S. domestic transportation industry is inextricably entwined with the international transportation industry. In today's global marketplace the U.S. transportation industry simply cannot survive unless it remains internationally competitive. The survival of other U.S. domestic industries is similarly tied to the economic health and vitality of the domestic transportation industry, as is the quality of life and mobility options of all residents in the United States. But what is the appropriate role for the FTA? TEA–21 is reasonably explicit concerning the broad types of activities FTA may carry out under the IMTP, as discussed under paragraph 1 above. Notwithstanding, FTA will look to the U.S. transportation industry, both public and private sector representatives, to say which of these activities are most needed and how they should be deployed at any given time.

Thus, FTA has identified a series of concrete steps, in addition to those previously discussed, which might be undertaken within the scope of the IMTP, to supplement, rather than supplant, the efforts of the industry itself and other stakeholders. FTA seeks comment and suggestions on how FTA should approach each area, as well as thoughts on other avenues that might be taken to achieve our strategic planning goals.

III. Implementation and Funding of Program Activities

Section 3015 of TEA–21 provides that IMTP program activities may be carried out with revenues paid to FTA by any cooperating organization or person. FTA seeks recommendations and suggestions on how such entities could make financial contributions to each of the proposed IMTP activities. In particular, FTA seeks comment on which activities should be funded; and, what levels of funding are appropriate for each activity? Commenters are also invited to identify program activities in addition to those listed below, indicate which organizations or individuals would participate in them, and how and by whom they would be funded. FTA will describe specific mechanisms for those program activities in its final notice on the IMTP.

(1) International Mass Transit Displays

Visual displays, literature and promotional materials/items supporting advocacy for U.S. efforts abroad would be provided. Video presentations on the IMTP and products and services available from U.S. domestic transportation industry suppliers would be prepared and distributed for use by presenters at appropriate events such as those sponsored by the American Public Transit Association, World Bank, State Department, Commerce Department and similar organizations.

(2) Speakers Bureau

FTA can serve as a clearinghouse for representatives of the U.S. domestic transportation industry willing to make speeches and provide technical presentations at both national and international meetings, conferences, trade fairs and the like.

(3) Co-sponsorship of International Conferences

It may be appropriate for FTA to provide a modest amount of funds, through cooperative arrangements with other public and private sector organizations, to co-sponsor events which provide opportunities for promoting the goals of the IMTP.

(4) International Mass Transportation Program Forum

FTA envisons holding one or more outreach events to promote the IMTP and to obtain public input on the program structure and direction.

(5) Scanning Tours

FTA plans to give continued support to the international scanning tours conducted under the FTA's Transit Cooperative Research Program managed

by the National Academy of Sciences, Transportation Research Board, whereby representatives of the U.S. domestic transit agencies travel to foreign countries to acquaint themselves with innovative technologies and solutions to transportation challenges. Similar tours could be organized for members of the business community. Moreover, FTA envisions establishing exchange programs which would bring foreign nationals to the United States, both to educate and inform the U.S. transportation industry, and to learn what the U.S. domestic industry may have to offer. This is a particularly promising venue for promoting the export of U.S. goods and services.

(6) Trade Missions

FTA could co-sponsor trade missions for various sectors of the U.S. domestic transportation industry either directly or through the auspices of other organizations such as the Commerce Department.

(7) Identification of Opportunities

FTA cannot hope to duplicate the resources of either government agencies whose principal function concerns international trade, or large international firms, when it comes to identifying overseas business opportunities. However, FTA can assist those entities in identifying domestic companies which are not yet engaged in international commerce, but could partner with the more sophisticated entities for mutual benefit. Additionally, implementation of our international agreements frequently involves discussion of technical matters that could lead to business opportunities for the U.S. domestic transportation industry.

III. Request for Comments

FTA is seeking comment on these proposed activities and expressions of interest from all stakeholders with an interest in the IMTP. After consideration of these comments, FTA will publish a final notice describing the activities to be undertaken under the IMTP.

Issued on: June 22, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–16357 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–1999–5857]

Information Collection Available for Public Comments and Recommendations; Notice and request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled "Application for Construction Reserve Fund and Annual Statements."

DATES: Comments should be submitted on or before August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel Ladd, Financial Analyst, Office of Ship Financing, Maritime Administration, 400 Seventh Street, SW, Room 8122, Washington, D.C. 20590, telephone number—202–366–5744. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for Construction Reserve Fund and Annual Statements.

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0032.

Form Number: NA.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: The collection consists of an application required for all citizens who own or operate vessels in the U.S. foreign or domestic commerce and desire "tax" benefits under the Construction Reserve Fund (CRF) program. The annual statement sets forth a detailed analysis of the status of the CRF when each income tax return is filed. Checks for withdrawals from the CRF must be sent to MARAD for countersignature.

Need and Use of the Information: The application is required in order for MARAD to determine whether the applicant is qualified for the benefits and for the applicant to obtain benefits under the CRF program. The annual statements are required from each respondent in order for MARAD to assure that the requirements of the program are being satisfied.

Description of Respondents: Citizens who own or operate vessels in the U.S., foreign, or domestic commerce.

Annual Responses: 17 responses.

Annual Burden: 153 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments maybe submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

Dated: June 22, 1999.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 99–16288 Filed 6–25–99; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33758]

CSX Transportation, Inc.—Trackage Rights Exemption—Grand Trunk Western Railroad Incorporated

Grand Trunk Western Railroad Incorporated, a wholly owned subsidiary of Canadian National Railway Company (CN), has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT) between CN's connection with Norfolk Southern Railway Company at Ecorse Junction, MI, at or near milepost 47.0, and CN's connection with CSXT at Toledo, OH, at or near milepost 0.6, on CN's Shoreline Subdivision, a total distance of approximately 46.4 miles. CSXT shall also have the right to enter and exit this trackage at the proposed connection between CN and Consolidated Rail Corporation at Denby, MI, at or near CN's milepost 34.1, or at any connection to be mutually agreed upon by CN and CSXT.

The transaction is scheduled to be consummated on or after June 24, 1999.

The purpose of the trackage rights is to improve service to customers by reducing congestion and delay in the West Detroit, Delray, and Ecorse Junction, MI, areas.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33758, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Charles M. Rosenberger, Esq., CSX Transportation, Inc., 500 Water Street, (J150), Jacksonville, FL 32202.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 21, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16397 Filed 6–25–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and time for the next meeting and the provisional agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on International Child Labor Enforcement will be held on Tuesday, July 13, 1999 at approximately 9:30 a.m. in the Secretary's large conference room, Room 3327, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC. The duration of the meeting will be approximately three hours.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Tel.: (202) 622–0220. Final meeting details, including the meeting time, location, and agenda, can be confirmed by contacting the above number one week prior to the meeting date.

SUPPLEMENTARY INFORMATION:

Agenda

At the July 13, 1999 session, the Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

1. The President's June 12, 1999 Executive Order prohibiting procurement by the U.S. Government of products made with child labor
2. Legislative proposals to address such issues as the definition of prohibited child labor
3. The new ILO Convention on Child Labor
4. Other Business

The meeting is open to the public; however, participation in the Committee's deliberations is limited to private sector and ex officio Committee members and Customs and Treasury Department staff. A person other than an Advisory Committee member who wishes to attend the meeting should give advance notice by contacting Theresa Manning at (202) 622–0220, no later than July 6, 1999.

Dated: June 22, 1999.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 99–16273 Filed 6–25–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0061]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to ascertain that the veteran needs the requested supplies, that the supplies are reasonable for the veteran's program, and that the veteran does not already own the supplies.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 27, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0061" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Supplies, VA Form 28–1905m.

OMB Control Number: 2900–0061.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The data collected is used to ascertain that the veteran needs the requested supplies, that the supplies are reasonable for the veteran's program, and that the veteran does not already own the supplies.

Affected Public: Individuals or households, Not-for-profit institutions, Business or other for-profit, Farms.

Estimated Annual Burden: 1000 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 1000.

Dated: April 27, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–16287 Filed 6–25–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 64, No. 123

Monday, June 28, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41482; File No. SR-CHX-99-3]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc., Concerning an Increase in the BEST Rule Guarantee and the Minimum Order Acceptance Level in the MAX System

Correction

In notice document 99–15354, beginning on page 32572, in the issue of Thursday, June 17, 1999, make the following correction:

On page 32572, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C9–15354 Filed 6-25-99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41510; File No. SR-NASD-99-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Creation of a Dispute Resolution Subsidiary

Correction

In notice document 99–15348, beginning on page 32575, in the issue of Thursday, June 17, 1999, make the following correction:

On page 32575, in the first column, the subject heading is corrected to read as set forth above.

[FR Doc. C9–15348 Filed 6-25-99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

Net Command Tech, Inc.; Order of Suspension of Trading

Correction

In notice document 99–15246, appearing on page 32074, in the issue of Tuesday, June 15, 1999, make the following correction:

On page 32074, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C9–15246 Filed 6-25-99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Monday
June 28, 1999

Part II

The President

Executive Order 13128—Implementation of the Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13128 of June 25, 1999

Implementation of the Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Chemical Weapons Convention Implementation Act of 1998 (as enacted in Division I of Public Law 105–277) (the Act), the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, and in order to facilitate implementation of the Act and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (the "Convention"), it is hereby ordered as follows:

Section 1. The Department of State shall be the United States National Authority (the "USNA") for purposes of the Act and the Convention.

Sec. 2. The USNA shall coordinate the implementation of the provisions of the Act and the Convention with an interagency group consisting of the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Energy, and the heads of such other agencies or departments, or their designees, I may consider necessary or advisable.

Sec. 3. The Departments of State and Commerce, and other agencies as appropriate, each shall issue, amend, or revise regulations, orders, or directives as necessary to implement the Act and U.S. obligations under Article VI and related provisions of the Convention. Regulations under section 401(a) of the Act shall be issued by the Department of Commerce by a date specified by the USNA, which shall review and approve these regulations, in coordination with the interagency group designated in section 2 of this order, prior to their issuance.

Sec. 4. The Secretary of Commerce is authorized:

(a) to obtain and execute warrants pursuant to section 305 of the Act for the purposes of conducting inspections of facilities subject to the regulations issued by the Department of Commerce pursuant to section 3 of this order;

(b) to suspend or revoke export privileges pursuant to section 211 of the Act; and

(c) to carry out all functions with respect to proceedings under section 501(a) of the Act and to issue regulations with respect thereto, except for those functions that the Act specifies are to be performed by the Secretary of State or the USNA.

Sec. 5. The Departments of State, Defense, Commerce, and Energy, and other agencies as appropriate, are authorized to carry out, consistent with the Act and in accordance with subsequent directives, appropriate functions that are not otherwise assigned in the Act and are necessary to implement the provisions of the Convention and the Act.

Sec. 6. The Departments of State, Defense, Commerce, and Energy, and other agencies, as appropriate, are authorized to provide assistance to facilities not owned or operated by the U.S. Government, or contracted for use by or for the U.S. Government, in meeting reporting requirements and in preparing the facilities for possible inspection pursuant to the Convention.

Sec. 7. The USNA, in coordination with the interagency group designated in section 2 of this order, is authorized to determine whether disclosure of confidential business information pursuant to section 404(c) of the Act is in the national interest. Disclosure will not be permitted if contrary to national security or law enforcement needs.

Sec. 8. In order to take additional steps with respect to the proliferation of weapons of mass destruction and means of delivering them and the national emergency described and declared in Executive Order 12938 of November 14, 1994, as amended by Executive Order 13094 of July 30, 1998, section 3 of Executive Order 12938, as amended, is amended to add a new subsection (e) to read as follows:

"(e) the Secretary of Commerce shall impose and enforce such restrictions on the importation of chemicals into the United States as may be necessary to carry out the requirements of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction."

Sec. 9. Any investigation emanating from a possible violation of this order, or of any license, order, or regulation issued pursuant to this order, involving or revealing a possible violation of 18 U.S.C. section 229 shall be referred to the Federal Bureau of Investigation (FBI), which shall coordinate with the referring agency and other appropriate agencies. The FBI shall timely notify the referring agency and other appropriate agencies of any action it takes on such referrals.

Sec. 10. Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 11. (a) This order shall take effect at 12:01 a.m. eastern daylight time, June 26, 1999.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
June 25, 1999.

[FR Doc. 99–16634
Filed 6–25–99; 1:33 pm]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
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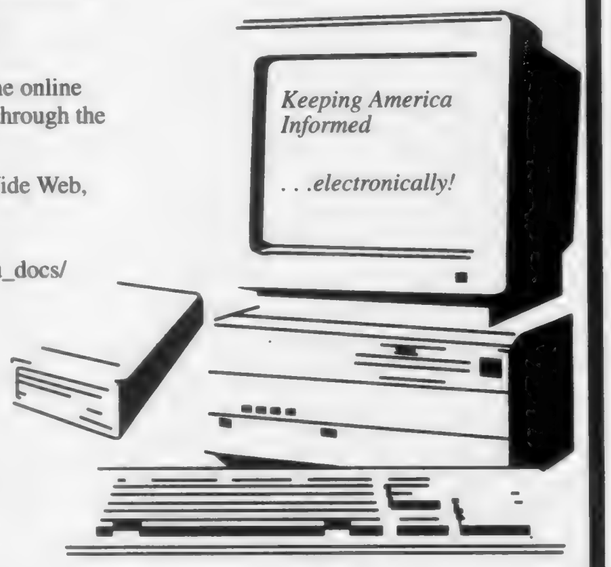
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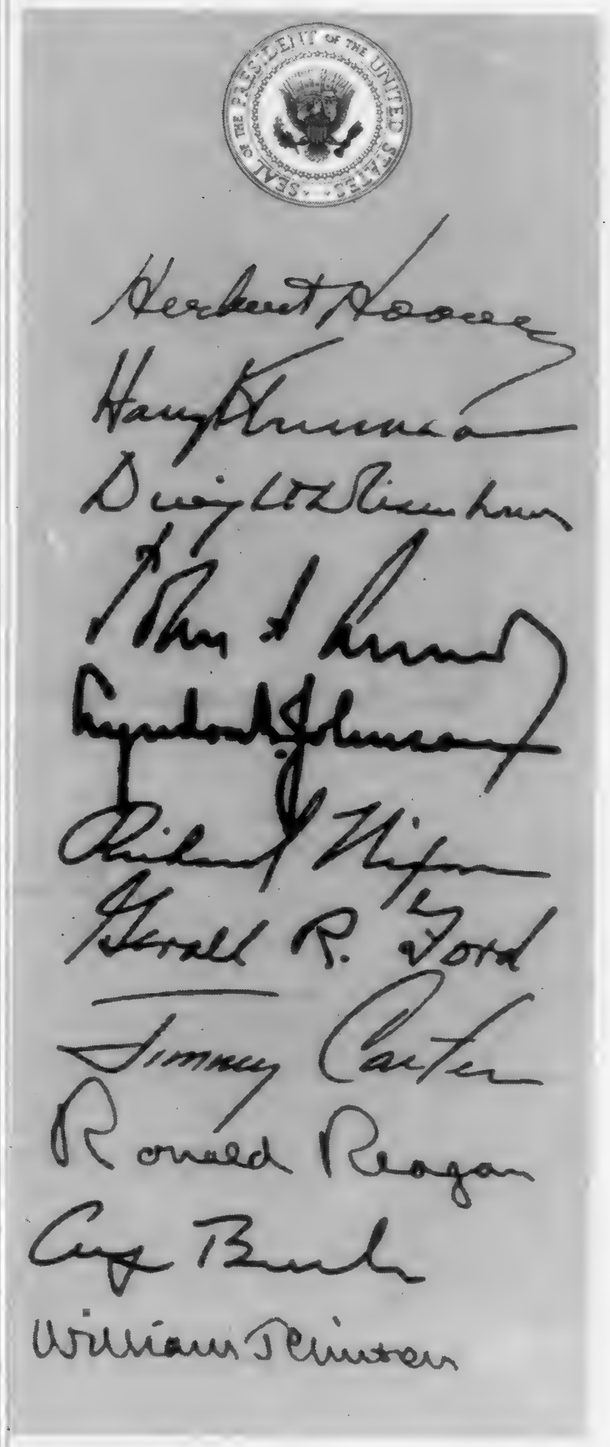
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[**Editorial Note:** This document, published at 64 FR 34697 in the Federal Register of June 28, 1999, was erroneously identified as "Customs Service Commercial Operations Advisory Committee." It should have been listed in the Table of Contents as set forth here.]

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Federal Register
Vol. 64, No. 124
Tuesday, June 29, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV99–929–1 FIR]

Cranberries Grown in the States of Massachusetts, et al.; Temporary Suspension of a Provision on Producer Continuance Referenda Under the Cranberry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which temporarily suspended an order provision requiring a producer continuance referendum to be conducted on the marketing order during the month of May 1999. The industry currently is experiencing unsettled marketing conditions due to a surplus of product. The temporary delay in holding the continuance referendum is allowing the Cranberry Marketing Committee (Committee) to finalize the development of a plan to improve the marketing situation, hold producer meetings throughout the production area to update them on the situation, and begin implementing the plan.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530-S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–2491; Fax: (202) 720–5698 or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698; or E-mail: Jay.Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following website: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in 10 States. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The action temporarily suspended a provision in § 929.69(d) of the order which specifies the month and year when a continuance referendum should be conducted to determine if producers favor continuance of the cranberry marketing order. This action was unanimously recommended by the Committee at its March 15, 1999, meeting.

Section 929.69(d) of the order provides that the Secretary shall conduct a referendum during the month of May 1975 to ascertain whether continuance of the order is favored by the producers, and that the Secretary shall conduct such a referendum during the month of May of every fourth year thereafter. The next continuance referendum was scheduled to be conducted in May 1999. The last continuance referendum was held in May 1995.

Section 929.69(b) of the order authorizes the Secretary to terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

At its March 15, 1999, meeting, the Committee recommended delaying the May 1999 referendum because the cranberry industry currently is experiencing significant marketing problems. Over the last few months, inventories of cranberry juice have been at record levels and producer prices have dropped significantly.

The Committee reported that, over the last five years, the industry has enjoyed increasing demand for cranberry products, primarily due to the success of numerous cranberry juice based beverages. However, such success has attracted additional production. With increased production and a leveling of demand, carry-out stocks of cranberry juice and juice products are at record levels and are predicted to increase significantly over the next few years. The Committee reported that carryout stocks at the end of August were approximately 1.2 million (mill.) barrels (bbls) in 1997, 2.1 mill. bbls in 1998, and are projected to be 2.7 and 3.2 mill. bbls in 1999 and 2000, respectively. The Committee also reported that, in recent months, producer prices have responded to this surplus by dropping from $70-80/barrel to $38/barrel.

The Committee plans a series of producer meetings throughout the 10-State production area to inform producers about positive actions being

undertaken by the Committee to help strengthen marketing conditions. Some of these actions include proposing amendments to the order, and filing an application with the Department's Foreign Agricultural Service for Market Access Program funds to help the industry further develop export markets for cranberries and cranberry products. The industry also is working with Congress on amendments to the Act to include reporting requirements for processors and importers, and adding cranberries to the list of commodities with the authority to establish marketing research projects, including paid advertising, to more effectively promote cranberries and cranberry products.

The Committee believes that a temporary delay in holding the continuance referendum provided time for its actions to help stabilize the current marketing situation. The Committee further believes that holding a continuance referendum in May 1999, given the current unsettled marketing situation, would not have provided a true indicator of support for and the value of the order.

Pursuant to § 929.69(b), the interim final rule suspended provisions in § 929.69(d) to postpone the May 1999 continuance referendum under the cranberry marketing order. The Department currently plans to conduct a producer continuance referendum in May 2000. However, a final decision on holding that referendum will not be made until the spring of 2000. The Committee traditionally meets each year during the months of February or March to assess the current marketing situation and prospects for the upcoming season. The Committee's assessment of marketing conditions at that time will be used in making the final decision. In accordance with § 929.69(d) of the order, a continuance referendum is required to be held in May 2003.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of cranberries who are subject to regulation under the order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of cranberries may be classified as small entities.

The interim final rule temporarily suspended a provision in the order requiring a producer referendum to be held in May 1999 to determine whether producers favor continuance of the order.

Section 929.69(d) of the order provides that the Secretary shall conduct a referendum during the month of May 1975 to ascertain whether continuance of the order is favored by the producers, and that the Secretary shall conduct such a referendum during the month of May of every fourth year thereafter. The next continuance referendum was scheduled to be conducted in May 1999. The last continuance referendum was held in May 1995.

Section 929.69(b) of the order authorizes the Secretary to terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

At its March 15, 1999, meeting, the Committee recommended delaying the May 1999 referendum because the cranberry industry currently is experiencing significant marketing problems. Over the last few months, inventories of cranberry juice have been at record levels and producer prices have dropped significantly.

The Committee reported that, over the last five years, the industry has enjoyed increasing demand for cranberry products, primarily due to the success of numerous cranberry juice based beverages. However, such success has attracted additional production. With increased production and a leveling of demand, carry-out stocks of cranberry juice and juice products are at record levels and are predicted to increase significantly over the next few years. The Committee reported that carryout stocks at the end of August were approximately 1.2 million (mill.) barrels (bbls) in 1997, 2.1 mill. bbls in 1998, and are projected to be 2.7 and 3.2 mill. bbls in 1999 and 2000, respectively. The Committee also reported that, in recent months, producer prices have responded to this surplus by dropping from $70-80/barrel to $38/barrel.

The Committee plans a series of producer meetings throughout the 10-State production area to inform producers about positive actions being undertaken by the Committee to help strengthen marketing conditions. Some of these actions include proposing amendments to the order, and filing an application with the Department's Foreign Agricultural Service for Market Access Program funds to help the industry further develop export markets for cranberries and cranberry products. The industry also is working with Congress on amendments to the Act to include reporting requirements for processors and importers, and adding cranberries to the list of commodities with the authority to establish marketing research projects, including paid advertising, to more effectively promote cranberries and cranberry products.

The Committee believes that a temporary delay in holding the continuance referendum provided time for its actions to help stabilize the current marketing situation. The Committee further believes that holding a continuance referendum in May 1999, given the current unsettled marketing situation, would not have provided a true indicator of support for and the value of the order.

Pursuant to § 929.69(b), this action suspended provisions in § 929.69(d) to postpone the May 1999 continuance referendum under the cranberry marketing order. The Department currently plans to conduct a producer continuance referendum in May 2000. This should serve as an alternative to just suspending the May 1999 continuance referendum. However, a final decision on holding that referendum will not be made until the spring of 2000. The Committee traditionally meets each year during the months of February or March to assess the current marketing situation and prospects for the upcoming season. The Committee's assessment of marketing conditions at that time will be used in making the final decision. In accordance with § 929.69(d) of the order, a continuance referendum is required to be held in May 2003.

This action did not impose any additional recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by Part 929 have been previously approved by OMB and assigned OMB Number 0581–0103.

Committee meetings are widely publicized throughout the cranberry industry and are open to all industry members and entities (including both small and large business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Like all Committee meetings, the March 1999 meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. The Committee itself is composed of eight members, of which seven members are growers and one represents the public.

The interim final rule concerning this action was published in the **Federal Register** (64 FR 24023, May 5, 1999) with an effective date of May 6, 1999, through May 31, 1999. Copies of the rule were mailed by the Committee's staff to all Committee members and cranberry producers. In addition, the rule was made available through the Internet by the Office of the **Federal Register**. That rule provided for a 15-day comment period which ended May 20, 1999. No comments were received.

After consideration of all available information, and pursuant to § 929.69(b), it is found that the second sentence in § 929.69(d) does not tend to effectuate the declared policy of the Act for the period specified in the interim final rule and it is temporarily suspended.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Accordingly the interim final rule amending 7 CFR part 929 which was published at 64 FR 24023 on May 5, 1999, is adopted as a final rule without change.

Dated: June 17, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–16508 Filed 6–28–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93 and 98

[Docket No. 98–102–2]

Limited Ports; Memphis, TN

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On April 30, 1999, the Animal and Plant Health Inspection Service published a direct final rule. (See 64 FR 23178–23179, Docket No. 98–102–1). The direct final rule notified the public of our intention to amend the animal importation regulations by adding Memphis, TN, to the list of limited ports of entry for semen, embryos, and products of horses, ruminants, and swine. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as: June 29, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Morley H. Cook, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8686; or e-mail: morley.h.cook@usda.gov.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 24th day of June 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–16499 Filed 6–28–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–45–AD; Amendment 39–11212; AD 99–14–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–300 and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–300 and –400 series airplanes. This action requires repetitive inspections of the E–42 satellite communications (SATCOM) rack and fuselage (supporting) structure to detect cracking in the area surrounding the fastener holes, and to detect broken and missing fasteners; and corrective actions, if necessary. This amendment is prompted by reports indicating that cracking and broken and/or missing fasteners were found on the E–42 SATCOM equipment rack structure that attaches to the fuselage structure. The actions specified in this AD are intended to detect and repair cracking of the E–42 SATCOM rack and its supporting structure, which could result in the SATCOM equipment falling from the rack, loss of SATCOM capabilities, injury to passengers, and reduced controllability of the airplane.

DATES: Effective July 14, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99-NM–45-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Gnehm, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1426; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that cracking and broken and/or missing fasteners were found on the E–42 SATCOM equipment rack structure that attaches to the fuselage structure on several Boeing Model 747–300 and –400 series airplanes. Investigation revealed that one of the four stanchions (i.e., a supporting prop or brace) was found completely broken on two airplanes (one that had accumulated 23,693 total flight hours and the other with 24,752 total flight hours). Further investigation revealed that the rigid joints of the supporting structure of the E–42 SATCOM rack, coupled with environmental vibration of the airplane, may have caused the cracking to initiate in the area surrounding the fastener holes (located at the rigid joints) of the supporting structure of the E–42 SATCOM rack. The FAA also has received a report indicating that cracking has been detected on four freighter airplanes; one of the airplanes had accumulated less than 1,500 total flight hours.

On all airplanes, the E–42 SATCOM rack hangs above the main deck ceiling. On freighter airplanes and "combi" airplanes (i.e., configurations with provisions for passenger seating and cargo on the main deck), the E–42 SATCOM rack is located near rudder and elevator control cables, and the SATCOM wires run above the rudder and elevator control cables.

On all airplanes, failure of the rack and its supporting structure could result in loss of support for the E–42 SATCOM equipment, which could lead to chafing and arcing of the electrical wires and loss of SATCOM capabilities. Such failure also could result in the following unsafe conditions:

- On passenger-only airplanes, the E–42 SATCOM equipment could break through the ceiling, which could result in injury to passengers.
- On freighter and "combi" airplanes, the E–42 SATCOM equipment could fall and cause the SATCOM wires to pull and possibly break the rudder and/or elevator control cables, which could result in reduced controllability of the airplane. Failure of the SATCOM rack on "combi" airplanes carrying passengers also could result in injury to the passengers.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2428, dated December 17, 1998, which describes procedures for repetitive close visual inspections of the E–42 SATCOM rack and fuselage (supporting) structure to detect cracking in the area surrounding the fastener holes, and to detect broken or missing fasteners.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and repair cracking of the E–42 SATCOM rack and its supporting structure, which could result in the SATCOM equipment falling from the rack, loss of SATCOM capabilities, injury to passengers, and reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below. This AD also requires that operators report results of initial inspection findings to the manufacturer.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Differences Between AD and Alert Service Bulletin

Operators should note that, although the Boeing alert service bulletin specifies that the manufacturer may be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Operators also should note that the Boeing alert service bulletin specifies that the manufacturer determine the repetitive inspection intervals in the event a repair and/or replacement of the fasteners is necessary. This AD would require repetitive inspections of the E–42 SATCOM rack and its supporting structure at intervals not exceeding 3,000 flight cycles, whether a repair and/or replacement of fasteners is required or not. While a manufacturer Designated Engineering Representative (DER) is authorized to determine whether a design or repair method complies with a specific requirement, at this time the FAA has not delegated the authority to a manufacturer DER to make the discretionary determination for repetitive inspection requirements.

Explanation of Applicability

Operators should note that the Boeing alert service bulletin (previously described), does not specify the line number for the effectivity of Boeing Model 747–400 series airplanes, but states that "a line number will be specified at a later date," when a design improvement can be incorporated into the production line. To account for this interpretative effectivity, this AD is applicable to Boeing Model 747–300 series airplanes as listed in the alert service bulletin and Boeing Model 747–400 series airplanes equipped with a Boeing-installed E–42 SATCOM rack. As discussed previously, because this AD is considered interim action, applicability may be revised accordingly in subsequent AD action.

Explanation of Compliance Time

Operators should note that the Boeing alert service bulletin (previously described) recommends that the initial inspection be performed at the applicable time, as specified below:

- For airplanes identified in the alert service as Group 1: Within 500 flight hours or within 14,000 flight hours since the E–42 SATCOM rack was installed and populated with equipment.
- For airplanes identified in the alert service as Groups 2, 3, and 4: Within 500 flight hours or 20,000 flight hours since the E–42 SATCOM rack was installed and populated with equipment.

This AD would require that the initial inspection be performed at the applicable time, as specified below:

- For airplanes identified in the alert service bulletin as Group 1: Within 30 days after the effective date of this AD.
- For airplanes identified in the alert service bulletin as Groups 2, 3, and 4: Within 90 days after the effective date of this AD.

The FAA finds that, in view of a recent report indicating that cracking has been detected on an airplane that had accumulated less than 1,500 total flight hours, and because of the safety implications and consequences associated with such cracking, the initial compliance time specified in this AD is appropriate.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–45–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–14–04 Boeing: Amendment 39–11212. Docket 99–NM–45–AD.

Applicability: Model 747–300 series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2428, dated December 17, 1998; and Model 747–400 series airplanes equipped with a Boeing installed E–42 satellite communications (SATCOM) rack; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and repair cracking of the E–42 SATCOM rack and its supporting structure, which could result in the SATCOM equipment falling from the rack, loss of SATCOM capabilities, injury to passengers, and reduced controllability of the airplane, accomplish the following:

Initial and Repetitive Detailed Visual Inspections

(a) Perform a detailed visual inspection of the E–42 SATCOM rack and fuselage (supporting) structure to detect cracking in the area surrounding the fastener holes, and to detect broken or missing fasteners, in accordance with Boeing Alert Service Bulletin 747–53A2428, dated December 17, 1998, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight hours.

(1) For airplanes identified as Group 1: Within 30 days after the effective date of this AD.

(2) For airplanes identified as Groups 2, 3, and 4: Within 90 days after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation or assembly to detect damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(b) If any cracking is found, or if any fastener is broken or missing, during any inspection required by paragraph (a) of this AD, prior to further flight: Repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. Repeat the detailed visual inspection of the SATCOM rack and fuselage (supporting) structure thereafter at the intervals specified by paragraph (a) of this AD.

Reporting Requirements

(c) Submit a report of the initial inspection findings (positive and negative) to Boeing Commercial Airplane Group, Attention: Manager, Airline Support, P.O. Box 3707, Seattle, Washington 98124–2207; at the time specified in paragraph (c)(1) or (c)(2) of this AD, as applicable. The report must include a description of any discrepancy found, the airplane serial number, the number of landings and flight hours on the airplane, and, when possible, sketches and photographs of the inspected area. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the initial inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the initial inspection required by paragraph (a) of this AD.

(2) For airplanes on which the initial inspection has been accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided that all the equipment is removed from the E–42 SATCOM rack.

Incorporation by Reference

(f) The inspections shall be done in accordance with Boeing Alert Service Bulletin 747–53A2428, dated December 17, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 14, 1999.

Issued in Renton, Washington, on June 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16326 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 3, 4, 40, 84, 96, 117, 127, 138, 151, 154, 159, 160, 164, 165, 167, 174, 175, 179, 181, and 183

[USCG–1999–5832]

Technical Amendments; Organizational Changes; Miscellaneous Editorial Changes and Conforming Amendments

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule makes editorial and technical changes throughout Title 33 of the Code of Federal Regulations (CFR) to update the title before it is recodified on July 1, 1999. It corrects addresses, updates cross-references, makes conforming amendments, and makes other technical corrections. This rule will have no substantive effect on the regulated public.

DATES: This final rule is effective June 30, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–1999–5832), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Ms. Janet Walton, Project Manager, Standards Evaluation and Development Division (G–MSR–2), Coast Guard, telephone 202–267–0257. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Discussion of the Rule

Each year Title 33 of the Code of Federal Regulations is recodified on July 1. This rule makes editorial changes throughout the title, corrects addresses, updates cross-references, and makes other technical and editorial corrections to be included in the recodification. Some editorial changes are discussed individually in the following paragraphs. This rule does not change any substantive requirements of existing regulations.

Sections 174.14, 174.19, and 174.106

In these sections the rule changes the word "boat" to "vessel" to conform to the current statutory authority language in 46 U.S.C. 12302.

Section 179.03

This rule revises § 179.03 to clarify the meaning of the term "Associated equipment" as used in part 179 for defect notification requirements by adding the words "as used in this part".

Section 181.21

This rule removes an outdated certification date.

Sections 183.37 and 183.43

This rule revises the section headings in §§ 183.37 and 183.43 by adding the words "outboard motors" to reflect that the sections apply to outboard motors.

Sections 183.101, 183.201, and 183.301

These sections contain references to boats constructed on or after July 31, 1978, the effective date of Subparts F, G, and H of the Flotation Standard. Boats manufactured prior to that date still exist, but the standard is a manufacturer requirement applicable to new boats, and the effective date is no longer needed. This rule removes the effective date.

Section 183.401

The text of paragraph (a) is clarified by moving the words "except outboard engines" from the end of the sentence to immediately follow the words "gasoline engines" and by adding the word "generation" following the word "electrical" to conform the wording in § 183.401 to the wording in § 183.501.

Section 183.601

Section 183.601 contains a reference to boats that were built after July 31, 1980, except that the manufacturer may elect to comply any time after July 31, 1978. Boats manufactured prior to these dates still exist, but the standard is a manufacturer requirement applicable to new boats. The dates are no longer needed. This rule removes the dates.

Section 183.701

Section 183.701 contains a reference to the fact that the subpart applies to outboard motors and controls manufactured after August 1, 1982. Outboard motors and controls manufactured prior to that date still exist, but the standard is a manufacturer requirement applicable to new engines and controls. The date is no longer needed. This rule removes the date.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. As this rule involves internal agency practices and procedures, it will not impose any costs on the public.

Collection of Information

This rule will call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act and Enhancing the Intergovernmental Partnership

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093, October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(a) and (b) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with paragraphs (34)(a) and (b), concerning regulations that are editorial or procedural and concerning internal agency functions or organization. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 3

Organization and functions (Government agencies).

33 CFR Part 4

Reporting and recordkeeping requirements.

33 CFR Part 40

Military academies.

33 CFR Part 84

Navigation (water), Waterways.

33 CFR Part 96

Administrative practice and procedure, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Safety management systems, Vessels.

33 CFR Part 117

Bridges.

33 CFR Part 127

Fire prevention, Harbors, Natural gas, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 138

Insurance, Maritime carriers, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 154

Fire prevention, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 159

Sewage disposal, Vessels.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 164

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

33 CFR Part 167

Harbors, Marine safety, Navigation (water), Waterways.

33 CFR Part 174

Intergovernmental relations, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 175

Marine safety.

33 CFR Part 179

Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 183

Marine safety.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 3, 4, 40, 84, 96, 117, 127, 138, 151, 154, 159, 160, 164, 165, 167, 174, 175, 179, 181, and 183 as follows:

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

1. The authority citation for part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. Revise § 3.35–1(b) to read as follows:

§ 3.35–1 Seventh district.

* * * * *

(b) The Seventh Coast Guard District is comprised of the states of South Carolina, Georgia and Florida, except for that part of Georgia and Florida west of a line from the intersection of the Florida coast with Longitude 83°50′W. (30°00′N., 83°50′W.) due north to a position 30°15′N., 83°50′W.; thence due

west to a position 30°15′N., 84°45′W.; thence due north to the intersection with the south shore of the Jim Woodruff Reservoir; thence along the east bank of the Jim Woodruff Reservoir and the east bank of the Flint River up stream to Montezuma, GA, thence northwesterly to West Point, GA. Also included is the Panama Canal Zone, all the island possessions of the United States pertaining to Puerto Rico and the U.S. Virgin Islands; and the U.S. Naval reservations in the islands of the West Indies and on the north coast of South America. The ocean areas are those portions of the western North Atlantic, Caribbean Sea, Gulf of Mexico and the Straits of Florida areas encompassed by a line originating at the state boundary between North Carolina and South Carolina, and extending southeasterly through 30°57′N., 73°06′W. and 29°00′N., 69°19′W. to 12°00′N., 43°00′W.; thence southwesterly to 10°00′N., 48°00′W.; thence westerly to 09°20′N., 57°00′W.; thence due west to the coastline of South America; thence westerly and northerly along the north coast of South America, and the eastern coasts of Central America and Mexico to the Yucatan Peninsula at 21°25′N., 87°11′W.; thence along a line 019°T to the intersection of longitude 83°50′W. and the western coastline of Florida (30°00′N., 83°50′W.).

PART 4—OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

3. The authority citation for part 4 continues to read as follows:

Authority: 44 U.S.C. 3507; 49 CFR 1.45(a).

4. In § 4.02, revise the entry for §§ 181.21 through 181.31 and add a new entry for "Part 183" to read as follows:

§ 4.02 Display.

33 CFR part or section where identified and described	Current OMB control No.
. . . . .	.
Section 181.21 through 181.31	2115–0573
Part 183	2115–0573

PART 40—CADETS OF THE COAST GUARD

5. The authority citation for part 40 continues to read as follows:

Authority: 14 U.S.C. 182 and 633; 49 CFR 1.46(b).

§ 40.1 [Amended]

6. In § 40.1, remove the number "06230" and add, in its place, the number "06320".

PART 84—ANNEX I: POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

7. The authority citation for part 84 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

§ 84.27 [Redesignated as § 84.24]

8. Redesignate § 84.27 as § 84.24.

PART 96—RULES FOR THE SAFE OPERATION OF VESSELS AND SAFETY MANAGEMENT SYSTEMS

9. The authority citation for part 96 continues to read as follows:

Authority: 46 U.S.C. 3201 *et seq.*; 46 U.S.C. 3103; 46 U.S.C. 3316, 33 U.S.C. 1231; 49 CFR 1.45, 49 CFR 1.46.

10. In § 96.340, revise paragraph (d) to read as follows:

§ 96.340 Safety Management Certificate: What is it and when is it needed?

* * * * *

(d) A copy of your vessel's valid Safety Management Certificate must be on board all U.S. and foreign vessels which carry more than 12 passengers, and must be on board a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more, when engaged on foreign voyages or within U.S. waters.

* * * * *

PART 117—DRAWBRIDGE OPERATION REGULATIONS

11. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.147 [Amended]

12. In § 117.147, in paragraph (a), remove the number "4.5" and add, in its place, the number "4.9"; and in paragraph (b), remove the number "4.4" and add, in its place, the number "4.8".

§ 117.169 [Amended]

13. In § 117.169(b), remove the words "Southern Pacific" and add, in their place, the words "Northwestern Pacific".

§ 117.191 [Amended]

14. In § 117.191(b), remove the words "Atchison, Topeka and Santa Fe" and add, in their place, the words "Burlington Northern Santa Fe".

§ 117.393 [Amended]

15. In § 117.393(b)(6), remove the words "Chicago and Northwestern" and add, in their place, the words "Union Pacific".

§ 117.773 [Amended]

16. In § 117.773(c), remove the word "Conrail" and add, in its place, the word "CSX Transportation".

§ 117.785 [Amended]

17. In § 117.785(b), remove the word "Conrail" and add, in its place, the word "CSX Transportation".

§ 117.791 [Amended]

18. In § 117.791(c), remove the word "Conrail" and add, in its place, the word "CSX Transportation".

§ 117.821 [Amended]

19. In § 117.821, redesignate paragraph (a)(7) as (a)(6).

§ 117.847 [Amended]

20. In § 117.847(b), remove the words "Conrail bridge, mile 2.2" and add, in their place, the words "Norfolk Southern bridge, mile 1.5".

§ 117.851 [Amended]

21. In § 117.851(d), remove the word "Conrail" and add, in its place, the words "Norfolk Southern".

§ 117.853 [Amended]

22. In § 117.853, remove the word "Conrail" and add, in its place, the words "Norfolk Southern".

§ 117.855 [Amended]

23. In § 117.855(c), introductory text, remove the words "Norfolk and Western" and add, in their place, the words "Norfolk Southern"; and remove the word "Conrail" and add, in its place, the words "Norfolk Southern".

24. In appendix A to part 117, revise the entries for California, Oregon, and Washington to read as follows:

Appendix A to Part 117 [Revised]

APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
. . . . .	.	.	.	.	.	.
CALIFORNIA						
Carquinez Strait	7.0	Martinez	Union Pacific RR	KQ 7193 ..	16	14
Cerritos Channel	4.8	Long Beach	Henry Ford (Badger) Avenue, Port of Los Angeles.	WHX 947	16	13
	4.9	Long Beach	Schuyler Heim, CA DOT	KXJ 749 ..	16	13
Channel Street	0	San Francisco	3rd Street, San Francisco	WXY 959	16	9
	0.2	San Francisco	4th Street, San Francisco	WXY 970	16	9
Connection Slough	2.5	Mandeville Island	South Real Estate Company	WHV 225	16	9
Cordelia Slough	1.5	Benicia	Union Pacific RR	KA 98642	16	9
Georgianna Slough	4.5	Isleton	Tyler Island, Sacramento Co	WHU 246	16	9
	12.4	Walnut Grove	Georgianna Sl, Sacramento, Co.	WHU 254	16	9
Islais Creek	0.4	San Francisco	3rd Street, San Francisco	WXY 977	16	9
Little Potato Slough	1.0	Terminous	Potato Slough, CA DOT, SR12.	KSK 278 ..	16	9
Middle River	8.6	Bacon Island	Bacon Island, San Joaquin Co.	WBE 8326	16	9
Mokelumne River	3.0	Isleton	Mokelumne, CA DOT, SR12	KMJ 382 ..	16	9
	12.1	Walnut Grove	Millers Ferry, Sacramento, Co.	WBE 8326	16	9
Napa River	2.8	Vallejo	Mare Island Causeway, Navy.	Military license only, No FCC.	16	13
Oakland Inner Harbor Tidal Canal	5.2	Oakland	Park Street, Alameda County.	WHX 996	16	9
	5.8	Oakland	Fruitvale Avenue, Alameda County.	WQB 330	16	9
	6.0	Oakland	High Street, Alameda County.	WHX 488	16	9
Old River	10.4	Orwood	Burlington Northern Santa Fe Railroad Bridge.	WHU 322	16	9
	14.8	Victoria Island	Victoria Island, CA DOT	KXE 301 ..	16	9
Pacheco Creek	1.1	Martinez	Avon, Union Pacific RR	KA 97324	16	9
Petaluma River	13.7	Petaluma	D Street Bridge, Petaluma	WQX 644	16	9
Sacramento River	12.8	Rio Vista	Rio Vista, CA DOT, SR12	KMJ 384 ..	16	9
	15.7	Isleton	Isleton, CA DOT, SR160	KMJ 383 ..	16	9
	26.7	Walnut Grove	Walnut Grove, Sacto Co., SR E–13.	KMJ 491 ..	16	9
	33.4	Paintersville	Paintersville, CA DOT, SR160.	KMJ 381 ..	16	9
	46.0	Freeport	Freeport Sacto Co., SR E–9	KMJ 490 ..	16	9
	59.0	Sacramento	Tower Bridge, CA DOT	KDO 739	16	9
	59.4	Sacramento	I Street Union Pacific RR	WHW 554	16	9
San Leandro Bay	0	Alameda	Bay Farm Island, CA DOT	WHX 870	16	9
Steamboat Slough	11.2	Courtland	Steamboat Slough, CA DOT, SR160.	WHX 295	16	9
Three Mile Slough	0.1	Rio Vista	Three Mile Slough, CA DOT, SR160.	KMJ 385 ..	16	9
Turner Cut	2.3	McDonald Island	Zuckerman Bros. Br, Delta Farms.	WHV 959	16	9
. . . . .	.	.	.	.	.	.
OREGON						
Coos Bay	9.0	North Bend	Union Pacific RR	KT 2006 ...	18A	13
Willamette River	6.9	St. Johns	Burlington Northern Santa Fe RR.	KQ 9050 ..	16	13
	11.7	Portland	Broadway Multnomah Co	KLU 724 ..	16	13
	12.1	Portland	Steel Union Pacific RR	KQU 534	16	13
	12.4	Portland	Burnside Multnomah Co	KTD 520 ..	16	13
	12.8	Portland	Morrison, Multnomah Co	KTD 522 ..	16	13
	13.1	Portland	Hawthorne Multnomah Co	KTD 521 ..	16	13
Youngs Bay	0.7	Astoria	OR DOT, US26	WHG 914	16	13

APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES—Continued

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
			WASHINGTON			
Blair Waterway	0.3	Tacoma	WA DOT, 11th Street	KZN 573	16	13
Chehalis River	0.1	Aberdeen	WA DOT, US101	KJA 289	16	13
Columbia River	105.6	Vancouver/Portland	Burlington Northern Santa Fe RR.	KQ 9049	16	13
	106.5	Vancouver/Portland	OR DOT, 15	KBM Interstate.	16	13
	169.8	Hood River, OR	Port of Hood River	KTD 562	16	13
	201.2	Celilo, OR	Burlington Northern Santa Fe RR.	KQ 9048	16	13
	323.4	Pasco/Kennewick	Union Pacific RR	KTD 561	16	13
	328.0	Pasco/Kennewick	Burlington Northern Santa Fe RR.	KQ 9046	16	13
Duwamish Waterway	0.4	Seattle	Spokane St., City of Seattle	KSK 285	13	13
	2.5	Seattle	1st Ave. So. City of Seattle	WHU 200	13	13
Ebey Slough	1.6	Marysville	WA DOT, US529	KZ 2475	13	13
Hood Canal		Port Gamble	WA DOT, Hood Canal Bride	KZJ 376	16	13
Hylebos Waterway	1.1	Tacoma	WA DOT, 11th Street	KZN 574	16	13
Lake Washington Ship Canal	0.1	Seattle	Burlington Northern Santa Fe RR.	KCE 201	16	13
	1.1	Seattle	Ballard, City of Seattle	KJA 445	13	13
	2.6	Seattle	Fremont, City of Seattle	KJA 442	13	13
	4.3	Seattle	University, City of Seattle	KJA 441	13	13
	5.2	Seattle	Montlake, City of Seattle	KJA 438	13	13
Snake River	1.5	East Pasco/Burbank	Burlington Northern Santa Fe RR.	KQ 9047	16	13

PART 127—WATERFRONT FACILITIES HANDLING LIQUEFIED NATURAL GAS AND LIQUEFIED HAZARDOUS GAS

25. The authority citation for part 127 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

26. In § 127.003(b), revise the entry for American Society of Mechanical Engineers (ASME) to read as follows:

§ 127.003 Incorporation by reference.

* * * * *

(b) * * *

American Society of Mechanical Engineers (ASME)

Three Park Avenue, New York, NY 10016–5990:

ASME B31.3, CHEMICAL PLANT AND PETROLEUM REFINERY

Piping, 1993	127.1101

* * * * *

§ 127.1501 [Amended]

27. In § 127.1501(a), remove the number "§ 127.103" and add, in its place, the number "§ 127.1307".

PART 138—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS)

28. The authority citation for part 138 continues to read as follows:

Authority: 33 U.S.C. 2716, 2716a; 42 U.S.C. 9608, 9609; sec. 7(b), E.O. 12580, 3 CFR, 1987 Comp., p. 198; E.O. 12777, 3 CFR 1991 Comp., p. 351; 49 CFR 1.46.

§ 138.40 [Amended]

29. In § 138.40(a), remove the words "(703) 235–4813, Telex 248324 (Answerback CGNPFCUR), Telefax (703) 235–4835" and add, in their place, the words "(202) 493–6780, Telefax (202) 493–6781".

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

30. The authority citation for part 151, subpart A, continues to read as follows:

Authority: 33 U.S.C. 1321 and 1903; Pub. L. 104–227 (110 Stat. 3034), E.O. 12777, 3 CFR, 1991 Comp. p. 351; 49 CFR 1.46.

31. In § 151.04, revise paragraph (d) to read as follows:

§ 151.04 Penalties for violation.

* * * * *

(d) A ship operated in violation of MARPOL 73/78, the Act, or the regulations of this subpart is liable *in rem* for any civil penalty covered by paragraph (a) or (b) of this section, or any fine covered by paragraph (c) of this section, and may be proceeded against in the United States District Court of any district in which the ship may be found.

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

32. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (M)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

Appendix A to Part 154—Guidelines for Detonation Flame Arresters [Amended]

33. In paragraph 14.3.5.2(1) of appendix A, remove the words "American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103" and add, in their place, the words "American Society for Testing and Materials (ASTM), 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959".

34. In paragraph 14.3.5.2(2) of appendix A, remove the words "American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017" and add, in their place, the words "American Society of Mechanical Engineers International, Three Park Avenue, New York, NY 10016–5990".

Appendix B to Part 154—Standard Specification for Tank Vent Flame Arresters [Amended]

35. In paragraph 3.3.3(1) of appendix B, remove the words "American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103" and add, in their place, the words "American Society for Testing and Materials (ASTM), 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959".

36. In paragraph 3.3.3(2) of appendix B, remove the words "American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017" and add, in their place, the words "American Society of Mechanical Engineers International, Three Park Avenue, New York, NY 10016–5990".

PART 159—MARINE SANITATION DEVICES

37. The authority citation for part 159 continues to read as follows:

Authority: Sec. 312(b)(1), 86 Stat. 871 (33 U.S.C. 1322(b)(1)); 49 CFR 1.45(b) and 1.46(l) and (m).

§ 159.201 [Amended]

38. In § 159.201, remove the word "(G–MSE–4)" and add, in its place, the word "(G–MSE–3)".

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

39. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 49 CFR 1.46.

§ 160.203 [Amended]

40. In § 160.203, in the definition of *hazardous condition*, in the last sentence, add a comma immediately following the word "damage".

PART 164—NAVIGATION SAFETY REGULATIONS

41. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

§ 164.72 [Amended]

42. In § 164.72, redesignate paragraph (b)(3) as paragraph (b)(2).

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

43. Revise the authority citation for part 165 to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

44. In § 165.100, add a new paragraph (e) to read as follows:

§ 165.100 Regulated Navigation Area: Navigable Waters within the First Coast Guard District.

* * * * *

(e) In addition to the authority for this part 165, this section is also authorized under authority of section 311, Pub. L. 105–383.

45. In § 165.170, revise the section heading to read as follows:

§ 165.170 Safety Zone; Annual Heritage of Pride Fireworks Display, Hudson River, New York.

* * * * *

46. In § 165.905, revise the section heading to read as follows:

§ 165.905 USX Superfund Site Safety Zones: St. Louis River.

* * * * *

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

47. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

48. In § 167.150, revise the section heading to read as follows:

§ 167.150 Off New York Traffic Separation Scheme: General.

* * * * *

49. In § 167.151, revise the section heading to read as follows:

§ 167.151 Off New York: Precautionary areas.

* * * * *

50. In § 167.152, revise the section heading to read as follows:

§ 167.152 Off New York: Eastern approach, off Nantucket.

* * * * *

51. In § 167.153, revise the section heading to read as follows:

§ 167.153 Off New York: Eastern approach, off Ambrose Light.

* * * * *

52. In § 167.154, revise the section heading to read as follows:

§ 167.154 Off New York: South-eastern approach.

* * * * *

53. In § 167.155, revise the section heading to read as follows:

§ 167.155 Off New York: Southern approach.

* * * * *

54. In § 167.200, revise the section heading to read as follows:

§ 167.200 In the approaches to Chesapeake Bay Traffic Separation Scheme: General.

* * * * *

55. In § 167.201, revise the section heading to read as follows:

§ 167.201 In the approaches to Chesapeake Bay: Precautionary area.

* * * * *

56. In § 167.202, revise the section heading to read as follows:

§ 167.202 In the approaches to Chesapeake Bay: Eastern approach.

* * * * *

57. In § 167.203, revise the section heading to read as follows:

§ 167.203 In the approaches to Chesapeake Bay: Southern approach.

* * * * *

58. In § 167.350, revise the section heading to read as follows:

§ 167.350 In the approaches to Galveston Bay Traffic Separation Scheme and precautionary areas.

* * * * *

PART 174—STATE NUMBERING AND CASUALTY REPORTING SYSTEMS

59. The authority citation for part 174 continues to read as follows:

Authority: 46 U.S.C. 6101, 12302; 49 CFR 1.46.

§§ 174.14, 174.19, and 174.106 [Amended]

60. In 33 CFR part 174, remove the word "boat" and add, in its place, the word "vessel" in the following sections:

(a) Section 174.14;

(b) Section 174.19(e); and

(c) Section 174.106.

PART 175—EQUIPMENT REQUIREMENTS

61. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

§§ 175.120, 175.125, and 175.128 [Amended]

62. In 33 CFR part 175, remove the designator for paragraph (a) in the following sections:

(a) Section 175.120;
(b) Section 175.125; and
(c) Section 175.128.

PART 179—DEFECT NOTIFICATION

63. The authority citation for part 179 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 4302, 4307, 4310, and 4311; 49 CFR 1.46.

§ 179.03 [Amended]

64. In § 179.03, in the definition of *Associated equipment*, add the words ", as used in this part," immediately following the words *"Associated equipment"*.

PART 181—MANUFACTURER REQUIREMENTS

65. The authority citation for part 181 continues to read as follows:

Authority: 46 U.S.C. 4302 and 4310; 49 CFR 1.46.

§ 181.15 [Amended]

66. In § 181.15(a)(2)(ii), remove the words "or boat hull".

§ 181.21 [Amended]

67. In § 181.21, remove paragraph (b) and remove the designator for paragraph (a).

PART 183—BOATS AND ASSOCIATED EQUIPMENT

68. The authority citation for part 183 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

§ 183.23 [Amended]

69. In § 183.23, add "a" following "by" and preceding "Motor".

§ 183.35 [Amended]

70. In § 183.35(b)(1), remove the word "displayed" and add, in its place, the word "displaced".

71. In § 183.37(a), remove the word "two" immediately preceding the word "horsepower" and add, in its place, the number "2"; and revise the section heading to read as follows:

§ 183.37 Maximum weight capacity: Boats rated for manual propulsion and boats rated for outboard motors of 2 horsepower or less.

* * * * *

72. In § 183.43, revise the section heading to read as follows:

§ 183.43 Persons capacity: Boats rated for manual propulsion and boats rated for outboard motors of 2 horsepower or less.

* * * * *

§ 183.101 [Amended]

73. In § 183.101, remove the words "the construction or assembly of which is begun after July 31, 1978,".

§ 183.110 [Amended]

74. In § 183.110, in the definition of *Sealed compartment*, remove the word "seppage" and add, in its place, the word "seepage".

75. In § 183.201, revise paragraph (a) to read as follows:

§ 183.201 Applicability.

(a) This subpart applies to monohull outboard boats that are:
(1) Less than 20 feet in length; and
(2) Rated for outboard engines of more than 2 horsepower.

* * * * *

§ 183.205 [Amended]

76. In § 183.205(c), in the last sentence in the paragraph, add the word "there" following the word "where".

§ 183.220 [Amended]

77. In § 183.220(b)(1), add the words "the first" immediately preceding the number 550.

§ 183.235 [Amended]

78. In § 183.235, introductory text, remove the words "(a), (d)" and add, in their place, the words "(a) and (d)".

79. In § 183.301, revise paragraph (a) to read as follows:

§ 183.301 Applicability.

(a) This subpart applies to monohull outboard boats that are:
(1) Less than 20 feet in length; and
(2) Rated for manual propulsion or outboard engines of 2 horsepower or less.

* * * * *

§ 183.335 [Amended]

80. In § 183.335 introductory text, remove the words "(a), (d)" and add, in their place, the words "(a) and (d)"; and in paragraph (a) remove the word "the" immediately preceding the word "heel".

81. In § 183.401, revise paragraph (a) to read as follows:

§ 183.401 Purpose, applicability, and effective dates.

(a) This subpart applies to all boats that have gasoline engines, except outboard engines, for electrical generation, mechanical power, or propulsion.

* * * * *

§ 183.440 [Amended]

82. In § 183.440(b), remove the word "boots" and add, in its place, the word "boot".

83. In § 183.501, revise paragraph (a) to read as follows:

§ 183.501 Applicability.

(a) This subpart applies to all boats that have gasoline engines, except outboard engines, for electrical generation, mechanical power, or propulsion.

* * * * *

§ 183.514 [Amended]

84. In § 183.514(b), introductory text, remove the word "paragragh" and add, in its place, the word "paragraph".

§ 183.530 [Amended]

85. In § 183.530(c), remove the word "serations" and add, in its place, the word "serrations"; and remove the word "continous" and add, in its place, the word "continuous".

§ 183.550 [Amended]

86. In § 183.550(h), remove the word "labled" and add, in its place, the word "labeled".

§ 183.584 [Amended]

87. In § 183.584 introductory text, add the word "tank" immediately following the word "fuel".

§ 183.588 [Amended]

88. In § 183.588(f), remove the word "degree" and add, in its place, the word "degrees".

89. Revise § 183.601 to read as follows:

§ 183.601 Applicability.

This subpart applies to all boats that have gasoline engines for electrical generation, mechanical power, or propulsion.

§ 183.620 [Amended]

90. In § 183.620, add the word "NOTE:" at the beginning of the undesignated paragraph immediately following paragraph (a)(5)(ii).

91. Revise § 183.701 to read as follows:

§ 183.701 Applicability.

This subpart applies to outboard motors and starting controls, and to manufacturers, distributors or dealers installing such equipment.

Dated: June 18, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–16367 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 065–1065; FRL–6364–3]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by the state of Missouri that are incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by the state agency and approved by EPA.

EFFECTIVE DATE: This action is effective June 29, 1999.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region VII, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; Office of Air and Radiation, Docket and Information Center (Air Docket), Environmental Protection Agency, 401 M Street, SW, Room M1500, Washington, DC 20460; and Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward West, Regional SIP Coordinator at the above Region VII address or at (913) 551–7330.

SUPPLEMENTARY INFORMATION: This format revision will affect the "Identification of Plan" section of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR); the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC; and the Region VII Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or state-submitted materials not subject to IBR review remain unchanged.

The supplementary information is organized in the following order:

Description of a SIP
How EPA Enforces SIPs
How the State and EPA updates the SIP
How EPA Compiles the SIPs
How EPA Organizes the SIP Compilation
Where You Can Find a Copy of the SIP Compilation
The Format of the New Identification of Plan Section
When a SIP Revision Becomes Federally Enforceable
The Historical Record of SIP Revision Approvals
What EPA Is Doing in This Action
How This Document Complies With the Federal Administrative Requirements for Rulemaking

Description of a SIP

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms.

How EPA Enforces SIPs

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the Federally approved SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), Title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is "IBR." This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. (Where you can find a copy of the SIP compilation.) The information provided allows EPA and the public to monitor the extent to which a state implements the SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

How the State and EPA Updates the SIP

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally approved SIPs, as a result of consultations between EPA and OFR.

EPA began the process of developing: (1) A revised SIP document for each state that would be incorporated by reference under the provisions of 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the "Identification of Plan" sections for each applicable subpart to reflect these revised IBR procedures.

The description of the revised SIP document, IBR procedures, and "Identification of Plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

How EPA Compiles the SIPs

The Federally approved regulations and source-specific permits submitted by Missouri have been organized by EPA into a SIP compilation that contains the updated regulations and source-specific permits approved by EPA through previous rulemaking actions in the **Federal Register**. The compilations are contained in three-ring binders and will be updated, primarily on an annual basis. The nonregulatory provisions are available by contacting Ed West at the Regional Office.

How EPA Organizes the SIP Compilation

Each compilation contains three parts. Part one contains the state regulations, part two contains the source-specific requirements that have been approved as part of the SIP, and part three contains nonregulatory provisions that have been EPA-approved. Each part consists of a table of identifying information for each regulation, each source-specific permit, and each nonregulatory provision. The effective dates in the tables indicate the date of the most recent revision of the regulation. The table of identifying information in the compilation corresponds to the table of contents published in 40 CFR part 52 for the state. The regional EPA Offices have the primary responsibility for ensuring accuracy and updating the compilations.

Where You Can Find a Copy of the SIP Compilation

The Region VII EPA Office developed and will maintain the compilation for Missouri. A copy of the full text of the state's current compilation will also be maintained at the OFR and EPA's Air Docket and Information Center. Missouri rules are also available electronically at http://www.epa.gov/

region07/programs/artd/air/rules/missouri /toc.htm.

The Format of the New Identification of Plan Section

In order to better serve the public, EPA revised the organization of the "Identification of Plan" section and included additional information to clarify the enforceable elements of the SIP.

The revised Identification of Plan section contains five subsections:

1. Purpose and scope
2. Incorporation by reference
3. EPA-approved regulations
4. EPA-approved source-specific permits
5. EPA-approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP become Federally enforceable as of the effective date of the revisions to paragraphs (c) or (d) of the applicable Identification of Plan section found in each subpart of 40 CFR part 52.

The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA retains the original Identification of Plan section, previously appearing in the CFR as the first or second section of part 52 for each state subpart. After an initial two-year period, EPA will review its experience with the new system and its ability to enforce previously approved SIP measures, and will decide whether or not to retain the Identification of Plan appendices for some further period.

What EPA Is Doing in This Action

Today's action constitutes a "housekeeping" exercise to ensure that all revisions to the state programs that have occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, *Enhancing the Intergovernmental Partnership*, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments; the nature of their concerns; copies of any written communications from the governments; and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, *Consultation and Coordination with Indian Tribal Governments*, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the Clean Air Act (CAA) do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United State House of Representatives, and the United States Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

EPA has determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Missouri SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" reorganization action.

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 11, 1999.

William Rice,

Acting Regional Administrator. Region VII.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. Section 52.1320 is redesignated as § 52.1322 and the heading and paragraph (a) are revised to read as follows:

§ 52.1322 Original Identification of Plan Section.

(a) This section identifies the original "Air Implementation Plan for the State of Missouri" and all revisions submitted by Missouri that were Federally approved prior to July 1, 1999.

* * * * *

3. A new § 52.1320 is added to read as follows:

§ 52.1320 Identification of Plan.

(a) Purpose and scope. This section sets forth the applicable SIP for Missouri under section 110 of the CAA, 42 U.S.C. 7401, and 40 CFR part 51 to meet national ambient air quality standards (NAAQS).

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 1999, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after July 1, 1999, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region VII certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of July 1, 1999.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC; or at EPA Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

(c) EPA-approved regulations.

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources Chapter 1—General Organization			
10–1.010	General Organization	10/1/82	7/21/83, 48 FR 33265.	
	Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area			
10–2.030	Restriction of Emission of Particulate Matter from Industrial Processes.	11/1/79	5/22/81, 46 FR 27932	9/27/84, 49 FR 38103 (correction). 10/5/89, 54 FR 41094 (correction).
10–2.040	Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating.	9/4/84	1/24/85, 50 FR 3337.	
10–2.060	Restriction of Emission of Visible Air Contaminants.	7/1/77	3/18/80, 45 FR 17145	
10–2.080	Emission of Visible Air Contaminants from Internal Combustion Engines.	2/25/70	3/18/80, 45 FR 17145	
10–2.090	Incinerators	2/25/70	3/18/80, 45 FR 17145	The state has rescinded this rule.
10–2.100	Open Burning Restrictions	4/2/84	8/31/84, 49 FR 34484	
10–2.150	Time Schedule for Compliance	2/25/70	3/18/80, 45 FR 17145	
10–2.210	Control of Emissions from Solvent Metal Cleaning.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (correction).
10–2.220	Liquefied Cutback Asphalt Paving Restricted.	5/3/91	6/23/92, 57 FR 27939	
10–2.230	Control of Emissions from Industrial Surface Coating Operations.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (correction).
10–2.260	Control of Petroleum Liquid Storage, Loading, and Transfer.	11/30/95	8/20/97, 62 FR 44219	
10–2.280	Control of Emissions from Perchloroethylene Dry Cleaning Installations.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (correction).
10–2.290	Control of Emissions From Rotogravure and Flexographic Printing Facilities.	3/30/92	8/30/93, 58 FR 45451	The state rule has Sections (6)(A) and (6)(B), which EPA has not approved. 9/6/94, 59 FR 43376 (correction).
10–2.300	Control of Emissions from the Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (correction). Section (1)(A) is not a part of the SIP.
10–2.310	Control of Emissions from the Application of Automotive Underbody Deadeners.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (correction).
10–2.320	Control of Emissions from Production of Pesticides and Herbicides.	11/29/91	8/24/94, 59 FR 43480	4/3/95, 60 FR 16806 (correction).
10–2.330	Control of Gasoline Reid Vapor Pressure.	9/30/97	4/24/98, 63 FR 20318.	
10–2.340	Control of Emissions from Lithographic Printing Facilities.	10/15/91	6/23/92, 57 FR 27939.	
10–2.360	Control of Emissions from Bakery Ovens.	11/30/95	7/20/98, 63 FR 38755.	
10–2.390	Conformity to State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 U.S.C. or the Federal Transit Act.	11/30/96	9/5/97, 62 FR 46880	2/10/98, 63 FR 6645 (correction).
	Chapter 3—Air Pollution Control Regulations for the Outstate Missouri Area			
10–3.010	Auto Exhaust Emission Controls	2/1/78	3/18/80, 45 FR 17145.	
10–3.030	Open Burning Restrictions	7/31/98	4/1/99, 64 FR 15688.	
10–3.040	Incinerators	2/1/78	3/18/80, 45 FR 17145	The state has rescinded this rule.
10–3.050	Restriction of Emission of Particulate Matter From Industrial Processes.	10/2/78	7/6/82, 47 FR 29233.	
10–3.060	Maximum Allowable Emissions of Particulate Matter From Fuel Burning Equipment.	5/4/84	1/24/85, 50 FR 3337	EPA has not approved the exemption in Section (7).

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
10–3.080	Restriction of Emission of Visible Air Contaminants.	4/30/96	11/27/98, 63 FR 65559.	
	Chapter 4—Air Quality Standards and Air Pollution Control Regulations for Springfield-Greene County Area			
10–4.030	Restriction of Emission of Particulate Matter From Industrial Processes.	11/1/79	5/22/81, 46 FR 27932	9/24/84, 49 FR 38103 (correction). 10/5/89, 54 FR 41094 (correction).
10–4.040	Maximum Allowable Emission of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating.	9/4/84	1/24/85, 50 FR 3337.	
10–4.060	Restrictions of Emission of Visible Air Contaminants.	7/1/77	3/18/80, 45 FR 17145.	
10–4.080	Incinerators	12/16/69	3/18/80, 45 FR 17145	The state has rescinded this rule.
10–4.090	Open Burning Restrictions	4/2/84	8/31/84, 49 FR 34484.	
10–4.140	Time Schedule for Compliance	12/15/69	3/18/80, 45 FR 17145.	
	Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area			
10–5.030	Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating.	9/4/84	1/24/85 50 FR 3337.	
10–5.040	Use of Fuel in Hand-Fired Equipment Prohibited.	9/18/70	3/18/80 45 FR 17145.	
10–5.050	Restriction of Emission of Particulate Matter From Industrial Processes.	11/1/79	5/22/81 46 FR 27932	9/27/84 49 FR 38103 (correction). 10/5/89 54 FR 41094 (correction).
10–5.060	Refuse Not To Be Burned in Fuel Burning Installations.	9/18/70	3/18/80 45 FR 17145	The state has rescinded this rule.
10–5.070	Open Burning Restrictions	4/2/84	8/31/84 49 FR 34484.	
10–5.080	Incinerators	9/18/70	3/18/80 45 FR 17145	The state has rescinded this rule.
10–5.090	Restriction of Emission of Visible Air Contaminants.	7/1/77	4/9/80 45 FR 24140	7/11/80 45 FR 46806 (correction).
10–5.120	Information on Sales of Fuels to be Provided and Maintained.	9/18/70	3/18/80 45 FR 17145.	
10–5.130	Certain Coals to be Washed	9/18/70	3/18/80 45 FR 17145.	
10–5.180	Emission of Visible Air Contaminants from Internal Combustion Engines.	9/18/70	3/18/80 45 FR 17145.	
10–5.220	Control of Petroleum Liquid Storage, Loading and Transfer.	11/30/95	8/20/97 62 FR 44219.	
10–5.240	Additional Air Quality Control Measures May Be Required When Sources Are Clustered in a Small Land Area.	9/18/70	3/18/80 45 FR 17145.	
10–5.250	Time Schedule for Compliance	1/18/72	3/18/80 45 FR 17145.	
10–5.290	More Restrictive Emission Limitations for Sulfur Dioxide and Particulate Matter in the South St. Louis Area.	5/3/82	8/30/82 47 FR 38123	The state has deleted all provisions to N.L. Industries, which is no longer in operation, and has made significant changes to the provisions affecting Carondelet Coke.
10–5.300	Control of Emissions from Solvent Metal Cleaning.	11/29/91	8/24/94 59 FR 43480	4/3/95 60 FR 16806 (correction).
10–5.310	Liquefied Cutback Asphalt Restricted.	3/1/89	3/5/90 55 FR 7712.	
10–5.320	Control of Emissions from Perchloroethylene Dry Cleaning Installations.	11/29/91	8/24/94 59 FR 43480	4/3/95 60 FR 16806 (correction).
10–5.330	Control of Emissions from Industrial Surface Coating Operations.	11/29/91	8/24/94 59 FR 43480	4/3/95 60 FR 16806 (correction).
10–5.340	Control of Emissions From Rotogravure and Flexographic Printing Facilities.	3/30/92	8/30/93 58 FR 45451	The state rule has Section (6)(A)(B), which EPA has not approved. 9/6/94 59 FR 43376 (correction).
10–5.350	Control of Emissions From Manufacture of Synthesized Pharmaceutical Products.	11/29/91	8/24/94 59 FR 4348	04/3/95 60 FR 16806 (Correction Notice).

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
10–5.360	Control of Emissions from Polyethylene Bag Sealing Operations.	11/29/91	8/24/94 59 FR 43480	4/3/95 60 FR 16806 (Correction Notice).
10–5.370	Control of Emissions from the Application of Deadeners and Adhesives.	11/29/91	8/24/94 59 FR 43480	4/3/95 60 FR 16806 (Correction Notice).
10–5.380	Motor Vehicle Emissions Inspection.	1/3/84	8/12/85 50 FR 32411	
10–5.390	Control of Emissions from Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products.	11/29/91	8/24/94 59 FR 43480	4/3/95 60 FR 16806 (Correction Notice).
10–5.410	Control of Emissions From Manufacture of Polystyrene Resin.	11/29/91	8/24/94 59 FR 43480	4/3/95 60 FR 16806 (Correction Notice).
10–5.420	Control of Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing Plants.	3/1/89	3/5/90 55 FR 7712.	
10–5.480	Conformity to State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 U.S.C. or the Federal Transit Act.	11/30/96	9/5/97 62 FR 46880	2/10/98 63 FR 6645 (correction).
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
10–6.010	Ambient Air Quality	4/18/88	7/31/89 54 FR 31524	The state adopted and submitted a revised ozone standard and a lead standard which EPA never acted on.
10–6.020	Definitions and Common Reference Tables.	5/31/96	5/14/97 62 FR 26405	
10–6.030	Sampling Methods for Air Pollution Sources.	10/31/98	4/1/99 64 FR 15688	
10–6.040	Reference Methods	4/18/88	7/31/89 54 FR 31524	Section 7, pertaining to percent sulfur in liquid hydrocarbons, is not part of the SIP.
10–6.050	Start-up, Shutdown, and Malfunction Conditions.	11/1/79	3/22/81, 46 FR 27932	9/27/84 49 FR 38103 (correction).
10–6.060	Construction Permits Required	3/31/98	12/22/98, 63 FR 70665	Section 9, pertaining to hazardous air pollutants, is not part of the SIP.
10–6.065	Operating Permits	5/31/96,	5/14/97 62 FR 26405	The state rule has sections (4)(A), (4)(B), and (4)(H)—Basic State Operating Permits. EPA has not approved those sections. 8/26/97 62 FR 45165 (revision notice).
10–6.110	Submission of Emission Data, Emission Fees and Process Information.	12/31/95	8/26/97, 62 FR 45166	Section (5), Emission Fees, has not been approved as part of the SIP. 2/10/98 63 FR 6648 (correction).
10–6.120	Restriction of Emissions of Lead from Primary Lead Smelter-Refinery Installations.	5/31/96	3/5/97, 62 FR 9970.	
10–6.130	Controlling Emissions During Episodes of High Air Pollution.	4/18/88	7/31/89, 54 FR 31524.	
10–6.140	Restriction of Emissions Credit for Reduced Pollutant Concentrations from the Use of Dispersion Techniques.	5/1/86	3/31/89, 54 FR 13184.	
10–6.150	Circumvention	8/15/90	4/17/91 56 FR 15500.	
10–6.170	Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin.	9/30/96	1/21/98, 63 FR 3037.	
10–6.180	Measurement of Emissions of Air Contaminants.	11/19/90	7/23/91, 56 FR 33714.	
10–6.210	Confidential Information	1/27/95	2/29/96, 61 FR 7714.	
10–6.260	Restriction of Emission of Sulfur Compounds.	7/31/96	8/27/98, 63 FR 45727	EPA did not approve section (4) of the state rule.

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
10–6.300	Conformity of General Federal Actions to State Implementation Plans.	8/31/96	5/14/97, 62 FR 26395.	
10–6.330	Charcoal Kilns	6/30/96	12/8/98, 63 FR 67591.	
Missouri Department of Public Safety Division 50—State Highway Patrol Chapter 2—Motor Vehicle Inspection				
50–2.010	Definitions	4/11/82	8/12/85, 50 FR 32411.	
50–2.020	Minimum Inspection Station Requirements.	10/11/82	8/12/85, 50 FR 32411.	
50–2.030	Inspection Station Classification	12/11/77	8/12/85, 50 FR 32411.	
50–2.040	Private Inspection Stations	5/31/74	8/12/85, 50 FR 32411.	
50–2.050	Inspection Station Permits	11/11/79	8/12/85, 50 FR 32411.	
50–2.060	Display of Permits, Signs and Poster.	11/31/74	8/12/85, 50 FR 32411.	
50–2.070	Hours of Operation	11/11/83	8/12/85, 50 FR 32411.	
50–2.080	Licensing of Inspector/Mechanics	4/13/78	8/12/85, 50 FR 32411.	
50–2.090	Inspection Station Operational Requirements.	8/11/78	8/12/85, 50 FR 32411.	
50–2.100	Requisition of Inspection Stickers and Decals.	6/12/80	8/12/85, 50 FR 32411.	
50–2.110	Issuance of Inspection Stickers and Decals.	12/11/77	8/12/85, 50 FR 32411.	
50–2.120	MVI–2 Form	11/11/83	8/12/85, 50 FR 32411.	
50–2.130	Violations of Laws or Rules Penalty.	5/31/74	8/12/85, 50 FR 32411.	
50–2.260	Exhaust System	5/31/74	8/12/85, 50 FR 32411.	
50–2.280	Air Pollution Control Devices	12/11/80	8/12/85, 50 FR 32411.	
50–2.290	Fuel Tank	5/3/74	8/12/85, 50 FR 32411.	
50–2.350	Applicability of Motor Vehicle Emission Inspection.	5/1/84	8/12/85, 50 FR 32411.	
50–2.360	Emission Fee	11/1/83	8/12/85, 50 FR 32411.	
50–2.370	Inspection Station Licensing	12/21/90	10/13/92, 57 FR 46778.	
50–2.380	Inspector/Mechanic Licensing	11/1/83	8/12/85, 50 FR 32411.	
50–2.390	Safety/Emission Stickers	11/1/83	8/12/85, 50 FR 32411.	
50–2.400	Emission Test Procedures	6/15/87	9/15/88, 53 FR 35820	Subsections (3)(B)3, (4)(A), (4)(B), (4)(B)1 and 2, (4)(B)5, and a portion of (4)(B)6 are not approved as part of the SIP.
50–2.401	General Specifications	12/21/90	10/13/92, 57 FR 46778.	
50–2.402	MAS Software Functions	12/21/90	10/13/92, 57 FR 46778	The SIP does not include Section (6), Safety Inspection.
50–2.403	Missouri Analyzer System (MAS) Display and Program Requirements.	12/21/90	10/13/92, 57 FR 46778	The SIP does not include Section (3)(B)4, Safety Inspection Sequences or (3)(M)5(II), Safety Inspection Summary.
50–2.404	Test Record Specifications	12/21/90	10/13/92, 57 FR 46778	The SIP does not include Section (5), Safety Inspection Results.
50–2.405	Vehicle Inspection Certificate, Vehicle Inspection Report, and Printer Function Specifications.	12/21/90	10/13/92, 57 FR 46778.	
50–2.406	Technical Specifications for the MAS.	12/21/90	10/13/92, 57 FR 46778.	
50–2.407	Documentation, Logistics and Warranty Requirements.	12/21/90	10/13/92 57 FR 46778.	
50–2.410	Vehicles Failing Reinspection	12/21/90	10/13/92, 57 FR 46778.	
50–2.420	Procedures for Conducting Only Emission Tests.	12/21/90	10/13/92, 57 FR 46778.	
Kansas City Article III—Air Pollution				
18.83	Definitions	10/31/96	4/22/98, 63 FR 19823.	
18.91	Incinerators	10/31/96	4/22/98, 63 FR 19823.	
Kansas City Chapter 8—Air Quality				
8–2	Definitions	10/31/96	4/22/98, 63 FR 19823.	
8–4	Open Burning	10/31/96	4/22/98, 63 FR 19823.	

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
Springfield—Chapter 2A—Air Pollution Control Standards				
Article I.	Definitions	10/31/96	4/22/98, 63 FR 19823	Only Section 2A–2 is approved by EPA.
Article VII.	Stack Emission Test Method	10/31/96	4/22/98, 63 FR 19823	Only Section 2A–25 is approved by EPA.
Article IX.	Incinerator	10/31/96	4/22/98, 63 FR 19823	Only Sections 2A–34 through 38 are approved by EPA.
Article XX.	Test Methods and Tables	10/31/96	4/22/98, 63 FR 19823	Only Sections 2A–51, 55, and 56 are approved by EPA.
St Louis City Ordinance 59270				
Section 4	Definitions	10/31/96	4/22/98, 63 FR 19823.	
Section 12	Open Burning Restrictions	10/31/96	4/22/98, 63 FR 19823.	

(d) EPA-approved state source-specific permits and orders.

EPA—Approved Missouri Source Specific Permits and Orders

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
ASARCO Inc. Lead Smelter Glover, MO	Order	8/13/80	4/27/81, 46 FR 23412.	
St. Joe Lead (Doe Run) Company Lead Smelter Herculaneum, MO.	Order	3/21/84	6/11/84, 49 FR 24022.	
AMAX Lead (Doe Run) Company Lead Smelter Boss, MO.	Order	9/27/84	1/7/85, 50 FR 788.	
Gusdorf Operating Permit 11440 Lackland Road St Louis County, MO. 4/29/80 (St Louis County)	Permit Nos: 04682–04693. 10/15/84, 49 FR 40164.			
Doe Run Lead Smelter Herculaneum, MO.	Consent Order	3/9/90	3/6/92, 57 FR 8077.	
Doe Run Lead Smelter Herculaneum, MO.	Consent Order	8/17/90	3/6/92, 57 FR 8077.	
Doe Run Lead Smelter Herculaneum, MO.	Consent Order	7/2/93	5/5/95, 60 FR 22334.	
Doe Run Lead Smelter Herculaneum, MO.	Consent Order (Modification)	4/28/94	5/5/95, 60 FR 22334.	In a notice published on 8/15/97 at 62 FR 43647, EPA required implementation of the contingency measures.
Doe Run Lead Smelter Herculaneum, MO.	Consent Order (Modification)	11/23/94	5/5/95, 60 FR 22334.	
Doe Run Buick Lead Smelter Boss, MO	Consent Order	7/2/93	8/4/95, 60 FR 39851.	
Doe Run Buick Lead Smelter Iron County, MO.	Consent Order (Modification)	~~9/29/94~~	8/4/95, 60 FR 39851.	
ASARCO Glover Lead Smelter Glover, MO.	Consent Decree CV596–98CC with exhibits A–G.	7/30/96	3/5/97, 62 FR 9970.	
St Louis City Incinerator Permits				
Washington University School of Medicine.	Pathological Incinerator (RETORT) Permit No. 96–10–083.	2/20/97	4/22/98, 63 FR 19823.	
Washington University School of Medicine.	Medical Waste Incinerator Permit No. 96–10–084.	2/20/97	4/22/98, 63 FR 19823.	
St Louis University	Medical Waste Incinerator	9/22/92	4/22/98, 63 FR 19823.	

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment Area	State submittal date	EPA approval date	Explanation
Kansas City and Outstate Air Quality Control Regions Plan.	Kansas City and Outstate.	1/24/72	5/31/72, 37 FR 10875.	
Implementation Plan for the Missouri portion of the St. Louis Interstate Air Quality Control Region.	St. Louis	1/24/72	5/31/72, 37 FR 10875.	
Effects of adopting Appendix B to NO^2 emissions.	St. Louis	3/27/72	5/31/72, 37 FR 10875.	
CO air quality data base	St. Louis	5/2/72	5/31/72, 37 FR 10875.	
Budget and manpower projections	Statewide	2/28/72	10/28/72, 37 FR 23089.	
Emergency episode manual	Kansas City	5/11/72	10/28/72, 37 FR 23089.	
Amendments to Air Conservation Law	Statewide	7/12/72	10/28/72, 37 FR 23089.	
Air monitoring plan	Outstate	7/12/72	10/28/72, 37 FR 23089.	
Amendments to Air Conservation Law	Statewide	8/8/72	10/28/72, 37 FR 23089.	
Transportation control strategy	Kansas City	5/11/73, 5/21/73,	6/22/73 38 FR 16566.	
Analysis of ambient air quality data and recommendation to not designate the area as an air quality maintenance area.	Kansas City	4/11/74	3/2/76, 41 FR 8962.	
Recommendation to designate air quality maintenance areas.	St. Louis, Columbia, Springfield.	5/6/74	9/9/75, 40 FR 41950.	
Plan to attain the NAAQS	Kansas City St. Louis	7/2/79 4/9/80, 45 FR ..	24140	Correction notice published 7/11/80.
Schedule for I/M program and commitment regarding difficult transportation control measures (TCMs).	St. Louis	9/9/80	3/16/81, 46 FR 16895	
Lead SIP	Statewide	9/2/80, 2/11/81, 2/13/81.	4/27/81, 46 FR 23412 7/19/84, 49 FR 29218	Correction notice published 5/15/81.
Report on recommended I/M program	St. Louis	12/16/80	8/27/81, 46 FR 43139	No action was taken on the specific recommendations in the report.
Report outlining commitments to TCMs, analysis of TCMs, and results of CO dispersion modeling.	St. Louis	2/12/81, 4/28/81	11/10/81, 46 FR 55518.	
1982 CO and ozone SIP	St. Louis	12/23/82, 8/24/83	10/15/84, 49 FR 40164.	
Air quality monitoring plan	Statewide	6/6/84	9/27/84, 49 FR 38103.	
Vehicle I/M program	St. Louis	8/27/84	8/12/85, 50 FR 32411.	
Visibility protection plan	Hercules Glades and Mingo Wildlife Area.	5/3/85	2/10/86, 51 FR 4916.	
Plan for attaining the ozone standard by December 31, 1987.	St. Louis	8/1/85	9/3/86, 51 FR 31328.	
PM^{10} plan	Statewide	3/29/88, 6/15/88	7/31/89, 54 FR 31524.	
Construction permit fees including Chapter 643 RSMo.	Statewide	1/24/89, 9/27/89	1/9/90, 55 FR 735.	
PSD NO_X requirements including a letter from the state pertaining to the rules and analysis.	Statewide	7/9/90	3/5/91, 56 FR 9172.	
Lead plan	Herculaneum	9/6/90, 5/8/91	3/6/92, 57 FR 8076.	
Ozone maintenance plan	Kansas City	10/9/91	6/23/92, 57 FR 27939.	
Small business assistance plan	Statewide	3/10/93	10/26/93, 58 FR 57563.	
Part D Lead plan	Herculaneum	7/2/93, 6/30/94, 11/23/94.	5/5/95, 60 FR 22274.	
Intermediate permitting program including three letters pertaining to authority to limit potential to emit hazardous air pollutants.	Statewide	3/31/94, 11/7/94, 10/3/94, 2/10/95.	9/25/95, 60 FR 49340.	
Part D lead plan	Bixby	7/2/93, 6/30/94	8/4/95, 60 FR 39851.	
Transportation conformity plans including a policy agreement and a letter committing to implement the state rule consistent with the Federal transportation conformity rule.	St. Louis, Kansas City	2/14/95	2/29/96, 61 FR 7711.	
Emissions inventory update including a motor vehicle emissions budget.	Kansas City	4/12/95	4/25/96, 61 FR 18251.	
Part D Lead Plan	Glover	8/14/96	3/5/97, 62 FR 9970.	
CO Maintenance Plan	St. Louis	6/13/97, 6/15/98	1/26/99, 64 FR 3855.	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ079–0014; FRL–6365–9]

RIN 2060–A122

Approval and Promulgation of Implementation Plans; Arizona—Maricopa Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving under the Clean Air Act (CAA or Act) a revision to the Arizona State Implementation Plan (SIP) reflecting Arizona State legislation that provides for the expeditious implementation of best management practices to reduce fugitive dust from agricultural sources in the Maricopa County (Phoenix) PM–10 nonattainment area. Because EPA is approving the State legislation as meeting the reasonably available control measure (RACM) requirements of the Act, EPA is also withdrawing a federal implementation plan (FIP) commitment, promulgated under section 110(c) of the Act, to adopt and implement RACM for agricultural fields and aprons in the Maricopa area.

EFFECTIVE DATE: July 29, 1999.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements

1. Designation and Classification

Portions of Maricopa County [1] are designated nonattainment for the PM–10 national ambient air quality standards (NAAQS) [2] and were originally classified as "moderate" pursuant to section 188(a) of the Clean Air Act (CAA or Act). 56 FR 11101 (March 15, 1991). On May 10, 1996, EPA reclassified the Maricopa County PM-10 nonattainment area to "serious" under CAA section 188(b)(2). 61 FR 21372. Having been reclassified, Phoenix is required to meet the serious area requirements in the CAA, including a demonstration that best available control measures (BACM) will be implemented by June 10, 2000. CAA sections 188(c)(2) and 189(b). While the Phoenix PM–10 nonattainment area is currently classified as serious, today's actions relate only to the moderate area statutory requirements.

Pursuant to section 189(b)(2), the State of Arizona was required to submit a serious area plan addressing both PM–10 NAAQS for the area by December 10, 1997. The State has not yet submitted that plan.

2. Moderate Area Planning Requirements and EPA Guidance

The air quality planning requirements for PM–10 nonattainment areas are set out in subparts 1 and 4 of Title I of the Clean Air Act. Those states containing initial moderate PM–10 nonattainment areas were required to submit, among other things, by November 15, 1991 provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993. CAA sections 172(c)(1) and 189(a)(1)(C).[3] Since that deadline has passed, EPA has concluded that the required RACM/RACT must be implemented "as soon as possible." *Delaney* v. *EPA*, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be "as soon as practicable." See 55 FR 41204, 41210 (October 1, 1990) and 63 FR 28898, 28900 (May 27, 1998).

EPA has issued a "General Preamble" [4] describing EPA's preliminary views on how the Agency intends to review state implementation plans (SIPs) and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM–10 nonattainment area SIP provisions. The methodology for determining RACM/RACT is described in detail in the General Preamble. 57 FR 13498, 13540–13541. With respect to PM–10, Appendix C1 of the General Preamble suggests starting to define RACM with the list of available control measures for fugitive dust and adding to this list any additional control measures proposed and documented in public comments. Any measures that apply to de minimis emission sources of PM–10, or any measures that are unreasonable for technology reasons or because of the cost of the control in the area can then be culled from the list. In addition, potential RACM may be culled from the list if a measure cannot be implemented on a schedule that would advance the date for attainment in the area. 57 13498, 13560. 57 FR 18070, 18072 (April 28, 1992).

Moderate area plans were also required to meet the generally applicable SIP requirements for reasonable notice and public hearing under section 110(a)(2), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111 and EPA guidance implementing these provisions.

B. EPA's Moderate Area PM–10 FIP for Phoenix

On August 3, 1998, EPA promulgated under the authority of CAA section 110(c)(1) a federal implementation plan (FIP) to address the CAA's moderate area PM–10 requirements for the Phoenix PM–10 nonattainment area. 63 FR 41326 (August 3, 1998).

In the FIP, EPA promulgated, among other things, for both the annual and 24-hour PM–10 NAAQS, a demonstration that RACM will be implemented in the Phoenix area as soon as practicable.[5] As part of its RACM demonstration, EPA promulgated an enforceable commitment, codified at 40 CFR 52.127, to ensure that RACM for agricultural sources will be expeditiously adopted and implemented. See 63 FR 41326, 41350.[6]

II. Proposed Actions

On May 29, 1998, Arizona Governor Hull signed into law Senate Bill 1427 (SB 1427) which revised title 49 of the Arizona Revised Statutes (ARS) by adding section 49–457. This legislation established an agricultural best management practices (BMPs) committee for the purpose of adopting by rule by June 10, 2000, an agricultural general permit specifying BMPs for regulated agricultural activities [7] to reduce PM–10 emissions in the Maricopa PM–10 nonattainment area. ARS 49–457.A–F.

On September 4, 1998, the State of Arizona submitted ARS 49–457 to EPA. On December 30, 1998, EPA proposed to approve the legislation into the Arizona SIP for the Phoenix PM–10 nonattainment area under section 110(k)(3) of the CAA as meeting the requirements of sections 110(a) and 189(a)(1)(C) and proposed to withdraw the FIP RACM commitment for such sources. Please refer to Notice of Proposed Rulemaking (63 FR 71816) for greater detail on the Arizona legislation. For EPA's SIP approval criteria and its evaluation of the Arizona legislation, see 63 FR 71817.

III. Comments on Proposed Rule and EPA Responses

EPA received 3 comment letters on its proposed action for Phoenix. The comment letters were submitted by: (1) Nancy C. Wrona, Director, Air Quality Division, Arizona Department of Environmental Quality; (2) Dan Thelander, Chair, Agricultural Best Management Practices Committee; and (3) Jennifer B. Anderson, Staff Attorney, Arizona Center for Law in the Public Interest (ACLPI). The first two letters expressed strong support for EPA's proposed approval and did not raise any issues that EPA need address. ACLPI, in a January 29, 1999 letter, however, opposes EPA's proposed actions for a variety of reasons. EPA responds to ACLPI's specific major comments below. The reader is referred to the technical support document (TSD) for this rulemaking for EPA's responses to all of ACLPI's comments in its January 29, 1999 letter.

ACLPI comments that EPA should withdraw the proposed SIP revision. ACLPI claims that EPA's proposal would replace a weak FIP commitment with a weaker State commitment to do the same thing and that the State commitment violates the CAA for the same reasons as the FIP commitment. Therefore ACLPI incorporates by reference into its comments its brief for petitioners in *Ober* v. *Browner*, No. 98–71158.[8]

In the Ober litigation, EPA fully responded to the arguments raised by the petitioners in their brief as they relate to the action at issue there, EPA's FIP commitment for agricultural sources in Phoenix. For the complete text of our responses to those arguments, see brief for respondents at pp. 10–18 and 43–59. Because ACLPI chose not to recast the arguments in its Ober brief in the context of EPA's proposed SIP approval and FIP withdrawal, we have not done so for them. Thus the text in the comment sections below summarizes and/or excerpts portions of the brief for petitioners as filed in the Ninth Circuit. In the EPA response sections, however, we have addressed the comments as if they refer to this proposed action and not the FIP promulgation.

The gravamen of ACLPI's complaint is that the State's regulatory approach is that of a commitment to adopt and implement agricultural controls in the future rather than immediate, adopted and implemented regulations. This approach was initially developed for EPA's FIP and was then incorporated into the State legislation that is the subject of this rulemaking. Therefore, the original rationale for that approach is of central relevance and we briefly summarize it here as a prologue to the specific comments and responses that follow:

EPA has, beginning with the proposed rulemaking for its August 3, 1998 FIP and culminating in the Ninth Circuit litigation, explained at length its reasoning in promulgating an enforceable commitment for the control of PM–10 from agricultural fields and aprons in the Phoenix PM–10 nonattainment area rather than immediate, fully developed regulations for those sources. See 63 FR 15920, 15935–15936 (April 1, 1998); 63 FR 41332–41334; 63 FR 71817; brief for respondents at 43–59. In short:

In general, EPA believes that because agricultural sources in the United States vary by factors such as regional climate, soil type, growing season, crop type, water availability, and relation to urban centers, each PM–10 agricultural strategy is uniquely based on local circumstances. Furthermore, EPA determined that the goal of attaining the PM–10 standards in Maricopa County with respect to agricultural sources would be best served by engaging all interested stakeholders in a joint comprehensive process on the appropriate mix of agricultural controls to implement in Maricopa County. EPA stated its belief that this process, despite the additional time needed to work through it, will ultimately result in the best and most cost-effective controls on agricultural sources in the County.

In the FIP notices, EPA also explained its intention to meet its RACM commitment by developing and promulgating BMPs. Given the number of potential BMPs, the variety of crops types, the need for stakeholder input, and the time necessary to develop the BMPs into effective control measures, EPA believes that the adoption and implementation schedule in the FIP is as expeditious as practicable. * * *

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[1] "Maricopa," "Maricopa County" and "Phoenix" are used interchangeably throughout this final rule to refer to the nonattainment area.

[2] There are two PM–10 NAAQS, a 24-hour standard and an annual standard. 40 CFR 50.6. EPA promulgated these NAAQS on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (μg/m³). The 24-hour PM–10 standard of 150 μg/m³ is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, Appendix K.

On July 18, 1997, EPA revised both the annual and the 24-hour PM–10 standards and also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5)(62 FR 38651). Today's actions relate only to the CAA requirements concerning the 24-hour and annual PM–10 standards as originally promulgated in 1987.

On May 14, 1999, the U.S. Court of Appeals for the D.C. Circuit in American Trucking Assoc., Inc., et al. v. USEPA, No. 97–1440 (May 14, 1999) issued an opinion that, among other things, vacated the new standards for PM–10 that were published on July 18, 1997 and became effective September 16, 1997. However, the PM–10 standards promulgated on July 1, 1987 were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards in the Maricopa area. Codification of those standards continues to be recorded at 40 CFR 50.6. In the notice promulgating the revised PM–10 standards, the EPA Administrator decided that the previous PM–10 standards that were promulgated on July 1, 1987, and provisions associated with them, would continue to apply in areas subject to the 1987 PM10 standards until certain conditions specified in 40 CFR 50.6(d) are met. See 62 FR at 38701. EPA has not taken any action under 40 CFR 50.6(d) for the Maricopa area.

[3] States with moderate PM–10 areas were also required to submit either a demonstration that the plan would provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable (CAA section 189(a)(1)(B)); and, for plan revisions demonstrating impracticability, a demonstration of reasonable further progress (RFP) meeting the requirements of CAA sections 172(c)(2) and 171(1). Section 171(1) defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by part D of the Act or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable attainment date."

[4] See "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

[5] In addition to the RACM demonstration, EPA also promulgated a demonstration of reasonable further progress and a demonstration that it was impracticable for the Phoenix area to attain either the annual or 24-hour PM–10 NAAQS by the applicable attainment deadline pursuant to CAA sections 172(c)(2) and 189(a)(1)(B). 63 FR 41326, 41340 and 41342

[6] 40 CFR 52.127 provides that "[t]he Administrator shall promulgate and implement reasonably available control measures (RACM) pursuant to section 189(a)(1)(C) of the Clean Air Act for agricultural fields and aprons in the Maricopa County (Phoenix) PM–10 nonattainment area according to the following schedule: by no later than September, 1999, the Administrator shall sign a Notice of Proposed Rulemaking; by no later than April, 2000, the Administrator shall sign a Notice of Final Rulemaking; and by no later than June 2000, EPA shall begin implementing the final RACM."

[7] "Regulated agricultural activities" are defined as "commercial farming practices that may produce PM–10 particulate emissions within the Maricopa PM–10 particulate nonattainment area." ARS 49–457.N.4.

[8] Ober is a pending petition for review, filed by ACLPI on behalf of Phoenix residents, in the U.S. Court of Appeals for the Ninth Circuit, of EPA's action in promulgating the Phoenix FIP. While ACLPI's comment letter does not specify what portions of the petitioners' brief it intends to incorporate, EPA believes that the only arguably relevant portion is at pp. 29–36, relating to EPA's commitment for agricultural sources, and therefore addresses here only the arguments in those pages.

63 FR 71817. That schedule provided that RACM for agricultural fields and aprons in the Phoenix area would be proposed by September 1999, finalized by April 2000, and implementation begun by June 2000. 40 CFR 52.127; 63 FR 41350.

Specific ACLPI Comments and EPA Responses

Comment: ACLPI claims in its Ober brief that EPA has not met its burden under its policy of demonstrating that available agricultural controls are infeasible or otherwise unreasonable. Petitioners' brief at 32.[9]

Response: Under EPA's General Preamble, a "reasoned justification" is required for measures rejected as RACM. 57 FR 13540. By demonstrating that it lacked sufficient information at the time the FIP was developed and promulgated to determine the appropriate agricultural controls for the Phoenix area, EPA fully justified its conclusion that the only responsible approach was the one it pursued, i.e., a commitment, enforceable through the CAA citizen suit provision, section 304, to adopt and implement RACM controls on an expeditious schedule. For the same reason, EPA did meet its burden under its own policy to demonstrate that the measures promoted by petitioners were not reasonably available at the time EPA developed and promulgated the FIP. As we demonstrate below, the FIP approach evolved into the State legislation; therefore the same justification exists for the State in adopting its legislation.

As noted above, in developing the FIP for these sources, EPA promoted and participated in a stakeholder process that included discussions and coordination among federal, state and local government agencies and national and local agricultural organizations. This approach resulted in a consensus among the participants on the elements of a workable and expeditious agricultural strategy that would be incorporated initially into the FIP and subsequently into State legislation. 63 FR 15936–15937. In its FIP proposal, EPA explained that its enforceable commitment included a series of milestones to assure adoption and implementation of RACM. The Agency further explained:

> EPA would initially convene a stakeholder-based process to begin formal development of draft BMPs. Stakeholder groups represented will likely include but not be limited to the Arizona Farm Bureau Federation, Maricopa County Farm Bureau, ADEQ [Arizona Department of Environmental Quality], MAG [Maricopa Association of Governments], MCESD [Maricopa County Environmental Services Department], NRCS [Natural Resource Conservation Service], Cooperative Extension, the University of Arizona, tribes, and environmental and/or public health organizations. This effort would build upon the stakeholder-based discussions which occurred in 1997 and early 1998. By September 1998, the stakeholders would begin to draft BMPs. * * * In June 2000, BMP implementation will begin with an extensive collaborative public outreach and education campaign. Guidance documents would be developed to assist growers with implementation of the BMPs. Compliance assistance would also be a key element of the BMP program.

Id. at 15937.

In the FIP proposal, EPA also addressed the issue of how the federal commitment could ultimately be replaced:

> While EPA's intended BMP approach is designed to meet the RACM requirement, the Agency believes it can serve as a potential starting point and model for the development of a State-led SIP process for addressing BACM [Best Available Control Measures] for agricultural sources. Thus, the stakeholders could potentially build upon the BMP approach initiated for the FIP to address both RACM and BACM requirements for the agricultural sector in the SIP.[10] The Arizona Farm Bureau Federation, the Maricopa County Farm Bureau, NRCS, ADEQ, and other regulatory agencies are currently working collaboratively to develop a State-led BMP process for that purpose. EPA strongly endorses such a process.

Id. at 15937. Thus it was clear from the beginning of the regulatory development effort for the agricultural sources in Phoenix that the participants intended that both the federal and State processes would be substantially identical and, as such, a seamless transition from the FIP to the State replacement SIP could be effectuated. See, e.g., letter from David P. Howekamp, EPA, to Kevin Rogers, Maricopa County Farm Bureau (MCFB), January 7, 1998 and letter from Kevin G. Rogers to David P. Howekamp, January 22, 1998.

As expected, the approach and process in the State legislation that was ultimately passed and submitted by the State as a SIP revision are virtually coextensive with that of the FIP. For example, the legislation establishes a committee with the authority to adopt BMPs and conduct an educational program. See ARS 49–457.A-F, H and M. The provisions of the State legislation are discussed in detail in the proposal for this action at 63 FR 71816–71817.

Furthermore, in practice, a single entity has been established and has been operating to develop BMPs to comply with both the requirements of the FIP and State legislation. This entity, known as the Best Management Practices committee, has been meeting on a regular basis since September, 1998. In addition, a Technical Working Group was formed which is currently reviewing and evaluating a list of over 50 BMPs for possible use in Maricopa County. The Technical Working Group will then forward its recommendations to the BMP committee. Together, the committee and the working group are comprised of representatives from State and local agencies, universities, farmers/producers in Maricopa County, and EPA representatives. The committee expects to develop BMPs by September, 1999. These BMPs will then undergo review by State offices and the public and are expected to be adopted by June 10, 2000. Thus, for all practical purposes, the implementation efforts to date of the FIP commitment and the Arizona legislation are effectively the same.

As we have demonstrated above, the FIP and the State legislation were developed by the same participants and through the same process and were intended to be substantially identical. Therefore, the justification for the commitment approach in both the FIP and the SIP [11] are the same. ACLPI has had ample opportunity to comment and detail its arguments regarding the alleged inadequacy of that justification in connection with the FIP promulgation and the judicial challenge to that rulemaking. See letter from ACLPI to EPA, Region 9, May 18, 1998 and petitioners' brief at 29–36. For these reasons, while EPA acknowledges that the SIP submittal did not contain the "reasoned justification" provided for in Agency guidance, EPA believes that such a State justification would have been the same as that provided by EPA in connection with the FIP. Therefore, to the extent that the State did not duplicate that rationale, it is of no consequence. By its incorporation of its brief in Ober into its comments on the proposal for this action, ACLPI has put its arguments in the record for this rulemaking.

Comment: In their brief, petitioners argue that EPA's deferral of agricultural controls in the FIP through the use of a commitment is not reasonable because "[t]echniques for controlling agricultural emissions are well known." In support of this argument, petitioners cite, among other things, existing South Coast Air Quality Management District (SCAQMD) rules, EPA guidance, and a report by a 1996 task force appointed by Arizona's Governor, and claim that EPA erred by not adopting those measures in the FIP. Petitioners' brief at 30–31. ACLPI also suggests that EPA's action with respect to agricultural controls is contrary to the Agency's own policies detailing available agricultural control measures. *Id.*

Response: As discussed above, EPA has explained at length the rationale for its commitment in the FIP to adopt and implement RACM for the agricultural sector in Phoenix. See, e.g., 63 FR 15936. The Arizona legislation takes a very similar approach for the same reasons.

EPA agrees that certain techniques are well known. The critical question, however, is not whether those measures are "available," but whether they are "reasonably available" for the Phoenix area. ACLPI's arguments ignore the fact that, as noted above, PM–10 strategies in an agricultural context are highly dependent on specific local factors. 63 FR 41332–41333; Technical Support Document for U.S.EPA's Final Federal Implementation Plan for the Phoenix Nonattainment Area, Response to Comments Document, p. 16. (FIP TSD). As EPA explained in connection with the FIP, "[a] resolution of these uncertainties, in the context of an assessment of the potential mix of control measures, is critical to a determination of whether controls such as those contained in the SCAQMD rules are reasonably available for the Maricopa County nonattainment area and will contribute to attaining the PM–10 standards in the area." [12] *Id.* at pp. 16–17. That reasoning applies to the State legislation as well.

Moreover, contrary to ACLPI's suggestion in its brief, the 1996 Governor's task force report supports—not undermines—the State's approach to agricultural controls in its legislation. That report recommends the "[d]evelopment, implementation, and documentation of specific voluntary practices to reduce dust emissions from agricultural practices" and specifies that they "may become part of a list of mandatory agricultural BACM developed through coordination" by local and state agencies with relevant expertise. The report further states that "[a] coordination plan could be started immediately. Implementation would require cooperation with the agricultural community." Finally, the report lists several barriers to implementation. Report of the Governor's Air Quality task Force; Recommended Long-term Control Measures for Ozone, Carbon Monoxide, and PM–10, December 2, 1996, p. III–85–88. Thus, the task force recognized that the recommended measures would need considerable additional work and coordination among stakeholders before they could be fully realized in the Phoenix area.

Finally, the EPA guidance cited by petitioners lists agricultural control measures generally determined to be available for consideration by states in developing their PM–10 plans. EPA does not dispute the availability of such controls, but its guidance does not presume that these measures are reasonably available in any or all areas. Again, the question is whether the application of those measures to a specific area, like Maricopa County, is reasonable.

To take just one of the available measures cited by petitioners—modified tillage methods—as an example, EPA's guidance notes that operational tillage modifications require areas to consider: replacing planting and seeding methods, planting and fertilizing of specific grasses, crops and trees, and revising grazing practices. It acknowledges that resorting to some of these modified farming approaches "would require initial capital investments by the farming industry for new equipment." Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures, U.S.EPA, Office of Air Quality Planning and Standards (OAQPS), September 1992, p. 3–49. Both the American Farm Bureau Federation and the MCFB commented on possible negative economic impacts on agriculture if FIP controls were imposed on such sources. 63 FR at 41333–41334. It is because agricultural controls can be costly and intersect with land management practices and farming issues that EPA's policy is to work closely with all affected local, state and federal entities (e.g., USDA). Indeed, petitioners correctly note that EPA's guidance includes "USDA-assisted soil conservation plans * * * on individual farms" as an available measure. Petitioners' brief at 32.

Comment: According to the petitioners, citing CAA section 172(c)(1), the "wholesale deferral of agricultural controls [in the FIP] is utterly indefensible because the Act required adoption of all reasonably available controls as expeditiously as practicable." They contend that for moderate PM–10 areas, the Act set an explicit, absolute deadline of December 10, 1993 for implementing such measures under section 189(a)(1)(C) and that where an absolute deadline under the Act has passed, EPA must correct the deficiency "as soon as possible" to effectuate Congressional intent. Delaney v. EPA, 898 F.2d 687, 691, 695 (9th Cir. 1990).

Response: The air quality planning requirements for moderate area PM–10 SIPs are set out in CAA section 189, which states that the moderate area SIP must contain provisions to assure that RACM for the control of PM–10 is implemented by December 10, 1993. CAA section 189(a)(1)(C). In its General Preamble, which contains guidance to the states for determining RACM and reasonably available control technology (RACT) in their PM–10 moderate area SIPs, EPA interpreted this specific deadline for PM–10 nonattainment areas to supersede the generally applicable "as expeditiously as practicable" deadline in CAA section 172(c)(1). See 57 FR 13501. However, because the December 10, 1993 deadline had passed by the time the State legislation at issue here was developed, the applicable deadline became "as soon as possible" under Delaney, 898 F.2d at 691. EPA has interpreted this requirement to be "as soon as practicable." 63 FR 15926. We have delineated above the various factors that demonstrate that the schedule in the State legislation meets that test.

Comment: In its January 29, 1999 comment letter, ACLPI contends that EPA cannot claim that the State legislation provides for the expeditious implementation of RACM because the implementation date for the BMPs in the State plan is December 31, 2001 compared to an implementation date of June 2000 for the FIP.

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[9] "ACLPI" and "petitioners" are used interchangeably throughout this document except where otherwise indicated.

[10] At the time the moderate area FIP was being developed, the State was preparing to develop its plan to meet the serious area PM–10 requirements of the Act in the Phoenix area, one of which is provisions to assure that the best available control measures for the control of PM–10 shall be implemented. See generally CAA section 189(b).

[11] The Arizona legislation operates as a commitment enforceable under CAA section 304 by mandating the adoption by June 10, 2000 of a general permit specifying BMPs with which sources must comply by December 31, 2001 and the initiation of an education program by June 10, 2000. ARS 49–457.G, H, M.

[12] EPA provided examples of the differences between Maricopa County and the Coachella Valley that affect control strategy choices. For instance, SCAQMD rule 403.1 restricts activities capable of generating fugitive dust when wind speeds exceed 25 miles per hour; while PM–10 excesedances in Maricopa County can occur when winds exceed 15 miles per hour. Maricopa County has approximately 300,000 acres in production as opposed to the Coachella Valley's 60,000 areas. Finally, not only are the crops very different (Maricopa County is dominated by cotton, alfalfa, and wheat, while the Coachella Valley primarily grows fruits and vegetables), these crops have different planting and growing patterns.

Response: Under the State legislation, by June 10, 2000, BMPs must be adopted and embodied in a general permit in the Maricopa PM–10 nonattainment area and an education program must be initiated. By December 31, 2001, all regulated parties are required to be in compliance with the general permit. ARS 49–457.G, H, M.

The FIP requires that EPA shall begin implementing the final RACM, i.e., the BMPs, by June 2000. 63 FR 41350. Prior to proposing the FIP and as part of the stakeholder process, EPA, in conjunction with MCFB, concluded that it would not be possible to fully implement the BMPs by June 2000. See, e.g., letter from David P. Howekamp, EPA, to Kevin Rogers, MCFB, January 7, 1998 and letter Kevin G. Rogers to David P. Howekamp, January 22, 1998. Thus, as we stated in the proposal for the FIP, EPA's intention was to conduct an education program before enforcing the BMPs: "In June 2000, BMP implementation will begin with an extensive collaborative public outreach and education campaign." 63 FR 15937. EPA's intention to begin its education program as the first phase of its implementation program by that date is consistent with the education program requirement in the State legislation. In fact, the State legislation is arguably more stringent than the FIP because it provides for full compliance with the BMPs by December 31, 2001, while the FIP has no such full or final implementation deadline. See 40 CFR 52.127; 63 FR 41350.

Comment: ACLPI argues that an enforceable commitment to adopt control measures is not consistent with the CAA and prior practice. Specifically, petitioners object that EPA's decision to promulgate an enforceable commitment, as opposed to actual control measures, does not meet the CAA requirements for enforceable measures as expeditiously as practicable, and that the commitment offers no assurance that adequate controls will ever be adopted. Petitioners' brief at 34–36.

Response: Historically EPA has interpreted the CAA to allow states to submit, and EPA to approve, enforceable commitments to adopt rules in the future, and the courts have upheld such approvals. See, e.g., *Friends of the Earth* v. *EPA*, 499 F.2d 1118, 1124 (2d Cir. 1974).[13] Indeed, in *Kamp* v. *Hernandez*, 752 F.2d 1444, 1446, modified in other part, 778 F.2d 527 (9th Cir. 1985), the court reviewed EPA's approval of a plan that required Arizona to adopt regulations in the future to control fugitive emissions. Petitioners challenged EPA's approval, claiming that the lack of such controls in the plan meant that it did not assure attainment and maintenance of the sulfur dioxide standards. While finding that the Act requires plans to "rely on emission limitations to the maximum extent feasible," the court upheld EPA's approval, agreeing with the Second Circuit's reasoning that "the demands of its "difficult and complex job" require that EPA be given some flexibility to approve nearly complete implementation plans." Id. at 1455. Here, as shown above, it was not feasible for the State to impose immediate controls on agricultural sources and the enforceable commitment in the State's legislation provides for the implementation of RACM as soon as practicable.

Petitioners rely on *NRDC* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994) to support their argument. There, the D.C. Circuit considered EPA's authority under CAA section 110(k)(4) which was added as part of the 1990 Amendments to the Act, to conditionally approve a SIP submittal which consisted entirely of a commitment letter to submit the required measure by a date certain.[14] Here, however, EPA did not rely on section 110(k)(4); rather the Agency proposed to approve the Arizona legislation under section 110(k)(3). 63 FR 71818.

Moreover, when section 110(k)(4) was enacted as part of the 1990 Amendments, it provided a new type of approval for a limited set of commitments that, in general, could not be enforced under the Act's enforcement mechanisms, including the citizen suit provision.[15] There is no evidence that by enacting this provision Congress intended to replace EPA's well-established policy of using its general approval authority to approve enforceable commitments and, in fact, EPA has continued to approve enforceable commitments under its general authority. See 62 FR 1150, 1187 (Jan. 8, 1997).

IV. Final Actions

EPA has evaluated ARS 49–457 and has determined that it is consistent with the CAA and EPA regulations. Therefore, EPA is approving ARS 49–457 under section 110(k)(3) of the CAA as meeting the requirements of sections 110(a) and 189(a)(1)(C). Because EPA is approving the Arizona statute as meeting the RACM requirements of the CAA for agricultural sources in the Phoenix area, EPA is also withdrawing the FIP RACM commitment for such sources by deleting § 52.127, Commitment to Promulgate and Implement Reasonably Available Control Measures for the Agricultural Fields and Aprons, in subpart D of part 52, chapter I, title 40 of the Code of Federal Regulations. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this rule does not create any new requirements, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law and withdraws Federal requirements, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 1999. Filing a petition for reconsideration by

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[13] Courts have agreed that such commitments are enforceable by the public under the CAA citizen suit provision, section 304. See, e.g., *American Lung Association of New Jersey* v. *Kean*, 670 F. Supp. 1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3d Cir. 1989); *NRDC* v. *New York State Dep't of Environmental Conservation*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Environment* v. *Deukmejian*, 731 F. Supp. 1448, reconsideration granted in part, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition Against Columbus Center* v. *New York*, 967 F.2d 764 (2d Cir. 1992); *Trustees for Alaska* v. *Fink*, 17 F.3d 1209 (9th Cir. 1994).

[14] Under section 110(k)(4), the Administrator "may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain," within one year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

[15] As noted above, under section 110(k)(4), if a commitment is not fulfilled, the conditional approval must be converted to a disapproval. Once a SIP provision is disapproved, there is no longer any commitment left to enforce under the Act.

the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: June 17, 1999.

Carol M. Browner,

Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(93) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(93) Plan revisions were submitted on September 4, 1998 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Revised Statute 49–457.

* * * * *

§ 52.127 [Removed and Reserved]

3. Section 52.127 is removed and reserved.

[FR Doc. 99–16371 Filed 6–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6369–1]

National Primary Drinking Water Regulation: Consumer Confidence Reports; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of August 19, 1998, a final rule setting out the requirements for annual drinking water quality reports that water suppliers must provide to their customers. The final rule included several minor typographical mistakes. This document corrects those mistakes.

DATES: Effective on June 29, 1999.

FOR FURTHER INFORMATION CONTACT: Rob Allison, 202–260–9836; E-mail: allison.rob@epa.gov.

SUPPLEMENTARY INFORMATION: In the August 19, 1998 **Federal Register** (63 FR 44511), EPA published the Consumer Confidence Report Rule. Paragraph f of the section on Report Content (§ 141.153) mistakenly refers to the requirements of § 141.153(d)(7) when it should refer to § 141.153(d)(6). This rule corrects that mistake.

The preamble to the August 19, 1998 rule explained that systems that detect certain contaminants at concentrations above 50% of the applicable MCL or action level must include additional educational information about those contaminants in their reports. As explained in the preamble to the final rule, EPA intended that all systems detecting a contaminant at greater than 50% of the MCL or AL and not in violation or exceedence would include this educational statement. (See discussion at 63 FR 44514 (August 19, 1998)). Systems that violate or exceed the applicable National Primary Drinking Water Regulation would not include this additional statement because another part of the rule requires them to provide a clear and readily understandable explanation of the violation, including the potential adverse health effects. EPA's rule language at § 141.154(d) inaccurately described this requirement when it said that the requirement applied to "systems which detect lead above the action level in more than 5%, but fewer than 10%, of homes sampled...." EPA's phrasing inadvertently exempts systems that detect lead above the AL in precisely 10% of homes sampled. EPA is clarifying its requirement by amending the statement to read "Systems which detect lead above the action level in more than 5%, and up to and including 10%, of homes sampled * * *."

In addition, Appendices A and B to Subpart O mischaracterized regulatory levels for total coliforms and total trihalomethanes. The Appendices listed the Maximum Contaminant Level Goal (MCLG) for Total Trihalomethanes (TTHMs) as zero. This is incorrect; under current EPA regulations, TTHMs have no MCLG. This notice amends Appendices A and B to replace the number zero for the TTHMs MCLG with "n/a" (the abbreviation for "not applicable.") Similarly, the Appendices mistakenly listed the Maximum Contaminant Level for Total Coliforms as "presence of coliform bacteria in ≥5% of monthly samples". EPA is today correcting the Appendices to show that the MCL for total coliforms is "(systems that collect 40 or more samples per month) 5% of monthly samples are positive; (systems that collect fewer than 40 samples per month) 1 positive monthly sample'.

Finally, in paragraphs (f)(2) and (f)(3) of the section on Special Primacy Requirements (§ 142.16), the rule mistakenly refers to 40 CFR 141.155(b) when it should refer to 40 CFR 141.155(c). This amendment corrects that mistake.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting minor errors in the promulgated rule. Thus, notice and public comment procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since August 19, 1998, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined under E.O. 12866. Further, EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule is not subject to the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) because it does not involve any technical standards. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the August 19, 1998 **Federal Register** notice.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an immediate effective date. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

The final rule [FR Doc. 98–22056] published on August 19, 1998, (63 FR 44511)is corrected as follows:

PART 141—[CORRECTED]

1. On page 44528, in the middle column, in § 141.153(f), correct "§ 141.153(d)(7)" to read "§ 141.153(d)(6)".

2. On page 44529, in the middle column, in § 141.154, correct "(d) Systems which detect lead above the action level in more than 5%, but fewer that 10%, of homes sampled:" to read "(d) Systems which detect lead above the action level in more than 5%, and up to and including 10%, of homes sampled:"

3. In Appendix A to subpart O, on page 44530, in the fourth column of the table, line 1, correct "presence of coliform bacteria in ≥5% of monthly samples" to read "(systems that collect 40 or more samples per month) 5% of monthly samples are positive; (systems that collect fewer than 40 samples per month) 1 positive monthly sample".

4. In Appendix A to subpart O, on page 44531, in the fifth column of the table, line 73, correct "0" to read "n/a".

5. In Appendix B to subpart O, on page 44531, in the third column of the table, line 1, correct "presence of coliform bacteria in ≥5% of monthly samples" to read "(systems that collect 40 or more samples per month) 5% of monthly samples are positive; (systems that collect fewer than 40 samples per month) 1 positive monthly sample".

6. In Appendix B to subpart O, on page 44533, in the second column of the table, line 73, correct "0" to read "n/a'.

PART 142—[CORRECTED]

7. On page 44535, in the third column, in § 142.16(f)(2), correct "40 CFR 141.155(b)" to read "40 CFR 141.155(c)".

8. On page 44535, in the third column, in § 142.16(f)(3), correct "40 CFR 141.155(b)" to read "40 CFR 141.155(c)".

Dated: June 18, 1999.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 99–16536 Filed 6–28–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION 6820–34

41 CFR Parts 101–25, 101–31, and 101–38

[FPMR Amendment E–278]

RIN 3090–AG54

Guidelines for Making Purchase or Lease Determinations and Use of Private Inspection, Testing, and Grading Services

AGENCY: Office of Governmentwide Policy.

ACTION: Final rule.

SUMMARY: The General Services Administration is removing Federal Property Management Regulations (FPMR) Guidelines for Making Purchase or Lease Determinations, and Use of Private Inspection, Testing, and Grading Services, from the FPMR. Adequate coverage on these issues is contained in the Federal Acquisition Regulation (FAR). A cross-reference is added to the FPMR to direct readers to the appropriate FAR coverage.

EFFECTIVE DATE: This final rule is effective June 29, 1999.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington DC 20405, (202) 208–7312.

SUPPLEMENTARY INFORMATION:

A. Background

In an effort to improve GSA's external directives system, GSA has undertaken a review of the Federal Property Management Regulations (FPMR). The FPMR prescribes Governmentwide regulations for real property, personal property, and other programs and activities within GSA's regulatory authority. GSA will update, streamline, and clarify the content of the FPMR over the next year. As part of this review, GSA is:

1. Removing FPMR 101–25.5 regarding Guidelines for Making Purchase or Lease Determinations and adding a cross-reference to the FAR in its place. The decision to lease or purchase equipment is an acquisition matter and coverage on this subject is contained in FAR Subpart 7.4.

2. Removing FPMR 101–31.2 regarding the use of private inspection, testing, and grading services and adding a cross-reference to the FAR in its place. Coverage on this subject is provided in the Federal Acquisition Regulation (FAR). FAR Part 46, Quality Assurance, prescribes policies and procedures to ensure that supplies and services acquired under Government contract conform to the contract's quality and quantity requirements. Included in Part 46 are inspection and other measures associated with quality requirements. FAR Part 37 covers service contracting. FAR Subpart 7.5, Inherently Governmental Functions, addresses what is and is not an inherently Governmental function.

A proposed rule was published in the **Federal Register** on February 10, 1999 (64 FR 6589). No comments were received.

B. Executive Order 12866

The General Services Administration has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule removes from the FPMR coverage at 101–25.5, Guidelines for Making Purchase or Lease Determinations, and 101–31.2, Use of Private Inspection, Testing, and Grading Services.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose reporting, recordkeeping or information collection requirements which require the approval of the Office of Management and Budget pursuant to 44 U.S.C. 3501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under 5 U.S.C. 804.

List of Subjects in 41 CFR Parts 101–25 and 101–31

For the reasons set forth in the preamble, 41 CFR parts 101–25, 101–31, and 101–38 are amended as follows:

1. The authority-citation for parts 101–25, 101–31, and 101–38 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

PART 101–25—GENERAL

2. Subpart 101–25.5 is revised to read as follows:

Subpart 101–25.5—Purchase or Lease Determinations

§ 101–25.500 Cross-reference to the Federal Acquisition Regulation (FAR)(48 CFR Chapter 1, Parts 1–99).

For guidance see Federal Acquisition Regulation Subpart 7.4 (48 CFR Subpart 7.4).

PART 101–31—INSPECTION AND QUALITY CONTROL

3. Subpart 101–31.2 is revised to read as follows:

Subpart 101–31.2—Private Inspection, Testing, and Grading Services

§ 101–31.200 Cross-reference to the Federal Acquisition Regulation (FAR)(48 CFR Chapter 1, Parts 1–99).

For guidance see Federal Acquisition Regulation (e.g., Subpart 7.5, and Parts 37 and 46) (48 CFR Subpart 7.5, and Parts 37 and 46).

PART 101–38—MOTOR VEHICLE MANAGEMENT

4. Section 101–38.105 is amended by removing paragraph (g) and redesignating paragraphs (h) and (i) as paragraphs (g) and (h) respectively.

Dated: May 19, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–16197 Filed 6–28–99; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 43, 63, and 64

[IB Docket Nos. 98–148, 95–22, CC Docket No. 90–337 (Phase II), FCC 99–73]

Biennial Review of the Reform of the International Settlements Policy and Associated Filing Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document removes outdated rules that govern the manner in which U.S. international telecommunications carriers relate to foreign carriers that provide service in competitive markets. The Commission concludes that it should remove the existing international settlements policy (ISP): for settlement arrangements between U.S. carriers and foreign telecommunications carriers that lack market power; and for all settlement arrangements on routes where U.S. carriers are able to terminate at least 50 percent of their U.S. billed traffic in the foreign market at rates that are at least 25 percent below the applicable benchmark settlement rate.

The Commission believes that the new rules will create greater incentives for U.S. carriers to adopt business strategies that will enable them to obtain low rates to terminate U.S. traffic in foreign markets.

DATES: These rules contain information collections that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules. Public and agency comments are due on the information collections August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Robert McDonald, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 99–73, adopted on April 15, 1999, and released on May 6, 1999. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. The document is also available for download over the Internet at http://www.fcc.gov/bureaus/international/orders/1999/fcc99073.wp. The complete text of this Order also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

This document contains information collections subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the modified information collections contained in this proceeding.

Summary of Report and Order

1. In August 1998, the Commission issued a Notice of Proposed Rulemaking (63 FR 44224, August 18, 1998) in which it proposed substantial changes in the way it regulates international telecommunications carriers' relations with their foreign counterparts. The Commission initiated this proceeding pursuant to Section 11 of the Telecommunications Act of 1996, 47 U.S.C.161, which directs the Commission to undertake a review on every even-numbered year of all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. In this proceeding the Commission adopts most of the , proposals contained in the Notice and implements procedures that will grant regulatory relief to carriers while increasing the efficiency of the Commission.

2. The Commission finds that removing the ISP and related filing requirements between U.S. carriers and foreign carriers that lack market power in foreign markets would remove unnecessary regulatory burdens on U.S. carriers and at the same time future competition in the U.S. international services market. The vast majority of commenting parties support this change in Commission policy.

3. The Commission adopted the ISP and related filing requirements to prevent whipsawing by a foreign monopoly carrier. Where the carrier in the foreign market lacks market power, however, its ability to whipsaw U.S. carriers is substantially diminished, if not eliminated. Except in unusual circumstances, a U.S. carrier that is faced with an attempt at whipsawing by a foreign carrier that lacks market power on the foreign end of a particular route may respond by entering an agreement with a different foreign carrier on the route. The Commission thus concludes that the ISP is not necessary to prevent whipsawing for settlement arrangements with foreign carriers that lack market power.

4. The Commission will no longer require U.S. carriers that conclude arrangements with foreign carriers that lack market power in the foreign market to comply with the terms of the ISP or its contract filing requirements. Instead, the Commission finds that a policy that promotes the conclusion of unrestricted commercial arrangements between U.S. carriers and foreign carriers that lack market power in the foreign market will best further our goal of promoting competition in the international services market. The Commission finds that its 47 CFR 43.51 contract filing requirement should no longer apply to any U.S. carrier arrangement with a foreign carrier that lacks market power.

5. In determining whether it should continue to apply the ISP, the Commission adopts a presumption that a foreign carrier lacks market power when it possesses less than a 50 percent market share in each of the relevant foreign markets.

6. The Commission finds that it is necessary to adopt a mechanism to ensure that carriers enter into arrangements that deviate from the ISP only with carriers that lack market power in the foreign market, and that a relaxation of the ISP would not enable U.S. carriers to enter into arrangements that deviate from the ISP with foreign carriers that could exercise their market power to the detriment of U.S. consumers. The Commission will therefore make an affirmative finding to determine which carriers possess market power in specific foreign markets, and make a list of such carriers public. Carriers would thus be precluded from exchanging traffic outside of the ISP with carriers on the list unless otherwise allowed. The Commission finds that this approach will best advance its policy of allowing U.S. carriers to enter into arrangements with foreign carriers that lack market power with a minimum of regulatory oversight, while maintaining the ISP for certain arrangements with foreign carriers that possess market power in the foreign market. The Commission's rules include a presumption that a foreign carrier does not possess market power in a foreign market if it possesses less than 50 percent market share in each of the relevant foreign markets. The Commission thus issues, concurrently with the release of this Order, a public notice containing a list of foreign carriers that it believes do not qualify for this presumption, for the purposes of identifying arrangements that are not required to comply with the ISP and the Commission's No Special Concessions rule. This list is based on publicly available information, compiled from official sources, including the International Telecommunication Union (ITU). (Public Notice, DA 99–809, published elsehwere in this issue.) Interested parties may challenge the inclusion or exclusion of any carrier on the list by submitting a petition for declaratory ruling and the appropriate supporting documentation to demonstrate that a carrier included on the list lacks market power or that a carrier excluded from the list has market power. The Commission may also amend the list on its own motion. The list will be updated periodically and posted on the Commission's web page at http://www.fcc.gov/ib. Carriers are responsible for ensuring that arrangements they enter into outside of the ISP comply with the Commission's rules in the event of additions to the list.

7. The Commission amends Sections 43.51 and 64.1001 to remove the ISP and related contract filing requirements for arrangements between U.S. carriers and foreign carriers that lack market power. Section 43.51 will also specify procedures for modifying the list of foreign carriers that do not qualify for the presumption that they lack market power. The Commission also amends its No Special Concessions Rule, Section 63.14, to eliminate the requirement that a carrier seeking to enter into an exclusive arrangement with a foreign carrier that lacks market power submit with the Section 43.51 contract filing (which the Commission here eliminates) information to demonstrate that the foreign carrier lacks market power. This rule change will permit carriers to rely on the Commission's published list of foreign carriers for purposes of determining which foreign carriers are the subject of the prohibitions contained in Section 63.14.

8. The Commission concludes that it would serve the public interest to remove the ISP completely on certain routes, including for arrangements with foreign carriers that possess market power in the foreign market. The Commission finds that lifting the ISP has significant merits where the potential harm due to a foreign carrier's abuse of market power is limited. The Commission declines, however, to adopt the standard proposed in the Notice to remove the ISP on all routes where it currently allows international simple resale (ISR). Instead, the Commission removes the ISP completely only on those routes where U.S. carriers have the ability to settle U.S. traffic at rates that are 25 percent below the benchmark, or less. The Commission believes this provides the proper balance between, on the one hand, its goal in this proceeding of eliminating regulations that impede the development of competition, and, on the other hand, the longstanding goal of the ISP of preventing anticompetitive behavior that can harm U.S. consumers. The Commission also finds that on those routes where U.S. carriers have the ability to settle U.S. traffic at rates that are 25 percent below the benchmark, or less, the ISP is no longer necessary, regardless of whether the foreign country is a WTO Member or a non-WTO Member country. The Commission therefore repeals this rule, as applied in such cases, as it is no longer in the public interest.

9. The Commission further finds that it is not necessary to require all traffic that is terminated in a foreign market to be settled at 25 percent below the applicable benchmark settlement rate, or less, in order to lift the ISP. Rather, the Commission finds that removing the ISP where at least 50 percent of U.S.-billed traffic is terminated at such rates will ensure that the ISP is maintained only where it is necessary. The Commission finds that the ability of U.S. carriers to terminate at least 50 percent of the U.S.-billed traffic in the foreign market at rates that are 25 percent below the benchmark rate or less is convincing evidence that competitive pressures exist in the foreign market to constrain the market power of the foreign carrier. The Commission thus finds that where at least 50 percent of traffic is terminated at rates 25 percent lower than the

benchmark, or less, a foreign carrier is unlikely to have the ability to exercise market power to harm U.S. consumers and that the ISP is thus unnecessary.

10. The Commission will amend its rules establishing procedures for carriers seeking to enter into an arrangement that does not comply with the ISP with a foreign carrier that possesses market power on a route for which the ISP has not previously been lifted. Such carriers must file a petition for declaratory ruling that at least 50 percent of U.S.-billed traffic on the route is terminated in the foreign market at rates that are 25 percent below the benchmark settlement rate, or less. For upper income routes, 25 percent below the benchmark rate is 11.25 cents; for upper middle income routes, 25 percent below the benchmark rate is 14.25 cents; and for lower income routes, 25 percent below the benchmark rate is 17.25 cents. Carriers filing such petitions should include the appropriate supporting documentation demonstrating that the route qualifies for exemption from the ISP. Such documentation may include settlement rate or other data published by the Commission. The Commission will issue a public notice upon the filing of such a petition and may, in each case, determine an appropriate deadline for filing comments. Unopposed requests may be granted by public notice. The Commission will publish and periodically update a list of international routes exempt from the ISP on the Commission's web page at http://www.fcc.gov/ib.

11. The Commission also concludes here that it should amend its filing requirements to allow that settlement rate information and copies of contracts required to be filed under Section 43.51 be filed confidentially for arrangements with foreign carriers that possess market power on routes where it removes the ISP. The Commission finds that requiring carriers to file copies of arrangements entered into with foreign carriers that possess market power in the relevant foreign telecommunications markets provides a valuable tool to ensure that U.S. carriers do not enter into arrangements that would allow the foreign carrier to exercise its market power to the detriment of U.S. consumers. The Commission will therefore amend Sections 43.51 and 64.1001 of the Commission's rules to require carriers that exchange traffic with foreign carriers that possess market power on routes where it has lifted the ISP to file information on rates paid for the origination and/or termination of international traffic and copies of their contracts with these foreign carriers with the Commission. Such information may be filed with the Commission under confidential seal. This filing requirement covers all arrangements between U.S. and foreign carriers that possess market power, including arrangements currently classified as ISR arrangements and alternative settlement arrangements. The Commission finds that a confidential filing requirement will adequately deter the kind of anticompetitive conduct in which affiliated carriers or joint venture partners could engage.

12. Removing the ISP could exacerbate the concern about anticompetitive behavior by allowing a foreign carrier to adopt a strategy that would raise the costs of its U.S. affiliate's rivals and thus improve the position of the joint enterprise. The Commission finds that on routes where it removes the ISP, the danger of harm from such action, generally, is significantly reduced. Due to heightened concern about anticompetitive arrangements between U.S. carriers and their affiliates and joint venture partners, however, the Commission finds it necessary to adopt an additional safeguard to deter such arrangements. The Commission adopts a safeguard that prohibits U.S. carriers that are affiliated or non-equity joint venture partners with foreign carriers that possess market power in the foreign market from entering into arrangements that may present a significant adverse impact on competition on the international route. If the Commission finds that carriers have entered into such arrangements, the Commission reserves the right to take appropriate action to remedy the situation, including reimposing the ISP on the route.

13. In 1996, the Commission adopted the *Flexibility Order* (62 FR 5535, February 6, 1997), which established a framework for permitting flexibility in its accounting rate policies where appropriate market and regulatory conditions exist. Under the flexibility policy, the Commission maintains a presumption in favor of allowing flexible settlement arrangements with carriers in WTO Member markets that can be rebutted only by a showing that the foreign carrier that is a party to the flexible settlement arrangement does not face competition from multiple facilities-based carriers. The Commission finds here, that the changes it makes in this Order to exempt from the ISP arrangements between U.S. and foreign carriers that lack market power, and between U.S. and all foreign carriers on routes that allow U.S. carriers to terminate at least 50 percent of their traffic at rates that are at least 25 percent below the applicable benchmark settlement rate largely supersede the policies adopted in the *Flexibility Order*. The Commission therefore finds that maintaining the flexibility policies and procedures would needlessly complicate its accounting rate policies. The Commission eliminates the flexibility policy and therefore removes Section 64.1002 of its rules.

14. The Commission finds, however, that there may be unforeseen circumstances in which it may be in the public interest to allow an arrangement with a foreign carrier with market power to deviate from the ISP, even though the standard for removing the ISP has not been met. The Commission will therefore entertain waivers of the ISP for individual settlement arrangements. Among the factors the Commission will consider are whether granting such a waiver would promote the public interest in achieving cost-based rates for terminating international traffic, while precluding the abuse of foreign market power.

15. The Commission finds that there is no valid reason to apply the No Special Concessions rule to the terms and conditions under which traffic is settled, including the allocation of return traffic, on a route where the Commission removes the ISP. It makes no sense for the No Special Concessions rule to impose a nondiscrimination requirement for settlement arrangements on routes where it removes the ISP. The point of removing the ISP is to allow market forces to determine the types of arrangements into which carriers enter. The Commission therefore will amend Section 63.14 of the Commission's rules to clarify that the No Special Concessions rule does not apply to the terms and conditions under which traffic is settled, including the allocation of return traffic, on routes where the Commission removes the ISP. The Commission also finds that the No Special Concessions rule should apply to interconnection of international facilities, private line provisioning and maintenance, and quality of service on routes where the Commission removes the ISP. The Commission finds that there is still a risk of anticompetitive conduct for arrangements with foreign carriers that possess market power, even on routes where the Commission removes the ISP. The Commission therefore will maintain the No Special Concessions rule, as modified above, on all routes, regardless of whether the ISP applies.

16. In the Notice, the Commission sought comment on whether removing the ISP and related filing requirements may allow carriers to enter into

arrangements that may have anticompetitive effects. In particular, the Commission noted that U.S. carriers have, in the past, expressed concern regarding whether their competitors may negotiate arrangements to accept "groomed" traffic, *i.e.* traffic that terminates in particular geographic regions. The Commission finds that the danger of anticompetitive effects of grooming arrangements are unlikely. The Commission therefore finds that a prohibition against incumbent local exchange carriers accepting "groomed" international traffic is unnecessary.

17. Given its conclusion that grooming arrangements are not a cause for concern on routes where it has removed the ISP, the Commission hereby removes the condition imposed on Bell Operating Company international Section 214 certificates, which required these carriers to obtain prior Commission approval of grooming arrangements.

18. The Commission sought comment in the Notice on whether it should continue to afford carriers the option of filing either a notification or a modification notice for simple changes in accounting rates negotiated with foreign carriers. The Commission finds that adopting a single procedure for accounting rate changes will simplify its regulatory structure and avoid confusion for parties seeking to make the required filings with the Commission. The Commission therefore adopts its proposal to remove the option of filing a notification and require that all accounting rate filings be governed under the existing procedures for accounting rate modifications.

19. The Commission also sought comment on the extent to which it should continue to require that carriers making accounting rate filings serve every carrier that provides service on the international route with a copy of the filing. The Commission noted that the number of international carriers is growing on many routes and sought comment on whether another approach is warranted. The Commission also noted that it had been urged to require that accounting rate filings be placed on public notice, as is required for petitions seeking approval of flexible settlement arrangements. Further, the Commission noted that it has introduced an electronic filing mechanism for accounting rate filings, and that information contained in such filings would be available on the Commission's web site at http://www.fcc.gov/ib. The Commission's electronic filing system for accounting rate filings was introduced very recently, however, and the Commission has not had sufficient experience with the system to determine whether the information available on the Commission's web site will be an adequate substitute for the existing service requirement. The Commission therefore declines to remove the existing service requirement at this time. The Commission anticipates, however, that it may remove the service requirement in the near future, as it continues to implement the new electronic filing system. The Commission will therefore eliminate the existing service requirement within 3 months of the release of this Order. The Commission delegates to the Chief, International Bureau the authority to implement this change and direct the International Bureau to issue a Public Notice at that time to make this change in the Commission's rules.

20. The Commission also has pending two remaining issues on reconsideration of the *Foreign Carrier Entry Order* (60 FR 6732, December 29, 1995; 61 FR 4937, February 9, 1996). In that order, the Commission adopted the requirement that U.S. facilities-based carriers obtain separate Section 214 authority and demonstrate that equivalency exists when such carriers seek to provide ISR over their *facilities-based* U.S. international private lines. The Commission adopted an exception to this general rule, however, to permit a carrier to use its U.S. facilities-based private lines to carry switched traffic without demonstrating equivalency where two conditions are met: (1) the private line is interconnected to the public switched network on one end only—either the U.S. end or the foreign end; and (2) the foreign correspondent with which the U.S. facilities-based carrier is interchanging switched traffic is not the owner of the underlying foreign private line half-circuit. The Commission finds above that there are significant public interest benefits to permitting U.S. facilities-based carriers to provide switched services, without limitation, outside the ISP in correspondence with foreign carriers that lack market power. In light of this conclusion, the provision the Commission adopted in the *Foreign Carrier Entry Order* permitting one-end interconnection by U.S. facilities-based carriers is superfluous. The Commission's decision to lift the ISP for all U.S. carrier arrangements with foreign carriers that lack market power thus effectively subsumes the rule that permits one-end interconnection by U.S. facilities-based carriers. The Commission therefore eliminates that rule.

21. British Telecommunications North America (BTNA) seeks reconsideration of the Commission's decision not to allow resellers on the U.S. end to offer one-end interconnection services. The Commission finds merit to BTNA's argument that U.S. private line resellers should be accorded the same regulatory freedom as U.S. facilities-based carriers to exchange switched traffic in correspondence with foreign carriers that lack market power. The Commission therefore modifies its rules to permit U.S.-authorized private line resellers to interconnect their private lines to the public switched network, at one or both ends, for the provision of switched basic services, and thus, to engage in ISR in either of the following circumstances: (1) on any route where the resale carrier exchanges switched traffic with a foreign carrier that lacks market power; or (2) on any route for which the Commission has authorized the provision of ISR. This rule supersedes the condition that appears in the Section 214 authorizations of private line resellers that limits their ability to resell interconnected private lines to routes for which the Commission have authorized ISR.

22. The Commission also directs all U.S. private line carriers to amend their international private line tariffs to track the policy and rules the Commission adopts in this Order. In particular, the Commission shall require that a carrier's tariff explicitly state the Commission's policy that the private line user may engage in resale of the international private line for the provision of a switched, basic telecommunications service upon authorization from the Commission under Section 214 of the Communications Act of 1934, as amended, and provided that the private line is used only on a route where the resale carrier exchanges switched traffic with a foreign carrier that the Commission has determined lacks market power; or on any route for which the Commission has authorized the provision of switched services over private lines. Carriers will be required to amend their international private line tariffs within ten days after the effective date of the rules adopted in this order.

Final Regulatory Flexibility Certification

23. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms

"small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

24. In the Notice in this proceeding, the Commission certified that the proposed rules "[would] not, if promulgated, have a significant economic impact on a substantial number of small entities." No comments were received concerning this certification. The purposes of this proceeding are to eliminate some regulatory requirements and to simplify and clarify other existing rules. These rule changes will affect facilities-based international telecommunications carriers exclusively—in particular, approximately 10 facilities-based international telecommunications carriers. Neither the Commission nor SBA has developed a small business definition specifically applicable to such international carriers; therefore, the Commission will utilize the definition under the SBA rules for Communications Services, Not Elsewhere Classified (NEC). Under this definition, a small business is one with $11.0 million or less in annual receipts. Based on information filed with the Commission, the subject facilities-based international telecommunications carriers do not fall within the above definition of "small business" because they each have more than $11.0 million in annual receipts. The rule modifications at issue do not impose any additional compliance burden on persons dealing with the Commission, including small entities. Rather, this action removes filing requirements in scaling back application of the Commission's International Settlements policy. Accordingly, the Commission certifies, pursuant to the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Report and Order and Order on Reconsideration*, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the *Report and Order and Order on Reconsideration* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Supplemental Final Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice in IB Docket No. 95–22, and a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the *Report and Order* in that docket. The Order contains a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) which conforms to the RFA.

26. *Need for, and Objectives of, the Present Action.* This action creates greater opportunities for U.S. international private line resellers to carry U.S. international traffic outside of the settlements process. It also harmonizes the treatment of private line resellers with that of facilities-based carriers.

27. *Summary of Significant Issues Raised by Reconsideration Petitions.* No petitions were received in direct response to the FRFA in the *Report and Order*, nor were small business issues raised.

28. *Description and Estimate of the Number of Small Entities to which the Rules Will Apply.* As noted in the associated Final Regulatory Flexibility Certification in IB Docket No. 98–148, *supra*, the RFA directs agencies to provide a Regulatory Flexibility Analysis in notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The Commission's action on reconsideration in IB Docket No. 95–22 will affect telecommunications resellers, including resellers that are small businesses; therefore, the Commission incorporates this present Supplemental FRFA into its *Report and Order and Order on Reconsideration.*

29. In light of the petitions for reconsideration in IB Docket No. 95–22, the Commission modifies its rules to allow U.S. international private line resellers to carry switched traffic over international private line circuits in correspondence with foreign carriers that lack market power. The Commission expects that these changes will allow U.S. private line resellers, including small entities, to take advantage of new opportunities in the international telecommunications marketplace. As noted in the associated certification, *supra*, in instances where neither the Commission nor the SBA has developed a small business definition specifically applicable to the entities potentially affected by its action, the Commission utilizes the pertinent definition under the SBA rules. Here, neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than a radiotelephone (wireless) company. The Commission describes available statistics for telecommunications entities generally, including resellers, then give more particular information on resellers.

30. The SBA has developed a small business definition for establishments engaged in providing "Telephone Communications, Except Radiotelephone" (wireless) to be such businesses having no more than 1,500 employees. The U.S. Bureau of the Census reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities that may be affected by present action.

31. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). According to TRS data, 339 reported that they were engaged in the resale of telephone service (including debit card providers). The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 339 small entity resellers that may be affected by the rules.

32. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* In its reconsideration of IB Docket No. 95–22, the Commission modifies its rules to allow U.S. private line resellers to carry switched traffic over international private line circuits in correspondence with foreign carriers that lack market power. The Commission expects that these changes will expand the ability of U.S. private line resellers, including small entities, to reap economic benefits by taking advantage of new opportunities in the international telecommunications marketplace.

33. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* As discussed, in reconsideration of the petitions in IB Docket No. 95–22, the Commission modifies its rules to allow U.S. private line resellers to carry switched traffic over international private line circuits in correspondence with foreign carriers that lack market power. Authorized private line resellers will be subject to no reporting, recordkeeping, or compliance requirements in order to carry switched traffic over international private line circuits in correspondence with foreign carriers that lack market power.

34. *Report to Congress.* The Commission will send a copy of the *Report and Order and Order on Reconsideration*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order and Order on Reconsideration*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order and Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Paperwork Reduction Act of 1995 Analysis

35. This Order contains information collections which will be submitted to the Office of. As part of our continuing effort to reduce paperwork burdens, the Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due August 30, 1999. Comments should address the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.
Title: Operating Agreements of Common Carriers & Affiliates.
Form Number: N/A.
Type of Review: New collection.
Respondents: Business and other for-profit entities.
Number of Respondents: 20.
Number of Responses: 1180.
Estimated Time Per Response: 5 hours.
Frequency of Response: On Occasion.
Total Annual Burden: 5900.
Total Annual Costs: None.
Needs and Uses: The information contained in these reports will be used by the Commission to determine whether the activities reported have affected or are likely to affect adversely the carrier's service to the public or whether these activities result in undue or unreasonable increases in charges. If this information was not reported, the Commission would not be able to ascertain the impact of these activities on the just and reasonable rates as required by the Act.

OMB Control Number: 3060–0454.
Title: Regulation of International Accounting Rates.
Form Number: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Business and other for-profit entities.
Number of Respondents: 20.
Estimated Time Per Response: 1 hour.
Frequency of Response: On occasion.
We estimate that more carriers will file for fewer markets (about 38). Third party disclosure.
Total Annual Burden: 760.
Total Annual Costs: $25,270.
Needs and Uses: The information is a method for the Commission to monitor the international accounting rates to ensure that the public interest is being served and also to enforce Commission policies.

OMB Control Number: 3060–0764.
Title: Regulation of International Accounting Rates.
Form Number: N/A.
Type of Review: Elimination of a currently approved collection.
Respondents: Business and other for-profit entities.
Number of Respondents: -30.
Estimated Time Per Response: 16 hours.
Total Annual Burden: -80 hours.
Total Annual Costs: -$180.000.
Needs and Uses: This Order removes Section 64.1002, and thus this collection of information is no longer necessary.

Written comments by the public on the proposed information collections are due on or before August 30, 1999. Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov. For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

Ordering Clauses

36. Accordingly, *it is ordered* that, pursuant to Sections 1, 2, 4(i), 201, 203, 205, 214, 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 152, 154(i), 201, 205, 214, 303(r), 309, the policies, rules, and requirements discussed herein *are adopted* and Parts 43 and 63 of the Commission's rules, 47 CFR Parts 43 and 63, *are amended* as set forth in the rule changes.

37. *It is further ordered* that the petitions for reconsideration in CC Docket No. 90–337 *are denied.*

38. *It is further ordered* that the petitions for reconsideration in IB Docket No. 95–22 *are granted in part* and *denied in part*, as discussed herein.

39. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *Report and Order and Order on Reconsideration*, including the Final Regulatory Flexibility Certification and the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

40. *It is further ordered* that the policies, rules, and requirements established in this decision shall take effect after the Commission publishes a document in the **Federal Register** announcing the effective date of these rules or in accordance with the

requirements of 5 U.S.C. 801(a)(3) and 44 U.S.C. 3507.

List of Subjects in 47 CFR Parts 0, 43, 63, and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 43, 63, and 64 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.457 is amended by adding paragraph (d)(1)(vi) to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

(1) * * *

(vi) The rates, terms and conditions in any agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S. international traffic, including the method for allocating return traffic, if the U.S. international route is exempt from the international settlements policy under § 43.51(g) of this chapter.

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

3. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

4. Section 43.51 is amended by revising paragraphs (a), (b) and (e), and by adding paragraphs (f) and (g) to read as follows:

§ 43.51 Contracts and concessions.

(a) Any communications common carrier that: is engaged in domestic communications and has not been classified as nondominant pursuant to § 61.3 of this chapter or, except as provided in paragraphs (f) and (g) of this section, is engaged in foreign communications, and enters into a contract with another carrier, including an operating agreement with a communications entity in a foreign point for the provision of a common carrier service between the United States and that point; must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto with respect to the following:

(1) The exchange of services;

(2) Except as provided in paragraph (c) of this section, the interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances; and

(3) The rights granted to the carrier by any foreign government for the landing, connection, installation, or operation of cables, land lines, radio stations, offices, or for otherwise engaging in communication operations.

(b) If the agreement referred to in this section is made other than in writing, a certified statement covering all details thereof must be filed by at least one of the parties to the agreement. Each other party to the agreement which is also subject to these provisions may, in lieu of also filing a copy of the agreement, file a certified statement referencing the filed document. The Commission may, at any time and upon reasonable request, require any communication common carrier not subject to the provisions of this section to submit the documents referenced in this section.

* * * * *

(e) *International settlements policy.* (1) Except as provided in paragraph (g) of this section, if a carrier files an operating agreement (whether in the form of a contract, concession, license, etc.) referred to in paragraph (a) of this section to begin providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point and the terms and conditions of such agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, are not identical to the equivalent terms and conditions in the operating agreement of another carrier providing the same or similar service between the United States and the same foreign point, the carrier must also file with the International Bureau a modification request under § 64.1001 of this chapter. Unless a carrier is providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point pursuant to an operating agreement that is exempt from the international settlements policy under paragraph (g) of this section, the carrier shall not bargain for or agree to accept more than its proportionate share of return traffic.

(2) Except as provided in paragraph (g) of this section, if a carrier files an amendment to the operating agreement referred to in paragraph (a) of this section under which it already provides switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point, and other carriers provide the same or similar service to the same foreign point, and the amendment relates to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, the carrier must also file with the International Bureau a modification request under § 64.1001 of this chapter.

(f) *Confidential treatment.* (1) A carrier providing service on an international route that is exempt from the international settlements policy under paragraph (g)(2) of this section, but that is required by paragraph (a) or (b) of this section to file a contract covering that route with the Commission, may request confidential treatment under § 0.457 of this chapter for the rates, terms and conditions that govern the settlement of U.S. international traffic.

(2) Carriers requesting confidential treatment under this paragraph must include the information specified in § 64.1001(c) of this chapter. Such filings shall be made with the Commission, with a copy to the Chief, International Bureau. The transmittal letter accompanying the confidential filing shall clearly identify the filing as responsive to § 43.51(f).

(g) Exemption from the international settlements policy and contract filing requirements.

(1) A carrier that enters into a contract, including an operating agreement, for the provision of a common carrier service between the United States and a foreign point with a carrier that lacks market power in that foreign market is not subject to the requirements of paragraphs (a), (b) or (e) of this section.

(i) A foreign carrier lacks market power for purposes of paragraph (g)(1) of this section if it does not appear on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points. The list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

(ii) The Commission will include on the list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points any foreign carrier that has 50 percent or more market share in the international transport or local access markets of a foreign point. A party that seeks to remove such a carrier from the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route or that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. A party that seeks to add a carrier to the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.

(2) A carrier that enters into a contract, including an operating agreement, with a carrier in a foreign point for the provision of a common carrier service between the United States and that point is not subject to the international settlements policy in paragraph (e) of this section if the foreign point appears on the Commission's list of international routes that the Commission has exempted from the international settlements policy. The list of exempt routes is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

(i) A party that seeks to add a foreign market to the list of markets that are exempt from the international settlements policy must show that U.S. carriers are able to terminate at least 50 percent of U.S.-billed traffic in the foreign market at rates that are at least 25 percent below the benchmark settlement rate adopted for that country in IB Docket No. 96–261.

(ii) A party that seeks to remove a foreign market from the list of markets that are exempt from the international settlements policy must show that U.S. carriers are unable to terminate at least 50 percent of U.S.-billed traffic in the foreign market at rates that are at least 25 percent below the benchmark settlement rate adopted for that country in IB Docket No. 96–261.

Note to paragraph (g): The Commission's benchmark settlement rates are available in International Settlement Rates, IB Docket No. 96–261, *Report and Order*, 12 FCC Rcd 19,806, 62 FR 45758 (August 29, 1997).

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

5. The authority citation for part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 161, 201–205, 218, 403, 533 unless otherwise noted.

6. Section 63.14 is amended by revising paragraphs (a) and (c), and by removing paragraph (d), to read as follows:

§ 63.14 Prohibition on agreeing to accept special concessions.

(a) Any carrier authorized to provide international communications service under this part shall be prohibited, except as provided in paragraph (c) of this section, from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and from agreeing to accept special concessions in the future.

Note to paragraph (a): Carriers may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the prohibitions contained in this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

* * * * *

(c) This section shall not apply to the rates, terms and conditions in an agreement between a U.S. carrier and a foreign carrier that govern the settlement of international traffic, including the method for allocating return traffic, if the international route is exempt from the international settlements policy under § 43.51(g)(2) of this chapter.

7. Section 63.16 is amended by revising paragraph (a) to read as follows:

§ 63.16 Switched services over private lines.

(a) Except as provided in §§ 63.22 (e)(2) and 63.23(d)(2), a carrier may provide switched basic services over its authorized private lines if and only if the country at the foreign end of the private line appears on a Commission list of destinations to which the Commission has authorized the provision of switched services over private lines. The list of authorized destinations is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

* * * * *

8. Section 63.22 is amended by revising paragraph (e) to read as follows:

§ 63.22 Facilities-based international common carriers.

* * * * *

(e)(1) Except as provided in paragraph (e)(2) of this section, the carrier may provide switched basic services over its authorized facilities-based private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16. If at any time the Commission removes the country from that list or finds that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(2) The carrier may use its authorized facilities-based private lines to provide switched basic services in circumstances where the carrier is exchanging switched traffic with a foreign carrier that lacks market power in the country at the foreign end of the private line.

(3) A foreign carrier lacks market power for purposes of paragraph (e)(2) of this section if it does not appear on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points. This list is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

* * * * *

9. Section 63.23 is amended by revising paragraph (d) to read as follows:

§ 63.23 Resale-based international common carriers.

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this section, the carrier may provide switched basic services over its authorized resold private lines if and

only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16. If at any time the Commission removes the country from that list or finds that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(2) The carrier may use its authorized resold private lines to provide switched basic services in circumstances where the carrier is exchanging switched traffic with a foreign carrier that lacks market power in the country at the foreign end of the private line.

(3) A foreign carrier lacks market power for purposes of paragraph (d)(2) of this section if it does not appear on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points. This list is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

* * * * *

PART 64 —MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

10. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 10, 201, 218, 226, 228, 332 unless otherwise noted.

11. Section 64.1001 is amended by revising paragraphs (b) through (g) and by removing paragraphs (h) through (l) to read as follows:

§ 64.1001 International settlements policy and modification requests.

* * * * *

(b) If the international settlement arrangement in the operating agreement or amendment referred to in § 43.51(e)(1) or (e)(2) of this chapter differs from the arrangement in effect in the operating agreement of another carrier providing service to or from the same foreign point, the carrier must file a modification request under this section unless the international route is exempt from the international settlements policy under § 43.51(g) of this chapter.

(c) A modification request must contain the following information:

(1) The applicable international service;

(2) The name of the foreign telecommunications administration;

(3) The present accounting rate (including any surcharges);

(4) The new accounting rate (including any surcharges);

(5) The effective date;

(6) The division of the accounting rate; and

(7) An explanation of the proposed modification(s) in the operating agreement with the foreign correspondent.

(d) A modification request must contain a notarized statement that the filing carrier:

(1) Has not bargained for, nor has knowledge of, exclusive availability of the new accounting rate;

(2) Has not bargained for, nor has any indication that it will receive, more than its proportionate share of return traffic; and

(3) Has informed the foreign administration that U.S. policy requires that competing U.S. carriers have access to accounting rates negotiated by the filing carrier with the foreign administration on a nondiscriminatory basis.

(e) An operating agreement or amendment filed under a modification request cannot become effective until the modification request has been granted under paragraph (g) of this section.

(f) Carriers must serve a copy of the modification request on all carriers providing the same or similar service to the foreign administration identified in the filing on the same day a modification request is filed.

(g) All modification requests will be subject to a twenty-one (21) day pleading period for objections or comments, commencing the date after the request is filed. If the modification request is not complete when filed, the carrier will be notified that additional information is to be submitted, and a new 21 day pleading period will begin when the additional information is filed. The modification request will be deemed granted as of the twenty-second (22nd) day without any formal staff action being taken: provided

(1) No objections have been filed, and

(2) The International Bureau has not notified the carrier that grant of the modification request may not serve the public interest and that implementation of the proposed modification must await formal staff action on the modification request. If objections or comments are filed, the carrier requesting the modification request may file a response pursuant to § 1.45 of this chapter. Modification requests that are formally opposed must await formal action by the International Bureau before the proposed modification can be implemented.

§ 64.1002 [Removed]

12. Section 64.1002 is removed.

[FR Doc. 99–16032 Filed 6–28–99; 8:45 am]

BILLING CODE 8712–10–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–189; RM–9377; RM–9475]

Radio Broadcasting Services; Manzanita, Cannon Beach and Bay City, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John L. Zolkoske and Broad Spectrum Communications, Inc., allots Channel 242A to Bay City, OR, as the community's first local aural service, substitutes Channel 235C3 for Channel 243A at Cannon Beach, OR, and modifies the license of Station KCBZ to specify the higher powered channel. The proposal of Zolkoske to allot Channel 235A to Manzanita, OR, as its first local aural service, is dismissed. *See* 63 FR 59263, November 3, 1998. Channel 242A can be allotted to Bay City in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 45–31–24 NL; 123–53–18 WL. Channel 235C3 can be allotted to Cannon Beach without the imposition of a site restriction, at coordinates 45–53–42 NL; 123–57–36 WL. Canadian concurrence in these allotments has been obtained since both Bay City and Cannon Beach are located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective August 2, 1999. A filing window for Channel 242A at Bay City, OR, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–189, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Bay City, Channel 242A, and by removing Channel 243A and adding Channel 235C3 at Cannon Beach.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16431 Filed 6–28–99; 8:45 am]

BILLING CODE 8712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–133; RM–9314]

Radio Broadcasting Services; Zapata, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 274A to Zapata, Texas, in response to a petition filed by Arturo Lopez and Eleazar Trevino. *See* 63 FR 6078, February 6, 1998. The coordinates for Channel 274A at Zapata are 26–54–30 and 99–16–18. In response to comments filed by Encarnacion A. Guerra in this proceeding, we shall also allot Channel 280A to Zapata. The coordinates for Channel 280A at Zapata are 26–54–30 and 99–16–18. Mexican concurrence has been obtained for the allotment of Channels 274A and 280A at Zapata. With this action, this proceeding is terminated. A filing window for Channels 274A and 280A at Zapata will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–133, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channels 274A and 280A at Zapata.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16433 Filed 6–28–99; 8:45 am]

BILLING CODE 8712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980817221–9020–02; I.D. 072898A]

RIN 0648–AL22

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program; Extension of Expiration Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; extension of expiration date.

SUMMARY: NMFS extends the expiration date of an emergency interim rule implementing requirements of the American Fisheries Act (AFA) related to the 1999 Western Alaska Community Development Quota (CDQ) Program. This action revises pollock CDQ catch accounting regulations and removes the squid allocation from the CDQ program. The emergency interim rule that is effective from January 21, 1999, through July 20, 1999, is extended through December 31, 1999, to allow necessary time for public comment on related issues.

DATES: The expiration date for "Directed fishing for pollock CDQ," the amendments to § 679.20(b)(1)(iii)(A) and (b)(1)(iii)(D), and § 679.32(e) of the emergency interim rule published January 26, 1999 (64 FR 3877), and as amended April 26, 1999 (64 FR 20210), is extended from July 20, 1999, through December 31, 1999.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the initial emergency interim rule may be obtained from Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attention: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Management Background and Need for Action

NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels and implementing the FMP appear at 50 CFR parts 600 and 679.

The President signed the AFA into law on October 20, 1998, as part of the Omnibus Appropriations Bill FY99, (Pub. L. 105–277). NMFS determined that two changes to the CDQ Program regulations were necessary in order for the CDQ Program-related provisions of the AFA to be effective by January 1999. These two regulatory changes were (1) to allow pollock bycatch in the non-pollock groundfish CDQ fisheries to accrue against the allowance for incidental catch of pollock established

by section 206(b) of the AFA and (2) to remove the allocation of squid from the CDQ Program in order to allow the CDQ groups to maximize the possibility that the pollock CDQ directed fishing allowance will be fully harvested. At its November 1998 meeting, the Council concurred with NMFS's recommendation for these changes.

NMFS published the emergency interim rule implementing these regulatory changes in the **Federal Register** on January 26, 1999 (64 FR 3877), effective through July 20, 1999. Specifically, the emergency interim rule (1) establishes a new definition of directed fishing for pollock CDQ, (2) revises specifications of the groundfish CDQ reserves at § 679.20(b)(1)(iii), and (3) revises pollock CDQ catch accounting regulations at § 679.32(a)(2) and (e). The preamble to the initial emergency interim rule provides more background on the justification and effects of this action. No comments were received during the comment period for the initial emergency interim rule. NMFS intends to initiate proposed and final rulemaking later in 1999 to permanently implement these CDQ Program-related provisions of the AFA.

This current action extends the expiration date of the emergency interim rule, as amended, through December 31, 1999.

On April 26, 1999 (64 FR 20210), NMFS issued a final rule amending the regulations governing the halibut CDQ fisheries and correcting some inadvertent errors in the initial emergency interim rule implementing AFA provisions relating to the CDQ Program. Specifically, revisions to the definition of groundfish CDQ fishing were made permanent; § 679.32(a)(2), (a)(3), and (e) were permanently removed; and § 679.32(g) was redesignated as § 679.32(e). Under this extension of the expiration date for the emergency interim rule, new § 679.32(e) will expire on December 31, 1999.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Extension of this emergency interim rule is necessary to continue to monitor and manage catch of pollock in the CDQ fisheries required by the AFA. Failure to extend this action would prevent the CDQ groups from taking advantage of the AFA's provisions that only pollock harvested while directed fishing for pollock CDQ will accrue against the pollock CDQ allocation and could result in squid bycatch limiting the total catch of pollock CDQ. The AA finds good cause to extend the emergency interim rule in accordance with section 305(c)(3)(B) of the Magnuson-Stevens Act. Pursuant to authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for public comment, as the delay associated with such procedures would be contrary to the public interest.

Similarly, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest. Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The emergency interim rule contains a reduction in a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB control number 0648–0269. Shoreside processors and CDQ groups are currently required to report all pollock harvested in the CDQ fisheries on CDQ delivery reports and CDQ catch reports. This emergency interim rule requires that the incidental catch of pollock in non-pollock CDQ fisheries not be reported on the CDQ delivery report and the CDQ catch report.

This rule has been determined to be not significant for purposes of E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 23, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine fisheries Service.

[FR Doc. 99–16520 Filed 6–28–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 124
Tuesday, June 29, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Liquidation of Collateral and Sale of Commercial Loans

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: SBA proposes to amend its regulation regarding the liquidation and sale of loans. As part of a government-wide initiative, federal credit agencies are being directed by the Office of Management and Budget (OMB) to sell their loan portfolios. Initially, SBA intends to sell its portfolio of direct and purchased loans made under the authorities of the 7(a) and 501, 502, 503, and 504 programs. This will include both secured and unsecured loans in performing and non-performing status. The loans will be sold to qualified bidders by means of competitive procedures at publicly advertised sales. Bidder qualifications will be set for each sale in accordance with the terms and conditions of each sale. SBA also intends to sell its disaster home loans and disaster business loans, but will publish separate regulations regarding these sales.

DATES: Submit comments on or before July 29, 1999.

ADDRESSES: Comments should be mailed to Arnold S. Rosenthal, Assistant Administrator for Portfolio Management, Small Business Administration, 409 Third Street, S.W., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Richard Blewett, 202–205–4202.

SUPPLEMENTARY INFORMATION: 13 CFR 120.540 sets forth SBA's policy for the liquidation of collateral and the sale of commercial loans. SBA now proposes to amend and expand this rule to include the sale of direct and purchased loans in asset sales. Pub. L. 104–134, the "Debt Collection Improvement Act of 1996," enacted on April 26, 1996, provides that, "the head of an executive * * * agency may sell, subject to section 504(b) of the Federal Credit Reform Act of 1990 and using competitive procedures, any non-tax debt owed to the United States that is delinquent for more than 90 days." 31 U.S.C. 3711(i)(1). The Small Business Act, 15 U.S.C. 634(b)(2), provides in pertinent part that "(The Administrator) may sell at public or private sale * * * in (her) discretion * * * any evidence of debt * * * personal property, or security * * *" It further provides in 15 U.S.C. 634(b)(7) that the Administrator may "take any and all actions * * * when [she] determines such actions are necessary or desirable in * * * liquidating or otherwise dealing with or realizing on loans * * *" Pursuant to this statutory authority, SBA is establishing an Asset Sales Program to sell portions of its direct and participation loan portfolios.

Compliance With Executive Orders 12612, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule is not a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

SBA certifies that this proposed rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

For purposes of Executive Order 12612, SBA certifies that this proposed rule has no federalism implications warranting preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this proposed rule is drafted, to the extent practicable, to accord with the standards set forth in paragraph 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—business.

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR part 120 as follows:

PART 120—[AMENDED]

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634 (b)(6) and (h).

2. In § 120.540 revise the section heading, add paragraph (b)(4), and revise paragraph (d) to read as follows:

§ 120.540 What are SBA's policies concerning the liquidation of collateral and the sale of business loans?

* * * * *

(b) * * *

(4) Sell direct and purchased 7(a) and 501, 502, 503 and 504 loans in asset sales. SBA will offer these loans for sale to qualified bidders by means of competitive procedures at publicly advertised sales. Bidder qualifications will be set for each sale in accordance with the terms and conditions of each sale.

* * * * *

(d) *Recoveries and security interests shared.* SBA and the Lender will share pro rata (in accordance with their respective interests in a loan) all loan payments or recoveries, including proceeds from asset sales, all reasonable expenses (including advances for the care, preservation, and maintenance of collateral securing the loan and the payment of senior lienholders), and any security interest or guarantee (excluding SBA's guarantee) which the Lender or SBA may hold or receive in connection with a loan.

* * * * *

Dated: June 22, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–16339 Filed 6–28–99; 8:45 am]

BILLING CODE 8025–01–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–26–AD]

Airworthiness Directives; Eurocopter France Model SA–360C, SA–365C, C1, C2, SA–365N, N1, AS–365N2, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA–360C, SA–365C, C1, C2, SA–365N, N1, AS–365N2, and SA–366G1 helicopters. This proposal would require inspecting and, if necessary, replacing certain circuit breakers. This proposal is prompted by the manufacturer discovering the loss of electrical continuity between the terminals of a circuit breaker. The actions specified by the proposed AD are intended to prevent loss of electrical power, loss of instrumentation, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–26–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–26–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–26–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Eurocopter France Model SA–360C, SA–365C, C1, C2, AS–365N, N1, AS–365N2, and SA–366G1 helicopters. The DGAC advises of the loss of electrical continuity on certain single-pole circuit breakers.

Eurocopter France has issued three service bulletins, all dated December 11, 1997. Service Bulletin No. 01.36 is applicable to Model SA–360/365C, C1, and C2 helicopters; Service Bulletin No. 01.24 is applicable to Model SA–366G1 helicopters; and Service Bulletin 01.00.45 is applicable to Model AS–365N, N1, and N2 helicopters. All of these service bulletins specify inspecting Crouzet single-pole circuit breakers, Part Number (P/N) 84–400–028 through P/N 84–400–037, and replacing all circuit breakers that have any loss of electrical continuity. The DGAC classified these service bulletins as mandatory and issued AD 98–111–021(A), AD 98–112–042(A), and AD 98–113–043(A), all dated March 11, 1998, in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA–360C, SA–365C, C1, C2, SA–365N, N1, AS–365N2, and SA–366G1 helicopters of the same type design registered in the United States, the proposed AD would require inspecting of any Crouzet single-pole circuit breakers, P/N 84–400–028 through P/N 84–400–037, and replacing all circuit breakers that have a loss of electrical continuity. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 136 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per helicopter to accomplish the inspection and replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $23 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,208.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 98–SW–26–AD.

Applicability: Model SA–360C, SA–365C, C1, C2, SA–365N, N1, AS–365N2, and SA–366G1 helicopters, with Crouzet single-pole circuit breaker, part number (P/N) 84–400–028 through P/N 84–400–037, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of electrical power, loss of instrumentation, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours time-in-service (TIS) or within the next 3 calendar months, whichever occurs first,

(1) For Model SA–360C, and SA–365C, C1, and C2 helicopters, inspect the electrical master box assembly, flotation gear unit assembly, and ground receptacle Crouzet circuit breakers for electrical continuity in accordance with section 2B of the Accomplishment Instructions contained in Eurocopter France Service Bulletin (SB) No. 01.36, dated December 11, 1997.

(2) For Model SA–365N, N1, and AS–365N2 helicopters, inspect the electrical master box assembly, flotation gear unit assembly, and ground receptacle Crouzet single-pole circuit breakers for electrical continuity in accordance with section 2B of the Accomplishment Instructions contained in SB No. 01.00.45, dated December 11, 1997.

(3) For Model SA–366G1 helicopters, inspect the electrical master box assembly, flotation gear unit assembly, and ground receptacle Crouzet single-pole circuit breakers for electrical continuity in accordance with section 2B of the Accomplishment Instructions contained in SB 01.24, dated December 11, 1997.

(b) On or before 500 hours TIS or 6 calendar months, whichever occurs first, inspect all remaining Crouzet single-pole circuit breakers in accordance with section 2B of the Accomplishment Instructions of the applicable SB.

(c) Any replacement single-pole circuit breaker installed, or any single-pole circuit breaker removed and reinstalled, must be inspected prior to further flight in accordance with paragraph 2.B. of the Accomplishment Instructions of the applicable SB.

(d) Remove any affected part-numbered circuit breaker and replace with an airworthy circuit breaker on or before December 31, 1999.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile AD 98–112–042(A), AD 98–113–043(A), and AD 98–111–021(A), all dated March 11, 1998.

Issued in Fort Worth, Texas, on June 22, 1999.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–16477 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

14 CFR Part 298

[Docket No. OST–98–4043]

RIN No. 2105–AC71

Meeting To Discuss Ways To Improve the Alaska Commuter and Small Certificated Air Carrier Data Collection Program

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Transportation (DOT) collects financial and traffic data from various types of air carriers. DOT announces a forthcoming meeting to discuss ways to improve this program as it relates to Alaska small certificated and commuter air carriers. The meeting is being held jointly with the U.S. Postal Service.

DATES: The meeting will be held Thursday, July 22, 1999, 8 a.m. to 5 p.m. and Friday, July 23, 1999, 8 a.m. to 5 p.m., Alaska time.

ADDRESSES: The meeting will take place in the US Postal Service Conference Room at the Anchorage Processing and Distribution Center, 4141 Postmark Drive, Anchorage, AK 99502. Attendance is open to the interested public but limited to space available. If you plan to attend the meeting please contact Kevin Adams by July 8, 1999. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Mr. Adams at least seven days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Kevin Adams, EAS & Domestic Analysis Division, X–53, Office of Aviation Analysis, Office of the Secretary, US Department of Transportation, 400 Seventh Street SW, Washington D.C. 20590; by phone at (202) 366–1047; by e-mail at kevin.adams@ost.dot.gov; or by Fax at (202) 366–7638.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. 329(b)(1) requires the Department of Transportation to collect and disseminate information on civil aeronautics, other than that collected and disseminated by the National Transportation Safety Board. In meeting this responsibility, the Department collects traffic and financial data submitted under 14 CFR part 241 (Large Certificated Air Carriers) and 14 CFR part 298 (Commuter and Small Certificated Air Carriers). It also collects

certain other traffic and service quality data under 14 CFR parts 217, 234, 250, and 374a.

The Department in Docket No. OST–98–4043, Notice 98–18, "Aviation Data Requirements Review and Modernization Program" on its own initiative requested public comments from reporting carriers and aviation data users on the nature, scope, source, and means for collecting, processing, and distributing airline traffic, fare, and financial data. Specifically, the Department invited comments on whether existing airline traffic, fare, and financial data should be amended, supplemented, or replaced; whether selected forms and reports should be retained, modified, or eliminated; whether the Department should require all aviation data to be filed electronically; and how the aviation data system should be reengineered to enhance efficiency and to reduce costs for both the Department and the airline industry. It is the Department's preliminary position that its current aviation data systems may not provide sufficiently detailed data in some areas which are necessary to ensure that the Department fully meets its mandated aviation responsibilities. One of these responsibilities is the setting of the Alaska bush mail rates. The Department relies on data submitted by the Alaska small certificated and commuter air carriers on the Form 298–C reports to set the bush mail rates. While this meeting will be held as part of the Advanced Notice of Proposed Rulemaking to review the Department's aviation data collection process, its focus will be on the data collection process for Form 298–C reports. A summary of the meeting will be included in the docket.

DOT, the Postal Service, Alaska air carriers, and other interested entities will review and discuss possible revisions to 14 CFR part 298 (the Department's Form 298–C reporting requirements). The meeting will assess how the Form 298–C data reporting system can be reengineered to enhance the usefulness of the data collected in facilitating the Alaska bush mail rate calculations while at the same time exploring alternatives for reducing costs for the Department, the Postal Service, and the airline industry. The meeting will be open to the public. We particularly solicit participation from those Alaska small certificated and commuter air carriers who currently transport or wish to transport mail for the U.S. Postal Service in Alaska.

Issued in Washington, DC, on June 24, 1999.

Timothy E. Carmody,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 99–16505 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 111

RIN 1515–AC34

Customs Brokers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document provides an additional 30 days for interested members of the public to submit comments on the proposed revision to part 111 of the Customs Regulations governing the licensing and conduct of customs brokers in the performance of customs business on behalf of others. The proposed revision, which was published in the **Federal Register** on April 27, 1999, includes changes to the regulatory texts to part 111 to reflect amendments to the underlying statutory authority enacted as part of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. The proposed revision also includes changes to reflect the recent reorganization of Customs as well as changes to improve the content, layout and clarity of the regulatory texts. The comment period was scheduled to expire on June 28, 1999.

DATES: Comments on the proposed revision must be received on or before July 28, 1999.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, US Customs Service, 1300 Pennsylvania Avenue, NW, Washington DC 20229. All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)) between 9 a.m. and 4:30 p.m. on normal business days at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Operational Aspects:* Bruce Ingalls, Office of Field Operations (202–927–1082).

Legal Aspects: Jerry Laderberg, Office of Regulations and Rulings (202–927–2320).

SUPPLEMENTARY INFORMATION:

Background

Customs published a document in the **Federal Register** (64 FR 22726) on April 27, 1999, proposing to revise part 111 of the Customs Regulations governing the licensing and conduct of customs brokers in the performance of customs business on behalf of others. The proposed revision includes changes to the regulatory texts to part 111 to reflect amendments to the underlying statutory authority enacted as part of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. The proposed revision also includes changes to reflect the recent reorganization of Customs as well as changes to improve the content, layout and clarity of the regulatory texts.

The document invited the public to comment on the proposed revision to part 111. Comments on the proposed rule were requested on or before June 28, 1999.

On June 22, 1999, Customs received a request from a law firm representing the JFK Airport Customs Brokers Association to extend the time period for submission of comments on the proposed rule so that the firm can receive sufficient input from members of the Association before submitting comments.

Customs has concluded that this request has merit. Accordingly, the period of time for the submission of comments is being extended 30 days. Comments are now due on or before July 28, 1999.

Dated: June 23, 1999.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 99–16479 Filed 6–28–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–99–011]

RIN 2115 AE47

Drawbridge Operations Regulations; Columbia River, OR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations for the dual Interstate 5 drawbridges across the Columbia River, mile 106.5, between Vancouver, WA, and Portland, OR. The proposed amendment would simplify the existing regulations by removing the river level and vessel types as schedule factors and establish a single schedule during which the draw spans need not be opened for the passage of vessels from 6:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday except federal holidays. The change would also require one-hour notice daily for all draw openings between 6:30 a.m. and 6 p.m. to allow vehicle traffic enough notice of bridge openings to choose an alternative route.

DATES: Comments must reach the Coast Guard on or before August 30, 1999.

ADDRESSES: You may mail comments to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067 or deliver them to room 3510 between 7:45 a.m. and 4:15 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220–7272.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should identify this rulemaking (CGD 13–99–011) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change the proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Coast Guard include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The purpose of the proposed change to section 117.869 is to streamline the operating regulations by removing the various periods when the dual lift spans need not open for vessels and replacing them with a single set of hours Monday through Friday for all vessels, in contrast to the current distinction made between recreational and commercial vessels when the local river gauge reads 6 feet or more. the proposed regulation would not change the operation of the draw spans on weekends and federal holidays, when openings on signal are provided. The proposed one-hour notice for openings would enable the state transportation departments of Washington and Oregon to establish means of notification to interstate traffic approaching the bridge. With adequate notification of an imminent opening, much of the highway traffic both north and south of the interstate bridges could divert to I–205, which crosses the Columbia on a high-level fixed bridge upstream of the drawbridges. This parallel crossing is about 6 miles upstream, east of the I–5 Drawbridges. Both states are in various phases of implementing electronic notification systems on I–5, which could warn motorists of draw span openings.

The operating regulations currently in effect are dependent upon river level measured by the gauge at the bridges. The hours during which the bridges need not open for navigation are presently changed whenever the river level is at 6 feet or above. This consideration of river level would be removed by this proposal in order to streamline the regulations to an easily remembered and administered schedule of operation.

The proposed regulations are uniformly applied to all types of navigation. There would no longer be an operating distinction between commercial and recreational vessels.

Currently, when the river is at 6 feet or more (above Columbia River Datum), the draws need not open for the passage of commercial vessels from 6:30 a.m. to 8 a.m. and from 3:30 p.m. to 6 p.m. Monday through Friday, except federal holidays, and for all other vessels the draws need not open from 5:30 a.m. to 9 a.m. and 2:30 p.m. and 6 p.m. Monday through Friday, except federal holidays. When the river gauge indicates 5.9 feet, or less, the draws need not open for the passage of any vessels from 5:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday, except federal holidays.

Interstate 5 is a major north-south transportation corridor in the western United States. The dual bridges across the Columbia are the only drawbridges on this interstate highway or any interstate highway west of the Mississippi River. The weekday traffic count often exceeds 120,000 vehicles per day. Traffic begins to increase dramatically about 7 a.m. Monday through Friday. It remains high throughout the day, generally more than 6,000 vehicles per hour to more than 9,000 per hour. In the evening the decrease in traffic follows 6 p.m. by several hundred vehicles per hour.

The Columbia River bears substantial navigation both recreational and commercial in this vicinity. Most of the commercial traffic is composed of towboats barges, floating derricks, and passenger vessels. the recreational traffic includes tall-masted sailboats.

The Interstate 5 Bridges provide 39.86 feet of vertical clearance at 0.0 elevation, Columbia River Datum or CRD, at the dual lift spans when they are down, or closed. Fully raised, the vertical lift spans provide 178 feet at 0.0 river level (CRD). Most of the towboats plying this reach of the river require at least 52 feet of vertical clearance. There are other vessels, such as derrick barges and sailboats, which require more clearance.

The dual vertical lift spans of the I–5 Bridges open annually from several hundred to over a thousand times, as recorded in the years of the current decade. There is a decrease in openings when the river level is low. Weather conditions can influence the preferred course through the bridges.

In 1998, the vertical lifts opened 386 times for vessels. This and the following counts do not include maintenance or training openings. In 1997, which witnessed higher water, the total annual openings for vessels was 829. The month in 1997 with the most openings for vessels was May. In May the bridges opened 161 times. River levels in May 1997 ranged from 15 to 17 feet at the bridge gauges. In May 1998 the water levels ranged from 6 to 14 feet and experienced only 56 openings. From the draw logs on hand (1993–1998) it can be concluded that the number of openings can fluctuate significantly from year to year and from month to month.

The river level has a significant influence on the number of openings that are requested by vessel operators. However, the difference in the closed periods make the regulations in effect more complicated than those which are proposed. Currently, commercial traffic is somewhat more limited in the hours during which they may use the lift spans when the river gauge is 6 feet or more at the bridges. The total daily

closed period is less restrictive when the river gauge is at 5.9 feet or less.

By changing the closed periods Monday through Friday and by requiring one-hour notice for openings, the Coast Guard intends to assist traffic flow on the I–5 corridor without unreasonably hindering navigation on the Columbia River.

Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.869 so that the draws need not be opened for the passage of commercial vessels from 6:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday, except federal holidays. This amendment also requires one-hour notice for all openings between the hours of 6:30 a.m. and 6 p.m. every day.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The proposed rule would improve commuter traffic flow and by minimally increasing the times when commercial navigation cannot pass through the open draw spans.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.869 (a) to read as follows:

§ 117.869 Columbia River.

(a) The draws of the Interstate 5 Bridges, mile 106.5, between Portland, OR, and Vancouver, WA, shall open on signal if one hour notice is provided between the hours of 6:30 a.m. and 6 p.m., except that the draws need not be opened for the passage of vessels from 6:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday, except federal holidays.

* * * * *

Dated: June 21, 1999.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 99–16533 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–222, RM–9602]

Radio Broadcasting Services; Fountain Green, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 244A at Fountain Green, Utah. The channel can be allotted to Fountain Green without a site restriction at coordinates 39–37–42 NL and 111–38–24 WL.

DATES: Comments must be filed on or before August 9, 1999, and reply comments on or before August 24, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–222, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16420 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–223, RM–9604]

Radio Broadcasting Services; Leeds, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 287C2 at Leeds, Utah, as the community's first local service. The channel can be allotted to Leeds without a site restriction at coordinates 37–14–18 NL and 113–21–42 WL.

DATES: Comments must be filed on or before August 9, 1999, and reply comments on or before August 24, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–223, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16421 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–219, RM–9638]

Radio Broadcasting Services; Choteau, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by the Battani Corporation proposing the allotment of Channel 271C1 at Choteau, Montana, as the community's first local service. The channel can be allotted to Choteau with a site restriction 29.4 kilometers (18.3 miles) south of the community at coordinates 47–33–40 NL and 112–18–43 WL. Canadian concurrence will be requested for the allotment of Channel 271C1 at choteau.

DATES: Comments must be filed on or before August 9, 1999, and reply comments on or before August 24, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–219, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16422 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–220, RM–9601 and RM–9636]

Radio Broadcasting Services; Darby and Stevensville, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately-filed petitions for rule making that are mutually exclusive. Mountain West Broadcasting has requested the allotment of Channel 300A at Darby, Montana (RM–9601). The channel can be allotted to Darby without a site

restriction at coordinates 46–01–18 NL and 114–10–42 WL. The Battani Corporation has requested the allotment of Channel 300C2 at Stevensville, Montana, at coordinates 46–30–24 and 114–05–18 (RM–9636). Since Stevensville is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for the allotment of Channel 300C2 at Stevensville.

DATES: Comments must be filed on or before August 9, 1999, and reply comments on or before August 24, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 and the Battani Corporation, c/o Robert Lewis Thompson, Taylor Thiemann and Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–220, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16423 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–221, RM–9639]

Radio Broadcasting Services; Fortine, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by the Battani Corporation proposing the allotment of Channel 232C3 at Fortine, Montana, as the community's first local service. The channel can be allotted to Fortine without a site restriction at coordinates 48–45–42 NL and 114–54–12 WL. Canadian concurrence will be requested for the allotment of Channel 232C3 at Fortine.

DATES: Comments must be filed on or before August 9, 1999, and reply comments on or before August 24, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–221, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16424 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–224, RM–9605]

Radio Broadcasting Services; Parowan, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 300C2 at Parowan, Utah. The channel can be allotted to Parowan without a site restriction at coordinates 37–50–30 NL and 112–49–30 WL.

DATES: Comments must be filed on or before August 9, 1999, and reply comments on or before August 24, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–224, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16425 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–225, RM–9635]

Radio Broadcasting Services; Saint Regis, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by the Battani Corporation proposing the allotment of Channel 256C2 at Saint Regis, Montana, as the community's first local service. The channel can be allotted to Saint Regis with a site restriction 18.1 kilometers (11.2 miles) east of the community at coordinates 47–15–56 NL and 114–51–29 WL. Canadian concurrence will be requested for the allotment of Channel 256C2 at Saint Regis.

DATES: Comments must be filed on or before August 9, 1999, and reply comments on or before August 24, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–225, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16426 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–226, RM–9603]

Radio Broadcasting Services; Toquerville, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 280C at Toquerville, Utah, as the community's first local broadcast service. The channel can be allotted to Toquerville without a site restriction at coordinates 37–15–12 NL and 113–17–00 WL.

DATES: Comments must be filed on or before August 9, 1999, and reply comments on or before August 24, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–226, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16427 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–227, RM–9634]

Radio Broadcasting Services; Trego, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by the Battani Corporation proposing the allotment of Channel 296C2 at Trego, Montana, as the community's first local service. The channel can be allotted to Trego with a site restriction 9.1 kilometers (5.7 miles) southwest of the community at coordinates 48–38–44 NL and 114–57–17 WL. Canadian concurrence will be requested for the allotment of Channel 296C2 at Trego.

DATES: Comments must be filed on or before August 9, 1999, and reply comments on or before August 24, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–227, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16428 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–228, RM–9612]

Radio Broadcasting Services; Valier, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by the Battani Corporation proposing the allotment of Channel 289C1 at Valier, Montana, as the community's first local service. The channel can be allotted to Valier without a site restriction at coordinates 48–18–18 NL and 112–15–30 WL. Canadian concurrence will be requested for the allotment of Channel 289C1 at Valier.

DATES: Comments must be filed on or before August 9, 1999, and reply comments on or before August 24, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–228, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16429 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–218, RM–9637]

Radio Broadcasting Services; Alberton, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by the Battani Corporation proposing the allotment of Channel 288C2 at Alberton, Montana, as the community's first local service. The channel can be allotted to Alberton with a site restriction 21.7 kilometers (13.5 miles) west of the community at coordinates 47–01–45 NL and 114–45–20 WL. Canadian concurrence will be requested for the allotment of Channel 288C2 at Alberton.

DATES: Comments must be filed on or before August 9, 1999, and reply comments on or before August 24, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–218, adopted June 9, 1999, and released June 24, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16430 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–229, RM–9479]

Radio Broadcasting Services; Dayton, Incline Village, and Reno, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition jointly filed by Salt Broadcasting, L.L.C., licensee of Station KTHX–FM, Incline Village, NV, and Americom Las Vegas Limited Partnership, licensee of Station KRNO–FM, Reno, NV. Petitioners request: (1) the substitution of Channel 261C1 for Channel 261C2 at Incline Village, its reallotment to Dayton, as the community's first local aural service, and the modification of Station KTHX–FM's license to specify both the higher class channel and Dayton as its community of license; and (2) the reallotment of Channel 295C from Reno to Incline Village and the modification of Station KRNO–FM's license to specify Incline Village as its community of license. Channel 261C1 can be allotted to Dayton with a site restriction of 36.8 kilometers (22.9 miles) northeast, at coordinates 39–29–27 NL; 119–19–03 WL, to accommodate petitioner's desired transmitter site. Channel 295C can be allotted to Incline Village with a site restriction of 10.1 kilometers (6.3 miles) northeast, at coordinates 39–18–38 NL; 119–53–01 WL, which represents Station KRNO–FM's presently licensed transmitter site.

DATES: Comments must be filed on or before August 9, 1999, and reply comments on or before August 24, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis P. Corbett, Ross G. Greenberg, Leventhal, Senter & Lerman, P.L.L.C., 2000 K Street, NW, Suite 600, Washington, D.C. 20006–1809 (Counsel to petitioners).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–229, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–16432 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List the Plant "Esenbeckia runyonii" (Limoncillo) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90-day finding for a petition to list *Esenbeckia runyonii* (limoncillo) as endangered under the Endangered Species Act of 1973, as amended. This small tree is known from Cameron County, Texas, and from the states of Tamaulipas, Nuevo Leon, San Luis Potosi, Queretaro, and Hidalgo in Mexico. We find that the petition failed to present substantial information indicating that listing this species may be warranted.

DATES: The finding announced in this document was made on June 3, 1999.

ADDRESSES: Data, information, comments, or questions concerning this petition finding should be submitted to the U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Texas A&M University-Corpus Christi, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robyn Cobb, c/o Texas A&M University-Corpus Christi Field Office (see **ADDRESSES** section) (telephone 512/994–9005; facsimile 512/994–8262).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we

make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, we make this finding within 90 days of the date the petition was received, and notice of the finding must be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we are also required to promptly commence a review of the status of the species involved if one has not already been initiated under our internal candidate assessment process.

We have made a 90-day finding on a petition to list the plant *Esenbeckia runyonii* (limoncillo). The petition, dated June 28, 1994, was submitted by Joe Ideker, Secretary of the Native Plant Project, and was received by the Service on July 5, 1994. The petitioner requested that we list *E. runyonii* as endangered. Action on this petition was delayed by a listing moratorium (Public Law 104–6, April 10, 1995) and rescission of listing program funding in Fiscal Year 1996. This moratorium was subsequently lifted and listing program funding restored on April 26, 1996. On May 16, 1996 (61 FR 24722) the Service issued guidance for priorities in restarting the listing program. This 90-day finding was precluded by the Service's listing priority guidance for Fiscal Year 1997, finalized December 5, 1996 (61 FR 64475). With the publication of listing priority guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 FR 25502) the Service returned to a more balanced listing program. The processing of petition findings to add species to the list of threatened and endangered species have significant conservation benefit and these actions are now placed in Tier 2.

The petitioner states that all but one of the four (perhaps five) historically known U.S. populations of this small tree have been lost due to habitat destruction and that the remaining U.S. population consists of 15 plants occurring on less than 0.4 hectare (ha) (1 acre (ac)) of a Lower Rio Grande Valley National Wildlife Refuge (LRGV–NWR) tract. The petitioner states that this population is vulnerable to destruction from catastrophic events such as hurricanes, freezes, or fires. The petitioner mentions two unverified groups of *E. runyonii* plants in a Brownsville, Texas, park that are threatened by construction of a road to the Los Tomates Bridge. We investigated these plants and found them to be *Crescentia alata*, a trifoliate-leaved species in the bignonia family. The petitioner notes that other *E. runyonii* populations occur in Mexico, but provides no information on these populations.

Cameron County, Texas, on the U.S./Mexico border, is the northern range limit of *E. runyonii*. Populations in Mexico are known from the states of Tamaulipas, Nuevo Leon, San Luis Potosi, Queretaro, and Hidalgo (F. Gonzalez-Medrano, Instituto de Biologia, Mexico City, Mexico, *in litt.* 1994; Kaastra 1982; A.M. Olivo, Instituto de Ecologia y Alimentos, Ciudad Victoria, Tamaulipas, Mexico, *in litt.* 1994; J.M. Poole, Texas Parks and Wildlife Department, Austin, Texas, *in litt.* 1994). Information from herbarium specimens at the Missouri Botanical Garden (J.M. Poole, *in litt.* 1994), Universidad Autonoma de Tamaulipas (A.M. Olivo, *in litt.* 1994), Universidad Nacional Autonoma de Mexico, Mexico, D.F. (F. Gonzalez-Medrano, *in litt.* 1994), and Kaastra (1982) indicate at least 45 collection sites in Mexico. Chiang (1989) notes a collection by Pringle in Nuevo Leon that may represent an additional site. The species is also known from the canyons of the Sierra de Picachos (Nuevo Leon) and the El Cielo (Tamaulipas) bioreserve (C. Best, LRGV-NWR, Alamo, Texas, pers. comm. 1994).

Esenbeckia runyonii populations in Mexico occur primarily in moist canyons on rocky talus slopes (C. Best, pers. comm. 1994; F. Gonzalez-Medrano, *in litt.* 1994). This habitat is vastly different from the floodplain delta of the Rio Grande where the species occurs in the United States.

The petition indicates a willingness to list only the Texas population of this plant until further studies are done on the populations in Mexico. The Act allows the listing of distinct population segments of vertebrate fish or wildlife species, but does not extend the same option to plants or invertebrate animals. The listing of any plant or invertebrate animal must include all populations within the species' historical range.

We have reviewed the petition and appended data, and other literature and information available in our files. On the basis of the best scientific and commercial information available, we find that the petition does not present substantial information that listing this species may be warranted. The petition includes no information regarding distribution, population sizes, or threats to *E. runyonii* in Mexico, which constitutes most of the species' documented range (Kaastra, 1982). Information readily available to us indicates that while the U.S. populations have been reduced from four to one, the populations in Mexico appear to be relatively abundant and under no immediate threat that would justify listing the species as endangered or threatened.

References Cited

Chiang, F. 1989. *Casimiroa greggii*, formerly in *Sargentia* (Rutaceae) Taxon 38:116–119.

Kaastra, R.C. 1982. Flora Neotropica, Monograph Number 33, Pilocarpinae (Rutaceae). New York Botanical Garden, Bronx, New York.

Author: The primary author of this document is Angela Brooks, formerly of the Corpus Christi Ecological Services Field Office (See **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 3, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–16418 Filed 6–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990506119–9119–01; I.D. 040799B]

RIN 0648–AM66

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues proposed regulations to implement certain provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). These proposed regulations would set the opening date of the recreational red snapper fishing season at March 1, beginning with the 2000 fishing year; establish a 4–fish recreational red snapper bag limit with a 0–fish bag limit for captain or crew of a charter vessel or headboat; and change the openings of the fall red snapper commercial season from the first 15 days of each month to the first 10 days of each month, beginning September 1 each year. The intended effect of these proposed regulations is to maximize the economic benefits from the red snapper resource within the constraints of the rebuilding program for this overfished resource.

DATES: Written comments must be received on or before July 14, 1999.

ADDRESSES: Comments on the proposed rule must be sent to Dr. Roy E. Crabtree, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the framework regulatory amendment, which includes an environmental assessment, and a regulatory impact review (RIR), should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Phone: 813–228–2815; Fax: 813-225–7015; E-mail: gulf.council@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree, 727–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the EEZ of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The Council has proposed adjusted management measures (regulatory amendment) for the Gulf red snapper fishery for NMFS' review, approval, and implementation. These measures were developed and submitted to NMFS under the terms of the FMP's framework procedure for annual adjustments in total allowable catch and related measures for the red snapper fishery (framework procedure). The proposed regulations would implement the measures contained in the Council's regulatory amendment except for a proposed measure to reduce the minimum size limit for red snapper from 15 to 14 inches. NMFS previously disapproved this measure (see below).

Background

The Council requested that NMFS implement the measures in its proposed regulatory amendment through emergency action because the proposed recreational season, size limit, and bag limit measures could not be implemented by proposed and final regulations before the automatic opening of the recreational fishery on January 1, 1999. NMFS implemented the 4-fish bag limit via emergency interim rule (63 FR 72200, December 31, 1998), as requested, to slow the rate of harvest, avoid angler confusion, and address emergency conditions in the fishery. NMFS did not implement the requested 0–fish bag limit for captain and crew, size limit change, or seasonal delay via emergency interim rule. NMFS analyses showed that benefits from emergency implementation of these measures were not sufficient to justify the associated loss of opportunity for prior notice and public comment.

The Council submitted a proposed regulatory amendment that would reduce the minimum size limit (size limit) for red snapper from 15 inches to 14 inches (38 cm to 36 cm) (total length) for persons fishing under the recreational or commercial quotas. NMFS has disapproved this measure based on national standard 2 of the Magnuson-Stevens Act and has returned this measure to the Council, as provided for by the Reef Fish FMP framework procedure. The proposed minimum size limit reduction provides no clear economic or biological benefits. NMFS analyses suggest that reducing the minimum size limit from 15 inches to 14 inches would shorten the recreational season by about 7 days, with little or no corresponding benefit to the stock.

Seven Council members signed a minority report opposing the 14-inch (36–cm) size limit and the 0–fish bag limit for captain and crew. One Council member signed a second minority report opposing the 0–fish bag limit for captain and crew.

Recreational Season Delay

The Council proposes to delay the opening date of the recreational season from January 1 to March 1. The Council recommends this change based on the preponderance of public testimony that this closure period would be the least disruptive to the fishery. The purpose of this change is to extend the fishing season further into the fall; however, NMFS analyses suggest that the 2-month delay would only extend the season an additional 15 days. The proposed delay would close the fishery in January and February, resulting in an estimated net loss of 12,000 angler trips, including 3,600 trips in the for-hire sector. The number of lost trips is expected to be greatest in the western Gulf off Texas. At its January 1999 meeting, the Council reviewed the NMFS economic analyses. Charter vessel and headboat operators from the northern and eastern Gulf reiterated their belief that the benefits of the extended fall season resulting from the March 1 opening outweigh the adverse effects of decreasing the total number of fishing trips per year. This testimony may not be representative of the affected Gulf-wide recreational sector; public comment on this aspect of the proposed rule is needed to better evaluate this issue.

Proposed Bag Limit Measures

To prolong the recreational season, the Council recommends a 0–fish bag limit for captain and crew of for-hire vessels and a continuation of the 4-fish limit for all other persons subject to the bag limit provision (currently in effect for all such persons through June 29, 1999, via emergency interim rule (63 FR 72200, December 31, 1998)). NMFS analyses suggest that the 4-fish bag limit will extend the duration of the recreational season beyond that achieved with a 5-fish bag limit. Industry participants have suggested that four fish is the minimum bag limit that would continue to attract for-hire customers. Analyses of the 0–fish bag limit for captain and crew suggest that the extension of the season resulting from this measure would be only 5 days or less. The Council considered this measure in combination with other proposed changes and concluded this measure would significantly extend the recreational season. Two Council minority reports question the fairness and equity of this measure and its disproportionate effect on for-hire vessels that carry few customers. These minority reports state that the Council approved the measure without any scientific analysis; however, the Council was provided the Socioeconomic Panel's analyses of the effect of the 0–fish bag limit for captain and crew. Additional public comment on these issues is needed.

Commercial Fall Season Adjustment

The regulations implementing FMP Amendment 15 restricted the red snapper commercial harvest to the first 15 days of the month for each of the annual fishing seasons beginning February 1 and September 1. These monthly harvest periods were intended to benefit the fishery by extending the length of the commercial fishing season and stabilizing market prices. Based on more recent public testimony, the Council concluded that the industry would benefit from a reduction in the duration of the monthly open periods from 15 days to 10 days in the fall season. The intent of this action is to stabilize ex-vessel prices.

Classification

This proposed rule has been determined to be significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The Council prepared an RIR that describes the economic outcomes of the measures in the proposed rule. The proposed measure to reduce the recreational bag limit from 5 to 4 fish, plus a 0–fish bag limit for captain and crew of for-hire vessels, is expected to reduce the projected rate of recreational harvest, potentially reduce the angler's economic value per trip, and reduce the benefits of captain and crew. Such reductions would be compensated for by extending the season by about 4 weeks later in the year. Given certain assumptions, this measure would increase the benefits to both anglers and for-hire vessels, but the available data do not allow the appropriate calculations to be made. Postponing the opening of the recreational fishery from January 1 to March 1 would allow the fishery to remain open for 15 days more in the fall. Even though the extension of the season is viewed as a desirable result, this extension will be accompanied by a small reduction in the expected total number of angler trips because more trips will be foregone during January and February than will be gained later in the season. Hence, the overall economic effect of postponing the season is expected to be negative by a small but unknown amount. The proposed reduction in fishing time from 15 days to 10 days for each open month in the fall commercial red snapper season is expected to achieve minimal but positive revenue effects. This result is expected because the shorter open periods each month will lessen the probability of supply gluts when red snapper markets are relatively weak in the fall season. The RIR found that the proposed regulations will not be significant under E.O. 12866. The RIR also estimated that the government costs of developing the rule were $40,500, and there are no expected increased costs of monitoring, enforcement or reporting.

The Council also determined, and NMFS concurs, that there will not be a significant impact on the estimated 1,626 reef fish permit holders who can legally engage in the commercial harvest of red snapper or operate for-hire businesses and can legally catch red snapper under the recreational bag limit. These permit holders are all classified as small entities. This determination was based on a finding that none of the measures are expected to directly reduce gross revenues of commercial or for-hire vessels, that no production cost increases are expected, that no differential small versus large firm impacts are expected, that there are no expected changes in capital costs of complying with the proposed rule, and that no small entities would be expected to cease business if the proposed rule is implemented.

Based on the findings summarized above, the Council concluded that the proposed rule would not have a significant impact on a substantial number of small business entities, and a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 23, 1999.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.34, paragraph (l), currently suspended through June 29, 1999, is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 15th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(A) is reached or until noon on September 1, whichever occurs first. Starting in September, the commercial fishery for red snapper in or from the Gulf EEZ is closed from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(B) is reached or until the end of the fishing year, whichever occurs first. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, the limit for such possession during a closed period is zero.

* * * * *

3. In § 622.39, paragraph (b)(1)(iii), currently suspended through June 29, 1999, is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(iii) Red snapper—4, except that for an operator or member of the crew of a charter vessel or headboat, the bag limit is 0.

* * * * *

4. In § 622.42, paragraph (a)(2) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(2) *Recreational quota for red snapper.* The following quota applies to persons who harvest red snapper other than under commercial vessel permits for Gulf reef fish and the commercial quota specified in paragraph (a)(1)(i) of this section—4.47 million lb (2.03 million kg), round weight. Beginning January 1, 2000, this quota becomes available on March 1 each year.

* * * * *

[FR Doc. 99–16519 Filed 6–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 050399A]

RIN 0648–AL27

Fisheries of the Northeastern United States; Amendment 12 to the Northeast Multispecies Fishery Management Plan; Measures to Address the Sustainable Fisheries Act Requirements; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to a notice of availability.

SUMMARY: NMFS corrects a notice of availability for Amendment 12 to the Northeast Multispecies Fishery Management Plan that was published at 64 FR 29257, June 1, 1999, containing a possession limit that was incorrect.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Management Specialist, 978–281–9288.

Correction

In the **Federal Register** of June 1, 1999, in FR Doc. 99–13828, on page 29257, in the 3rd column, in the 16th line, the weight "35,000 lb" should read "30,000 lb".

Dated: June 22, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16513 Filed 6–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 060899B]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan for spiny dogfish; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic and New England Fishery Management Councils (Councils) have submitted the Fishery Management Plan for Spiny Dogfish (FMP) for Secretarial review and are requesting comments from the public. The FMP proposes management measures to control fishing mortality, a definition of overfishing, a 5-year rebuilding schedule, and an identification and description of essential fish habitat (EFH). The purpose of the FMP is to conserve spiny dogfish to achieve optimum yield from this resource. The FMP will achieve this overall goal primarily by eliminating overfishing and rebuilding the spiny dogfish stock to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments on the FMP must be received on or before August 30, 1999.

ADDRESSES: Send comments to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope: "Comments on Spiny Dogfish FMP."

Copies of the FMP including the final environmental impact statement, regulatory impact review, and supplement of May 1999, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, at 978–281–9279.

SUPPLEMENTARY INFORMATION: Domestic landings of spiny dogfish (*Squalus acanthias*) on the East Coast rapidly increased from 9.92 million lb (4,500 metric tons (mt)) in 1989 to 61.72 million lb (28,000 mt) in 1996, then declined to approximately 41.89 million lb (19,000 mt) in 1997. During this period, the fishing mortality rate (F) rose from below 0.1 during the 1980's to 0.3 in 1997. In addition to the overall increase in landings, the landings disproportionately contain females, because they grow to a larger size than males and are, therefore, preferred for processing. Because of the directed fishing effort on adult female spiny dogfish, including discard mortality, the spawning stock biomass (SSB) has severely declined.

The spiny dogfish, a common small shark, inhabits the temperate and sub-Arctic latitudes of the North Atlantic Ocean. In the Northwest Atlantic, they range from Labrador to Florida, but are most abundant from Nova Scotia to Cape Hatteras. They migrate seasonally, moving north in spring and summer and south in fall and winter. Spiny dogfish are considered a unit stock in the Northwest Atlantic Ocean. The management unit for this FMP is the entire spiny dogfish stock along the Atlantic coast of the United States.

Spiny dogfish is a long-lived, slow growing species. Fifty percent of the female population is mature at 12 years of age. This species bears live young after a 2-year gestation period. Litter sizes range from 2 to 15 pups. Therefore, a small spawning stock produces correspondingly low recruitment, making spiny dogfish especially vulnerable to overfishing.

The 26th Northeast Regional Stock Assessment Workshop (SAW 26) in March 1998 concluded that spiny dogfish are overexploited. SAW 26 reported that minimum biomass estimates of mature females (≥ 80 cm) have declined by over 50 percent since 1989 and that recruitment of juvenile dogfish was the lowest on record in 1997. The combination of increased fishing mortality, declining biomass of mature females, and low recruitment have contributed to the overfished condition of the stock.

NMFS notified the Councils on April 3, 1998, that spiny dogfish was being added to the list of overfished stocks in the Report on the Status of the Fisheries of the United States, prepared pursuant to section 304 of the Magnuson-Stevens Act. The Magnuson-Stevens Act requires remedial action for stocks that are designated overfished, and requires the Regional Fishery Management Councils to prepare measures within 1 year of notification to end overfishing and to rebuild the overfished stock.

The FMP proposes management measures to control fishing mortality, a definition of overfishing, a 5-year stock rebuilding schedule, and identification and description of EFH. The FMP was developed jointly by the Councils. The Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) has the administrative lead on the FMP.

The proposed management measures to control fishing mortality include: (1) Permit and reporting requirements for owners of commercial vessels, operators, and dealers; (2) the establishment of a Spiny Dogfish Monitoring Committee; (3) a framework adjustment process; (4) an annual commercial quota; (5) seasonal (semi-annual) allocation of the commercial quota; (6) a prohibition on finning; and (7) annual FMP review.

The FMP would eliminate overfishing and rebuild the spiny dogfish stock through a two-step reduction in F. The first step would reduce F from current levels (approximately 0.3) to 0.2 beginning the second quota period of year one (November 1999–April 2000). F would be reduced to 0.03 for the remaining 4 years of the rebuilding schedule.

The primary management measure in the FMP is an annual commercial quota that would be allocated semi-annually, based upon the percentage of commercial landings for each semi-annual period during the years 1990–1997. The first period (May 1–Oct. 31) would receive 57.9 percent of the annual commercial quota; the second period (Nov. 1–April 30) would receive the remaining 42.1 percent of the annual commercial quota.

The annual commercial quota would be based upon the recommendations of the Spiny Dogfish Monitoring Committee, the Joint Spiny Dogfish Committee, and the Councils. The annual quota would be established by the Regional Administrator at a level to assure that the target F specified in the FMP is not exceeded.

Any owner of a vessel wanting to fish for spiny dogfish within the EEZ for sale, or wanting to transport and deliver for sale any spiny dogfish taken within

the EEZ, would be required to obtain a Federal commercial vessel permit for that purpose. Any dealer of spiny dogfish would be required to obtain a Federal dealer permit. Anyone who operates a vessel for the purpose of fishing commercially for spiny dogfish would be required to obtain an operator's permit. Specific requirements regarding permitting requirements are discussed in the FMP and proposed rule.

Overfishing Definition

The FMP's overfishing definition consists of two components: (1) A maximum F threshold and a target F, and (2) a minimum SSB threshold and an SSB target. The overfishing definition specifies an F threshold level, whereby F in excess of this level would be defined as overfishing. The definition also specifies a target F that would allow stock rebuilding. Overfishing for spiny dogfish occurs when F exceeds the level associated with a pup-per-recruit ratio of 1.0, designated as F_{rep}. F_{rep} represents the level that allows for the production of 1.0 female pup per female recruit to the adult stock; that is, the level that allows the adult female portion of the stock to replace itself. F_{rep} is currently estimated to be 0.11. The current F level of 0.3 exceeds F_{rep}. The target F (F_{target}) specified in the FMP represents the mortality rate that would produce an average of 1.5 pups-per-recruit and is estimated to be 0.08.

The SSB component of the overfishing definition is based upon the level of adult female SSB that maximizes average recruitment, referred to as SSB_{max}. SSB_{max} was selected as a proxy value for B_{msy} (the biomass level that would produce maximum sustainable yield). SSB_{max} was determined to be 440 million lb (200,000 mt) SSB. Spiny dogfish is defined as overfished when adult female SSB falls below the threshold level of ½ SSB_{max}, which is 220 million lb (100,000 mt) SSB. The Councils have chosen a biomass rebuilding target of 397 million lb (180,000), which is 90 percent of SSB_{max}.

The most recent stock assessment data presented by the NMFS Northeast Fisheries Science Center (NEFSC)(1998) and the Dogfish Technical Committee indicate that, based upon a 3-year moving average of NEFSC survey data, the total adult female spiny dogfish SSB is currently about 280 million lb (127,000 mt). This is below the SSB rebuilding target specified in the FMP. The FMP proposes to rebuild the adult female spiny dogfish stock to 396 million lb (180,000 mt) over a 5-year rebuilding period, whereby F is reduced from 0.3 to 0.2 beginning the second quota period of year one (November 1999–April 2000) and then further reduced to 0.03 for the remaining 4 years of the rebuilding schedule.

Essential Fish Habitat

The FMP includes the Councils' identification and description of EFH for juvenile and adult spiny dogfish, and evaluation of fishing activities and non-fishing activities that may adversely affect EFH. The FMP does not propose any specific management measures to address adverse effects from fishing, but it makes conservation, enhancement, and research recommendations to address non-fishing activities. The FMP states that the Councils intend to review and, if necessary, amend the EFH designations for spiny dogfish at least every 5 years. The FMP also authorizes the revision of EFH components using the framework process.

Supplement to the FMP

Following initial review of the Council's FMP submission, NMFS identified several areas that required clarification or additional information. These areas included discussion of sections addressing the Paperwork Reduction Act, Marine Mammal Protection Act, Endangered Species Act, EFH, the overfishing definition, and national standard 9. As a result, the Councils submitted a Supplement to the FMP on May 12, 1999.

This NOA requests comments on the FMP, including comments on the amended biomass rebuilding target and the associated 5-year rebuilding schedule. A proposed rule that would implement the FMP will be published in the **Federal Register** for public comment after NMFS has evaluated it under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by August 30, 1999, the end of the comment period on the FMP, to be considered in the decision concerning approval or disapproval of the FMP. All comments received by August 30, 1999, whether specifically directed to the FMP or to the proposed rule, will be considered in the approval/disapproval decision on the FMP. Comments received after that date will not be considered in the approval/disapproval decision on the FMP. All comments received on the FMP or on the proposed rule will be responded to in the preamble to the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 24, 1999.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16521 Filed 6–28–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 124

Tuesday, June 29, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 24, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* To Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Financial Requirement & Expenditure Statement.

OMB Control Number: 0572–0015.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes loans (direct and guaranteed) to finance electric, telecommunications, and water and waste water facilities in rural areas. RUS' electric program is a leader in lending to upgrade, expand, maintain and replace the vast rural American electric infrastructure. The RUS loan portfolio totals nearly $42 billion. RUS also acts as a catalyst for private sector investment in rural America and assists borrowers by enabling them to more easily obtain "market financing." The Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, authorizes and empowers the Administrator of the Rural Utilities Service to make loans in the several States and Territories of the United States for rural electrification and the furnishing of electric energy to persons in rural areas who are not receiving central station service. Eligible borrowers for RUS financial assistance include rural cooperative, nonprofit, limited-dividend, or mutual associations; municipalities; Indian Tribes; people's utility districts; states, territories, and subdivisions and agencies thereof; and, commercial corporations. These entities are obligated to serve the public welfare and, in many instances, are subject to State regulatory oversight. RUS electric borrowers use RUS form 595 to request an advance of loan funds. RUS will collect information using RUS form 595.

Need and Use of the Information: RUS will collect information on the distribution, transmission, generation, headquarters facilities, and acquisitions. The information enables the Government to ensure that loan funds are expended and advanced by RUS to electric borrowers only for US approved budget processes and amounts. Under RUS loan contracts, advances are made to borrowers as they need funds for their previously authorized construction projects. The Government's security would be impaired if it could not determine with assurance that loan fund advances and expenditures were being made in accordance with the borrower's obligations and commitments.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 798.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 26,334.

Animal and Plant Health Inspection Service

Title: National Animal Health Monitoring System (NAHMS).

OMB Control Number: 0579–0079.

Summary of Collection: The mission of the National Animal Health Monitoring System (NAHMS) Program of the Animal and Plant Health Inspection Service (APHIS) is to deliver statistically-valid and scientifically-sound animal health information to consumers, animal health officials, private practitioners, animal industry groups, policy makers, public health officials, media, educational institutions, and others. Annually, NAHMS conducts studies of specific livestock and poultry issues. NAHMS is proposing to collect information in conjunction with the Equine '98 study. Information for the study will be collected voluntarily on a national basis from people involved in the equine (horses, ponies, donkeys, and mules) industry using surveys and other structured forms.

Need and Use of the Information: The information collected through the NAHMS Equine '98 study will be used to estimate risk factors for regional and national prevalence of specific pathogens; support the industry goal of providing optimal health care for equids by determining current practices in health management; provide baseline estimates of equine health conditions; provide information on mortality and morbidity as it relates to body system categories such as respiratory disease, colic, and lameness; and determine the cost of disease.

Description of Respondents: Farms; State, Local, or Tribal Government.

Number of Respondents: 5,468.

Frequency of Responses: Reporting: On occasion; Monthly.

Total Burden Hours: 10,454.

Animal and Plant Health Inspection Service

Title: Tuberculosis.

OMB Control Number: 0579–0084.

Summary of Collection: Title 21 U.S.C. authorizes the Secretary of Agriculture to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as hog cholera, African swine fever, and other foreign diseases. The Animal and Plant Health Inspection Service (APHIS) oversees the Cooperative State-Federal Bovine Tuberculosis Eradication Program to eliminate bovine tuberculosis, a serious disease of livestock. The disease also affects man through contacts with infected animals or their byproducts. APHIS works with State and other federal organizations to conduct epidemiologic investigations to locate bovine tuberculosis and provide a means of controlling it. Information is collected using a variety of forms to properly identify, test, and transport animals that are infected with or exposed to tuberculosis.

Need and Use of the Information: APHIS will collect information to search for infected herds, maintain identification of livestock, monitor deficiencies in identification of animals for movement, and monitor program deficiencies in suspicious and infected herds. Continued collection of this information is essential for program progress aimed at controlling and eradicating bovine tuberculosis.

Description of Respondents: Business or other for-profit; Farms; State, Local, or Tribal Government.

Number of Respondents: 5,031.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 17,372.

Food and Nutrition Service

Title: Survey of State Public Health and Community Nutrition Workforce.

OMB Control Number: 0584–NEW.

Summary of Collection: The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) was created by the Congress in 1972 to provide nutritious food, nutrition education, and health care referrals to meet the special nutritional needs of low-income pregnant, postpartum, and breastfeeding women, and their infants and children (up to age five) who are at nutritional risk. The program seeks to meet the special nutritional needs to these individuals and to prevent health and development problems associated with poor nutrition during pregnancy and early childhood. The Food and Nutrition Service (FNS), which administers the WIC Program, needs workforce information to provide technical assistance to improve state agency administrative systems, including recruitment and retention of qualified nutrition staff. FNS has executed a cooperative agreement with the Association of State and Territorial Public Health Nutrition Directors (ASTPHND) to collect, process, aggregate, analyze and report the survey data. Legislative authority for the Survey of State Public Health Nutrition Workforce is provided under section 17(g) of the Child Nutrition Act of 1966 as amended through Pub. L. 105–24. The FNS will collect information from the public health nutrition workforce using a survey which will be distributed by mail, fax, email or hand delivered to their worksite.

Need and use of the Information: FNS will collect information to assist with workforce recruitment and retention; identify trends in the experience and preparation of the public health nutrition workforce; compare current qualifications of WIC nutrition staff with the workforce resources needed to carry out the program at the state and local level; and identify training and development needs of WIC personnel in relation to their job responsibilities, credentials, education, and tenure. The information is needed to assess efforts to recruit and retain public health nutritionists to staff the WIC Program at the state and local levels. Recruitment and retention of qualified staff is essential to maintaining the quality of nutrition services by providing an environment where staff is appropriately selected, trained, and supported.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 8055.

Frequency of Responses: Recordkeeping; Reporting: Other; one-time.

Total Burden Hours: 3233.4.

Rural Utilities Service

Title: Request for Mail List Data.

OMB Control Number: 0572–0051.

Summary of Collection: The Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended, (Re Act) and as prescribed by Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-tax Receivables. RUS Form 87 is used for the RUS electric and telephone programs to obtain the name and addresses of the borrowers' officials with whom RUS must communicate directly in order to administer the agency's lending programs. RUS will collect information using form RUS 87.

Need and use of the Information: RUS will collect information to assure that correspondence with the borrowers is properly directed; documents submitted to RUS, such as loan applications and requests for the advance of loan funds, are signed by the appropriate officials and regulatory and administrative obligations are met to provide information to persons directly involved with carrying out Department programs and activities.

Description of Respondents: Not-for-profit institutions; business or other for-profit.

Number of Respondents: 905.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 226.

Food and Nutrition Service

Title: 7 CFR Part 215 SMP Special Milk Program for Children.

OMB Control Number: 0584–0005.

Summary of Collection: Responsibility for administering the Special Milk Program (SMP) at the Federal level has been assigned to the Food and Nutrition Service (FNS). 7 CFR part 215 legislation requires that SMP operations within the States be administered by State Agencies (SAs). Section 2 of the Child Nutrition Act sets forth the intent of the Congress as being "to safeguard the health and well-being of the Nation's children, and to encourage the domestic consumption of agricultural and other foods by assisting the States, through grants-in-aid and other means, to meet effectively the nutritional needs of our children." The SMP is a performance-funded program. For each half-pint of milk served free to an eligible child, in a School Food Authority (SFA) operating the SMP in its pricing mode, the SA reimburses the SFA for the cost of obtaining the milk. For each half-pint of milk served to a paying child in a pricing program, or to any child in a nonpricing program, the SA reimburses the SFA at a rate set by statute. The SA obtains from FNS the Federal funds necessary to make SMP reimbursement payments. FNS pays the SA at the same rates at which the SA reimburses SFAs. FNS will collect information using Form FNS–10.

Need and use of the Information: FNS will collect information to compute the amount of Federal SMP funds due the SA under the performace-funding formula; analyze and evaluate the results of program operations within each State and nationwide; respond to data requests from the Congress, OMB, advocacy groups and the general public; develop budget projections of the amount of Federal funds needed to pay SMP program benefits; and regulate the flow of Federal funds to SA. Without this information FNS would not be able to evaluate program operations.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 16,370.

Frequency of Responses: Recordkeeping; Reporting: Monthly, Annually.

Total Burden Hours: 830,184.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–16534 Filed 6–28–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV99–902–1 NC]

Notice of Request for Approval of a Generic Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval for a generic information collection that will combine several individual marketing order information collections into one.

DATES: Comments on this notice must be received by August 30, 1999, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C. 20090–6456; Telephone: (202) 205–2829 or Fax: (202) 720–5698, or E-mail: moabdocket__clerk@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Marketing Orders for Fruit Crops.

OMB Number: Number not assigned yet.

Expiration Date of Approval: Three years from date of approval.

Type of Request: Approval for a generic information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruit, vegetables, and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality products for consumers and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing order programs. Under the Act, orders may authorize the following: production and marketing research, including paid advertising, volume regulations, reserves, including pools and producer allotments, container regulations, and quality control. Production and marketing research activities are paid for by assessments levied on handlers regulated under the marketing orders.

Under the marketing orders, producers and handlers are nominated by their respective peers. These nominees then serve as representatives on their respective committees/boards and must file nomination forms with the Secretary.

The respective committees/boards have developed forms as a means for persons to file required information with the committees/boards relating to supplies, shipments, and dispositions of their respective commodities, and other information needed to effectively carry out the purpose of the AMAA and their respective orders, and these forms are utilized accordingly.

Formal rulemaking amendments to the orders must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of these marketing order programs. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the respective orders whenever an order is amended.

This information collection will combine: OMB #0581–0068, Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas, Marketing Order No. 906; OMB #0581–0091, Limes Grown in Florida, Marketing Order No. 911; OMB # 0581–0078, Avocados Grown in South Florida, Marketing Order No. 915; OMB #0581–0072, Nectarines Grown in California, Marketing Order No. 916; OMB #0581–0149, Kiwifruit Grown in California, Marketing Order No. 920; OMB #0581–0133, Sweet Cherries Grown in Designated Counties in Washington, Marketing Order No. 923; OMB #0581–0134, Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, Oregon, Marketing Order No. 924; and OMB #0581–0109, Grapes Grown in a Designated Area of Southeastern California, Marketing Order No. 925.

The forms covered under this information collection will continue to require the minimum information necessary to effectively carry out the requirements of the orders, and their use is necessary to fulfill the intent of the Act as expressed in the orders.

The information collected is used only by authorized employees of the committees/boards and authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff. Authorized committee/board employees are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .37 hours per response.

Respondents: Producers, handlers and processors.

Estimated Number of Respondents: 3,983.

Estimated Number of Responses per Respondent: 2.75.

Estimated Total Annual Burden on Respondents: 10,940 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference this docket number and the appropriate marketing order, and be mailed to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C. 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket__clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and

Independence Avenue, S.W., Washington, D.C., room 2525–South Building.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 17, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–16509 Filed 6–28–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[PY–99–005]

United States Grade Standards for Shell Eggs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is soliciting comments on its proposal to change the United States Grade Standards for Shell Eggs. Specifically, AMS proposes to delete the general term "Inedible eggs" and its definition, revise the definition of the general term "Loss" eggs by including examples of inedible eggs, revise the term descriptive of an A quality white, and delete specifications for packaging materials. These changes would simplify and clarify the terminology used and would remove information that is no longer of value to the industry.

The current United States Grade Standards for Shell Eggs, along with the proposed changes, are available by contacting the address below or by visiting the AMS Internet site at: www.ams.usda.gov/poultry/standards.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Send written comments to Douglas C. Bailey, Chief, Standardization Branch, Poultry Programs, AMS, USDA, Room 3944-South Bldg., STOP 0259, 1400 Independence Avenue, SW, Washington, DC 20250–0259. Comments may also be faxed to (202) 690–0941.

State that your comments refer to Notice number PY–99–005 and include the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8:00 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, except holidays. Comments will also be posted on the Internet at www.ams.usda.gov/poultry/standards.

FOR FURTHER INFORMATION CONTACT: Douglas C. Bailey at (202) 720–3506.

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621 *et seq.*) authorizes the establishment of U.S. standards and grades for shell eggs. These standards and grades are maintained by AMS for use as a common language of trade among those buying and selling shell eggs. The standards are used by shell egg processors, wholesale traders, institutions, Federal and State governments, and retailers that sell eggs to the ultimate consumer. AMS also administers a voluntary grading program for shell eggs under the AMA. Any interested person, commercial firm, or government agency can, for a fee, have AMS monitor processing operations and verify that the grade and size of eggs being packaged meet the requirements of the U.S. grade standards and weight classes. Eggs meeting the requirements can be packaged into cartons or other containers bearing the USDA grade shield.

Currently, the definition of "Loss" eggs includes inedible eggs. There is also a separate definition for "Inedible eggs" that includes examples of such eggs. When applying the grade tolerances of the standard, there is no need to separately identify inedible eggs from loss eggs. Therefore, AMS proposes to delete the general term "Inedible eggs" and to add the examples of inedible eggs to the definition of "Loss" eggs. This would clarify that eggs with rots, green whites, stuck yolks, blood rings, or free yolk in the white are to be classed as "Loss" eggs when applying grade tolerances.

Candling is the process of using light to help determine the quality of an egg. Automated mass scanning equipment is used by most egg packers to detect eggs with cracked shells and interior defects. Hand-candling is done to spot-check and determine accuracy in grading. The breakout method of determining interior quality enables graders and students to calibrate their grading skills against an objective standard. In this method, a micrometer measures the height of the thick white of a broken-out egg and gives a direct reading in Haugh units. Currently, there is a Haugh unit range of "60 to 72" for A quality and "72 or higher" for AA quality. Because these values appear to overlap, AMS proposes to revise the description for A quality to read "60 up to, but not including, 72." This would clarify the wording and make it consistent with the intent of the description.

Specifications for packaging materials are provided as examples of quality packaging, but do not appear to be of any recognized value to today's industry. Therefore, AMS is proposing to delete this section entirely.

The complete text of the proposed revisions to the grade standards can be obtained from the Internet at www.ams.usda.gov/poultry/standards. A copy can also be obtained by writing to the address above, calling (202) 720–3506, faxing (202) 690–0641, or e-mailing Douglas.Bailey@usda.gov.

Authority: 7 U.S.C. 1621–1627.

Dated: June 23, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–16451 Filed 6–28–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–045–1]

Draft Guideline on Good Clinical Practices, VICH Topic GL9

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are requesting comments on a draft document titled "Guideline on Good Clinical Practices" that has been developed by the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The guideline is intended to be an international ethical and scientific quality standard for designing, conducting, monitoring, recording, auditing, analyzing, and reporting clinical studies evaluating veterinary products. Because the guideline would apply to veterinary biological products regulated by the Animal and Plant Health Inspection Service under the Virus-Serum-Toxin Act, we are requesting comments on its provisions so that we may include any relevant public input on the draft in the Agency's comments to the VICH Steering Committee.

DATES: To ensure that your comments are considered, we must receive them by August 13, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–045–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–045–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

You may request a copy of the draft "Guideline on Good Clinical Practices" by writing to Dr. Lawrence A. Elsken, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010, or by calling (515) 232–5785. The draft guideline is also available on the Internet at http://www.aphis.usda.gov/vs/cvb/lpd/notices.

FOR FURTHER INFORMATION CONTACT: For information regarding VICH, contact Dr. David A. Espeseth, Special Assistant to the Deputy Administrator, Veterinary Services, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245. For information regarding the draft guideline, contact Dr. Lawrence A. Elsken, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010; phone (515) 232–5785.

SUPPLEMENTARY INFORMATION: The International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) is a unique project that brings together the regulatory authorities of the European Union, Japan, and the United States and representatives from the animal health industry in the three regions to harmonize technical requirements for veterinary products (both drugs and biologics). Regulatory authorities and industry experts from Australia and New Zealand participate in an observer capacity. The VICH initiative is conducted under the auspices of the International Office of Epizootics. The World Federation of the Animal Health Industry (COMISA, the Confederation Mondiale de L'Industrie de la Sante Animale) provides the secretarial and administrative support for VICH activities.

The United States Government is represented in VICH by the Food and Drug Administration (FDA) and the Animal and Plant Health Inspection Service (APHIS). The FDA provides expertise regarding veterinary drugs, while APHIS fills a corresponding role for veterinary biological products. As VICH members, APHIS and FDA participate in efforts to enhance harmonization and have expressed their commitment to seeking scientifically based harmonized technical requirements for the development of veterinary drugs and biological products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for veterinary medicines and biologics among regulatory agencies in different countries.

The draft document that is the subject of this notice, "Guideline on Good Clinical Practices" (VICH Topic GL9), has been made available by the VICH Steering Committee for comments by interested parties. The guideline is intended to be an international ethical and scientific quality standard for designing, conducting, monitoring, recording, auditing, analyzing, and reporting clinical studies evaluating veterinary products. Because the guideline would apply to veterinary biological products regulated by APHIS under the Virus-Serum-Toxin Act—particularly with regard to prelicensing field studies testing the safety or efficacy of veterinary biological products—we are requesting comments on its provisions so that we may include any relevant public input on the draft in the Agency's comments to the VICH Steering Committee.

The draft document reflects current APHIS thinking on the design and conduct of all field studies testing the safety or efficacy of veterinary biological products in the target species. (The draft guideline refers to such studies as "clinical studies.") Once a final draft of "Guideline on Good Clinical Practices" has been approved, the guideline will, in accordance with the VICH process, be recommended for adoption by the regulatory bodies of the European Union, Japan, and the United States. As with all VICH documents, the guidelines, once finalized, will not create or confer any rights for or on any person and will not operate to bind APHIS or the public. Further, the VICH guidelir.es specifically provide for the use of alternative approaches if those approaches satisfy the requirements of applicable regulatory requirements.

Ultimately, APHIS intends to adopt the VICH Steering Committee's final guidance document and publish it for use by U.S. veterinary biologics licensees, permittees, and applicants. In addition, APHIS intends to use it as a basis for the approval of shipments of veterinary biological products for experimental use under 9 CFR 103.3. APHIS may also use the final guidance document as the basis for proposed additions or amendments to its regulations in 9 CFR subchapter E (Viruses, Serums, Toxins, and Analogous Products; Organisms and Vectors). Given that we anticipate that the applicable provisions of "Guideline on Good Clinical Practices" will be introduced into APHIS' veterinary biologics regulatory program in the future, we encourage your comments on the draft version of those guidelines.

Authority: 21 U.S.C. 151 *et seq.*

Done in Washington, DC, this 24th day of June 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–16500 Filed 6–28–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

U.S. Warehouse Act Fees

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This notice publishes a schedule increasing the annual operational fee warehouse operators are charged under the United States Warehouse Act (USWA). This action is needed to increase the amount of revenue generated to recover operational costs projected for operations under the USWA in fiscal year 2000. This notice does not change any of the other various license or inspection fees charged under the USWA.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen, Deputy Director, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW, STOP 0553, Washington, DC 20250–0553, telephone (202) 720–2121 FAX: (202) 690–3123, E–Mail: Steve__Mikkelsen@wdc.fsa.usda.gov.

Background

The Secretary has the authority to license public warehouses and assess warehouse operators fees under the United States Warehouse Act (USWA) (7 U.S.C. 241 *et seq*). Warehouse operators licensed under the USWA understand that fees will be imposed to cover the costs of the program. Specifically, section 10 of the USWA (7 U.S.C 249) mandates the imposition of fees for USWA licensed warehouses. The USWA provides for licensing warehouses, for examining licensed warehouses, and for the collection of fees to sustain the USWA warehouse licensing and examination programs. In keeping with that responsibility the Department of Agriculture's Farm Service Agency (FSA) is raising USWA annual operational fees charged to licensed warehouses in order to assure the recovery of operational costs projected for USWA activities in fiscal year 2000. The fiscal year 2000 fee adjustment reflects a 2.0 percent increase in the annual fees. No increase is being made in other license or inspection fees charged under the USWA.

USWA fees vary by the type of storage warehouse and were last amended effective October 1, 1998, (63 FR 35186, June 29, 1998). None of last year's increases for any particular type of warehouse exceeded 7.5 percent and varied based on FSA's direct costs with respect to warehouse examinations for that type of warehouse. The regulations issued under the USWA, codified at 7 CFR Parts 735 through 743, provide that fees charged warehouse operators under the USWA could be adjusted annually. The schedule below sets out all of the relevant fees and charges for licensing and examination and reflects the increased annual fees noted above.

USWA Schedule for License, Inspection and Annual Operational Fees To Be Paid by Warehouse Operators

Warehouse and Service License Fees

The fee for original issuance, reissuance, or duplication of a license for cotton, grain, tobacco, wool, dry beans, nut, syrup, and cottonseed is $80 for each license issued.

The fee charged to license individuals to inspect, sample, grade, classify, or weigh commodities is $35 for each service license issued.

Warehouse Annual and Inspection Fees

These fees are shown in the following tables by agricultural product. Inspection fees are assessed for each original examination or inspection, or reexamination or reinspection for modification of an existing license. Annual fees are assessed independently of inspection fees and of the license fees set forth in the preceding paragraph.

COTTON

[In bales]

Licensed capacity	Annual fee for each warehouse location with a CCC storage agreement	Annual fee for each warehouse location without a CCC storage agreement
1–20,000	$600	$1,095
20,001–40,000	785	1,430
40,001–60,000	965	1,755
60,001–80,000	1,210	2,200
80,001–100,000	1,510	2,745
100,001–120,000	1,810	3,290
120,001–140,000	2,110	3,840
140,001–160,000	2,410	4,385
160,001+	*2,410	**4,385

*Plus $60 per 5,000 bale capacity above 160,000 bales or fraction thereof.
**Plus $110 per 5,000 bale capacity above 160,000 bales or fraction thereof.

Inspection fees will be charged at the rate of $80 for each 1,000 bales of licensed capacity, or fraction thereof, but in no case less than $160 nor more than $1,600.

GRAIN

[In bushels]

Licensed capacity	Annual fee for each warehouse location with a CCC storage agreement	Annual fee for each warehouse location without a CCC storage agreement
1–150,000	$160	$285
150,001–250,000	315	575
250,001–500,000	470	850
500,001–750,000	635	1,150
750,001–1,000,000	785	1,430
1,000,001–1,200,000	945	1,715
1,200,001–1,500,000	1,095	1,995
1,500,001–2,000,000	1,255	2,280
2,000,001–2,500,000	1,415	2,570
2,500,001–5,000,000	1,565	2,845
5,000,001–7,500,000	1,730	3,140
7,500,001–10,000,000	1,885	3,430
10,000,001+	*1,885	**3,430

*Plus $50 per million bushels above 10,000,000 or fraction thereof.

**Plus $90 per million bushels above 10,000,000 or fraction thereof.

Inspection fees will be charged at the rate of $16 for each 10,000 bushels of licensed capacity, or fraction thereof, but in no case less than $160 nor more than $1,600.

DRY BEANS

[In hundredweight]

Licensed capacity	Annual fee
100–90,000	$785
90,001–150,000	1,095
150,001–300,000	1,415
300,001–450,000	1,730
450,001–600,000	2,040
600,001–720,000	2,350
720,001–900,000	2,670
900,001–1,200,000	2,985
1,200,001–1,500,000	3,290
1,500,001–3,000,000	3,605
3,000,001+	3,920

Inspection fees will be charged at the rate of $16 for each 1,000 hundredweight of licensed capacity, or fraction thereof, but in no case less than $160 nor more than $1,600.

Tobacco and Wool

Annual fee: $16 for each 100,000 pounds of licensed capacity, or fraction thereof, but in no case less than $630.

Inspection fee: $16 for each 100,000 pounds of licensed capacity, or fraction thereof, but in no case less than $160 nor more than $1,600.

Nuts

Annual fee: $14 for each 100 short tons of licensed capacity, or fraction thereof, but in no case less than $630.

Inspection fee: $8 for each 100 short tons of licensed capacity, or fraction thereof, of peanuts and $14 for each 1,000 hundredweight, or fraction thereof, of other nuts, but in no case less than $160 nor more than $1,600.

Syrup

Annual fee: $6 for each 5,000 gallons of licensed capacity, or fraction thereof, but in no case less than $630.

Inspection fee: $6 for each 5,000 gallons of licensed capacity, or fraction thereof, but in no case less than $160 nor more than $1,600.

Cottonseed

Annual fee: $16 for each 1,000 short tons of licensed capacity, or fraction thereof, but in no case less than $630.

Inspection fee: $16 for each 1,000 short tons of licensed capacity, or fraction thereof, but in no case less than $160 nor more than $1,600.

Signed at Washington, DC, on June 21, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99–16434 Filed 6–28–99; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after June 1, 1999. The list of newspapers will remain in effect until January 1, 2000 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Donald W. Murphy, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, Phone (801) 625–5274.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR 215 and 36 CFR 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in additions to direct notice to those who have requested notice in writing and to those who requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: The decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In additions, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho:
The Idaho Statesman, Boise, Idaho
For decisions made by the Regional Forester affecting National Forests in Nevada:
The Reno Gazette-Journal, Reno, Nevada
For decisions made by the Regional Forester affecting National Forests in Wyoming:
Casper Star-Tribune, Casper, Wyoming

For decisions made by the Regional Forester affecting National Forests in Utah:
Salt Lake Tribune, Salt Lack City, Utah
If the decisions made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:
Salt Lake Tribune, Salt Lack City, Utah

Ashley National Forest

Ashley forest Supervisors decisions:
Vernal Express, Vernal, Utah
Vernal District Ranger decisions:
Vernal Express, Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming:
Casper Star-Tribune, Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah
Roosevelt and Duchesne District Ranger Decisions:
Uintah Basin Standard, Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions:
The Idaho Statesman, Boise, Idaho
Mountain Home District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Cascade District Ranger decisions:
The Advocate. Cascade, Idaho
Lowman District Ranger decisions:
The Idaho City World, Idaho City, Idaho
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming
Jackson District Ranger decisions;
Casper Star-Tribune, Casper, Wyoming
Buffalo District Ranger decisions;
Casper Star-Tribune, Casper, Wyoming
Big Piney District Ranger decisions;
Casper Star-Tribune, Casper, Wyoming
Pinedale District Ranger decisions;
Casper Star-Tribune, Casper, Wyoming
Greys River District Ranger decisions;
Casper Star-Tribune, Casper, Wyoming
Kemmerer District Ranger decisions;
Casper Star-Tribune, Casper, Wyoming

Caribou National Forest

Caribou Forest Supervisions decisions;
Idaho State Journal, Pocatello, Idaho
Soda Springs District Ranger decisions;
Idaho State Journal, Pocatello, Idaho
Montipelier District Ranger decisions;
Idaho State Journal, Pocatello, Idaho
Westside District Ranger decisions;
Idaho State Journal, Pocatello, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions;
The Daily Spectrum, St. George, Utah
Pine Valley District Ranger decisions;
The Daily Spectrum, St. George, Utah
Cedar City District Ranger decisions;
The Daily Spectrum, St. George, Utah
Power District Ranger decisions;
The Daily Spectrum, St. George, Utah
Escalante District Ranger decisions;
The Daily Spectrum, St. George, Utah
Teasdale District Ranger decisions;
The Daily Spectrum, St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions;
Richfield Reaper, Richfield, Utah
Loa District Ranger decisions;
Richfield Reaper, Richfield, Utah
Richfield District Ranger decisions;
Richfield Reaper, Richfield, Utah
Beaver District Ranger decisions;
Richfield Reaper, Beaver, Utah
Fillmore District Ranger decisions;
Richfield Reaper, Fillmore, Utah

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion:
Elko Daily Free Press, Elko, Nevada
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion:
Reno Gazette-Journal, Reno, Nevada
Sierra Ecosystem Coordination Center (SECO):
Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Bridgeport District Ranger, decisions:
The Review-Herald, Mammoth Lakes, California
Spring Mountains National Recreation Area Ecosystem (SMNRAE):
Spring Mountain National Recreation Area District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada
Central Nevada Ecosystem (CNECO):
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada
Ely District Ranger decisions:
Ely Daily Times, Ely, Nevada
Northeast Nevada Ecosystem (NNECO):
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Ruby Mountains District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Jarbidge District Range decisions:
Elko Daily Free Press, Elko, Nevada
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada

Manti-Lasal National Forest

Manti-LaSal Forest Supervisor decisions:
Sun Advocate, Price, Utah
Sampete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah
Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah
Price District Ranger decisions:
Sun Advocate, Price, Utah
Moab District Ranger decisions:
The Times Independent, Moab, Utah
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho
Weiser District Ranger decisions:
Siganl American, Weiser, Idaho
Council District Ranger decisions:
Council Record, Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho

Salmon and Challis National Forests

Salmon Forest Supervisor decisions:
The Recorder-Herald, Salmon Idaho
Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Salmon District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Challis Forest Supervisor decisions:
The Challis Messenger, Challis, Idaho
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Lost River District Range decisions:
The Challis Messenger, Challis, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho
Burley District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah for those decisions on the Burley District involving the Raft River Unit.
South Idaho Press, Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.
Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho
Ketchum District Ranger decisions:
Wood River Journal, Hailey, Idaho
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho

Targhee National Forest

Targhee Forest Supervisor decisions:
The Post Register, Idaho Falls, Idaho
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Palisaded District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho

Uinta National Forest

Uinta Forest Supervisor decisions:
The Daily Herald, Provo, Utah
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah
Heber District Ranger decisions:
The Daily Herald, Provo, Utah and
Spanish Fork District Ranger decisions:
The Daily Herald, Provo, Utah

Wasatch-Cache National Forest

Wasach-Cache Forest Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Evanston District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Mountain View District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah

Dated: June 23, 1999.

Jack A. Blackwell,

Regional Forester.

[FR Doc. 99–16478 Filed 6–28–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

TwoBee Landscape Management Project, Willamette National Forest, Lane and Linn Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to thin and regenerate forest stands, construct and reconstruct roads, decommission and obliterate roads, restore and maintain ecosystem function, and use prescribed fire within the Two Bee project area in the Upper McKenzie River drainage. The project area is about 60 miles east of Springfield/Eugene, and is in portions of the Hackleman, Smith, and Browder Creek drainages. The purpose and need for action is to provide timber products from this area as part of the Willamette National Forest annual harvest and to maintain and restore ecosystem function. Harvest and regeneration would provide both short-term and long-term benefits to society in the form of wood fiber and economic opportunity. The project is proposed for fiscal years 2001 and 2002. The Willamette National Forest invites written comment on this proposal and the scope of analysis. The agency will give notice of the full environmental analysis and decision making process for the proposal so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by August 30, 1999.

ADDRESSES: Send written comments to John Allen, District Ranger, McKenzie Ranger District, McKenzie Bridge, OR 97413.

FOR FURTHER INFORMATION CONTACT: Norm Michaels, TwoBee project leader, McKenzie Ranger District, McKenzie Bridge, OR 97413, phone (541) 822–3381.

SUPPLEMENTARY INFORMATION: The USDA, Forest Service Proposed Action is to reintroduce natural fire through the prescribed burning of understory layers in selected stands. Trees will be harvested through commercial thinning, selection harvest, and regeneration harvest on an estimated 1,000 acres, removing about 20 million board feet of timber. There will be permanent roads constructed and temporary roads constructed to access treatment units. There will also be roads repaired and decommissioned or obliterated. This proposed action will continue to develop opportunities for post/pole/chip/firewood products from small-sized trees; and develop habitat improvement projects for a variety of wildlife, fish, and sensitive plant species.

These activities will be consistent with the 1990 Final EIS for the Willamette National Forest Land and Resource Management Plan and the Willamette Land and Resource Management Plan as amended by the 1994 Record of Decision for management of habitat for late-successional and old-growth forest related species within the range of the Northern Spotted Owl. This project will be guided by the recommendations in the Upper McKenzie Watershed Analysis.

The decision-to-be-made will include whether and/or how much harvest should occur, whether and/or which activities should be accomplished to maintain or improve the ecosystem function such as prescribed burning of natural fuels, whether and/or how much road decommissioning, repair, obliteration, or construction should occur, and whether and/or which activities would be appropriate for improvement of habitat for fish, wildlife, and plants.

The project area includes all or portions of T13S, R6E, Sec 25; T13S, R7E, Sec 29, 30, 31, 32; T14S, R6E, Sec 12, 13, 23, 24, 25–28, 34–36; T14S, R7E, Sec 5–8, 17–20, 29–31; T15S, R6E, Sec 1, 2, 11, 12; T14S, R7E, Sec 6.

Preliminary issues have been identified: landscape level pattern and vegetative diversity; stand health and vigor; water quality; proposed endangered; threatened or sensitive species; heritage resources; big game habitat; and recreational activities.

Alternatives to be considered will include the no action alternative, plus action alternatives that will be developed in response to key issues. The action alternatives will include various levels of timber harvest, prescribed fire, road work, and other activities which may be identified.

Initial scoping will begin in June 1999. The public is invited to offer suggestions and comments in writing. Comments received in response to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d); any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is

denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS expected to be completed in April 2000. The comment period on the draft EIS will be 45 days from the date of the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed in November 2000. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the TwoBee Landscape Management Project.

The Forest Service is the lead agency. John Allen, District Ranger, is the Responsible Official. As the Responsible Official, he will decide whether to implement the project. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: June 16, 1999.

John Allen,

District Ranger.

[FR Doc. 99–16474 Filed 6–28–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Mining Specifications for Prime Farmland

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final notice.

SUMMARY: The Natural Resources Conservation Service (NRCS) of the Department of Agriculture (USDA) is issuing specifications for soil handling in relation to mining activities on prime farmland, as provided for in the Surface Mining Control and Reclamation Act of 1977 (SMCRA). SMCRA requires the Secretary of Agriculture to establish specifications for the removal, storage, replacement, and reconstruction of prime farmland soils.

The Soil Conservation Service, now called the Natural Resources Conservation Service, first proposed these specifications on February 19, 1988 (53 FR 4989). Beginning in 1997, NRCS and the Office of Surface Mining (OSM) began reviewing and updating these specifications to be published as a rule in the **Federal Register**. The process included reviewing comments received from the 1988 **Federal Register**, knowledge gained from field experiences since 1988, and field reviews conducted with state regulatory authorities.

During the process of developing these specifications, we concluded that these specifications should be published through a notice rather than a rule because the specifications are not regulatory. These specifications serve as guidelines to NRCS State Conservationists for developing state-specific specifications and may assist the various states in developing state standards. They will also help the mining industry, state regulatory authority, and OSM develop reclamation plans, which if implemented, will provide the best opportunity to meet the post-reclamation crop production standards required by SMCRA.

General Background on Proposed Specifications

Section 515(b)(7) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, 30 U.S.C. 1265(b)(7), authorizes the Secretary of Agriculture to establish specifications for soil removal, storage, replacement, and reconstruction for all prime farmlands, as identified in Section 507(b)(16) of the Act 30 U.S.C. 1257(b)(16), to be mined and reclaimed. This authority is delegated to NRCS in 7 CFR 2.61(a)(22).

NRCS determined that national specifications for soil handling must allow for consideration of the wide diversity of soils, geology, climate, mining equipment, and crops in coal mining areas across the nation. These differences are recognized in the permanent program regulations published by the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, specifically in 30 CFR 823.4(a) which states that "NRCS within each State shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction."

Accordingly, NRCS developed the specifications set forth in this notice to ensure that local and site-specific factors are considered. Within the individual States, each NRCS State Conservationist will maintain and make available a local version of these specifications that incorporates the general criteria set forth in these specifications and any modifications made for the respective State. To the fullest extent possible, the basic specifications and the applicable modifications for individual States reflect the latest scientific information and experience regarding reclamation techniques.

During the development of these specifications, NRCS' national office provided certain general guidelines to assist the NRCS State staffs in developing specifications at the local level. These guidelines were set out in the advance notice of the proposed rule published on August 26, 1985 (50 FR 34490). The first version of these proposed specifications was published on February 19, 1988 (53 FR 4989). The specifications set forth in this notice reflect comments received as a result of the 1988 publication and include technical revisions based on research results and improvements in technology, which have occurred since the 1988 publication.

Discussion of These Specifications

The Soil Removal section provides guidance on the identification of prime farmland soils where a published survey is not available and outlines how a soil scientist should proceed with identifying and sampling the soils to be removed for later replacement and reconstruction. This section identifies needed documentation of field conditions, including rooting zones; surface relief; pre-mining drainage conditions (including subsurface); flood frequency; physical, chemical, and morphological soil properties of the soils to be removed; and the procedures to be used in soil removal. The soil removal specifications address the handling of the various soil horizons encountered on prime farmland and the procedures to be followed if substitute materials are to be used. NRCS recognizes that compaction of prime farmland soils during removal and reconstruction is a significant factor in prime farmland reclamation and therefore, the specifications include guidance to avoid compaction problems.

In the Soil Stockpiling section, NRCS recognizes that stockpiling of soil horizons, while not the preferred procedure for reclamation, is often necessary because of weather conditions, limitations or availability of equipment, or the reclamation method utilized. These specifications provide guidance to ensure that if stockpiling is utilized, the soil resources will be protected until reconstruction begins. This section provides criteria for stockpile site selection, protection against contamination and loss, and temporary distribution if long-term stockpiling is required.

In the Soil Reconstruction section, NRCS incorporates the principle of SMCRA that the reclamation of prime farmland requires the re-establishment of the pre-mining productivity of the disturbed soils. The soil reconstruction specifications provide a framework which, if followed and the required conditions are achieved, should maximize the probability that the reconstructed soil will achieve the required productivity.

Many factors contribute to the pre-mining productivity of prime farmland, including the chemical and physical characteristics of the soil horizons, the soil depth, the soil slope, and the drainage conditions. Research has shown that when the post-mining soil characteristics are similar to the pre-mining characteristics, pre-mining productivity can be achieved. These specifications provide for documentation of the characteristics of original soil, as required by SMCRA, 30 U.S.C. 1257 and 1258, and provide that the reconstructed soils should achieve these characteristics to the greatest extent possible. These specifications provide guidance on how to utilize pre-mining information in the development of a reconstruction plan for successful reclamation. This guidance includes provisions regarding rooting depths, chemical and physical characteristics of the soil horizons, and site conditions. These specifications also include erosion control measures to ensure that the reconstructed soils remain in place after reclamation.

NRCS has attached appendices A and B for informational and compliance assistance. These appendices do not establish an obligation not otherwise imposed by other rules and regulations, nor do they detract from obligations imposed by other rules and regulations. Appendix A contains information describing the procedures for determining the rooting zone of the pre-mined prime farmland soil. Appendix B contains information describing the procedure and quantitative specifications, which can be used to evaluate the rooting zone of the reconstructed soil in relation to the pre-mined soil.

Response to Comments

We received 17 comments. A majority of the commentors had multiple responses to the notice. Therefore, we have grouped the responses by issue to address each of the comments received.

Comment: One commenter stated that NRCS should withdraw this national guidance and proceed with state specific guidance. The commenter apparently believes that these specifications were to be implemented as national standards for removal, storage, replacement and reconstruction of prime farmland soils. The commenter also believes NRCS has no reason for proposing national guidance. Furthermore, commentor states that national guidance is contradictory to NRCS long-standing position that national specifications are not possible or appropriate.

Response: We agree with the commenter that national specifications are not appropriate. These specifications will not be published in 7 CFR 652 as national specifications. As stated in the preamble of the *Mining Specifications for Prime Farmland* (63 FR 57651) this guidance is advisory in nature, not regulatory. These specifications are intended only to serve as guidance for development of state specific specifications for the removal, storage, replacement and reconstruction of prime farmland soils.

Comment: This same commenter also argued that NRCS is not obligated to publish a national "rule" or guidance.

Response: We disagree. SMCRA at Sec. 515(b)(7) requires the Secretary of Agriculture to publish specifications for removal, storage, replacement and reconstruction of prime farmland soils. We see these specifications as necessary guidance and an integral part of the process that will result in state specific prime farmland specifications. To reiterate, these specifications are not intended to be implemented as they stand; they are to be used as a basis for developing state specific prime farmland specifications.

Comment: Commenters suggested that the specifications should not use binding language.

Response: We agree and the mandatory or binding language has been changed in this final document to better indicate the advisory nature of the specifications.

Comment: Commenters questioned whether specifications and performance standards are both necessary.

Response: The specifications are required by the SMCRA to address soil removal, storage, replacement and reconstruction. Both the establishment of specifications and the achievement of performance standards (crop production) are required by SMCRA and the OSM regulations.

Comment: Commenters questioned why a soil scientist, as defined in these guidelines, should locate and mark on the ground and on the plan map the boundaries of prime farmland soils that will be removed during mining.

Response: As used in this final notice, a soil scientist "means a technical specialist with the academic credentials or work experience, which enables the specialist to use established procedures to collect the required soil information." We believe this is a very liberal definition of soil scientist, which allows anyone with the appropriate knowledge to carry out the required operations. Several commenters argued that only certified professional soil scientists should be considered soil scientists for the purposes of these specifications. These specifications are guidelines and individual states may set their own standards for who qualifies as a soil scientist under their own state specific specifications.

Comment: Commenters identified a potential conflict in the discussion of removal of topsoils less than six inches thick.

Response: We agree with the comments and we have removed that discussion from these specifications.

Comment: Commenters objected to the requirement under item (iii) in section entitled "Specifications for Soil Removal" that says "In no case will prime farmland topsoil be mixed with topsoil containing rocks larger than 2mm."

Response: This section has been rewritten in the final guidance to require that prime farmland topsoil not be mixed with topsoil, which will result in an increase in the amount of rock fragments in the resulting soil mix.

Comment: Commenters objected to the specification at part a (v) of "Soil Removal Specifications" that states "soil removal should occur only in water state classes that are slightly dry or dryer." The commenters also contend that this specification contradicts the goal of restoring prime farmland and is impossible to comply with.

Response: We disagree with this comment. We recognize that prime farmland soils will be handled in other water state classes, however, this results in a greater degradation in the quality of the replaced prime farmland soil. Collectively these specifications are designed to maximize the probability of reclamation success.

Comment: One respondent commented that the provision of "Soil Stockpiling," stating that stockpiling is permitted only if the soil removal and reclamation cannot occur at the same time, is not consistent with SMCRA.

Response: The sentence has been reworded to reflect the advisory nature of these guidelines.

Comment: Commenters pointed out that there appeared to be language missing from paragraph (b) of "Soil Stockpiling."

Response: The missing language has been replaced.

Comment: One commenter noted that paragraph (f) of "Soil Stockpiling" is unclear.

Response: This paragraph has been revised to allow topsoil and topsoil substitutes and subsoil and subsoil substitutes to be handled together.

Comment: One commenter stated that the language of paragraph (b) of "Soil Replacement and Reconstruction," which states that the depth and quality of the replaced subsoil should be verified before replacement of topsoil, may conflict with contemporaneous mining operations where such activity would be impractical.

Response: We disagree. The specification is intended to prevent topsoil from being placed over subsoil not meeting the reclamation plan requirements. This could result in having to remove the topsoil. It does not conflict with the direct haul back situation.

Comment: Several commenters stated that they were not able to understand the meaning of the section on Root Permissive Structure in Appendix B.

Response: This section describes a soil test that is applicable only under semiarid conditions and may not be familiar to some persons involved in coal mining and reclamation. However, it is a legitimate test under some reclamation conditions. This section has been retained.

Comment: Several commenters pointed out conflict between the soil strength discussions in the original Appendices A and B.

Response: We accept the comment and have removed the soil strength discussion from Appendix A. The soil strength discussion in Appendix B has been simplified.

Comment: Commenters requested that the references and sources of values given in Appendices A and B be included.

Response: This has been done.

Comment: One commenter stated that we have not provided needed references for data, research or other scientific information that was relied on to establish these specifications. The commenter also states that an agency must disclose this type of information to afford interested parties a reasonable opportunity to comment on the agency's proposal. They further stated that "(i) interested persons, as well as reviewing courts, have great difficulty analyzing agency decisions when there is no indication in the rulemaking record as to how the agency arrived at its decisions."

Response: We have provided appropriate references in this final notice.

Comment: One commenter states that there is no indication that the agency has complied with the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, the Paperwork Reduction Act, or Executive Order 12866.

Response: NRCS reviewed the Environmental Impact Statement developed by the Department of the Interior for the SMCRA regulatory program and determined that this action is covered by that document. Based on the amount of time since the SMCRA EIS, the agency, though it is not necessary for publication of guidelines, developed an Environmental Assessment (EA). This EA is on file at the agency's headquarters. As with the NEPA requirements, the other requirements identified by the commenter are not necessary for the publication of these guidelines.

Comment: One commenter felt that the guidelines are written with detailed specifications that undermine the stated purpose of providing a national guideline to support state specific guidelines.

Response: We do not agree with this comment because the specific parameter values and guidance are included to provide a basis for developing state specific specifications, as stated in the preamble. Some of the specific examples they identify in the comment letter contain items that have been addressed in the response to other commenters. The purpose of the appendices is given in the section titled "Discussion of the Proposed Specifications."

Comment: Commenters questioned the use of 0.06 inches per inch of available water capacity to determine the limit for fragipans or other root inhibiting layers in Appendix A: Criteria for Determining Pre-Mining Rooting Zone.

Response: We have not changed this value because it is generally accepted by NRCS, and the guidance provided by this document may be modified to accommodate state specific conditions.

Comment: Commenters felt that the listing of root inhibiting layers and repetition of statements was not necessary.

Response: We agree with this comment and have removed the language.

Comment: Commenters felt that the lack of comparability of chemical property values specified in Appendix A and Appendix B was inappropriate.

Response: We disagree with this comment because the values in Appendix A address root inhibiting horizons in undisturbed soils, whereas values in Appendix B address desirable chemical properties of reconstructed soils.

Comment: One commenter felt that the list of physical and chemical properties in these guidelines should be expanded to include additional soil properties.

Response: We have not made this change. These guidelines were not developed to be all inclusive, but to serve as the basis for state specific specifications.

Comment: One commenter requested that the guidelines include a mechanism to resolve soil mapping differences when a soil survey is done for permitting and may be more detailed than the published soil survey.

Response: We feel that this issue is better addressed by the regulatory authority consulting with the appropriate NRCS State Conservationist.

Comment: Some commenters suggested that the SAR values in these guidelines be changed, based on experience in their respective states.

Response: This was not done because the stated values provide a greater chance of achieving performance standards.

Comment: One commenter suggested that inclusion of Bw and Bt horizons in "Specifications for Soil Removal" should be conditioned on the structure and texture being similar to the topsoil.

Response: We agree and the language has been changed.

Comment: One commenter noted the difficulty in interpreting Table 2 of Appendix B.

Response: We have simplified the table and accompanying explanation.

Comment: One commenter expressed concern about the definition of prime farmland.

Response: To address this concern, we have clarified the definition of prime farmland as used in this document. The definition is consistent with Office of Surface Mining regulations at 30 CFR, Part 700. Office of Surface Mining regulations protect prime farmland soils (defined in 7 CFR 657) which have been historically used for crop production. These definitions are found at 30 CFR 701.5, which can be accessed on the OSM internet home page (www.osmre.gov).

Comment: One commenter stated that "Section 507(b)(16) of the Surface Mining Control and Reclamation Act of 1977 contemplate that the Secretary of Agriculture will establish standards for the conducting of soil surveys.

Response: With regard to the conducting of soil surveys, OSM regulations require that soil surveys meet the standards of the National Cooperative Soil Survey. Therefore, the standards for the soil survey have been established by the Secretary of Agriculture.

Comment: This same commenter also stated that Sec. 515(b)(7) mandates that specifications for soil removal, storage, replacement and reconstruction shall be established. The commenter further states that these standards are substantive rules under the Administrative Procedure Act in that they require actions to be taken by regulated entities, and effect the rights of third-party landowners by establishing the standards for handling and replacement of the soil in prime farmland mining situations. The commenter asserts that the specifications are not merely interpretive in nature, but are intended to bind the regulated entities through the vehicle of surface coal mining permit and reclamation plan.

Response: We agree with the commenter that Section 515(b)(7) of SMCRA, 30 U.S.C. 1265(b)(7), is the authority that requires the Secretary of Agriculture to establish specifications for the removal, storage, replacement, and reconstruction of prime farmland soils that are disturbed by coal mining. This section also outlines certain minimum requirements for soil handling and replacement. However, we disagree with the next assertions of the commenter. These specifications are not substantive rules and do not bind the RA to issue permits under these specifications. Section 515(b)(7) does not, nor does any section of SMCRA, establish these specifications as law or regulation that is binding on OSM or any other RA. Section 510(d)(1) of SMCRA, 30 U.S.C. 1260(d)(1), states that permits for mining of prime farmland will be issued under regulations issued by the Secretary of the Interior (OSM) after consultation with the Secretary of Agriculture (NRCS). SMCRA and its regulations, found at 30 CFR Chapter 7, consistently rely on the Secretary of Agriculture (NRCS) for concurrence or advice, not regulation, on matters dealing with mining and reclamation of prime farmland. In conclusion, the prime farmland specifications published here are a useful tool for reclamation planning in that they are all known components of a soil's capacity to support crop yields and not the basis for measuring successful restoration of capacity.

Implementation Issues

It is important that the implementation and administration of the specifications be understood by everyone with an interest in the successful reclamation of surface mined prime farmlands. Once these specifications are finalized, NRCS will distribute these specifications to each NRCS State Office for use in the development or revision of State specifications. NRCS will send copies to each State Regulatory Authority (RA) and each OSM office so that the specifications can be used in carrying out their responsibilities for prime farmland reclamation. The applicant for a mining permit on prime farmland will prepare a reclamation plan, as required by sections 507 and 508 of SMCRA, 30 U.S.C. 1257 and 1258, based upon the particular prime farmland soils proposed to be mined, the equipment to be used, and the physical characteristics of the site. Because these conditions vary considerably among sites, the mining and reclamation plans will also vary.

The RA must rely on its technical staff to assure the proposed reclamation plan will likely yield the required results. The RA technical staff will utilize NRCS specifications in making their recommendations for approving, disapproving, or revising the proposed reclamation plan. In addition to the plan review by the RA technical staff, the RA will consult with the NRCS State Conservationist on the plan prior to a final decision. The NRCS State Conservationist will review and comment on the proposed reclamation plan and, if the plan does not reflect NRCS specifications, the NRCS State Conservationist will suggest appropriate plan revisions to the RA.

The RA will make a final decision on the reclamation plan based, in part, on its review of NRCS specifications and consideration of comments received from the NRCS State Conservationist. The decision will be specific to the particular permit under review.

If a NRCS State Conservationist determines that a revision in the State reconstruction specifications is desirable, then NRCS, in consultation and cooperation with the RA, will utilize a public outreach process to obtain comments on the proposed revision. Under no circumstances will the State reconstruction specifications be less effective than the National specifications. After a public comment process, including publication in the **Federal Register** and internal review by NRCS and RA, the NRCS State Conservationist will incorporate the changes into the specifications and distribute them to the NRCS local offices within the State and to the RA. The RA will make the revised specifications available to mine operators and other interested parties.

Questions and Answers

NRCS lists below questions related to implementation of NRCS specifications, which have arisen during their development along with answers to those questions.

Question 1: Are the RAs required to incorporate the NRCS specifications into their approved state program through the formal amendment process?

Answer: The RA will use the specifications in making their determinations on prime farmland reclamation plans, but NRCS specifications are not required to be a part of the approved state program.

Question 2: What if the RA decides not to incorporate the State Conservationist's recommendations into a reclamation plan?

Answer: The RA is required, under , 30 U.S.C.1260(d)(1), to consult with the State Conservationist and to consider any suggested revisions. It is not mandatory that NRCS recommendations be adopted on the permit application and reclamation plan. Under the OSM regulations, 30 CFR 823.15, success of prime farmland reclamation is based on crop production. NRCS specifications are provided to aid the permittee and RA in reviewing and approving reclamation plans and in achieving productivity standards. The specifications are not performance standards. Section, 30 U.S.C. 1265(6)(7), sets forth the general performance standards for mining and reclamation activities on prime farmland. Under the OSM regulation, the ultimate standard, which must be met, is the production standard. The specifications were not developed to restrict prime farmland reclamation, but rather to provide a basis upon which a prime farmland reclamation plan can be developed. A reclamation plan that differs from the specification can be approved if, in consultation with NRCS, the RA determines that a plan takes into consideration the particular soil conditions, equipment, and mining reclamation methods applicable to a site and will yield the desired results.

Question 3: The proposed specifications would require permit applicants to submit information which may not be required under the current RA regulations or in the current permit application form. What will be required of the RA's to address this issue?

Answer: The proposed specifications allow for a variety of options in the area of needed information. This approach is consistent with the variable site conditions, mining and reclamation equipment, and procedures inherent in mining. Individual State RA's will determine their informational needs using NRCS specifications. Some RA's, at their discretion, may wish to change permit information requirements.

Question 4: How will the adoption of NRCS Soil Reconstruction Specifications change the manner in which prime farmland plans are currently being approved?

Answer: Adoption of these specifications will formalize the knowledge and expertise that NRCS has brought to prime farmland reclamation for over 20 years. State and Federal RA's and mine operators have always relied upon NRCS for technical advice relating to prime farmland reconstruction. State RA's have been required to consult with NRCS on every acre of non-exempted prime farmland which has been mined since enactment of SMCRA. Prior to the enactment of SMCRA, many State RAs with a large amount of prime farmland being mined, such as Illinois, have included NRCS in their mine plan review. Because of this long relationship and prior history of consultation, we anticipate that adoption of the specifications will not change the manner in which plans are approved. Formalization of the specifications will provide a written framework developed during many years of experience and research, from which RA's and permittee can operate. The specifications will be available to all that have an interest in prime farmland restoration.

Applicability

The specifications apply to the removal, stockpiling, replacement, and reconstruction of soil materials during surface coal mining and reclamation operations on prime farmland, as defined and regulated by the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* These specifications are to be used in conjunction with the permanent program performance standards of the Office of Surface Mining Regulation and Enforcement, Department of the Interior, which are set forth in 30 CFR 785.17, 816.22, and part 823. These specifications apply to prime farmlands as defined by the Secretary of Agriculture in 7 CFR part 657 and historically used for cropland.

Definitions

The following definitions apply to all documents issued in accordance with these specifications, unless specified otherwise:

Prime farmland (as used in this document) means those lands which are defined by the Secretary of Agriculture in 7 CFR part 657 and which have historically been used for cropland.

Reclamation Plan means the part of a permit application that details the actions a mine operator will take to restore the area to be mined to an approved post-mining land use.

Rooting zone means the part of the soil that can be penetrated by plant roots. The rooting zone of a soil can be obtained from a published NRCS soil survey or determined in the field by a soil scientist in accordance with procedures.

Soil characteristics mean properties of the soil, which can be described or measured by field or laboratory observations, such as color, temperature, water content, structure, pH, and exchangeable cations.

Soil morphology means:

(a) The physical constitution of a soil profile as exhibited by the kinds, thickness, and arrangement of the horizons in the profile, and by the texture, structure, consistence, and porosity of each horizon; or

(b) The visible characteristics of the soil or any of its parts.

State regulatory authority means the agency in each State, which has the primary responsibility at the state level for administering the initial or permanent state regulatory program relating to mining of prime farmland.

Soil scientist means a technical specialist with the academic credentials or work experience, which enables the specialist to use, established procedures to collect the required information about soils.

Soil survey means field and other investigations which result in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use, and which meets the standards of the National Cooperative Soil Survey as incorporated by reference in 30 CFR 785.17(c)(1).

Soil Removal

Specifications for designating prime farmland soils for removal.

(a) A soil scientist should locate and mark, on the ground and on the plan map, the boundaries of prime farmland soils that will be removed during mining. Prime farmland soils on the proposed mining site will be identified from a published NRCS soil survey. If a soil survey is not available or does not provide the physical, chemical, and morphological soil properties described in 30 CFR 785.17(c)(1), a soil scientist should sample and document those properties for the identified prime farmland soils using the following procedures:

(i) Soil laboratory analysis for testing any sample will use the procedures described in Soil Survey Investigations Report No. 42.

(ii) Identify the rooting zone of the undisturbed prime farmland soils in the reclamation plan.

(iii) Identify the original topography of prime farmland soils to be mined in the reclamation plan.

(iv) Identify the pre-mining surface and internal drainage conditions, flooding frequency, and surface or subsurface drainage systems of the prime farmland in the reclamation plan.

(v) Identify the equipment that will be used for soil removal in the reclamation plan.

Specifications for Soil Removal

(a) Soil removal should be accomplished with adherence to the following principles;

(i) Minimize pre-mining compaction and destruction of the soil structure by using equipment that will have the least impact on the natural soil.

(ii) Route soil removal equipment and adjust removal depth with each cycle of that equipment to minimize the compaction and destruction of soil structure in the natural soil.

(iii) Remove the topsoil layer (A, AP, AB, AB, E horizons and where the structure and texture are similar to the A horizon, dark noncalcareous Bw and Bt horizons). If there is not an area to use the topsoil, place it in a designated stockpile. The topsoil of prime farmlands may be mixed with other topsoils or substitute materials only if the resulting topsoil will have greater productivity. In no case should prime farmland topsoil be mixed with other material that will result in an increase in the amount of rock fragments.

(iv) Remove the B horizon and/or C horizon, or an RA approved substitute rooting media and, if there is not a currently or a recently mined area to concurrently place the rooting media, place it in a designated stockpile.

(v) Soil removal should occur only in water state classes that are slightly dry or dryer, as defined in the Soil Survey Manual, United States Department of Agriculture, Handbook No. 18, October 1993.

(b) Substitution of any material for naturally occurring prime farmland topsoil should be approved by the RA, in consultation with the NRCS, only when the substitute material will have a demonstrated productivity that is higher than the original topsoil. Substitution of any material, or mixing of the existing layers, for a naturally occurring prime farmland subsoil should be approved by the RA, in consultation with the NRCS, only when the substitute material will have a demonstrated productivity that is equal to or higher than the original subsoil.

Soil Stockpiling

Specifications For Stockpiling: Stockpiling should only occur only if the soil removal and reconstruction operations cannot be carried out concurrently.

(a) Stockpiled materials should:

(i) Be placed on a stable site within the permit area;

(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the regulatory authority; and

(iv) Not be moved until required for redistribution.

(b) Where long-term surface disturbances will result from facilities, such as support facilities and preparation plants, and where stockpiling of soils would be detrimental to the quality or quantity of those soils, the RA may approve the temporary distribution of the removed soil materials to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that it does not diminish the capability of host site and the soil material will be retained in a condition more suitable for redistribution than if stockpiled.

(c) Sites subject to flooding or slippage are to be avoided for stockpiling of soil. The soil survey map for the proposed stockpiling site, as well as a field investigation, should be used to determine if a proposed soil stockpile location will be subject to flooding or slippage.

(d) Ponding of water should be avoided on all stockpiles.

(e) All woody vegetation and any other materials on the stockpile site that may degrade the quality of stored material or interfere with placement or removal of stockpiled soils should be removed.

(f) The topsoil, or approved substitute material, should be stockpiled separately from the subsoil or approved substitute material.

(g) If possible, topsoil and subsoil stockpiles should not be located on prime farmland soils. If prime farmland must be used as a stockpile site, actions should be taken to avoid and mitigate any adverse effects such as compaction.

Soil Replacement and Reconstruction

Specifications for soil replacement and reconstruction are as follows:

(a) The minimum depth of soil and substitute soil material to be reconstructed should be 48 inches; or (1) a lesser depth equal to the depth of a sub-surface horizon in the natural soil that inhibits or prevents root penetration; or (2) a greater depth if determined by the RA, in consultation with the NRCS, to be necessary to restore the original soil productive capacity.

(b) The rooting zone of the pre-mining soils will be used as a basis for determining the replacement soil depth. Appendix A provides guidance for establishing the pre-mining rooting zone depth. The depth and quality of the rooting zone of the reconstructed prime farmland soils should be equal to or greater than the pre-mined soil rooting zone. The depth and quality of the replaced subsoil should be verified, using characteristics in Appendix B, before replacement of the topsoil.

(c) Topsoil, or the approved substitute material, should be returned to the mined area to a thickness not less than that of the pre-mined topsoil.

(d) The reconstructed soil should have a hydraulic conductivity, texture, porosity, consistency, penetration resistance, and other physical properties which approximates the pre-mined soil or are more favorable for plant growth as outlined in Appendix B.

(e) The reaction (pH) and other chemical properties of the major horizon of the reconstructed soil must be within the ranges of the pre-mined soil or be more favorable for plant growth. (Appendix B provides additional guidance on desirable physical and chemical properties for the reconstructed soils).

(f) Final grading of soil should provide drainage a[illegible] for the range [illegible]d pre-mining farmlan[illegible]s. In semi-arid and ariu[illegible]ce drainage patterns and slope gradients must be reestablished to ensure that reconstructed prime farmland soils receive approximately the same amount of surface water run-on from adjacent areas as they did in their pre-mined condition.

(g) Soon after topsoil replacement, the soil should be tilled at sufficient depth to encourage root and water penetration into the subsoil to reduce runoff and erosion.

(h) Erosion control measures contained in the approved reclamation plan should be implemented immediately after replacement of the topsoil. These erosion control measures should meet, at a minimum, the specifications found in Section IV of the local NRCS Field Office Technical Guide for seeding, mulching, and other appropriate erosion control methods.

All field observation and testing should be performed by a soil scientist or persons under the direction of a soil scientist.

Appendices

An Introduction to Appendices A and B

Appendices A and B illustrates the importance of soil chemical and physical properties during the reconstruction of prime farmland in the restoration of productivity. These appendices do not establish an obligation not otherwise imposed by other rules and regulations, nor do they detract from obligations imposed by other rules and regulations. Appendix A contains information describing the procedures for determining the rooting zone of the pre-mined farmland soil. Appendix B contains information describing the procedure and quantitative specifications, which can be used to evaluate the rooting zone of the reconstructed soil in relation to the pre-mined soil.

Appendix A: Criteria for Determining Pre-Mining Rooting Zone

Soil horizons are considered as preventing root penetration if their physical or chemical properties or water holding capacity cause them to prevent penetration by roots of plants common to the area. Soil features, e.g. tillage pan, formed during mechanical disturbance are not to be considered as root inhibiting for purposes of determining pre-mining rooting zone.

Most prime farmland soils have a favorable rooting depth of at least 48 inches and, for such soils, proper soil reconstruction to this depth will help in the restoration of productivity. However, there may be some prime farmland soils for which reconstruction to a greater depth is needed. Where bedrock or approved root inhibiting horizons are at a depth of less than 48 inches, reconstruction is thus required to a lesser depth. Fragipans or other root inhibiting layers, in order to qualify for exclusion from reconstruction, must contribute little or nothing to the productive capacity of the soil. This contribution must be less than 0.06 inches per inch of available water capacity to qualify for such exclusion.

The rooting zone of the prime farmland soils before mining will be determined and documented in the reclamation plan. The rooting zone can be obtained from published soil surveys or field determination.

If a soil survey or field determination (observation of rooting depth in an excavation) is not used to determine the rooting zone, the following guidelines will be used to determine depth (below 20 inches) to a root inhibiting soil layer for each of the following factors.

Sodium Adsorption Ratio (SAR): This is a measure of the amount of sodium (Na^+) relative to calcium (Ca^{++}) and magnesium (Mg^{++}) in the water extract from saturated soil paste. SAR is calculated from the following equation:

$$SAR = Na^+ / \sqrt{\left(CA^{++} + Mg^{++}\right)/2}$$

Soils having the SAR values listed below will have increased dispersion of organic matter and clay particles, reduced permeability and aeration, and a degradation of soil structure.

SAR Values

A value of greater than 30 is a root inhibiting soil layer.

Electrical Conductivity: This is a measure of the concentration of water soluble salts in a soil (from an extract of saturated soil paste) and is used to indicate saline soils. High concentrations of neutral salts interfere with the absorption of water by plants because the osmotic pressure in the soil solution is higher than that in the plant cells.

Salts in a soil layer can interfere with the exchange capacity of nutrient ions, thereby resulting in nutritional deficiencies in plants. Soils having the following value will be root inhibiting: A value of greater than 8 mmho/cm.

Aluminum Saturation: Excess aluminum restricts plant root penetration and proliferation in acid subsoils by decreasing water uptake in plants. Aluminum toxicity damage roots to the extent that they cannot absorb adequate water. High concentrations of aluminum are linked to adverse interaction with other elements, e.g., iron and calcium. The relationship of aluminum and calcium is the most important factor affecting calcium uptake by plants. Aluminum toxicity is linked to phosphorus deficiency, and conversely, aluminum tolerance is related to the efficient use of phosphorus. A value of equal to or more than 55 percent aluminum saturation for cotton, peanuts, soybeans, and other similar crops and equal to or more than 60 percent aluminum saturation for corn, wheat, sorghum, and other similar crops is a root inhibiting soil layer using the following equation

$$\frac{\text{Potassium chloride (KCl) extractable aluminum} \times 100}{NH_4OA_c \text{ Extractable bases} + \text{KCl extractable aluminum}}$$

Root Inhibiting Structures: Any structural unit that prevents root penetration is considered root inhibiting. Structural units that have an average spacing of more than 4 inches on the horizontal dimension may be considered root inhibiting structures even though roots penetrate between the structural units. The determination of structures must occur at a consistency of firm or firmer. The kind and size of structure and consistency are always evaluated under moderately moist or very moist conditions.

Moist Bulk Density: Bulk density is an indicator of the soil's ability for root development, both vertically and horizontally. A soil having moist bulk density equal to or more than values shown in table 1 is considered having a soil root inhibiting layer:

TABLE 1.—ROOT-LIMITING BULK DENSITIES FOR EACH FAMILY TEXTURE CLASS

Family texture class	Rooting-limiting bulk density (g/cm^3)
Sandy	1.85
Coarse loamy	1.80
Fine loamy	1.78
Coarse silty	1.79
Fine silty	1.65
Clayey: 35–45% clay	1.58
>45% clay	1.47

Appendix B: Desirable Characteristics for Physical and Chemical Properties of Reconstructed Soils

The reconstructed soils should have the following characteristics. These characteristics will help ensure the success of meeting the performance standards. Terms used in this Appendix are explained in Appendix A. All rooting media must meet the following chemical and physical properties to have the minimal favorable environment for root growth:

Sodium Adsorption Ratio

$$SAR = Na^+ / \sqrt{\left(CA^{++} + Mg^{++}\right)/2}$$

SAR: A value of less than 4.

Electrical Conductivity: A value of less than 4 mmho/cm.

Aluminum Saturation: Aluminum saturation value of less than 20 percent for cotton, peanuts, soybeans, and other similar crops and less than 35 percent aluminum saturation for corn, wheat sorghum, and other similar crops using the following equation—

$$\frac{\text{Potassium chloride (KCl) extractable aluminum} \times 100}{NH_4OA_c \text{ Extractable bases} + \text{KCl extractable aluminum}}$$

Root Permissive Structure: The reconstructed soil must have a root permissive structure after the soil material has been subject to the passage of at least 1.5 pore volumes of water in excess of the retention at 15 bar bringing all parts through the depth of consideration at least one time to very moist or wet. The pore volume is obtained by multiplying the depth zones by the water holding capacity volume fractions to follow: stratified by family particle-size class excluding the effect of those larger than 2 mm:

Family particle size [a]	Volume fraction
Sandy	0.10
Coarse-loamy	0.18
Fine-loamy	0.20
Coarse-silty	0.25
Fine-Silty	0.23
Clayey	0.15

[a] Family particle size classes defined in Soil Taxonomy Agriculture Handbook 436.

Alternative volume fractions may be substituted if documented. The volume of water for the family particle-size class is multiplied by the thickness of the zone and the amounts of zones are added through to 48 inches. Under raid fed conditions, the water addition is taken as the aggregate of successive monthly positive differences between precipitation and the evapotranspiration as computed by an acceptable method. Figure 1 is a method for determination of soluble salts and percent sodium for extract for identifying dispersive soils. Irrigation *should be considered* when precipitation is insufficient to subject the reclaimed soil to the passage of at least one pore volume of water while all parts of the soil are very moist or wet. The water added must not change the soil solution chemistry from indicative of dispersion (zone A in figure 1) to non-dispersive (zone B).

Figure 1. The field of percent sodium and total dissolved solids, both for the saturation extract, divided into a non-dispersive part (zone A), a dispersive part (zone B), and a transitional part (zone C). From Flanagan, C.P. and G.G.S. Holmgren. 1977. Field methods for determination of soluble salts and percent sodium from extract for identifying dispersive soils. Am. Soc. Test Mat. STP 623. Reference Address: American Society of Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohcken, PA 19428–2959



Moist Bulk density is an indicator of the soil's ability to allow root development, both vertically and horizontally. Table 2 has values for bulk densities, by family soil texture class, that are non-limiting to root development. Soil handling methods can result in reclaimed soils that do not have continuity of pores or interpedal voids: therefore, values in table 2 are an important consideration during the reconstruction and reclamation of mined soils. A bulk density value above those shown may be associated with reduced crop yields.

TABLE 2.—NON-LIMITING BULK DENSITY FOR EACH FAMILY TEXTURE CLASS

Family texture class	Nonlimiting bulk density
Sandy	1.60
Coarse loamy	1.50
Fine loamy	1.46
Coarse silty	1.43
Fine silty	1.34
Clayey: 35–45% clay	1.40
≤45% clay	1.30

Caution—Because of the diversity of soil texture, rock fragments, climate, mining equipment, and other variables during reclamation, moist bulk density values are only a guide. In spite of overall high bulk density, there are cases where good root deployment and targeted crop yields have been achieved, mainly because the pattern of pore spaces was favorable. On the other hand, there are cases in which the overall bulk density is not high and good root deployment was expected, but a very thin highly compacted layer that could not be detected in a standard test method prohibited the entry of plant roots.

Soil Strength: Soil strength is highly correlated to crop yields on reclaimed and reconstructed mined soils. The response is curvilinear with crop yield decreasing as soil strength increases. There appears to be a threshold where soil strength has an effect on crop yield. A soil strength value above 100 PSI may be associated with reduced crop yields. The PSI values are determined by inserting into the soil profile a 3/4 inch rod with a 300 right circular cone point on the end of the rod.

Even when soil strength is not the limiting factor (<100 PSI), the quality of rooting

material and the practices used during reconstruction and reclamation can have a significant impact on crop yields.

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Signed at Washington, DC on June 23, 1999.

Danny D. Sells,

Associate Chief, Natural Resources Conservation Service.

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BILLING CODE 3410–16–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, July 13–14, 1999, at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, July 13, 1999

1:30 p.m.–3:30 p.m. Technical Programs Committee

3:30 p.m.–5:00 p.m. Planning and Budget Committee

Wednesday, July 14, 1999

9:00 a.m.–10:00 a.m. Committee of the Whole Meeting on Play Areas—Final Rule (Closed Meeting).

10:00 a.m.–Noon Ad Hoc Committee on Section 508—NPRM (Closed Meeting).

1:30 p.m.–3:00 p.m. Board Meeting.

ADDRESSES: The meetings will be held at the Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items.

Open Meeting

- Executive Director's Report
- Approval of the Minutes of the May 12, 1999, Board Meeting
- Planning and Budget Committee Report—Fiscal Year 1999 Spending Plan and Fiscal Year 2000 Budget
- Technical Programs Committee Report—Status Report Fiscal Years 1998, 1999, and 2000 Projects

Closed Meeting

- Committee of the Whole Report—Play Areas
- Committee of the Whole Report—Section 508

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 99–16515 Filed 6–28–99; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Antidumping Duty Order; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATES: June 29, 1999.

FOR FURTHER INFORMATION CONTACT: John Totaro at (202) 482–1374, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1998).

Scope of the Order

The products covered by this order are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of Harmonized Tariff Schedule of the United States ("HTSUS") definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.70%	0.25% Max	0.20% Max	10.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0.005% Min	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm ^{2} and 640 N/mm ^{2} and an elongation percentage ≥26 percent for thicknesses of 2 mm and above; or (ii) a tensile strength between 590 N/mm ^{2} and 690 N/mm ^{2} and an elongation percentage ≥25 percent for thicknesses of 2mm and above.

- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

- Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00,

7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210:70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of the order is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act, the Department made its final determinations that certain hot-rolled flat-rolled carbon-quality steel products from Japan are being sold at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 24329, (May 6, 1999). This determination included a finding that critical circumstances existed with respect to Kawasaki Steel Corporation (Kawasaki) and the "All Others" exporter/producer category, but not with respect to Nippon Steel Corporation and NKK Corporation.

On June 18, 1999, the International Trade Commission (the Commission) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Japan. The Commission further found that critical circumstances do not exist with respect to imports of the subject merchandise from Japan. As a result, the Department will direct Customs officers to refund any cash deposits made or bonds posted, pursuant to the Department's final determination of critical circumstances, on merchandise produced/exported by Kawasaki and by any of the "All Others" companies which were entered on or after November 21, 1998 (90 days prior to the Department's preliminary determination publication date of February 19, 1999) and before February 19, 1999.

Moreover, in accordance with section 736(a)(1) of the Tariff Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of hot-rolled carbon-quality steel products from Japan. These antidumping duties will be assessed on all unliquidated entries of certain hot-rolled flat-rolled carbon-quality steel products from Japan entered, or withdrawn from warehouse, for consumption on or after February 19, 1999, the date on which the Department published its notice of preliminary determination in the **Federal Register** (64 FR 8291). Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rates apply to all exporters of subject hot-rolled flat-rolled carbon-quality steel products not specifically listed. Imports of hot-rolled flat-rolled carbon-quality steel products, not described above under "Scope of the Order," will not be covered by this order. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter (company)	Cash deposit rate (margin in percent)
Nippon Steel Corporation	19.65
NKK Corporation	17.86
Kawasaki Steel Corporation	67.14
All Others	29.30

This notice constitutes the antidumping duty order with respect to certain hot-rolled flat-rolled carbon-quality steel products from Japan. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect. These orders are published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: June 23, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–16549 Filed 6–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062199E]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on July 12–15, 1999.

ADDRESSES: These meetings will be held at the Pier House, One Duval Street, Key West, FL; telephone: 305–296–4600.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

July 14, 1999

1:00 p.m.—Convene.

1:15 p.m. - 5:00 p.m.—Receive public testimony on Mackerel Amendment 12, Reef Fish Amendment 17, and the Gag Regulatory Amendment.

5:00 p.m. - 5:30 p.m.—(Closed Session) Receive the AP Selection Committee report and the Marine Reserves Committee Report.

July 15, 1999

8:00 a.m. - 11:30 a.m.—Receive the Reef Fish Management Committee Report.

1:00 p.m. - 1:15 p.m.—Receive the Mackerel Management Committee Report.

1:15 p.m. - 1:30 p.m.—Receive the Shrimp Management Committee Report.

1:30 p.m. - 2:00 p.m.—Receive the Law Enforcement Committee Report.

2:00 p.m. - 2:15 p.m.—Receive the Administrative Policy Committee Report.

2:15 a.m. - 2:45 p.m.—Receive the Data Collection Committee Report.

2:45 p.m. - 3:00 p.m.—Receive the Council Chairman's Meeting Report.

3:00 p.m. - 3:15 p.m.—Receive the South Atlantic Fishery Management Council Liaison Report.

3:15 p.m. - 3:30 p.m.—Receive Enforcement Reports.

3:30 p.m. - 3:45 p.m.—Receive Director's Reports.

3:45 p.m.- 4:00 p.m.—Other Business.

Committees

July 12, 1999

9:30 a.m. - 10:30 a.m.—(Closed Session) Convene the Advisory Panel Selection Committee to select members for an advisory panel.

10:30 a.m. - 11:00 a.m.—(Closed Session) Convene the Marine Reserves Committee to potentially approve a contractual agreement for a facilitator.

11:00 a.m. - 12:00 noon—Convene the Marine Reserves Committee to hear a report of the Tortugas 2000 working group that was charged with developing plans for marine reserves in the Florida Keys National Marine Sanctuary.

1:00 p.m. - 5:30 p.m.—Convene the Law Enforcement Committee to hear reports on enforcement and non-compliance issues related to the red snapper fishery, the Tortugas Shrimp Sanctuary, the Southwest Florida seasonal shrimp closure, the Florida Middle Grounds Habitat Area of Particular Concern (HAPC), the Eastern Gulf long-line closed area, and implementation of Reef Fish Amendment 16A.

July 13, 1999

8:00 a.m. - 12:00 noon—Convene the Reef Fish Management Committee to develop its recommendations to the Council on Reef Fish Amendment 17 and the Gag Regulatory Amendment. The Committee will also determine whether to recommend that Council staff begin development of a resubmission document to readdress the portion of Reef Fish Amendment 16A that was disapproved by NMFS. That portion would have phased out the fish trap fishery in the Florida Keys by February 7, 2001. The Committee will also hear a report projecting when the 1999 recreational red snapper season will be closed, and hear updates on the pending approval of the regulatory amendment and emergency rules for red snapper.

2:00 p.m. - 5:00 p.m.—Council members will take a field trip on a U.S. Coast Guard cutter to examine enforcement procedures.

July 14, 1999

8:00 a.m. - 9:00 a.m.—Convene the Mackerel Management Committee to develop its recommendations to the Council on Mackerel Amendment 12.

9:00 a.m.- 10:00 a.m.—Convene the Shrimp Management Committee will hear a NMFS report on the Tortugas Shrimp fishery and annual reports assessing the status of the shrimp stocks. The Committee will also discuss workshop(s) to assess the impacts of shrimp trawl bycatch in the eastern Gulf, which will be held in late Summer or Fall.

10:00 a.m. - 11:00 a.m.—Convene the Data Collection Committee to hear a report on the pilot study on recreational data collection via MRFSS vs. Logbooks.

11:00 a.m. - 12:00 noon—Convene the Administrative Policy Committee to discuss reauthorization of the Magnuson-Stevens Act.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by July 2, 1999.

Dated: June 23, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16522 Filed 6–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062199D]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Social Sciences Advisory Committee on July 12, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on July 12, 1999 at 10 a.m.

ADDRESSES: The meeting will be held at the Council Office conference room; 5 Broadway (Route 1 South); Saugus, MA 01906; telephone: (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION: The committee will develop recommendations concerning improvements to the social and economic impacts analyses contained in New England Council fishery management plans. They also will develop recommendations for peer review of these analyses.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: June 23, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16511 Filed 6–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062199C]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Council (Council) will hold a meeting of its Coral Reef Ecosystem Plan Team (CREPT) in Honolulu, HI. The meeting will also serve as a public scoping hearing on the management alternatives to be analyzed in a Draft Environmental Impact Statement (DEIS) for the Coral Reef Ecosystem Fishery Management Plan (FMP).

DATES: The CREPT meeting will be held on July 13–15, 1999, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The meeting will be held at the Council office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808–522–8220).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The CREPT will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed can change.

Tuesday, July 13, 1999, 8:30 a.m.

1. Summary of progress to date on Coral Reef Ecosystem Fishery Management Plan (CRE-FMP)
2. Implementation plan/timetable for completion of CRE-FMP
3. Review of fishery management units
   A. Fish
   B. Invertebrates
   C. Other
4. Review of initial proposed measures/alternatives/impacts
   A. Permit and reporting requirement
   B. Designation of Marine Protected Areas(MPAs)
      (1) Criteria
      (2) Specific candidate sites
   C. Allowable harvest gear/prohibited practices

Wednesday, July 14, 1999, 8:30 a.m.

D. Framework regulatory process
   (1) Aquaculture/possession permit for live rock/coral
   (2) Prohibit anchoring by fishing vessels on Guam's offshore banks
   (3) Designate zones for mooring buoy installation and anchoring requirement
   (4) Require permanent marking of passive fishing gear
   (5) Other
5. Proposed non-regulatory management measures
   A. Facilitate local management
   B. Create incentives for sustainable use
   C. Public education outreach
6. Suggestions to address other existing laws and policies
   A. Endangered Species Act
   B. Marine Mammal Protection Act
   C. Administrative Procedure Act
   D. Coastal Zone Management Act
   E. Regulatory Flexibility Act
   F. Executive Orders
   G. Magnuson-Stevens Act/Sustainable Fisheries Act/Essential Fish Habitat
   H. Other
7. Preliminary draft regulations
8. Other concerns regarding developing CRE-FMP

Thursday, July 15, 1999. 8:30 a.m.

9. Public scoping hearing for National Environmental Policy Act/ Environmental Impact Statement
   A. Review of public comments received
   B. Public hearing for additional comments
10. Other business
   A. Scheduling of next CREPT meeting
   B. Upcoming coral reef meetings
11. Other business
   A. Scheduling of next meeting

Although other issues not contained in this agenda may come before this team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: June 23, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16510 Filed 6–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062199F]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Precious Corals Plan Team and Advisory Panel.

DATES: The meeting will be held on July 20, 1999, from 2:00 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at NMFS Honolulu Laboratory, 2570 Dole St., Rm. 112, Honolulu, HI 96822–2396, telephone: 808–983–5300.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: Members of the Precious Corals Plan Team and Advisory Panel will discuss the findings of recent research on precious corals in the waters around Hawaii, including information on the size and condition of certain classified precious coral beds, potential increases in fishing pressure on black corals, the presence of a new precious coral bed near French Frigate Shoals and the possible importance of precious coral beds as foraging areas for Hawaiian monk seals. Based on this new information, the plan team will discuss possible modifications to the precious corals fishery management plan. Possible changes in the FMP include suspending the harvest quota for live gold coral at the Makapu'u Bed; redefining live precious coral as precious coral thathas live coral polyps or tissue and redefining dead precious coral as precious coral that no longer has any live coral polyps or tissue; applying size limits to harvested live coral only; implementing a minimum size limit for black coral; prohibiting the use of non-selective gear except for scientific research activity; prohibiting the harvest of pink coral from any established or conditional bed unless it has attained a minimum height of 10 inches; revising the boundaries of Brooks Bank; increasing the annual harvest quota for live pink coral at Brooks Bank; suspending the harvest quota for live gold coral at Brooks Bank; restricting the harvest quota for all types of live precious coral at the newly-discovered bed near French Frigate Shoals; and revising the fishing logbooks to require additional information.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: June 23, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16512 Filed 6–28–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Form for Certain Textile Products Produced or Manufactured in Sri Lanka

June 23, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new export visa form.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Effective on July 1, 1999, goods produced or manufactured in Sri Lanka and exported to the United States must be accompanied by Sri Lanka's Textile Quota Board export visa form printed on a white form with the term "non-negotiable" printed on it. This replaces the light green security paper form currently in use. The visa stamp remains unchanged. There will be a grace period from July 1, 1999 through July 31, 1999, during which products exported from Sri Lanka may be accompanied by either the old or new export visa form. Products exported from Sri Lanka on or after August 1, 1999 must be accompanied by the new export visa form.

See 53 FR 34573, published on September 7, 1988.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 23, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 1, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool and man-made fiber apparel, produced or manufactured in Sri Lanka for which the Government of Sri Lanka has not issued an appropriate export visa.

Effective on July 1, 1999, you are directed to amend further the directive dated September 1, 1988 to provide for the use of a new export visa form issued by the Government of Sri Lanka to accompany shipments of textile products, produced or manufactured in Sri Lanka and exported from Sri Lanka on or after July 1, 1999. This new visa form is Sri Lanka's Textile Quota Board export visa form printed on a white form with the term "non-negotiable" printed on it. This replaces the light green security paper form currently in use. The visa stamp remains unchanged.

Textile products exported from Sri Lanka during the period July 1, 1999 through July 31, 1999 may be accompanied by either the old or new export visa form. Products exported from Sri Lanka on or after August 1, 1999 must be accompanied by the new export visa form.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–16507 Filed 6–28–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on a Request that the United States Consult with Mexico and Canada Concerning a Certain Rayon Filament Yarn

June 23, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for consultations on certain rayon filament yarn.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The purpose of this notice is to advise the public that CITA has been petitioned to initiate consultations with Mexico and Canada under Section 7(2) of Annex 300–B of the North American Free Trade Agreement (NAFTA) for the purpose of amending the NAFTA rules of origin for HTS subheading 5806.32 to permit the use of non-North American rayon filament yarn classified in HTS subheading 5403.31.00 of the Harmonized Tariff Schedule of the United States, in NAFTA originating goods.

There will be a 30-day comment period beginning on June 29, 1999 and extending through July 29, 1999. Anyone wishing to comment or provide data or information regarding domestic production or availability of rayon filament yarn classified in HTS subheading 5403.31.00 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute a "foreign affairs function of the United States."

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–16506 Filed 6–28–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Acquisition Management Systems and Data Requirements Control List (AMSDL); Numerous Forms; OMB Number 0704–0188.

Type of Request: Revision.

Number of Respondents: 886.

Responses per Respondent: 540.

Annual Responses: 478,440.

Average Burden Per Response: 110 hours.

Annual Burden Hours: 52,628,400.

Needs and Uses: The Acquisition Management Systems and Data Requirements Control List (AMSDL) is a list of data requirements used in Department of Defense (DoD) contracts. The information collected will be used by DoD personnel and other DoD contractors to support the design, test, manufacture, training, operation, and maintenance of procured items, including weapon systems critical to the national defense. Information collection requests are contained in DoD contract actions for supplies, services, hardware, and software. The collection of such data is essential to accomplishing the assigned mission of the Department of Defense. Failure to collect this information would have a detrimental effect on the DoD acquisition programs and the National Security.

Affected Public: Business or Other For Profit; Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 23, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–16436 Filed 6–28–99; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–21]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: None.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–21, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE: 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

16 JUN 1999
In reply refer to:
I-99/07095

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-21, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $210 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. Keltz

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-21

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 60 million
Other	$ 150 million
TOTAL	$ 210 million

(iii) Description of Articles or Services Offered: The upgrade of five E-2C Update Group II Mission Suite retrofit kits including AN/APS-145 Radar (Category XII) for existing E-2C aircraft, spare and repairs parts, support equipment, personnel training and training equipment, technical data and publications, system software development and installation, testing of new system modifications, U.S. Government and contractor engineering and logistics services and other related elements of program support.

(iv) Military Department: Navy (SBJ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 16 JUN 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - Upgrade of E-2C Update Group II Mission Suite Retrofit Kits

The Government of Egypt (GOE) has requested a possible sale for the upgrade of five E-2C Update Group II Mission Suite retrofit kits including AN/APS-145 Radar (Category XII) for existing E-2C aircraft, spare and repairs parts, support equipment, personnel training and training equipment, technical data and publications, system software development and installation, testing of new system modifications, U.S. Government and contractor engineering and logistics services and other related elements of program support. The estimated cost is $210 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle Eastern region.

The GOE needs this upgrade of the retrofit kits to help maintain the operational readiness of its extended Airborne Early Warning (AEW) system and continue the interoperability with United States. Egypt will have no difficulty absorbing this logistics support into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Northrop Grumman Aircraft Corporation, Bethpage, New York. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of approximately seven contractor representatives in-country the first year for installation technical assistance. Six contractor personnel will be required at the main operation base for one year after the completion of the first installation to assist with training, operation, and maintenance. U.S. Government personnel will be required for an additional period to implement the system.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-21

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The E-2C contains sensitive state-of-the-art technology. Some of the hardware, publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Secret. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through depot level) of the E-2C aircraft and its installed systems and related software.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–16437 Filed 6–28–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Office of the Inspector General, Department of Defense (OIG, DOD).

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service (SES) Performance Review Board (PRB) for the OIG, DoD, as required by 5 U.S.C. 4314 (c) (4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations regarding performance ratings, performance awards and recertification to the Inspector General.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Dona Seracino, Deputy Director for Operations, Personnel and Security Directorate, Office of the Assistant Inspector General for Administration and Management, OIG, DoD, 400 Army Navy Drive, Arlington, VA 22202, (703) 604–9716.

Charles W. Beardall, Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, OAIG for Investigations.
David A. Brinkman, Director, Audit Followup and Technical Support, OAIG-Auditing.
C. Frank Broome, Director, Office of Departmental Inquiries.
David M. Crane, Director, Office for Intelligence Review.
Donald E. Davis, Deputy Assistant Inspector General for Audit Policy and Oversight, OAIG-Auditing.
Thomas F. Gimble, Director, Acquisition Management, OAIG-Auditing.
Paul J. Granetto, Director, Contract Management, OAIG-Auditing.
John F. Keenan, Assistant Inspector General for Investigations.
Frederick J. Lane, Director, Finance and Accounting, OAIG-Auditing.
Joel L. Leson, Deputy Assistant Inspector General for Administration and Information Management.
Carol L. Levy, Deputy Assistant Inspector General for Investigations.
Robert J. Lieberman, Assistant Inspector General for Auditing.
Nickolas T. Lutsch, Assistant Inspector General for Administration and Information management.
Donald Mancuso, Deputy Inspector General.
David K. Steensma, Deputy Assistant Inspector General for Auditing.
Alan W. White, Director, Investigative Operations, OAIG for Investigations.
Shelton R. Young, Director, Readiness and Logistics Support, OAIG-Auditing.
Robert L. Ashbaugh, Deputy Inspector General, Department of Justice.
Raymond J. DeCarli, Deputy Inspector General, Department of Transportation.
John C. Payne, Deputy Inspector General, Department of State.
Joseph R. Willeven, Deputy Inspector General, Office of Personnel Management.

Dated: June 22, 1999.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 99–16438 Filed 6–28–99; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on July 29, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: June 22, 1999.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC L

SYSTEM NAME:

Unfavorable Information Files (UIF) *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Complete UIFs are maintained in the Unit Orderly Room, the Military Personnel Flight (MPF), Headquarters Air Reserve Personnel Center (HQ ARPC), or HQ Air National Guard Readiness Center (HQ ANGRC). A copy of the UIF summary sheet is maintained at: Individual's unit of assignment; geographically separated units not co-located with a servicing MPF. For officers only the UIF Summary Sheet is also maintained at major command level; for colonels, colonel selects, and general officers at the Headquarters Air Force level; and the gaining unit for individuals selected for reassignment. For Reserve personnel, to the unit of assignment/attachment. Official mailing addresses are published as an appendix to the Air Force's compilation of system of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All active or Reserve component (AF Reserve and Air National Guard) military personnel who are the subject of an Unfavorable Information File'.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'For enlisted personnel, UIFs are maintained for one year from the effective date of the most recent correspondence, except when the file contains documentation pertaining to Article 15, court-martial or certain civil court convictions, in which case the retention period is two years from the date of that correspondence. UIFs are automatically destroyed upon discharge (no military service obligation) or retirement and on an individual basis when the individual's commander so determines. UIFs are transferred to the active or reserve component to which the enlisted member is transferring, if known, or if unknown or upon separation to HQ AFRC or HQ ANGRC.

For officer personnel UIFs are maintained for two years from the

effective date of the most recent correspondence, except when the file contains documentation pertaining to court-martial convictions or civil court convictions, in which case the retention period is four years from the date of that correspondence or one year from the date of arrival at a new permanent change of station or one year after date of separation, whichever is longer. UIFs are transferred to the Reserve component to which the officer is transferring, if known or upon separation to HQ ARPC or HQ ANGRC. UIFs are automatically destroyed upon retirement. If a Reserve officer is discharged, (no military service, obligation), the UIF is destroyed. UIFs for regular officers discharged are maintained by HQ ARPC for one year from date of discharge and then destroyed.

UIF records are destroyed on officer or enlisted personnel by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.'

* * * * *

F036 AF PC L

SYSTEM NAME:

Unfavorable Information Files (UIF).

SYSTEM LOCATION:

Complete UIFs are maintained in the Unit Orderly Room, the Military Personnel Flight (MPF), Headquarters Air Reserve Personnel Center (HQ ARPC), or HQ Air National Guard Readiness Center (HQ ANGRC). A copy of the UIF summary sheet is maintained at: Individual's unit of assignment; geographically separated units not co-located with a servicing MPF. For officers only the UIF Summary Sheet is also maintained at major command level; for colonels, colonel selects, and general officers at the Headquarters Air Force level; and the gaining unit for individuals selected for reassignment. For Reserve personnel, to the unit of assignment/attachment. Official mailing addresses are published as an appendix to the Air Force's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active or Reserve component (AF Reserve and Air National Guard) military personnel who are the subject of an Unfavorable Information File.

CATEGORIES OF RECORDS IN THE SYSTEM:

Derogatory correspondence determined as mandatory for file or as appropriate for file by an individual's commander. Examples include written admonitions or reprimands; court-martial orders; letters of indebtedness, or control roster correspondence and drug/alcohol abuse correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by; as implemented by Air Force Instruction 36–2907, Unfavorable Information File Program.

PURPOSE(S):

Reviewed by commanders and personnel officials to assure appropriate assignment, promotion and reenlistment considerations prior to effecting such actions. UIFs also provide information necessary to support administrative separation when further rehabilitation efforts would not be considered effective.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets and in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms. Computer records are protected by computer software.

RETENTION AND DISPOSAL:

For enlisted personnel, UIFs are maintained for one year from the effective date of the most recent correspondence, except when the file contains documentation pertaining to Article 15, court-martial or certain civil court convictions, in which case the retention period is two years from the date of that correspondence. UIFs are automatically destroyed upon discharge (no military service obligation) or retirement and on an individual basis when the individual's commander so determines. UIFs are transferred to the active or reserve component to which the enlisted member is transferring, if known, or if unknown or upon separation to HQ AFRC or HQ ANGRC.

For officer personnel UIFs are maintained for two years from the effective date of the most recent correspondence, except when the file contains documentation pertaining to court-martial convictions or civil court convictions, in which case the retention period is four years from the date of that correspondence or one year from the date of arrival at a new permanent change of station or one year after date of separation, whichever is longer. UIFs are transferred to the Reserve component to which the officer is transferring, if known or upon separation to HQ ARPC or HQ ANGRC. UIFs are automatically destroyed upon retirement. If a Reserve officer is discharged, (no military service, obligation), the UIF is destroyed. UIFs for regular officers discharged are maintained by HQ ARPC for one year from date of discharge and then destroyed.

UIF records are destroyed on officer or enlisted personnel by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff/Personnel, Headquarters Air Force Personnel Center, 550 C Street W, Randolph AFB, TX 78150–4703.

For Reserve system management: Headquarters Air Force Reserve Command/Directorate of Personnel, 155 2nd Street, Robins AFB, GA 31098–1635.

NOTIFICATION PROCEDURE:

Personnel for whom optional UIFs exist are routinely notified of a file. In all cases personnel have had the opportunity or are authorized to rebut the correspondence in the file.

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the servicing Military Personnel Flight, Unit Orderly Room, Headquarters Air Reserve Personnel Center or Headquarters Air National Guard Readiness Center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address inquiries to the servicing Military Personnel Flight, Unit Orderly Room, Headquarters Air Reserve Personnel Center, or Headquarters Air National Guard Readiness Center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Supervisory reports or censures and documented records of poor performance or conduct.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–16439 Filed 6–28–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 29, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0680–31a TAPC

SYSTEM NAME:

Officer Personnel Management Information System (OPMIS) *(May 11, 1998, 63 FR 25840).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Commander, U.S. Total Army Personnel Command, ATTN: TAPC-OPD-S, Information Management Officer, 200 Stovall Street, Alexandria, VA 22332–0414.'

* * * * *

A0680–31a TAPC

SYSTEM NAME:

Officer Personnel Management Information System (OPMIS).

SYSTEM LOCATION:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC-OPD-S, Information Management Officer, 200 Stovall Street, Alexandria, VA 22332–0414.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals projected for entrance into the Active officer corps, active duty commissioned and warrant officers, officers in a separated or retired status, activated/mobilized U.S. Army Reserve and National Guard officers, and DoD civilians and military officers who serve as rating officials on the Officer Evaluation Reports (OERs) of Army officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Total Army Personnel Data Base - Active Officer (TAPDB-AO) is the active officer component data base of Total Army Personnel Data Base. It is comprised of approximately 100 data tables containing the official automated personnel records for active component Army officers. Data maintained in the Total Army Personnel Data Base - Active Officer includes Social Security Number, name, grade, personal and family information, service, security clearance, assignment history, strength management data, civilian and military education, awards, training, branch and occupational specialties/areas of concentration, mailing addresses, telephone numbers, facsimile numbers, email addresses, physical location, languages, career pattern, performance, command and promotion history, retirement/separation information and service agreement information. TAPDB-AO is updated in both on-line and batch mode from various source data bases and applications including the Standard Installation Division Personnel System (SIDPERS), the Total Officer Personnel Management Information System (TOPMIS), the Officer Evaluation Reporting System (OERS) and Accessions Management Information Systems (AMIS).

Accessions Management Information Systems (AMIS) contains selected officer personnel data from the Total Army Personnel Data Base - Active Officer, the date of entry on active duty, selected information regarding current location/school for pre-accessed officers, demographic data and assignment information on new officer accessions. It includes individual and mass record processing, erroneous record processing, report generation, Regular Army integration processing, Accessions Management Information Systems (AMIS) active record data, Officer Record Brief (ORB) information and strength data. Accessions Management Information Systems (AMIS) is used to manage Reserve Officer Training Corps (ROTC), U.S. Military Academy (USMA), Officer Candidate School (OCS), Judge Advocate General Corps (JAG) Recalls, Chaplains Corps, Warrant Officer and Surgeon General Reserve officers accessions. Accessions Management Information Systems (AMIS) data is stored on the Total Army Personnel Data Base - Active Officer. Some users enter new accession data directly to the Total Army Personnel Data Base - Active Officer via Accessions Management Information Systems (AMIS). For Reserve Officer Training Corps (ROTC), and U.S. Military Academy (USMA) new accessions, data extracts are batch loaded to the Total Army Personnel Data Base - Active Officer annually.

Assignments and Training Selection for Reserve Officer Training Corps (ROTC) graduates contains selected information from the Total Army

Personnel Data Base - Active Officer (TAPDB-AO), the cadet's preference statement for specialty (branch), duty and initial training; Reserve Forces duty or delay selection, Regular Army selection and branch selection.

The Officer Evaluation Reporting System (OERS) contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO); selection board status; OER suspense indicator for action being taken to obtain missing or erroneous OERs; selected information for each OER; and the name, Social Security Number, and rating history of each individual, military and civilian, who has served as the senior rating official for an active duty Army officer.

Total Officer Personnel Management Information System (TOPMIS) provides the display and update of selected data on Total Army Personnel Data Base - Active Officer (TAPDB-AO) and comprises an extensive variety of automated officer personnel management functions. These functions include, officer personnel record display and update, requisition validation and processing, active officer strength management, Officer Distribution Plan (ODP) goaling management, officer asset reports, centralized command slate development, assignment stabilization break processing, electronic mail, Officer Record Brief (ORB) display and interactive telephonic/voice response retrieval of selected information from Total Army Personnel Data Base - Active Officer (TAPDB-AO).

Reserve Officer Training Corps (ROTC) Instructor File contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO) and the following information pertaining to ROTC instructors; ROTC detachment, duty station, date assigned to ROTC detachment, date projected to be reassigned. This information is maintained in a local data base by the Cadet Command Distribution Account Manager in Officer Distribution Division, OPMD, TAPC-OPD-O.

Advanced Civil Schools Management Information System (ACSMIS) contains selected information from the Total Army Personnel Data Base - Active Officer and the following information concerning commissioned and warrant officer personnel currently participating, or who have previously participated, in one of the following: Army sponsored college degree completion program, Training With Industry (TWI) program, special fellowship/scholarship programs, or the fully funded degree program. Data maintained also includes schooling start/stop dates, degree level, educational discipline and Army duty positions.

Army Education Requirements System (AERS) contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO) for officer and warrant officer personnel who are serving or are projected to serve in an AERS approved position requiring graduate level education.

U.S. Army Military Academy (USMA) Potential Instructor File contains selected information from the OMF and the following information pertaining to previous, current, and potential instructors for the USMA teaching staff; academic department and projected availability for USMA instructor duty. This information is maintained in a local data base by the USMA Distribution Account Manager in Officer Distribution Division, OPMD, TAPC-OPD-O.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used for personnel management strength accounting, manpower management, accessioning and determining basic entry specialty (branch) and initial duty assignments; tracking Officer Evaluation Reports, the rating history of senior rating official's rating history on individual OERs producing reports on active duty officers who have served as senior rating officials; managing instructor population at ROTC detachments and USMA; tracking information relating to the Army Degree Completion Civil School Program; transmitting necessary assignment instructions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Social Security Administration to verify Social Security Numbers.

To the Smithsonian Institution (The National Museum of American History): Copy of the U.S. Army Active Duty Register, for historical research purposes (not authorized for public display).

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronically on computer magnetic tapes and disc.

RETRIEVABILITY:

By Social Security Number, name, or other individual identifying characteristics.

SAFEGUARDS:

Physical security devices, guards, computer hardware and software features, and personnel clearances. Automated media and information are protected by authorized user ids, passwords for the system, a tiered system of security for access to officer data provided via Interactive Voice Response Systems based on the sensitivity of the data items provided, encryption of data transmitted via networks, controlled access to operator rooms and controlled output distribution.

RETENTION AND DISPOSAL:

Records are retained on the active TAPDB-AO files for 4 months after separation. Historical TAPDB-AO records are retained dating back to FY 1970. Accessions in AMIS are retained on active file until effective date of accession and are then placed on a history file for a period of 6 months. Records in the ROTC Graduate Assignment and Training Selection File are retained for approximately 400 days after the file is created (approximately December each year). Historic files for the OER system are kept for the life of the system. All other records are retained for active duty only until the individual is released from active duty and then destroyed. There are still hard copies in their Official Military Personnel Files (OMPFs).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC-OPD-S, Information Management Officer, 200 Stovall Street, Alexandria, VA 22332–0414.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-OPD-S, Information Management Officer, 200 Stovall Street, Alexandria, VA 22332–0414.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated and give return address.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-OPD-S, Information Management Officer, 200 Stovall Street, Alexandria, VA 22332–0414.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated and give return address.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

Selected data from the Total Army Personnel Data Base - Active Officer is also accessible to records subjects through an Interactive Voice Response Systems (IVRS). Access to the data made available through the IVRS is controlled by a tiered security system which is based on the sensitivity of the data being accessed.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, civilian Educational Institutions, Army records and reports, other Federal, state, and local agencies and departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–16440 Filed 6–28–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on July 29, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The record system being amended is set forth below, as amended, published in its entirety.

Dated: June 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05300–1

SYSTEM NAME:

Organization Locator and Social Roster (February 22, 1993, 58 FR 10749).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05000–3'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Military and civilian personnel attached to the activity, Departments of the Navy and Defense, or other government agencies; family members; and guest or other invitees.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Manual and automated records which include names; Social Security Numbers; dates of birth; next of kin information; dependent information; addresses; telephone numbers; official titles; organization identification; invitations, acceptances, regrets, protocol, and other information associated with attendance at functions; disability data; and locator records of personnel attached to the organization.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To notify personnel of arrival of visitors; recall personnel to duty station when required; locate individuals on routine matters; provide mail distribution and forwarding addresses; compile a social roster for official and non-official functions; send personal greetings and invitations; and locate individuals during medical emergencies, facility evacuations, and similar threat situations.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Documents are marked 'FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE' and are only distributed to those persons having an official need to know. Computerized records are password protected and only accessible by those persons with an official need to know.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual and records of the activity.'

* * * * *

N05000–3

SYSTEM NAME:

Organization Locator and Social Roster.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel attached to the activity, Departments of the Navy and Defense, or other government agencies; family members; and guests or other invitees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual or mechanized records. Includes information such as names, addresses, telephone numbers; official titles or positions and organizations; invitations, acceptances, regrets,

protocol, and other information associated with attendants at functions. Locator records of personnel attached to the organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To notify personnel of arrival of visitors; recall personnel to duty station when required; locate individuals on routine matters; provide mail distribution and forwarding addresses; compile a social roster for official and non-official functions; send personal greetings and invitations; and locate individuals during medical emergencies, facility evacuations, and similar threat situations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and automated records.

RETRIEVABILITY:

Name, Social Security Number, and/or organization code.

SAFEGUARDS:

Documents are marked 'FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE' and are only distributed to those persons having an official need to know. Computerized records as password protected and only accessible by those persons with an official need to know.

RETENTION AND DISPOSAL:

Records are destroyed upon update of roster to add/delete individuals who have arrived/departed the organization.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and records of the activity.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–16441 Filed 6–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

Notice of Floodplain and Wetlands Involvement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy, Los Alamos National Laboratory, New Mexico

AGENCY: Los Alamos Area Office, Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: In compliance with the requirements of Public Law 105–119, DOE proposes to convey to the Incorporated County of Los Alamos, and transfer to the Secretary of the Department of the Interior in trust for San Ildefonso Pueblo, ten (10) tracts of land located at Los Alamos National Laboratory in Los Alamos, New Mexico. The conveyance and transfer involves about 4,800 acres located within various canyon systems and over several mesa tops. Some of these tracts encompass floodplains and wetlands located in Los Alamos and Santa Fe Counties, New Mexico.

In accordance with 10 CFR part 1022, DOE has prepared a floodplain and wetlands assessment. This assessment is included as part (Appendix D) of the Draft *Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico,* prepared for the proposed project in accordance with the National Environmental Policy Act.

DATE: Comments are due to the address below no later than July 15, 1999.

ADDRESS: Comments should be addressed to: Elizabeth Withers, CT EIS Document Manager, U.S. Department of Energy, Los Alamos Area Office 528 35th Street, Los Alamos, New Mexico 87544, PHONE: (505) 667–8690; FAX: (505) 665–4872.

The Draft Environmental Impact Statement is available for review at the Los Alamos Outreach Center, 1619 Central Avenue, Los Alamos, New Mexico 87544; and the Government Information Department, Zimmerman Library, University of New Mexico, Albuquerque, New Mexico 87131. The Draft CT EIS is also available under the NEPA Analysis Module of the DOE NEPA Web Site at http://tis.eh.doe.gov/nepa/.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT: Elizabeth Withers, CT EIS Document Manager, at the above listed address.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U. S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC. 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: In compliance with the requirements of Pub. L. 105–119, DOE is proposing to convey and transfer ten (10) tracts of land, totaling about 4,800 acres, to the Incorporated County of Los Alamos, and to the Secretary of the Interior in trust for San Ildefonso Pueblo. Six (6) of the ten tracts encompass wetlands and floodplains within their boundaries: the Rendija Canyon Tract, TA–21 Tract, Airport Tract, White Rock "Y" Tract, TA–74 Tract and the White Rock Tract. These tracts are located within or contain portions of Rendija Canyon, DP Canyon, Los Alamos Canyon, Bayo/Pueblo Canyons confluence, and in Canada del Buey. Future use of the tracts as established by Pub. L. 105–119 is limited to historic, cultural, or environmental preservation, economic diversification, and community self-sufficiency purposes. The two named recipients identified their contemplated uses of the tracts as follows:

Rendija Canyon Tract (about 910 acres)—environmental preservation (including recreational use) and residential development or cultural preservation.

TA–21 Tract (about 260 acres)—commercial and industrial development.

Airport Tract (about 205 acres)—commercial and industrial development or commercial development.

White Rock "Y" Tract (about 540 acres)—environmental preservation or cultural preservation.

TA–74 Tract (about 2715 acres)—cultural preservation or environmental preservation.

White Rock Tract (about 100 acres)—cultural preservation and commercial development or commercial and residential development.

Each of these tracts may have existing or future infrastructure uses that include utility lines, utility support structures, water supply wells, storage tanks or structures, water or effluent treatment structures and transportation routes.

The proposed action encompasses floodplains and wetlands because Pub. L. 105–119 requires DOE to identify land that may meet the criteria established by the Law. The suitability criteria does not exclude land containing wetland and floodplain areas; therefore, potentially suitable land in wetland and floodplain areas was included in the tracts DOE identified for possible conveyance and transfer. The conveyance or transfer of each tract, in whole or in part, constitutes DOE's Proposed Action Alternative. The only alternative to the proposed action considered is the No Action Alternative. The proposed action of conveying or transferring each of the tracts, either in whole or in part, conforms to applicable State or local floodplain protection standards. Contemplated use of the tracts as articulated to DOE by the named recipients would also conform to applicable State or local floodplain protection standards. Both Los Alamos and Santa Fe Counties have protective ordinances pertaining to flood damage prevention that is inclusive of language requiring new construction to be placed outside of floodplains. The pertinent Los Alamos County Code Ordinance is: 85–70 "An Ordinance Repealing Chapter 15.16 of the Los Alamos County Code Adopting a New Chapter 17.70 Pertaining to Flood Damage prevention." The pertinent Santa Fe County Code Ordinances are: 1988–1 "An Ordinance to Establish Regulations for Development in Flood Hazard Areas, Set Minimum Floor Elevations for Compliance, Define Flood Plains, Address Required Building Improvements, and Establish Variance Regulations for Cases Where There Isn't an Ability to Comply with Adopted Standards," and 1996–1 "Flood Hazards."

A floodplain statement of findings will be published in the *Final Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico* in accordance with the National Environmental Policy Act. The anticipated issuance date for the Final Environmental Impact Statement is August 1999. Notice of its availability will be announced in the **Federal Register**.

Issued in Los Alamos, NM on June 16, 1999.

David A. Gurulé,

Area Manager, U.S. Department of Energy, Los Alamos Area Office.

[FR Doc. 99–16517 Filed 6–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah Gaseous Diffusion Plant

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, July 15, 1999: 5:30 p.m.–8:30 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard Paducah, Kentucky

OTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m. Call to order/Discussion
6:00 p.m. Approve Meeting Minutes
6:05 p.m. Public Comment/Questions
6:30 p.m. Presentations
7:15 p.m. Sub Committee Reports
8:15 p.m. Administrative Issues
8:30 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (502) 441–6804.

Issued at Washington, DC on June 21, 1999

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–16516 Filed 6–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–557–000]

Columbia Gas Transmission Corporation; Notice of Application

June 23, 1999.

Take notice that on June 15, 1999, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Ave, SE, Charleston, WV 25314, tendered for filing in Docket No. CP99–557–000 an

application, pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations seeking permission and approval to abandon by sale 1.9 Bcf of base gas in Columbia's Lucas Storage Field (Lucas Field) located in Ashland and Richland Counties, Ohio, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc/online/rims.htm (call 202–208–2222 for assistance).

Columbia states that operational efficiencies within the Lucas Field have reduced the need to maintain the historic levels of base gas in Lucas Field. Columbia further states that the disposition of proceeds from the proposed sale of the base gas will be made pursuant to Section C. of Article IV, of Stipulation II of the Settlement in Docket No. RP95–408 Columbia Gas Transmission Corp., 79 FERC ¶ 61,044 (1997).

Any questions regarding the application should be directed to either Ronald L. Binford at (304) 357–2489 (voice) 357–2926 (fax) or Fredric J. George at (304) 357–2359 (voice) (304) 357–3206 (fax), Columbia Gas Transmission Corporation, P.O. Box 1273; Charlestown, West Virginia 25325–1273.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before July 14, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–16450 Filed 6–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3253–000]

Mid-Continent Area Power Pool; Notice of Filing

June 21, 1999.

Take notice that on June 15, 1999, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, filed short-term firm and non-firm service agreements under MAPP Schedule F with AES Power, Incorporated; Ameren Services Company; Ames Municipal Electric System; Basin Electric Power Cooperative (Basin Electric); Central Iowa Power Cooperative; Conagra Energy Services, Inc.; GEN–SYS Energy; Great River Energy; Koch Energy Trading, Incorporated; Lincoln Electric System (LES); Madison Gas and Electric Company; Minnesota Municipal Utilities Association; Minnesota Power; Minnkota Power Cooperative, Incorporated; Missouri River Energy Services; Northern AES; Rainbow Energy Marketing Corporation; Rochester Public Utilities; Southern Minnesota Municipal Power Agency; St. Joseph Light & Power Company; Tenaska Power Services Co.; and TransCanada Power. MAPP also filed, on behalf of its public utility members, service specifications for long-term service under Schedule F with Basin Electric; Interstate Power Company—Marketing; LES; MidAmerican Energy Company; Nebraska Public Power District; Wisconsin Power & Light Company—Bulk Power Marketing; and Wisconsin Public Power, Inc.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 6, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims/htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16448 Filed 6–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–558–000]

National Fuel Gas Supply Corporation; Notice of Application

June 23, 1999.

Take notice that on June 15, 1999, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, field in Docket No. CP99–558–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the storage service it provides to Colonial Gas Company (Colonial) and Boston Gas Company (Boston Gas) under its SS–1 and SS–2 Rate Schedules, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, National Fuel seeks permission and approval to abandon the storage service it provides to Colonial under National Fuel's SS–1 Rate Schedule, and Boston Gas under National Fuel's SS–2 Rate Schedule, effective April 1, 2000. National Fuel states that both customers, as provided in their service agreements, submitted written notice of termination to National Fuel, effective at the end of the gas day on March 31, 2000.

Any questions regarding the application should be directed to David W. Reitz at (716) 857–7949, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203.

Any person desiring to be heard or to make protest with reference to said application should on or before July 14, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–16449 Filed 6–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Southwestern Power Administration

Sam Rayburn Dam Project Power Rate

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of proposed extension.

SUMMARY: The Current Sam Rayburn Dam Project rate was approved by the Federal Energy Regulatory Commission (FERC) on December 7, 1994, Docket No. EF94–4021–000. These rates were effective October 1, 1994, through September 30, 1998. On August 14, 1998, the Deputy Secretary of Energy approved a one-year extension of the Sam Rayburn Dam rate schedule for the period October 1, 1998 through September 30, 1999. The Administrator, Southwestern, has prepared Current and Revised 1999 Power Repayment Studies for the Sam Rayburn Dam Project which show the need for a minor rate adjustment of $4,692 (0.2 percent increase) in annual revenues. In accordance with Southwestern's rate adjustment threshold, dated June 23, 1987, the Administrator, Southwestern, may determine, on a case by case basis, that for a revenue decrease or increase in the magnitude of two percent, deferral of a formal rate filing is in the best interest of the Government. The Secretary of Energy has the authority to extend rates, previously confirmed and approved by FERC, on an interim basis, pursuant to 10 CFR 903.22(h) and 903.23(a)(3). In accordance with Department of Energy (DOE) rate extension authority and Southwestern's rate adjustment threshold, the Administrator is proposing that the rate adjustment be deferred and that the current rates be extended for a one-year period effective through September 30, 2000.

DATES: Written comments are due on or before July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 595–6696, reeves@swpa.gov.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The other two projects (Sam Rayburn and Robert Douglas Willis) are not interconnected with Southwestern's Integrated System. Instead, their power is marketed under separate contracts through which two customers purchase the entire power output of each of the projects at the dams.

Following DOE Order Number RA 6120.2, the Administrator, Southwestern, prepared a 1999 Current Power Repayment Study (PRS) using the existing Sam Rayburn Dam Project rate schedule. This PRS, like the previous year's, includes estimates for both Southwestern's and the Corps' portions of the unfunded Civil Service Retirement Service and post retirement life/health costs. The PRS shows the cumulative amortization through FY 1998 at $12,339,699 on a total investment of $25,734,878. The FY 1999 Revised PRS indicates the need for an increase in annual revenues of $4,692, or 0.2 percent.

As a matter of practice, Southwestern would defer an indicated rate adjustment that falls within Southwestern's plus-or-minus two percent rate adjustment threshold. The threshold was developed to add efficiency to the process of maintaining adequate rates and is consistent with cost recovery criteria within DOE Order Number RA 6120.2 regarding rate adjustment plans. The Sam Rayburn Dam Project's FY 1998 (last year's) PRS concluded that the annual revenues needed to be decreased by 0.2 percent. At that time, it was determined prudent to defer the decrease in accordance with the established threshold and the current rate schedule was continued for one year. It once again seems prudent to defer this rate adjustment of 0.2 percent, or $4,692 per year in accordance with Southwestern's rate adjustment threshold and reevaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the FY 2000 (next year's) PRS.

On December 7, 1994, the current rate schedule for the Sam Rayburn Dam Project was confirmed and approved by the FERC on a final basis for a period that ended September 30, 1998. In accordance with 10 CFR 903.22(h) and 903.23(a)(3), the Secretary may extend existing rates on an interim basis beyond the period specified by the FERC.

As a result of the benefits obtained by a rate adjustment deferral (reduced Federal expense and rate stability) and the Secretary's authority to extend a previously approved rate, Southwestern's Administrator is proposing to extend the current Sam

Rayburn Dam Project rate schedule. The schedule is to be effective for the one-year period beginning October 1, 1999, and extending through September 30, 2000.

Opportunity is presented for customers and interested parties to receive copies of the study data for the Sam Rayburn Dam Project. If you desire a copy of the Repayment Study data package for the Sam Rayburn Dam Project, please submit your request to: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, P.O. Box 1619, Tulsa, OK 74101, call (918) 595–6696 or e-mail *reeves@swpa.gov*.

Following review of the written comments (absent any substantive reasons to do otherwise), the Administrator will submit the rate extension proposal for the Sam Rayburn Dam Project to the Secretary of Energy for confirmation and approval.

Dated: June 16, 1999.

Michael A. Deihl,

Administrator.

[FR Doc. 99–16518 Filed 6–28–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6369–3]

Clean Air Act Advisory Committee, Notice of Meeting

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

OPEN MEETING NOTICE: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2) notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Tuesday, July 27, 1999, from approximately 8:30 a.m. to 3:30 p.m. at the Washington Marriott Hotel, 1221 22rd Street, N.W., Washington, D.C. Seating will be available on a first come, first served basis. The CAAAC's four Subcommittees (The Energy, Clean Air and Climate change Subcommittee; Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NSR/Toxics Integration Subcommittee; and the Economic Incentives and Regulatory Innovations Subcommittee) will hold meetings on July 26. The Climate Change Subcommittee is scheduled to meet from 1 p.m. to 4 p.m.; the Economics Incentives and Regulatory Innovations Subcommittee is scheduled to meet from 4 p.m. to 6 p.m.; the Permits/NSR/Toxics Subcommittee is scheduled to meet from 5:30 p.m. to 7:30 p.m.; and the Linking Transportation Land Use and Air Quality Subcommittee is scheduled to meet from 7 p.m. to 10 p.m. All subcommittee meetings will be held at the Washington Marriott Hotel, the same location as the full Committee.

INSPECTION OF COMMITTEE DOCUMENTS: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

For Further Information concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 260–6877, FAX (202) 260–8509 or by mail at US EPA, Office of Air and Radiation (Mail code 6102), 401 M St. S.W. Washington, D.C. 20460. For information on the Subcommittee meetings, please contact the following individuals: (1) Energy, Clean Air and Climate Change—Anna Garcia, 202–564–9492; (2) Permits/NSR/Toxics Integration—Debbie Stackhouse, 919 541–5354; (3) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202–260–7433; and (4) Linking Transportation Land Use and Air Quality Concerns—Gay MacGregor, 734–668–4438.

Dated: June 17, 1999.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–16540 Filed 6–28–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6369–2]

Gulf of Mexico Program's Citizens Advisory Committee Meeting

AGENCY: U.S. Environmental Protection Agency (US EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Act, P.L. 92463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

DATES: The CAC meeting will be held on Thursday, July 29, 1999 from 1:00 p.m. to 5:30 p.m. and on Friday, July 30, 1999 from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at the River House Conference Facility, Stennis Space Center, Mississippi (228) 688–7618.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: Watershed Targeting, Coastal Sewage Initiative Discussion, Membership & Attendance Follow-up, GMP Project Presentations, and Ecoventures Project Presentation.

The meeting is open to the public.

Dated: June 21, 1999.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 99–16539 Filed 6–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6368–9]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9601–9675, notice is hereby given that a proposed purchaser agreement ("Purchaser Agreement") associated with the Warwick Township Creek Road Superfund Site ("Site") in Warwick Township, Bucks County, Pennsylvania, was executed by the United States Environmental Protection Agency ("EPA" or "Agency") and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement will resolve certain potential EPA claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against LC Associates, L.P,, General Land Partners, Inc., Heritage Creek Associates, L.P. and Heritage Creek Associates, Inc. (referred to herein collectively as the "Purchaser"). The property subject to the Purchaser Agreement is located at the 13 acre +/− Warwick Township Creek Road Superfund Site. The town of Hartsville, Pennsylvania is situated west of the Site. A small stream, which is a tributary to the Little Neshaminy Creek and the Little Neshaminy Creek are located in the area.

The Property was used primarily for farming, however, a portion of the Property was utilized as an auto-body, sandblasting, automotive and swimming pool painting operation. On or about January 1997, EPA initiated a response action at the Site. EPA removed numerous drums, containers and contaminated soil. Hazardous substances released at the Site include polychlorinated biphenyls ("PCBs") and lead. The Purchaser intends to construct a golf course on the Site.

For fifteen (15) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before July 14, 1999.

ADDRESSES: *Availability:* The proposed Purchaser Agreement and additional background information relating to the proposed Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Purchaser Agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the "Warwick Township Creek Road Site Prospective Purchaser Agreement" and "EPA Docket No. III–CERC–PPA–99–05," and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Benjamin Cohan (3RC41), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2618.

Dated: June 21, 1999.

W. Michael McCabe,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 99–16535 Filed 6–28–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority.

June 22, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected: and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 30, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0209.

Title: Section 73.1920 Personal attacks.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 698 AM/FM/TV stations.

Estimated Time Per Response: 30 minutes.

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 349 hours.

Total Annual Cost: $0.

Needs and Uses: During the presentation of views on a controversial issue of public importance, an attack may be made upon the honesty, character, integrity, or like personal qualities of an identified person or group. Section 73.1920 requires that a licensee of a broadcast station must transmit to the person or group attacked a notification of the date, time and identification of the broadcast of a personal attack, a script or tape of the attack, and an offer of a reasonable opportunity to respond to the attack over the licensee's facilities. This data is used to notify a person or group that a personal attack has been made and to afford that person or group attacked an opportunity to respond to the attack over the licensee's facilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16483 Filed 6–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–809]

List of Foreign Telecommunications Carriers that are Presumed To Possess Market Power in Foreign Telecommunications Markets

AGENCY: Federal Communications Commission

ACTION: Notice.

SUMMARY: This document contains a list of carriers that are presumed to possess market power in foreign telecommunications markets. Carriers will be precluded from exchanging traffic outside of the international

settlements policy with carriers on the list unless otherwise allowed by the rules. The Commission developed this list to provide carriers with a means of identifying carriers that lack market power in the foreign market.

FOR FURTHER INFORMATION CONTACT: Robert McDonald, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION:

Released: May 6, 1999.

In the *1998 Biennial Regulatory Review—Reform of the International Settlements Policy and Associated Filing Requirements*, IB Docket No. 98–148 and CC Docket No. 90–337, Report and Order and Order on Reconsideration FCC 99–73 (released May 6, 1999 and published elsewhere in this issue), the Federal Communications Commission (Commission) modified its rules to remove its requirement that agreements between U.S. telecommunications carriers and foreign carriers that lack market power in the foreign telecommunications market conform to the Commission's international settlements policy (ISP). The Commission's rules include a presumption that a foreign carrier does not possess market power on the foreign end of a U.S. international route if it possesses less than 50 percent market share in each of three relevant foreign product markets: international transport facilities, including cable landing station access and backhaul facilities; intercity facilities and services; and local access facilities and services on the foreign end.

The Commission stated that it would issue a list of carriers that do not qualify for this presumption. U.S. international carriers would be precluded from exchanging traffic outside of the ISP with carriers on the list unless otherwise allowed. U.S.-authorized carriers would also be precluded from agreeing to accept special concessions (as defined in Section 63.14 of the Commission's rules) from carriers on the list unless otherwise allowed under the Commission's rules. The Commission found that this approach best advances the policy of allowing U.S. carriers to enter into arrangements with foreign carriers that lack market power with a minimum of regulatory oversight, while maintaining the ISP for certain arrangements with foreign carriers that possess market power in the foreign market.

The following list specifies particular foreign carriers that do not qualify for this presumption. The list is based on publicly available information, compiled from official sources, including the International Telecommunication Union. Interested parties may challenge the inclusion or exclusion of any carrier on the list by submitting a petition for declaratory ruling and the appropriate supporting documentation to demonstrate that a carrier included on the list lacks market power or that a carrier not included does not lack market power. This list applies only for purposes of determining those foreign carriers that are subject to our ISP, our rules on providing switched services over private lines, and the No Special Concessions rule. It does not apply for purposes of market power determination under Sections 63.10 (Regulatory classification of international carriers) or 63.18 (Contents of applications for international common carriers).

The list below will be posted on the International Bureau's World Wide Web site. (http://www.fcc.gov/ib).

Destination market	Dominant operators
Afghanistan:	Cable Alcao Kabul.
Albania	Albania Telecom.
Algeria	Ministére des Postes et Télécommunications (MPT).
Angola	Angola Telecom.
Antigua and Barbuda	Cable & Wireless.
Argentina	Telintar.
Armenia	Armentel.
Australia	Telstra.
Austria	Post and Telekom Austria AG (PTA).
Azerbaijan	Ministry of Communication.
Bahamas	Bahamas Telecommunications Corporation (Batelco).
Bahrain	Bahrain Telecommunications Company (BATELCO).
Bangladesh	Bangladesh Telegraph & Telephone Board.
Barbados	Barbados External Telecommunications Ltd. (BET).
Belarus	Beltelecom.
Belgium	Belgacom.
Belize	Belize Telecommunications Ltd.
Benin	Office des postes et télécommunications (OPT).
Bermuda	Cable & Wireless Bermuda.
Bhutan	Bhutan Telecom.
Bolivia	Empresa Nacional de Telecomunicaciones S.A.
Bosnia and Herzegovina	Post Telephone & Telegraph of Bosnia and Herzegovina. Telekom Republike Srpske.
Botswana	Botswana Telecommunications Corporation (BTC).
Brazil	Embratel.
Brunei	Jabatan Telekom Brunei (JTB).
Bulgaria	Bulgarian Telecommunications Company (BTC).
Burkino Faso	Office national des télécommunications (ONATEL).
Burma	Myanmar Posts & Telecommunications.
Burundi	Office National des Télécommunications (ONATEL).
Cambodia	Directorate of Posts and Telecommunications (DPTK).
Cameroon	Société des Télécommunications Internationales du Cameroun (INTELCAM).
Canada	Stentor Alliance (BC Tel, Bell Canada, Island Tel. Manitoba Telecom Services, Inc., Maritiem Tel&Tel, NewTel Communications, NBTel, and Telus).
Cape Verde	Cabo Verde Telecom Sarl.
Central African Rep	Société Centrafricaine des Télécommunications (SOCATEL).
Chad	Société des Télécommunications Internationales du Tchad (TIT).
Chile	CTC.

Destination market	Dominant operators
China	China Telecom.
Colombia	Empresa Nacional de Telecomunicaciones.
Comoros	Société Nationale des Postes et Télécommunications (SNPT).
Congo	Office National des Postes et des Télécommunications (ONPT).
Costa Rica	Instituto Costariccense de Electicidad (ICE).
Côte d'Ivoire	Société Côte d'Ivoire-TELECOM (CI–TELECOM).
Croatia	Croatian Post and Telecommunications (HPT).
Cuba	Empresa Telecomunicaciones de Cuba S.A. (ETECSA).
Cyprus	Cyprus Telecommunications Company.
Czech Rep	SPT Telecom.
Dem. Rep. of Congo	Office Congolais des Postes et des Télécommunications (OCPT).
Denmark	Tele Danmark A/S.
Djibouti	Société Telecom International (STID).
Dominica	Telecommunications of Dominica.
Dominican Republic	Compañía Dominicana de Teléfonos (CODETEL).
Ecuador	Emetel. Andinatel. Pacifictel.
Egypt	Egypt Telecom.
El Salvador	Compañía de Telecomunicaciones de El Salvador.
Equatorial Guinea	La Sociedad Anonima de Telecomunicaciones de la.
Republica de	Guinea Ecuatorial (GETESA).
Eritrea	Telecommunications Services of Eritrea (TSE).
Estonia	Estonian Telephone Company.
Ethiopia	Ethipian Telecommunications Corporation (ETC).
Finland	Sonera Ltd.
France	France Télécom.
Gabon	Télécommunications Internationales Gabonaises (TIG).
Gambia	Gambia Telecommunications Company, Ltd. (GAMTEL).
Georgia	Georgia Telecom.
Germany	Deutsche Telekom AG.
Ghana	Ghana Telecommunications Company.
Greece	Hellenic Telecommunications Organization (OTE).
Grenada	Grenada Telecommunications.
Guatemala	Telecomunicaciones de Guatemala (Telgua).
Guinea	Société des Télécommunications de Guinée (SOTELGUI).
Guinea-Bissau	Companhia de Telecomunicaoes da Guiné-Bissau, sarl (Guiné-Telecom).
Guyana	Guyana Telephone and Telegraph Ltd.
Haiti	Telecommunications d'Haiti S.A.M.
Holy See (Vatican City)	Telecom Italia.
Honduras	Empresa Hondureña de Telecomunicaciones.
Hong Kong	Hong Kong Telecom.
Hungary	Hungarian Telecommunication Co. (MATAV).
Iceland	Landssiminn.
India	Videsh Sanchar Nigam Limited (VSNL).
Indonesia	PT Indosat.
Iran	Telecommunciations Company of Iran.
Iraq	Ministry of Telecommunications.
Ireland	Telecom Eireann.
Israel	Bezeq.
Italy	Telecom Italia.
Jamaica	Cable & Wireless Jamaica.
Japan	Kokusai Denshin Denwa Co., Ltd. (KDD). Nippon Telegraph & Telephone Corporation (NTT).
Jordan	Jordan Telecommunications Corporation (JTC).
Kazakhstan	Kazakhtelecom.
Kenya	Kenya Posts and Telecommunication Corporation (KPTC).
Kiribati	Telecom Services Kiribati Limited.
Korea (South)	Korea Telecom.
Korea (North)	Pycompute Pyongyang.
Kuwait	Ministry of Communications.
Kyrgyszstan	Kyrgyztelecom.
Laos	Enterprise of Telecommunications Lao (ETL). Lao Shinawatra Telecom Company.
Latvia	Lattelekom.
Lebanon	Ministry of Posts and Telecommunications.
Lesotho	Lesotho Telecommunications Corporation (LTC).
Liberia	Ministry of Posts and Telecommunications.
Libya	General Post and Telecommunications Company (GPTC).
Liechtenstein	Swiss Telecom PTT.
Lithuania	Lietuvos Telekom.
Luxembourg	Luxembourg PTT.
Macedonia	Macedonian Telecom.
Madagascar	Telecom Malagasy (TELMA).

Destination market	Dominant operators
Malawi	Malawi Posts and Telecommunications Corporation (MPTC).
Malaysia	Telecom Malaysia.
Maldives	DHIRAAGU.
Mali	Société des Télécommunications du Mali (SOTELMA).
Malta	Telemalta Corporation.
Marshall Islands	National Telecommunications Authority.
Mauitania	Office des postes et des télécommunications (OPT).
Mauritius	Mauritius Telecom Limited.
Mayotte	France Télécom.
Mexico	Telefonos de Mexico (TelMex).
Micronesia	FSM Telecommunications.
Moldova	Moldtelecom.
Monaco	France Télécom.
Mongolia	Mongolia Telecommunications Company.
Morocco	Itissalat Al Maghrib.
Mozambique	Telecomunicaçoes de Moçambique.
Namibia	Telecom Namibia.
Nauru	Nauru Telcom.
Nepal	Nepal Telecommunications Company.
Netherlands	KPN Telecom N.V.
Netherlands Antilles	Antelecom N.V.
New Zealand	Telecom Corporation of New Zealand Ltd. (TCNZ).
Nicaragua	Enitel.
Niger	Société nigérinne des télécommunications (SONITEL).
Nigeria	Negerian Telecommunications plc.
Norway	Telenor AS.
Oman	General Telecommunications Organization (GTO).
Pakistan	PAK-Telecom.
Palau	Palau National Communications Corporation (PNCC).
Palestine	Palestine Telecommunications Company P.L.C. (PALTEC).
Panama	INTEL.
Papua New Guinea	Post & Telecommunications Commission.
Paraguay	Antelco.
Peru	Telefónica del Peru.
Philippines	Philippines Long Distance Telephone Company (PLDT).
Poland	Telekomunikacja Polska S.A.
Portugal	Portugal Telecom S.A.
Qatar	Qatar Public Telecommunications Corporation.
Réunion	France Télécom.
Romania	Romtelecom.
Russia	Rostelecom.
Rwanda	Rwandatel S.A. (RWANDATEL).
St. Kitts and Nevis	Cable & Wirless.
St. Lucia	Cable & Wireless.
St. Vincent and the Grenadines	Cable & Wireless.
San Marino	Telecom Italia.
Sao Tomé & Principe	Companhia Santomense de Telecomunicações, s.a.r.l. (CST).
Saudi Arabia	Saudi Telecommunications Company.
Senegal	Société Nationale des Télécommunications du Sénégal (SONATEL).
Serbia and Montenegro	Serbija Telecom.
Seychelles	Cable & Wireless (Seychelles) Ltd.
Sierra Leone	Sirra Leone Telecommunications Company (SIRRATEL).
Singapore	Singapore Telecom.
Slovakia	Slovak Telecom (ST).
Slovenia	Telecom Slovenia.
Solomon Islands	Solomon Telekom Company.
Somalia	Ministry of Posts and Telecommunications.
South Africa	Telkom SA Limited.
Spain	Telefónica.
Sri Lanka	Sri Lanka Telecom.
Sudan	Sudan Telecommunications Company Ltd. (Sudatel).
Suriname	Telesur.
Swaziland	Swaziland Posts and Telecommunications Corporation (SPTC).
Sweden	Telia.
Switzerland	Swisscomm.
Syria	Syrian Telecommunications Establishment (STE).
Taiwan	Chunghwa Telecom.
Tajikistan	Tajiktelecom.
Tanzania	Tanzania Telecommunications Company Limited (TTCL).
Thailand	Telephone Organization of Thailand (TOT).
Togo	Société des Télécommunications du Togo (TOGO TELECOM).
Trinidad and Tobago	Telecom Services of Trinidad and Tobago
Tunisia	Tunisie Telecom.
Turkey	Turk Telekomunikasyon A.S.

Destination market	Dominant operators
Turkmenistan	Turkmentelecom.
Tuvalu	Ministry of Labor, Works and Communications.
Uganda	Uganda Posts and Telecommunications Corporation (UPTC).
Ukraine	Utel.
United Arab Emirates	The Emirates Telecommunications Corp. Ltd. (Etisalat).
United Kingdom	British Telecom.
Uruguay	Administración Nacional de Telecomunicationes.
Uzbekistan	Halqaro Telecom.
Vanuatu	Vanuatu Telecom.
Venezuela	Compañia Anónima Nacional Teléfonos de Venezuela.
Vietnam	Viet Nam Post and Telecommunications Corporation (VNPT).
Western Samoa	Postal and Telecommunications Department.
Yemen	Yemen International Telecommunications Company (TELEYEMEN).
Zambia	Zambia Telecommunications Company Limited (Zamtel).
Zimbabwe	Posts and Telecommunications Corporation (PTC).

Additional Carriers Included on This List

All incumbent local exchange carriers in the destination markets above.

All carriers that control, are controlled by, or are under common control with, a carrier listed above in the particular destination market.

For additional information, please contact Robert McDonald or Kathy O'Brien, Telecommunications Division, International Bureau, (202) 418–1470.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–16033 Filed 6–28–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of Certain Receiverships by the FDIC in the Third Quarter of 1999

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: Notice is hereby given that the FDIC, for itself or as successor in interest to the Resolution Trust Corporation, in its capacity as Receiver for the Institutions set forth below (the Receiver) intends to terminate these receiverships during the third calendar quarter of 1999.

FOR FURTHER INFORMATION CONTACT: Division of Resolutions and Receiverships, Terminations Section, 1–800–568–9161.

SUPPLEMENTARY INFORMATION:

Financial institution No. and name	City	State
1123 United American Bank in Knoxville	Knoxville	TN
1213 First Federal Savings Bank of South Dakota	Rapid City	SD
1245 Potomac Federal Savings Bank	Silver Spring	MD
1262 Jacksonville Federal Savings Association	Jacksonville	FL
1264 Goldome Federal Savings Bank	St. Petersburg	FL
2117 First Federal Savings Association of Toledo	Toledo	OH
2132 The First, F.A.	Orlando	FL
2136 Atlantic Financial Federal—West Virgina, F.S.A.	Charleston	WV
2195 Trustbank Federal Savings Bank	Tysons Corner	VA
4245 Milford Savings Bank	Milford	MA
4286 First American Bank for Savings	Boston	MA
4309 Bank of New England	Boston	MA
4310 Connecticut Bank & Trust Co., N.A.	Hartford	CT
4311 Maine National Bank	Portland	ME
4371 First Mutual Bank for Savings	Boston	MA
4434 The Bank Mart	Bridgeport	CT
4450 The Central Savings Bank	Lowell	MA
4550 The Merchants Bank	Kansas City	MO
4588 Jefferson Bank & Trust	Lakewood	CO
4606 Mechanics National Bank	Paramount	CA
4620 First Trust Bank	Ontario	CA
4627 The First National Bank of the Panhandle	Panhandle	TX
4629 Commonwealth Thrift and Loan	Torrance	CA
4634 Victory State Bank	Columbia	SC
6852 Heritage Bank & Trust	Salt Lake	UT
6915 Enterprise Federal Savings and Loan Association	Marrero	LA
6959 San Antonio Savings Association, F.A.	San Antonio	TX
7047 Lincoln Federal Savings and Loan Association	Miami	FL
7064 Lincoln Federal Savings and Loan Association	Mt. Carmel	TN
7070 Gill Savings Association	Hondo	TX
7093 Universal Federal Savings Association	Houston	TX
7094 Metropolitan Financial Federal Savings and Loan Association	Dallas	TX
7098 Frontier Federal Savings Association	Walla Walla	WA
7164 Independence Federal Bank, Federal Savings Bank	Batesville	AR
7169 City Federal Savings and Loan Association	Birmingham	AL

Financial institution No. and name	City	State
7220 Nassau Savings and Loan Association F.A.	Brooklyn	NY
7258 Mid-America Federal Savings and Loan Association	Columbus	OH
7277 Statesman Federal Savings Bank	Des Moines	IA
7364 First Federal Savings Association of Conroe	Conroe	TX
7590 Silverado Banking, Savings and Loan Association	Denver	CO
7793 Goldome Savings Bank, FSB	St. Petersburg	FL
7964 Jacksonville Federal Savings Bank	Jacksonville	FL
8235 Nassau Federal	Brooklyn	NY

The liquidation of the assets of these receiverships is expected to be completed no later than September 30, 1999. To the extent permitted by available funds and in accordance with law, the Receiver for these institutions will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of such receiverships will serve no useful purpose. Consequently, notice is given that the receiverships will be terminated, as soon as practicable but no sooner than thirty (30) days after the date this Notice is published.

If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date this Notice is published to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Terminations Department, 1910 Pacific Avenue, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Federal Deposit Insurance Corporation.

Dated: June 23, 1999.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–16435 Filed 6–28–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Tuesday, July 6, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 25, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16692 Filed 6–25–99; 3:39 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Premerger Notification: Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of amendment of Formal Interpretation 15.

SUMMARY: The Premerger Notification Office ("PNO") of the Federal Trade Commission ("FTC"), with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice ("DOJ"), is amending a Formal Interpretation of the Hart-Scott-Rodino Act, which requires persons planning certain mergers, consolidations, or other acquisitions to report information about the proposed transactions to the FTC and DOJ. The Interpretation concerns the reportability of certain transactions involving the formation of a Limited Liability Company ("LLC"), a relatively new form of entity authorized by state statutes, resulting in the combination of businesses into the new LLC.

This Formal Interpretation was first published on October 13, 1998, together with a request for comments, to become effective on December 14, 1998. 63 FR 54713 (October 13, 1998). The PNO received six comments which were placed on the public record. On December 2, 1998, the effective date of this Interpretation was postponed until February 1, 1999, to give the PNO staff more time to analyze and respond to the comments. 63 FR 66546 (December 2, 1998).

Formal Interpretation 15 was modified in response to the comments and republished on February 5, 1999. 64 FR 5808 (February 5, 1999). Under the revised Interpretation, the formation of an LLC which combines under common control in the LLC two or more pre-existing businesses will be treated as subject to the requirements of the HSR act under § 801.2(d) of the HSR rules, 16 CFR 801.2(d), which governs mergers and consolidations. Because Formal Interpretation 15 had been modified substantially, the effective date of the Interpretation was postponed until March 1, 1999. *Id.*

Shortly after the Interpretation became effective, it became apparent that the Interpretation as it applies to transactions involving existing LLCs does not give clear guidance. The section of the Interpretation dealing with acquisitions of and by existing LLCs has therefore been amended in a number of respects to explain how much transactions are to be analyzed. First, the first full paragraph in the third column 64 FR 5809 (February 5, 1999) has been deleted. Second, the four paragraphs in this notice which begin with the phrase "The acquisition of a membership interest in an existing LLC will be a potentially reportable event * * *" and end with phrase "* * * whether there is a change in any member's membership interest." have been inserted between the carryover paragraph and the first full paragraph in the second column at 64 FR 5810. Third, Example 2, at 64 FR 5811, has been revised in a number of respects. Fourth, a new Example 3 has been added, and current Examples 3 and 4 at 64 FR 5811 have been renumbered as Examples 4 and 5, Fifth, a new Example 6 has been added, and current Examples

6–8 at 64 FR 5811 have been renumbered as Example 8–10. Finally, current Example 8 (now Example 10) has been revised a number of respects. The new language in the Interpretation is shown in italics.

Formal Interpretation 15, as published on February 5, 1999, will continue in effect until the Amended Formal Interpretation 15 becomes effective.

DATES: The Amended Formal Interpretation 15 will become effective on July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Richard B. Smith, Deputy Assistant Director, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone (202) 326–2850. Thomas F. Hancock, Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–2946.

SUPPLEMENTARY INFORMATION: The text of Formal Interpretation Number 15, as amended, is set out below.

Formal Interpretation Number 15

Formal Interpretation pursuant to § 803.30 of the Premerger Notification Rules, 16 CFR 803.30, Concerning the Reporting Requirements for the Formation of Certain Limited Liability Companies ("LLCs").

This is a Formal Interpretation pursuant to § 803.30 of the Premerger Notification Rules ("the rules"). The rules implement Section 7A of the Clayton Act, 15 U.S.C. 18a, which was added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the act"). This Formal Interpretation and a request for comments were originally published on October 13, 1998, to become effective on December 14, 1998. *See* 63 FR 54713 (October 13, 1998). The PNO staff received six comments. The staff postponed the effective date until February 1, 1999, in order to have more time to analyze these comments. 63 FR 66546 (December 2, 1998). Formal Interpretation 15, published here, has been modified substantially in response to the comments received and postpones the effective date until March 1, 1999.

The act requires the parties to certain acquisitions of voting securities or assets to notify the FTC and the DOJ and to wait a specified period of time before consummating the transaction. The purpose of the act and the rules is to ensure that such transactions receive meaningful scrutiny under the antitrust laws, with the possibility of an effective remedy for violations, prior to consummation. Under the rules, certain types of transactions, such as mergers, consolidations, and the formation of corporate joint ventures, are treated as acquisitions of voting securities potentially subject to the act, while other transactions, such as the formation of partnerships, are deemed non-reportable. See §§ 801.2(d) and 801.40 of the rules, 16 CFR 801.2(d) and 801.40.

The LLC [1] is a relatively new form of business organization that is neither a partnership nor a corporation but a hybrid legal entity that combines certain desirable features of both partnerships and corporations. Specifically, an LLC is taxed as a partnership but shields its members from liability as a corporation shields its shareholders. The first LLC statute was passed in 1977 by Wyoming [2] and a trickle of other states followed. The use of LLC's expanded significantly after 1988 when the Internal Revenue Service ("IRS") concluded that an LLC organized under the Wyoming statute was taxable as a partnership.[3] By 1993 all 51 jurisdictions had LLC laws of one form or another.

When it first encountered these types of organizational structures, the PNO concluded that as "companies" LLCs are "entities" within the meaning of § 801.1(a)(2), 16 CFR 801.1(a)(2), and that, until it had more experience with them, the PNO would treat LLCs like corporations. Initially, therefore, § 801.40 of the rules, 16 CFR 801.40, "Formation of joint venture or other corporations," governed the formation of LLCs and an interest in an LLC was treated as a voting security for HSR purposes.

On further analysis, the PNO concluded that this initial approach was too inclusive. LLCs at the time were primarily used as vehicles for the creation of start-up businesses. The PNO's treatment of LLCs resulted in requiring HSR filings in a large number of transactions that did not raise antitrust concerns. Furthermore, the PNO believed that in most LLCs the interest held by the members of the LLC was more like a partnership interest than a voting security interest. Consequently, in 1994, the PNO began to informally advise parties that the treatment of LLCs for reporting purposes would depend on a determination of whether the interest acquired in the LLC was more like a voting security interest or more like a partnership interest.[4]

This treatment of LLCs has not been completely satisfactory. The use of LLCs has evolved, and while LLCs continue to be used as vehicles for start-up enterprises, they are now often used to combine competing businesses under common control. Indeed, the Commission's litigation staff has investigated several transactions raising potential antitrust concerns involving the formation of LLCs. In these transactions, previously separate businesses were combined under common control when they were both contributed to a single, newly-formed LLC. Nevertheless, the creation of the LLC to combine competing businesses under common control was typically not treated as reportable under the PNO's then-current treatment. However, the union of competing businesses under common control is of obvious potential antitrust concern. Since the past treatments of LLCs have not been satisfactory at singling out those transactions that were the most likely to have anticompetitive effects, the PNO staff has decided to revise its approach to LLCs in order to better carry out the purposes of the act.

The formation of an LLC into which two or more businesses are contributed, like other unions of businesses under common control, is a kind of merger or consolidation.[5] Section 801.2(d)(1)(i) of the rules, 16 CFR 801.2(d)(1)(i), states that "[m]ergers and consolidations are transactions subject to the act * * *."[6]

[1] This Formal Interpretation applies only to the reportability of the formation of certain LLC's. The position of the FTC staff on the status and treatment under the act of other non-corporate entities such as partnerships remains unchanged.

[2] *Wyo Stat.* §§ 17–15–101 to —135 (Supp. 1989).

[3] Rev. Rul. 88–76, 1988–2 C.B. 360, 361.

[4] Specifically, the information of an LLC was treated as potentially reportable only if the LLC had a group that functioned like a board of directors and the LLC ownership interest resulted in the holders appointing person(s) other than their employees, officers, or directors (or those of entities controlled by such holder or its ultimate parent entity) to that group. In such cases, the LLC interest was treated as a voting security interest. In all other instances, LLC interests were treated as partnership interests and the acquisition of these interests was not reportable (unless the acquiring person would hold 100 percent of the interests as a result of the acquisition).

[5] While combining businesses in an LLC may not be a "merger" or "consolidation" in the strictest sense because they do not involve corporations, the rationale of this interpretation is similar to that used by the PNO under § 801.2(d) to require filing for acquisitions of non-profit corporations which, like LLCs, typically do not issue voting securities. (See ABA, The Premerger Notification Practice Manual, 1991 ed., Interp. #109.)

[6] In fact, as it was originally promulgated in 1978, § 801.2(d)(1)(I), 16 CFR 801.2(d)(1)(I), stated that "[a] merger, consolidation, or *other transaction combining all or any part of the business of two or more persons* shall be an acquisition subject to the act * * *." (emphasis added) 43 FR 33539, July 31, 1978. In 1983, this section was changed to clarify the treatment of mergers and consolidations under the rules, and the italicized wording was eliminated. However, there is no indication that

Continued

A filing requirement for those LLC formations that involve the combination of businesses is appropriate and advances the purposes of the act and the rules, namely, to ensure that the antitrust enforcement agencies have advance notice of, and a timely opportunity to challenge, transactions which may violate the antitrust laws.

This Formal Interpretation, therefore, changes the PNO's treatment of LLC's as follows: The PNO will henceforth treat as reportable the formation of an LLC if (1) two or more preexisting, separately controlled businesses will be contributed, and (2) at least one of the members will control the LLC (i.e., have an interest entitling it to 50 percent of the profits of the LLC or 50 percent of the assets of the LLC upon dissolution.[7] The formation of all other LLCs will be treated similar to the formation of a partnership which, under the PNO's longstanding position on partnership formations, will not be reportable.

In determining what is a "business" for purposes of this Interpretation, the PNO will look to the definition of "operating unit" for purposes of § 802.1(a) of the rules, 16 CFR 802.1(a), namely, "* * * assets that are operated * * * as a business undertaking in a particular location or for particular products or services, even though those assets may not be organized as a separate legal entity." In addition, for purposes of this Formal Interpretation, the contribution to an LLC of an interest in intellectual property, such as a patent, a patent license, know-how, and so forth, which is exclusive against all parties including the grantor, is the contribution of a business, whether or not the intellectual property has generated any revenues.

Under this Interpretation, the approach of § 801.2(d) will be used to determine the acquiring person(s) and acquired person(s) for potentially reportable LLC formations.[8] Section 801.2(d)(2)(i) states that "[a]ny person party to a merger or consolidation is an *acquiring person* if as a result of the transaction such person will hold any *assets or voting securities* which it did not hold prior to the transaction" (emphasis added). In the context of the formation of a new LLC, this means that any person that will control an LLC in which two or more previously separate businesses will be combined will be an acquiring person. Thus, if "A" and "B" form a 60–40 LLC, the 60 percent member, "A," will be an acquiring person with respect to the contributions of "B." Section 801.2(d)(2)(ii) states that "[a]ny person party to a merger or consolidation is an *acquired person* if as a result of the transaction the assets or voting securities of any entity included within such person will be held by any other person" (emphasis added). In the above example of the formation of a 60–40 LLC, "B" would therefore be an acquired person. If "A" and "B" were to form a 50–50 LLC to which both were to contribute businesses, both would be both acquiring and acquired persons because both would control the LLC and thus hold assets or voting securities it did not hold prior to the transaction. "A" and "B" would file in both capacities, assuming the relevant size criteria were met. Thus, both the acquiring and acquired persons will be required to file notification and, in accordance with § 803.10 of the rules, the 30-day waiting period will begin when both persons have substantially complied with the notification requirements.

Under this Interpretation, the nature of the acquisition(s) taking place when an LLC is formed, that is, whether it is an acquisition of assets or of voting securities, depends on what is being contributed by the other member(s) of the LLC.[9] In the 50–50 LLC described above, suppose that "A" contributes a group of assets constituting a business and "B" contributes 50 or more percent of the voting securities of a corporate subsidiary, S. In this example, "B" will be deemed to have made an acquisition of assets and "A," an acquisition of voting securities.

In addition, any exemption in the act of rules that would make any other acquisition non-reportable may make the acquisition by one or more of the contributors to an LLC non-reportable. If, for example, "A's" asset contribution consists of hotel properties the acquisition of which would be exempt under § 802.2(e), "B's" acquisition in the formation of this LLC would not be reportable. Similarly, if S has sales and assets of less than $25 million and the value of the S stock that will be held by "A" as a result of the acquisition is $15 million or less, then "A's" acquisition in the formation would be exempted by § 802.20(b).

To determine whether a filing is required, the parties to potentially reportable formation transactions also must determine the size-of-person and size-of-transaction, which should be done just as in any other asset or voting securities acquisition in accordance with §§ 801.10 and 801.11 of the HSR rules. Since these transactions are similar to asset exchanges, for most such transactions there will not be a determined acquisition price for the acquired assets or voting securities to use in applying the size-of-transaction test. For such transactions, parties should use the market price or fair market value where another contributor contributes 50 or more percent of the voting securities of an issuer (see § 801.10(a)), or the fair market value where another contributor puts assets constituting a business into the LLC (see § 801.10(b)).

The acquisition of a membership interest in an existing LLC will be a potentially reportable event (1) if it results in the acquiring person holding 100 percent of the membership interests in that LLC, and (2) that person had not previously filed for and consummated the acquisition of control of that LLC. Such an acquisition is reportable as the acquisition of all the assets of the LLC. This is similar to the PNO's treatment of acquisitions of partnership interests.

Acquisitions of additional businesses by existing LLCs fall into one of two categories. First, those that result in a change in the percentage membership interest of any member will be treated by the PNO as the formation of a new LLC under this Interpretation. In such a new formation, the acquisition by any person that will control the new LLC of the assets or voting securities of the business(es) being contributed that it did not previously control is potentially reportable. Both additional businesses and the business(es) already in the existing LLC are regarded as being contributed to the new LLC. These transactions should be analyzed using the criteria for formations. Accordingly, persons will be regarded as acquiring only those businesses that they come to control as a result of the transaction.

Second, those acquisitions of businesses by existing LLCs that do not result in a change in the percentage membership interest of any member are not treated as new formations but, rather, as the acquisition of the assets or voting securities of the business by the LLC or, if it is controlled, by its ultimate parent entity, or entities, and, as such, are potentially reportable.

The acquisition by an existing LLC of assets or voting securities not constituting a business will be treated as the acquisition of assets or voting securities by the LLC or, if it is controlled, by its post-acquisition ultimate parent entity, or entities, and, as such, is potentially reportable. This treatment will pertain without regard to whether there is a change in any member's membership interest.

This Formal Interpretation will not require reporting of some LLC formations and some acquisitions of existing LLC interests that would have required reporting under the Interpretation announced by the PNO in October of 1998. Unlike the October version, this Formal Interpretation requires reporting of the formation of an LLC only if the formation brings together with the LLC two formerly separately controlled businesses. Comments received suggested that the treatment announced in the October version would have covered a substantial number of LLCs that are not likely to raise competitive concerns. For example, the October Formal Interpretation would have viewed LLCs that are created solely as financing vehicles as reportable. In these transactions, a financial institution (or other party providing financing) in the ordinary course of its business contributes only cash or other financial assets and one other party contributes one or more operating units to a new LLC that the financial institution may control for HSR purposes, at least for a period of time. Under this revised Interpretation, so long as such financing transactions do not result in the contribution of a business to the LLC by two or more members, it will not be treated as reportable.[10]

As described above, except for a situation where, as a result of an acquisition, the acquiring person would hold 100 percent of the interests in an existing LLC, no acquisition of an interest in an existing LLC is reportable under this Interpretation. Several comments indicated that LLC agreements are sometimes entered into in which the right to receive more than 50 percent of the LLC's profits shifts from one member to another upon the happening of some event outside the control—or even the knowledge—of the members. Under the definition of control applicable to LLCs (*i.e.*, § 801.1(b)(ii)), under the October Interpretation, such a shift in the right to receive profits might have created a reporting obligation. The commenters argued that it would be unduly burdensome to require the beneficiaries of such shifts to file and that no substantive law enforcement interest would be served. The PNO does not intend that such shifts be reportable under this Formal Interpretation. Since such a shift would be the post-formation acquisition of any interest in an existing LLC without the contribution of another business, it will not be treated as subject to the reporting requirements of the act.

Some of the reasons for concluding that the formation of certain LLCs should be treated as reportable may apply equally well to partnerships. The position of the PNO, however, is that the formation of a partnership is not reportable and acquisitions of partnership interests that do not result in one person's holding 100 percent of the interests in a partnership are non-reportable. Several comments received on the Formal Interpretation published in October suggested that no change to the treatment of partnerships was necessary at this time. The treatment of partnerships was originally adopted, in part, because of the difficulty of monitoring compliance with HSR reporting obligations since many partnerships can be formed informally or by implication in many typical business arrangements. Furthermore, there has been no suggestion in any of the comments that partnerships are being used with any greater frequency now to combine competing businesses. Consequently, the PNO has decided not to change its treatment of partnerships at this time, but it may re-visit this issue in the future as developments require.

The following examples are an integral part of this Formal Interpretation:

1. "A" and "B" both plan to contribute businesses to a new LLC in which each will acquire a 50 percent interest. This LLC formation would involve both "A" and "B" making reportable acquisitions if the size-of-person and size-of-transaction tests are met. Each acquisition would be reportable unless exempted by Section 7A(c) of the act or Part 802 of the HSR rules. "A" would file as an acquiring person and "B" as an acquired person for "A's" acquisition of the assets being contributed by "B," and "B" would file as an acquiring person and "A" as an acquired person for "B's" acquisition of the assets contributed by "A." If "A" or "B" (or both) contributed 50 percent or more of the voting securities of a corporation, the acquisition(s) would be treated as an acquisition of voting securities of the issuer whose shares are contributed.

2. "A," "B," and "C" form an LLC in year 1 in which each receives a one-third interest and to which each contributes a business valued at approximately $20 million. "A," "B," and "C" are $100 million persons. This formation would not be reportable because no member controls the LLC. In year 2, "X," also a $100 million person, acquires the membership interests of "A" and "B" for cash. This would not be reportable because *acquisitions of membership interests in existing LLCs are potentially reportable only if they result in one person holding 100 percent of the interests in the LLC. Note that if "X" also contributes a business to the LLC in exchange for the LLC membership interest it receives, the transaction will be treated as the formation of a new LLC. The acquisition of the new business will not be reportable because "X" already controls it. "X" may, however, have a filing obligation as an acquiring person with respect to the businesses already in the LLC if the size tests are met and no exemption applies. The existing LLC would be the acquired person because no member controls it.* Note also that in the example where "X" contributed only cash and did not file under HSR, if "X" were subsequently also to acquire "C's" membership interest it would then hold 100 percent of the interests in this LLC and would therefore have to file for the acquisition of all of the assets of the LLC.

3. In year 1, "A" and "B" form an LLC to which "A" contributes a business and takes back a 60 percent interest and "B" contributes cash and takes back a 40 percent interest. This transaction is not reportable. Suppose, however, that in year 4:

a. "B" contributes a new business, "A" contributes cash, and there is no change in percentage membership interests. This would not be analyzed as a new formation but would be treated as an acquisition by the LLC. "A," as the ultimate parent entity of the LLC, would file as acquiring and [illegible] as acquired for the acquisition of t[illegible]

b. "A" contr[illegible] contrib[illegible] change [illegible] "B" [illegible] This is a new forma[illegible] the changes in the

[7] Of course, as with all transactions, the HSR size of person and size of transaction requirements need to be met as well, and exemptions may apply.

[8] The Formal Interpretation as published in October described a method to determine reportability that was based on concepts found in § 801.40 of the HSR rules, 16 CFR 801.40. Certain comments suggested that such an approach was confusing and would increase the likelihood that parties would make erroneous conclusions on their reporting obligations. In light of those comments, and the change in approach this Formal Interpretation adopts, there will no longer be any need to look to § 801.40 to determine reporting obligations.

[9] In this respect, the Interpretation necessarily departs from the text of § 801.2(d)(1)(i), which provides that all mergers and consolidations shall be treated as acquisitions of voting securities.

[10] There is no evidence to suggest now that LLC formations where only one business is contributed are being used to accomplish a merger or consolidation of two businesses. However, the PNO will look carefully at these transactions in the future and, it they begin to be used to accomplish a merger or consolidation, will re-visit this issue.

membership interests but it is not reportable because two or more separately controlled businesses are not being contributed, as "A" controlled both businesses before the transaction.

c. "B" contributes a business, "A" contributes cash, and their interests change so that "A" has 59 percent and "B" has 41 percent. This is also a new formation. "A" will file to acquire the business being contributed by "B."

d."B" contributes a business and the membership interests change so that "B" has 60 percent and "A" has 40 percent. This is a new formation, and "B" would file to acquire the business contributed by the LLC. "A," as the ultimate parent entity of the existing LLC, would file as the acquired person.

e. "C" contributes assets not constituting a business and the percentage interests are adjusted so that "A" has 50 percent,"B" has 30 percent, and "C" has 20 percent. This is not a new formation because the assets being contributed are not a business. "A," as ultimate parent entity of the LLC, will file to acquire these assets from "C."

4. "A" and "B" form a new LLC, to which "A" will contribute its widget business and "B" will contribute cash for operating capital. This formation would not be reportable because two previously separate businesses are not being contributed to the LLC.

5. "A," "B," and "C" form a 60–20–20 LLC to which "A" contributes cash and receives a 60 percent membership interest and "B" and "C" each contribute an operating unit for a 20 percent interest. This is a kind of a consolidation of "B's" and "C's" operating units into the new LLC and "A" will control the LLC. There are two reportable transactions (assuming the size criteria are met and no exemption applies): "A" acquiring the operating unit contributed by "B," and "A" acquiring the operating unit contributed by "C".

6. In year 1, "A," "B," and "C" form a new LLC to which each contributes a business and takes back a one-third membership interest. In year 4, the LLC acquires all the voting securities of another business from "D" in exchange for certain assets not constituting a business. This acquisition would not be analyzed as the formation of a new LLC because no member's percentage interest changes as a result of the transaction. Rather, the LLC would be viewed as acquiring the voting securities of the new business from "D." This transaction will be reportable if the size criteria are met and no exemption applies. "D" will, of course, have to analyze its acquisition of assets from the LLC to determine if it is also reportable.

7. "A" proposes to consolidate its widget business, which it has conducted in two subsidiaries and a division, into a newly-formed LLC in which it will hold a 60 percent membership interest. This would not be reportable because, although separate businesses are being combined, they were not under separate control prior to the transaction.

8. "A," "B," and "C" form a new LLC in which "A" will have a 60 percent interest and "B" and "C" each will have 20 percent interests. "A," a large, international pharmaceutical company, contributes $100 million in cash and the assets of a pharmaceutical product which is currently on the market. This pharmaceutical product line constitutes a business. "B" contributes licenses to several patents which it will also continue to use to manufacture various drugs. "C" will contribute licenses which are exclusive even against itself for several drugs which are still at the testing stage and which have never been marketed. With a 60 percent interest, "A" will control the LLC. Since the licenses "B" will contribute are not exclusive as against it, they do not constitute a business. However, the licenses being contributed by "C" do constitute a business, even though they have not generated any revenue. "A" has a potential reporting obligation for the formation of this LLC for acquiring assets from "C." This formation combines two pre-existing, separately controlled businesses in an LLC which "A" will control.

9. "A" and "B" are both regional grocery store chains which do their data processing in-house. "A's" data processing unit does work only for "A" and "B's" only for "B." "A" and "B" decide to contribute the assets used in their data processing operations to a new jointly-controlled LLC which will provide data processing services to "A" "B." Assume the size tests are met. This would not be reportable because the assets used to provide such management and administrative support services do not constitute businesses. *Cf* § 802.1(d)(4) of the rules and Examples 10 and 11, 16 CFR 802.1(d)(4). This would be the case even if the new LLC intends to begin offering data processing services to third parties, since this would be beginning a new business rather than uniting existing businesses. Note, however, that the result would be different if "A" and "B" had used their equipment to provide any data processing services to others prior to contributing it to the new LLC, for then each would be contributing an existing business.

10. In year 1, "A," "B," and "C" form a new LLC to which each contributes a business in exchange for a one-third interest. This formation is not reportable because no member controls the LLC. Suppose that in year 2 "A" sells additional assets to the LLC for cash. This transaction is not analyzed as a new formation under this Formal Interpretation. However, the LLC has a potential filing obligation as the acquiring person of those assets and "A" as the acquired person. Note that it is irrelevant whether the assets sold by "A" in year 2 constitute a business. *Note also that if assets not constituting a business are acquired by an LLC, even if the percentage membership interests change in the transaction, this is not analyzed as the formation of a new LLC, either, but as an acquisition by the LLC (or its post-acquisition ultimate parent entity).*

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–16398 Filed 6–28–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR G–202]

Aviation, Transportation, and Motor Vehicles

To: Heads of Federal agencies

Subject: Eliminating the Use of Standard Form (SF) 1169, U.S. Government Transportation Request (GTR)

1. *What is the purpose of this bulletin?* This bulletin notifies Federal agencies of the proposed elimination of Standard Form (SF) 1169, U.S. Government Transportation Request (GTR).

2. *When does this bulletin expire?* This bulletin will remain in effect until specifically canceled.

3. *What is the background?*

a. Currently, Federal Property Management Regulations (FPMR) (41 CFR 101–41) require that SF 1169 be used to procure all passenger transportation services. For many years, the GTR has been recognized as the primary source document required to obtain passenger transportation services payable by the U.S. Government.

b. As we enter the 21st century, innovative ideas and methods are being applied to change the way the Government transacts its business. The General Services Administration (GSA) has already successfully:

(1) Implemented simplified travel regulations,

(2) Reduced the costs of administering travel programs, and

(3) Employed the use of a Government travel card to pay for travel expenses to reduce the Government's cash flow.

c. GSA is issuing the guidelines contained in this bulletin to inform agencies that, although a final decision has not been made, SF 1169 may become obsolete.

d. GSA's final review is anticipated by September 30, 2000.

e. Final action is anticipated early in the calendar year 2001.

4. *What are the guidelines?* To continue on the road of improvement, Federal agencies are encouraged to:

a. Focus attention on eliminating outdated methods of payment for passenger transportation services by adopting such payment methods as:

(1) Direct centrally billed accounts arranged through the Government travel card program,

(2) Direct charge to an employee's individual Government travel card, and

(3) Use of electronic fund payments.

b. Seek innovative ideas for ways to:

(1) Pay for passenger transportation services, and

(2) Eliminate the use of the GTR to the maximum extent possible.

5. *Why should the GTR be eliminated?* The GTR should be eliminated because:

a. Most travelers are not familiar with the form and process,

b. It is an accountable form and must be controlled,

c. The administrative burden of reconciling charges, unused tickets, and refund applications is significant,

d. The form and the process are outdated, and

e. There are better and more efficient ways for the Government to pay for commercial passenger transportation services.

6. *Why is elimination of SF 1169 in the interest of the Government?* If agencies can and will adopt best business practices for the payment of passenger transportation services, the Government can eliminate a significant Policy, General Services Administration, Washington, DC 20405; telephone, (202) 501–0483; e-mail, *jim.harte@gsa.gov*.

Dated: June 22, 1999.

Becky Rhodes,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 99–16502 Filed 6–28–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority; Program Support Center

Part P (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995 as amended most recently at 64 FR 9996, March 1, 1999) is amended to reflect changes in Chapter PB within Part P, Program Support Center, Department of Health and Human Services. The Program Support Center is reorganizing and realigning the division level structure of the *Human Resources Service*, specifically the *Training and Career Development Division. The Training and Career Development Division* is being abolished and its functions are being realigned within the *Division of Personnel Operations—Parklawn* and the *Division of Personnel Operations—Switzer.*

Program Support Center

Under *Part P, Section P–20, Functions*, change the following: Under *Chapter PB, Human Resources Service (PB)*, delete the title and functional statement for the *Training and Career Development Division (PBO)* in its entirety.

Under the heading *Division of Personnel Operations—Parklawn (PBS)*, add the following new item after item (8): "(9) Administers comprehensive training and career development services for the Program Support Center, and other external customers."

Under the heading *Division of Personnel Operations—Switzer (PBT)*, add the following new item after item (11): "(12) Administers comprehensive training and career development services for the Office of the Secretary, the Office of the Inspector General, the Administration on Aging, and other external customers.

Dated: June 18, 1999.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 99–16443 Filed 6–28–99; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99129]

Enhanced Surveillance for Newly Vaccine Preventable Diseases; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for a New Vaccine Surveillance Network (NVSN). This program will compliment existing local, State, and national surveillance efforts and will facilitate research on issues related to new vaccine introduction and impact. This program addresses the "Healthy People 2000" priority area, Immunization and Infectious Diseases. The purpose of the program is to create a surveillance network that can provide surveillance and data collection on new vaccine use and impact through enhanced surveillance, applied epidemiologic research, and investigator initiated studies to investigate the impact of new vaccines on the overall vaccination program.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $900,000 is available in FY 1999 to fund two awards of approximately $450,000 each. It is expected that the awards will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Programmatic Interest

As new vaccines are licensed and recommended for use in children, new strategies are needed for surveillance and monitoring. CDC has identified several areas that are considered programmatic priorities: (1) Improving identification of cases, for some conditions using enhanced diagnostic testing; (2) monitoring outpatient reports of clinical diagnoses (such as otitis media) or inpatient conditions (such as lobar pneumonia or diarrhea and dehydration); (3) evaluating immunological responses to new vaccines and laboratory testing of isolates from patients with vaccine preventable diseases; and (4) assessing the impact of new vaccines on clinical practices. CDC also values the flexibility to respond to emerging issues as new vaccines are introduced and new questions arise.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities) and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

A. Establish and operate a NVSN site. The site should have the following characteristics:

1. Be established in a defined population, which could include either an entire State or a geographically defined area (or areas) within a State. (A minimum population base of approximately 500,000 may be necessary to accomplish the objectives of certain NVSN activities.)

2. Have the capacity to conduct up to four concurrent projects; accommodate changes in specific projects and priorities as the public health system's need for information changes or new vaccines are licensed and implemented into the vaccination program; and function effectively as part of a network to further local, State, and national efforts to monitor introduction of new vaccines.

3. Maintain participation of pediatric care providers and all facilities providing inpatient pediatric care. This provider network should participate in required surveillance activities (see D.1.–D.3. below), enroll patients in studies and participate in health services research (D.4. and D.5. below).

B. Develop plans for obtaining additional support to supplement assistance from CDC.

C. Establish collaboration in accomplishing program activities between public and private organizations that have an interest in addressing public health issues relating to new vaccines.

D. Conduct activities addressing sections D.1.-D.3. below, and either D.4 or D.5 below. Specific protocols for the activities to be conducted at all surveillance sites will be developed jointly by investigators at those sites and CDC.

1. Impact of incorporation of new vaccines on provider policies, practices, and utilization. Collect data from the network of pediatric care providers to document the impact of rotavirus and other new vaccines recommended for routine use among children (including combination vaccines).

2. Enhance surveillance for vaccine preventable diseases, including reporting of specific clinical diagnoses from the network of pediatric care providers, improving diagnosis through enhanced etiological diagnostic testing, and reporting of all hospitalizations for vaccine preventable diseases at inpatient facilities in the surveillance area.

3. Conduct serologic surveillance of 2-year-old children who received recommended childhood vaccines as part of routine pediatric care in an ongoing evaluation of the immunogenicity of vaccines administered as part of the recommended childhood immunization series.

4. Develop and conduct other applied epidemiologic research projects. See Appendix II for examples of potential projects.

5. Develop and conduct health services research. See Appendix II for examples of potential projects.

E. Routinely evaluate progress in achieving the purpose of this program.

F. Analyze and interpret data from NVSN projects, and publish and disseminate findings.

2. CDC Activities

A. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

B. Provide consultation, scientific, and technical assistance in designing and conducting individual NVSN projects.

C. Assist with analysis and interpretation of data, dissemination of findings.

D. As needed and arranged with investigators, perform laboratory evaluation of specimens or isolates (e.g., molecular epidemiologic studies, evaluation of diagnostic tools) obtained in NVSN projects; and assist with integrating results with data from other NVSN site.

E. As needed, store serum specimens at the CDC specimen bank, arrange for routine serological testing of a sample of isolates, and bank specimens for later evaluations, as appropriate.

F. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application. Your application will be evaluated on the criteria listed, so it is important to follow them in preparing your program plan. The narrative (excluding budget, appendices, and required forms) should be no more than 30 double-spaced pages, printed on one side, with one inch margins, and unreduced font. Only the following information should be presented in appendices: Letters of support, documentation of bona fide agent status, curricula vitae of key project personnel, and budget. Letters of support should clearly indicate collaborators' willingness to be participants in the NVSN activities. All other materials or information that should be included in the narrative will not be accepted if placed in the appendices.

Applicants should propose a total of 4 projects from the list of activities provided in Program Requirements, 1. Recipient Activities, paragraphs D.1. through D.5. Projects described in paragraphs D.1. through D.3., above, must be proposed along with one project as described in D.4. and D.5. Each specific project proposal should be clearly identified in a distinct portion of the Operational Plan and should not exceed 5 pages. Although the specific activities described address distinct issues and needs, they may be implemented in an integrated manner such that staff members work on more than one activity and supplies and equipment are shared, etc.

Since enhanced surveillance will be done in collaboration with the other NVSN site, the project should be designed so that data can be integrated with data from the other site.

Applicants should detail a plan for establishing collaboration between public and private organizations that have an interest in addressing public health issues relating to new vaccines. Such a plan should document meaningful collaboration in accomplishing project objectives including developing inpatient and outpatient surveillance networks, collecting data, and analyzing results.

In describing the impact of incorporation of new vaccines on provider policies, practices, and utilization (Recipient activities, D.1.), applicants may include but need not be limited to description of the number of vaccines and injections offered at visits during the first two years of life; vaccine-specific coverage rates of all recommended vaccines at specified ages, before and after incorporating new vaccines; the number of visits used to complete administration of all recommended vaccines by ages 1 and 2; and revenues and costs associated with incorporating new vaccines in practice.

In describing plans to enhance surveillance for newly vaccine preventable diseases (Recipient activities, D.2.), applicants may include but need not be limited to a description of approaches to collecting outpatient data from the network of pediatric care providers who can report specified clinical diagnoses, therapy, and outcome, and enhance etiological diagnosis of infections such as rotavirus, pertussis, and/or influenza; enhancing laboratory diagnosis which could be conducted as an ongoing or periodic activity (e.g., one day per week) depending on the needed sample size; and estimating the completeness of case detection using an appropriate method such as focused chart reviews. Detection and reporting of inpatient conditions may include but need not be limited to data on all children in the surveillance area hospitalized for varicella, gastroenteritis, pneumonia, and documented pneumococcal or influenza infections. In addition, applicants should describe approaches to obtaining additional data on etiological diagnosis (where available), demographic data, and clinical course (for example, through chart reviews), and data on vaccination status.

In describing plans for serological testing (Recipient activity D.3.), applicants description may include but need not be limited to an approach to recruiting through the provider network; age group of children tested (e.g., 20–28 months); plans for phlebotomy, storage and shipping of serum samples to CDC; and plans for providing additional doses of vaccine to children who are found to have less than protective levels of antibody for one or more vaccines (where good correlates of protection exist). An illustrative sample size calculation should be included recognizing that data from 2 sites will be aggregated for analysis.

Budget Instructions

For each line-item (as identified on the Form 424a of the application), show both Federal and non-Federal (e.g., State or other funding) shares of total cost for the NVSN. For each staff member listed under the Personnel line item, indicate their specific responsibilities relative to each of the proposed projects. Include provisions for travel of the principal investigator and one NVSN participant to two meetings at CDC in Atlanta during the first year of the program.

G. Submission and Deadline

Letter of Intent (LOI)

In order to assist CDC with planning, your letter of intent should include: (1) Name and address of institution, and (2) name, address, and telephone number of contact person. The letter of intent must be submitted on or before July 16, 1999, to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1. Forms are available in the application kit. On or before August 18, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline; or

(b) Sent on or before the deadline date and received in time for submission to the review panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier of U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late Applications: Applications which do not meet the criteria (a) or (b) above a considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. *Understanding the objectives of the NVSN (5 points)*

a. Demonstration of a clear understanding of the background and objectives of this cooperative program.

b. Demonstration of a clear understanding of the requirements, responsibilities, problems, constraints, and complexities that may be encountered in establishing and operating the NVSN site.

c. Demonstration of a clear understanding of the roles and responsibilities of participation in the NVSN network.

2. *Description of the population base and the vaccine providers in the NVSN site. (10 points)*

a. Clear definition of the geographic area and population base in which the NVSN site will operate. Detailed description of the demographics of the proposed population base.

b. Clear description of various special populations within the defined population base as they relate to the proposed activities of the NVSN site. Extent to which the population base is diverse in terms of demographics and special populations.

c. Description of vaccination providers within the NVSN site and the representativeness of the providers and patient populations included in the study network.

3. *Description of existing capacity to implement new vaccines and assess their impact: (15 points)*

a. Description of applicant's past experience in conducting studies of vaccines including monitoring coverage, disease, and impact; and in applied epidemiologic research and health services research, in general.

b. Demonstration of applicant's ability to develop and maintain strong cooperative relationships with both public and private vaccine providers at the NVSN site, public health agencies, academic centers, managed care organizations, and community organizations. Evidence of applicant's ability to solicit and secure programmatic collaboration, and financial and technical support from such organizations.

c. Demonstration of support from non-applicant participating agencies, institutions, organizations, laboratories, individuals, consultants, etc., indicated in applicant's operational plan.

4. *Operational plan (30 points)*

a. The extent to which the applicant's plan for establishing and operating the NVSN site clearly describes the proposed organizational and operating structure/procedures and clearly identifies the roles and responsibilities of all participating agencies, organizations, institutions, and individuals. The extent to which the applicant describes plans for collaboration with the other NVSN site and CDC in the establishment and operation of the NVSN and individual NVSN projects, including project design/development (e.g., protocols), management and analysis of data, and synthesis and dissemination of findings.

b. Description of a plan to solicit and secure financial and technical assistance from other public and private organizations (e.g., schools of public health, university medical schools, public health laboratories, community-based organizations, other Federal and State government agencies, research organizations, foundations, etc.) to supplement the proposed funding from CDC.

c. Quality of the proposed projects regarding consistency with public health needs, intent of this program, feasibility, methodology/approach, and collaboration/participation of partner organizations. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. *Collaborative relationships (15 points)*

If applicant is a state or local health department, description of applicant's partnerships with necessary and appropriate non-governmental organizations for establishing and operating the proposed NVSN and for conducting individual NVSN projects. If applicant is a non-governmental organization, description of applicant's plans for collaboration with State public health officials for establishing and operating the proposed NVSN and for conducting individual NVSN projects.

6. *Personnel qualifications and management plan (15 points)*

a. Identification of applicant's key professional personnel to be assigned to the NVSN site and NVSN projects. Clear identification of their respective roles in the management and operation of the NVSN site. Descriptions of their experience in conducting work similar to that proposed in this announcement.

b. Identification of key professional personnel from other participating or collaborating institutions, agencies, organizations outside of the applicant's agency that will be assigned to NVSN activities. Clear identification of their respective roles.

c. Description of all support staff and services to be assigned to the NVSN.

d. Description of approach to maintaining sufficiently flexible NVSN staffing to accommodate the likelihood that the requirements of NVSN projects will change from time to time due to changes in the public health system's need for information or licensure of new vaccines.

7. *Evaluation (10 points)*

a. Quality of plan for monitoring and evaluating the quality of vaccine coverage data, the completeness of case ascertainment, and the scientific and operational accomplishments of the NVSN site and of individual NVSN projects

b. Quality of plan for monitoring and evaluating progress in achieving the purpose and overall goals of this cooperative program.

8. *Budget (not scored)*

If requesting funds for any contracts, provide the following information for each proposed contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, and (5) method of contractor selection (e.g., sole-source or competitive solicitation).

9. *Human Subjects (not scored)*

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports. The first semiannual report is required with each year's continuation application and should cover program activities from beginning of the current budget period to date of report/application preparation. The second semiannual report is due 90 days after the end of each budget period and should cover activities for the entire budget period.

2. Financial Status Report (FSR), no more than 90 days after the end of the budget period; and

3. Final FSR and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2000

AR–12 Lobbying Restrictions

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(1),(2) of the Public Health Service Act (42 U.S.C. sections 241(a) and 247b(k)(1),(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.185.

K. Where To Obtain Additional Information

Copies of this and other announcements and application forms may be downloaded from the CDC homepage address on the Internet: http://www.cdc.gov. Click on "funding".

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and you will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement & Grants Office, Announcement 99129, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2716, Fax: (770) 488–2716, E-mail: spo2@cdc.gov

For program technical assistance, contact: Benjamin Schwartz, M.D., or Melinda Wharton, M.D., Epidemiology and Surveillance Division, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road. NE, Mailstop E–61, Atlanta, GA 30333, Telephone: (404) 639–8254 and (404) 639–8253, E-mail: bxs1@cdc.gov and mew2@cdc.gov

Dated: June 23, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–16475 Filed 6–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99131]

Active Sentinel Hospital Surveillance and Epidemiologic Studies for Rotavirus Gastroenteritis; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement for Active Sentinel Hospital Surveillance and Epidemiologic Studies for Rotavirus Gastroenteritis. This program addresses the "Healthy People 2000", Immunization and Infectious Diseases.

The purpose of the program is to provide assistance to recipients to develop, maintain, and evaluate surveillance for hospitalizations among children <5 years of age due to rotavirus gastroenteritis and to conduct case-control studies (enrolling patients hospitalized with rotavirus gastroenteritis and appropriate control subjects) to evaluate vaccine effectiveness and risk factors for severe rotavirus disease and hospitalization due to rotavirus gastroenteritis.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian Tribal Organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $250,000 is available in FY 1999 to fund four cooperative agreement awards. It is expected that there will be two awards at an average of $105,000 (direct and indirect costs) for sites which conduct active surveillance and epidemiologic studies and two awards at an average of $20,000 (direct and indirect costs) for sites which only conduct active surveillance. It is expected that the awards will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to 2 years. Funding estimates may change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Applicants may request Federal personnel, equipment, or supplies (such as rapid antigen EIA test kits for testing hospitalized patients with gastroenteritis) as direct assistance, in lieu of a portion of financial assistance.

D. Program Requirements

In conducting the activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under A. (Recipient Activities) and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Meet three or four times each year with other funded sites to develop standardized research protocols (surveillance and epidemiologic studies).

2. Establish, maintain, and evaluate a surveillance system for hospitalizations due to rotavirus gastroenteritis among children <5 years of age in the hospital(s) affiliated with recipient institution.

3. Collect and analyze data.

4. Collaborate with a clinical laboratory to ensure: (1) Cases of pediatric gastroenteritis in the surveillance population are examined for rotavirus; and (2) cases of rotavirus gastroenteritis are strain typed.

5. Summarize the data and disseminate findings in peer-reviewed journals and at professional meetings.

6. For sites conducting both active surveillance and epidemiologic studies only: Conduct case-control studies. Enroll and interview hospitalized case-patients and age-matched control subjects from appropriate groups of children in order to examine vaccine effectiveness and identify risk factors for severe rotavirus disease and hospitalization due to rotavirus disease.

B. CDC Activities

1. Provide scientific and technical assistance and coordination, as requested, for all phases of the study.

2. As needed, participate in the analysis of data gathered from research projects and the reporting of results.

3. Facilitate group meetings with the sites to allow for the exchange of information and for input into the development and refinement of the research and intervention protocol.

4. Assist in the development of a research protocol for IRB review by each institution participating in the research project as well as the CDC IRB. CDC IRB will review the projects on at least an annual basis until the research is complete.

5. As needed, provide clinical laboratory services, at no charge, to ensure cases of rotavirus gastroenteritis are strain typed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application. Your application will be evaluated on the criteria listed, so it is important to follow them in preparing your research plan.

Applicants must indicate whether they are applying to be a site where active surveillance will be performed ("surveillance site"), or to be a site where active surveillance and case-control studies will be performed ("combined study site"). Applicants may apply to be considered for either one or both study sites, but must submit separate applications for each type—one for funding to conduct active surveillance only and one to conduct surveillance and case-control studies only.

The research plan for each application should include the sections listed in the table of contents on page CC of form PHS 398:

1. Specific aims of the proposed rotavirus sentinel hospital surveillance system.

2. Background and Significance. This section should include the following:

—the demographic characteristics of the population served by the pediatric hospital including race, ethnicity, and socio-economic data,

—detailed characteristics of the hospital including size, number of admissions, academic affiliation, previous experience with pediatric research,

—information to demonstrate that the applicant has the appropriate organizational structure, administrative and laboratory support, and ability to access appropriate target populations, current hospital guidelines (if any) and information about hospital practice regarding testing for rotavirus in cases of gastroenteritis, and current laboratory testing procedures for rotavirus.

3. Preliminary studies. This section should include the following:

—number of admissions for gastroenteritis in children <5 years of age (by year of age)

—data on the number of admissions for laboratory confirmed rotavirus gastroenteritis for the target age group,

—other available data or previous studies on rotavirus gastroenteritis in the surveillance population,
—information on coverage with the current routine infant immunizations, including rotavirus vaccine, in this population.

4. Research Design and Methods. This section should include the following:
—the proposed operation of surveillance for rotavirus gastroenteritis in the hospital, to include details of how cases of gastroenteritis will be detected, how routine testing of each case for rotavirus will be organized, how the immunization status of case-patients will be verified, the type and format of data to be collected, mechanism for monitoring the system, and type of personnel required for obtaining and managing data.
—The proposed operation of case-control studies of cases of rotavirus gastroenteritis (if applying to perform epidemiologic studies). This should include a description of the populations from which control subjects will be selected, details of how case and control subjects will be selected and enrolled, possible sources of bias in selection of control subjects, how the immunization status of case-patients and control subjects will be verified, the type and format of data to be collected, and type of personnel required for obtaining, managing, and analyzing data.

5. Current letters of support should be included if applicant anticipates the participation of other organizations in conducting proposed activities.

F. Submission and Deadline

Letter of Intent

In order to assist CDC in planning and executing the evaluation of applications submitted under this announcement, all parties intending to submit an application are requested to submit a letter of intent. Your letter of intent should include the following information. (1) Name and address of institution, and (2) name, address, and telephone number of contact person, (3) identification of type site(s). On or before July 16, 1999, submit the letter of intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet). Forms are in the application kit. On or before August 18, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Applications for "Surveillance Sites" will be evaluated against Criteria A., and applications for "Combined Sites" will be Evaluated against Criteria B.

A. Surveillance sites

11. Specific aims: (5 percent)

The extent to which the applicant demonstrates an understanding of the purpose of the proposed rotavirus sentinel hospital surveillance system activity and the feasibility of accomplishing the outcomes described.

2. Background and Significance: (15 percent)

The extent to which background information and other data demonstrate that the applicant (a) has the appropriate organizational structure, administrative and laboratory support, and the ability to access and test cases of gastroenteritis admitted to the hospital and affiliated emergency department and (b) has experience with conducting pediatric research.

3. Preliminary Studies: (30 percent)

(a) The extent to which the applicant demonstrates that the participating hospital(s) will have sufficient rotavirus admissions among children <5 years of age to provide adequate statistical power for surveillance studies (i.e. >150 admissions per year due to gastroenteritis or >75 admissions per year due to rotavirus gastroenteritis),

(b) The extent to which background information and other data demonstrate that uptake of rotavirus vaccine is likely to be substantial in the population served by the hospital in the first 2 years of surveillance, and the extent to which the applicant demonstrates capacity for estimation of rotavirus immunization coverage rates during the study period,

(c) The extent to which previous studies demonstrate experience and expertise in conducting studies on rotavirus in this population.

4. Research Design and Methods: (35 percent)

The adequacy of the plan for detecting, testing for rotavirus, and obtaining and reporting information, including verified immunization histories on cases of childhood gastroenteritis, and the extent to which these proposed methods of testing will ensure complete monitoring for rotavirus of all cases of gastroenteritis admitted.

5. Qualifications of Key Personnel: (15 percent)

Qualifications, including training and experience, of key project personnel and the projected level of effort by each toward accomplishment of the proposed activities.

6. Budget (not scored)

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

7. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

8. Inclusion of Women and Racial and Ethnic Minorities in Research (not scored)

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

A. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

B. The proposed justification when representation is limited or absent.

C. A statement as to whether the design of the study is adequate to measure differences when warranted.

D. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

B. Combined Study Sites

1. Specific Aims: (5 percent)

The extent to which the applicant demonstrates an understanding of the purpose of the proposed rotavirus sentinel hospital surveillance system activity and the feasibility of accomplishing the outcomes described.

2. Background and Significance: (10 percent)

The extent to which background information and other data demonstrate that the applicant (a) Has the appropriate organizational structure, administrative and laboratory support, and the ability to access and test cases of gastroenteritis admitted to the hospital and affiliated emergency department and (b) has experience with conducting pediatric research.

3. Preliminary studies: (25 percent)

(a) The extent to which the applicant demonstrates that the participating hospital(s) will have sufficient rotavirus admissions among children <5 years of age to provide adequate statistical power for surveillance studies (i.e., >150 admissions per year due to gastroenteritis or >75 admissions per year due to rotavirus gastroenteritis),

(b) The extent to which background information and other data demonstrate that uptake of rotavirus vaccine is likely to be substantial in the population served by the hospital in the first 2 years of surveillance, and the extent to which the applicant demonstrates capacity for estimation of rotavirus immunization coverage rates during the study period,

(c) The extent to which previous studies demonstrate experience and expertise in conducting studies on rotavirus in this population.

4. Research design and methods: (45 percent)

(a) The adequacy of the plan for detecting, testing for rotavirus, and obtaining and reporting information, including verified immunization histories on cases of childhood gastroenteritis, and the extent to which these proposed methods of testing will ensure complete monitoring for rotavirus of all cases of gastroenteritis admitted.

(b) Ability to enroll and interview an adequate (>50 per year) number of hospitalized children with cases of rotavirus gastroenteritis.

(c) Adequacy of the plan for selecting, enrolling, and interviewing suitable controls, including the plan for obtaining a suitable number of controls per case to obtain a study with adequate power to assess vaccine effectiveness and risk factors; adequacy of the plan to minimize potential sources of bias in the selection of control populations.

5. Qualifications of key personnel: (15 percent)

Qualifications, including training and experience, of key project personnel and the projected level of effort by each toward accomplishment of the proposed activities.

6. Budget (not scored)

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

7. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

8. Inclusion of Women and Racial and Ethnic Minorities in Research (not scored)

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

A. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

B. The proposed justification when representation is limited or absent.

C. A statement as to whether the design of the study is adequate to measure differences when warranted.

D. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports.

2. Financial Status Report (FSR), no more than 90 days after the end of the budget period

3. Final FSR and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I in the application kit.

AR 98–1 Human Subjects Requirements
AR 98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR 98–7 Executive Order 12372 Review
AR 98–9 Paperwork Reduction Act Requirements
AR 98–10 Smoke-Free Workplace Requirements
AR 98–11 Healthy People 2000
AR 98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(1) and (K)(2) of the Public Health Service Act [42 U.S.C. 241(a), 247b(K)(1) and (k)(2)].

The Catalog of Federal Domestic Assistance Number is 93.185.

J. Where To Obtain Additional Information

This and other CDC announcements may be viewed and downloaded from the CDC homepage on the Internet, at: http://www.cdc.gov. Click on "funding opportunities."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and you will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2716, E-Mail: spo2@cdc.gov.

Programmatic technical assistance may be obtained from:

Charles Vitek, M.D., Medical Epidemiologist, Epidemiology and Surveillance Division, National Immunization Program, Mailstop E–61, Centers for Disease Control and Prevention (CDC), Telephone: (404) 639–8715, E-Mail: cxv3@cdc.gov
OR
Rebecca Prevots, Ph.D., Epidemiologist, Epidemiology and Surveillance Division, National Immunization Program, Mailstop E–61, Centers for Disease Control and Prevention (CDC), Telephone (404) 639–8255, E-Mail: ryp0@cdc.gov
OR
Joseph Bresee, M.D., Medical Epidemiologist, Viral and Rickettsial Diseases, Natl. Center for Infectious

Diseases, Mailstop A–34, Centers for Disease Control and Prevention (CDC), Atlanta, GA 30333, Telephone: (404) 639–4651, E-Mail: jsb6@cdc.gov

Dated: June 23, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–16473 Filed 6–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98C–0431]

EM Industries, Inc.; Filing of Color Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a color additive petition filed by EM Industries, Inc., to clarify that the petitioner's request is to amend the color additive regulations to provide for the safe use of composite pigments made from synthetic iron oxide, titanium dioxide, and mica to color ingested drugs.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 22, 1998 (63 FR 33934), FDA announced that a color additive petition (CAP 8C0257) had been filed by EM Industries, Inc., 7 Skyline Dr., Hawthorne, NY 10532. The petition proposed to amend the color additive regulations to provide for the safe use of synthetic iron oxide to color ingested drugs at levels higher than the current limit and to provide for the safe use of mica to color ingested drugs.

The data in the petition indicated that the petitioner manufactured color additives, to color ingested drugs, by combining synthetic iron oxide, mica, and titanium dioxide. Based on these data, at the time of the filing of the petition, FDA considered the color additive combinations the petitioner prepared from synthetic iron oxide, mica, and titanium dioxide to be color additive mixtures. Titanium dioxide was already listed as a color additive for ingested drug use and the petition did not propose to amend the existing regulation.

To more accurately describe the pigments that are the subjects of this petition, FDA is amending the filing notice of June 22, 1998, to indicate that the petition proposes to amend the color additive regulations to provide for the safe use of composite pigments prepared from synthetic iron oxide, mica, and titanium dioxide to color ingested drugs.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 2, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–16527 Filed 6–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Biological Response Modifiers Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 15, 1999, 8 a.m. to 5:45 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Gail M. Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12389. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 15, 1999, the committee will discuss the following issues: (1) An update of FDA's regulatory policy concerning the implications on biological product development of fast track and the recent pediatric rule, (2) a scientific discussion concerning immune reactions to therapeutic and diagnostic biological products, (3) the report of the June 3 through 4, 1999, meeting of the xenotransplantation subcommittee, and (4) an update of research programs in the Laboratory of Cytokine Research, Office of Therapeutics Research and Review, Center for Biologics Evaluation and Research.

Procedure: On July 15, 1999, from 8 a.m. to approximately 1 p.m., and from 1:30 p.m. to approximately 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 8, 1999. Oral presentations from the public will be scheduled between approximately 8:10 a.m. to 9:10 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 8, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On July 15, 1999, from 1 p.m. to 1:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The meeting will be closed to discuss issues relating to pending or proposed investigational new drug applications. The meeting will also be closed from 5 p.m. to 5:45 p.m., to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of this information.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 21, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–16442 Filed 6–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request Physician Survey on Genetic Testing

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register**, on January 21, 1999, Volume 64, pages 3305 and 3306 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

Proposed Collection

Title: American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Strength of Tobacco Control Survey". *Type of Information Request:* New. *Need and Use of Information Collection:* "The Strength of Tobacco Control Survey" will collect data on financial resources, capacity, and specific efforts to control tobacco use. The data will be collected from professionals working in the field, in project management, and in senior agency administration within major state-level organizations concerned with tobacco control, in all 50 states and the District of Columbia. The data will be used by the National Cancer Institute to evaluate the effectiveness of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST), a large-scale, 17-state demonstration project. Data will be used to develop a "strength of tobacco control" construct for use in evaluation of the overall ASSIST intervention. This study will also provide valuable information to Government agencies and to the general public necessary for tobacco control research. Data will be collected from September to November 1999, from approximately 1,428 individuals in 357 organizations in the 50 states and the District of Columbia. *Frequency of Response:* One-time study. *Affected Public: Individuals. Type of Respondents:* Professionals in tobacco control organizations. The annual reporting burden is as follows: Estimated Number of Respondents: 1,428; Estimated Number of Responses per Respondent: 1; Average Burden Hour per Response: .54; and Estimated Total Annual Burden Hours Requested: 774. The annualized cost to respondents is estimated at $31,852. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms on information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Frances Stillman, Ed.D., Public Health Advisor, National Cancer Institute, Executive Plaza North, Room 241, 6130 Executive Boulevard MSC 7337, Bethesda, Maryland 20892–7337, or call non-toll free number (301) 496–8584, or FAX your request to (301) 496–8675.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: June 18, 1999.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 99–16463 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Physicians' Resolution of Ethical Problems and Use of Institutional Consultation Services

Summary

Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 4, 1998, vol. 63, no. 172, pages 47310–47311 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Physicians' Resolution of Ethical Problems and Use of Institutional Consultation Services. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The survey asks for information about: (1) The ways that physicians address ethical problems that arise in their practice; (2) the types of questions that physicians perceive to raise ethical issues, and how often these arise; (3) how frequently physicians use the ethics consultation service (if any) at their primary institution; and (4) the reasons why physicians do and do not request formal ethics consultation through their institution's ethics consultation service. The information collected will help the NIH and other health care institutions to structure their ethics consultation service, and other ethics resources, to provide more helpful and responsive ways of addressing ethical problems and dilemmas. *Frequency of Response:* One time. *Affected Public:* Internal medicine doctors throughout the U.S. *Type of Respondents:* Clinical Oncologists, Critical Care Specialists and other Internal Medicine physicians. The

annual reporting burden is as follows: *Estimated Number of Respondents:* 450; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response: 5; and Estimated Total Annual Burden Hours requested:* 225. The annualized cost to respondents is estimated at: $nil. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request For Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH.

To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Gordon DuVal, Department of Clinical Bioethics, Building 10, Room C118, National Institutes of Health, Bethesda, MD 20892–1156, or telephone (301) 435–8717, or e-mail your request, including your address to: gduval@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: May 31, 1999.

David K. Henderson, M.D.,

Deputy Director for Clinical Care, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 99–16464 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance limited to spaceavailable. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C., as amended. The discussions could reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of discussions related to personnel and programmatic issues would be likely to significantly frustrate the subsequent implementation of recommendations.

Name of Committee: Board of Scientific Counselors, National Cancer Institute. Subcommittee B—Basic Sciences.

Date: July 12, 1999.

Open: 8:30 AM to 8:50 AM.

Agenda: Chairman's Remarks and Review Issues Update.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Closed: 8:50 AM to 5:00 PM.

Agenda: To review and evaluate Site Visit Reports; Status Report; Division Director's Report and Discussion of personnel and programmatic issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Contact Person: Florence E. Farber, Ph.D., Executive Secretary, Institute Review Office, office of the Director, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN 609, Rockville, MD 20892, (301) 496–2378.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 21, 999.

La Verne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 16459 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C., as amended. The discussions could reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of discussions related to personnel and programmatic issues would be likely to significantly frustrate the subsequent implementation recommendations.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee A—Clinical Sciences and Epidemiology.

Date: July 19, 1999.

Open: 9:00 AM to 10:00 AM.

Agenda: Chairman's Remarks; Review Issues Update; Ethics Review; and Legislative Update.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Closed: 10:00 AM to 4:00 PM.

Agenda: To review and evaluate Site Visit Report; Brain Tumor/EMF Study; Division Director's Reports; Discussion of personnel and programmatic issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Contact Person: Judy A. Aietz, Ph.D., Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN 609, Rockville, MD 20892, (301) 496–2378.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 21, 1999.

La Verne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–16460 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology.

Date: July 13, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contract Person: Wilna A. Woods, PHD, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Rockville, MD 20852 (301) 496–7903.

(Catalog of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 18, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–16461 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: July 19, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: The National Cancer Program—History and Future.

Place: The Schepens Eye Research Institute, Starr Center for Scientific Communications, 20 Staniford Street, Boston, MA 02114–2500.

Contact Person: Maureen O. Wilson, PHD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 18, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc 99–16462 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine Review Committee.

Date: July 28, 1999.

Time: 8:00 AM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: John D. Harding, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0820.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: June 22, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–16457 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Environmental Health Sciences Review Committee.

Date: July 29–30, 1999.

Time: 8:30 AM to 1:00 PM.

Agenda: To review and evaluate grant application.

Place: National Institute of Environmental Health Sciences, South Campus, Building 101 Conference Room, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PHD, Scientific Review Administrator, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: June 22, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–16453 Filed 6–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 12, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel , 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Jack D. Maser, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 13, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Fred Altman, PHD, Scientific Review Administrator, Fellowships and Merit Programs, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6220, MSC 9621, Bethesda, MD 20892–9621, (301) 443–9700.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 22, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–16454 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority programs Review Committee, Mbrs Subcommittee B.

Date: July 15–16, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael A. Sesma, PHD, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS19H, 45 Center Drive, Bethesda, MD 20892 (301) 594–2048.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 22, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–16456 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: July 23, 1999.

Time: 9:00 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Craig A. Jordan, PHD, Acting Director, NIH/NIDCD/DEA, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8693.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: July 27, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Westin Fairfax Hotel, 2100 Massachusetts Ave., NW, Washington, DC 20008.

Contact Person: Melissa Stick, PHD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 21, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–16458 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Chronic Fatigue Syndrome Coordinating Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH) announces the following committee meeting.

NAME: Chronic Fatigue Syndrome Coordinating Committee (CFSCC).

TIME AND DATE: 1 p.m.–5 p.m., July 26, 1999.

PLACE: Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC.

STATUS: Open to the public, limited only by the space available. The meeting room will accommodate approximately 80 people.

NOTICE: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card will need to provide a photo ID and must know the subject and room number of the meeting in order to be admitted into the building. Visitors must use the Independence Avenue entrance.

PURPOSE: The Committee is charged with providing advice to the Secretary, the Assistant Secretary for Health, and the Commissioner, Social Security Administration (SSA), to assure interagency coordination and communication regarding chronic fatigue syndrome (CFS) research and other related issues; facilitating increased Department of Health and Human Services (HHS) and agency awareness of CFS research and educational needs; developing complementary research programs that minimize overlap; identifying opportunities for collaborative and/or coordinated efforts in research and education; and developing informed responses to constituency groups regarding HHS and SSA efforts and progress.

MATTERS TO BE DISCUSSED: The Office of Inspector General Report, Audit of Costs Charged to the Chronic Fatigue Syndrome Program at the Centers for Disease Control and Prevention (CIN:A–04–98–04226). Because this is a briefing session there will be no public testimony.

CONTACT PERSON FOR MORE INFORMATION: Lillian Abbey, Executive Secretary, NIAID, NIH, 6700B Rockledge Drive, Room 3140, MSC 7630, Bethesda, Maryland 20817, telephone 301–496–1884, fax 301–480–4528.

Dated: June 23, 1999.

Anthony S. Fauci,

Director, National Institute of Allergy and Infectious Diseases, National Institutes of Health.

[FR Doc. 99–16514 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personnel information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel Fogarty SEP, for ZLM1 SRC (99) study section.

Date: July 23, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Road, NW, Chevy Chase, MD 20015.

Contact Person: Sharee Pepper, PHD., Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive Suite 301, Bethesda, MD 20817.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 23, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–16452 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 1, 1999.

Time: 8:30 AM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIRS.
Date: July 1, 1999.
Time: 1:00 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Arnold Revzin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 1, 1999.
Time: 3:00 AM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed Quadri, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 2, 1999.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Jefferson Hotel, 1615 Rhode Island Avenue, NW Washington, DC 20036.
Contact Person: Robert Weller, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7848, Bethesda, MD 20892, (301) 435–0694.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 2, 1999.
Time: 1:00 AM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gloria B. Levin, PHD,, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group Cardiovascular and Renal Study Section.
Date: July 6–7, 1999.
Time: 8:30 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn-Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Anthony C. Chung, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7802, Bethesda, MD 20892, (301) 435–1213.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93–837–93.844, 93.846–93.878, 93–892, 93.893, National Institutes of Health, HHS)

Dated: June 22, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–16455 Filed 6–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Booker T. Washington National Monument Draft General Management Plan and Environmental Impact Statement

AGENCY: National Park Service, DOI.

ACTION: Notice of availability of Booker T. Washington National Monument Draft General Management Plan and Environmental Impact Statement.

SUMMARY: The National Park Service has prepared and released a Draft General Management Plan and Environmental Impact Statement for the management, protection, use, and development of Booker T. Washington National Monument, Hardy, Virginia. The public is invited to review and comment on the Booker T. Washington National Monument Draft General Management Plan and Environmental Impact Statement. Copies are available at Booker T. Washington National Monument and at the Franklin County Public Library in Rocky Mount, Virginia. The document can be viewed on the monument's web site (*http://www.nps.gov/bowa*), which also contains information on scheduled public meetings. Comments will be accepted until August 11, 1999. For more information about this document, contact the Superintendent, Booker T. Washington National Monument, 12130 Booker T. Washington Highway, Hardy, VA 24101–9688. The phone number 540–721–2094.

Dated: June 19, 1999.

Marie Rust,

Northeast Regional Director, National Park Service.

[FR Doc. 99–16496 Filed 6–28–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces two upcoming meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Saturday, September 25, 1999 at 9:00 a.m.

Address: Pocono Environmental Education Center, RR 2 Box 1010, Brisco Mountain Road, Dingmans Ferry PA 18328.

Meeting Date and Time: Thursday, January 13, 2000 at 7:00 p.m.

Address: New Jersey District Office, Route 615, Walpack, NJ.

The agenda for the meeting consists of reports from Citizen Advisory Commission committees including: Natural Resources and Recreation, Cultural and Historical Resources, Intergovernmental and Public Affairs, Construction and Capital Project Implementation, and Interpretation, as well as Special Committee Reports. Superintendent William G. Laitner will give a report on various park issue.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

Congressional Listing for Delaware Water Gap NRA.

Honorable Frank Lautenberg, U.S. Senate SH–506 Hart Senate Office Building, Washington, D.C. 20510–3002

Honorable Robert G. Torricelli, U.S. Senate, Washington, D.C. 20510–3001
Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, D.C. 20510
Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, D.C. 20510–3802
Honorable Pat Toomey, U.S. House of Representatives, Cannon House Office Bldg., Washington D.C. 20515
Honorable Don Sherwood, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, D.C. 20515–3810
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, D.C. 20515–3005
Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120
Honorable Christine Whitman, State House, Trenton, NJ 08625

The meetings will be open to the public. Any member of the public may file a written statement concerning agenda items with the Commission. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizen Advisory Commission, P. O. Box 284, Bushkill, PA 18324. Minutes of the meetings will be available for inspection several weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: June 16, 1999.

J. Robert Kirby,

Acting Superintendent.

[FR Doc. 99–16495 Filed 6–28–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Revision of the National Park Service Strategic Plan; Notice of Meetings

Notice is hereby given that in accordance with the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62, Sec. 3) the National Park Service will hold seven public meetings from July 20 through August 5, 1999. The Act requires all federal agencies to have strategic plans and to revise and update those plans at least one every three years. This revision covers the period FY 2000—FY 2005. The National Park Service is seeking pubic participation in the goal review process while revising its strategic plan. The public meetings will provide the public the opportunity to learn about the long-term strategic goals of the National Park Service and to comment on those goals.

All meetings are open to the public. Interested persons may make oral or written comments during and after the public meetings. Written comments must be received within seven days of the public meeting.

The meetings will be held at the following times and locations.

Alaska: Tuesday, July 20, 1999, 3–7 PM, 2525 Gambell, Room 300, Anchorage, AK. Point of Contact: Lou Waller 907–257–2548.
Colorado: Tuesday, July 20, 1999, 4–7 PM, Vitamin Cottage Natural Food Market, 12612 West Alameda Parkway, Lakewood, CO. Point of Contact: Ron Thoman 303–987–6702.
California: Thursday, July 22, 1999 , 5—8 PM, Fort Mason Center, Landmark Building A, Golden Gate Room, San Francisco, CA. Point of Contact: Joan Chaplick 415–427–1444.
Washington, DC: Tuesday, July 27, 1999, 4–7 PM, National Capital Region Headquarters Building, Cafeteria Room, 1100 Ohio Drive, SW, Washington, DC. Pont of Contact: Earle Kittleman 202–619–7051.
Pennsylvania: Wednesday, July 28, 1999, 4–7 PM, Arch Street Meeting House, 320 Arch Street, Philadelphia, PA. Pont of Contact: Lee Gurney 215–597–2284.
South Dakota: Tuesday, August 3, 1999, 7 PM–10 PM, City and School Administration Building, Community Room, first floor, 300 6th Street, Rapid City, SD. Point of Contact: Bill Fink 906–487–9597 or Mike Pflaum, Chief Ranger, Mount Rushmore National Memorial 605–574–2523.
Georgia: Thursday, August 5, 1999, 4–7 PM, Martin Luther King, Jr. National Historic Site, 450 Auburn Avenue, N.E. Atlanta, GA. Point of Contact: Troy Lissimore 404–562–3278.

Further information concerning these meetings may be obtained by contacting the Point of Contact listed for each meeting.

Dated: June 22, 1999.

Richard L. Harris,

Strategic Planning Officer, National Park Service.

[FR Doc. 99–16494 Filed 6–28–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 19, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 14, 1999.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Garland County

Quapaw—Prospect Historic District, Roughly bounded by Quapaw and Prospect Aves., Hot Springs, 99000821

Jefferson County

Dollarway Road (Boundary Increase), AR 365, Redfield vicinity, 99000822

COLORADO

Denver County

Stanley Arms, 1321–1333 E. Tenth Ave., Denver, 99000823

Garfield County

Citizens National Bank Building, 801 Grand Ave., Glenwood Springs, 99000824

FLORIDA

Collier County

Bank of Everglades Building, 201 W. Broadway, Everglades City, 99000825

IDAHO

Ada County

Boise City-Silver City Road—Fick Property Segment, 3232 W. Kuna-Mora Rd., Kuna vicinity, 99000852

INDIANA

Grant County

Marion Branch, National Home for Disabled Volunteer Soldiers Historic District, 1700 E 38th St., Marion, 99000833

IOWA

Henry County

Hult, Charles E., House, Summer Kitchen and Wood Shed (Henry County, Iowa MPS) 1904 140th St., Swedesburg vicinity, 99000830
Hultquist, John, House (Henry County, Iowa MPS) 105 Park, Swedesburg, 99000828
Red Ball Garage (Henry County, Iowa MPS) 1901 140th St., Swedesburg vicinity, 99000826
Swedesburg Historic Commercial District (Henry County, Iowa MPS) 107 IA 218, Swedesburg, 99000829
Swedish Evangelical Lutheran Church (Henry County, Iowa MPS) 1897 140th St., Swedesburg vicinity, 99000827

Taylor County

Bedford Oil Company Station, 601 Madison, Bedford, 99000831

Van Buren County

Bonaparte Pottery Archeological District, 411–419 First St., Bonaparte, 99000832

KANSAS

Bourbon County

Fort Scott National Cemetery (Civil War Era National Cemeteries MPS) 900 East National Ave., Fort Scott, 99000835

Leavenworth County

Fort Leavenworth National Cemetery (Civil War Era National Cemeteries MPS) Within Fort Leavenworth military reservation, Fort Leavenworth, 99000834

LOUISIANA

Union Parish

Lindsey Bonded Warehouses, Holly and 2nd Sts., Bernice, 99000836

MISSISSIPPI

Clay County

Waide Archeological Site, Address Restricted, Palo Alto vicinity, 99000842

Lafayette County

Hopewell Presbyterian Church, 2070 MS 10, Oxford vicinity, 99000837

Leflore County

Stratton Archeological Site, Address Restricted, Sidon vicinity, 99000840

Lincoln County

Downtown Brookhaven Historic District, Roughly bounded by Court St., W. Chichasaw St., S. First St., and jct. of W. Cherokee and W. Monticello, Brookhaven, 99000839

Newton County

Boler's Inn, Jackson Rd., Union, 99000838

Sunflower County

Ruleville Depot, E side of RR tracks, jct. of E. Floyce St. and N. Front St., Ruleville, 99000841

NORTH CAROLINA

Forsyth County

Indera Mills, 400 S. Marshall St., Winston-Salem, 99000843

NORTH DAKOTA

Grand Forks County

Sorlie Memorial Bridge (Historic Roadway Bridges of North Dakota MPS) E end of Demers Ave., Grand Forks, 99000844

OHIO

Ottawa County

St. Thomas Episcopal Church, 214 E. Second St., Port Clinton, 99000845

UTAH

Davis County

Atkinson, James and Hannah, House, 1510 S 1100 W, Woods Cross, 99000847

Stayner—Steed House, 79 S 100 E, Farmington, 99000846

VIRGINIA

Albemarle County

East Belmont, jct. of VA 22 and VA 616, Keswick vicinity, 99000853

Charles City County

Fort Pocahontas, Address Restricted, Charles City vicinity, 99000848

WISCONSIN

La Crosse County

LaCrosse State Teachers College Training School Building, 1615 State St., LaCrosse, 99000850

Washington County

Groth, Friedrich, House, N12297 Pleasant View Dr., Germantown, 99000851

Waukesha County

Newhall Avenue Pump House and Reservoir, 445 W. Newhall Ave., Waukesha, 99000849

A request for a removal has been made for the following resource:

ARKANSAS

Pulaski County

Bragg, Richard, House 305 E. 16th St., Little Rock, 79000450

A request for a move has been made for the following resource:

NORTH CAROLINA

Wake County

Polk, Leonidus L., House, 612 N. Blount St., Raleigh, 77001012

[FR Doc. 99–16485 Filed 6–28–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; COPS Distressed Neighborhood Process Evaluation Survey.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days from the date listed at the top of this page in the **Federal Register**. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are requested. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave, NW, Washington, DC 20530–0001. Additionally, comments may be submitted to COPS via facsimile to 202–633–1386. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530.

Overview of this information collection:

(1) Type of Information Collected: New collection.

(2) Title of the Form/Collection: COPS Distressed Neighborhood Process Evaluation Survey.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: N/A. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Agencies that have received funding under the COPS Distressed Neighborhood grant program are required to respond.

The COPS Distressed Neighborhood Process Evaluation Survey will collect basic information about recipient's hiring and deployment processes, training, plans for internal assessment and reallocation of resources. The COPS office will use the information collected to assess whether the pilot Distressed Neighborhood sites met the goal of allocating personnel resources to the neighborhoods with the greatest need for additional police presence. A comprehensive report of the sites' deployment and hiring processes, training, and perceptions of the grant will assist the COPS Office to make future funding determinations and with future program development.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: COPS Distressed Neighborhood Process Evaluation Survey: Eighteen respondents, at 1.5 hours per respondent (including record-keeping).

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 27 hours. If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: June 23, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–16445 Filed 6–28–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 21, 1999, Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480).	I
4-Methylaminorex (cis isomer) (1590).	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl) pyrrolidine (7458).	I
1-[1-(2-Thienyl) cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: June 22, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–16415 Filed 6–28–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 27, 1999, Chiragene, Inc., 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
2, 5-Dimethoxyamphetamine (7396).	I
3, 4-Methylenedioxyamphetamine (7400).	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The firm plans to manufacture the listed controlled substances to supply their customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: June 22, 1999.

John H. King,

Deputy Assistant Administrator Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 99–16416 Filed 6–28–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 27, 1999, Radian International LLC, 14050 Summit Drive #121, P.O. Box 201088, Austin, Texas 78720–1088, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Ibogaine (7260)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391).	I
4-Bromo-2, 5-dimethoxyphenethylamine (7392).	I

Drug	Schedule
4-Methyl-2, 5-dimethoxyamphetamine (7395).	I
2, 5-Dimethozyamphe- tamine (7396).	I
3, 4-Methylenediozyam- phetamine (7400).	I
3, 4-Methylenedioxy-N-ethylamphetamine (7404).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Etorphine (except HC1) (9056)	I
Heroin (9200)	I
Pholcodine (9314)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Dextropropoxyphene, bulk (Non-dosage forms) (9273) ().	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The firm plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.4 in such form as prescribed by 21 FR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 F.R. 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonsrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated June 10, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–16417 Filed 6–28–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB Emergency Approval; Immigration Bond.

The Department of Justice, Immigration and Naturalization Service has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from August 30, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement with change of a previously approved collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–352. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information will be used by the Service to determine eligibility release of a detained alien on bond, and will collect information of the obligor of the bond who is taking the responsibility of the released alien.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 30 minutes or (.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestion regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center Building, 1001 G Street, NW., Washington, DC 20430.

Dated: June 22, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–16465 Filed 6–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 17, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Rehabilitation Action Report.

OMB Number: 1215–0182.

Frequency: On occassion.

Affected Public: Businesses or other for-profit; Individuals or households.

Number of Respondents: 7,000.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 3,500.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The OWCP–44 is the rehabilitation action report, submitted by the rehabilitation counselor to report transition periods and to request prompt adjudicatory claims action.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 99–16491 Filed 6–28–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

June 21, 1999.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by June 20, 1999. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Ira Mills Departmental Clearance Officer, ((202) 219–5095, x 143). Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of response.

Agency: Employment and Training Administration.

Title: Workforce Investment Act Cumulative Quarterly Financial Reporting for Funds Allotted to States for: (1) Services to Youth (2) Services to Adults (3) Services to Dislocated Workers (4) Local Area Administration (5) Statewide Activities (15% of Total Federal Allotment) and (6) Statewide Rapid Response.

OMB Number: 1205–0New.

Frequency: Quarterly.

Affected Public: States, local governments, and Private Industry Councils.

Number of Respondents: 56.

See Burden and Cost Estimate below:

DOL–ETA REPORTING BURDEN FOR WIA TITLE I STATES

Requirements	PY 1999	PY 2000	PY 2001	PY 2002
Number of Reports Per Entity Per Quarter	3	3	3	3
Total Number of Reports Per Entity Per Year	12	12	12	12
Number of Hours Required Per Report	1	1	1	1
Total Number of Hours Required for Reporting Per Entity Per Year	12	12	12	12
Number of Entities Reporting	10	56	56	56
Total Number of Hours Required for Reporting Burden Per Year	120	672	672	672
Total Burden Cost @ $23.45 per hour	$2,814	$15,758	$15,758	$15,758

Note: Number of reports required per entity per quarter/per year is impacted by the 3 year life of each year of appropriated funds, *i.e.*, PY 1997 and 1998 funds are available for expenditure in PY 1999, thus 3 reports reflect 3 available funding years.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Description: The proposed ICR incorporates the necessary reporting instructions for States to report financial data related to Workforce Investment Act programs to DOL. These instructions have been prepared in response to the requirement set forth at 20 CFR 667.300, for DOL to issue financial reporting instructions to States; and to ensure State compliance with the reporting elements contained in the Workforce Investment Act of 1998, Subtitle E, Sec. 185.

The WIA requires quarterly financial reports which "shall include information identifying all programs and activity costs by cost category in accordance with generally accepted accounting principles and by year of appropriation". The WIA also requires reporting "any income or profits earned, including such income or profits earned by subrecipients"; and any cost incurred (such as stand-in costs) that are otherwise allowable except for funding limitations." In addition, WIA requires the reporting of costs only as administrative or programmatic, with computerization/technology costs not included in the administrative cost limit calculation.

The Standard Form 269 has been modified to provide the six reporting formats which will be used for WIA reporting. Separate reporting formats will be needed for (1) Local area youth (2) local area adults (3) local area dislocated workers (4) local administration (5) Statewide activities (15% total Federal allotment) and (6) Statewide rapid response.

ETA is designing software that will contain the data elements required for each of the reporting formats. Instructions corresponding to the required data elements will also be provided to the States in the software package. Transmittal of this data will occur on a quarterly basis via the Internet. The data collection and reporting requirements requested by the Employment and Training Administration are necessary to effectively manage and evaluate the financial status of the WIA program, to measure regulatory compliance, to prepare required reports to Congress and for audit purposes.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 99–16492 Filed 6–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 22, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collect; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Report of Constructor's Wage Rates.

OMB Number: 1215–0046.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 37,500.

Estimated Time Per Respondent: 75,000.

Total Burden Hours: 25,000.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing service: $0.

Description: Form WD–10 is used by the U.S. Department of Labor to elicit construction project data from contractor associations, contractors, and unions. The wage data is used to determine locally prevailing wages under the Davis-Bacon and related Acts.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–16493 Filed 6–28–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–8]

Construction Records for Tests and Inspections of Personnel Hoists; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed reduction, and extension of, the information collection requirements contained in the standard on Construction Record for Test and Inspections of Personnel Hoists (29 CFR 1926.552(c)(15)).

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before August 30, 1999.

ADDRESSES: Submit comments to the Docket Office, Docket No. ICR–99–8, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. You may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen Martinez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements on Construction Records for Tests and Inspections of Personnel Hoists is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Kathleen Martinez at (202) 693–2444 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR on Construction Records for Test and Inspection for Personnel Hoists, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and the impact of information collection requirements on respondents properly assessed. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act of for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

II. Proposed Actions

The certification record required in 29 CFR 1926.552(c)(15) is necessary to assure compliance with the requirement for personnel hoists. It assures that the hoists have initial, periodic, and regular maintenance checks. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Construction Records for Test and Inspections of Personnel Hoists (29 CFR 1926.552(c)(15)).

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Construction Records for Test and Inspections of Personal Hoists (29 CFR 1926.552(c)(15)).

OMB Number: 1218–0231.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 14,400.

Fequency: Every 3 months.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 15,840.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 11.

Signed at Washington, DC, this 21st day of June, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99–16309 Filed 6–28–99; 8:45am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–10]

Rigging Equipment—Proof Testing of Welded End Wire Rope Attachment; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed reduction, and extension of, the information collection requirements contained in the standard on Rigging Equipment—Proof-Testing of Welded End Wire Rope Attachment (29 CFR 251(c)(15)(ii)).

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before August 30, 1999.

ADDRESSES: Submit comments to the Docket Office, Docket No. ICR–99–10, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–2350. You may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen Martinez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements on Rigging Equipment—Proof-Testing of Welded End Wire Rope attachments is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Kathleen Martinez at (202) 693–2444 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR on Rigging Equipment—Proof-Testing of Welded End Wire Rope Attachment (29 CFR 251(c)(15)(ii)), contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and the

impact of information collection requirements on respondents can be properly assessed. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

II. Proposed Actions

Paragraph (c)(15)(ii) of 29 CFR 1926.251 requires employers to retain a certificate of proof-test from the manufacturer. The retention of manufacturer certificates is necessary to assure proof-testing of the welded end wire rope attachment and also to assure testing of all welded end attachments at twice their rated capacity.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Rigging Equipment—Proof testing of Welded End Wire Rope Attachment (29 CFR 251(c)(15)(ii))$_{rr}$.

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Rigging Equipment—Proof testing of Welded End Wire Rope Attachment (29 CFR 251(c)(15)(ii)).

OMB Number: 1218–0233.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 18,940.

Frequency: On occasion.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 1,515 hours.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 11.

Signed at Washington, DC, this 21st day of June, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99–16311 Filed 6–28–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–7]

Trucks Used Underground To Transport Explosives—Inspection Record; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSH solicits comments concerning the proposed reduction, and extension of, the information collection requirements contained in the standard on Trucks Used Underground to Transport Explosives (29 CFR 1926.903(e))—Inspection Certification.

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before August 30, 1999.

ADDRESSES: Submit comments to the Docket Office, Docket No. CR–99–7, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone; (202) 693–2350. You may transmit written comments 10 pages or less in length by fascimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen Martinez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements on Trucks used Underground to Transport Explosives—Inspection Certification is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Kathleen Martinez at (202) 693–2444 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR on Trucks used Underground to Transport Explosives—Inspection Certification, contact OSHA on the Internet at http://www.osha-slc-gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and the impact of information collection requirements on respondents properly assessed. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the cause and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

II. Proposed Actions

The inspection certification required in 29 CFR 1926.903(e) is necessary to assure compliance with the requirement for inspection of the electrical system in trucks used for the undergound transportation of explosives. The inspection assures that the truck have a weekly maintenance check of the electrical system to detect any failures which may constitute an electrical hazard. Employers must prepare and retain a cerification record of the inspection.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Truck used Underground to Transport Explosives—Inspection Certification (29 CFR 1926.903(e)).

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Trucks used Underground to Transport Explosives—Inspection Certification (29 CFR 1926.903(e)).

OMB Number: 1218–0227.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 1.

Frequency: Weekly.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 9 hours.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 11.

Signed at Washington, DC, this 21st day of June, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99–16312 Filed 6–28–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–6]

Construction Records for Blasting Operations; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed reduction, and extension of, the information collection requirements contained in the standard on Construction Records for Blasting Operations (29 CFR 1926.900(k)(3)(i)).

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before August 30, 1999.

ADDRESSES: Submit comments to the Docket Office, Docket No. ICR–99–6, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. You may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen Martinez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements on Construction Records for Blasting Operations is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Kathleen Martinez at (202) 693–2444 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR Construction Records For Blasting Operations, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments is clearly understood, and the impact of information collection requirements on respondents can be properly assessed. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

II. Proposed Actions

This provision requires employers to post a sign warning against the use of mobile radio transmitters on all roads within 1000 feet of blasting operations. When this requirement creates an "operational handicap," the employer must develop and implement an alternative method that will prevent the premature detonation of electric blasting caps. The alternative method must be in writing, and a competent person must certify its adequacy.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Construction Records for Blasting Operations.

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Construction Records for Blasting Operations (29 CFR 1926.900(k)(3)(i)).

OMB Number: 1218–0217.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 3,000 work sites.

Frequency: Once per 160 work sites.

Average Time per Response: 8 hours.

Estimated Total Burden Hours: 640.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 11.

Signed at Washington, D.C., this 21st day of June, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99–16313 Filed 6–28–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–092]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Wednesday, July 28, 1999, 8:15 a.m. to 5:30 p.m.; Thursday, July 29, 1999, 8 a.m. to 5:30 p.m.; Friday, July 30, 1999, 8:15 a.m. to 12:15 p.m.

ADDRESSES: NASA Headquarters, Conference Room 6H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—OSS Program and Budget Status
—Theme Status Reports/Reports from Subcommittees
—Research Program Update
—Education Program Update
—Roadmapping Status/Programs and Priorities
—Technology Program Update

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June 22, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–16419 Filed 6–28–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 396, Certification of Medical Examination by Facility Licensee.

2. *Current OMB approval number:* 3150–0024.

3. *How often the collection is required:* Upon application for an initial operator license, and every six years for the renewal of operator or senior operator licenses, and upon notices of disability.

4. *Who is required or asked to report:* Facility licensees who are tasked with certifying the medical fitness of an applicant or licensee.

5. *The number of annual respondents:* 141.

6. *The number of hours needed annually to complete the requirement or request:* 730 hours (244 hours for reporting [.25 hours per response] and 486 hours for recordkeeping [3.4 hours per recordkeeper]).

7. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial or renewal operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licenses is such that the applicant would not be expected to cause operational errors endangering public health and safety.

Submit, by August 30, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 23rd day of June 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–16486 Filed 6–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York, Indian Point Nuclear Generating Unit No. 3; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Power Authority of the State of New York (the licensee) to withdraw its May 29, 1997, application for proposed amendment to Facility Operating License No. DPR–64 for the Indian Point Nuclear Generating Unit No. 3 located in Westchester County, New York.

The proposed amendment would have revised the Technical Specifications pertaining to containment integrity.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 27, 1997 (62 FR 45461). However, by letter dated May 3, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 29, 1997, and the licensee's letter dated May 5, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Ave., White Plains, New York, 10601.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 22nd day of June, 1999.

George F. Wunder,

Project Manager, Section 1, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–16487 Filed 6–28–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389]

Florida Power & Light Company, Inc., et al., St. Lucie Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–67 and NPF–16, issued to Florida Power and Light Company (the licensee), for operation of the St. Lucie Nuclear Plant, Units 1 and 2 located in St. Lucie County, Florida.

Environmental Assessment

Identification of the Proposed Action

The proposed amendments would revise the St. Lucie Plant, Units 1 and 2, Technical Specifications, Appendix B, "Environmental Protection Plan (Non-Radiological)" (EPP), to incorporate the terms and conditions of the Incidental Take Statement in the Biological Opinion issued by the National Marine Fisheries Service (NMFS) on February 7, 1997, and subsequently modified on May 8, 1998. The proposed amendments will replace Section 4, "Environmental Conditions," of the EPPs for both Units 1 and 2, and add Section 5, "Administrative Procedures," to the Unit 1 EPP and revise the current EPP Section 5 for Unit 2.

The proposed action is in accordance with the licensee's application for amendment dated December 1, 1997, as supplemented in a letter dated August 26, 1998.

The Need for the Proposed Action

The proposed action would incorporate the terms and conditions of the Incidental Take Statement of the Biological Opinion issued by NMFS into St. Lucie Units 1 and 2 operating licenses as well as provide consistency between the Unit 1 and Unit 2 Environmental Protection Plans.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that implementation of the Incidental Take Statement in St. Lucie's Environmental Protection Plan for Units 1 and 2 would support the National Marine Fisheries Service conclusion that the continued operation of the circulating water system at St. Lucie Plant is not likely to jeopardize the continued existence of threatened or endangered sea turtle species under NMFS jurisdiction. The Incidental Take Statement identifies actions that have been or will be taken by St. Lucie to ensure the takes of endangered sea turtles are limited. These actions include the use of two different mesh barrier nets across the intake canal, a capture and release program for endangered sea turtles found in the intake canal, a program to monitor for endangered sea turtles at the cooling water intakes on a regular basis, and a study to elucidate the effect of various factors on turtle entrapment.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in St. Lucie not implementing the Incidental Take Statement which would lead to takes of endangered sea turtles outside the NMFS Biological Opinion. The environmental impacts of the proposed action are less than the alternative action.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the St. Lucie Nuclear Plant.

Agencies and Persons Consulted

On June 9, 1999, the staff consulted with William Passetti, Chief, Department of Health, Bureau of Radiation Control, for the state of Florida, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 1, 1997, as supplemented in a letter dated August 26, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 23rd day of June, 1999.

William C. Gleaves,

Project Manager, Section 2, and Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–16488 Filed 6–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of June 28, July 5, 12, and 19, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 28

Tuesday, June 29
9:00 a.m. Affirmation Session (Public Meeting) (If needed)

Week of July 5—Tentative

There are no meetings scheduled for the Week of July 5.

Week of July 12—Tentative

Tuesday, July 13
9:30 a.m. Briefing on Treatment of Existing Programs for License Renewal (Public Meeting)

Thursday, July 15
10:00 a.m. Briefing on Existing Event Response Procedures (Including Federal Response Plan and Coordination of Federal Agencies in Response to Terrorist

Activities) (Public Meeting)
11:30 a.m. Affirmation Session (Public Meeting) (If needed)

Week of July 19—Tentative

There are no meetings scheduled for the Week of July 19.

Note: The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: June 24, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–16596 Filed 6–25–99; 10:44 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1805; File No. 803–134]

CSX Financial Management, Inc.; Notice of Application

June 23, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

Applicant: CSX Financial Management, Inc.

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

Summary of Application: Applicant requests an order declaring it to be a person not within the intent of section 202(a)(11), which defines the term "investment adviser."

Filing Dates: The application was filed on January 25, 1999 and amended on June 1, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1999, and should be accompanied by proof of service or applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549–0609. Applicant, CSX Financial Management, Inc., One James Center, 16th Floor, 901 East Cary Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Staff Attorney, at (202) 942–0646, Jennifer L. Sawin, Special Counsel, at (202) 942–0532 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was organized as a Delaware corporation in 1989. Sea-Land Service, Inc. ("Sea-Land"), a wholly-owned subsidiary of CSX Corporation ("CSX"), owns all of the outstanding stock of Applicant.

2. Applicant serves as an investment adviser for CSX and certain CSX subsidiaries, now existing or to be formed in the future, of which CSX owns, directly or indirectly, more than 50% of the outstanding voting shares (such existing and future subsidiaries, together with CSX, the "CSX Companies"). From time to time there are more than 15 companies included within the CSX Companies.

3. Since 1993, Applicant has been registered with the SEC as an investment adviser. Applicant has never provided advisory services to any other person or entity other than the CSX Companies.

Applicant's Legal Analysis

1. Section 202(a) (11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. . ." Section 202(a) (11) (F) of the Advisers Act authorizes the SEC to exclude from the definition of "investment adviser" persons that are not within the intent of section 202(a)(11).

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement. Applicant asserts that it does not appear to qualify for any of the exemptions provided by section 203(b).

3. Applicant requests that the SEC declare it to be a person not within the intent of section 202(a) (11). Applicant submits that its advisory services to the CSX Companies should not be considered services to "others". Although Applicant is a corporation, and therefore a separate legal entity from the CSX Companies, Applicant describes its relationship to the CSX Companies as internal. Applicant's financial results are reported in CSX's financial statements, which reflect results for all the CSX Companies on a consolidated basis. Applicant states that CSX owns more than 50% of the outstanding voting shares of Applicant and of each CSX Company.

4. Applicant submits that the protections of the Advisers Act may be considered unnecessary when an adviser and client, although separate legal entities, in reality, form a single economic entity. Applicant states that it exists solely to provide investment advisory services to the CSX Companies. Applicant represents that it has never provided, and does not intend to provide in the future, any investment advisory services to the general public or to any persons or entities other than the CSX Companies. Applicant states the CSX, the indirect parent of Applicant, views its investment in Applicant as a method of obtaining advisory services for the CSX Companies and not as a portfolio asset. Applicant asserts that there is no public interest in requiring it to be registered under the Advisers Act.

5. Applicant states that it does not hold itself out to the public as an investment adviser. Applicant states that it is not listed in the phone book under "investment advisory services." Applicant represents that it does not engage in any advertising, attend investment management conferences as a vendor, or conduct any marketing activities.

Applicant's Condition

Applicant agrees that the requested order shall be subject to the condition that Applicant continues to provide investment advisory services only with respect to the assets of the CSX Companies and does not solicit public clients.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16497 Filed 6–28–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41543; File No. SR–NASD–99–20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating To Firm Quotation Requirements

June 22, 1999.

I. Introduction and Background

On April 20, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposed rule change would require a market maker to disseminate an inferior quote whenever the market maker fails to execute the full size of an incoming order that is at least one normal unit of trading greater than the market maker's published quotation size. The proposal also would prohibit the use of automatic quote updating in such circumstances.

Notice of the proposed rule change was published for comment in the **Federal Register** on May 18, 1999.[3] The Commission received four comment letters regarding the proposal.[4] This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq proposes to amend NASD Rule 4613(b), "Firm Quotations," and IM–4613, "Autoquote Policy," to require a market maker to disseminate an inferior quote whenever the market maker fails to execute the full size of an incoming order that is at least one normal unit of trading greater than the market maker's published quotation size. The proposal also will prohibit the use of automatic quote updating in such circumstances.

According to Nasdaq, the proposal is designed to correct the inefficiencies that arise when a market participant must use multiple small orders to accomplish the objectives of a single large order. In this regard, Nasdaq notes that a market participant may be required to enter multiple small orders when a market maker enters a minimum quotation size, receives an order larger than its quoted size, fills the order only up to its quoted size (as currently required under NASD Rule 4613(b)), and remains at the inside quote prepared to accept another order at the minimum quotation size. The following example illustrates this scenario:

Market Maker #1 ("MM1") is bidding $10 for 100 shares of ABCD. Order Entry Firm # ("OE1") sends a preferenced SelectNet order to MM1 to sell 1000 shares of ABCD at $10, MM1 partially executes OE1's 1000-share order by buying 100 shares of ABCD, and does not move its quotation. Assuming MM1 is alone at the inside (i.e. at the best bid), OE1 may be compelled to send multiple SelectNet messages to MM1, potentially resulting in a total of ten transactions to complete its 1000-share order.

Nasdaq maintain that although MM1 has complied with NASD Rule 3320, "Offers at Stated Prices," IM–3320, "Firmness of Quotations,' current NASD Rule 4613(b), and Exchange Act Rule 11Ac1–1[5] executing a presented order up to its published quotation price and size, it is apparent that MMI was willing to buy more than the 100 shares displayed. Nasdaq believes that MM1's actions result in increased transaction costs, impede the price discovery process, and preclude other market makers from positiving executing large orders.

In addition, Nasdaq believes that MM1's actions may hinder price continuity and lead to increased instances of locked and crossed markets. For example, if MM1 is bidding 100 shares at $20, and MM2 wishes to lower its offer from $20 1/16 to $20. MM2 would send MM1 a SelectNet message for 100 shares (or more) in an attempt to exhaust MM1's quote. After sending multiple SelectNet messages to take out MM1, MM2 may move its quote to $20, thereby locking the market.[6]

Nasdaq states that the proposal is designed to effectuate the display of a market maker's true and intended quotation size. Nasdaq believes that when a market maker receives an order larger than the market maker's displayed size and completes the order only at its displayed size, the market maker has indicated clearly that its interest in trading at that price level has been depleted. Accordingly, the proposal will require a maket maker that has partially filled an incoming order that is greater than the market maker's displayed size to adjust its quote to an inferior price level.

Nasdaq proposes to modify IM–4613(b) to mandate compliance with proposed NASD Rule 4613(b)(2). IM–4613(a) generally prohibits the use of "autoquote" mechanisms to generate automatically a new quote that would keep a market maker's quote away from the best market. IM–4613(b)(1) provides an exception to this rule that permits the use of autoquote functions when the update is in response to an execution in the security by that firm. Nasdaq proposes to revise IM–4613(b)(1) to require that the market maker comply with proposed NASD Rule 4613(b)(2) by allowing the market maker to update automatically its quote only after fully executed the incoming order. If the order is not executed in full, the autoquote functionality must be discontinued and the market maker must revise its quote to an inferior price level.

III. Summary of Comments

The Commission received four comment letters regarding the proposal.[7] All four commenters generally supported the proposed rule change. One commenter argued, for example, that the proposal will increase

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41390 (May 12, 1999) 64 FR 27016.

[4] *See* Letter from Richard Y. Roberts, Esquire, Thelen Reid & Priest LLP, on behalf of the Electronic Traders Association ("ETA") to Jonathan Katz, Secretary, SEC, dated June 8, 1999 ("ETA Letter"); Letter from Gerald S. Putnam, Chief Executive Officer, Archipelago, LLC to Jonathan G. Katz, Secretary, SEC dated June 8, 1999 ("Archipelago Letter"), Letter from Mike Cormack, Manager, Equity Trading, American Century Investment Management ("ACIM") to Jonathan Katz Secretary, SEC, dated June 3, 1999 ("ACIM Letter"); Letter from Matthew W. Johnson, Managing Director, Lehman Brothers, to Jonathan G. Katz, Secretary, SEC, dated June 9, 1999 ("Lehman Letter").

[5] 17 CFR 240.11Ac1–1 (requiring a broker-dealer to execute orders at prices at least as favorable as its published quotation in an amount up to its published quotation size).

[6] The Commission notes that market makers are required to use reasonable means to avoid locking and crossing the market. *See* Securities Exchange Act Release No. 40455 (September 22, 1998), 63 FR 51987 (September 29, 1998) (order approving File No. SR–NASD–98–01).

[7] *See Supra* Note 4.

efficiency by providing a mechanism that will assist the marketplace in expeditiously assesing the size of trading interest by market participants.[8] Another commenter maintained that the proposal will reduce the long-standing problem associated with market makers who inhibit price discovery and market liquidity of remaining at the inside bid or offer for extended periods of time. The commenter also stated that the proposal will reduce transction costs, allow for more orderly executions of trades, and increase transparency in the marketplace.[9] A third commenter believed that the proposed represents a sound solution to a inefficient market situation, but urged the Commission and the NASD to review the continuing need for the autoquote policy contained in IM–4613.[10]

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations applicable to the NASD. In particular, the Commission finds that the proposal is consistent with the requirements of Sections 15A(b)(6), 15A(b)(11), and Section 11A(a)(1)(C) of the Act.[11] Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impedments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 15A(b)(11) requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. In Section 11A(a)(1)(C), Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities of securities transactions; (2) fair competition among brokers and dealers; (3) the availability of brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

Specifically, the Commission finds that the proposal to amend NASD Rule 4613 by requiring that a market revise its quotation to disseminate an inferior quote whenever the market maker fails to execute the full size of an incoming order that is at least one normal unit of trading greater than the market maker's published quote size is consistent with Sections 15A(b)(6), 15A(b)(11), and 11A(a)(1)(C) of the Act because it will encourage market makers to display quotations that accurately reflect their trading interest, thereby producing more informative quotation information and increasing market transparency. Increased transparency, in turn, will enhance the integrity of the market and facilitate price discovery by helping market participants asesss the supply and demand for securities.

In addition, the Commission finds that the proposal may help to reduce instances of locked and crossed markets which may occur, according to Nasdaq, when a market maker is unable to exhaust the bid or offer of another market maker after sending the market maker multiple SelectNet messages.[12] The Commission believes that continued locking and crossing of the market can negatively impact market quality.[13] By reducing the frequency of locked and crossed markets, the Commission believes that the proposal should improve market quality and help to maintain a fair and orderly market, to the benefit of all market participants.

The Commission also finds that the proposal could help to reduce the transaction costs that arise currently when a market participant must execute multiple small orders rather than a single large order because a market maker does not trade to the full extent of its interest at its displayed price in a single transaction. By reducing transaction costs, the proposal should help to provide for the economically efficient execution of securities transactions, consistent with Section 11A(a)(1)(C) of the Act.

The Commission finds that the amendment to IM–4613 is appropriate and consistent with the Act because it will help to effectuate compliance with NASD Rule 4613, as amended. Specifically, IM–4613, as amended, will allow a market maker to update automatically its quote only after executing an incoming order in full. If the market maker fails to execute fully the incoming order, the market maker must discontinue the autoquote functionality and revise its quotation to disseminate an inferior price. Accordingly, IM–4613, as amended, will help to ensure that a market maker does not automatically update its quote to remain at the inside after it has failed to execute fully an incoming order that is greater than the market maker's published quote size.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the Act, in general, and in particular, with Sections 15A(b)(6), 15A(b)(11), and Section 11A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD 99–20) be, and hereby is, approved.[15]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16446 Filed 6–28–99; 8:45 am]

BILLING CODE 8010–01–M

[8] *See* Archipelago Letter *Supra* note 4.

[9] *See* Lehman Letter, *supra* note 4.

[10] *See* ETA Letter, *supra* note 4.

[11] 15 U.S.C. 78o–3(b)(6), 15 U.S.C. 78o–3(b)(11), and 15 U.S.C. 78k–1.

[12] As noted above, market makers are required to use reasonable means to avoid locking and crossing the market. *See* Securities Exchange Act Release No. 40455, *supra* note 6.

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41547; File No. SR–NASD–99–30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Entry Fees and Annual Fees for Foreign Issuers Quoted on the Nasdaq National Market

June 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 7, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and grant accelerated approval to the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed with Commission a proposed rule change regarding entry fees and annual fees for foreign issuers quoted on the Nasdaq National Market. Below is the text of the proposed rule change. The proposed new language is italicized.

* * * * *

4510. The Nasdaq National Market

(a) Entry Fee

(1) No change.

(2) Total shares outstanding means the aggregate of all classes of equity securities to be included in the Nasdaq National Market as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority. *In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.*

(3) No change.

(4) No change.

(b) Additional Shares

No change.

(c) Annual Fee—Domestic and Foreign Issues

(1)–(3) No change.

(4) The annual fee shall be based on the total shares outstanding of the class included in the Nasdaq National Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

(d) Annual Fee—American Depository Receipts (ADRs)

No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Association included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective January 1, 1998, the NASD adjusted the Entry Fee and the Annual Fee for Nasdaq National Market issuers ("the 1998 fee change"),[3] The 1998 fee change was justified, in part, by the increased costs associated with efforts to communicate with investors and to support the continued expansion and technological enhancements of Nasdaq's qualification and market surveillance systems and programs.

As a result of the 1998 fee change, the method for computing entry fees and annual fees on the Nasdaq Stock Market was changed to rely solely on the issuer's total shares outstanding. The NASD now believes that with respect to foreign issuers whose shares are quoted on the Nasdaq National Market, total shares outstanding is not the best benchmark upon which to base listing fees. In particular, the NASD notes that only those shares outstanding in the United States typically trade on the Nasdaq Stock Market, and it is the holders of these shares that primarily receive the benefits of a listing on the Nasdaq Stock Market, including those benefits detailed when the 1998 fee change was approved. Accordingly, the Association proposes to charge entry fees and annual fees for such foreign issuers based on the total shares outstanding in the United States.

In order to effectuate this change, the Association will request that foreign issuers provide Nasdaq with the total number of shares outstanding in the United States. In the event that a foreign issuer does not provide that information, the NASD will assess fees for that issuer based upon the total shares outstanding as shown in the most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority.

The NASD requests that this proposal be made effective as of January 1, 1999, with respect to annual fees. Accordingly, issuers will be given a credit for the difference between the 1999 annual fee that they have paid and the fee as computed for 1999 under this proposed rule change. This credit can be used to offset future fees owed to Nasdaq.

With respect to entry fees, the Association requests that this proposal be effective immediately upon approval.

2. Basis

The Association believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[4] and (6)[5] of the Act. The NASD believes the proposed rule change is consistent with Section 15A(b)(5) because it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers using the Nasdaq system. The NASD also believes the proposed rule change is consistent with Section 15A(b)(6) because it is designed to promote just and equitable principles of trade and does not permit unfair discrimination between customers, issuers, brokers or dealers. As noted above, the proposed rule change allocates fees for foreign issuers based on the number of shares that trade on the Nasdaq Stock market and the shareholders that receive the benefit of the Nasdaq listing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements

[3] Securities Exchange Act Release No. 39613 (February 2, 1998); 63 FR 6789 (February 10, 1998).

[4] 15 U.S.C. 78o–3(b)(5).

[5] 15 U.S.C. 78o–3(b)(6).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–30 and should be submitted by July 20, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a registered securities association,[6] and, in particular, the requirements of Section 15A(b)(5) and Section 15A(b)(6) of the Act.

Section 15A(b)(5) requires that the rules of a registered securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers using any facility or system which the association operates or controls. The proposal amends the entry fees and annual fees paid by foreign issuers listed on the Nasdaq National Market. These fees are proposed to be based on a foreign issuer's number of outstanding shares trading in the United States.[7] The Commission finds that this number is reasonable because it represents the number of shareholders that receive the benefits of listing on Nasdaq Stock Market. The Commission also finds that the new fees are equitably allocated among foreign issuers because all foreign issuers are subject to the same fee calculation. Moreover, the Commission finds that the fees are reasonably allocated among all issuers, foreign and domestic, because they are based upon the benefits derived by each issuer.

Section 15A(b)(6) requires, among other things, that the rules of a registered securities association be designed to promote just and equitable principles of trade and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal applies equally to all foreign issuers that trade in the United States on the Nasdaq stock Market, thus it is not designed to permit unfair discrimination among foreign issuers. In addition, as discussed above, the proposal should not permit unfair discrimination among all issuers because the fees are based upon an issuer's usage of the Nasdaq Stock market.

Finally, the Commission notes that the proposed change to the annual fees are to be made effective as of January 1, 1999. The Commission finds that since the proposed change reduces the amount of fees owed by foreign issuers and that as a result of this proposed change foreign issuers will be given a credit for the higher fees paid thus far in 1999 to be applied to future annual fees that it is consistent with the Act to make these changes effective retroactively.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register.** The proposal reduces the amount of entry fees and annual fees to be paid by foreign issuers. These reductions do not raise any new or novel regulatory issues. Accordingly, the Commission believes that it is consistent with Sections 15A(b)(5) and (6) to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NASD–99–30) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16498 Filed 6–28–99; 8:45 am]

BILLING CODE 8010-01-M

[6] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] The Commission notes that the New York Stock Exchange ("NYSE") employs the same calculation for determining initial fees and annual fees for its foreign issuers. *See* NYSE Listed Company Manual ¶902.04.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending June 18, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5839
Date Filed: June 14, 1999
Parties: Members of the International Air Transport Association
Subject: PTC2 AFR 0059 dated 15 June 1999 Mail Vote 009—Resolution 010o TC2 Within Africa Special Passenger Amending Resolution from Malawi
Intended effective date: 21 June 1999.

Docket Number: OST–99–5842
Date Filed: June 15, 1999
Parties: Members of the International Air Transport Association
Subject: PAC/Reso/405 dated June 2, 1999
22nd PAC—Expedited Resolution 808
Intended effective date: 1 August 1999.

Docket Number: OST–99–5849
Date Filed: June 17, 1999
Parties: Members of the International Air Transport Association
Subject: PTC31 S/CIRC 0068 dated 28 May 1999
South Pacific Resolutions r1–r33
Minutes—PTC31 S/CIRC 0069 dated 15 June 1999
Tables—PTC31 S/CIRC 0020 dated 4 June 1999
Intended effective date: 1 October 1999.

Docket Number: OST–99–5852
Date Filed: June 17, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC2 AFR 0060 dated 18 June 1999 Mail Vote 011—Resolution 010q TC2 Within Africa Special Passenger Amending Resolution from Zimbabwe
Intended effective date: 1 July 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–16482 Filed 6–28–99; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 18, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–5846
Date Filed: June 16, 1999
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 14, 1999
Description: Application of United Air Lines, Inc. pursuant to 49 U.S.C. Section 41101 and Subpart Q, applies for renewal of segments 1, 2, 3, and 6 of its Certificate of Public Convenience and Necessity for Route 566, authorizing United to engage in scheduled foreign air transportation of persons, property and mail between San Francisco and Mexico City; Chicago and Mexico City; Washington, D.C. and Mexico City; and Denver and Mexico City.

Docket Number: OST–99–5861
Date Filed: June 17, 1999
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 15, 1999
Description: Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. Sections 41102, 41108 and Subpart Q, applies for renewal of its Certificate of Public Convenience and Necessity for Route 562, segments 1 and 2, which authorizes Delta to engage in scheduled foreign air transportation of persons, property and mail between (1) the terminal point Atlanta, Georgia, and the terminal point Mexico City, Mexico (segment 1); and (2) the terminal point Dallas/Ft. Worth, Texas, and the terminal point Mexico City, Mexico (segment 2).

Docket Number: OST–99–5865
Date Filed: June 18, 1999
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 16, 1999
Description: Application of Northwest Airlines, Inc. pursuant to 49 U.S.C. Section 41101, 14 CFR section 302.1750 (a) (3), 14 CFR part 377 and Subpart Q, applies for Renewal of Segment 1 and Segments 3–8 of its Experimental Certificate of Public Convenience and Necessity for Route 564, which authorizes Northwest to engage in foreign air transportation of persons, property and mail on the following U.S.-Mexico routes: Memphis-Cancun; Minneapolis/St. Paul-Puerto Vallarta; Detroit-Mexico City; Detroit-Puerto Vallarta; Minneapolis/St. Paul-Ixtapa/Zihuatanejo; Minneapolis/St. Paul-Cozumel; and Minneapolis/St. Paul-Ixtapa/Zihuatanejo.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–16481 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on July 22, 1999, at 9 a.m. Arrange for oral presentations by July 7, 1999.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, Transportation Industry Analyst, Office of Rulemaking (ARM–205), 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7653, fax: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on July 22, 1999, at 9:00 a.m. at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC 20005–2485.

The agenda for this meeting will include:

(1) Approval of the ARAC draft meeting minutes of April 15, 1999.

(2) A progress report on the Parts and Production Certification Working Group tasking (FAA Form 8130–3/JAA Form 1 harmonization);

(3) A status report on the Delegation Working Group tasking;

(4) A discussion of future meeting dates, locations, activities, and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by April 7, 1999, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on June 21, 1999

Brian Yanez,

Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–16532 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 194; ATM Data Link Implementation

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 194 meeting to be held July 22, 1999, starting at 9:00 a.m. The committee was formed in May 1999 to produce the guidance and performance requirements necessary to implement data link in the U.S. National Airspace System (NAS), further developing work resulting from the FAA Administrator's NAS Modernization Task Force. The meeting will be held at RTCA, 1140 Connecticut Ave., NW, Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome and Introductions; (2) Report on trip to SC–189 plenary, Canberra, Australia, June 21–25; (3) Review draft P–PUB–01, Organization, Work Structure, and Operating Procedures; (4) Discuss email exploders and web pages; (5) Working group reports; (6) Other Business; (7) Summarize action items; (8) Schedule for future meetings; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 23, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–16528 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195; Flight Information Services Communications (FISC)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)—195 meeting to be held July 20–22, starting at 8:30 a.m. each day. This new committee has been approved by the Program Management Committee to replace SC–169 and Working Group 3. The meeting will be held at National Center for Atmospheric Research, 3450 Mitchell Lane, Boulder, Colorado.

The agenda will include: July 20: (1) Welcome and Introductions; (2) Final Review of Automet Minimum Operational Performance Standards; (3) Review of FIS–B Minimum Aviation System Performance Standards (MASPS) Action Items; (4) Page-by-Page review of FIS–B MASPS. July 21: (5) Continue Page-by-Page review of FIS–B. July 22: (6) Review new FIS–B MASPS actions; (7) Determine location/date of next meeting; (8) Closing.

Attendance is open the the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Person wishing to present statements or obtain information should contact Tenny Lindholm with NCAR at (303) 497–8448 or the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 23, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–16529 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a Passenger Facility Charge at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 29, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Juliano, A.A.E., Bureau of Chief, State of Connecticut, Department of Transportation, Bureau of Aviation and Ports at the following address: 2800 Berlin Turnpike, P.O. Box 317546, Newington, CT. 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided the State of Connecticut under § 158.23 of part 158 of the Federal Aviation Regulation.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a Passenger Facility Charge (PFC) at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 15, 1999, the FAA determined that the application to impose a PFC submitted by the State of Connecticut was substantially complete within the requirements of § 158.25 of part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than August 27, 1999.

The following is a brief overview of the impose application.

PFC Project #: 99–09–I–00–BDL.

Level of the proposed PFC: $3.00.

Charge effective date: November 1, 1999.

Estimated charge expiration date: June 1, 2000.

Estimated total net PFC revenue: $4,400,000.

Brief description of projects: Reconstruction of the eastern end of taxiway "S".

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building, 2800 Berlin Turnpike, Newington, Connecticut 06131–7546.

Issued in Burlington, Massachusetts on June 18, 1999.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 99–16531 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on March 22, 1999 [64 FR 13843].

DATES: Comments must be submitted on or before July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Gorman, (202) 366–5001, Office of Intermodal and Statewide Planning, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Ferry Study.

Type of Request: Approval of a new information collection.

Affected Public: 250 ferry operators nationwide.

Abstract: The Transportation Equity Act for the 21st Century (TEA–21), section 1207 (c), directs the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. The Federal Highway Administration (FHWA) will conduct the study which will be used to: (1) Inventory existing ferry operations; (2) determine the potential for new ferry routes; (3) determine the potential for alternative fuel ferries; and (4) determine the potential for high speed ferries. Information for the study will be collected from operators of existing ferry services and will include: (1) the points served; (2) the amount and source of Federal, State, and/or local funds used in the past three years; (3) the type of ownership; (4) the number of passengers and vehicles carried in the past year; (5) any new routes expected to be added within the next five years; and (6) the highways that are connected by the ferries.

Frequency: The survey will be conducted once.

Estimated Burden: The estimated total annual burden is 84 hours (20 minutes per respondent).

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this Notice.

Issued on: June 22, 1999.

Lawrence I. Neff,

Acting Director, Office of Information and Management Services.

[FR Doc. 99–16414 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being sought and the petitioner's arguments in favor of relief.

Alaska Railroad Corporation; FRA Waiver Petition No. FRA–1999–5105

Alaska Railroad Corporation (ARR) seeks a permanent waiver of compliance from certain provisions of the Roadway Worker Protection Standards, 49 CFR Part 214, Subpart C. ARR seeks a waiver of 49 CFR 214.327(c) which states:

(c) No operable locomotives or other or other items of on-track equipment, except those present or moving under the direction of the roadway worker in charge of the working limits, shall be located within working limits established by means of inaccessible track.

The ARR requests this waiver so it can use a procedure that will utilize a General Order or Special Instruction to assure that locomotives or other items of on track equipment located within working limits can not be operated until an advisory from the Anchorage Terminal Superintendent has been obtained. ARR desires to use this procedure during inclement weather to facilitate snow removal operations. Anchorage yard would be made into working limits by establishing a track warrant on the entrance to the yard in accordance with Sec. 214.327 (a) (4), inaccessible track. All movements within the yard would be under the control of the roadway worker that is in charge of the working limits.

ARR intends to create "zones" within the Anchorage yard for the purpose of delineating specific [illegible] could be fouled and further [illegible] (in zones [illegible] not be involved in the s[illegible]rocess.

Interested parties are invited to participate in this proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA 1999–5105) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on June 23, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–16466 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railway; Docket Number FRA–1999–5756

The Canadian National Railway (CN) seeks a permanent waiver of compliance with the Locomotive Safety Standards, 49 CFR Part 229.47(a), which requires each car body type road locomotive be equipped with an emergency brake valve adjacent to each end exit door, that these brake pipe valve locations shall be stencilled as "EMERGENCY BRAKE VALVE" or shall be identified on adjacent badge plate. The CN seeks this waiver for 178 car body locomotives built between 1985 and 1990, utilized to haul freight that have never been equipped with an emergency brake valve at the rear exit door. CN states that they do not believe that the emergency brake valve at the rear exit of these locomotives is needed.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–5756) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW, Washington. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, DC on June 23, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–16469 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Honey Creek Railroad; Docket Number FRA–1999–4988

The Honey Creek Railroad (HCRR) seeks a permanent waiver of compliance with the Safety Glazing Standards, 49 CFR Part 223.11(c), which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The HCRR seeks this waiver for locomotive number 7898. The owner states the locomotive is equipped with FRA approved glazing in all locations but two sections of glass. The owner also states they operate six miles of track and that there has never been a glazing related accident.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–4988) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street S.W., Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on June 23, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–16468 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Southeastern Pennsylvania Transportation Authority; Docket Number FRA–1999–5802

The Southeastern Pennsylvania Transportation Authority (SEPTA) seeks a temporary waiver of compliance with the Passenger Equipment Safety Standards, 49 CFR Part 238.235, which requires that by December 31, 1999, each power operated door that is partitioned from the passenger compartment shall be equipped with a manual override adjacent to that door. SEPTA requests that the temporary waiver extend the December 31, 1999 compliance date to July 12, 2001. SEPTA states that they need the added time to meet this requirement. SEPTA seeks this waiver for 231 MU's and 35 passenger coaches with power operated side doors.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these 2 proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1998–5802) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street S.W., Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, DC on June 23, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–16467 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33769]

Canadian National Railway Company—Trackage Rights Exemption—New York Central Lines LLC

New York Central Lines LLC (NYC) has agreed to grant limited, non-exclusive overhead trackage rights to Canadian National Railway Company (CN) over a segment of NYC's lines between the NYC/CN connection at CP "H", at Belt Line Branch MP 7.2 near Black Rock, and the NYC/Pennsylvania Lines LLC connection at CP 5, at Chicago Line MP 5.4 near the south end of Seneca Yard, both in the vicinity of Buffalo, NY, via: (i) NYC's Belt Line Branch between CP "H" and CP "T"; (ii) NYC's Bailey Avenue Branch between CP "T" and CP 437; (iii) NYC's Compromise Branch between CP 437 and CP 2; and (iv) NYC's Chicago Line between CP 2 and CP 5, a total distance of approximately 12.8 miles.

The transaction is scheduled to be consummated on or after June 25, 1999.

The purpose of the trackage rights is generally to improve service and transit times for CN's traffic moving through the Buffalo area, and to facilitate CN's interchange with Norfolk Southern Railway Company.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33769, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert P. vom Eigen, Esq., Hopkins & Sutter, 888 16th Street, N.W., Washington, DC 20006.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 22, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16551 Filed 6–28–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Renewal of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, for an information collection titled, "Interpretive Rulings—12 CFR 7."

DATES: You should submit written comments by August 30, 1999.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0204, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jacqueline Lussier, Senior Attorney, (202) 874–5090; or a copy of the collection from Jessie Gates or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0204), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Interpretive Rulings—12 CFR 7.
OMB Number: 1557–0204.
Form Number: None.
Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requets only that OMB renew its approval of the information collections in the current regulation.

National banks need these collections of information to ensure that they conduct their operations in a safe and sound manner and in accordance with applicable federal banking statutes and regulations. The collections of information provide needed information for examiners and provide protections for national banks. The collections of information are necessary for regulatory and examination purposes and for national banks to ensure their compliance with federal law and regulations.

The information requirements in 12 CFR part 7 are located as follows:

12 CFR 7.1000(d)(1) (Lease financing of public facilities): The lease agreement must provide that the lessee will become the owner of the building or facility upon the expiration of the lease.

12 CFR 7.1014 (Sale of money orders at nonbanking outlets): The written agreement between a national bank and bonded agent to sell the bank's money orders at a nonbanking outlet should define the responsibilities of both parties, set forth their respective duties, and provide for remuneration of the agent.

12 CFR 7.2000(b) (Other sources of guidance for corporate governance procedures): A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.

12 CFR 7.2004 (Honorary directors or advisory boards): Any listing of a

national bank's honorary or advisory directors (who act in advisory capacities without voting power or the power of final decision in matters concerning bank business) must distinguish between them and the bank's board of directors, or indicate their advisory status.

12 CFR 7.2014(b) (Indemnification of institution-affiliated parties in administrative proceedings or civil actions not initiated by a federal banking agency): A national bank shall designate in its bylaws the body of law selected for making indemnification payments in administrative proceedings or civil actions not initiated by a federal banking agency.

National banks use the information to ensure their compliance with applicable federal banking law and regulations. Further, the collections of information evidence bank compliance with various regulatory requirements. This information assists bank management in the safe and sound operation of the bank. The OCC uses the information in the conduct of bank examinations and as an audit tool to verify bank compliance with law and regulations.

Type of Review. Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2,430.

Estimated Total Annual Responses: 2,430.

Frequency of Response: Recordkeeping.

Estimated Total Annual Burden: 4,156 burden hours.

Comments

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 22, 1999.

Mark Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 99–16472 Filed 6–28–99; 8:45 am]

BILLING CODE 4810–33–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 99–06]

FEDERAL RESERVE SYSTEM

[Docket No. R–1036]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket No. 99–33]

Branch Closings

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint policy statement.

SUMMARY: The OCC, the Board, the FDIC, and the OTS (the agencies) are revising their joint policy statement regarding branch closings by insured depository institutions. This action is needed to incorporate changes in the underlying statute made by section 106 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 and section 2213 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The action is intended to clarify the additional steps regarding notice and consultation for proposed branch closings by interstate banks in low- or moderate-income areas, and to clarify the status of automated teller machines, relocations and consolidations, and branch closings in connection with emergency acquisitions or assistance by the FDIC.

EFFECTIVE DATE: June 29, 1999.

FOR FURTHER INFORMATION CONTACT:

OCC: Crystal Maddox, National Bank Examiner, Licensing Policy and Systems Analyst, Bank Organization and Structure Division (202/874–5060); Sue Auerbach, Senior Attorney, Bank Activities and Structure Division (202/874–5300); Beth Knickerbocker, Senior Attorney, Community and Consumer Law Division (202/874–5750); Office of the Comptroller of the Currency, 250 E Street, SW., Washington DC 20219.

Board: Rick Heyke, Senior Attorney, Legal Division (202/452–3688), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

FDIC: Curtis Vaughn, Examination Specialist, Division of Supervision (202/898–6759); Gladys C. Gallagher, Counsel, Legal Division (202/898–3833); Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Larry Clark, Director of Trust Programs, Compliance Policy and Specialty Examinations (202/906–5628); Lucrecia R. Moore, Attorney (202/906–6161); Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background Information

Section 42 of the Federal Deposit Insurance Act (12 U.S.C. 1831r–1) (FDI Act) requires an insured depository institution to give 90 days prior written notice of any branch closing to its primary Federal regulator and to branch customers, to post a notice at the branch site at least 30 days prior to closing, and to develop a policy with respect to branch closings. The notice to the regulator must include a detailed statement of the reasons for the decision to close the branch and information in support of those reasons.

On September 21, 1993 (58 FR 49083), the agencies issued a joint policy statement to provide guidance to institutions in complying with section 42 of the FDI Act. The 1993 joint policy statement defines a branch for purposes of section 42, clarifies what constitutes a branch closing, and provides guidance to institutions in identifying customers to be notified in the event of a branch closing.

On September 29, 1994, section 42 of the FDI Act was amended by section 106 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103–328, 108 Stat. 2338) (Interstate Act). The Interstate Act changed section 42 of the FDI Act in two ways, both relating to proposed closings by interstate banks (banks which maintain branches in more than one state) of branches in low- or moderate-income areas: First, by providing a new notice procedure; and second, by requiring the appropriate Federal banking agency to convene a meeting of community leaders and other persons to discuss the feasibility of obtaining adequate alternative facilities and services if a person from the affected area requests such a meeting and other prescribed requirements are satisfied.

On September 30, 1996, section 42 of the FDI Act was amended by section 2213 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) (Regulatory Relief Act). The Regulatory Relief Act amended section 42 of the FDI Act to clarify that section 42 does not apply to: (1) An automated teller machine; (2) the relocation of a branch or consolidation of one or more branches into another branch, if the relocation or consolidation occurs within the immediate neighborhood and does not substantially affect the nature of the business or customers served; and (3) a branch that is closed in connection with an emergency acquisition under sections 11(n), 13(f), or 13(k) of the FDI Act, or any assistance provided by the FDIC under section 13(c) of the FDI Act. (12 U.S.C. 1821(n), 1823(f) and (k), and 1823(c)).

The agencies are revising the 1993 joint policy statement to reflect the changes to section 42 of the FDI Act made by the Interstate Act and the Regulatory Relief Act. The revised policy statement incorporates the new procedure and provides for banks to inform customers in affected areas of their ability to comment on a particular branch closing. The agencies are also clarifying that main offices, remote service facilities, loan production offices, and insured branches of foreign banks are not branches for purposes of section 42. A reference to the Resolution Trust Corporation (RTC) is being eliminated since the agency ceased to exist on December 31, 1995. The agencies are also clarifying the section on allocation of customers to branches.

The text of the revised joint policy statement follows:

Policy Statement of Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision Concerning Branch Closing Notices and Policies

Purpose

This policy statement provides guidance to each insured depository institution concerning requirements that an institution provide prior notice of any branch closing and establish internal policies for branch closings.[1]

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236) (FDICIA) was enacted on December 19, 1991. Section 228 of the FDICIA added a new section 42 to the Federal Deposit Insurance Act (12 U.S.C. 1831r–1) (FDI Act) that imposes notice requirements on insured depository institutions that intend to close branches. The provision became effective on December 19, 1991. Section 42 was amended on September 29, 1994, by section 106 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103–328, 108 Stat. 2338), and on September 30, 1996, by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009).

The law requires an insured depository institution to submit a notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of such reasons.

The law also requires an insured depository institution to notify its customers of the proposed closing. The institution must mail the notice to the customers of the branch proposed to be closed at least 90 days prior to the proposed closing. The institution also must post a notice to customers in a conspicuous manner on the premises of the branch proposed to be closed at least 30 days prior to the proposed closing.

An interstate bank (defined in section 42 as a bank that maintains branches in more than one state) proposing to close a branch located in a low- or moderate-income area is required to include in its notice to customers the mailing address of the appropriate Federal banking agency and a statement that comments on the closing may be mailed to the agency.[2] In those cases, a person from the affected area may submit a written request relating to the proposed closing to the agency, stating specific reasons for the request and including a discussion of the adverse effect the closing may have on the availability of banking services in the affected area. If the agency determines that the request is nonfrivolous, then the agency shall convene a meeting of appropriate individuals, organizations, depository institutions, and agency representatives, as determined by the agency in its discretion, to explore the feasibility of obtaining adequate alternative facilities and services for the affected area following the closing of the branch.

Finally, the law requires each institution to adopt policies regarding closings of branches of the institution.

Applicability

Section 42 of the FDI Act applies to the closing of a "branch" by an insured depository institution.[3] The agencies consider a "branch" for purposes of section 42 to be a traditional brick-and-mortar branch, or any similar banking facility other than a main office, at which deposits are received or checks paid or money lent. Notice pursuant to section 42 would not be required for the closing of non-branch facilities, such as an ATM, remote service facility, or loan production office, or of a temporary branch.[4] The law also does not apply to mergers, consolidations, or other acquisitions, including branch sales, that do not result in any branch closings. Institutions that are in doubt about the coverage of a particular closing should consult the appropriate Federal banking agency.

Mergers

An institution must file a branch closing notice whenever it closes a branch, including when the closing occurs in the context of a merger, consolidation or other form of acquisition.[5] Branch closings that occur in the context of transactions subject to the Bank Merger Act (12 U.S.C. 1828) require a branch closing notice, even if the transaction received expedited treatment under that Act. The responsibility for filing the notice lies with the acquiring or resulting institution, but either party to such a transaction may give the notice. Thus, for example, the purchaser may give the notice prior to consummation of the transaction where the purchaser intends to close a branch following consummation, or the seller may give the notice because it intends to close a branch at or prior to consummation. In the latter example, if the transaction

[1] An "insured depository institution" means any bank or savings association, as defined in Section 3 of the FDI Act (12 U.S.C. 1813), the deposits of which are insured by the FDIC.

[2] Under section 42, this requirement does not apply when a savings association closes a branch.

[3] Insured branches of foreign banks are not considered "branches" for purposes of section 42 because they are subject to separate liquidation procedures as specified in 12 CFR 28.22 (Federal branches of foreign banks) and 12 CFR 211.25(f) (state branches of foreign banks).

[4] Consistent with the agencies' original interpretation, the 1996 amendment expressly stated that section 42 of the FDI Act "shall not apply with respect to automated teller machines." (Pub. L. 104–208, 110 Stat. 3009.)

[5] See "Other" below for certain branches closed in connection with emergency acquisitions or FDIC assistance or subsequently transferred back to the FDIC.

were to close ahead of schedule, the purchaser, if authorized by the appropriate Federal banking agency, could operate the branch to complete compliance with the 90-day requirement without the need for an additional notice.

Relocations and Consolidations

The law does not apply when a branch is relocated or consolidated with one or more other branches if the relocation or consolidation occurs within the immediate neighborhood and does not substantially affect the nature of the business or customers served. For purposes of this policy statement, a branch relocation is a movement within the same immediate neighborhood that does not substantially affect the nature of the business or customers served. Generally, relocations will be found to have occurred only when short distances are involved: For example, moves across the street, around the corner, or a block or two away. Moves of less than 1,000 feet will generally be considered to be relocations. In less densely populated areas or where neighborhoods extend farther, and a long move would not significantly affect the nature of the business or the customers served by the branch, a relocation may occur over substantially longer distances.[6] Institutions that are in doubt about whether a relocation or a closing has occurred should consult the appropriate Federal banking agency.

Consolidations of branches are considered relocations for purposes of this policy statement if the branches are located within the same neighborhood and the nature of the business or customers served is not affected. Thus, for example, a consolidation of two branches on the same block following a merger would not constitute a branch closing. The same guidelines apply to consolidations as to relocations.

Other

Changes of services at a branch are not considered a branch closing, provided that the remaining facility constitutes a branch (as defined herein).[7]

Section 42 also does not apply when a branch ceases operation but is not closed by an institution. Thus, the law does not apply to:

- A temporary interruption of service caused by an event beyond the institution's control (e.g., a natural catastrophe), if the insured depository institution plans to restore branching services at the site in a timely manner;[8]
- Transferring back to the FDIC, pursuant to the terms of an acquisition agreement, a branch of a failed bank or savings association operated on an interim basis in connection with the acquisition of all or part of a failed bank or savings association, so long as the transfer occurs within the option period or within an occupancy period, not to exceed 180 days, provided in the agreement.
- A branch that is closed in connection with an emergency acquisition under sections 11(n), 13(f), or 13(k) of the FDI Act, or any assistance provided by the FDIC under section 13(c) of the FDI Act. (12 U.S.C. 1821(n), 1823(f) and (k), and 1823(c)).

Notice of Branch Closing to the Agency

The law requires an insured depository institution to give notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include the following:

- Identification of the branch to be closed;
- The proposed date of closing;
- A detailed statement of the reasons for the decision to close the branch; and
- Statistical or other information in support of such reasons consistent with the institution's written policy for branch closings.

If an institution believes certain information included in the notice is confidential in nature, the institution should prepare such information separately and request confidential treatment. The agency will decide whether to treat such information confidentially under the Freedom of Information Act (5 U.S.C. 552).

If a notice provided to a state supervisory agency pursuant to state law contains the information outlined above, then the institution may provide a copy of that notice to the appropriate Federal banking agency in satisfaction of section 42, provided that the notice is filed at least 90 days prior to the date of the branch closing.

Notice of Branch Closing to Customers

Customer Allocation

The law requires an insured depository institution that proposes to close a branch to provide notice of the proposed closing to the customers of the branch. A customer of a branch is a patron of an institution who has been identified with a particular branch by such institution through use, in good faith, of a reasonable method for allocating customers to specific branches. An institution that allocates customers based on where a customer opened his or her deposit or loan account will be presumed to have reasonably identified each customer of a branch. The agencies recognize that use of this means of allocation, and perhaps others, may result in certain facilities which technically constitute branches not being assigned any customers, but believe that this result is permissible so long as the means of allocation is reasonable; if such a branch is closed, then notification to the appropriate agency and posting of a notice on the branch premises will suffice. Finally, an institution need not change its recordkeeping system in order to make a reasonable determination of who is a customer of a branch.

Timing

Under section 42, an institution must include a customer notice at least 90 days in advance of the proposed closing in at least one of the regular account statements mailed to customers, or in a separate mailing. If the branch closing occurs after the proposed date of closing, no additional notice is required to be mailed to customers (or provided to the appropriate Federal banking agency) if the institution acted in good faith in projecting the date for closing and in subsequently delaying the closing.

Content

The mailed customer notice should state the location of the branch to be closed and the proposed date of closing, and either identify where customers may obtain service following the closing date or provide a telephone number for customers to call to determine such alternative sites. If a notice of branch closing provided to customers pursuant to state law contains this information, then a separate notice need not be sent, provided that the notice is sent at least 90 days prior to the closing.

Low- or Moderate-Income Areas Served by Interstate Banks

If the institution is a bank that maintains branches in more than one state and the branch to be closed is located in a low-or moderate-income area,[9] the notice shall contain the mailing address of the appropriate Federal banking agency and a statement that comments on the proposed branch closing may be mailed to that agency. The notice should also state that the agency does not have the authority to approve or prevent the branch closing. If the agency receives a written request by a person from the area in which the branch is located, relating to the proposed closing and stating specific reasons for the request, including a discussion of the adverse effect of such closing on the availability of banking services in the affected area, and if the agency concludes that the request is nonfrivolous, then the agency shall convene a meeting of agency representatives, other interested depository institution regulatory agencies, community leaders, and other appropriate individuals, organizations, and depository institutions, as determined by the agency in its discretion. The purpose of the meeting shall be to explore the feasibility of obtaining adequate alternative facilities and services for the affected area, including the establishment of a new branch by another depository institution, the chartering of a new depository institution, or the establishment of a community development credit union, following the closing of the branch. In the case of an institution which will become an interstate bank prior to the closure of a branch in a low-or moderate-income area, such information must be included in the notice unless the closure will occur immediately upon consummation of the transaction that causes the institution to become interstate. No action by the appropriate Federal banking agency under this provision shall affect the authority of an interstate bank to close a branch (including the timing of such closing) if the requirements of sections 42(a) and 42(b) of the FDI Act (regarding notice to the appropriate Federal banking agency and notice to the institution's customers) have been met by such bank with respect to the branch being closed.

On-Site Notice

Under section 42, an institution also must post notice to branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing. This notice should state the proposed date of closing and identify where customers may obtain service following that date or provide a telephone number for customers to call to determine such alternative sites. An institution may revise the notice to extend the projected date of closing without triggering a new 30-day notice period.

Contingent Notices

In some situations, an institution, in its discretion and to expedite transactions, may mail and post notices to customers of a proposed branch closing that is contingent upon an event. For example, in the case of a proposed merger or acquisition, an institution may notify customers of its intent to close a branch upon approval by the appropriate Federal banking agency of the proposed merger or acquisition.

Policies for Branch Closings

The law requires all insured depository institutions to adopt policies for branch closings. Each institution with one or more branches must adopt such a policy. If an institution currently has no branches, it must adopt a policy for branch closing when it establishes its first branch. The policy should be in writing and meet the size and needs of the institution.

Each branch closing policy adopted pursuant to section 42 should include factors for determining which branch to close and which customers to notify, and procedures for providing the notices required by the statute.

Compliance

The Federal banking agencies will examine for compliance with section 42 of the FDI Act in accordance with each agency's compliance examination procedures, to determine whether the institution has adopted a branch closing policy and whether the institution provided the required notices when it closed a branch. If an institution fails to comply with section 42, the appropriate Federal banking agency may make adverse findings in the compliance evaluation or take appropriate enforcement action.

Dated: May 19, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, June 22, 1999.

Jennifer J. Johnson,

Secretary of the Board.

Dated: June 3, 1999.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

Dated: June 18, 1999.

Ellen Seidman,

Director, Office of Thrift Supervision.

[FR Doc. 99–16471 Filed 6–28–99; 8:45 am]

BILLING CODE Board of Governors: 6210–01–P (25%) OCC: 4810–33–P (25%) FDIC: 6714–01–P (25%) OTS: 6720–01–P (25%)

[6] OCC and OTS regulations specify distances considered short-distance relocations. *See* 12 CFR 5.3(i) (national banks) and 12 CFR 545.95(c) (thrifts).

[7] The agencies note that where, after a reduction in services, the resulting facility no longer qualifies as a branch, section 42 would apply. Thus, notices of branch closing would be required if an institution were to replace a traditional brick-and-mortar branch with an ATM.

[8] Section 42 would apply, however, if the institution did not reopen the branch following the incident. Although prior notice would not be possible in such a case, the institution should notify the customers of the branch and the appropriate Federal banking agency in the manner specified by section 42 to the extent possible and as soon as possible after the decision to close the branch has been made.

[9] The term "low-or moderate-income area" means a census tract for which the median family income is: (1) Less than 80 percent of the median family income for the metropolitan statistical area (as designated by the Director of the Office of Management and Budget) in which the census tract is located; or (2) in the case of a census tract that is not located in a metropolitan statistical area, less than 80 percent of the median family income for the State in which the census tract is located, as determined without taking into account family income in metropolitan statistical areas in such State. (12 U.S.C. 1831r-l(d)(4)).

DEPARTMENT OF THE TREASURY

Customs Service

Procedures If the Generalized System of Preferences Program Expires

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: The Generalized System of Preferences (GSP) is a renewable preferential trade program that allows the eligible products of designated developing countries to directly enter the United States free of duty. The GSP is currently scheduled to expire at midnight on June 30, 1999, unless its provisions are extended by Congress. This document provides notice to importers that claims for duty-free treatment under the GSP will not be processed by Customs for merchandise entered or withdrawn from a warehouse for consumption on or after July 1, 1999, if the program is not extended before that date. This document also sets forth the mechanisms that will facilitate refunds, should the GSP be renewed with retroactive effect.

DATES: The plan set forth in this document will become effective as of July 1, 1999, if Congress does not extend the GSP program before that date.

FOR FURTHER INFORMATION CONTACT: For specific questions relating to the Automated Commercial System:

James Halpin, Office of Information Technology, 703–921–7128. For general operational questions:

Formal entries—John Pierce, 202–927–1249;

Informal entries—John Considine, 202–927–0042;

Mail entries—Robert Woods, 202–927–1236;

Passenger claims—Wes Windle, 202–927–0167

SUPPLEMENTARY INFORMATION:

Background

Section 501 of the Trade Act of 1974 (the Act), as amended (19 U.S.C. 2461), authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary countries. Beneficiary developing countries and articles eligible for duty-free treatment under the GSP are designated by the President by Presidential Proclamation in accordance with sections 502(a) and 503(a) of the Act (19 U.S.C. 2462(a) and 2463(a)). Pursuant to 19 U.S.C. 2465, as amended by section 1011(a) of Pub. L. 105–277, 112 Stat. 2681, duty-free treatment under the GSP is presently scheduled to expire on June 30, 1999.

Congress is currently considering whether to extend the GSP program. If Congress does not pass legislation renewing the GSP before midnight, June 30, 1999, no claims for duty-free treatment under the program will be processed by Customs on entries made after that time. If legislation renewing the GSP is enacted after the GSP expires, language may be included that would make the GSP effective back to the date of its present expiration.

Recognizing the effect that renewing GSP duty treatment with retroactive effect has on both importers, who must request refunds of duties deposited, and Customs, which must liquidate or reliquidate eligible entries, Customs developed a mechanism to facilitate certain refunds. Set forth below is Customs plan that will be implemented on July 1, 1999, if the GSP has not been extended by that date.

Formal Entries

Claims—Duties Must Be Deposited

Although Customs will accept claims for GSP duty-free treatment, as specified below, Customs will not process the claim as duty free under the GSP for merchandise entered, or withdrawn from warehouse for consumption on or after July 1, 1999. Further, duties at the normal-trade-relations rate must be deposited, unless an alternate claim is made under another preferential program for which the merchandise qualifies (for example, the Andean Trade Preference Act or the Caribbean Basin Economic Recovery Act).

On or after July 1, 1999, for all merchandise that would qualify for the GSP were the GSP still in effect, Automated Broker Interface (ABI) filers must deposit duties at the normal-trade-relations rate with their entry summaries, but may continue to claim GSP duty-free treatment by using the Special Program Indicator (SPI) "A" as a prefix to the tariff number. Customs Automated Commercial System (ACS) will accept the SPI "A" transmission with the payment of duty. If the GSP is renewed with retroactive effect, the duties deposited will be refunded by Customs without further action by the ABI filer. In effect, use of the SPI "A" will constitute an ABI filer's request for a refund of duties paid for GSP line items if GSP is renewed with retroactive effect. It is noted that for ABI filers to take advantage of this system for receiving an automatic refund if GSP is renewed retroactively, the filers will have to reprogram their software to allow for the submission of estimated duties with the SPI "A" designation on entries. ABI filers who do not wish to reprogram their software will be required to request refunds in writing to the appropriate port director identifying the affected entry numbers if the GSP is renewed with retroactive effect.

While reprogramming is strictly voluntary, continued use of the SPI "A" has some benefits: one already mentioned is that the filer will not have to request a refund of deposited duties in writing should the GSP be renewed with retroactive effect; another is that ACS will perform its usual edits on the information transmitted by the filer, thereby ensuring that GSP claims are for acceptable country/tariff combinations and eliminating the need for statistical corrections.

Importers may not use the SPI "A" if they intend to later claim drawback, because claiming both the refund of duties deposited and drawback would be to request a refund in excess of duties actually deposited. Importers who are unsure as to whether they will claim drawback are advised not to use the SPI "A". If the GSP is renewed with retroactive effect, and the importer has not claimed drawback or enabled another person to claim drawback, then the importer may request a refund of duties deposited by writing to the port director at the port of entry. Also, importers may not use the SPI "A" if they have made an alternative duty-free treatment claim to GSP (for example, the Andean Trade Preference Act or the Caribbean Basin Economic Recovery Act).

Refunds

1. Automatic

If an ABI entry summary was filed with the SPI "A", should the GSP be renewed with retroactive effect, then Customs will liquidate or reliquidate all affected ABI entry summaries with a refund for the GSP line items with no further action needed to be taken by the filer to request a refund.

2. Need for Written Request

If an ABI entry summary was filed without the SPI "A", then the request for a refund must be in writing. Further, all non-ABI filers must request refunds in writing. Instructions on how to request a refund in writing will be issued if the GSP is renewed with retroactive effect.

Informal Entries

Refunds on informal entries filed through the ABI with the SPI "A" designation will be processed in accordance with the automatic refund procedure outlined above.

Baggage Declarations and Non-ABI Informals

When merchandise is presented for clearance, travelers and importers will be advised verbally that they may be eligible for a refund of GSP duties. Travelers/importers desiring such refund should request the Customs Officer to annotate the receipt of payment to indicate that the merchandise would be eligible for GSP duty-free treatment. Then, should the GSP be renewed with retroactive effect, the traveler/importer must request the GSP duty refund in a letter that includes the copy of the receipt of payment and submit the request to the appropriate Customs port of entry.

Mail Entries

Should the GSP be renewed with retroactive effect, those addressees who received GSP eligible merchandise (identified on the CF 3419A, (Mail Entry)) may be eligible for a refund of GSP duties and should submit a separate written claim for a refund. The request for the refund and a copy of the CF 3419A should be submitted to the appropriate International Mail Branch identified at the bottom right-hand corner of the CF 3419A. (The copy of the CF 3419A must be included with the request, as the information contained on the form will be the only record of the GSP merchandise entered and whether the duties and fees were paid).

Dated: June 24, 1999.

Robert J. McNamara,

Acting Assistant Commissioner Field Operations.

[FR Doc. 99–16480 Filed 6–28–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of Citizen Advocacy Panel, Brooklyn District.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Tuesday, July 20, 1999.

FOR FURTHER INFORMATION CONTACT: Kevin McKeon at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Tuesday, July 20, 1999, 6:00 p.m. to 9:00 p.m. at 10 MetroTech Center, 6th Floor, 625 Fulton Street, Brooklyn, N.Y. 11201. Due to limited conference space, notification of intent to attend the meeting must be made with Kevin McKeon. Mr. McKeon can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 7:00 p.m. to 8:00 p.m. on Tuesday, July 20, 1999. Individual comments will be limited to 5 minutes.

If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Kevin McKeon, CAP Office, P.O. Box R, Brooklyn, N.Y., 11202.

The Agenda will include the following: Reports of the sub-committees and various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 14, 1999.

M. Cathy VanHorn,

CAP Project Manager.

[FR Doc. 99–16412 Filed 6–28–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of Citizen Advocacy Panel, Midwest District.

SUMMARY: An open meeting of the Midwest Citizen Advocacy Panel will be held in Des Moines, Iowa.

DATES: The meeting will be held Thursday, July 22, 1999 and Friday, July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, July 22, 1999 from 12:00 noon to 5:00 p.m. and 7:00 p.m to 9:00 p.m. and Friday, July 23, 1999 from 9:00 a.m. to 4:30 p.m. in Room 207, Best Western, Starlite Village, 929 Third Street, Des Moines, Iowa 50309. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. The public is invited to make oral comments on Thursday, July 22, 1999, 7:00 p.m. to 9:00 p.m.; written comments will be read into the record. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement or pre-register to make an oral comment, please call the CAP office at 1–888–912–1227 or 414–297–1604, FAX (414) 297–1623 or mail to Citizen Advocacy Panel, Mail Stop 1006–MIL, 310 W. Wisconsin Ave, Milwaukee, Wisconsin 53203–2221. If you would like to pre-register for the meeting, the only information needed by the CAP office is number of attendees and zip code.

The Agenda will include the following: Reports by the CAP sub-groups, presentation of taxpayer issues by individual members, CAP office report, report on *Points of Light* conference, and discussion of issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 14, 1999.

M. Cathy VanHorn,

CAP Project Manager.

[FR Doc. 99–16413 Filed 6–28–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

June 21, 1999.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

DATES: Submit written comments on or before July 29, 1999.

OMB Number: 1550–0015.

Form Number: H–(e)__.

Type of Review: Extension.

Title: S&L Holding Company Applications.

Description: This information is collected to determine whether a company meets the statutory standards to become a savings and loan holding company.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Recordkeepers: 154.

Estimated Burden Hours Per Recordkeeper: 502.6 hours.

Frequency of Response: Once per submission.

Estimated Total Recordkeeping Burden: 77,402 hours.

Clearance Officer: Mary Rawlings-Milton, (202) 906–6028, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Frank DiGiallenardo,

CIO and Director, Office of Information Services.

[FR Doc. 99–16524 Filed 6–28–99; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

June 21, 1999.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift

Supervision, 1700 G Street, NW, Washington, DC 20552.

DATES: Submit written comments on or before July 29, 1999.

OMB Number: 1550–0020.

Form Number: H(b)10.

Type of Review: Extension.

Title: S&L Holding Company Registration Statement.

Description: This information is collected to determine if a savings and loan holding company has adhered to the statutes, regulations, and condition of approval to acquire an insured institution and whether any of the holding company?s activities would be injurious to the operation of the subsidiary savings institution.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Recordkeepers: 135.

Estimated Burden Hours Per Recordkeeper: 8 hours.

Frequency of Response: Once per submission.

Estimated Total Recordkeeping Burden: 1,080 hours.

Clearance Officer: Mary Rawlings-Milton, (202) 906–6028, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Frank DiGialleonardo,

CIO and Director, Office of Information Services.

[FR Doc. 99–16525 Filed 6–28–99; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 64, No. 124

Tuesday, June 29, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Alternative Execution, or Block Trading, Procedures for the Futures Industry

Correction

In notice document 99– 14713, beginning on page 31195 in the issue of Thursday, June 10, 1999, make the following corrections:

1. On page 31195, in the third column, in the heading, "Executive" should read "Execution".

2. On the same page, in the same column, in the summary, in the fourth line, remove "executive."

3. On page 31196, in the first column, in the third line, add a comma after "Trading".

4. On the same page, in the same column, in the first paragraph, in the eighth line, "release" should read "Release".

5. On the same page, in the same column, in footnote 1, in the fourth line, "noncompetitive transaction" should read "noncompetitive transactions".

6. On the same page, in the same column, in footnote 2, in the second line, "Exchanges" should read "exchanges".

7. On the same page, in the same column, in footnote 2, in the second paragraph, in the third line, "authorize" should read "authorizes".

8. On the same page, in the third column, in footnote 5, in the first line, "sections" should read "Sections".

9. On the same page, in the same column, in footnote 5, in the last line, "rule" should read "rules".

10. On the same page, in the same column, in footnote 6, in the 11th line, "CMD" should read "CME".

11. On page 31197, in the first column, in the ninth line, "These" should read "these".

12. On the same page, in the same column, in the second paragraph, in the sixth line, "the" should read "a".

13. On the same page, in the same column, in footnote 8, in the ninth line from the end, "transaction" should read "transactions".

14. On the same page, in the same column, in footnote 8, in the second line from the bottom, "of" should read "for".

15. On the same page, in the second column, in footnote 9, in the 13th line, "Future" should read "Futures".

16. On the same page, in the same column, in footnote 9, in the third line from the end, "April 10, 1995" should read "April 20, 1995".

17. On the same page, in the same column, in footnote 11, in the last line, "ti" should read "it".

18. On the same page, in the third column, in footnote 11, in the second paragraph, in the fifth line from the end, after "are" add "not".

19. On the same page, in the same column, in footnote 12, in the last line, add end quotation marks after "up".

20. On page 31198, in the first column, in the first line of the footnote, "Inform" should read "inform".

21. On the same page, in the second column, in the first complete paragraph, in the third line from the end, "transaction" should read "transactions".

[FR Doc. C9–14713 Filed 6–28–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Tuesday
June 29, 1999

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology (Generic MACT); Final Rule
Process Wastewater Provisions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6348–9]

RIN 2060–AG91, 2060–AF06, 2060–AG94, 2060–AF09, 2060–AE36

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology (Generic MACT)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates the consolidated rulemaking proposal published on October 14, 1998. Today's rule establishes our "generic MACT standards" program for setting national emission standards for hazardous air pollutants (NESHAP) under section 112 of the Clean Air Act (Act) for certain small source categories consisting of five or fewer major sources. As part of this generic MACT program, we are establishing an alternative methodology for making maximum achievable control technology (MACT) determinations for appropriate small categories by referring to previous MACT standards that have been promulgated for similar sources in other categories. The basic purposes of the generic MACT program are to use public and private sector resources efficiently, and to promote regulatory consistency and predictability in MACT standards development.

Today's consolidated rulemaking package includes promulgated MACT standards that have been developed within the generic MACT framework for four specific source categories that are included on our list of categories for which NESHAP are required: acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, and polycarbonate(s) (PC) production.

In this consolidated rulemaking package, we are also promulgating general control requirements for certain types of emission points for hazardous air pollutants (HAP), which will then be referenced, as appropriate, in MACT requirements for individual source categories. These general control requirements are set forth in new promulgated subparts and are applicable to storage vessels containing organic materials, process vents emitting organic vapors, and leaks from equipment components. In addition, we are promulgating a separate subpart of requirements for closed vent systems, control devices, recovery devices and routing emissions to fuel gas systems or a process.

We have withdrawn the proposed process wastewater provisions from the promulgated rule. In a supplemental notice of proposed rulemaking (SNPR) published elsewhere in today's **Federal Register**, we reopen the comment period (for 30 days) specifically to request additional comment on amendments to the proposed standards for process wastewater provisions for the AR, AMF, and PC production source categories. We plan to take final action regarding the amendments to the proposed provisions for process wastewater streams by November 15, 1999 (the revised date set forth in a proposed consent decree).

EFFECTIVE DATE: The effective date is June 29, 1999.

ADDRESSES: *Technical Support Document.* The consolidated rulemaking package promulgated today is supported by a background information document (BID) that contains a summary of the public comments received on the proposal and the Administrator's responses to public comments. This document may be obtained from the docket for this rule, A–97–17, or through the Internet at http://www.epa.gov/ttn/oarpg/ramain.html or from the U.S. Environmental Protection Agency Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. Please refer to "National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology—Background Information for Acetal Resins, Acrylic and Modacrylic Fiber, Hydrogen Fluoride, and Polycarbonate Production Promulgated Standards," EPA–453/C–99–001.

Docket. A docket, No. A–97–17, containing information considered by us in the development of the proposed and promulgated standards for the generic MACT, is available for public inspection between 8:30 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays), at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington DC 20460, telephone: (202) 260–7548. Our Air Docket section is located at the above address in Room M–1500, Waterside Mall (ground floor). Dockets established for each of the source categories assimilated under the generic MACT standards with this promulgation include the following: AR production (Docket No. A–97–19); AMF production (Docket No. A–97–18); HF production (Docket No. A–96–54); and PC production (Docket No. A–97–16). These dockets include source category-specific supporting information. The proposed and promulgated standards, and supporting information are available for inspection and copying. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the promulgated standards, contact the following at the Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711:

Information Type	Contact	Group	Phone/Facsimile/ e-mail address
AR Production	John M. Schaefer	Organic Chemicals Group	(919) 541–0296/(919) 541–3470/ schaefer.john@epa.gov
AMF Production	Anthony P. Wayne	Policy, Planning and Standards Group.	(919) 541–5439/(919) 541–0942/ wayne. tony@epa.gov
HF Production	Richard S. Colyer	Policy, Planning, and Standards Group.	(919) 541–5262/(919) 541–0942/ colyer.rick@epa.gov
PC Production	Mark A. Morris	Organic Chemicals Group	(919) 541–5416/(919) 541–3470/ morris.mark@epa.gov
Recordkeeping and Reporting Requirements.	Belinda Breidenbach	Office of Enforcement and Compliance Assurance.	(202) 564–7022
Nonsource category-specific	David W. Markwordt	Policy, Planning and Standards Group.	(919) 541–0837/ (919) 541–0942/ markwordt.david@epa.gov

The EPA Region contacts are as follows:

Information Type	Contact	EPA Office/Region	Phone
AR Production	Lee Page	Region IV	(404) 562–9131
	Robert Todd	Region VI	(214) 665–2156
AMF Production	Lee Page	Region IV	(404) 562–9131
HF Production	Robert Todd	Region VI	(214) 665–2156
PC Production	Lee Page	Region IV	(404) 562–9131
	Bruce Varner	Region V	(312) 886–6793
	Robert Todd	Region VI	(214) 665–2156

SUPPLEMENTARY INFORMATION: The SNPR, the promulgated regulatory text, and supporting documentation are available in Docket No. A–97–17 or by request from our Air and Radiation Docket and Information Center (see **ADDRESSES**). The SNPR and the promulgated regulatory text are also available on the Technology Transfer Network (TTN) on our electronic bulletin boards. The TTN provides information and technology exchange in various areas of air emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5384, from 1:00 p.m. to 5:00 p.m. Monday through Friday, or access the TTN web site at: http://www.epa.gov/ttn.

Regulated Entities

Entities potentially regulated are those that produce AR, AMF, HF, and PC and are major sources of HAP as defined in section 112 of the Act. Regulated categories and entities include the following:

Category	Regulated entities [a]
Industry	Producers of homopolymers and/or copolymers of alternating oxymethylene units.
	Producers of either acrylic fiber or modacrylic fiber synthetics composed of acrylonitrile (AN) units.
	Producers of, and recoverers of HF by reacting calcium fluoride with sulfuric acid. For the purpose of implementing the rule, HF production is not a process that produces gaseous HF for direct reaction with hydrated aluminum to form aluminum fluoride (i.e., the HF is not recovered as an intermediate or final product prior to reacting with the hydrated aluminum).
	Producers of polycarbonate.

[a] This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in §63.1104(a)(1), (b)(1), (c)(1), and (d)(1) of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

Under section 307(b)(1) of the Act, judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by August 30, 1999. Under section 307(d)(7)(B) of the Act, only an objection to this rule which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the Act, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by us to enforce these requirements.

Plain Language

In compliance with President Clinton's June 1, 1998 Executive Memorandum on Plain Language in government writing, this preamble is written using plain language. Thus, the use of "we," "us," or "our" in this notice refers to the EPA. The use of "you" refers to the reader, and may include industry; State, local, and tribal governments; environmental groups; and other interested individuals.

The following outline is provided to assist you in reading this preamble.

I. Why have we developed these regulations?
II. What factors did we consider when developing these standards?
  A. Promotion of Public Health and Welfare
  B. Statutory and Technical Considerations
  C. Stakeholder and Public Participation
III. What are the final standards?
  A. Generic MACT Rule Structure
  B. Acetal Resins Production Standards
  C. Acrylic and Modacrylic Fibers Production Standards
  D. Hydrogen Fluoride Production Standards
  E. Polycarbonate Production Standards
IV. What are the impacts associated with the final rule?
V. The Legal Basis for the Generic MACT Approach
  A. The Generic MACT Approach
  B. Criteria for Determining Suitability for Generic MACT
  C. Adequacy of Notice and Comment
  D. Date for Determining New Sources
VI. What are the significant comments and changes made on the proposed standards?
  A. MACT for Acrylic and Modacrylic Fiber Production—Changes Made Since Proposal
  B. Process and Maintenance Wastewater Stream Provisions
VII. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866
  D. Executive Order 12875
  E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996
  F. Unfunded Mandates Reform Act
  G. Submittal to Congress and the General Accounting Office
  H. National Technology Transfer and Advancement Act
  I. Executive Order 13045
  J. Executive Order 13084

I. Why Have We Developed These Regulations?

Section 112(b) of the Act (as amended) lists 188 HAP's and directs us to develop rules to control all major and some area sources emitting HAP. On July 16, 1992 (57 FR 31576), we published a list of major and area sources for which NESHAP are to be promulgated. On December 3, 1993 (58 FR 83941), we published a schedule for promulgating standards for the listed major and area sources. Standards for the acetal resins production, acrylic and modacrylic fiber production, and polycarbonate production source categories were scheduled for promulgation by 1997. The hydrogen

fluoride production source category was scheduled for promulgation by the year 2000 but was changed to be scheduled for promulgation by 1997. We are promulgating standards for the AR, AMF, HF, and PC production source categories under a May 15, 1999 court-ordered deadline.

II. What Factors Did We Consider When Developing These Standards?

A. Promotion of Public Health and Welfare

The Act was developed, in part,

> * * * to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population [the Act, section 101(b)(1)].

Sources that would be subject to the standards promulgated for each of the source categories (i.e., AR production, AMF production, HF production, PC production) with today's consolidated rulemaking package are major sources of HAP emissions on our list of categories scheduled for regulation under section 112(c)(1) of the Act. Major sources of HAP emissions are those sources that have the potential to emit greater than 9.1 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP. The HAP that would be controlled with today's consolidated rulemaking package are associated with a variety of adverse health effects. Adverse health effects associated with HAP include chronic health disorders (e.g., cancer, aplastic anemia, pulmonary (lung) structural changes), and acute health disorders (e.g., dyspnea (difficulty in breathing), and neurotoxic effects.

B. Statutory and Technical Considerations

We regulate stationary sources of HAP under section 112 of the Act. Section 112(b) (as amended) of the Act lists 188 chemicals, compounds, or groups of chemicals as HAP. Under section 112, we are directed to regulate the emission of HAP from stationary sources by establishing national emission standards.

Section 112(a)(1) of the Act defines a major source as:

> * * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit, considering controls, in the aggregate 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

The statute requires that we establish standards to reflect the maximum degree of reduction in HAP emissions through application of MACT for major sources on our list of categories scheduled for regulation under section 112(c)(1) of the Act. We are required to establish standards that are no less stringent than the level of control defined under section 112(d)(3) of the Act (this minimal level of control is referred to as the "MACT floor."

We chose to regulate the AR production, AMF production, HF production, and PC production source categories under one subpart to streamline the regulatory burden associated with the development of separate rulemaking packages. All of these source categories have four or fewer major sources that would be subject to the standards. This subpart is referred to as the "generic MACT standards" subpart. The generic MACT standards subpart has been structured to allow source categories with similar emission points and MACT control requirements to be covered under one subpart.

In the proposal preamble, we provide a discussion on the approach used to collect and evaluate information pertaining to MACT and the rationale for our approach for determining MACT for source categories with a limited population of sources (see 63 FR 55181–55184, October 24, 1998). The rationale for the MACT determination under the MACT standards for the AR production, AMF production, HF production, and PC production source categories is also described in the proposal preamble (see 63 FR 55191–55196, October 24, 1998).

C. Stakeholder and Public Participation

Representatives of the AR production, AMF production, HF production, and PC production industries and State and local agencies were consulted in the development of the proposed standards. Documentation for stakeholder and public participation for these source categories is included in the docket for these standards (Docket No. A–97–17). Source category-specific supporting information is maintained within dockets established for each of these source categories (see **ADDRESSES** section of this preamble for Docket information).

The generic MACT standards were proposed in the **Federal Register** on October 14, 1998 (63 FR 55178). We placed the proposed notice and regulatory text, along with supporting documentation, in a docket open to the public at that time and made them available to interested parties. Public comments were solicited at the time of proposal. Comments were specifically requested on the proposed generic MACT approach and the emission point general control requirement subparts.

To provide interested parties the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered on November 25, 1998 in Research Triangle Park, North Carolina.

The public comment period was from October 14, 1998 to January 12, 1999. The most significant comments and responses are discussed in section VI of this preamble.

III. What Are the Final Standards?

The final rule promulgates standards for AR production, AMF production, HF production, and PC production that include requirements that reflect existing emission point control requirements for similar sources; requirements that are source category-specific; and requirements that apply to all source categories that are regulated under the generic MACT standards subpart (e.g., general recordkeeping, reporting, compliance, operation, and maintenance requirements). Section III.A of this preamble presents the generic MACT standards subpart structure, and sections III.B through III.E present a summary of the promulgated standards applicable to each of the source categories in the final rule.

The final rule applies to process units and emission points that are part of a plant site that is a major source as defined in section 112 of the Act. The applicability section of the regulation specifies what source categories are being regulated and defines the emission points subject to the rule.

A. Generic MACT Rule Structure

The following discussion presents a summary of the structure of the standards included in the final rule.

1. Applicability

The final rule allows source categories with similar emission points and MACT control requirements to be covered under one subpart. The applicability section specifies the source categories and affected source for each of the source categories subject to the generic MACT standards. This section also clarifies the applicability of certain emission point provisions for which both the generic MACT standards subpart and other existing Federal regulations might apply.

2. *Definitions*

The definitions section of the final rule specifies definitions that apply across source categories.

3. Compliance Schedule

The compliance schedule section of the final rule provides compliance dates for new and existing sources.

4. Source Category-specific Applicability, Definitions, and Standards

The source category-specific applicability, definitions and standards section of the final rule specifies the definitions, and standards that apply to an affected source based on applicability criteria, for each source category.

5. Applicability Assessment Procedures and Methods

If you are an owner or operator of an affected source, the applicability assessment procedures and methods sections of the final rule provide procedures for you to follow when assessing whether control requirements under the standard applicability section of the rule apply. Standard applicability assessment procedures (as applicable) are footnoted in the standard requirement applicability tables specified for each source category.

6. Generic Standards and Procedures for Approval for an Alternative Means of Emissions Limitation

The remaining sections of the final rule contain provisions that apply across source categories within the generic MACT subpart. These provisions include generic compliance, maintenance, monitoring, recordkeeping, and reporting requirements. An alternative means of emission limitation to the design, operational, work practice, or equipment standards specified for each source category within the generic MACT subpart may also be established as provided in § 63.1113 of 40 CFR part 63, subpart YY (Generic MACT Standards).

B. Acetal Resins Production Standards

The AR production standard regulates HAP emissions from storage vessels storing process feed materials, process vents, and equipment leaks from compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems. Requirements are the same for both existing and new sources.

1. Storage Vessels

Storage vessels with specified sizes that store materials with specified vapor pressures are required to control HAP emissions by using an external floating roof equipped with specified primary and secondary seals; by using a fixed roof with an internal floating roof equipped with specified seals; or by covering and venting emissions through a closed vent system to one of the following:

a. A recovery device or an enclosed combustion device that achieves a HAP control efficiency ≥ 95 percent.

b. A flare.

2. Process Vents From Continuous Unit Operations (Back End and Front End Process Vents)

Front end process vents are required to control HAP or total organic compound (TOC) emissions by venting emissions through a closed vent system to a flare, or venting emissions through a closed vent system to any combination of control devices that reduces emissions of HAP or TOC by 60 percent by weight or to a concentration of 20 ppmv, whichever is less stringent. Back end process vents with a total resource effectiveness index value (TRE) less than 1.0 are required to control HAP or TOC emissions by venting emissions through a closed vent system to a flare, or avoid control requirements venting emissions through a closed vent system to any combination of control devices that reduces emissions of HAP or TOC by 98 percent by weight or to a concentration of 20 parts per million by volume (ppmv), whichever is less stringent; or by achieving and maintaining a TRE index value greater than 1.0.

3. Equipment Leaks

For equipment containing or contacting HAP in amounts ≥ 5 percent, HAP emissions are required to be controlled through the implementation of a leak detection and repair (LDAR) program for affected equipment.

C. Acrylic and Modacrylic Fibers Production Standards

The final standards for AMF production consist of standards that regulate acrylonitrile (AN) emissions from storage vessels, process vents, fiber spinning lines, process wastewater treatment systems; and equipment leaks. Requirements for individual sources are, for the most part, the same for both existing and new sources. The one exception is fiber spinning lines. The requirements for spinning lines at new or modified sources remain the same as those proposed (i.e., an 85 percent AN reduction) with the addition of an alternative performance standard that limits spinning line emissions to 0.25 kilograms AN per megagram (Mg) of fiber produced.

The requirements for existing spinning lines at existing AMF sources have been revised to better reflect existing spinning solution AN concentrations and subsequent emissions relative to the two types of polymerization processes used in the industry. Separate control requirements are being included in the final rule to reflect the differences in the two polymerization processes relative to spinning solution or spin dope residual AN concentrations and the technical feasibility of applying source reduction measures.

As an alternative to these individual source requirements, if you own or operate an affected AMF production facility you can comply with the final rule by controlling facility-wide AN emissions (not including equipment leaks) to a level such that emissions do not exceed 0.5 kilograms of AN per Mg of fiber produced (1.0 pound AN per ton of fiber produced) for existing sources, and 0.25 kilograms of AN per Mg of fiber produced (0.5 pounds AN per ton of fiber produced) for new sources.

1. Storage Vessels

Storage vessels storing process feed material would be required to control AN emissions by using an external floating roof equipped with specified primary and secondary seals; using a fixed roof with an internal floating roof equipped with specified seals; or by venting emissions through a closed-vent system to one of the following:

a. A recovery device that achieves a HAP control efficiency ≥95 percent;

b. An enclosed combustion control device that achieves a HAP control efficiency ≥98 percent; or

c. A flare.

2. Continuous Process Vents

Process vents with vent streams with a HAP concentration ≥50 ppmv would be required to control HAP emissions by venting vapors through a closed-vent system to a recovery or control device that reduces emissions of HAP or TOC by 98 weight-percent or to a concentration of 20 ppmv, whichever is less stringent, by using a flare or by venting and using any combination of combustion, recovery, and/or recapture devices. If the controlled vent stream is halogenated, emissions are required to be vented to a halogen reduction device that reduces hydrogen halides and halogens by 99 percent or to less than 0.45 kilograms per hour (kg/hr) either prior to or after (other than by using a flare) reducing the HAP or TOC by 98 weight-percent.

3. Fiber Spinning Lines

Spinning lines at suspension polymerization existing sources are required to reduce the spin dope AN concentration to 100 (ppmw) or less. No additional AN specific emission reduction levels have been identified in this final rule for these sources. No control requirements are specified in the final rule for existing spinning lines at solution polymerization sources. New and modified sources are required either to reduce AN emissions by greater than or equal to 85 percent, reduce the spin dope AN concentration to 100 ppmw, or limit spinning line emissions to 0.25 kilograms AN per Mg (0.5 lb AN per ton) of fiber produced.

4. Equipment Leaks

For equipment containing or contacting AN in amounts ≥10 percent, HAP emissions would be required to be controlled through the implementation of an LDAR program for affected equipment. This requirement applies to equipment leaks from compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, or instrumentation systems.

We chose to regulate AMF production facilities based on the control of pollutant streams containing AN. This pollutant is the principal HAP associated with and emitted from AMF production facilities. Other organic HAP constituents, where present, would only be associated with those pollutant streams containing AN. We expect that where sources control AN emissions, comparable levels of control will be achieved for other organic HAP emitted from AMF production facilities.

D. Hydrogen Fluoride Production Standards

The HF production standards regulate HAP emissions from storage vessels; process vents on HF recovery and refining vessels; bulk loading of HF liquid into tank trucks and railcars; and equipment leaks from compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, or instrumentation systems. Requirements are the same for both existing and new sources.

1. *Storage Vessels and Transfer Racks*

Storage vessels and transfer loading racks are required to control HF emissions by venting to a recovery system or wet scrubber designed and operated to achieve a 99 percent by weight removal efficiency.

2. *Process Vents From Continuous Unit Operations*

Process vents for HF recovery and refining are required to control HF emissions by venting emissions to a wet scrubber designed and operated to achieve a 99 percent by weight HF removal efficiency.

3. *Equipment Leaks*

All equipment leaks are controlled through a LDAR program.

E. Polycarbonate Production Standards

The PC production standards regulate organic HAP emissions from process vents, storage vessels, and equipment leaks. Different requirements and applicability criteria apply for existing and new sources.

1. *Storage Vessels*

Storage vessels with specified sizes that store materials with specified vapor pressures are required to control organic HAP emissions by using an external floating roof equipped with specified primary and secondary seals; by using a fixed roof with an internal floating roof equipped with specified seals; or by venting emissions through a closed vent system to a control device. Some vessels must use a closed vent system and recovery or control device, based on vessel size and the vapor pressure of the stored material.

2. *Process Vents*

Process vents from continuous unit operations and combined vent streams (combinations of streams from continuous and/or batch unit operations) that have a TRE index value less than or equal to 2.7 are required to control organic HAP emissions by venting emissions through a closed vent system to a control device that reduces total organic HAP by 98 percent by weight, or reduces the concentration of total organic HAP or TOC to 20 ppmv, whichever is less stringent.

3. *Equipment Leaks*

For equipment containing or contacting organic HAP in amounts ≥ 5 percent, organic HAP emissions are required to be controlled through the implementation of an LDAR program for affected equipment.

IV. What Are the Impacts Associated With the Final Rule?

The impacts resulting from the promulgated standards for the source categories (i.e., AR production, AMF production, HF production, and PC production) are determined relative to the baseline that is set at the level of control in absence of the rule. The emissions reductions associated with the application of the control or recovery devices for the regulated source categories are expected to be small as the AR, AMF, HF, and PC production facilities affected by this rule essentially already have a level of control equivalent to that determined to be MACT.

Based on previous impacts analyses associated with the application of the control and recovery devices required under the standards and because each of the four regulated source categories have only five or fewer major sources, we believe that there will be minimal, if any, adverse environmental or energy impacts associated with the final standards.

Likewise, based on available information, we estimate that the cost and economic impacts of the final standards for the four source categories being regulated will be insignificant or minimal. The economic analyses for each of the four source categories can be obtained from the dockets established for these source categories (see **ADDRESSES**).

V. The Legal Basis for Generic MACT Approach

A. The Generic MACT Approach

The basic objectives of generic MACT are to conserve our limited resources, avoid unnecessary duplication of effort, and encourage consistency in our regulatory determinations. The generic MACT concept is based on applying the knowledge that we have already gained in the development of MACT standards under section 112 of the Act to source categories with a small number of facilities. As the source category becomes smaller, the likelihood that the best control strategies will have already been implemented for the sources in that category also becomes smaller. Thus, as the source category becomes smaller, it is more important for us when determining MACT for existing sources to consider control strategies that have been evaluated for similar types of sources in other source categories.

Just as we need to look beyond the source category itself in determining MACT for smaller source categories, the statutory MACT floor becomes increasingly less important as a regulatory safeguard as the number of facilities used to determine it declines. This is not only because the existing emission controls in a small source category are likely to be less representative of the range of practical technologies and strategies. It also is because, in the larger source categories, the MACT floor is derived from a subset of all sources in the category which have achieved greater control.

While we have concluded that the statutory scheme is in fact somewhat ambiguous with respect to deriving a MACT floor for source categories with five or fewer sources, in developing the generic MACT concept, we have nevertheless assumed that compliance with the MACT floor is required in all instances. However, we also have concluded that there are circumstances where we may reasonably determine compliance with the MACT floor without a separate numerical analysis. One circumstance where we believe a non-quantitative evaluation may be appropriate occurs when the information we have collected concerning sources in a small category (i.e. a category with five or fewer sources) supports a basic premise that they are similar to a larger group of previously regulated sources, and where we adopt a MACT standard which is based on the prior MACT determinations for the larger group of sources. In this circumstance, the small number of sources in the category, our prior experience with MACT determinations for similar sources in other categories, and the efficacious use of public and private resources make a non-quantitative evaluation of MACT floor compliance appropriate.

In each of the prior standards from which a generic MACT standard is derived, we selected a level of control equal to or greater than the MACT floor for the category in question, and each of those MACT floors was itself derived from a subset of the category in question consisting of the best-controlled facilities. So long as our evaluation of the sources in a small category according to our criteria for similarity (as summarized below) indicates that they are like the sources we previously regulated, and we do a separate MACT analysis rather than adopting a generic standard whenever we find that the sources in the small category have achieved greater control or are otherwise unlike the previously regulated sources in a meaningful way, we believe that a generic standard will meet all the statutory requirements.

Several commenters stated that the proposed generic MACT approach does not comply with the statutory scheme because a two-step analysis beginning with a numerical MACT floor determination is mandatory. To the extent that these comments are based on an assumption that our practice has always been to prepare a quantitative MACT floor analysis for a particular group of emission points before determining MACT for those emission points, this premise is incorrect. In some instances, we have determined that a particular MACT requirement is sufficient to assure compliance with the MACT floor based on a qualitative analysis of the emission points in question.

We are not suggesting that the question of compliance with the statutory MACT floor can be disregarded. If the commenters have concluded that we intend to ignore this issue in developing generic MACT standards, they have misunderstood our proposal. However, to the extent that the commenters instead are arguing that we have no discretion to establish alternate methodologies for determining compliance with the MACT floor, we disagree.

Even if we assume that the MACT floor provision applies to small categories, the statute requires only that we conclude that the MACT floor has been met by the promulgated standard. We do not agree that the statute requires us to use exactly the same methodology in every instance. A recent decision by the D.C. Court of Appeals expressly held that we "have wide latitude in determining the extent of data-gathering" required to determine compliance with the MACT floor, and that we may base our conclusions on a "reasonable inference." *Sierra Club* v. *EPA*, No. 97–1686 (D.C. Cir. March 2, 1999), slip op. at 7–9.

No source category will be selected for inclusion in the Generic MACT program until we have collected the information pertaining to sources in that category necessary to evaluate such sources according to the specific criteria for similarity set forth below. In practice, these criteria cannot be applied unless we have collected information which would also be sufficient to permit a general qualitative assessment of those existing controls which would represent the MACT floor for that category. If the information we have collected for a category which is a candidate for Generic MACT suggests that a MACT standard derived from our prior MACT determinations for sources in other categories would be less stringent than a MACT floor derived from such existing controls, we will not utilize Generic MACT in that instance. We believe our process for seeking early stakeholder involvement in development of a proposed standard will assure that we have sufficient information concerning existing emission controls at affected facilities to apply these criteria.

Generic MACT standards will always be adopted by notice and comment rulemaking. If we have incorrectly evaluated the issue of MACT floor compliance, affected sources in the category and other interested persons will have an opportunity to point this out during the comment period. If we conclude, based on such comments, that a small source category or one or more facilities within a small source category is not an appropriate candidate for generic MACT, we will not use our generic data base to determine MACT for that category or facility.

There were no commenters who argued directly that a standard developed using the generic MACT approach might be insufficiently stringent to satisfy the MACT floor, although certain industry commenters did state that omission of a separate numerical MACT floor analysis is impermissible. In evaluating this argument, we believe that the key point is that the standard that affected industry sources must ultimately meet is MACT itself, not the MACT floor.

If we were to erroneously adopt a Generic MACT standard less stringent than the MACT floor, this would have no adverse effect on the sources in question. Moreover, if we correctly determine MACT for a small source category and the resultant standard happens to be more stringent than the MACT floor for that category, the manner in which we determined compliance with the MACT floor would not be relevant when assessing any effect on the sources in question.

The commenters may believe that doing a quantitative MACT floor analysis will assist us in discovering meaningful differences between the sources in a small category and the larger groups of facilities used in deriving the generic MACT standard to be applied to that category. These commenters may be concerned that our utilizing a generic approach in developing certain MACT standards will cause us to disregard such differences. This type of concern about the quality of our analysis on the issue of similarity is reasonable. We agree that the issue of similarity must be carefully evaluated before we elect to utilize a generic MACT approach for sources in a small category.

One industry commenter states that the generic MACT approach does not meet statutory requirements because we must perform a "cost-benefit evaluation" for each decision to impose control requirements beyond the MACT floor. This commenter contends that this cost-benefit evaluation must be based on the incremental costs and benefits of additional controls as compared to the MACT floor. This

commenter also asserts that this cost-benefit analysis would consider potential differences in "public exposure" and "health benefits" between the sources in a small category and the sources from which a generic MACT standard was derived. These comments do not correctly interpret statutory requirements.

We are required to consider the cost of achieving emission reductions, and any non-air quality health and environmental impacts and energy requirements, in deciding what level of control constitutes MACT. This basic statutory requirement is applicable to all MACT standards, including any proposed generic MACT standard. Those emission controls which have already been demonstrated at facilities in the source category in question are obviously relevant to our determination of MACT. But the commenter is incorrect in implying that there is a direct connection between calculation of the MACT floor and the determination of MACT itself.

The assertion by this commenter that public exposure or the direct health benefits of reductions in HAP emissions are a factor in establishing MACT is also incorrect. Congress created the present statutory approach requiring MACT standards to replace a prior process where NESHAPs were based on health risks rather than on the practicality of controls. Although we do not consider health risks in determining MACT, the relative magnitude of the incremental emission reductions which particular controls would achieve may be an element in our determination whether particular controls would be cost effective. Moreover, there are other Section 112 programs such as the urban strategy and residual risk assessment where we will be considering the potential health risks presented by HAPs.

If a commenter persuades us that there are differences between a source or group of sources and the source categories from which we derived a generic MACT standard, and that these differences are sufficiently material to make adoption of that standard inappropriate (taking into account the cost of achieving emission reductions, and any non-air quality health and environmental impacts and energy requirements), we will establish MACT for that source or group of sources by an alternative methodology. In instances where it is appropriate, we may adopt such an alternative final standard as part of an existing rulemaking. We may also use elements of one of the standard standards in formulating an alternative standard for that source or group of sources.

Indeed, there is an example of this approach among the standards we are promulgating today. We originally proposed to apply the same generic standard to all AMF production facilities. During the comment period, one of these facilities persuaded us that there are significant differences between AMF spinning operations and the sources from which we derived the proposed standard for spinning operations, which make emission controls based on enclosure of AMF spinning impractical. The degree of control which is attainable without enclosure also differs depending on whether an existing facility uses a suspension polymerization or solution polymerization process. The final standard includes separate requirements for each of these two types of spinning operations, but is otherwise based on generic MACT procedures.

B. Criteria for Determining Suitability of Generic MACT

Three commenters noted that the criteria which we will use in deciding whether a small source category is a suitable candidate for use of generic MACT were discussed in the preamble of the proposal but were not included in the proposed regulatory text. These commenters recommended that we incorporate such criteria in the regulatory text.

We agree that objective criteria for making the determination of similarity are needed and that we should apply such criteria in a consistent manner each time we elect to utilize generic MACT procedures. We also agree that we should discuss the criteria we are utilizing, and the manner in which we have applied such criteria, whenever we decide that a small source category is an appropriate candidate for the generic MACT approach.

Although we do not believe that it is necessary that we incorporate such criteria in specific regulatory text, for the sake of clarity we will restate our criteria here. In deciding whether or not a source category or subcategory is sufficiently similar to a group of sources that we have previously regulated that it would be appropriate for us to derive generic control requirements from prior MACT determinations, we will consider each of the following factors:

(1) Differences in the volume and concentration of HAP emissions,

(2) Differences in the type of HAPs emitted,

(3) Differences in the type of emission points subject to control,

(4) Differences in the technical practicality and cost-effectiveness of emission controls,

(5) Whether the source category or subcategory being considered for generic control requirements presents unusual hazards that may have caused prior adoption of control requirements more stringent than those which would be derived from prior MACT determinations, and

(6) Whether sources in the source category or subcategory being considered for generic control requirements have already achieved emission limitations more stringent than those which would be derived from prior MACT determinations. In addition to these criteria, we may also decide to consider other factors in making future similarity determinations.

One commenter also raised a specific concern about the issue of similarity which suggests that the commenter did not fully understand our position. In the preamble we discussed factors which might undercut "the basic premise that [a small source category] is similar to the larger group of previously regulated sources." The commenter interpreted this statement as indicating that we might start with a basic premise of similarity for source categories under consideration for generic MACT which must then be refuted. This is an incorrect interpretation. We were referring to the basic premise of similarity which must be satisfied before we conclude that use of generic MACT is appropriate. We will apply our criteria first and will not select a source category for inclusion in generic MACT if we conclude that it is different in a material way from the sources we have previously regulated.

C. Adequacy of Notice and Comment

One commenter argues that, since sources in a small source category could not have anticipated that previous MACT determinations for large source categories would serve as precedents for the MACT determination for their source category, generic MACT procedures deny due process to such sources. We strongly disagree with this argument. Things we learn in developing one standard are often useful when we develop subsequent standards. There is no reason why we should not use our previous experience in a constructive manner merely because a regulated party did not participate in the prior rulemaking.

Each time generic MACT procedures are used, we will do notice and comment rulemaking. Each source in a small source category will have a full opportunity to explain why our previous experience does not apply to its circumstances, or to argue otherwise that the source category is not a suitable candidate for the generic MACT approach.

D. Date for Determining New Sources

One commenter expressed concern that sources in small categories subjected to Generic MACT in the future would be considered new sources if constructed or reconstructed after the proposal date for this current rulemaking. This result would not be reasonable and is not our intention. The date used to determine whether a source is a new source under section 112(a)(4) will be the date on which we specifically propose to apply Generic MACT standards to the source category in question.

VI. What Are the Significant Comments and Changes Made on the Proposed Standards?

A complete summary of the public comments on the generic MACT standards and our responses are presented in the BID for the promulgated standards, as referenced in the ADDRESSES section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that have been made to the standards between proposal and promulgation. We received many comments addressing a wide variety of issues, including the generic MACT approach and the proposed standards. The comments have been carefully considered, and, where determined to be appropriate by the Administrator, changes have been made in the promulgated standards.

The following sections discuss the most significant issues raised by commenters and our responses to them.

A. MACT for Acrylic and Modacrylic Fiber Production—Changes Made Since Proposal

1. Definitions

In today's final rule for AMF production, a definition of "spin dope" has been added to resolve applicability issues and to clarify the intent of the standards for spinning lines under the rules. In the proposed rule, spinning line control requirements were based on an applicability cutoff for AN concentration in the "spinning solution or spin dope." Commenters stated that the use of the term spinning solution alone could cause some confusion because the bath into which the fiber polymer and solvent mixture (i.e., spin dope) is extruded is also referred to in these terms. They also suggested that the term "spin dope" be defined to clarify that the concentration cutoff refers to the AN content of the mixture of polymer and solvent that is fed to the spinneret to form the fibers. The final rule contains the definition of spin dope and clarifies the use of both terms, spinning solution and spin dope, for purposes of applicability to control requirements.

2. Standards for Spinning Lines

During the spinning process, unreacted monomer and organic solvent used to dissolve the polymer are volatilized into room air. Major process fugitive emission points include the filtering, spinning, washing, drying and crimping steps.

At proposal, we concluded that if enclosures were constructed to capture the spinning process emissions, the resulting enclosed emission streams would have similar characteristics to the process vent streams covered by other parts of this standard where we had already determined MACT for similar vents in the chemical and related industries. This is the basis for the synthetic fiber new source performance standard (NSPS), 40 CFR Part 60 Subpart HHH, regarding volatile organic compound (VOC) emissions. Because of the AMF industry fiber spinning emission similarities, we concluded that MACT for AMF fiber spinning lines with a spinning monomer AN concentration equal to or greater than 100 ppmw was the use of an enclosure around the spinning and washing areas of the spinning line and venting the captured emissions of the enclosure to an appropriate control device. The overall AN emission reductions proposed were to achieve overall control efficiency of greater than or equal to 85 percent by weight. This value was proposed and is based on the assumption that the enclosure achieves a minimum capture efficiency of 90 percent by weight, and the captured vapor stream is routed to an organic recovery or destruction control device that achieves a total HAP reduction of 95 percent by weight or greater.

The proposed rule contained flexibility for facilities in selecting methods to reduce HAP emissions from their operations. There are two types of polymerization and spinning operations utilized at AMF production plants: solution and suspension processes. Several of the plants using the suspension process have used source reduction/pollution prevention techniques to significantly reduce the amount of residual AN monomer in the fiber spinning solution or spin dope. By reducing the AN content prior to spinning and fiber processing, this source reduction technique reduces the amount of AN that is ultimately volatilized into the room air and emitted to the atmosphere. The proposal preamble argued that it was appropriate to establish an alternative for those owners and operators who prefer to use source reduction or pollution prevention measures to reduce spinning line AN emissions rather than install capture/add-on control systems for their spinning lines under the individual source standards. Specifically, a maximum limit on the residual AN content within the spinning monomer which provided a level of AN emission control comparable to add-on controls was proposed. This was represented by the 100 ppmw cutoff in table 2 of the proposed rule. Therefore, in the proposed rule, capture/add-on control systems were required only for those spinning lines using a spinning solution or spin dope having a total organic HAP (i.e., AN monomer) concentration equal or greater than 100 ppmw. The 100 ppmw criterion or action level was based on estimates of the amount of residual AN monomer in the spin dope found in suspension polymerization process with application of source reduction measures (i.e., pollution prevention) to remove the residual AN prior to spinning.

Public comments on the proposal argued that the similarity arguments regarding capture/add-on control systems were not valid. They also argued that there are differences between existing solution and suspension processes which need to be considered in establishing emission limits for existing processes. We reassessed the control requirements for spinning operations based on these comments. In doing so, a series of questions were considered, as outlined in the following paragraphs.

i. *Are there capture/control systems being used on spinning operations in this industry? Do we have MACT regulations requiring capture/add-on control for similar processes in other industries?* In practice, there are no AMF production facilities within this source category which have enclosed and captured the emissions from their spinning lines and vented them to a control device. The success of add-on controls system applications to existing fiber spinning lines relies on enclosure of the existing spinning lines. The MACT process vent rules used as the basis for the similarity argument in the proposal preamble apply to processes which are typically already enclosed (e.g., reactors) or very easily enclosed as a normal part of the process, whether

the emissions are controlled or not. Enclosing spinning operations requires consideration of a variety of factors such as worker access and safety requirements that must be factored into retrofitting designs unique to this industry. We have not been able, at this time, to identify MACT standards beyond those considered at proposal which apply to situations sufficiently similar to the AMF spinning lines to use as the basis for a similarity argument.

Some existing spinning line processes are subject to the NSPS for synthetic fiber production plants. The commenters pointed out that these spinning lines are in compliance with the NSPS through source reduction measures rather than the NSPS identified reduction techniques of installing enclosures and add-on control devices. As a result of our review of the spinning line emissions and proposed rule basis of enclosure and control, we have concluded that the original assumption of similar enclosure and control applications does not apply to these existing spinning lines.

ii. *Can the pollution prevention control techniques being used by several of the plants with suspension spinning operations be used for the solution process in existing facilities?* Although the air emission and source characteristics for all other emission point types (i.e., tanks, equipment components, wastewater treatment units) are similar throughout the source category, the solution and suspension processes associated with the spinning operations differ from each other in the processing steps and the acrylonitrile concentrations in the process materials and associated emissions. Solution polymerization spin dope for fiber production contains, by product and process design, a significantly higher concentration of residual AN monomer than does suspension polymerization. The public comments argued that the application of the pollution prevention techniques being used for suspension processes (e.g., steam stripping of excess monomer, scavenger solvents) to existing solution processes is not viable because of the physical nature of the solution polymerization process. Specifically, application of high efficiency residual AN polymer steam stripping (incorporated to reduce downstream emissions) is technically feasible to incorporate into the suspension process and is not feasible for a solution polymerization process because the latter does not produce a solid polymer product that can be introduced to direct steam contact without contamination. At solution polymerization facilities, other pollution prevention or source reduction measures which formed the initial technical basis for determining the 100 ppmw action level for all spinning lines may not be capable of achieving the higher AN removal rates of the higher residual monomer concentration present in solution polymerization fiber spinning operations. We agree with the public comments that incorporating the pollution prevention techniques to an existing solution process spinning line is not viable.

iii. *Are there any other control systems that could be applied to the solution process?* We considered control of all HAP emissions from the entire building's exhaust system. Such an exhaust would have very high flow/low pollutant concentration stream; such streams are typically difficult to control to a high level of efficiency and also require very large, expensive control devices. In addition, the public comments pointed out that retrofitting carbon adsorption to the building exhaust may not be a technically viable alternative for existing AMF spinning lines. This is because low volatility organic solvent is typically used in the solution process to provide the reductions of VOC emissions to meet the NSPS. This solvent has a much higher molecular weight and boiling point than either the AN or organic solvents typically used. Solvents are also present in a higher emission exhaust concentration relative to the AN; thus, exacerbating common carbon bed adsorption/desorption problems. This is a reasonable argument with respect to the specific solvent formulation and concentration anticipated at the emission point (building exhaust). The use of activated carbon appears to have limited feasibility because of carbon adsorption interferences caused by the non-HAP, low volatility organic solvent used in the spinning process. In addition, the presence of a solvent with a high boiling point makes cost-effective measures such as on-site regeneration of the activated carbon less effective or viable for consideration. We, therefore, have not identified at this time a basis for requiring building exhaust control systems for solution processes. There can also be potential difficulties associated with retrofitting other conventional control technologies at existing fiber spinning lines. The particular solvents used on some spinning operations may require that a scrubber be installed in addition to a catalytic or thermal incinerator to control pollutants generated as by-products of combustion. In addition, the catalyst used for catalytic incineration devices may also be limited because the solvent used in some of the affected existing operations will foul or poison conventional catalyst.

iv. *What changes need to be made to the final rule for existing sources to reflect these considerations?* We concluded that there is no basis at this time to require capture and control systems for existing AMF fiber spinning operations. Therefore, the 85 percent control requirement is being removed for existing AMF spinning operations.

In addition, the solution and suspension processes are being treated separately in the final rule to better reflect spin dope AN concentrations and subsequent emissions relative to the two types of polymerization processes used in this industry. The performance requirement based on source reduction measures (i.e., formatted in terms of the spin dope AN concentration) is being retained for existing suspension polymerization processes; this will ensure that facilities continue to use the techniques they have already adopted. Therefore, a separate performance requirement or emission limit (i.e., the 100 ppmw spin dope criterion for suspension polymerization) is being included in the final rule to reflect the differences in spinning solution or spin dope residual AN concentrations and the technical feasibility of applying source reduction measures at existing facilities. In the proposed rule, the spin dope concentration limit was formatted as an applicability criterion for the spinning line control requirements; in the final rule, the format has been changed to specify the limit as an alternative performance standard. This is considered a format change only and does not result in any substantive changes to the source requirements. No control requirements are specified for solution polymerization processes at existing sources. We will reexamine the applicability of various control system options for spinning operations using the solution process during the residual risk analysis phase of these standards. Any new information will be collected and the viability of systems designed specifically for this industry will be assessed.

v. *Are there any changes for new sources?* The final requirements for AMF fiber spinning lines that are part of a new or modified source remain as proposed. The operating and design constraints that limit the application of enclosures and controls at new spinning operations (e.g., selection of solvents from a variety of possible solvents used for particular fibers, reactor process

modifications to accommodate new monomers, spin line configuration layouts, and other process and site considerations), are not limiting factors for new and modified sources; therefore, the new and modified source MACT requirements are not being significantly revised. The 85 percent reduction option has been retained for new sources in order to provide flexibility for future development of means to achieve equivalent emission reductions, and the source reduction performance limit (i.e., the 100 ppmw spin dope concentration) is also included to provided operational and control flexibility.

An additional control option for new and modified sources that was not proposed is being added to the final rule. This option is part of the individual source standards in § 63.1103(b)(3)(i) and allows the owner or operator to reduce AN emissions from a spinning line that is a part of a new or modified source to less than or equal to 0.25 kilograms per Mg of fiber produced (i.e., 0.5 lb per ton). This alternative standard will allow greater flexibility to facility owners and operators in selecting the type of controls, including pollution prevention measures, that can be applied to their spinning operations to reduce HAP emissions.

An additional change is being made to the AMF standards to correct an inadvertent typographical error. In Table 3 to § 63.1103 that lists the requirements for owners and operators complying with paragraph (b)(3)(ii) of the section, the facility-wide emission limits are presented as ". . . less than or equal to 1.0 kilograms (kg) pf acrylonitrile per megagram (mg) of fiber produced" for existing sources and "* * * less than or equal to 0.5 kilograms (kg) of acrylonitrile per megagram (mg) of fiber produced" for new sources. These values should read "* * * less than or equal to 0.5 kilograms (kg) of acrylonitrile per megagram (mg) of fiber produced (i.e., 1.0 pound AN per ton of fiber produced)" for existing sources and "* * * less than or equal to 0.25 kilograms (kg) of acrylonitrile per megagram (mg) of fiber produced (i.e., 0.5 pound AN per ton of fiber produced)" for new sources. The correct values for the emissions limits are clearly stated in the preamble to the proposed rule (63 FR 55185, October 14, 1998). These same values are also included in our presumptive MACT document (Docket Item 11–A–5 in Docket No. A–97–18) that was developed in collaboration with the industry and State and local agencies.

B. Process and Maintenance Wastewater Stream Provisions

Two commenters provided comment on the process wastewater stream provisions proposed on October 14, 1998. One commenter provided that the proposed provisions do not specify the location for determining HAP concentration. The commenter stated that it seems appropriate to make this determination at the entrance to each wastewater treatment system unit. The commenter recommended that a definition for "point of determination" be made and that references to "point of generation" be changed to "point of determination." The commenter also stated that an owner or operator should be allowed to use all of the test methods specified in subparts F,G, and H of this part (collectively known as the "HON") when determining HAP concentrations in wastewater.

Another commenter stated that there was no information or requirements for treatment or destruction of wastewater streams leaving the process unit, and that the proposal only requires control of secondary emissions from equipment handling the wastewater stream.

Based on comments received, and evaluation of the proposed process and maintenance wastewater stream provisions, we agree that the proposed process and maintenance wastewater stream provisions were not adequate. In addition to the identified applicability procedures and treatment requirement deficiencies, we identified a number of other deficiencies in the proposed standards that were not intended.

Therefore, we have deferred taking final action regarding provisions applicable to process and maintenance wastewater streams for the AR, AMF, and PC production source categories. We have withdrawn the proposed process and maintenance wastewater provisions from the promulgated rule.

In a SNPR published elsewhere in today's **Federal Register**, we reopen the comment period specifically to request additional comment on proposed amendments to the promulgated standards for process and maintenance wastewater for the AR, AMF, and PC production source categories. The amendments to the promulgated standards incorporate and cross-reference appropriate process and maintenance wastewater provisions of the HON for the AR, AMF, and PC production source categories. These amendments respond to comments received, eliminate identified deficiencies that existed in the proposed standards, and reflect our intent.

We plan to take final action regarding the amendments to the proposed provisions for process wastewater streams for the AR, AMF, and PC production source categories by November 15, 1999.

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of the administrative record compiled by us in the development of this rule. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and our responses to significant comments, the contents of the docket will serve as the record in case of judicial review (except for interagency review materials) (see 42 U.S.C. 7607(d)(7)(A)).

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by us (ICR No. 1871.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

The information collections required under this rule are needed as part of the overall compliance and enforcement program. The information will be used by us to ensure that the regulated entities are in compliance with the rule. In addition, our authority to take administrative action would be reduced significantly without the collected information. The recordkeeping and reporting requirements are mandatory and are being established under section 114 of the Act. The generic MACT standards require owners or operators of affected sources to retain records for a period of 5 years. The 5-year retention period is consistent with the General Provisions (subpart A) of 40 CFR part 63, and with the 5-year record retention requirement in the operating permit program under title V of the Act.

All information submitted to us for which a claim of confidentiality is made will be safeguarded according to our policies set forth in title 40, chapter 1, part 2, subpart B, Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 3999, September 8, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979).

The total estimated annual average hourly and annual average cost burden per respondent for the standards for the AR production, AMF production, HF production, and PC production source categories are 6,125 hours and $262,700. These burden hour and cost estimates for monitoring, recordkeeping, and reporting are aggregated for affected sources and averaged over the first 3 years of the rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Any Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule may be construed as a "significant regulatory action" under criterion (4) above. Today's final rule may be considered novel in certain respects because it includes new policies and procedures pertaining to a generic MACT program, which will be utilized by us in establishing NESHAP under section 112 of the Act for certain small source categories consisting of five or fewer sources. As part of this generic MACT program, we will be using an alternative methodology under which the we will make MACT determinations for appropriate small categories by referring to previous MACT standards that have been promulgated for similar sources in other categories. The basic purposes of this generic MACT program are to use public and private sector resources efficiently and to promote regulatory consistency and predictability in MACT standard development.

D. Executive Order 12875

Under Executive Order 12875, we may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or we consult with those governments. If we comply by consulting, Executive Order 12875 requires us to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule implements requirements specifically set forth by the Congress in section 112 of the Act without the exercise of any discretion by us. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Each of the specific MACT standards adopted in this rulemaking applies to a source category with five or fewer major sources; therefore, this rule will not have a significant impact on a substantial number of small entities, and a regulatory flexibility analysis was determined to be unnecessary.

The Generic MACT procedures we are announcing today may also be applied to other small source categories in the future. Moreover, it is possible that the MACT standards for some larger source categories may reference or incorporate some element of the generic standards we are adopting for certain types of emission points. In any case, the nature of any regulatory impacts and the applicability of RFA requirements are matters that will be separately addressed in any subsequent rulemaking that utilizes Generic MACT procedures or incorporates generic standards.

Although it was not required by the statute, we conducted a limited assessment of possible outcomes and the economic effect of the proposed standards on small entities as part of the economic analysis conducted before proposal for each of the source categories for which standards are being promulgated. These limited assessments showed no adverse economic effect for any small entities within any of these source categories. Changes that have been made since proposal do not change the results of these assessments. The economic analysis for each of the source categories for which standards are being promulgated can be obtained from the source category-specific dockets established for each of the source categories (see *Docket* in **ADDRESSES** section for individual docket numbers).

F. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995, Pub. L. 104–4, we must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Section 203 requires us to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of UMRA, we must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least burdensome alternative for State, local, and tribal governments and the private sector that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

Because this final rule does not include a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year, we have not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments will not be significantly or uniquely affected by this rule, we are not required to develop a plan with regard to small governments. Therefore, the requirements of UMRA do not apply to this final rule.

G. Submittal to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Therefore, we will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 29, 1999.

H. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note), we are directed to use voluntary consensus standards instead of government-unique standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. By doing so, the Act is intended to reduce the cost to the private and public sectors.

Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), International Organization for Standardization (IOS), International Electrotechnical Commission (IEC), American Petroleum Institute (API), National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like us to provide Congress, through OMB, explanations when the we decide not to use available and applicable voluntary consensus standards.

This action does not require the use of any new technical standards. It does, however, incorporate by reference existing technical standards, including government-unique technical standards. The technical standards included in this final rule are standards that have been proposed and promulgated under other rulemakings for similar source control applicability and compliance determinations. In response to the proposed rule, we received no comments pertaining to the use of additional voluntary consensus standards in lieu of those included under other rulemakings and incorporated by reference in this final rule.

As part of a larger effort, we are undertaking a project to cross-reference existing voluntary consensus standards in testing, sampling, and analysis, with current and future EPA test methods. When completed, this project will assist us in identifying potentially applicable voluntary consensus standards that can then be evaluated for equivalency and applicability in determining compliance with future regulations.

I. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that we determine (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. No children's risk analysis was performed for this rulemaking because the agency does not have the data necessary to conduct such analysis, and cannot obtain such data with available resources.

J. Executive Order 13084

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13084 requires us to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule implements requirements specifically set forth by Congress in section 112 of the Act without the exercise of any discretion by us. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects for 40 CFR Part 63

Environmental protection, Acetal resins production, Acrylic and modacrylic fiber production, Administrative practice and procedure, Air pollution control, Equipment leaks, Fiber spinning lines, Hazardous substances, Hydrogen fluoride production., Intergovernmental relations, Kilns, Polycarbonate production, Process vents, Reporting and recordkeeping requirements, Storage vessels, Transfer.

Dated: May 14, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR AFFECTED SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et. seq.*

2. Part 63 is amended by adding subpart SS, consisting of §§ 63.980 through 63.999, to read as follows.

Subpart SS—National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process

Sec.

63.980 Applicability.
63.981 Definitions.
63.982 Requirements.
63.983 Closed vent systems.
63.984 Fuel gas systems and processes to which storage vessel, transfer rack, or equipment leak regulated materials emissions are routed.
63.985 Nonflare control devices used to control emissions from storage vessels and low throughput transfer racks.
63.986 Nonflare control devices used for equipment leaks only.
63.987 Flare requirements.
63.988 Incinerators, boilers, and process heaters.
63.989 [Reserved].
63.990 Absorbers, condensers, and carbon adsorbers used as control devices.
63.991 [Reserved].
63.992 [Reserved].
63.993 Absorbers, condensers, carbon adsorbers and other recovery devices used as final recovery devices.
63.994 Halogen scrubbers and other halogen reduction devices.
63.995 Other control devices.
63.996 General monitoring requirements for control and recovery devices.
63.997 Performance test and flare compliance assessment requirements for control devices.
63.998 Recordkeeping requirements.
63.999 Notifications and other reports.

Subpart SS—National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process

§ 63.980 Applicability.

The provisions of this subpart include requirements for closed vent systems, control devices and routing of air emissions to a fuel gas system or process. These provisions apply when another subpart references the use of this subpart for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to a referencing subpart. The provisions of 40 CFR part 63, subpart A (General Provisions) do not apply to this subpart except as specified in a referencing subpart.

§ 63.981 Definitions.

Alternative test method means any method of sampling and analyzing for an air pollutant that is not a reference test or equivalent method, and that has been demonstrated to the Administrator's satisfaction, using Method 301 in appendix A of this part 63, or previously approved by the Administrator prior to the promulgation date of standards for an affected source or affected facility under a referencing subpart, to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this subpart.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator or a process heater.

By compound means by individual stream components, not carbon equivalents.

Closed vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device. Closed vent system does not include the vapor collection system that is part of any tank truck or railcar.

Closed vent system shutdown means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a closed vent system or part of a closed vent system consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a closed vent system shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the closed vent system or part of the closed vent system of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled closed vent system shutdown, is not a closed vent system shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not closed vent system shutdowns.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic emissions.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 63.998(b).

Control device means, with the exceptions noted below, a combustion device, recovery device, recapture device, or any combination of these devices used to comply with this subpart or a referencing subpart. For process vents from continuous unit operations at affected sources in subcategories where the applicability criteria includes a TRE index value, recovery devices are not considered to be control devices. Primary condensers on steam strippers or fuel gas systems are not considered to be control devices.

Control System means the combination of the closed vent system and the control devices used to collect and control vapors or gases from a regulated emission source.

Day means a calendar day.

Ductwork means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

Final recovery device means the last recovery device on a process vent stream from a continuous unit operation at an affected source in a subcategory where the applicability criteria includes a TRE index value. The final recovery device usually discharges to a combustion device, recapture device, or directly to the atmosphere.

First attempt at repair, for the purposes of this subpart, means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in § 63.983(c) to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

Flow indicator means a device which indicates whether gas flow is, or whether the valve position would allow gas flow to be, present in a line.

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and flow and pressure control system that gathers gaseous streams generated by onsite operations, may blend them with other sources of gas, and transports the gaseous streams for use as fuel gas in combustion devices or in-process combustion equipment such as furnaces and gas turbines, either singly or in combination.

Hard-piping means pipe or tubing that is manufactured and properly installed using good engineering judgment and standards, such as ANSI B31.3.

High throughput transfer rack means those transfer racks that transfer a total of 11.8 million liters per year or greater of liquid containing regulated material.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. The above energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

Low throughput transfer rack means those transfer racks that transfer less than a total of 11.8 million liters per year of liquid containing regulated material.

Operating parameter value means a minimum or maximum value established for a control device parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limit or operating limit.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds based on a detection principle such as infra-red, photo ionization, or thermal conductivity.

Owner or operator means any person who owns, leases, operates, controls, or supervises a regulated source or a stationary source of which a regulated source is a part.

Performance level means the level at which the regulated material in the gases or vapors vented to a control or recovery device is removed, recovered, or destroyed. Examples of control device performance levels include: achieving a minimum organic reduction efficiency expressed as a percentage of regulated material removed or destroyed in the control device inlet stream on a weight-basis; achieving an organic concentration in the control device exhaust stream that is less than a maximum allowable limit expressed in parts per million by volume on a dry basis corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions; or maintaining appropriate control device operating parameters indicative of the device performance at specified values.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission limit as specified in the performance test section of this subpart or in the referencing subpart.

Primary fuel means the fuel that provides the principal heat input to a device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means an enclosed combustion device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water. A process heater may, as a secondary function, heat water in unfired heat recovery sections.

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. For example, a recapture device may recover chemicals primarily for disposal. Recapture devices include, but are not limited to, absorbers, carbon adsorbers, and condensers. For purposes of the monitoring, recordkeeping and reporting requirements of this subpart, recapture devices are considered recovery devices.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

Referencing subpart means the subpart which refers an owner or operator to this subpart.

Regulated material, for purposes of this subpart, refers to vapors from volatile organic liquids (VOL), volatile organic compounds (VOC), or hazardous air pollutants (HAP), or other chemicals or groups of chemicals that are regulated by a referencing subpart.

Regulated source for the purposes of this subpart, means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to a referencing subpart.

Repaired, for the purposes of this subpart, means that equipment; is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable sections of this subpart; and unless otherwise specified in applicable provisions of this subpart, is inspected as specified in § 63.983(c) to verify that emissions from the equipment are below the applicable leak definition.

Routed to a process or route to a process means the gas streams are conveyed to any enclosed portion of a process unit where the emissions are recycled and/or consumed in the same manner as a material that fulfills the same function in the process; and/or transformed by chemical reaction into materials that are not regulated materials; and/or incorporated into a product; and/or recovered.

Run means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this subpart. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

Secondary fuel means a fuel fired through a burner other than the primary fuel burner that provides supplementary heat in addition to the heat provided by the primary fuel.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Specific gravity monitoring device means a unit of equipment used to monitor specific gravity and having a minimum accuracy of ±0.02 specific gravity units.

Temperature monitoring device means a unit of equipment used to monitor temperature and having a

minimum accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±1.2 degrees Celsius (°C), whichever is greater.

§ 63.982 Requirements.

(a) *General compliance requirements for storage vessels, process vents, transfer racks, and equipment leaks.* An owner or operator who is referred to this subpart for controlling regulated material emissions from storage vessels, process vents, low and high throughput transfer racks, or equipment leaks by venting emissions through a closed vent system to a flare, nonflare control device or routing to a fuel gas system or process shall comply with the applicable requirements of paragraphs (a)(1) through (4) of this section.

(1) *Storage vessels.* The owner or operator shall comply with the applicable provisions of paragraphs (b), (c)(1), and (d) of this section.

(2) *Process vents.* The owner or operator shall comply with the applicable provisions of paragraphs (b), (c)(2), and (e) of this section.

(3) *Transfer racks.* (i) For low throughput transfer racks, the owner or operator shall comply with the applicable provisions of paragraphs (b), (c)(1), and (d) of this section.

(ii) For high throughput transfer racks, the owner or operator shall comply with the applicable provisions of paragraphs (b), (c)(2), and (d) of this section.

(4) *Equipment leaks.* The owner or operator shall comply with the applicable provisions of paragraphs (b), (c)(3), and (d) of this section.

(b) *Closed vent system and flare.* Owners or operators that vent emissions through a closed vent system to a flare shall meet the requirements in § 63.983 for closed vent systems; § 63.987 for flares; § 63.997 (a), (b) and (c) for provisions regarding flare compliance assessments; the monitoring, recordkeeping, and reporting requirements referenced therein; and the applicable recordkeeping and reporting requirements of §§ 63.998 and 63.999. No other provisions of this subpart apply to emissions vented through a closed vent system to a flare.

(c) *Closed vent system and nonflare control device.* Owners or operators who control emissions through a closed vent system to a nonflare control device shall meet the requirements in § 63.983 for closed vent systems, the applicable recordkeeping and reporting requirements of §§ 63.998 and 63.999, and the applicable requirements listed in paragraphs (c)(1) through (3) of this section.

(1) For storage vessels and low throughput transfer racks, the owner or operator shall meet the requirements in § 63.985 for nonflare control devices and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to low throughput transfer rack emissions or storage vessel emissions vented through a closed vent system to a nonflare control device unless specifically required in the monitoring plan submitted under § 63.985(c).

(2) For process vents and high throughput transfer racks, the owner or operator shall meet the requirements applicable to the control devices being used in § 63.988, § 63.990 or § 63.995; the applicable general monitoring requirements of § 63.996 and the applicable performance test requirements and procedures of § 63.997; and the monitoring, recordkeeping and reporting requirements referenced therein. Owners or operators subject to halogen reduction device requirements under a referencing subpart must also comply with § 63.994 and the monitoring, recordkeeping, and reporting requirements referenced therein. The requirements of § 63.984 through § 63.986 do not apply to process vents or high throughput transfer racks.

(3) For equipment leaks, owners or operators shall meet the requirements in § 63.986 for nonflare control devices used for equipment leak emissions and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions vented through a closed vent system to a nonflare control device.

(d) *Route to a fuel gas system or process.* Owners or operators that route emissions to a fuel gas system or to a process shall meet the requirements in § 63.984, the monitoring, recordkeeping, and reporting requirements referenced therein, and the applicable recordkeeping and reporting requirements of §§ 63.998 and 63.999. No other provisions of this subpart apply to emissions being routed to a fuel gas system or process.

(e) *Final recovery devices.* Owners or operators who use a final recovery device to maintain a TRE above a level specified in a referencing subpart shall meet the requirements in § 63.993 and the monitoring, recordkeeping, and reporting requirements referenced therein that are applicable to the recovery device being used; the applicable monitoring requirements in § 63.996 and the recordkeeping and reporting requirements referenced therein; and the applicable recordkeeping and reporting requirements of §§ 63.998 and 63.999. No other provisions of this subpart apply to process vent emissions routed to a final recovery device.

(f) *Combined emissions.* When emissions from different emission types (e.g., emissions from process vents, transfer racks, and/or storage vessels) are combined, an owner or operator shall comply with the requirements of either paragraph (f)(1) or (2) of this section.

(1) Comply with the applicable requirements of this subpart for each kind of emissions in the stream (e.g., the requirements of § 63.982(a)(2) for process vents, and the requirements of § 63.982(a)(3) for transfer racks); or

(2) Comply with the first set of requirements identified in paragraphs (f)(2)(i) through (iii) of this section which applies to any individual emission stream that is included in the combined stream. Compliance with paragraphs (f)(2)(i) through (iii) of this section constitutes compliance with all other emissions requirements for other emission streams.

(i) The requirements of § 63.982(a)(2) for process vents, including applicable monitoring, recordkeeping, and reporting;

(ii) The requirements of § 63.982(a)(3)(ii) for high throughput transfer racks, including applicable monitoring, recordkeeping, and reporting;

(iii) The requirements of § 63.982(a)(1) or (a)(3)(i) for control of emissions from storage vessels or low throughput transfer racks, including applicable monitoring, recordkeeping, and reporting.

§ 63.983 Closed vent systems.

(a) *Closed vent system equipment and operating requirements.* Except for closed vent systems operated and maintained under negative pressure, the provisions of this paragraph apply to closed vent systems collecting regulated material from a regulated source.

(1) *Collection of emissions.* Each closed vent system shall be designed and operated to collect the regulated material vapors from the emission point, and to route the collected vapors to a control device.

(2) *Period of operation.* Closed vent systems used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to, or collected by, them.

(3) *Bypass monitoring.* Except for equipment needed for safety purposes such as pressure relief devices, low leg drains, high point bleeds, analyzer vents, and open-ended valves or lines, the owner or operator shall comply with the provisions of either paragraphs (a)(3)(i) or (ii) of this section for each closed vent system that contains bypass lines that could divert a vent stream to the atmosphere.

(i) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in § 63.998(d)(1)(ii)(A). The flow indicator shall be installed at the entrance to any bypass line.

(ii) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass line. Records shall be generated as specified in § 63.998(d)(1)(ii)(B).

(4) *Loading arms at transfer racks.* Each closed vent system collecting regulated material from a transfer rack shall be designed and operated so that regulated material vapors collected at one loading arm will not pass through another loading arm in the rack to the atmosphere.

(5) *Pressure relief devices in a transfer rack's closed vent system.* The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's closed vent system shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to this paragraph.

(b) *Closed vent system inspection requirements.* The provisions of this subpart apply to closed vent systems collecting regulated material from a regulated source. Inspection records shall be generated as specified in § 63.998(d)(1)(iii) and (iv) of this section.

(1) Except for any closed vent systems that are designated as unsafe or difficult to inspect as provided in paragraphs (b)(2) and (3) of this section, each closed vent system shall be inspected as specified in paragraph (b)(1)(i) or (ii) of this section.

(i) If the closed vent system is constructed of hard-piping, the owner or operator shall comply with the requirements specified in paragraphs (b)(1)(i)(A) and (B) of this section.

(A) Conduct an initial inspection according to the procedures in paragraph (c) of this section; and

(B) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(ii) If the closed vent system is constructed of ductwork, the owner or operator shall conduct an initial and annual inspection according to the procedures in paragraph (c) of this section.

(2) Any parts of the closed vent system that are designated, as described in § 63.998(d)(1)(i), as unsafe to inspect are exempt from the inspection requirements of paragraph (b)(1) of this section if the conditions of paragraphs (b)(2)(i) and (ii) of this section are met.

(i) The owner or operator determines that the equipment is unsafe-to-inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (b)(1) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practical during safe-to-inspect times. Inspection is not required more than once annually.

(3) Any parts of the closed vent system that are designated, as described in § 63.998(d)(1)(i), as difficult-to-inspect are exempt from the inspection requirements of paragraph (b)(1) of this section if the provisions of paragraphs (b)(3)(i) and (ii) of this section apply.

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters (7 feet) above a support surface; and

(ii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(c) *Closed vent system inspection procedures.* The provisions of this paragraph apply to closed vent systems collecting regulated material from a regulated source.

(1) Each closed vent system subject to this paragraph shall be inspected according to the procedures specified in paragraphs (c)(1)(i) through (vii) of this section.

(i) Inspections shall be conducted in accordance with Method 21 of 40 CFR part 60, appendix A, except as specified in this section.

(ii) Except as provided in (c)(1)(iii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 must be for the representative composition of the process fluid and not of each individual VOC in the stream. For process streams that contain nitrogen, air, water, or other inerts that are not organic HAP or VOC, the representative stream response factor must be determined on an inert-free basis. The response factor may be determined at any concentration for which the monitoring for leaks will be conducted.

(iii) If no instrument is available at the plant site that will meet the performance criteria of Method 21 specified in paragraph (c)(1)(ii) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid, calculated on an inert-free basis as described in paragraph (c)(1)(ii) of this section.

(iv) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(v) Calibration gases shall be as specified in paragraphs (c)(1)(v)(A) through (C) of this section.

(A) Zero air (less than 10 parts per million hydrocarbon in air); and

(B) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (c)(1)(ii) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(C) If the detection instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,500 parts per million.

(vi) An owner or operator may elect to adjust or not adjust instrument readings for background. If an owner or operator elects not to adjust readings for background, all such instrument readings shall be compared directly to 500 parts per million to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall measure background concentration using the procedures in this section. The owner or operator shall subtract the background reading from the maximum concentration indicated by the instrument.

(vii) If the owner or operator elects to adjust for background, the arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 parts per million for determining whether there is a leak.

(2) The instrument probe shall be traversed around all potential leak interfaces as described in Method 21 of 40 CFR part 60, appendix A.

(3) Except as provided in paragraph (c)(4) of this section, inspections shall

be performed when the equipment is in regulated material service, or in use with any other detectable gas or vapor.

(4) Inspections of the closed vent system collecting regulated material from a transfer rack shall be performed only while a tank truck or railcar is being loaded or is otherwise pressurized to normal operating conditions with regulated material or any other detectable gas or vapor.

(d) *Closed vent system leak repair provisions.* The provisions of this paragraph apply to closed vent systems collecting regulated material from a regulated source.

(1) If there are visible, audible, or olfactory indications of leaks at the time of the annual visual inspections required by paragraph (b)(1)(i)(B) of this section, the owner or operator shall follow the procedure specified in either paragraph (d)(1)(i) or (ii) of this section.

(i) The owner or operator shall eliminate the leak.

(ii) The owner or operator shall monitor the equipment according to the procedures in paragraph (c) of this section.

(2) Leaks, as indicated by an instrument reading greater than 500 parts per million by volume above background or by visual inspections, shall be repaired as soon as practical, except as provided in paragraph (d)(3) of this section. Records shall be generated as specified in § 63.998(d)(1)(iii) when a leak is detected.

(i) A first attempt at repair shall be made no later than 5 days after the leak is detected.

(ii) Except as provided in paragraph (d)(3) of this section, repairs shall be completed no later than 15 days after the leak is detected or at the beginning of the next introduction of vapors to the system, whichever is later.

(3) Delay of repair of a closed vent system for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible or unsafe without a closed vent system shutdown, as defined in § 63.981, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of such equipment shall be completed as soon as practical, but not later than the end of the next closed vent system shutdown.

§ 63.984 Fuel gas systems and processes to which storage vessel, transfer rack, or equipment leak regulated material emissions are routed.

(a) *Equipment and operating requirements for fuel gas systems and processes.* (1) Except during periods of start-up, shutdown and malfunction as specified in the referencing subpart, the fuel gas system or process shall be operating at all times when regulated material emissions are routed to it.

(2) The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's system returning vapors to a fuel gas system or process shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to this paragraph.

(b) *Fuel gas system and process compliance assessment.* (1) If emissions are routed to a fuel gas system, there is no requirement to conduct a performance test or design evaluation.

(2) If emissions are routed to a process, the regulated material in the emissions shall meet one or more of the conditions specified in paragraphs (b)(2)(i) through (iv) of this section. The owner or operator of storage vessels subject to this paragraph shall comply with the compliance demonstration requirements in paragraph (b)(3) of this section.

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not regulated materials;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(3) To demonstrate compliance with paragraph (b)(2) of this section for a storage vessel, the owner or operator shall prepare a design evaluation (or engineering assessment) that demonstrates the extent to which one or more of the conditions specified in paragraphs (b)(2)(i) through (iv) of this section are being met.

(c) *Statement of connection.* For storage vessels and transfer racks, the owner or operator shall submit the statement of connection reports for fuel gas systems specified in § 63.999(b)(1)(ii), as appropriate.

§ 63.985 Nonflare control devices used to control emissions from storage vessels and low throughput transfer racks.

(a) *Nonflare control device equipment and operating requirements.* The owner or operator shall operate and maintain the nonflare control device so that the monitored parameters defined as required in paragraph (c) of this section remain within the ranges specified in the Notification of Compliance Status whenever emissions of regulated material are routed to the control device except during periods of start-up, shutdown, and malfunction as specified in the referencing subpart.

(b) *Nonflare control device design evaluation or performance test requirements.* When using a control device other than a flare, the owner or operator shall comply with the requirements in paragraphs (b)(1)(i) or (ii) of this section, except as provided in paragraphs (b)(2) and (3) of this section.

(1) *Design evaluation or performance test results.* The owner or operator shall prepare and submit with the Notification of Compliance Status, as specified in § 63.999(b)(2), either a design evaluation that includes the information specified in paragraph (b)(1)(i) of this section, or the results of the performance test as described in paragraph (b)(1)(ii) of this section.

(i) *Design evaluation.* The design evaluation shall include documentation demonstrating that the control device being used achieves the required control efficiency during the reasonably expected maximum storage vessel filling or transfer loading rate. This documentation is to include a description of the gas stream that enters the control device, including flow and regulated material content, and the information specified in paragraphs (b)(1)(i)(A) through (E) of this section, as applicable. For storage vessels, the description of the gas stream that enters the control device shall be provided for varying liquid level conditions. This documentation shall be submitted with the Notification of Compliance Status as specified in § 63.999(b)(2).

(A) The efficiency determination is to include consideration of all vapors, gases, and liquids, other than fuels, received by the control device.

(B) If an enclosed combustion device with a minimum residence time of 0.5 seconds and a minimum temperature of 760 °C is used to meet an emission reduction requirement specified in a referencing subpart for storage vessels and transfer racks, documentation that those conditions exist is sufficient to meet the requirements of paragraph (b)(1)(i) of this section.

(C) Except as provided in paragraph (b)(1)(i)(B) of this section for enclosed combustion devices, the design evaluation shall include the estimated autoignition temperature of the stream being combusted, the flow rate of the stream, the combustion temperature, and the residence time at the combustion temperature.

(D) For carbon adsorbers, the design evaluation shall include the estimated affinity of the regulated material vapors for carbon, the amount of carbon in each bed, the number of beds, the humidity, the temperature, the flow rate of the inlet stream and, if applicable, the desorption schedule, the regeneration stream pressure or temperature, and the flow rate of the regeneration stream. For vacuum desorption, pressure drop shall be included.

(E) For condensers, the design evaluation shall include the final temperature of the stream vapors, the type of condenser, and the design flow rate of the emission stream.

(ii) *Performance test.* A performance test, whether conducted to meet the requirements of this section, or to demonstrate compliance for a process vent or high throughput transfer rack as required by §§ 63.988(b), 63.990(b), or 63.995(b), is acceptable to demonstrate compliance with emission reduction requirements for storage vessels and transfer racks. The owner or operator is not required to prepare a design evaluation for the control device as described in paragraph (b)(1)(i) of this section if a performance test will be performed that meets the criteria specified in paragraphs (b)(1)(ii)(A) and (B) of this section.

(A) The performance test will demonstrate that the control device achieves greater than or equal to the required control device performance level specified in a referencing subpart for storage vessels or transfer racks; and

(B) The performance test meets the applicable performance test requirements and the results are submitted as part of the Notification of Compliance Status as specified in § 63.999(b)(2).

(2) *Exceptions.* A design evaluation or performance test is not required if the owner or operator uses a combustion device meeting the criteria in paragraph (b)(2)(i), (ii), (iii), or (iv) of this section.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater.

(ii) A boiler or process heater burning hazardous waste for which the owner or operator meets the requirements specified in paragraph (b)(2)(ii)(A) or (B) of this section.

(A) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or

(B) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iii) A hazardous waste incinerator for which the owner or operator meets the requirements specified in paragraph (b)(2)(iii)(A) or (B) of this section.

(A) The incinerator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O; or

(B) The incinerator has certified compliance with the interim-status requirements of 40 CFR part 265, subpart O; or

(iv) A boiler or process heater into which the vent stream is introduced with the primary fuel.

(3) *Prior design evaluations or performance tests.* If a design evaluation or performance test is required in the referencing subpart or was previously conducted and submitted for a storage vessel or low throughput transfer rack, then a performance test or design evaluation is not required.

(c) *Nonflare control device monitoring requirements.* (1) The owner or operator shall submit with the Notification of Compliance Status, a monitoring plan containing the information specified in § 63.999(b)(2)(i) and (ii) to identify the parameters that will be monitored to assure proper operation of the control device.

(2) The owner or operator shall monitor the parameters specified in the Notification of Compliance Status or in the operating permit application or amendment. Records shall be generated as specified in § 63.998(d)(2)(i).

§ 63.986 Nonflare control devices used for equipment leaks only.

(a) *Equipment and operating requirements.* (1) Owners or operators using a nonflare control device to meet the applicable requirements of a referencing subpart for equipment leaks shall meet the requirements of this section.

(2) Control devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Performance test requirements.* A performance test is not required for any nonflare control device used only to control emissions from equipment leaks.

(c) *Monitoring requirements.* Owners or operators of control devices that are used to comply only with the provisions of a referencing subpart for control of equipment leak emissions shall monitor these control devices to ensure that they are operated and maintained in conformance with their design. The owner or operator shall maintain the records as specified in § 63.998(d)(4).

§ 63.987 Flare requirements.

(a) *Flare equipment and operating requirements.* Flares subject to this subpart shall meet the performance requirements in 40 CFR 63.11(b) (General Provisions).

(b) *Flare compliance assessment.* (1) The owner or operator shall conduct an initial flare compliance assessment of any flare used to comply with the provisions of this subpart. Flare compliance assessment records shall be kept as specified in § 63.998(a)(1) and a flare compliance assessment report shall be submitted as specified in § 63.999(a)(2). An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet regulated material or total organic compound concentration when a flare is used.

(2) [Reserved]

(3) Flare compliance assessments shall meet the requirements specified in paragraphs (b)(3)(i) through (iv) of this section.

(i) Method 22 of appendix A of part 60 shall be used to determine the compliance of flares with the visible emission provisions of this subpart. The observation period is 2 hours, except for transfer racks as provided in (b)(3)(i)(A) or (B) of this section.

(A) For transfer racks, if the loading cycle is less than 2 hours, then the observation period for that run shall be for the entire loading cycle.

(B) For transfer racks, if additional loading cycles are initiated within the 2-hour period, then visible emissions observations shall be conducted for the additional cycles.

(ii) The net heating value of the gas being combusted in a flare shall be calculated using Equation 1:

$$H_T = K_1 \sum_{j=1}^{n} D_j H_j \quad \text{[Eq. 1]}$$

Where:

H_T = Net heating value of the sample, megajoules per standard cubic meter; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 millimeters of mercury (30 inches of mercury), but the standard temperature for determining the volume corresponding to one mole is 20 °C;

$K_1 = 1.740 \times 10^{-7}$ (parts per million by volume)$^{-1}$ (gram-mole per standard cubic meter) (megajoules per kilocalories), where the standard temperature for gram mole per standard cubic meter is 20 °C;

n = number of sample components;

D_j = Concentration of sample component j, in parts per million by volume on a wet basis, as measured for organics by Method 18 of part 60, appendix A and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–90; and

H_j = Net heat of combustion of sample component j, kilocalories per gram

mole at 25 °C and 760 millimeters of mercury (30 inches of mercury).

(iii) The actual exit velocity of a flare shall be determined by dividing the volumetric flowrate (in units of standard temperature and pressure), as determined by Methods 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A as appropriate; by the unobstructed (free) cross sectional area of the flare tip.

(iv) Flare flame or pilot monitors, as applicable, shall be operated during any flare compliance assessment.

(c) *Flare monitoring requirements.* Where a flare is used, the following monitoring equipment is required: a device (including but not limited to a thermocouple, ultra-violet beam sensor, or infrared sensor) capable of continuously detecting that at least one pilot flame or the flare flame is present. Flare flame monitoring and compliance records shall be kept as specified in § 63.998(a)(1) and reported as specified in § 63.999(c)(8).

§ 63.988 Incinerators, boilers, and process heaters.

(a) *Equipment and operating requirements.* (1) Owners or operators using incinerators, boilers, or process heaters to meet a weight-percent emission reduction or parts per million by volume outlet concentration requirement specified in a referencing subpart shall meet the requirements of this section.

(2) Incinerators, boilers, or process heaters used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(3) For boilers and process heaters, the vent stream shall be introduced into the flame zone of the boiler or process heater.

(b) *Performance test requirements.* (1) Except as specified in § 63.997(b), and paragraph (b)(2) of this section, the owner or operator shall conduct an initial performance test of any incinerator, boiler, or process heater used to comply with the provisions of a referencing subpart and this subpart according to the procedures in § 63.997. Performance test records shall be kept as specified in § 63.998(a)(2) and a performance test report shall be submitted as specified in § 63.999(a)(2). As provided in § 63.985(b)(1), a design evaluation may be used as an alternative to the performance test for storage vessels and low throughput transfer rack controls. As provided in § 63.986(b), no performance test is required for equipment leaks.

(2) An owner or operator is not required to conduct a performance test when any of the control devices specified in paragraphs (b)(2)(i) through (iv) of this section are used.

(i) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O;

(ii) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater;

(iii) A boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel; or

(iv) A boiler or process heater burning hazardous waste for which the owner or operator meets the requirements specified in paragraph (b)(2)(iv)(A) or (B) of this section.

(A) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(B) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(c) *Incinerator, boiler, and process heater monitoring requirements.* Where an incinerator, boiler, or process heater is used, a temperature monitoring device capable of providing a continuous record that meets the provisions specified in paragraph (c)(1), (2), or (3) of this section is required. Any boiler or process heater in which all vent streams are introduced with primary fuel or are used as the primary fuel is exempt from monitoring. Monitoring results shall be recorded as specified in § 63.998(b) and (c), as applicable. General requirements for monitoring and continuous parameter monitoring systems are contained in the referencing subpart and § 63.996.

(1) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the fire box or in the ductwork immediately downstream of the fire box in a position before any substantial heat exchange occurs.

(2) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(3) Where a boiler or process heater of less than 44 megawatts (150 million British thermal units per hour) design heat input capacity is used and the regulated vent stream is not introduced as or with the primary fuel, a temperature monitoring device shall be installed in the fire box.

§ 63.989 [Reserved]

§ 63.990 Absorbers, condensers, and carbon adsorbers used as control devices.

(a) *Equipment and operating requirements.* (1) Owners or operators using absorbers, condensers, or carbon adsorbers to meet a weight-percent emission reduction or parts per million by volume outlet concentration requirement specified in a referencing subpart shall meet the requirements of this section.

(2) Absorbers, condensers, and carbon adsorbers used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(b) *Performance test requirements.* Except as specified in § 63.997(b), the owner or operator shall conduct an initial performance test of any absorber, condenser, or carbon adsorber used as a control device to comply with the provisions of the referencing subpart and this subpart according to the procedures in § 63.997. Performance test records shall be kept as specified in § 63.998(a)(2) and a performance test report shall be submitted as specified in § 63.999(a)(2). As provided in § 63.985(b)(1), a design evaluation may be used as an alternative to the performance test for storage vessels and low throughput transfer rack controls. As provided in § 63.986(b), no performance test is required to demonstrate compliance for equipment leaks.

(c) *Monitoring requirements.* Where an absorber, condenser, or carbon adsorber is used as a control device, either an organic monitoring device capable of providing a continuous record, or the monitoring devices specified in paragraphs (c)(1) through (3), as applicable, shall be used. Monitoring results shall be recorded as specified in § 63.998(b) and (c), as applicable. General requirements for monitoring and continuous parameter monitoring systems are contained in a referencing subpart and § 63.996.

(1) Where an absorber is used, a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each capable of providing a continuous record, shall be used. If the difference between the specific gravity of the saturated scrubbing fluid and specific gravity of the fresh scrubbing fluid is less than 0.02 specific gravity units, an organic monitoring device capable of providing a continuous record shall be used.

(2) Where a condenser is used, a condenser exit (product side) temperature monitoring device capable of providing a continuous record shall be used.

(3) Where a carbon adsorber is used, an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better, capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle, shall be used.

§ 63.991 [Reserved]

§ 63.992 [Reserved]

§ 63.993 Absorbers, condensers, carbon adsorbers and other recovery devices used as final recovery devices.

(a) *Final recovery device equipment and operating requirements.* (1) Owners or operators using a final recovery device to maintain a TRE above a level specified in a referencing subpart shall meet the requirements of this section.

(2) Recovery devices used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(b) *Recovery device performance test requirements.* There are no performance test requirements for recovery devices. TRE index value determination information shall be recorded as specified in § 63.998(a)(3).

(c) *Recovery device monitoring requirements.* (1) Where an absorber is the final recovery device in the recovery system and the TRE index value is between the level specified in a referencing subpart and 4.0, either an organic monitoring device capable of providing a continuous record or a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each capable of providing a continuous record, shall be used. If the difference between the specific gravity of the saturated scrubbing fluid and specific gravity of the fresh scrubbing fluid is less than 0.02 specific gravity units, an organic monitoring device capable of providing a continuous record shall be used. Monitoring results shall be recorded as specified in § 63.998(b) and (c), as applicable. General requirements for monitoring and continuous parameter monitoring systems are contained in § 63.996.

(2) Where a condenser is the final recovery device in the recovery system and the TRE index value is between the level specified in a referencing subpart and 4.0, an organic monitoring device capable of providing a continuous record or a condenser exit (product side) temperature monitoring device capable of providing a continuous record shall be used. Monitoring results shall be recorded as specified in § 63.998(b) and (c), as applicable. General requirements for monitoring and continuous parameter monitoring systems are contained in a referencing subpart and § 63.996.

(3) Where a carbon adsorber is the final recovery device in the recovery system and the TRE index value is between the level specified in a referencing subpart and 4.0, an organic monitoring device capable of providing a continuous record or an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better, capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle; and a carbon-bed temperature monitoring device, capable of recording the carbon-bed temperature after each regeneration and within 15 minutes of completing any cooling cycle shall be used. Monitoring results shall be recorded as specified in § 63.998(b) and (c), as applicable. General requirements for monitoring and continuous parameter monitoring systems are contained in a referencing subpart and § 63.996.

(4) If an owner or operator uses a recovery device other than those listed in this subpart, the owner or operator shall submit a description of planned monitoring, reporting and recordkeeping procedures as specified in a referencing subpart. The Administrator will approve, deny, or modify based on the reasonableness of the proposed monitoring, reporting and recordkeeping requirements as part of the review of the submission or permit application or by other appropriate means.

§ 63.994 Halogen scrubbers and other halogen reduction devices.

(a) *Halogen scrubber and other halogen reduction device equipment and operating requirements.* (1) An owner or operator of a halogen scrubber or other halogen reduction device subject to this subpart shall reduce the overall emissions of hydrogen halides and halogens by the control device performance level specified in a referencing subpart.

(2) Halogen scrubbers and other halogen reduction devices used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(b) *Halogen scrubber and other halogen reduction device performance test requirements.* (1) An owner or operator of a combustion device followed by a halogen scrubber or other halogen reduction device to control halogenated vent streams in accordance with a referencing subpart and this subpart shall conduct an initial performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens according to the procedures in § 63.997. Performance test records shall be kept as specified in § 63.998(a)(2) and a performance test report shall be submitted as specified in § 63.999(a)(2).

(2) An owner or operator of a halogen scrubber or other halogen reduction technique used to reduce the vent stream halogen atom mass emission rate prior to a combustion device to comply with a performance level specified in a referencing subpart shall determine the halogen atom mass emission rate prior to the combustion device according to the procedures specified in the referencing subpart for halogen atom mass emission rate in the vent stream as specified in § 63.9[illegible].

(c) *Halogen scrubber and other halogen reduction device monitoring requirements.* (1) Where a halogen scrubber is used, the monitoring equipment specified in paragraphs (c)(1)(i) and (ii) of this section is required for the scrubber. Monitoring results shall be recorded as specified in § 63.998(b) and (c), as applicable. General requirements for monitoring and continuous parameter monitoring systems are contained in a referencing subpart and § 63.996.

(i) A pH monitoring device capable of providing a continuous record shall be installed to monitor the pH of the scrubber effluent.

(ii) A flow meter capable of providing a continuous record shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the procedures specified in paragraphs (c)(1)(ii)(A) through (D) of this section.

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) The owner or operator may measure the gas stream flow at the scrubber inlet.

(C) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination

of the liquid to gas (L/G) ratio prior to the applicable compliance date for the process unit of which it is part as specified in a referencing subpart, the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to that compliance date may be utilized to comply with this subpart if it is still representative.

(D) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method that will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method that will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than start-ups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in a referencing subpart.

(2) Where a halogen reduction device other than a scrubber is used, the owner or operator shall follow the procedures specified in a referencing subpart in order to establish monitoring parameters.

§ 63.995 Other control devices.

(a) *Other control device equipment and operating requirements.* (1) Owners or operators using a control device other than one listed in §§ 63.985 through 63.990 to meet a weight-percent emission reduction or parts per million by volume outlet concentration requirement specified in a referencing subpart shall meet the requirements of this section.

(2) Other control devices used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(b) *Other control device performance test requirements.* An owner or operator using a control device other than those specified in §§ 63.987 through 63.990 to comply with a performance level specified in a referencing subpart, shall perform an initial performance test according to the procedures in § 63.997. Performance test records shall be kept as specified in § 63.998(a)(2) and a performance test report shall be submitted as specified in § 63.999(a)(2).

(c) *Other control device monitoring requirements.* If an owner or operator uses a control device other than those listed in this subpart, the owner or operator shall submit a description of planned monitoring, recordkeeping and reporting procedures as specified in a referencing subpart. The Administrator will approve, deny, or modify based on the reasonableness of the proposed monitoring, reporting and recordkeeping requirements as part of the review of the submission or permit application or by other appropriate means.

§ 63.996 General monitoring requirements for control and recovery devices.

(a) *General monitoring requirements applicability.* (1) This section applies to the owner or operator of a regulated source required to monitor under this subpart.

(2) Flares subject to § 63.987(c) are not subject to the requirements of this section.

(3) Flow indicators are not subject to the requirements of this section.

(b) *Conduct of monitoring.* (1) Monitoring shall be conducted as set forth in this section and in the relevant sections of this subpart unless the provision in either paragraph (b)(1)(i) or (ii) of this section applies.

(i) The Administrator specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures; or

(ii) The Administrator approves the use of alternatives to any monitoring requirements or procedures as provided in the referencing subpart or paragraph (d) of this section.

(2) When one CPMS is used as a backup to another CPMS, the owner or operator shall report the results from the CPMS used to meet the monitoring requirements of this subpart. If both such CPMS's are used during a particular reporting period to meet the monitoring requirements of this subpart, then the owner or operator shall report the results from each CPMS for the time during the six month period that the instrument was relied upon to demonstrate compliance.

(c) *Operation and maintenance of continuous parameter monitoring systems.* (1) All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(2) The owner or operator of a regulated source shall maintain and operate each CPMS as specified in this section, or in a relevant subpart, and in a manner consistent with good air pollution control practices.

(i) The owner or operator of a regulated source shall ensure the immediate repair or replacement of CPMS parts to correct "routine" or otherwise predictable CPMS malfunctions. The necessary parts for routine repairs of the affected equipment shall be readily available.

(ii) If under the referencing subpart, an owner or operator has developed a start-up, shutdown, and malfunction plan, the plan is followed, and the CPMS is repaired immediately, this action shall be recorded as specified in § 63.998(c)(1)(ii)(E).

(iii) The Administrator's determination of whether acceptable operation and maintenance procedures are being used for the CPMS will be based on information that may include, but is not limited to, review of operation and maintenance procedures, operation and maintenance records as specified in § 63.998(c)(1)(i) and (ii), manufacturer's recommendations and specifications, and inspection of the CPMS.

(3) All CPMS's shall be installed and operational, and the data verified as specified in this subpart either prior to or in conjunction with conducting performance tests. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(4) All CPMS's shall be installed such that representative measurements of parameters from the regulated source are obtained.

(5) In accordance with the referencing subpart, except for system breakdowns, repairs, maintenance periods, instrument adjustments, or checks to maintain precision and accuracy, calibration checks, and zero and span adjustments, all continuous parameter monitoring systems shall be in continuous operation when emissions are being routed to the monitored device.

(6) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the control or recovery device. In order to establish the range, the information required in § 63.999(b)(3) shall be submitted in the Notification of Compliance Status or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 63.997(b)(1) or a prior TRE index value determination, as applicable, or upon existing ranges or limits established under a referencing subpart. Where the regeneration stream flow and carbon bed temperature are monitored, the range shall be in terms of the total regeneration stream flow per regeneration cycle and the temperature of the carbon bed determined within 15 minutes of the completion of the regeneration cooling cycle.

(d) *Alternatives to monitoring requirements.* (1) *Alternatives to the continuous operating parameter monitoring and recordkeeping provisions.* An owner or operator may request approval to use alternatives to the continuous operating parameter monitoring and recordkeeping provisions listed in §§ 63.988(c), 63.990(c), 63.993(c), 63.994(c), 63.998(a)(2) through (4), 63.998(c)(2) and (3), as specified in § 63.999(d)(1).

(2) *Monitoring a different parameter than those listed.* An owner or operator may request approval to monitor a different parameter than those established in paragraph (c)(6) of this section or to set unique monitoring parameters if directed by §§ 63.994(c)(2) or 63.995(c), as specified in § 63.999(d)(2).

§ 63.997 Performance test and compliance assessment requirements for control devices.

(a) *Performance tests and flare compliance assessments.* Where §§ 63.985 through 63.995 require, or the owner or operator elects to conduct, a performance test of a control device or a halogen reduction device, or a compliance assessment for a flare, the requirements of paragraphs (b) through (d) of this section apply.

(b) *Prior test results and waivers.* Initial performance tests and initial flare compliance assessments are required only as specified in this subpart or a referencing subpart.

(1) Unless requested by the Administrator, an owner or operator is not required to conduct a performance test or flare compliance assessment under this subpart if a prior performance test or compliance assessment was conducted using the same methods specified in § 63.997(e) or § 63.987(b)(3), as applicable, and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test or compliance demonstration, with or without adjustments, reliably demonstrate compliance despite process changes. An owner or operator may request permission to substitute a prior performance test or compliance assessment by written application to the Administrator as specified in § 63.999(a)(1)(iv).

(2) Individual performance tests and flare compliance assessments may be waived upon written application to the Administrator, per § 63.999(a)(1)(iii), if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, the source is being operated under an extension or waiver of compliance, or the owner or operator has requested an extension or waiver of compliance and the Administrator is still considering that request.

(3) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notification is given to the owner or operator of the source.

(c) *Performance tests and flare compliance assessments schedule.* (1) Unless a waiver of performance testing or flare compliance assessment is obtained under this section or the conditions of a referencing subpart, the owner or operator shall perform such tests as specified in paragraphs (c)(1)(i) through (vii) of this section.

(i) Within 180 days after the effective date of a relevant standard for a new source that has an initial start-up date before the effective date of that standard; or

(ii) Within 180 days after initial start-up for a new source that has an initial start-up date after the effective date of a relevant standard; or

(iii) Within 180 days after the compliance date specified in a referencing subpart for an existing source, or within 180 days after start-up of an existing source if the source begins operation after the effective date of the relevant emission standard; or

(iv) Within 180 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 180 days after the termination date of the source's extension of compliance or a waiver of compliance for an existing source that obtains an extension of compliance under § 63.1112(a), or waiver of compliance under 40 CFR 61.11; or

(vi) Within 180 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f); or

(vii) When the promulgated emission standard in a referencing subpart is more stringent than the standard that was proposed, the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date, or within 180 days after start-up of the source, whichever is later. If a promulgated standard in a referencing subpart is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance initially with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after start-up of the source, whichever is later, to demonstrate compliance with the promulgated standard.

(2) The Administrator may require an owner or operator to conduct performance tests and compliance assessments at the regulated source at any time when the action is authorized by section 114 of the Act.

(3) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a recovery device to replace an existing control device at a later date, or elects to use a different flare, nonflare control device or recovery device to replace an existing flare, nonflare control device or final recovery device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 63.999(c)(7) before implementing the change. Upon implementing the change, a compliance demonstration or performance test shall be performed according to the provisions of paragraphs (c)(3)(i) through (v) of this section, as applicable, within 180 days. The compliance assessment report shall be submitted to the Administrator within 60 days of completing the determination, as provided in § 63.999(a)(1)(ii).

(i) For flares used to replace an existing control device, a flare compliance demonstration shall be

performed using the methods specified in § 63.987(b);

(ii) For flares used to replace an existing final recovery device that is used on an applicable process vent, the owner or operator shall comply with the applicable provisions in a referencing subpart and in this subpart;

(iii) For incinerators, boilers, or process heaters used to replace an existing control device, a performance test shall be performed, using the methods specified in § 63.997;

(iv) For absorbers, condensers, or carbon adsorbers used to replace an existing control device on a process vent or a transfer rack, a performance test shall be performed, using the methods specified in § 63.997;

(v) For absorbers, condensers, or carbon adsorbers used to replace an existing final recovery device on a process vent, the owner or operator shall comply with the applicable provisions of a referencing subpart and this subpart;

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new regulated source and, at the request of the Administrator, the owner or operator of each existing regulated source, shall provide performance testing facilities as specified in paragraphs (d)(1) through (5) of this section.

(1) Sampling ports adequate for test methods applicable to such source. This includes, as applicable, the requirements specified in (d)(1)(i) and (ii) of this section.

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

(2) Safe sampling platform(s);

(3) Safe access to sampling platform(s);

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

(e) *Performance test procedures.* Where §§ 63.985 through 63.995 require the owner or operator to conduct a performance test of a control device or a halogen reduction device, the owner or operator shall follow the requirements of paragraphs (e)(1)(i) through (v) of this section, as applicable.

(1) *General procedures.* (i) *Continuous unit operations.* For continuous unit operations, performance tests shall be conducted at maximum representative operating conditions for the process, unless the Administrator specifies or approves alternate operating conditions. During the performance test, an owner or operator may operate the control or halogen reduction device at maximum or minimum representative operating conditions for monitored control or halogen reduction device parameters, whichever results in lower emission reduction. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(ii) [Reserved]

(iii) *Combination of both continuous and batch unit operations.* For a combination of both continuous and batch unit operations, performance tests shall be conducted at maximum representative operating conditions. For the purpose of conducting a performance test on a combined vent stream, maximum representative operating conditions shall be when batch emission episodes are occurring that result in the highest organic HAP emission rate (for the combined vent stream) that is achievable during the 6-month period that begins 3 months before and ends 3 months after the compliance assessment (e.g. TRE calculation, performance test) without causing any of the situations described in paragraphs (e)(1)(iii)(A) through (C) of this section.

(A) Causing damage to equipment;

(B) Necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or

(C) Necessitating that the owner or operator make product in excess of demand.

(iv) *Alternatives to performance test requirements.* Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this subpart, in each relevant standard, and, if required, in applicable appendices of 40 CFR parts 51, 60, 61, and 63 unless the Administrator specifies one of the provisions in paragraphs (e)(1)(iv)(A) through (E) of this section.

(A) Specifies or approves, in specific cases, the use of a test method with minor changes in methodology; or

(B) Approves the use of an alternative test method, the results of which the Administrator has determined to be adequate for indicating whether a specific regulated source is in compliance. The alternate method or data shall be validated using the applicable procedures of Method 301 of appendix A of 40 CFR part 63; or

(C) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors; or

(D) Waives the requirement for the performance test as specified in paragraph (b)(2) of this section because the owner or operator of a regulated source has demonstrated by other means to the Administrator's satisfaction that the regulated source is in compliance with the relevant standard; or

(E) Approves the use of an equivalent method.

(v) *Performance test runs.* Except as provided in paragraphs (e)(1)(v)(A) and (B) of this section, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for at least 1 hour and under the conditions specified in this section. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.

(A) For control devices used to control emissions from transfer racks (except low throughput transfer racks that are capable of continuous vapor processing but do not handle continuous emissions or multiple loading arms of a transfer rack that load simultaneously), each run shall represent at least one complete tank truck or tank car loading period, during which regulated materials are loaded, and samples shall be collected using integrated sampling or grab samples taken at least four times per hour at approximately equal intervals of time, such as 15-minute intervals.

(B) For intermittent vapor processing systems used for controlling transfer rack emissions (except low throughput transfer racks that do not handle continuous emissions or multiple loading arms of a transfer rack that load simultaneously), each run shall represent at least one complete control device cycle, and samples shall be collected using integrated sampling or grab samples taken at least four times per hour at approximately equal intervals of time, such as 15-minute intervals.

(2) *Specific procedures.* Where §§ 63.985 through 63.995 require the owner or operator to conduct a performance test of a control device, or a halogen reduction device, an owner or operator shall conduct that performance test using the procedures in paragraphs (e)(2)(i) through (iv) of this section, as applicable. The regulated material concentration and percent reduction may be measured as either total organic regulated material or as TOC minus methane and ethane according to the procedures specified.

(i) *Selection of sampling sites.* Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites.

(A) For determination of compliance with a percent reduction requirement of total organic regulated material or TOC, sampling sites shall be located as specified in paragraphs (e)(2)(i)(A)(*1*) and (e)(2)(i)(A)(*2*) of this section, and at the outlet of the control device.

(*1*) With the exceptions noted below in paragraphs (e)(2)(i)(A)(*2*) and (*3*), the control device inlet sampling site shall be located at the exit from the unit operation before any control device.

(*2*) For process vents from continuous unit operations at affected sources in subcategories where the applicability criteria includes a TRE index value, the control device inlet sampling site shall be located after the final recovery device.

(*3*) If a vent stream is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total organic regulated material or TOC (minus methane and ethane) concentrations, as applicable, in all vent streams and primary and secondary fuels introduced into the boiler or process heater.

(B) For determination of compliance with a parts per million by volume total regulated material or TOC limit in a referencing subpart, the sampling site shall be located at the outlet of the control device.

(ii) *Gas volumetric flow rate.* The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

(iii) *Total organic regulated material or TOC concentration.* To determine compliance with a parts per million by volume total organic regulated material or TOC (minus methane and ethane) limit, the owner or operator shall use Method 18 of 40 CFR part 60, appendix A, to measure either TOC minus methane and ethane or total organic regulated material, as applicable. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63, may be used. Method 25A of 40 CFR part 60, appendix A may be used for transfer racks as detailed in paragraph (e)(2)(iii)(D) of this section. The procedures specified in paragraphs (e)(2)(iii)(A) through (D) of this section shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions.

(A) *Sampling time.* For continuous unit operations and for a combination of both continuous and batch unit operations, the minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(B) *Concentration calculation.* The concentration of either TOC (minus methane or ethane) or total organic regulated material shall be calculated according to paragraph (e)(2)(iii)(B) (*1*) or (*2*) of this section.

(*1*) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using Equation 2.

$$C_{TOC} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{[Eq. 2]}$$

Where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

x = Number of samples in the sample run.

n = Number of components in the sample.

C_{ji} = Concentration of sample components j of sample I, dry basis, parts per million by volume.

(*2*) The total organic regulated material (C_{REG}) shall be computed according to Equation 2 in paragraph (e)(2)(iii)(B)(*1*) of this section except that only the regulated species shall be summed.

(C) *Concentration correction calculation.* The concentration of TOC or total organic regulated material, as applicable, shall be corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions.

(*1*) The emission rate correction factor (or excess air), integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, shall be used to determine the oxygen concentration. The sampling site shall be the same as that of the organic regulated material or organic compound samples, and the samples shall be taken during the same time that the organic regulated material or organic compound samples are taken.

(*2*) The concentration corrected to 3 percent oxygen (C_c) shall be computed using Equation 3.

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \qquad \text{[Eq. 3]}$$

Where:

C_c = Concentration of TOC or organic regulated material corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = Concentration of TOC (minus methane and ethane) or organic regulated material, dry basis, parts per million by volume.

$\%O_{2d}$ = Concentration of oxygen, dry basis, percentage by volume.

(D) *Transfer racks.* Method 25A of 40 CFR part 60, appendix A may be used for the purpose of determining compliance with a parts per million by volume limit for transfer racks. If Method 25A of 40 CFR part 60, appendix A is used, the procedures specified in paragraphs (e)(2)(iii)(D) (*1*) through (*4*) of this section shall be used to calculate the concentration of organic compounds (C_{TOC}):

(*1*) The principal organic regulated material in the vent stream shall be used as the calibration gas.

(*2*) The span value for Method 25A of 40 CFR part 60, appendix A, shall be between 1.5 and 2.5 times the concentration being measured.

(*3*) Use of Method 25A of 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(*4*) The concentration of TOC shall be corrected to 3 percent oxygen using the procedures and Equation 3 in paragraph (e)(2)(iii)(C)(*2*) of this section if a combustion device is the control device and supplemental combustion air is used to combust emissions.

(iv) *Percent reduction calculation.* To determine compliance with a percent reduction requirement, the owner or operator shall use Method 18 of 40 CFR part 60, appendix A; alternatively, any other method or data that have been validated according to the applicable

procedures in Method 301 of appendix A of this part may be used. Method 25A or 25B of 40 CFR part 60, appendix A may be used for transfer racks as detailed in paragraph (e)(2)(iv)(E) of this section. Procedures specified in paragraphs (e)(2)(iv)(A) through (e)(2)(iv)(E) of this section shall be used to calculate percent reduction efficiency.

(A) *Sampling time.* The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) *Mass rate of TOC or total organic regulated material.* The mass rate of either TOC (minus methane and ethane) or total organic regulated material (E_i, E_o) shall be computed as applicable.

(*1*) Equations 4 and 5 shall be used.

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i \qquad \text{[Eq. 4]}$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o \qquad \text{[Eq. 5]}$$

Where:

E_i, E_o = Emission rate of TOC (minus methane and ethane) (E_{TOC}) or emission rate of total organic regulated material (E_{RM}) in the sample at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram per gram) (minute per hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in the sample.

C_{ij}, C_{oj} = Concentration on a dry basis of organic compound j in parts per million by volume of the gas stream at the inlet and outlet of the control device, respectively. If the TOC emission rate is being calculated, C_{ij} and C_{oj} include all organic compounds measured minus methane and ethane; if the total organic regulated material emissions rate is being calculated, only organic regulated material are included.

M_{ij}, M_{oj} = Molecular weight of organic compound j, gram per gram-mole, of the gas stream at the inlet and outlet of the control device, respectively.

Q_i, Q_o = Process vent flow rate, dry standard cubic meter per minute, at a temperature of 20° C, at the inlet and outlet of the control device, respectively.

(*2*) Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by method 18 of 40 CFR part 60, appendix A, are summed using Equations 4 and 5 in paragraph (e)(2)(iv)(B)(*1*) of this section.

(*3*) Where the mass rate of total organic regulated material is being calculated, only the species comprising the regulated material shall be summed using Equations 4 and 5 in paragraph (e)(2)(iv)(B)(*1*) of this section.

(C) *Percent reduction in TOC or total organic regulated material for continuous unit operations and a combination of both continuous and batch unit operations.* For continuous unit operations and for a combination of both continuous and batch unit operations, the percent reduction in TOC (minus methane and ethane) or total organic regulated material shall be calculated using Equation 6.

$$R = \frac{E_i - E_o}{E_i}(100) \qquad \text{[Eq. 6]}$$

Where:

R = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) or total organic regulated material at the inlet to the control device as calculated under paragraph (e)(2)(iv)(B) of this section, kilograms TOC per hour or kilograms organic regulated material per hour.

E_o = Mass rate of TOC (minus methane and ethane) or total organic regulated material at the outlet of the control device, as calculated under paragraph (e)(2)(iv)(B) of this section, kilograms TOC per hour or kilograms total organic regulated material per hour.

(D) *Vent stream introduced with combustion air or as secondary fuel.* If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic regulated material or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total organic regulated material in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total organic regulated material exiting the combustion device, respectively.

(E) *Transfer racks.* Method 25A of 40 CFR part 60, appendix A, may also be used for the purpose of determining compliance with the percent reduction requirement for transfer racks.

(*1*) If Method 25A of 40 CFR part 60, appendix A, is used to measure the concentration of organic compounds (C_{TOC}), the principal organic regulated material in the vent stream shall be used as the calibration gas.

(*2*) An emission testing interval shall consist of each 15-minute period during the performance test. For each interval, a reading from each measurement shall be recorded.

(*3*) The average organic compound concentration and the volume measurement shall correspond to the same emissions testing interval.

(*4*) The mass at the inlet and outlet of the control device during each testing interval shall be calculated using Equation 7.

$$M_j = FKV_sC_t \qquad \text{[Eq. 7]}$$

Where:

M_j = Mass of organic compounds emitted during testing interval j, kilograms.

$F = 10^{-6}$ = Conversion factor, (cubic meters regulated material per cubic meters air) * (parts per million by volume)$^{-1}$.

K = Density, kilograms per standard cubic meter organic regulated material.

= 659 kilograms per standard cubic meter organic regulated material. (Note: The density term cancels out when the percent reduction is calculated. Therefore, the density used has no effect. The density of hexane is given so that it can be used to maintain the units of M_j.)

V_s = Volume of air-vapor mixture exhausted at standard conditions, 20 °C and 760 millimeters mercury, standard cubic meters.

C_t = Total concentration of organic compounds (as measured) at the exhaust vent, parts per million by volume, dry basis.

(*5*) The organic compound mass emission rates at the inlet and outlet of the control device shall be calculated using Equations 8 and 9 as follows:

$$E_i = \frac{\sum_{j=1}^{n} M_{ij}}{T} \qquad \text{[Eq. 8]}$$

$$E_o = \frac{\sum_{j=1}^{n} M_{oj}}{T} \qquad \text{[Eq. 9]}$$

Where:

E_i, E_o = Mass flow rate of organic compounds at the inlet (i) and outlet (o) of the control device, kilograms per hour.

n = Number of testing intervals.

M_{ij}, M_{oj} = Mass of organic compounds at the inlet (i) or outlet (o) during testing interval j, kilograms.

T = Total time of all testing intervals, hours.

(*3*) An owner or operator using a halogen scrubber or other halogen reduction device to control process vent and transfer rack halogenated vent streams in compliance with a referencing subpart, who is required to conduct a performance test to determine compliance with a control efficiency or emission limit for hydrogen halides and halogens, shall follow the procedures specified in paragraphs (e)(3) (i) through (iv) of this section.

(i) For an owner or operator determining compliance with the percent reduction of total hydrogen halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions. For an owner or operator determining compliance with a kilogram per hour outlet emission limit for total hydrogen halides and halogens, the sampling site shall be located at the outlet of the scrubber or other halogen reduction device and prior to any releases to the atmosphere.

(ii) Except as provided in paragraph (e)(1)(iv) of this section, Method 26 or Method 26A of 40 CFR part 60, appendix A, shall be used to determine the concentration, in milligrams per dry standard cubic meter, of total hydrogen halides and halogens that may be present in the vent stream. The mass emissions of each hydrogen halide and halogen compound shall be calculated from the measured concentrations and the gas stream flow rate.

(iii) To determine compliance with the percent removal efficiency, the mass emissions for any hydrogen halides and halogens present at the inlet of the halogen reduction device shall be summed together. The mass emissions of the compounds present at the outlet of the scrubber or other halogen reduction device shall be summed together. Percent reduction shall be determined by comparison of the summed inlet and outlet measurements.

(iv) To demonstrate compliance with a kilogram per hour outlet emission limit, the test results must show that the mass emission rate of total hydrogen halides and halogens measured at the outlet of the scrubber or other halogen reduction device is below the kilogram per hour outlet emission limit specified in a referencing subpart.

§ 63.998 Recordkeeping requirements.

(a) *Compliance assessment, monitoring, and compliance records.* (1) *Conditions of flare compliance assessment, monitoring, and compliance records.* Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of flare compliance assessments performed pursuant to § 63.987(b).

(i) *Flare compliance assessment records.* When using a flare to comply with this subpart, record the information specified in paragraphs (a)(1)(i)(A) through (C) of this section for each flare compliance assessment performed pursuant to § 63.987(b). As specified in § 63.999(a)(2)(iii)(A), the owner or operator shall include this information in the flare compliance assessment report.

(A) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(B) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the flare compliance assessment; and

(C) All periods during the flare compliance assessment when all pilot flames are absent or, if only the flare flame is monitored, all periods when the flare flame is absent.

(ii) *Monitoring records.* Each owner or operator shall keep up to date and readily accessible hourly records of whether the monitor is continuously operating and whether the flare flame or at least one pilot flame is continuously present. For transfer racks, hourly records are required only while the transfer rack vent stream is being vented.

(iii) *Compliance records.* (A) Each owner or operator shall keep records of the times and duration of all periods during which the flare flame or all the pilot flames are absent. This record shall be submitted in the periodic reports as specified in § 63.999(c)(8).

(B) Each owner or operator shall keep records of the times and durations of all periods during which the monitor is not operating.

(2) *Nonflare control device performance test records.* (i) *Availability of performance test records.* Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests performed pursuant to §§ 63.988(b), 63.990(b), 63.994(b), or 63.995(b).

(ii) *Nonflare control device and halogen reduction device performance test records.* (A) *General requirements.* Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the data specified in (a)(2)(ii)(B) through (D) of this section, as applicable, measured during each performance test performed pursuant to §§ 63.988(b), 63.990(b), 63.994(b), or 63.995(b), and also include that data in the Notification of Compliance Status required under § 63.999(b). The same data specified in this section shall be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a combustion device, or the outlet concentration of TOC or regulated material is determined.

(B) *Nonflare combustion device.* Where an owner or operator subject to the provisions of this paragraph seeks to demonstrate compliance with a percent reduction requirement or a parts per million by volume requirement using a nonflare combustion device the information specified in (a)(2)(ii)(B)(*1*) through (*6*) of this section shall be recorded.

(*1*) For thermal incinerators, record the fire box temperature averaged over the full period of the performance test.

(*2*) For catalytic incinerators, record the upstream and downstream temperatures and the temperature difference across the catalyst bed averaged over the full period of the performance test.

(*3*) For a boiler or process heater with a design heat input capacity less than 44 megawatts and a vent stream that is not introduced with or as the primary fuel, record the fire box temperature averaged over the full period of the performance test.

(*4*) For an incinerator, record the percent reduction of organic regulated material, if applicable, or TOC achieved by the incinerator determined as specified in § 63.997(e)(2)(iv), as applicable, or the concentration of organic regulated material (parts per million by volume, by compound) determined as specified in § 63.997(e)(2)(iii) at the outlet of the incinerator.

(*5*) For a boiler or process heater, record a description of the location at which the vent stream is introduced into the boiler or process heater.

(*6*) For a boiler or process heater with a design heat input capacity of less than

44 megawatts and where the process vent stream is introduced with combustion air or used as a secondary fuel and is not mixed with the primary fuel, record the percent reduction of organic regulated material or TOC, or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 63.997(e)(2) at the outlet of the combustion device.

(C) *Other nonflare control devices.* Where an owner or operator seeks to use an absorber, condenser, or carbon adsorber as a control device, the information specified in paragraphs (a)(2)(ii)(C)(*1*) through (*5*) of this section shall be recorded, as applicable.

(*1*) Where an absorber is used as the control device, the exit specific gravity and average exit temperature of the absorbing liquid averaged over the same time period as the performance test (both measured while the vent stream is normally routed and constituted); or

(*2*) Where a condenser is used as the control device, the average exit (product side) temperature averaged over the same time period as the performance test while the vent stream is routed and constituted normally; or

(*3*) Where a carbon adsorber is used as the control device, the total regeneration stream mass flow during each carbon-bed regeneration cycle during the period of the performance test, and temperature of the carbon-bed after each regeneration during the period of the performance test (and within 15 minutes of completion of any cooling cycle or cycles; or

(*4*) As an alternative to paragraph (a)(2)(ii)(C)(*1*), (*2*), or (*3*) of this section, the concentration level or reading indicated by an organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber averaged over the same time period as the performance test while the vent stream is normally routed and constituted.

(*5*) For an absorber, condenser, or carbon adsorber used as a control device, the percent reduction of regulated material achieved by the control device or concentration of regulated material (parts per million by volume, by compound) at the outlet of the control device.

(D) *Halogen reduction devices.* When using a scrubber following a combustion device to control a halogenated vent stream, record the information specified in paragraphs (a)(2)(ii)(D)(*1*) through (*3*) of this section.

(*1*) The percent reduction or scrubber outlet mass emission rate of total hydrogen halides and halogens as specified in § 63.997(e)(3).

(*2*) The pH of the scrubber effluent averaged over the time period of the performance test; and

(*3*) The scrubber liquid-to-gas ratio averaged over the time period of the performance test.

(3) *Recovery device monitoring records during TRE index value determination.* For process vents that require control of emissions under a referencing subpart, owners or operators using a recovery device to maintain a TRE above a level specified in the referencing subpart shall maintain the continuous records specified in paragraph (a)(3)(i) through (v) of this section, as applicable, and submit reports as specified in § 63.999(a)(2)(iii)(C).

(i) Where an absorber is the final recovery device in the recovery system and the saturated scrubbing fluid and specific gravity of the scrubbing fluid is greater than or equal to 0.02 specific gravity units, the exit specific gravity (or alternative parameter that is a measure of the degree of absorbing liquid saturation if approved by the Administrator) and average exit temperature of the absorbing liquid averaged over the same time period as the TRE index value determination (both measured while the vent stream is normally routed and constituted); or

(ii) Where a condenser is the final recovery device in the recovery system, the average exit (product side) temperature averaged over the same time period as the TRE index value determination while the vent stream is routed and constituted normally; or

(iii) Where a carbon adsorber is the final recovery device in the recovery system, the total regeneration stream mass flow during each carbon-bed regeneration cycle during the period of the TRE index value determination, and temperature of the carbon-bed after each regeneration during the period of the TRE index value determination (and within 15 minutes of completion of any cooling cycle or cycles); or

(iv) As an alternative to paragraph (a)(3)(i), (ii), or (iii) of this section, the concentration level or reading indicated by an organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber averaged over the same time period as the TRE index value determination while the vent stream is normally routed and constituted.

(v) All measurements and calculations performed to determine the TRE index value of the vent stream as specified in a referencing subpart.

(4) *Halogen concentration records.* Record the halogen concentration in the vent stream determined according to the procedures specified in a referencing subpart. Submit this record in the Notification of Compliance Status, as specified in § 63.999(b)(4). If the owner or operator designates the vent stream as halogenated, then this shall be recorded and reported in the Notification of Compliance Status report.

(b) *Continuous records and monitoring system data handling.* (1) *Continuous records.* Where this subpart requires a continuous record, the owner or operator shall maintain a record as specified in paragraphs (b)(1)(i) through (iv) of this section, as applicable:

(i) A record of values measured at least once every 15 minutes or each measured value for systems which measure more frequently than once every 15 minutes; or

(ii) A record of block average values for 15-minute or shorter periods calculated from all measured data values during each period or from at least one measured data value per minute if measured more frequently than once per minute.

(iii) Where data is collected from an automated continuous parameter monitoring system, the owner or operator may calculate and retain block hourly average values from each 15-minute block average period or from at least one measured value per minute if measured more frequently than once per minute, and discard all but the most recent three valid hours of continuous (15-minute or shorter) records, if the hourly averages do not exclude periods of CPMS breakdown or malfunction. An automated CPMS records the measured data and calculates the hourly averages through the use of a computerized data acquisition system.

(iv) A record as required by an alternative approved under a referencing subpart.

(2) *Excluded data.* Monitoring data recorded during periods identified in paragraphs (b)(2)(i) through (iii) of this section shall not be included in any average computed to determine compliance with an emission limit in a referencing subpart.

(i) Monitoring system breakdowns, repairs, preventive maintenance, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Periods of non-operation of the process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies; and

(iii) Start-ups, shutdowns, and malfunctions, if the owner or operator follows the applicable provisions of the start-up, shutdown, and malfunction plan required by a referencing subpart and maintains the records specified in paragraph (d)(3) of this section.

(3) *Records of daily averages.* In addition to the records specified in paragraph (a), owners or operators shall keep records as specified in paragraphs (b)(3)(i) and (ii) of this section and submit reports as specified in § 63.999(c), unless an alternative recordkeeping system has been requested and approved under a referencing subpart.

(i) Except as specified in paragraph (b)(3)(ii) of this section, daily average values of each continuously monitored parameter shall be calculated from data meeting the specifications of paragraph (b)(2) of this section for each operating day and retained for 5 years.

(A) The daily average shall be calculated as the average of all values for a monitored parameter recorded during the operating day. The average shall cover a 24-hour period if operation is continuous, or the period of operation per operating day if operation is not continuous (e.g., for transfer racks the average shall cover periods of loading). If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the daily average instead of all measured values.

(B) The operating day shall be the period defined in the operating permit or in the Notification of Compliance Status. It may be from midnight to midnight or another daily period.

(ii) If all recorded values for a monitored parameter during an operating day are within the range established in the Notification of Compliance Status or in the operating permit, the owner or operator may record that all values were within the range and retain this record for 5 years rather than calculating and recording a daily average for that operating day. In such cases, the owner or operator may not discard the recorded values as allowed in paragraph (b)(1)(iii) of this section.

(4) [Reserved]

(5) *Alternative recordkeeping.* For any parameter with respect to any item of equipment associated with a process vent or transfer rack (except low throughput transfer loading racks), the owner or operator may implement the recordkeeping requirements in paragraphs (b)(5)(i) or (ii) of this section as alternatives to the recordkeeping provisions listed in paragraphs (b)(1) through (3) of this section. The owner or operator shall retain each record required by paragraphs (b)(5)(i) or (ii) of this section as provided in a referencing subpart.

(i) The owner or operator may retain only the daily average value, and is not required to retain more frequently monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (b)(5)(i)(A) through (F) of this section are met. The owner or operator shall notify the Administrator in the Notification of Compliance Status as specified in § 63.999(b)(5) or, if the Notification of Compliance Status has already been submitted, in the Periodic Report immediately preceding implementation of the requirements of this paragraph, as specified in § 63.999(c)(6)(iv).

(A) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation other than start-ups, shutdowns or malfunctions (e.g., a temperature reading of −200° C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(B) The monitoring system generates a running average of the monitoring values, updated at least hourly throughout each operating day, that have been obtained during that operating day, and the capability to observe this average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (b)(5)(i)(B)(*1*) through (*3*) of this section. All instances in an operating day constitute a single occurrence.

(*1*) The running average is above the maximum or below the minimum established limits;

(*2*) The running average is based on at least six one-hour average values; and

(*3*) The running average reflects a period of operation other than a start-up, shutdown, or malfunction.

(C) The monitoring system is capable of detecting unchanging data during periods of operation other than start-ups, shutdowns or malfunctions, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(D) The monitoring system will alert the owner or operator by an alarm, if the running average parameter value calculated under paragraph (b)(5)(i)(B) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(E) The owner or operator shall verify the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (b)(5)(i) of this section, at the times specified in paragraphs (b)(5)(i)(E)(*1*) through (*3*) of this section. The owner or operator shall document that the required verifications occurred.

(*1*) Upon initial installation.

(*2*) Annually after initial installation.

(*3*) After any change to the programming or equipment constituting the monitoring system that might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(F) The owner or operator shall retain the records identified in paragraphs (b)(5)(i)(F)(*1*) through (*4*) of this section.

(*1*) Identification of each parameter, for each item of equipment, for which the owner or operator has elected to comply with the requirements of paragraph (b)(5)(i) of this section.

(*2*) A description of the applicable monitoring system(s), and of how compliance will be achieved with each requirement of paragraph (b)(5)(i)(A) through (E) of this section. The description shall identify the location and format (e.g., on-line storage; log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description. The description, and the most recent superseded description, shall be retained as provided in the subpart that references this subpart, except as provided in paragraph (b)(5)(i)(F)(*1*) of this section.

(*3*) A description, and the date, of any change to the monitoring system that would reasonably be expected to affect its ability to comply with the requirements of paragraph (b)(5)(i) of this section.

(*4*) Owners and operators subject to paragraph (b)(5)(i)(F)(*2*) of this section shall retain the current description of the monitoring system as long as the description is current, but not less than 5 years from the date of its creation. The current description shall be retained on-site at all times or be accessible from a central location by computer or other means that provides access within 2 hours after a request. The owner or operator shall retain the most recent superseded description at least until 5 years from the date of its creation. The superseded description shall be retained on-site (or accessible from a central location by computer that provides access within 2 hours after a request) at least 6 months after being superseded.

Thereafter, the superseded description may be stored off-site.

(ii) If an owner or operator has elected to implement the requirements of paragraph (b)(5)(i) of this section, and a period of 6 consecutive months has passed without an excursion as defined in paragraph (b)(6)(i) of this section, the owner or operator is no longer required to record the daily average value for that parameter for that unit of equipment, for any operating day when the daily average value is less than the maximum, or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months, if the parameter limit and the monitoring were required and/or approved by the Administrator.

(A) If the owner or operator elects not to retain the daily average values, the owner or operator shall notify the Administrator in the next Periodic Report, as specified in § 63.999(c)(6)(i). The notification shall identify the parameter and unit of equipment.

(B) If there is an excursion as defined in paragraph (b)(6)(i) of this section on any operating day after the owner or operator has ceased recording daily averages as provided in paragraph (b)(5)(ii) of this section, the owner or operator shall immediately resume retaining the daily average value for each operating day, and shall notify the Administrator in the next Periodic Report, as specified in § 63.999(c). The owner or operator shall continue to retain each daily average value until another period of 6 consecutive months has passed without an excursion as defined in paragraph (b)(6)(i) of this section.

(C) The owner or operator shall retain the records specified in paragraphs (b)(5)(i)(A) through (F) of this section for the duration specified in a referencing subpart. For any week, if compliance with paragraphs (b)(5)(i)(A) through (D) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a start-up, shutdown, or malfunction.

(6)(i) For the purposes of this section, an excursion means that the daily average value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except as provided in paragraphs (b)(6)(i)(A) and (B) of this section.

(A) The daily average value during any start-up, shutdown or malfunction shall not be considered an excursion if the owner or operator follows the applicable provisions of the start-up, shutdown, and malfunction plan required by a referencing subpart and maintains the records specified in paragraph (d)(3) of this section.

(B) An excused excursion, as described in paragraph (b)(6)(ii), does not count toward the number of excursions for the purposes of this subpart.

(ii) One excused excursion for each control device or recovery device for each semiannual period is allowed. If a source has developed a start-up, shutdown and malfunction plan, and a monitored parameter is outside its established range or monitoring data are not collected during periods of start-up, shutdown, or malfunction (and the source is operated during such periods in accordance with the start-up, shutdown, and malfunction plan) or during periods of nonoperation of the process unit or portion thereof (resulting in cessation of the emissions to which monitoring applies), then the excursion is not a violation and, in cases where continuous monitoring is required, the excursion does not count as the excused excursion for determining compliance.

(c) *Nonflare control and recovery device regulated source monitoring records.* (1) *Monitoring system records.* For process vents and high throughput transfer racks, the owner or operator subject to this subpart shall keep the records specified in this paragraph, as well as records specified elsewhere in this subpart.

(i) For a CPMS used to comply with this part, a record of the procedure used for calibrating the CPMS.

(ii) For a CPMS used to comply with this subpart, records of the information specified in paragraphs (c)(ii)(A) through (H) of this section, as indicated in a referencing subpart.

(A) The date and time of completion of calibration and preventive maintenance of the CPMS.

(B) The "as found" and "as left" CPMS readings, whenever an adjustment is made that affects the CPMS reading and a "no adjustment" statement otherwise.

(C) The start time and duration or start and stop times of any periods when the CPMS is inoperative.

(D) Records of the occurrence and duration of each start-up, shutdown, and malfunction of CPMS used to comply with this subpart during which excess emissions (as defined in a referencing subpart) occur.

(E) For each start-up, shutdown, and malfunction during which excess emissions as defined in a referencing subpart occur, records whether the procedures specified in the source's start-up, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. These records may take the form of a "checklist," or other form of recordkeeping that confirms conformance with the start-up, shutdown, and malfunction plan for the event.

(F) Records documenting each start-up, shutdown, and malfunction event.

(G) Records of CPMS start-up, shutdown, and malfunction event that specify that there were no excess emissions during the event, as applicable.

(H) Records of the total duration of operating time.

(2) *Combustion control and halogen reduction device monitoring records.* (i) Each owner or operator using a combustion control or halogen reduction device to comply with this subpart shall keep the following records up-to-date and readily accessible, as applicable. Continuous records of the equipment operating parameters specified to be monitored under §§ 63.988(c) (incinerator, boiler, and process heater monitoring), 63.994(c) (halogen reduction device monitoring), and 63.995(c) (other combustion systems used as control device monitoring) or approved by the Administrator in accordance with a referencing subpart.

(ii) Each owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in paragraph (b)(3)(i) of this section. For catalytic incinerators, record the daily average of the temperature upstream of the catalyst bed and the daily average of the temperature differential across the bed. For halogen scrubbers record the daily average pH and the liquid-to-gas ratio.

(iii) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries are exceeded. The parameter boundaries are established pursuant to § 63.996(c)(6).

(3) *Monitoring records for recovery devices, absorbers, condensers, carbon adsorbers or other noncombustion systems used as control devices.* (i) Each owner or operator using a recovery device to achieve and maintain a TRE index value greater than the control applicability level specified in the referencing subpart but less than 4.0 or using an absorber, condenser, carbon adsorber or other non-combustion

system as a control device shall keep readily accessible, continuous records of the equipment operating parameters specified to be monitored under §§ 63.990(c) (absorber, condenser, and carbon adsorber monitoring), 63.993(c) (recovery device monitoring), or 63.995(c) (other noncombustion systems used as a control device monitoring) or as approved by the Administrator in accordance with a referencing subpart. For transfer racks, continuous records are required while the transfer vent stream is being vented.

(ii) Each owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in paragraph (b)(3)(i) of this section. If carbon adsorber regeneration stream flow and carbon bed regeneration temperature are monitored, the records specified in paragraphs (c)(3)(ii)(A) and (B) of this section shall be kept instead of the daily averages.

(A) Records of total regeneration stream mass or volumetric flow for each carbon-bed regeneration cycle.

(B) Records of the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle.

(iii) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries are exceeded. The parameter boundaries are established pursuant to § 63.996(c)(6).

(d) *Other records.* (1) *Closed vent system records.* For closed vent systems the owner or operator shall record the information specified in paragraphs (d)(1)(i) through (iv) of this section, as applicable.

(i) For closed vent systems collecting regulated material from a regulated source, the owner or operator shall record the identification of all parts of the closed vent system, that are designated as unsafe or difficult to inspect, an explanation of why the equipment is unsafe or difficult to inspect, and the plan for inspecting the equipment required by § 63.983(b)(2)(ii) or (iii) of this section.

(ii) For each closed vent system that contains bypass lines that could divert a vent stream away from the control device and to the atmosphere, the owner or operator shall keep a record of the information specified in either paragraph (d)(1)(ii)(A) or (B) of this section, as applicable.

(A) Hourly records of whether the flow indicator specified under § 63.983(a)(3)(i) was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(B) Where a seal mechanism is used to comply with § 63.983(a)(3)(ii), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has been broken.

(iii) For a closed vent system collecting regulated material from a regulated source, when a leak is detected as specified in § 63.983(d)(2), the information specified in paragraphs (d)(1)(iii)(A) through (F) of this section shall be recorded and kept for 5 years.

(A) The instrument and the equipment identification number and the operator name, initials, or identification number.

(B) The date the leak was detected and the date of the first attempt to repair the leak.

(C) The date of successful repair of the leak.

(D) The maximum instrument reading measured by the procedures in § 63.983(c) after the leak is successfully repaired or determined to be nonrepairable.

(E) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 days after discovery of the leak. The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(F) Copies of the Periodic Reports as specified in § 63.999(c), if records are not maintained on a computerized database capable of generating summary reports from the records.

(iv) For each instrumental or visual inspection conducted in accordance with § 63.983(b)(1) for closed vent systems collecting regulated material from a regulated source during which no leaks are detected, the owner or operator shall record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(2) *Storage vessel and transfer rack records.* An owner or operator shall keep readily accessible records of the information specified in paragraphs (d)(2)(i) and (ii) of this section, as applicable.

(i) A record of the measured values of the parameters monitored in accordance with § 63.985(c) or § 63.987(c).

(ii) A record of the planned routine maintenance performed on the control system during which the control system does not meet the applicable specifications of §§ 63.983(a), 63.985(a), or 63.987(a), as applicable, due to the planned routine maintenance. Such a record shall include the information specified in paragraphs (d)(2)(ii)(A) through (C) of this section. This information shall be submitted in the Periodic Reports as specified in § 63.999(c)(4).

(A) The first time of day and date the requirements of §§ 63.983(a), § 63.985(a), or § 63.987(a), as applicable, were not met at the beginning of the planned routine maintenance, and

(B) The first time of day and date the requirements of §§ 63.983(a), 63.985(a), or 63.987(a), as applicable, were met at the conclusion of the planned routine maintenance.

(C) A description of the type of maintenance performed.

(3) *Regulated source and control equipment start-up, shutdown and malfunction records.* (i) Records of the occurrence and duration of each start-up, shutdown, and malfunction of operation of process equipment or of air pollution control equipment used to comply with this part during which excess emissions (as defined in a referencing subpart) occur.

(ii) For each start-up, shutdown, and malfunction during which excess emissions occur, records that the procedures specified in the source's start-up, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a start-up, shutdown, and malfunction plan includes procedures for routing control device emissions to a backup control device (e.g., the incinerator for a halogenated stream could be routed to a flare during periods when the primary control device is out of service), records must be kept of whether the plan was followed. These records may take the form of a "checklist," or other form of recordkeeping that confirms conformance with the start-up, shutdown, and malfunction plan for the event.

(4) *Equipment leak records.* The owner or operator shall maintain records of the information specified in paragraphs (d)(4)(i) and (ii) of this section for closed vent systems and control devices if specified by the equipment leak provisions in a

referencing subpart. The records specified in paragraph (d)(4)(i) of this section shall be retained for the life of the equipment. The records specified in paragraph (d)(4)(ii) of this section shall be retained for 5 years.

(i) The design specifications and performance demonstrations specified in paragraphs (d)(4)(i)(A) through (C) of this section.

(A) Detailed schematics, design specifications of the control device, and piping and instrumentation diagrams.

(B) The dates and descriptions of any changes in the design specifications.

(C) A description of the parameter or parameters monitored, as required in a referencing subpart, to ensure that control devices are operated and maintained in conformance with their design and an explanation of why that parameter (or parameters) was selected for the monitoring.

(ii) Records of operation of closed vent systems and control devices, as specified in paragraphs (d)(4)(ii)(A) through (C) of this section.

(A) Dates and durations when the closed vent systems and control devices required are not operated as designed as indicated by the monitored parameters.

(B) Dates and durations during which the monitoring system or monitoring device is inoperative.

(C) Dates and durations of start-ups and shutdowns of control devices required in this subpart.

(5) *Records of monitored parameters outside of range.* The owner or operator shall record the occurrences and the cause of periods when the monitored parameters are outside of the parameter ranges documented in the Notification of Compliance Status report. This information shall also be reported in the Periodic Report.

§ 63.999 Notifications and other reports.

(a) *Performance test and flare compliance assessment notifications and reports.* (1) *General requirements.* General requirements for performance test and flare compliance assessment notifications and reports are specified in paragraphs (a)(1)(i) through (iii) of this section.

(i) The owner or operator shall notify the Administrator of the intention to conduct a performance test or flare compliance assessment at least 30 days before such a compliance demonstration is scheduled to allow the Administrator the opportunity to have an observer present. If after 30 days notice for such an initially scheduled compliance demonstration, there is a delay (due to operational problems, etc.) in conducting the scheduled compliance demonstration, the owner or operator of an affected facility shall notify the Administrator as soon as possible of any delay in the original demonstration date. The owner or operator shall provide at least 7 days prior notice of the rescheduled date of the compliance demonstration, or arrange a rescheduled date with the Administrator by mutual agreement.

(ii) Unless specified differently in this subpart or a referencing subpart, performance test and flare compliance assessment reports, not submitted as part of a Notification of Compliance Status report, shall be submitted to the Administrator within 60 days of completing the test or determination.

(iii) Any application for a waiver of an initial performance test or flare compliance assessment, as allowed by § 63.997(b)(2), shall be submitted no later than 90 days before the performance test or compliance assessment is required. The application for a waiver shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the source performing the test.

(iv) Any application to substitute a prior performance test or compliance assessment for an initial performance test or compliance assessment, as allowed by § 63.997(b)(1), shall be submitted no later than 90 days before the performance test or compliance test is required. The application for substitution shall include information demonstrating that the prior performance test or compliance assessment was conducted using the same methods specified in § 63.997(e) or § 63.987(b)(3), as applicable. The application shall also include information demonstrating that no process changes have been made since the test, or that the results of the performance test or compliance assessment reliably demonstrate compliance despite process changes.

(2) *Performance test and flare compliance assessment report submittal and content requirements.* Performance test and flare compliance assessment reports shall be submitted as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) For performance tests or flare compliance assessments, the Notification of Compliance Status or performance test and flare compliance assessment report shall include one complete test report as specified in paragraph (a)(2)(ii) of this section for each test method used for a particular kind of emission point and other applicable information specified in (a)(2)(iii) of this section. For additional tests performed for the same kind of emission point using the same method, the results and any other information required in applicable sections of this subpart shall be submitted, but a complete test report is not required.

(ii) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(iii) The performance test or flare compliance assessment report shall also include the information specified in (a)(2)(iii)(A) through (C) of this section, as applicable.

(A) For flare compliance assessments, the owner or operator shall submit the records specified in § 63.998(a)(1)(i).

(B) For nonflare control device and halogen reduction device performance tests as required under §§ 63.988(b), 63.990(b), 63.994(b), or 63.995(b), also submit the records specified in § 63.998(a)(2)(ii), as applicable.

(C) For recovery devices also submit the records specified in § 63.998(a)(3), as applicable.

(b) *Notification of Compliance Status.* (1) *Routing storage vessel or transfer rack emissions to a process or fuel gas system.* An owner or operator who elects to comply with § 63.982 by routing emissions from a storage vessel or transfer rack to a process or to a fuel gas system, as specified in § 63.984, shall submit as part of the Notification of Compliance Status the information specified in paragraphs (b)(1)(i) and (ii), or (iii) of this section, as applicable.

(i) If storage vessels emissions are routed to a process, the owner or operator shall submit the information specified in § 63.984(b)(2) and (3).

(ii) As specified in § 63.984(c), if storage vessels emissions are routed to a fuel gas system, the owner or operator shall submit a statement that the emission stream is connected to the fuel gas system and whether the conveyance system is subject to the requirements of § 63.983.

(iii) As specified in § 63.984(c), report that the transfer rack emission stream is being routed to a fuel gas system or process, when complying with a referencing subpart.

(2) *Routing storage vessel or low throughput transfer rack emissions to a nonflare control device.* An owner or operator who elects to comply with § 63.982 by routing emissions from a storage vessel or low throughput transfer rack to a nonflare control device, as specified in § 63.985, shall submit, with the Notification of Compliance Status required by a referencing subpart, the applicable information specified in paragraphs (b)(2)(i) through (vi) of this section. Owners and operators who elect to comply with § 63.985(b)(1)(i) by submitting a design evaluation shall submit the information specified in paragraphs (b)(2)(i) through (iv) of this section. Owners and operators who elect to comply with § 63.985(b)(1)(ii) by submitting performance test results from a control device for a storage vessel or low throughput transfer rack shall submit the information specified in paragraphs (b)(2)(i), (ii), (iv), and (v) of this section. Owners and operators who elect to comply with § 63.985(b)(1)(ii) by submitting performance test results from a shared control device shall submit the information specified in paragraph (b)(2)(vi) of this section.

(i) A description of the parameter or parameters to be monitored to ensure that the control device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (e.g., when the liquid level in the storage vessel is being raised). If continuous records are specified, indicate whether the provisions of § 63.999(c)(6) apply.

(ii) The operating range for each monitoring parameter identified in the monitoring plan required by § 63.985(c)(1). The specified operating range shall represent the conditions for which the control device is being properly operated and maintained.

(iii) The documentation specified in § 63.985(b)(1)(i), if the owner or operator elects to prepare a design evaluation.

(iv) The provisions of paragraph (c)(6) of this section do not apply to any low throughput transfer rack for which the owner or operator has elected to comply with § 63.985 or to any storage vessel for which the owner or operator is not required, by the applicable monitoring plan established under § 63.985(c)(1), to keep continuous records. If continuous records are required, the owner or operator shall specify in the monitoring plan whether the provisions of paragraph (c)(6) of this section apply.

(v) A summary of the results of the performance test described in § 63.985(b)(1)(ii). If such a performance test is conducted, submit the results of the performance test, including the information specified in § 63.999(a)(2)(ii) and (iii).

(vi) Identification of the storage vessel or transfer rack and control device for which the performance test will be submitted, and identification of the emission point(s), if any, that share the control device with the storage vessel or transfer rack and for which the performance test will be conducted.

(3) *Operating range for monitored parameters.* The owner or operator shall submit as part of the Notification of Compliance Status, the operating range for each monitoring parameter identified for each control, recovery, or halogen reduction device as determined pursuant to § 63.996(c)(6). The specified operating range shall represent the conditions for which the control, recovery, or halogen reduction device is being properly operated and maintained. This report shall include the information in paragraphs (b)(3)(i) through (iii) of this section, as applicable, unless the range and the operating day have been established in the operating permit.

(i) The specific range of the monitored parameter(s) for each emission point;

(ii) The rationale for the specific range for each parameter for each emission point, including any data and calculations used to develop the range and a description of why the range indicates proper operation of the control, recovery, or halogen reduction device, as specified in paragraphs (b)(3)(ii)(A), (B), or (C) of this section, as applicable.

(A) If a performance test or TRE index value determination is required by a referencing subpart for a control, recovery or halogen reduction device, the range shall be based on the parameter values measured during the TRE index value determination or performance test and may be supplemented by engineering assessments and/or manufacturer's recommendations. TRE index value determinations and performance testing are not required to be conducted over the entire range of permitted parameter values.

(B) If a performance test or TRE index value determination is not required by a referencing subpart for a control, recovery, or halogen reduction device, the range may be based solely on engineering assessments and/or manufacturer's recommendations.

(C) The range may be based on ranges or limits previously established under a referencing subpart.

(iii) A definition of the source's operating day for purposes of determining daily average values of monitored parameters. The definition shall specify the times at which an operating day begins and ends.

(4) *Halogen reduction device.* The owner or operator shall submit as part of the Notification of Compliance Status the information recorded pursuant to § 63.998(a)(4).

(5) *Alternative recordkeeping.* The owner or operator shall notify the Administrator in the Notification of Compliance Status if the alternative recordkeeping requirements of § 63.998(b)(5) are being implemented. If the Notification of Compliance Status has already been submitted, the notification must be in the periodic report submitted immediately preceding implementation of the alternative, as specified in paragraph (c)(6)(iv) of this section.

(c) *Periodic reports.* (1) Periodic reports shall include the reporting period dates, the total source operating time for the reporting period, and, as applicable, all information specified in this section and in the referencing subpart, including reports of periods when monitored parameters are outside their established ranges.

(2) For closed vent systems subject to the requirements of § 63.983, the owner or operator shall submit as part of the periodic report the information specified in paragraphs (c)(2)(i) through (iii) of this section, as applicable.

(i) The information recorded in § 63.998(d)(1)(iii)(B) through (E);

(ii) Reports of the times of all periods recorded under § 63.998(d)(1)(ii)(A) when the vent stream is diverted from the control device through a bypass line; and

(iii) Reports of all times recorded under § 63.998(d)(1)(ii)(B) when maintenance is performed in car-sealed valves, when the seal is broken, when the bypass line valve position is changed, or the key for a lock-and-key type configuration has been checked out.

(3) For flares subject to this subpart, report all periods when all pilot flames were absent or the flare flame was absent as recorded in § 63.998(a)(1)(i)(C).

(4) For storage vessels, the owner or operator shall include in each periodic report required the information specified in paragraphs (c)(4)(i) through (iii) of this section.

(i) For the 6-month period covered by the periodic report, the information recorded in § 63.998(d)(2)(ii)(A) through (C).

(ii) For the time period covered by the periodic report and the previous periodic report, the total number of hours that the control system did not meet the requirements of §§ 63.983(a),

63.985(a), or 63.987(a) due to planned routine maintenance.

(iii) A description of the planned routine maintenance during the next 6-month periodic reporting period that is anticipated to be performed for the control system when it is not expected to meet the required control efficiency. This description shall include the type of maintenance necessary, planned frequency of maintenance, and expected lengths of maintenance periods.

(5) If a control device other than a flare is used to control emissions from storage vessels or low throughput transfer racks, the periodic report shall describe each occurrence when the monitored parameters were outside of the parameter ranges documented in the Notification of Compliance Status in accordance with paragraph (b)(3) of this section. The description shall include the information specified in paragraphs (c)(5)(i) and (ii) of this section.

(i) Identification of the control device for which the measured parameters were outside of the established ranges, and

(ii) The cause for the measured parameters to be outside of the established ranges.

(6) For process vents and transfer racks (except low throughput transfer racks), periodic reports shall include the information specified in paragraphs (c)(6)(i) through (iv) of this section.

(i) Periodic reports shall include the daily average values of monitored parameters, calculated as specified in § 63.998(b)(3)(i) for any days when the daily average value is outside the bounds as defined in § 63.998(c)(2)(iii) or (c)(3)(iii), or the data availability requirements defined in paragraphs (c)(6)(i)(A) through (D) of this section are not met, whether these excursions are excused or unexcused excursions. For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified. An excursion means any of the cases listed in paragraphs (c)(6)(i)(A) through (C) of this section. If the owner or operator elects not to retain the daily average values pursuant to § 63.998(b)(5)(ii)(A), the owner or operator shall report this in the periodic report.

(A) When the daily average value of one or more monitored parameters is outside the permitted range.

(B) When the period of control or recovery device operation is 4 hours or greater in an operating day and monitoring data are insufficient to constitute a valid hour of data for at least 75 percent of the operating hours.

(C) When the period of control or recovery device operation is less than 4 hours in an operating day and more than one of the hours during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(D) Monitoring data are insufficient to constitute a valid hour of data as used in paragraphs (c)(6)(i)(B) and (C) of this section, if measured values are unavailable for any of the 15-minute periods within the hour.

(ii) Report all carbon-bed regeneration cycles during which the parameters recorded under § 63.998(a)(2)(ii)(C) were outside the ranges established in the Notification of Compliance Status or in the operating permit.

(iii) The provisions of paragraph (c)(6)(i) and (ii) of this section do not apply to any low throughput transfer rack for which the owner or operator has elected to comply with § 63.985 or to any storage vessel for which the owner or operator is not required, by the applicable monitoring plan established under § 63.985(c)(1), to keep continuous records. If continuous records are required, the owner or operator shall specify in the monitoring plan whether the provisions of paragraphs (c)(6)(i) and (c)(6)(ii) of this section apply.

(iv) If the owner or operator has chosen to use the alternative recordkeeping requirements of § 63.998(b)(5), and has not notified the Administrator in the Notification of Compliance Status that the alternative recordkeeping provisions are being implemented as specified in paragraph (b)(5) of this section, the owner or operator shall notify the Administrator in the periodic report submitted immediately preceding implementation of the alternative. The notifications specified in § 63.998(b)(5)(ii) shall be included in the next Periodic Report following the identified event.

(7) As specified in § 63.997(c)(3), if an owner or operator at a facility not required to obtain a title V permit elects at a later date to replace an existing control or recovery device with a different control or recovery device, then the Administrator shall be notified by the owner or operator before implementing the change. This notification may be included in the facility's periodic reporting.

(d) *Requests for approval of monitoring alternatives.* (1) *Alternatives to the continuous operating parameter monitoring and recordkeeping provisions.* Requests for approval to use alternatives to continuous operating parameter monitoring and recordkeeping provisions, as provided for in § 63.996(d)(1), shall be submitted as specified in a referencing subpart, and the referencing subpart will govern the review and approval of such requests. The information specified in paragraphs (d)(1)(i) and (ii) of this section shall be included.

(i) A description of the proposed alternative system; and

(ii) Information justifying the owner or operator's request for an alternative method, such as the technical or economic infeasibility, or the impracticality, of the regulated source using the required method.

(2) *Monitoring a different parameter than those listed.* Requests for approval to monitor a different parameter than those established in § 63.996(c)(6) of this section or to set unique monitoring parameters, as provided for in § 63.996(d)(2), shall be submitted as specified as specified in a referencing subpart, and the referencing subpart will govern the review and approval of such requests. The information specified in paragraphs (d)(2)(i) through (iii) of this section shall be included in the request.

(i) A description of the parameter(s) to be monitored to ensure the control technology or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s);

(ii) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device, the schedule for this demonstration, and a statement that the owner or operator will establish a range for the monitored parameter(s) as part of the Notification of Compliance Status if required under a referencing subpart, unless this information has already been submitted; and

(iii) The frequency and content of monitoring, recording, and reporting, if monitoring and recording is not continuous, or if reports of daily average values when the monitored parameter value is outside the established range will not be included in periodic reports under paragraph (c) of this section. The rationale for the proposed monitoring, recording, and reporting system shall be included.

3. Part 63 is amended by adding subpart TT to read as follows:

Subpart TT—National Emission Standards for Equipment Leaks—Control Level 1

Sec.

63.1000 Applicability.
63.1001 Definitions.
63.1002 Compliance determination.
63.1003 Equipment identification.
63.1004 Instrument and sensory monitoring for leaks.
63.1005 Leak repair.
63.1006 Valves in gas and vapor service and in light liquid service standards.
63.1007 Pumps in light liquid service standards.
63.1008 Connectors in gas and vapor service and in light liquid service standards.
63.1009 Agitators in gas and vapor service and in light liquid service standards.
63.1010 Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems standards.
63.1011 Pressure relief devices in gas and vapor service standards.
63.1012 Compressor standards.
63.1013 Sampling connection systems standards.
63.1014 Open-ended valves or lines standards.
63.1015 Closed vent systems and control devices; or emissions routed to a fuel gas system or process standards.
63.1016 Alternative means of emission limitation: Enclosed-vented process units.
63.1017 Recordkeeping requirements.
63.1018 Reporting requirements.

Subpart TT—National Emission Standards for Equipment Leaks—Control Level 1

§ 63.1000 Applicability.

(a) The provisions of this subpart apply to the control of air emissions from equipment leaks for which another subpart references the use of this subpart for such air emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing subpart. The provisions of 40 CFR part 63 subpart A (General Provisions) do not apply to this subpart except as noted in the referencing subpart.

(b) [Reserved]

(c) *Exemptions.* Paragraphs (c)(1) through (c)(3) delineate equipment that is excluded from the requirements of this subpart.

(1) *Equipment in vacuum service.* Equipment that is in vacuum service is excluded from the requirements of this subpart.

(2) *Equipment in service less than 300 hours per calendar year.* Equipment that is in regulated material service less than 300 hours per calendar year is excluded from the requirements of §§ 63.1006 through 63.1015 of this subpart if it is identified as required in paragraph (c)(2)(ii) of this section.

(3) *Lines and equipment not containing process fluids.* Except as provided in a referencing subpart, lines and equipment not containing process fluids are not subject to the provisions of this subpart. Utilities, and other nonprocess lines, such as heating and cooling systems which do not combine their materials with those in the processes they serve, are not considered to be part of a process unit or affected facility.

§ 63.1001 Definitions.

All terms used in this part shall have the meaning given them in the Act and in this section.

Closed-loop system means an enclosed system that returns process fluid to the process and is not vented directly to the atmosphere.

Closed-purge system means a system or combination of systems and portable containers to capture purged liquids. Containers must be covered or closed when not being filled or emptied.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic emissions.

Connector means flanged, screwed, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, ceramic, or ceramic-lined (*e.g.*, porcelain, glass, or glass-lined) as described in § 63.1008(d)(2) of this subpart.

Control device means any combustion device, recovery device, recapture device, or any combination of these devices used to comply with this part. Such equipment or devices include, but are not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. Primary condensers on steam strippers or fuel gas systems are not considered control devices.

Distance piece means an open or enclosed casing through which the piston rod travels, separating the compressor cylinder from the crankcase.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in regulated material service; and any control devices or systems used to comply with this subpart.

First attempt at repair, for the purposes of this subpart, means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in § 63.1004(b) and, as applicable, in § 63.1004(c) of this subpart, as appropriate, to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as a fuel gas in combustion equipment, such as furnaces and gas turbines, either singly or in combination.

In gas or vapor service means that a piece of equipment in regulated material service contains a gas or vapor at operating conditions.

In heavy liquid service means that a piece of equipment in regulated material is not in gas or vapor service or in light liquid service.

In light liquid service means that a piece of equipment in regulated-material service contains a liquid that meets the following conditions:

(1) The vapor pressure of one or more of the organic compounds is greater than 0.3 kilopascals at 20°C,

(2) The total concentration of the pure organic compounds constituents having a vapor pressure greater than 0.3 kilopascals at 20°C is equal to or greater than 20 percent by weight of the total process stream, and

(3) The fluid is a liquid at operating conditions.

(Note to definition of "In light liquid service": Vapor pressures may be determined by standard reference texts or ASTM D–2879.)

In liquid service means that a piece of equipment in regulated material service is not in gas or vapor service.

In organic hazardous air pollutant or in organic HAP service means that a piece of equipment either contains or contracts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP's as determined according to the provisions of § 63.180(d) of subpart H. The provisions of § 63.180(d) of Subpart H also specify how to

determine that a piece of equipment is not in organic HAP service.

In regulated material service means, for the purposes of this subpart, equipment which meets the definition of "in VOC service", "in VHAP service", "in organic hazardous air pollutant service," or "in other chemicals or groups of chemicals service" as defined in the referencing subpart.

In-situ sampling systems means nonextractive samplers or in-line samplers.

In vacuum service means that equipment is operating at an internal pressure which is at least 5 kilopascals below ambient pressure.

Initial startup means for new sources, the first time the source begins production. For additions or changes not defined as a new source by this subpart, initial startup means the first time additional or changed equipment is put into operation. Initial startup does not include operation solely for testing of equipment. Initial startup does not include subsequent startup of process units following malfunction or process unit shutdowns. Except for equipment leaks, initial startup also does not include subsequent startups (of process units following changes in product for flexible operation units or following recharging of equipment in batch unit operations).

Instrumentation system means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (*e.g.*, composition, pressure, flow, etc.). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 1.27 centimeters (0.5 inches) and smaller, and connectors nominally 1.91 centimeters (0.75 inches) and smaller in diameter are considered instrumentation systems for the purposes of this subpart. Valves greater than nominally 1.27 centimeters (0.5 inches) and connectors greater than nominally 1.91 centimeters (0.75 inches) associated with instrumentation systems are not considered part of instrumentation systems and must be monitored individually.

Liquids dripping means any visible leakage from the seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquids dripping include puddling or new stains that are indicative of an existing evaporated drip.

Nonrepairable means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process unit or affected facility shutdown.

Open-ended valve or line means any valve, except relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds based on a detection principle such as infra-red, photo ionization, or thermal conductivity.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the relief device. This release can be one release or a series of releases over a short time period due to a malfunction in the process.

Pressure relief device or valve means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

Process unit means the equipment specified in the definitions of process unit in the applicable referencing subpart. If the referencing subpart does not define process unit, then for the purposes of this part, process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product.

Process unit shutdown means a work practice or operational procedure that stops production from a process unit, or part of a process unit during which it is technically feasible to clear process material from a process unit, or part of a process unit, consistent with safety constraints and during which repairs can be affected. The following are not considered process unit shutdowns:

(1) An unscheduled work practice or operations procedure that stops production from a process unit, or part of a process unit, for less than 24 hours.

(2) An unscheduled work practice or operations procedure that would stop production from a process unit, or part of a process unit, for a shorter period of time than would be required to clear the process unit, or part of the process unit, of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled process unit shutdown.

(3) The use of spare equipment and technically feasible bypassing of equipment without stopping production.

Referencing subpart means the subpart which refers an owner or operator to this subpart.

Regulated material, for purposes of this subpart, refers to gases from volatile organic liquids (VOL), volatile organic compounds (VOC), hazardous air pollutants (HAP), or other chemicals or groups of chemicals that are regulated by the referencing subpart.

Regulated source for the purposes of this subpart, means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a referencing subpart.

Relief device or valve means a valve used only to release an unplanned, nonroutine discharge. A relief valve discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Repaired, for the purposes of this subpart means the following:

(1) Equipment is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable sections of this subpart, and

(2) Equipment, unless otherwise specified in applicable provisions of this subpart, is monitored as specified in § 63.1004(b) and, as applicable in §§ 63.1004(c) and 63.1015 of this part as appropriate, to verify that emissions from the equipment are below the applicable leak definition.

Routed to a process or route to a process means the emissions are conveyed to any enclosed portion of a process unit where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by chemical reaction into materials that are not regulated materials and/or incorporated into a product; and /or recovered.

Sampling connection system means an assembly of equipment within a process unit or affected facility used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

Screwed (threaded) connector means a threaded pipe fitting where the threads are cut on the pipe wall and the fitting requires only two pieces to make the connection (*i.e.*, the pipe and the fitting).

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Set pressure means the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

Start-up means the setting into operation of a piece of equipment or a control device that is subject to this subpart.

§ 63.1002 Compliance determination.

(a) *General procedures for compliance determination.* Compliance with this subpart will be determined by review of the records required by § 63.1017 and the reports required by § 63.1018, by review of performance test results, and by inspections.

(b) *Alternative means of emission limitation.* The provisions of paragraph (b) of this section do not apply to the performance standards of § 63.1001(b) for pressure relief devices, § 63.1006(e)(4) for valves designated as having no detectable emissions or § 63.1012(f) for compressors operating under the alternative compressor standard.

(1) An owner or operator may request a determination of alternative means of emission limitation to the requirements of §§ 63.1005 through 63.1015 as provided in paragraphs (b)(2) through (b)(6) of this section. If the Administrator makes a determination that an alternative means of emission limitation is a permissible alternative, the owner or operator shall comply with the alternative.

(2) Permission to use an alternative means of emission limitation shall be governed by the following procedures in paragraphs (b)(3) through (b)(6) of this section.

(3) Where the standard is an equipment, design, or operational requirement the criteria specified in paragraphs (b)(3)(i) and (b)(3)(ii) shall be met.

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying emission performance test data for an alternative means of emission limitation.

(ii) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(4) Where the standard is a work practice the criteria specified in paragraphs (b)(4)(i) through (b)(4)(iv) shall be met.

(i) Each owner or operator applying for permission shall be responsible for collecting and verifying test data for an alternative means of emission limitation.

(ii) For each kind of equipment for which permission is requested, the emission reduction achieved by the alternative means of emission limitation shall be demonstrated.

(iii) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the required work practices.

(iv) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same or greater emission reduction as the required work practices of this subpart.

(5) An owner or operator may offer a unique approach to demonstrate the alternative means of emission limitation.

(6) If, in the judgement of the Administrator, an alternative means of emission limitation will be approved, the Administrator will publish a notice of the determination in the **Federal Register**.

(7)(i) Manufacturers of equipment used to control equipment leaks of a regulated material may apply to the Administrator for permission for an alternative means of emission limitation that achieves a reduction in emissions of the regulated material achieved by the equipment, design, and operational requirements of this subpart.

(ii) The Administrator will grant permission according to the provisions of paragraphs (b)(3), (b)(4), (b)(5) and (b)(6) of this section.

§ 63.1003 Equipment identification.

(a) *General equipment identification.* Equipment subject to this subpart shall be identified. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, by designation of process unit or affected facility boundaries by some form of weatherproof identification, or by other appropriate methods.

(b) *Additional equipment identification.* In addition to the general identification required by paragraph (a) of this section, equipment subject to any of the provisions in §§ 63.1006 to 63.1015 shall be specifically identified as required in paragraphs (b)(1) through (b)(5) of this section, as applicable.

(1) *Connectors.* Except for inaccessible, ceramic, or ceramic-lined connectors meeting the provisions of § 63.1008(d)(2) and instrumentation systems identified pursuant to paragraph (b)(4) of this section, identify the connectors subject to the requirements of this subpart. Connectors need not be individually identified if all connectors in a designated area or length of pipe subject to the provisions of this subpart are identified as a group, and the number of connectors subject is indicated.

(2) *Routed to a process or fuel gas system or equipped with a closed vent system and control device.* Identify the equipment that the owner or operator elects to route to a process or fuel gas system or equip with a closed vent system and control device, under the provisions of § 63.1007(e)(3) (pumps in light liquid service), § 63.1009(e)(3) (agitators in gas and vapor service and in light liquid service), § 63.1011(d) (pressure relief devices in gas and vapor service), § 63.1012(e) (compressors), or § 63.1016 (alternative means of emission limitation for enclosed vented process units) of this subpart.

(3) *Pressure relief devices.* Identify the pressure relief devices equipped with rupture disks, under the provisions of § 63.1011(e) of this subpart.

(4) *Instrumentation systems.* Identify instrumentation systems subject to the provisions of § 63.1010 of this subpart. Individual components in an instrumentation system need not be identified.

(5) *Equipment in service less than 300 hours per calendar year.* The identity, either by list, location (area or group), or other method, of equipment in regulated material service less than 300 hours per calendar year within a process unit or affected facilities subject to the provisions of this subpart shall be recorded.

(c) *Special equipment designations: Equipment that is unsafe or difficult-to-monitor.* (1) *Designation and criteria for unsafe-to-monitor.* Valves meeting the provisions of § 63.1006(e)(1), pumps meeting the provisions of § 63.1007(e)(5), connectors meeting the provisions of § 63.1008(d)(1), and agitators meeting the provisions of § 63.1009(e)(7) may be designated unsafe-to-monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements of this subpart. Examples of an unsafe-to-monitor equipment include, but is not limited to, equipment under extreme pressure or heat.

(2) *Designation and criteria for difficult-to-monitor.* Valves meeting the provisions of § 63.1006(e)(2) of this subpart may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(i) of this section apply. Agitators meeting the provisions of § 63.1009(f)(5) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(ii) apply.

(i) *Valves.* (A) The owner or operator of the valve determines that the equipment cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface or it is not accessible in a safe manner when it is in regulated material service.

(B) The process unit or affected facility within which the valve is located is an existing source, or the owner or operator designates less than 3 percent of the total number of valves in a new source as difficult-to-monitor.

(ii) *Agitators.* The owner or operator determines that the agitator cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface or it is not accessible in a safe manner when it is in regulated material service.

(3) [Reserved]

(4) *Identification of unsafe or difficult-to-monitor equipment.* The owner or operator shall record the identity of equipment designated as unsafe-to-monitor according to the provisions of paragraph (c)(1) of this section and the planned schedule for monitoring this equipment. The owner or operator shall record the identity of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section, the planned schedule for monitoring this equipment, and an explanation why the equipment is difficult-to-monitor. This record must be kept at the plant and be available for review by an inspector.

(5) *Written plan requirements.* (i) The owner or operator of equipment designated as unsafe-to-monitor except connectors meeting the provisions of § 63.1008(d)(1) according to the provisions of paragraph (c)(1)(i) of this section shall have a written plan that requires monitoring of the equipment as frequently as practical during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment according to the procedures in § 63.1005 if a leak is detected.

(ii) The owner or operator of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section shall have a written plan that requires monitoring of the equipment at least once per calendar year, and repair of the equipment according to the procedures in § 63.1005 if a leak is detected.

(d) *Special equipment designations: Unsafe-to-repair.* (1) *Designation and criteria.* Connectors subject to the provisions of § 63.1005(e) may be considered unsafe-to-repair if the owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with the repair requirements of this subpart, and if the connector will be repaired before the end of the next process unit or affected facility shutdown as specified in § 63.1005(e) of this subpart.

(2) *Identification of equipment.* The identity of connectors designated as unsafe-to-repair and an explanation why the connector is unsafe-to-repair shall be recorded.

(e) *Special equipment designations: Equipment operating with no detectable emissions.* (1) *Designation and criteria.* Equipment may be designated as having no detectable emissions if it has no external actuating mechanism in contact with the process fluid, and is operated with emissions less than 500 parts per million above background as determined by the method specified in §§ 63.1004(b) and (c).

(2) *Identification of equipment.* The identity of equipment designated as no detectable emissions shall be recorded.

(3) *Identification of compressors operating under no detectable emissions.* Identify the compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 parts per million above background, under the provisions of § 63.1012(f).

§ 63.1004 Instrument and sensory monitoring for leaks.

(a) *Monitoring for leaks.* The owner or operator of a regulated source subject to this subpart shall monitor all regulated equipment as specified in paragraph (a)(1) of this section for instrument monitoring and paragraph (a)(2) of this section for sensory monitoring.

(1) *Instrument monitoring for leaks.* (i) Valves in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1006(b).

(ii) Pumps in light liquid service shall be monitored pursuant to § 63.1007(b).

(iii) Connectors in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1008(b).

(iv) Agitators in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1009(b).

(v) Pressure relief devices in gas and vapor service shall be monitored pursuant to § 63.1011(c).

(vi) Compressors designated to operate with an instrument reading less than 500 parts per million as described in § 63.1003(e), shall be monitored pursuant to § 63.1012(f).

(2) *Sensory monitoring for leaks.* (i) Pumps in light liquid service shall be observed pursuant to § 63.1007(b)(3) and (e)(1)(v).

(ii) [Reserved]

(iii) Agitators in gas and vapor service and in light liquid service shall be observed pursuant to § 63.1009(b)(3) or (e)(1)(iv).

(iv) [Reserved]

(b) *Instrument monitoring methods.* Instrument monitoring, as required under this subpart, shall comply with the requirements specified in paragraphs (b)(1) through (b)(6) of this section.

(1) *Monitoring method.* Monitoring shall comply with Method 21 of 40 CFR part 60, appendix A.

(2) *Detection instrument performance criteria.* (i) Except as provided for in paragraph (b)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the representative composition of the process fluid, and not for each individual HAP, VOC or other regulated material individual chemical compound in the stream. For process streams that contain nitrogen, air, water, or other inerts that are not regulated materials, the representative stream response factor shall be calculated on an inert-free basis. The response factor may be determined at any concentration for which monitoring for leaks will be conducted.

(ii) If there is no instrument commercially available that will meet the performance criteria specified in paragraph (b)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid, calculated on an inert-free basis as described in paragraph (b)(2)(i) of this section.

(3) *Detection instrument calibration procedure.* The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(4) *Detection instrument calibration gas.* Calibration gases shall be zero air (less than 10 parts per million of hydrocarbon in air); and a mixture of methane in air at a concentration of approximately, but less than, 10,000 parts per million; or a mixture of n-hexane in air at a concentration of approximately, but less than, 10,000 parts per million. A calibration gas other than methane in air or n-hexane in air may be used if the instrument does not respond to methane or n-hexane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more compounds to be measured in air.

(5) *Monitoring performance.* Monitoring shall be performed when the equipment is in regulated material service or is in use with any other detectable material.

(6) *Monitoring data.* Monitoring data obtained prior to the regulated source becoming subject to the referencing subpart that do not meet the criteria specified in paragraphs (b)(1) through (b)(5) of this section may still be used to initially qualify for less frequent monitoring under the provisions in § 63.1006(a)(2), (b)(3) or (b)(4) for valves provided the departures from the criteria specified or from the specified monitoring frequency of § 63.1006(b)(3) are minor and do not significantly affect the quality of the data. Examples of minor departures are monitoring at a slightly different frequency (such as every six weeks instead of monthly or quarterly), following the performance criteria of section 3.1.2(a) of Method 21 of Appendix A of 40 CFR part 60 instead of paragraph (b)(2) of this section, or monitoring at a different leak definition if the data would indicate the presence or absence of a leak at the concentration specified in the referencing subpart. Failure to use a calibrated instrument is not considered a minor departure.

(c) *Instrument monitoring using background adjustments.* The owner or operator may elect to adjust or not to adjust the instrument readings for background. If an owner or operator elects not to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (b)(1) through (b)(4) of this section. In such case, all instrument readings shall be compared directly to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 63.1011(b) (pressure relief devices in gas and vapor service) or § 63.1012(f) (compressors). If an owner or operator elects to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (c)(1) through (c)(4) of this section.

(1) The requirements of paragraphs (b)(1) through (b)(4) of this section shall apply.

(2) The background level shall be determined, using the procedures in Method 21 of 40 CFR part 60, appendix A.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible (as described in Method 21 of 40 CFR part 60, appendix A).

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared to the applicable leak definitions for the monitored equipment to determine whether there is a leak or to determine compliance with § 63.1011(b) (pressure relief devices in gas and vapor service) or § 63.1012(f) (compressors).

(d) *Sensory monitoring methods.* Sensory monitoring, as required under this subpart, shall consist of detection of a potential leak to the atmosphere by visual, audible, olfactory, or any other detection method.

(e) *Leaking equipment identification and records.* (1) When each leak is detected pursuant to the monitoring specified in paragraph (a) of this section, a weatherproof and readily visible identification, marked with the equipment identification, shall be attached to the leaking equipment.

(2) When each leak is detected, the information specified in § 63.1005(e) shall be recorded and kept pursuant to the referencing subpart.

§ 63.1005 Leak repair.

(a) *Leak repair schedule.* The owner or operator shall repair each leak detected no later than 15 calendar days after it is detected, except as provided in paragraphs (c) and (d) of this section. A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempt at repair for pumps includes, but is not limited to, tightening the packing gland nuts and/or ensuring that the seal flush is operating at design pressure and temperature. First attempt at repair for valves includes, but is not limited to, tightening the bonnet bolts, and/or replacing the bonnet bolts, and/or tightening the packing gland nuts, and/or injecting lubricant into the lubricated packing.

(b) *Leak identification removal.* (1) *Valves in gas/vapor and light liquid service.* The leak identification on a valve in gas/vapor or light liquid service may be removed after it has been monitored as specified in § 63.1006(b), and no leak has been detected during that monitoring. The leak identification on a connector in gas/vapor or light liquid service may be removed after it has been monitored as specified in § 63.1008(b) and no leak has been detected during that monitoring.

(2) *Other equipment.* The identification that has been placed, pursuant to § 63.1004(e), on equipment determined to have a leak, except for a valve in gas/vapor or light liquid service, may be removed after it is repaired.

(c) *Delay of repair.* Delay of repair can be used as specified in any of paragraphs (c)(1) through (c)(5) of this section. The owner or operator shall maintain a record of the facts that explain any delay of repairs and, where appropriate, why the repair was technically infeasible without a process unit shutdown.

(1) Delay of repair of equipment for which leaks have been detected is allowed if the repair is technically infeasible without a process unit or affected facility shutdown within 15 days after a leak is detected. Repair of this equipment shall occur as soon as practical, but not later than by the end of the next process unit or affected facility shutdown, except as provided in paragraph (c)(5) of this section.

(2) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in regulated material service.

(3) Delay of repair for valves, connectors, and agitators is also allowed if the criteria specified in paragraphs (c)(3)(i) and (c)(3)(ii) are met.

(i) The owner or operator determines that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair, and

(ii) When repair procedures are effected, the purged material is collected and destroyed, or recovered in a control or recovery device, or routed to a fuel gas system or process complying with § 63.1015 or § 63.1002(b) of this part.

(4) Delay of repair for pumps is allowed if the criteria specified in paragraphs (c)(4)(i) and (c)(4)(ii) are met.

(i) Repair requires replacing the existing seal design with a new system that the owner or operator has determined will provide better performance or one of the specifications of paragraphs (c)(4)(i)(A) through (c)(4)(i)(C) of this section are met.

(A) A dual mechanical seal system that meets the requirements of § 63.1007(e)(1) will be installed,

(B) A pump that meets the requirements of § 63.1007(e)(2) will be installed; or

(C) A system that routes emissions to a process or a fuel gas system or a closed vent system and control device that meets the requirements of § 63.1007(e)(3) will be installed.

(ii) Repair is to be completed as soon as practical, but not later than 6 months after the leak was detected.

(5) Delay of repair beyond a process unit or affected facility shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit or affected facility shutdown, and valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the second process unit or affected facility shutdown will not be allowed unless the third process unit or affected facility shutdown occurs sooner than 6 months after the first process unit or affected facility shutdown.

(d) *Unsafe-to-repair-connectors.* Any connector that is designated, as described in § 63.1003(d), as an unsafe-to-repair connector is exempt from the requirements of § 63.1008(b), and paragraph (a) of this section.

(e) *Leak repair records.* For each leak detected, the information specified in paragraphs (e)(1) through (e)(5) of this section shall be recorded and maintained pursuant to the referencing subpart.

(1) The date of first attempt to repair the leak.

(2) The date of successful repair of the leak.

(3) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A at the time the leak is successfully repaired or determined to be nonrepairable.

(4) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak as specified in paragraphs (e)(4)(i) and (e)(4)(ii) of this section.

(i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures may be included as part of the startup, shutdown, and malfunction plan, as required by the referencing subpart for the source, or may be part of a separate document that is maintained at the plant site. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(ii) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on site before depletion and the reason for depletion.

(5) Dates of process unit or affected facility shutdowns that occur while the equipment is unrepaired.

§ 63.1006 Valves in gas and vapor service and in light liquid service standards.

(a) *Compliance schedule.* (1) The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(2) The use of monitoring data generated before the regulated source became subject to the referencing subpart to initially qualify for less frequent monitoring is governed by the provisions of § 63.1004(b)(6).

(b) *Leak detection.* Unless otherwise specified in § 63.1002(b), or § 63.1016, or in paragraph (e) of this section, or the referencing subpart, the owner or operator shall monitor all valves at the intervals specified in paragraphs (b)(3) through (b)(6) of this section and shall comply with all other provisions of this section.

(1) *Monitoring method.* The valves shall be monitored to detect leaks by the method specified in § 63.1004(b) and (c).

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is 10,000 parts per million or greater.

(3) *Monitoring period.* (i) Each valve shall be monitored monthly to detect leaks, except as provided in paragraphs (b)(3)(ii), (e)(1), (e)(2), and (e)(4) of this section. An owner or operator may otherwise elect to comply with one of the alternative standards in paragraphs (b)(5) or (b)(6) of this section as specified in paragraph (b)(4) of this section.

(ii)(A) Any valve for which a leak is not detected for 2 successive months may be monitored the same month (first, second, or third month) of every quarter, beginning with the next quarter, until a leak is detected. The first quarterly monitoring shall occur less than 3 months following the last monthly monitoring.

(B) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for 2 successive months.

(C) For purposes of paragraph (b) of this section, quarter means a 3-month period with the first quarter concluding on the last day of the last full month during the 180 days following initial startup.

(4) *Allowance of alternative standards.* An owner or operator may elect to comply with one of the alternatives specified in either paragraph (b)(5) or (b)(6) of this section if the percentage of valves leaking is equal to or less than 2.0 percent as determined by the procedure in paragraph (c) of this section. An owner or operator must notify the Administrator before implementing one of the alternatives specified in either paragraph (b)(5) or (b)(6) of this section.

(5) *Allowable percentage alternative.* An owner or operator choosing to comply with the allowable percentage alternative shall have an allowable percentage of leakers no greater than 2.0 percent for each affected facility or process unit and shall comply with paragraphs (b)(5)(i) and (b)(5)(ii) of this section.

(i) A compliance demonstration for each affected facility or process unit or affected facility complying with this alternative shall be conducted initially upon designation, annually, and at other times requested by the Administrator. For each such demonstration, all valves in gas and vapor and light liquid service within the affected facility or process unit shall be monitored within 1 week by the methods specified in § 63.1004(b). If an instrument reading exceeds the equipment leak level specified in the referencing subpart, a leak is detected. The leak percentage shall be calculated as specified in paragraph (c) of this section.

(ii) If an owner or operator decides no longer to comply with this alternative, the owner or operator must notify the Administrator in writing that the work practice standard described in paragraph (b)(3) of this section will be followed.

(6) *Skip period alternatives.* An owner or operator may elect to comply with one of the alternative work practices specified in paragraphs (b)(6)(i) or (b)(6)(ii) of this section. An owner or operator electing to use one of these skip period alternatives shall comply with paragraphs (b)(6)(iii) and (b)(6)(iv) of this section. Before using either skip period alternative, the owner or operator shall initially comply with the requirements of paragraph (b)(3) of this section. Monitoring data generated before the regulated source became subject to the referencing subpart that meets the criteria of either § 63.1004(b)(1) through (b)(5), or § 63.1004(b)(6), may be used to initially qualify for skip period alternatives.

(i) After 2 consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0 as determined by the procedure in paragraph (c) of this section, an owner or operator may begin to monitor for leaks once every 6 months.

(ii) After 5 consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0 as determined by the procedure in

paragraph (c) of this section, an owner or operator may begin to monitor for leaks once every year.

(iii) If the percent of valves leaking is greater than 2.0, the owner or operator shall comply with paragraph (b)(3) of this section, but can elect to comply with paragraph (b)(6) of this section if future percent of valves leaking is again equal to or less than 2.0.

(iv) The owner or operator shall keep a record of the monitoring schedule and the percent of valves found leaking during each monitoring period.

(c) *Percent leaking valves calculation—calculation basis and procedures.* (1) The owner or operator shall decide no later than the compliance date of this subpart, or upon revision of an operating permit whether to calculate percent leaking valves on a process unit or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis and this shall be the basis used for comparison with the subgrouping criteria specified in paragraph (b)(5)(i) of this section.

(2) The percent of valves leaking shall be determined by dividing the sum of valves found leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements of this section.

(d) *Leak repair.* (1) If a leak is determined pursuant to paragraph (b), (e)(1), or (e)(2) of this section, then the leak shall be repaired using the procedures in § 63.1005, as applicable.

(2) After a leak determined pursuant to paragraph (b) or (e)(2) of this section has been repaired, the valve shall be monitored at least once within the first 3 months after its repair. The monitoring required by this paragraph is in addition to the monitoring required to satisfy the definition of repair.

(i) The monitoring shall be conducted as specified in § 63.1004(b) and (c), as appropriate, to determine whether the valve has resumed leaking.

(ii) Periodic monitoring required by paragraph (b) of this section may be used to satisfy the requirements of this paragraph, if the timing of the monitoring period coincides with the time specified in this paragraph. Alternatively, other monitoring may be performed to satisfy the requirements of this paragraph, regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in this paragraph.

(iii) If a leak is detected by monitoring that is conducted pursuant to paragraph (d)(2) of this section, the owner or operator shall follow the provisions of paragraphs (d)(2)(iii)(A) and (d)(2)(iii)(B) of this section, to determine whether that valve must be counted as a leaking valve for purposes of paragraph (c) of this section.

(A) If the owner or operator elected to use periodic monitoring required by paragraph (b) of this section to satisfy the requirements of paragraph (d)(2) of this section, then the valve shall be counted as a leaking valve.

(B) If the owner or operator elected to use other monitoring, prior to the periodic monitoring required by paragraph (b) of this section, to satisfy the requirements of paragraph (d)(2) of this section, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

(e) *Special provisions for valves.* (1) *Unsafe-to-monitor valves.* Any valve that is designated, as described in § 63.1003(c)(1), as an unsafe-to-monitor valve, is exempt from the monitoring requirements of paragraph (b) of this section, and the owner or operator shall monitor the valve according to the written plan specified in § 63.1003(c)(5).

(2) *Difficult-to-monitor.* Any valve that is designated, as described in § 63.1003(c)(2), as a difficult-to-monitor valve, is exempt from the requirements of paragraph (b) of this section, and the owner or operator shall monitor the valve according to the written plan specified in § 63.1003(c)(5).

(3) *Less than 250 valves.* Any equipment located at a plant site with fewer than 250 valves in regulated material service is exempt from the monthly monitoring specified in paragraph (b)(3)(i) of this section. Instead, the owner or operator shall monitor each valve in regulated material service for leaks once each quarter, or comply with paragraphs (b)(3)(ii)(A), (b)(3)(ii)(B), or (b)(3)(ii)(C) of this section except as provided in paragraphs (e)(1) and (e)(2) of this section.

(4) *No detectable emissions.* (i) Any valve that is designated, as described in § 63.1003(e), as having no detectable emissions is exempt from the requirements of paragraphs (b) through (c) of this section if the owner or operator meets the criteria specified in paragraphs (e)(4)(i)(A) and (e)(4)(i)(B) of this section.

(A) Tests the valve for operation with emissions less than 500 parts per million above background as determined by the method specified in § 63.1004(c) initially upon designation, annually, and at other times requested by the Administrator, and

(B) Records the dates of each compliance demonstration, the background level measured during each compliance test, and the maximum instrument reading measured at the equipment during each compliance test.

(ii) A valve may not be designated or operated for no detectable emissions, as described in § 63.1003(e), if the valve has an instrument reading greater than 500 parts per million above background.

§ 63.1007 Pumps in light liquid service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance date specified in the referencing subpart.

(b) *Leak detection.* Unless otherwise specified in § 63.1002(b), or § 63.1016 of this subpart or paragraph (e) of this section, the owner or operator shall monitor each pump monthly to detect leaks and shall comply with all other provisions of this section.

(1) *Monitoring method.* The pumps shall be monitored to detect leaks by the method specified in § 63.1004(b) of this subpart.

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is 10,000 parts per million.

(3) *Visual inspection.* Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal, a leak is detected. Unless the owner or operator demonstrates (e.g., through instrument monitoring) that the indications of liquids dripping are due to a condition other than process fluid drips, the leak shall be repaired according to the procedures of paragraph (b)(4) of this section.

(4) *Visual inspection: Leak repair.* Where a leak is identified by visual indications of liquids dripping, repair shall mean that the visual indications of liquids dripping have been eliminated.

(c) *Percent leaking pumps calculation.* (1) The owner or operator shall decide no later than the compliance date of this part or upon revision of an operating permit whether to calculate percent leaking pumps on a process unit basis or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis.

(2) The number of pumps at a process unit shall be the sum of all the pumps in regulated material service, except that pumps found leaking in a continuous process unit or within 1 month after startup of the pump shall not count in

the percent leaking pumps calculation for that one monitoring period only.

(3) Percent leaking pumps shall be determined by the following equation:

$$\%P_L = \left((P_L - P_S)/(P_T - P_S)\right) \times 100 \quad \text{[Eq. 1]}$$

Where:

$\%P_L$ = Percent leaking pumps

P_L = Number of pumps found leaking as determined through monthly monitoring as required in paragraph (b) of this section. Do not include results from inspection of unsafe-to-monitor pumps pursuant to paragraph (e)(6) of this section.

P_T = Total pumps in regulated material service, including those meeting the criteria in paragraphs (e)(1), (e)(2), (e)(3), and (e)(6) of this section.

P_S = Number of pumps leaking within 1 month of start-up during the current monitoring period.

(d) *Leak repair.* If a leak is detected pursuant to paragraph (b) of this section, then the leak shall be repaired using the procedures in § 63.1005, as applicable, unless otherwise specified in paragraph (b)(4) of this section for leaks identified by visual indications of liquids dripping.

(e) *Special provisions for pumps.* (1) *Dual mechanical seal pumps.* Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the requirements specified in paragraphs (e)(1)(i) through (e)(1)(viii) of this section are met.

(i) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both. The owner or operator shall keep records at the plant of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes. This record must be available for review by an inspector.

(ii) Each dual mechanical seal system shall meet the requirements specified in paragraphs (e)(1)(ii)(A) through (e)(1)(ii)(C) of this section.

(A) Each dual mechanical seal system is operated with the barrier fluid at a pressure that is at all times (except periods of startup, shutdown, or malfunction) greater than the pump stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of subpart SS of this part; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(iii) The barrier fluid is not in light liquid service.

(iv) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(v) Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (e)(1)(v)(A) or (e)(1)(v)(B) of this section prior to the next required inspection.

(A) The owner or operator shall monitor the pump as specified in § 63.1004(b) to determine if there is a leak of regulated material in the barrier fluid; if an instrument reading of 10,000 parts per million or greater is measured, a leak is detected and shall be repaired using the procedures in § 63.1005; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(vi) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (e)(1)(i) of this section, or if based on the criteria established in paragraph (e)(1)(i) of this section the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(vii) Each sensor as described in paragraph (e)(1)(iv) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(viii) When a leak is detected pursuant to paragraph (e)(1)(vi) of this section, it shall be repaired as specified in § 63.1005.

(2) *No external shaft.* Any pump that is designed with no externally actuated shaft penetrating the pump housing is exempt from the requirements of paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any pump that is routed to a process or a fuel gas system or equipped with a closed vent system that captures and transports leakage from the pump to a control device meeting the requirements of § 63.1015 is exempt from requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(3), and (e)(1)(v) of this section, and the daily requirements of paragraph (e)(1)(vii) of this section, provided that each pump is visually inspected as often as practical and at least monthly.

(5) *Unsafe-to-monitor pumps.* Any pump that is designated, as described in § 63.1003(c)(1), as an unsafe-to-monitor pump is exempt from the requirements of paragraph (b) of this section and the requirements of § 63.1005 and the owner or operator shall monitor the pump according to the written plan specified in § 63.1003(c)(5).

§ 63.1008 Connectors in gas and vapor service and in light liquid service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Leak detection.* Unless otherwise specified in § 63.1002(b), or § 63.1016 of this subpart, or the referencing subpart, the owner or operator shall monitor all connectors within 5 days by the method specified in § 63.1004(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method. No monitoring is required if the evidence of a potential leak is eliminated within 5 days. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected.

(c) *Leak repair.* If a leak is detected pursuant to paragraph (b) of this section, then the leak shall be repaired using the procedures in § 63.1005, as applicable.

(d) *Special provisions for connectors.* (1) *Unsafe-to-monitor connectors.* Any connector that is designated, as described in § 63.1003(c)(1), as an unsafe-to-monitor connector is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor according to the written plan specified in § 63.1003(c)(5).

(2) *Inaccessible, ceramic, or ceramic-lined connectors.* (i) Any connector that is inaccessible or that is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined), is exempt from the monitoring requirements of paragraph (b) of this section, the leak repair requirements of paragraph (c) of this section, and the recordkeeping and reporting requirements of § 63.1017 and § 63.1018. An inaccessible connector is a connector that meets any of the provisions specified in paragraphs (d)(2)(i)(A) through (d)(2)(i)(F) of this section, as applicable.

(A) Buried;

(B) Insulated in a manner that prevents access to the connector by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the connector by a monitor probe; or

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold that would allow access to connectors up to 7.6 meters (25 feet) above the ground.

(E) Inaccessible because it would require elevating the monitoring personnel more than 2 meters (7 feet) above a permanent support surface or would require the erection of scaffold;

(F) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines, or would risk damage to equipment.

(ii) If any inaccessible ceramic or ceramic-lined connector is noted to have a leak by visual, audible, olfactory, or other means, the leak to the atmosphere shall be eliminated as soon as practical.

§ 63.1009 Agitators in gas and vapor service and in light liquid service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Leak detection.* (1) *Monitoring method.* Each agitator seal shall be monitored monthly to detect leaks by the methods specified in § 63.1004(b), or § 63.1016, except as provided in § 63.1002(b) or in paragraph (e) of this section.

(2) *Instrument reading that defines a leak.* If an instrument reading equivalent of 10,000 parts per million or greater is measured, a leak is detected.

(3) *Visual inspection.* Each agitator seal shall be checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the agitator seal, the owner or operator shall follow the procedures specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this section prior to the next required inspection.

(i) The owner or operator shall monitor the agitator seal as specified in § 63.1004(b) to determine if there is a leak of regulated material. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected, and it shall be repaired using the procedures in paragraph (d) of this section;

(ii) The owner or operator shall eliminate the indications of liquids dripping from the agitator seal.

(c) [Reserved]

(d) *Leak repair.* If a leak is detected, then the leak shall be repaired using the procedures in § 63.1005, as applicable.

(e) *Special provisions for agitators.* (1) *Dual mechanical seal.* Each agitator equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the requirements specified in paragraphs (e)(1)(i) through (e)(1)(vi) of this section are met.

(i) Each dual mechanical seal system shall meet the applicable requirement specified in paragraphs (e)(1)(i)(A), (e)(1)(i)(B), or (e)(1)(i)(C) of this section.

(A) Operated with the barrier fluid at a pressure that is at all times (except during periods of startup, shutdown, or malfunction) greater than the agitator stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that meets the requirements of § 63.1015; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(ii) The barrier fluid is not in light liquid service.

(iii) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(iv) Each agitator seal is checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. If there are indications of liquids dripping from the agitator seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (e)(1)(iv)(A) or (e)(1)(iv)(B) of this section prior to the next required inspection.

(A) The owner or operator shall monitor the agitator seal shall as specified in § 63.1004(b) to determine the presence of regulated material in the barrier fluid. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected and it shall be repaired using the procedures in § 63.1005; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(v) Each sensor as described in paragraph (e)(1)(iii) of this section is observed daily or is equipped with an alarm unless the agitator seal is located within the boundary of an unmanned plant site.

(vi) The owner or operator of each dual mechanical seal system shall meet the requirements specified in paragraphs (e)(1)(vi)(A) through (e)(1)(vi)(D).

(A) The owner or operator shall determine, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both.

(B) The owner or operator shall keep records of the design criteria and an explanation of the design criteria; and any changes to these criteria and the reasons for the changes.

(C) If indications of liquids dripping from the agitator seal exceed the criteria established in paragraphs (e)(1)(vi)(A) and (e)(1)(vi)(B) of this section, or if, based on the criteria established in paragraphs (e)(1)(vi)(A) and (e)(1)(vi)(B) of this section, the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(D) When a leak is detected, it shall be repaired using the procedures in § 63.1005.

(2) *No external shaft.* Any agitator that is designed with no externally actuated shaft penetrating the agitator housing is exempt from the requirements of paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any agitator that is routed to a process or fuel gas system or equipped with a closed vent system that captures and transports leakage from the agitator to a control device meeting the requirements of § 63.1015 is exempt from the monitoring requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any agitator that is located within the boundary of an unmanned plant site is exempt from

the weekly visual inspection requirement of paragraphs (b)(3) and (e)(1)(iv) of this section, and the daily requirements of paragraph (e)(1)(v) of this section, provided that each agitator is visually inspected as often as practical and at least monthly.

(5) *Difficult-to-monitor agitator seals.* Any agitator seal that is designated, as described in § 63.1003(c)(2), as a difficult-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor the agitator seal according to the written plan specified in § 63.1003(c)(5).

(6) *Equipment obstructions.* Any agitator seal that is obstructed by equipment or piping that prevents access to the agitator by a monitor probe is exempt from the monitoring requirements of paragraph (b) of this section.

(7) *Unsafe-to-monitor agitator seals.* Any agitator seal that is designated, as described in § 63.1003(c)(1), as an unsafe-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator of the agitator seal monitors the agitator seal according to the written plan specified in § 63.1003(c)(5).

§ 63.1010 Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Leak detection.* (1) *Monitoring method.* Unless otherwise specified in § 63.1002(b), or § 63.1016, the owner or operator shall comply with paragraphs (b)(1) and (b)(2) of this section. Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems shall be monitored within 5 calendar days by the method specified in § 63.1004(b) if evidence of a potential leak to the atmosphere is found by visual, audible, olfactory, or any other detection method. If such a potential leak is repaired as required in paragraph (c) of this section, it is not necessary to monitor the system for leaks by the method specified in § 63.1004(b).

(2) *Instrument reading that defines a leak.* For systems monitored by the method specified in § 63.1004(b), if an instrument reading of 10,000 parts per million or greater is measured, a leak is detected. If a leak is detected, it shall be identified pursuant to § 63.1004(e) and repaired pursuant to § 63.1005.

(c) *Leak repair.* If a leak is determined pursuant to this section, then the leak shall be repaired using the procedures in § 63.1005, as applicable. For equipment identified in paragraph (b) of this section that is not monitored by the method specified in § 63.1004(b), repaired shall mean that the visual, audible, olfactory, or other indications of a leak to the atmosphere have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

§ 63.1011 Pressure relief devices in gas and vapor service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Compliance standard.* Except during pressure releases as provided for in paragraph (c) of this section, each pressure relief device in gas or vapor service shall be operated with an instrument reading of less than 500 parts per million as measured by the method specified in § 63.1004(c).

(c) *Pressure relief requirements.* (1) After each pressure release, the pressure relief device shall be returned to a condition indicated by an instrument reading of less than 500 parts per million, as soon as practical, but no later than 5 calendar days after each pressure release, except as provided in paragraph (d) of this section.

(2) The pressure relief device shall be monitored no later than five calendar days after the pressure release and being returned to regulated material service to confirm the condition indicated by an instrument reading of less than 500 parts per million, as measured by the method specified in § 63.1004(c).

(3) The owner or operator shall record the dates and results of the monitoring required by paragraph (c)(2) of this section following a pressure release including maximum instrument reading measured during the monitoring and the background level measured if the instrument reading is adjusted for background.

(d) *Pressure relief devices routed to a process or fuel gas system or equipped with a closed vent system and control device.* Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed vent system that captures and transports leakage from the pressure relief device to a control device meeting the requirements of § 63.1015 is exempt from the requirements of paragraphs (b) and (c) of this section.

(e) *Rupture disk exemption.* Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (b) and (c) of this section provided the owner or operator installs a replacement rupture disk upstream of the pressure relief device as soon as practical after each pressure release, but no later than 5 calendar days after each pressure release, except as provided in § 63.1005(d).

§ 63.1012 Compressor standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Seal system standard.* Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluid to the atmosphere, except as provided in § 63.1002(b) and paragraphs (e) and (f) of this section. Each compressor seal system shall meet the requirements specified in paragraphs (b)(1), (b)(2), or (b)(3) of this section.

(1) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure at all times (except during periods of startup, shutdown, or malfunction); or

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that meets the requirements of § 63.1015; or

(3) Equipped with a closed-loop system that purges the barrier fluid directly into a process stream.

(c) *Barrier fluid system.* The barrier fluid shall not be in light liquid service. Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both. Each sensor shall be observed daily or shall be equipped with an alarm unless the compressor is located within the boundary of an unmanned plant site.

(d) *Failure criterion and leak detection.* (1) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both. If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion, a leak is detected and shall be repaired pursuant to § 63.1005, as applicable.

(2) The owner or operator shall keep records of the design criteria and an explanation of the design criteria; and any changes to these criteria and the reasons for the changes.

(e) *Routed to a process or fuel gas system or equipped with a closed vent system and control device.* A compressor is exempt from the requirements of paragraphs (b) through (d) of this section if it is equipped with a system to capture and transport leakage from the compressor drive shaft seal to a process or a fuel gas system or to a closed vent system that captures and transports leakage from the compressor to a control device meeting the requirements of § 63.1015.

(f) *Alternative compressor standard.* (1) Any compressor that is designated as described in § 63.1003(e)(e) as operating with no detectable emissions shall operate at all times with an instrument reading of less than 500 parts per million. A compressor so designated is exempt from the requirements of paragraphs (b) through (d) of this section if the compressor is demonstrated initially upon designation, annually, and at other times requested by the Administrator to be operating with an instrument reading of less than 500 parts per million as measured by the method specified in § 63.1004(c). A compressor may not be designated or operated having an instrument reading of less than 500 parts per million as described in § 63.1003(e) if the compressor has a maximum instrument reading greater than 500 parts per million.

(2) The owner or operator shall record the dates and results of each compliance test including the background level measured and the maximum instrument reading measured during each compliance test.

(g) *Reciprocating compressor exemption.* Any existing reciprocating compressor in a process unit or affected facility that becomes an affected facility under provisions of 40 CFR 60.14 or 60.15 is exempt from paragraphs (b), (c), and (d) of this section provided the owner or operator demonstrates that recasting the distance piece or replacing the compressor are the only options available to bring the compressor into compliance with the provisions of the above exempted paragraphs of this section.

§ 63.1013 Sampling connection systems standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Equipment requirement.* Each sampling connection system shall be equipped with a closed purge, closed loop, or closed vent system, except as provided in paragraph (d) of this section. Gases displaced during filling of the sample container are not required to be collected or captured.

(c) *Equipment design and operation.* Each closed-purge, closed-loop, or closed vent system except as provided in paragraph (d) of this section shall meet the applicable requirements specified in paragraphs (c)(1) through (c)(5) of this section.

(1) The system shall return the purged process fluid directly to a process line or fuel gas system meeting the compliance determinations in §§ 63.1015 or 63.1002(b) as appropriate; or

(2) Collect and recycle the purged process fluid to a process; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that meets the requirements of § 63.1015; or

(4) Collect, store, and transport the purged process fluid to a system or facility identified in paragraph (c)(4)(i), (c)(4)(ii), or (c)(4)(iii) of this section.

(i) A waste management unit as defined in 40 CFR 63.111 or 40 CFR part 63, subpart G, if the waste management unit is complying with the provisions of 40 CFR part 63, subpart G, applicable to group 1 wastewater streams. If the purged process fluid does not contain any organic HAP listed in table 9 of 40 CFR part 63, subpart G, the waste management unit need not be subject to, and operated in compliance with the requirements of 40 CFR part 63, subpart G, applicable to subject wastewater steams provided the facility has a National Pollution Discharge Elimination System (NPDES) permit or sends the wastewater to an NPDES-permitted facility.

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

(5) Containers that are part of a closed-purge system must be covered or closed when not being filled or emptied.

(d) *In-situ sampling systems.* In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (b) and (c) of this section.

§ 63.1014 Open-ended valves or lines standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Equipment and operational requirements.*

(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 63.1002(b) and paragraphs (c) and (d) of this section. The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance. The operational provisions of paragraphs (b)(2) and (b)(3) of this section also apply.

(2) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(3) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (b)(1) of this section at all other times.

(c) *Emergency shutdown exemption.* Open-ended valves or lines in an emergency shutdown system that are designed to open automatically in the event of a process upset are exempt from the requirements of paragraph (b) of this section.

(d) *Polymerizing materials exemption.* Open-ended valves or lines containing materials that would autocatalytically polymerize or, would present an explosion, serious over pressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraph (b) of this section are exempt from the requirements of paragraph (b) of this section.

§ 63.1015 Closed vent systems and control devices; or emissions routed to a fuel gas system or process.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Compliance standard.* (1) Owners or operators of closed vent systems and nonflare control devices used to comply with provisions of this subpart shall design and operate the closed vent system and nonflare control devices to reduce emissions of regulated material with an efficiency of 95 percent or

greater or to reduce emissions of regulated material to a concentration of 20 parts per million by volume or, for an enclosed combustion device, to provide a minimum of 760°C (1400°F). Owners and operators of closed vent systems and nonflare control devices used to comply with this subpart shall comply with the provisions of subpart SS of this part, except as provided in § 63.1002(b).

(2) Owners or operators of closed vent systems and flares used to comply with the provisions of this subpart shall design and operate the flare as specified in subpart SS of this part, except as provided in § 63.1002(b).

(3) Owners or operators routing emissions from equipment leaks to a fuel gas system or process shall comply with the provisions of subpart SS of this part, except as provided in § 63.1002(b).

§ 63.1016 Alternative means of emission limitation: Enclosed-vented process units.

(a) *Use of closed vent system and control device.* Process units of affected facilities or portions of process units of affected facilities enclosed in such a manner that all emissions from equipment leaks are routed to a process or fuel gas system or collected and vented through a closed vent system to a control device meeting the requirements of either § 63.1015 or § 63.1002(b) are exempt from the requirements of §§ 63.1006 through 63.1014. The enclosure shall be maintained under a negative pressure at all times while the process unit or affected facility is in operation to ensure that all emissions are routed to a control device.

(b) *Recordkeeping.* Owners and operators choosing to comply with the requirements of this section shall maintain the records specified in paragraphs (b)(1) through (b)(3) of this section.

(1) Identification of the process unit(s) or affected facilities and the regulated materials they handle.

(2) A schematic of the process unit or affected facility, enclosure, and closed vent system.

(3) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

§ 63.1017 Recordkeeping requirements.

(a) *Recordkeeping system.* An owner or operator of more than one regulated source subject to the provisions of this subpart may comply with the recordkeeping requirements for these regulated sources in one recordkeeping system. The recordkeeping system shall identify each record by regulated source and the type of program being implemented (e.g., quarterly monitoring) for each type of equipment. The records required by this subpart are summarized in paragraphs (b) and (c) of this section.

(b) *General equipment leak records.* (1) As specified in § 63.1003(a) through (d), the owner or operator shall keep general and specific equipment identification if the equipment is not physically tagged and the owner or operator is electing to identify the equipment subject to this subpart through written documentation such as a log or other designation.

(2) The owner or operator shall keep a written plan as specified in § 63.1003(c)(5) for any equipment that is designated as unsafe or difficult-to-monitor.

(3) The owner or operator shall maintain the identity and an explanation as specified in § 63.1003(d)(1) for any equipment that is designated as unsafe-to-repair.

(4) As specified in § 63.1003(e), the owner or operator shall maintain the identity of compressors operating with an instrument reading of less than 500 parts per million.

(5) The owner or operator shall keep records for leaking equipment as specified in § 63.1004(e).

(6) The owner or operator shall keep records for delay of repair as specified in § 63.1005(c) and records for leak repair as specified in § 63.1005(e).

(c) *Specific equipment leak records.* (1) For valves, the owner or operator shall maintain the monitoring schedule for each process unit as specified in § 63.1006(b), and the records specified in § 63.1006(e)(4)(i)(B).

(2) For pumps, the owner or operator shall maintain the records specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

(i) Documentation of pump visual inspections as specified in § 63.1007(b)(4).

(ii) Documentation of dual mechanical seal pump visual inspections as specified in § 63.1007(e)(1)(v).

(iii) For the criteria as to the presence and frequency of drips for dual mechanical seal pumps, records of the design criteria and explanations and any changes and the reason for the changes, as specified in § 63.1007(e)(1)(i).

(3) [Reserved]

(4) For agitators, the owner or operator shall maintain records specified in paragraphs (c)(4)(i) and (c)(4)(ii) of this section.

(i) Documentation of the agitator seal visual inspections as specified in § 63.1009(b)(3).

(ii) Documentation of the design criteria and explanations and any changes and the reason for the changes, as specified in § 63.1009(e)(1)(vi)(A).

(5) For pressure relief devices in gas and vapor or light liquid service, the owner or operator shall keep records of the dates and results of monitoring following a pressure release, as specified in § 63.1011(c)(3).

(6) For compressors, the owner or operator shall maintain the records specified in paragraphs (c)(6)(i) and (c)(6)(ii) of this section.,

(i) For criteria as to failure of the seal system and/or the barrier fluid system, record the design criteria and explanations and any changes and the reason for the changes, as specified in § 63.1012(d)(2).

(ii) For compressors operating under the alternative compressor standard, record the dates and results of each compliance test as specified in § 63.1012(f)(2).

(7) For process units complying with the enclosed-vented process unit alternative, the owner or operator shall maintain the records for enclosed-vented process units as specified in § 63.1016(b).

§ 63.1018 Reporting requirements.

(a) *Periodic Reports.* The owner or operator shall report the information specified in paragraphs (a)(1) through (a)(2) of this section, as applicable, in the periodic report specified in the referencing subpart.

(1) The initial Periodic Report shall include the information specified in paragraphs (a)(1)(i) through (a)(1)(iv) and (a)(2) of this section.

(i) Process unit or affected facility identification.

(ii) Number of valves subject to the requirements of § 63.1006, excluding those valves designated for no detectable emissions under the provisions of § 63.1006(e)(4).

(iii) Number of pumps subject to the requirements of § 63.1007, excluding those pumps designated for no detectable emissions under the provisions of § 63.1007(e)(2) and those pumps complying with the closed vent system provisions of § 63.1007(e)(3).

(iv) Number of compressors subject to the requirements of § 63.1012, excluding those compressors designated for no detectable emissions under the provisions of § 63.1012(f) and those compressors complying with the closed vent system provisions of § 63.1012(e).

(2) Each periodic report shall contain the information listed in paragraphs (a)(2)(i) through (a)(2)(iv) of this section, as applicable.

(i) Process unit identification.

(ii) For each month during the semiannual reporting period,

(A) Number of valves for which leaks were detected as described in § 63.1006(b),

(B) Number of valves for which leaks were not repaired as required in § 63.1006(d),

(C) Number of pumps for which leaks were detected as described in § 63.1007(b) and § 63.1007(e)(1)(vi),

(D) Number of pumps for which leaks were not repaired as required in §§ 63.1007(d) and (e)(5),

(E) Number of compressors for which leaks were detected as described in § 63.1012(d)(1),

(F) Number of compressors for which leaks were not repaired as required in § 63.1012(d)(1), and

(G) The facts that explain each delay of repair and, where appropriate, why the repair was technically infeasible without a process unit or affected facility shutdown.

(iii) Dates of process unit or affected facility shutdowns which occurred within the periodic report reporting period.

(iv) Revisions to items reported according to paragraph (a)(1) of this section if changes have occurred since the initial report or subsequent revisions to the initial report.

(b) *Special notifications.* An owner or operator electing to comply with either of the alternatives in § 63.1006(b)(5) or (6) shall notify the Administrator of the alternative standard selected before implementing either of the provisions.

4. Part 63 is amended by adding subpart UU as follows:

Subpart UU—National Emission Standards for Equipment Leaks—Control Level 2 Standards

Sec.

63.1019 Applicability.
63.1020 Definitions.
63.1021 Alternative means of emission limitation.
63.1022 Equipment identification.
63.1023 Instrument and sensory monitoring for leaks.
63.1024 Leak repair.
63.1025 Valves in gas and vapor service and in light liquid service standards.
63.1026 Pumps in light liquid service standards.
63.1027 Connectors in gas and vapor service and in light liquid service standards.
63.1028 Agitators in gas and vapor service and in light liquid service standards.
63.1029 Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems standards.
63.1030 Pressure relief devices in gas and vapor service standards.
63.1031 Compressors standards.
63.1032 Sampling connection systems standards.
63.1033 Open-ended valves or lines standards.
63.1034 Closed vent systems and control devices; or emissions routed to a fuel gas system or process standards.
63.1035 Quality improvement program for pumps.
63.1036 Alternative means of emission limitation: Batch processes.
63.1037 Alternative means of emission limitation: Enclosed vented process units or affected facilities.
63.1038 Recordkeeping requirements.
63.1039 Reporting requirements.
Table 1 to Subpart UU—Batch Processes Monitoring Frequency for Equipment Other Than Connectors

Subpart UU—National Emission Standards for Equipment Leaks—Control Level 2 Standards

§ 63.1019 Applicability.

(a) The provisions of this subpart apply to the control of air emissions from equipment leaks for which another subpart references the use of this subpart for such air emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to a referencing subpart. The provisions of 40 CFR part 63, subpart A (General Provisions) do not apply to this subpart except as noted in the referencing subpart.

(b) *Equipment subject to this subpart.* The provisions of this subpart and the referencing subpart apply to equipment that contains or contacts regulated material. This subpart applies to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and closed vent systems and control devices used to meet the requirements of this subpart.

(c) *Equipment in vacuum service.* Equipment in vacuum service is excluded from the requirements of this subpart.

(d) *Equipment in service less than 300 hours per calendar year.* Equipment intended to be in regulated material service less than 300 hours per calendar year is excluded from the requirements of §§ 63.1025 through 63.1034 and § 63.1036 if it is identified as required in § 63.1022(b)(5).

(e) *Lines and equipment not containing process fluids.* Lines and equipment not containing process fluids are not subject to the provisions of this subpart. Utilities, and other non-process lines, such as heating and cooling systems that do not combine their materials with those in the processes they serve, are not considered to be part of a process unit or affected facility.

§ 63.1020 Definitions.

All terms used in this part shall have the meaning given them in the Act and in this section.

Batch process means a process in which the equipment is fed intermittently or discontinuously. Processing then occurs in this equipment after which the equipment is generally emptied. Examples of industries that use batch processes include pharmaceutical production and pesticide production.

Batch product-process equipment train means the collection of equipment (e.g., connectors, reactors, valves, pumps, etc.) configured to produce a specific product or intermediate by a batch process.

Car-seal means a seal that is placed on a device that is used to change the position of a valve (e.g., from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

Closed-loop system means an enclosed system that returns process fluid to the process and is not vented directly to the atmosphere.

Closed-purge system means a system or combination of systems and portable containers to capture purged liquids. Containers must be covered or closed when not being filled or emptied.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic emissions.

Connector means flanged, screwed, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, ceramic, or ceramic-lined (e.g., porcelain, glass, or glass-lined) as described in § 63.1027(e)(2).

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable),

analyze, and provide a record of process or control system parameters.

Control device means any combustion device, recovery device, recapture device, or any combination of these devices used to comply with this part. Such equipment or devices include, but are not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. Primary condensers on steam strippers or fuel gas systems are not considered control devices.

Distance piece means an open or enclosed casing through which the piston rod travels, separating the compressor cylinder from the crankcase.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in regulated material service; and any control devices or systems used to comply with this subpart.

First attempt at repair, for the purposes of this subpart, means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in §§ 63.1023(b) and (c) of this subpart in to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use a fuel gas in combustion equipment, such as furnaces and gas turbines, either singly or in combination.

In food and medical service means that a piece of equipment in regulated material service contacts a process stream used to manufacture a Food and Drug Administration regulated product where leakage of a barrier fluid into the process stream would cause any of the following:

(1) A dilution of product quality so that the product would not meet written specifications,

(2) An exothermic reaction which is a safety hazard,

(3) The intended reaction to be slowed down or stopped, or

(4) An undesired side reaction to occur.

In gas and vapor service means that a piece of equipment in regulated material service contains a gas or vapor at operating conditions.

In heavy liquid service means that a piece of equipment in regulated material service is not in gas and vapor service or in light liquid service.

In light liquid service means that a piece of equipment in regulated material service contains a liquid that meets the following conditions:

(1) The vapor pressure of one or more of the organic compounds is greater than 0.3 kilopascals at 20°C,

(2) The total concentration of the pure organic compounds constituents having a vapor pressure greater than 0.3 kilopascals at 20°C is equal to or greater than 20 percent by weight of the total process stream, and

(3) The fluid is a liquid at operating conditions.

(Note to definition of "in light liquid service": Vapor pressures may be determined by standard reference texts or ASTM D–2879.)

In liquid service means that a piece of equipment in regulated material service is not in gas and vapor service.

In organic hazardous air pollutant or in organic HAP service means that piece of equipment either contains or contracts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP's as determined according to the provisions of § 63.180(d) of subpart H. The provisions of § 63.180(d) of subpart H also specify how to determine that a piece of equipment is not in organic HAP service.

In regulated material service means, for the purposes of this subpart, equipment which meets the definition of "in VOC service," "in VHAP service," "in organic hazardous air pollutant service," or "in" other chemicals or groups of chemicals "service" as defined in the referencing subpart.

In-situ sampling systems means nonextractive samplers or in-line samplers.

In vacuum service means that equipment is operating at an internal pressure which is at least 5 kilopascals below ambient pressure.

Initial startup means for new sources, the first time the source begins production. For additions or changes not defined as a new source by this subpart, initial startup means the first time additional or changed equipment is put into operation. Initial startup does not include operation solely for testing of equipment. Initial startup does not include subsequent startup of process units following malfunction or process unit shutdowns. Except for equipment leaks, initial startup also does not include subsequent startups (of process units following changes in product for flexible operation units or following recharging of equipment in batch unit operations).

Instrumentation system means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (e.g., composition, pressure, flow, etc.). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 1.27 centimeters (0.5 inches) and smaller, and connectors nominally 1.91 centimeters (0.75 inches) and smaller in diameter are considered instrumentation systems for the purposes of this subpart. Valves greater than nominally 1.27 centimeters (0.5 inches) and connectors greater than nominally 1.91 centimeters (0.75 inches) associated with instrumentation systems are not considered part of instrumentation systems and must be monitored individually.

Liquids dripping means any visible leakage from the seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquids dripping include puddling or new stains that are indicative of an existing evaporated drip.

Nonrepairable means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process unit or affected facility shutdown.

Open-ended valve or line means any valve, except relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds based on a detection principle such as infra-red, photoionization, or thermal conductivity.

Polymerizing monomer means a compound which may form polymer buildup in pump mechanical seals resulting in rapid mechanical seal failure.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the relief device. This release can be one release or a series of releases over a short time period due to a malfunction in the process.

Pressure relief device or valve means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

Process unit means the equipment specified in the definitions of process unit in the applicable referencing subpart. If the referencing subpart does not define process unit, then for the purposes of this part, process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product.

Process unit shutdown means a work practice or operational procedure that stops production from a process unit, or part of a process unit during which it is technically feasible to clear process material from a process unit, or part of a process unit, consistent with safety constraints and during which repairs can be affected. The following are not considered process unit shutdowns:

(1) An unscheduled work practice or operations procedure that stops production from a process unit, or part of a process unit, for less than 24 hours.

(2) An unscheduled work practice or operations procedure that would stop production from a process unit, or part of a process unit, for a shorter period of time than would be required to clear the process unit, or part of the process unit, of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled process unit shutdown.

(3) The use of spare equipment and technically feasible bypassing of equipment without stopping production.

Referencing subpart means the subpart that refers an owner or operator to this subpart.

Regulated material, for purposes of this part, refers to gas from volatile organic liquids (VOL), volatile organic compounds (VOC), hazardous air pollutants (HAP), or other chemicals or groups of chemicals that are regulated by the referencing subpart.

Regulated source for the purposes of this part, means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a referencing subpart.

Relief device or valve means a valve used only to release an unplanned, nonroutine discharge. A relief valve discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Repaired, for the purposes of this subpart, means that equipment is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable sections of this subpart and unless otherwise specified in applicable provisions of this subpart, is monitored as specified in §§ 63.1023(b) and (c) to verify that emissions from the equipment are below the applicable leak definition.

Routed to a process or route to a process means the emissions are conveyed to any enclosed portion of a process unit where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by chemical reaction into materials that are not regulated materials and/or incorporated into a product; and/or recovered.

Sampling connection system means an assembly of equipment within a process unit or affected facility used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

Screwed (threaded) connector means a threaded pipe fitting where the threads are cut on the pipe wall and the fitting requires only two pieces to make the connection (i.e., the pipe and the fitting).

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Set pressure means for the purposes of this subpart, the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

Start-up means the setting into operation of a piece of equipment or a control device that is subject to this subpart.

§ 63.1021 Alternative means of emission limitation.

(a) *Performance standard exemption.* The provisions of paragraph (b) of this section do not apply to the performance standards of § 63.1030(b) for pressure relief devices or § 63.1031(f) for compressors operating under the alternative compressor standard.

(b) *Requests by owners or operators.* An owner or operator may request a determination of alternative means of emission limitation to the requirements of §§ 63.1025 through 63.1034 as provided in paragraph (d) of this section. If the Administrator makes a determination that a means of emission limitation is a permissible alternative, the owner or operator shall either comply with the alternative or comply with the requirements of §§ 63.1025 through 63.1034.

(c) *Requests by manufacturers of equipment.* (1) Manufacturers of equipment used to control equipment leaks of the regulated material may apply to the Administrator for permission for an alternative means of emission limitation that achieves a reduction in emissions of the regulated material achieved by the equipment, design, and operational requirements of this subpart.

(2) The Administrator will grant permission according to the provisions of paragraph (d) of this section.

(d) *Permission to use an alternative means of emission limitation.* Permission to use an alternative means of emission limitation shall be governed by the procedures in paragraphs (d)(1) through (d)(4) of this section.

(1) Where the standard is an equipment, design, or operational requirement, the requirements of paragraphs (d)(1)(i) through (d)(1)(iii) of this section apply.

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying emission performance test data for an alternative means of emission limitation.

(ii) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(iii) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve at least the same emission reduction as the equipment, design, and operational requirements of this subpart.

(2) Where the standard is a work practice, the requirements of paragraphs (d)(2)(i) through (d)(2)(vi) of this section apply.

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying test data for the alternative.

(ii) For each kind of equipment for which permission is requested, the emission reduction achieved by the required work practices shall be demonstrated for a minimum period of 12 months.

(iii) For each kind of equipment for which permission is requested, the emission reduction achieved by the alternative means of emission limitation shall be demonstrated.

(iv) Each owner or operator applying for such permission shall commit, in writing, for each kind of equipment to work practices that provide for emission reductions equal to or greater than the emission reductions achieved by the required work practices.

(v) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in paragraph (d)(2)(iv) of this section.

(vi) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same or greater emission reduction as the required work practices of this subpart.

(3) An owner or operator may offer a unique approach to demonstrate the alternative means of emission limitation.

(4) If, in the judgement of the Administrator, an alternative means of emission limitation will be approved, the Administrator will publish a notice of the determination in the **Federal Register** using the procedures specified in the referencing subpart.

§ 63.1022 Equipment identification.

(a) *General equipment identification.* Equipment subject to this subpart shall be identified. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, by designation of process unit or affected facility boundaries by some form of weatherproof identification, or by other appropriate methods.

(b) *Additional equipment identification.* In addition to the general identification required by paragraph (a) of this section, equipment subject to any of the provisions in §§ 63.1023 through 63.1034 shall be specifically identified as required in paragraphs (b)(1) through (b)(5) of this section, as applicable. This paragraph does not apply to an owner or operator of a batch product process who elects to pressure test the batch product process equipment train pursuant to § 63.1036.

(1) *Connectors.* Except for inaccessible, ceramic, or ceramic-lined connectors meeting the provision of § 63.1027(e)(2) and instrumentation systems identified pursuant to paragraph (b)(4) of this section, identify the connectors subject to the requirements of this subpart. Connectors need not be individually identified if all connectors in a designated area or length of pipe subject to the provisions of this subpart are identified as a group, and the number of connectors subject is indicated. With respect to connectors, the identification shall be complete no later than the completion of the initial survey required by paragraph (a) of this section.

(2) *Routed to a process or fuel gas system or equipped with a closed vent system and control device.* Identify the equipment that the owner or operator elects to route to a process or fuel gas system or equip with a closed vent system and control device, under the provisions of § 63.1026(e)(3) (pumps in light liquid service), § 63.1028(e)(3) (agitators), § 63.1030(d) (pressure relief devices in gas and vapor service), § 63.1031(e) (compressors), or § 63.1037(a) (alternative means of emission limitation for enclosed-vented process units).

(3) *Pressure relief devices.* Identify the pressure relief devices equipped with rupture disks, under the provisions of § 63.1030(e).

(4) *Instrumentation systems.* Identify instrumentation systems subject to the provisions of § 63.1029 of this subpart. Individual components in an instrumentation system need not be identified.

(5) *Equipment in service less than 300 hours per calendar year.* The identity, either by list, location (area or group), or other method, of equipment in regulated material service less than 300 hours per calendar year within a process unit or affected facilities subject to the provisions of this subpart shall be recorded.

(c) *Special equipment designations: Equipment that is unsafe or difficult-to-monitor.* (1) *Designation and criteria for unsafe-to-monitor.* Valves meeting the provisions of § 63.1025(e)(1), pumps meeting the provisions of § 63.1026(e)(6), connectors meeting the provisions of § 63.1027(e)(1), and agitators meeting the provisions of § 63.1028(e)(7) may be designated unsafe-to-monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements of this subpart. Examples of unsafe-to-monitor equipment include, but is not limited to, equipment under extreme pressure or heat.

(2) *Designation and criteria for difficult-to-monitor.* Valves meeting the provisions of § 63.1025(e)(2) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(i) apply. Agitators meeting the provisions of § 63.1028(e)(5) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(ii) apply.

(i) *Valves.* (A) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface or it is not accessible in a safe manner when it is in regulated material service; and

(B) The process unit or affected facility within which the valve is located is an existing source, or the owner or operator designates less than 3 percent of the total number of valves in a new source as difficult-to-monitor.

(ii) *Agitators.* The owner or operator determines that the agitator cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface or it is not accessible in a safe manner when it is in regulated material service.

(3) *Identification of unsafe or difficult-to-monitor equipment.* The owner or operator shall record the identity of equipment designated as unsafe-to-monitor according to the provisions of paragraph (c)(1) of this section and the planned schedule for monitoring this equipment. The owner or operator shall record the identity of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section, the planned schedule for monitoring this equipment, and an explanation why the equipment is unsafe or difficult-to-monitor. This record must be kept at the plant and be available for review by an inspector.

(4) *Written plan requirements.* (i) The owner or operator of equipment designated as unsafe-to-monitor according to the provisions of paragraph (c)(1) of this section shall have a written plan that requires monitoring of the equipment as frequently as practical during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment according to the procedures in § 63.1024 if a leak is detected.

(ii) The owner or operator of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section shall have a written plan that requires monitoring of the equipment at least once per calendar year and repair of the equipment according to the procedures in § 63.1024 if a leak is detected.

(d) *Special equipment designations: Equipment that is unsafe-to-repair.* (1) *Designation and criteria.* Connectors subject to the provisions of § 63.1024(e) may be designated unsafe-to-repair if the owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with the repair requirements of this subpart, and if the connector will be repaired before the end of the next process unit or affected facility shutdown as specified in § 63.1024(e)(2).

(2) *Identification of equipment.* The identity of connectors designated as unsafe-to-repair and an explanation why the connector is unsafe-to-repair shall be recorded.

(e) *Special equipment designations: Compressors operating with an instrument reading of less than 500 parts per million above background.* Identify the compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 parts per million above background, under the provisions of § 63.1031(f).

(f) *Special equipment designations: Equipment in heavy liquid service.* The owner or operator of equipment in heavy liquid service shall comply with the requirements of either paragraph (f)(1) or (f)(2) of this section, as provided in paragraph (f)(3) of this section.

(1) Retain information, data, and analyses used to determine that a piece of equipment is in heavy liquid service.

(2) When requested by the Administrator, demonstrate that the piece of equipment or process is in heavy liquid service.

(3) A determination or demonstration that a piece of equipment or process is in heavy liquid service shall include an analysis or demonstration that the process fluids do not meet the definition of "in light liquid service." Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

§ 63.1023 Instrument and sensory monitoring for leaks.

(a) *Monitoring for leaks.* The owner or operator of a regulated source subject to this subpart shall monitor regulated equipment as specified in paragraph (a)(1) of this section for instrument monitoring and paragraph (a)(2) of this section for sensory monitoring.

(1) *Instrument monitoring for leaks.* (i) Valves in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1025(b).

(ii) Pumps in light liquid service shall be monitored pursuant to § 63.1026(b).

(iii) Connectors in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1027(b).

(iv) Agitators in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1028(c).

(v) Pressure relief devices in gas and vapor service shall be monitored pursuant to § 63.1030(c).

(vi) Compressors designated to operate with an instrument reading less than 500 parts per million above background, as described in § 63.1022(e), shall be monitored pursuant to § 63.1031(f).

(2) *Sensory monitoring for leaks.* (i) Pumps in light liquid service shall be observed pursuant to §§ 63.1026(b)(4) and (e)(1)(v).

(ii) [Reserved].

(iii) Agitators in gas and vapor service and in light liquid service shall be observed pursuant to § 63.1028(c)(3) or (e)(1)(iv).

(iv) [Reserved].

(b) *Instrument monitoring methods.* Instrument monitoring, as required under this subpart, shall comply with the requirements specified in paragraphs (b)(1) through (b)(6) of this section.

(1) *Monitoring method.* Monitoring shall comply with Method 21 of 40 CFR part 60, appendix A, except as otherwise provided in this section.

(2) *Detection instrument performance criteria.* (i) Except as provided for in paragraph (b)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2, paragraph (a) of Method 21 shall be for the representative composition of the process fluid not each individual VOC in the stream. For process streams that contain nitrogen, air, water or other inerts that are not HAP or VOC, the representative stream response factor shall be determined on an inert-free basis. The response factor may be determined at any concentration for which monitoring for leaks will be conducted.

(ii) If there is no instrument commercially available that will meet the performance criteria specified in paragraph (b)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid, calculated on an inert-free basis as described in paragraph (b)(2)(i) of this section.

(3) *Detection instrument calibration procedure.* The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(4) *Detection instrument calibration gas.* Calibration gases shall be zero air (less than 10 parts per million of hydrocarbon in air); and the gases specified in paragraph (b)(4)(i) of this section except as provided in paragraph (b)(4)(ii) of this section.

(i) Mixtures of methane in air at a concentration no more than 2,000 parts per million greater than the leak definition concentration of the equipment monitored. If the monitoring instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,000 parts per million above the concentration specified as a leak, and the highest scale shall be calibrated with a calibration gas that is approximately equal to 10,000 parts per million. If only one scale on an instrument will be used during monitoring, the owner or operator need not calibrate the scales that will not be used during that day's monitoring.

(ii) A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(5) *Monitoring performance.* Monitoring shall be performed when the equipment is in regulated material service or is in use with any other detectable material.

(6) *Monitoring data.* Monitoring data obtained prior to the regulated source becoming subject to the referencing subpart that do not meet the criteria specified in paragraphs (b)(1) through (b)(5) of this section may still be used to qualify initially for less frequent monitoring under the provisions in § 63.1025(a)(2), (b)(3) or (b)(4) for valves or § 63.1027(b)(3) for connectors provided the departures from the criteria or from the specified monitoring frequency of § 63.1025(b)(3) or (b)(4) or § 63.1027(b)(3) are minor and do not significantly affect the quality of the data. Examples of minor departures are monitoring at a slightly different frequency (such as every 6 weeks instead of monthly or quarterly), following the performance criteria of section 3.1.2, paragraph (a) of Method 21 of Appendix A of 40 CFR part 60 instead of paragraph (b)(2) of this section, or monitoring using a different leak definition if the data would indicate the presence or absence of a leak at the concentration specified in this subpart. Failure to use a calibrated

instrument is not considered a minor departure.

(c) *Instrument monitoring using background adjustments.* The owner or operator may elect to adjust or not to adjust the instrument readings for background. If an owner or operator elects not to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (b)(1) through (b)(5) of this section. In such cases, all instrument readings shall be compared directly to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 63.1030(b) (pressure relief devices) or § 63.1031(f) (alternative compressor standard). If an owner or operator elects to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (c)(1) through (c)(4) of this section.

(1) The requirements of paragraphs (b)(1) through (b)(5) of this section shall apply.

(2) The background level shall be determined, using the procedures in Method 21 of 40 CFR part 60, appendix A.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21 of 40 CFR part 60, appendix A.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 63.1030(b) (pressure relief devices) or § 63.1031(f) (alternative compressor standard).

(d) *Sensory monitoring methods.* Sensory monitoring consists of visual, audible, olfactory, or any other detection method used to determine a potential leak to the atmosphere.

(e) *Leaking equipment identification and records.* (1) When each leak is detected pursuant to the monitoring specified in paragraph (a) of this section, a weatherproof and readily visible identification, shall be attached to the leaking equipment.

(2) When each leak is detected, the information specified in § 63.1024(f) shall be recorded and kept pursuant to the referencing subpart, except for the information for connectors complying with the 8 year monitoring period allowed under § 63.1027(b)(3)(iii) shall be kept 5 years beyond the date of its last use.

§ 63.1024 Leak repair.

(a) *Leak repair schedule.* The owner or operator shall repair each leak detected as soon as practical, but not later than 15 calendar days after it is detected, except as provided in paragraphs (d) and (e) of this section. A first attempt at repair as defined in this subpart shall be made no later than 5 calendar days after the leak is detected. First attempt at repair for pumps includes, but is not limited to, tightening the packing gland nuts and/or ensuring that the seal flush is operating at design pressure and temperature. First attempt at repair for valves includes, but is not limited to, tightening the bonnet bolts, and/or replacing the bonnet bolts, and/or tightening the packing gland nuts, and/or injecting lubricant into the lubricated packing.

(b) [Reserved]

(c) *Leak identification removal.* (1) *Valves and connectors in gas/vapor and light liquid service.* The leak identification on a valve in gas/vapor or light liquid service may be removed after it has been monitored as specified in § 63.1025(d)(2), and no leak has been detected during that monitoring. The leak identification on a connector in gas/vapor or light liquid service may be removed after it has been monitored as specified in § 63.1027(b)(3)(iv) and no leak has been detected during that monitoring.

(2) *Other equipment.* The identification that has been placed, pursuant to § 63.1023(e)(1), on equipment determined to have a leak, except for a valve or for a connector in gas/vapor or light liquid service that is subject to the provisions of § 63.1027(b)(3)(iv), may be removed after it is repaired.

(d) *Delay of repair.* Delay of repair is allowed for any of the conditions specified in paragraphs (d)(1) through (d)(5) of this section. The owner or operator shall maintain a record of the facts that explain any delay of repairs and, where appropriate, why the repair was technically infeasible without a process unit shutdown.

(1) Delay of repair of equipment for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible without a process unit or affected facility shutdown. Repair of this equipment shall occur as soon as practical, but no later than the end of the next process unit or affected facility shutdown, except as provided in paragraph (d)(5) of this section.

(2) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in regulated material service.

(3) Delay of repair for valves, connectors, and agitators is also allowed if the provisions of paragraphs (d)(3)(i) and (d)(3)(ii) of this section are met.

(i) The owner or operator determines that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair, and

(ii) When repair procedures are effected, the purged material is collected and destroyed, collected and routed to a fuel gas system or process, or recovered in a control device complying with either § 63.1034 or § 63.1021(b) of this part.

(4) Delay of repair for pumps is also allowed if the provisions of paragraphs (d)(4)(i) and (d)(4)(ii) of this section are met.

(i) Repair requires replacing the existing seal design with a new system that the owner or operator has determined under the provisions of § 63.1035(d) will provide better performance or one of the specifications of paragraphs (d)(4)(i)(A) through (d)(4)(i)(C) of this section are met.

(A) A dual mechanical seal system that meets the requirements of § 63.1026(e)(1) will be installed;

(B) A pump that meets the requirements of § 63.1026(e)(2) will be installed; or

(C) A system that routes emissions to a process or a fuel gas system or a closed vent system and control device that meets the requirements of § 63.1026(e)(3) will be installed; and

(ii) Repair is completed as soon as practical, but not later than 6 months after the leak was detected.

(5) Delay of repair beyond a process unit or affected facility shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit or affected facility shutdown, and valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the second process unit or affected facility shutdown will not be allowed unless the third process unit or affected facility shutdown occurs sooner than 6 months after the first process unit or affected facility shutdown.

(e) *Unsafe-to-repair—connectors.* Any connector that is designated, as described in § 63.1022(d), as an unsafe-to-repair connector is exempt from the requirements of § 63.1027(d), and paragraph (a) of this section.

(f) *Leak repair records.* For each leak detected, the information specified in paragraphs (f)(1) through (f)(5) of this section shall be recorded and

maintained pursuant to the referencing subpart.

(1) The date of first attempt to repair the leak.

(2) The date of successful repair of the leak.

(3) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A at the time the leak is successfully repaired or determined to be nonrepairable.

(4) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak as specified in paragraphs (f)(4)(i) and (f)(4)(ii) of this section.

(i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures may be included as part of the startup, shutdown, and malfunction plan, as required by the referencing subpart for the source, or may be part of a separate document that is maintained at the plant site. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(ii) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(5) Dates of process unit or affected facility shutdowns that occur while the equipment is unrepaired.

§ 63.1025 Valves in gas and vapor service and in light liquid service standards.

(a) *Compliance schedule.* (1) The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(2) The use of monitoring data generated before the regulated source became subject to the referencing subpart to qualify initially for less frequent monitoring is governed by the provisions of § 63.1023(b)(6).

(b) *Leak detection.* Unless otherwise specified in § 63.1021(b) or paragraph (e) of this section, or the referencing subpart, the owner or operator shall monitor all valves at the intervals specified in paragraphs (b)(3) and/or (b)(4) of this section and shall comply with all other provisions of this section.

(1) *Monitoring method.* The valves shall be monitored to detect leaks by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c).

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is 500 parts per million or greater.

(3) *Monitoring frequency.* The owner or operator shall monitor valves for leaks at the intervals specified in paragraphs (b)(3)(i) through (b)(3)(v) of this section and shall keep the record specified in paragraph (b)(3)(vi) of this section.

(i) If at least the greater of 2 valves or 2 percent of the valves in a process unit leak, as calculated according to paragraph (c) of this section, the owner or operator shall monitor each valve once per month.

(ii) At process units with less than the greater of 2 leaking valves or 2 percent leaking valves, the owner or operator shall monitor each valve once each quarter, except as provided in paragraphs (b)(3)(iii) through (b)(3)(v) of this section. Monitoring data generated before the regulated source became subject to the referencing subpart and meeting the criteria of either § 63.1023(b)(1) through (b)(5), or § 63.1023(b)(6), may be used to qualify initially for less frequent monitoring under paragraphs (b)(3)(iii) through (b)(3)(v) of this section.

(iii) At process units with less than 1 percent leaking valves, the owner or operator may elect to monitor each valve once every two quarters

(iv) At process units with less than 0.5 percent leaking valves, the owner or operator may elect to monitor each valve once every four quarters.

(v) At process units with less than 0.25 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 years.

(vi) The owner or operator shall keep a record of the monitoring schedule for each process unit.

(4) *Valve subgrouping.* For a process unit or a group of process units to which this subpart applies, an owner or operator may choose to subdivide the valves in the applicable process unit or group of process units and apply the provisions of paragraph (b)(3) of this section to each subgroup. If the owner or operator elects to subdivide the valves in the applicable process unit or group of process units, then the provisions of paragraphs (b)(4)(i) through (b)(4)(viii) of this section apply.

(i) The overall performance of total valves in the applicable process unit or group of process units to be subdivided shall be less than 2 percent leaking valves, as detected according to paragraphs (b)(1) and (b)(2) of this section and as calculated according to paragraphs (c)(1)(ii) and (c)(2) of this section.

(ii) The initial assignment or subsequent reassignment of valves to subgroups shall be governed by the provisions of paragraphs (b)(4)(ii)(A) through (b)(4)(ii)(C) of this section.

(A) The owner or operator shall determine which valves are assigned to each subgroup. Valves with less than one year of monitoring data or valves not monitored within the last twelve months must be placed initially into the most frequently monitored subgroup until at least one year of monitoring data have been obtained.

(B) Any valve or group of valves can be reassigned from a less frequently monitored subgroup to a more frequently monitored subgroup provided that the valves to be reassigned were monitored during the most recent monitoring period for the less frequently monitored subgroup. The monitoring results must be included with that less frequently monitored subgroup's associated percent leaking valves calculation for that monitoring event.

(C) Any valve or group of valves can be reassigned from a more frequently monitored subgroup to a less frequently monitored subgroup provided that the valves to be reassigned have not leaked for the period of the less frequently monitored subgroup (e.g., for the last 12 months, if the valve or group of valves is to be reassigned to a subgroup being monitored annually). Nonrepairable valves may not be reassigned to a less frequently monitored subgroup.

(iii) The owner or operator shall determine every 6 months if the overall performance of total valves in the applicable process unit or group of process units is less than 2 percent leaking valves and so indicate the performance in the next Periodic Report. If the overall performance of total valves in the applicable process unit or group of process units is 2 percent leaking valves or greater, the owner or operator shall no longer subgroup and shall revert to the program required in paragraphs (b)(1) through (b)(3) of this section for that applicable process unit or group of process units. An owner or operator can again elect to comply with the valve subgrouping procedures of paragraph (b)(4) of this section when the overall performance of valves in the process unit or process units is again less than 2 percent. The overall performance of total valves in the applicable process unit or group of process units shall be calculated as a weighted average of the percent leaking valves of each subgroup according to Equation number 1:

$$\%V_{LO} = \frac{\sum_{i=1}^{n}(\%V_{Li} \times V_i)}{\sum_{i=1}^{n} V_i} \quad \text{[Eq. 1]}$$

where:

$\%V_{LO}$ = Overall performance of total valves in the applicable process unit or group of process units

$\%V_{Li}$ = Percent leaking valves in subgroup i, most recent value calculated according to the procedures in paragraphs (c)(1)(ii) and (c)(2) of this section.

V_i = Number of valves in subgroup i.

n = Number of subgroups.

(iv) The owner or operator shall maintain records specified in paragraphs (b)(4)(iv)(A) through (b)(4)(iv)(D) of this section.

(A) Which valves are assigned to each subgroup,

(B) Monitoring results and calculations made for each subgroup for each monitoring period,

(C) Which valves are reassigned, the last monitoring result prior to reassignment, and when they were reassigned, and

(D) The results of the semiannual overall performance calculation required in paragraph (b)(4)(iii) of this section.

(v) The owner or operator shall notify the Administrator no later than 30 days prior to the beginning of the next monitoring period of the decision to subgroup valves. The notification shall identify the participating process units and the number of valves assigned to each subgroup, if applicable, and may be included in the next Periodic Report.

(vi) The owner or operator shall submit in the periodic reports the information specified in paragraphs (b)(4)(vi)(A) and (b)(4)(vi)(B).

(A) Total number of valves in each subgroup, and

(B) Results of the semiannual overall performance calculation required by paragraph (b)(4)(iii) of this section.

(vii) To determine the monitoring frequency for each subgroup, the calculation procedures of paragraph (c)(2) of this section shall be used.

(viii) Except for the overall performance calculations required by paragraphs (b)(4)(i) and (iii) of this section, each subgroup shall be treated as if it were a process unit for the purposes of applying the provisions of this section.

(c) *Percent leaking valves calculation.* (1) *Calculation basis and procedures.* (i) The owner or operator shall decide no later than the compliance date of this part or upon revision of an operating permit whether to calculate percent leaking valves on a process unit or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis and this shall be the basis used for comparison with the subgrouping criteria specified in paragraph (b)(4)(i) of this section.

(ii) The percent leaking valves for each monitoring period for each process unit or valve subgroup, as provided in paragraph (b)(4) of this section, shall be calculated using the following equation:

$$\%V_L = (V_L / V_T) \times 100 \quad \text{[Eq. 2]}$$

where:

$\%V_L$ = Percent leaking valves.

V_L = Number of valves found leaking, excluding nonrepairable valves, as provided in paragraph (c)(3) of this section, and including those valves found leaking pursuant to paragraphs (d)(2)(iii)(A) and (d)(2)(iii)(B) of this section.

V_T = The sum of the total number of valves monitored.

(2) *Calculation for monitoring frequency.* When determining monitoring frequency for each process unit or valve subgroup subject to monthly, quarterly, or semiannual monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last two monitoring periods. When determining monitoring frequency for each process unit or valve subgroup subject to annual or biennial (once every 2 years) monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last three monitoring periods.

(3) *Nonrepairable valves.* (i) Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable and as required to comply with paragraph (c)(3)(ii) of this section. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking valves calculation in a previous period) up to a maximum of 1 percent of the total number of valves in regulated material service at a process unit or affected facility may be excluded from calculation of percent leaking valves for subsequent monitoring periods.

(ii) If the number of nonrepairable valves exceeds 1 percent of the total number of valves in regulated material service at a process unit or affected facility, the number of nonrepairable valves exceeding 1 percent of the total number of valves in regulated material service shall be included in the calculation of percent leaking valves.

(d) *Leak repair.* (1) If a leak is determined pursuant to paragraph (b), (e)(1), or (e)(2) of this section, then the leak shall be repaired using the procedures in § 63.1024, as applicable.

(2) After a leak has been repaired, the valve shall be monitored at least once within the first 3 months after its repair. The monitoring required by this paragraph is in addition to the monitoring required to satisfy the definition of repaired and first attempt at repair.

(i) The monitoring shall be conducted as specified in § 63.1023(b) and (c) of this section, as appropriate, to determine whether the valve has resumed leaking.

(ii) Periodic monitoring required by paragraph (b) of this section may be used to satisfy the requirements of this paragraph, if the timing of the monitoring period coincides with the time specified in this paragraph. Alternatively, other monitoring may be performed to satisfy the requirements of this paragraph, regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in this paragraph.

(iii) If a leak is detected by monitoring that is conducted pursuant to paragraph (d)(2) of this section, the owner or operator shall follow the provisions of paragraphs (d)(2)(iii)(A) and (d)(2)(iii)(B) of this section, to determine whether that valve must be counted as a leaking valve for purposes of paragraph (c)(1)(ii) of this section.

(A) If the owner or operator elected to use periodic monitoring required by paragraph (b) of this section to satisfy the requirements of paragraph (d)(2) of this section, then the valve shall be counted as a leaking valve.

(B) If the owner or operator elected to use other monitoring, prior to the periodic monitoring required by paragraph (b) of this section, to satisfy the requirements of paragraph (d)(2) of this section, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

(e) *Special provisions for valves.* (1) *Unsafe-to-monitor valves.* Any valve that is designated, as described in § 63.1022(c)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraphs (b) and (d)(2) of this section and the owner or operator shall monitor the valve according to the written plan specified in § 63.1022(c)(4).

(2) *Difficult-to-monitor valves.* Any valve that is designated, as described in § 63.1022(c)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor the valve according to the written plan specified in § 63.1022(c)(4).

(3) *Fewer than 250 valves.* Any equipment located at a plant site with fewer than 250 valves in regulated material service is exempt from the requirements for monthly monitoring specified in paragraph (b)(3)(i) of this section. Instead, the owner or operator shall monitor each valve in regulated material service for leaks once each quarter, as provided in paragraphs (e)(1) and (e)(2) of this section.

§ 63.1026 Pumps in light liquid service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Leak detection.* Unless otherwise specified in § 63.1021(b), § 63.1036, § 63.1037, or paragraph (e) of this section, the owner or operator shall monitor each pump to detect leaks and shall comply with all other provisions of this section.

(1) *Monitoring method and frequency.* The pumps shall be monitored monthly to detect leaks by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c).

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section.

(i) 5,000 parts per million or greater for pumps handling polymerizing monomers;

(ii) 2,000 parts per million or greater for pumps in food/medical service; and

(iii) 1,000 parts per million or greater for all other pumps.

(3) *Leak repair exception.* For pumps to which a 1,000 parts per million leak definition applies, repair is not required unless an instrument reading of 2,000 parts per million or greater is detected.

(4) *Visual inspection.* Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (b)(4)(i) or (b)(4)(ii) of this section.

(i) The owner or operator shall monitor the pump as specified in § 63.1023(b) and, as applicable, § 63.1023(c). If the instrument reading indicates a leak as specified in paragraph (b)(2) of this section, a leak is detected and it shall be repaired using the procedures in § 63.1024, except as specified in paragraph (b)(3) of this section; or

(ii) The owner or operator shall eliminate the visual indications of liquids dripping.

(c) *Percent leaking pumps calculation. (1) The owner or operator shall decide no later than the compliance date of this part or upon revision of an operating permit whether to calculate percent leaking pumps on a process unit basis or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis.*

(2) If, when calculated on a 6-month rolling average, at least the greater of either 10 percent of the pumps in a process unit or three pumps in a process unit leak, the owner or operator shall implement a quality improvement program for pumps that complies with the requirements of § 63.1035.

(3) The number of pumps at a process unit or affected facility shall be the sum of all the pumps in regulated material service, except that pumps found leaking in a continuous process unit or affected facility within 1 month after start-up of the pump shall not count in the percent leaking pumps calculation for that one monitoring period only.

(4) Percent leaking pumps shall be determined by the following equation:

$$\%P_L = ((P_L - P_S)/(P_T - P_S)) \times 100 \quad \text{[Eq. 3]}$$

Where:

$\%P_L$ = Percent leaking pumps

P_L = Number of pumps found leaking as determined through monthly monitoring as required in paragraph (b)(1) of this section. Do not include results from inspection of unsafe-to-monitor pumps pursuant to paragraph (e)(6) of this section.

P_S = Number of pumps leaking within 1 month of start-up during the current monitoring period.

P_T = Total pumps in regulated material service, including those meeting the criteria in paragraphs (e)(1), (e)(2), (e)(3), and (e)(6) of this section.

(d) *Leak repair.* If a leak is detected pursuant to paragraph (b) of this section, then the leak shall be repaired using the procedures in § 63.1024, as applicable, unless otherwise specified in paragraph (b)(5) of this section for leaks identified by visual indications of liquids dripping.

(e) *Special provisions for pumps. (1) Dual mechanical seal pumps.* Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the requirements specified in paragraphs (e)(1)(i) through (e)(1)(viii) of this section are met.

(i) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both. The owner or operator shall keep records at the plant of the design criteria and an explanation of the design criteria; and any changes to these criteria and the reasons for the changes. This record must be available for review by an inspector.

(ii) Each dual mechanical seal system shall meet the requirements specified in paragraph (e)(1)(ii)(A), (e)(1)(ii)(B), or (e)(1)(ii)(C) of this section.

(A) Each dual mechanical seal system is operated with the barrier fluid at a pressure that is at all times (except periods of startup, shutdown, or malfunction) greater than the pump stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of either § 63.1034 or § 63.1021(b) of this part; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(iii) The barrier fluid is not in light liquid service.

(iv) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(v) Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the

owner or operator shall follow the procedure specified in paragraphs (e)(1)(v)(A) or (e)(1)(v)(B) of this section prior to the next required inspection.

(A) The owner or operator shall monitor the pump as specified in § 63.1023(b) and, as applicable, § 63.1023 (c), to determine if there is a leak of regulated material in the barrier fluid. If an instrument reading of 1,000 parts per million or greater is measured, a leak is detected and it shall be repaired using the procedures in § 63.1024; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(vi) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (e)(1)(i) of this section, or if based on the criteria established in paragraph (e)(1)(i) of this section the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(vii) Each sensor as described in paragraph (e)(1)(iv) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(viii) When a leak is detected pursuant to paragraph (e)(1)(vi) of this section, it shall be repaired as specified in § 63.1024.

(2) *No external shaft.* Any pump that is designed with no externally actuated shaft penetrating the pump housing is exempt from the requirements of paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any pump that is routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage from the pump to a control device meeting the requirements of § 63.1034 of this part or § 63.1021(b) is exempt from the requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(4) and (e)(1)(v) of this section, and the daily requirements of paragraph (e)(1)(vii) of this section, provided that each pump is visually inspected as often as practical and at least monthly.

(5) *90 percent exemption.* If more than 90 percent of the pumps at a process unit or affected facility meet the criteria in either paragraph (e)(1) or (e)(2) of this section, the process unit or affected facility is exempt from the percent leaking calculation in paragraph (c) of this section.

(6) *Unsafe-to-monitor pumps.* Any pump that is designated, as described in § 63.1022(c)(1)(ii), as an unsafe-to-monitor pump is exempt from the requirements of paragraph (b) of this section and the requirements of § 63.1024 and the owner or operator shall monitor the pump according to the written plan specified in § 63.1022(c)(4)

§ 63.1027 Connectors in gas and vapor service and in light liquid service standards.

(a) *Compliance schedule.* The owner or operator shall monitor all connectors in each process unit initially for leaks by the later of either 12 months after the compliance date as specified in a referencing subpart or 12 months after initial startup. If all connectors in each process unit have been monitored for leaks prior to the compliance date specified in the referencing subpart, no initial monitoring is required provided either no process changes have been made since the monitoring or the owner or operator can determine that the results of the monitoring, with or without adjustments, reliably demonstrate compliance despite process changes. If required to monitor because of a process change, the owner or operator is required to monitor only those connectors involved in the process change.

(b) *Leak detection.* Except as allowed in § 63.1021(b), § 63.1036, § 63.1037, or as specified in paragraph (e) of this section, the owner or operator shall monitor all connectors in gas and vapor and light liquid service as specified in paragraphs (a) and (b)(3) of this section.

(1) *Monitoring method.* The connectors shall be monitored to detect leaks by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c).

(2) *Instrument reading that defines a leak.* If an instrument reading greater than or equal to 500 parts per million is measured, a leak is detected.

(3) *Monitoring periods.* The owner or operator shall perform monitoring, subsequent to the initial monitoring required in paragraph (a) of this section, as specified in paragraphs (b)(3)(i) through (b)(3)(iii) of this section, and shall comply with the requirements of paragraphs (b)(3)(iv) and (b)(3)(v) of this section. The required period in which monitoring must be conducted shall be determined from paragraphs (b)(3)(i) through (b)(3)(iii) of this section using the monitoring results from the preceding monitoring period. The percent leaking connectors shall be calculated as specified in paragraph (c) of this section.

(i) If the percent leaking connectors in the process unit was greater than or equal to 0.5 percent, then monitor within 12 months (1 year).

(ii) If the percent leaking connectors in the process unit was greater than or equal to 0.25 percent but less than 0.5 percent, then monitor within 4 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40 percent of the connectors within 2 years of the start of the monitoring period, provided all connectors have been monitored by the end of the 4 year monitoring period.

(iii) If the percent leaking connectors in the process unit was less than 0.25 percent, then monitor as provided in paragraph (b)(3)(iii)(A) of this section and either paragraph (b)(3)(iii)(B) or (b)(3)(iii)(C) of this section, as appropriate.

(A) An owner or operator shall monitor at least 50 percent of the connectors within 4 years of the start of the monitoring period.

(B) If the percent leaking connectors calculated from the monitoring results in paragraph (b)(3)(iii)(A) of this section is greater than or equal to 0.35 percent of the monitored connectors, the owner or operator shall monitor as soon as practical, but within the next 6 months, all connectors that have not yet been monitored during the monitoring period. At the conclusion of monitoring, a new monitoring period shall be started pursuant to paragraph (b)(3) of this section, based on the percent leaking connectors of the total monitored connectors.

(C) If the percent leaking connectors calculated from the monitoring results in paragraph (b)(3)(iii)(A) of this section is less than 0.35 percent of the monitored connectors, the owner or operator shall monitor all connectors that have not yet been monitored within 8 years of the start of the monitoring period.

(iv) If, during the monitoring conducted pursuant to paragraph (b)(3)(i) through (b)(3)(iii) of this section, a connector is found to be leaking, it shall be re-monitored once within 90 days after repair to confirm that it is not leaking.

(v) The owner or operator shall keep a record of the start date and end date of each monitoring period under this section for each process unit.

(c) *Percent leaking connectors calculation.* For use in determining the monitoring frequency, as specified in paragraphs (a) and (b)(3) of this section, the percent leaking connectors as used in paragraphs (a) and (b)(3) of this section shall be calculated by using equation number 4.

$$\%C_L = C_L / C_t \times 100 \quad \text{[Eq. 4]}$$

Where:

$\%C_L$ = Percent leaking connectors as determined through periodic monitoring required in paragraphs (a) and (b)(3)(i) through (b)(3)(iii) of this section.

C_L = Number of connectors measured at 500 parts per million or greater, by the method specified in § 63.1023(b).

C_t = Total number of monitored connectors in the process unit or affected facility.

(d) *Leak repair.* If a leak is detected pursuant to paragraphs (a) and (b) of this section, then the leak shall be repaired using the procedures in § 63.1024, as applicable.

(e) *Special provisions for connectors.* (1) *Unsafe-to-monitor connectors.* Any connector that is designated, as described in § 63.1022(c)(1), as an unsafe-to-monitor connector is exempt from the requirements of paragraphs (a) and (b) of this section and the owner or operator shall monitor according to the written plan specified in § 63.1022(c)(4).

(2) *Inaccessible, ceramic, or ceramic-lined connectors.* (i) Any connector that is inaccessible or that is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined), is exempt from the monitoring requirements of paragraphs (a) and (b) of this section, from the leak repair requirements of paragraph (d) of this section, and from the recordkeeping and reporting requirements of §§ 63.1038 and 63.1039. An inaccessible connector is one that meets any of the provisions specified in paragraphs (e)(2)(i)(A) through (e)(2)(i)(F) of this section, as applicable.

(A) Buried;

(B) Insulated in a manner that prevents access to the connector by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the connector by a monitor probe;

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold that would allow access to connectors up to 7.6 meters (25 feet) above the ground.

(E) Inaccessible because it would require elevating the monitoring personnel more than 2 meters (7 feet) above a permanent support surface or would require the erection of scaffold;

(F) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines, or would risk damage to equipment.

(ii) If any inaccessible, ceramic or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the visual, audible, olfactory, or other indications of a leak to the atmosphere shall be eliminated as soon as practical.

§ 63.1028 Agitators in gas and vapor service and in light liquid service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) [Reserved]

(c) *Leak detection.* (1) *Monitoring method.* Each agitator seal shall be monitored monthly to detect leaks by the methods specified in § 63.1023(b) and, as applicable, § 63.1023(c), except as provided in § 63.1021(b), § 63.1036, § 63.1037, or paragraph (e) of this section.

(2) *Instrument reading that defines a leak.* If an instrument reading equivalent of 10,000 parts per million or greater is measured, a leak is detected.

(3) *Visual inspection.* (i) Each agitator seal shall be checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. The owner or operator shall document that the inspection was conducted and the date of the inspection.

(ii) If there are indications of liquids dripping from the agitator seal, the owner or operator shall follow the procedures specified in paragraphs (c)(3)(ii)(A) or (c)(3)(ii)(B) of this section prior to the next required inspection.

(A) The owner or operator shall monitor the agitator seal as specified in § 63.1023(b) and, as applicable, § 63.1023(c), to determine if there is a leak of regulated material. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected, and it shall be repaired according to paragraph (d) of this section; or

(B) The owner or operator shall eliminate the indications of liquids dripping from the agitator seal.

(d) *Leak repair.* If a leak is detected, then the leak shall be repaired using the procedures in § 63.1024.

(e) *Special provisions for agitators.* (1) *Dual mechanical seal.* Each agitator equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (c) of this section, provided the requirements specified in paragraphs (e)(1)(i) through (e)(1)(vi) of this section are met.

(i) Each dual mechanical seal system shall meet the applicable requirements specified in paragraphs (e)(1)(i)(A), (e)(1)(i)(B), or (e)(1)(i)(C) of this section.

(A) Operated with the barrier fluid at a pressure that is at all times (except during periods of startup, shutdown, or malfunction) greater than the agitator stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that meets the requirements of either § 63.1034 or § 63.1021(b); or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(ii) The barrier fluid is not in light liquid service.

(iii) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(iv) Each agitator seal is checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. If there are indications of liquids dripping from the agitator seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in paragraphs (e)(1)(iv)(A) or (e)(1)(iv)(B) of this section prior to the next required inspection.

(A) The owner or operator shall monitor the agitator seal as specified in § 63.1023(b) and, as applicable, § 63.1023(c), to determine the presence of regulated material in the barrier fluid. If an instrument reading equivalent to or greater than 10,000 ppm is measured, a leak is detected and it shall be repaired using the procedures in § 63.1024, or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(v) Each sensor as described in paragraph (e)(1)(iii) of this section is observed daily or is equipped with an alarm unless the agitator seal is located within the boundary of an unmanned plant site.

(vi) The owner or operator of each dual mechanical seal system shall meet the requirements specified in paragraphs (e)(1)(vi)(A) and (e)(1)(vi)(B).

(A) The owner or operator shall determine, based on design considerations and operating experience, criteria that indicates failure of the seal system, the barrier fluid system, or both and applicable to the presence and frequency of drips. If indications of liquids dripping from the agitator seal exceed the criteria, or if, based on the criteria the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is

detected and shall be repaired pursuant to § 63.1024, as applicable.

(B) The owner or operator shall keep records of the design criteria and an explanation of the design criteria; and any changes to these criteria and the reasons for the changes.

(2) *No external shaft.* Any agitator that is designed with no externally actuated shaft penetrating the agitator housing is exempt from paragraph (c) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any agitator that is routed to a process or fuel gas system that captures and transports leakage from the agitator to a control device meeting the requirements of either § 63.1034 or § 63.1021(b) is exempt from the requirements of paragraph (c) of this section.

(4) *Unmanned plant site.* Any agitator that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (c)(3) and (e)(1)(iv) of this section, and the daily requirements of paragraph (e)(1)(v) of this section, provided that each agitator is visually inspected as often as practical and at least monthly.

(5) *Difficult-to-monitor agitator seals.* Any agitator seal that is designated, as described in § 63.1022(c)(2), as a difficult-to-monitor agitator seal is exempt from the requirements of paragraph (c) of this section and the owner or operator shall monitor the agitator seal according to the written plan specified in § 63.1022(c)(4).

(6) *Equipment obstructions.* Any agitator seal that is obstructed by equipment or piping that prevents access to the agitator by a monitor probe is exempt from the monitoring requirements of paragraph (c) of this section.

(7) *Unsafe-to-monitor agitator seals.* Any agitator seal that is designated, as described in § 63.1022(c)(1), as an unsafe-to-monitor agitator seal is exempt from the requirements of paragraph (c) of this section and the owner or operator of the agitator seal monitors the agitator seal according to the written plan specified in § 63.1022(c)(4).

§ 63.1029 Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Leak detection.* (1) *Monitoring method.* Unless otherwise specified in §§ 63.1021(b), 63.1036, or 63.1037, the owner or operator shall comply with paragraphs (b)(1) and (b)(2) of this section. Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems shall be monitored within 5 calendar days by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c), if evidence of a potential leak to the atmosphere is found by visual, audible, olfactory, or any other detection method, unless the potential leak is repaired as required in paragraph (c) of this section.

(2) *Instrument reading that defines a leak.* If an instrument reading of 10,000 parts per million or greater for agitators, 5,000 parts per million or greater for pumps handling polymerizing monomers, 2,000 parts per million or greater for pumps in food and medical service, or 2,000 parts per million or greater for all other pumps (including pumps in food/medical service), or 500 parts per million or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured pursuant to paragraph (b)(1) of this section, a leak is detected and shall be repaired pursuant to § 63.1024, as applicable.

(c) *Leak repair.* For equipment identified in paragraph (b) of this section that is not monitored by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c), repaired shall mean that the visual, audible, olfactory, or other indications of a leak to the atmosphere have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

§ 63.1030 Pressure relief devices in gas and vapor service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Compliance standard.* Except during pressure releases as provided for in paragraph (c) of this section, or as otherwise specified in §§ 63.1036, 63.1037, or paragraphs (d) and (e) of this section, each pressure relief device in gas and vapor service shall be operated with an instrument reading of less than 500 parts per million as measured by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c).

(c) *Pressure relief requirements.* (1) After each pressure release, the pressure relief device shall be returned to a condition indicated by an instrument reading of less than 500 parts per million, as soon as practical, but no later than 5 calendar days after each pressure release, except as provided in § 63.1024(d).

(2) The pressure relief device shall be monitored no later than five calendar days after the pressure to confirm the condition indicated by an instrument reading of less than 500 parts per million above background, as measured by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c).

(3) The owner or operator shall record the dates and results of the monitoring required by paragraph (c)(2) of this section following a pressure release including the background level measured and the maximum instrument reading measured during the monitoring.

(d) *Pressure relief devices routed to a process or fuel gas system or equipped with a closed vent system and control device.* Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage from the pressure relief device to a control device meeting the requirements of § 63.1034 is exempt from the requirements of paragraphs (b) and (c) of this section.

(e) *Rupture disk exemption.* Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (b) and (c) of this section provided the owner or operator installs a replacement rupture disk upstream of the pressure relief device as soon as practical after each pressure release but no later than 5 calendar days after each pressure release, except as provided in § 63.1024(d).

§ 63.1031 Compressors standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Seal system standard.* Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluid to the atmosphere, except as provided in §§ 63.1021(b), 63.1036, 63.1037, and paragraphs (e) and (f) of this section. Each compressor seal system shall meet the applicable requirements specified in paragraph (b)(1), (b)(2), or (b)(3) of this section.

(1) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure at all times (except during periods of startup, shutdown, or malfunction); or

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that meets the requirements of either § 63.1034 or § 63.1021(b); or

(3) Equipped with a closed-loop system that purges the barrier fluid directly into a process stream.

(c) *Barrier fluid system.* The barrier fluid shall not be in light liquid service. Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both. Each sensor shall be observed daily or shall be equipped with an alarm unless the compressor is located within the boundary of an unmanned plant site.

(d) *Failure criterion and leak detection.* (1) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both. If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion, a leak is detected and shall be repaired pursuant to § 63.1024, as applicable.

(2) The owner or operator shall keep records of the design criteria and an explanation of the design criteria; and any changes to these criteria and the reasons for the changes.

(e) *Routed to a process or fuel gas system or equipped with a closed vent system.* A compressor is exempt from the requirements of paragraphs (b) through (d) of this section if it is equipped with a system to capture and transport leakage from the compressor drive shaft seal to a process or a fuel gas system or to a closed vent system that captures and transports leakage from the compressor to a control device meeting the requirements of either § 63.1034 or § 63.1021(b).

(f) *Alternative compressor standard.* (1) Any compressor that is designated, as described in § 63.1022(e), as operating with an instrument reading of less than 500 parts per million above background shall operate at all times with an instrument reading of less than 500 parts per million. A compressor so designated is exempt from the requirements of paragraphs (b) through (d) of this section if the compressor is demonstrated, initially upon designation, annually, and at other times requested by the Administrator to be operating with an instrument reading of less than 500 parts per million above background, as measured by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c).

(2) The owner or operator shall record the dates and results of each compliance test including the background level measured and the maximum instrument reading measured during each compliance test.

§ 63.1032 Sampling connection systems standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Equipment requirement.* Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed vent system, except as provided in §§ 63.1021(b), 63.1036, 63.1037, or paragraph (d) of this section. Gases displaced during filling of the sample container are not required to be collected or captured.

(c) *Equipment design and operation.* Each closed-purge, closed-loop, or closed vent system as required in paragraph (b) of this section shall meet the applicable requirements specified in paragraphs (c)(1) through (c)(5) of this section.

(1) The system shall return the purged process fluid directly to a process line or to a fuel gas system that meets the requirements of either § 63.1034 or § 63.1021(b); or

(2) [Reserved]

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that meets the requirements of either § 63.1034 or § 63.1021(b); or

(4) Collect, store, and transport the purged process fluid to a system or facility identified in paragraph (c)(4)(i), (c)(4)(ii), or (c)(4)(iii) of this section.

(i) A waste management unit as defined in 40 CFR 63.111 or subpart G, if the waste management unit is subject to and operating in compliance with the provisions of 40 CFR part 63, subpart G, applicable to group 1 wastewater streams. If the purged process fluid does not contain any regulated material listed in Table 9 of 40 CFR part 63, subpart G, the waste management unit need not be subject to, and operated in compliance with the requirements of 40 CFR part 63, subpart G, applicable to group 1 wastewater steams provided the facility has a National Pollution Discharge Elimination System (NPDES) permit or sends the wastewater to an NPDES-permitted facility.

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR parts 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

(5) Containers that are part of a closed purge system must be covered or closed when not being filled or emptied.

(d) *In-situ sampling systems.* In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (b) and (c) of this section.

§ 63.1033 Open-ended valves or lines standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance date specified in the referencing subpart.

(b) *Equipment and operational requirements.* (1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in §§ 63.1021(b), 63.1036, 63.1037, and paragraphs (c) and (d) of this section. The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance. The operational provisions of paragraphs (b)(2) and (b)(3) of this section also apply.

(2) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(3) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (b)(1) of this section at all other times.

(c) *Emergency shutdown exemption.* Open-ended valves or lines in an emergency shutdown system that are designed to open automatically in the event of a process upset are exempt from the requirements of paragraph (b) of this section.

(d) *Polymerizing materials exemption.* Open-ended valves or lines containing materials that would autocatalytically polymerize or, would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraph (b) of this section are exempt from the requirements of paragraph (b) of this section.

§ 63.1034 Closed vent systems and control devices; or emissions routed to a fuel gas system or process standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance

date specified in the referencing subpart.

(b) *Compliance standard.* (1) Owners or operators routing emissions from equipment leaks to a fuel gas system or process shall comply with the provisions of subpart SS of this part, except as provided in § 63.1002(b).

(2) Owners or operators of closed vent systems and control devices used to comply with the provisions of this subpart shall comply with the provisions of subpart SS of this part and (b)(2)(i) through (b)(2)(iii) of this section, except as provided in § 63.1002(b).

(i) Nonflare control devices shall be designed and operated to reduce emissions of regulated material vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, whichever is less stringent. The 20 parts per million by volume standard is not applicable to the provisions of § 63.1016.

(ii) Enclosed combustion devices shall be designed and operated to reduce emissions of regulated material vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent, or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760° C (1400° F).

(iii) Flares used to comply with the provisions of this subpart shall comply with the requirements of subpart SS of this part.

§ 63.1035 Quality improvement program for pumps.

(a) *Criteria.* If, on a 6-month rolling average, at least the greater of either 10 percent of the pumps in a process unit or affected facility (or plant site) or three pumps in a process unit or affected facility (or plant site) leak, the owner or operator shall comply with the requirements specified in paragraphs (a)(1) and (a)(2) of this section.

(1) Pumps that are in food and medical service or in polymerizing monomer service shall comply with all requirements except for those specified in paragraph (d)(8) of this section.

(2) Pumps that are not in food and medical or polymerizing monomer service shall comply with all of the requirements of this section.

(b) *Exiting the QIP.* The owner or operator shall comply with the requirements of this section until the number of leaking pumps is less than the greater of either 10 percent of the pumps or three pumps, calculated as a 6-month rolling average, in the process unit or affected facility (or plant site). Once the performance level is achieved, the owner or operator shall comply with the requirements in § 63.1026.

(c) *Resumption of QIP.* If, in a subsequent monitoring period, the process unit or affected facility (or plant site) has greater than either 10 percent of the pumps leaking or three pumps leaking (calculated as a 6-month rolling average), the owner or operator shall resume the quality improvement program starting at performance trials.

(d) *QIP requirements.* The quality improvement program shall meet the requirements specified in paragraphs (d)(1) through (d)(8) of this section.

(1) The owner or operator shall comply with the requirements in § 63.1026.

(2) *Data collection.* The owner or operator shall collect the data specified in paragraphs (d)(2)(i) through (d)(2)(v) of this section and maintain records for each pump in each process unit or affected facility (or plant site) subject to the quality improvement program. The data may be collected and the records may be maintained on a process unit, affected facility, or plant site basis.

(i) Pump type (e.g., piston, horizontal or vertical centrifugal, gear, bellows); pump manufacturer; seal type and manufacturer; pump design (e.g., external shaft, flanged body); materials of construction; if applicable, barrier fluid or packing material; and year installed.

(ii) Service characteristics of the stream such as discharge pressure, temperature, flow rate, corrosivity, and annual operating hours.

(iii) The maximum instrument readings observed in each monitoring observation before repair, response factor for the stream if appropriate, instrument model number, and date of the observation.

(iv) If a leak is detected, the repair methods used and the instrument readings after repair.

(v) If the data will be analyzed as part of a larger analysis program involving data from other plants or other types of process units or affected facilities, a description of any maintenance or quality assurance programs used in the process unit or affected facility that are intended to improve emission performance.

(3) The owner or operator shall continue to collect data on the pumps as long as the process unit or affected facility (or plant site) remains in the quality improvement program.

(4) *Pump or pump seal inspection.* The owner or operator shall inspect all pumps or pump seals that exhibited frequent seal failures and were removed from the process unit or affected facility due to leaks. The inspection shall determine the probable cause of the pump seal failure or of the pump leak and shall include recommendations, as appropriate, for design changes or changes in specifications to reduce leak potential.

(5)(i) *Data analysis.* The owner or operator shall analyze the data collected to comply with the requirements of paragraph (d)(2) of this section to determine the services, operating or maintenance practices, and pump or pump seal designs or technologies that have poorer than average emission performance and those that have better than average emission performance. The analysis shall determine if specific trouble areas can be identified on the basis of service, operating conditions or maintenance practices, equipment design, or other process-specific factors.

(ii) The analysis shall also be used to determine if there are superior performing pump or pump seal technologies that are applicable to the service(s), operating conditions, or pump or pump seal designs associated with poorer than average emission performance. A superior performing pump or pump seal technology is one with a leak frequency of less than 10 percent for specific applications in the process unit, affected facility, or plant site. A candidate superior performing pump or pump seal technology is one demonstrated or reported in the available literature or through a group study as having low emission performance and as being capable of achieving less than 10 percent leaking pumps in the process unit or affected facility (or plant site).

(iii) The analysis shall include consideration of the information specified in paragraphs (d)(5)(iii)(A) through (d)(5)(iii)(C) of this section.

(A) The data obtained from the inspections of pumps and pump seals removed from the process unit or affected facility due to leaks;

(B) Information from the available literature and from the experience of other plant sites that will identify pump designs or technologies and operating conditions associated with low emission performance for specific services; and

(C) Information on limitations on the service conditions for the pump seal technology operating conditions as well as information on maintenance procedures to ensure continued low emission performance.

(iv) The data analysis may be conducted through an inter- or intra-company program (or through some combination of the two approaches) and may be for a single process unit, a plant site, a company, or a group of process units.

(v) The first analysis of the data shall be completed no later than 18 months after the start of the quality improvement program. The first analysis shall be performed using data collected for a minimum of 6 months. An analysis of the data shall be done each year the process unit or affected facility is in the quality improvement program.

(6) *Trial evaluation program.* A trial evaluation program shall be conducted at each plant site for which the data analysis does not identify use of superior performing pump seal technology or pumps that can be applied to the areas identified as having poorer than average performance, except as provided in paragraph (d)(6)(v) of this section. The trial program shall be used to evaluate the feasibility of using in the process unit or affected facility (or plant site) the pump designs or seal technologies, and operating and maintenance practices that have been identified by others as having low emission performance.

(i) The trial evaluation program shall include on-line trials of pump seal technologies or pump designs and operating and maintenance practices that have been identified in the available literature or in analysis by others as having the ability to perform with leak rates below 10 percent in similar services, as having low probability of failure, or as having no external actuating mechanism in contact with the process fluid. If any of the candidate superior performing pump seal technologies or pumps is not included in the performance trials, the reasons for rejecting specific technologies from consideration shall be documented as required in paragraph (e)(3)(ii) of this section.

(ii) The number of pump seal technologies or pumps in the trial evaluation program shall be the lesser of 1 percent or two pumps for programs involving single process units or affected facilities and the lesser of 1 percent or five pumps for programs involving a plant site or groups of process units or affected facilities. The minimum number of pumps or pump seal technologies in a trial program shall be one.

(iii) The trial evaluation program shall specify and include documentation of the information specified in paragraphs (d)(6)(iii)(A) through (d)(6)(iii)(D) of this section.

(A) The candidate superior performing pump seal designs or technologies to be evaluated, the stages for evaluating the identified candidate pump designs or pump seal technologies, including the time period necessary to test the applicability;

(B) The frequency of monitoring or inspection of the equipment;

(C) The range of operating conditions over which the component will be evaluated; and

(D) Conclusions regarding the emission performance and the appropriate operating conditions and services for the trial pump seal technologies or pumps.

(iv) The performance trials shall initially be conducted, at least, for a 6-month period beginning not later than 18 months after the start of the quality improvement program. No later than 24 months after the start of the quality improvement program, the owner or operator shall have identified pump seal technologies or pump designs that, combined with appropriate process, operating, and maintenance practices, operate with low emission performance for specific applications in the process unit or affected facility. The owner or operator shall continue to conduct performance trials as long as no superior performing design or technology has been identified, except as provided in paragraph (d)(6)(vi) of this section. The initial list of superior emission performance pump designs or pump seal technologies shall be amended in the future, as appropriate, as additional information and experience are obtained.

(v) Any plant site with fewer than 400 valves and owned by a corporation with fewer than 100 employees shall be exempt from trial evaluations of pump seals or pump designs. Plant sites exempt from the trial evaluations of pumps shall begin the pump seal or pump replacement program at the start of the fourth year of the quality improvement program.

(vi) An owner or operator who has conducted performance trials on all alternative superior emission performance technologies suitable for the required applications in the process unit or affected facility may stop conducting performance trials provided that a superior performing design or technology has been demonstrated or there are no technically feasible alternative superior technologies remaining. The owner or operator shall prepare an engineering evaluation documenting the physical, chemical, or engineering basis for the judgment that the superior emission performance technology is technically infeasible or demonstrating that it would not reduce emissions.

(7) *Quality assurance program.* Each owner or operator shall prepare and implement a pump quality assurance program that details purchasing specifications and maintenance procedures for all pumps and pump seals in the process unit or affected facility. The quality assurance program may establish any number of categories, or classes, of pumps as needed to distinguish among operating conditions and services associated with poorer than average emission performance as well as those associated with better than average emission performance. The quality assurance program shall be developed considering the findings of the data analysis required under paragraph (d)(5) of this section; and, if applicable, the findings of the trial evaluation required in paragraph (d)(6) of this section; and the operating conditions in the process unit or affected facility. The quality assurance program shall be updated each year as long as the process unit or affected facility has the greater of either 10 percent or more leaking pumps or has three leaking pumps.

(i) The quality assurance program shall meet the requirements specified in paragraphs (d)(7)(i)(A) through (d)(7)(i)(D) of this section.

(A) Establish minimum design standards for each category of pumps or pump seal technology. The design standards shall specify known critical parameters such as tolerance, manufacturer, materials of construction, previous usage, or other applicable identified critical parameters;

(B) Require that all equipment orders specify the design standard (or minimum tolerances) for the pump or the pump seal;

(C) Provide for an audit procedure for quality control of purchased equipment to ensure conformance with purchase specifications. The audit program may be conducted by the owner or operator of the plant site or process unit or affected facility, or by a designated representative; and

(D) Detail off-line pump maintenance and repair procedures. These procedures shall include provisions to ensure that rebuilt or refurbished pumps and pump seals will meet the design specifications for the pump category and will operate so that emissions are minimized.

(ii) The quality assurance program shall be established no later than the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees; and no later than the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees.

(8) *Pump or pump seal replacement.* Three years after the start of the quality improvement program for plant sites with 400 or more valves or 100 or more employees and at the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees, the owner or operator shall replace, as described in paragraphs (d)(8)(i) and (d)(8)(ii) of this section, the pumps or pump seals that are not superior emission performance technology with pumps or pump seals that have been identified as superior emission performance technology and that comply with the quality assurance standards for the pump category. Superior emission performance technology is that category or design of pumps or pump seals with emission performance that when combined with appropriate process, operating, and maintenance practices, will result in less than 10 percent leaking pumps for specific applications in the process unit, affected facility, or plant site. Superior emission performance technology includes material or design changes to the existing pump, pump seal, seal support system, installation of multiple mechanical seals or equivalent, or pump replacement.

(i) Pumps or pump seals shall be replaced at the rate of 20 percent per year based on the total number of pumps in light liquid service. The calculated value shall be rounded to the nearest nonzero integer value. The minimum number of pumps or pump seals shall be one. Pump replacement shall continue until all pumps subject to the requirements of § 63.1026 are pumps determined to be superior performance technology.

(ii) The owner or operator may delay replacement of pump seals or pumps with superior technology until the next planned process unit or affected facility shutdown, provided the number of pump seals and pumps replaced is equivalent to the 20 percent or greater annual replacement rate.

(iii) The pumps shall be maintained as specified in the quality assurance program.

(e) *QIP recordkeeping.* In addition to the records required by paragraph (d)(2) of this section, the owner or operator shall maintain records for the period of the quality improvement program for the process unit or affected facility as specified in paragraphs (e)(1) through (e)(6) of this section.

(1) When using a pump quality improvement program as specified in this section, record the information specified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(i) The rolling average percent leaking pumps.

(ii) Documentation of all inspections conducted under the requirements of paragraph (d)(4) of this section, and any recommendations for design or specification changes to reduce leak frequency.

(iii) The beginning and ending dates while meeting the requirements of paragraph (d) of this section.

(2) If a leak is not repaired within 15 calendar days after discovery of the leak, the reason for the delay and the expected date of successful repair.

(3) Records of all analyses required in paragraph (d) of this section. The records will include the information specified in paragraphs (e)(3)(i) through (e)(3)(iv) of this section.

(i) A list identifying areas associated with poorer than average performance and the associated service characteristics of the stream, the operating conditions and maintenance practices.

(ii) The reasons for rejecting specific candidate superior emission performing pump technology from performance trials.

(iii) The list of candidate superior emission performing valve or pump technologies, and documentation of the performance trial program items required under paragraph (d)(6)(iii) of this section.

(iv) The beginning date and duration of performance trials of each candidate superior emission performing technology.

(4) All records documenting the quality assurance program for pumps as specified in paragraph (d)(7) of this section, including records indicating that all pumps replaced or modified during the period of the quality improvement program are in compliance with the quality assurance.

(5) Records documenting compliance with the 20 percent or greater annual replacement rate for pumps as specified in paragraph (d)(8) of this section.

(6) Information and data to show the corporation has fewer than 100 employees, including employees providing professional and technical contracted services.

§ 63.1036 Alternative means of emission limitation: Batch processes.

(a) *General requirement.* As an alternative to complying with the requirements of §§ 63.1025 through 63.1033 and § 63.1035, an owner or operator of a batch process that operates in regulated material service during the calendar year may comply with one of the standards specified in paragraphs (b) and (c) of this section, or the owner or operator may petition for approval of an alternative standard under the provisions of § 63.1021(b). The alternative standards of this section provide the options of pressure testing or monitoring the equipment for leaks. The owner or operator may switch among the alternatives provided the change is documented as specified in paragraph (b)(7) of this section.

(b) *Pressure testing of the batch equipment.* The following requirements shall be met if an owner or operator elects to use pressure testing of batch product-process equipment to demonstrate compliance with this subpart.

(1) *Reconfiguration.* Each time equipment is reconfigured for production of a different product or intermediate, the batch product-process equipment train shall be pressure-tested for leaks before regulated material is first fed to the equipment and the equipment is placed in regulated material service.

(i) When the batch product-process equipment train is reconfigured to produce a different product, pressure testing is required only for the new or disturbed equipment.

(ii) Each batch product process that operates in regulated material service during a calendar year shall be pressure-tested at least once during that calendar year.

(iii) Pressure testing is not required for routine seal breaks, such as changing hoses or filters, that are not part of the reconfiguration to produce a different product or intermediate.

(2) *Testing procedures.* The batch product process equipment shall be tested either using the procedures specified in paragraph (b)(5) of this section for pressure vacuum loss or with a liquid using the procedures specified in paragraph (b)(6) of this section.

(3) *Leak detection.* (i) For pressure or vacuum tests using a gas, a leak is detected if the rate of change in pressure is greater than 6.9 kilopascals (1 pound per square inch gauge) in 1 hour or if there is visible, audible, or olfactory evidence of fluid loss.

(ii) For pressure tests using a liquid, a leak is detected if there are indications of liquids dripping or if there is other evidence of fluid loss.

(4) *Leak repair.* (i) If a leak is detected, it shall be repaired and the batch product-process equipment shall be retested before start-up of the process.

(ii) If a batch product-process fails the retest (the second of two consecutive pressure tests), it shall be repaired as soon as practical, but not later than 30 calendar days after the second pressure test except as specified in paragraph (e) of this section.

(5) *Gas pressure test procedure for pressure or vacuum loss.* The procedures specified in paragraphs (b)(5)(i) through (b)(5)(v) of this section shall be used to pressure test batch product-process equipment for pressure or vacuum loss to demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section.

(i) The batch product-process equipment train shall be pressurized with a gas to a pressure less than the set pressure of any safety relief devices or valves or to a pressure slightly above the operating pressure of the equipment, or alternatively the equipment shall be placed under a vacuum.

(ii) Once the test pressure is obtained, the gas source or vacuum source shall be shut off.

(iii) The test shall continue for not less than 15 minutes unless it can be determined in a shorter period of time that the allowable rate of pressure drop or of pressure rise was exceeded. The pressure in the batch product-process equipment shall be measured after the gas or vacuum source is shut off and at the end of the test period. The rate of change in pressure in the batch product-process equipment shall be calculated using the following equation:

$$\Delta(P/t) = \left(|P_f - P_i|\right)/(t_f - t_i) \qquad \text{[Eq. 5]}$$

Where:

Δ (P/t) = Change in pressure, pounds per square inch gauge per hour.

P_f = Final pressure, pounds per square inch gauge.

P_i = Initial pressure, pounds per square inch gauge.

$t_f - t_i$ = Elapsed time, hours.

(iv) The pressure shall be measured using a pressure measurement device (gauge, manometer, or equivalent) that has a precision of ±2.5 millimeter mercury (0.10 inch of mercury) in the range of test pressure and is capable of measuring pressures up to the relief set pressure of the pressure relief device. If such a pressure measurement device is not reasonably available, the owner or operator shall use a pressure measurement device with a precision of at least ± 10 percent of the test pressure of the equipment and shall extend the duration of the test for the time necessary to detect a pressure loss or rise that equals a rate of 1 pound per square inch gauge per hour (7 kilopascals per hour).

(v) An alternative procedure may be used for leak testing the equipment if the owner or operator demonstrates the alternative procedure is capable of detecting a pressure loss or rise.

(6) *Pressure test procedure using test liquid.* The procedures specified in paragraphs (b)(6)(i) through (b)(6)(iv) of this section shall be used to pressure-test batch product-process equipment using a liquid to demonstrate compliance with the requirements of paragraph (b)(3)(ii) of this section.

(i) The batch product-process equipment train, or section of the equipment train, shall be filled with the test liquid (e.g., water, alcohol) until normal operating pressure is obtained. Once the equipment is filled, the liquid source shall be shut off.

(ii) The test shall be conducted for a period of at least 60 minutes, unless it can be determined in a shorter period of time that the test is a failure.

(iii) Each seal in the equipment being tested shall be inspected for indications of liquid dripping or other indications of fluid loss. If there are any indications of liquids dripping or of fluid loss, a leak is detected.

(iv) An alternative procedure may be used for leak testing the equipment, if the owner or operator demonstrates the alternative procedure is capable of detecting losses of fluid.

(7) *Pressure testing recordkeeping.* The owner or operator of a batch product process who elects to pressure test the batch product process equipment train to demonstrate compliance with this subpart shall maintain records of the information specified in paragraphs (b)(7)(i) through (b)(7)(v) of this section.

(i) The identification of each product, or product code, produced during the calendar year. It is not necessary to identify individual items of equipment in a batch product process equipment train.

(ii) Physical tagging of the equipment to identify that it is in regulated material service and subject to the provisions of this subpart is not required. Equipment in a batch product process subject to the provisions of this subpart may be identified on a plant site plan, in log entries, or by other appropriate methods.

(iii) The dates of each pressure test required in paragraph (b) of this section, the test pressure, and the pressure drop observed during the test.

(iv) Records of any visible, audible, or olfactory evidence of fluid loss.

(v) When a batch product process equipment train does not pass two consecutive pressure tests, the information specified in paragraphs (b)(7)(v)(A) through (b)(7)(v)(E) of this section shall be recorded in a log and kept for 2 years:

(A) The date of each pressure test and the date of each leak repair attempt.

(B) Repair methods applied in each attempt to repair the leak.

(C) The reason for the delay of repair.

(D) The expected date for delivery of the replacement equipment and the actual date of delivery of the replacement equipment; and

(E) The date of successful repair.

(c) *Equipment monitoring.* The following requirements shall be met if an owner or operator elects to monitor the equipment in a batch process to detect leaks by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c), to demonstrate compliance with this subpart.

(1) The owner or operator shall comply with the requirements of §§ 63.1025 through 63.1035 as modified by paragraphs (c)(2) through (c)(4) of this section.

(2) The equipment shall be monitored for leaks by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c), when the equipment is in regulated material service or is in use with any other detectable material.

(3) The equipment shall be monitored for leaks as specified in paragraphs (c)(3)(i) through (c)(3)(iv) of this section.

(i) Each time the equipment is reconfigured for the production of a new product, the reconfigured equipment shall be monitored for leaks within 30 days of start-up of the process. This initial monitoring of reconfigured equipment shall not be included in determining percent leaking equipment in the process unit or affected facility.

(ii) Connectors shall be monitored in accordance with the requirements in § 63.1027.

(iii) Equipment other than connectors shall be monitored at the frequencies specified in table 1 to this subpart. The operating time shall be determined as the proportion of the year the batch product-process that is subject to the provisions of this subpart is operating.

(iv) The monitoring frequencies specified in paragraph (c)(3)(iii) of this section are not requirements for monitoring at specific intervals and can be adjusted to accommodate process operations. An owner or operator may monitor anytime during the specified monitoring period (e.g., month, quarter, year), provided the monitoring is conducted at a reasonable interval after completion of the last monitoring campaign. For example, if the equipment is not operating during the scheduled monitoring period, the monitoring can be done during the next period when the process is operating.

(4) If a leak is detected, it shall be repaired as soon as practical but not later than 15 calendar days after it is

detected, except as provided in paragraph (e) of this section.

(d) *Added equipment recordkeeping.* (1) For batch product-process units or affected facilities that the owner or operator elects to monitor as provided under paragraph (c) of this section, the owner or operator shall prepare a list of equipment added to batch product process units or affected facilities since the last monitoring period required in paragraphs (c)(3)(ii) and (c)(3)(iii) of this section.

(2) Maintain records demonstrating the proportion of the time during the calendar year the equipment is in use in a batch process that is subject to the provisions of this subpart. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit or affected facility. These records are not required if the owner or operator does not adjust monitoring frequency by the time in use, as provided in paragraph (c)(3)(iii) of this section.

(3) Record and keep pursuant to the referencing subpart and this subpart, the date and results of the monitoring required in paragraph (c)(3)(i) of this section for equipment added to a batch product-process unit or affected facility since the last monitoring period required in paragraphs (c)(3)(ii) and (c)(3)(iii) of this section. If no leaking equipment is found during this monitoring, the owner or operator shall record that the inspection was performed. Records of the actual monitoring results are not required.

(e) *Delay of repair.* Delay of repair of equipment for which leaks have been detected is allowed if the replacement equipment is not available providing the conditions specified in paragraphs (e)(1) and (e)(2) of this section are met.

(1) Equipment supplies have been depleted and supplies had been sufficiently stocked before the supplies were depleted.

(2) The repair is made no later than 10 calendar days after delivery of the replacement equipment.

(f) *Periodic report contents.* For owners or operators electing to meet the requirements of paragraph (b) of this section, the Periodic Report to be filed pursuant to § 63.1039(b) shall include the information listed in paragraphs (f)(1) through (f)(4) of this section for each process unit.

(1) Batch product process equipment train identification;

(2) The number of pressure tests conducted;

(3) The number of pressure tests where the equipment train failed the pressure test; and (4) The facts that explain any delay of repairs.

§ 63.1037 Alternative means of emission limitation: Enclosed-vented process units or affected facilities.

(a) *Use of closed vent system and control device.* Process units or affected facilities or portions of process units at affected facilities enclosed in such a manner that all emissions from equipment leaks are vented through a closed vent system to a control device or routed to a fuel gas system or process meeting the requirements of § 63.1034 are exempt from the requirements of §§ 63.1025 through 63.1033 and 63.1035. The enclosure shall be maintained under a negative pressure at all times while the process unit or affected facility is in operation to ensure that all emissions are routed to a control device.

(b) *Recordkeeping.* Owners and operators choosing to comply with the requirements of this section shall maintain the records specified in paragraphs (b)(1) through (b)(3) of this section.

(1) Identification of the process unit(s) or affected facilities and the regulated materials they handle.

(2) A schematic of the process unit or affected facility, enclosure, and closed vent system.

(3) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

§ 63.1038 Recordkeeping requirements.

(a) *Recordkeeping system.* An owner or operator of more than one regulated source subject to the provisions of this subpart may comply with the recordkeeping requirements for these regulated sources in one recordkeeping system. The recordkeeping system shall identify each record by regulated source and the type of program being implemented (e.g., quarterly monitoring, quality improvement) for each type of equipment. The records required by this subpart are summarized in paragraphs (b) and (c) of this section.

(b) *General equipment leak records.* (1) As specified in § 63.1022(a) and (b), the owner or operator shall keep general and specific equipment identification if the equipment is not physically tagged and the owner or operator is electing to identify the equipment subject to this subpart through written documentation such as a log or other designation.

(2) The owner or operator shall keep a written plan as specified in § 63.1022(c)(4) for any equipment that is designated as unsafe- or difficult-to-monitor.

(3) The owner or operator shall maintain a record of the identity and an explanation as specified in § 63.1022(d)(2) for any equipment that is designated as unsafe-to-repair.

(4) As specified in § 63.1022(e), the owner or operator shall maintain the identity of compressors operating with an instrument reading of less than 500 parts per million.

(5) The owner or operator shall keep records associated with the determination that equipment is in heavy liquid service as specified in § 63.1022(f).

(6) The owner or operator shall keep records for leaking equipment as specified in § 63.1023(e)(2).

(7) The owner or operator shall keep records for leak repair as specified in § 63.1024(f) and records for delay of repair as specified in § 63.1024(d).

(c) *Specific equipment leak records.* (1) For valves, the owner or operator shall maintain the records specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) The monitoring schedule for each process unit as specified in § 63.1025(b)(3)(vi).

(ii) The valve subgrouping records specified in § 63.1025(b)(4)(iv), if applicable.

(2) For pumps, the owner or operator shall maintain the records specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

(i) Documentation of pump visual inspections as specified in § 63.1026(b)(4).

(ii) Documentation of dual mechanical seal pump visual inspections as specified in § 63.1026(e)(1)(v).

(iii) For the criteria as to the presence and frequency of drips for dual mechanical seal pumps, records of the design criteria and explanations and any changes and the reason for the changes, as specified in § 63.1026(e)(1)(i).

(3) For connectors, the owner or operator shall maintain the monitoring schedule for each process unit as specified in § 63.1027(b)(3)(v).

(4) For agitators, the owner or operator shall maintain the following records:

(i) Documentation of agitator seal visual inspections as specified in § 63.1028; and

(ii) For the criteria as to the presence and frequency of drips for agitators, the owner or operator shall keep records of the design criteria and explanations and any changes and the reason for the changes, as specified in § 63.1028(e)(1)(vi).

(5) For pressure relief devices in gas and vapor or light liquid service, the owner or operator shall keep records of the dates and results of monitoring following a pressure release, as specified in § 63.1030(c)(3).

(6) For compressors, the owner or operator shall maintain the records specified in paragraphs (c)(6)(i) and (c)(6)(ii) of this section.

(i) For criteria as to failure of the seal system and/or the barrier fluid system, record the design criteria and explanations and any changes and the reason for the changes, as specified in § 63.1031(d)(2).

(ii) For compressors operating under the alternative compressor standard, record the dates and results of each compliance test as specified in § 63.1031(f)(2).

(7) For a pump QIP program, the owner or operator shall maintain the records specified in paragraphs (c)(7)(i) through (c)(7)(v) of this section.

(i) Individual pump records as specified in § 63.1035(d)(2).

(ii) Trial evaluation program documentation as specified in § 63.1035(d)(6)(iii).

(iii) Engineering evaluation documenting the basis for judgement that superior emission performance technology is not applicable as specified in § 63.1035(d)(6)(vi).

(iv) Quality assurance program documentation as specified in § 63.1035(d)(7).

(v) QIP records as specified in § 63.1035(e).

(8) For process units complying with the batch process unit alternative, the owner or operator shall maintain the records specified in paragraphs (c)(8)(i) and (c)(8)(ii) of this section.

(i) Pressure test records as specified in § 63.1036(b)(7).

(ii) Records for equipment added to the process unit as specified in § 63.1036(d).

(9) For process units complying with the enclosed-vented process unit alternative, the owner or operator shall maintain the records for enclosed-vented process units as specified in § 63.1037(b).

§ 63.1039 Reporting requirements.

(a) *Initial Compliance Status Report.* Each owner or operator shall submit an Initial Compliance Status Report according to the procedures in the referencing subpart. The notification shall include the information listed in paragraphs (a)(1) through (a)(3) of this section, as applicable.

(1) The notification shall provide the information listed in paragraphs (a)(1)(i) through (a)(1)(iv) of this section for each process unit or affected facility subject to the requirements of this subpart.

(i) Process unit or affected facility identification.

(ii) Number of each equipment type (e.g., valves, pumps) excluding equipment in vacuum service.

(iii) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(iv) Planned schedule for requirements in §§ 63.1025 and 63.1026.

(2) The notification shall provide the information listed in paragraphs (a)(2)(i) and (a)(2)(ii) of this section for each process unit or affected facility subject to the requirements of § 63.1036(b).

(i) Batch products or product codes subject to the provisions of this subpart, and

(ii) Planned schedule for pressure testing when equipment is configured for production of products subject to the provisions of this subpart.

(3) The notification shall provide the information listed in paragraphs (a)(3)(i) and (a)(3)(ii) of this section for each process unit or affected facility subject to the requirements in § 63.1037.

(i) Process unit or affected facility identification.

(ii) A description of the system used to create a negative pressure in the enclosure and the control device used to comply with the requirements of § 63.1034 of this part.

(b) *Periodic Reports.* The owner or operator shall report the information specified in paragraphs (b)(1) through (b)(8) of this section, as applicable, in the Periodic Report specified in the referencing subpart.

(1) For the equipment specified in paragraphs (b)(1)(i) through (b)(1)(v) of this section, report in a summary format by equipment type, the number of components for which leaks were detected and for valves, pumps and connectors show the percent leakers, and the total number of components monitored. Also include the number of leaking components that were not repaired as required by § 63.1024, and for valves and connectors, identify the number of components that are determined by § 63.1025(c)(3) to be nonrepairable.

(i) Valves in gas and vapor service and in light liquid service pursuant to § 63.1025(b) and (c).

(ii) Pumps in light liquid service pursuant to § 63.1026(b) and (c).

(iii) Connectors in gas and vapor service and in light liquid service pursuant to § 63.1027(b) and (c).

(iv) Agitators in gas and vapor service and in light liquid service pursuant to § 63.1028(c).

(v) Compressors pursuant to § 63.1031(d).

(2) Where any delay of repair is utilized pursuant to § 63.1024(d), report that delay of repair has occurred and report the number of instances of delay of repair.

(3) If applicable, report the valve subgrouping information specified in § 63.1025(b)(4)(iv).

(4) For pressure relief devices in gas and vapor service pursuant to § 63.1030(b) and for compressors pursuant to § 63.1031(f) that are to be operated at a leak detection instrument reading of less than 500 parts per million, report the results of all monitoring to show compliance conducted within the semiannual reporting period.

(5) Report, if applicable, the initiation of a monthly monitoring program for valves pursuant to § 63.1025(b)(3)(i).

(6) Report, if applicable, the initiation of a quality improvement program for pumps pursuant to § 63.1035.

(7) Where the alternative means of emissions limitation for batch processes is utilized, report the information listed in § 63.1036(f).

(8) Report the information listed in paragraph (a) of this section for the Initial Compliance Status Report for process units or affected facilities with later compliance dates. Report any revisions to items reported in an earlier Initial Compliance Status Report if the method of compliance has changed since the last report.

TABLE 1 TO SUBPART UU.—BATCH PROCESSES MONITORING FREQUENCY FOR EQUIPMENT OTHER THAN CONNECTORS

Operating time (% of year)	Equivalent continuous process monitoring frequency time in use		
	Monthly	Quarterly	Semiannually
0 to <25%	Quarterly	Annually	Annually.
25 to <50%	Quarterly	Semiannually	Annually.
50 to <75%	Bimonthly	Three times	Semiannually.

TABLE 1 TO SUBPART UU.—BATCH PROCESSES MONITORING FREQUENCY FOR EQUIPMENT OTHER THAN CONNECTORS—Continued

Operating time (% of year)	Equivalent continuous process monitoring frequency time in use		
	Monthly	Quarterly	Semiannually
75 to 100%	Monthly	Quarterly	Semiannually.

5. Part 63 is amended by adding subpart WW, consisting of §§ 63.1060 through 63.1066, to read as follows.

Subpart WW—National Emission Standards for Storage Vessels (Tanks)—Control Level 2

Sec.
63.1060 Applicability.
63.1061 Definitions.
63.1062 Storage vessel control requirements.
63.1063 Floating roof requirements.
63.1064 Alternative means of emission limitation.
63.1065 Recordkeeping requirements.
63.1066 Reporting requirements.

Subpart WW—National Emission Standards for Storage Vessels (Tanks)—Control Level 2

§ 63.1060 Applicability.

The provisions of this subpart apply to the control of air emissions from storage vessels for which another subpart references the use of this subpart for such air emission control. These air emission standards for storage vessels are placed here for administrative convenience and only apply to those owners and operators of facilities subject to a referencing subpart. The provisions of subpart A (General Provisions) of this part do not apply to this subpart except as noted in the referencing subpart.

§ 63.1061 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in this section.

Capacity means the volume of liquid that is capable of being stored in a vessel, determined by multiplying the vessel's internal cross-sectional area by the internal height of the shell.

Deck cover means a device which covers an opening in a floating roof deck. Some deck covers move horizontally relative to the deck (i.e., a sliding cover).

Empty or *emptying* means the partial or complete removal of stored liquid from a storage vessel. Storage vessels that contain liquid only as wall or bottom clingage, or in pools due to bottom irregularities, are considered completely empty.

External floating roof or *EFR* means a floating roof located in a storage vessel without a fixed roof.

Fill or *filling* means the introduction of liquid into a storage vessel, but not necessarily to capacity.

Fixed roof means a roof that is mounted (i.e., permanently affixed) on a storage vessel and that does not move with fluctuations in stored liquid level.

Flexible fabric sleeve seal means a seal made of an elastomeric fabric (or other material) which covers an opening in a floating roof deck, and which allows the penetration of a fixed roof support column. The seal is attached to the rim of the deck opening and extends to the outer surface of the column. The seal is draped (but does not contact the stored liquid) to allow the horizontal movement of the deck relative to the column.

Floating roof means a roof that floats on the surface of the liquid in a storage vessel. A floating roof substantially covers the stored liquid surface (but is not necessarily in contact with the entire surface), and is comprised of a deck, a rim seal, and miscellaneous deck fittings.

Initial fill or *initial filling means* the first introduction of liquid into a storage vessel that is either newly constructed or has not been in liquid service for a year or longer.

Internal floating roof or *IFR* means a floating roof located in a storage vessel with a fixed roof. For the purposes of this subpart, an external floating roof located in a storage vessel to which a fixed roof has been added is considered to be an internal floating roof.

Liquid-mounted seal means a resilient or liquid-filled rim seal designed to contact the stored liquid.

Mechanical shoe seal or *metallic shoe seal* means a rim seal consisting of a band of metal (or other suitable material) as the sliding contact with the wall of the storage vessel, and a fabric seal to close the annular space between the band and the rim of the floating roof deck. The band is typically formed as a series of sheets (shoes) that are overlapped or joined together to form a ring. The lower end of the band extends into the stored liquid.

Pole float means a float located inside a guidepole that floats on the surface of the stored liquid. The rim of the float has a wiper or seal that extends to the inner surface of the pole.

Pole sleeve means a device which extends from either the cover or the rim of an opening in a floating roof deck to the outer surface of a pole that passes through the opening. The sleeve extends into the stored liquid.

Pole wiper means a seal that extends from either the cover or the rim of an opening in a floating roof deck to the outer surface of a pole that passes through the opening.

Referencing subpart means the subpart that refers an owner or operator to this subpart.

Rim seal means a device attached to the rim of a floating roof deck that spans the annular space between the deck and the wall of the storage vessel. When a floating roof has only one such device, it is a primary seal; when there are two seals (one mounted above the other), the lower seal is the primary seal and the upper seal is the secondary seal.

Slotted guidepole means a guidepole or gaugepole that has slots or holes through the wall of the pole. The slots or holes allow the stored liquid to flow into the pole at liquid levels above the lowest operating level.

Storage vessel or *Tank* means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support and is designed to hold an accumulation of liquids or other materials.

Vapor-mounted seal means a rim seal designed not to be in contact with the stored liquid. Vapor-mounted seals may include, but are not limited to, resilient seals and flexible wiper seals.

§ 63.1062 Storage vessel control requirements.

(a) For each storage vessel to which this subpart applies, the owner or operator shall comply with one of the requirements listed in paragraphs (a)(1) through (a)(3) of this section.

(1) Operate and maintain an IFR.

(2) Operate and maintain an EFR.

(3) *Equivalent requirements.* Comply with an equivalent to the requirements in paragraph (a)(1) or (a)(2) of this section, as provided in § 63.1064.

(b) [Reserved]

§ 63.1063 Floating roof requirements.

The owner or operator who elects to use a floating roof to comply with the requirements of § 63.1062 shall comply with the requirements in paragraphs (a) through (e) of this section.

(a) *Design requirements.* (1) *Rim seals.* (i) *Internal floating roof.* An IFR shall be equipped with one of the seal configurations listed in paragraphs (a)(1)(i)(A) through (a)(1)(i)(C) of this section.

(A) A liquid-mounted seal.

(B) A mechanical shoe seal.

(C) Two seals mounted one above the other. The lower seal may be vapor-mounted.

(D) If the IFR is equipped with a vapor-mounted seal as of the proposal date for a referencing subpart, paragraphs (a)(1)(i)(A) through (a)(1)(i)(C) of this section do not apply until the next time the storage vessel is completely emptied and degassed, or 10 years after promulgation of the referencing subpart, whichever occurs first.

(ii) *External floating roof.* An EFR shall be equipped with one of the seal configurations listed in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section.

(A) A liquid-mounted seal and a secondary seal.

(B) A mechanical shoe seal and a secondary seal. The upper end of the shoe(s) shall extend a minimum of 61 centimeters (24 inches) above the stored liquid surface.

(C) If the EFR is equipped with a liquid-mounted seal or mechanical shoe seal, or a vapor-mounted seal and secondary seal, as of the proposal date for a referencing subpart, the seal options specified in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section do not apply until the next time the storage vessel is completely emptied and degassed, or 10 years after the promulgation date of the referencing subpart, whichever occurs first.

(2) *Deck fittings.* Openings through the deck of the floating roof shall be equipped as described in paragraphs (a)(2)(i) through (a)(2)(viii) of this section.

(i) Each opening except those for automatic bleeder vents (vacuum breaker vents) and rim space vents shall have its lower edge below the surface of the stored liquid.

(ii) Each opening except those for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and deck drains shall be equipped with a deck cover. The deck cover shall be equipped with a gasket between the cover and the deck.

(iii) Each automatic bleeder vent (vacuum breaker vent) and rim space vent shall be equipped with a gasketed lid, pallet, flapper, or other closure device.

(iv) Each opening for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(v) Each opening for a sample well or deck drain (that empties into the stored liquid) may be equipped with a slit fabric seal or similar device that covers at least 90 percent of the opening, instead of a deck cover.

(vi) Each cover on access hatches and gauge float wells shall be designed to be bolted or fastened when closed.

(vii) Each opening for an unslotted guidepole shall be equipped with a pole wiper, and each unslotted guidepole shall be equipped with a gasketed cap on the top of the guidepole.

(viii) Each opening for a slotted guidepole shall be equipped with one of the control device configurations specified in paragraphs (a)(2)(viii)(A) and (a)(2)(viii)(B) of this section.

(A) A pole wiper and a pole float. The wiper or seal of the pole float shall be at or above the height of the pole wiper.

(B) A pole wiper and a pole sleeve.

(ix) If the floating roof does not meet the requirements listed in paragraphs (a)(2)(i) through (a)(2)(viii) of this section as of the proposal date of the referencing subpart, these requirements do not apply until the next time the vessel is completely emptied and degassed, or 10 years after the promulgation date of the referencing subpart, whichever occurs first.

(b) *Operational requirements.* (1) The floating roof shall float on the stored liquid surface at all times, except when the floating roof is supported by its leg supports or other support devices (e.g., hangers from the fixed roof).

(2) When the storage vessel is storing liquid, but the liquid depth is insufficient to float the floating roof, the process of filling to the point of refloating the floating roof shall be continuous and shall be performed as soon as practical.

(3) Each cover over an opening in the floating roof, except for automatic bleeder vents (vacuum breaker vents) and rim space vents, shall be closed at all times, except when the cover must be open for access.

(4) Each automatic bleeder vent (vacuum breaker vent) and rim space vent shall be closed at all times, except when required to be open to relieve excess pressure or vacuum, in accordance with the manufacturer's design.

(5) Each unslotted guidepole cap shall be closed at all times except when gauging the liquid level or taking liquid samples.

(c) *Inspection frequency requirements.* (1) *Internal floating roofs.* Internal floating roofs shall be inspected as specified in paragraph (d)(1) of this section before the initial filling of the storage vessel. Subsequent inspections shall be performed as specified in paragraph (c)(1)(i) or (c)(1)(ii) of this section.

(i) Internal floating roofs shall be inspected as specified in paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) of this section.

(A) At least once per year the IFR shall be inspected as specified in paragraph (d)(2) of this section.

(B) Each time the storage vessel is completely emptied and degassed, or every 10 years, whichever occurs first, the IFR shall be inspected as specified in paragraph (d)(1) of this section.

(ii) Instead of the inspection frequency specified in paragraph (c)(1)(i) of this section, internal floating roofs with two rim seals may be inspected as specified in paragraph (d)(1) of this section each time the storage vessel is completely emptied and degassed, or every 5 years, whichever occurs first.

(2) *External floating roofs.* External floating roofs shall be inspected as specified in paragraphs (c)(2)(i) through (c)(2)(iv) of this section.

(i) Within 90 days after the initial filling of the storage vessel, the primary and secondary rim seals shall be inspected as specified in paragraph (d)(3) of this section.

(ii) The secondary seal shall be inspected at least once every year, and the primary seal shall be inspected at least every 5 years, as specified in paragraph (d)(3) of this section.

(iii) Each time the storage vessel is completely emptied and degassed, or every 10 years, whichever occurs first, the EFR shall be inspected as specified in paragraph (d)(1) of this section.

(iv) If the owner or operator determines that it is unsafe to perform the floating roof inspections specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this section, the owner or operator shall comply with the requirements of paragraph (c)(2)(iv)(A) or (c)(2)(iv)(B) of this section.

(A) The inspections shall be performed no later than 30 days after the determination that the floating roof is unsafe.

(B) The storage vessel shall be removed from liquid service no later

than 45 days after determining the floating roof is unsafe. If the vessel cannot be emptied within 45 days, the owner or operator may utilize up to two extensions of up to 30 additional days each. If the vessel cannot be emptied within 45 days, the owner or operator may utilize up to two extensions of up to 30 additional days each. Documentation of a decision to use an extension shall include an explanation of why it was unsafe to perform the inspection, documentation that alternative storage capacity is unavailable, and a schedule of actions that will ensure that the vessel will be emptied as soon as practical.

(d) *Inspection procedure requirements.* Floating roof inspections shall be conducted as specified in paragraphs (d)(1) through (d)(3) of this section, as applicable. If a floating roof fails an inspection, the owner or operator shall comply with the repair requirements of paragraph (e) of this section.

(1) Floating roof (IFR and EFR) inspections shall be conducted by visually inspecting the floating roof deck, deck fittings, and rim seals from within the storage vessel. The inspection may be performed entirely from the top side of the floating roof, as long as there is visual access to all deck components specified in paragraph (a) of this section. Any of the conditions described in paragraphs (d)(1)(i) through (d)(1)(v) of this section constitutes inspection failure.

(i) Stored liquid on the floating roof.

(ii) Holes or tears in the primary or secondary seal (if one is present).

(iii) Floating roof deck, deck fittings, or rim seals that are not functioning as designed (as specified in paragraph (a) of this section).

(iv) Failure to comply with the operational requirements of paragraph (b) of this section.

(v) Gaps of more than 0.32 centimeters (⅛ inch) between any deck fitting gasket, seal, or wiper (required by paragraph (a) of this section) and any surface that it is intended to seal.

(2) Tank-top inspections of IFR's shall be conducted by visually inspecting the floating roof deck, deck fittings, and rim seal through openings in the fixed roof. Any of the conditions described in paragraphs (d)(1)(i) through (d)(1)(iv) of this section constitutes inspection failure. Identification of holes or tears in the rim seal is required only for the seal that is visible from the top of the storage vessel.

(3) Seal gap inspections for EFR's shall determine the presence and size of gaps between the rim seals and the wall of the storage vessel by the procedures specified in paragraph (d)(3)(i) of this section. Any exceedance of the gap requirements specified in paragraphs (d)(3)(ii) and (d)(3)(iii) of this section constitutes inspection failure.

(i) Rim seals shall be measured for gaps at one or more levels while the EFR is floating, as specified in paragraphs (d)(3)(i)(A) through (d)(3)(i)(F) of this section.

(A) The inspector shall hold a 0.32 centimeter (⅛ inch) diameter probe vertically against the inside of the storage vessel wall, just above the rim seal, and attempt to slide the probe down between the seal and the vessel wall. Each location where the probe passes freely (without forcing or binding against the seal) between the seal and the vessel wall constitutes a gap.

(B) The length of each gap shall be determined by inserting the probe into the gap (vertically) and sliding the probe along the vessel wall in each direction as far as it will travel freely without binding between the seal and the vessel wall. The circumferential length along which the probe can move freely is the gap length.

(C) The maximum width of each gap shall be determined by inserting probes of various diameters between the seal and the vessel wall. The smallest probe diameter should be 0.32 centimeter, and larger probes should have diameters in increments of 0.32 centimeter. The diameter of the largest probe that can be inserted freely anywhere along the length of the gap is the maximum gap width.

(D) The average width of each gap shall be determined by averaging the minimum gap width (0.32 centimeter) and the maximum gap width.

(E) The area of a gap is the product of the gap length and average gap width.

(F) The ratio of accumulated area of rim seal gaps to storage vessel diameter shall be determined by adding the area of each gap, and dividing the sum by the nominal diameter of the storage vessel. This ratio shall be determined separately for primary and secondary rim seals.

(ii) The ratio of seal gap area to vessel diameter for the primary seal shall not exceed 212 square centimeters per meter of vessel diameter (10 square inches per foot of vessel diameter), and the maximum gap width shall not exceed 3.81 centimeters (1.5 inches).

(iii) The ratio of seal gap area to vessel diameter for the secondary seal shall not exceed 21.2 square centimeters per meter (1 square inch per foot), and the maximum gap width shall not exceed 1.27 centimeters (0.5 inches), except when the secondary seal must be pulled back or removed to inspect the primary seal.

(e) *Repair requirements.* Conditions causing inspection failures under paragraph (d) of this section shall be repaired as specified in paragraph (e)(1) or (e)(2) of this section.

(1) If the inspection is performed while the storage vessel is not storing liquid, repairs shall be completed before the refilling of the storage vessel with liquid.

(2) If the inspection is performed while the storage vessel is storing liquid, repairs shall be completed or the vessel removed from service within 45 days. If a repair cannot be completed and the vessel cannot be emptied within 45 days, the owner or operator may use up to 2 extensions of up to 30 additional days each. Documentation of a decision to use an extension shall include a description of the failure, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be completely emptied as soon as practical.

§ 63.1064 Alternative means of emission limitation.

(a) An alternate control device may be substituted for a control device specified in § 63.1063 if the alternate device has an emission factor less than or equal to the emission factor for the device specified in § 63.1063. Requests for the use of alternate devices shall be made as specified in § 63.1066(b)(3). Emission factors for the devices specified in § 63.1063 are published in EPA Report No. AP–42, Compilation of Air Pollutant Emission Factors.

(b) Tests to determine emission factors for an alternate device shall accurately simulate conditions under which the device will operate, such as wind, temperature, and barometric pressure. Test methods that can be used to perform the testing required in this paragraph include, but are not limited to, the methods listed in paragraphs (b)(1) through (b)(3) of this section.

(1) American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 19, Section 3, Part A, Wind Tunnel Test Method for the Measurement of Deck-Fitting Loss Factors for External Floating-Roof Tanks.

(2) API Manual of Petroleum Measurement Standards, Chapter 19, Section 3, Part B, Air Concentration Test Method for the Measurement of Rim Seal Loss Factors for Floating-Roof Tanks.

(3) API Manual of Petroleum Measurement Standards, Chapter 19, Section 3, Part E, Weight Loss Test Method for the Measurement of Deck-Fitting Loss Factors for Internal Floating-Roof Tanks.

(c) An alternate combination of control devices may be substituted for any combination of rim seal and deck fitting control devices specified in § 63.1063 if the alternate combination emits no more than the combination specified in § 63.1063. The emissions from an alternate combination of control devices shall be determined using AP–42 or as specified in paragraph (b) of this section. The emissions from a combination of control devices specified in § 63.1063 shall be determined using AP–42. Requests for the use of alternate devices shall be made as specified in § 63.1066(b)(3).

§ 63.1065 Recordkeeping requirements.

The owner or operator shall keep the records required in paragraph (a) of this section for as long as liquid is stored. Records required in paragraphs (b), (c) and (d) of this section shall be kept for at least 5 years. Records shall be kept in such a manner that they can be readily accessed within 24 hours. Records may be kept in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, floppy disk, magnetic tape, or microfiche.

(a) *Vessel dimensions and capacity.* A record shall be kept of the dimensions of the storage vessel, an analysis of the capacity of the storage vessel, and an identification of the liquid stored.

(b) *Inspection results.* Records of floating roof inspection results shall be kept as specified in paragraphs (b)(1) and (b)(2) of this section.

(1) If the floating roof passes inspection, a record shall be kept that includes the information specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section. If the floating roof fails inspection, a record shall be kept that includes the information specified in paragraphs (b)(1)(i) through (b)(1)(v) of this section.

(i) Identification of the storage vessel that was inspected.

(ii) The date of the inspection.

(iii) A description of all inspection failures.

(iv) A description of all repairs and the dates they were made.

(v) The date the storage vessel was removed from service, if applicable.

(2) A record shall be kept of EFR seal gap measurements, including the raw data obtained and any calculations performed.

(c) *Floating roof landings.* The owner or operator shall keep a record of the date when a floating roof is set on its legs or other support devices. The owner or operator shall also keep a record of the date when the roof was refloated, and the record shall indicate whether the process of refloating was continuous.

(d) An owner or operator who elects to use an extension in accordance with § 63.1063(e)(2) or § 63.1063(c)(2)(iv)(B) shall keep the documentation required by those paragraphs.

§ 63.1066 Reporting requirements.

(a) *Notification of initial startup.* If the referencing subpart requires that a notification of initial startup be filed, then the content of the notification of initial startup shall include (at a minimum) the information specified in the referencing subpart and the information specified in paragraphs (a)(1) and (a)(2) of this section.

(1) The identification of each storage vessel, its capacity and the liquid stored in the storage vessel.

(2) A statement of whether the owner or operator of the source can achieve compliance by the compliance date specified in referencing subpart.

(b) *Periodic reports.* Report the information specified in paragraphs (b)(1) through (b)(4) of this section, as applicable, in the periodic report specified in the referencing subpart.

(1) *Notification of inspection.* To provide the Administrator the opportunity to have an observer present, the owner or operator shall notify the Administrator at least 30 days before an inspection required by §§ 63.1063(d)(1) or (d)(3). If an inspection is unplanned and the owner or operator could not have known about the inspection 30 days in advance, then the owner or operator shall notify the Administrator at least 7 days before the inspection. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, the notification including the written documentation may be made in writing and sent so that it is received by the Administrator at least 7 days before the inspection. If a delegated State or local agency is notified, the owner or operator is not required to notify the Administrator. A delegated State or local agency may waive the requirement for notification of inspections.

(2) *Inspection results.* The owner or operator shall submit a copy of the inspection record (required in § 63.1065) when inspection failures occur.

(3) *Requests for alternate devices.* The owner or operator requesting the use of an alternate control device shall submit a written application including emissions test results and an analysis demonstrating that the alternate device has an emission factor that is less than or equal to the device specified in § 63.1063.

(4) Requests for extensions. An owner or operator who elects to use an extension in accordance with § 63.1063(e)(2) or § 63.1063(c)(2)(iv)(B) shall submit the documentation required by those paragraphs.

6. Part 63 is amended by adding subpart YY, consisting of §§ 63.1100 through 63.1113, to read as follows.

Subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

Sec.

63.1100 Applicability.
63.1101 Definitions.
63.1102 Compliance schedule.
63.1103 Source category-specific applicability, definitions, and requirements.
63.1104 Process vents from continuous unit operations: applicability assessment procedures and methods.
63.1105 [Reserved]
63.1106 [Reserved]
63.1107 Equipment leaks: applicability assessment procedures and methods.
63.1108 Compliance with standards and operation and maintenance requirements.
63.1109 Recordkeeping requirements.
63.1110 Reporting requirements.
63.1111 Startup, shutdown, and malfunction.
63.1112 Extension of compliance, and performance test, monitoring, recordkeeping, and reporting waivers and alternatives.
63.1113 Procedures for approval of alternative means of emission limitation.

Subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

§ 63.1100 Applicability.

(a) *General.* This subpart applies to source categories and affected sources specified in § 63.1103(a) through (d) of this subpart. The affected emission points, by source category, are summarized in table 1 of this section. This table also delineates the section and paragraph of the rule that directs an owner or operator of an affected source to source category-specific control, monitoring, recordkeeping, and reporting requirements.

TABLE 1 TO § 63.1100(a).—SOURCE CATEGORY MACT [a] APPLICABILITY

Source category	Storage vessels	Process vents	Transfer racks	Equipment leaks	Waste-water streams	Other	Source category MACT requirements
Acetal Resins Production	Yes	Yes	No	Yes	Yes	No	§ 63.1103(a)
Acrylic and Modacrylic Fibers Production	Yes	Yes	No	Yes	Yes	Yes [b]	§ 63.1103(b)
Hydrogen Fluoride Production	Yes	Yes	Yes	Yes	No	No	§ 63.1103(c)
Polycarbonate Production	Yes	Yes	No	Yes	Yes	No	§ 63.1103(d)

[a] Maximum achievable control technology.
[b] Fiber spinning lines using spinning solution or suspension containing acrylonitrile.

(b) *Subpart A requirements.* The following provisions of subpart A of this part (General Provisions), §§ 63.1 through 63.5, and §§ 63.12 through 63.15, apply to owners or operators of affected sources subject to this subpart.

(c) *Research and development facilities.* The provisions of this subpart do not apply to research and development facilities, consistent with section 112(b)(7) of the Act.

(d) *Primary product determination and applicability.* The primary product of a process unit shall be determined according to the procedures specified in paragraphs (d)(1) and (2) of this section. Paragraphs (d(3), (4), and (5) of this section discuss compliance for those process units operated as flexible operation units.

(1) If a process unit only manufactures one product, then that product shall represent the primary product of the process unit.

(2) If a process unit is designed and operated as a flexible operation unit, the primary product shall be determined as specified in paragraphs (d)(2)(i) or (ii) of this section based on the anticipated operations for the 5 years following the promulgation date for existing affected sources and for the first 5 years after initial startup for new affected sources.

(i) If the flexible operation unit will manufacture one product for the greatest percentage of operating time over the five-year period, then that product shall represent the primary product of the flexible operation unit.

(ii) If the flexible operation unit will manufacture multiple products equally based on operating time, then the product with the greatest production on a mass basis over the five-year period shall represent the primary product of the flexible operation unit.

(3) Once the primary product of a process unit has been determined to be a product produced by a source category subject to this subpart, the owner or operator of the affected source shall comply with the standards for the primary product production process unit.

(4) The determination of the primary product for a process unit, including the assessment of applicability of this subpart to process units that are designed and operated as flexible operation units, shall be reported in the Notification of Compliance Status Report required by § 63.1110(a)(4) when the primary product is determined to be a product produced by a source category subject to requirements under this subpart. The Notification of Compliance Status shall include the information specified in either paragraph (d)(4)(i) or (ii) of this section. If the primary product is determined to be something other than a product produced by a source category subject to requirements under this subpart, the owner or operator shall retain information, data, and analyses used to document the basis for the determination that the primary product is not produced by a source category subject to requirements under this subpart.

(i) If the process unit manufactures only one product subject to requirements under this subpart, the identity of that product.

(ii) If the process unit is designed and operated as a flexible operation unit, the information specified in paragraphs (d)(4)(ii)(A) through (C) of this section, as appropriate.

(A) The identity of the primary product.

(B) Information concerning operating time and/or production mass for each product that was used to make the determination of the primary product under paragraph (d)(2)(i) or (ii) of this section.

(5) When a flexible operation unit that is subject to this subpart is producing a product other than a product subject to this subpart, or is producing a product subject to this subpart that is not the primary product, the owner or operator shall comply with either paragraph (d)(5) (i) or (ii) of this section for each emission point.

(i) The owner or operator shall control emissions during the production of all products in accordance with the requirements for the production of the primary product. As appropriate, the owner or operator shall demonstrate that the parameter monitoring level established for the primary product is also appropriate for those periods when products other than the primary product are being produced. Documentation of this demonstration shall be submitted in the Notification of Compliance Status report required by § 63.1110(a)(4).

(ii) The owner or operator shall determine, for the production of each product, whether control is required in accordance with the applicable criteria for the primary product in § 63.1103. If control is required, the owner or operator shall establish separate parameter monitoring levels, as appropriate, for the production of each product. The parameter monitoring levels developed shall be submitted in the Notification of Compliance Status report required by § 63.1110(a)(4).

(e) *Storage vessel ownership determination.* To determine the process unit to which a storage vessel shall belong, the owner or operator shall sequentially follow the procedures specified in paragraphs (e)(1) through (8) of this section, stopping as soon as the determination is made.

(1) If a storage vessel is already subject to another subpart of this part on the date of promulgation for an affected source under the generic MACT, that storage vessel shall belong to the process unit subject to the other subpart.

(2) If a storage vessel is dedicated to a single process unit, the storage vessel shall belong to that process unit.

(3) If a storage vessel is shared among process units, then the storage vessel shall belong to that process unit located on the same plant site as the storage vessel that has the greatest input into or output from the storage vessel (i.e., the process unit has the predominant use of the storage vessel.)

(4) If predominant use cannot be determined for a storage vessel that is shared among process units and if only one of those process units is subject to this subpart, the storage vessel shall belong to that process unit.

(5) If predominant use cannot be determined for a storage vessel that is shared among process units and if more than one of the process units are subject to standards under this subpart that have different primary products, then the owner or operator shall assign the storage vessel to any one of the process units sharing the storage vessel.

(6) If the predominant use of a storage vessel varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding the date of promulgation of standards for an affected source under this subpart or based on the expected utilization for the 5 years following the promulgation date of standards for an affected source under this subpart for existing affected sources, whichever is more representative of the expected operations for that storage vessel, and based on the expected utilization for the 5 years after initial startup for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status Report required by § 63.1110(a)(4). If the predominant use changes, the redetermination of predominant use shall be reported in the next Periodic Report.

(7) If the storage vessel begins receiving material from (or sending material to) another process unit; ceases to receive material from (or send material to) a process unit; or if the applicability of this subpart to a storage vessel has been determined according to the provisions of paragraphs (e)(1) through (6) of this section and there is a significant change in the use of the storage vessel that could reasonably change the predominant use, the owner or operator shall reevaluate the applicability of this subpart to the storage vessel.

(8) Where a storage vessel is located at a major source that includes one or more process units that place material into, or receive materials from, the storage vessel, but the storage vessel is located in a tank farm, the applicability of this subpart shall be determined according to the provisions in paragraphs (e)(8)(i) through (iii) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw material, as appropriate). With respect to any process unit, an intervening storage vessel means a storage vessel connected by hard-piping to the process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is only one process unit at a major source that meets the criteria of paragraph (e)(8)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that process unit.

(iii) If there are two or more process units at the major source that meet the criteria of paragraph (e)(8)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraph (e)(6) of this section. The predominant use shall be determined among only those process units that meet the criteria of paragraph (e)(8)(i) of this section.

(f) *Recovery operation equipment ownership determination.* To determine the process unit to which recovery equipment shall belong, the owner or operator shall sequentially follow the procedures specified in paragraphs (f)(1) through (7) of this section, stopping as soon as the determination is made.

(1) If recovery operation equipment is already subject to another subpart of this part on the date standards are promulgated for an affected source, that recovery operation equipment shall belong to the process unit subject to the other subpart.

(2) If recovery operation equipment is used exclusively by a single process unit, the recovery operation shall belong to that process unit.

(3) If recovery operation equipment is shared among process units, then the recovery operation equipment shall belong to that process unit that has the greatest input into or output from the recovery operation equipment (i.e., that process unit has the predominant use of the recovery operation equipment).

(4) If predominant use cannot be determined for recovery operation equipment that is shared among process units and if one of those process units is a process unit subject to this subpart, the recovery operation equipment shall belong to the process unit subject to this subpart.

(5) If predominant use cannot be determined for recovery operation equipment that is shared among process units and if more than one of the process units are process units that have different primary products and that are subject to this subpart, then the owner or operator shall assign the recovery operation equipment to any one of those process units.

(6) If the predominant use of recovery operation equipment varies from year to year, then the predominant use shall be determined based on the utilization that occurred during the year preceding the promulgation date of standards for an affected source under this subpart or based on the expected utilization for the 5 years following the promulgation date for standards for an affected source under this subpart for existing affected sources, whichever is the more representative of the expected operations for the recovery operations equipment, and based on the expected utilization for the first 5 years after initial startup for new affected sources. This determination shall be reported in the Notification of Compliance Status Report required by § 63.1110(a)(4). If the predominant use changes, the redetermination of predominant use shall be reported in the next Periodic Report.

(7) If there is an unexpected change in the utilization of recovery operation equipment that could reasonably change the predominant use, the owner or operator shall redetermine to which process unit the recovery operation belongs by reperforming the procedures specified in paragraphs (f)(2) through (6) of this section.

(g) *Overlap with other regulations.* Paragraphs (g)(1) through (4) of this section specify the applicability of subpart YY emission point requirements when other rules may apply. Where subpart YY of this part allows an owner or operator an option to comply with one or another regulation to comply with subpart YY of this part, an owner or operator must report which regulation they choose to comply with in the Notification of Compliance Status report required by § 63.1110(a)(4).

(1) *Overlap of subpart YY with other regulations for storage vessels.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a storage vessel that is part of an existing source that is subject to the storage vessel requirements of this subpart and the storage vessel requirements of subpart G (the hazardous organic national emission standards for hazardous air pollutants (the HON)) of this part is in compliance with the requirements of this subpart if it complies with either such requirement and has notified the Administrator in the Notification of Compliance Status report required by § 63.1110(a)(4).

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a storage vessel that is part of an existing source that is subject to the storage vessel requirements of this subpart and to the storage vessel requirements of subpart Ka or Kb of part 60 is required only to comply with the storage vessel requirements of this subpart.

(2) *Overlap of subpart YY with other regulations for process vents.* After the

compliance dates specified in § 63.1102 for an affected source subject to this subpart, a process vent that is part of an existing source that is subject to the process vent requirements of this subpart and to the process vent requirements of subpart G (the HON) of this part is in compliance with this subpart if it complies with either such requirement and has notified the Administrator in the Notification of Compliance Status report required by § 63.1110(a)(4).

(3) *Overlap of subpart YY with other regulations for transfer racks.* After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a transfer rack that is part of an existing source that is subject to the transfer rack requirements of this subpart and to the transfer rack requirements of subpart G (the HON) of this part is in compliance with this subpart if it complies with either such requirement and has notified the Administrator in the Notification of Compliance Status report required by § 63.1110(a)(4).

(4) *Overlap of subpart YY with other regulations for equipment leaks.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, equipment that is part of an existing source that is subject to the equipment leak control requirements of subpart TT (National Emission Standards for Equipment Leaks—Control Level 1) pursuant to this subpart and to the equipment leak control requirements of subpart VV of part 60 or subpart V of part 61 is required only to comply with the equipment leak requirements of this subpart.

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, equipment that is part of an existing source that is subject to the equipment leak control requirements of subpart UU (National Emission Standards for Equipment Leaks—Control Level 2) of this part pursuant to this subpart and to the equipment leak control requirements of subpart H (the HON) or subpart I of this part is in compliance with the equipment leak control requirements of this subpart if it complies with either such requirement and has notified the Administrator in the Notification of Compliance Status report required by § 63.1110(a)(4).

§ 63.1101 Definitions.

All terms used in this subpart shall have the meaning given them in the Act, in 40 CFR 63.2 (General Provisions), and in this section.

Batch cycle refers to manufacturing a product from start to finish in a batch unit operation.

Batch emission episode means a discrete venting episode that may be associated with a single unit operation. A unit operation may have more than one batch emission episode per batch cycle. For example, a displacement of vapor resulting from the charging of a vessel with organic HAP will result in a discrete emission episode. If the vessel is then heated, there may also be another discrete emission episode resulting from the expulsion of expanded vapor. Both emission episodes may occur during the same batch cycle in the same vessel or unit operation. There are possibly other emission episodes that may occur from the vessel or other process equipment, depending on process operations.

Batch unit operation means a unit operation involving intermittent or discontinuous feed into equipment and, in general, involves the emptying of equipment after the batch cycle ceases and prior to beginning a new batch cycle. Mass, temperature, concentration and other properties of the process may vary with time. Addition of raw material and withdrawal of product do not simultaneously occur in a batch unit operation.

Bottoms receiver means a tank that collects distillation bottoms before the stream is sent for storage or for further downstream processing.

By compound means by individual stream components, not carbon equivalents.

Capacity means the volume of liquid that is capable of being stored in a storage vessel, determined by multiplying the vessel's internal cross-sectional area by the internal height of the shell.

Closed vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device. A closed vent system does not include the vapor collection system that is part of any tank truck or railcar or the loading arm or hose that is used for vapor return. For transfer racks, the closed vent system begins at, and includes, the first block valve on the downstream side of the loading arm or hose used to convey displaced vapors.

Combined vent stream means a combination of emission streams from continuous and/or batch unit operations.

Compliance equipment means monitoring equipment used by an owner or operator of an affected source under this subpart to demonstrate compliance with an operation or emission limit standard.

Continuous parameter monitoring system or *CPMS* means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, and that is used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Continuous unit operation means a unit operation where the inputs and outputs flow continuously. Continuous unit operations typically approach steady-state conditions. Continuous unit operations typically involve the simultaneous addition of raw material and withdrawal of the product.

Control device means, with the exceptions noted below, a combustion device, recovery device, recapture device, or any combination of these devices used to comply with this subpart or a referencing subpart. For process vents from continuous unit operations at affected sources in source categories where the applicability criteria includes a TRE index value, recovery devices are not considered to be control devices. Primary condensers on steam strippers or fuel gas systems are not considered to be control devices.

Day means a calendar day.

Distillate receiver means overhead receivers, overhead accumulators, reflux drums, and condenser(s) including ejector condenser(s) associated with a distillation unit.

Distillation unit means a device or vessel in which one or more feed streams are separated into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and the vapor phases by vaporization and condensation as they approach equilibrium within the distillation unit. Distillation unit includes the distillate receiver, reboiler, and any associated vacuum pump or steam jet.

Emission point means an individual process vent, storage vessel, transfer rack, wastewater stream, kiln, fiber spinning line, equipment leak, or other point where a gaseous stream is released.

Equipment means each of the following that is subject to control under this subpart: pump, compressor, agitator, pressure relief device, sampling collection system, open-ended valve or line, valve, connector, instrumentation system, and surge control vessel and bottoms in organic hazardous air pollutant service as defined in § 63.1103 for the applicable chemical manufacturing production unit; and any control device or system used to comply with this subpart.

Equivalent method means any method of sampling and analysis for an air pollutant that has been demonstrated to the Administrator's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

Excess emissions means emissions in excess of those that would have occurred if there were no start-up, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this subpart.

Final recovery device means the last recovery device on a process vent stream from a continuous unit operation at an affected source in a source category where the applicability criteria includes a TRE index value. The final recovery device usually discharges to a combustion device, recapture device, or directly to the atmosphere.

Flexible operation unit means a process unit that manufactures different chemical products periodically by alternating raw materials or operating conditions.

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as a fuel gas in combustion devices or in-process combustion equipment, such as furnaces and gas turbines, either singly or in combination.

Halogens and hydrogen halides means hydrogen chloride (HCl), chlorine (Cl2), hydrogen bromide (HBr), bromine (Br2), and hydrogen fluoride (HF).

Impurity means a substance that is produced coincidentally with the primary product, or is present in a raw material. An impurity does not serve a useful purpose in the production or use of the primary product and is not isolated.

Initial startup means, for new sources, the first time the source begins production. For additions or changes not defined as a new source by this subpart, initial startup means the first time additional or changed equipment is put into operation. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startup (as defined in this section) of process units following malfunctions or process unit shutdowns. Except for equipment leaks, initial startup also does not include subsequent startups (as defined in this section) of process units following changes in product for flexible operation units or following recharging of equipment in batch unit operations.

Low throughput transfer rack means a transfer rack that transfers less than a total of 11.8 million liters per year of liquid containing regulated HAP.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Maximum true vapor pressure means the equilibrium partial pressure exerted by the total organic HAP in the stored or transferred liquid at the temperature equal to the highest calendar-month average of the liquid storage or transfer temperature for liquids stored or transferred above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored or transferred at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum Institute Publication 2517, Evaporation Loss From External Floating-Roof Tanks (incorporated by reference as specified in § 63.14 of subpart A of this part); or

(2) As obtained from standard reference texts; or

(3) As determined by the American Society for Testing and Materials Method D2879–83 (incorporated by reference as specified in § 63.14 of subpart A of this part); or

(4) Any other method approved by the Administrator.

On-site means, with respect to records required to be maintained by this subpart, a location within a plant site that encompasses the affected source. On-site includes, but is not limited to, the affected source to which the records pertain, or central files elsewhere at the plant site.

Organic hazardous air pollutant or *organic HAP* means any organic chemicals that are also HAP.

Permitting authority means one of the following:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661) and part 71 of this chapter.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Process condenser means a condenser whose primary purpose is to recover material as an integral part of a process. The condenser must support a vapor-to-liquid phase change for periods of source equipment operation that are above the boiling or bubble point of substance(s). Examples of process condensers include distillation condensers, reflux condensers, process condensers in line prior to the vacuum source, and process condensers used in stripping or flashing operations.

Process unit means the equipment assembled and connected by pipes or ducts to process raw and/or intermediate materials and to manufacture an intended product. A process unit includes more than one unit operation. A process unit includes, but is not limited to, process vents, storage vessels, and equipment.

Process unit shutdown means a work practice or operational procedure that stops production from a process unit, or part of a process unit during which practice or procedure it is technically feasible to clear process material from the process unit, or part of the process unit, consistent with safety constraints and during which repairs can be effected. The following are not considered process unit shutdowns:

(1) An unscheduled work practice or operational procedure that stops production from a process unit, or part of a process unit, for less than 24 hours.

(2) An unscheduled work practice or operational procedure that would stop production from a process unit, or part of a process unit, for a shorter period of time than would be required to clear the process unit, or part of the process unit, of materials and start up the unit and result in greater emissions than delay of repair of leaking components until the next scheduled process unit shutdown.

(3) The use of spare equipment and technically feasible bypassing of equipment without stopping production.

Process vent means a piece of equipment that processes a gas stream (both batch and continuous streams) during operation of the unit within a manufacturing process unit that meets

the applicability criteria of this subpart. Process vents process gas streams that are either discharged directly to the atmosphere or are discharged to the atmosphere after diversion through a product recovery device. Process vents include vents from distillate receivers, product separators, and ejector-condensers. Process vents exclude relief valve discharges and leaks from equipment regulated under this subpart. Process vents that process gas streams containing less than or equal to 0.005 weight-percent organic HAP are not subject to the process vent requirements of this subpart.

Product means a compound or chemical which is manufactured as the intended product of the applicable production process unit as defined in § 63.1103. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. For example, a recapture device may recover chemicals primarily for disposal. Recapture devices include, but are not limited to, absorbers, carbon adsorbers, and condensers. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

Research and development facility means laboratory and pilot plant operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.

Shutdown means the cessation of operation of a regulated source and equipment required or used to comply with this subpart, or the emptying and degassing of a storage vessel. Shutdown is defined here for purposes of including, but not limited to, periodic maintenance, replacement of equipment, or repair. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches.

Startup means the setting into operation of a regulated source and/or equipment required or used to comply with this subpart. Startup includes initial startup, operation solely for testing equipment, the recharging of equipment in batch operation, and transitional conditions due to changes in product for flexible operation units.

Storage vessel or *Tank*, for the purposes of this subpart, means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) that provide structural support and is designed to hold an accumulation of liquids or other materials. Storage vessel does not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Bottoms receiver tanks;

(3) Surge control vessels; or

(4) Vessels storing wastewater.

Subsequent startup means any setting into operation of a regulated source and/or equipment required or used to comply with this subpart following the initial startup.

Surge control vessel means a feed drum, recycle drum, or intermediate vessel. Surge control vessels are used within a process unit (as defined in this subpart) when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

Total organic compounds or *TOC* means those compounds, excluding methane and ethane, measured according to the procedures of Method 18 or Method 25A of appendix A of part 60.

Total resource effectiveness index value or *TRE index value* means a measure of the supplemental total resource requirement per unit reduction of organic HAP associated with a process vent stream, based on vent stream flow rate, emission rate of organic HAP, net heating value, and corrosion properties (whether or not the vent stream contains halogenated compounds), as quantified by the equations given under § 63.1104(e).

Transfer rack means a single system used to fill bulk cargo tanks mounted on or in a truck or railcar. A transfer rack includes all loading arms, pumps, meters, shutoff valves, relief valves, and other piping and equipment necessary for the transfer operation. Transfer equipment and operations that are physically separate (i.e., do not share common piping, valves, and other equipment) are considered to be separate transfer racks.

Unit operation means distinct equipment used in processing, among other things, to prepare reactants, facilitate reactions, separate and purify products, and recycle materials. Equipment used for these purposes includes, but is not limited to, reactors, distillation columns, extraction columns, absorbers, decanters, dryers, condensers, and filtration equipment.

Vapor balancing system means a piping system that is designed to collect organic HAP vapors displaced from tank trucks or railcars during loading; and to route the collected organic HAP vapors to the storage vessel from which the liquid being loaded originated, or to compress collected organic HAP vapors and commingle with the raw feed of a production process unit.

§ 63.1102 Compliance schedule.

(a) *General requirements.* Affected sources, as defined in § 63.1103(a)(1)(i) for acetyl resins production; § 63.1103(b)(1)(i) for acrylic and modacrylic fiber production; § 63.1103(c)(1)(i) for hydrogen fluoride production; or § 63.1103(d)(1)(i) for polycarbonate production, shall comply with the appropriate provisions of this subpart and the subparts referenced by this subpart according to the schedule described in paragraph (a)(1) or (2) of this section, as appropriate.

(1) *Compliance dates for new and reconstructed sources.* (i) The owner or operator of a new or reconstructed affected source for which construction or reconstruction commences after October 14, 1998 that has an initial startup before the effective date of standards for an acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, or polycarbonate production affected source under this subpart shall comply with this subpart no later than the effective date of standards for the affected source.

(ii) The owner or operator of a new or reconstructed acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, or polycarbonate production affected source that has an initial startup after the effective date of standards for the affected source shall comply with this subpart upon startup of the source.

(iii) The owner or operator of an acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, or polycarbonate production affected source for which construction or reconstruction is commenced after October 14, 1998 but before the effective date of standards for the affected source under this subpart shall comply with this subpart no later than July 1, 2002 if:

(A) The promulgated standard is more stringent than the proposed standard; and

(B) The owner or operator complies with this subpart as proposed during the 3-year period immediately after the effective date of standards for an acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, or polycarbonate production affected source.

(2) *Compliance dates for existing sources.* (i) The owner or operator of an existing acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, or polycarbonate production affected source shall comply with the requirements of this subpart within 3 years after the effective date of standards for the affected source.

(ii) The owner or operator of an acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, or polycarbonate production nonmajor source that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source shall be subject to the relevant standards for existing sources under this subpart. Such sources shall comply with the relevant standard within 3 years of becoming a major source.

§ 63.1103 Source category-specific applicability, definitions, and requirements.

(a) *Acetal resins production applicability, definitions, and requirements.* (1) *Applicability.* (i) *Affected source.* For the acetal resins production source category (as defined in paragraph (a)(2) of this section), the affected source shall comprise all emission points, in combination, listed in paragraphs (a)(1)(i)(A) through (D) of this section, that are associated with an acetal resins production process unit located at a major source, as defined in section 112(a) of the Clean Air Act (Act).

(A) All storage vessels that store liquids containing organic HAP.

(B) All process vents from continuous unit operations (front end process vents and back end process vents).

(C) All wastewater streams associated with the acetal resins production process unit as defined in (a)(2) of this section.

(D) Equipment (as defined in § 63.1101 of this subpart) that contains or contacts organic HAP.

(ii) *Compliance schedule.* The compliance schedule for affected sources as defined in paragraph (a)(1)(i) of this section is specified in § 63.1102(a).

(2) *Definitions.*

Acetal resins production means the production of homopolymers and/or copolymers of alternating oxymethylene units. Acetal resins are also known as polyoxymethylenes, polyacetals, and aldehyde resins. Acetal resins are generally produced by polymerizing formaldehyde (HCHO) with the methylene functional group (CH_2) and are characterized by repeating oxymethylene units (CH_2O) in the polymer backbone.

Back end process vent means any process vent from a continuous unit operation that is not a front end process vent up to the final separation of raw materials and by-products from the stabilized polymer.

Front end process vent means any process vent from a continuous unit operation involved in the purification of formaldehyde feedstock for use in the acetal homopolymer process. All front end process vents are restricted to those vents that occur prior to the polymer reactor.

(3) *Requirements.* Table 1 of this section specifies the acetal resins production standards applicability for existing and new sources. Applicability assessment procedures and methods are specified in §§ 63.1104 through 63.1107. An owner or operator of an affected source is not required to perform tests, TRE calculations or other applicability assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113. The owner or operator must control organic HAP emissions from each affected source emission point by meeting the applicable requirements specified in table 1 of this section.

TABLE 1. TO § 63.1103(a)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACETAL RESINS PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate. . .	And if. . .	Then you must. . .
1. A storage vessel with: 34 cubic meters < capacity.	The maximum true vapor pressure of organic HAP > 17.1 kilopascals (for existing sources) or > 11.7 kilopascals (for new sources).	a. Reduce emissions of total organic HAP by 95 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), as specified in § 63.982(a)(1) (storage vessel requirements) of this part; or b. Comply with the requirements of subpart WW (national emission standards for storage vessels (control level 2)) of this part.
2. A front end process vent from continuous unit operations.	.....	a. Reduce emissions of total organic HAP by using a flare meeting the requirements of subpart SS of this part; or b. Reduce emissions of total organic HAP by 60 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(2) (process vent requirements) of this part.

TABLE 1. TO § 63.1103(a)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACETAL RESINS PRODUCTION EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate. . .	And if. . .	Then you must. . .
3. A back end process vent from continuous unit operations.	The vent stream has a a TRE[a] < 1.0	a. Reduce emissions of total organic HAP by using a flare meeting the requirements of subpart SS of this part; or b. Reduce emissions of total organic HAP by 98 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(2) (process vent requirements) of this part; or c. Achieve and maintain a TRE index value greater than 1.0.
4. A back end process vent from continuous unit operations.	1.0 ≤ TRE[a] ≤ 4.0	Monitor and keep records of equipment operating parameters specified to be monitored under subpart SS, §§ 63.990(c)(absorber, condenser, and carbon adsorber monitoring) or 63.995(c) (other noncombustion systems used as a control device monitoring) of this part.
5. Equipment as defined under § 63.1101	The equipment contains or contacts ≥ 10 weight-percent organic HAP[b], and operates ≤ 300 hours per year.	Comply with the requirements of subpart TT (national emission standards for equipment leaks (control level 1)) or subpart UU (national emission standards for equipment leaks (control level 2)) of this part.

a The TRE is determined according to the procedures specified in § 63.1104(j).
b The weight-percent organic HAP is determined for equipment according to procedures specified in § 63.1107.

(b) *Acrylic and modacrylic fiber production applicability, definitions, and requirements.* (1) *Applicability.* (i) *Affected source.* For the acrylic fibers and modacrylic fibers production (as defined in paragraph (b)(2) of this section) source category, the affected source shall comprise all emission points, in combination, listed in paragraphs (b)(1)(i)(A) through (E) of this section, that are associated with a suspension or solution polymerization process unit that produces acrylic and modacrylic fiber located at a major source as defined in section 112(a) of the Act.

(A) All storage vessels that store liquid containing acrylonitrile or organic HAP.

(B) All process vents from continuous unit operations.

(C) All wastewater streams associated with the acrylic and modacrylic fibers production process unit as defined in (b)(2) of this section.

(D) Equipment (as defined in § 63.1101 of this subpart) that contains or contacts acrylonitrile or organic HAP.

(E) All acrylic and modacrylic fiber spinning lines using a spinning solution or suspension having organic acrylonitrile or organic HAP. For the purposes of implementing this paragraph, a spinning line includes the spinning solution filters, spin bath, and the equipment used downstream of the spin bath to wash, dry, or draw the spun fiber.

(ii) *Compliance schedule.* The compliance schedule, for affected sources as defined in paragraph (b)(1)(i) of this section, is specified in § 63.1102(a).

(2) *Definitions.*

Acrylic fiber means a manufactured synthetic fiber in which the fiber-forming substance is any long-chain synthetic polymer composed of at least 85 percent by weight of acrylonitrile units.

Acrylic and modacrylic fibers production means the production of either of the following synthetic fibers composed of acrylonitrile units:

(i) Acrylic fiber.

(ii) Modacrylic fiber.

Acrylonitrile solution polymerization means a process where acrylonitrile and comonomers are dissolved in a solvent to form a polymer solution (typically polyacrylonitrile). The polyacrylonitrile is soluble in the solvent. In contrast to suspension polymerization, the resulting reactor polymer solution (spin dope) is filtered and pumped directly to the fiber spinning process.

Acrylonitrile suspension polymerization means a polymerization process where small drops of acrylonitrile and comonomers are suspended in water in the presence of a catalyst where they polymerize under agitation. Solid beads of polymer are formed in this suspension reaction which are subsequently filtered, washed, refiltered, and dried. The beads must be subsequently redissolved in a solvent to create a spin dope prior to introduction to the fiber spinning process.

Fiber spinning line means the group of equipment and process vents associated with acrylic or modacrylic fiber spinning operations. The fiber spinning line includes (as applicable to the type of spinning process used) the blending and dissolving tanks, spinning solution filters, wet spinning units, spin bath tanks, and the equipment used downstream of the spin bath to wash, dry, or draw the spun fiber.

Modacrylic fiber means a manufactured synthetic fiber in which the fiber-forming substance is any long-chain synthetic polymer composed of at least 35 percent by weight of acrylonitrile units but less than 85 percent by weight of acrylonitrile units.

Spin dope means the liquid mixture of polymer and solvent that is fed to the spinneret to form the acrylic and modacrylic fibers.

(3) *Requirements.* An owner or operator of an affected source must comply with the requirements of paragraph (b)(3)(i) or (ii) of this section.

(i) Table 2 of this section specifies the acrylic and modacrylic fiber production

source category control requirement applicability for both existing and new sources. Applicability assessment procedures and methods are specified in §§ 63.1104 through 63.1107. An owner or operator of an affected source is not required to perform tests, or other applicability assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113. The owner or operator must control organic HAP emissions from each affected source emission point by meeting the applicable requirements specified in table 2 of this section.

TABLE 2.—TO § 63.1103(b)(3)(i)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACRYLIC AND MODACRYLIC FIBER PRODUCTION EXISTING OR NEW AFFECTED SOURCE AND AM COMPLYING WITH PARAGRAPH (b)(3)(i) OF THIS SECTION?

If you own or operate...	And if...	Then you must...
1. A storage vessel	The stored material is acrylonitrile	a. Reduce emissions of acrylonitrile by 98 weight-percent by venting emissions through a closed vent system to any combination of control device meeting the requirements of subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), as specified in § 63.982(a)(1) (storage vessel requirements) of this part, or 95 weight-percent or greater by venting through a closed vent system to a recovery device meeting the requirements of subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.993 (recovery device requirements) of this part; or b. Comply with the requirements of subpart WW (national emission standards for storage vessels (control level 2)) of this part.
2. A process vent from continuous unit operations (halogenated).	The vent steam has a mass emission rate of halogen atoms contained in organic compounds ≥0.45 kilograms per hour[a] and an acrylonitrile concentration ≥50 parts per million by volume[b] and an average flow rate ≥0.005 cubic meters per minute.	a. Reduce emissions of acrylonitrile or TOC as specified for nonhalogenated process vents from continuous unit operations (other than by using a flare) by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of subpart SS, § 63.994 (halogen reduction devices requirements) of this part that reduces hydrogen halides and halogens by 99 weight-percent or to less than 0.45 kilograms per year, whichever is less stringent; or b. Reduce the process vent halogen atom mass emission rate to less than 0.45 kilograms per hour by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of subpart SS, § 63.994 (halogen reduction devices requirements) of this part and then complying with the requirements specified for process vents from continuous unit operations (nonhalogenated).
3. A process vent from continuous unit operations (nonhalogenated).	The vent steam has a mass emission rate of halogen atoms contained in organic compounds <0.45 kilograms per hour[a], and an acrylonitrile concentration ≥50 parts per million by volume[b] and an average flow rate ≥0.005 cubic meters per minute.	a. Reduce emissions of acrylonitrile by using a flare meeting the requirements of subpart SS, § 63.987 (flare requirements) of this part or b. Reduce emissions of acrylonitrile by 98 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), as specified in § 63.982(a)(2) (process vent requirements) of this part.

TABLE 2.—TO §63.1103(b)(3)(i)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACRYLIC AND MODACRYLIC FIBER PRODUCTION EXISTING OR NEW AFFECTED SOURCE AND AM COMPLYING WITH PARAGRAPH (b)(3)(i) OF THIS SECTION?—Continued

If you own or operate...	And if...	Then you must...
4. A fiber spinning line that is a new or modified source.	The lines use a spin dope produced from either a suspension polymerization process or solution polymerization process,.	a. Reduce acrylonitrile emissions by 85 weight-percent or more. (For example, by enclosing the spinning and washing areas of the spinning line (as specified in paragraph (b)(4) of this section) and venting through a closed vent system and using any combination of control devices meeting the requirements of subpart SS, as specified in §63.982(a), of this part); or b. Reduce acrylonitrile emissions from the spinning line to less than or equal to 0.25 kilograms of acrylonitrile per megagram (0.5 pounds of acrylonitrile per ton) of acrylic and modacrylic fiber produced; or c. Reduce the AN concentration of the spin dope to less than 100 ppmw.
5. A fiber spinning line that is an existing source.	The spinning line uses a spin dope produced from a solution polymerization process.	Maintain records and report emissions as specified in §§63.1109 through 63.1110. Control of spinning line AN emissions is not required
6. A fiber spinning line that is an existing source.	The spinning line uses a spin dope produced from a suspension polymerization process.	a. Reduce the AN concentration of the spin dope to less than 100 ppmw[b], or b. Reduce acrylonitrile emissions from the spinning line to less than or equal to 0.025 kilograms of acrylonitrile per megagram of acrylic and modacrylic fiber produced.
7. Equipment as defined under §63.1101	It contains or contacts ≥10 weight-percent acrylonitrile[c], and operates ≥300 hours per year.	Comply with the requirements of subpart TT (national emission standards for equipment leaks (control level 1)) or subpart UU (national emission standards for equipment leaks (control level 2)) of this part.

[a] The mass emission rate of halogen atoms contained in organic compounds is determined according to the procedures specified in §63.1104(i).
[b] The percent by weight organic HAP is determined according to the procedures specified in §63.1107.
[c] The weight-percent organic HAP is determined for equipment according to procedures specified in §63.1107.

(ii) The owner or operator must control organic HAP emissions from the acrylic and modacrylic fibers production facility by meeting the applicable requirements specified in table 3 of this section. The owner or operator must determine the facility acrylonitrile emission rate using the procedures specified in paragraph (b)(5) of this section. Applicability assessment procedures and methods are specified in §§63.1104 through 63.1107. An owner or operator of an affected source does not have to perform tests, TRE calculations or other applicability assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in §63.1113.

TABLE 3. TO §63.1103(b)(3)(ii).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACRYLIC AND MODACRYLIC FIBER PRODUCTION EXISTING OR NEW AFFECTED SOURCE AND AM COMPLYING WITH PARAGRAPH (b)(3)(ii) OF THIS SECTION?

If you own or operate...	Then you must control total organic HAP emissions from the affected source by...
1. An acrylic and modacrylic fibers production affected source and your facility is an existing source.	Meeting all of following requirements: a. Reduce total acrylonitrile emissions from all affected storage vessels, process vents, wastewater streams associated with the acrylic and modacrylic fibers production process unit as defined in paragraph (b)(2) of this section, and fiber spinning lines operated in your acrylic and modacrylic fibers production facility to less than or equal to 1.0 kilograms (kg) of acrylonitrile per megagram (Mg) of fiber produced. b. Determine the facility acrylonitrile emission rate in accordance with the requirements specified in paragraph(b)(5) of this section.
2. An acrylic and modacrylic fibers production affected source and your facility is a new source.	Meeting all of following requirements: a. Reduce total acrylonitrile emissions from all affected storage vessels, process vents, wastewater streams associated with the acrylic and modacrylic fibers production process unit as defined in paragaph (b)(2) of this section, and fiber spinning lines operated in the acrylic and modacrylic fibers production facility to less than or equal to 0.5 kilograms (kg) of acrylonitrile per megagram (Mg) of fiber produced.

TABLE 3. TO §63.1103(b)(3)(ii).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACRYLIC AND MODACRYLIC FIBER PRODUCTION EXISTING OR NEW AFFECTED SOURCE AND AM COMPLYING WITH PARAGRAPH (b)(3)(ii) OF THIS SECTION?—Continued

If you own or operate...	Then you must control total organic HAP emissions from the affected source by...
	b. Determine the facility acrylonitrile emission rate in accordance with the requirements specified in paragraph (b)(5) of this section.
3. Equipment as defined under §63.1101 and it contains or contacts ≥ 10 weight-percent acrylonitrile,[a] and operates ≥ 300 hours per year.	Meeting either of the following standards for equipment leaks: a. Comply with subpart TT of this part; or b. Comply with subpart UU of this part.

[a] The weight-percent organic HAP is determined for equipment according to procedures specified in §63.1107.

(4) *Fiber spinning line enclosure requirements.* For an owner or operator of a new or modified source electing to comply with paragraph (b)(3)(i) of this section, the fiber spinning line enclosure must be designed and operated to meet the requirements specified in paragraphs (b)(4)(i) through (iv) of this section.

(i) The enclosure must cover the spinning and washing areas of the spinning line.

(ii) The enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" in 40 CFR 52.741, Appendix B.

(iii) The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure.

(iv) The owner or operator must perform the verification procedure for the enclosure as specified in section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(5) *Facility acrylonitrile emission rate determination.* For an owner or operator electing to comply with paragraph (b)(3)(ii) of this section, the facility acrylonitrile emission rate must be determined using the requirements specified in paragraphs (b)(5)(i) through (iii) of this section.

(i) The owner or operator must prepare an initial determination of the facility acrylonitrile emission rate.

(ii) Whenever changes to the acrylic or modacrylic fiber production operations at the facility could potentially cause the facility acrylonitrile emission rate to exceed the applicable limit of kilogram of acrylonitrile per Megagram of fiber produced, the owner or operator must prepare a new determination of the facility acrylonitrile emission rate.

(iii) For each determination, the owner or operator must prepare and maintain at the facility site sufficient process data, emissions data, and any other documentation necessary to support the facility acrylonitrile emission rate calculation.

(c) *Hydrogen fluoride production applicability, definitions, and requirements.* (1) *Applicability.* (i) *Affected source.* For the hydrogen fluoride production (as defined in paragraph (c)(2) of this section) source category, the affected source shall comprise all emission points, in combination, listed in paragraphs (c)(1)(i)(A) through (D) of this section, that are associated with a hydrogen fluoride production process unit located at a major source as defined in section 112(a) of the Act.

(A) All storage vessels used to accumulate or store hydrogen fluoride.

(B) All process vents from continuous unit operations associated with hydrogen fluoride recovery and refining operations. These process vents include vents on condensers, distillation units, and water scrubbers.

(C) All transfer racks used to load hydrogen fluoride into tank trucks or railcars.

(D) Equipment in hydrogen fluoride service (as defined in paragraph (c)(2) of this section).

(ii) *Compliance schedule.* The compliance schedule, for affected sources as defined in paragraph (c)(1)(i) of this section, is specified in §63.1102(a).

(2) *Definitions.*

Connector means flanged, screwed, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purposes of this subpart.

Equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in hydrogen fluoride service; and any control devices or closed-vent systems used to comply with this subpart.

Hydrogen fluoride production means a process engaged in the production and recovery of hydrogen fluoride by reacting calcium fluoride with sulfuric acid. For the purpose of implementing this subpart, hydrogen fluoride production is not a process that produces gaseous hydrogen fluoride for direct reaction with hydrated aluminum to form aluminum fluoride (i.e., the hydrogen fluoride is not recovered as an intermediate or final product prior to reacting with the hydrated aluminum).

In hydrogen fluoride service means that a piece of equipment either contains or contacts a hydrogen fluoride process fluid (liquid or gas).

In vacuum service means that equipment is operating at an internal pressure which is at least 5 kilopascals below ambient pressure.

Instrumentation system means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (e.g., composition, pressure, flow, etc.). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems.

Kiln seal means the mechanical or hydraulic seals at both ends of the kiln, designed to prevent the infiltration of moisture and air through the interface of the rotating kiln and stationary pipes and equipment attached to the kiln during normal vacuum operation of the kiln (operation at an internal pressure of at least 0.25 kilopascal [one inch of water] below ambient pressure).

Leakless pump means a pump whose seals are submerged in liquid, a magnetically-driven pump, a pump equipped with a dual mechanical seal system that includes a barrier fluid system, a canned pump, or other pump that is designed with no externally

actuated shaft penetrating the pump housing.

Open-ended valve or line means any valve, except relief valves, having one side of the valve seat in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the relief device. This release can be one release or a series of releases over a short time period due to a malfunction in the process.

Pressure relief device or valve means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

Relief device or valve means a valve used only to release an unplanned, nonroutine discharge. A relief valve discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Repaired for the purpose of this regulation means equipment is adjusted, or otherwise altered, to eliminate a leak identified by sensory monitoring.

Sampling connection system means an assembly of equipment within a process unit or affected facility used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

Sensory monitoring means the detection of a potential leak to the atmosphere by walk-through visual, audible, or olfactory monitoring. Comprehensive component-by-component inspection is not required.

Shift means the time a shift operator normally works, typically 8 or 12 hours.

(3) *Requirements.* Table 4 of this section specifies the hydrogen fluoride production source category applicability and control requirements for both existing and new sources. The owner or operator must control hydrogen fluoride emissions from each affected source emission point as specified in table 4. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Specific monitoring, recordkeeping, and reporting requirements are specified in table 4. Minimization of emissions from startups, shutdowns, and malfunctions, including those resulting from kiln seals must be addressed in the startup, shutdown, and malfunction plan required by § 63.1111; the plan must also establish reporting and recordkeeping of such events. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

TABLE 4. TO § 63.1103(C)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A HYDROGEN FLUORIDE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
1. A storage vessel	The stored material is hydrogen fluoride	Reduce emissions of hydrogen fluoride by venting displacement emissions created by normal filling or emptying activities through a closed-vent system to a recovery system or wet scrubber that is designed and operated to achieve a 99 weight-percent removal efficiency. The minimum liquid flow rate to the scrubber that achieves a 99 weight-percent removal efficiency shall be established, and may be done so by design analysis. The liquid flow rate to the scrubber shall be continuously monitored and records maintained according to § 63.996 and § 63.998(b), (c), and (d)(3) of 40 CFR subpart SS of this part. The Periodic Report specified in § 63.1110(a)(5) of this subpart shall include the information specified in § 63.999(c) of 40 CFR subpart SS of this part, as applicable.
2. A process vent from continuous unit operations.	The vent stream is from hydrogen fluoride recovery and refining vessels.	Reduce emissions of hydrogen fluoride from the process vent by venting emissions through a closed-vent system to a wet scrubber that is designed and operated to achieve a 99 weight-percent removal efficiency. Monitoring, recordkeeping, and reporting of wet scrubber operation shall be in accordance with the requirements stated above for a wet scrubber controlling hydrogen fluoride emissions from a storage vessel.

TABLE 4. TO § 63.1103(C)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A HYDROGEN FLUORIDE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
3. A transfer rack	The transfer rack is associated with bulk hydrogen fluoride liquid loading into tank trucks and rail cars.	Reduce emissions of hydrogen fluoride by venting emissions through a closed-vent system to a recovery system or wet scrubber that is designed and operated to achieve a 99 weight-percent removal efficiency. Monitoring, recordkeeping, and reporting of wet scrubber operation shall be in accordance with the requirements stated above for a wet scrubber controlling HF emissions from a storage vessel. You also must load hydrogen fluoride into only tank trucks and railcars that have a current certification in accordance with the U.S. DOT pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars; or have been demonstrated to be vapor-tight (i.e. will sustain a pressure change of not more than 750 Pascals within 5 minutes after it is pressurized to a minimum or 4,500 Pascals) within the preceding 12 months.
4. Equipment	It is in hydrogen fluoride service and operates ≥ 300 hours per year and is not in vacuum service.	Control hydrogen fluoride emissions by using leakless pumps and by implementing a sensory monitoring leak detection program. Equipment that is excluded from sensory monitoring because it operates less than 300 hours per year or is in vacuum service shall be identified by list, location, or other method and the identity shall be recorded. An owner or operator is required to perform sensory monitoring at least once every shift, but no later than within 15 days. When a leak is detected, repair must begin within one hour and be completed as soon as practical. A record shall be kept of each leak detected and repaired including: equipment identification number, date and time the leak was detected and that repair was initiated, and the date of successful repair.

(d) *Polycarbonate production applicability, definitions, and requirements.*

(1) *Applicability.*

(i) *Affected source.* For the polycarbonate production (as defined in paragraph (d)(2) of this section) source category, the affected source shall comprise all emission points, in combination, listed in paragraphs (d)(1)(i)(A) through (D) of this section, that are part of a polycarbonate production process unit located at a major source as defined in section 112(a) of the Act. For the purposes of this rule, a polycarbonate production process unit is a unit that produces polycarbonate by interfacial polymerization from bisphenols and phosgene. Phosgene production units that are associated with polycarbonate production process units are considered to be part of the polycarbonate production process. A phosgene production unit consists of the reactor in which phosgene is formed and all equipment (listed in paragraphs (d)(1)(i)(A) through (D) of this section) downstream of the reactor that provides phosgene for the production of polycarbonate. Therefore, for the purposes of this rule, such a phosgene production unit is considered to be a polycarbonate production process unit.

(A) All storage vessels that store liquids containing organic HAP.

(B) All process vents from continuous and batch unit operations.

(C) All wastewater streams.

(D) Equipment (as defined in § 63.1101 of this subpart) that contains or contacts organic HAP.

(ii) *Compliance schedule.* The compliance schedule, for affected sources as defined in paragraph (d)(1)(i) of this section, is specified in § 63.1102(a).

(2) *Definitions.*

Polycarbonate production means a process engaged in the production of a special class of polyester formed from any dihydroxy compound and any carbonate diester or by ester exchange. Polycarbonate may be produced by solution or emulsion polymerization, although other methods may be used. A typical method for the manufacture of polycarbonate includes the reaction of bisphenol-A with phosgene in the presence of pyridine or other catalyst to form polycarbonate. Methylene chloride or other solvents are used in this polymerization reaction.

(3) *Requirements.* Tables 5 and 6 of this section specify the applicability criteria and standards for existing and new sources within the polycarbonate production source category. The owner or operator must control organic HAP emissions from each affected source emission point by meeting the applicable requirements specified in tables 5 and 6. Applicability assessment procedures and methods are specified in §§ 63.1104 through 63.1107. An owner or operator of an affected source is not required to perform tests, TRE calculations or other applicability

assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

TABLE 5 TO § 63.1103(d)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATE PRODUCTION EXISTING AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
1. A storage vessel with: 75 cubic meters ≤ capacity < 151 cubic meters.	27.6 kilopascals ≤ maximum true vapor pressure of total organic HAP < 76.6 kilopascals.	Reduce emissions of total organic HAP by 95 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), as specified in § 63.982(a)(1) (storage vessel requirements) of this part; or comply with the requirements of subpart WW (national emission standards for storage vessels (control level 2)) of this part.
2. A storage vessel with: 151 cubic meters ≤ capacity.	The maximum true vapor pressure of total organic HAP ≥ 5.2 kilopascals.	Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(1) (storage vessel requirements) of this part
3. A storage vessel with: 75 cubic meters ≤ capacity < 151 cubic meters.	The maximum true vapor pressure of total organic HAP ≥ 76.6 kilopascals.	Reduce emissions of total organic HAP by 95 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(1) . (storage vessel requirements) of this part.
4. A process vent from continuous unit operations or a combined vent stream [a].	The vent stream has a TRE [b,c] ≤ 2.7	a. Reduce emissions of total organic HAP by 98 weight-percent; or reduce total organic HAP to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(2) (process vent requirements) of this part and vent emissions through a closed vent system to a halogen reduction device meeting the requirements of subpart SS, § 63.994, of this part, that reduces hydrogen halides and halogens by 99 weight-percent or to less than 0.45 kilograms per hour [d], whichever is less stringent; or b. Reduce the process vent halogen atom mass emission rate to less than 0.45 kilograms per hour by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of subpart SS, § 63.994 (halogen reduction device requirements) of this part and reduce emissions of total organic HAP by 98 weight-percent; or reduce total organic HAP or TOC to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(2) (process vent requirements) of this part; or c. Achieve and maintain a TRE index value greater than 2.7.
.....		

TABLE 5 TO § 63.1103(d)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATE PRODUCTION EXISTING AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
5. A process vent from continuous unit operations or a combined vent stream [a].	2.7 < TRE [b,c] ≤ 4.0	Monitor and keep records of equipment operating parameters specified to be monitored under subpart SS, §§ 63.990(c) (absorber, condenser, and carbon adsorber monitoring) or 63.995(c) (other noncombustion systems used as a control device monitoring) of this part.
6. Equipment as defined under § 63.1101	The equipment contains or contacts ≥ 5 weight-percent total organic HAP [d], and operates ≥ 300 hours per year.	Comply with the requirements of subpart TT (national emission standards for equipment leaks (control level 1)) or subpart UU (national emission standards for equipment leaks (control level 2)) of this part.

[a] Combined vent streams shall use the applicability determination procedures and methods for process vents from continuous unit operations (§ 63.1104).

[b] The TRE equation coefficients for halogenated streams (table 1 of § 63.1104(j)(1)) shall be used to calculate the TRE index value.

[c] The TRE is determined according to the procedures specified in § 63.1104(j). If a dryer is manifolded with such vents, and the vent is routed to a recovery, recapture, or combustion device, then the TRE index value for the vent must be calculated based on the properties of the vent stream (including the contributions of the dryer). If a dryer is manifolded with other vents and not routed to a recovery, recapture, or combustion device, then the TRE index value must be calculated excluding the contributions of the dryer. The TRE index value for the dryer must be calculated separately in this case.

[d] The mass emission rate of halogen atoms contained in organic compounds is determined according to the procedures specified in § 63.1104(i).

[e] The weight-percent organic HAP is determined for equipment according to procedures specified in § 63.1107.

TABLE 6. TO § 63,1103(d)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATE PRODUCTION NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
1. A storage vessel with: 38 cubic meters ≤ capacity < 151 cubic meters.	13.1 kilopascals ≤ maximum true vapor pressure of total organic HAP < 76.6 kilopascalsa.	a. Reduce emissions of total organic HAP by 95 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), as specified in § 63.982(a)(1) (storage vessel requirements) of this part; or b. Comply with the requirements of subpart WW (national emission standards for storage vessels (control level 2)) of this part.
2. A storage vessel with: 151 cubic meters ≥ capacity.	The vapor pressure of total organic HAP is ≥ 5.2 kilopascals.	Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(1) (storage vessel requirements) of this part.
3. A storage vessel with: 38 cubic meters ≤ capacity < 151 cubic meters.	The vapor pressure of total organic HAP is ≥ 76.6 kilopascals.	Reduce emissions of total organic HAP by 95 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(1) (storage vessel requirements) of this part.

TABLE 6. TO § 63.1103(d)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATE PRODUCTION NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
4. A process vent from continuous unit operations or a combined vent stream[a].	The vent stream has a a TRE[b,c] ≤ 9.6	a. Reduce emissions of total organic HAP by 98 weight-percent; or reduce total organic HAP to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(2) (process vent requirements) of this part and vent emissions through a closed vent system to a halogen reduction device meeting the requirements of subpart SS, § 63.994, of this part that reduces hydrogen halides and halogens by 99 weight-percent or to less than 0.45 kilograms per hourd, whichever is less stringent; or b. Reduce the process vent halogen atom mass emission rate to less than 0.45 kilograms per hour by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of subpart SS, § 63.994 (halogen reduction device requirements) of this part and reduce emissions of total organic HAP by 98 weight-percent; or reduce total organic HAP or TOC to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(2) (process vent requirements) of this part; or c. Achieve and maintain a TRE index value greater than 9.6
5. Equipment as defined under § 63.1101	The equipment contains or contacts ≥ 5 weight-percent HAPe, and operates ≥ 300 hours per year.	Comply with the requirements of 40 CFR subpart TT (national emission standards for equipment leaks (control level 1)) or subpart UU (national emission standards for equipment leaks (control level 2)) of this part.

[a] Combined vent streams shall use the applicability determination procedures and methods for process vents from continuous unit operations (§ 63.1104).

[b] The TRE equation coefficients for halogenated streams (table 1 of § 63.1104(j)(1)) shall be used to calculate the TRE index value.

[c] The TRE is determined according to the procedures specified in § 63.1104(j). If a dryer is manifolded with such vents, and the vent is routed to a recovery, recapture, or combustion device, then the TRE index value for the vent must be calculated based on the properties of the vent stream (including the contributions of the dryer). If a dryer is manifolded with other vents and not routed to a recovery, recapture, or combustion device, then the TRE index value must be calculated excluding the contributions of the dryer. The TRE index value for the dryer must be calculated separately in this case.

[d] The mass emission rate of halogen atoms contained in organic compounds is determined according to the procedures specified in § 63.1104(i).

[e] The weight-percent organic HAP is determined for equipment according to procedures specified in § 63.1107.

§ 63.1104 Process vents from continuous unit operations: applicability assessment procedures and methods.

(a) *General.* The provisions of this section provide calculation and measurement methods for criteria that are required by § 63.1103 to be used to determine applicability of the control requirements for process vents from continuous unit operations. The owner or operator of a process vent is not required to determine the criteria specified for a process vent that is being controlled in accordance with the applicable weight-percent or TOC concentration requirement in § 63.1103.

(b) *Sampling sites.* For purposes of determining process vent applicability criteria, the sampling site shall be located as specified in (b)(1) through (4) of this section, as applicable.

(1) *Sampling site location if TRE determination is required.* If the applicability criteria specified in the applicable table of § 63.1103 includes a TRE index value, the sampling site for determining volumetric flow rate, regulated organic HAP concentration, total organic HAP or TOC concentration, heating value, and TRE index value, shall be after the final recovery device (if any recovery devices are present) but prior to the inlet of any control device that is present, and prior to release to the atmosphere.

(2) *Sampling site location if TRE determination is not required.* If the applicability criteria specified in the applicable table of § 63.1103 does not include a TRE index value, the sampling site for determining volumetric flow rate, regulated organic HAP concentration, total organic HAP or TOC concentration, and any other specified parameter shall be at the exit from the unit operation before any control device.

(3) *Sampling site selection method.* Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling site. No traverse site selection method is needed for process vents smaller than 0.10 meter (0.33 foot) in nominal inside diameter.

(4) *Sampling site when a halogen reduction device is used prior to a combustion device.* An owner or operator using a scrubber to reduce the process vent halogen atom mass emission rate to less than 0.45 kilograms per hour (0.99 pound per hour) prior to a combustion control device in compliance with § 63.1103 (as appropriate) shall determine the halogen atom mass emission rate prior to the combustion device according to the procedures in paragraph (i) of this section.

(c) *Applicability assessment requirement.* The TOC or organic HAP concentrations, process vent volumetric flow rates, process vent heating values, process vent TOC or organic HAP emission rates, halogenated process vent determinations, process vent TRE index values, and engineering assessment process vent control applicability assessment requirements are to be determined during maximum representative operating conditions for the process, except as provided in paragraph (d) of this section, or unless the Administrator specifies or approves alternate operating conditions. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of an applicability test.

(d) *Exceptions.* For a process vent stream that consists of at least one process vent from a batch unit operation manifolded with at least one process vent from a continuous unit operation, the TRE shall be calculated during periods when one or more batch emission episodes are occurring that result in the highest organic HAP emission rate (in the combined vent stream that is being routed to the recovery device) that is achievable during the 6-month period that begins 3 months before and ends 3 months after the TRE calculation, without causing any of the situations described in paragraphs (d)(1) through (3) to occur.

(1) Causing damage to equipment;

(2) Necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or

(3) Necessitating that the owner or operator make produce in excess of demand.

(e) *TOC or Organic HAP concentration.* The TOC or organic HAP concentrations, used for TRE index value calculations in paragraph (j) of this section, shall be determined based on paragraph (e)(1), (e)(2) or (k) of this section, or any other method or data that have been validated according to the protocol in method 301 of appendix A of this part. For concentrations needed for comparison with the appropriate control applicability concentrations specified in § 63.1103, TOC or organic HAP concentration shall be determined based on paragraph (e)(1), (e)(2), or (k) of this section or any other method or data that has been validated according to the protocol in method 301 of appendix A of this part. The owner or operator shall record the TOC or organic HAP concentration as specified in paragraph (l)(3) of this section.

(1) *Method 18.* The procedures specified in paragraph (e)(1)(i) and (ii) of this section shall be used to calculate parts per million by volume concentration using method 18 of 40 CFR part 60, appendix A:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The concentration of either TOC (minus methane and ethane) or regulated organic HAP emissions shall be calculated according to paragraph (e)(1)(ii)(A) or (B) of this section, as applicable.

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using Equation 1:

$$C_{TOC} = \frac{\sum_{i=1}^{x}\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{[Eq. 1]}$$

Where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

C_{ji} = Concentration of sample component j of the sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(B) The regulated organic HAP or total organic HAP concentration (C_{HAP}) shall be computed according to Equation 1 in paragraph (e)(1)(ii)(A) of this section except that only the regulated or total organic HAP species shall be summed, as appropriate.

(2) *Method 25A.* The procedures specified in paragraphs (e)(2)(i) through (vi) of this section shall be used to calculate parts per million by volume concentration using Method 25A of 40 CFR part 60, appendix A.

(i) Method 25A of 40 CFR part 60, appendix A shall be used only if a single organic HAP compound comprises greater than 50 percent of total organic HAP or TOC, by volume, in the process vent.

(ii) The process vent composition may be determined by either process knowledge, test data collected using an appropriate Environmental Protection Agency method or a method or data validated according to the protocol in Method 301 of appendix A of part 63. Examples of information that could constitute process knowledge include calculations based on material balances, process stoichiometry, or previous test results provided the results are still relevant to the current process vent conditions.

(iii) The organic compound used as the calibration gas for Method 25A of 40 CFR part 60, appendix A shall be the single organic HAP compound present at greater than 50 percent of the total organic HAP or TOC by volume.

(iv) The span value for Method 25A of 40 CFR part 60, appendix A shall be equal to the appropriate control applicability concentration value specified in the applicable table(s) presented in § 63.1103 of this subpart.

(v) Use of Method 25A of 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(vi) The owner or operator shall demonstrate that the concentration of TOC including methane and ethane measured by Method 25A of 40 CFR part 60, appendix A is below one-half the appropriate control applicability concentration specified in the applicable table for a subject source category in § 63.1103 in order to qualify for a low organic HAP concentration exclusion.

(f) *Volumetric flow rate.* The process vent volumetric flow rate (Q_S), in standard cubic meters per minute at 20 °C, shall be determined as specified in paragraphs (f)(1) or (2) of this section and shall be recorded as specified in § 63.1109.

(1) Use Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. If the process vent tested passes through a final steam jet ejector and is not condensed, the stream

volumetric flow shall be corrected to 2.3 percent moisture; or

(2) The engineering assessment procedures in paragraph (k) of this section can be used for determining volumetric flow rates.

(g) *Heating value.* The net heating value shall be determined as specified in paragraphs (g)(1) and (2) of this section, or by using the engineering assessment procedures in paragraph (k) of this section.

(1) The net heating value of the process vent shall be calculated using Equation 2:

$$H_T = K_1\left(\sum_{j=1}^{n} D_j H_j\right) \qquad \text{[Eq. 2]}$$

Where:

H_T = Net heating value of the sample, megaJoule per standard cubic meter, where the net enthalpy per mole of process vent is based on combustion at 25° C and 760 millimeters of mercury, but the standard temperature for determining the volume corresponding to 1 mole is 20° C, as in the definition of Q_s (process vent volumetric flow rate).

K_1 = Constant, 1.740×10^{-7} (parts per million)$^{-1}$(gram-mole per standard cubic meter) (megaJoule per kilocalorie), where standard temperature for (gram-mole per standard cubic meter) is 20° C.

Dj = Concentration on a wet basis of compound j in parts per million, as measured by procedures indicated in paragraph (e)(2) of this section. For process vents that pass through a final stream jet and are not condensed, the moisture is assumed to be 2.3 percent by volume.

H_j = Net heat of combustion of compound j, kilocalorie per gram-mole, based on combustion at 25° C and 760 millimeters mercury.

(2) The molar composition of the process vent (D_j) shall be determined using the methods specified in paragraphs (g)(2)(i) through (iii) of this section:

(i) Method 18 of 40 CFR part 60, appendix A to measure the concentration of each organic compound.

(ii) American Society for Testing and Materials D1946–90 to measure the concentration of carbon monoxide and hydrogen.

(iii) Method 4 of 40 CFR part 60, appendix A to measure the moisture content of the stack gas.

(h) *TOC or Organic HAP emission rate.* The emission rate of TOC (minus methane and ethane) (E_{TOC}) and the emission rate of the regulated organic HAP or total organic HAP (E_{HAP}) in the process vent, as required by the TRE index value equation specified in paragraph (j) of this section, shall be calculated using Equation 3:

$$E = K_2\left(\sum_{j=1}^{n} C_j M_j\right) Q_s \qquad \text{[Eq. 3]}$$

Where:

E = Emission rate of TOC (minus methane and ethane) (E_{TOC}) or emission rate of the regulated organic HAP or total organic HAP (E_{HAP}) in the sample, kilograms per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minutes/hour), where standard temperature for (gram-mole per standard cubic meter) is 20° C.

n = Number of components in the sample.

C_j = Concentration on a dry basis of organic compound j in parts per million as measured by method 18 of 40 CFR part 60, appendix A as indicated in paragraph (e) of this section. If the TOC emission rate is being calculated, C_j includes all organic compounds measured minus methane and ethane; if the total organic HAP emission rate is being calculated, only organic HAP compounds are included; if the regulated organic HAP emission rate is being calculated, only regulated organic HAP compounds are included.

M_j = Molecular weight of organic compound j, gram/gram-mole.

Q_s = Process vent flow rate, dry standard cubic meter per minute, at a temperature of 20° C.

(i) *Halogenated process vent determination.* In order to determine whether a process vent is halogenated, the mass emission rate of halogen atoms contained in organic compounds shall be calculated according to the procedures specified in paragraphs (i)(1) and (2) of this section. A process vent is considered halogenated if the mass emission rate of halogen atoms contained in the organic compounds is equal to or greater than 0.45 kilograms per hour.

(1) The process vent concentration of each organic compound containing halogen atoms (parts per million by volume, by compound) shall be determined based on one of the procedures specified in paragraphs (i)(1)(i) through (iv) of this section:

(i) Process knowledge that no halogen or hydrogen halides are present in the process vent, or

(ii) Applicable engineering assessment as discussed in paragraph (k) of this section, or

(iii) Concentration of organic compounds containing halogens or hydrogen halides as measured by Method 26 or 26A of 40 CFR part 60, appendix A, or

(iv) Any other method or data that have been validated according to the applicable procedures in method 301 of appendix A of this part.

(2) Equation 4 shall be used to calculate the mass emission rate of halogen atoms:

$$E = K_2 Q\left(\sum_{j=1}^{n}\sum_{i=1}^{m} C_j * L_{j,i} * M_{j,i}\right) \qquad \text{[Eq. 4]}$$

Where:

E = Mass of halogen atoms, dry basis, kilogram per hour,

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (kilogram-mole per standard cubic meter) (minute per hour), where standard temperature is 20° C.

Q = Flow rate of gas stream, dry standard cubic meters per minute, determined according to paragraph (f)(1) or (f)(2) of this section.

n = Number of halogenated compounds j in the gas stream.

j = Halogenated compound j in the gas stream.

m = Number of different halogens i in each compound j of the gas stream.

i = Halogen atom i in compound j of the gas stream.

C_j = Concentration of halogenated compound j in the gas stream, dry basis, parts per million by volume.

L_{ji} = Number of atoms of halogen i in compound j of the gas stream.

M_{ji} = Molecular weight of halogen atom i in compound j of the gas stream, kilogram per kilogram-mole.

(j) *TRE index value.* The owner or operator shall calculate the TRE index value of the process vent using the equations and procedures in this paragraph, as applicable, and shall maintain records specified in paragraph (l)(1) or (m)(2) of this section, as applicable.

(1) *TRE index value equation.* The equation for calculating the TRE index value is Equation 5:

$$TRE = 1/E_{HAP} * [A + B(Q_s) + C(H_T) + D(E_{TOC})] \qquad \text{[Eq. 5]}$$

Where:

TRE = TRE index value.

A, B, C, D = Coefficients presented in table 8 of this subpart.

E_{HAP} = Emission rate of total organic HAP, kilograms per hour, as calculated according to paragraph (h) or (k) of this section.

Q_s = process vent flow rate, standard cubic meters per minute, at a standard temperature of 20° C, as calculated according to paragraph (f) or (k) of this section.

H_T = process vent net heating value, megaJoules per standard cubic meter, as calculated according to paragraph (g) or (k) of this section.

E_{TOC} = Emission rate of TOC (minus methane and ethane), kilograms per hour, as calculated according to paragraph (h) or (k) of this section.

TABLE 1 OF § 63.1104(j)(1).—COEFFICIENTS FOR TOTAL RESOURCE EFFECTIVENESS [a]

Existing or new?	Halogenated vent stream?	Control device basis	Values of coefficients			
			A	B	C	D
Existing	Yes	Thermal Incinerator and Scrubber.	3.995	5.200×10^{-2}	-1.769×10^{-3}	9.700×10^{-4}
	No	Flare	1.935	3.660×10^{-1}	-7.687×10^{-3}	-7.33×10^{-4}
		Thermal Incinerator 0 Percent Recovery	1.492	6.267×10^{-2}	3.177×10^{-2}	-1.159×10^{-3}
		Thermal Incinerator 70 Percent Recovery	2.519	1.183×10^{-2}	1.300×10^{-2}	4.790×10^{-2}
New	Yes	Thermal Incinerator and Scrubber.	1.0895	1.417×10^{-2}	-4.82×10^{-3}	2.645×10^{-3}
	No	Flare	5.276×10^{-1}	$9.98\times10-2^{-2}$	-2.096×10^{-3}	-2.000×10^{-4}
		Thermal Incinerator 0 Percent Recovery	4.068×10^{-1}	1.71×10^{-2}	8.664×10^{-3}	-3.16×10^{-4}
		Thermal Incinerator 70 Percent Recovery	6.868×10^{-1}	3.21×10^{-3}	3.546×10^{-3}	1.306×10^{-2}

[a] Use according to procedures outlined in this section.
MJ/scm = Mega Joules per standard cubic meter
scm/min = Standard cubic meters per minute

(2) *Nonhalogenated process vents.* The owner or operator of a nonhalogenated process vent shall calculate the TRE index value by using the equation and appropriate nonhalogenated process vent parameters in table 1 of this section for process vents at existing and new sources. The lowest TRE index value is to be selected.

(3) *Halogenated process vents.* The owner or operator of a halogenated process vent stream, as determined according to procedures specified in paragraph (i) or (k) of this section, shall calculate the TRE index value using the appropriate halogenated process vent parameters in table 1 of this section for existing and new sources.

(k) *Engineering assessment.* For purposes of TRE index value determinations, engineering assessments may be used to determine process vent flow rate, net heating value, TOC emission rate, and total organic HAP emission rate for the representative operating condition expected to yield the lowest TRE index value. Engineering assessments shall meet the requirements of paragraphs (k)(1) through (4) of this section. If process vent flow rate or process vent organic HAP or TOC concentration is being determined for comparison with the 0.011 standard cubic meters per minute (scmm) flow rate or the applicable concentration value presented in the tables in § 63.1103, engineering assessment may be used to determine the flow rate or concentration for the representative operating condition expected to yield the highest flow rate or concentration.

(1) If the TRE index value calculated using such engineering assessment and the TRE index value equation in paragraph (j) of this section is greater than 4.0, then the owner or operator is not required to perform the measurements specified in paragraphs (e) through (i) of this section.

(2) If the TRE index value calculated using such engineering assessment and the TRE index value equation in paragraph (j) of this section is less than or equal to 4.0, then the owner or operator is required either to perform the measurements specified in paragraphs (e) through (i) of this section for control applicability assessment or comply with the requirements (or standards) specified in the tables presented in § 63.1103 (as applicable).

(3) Engineering assessment includes, but is not limited to, the examples specified in paragraphs (k)(3)(i) through (iv) of this section:

(i) Previous test results, provided the tests are representative of current operating practices at the process unit.

(ii) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(iii) Maximum flow rate, TOC emission rate, organic HAP emission rate, organic HAP or TOC concentration, or net heating value limit specified or implied within a permit limit applicable to the process vent.

(iv) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to those specified in paragraphs (k)(3)(iv)(A) through (k)(3)(iv)(D) of this section:

(A) Use of material balances based on process stoichiometry to estimate maximum TOC or organic HAP concentrations,

(B) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities,

(C) Estimation of TOC or organic HAP concentrations based on saturation conditions, and

(D) Estimation of maximum expected net heating value based on the stream concentration of each organic compound or, alternatively, as if all TOC in the stream were the compound with the highest heating value.

(4) All data, assumptions, and procedures used in the engineering assessment shall be documented. The owner or operator shall maintain the records specified in paragraphs (l)(1) through (4) of this section, as applicable.

(l) *Applicability assessment recordkeeping requirements.* (1) *TRE index value records.* The owner or operator shall maintain records of measurements, engineering assessments, and calculations performed to determine the TRE index value of the process vent according to the procedures of paragraph (j) of this section, including those records associated with halogen vent stream determination. Documentation of engineering assessments shall include all data, assumptions, and procedures used for the engineering assessments, as specified in paragraph (k) of this section. As specified in paragraph (m) of this section, the owner or operator shall include this information in the Notification of Compliance Status report required by § 63.1110(a)(4) .

(2) *Flow rate records.* The owner or operator shall record the flow rate as measured using the sampling site and flow rate determination procedures (if applicable) specified in paragraphs (b) and (f) of this section or determined through engineering assessment as specified in paragraph (k) of this section. As specified in paragraph (m) of this section, the owner or operator shall include this information in the Notification of Compliance Status report required by § 63.1110(a)(4).

(3) *Concentration records.* The owner or operator shall record the regulated organic HAP or TOC concentration (if applicable) as measured using the sampling site and regulated organic HAP or TOC concentration determination procedures specified in paragraphs (e)(1) and (2) of this section, or determined through engineering assessment as specified in paragraph (k) of this section. As specified in paragraph (m) of this section, the owner or operator shall include this information in the Notification of Compliance Status report required by § 63.1110(a)(4).

(4) *Process change records.* The owner or operator shall keep up-to-date, readily accessible records of any process changes that change the control applicability for a process vent. Records are to include any recalculation or measurement of the flow rate, regulated organic HAP or TOC concentration, and TRE index value.

(m) *Applicability assessment reporting requirements.* (1) *Notification of Compliance Status.* The owner or operator shall submit, as part of the Notification of Compliance Status report required by § 63.1110(a)(4), the information recorded in paragraph (l)(1) through (3) of this section.

(2) *Process change.* (i) Whenever a process vent becomes subject to control requirements under subpart SS of this part as a result of a process change, the owner or operator shall submit a report within 60 days after the performance test or applicability assessment, whichever is sooner. The report may be submitted as part of the next Periodic Report required by § 63.1110(a)(5). The report shall include the information specified in paragraphs (m)(2)(i)(A) through (C) of this section.

(A) A description of the process change;

(B) The results of the recalculation of the TOC or organic HAP concentration, flow rate, and/or TRE index value required under paragraphs (e), (f), and (j), and recorded under paragraph (l); and

(C) A statement that the owner or operator will comply with the requirements specified in § 63.1103 by the schedules specified in that section for the affected source.

(ii) If a performance test is required as a result of a process change, the owner or operator shall specify that the performance test has become necessary due to a process change. This specification shall be made in the performance test notification to the Administrator, as specified in § 63.999(a)(1).

(iii) If a process change does not result in additional applicable requirements, then the owner or operator shall include a statement documenting this in the next Periodic Report required by § 63.1110(a)(5) after the process change was made.

(n) *Parameter monitoring of certain process vents.* An owner or operator who maintains a TRE index value (if applicable) in the applicable TRE index value monitoring range as specified in an applicable table presented in § 63.1103 of this subpart without using a recovery device shall report a description of the parameter(s) to be monitored to ensure the process vent is operated in conformance with its design or process and achieves and maintains the TRE index value above the specified level, and an explanation of the criteria used to select parameter(s). An owner or operator who maintains a TRE index value (if applicable) in the applicable TRE index monitoring range as specified in an applicable table presented in § 63.1103 of this subpart by using a recovery device shall comply with the requirements of § 63.993(c).

§ 63.1105 [Reserved]

§ 63.1106 [Reserved]

§ 63.1107 Equipment leaks: applicability assessment procedures and methods.

(a) Each piece of equipment within a process unit that can reasonably be expected to contain equipment in organic HAP service is presumed to be in organic HAP service unless an owner or operator demonstrates that the piece of equipment is not in organic HAP service. For a piece of equipment to be considered not in organic HAP service, it must be determined that the percent organic HAP content can be reasonably expected not to exceed the percent by weight control applicability criteria specified in § 63.1103 for an affected source on an annual average basis. For purposes of determining the percent organic HAP content of the process fluid that is contained in or contacts equipment, Method 18 of 40 CFR part 60, appendix A shall be used.

(b) An owner or operator may use good engineering judgment rather than the procedures in paragraph (a) of this section to determine that the percent organic HAP content does not exceed the percent by weight control applicability criteria specified in § 63.1103 for an affected source. When an owner or operator and the Administrator do not agree on whether a piece of equipment is not in organic HAP service, however, the procedures in paragraph (a) of this section shall be used to resolve the disagreement.

(c) If an owner or operator determines that a piece of equipment is in organic HAP service, the determination can be revised after following the procedures in paragraph (a) of this section, or by documenting that a change in the process or raw materials no longer causes the equipment to be in organic HAP service.

(d) Samples used in determining the percent organic HAP content shall be representative of the process fluid that is contained in or contacts the equipment.

§ 63.1108 Compliance with standards and operation and maintenance requirements.

(a) *Requirements.* (1) Except as provided in paragraph (a)(2) of this section, the emission limitations and established parameter ranges of this part shall apply at all times except during periods of startup, shutdown, malfunction, or non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. During periods of startup, shutdown, or malfunction, the owner or operator shall follow the applicable provisions of the startup, shutdown, malfunction plan required by § 63.1111. However, if a startup, shutdown, malfunction or period of non-operation of one portion of an affected source does not affect the ability of a particular emission point to comply with the specific provisions to which it is subject, then that emission point shall still be required to comply with the applicable provisions of this subpart and any of the subparts that are referenced by this subpart during startup, shutdown, malfunction, or period of non-operation.

(2) If equipment leak requirements are referenced by this subpart for a subject source category, such requirements shall apply at all times except during periods of startup, shutdown, or malfunction, process unit shutdown (as defined in § 63.1101), or non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which the equipment leak requirements apply.

(3) For batch unit operations, shutdown does not include the normal periods between batch cycles; and startup does not include the recharging of batch unit operations, or the transitional conditions due to changes in product.

(4) [Reserved]

(5) During startups, shutdowns, and malfunctions when the emission standards of this subpart and the subparts referenced by this subpart do not apply pursuant to paragraphs (a)(1) through (4) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions. The measures to be taken shall be identified in the startup, shutdown, and malfunction plan (if applicable), and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Back-up control devices are not required, but may be used if available. Compliance with an inadequate startup, shutdown, and malfunction plan developed pursuant to § 63.1111 is not a shield for failing to comply with good operation and maintenance requirements.

(6) Malfunctions shall be corrected as soon as practical after their occurrence and/or in accordance with the source's startup, shutdown, and malfunction plan developed as specified under § 63.1111.

(7) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable, independent of emissions limitations or other requirements in relevant standards.

(b) *Compliance assessment procedures.* (1) *Parameter monitoring: compliance with operating conditions.* Compliance with the required operating conditions for the monitored control devices or recovery devices may be determined by, but is not limited to, the parameter monitoring data for emission points that are required to perform continuous monitoring. For each excursion except for excused excursions (as described in § 63.998(b)(6)), and as provided for in paragraph (b)(2) of this section the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions.

(2) *Parameter monitoring: excursions.* An excursion is not a violation in cases where continuous monitoring is required and the excursion does not count toward the number of excused excursions (as described in § 63.998(b)(6)), if the conditions of paragraphs (b)(2)(i) or (ii) of this section are met. Nothing in this paragraph shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this subpart or a subpart referenced by this subpart.

(i) During periods of startup, shutdown, or malfunction (and the source is operated during such periods in accordance with the source's startup, shutdown, and malfunction plan as required by § 63.1111), or

(ii) During periods of non-operation of the affected source or portion thereof (resulting in cessation of the emissions to which the monitoring applies).

(3) *Operation and maintenance procedures.* Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator. This information may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan under § 63.1111), review of operation and maintenance records, and inspection of the affected source, and alternatives approved as specified in § 63.1113.

(4) *Applicability and compliance assessment procedures.* Applicability and compliance with standards shall be governed by, in part, but not limited to, the use of data, tests, and requirements according to paragraphs (b)(4)(i) through (iii) of this section. Compliance with design, equipment, work practice, and operating standards, including those for equipment leaks, shall be determined according to paragraph (b)(5) of this section.

(i) *Applicability assessments.* Unless otherwise specified in a relevant test method required to assess control applicability, each test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in this subpart. The arithmetic mean of the results of the three runs shall apply when assessing applicability. Upon receiving approval from the Administrator, results of a test run may be replaced with results of an additional test run if it meets the criteria specified in paragraphs (a)(4)(i)(A) through (D) of this section.

(A) A sample is accidentally lost after the testing team leaves the site; or

(B) Conditions occur in which one of the three runs must be discontinued because of forced shutdown; or

(C) Extreme meteorological conditions occur;

(D) Other circumstances occur that are beyond the owner or operator's control.

(ii) *Performance test.* The Administrator may determine compliance with emission limitations of this subpart based on, but not limited to, the results of performance tests conducted according to the procedures specified in § 63.997 of this part, unless

otherwise specified in this subpart or a subpart referenced by this subpart.

(iii) *Operation and maintenance requirements.* The Administrator may determine compliance with the operation and maintenance standards of this subpart by, but not limited to, evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in this subpart or a subpart referenced by this subpart.

(5) *Design, equipment, work practice, or operational standards.* The Administrator may determine compliance with design, equipment, work practice, or operational requirements by, but is not limited to, review of records, inspection of the affected source, and by evaluation of an owner or operator's conformance with operation and maintenance requirements as specified in this subpart, and in the subparts referenced by this subpart.

(c) *Finding of compliance.* The Administrator may make a finding concerning an affected source's compliance with an emission standard or operating and maintenance requirement as specified in, but not limited to, paragraphs (a) and (b) of this section, upon obtaining all of the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable) and any information available to the Administrator to determine whether proper operation and maintenance practices are being used. Standards in this subpart and methods of determining compliance are in metric units followed by the equivalents in English units. The Administrator will make findings of compliance with the numerical standards of this subpart using metric units.

(d) *Compliance time.* All terms that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annually), unless specified otherwise in the section or subsection that imposes the requirement, refer to the standard calendar periods.

(1) Notwithstanding time periods specified for completion of required tasks, time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in § 63.1110(h). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) When the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraph (d)(2) (i) or (ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided the task is conducted at a reasonable interval after completion of the task during the previous period.

§ 63.1109 Recordkeeping requirements.

(a) *Maintaining notifications, records, and reports.* Except as provided in paragraph (b) of this section, the owner or operator of each affected source subject to this subpart shall keep copies of notifications, reports and records required by this subpart and subparts referenced by this subpart for at least 5 years, unless otherwise specified under this subpart.

(b) *Copies of reports.* If the Administrator has waived the requirement of § 63.1110(g)(1) for submittal of copies of reports, the owner or operator is not required to maintain copies of the waived reports. This paragraph applies only to reports and not the underlying records that must be maintained as specified in this subpart and the subparts referenced by this subpart.

(c) *Availability of records.* All records required to be maintained by this subpart or a subpart referenced by this subpart shall be maintained in such a manner that they can be accessed within 2 hours and are suitable for inspection. The most recent 2 years of records shall be retained onsite or shall be accessible to an inspector while onsite. The records of the remaining 3 years, where required, may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, computer disk, magnetic tape, or microfiche.

(d) *Control applicability records.* Owners or operators shall maintain records containing information developed and used to assess control applicability under § 63.1103 (e.g., combined total annual emissions of regulated organic HAP).

§ 63.1110 Reporting requirements.

(a) *Required reports.* Each owner or operator of an affected source subject to this subpart shall submit the reports listed in paragraphs (a)(1) through (8) of this section, as applicable.

(1) A Notification of Initial Startup described in paragraph (b) of this section, as applicable.

(2) An Initial Notification described in paragraph (c) of this section.

(3) [Reserved]

(4) A Notification of Compliance Status report described in paragraph (d) of this section.

(5) Periodic Reports described in paragraph (e) of this section.

(6) Application for approval of construction or reconstruction described in § 63.5(d) of subpart A of this part.

(7) Startup, Shutdown, and Malfunction Reports described in § 63.1111 of this subpart.

(8) Other reports. Other reports shall be submitted as specified elsewhere in this subpart and subparts referenced by this subpart.

(b) *Notification of initial startup.* (1) *Contents.* An owner or operator of an affected source for which a notice of initial startup has not been submitted under § 63.5, shall send the Administrator written notification of the actual date of initial startup of an affected source. This paragraph does not apply to an affected source in existence on the effective date of this rule.

(2) *Due date.* The notification of the actual date of initial startup shall be postmarked within 15 days after such date.

(c) *Initial Notification.* Owners or operators of affected sources who are subject to this subpart shall notify the Administrator of the applicability of this subpart by submitting an Initial Notification according to the schedule described in paragraph (c)(1) of this section. The notice shall include the information specified in paragraphs (c)(2) through (7) of this section, as applicable. An application for approval of construction or reconstruction required under § 63.5(d) of subpart A of this part may be used to fulfill the initial notification requirements.

(1) The initial notification shall be postmarked within 1 year after the source becomes subject to this subpart.

(2) Identification of the storage vessels subject to this subpart.

(3) Identification of the process vents subject to this subpart.

(4) Identification of the transfer racks subject to this subpart.

(5) For equipment leaks, identification of the process units subject to this subpart.

(6) Identification of other equipment or emission points subject to this subpart.

(7) As an alternative to the requirements specified in paragraphs (c)(1) through (3) and (c)(5) of this section, process units can be identified instead of individual pieces of equipment. For this alternative, the kind of emission point in the process unit that will comply must also be identified.

(d) *Notification of Compliance Status.* (1) *Contents.* The owner or operator shall submit a Notification of Compliance Status for each affected source subject to this subpart containing the information specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this section.

(i) The Notification of Compliance Status shall include the information specified in this subpart and the subparts referenced by this subpart. Alternatively, this information can be submitted as part of a title V permit application or amendment.

(ii) The Notification of Compliance Status shall include a statement from the owner or operator identifying which subpart he or she has elected to comply with, where given a choice, as provided for in § 63.1100(g).

(2) *Due date.* The owner or operator shall submit the Notification of Compliance Status for each affected source 240 days after the compliance date specified for the affected source under this subpart, or 60 days after completion of the initial performance test or initial compliance assessment, whichever is earlier. Notification of Compliance Status reports may be combined for multiple affected sources as long as the due date requirements for all sources covered in the combined report are met.

(e) *Periodic Reports.* The owner or operator of an affected source subject to monitoring requirements of this subpart, or to other requirements of this subpart or subparts referenced by this subpart, where periodic reporting is specified, shall submit a Periodic Report.

(1) *Contents.* Periodic Reports shall include all information specified in this subpart and subparts referenced by this subpart.

(2) *Due date.* The Periodic Report shall be submitted semiannually no later than 60 days after the end of each 6-month period. The first report shall be submitted as specified in paragraph (e)(2)(i) or (ii), as applicable.

(i) The first report shall be submitted no later than the last day of the month that includes the date 8 months (6 months and 60 days) after the date the source became subject to this subpart.

(ii) For affected sources electing to comply with this subpart at initial startup, the first report shall cover the 6 months after the Notification of Compliance Status report is submitted. The first report shall be submitted no later than the last day of the month that includes the date 6 months after the Notification of Compliance Status report is submitted.

(3) *Overlap with title V reports.* Information required by this subpart, which is submitted with a title V periodic report, need not also be included in a subsequent Periodic Report required by this subpart or subpart referenced by this subpart. The title V report shall be referenced in the Periodic Report required by this subpart.

(f) *General report content.* All reports and notifications submitted pursuant to this subpart, including reports that combine information required under this subpart and a subpart referenced by this subpart, shall include the information specified in paragraphs (f)(1) through (4) of this section.

(1) The name, address and telephone number (fax number may also be provided) of the owner or operator.

(2) The name, address and telephone number of the person to whom inquiries should be addressed, if different than the owner or operator.

(3) The address (physical location) of the reporting facility.

(4) Identification of each affected source covered in the submission and identification of the subparts (this subpart and the subparts referenced in this subpart) that are applicable to that affected source. Summaries and groupings of this information are permitted.

(g) *Report and notification submission.* (1) *Submission to the Environmental Protection Agency.* All reports and notifications required under this subpart shall be sent to the appropriate EPA Regional Office and to the delegated State authority, except that request for permission to use an alternative means of emission limitation as provided for in § 63.1113 shall be submitted to the Director of the EPA Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–10, Research Triangle Park, North Carolina, 27711. The EPA Regional Office may waive the requirement to submit a copy of any reports or notifications at its discretion.

(2) *Submission of copies.* If any State requires a notice that contains all the information required in a report or notification listed in this subpart, an owner or operator may send the appropriate EPA Regional Office a copy of the report or notification sent to the State to satisfy the requirements of this subpart for that report or notification.

(3) *Method of submission.* Wherever this subpart specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent on or before the specified date.

(4) *Submission by electronic media.* If acceptable to both the Administrator and the owner or operator of an affected source, reports may be submitted on electronic media.

(h) *Adjustment to timing of submittals and review of required communications.* (1) *Alignment with title V submission.* An owner or operator may submit Periodic Reports required by this subpart on the same schedule as the title V periodic report for the facility. The owner or operator using this option need not obtain prior approval, but must ensure that no reporting gaps occur. The owner or operator shall clearly identify the change in reporting schedule in the first report filed under this paragraph. The requirements of paragraph (f) of this section are not waived when implementing this change.

(2) *Establishment of a common schedule.* An owner or operator may arrange by mutual agreement (which may be a standing agreement) with the Administrator a common schedule on which periodic reports required by this subpart shall be submitted throughout the year as long as the reporting period is not extended. Procedures governing the implementation of this provision are specified in paragraphs (h)(3) through (7) of this section.

(3) *Submission requirements.* Except as allowed by paragraph (h)(1) of this section, until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (h)(5) and (6) of this section, the owner or operator of an affected source remains strictly subject to the required submittal deadlines specified in this subpart and subparts referenced by this subpart.

(4) *Request for adjustment of reporting schedule.* Except as allowed by paragraph (h)(1) of this section, an owner or operator shall request the adjustment provided for in paragraphs (h)(5) and (6) of this section each time he or she wishes to change an applicable time period or postmark

deadline specified in this subpart or subparts referenced by this subpart. A request for a change to the periodic reporting schedule need only be made once for every schedule change and not once for every semiannual report submitted.

(5) *Alteration of time periods or deadlines.* Notwithstanding time periods or postmark deadlines specified in this subpart for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practical before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(6) *Approval of request for adjustment.* If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(7) *Notification of delay.* If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

§ 63.1111 Startup, shutdown, and malfunction.

(a) *Startup, shutdown, and malfunction plan.* (1) *Description and purpose of plan.* The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the affected source during periods of startup, shutdown, and malfunction. This plan shall also include a program of corrective action for malfunctioning process and air pollution control equipment used to comply with relevant standards under this subpart. The plan shall also address routine or otherwise predictable CPMS malfunctions. This plan shall be developed by the owner or operator by the affected source's compliance date under this subpart. The requirement to develop and implement this plan shall be incorporated into the source's title V permit. This requirement is optional for equipment that must comply with subparts TT or UU under this subpart. It is not optional for equipment equipped with a closed vent system and control device subject to this subpart and subpart SS of this part. The purpose of the startup, shutdown, and malfunction plan is described in paragraphs (a)(1)(i) and (ii) of this section.

(i) To ensure that owners or operators are prepared to correct malfunctions as soon as practical after their occurrence, in order to minimize excess emissions of regulated organic HAP; and

(ii) To reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

(2) *Operation of source.* During periods of startup, shutdown, and malfunction, the owner or operator of an affected source subject to this subpart shall operate and maintain such affected source (including associated air pollution control equipment and CPMS) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (a)(1) of this section.

(3) *Use of additional procedures.* To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator of an affected source may use the affected source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans meet all the requirements of this section and are made available for inspection when requested by the Administrator.

(4) *Revisions to the plan.* Based on the results of a determination made under § 63.1108(b)(3), the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan if the Administrator finds that the plan is inadequate as specified in paragraphs (a)(4)(i) through (iv) of this section:

(i) Does not address a startup, shutdown, and malfunction event of the CPMS, the air pollution control equipment, or the affected source that has occurred; or

(ii) Fails to provide for the operation of the affected source (including associated air pollution control equipment and CPMS) during a startup, shutdown, and malfunction event in a manner consistent with good air pollution control practices for minimizing emissions to the extent practical; or

(iii) Does not provide adequate procedures for correcting malfunctioning process and air pollution control equipment as quickly as practicable; or

(iv) Does not provide adequate measures to prevent or minimize excess emissions to the extent practical as specified in § 63.1108(a)(5).

(5) *Additional malfunction plan requirements.* If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator shall revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the affected source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control equipment or CPMS.

(b) *Startup, shutdown, and malfunction reporting requirements.* (1) *Periodic startup, shutdown, and malfunction reporting requirements.* If actions taken by an owner or operator during a startup, shutdown, and malfunction of an affected source, or of a control device or monitoring system required for compliance (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's plan, then the owner or operator shall state such information in a startup, shutdown, and malfunction report. During the reporting period, reports shall only be required for startups, shutdowns, and malfunctions during which excess emissions, as defined in § 63.1108(a)(5), occur during the reporting period. A startup, shutdown, and malfunction report can be submitted as part of a Periodic Report required under § 63.1110(a)(5), or on a more frequent basis if specified otherwise under this subpart or a subpart referenced by this subpart or as established otherwise by the permitting authority in the affected source's title V permit. The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30th day following the end of each calendar half (or other

calendar reporting period, as appropriate), unless the information is submitted with the Periodic Report. The report shall include the information specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section.

(i) The name, title, and signature of the owner or operator or other responsible official certifying its accuracy.

(ii) The number of startup, shutdown, and malfunction events and the total duration of all periods of startup, shutdown, and malfunction for the reporting period if the total duration amounts to either of the durations in paragraphs (b)(1)(ii)(A) or (B) of this section. Records of the number of CPMS startup, shutdown, and malfunction events and the total duration of all periods of startup, shutdown, and malfunction for the reporting period are required under § 63.998(c)(1)(ii)(C) and (D) of this section.

(A) Total duration of periods of malfunctioning of a CPMS equal to or greater than 5 percent of that CPMS operating time for the reporting period; or

(B) Total duration of periods of startup, shutdown, and malfunction for an affected source equal to or greater than 1 percent of that affected source's operating time for the reporting period.

(iii) Records documenting each startup, shutdown and malfunction event as required under § 63.998(c)(1)(ii)(F).

(iv) Records documenting the total duration of operating time as required under § 63.998(c)(1)(ii)(H).

(2) *Immediate startup, shutdown, and malfunction reports.* Notwithstanding the allowance to reduce the frequency of reporting for startup, shutdown, and malfunction reports under paragraph (b)(1) of this section, any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) during which excess emissions occur is not consistent with the procedures specified in the affected source's plan, the owner or operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan, followed by a letter delivered or postmarked within 7 working days after the end of the event. The immediate report required under this paragraph shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred. Notwithstanding the requirements of the previous sentence, after the effective date of an approved permit program in the State in which an affected source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under this paragraph are specified in § 63.1110(h).

(3) [Reserved]

§ 63.1112 Extension of compliance, and performance test, monitoring, recordkeeping and reporting waivers and alternatives.

(a) *Extension of compliance.* (1) *Extension of compliance with emission standards.* Until an extension of compliance has been granted by the Administrator under this paragraph, the owner or operator of an affected source subject to the requirements of this subpart shall comply with all applicable requirements of this subpart.

(2) *Extension of compliance for early reductions and other reductions.* (i) *Early reductions.* Pursuant to section 112(i)(5) of the Act, if the owner or operator of an existing source demonstrates that the source has achieved a reduction in emissions of hazardous air pollutants in accordance with the provisions of subpart D of this part, the Administrator will grant the owner or operator an extension of compliance with specific requirements of this part, as specified in subpart D of this part.

(ii) *Other reductions.* Pursuant to section 112(i)(6) of the Act, if the owner or operator of an existing source has installed best available control technology (BACT) (as defined in section 169(3) of the Act) or technology required to meet a lowest achievable emission rate (LAER) (as defined in section 171 of the Act) prior to the promulgation of an emission standard in this part applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to the BACT or LAER installation, the Administrator will grant the owner or operator an extension of compliance with such emission standard that will apply until the date 5 years after the date on which such installation was achieved, as determined by the Administrator.

(3) *Request for extension of compliance.* Paragraphs (a)(4) through (7) of this section concern requests for an extension of compliance with a relevant standard under this part (except requests for an extension of compliance under paragraph (a)(2)(i) of this section will be handled through procedures specified in subpart D of this part).

(4) *Requests for extensions of compliance for section 112 standards.* (i) *Section 112(d) standards.* (A) The owner or operator of an existing source who is unable to comply with a relevant standard established under this part pursuant to section 112(d) of the Act may request that the Administrator grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls. The owner or operator of an affected source who has requested an extension of compliance under this paragraph and who is otherwise required to obtain a title V permit shall apply for such permit or apply to have the source's title V permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted under this paragraph will be incorporated into the affected source's title V permit according to the provisions of part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever are applicable.

(B) Any request under this paragraph for an extension of compliance with a relevant standard shall be submitted in writing to the appropriate authority not later than 12 months before the affected source's compliance date (as specified in § 63.1102) for sources that are not including emission points in an emissions average, or not later than 18 months before the affected source's compliance date (as specified in § 63.1102) for sources that are including emission points in an emissions average. Emission standards established under this part may specify alternative dates for the submittal of requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards, e.g., a compliance date specified by the standard is less than 12 (or 18) months after the standard's effective date.

(ii) *Section 112(f) standards.* The owner or operator of an existing source unable to comply with a relevant standard established under this part pursuant to section 112(f) of the Act may request that the Administrator grant an extension allowing the source up to 2 years after the standard's effective date to comply with the standard. The Administrator may grant such an extension if he/she finds that such additional period is necessary for the installation of controls and that steps will be taken during the period of

the extension to assure that the health of persons will be protected from imminent endangerment. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 15 days after the effective date of the relevant standard.

(5) *Requests for extensions of compliance for BACT or LAER.* The owner or operator of an existing source who has installed BACT or technology required to meet LAER (as specified in paragraph (a)(2)(ii) of this section) prior to the promulgation of a relevant emission standard in this part may request that the Administrator grant an extension allowing the source 5 years from the date on which such installation was achieved, as determined by the Administrator, to comply with the standard. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 120 days after the promulgation date of the standard. The Administrator may grant such an extension if he or she finds that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(6) *Contents of request.* (i) The request for a compliance extension under paragraph (a)(4) of this section shall include the following information:

(A) A description of the controls to be installed to comply with the standard;

(B) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

(*1*) The date by which contracts for emission control systems or process changes for emission control will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(*2*) The date by which on-site construction, installation of emission control equipment, or a process change is to be initiated;

(*3*) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and

(*4*) The date by which final compliance is to be achieved.

(C) A description of interim emission control steps, that will be taken during the extension period, including milestones to assure proper operation and maintenance of emission control and process equipment; and

(D) Whether the owner or operator is also requesting an extension of other applicable requirements (e.g., performance testing requirements).

(ii) The request for a compliance extension under paragraph (a)(5) of this section shall include all information needed to demonstrate to the Administrator's satisfaction that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(7) *Additional advice.* Advice on requesting an extension of compliance may be obtained from the Administrator.

(8) *Approval of request for extension of compliance.* Paragraphs (a)(9) through (14) of this section concern approval of an extension of compliance requested under paragraphs (a)(4) through (6) of this section.

(9) *General.* Based on the information provided in any request made under paragraphs (a)(4) through (6) of this section, or other information, the Administrator may grant an extension of compliance with an emission standard, as specified in paragraphs (a)(4) and (5) of this section.

(10) *Contents of extension.* The extension will be in writing and will—

(i) Identify each affected source covered by the extension;

(ii) Specify the termination date of the extension;

(iii) Specify the dates by which steps toward compliance are to be taken, if appropriate;

(iv) Specify other applicable requirements to which the compliance extension applies (e.g., performance tests); and

(v)(A) Under paragraph (a)(4) of this section, specify any additional conditions that the Administrator deems necessary to assure installation of the necessary controls and protection of the health of persons during the extension period; or

(B) Under paragraph (a)(5)of this section, specify any additional conditions that the Administrator deems necessary to assure the proper operation and maintenance of the installed controls during the extension period.

(11) *Progress reports.* The owner or operator of an existing source that has been granted an extension of compliance under paragraph (a)(10) of this section may be required to submit to the Administrator progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached. The contents of the progress reports and the dates by which they shall be submitted will be specified in the written extension of compliance granted under paragraph (a)(9) of this section.

(12) *Notifications to owners and operators regarding compliance extensions for section 112(d) standards.* (i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 days after receipt of sufficient information to evaluate a request submitted under paragraph (a)(4)(i) or (a)(5) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 days after receipt of the original application and within 30 days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator will notify the owner or operator in writing of the Administrator's intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(iv) The Administrator's final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 days after presentation of additional information or argument (if the application is complete), or within 30 days after the final date specified for the presentation if no presentation is made.

(13) *Notifications to owners and operators regarding compliance extensions for section 112(f) standards.* (i) The Administrator will notify the owner or operator in writing of approval

or intention to deny approval of a request for an extension of compliance within 30 days after receipt of sufficient information to evaluate a request submitted under paragraph (a)(4)(ii) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 15 days after receipt of the original application and within 15 days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 15 days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator will notify the owner or operator in writing of the Administrator's intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(iv) A final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 days after presentation of additional information or argument (if the application is complete), or within 30 days after the final date specified for the presentation if no presentation is made.

(14) *Termination of extension.* The Administrator may terminate an extension of compliance at an earlier date than specified if any specification under paragraphs (a)(10)(iii) or (iv) of this section is not met.

(15) [Reserved]

(16) *Administrator's authority.* The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the Act.

(b) *Waiver of performance tests.* (1) *Applicability of this section.* Until a waiver of a performance testing requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) *General.* Individual performance tests may be waived upon written application to the Administrator if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) *Request to waive a performance test.* (i) If a request is made for an extension of compliance under paragraph (a) of this section, the application for a waiver of an initial performance test shall accompany the information required for the request for an extension of compliance. If no extension of compliance is requested or if the owner or operator has requested an extension of compliance and the Administrator is still considering that request, the application for a waiver of an initial performance test shall be submitted at least 60 days before the performance test if a site-specific test plan is not submitted.

(ii) If an application for a waiver of a subsequent performance test is made, the application may accompany any required compliance progress report, compliance status report, or excess emissions and continuous monitoring system performance report, but it shall be submitted at least 60 days before the performance test if a site-specific test plan is not submitted.

(iii) Any application for a waiver of a performance test shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test.

(4) *Approval of request to waive performance test.* The Administrator will approve or deny a request for a waiver of a performance test made under paragraph (b)(3) of this section when he/she—

(i) Approves or denies an extension of compliance under paragraph (a) of this section; or

(ii) Approves or disapproves a site-specific test plan; or

(iii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iv) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) *Administrator's authority.* Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

(c) *Use of an alternative monitoring method.* (1) *General.* Until permission to use an alternative monitoring method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) *Alternatives to monitoring methods.* After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring methods or procedures of this part including, but not limited to, the following:

(i) Alternative monitoring requirements when installation of a CMS specified by a relevant standard would not provide accurate measurements due to liquid water or other interferences caused by substances within the effluent gases;

(ii) Alternative monitoring requirements when the affected source is infrequently operated;

(iii) Alternative monitoring requirements to accommodate CEMS that require additional measurements to correct for stack moisture conditions;

(iv) Alternative locations for installing CMS when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements;

(v) Alternate methods for converting pollutant concentration measurements to units of the relevant standard;

(vi) Alternate procedures for performing daily checks of zero (low-level) and high-level drift that do not involve use of high-level gases or test cells;

(vii) Alternatives to the American Society for Testing and Materials (ASTM) test methods or sampling procedures specified by any relevant standard;

(viii) Alternative CMS that do not meet the design or performance requirements in this part, but adequately demonstrate a definite and consistent relationship between their measurements and the measurements of opacity by a system complying with the

requirements as specified in the relevant standard. The Administrator may require that such demonstration be performed for each affected source; or

(ix) Alternative monitoring requirements when the effluent from a single affected source or the combined effluent from two or more affected sources is released to the atmosphere through more than one point.

(3) *Conflicts between alternative and required methods.* If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in this section or in the relevant standard. If the results of the specified and alternative method, requirement, or procedure do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

(4)(i) *Request to use alternative monitoring method.* An owner or operator who wishes to use an alternative monitoring method shall submit an application to the Administrator as described in paragraph (c)(4)(ii) of this section. The application may be submitted at any time provided that the monitoring method is not used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring method is to be used to demonstrate compliance with a relevant standard, the application shall be submitted not later than with the site-specific test plan required, or with the site-specific performance evaluation plan (if requested), or at least 60 days before the performance evaluation is scheduled to begin.

(ii) The application shall contain a description of the proposed alternative monitoring system and a performance evaluation test plan, if required. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the affected source using the required method.

(iii) The owner or operator may submit the information required in this paragraph well in advance of the submittal dates specified in paragraph (c)(4)(i) of this section to ensure a timely review by the Administrator in order to meet the compliance demonstration date specified in this section or the relevant standard.

(5) *Approval of request to use alternative monitoring method.* (i) The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring method within 30 days after receipt of the original request and within 30 days after receipt of any supplementary information that is submitted. Before disapproving any request to use an alternative monitoring method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with—

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of his or her intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(ii) The Administrator may establish general procedures and criteria in a relevant standard to accomplish the requirements of paragraph (c)(5)(i) of this section.

(iii) If the Administrator approves the use of an alternative monitoring method for an affected source under paragraph (c)(5)(i) of this section, the owner or operator of such source shall continue to use the alternative monitoring method until he or she receives approval from the Administrator to use another monitoring method as allowed by this subpart or a subpart referenced by this subpart.

(6) *Alternative to the relative accuracy test.* An alternative to the relative accuracy test for CEMS specified in a relevant standard may be requested as follows:

(i) *Criteria for approval of alternative procedures.* An alternative to the test method for determining relative accuracy is available for affected sources with emission rates demonstrated to be less than 50 percent of the relevant standard. The owner or operator of an affected source may petition the Administrator under paragraph (c)(6)(ii) of this section to substitute the relative accuracy test in section 7 of Performance Specification 2 with the procedures in section 10 if the results of a performance test conducted according to the requirements specified in this subpart or subpart referenced by this subpart demonstrate that the emission rate of the pollutant of interest in the units of the relevant standard is less than 50 percent of the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the owner or operator may petition the Administrator to substitute the relative accuracy test with the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the CEMS is used continuously to determine compliance with the relevant standard.

(ii) *Petition to use alternative to relative accuracy test.* The petition to use an alternative to the relative accuracy test shall include a detailed description of the procedures to be applied, the location and the procedure for conducting the alternative, the concentration or response levels of the alternative relative accuracy materials, and the other equipment checks included in the alternative procedure(s). The Administrator will review the petition for completeness and applicability. The Administrator's determination to approve an alternative will depend on the intended use of the CEMS data and may require specifications more stringent than in Performance Specification 2.

(iii) *Rescission of approval to use alternative to relative accuracy test.* The Administrator will review the permission to use an alternative to the CEMS relative accuracy test and may rescind such permission if the CEMS data from a successful completion of the alternative relative accuracy procedure indicate that the affected source's emissions are approaching the level of the relevant standard. The criterion for reviewing the permission is that the collection of CEMS data shows that emissions have exceeded 70 percent of the relevant standard for any averaging period, as specified in the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the criterion for reviewing the permission is that the collection of CEMS data shows that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for any averaging period, as specified in the relevant standard. The owner or operator of the affected source shall maintain records and determine the level of emissions relative to the criterion for permission to use an alternative for relative accuracy testing. If this criterion is exceeded, the owner or operator shall notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of the increased emissions. The Administrator will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2.

(d) *Waiver of recordkeeping or reporting requirements.* (1) Until a waiver of a recordkeeping or reporting requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the recordkeeping and reporting requirements of this subpart and any subparts referenced by this subpart.

(2) Recordkeeping or reporting requirements may be waived upon written application to the Administrator if, in the Administrator's judgment, the affected source is achieving the relevant standard(s), or the source is operating under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) If an application for a waiver of recordkeeping or reporting is made, the application shall accompany the request for an extension of compliance under paragraph (a) of this section, any required compliance progress report or compliance status report required under this part or in the source's title V permit, or an excess emissions and continuous monitoring system performance report required under § 63.999(c) or another subpart referenced by this subpart, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Administrator that a waiver of recordkeeping or reporting is warranted.

(4) The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements under this paragraph when he/she—

(i) Approves or denies an extension of compliance under paragraph (a) of this section; or

(ii) Makes a determination of compliance following the submission of a required Notification of Compliance Status report or excess emissions and continuous monitoring systems performance report; or

(iii) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) A waiver of any recordkeeping or reporting requirement granted under this paragraph may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(6) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

§ 63.1113 Procedures for approval of alternative means of emission limitation.

(a) *Alternative means of emission limitation.* An owner or operator of an affected source may request a determination of alternative means of emission limitation to the requirements of design, equipment, work practice, or operational standards of this subpart or of a subpart referenced by this subpart. If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in emissions from that source achieved under any design, equipment, work practice, or operational standards (but not performance standards) in this subpart, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement.

(1) The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(2) Any such notice shall be published only after public notice and an opportunity for a hearing.

(b) *Content of submittal.* (1) In order to obtain approval, any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information showing that the alternative means achieves equivalent emission reductions. An owner or operator of an affected source seeking permission to use an alternative means of compliance who has not previously performed testing shall also submit a proposed test plan. If the owner or operator seeks permission to use an alternative means of compliance based on previously performed testing, they shall submit the results of testing, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring.

(2) The owner or operator who requests an alternative means of emissions limitation shall submit a description of the proposed testing, monitoring, recordkeeping, and reporting that will be used and the proposed basis for demonstrating compliance.

(3) For storage vessels, the owner or operator shall include the results of actual emissions tests using full-size or scale-model storage vessels that accurately collect and measure all regulated HAP emissions using a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or an engineering analysis that the Administrator determines to be an accurate method of determining equivalence.

(4) For proposed alternatives to equipment leak requirements referenced by this subpart, the owner or operator shall also submit the information specified in and meet the requirements for alternate means of emission limitation specified in the referenced subparts.

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BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6347–1]

RIN 2060–A–53

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology; Process Wastewater Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking; reopening of public comment period.

SUMMARY: On October 14, 1998, the EPA proposed a consolidated rulemaking that included several related elements: the establishment of the EPA's "generic MACT standards" program for setting national emission standards for hazardous air pollutants (NESHAP) under section 112 of the Clean Air Act (Act) for certain small source categories consisting of five or fewer sources; as part of this program, the establishment of an alternative methodology for making EPA's maximum available control technology (MACT) determination for appropriate small categories by referring to previous MACT standards that have been promulgated for similar sources in other categories; the proposal of MACT standards that were developed within the generic MACT framework for four specific source categories (i.e., acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, and polycarbonate(s) (PC) production; and the proposal of general control requirements for certain types of emission points for hazardous air pollutants (HAP), which would then be referenced, as appropriate, in the generic MACT requirements for individual source categories.

The initial comment period for the proposed generic MACT standards closed on January 12, 1999. The EPA received several comments requesting clarifying changes to the standards. Changes in response to relevant comments have been made and those standards are being promulgated elsewhere in this separate part of the **Federal Register**. However, comments related to the wastewater provisions were received, which upon consideration by the EPA, indicate a need for significant changes to these provisions. Therefore, in today's promulgated rule for the generic MACT standards, the EPA has deferred taking final action regarding provisions applicable to process wastewater streams for the AR, AMF, and PC production source categories.

DATES: *Comments:* Comments must be received on or before July 29, 1999.

Public Hearing: A public hearing will be held, if a timely hearing request is received, to provide interested persons an opportunity to present information pertaining to today's supplemental proposal. If any person specifically requests that a public hearing be held by July 6, 1999, a public hearing will be held on July 13, 1999 beginning at 10 a.m. Any request that a hearing be held concerning this supplemental proposal must be submitted orally or in writing no later than July 6, 1999.

ADDRESSES: *Comments:* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), (LE–131), Attention, Docket No. A–97–17, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of comments also be sent to Mr. David W. Markwordt (see **FOR FURTHER INFORMATION CONTACT FOR ADDRESS).**

Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments and data will also be accepted on Microsoft DOS formatted 3.5 inches high-density diskettes containing WordPerfect® 5.1 or 6.1, or ASCII formatted files. All comments and data submitted in electronic form must note the docket number: A–97–17. No confidential business information (CBI) should be submitted by e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Public Hearing: If a timely request for a public hearing is received, the hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending such a hearing should contact Ms. Dorothy Apple at (919) 541–4487, Policy Planning and Standards Group (MD–13) to verify that a hearing will be held. The subject matter of any hearing will be strictly limited to the proposed revisions of the wastewater provisions for the AR, AMF, and PC source categories set forth in today's supplemental proposal.

Docket: A docket, No. A–97–17, containing information considered by the EPA in the development of the proposed and promulgated generic MACT standards, is available for public inspection between 8:30 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays), at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460, telephone: (202) 260–7548. The EPA's Air Docket section is located at the above address in Room M–1500, Waterside Mall (ground floor). The proposed and final standards, and supporting information, are available for inspection and copying. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information concerning this document, contact Mr. David W. Markwordt, Policy, Planning, and Standards Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone: (919) 541–0837; facsimile: (919) 541–0942; e-mail address: markwordt.david@epa.gov.

SUPPLEMENTARY INFORMATION:

Plain Language

In compliance with President Clinton's June 1, 1998 Executive Memorandum on Plain Language in government writing, this preamble is written using plain language. Thus, the use of "we" in this notice refers to the EPA. The use of "you" refers to the reader, and may include industry; State, local, and tribal governments; environmental groups; and other interested individuals.

On October 14, 1998 (63 FR 55178), we proposed a consolidated rulemaking that included generic MACT standards under section 112 of the Act for certain small source categories consisting of five or fewer sources. In a separate document published elsewhere in this separate part of the **Federal Register**, we are taking final action on nearly all aspects of that proposal, but we are deferring final action on the provisions applicable to process and maintenance wastewater and certain liquid streams in open systems.

I. Comments Received on the Proposed Wastewater Provisions

Commenters raised several issues related to the wastewater provisions proposed on October 14, 1998. One commenter provided that the proposed provisions did not specify the location for determining HAP concentration. The commenter stated that it seems appropriate to make this determination at the entrance to each wastewater treatment system unit. The commenter recommended that a definition for "point of determination" be made and that references to "point of generation" be changed to "point of determination." The commenter also stated that an owner or operator should be allowed to use all of the test methods specified in the hazardous organic NESHAP (HON) when determining HAP concentrations in wastewater.

Another commenter stated that there was no information or requirements for treatment or destruction of wastewater streams leaving the process unit. The commenter noted that the proposal only required control of secondary emissions from equipment handling the wastewater stream.

Based on comments received, and an evaluation of the proposed process wastewater stream provisions, we agree that the proposed process wastewater stream provisions for the AR, AMF, and PC standards did not include adequate applicability procedures and treatment requirements. We also concluded that provisions were needed to address HAP emissions from maintenance wastewater and certain liquid streams in open systems. The final standards for these source categories that appear in today's **Federal Register** do not contain any wastewater provisions. Rather, we are reopening the comment period to specifically request additional comment on appropriate revisions of the wastewater provisions.

II. Summary of Proposed Amendments

The proposed amendments incorporate and cross-reference appropriate wastewater provisions of the HON for the AR, AMF, and PC production source categories. The proposed amendments respond to comments received on the wastewater provisions on October 14, 1998. In addition, these amendments reflect our original intent regarding "point of determination" measurements and "treatment and destruction" requirements for process wastewater and that requirements for maintenance wastewater and liquid streams in open systems be included.

The proposed amendments for process wastewater, maintenance wastewater, and liquid streams in open systems directly refer to HON wastewater requirements. For process wastewater, you are required to make a group determination for each wastewater stream based on flow rate and organic HAP concentration. If a process wastewater stream is determined to be Group 1, you must comply with specific requirements for waste management units to suppress emissions, and requirements to treat the wastewater streams to reduce the organic HAP concentration. The suppression requirements in the referenced sections of the HON are equivalent in stringency to the wastewater requirements that were proposed on October 14, 1998 for most emissions points associated with wastewater streams.

The maintenance wastewater provisions require, for each maintenance wastewater stream that contains organic HAP, that you develop and follow procedures to manage wastewaters generated during maintenance activities so that emissions are minimized. The proposed provisions for liquid streams in open systems apply to drain or drain hubs, manholes, lift stations, trenches, pipes, oil/water separators, and tanks, and require that you implement specific emission reduction techniques for each type of equipment.

We intend to take final action concerning the revised wastewater provisions for the AR, AMF, and PC source categories proposed today as expeditiously as practicable, but no later than November 15, 1999 (the revised date set forth in a proposed consent decree). For purposes of this rulemaking, we will consider only comments limited to the newly proposed process wastewater stream provisions for the AR, AMF, and PC production source categories (see IV. Solicitation of Comments).

III. Summary of Impacts

We estimate that the impacts for air emissions will be negligible as the AMF, AR, and PC production affected sources that would be subject to these requirements are already well controlled. Similarly, water pollution and solid waste, and increases in energy use resulting from the use of control devices would be negligible. Based on previous impacts analyses associated with the application of the control and recovery devices required under the standards and because each of the three subject source categories have only five or fewer major sources, we believe that there will be minimal, if any, adverse environmental or energy impacts associated with the final standards.

Likewise, based on available information, we estimate that the cost and economic impacts of the proposed amendments to the promulgated standards for the three source categories being regulated will be insignificant or minimal. The economic analyses for each of the three source categories can be obtained from the dockets established for these source categories (see **ADDRESSES**).

IV. Solicitation of Comments

As noted in section I of today's SNPR, commenters provided comment on the limitations of the proposed wastewater provisions. We evaluated their comments and realized that treatment provisions had inadvertently been omitted and that the applicability procedures were not adequate. The three source categories affected by the proposed wastewater provisions amendments (i.e., the AMF, AR, and PC production source categories) handle organic HAP waste streams similar to what is managed by the HON. Therefore, these proposed amendments directly reference HON wastewater provisions. We are soliciting comment on the appropriateness of these HON wastewater provisions for the AR, AMF, and PC production source categories.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of the administrative record compiled by the EPA in the development of the rule. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (except for interagency review materials) (see 42 U.S.C. 7607(d)(7)(A)).

B. Paperwork Reduction Act

The information collection requirements associated with this supplemental notice of proposed rulemaking do not add to the promulgated rule information collection requirements. The information collection requirements of the promulgated rule for the Generic MACT standards were submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501, *et seq*. Under the promulgated rule, an Information Collection Request (ICR) document was prepared by the EPA (ICR No. 1871.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, S.W., Washington, DC 20460, or by calling (202) 260–2740.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's SNPR is a significant action under the terms of Executive Order 12866 because the proposed amendments for AR, AMF, and PC production do constitute a "significant regulatory action" as defined under Executive Order 12866.

D. Executive Order 12875

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's proposed amendments implement requirements specifically set forth by the Congress in section 112 of the Act without the exercise of any discretion by the EPA. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

This proposed amendments are not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. No children's risk analysis was performed for this rulemaking because the agency does not have the data necessary to conduct such analysis, and cannot obtain such data with available resources.

F. Executive Order 13084

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule implements requirements specifically set forth by Congress in section 112 of the Act without the excercise of any discretion by the EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The RFA of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts.

Today's action is not subject to the requirements of the RFA as modified by SBREFA because it does not impose any regulatory requirements on small entities.

H. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Because the promulgated rule and this supplemental notice of proposed rulemaking do not include a Federal mandate and is estimated to result in expenditures less than $100 million in any one year by State, local, and tribal governments, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments would not be significantly or uniquely affected by this rule, the EPA is not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply to this action.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve the proposal of any new technical standards. It does, however, incorporate by reference existing technical standards, including government-unique technical standards. The technical standards proposed with this action are standards that have been proposed and promulgated under other rulemakings for similar source control applicability and compliance determinations. The EPA solicits comment on the identification of potentially-applicable voluntary consensus standards that could be use in lieu of standard proposed under today's action. The EPA request that submitted comments include an explanation why such standards should be used in lieu of those proposed.

As part of a larger effort, the EPA is undertaking a project to cross-reference existing voluntary consensus standards on testing, sampling, and analysis, with current and future EPA test methods. When completed, this project will assist the EPA in identifying potentially-applicable voluntary consensus standards that can then be evaluated for equivalency and applicability in determining compliance with future regulations.

List of Subjects in 40 CFR Part 63

Environmental protection, Acetal resins production, Acrylic and modacrylic fiber production, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Polycarbonates production, Process wastewater streams, Reporting and recordkeeping requirements.

Dated: May 14, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

2. Section 63.1100 is amended by adding paragraph (g)(5) to read as follows:

§ 63.1100 Applicability.

* * * * *

(g) * * *

(5) *Overlap of subpart YY with other regulations for wastewater.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, wastewater streams that are subject to the wastewater requirements of this subpart and the wastewater requirements of subparts F, G, and H of this part (collectively known as the "HON") are in compliance with the requirements of this subpart if it complies with either such requirement.

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, wastewater streams that are subject to control requirements in the Benzene Waste NESHAP (subpart FF of part 61 of this chapter) and this subpart are required to comply with both subpart FF of part 61 of this chapter and this subpart.

3. Section 63.1101 is amended by adding definitions in alphabetical order to read as follows:

§ 63.1101 Definitions.

* * * * *

Annual average concentration, as used in the wastewater provisions, means the flow-weighted annual average concentration, as determined according to the procedures specified in § 63.144(b).

Annual average flow rate, as used in the wastewater provisions, means the annual average flow rate, as determined according to the procedures specified in § 63.144(c).

* * * * *

Group 1 wastewater stream means a process wastewater stream at an existing or new source that meets the criteria for Group 1 status in § 63.132(c).

Group 2 wastewater stream means a process wastewater stream that does not meet the definition of a Group 1 wastewater stream.

* * * * *

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the chemical manufacturing process unit into an individual drain system prior to or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewaters include descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of low legs and high point bleeds, draining of pumps into an individual drain system, and draining of portions of the chemical manufacturing process unit for repair.

* * * * *

Oil-water separator or *organic-water separator* means a waste management unit, generally a tank used to separate oil or organics from water. An oil-water or organic-water separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to additional waste management units such as an air flotation unit, clarifier, or biological treatment unit. Examples of an oil-water or organic-water separator include, but are not limited to, an American Petroleum Institute separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

* * * * *

Point of determination means each point where process wastewater exits the chemical manufacturing process unit.

Note to definition for "Point of determination": This subpart allows determination of the characteristics of a wastewater stream: At the point of determination; or downstream of the point of determination if corrections are made for changes in flow rate and annual average concentration of Table 9 compounds as determined in § 63.144. Such changes include losses by air emissions; reduction of annual average concentration or changes in flow rate by mixing with other water or wastewater streams; and reduction in flow rate or annual average concentration by treating or otherwise handling the wastewater stream to remove or destroy hazardous air pollutants.

* * * * *

Process wastewater means wastewater which, during manufacturing or processing, comes into direct contact

with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples are product tank drawdown or feed tank drawdown, water formed during a chemical reaction or used as a reactant; water used to wash impurities from organic products or reactants; equipment washes between batches in a batch process; water used to cool or quench organic vapor streams through direct contact; and condensed steam from jet ejector systems pulling vacuum on vessels containing organics.

Process wastewater stream means a stream that contains process wastewater.

* * * * *

Table 9 compounds means compounds listed in Table 9 of subpart G of this part.

* * * * *

Wastewater is either a process wastewater or a maintenance wastewater and means water that:

(1) Contains either:

(i) An annual average concentration of Table 9 compounds of at least 5 parts per million by weight at the point of determination and has an annual average flow rate of 0.02 liter per minute or greater; or

(ii) An annual average concentration of Table 9 compounds of at least 10,000 parts per million by weight at the point of determination at any flow rate; and

(2) Is discarded from a chemical manufacturing process unit.

Wastewater stream means a stream that contains wastewater.

4. Section 63.1103 is amended in table 1 in paragraph (a) by adding in numerical order entries 6, 7, and 8; in table 2 in paragraph (b)(3)(i) by adding in numerical order entries 8, 9, and 10; in table 5 in paragraph (d) by adding in numerical order entries 7, 8, and 9; and in table 6 in paragraph (d) by adding in numerical order entries 6, 7, and 8 to read as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

(a) * * *

TABLE 1 TO § 63.1103(A).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACETAL RESINS PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
.	.	.
6. An acetal resins production process unit that generates process wastewater.	The process wastewater stream is a Group 1 wastewater stream.	Comply with the requirements of § 63.1106(a).
7. An acetal resins production process unit that generates maintenance wastewater.	The maintenance wastewater contains organic HAP.	Comply with the requirements of § 63.1106(b).
8. An item of equipment listed in § 63.1106(c)(1).	The item of equipment meets the criteria specified in § 63.1106(c)(1) through (3) and either (c)(4)(i) or (ii).	Comply with the requirements in Table 35 of subpart G of this part.

* * * * *

(b) * * *

(3) * * *

(i) * * *

TABLE 2. TO § 63.1103(B)(3)(I).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACRYLIC AND MODACRYLIC FIBER PRODUCTION EXISTING OR NEW AFFECTED SOURCE AND AM COMPLYING WITH PARAGRAPH (B)(3)(I) OF THIS SECTION?

If you own or operate . . .	And if . . .	Then you must . . .
.	.	.
8. An acrylic and modacrylic fiber production process unit that generates process wastewater.	The process wastewater stream is a Group 1 wastewater stream.	Comply with the requirements of § 63.1106(a).
9. An acrylic and modacrylic fiber production process unit that generates maintenance wastewater.	The maintenance wastewater contains organic HAP.	Comply with the requirements of § 63.1106(b).
10. An item of equipment listed in § 63.1106(c)(1).	The item of equipment meets the criteria specified in § 63.1106(c)(1) through (3) and either (c)(4)(i) or (ii).	Comply with the requirements in Table 35 of subpart G of this part.

* * * * * * *

* * * * * * *

(d) * * *

TABLE 5 TO § 63.1103(D).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATE PRODUCTION EXISTING AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
.	.	.
7. A polycarbonate production process unit that generates process wastewater.	The process wastewater stream is a Group 1 wastewater stream.	Comply with the requirements of § 63.1106(a).

TABLE 5 TO § 63.1103(D).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATE PRODUCTION EXISTING AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
8. A polycarbonate production process unit that generates maintenance wastewater.	The maintenance wastewater contains organic HAP.	Comply with the requirements of § 63.1106(b).
9. An item of equipment listed in § 63.1106(c)(1).	The item of equipment meets the criteria specified in § 63.1106(c)(1) through (3) and either (c)(4)(i) or (ii).	Comply with the requirements in Table 35 of subpart G of this part.

* * * * * * *

Table 6 to § 63.1103(d).—What Are My Requirements if I Own or Operate a Polycarbonate Production New Affected Source?

If you own or operate . . .	And if . . .	Then you must . . .
.	.	.
6. A polycarbonate production process unit that generates process wastewater.	The process wastewater stream is a Group 1 wastewater stream.	Comply with the requirements of § 63.1106(a).
7. A polycarbonate production process unit that generates maintenance wastewater.	The maintenance wastewater contains organic HAP.	Comply with the requirements of § 63.1106(b).
8. An item of equipment listed in § 63.1106(c)(1).	The item of equipment meets the criteria specified in § 63.1106(c)(1) through (3) and either (c)(4)(i) or (ii).	Comply with the requirements in Table 35 of subpart G of this part.

* * * * * * *

5. Section 63.1106 is added to subpart YY to read as follows:

§ 63.1106 Wastewater provisions.

(a) *Process wastewater.* Except as specified in paragraphs (a)(1) through (a)(16) and (d) of this section, the owner or operator of each affected source shall comply with the HON process wastewater requirements in §§ 63.132 through 63.148.

(1) When terms used in §§ 63.132 through 63.148 are defined in § 63.1101, the definition in § 63.1101 shall apply, for the purposes of this subpart. For terms used in §§ 63.132 through 63.148 that are not defined in § 63.1101, the definitions in § 63.101 and § 63.111 shall apply.

(2) When the term chemical manufacturing production process unit, or CMPU, is used in § 63.132 through 63.148, the phrase "a process unit whose primary product is a product produced by a source category subject to this subpart" shall apply, for the purposes of this subpart.

(3) Owners and operators of affected sources are not required to comply with § 63.132(b)(1) and (d) and § 63.138(c). Further, owners and operators are exempt from all requirements in §§ 63.132 through 63.148 that pertain solely and exclusively to organic HAP listed in table 8 of subpart G of this part.

(4) When the determination of equivalence criteria in § 63.102(b) is referred to in §§ 63.132, 63.133, and 63.137, the alternative nonopacity emission standard provisions in § 63.6(g) shall apply, for the purposes of this subpart.

(5) When the HON storage vessel requirements for internal floating roofs contained in §§ 63.119(b) are referred to in § 63.133(a)(2)(ii), the requirements in § 63.1063(a)(1)(i), (2), and (b) shall apply, for the purposes of this subpart.

(6) When the HON storage vessel requirements for external floating roofs in § 63.119(c) and § 63.120(b)(5) and (6) are referred to in § 63.133(a)(2)(iii) and (d), the requirements in § 63.1063(a)(1)(ii), (2), and (b) shall apply, for the purposes of this subpart.

(7) For the purposes of this subpart, § 63.1063(c)(2)(iv) shall apply instead of § 63.133(e).

(8) When § 63.143(c), (d), (e)(3) and § 63.146(a) require the submission of a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(f) or (g), the owner or operator requesting to monitor alternative parameters shall follow the procedures specified in § 63.1108(c) or as specified in a referenced subpart.

(9) When § 63.147(d) requires the owner or operator to keep records of the daily average value of each continuously monitored parameter for each operating day as specified in § 63.152(f), the owner or operator shall keep records of each continuously monitored parameter for each operating day as specified in § 63.998(b).

(10) When § 63.132(a) and (b) refer to the "applicable dates specified in § 63.100 of subpart F of this part," the applicable compliance dates specified in § 63.1102 shall apply, for purposes of this subpart.

(11) Where § 63.152(b) and/or the Notification of Compliance Status is referred to in § 63.132 through § 63.148, the Notification of Compliance Status requirements contained in § 63.1110(a)(3) shall apply, for purposes of this subpart.

(12) Where § 63.152(c) and/or the Periodic Report requirements are referred to § 63.132 through 63.148, the Periodic Report requirements contained in § 63.1110(a)(4) shall apply, for purposes of this subpart.

(13) When Method 18 of appendix A to part 60 of this chapter is specified in § 63.139(e)(1)(ii), § 63.145(d)(4), or § 63.145(i)(2), either Method 18 or Method 25A of appendix A to part 60 of this chapter may be used. The use of Method 25A of appendix A to part 60 of this chapter shall comply with paragraphs (a)(13)(i) and (a)(13)(ii) of this chapter.

(i) The organic HAP used as the calibration gas for Method 25A of appendix A of part 60 of this chapter shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A of appendix A of part 60 of this chapter is acceptable if the response from the high-level calibration gas is at least 20 times

the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(14) When the HON recordkeeping requirements for by-pass lines in § 63.118(a)(3) is referred to in § 63.148(f), the requirements in § 63.998(d)(1)(ii)(A) shall apply, for the purposes of this subpart.

(15) When the Initial Notification requirements in § 63.182(b) are referred to in § 63.148(j), the requirements in § 63.1110(c) shall apply, for the purposes of this subpart.

(16) For the purposes of this subpart, § 63.148(k) shall not apply.

(b) *Maintenance wastewater.* The owner or operator of each affected source shall comply with the HON maintenance wastewater requirements in § 63.105. When terms used in §§ 63.105 are defined in § 63.1101, the definition in § 63.1101 shall apply, for the purpose of this subpart. For terms used in § 63.105 that are not defined in § 63.1101, the definitions in § 63.101 and § 63.111 shall apply.

(c) *Liquid streams in open systems.* The owner or operator shall comply with the provisions of Table 35 of subpart G of this part for each item of equipment meeting the criteria specified in paragraphs (c)(1) through (3) of this section and either paragraph (c)(4)(i) or (ii) of this section, with the exceptions provided in paragraphs (c)(5) and (6) of this section.

(1) The item of equipment is one of the types of equipment identified in paragraphs (c)(1)(i) through (vii) of this section.

(i) Drain or drain hub.

(ii) Manhole (including sumps and other points of access to a conveyance system).

(iii) Lift station.

(iv) Trench.

(v) Pipe.

(vi) Oil/water separator.

(vii) Tanks with capacities of 38 m^3 or greater.

(2) The item of equipment is part of an affected source that is subject to this subpart.

(3) The item of equipment is controlled less stringently than in Table 35 of subpart G of this part, and the item of equipment is not otherwise exempt from the provisions of this subpart, or a referenced subpart.

(4) The item of equipment:

(i) Is a drain, drain hub, manhole, lift station, trench, pipe, or oil/water separator that conveys water with a total annual average concentration greater than or equal to 10,000 parts per million by weight of Table 9 compounds at any flow rate; or a total annual average concentration greater than or equal to 1,000 parts per million by weight of Table 9 compounds at an annual average flow rate greater than or equal to 10 liters per minute.

(ii) Is a tank that receives one or more streams that contain water with a total annual average concentration greater than or equal to 1,000 parts per million by weight of Table 9 compounds at an annual average flow rate greater than or equal to 10 liters per minute. The owner or operator shall determine the characteristics of the stream as specified in paragraphs (c)(4)(ii)(A) and (B) of this section.

(A) The characteristics of the stream being received shall be determined at the inlet to the tank.

(B) The characteristics shall be determined according to the procedures in § 63.144(b) and (c).

(5) When terms used in Table 35 of subpart G of this part are defined in § 63.1101, the definition in § 63.1101 shall apply, for the purpose of this subpart. For terms used in Table 35 of subpart G of this part that are not defined in § 63.1101, the definitions in § 63.101 and § 63.111 shall apply.

(6) When Table 35 of subpart G of this part refers to § 63.119(e)(1) or (e)(2) in the requirements for tanks, the requirements in § 63.982(a)(1) shall apply, for purposes of this subpart.

(d) The compliance date for the affected sources subject to the provisions of this section is specified in § 63.1102.

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Part III

Department of Labor

Employment and Training Administration

20 CFR Parts 654 and 655

Labor Certification Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Administrative Measures To Improve Program Performance; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 654 and 655

Labor Certification Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Administrative Measures To Improve Program Performance

RIN 1205–AB19

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) is publishing a final rule amending its regulations relating to the temporary employment of nonimmigrant agricultural workers (H–2A workers) in the United States. The final rule makes three substantive changes to the current regulations. One change reduces the time that an application for temporary agricultural labor certification must be filed from 60 days to 45 days before the date the employer needs agricultural workers. Another change provides employers with the option of having the housing inspected as late as 20 days before the date of need. The third substantive change modifies the requirement that employers notify the local State Employment Security Office, in writing, of the exact date on which the H–2A workers depart for the employers place of business.

The proposal to provide a limited exception from the requirement to use certain Farm Labor Contractors as a source of workers has been narrowed so that it can be implemented in a manner that does not require a change to the current regulations. A fifth proposed change to transfer visa petition adjudication authority for workers outside of the United States from the Immigration and Naturalization Service (INS) to DOL remains open as it is the subject of parallel notice-and-comment rulemaking by INS.

DATES: This final rule is effective July 29, 1999. Affected parties do not have to comply with the information collection and recordkeeping requirements in § 655.106(e)(1) until the Department publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denis M. Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 2, 1998, ETA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) which proposed five amendments to ETA's regulations at 20 CFR part 655, subpart B, relating to the temporary employment of nonimmigrant agricultural (H–2A) workers in the United States. 63 FR 53244 (Oct. 2, 1998). The NPRM proposed five regulatory changes pertaining to: (1) The time limits for housing inspections; (2) time limits for filing labor certification applications; (3) a possible exception from using certain Farm Labor Contractors (FLC's); (4) elimination of the requirement that employers notify the local job service office in writing of the date the H–2A workers depart for the employer's place of business; and (5) transfer of the responsibility for approving H–2A visa petitions for workers coming from outside of the United States (U.S.) to DOL from the INS Commissioner. This document adopts final regulations involving the time limits for housing inspection and filing applications, and the requirement that employers notify the local employment service office of the date the H–2A workers depart for the employer's place of business. Another proposed change relating to an exception from using certain FLC's is being adopted, in part, in a manner that can be implemented under current regulations. The Department will take appropriate action to finalize the transfer of petition authority if INS concludes such transfer is appropriate at the completion of its rulemaking.

II. Statutory Standard and Implementing Regulations

The decision whether to grant or deny an employer's petition to import nonimmigrant farm workers to the United States for the purpose of temporary employment is the responsibility of the Attorney General's designee, the INS Commissioner. The Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*) provides that the Attorney General may not approve a petition from an employer for employment of nonimmigrant farm workers (H–2A visa holders) for temporary or seasonal services or labor in agriculture unless the petitioner has applied to the Secretary of Labor for a labor certification showing that:

(A) There are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and

(B) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. [8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.]

The Department of Labor has published regulations at 20 CFR part 655, subpart B, and 29 CFR part 501 to implement its responsibilities under the H–2A program. Regulations affecting employer-provided agricultural worker housing are in 20 CFR part 654, subpart E, and 29 CFR 1910.42.

It was noted in the NPRM that some recent H–2A program changes were made to enhance effectiveness and efficiency while maintaining worker protections by administrative directives in the form of Field Memoranda (FM) issued by the ETA national office to its 10 Regional Administrators (RA's). (The RA's make determinations on H–2A labor certification applications and provide functional guidance to the State Employment Security Agencies (SESA), which administer the H–2A program under 20 CFR part 655, subpart B—Labor Certification Process for Temporary Agricultural Employment in the United States.) These administrative changes are summarized herein for the convenience of interested parties.

Administrative changes made by FM 17–9, issued January 6, 1997, Subject: *Improvements in H–2A processing,* included:

- Clarifying under what conditions U.S. workers are considered to be "available" and thus may be counted to fully or partially deny H–2A positions requested on employers' labor certification applications. Only those U.S. workers who are identified by name, address, and social security number can be counted to reduce the number of H–2A workers requested by an employer;
- Emphasizing that regional offices should use discretion in reducing the number of certified positions requested as a result of "last minute" replacements of recruited U.S. workers where historical records of similar last minute referrals, or other information,

indicate the likelihood that a proportion of the referred workers would not make themselves available for work;

- Clarifying positive recruitment requirements of U.S. farm workers in areas where there are credible reports of "a significant number of qualified U.S. workers, who, if recruited, would likely be willing to make themselves available for work at the time and place needed," thereby targeting recruitment efforts by employers and SESA's to those areas most likely to produce qualified and available U.S. workers;
- Encouraging routine posting of approved agricultural job orders on America's Job Bank in view of the increased use of this resource on the part of employers and U.S. workers.

FM Number 22–98, issued April 14, 1998, Subject: *Clarification of Transportation Requirements Home,* reaffirmed and clarified the regulatory provisions which allow H–2A workers to move from one certified employer to another and the requirement placed on the final H–2A employer to pay for (or provide) the worker's transportation home.

III. Comments on Proposed Rule and the Department's Response

A. Comments on Proposed Rule

Thirty-six comments were received on the proposed rule. The largest number of comments—15—were received from State agencies. After the State agencies, the largest number of comments were received from worker advocates and employer organizations, which submitted 8 and 5 comments, respectively. The Farmworker Justice Fund (FJF) indicated that its comments were supported by 32 listed organizations. Comments were received from the American Immigration Lawyers Association (AILA) and two private attorneys. Comments were also received from Congressman Howard Berman of California, ETA's Regional Office in Chicago, one monitor advocate, and one member of the general public.

Many commenters, in addition to commenting on the specific regulatory proposals contained in the NPRM, offered a number of additional suggestions for modifying the H–2A program. These suggestions included, but were not limited to:

- Repealing the adverse effect wage rate (AEWR);
- Increasing the AEWR by 20 percent;
- Eliminating the current definition of "prevailing practice" which is based on the practices of a majority of employers and employees, and replacing it with one based on either a majority of employers, or a majority of the employees in the local area and occupation;
- Imposing user fees that recover the true cost of the H–2A program;
- Eliminating the 50 percent rule, which requires employers to hire any qualified U.S. worker who applies until 50 percent of the work contract, under which the foreign worker was hired, has elapsed.
- Requiring withholding and placing in escrow sufficient funds from H–2A workers' wages so that they can pay for their return transportation home if they do not fulfill their contracts.

The above suggestions are outside the scope of the proposed rule. Consequently, they are not addressed in this document but may be considered by the Department in a future rulemaking regarding the H–2A nonimmigrant program. Similarly, comments concerning administrative (i.e., non-regulatory) changes in the H–2A program are not addressed in this document, but will be considered by the Department in making administrative changes that can be implemented without amending the H–2A regulations at 20 CFR part 656, subpart B.

The FJF strongly opposed the proposed rule and urged that it be withdrawn. According to the FJF, the proposal is arbitrary and capricious because it allegedly ignores numerous studies concluding that the Department has not adequately implemented worker protections under the H–2A program, and it ignores recommendations that have been made by such studies to improve worker protections. The FJF enumerated a variety of recommendations made and issues identified by the studies cited in its comments. Moreover, addressing the recommendations and issues cited by the FJF, as well as the many other recommendations made by other commenters would require a much more comprehensive assessment of the H–2A program and extensive consultation with all stakeholders, which—while such a process has been taking place in other fora—is outside the scope of this rulemaking.

As indicated in the preamble to the NPRM, the primary purpose of the proposed regulatory amendments was to implement certain changes growing out of a dialogue among the Departments of State (DOS), Justice (INS), Agriculture, and Labor to streamline the H–2A program and address complaints raised by some users of the program without weakening worker protections. Such an effort is particularly important in an environment characterized by program growth and stable or declining resources. The Department believes, as discussed in greater detail below, that the amendments adopted are balanced. The amendments serve to streamline the H–2A program and can help improve operations without weakening worker protections. Further, as stated in the preamble, this rulemaking represents one step towards implementing changes to improve H–2A program operations. The Department will consider the issues raised by various studies of the H–2A program, as well as the recommendations made by the commenters on the NPRM, in a future rulemaking effort to improve the operation of the H–2A program.

B. Comments About the Proposed Regulatory Changes

The comments received on the specific regulatory proposals in the NPRM and the Department's response to the comments are discussed below.

1. Time Limits for Employer Provided Housing To Be Available for Inspection (§ 654.403)

Several comments were received on the proposal to reduce the time by which housing that will be provided to a worker must be available for inspection, from 30 to 15 days prior to occupancy. Inspections are performed by State agencies in most cases. See 20 CFR 653.501(d)(2)(xv) and 20 CFR 654.400 *et seq.*

Congressman Howard Berman and several worker advocates objected to the proposal on several grounds. The major issues raised by those comments include:

- State agencies do not always make timely inspections and shortening the lead time to conduct housing inspections will inevitably lead to some needed repairs not being made.
- The Office of Inspector General's (OIG) report concluded, in relevant part, that DOL has certified employers to receive H–2A workers despite lacking documentary proof that housing inspection had occurred. The OIG finding is consistent with reports that some H–2A housing is not inspected in a timely fashion and that H–2A housing does not comply with basic housing standards.
- The untimely inspection and repair of farmworker housing will worsen as the H–2A program continues to grow, since funding for inspections will not keep pace with the increased need. The H–2A program has been expanding to new States and crop areas during the last three years and is expected to continue its growth.

Employer organizations favored the proposal to reduce the lead time worker

housing must be available for inspection prior to occupancy, and assumed that the proposed shortened deadline for housing inspections would allow certifications to be issued even if housing inspection was still pending. The National Council of Agricultural Employers (NCAE) stated that if certification is delayed while housing inspections are still pending, the proposed amendment would have little "real impact on H–2A users." NCAE recommended that the regulations be amended to clarify that housing inspection is not required prior to certification.

Two large employer organizations—NCAE and the American Farm Bureau Federation (AFBF)—expressed considerable concern about the increasing difficulty employers face in obtaining timely housing inspections. The NCAE indicated that this problem has grown worse in recent years with growth in the H–2A program and its expansion into States where H–2A certification has not been sought in recent years. The NCAE further stated that it appears that many states have an extremely limited number of personnel who are capable of performing housing inspections. Although the NCAE supported reducing the application time, it strongly urged that DOL inventory the housing inspection resources available in the State agencies to assure that there are qualified inspectors available to make inspections in a timely manner.

Both the NCAE and AFBF recommended conforming the H–2A. housing inspection requirement to that for all other migrant and seasonal agricultural workers in the regulations implementing the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) at 29 CFR 500.135. They contend such a change would address the problem faced by employers in obtaining timely housing inspections. The MSPA regulations require that housing be approved prior to occupancy. They also provide that if the employer has made a timely request for an inspection, and the inspection has not been made, the employer may house workers without inspection, provided that the housing is in full compliance with applicable regulations.

Nine State agencies objected to the proposal to shorten the lead time for housing inspections. The major points they made include:

- Several States objected to the proposal because it would allow certification to be issued before the employer's housing was inspected and approved.
- Other states objected to the proposal based on resource considerations. With the limited resources available, a shorter time frame would make it more difficult for States to inspect and approve housing prior to occupancy. Two States pointed out that they only had one person available to conduct housing inspections; another indicated that normally only one person is available to conduct 150 housing inspections.
- One State pointed out that inclement weather conditions during the winter months requires rescheduling of housing inspections in remote areas. The proposed 15-day time frame would make it difficult for inspections to be completed in a timely fashion.
- Many employers do not request housing inspections in a timely manner.
- Inspection 15-days before occupancy may not provide adequate time for employers to correct deficiencies in their housing.

Four States were in favor of the proposal to shorten the lead time for conducting housing inspections. One State maintained that the shorter time frame would allow more flexibility for its field staff to work with employers and that the "relaxing" of the regulation "still provides the same level of protection for U.S. workers."

The ETA Chicago Regional Office expressed great concern about reducing the time limit for inspection prior to occupancy, because there would be no way to guarantee that housing will be in full compliance with requirements before certification is granted.

The Department indicated in the NPRM that one reason for reducing the lead time for conducting housing inspections was the commonly expressed concern among employers in Northern States that a 1-month lead time was unrealistic for employers that need workers in March or April. It was also stated in the NPRM that local employment security agency staff have had difficulty inspecting employer-provided housing in Northern States. 63 FR at 53245. Only two comments directly addressed these issues. Massachusetts indicated that it does not have a problem in inspecting housing in late winter or early spring. The State's records show that employers with employment needs during late winter or early spring normally maintain their housing facilities in conformity with the required standards and have always been inspected in a timely manner. As noted above, another state, pointed out that inclement weather frequently causes housing inspections to be rescheduled and opined that reducing the lead time the employer has to assure that housing will be in full compliance before it is occupied will make it more difficult for State agencies to perform timely housing inspections.

Lastly, one commenter questioned what would happen if—with a shortened lead time—the employer's housing is found deficient after certification, and called upon the Department to spell out what happens in such circumstances. The commenter urged that the employer simply be given an opportunity to correct and cure any deficiency before the date of need.

After carefully reviewing all the comments, the Department continues to be of the view that employers should have the option of having the housing inspected at a date considerably later than under the current regulations. At the same time, however, the Department has given careful consideration to the interrelationship between housing inspection and the certification process, and has concluded that housing must pass inspection before certification can be granted. See 8 U.S.C. 1188(c)(4). Therefore the Department has concluded that the latest date by which employers must assure that the housing will be in full compliance with applicable standards pursuant to § 655.403(a)(3) can be no later than 20 days before the date of need—i.e., the date on which certification must ordinarily be granted. An employer whose housing fails to pass an inspection conducted on or before the 20th day prior to the date of need will have the 5 days provided for in § 655.403 (e) to correct the deficiency and the certification will be delayed for that period, if necessary. If, on the other hand, the state agency did not timely inspect the housing (i.e., by 20 days before the date of need), at no fault of the employer, the Department will delay certification until the housing has been inspected and the employer has had an opportunity to remediate any deficiencies discovered.

The Department notes that the employer must notify the SESA ordering office at least 10 working days before the date of need, pursuant to 20 CFR 653.501(d)(2)(v)(D), if workers are no longer needed or if the date of need has changed or else face liability to U.S. workers for housing and the first week's pay. U.S. workers in turn are required pursuant to 20 CFR 653.510(d)(2)(v)(B) to contact a local job service office 5 to 9 working days before the date of need to determine if the employer's needs have changed. This allows workers to commence travel to the jobsite, or to find alternative employment if the work is no longer available. It therefore is important that the housing be timely

inspected so that the local office is able to advise workers if it becomes necessary to deny the certification because the housing is not in compliance with the applicable standards.

The Department is of the view that rather than allow State agencies less time in which to schedule inspections, this modification actually provides a longer window. The Department anticipates that in areas where housing inspections take longer to schedule, employers will continue to provide early notice to State agencies to ensure that inspections are conducted timely.

Accordingly, the Department has modified § 654.403 to require that employers assure housing will be in full compliance no later than 20 calendar days before the date of need. The Department intends to issue administrative guidance concerning the operation of this modification.

2. Reduction in Lead Time To File Labor Certification Applications (§ 655.101(c))

The proposal in the NPRM to reduce the deadline for filing applications from 60 to 45 days before the date of need was strongly opposed by the FJF, other worker advocates, and Congressman Howard Berman. Their major reasons for objecting to the proposal include:

- There has been no showing that a change in the lead time to file applications is justified. Agricultural growers know well in advance their planting and harvesting schedules. Indeed, for decades, growers throughout the eastern United States were able to estimate these needs a full 80 days in advance.
- The time available for interstate and positive recruitment of U.S. workers would be unreasonably shortened if the proposal is implemented. Interstate recruitment does not begin until the application is accepted for consideration by DOL. It can take 7 days for the DOL's regional office to review the employer's application, and the employer has another 5 days to correct deficiencies. With a shortened lead time, this would place the beginning of the interstate recruitment at the 33rd day prior to the date of need and just 13 days before the date for labor certification. If DOL does not review applications in a timely manner, as is often the case, there could be 10 days or less of interstate recruitment of migrant workers prior to the date of certification.
- Congress insisted that H–2A labor certification be based on proof that there is an actual labor shortage, following a meaningful test of the labor market. Accordingly, it is not sufficient to rebut that the regulations provide that recruitment must continue until the date the foreign (H–2A) workers depart for the employer's place of work.
- Employers do not always hire workers referred to them pursuant to the 50-percent rule.
- The proposal is inconsistent with the recommendations of the General Accounting Office (GAO). Although the GAO report suggested that the Department could reduce from 60 to 45 days the time applications have to be submitted prior to the date of need, it also stated that such a reduction should only be made if the statutory requirement that certifications be issued 20 days before the date of need is reduced to 7 days.
- The proposal is inconsistent with the regulatory requirement at § 655.105 (a)(2), which requires that H–2A employers engage, at a minimum, in the kind and degree of recruitment efforts to secure U.S. workers that they made to obtain H–2A workers.

Employer organizations supported the reduction in the required lead time to file applications. However, they recommended that the lead time to file applications be reduced by more than suggested by DOL.

The NCAE, for example, maintained that it is the experience of H–2A users that most U.S. workers make themselves available shortly before, or after, the certification date. Furthermore, since under current regulations all qualified U.S. workers who apply to the employer must be hired until 50 percent of the anticipated period of work (the contract period) has elapsed, no qualified U.S. worker would be denied a job even if the deadline for applications were reduced to 40 or even 30 days before the date of need. The New England Apple Council (NEAC) maintained that the "lag time" between recruitment and start of work produces more "no shows" of workers than any other reason.

The Florida Fruit and Vegetable Association (FFVA) stated that for several vegetable crops which are greatly influenced by weather and other production uncertainties, a 45-day lead time may still be too far out to determine a crop's maturity rate.

Comments submitted by State agencies regarding the proposal to shorten the lead time for filing applications were mixed. Four States supported the proposal, indicating that the proposed change would not have an adverse impact on U.S. workers. Two of these States indicated that the deadline for filing applications should be reduced to less than 45 days. The California State agency recommended that the deadline for filing applications be reduced to 30 days prior to the date of need. According to the California State Agency, the shorter lead time would increase the possibility of locating U.S. workers who can commit to the job and it also would be beneficial to employers "who may not know their exact staffing needs or start date until closer to the time the work needs to be done." The Kentucky State agency commented that "(s)uccessfully recruiting any U.S. workers can be achieved through the Agriculture Recruitment System in 30 days if supply states and demand states coordinate specific efforts towards identified populations."

Two states were against reducing the lead time for filing and processing applications. The Idaho State agency noted that the full 60 days is needed because applications are not filled out properly when received. The Massachusetts State agency indicated that the shorter time frame will adversely impact on State agencies' ability to conduct effective recruitment, especially in regions where master orders are used.

Two other states also commented. The New Jersey State agency indicated that the reduction in time to process applications should not be a problem if there are adequate staff at DOL to respond to the applications when they are received. The Nevada State agency noted that the proposal provides employers with more flexibility in recruitment of agricultural labor, particularly with regard to crops that are more sensitive to weather conditions. At the same time, the proposal may allow employers to be less organized in the planning and execution of their application. The Nevada State agency concluded by stating that because of the way applications are prioritized and processed in Nevada, processing times would remain relatively constant regardless of filing deadlines.

A monitor advocate who commented opined that the lead time to file and process applications should be expanded. This time should not be less than 60 days to enable employers to access all local resources in attracting and identifying a "sufficiently large labor force."

The ETA Chicago Regional Office commented that reducing the time limit to file labor certifications did not leave enough time for the State agencies to recruit adequately in view of all the administrative steps that must be completed before States can conduct recruitment.

Some commenters also indicated that the employers should still be able to file labor certification applications more than 45-days prior to the date of need

for H–2A agricultural workers. One commenter assumed that first-time users of the program would be able to file less than 45-days prior to the date of need if necessary.

With respect to the time limit for filing applications, the Department has decided, after reviewing all of the diverse comments, to implement the proposal to reduce the lead time for filing H–2A labor certification applications from 60 to 45 days before the first date the employer estimates that H–2A workers are needed. The regulation will provide growers with increased ability to more precisely estimate the need for workers. The Department has concluded, for the reasons discussed below, that reducing the lead time for filing H–2A labor certification applications will not have a significant adverse impact on the recruitment of U.S. workers. The final rule, at § 655.101(c)(3), continues to encourage employers to file in advance of the required filing date, and no change is made in the regulation for emergency applications at § 655.101(f)(2), which refers to agricultural employers who have not made use of H–2A agricultural workers for the prior year's agricultural season.

As noted in the preamble to the NPRM, the overwhelming majority of qualified U.S. workers do not apply and make a commitment to temporary agricultural employment earlier than 45 days before their services are required. The Department does not believe that this is generally attributable to the fact, as some commenters indicated, that DOL regional offices may spend 12 days, or more, in processing applications before they are accepted for consideration and placed into interstate clearance. Furthermore, the majority of applications filed on behalf of H–2A agricultural workers are by repeat users of the H–2A program. Most such employers are well versed in program requirements, policies, and procedures; consequently, their applications can be accepted for consideration and placed into the Agricultural Recruitment System with minimal review.

H–2A labor certification applications are filed simultaneously with the local employment service office and the ETA regional office. The local office begins to conduct local recruitment when it receives the application from the employer whether or not it has been accepted for consideration by ETA's regional office. 20 CFR 655.101(c)(2).

As stated above, some commentators noted that it can take longer than the allotted 7 days for regional offices to review H–2A labor certification applications, and that employers may take longer than 5 days to resubmit an amended application in response to any deficiencies found in the application by the regional office, resulting in a reduction in the time allowed for interstate recruitment, since the application has to be certified 20 days before the day the employer first needs agricultural workers. With respect to meeting the 7-day deadline for reviewing applications, ETA intends to increase its monitoring of regional offices to improve its performance in meeting this statutory and regulatory requirement. See 20 CFR 655.101(c)(1); and 8 U.S.C. 1188(c)(2).

With respect to the 5 days allotted for employers to submit amended applications in response to deficiencies noted by the regional office, ETA intends to strictly enforce the regulatory requirement at § 655.101(c)(2). This provides, in relevant part, that when ETA has formally notified an applicant of any deficiencies, any time needed to obtain an application acceptable for consideration after the 5-calendar period allowed for an amended application will postpone the certification decision day-for-day beyond the 20 calendar days before the date of need. This will lessen considerably the possibility that the period of interstate recruitment prior to the date the application is certified will be unduly abbreviated.

Most importantly, notwithstanding comments to the contrary, it is important to recognize that recruitment continues considerably past the date a labor certification application is certified. Positive recruitment conducted by the employer must continue until the time the H–2A workers depart for the employer's place of employment, and recruitment through the interstate clearance system continues until 50 percent of the work contract under which the H–2A workers were hired has elapsed. Under the "50-percent rule," which refers to half the time accounted for by the total period of the contract, the employer must continue to provide employment to any qualified, eligible U.S. worker who may apply. In addition, the employer must offer to provide the U.S. workers with housing and the other benefits, wages, and working conditions provided to H–2A workers. See 8 U.S.C. 1188(b)(4), and 20 CFR 655.102, 655.103(d), 655.105(a), and 655.106(e).

As noted above, some commenters indicated that employers do not always hire U.S. workers referred to them pursuant to the "50-percent rule." See 20 CFR 655.103(e). However, no evidence to support these claims was submitted to the Department. Additionally, the Department is not aware of any evidence suggesting that such occurrences are numerous or widespread. Nevertheless, ETA intends to be vigilant of employers' compliance with the "50-percent rule", with violations addressed through the imposition of appropriate sanctions.

3. Exception From Using Farm Labor Contractors (§ 655.103(f))

The majority of comments opposed the proposal to provide a limited exception from the requirement to use farm labor contractors (FLC's) when it is the prevailing practice in an area and occupation for non-H–2A employers to use such contractors as a recruitment source for U.S. workers and to compensate them with an override. This exception would have applied if a particular FLC has a demonstrated history of using undocumented aliens or serious labor standard violations.

Congressman Berman and worker advocacy organizations were strongly opposed to the proposal. They indicated that such an exception would reduce the use of FLC's which are an important recruitment source for U.S. farmworkers. The FJF maintained that recent studies show that an increasing percentage of U.S. farmworkers and most guest workers are hired through labor contractors. Both Congressman Berman and the FJF maintained that in California it is estimated that between one-half and two-thirds of seasonal farmworkers are hired through crewleaders—many of whom also transport, house, pay, and supervise workers in the fields.

Objections to the proposal by worker advocates include:

- The provision that employers need not use an FLC on the Wage and Hour Division's (WHD's) list of contractors whose certificates have been revoked is redundant with current law under MSPA and unnecessary. Employers are prohibited by law from contracting with an FLC whose licenses has been revoked and not reinstated.
- The complaint provision proposed provides no due process rights permitting FLC's to challenge the evidence submitted by State agencies.
- The proposed rule could put some FLC's out of business and deny jobs to U.S. workers who are associated with contractors who have been "sanctioned" by the INS for hiring unauthorized immigrants or who have violated labor laws. The Department should not use this rulemaking process to impose additional "punishment" on businesses because affected U.S. workers would be unduly harmed.

- The proposal may lead to workers being "doubly punished" and discouraged from filing complaints. If a worker complains about abusive practices of an FLC, such as nonpayment of wages, the worker may see wages go unpaid and then lose future work because of the secondary consequences of the complaint.
- An H–2A grower which may have hired unauthorized workers and violated labor laws would still receive Government approval to hire H–2A workers; yet, an FLC could be barred, at the grower's initiation, from supplying lawful U.S. workers to that same U.S. employer.
- The proposal is particularly troubling in that it allows an FLC who is barred as a contractor supplying U.S. workers to apply for H–2A labor certifications.
- The proposal could be subject to manipulation and harmful to workers. An employer could bring a complaint against an FLC who has a large number of available U.S. workers to avoid hiring U.S. workers.

The employer organizations also objected to the proposal to provide an exception from using certain FLC's. The NCAE pointed out, as did the worker advocates, that the provision in the proposal permitting H–2A applicants to refuse to engage FLC's who are on WHD's list of contractors whose certificates have been revoked adds no new protections for H–2A employers. Under the MSPA regulations at 20 CFR 500.71, employers are already prohibited from engaging such contractors.

The NCAE also maintained that the provision that H–2A employers would not be required to employ farm labor contractors on a list of contractors sanctioned by INS is meaningless, because INS does not maintain such a list. NCAE contends that although INS district or regional offices may have such lists, all offices may not have such lists, and to the extent such lists exist, they would include all employers sanctioned by that INS district and would not be limited to FLC's. The lists are not aggregated in one spot and the lists that do exist are not routinely disseminated to the public as is the DOL FLC list. NCAE contended that the only apparent way an employer could avail itself of this regulatory provision is to contact each INS district office and request its list of employers which have been sanctioned for violations of immigration laws and search each list for the names of contractors.

According to the NCAE, the provision in the proposal to permit employers not to use FLC's not on the WHD or INS lists if the employer can document that the FLC "has a history of employing or providing a substantial number of workers who do not have the authorization to work in the U.S. or a substantial history of labor violations" is impractical on several grounds. These grounds include:

- It is unlikely that growers would be able to assemble the documentation on the FLC required to support a credible complaint;
- There is no protection for the employer from retaliation by the FLC; DOL would be creating a procedure in which the employer could incur legal liability by making the complaint; and
- The complaint procedure is flawed, convoluted and ignores the reality of the hiring procedure.

The NCAE recommended that, if the Department is truly concerned about helping employers avoid hiring persons not authorized to work in the United States, it should take appropriate measures to assure that the workers the State agencies refer are authorized to work before referring them. It is the experience of users of the H–2A program that a substantial and growing number of the persons referred as "U.S. workers" to H–2A applicant employers are, in fact, workers with fraudulent documents or, in some cases, no documents at all.

The comments submitted by State agencies on the proposal to provide an exception to permit employers not to use certain FLC's were mixed. The thrust of the comments submitted by three States appeared to be that the current regulation pertaining to FLC's as a recruitment source should be eliminated. On balance the State agencies of Arizona and Ohio appeared to be against the proposal. The Kentucky state agency stated that the proposal is a common-sense approach to a growing concern on the part of employer's and the State employment security staff and should be implemented.

The one monitor advocate who submitted comments supported the proposed amendment that provided an exception to using certain FLC's as a recruitment source.

After reviewing all the comments received on the proposed amendment to provide an exception to using certain FLC's, the Department has concluded that there are indeed serious due process concerns about potentially stigmatizing FLC's who have not had an opportunity to challenge allegations of wrongdoing in an adjudicatory proceeding. Further, the Department has legal authority to revoke the licence of an FLC who has violated immigrations laws or to refuse to register such an FLC (29 CFR 500.51(g)). The Department intends to obtain from the INS the list of those FLC's who have been found in violation of Section 274A(a) of the INA, either by hiring, recruiting, or referring an alien, knowing the alien was unauthorized to work; or by employing a person without first verifying the person's identity and employment authorization. Therefore, the final rule needs to make no change to the regulation at § 655.103(f). The Department is not implementing its proposal to provide a new means for employers to challenge the requirement to use an FLC the employer believes may have violated immigration or labor laws. Employers must attempt to secure workers through registered FLC's and to compensate them with an override for their services when it is the prevailing practice in the area for non-H–2A agricultural employers to use FLC's. However, no H–2A grower-applicant may or will be required to use any FLC included on WHD's list of contractors whose certificates have been revoked, including those certificates which are revoked because of violations of the immigration laws. The Wage and Hour Division publishes a list of ineligible FLC's, which is also available at its web site at: http://www.dol.gov/dol/esa/public/regs/statutes/whd/mspa_debar0399.html. Thus, the Department's proposal is being narrowed and can be implemented under existing regulatory authority.

4. Elimination of Requirement To Provide Notice of the H–2A Workers' Departure Date (§ 655.106(e)(1))

Diverse comments were received on the proposal to eliminate the requirement that employers notify the local employment service office, in writing, of the exact date the H–2A workers depart for the employer's place of employment, and substitute a provision deeming that the workers departed on the day immediately preceding the date of need. The Department stated in the preamble to the NPRM that program experience indicates that the H–2A workers usually depart for the employer's place of business the day before they are needed.

Worker advocates objected to eliminating the requirement that employers notify the local office of the H–2A workers departure dates because:

- There is no evidence that the current regulation imposes an excessive burden on growers utilizing the H–2A program;
- Such change should not occur until DOL addresses workers' needs; and

• Although the proposed change appears innocuous, it is likely to harm U.S. workers. For example, a nursery that was certified for H–2A workers to begin employment on October 15, 1998, did not start employing its H–2A workers until November 15, a full month later. The required notification enabled the local office to determine the appropriate dates for administering the 50-percent rule and advise job applicants accordingly.

The NCAE supported eliminating notice of the departure date, but disagreed that workers typically depart the day before the employer's date of need. The NCAE maintained that typically for workers to obtain their visas, travel to the employer's place of employment, and be settled and ready for work on the date of need, they must depart at least 3 days before the date of need. NCAE recommended that DOL deem 3 days before the date of need as the departure date. Furthermore, since workers' departure dates may be even earlier, depending on where they are coming from, it recommended that DOL continue to allow employers to notify the Department of the date on which their workers depart if it is more than 3 days before the date of need.

One attorney supported eliminating notice of the departure date because it is extremely burdensome to employers, especially when the employer has many H–2A workers who do not always depart for the employer's place of business at the same time.

Divergent comments were submitted by State agencies on this proposal. Three States commented that the requirement for notification of the departure date should not be eliminated. One of these States maintained that the change will harm U.S. workers, as on numerous occasions H–2A workers have departed up to 15 days after the date of need. Another State also pointed out that the contract period must also be determined for the purpose of determining whether the employer must provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the worker came to work for the employer. A third State indicated that notification of the departure date is helpful in scheduling field checks, which is important to ensure that information is collected timely and for each employer, each crop and for each activity of those crops.

Four State agencies supported eliminating the requirement of notification of the H–2A workers' departure date. One State noted that the requirement is currently being ignored. Two States indicated that eliminating notice of the departure date would have no adverse impact on U.S. workers. A fourth State viewed the proposal as positive, since it does not affect the employer's requirement of notifying the order-holding office of changes in the date of need. This State also noted that it has had problems with H–2A employers notifying it of departure dates, but it can still meet with the H–2A workers after the date of need to review the job order and the employment service complaint system.

In light of the above comments regarding departure date notification, ETA has concluded that its original proposal to eliminate the requirement to notify of the departure date at § 655.106(e) should be modified to provide that ETA and the SESA shall deem the date of departure to be the third day before the first date of need. If the workers depart on or before the date of need, no notice to the SESA will be necessary. However, employers will have the option of advising the SESA if workers depart earlier. In all cases, an employer's obligation to positively recruit continues until the actual date of departure.

If the workers do not depart by the date of need, the employer must notify the SESA. Such notice shall be in writing, or orally, confirmed in writing, and must be made as soon as the employer knows that the workers will not depart by the first date of need, but in no event later than the date of need. At the same time the employer shall notify the SESA of the workers' expected departure date, if known. No additional notification will be necessary unless the employer either did not inform the local office of the expected departure date or the workers in fact did not depart by the expected date.

This modification should address the concerns of employers that workers more commonly depart three days before the date of need, while allowing flexibility if they do not depart on exactly that day or if employers wish to advise of an earlier departure date. In addition, this modification should address the concern expressed by worker advocates groups that on occasion workers depart long after the stated date of need, as well as the concern of States regarding their need to know the date of departure.

5. Transfer of Adjudication of Visa Petitions

Worker advocates indicated that there should be no transfer of adjudication of H–2A visa petitions from INS to DOL, absent a comprehensive approach to improving administration of the program.

AILA and two attorneys opposed the proposal to transfer the adjudication of visa petitions to the Department. They cited the lack of DOL's experience in adjudicating visa petitions, that training DOL personnel in visa petitioning issues and procedures would be duplicative of the training INS adjudicators already receive on these issues, that DOL does not have the resources or personnel to adjudicate visa petitions, and that they believe it is doubtful that DOL could be any more efficient than INS in processing H–2A visa petitions—in fact, because of the lack of personnel familiar with the issues, as well as the budgetary problems experienced by ETA in immigration-related processing, they contend it is likely to be worse.

Further, AILA and one attorney pointed out that it is impossible to know how delegation will work without seeing specifics of a rule implementing the proposed delegation. The AILA suggested that, if the proposed transfer of adjudication of visa petitions to DOL goes forward, it should be published in the **Federal Register** for comment.

The NCAE expressed "grave" concerns about any interim procedures that might be established to process H–2A visa petitions. It noted the interim procedures were not described in sufficient detail to permit an analysis of whether they, in fact, will be more streamlined and save time, or whether they might have the opposite effect. It also opined that the bottleneck in the current system is not the INS but the DOL. The only way to save time and increase the probability of timely arrival of workers is if the employer is permitted to include a completed visa petition in the same submission as the labor certification application, and if the issuance of the labor certification and approval of the visa petition are done in one action.

The NCAE concluded its comments by stating it strongly supported efforts to streamline the H–2A paperwork process. Combining the temporary labor certification application and visa petition into a single document, which is acted upon at the time of certification and immediately transmitted to the consulate or port of entry, could result in a significant improvement. Before undertaking this change, however, DOL should propose the precise regulations and procedures under which it intends to operate, and, at the same time, the INS should propose its regulations so both proposals can be evaluated together. Until this can be done, NCAE stated that it strongly objects to the proposed change and recommended that the proposal to transfer adjudication of visa petitions be withdrawn from the rulemaking effort at this time.

The NEAC and the AFBF also expressed concerns similar to the NCAE regarding the transfer of the adjudication of the visa petition function to DOL; only the FFVA approved of this proposal.

Three State agencies supported transferring adjudication of H–2A visa petitions to DOL from the INS as it would result in reducing the time needed for employers to obtain foreign workers. Four States indicated that visa petitioning authority should not be transferred to DOL, unless additional funding is made available to the regional offices to adjudicate the visa petitions. The Ohio State agency "guardedly" agreed with the change based on a concern that work may be delegated to the States which are already underfunded to complete existing duties.

The Department believes that transferring the visa adjudication function to the Department would save substantial government resources and would eliminate one administrative step employers would have to complete under the program. Reducing the number of steps and paperwork involved in the process of obtaining H–2A workers—from the filing of an application with the Department of Labor to the issuance of a visa by the Department of State—should reduce both the paperwork burden and the number of instances that foreign workers do not arrive by the first date of the employer's need. The Department anticipates that the streamlined process would involve the development of a single consolidated labor certification application and visa petition form that will eliminate otherwise redundant information and support both labor certification and visa petitioning requirements. This would eliminate the necessity of employers filing visa petitions with INS for H–2A workers who are outside of the United States. The Department is committed to completing the necessary rulemaking and associated procedural changes as soon as possible, if INS delegates to DOL the authority to adjudicate H–2A visa petitions. INS has begun rulemaking to implement the transfer and the comment period on its proposed rule concluded on February 5, 1999.

Executive Order 12866

The Department has treated this rule as a "significant regulatory action" within the meaning of Executive Order 12866 because of the great interest in the H–2A program and the legal and policy issues raised by the rulemaking. However, this rule is not an "economically significant regulatory action" which requires an economic analysis because it will not have an economic effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

Regulatory Flexibility Act

When the proposed rule was published, the Department notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule would not have a significant impact on a small number of entities. The Chief Counsel did not submit a comment.

Paperwork Reduction Act

Section 655.106(e)(1), pertaining to departure-date notification, contains information collection recordkeeping requirements. As required by the Paperwork Reduction Act of 1995, the U.S. Department of Labor has submitted a copy of these sections to OMB for its review. (44 U.S.C. 3504(h)).

The public reporting burden for information collection requirements contained in these regulations is estimated to average as follows:

15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments from the public and substantive changes are discussed in the preamble section dealing with this regulatory provision.

As discussed in the preamble, the Department anticipates further rulemaking to transfer the adjudication of H–2A visa petitions from the INS to DOL. Although this requirement would create a new collection of information requirement for DOL, we expect a net reduction in requirements for employers. This rulemaking will be subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* as Number 17.202, "Certification of Foreign Workers for Agricultural and Logging Employment."

List of Subjects

20 CFR Part 654

Agriculture, Employment, Government procurement, Housing standards, Labor, Migrant labor, Unemployment.

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and record keeping requirements, Specialty occupation, Students, Wages.

Final Rule

Accordingly, parts 654 and 655 of chapter V of title 20, Code of Federal Regulations, are amended as follows:

PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM

Subpart E—Housing for Agricultural Workers

1. The authority citation for part 654, subpart E is revised to read as follows:

Authority: 29 U.S.C. 49k; 8 U.S.C. 1188(c)(4); 41 Op.A.G. 406 (1959).

§ 654.403 [Amended]

2. Section 654.403 is amended as follows:

a. In paragraph (a)(1) the phrase "30 calendar days" is removed and the phrase "20 calendar days" is added in lieu thereof.

b. In paragraph (a)(3) the phrase "30 calendar days" is removed and the phrase "20 calendar days" is added in lieu thereof.

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m) and (n), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); P.L. 103–206, 107 Stat 2419; and 8 CFR 214.2(h)(4)(i).

Section 665.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c) and (d); and 29 U.S.C. 49 *et seq.*; and P.L. 103–206, 107 Stat 2419.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

§ 655.100 [Amended]

2. In § 655.100, paragraph (a)(1) is amended by removing the phrases "60 calendar days" and "60-calendar-day period" and adding in lieu thereof the phrases "45 calendar days" and "45-calendar-day period", respectively.

§ 655.101 [Amended]

3. In § 655.101, paragraph (c) is amended as follows:

a. In the introductory text of paragraph (c), the phrase "60 calendar days" is removed and the phrase "45 calendar days" is added in lieu thereof.

b. In paragraph (c)(1), the phrase "60 calendar days" is removed in the two places it appears and the phrase "45 calendar days" is added in each place in lieu thereof.

c. In paragraph (c)(2), the phrase "60-calendar-day filing requirement" is removed and the phrase "45-calendar-day filing requirement" is added in lieu thereof.

d. In paragraph (c)(3), the term "60-calendar-day" is removed in the two places it appears and the term "45-calendar-day" is added in each place in lieu thereof.

§ 655.106 [Amended]

4. Section 655.106 is amended by revising paragraph (e) to read as follows:

§ 655.106 Referral of U.S. workers; determinations based on U.S. worker availability and adverse effect; activities after receipt of the temporary alien agricultural labor certification.

* * * * *

(e) *Approvals of applications*—(1) *Continued recruitment of U.S. workers.* After a temporary agricultural labor certification has been granted, the employer shall continue its efforts to recruit U.S. workers until the actual date the H–2A workers depart for the employer's place of employment.

(i) Unless the local employment office is informed in writing of a different date, the local office shall deem the third day immediately preceding the employer's first date of need to be the date the H–2A workers depart for the employer's place of employment. The employer may notify the local office in writing if the workers depart prior to that date.

(ii)(A) If the H–2A workers do not depart for the place of employment on or before the first date of need (or by the stated date of departure, if the local office has been advised of a different date), the employer shall notify the local employment office in writing (or orally, confirmed in writing) as soon as the employer knows that the workers will not depart by the first date of need, and in no event later than such date of need. At the same time, the employer shall notify the local office of the workers' expected departure date, if known. No further notice is necessary if the workers depart by the stated date of departure.

(B) If the employer did not notify the local office of the expected departure date pursuant to paragraph (e)(1)(ii)(A) of this section, or if the H–2A workers do not leave for the place of employment on or before the stated date of departure, the employer shall notify the local employment office in writing (or orally, confirmed in writing) as soon as the employer becomes aware of the expected departure date, or that the workers did not depart by the stated date and the new expected departure date, as appropriate.

(2) *Requirement for Active Job Order.* The employer shall keep an active job order on file until the "50-percent rule" assurance at § 655.103(e) of this part is met, except as provided by paragraph (f) of this section.

(3) *Referrals by ES System.* The ES system shall continue to refer to the employer U.S. workers who apply as long as there is an active job order on file.

* * * * *

Signed at Washington, DC, this 22nd day of June, 1999.

Raymond L. Bramucci,

Assistant Secretary for Employment and Training.

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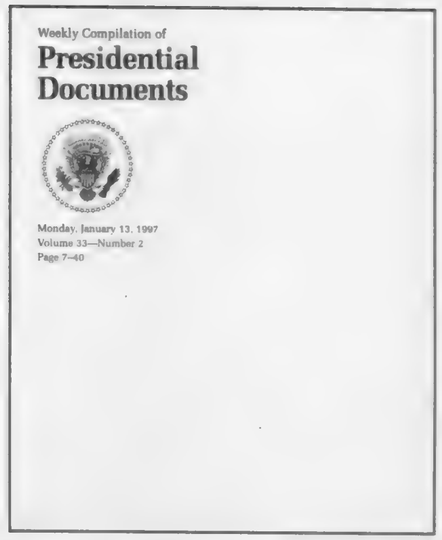
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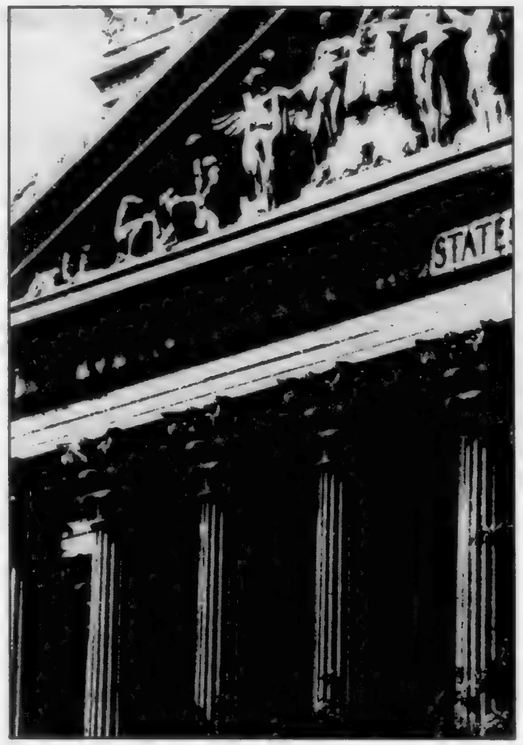
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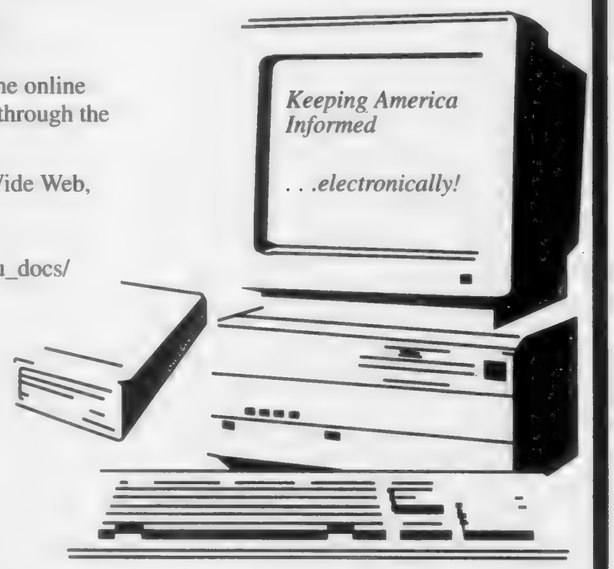
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Rules and Regulations

Federal Register
Vol. 64, No. 125
Wednesday, June 30, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revisions of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to delegate, through the Under Secretary for Natural Resources and Environment, to the Chief of the Forest Service the authority vested in the Secretary pursuant to Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998 (Title V), Pub. L. 105–83, relating to the New World Mine acquisition and other priority land acquisitions, exchanges, and maintenance.

EFFECTIVE DATE: June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Harwood, Executive Director, Hazardous Materials Policy Council, United States Department of Agriculture, 324 25th Street, Ogden, Utah 84401, telephone (801) 625–5196.

SUPPLEMENTARY INFORMATION: Pursuant to Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998 (Title V), Pub. L. 105–83, Congress made available to the Secretary of Agriculture $167,000,000 for priority land acquisitions, land exchange agreements, and other activities consistent with the Land and Water Conservation Fund Act of 1965, as amended, and critical maintenance. Of those funds made available to the Secretary, not to exceed $65,000,000 may be used by the Secretary to acquire identified lands and interests in lands from Crown Butte Mines, Inc. (Crown Butte), in the New World Mining District to protect and preserve Yellowstone National Park pursuant to sections 502 and 504 of Title V, and $12,000,000 may be used by the Secretary for the rehabilitation and maintenance of the Beartooth Highway in Montana and Wyoming pursuant to section 502 of Title V. Pursuant to section 502(d), immediately upon receipt of payment from the United States for the lands and interests in lands, Crown Butte shall deposit $22,500,000 in an interest bearing account in a private, Federally-chartered financial institution that shall be acceptable to the Secretary and available to carry out certain response and restoration actions in the New World Mining District (New World Mine Response and Restoration Account). This document amends the formal delegations of authority by the Secretary of Agriculture and general officers of the Department to reflect the previous internal delegation by the Secretary, through the Under Secretary for Natural Resources and Environment, to the Chief of the Forest Service with the exception of the authority to approve disbursements from the New World Mine Response and Restoration Account under section 502(d) and the authority to prepare and approve the New World Mine Response and Restoration Plan, including the coordination of the response and restoration activities of the Forest Service and the other Federal and State agencies, and make quarterly reports to Congress under section 502(f), which are reserved to the Under Secretary for Natural Resources and Environment.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and thus, is exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, this rule may be made effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. In § 2.20 paragraph (a)(1)(viii) is added to read as follows:

§ 2.20 Under Secretary for Natural Resources and Environment

(a) * * *

(1) * * *

(viii) Exercise the functions of the Secretary of Agriculture authorized in Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. 105–83, relating to the acquisition of the New World Mine and other priority land acquisitions, land exchanges, and other activities.

* * * * *

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

3. In § 2.60, paragraphs (a)(47) and (b)(7) are added to read as follows:

§ 2.60 Chief, Forest Service.

(a) * * *

(47) Exercise the functions of the Secretary of Agriculture authorized in Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. 105–83, relating to the acquisition so the New World Mines and other priority land acquisitions, land exchanges, and other activities.

(b) * * *

* * * * *

(7) The authority to approve disbursements from the New World Mine Response and Restoration Account and the authority to prepare and approve the New World Mine Response and Restoration Plan, including the coordination of the response and restoration activities of the Forest Service and the other Federal and State agencies, and make quarterly reports to

Congress under section 502(d) and (f) of Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. 105–83.

Dated: June 16, 1999.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–16523 Filed 6–29–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1730

RIN 2550–AA07

Debt Collection

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Interim regulation with request for comments.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing an interim regulation that sets forth procedures for use by OFHEO in collecting debts owed to the Federal Government. The Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, requires agencies to issue a regulation on their debt collection procedures. The interim regulation includes procedures for collection of debts through salary offset, administrative offset, and tax refund offset. OFHEO requests comments on the interim regulation.

DATES: The interim regulation is effective June 30, 1999. Written comments on the interim regulation must be received by August 30, 1999.

ADDRESSES: Send written comments concerning the interim regulation to Anne E. Dewey, General Counsel, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. Written comments may also be sent to Ms. Dewey by electronic mail at RegComments@OFHEO.gov.

FOR FURTHER INFORMATION CONTACT: Isabella W. Sammons, Associate General Counsel, telephone (202) 414–3751 (not a toll-free number); or Gail Palestine, Financial Management Officer, telephone (202) 414–3816 (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Discussion of the Interim Regulation

The interim regulation implements the requirements of the Federal Claims Collection Act, Pub. L. 89–508, 80 Stat. 308 (1966), as amended by the Debt Collection Act of 1982, Pub. L. 97–365, 96 Stat. 1749 (1982), and the Debt Collection Improvement Act of 1966, Pub. L. 104–134, 110 Stat. 1321 (1996). The interim regulation provides that OFHEO will attempt to collect debts owed to the Federal Government either directly or by salary offset, administrative offset, or tax refund offset.

Subpart A of the interim regulation addresses the collection of debts in general and incorporates the debt collection procedures of the Federal Claims Collection Standards (FCCS) at 4 CFR chapter II. A revised FCCS has been proposed jointly by the Department of Justice and the Department of the Treasury. 62 FR 68476–01, Dec. 31, 1997. OFHEO will amend, as necessary, its Debt Collection regulation after the revised FCCS has been issued as a final regulation.

Subpart A also provides, in accordance with applicable law and regulations, that OFHEO will transfer debts that are delinquent for over 180 days to the Secretary of the Department of the Treasury for collection or other appropriate action. It further provides that debts that are delinquent for less than 180 days may be referred to debt collection centers for collection.

Subpart B of the interim regulation sets forth the procedures that will be used by OFHEO to collect debts owed to the Federal Government by OFHEO employees and former OFHEO employees who are employed by other agencies. When an employee of an agency is indebted to the Federal Government, the agency may collect the debt by salary offset, that is, by deductions from the current pay account of the employee. 5 U.S.C. 5514(a)(1).

The procedures for salary offset are governed by 5 U.S.C. 5514, and by Office of Personnel Management (OPM) regulations at 5 CFR part 550, subpart K (63 FR 72098, Dec. 31, 1998). Agencies are required to promulgate their own salary offset regulations, 5 U.S.C. 5514(b)(1), that must conform with the OPM regulations and be approved by OPM before they become effective. 5 CFR 550.1105(a)(1). The salary offset provisions of subpart B of the interim regulation have been reviewed and approved by OPM.

Subpart C of the interim regulation sets forth the procedures that OFHEO will use to collect debts by administrative offset, if salary offset is not applicable or appropriate. Under this method of collection, an agency collects a debt from a debtor by withholding money that is either payable to the debtor or held by the Federal Government for the debtor. 31 U.S.C. 3716. Subpart C is consistent with the procedures of administrative offset set forth in 31 U.S.C. 3716 and the FCCS.

Subpart D of the interim regulation sets forth the procedures used for collection by the tax refund offset. If collection by salary offset or administrative offset is not feasible, an agency must seek to recover monies owed it by requesting that the Internal Revenue Service reduce a tax refund to a debtor by the amount of the debt and pay such monies to the agency. 31 U.S.C. 3720A, 26 CFR 301.6402–6. In order to use the tax refund offset method of collection, the Internal Revenue Service requires that the agency promulgate temporary or permanent regulations covering all three collection methods: salary offset, administrative offset, and tax refund offset. 31 U.S.C. 3720A(b)(4), 26 CFR 301.6402–6(b). The publication of this interim regulation satisfies that requirement.

Effective Date and Request for Comments

OFHEO has determined that this interim regulation pertains to agency practice and procedure and is interpretative in nature. The procedures contained in the interim regulation for salary offset, administrative offset, and tax refund offset are mandated by law and by regulations promulgated by OPM, jointly by the Department of the Treasury and the Department of Justice, and by the IRS. Therefore, the interim regulation is not subject to the Administrative Procedure Act (APA) and the requirements of the APA for a notice and comment period and for a delayed effective date. 5 U.S.C. 553(b) and (c). Nevertheless, OFHEO requests comments from the public and will take all comments into consideration before promulgating the final regulation. Copies of all comments received will be available for examination by the public at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This interim regulation is not classified as a significant rule under Executive Order 12866 because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this interim regulation has not been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of this interim regulation under the Regulatory Flexibility Act. Of the few debts that have been owed to OFHEO, most have been owed by individuals rather than business entities. Therefore, the General Counsel of OFHEO certifies that the interim regulation is not likely to have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

This interim regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

This interim regulation does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, this regulation implements specific statutory requirements. In addition, this regulation does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), OFHEO has submitted a report containing this interim regulation and other required information to each House of Congress and the Comptroller General of the United States before publication of this interim regulation in the **Federal Register**. The interim regulation is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 1730

Administrative practice and procedure, Debt collection.

For the reasons stated in the preamble, part 1730 is added to chapter XVII, title 12 of the Code of Federal Regulations to read as follows:

PART 1730—DEBT COLLECTION

Subpart A—General

Sec.
1730.1 Authority and scope.
1730.2 Definitions.
1730.3 Collection of debts and referrals to the Department of the Treasury.
1730.4—1730.19 [Reserved]

Subpart B—Salary Offset

1730.20 Authority and scope.
1730.21 Notice requirements before salary offset where OFHEO is the creditor agency.
1730.22 Review of OFHEO records related to the debt.
1730.23 Opportunity for a hearing where OFHEO is the creditor agency.
1730.24 Certification when OFHEO is the creditor agency.
1730.25 Voluntary repayment agreements as alternative to salary offset where OFHEO is the creditor agency.
1730.26 Special review where OFHEO is creditor agency.
1730.27 Notice of salary offset where OFHEO is the paying agency.
1730.28 Procedures for salary offset where OFHEO is the paying agency.
1730.29 Coordinating salary offset with other agencies.
1730.30 Interest, penalties, and administrative costs.
1730.31 Refunds.
1730.32 Request from a creditor agency for the services of a hearing official.
1730.33 Non-waiver of rights by payment.
1730.34–1730.39 [Reserved]

Subpart C—Administrative Offset

1730.40 Authority and scope.
1730.41 Offset prior to completion of procedures.
1730.42 Procedures.
1730.43 Interest.
1730.44 Refunds.
1730.45 Requests for administrative offset to other Federal agencies.
1730.46 Requests for administrative offset from other Federal agencies.
1730.47 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.
1730.48—1730.49 [Reserved]

Subpart D—Tax Refund Offset

1730.50 Authority and scope.
1730.51 Definitions.
1730.52 Procedures.

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402(d); 31 U.S.C. 3701–3720A.

Subpart A—General

§ 1730.1 Authority and scope.

(a) *Authority.* The Office of Federal Housing Enterprise Oversight (OFHEO) issues this part 1730 under the authority of 5 U.S.C. 5514 and 31 U.S.C. 3701–3720A, and in conformity with the FCCS at 4 CFR chapter II; the regulations on salary offset issued by the Office of Personnel Management at 5 CFR part 550, subpart K; and the regulations on tax refund offset issued by the Internal Revenue Service at 26 CFR 301.6402–6.

(b) *Scope.* (1) This part 1730 applies to debts that are owed to the Federal Government by Federal employees, other persons, organizations, or entities that are indebted to OFHEO, and by Federal employees of OFHEO who are indebted to other agencies, except for those debts listed in paragraph (b)(2) of this section.

(2) Subparts B and C of this part 1730 do not apply to:

(i) Debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States;

(ii) Any case to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies;

(iii) Any case where collection of a debt is explicitly provided for or provided by another statute, *e.g.* travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108, or, as provided for by title 11 of the United States Code, when the claims involve bankruptcy;

(iv) Any debt based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, unless the Department of

Justice authorizes OFHEO to handle the collection;

(v) Claims between agencies; or

(vi) A claim that has been outstanding for more than 10 years after the creditor agency's right to collect the debt first accrued, unless facts material to the Federal Government's right to collect were not known and could not reasonably have been known by the officials charged with the responsibility for discovery and collection of such debts.

(3) Nothing in this part 1730 precludes the compromise, suspension, or termination of collection actions, where appropriate under the FCCS, or the use of alternative dispute resolution methods if they are not inconsistent with applicable law and regulations.

(4) Nothing in this part 1730 precludes an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or from questioning the amount or validity of a debt, in the manner set forth in this part 1730.

§ 1730.2 Definitions.

The following definitions apply to the terms used in this part 1730, unless the term is defined elsewhere in this part 1730.

(a) *Administrative offset* means an action, pursuant to 31 U.S.C. 3716, in which the Federal Government withholds funds payable to, or held by the Federal Government for a person, organization, or other entity in order to collect a debt from that person, organization, or other entity. Such funds include funds payable by the Federal Government on behalf of a State Government.

(b) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

(c) *Claim* or *debt* (used interchangeably in this part 1730) means any amount of funds or property that has been determined by an agency official to be due the Federal Government by a person, organization, or entity, except another agency. It also means any amount of money, funds, or property owed by a person to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. A claim or debt includes:

(1) Funds owed on account of loans made, insured, or guaranteed by the Federal Government, including any deficiency or any difference between the price obtained by the Federal Government in the sale of a property and the amount owed to the Federal Government on a mortgage on the property;

(2) Expenditures of non-appropriated funds;

(3) Overpayments, including payments disallowed by audits performed by the Inspector General of the agency administering the program;

(4) Any amount the Federal Government is authorized by statute to collect for the benefit of any person;

(5) The unpaid share of any non-Federal partner in a program involving a Federal payment, and a matching or cost-sharing payment by the non-Federal partner;

(6) Any fines or penalties assessed by an agency; and

(7) Other amounts of money or property owed to the Federal Government.

(d) *Certification* means a written statement received by a paying agency from a creditor agency that request the paying agency to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

(e) *Compromise* means the settlement or forgiveness of a debt.

(f) *Creditor agency* means the agency to which the debt is owed, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt.

(g) *Debt.* See *Claim* or *debt* in paragraph (c) of this section.

(h) *Debt collection center* means the Department of the Treasury or any other agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(i) *Debtor* means the person, organization, or entity owing money to the Federal Government.

(j) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, or retainer pay (or in the case of an employee not entitled to basic pay, other authorized pay) remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that OFHEO must apply first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in 5 CFR 581.105 (b) through (f), as follows:

(1) Federal employment taxes;

(2) Amounts withheld for the United States Soldiers' and Airmen's Home;

(3) Amounts deducted for Medicare;

(4) Fines and forfeiture ordered by a court-martial or by a commanding officer;

(5) Federal, State, or local income taxes to the extent authorized or required by law, but no greater than would be the case if the employee claimed all dependents to which her or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(6) Health insurance premiums;

(7) Normal retirement contributions, including employee contributions to the Thrift Savings Plan; and

(8) Normal life insurance premiums, *e.g.*, Serviceman's Group Life Insurance and "Basic Life" Federal Employee's Group Life Insurance premiums, not including amounts deducted for supplementary coverage.

(k) *Employee* means a current employee of OFHEO or other agency, including a current member of the Armed Forces or a Reserve of the Armed Forces of the United States.

(l) *FCCS* means the Federal Claims Collection Standards at 4 CFR chapter II.

(m) *Hearing official* means an individual who is responsible for conducting any hearing with respect to the existence or amount of a debt claimed and for rendering a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Director of OFHEO when OFHEO is the creditor agency but may be an administrative law judge.

(n) *Notice of Intent* means a written notice of a creditor agency to a debtor that states that the debtor owes a debt to the creditor agency and apprises the debtor of the applicable procedural rights.

(o) *Notice of salary offset* means a written notice from the paying agency to an employee after a certification has been issued by a creditor agency that informs the employee that salary offset will begin at the next officially established pay interval.

(p) *Paying agency* means an agency of the Federal Government that employs the individual who owes a debt to an agency of the Federal Government.

(q) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deductions at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(r) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee

to OFHEO or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 1730.3 Collection of debts and referrals to the Department of the Treasury.

(a) *Collection activity.* The collection of debts directly and by offset shall be pursued in accordance with this part 1730. This part 1730 incorporates all applicable debt collection provisions of the FCCS and supplements the FCCS by the prescription of procedures necessary and appropriate for the operations of OFHEO.

(b) *Referral of delinquent debts.* (1) OFHEO shall transfer to the Secretary of the Department of the Treasury any past due, legally enforceable nontax debt that has been delinquent for a period of 180 days or more so that the Secretary may take appropriate action to collect the debt or terminate collection action in accordance with 31 U.S.C. 3716, 5 U.S.C. 5514, the FCCS, 5 CFR 550.1108, and 31 CFR part 285.

(2) OFHEO may transfer any past due, legally enforceable nontax debt that has been delinquent for less than a period of 180 days to a debt collection center for collection in accordance with 31 U.S.C. 3716, 5 U.S.C. 5514, 5 CFR 550.1108, 31 CFR part 285, and the FCCS.

§§ 1730.4–1730.19 [Reserved]

Subpart B—Salary Offset

§ 1730.20 Authority and scope.

(a) *Authority.* OFHEO may collect debts owed by employees to the Federal Government by means of salary offset under the authority of 5 U.S.C. 5514, 5 CFR part 550, subpart K, and this subpart B.

(b) *Scope.* (1) The procedures set forth in this subpart B apply to situations where OFHEO is attempting to collect a debt by salary offset that is owed to it by an individual employed by OFHEO or by another agency; or where OFHEO employs an individual who owes a debt to another agency.

(2) The procedures set forth in this subpart B do not apply to:

(i) Any routine intra-agency adjustment of pay that is attributable to clerical or administrative error or delay in processing pay documents that have occurred within the four pay periods preceding the adjustment, or any adjustment to collect a debt amounting to $50 or less. However, at the time of any such adjustment, or as soon thereafter as possible, OFHEO or its designated payroll agent shall provide the employee with a written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(ii) Any negative adjustment to pay that arises from an employee's election of coverage or a change in coverage under a Federal benefits program that requires periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. However, at the time the such adjustment is made, OFHEO or its payroll agent shall provide in the employee's earnings statement a clear and concise statement that informs the employee of the previous overpayment.

§ 1730.21 Notice requirements before salary offset where OFHEO is the creditor agency.

(a) *Notice of Intent.* Deductions from an employee's salary may not be made unless OFHEO provides the employee with a Notice of Intent a minimum of 30 calendar days before the salary offset is initiated.

(b) *Contents of Notice of Intent.* The Notice of Intent shall advise the employee of the following:

(1) OFHEO has reviewed the records relating to the claim and has determined that the employee owes the debt;

(2) OFHEO intends to collect the debt by deductions from the employee's current disposable pay account;

(3) The amount of the debt and the facts giving rise to the debt;

(4) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of disposable pay), and the intention to continue the deductions until the debt and all accumulated interest are paid in full or otherwise resolved;

(5) The name, address, and telephone number of the person to whom the employee may propose a written alternative schedule for voluntary repayment, in lieu of salary offset. The employee shall include a justification for the alternative schedule in his or her proposal. If the terms of the alternative schedule are agreed upon by the employee and OFHEO, the alternative written schedule shall be signed by both the employee and OFHEO;

(6) An explanation of OFHEO's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(7) The employee's right to inspect and copy all records of OFHEO pertaining to his or her debt that are not exempt from disclosure or to receive copies of such records if he or she is unable personally to inspect the records as the result of geographical or other constraints;

(8) The name, address, and telephone number of the OFHEO employee to whom requests for access to records relating to the debt must be sent;

(9) The employee's right to a hearing conducted by an impartial hearing official with respect to the existence and amount of the debt claimed or the repayment schedule *i.e.*, the percentage of disposable pay to be deducted each pay period, so long as a request is filed by the employee as prescribed in § 1730.23; the name and address of the office to which the request for a hearing should be sent; and the name, address, and telephone number of a person whom the employee may contact concerning procedures for requesting a hearing;

(10) The filing of a request for a hearing on or before the 15th calendar day following receipt of the Notice of Intent will stay the commencement of collection proceedings and a final decision on whether a hearing will be held (if a hearing is requested) will be issued at the earliest practical date;

(11) OFHEO shall initiate certification procedures to implement a salary offset unless the employee files a request for a hearing on or before the 15th calendar day following receipt of the Notice of Intent;

(12) Any knowingly false or frivolous statement, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under 5 U.S.C. chapter LXXV, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or under any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or under any other applicable statutory authority;

(13) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(14) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted from debts that are later waived or found not to be owed to the Federal Government shall be promptly refunded to the employee; and

(15) Proceedings with respect to the debt are governed by 5 U.S.C. 5514.

§ 1730.22 Review of OFHEO records related to the debt.

(a) *Request for review.* An employee who desires to inspect or copy OFHEO records related to a debt owed by the employee to OFHEO must send a letter

to the individual designated in the Notice of Intent requesting access to the relevant records. The letter must be received in the office of that individual within 15 calendar days after the employee's receipt of the Notice of Intent.

(b) *Review location and time.* In response to a timely request submitted by the employee, the employee shall be notified of the location and time when the employee may inspect and copy records related to his or her debt that are not exempt from disclosure. If the employee is unable personally to inspect such records as the result of geographical or other constraints, OFHEO shall arrange to send copies of such records to the employee.

§ 1730.23 Opportunity for a hearing where OFHEO is the creditor agency.

(a) *Request for a hearing.* (1) *Time-period for submission.* An employee who requests a hearing on the existence or amount of the debt held by OFHEO or on the salary-offset schedule proposed by OFHEO, must send such request to OFHEO. The request for a hearing must be received by OFHEO on or before the 15th calendar day following receipt by the employee of the Notice of Intent.

(2) *Failure to submit timely.* If the employee files a request for a hearing after the expiration of the 15th calendar day, OFHEO may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

(3) *Contents of request.* The request for a hearing must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position. The employee must also specify whether he or she requests an oral hearing. If an oral hearing is requested, the employee should explain why a hearing by examination of the documents without an oral hearing would not resolve the matter.

(4) *Failure to request a hearing.* The failure of an employee to request a hearing will be considered an admission by the employee that the debt exits in the amount specified in the Notice of Intent that was provided to the employee under § 1730.21(b).

(b) *Obtaining the services of a hearing official.* (1) *Debtor is not OFHEO employee.* When the debtor is not an OFHEO employee and OFHEO cannot provide a prompt and appropriate hearing before an administrative law judge or other hearing official, OFHEO may request a hearing official from an agent of the paying agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the paying agency.

(2) *Debtor is OFHEO employee.* When the debtor is an OFHEO employee, OFHEO may contact any agent of another agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the agency, to request a hearing official.

(c) *Procedure.* (1) *Notice of hearing.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must occur no more than 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be conducted by an examination of documents, the employee shall be notified within 30 calendar days that he or she should submit evidence and arguments in writing to the hearing official.

(2) *Oral hearing.* (i) An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by an examination of the documents alone, as for example, when an issue of credibility or veracity is involved. The oral hearing need not be an adversarial adjudication and rules of evidence need not apply. Witnesses who testify in an oral hearing shall do so under oath or affirmation.

(ii) Oral hearings may take the form of, but are not limited to:

(A) Informal conferences with the hearing official in which the employee and agency representative are given full opportunity to present evidence, witnesses, and argument;

(B) Informal meetings in which the hearing examiner interviews the employee; or

(C) Formal written submissions followed by an opportunity for oral presentation.

(3) *Hearing by examination of documents.* If the hearing official determines that an oral hearing is not necessary, he or she shall make the determination based upon an examination of the documents.

(d) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(e) *Decision.* (1) The hearing official shall issue a written opinion stating his or her decision, based upon all evidence and information developed during the hearing, as soon as practicable after the hearing, but not later than 60 calendar days after the date on which the request was received by OFHEO, unless the hearing was delayed at the request of the employee, in which case the 60-day decision period shall be extended by the number of days by which the hearing was postponed.

(2) The decision of the hearing official shall be final and is considered to be an official certification regarding the existence and the amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. If the hearing official determines that a debt may not be collected by salary offset, but OFHEO finds that the debt is still valid, OFHEO may seek collection of the debt through other means in accordance with applicable law and regulations.

(f) *Content of decision.* The written decision shall include:

(1) A summary of the facts concerning the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(g) *Failure to appear.* If, in the absence of good cause shown, such as illness, the employee or the representative of OFHEO fails to appear, the hearing official shall proceed with the hearing as scheduled, and make his or decision based upon the oral testimony presented and the documentation submitted by both parties. At the request of both parties, the hearing official may schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of the new hearing.

§ 1730.24 Certification where OFHEO is the creditor agency.

(a) *Issuance.* OFHEO shall issue a certification in all cases where the hearing official determines that a debt exists or the employee admits the existence and amount of the debt, as for example, by failing to request a hearing.

(b) *Contents.* The certification must be in writing and state:

(1) That the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date of the Federal Government's right to collect the debt first accrued;

(4) The date the employee was notified of the debt, the action(s) taken pursuant to OFHEO's regulations, and the dates such actions were taken;

(5) If the collection is to be made by lump-sum payment, the amount and date such payment will be collected;

(6) If the collection is to be made in installments, the amount or percentage of disposable pay to be collected in each installment and, if OFHEO wishes, the desired commencing date of the first installments, if a date other than the next officially established pay period; and

(7) A statement that OFHEO's regulation on salary offset has been approved by the Office of Personnel Management pursuant to 5 CFR part 550, subpart K.

§ 1730.25 Voluntary repayment agreements as alternative to salary offset where OFHEO is the creditor agency.

(a) *Proposed repayment schedule.* In response to a Notice of Intent, an employee may propose to repay the debt voluntarily in lieu of salary offset by submitting a written proposed repayment schedule to OFHEO. Any proposal under this section must be received by OFHEO within 15 calendar days after receipt of the Notice of Intent.

(b) *Notification of decision.* In response to a timely proposal by the employee, OFHEO shall notify the employee whether the employee's proposed repayment schedule is acceptable. OFHEO has the discretion to accept, reject, or propose to the employee a modification of the proposed repayment schedule.

(1) If OFHEO decides that the proposed repayment schedule is unacceptable, the employee shall have 15 calendar days from the date he or she received notice of the decision in which to file a request for a hearing.

(2) If OFHEO decides that the proposed repayment schedule is acceptable or the employee agrees to a modification proposed by OFHEO, an agreement shall be put in writing and signed by both the employee and OFHEO.

§ 1730.26 Special review where OFHEO is the creditor agency.

(a) *Request for review.* (1) An employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by OFHEO of the amount of the salary offset or voluntary repayment, based on materially changed circumstances, including, but not limited to, catastrophic illness, divorce, death, or disability.

(2) The request for special review must include an alternative proposed offset or payment schedule and a detailed statement, with supporting documents, that shows why the current salary offset or payments result in extreme financial hardship to the employee and his or her spouse and dependents. The detailed statement must indicate:

(i) Income from all sources;

(ii) Assets;

(iii) Liabilities;

(iv) Number of dependents;

(v) Expenses for food, housing, clothing, and transportation;

(vi) Medical expenses; and

(vii) Exceptional expenses, if any.

(b) *Evaluation of request.* OFHEO shall evaluate the statement and supporting documents and determine whether the original offset or repayment schedule imposes extreme financial hardship on the employee. OFHEO shall notify the employee in writing within 30 calendar days of such determination, including, if appropriate, a revised offset or payment schedule. If the special review results in a revised offset or repayment schedule, OFHEO shall provide a new certification to the paying agency.

§ 1730.27 Notice of salary offset where OFHEO is the paying agency.

(a) *Notice.* Upon issuance of a proper certification by OFHEO (for debts owed to OFHEO) or upon receipt of a proper certification from another creditor agency, OFHEO shall send the employee a written notice of salary offset.

(b) *Content of notice.* Such written notice of salary offset shall advise the employee of the:

(1) Certification that has been issued by OFHEO or received from another creditor agency;

(2) Amount of the debt and of the deductions to be made; and

(3) Date and pay period when the salary offset will begin.

(c) If OFHEO is not the creditor agency, OFHEO shall provide a copy of the notice of salary offset to the creditor agency and advise the creditor agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 1730.28 Procedures for salary offset where OFHEO is the paying agency.

(a) *Generally.* OFHEO shall coordinate salary deductions under this section and shall determine the amount of an employee's disposable pay and the amount of the salary offset subject to the requirements in this section. Deductions shall begin the pay period following the issuance of the certification by OFHEO or the receipt by OFHEO of the certification from another agency, or as soon thereafter as possible.

(b) *Types of collection.* (1) *Lump-sum payment.* If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay, such debt ordinarily will be collected in one lump-sum payment.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any pay period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount. The installment payment should normally be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than $50 should be accepted only in the most unusual circumstances.

(3) *Lump-sum deductions from final check.* In order to liquidate a debt, a lump-sum deduction exceeding 15 percent of disposable pay may be made pursuant to 31 U.S.C. 3716 from any final salary payment due a former employee, whether the former employee was separated voluntarily or involuntarily.

(4) *Lump-sum deductions from other sources.* Whenever an employee subject to salary offset is separated from OFHEO, and the balance of the debt cannot be liquidated by offset of the final salary check, OFHEO may offset any later payments of any kind to the former employee to collect the balance of the debt pursuant to 31 U.S.C. 3716.

(c) *Multiple debts.* (1) Where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, OFHEO may, at his or her discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(2) In the event that a debt owed OFHEO is certified while an employee is subject to salary offset to repay another agency, OFHEO may, at its discretion, determine whether the debt to OFHEO should be repaid before the debt to the other agency is repaid, repaid simultaneously with the other debt, or repaid after the debt to the other agency.

(3) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section, as provided in 5 U.S.C. 5514(d).

§ 1730.29 Coordinating salary offset with other agencies.

(a) *Responsibility of OFHEO as the creditor agency.* (1) OFHEO shall be responsible for:

(i) Arranging for a hearing upon proper request by a Federal employee;

(ii) Preparing the Notice of Intent consistent with the requirements of § 1730.21;

(iii) Obtaining hearing officials from other agencies pursuant to § 1730.23(b); and

(iv) Ensuring that each certification of debt is sent to a paying agency pursuant to § 1730.24(b).

(2) Upon completion of the procedures set forth in §§ 1730.24–1730.26, OFHEO shall submit to the employee's paying agency, if applicable, a certified debt claim and an installment agreement or other instruction on the payment schedule.

(i) If the employee is in the process of separating from the Federal Government, OFHEO shall submit its debt claim to the employee's paying agency for collection by lump-sum deduction from the employee's final check. The paying agency shall certify the total amount of its collection and furnish a copy of the certification to OFHEO and to the employee.

(ii) If the employee is already separated and all payments due from his or her former paying agency have been paid, OFHEO may, unless otherwise prohibited, request that money due and payable to the employee from the Federal Government be administratively offset to collect the debt.

(iii) When an employee transfers to another paying agency, OFHEO shall not repeat the procedures described in §§ 1730.24—1730.26. Upon receiving notice of the employee's transfer, OFHEO shall review the debt to ensure that collection is resumed by the new paying agency.

(b) *Responsibility of OFHEO as the paying agency.* (1) *Complete claim.* When OFHEO receives a certified claim from a creditor agency, the employee shall be given written notice of the certification, the date salary offset will begin, and the amount of the periodic deductions. Deductions shall be scheduled to begin at the next officially established pay interval or as otherwise provided for in the certification.

(2) *Incomplete claim.* When OFHEO receives an incomplete certification of debt from a creditor agency, OFHEO shall return the claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed, and that a properly certified claim must be received before OFHEO will take action to collect the debt from the employee's current pay account.

(3) *Review.* OFHEO is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another agency.* If, after the creditor agency has submitted the debt claim to OFHEO, the employee transfers to another agency before the debt is collected in full, OFHEO must certify the total amount collected on the debt. One copy of the certification shall be furnished to the employee and one copy shall be sent to the creditor agency along with notice of the employee's transfer. If OFHEO is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the requirements set forth herein and in 5 CFR part 550, subpart k, have been met.

§ 1730.30 Interest, penalties, and administrative costs.

Where OFHEO is the creditor agency, OFHEO shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and the FCCS.

§ 1730.31 Refunds.

(a) Where OFHEO is the creditor agency, OFHEO shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when:

(1) OFHEO receives notice that the debt has been compromised or otherwise found not to be owing to the Federal Government; or

(2) An administrative or judicial order directs OFHEO to make a refund.

(b) Unless required by law or contract, refunds under this section shall not bear interest.

§ 1730.32 Request from a creditor agency for the services of a hearing official.

(a) OFHEO may provide qualified personnel to serve as hearing officials upon request of a creditor agency when—

(1) The debtor is employed by OFHEO and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement; or

(2) The debtor is employed by the creditor agency and that agency cannot arrange for a hearing official.

(b) Services provided by OFHEO to creditor agencies under this section shall be provided on a fully reimbursable basis pursuant to 31 U.S.C. 1535.

§ 1730.33 Non-waiver of rights by payments.

A debtor's payment, whether voluntary or involuntary, of all or any portion of a debt being collected pursuant to this subpart B shall not be construed as a waiver of any rights that the debtor may have under any statute, regulation, or contract, except as otherwise provided by law or contract.

§§ 1730.34–1730.39 [Reserved]

Subpart C—Administrative Offset

§ 1730.40 Authority and scope.

OFHEO may collect a debt owed to the Federal Government from a person, organization, or other entity by administrative offset, pursuant to 31 U.S.C. 3716, where:

(a) The debt is certain in amount;

(b) Administrative offset is feasible, desirable, and not otherwise prohibited;

(c) The applicable statute of limitations has not expired; and

(d) Administrative offset is in the best interest of the Federal Government.

§ 1730.41 Administrative offset prior to completion of procedures.

Prior to the completion of the procedures described in § 1730.42, OFHEO may effect administrative offset if failure to offset would substantially prejudice its ability to collect the debt, and if the time before the payment is to be made does not reasonably permit completion of the procedures described in § 1730.42. Such prior administrative offset shall be followed promptly by the completion of the procedures described in § 1730.42.

§ 1730.42 Procedures.

Unless the procedures described in § 1730.41 are used, prior to collecting any debt by administrative offset or referring such claim to another agency for collection through administrative offset, OFHEO shall provide the debtor with the following:

(a) Written notification of the nature and amount of the debt, the intention of OFHEO to collect the debt through administrative offset, and a statement of the rights of the debtor under this section;

(b) An opportunity to inspect and copy the records of OFHEO related to the debt that are not exempt from disclosure;

(c) An opportunity for review within OFHEO of the determination of indebtedness. Any request for review by the debtor shall be in writing and shall be submitted to OFHEO within 30 calendar days of the date of the notice of the offset. OFHEO may waive the time limits for requesting review for good cause shown by the debtor. OFHEO shall provide the debtor with a reasonable opportunity for an oral hearing when:

(1) An applicable statute authorizes or requires OFHEO to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and OFHEO determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, as for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this subpart C is not required to be a formal evidentiary hearing, although OFHEO shall document all significant matters discussed at the hearing. In those cases where an oral hearing is not required by this subpart C, OFHEO shall make its determination on the request for waiver or reconsideration based upon a review of the written record; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the claim at the discretion of OFHEO.

§ 1730.43 Interest.

OFHEO shall assess interest, penalties, and administrative costs on debts owed to the Federal Government, in accordance with 31 U.S.C. 3717 and the FCCS. OFHEO may also assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 and the FCCS to the extent authorized under the common law or other applicable statutory authority.

§ 1730.44 Refunds.

OFHEO shall refund promptly those amounts recovered by administrative offset but later found not to be owed to the Federal Government.

§ 1730.45 Requests for administrative offset to other Federal agencies.

(a) OFHEO may request that a debt owed to OFHEO be collected by administrative offset against funds due and payable to a debtor by another agency.

(b) In requesting administrative offset, OFHEO, as creditor, shall certify in writing to the agency holding funds of the debtor:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That OFHEO has complied with the requirements of its own administrative offset regulations and the applicable provisions of the FCCS with respect to providing the debtor with due process.

§ 1730.46 Requests for administrative offset from other Federal agencies.

(a) Any agency may request that funds due and payable to a debtor by OFHEO be administratively offset in order to collect a debt owed to such agency by the debtor.

(b) OFHEO shall initiate the requested administrative offset only upon:

(1) Receipt of written certification from the creditor agency that:

(i) The debtor owes the debt, including the amount and basis of the debt;

(ii) The agency has prescribed regulations for the exercise of administrative offset; and

(iii) The agency has complied with its own administrative offset regulations and with the applicable provisions of the FCCS, including providing any required hearing or review.

(2) A determination by OFHEO that collection by administrative offset against funds payable by OFHEO would be in the best interest of the Federal Government as determined by the facts and circumstances of the particular case and that such administrative offset would not otherwise be contrary to law.

§ 1730.47 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) *Request for administrative offset.* Unless otherwise prohibited by law, OFHEO may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund (Fund) be offset administratively in reasonable amounts in order to collect in one full payment or in a minimal number of payments debt owed to OFHEO by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of the Office of Personnel Management.

(b) *Contents of certification.* When making a request for administrative offset under paragraph (a) of this section, OFHEO shall include a written certification that:

(1) The debtor owes OFHEO a debt, including the amount of the debt;

(2) OFHEO has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) OFHEO has complied with the requirements of the FCCS, including any required hearing or review.

(c) If OFHEO decides to request administrative offset under paragraph (a) of this section, it shall make the request as soon as practicable after completion of the applicable procedures. This will satisfy any requirement that administrative offset be initiated prior to the expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least one year has elapsed since the administrative offset request was originally made, the debtor shall be permitted to offer a satisfactory repayment plan in lieu of administrative offset if he or she establishes that changed financial circumstances would render the administrative offset unjust.

(d) If OFHEO collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, OFHEO shall act promptly to modify or terminate its request for administrative offset under paragraph (a) of this section.

§§ 1730.48–1730.49 [Reserved]

Subpart D—Tax Refund Offset

§ 1730.50 Authority and scope.

The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury to offset a delinquent debt owed the Federal Government from the tax refund due a taxpayer when other collection efforts have failed to recover the amount due.

§ 1730.51 Definitions.

(a)(1) *Debt* means money owed by an individual, organization, or entity from sources which include loans insured or guaranteed by the Federal Government and all other amounts due the Federal Government from fees, leases, services, overpayments, civil and criminal penalties, damages, interest, fines, administrative costs, and all other similar sources.

(2) A debt becomes eligible for tax refund offset procedures if:

(i) It cannot currently be collected pursuant to the salary offset procedures of 5 U.S.C. 5514(a)(1);

(ii) The debt is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or it cannot be collected currently by administrative offset under 31 U.S.C. 3716(a); and

(iii) The requirements of this section are otherwise satisfied.

(3) All judgment debts are past due for purposes of this subpart D. Judgment debts remain past due until paid in full.

(b) *Dispute* means a written statement supported by documentation or other evidence that all or part of an alleged debt is not past due or legally enforceable, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or in the case of a debt reduced to judgment, that the judgement has been satisfied or stayed.

(c) *Notice* means the information sent to the debtor pursuant to § 1730.53. The

date of the notice is that date shown on the notice letter as its date of issuance.

§ 1730.52 Procedures.

(a) *Referral to the Department of the Treasury.* (1) OFHEO may refer any past due, legally enforceable nonjudgment debt of an individual, organization, or entity to the Department of the Treasury for tax refund offset if OFHEO's or the referring agency's rights of action accrued more than three months but less than 10 years before the offset is made.

(2) Debts reduced to judgment may be referred at any time.

(3) Debts in amounts lower than $25 are not subject to referral.

(4) In the event that more than one debt is owed, the tax refund offset procedures shall be applied in the order in which the debts became past due.

(5) OFHEO shall notify the Department of the Treasury of any change in the amount due promptly after receipt of payment or notice of other reductions.

(b) *Notice.* OFHEO shall provide the debtor with written notice of its intent to offset before initiating the offset. Notice shall be mailed to the debtor at the current address of the debtor, as determined from information obtained from the Internal Revenue Service pursuant to 26 U.S.C. 6103(m)(2), (4), (5) or maintained by OFHEO. The notice sent to the debtor shall state the amount of the debt and inform the debtor that:

(1) The debt is past due;

(2) OFHEO intends to refer the debt to the Department of the Treasury for offset from tax refunds that may be due to the taxpayer;

(3) OFHEO intends to provide information concerning the delinquent debt exceeding $100 to a consumer reporting bureau unless such debt has already been disclosed; and

(4) Before the debt is reported to a consumer reporting agency, if applicable, and referred to the Department of the Treasury for offset from tax refunds, the debtor has 65 calendar days from the date of notice to request a review under paragraph (d).

(c) *Report to consumer reporting agency.* If the debtor neither pays the amount due nor presents evidence that the amount is not past due or is satisfied or stayed, OFHEO will report the debt to a consumer reporting agency at the end of the notice period, if applicable, and refer the debt to the Department of the Treasury for offset from the taxpayer's Federal tax refund. OFHEO shall certify to the Department of the Treasury that reasonable efforts have been made by OFHEO to obtain payment of such debt.

(d) *Request for review.* A debtor may request a review by OFHEO if he or she believes that all or part of the debt is not past due or is not legally enforceable, or in the case of a judgment debt, that the debt has been stayed or the amount satisfied, as follows:

(1) The debtor must send a written request for review to OFHEO at the address provided in the notice.

(2) The request must state the amount disputed and reasons why the debtor believes that the debt is not past due, is not legally enforceable, has been satisfied, or if a judgment debt, has been satisfied or stayed.

(3) The request must include any documents that the debtor wishes to be considered or state that additional information will be submitted within the time permitted.

(4) If the debtor wishes to inspect records establishing the nature and amount of the debt, the debtor must make a written request to OFHEO for an opportunity for such an inspection. The office holding the relevant records not exempt from disclosure shall make them available for inspection during normal business hours within one week from the date of receipt of the request.

(5) The request for review and any additional information submitted pursuant to the request must be received by OFHEO at the address stated in the notice within 65 calendar days of the date of issuance of the notice.

(6) In reaching its decision, OFHEO shall review the dispute and shall consider its records and any documentation and arguments submitted by the debtor. OFHEO shall send a written notice of its decision to the debtor. There is no administrative appeal of this decision.

(7) If the evidence presented by the debtor is considered by a non-OFHEO agent or other entities or persons acting on behalf of OFHEO, the debtor shall be accorded at least 30 calendar days from the date the agent or other entity or person determines that all or part of the debt is past due and legally enforceable to request review by OFHEO of any unresolved dispute.

(8) Any debt that previously has been reviewed pursuant to this section or any other section of this part, or that has been reduced to a judgment, may not be disputed except on the grounds of payments made or events occurring subsequent to the previous review or judgment.

Dated: June 22, 1999.

Mark A. Kinsey,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 99–16369 Filed 6–29–99; 8:45 am]

BILLING CODE 4220–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–133–AD; Amendment 39–11213; AD 99–13–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–700 and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T99–13–51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 737–700 and –800 series airplanes by individual telegrams. This AD requires revising the Airplane Flight Manual (AFM) to prohibit operation of the airplane under certain conditions; repetitive inspections of the tab mast fitting of the elevator tab assemblies to detect cracking; an elevator tab freeplay check; and corrective actions, if necessary. This AD also provides for optional terminating action for certain repetitive inspections. This AD requires installing an additional fastener on the tab mast fitting, which terminates the AFM revision and extends certain repetitive inspections. This action is prompted by a report of a severe vibration incident on a Boeing Model 737–800 series airplane; inspection revealed fracturing of the elevator tab mast fitting and excessive freeplay in the elevator tab. The actions specified by this AD are intended to prevent reduced controllability of the airplane due to excessive freeplay in the elevator tab or a free tab.

DATES: Effective July 6, 1999, to all persons except those persons to whom it was made immediately effective by telegraphic AD T99–13–51, issued June 10, 1999, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 6, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory L. Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On June 10, 1999, the FAA issued telegraphic AD T99–13–51, which is applicable to certain Boeing Model 737–700 and –800 series airplanes.

Background

On June 2, 1999, the FAA received a report of a severe vibration incident on a Boeing Model 737–800 series airplane, which had accumulated 3,517 total flight hours and 1,284 total flight cycles. The airplane was involved in a high-speed descent with speed brakes extended while operating at an airspeed of 320 knots. During the descent, severe vibration occurred at 250 knots. At 230 knots, the speed brakes were retracted and the vibration stopped. The landing was uneventful.

Inspection of the airplane revealed that the upper flange of the right elevator tab mast fitting, to which the elevator tab push rods are attached, was found fractured. The lower flange of the fitting was not damaged. In addition, excessive freeplay in the elevator tab also was observed and measured during the inspection.

Further analysis confirmed that the damage to the fitting was aggravated by speed brake induced airframe vibrations. Such vibration could lead to damage of the elevator tab mast fitting, excessive freeplay in the tab, and consequent separation of the tab mast fitting from the tab. Excessive freeplay in the tab could result in severe airframe vibrations and consequent damage to the tab, elevator, and horizontal stabilizer. Separation of the elevator tab mast fitting will result in a free tab. These conditions, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–55A1068, dated June 9, 1999, which describes procedures for repetitive high frequency eddy current (HFEC) inspections of the tab mast fitting of the left and right elevator tab assembly to detect cracking, and a one-time elevator tab freeplay check to detect excessive freeplay of the elevator tab; and corrective actions, if necessary. The alert service bulletin also describes procedures for installing an additional high-strength fastener on the tab mast fitting (time-limited modification).

In addition, the alert service bulletin references removing and replacing the cracked tab mast fitting with a new, improved fitting. Such replacement, if accomplished, eliminates the need for the repetitive inspections.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, this airworthiness directive is issued to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit operation of the airplane at certain airspeeds with the speed brakes extended, and at certain altitudes.

This AD also requires repetitive HFEC inspections of the tab mast fitting of the left and right elevator tab assembly to detect cracking, and a one-time elevator tab freeplay check to detect excessive freeplay of the elevator tab; and corrective actions, if necessary. This AD also provides for optional terminating action for the repetitive HFEC inspections.

Certain actions are required to be accomplished in accordance with the alert service bulletin described previously.

Additionally, this AD requires installing an additional high-strength fastener on the tab mast fitting (time-limited modification). Such installation terminates the AFM revision and allows extension of the repetitive interval for accomplishment of the HFEC inspections.

It should be noted that, although this AD prohibits the deployment of the spoilers at speeds in excess of 310 knots indicated airspeed (IAS), the FAA recognizes that under emergency circumstances, previous pilot training and human factors could result in deployment of the spoilers at suc speeds notwithstan prohibition. In th requires acco inspect ia.. the ch or freeplay prior to furth nding.

Since it was fo d that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on June 10, 1999, to all known U.S. owners and operators of Boeing Model 737–700 and –800 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Interim Action

In the preamble to AD T99–13–51, the FAA indicated that the actions required by that AD were considered to be interim action and that the FAA may consider further rulemaking to require replacement of the tab mast fitting with a new, improved fitting.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that

summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–133–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–13–51 Boeing: Amendment 39–11213. Docket 99–NM–133–AD.

Applicability: Model 737–700 and –800 series airplanes having line numbers 1 through 190, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane due to excessive freeplay in the elevator tab or a free tab, accomplish the following:

Airplane Flight Manual (AFM) Revision

(a) Within 24 clock hours after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following information. This may be accomplished by inserting a copy of this AD into the AFM.

Do not operate the airplane at speeds in excess of 310 knots indicated airspeed (IAS) with speed brakes extended. Do not operate the airplane above FL 390.

(b) In the event of deployment of the speed brakes at speeds in excess of 310 knots indicated airspeed (IAS), prior to further flight after landing, accomplish the requirements of paragraph (c) of this AD.

Inspection and Check

(c) Within 10 days after the effective date of this AD, perform a high frequency eddy current (HFEC) inspection of the tab mast fitting of the left and right elevator tab assembly to detect cracking, and a one-time elevator tab freeplay check to detect freeplay of the elevator tab, in accordance with Boeing Alert Service Bulletin 737–55A1068, dated June 9, 1999.

(1) If no cracking is found in the elevator tab mast fitting, repeat the HFEC inspection thereafter at intervals not to exceed 15 days, until accomplishment of the actions required by paragraph (d) of this AD.

(2) If any cracking is found in the elevator tab mast fitting, prior to further flight, accomplish the requirements of paragraph (e) of this AD.

(3) If any freeplay is found that is outside the limits specified in the alert service bulletin, prior to further flight, perform corrective actions in accordance with the alert service bulletin.

Note 2: Boeing Alert Service Bulletin 737–55A1068, dated June 9, 1999, references Boeing Model 737–600/–700/–800 Maintenance Manual (AMM), Subjects 27–09–91, 27–31–00, and 51–21–99; 737 Nondestructive Test (NDT) Manual D6–37239, Part 6, Subject 55–00–00; 737 Structural Repair Manual (SRM) Subject 51–20–81; and Operations Manual Service Bulletin D6–27370–TBC ("Elevator Tab Operational Limitations"), dated June 10, 1999; as additional sources of service information to accomplish certain requirements of this AD.

Time-Limited Modification

(d) Within 90 days after the effective date of this AD, install an additional high-strength fastener on the elevator tab mast fitting in accordance with Boeing Alert Service Bulletin 737–55A1068, dated June 9, 1999. Accomplishment of this modification constitutes terminating action for the requirements of paragraph (b) of this AD. Following accomplishment of the installation, the AFM revision required by paragraph (a) of this AD may be removed from the AFM. Following accomplishment of the installation, repeat the HFEC inspection required by paragraph (c) of this AD thereafter at intervals not to exceed 90 days until accomplishment of paragraph (e) of this AD.

Replacement

(e) Replacement of the elevator tab mast fitting with a new, improved fitting in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, constitutes terminating action for the requirements of this AD.

Spares

(f) As of receipt of this AD, no elevator tab mast fitting, part numbers (P/N) 185A408–1 or 185A408–2, shall be installed on any airplane.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) The inspections, check, and time-limited modification shall be done in accordance with Boeing Alert Service Bulletin 737–55A1068, dated June 9, 1999. This incorporation by reference was approved by the Director of the Federal

Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on July 6, 1999, to all persons except those persons to whom it was made immediately effective by telegraphic AD T99–13–51, issued on June 10, 1999, which contained the requirements of this amendment.

Issued in Renton, Washington, on June 22, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16325 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–243–AD; Amendment 39–11214; AD 99–14–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that requires inspections to verify correct installation of certain fasteners located on the trailing edges of the horizontal and vertical stabilizer; replacement of the existing fasteners with new fasteners installed with wet sealant; and follow-on actions, if necessary. This amendment is prompted by reports indicating that, during manufacture of the horizontal and vertical stabilizers, certain fasteners attaching the aluminum ribs and brackets to the trailing edges on the empennage were not correctly installed with wet sealant. The actions specified by this AD are intended to prevent corrosion and possible cracking of those aluminum parts, which could result in loss of the attachment of the elevator and rudder to the empennage and consequent reduced controllability of the airplane.

DATES: Effective August 4, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 4, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes was published in the **Federal Register** on October 14, 1998 (63 FR 55065). That action proposed to require inspections to verify correct installation of certain fasteners located on the trailing edges of the horizontal and vertical stabilizer; replacement of the existing fasteners with new fasteners installed with wet sealant; and follow-on actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule; another commenter indicates that it is not affected by the proposed rule.

Request To Extend Compliance Time

One commenter (an operator) requests that the FAA extend the proposed compliance time for accomplishment of the actions from five years to six years since the date of manufacture of the airplane. The commenter indicates that its airplanes were delivered in February and March 1996, which would require the inspections to be accomplished within 2.2 years. In support of the request for extension, if approved by the FAA, the commenter states that it will immediately apply corrosion inhibiting compound to the area, inspect the fastener holes for corrosion after oversizing, and remove any detected corrosion.

The FAA does not concur with the commenter's request and proposal. If the fasteners were not correctly installed with wet sealant in production, the application of corrosion inhibiting compound prior to further flight would have limited effectiveness for corrosion prevention. In light of the fact that there is continued degradation of the structure due to corrosion, the FAA has determined that a one year extension is not warranted. No change to the final rule is necessary in this regard.

Request To Revise Cost Impact Information

One commenter requests that the cost impact information for accomplishment of the inspections of the horizontal and vertical stabilizer as stated in the proposed rule be revised to reflect the work hours and associated costs specified in the service bulletin. The commenter also states that the work hours and cost for replacement of any incorrectly installed fasteners, in addition to the cost for the fastener repair kit, should be included in the economic analysis.

The FAA does not concur that a change to the cost impact information is necessary. The inspections of the horizontal and vertical stabilizer that the commenter refers to are inspections that must be accomplished to detect incorrect installation of any fasteners. The cost impact information, restated below, describes only the "direct" costs of the specific actions required by this AD. The number of work hours represents the time necessary to perform only the inspections actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions.

In addition, the economic analysis of the AD is limited to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions such as replacement of an incorrectly installed fastener if one is detected during a required inspection ("replace, if necessary"). Such "on-condition" replacement would be required to be accomplished regardless of AD direction, in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 18 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD.

It will take approximately 331 work hours per airplane to accomplish the required inspection of the horizontal stabilizer, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection, as required by this AD, on U.S. operators is estimated to be $39,720, or $19,860 per airplane.

It will take approximately 206 work hours per airplane to accomplish the required inspection of the vertical stabilizer, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection, as required by this AD, on U.S. operators is estimated to be $24,720, or $12,360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–14–05 Boeing: Amendment 39–11214. Docket 98–NM–243–AD.

Applicability: Model 777–200 series airplanes, line numbers 15 through 33, excluding line number 18; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion and possible cracking of the aluminum ribs and brackets of the trailing edges on the empennage, which could result in loss of the attachment of the elevator and rudder to the empennage and consequent reduced controllability of the airplane, accomplish the following:

(a) Within five years since the date of manufacture of the airplane, perform visual inspections of the specified number of fasteners installed in each zone on the aluminum ribs and brackets located on the trailing edges of the horizontal and vertical stabilizer to verify correct installation of fasteners with wet sealant, in accordance with Boeing Alert Service Bulletin 777–55A0005, Revision 1, dated June 4, 1998. Following the inspection, oversize the holes for all removed fasteners, apply primer, and install new, oversize fasteners with wet sealant, in accordance with the alert service bulletin.

(1) If the fasteners are correctly installed with wet sealant, no further action is required for that zone.

(2) If the fasteners are not correctly installed with wet sealant in any zone, remove the remaining fasteners in that zone, oversize the holes, apply primer, and install new, oversize fasteners with wet sealant, in accordance with the alert service bulletin.

(3) If it cannot be determined that the fasteners are correctly installed with wet sealant, remove and inspect the specified number of additional fasteners in that zone, oversize the holes, apply primer, and install new, oversize fasteners with wet sealant, in accordance with the alert service bulletin.

(i) If, after removal, all additional fasteners inspected in that zone are found to be correctly installed with wet sealant, no further action is required for that zone.

(ii) If, after removal, the fasteners in that zone are found to be incorrectly installed, remove all other fasteners in the zone, oversize the holes, apply primer, and install new, oversize fasteners with wet sealant, in accordance with the alert service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–55A0005, Revision 1, dated June 4, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 4, 1999.

Issued in Renton, Washington, on June 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16324 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–6]

Amendment to Class D and Class E Airspace; San Juan, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D airspace at Fernando Luis Ribas Dominicci Airport, San Juan, PR, and Class E5 airspace at Luis Munoz Marin International Airport, San Juan, PR. A Global Positioning System (GPS) Runway (RWY) 9 Standard Instrument Approach Procedure (SIAP) has been developed for Fernando Luis Ribas Dominicci Airport. As a result, additional Class D controlled airspace for the Fernando Luis Ribas Dominicci Airport, extending upward from the surface, and additional Class E5 controlled airspace for the Luis Munoz Marin International airport, extending upward from 700 feet above the surface, is needed to accommodate the SIAP and for Instrument Flight rules (IFR) operations at Fernando Luis Ribas Dominicci Airport. The Class D airspace will increase from a 3-mile, to a 3.9-mile radius of Fernando Luis Ribas Dominicci Airport and within 1 mile each side of the 275° bearing from the Fernando Luis Ribas Dominicci Airport, extending from the 3.9-mile radius to 5.3 miles west of the airport. The Class E5 airspace area for the Luis Munoz Marin International Airport will increase within 1 mile each side of the 275° bearing from the Fernando Luis Ribas Dominicci Airport, extending 2.5 miles west of the 13-mile radius of the Luis Munoz Marin International Airport. The operating status of the Fernando Luis Ribas Dominicci Airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On April 29, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class D airspace at the Fernando Luis Ribas Dominicci Airport, San Juan, PR, and Class E5 airspace at the Luis Munoz Marin International Airport, San Juan, PR, (64 FR 23028). This action provides adequate Class D and Class E5 airspace for IFR operations at Fernando Luis Ribas Dominicci Airport. Designations for Class D airspace and Class E5 airspace areas extending upward from 700 feet or more above the surface are published in FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class D and E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D airspace at the Fernando Luis Ribas Dominicci Airport and Class E5 airspace at the Luis Munoz Marin International Airport.

The FAA has determined that this regulation only involves an established body of technical regulation for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air). Adoption of the Amendment.

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO PR D San Juan, PR [Revised]

Fernando Luis Ribas Dominicci Airport
(Lat. 18°27'25" N, long. 66°05'54" W)
Luis Munoz Marin International Airport
(Lat. 18°26'22" N, long. 66°00'07" W)

That airspace extending upward from the surface, to but not including 1,200 feet MSL, within a 3.9-mile radius of San Juan Fernando Luis Ribas Dominicci Airport and within 1 mile each side of the 275° bearing from the Fernando Luis Ribas Dominicci Airport, extending from the 3.9-mile radius to 5.3 miles west of the airport; excluding that portion within the San Juan Luis Munoz Marin International Airport, PR, Class C airspace area. This Class D airspace area is effective during the dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO PR E5 San Juan, PR [Revised]

Luis Munoz Marin International Airport
(Lat. 18°26'22" N, long. 66°00'07" W)
Fernando Luis Ribas Dominicci Airport
(Lat. 18°27'25" N, long. 66°05'54" W)

That airspace extending upward from 700 feet or more above the surface south of lat. 18°23'00"N, within a 17-mile radius of Luis Munoz International Airport and that airspace north of lat. 18°23'00"N, within a 13-mile radius of Luis Munoz Marin International Airport and within 1 mile each side of the 275° bearing from the Fernando Luis Ribas Dominicci Airport, extending 2.5 miles west from the 13-mile radius point.

* * * * *

Issued in College Park, Georgia, on June 10, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–16663 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–7]

Amendment of Class E Airspace; Sanford, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Sanford, NC. The Sanford-Lee County Brick Field Airport has been relocated approximately 10 miles northeast and the name of the airport has been changed to Sanford-Lee County Regional Airport. An Instrument Landing System (ILS)/Distance Measuring Equipment (DME) Runway (RWY) 3 Standard Instrument Approach Procedure (SIAP) has been developed for Sanford-Lee Country Regional Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Sanford-Lee Country Regional Airport.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On May 4, 1999, FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Sanford, NC, (64 FR 23807). This action provides adequate Class E airspace for IFR operations at the Sanford-Lee County Regional Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Sanford, NC, for the Sanford-Lee County Regional Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 39 U.S.C. 106(g), 40103, 40113, 30120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO NC E5 Sanford, NC [Revised]

Sanford-Lee County Regional Airport, NC
(Lat. 35°34'57" N, long. 79°06'05" W)

That airspace extending upward from 700 feet or more above the surface within a 6.6-mile radius of Sanford-Lee County Regional Airport.

* * * * *

Issued in College Park, Georgia, on June 10, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–16662 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Statement of policy.

SUMMARY: The Agency hereby announces its police regarding various program administration issues arising from the pursuit of graduate medical education or training in the United States by foreign medical graduates under the aegis of the Exchange Visitor Program.

EFFECTIVE DATE: This policy statement is effective June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, S.W., Washington, DC 20547; telephone, (202) 619–6531.

SUPPLEMENTARY INFORMATION: Since enactment of the Health Care Professions Act, Pub. L. 94–484, USIA has been responsible for the administration and oversight of exchange programs whereby foreign medical graduates enter the United States to pursue graduate medical eduation or training opportunities at U.S. medical training facilities, most of whom enter the United States to pursue clinical-based medical speciality training. In addition to reviewing the credentials of foreign medical graduates, and pursuant to a long-standing agreement, the Educational Commission for Foreign Medical Graduates (ECFMG) is responsible for the day to day administration of these exchange programs. ECFMG administration of these programs is conducted in conformance with the program and policy guidance of the USIA, which in turn is developed in consultation with the Secretary of Health and Human Services. Periodically, program administration issues arise and USIA provides appropriate guidance to the ECFMG on how to address such issues. Recently, five specific questions regarding eligibility for program participation have presented themselves.

A foreign medical graduate seeking to pursue graduate medical education must apply for a residency program in one of the recognized speciality or subspeciality fields of medicine. These residency programs are conducted by the various teaching hospitals and medical facilities located throughout the United States. Because such residency programs require the performance of clinical care of patients, the individual states require that the foreign medical graduate be licensed to practice medicine in the particular state. The question of state licensure comes up at both the beginning of a program of graduate medical education as an eligibility criteria and at the end of a program when the foreign medical graduate seeks a waiver of the statutorily-imposed two-year home country physical presence requirement. Because the question of who may practice medicine in any jurisdiction is a unique question of local determination, USIA imposes no regulatory requirement regarding state licensure.

A recurring question regarding eligibility for program participation arises from the statutory requirement that the foreign medical graduate present a statement of need from his or her country of nationality or last legal permanent residence. This statement of need is submitted in a prescribed format and provides assurances to the United States Government that the graduate medical education that the foreign medical graduate will pursue is of use to his or her country of nationality or last legal permanent residence. The foreign medical graduate seeking to pursue graduate medical education does not have a choice regarding which country will submit the statement of need. Such determination is self-executing and fact based. Does the foreign medical graduate reside in his or her country of nationality? If so, the statement of need is submitted from that country. If the foreign medical graduate does not reside in his or her home country, then the statement of need is submitted by his or her country of last legal permanent residence. If the foreign medical graduate cannot submit the appropriate statutorily-mandated statement of need the foreign medical graduate is ineligible for program participation.

An additional area of program administration that has generated substantial interest is the eligibility of foreign medical graduates to continue in J-visa status following the completion of their graduate medical education. This eligibility question arises for those foreign medical graduates who have completed their program and who have also received a waiver of the two-year home country physical presence requirement. These participants are required to adjust their non-immigrant status from the J-visa to the work based H-visa. In doing so, many participants have been delayed in their receipt of the H-visa because of the yearly numerical limitation governing the initial issuance of H-visas. To accommodate these participants, USIA has adopted a policy that participants who have received an IGA or State 20 based waiver and who are sitting for speciality board examinations may continue in J-visa status. These participants are not authorized to work while in this extension period and the extension is limited to the end of the month in which the Board examination is given but not to exceed six months.

Two employment related or work authorization questions arises from the desire of many participants and medical facilities to have the foreign medical graduate participate in residency training as a "chief" resident or work outside of the residency program. First, the number of years of eligibility for program participation and thereby work authorization is totally dependent upon the period of time established by the American Council for Graduate Medical Education as published in the *American Medical Association; Graduate Medical Education Directory*. It appears that many residency programs have attempted to add an additional year of residency training and thereby have the services of the foreign medical graduate for the additional year. Given the requirement that the USIA administer this activity on a national basis and in conjunction with criteria established by the Secretary of Health and Human Services, USIA will not authorize program participation for this additional year unless such additional year is set forth as a requirement in the *American Medical Association; Graduate Medical Education Directory*. Further, a foreign medical graduate is not authorized to "moonlight" and is without work authorization to do so. A foreign medical graduate may receive compensation from the medical training facility for work activities that are an integral part of his or her residency program. The foreign medical graduate is not authorized to work at other medical facilities or emergency rooms at night or on weekends. Such outside employment is a violation of the foreign medical graduate's program status and would subject the foreign medical graduate to termination of his or her program.

Finally, USIA has examined the eligibility of foreign medical graduates who have entered the United States not as alien physicians seeking to pursue graduate medical education or training, but as research scholars holding a J-visa. The Exchange Visitor Program is premised upon the idea that foreign nationals will enter the United States for a specific program purpose such as training or research and then return to their home country to share their impressions and experiences with their countrymen. This premise, which lies at the heart of the Agency's mission, obligates the Agency to administer the program in the manner most likely to achieve this exchange objective. Accordingly, the Agency has informed the ECFMG that individuals who have participated in the Exchange Visitor Program as a research scholar or professor participant during the twelve month period preceding their proposed commencement of a program of graduate medical education are ineligible for sponsorship.

Dated: June 25, 1999.

Les Jin, General Counsel.

[FR Doc. 99–16757 Filed 6–29–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4411–F–03]

RIN 2502–AH30

Single Family Mortgage Insurance; Informed Consumer Choice Disclosure Notice: Technical Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; technical correction.

SUMMARY: This rule makes a technical correction to HUD's rule on Informed Consumer Choice Disclosure Notice, published on June 2, 1999, to provide for a compliance date of September 2, 1999 for mortgagees subject to the requirements of this rule.

DATES: *Effective Date:* July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Home

Mortgage Insurance Division, Office of Insured Single Family Housing, Room 9270, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On June 2, 1999 (64 FR 29758), HUD published a final rule to implement a recent statutory amendment to HUD's Federal Housing Administration (FHA) Single Family Mortgage Insurance Program. The statutory amendment requires an original lender to provide certain information, in the form of a disclosure notice, to prospective borrowers who have applied for an FHA-insured home mortgage; and that HUD develop this disclosure notice. Specifically, through the disclosure notice, the lender must provide the prospective FHA borrower with an analysis comparing the mortgage costs of the FHA-insured mortgage with the mortgage costs of other similar conventional mortgage products that the lender offers and that the borrower may qualify for. The disclosure notice must also provide information about when the requirement to pay FHA mortgage insurance premiums terminates. This final rule takes effect on July 2, 1999.

In developing the Informed Consumer Choice Disclosure Notice final rule, HUD intended to provide mortgagees with sufficient time to prepare their own disclosure notices, based on HUD's model notice, once HUD issued its rule that provides the model notice. While HUD believed that it could not delay the effective date of the rule, as requested by some commenters, in view of the statutory requirement imposed on HUD to promptly develop the disclosure notice through rulemaking, HUD believes that it is not inconsistent with statutory intent to allow mortgagees the requisite time to design and develop their disclosure notices based on HUD's model notice. The June 2, 1999 inadvertently failed to include this additional time.

Accordingly, this final rule makes a technical correction to the June 2, 1999 final rule to provide that the requirements of new § 203.10 are applicable to any application for mortgage insurance authorized under section 203(b) of the National Housing Act (12 U.S.C. 1709) that the mortgagee receives on or after September 2, 1999 (see § 203.10(e)).

Other Matters

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this final rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. Public procedure is unnecessary because this final rule simply makes a technical correction to its HUD's Informed Consumer Choice regulation to provide covered lenders with the necessary time to prepare their disclosure notices, based on HUD's model notice.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule only makes a technical correction to HUD's Informed Consumer Choice rule to provide for a compliance date of September 2, 1999 for covered lenders.

Environmental Impact

This final rule is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1). This final rule only makes a technical correction to an existing regulation.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

For the reasons discussed in the preamble, HUD amends 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Paragraph (e) of § 203.10 is revised to read as follows:

§ 203.10 Informed consumer choice for prospective FHA mortgagors.

* * * * *

(e) *Applicability.* This section applies to any application for mortgage insurance authorized under section 203(b) of the National Housing Act (12 U.S.C. 1709) that the mortgagee receives on or after September 2, 1999.

* * * * *

Dated: June 25, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–16612 Filed 6–25–99; 2:10 pm]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Additional Designations and Removals and Supplementary Information on Specially Designated Narcotics Traffickers; Removal of Appendix B; Redesignation of Appendix C

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is amending appendix A to 31 CFR chapter V by adding the names of 8 individuals and 41 entities and supplementing information concerning 44 individuals who have been designated as specially designated narcotics traffickers. The entries for four individuals previously listed as specially designated narcotics traffickers are being removed from appendix A. In addition, appendix B to 31 CFR chapter V is being removed and appendix C is being redesignated as appendix B.

EFFECTIVE DATE: June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat^R readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Research Mall" of the FedWorld bulletin board. By modem, dial 703/321–3339, and select self-expanding file "T11FR00.EXE" in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

Appendix A to 31 CFR chapter V contains the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC"). Pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers" (the "Order"), and § 536.312 of the Narcotics Trafficking Sanctions Regulations, 31 CFR part 536 (the "Regulations"), the following 8 individuals and 41 entities are added to appendix A as persons who have been determined to play a significant role in international narcotics trafficking centered in Colombia, to materially assist in or provide financial support or technological support for, or goods or services in support of other specially designated narcotics traffickers, or to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the Order (collectively, "Specially Designated Narcotics Traffickers" or "SDNTs"). All real and personal property in which the SDNTs have any interest, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of U.S. persons, including their overseas branches, are blocked. All transactions by U.S. persons or within the United States in property or interests in property of SDNTs are prohibited unless licensed by the Office of Foreign Assets Control or exempted by statute. Supplementary information is added to existing SDNT entries for 44 individuals and those entries are revised in their entirety.

The entries for four SDNT individuals are being removed from appendix A because OFAC has determined that these individuals no longer meet the criteria for designation as SDNTs. All real and personal property of these individuals, including all accounts in which they have any interest, that had been blocked solely due to the their designation as SDNTs, is unblocked; and all lawful transactions involving U.S. persons and these individuals are permissible.

Designations of foreign persons blocked pursuant to the Order are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the **Federal Register**, or upon prior actual notice.

Appendix B to 31 CFR chapter V lists the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers geographically by the country or countries in which they are or have been located (where known). The Office of Foreign Assets Control has determined that continued publication of this appendix is unwarranted, because the named persons' known locations are already available in appendix A, and because the absence of a name listing under a particular country is not a reliable basis upon which to conclude that the designated entity, individual, or group is not located or operating there. The public can download the database of country listings provided on OFAC's Internet site (http://www.treas.gov/ofac) for current information on known geographical locations. The public should make further inquiry before concluding that a person is not a designated person, based solely on geographical information, if that person's name and other identifying information match information in appendix A. A new note is added to the notes to the appendices to inform the public of the availability of up-to-date information on OFAC's Internet site.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of 3 U.S.C. 301; 50 U.S.C. 1601–1651, 1701–1706; E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415, the appendices to 31 CFR chapter V are amended as set forth below:

1. The notes to the appendices to chapter V are amended by adding a note 7 to read as follows:

APPENDICES TO CHAPTER V

Notes: * * *

* * * * * *

7. Changes to these appendices are made through amendments published in the **Federal Register**. Frequently updated information on Office of Foreign Assets Control ("OFAC") designations is provided for examination or downloading on OFAC's Internet site (http://www.treas.gov/ofac). Among other data, the Internet site posts changes in designations and identifying information, and provides country-by-country lists of names. Information is also available by fax through OFAC's fax-on-demand system at 202/622–0077 and on various computer bulletin boards serviced by OFAC. Updated information on OFAC designations should be consulted before engaging in transactions subject to the economic sanctions programs in chapter V. (Please call OFAC Compliance Programs Division for current electronic sources of OFAC information: 202/622–2490.)

Appendix A [Amended]

2. Appendix A to 31 CFR chapter V is amended by adding the following

names inserted in alphabetical order in appendix A, section I:

ADMACOOP (a.k.a. COOPERATIVA MULTIACTIVA DE ADMINISTRACION Y MANEJO ADMACOOP), Calle 12B No. 28–58, Bogota, Colombia; Carrera 28A No. 14–29, Bogota, Colombia; NIT # 830030933–6 (Colombia) [SDNT]

ALKALA ASOCIADOS S.A. (f.k.a. INVHERESA S.A.), Calle 1A No. 62A–130, Cali, Colombia; Calle 1A No. 62A–120, Cali, Colombia; Avenida 2N No. 7N–55 of. 501, Cali, Colombia; Calle 70N No. 14–31, Cali, Colombia; NIT # 800108121–0 (Colombia) [SDNT]

BONOMERCAD S.A. (f.k.a. DECACOOP S.A.), Transversal 29 No. 39–92, Bogota, Colombia; NIT # 830018919–3 (Colombia) [SDNT]

C.N.A. PUBLICIDAD LTDA., Calle 74 No. 53–30, Barranquilla, Colombia; NIT # 802092664–9 (Colombia) [SDNT]

CAMPO VERDE LTDA., Carrera 54 No. 75–97 piso 2, Barranquilla, Colombia; NIT # 806204479–2 (Colombia) [SDNT]

CARRILLO QUINTERO, Eugenio, c/o BONOMERCAD S.A., Bogota, Colombia; c/o DECAFARMA S.A., Bogota, Colombia; c/o PATENTES MARCAS Y REGISTROS S.A., Bogota, Colombia; c/o SHARPER S.A., Bogota, Colombia; Cedula No. 73094061 (Colombia) (individual) [SDNT]

CLAUDIA PILAR RODRIGUEZ Y CIA. S.C.S., Calle 17A No. 28A–43, Bogota, Colombia; NIT # 830007201–7 (Colombia) [SDNT]

CLUB AMERICA DE CALI (see CORPORACION DEPORTIVA AMERICA) [SDNT]

CLUB DEPORTIVO AMERICA (see CORPORACION DEPORTIVA AMERICA) [SDNT]

COLCERDOS LTDA. (see COLOMBIANA DE CERDOS LTDA.) [SDNT]

COLOMBIANA DE CERDOS LTDA. (a.k.a. COLCERDOS LTDA.), Km. 3 Via Marsella Parque Industrial, Pereira, Colombia; Apartado Aereo 3786, Pereira, Colombia; NIT # 809018928–0 (Colombia) [SDNT]

COLOR STEREO S.A. (see SONAR F.M. S.A.) [SDNT]

COLOR'S S.A. (see SONAR F.M. S.A.) [SDNT]

COMERCIALIZACION Y FINANCIACION DE AUTOMOTORES S.A. (a.k.a. COMFIAUTOS S.A.), Carrera 4 No. 11–33 of. 303, Cali, Colombia; Avenida 2N No. 7N–55 of. 609, Cali, Colombia; NIT # 800006115–1 (Colombia) [SDNT]

COMFIAUTOS S.A. (see COMERCIALIZACION Y FINANCIACION DE AUTOMOTORES S.A.) [SDNT]

COMPAÑIA ADMINISTRADORA DE VIVIENDA S.A. (f.k.a. INVERSIONES GEMINIS S.A.), Carrera 40 No. 6–24 of. 402B, Cali, Colombia; Carrera 41 No. 6–15/35, Cali, Colombia; NIT # 800032419–1 (Colombia) [SDNT]

CONE S.A. (see CONSTRUCTORA EL NOGAL S.A.) [SDNT]

CONSTRUCCIONES COLOMBO–ANDINAS LTDA., Carrera 8 No. 16–79 of. 504, Bogota, Colombia; Calle 29 No. 36–61, Bogota, Colombia; NIT # 860505252–8 (Colombia) [SDNT]

CONSTRUCTORA EL NOGAL S.A. (f.k.a. CONE S.A.; f.k.a. CONSTRUEXITO S.A.), Avenida 2N No. 7N–55 of. 501, Cali, Colombia; Calle 2A No. 65A–110, apto. 501 B3, Cali, Colombia; NIT # 800051378–9 (Colombia) [SDNT]

CONSTRUEXITO S.A. (see CONSTRUCTORA EL NOGAL S.A.) [SDNT]

COOPERATIVA MULTIACTIVA DE ADMINISTRACION Y MANEJO ADMACOOP (see ADMACOOP) [SDNT]

CORDOBA VALENCIA, Juan Ramon, c/o BONOMERCAD S.A., Bogota, Colombia; c/o PATENTES MARCAS Y REGISTROS S.A., Bogota, Colombia; c/o SHARPER S.A., Bogota, Colombia; Cedula No. 19273511 (Colombia) (individual) [SDNT]

CORPORACION DEPORTIVA AMERICA (a.k.a. CLUB AMERICA DE CALI; a.k.a. CLUB DEPORTIVO AMERICA), Carrera 56 No. 2–70, Cali, Colombia; Avenida Guadalupe No. 2–70, Cali, Colombia; Calle 24N No. 5BN–22, Cali, Colombia; Calle 13 Carrera 70, Cali, Colombia; Sede Cascajal, Cali, Colombia; Sede Naranjal, Cali, Colombia; NIT # 890305773–4 (Colombia) [SDNT]

CORTEZ, Oliverio Abril (see ABRIL CORTEZ, Oliverio) (individual) [SDNT]

CUECA V., Miguel A., c/o ADMACOOP, Bogota, Colombia; c/o FARMACOOP, Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; Cedula No. 11386978 (Colombia) (individual) [SDNT]

D'CACHE S.A., Calle 25N No. 3AN–39, Cali, Colombia; NIT # 800149284–8 (Colombia) [SDNT]

D'ELCON S.A. (see DISTRIBUIDORA DE ELEMENTOS PARA LA CONSTRUCCION S.A.) [SDNT]

DECACOOP S.A. (see BONOMERCAD S.A.) [SDNT]

DECAFARMA S.A., Transversal 29 No. 39–92, Bogota, Colombia; NIT # 800241240–7 (Colombia) [SDNT]

DISTRIBUIDORA DE ELEMENTOS PARA LA CONSTRUCCION S.A. (a.k.a. D'ELCON S.A.), Carrera 23D No. 13B–59, Cali, Colombia; NIT # 800117788–2 (Colombia) [SDNT]

DROGUERIA FARMAHOGAR (see FARMAHOGAR) [SDNT]

EL PASO LTDA. (see MIRALUNA LTDA.) [SDNT]

FARMAHOGAR (a.k.a. DROGUERIA FARMAHOGAR; a.k.a. FARMAHOGAR COPSERVIR 19), Carrera 7 No. 118–38, Bogota, Colombia; Avenida 7 No. 118–46, Bogota, Colombia; NIT # 830011670–3 (Colombia) [SDNT]

FARMAHOGAR COPSERVIR 19 (see FARMAHOGAR) [SDNT]

FIESTA STEREO 91.5 F.M. (see SONAR F.M. E.U. DIETER MURRLE) [SDNT]

GUTIERREZ PADILLA, Clara Ines, c/o ADMACOOP, Bogota, Colombia; c/o DECAFARMA S.A., Bogota, Colombia; c/o FARMACOOP, Bogota, Colombia; Cedula No. 51583831 (Colombia) (individual) [SDNT]

GUTIERREZ PARDO, Elvira Patricia, c/o ADMACOOP, Bogota, Colombia; c/o BONOMERCAD S.A., Bogota, Colombia; c/o PATENTES MARCAS Y REGISTROS S.A., Bogota, Colombia; Cedula No. 39612308 (Colombia) (individual) [SDNT]

INDUSTRIAL DE GESTION DE NEGOCIOS E.U., Calle 5C No. 41–30, Cali, Colombia; NIT # 805005946–5 (Colombia) [SDNT]

INVERSIONES BETANIA LTDA. (see SAN MATEO S.A.) [SDNT]

INVERSIONES BETANIA S.A. (see SAN MATEO S.A.) [SDNT]

INVERSIONES CAMINO REAL S.A. (see INVERSIONES Y CONSTRUCCIONES ABC S.A.) (Colombia) [SDNT]

INVERSIONES EL GRAN CRISOL LTDA. (f.k.a. W. HERRERA Y CIA. S. EN C.), Avenida 2N 7N–55 of. 501, Cali, Colombia; Carrera 24D Oeste No. 6–237, Cali, Colombia; NIT # 800001330–2 (Colombia) [SDNT]

INVERSIONES GEMINIS S.A. (see COMPAÑIA ADMINISTRADORA DE VIVIENDA S.A.) [SDNT]

INVERSIONES INTEGRAL LTDA., Carrera 4 No. 12–41 of. 1403, 1501 Edificio Seguros Bolivar, Cali, Colombia; Apartado Aereo 10077, Cali, Colombia; NIT # 800092770–9 (Colombia) [SDNT]

INVERSIONES INVERVALLE S.A. (see SAN VICENTE S.A.) [SDNT]

INVERSIONES MONDRAGON Y CIA. S.C.S. (f.k.a. MARIELA DE RODRIGUEZ Y CIA. S. EN C.), Calle 12 Norte No. 9N–56/58, Cali, Colombia; NIT # 890328152–1 (Colombia) [SDNT]

INVERSIONES NAMOS Y CIA. LTDA., Carrera 54 No. 75–107, Barranquilla, Colombia; NIT # 800182475–7 (Colombia) [SDNT]

INVERSIONES Y CONSTRUCCIONES ABC S.A. (f.k.a. INVERSIONES CAMINO REAL S.A.), Calle 10 No. 4–47 piso 19, Cali, Colombia; Calle 12 Norte No. 9N–56/58, Cali, Colombia; NIT # 890325389–4 (Colombia) [SDNT]

INVERVALLE S.A. (see SAN VICENTE S.A.) [SDNT]

INVHERESA S.A. (see ALKALA ASOCIADOS S.A.) [SDNT]

K. P. TO JEANS WEAR S. DE H., Calle 78 No. 53–70 Local 218, Barranquilla, Colombia; NIT # 800211718–7 (Colombia) [SDNT]

M.O.C. ECHEVERRY HERMANOS LTDA., Calle 23AN No. 5AN–21, Cali, Colombia; NIT # 800038241–5 (Colombia) [SDNT]

MANJARRES GRANDE, Jorge (see MANJARRES GRANDE, Jorge) (individual) [SDNT]

MANJARREZ GRANDE, Jorge (a.k.a. MANJARRES GRANDE, Jorge), c/o GRACADAL S.A., Cali, Colombia; c/o INTERAMERICANA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o RADIO UNIDAS F.M. S.A., Cali, Colombia; c/o SERVIFAR S.A., Cali, Colombia; c/o SONAR F.M. S.A., Cali, Colombia; Cedula No. 16632969 (Colombia) (individual) [SDNT]

MARIELA DE RODRIGUEZ Y CIA. S. EN C. (see INVERSIONES MONDRAGON Y CIA. S.C.S.) [SDNT]

MARIELA MONDRAGON DE R. Y CIA. S. EN C., Calle 12 Norte No. 9N–56/58, Cali, Colombia; Avenida 4 Norte No. 8N–67, Cali, Colombia; NIT # 800122032–1 (Colombia) [SDNT]

MATADERO METROPOLITANO LTDA., Km. 3 Via Marsella Parque Industrial, Pereira, Colombia; Carrera 10 No. 34–21 Dosq., Pereira, Colombia; Apartado Aereo 3786, Pereira, Colombia; NIT # 891412986–8 (Colombia) [SDNT]

MIRALUNA LTDA. (f.k.a. EL PASO LTDA.), Carrera 4 No. 12–41 of. 1403, 1501, Cali, Colombia; NIT # 890328836–9 (Colombia) [SDNT]

NASSER DE HASBUN, Claudia Patricia (see NASSER ARANA, Claudia Patricia) (individual) [SDNT]

NASSER DE HAZBUN, Claudia Patricia (see NASSER ARANA, Claudia Patricia) (individual) [SDNT]

PATENTES MARCAS Y REGISTROS S.A. (a.k.a. PATMAR S.A.), Transversal 29 No. 39–92, Bogota, Colombia; NIT # 830016913–0 (Colombia) [SDNT]

PATMAR S.A. (see PATENTES MARCAS Y REGISTROS S.A.) [SDNT]

PRISMA STEREO 89.5 F.M. (see SONAR F.M. E.U. DIETER MURRLE) [SDNT]

PROYECTOS J.A.M. LTDA., Carrera 53 No. 74–16, Barranquilla, Colombia; Carrera 54 No. 72–147, Barranquilla, Colombia; Calle 77 No. 65–37 L–6, Barranquilla, Colombia; NIT # 800234529–0 (Colombia) [SDNT]

PROYECTOS J.A.M. LTDA. Y CIA. S. EN C., Calle 74 No. 53–23 of. 401, Barranquilla, Colombia; Calle 74 No. 53–23 L–503, Barranquilla, Colombia; Carrera 53 No. 74–16 of. 401, Barranquilla, Colombia; Carrera 53 No. 74–16, Barranquilla, Colombia; NIT # 800243483–9 (Colombia) [SDNT]

RADIO UNIDAS FM S.A. (see SONAR F.M. S.A.) [SDNT]

RECONSTRUYE LTDA. (see REPARACIONES Y CONSTRUCCIONES LTDA.) [SDNT]

REPARACIONES Y CONSTRUCCIONES LTDA. (a.k.a. RECONSTRUYE LTDA.), Avenida 6N No. 23DN–16 of. 402, Cali, Colombia; NIT # 800053838–4 (Colombia) [SDNT]

RODRIGUEZ DE MUÑOZ, Haydee (see RODRIGUEZ DE ROJAS, Haydee) (individual) [SDNT]

RODRIGUEZ MONDRAGON, Alexandra (see RODRIGUEZ MONDRAGON, Maria Alexandra) (individual) [SDNT]

RODRIGUEZ OREJUELA, Haydee (see RODRIGUEZ DE ROJAS, Haydee) (individual) [SDNT]

SAN MATEO S.A. (f.k.a. INVERSIONES BETANIA LTDA.; f.k.a. INVERSIONES BETANIA S.A.), Avenida 2N No. 7N–55 of. 501, Cali, Colombia; Carrera 53 No. 13–55 apt. 102B, Cali, Colombia; Carrera 3 No. 12–40, Cali, Colombia; NIT # 890330910–2 (Colombia) [SDNT]

SAN VICENTE S.A. (f.k.a. INVERSIONES INVERVALLE S.A.), Avenida 2N No. 7N–55 of. 501, Cali, Colombia; Calle 70N No. 14–31, Cali, Colombia; Avenida 4 Norte No. 17N–43 L.1, Cali, Colombia; NIT # 800061212–8 (Colombia) [SDNT]

SERVICIOS FARMACEUTICOS SERVIFAR S.A. (a.k.a. SERVIFAR S.A.), Carrera 4 No. 31–96, Cali, Colombia; NIT # 805003968–8 (Colombia) [SDNT]

SERVIFAR S.A. (see SERVICIOS FARMACEUTICOS SERVIFAR S.A.) [SDNT]

SHARPER S.A., Calle 17A No. 28A–43, Bogota, Colombia; Calle 12B No. 28–58, Bogota, Colombia; Calle 12B No. 28–70, Bogota, Colombia; Calle 16 No. 28A–42, Bogota, Colombia; Calle 16 No. 28A–57, Bogota, Colombia; NIT # 830026833–2 (Colombia) [SDNT]

SOCIEDAD COMERCIAL Y DEPORTIVA LTDA., Carrera 34 Diag. 29–86 Estadio Pascual Guerrero, Cali, Colombia; Carrera 34 Diag. 29–05, Cali, Colombia; Carrera 34 Diagonal 29 Estadio, Cali, Colombia; NIT # 800141329–4 (Colombia) [SDNT]

SONAR F.M. E.U. DIETER MURRLE (a.k.a. FIESTA STEREO 91.5 F.M.; a.k.a. PRISMA STEREO 89.5 F.M.), Calle 15 Norte No. 6N–34 of. 1003, Cali, Colombia; Calle 43A No. 1–29 Urb. Sta. Maria del Palmar, Palmira, Colombia; NIT # 805006273–1 (Colombia) [SDNT]

SONAR F.M. S.A. (f.k.a. COLOR STEREO S.A.; f.k.a. COLOR'S S.A.; f.k.a. RADIO UNIDAS FM S.A.), Calle 15 Norte No. 6N–34 piso 15 Edificio Alcazar, Cali, Colombia; Calle 19N No. 2N–29 piso 10 Sur, Cali, Colombia; NIT # 800163602–5 (Colombia) [SDNT]

SOSA RIOS, Diego Alberto (see SOSSA RIOS, Diego Alberto) (individual) [SDNT]

SOSSA RIOS, Diego Alberto (a.k.a. SOSA RIOS, Diego Alberto), Calle 46 No. 13–56 of. 111, Bogota, Colombia; c/o BONOMERCAD S.A., Bogota, Colombia; c/o DECAFARMA S.A., Bogota, Colombia; c/o FARMACOOP, Bogota, Colombia; c/o PENTAPHARMA DE COLOMBIA S.A., Bogota, Colombia; c/o SHARPER S.A., Bogota, Colombia; Cedula No. 71665932 (Colombia) (individual) [SDNT]

TITOS BOLO CLUB, Carrera 51B No. 94–110, Barranquilla, Colombia; NIT # 890108148–6 (Colombia) [SDNT]

URBANIZACIONES Y CONSTRUCCIONES LTDA. (see URBANIZACIONES Y CONSTRUCCIONES LTDA. DE CALI) [SDNT]

URBANIZACIONES Y CONSTRUCCIONES LTDA. DE CALI (f.k.a. URBANIZACIONES Y CONSTRUCCIONES LTDA.), Carrera 4 No. 12–41 of. 1403, Cali, Colombia; NIT # 890306569–2 (Colombia) [SDNT]

VEGA, Rosalba, c/o BONOMERCAD S.A., Bogota, Colombia; c/o PATENTES MARCAS Y REGISTROS S.A., Bogota, Colombia; c/o SHARPER S.A., Cali, Colombia; Cedula No. 21132758 (Colombia) (individual) [SDNT]

VILLA D'ARTE (see VILLA DE ARTE S. DE H.) [SDNT]

VILLA DE ARTE S. DE H. (a.k.a. VILLA D'ARTE), Carrera 54 No. 74–79, Barranquilla, Colombia; Aereo Apartado 51881, Barranquilla, Colombia; NIT # 800125346–2 (Colombia) [SDNT]

W. HERRERA Y CIA. S. EN C. (see INVERSIONES EL GRAN CRISOL LTDA.) [SDNT]

3. Appendix A to 31 CFR chapter V is amended by revising the following existing entries to include additional identifying information in appendix A, section I to read as revised as follows:

ABRIL CORTEZ, Oliverio (f.k.a. CORTEZ, Oliverio Abril), Calle 18A No. 8A–20, Jamundi, Colombia; c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INVERSIONES EL GRAN CRISOL LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o VALLADARES LTDA., Cali, Colombia; c/o W. HERRERA Y CIA. S. EN C., Cali, Colombia; Cedula No. 3002003 (Colombia) (individual) [SDNT]

AGUADO ORTIZ, Luis Jamerson, c/o D'CACHE S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o FLEXOEMPAQUES LTDA., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES COSMOVALLE LTDA., Cali, Colombia; c/o PLASTICOS CONDOR LTDA., Cali, Colombia; Cedula No. 2935839 (Colombia) (individual) [SDNT]

ARBOLEDA A., Pedro Nicholas (Nicolas), c/o D'CACHE S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; Cedula No. 16602372 (Colombia) (individual) [SDNT]

AVILA DE MONDRAGON, Ana Dolores, c/o COMPAX LTDA., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES ABC S.A., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES COSMOVALLE LTDA., Cali, Colombia; Cedula No. 29183223 (Colombia) (individual) [SDNT]

BENITEZ CASTELLANOS, Cesar Tulio, c/o D'CACHE S.A., Cali, Colombia; c/o DROGAS LA REBAJA, Cali, Colombia; c/o INVERSIONES MONDRAGON Y CIA. S.C.S., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES ABC S.A., Cali, Colombia; c/o RIONAP COMERCIOS Y REPRESENTACIONES S.A., Quito, Ecuador; Cedula No. 14969366 (Colombia) (individual) [SDNT]

BUITRAGO DE HERRERA, Luz Mery, c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL GRAN CRISOL LTDA., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; c/o SOCOVALLE, Cali, Colombia; c/o VALLADARES LTDA., Cali, Colombia; c/o W. HERRERA Y CIA., Cali, Colombia; Cedula No. 29641219 (Colombia) (individual) [SDNT]

CASTRO DE SANTACRUZ, Amparo, c/o COMERCIALIZACION Y FINANCIACION DE AUTOMOTORES S.A., Cali, Colombia; c/o INMOBILIARIA SAMARIA LTDA., Cali, Colombia; c/o INVERSIONES EL PASO LTDA., Cali, Colombia; c/o INVERSIONES INTEGRAL LTDA., Cali, Colombia; c/o INVERSIONES SANTA LTDA., Cali, Colombia; c/o MIRALUNA LTDA., Cali, Colombia; c/o SAMARIA LTDA., Cali, Colombia; c/o URBANIZACIONES Y CONSTRUCCIONES LTDA. DE CALI, Cali, Colombia; DOB 13 January 1948; alt. DOBs 13 January 1946, 14 April 1959; Passports PE027370 (Colombia), AA429676 (Colombia); Cedula No. 38983611 (Colombia) (individual) [SDNT]

CUERO MARTINEZ, Otalvaro, c/o ALKALA ASOCIADOS S.A., Cali, Colombia; c/o INVHERESA S.A., Cali, Colombia; Cedula No. 16599979 (Colombia) (individual) [SDNT]

DAZA RIVERA, Pablo Emilio, c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o COLOR 89.5 FM STEREO, Cali, Colombia; c/o DISTRIBUIDORA MYRAMIZEZ S.A., Bogota, Colombia; c/o DROGAS LA REBAJA, Cali, Colombia; c/o FARMATODO S.A., Bogota, Colombia; c/o INVERSIONES Y CONSTRUCCIONES ABC S.A., Cali, Colombia; c/o LABORATORIOS KRESSFOR, Bogota, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador; Cedula No. 4904545 (Colombia) (individual) [SDNT]

ECHEVERRY TRUJILLO, Martha Lucia, c/o CORPORACION DEPORTIVA AMERICA, Cali, Colombia; c/o M.O.C. ECHEVERRY HERMANOS LTDA., Cali, Colombia; c/o REVISTA DEL AMERICA LTDA., Cali, Colombia; Cedula No. 31151067 (Colombia) (individual) [SDNT]

ECHEVERRY TRUJILLO, Oscar Alberto, Avenida 4N No. 17–23 piso 1, Cali, Colombia; Calle 43N No. 4–05, Cali, Colombia; c/o COLOR 89.5 FM STEREO, Cali, Colombia; c/o M.O.C. ECHEVERRY HERMANOS LTDA., Cali, Colombia; Cedula No. 16272989 (Colombia) (individual) [SDNT]

FIGUEROA DE BRUSATIN, Dacier, c/o INVERSIONES EL GRAN CRISOL LTDA., Cali, Colombia; c/o W. HERRERA Y CIA. S. EN C., Cali, Colombia; Cedula No. 29076093 (Colombia) (individual) [SDNT]

GARCIA MANTILLA, Edgar Alberto (see GARCIA MANTILLA, Edgar Alberto) (individual) [SDNT]

GARCIA MOGAR, Edgar (see GARCIA MONTILLA, Edgar Alberto) (individual) [SDNT]

GARCIA MONTELLA, Edgar Alberto (see GARCIA MONTILLA, Edgar Alberto) (individual) [SDNT]

GARCIA MONTILLA, Edgar Alberto (a.k.a. GARCIA MANTILLA, Edgar Alberto; a.k.a. GARCIA MOGAR, Edgar; a.k.a. GARCIA MONTELLA, Edgar Alberto), c/o COMERCIALIZACION Y FINANCIACION DE AUTOMOTORES S.A., Cali, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o REVISTA DEL AMERICA LTDA., Cali, Colombia; DOB 28 November 1946; Passports AC365457 (Colombia), PE008603 (Colombia), PO564495 (Colombia), AA294885 (Colombia); Cedula No. 14936775 (Colombia) (individual) [SDNT]

GARCIA ROMERO, Audra Yamile, c/o ALKALA ASOCIADOS S.A., Cali, Colombia; c/o INVHERESA S.A., Cali, Colombia; Cedula No. 66765096 (Colombia) (individual) [SDNT]

GIL OSORIO, Alfonso, c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o D'CACHE S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o FARMATODO S.A., Bogota, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o SERVICIOS SOCIALES LTDA., Barranquilla, Colombia; DOB 17 December 1946; alt. DOB 17 December 1940; Passports 14949229 (Colombia), 14949279 (Colombia), 14949289 (Colombia), AC342060 (Colombia); Cedula No. 14949279 (Colombia) (individual) [SDNT]

IBANEZ LOPEZ, Raul Alberto, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o DISTRIBUIDORA DE ELEMENTOS PARA LA CONSTRUCCION S.A., Cali, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; c/o INCOES LTDA., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; Cedula No. 16640123 (Colombia) (individual) [SDNT]

LEAL RODRIGUEZ, Jose Guillermo, c/o DECAFARMA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogota, Colombia; c/o PENTACOOP LTDA., Bogota, Colombia; Cedula No. 89867 (Colombia) (individual) [SDNT]

LIBREROS DIEZ, Orlando, c/o CONSTRUCTORA DIMISA LTDA., Cali,Colombia; c/o DISTRIBUIDORA DE ELEMENTOS PARA LA CONSTRUCCION S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o VALLE COMUNICACIONES LTDA., Cali, Colombia; Cedula No. 16651068 (Colombia) (individual) [SDNT]

MONDRAGON DE RODRIGUEZ, Mariela, c/o COMPAX LTDA., Cali, Colombia; c/o CORPORACION DEPORTIVA AMERICA, Cali, Colombia; c/o INVERSIONES MONDRAGON Y CIA. S.C.S., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES COSMOVALLE LTDA., Cali, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia; c/o MARIELA MONDRAGON DE R. Y CIA. S. EN C., Cali, Colombia; DOB 12 April 1935; Passport 4436059 (Colombia); Cedula No. 29072613 (Colombia) (individual) [SDNT]

MONROY ARCILA, Francisco Jose, c/o COMPAÑIA ADMINISTRADORA DE VIVIENDA S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON, Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; Cedula No. 79153691 (Colombia) (individual) [SDNT]

MUÑOZ RODRIGUEZ, Juan Carlos, c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o GRACADAL S.A., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES ABC S.A., Cali, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; DOB 25 September 1964; Passport 16703148 (Colombia); Cedula No. 16703148 (Colombia) (individual) [SDNT]

MUÑOZ RODRIGUEZ, Soraya, c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES ABC S.A., Cali, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia; DOB 26 July 1967; Passport AC569012 (Colombia); Cedula 31976822 (Colombia) (individual) [SDNT]

NASSER ARANA, Carlos Alberto, Calle 74 No. 53–30, Barranquilla, Colombia; c/o AGRICOLA SONGO LTDA., Barranquilla, Colombia; c/o DESARROLLOS URBANOS "DESARROLLAR" LTDA., Barranquilla, Colombia; c/o EDIFICACIONES DEL CARIBE LTDA., Barranquilla, Colombia; c/o GRAN COMPAÑIA DE HOTELES LTDA., Barranquilla, Colombia; c/o HOTELES E INMUEBLES DE COLOMBIA LTDA., Barranquilla, Colombia; c/o INMOBILIARIA DEL CARIBE LTDA., Barranquilla, Colombia; c/o INMOBILIARIA HOTELERA DEL CARIBE LTDA., Barranquilla, Colombia; c/o INVERSIONES HOTELERAS DEL LITORAL LTDA., Barranquilla, Colombia; c/o INVERSIONES NAMOS Y CIA. LTDA., Barranquilla, Colombia; c/o INVERSIONES PRADO TRADE CENTER LTDA., Barranquilla, Colombia; c/o K. P. TO JEANS WEAR S. DE H., Barranquilla, Colombia; c/o NEGOCIOS Y PROPIEDADES DEL CARIBE LTDA., Barranquilla, Colombia; c/o PROMOCIONES Y CONSTRUCCIONES DEL CARIBE LTDA., Barranquilla, Colombia; c/o PROMOCIONES Y CONSTRUCCIONES DEL CARIBE LTDA. Y CIA. S.C.A., Barranquilla, Colombia; c/o PROMOTORA HOTEL BARRANQUILLA LTDA., Barranquilla, Colombia; c/o SURAMERICANA DE HOTELES LTDA., Barranquilla, Colombia; DOB November 21, 1964; Passport T707770 (Colombia); Passport PE008808 (Colombia); Cedula No. 8745045 (Colombia) (individual) [SDNT]

NASSER ARANA, Claudia Patricia (a.k.a. Claudia Patricia NASSER DE HASBUN; a.k.a. Claudia Patricia NASSER DE HAZBUN), Calle 74 No. 53–30, Barranquilla, Colombia; Carrera 54 No. 74–79, Barranquilla, Colombia; Carrera 54 No. 75–97 piso 2, Barranquilla, Colombia; c/o AGRICOLA SONGO LTDA., Barranquilla, Colombia; c/o CAMPO VERDE LTDA., Barranquilla, Colombia; c/o COMPAÑIA HOTEL DEL PRADO S.A., Barranquilla, Colombia; c/o DESARROLLOS URBANOS "DESARROLLAR" LTDA., Barranquilla, Colombia; c/o EDIFICACIONES DEL CARIBE LTDA., Barranquilla, Colombia; c/o GRAN COMPAÑIA DE HOTELES LTDA., Barranquilla, Colombia; c/o HOTELES E INMUEBLES DE COLOMBIA LTDA., Barranquilla, Colombia; c/o INMOBILIARIA DEL CARIBE LTDA., Barranquilla, Colombia; c/o INMOBILIARIA HOTELERA DEL CARIBE LTDA., Barranquilla, Colombia; c/o INVERSIONES HOTELERAS DEL LITORAL LTDA., Barranquilla, Colombia; c/o INVERSIONES PRADO TRADE CENTER LTDA., Barranquilla, Colombia; c/o NEGOCIOS Y PROPIEDADES DEL CARIBE LTDA., Barranquilla, Colombia; c/o PROMOCIONES Y CONSTRUCCIONES DEL CARIBE LTDA., Barranquilla, Colombia; c/o PROMOCIONES Y CONSTRUCCIONES DEL CARIBE LTDA. Y CIA. S.C.A., Barranquilla, Colombia; c/o PROMOTORA HOTEL BARRANQUILLA LTDA., Barranquilla, Colombia; c/o SURAMERICANA DE HOTELES LTDA., Barranquilla, Colombia; c/o VILLA DE ARTE S. DE H., Barranquilla, Colombia; DOB January 23, 1966; Passport AC751227 (Colombia); Cedula No. 32665137 (Colombia) (individual) [SDNT]

NAVARRO REYES, Fernando, c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DROGAS LA REBAJA BARRANQUILLA S.A., Bogota, Colombia; c/o DROGAS LA REBAJA BOGOTA S.A., Bogota, Colombia; c/o DROGAS LA REBAJA CALI S.A., Cali, Colombia; c/o DROGAS LA REBAJA NEIVA S.A., Neiva, Colombia; c/o DROGAS LA REBAJA PEREIRA S.A., Pereira, Colombia; c/o DROGAS LA REBAJA PRINCIPAL S.A., Cali, Colombia; c/o SERVICIOS FARMACEUTICOS SERVIFAR S.A., Cali, Colombia; Cedula No. 16617177 (Colombia) (individual) [SDNT]

RAMIREZ, James Alberto, c/o ANDINA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o DISMERCOOP, Cali, Colombia; c/o GRACADAL S.A., Cali, Colombia; c/o INTERAMERICANA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o INVERSIONES MONDRAGON Y CIA. S.C.S., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES COSMOVALLE LTDA., Cali, Colombia; c/o SERVICIOS FARMACEUTICOS SERVIFAR S.A., Cali, Colombia; Cedula No. 16691796 (Colombia) (individual) [SDNT]

RAMIREZ CORTES, Delia Nhora (Nora), c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o COMPAÑIA ADMINISTRADORA DE VIVIENDA S.A., Cali, Colombia; c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogota, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia; c/o VIAJES MERCURIO LTDA., Cali, Colombia; DOB 20 January 1959; Cedula No. 38943729 (Colombia) (individual) [SDNT]

RODAS, Luis Alberto, c/o COMERCIALIZACION Y FINANCIACION DE AUTOMOTORES S.A., Cali, Colombia; c/o CONSTRUCCIONES ASTRO S.A., Cali, Colombia; Cedula No. 16630332 (Colombia) (individual) [SDNT]

RODRIGUEZ ABADIA, William, c/o ANDINA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o ASPOIR DEL PACIFICO Y CIA. LTDA., Cali, Colombia; c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o CLAUDIA PILAR RODRIGUEZ Y CIA. S.C.S., Bogota, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DERECHO INTEGRAL Y CIA. LTDA., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o INTERAMERICANA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o INVERSIONES MIGUEL RODRIGUEZ E HIJO, Cali, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o M. RODRIGUEZ O. Y CIA. S. EN C., Cali, Colombia; c/o MUÑOZ Y RODRIGUEZ Y CIA. LTDA., Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia; c/o REVISTA DEL AMERICA LTDA., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador; c/o VALORES MOBILIARIOS DE OCCIDENTE S.A., Bogota, Colombia; DOB 31 July 1965; Cedula No. 16716259 (Colombia) (individual) [SDNT]

RODRIGUEZ ARBELAEZ, Maria Fernanda, c/o D'CACHE S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DROGAS LA REBAJA BOGOTA S.A., Bogota, Colombia; c/o INTERAMERICANA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador; DOB 28 November 1973; alt. DOB 28 August 1973; Passport AC568974 (Colombia); Cedula No. 66860965 (Colombia) (individual) [SDNT]

RODRIGUEZ DE ROJAS, Haydee (a.k.a. RODRIGUEZ DE MUÑOZ, Haydee; a.k.a. RODRIGUEZ OREJUELA, Haydee), c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o CORPORACION DEPORTIVA AMERICA, Cali, Colombia; c/o CREACIONES DEPORTIVAS WILLINGTON LTDA., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o HAYDEE DE MUÑOZ Y CIA. S. EN C., Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia; DOB 22 September 1940; Cedula No. 38953333 (Colombia) (individual) [SDNT]

RODRIGUEZ MONDRAGON, Humberto, c/o ANDINA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o CLAUDIA PILAR RODRIGUEZ Y CIA. S.C.S., Bogota, Colombia; c/o D'CACHE S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o FARMATODO S.A., Bogota, Colombia; c/o GRACADAL S.A., Cali, Colombia; c/o INDUSTRIAL DE GESTION DE NEGOCIOS E.U., Cali, Colombia; c/o INTERAMERICANA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o INVERSIONES MONDRAGON Y CIA. S.C.S., Cali, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia; c/o MAXITIENDAS TODO EN UNO, Cali, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogota, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador; DOB 21 June 1963; Passport AD387757 (Colombia); Cedula No. 16688683 (Colombia) (individual) [SDNT]

RODRIGUEZ MONDRAGON, Jaime, c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o CORPORACION DEPORTIVA AMERICA, Cali, Colombia; c/o D'CACHE S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o FARMATODO S.A., Bogota, Colombia; c/o FLEXOEMPAQUES LTDA., Cali, Colombia; c/o GRACADAL S.A., Cali, Colombia; c/o INVERSIONES MONDRAGON Y CIA. S.C.S., Cali, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogota, Colombia; c/o PLASTICOS CONDOR LTDA., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador; Cedula No. 16637592 (Colombia) (individual) [SDNT]

RODRIGUEZ MONDRAGON, Maria Alexandra (a.k.a. RODRIGUEZ MONDRAGON, Alexandra), c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o CORPORACION DEPORTIVA AMERICA, Cali, Colombia; c/o D'CACHE S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o GRACADAL S.A., Cali, Colombia; c/o INTERAMERICANA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o INVERSIONES MONDRAGON Y CIA. S.C.S., Cali, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia; c/o MARIELA MONDRAGON DE R. Y CIA. S. EN C., Cali, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogota, Colombia; c/o TOBOGON, Cali, Colombia; DOB 30 May 1969; alt. DOB 05 May 1969; Passport AD359106 (Colombia); Cedula No. 66810048 (Colombia) (individual) [SDNT]

RODRIGUEZ OREJUELA DE GIL, Amparo, c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o CORPORACION DEPORTIVA AMERICA, Cali, Colombia; c/o CREACIONES DEPORTIVAS WILLINGTON LTDA., Cali, Colombia; c/o D'CACHE S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia; DOB 13 March 1949; Passport AC342062 (Colombia); Cedula No. 31218703 (Colombia) (individual) [SDNT]

RODRIGUEZ RAMIREZ, Claudia Pilar (Patricia), c/o CLAUDIA PILAR RODRIGUEZ Y CIA. S.C.S., Bogota, Colombia; c/o D'CACHE S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o FARMATODO S.A., Bogota, Colombia; c/o GRACADAL S.A., Cali, Colombia; c/o INTERAMERICANA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS WILLINGTON LTDA., Cali, Colombia; c/o D'CACHE S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia; DOB 30 June 1963; alt. DOB 30 August 1963; alt. DOB 1966; Passports 007281 (Colombia); P0555266 (Colombia); Cedula No. 51741013 (Colombia) (individual) [SDNT]

ROJAS MEJIA, Hernan, Calle 2A Oeste No. 24B–45 apt. 503A, Cali, Colombia; Calle 6A No. 9N–34, Cali, Colombia; c/o COLOR 89.5 FM STEREO, Cali, Colombia; c/o CONSTRUCCIONES COLOMBO–ANDINAS LTDA., Bogota, Colombia; c/o INVERSIONES Y CONSTRUCCIONES ABC S.A., Cali, Colombia; DOB 28 August 1948; Cedula No. 16242661 (Colombia) (individual) [SDNT]

ROSALES DIAZ, Hector Emilio, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o COMPAÑIA ADMINISTRADORA DE VIVIENDA S.A., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia; c/o MERCAVICOLA LTDA., Cali, Colombia; Cedula No. 16588924 (Colombia) (individual) [SDNT]

SANTACRUZ CASTRO, Ana Milena, c/o AUREAL INMOBILIARIA LTDA., Bogota, Colombia; c/o COMERCIALIZACION Y FINANCIACION DE AUTOMOTORES S.A., Cali, Colombia; c/o INMOBILIARIA SAMARIA LTDA., Cali, Colombia; c/o INVERSIONES EL PASO LTDA., Cali, Colombia; c/o INVERSIONES INTEGRAL LTDA., Cali, Colombia; c/o INVERSIONES SANTA LTDA., Cali, Colombia; c/o MIRALUNA LTDA., Cali, Colombia; c/o SAMARIA LTDA., Cali, Colombia; c/o SOCIEDAD CONSTRUCTORA LA CASCADA S.A., Cali, Colombia; c/o URBANIZACIONES Y CONSTRUCCIONES LTDA. DE CALI, Cali, Colombia; DOB 31 March 1965; Passports 31929808 (Colombia), AB151189 (Colombia); Cedula No. 31929808 (Colombia) (individual) [SDNT]

SARRIA HOLGUIN, Ramiro Hernan (Robert), Avenida 6N No. 23D–16 of. L301, Cali, Colombia; Carrera 100 No. 11–60 of. 603, AA 20903, Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o INVERSIONES MIGUEL RODRIGUEZ E HIJO, Cali, Colombia; c/o INVERSIONES RODRIGUEZ ARBELAEZ, Cali, Colombia; c/o INVERSIONES RODRIGUEZ MORENO, Cali, Colombia; c/o REPARACIONES Y CONSTRUCCIONES LTDA., Cali, Colombia; Cedula No. 6078583 (Colombia) (individual) [SDNT]

SEPULVEDA SEPULVEDA, Manuel Salvador, c/o ALKALA ASOCIADOS S.A., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o INVHERESA S.A., Cali, Colombia; Cedula No. 16855038 (Colombia) (individual) [SDNT]

SERNA, Maria Norby, c/o ALKALA ASOCIADOS S.A., Cali, Colombia; c/o INVHERESA S.A., Cali, Colombia; Cedula No. 29475049 (Colombia) (individual) [SDNT]

VARGAS LOPEZ, Gustavo Adolfo, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o COLOMBIANA DE CERDOS LTDA., Pereira, Colombia; c/o INDUSTRIA MADERERA ARCA LTDA., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia; c/o MATADERO METROPOLITANO LTDA., Pereira, Colombia; Cedula No. 6457925 (Colombia) (individual) [SDNT]

ZAMBRANO MADRONERO, Carmen Alicia, c/o COSMEPOP, Bogota, Colombia; c/o PATENTES MARCAS Y REGISTROS S.A., Bogota, Colombia; Cedula No. 30738265 (Colombia) (individual) [SDNT]

4. Appendix A to 31 CFR chapter V is amended by removing in their entirety the entries for the following names from appendix A, section I: "ARBELAEZ ALZATE, Rafael", "BARRENEQUE GOMEZ, Jairo (a.k.a. BARRENECHE GOMEZ, Jairo)", "MILLAN RUBIO, Alba Milena", and "ORDOÑEZ MEDINA, Elizabeth".

Appendix B [Removed]

5. Appendix B to 31 CFR chapter V is removed.

Appendix C [Redesignated]

6. Appendix C to 31 CFR chapter V is redesignated as appendix B.

Dated: June 16, 1999.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 21, 1999.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 99–16586 Filed 6–25–99; 9:38 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Designations of Senior UNITA Officials

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is amending the appendix A to 31 CFR chapter V by adding the names of 10 individuals who have been determined to be senior officials of the National Union for the Total Independence of Angola ("UNITA").

EFFECTIVE DATE: June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

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Background

Appendix A to 31 CFR chapter V contains the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control. Pursuant to Executive Order 13098 of August 18, 1998, "Blocking Property of UNITA and Prohibiting Certain Transactions with respect to UNITA" (E.O. 13098, 63 FR 44771, 3 CFR, 1998 Comp., p. 206—the "Order"), and the UNITA (Angola) Sanctions Regulations (31 CFR part 590—the "Regulations"), the following 10 individuals are added to appendix A as persons who have been determined to be senior officials of UNITA (hereinafter "blocked persons"). All real and personal property in which the blocked persons have any interest, including but not limited to all accounts that are or come within the United States or that are or come within the possession or control of U.S. persons, including their overseas branches, are blocked. All transactions by U.S. persons or within the United States in property or interests in property of blocked persons are prohibited unless licensed by the Office of Foreign Assets Control.

Designations of foreign persons blocked pursuant to the Order are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the **Federal Register**, or upon prior actual notice.

Because the Order and Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring

notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12865, 58 FR 51005, 3 CFR, 1993 Comp., p.636; E.O. 13069, 62 FR 65989, 3 CFR, 1997 Comp., p. 232; E.O. 13098, 63 FR 44771, 3 CFR, 1998 Comp., p. 206, appendix A to chapter V of 31 CFR is amended as set forth below:

Appendix A [Amended]

1. Appendix A to chapter V of 31 CFR is amended by adding the following names inserted in alphabetical order in appendix A, section I:

CAMALATA, Abilio (see KAMALATA, Abilio Jose Augusto "Numa") (individual) [UNITA]

CANDEIA, Anibal Jose Mateus "Kile" (a.k.a. KANDEYA, Amilcar Jose Mateus; a.k.a. KANDEYA, Anibal), UNITA Representative to the United Kingdom; DOB 21 August 1954; POB Dondi, Huambo Province, Angola; Passport No. PSAE/505893 (Ivory Coast) (individual) [UNITA]

CHILALA, Odeth Ludovina Baca Joaquim (a.k.a. LUDEVINA, Odeth), President of UNITA's League of Angolan Women (Secretary of Women's Organization for UNITA); DOB 5 August 1959; POB Bela Vista, Huambo Province, Angola (individual) [UNITA]

DACHALA, Marcial Adriano, UNITA Information Secretary; DOB 11 August 1956; POB Bela Vista, Huambo Province, Angola (individual) [UNITA]

DEMBO, Antonio Sebastiao, Vice-President of UNITA; DOB 25 August 1944; POB Nambuangongo, Luanda Province, Angola (individual) [UNITA]

GATO, Armindo Lukamba "Gato" (see PAULO, Armindo Lucas "Gato") (individual) [UNITA]

GATO, Paulo Lukamba (see PAULO, Armindo Lucas "Gato") (individual) [UNITA]

KAMALATA, Abilio Jose Augusto "Numa" (a.k.a. CAMALATA, Abilio), General of UNITA; DOB 31 August 1955; POB Cubal, Benguela Province, Angola (individual) [UNITA]

KANDEYA, Amilcar Jose Mateus (see CANDEIA, Anibal Jose Mateus "Kile") (individual) [UNITA]

KANDEYA, Anibal (see CANDEIA, Anibal Jose Mateus "Kile") (individual) [UNITA]

LUDEVINA, Odeth (see CHILALA, Odeth Ludovina Baca Joaquim) (individual) [UNITA]

MULATO, Ernesto Joaquim, UNITA Representative to Germany; DOB 12 August 1940; POB Bembe, Uige Province, Angola (individual) [UNITA]

PAULO, Armindo Lucas "Gato" (a.k.a. GATO, Armindo Lukamba "Gato"; a.k.a. GATO, Paulo Lukamba), UNITA Secretary-General; DOB 13 May 1954; POB Bailundo, Huambo Province, Angola (individual) [UNITA]

SAPALALO, Altino Bango "Bock," General of UNITA; DOB 5 November 1954; POB Andulo, Bie Province, Angola (individual) [UNITA]

SAVIMBI, Jonas Malheiro, President and Founder of UNITA; DOB 3 August 1934; POB Munhango, Bie Province, Angola (individual) [UNITA]

SAKALA, Alcides (see SIMOES, Alcides Sakala) (individual) [UNITA]

SIMOES, Alcides Sakala (a.k.a. SAKALA, Alcides; a.k.a. TCHACALA, Alcides), UNITA Foreign Affairs Secretary; DOB 23 December 1953; POB Bailundo, Huambo Province, Angola (individual) [UNITA]

TCHACALA, Alcides (see SIMOES, Alcides Sakala) (individual) [UNITA]

Dated: June 16, 1999.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 21, 1999.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 99–16587 Filed 6–25–99; 9:50 am]

BILLING CODE 4810–25–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[C6D 13–99–019]

Drawbridge Operation Regulations; Steamboat Slugh, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of the Burlington Northern Santa Fe Railroad Drawbridge over Steamboat Slough, mile 1.0, at Everett, Washington, from a 6 a.m. July 12 to 6 a.m. July 17, 1999. During this period the draw span need not open for the passage of vessels.

DATES: The period of deviation begins at 6 a.m. July 12 and ends at 6 a.m. July 17, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. John E. Mikesell, Chief, Plans and Programs Section, Thirteen Coast Guard District. Telephone number (206) 220–7270.

SUPPLEMENTARY INFORMATION: The only economic consequences involve some rescheduling of infrequent log towing during the temporary deviation. This deviation is for the purpose of accommodating major repair to the draw machinery.

This deviation from normal operating regulations (33 CFR 117.869) is authorized in accordance with the provisions of Title 33 of the Code of Federal Regulations, § 117.35(d).

Dated: 17 June 1999.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 99–16668 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–083]

RIN 2115–AA97

Safety Zone: Staten Island Fireworks, Raritan Bay and Lower New York Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones for Staten Island fireworks displays located on Raritan Bay and Lower New York Bay. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Raritan Bay and Lower New York Bay.

DATES: This rule is effective from 8:30 p.m. on July 3, 1999, until 10 p.m. on July 11, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and publish the final rule 30 days before its effective date. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close the waterways and protect the maritime public from the hazards associated with these fireworks displays.

Background and Purpose

The fireworks programs are being sponsored by the Borough of Staten Island. This regulation establishes two safety zones. First, in all waters of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of the fireworks barge located in approximate position 40°30′04″ N 074°15′35″ W (NAD 1983), approximately 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595). The safety zone is in effect from 8:30 p.m. until 10 p.m. on Saturday, July 3, 1999. The rain date for this event is Sunday, July 4, 1999, at the same time and place. Second, in all waters of Lower New York Bay within a 360-yard radius of the fireworks barge located in approximate position 40°35′11″ N 074°03′42″ W (NAD 1983), approximately 350 yards east of South Beach, Staten Island. The safety zone is in effect from 8:30 p.m. until 10 p.m. on Saturday, July 10, 1999. The rain date for this event is Sunday, July 11, 1999, at the same time and place. The safety zones prevent vessels from transiting a portion of Raritan Bay in the vicinity of the Raritan River Cutoff, Ward Point Bend (West), and Lower New York Bay. The safety zones are needed to protect boaters from the hazards associated with fireworks launched from two barges in the area. Marine traffic will still be able to transit through the eastern 140 yards of the 230-yard wide Ward Point Bend (West) during the event on July 3, 1999. Traffic that can not transit through the Raritan River Cutoff will be able to transit through Ward Point Bend (West) by using South Amboy Reach, Great Beds Reach, Ward Point Secondary Channel, and Ward Point Bend (East). Marine traffic will still be able to transit through Lower New York Bay during the event off South Beach on July 10, 1999. Additionally, vessels are not precluded from mooring at or getting underway from any marinas or piers at Perth Amboy, New Jersey during the display in the Raritan River Cutoff. Public notifications will be made prior to the event via the Local Notice to Mariners and marine information broadcasts.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. this finding is based on the minimal time that vessels will be restricted from the zone, that vessels are not precluded from getting underway, or mooring at, the marinas and piers in Perth Amboy, New Jersey, that marine traffic may safely transit to the east of the zone on July 3, 1999, marine traffic will still be able to transit through Lower New York Bay during the display on July 10, 1999, and advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions and with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates.* A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the URMA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–083 to read as follows:

§ 165.T01–083 Safety Zone: Staten Island Fireworks, Raritan Bay and Lower New York Bay.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *Safety Zone A:* (1) *Location.* All waters of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of

the fireworks barge in approximate position 40°30'04" N 074°15'35" W (NAD 1983), approximately 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595).

(ii) *Effective period.* Paragraph (a)(1) of this section is effective from 8:30 p.m. until 10 p.m. on July 3, 1999. If the event is cancelled due to inclement weather, then this paragraph is effective from 8:30 p.m. until 10 p.m. on July 4, 1999.

(2) *Safety Zone B:* (i) *Location.* All waters of Lower New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°35'11" N 074°03'42" W (NAD 1983), approximately 350 yards east of South Beach, Staten Island.

(ii) *Effective period.* Paragraph (a)(2) of this section is effective from 8:30 p.m. until 10 p.m. on July 10, 1999. If the event is cancelled due to inclement weather, then this paragraph is effective from 8:30 p.m. until 10 p.m. on July 11, 1999.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) all persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 18, 1999.

L.M. Brooks,

Captain, U.S. Coast Guard, Acting Captain of the Port, New York.

[FR Doc. 99–16667 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–092]

RIN 2115–AA97

Safety Zone: Madison 4th of July Celebration, Long Island Sound

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Madison 4th of July Celebration to be held off West Wharf, Madison, CT, on July 2, 1999. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective on July 2, 1999, from 9:30 p.m. until July 3, 1999, at 10:45 p.m.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. The fax number is (203) 468–4445.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after **Federal Register** publication. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Madison Cultural Arts of Madison, CT is sponsoring a fireworks display off of West Wharf on Long Island Sound, Madison, CT. The fireworks display will occur on July 2, 1999, from 9:30 p.m. until 10:45 p.m. In case of inclement weather, the rain date will be July 3, 1999, at the same time and place. The safety zone covers all waters of Long Island Sound within a 600 foot radius of the fireworks launching barge which will be located off of West Wharf, Madison, CT, in approximate position: 41°16'02" N, 072°36'25" W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of Long Island Sound and entry into this zone will be restricted for only 1 hour and 15 minutes on July 2 or 3, 1999. Although this regulation prevents traffic from transiting this section of Long Island Sound, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed under the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LCDR T.J. Walker, telephone (203) 468–4444.

The Ombudsman of Regulatory Enforcement for Small Business and

Agriculture, and 10 Regional Fairness Boards, were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If your wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the lease costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under Addresses.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub.L. 105–383.

2. Add temporary § 165.T01–CGD1–092 to read as follows:

§ 165.T01–CGD1–092 Madison 4th of July Celebration, West Wharf, Long Island Sound, Madison, CT.

(a) *Location.* The safety zone includes all waters of Long Island Sound within a 600 foot radius of the launch barge located off of West Wharf, Madison, CT in approximate position 41°16'02" N, 072°36'25" W (NAD 1983).

(b) *Effective date.* This section is effective on July 2, 1999 from 9:30 p.m. until 10:45 p.m. In case of inclement weather, the rain date will be July 3, 1999 at the same time and place.

(c)(1) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 21, 1999.

P.K. Mitchell,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 99–16666 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–095]

RIN 2115–AA97

Safety Zone: Fenwick Fireworks Display, Long Island Sound

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Fenwick Fireworks Display to be held off Fenwick Pier, Old Saybrook, CT., on July 3, 1999. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective on July 3, 1999, from 8:45 p.m. until July 4, 1999 at 10:00 p.m.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. The fax number is (203) 468–4445.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after **Federal Register** publication. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to

publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

Mr. Arnold L. Chase of West Hartford, CT. is sponsoring a fireworks display off of Fenwick Pier on Long Island Sound, Old Saybrook, CT. The fireworks display will occur on July 3, 1999, from 8:45 pm until 10:00 pm. In case of inclement weather, the rain date will be July 4, 1999 at the same time and place. The safety zone covers all waters of Long Island Sound within a 600 foot radius of the fireworks launching barge which will be located off of Fenwick Pier, Old Saybrook, CT, in approximate position: 41°16′ N, 072°23′ W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(30 of that order. It has been exempted form review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of Lond Island Sound and entry into this zone will be restricted for only 1 hour and 15 minutes on July 3 or 4 1999. Although this regulation prevents traffic from transiting this section of Long Island Sound, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is a later hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this proposal would have a significant economic impact on a substantial number or small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed under the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance please call LCDR T.J. Walker, telephone (202) 468–4444.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture, and 10 Regional Fairness Boards, were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive order 12612, and has determine that these regulations do no raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under Addresses.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub.L. 105–383.

2. Add temporary § 165.T01–CGD1–095 to read as follows:

§ 165.T01–CGD1–095 Fenwick Fireworks Display, Old Saybrook, Long Island Sound.

(a) *Location.* The safety zone includes all waters of Long Island Sound within a 600 foot radius of the launch barge located off of Fenwick Pier, Old Saybrook, CT. in approximate position 41°16′ N, 072°23′ W (NAD 1983).

(b) *Effective date.* This section is effective on July 3, 1999, from 8:45 p.m. until 10:00 p.m. In case of inclement weather, the rain date will be July 4, 1999, at the same time and place.

(c)(1) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 21, 1999.

P.K. Mitchell,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 99–16665 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 59

[AD–FRL–6368–7]

RIN 2060–AE55

National Volatile Organic Compound Emission Standards for Architectural Coatings; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections and amendments.

SUMMARY: On September 11, 1998 (63 FR 48848), EPA published the "National Volatile Organic Compound Emission Standards for Architectural Coatings" under the authority of section 183(e) of the Clean Air Act (Act). In today's action, we're issuing technical corrections and clarifications for that rule. Today's action won't change the volatile organic compound (VOC content limits for architectural coatings or the level of health protection that the rule provides. In compliance with the Paperwork Reduction Act (PRA), today's action also amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for the architectural coatings regulation.

DATES: The effective date is June 30, 1999.

ADDRESSES: *Technical Support Documents.* The promulgated regulation is supported by two background information documents: one specific to the architectural coatings rule, and one that addresses comments on the study and Report to Congress under section 183(e). You can obtain both documents from the docket for the architectural coatings rule (see below); through the Internet at http://www.epa.gov/ttn/uatw/183e/aim/aimpg.html; or from the U.S. Environmental Protection Agency Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. Please refer to "National Volatile Organic Compound Emission Standards for Architectural Coatings—Background for Promulgated Standards," EPA–453/R–98–006b, or "Response to Comments on Section 183(e) Study and Report to Congress," EPA–453/R–98–007.

Docket. Docket No. A–92–18 contains information considered by EPA in developing the promulgated standards and this action. You can inspect the docket and copy materials from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548 or fax (202) 260–4400. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Herring at (919) 541–5358, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (herring.linda@epa.gov). Any correspondence related to compliance with this rule must be submitted to the appropriate EPA Regional Office listed in § 59.409 of 40 CFR Part 59 (see 63 FR 48848, September 11, 1998).

SUPPLEMENTARY INFORMATION: *Regulated Entities.* You may be affected by these rule amendments if you fall into one of the categories in the following table.

Category	NAICS code	SIC code	Examples of regulated entities
Industry	32551 325510	2851	Manufacturers (which includes packagers and repackagers) and importers of architectural coatings that are manufactured for sale or distribution in the U.S., including all U.S. territories.
State/local/tribal governments	.....	.....	State Departments of Transportation that manufacture their own coatings.

Architectural coatings are coatings that are recommended for field application to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs.

Use this table only as a guide because this action may also regulate other entities. To determine if it regulates your facility, business, or organization, carefully examine the applicability criteria in § 59.400 of 40 CFR part 59. If you have questions about how it applies, contact Linda Herring (see **FOR FURTHER INFORMATION CONTACT** section of this preamble).

I. Technical Corrections

The EPA published in the **Federal Register** of September 11, 1998 (63 FR 48848), the final rule regulating VOC emissions from architectural coatings. The preamble and rule (FR Doc. 98–22659) contain errors and require clarification. Thus, we're correcting and clarifying the rule as follows.

1. We are adding a definition for the term "megagram" to § 59.401. We are adding this definition at the request of some regulated entities to assist them in understanding and applying the units of measure used in the rule.

2. We are correcting § 59.402(a) by adding a sentence to the end of paragraph (a) to clarify that we'll use

metric units, rather than English units, to determine compliance.

3. We are correcting § 59.402(c)(1), (c)(3) through (c)(8), and (c)(15), to use consistent terminology throughout the section. We are removing the phrases "are also recommended for use as" and "are recommended for use as," and replacing them with the phrase "also meet the definition for."

4. We are correcting § 59.402(c)(13) by adding the word "sealers," which we omitted by mistake in the published rule.

5. We are adding a paragraph (16) to § 59.402(c). This addition corrects an inadvertent overlap between the definitions for zone marking coating and traffic marking coating.

6. We are adding a paragraph (17) to § 59.402(c). This addition corrects an inadvertent overlap between the definitions for rust preventative coatings and primers and undercoaters.

7. We are correcting the definition for the term "Volume Manufactured or Imported" in equation 2, which is referenced in § 59.403(c). This change clarifies that for the exceedance fee, you must include the volume of any water and exempt compounds in the coating and exclude the volume of colorant added to tint bases when calculating the volume manufactured or imported.

8. We are adding a sentence to the end of § 59.404(a)(1). This addition clarifies that you must use metric units, not English units, to determine compliance.

9. We are correcting § 59.404(a)(4) by removing the erroneous cross-reference to § 59.408(f), which does not exist.

10. We are adding a sentence to the end of § 59.404(b) to clarify that the VOC amount used in the tonnage exemption calculations excludes the volume of any colorant added to tint bases.

11. We are correcting the definition for the term "VOC_C" in equation 3, which is referenced in § 59.404(b). This change is necessary to be consistent with the clarifying changes to the terms used in equation 4, described in change numbers 12 and 14 below. The change is intended to distinguish between the term "VOC_C" and the new term "VOC Amount" in equation 4.

12. We are replacing the term "VOC Content" with "VOC Amount" in equation 4, which is referenced in § 59.404(b). We're replacing the term "VOC Content" with "VOC Amount" to distinguish this term from the term "VOC Content." The term "VOC Amount" in equation 4 is used only for calculating the grams VOC per liter of each coating claimed under the tonnage exemption. The VOC amount in equation 4 includes the volume of water and exempt compounds (see change number 13 below). The "VOC Content" in § 59.406 is used for calculating the trams VOC per liter of each coating to determine compliance with the VOC content limits. The VOC content in § 59.406 excludes the volume of any water and exempt compounds, except for low solids stains and low solids wood preservatives.

13. We are correcting the definition for the term "Volume Manufactured or Imported" in equation 4, which is referenced in § 59.404(b), to clarify that for the tonnage exemption, the volume of coating is calculated including the volume of any water and exempt compounds, and excluding the volume of any colorant added to tint bases.

14. We are removing the term and definition of "VOC Content" in equation 4, which is referenced in § 59.404(b), and replacing it with the term and definition of "VOC Amount." We're adding a definition for the new term "VOC Amount" to clarify that for the tonnage exemption, you determine the VOC amount by calculating the grams of VOC in each liter of coating including the volume of any water and exempt compounds. Colorant added to tint bases is not included in this calculation, and the reference to it in the final rule which we are correcting was in error.

15. We are correcting § 59.405(a)(3)(i) and (ii) to allow you to label the VOC content in either metric or English units.

16. We are correcting § 59.407(b)(5) to make this paragraph concerning recordkeeping for the exceedance fee consistent with the definition of "Volume Manufactured or Imported" in Equation 2.

17. We are correcting § 59.407(c)(2) to make this paragraph concerning recordkeeping for the tonnage exemption consistent with the definition for "VOC Amount" in equation 4.

18. We are correcting § 59.407(c)(3), to reflect EPA's intent for the tonnage exemption: Records must be kept of the volume of coating manufactured or imported, not the sales volume.

19. We are correcting the first sentence of § 59.408(b) to reflect EPA's intent that the deadline for submitting the initial notification report for coatings registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is March 13, 2000; and the deadline for submitting the report for all other coatings subject to the rule is September 13, 1999.

20. We are correcting § 59.408(d)(5) to make this paragraph concerning reporting for the exceedance fee consistent with the revised definition for "Volume Manufactured or Imported" in equation 2.

21. We are correcting § 59.408(e)(2) to make this paragraph concerning reporting for the tonnage exemption consistent with the definition for "VOC Amount" in equation 4.

22. We are correcting § 59.408(e)(3) to reflect EPA's intent that reports be submitted for the volume of coating manufactured or imported, not the sales volume.

23. We are correcting the addresses for EPA Regional Offices. These are administrative changes of addresses of EPA Regional Offices necessary to ensure that submittals by regulated entities reach the correct EPA address.

24. In the third column of table to Subpart D—Volatile Organic Compound (VOC) Content Limits for Architectural Coatings, for Anti-fouling coatings, we are correcting the number of pounds VOC per gallon to read "3.8." The number "3.3" was a typographical error.

We're making these technical corrections effective immediately. By issuing these technical corrections directly as a final rule, we're foregoing an opportunity for public comment on a notice of proposed rulemaking. Section 553(b) of title 5 of the United States Code (U.S.C.) and section 307(b) of the Act permit an agency to forego notice and comment when "the Agency for good cause finds (and incorporates the finding and brief statement of reasons therefore in the rule issues) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." We find that notice and comment regarding these minor technical corrections are unnecessary because the corrections are not controversial and don't substantively change the requirements of the architectural coatings rule. We find that this constitutes good cause under 5 U.S.C. 553(b) and section 307(b) of the Act for a determination that the issuance of a notice of proposed rulemaking is unnecessary.

Amendment to 40 CFR Part 9

Today, we're amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various EPA regulations. The amendment updates the table to list those information collection requirements promulgated under the "National Volatile Organic Compound Emission Standards for Architectural Coatings," which appeared in the **Federal Register** on September 11, 1998, at 63 FR 48848. The affected regulations are codified at 40 CFR part 59. We'll continue to present the OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the EPA's regulations, and in each CFR volume containing EPA regulations. The table lists CFR sections with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the PRA (44 U.S.C. 3501, *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was subject to public notice and comment before OMB's approval. Due to the technical nature of the table, we find there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment.

Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information that we considered in developing the rule and today's technical amendments. The docket is a dynamic file, since we add material throughout the rulemaking development. The docketing system allows you to identify and locate documents so you can participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (see 42 U.S.C. 7607(d)(7)(A)).

B. Paperwork Reduction Act

The OMB has approved the information collection requirements of the previously promulgated rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501, *et seq.*, and has assigned OMB Control Number 2060–0393. A copy of the ICR No. 1750.02 may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740. The information collection requirements were effective upon OMB's approval on January 8, 1999.

Today's amendments to the rule will have no effect on the estimates of the information collection burden. The technical changes are clarifications of requirements and don't impose additional requirements. Therefore, we haven't revised the ICR.

Today's action amends 40 CFR part 9 by adding the architectural coatings ICR to section 9.1, OMB approvals under the PRA.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" is one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The regulation published on September 11, 1998 was considered a "significant regulatory action" under criterion (4) above, based on the novel use of economic incentives (an exceedance fee) for this industry. Therefore, EPA submitted the final rule to OMB for review before publication. Today's amendments to the rule include minor technical corrections and clarifications to several rule requirements. Therefore, EPA determined that this action is not significant and does not require OMB review.

D. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

In compliance with Executive Order 12875, EPA involved State and local governments in the development of the rule published on September 11, 1998. Today's action does not create a mandate upon State, local, or tribal governments because it clarifies and makes minor technical corrections to several rule requirements and it does not impose any additional requirements. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The EPA is not aware of any tribal governments that manufacture or import architectural coatings. Nevertheless, today's action does not create a mandate upon tribal governments because it clarifies and makes minor technical corrections to several rule requirements and it does not impose any additional requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. As discussed in the preamble to the rule published on September 11, 1998 (63 FR 48874–48875), EPA prepared analyses to support both the proposed and final rules to meet the requirements of the RFA as modified by SBREFA.

For the reasons discussed in the preamble to the rule, EPA believes that the measures adopted in the final rule will significantly mitigate the economic impacts on small businesses that might otherwise have occurred. Today's action is not subject to the requirements of the RFA as modified by SBREFA because it only makes minor technical corrections and clarifications to some of the rule's requirements and it does not impose any additional requirements.

G. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the last costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule explanation why that alternative was not adopted. Before EPA establishes any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector, in any one year. Therefore, the requirements of sections 202 and 205 of the UMRA do not apply to this action. The EPA has likewise determined that today's amendments to the rule do not include regulatory requirements that would significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the UMRA.

H. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. § 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the rule, its amendments, and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. § 804(2).

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards.

For the reasons discussed in the preamble to the final rule (63 FR 48876), EPA determined that its analytical test method for determining product compliance under the rule is consistent with the requirements of NTTAA. Today's action does not amend or modify the rule's test method and, therefore, the requirements of the NTTAA do not apply.

J. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) for which the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

Today's action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

List of Subjects in 40 CFR Parts 9 and 59

Environmental protection, Air pollution control, Architectural coatings, Consumer and commercial products, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 21, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

Technical Corrections

The EPA published in the **Federal Register** of September 11, 1998 (63 FR 48848), the final rule regulating VOC emissions from architectural coatings. The preamble and rule (FR Doc. 98–22659) contain errors and require clarification. Thus, we're correcting and clarifying the preamble and rule as follows.

A. In the **Federal Register** issue of September 11, 1998 in FR Doc. 98-22659, on page 48851, second column, in the last line of the first paragraph in section II.A., correct the date "March 10, 2000" to read "March 13, 2000."

B. In the rule FR Doc. 98–22659 published on September 11, 1998 (63 FR 48848), make the following corrections.

PART 59—[CORRECTED]

Subpart D—[Corrected]

§ 59.401 [Corrected]

1. On page 48879, in the second column, correct § 59.401 by adding immediately before the definition of *Matallic pigmented coating* the definition for the term "megagram" to read as follows. "*Megagram* means one million grams or 1.102 tons."

§ 59.402 [Corrected]

2. On page 48880, in the third column, correct § 59.402(a) by adding the following sentence to the end of paragraph (a): "Compliance with the VOC content limits will be determined based on the VOC content, as expressed in metric units."

3. On page 48880, in the third column, and page 48881, in the first and third columns, correct § 59.402(c)(1), (c)(3) through (c)(8), and (c)(15), by removing the phrases "are also recommended for use as" and "are recommended for use as," and replacing them with the phrase "also meet the definition for."

4. On page 48881, in the second column, correct § 59.402(c)(13) to read: "Quick-dry primers, sealers, and undercoaters that also meet the definition for primers, sealers, or undercoaters are subject only to the VOC content limit in table 1 of this subpart for quick-dry primers, sealers, and undercoaters."

5. On page 48881, in the third column, add the following new paragraph (c)(16) to § 59.402: "(16) Zone marking coatings that also meet the definition for traffic marking coatings are subject only to the VOC content limit in table 1 of this subpart for zone marking coatings."

6. On page 48881, in the third column, add the following new paragraph (c)(17) to § 59.402: "(17) Rust preventative coatings that also meet the definition for primers or undercoaters are subject only to the VOC content limit in table 1 of this subpart for rust preventative coatings."

§ 59.403 [Corrected]

7. On page 48881, in the first column, correct the definition for the term "Volume Manufactured or Imported" in equation 2, which is referenced in § 59.403(c), to read: "The volume of the coating manufactured or imported per year, in liters, including the volume of any water and exempt compounds and excluding the volume of any colorant added to tint bases. Any volume for which a tonnage exemption in claimed under § 59.404 of this subpart is also excluded."

§ 59.404 [Corrected]

8. On page 48881, in the third column, add the following sentence to the end of § 59.404(a)(1): "Compliance with the tonnage exemption will be determined based on the amount of VOC, as expressed in metric units."

9. On page 48881, in the third column, correct § 59.404(a)(4) to read: "The reporting requirements of § 59.408(b) and (e) of this subpart."

10. On page 48882, in the first column, add the following sentence to the end of § 59.404(b): "The VOC amount shall be determined without colorant that is added after the tint base is manufactured or imported."

11. On page 48882, in the third column, correct the definition for the term "VOC_c" in equation 3, which is referenced in § 59.404(b), to read: "Megagrams of VOC, for each coating (c) claimed under the exemption, as computed by equation 4."

12. On page 48882, in equation 4, which is referenced in § 59.404(b), replace the term "VOC Content" with "VOC Amount."

13. On page 48882, in the first column, correct the definition for the term "Volume Manufactured or Imported" in equation 4, which is referenced in § 59.404(b), to read: "Volume of the coating manufactured or imported, in liters, including the volume of any water and exempt compounds and excluding the volume of any colorant added to tint bases, for the time period the exemption is claimed."

14. On page 48882, in the first column, correct the term and definition of "VOC Content" in equation 4, which is referenced in § 59.404(b), to read as follows: "VOC Amount = Grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, including the volume of any water and exempt compounds."

§ 59.405 [Corrected]

15. On page 48882, in the first column, correct § 59.405(a)(3)(i) and (ii) to read:

"(i) The VOC content of the coating, displayed in units of grams of VOC per liter of coating or in units of pounds of VOC per gallon of coating; or

"(ii) The VOC content limit in table 1 of this subpart with which the coating is required to comply and does comply, displayed in units of grams of VOC per liter of coating or in units of pounds of VOC per gallon of coating."

§ 59.407 [Corrected]

16. On page 48883, in the third column, correct § 59.407(b)(5) to read: "The total volume of each coating manufactured or imported per calendar year, in liters, including the volume of any water and exempt compounds and excluding the volume of any colorant added to tint bases."

17. On page 48883, in the third column, correct § 59.407(c)(2) to read: "The VOC amount as used in equation 4."

18. On page 48883, in the third column, correct § 59.407(c)(3) to read: "The volume manufactured or imported, in liters, for each coating for which the exemption is claimed for the time period the exemption is claimed."

§ 59.408 [Corrected]

19. On page 48884, in the first column, correct the first sentence of § 59.408(b) to read: "Each manufacturer and importer of any architectural coating subject to the provisions of this subpart shall submit an initial notification report no later than the applicable compliance date specified in § 59.400, or within 180 days after the date that the first architectural coating is manufactured or imported, whichever is later."

20. On page 48884, in the second column, correct § 59.408(d)(5) to read: "The total volume of each coating manufactured or imported per calendar year, in liters, including the volume of any water and exempt compounds and excluding the volume of any colorant added to tint bases."

21. On page 48884, in the second column, correct § 59.408(e)(2) to read: "The VOC amount as used in equation 4."

22. On page 48884, in the second column, correct § 59.408(e)(3) to read: "The volume manufactured or imported, in liters, for each coating for which the exemption is claimed for the time period the exemption is claimed."

§ 59.409 [Corrected]

23. On page 48884, in the third column, correct the addresses for EPA Regional Offices as follows:

For Region I, correct the street address by removing "J.F.K. Federal Building, Boston, MA 02203–2211" and replacing it with "One Congress Street, Boston, MA 02114–2023."

For Region II, correct the name of the division by removing "Division of Environmental Planning and

Protection" and replacing it with "Division of Enforcement and Compliance Assistance."

For Region VII, correct the street address by removing "726 Minnesota Avenue" and replacing it with "901 North 5th Street."

Table 1 to Subpart D

24. On page 48886, in the third column of table 1 to Subpart D—Volatile Organic Compound (VOC) Content Limits for Architectural Coatings, for "Anti-fouling coatings," correct the number of pounds VOC per gallon to read "3.8."

Amendment to 40 CFR Part 9

For the reasons set out in the preamble, part 9 of title 40 of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135, *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251, *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857, *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 amend the table by removing the heading "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings" and add in its place the heading "National Volatile Organic Compound Emission Standards for Consumer and Commercial Products"; and by adding new entries under the heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
. . . . .	

National Volatile Organic Compound Emission Standards for Consumer and Commercial Products

. . . . .	
59.405	2060–0393
59.407	2060–0393
59.408	2060–0393
. . . . .	

[FR Doc. 99–16384 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 009–130c; FRL–6368–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action redesignates the number of a paragraph in Title 40 of the Code of Federal Regulations that appeared in a direct final rule published in the **Federal Register** on June 3, 1999.

EFFECTIVE DATE: This action is effective on August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: On June 3, 1999, at 64 FR 29790, EPA published a direct final rulemaking action approving San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), Rule 1010 and Rule 1130 of the California State Implementation Plan (SIP). This action contained amendments to 40 CFR part 52, subpart F. The amendments which incorporated material by reference into § 52.220, Identification of plan, paragraph (c)(199)(i)(D)(4) are being redesignated as (c)(199)(i)(D)(5) in this action.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: June 14, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52— [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by redesignating the paragraph (c)(199)(i)(D)(*4*) added at 64 FR 29793 on June 3, 1999 as (c)(199)(i)(D)(*5*).

[FR Doc. 99–16386 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–33–2–9926a; FRL–6368–6]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On March 15, 1995, the State of Georgia, through the Environmental Protection Division (EPD), submitted revisions to their State Implementation Plan (SIP) regarding permitting exemptions. EPA is granting final approval to these revisions.

DATES: This direct final rule is effective August 30, 1999 without further notice, unless EPA receives adverse comment by July 30, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Scott Martin at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. The telephone number is 404–562–9036.

SUPPLEMENTARY INFORMATION: On March 15, 1995, the EPD submitted revisions to the Georgia SIP incorporating revisions to Rules for Air Quality Control Chapter 391–3–1–.03, "Permits." A public hearing for these revisions was held on July 14, 1994, and the revisions became state effective on August 17, 1994. The revisions are described below:

391–3–1–.03 Permits

Section (6) was amended to update the list of sources which are exempt from the requirement to obtain an air quality permit. The exempt sources include, but are not limited to, the following: mobile sources, combustion equipment, equipment used for cooking food, blacksmith forges, funeral homes, small incinerators, boiler water treatment operations, storage tanks, farm equipment, repair shops, non-perchloroethylene dry-cleaning, cold cleaners, equipment used for portable steam cleaning, and portable equipment used for the on-site painting of buildings. Further details regarding source exemptions can be obtained from the regional EPA address listed above.

Final Action

EPA is approving the aforementioned changes to the SIP because they are consistent with the Clean Air Act and EPA requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 30, 1999 without further notice unless the Agency receives adverse comments by July 30, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 30, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the

environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 16, 1999.

Phyllis P. Harris,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. Section 52.570(c) is amended by revising the entry for "391–3–1–.03 Permits" to read as follows :

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
• • •	•	•	•	•
391–3–1–.03	Permits	8/17/94	June 30, 1999	
• • •	•	•	•	•

[FR Doc. 99–16376 Filed 6–29–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 210–0103; FRL–6365–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Modoc County Air Pollution Control District, Siskiyou County Air Pollution Control District, Tehama County Air Pollution Control District, and Tuolumne County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). This action is an administrative change which revises the definitions in Modoc County Air Pollution Control District (MCAPCD), Siskiyou County Air Pollution Control District (SCAPCD), Tehama County Air Pollution Control District (TCAPCD), and Tuolumne County Air Pollution Control District (TUCAPCD). The intended effect of approving this action is to incorporate changes to the definitions for clarity and consistency and to update the Exempt Compound list in TCAPCD definition's rule to be consistent with the revised federal and state VOC definitions.

DATES: This rule is effective on August 30, 1999 without further notice, unless EPA receives adverse comments by July 30, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of these rules, along with EPA's evaluation report for each rule, are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted requests for rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Modoc County Air Pollution Control District, 202 West 4th Street, Alturas, CA 96101–3915

Siskiyou County Air Pollution Control District, 1855 Placer Street, Ste. 101, Redding, CA 96001–1759

Tehama County Air Pollution Control District, P.O. Box 38 (1750 Walnut St.), Red Bluff, CA 96080–0038

Tuolumne County Air Pollution Control District, 22365 Airport, Columbia, CA 95310

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules with definition revisions being approved into the California SIP include the following: MCAPCD Rule 1.2, Definitions and 7.1, Definitions (Agricultural Burning); SCAPCD Rule 7.1, Agricultural Burning Definitions; TCAPCD Rule 1:2, Definitions; and TUCAPCD Rules 101, Title; 102, Definitions; and Regulation III, Open Burning, Rule 300, General Definitions. These rules were submitted by the California Air Resources Board to EPA on March 26, 1990 (Tuolumne), December 31, 1990 (Modoc and Siskiyou), and May 13, 1991 (Tehama).

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included MCAPCD, SCAPCD, TCAPCD, and TUCAPCD. 43 FR 8964, 49 CFR 81.305. In response to section 110(a) of the Act and other requirements, the MCAPCD, SCAPCD, TCAPCD, and TUCAPCD submitted many rules which EPA approved into the SIP.

This document addresses EPA's direct-final action for MCAPCD Rules 1.2, Definitions and 7.1, Definitions (Agricultural Burning); SCAPCD Rule 7.1, Agricultural Burning Definitions; TCAPCD Rule 1.2, Definitions; and TUCAPCD Rules 101, Title; 102, Definitions; and Regulation III, Open Burning, Rule 300, General Definitions. These rules were adopted by TUCAPCD on November 22, 1988; by MCAPCD on May 1, 1989; by SCAPCD on July 11, 1989; and by TCAPCD on April 25, 1989. These rules were submitted by the California Air Resources Board to EPA on March 26, 1990 (Tuolumne); December 31, 1990 (Modoc and Siskiyou); and May 13, 1991 (Tehama). These submitted rules were found to be complete on February 28, 1991 (Modoc and Siskiyou), July 10, 1991 (Tehama), and June 20, 1990 (Tuolumne), pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[1] and are being finalized for approval into the SIP. The following are EPA's summary and final action for these rules:

III. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements appears in various EPA policy guidance documents.[2]

MCAPCD Rule 1.2, Definitions, is amended by changing the format of the existing rule, and adding and/or revising several definitions. The following new definitions are: A3, Approved Combustibles; B1, Baseline Air Quality; Date; B3, Bulk Plant; C1, Class I Area; C4, Complete Application; C5, Condensed Fumes; D2, Dusts; F1, Fugitive Emissions; I1, Implement of Husbandry; M1, Multi-Component System; N1, Net Emissions Increases; P2, Permit; P4, PM–10; P5, Portable Source; P6, Process; P9, PSD Permit; R1, Regulation; S3, Significance Level; S4, Source Operation; T1, Total Reduced Sulfur (TRS); and T2, Trade Secrets. Rule 7.1, Definitions (Agricultural Burning), is amended by adding the following new definitions: Permit, Agricultural Burning Guidelines, Wildland Vegetation Management Burning, Prescribed Burning, Sensitive Receptor Area, and Burning Permit. Rule 5.3, Definitions, submitted on July 25, 1973 is being superseded by Rule 7.1.

SCAPCD Rule 7.1, Definitions, is amended to include "alumigel" to the list of approved ignition devices.

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(l)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviation, Clarification to appendix D of November 24, 1987 **Federal Register** document" (Blue Book)(notice of availability was published in the **Federal Register** on May 25, 1988), and the existing control technique guidelines (CTGs).

TCAPCD Rule 1.2, Definitions, is amended by adding the following new definitions: Designated Agency, Garbage, and Volatile Organic Compounds (VOC),

TUCAPCD Rule 101, Title, is being amended for clarity and consistency with the Clean Air Act and 40 CFR part 51. Rule 102, Definitions, is amended by adding the following new definitions: Allowable Emissions, Attainment Pollutant, Baseline Concentration, Best Available Control Technology, Breakdown Condition, Criteria Pollutant, Facility, Federal Land Manager, Fugitive Dust, Lowest Achievable Emission Rate, Major Facility, Major Modification, Modification, Nonattainment Pollutant, Potential to Emit, Precursor, Resource Recovery Facility, Secondary Emissions, Source, and Temporary Source. Regulation III, Open Burning, Rule 300, General Definitions, is a new rule and contains general definitions for terms used or referenced in the district rules. This new rule defines the following terms: (A) Agricultural Operation, (B) Agricultural Wastes, (C) APCD, (D) APCO, (E) Approved Ignition Devices, (F) ARB, (G) Brush Treated, (H) Designated Agency, (I) No-Burn Day, (J) Open Out-Door, (K) Permissive Burn Day, (L) Person, (M) Prescribed Burning, (N) Section, (O) Silviculture, and (P) Timber Operations.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MCAPCD Rule 1.2, Definitions and 7.1, Definitions (Agricultural Burning); SCAPCD Rule 7.1, Agricultural Burning Definitions; TCAPCD Rule 1:2, Definitions; and TUCAPCD Rules 101, Title; 102, Definitions; and Regulation III, Open Burning, Rule 300, General Definitions are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 30, 1999 without further notice unless the Agency receives adverse comments by July 30, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 30, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 8, 1999.

Nora L. McGee,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(179)(i)(G), (182)(i)(F)(*3*) and (G)(*2*), and (184)(i)(F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(179) * * *

(i) * * *

(G) Tuolumne County Air Pollution Control District.

(*1*) Rules 101, 102, and Rule 300, adopted November 22, 1988.

* * * * *

(182) * * *

(i) * * *

(F) * * *

(*3*) Rule 1.2 and Rule 7.1, adopted May 1, 1989.

(G) * * *

(*2*) Rule 7.1, adopted July 11, 1989.

* * * * *

(184) * * *

(i) * * *

(F) Tehama County Air Pollution Control District.

(*1*) Rule 1.2, adopted April 25, 1989.

* * * * *

[FR Doc. 99–16374 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MS9921: FRL–6348–4]

Approval and Promulgation of Air Quality Implementation Plans; Mississippi Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Mississippi that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, D.C., and the Regional Office.

EFFECTIVE DATE: This action is effective June 30, 1999.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303; Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW, Room M1500, Washington, DC 20460; and

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Notarianni at the above Region 4 address or at (404) 562–9031.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions

containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On July 1, 1997, EPA published a document in the **Federal Register** (62 FR 35441) beginning the new IBR procedure for Mississippi. In this document EPA is doing the first update to the material being IBRed. On July 15, 1997, (62 FR 37724) EPA published a direct final approval document approving revisions to the Mississippi SIP for open burning and prevention of signficant deterioration. In that document EPA also updated the Identification of plan section for the Code of Federal Regulations.

In this document EPA is updating the SIP compilation that is incorporated by reference. EPA took notice and public comment on this rulemaking in July 1997. No comments were received and the rule became effective September 15, 1997.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

I. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This action is not subject to E.O. 13045 because it approves a state rule implementing a previously promulgated health or safety-based Federal standard, and preserves the existing level of pollution control for the affected areas.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Mississippi SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 29, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Z—Mississippi

2. Section 52.1270 paragraph (b) is revised to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 1999, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after July 1, 1999, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of July 1, 1999.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; or at the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC. 20460.

* * * * *

[FR Doc. 99–16538 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN—9922; FRL–6367–5]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by the State of Tennessee that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this change have been submitted by the State of Tennessee and approved by EPA. This action will affect the "Identification of plan" sections of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, D.C., and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or State-submitted materials not subject to IBR review remain unchanged.

EFFECTIVE DATE: This action is effective June 30, 1999.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303;

Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW, Room M1500, Washington, DC 20460; and

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steven M. Scofield at the above Region 4 address or at (404) 562–9034.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What is a SIP?
How EPA enforces SIPs.
How the State and EPA update the SIP.
How EPA compiles the SIPs.
How EPA organizes the SIP Compilation.
Where you can find a copy of the SIP Compilation.
The format of the new Identification of Plan Section.
When a SIP revision become federally enforceable.
The historical record of SIP revision approvals.
What EPA is doing in this action.
How this document complies with the Federal Administrative Requirements for rulemaking.

What Is a SIP?

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms.

How EPA Enforces SIPs

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the SIP to EPA.

Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the federally approved SIP and are identified in Part 52 (Approval and Promulgation of Implementation Plans), Title 40 of the Code of Federal Regulations (40 CFR Part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR Part 52, but is "incorporated by reference." This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements the SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

How the State and EPA Update the SIP

The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and OFR.

EPA began the process of developing

1. A revised SIP document for each state that would be incorporated by reference under the provisions of 1 CFR part 51;

2. A revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and

3. A revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures.

The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

How EPA Compiles the SIPs

The federally-approved regulations and source specific permits (entirely or portions of), submitted by each state agency have been compiled by EPA into a "SIP Compilation." The SIP Compilation contains the updated regulations and source specific permits approved by EPA through previous rule making actions in the **Federal Register**. The compilations are contained in 3-ring binders and will be updated, primarily on an annual basis.

How EPA Organizes the SIP Compilation

Each State Compilation contains two parts. Part 1 contains the regulations and Part 2 contains the source specific requirements that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific permit. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for each state. The Regional EPA Offices have the primary responsibility for ensuring accuracy and updating the compilations.

Where You Can Find a Copy of the SIP Compilation

The Region 4 EPA Office developed and will maintain the compilation for the State of Tennessee. A copy of the full text of each State's current compilation will also be maintained at the Office of Federal Register and EPA's Air Docket and Information Center.

The Format of the New Identification of Plan Section

In order to better serve the public, EPA revised the organization of the "Identification of plan" section and included additional information to clarify the enforceable elements of the SIP.

The revised Identification of plan section contains five subsections:

(a) Purpose and scope
(b) Incorporation by reference
(c) EPA approved regulations
(d) EPA approved source specific permits
(e) EPA approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable identification of plan found in each subpart of 40 CFR part 52.

The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA retains the original Identification of Plan section, previously appearing in the CFR as the first or second section of part 52 for each state subpart. After an initial two year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures, and will decide whether or not to retain the Identification of Plan appendices for some further period.

What EPA Is Doing in This Action

Today's rule constitutes a "housekeeping" exercise to ensure that all revisions to the State programs that have occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately

(thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

How This Document Complies With the Federal Administrative Requirements for Rule Making

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled Regulatory Planning and Review.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E. O. 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Tennessee compilation has previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 30, 1999.

A. Stanely Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[Amended]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. Section 52.2220 is redesignated as § 52.2239 and the section heading and paragraph (a) are revised to read as follows:

§ 52.2239 Original identification of plan section.

(a) This section identifies the original "Tennessee Air Pollution Control Implementation Plan" and all revisions submitted by Tennessee that were federally approved prior to December 1, 1998.

* * * * *

3. A new § 52.2220 is added to read as follows:

§ 52.2220 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State implementation plan for Tennessee under section 110 of the Clean Air Act, 42 U.S.C. 7401, and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to December 1, 1998, was approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after December 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; or at the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC. 20460.

(c) EPA approved regulations.

EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	Federal Register Notice
Chapter 1200–3–1 GENERAL PROVISIONS				
Section 1200–3–1–.01	General Rules	02/09/77	03/29/85	50 FR 12540.
Section 1200–3–1–.02	Severability	10/12/79	06/24/82	47 FR 27267.
Chapter 1200–3–2 DEFINITIONS				
Section 1200–3–2–.01	General Definitions	08/01/90	04/18/94	59 FR 18310.
Section 1200–3–2–.02	Abbreviations	02/09/77	03/29/85	50 FR 12540.
Chapter 1200–3–3 AIR QUALITY STANDARDS				
Section 1200–3–3–.01	Primary Air Quality Standards	02/09/77	03/29/85	50 FR 12540.
Section 1200–3–3–.02	Secondary Air Quality Standards	02/09/77	03/29/85	50 FR 12540.
Section 1200–3–3–.03	Tennessee's Ambient Air Quality Standards	12/05/84	03/29/85	50 FR 12539.
Section 1200–3–3–.04	Nondegradation	02/09/77	03/29/85	50 FR 12540.
Section 1200–3–3–.05	Achievement	08/02/83	04/07/93	58 FR 18011.
Chapter 1200–3–4 OPEN BURNING				
Section 1200–3–4–.01	Purpose	02/09/77	03/29/85	50 FR 12540.
Section 1200–3–4–.02	Open Burning Prohibited	03/21/79	06/24/82	47 FR 27268.
Section 1200–3–4–.03	Exceptions to Prohibition	02/09/77	03/29/85	50 FR 12540.
Section 1200–3–4–.04	Permits for Open Burning	06/21/79	06/24/82	47 FR 27268.
Chapter 1200–3–5 VISIBLE EMISSION REGULATIONS				
Section 1200–3–5–.01	General Standards	06/07/92	08/15/97	62 FR 43643.
Section 1200–3–5–.02	Exceptions	06/07/92	08/15/97	62 FR 43643.
Section 1200–3–5–.03	Method of Evaluating and Recording	06/07/92	08/15/97	62 FR 43643.
Section 1200–3–5–.04	Exemption	06/07/92	08/15/97	62 FR 43643.

EPA APPROVED TENNESSEE REGULATIONS—Continued

State citation	Title/subject	Adoption date	EPA approval date	Federal Register Notice
Section 1200–3–5–.05	Standard for Certain Existing Sources	06/07/92	08/15/97	62 FR 43643.
Section 1200–3–5–.06	Wood-Fired Fuel Burning Equipment	06/07/92	08/15/97	62 FR 43643.
Section 1200–3–5–.07	Repealed	06/07/92	08/15/97	62 FR 43643.
Section 1200–3–5–.08	Titanium Dioxide (TiO_2) Manufacturing	06/07/92	08/15/97	62 FR 43643.
Section 1200–3–5–.09	Kraft Mill Recovery Furnaces	06/07/92	08/15/97	62 FR 43643.
Section 1200–3–5–.10	Choice of Visible Emission Standard for Certain Fuel Burning Equipment.	06/07/92	08/15/97	62 FR 43643.
Section 1200–3–5–.11	Soda Recovery Boilers	06/07/92	08/15/97	62 FR 43643.
Section 1200–3–5–.12	Coke Battery Underfire (combustion) Stacks	06/07/92	08/15/97	62 FR 43643.
Chapter 1200–3–6 NON-PROCESS EMISSION STANDARDS				
Section 1200–3–6–.01	General Non-Process Emissions	06/21/79	06/24/82	47 FR 27268.
Section 1200–3–6–.02	Non-Process Particulate Emission Standards	09/08/80	06/24/82	47 FR 27268.
Section 1200–3–6–.03	General Non-Process Gaseous Emissions	06/21/79	06/24/82	47 FR 27268.
Section 1200–3–6–.04	(Deleted)	06/21/79	06/24/82	47 FR 27268.
Section 1200–3–6–.05	Wood-Fired Fuel Burning Equipment	05/30/87	11/23/88	53 FR 47530.
Chapter 1200–3–7 PROCESS EMISSION STANDARDS				
Section 1200–3–7–.01	General Process Particulate Emission Standards	03/02/79	06/24/82	47 FR 27269.
Section 1200–3–7–.02	Choice of Particulate Emission Standards—Existing Process	04/12/78	06/07/79	44 FR 32681.
Section 1200–3–7–.03	New Processes	06/21/79	06/24/82	47 FR 27269.
Section 1200–3–7–.04	Limiting Allowable Emissions	03/21/79	06/07/79	44 FR 32681.
Section 1200–3–7–.05	Specific Process Emission Standards	06/07/74	06/07/79	44 FR 32681.
Section 1200–3–7–.06	Standards of Performance for New Stationary Sources	06/07/74	06/07/79	44 FR 32681.
Section 1200–3–7–.07	General Provisions and Applicability for Process Gaseous Emission Standards.	01/22/82	06/12/96	61 FR 29666.
Section 1200–3–7–.08	Specific Process Emission Standards	09/22/80	01/31/96	61 FR 3318.
Section 1200–3–7–.09	Sulfuric Acid Mist	02/09/77	03/29/85	50 FR 12540.
Section 1200–3–7–.10	Grain Loading Limit for Certain Existing Sources	03/21/79	06/24/82	47 FR 27269.
Section 1200–3–7–.11	Carbon Monoxide, Electric Arc Furnaces	10/25/79	06/24/82	47 FR 27267.
Section 1200–3–7–.12	Carbon Monoxide, Catalytic Cracking Units	01/22/82	06/21/82	47 FR 26621.
Chapter 1200–3–8 FUGITIVE DUST				
Section 1200–3–8–.01	Fugitive Dust	07/11/80	06/24/82	47 FR 27269.
Section 1200–3–8–.02	Special Nonattainment Area Fugitive Dust Requirements	03/21/79	06/24/82	47 FR 27269
Chapter 1200–3–9 CONSTRUCTION AND OPERATING PERMITS				
Section 1200–3–9–.01	Construction Permits	12/28/96	07/29/97	62 FR 40458.
Section 1200–3–9–.02	Operating Permits	09/21/94	02/13/97	62 FR 6724.
Section 1200–3–9–.03	General Provisions	02/09/77	03/29/85	50 FR 12540.
Section 1200–3–9–.04	Exemptions	02/09/77	03/29/85	50 FR 12540.
Section 1200–3–9–.05	Appeal of Permit Application Denials and Permit Conditions	11/16/79	06/24/82	47 FR 27269.
Chapter 1200–3–10 REQUIRED SAMPLING, RECORDING, AND REPORTING				
Section 1200–3–10–.01	Sampling Required to Establish Contaminant Emission Levels	12/14/81	03/19/96	61 FR 11136.
Section 1200–3–10–.02	Monitoring of Source Emissions, Recording, Reporting of the Same are Required.	12/14/81	03/19/96	61 FR 11136.
Chapter 1200–3–12 METHODS OF SAMPLING AND ANALYSIS				
Section 1200–3–12–.01	General	02/09/77	03/29/85	50 FR 12540.
Section 1200–3–12–.02	Procedures for Ambient Sampling and Analysis	01/18/80	06/24/82	47 FR 27270.
Section 1200–3–12–.03	Source Sampling and Analysis	08/01/84	03/29/85	50 FR 12539.
Section 1200–3–12–.04	Monitoring Required for Determining Compliance of Certain Large Sources.	12/13/82	07/27/84	49 FR 30177.
Chapter 1200–3–13 VIOLATIONS				
Section 1200–3–13–.01	Violation Statement	06/07/74	06/07/79	44 FR 32681.
Chapter 1200–3–14 CONTROL OF SULFUR DIOXIDE EMISSIONS				
Section 1200–3–14–.01	General Provisions	08/01/84	04/07/93	58 FR 18011.
Section 1200–3–14–.02	Non-Process Emission Standards	08/01/84	04/07/93	58 FR 18011.
Section 1200–3–14–.03	rocess Emission Standards	03/21/93	03/19/96	61 FR 11136.

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State citation	Title/subject	Adoption date	EPA approval date	Federal Register Notice
Chapter 1200–3–15 EMERGENCY EPISODE REQUIREMENTS				
Section 1200–3–15–.01	Purpose	02/09/77	03/29/85	50 FR 12540.
Section 1200–3–15–.02	Episode Criteria	06/26/93	09/15/94	59 FR 47256.
Section 1200–3–15–.03	Required Emissions Reductions	05/15/81	06/24/82	47 FR 27267.
Chapter 1200–3–18 VOLATILE ORGANIC COMPOUNDS				
Section 1200–3–18–.01	Definitions	06/03/96	08/27/96	61 FR 43972.
Section 1200–3–18–.02	General Provisions and Applicability	02/23/96	07/18/96	61 FR 37387.
Section 1200–3–18–.03	Compliance Certification, Recordkeeping, and Reporting Requirements for Coating and Printing Sources.	02/08/96	07/18/96	61 FR 37387.
Section 1200–3–18–.04	Compliance Certification, Recordkeeping, and Reporting Requirements for Non-Coating and Non-Printing Sources.	02/08/96	07/18/96	61 FR 37387.
Section 1200–3–18–.05	(Reserved)	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.06	Handling, Storage, Use, and Disposal of Volatile Organic Compounds (VOC).	06/04/96	08/27/96	61 FR 43972.
Section 1200–3–18–.07	Source-Specific Compliance Schedules	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.08	(Reserved)	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.09	(Reserved)	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.10	(Reserved)	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.11	Atomobile and Light-Duty Truck Coating Operations	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.12	Can Coating	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.13	Coil Coating	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.14	Paper and Related Coating	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.15	Fabric Coating	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.16	Vinyl Coating	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.17	Coating of Metal Furniture	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.18	Coating of Large Appliances	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.19	Coating of Magnet Wire	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.20	Coating of Miscellaneous Metal Parts	02/08/96	07/18/96	61 FR 37387.
Section 1200–3–18–.21	Coating of Flat Wood Paneling	02/08/96	07/18/96	61 FR 37387.
Section 1200–3–18–.22	Bulk Gasoline Plants	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.23	Bulk Gasoline Terminals	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.24	Gasoline Dispensing Facility—Stage I and Stage II Vapor Recovery.	06/03/96	04/14/97	62 FR 18046.
Section 1200–3–18–.25	Leaks from Gasoline Tank Trucks	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.26	Petroleum Refinery Sources	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.27	Leaks from Petroleum Refinery Equipment	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.28	Petroleum Liquid Storage in External Floating Roof Tanks	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.29	Petroleum Liquid Storage in Fixed Roof Tanks	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.30	Leaks from Natural Gas/Gasoline Processing Equipment	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.31	Solvent Metal Cleaning	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.32	Cutback and Emulsified Asphalt	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.33	Manufacture of Synthesized Pharaceutical Products	02/21/95	07/18/96	61 FR 37387.
Section 1200–3–18–.34	Pneumatic Rubber Tire Manufacturing	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.35	Graphic Arts Systems	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.36	Petroleum Solvent Dry Cleaners	02/08/96	07/18/96	61 FR 37387.
Section 1200–3–18–.37	(Reserved)	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.38	Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment.	02/08/96	07/18/96	61 FR 37387.
Section 1200–3–18–.39	Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.	05/08/97	07/29/97	62 FR 40458.
Section 1200–3–18–.40	Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry.	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.41	(Reserved)	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.42	Wood Furniture Finishing and Cleaning Operations	04/25/96	07/18/96	61 FR 37387.
Section 1200–3–18–.43	Offset Lithographic Printing Operations	04/22/96	07/18/96	61 FR 37387.
Section 1200–3–18–.44	Surface Coating of Plastic Parts	06/03/96	08/27/96	61 FR 43972.
Section 1200–3–18–.45	Standards of Performance for Commercial Motor Vehicle and Mobile Equipment Refinishing Operations.	06/03/96	08/27/96	61 FR 43972.
Section 1200–3–18–.48	Volatile Organic Liquid Storage Tanks	06/03/96	08/27/96	61 FR 43972.
Sections 1200–3–18–.49–.77	(Reserved)	05/18/93	02/27/95	60 FR 10504.
Section 1200–3–18–.78	Other Facilities That Emit Volatile Organic Compounds (VOC's) of Fifty Tons Per Year.	02/08/96	07/18/96	61 FR 37387.
Section 1200–3–18–.79	Other Facilities That Emit Volatile Organic Compounds (VOC's) of One Hundred Tons Per Year.	02/08/96	07/18/96	61 FR 37387
Section 1200–3–18–.80	Test Methods and Compliance Procedures: General Provisions.	05/18/93	02/27/95	60 FR 10504
Section 1200–3–18–.81	Test Methods and Compliance Procedures: Determining the Volatile Organic Compound (VOC) Content of Coatings and Inks.	05/08/97	07/29/97	62 FR 40458

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State citation	Title/subject	Adoption date	EPA approval date	Federal Register Notice
Section 1200–3–18–.82	Test Methods and Compliance Procedures: Alternative Compliance Methods for Surface Coating.	05/18/93	02/27/95	60 FR 10504
Section 1200–3–18–.83	Test Methods and Compliance Procedures: Emission Capture and Destruction or Removal Efficiency and Monitoring Requirements.	05/18/93	02/27/95	60 FR 10504
Section 1200–3–18–.84	Test Methods and Compliance Procedures: Determining the Destruction or Removal Efficiency of a Control Device.	05/18/93	02/27/95	60 FR 10504
Section 1200–3–18–.85	Test Methods and Compliance Procedures: Leak Detection Methods for Volatile Organic Compounds (VOC's).	05/18/93	02/27/95	60 FR 10504
Section 1200–3–18–.86	Performance Specifications for Continuous Emission Monitoring of Total Hydrocarbons.	06/03/96	04/14/97	62 FR 18046
Section 1200–3–18–.87	Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS).	05/18/93	02/27/95	60 FR 10504
Section 1200–3–18–.88–.99	(Reserved)	05/18/93	02/27/95	60 FR 10504
Chapter 1200–3–19 EMISSION STANDARDS AND MONITORING REQUIREMENTS FOR PARTICULATE AND SULFUR DIOXIDE NONATTAINMENT AREAS				
Section 1200–3–19–.01	Purpose	04/30/96	07/30/97	62 FR 40734
Section 1200–3–19–.02	General Requirements	04/30/96	07/30/97	62 FR 40734
Section 1200–3–19–.03	Particulate and Sulfur Dioxide Nonattainment Areas within Tennessee.	04/30/96	07/30/97	62 FR 40734
Section 1200–3–19–.04	(Reserved)	04/30/96	07/30/97	62 FR 40734
Section 1200–3–19–.05	Operating Permits and Emission Limiting Conditions	04/30/96	07/30/97	62 FR 40734
Section 1200–3–19–.06	Logs for Operating Hours	04/30/96	07/30/97	62 FR 40734
Section 1200–3–19–.07–.10	(Reserved)	04/30/96	07/30/97	62 FR 40734
Section 1200–3–19–.11	Particulate Matter Emission Regulations for the Bristol Nonattainment Area.	04/30/96	07/30/97	62 FR 40734
Section 1200–3–19–.12	Particulate Matter Emission Regulations for Air Contaminant Sources in or Significantly Impacting the Particulate Nonattainment Areas in Campbell County.	04/30/96	07/30/97	62 FR 40734
Section 1200–3–19–.13	Particulate Emission Regulations for the Bull Run Nonattainment Area and Odoms Bend Nonattainment Area.	04/30/96	07/30/97	62 FR 40734.
Section 1200–3–19–.14	Sulfur Dioxide Emission Regulations for the New Johnsonville Nonattainment Area.	04/30/96	07/30/97	62 FR 40734.
Section 1200–3–19–.15	Particulate Matter Monitoring Requirements for Steam Electric Generating Units in the Bull Run and Odoms Bend Nonattainment Areas.	04/30/96	07/30/97	62 FR 40734.
Section 1200–3–19–.16–.18	(Reserved)	04/30/96	07/30/97	62 FR 40734.
Section 1200–3–19–.19	Sulfur Dioxide Regulations for the Copper Basin Nonattainment Area.	04/30/96	07/30/97	62 FR 40734.
Chapter 1200–3–20 LIMITS ON EMISSIONS DUE TO MALFUNCTIONS, START–UPS, AND SHUTDOWNS				
Section 1200–3–20–.01	Purpose	02/13/79	02/06/80	45 FR 8004.
Section 1200–3–20–.02	Reasonable Measures Required	02/13/79	02/06/80	45 FR 8004.
Section 1200–3–20–.03	Notice Required When Malfunction Occurs	12/09/81	06/24/82	47 FR 27272.
Section 1200–3–20–.04	Logs and Reports	02/13/79	02/06/80	45 FR 8004.
Section 1200–3–20–.05	Copies of Log Required	02/13/79	02/06/80	45 FR 8004.
Section 1200–3–20–.06	Scheduled Maintenance	02/13/79	02/06/80	45 FR 8004.
Section 1200–3–20–.07	Report Required Upon The Issuance of Notice of Violation	02/13/79	02/06/80	45 FR 8004.
Section 1200–3–20–.08	Special Reports Required	02/13/79	02/06/80	45 FR 8004.
Section 1200–3–20–.09	Rights Reserved	02/13/79	02/06/80	45 FR 8004.
Section 1200–3–20–.10	Additional Sources Covered	11/23/79	06/24/82	47 FR 27272.
Chapter 1200–3–21 GENERAL ALTERNATE EMISSION STANDARD				
Section 1200–3–21–.01	General Alternate Emission Standard	01/22/82	06/24/82	47 FR 27272.
Section 1200–3–21–.02	Applicability	03/22/93	04/18/94	59 FR 18310.
Chapter 1200–3–22 LEAD EMISSION STANDARDS				
Section 1200–3–22–.01	Definitions	03/18/85	08/12/85	50 FR 32412.
Section 1200–3–22–.02	General Lead Emission Standards	12/05/84	08/12/85	50 FR 32412.
Section 1200–3–22–.03	Specific Emission Standards for Existing Sources of Lead	12/05/84	08/12/85	50 FR 32412.
Section 1200–3–22–.04	Standards for New and Modified Sources of Lead	12/05/84	08/12/85	50 FR 32412.
Section 1200–3–22–.05	Source Sampling and Analysis	12/05/84	08/12/85	50 FR 32412.
Section 1200–3–22–.06	Lead Ambient Monitoring Requirements	12/05/84	08/12/85	50 FR 32412.
Chapter 1200–3–23 VISIBILITY PROTECTION				
Section 1200–3–23–.01	Purpose	12/19/94	07/02/97	62 FR 35681.

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State citation	Title/subject	Adoption date	EPA approval date	Federal Register Notice
Section 1200–3–23–.02	Definitions	12/19/94	07/02/97	62 FR 35681.
Section 1200–3–23–.03	General Visibility Protection Standards	12/19/94	07/02/97	62 FR 35681.
Section 1200–3–23–.04	Specific Emission Standards for Existing Stationary Facilities	12/19/94	07/02/97	62 FR 35681.
Section 1200–3–23–.05	Specific Emission Standards for Existing Sources	12/19/94	07/02/97	62 FR 35681.
Section 1200–3–23–.06	Visibility Standards for New and Modified Sources	12/19/94	07/02/97	62 FR 35681.
Section 1200–3–23–.07	Visibility Monitoring Requirements	12/19/94	07/02/97	62 FR 35681.
Section 1200–3–23–.08	Exemptions from BART Requirements	12/19/94	07/02/97	62 FR 35681.
Chapter 1200–3–24 GOOD ENGINEERING PRACTICE STACK HEIGHT REGULATIONS				
Section 1200–3–24–.01	General Provisions	08/18/86	10/19/88	53 FR 40881.
Section 1200–3–24–.02	Definitions	08/18/86	10/19/88	53 FR 40881.
Section 1200–3–24–.03	Good Engineering Practice Stack Height Regulations Standards.	08/18/86	10/19/88	53 FR 40881.
Section 1200–3–24–.04	Specific Emission Standards	08/18/86	10/19/88	53 FR 40881.
Chapter 1200–3–27 NITROGEN OXIDES				
Section 1200–3–27–.01	Definitions	06/14/93	07/29/96	61 FR 39326.
Section 1200–3–27–.02	General Provisions and Applicability	04/29/96	07/29/96	61 FR 39326.
Section 1200–3–27–.03	Standards and Requirements	04/29/96	07/29/96	61 FR 39326.
Chapter 1200–3–29 LIGHT-DUTY MOTOR VEHICLE INSPECTION AND MAINTENANCE				
Section 1200–3–29–.01	Purpose	07/08/94	07/28/95	60 FR 38694.
Section 1200–3–29–.02	Definitions	07/08/94	07/28/95	60 FR 38694.
Section 1200–3–29–.03	Motor Vehicle Inspection Requirements	07/08/94	07/28/95	60 FR 38694.
Section 1200–3–29–.04	Exemption From Motor Vehicle Inspection Requirements	07/08/94	07/28/95	60 FR 38694.
Section 1200–3–29–.05	Motor Vehicle Emission Performance Test Criteria	07/08/94	07/28/95	60 FR 38694.
Section 1200–3–29–.06	Motor Vehicle Anti-Tampering Test Criteria	07/08/94	07/28/95	60 FR 38694.
Section 1200–3–29–.07	Motor Vehicle Emissions Performance Test Methods	07/08/94	07/28/95	60 FR 38694.
Section 1200–3–29–.08	Motor Vehicle Anti-Tampering Test Methods	07/08/94	07/28/95	60 FR 38694.
Section 1200–3–29–.09	Motor Vehicle Inspection Program	07/08/94	07/28/95	60 FR 38694.
Section 1200–3–29–.10	Motor Vehicle Inspection Fee	07/08/94	07/28/95	60 FR 38694.

(d) EPA-approved State Source-specific requirements.

EPA-APPROVED TENNESSEE SOURCE-SPECIFIC REQUIREMENTS

Name of Source	Permit No.	State effective date	EPA approval date	Explanation
Revised Permits for the Kingsport Particulate Nonattainment Area	n/a	05/10/82	12/07/82 ..... 47 FR 54936	various permits.
Union Carbide, Tennessee Eastman Company	n/a, 011397P	12/30/86	06/16/87 ..... 52 FR 22778	
Murray Ohio Manufacturing Company	n/a	12/30/86	12/10/87 ..... 52 FR 46764	
Tennessee Eastman Company	n/a	01/06/88	10/12/88 ..... 53 FR 39742.	
Variance for Averaging Times for VOC Emission	n/a	01/06/88	06/23/88 ..... 53 FR 23624	5 sources.
Avco Aerostructures	n/a	02/25/88	01/23/89 ..... 54 FR 3031	
Miscellaneous Metal Parts	n/a	05/16/89	06/28/89 ..... 54 FR 27164	14 sources.
Nissan Manufacturing Corporation	n/a	04/29/91	09/09/91 ..... 56 FR 45896	
Tenneco Energy	045022F, 045025F.	05/31/96	07/24/96 ..... 61 FR 38391	
Brunswick Marine Corporation	044881P, 045012P, 045013P.	05/31/96	07/21/97 ..... 62 FR 38909.	

(e) [Reserved]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MI73–7281a; FRL–6366–5]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule

SUMMARY: The Environmental Protection Agency (EPA) is approving the State of Michigan's request to redesignate the Detroit area, which includes portions of Wayne, Oakland, and Macomb Counties, to attainment for carbon monoxide (CO). The EPA is also approving the corresponding 175A maintenance plan associated with the redesignation request as a revision to the Michigan State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standard (NAAQS) for CO.

DATES: This action is effective August 30, 1999, without further notice, unless EPA receives adverse comment by July 30, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Mooney at (312) 886–6043 before visiting the Region 5 Office.)

A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: John M. Mooney, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6043.

I. Supplementary Information

This Supplementary Information section is organized as follows:

A. Redesignation
1. Background
2. Evaluation Criteria
3. Review of State Submittal
a. Attainment of the CO NAAQS
b. Meeting Applicable Requirements of Section 110 and Part D
i. Section 110 Requirements
ii. Part D Requirements
I. Subpart 1 of Part D—Section 172(c) Provisions
II. Subpart 1 of Part D—Section 176 Conformity Provisions
III. Subpart 3 Requirements
c. Fully Approved SIP Under Section 110(k) of the Act
d. Improvement in Air Quality Due to Permanent and Enforceable Measures.
e. Fully Approved Maintenance Plan Under Section 175A
i. Emissions Inventory—Base Year Inventory
ii. Demonstration of Maintenance—Projected Inventories
iii. Verification of Continued Attainment
iv. Contingency Plan
v. Commitment to Submit Subsequent Maintenance Plan Revisions
B. Final Action

A. Redesignation

Under the Clean Air Act (Act), EPA may redesignate areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3) of the Act. On March 18, 1999, the State of Michigan submitted a redesignation request and section 175A maintenance plan for the Detroit CO nonattainment area. Once approved, the section 175A maintenance plan becomes a federally enforceable part of the SIP for the Detroit area.

A detailed analysis of the Detroit Redesignation Request and section 175A Maintenance Plan SIP submittal for the Detroit area is contained in the EPA's Technical Support Document (TSD), dated May 26, 1999 from John Mooney to the Docket, entitled "Technical Review of Michigan's State Implementation Plan Revision for the Detroit Carbon Monoxide Nonattainment Area," which is available from the Region 5 office listed above.

1. Background

EPA designated the Detroit area as a CO nonattainment area under section 107 of the 1977 Act on March 3, 1978 (43 FR 8962). The Clean Air Act Amendments of 1990 (1990 Act) authorizes EPA to designate nonattainment areas according to degree of severity of the nonattainment problem. On November 6, 1991 (56 FR 56694), the EPA designated the Detroit area as a CO nonattainment area. At the time of the designation, air quality monitoring data recorded in the area did not show violations of the CO NAAQS, however, the State had not completed a redesignation request showing that it had complied with the requirements of section 107 of the Act. As a result, EPA designated the area as nonattainment, but did not establish a nonattainment classification. The preamble for the original designation contains more detail on this action (56 FR 56694).

Since the EPA's 1991 designation, monitors in the Detroit area have demonstrated attainment of the CO NAAQS, except for a single violation of the CO standard at one monitor in the area during 1994. From 1994 to the present, monitors in the area have continued to show attainment. As a result, the area is eligible for redesignation from nonattainment to attainment consistent with the 1990 Act. On March 18, 1999, the State of Michigan submitted a SIP revision to the EPA containing the redesignation request and maintenance plan to ensure continued attainment of the CO standard for the Detroit area. The State also included materials from the public hearing on the request which it held in Detroit on February 10, 1999.

2. Evaluation Criteria

The Amended Act revised section 107(d)(3)(E) to provide five specific requirements that an area must meet to be redesignated from nonattainment to attainment. These requirements are:

1. The area has attained the applicable NAAQS;
2. The area has met all relevant requirements under section 110 and part D of the Act;
3. The area has a fully approved SIP under section 110(k) of the Act;
4. The air quality improvement is permanent and enforceable;
5. The area has a fully approved maintenance plan pursuant to section 175A of the Act.

3. Review of State Submittal

The EPA has reviewed the Michigan redesignation request for the Detroit area and finds that the area meets meet the five requirements of section 107(d)(3)(E). EPA's Redesignation/Maintenance Plan technical support document (TSD) contains a more in-depth analysis of the submittal with respect to certain of these evaluation criteria.

a. Attainment of the CO NAAQS

The Michigan request is based on an analysis of quality-assured CO air

quality data. Ambient air monitoring data for calendar years 1997 through calendar year 1998 show no violations of the CO NAAQS (40 CFR 50.8) in the Detroit area. The State collected this data in an EPA approved, quality assured, National Air Monitoring System monitoring network.

As discussed in the State's redesignation submittal, the CO monitor located on Evergreen Road that recorded the 1994 CO violation has had a history of being vandalized. The State discontinued monitoring at the site after a fire at the site on December 14, 1996. The MDEQ and the Wayne County Department of the Environment established a new monitor at a nearby location on February 7, 1997. At the temporary location, there was a period where the environmental conditions in the monitoring shed exceeded EPA recommendations, requiring that the data recorded during that period be flagged in EPA's Aerometric Information Retrieval System (AIRS). Even though the data was flagged for 2 quarters, the monitor did not record any exceedances of the CO standard during that time. Further, the monitor did not record any exceedances over the next seven quarters, to date, when the State collected valid data at the site. The EPA has reviewed the State's actions to establish the new monitor, as well as the action to discontinue monitoring at the Evergreen Road monitoring site, and believes that the actions that the State took were appropriate. Since this was a new monitor, the lack of complete, quality assured data collected during the startup period for the monitor does not affect the area's ability to demonstrate attainment of the CO NAAQS. EPA sent a letter to the State noting the acceptability of the changes to their CO monitoring network in the area on May 11, 1999.

All other monitors in the Detroit nonattainment area show attainment of the CO NAAQS during the 1997–1998 calendar years, in accordance with EPA's quality assurance and data completeness requirements.

As a result, the area meets the first statutory criterion for redesignation to attainment of the CO NAAQS. The State has committed to continue monitoring in this area in accordance with 40 CFR part 58. (If, however, complete quality assured data show violations of the CO NAAQS before the final EPA action on this redesignation, the EPA will disapprove the redesignation request).

b. Meeting Applicable Requirements of Section 110 and Part D

On May 6, 1980 (45 FR 29801) and February 7, 1985 (50 FR 5250), EPA fully approved Michigan's SIP for the Detroit area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act for CO. The 1990 Act, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, in addition to complying with requirements of the 1977 Act, for purposes of redesignation, the Michigan SIP must satisfy all applicable requirements of section 110(a)(2) and part D added by the 1990 amendments. EPA has reviewed the SIP to ensure that it contains all measures that were due under the amended 1990 Act prior to or at the time Michigan submitted its redesignation request for the Detroit area.

i. Section 110 Requirements

The Detroit area SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. The EPA has analyzed the Michigan SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

ii. Part D Requirements

Before EPA may redesignate the Detroit area to attainment, the SIP must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 3 of part D establishes additional requirements for CO nonattainment areas classified under section 186 of the Act. As described in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," specific requirements of subpart 3 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). However, as noted in the General Preamble, the subpart 3 requirements do not apply to "not classified" CO nonattainment areas (57 FR 13535). EPA designated the Detroit area as a "not classified" CO nonattainment area (56 FR 56694, November 6, 1991), codified at 40 CFR 81.323. Therefore, to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, but not the requirements of subpart 3 of part D.

I. Subpart 1 of Part D—Section 172(c) Provisions

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years from the date of the nonattainment designation. As discussed below, Michigan has satisfied the section 172(c) requirements.

(A) RFP is defined as progress that a nonattainment area must make each year toward attainment of the NAAQS. This requirement only has relevance during the time it takes an area to attain the NAAQS. Because the Detroit area has attained the NAAQS, its SIP has already achieved the necessary RFP toward that goal.

(B) In addition, because the Detroit area has attained the NAAQS and is no longer subject to an RFP requirement, the section 172(c)(9) contingency measures are not applicable unless EPA does not approve the redesignation request and maintenance plan. However, section 175A contingency measures still apply.

(C) Similarly, once EPA redesignates an area to attainment, nonattainment new source review (NSR) requirements are not generally applicable. The area then becomes subject to prevention of significant deterioration (PSD) requirements instead of the NSR program (45 FR 29790). The State has a valid program for review of new sources (45 FR 29790, May 6, 1980). EPA delegated the PSD program to the State of Michigan on September 10, 1979 and amended it on November 7, 1983 and September 26, 1988. Moreover, the EPA believes that the applicability of the part C PSD program to maintenance areas makes it unnecessary for an area to have obtained full approval of the NSR revisions required by part D to be redesignated.

(D) The State met the 172(c) requirement for an emissions inventory by submitting the 1990 base year emission inventory which EPA approved on April 7, 1995 (60 FR 12495).

(E) No additional Reasonably Available Control Measures (RACM) controls beyond what may already be required in the SIP are necessary upon redesignation to attainment. The General Preamble (57 FR 13560, April 16, 1992) explains that section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable. The EPA interprets this requirement to impose a duty on all

nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the areas attainment demonstration. Because the area has reached attainment, no additional measures are needed to provide for attainment.

(F) For purposes of redesignation, EPA reviewed the Michigan SIP to ensure that it satisfied all requirements of section 110(a)(2) of the Act, which contains general SIP elements. Title 40 CFR section 52.1172, states that, with several exceptions, EPA approved the Michigan SIP under section 110 of the Act and further found that it satisfied all Part D, Title I (as amended in 1977) requirements on May 6, 1980 (45 FR 29801).

II. Subpart 1 of Part D—Section 176 Conformity Provisions

Section 176(c) of the Act requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federally supported or funded projects ("general conformity"). Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the Act required the EPA to promulgate. EPA approved Michigan's general conformity rule on December 18, 1996 (61 FR 66607).

The EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under Section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment, since such areas would be subject to a Section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of federally approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet approved, the EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. Consequently, EPA may approve the CO redesignation request for the Detroit area notwithstanding the lack of a fully approved conformity SIP.

Included in the March 18, 1999 submittal is a commitment by the State to satisfy the applicable requirements of the final transportation conformity rules. This is acceptable since the transportation conformity rule applies to maintenance areas.

For purposes of transportation conformity, the control measures in the maintenance plan establish an emissions budget. The State has defined this budget for year 2010 as 5,453,417 lbs. per day of CO for onroad mobile sources, as noted in their April 29, 1999 letter to the EPA. This level of emissions provides for continued maintenance of the CO standard.

III. Subpart 3 Requirements

As noted in the General Preamble, the subpart 3 requirements do not apply to "not classified" CO nonattainment areas (57 FR 13535). EPA designated the Detroit area as a not classified CO nonattainment area on November 6, 1991 (56 FR 56694) codified at 40 CFR 81.323. Therefore, to be redesignated to attainment, the State does not have to meet the requirements of subpart 3 of part D.

c. Fully Approved SIP Under Section 110(k) of the Act

As noted above, because the area is a non classified nonattainment area, the 1990 Act did not establish additional requirements under subpart 3 of the Act. Prior to the 1990 Amendments, EPA had fully approved the State's CO SIP. Since the area is not subject to the subpart 3 requirements, no additional requirements exist under section 110(k) which the State must address prior to redesignation.

d. Improvement in Air Quality Due to Permanent and Enforceable Measures

The State must demonstrate that the actual enforceable emission reductions are responsible for the recent improvement in air quality. The State may make this demonstration through an estimate of the percent reduction (from the year that it used to determine the design value for designation and classification) achieved through Federal measures such as the Federal Motor Vehicle Control Program (FMVCP) and fuel volatility rules, as well as other control measures that the State has adopted and implemented.

The State provided a detailed discussion of the emission reductions of CO between 1986 and 1996 which were responsible for the improvement in air quality. All emission estimates were made using EPA approved emissions inventory techniques.

Consistent with emission inventory guidance, the 1986 base year emission inventory represents 1986 average winter day *actual emissions* for the Detroit area. These 1986 base year emissions were calculated from a 1990 base year inventory that EPA approved on April 7, 1995 (60 FR 12459). The State also projected the 1990 inventory to 1996, to determine the emission reductions during the 10-year time period. The State based its projections on growth factors developed by the Southeast Michigan Council of Governments (SEMCOG) and the Michigan Department of Environmental Quality (MDEQ).

On road mobile sources represent the majority of mobile source emissions in the Detroit-Ann Arbor CO nonattainment area. The State used the Federal highway administration (FHWA) highway performance monitoring system (HPMS) method to develop traffic counts for 1996 vehicle miles traveled (VMT). The VMT, adjusted for seasonal and temporal effects, reflects a typical winter weekday. The State projected the VMT for 1986 and 2010 using SEMCOG's validated travel model. This travel model was calibrated with HPMS VMT data. Michigan developed on road travel speeds for mobile sources using SEMCOG's 1992 regional speed survey. MDEQ generated mobile source emission factors with EPA's MOBILE5a model. Attachment 1 of the State's submittal provides additional detail on significant MOBILE5a model input parameters and methods of mobile source emissions estimation.

MDEQ developed 1996 non-road mobile source emissions estimates for aircraft and railroads. MDOT provided aircraft and railroad activity data for the Detroit-Ann Arbor area. MDEQ obtained aircraft and railroad emission factors from EPA's *Procedure for Emissions Inventory Preparation, Volume IV: Mobile Sources*. MDOT provided forecast growth factors for the 1986 and 2010 aircraft emissions projections. SEMCOG provided growth factors for 1986 and 2010 railroad emissions projections. MDEQ used EPA's NONROAD emissions model to estimate 1986, 1996, and 2010 emissions for the remaining non-road sources.

The MDEQ included actual emissions for 1996 point sources. The MDEQ used 1996 actual activity levels, emissions factors based on the EPA Factor Information Retrieval System Version 6.1B, and control technology effectiveness to estimate emissions. The

1996 emissions were adjusted to account for seasonal fluctuations. The MDEQ projected point source emissions for years 1986 and 2010 by applying energy consumption, source activity, and economic growth factor to the 1996 point source inventory.

The State developed area source emissions estimates for stationary sources emitting less than 100 tons of CO per year and for combustion sources. The stationary sources include residential, commercial, and industrial boilers which burn fossil fuels. Combustion sources include open burning or incineration from forest, agriculture, or structural fires. MDEQ developed activity levels from State and local information. MDEQ used EPA's *Compilation of Air Pollutant Emission Factors, Volume 1: Point and Area Source AP42* to generate emission factors for area sources. The MDEQ projected area source emissions for years 1986 and 2010 by applying energy consumption, source activity, and economic growth factors.

The following tables present the CO emissions for 1986 and 1996 and emission reductions from 1986 to 1996. The State claimed credit for emission reductions achieved by implementing the federally enforceable FMVCP.

As illustrated by the tables and discussed in the TSD, the total reductions achieved from 1986 to 1996 are 1,822,739 lbs. of CO per day.

TABLE 1.—CO EMISSION INVENTORY SUMMARY FOR DEMONSTRATION OF EMISSION REDUCTIONS FROM 1986–1996

[lbs. per day]

Category	1986	1996	Net change1986–1996
Point	564,657	257,359	–307,298
Area	248,194	259,459	+11,265
Non-Road Mobile	434,619	465,913	+31,294
On-Road Mobile	7,058,000	5,500,000	–1,558,000
Total	8,305,470	6,482,731	–1,822,739
Net Reduction			–1,822,739

The State has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions of 1,822,739 lbs. of CO per day as a result of the federally enforceable FMVCP.

e. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems.

Section 175A(d) requires that the contingency provisions include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area. In this action, EPA is proposing approval of the State of Michigan's maintenance plan for the Detroit area because EPA finds that Michigan's submittal meets the requirements of section 175A.

I. Emissions Inventory—Base Year Inventory

The State has adequately developed an attainment emission inventory for 1996 that identifies 6,482,731 lbs. of CO per day as the level of emissions in the area sufficient to attain the CO NAAQS.

The State derived all inventories in the maintenance plan from the 1990 base year emission inventory. The methodologies used in developing these inventories are discussed in section 3D of EPA's TSD and in further detail in Attachment 1 of the State's TSD. EPA approved the 1990 base year emission inventory on April 7, 1995 (60 FR 12495). The State has adequately developed an attainment emissions inventory for 1996 that identifies the levels of emissions as 6,482,731 lbs. of CO per days the level of emissions in the area sufficient to attain the NAAQS.

ii. Demonstration of Maintenance—Projected Inventories

To demonstrate continued attainment, the State projected CO emissions through the maintenance period to the year 2010. These emissions are presented in Table 3 of the submittal and summarized below in Table 2. These projected emission inventories demonstrate that the CO emissions will remain below the 1996 attainment year emission levels. In fact, the emissions projections through the year 2010 show an emissions reduction of 1,679,417 lbs. of CO per day. These emission reductions are primarily the result of continued implementation of the Federally enforceable FMVCP.

In developing the projection inventories, the State used the same methodologies as those employed for the other inventories contained in the Section A(3)(d) of today's action and in further detail in Attachment 1 of the State's TSD.

TABLE 2.—CO MAINTENANCE EMISSION INVENTORY PROJECTION SUMMARY THROUGH 2010

[lbs. per day]

Category	1986	1996	2010	Net Change 1986–2010 (percent)
Point	564,657	257,359	280,089	–50.4
Area	248,194	259,459	279,058	10.8
Non-Road Mobile	434,619	465,913	474,167	9.1

TABLE 2.—CO MAINTENANCE EMISSION INVENTORY PROJECTION SUMMARY THROUGH 2010—Continued

[lbs. per day]

Category	1986	1996	2010	Net Change 1986–2010
On-Road Mobile	7,058,000	5,500,000	3,774,000	–46.4
Total	8,305,470	6,482,731	4,803,314	–42.2

The State has adequately demonstrated continued attainment of the CO NAAQS through the projection of CO emissions through the 10 year maintenance period to 2010. These projections indicate that CO emissions, throughout the maintenance period, will remain well below the 1996 attainment inventory.

iii. Verification of Continued Attainment

(I) Ambient Air Quality Monitoring Network

In the submittal and the State's TSD, the State commits to continue to operate and maintain the network of ambient CO monitoring stations in accordance with provisions of 40 CFR Part 58 to demonstrate ongoing compliance with the CO NAAQS.

(II) Tracking

The submittal presents the tracking plan for the maintenance period which consists of two components: (1)continued CO monitoring and (2) an analysis of stationary growth factor assumptions and VMT projections in the year 2007. The State will continue to monitor CO levels throughout the Detroit area to demonstrate ongoing compliance with the CO NAAQS. The State also commits to checking in 2007 the stationary source growth factor assumptions and VMT projections used to generate the 2010 CO inventory to ensure that the estimates are reasonable.

(III) Triggers

The contingency plan contains one trigger: a monitored air quality violation of the CO NAAQS, as defined in 40 CFR section 50.8. The trigger date will be the date that the State certifies to the U.S. EPA that the air quality data are quality assured, which will be no later than 30 days after monitoring an ambient air quality violation. The justification for providing only one trigger is that section 175A(d) explicitly stipulates that a contingency measure must ensure prompt correction of any violation of the NAAQS once the area is redesignated.

iv. Contingency Plan

The level of CO emissions in the Detroit area will largely determine its ability to stay in compliance with the CO NAAQS in the future. Despite best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required by section 175A of the Act, Michigan has provided contingency measures with a schedule for implementation if a future CO air quality problem occurs. Contingency measures in the plan include a series of transportation control measures, a motor vehicle inspection and maintenance (I/M) program, and enforceable emission limitations on stationary sources.

Where it must adopt and implement the contingency measures, the State will observe the schedules specified in the SIP. If it selects a transportation control measure as the contingency measure, the State will program it in the next annual update of the Regional Transportation Improvement Program for Southeast Michigan. For other contingency measures, selection and implementation of the measure will occur within twelve months of the triggering date.

v. Commitment To Submit Subsequent Maintenance Plan Revisions

The State has committed to submit a new maintenance plan within eight years of the redesignation of the Detroit area as required by section 175(A)(b). This subsequent maintenance plan must constitute a SIP revision and provide for the maintenance of the CO NAAQS for a period of 10 years after the expiration of the initial 10 year maintenance period.

B. Final Action

The EPA is approving the Detroit CO maintenance plan as a SIP revision meeting the requirements of section 175A. In addition, the EPA is approving the redesignation request for the Detroit area because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

Nothing in this action should be construed as establishing a precedent for any future request for revision to any SIP. EPA must evaluate each request for revision to the SIP separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

CO SIPs are designed to satisfy the requirements of part D of the Act and to provide for attainment and maintenance of the CO NAAQS. This redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the CO emission limitations and restrictions in the approved CO SIP. The State cannot make changes to CO SIP regulations which will render them less stringent than those in the EPA approved plan unless it submits to EPA a revised plan for attainment and maintenance and EPA approves the revision. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation [section 173(b) of the Act] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elective officials and other representatives of

State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This direct final rule will not have a significant impact on a substantial number of small entities because plan approvals under section 111(d) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act (Act) preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The Act forbids EPA to base its actions on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each house of Congress and to the Comptroller General of the United States.

The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 1999.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule or action. The action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Carbon Monoxide.

40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Carbon Monoxide.

Dated: June 7, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(111) to read as follows:

§ 52.1170 Identification of Plan.

* * * * *

(c) * * *

(111) On March 18, 1999, the State of Michigan submitted a revision to the Michigan State Implementation Plan for carbon monoxide containing a section 175A maintenance plan for the Detroit area as part of Michigan's request to redesignate the area from nonattainment to attainment for carbon monoxide. Elements of the section 175A maintenance plan include a base year (1996 attainment year) emission inventory for CO, a demonstration of maintenance of the ozone NAAQS with projected emission inventories to the year 2010, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the CO NAAQS (which must be confirmed by the State), Michigan will implement one or more appropriate contingency measure(s) which are in the contingency plan. The menu of contingency measures includes enforceable emission limitations for stationary sources, transportation control measures, or a vehicle inspection and maintenance program.

2. Subpart X is amended by adding § 52.1179 to read as follows:

§ 52.1179 Control strategy: Carbon monoxide.

Approval—On March 18, 1999, the Michigan Department of Environmental Quality submitted a request to redesignate the Detroit CO nonattainment area (consisting of portions of Wayne, Oakland, and Macomb Counties) to attainment for CO. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a base year (1996 attainment year) emission inventory for CO, a demonstration of maintenance of the ozone NAAQS with projected emission inventories to the year 2010, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the CO NAAQS (which must be confirmed by the State), Michigan will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. The menu of contingency measures includes enforceable emission limitations for stationary sources, transportation control measures, or a vehicle inspection and maintenance program. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.323 the table entitled "Michigan-carbon monoxide" is amended by revising the entry for the "Detroit Area" to read as:

§ 81.323 Michigan.

* * * * *

MICHIGAN—CARBON MONOXIDE

Designated areas	Designation		Classification	
	Date [1]	Type	Date [1]	Type
DETROIT AREA				
Areas included within the following (counter-clockwise):				
Lake St. Clair to 14 Mile Road to Kelly Road, N. to 15 Mile Road to Hayes Road, S. to 14 Mile Road to Clawson City Boundary, following N. Clawson City boundary to N. Royal Oak boundary to 13 Mile Road to Evergreen Road to southern Beverly Hills City boundary to southern Bingham Farms City boundary to southern Franklin Hills City boundary to Inkster Road, south to Pennsylvania Road extending east to the Detroit River. Macomb County (part).	August 30, 1999	Attainment.		
Oakland County (part)	August 30, 1999	Attainment.		
Wayne County (part)	August 30, 1999	Attainment.		

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 99–16372 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6369–9]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins and Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule: notice of stay.

SUMMARY: The EPA is taking direct final action to indefinitely stay the compliance dates for portions of the national emission standards for hazardous air pollutants (NESHAP) for Group I Polymers and Resins and Group IV Polymers and Resins. This direct final rule stays, indefinitely, the compliance dates for existing affected sources and new affected sources with an initial start up date on or after March 9, 1999, which are subject to the Group I Polymers and Resins and Group IV Polymers and Resins NESHAP

requirements for all emission points except equipment leaks. This stay will remain in effect until the date that the amendments to these rules (which were proposed on March 9, 1999) are promulgated, at which point the EPA will publish new compliance dates for these affected sources. The EPA is issuing this stay of the compliance dates for existing affected sources and for new affected sources with an initial start up date on or after March 9, 1999, because of the significant amendments to these NESHAP that were proposed on March 9, 1999. It is unlikely that those amendments will be promulgated before the compliance dates for existing affected sources subject to Group I and Group IV Polymers and Resins regulations (September 5, 1999, and September 12, 1999, respectively).

DATES: This direct final rule is effective on August 30, 1999 without further notice unless EPA receives adverse comments by July 30, 1999. Should EPA receive such comments, it will publish a timely withdrawal informing the public that this rule will not take effect.

ADDRESSES: Comments. Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–44 (Group I Polymers and Resins) and/or Docket Number A–92–45 (Group IV Polymers and Resins), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket numbers A–92–44 and A–92–45, containing information relevant to this direct final rule, are available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608, electronic mail address rosensteel.bob@epa.gov.

SUPPLEMENTARY INFORMATION:

Plain Language

In compliance with President Clinton's June 1, 1998 Executive Memorandum on Plain Language in government writing, this notice is written using plain language. Thus, the use of "we" in this notice refers to EPA. The use of "you" refers to the reader, and may include industry; State, local, and tribal governments; environmental groups; and other interested individuals.

Regulated Entities

Entities potentially regulated by this direct final rule include:

Category	Examples of regulated entities
Industry	Butyl Rubber, Halobutyl Rubber, Epichlorohydrin Elastomer, Ethylene Propylene Rubber, Hypalon™, Neoprene, Nitrile Butadiene Rubber, Nitrile Butadiene Latex, Polybutadiene Rubber, Styrene-Butadiene Rubber or Latex, Acrylonitrile Butadiene Styrene Resin, Styrene Acrylonitrile Resin, Methyl Methacrylate Acrylonitrile Butadiene Styrene Resin, Methyl Methacrylate Butadiene Styrene Resin, Poly(ethylene terephthalate) Resin, Polystyrene Resin, and Nitrile Resin producers.

This table is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected by this action. To determine whether your facility is regulated by this direct final rule, you should carefully examine the applicability criteria in 40 CFR 63.480 and 63.1310. If you have any questions regarding the applicability of this direct final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Access and Filing Addresses

You can get this notice, the promulgated texts, and other background information in Docket Numbers A–92–44 and A–92–45 by request from EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). You can also access materials through the EPA web site at: http://www.epa.gov/ttn/oarpg. For further information and general questions regarding the Technology Transfer Network (TTN), you can call Mr. Hersch Rorex (919) 541–5637 or Mr. Phil Dickerson (919) 541–4814.

If you send comments by electronic mail (e-mail) to "a-and-r-docket@epamail.epa.gov," they should be in an ASCII file, and the file should not use special characters or encryption. We will also accept comments and data on diskette in WordPerfect 5.1 or 6.1 or ASCII file format. You may file comments on the proposed rule online at many Federal Depository Libraries. Identify all comments and data in electronic form by the docket numbers A–92–44 and/or A–92–45. Do not send any confidential business information through electronic mail.

The following outline is provided to aid you in reading the preamble to the direct final rule.

I. Why are we taking this action?
II. Who does this stay impact?
III. What are the administrative requirements for this direct final rule?

I. Why are we taking this action?

On September 5, 1996 and September 12, 1996, we promulgated NESHAP for Group I Polymers and Resins and Group IV Polymers and Resins as subparts U (Group I) and JJJ (Group IV) in 40 CFR part 63. These regulations require Group I Polymers and Resins existing affected sources, with certain exceptions (listed in § 63.481(d)), to be in compliance with the equipment leak provisions in § 63.502 by July 31, 1997. Likewise these regulations require Group IV Polymers and Resins existing affected sources, with certain exceptions (listed in § 63.1311(d)) to be in compliance with the equipment leak provisions in § 63.1331 by February 27, 2001. The Group I Polymers and Resins NESHAP also requires that existing affected sources comply with the nonequipment leak provisions in subpart U by September 5, 1999. Group IV existing affected sources subject to subpart JJJ are required to comply with the nonequipment leak provisions in subpart JJJ by September 12, 1999.

Under 40 CFR parts 63.481 and 63.1311, with the exception of new sources producing PET, new affected sources are required to comply with all provisions of the applicable rules upon initial start-up, or by September 5, 1996 or February 27, 1998 (respectively), whichever is later. New affected sources producing PET are required to be in compliance with all nonequipment leak provisions at initial start-up and with the equipment leak provisions by

February 27, 2001. Sections 63.481 and 63.1311 provide specific compliance dates for all emission points.

As a result of litigation proceedings and changes necessary due to amendments to the Hazardous Organics NESHAP (HON), which were promulgated on January 17, 1997 (62 FR 6722), significant amendments to these NESHAP were proposed on March 9, 1999 (64 FR 11560). Those amendments were necessary due to the fact that both subparts U and JJJ reference a substantial number of the HON requirements, and those requirements changed significantly in the January 17, 1997, promulgated amendments.

We are currently summarizing and evaluating comments on the March 9, 1999, proposed amendments. As noted above, for existing affected sources subject to subparts U and JJJ, the compliance dates for all equipment, except components subject to the equipment leak provisions, are in September 1999 (September 5, 1999, for subpart U and September 12, 1999, for subpart JJJ). While we are uncertain of the exact date that we will promulgate these amendments, we expect that it will be after the compliance dates noted above. We believe that requiring existing affected sources to come into compliance with a regulation that is soon-to-be-amended, to a considerable degree, presents a significant and unnecessary burden for affected sources and enforcement agencies. We also believe that new affected sources, starting up on or after March 9, 1999, should be treated the same way that new sources are treated that start up after the proposal of a regulation (i.e., they must comply at promulgation or start-up, whichever is later). We also believe that requiring these new sources to begin to comply with the provisions of a soon-to-be-amended regulation would result in a significant and unnecessary burden.

We are publishing this direct final rule without prior proposal because we view these amendments to be noncontroversial, and we anticipate no adverse comments on these amendments. This direct final rule is of a relatively short time frame (likely well under 1 year), and it would avoid imposing the significant burden of requiring owners and operators to comply with one version of a rule for a period of months only to impose different compliance provisions at promulgation of the amendments. We are publishing this rule as a direct final rule because we believe that the "indefinite stay" of these compliance dates should become effective as soon as possible, to allow owners or operators that have started up, or that plan to start up, a new affected source this spring or summer to focus on compliance with the final amended versions of the regulations. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as a *proposal* to stay the subparts U and JJJ compliance dates for existing affected sources and to establish new compliance dates for new affected sources with an initial start up date on or after March 9, 1999, if adverse comments are filed on this direct final rule. This rule will be effective on August 30, 1999 without further notice unless we receive adverse comment by July 30, 1999. If a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision may be addressed separately from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of a significant adverse comment and withdraw those provisions that did receive adverse comment. For any provisions that are withdrawn, we will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

We do not anticipate that the amendments proposed on March 9, 1999, will alter the type or identity of sources subject to the regulation. However, the amendments do affect how owners or operators of those sources must comply with the requirements in subpart U or JJJ.

Without today's stay of the compliance dates, owners or operators of existing affected sources subject to subpart U or JJJ would have to comply by this September (September 1999) with the regulations as they were promulgated in 1996. New affected sources starting up in spring or summer of 1999 would have to comply with the September 1996 promulgated requirements, upon initial start up. Soon thereafter, we will promulgate amendments to 40 CFR part 63, subparts U and JJJ, which will likely contain different compliance demonstration requirements. Examples of potential situations that could arise if we did not take action to stay the compliance dates for these regulations are provided below.

The regulations promulgated in 1996 specify that compliance tests be conducted at "maximum representative" operating conditions. The owner or operator, who is required to select the maximum representative conditions for a performance test based on the 1996 version of the regulation, would conduct the test shortly after the September 1999 compliance date. We did not propose to change this requirement in our March 9, 1999 action, but we did propose provisions that clarify what are maximum representative operating conditions. If the conditions originally selected by the owner or operator, based on the 1996 regulations, did not meet the amended definition, the owner or operator may be required to conduct another performance test.

The regulations promulgated in 1996 require an owner or operator to base the group determination for batch process vents on the "worst-case hazardous air pollutant (HAP) emitting product." For a Group 2 batch process vent, the regulations require that the owner or operator establish and comply with a "batch cycle limitation," to ensure that the Group 2 vent does not become Group 1. The proposed amendments change the basis for the group determination for batch process vents to the "highest-HAP recipe," and replace the batch cycle limitation with a "batch mass input limitation."

Without today's stay of the compliance dates, the following scenario could be encountered by owners and operators of batch process vents. Prior to the September 1999 compliance dates (existing affected sources) or initial start-up (new affected sources), an owner or operator would need to determine the group status for each batch process vent. This presumably means an owner or operator would need to "model" all formulations to see which formulation emits the most HAP, in order to make a group determination. However, that group determination will be irrelevant once we promulgate the amendments to subparts U and JJJ. Today's Direct Final Rule removes the burden that such a scenario would impose.

According to the September 1996 promulgated requirements for Group 2 batch process vents, the owner or operator needs to establish a batch cycle limitation and to begin tracking batch cycles. The owner or operator would also be required to record and report the group determination results and the batch cycle limitation.

Following promulgation of the proposed amendments, records of the "new" group determination (based on the highest-HAP recipe) would be required, a batch mass input limitation would need to be established, and tracking of the mass input to each unit operation would need to be conducted. Notwithstanding the owner or operator's

considerable prior efforts in establishing a group determination, the owner or operator would then be compelled to conduct and establish an entirely new group determination and to establish a batch mass input limitation.

The wastewater provisions provide another example of potential problems that should be resolved by today's Direct Final Rule. Subparts U and JJJ both directly reference the HON wastewater provisions, and provide a list of exceptions to the HON requirements. After the September 1996 promulgation of subparts U and JJJ, we proposed and promulgated significant amendments to the HON wastewater provisions. Therefore, some of the specific HON wastewater paragraphs which are cited in subparts U and JJJ have been moved, while some cited paragraphs no longer exist. Therefore, an owner or operator attempting to comply with the wastewater provisions in subpart U (§ 63.501) or subpart JJJ (§ 63.1330) as promulgated in September 1996 would be faced with this list of incorrect exceptions and citations. On March 9, 1999, we proposed to amend the wastewater exceptions and cross-references, in accordance with the promulgated HON amendments.

We do not believe that owners or operators of affected sources should be placed in situations like those described above. Further, you should not be compelled to comply with regulatory provisions that we have deemed to be defective and in need of revision. We also do not believe that it would be prudent for agencies enforcing this regulation to expend resources enforcing requirements that will be changing soon after the compliance date. Therefore, we believe that the most reasonable action is to stay the compliance dates indefinitely, until new compliance dates can be put forth in the promulgated amendments.

II. Who does this stay impact?

We are issuing a stay of the existing source compliance dates for the Group I (subpart U) and Group IV (subpart JJJ) Polymers and Resins NESHAP for all emission points, except for those components subject to the equipment leak provisions. Specifically, we are staying the provisions in 40 CFR 63.481(c) and (d)(6), and in 40 CFR 63.1311(c), by adding a note at the end of each of these paragraphs, explaining that these compliance dates are stayed indefinitely. In a similar manner, we are also staying the compliance dates for new affected sources with an initial start-up date on or after March 9, 1999, by adding a note at the end of 40 CFR 63.481(b) and 40 CFR 63.1311(b).

This stay will impact you if you are the owner or operator of an existing or new (on or after March 9, 1999) affected source subject to either the Group I or Group IV Polymers and Resins NESHAP. You will not be required to comply with the requirements for storage vessels, process vents, back-end process operations (subpart U only), heat exchange systems, or wastewater by September 5, 1999 or September 12, 1999, respectively. Also, you will not be required to comply with the associated monitoring, recordkeeping, or reporting provisions at that time. When the final amendments to the regulations are promulgated, we will publish the new compliance dates, providing you with a reasonable amount of time in which to comply with the amended regulations. We will use information submitted by commenters in response to our request for comments on this topic in the March 9, 1999, proposal of amendments (64 FR 11573) to determine what constitutes a "reasonable amount of time" before promulgating those amendments. We also plan to specify how and when any reports that are due prior to the compliance date (e.g., the Precompliance Report or the Emissions Averaging Plan) are to be submitted. This Direct Final Rule does not stay the compliance date in 40 CFR part 63, subpart JJJ for process contact cooling tower provisions at existing affected sources that produce PET using a continuous terephthalic acid high viscosity multiple end finisher process, because that compliance date was previously extended until February 27, 2001.

If you are the owner or operator of an existing source that is subject to either the Group I or Group IV Polymers and Resins NESHAP, you should already be in compliance with the equipment leak provisions associated with those NESHAP, unless you have received a compliance extension or are a producer of PET. This Direct Final Rule does not impact the compliance dates for those equipment leak provisions. You will need to continue to comply with those equipment leak provisions, along with all the associated monitoring, recordkeeping, and reporting requirements. For PET producers, the existing source compliance date for the equipment leak provisions is February 27, 2001.

At promulgation of the March 9, 1999 proposed amendments, we will also publish the compliance dates that apply to new affected sources subject to the Group I and Group IV Polymers and Resins NESHAP. We will amend §§ 63.481(b) and 63.1311(b) to specify the compliance date for new sources that have an initial start up date on or after March 9, 1999. The February 27, 2001, compliance date for the equipment leaks provisions for new affected sources producing PET will not be affected by the promulgation of the amendments to subparts U and JJJ.

Therefore, if you are the owner or operator of a new affected source that has an initial start-up date on or after March 9, 1999, but before the new compliance date which will be specified in the promulgated amendments, you will not be required to comply with any provisions of the rule upon initial start-up. Instead, you will be required to be in compliance with the requirements for new affected sources on the compliance date published in the promulgated amendments. If you will have an initial start-up date after the compliance date described in the promulgated amendments, then you will be required to comply with the requirements for new affected sources on the date of your initial start-up.

If you are the owner or operator of a new affected source that had an initial start up date prior to March 9, 1999, you should already be in compliance with all aspects of the applicable regulation (with the exception of owners or operators of PET sources, who are not yet required to be in compliance with the equipment leak provisions). This Direct Final Rule does not impact the provisions for new affected sources with an initial start-up prior to March 9, 1999. You will need to continue to comply with the September 1996 promulgated requirements, along with all the associated monitoring, recordkeeping, and reporting requirements. Further, you will need to come into compliance with the promulgated amendments on the compliance date published in the promulgated amendments for new affected sources.

III. What are the administrative requirements for this direct final rule?

A. Docket

The dockets are organized and complete files of all the information submitted to or otherwise considered by EPA in the development of the final standards. The principal purposes of the docket are to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and to serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A)).

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA has determined that this direct final rule does not meet any of the criteria enumerated above and therefore, does not constitute a "significant regulatory action" under the terms of Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that is determined to be "economically significant" as defined under Executive Order 12866, and concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

D. Paperwork Reduction Act

For both the Group I and Group IV Polymers and Resins NESHAP, the information collection requirements (ICRs) were submitted to OMB under the Paperwork Reduction Act. At promulgation, OMB had already approved the ICR for the Group IV Polymers and Resins NESHAP and assigned OMB control number 2060–0351. Subsequently, OMB approved the ICR for the Group I Polymers and Resins NESHAP, and on July 15, 1997 (62 FR 37720) assigned OMB control number 2060–0356.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA has amended 40 CFR 9.1 to indicate the ICRs contained in the Group I and IV Polymers and Resins NESHAP.

The amendments to the NESHAP contained in this direct final rule should have no impact on the information collection burden estimates made previously. Therefore, the ICRs have not been revised.

E. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. The EPA has also determined that this direct final rule will not have a significant adverse economic impact on a substantial number of small businesses, as it only stays the compliance dates for certain sources and imposes no additional regulatory requirements on owners or operators of affected sources.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

G. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this direct final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor does this direct final rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to this direct final rule.

H. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a

mandate upon a State, local, or tribal governments, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's direct final rule does not create a mandate on State, local, or tribal governments. This direct final rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this direct final rule.

I. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This direct final rule does not significantly or uniquely affect the communities of Indian tribal governments. Further, the direct final rule, provided herein, does not significantly alter the control standards imposed by subpart U or subpart JJJ for any source, including any that may affect communities of the Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this direct final rule.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

This action does not involve the promulgation of any new technical standards. Therefore, NTTAA requirements are not applicable to today's direct final rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 24, 1999.

Carol M. Browner,

Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 63 is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

2. Amend § 63.481 by revising paragraphs (b), (c) and (d)(6), to read as follows:

§ 63.481 Compliance schedule and relationship to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after June 12, 1995 shall be in compliance with this subpart upon initial start up or September 5, 1996, whichever is later, as provided in § 63.6(b) of subpart A.

[**Note:** The compliance date for new affected sources with an initial start-up date on or after March 9, 1999 is stayed indefinitely. The EPA will publish a document in the **Federal Register** establishing a new compliance date for new affected sources with an initial startup date on or after March 9, 1999.]

* * * * *

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.502 for which compliance is covered by paragraph (d) of this section) no later than 3 years after September 5, 1996, as provided in § 63.6(c) of subpart A, unless an extension has been granted as specified in paragraph (e) of this section.

[**Note:** The compliance date of September 5, 1999 for existing affected sources, except for emission points addressed under § 63.502, which are covered by paragraph (d) of this section, is stayed indefinitely. The EPA will publish a document in the **Federal Register** establishing a new compliance date for existing affected sources.]

(d) * * *

(6) Compliance with the heat exchange system provisions of § 63.104, as required in § 63.502(f), shall occur no later than September 5, 1999.

[**Note:** The compliance date of September 5, 1999 for the heat exchange provisions at existing affected sources is stayed indefinitely. The EPA will publish a document in the **Federal Register** establishing a new compliance date for heat exchange provisions at existing affected sources.]

* * * * *

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

3. Amend § 63.1311 by revising paragraphs (b) and (c) to read as follows:

§ 63.1311 Compliance schedule and relationship to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart upon initial start-up or February 27, 1998, whichever is later, as provided in § 63.6(b), except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is poly(ethylene terephthalate) (PET) shall be in compliance with § 63.1331 upon initial start-up or February 27, 2001, whichever is later.

[**Note:** The compliance date for new affected sources with an initial start-up date on or after March 9, 1999 is stayed indefinitely. The EPA will publish a document in the **Federal Register** establishing a new compliance date for new affected sources with an initial start-up date on or after March 9, 1999.]

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.1331 for which compliance is covered by paragraph (d) of this section) no later than September 12, 1999, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section, except that the compliance date for the provisions contained in § 63.1329 is extended from September 12, 1999 to February 27, 2001, for existing affected sources whose primary product, as determined using the procedures specified in 63.1310(f), is PET using a continuous terephthalic acid high viscosity multiple end finisher process.

[**Note:** The compliance date of September 12, 1999 for existing affected sources, except for emission points addressed under § 63.1331, which are covered by paragraph (d) of this section, is stayed indefinitely. The EPA will publish a document in the **Federal Register** establishing a new compliance date for existing affected sources.]

* * * * *

[FR Doc. 99–16635 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6369–6]

RIN 2060–AD05

Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final rule.

SUMMARY: On December 27, 1996, the Agency published a rule in the **Federal Register** implementing certain provisions in section 112(g) of the Clean Air Act (Act). After the effective date of that rule, all owners or operators of major sources of hazardous air pollutants (HAP) that are constructed or reconstructed are required to install maximum achievable control technology (MACT) (unless specifically exempted), provided they are located in a State with an approved title V permit program. When no applicable Federal emission limitation has been promulgated under section 112(d) of the Act, the Act requires the permitting authority (generally a State or local agency responsible for the program) to determine a MACT emission limitation on a case-by-case basis. If the permitting authority has not yet established procedures for requiring MACT on constructed or reconstructed major sources by the required date, the rule provides that the EPA Regional Administrator will determine MACT emission limitations on a case-by-case basis for a period of up to one year. This action amends the rule governing constructed or reconstructed major sources—by providing a longer time period (up to 30 months) during which the EPA Regional Administrator may determine MACT emission limitations on a case-by-case basis—if the permitting authority has not yet established procedures for requiring MACT on constructed or reconstructed major sources. This action is needed in order to ensure that major sources can obtain MACT determinations required for construction or reconstruction in those jurisdictions where permitting authorities require extra time to establish procedures to implement the section 112(g) rule.

EFFECTIVE DATE: This final rule amendment will be effective on July 30, 1999 without further notice, unless EPA receives adverse comments on this rulemaking by July 12, 1999 or a request for a hearing concerning the accompanying proposed rule is received by EPA by July 7, 1999. If EPA receives timely adverse comment or a timely hearing request, EPA will publish a withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect and will proceed to promulgate a final rule based on the proposed rule.

ADDRESSES: *Comments.* Interested parties may submit comments on this rulemaking in writing (original and two copies, if possible) to Docket No. A–91–64 to the following address: Air and Radiation Docket and Information Center (6102), US Environmental Protection Agency, 401 M Street, S.W., Room 1500, Washington, D.C. 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.** Public comments on this rulemaking will be accepted until July 12, 1999.

Docket. All information used in the development of this final action is contained in the preamble below. However, Docket No. A–91–64, containing the supporting information for the original Regulations Governing Constructed or Reconstructed Major Sources rule is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday at the Air and Radiation Docket and Information Center (6102), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; telephone (202) 260–7548, fax (202) 260–4000. A reasonable fee may be charged for copying.

These documents can also be accessed through the EPA web site at: http://www.epa.gov/ttn/oarpg. For further information and general questions regarding the Technology Transfer Network (TTNWEB), call Mr. Hersch Rorex (919) 541–5637 or Mr. Phil Dickerson (919) 541–4814.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Kaufman, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919)541–0102.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule amendment without prior proposal because we consider this to be a noncontroversial amendment; and we do not expect to receive any adverse comment. However, in the "Proposed Rules" section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal for this amendment, in the event we receive adverse comment or a hearing request and this direct final rule is subsequently withdrawn. This final rule amendment will be effective on July 30, 1999 without further notice, unless we receive adverse comment on this rulemaking by July 12, 1999 or a request for a hearing concerning the accompanying proposed rule is received by EPA by July 7, 1999. If EPA receives timely adverse comment or a timely hearing request, we will publish a withdrawal in the **Federal Register**

informing the public that this direct final rule will not take effect. In that event, we will address all public comments in a subsequent final rule, based on the proposed rule amendment published in the "Proposed Rules" section of this **Federal Register** document. The EPA will not provide further opportunity for public comment on this action. Any parties interested in commenting on this amendment must do so at this time. Electronic comments and data may be submitted by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Word Perfect 5.1 or 6.1 or ACSII file format. Identify all comments and data in electronic form by the docket numbers A–91–64. No Confidential Business Information (CBI) should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

Outline. The information presented in this preamble is organized as follows:

I. What are the relative responsibilities of permitting authorities and EPA Regional Offices under the current Section 112(g) rule?
II. Why does EPA want to amend these relative responsibilities in some cases?
III. What are the requirements to review this action in Court?
IV. Administrative Requirements
A. Docket
B. Paper Reduction Act
C. E.O. 12866: The Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act of 1996
D. National Technology Transfer and Advancement Act
E. E.O. 13045: Protection of Children from Environmental Health and Safety Risks
F. E.O. 13084: Consultation and Coordination with Indian Tribal Governments
G. E.O. 12875: Enhancing the Intergovernmental Partnership
H. Submission to Congress and the Comptroller General

I. What are the Relative Responsibilities of Permitting Authorities and EPA Regional Offices Under the Current Section 112(g) Rule?

Section 112(g) is effective in a State or local jurisdiction on the date specified by the permitting authority, at the time it adopts a program to implement section 112(g), or June 29, 1998, whichever is earlier. Thus, permitting authorities had until June 29, 1998 to initiate implementing programs. To place its implementing program into effect, the chief executive officer of the State or local jurisdiction must have certified to the EPA that its program meets all the requirements set forth in this rule, and published a notice stating that the program has been adopted and specifying its effective date. The program need not have been officially reviewed or approved by the EPA.

After June 29, 1998, if a State or local permitting authority had not yet initiated a program to implement the section 112(g) rule, there have been two options for obtaining a MACT approval: either (1) the permitting authority would make section 112(g) determinations according to procedures specified in § 63.43 of this rule, and issue a Notice of MACT Approval that would become final and legally enforceable after the EPA had concurred in writing with the permitting authority's determination; or (2) the EPA Regional Administrator would issue section 112(g) determinations for up to 1 year—i.e. until June 29, 1999.

II. Why Does EPA Want to Amend These Relative Responsibilities in Some Cases?

If the permitting authority had not yet initiated an implementing program by June 29, 1999, the section 112(g) rule did not provide an explicit mechanism by which construction permits could be issued. It was assumed that all permitting authorities would have established section 112(g) programs by that time. However, it has now become clear that a few permitting authorities will not have initiated an implementing program by June 29, 1999. In addition, some of these jurisdictions believe that they may not yet have the authority even to issue a Notice of MACT Approval for EPA concurrence. Therefore, in some jurisdictions, after June 29, 1999, it is possible that there could be no mechanism by which a major source could receive the MACT determination required by the Act in order to construct.

This action therefore provides a longer time period (up to 30 months) during which the EPA Regional Administrator may determine MACT emission limitations on a case-by-case basis, if the permitting authority has not yet established procedures for requiring MACT on constructed or reconstructed major sources. This action is needed in order to ensure that major sources can obtain MACT determinations required for construction or reconstruction in those jurisdictions where permitting authorities require extra time to establish procedures to implement the section 112(g) rule. We believe that this action provides enough extra time for permitting authorities to establish procedures for requiring MACT on constructed or reconstructed major sources, as required by section 112(g) of the Act.

III. What are the Requirements to Review This Action in Court?

Under Section 307(b)(1) of the Act, judicial review of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by August 30, 1999. Any such judicial review is limited to only those objections which are raised with reasonable specificity in timely comments. Under Section 307(b)(2) of the Act, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

IV. Administrative Requirements

A. Docket

The docket for this regulatory action is A–91–64, the same docket as the original final rule, and a copy of today's amendment to the final rule will be included in the docket. The principle purposes of the docket are: (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (Section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this document.

B. Paper Reduction Act

The information collection requirements of the previously promulgated rule for Regulations Governing Equivalent Emission Limitations by Permit were submitted to and approved by the Office of Management and Budget. A copy of this Information Collection Request (ICR) document (ICR No. 1658.01) may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2136), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, or by calling (202) 260–2740. Today's change to the final rule does not affect the information collection burden estimates made previously. Therefore, the ICR has not been revised.

C. Analysis Under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act of 1996

Because the regulatory revisions that are the subject of today's notice would delay an existing requirement, this action is not a "significant" regulatory action within the meaning of Executive Order 12866, and does not impose any Federal mandate on State, local and tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. Further, the EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this action under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act of 1996. The regulatory change proposed here is not expected to affect the regulatory burdens on small businesses, and will not have a significant impact on a substantial number of small entities.

D. National Technology Transfer and Advancement Act

Under Section 12 of the National Technology Transfer and Advancement Act of 1995, the EPA must consider the use of "voluntary consensus standards," if available and applicable, when implementing policies and programs, unless it would be "inconsistent with applicable law or otherwise impractical." The intent of the National Technology Transfer and Advancement Act is to reduce the costs to the private and public sectors by requiring federal agencies to draw upon any existing, suitable technical standards used in commerce or industry.

A "voluntary consensus standard" is a technical standard developed or adopted by a legitimate standards-developing organization. The Act defines "technical standards" as "performance-based or design-specific technical specifications and related management systems practices." A legitimate standards-developing organization must produce standards by consensus and observe principles of due process, openness, and balance of interests. Examples of organizations that are regarded as legitimate standards-developing organizations include the American Society for Testing and Materials (ASTM), International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), American Petroleum Institute (API), National Fire Protection Association (NFPA) and Society of Automotive Engineers (SAE).

Since today's action does not involve the establishment or modification of technical standards, the requirements of the National Technology Transfer and Advancement Act do not apply.

E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) OMB determines is "economically significant" as defined under Executive Order 12866, and (2) EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These regulatory revisions are not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

F. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. These rule revisions impose no enforceable duties on these entities. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule changes do not create a mandate on State, local or tribal governments. The rule changes do not impose any additional enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of Executive Order 12875 do not apply to this rule.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not

a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 24, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 63 is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.42(b) is revised to read as follows:

§ 63.42 Program requirements governing construction or reconstruction of major sources.

* * * * *

(b) *Failure to adopt program.* In the event that the permitting authority fails to adopt a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP with an effective date on or before June 29, 1998, and the permitting authority concludes that it is able to make case-by-case MACT determinations which conform to the provisions of § 63.43 in the absence of such a program, the permitting authority may elect to make such determinations. However, in those instances where the permitting authority elects to make case-by-case MACT determinations in the absence of a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP, no such case-by-case MACT determination shall take effect until after it has been submitted by the permitting authority in writing to the appropriate EPA Regional Adminstrator and the EPA Regional Administrator has concurred in writing that the case-by-case MACT determination by the permitting authority is in conformity with all requirements established by §§ 63.40 through 63.44. In the event that the permitting authority fails to adopt a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP with an effective date on or before June 29, 1998, and the permitting authority concludes that it is unable to make case-by-case MACT determinations in the absence of such a program, the permitting authority may request that the EPA Regional Administrator implement a transitional program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP in the affected State of local jurisdiction while the permitting authority completes development and adoption of a section 112(g) program. Any such transitional section 112(g) program implemented by the EPA Regional Administrator shall conform to all requirements established by §§ 63.40 through 63.44, and shall remain in effect for no more than 30 months. Continued failure by the permitting authority to adopt a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP shall be construed as a failure by the permitting authority to adequately administer and enforce its title V permitting program and shall constitute cause by EPA to apply the sanctions and remedies set forth in the Clean Air Act section 502(l).

* * * * *

[FR Doc. 99–16681 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300876; FRL–6086–3]

RIN 2070–AB78

Cyprodinil; Pesticide Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of cyprodinil in or on caneberries. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on caneberries. This regulation establishes a maximum permissible level for residues of cyprodinil in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 2000.

DATES: This regulation is effective June 30, 1999. Objections and requests for hearings must be received by EPA on or before August 30, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300876], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300876], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300876]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9362, schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the fungicide cyprodinil, in or on caneberries at 10 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Cyprodinil on Caneberries and FFDCA Tolerances

According to the Applicants, weather conditions favorable to gray mold disease development, combined with pathogen resistance to existing registered fungicides, has contributed to an emergency condition for caneberry growers in the States of Washington and Oregon. The States claim that registered pesticides either do not provide an adequate level of economic control of gray mold fruit rot or are limited in the number of applications needed for season-long control. EPA has authorized under FIFRA section 18 the use of the product Switch 62.5 WG, containing the active ingredients cyprodinil and fludioxonil, on caneberries for control of gray mold in Oregon and Washington. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of cyprodinil in or on caneberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on caneberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether cyprodinil meets EPA's registration requirements for use on caneberries or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of cyprodinil by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any States other than Oregon and Washington to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for cyprodinil, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of cyprodinil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of cyprodinil on caneberries at 10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyprodinil are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

2. *Short - and intermediate-term toxicity.* A no observed adverse effect level (NOAEL) of 25 milligrams/kilograms/day (mg/kg/day) was selected from the 21–day dermal rat study. The effect observed at the lowest observed adverse effect level (LOAEL) of 125 mg/kg/day in this study was hunched posture in females.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for cyprodinil at 0.03 mg/kg/day. This RfD is based on a NOAEL of 2.7 mg/kg/day and an uncertainty factor of 100. The NOAEL was taken from the chronic rat study; at the LOAEL of 35.6 mg/kg/day, effects observed were histopathological alterations in the liver (*spongiosis hepatis*) in males.

4. *Carcinogenicity.* Cyprodinil is classified as a "not likely" human carcinogen, based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.532) for the residues of cyprodinil, in or on a variety of raw agricultural commodities. Mention any tolerances of special relevance and meat, milk, poultry and egg tolerances, if applicable. Risk assessments were conducted by EPA to assess dietary exposures and risks from cyprodinil as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. This risk assessment is not required. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

ii. *Chronic exposure and risk.* Tolerance level residues and 100% crop treated were assumed to calculate dietary exposure for the United States (U.S.) population and population subgroups from residues on published and proposed uses. Chronic exposure from food uses of cyprodinil represents 6% of the RfD for the U.S. population and 21% of the RfD for nursing infants (<1yr), the subgroup most highly exposed.

2. *From drinking water.* Cyprodinil is considered to be persistent in water and mobile in most soils; under most conditions though, cyprodinil will have a low potential for movement into ground water at high concentrations. There is potential for cyprodinil to contaminate surface water as runoff and as a sorbed species through erosion of soil particles. There is no established Maximum Contaminant Level (MCL) for residues of cyprodinil in drinking water. No health advisory levels for cyprodinil in drinking water have been established.

The Agency has calculated drinking water levels of comparison (DWLOCs) for chronic exposure to cyprodinil in surface and ground water. A DWLOC is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. Toxicity endpoints, default body weight (70 kg for males, 60 kg for females, and 10 kg for nursing infants < 1 year old) and default drinking water consumption estimates (2 liter (L)/day for adults, 1 L/day for nursing infants) are used to calculate the actual DWLOCs. The DWLOC represents the concentration level in surface water or ground water at which aggregate exposure to the chemical is not of concern.

Using the Screening Concentration in Ground Water (SCI-GROW) screening model, the Agency calculated an Estimated Environmental Concentration (EEC) of cyprodinil in ground water for use in human health risk assessments. This value represents an upper bound estimate of the concentration of cyprodinil that might be found in ground water assuming the maximum application rate allowed on the label of the highest use pattern.

The Agency used its Pesticide Root Zone Model (PRZM)-EXAMS model to estimate EECs for cyprodinil in surface water. PRZM-EXAMS is a more refined Tier II assessment. The EECs from these models are compared to the DWLOCs to make the safety determination.

i. *Acute exposure and risk.* This risk assessment is not required. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

ii. *Chronic exposure and risk.* Using the SCI-GROW model, the maximum long-term estimated concentration in ground water is not expected to exceed 0.04 parts per billion (ppb). The chronic estimated concentration in surface water, using the PRZM-EXAMS model, is 51 ppb. The DWLOC for the U.S. population was calculated to be 990 ppb; the DWLOC for the most sensitive subgroup, nursing infants < 1 year old, was 220 ppb. As concentrations of cyprodinil in ground water and surface water do not exceed the calculated DWLOCs, the Agency concludes with reasonable certainty that chronic exposure to cyprodinil in drinking water is not of concern.

3. *From non-dietary exposure.* Cyprodinil is currently not registered for use on residential, non-food sites; therefore, no non-occupational, non-dietary exposure is expected.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether cyprodinil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyprodinil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyprodinil has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* This risk assessment is not required. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

2. *Chronic risk.* Using the Theoreticl Maximus Residue Contribution (TMRC) exposure assumptions described in this unit, EPA has concluded that aggregate exposure to cyprodinil from food will utilize 6 of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is nursing infants < 1 year old (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Estimated chronic environmental concentrations of cyprodinil in surface water and ground water do not exceed chronic DWLOCs calculated by the Agency; therefore, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

There are no residential uses of this chemical registered. This risk assessment is therefore not required.

4. *Aggregate cancer risk for U.S. population.* Cyprodinil is classified as a "not likely" human carcinogen, based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential. This risk assessment is not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyprodinil residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children — i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of cyprodinil, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rat developmental study, the maternal NOAEL was 200 mg/kg/day, based on decreased body weight, body weight gain, and food consumption at the LOAEL of 1,000 mg/kg/day. The developmental NOAEL was 200 mg/kg/day, based on increased incidence of skeletal variations (primarily absent or reduced ossification of the metacarpal) and on decreased mean fetal weight at the LOAEL of 1,000 mg/kg/day. In the rabbit developmental toxicity study, the maternal NOAEL was 150 mg/kg/day, based on decreased body weight gain at the LOAEL of 400 mg/kg/day. The developmental NOAEL was 150 mg/kg/day and the LOAEL was 400 mg/kg/day, based on increased incidence of 13th rib.

iii. *Reproductive toxicity study.* In the 2–generation reproductive toxicity study in rats, the parental NOAEL was 81 mg/kg/day, based on decreased parental female premating body weight gain at the LOAEL of 326 mg/kg/day. The Agency considers significant increases in kidney and liver weight at the 326 mg/kg/day dose as supportive evidence of toxicity. The reproductive/developmental NOAEL was 81 mg/kg/day and the LOAEL was 326 mg/kg/day, based on decreased F_1 and F_2 pup weight during lactation and continuing into adulthood for F_1 rats.

iv. *Pre- and postnatal sensitivity.* The toxicological data base for evaluating pre- and postnatal toxicity for cyprodinil is complete with respect to current data requirements. There are no pre- or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2–generation rat reproductive toxicity study.

v. *Conclusion.* There is a complete toxicity data base for cyprodinil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency determined that for cyprodinil, the 10x factor to account for enhanced sensitivity of infants and children should be removed.

2. *Acute risk.* This risk assessment is not required. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to cyprodinil from food will utilize 21 of the RfD for nursing infants < 1 year old, the infant and children subgroup most highly exposed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Because the chronic DWLOCs are not exceeded by estimated chronic environmental concentrations in ground water or surface water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* There are no residential uses for this chemical; this risk assessment is not required.

5. Determination of safety. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyprodinil residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plant is understood based on metabolism studies in stone fruit, pome fruit, wheat, tomatoes and potatoes. The residue of concern is parent cyprodinil only. There are no animal feed items associated with the proposed use; data on the nature of the residue in animals are not required for the section 18 action or the establishment of this tolerance.

B. Analytical Enforcement Methodology

Adequate enforcement methodology High Performance Liquid Chromotography (HPLC) is available to enforce the tolerance expression; OPP concludes that the method will be suitable for enforcement purposes once revisions recommended by the Analytical Chemistry Laboratory (ACL) are incorporated. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection

Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Residues of cyprodinil are not expected to exceed 10 ppm in caneberries as a result of the proposed section 18 use.

D. International Residue Limits

There are no Codex, Canadian, or Mexican residue limits established for cyprodinil on caneberries. Therefore, no compatibility problems exist for the proposed tolerance.

E. Rotational Crop Restrictions

As caneberries are not considered to be a rotated crop, no rotational crop data are required.

V. Conclusion

Therefore, the tolerance is established for residues of cyprodinil in caneberries at 10 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 30, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300876] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 11, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.532, by alphabetically adding the commodity "caneberries" to the table in paragraph (b) to read as follows:

§ 180.532 Cyprodinil; tolerances for residues.

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * *	*	*
Caneberries	10	12/31/00
* * *	*	*

* * * * *

[FR Doc. 99–16542 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300877; FRL–6086–4]

RIN 2070–AB78

Fludioxonil; Pesticide Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of fludioxonil in or on caneberries. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on caneberries. This regulation establishes a maximum permissible level for residues of fludioxonil in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 2000.

DATES: This regulation is effective June 30, 1999. Objections and requests for hearings must be received by EPA on or before August 30, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300877], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests

filed with the Hearing Clerk identified by the docket control number, [OPP–300877], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM#2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300877]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9362, schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the fungicide fludioxonil, in or on caneberries at 2.0 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Fludioxonil on Caneberries and FFDCA Tolerances

According to the Applicant, weather conditions favorable to gray mold disease development, combined with pathogen resistance to existing registered fungicides, has contributed to an emergency condition for caneberry growers in the States of Washington and Oregon. The states claim that registered pesticides either do not provide an adequate level of economic control of gray mold fruit rot or are limited in the number of applications needed for season-long control. EPA has authorized under FIFRA section 18 the use of the product Switch 62.5 WG, containing the active ingredients cyprodinil and fludioxonil, on caneberries for control of gray mold in Oregon and Washington. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fludioxonil in or on caneberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on caneberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether fludioxonil meets EPA's registration requirements for use on caneberries or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of fludioxonil by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Oregon and Washington to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fludioxonil, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fludioxonil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of fludioxonil on caneberries at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fludioxonil are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* No endpoint was identified for acute dietary exposure. The OPP Toxicity Endpoint Selection Committee has concluded that the toxicology data base does not suggest the need for this assessment.

2. *Short- and intermediate-term toxicity.* No toxicological endpoints of concern were identified for acute oral exposure, short-term dermal exposure, or inhalation exposure for all time periods. Risk assessments for these exposure scenarios were not conducted.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for fludioxonil at 0.03 milligrams/kilograms/day (mg/kg/day). This RfD is based on a no observed adverse effect level (NOAEL) of 3.3 mg/kg/day, taken from a chronic feeding study in dogs, and an uncertainty factor of 100. The effect observed at the lowest observed adverse effect level (LOAEL) of 35.5 mg/kg/day was decreased body weight gain in females.

4. *Carcinogenicity.* Fludioxonil has been classified as a Group D not classifiable as to human carcinogenicity, chemical by the Cancer Peer Review Committee. The Group D classification was based on the statistically significant increase in liver tumors in female rats for combined adenoma/carcinoma only, the lack of tumorigenic response in male rats or in either sex of the mouse, and the need for additional mutagenicity studies.

C. Exposures and Risks

1. *From food and feed uses.* A tolerance has been established (40 CFR 180.516) for the residues of fludioxonil, in or on potatoes at 0.02 ppm. Fludioxonil is currently registered for use as a seed treatment on potatoes, popcorn, field and sweet corn, and sorghum, as well as for use in greenhouses on nonfood crops. Additionally, time-limited tolerances have been established for residues of fludioxonil on apricots, nectarines, peaches, plums, and strawberries. Risk assessments were conducted by EPA to assess dietary exposures and risks from fludioxonil as follows:

i. Acute exposure and risk. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. In reviewing the toxicity data base, no toxicological endpoints were identified which could be attributable to a single dietary exposure. Therefore a risk assessment for this exposure scenario was not conducted.

ii. *Chronic exposure and risk.* Tolerance level residues and 100% crop treated were assumed to calculate Theoretical Maximum Residue Contribution (TMRCs) for the United States (U.S.) population and population subgroups from residues on published and proposed uses. Chronic exposure from food uses of fludioxonil represents 5% of the RfD for the U.S. population and 22% of the RfD for infants (<1yr), the subgroup most highly exposed.

2. *From drinking water.* Fludioxonil is not expected to impact ground or surface water resources. Available data suggest fludioxonil has a relatively low potential to leach to ground water and move in runoff to aquatic environments. There is no established Maximum Contaminant Level (MCL) for residues of fludioxonil in drinking water. No health advisory levels for fludioxonil in drinking water have been established.

The Agency has calculated drinking water levels of comparison (DWLOCs) for chronic exposure to fludioxonil in surface and ground water. The DWLOCs are calculated by subtracting from the RfD the respective chronic dietary exposure attributable to food to obtain the acceptable exposure to fludioxonil in drinking water. Default body weight (70 kg for males, 60 kg for females, and 10 kg for non-nursing infants < 1 year old) and default drinking water consumption estimates (2 liter (L)/day for adults, 1 L/day for non-nursing infants) are then used to calculate the actual DWLOCs. The DWLOC represents the concentration level in surface water or ground water at which aggregate exposure to the chemical is not of concern.

Using Generic (GENEEC (surface water)) and Screening Concentration in Ground Water (SCI-GROW (ground water)) models, the Agency has calculated chronic Tier I Estimated Environmental Concentrations (EECs) for fludioxonil for use in human health risk assessments. These values represent the upper bound estimates of the concentrations of fludioxonil that might be found in surface and ground water assuming the maximum application rate allowed on the label of the highest use pattern. The EECs from these models are compared to the DWLOCs to make the safety determination.

i. Acute exposure and risk. In reviewing the toxicity data base, no toxicological endpoints were identified which could be attributable to a single dietary exposure. Therefore a risk assessment for this exposure scenario was not conducted.

ii. *Chronic exposure and risk.* Using the SCI-GROW model, the maximum long-term estimated concentration in ground water is not expected to exceed 0.08 parts per billion (ppb). The chronic estimated concentration in surface water, using the GENEEC model, is 7.8 ppb. The DWLOC for the U.S. population was calculated to be 999 ppb; the DWLOC for the most sensitive subgroup, infants less than 1 year old, was calculated to be 235 ppb. As even the upper bound concentrations of fludioxonil in ground water and surface water are not expected to exceed the

calculated DWLOC, the Agency concludes with reasonable certainty that chronic exposure to fludioxonil in drinking water is not of concern.

3. *From non-dietary exposure.* Fludioxonil is currently not registered for use on residential, non-food sites; therefore, no non-occupational, non-dietary exposure is expected.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether fludioxonil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fludioxonil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fludioxonil has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* In reviewing the toxicity data base, no toxicological endpoints were identified which could be attributable to a single dietary exposure. Therefore a risk assessment for this exposure scenario was not conducted.

2. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fludioxonil from food will utilize 5% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is infants less than 1 year in age (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Estimated chronic environmental concentrations of fludioxonil in surface water and ground water do not exceed chronic DWLOCs calculated by the Agency. EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Fludioxonil is currently not registered for use on residential, non-food sites; therefore, short- and intermediate-term aggregate risk assessments were not conducted.

4. *Aggregate cancer risk for U.S. population.* Fludioxonil has been classified as a Group D- not classifiable as to human carcinogenicity- chemical by the Cancer Peer Review Committee. The Group D classification was based on the statistically significant increase in liver tumors in female rats for combined adenoma/carcinoma only, the lack of tumorigenic response in male rats or in either sex of the mouse, and the need for additional mutagenicity studies.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fludioxonil residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children— i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of fludioxonil, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rat developmental study, the maternal (systemic) NOAEL was 100 mg/kg/day, based on reduction in mean body weight gain in dams during gestation period at the LOAEL of 1,000 mg/kg/day. The developmental (fetal) NOAEL was 100 mg/kg/day, based on increased fetal and litter incidence of dilated renal pelvis and dilated ureter at the LOAEL of 1,000 mg/kg/day. In the rabbit developmental toxicity study, the maternal (systemic) NOAEL was 10 mg/kg/day, based on decreased body weight gains and food efficiency at the LOAEL of 100 mg/kg/day. The developmental (pup) NOAEL was 300 mg/kg/day, the highest dose tested.

iii. *Reproductive toxicity study.* In the 2–generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 22.13 mg/kg/day (males) and 24.24 mg/kg/day (females), based on clinical signs and decreased body weight, body weight gain and food consumption at the LOAEL of 221.6 mg/kg/day (males) and 249.7 mg/kg/day (females). The reproductive/developmental (pup) NOAEL was 22.13 mg/kg/day (males) and 24.24 mg/kg/day (females), based on reduced pup weights at the LOAEL of 221.6 mg/kg/day (males) and 249.7 mg/kg/day (females).

iv. *Pre- and postnatal sensitivity.* The toxicological data base for evaluating pre- and postnatal toxicity for fludioxonil is complete with respect to current data requirements. There are no pre- or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2–generation rat reproductive toxicity study.

v. *Conclusion.* There is a complete toxicity data base for fludioxonil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* In reviewing the toxicity data base, no toxicological endpoints were identified which could be attributable to a single dietary exposure. Therefore, a risk assessment for this exposure scenario was not conducted.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fludioxonil from food will utilize 22% of the RfD for non-nursing and nursing infants less than 1 year old, the subgroups most highly exposed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Because the chronic DWLOCs are not exceeded by estimated chronic environmental concentrations in ground water or surface water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* Fludioxonil is currently not registered for use on residential, non-food sites; therefore, short- and intermediate-term aggregate risk assessments were not conducted.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fludioxonil residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is adequately understood based on a metabolism study submitted for seed treatment use on potatoes. The residue of concern is the parent compound, fludioxonil, only. There are no livestock feed items associated with the proposed use on caneberries. Therefore, the nature of the residue in animals is not of concern with regard to the establishment of this tolerance.

B. Analytical Enforcement Methodology

Adequate enforcement methodology high pressure liquid chromotography/using ultraviolet detection (HPLC/UV) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Residues of fludioxonil are not expected to exceed 5.0 ppm in/on caneberries as a result of the proposed section 18 use. Secondary residues are not expected in animal commodities as there are no feed items associated with use on caneberries.

D. International Residue Limits

There are no Codex residue limits established for fludioxonil, and no Canadian or Mexican residue limits for fludioxonil use on caneberries.

E. Rotational Crop Restrictions

As caneberries are not considered to be a rotated crop, no rotational crop data are required.

V. Conclusion

Therefore, the tolerance is established for residues of fludioxonil in caneberries at 5.0 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 30, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300877] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hea
be sent by e-mail di
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requests st itted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and

hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 11, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.516, by alphabetically adding the commodity "Caneberries" to the table in paragraph (b) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * *		
Caneberries	5.0	12/31/00
* * * * *		

* * * * *

[FR Doc. 99–16544 Filed 6–29–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300871; FRL–6084–4]

RIN 2070–AB78

Hexaconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the fungicide hexaconazole, [alpha-butyl-alpha-(2,4-dichlorophenyl)-1*H*-1,2,4-triazole-1-ethanol] in or on the imported raw agricultural commodity bananas at 0.7 parts per million (ppm). Zeneca Ag Products requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective June 30, 1999. Objections and requests for hearings must be received by EPA on or before August 30, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300871], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300871], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300871]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 249, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9354, waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 24, 1999 (64 FR 9147) (FRL–6058–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 0E3853) for tolerance by Zeneca Ag Products, 1800 Concord Pike, Wilmington, DE 19850–5458. This notice included a summary of the petition prepared by Zeneca Ag Products, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.488 be amended by establishing a tolerance for residues of the fungicide hexaconazole, [alpha-butyl-alpha-(2,4-dichlorophenyl)-1*H*-1,2,4-triazole-1-ethanol], in or on the imported raw agricultural commodity bananas at 0.7 ppm.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of hexaconazole, [alpha-butyl-alpha-(2,4-dichlorophenyl)-1*H*-1,2,4-triazole-1-ethanol] on the imported raw agricultural commodity bananas at 0.7 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as

the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by hexaconazole are discussed in this unit.

1. *Acute toxicity.* Hexaconazole possesses a low order acute toxicity by the oral, dermal and inhalation routes of exposure [categories 3/4]. It is slightly to moderately irritating to the eye and non-irritating to the skin. Hexaconazole tested positive in animal studies for skin sensitization.

2. *Subchronic toxicity and chronic toxicity.* Subchronic and chronic dietary feeding studies in mice, rats and dogs indicate that the liver is the primary target organ as generally seen by increased enzyme levels, liver cell hypertrophy, and fatty infiltration of the liver across species. Decreased body weight gain was also seen across species.

Groups of male and female mice fed dietary doses ranging from 3.75 milligrams (mg)/kilograms (kg)/day to 225 mg/kg/day for 29 days manifested group mean body weight decreases of 17% in males and 14% in females at the lowest observed adverse effect level (LOAEL) of 15 mg/kg/day concurrent with hepatotoxicity. The no observed adverse effect level (NOAEL) was 3.75 mg/kg/day.

Male and female rats were given dietary levels of compound in feed for a period of either 90 days or 2 years at doses ranging from 2.5 to 250 mg/kg/day for 90 days or 2 years at doses ranging from 0.47 mg/kg/day to 61 mg/kg/day. Body weight gains in the 90–day study were statistically significantly decreased at 250 mg/kg/day in both sexes at this high dose. The LOAEL of 25 mg/kg/day for both sexes was based on slight fatty changes in the liver of males and cortical parenchymal vacuolation for the adrenal gland in both sexes. The NOAEL was 2.5 mg/kg/day.

Dogs in a 90–day study given hexaconazole by capsule at doses of 0, 5, 25 or 125 mg/kg/day reduced to 50 mg/kg/day with the addition of a new group and the termination of the original group at 125 mg/kg/day as a result of extreme toxicity manifested increases in alkaline phosphatase and serum glutamic pyruvic transaminase (SGPT) and decreases in cholesterol and triglycerides as well as fatty infiltration of the liver at the LOAEL of 25 mg/kg/day. The NOAEL was 5 mg/kg/day. Liver organ weight increases on a relative and absolute basis were increased at the highest dose tested (HDT) accompanied by pallor and enlargement of the liver and an accumulation of lipid.

Male and female dogs in a 12–month oral gavage study given either 0, 2, 10 or 50 mg/kg/day of hexaconazole showed fatty infiltration of the liver in males and an increase in the liver weights of females at the LOAEL of 10 mg/kg/day. The NOAEL was 2 mg/kg/day. Albumin, total protein, calcium, cholesterol, and triglyceride were decreased at 50 mg/kg/day at all time periods. Females showed an increase in SGPT and a decrease in plasma urea at the HDT. Alkaline phosphatase was also increased in both sexes at the HDT. Liver and kidney weight were increased at the high dose. Fatty infiltration of the liver was seen at the high dose in all dogs.

3. *Carcinogenicity.* In a 3 dose chronic dietary/carcinogenicity rat feeding study, males and females received either 0, 10, 100 or 1,000 ppm of compound in the diet. The NOAEL was 4.7 and 6.1 mg/kg/day for males and females respectively. The LOAEL was 47 for males and 61 mg/kg/day females based on decreased body weight gains in females of 7% and fatty changes in the centrilobular region of the liver of males as well as increased incidence of cortical vacuolation of the adrenal gland and tubular atrophy of the testes in males which was considered to be an acceleration of natural occurring lesions. Effects at the HDT LOAEL were essentially an extension of the effects at the lower doses. There was a dose responsive positive trend in the number of benign Leydig cell tumors in the testes and a significant pair wise comparison between the HDT and the controls. These tumors were considered uncommon in the test strain and occurred at an accelerated rate.

Male and female mice fed hexaconazole for a period of 2 years at doses ranging from 0.57 to 29.6 mg/kg/day showed body weight gain decreases and decreased food efficiency at the LOAEL of 23.5 mg/kg/day for males and 29.6 mg/kg/day for females. Increased liver weight and an increase in hepatocellular hypertrophy as well as an increase in centrilobular fatty infiltration of the liver in both sexes was also reported at the high dose. However, the HDT was not considered to be the maximum tolerated dose for the purpose of carcinogenicity testing. Therefore the negative finding for carcinogenicity in the mouse should be viewed with caution.

4. *Developmental toxicity.* In a rat developmental study, pregnant females were gavaged with either 0, 2.5, 25, or 250 mg/kg/day of hexaconazole. The parental NOAEL was 25 mg/kg/day and the LOAEL was 250 mg/kg/day based on decreased body weight gain and decreased food consumption. The developmental NOAEL was 2.5 mg/kg/day and the developmental LOAEL was 25 mg/kg/day based on delayed ossification of the 7th cervical transverse process and the presence of the extra 14th rib. At 250 mg/kg/day there was a statistically significant increase in late uterine deaths.

In a rabbit developmental study, animals tested at doses of 0, 25, 50, and 100 mg/kg/day also showed increased susceptibility to the effects of compound. The maternal NOAEL was 50 mg/kg/day and the LOAEL for maternal effects was 100 mg/kg/day based on a decreased body weight gain. The developmental NOAEL was 25 mg/kg/day and the developmental LOAEL was 50 mg/kg/day based on a decrease in mean fetal body weight.

5. *Two-generation reproduction study in rats.* Animals were fed either 0, 1, 5, or 50 mg/kg/day of test compound. There were no treatment related effects on reproductive performance of either sex for the F_0 or the F_1 generations. The parental NOAEL was 1 mg/kg/day. The parental systemic LOAEL was determined to be 5 mg/kg/day based on liver pathology (fatty infiltration) which was considered to be minimal. At 50 mg/kg/day, liver weight was increased accompanied with fatty changes in the liver. There was also an increased incidence of cytoplasmic vacuolation of the adrenal cortex in both sexes. The NOAEL for offspring was 5 mg/kg/day. The LOAEL for offspring was 50 mg/kg/day based on decreased body weight gain in pups, decreased litter size and decreased pup survival. Liver weights were increased and fatty infiltration was also observed.

6. *Mutagenicity.* Hexaconazole is not considered to be a mutagen with the currently available data from the Gene Mutation *Salmonella* Ames Assay, Micro-nucleus Assay in Mice, *In Vitro* Cytogenetics Human Lyphocytes Cells, and the Unscheduled DNA Synthesis in Primary Rat Hepatocytes studies.

7. *Dermal penetration.* Hexaconazole administered dermally to rats over a period of 21 days for 6 hours a day at dose levels of 0, 100, 300, and 1,000 mg/kg/day induced no systemic toxicity and was not irritating to the skin. The LOAEL was concluded to be greater than 1,000 mg/kg/day the HDT.

8. EPA determined that a developmental neurotoxicity study in rats is not required for hexaconazole because:

i. Hexaconazole is not structurally related to a neurotoxic agent.

ii. There is no evidence in the acute, subchronic, or chronic studies that indicate that hexaconazole induces neurotoxic effects.

iii. The developmental and reproductive studies do not indicate that the chemical is neurotoxic. Developmental effects occurred at dose levels that were below maternally toxic levels for both rat and rabbit but were not associated with neurotoxicity.

9. *General metabolism.* Hexaconazole is readily absorbed and excreted in both urine and feces in both males and females. Metabolites underwent extensive glucuronidation, biliary excretion, and enterohepatic recirculating. Radio labeled hexaconazole concentrated in liver, kidney, and adrenal at 24 hours. About 94–98% of the radio labeled material was excreted in 7 days by both sexes with males excreting 77% in 3 days and females excreting 88–95% in 3 days. Males excreted 41% in urine and 52% in feces compared to females 64% and 29% in urine and feces, respectively. The majority of the metabolites were oxidation products of the *n*-butyl chain (hexaconazole acid, 5-hydroxy-hexaconazole, 5-keto hexaconazole and an unspecified hydroxy-keto-hexaconazole). Preferential elimination of hexaconazole was seen in the urine of females as 5-hydroxy-hexaconazole.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute reference dose (RfD) of 0.025 mg/kg/day was established for the subpopulation group, females 13+ only, based on a NOAEL of 2.5 mg/kg/day from a developmental study in the rat. Effects at the next higher dose level of 25 mg/kg/day were an increase in the delayed ossification of the 7th cervical transverse process and the presence of the extra 14th rib. Effects were dose responsive and statistically significant. These effects are presumed to occur after a single exposure *in utero* and therefore are considered to be appropriate for this risk assessment. The acute population adjusted dose (aPAD) is 0.0025 mg/kg/day and includes the additional 10x FQPA safety factor. The FQPA Safety Factor will be applied for acute food risk assessment for females 13+ only because the effects occur only during *in utero* exposure and are not postnatal effects. Thus, it is not appropriate to apply this safety factor to the acute food risk assessment of the general population including infants and children. An acute dose and endpoint were not selected for the general population group (including infants and children) because there were no effects observed in oral toxicology studies including maternal toxicity in the developmental toxicity studies in rats and rabbits that are attributable to a single exposure dose.

2. *Short- and intermediate-term toxicity.* Risk assessments for short- and intermediate-term toxicity are used for addressing residential or other similar non-dietary, non-occupational exposures. No short-, intermediate-, or long-term dermal or aggregate exposure risk assessments were performed for hexaconazole because hexaconazole has no registered residential uses.

3. *Chronic toxicity.* EPA has established the RfD for hexaconazole at 0.02 mg/kg/day. This RfD is based on a 1–year oral gavage study in dogs. The NOAEL in this study was 2 mg/kg/day. Fatty infiltration of the liver and an increase in liver weights occurred at the LOAEL of 10 mg/kg/day. An FQPA safety factor was not applied for chronic dietary risk assessment because:

i. The NOAEL used in deriving the RfD was based on liver effects in the chronic dog study.

ii. The developmental effects on which the FQPA factor is based were seen in pregnant animals of a different species (rats, and rabbits).

iii. The developmental effects are considered to be "acute" effects. Therefore, the chronic population adusted dose (PAD) and the RfD are the same.

4. *Carcinogenicity.* The EPA Cancer Peer Review Committee (CPRC) classified hexaconazole as a Group C (likely) carcinogen based on benign Leydig cell tumors in the male rats. A revised Q_1^* was calculated using the body weight 3/4 interspecies scaling factor. This resulted in a revised potency factor of 1.6×10^{-2} $(mg/kg/day)^{-1}$.

C. Exposures and Risks

1. *From food and feed uses.* Time-limited tolerances were established (40 CFR 180.488) for the residues of hexaconazole, [alpha-butyl-alpha-(2,4-dichlorophenyl)-1*H*-1,2,4-triazole-1-ethanol], in or on the imported agricultural commodity bananas at 0.1 ppm; however, this tolerance expired on March 26, 1999. Risk assessments were conducted by EPA to assess food exposures from hexaconazole as follows:

There are no proposed or existing residential uses for hexaconazole. The proposed use is limited to import bananas only. The aggregate exposure risk is limited to dietary exposure only. If new uses are added in the future, the Agency will reassess the impact of these uses, which may result in the necessity of residential and water exposure assessments.

For all food analyses, the anticipated residue levels based on the field trials on banana pulp were used. The use of banana pulp residue levels provides a more realistic food exposure as individuals do not usually eat the banana peel. The residue levels of the diol metabolites were also included in the food exposure analysis. The diol metabolites are expected to be of comparable toxicity to the parent compound. EPA will require residue data on these metabolites for bananas, as well as future food uses.

The food exposure analyses for hexaconazole is a conservative but more realistic estimate of food exposure with the use of the pulp residue values and 100% of the commodities assumed to be treated. The residue level value of 0.56 ppm, which was the highest residue level for pulp (hexaconazole-0.17 ppm + diol metabolites-0.39 ppm), was used in the acute dietary analysis. The residue level value of 0.11 ppm, which was the average from the field trials for pulp (hexaconazole-0.03 ppm + diol metabolites-0.08 ppm), was used in the chronic dietary analysis.

i. *Acute exposure and risk.* Acute food risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The acute food exposure analysis for the population subgroup females 13+ was performed using the highest pulp residue level (parent + diol metabolites) and 100% crop treated. The FQPA Safety Factor of 10x was retained for the acute food analysis only for the population subgroup females 13+. The acute population adjusted dose (aPAD) used in the acute food analysis was 0.0025 mg/kg/day.

ii. *Chronic exposure and risk.* The FQPA Safety Factor was removed (i.e., reduced to 1x) for chronic food exposure. Therefore, the chronic PAD (cPAD) and the chronic RfD are the same. For chronic food risk, EPA's level of concern is greater than 100% chronic PAD. All chronic (non-cancer) percent cPADs for all subgroups were ≤1%. The results of the chronic food exposure analysis indicate that the chronic food risk associated with the proposed use of hexaconazole is below the Agency's level of concern.

2. *From drinking water.* Hexaconazole is not registered for use in the United States (U.S.). Therefore, no water or occupational exposure assessment was performed.

3. *From non-dietary exposure.* The use of bananas is for import use only.

There are currently no proposed or registered domestic or residential uses for this product. Therefore, no occupation exposure assessment is required. If domestic uses are added in the future, an occupational exposure assessment will have to be completed.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether hexaconazole has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, hexaconazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that hexaconazole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute food exposure analysis for hexaconazole is a conservative but more realistic estimate of dietary exposure with the use of the pulp residue values. The acute food exposure analysis for the population subgroup females 13+ was performed using the highest pulp residue (parent + diol metabolite) levels and 100% crop treated (CT). The FQPA Safety Factor of 10x was retained for the acute dietary analysis only. The aPAD used in the acute dietary analysis was 0.0025 mg/kg/day. The percent aPADs were below EPA's level of concern at the 95th percentile of exposure for the females 13+ subgroup. The highest percent aPAD at the 95th percentile of exposure was 47% for the subgroup, females 13+ (pregnant, not nursing). Therefore, the acute dietary risk associated with the proposed use of hexaconazole on bananas is below the Agency's level of concern. The table below summarizes the acute food exposure.

Summary of Acute Food Exposure and Risk for Hexaconazole at 95th Percentile of Exposure

Population Subgroup	Exposure (mg/kg/day)	Population Adjusted Dose (PAD)
Females (13+, pregnant, not nursing).	0.001181	47.2
Females (13+, nursing).	0.001136	45.4
Females (13–19 yrs., not pregnant, not nursing).	0.000892	35.7
Females (10+ years, not pregnant, not nursing).	0.001030	41.2
Females (13–50 years).	0.000954	38.1

2. *Chronic risk.* The chronic (non-cancer) and cancer Dietary Exposure Evaluation Model (DEEM) analyses used mean consumption (3–day average). Average pulp residues from field trials and 100% CT information were used. The FQPA Safety Factor was removed (equivalent to a factor of 1x) for chronic exposures. Therefore, the chronic PAD and the chronic RfD are identical. For chronic dietary risk, EPA's level of concern is greater than 100% cPAD. All chronic (non-cancer) percent PADs for all subgroups were ≤1%. The results of the chronic dietary analysis indicate that the chronic dietary risk associated with the existing and proposed uses of hexaconazole is below the Agency's level of concern (<100% PAD). The table below summarizes the chronic dietary exposure and includes the U.S. general population and other subgroups. The other subgroups included are all infant and children subgroups and the highest dietary exposures for the respective adult population subgroups (i.e., females and the other general population subgroup higher than U.S. population).

Summary of Chronic (non-cancer) Dietary Exposure and Risk for Hexaconazole

Population Subgroup	Exposure (mg/kg/day)	%RfD
U.S. Population (the contiguous 48 states).	0.000033	<1
Non-Hispanic other than black or white.	0.000050	<1
All infants (< 1 year).	0.000167	<1
Nursing infants (< 1 year).	0.000077	<1
Non-nursing infants (< 1 year).	0.000205	1.0
Children (1–6 years old).	0.000091	<1
Children (7–12 years old).	0.000037	<1
Females (13+/ nursing).	0.000035	<1

3. *Aggregate cancer risk for U.S. population.* The Agency generally considers 1×10^{-6} as negligible risk (i.e, less than 1 in 1 million) for cancer. The results of this analysis indicate that the cancer dietary risk of 5.3×10^{-7} associated with the proposed use of hexaconazole is below the Agency's level of concern.

Subgroup	Exposure (mg/kg/day)	Lifetime Risk
U.S. Population (the contiguous 48 states).	0.000033	5.3×10^{-7}

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to hexaconazole residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children — i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of hexaconazole, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the database unless

EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* The available data indicated evidence of increased susceptibility of rat and rabbit fetuses to the *in utero* exposure of hexaconazole in developmental studies. In both the rat and rabbit developmental toxicity studies, developmental effects occurred at dose levels lower than those causing maternal toxicity; in rats developmental toxicity was manifested as delayed ossification and an extra 14th rib; and in rabbits, decreased fetal weights occurred at doses below maternally toxic levels.

iii. *Reproductive toxicity study.* In the 2-generation reproduction study, no increased susceptibility was observed. Effects in the offspring occurred only at or above treatment levels which resulted in evidence of parental toxicity.

iv. *Conclusion.* There is a complete toxicity database for hexaconazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The 10x FQPA safety factor will be applied only to subpopulation group females 13+ for the determination of acute dietary risk because the effects occur only during utero exposure and are not post natal effects. The FQPA safety factor will not be applied for chronic dietary risk assessment because: (a) the NOAEL used in deriving the RfD is based on liver effects from the chronic dog study; (b) the developmental effects on which the FQPA factor is based were seen in pregnant animals of a different species (rats and rabbits); and (c) the developmental effects are considered to be "acute" effects, and not a result of chronic exposure.

2. *Acute risk.* A dose and endpoint were not selected for the general population including infants and children subpopulation group because their were no effects observed in the oral toxicity studies including maternal toxicity in the developmental toxicity studies in rats and rabbits that are attributable to a single exposure dose.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to hexaconazole from food will utilize 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to hexaconazole residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is understood. Plant metabolism studies were conducted on grapes, apples, and wheat and found acceptable. As the nature of the residue is understood in these crops, no additional metabolism studies for bananas were required. The data indicate that the major terminal residues in plants will be parent hexaconazole, its diol metabolites [(±)-5-(2,4-dichlorophenyl)-6-(1*H*-1,2,4-triazol-1-yl)hexan-2,6-diol, (±)-5-(2,4-dichlorophenyl)-5-hydroxy-6-(1*H*-1,2,4-triazol-1-yl)hexanoic acid, (±)-2-(2,4-dichlorophenyl)-1-(1*H*-1,2,4-triazol-1-yl)hexan-2,5-diol, and (±)-2-(2,4-dichlorophenyl)-1-(1*H*-1,2,4-triazol-1-yl)hexan-2,4-diol, free and conjugated] resulting from oxidation of the alkyl side chain of hexaconazole, and its triazole metabolites [1*H*-1,2,4-triazole, (*RS*)-3-(1*H*-1,2,4-triazol-1-yl) alanine (also known as triazole alanine), (1*H*-1,2,4-triazole-1-yl) acetic acid (also known as triazole acetic acid)], resulting from the cleavage of the triazolyl moiety of the parent compound. The predominant residues in apples and grapes are hexaconazole and its diol metabolites. The metabolism in wheat apparently differs in that while hexaconazole and its diol metabolites were the major terminal residues in straw and chaff, the major terminal residues in grain were the triazole degradation products. Any residues in banana flesh will result from extensive translocation through leaves, stalk, and skin.

EPA determined that parent hexaconazole is the only terminal residue that should be included in the tolerance expression for bananas, which is the only food use pending at this time. The diol metabolites are not being included in the tolerance expression or in the risk assessments since they are of low toxicity and are not likely to be present at detectable levels in bananas.

B. Analytical Enforcement Methodology.

The petitioner has proposed "Agrochemical Residue Analytical Method 108/1 for Residues of Hexaconazole in Crops" as the analytical enforcement method. Samples of homogenized whole bananas are weighed into a round bottom flask (fortification occurs at this step). The sample is extracted by refluxing with methanolic sodium hydroxide for 1–hour. Aqueous sodium chloride is then added, and the hexaconazole is partitioned from the methanol/aqueous solution into dichloromethane. The extracts in dichloromethane are cleaned up using silica adsorption micro-columns. Parent hexaconazole is then determined using capillary column gas liquid chromatography (GLC)/nitrogen phosphorous (NP) or GLC/electron capture (EC). EPA concluded that Method 108/1 is adequate for enforcement purposes. An independent laboratory validation (ILV) of the method has been submitted and a satisfactory petition method validation (PMV) by EPA was completed.

Adequate enforcement methodology (example - gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues.

A total of 18 field trials were submitted and reviewed by the Agency. The residue levels of hexaconazole (parent only) in whole unbagged bananas from all trials ranged from < 0.01 limit of quantitation (LOQ) to 0.64 ppm. The residue levels of hexaconazole in unbagged banana pulp from all field trials ranged from < 0.01 ppm (LOQ) to 0.17 ppm. The residue levels of the diol metabolites in whole unbagged bananas from all trials ranged from < 0.03 (LOQ) to 1.6 ppm. The residue levels of the diol metabolites in unbagged banana pulp from all field trials ranged from < 0.03 ppm (LOQ) to 0.39 ppm. The submitted data indicate that residues of hexaconazole in whole bananas will exceed the existing time-limited tolerance level of 0.1 ppm for bananas. The appropriate tolerance level is 0.7 ppm for bananas. A revised

section F was submitted amending the tolerance to 0.7 ppm for bananas.

There are no processed commodities associated with bananas; therefore, no tolerances for processed commodities are required.

There are no animal feed items associated with bananas; therefore, no tolerances for meat, milk, poultry, and eggs are required. For any future petition in which there is a potential for transfer of residues to animals (meat, milk, poultry, eggs, etc.), animal metabolism studies will be required.

Anticipated residues were calculated from field trial data. The residue levels from banana pulp for parent and diol metabolites were used. The residue level value of 0.56 ppm, which was the highest residue level for pulp (hexaconazole-0.17 ppm + diol metabolites-0.39 ppm), was used in the acute dietary analysis. The residue level value of 0.11 ppm, which was the average from the field trials for pulp (hexaconazole-0.03 ppm + diol metabolites-0.08 ppm), was used in the chronic dietary analysis.

To provide for the re-evaluation of the anticipated residues, the Agency will require under section 408(b)(2)(E) that additional data be submitted within 5 years. EPA will require additional residue data on the diol metabolites for future food uses. If monitoring data for the parent need to be used in the future for dietary risk assessments, then diol residues may be estimated based on their ratio to parent hexaconazole.

D. International Residue Limits.

There is neither a Codex proposal, nor Canadian or Mexican limits for residues of hexaconazole in bananas. Therefore, a compatibility issue is not relevant to the proposed tolerance.

IV. Conclusion

Therefore, the tolerance is established for residues of hexaconazole, [alpha-butyl-alpha-(2,4-dichlorophenyl)-1*H*-1,2,4-triazole-1-ethanol] in the imported raw agricultural commodity bananas at 0.7 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 30, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300871] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 10, 1999.

James Jones,
Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. § 180.488 is revised to read as follows:

§ 180.488 Hexaconazole; tolerance for residues.

A tolerance is established for residues of the fungicide hexaconazole, [alpha-butyl-alpha-(2,4-dichlorophenyl)-1*H*-1,2,4-triazole-1-ethanol], in or on the imported raw agricultural commodity bananas at 0.7 parts per million (ppm). There are no U.S. registrations as of June 30, 1999.

[FR Doc. 99–16545 Filed 6–29–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300860A; FRL–6087–3]

Aspergillus flavus AF36; Exemption from Temporary Tolerance, Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: EPA is issuing a technical amendment to the expiration date for an exemption from temporary tolerance regulation for *Aspergillus flavus* AF36 that published in the **Federal Register** on May 26, 1999 (64 FR 28371) (FRL–6081–2). This amendment corrects the expiration date for the exemption from temporary tolerance for residues of the atoxigenic *Aspergillus flavus* AF36 on cotton grown in certain Counties in Arizona to December 30, 2001, in order to allow clearance of the treated food/feed commodities through the channels of trade.

DATES: This regulation is effective June 30, 1999. You may submit an objection

or request a hearing as specified in Unit IV. of the "SUPPLEMENTARY INFORMATION" section of this document. Any objection or hearing request must identify docket control number [OPP–300860A], and must be received by the EPA Hearing Clerk on or before August 30, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–308–8097; e-mail address: bacchus.shanaz@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be affected by this action if you are a cotton producer in certain counties of Arizona (NAICS 11192). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at *http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the* "**Federal Register** - Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number [OPP–300860A]. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

III. What Does this Technical Correction Do?

This technical correction amends the expiration date for an exemption from temporary tolerance for residues of atoxigenic *Aspergillus flavus* AF36 on cotton in Arizona treated in accordance with the Experimental Use Permit 69224–EUP–1. This temporary exemption from a tolerance was established on May 26, 1999 (64 FR 28371) (FRL–6081–2) in response to a petition submitted by the Interregional Research Project Number 4 (IR-4). Specifically, IR-4 requested an exemption from temporary tolerance for residues of *Aspergillus flavus* AF36 on cotton in certain counties in Arizona as specified in the Experimental Use Permit 69224-EUP-1 under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The Notice of Petition appeared in the **Federal Register** on February 19, 1999 (64 FR 8358) (FRL–6057–3).

At the time of the petition, as presented in the notice of petition as published on February 19, 1999, IR-4 specifically requested that the exemption from temporary tolerances be established for residues of this microbial pesticide until December 30, 2001, to allow the treated cotton to clear the channels of trade. (See 64 FR 8358, at 8358). Inadvertently, the expiration date appeared as December 30, 2000 in the May 26, 1999 final rule. However, in granting the request contained in the petition, the Agency intended to grant the expiration date specifically requested by IR-4. This document corrects the expiration date that appears in the May 26, 1999 final rule, by changing December 30, 2000 to December 30, 2001 in the regulation.

This correction to the exemption from a temporary tolerance is subject to the objection procedures in FFDCA section 408(g)(2) and 40 CFR part 178.

IV. Why Is this Technical Correction Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary and would be contrary to the public interest. As explained above, the correction contained in this action will simply correct the expiration date for the exemption from temporary tolerances established for residues of this microbial pesticide to allow the treated cotton to clear the channels of trade. EPA therefore finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make this amendment without prior notice and comment. For the same reasons, EPA also finds that there is "good cause" under FFDCA section 408(e)(2) to make this minor modification to the exemption from tolerance without notice and comment.

V. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

EPA's compliance with these statutes and Executive Orders for the May 26, 1999 final rule, which established the exemption from temporary tolerance for residues of the atoxigenic *Aspergillus flavus* AF36 on cotton grown in certain Counties in Arizona, is discussed in the preamble for the final rule (64 FR 28371, at 28373).

VI. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental Protection, Administrative Practice and Procedure, Agricultural Commodities, Pesticides and Pests, Reporting and Recordkeeping Requirements.

Dated: June 10, 1999.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.1206 [Amended]

2. Section 180.1206 is amended by revising the date in the last sentence therein to read "December 30, 2001".

[FR Doc. 99–16546 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300888; FRL–6089–9]

RIN 2070–AB78

Bifenthrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the insecticide bifenthrin, (2-methyl[1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the food commodities: cabbage at 4.0 part per million (ppm); the cucurbit vegetable crop group (Crop Group 9) at 0.4 ppm; edible- podded legume vegetable subgroup (Crop Subgroup 6A) at 0.6 ppm; eggplant at 0.05 ppm; globe artichoke at 1.0 ppm; head and stem Brassica subgroup (Crop Subgroup 5A), except cabbage, at 0.6 ppm; rapeseed at 0.05 ppm, succulent shelled pea and bean subgroup (Crop Subgroup 6B) at 0.05 ppm; sweet corn kernel plus cob with husk removed at 0.05 ppm; and corn forage at 3.0 ppm. The Interregional Research Project (IR-4) and FMC Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 30, 1999. Objections and requests for hearings must be received by EPA on or before August 30, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300888], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300888], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300888]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9368, e-mail: jamerson.hoyt@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 7, 1998 (63 FR 53902) (FRL–6026–3), and May 19, 1999 (64 FR 27262) (FRL–6079–8), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petitions for tolerances by the Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experimental Station, P.O. Box 231, Rutgers University, New Brunswick, NJ, and FMC Corporation, 1753 Market Street, Philadelphia, PA 19103. These notices included summaries of the petitions prepared by FMC Corporation, the registrant. There were no comments received in response to the notices of filing.

The petitions requested that 40 CFR 180.442 be amended by establishing tolerances for residues of the insecticide bifenthrin, in or on various food commodities, as follows:

1. IR-4 petition 6E4629 proposes the establishment of a tolerance for globe artichoke at 1.0 ppm. IR-4 first proposed the tolerance for the commodity "artichokes," but the petition was amended to specify the food commodity as "globe artichoke."

2. IR-4 petition 6E4760 proposes the establishment of a tolerance for the cucurbit vegetable crop group at 0.4 ppm.

3. IR-4 petition 8E4993 proposes the establishment of a tolerance for the edible-podded legume vegetable subgroup at 0.6 ppm. The initial proposal was for a tolerance for the edible- podded legume vegetable group at 0.2 ppm. Based on EPA's review of the field residue data submitted by IR-4, the petition was revised by the petitioner to propose the tolerance at 0.6 ppm.

4. IR-4 petition 8E5009 proposes the establishment of a tolerance for eggplant at 0.05 ppm.

5. IR-4 petition 9E5084 proposes the establishment of a tolerance for rapeseed (including canola and crambe seed) at 0.05 ppm.

6. IR-4 petition 9E5064 proposes the establishment of a tolerance for succulent shelled pea and bean subgroup at 0.05 ppm.

7. IR-4 petition 9E5069 proposes the establishment of a tolerance for the head and stem Brassica subgroup, except cabbage, at 0.6 ppm; and cabbage at 4.0 ppm.

8. FMC Corporation petition 8F5014 proposes the establishment of a tolerance for sweet corn grain at 0.05 ppm and corn forage at 3.0 ppm. The petition was amended by changing the commodity term "sweet corn grain" to read "sweet corn kernel plus cob with husk removed."

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of bifenthrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of bifenthrin on cabbage at 4.0 ppm; the cucurbit vegetable crop group at 0.4 ppm; edible-podded legume vegetable subgroup at 0.6 ppm; eggplant at 0.05 ppm; globe artichoke at 1.0 ppm; head and stem Brassica subgroup, except cabbage, at 0.6 ppm; rapeseed at 0.05 ppm; succulent shelled pea and bean subgroup at 0.05 ppm; sweet corn kernel plus cob with husk removed at 0.05 ppm; and corn forage at 3.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by bifenthrin are discussed in this unit.

1. *Genotoxicity.* The following genotoxicity tests conducted with bifenthrin all yielded negative results including: gene mutation in Salmonella (Ames); chromosomal aberrations in Chinese hamster ovary and rat bone marrow cells; HGPRT locus mutation in mouse lymphoma cells; and unscheduled DNA synthesis in rat hepatocytes. Bifenthrin tested positive in a mouse lymphoma forward mutation assay, with and without metabolic activation.

2. *Developmental toxicity.* In the rabbit developmental toxicity study, there were no developmental effects observed in the fetuses exposed to bifenthrin. The maternal no observed adverse effect level (NOAEL) was 2.67 milligrams (mg)/kilogram (kg)/day based on head and forelimb twitching at the lowest observed adverse effect level (LOAEL) of 4 mg/kg/day. In the rat developmental study, the maternal NOAEL was 1 mg/kg/day, based on tremors at the LOAEL of 2 mg/kg/day. The developmental (pup) NOAEL was also 1 mg/kg/day, based upon increased incidence of hydroureter at the LOAEL of 2 mg/kg/day. There were 5 of 23 (22 percent) litters affected with each litter having only one affected pup in the 2 mg/kg/day group, compared with zero in the control, 1 and 0.5 mg/kg/day groups. According to recent historical data (1992-1994) for this strain of rat, incidence of distended ureter averaged 11 percent with a maximum incidence of 90 percent.

3. *Reproductive toxicity.* In the rat reproduction study, parental toxicity occurred as decreased body weight at 5.0 mg/kg/day with a NOAEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day (highest dose tested)(HDT).

4. *Chronic toxicity/carcinogenicity.* In a 1-year chronic/carcinogenicity study dogs were fed diets containing 0, 0.75, 1.5, 3, or 5 mg/kg/day. No mortality occurred during the study and there were no treatment-related effects on body weight, food consumption, organ weights, and gross or microscopic pathology. In addition, there were no treatment-related ophthalmological changes. Tremors were noted in all males and females at 5 mg/kg/day during weeks 15-29 and in 1 of 4 males and 2 of 4 females at 3 mg/kg/day during weeks 16-23. A significant increase in platelets was noted at 52 weeks in males fed 5 mg/kg/day . Serum sodium levels were significantly increased in males at 3 and 5 mg/kg/day and serum chloride was increased in males fed 5 mg/kg/day. The LOAEL for this study is 3 mg/kg/day based on the increased incidence of tremors in both sexes. The NOAEL is 1.5 mg/kg/day.

5. *Chronic/carcinogenicity study.* In this study mice were fed doses of 0, 50, 200, 500, or 600 ppm (0, 2.5, 10, 25, or 30 mg/kg/day) in the diet for 87 weeks (males) or 92 weeks (females). The chronic LOAEL was established at 10 mg/kg/day based on the incidence of tremors in both sexes. The chronic NOAEL is established at 2.5 mg/kg/day. Carcinogenic potential was evidenced by a statistically significant increased trend for hemangiopericytomas in the urinary bladders of males, a significant dose-related trend for combined hepatocellular adenomas and carcinomas in males, and a significantly higher incidence of combined lung adenomas and carcinomas in females.

6. *Chronic/carcinogenicity study.* In this study rats were fed diets containing 0, 12, 50, 100, or 200 ppm (0, 0.6, 2.5, 5, or 10 mg/kg/day). The chronic LOAEL is 5 mg/kg/day based on the increased incidence of tremors in both sexes and possible increases in organ-to-body weight ratios in males, and the chronic NOAEL is established at 2.5 mg/kg/day. Under the conditions of this study, there was no evidence of carcinogenic potential.

7. *Animal metabolism.* Metabolism studies in rats demonstrated that distribution patterns and excretion rates in multiple oral dose studies are similar to single-dose studies. There was an accumulation of unchanged compound in fat upon chronic administration with slow elimination. Otherwise, bifenthrin was rapidly metabolized and excreted. Unchanged bifenthrin is the major residue component of toxicological concern in meat and milk.

B. Toxicological Endpoints

1. *Acute dietary toxicity.* The acute reference doses (RfD) for dietary exposure is established at 0.01 mg/kg/day. The acute RfD is based on a developmental toxicity study in the rat with a maternal NOAEL of 1.0 mg/kg of body weight/day and an uncertainty factor (UF) of 100. The FQPA Safety Factor for the protection of infants and children was reduced to 1x. (See Unit II.E.iv. in the preamble of this document for discussion of pre- and post-natal sensitivity to bifenthrin.) The acute population adjusted dose (acute PAD) is determined by dividing the acute RFD by the FQPA factor: acute PAD = 0.01 / 1 = 0.01 mg/kg /day. Since the FQPA Safety Factor is 1X, the acute RfD is identical to the acute PAD. This acute PAD applies to all population subgroups.

2. *Short- and intermediate-term residential dermal toxicity.* For short- and intermediate- term dermal endpoints, EPA selected the maternal NOAEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats (same study as for acute dietary exposure). The dermal absorption rate is 25% and a MOE of 100 was selected, which includes FQPA considerations.

3. *Chronic residential dermal exposure.* For the chronic dermal endpoint, EPA selected the NOAEL of 1.5 mg/kg/day from the 1-year oral study in dogs (same study as for chronic dietary exposure). The dermal absorption rate is 25% and a MOE of 100 was selected, which includes FQPA considerations.

4. *Chronic dietary toxicity.* EPA has established the chronic RfD for bifenthrin at 0.015 mg/kg/day. This RfD is based on a 1-year oral feeding study in dogs with a NOAEL of 1.5 mg/kg/day and an uncertainty factor (UF) of 100. The FQPA Safety Factor for the protection of infants and children was reduced to 1x. The chronic population adjusted dose (chronic PAD) is determined by dividing the chronic RfD by the FQPA factor. Since the FQPA safety factor is 1X, the chronic RfD is identical to the chronic PAD. This chronic PAD applies to all population subgroups.

5. *Carcinogenicity.* Bifenthrin has been classified as a Group C Carcinogen (a possible human carcinogen). A cancer risk assessment using the RfD approach is required.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.442) for the residues of bifenthrin, in or on a variety of food commodities. Tolerances are established on plant commodities ranging from 0.05 ppm on field corn grain to 10 ppm on dried hops. Tolerances are also established on animal commodities including meat, meat byproducts and fat of cattle, goats, hogs, horses, poultry, sheep, and milk and eggs. Risk assessments were conducted by EPA to assess dietary exposures from bifenthrin as follows:

The acute dietary (food only) risk assessment was conducted by Novigen Science, Inc. In this acute analysis, Monte Carlo analysis (Tier 3) was used. For those foods identified by EPA as single-serving commodities, Monte Carlo simulation is based on iterative sampling from individual residue values from field trial data reflecting maximum application rates and minimum preharvest intervals. For those considered to be blended or processed, mean field trial residues were calculated, substituting those samples for which residues were reported at or below the limit of detection (LOD) with one-half of the LOD. It was assumed that 100% crop treated for all pending registrations: citrus, snap beans, peas, lima beans, canola, sweet corn, cucurbits, eggplant, and Brassica vegetable. Secondary residues for meat and milk were derived from the total dietary burden and tissue- to- feed ratio, using the highest ratio for meat, and the average ratio for milk.

This analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of exposure to residues in food. This is a highly refined assessment since percent of crop treated was used for registered crops and anticipated residues for all crops.

In conducting this DEEM analysis for chronic food risk assessment, Novigen used anticipated residue values which were determined from field trial data conducted at maximum label conditions of maximum application rates and minimum preharvest intervals. Mean anticipated residue values were calculated, substituting one-half of the LOD for those samples for which residues were reported below the LOD. It was assumed that 100% crop treated for all crops except hops at 43%, cottonseed-oil and cottonseed-meal at 4%. Secondary residues for meat and milk were derived from the total dietary burden and tissue- to- feed ratio, using the average ratio for meat and milk. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated as required by the section 408(b)(2)(F), EPA may

require registrants to submit data on PCT.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. A range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which bifenthrin may be applied in a particular area.

i. *Acute exposure and risk (food).* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The percentages of the acute PAD utilized at the 99.9th percentile of exposure are 53% for the U.S. population, 63% for infants (<1 year), 58% for non-nursing infants (< 1 year) and 96% for children (1-6 years old), the most highly exposed population subgroup. An acute dietary exposure (food plus water) of 100% or less of the acute PAD is needed to protect the safety of all population subgroups.

ii. *Chronic exposure and risk (food).* The most highly exposed population subgroup (children 1-6 years) will utilize 6.7% of the chronic PAD. The exposure for the U.S. population is 2.4% of the chronic PAD. A chronic dietary exposure (food plus water) of 100% or less of the chronic PAD is needed to protect the safety of all population subgroups.

2. *From drinking water.* A Drinking Water Level of Comparison (DWLOC) is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Different populations will have different DWLOCs. The Agency uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. They do have an indirect regulatory impact through aggregate exposure and risk assessments. The estimated acute and chronic drinking water concentrations were generated with the PRZMI/EXAMS model using the highest application rate of 0.5 pounds/acre, which is registered for use on cotton.

i. *Acute exposure and risk (water).* For purposes of this acute risk assessment, the estimated acute maximum concentration for bifenthrin in surface and ground waters is 0.10 µg (micrograms)/L (liter), which was used for comparison to the back- calculated DWLOCs for the acute endpoint. The DWLOCs for various population categories are 165 µg/L for the U.S. population, 200 µg/L for females 13 years and older, and 4 µg/L for children 1 to 6 years. Acute exposure to bifenthrin in drinking water is below the calculated drinking water levels of concern.

ii. *Chronic exposure and risk (water).* For purposes of chronic risk assessment, the estimated chronic maximum concentration for bifenthrin in surface and ground waters is 0.032 µg/L, which was used for comparison to the back-calculated human health DWLOCs from the chronic (non-cancer) endpoint. These DWLOCs for various population categories are 530 µg/L for the U.S. population, 450 µg/L for females 13 years and older, and 140 µg/L for children 1 to 6 years. Chronic exposure to bifenthrin in drinking water is below the calculated drinking water levels of concern. iii. Short- and intermediate-term exposure and risk (water). For purposes of short- and intermediate-term risk assessment, the estimated chronic maximum concentration for bifenthrin in surface and ground waters is 0.032 µg/L, which was used for comparison to the back-calculated human health DWLOCs from the short- and intermediate-term endpoints. The DWLOCs for various population categories are 290 µg/L for the U.S. population, 250 µg/L for females 13 years and older, and 77 µg/L for children 1 to 6 years. Short- and intermediate-term exposure to bifenthrin in drinking water is below the calculated drinking water levels of concern.

3. *From non-dietary exposure.* Bifenthrin is currently registered for use on the residential non-food sites outdoor lawn and garden, inside households and termiticide use. These registered uses constitute short- and/or intermediate-term, and chronic exposure.

i. *Chronic exposure and risk (residential).* Although the registered termiticide use of bifenthrin constitutes a chronic exposure scenario, the exposure from this termiticide use is negligible considering the application technique of the termiticide use (buried underground) and the fact that vapor pressure of bifenthrin is extremely low (1.8×10^{-7} torr). .

ii. *Short- and intermediate-term exposure and risk (residential).* This risk assessment is based on post-application to treated lawns (turf use), a worst case scenario estimate of residential exposure. An assessment of applicator exposure was not included since the registered products are primarily limited to commercial use and, therefore, applied by professional lawn care operators. Inhalation, dermal and oral non-dietary routes of exposure were evaluated by this short- and intermediate-term risk assessment. For adults, the routes of exposure from these registered residential uses include dermal and inhalation, and for infants and children, the routes of exposure include dermal, inhalation, and oral (nondietary). The MOEs for residential exposures are 1600 for adults, 610 for children (1 to 6 years), and 600 for infants (<1 year). These MOE's are well above the acceptable short-term aggregate MOE of 100.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Bifenthrin is a member of a class of chemicals commonly referred to as "Synthetic Pyrethroids." Other members of this class include cyfluthrin, cypermethrin, lambda-cyhalothrin, zeta-cypermethrin, deltamethrin, esfenvalerate, fenpropathrin, tefluthrin and tralomethrin.

EPA does not have, at this time, available data to determine whether bifenthrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, bifenthrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that bifenthrin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

5. *Endocrine disrupter effects.* EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect..." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk (food + water).* Using the Monte Carlo analysis, it is estimated that the acute exposure to bifenthrin from food for the U.S. population subgroup will utilize 53% of the acute PAD. Children 1 to 6 years are the most highly exposed population subgroup. (See discussion in Unit II.E.) An acute dietary exposure (food plus water) of 100% or less of the acute PAD is needed to protect the safety of all population subgroups. Despite the potential for exposure to bifenthrin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the acute PAD for adults, infants and children. The estimated maximum concentration of bifenthrin in surface and ground water for acute exposure is below the DWLOC.

2. *Chronic risk (food + water + residential).* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to bifenthrin from food will utilize 2.4% of the chronic PAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1 to 6 years. [See discussion in Unit II.E. in the preamble of this document] EPA generally has no concern for exposures below 100% of the chronic PAD because the chronic PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to bifenthrin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the chronic PAD, the estimated maximum concentration of bifenthrin in surface and ground water for chronic exposure is very small compared to the DWLOC. Although the registered termiticide use of bifenthrin constitutes a chronic exposure scenario, the exposure from this termiticide use is negligible considering the application technique of the termiticide use (buried underground) and the fact that vapor pressure of bifenthrin is extremely low (1.8×10^{-7} torr).

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. In the case of bifenthrin, the registered residential use sites include outdoor lawn/gardens, inside households and termiticide. These uses constitute a short- and intermediate-term exposure scenario. The short- and intermediate-term aggregate risk assessment for bifenthrin includes inhalation, dermal, oral non-dietary, chronic food, and water exposure routes. The acceptable MOEs for short- and intermediate-term exposures are all at 100. For adults, the routes of exposure from these registered, residential uses include dermal and inhalation, and for infants and children, the routes of exposure include dermal, inhalation, and oral (nondietary). The MOEs for food (excluding water) and residential exposures is 1200 for adults, 430 for children 1 to 6 years, and 500 for infants less than 1 year. These MOEs are well above the acceptable short-term aggregate MOE of 100.

Since residue values in drinking water are not available, the DWLOCs have to be back- calculated. The short- and intermediate-term DWLOCs are 290 µg/L for adult males, 250 µg/L for adult females, 77 µg/L for children 1 to 6 years, and 77 µg/L for infants (less than 1 year old). The estimated maximum concentration of bifenthrin in surface and ground water for chronic exposure 0.032 µg/L is very small compared to the DWLOCs.

4. *Aggregate cancer risk for U.S. population.* Bifenthrin has been classified as a group C carcinogen, using the RfD approach. Based on the recommendation that the RfD approach be used, a quantitative (q^*) dietary cancer risk assessment was not performed. Dietary risk concerns due to long-term consumption of bifenthrin are adequately addressed by the DEEM chronic exposure analysis using the chronic PAD (RfD). For the U.S. population, only 2.4% of the chronic PAD (RfD) is occupied by chronic food exposure. As stated previously, based on a comparison of the calculated DWLOCs and the estimated exposure to bifenthrin in drinking water (0.032 g/L), EPA does not expect the aggregate exposure to exceed 100% of the chronic PAD (RfD) for adults.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to bifenthrin residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children — i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of bifenthrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually

100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rabbit developmental study, there were no developmental effects observed in the fetuses exposed to bifenthrin. The maternal NOEL was 2.67 mg/kg/day based on head and forelimb twitching at the LOAEL of 4 mg/kg/day. In the rat developmental study, the maternal NOEL was 1 mg/kg/day, based on tremors at the LOAEL of 2 mg/kg/day. The developmental (pup) NOEL was also 1 mg/kg/day, based upon increased incidence of hydroureter at the LOAEL 2 mg/kg/day. There were 5 of 23 (22%) litters affected with each litter having only one affected pup in the in the 2 mg/kg/day group, compared with zero in the control, 1 and 0.5 mg/kg/day groups. According to recent historical data (1992-1994) for this strain of rat, incidence of distended ureter averaged 11% with a maximum incidence of 90%.

iii. *Reproductive toxicity study.* In the rat reproduction study, parental toxicity occurred as decreased bwt at 5.0 mg/kg/day with a NOEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day (HDT).

iv. *Pre- and post-natal sensitivity* — a. *Pre-natal.* Since there was not a dose-related finding of hydroureter in the rat developmental study and in the presence of similar incidences in the recent historical control data, the marginal finding of hydroureter in rat fetuses at 2 mg/kg/day (in the presence of maternal toxicity) is not considered a significant developmental finding. Nor does it provide sufficient evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

b. *Post-natal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

v. *Conclusion.* There is a complete toxicity database for bifenthrin and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Based on the completeness of the toxicity data and pre- and post-natal toxicity of bifenthrin, no additional safety factor is needed to protect infants and children.

2. *Acute risk. (Food + Water.)* The percentages of the acute PAD utilized at the 99.9th percentile of exposure are 63% for infants (less than 1 year) and 96% for children (1 to 6 years), the most highly exposed population subgroup. An acute dietary exposure (food plus water) of 100% or less of the acute PAD is needed to protect the safety of all population subgroups. Despite the potential for exposure to bifenthrin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the acute PAD for infants and children. The estimated maximum concentration of bifenthrin in surface and ground water for acute exposure is below the DWLOC.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to bifenthrin from food will utilize 6.7% of the chronic PAD (RfD) for children (1 to 6 years). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to bifenthrin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* The MOEs for food (excluding water) and residential exposures is 430 for children (1 to 6 years), and 500 for infants (less than 1 year). These MOEs are well above the acceptable short-term aggregate MOE of 100. The short- and intermediate-term DWLOCs are 77 µg/L for children (1 to 6 years), and 77 µg/L for infants (less than 1 year). The estimated maximum concentration of bifenthrin in surface and ground water for chronic exposure (µg/L) is very small compared to the DWLOCs.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to bifenthrin residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of bifenthrin in plants and animals is adequately understood. Studies conducted to delineate the metabolism of radio-labeled bifenthrin in various crops and animals show similar results. The residue of concern is the parent compound only.

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of the regulated bifenthrin residue in plants and animals. Residues of bifenthrin are recoverable under Protocols D and E of the FDA Multiresidue Methods.

C. Magnitude of Residues

An adequate number of residue field trials reflecting the proposed use rates were submitted to EPA to demonstrate that tolerances for cabbage at 4.0 ppm; the cucurbit vegetable crop group at 0.4 ppm; edible-podded legume vegetable subgroup at 0.6 ppm; eggplant at 0.05 ppm; globe artichoke at 1.0 ppm; head and stem Brassica subgroup, except cabbage, at 0.6 ppm; rapeseed at 0.05 ppm, succulent shelled pea and bean subgroup at 0.05 ppm; sweet corn at 0.05 ppm; and corn forage at 0.6 ppm will not be exceeded when bifenthrin products labeled for these uses are used as directed.

D. International Residue Limits

There are no Codex Maximum Residue Levels (MRL's) for these commodities.

E. Rotational Crop Restrictions

Crops with established U.S. tolerances may be rotated at any time. Leafy vegetable and root crops may be rotated 30 days following the final application. All other crops may be rotated seven months following the final application.

IV. Conclusion

Therefore, the tolerance is established for residues of bifenthrin in cabbage at 4.0 part per million (ppm); the cucurbit vegetable crop group (Crop Group 9) at 0.4 ppm; edible- podded legume vegetable subgroup (Crop Subgroup 6A) at 0.6 ppm; eggplant at 0.05 ppm; globe artichoke at 1.0 ppm; head and stem Brassica subgroup (Crop Subgroup 5A), except cabbage, at 0.6 ppm; rapeseed at 0.05 ppm, succulent shelled pea and bean subgroup (Crop Subgroup 6B) at 0.05 ppm; sweet corn kernel plus cob with husk removed at 0.05 ppm; and corn forage at 3.0 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law.

However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 30, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(I). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300888] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful

and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 23, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.442, by amending paragraph (a) by revising the introductory text and the tolerance level for "corn forage" and by alphabetically adding the following entries to the table:

§ 180.442 Bifenthrin; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide bifenthrin (2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on the following food commodities:

Commodity	Parts per million
Artichoke, globe	1.0
Brassica, head and stem, subgroup, excluding cabbage.	0.6
Cabbage	4.0
• • • •	• • •
Corn, forage	3.0
• • • •	• • •
Corn, sweet, kernel plus cob with husk removed.	0.05
Eggplant	0.05
• • • •	• • •
Pea and bean, succulent shelled, subgroup.	0.05
• • • •	• • •
Rapeseed	0.05
• • • •	• • •
Vegetable, cucurbit, crop group.	0.4
Vegetable, legume, edible podded, subgroup.	0.6

* * * * *

[FR Doc. 99–16575 Filed 6–29–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300887; FRL–6088–9]

RIN 2070–AB78

Cyfluthrin: [cyano[4-fluoro-3-phenoxyphenyl]-methyl-3-[2,2-dichloroethenyl]-2,2-dimethyl-cyclopropanecarboxylate]; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the insecticide cyfluthrin: [cyano[4-fluoro-3-phenoxyphenyl]-methyl-3-[2,2-dichloroethenyl]-2,2-dimethyl-cyclopropanecarboxylate] in or on potatoes at 0.01 parts per million (ppm). It also removes time limitations for tolerances for residues of cyfluthrin on sweet corn, field corn, and pop corn (including forage and fodder). Bayer Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 30, 1999. Objections and requests for hearings must be received by EPA on or before August 30, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300887], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300887], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300887]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mark Dow, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 222, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5533, dow.mark@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 5, 1995 (60 FR 34874) (FRL-4963-2), EPA issued a time-limited tolerance for cyfluthrin use in or on corn (field, pop, and sweet) in combination with another insecticide, the organophosphate tebupirimifos (originally known as phostebupirim) (O-[2-(1-dimethylethyl)-5-pyrimidinyl]O-ethyl-O-ethyl-O-(1-methylethyl)phosphorothioate) with an expiration date of 5 July 1999. These time-limited tolerances were established due to a lack of mammalian neurotoxicity data and the need for confirmatory soil metabolism and product chemistry data for tebupirimiphos. Bayer Corporation requested the Agency to remove the time limitations for cyfluthrin on corn in a notice of filing published in the **Federal Register** of September 25, 1997 (62 FR 50337) (FRL–5748–2), and in a March 8, 1999 letter based on the fact that the time limitation was due to data deficiencies for tebupirimifos and not for cyfluthrin. Since (1) cyfluthrin is registered for use on corn; (2) the data base is complete for tolerance assessment purposes and ; (3) these tolerances were considered by EPA for risk assessment purposes, EPA has no objection to the removal of the time-limitations and the establishment of permanent tolerances for the residues of cyfluthrin on corn. In the **Federal Register** of August 14, 1998 (63 FR 43705) (FRL–6019–8), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) 4F4330 for tolerance by Bayer Corporation, 8400 Hawthorn Road, Kansas City, MO 64120. This notice included a summary of the petition prepared by Bayer Corporation, the registrant.

The petition requested that 40 CFR 180.436 be amended by establishing a tolerance for residues of the insecticide cyfluthrin: [cyano[4-fluoro-3-phenoxyphenyl]-methyl-3-[2,2-dichloroethenyl]-2,2-dimethyl-cyclopropanecarboxylate], in or on potatoes at 0.01 ppm. Cyfluthrin controls cabbage looper, potato leafhopper, Colorado potato beetle, European corn borer, flea beetles, potato tuberworm, potato psyllid, tarnished plant bug and aphids on potatoes.

There were no comments received in response to the Notices of Filing.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of cyfluthrin: [cyano[4-fluoro-3-phenoxyphenyl]-methyl-3-[2,2-dichloroethenyl]-2,2-dimethyl-cyclopropanecarboxylate] and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of cyfluthrin on potatoes at 0.01 ppm and removal of time limitations for tolerances for residues of cyfluthrin on corn (field, pop, and sweet). EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyfluthrin are discussed in this unit.

1. *Acute toxicity.* The required toxicity battery studies for acute oral (LD_{50} ≧16.2 miligrams/kilograms (mg/kg)), dermal (LD_{50} >5,000 mg/kg), inhalation (LC_{50} ≧0.468 mg/liter (L)), primary eye irritation (category III), primary dermal irritation (category IV), and dermal sensitization have been conducted and were found adequate. Cyfluthrin is not a dermal sensitizer.

2. *Mutagenicity.* There are seven acceptable studies upon which the Agency based its evaluation: three reverse mutation assays (*Salmonella typhimurium*, *E. coli* and *Saccharomyces cerevisiae*); one reverse mutation, mitotic recombination and conversion assay in *Saccharomyces cerevisiae*); one Chinese Hampster Ovary/ Hypoxanthine guanine phophoribosyl transferase (CHO/HGPRT) assay; one sister chromatid exchange assay in CHO cells; and one Unscheduled DNA synthesis (UDS) assay in primary rat hepatocytes. All these studies were negative. There is no mutagenicity concern.

3. *Reproductive and developmental toxicity — i. Oral developmental study in rats.* Cyfluthrin was administered via gavage to pregnant female rats during

days 6–15 of gestation at dose levels of 0, 1, 3, or 10 mg/kg/day. A maternal Lowest Observable Adverse Effect Level (LOAEL) was not observed (i.e., the maternal No Observable Adverse Effect Level (NOAEL) is ≧10 mg/kg/day). A developmental LOAEL was not observed. The developmental NOAEL is ≧10mg/kg/day. This developmental study in rats was classified core guideline.

ii. *Oral developmental study in rabbits.* Cyfluthrin was administered via gavage to pregnant female rabbits during days 6–18 of gestation at dose levels of 0, 20, 60, or 180 mg/kg/day. The maternal LOAEL is 60 mg/kg/day based on decreased body weight gain and food consumption during the dosing period. The maternal NOAEL is 20 mg/kg/day. The developmental LOAEL is 60 mg/kg/day based on increased numbers of resorptions and percent incidence of postimplantation loss. The developmental NOAEL is 20 mg/kg/day. This study was classified core guideline.

iii. *Rat developmental studies via inhalation.* In the first study, pregnant female rats at day 0 gestation were exposed head-only to cyfluthrin concentrations of 0, 1.1, 4.7 or 23.7mg/m^3/day (milligrams per cubic meter per day) for 6 hours/day on gestation days 6–15. In the second study, the dams were exposed to analytical concentrations of 0, 0.09, 0.25, 0.59 or 4.2 mg/m^3 of the test material. The dams were sacrificed on day 20 and their pups removed by caesarian section. The maternal NOAEL was 1.1 mg/m^3 and the maternal LOAEL was 4.7 mg/m^3 (reduced motility, dyspnea, piloerection, ungroomed coats and eye irritation). The developmental NOAEL was 0.59 mg/m^3 and the developmental LOAEL was 1.1 mg/m^3 based on increases in the incidence of runts and skeletal anomalies in the sternum (1.1 mg/m^3 and above); and increases in post-implantation losses and decreases in pup weights (4.7 mg/m^3 and above) and increased incidences of late embryonic deaths, in skeletal anomalies in the extremities, pelvis and skull and microphthalmia (23.7mg/m^3). The study was graded core minimum.

In a third study, a developmental toxicity study via inhalation, cyfluthrin was administered to female rats at 0.46, 2.55, 11.9 or 12.8 mg/m^3 exposure levels for gestational days 6–15 in a nose only inhalation chamber. The rats were exposed to the test material 6 hr/day, 7 days/week. The maternal NOAEL/LOAEL were <0.46/<0.46 mg/m^3 based on decreased body weight gain and reduced relative food efficiency. The developmental NOAEL/LOAEL were 0.46/2.55 mg/m^3 based on reduced fetal and placental weight, reduced ossification in the phalanx, metacarpals and vertebrae. This study was classified as core guideline.

iv. *3-Generation reproduction study.* Cyfluthrin was administered in the diet to male and female rats dose levels of 0, 50, 150, or 450 ppm (actual animal intake; 0, 2.5, 7.5, or 22.5 mg/kg/day). The LOAEL for parental toxicity was 450 ppm (22.5 mg/kg/day) based on decreased body weight gains. The NOAEL for parental toxicity is 150 ppm (7.5 mg/kg/day). The LOAEL for reproductive toxicity was 150 ppm (7.5 mg/kg/day) based on decreased viability and lactational indices and decreased pup body weight gains. The reproductive NOAEL was 50 ppm (2.5 mg/kg/day). The multigeneration reproductive study in the rat was classified core minimum.

4. *Subchronic toxicity* — i. *28–Day oral toxicity study in rats.* Cyfluthrin was administered to SPF-Wistar rats via gavage at 0, 5, 20, or 80 (40) mg/kg/day. The high dose was 80 mg/kg/day during the first and third weeks and 40 mg/kg/day during the second and fourth weeks. The LOAEL was 80 (40) mg/kg/day in both sexes based on clinical signs of nerve toxicity, decreases in body weight gain, and changes in liver and adrenal weights. The NOAEL was 20 mg/kg/day. This study was classified as core minimum.

ii. *28-Day oral toxicity study in rats.* Rats were dosed with cyfluthrin in the diet at 0, 100, 300, or 1,000 ppm (equivalent to 0, 5, 15, or 50 mg/kg/day). The LOAEL was 15 mg/kg/day in both sexes based on decreased blood glucose. The NOAEL was 5 mg/kg/day. This study was classified core supplementary.

iii. *3–Month feeding study in rats.* SPF Wistar rats were dosed with cyfluthrin in the diet at 0, 30, 100, or 300 ppm (equivalent to 0, 1.5; 5, or 15 mg/kg/day) for 3 months. No treatment related effects were observed at any of the levels tested, thus the NOAEL for this 3–month rat feeding study was 15 mg/kg/day for both sexes. This study was classified core minimum.

iv. *6–Month dog feeding study.* Cyfluthrin was administered in the diet to dogs at 0, 65, 200 or 600 ppm (equivalent to 0, 1.62, 5 or 15 mg/kg/day) for 26 weeks. The LOAEL for this study was 15 mg/kg/day for both sexes, based on neurological effects (hindlimb abnormalities) and gastrointestinal disturbances. The NOAEL was 5 mg/kg/day for males and females. The study was classified as core minimum.

v. *21–Day dermal study in rats.* In a 21–day repeated dose dermal toxicity study, male and female rats were treated with cyfluthrin by dermal occlusion at target doses of 0, 100, 340, or 1,000 mg/kg/day for 6 hours/day (average actual dose levels were 0, 113, 376, or 1,077 mg/kg/day). No mortality was observed, and there were no treatment-related effects on body weight, ophthalmology, organ weights, clinical biochemistry, or hematology. The LOAEL for dermal effects was 376 mg/kg/day for male and female Sprague-Dawley rats based on gross and histological skin lesions. The NOAEL for dermal effects for technical Baythroid was 113 mg/kg/day. The LOAEL for systemic effects was 1,077 mg/kg/day based on decreased food consumption, red nasal discharge and urine staining. The NOAEL for systemic effects was 376 mg/kg/day. This study was classified as acceptable.

vi. *3–Week inhalation toxicity studies in rats* —a. Wistar rats were dynamically exposed by nose-only inhalation to cyfluthrin at concentrations of 0, 2.3, 11.5, or 69.6 mg/kg/day for 6 hours/day, 5 consecutive days/week for 3 weeks (total of 15 exposures). The LOAEL was 2.3 mg/m^3, based on the treatment-related effects on body weight and temperature observed during the 3–week exposure period. A NOAEL was not established; therefore this study was repeated using lower doses.

b. Wistar rats were dynamically exposed by nose-only inhalation to cyfluthrin at concentrations of 0, 0.4, 1.4, or 10.5 mg/m^3 for 6 hours/day, 5 consecutive days/week for 3 weeks (total of 15 exposures). The LOAEL was 10.5 mg/m^3, based on the treatment-related behavioral effects as well as effects on body and organ (spleen) weights. The NOAEL is 1.4 mg/m^3. These studies were classified as core minimum.

vii. *4–Week inhalation toxicity study in rats.* Rats were dynamically exposed by inhalation (nose only) to cyfluthrin at concentrations of 0, 0.44, 6.04, or 46.6 mg/m^3 for 6 hours/day, 5 consecutive days/week for 4 weeks (20 exposures). The LOAEL is 6.04 mg/m^3 based on the decrease in body and thymus weights, hypothermia, reduction in leukocytes counts (females), and low serum protein. The NOAEL is 0.44 mg/m^3. This subacute inhalation toxicity study in rats was classified as supplementary.

viii. *13–Week inhalation toxicity study in rats.* Rats were dynamically exposed by head-only inhalation to cyfluthrin at concentrations of 0, 0.09, 0.71, or 4.51 mg/m^3 for 6 hours/day, 5 consecutive days/week for 13 weeks. All animals survived the 13–week study, and no treatment-related changes were observed in organ weight, gross pathology and histopathology. The LOAEL was 0.71 mg/m^3, based on the

treatment-related behavioral effects in females as well as the increased urinary protein in males. The NOAEL was 0.09 mg/m^3. This study was classified as core minimum.

5. *Chronic toxicity* — i. *1–Year dog study.* Cyfluthrin was fed to beagle dogs at 0, 40, 160, or 640 ppm (equivalent to 0, 1, 4, or 16 mg/kg/day) for 52 weeks. The NOAEL was 4 mg/kg bw/day. The LOAEL was 16 mg/kg bw/day for both sexes, based on slight ataxia in two dogs on single occasions, decreased body weight in males, and on observations of increased vomiting and diarrhea at the high dose. The NOAEL is 4 mg/kg bw/day. This study was classified as core minimum.

ii. *Chronic/carcinogenicity-rat.* Cyfluthrin was administered for 24 months in the diet to rats at dose levels of 0, 50, 150, or 450 ppm (equivalent to 2.02, 6.19, or 19.20 mg/kg bw/day in males and 2.71, 8.15, or 25.47 mg/kg/day in females based on food consumption and body weights). The chronic LOAEL was 150 ppm (equivalent to 6.19 mg/kg/day in males and 8.15 mg/kg/day in females) based on decreased body weights in the high-dose animals and the mid-dose males. The chronic NOAEL was 50 ppm (equivalent to 2.02 mg/kg/day in males and 2.71 mg/kg/day in females). Under the conditions of this study, there was no evidence of carcinogenic potential. The study was classified core minimum for both chronic toxicity and oncogenicity.

iii. *Chronic/carcinogenicity- mouse.* In a chronic/carcinogenicity study, cyfluthrin was administered in the diet for 23 months to mice at dose levels of 0, 50, 200, or 800 ppm (equivalent to 11.6, 45.8, or 194.5 mg/kg/day in males and 15.3, 63.0, or 259.9 in females based on food consumption and body weights). There were no treatment related changes noted in the clinical observation, food consumption, hematology, gross observation, organ weight, and microscopic data. The chronic LOAEL is 50 ppm (equivalent to 11.6 mg/kg/day in males and 15.3 mg/kg/day in females) based on increased alkaline phosphatase activity in the dosed males. A chronic NOAEL was not established in male and female mice. Under the conditions of this study, there was no evidence of carcinogenic potential. This study was classified core minimum for carcinogenicity and supplementary for chronic toxicity.

6. *Animal metabolism.* Metabolism studies in rats showed that cyfluthrin is rapidly absorbed and excreted, mostly as conjugated metabolites in the urine, within 48 hours. An enterohepatic circulation was observed.

7. *Neurotoxicity.* Other studies evaluated included a subacute oral neurotoxicity study in rats (LOAEL of 50 mg/kg/day; no NOAEL observed); a second subacute oral neurotoxicity study (NOAEL of 40 mg/kg/day); a subchronic neurotoxicity study in rats (NOAEL <60 mg/kg/day), and a subacute inhalation study in mice NOAEL for pups, 0.006 mg/L; parental NOAEL 0.058 mg/L Highest Dose Tested (HDT). These studies were all graded acceptable/guideline. Additional neurotoxicity data may be required under a special Data-Call-In letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking, EPA has a sufficient toxicity data base to support these tolerances and these additional studies are not expected to significantly change its risk assessment.

B. Toxicological Endpoints

The Agency has determined that an additional uncertainty factor (UF) is needed for risk assessments for cyfluthrin because there was evidence of increased sensitivity of pups in the 3–generation reproduction study based on decreased pup weight gains at a dose in which there were no effects in the parents. The FQPA factor of 10 was reduced to 3x because of the lack of severity of effects (reduced body weight gain in pups) and the availability of acceptable reproduction (rat) and developmental (rats and rabbits) toxicity studies.

1. *Acute toxicity — Acute dietary.* To assess acute dietary risk, the Agency used an endpoint of 20 mg/kg/day from the rabbit developmental study. This endpoint is due to increases in resorption and percent incidence of postimplantation loss at the Lowest Effect Level (LEL) of 60 mg/kg/day. The population adjusted dose for acute dietary (aPAD) is determined by dividing NOAEL by Ufs of 300 (10x for interspecies differences, 10x for intraspecies variability and 3x FQPA safety factor): aPAD = 20/ (10x 10x 3) = 0.07 mg/kg bwt/day. This aPAD applies to all population subgroups.

2. *Short and intermediate term toxicity.* For the short and intermediate term dermal endpoints, a NOAEL of 20 mg/kg/day was determined from the rabbit developmental study due to an increase in resorption and percent incidence of postimplantation loss at the LEL of 60 mg/kg/day. The dermal absorption rate is 25%. This rate is based on the weight of the evidence available for structurally related synthetic pyrethroids. For short term inhalation a NOAEL of 0.00044 mg/L is based on decreases in body and thymus weights, hypothermia, and clinical pathology at 0.00604 mg/L in a 28–day inhalation study.

For the Intermediate Term Inhalation Endpoint a NOAEL of 0.00009 mg/L is based on behavioral effects in rats at 0.00071 mg/L in a 90–day inhalation study. The 3x FQPA UF was included for inhalation because an inhalation study is available in the mouse which indicates increased sensitivity of the pups in comparison to the dams.

3. *Chronic toxicity — Chronic dietary.* A NOAEL of 2.5 mg/kg/day was determined from the rat chronic toxicity/ carcinogenicity study and is based on decreased body weight gains in males and inflammatory foci in the kidneys of females at the LEL of 6.2 mg/kg/day. The chronic population adjusted dose (cPAD) is determined by dividing the NOAEL by Ufs: cPAD = 2.5/ (10x10x3) = 0.008 mg/kg bwt/day. This cPAD applies to all population subgroups.

Long-term Dermal Endpoint For the chronic dermal endpoint, the same study used for determining the chronic dietary endpoint was used here.

4. *Carcinogenicity.* Cyfluthrin has been classified as a Group E chemical (evidence of non-carcinogenicity in humans), since carcinogenicity studies in rats and mice were negative.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.436) for the residues of cyfluthrin, in or on a variety of raw agricultural commodities. For purposes of dietary risk assessment, residue data generated from residue field trials conducted at maximum application rates and minimum preharvest intervals were used. To assess secondary exposure from edible animal commodities, animal dietary burdens were calculated using mean field trial residues, adjusted for percent crop treated (PCT) and applying appropriate processing factors for all feed items. Risk assessments were conducted by EPA to assess dietary exposures from cyfluthrin as follows:

i. *Acute dietary exposure and risk.* aPAD = 0.07 mg/kg bwt/day.

aPAD = NOAEL/UFs = 20/(10 x 10 x 3) = 0.07 mg/kg bwt/day.

An acute dietary (food) risk assessment was conducted. In the assessment, a Monte Carlo analysis (Tier 3) was used. The anticipated residue values used were determined from field trial data reflecting maximum application rates and minimum preharvest intervals. Field trial residue distributions were used in the Monte Carlo simulation for those foods

identified by EPA as single-serving commodities. For those considered to be blended or processed, mean field trial residues were calculated, substituting the full limit of detection (LOD) for those samples for which residues were reported below the LOD. For the analysis, current registered uses plus potatoes were used.

In the Monte Carlo analysis for potatoes, the tolerance used is 0.01 ppm and 100% crop treated was assumed. Data files used include (a) The highest field trial data for dried hops (16.6 ppm) and radishes (0.38 ppm) were used instead of the tolerances (dried hops: 20 ppm, radishes: 1.0 ppm); (b) Processing factors for corn were used since the processing study was available (concentration factor for corn oil: 7.6); (c) New available residue levels on potato and its commodities, all at 0.01 ppm (LOD), were used; (d) Secondary residues in milk, milk sugar, milk based water, and animal fat were adjusted (decreased) due to the slight change of dietary burden as a result of the above changes.

Analysis evaluates individual food consumption as reported in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure. Resulting exposure values (at the 99.9th percentile) and percentage of the aPAD utilized are shown in Table 1. The most highly exposed population subgroup (Non-Nursing infants, <1 year) utilizes 9.7% of the aPAD.

An acceptable acute dietary exposure (food plus water) of 100% or less of the aPAD is needed to protect the safety of all population subgroups. EPA generally has no concern for aPAD of less than 100%.

Table 1. Acute Dietary (Food Only) Exposure Analysis by Dietary Exposure Evaluation Model (DEEM) for Cyfluthrin

Population Subgroup	Exposure @ 99.9th Percentile (mg/kg bwt/day)	Percent aPAD[1]
U.S. Population (48 Contiguous States)	0.0045	6.4%
All infants (< 1 yr)	0.0062	8.9%
Nursing infants (< 1 yr)	0.0037	5.3%
Non-nursing infants (< 1 yr)	0.0068	9.7%
Children (1–6 yrs)	0.0059	8.4%
Children (7–12 yr)	0.0042	6.0%

[1]Percentage Acute PAD (% aPAD) = Exposure X 100% / aPAD

The subgroups listed above are: (1) the U.S. population (48 Contiguos States) and (2) those for infants and children.

ii. *Chronic dietary exposure and risk.* cPAD = 0.008 mg/kg bwt/day.

cPAD = NOAEL/ UFs = 2.5/ (10 x10 x3) = 0.008 mg/kg bwt/day.

In the DEEM analysis for chronic dietary (food only) risk assessment the anticipated residue values used were determined from field trial data conducted at maximum application rates and minimum preharvest intervals. Mean anticipated residue values were calculated substituting half of the LOD for those samples for which residues were reported below the LOD.

For the chronic dietary analysis, all registered food uses plus potatoes were included. In the analysis, the residue levels used for potatoes and potato commodities are all 0.005 ppm, and 100% crop treated was assumed. Other "assumptions" are: (1) Mean field trial data for radishes (0.09 ppm) and hops (13.7 ppm) have been used instead of tolerances; (2) Residue for alfalfa sprout was adjusted for the percent crop treated (from 0.01 ppm to 0.14 ppm); (3) Processing factors for citrus, corn, cottonseed, sugarcane, sunflower, and tomatoes were used since these processing studies were available; (4) Residue levels used for potatoes and potato commodities were changed from 0.05 ppm to 0.005 ppm(half of LOD); (5) Secondary residues in meat, milk, poultry, and eggs were adjusted since the slight change of dietary burden as a result of the above changes (meat and poultry: slight decrease in residue levels, milk and milk-based water: slight increase in residue levels).

The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. Summaries of the Anticipated Residue Concentration (ARC) and their representations as percentages of cPAD for the general population and subgroups of interest are in Table 2. The most highly exposed population subgroup (Non-Nursing infants < 1yr) will utilize 1.9% of the cPAD.

An acceptable chronic dietary exposure (food plus water) of 100% or less of the cPAD is needed to protect the safety of all population subgroups. EPA generally has no concern for cPAD of less than 100%.

Table 2. Chronic Exposure Analysis by the DEEM System for Cyfluthrin

Population Subgroup	Exposure (mg/kg/day)	Percent cPAD[1]
U.S. Population (48 Contiguous States)	0.000067	0.8%
Non-Nursing Infants (<1 year old)	0.00015	1.9%
Children (1–6 years old)	0.00014	1.8%

[1]Percentage cPAD = Exposure X 100% / cPAD

The subgroups listed above are: (1) the U.S. population (48 Contiguous States); (2) highest exposed population subgroup that includes infants and children.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate.

As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of the tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual PCT for assessing chronic dietary risk only if the Agency can make the following findings: (1) That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; (2) that the exposure estimate does not underestimate exposure for any significant subpopulation group and; (3) if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by the section 408 (b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency believes that the three conditions, discussed in section 408(b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. With respect to (1), percent crop treated estimates are derived from federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates is supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimate. As to (2) and (3), regional consumption information and consumption information for significant sub populations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant sub population group and allows the Agency to be reasonably certain that no regional pupulation is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which may be applied in a particular area. EPA finds that the PCT information is reliable and has a valid basis.

2. *From drinking water.* There is no established Maximum Concentration Level for residues of cyfluthrin in drinking water. Although data indicate little potential for soil mobility or leaching, cyfluthrin is moderately persistent. Estimates of potential concentrations of cyfluthrin in water were generated with the Pesticide Root Zone Model (PRZM 1) and Exposure Analysis Modeling System (EXAMS) computer models in 1993 for comparative ecological risk assessment for cyfluthrin. The estimated environmental concentrations (EECs) of cyfluthrin residues are 0.236 µg/L for acute surface water and 0.044 µg/L for chronic surface water. The primary use of these models is to provide a screen for sorting out pesticides for which EPA has a high degree of confidence tht the true levels of the pesticide in drinking water will be less that the human health drinking water levels of concern (DWLOCs). A DWLOC is a theoretical upper limit of a pesticide's concentration in drinking water in light of total aggregate exposure to that pesticide in food and through residential uses. A DWLOC will vary depending on the toxic endpoint, consumption and body weight. Different populations will have different DWLOCs. EPA uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, the DWLOC is used as a point of comparison against conservative model estimates of potential pesticide concentration in water. DWLOC values are not regulatory standards for drinking water.

For this acute risk assessment, the estimated maximum concentration for cyfluthrin in surface and ground waters (which is 0.236 µg/L) is used for comparison to the back-calculated human health drinking water levels of concern (DWLOCs) for the acute endpoint. These DWLOCs for various population categories are summarized in Table 3.

Table 3. Drinking Water Levels of Comparison for Acute Exposure to Cyfluthrin[1]

Population Category[2]	aPAD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure3 (mg/kg/day)	DWLOC 4,5,6 (µg/L)	DWEC,7 (µg/L)
U.S. Population (48 Contiguous States) Male.	0.07	0.0045	0.066	2300	0.24
U.S. Population (48 Contiguous states) Females.	0.07	0.0045	0.066	2000	0.24
Non-Nursing Infants (<1 year old)	0.07	0.0068	0.063	630	0.24

[1] Values are expressed to 2 significant figures.
[2] Within each of these categories, the subgroup with the highest food exposure was selected.
[3] Maximum Water Exposure (Chronic or Acute) (mg/kg/day) = [aPAD or cPAD (mg/kg/day) - Food Exposure (mg/kg/day).
[4] DWLOC (µg/L) = Max. water exposure (mg/kg/day) x body wt (kg) ÷ [(10^{-3} mg/µg) x water consumed daily (L/day)].
[5] HED Default body weights are: General U.S. Population, 70 kg; Males (13+ years old), 70 kg; Females (13+ years old), 60 kg; Other Adult Populations, 70 kg; and, All Infants/Children, 10 kg.
[6] HED Default daily drinking rates are 2 L/day for adults and 1 L/day for children.
[7] DWEC: Drinking Water Estimate Concentration. (Acute value).

For purposes of chronic risk assessment, the estimated maximum concentration for cyfluthrin in surface and ground waters (which is 0.04 µg/L) should be used for comparison to the back-calculated human health DWLOCs for the chronic (non-cancer) endpoint. These DWLOCs for various population categories are summarized in Table 4.

Table 4. Drinking Water Levels of Comparison for Chronic Exposure to Cyfluthrin[1]

Population Category[2]	cPAD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure[3] (mg/kg/day)	DWLOC [4,5,6](µg/L)	DWEC,[7](µg/L)
U.S. Population (48 Contiguous States) Male	0.008	0.000067	0.0079	270	0.044
U.S. Population (48 Contiguous States) Female	0.008	0.000067	0.0079	240	0.044
Non-Nursing infants < 1 yr	0.008	0.00015	0.0079	[illegible]	0.044

[1] Values are expressed to 2 significant figures.
[2] Within each of these categories, the subgroup with the highest food exposure was selected.
[3] Maximum Water Exposure (Chronic or Acute) (mg/kg/day) = [aPAD or cPAD (mg/kg/day) - Food Exposure (mg/kg/day).
[4] DWLOC (µg/L) = Max. water exposure (mg/kg/day) x body wt (kg) ÷ [(10–3 mg/µg) x water consumed daily (L/day)].
[5] HED Default body weights are: General U.S. Population, 70 kg; Males (13+ years old), 70 kg; Females (13+ years old), 60 kg; Other Adult Populations, 70 kg; and, All Infants/Children, 10 kg.
[6] HED Default daily drinking rates are 2 L/day for adults and 1 L/day for children.
[7] DWEC: Drinking Water Estimate Concentration. (Acute value).

As indicated in the Tables above, the estimated maximum concentration of cyfluthrin in surface and ground water are less than the DWLOCs as a contribution to acute and chronic exposure. The estimated concentrations of cyfluthrin in surface and ground water are conservative estimates. Therefore the Agency concludes with reasonable certainty that residues of cyfluthrin in food and drinking water will not result in an unacceptable estimate of acute or chronic human health risk.

3. *From non-dietary exposure.* Cyfluthrin is currently registered for use on the following residential non-food sites: outdoor lawn/gardens, inside households, carpets and as a termiticide. Exposure to cyfluthrin may occur as a result of inhalation or contact from indoor and outdoor uses. Thus these uses constitute a short- and intermediate-term exposure scenario. A worst case scenario which aggregates all the above exposure routes was conducted for risk assessment purposes.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Cyfluthrin is a member of the Synthetic Pyrethroids. Other members of this class include bifenthrin, cypermethrin, lambda-cyhalothrin, zeta-cypermethrin, deltamethrin, esfenvalerate, permethrin, fenpropathrin, tefluthrin and tralomethrin. Four members of this class produce a common metabolite known as DCVA. These pyrethroids are cyfluthrin, cypermethrin, z- cypermethrin and permethrin. Although the residues of DCVA can be estimated, no toxicology data on the compound per se are available to directly conduct a hazard evaluation and therby establish an appropriate endpoint for use in a joint risk assessment. To date, for the purpose of assessing the risk of the parent compound the toxicity of DCVA has been assumed to be equivalent to the parent compound. However, due to the different toxicological profiles of cyfluthrin, cypermethrin, z-cypermethrin, and permethrin, EPA does not believe that it would be appropriate to cumulate DCVA for these pesticides, or DCVA residues from one of these pesticides with the parent of another of these pesticides, in conducting the risk assessment for these pesticides.

EPA does not have, at this time, available data to determine whether cyfluthrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyfluthrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyfluthrin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Using a Monte Carlo analysis, it is estimated the acute exposure to cyfluthrin from food for the population subgroup (U.S. Population-all season) will utilize 6.4% of the aPAD, and for the most highly exposed population subgroup that includes children (Non-Nursing infants, <1 year) will utilize 9.7% of the aPAD, as shown in Table 1. It was determined that an acute dietary exposure (food plus water) of 100% or less of the aPAD is needed to protect the safety of all population subgroups.

Despite the potential for exposure to cyfluthrin in drinking water, the Agency does not expect the aggregate exposure to exceed 100% of the aPAD for adults, infants and children. The maximum concentration of cyfluthrin in surface and ground water for acute exposure is very small compared to the DWLOC as shown in Table 3. Under current Agency guidelines, non-dietary uses of cyfluthrin do not constitute an acute exposure scenario. The Agency concludes that there is a reasonable certainty that no harm will result to adults, infants and children from acute aggregate exposure to cyfluthrin residues.

2. *Chronic risk.* Using the exposure assumptions described above, it is estimated that the chronic exposure to cyfluthrin from food for the most highly exposed population subgroup (Non-Nursing infants < 1yr) will utilize 1.9% of the cPAD as shown in Table 2. It was determined that a chronic dietary exposure (food plus water) of 100% or less of the cPAD is needed to protect the safety of all population subgroups.

Despite the potential for exposure to cyfluthrin in drinking water, the Agency does not expect the aggregate exposure to exceed 100% of the cPAD. The maximum concentration of cyfluthrin in surface and ground water for chronic exposure is very small compared to the DWLOC as shown in Table 4. Although the registered residential termiticide use of cyfluthrin constitutes a possible chronic exposure scenario (inhalation), it is not aggregated into dietary exposure due to the fact that the toxicological endpoints were from different studies

with different toxicological effects. The Agency also concludes that a single source chronic risk from exposure to a termiticide use is negligible due to the fact that the vapor pressure of cyfluthrin is very low (3.3×10^{-8} torr). The Agency concludes that there is a reasonable certainty that no harm will result to adults, infants and children from chronic aggregate exposure to cyfluthrin residues.

3. *Short- and intermediate-term risk.* The short- and intermediate-term aggregate risks are estimated by combining exposure from food (chronic), water and residential uses.

Since residue values in water from monitoring data were not available, the DWLOCs have to be back calculated for the short- and intermediate-term aggregate risk assessments.

For cyfluthrin, the registered residential use sites include outdoor lawn/gardens, inside households and termiticide. These uses constitute a short, and intermediate term exposure scenario. Endpoints have been selected for short- and intermediate-term dermal and inhalation exposures. For adults, the routes of exposure from these registered residential uses include dermal and inhalation, and for infants and children, the routes of exposure include dermal, inhalation, and oral (nondietary).

According to Agency aggregate risk assessment guidelines, exposures with toxicological endpoints selected from different studies with different toxicological effects should not be aggregated. Since the toxicological effects through the inhalation exposure route is different from those toxicological effects through the dermal, chronic food, and oral non-dietary routes, short- and intermediate-term aggregate risk assessment should only include dermal, chronic food and water, and oral non-dietary exposure routes. However, a worst case scenario which aggregated all exposure routes (includes inhalation, dermal, chronic food and water, and oral non-dietary) has previously been calculated (see the Final Rule on Cyfluthrin Residue Tolerances (62 FR 62961), November 26, 1997 (FRL–5755–2), and the Margin of Exposure (MOE) is above 2,000 for all population subgroups. The current action does not change this previous assessment. EPA generally has no concern for MOEs greater than 300.

4. *Aggregate cancer risk for U.S. population.* The Agency has concluded that there is no evidence of carcinogenicity in studies of either the rat or mouse. Therefore a carcinogenicity risk assessment is not required.

5. *Determination of safety.* Based on the above risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyfluthrin residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of cyfluthrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

The Agency has determined that an additional UF is needed for risk assessments for cyfluthrin. This is due to evidence of increased sensitivity of pups in the 3–generation reproduction study. It was observed that there were decreased pup weight gains at a dose in which there were no effects in the parents. The additional UF is determined to be 3x due to the lack of severity of effects (reduced body weight gain in pups) and the availability of acceptable reproduction (rat) and developmental (rats and rabbits) toxicity studies.

ii. *Conclusion.* There is a complete toxicity database for cyfluthrin and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Taking into account the completeness of the data base, EPA concludes the use of the additional safety factor would be safe for infants and children.

2. *Acute risk.* For nonnursing infants >1 year old, the aggregate acute exposure is 0.0068 mg/kg bw/day and a MOE ≤ 2000. For cyfluthrin, EPA has no concern for MOEs over 300.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to cyfluthrin from food will utilize 9.7% of the aPAD for the most highly exposed population subgroup (non-nursing infants less than 1–year). It is determined that an acceptable chronic dietary exposure (food plus water) of 100% or less of the cPAD is neede to protect the safety of all populations subgroups. The Agency generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

4. *Short or intermediate term risk.* For children and non-nursing infants < 1 year, EPA estimates the aggregate short and intermediate term exposures are 0.007662 and 0.008255 mg/kg bw/day respectively with resulting MOE's of 2600 and 2400 respectively. For cyfluthrin, EPA has no concern for MOE's over 300.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyfluthrin residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of cyfluthrin in plants and animals is aequately understood. Studies have been conducted to delineate the metabolism of radio labeled cyfluthrin in various crops and animals all showing similar results. The residue of concern is cyfluthrin.

B. Analytical Enforcement Methodology

Adequate analytical methodology (gas/liquid chromatography with an electron capture detector) is available for enforcement purposes.

C. Magnitude of Residues

Field trial residue and feeding study data have been submitted and reviewed in support of the tolerance on potatoes.

D. International Residue Limits

There are no Codex, Canadian, or Mexican Limits established for cyfluthrin on potatoes. There are not Canadian or Mexican Limits established for corn. There is a Codex Maximum Residuce Limit for maize (0.05 mg/kg). The U.S. tolerances are 0.05 ppm for sweet corn and 0.01 ppm for field corn and pop corn. These differences could be caused by differences in methods to establish tolerances, calculation of animal dietary exposure, and as a result of different agricultural practices. The Agency will specifically address these differences when this pesticide is reregistered.

E. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further information.

IV. Conclusion

Therefore, the tolerance is established for residues of cyfluthrin in potatoes at 0.01 ppm and the tolerances for corn and corn byproducts are made permanent..

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 30, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300887] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. Section 180.436, is amended to read as follows:

i. By alphabetically adding "Potatoes" to the table under paragraph (a)(1).

ii. By transferring the entries in the table in paragraph (a)(2) to the table in paragraph (a)(1) and removing the expiration dates; and removing the remainder of paragraph (a)(2).

iii. By redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3).

The additions and amendments to § 180.436 read as follows:

180.436 Cyfluthrin; tolerances for residues

(a)(1) * * *

Commodity	Parts per million
* * * * *	*
Corn, forage and fodder field and pop.	0.01
Corn, grain, field and pop	0.01
Corn, sweet, (K+CWHR)	0.05
Corn, sweet, fodder	15.00
Corn, sweet, forage	30.00
* * * * *	*
Potatoes	0.01
* * * * *	*

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[FR Doc. 99–16637 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300874; FRL–6084–3]

RIN 2070–AB78

Paraquat; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of

the herbicide/desiccant/defoliant paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion) derived from application of either the bis(methyl sulfate) or the dichloride salt (both calculated as the cation) in or on dry peas at 0.3 part per million (ppm) for an additional 1½–year period.This tolerance will expire and is revoked on November 15, 2001. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on dry peas. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective June 30, 1999. Objections and requests for hearings must be received by EPA, on or before August 30, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300874], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300874], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300874]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location , telephone number, and e-mail address: Rm. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of August 29, 1997 (62 FR 45748) (FRL–5739–8), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion) in or on dry peas at 0.3 ppm, with an expiration date of November 15, 1998. EPA extended the expiration date of this tolerance to May 15, 2000 in a **Federal Register** notice published October 9, 1998 (63 FR 54357) (FRL–6032–5). EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of paraquat dichloride for desiccation of weeds infesting green peas grown for seed and dry peas for this year's growing season due to the continuation of the emergency situations occuring in Idaho, Montana, Oregon, and Washington. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of paraquat dichloride on dry peas and green peas grown for seed for desiccation of weeds.

EPA assessed the potential risks presented by residues of paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion) in or on dry peas. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 29, 1997. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1½–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on November 15, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on dry peas after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicates that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 30, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300874] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance

costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 10, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.205 [Amended]

2. In § 180.205, by amending the table in paragraph (b), for the entry "peas dry", change the date "5/15/00" to read "11/15/01".

[FR Doc. 99–16686 Filed 6–29–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300870; FRL–6085–3]

RIN 2070–AB78

Fludioxonil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fludioxonil (4-[2,2-difluoro-1,3-benzodioxol-4-yl]-1H-pyrrole-3-carbonitrile) in or on flax seed and safflower seed. Novartis Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 30, 1999. Objections and requests for hearings must be received by EPA on or before August 30, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300870], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300870], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300870]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Product Manager 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 249, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9354, waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 23, 1999 (64 FR 8816) (FRL–6058–8), EPA issued an amendment to the notice published on August 26, 1998 (63 FR 45497; FRL–6023–4) pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a announcing the filing of a pesticide petition (PP) for tolerances by Novartis Crop Protection, Inc., 410 Swing Road, Greensboro, NC 27419. The August 26, 1998 notice included a summary of the petition prepared by Novartis Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The February 23, 1999 amendment to the petition requested that 40 CFR 180.516 be amended by establishing tolerances for fludioxonil fungicide in or on flax seed at 0.05 parts per million (ppm) and safflower seed at 0.01 ppm.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fludioxonil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for fludioxonil in or on flax seed at 0.05 ppm and safflower seed at 0.01 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances in food and feed crops, including flax and safflower seeds was published earlier, see the final rule published on October 7, 1998; (63 FR 53820. FRL–6036–8). Although the October 7, 1998 final rule did not mention flax or safflower, the exposure and risk numbers presented were based on the assumption that use on these crops was permitted (See Memorandum, Fludioxonil, FQPA Human Risk Assessment dated September 3, 1998, included in Docket). Accordingly, each of the safety findings, including the safety finding pertaining to infants and children in the October 7, 1998 final rule are applicable to the flax and safflower tolerances.

III. Conclusion

Therefore, tolerances are established for fludioxonil in or on flax seed at 0.05 ppm and safflower seed at 0.01 ppm.

IV. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 30, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

V. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300870] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VI. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any

enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: June 9, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. In § 180.516 the table to paragraph (a) is amended by adding alphabetically entries for the commodities "flax seed" and "safflower seed".

§ 180.516 Fludioxonil; tolerances for residues.

* * * * *

(a) * * *

Commodity	Parts per million
. . . . .	
Flax seed	0.05
. . . . .	
Safflower seed	0.01
. . . . .	

* * * * *

[FR Doc. 99–16685 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42193A; FRL–6067–4]

RIN 2070–AB94

Toxic Substances Control Act Test Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this rule, EPA is amending 7 of the 11 existing health effects guidelines. These guidelines are a part of the series of test guidelines which consist of standardized test procedures for test rules promulgated under section 4 of the Toxic Substances Control Act (TSCA), that are published in part 799 of Title 40 of the Code of Federal Regulations (CFR). These TSCA test guidelines are based on the harmonized test guidelines in the unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) for use in testing chemical substances to develop data for submission to EPA under TSCA, the Federal Food, Drug and Cosmetic Act (FFDCA), and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The process for developing and amending the harmonized test guidelines includes broad public participation and extensive involvement of the scientific community. The TSCA test guidelines do not in themselves impose any obligations on anyone until they are incorporated in a test rule promulgated under section 4 of TSCA.

DATES: This rule is effective on June 30, 1999.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Roger Nelson, Chemical Control Division, Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–8163; e-mail address: nelson.roger@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be particularly interested in this action if you manufacture (defined by statute to include import) or process a chemical substance that could become the subject of a proposed test rule under TSCA section 4. This action does not, however, impose any obligations on anyone until the test guidelines are incorporated in a future test rule that would be proposed under TSCA section 4. Therefore, entities potentially affected by this action may include, but are not limited to:

Type of entity	SIC	NAICS	Examples of potentially affected entities
Chemical manufacturers or importers	28, 2911	325, 32411	Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.
Chemical processors	28, 2911	325, 32411	Persons who process one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The Standard Industrial Classification (SIC) codes and the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document from and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page, select "Laws and Regulations" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/EPA-TOX/1999/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–42193. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, Environmental Protection Agency, North East Rm. NE–B607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

3. *By phone.* If you need additional information about this action, you may also contact the person identify in the "FOR FURTHER INFORMATION CONTACT" section.

II. Background

A. What are Test Guidelines?

Test guidelines are a standardized set of test procedures or protocols organized by health effect or other testing endpoint. These guidelines present generally formulated procedures for laboratory testing of an effect or characteristic deemed important for the evaluation of health and environmental hazards of a chemical. These guidelines are designed to, when followed, produce data which are accurate, reliable, and reproducible. Such data are necessary for the regulatory programs under TSCA.

B. What are TSCA Test Guidelines?

TSCA test guidelines are guidelines which were established to meet the regulatory needs of TSCA, particularly the needs of the TSCA section 4 testing program. The TSCA section 4 testing program is a regulatory program which is based on the promulgation of rules requiring certain persons identified in the rule, usually manufacturers and processors of the chemical to conduct testing of the chemical specified in the rule. Section 4(b)(1)(B) of TSCA specifically requires that test rules promulgated under the section 4 include "standards for the development of test data for such substance or mixture * * *." These "standards for the development of test data" specify how the study is to be conducted, what data will be collected, and how the data will be analyzed. Each test rule must specify such "test standards" which contain specifications for testing. Section 4(b)(1)

of TSCA describes the elements which must be described in these test standards.

The Agency has found that most of these elements can be standardized into the common set of protocols which EPA defines as "test guidelines." These guidelines are organized by testing endpoint. The test rule itself can add or subtract to the requirements of the test guidelines in order to meet the unique testing circumstances for the particular chemical substance.

C. How are TSCA Test Guidelines Used?

The Agency uses this system of standardized guidelines, organized by testing endpoint and codified in a subpart in 40 CFR part 799 for use in cross-referencing in a TSCA section 4 action. When a section 4 test rule is promulgated, the test rule cross-references the appropriate TSCA test guideline for the bulk of the testing requirements. In this context, the public is given notice of, and an opportunity to comment on, these guidelines as they are applied in chemical-specific test rules. This approach eliminates the need to repeat the same test specifications for each substance-specific test rule since most of the specifications for testing do not change across substances. The test specifications in a guideline can be varied, when necessary, to the specific requirements of a test rule by amendatory language in the test rule itself.

D. Where Did the TSCA Test Guidelines Come From?

The TSCA test guidelines series were first promulgated in 1985 (50 FR 39252, September 27, 1985) and were established in 40 CFR parts 795, 796, 797, and 798. The Agency has over time amended and improved these guidelines (52 FR 19072, May 20, 1987) and in some cases revoked those guidelines which had not been cross-referenced in any test rules (60 FR 31917, June 19, 1995) (FRL–4955–2).

In 1991, EPA began an effort to blend the testing guidance and requirements that existed in the Office of Pollution Prevention and Toxics (OPPT) (and appeared in 40 CFR parts 795 through 798), the Office of Pesticides Programs (OPP) guidelines which appeared in publications of the National Technical Information Service (NTIS), and the guidelines published by the Organization for Economic Cooperation and Development (OECD). The product of this effort would be one set of guidelines which would be thus blended or "harmonized." These harmonized guidelines would then be made available to the EPA, other government agencies, and the public through EPA's Internet web site and would be accessible by anyone with a personal computer and the ability to connect to the Internet. The EPA Internet web site would be the site and publication source for the "OPPTS Harmonized Guidelines" at http://www.epa.gov/epahome/research.htm/.

E. How Were These OPPTS Harmonized Test Guidelines Developed?

The OPPTS harmonized test guidelines were first drafted by EPA scientists for specific testing endpoints. These drafts were reviewed by other EPA experts and, in some instances, presented at domestic and international colloquia in order to solicit the views of recognized experts and the regulated community. These draft harmonized guidelines were made available on EPA's Internet web site as public drafts and public comment was solicited and received. After review of the public drafts and comments, EPA published the final OPPTS harmonized guidelines on EPA's Internet web site and announced their availability to the public in a **Federal Register** notice (63 FR 41845, August 5, 1998)(FRL–5740–1).

F. What is Done to Make TSCA Test Guidelines From the OPPTS Harmonized Test Guidelines?

Harmonization has resulted in significantly improved guidelines. However, creating a single set of guidelines which can be used by both OPP, in its administration of the FIFRA and the Federal Food, Drug and Cosmetic Act (FFDCA), and the Office of Pollution Prevention and Toxics, which administers TSCA presented certain challenges. Under FIFRA, test guidelines are used in an interactive process between the Agency and registrants seeking registration of pesticides or food residue tolerances. Flexibility to tailor required testing to individual circumstances is critical, and the Agency has considerable discretion to determine whether submitted test results are adequate to support the requested action. Under this scheme, registrants have an intrinsic motivation to conduct well-grounded testing. Thus, pesticide testing protocols tend to have few absolute requirements specifying the details of the conduct of the testing.

Under section 4 of TSCA, on the other hand, the Agency is required to impose prescriptive test requirements using notice and comment rulemaking. Rules promulgated under section 4 of TSCA must specify classes of affected parties and specify the standards to be followed by these parties in conducting the required testing. In contrast to FIFRA, the Agency does not interact with companies on an individual basis in designing the testing requirements.

TSCA section 4 rulemakings typically take years to complete. Without initiating another rulemaking process, the Agency has the ability to require further testing only if the tests were not conducted in accordance with the procedures specified in the test rule. In addition, the Agency has an alternative process of negotiating TSCA testing requirements via enforceable consent agreements (ECAs), but these agreements require the consent of all the parties involved. Under TSCA section 4 enforceable test standards, much in the conduct of these test protocols is left to the judgment of those professionals conducting the testing. EPA believes that certain provisions must be mandatory whenever the guidelines are cross-referenced in specific test rules.

Therefore, the Agency has used the OPPTS harmonized test guidelines developed using the public notice and comment process to create the TSCA-specific test guidelines which are the subject of this rule. TSCA section 4 test rules now cross-reference only the 40 CFR part 799 guidelines rather than the older, non-harmonized guidelines established in 40 CFR parts 795 through 798 mostly in 1985. The only significant difference between the TSCA test guidelines and the OPPTS harmonized test guidelines is that certain discretionary procedures in the OPPTS harmonized test guidelines are made mandatory (i.e., the guideline states that they "must" be carried out) in order to ensure the enforcibility of the test standard.

III. What Changes Is EPA Making to the TSCA Guidelines in 40 CFR Part 799?

EPA is making changes to seven of the existing 40 CFR part 799 guidelines in order that they more accurately reflect the equivalent OPPTS harmonized guideline as finalized in August 1998. The TSCA guidelines which were promulgated in August 1997 were based on early versions of the final OPPTS harmonized guidelines. Seven of the 11 TSCA guidelines promulgated in 1997 have differences in text with the OPPTS guidelines finalized in August 1998. This **Federal Register** document corrects those differences.

The changes that EPA is making to the existing 40 CFR part 799 guidelines are summarized in the following Table 1 and discussed guideline by guideline in detail below:

Table 1

Existing TSCA 40 CFR part 799 guideline and cite	Number of changes made to guideline in this rule
TSCA acute inhalation toxicity with histopathology (799.9135)	0
TSCA subchronic inhalation toxicity (799.9346)	8
TSCA prenatal developmental toxicity (799.9370)	0
TSCA reproduction and fertility effects (799.9380)	2
TSCA carcinogenicity (799.9420)	14
TSCA bacterial reverse mutation test (799.9510)	3
TSCA in vitro mammalian cell gene mutation test (799.9530)	0
TSCA mammalian bone marrow chromosomal aberration test (799.9538)	1
TSCA mammalian erythrocyte micronucleus test (799.9539)	2
TSCA neurotoxicity screening battery (799.9620)	1
TSCA immunotoxicity (799.9780)	0

The description of the changes with the detailed discussion of the changes being made to the existing 40 CFR part 799 TSCA guidelines are contained in the following lettered sections.

A. Section 799.9135 TSCA Acute Inhalation Toxicity with Histopathology

EPA is making no changes to this section.

B. Section 799.9346 TSCA Subchronic Inhalation Toxicity

1. EPA is revising the title of the TSCA guideline from "TSCA Subchronic Inhalation Toxicity" in § 799.9346 with "TSCA 90-Day Inhalation Toxicity." This change tracks the change made in the title of the final OPPTS harmonized guideline.

2. EPA is revising paragraph (d) to track changes in the final OPPTS harmonized guideline. This revision better explains when a full study (using three test concentrations) might not be necessary.

3. EPA is revising the provision of paragraph (e)(1)(ii)(B) to track the OPPTS harmonized guideline emphasis that only testing on rodents (as opposed to all mammalian species) would be permitted. Provisions referencing non-rodents in the OPPTS guideline have been removed.

4. EPA is revising paragraph (e)(1)(iv)(A) be deleting provisions which imply the permissibility of using non-rodents as test animals. This language tracks the language in the final OPPTS harmonized guideline.

5. EPA is revising paragraphs (e)(1)(v)(E) and (e)(1)(v)(F) to track the language in the final OPPTS harmonized guideline. This language reorganizes these paragraphs and emphasizes the permissibility of using an unlimited supply of drinking water in the diets of the test animals.

6. EPA is revising the language in paragraph (e)(12) with new language which modifies the hematology and clinical chemistry parameters to track the modifications made in the final OPPTS harmonized guideline.

7. EPA is revising paragraph (e)(15)(i)(D) to delete the requirement for full histopathology of livers and kidneys of all animals. This change tracks the changes in the final OPPTS harmonized guideline.

8. EPA is adding additional requirements for test system information collection. New paragraphs (f)(3)(ii)(D)and (f)(3)(ii)(E) are added to include data on identification of the animal diet and the acclimation period. This tracks new language in the final OPPTS harmonized guideline.

C. Section 799.9370 TSCA Prenatal Developmental Toxicity

EPA made no changes to this section.

D. Section 799.9380 TSCA Reproduction and Fertility Effects

EPA is amending the existing TSCA Reproduction and Fertility Effects guideline by making several changes and clarifications to bring the text into agreement with the final OPPTS harmonized guideline 870.3800, Reproduction and Fertility Effects guideline (August 1998). Specific changes to the TSCA guideline are:

1. Paragraphs (e)(4)(i)(D) and (f)(3)(vi) were revised to incorporate the decisions made by the Agency in finalizing the OPPTS harmonized guideline to revise the definition of "abnormal" estrous cyclicity. There, the guideline wording which described assessment of cyclicity data in terms of normality was revised to indicate that the evaluation of the pattern of cycling to better reflect current scientific opinion.

2. Paragraph (e)(9) was revised to remove the triggers specified in the June 1996 draft guideline because EPA determined that these triggers would not be useful in identifying chemicals that require further examination. Instead, an assessment of F1 females for every study was specified (P females need not be assessed). Since EPA believes that there is more than one valid method of selecting the ovarian sections that will be evaluated and that the June 1996 draft guideline was excessively prescriptive in its description of methodology, specific instructions were removed in order to allow the performing laboratory to determine the most appropriate methodological criteria to attain biologically and statistically valid results. Supporting references were provided in § 799.9380 (g) of the TSCA guideline.

E. Section 799.9420 TSCA Carcinogenicity

EPA is amending the existing TSCA Carcinogenicity guideline by making several changes and clarifications to bring the text into agreement with the final OPPTS harmonized guideline 870.4200, Carcinogenicity guideline (August 1998). Specific changes to the TSCA guideline are:

1. EPA is further specifying its recommended procedures for test substance preparation. Paragraphs (d)(5)(ii)(C) and (d)(5)(ii)(D) are revised with modified language which is designed for consistency with other guidelines.

2. Paragraph (d)(5)(iii)(G) is revised to track technical changes made to the OPPTS harmonized guideline.

3. EPA is tracking changes made to the OPPTS harmonized guideline by adding provisions in paragraph (d)(7)(iv) recommending that water consumption be measured at the same intervals as the test substance if the test substance is administered in the drinking water.

4. EPA is tracking changes in the final OPPTS harmonized guideline by revising the provisions in paragraph (d)(9)(ii) for trimming and weighing organs during the gross necropsy phase

of the testing conducted under the TSCA guideline.

5. The requirement in paragraph (d)(9)(iii)(A)(*13*) for full histopathology and preservation of the bile duct (for rats when the rat is the test animal) is deleted in order to track changes made in the final OPPTS harmonized guideline.

6. The requirement in paragraph (d)(9)(iii)(D)(*5*) for full histopathology and preservation of the nose of the test animal has been deleted to track changes in the final OPPTS harmonized guideline.

7. The requirement in paragraph (d)(9)(iii)(E)(*6*) for full histopathology and preservation of the thymus of the test animal has been deleted to track changes in the final OPPTS harmonized guideline.

8. The requirement for the histopathology and the preservation of the female mammary gland was redesignated as new paragraph (d)(9)(iii)(F)(*8*). This addition tracks the change made in the final OPPTS harmonized guideline.

9. Requirements in paragraphs (d)(9)(iii)(G)(*1*), (d)(9)(iii)(G)(*2*), (d)(9)(iii)(G)(*4*), and (d)(9)(iii)(G)(*6*) for the histopathology and preservation of the lacrymal gland, skeletal muscle, the sternum, and femur were deleted in accordance with changes made in the final OPPTS harmonized guideline.

10. The requirement in paragraph (d)(10)(i)(D) for the full histopathology of lungs, liver and kidneys of all test animals was deleted in accordance with changes made in the final OPPTS harmonized guidelines.

11. Paragraph (d)(10)(ii) was revised to indicate the correct citation to the provisions specifying the methodology for examination of animals exposed to lower dose levels. This citation was incorrect in the original promulgation.

12. Paragraph (d)(10)(iv) was revised to remove the allowable maximum thickness provision for trimming tissues designated for microscopic examination. This change tracks changes made in the final OPPTS harmonized guideline.

13. New paragraphs (e)(3)(i)(B)(*4*) and (e)(3)(i)(B)(*5*) were added to specify that data on the identification of the animal diet and the animal acclimation period should be included in the test system data collection requirement. This addition tracks language added to the final OPPTS harmonized guideline.

14. A new paragraph (e)(4)(ii)(J) was added to specify that achieved dose (mg/kg/day) data (as a time-weighted average) would be recorded as part of the individual animal data recordation requirement if the test substance is administered in the diet or drinking water. A similar provision was added in the final OPPTS harmonized guideline.

F. Section 799.9510 TSCA Bacterial Reverse Mutation Test

1. Paragraph (e)(2)(i)(A)(*3*) was revised to delete language which indicated a preference for a particular approach to detect cross-linking mutagens. This revision tracks changes made in the final OPPTS harmonized guideline.

2. Paragraph (e)(2)(ii)(A) was revised to make grammatical corrections erroneously omitted in the original promulgation.

3. The language of paragraph (f)(3) was revised to be consistent with the test report requirement paragraph of the other TSCA guidelines.

G. Section 799.9530 TSCA In Vitro Mammalian Cell Gene Mutation Test

EPA is making no changes to this section.

H. Section 799.9538 TSCA Mammalian Bone Marrow Chromosomal Aberration Test

EPA is adding mandatory requirements in paragraph (e)(2)(ii)(B)(*3*) for the treatment of negative controls.

I. Section 799.9539 TSCA Mammalian Erythrocyte Micronucleus Test

The EPA is correcting some errors in the original promulgation.

1. Paragraphs (e)(2)(ii)(A) and (e)(3)(iii) were revised to be consistent with the comparable paragraphs in § 799.9538.

2. Paragraph (f)(2)(ii) was revised to identify the specific citation for the criteria to assess mutagencity instead of merely referring to "the above criteria."

3. The language of paragraph (f)(3) was revised to be consistent with the test report requirement paragraph of the other TSCA guidelines.

J. Section 799.9620 TSCA Neurotoxicity Screening Battery

The only change EPA is making to the TSCA neurotoxicity screening battery is the elimination of any need to use permanently injurious chemicals for behavioral measurements. Paragraph (e)(3)(ii) is thus revised by adding the same provisions which were added to the OPPTS final harmonized guideline.

K. Section 799.9780 TSCA Immunotoxicity

EPA is making no changes to this section.

IV. Why Is This Action Being Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and an opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary and would be contrary to the public interest. As explained above, this final rule does not impose any obligations on anyone until the test guidelines are incorporated in a test rule promulgated under TSCA section 4. Before any such test rule is promulgated, EPA will provide notice and an opportunity to comment on the incorporation of a particular test guideline into a specific test rule. In addition, the process for developing and amending the harmonized test guidelines includes broad public participation and extensive involvement of the scientific community. EPA therefore finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make this amendment without prior notice and comment. Thus, this rule may be promulgated without prior opportunity for public notice and comment, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), and may be made effective immediately, without a 30-day delay, pursuant to 5 U.S.C. 553(d)(3).

V. How Do the Regulatory Assessment Requirements Apply to This Action?

This final rule does not impose any requirements. It only amends test guidelines in the TSCA series of test guidelines that are published in the CFR and which would be considered for potential incorporation in a future test rule that would be proposed under TSCA section 4. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, since this action is not subject to notice and comment requirements under the APA as discussed in Unit IV. of this preamble, or in any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

VI. Are There Any Applicable Voluntary Consensus Standards?

No. Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide an explanation to Congress, through OMB, when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

As indicated earlier, this final rule does not impose any obligations on anyone until the test guidelines are incorporated in a test rule promulgated under TSCA section 4. Before any such test rule is promulgated, EPA will provide notice and an opportunity to comment on the incorporation of a particular test guideline into that specific test rule, including the availability of applicable voluntary consent standards.

In addition, although the NTTAA requirements do not specifically apply to the issuance of the harmonized test guidelines, EPA has sought comments on the availability of applicable voluntary consensus standards that should be considered during the development of future rules under TSCA. This allows the Agency to consider such standards during the development of the harmonized test guidelines, upon which the TSCA test guidelines are based.

VII. Will EPA Submit This Action to Congress and the Comptroller General?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). EPA has made such a good cause finding for this final rule, and established an effective date of June 30, 1999. Pursuant to 5 U.S.C. 808(2), this determination is supported by the brief statement in Unit IV. of this preamble. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Health, Reporting and recordkeeping requirements.

Dated: June 21, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.9346 is amended by revising the section heading, by revising paragraphs (d), (e)(1)(ii)(B), (e)(1)(iv)(A), (e)(1)(v)(E), (e)(1)(v)(F), (e)(12), and (e)(15)(i)(D), and adding paragraphs (f)(3)(ii)(D) and (f)(3)(ii)(E) to read as follows:

§ 799.9346 TSCA 90-Day Inhalation Toxicity.

* * * * *

(d) *Limit test.* If exposure at a concentration of 1 mg/L (expected human exposure may indicate the need for a higher concentration), or where this is not possible due to physical or chemical properties of the test substance, the maximum attainable concentration produces no observable toxic effects, then a full study using three concentrations might not be necessary.

(e) * * *

(1) * * *

(ii) * * *

(B) Dosing of rodents should generally begin no later than 8 weeks of age.

* * * * * *

(iv) *Numbers.* (A) At least 20 animals (10 females and 10 males) should be used for each test group.

* * * * * *

(v) * * *

(E) Control and test animals should be fed from the same batch and lot. The feed should be analyzed to assure adequacy of nutritional requirements of the species tested and for impurities that might influence the outcome of the rest. For feeding, conventional laboratory diets may be used with an unlimited supply of drinking water.

(F) The study should not be initiated until animals have been allowed a period of acclimatization/quarantine to environmental conditions, nor should animals from outside sources be placed on test without an adequate period of quarantine. An acclimatization period of at least 5 days is recommended.

* * * * * *

(12) *Clinical pathology.* Hematology and clinical chemistry examinations shall be made on all animals, including controls, of each sex in each group. The hematology and clinical chemistry parameters should be examined at terminal sacrifice at the end of the study. Overnight fasting of the animals prior to blood sampling is recommended. Overall, there is a need for a flexible approach in the measures examined, depending on the observed or expected effects from a chemical, and in the frequency of measures, depending on the duration of potential chemical exposures.

(i) Hematology. The recommended parameters are red blood cell count, hemoglobin concentration, hematocrit, mean corpuscular volume, mean corpuscular hemoglobin, and mean corpuscular hemoglobin concentration, white blood cell count, differential leukocyte count, platelet count, and a measure of clotting potential, such as prothrombin time or activated partial thromboplastin time.

(ii) Clinical chemistry. (A) Parameters which are considered appropriate to all studies are electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance and signs of clinical toxicity.

(B) The recommended clinical chemistry determinations are potassium, sodium, glucose, total cholesterol, urea nitrogen, creatinine, total protein and albumin. More than 2 hepatic enzymes, (such as alanine aminotransferase, aspartate aminotransferase, alkaline phosphatase, sorbitol dehydrogenase, or gamma glutamyl transpeptidase) should also be measured. Measurements of addtional enzymes (of hepatic or other origin) and bile acids, may also be useful.

(C) If a test chemical has an effect on the hematopoietic system, reticulocyte counts and bone marrow cytology may be indicated.

(D) Other determinations that should be carried out if the test chemical is known or suspected of affecting related measures include calcium, phosphorus, fasting triglycerides, hormones, methemoglobin, and cholinesterases.

(iii) Optionally, the following urinalysis determinations could be performed during the last week of the study using timed urine volume collection: appearance, volume, osmolality or specific gravity, pH, protein, glucose, and blood/blood cells.

* * * * *

(15) * * *

(i) * * *

(D) Lungs of all animals. Special attention to examination of the respiratory tract should be made for evidence of infection as this provides a convenient assessment of the state of health of the animals

* * * * * *

(f) * * *

(3) * * *

(ii) * * *

(D) Identification of animal diet.

(E) Acclimation period.

* * * * * *

3. Section 799.9380 is amended by revising paragraphs (e)(4)(i)(D), (e)(9) and (f)(3)(vi) to read as follows:

§ 799.9380 TSCA reproduction and fertility effects.

* * * * * *

(e) * * *

(4) * * *

(i) * * *

(D) Estrous cycle length and pattern should be evaluated by vaginal smears for all P and F1 females during a minimum of 3 weeks prior to mating and throughout cohabitation; care should be taken to prevent the induction of pseudopregnancy

* * * * * *

(9) *Histopathology*—(i) *Parental animals.* Full histopathology of the organs listed in paragraph (e)(8)(i) of this section shall be performed for ten randomly chosen high dose and control P and F1 animals per sex, for those animals that were selected for mating. Organs demonstrating treatment-related changes shall also be examined for the remainder of the high-dose and control animals and for all parental animals in the low- and mid-dose groups. Additionally, reproductive organs of the low- and mid-dose animals suspected of reduced fertility, e.g., those that failed to mate, conceive, sire, or deliver healthy offspring, or for which estrous cyclicity or sperm number, motility, or morphology were affected, shall be subjected to histopathological evaluation. Besides gross lesions such as atrophy or tumors, testicular histopathological examination should be conducted in order to to identify treatment-related effects such as retained spermatids, missing germ cell layers or types, multinucleated giant cells, or sloughing of spermatogenic cells into the lumen. Examination of the intact epididymis should include the caput, corpus, and cauda, which can be accomplished by evaluation of a longitudinal section, and should be conducted in order to identify such lesions as sperm granulomas, leukocytic infiltration (inflammation), aberrant cell types within the lumen, or the absence of clear cells in the cauda epididymal epithelium. The postlactational ovary should contain primordial and growing follicles as well as the large corpora lutea of lactation. Histopathological examination should detect qualitative depletion of the primordial follicle population. A quantitative evaluation of primordial follicles should be conducted for all F1 females; the number of animals, ovarian section selection, and section sample size should be statistically appropriate for the evaluation procedure used. Examination should include enumeration of the number of primordial follicles, which can be combined with small growing follicles (see paragraphs (g)(1) and (g)(2) of this section), for comparison of treated and control ovaries.

(ii) *Weanling.* For F1 and F2 weanlings, histopathological examination of treatment-related abnormalities noted in macroscopic examination should be considered, if such evaluation were deemed appropriate and would contribute to the interpretation of the study data.

(f) * * *

(3) * * *

(vi) Number of P and F1 females cycling pattern and mean estrous cycle length.

* * * * * *

4. Section 799.9420 is amended as follows:

a. By revising paragraphs (d)(5)(ii)(C), (d)(5)(ii)(D), (d)(5)(iii)(G), (d)(7)(iv), (d)(9)(ii), (d)(9)(iii)(D)(*5*), (d)(10)(ii), and (d)(10)(iv).

b. By adding paragraphs (d)(9)(iii)(F)(*8*), (e)(3)(i)(B)(*4*), (e)(3)(i)(B)(*5*), and (e)(4)(ii)(J).

c. By removing paragraphs (d)(9)(iii)(A)(*13*), (d)(9)(iii)(E)(*6*), (d)(9)(iii)(G)(*1*), (d)(9)(iii)(G)(*2*), (d)(9)(iii)(G)(*4*), and (d)(9)(iii)(G)(*6*) and redesignating paragraph (d)(9)(iii)(G)(*3*) as paragraph (d)(9)(iii)(G)(*1*) and paragraph (d)(9)(iii)(G)(*5*) as paragraph (d)(9)(iii)(G)(*2*), and removing paragraph (d)(10)(i)(D).

§ 799.9420 TSCA carcinogenicity.

* * * * * *

(d) * * *

(5) * * *

(ii) * * *

(C) Preparation of test substance. Liquid test substances are generally used undiluted, except as indicated in paragraph (e)(4)(vi) of this section. Solids should be pulverized when possible. The substance should be moistened sufficiently with water or, when necessary, with a suitable vehicle to ensure good contact with the skin. When a vehicle is used, the influence of the vehicle on toxicity of, and penetration of the skin by, the test substance should be taken into account. The volume of application should be kept constant, e.g. less than 100 uL for the mouse and less than 300 uL for the rat. Different concentrations of test solution should be prepared for different dose levels.

(D) The test substance shall be applied uniformly over a shaved area which is approximately 10 percent of the total body surface area. In order to dose approximately 10 percent of the body surface, the area starting at the scapulae (shoulders) to the wing of the ileum (hipbone) and half way down the flank on each side of the animal should be shaved. With highly toxic substances, the surface area covered may be less, but as much of the area as possible should be covered with as thin and uniform a film as practical.

(iii) * * *

(G) The actual concentration of the test substance shall be measured in the breathing zone. During the exposure period, the actual concentrations of the test substance should be held as constant as practicable, monitored continuously or intermittently depending on the method of analysis. Chamber concentrations may be measured using gravimetric or analytical methods as appropriate. If

trial run measurements are reasonably consistent (plus or minus 10 percent for liquid aerosol, gas, or vapor; plus or minus 20 percent for dry aerosol), the two measurements should be sufficient. If measurements are not consistent, then three to four measurements should be taken.

* * * * * *

(7) * * *

(iv) Measurements of feed consumption should be determined weekly during the first 13 weeks of the study and at approximately monthly intervals thereafter unless health status or body weight changes dictate otherwise. Measurement of water consumption should be determined at the same intervals if the test substance is administered in the drinking water.

* * * * * *

(9) * * *

(ii) At least the liver, kidneys, adrenals, testes, epididymides, ovaries, uterus, spleen, brain, and heart should be weighed wet as soon as possible after dissection to avoid drying. The lungs should be weighed if the test substance is administered by the inhalation route. The organs should be weighed from interim sacrifice animals as well as from at least 10 animals per sex per group at terminal sacrifice.

(iii) * * *

(D) * * *

(*5*) Nose.

* * * * * *

(F) * * *

(*8*) Female mammary gland.

* * * * * *

(10) * * *

(ii) If the results show substantial alteration of the animal's normal life span, the induction of effects that might affect a neoplastic response, or other effects that might compromise the significance of the data, the next lower dose levels shall be examined as described in paragraph (d)(10)(i) of this section.

* * * * * *

(iv) Tissues and organs designated for microscopic examination should be fixed in 10 percent buffered formalin or a recognized suitable fixative as soon as necropsy is performed and no less than 48 hours prior to trimming.

* * * * * *

(e) * * *

(3) * * *

(i) * * *

(B) * * *

(*4*) Identification of animal diet.

(*5*) Acclimation period.

* * * * * *

(4) * * *

(ii) * * *

(J) Achieved dose (mg/kg/day) as a time-weighted average if the test substance is administered in the diet or drinking water.

5. Section 799.9510 is amended by revising paragraphs (e)(2)(i)(A)(*3*) introductory text, (e)(2)(ii)(A), and (f)(3) introductory text to read as follows:

§ 799.9510 TSCA bacterial reverse mutation test.

* * * * * *

(e) * * *

(2) * * *

(i) * * *

(A) * * *

(*3*) At least five strains of bacteria should be used. These should include four strains of S. typhimurium (TA1535; TA1537 or TA97a or TA97; TA98; and TA100) that have been shown to be reliable and reproducibly responsive between laboratories. These four S. typhimurium strains have GC base pairs at the primary reversion site and it is known that they may not detect certain oxidizing mutagens, cross-linking agents, and hydrazines. Such substances may be detected by E. coli WP2 strains or S. typhimurium TA102 (see reference in paragraph (g)(19) of this section) which have an AT base pair at the primary reversion site. Therefore the recommended combination of strains is:

* * * * * *

(ii) * * *

(A) *Solvent/vehicle.* The solvent/vehicle should not be suspected of chemical reaction with the test substance and shall be compatible with the survival of the bacteria and the S9 activity (for further information see the reference in paragraph (g)(22) of this section). If other than well-known solvent/vehicles are used, their inclusion should be supported by data indicating their compatibility. It is recommended that wherever possible, the use of an aqueous solvent/vehicle be considered first. When testing water-unstable substances, the organic solvents used be free of water.

* * * * * *

(f) * * *

(3) *Test report.* The test report shall include the following information:

* * * * * *

6. Section 799.9538 is amended by revising paragraph (e)(2)(ii)(B)(*3*) to read as follows:

§ 799.9538 TSCA mammalian bone marrow chromosomal aberration test.

* * * * * *

(e) * * *

(2) * * *

(ii) * * *

(B) * * *

(*3*) Negative controls, treated with solvent or vehicle alone, and otherwise treated in the same way as the treatment groups, shall be included for every sampling time, unless acceptable inter-animal variability and frequencies of cells with chromosome aberrations are available from historical control data. If single sampling is applied for negative controls, the most appropriate time is the first sampling time. In the absence of historical or published control data demonstrating that no deleterious or mutagenic effects are induced by the chosen solvent/vehicle, untreated animals should be used.

* * * * * *

7. Section 799.9539 is amended by revising paragraphs (e)(2)(ii)(A), (e)(3)(iii), (f)(2)(ii), and (f)(3) introductory text to read as follows:

§ 799.9539 TSCA mammalian erythrocyte micronucleus test.

* * * * * *

(e) * * *

(2) * * *

(ii) * * *

(A) *Solvent/vehicle.* The solvent/vehicle shall not produce toxic effects at the dose levels used, and shall not be suspected of chemical reaction with the test substance. If other than well-known solvents/vehicles are used, their inclusion should be supported with reference data indicating their compatibility. It is recommended that wherever possible, the use of an aqueous solvent/vehicle should be considered first.

* * * * * *

(3) * * *

(iii) *Dose levels.* If a range finding study is performed because there are no suitable data available, it shall be performed in the same laboratory, using the same species, strain, sex, and treatment regimen to be used in the main study (guidance on dose setting is provided in the reference in paragraph (g)(9) of this section). If there is toxicity, three dose levels shall be used for the first sampling time. These dose levels shall cover a range from the maximum to little or no toxicity. At the later sampling time only the highest dose needs to be used. The highest dose is defined as the dose producing signs of toxicity such that higher dose levels, based on the same dosing regimen, would be expected to produce lethality. Substances with specific biological activities at low non-toxic doses (such as hormones and mitogens) may be exceptions to the dose-setting criteria and should be evaluated on a case-by-case basis. The highest dose may also be defined as a dose that produces some indication of toxicity in the bone marrow (e.g. a reduction in the proportion of immature erythrocytes

among total erythrocytes in the bone marrow or peripheral blood).

* * * * *

(f) * * *

(2) * * *

(ii) A test substance for which the results do not meet the criteria in paragraph (f)(2)(i) of this section is considered non-mutagenic in this test.

* * * * *

(3) *Test report.* The test report shall include the following information:

* * * * *

8. Section 799.9620 is amended by revising paragraph (e)(3)(ii) to read as follows:

§ 799.9620 TSCA neurotoxicity screening battery.

* * * * *

(e) * * *

(3) * * *

(ii) Positive control data from the laboratory performing the testing shall provide evidence of the ability of the observational methods used to detect major neurotoxic endpoints including limb weakness or paralysis, tremor, and autonomic signs. Positive control data are also required to demonstrate the sensitivity and reliability of the activity-measuring device and testing procedures. These data should demonstrate the ability to detect chemically induced increases and decreases in activity. Positive control groups exhibiting central nervous system pathology and peripheral nervous system pathology are also required. Separate groups for peripheral and central neuropathology are acceptable (e.g. acrylamide and trimethyl tin). Permanently injurious substances need not be used for the behavioral tests. Historical data may be used if the essential aspects of the experimental procedure remain the same. Periodic updating of positive control data is recommended. New positive control data should also be collected when personnel or some other critical element in the testing laboratory has changed.

* * * * *

[FR Doc. 99–16526 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

48 CFR Part 1352

[Docket No. 981202294–8294–01]

RIN 0605–AA13

Solicitation Provisions and Contract Clauses; Women-Owned Small Business Sources

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (Department) is removing a section of the Commerce Acquisition Regulation (CAR) pertaining to the Federal Acquisition Regulation (FAR) contract clause "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan." The FAR contains requirements for where the clause "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" is required in solicitations and contracts. Since the CAR is intended to supplement and implement the FAR without paraphrasing or duplicating the FAR language, the Department is removing the section of the CAR which duplicates the FAR requirement.

EFFECTIVE DATE: This rule is effective July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Jandovitz, 202–482–0202.

SUPPLEMENTARY INFORMATION: The Federal Acquisition Regulations System was established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement the FAR. The Commerce Acquisition Regulation (CAR) is codified at 48 CFR chapter 13. The solicitation provisions and contract clauses are codified at 48 CFR part 1352. The CAR is intended to supplement and implement the FAR without paraphrasing or duplicating FAR language. Therefore, section 1352.219–1 of Title 48 is being removed because it duplicates the FAR clause in 48 CFR 52–219–9 as prescribed by 48 CFR 19.708(b). There is no change in the solicitation provisions and contract clauses that will be used by the Department.

Rulemaking Requirements

This rule was determined to be "not significant" for purposes of Executive Order 12866. This rule does not contain a collection of information for purposes of the Paperwork Reduction Act. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. The Department finds good cause to issue this rule without notice of proposal rulemaking and the opportunity for public participation. These procedures are unnecessary for this technical amendment to remove duplicate language that is codified in the Federal Acquisition Regulation (FAR). Retaining the present language could be confusing to the public. The rule will have no effect on procurement policy or cost or administrative impact on contractors or offerors. Because a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law for this rule, the analytical requirements of the Regulatory Flexibility Act are not applicable.

List of Subject in 48 CFR Part 1352

Government contracts, Government procurement.

For the reasons set forth in the preamble, 48 CFR part 1352 is amended to read as follows:

PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation is revised to read as follows:

Authority: 41 U.S.C. 418b.

1352.219–1 [Removed]

2. Remove section 1352.219–1.

Dated: June 21, 1999.

Christine Makris,

Director, Acquisition Policy and Programs.

[FR Doc. 99–16579 Filed 6–29–99; 8:45 am]

BILLING CODE 3510–EC–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 062399A]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-water Species Fishery by Vessels using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the third seasonal apportionment of the 1999 halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 4, 1999, until 1200 hrs, A.l.t., October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) for the third season, the period July 4, 1999, through September 30, 1999, as 200 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species".

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the third seasonal bycatch allowance of Pacific halibut. Further delay would only result in the 1999 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA being exceeded. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 23, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–16673 Filed 6–29–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 125
Wednesday, June 30, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, and 285

RIN 0584–AB90

Food Stamp Program: Revisions to the Retail Food Store Definition and Program Authorization Guidance

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement provisions of the Food Stamp Program Improvements Act of 1994 to revise the criteria for eligibility of firms to participate in the Food Stamp Program (FSP) as retail food stores, and to provide for notification to such firms of eligibility criteria for participation in the FSP. The intended effect of this proposed rule is to ensure that food stamp recipients continue to have adequate access to retail food stores where they can purchase a wide variety of nutritious food items, intended for home preparation and consumption, that meet their daily food needs, and to clarify procedures and eligibility requirements for authorizing participation in the FSP as a retail food store. This proposed rule also reinserts part of a sentence inadvertently removed from the regulations by an earlier rule, and replaces references to the Secretary of Health and Human Services with references to the Commissioner of the Social Security Administration.

DATES: Comments must be received by August 30, 1999 to be assured of consideration.

ADDRESSES: Comments should be addressed to Judy Love, Redemption Management Branch, Benefit Redemption Division, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or faxed to (703) 305–2418. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) in room 706, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judy Love at the above address or by telephone at (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice to 7 CFR Part 3015 subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of the Executive Order 12372 which requires inter-governmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., the Administrator of FNS, has certified that this rule does not have a significant economic impact on a substantial number of small entities, based on preliminary implementation data. It may, however, impact a small number of firms that do not effectuate the purposes of the FSP.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions, or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE"** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for Program benefit recipients—State administrative procedures issued under to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued under to 7 U.S.C. 2023, and set forth in 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or 7 CFR Part 283 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued under to 7 U.S.C. 2023, and set forth in 7 CFR 278.8.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provision of Title II of the UMRA for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this notice announces our intent to collect additional information on the application completed by retail food stores to request approval to participate in the Food Stamp Program (FSP) and to obtain approval for 3 years of the revised applications.

Comments on this notice must be submitted by August 30, 1999.

Comments are invited on: (a) whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Lori Schack, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (a copy may also be sent to Judy Love, Redemption Management Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection, please contact Ms. Love at the above address.)

All responses to this notice will be summarized, included in the request for OMB approval, and become a matter of public record.

Title: Food Stamp Program Store Applications.

OMB Number: 0584–0008.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture is the Federal agency responsible for the FSP. The Food Stamp Act of 1977, as amended (the Act) (7 U.S.C. 2011–2036), requires that the Agency determine the eligibility of firms and certain food service organizations to accept and redeem food stamp benefits and to monitor them for compliance and continued eligibility.

Part of FNS's responsibility is to accept applications from retail food establishments and meal service programs that wish to participate in the FSP, review the applications in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem food stamp benefits. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the firms or services continue to meet eligibility requirements.

There are currently 3 application forms approved under OMB No. 0584–0008. Together these forms are used by retailers, wholesalers, meal service providers, certain types of group homes, shelters, and state-contracted restaurants, to apply to FNS for authorization to participate in the FSP. Form FNS–252, Food Stamp Application For Stores is generally used by stores, excluding facilities which provide meal services such as communal dining, shelters, restaurant and other meal service programs, which are newly applying for authorization; Form FNS–252R, Food Stamp Program Application For Stores-Reauthorization is used by the majority of currently authorized stores to apply for reauthorization, excluding facilities which provide meal services such as communal dining, shelters, restaurants and other meal service programs; and Form FNS–252–2, Application to Participate in the Food Stamp Program for Communal Dining Facility/Others generally used by communal dining and restaurant facilities and other food service programs which are newly applying or applying for reauthorization. In a few cases, at the discretion of the FNS field offices, some stores would be required to complete Form FNS–252 to apply for reauthorization. Section 9(c) of the Act provides the necessary authorization(s) to collect the information contained in these forms. This proposed rule contains new eligibility requirements that result in changes to the application form(s).

Except for two of the new eligibility requirements (discussed later in this notice), the burden imposed by the new requirements have already been incorporated into Form FNS–252 and FNS–252R, as appropriate. On May 6, 1996, FNS published a notice for public comment on the revisions resulting from these new statutory requirements and associated burden estimates. The burden estimates and comments received were submitted to OMB. OMB approved the burden estimates through May 30, 1999. On October 15, 1996, FNS issued final rules (61 FR 53595) which implemented a new collection requirement for certain users of Form FNS–252–2. The appropriate notice soliciting comments on the revised estimates was contained in the preamble of that rule. Again, the burden estimates and comments were submitted to OMB. That submission to OMB included the May 1996 estimates and the October 1996 estimates, and were approved by OMB through October 31, 1999. This new notice announces our intent to revise the existing burden estimates approved by OMB through October 31, 1999 and obtain OMB approval for an additional 3 years based on proposed re-estimates of the existing burden using more recent data as well as estimates for new information collection that was not contained in the May 6, 1996 or October 15, 1996 notices for public comment.

We do not collect information on the number of FSP applications received annually. Current burden estimates associated with these 3 application forms are determined from information maintained in STARS (Store Tracking and Redemption System) based on the total number of currently authorized stores or the number of newly authorized stores. The number of expected applications is divided between initial applications from new applicants and applications for reauthorization from currently authorized stores.

We are proposing new burden estimates which: use more recent store authorization data; include burden estimates associated with new information collection contained in this proposed rule which was not included in the May 6, 1996 notice; and, include a correction in burden estimates to capture a change in application requirements for private restaurants that was inadvertently omitted from the hourly burden estimates when last submitted to OMB.

Adjustments—Re-estimates Based on More Recent Data and Corrections

For burden estimates associated with new applicants (initial authorizations), we used the number of stores (all types) newly authorized/approved currently estimated at 20,696 (rounded to 20,700) based on FY 1997 year-end data from STARS and inflated this number by 10% (2,070) to capture a total of 22,770 applications expected to be received and processed from stores annually. It is estimated that 98% (22,315) of the 22,770 applications expected to be received would be on Form FNS–252 and 2% (455 would be on Form FNS–252–2. Due to a technical correction discussed later in this section of the preamble, the number of expected applications would be further changed to reflect an expected total of 22,347 applications using Form FNS–252 and 423 applications using Form FNS–252–2.

For burden estimates associated with applications for reauthorization, we used the total number of stores (all types) authorized (184,300) as of December 1997. Generally, authorized stores are subject to reauthorization at least once every 4 years. Thus, it is

estimated that 25% (46,000) of all authorized stores would be subject to reauthorization in any given year. Using, the number of authorized stores as of December 1997, it is estimated that 46,000 reauthorization applications would be expected to be received annually. Of the 46,000 reauthorization applications expected, it is estimated that 96% (44,160) will be on Form FNS–252R, 3% (1,380) will be on Form FNS–252–2, and 1% (460) will be on Form FNS–252.

Hourly burden time per response varies by type of application and includes the time to review instructions, search existing data resources, gather and copy the data needed, complete and review the application, and submit the form and documentation to FNS. It should be noted that the number of applicant and authorized stores has been declining over the past few years due to several program changes, such as changes in eligibility requirements, stronger sanctions against violators, and implementation of Electronic Benefit Transfer systems. These declines have resulted in a reduction in the overall number of respondents and ultimately a reduction in the overall proposed burden hours reflected in the summary chart.

Currently, private restaurants applying for FSP participation in the State-administered special restaurant program use Form FNS–252–2 to apply for participation. This category of applicant represents about 7% of the number of current applicants using Form FNS–252–2. Over time, it has been determined that we need additional information from such private restaurants to ensure that they meet necessary requirements of operation to carry out the intent of the FSP. The additional information needed would be captured by having these respondents, estimated at about 32, complete Form FNS–252 rather than Form FNS–252–2. We estimate that these restaurants will spend an estimated 10 minutes of additional burden time using the longer Form FNS–252, however, this contributes to a negligible amount to the increase in the average hourly burden rate reflected in the chart on page 10 because the number of respondents is so small. This change is a technical correction rather than a re-estimate based on more recent data, and is reflected in the number of initial applications expected to be received as shown in the summary chart.

As currently approved by OMB, the hourly burden rate per response for Form FNS–252 is 20 to 68 minutes, with the average being 27 minutes and 10 to 20 minutes for Form FNS 252–2, with the average being 10 minutes. These hourly burden rates are not affected by the re-estimated number of applications expected to be received or the technical correction. However, previous estimates to OMB erroneously reflected the average burden time for Form FNS–252–2 as 10 minutes. The average time is 12 minutes and this correction appears in the proposed estimates in the summary chart.

Adjustments—New Information Collection—Proposed Rule

This proposed rule requires that retail food stores qualifying under criterion A offer for sale on a continuous basis a variety of foods in each of the 4 staple food categories: Bread/Cereals; Dairy Products; Fruits/Vegetables; and Meat/Poultry/Fish. Forms FNS–252 and 252R would be affected by this new information collection. Currently, stores simply use a check box entitled "Variety" on Forms FNS–252 and FNS–252R to indicate that they have more than one type of staple food within each of the 4 staple food categories listed. Under the proposed rules (§ 278.1(b)(1)(ii)(A)), stores would have to declare that they have a minimum of 3 different types of staple foods in each of the 4 staple food categories. To implement this change, we would make a simple change to the heading of the current check-box item. Hourly burden associated with this change is expected to be negligible, so no change is made in the estimate.

The proposed regulations (§ 278.1(b)(1)(ii)(B)) further provide that stores qualifying under criterion A have at least $30,000 in annual wholesale staple food purchases. We would add a Yes/No check-box question to Forms FNS–252 and FNS–252R to capture this information. Most stores will know their wholesale staple food purchases exceed $30,000 and will check this box. Those that do not know this information will incur an estimated additional 10 minutes (or .1667 hours) of burden time to assemble and analyze readily available store records such as wholesale inventory receipts. This requirement does not affect users of Form FNS–252–2 as these applicants are meal service providers, which are not subject to the new requirement, nor does it affect stores qualifying under Criterion B, which requires that 50 percent or more of a firm's sales must be in staple foods. We do not know how many stores would incur this additional burden on Forms FNS–252 and 252R. For the purpose of assessing burden, we are assuming that at least an estimated 5% (1,140) of the number of applications expected to be received annually using Form FNS–252 (22,807) would incur this additional burden. We further assume that at least an estimated 5% (2,208) of the number of reauthorization applications expected to be received using Form FNS–252R (44,160) would incur the additional burden.

The hourly burden time for users of Form FNS–252 is estimated to be 20 to 68 minutes, with the average being 27 minutes. The hourly burden time for users of Form FNS–252R is estimated to be 5 to 8 minutes, with the average being 7 minutes. The estimated additional 10 minutes of burden time associated with the new information collection requirements would increase the average burden time for the affected respondents to 37 minutes for Form FNS–252 and 17 minutes for Form FNS–252R. Thus, the overall average hourly burden rate for all users of these forms would change from 27 to 27.5 minutes for Form FNS–252 and from 7 to 7.5 minutes for Form FNS–252R as a result of the new requirements.

Total number of respondents completing at least one of the 3 applications in question, taking into consideration the adjustments discussed above, would be as follows:

FNS–252:			
New authorizations	–	22,347	(22,770 × .98 + 32).
Reauthorizations	–	460	(184,000 × .25 × .01).
		22,807	
FNS–252–2:			
New authorizations	–	423	(22,770 × .02 – 32).
Reauthorizations	–	1,380	(184,000 × .25 × .03).
		1,803	
FNS–252R:			
Reauthorizations	–	44,160	(184,000 × .25 × .01 – 1,380 – 460).
Total Responses		68,770	

The existing estimates, as approved by OMB through May 1999 and shown on the following chart, reflect the total annual number of responses as 80,613 and the annual burden hours as 18,396. The proposed number of responses would be 68,700 with total burden hours of 16,333 hours. The net effect of the proposed burden estimates is an overall decrease in burden hours of 2,063 hours annually.

Affected Public: Food Retail and Wholesale Firms, Meal Service Programs, certain types of Group Homes, Shelters, and State-contracted Restaurants.

Estimated Number of Respondents: 68,770.

Estimated Number of Responses per respondent: 1.

Estimated Time per Response: 0.237501.

Estimated Total Annual Burden: 16,333.

SUMMARY OF PROPOSED BURDEN ESTIMATES FOR FORMS FNS–252, 252–2 AND 252R

Title	Number of respondents	Responses per respondent	Total annual responses	Burden hours per response	Total annual burden hours
Form FNS–252:					
Existing	26,431	1	26,431	.4500	11,894
Proposed	22,807	1	22,807	.4583	10,452
Difference	–3,624	1	–3,624	+.0083	–1,442
Form FNS–252–2:					
Existing	2,592	1	2,592	.1855	481
Proposed	1,803	1	1,803	.2000	361
Difference	–789		–789	+.0145	–120
Form FNS–252R:					
Existing	51,590	1	51,590	.1167	6,021
Proposed	44,160	1	44,160	.1250	5,520
Difference	–7,430		–7,430	+.0083	–501
Totals:					
Existing	80,613		80,613		18,396
Proposed	68,770		68,770		16,333
Difference	–11,843		–11,843		–2,063

Background

Sections 201 and 202 of the Food Stamp Program Improvements Act of 1994, Pub. L. 103–225, (hereinafter, Pub. L. 103–225), revised the eligibility requirements found in section 3(k)(1) of the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2036 (hereinafter the Act) for firms participating in the Food Stamp Program (FSP) as retail food stores. Under the current provisions of the Act, as amended by Pub. L. 103–225, a firm to be eligible to participate as a retail food store, under section 3(k)(1) of the Act, must offer for sale a variety of staple foods for home preparation and consumption in each of four staple food categories, including perishable foods in at least two of the categories, or have the majority of its total gross sales in staple foods for home preparation and consumption.

Current food stamp regulations, implementing section 3(k)(1) of the Act, provide that, in order to participate in the FSP, a firm must have more than 50 percent of its eligible food sales volume in staple food items intended for home preparation and consumption. In 1992, when the Department began the periodic reauthorization of retail food stores, as authorized by the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, it was determined that a significant number of small retail food stores participating in the Food Stamp Program, under section 3(k)(1) of the Act, no longer met the required ratio of staple food sales to eligible food sales. Concern developed over the possibility that a massive withdrawal of these retail food stores, especially stores serving recipients in inner-cities and rural areas, could create a hardship for food stamp recipients throughout the country. Accordingly, in Pub. L. 103–225, Congress revised the eligibility criteria that firms must meet in order to obtain and maintain FSP authorization to participate as a retail food store.

H.R. Report No. 352, 103rd Congress (1993) (November 10, 1993, page 3), which accompanied Pub. L. 103–225, (hereafter Report 352), stated that the revised eligibility criteria were intended to allow stores that ". . . sell a wide range and high percentage of nutritious staple foods . . ." to continue participating in the FSP, to ensure ". . . that food stamp recipients have adequate access to retail food stores. . . ." That same report also stated that the revised definition of a retail food store in section 3(k)(1) was intended to " . . . bar marginal food stores from participating in the program. . . ."

Under current rules implementing section 3(k)(1) of the Act, a firm's eligibility is based on the ratio of staple food sales to eligible food sales. At section 3(g) of the Act, "eligible food" is defined as any food or food product intended for home consumption except alcoholic beverages, tobacco, hot foods, or hot food products ready for immediate consumption. Thus, under current rules, a firm could qualify as long as its staple food sales exceeded 50 percent of its total eligible food sales. This means, for example, that a liquor store that sells a variety of staple snack foods such as chips, crackers, cheeses and hors d'oeuvres, would qualify for authorization as long as the staple food sales exceeded eligible accessory food sales, including carbonated and uncarbonated non-alcoholic beverages, coffee, tea, cocoa, candy, condiments, and spices. This was true even though a store's food sales may have represented only a small portion of its business. Consequently, such marginal food stores have been allowed to participate in the FSP under current rules.

As noted, Report 352 states that the revised definition of a retail food store under Pub. L. 103–225 was intended to bar such marginal food stores from participating in the FSP. Congress amended section 3(k)(1) to require that firms sell a wide range or high percentage of staple foods in order to be eligible to participate as a retail food store. Thus, based on Pub. L. 103–225, this rule proposes that in order to qualify under section 3(k)(1) of the Act, as amended, a firm must either offer for sale an ample variety of staple foods for home preparation and consumption in each of the four staple food categories, including perishable foods in at least two of the categories, or have the majority of a its total gross sales in staple foods for home preparation and consumption. This would effectively bar many marginal food stores from participation, and at the same time, ensure that food stamp recipients have access to retail food stores that sell an ample variety of staple foods intended for home preparation and consumption.

Pub. L. 103–225 and this proposed rule are not intended to affect the current prohibition against the participation of certain types of firms that do not effectuate the purposes of the Food Stamp Program, as set forth in Report 352. This includes, but is not limited to, stores selling only accessory foods, such as spices, candy, soft drinks, tea, or coffee; ice cream vendors selling solely ice cream; specialty doughnut shops or bakeries not selling bread. Furthermore, this rule is not intended to affect and does not change current statutory restrictions on the participation of meal services, wholesalers or the special restaurant programs for the elderly, disabled, and the homeless.

Pub. L. 103–225 and this proposed rule restate the long-standing requirement that a qualifying firm under section 3(k)(1) of the Act must sell staple foods for home preparation and consumption. As set forth in section 1 of the Act, the purpose of the FSP is "to provide for improved levels of nutrition among low-income households." Further, as set forth in section 2, the FSP should "permit low-income households to obtain a more nutritious diet through normal channels of trade * * *" The policies and concepts proposed in this rule are based on the underlying principle that a qualifying firm under section 3(k)(1) of the Act must either sell an ample variety of staple foods for home preparation and consumption, or have the majority of its total gross retail sales in staple foods intended for home preparation and consumption.

In addition, Pub. L. 103–225 states that the Secretary must issue regulations providing for periodic notice to participating retail food stores and wholesale food concerns of the definitions of "retail food store," "staple foods," "eligible foods," and "perishable foods." The Department is proposing that this notification, at a minimum, be provided at the time of the initial authorization of a firm, as well as at the time a participating retail food store is reauthorized.

Finally, this proposed rule reinserts language that was inadvertently removed in a regulation published on December 27, 1996, titled "Revisions in Use and Disclosure Rules Involving the Sharing of Information Provided by Retail and Wholesale Concerns with Other Federal and State Agencies". The language, which allows the Department to disclose information about firms participating in the FSP for administration and enforcement purposes, would be added to the first sentence in § 278.1(q) of the FSP regulations. This is consistent with section 9(c)of the Food Stamp Act of 1977, as amended, and section 17 of the Child Nutrition Act of 1966.

Revisions in Definitions and Eligibility Criteria Involving Retail Food Stores (7 CFR 271.2 and 7 CFR 278.1)

Under current rules (7 CFR 271.2), a retail food store is defined as having more than 50 percent of its total eligible food sales in staple food sales intended for home preparation and consumption. Pub. L. 103–225 amended section 3(k)(1) of the Act and established two separate criteria, meeting either one of which, absent any other restriction, would qualify a firm to be eligible to accept and redeem food stamp benefits as a participating retail food store. This rulemaking proposes to implement changes to section 3(k)(1) of the Act required by Pub. L. 103–225, to revise the definition of "retail food store" and "staple foods" to conform to the statutory changes. It also would define four new terms—"continuous basis," "perishable," "total gross retail sales" and "variety of foods"—that are used in the revised definition of a retail food store.

Eligibility Requirements Under Criterion A

Criterion A, section 3(k)(1)(A) as amended by Pub. L. 103–225, is the first basis upon which a firm may qualify for participation in the FSP as a retail food store. Section 3(k)(1)(A) requires that an establishment or house-to-house trade route offer for sale, on a continuous basis, a variety of staple foods intended for home preparation and consumption in each of the four categories of staple foods, as specified in subsection (u)(1) of the Act, including perishable foods in at least two of the four categories.

The Department proposes to revise the definition of "staple food" contained in regulations at 7 CFR 271.2 to mean those items intended for home preparation and consumption in the following four categories: (1) meat, poultry, or fish; (2) bread or cereals; (3) vegetables or fruits; and, (4) dairy products. "Staple foods" do not include accessory food items such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices (section 3(u)(2) of the Act). The definition of "staple food" under current rules in 7 CFR 271.2 and in previous statutory language at section 3(k)(1) of the Act, described "staple food" as items for home preparation and consumption, such as meat, poultry, fish, bread, breadstuffs, cereals, vegetables, fruits, fruit and vegetable juices, dairy products and the like, but not including accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices.

Hot foods, by statute, continue to be ineligible for purchase with food stamps under this proposed rule, and therefore do not qualify as staple foods for the purpose of determining eligibility. Pub. L. 103–225 and this rule do not change the definition of "eligible foods" that can be purchased with food coupons.

The revised statutory definition of retail food store under this criterion includes four new terms—"variety of foods," "continuous basis," "perishable foods," and "total gross retail sales" (section 3(k)(1)(A) of the Act, as amended by Pub. L. 103–225). Firms that qualify to participate in the Food Stamp Program as a retail food store under Criterion A, must stock and offer for sale a variety of foods on a continuous basis in each of the four defined staple food categories, with perishable foods in at least two of those categories.

Variety of Foods

The Department proposes that the term "variety of foods" means that a qualifying firm must maintain no fewer than three different varieties of staple food items for home preparation and consumption in each of the four defined staple food categories, including perishable foods in at least two of those categories.

The Department further proposes that the term "variety of foods" should not be interpreted as meaning different brands, different types of packaging, different package sizes, or similar food items with varying ingredients. The purpose of this is to ensure that food stamp recipients have a reasonable selection of foods from which to choose. For example, a store could not satisfy the dairy requirement under Criterion A by stocking only skim milk, whole milk, and chocolate milk, because these milks with varying ingredients would count as only one variety. Examples of processed foods with similar ingredients that would count as a single staple food variety for the purpose of determining store eligibility are: various types and brands of sausage (mild, spicy, low salt, low fat); breakfast cereals; sliced breads (white, wheat, rye, oat bran, and multi-grains); pasta sauces; and milk (low fat, flavored, canned, powdered). Examples of unprocessed foods that, because of their similarities, would count as a single staple food variety for the purpose of determining store eligibility are: different types of apples, lettuce, mushrooms, potatoes, cabbage, tomatoes, squash, or onions. The Department is particularly interested in receiving comments on this aspect of the proposed rulemaking.

In addition, the Department proposes that multi-ingredient food items intended for home preparation and consumption, such as macaroni and cheese, canned beef stew, cold pizzas or frozen dinners, would only be counted as one variety of staple food, which would normally be based on the main staple food ingredient as determined by the Department. For example, macaroni and cheese would be counted as only one variety, a pasta, and not a cheese or both pasta and cheese, because pasta is the main ingredient. The Department believes this proposal is needed for clarification purposes and to ensure more consistent application of the new retail store definition in determining a firm's eligibility. The Department also believes this proposal is reasonable and prudent and meets the intent of Congress in requiring eligible stores to sell a variety of staple foods. The Department invites comments regarding this criteria.

Continuous Basis

The stated purpose of the FSP in section 2 of the Act is to alleviate hunger and malnutrition and to permit low-income households to obtain a more nutritious diet. Report 352 states that "only food stores that carry an ample supply of food items in each category of staple foods would be authorized to accept and redeem food stamps." It is, therefore, important that authorized firms qualifying under section 3(k)(1) of the Act be able to provide food stamp households access to an ample variety of staple food items in sufficient amounts on a continuous basis. The Department proposes that one way to measure whether or not qualifying firms offer a sufficient depth of stock in staple foods on a continuous basis is to require that firms meet a minimum annual staple food wholesale purchase threshold, which would require verification of at least $30,000 in staple food wholesale purchases annually. Wholesale purchases are purchases of goods by retailers for resale to consumers. This threshold may be periodically adjusted. Participating stores would be notified in advance of any changes in the minimum annual staple food threshold. The Department seeks comments on its proposed threshold, as well as any alternative suggestions.

The Department proposes that a retail food store covered by section 3(k)(1) of the Act would not qualify under Criterion A if it failed to meet the minimum $30,000 in staple food wholesale purchases annually. New stores must meet this standard to be authorized, and all participating stores must continue to meet this standard in order to maintain their authorization. New stores may meet the standard through projections of, at least, $30,000 in staple food wholesale purchases annually.

As mentioned above, Congress revised the eligibility requirements in section 3(k)(1) of the Act in response to concerns that a number of small firms (particularly convenience type stores), were at risk of losing their authorization to accept food stamps. This concern was particularly evident in inner-cities and rural areas where the Department seeks to ensure that food stamp households have access to nutritious foods that are intended for home preparation and consumption. The department anticipates that because of the relatively few firms that may be negatively impacted by these requirements and the small quantities of staple foods that affected stores sell to recipients, their ineligibility will not cause hardship to food stamp households and the standard will continue to allow adequate recipient access to eligible staple food for home preparation and consumption.

Perishable Foods

The Department proposes that, for the purpose of this rule, the term "perishable foods" means frozen staple foods as well as fresh, unrefrigerated or refrigerated staple foods that have a turnover rate of approximately 2 to 3 weeks to ensure that optimal quality is maintained. Frozen food is included as a perishable because of the potential for frozen foods to deteriorate if they are maintained at temperatures above freezing for lengthy periods of time. Typically, perishable foods will spoil or suffer significant deterioration in quality within a 2–3 week period. Examples of perishable food items include fresh milk; fresh or frozen vegetables, fruits, breads, meats, and fish. Two or more staple food categories must include perishable foods. Congressional intent for this requirement, as referenced in Report 352, is to ensure "* * *adequate turnover of items in those categories* * *." which is evidence that a firm is a legitimate food store regularly in the business of selling food for home preparation and consumption under section 3(k)(1) of the Act.

Eligibility Requirements Under Criterion B

The eligibility requirements under this criterion, section 3(k)(1)(B) of the Act, are similar to current rules, but rather than requiring a firm to have more than 50 percent of its total eligible food sales in staple foods, it requires that more than 50 percent of its total *gross* retail sales be in staple food sales. A firm that meets the eligibility requirements of the first criterion (Criterion A) (absent other restrictions) would not be required to meet this second criterion (Criterion B) and likewise, a firm that meets the second criterion (absent other restrictions) would not be required to meet the first criterion.

The Department wishes to clarify that total gross retail sales means *all* retail sales of the firm, including food and non-food merchandise, as well as services such as rental fees, professional fees, and entertainment/sports/game income. However, the Department proposes that retail service fees directly connected to the processing of staple foods, such as raw meat, poultry or fish by the service provider, would be calculated as staple food sales under Criterion B. This is to ensure that specialty firms, such as those selling only meat, are not negatively impacted by the proposed retail food store definition if they derive a high percentage of their gross retail sales from services that are not staple food sales but are directly related to staple food sales, such as meat processing fees. These types of specialty firms generally offer reasonably priced staple foods and provide a valued service to food stamp recipients, and clearly effectuate the purposes of the FSP. The Department wishes to reiterate, however, that service charges such as rental fees, professional fees, and entertainment/

sports/games incomes are to be included in the computation of a firm's total gross retail sales.

Verification of Information

As set forth in Pub. L. 103–225, the Department proposes that verification of information (such as a firm's food sales data, wholesale purchasing receipts, and inventory records) that covers an appropriate period of time may be required to be provided by the firm to the Department to document compliance with eligibility criteria. Failure to provide this information when requested would result in the denial or withdrawal of authorization.

Recipient Hardship Consideration

Historically, FSP rules and the Act have only stipulated special recipient hardship exceptions in rare cases involving stores that have committed violations and face disqualification from program participation under section 278.6. This rule does not propose to create a new recipient hardship exception for applicant firms. The Department is, however, requesting comments regarding justification for such an exception.

Ineligible Stores

The changes proposed in this rulemaking are intended to allow continued FSP participation as a retail food store for firms that effectuate the purposes of the FSP and which meet either of the criterion under section 3(k)(1). In keeping with the intent of Congress, it is not the purpose of this proposed rulemaking to expand participation to entities that have not been allowed to participate in the past under section 3(k)(1). Thus, the Department wishes to reiterate that firms that are primarily restaurants would qualify to participate in the FSP only under the restrictions of the special, State administered restaurant programs that serve only special populations (the elderly, disabled or homeless food stamp recipients) at concessional prices. These programs are specifically provided for in section 3(g) of the Act. Therefore, at section 271.2, paragraph 4, the Department has proposed that firms having more than 50 percent of their total gross retail sales in hot or cold prepared foods that are not intended for home preparation and consumption, such as prepared sandwiches, prepared salads and individual cones or dishes of ice cream, that are consumed on the premises or sold for carryout, will continue to be ineligible under section 3(k)(1) (A) or (B) of the Act. This position is strongly supported by the manner in which the statute at section 3(k) was constructed and subsequently amended by Pub. L. 103–225. That is, section 3(k) sets forth 4 separate and distinct types of eligible firms. Firms described in sections 3(k)(2), (3) and (4) are clearly distinguishable from those covered in 3(k)(1) and are singled out for special treatment. Section 3(k)(2) covers, among other firm types, private restaurants by directly referencing entities cited in sections 3(g) (3), (4), (5), (7), (8), and (9), under the definition of "food." Clearly Pub. L. 103–225 amended only section 3(k)(1) and did not change the restrictions on the types of firms covered under sections 3(k) (2), (3) and (4).

Finally, the provisions in sections 3(g) (3), (4) and (9) of the Act under the definition of "food," permit private establishments (i.e., restaurants) to accept food stamps only from elderly, disabled or homeless individuals, and only if the establishment has a contract with an agency of the State to offer meals to such persons at concessional prices.

Periodic Notification to Stores

In accordance with the provisions and requirements set forth in section 202 of Pub. L. 103–225, this rule proposes that firms participating as retail food stores will be provided periodic notification of program eligibility criteria. In order to maintain program integrity, authorized retail food stores must fully understand and comply with regulatory requirements to continue to participate in the FSP. Thus, the Department proposes that when a new firm applies for authorization, it will routinely be provided with materials that lay out the criteria for authorization under section 3(k)(1) of the Act. In addition, FNS will provide this information when a participating retail food store receives its reauthorization notification, and at other times, upon request. These materials, at a minimum, will include the definitions of "retail food store," "eligible foods," "staple foods," and "perishable foods."

Request for Comments on Proposed Retail Food Store Eligibility Criteria

Because the statutory requirements were effective upon enactment, most of the changes in store eligibility criteria required by Pub. L. 103–225 have been implemented. The proposed wholesale purchase threshold used to define the continuous basis requirement under Criterion A is new and has not been implemented. The Department believes most firms that are otherwise eligible under Criterion A will meet this new proposed requirement. Some small stores that are currently eligible may not meet this proposed threshold; however, because these stores tend to sell primarily staple food items, they should easily qualify under Criterion B, which does not include such a threshold.

The Department projects that the overall impact of this proposed rule will not affect most stores currently participating in the Food Stamp Program. FNS data shows that 1.7 percent of all stores evaluated for reauthorization between October, 1993 and September, 1998, (2,866 out of 168,079 stores) failed to meet either Criterion A or B. The Department requests comments on the effects of this proposed rule, including costs and benefits.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries, General line—wholesaler, Penalties.

Accordingly, 7 CFR parts 271 through 285 are proposed to be amended as follows:

PARTS 271–285—[AMENDED]

1. The authority citation for parts 271 through 285 is revised to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. The definitions of "retail food store" and "staple food" are revised to read as follows:

§ 271.2 Definitions.

* * * * *

Retail food store means: (1) An establishment or house-to-house trade route that sells food for home preparation and consumption displayed in a public area, and, either offers for sale on a continuous basis, a variety of foods in sufficient quantities in each of the four categories of staple foods including perishable foods in at least two such categories (Criterion A) as set forth in § 278.1(b)(1), or has more than 50 percent of its total gross retail sales in staple foods (Criterion B) as set forth in § 278.1(b)(1). Entities that have more than 50 percent of their total gross sales in hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption either for carry-out or on-premises consumption, and require no additional preparation, are not eligible for FSP participation as retail food stores under § 278.1(b)(1);

(2) An entity with indicators which may be used to establish that a firm is a legitimate retail food store. These include, but are not limited to, the following: a firm's marketing structure; appropriate retail business licenses; the posting of prices, and the accessibility of food items offered for sale; and

(3) An entity that meets this definition of retail food store as determined by visual inspection, sales records, wholesale purchase records, counting of stockkeeping units, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry.

* * * * *

Staple food means those food items intended for home preparation and consumption in each of the following food categories: meat, poultry, or fish; bread or cereals; vegetables or fruits; and dairy products. Commercially processed foods and prepared mixtures with multiple ingredients shall only be counted in one staple food category. For example, foods such as cold pizza, macaroni and cheese, multi-ingredient soup, or frozen dinners, shall only be counted as one staple food item and will normally be included in the staple food category of the main ingredient as determined by FNS. Hot foods are not eligible for purchase with food stamps, and therefore do not qualify as staple foods for the purpose of determining eligibility under § 278.1(b)(1). Accessory food items including, but not limited to, coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices shall not be considered staple foods for the purpose of determining eligibility of any firm. However, accessory foods that are offered for sale in authorized retail food stores are eligible food items to be purchased with food stamp benefits.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

3. In § 278.1:

a. Paragraphs (b)(1)(i) and (b)(1)(ii) are revised;

b. Paragraph (b)(1)(iii) is redesignated as paragraph (b)(1)(v) and revised;

c. Paragraph (b)(1)(iv) is redesignated as paragraph (b)(1)(vi) and a heading is added;

d. New paragraphs (b)(1)(iii) and (b)(1)(iv) are added;

e. The first sentence of paragraph (q) introductory text is revised and a new sentence is added after the first sentence.

f. Paragraph (q)(3)(iii) is amended by removing the words "Secretary of Health and Human Services" wherever they appear, and adding in their place the words "Commissioner of the Social Security Administration"; and,

g. A new paragraph (t) is added.

The revisions and additions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(b) *Determination of authorization.* * * *

(1) *The nature and extent of the food business conducted by the applicant.* (i) *Retail food store.* An establishment or house-to-house trade route shall normally be considered to have food business of a nature and extent that will effectuate the purposes of the program if they sell food for home preparation and consumption and meet one of the following criteria:

(A) offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories of staple foods as defined in § 271.2 of this chapter, including perishable foods in at least two of the categories; or

(B) have more than 50 percent of the total gross retail sales of the establishment or route in staple foods; and

(C) eligibility determination may be based on, but not limited to, visual inspection, sales records, purchase records, counting of stockkeeping units, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry. In determining eligibility such information may be requested for verification purposes, and failure to provide such documentation may result in denial or withdrawal from the FSP.

(ii) *Application of Criterion A.* In order to qualify under this criterion, firms shall:

(A) Offer for sale and displayed in a public area, qualifying staple food items on a continuous basis, evidenced by having on any given day, no fewer than three different varieties of food items in each of the four staple food categories;

(B) Meet a minimum annual staple food wholesale purchase requirement of $30,000 which may be shown through business records such as, but not limited to, wholesale purchase receipts or sales records, or by visual inspections. Failure to provide verifying information when requested shall result in the denial or withdrawal of authorization. Wholesale purchases are purchases of goods by retailers for resale to consumers. For new firms, this minimum annual staple food wholesale purchase requirement may be met by business projections. This minimum annual staple food wholesale purchase requirement may be periodically adjusted after advance notification to participating firms of such a change;

(C) Offer for sale perishable staple food items in at least two staple food categories. Perishable foods are items which are either frozen staple food items or fresh, unrefrigerated or refrigerated staple food items that will spoil or suffer significant deterioration in quality within 2–3 weeks;

(D) Variety of foods is not to be interpreted as different brands, different nutrient values, different varieties of packaging, or different package sizes. Similar processed food items with varying ingredients such as, but not limited to, sausages, breakfast cereals, milk, sliced breads, and cheeses, and similar unprocessed food items, such as, but not limited to, different varieties of apples, cabbage, tomatoes, or squash, shall not be considered as more than one staple food variety each for the purpose of determining variety. Multiple ingredient food items intended for home preparation and consumption, such as, but not limited to, cold pizza, macaroni and cheese, soup, or frozen dinners, shall only be counted as one staple food variety each and will normally be included in the staple food category of the main ingredient as determined by the FNS; and

(E) Failure to stock and offer for sale staple food items as required under paragraph (b)(1)(ii) of this section shall result in the store not meeting Criterion A.

(iii) *Application of Criterion B.* In order to qualify under this criterion, firms must have more than 50 percent of their total gross retail sales in staple food sales. Total gross retail sales must include all retail sales of a firm, including food and non-food merchandise, as well as services, such as rental fees, professional fees, and entertainment/sports/games income. However, a fee directly connected to the processing of staple foods, such as raw meat, poultry or fish by the service provider, shall be calculated as staple food sales under Criterion B.

(iv) *Ineligible firms.* Firms that do not meet the eligibility requirements in this section or that do not effectuate the purpose of the FSP shall not be eligible for program participation. New applicant firms that are found to be ineligible will be denied authorization for program participation and

authorized retail food stores found to be ineligible will be withdrawn from program participation. Ineligible firms under this paragraph (b)(1)(iv) include, but are not limited to, stores selling only accessory foods, including spices, candy, soft drinks, tea, or coffee; ice cream vendors selling solely ice cream; and specialty doughnut shops or bakeries not selling bread. In addition, firms that are considered to be restaurants, that is, firms that have more than 50 percent of their total gross retail sales in hot and/or cold prepared foods not intended for home preparation and consumption, shall not qualify for participation as retail food stores under Criterion A or B. This includes firms that primarily sell prepared foods that are consumed on the premises or sold for carryout. This does not, however, change the eligibility requirements for the special restaurant programs that serve the elderly, disabled, and homeless populations, as set forth in paragraph (d) of this section.

(v) *Wholesale food concerns.* Wholesale food concerns, the primary business of which is the sale of eligible food at wholesale, and which meet the staple food requirements in paragraph (b) of this section, shall normally be considered to have adequate food business for the purposes of the program, provided such concerns meet the criteria specified in paragraph (c) of this section.

(vi) *Co-located wholesale food concerns.* * * *

* * * * *

(q) *Use and disclosure of information provided by firms.* With the exception of EINs and SSNs, any information collected from retail food stores and wholesale food concern, such as ownership information and sales and redemption data, may be disclosed for purposes directly connected with the administration and enforcement of the Food Stamp Act and these regulations, and can be disclosed to and used by State agencies that administer the Special Supplemental Food Program for Women, Infants and Children (WIC). Such information may also be disclosed to and used by Federal and State law enforcement and investigative agencies for the purpose of administering or enforcing other Federal or State law, and the regulations issued under such other law.* * *

* * * * *

(t) *Periodic notification.* The FNS will issue periodic notification to participating retail stores and wholesale food concerns to clarify program eligibility criteria, including the definitions of "retail food store", "staple foods", "eligible foods", and "perishable foods". At a minimum, such information will be provided to stores at the time of authorization, reauthorization and upon request.

Dated: June 18, 1999.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 99–16501 Filed 6–29–99; 8:45 am]

BILLING CODE 3410–30–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Release of Solid Materials at Licensed Facilities: Issues Paper, Scoping Process for Environmental Issues, and Notice of Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment on issues paper and scoping process, and notice of plans for public meetings.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering a rulemaking that would set specific requirements on releases of solid materials in order to establish a regulatory framework more consistent with existing NRC requirements on air and liquid releases. The NRC is seeking early public input on the major issues associated with such a rulemaking, including conducting a scoping process related to the scope of environmental impacts. To aid in that process, the NRC is requesting comments on the issues discussed in this notice. NRC also intends to conduct four public meetings beginning in August of this year. This document provides background and topics of discussion for those meetings.

DATES: Submit comments by November 15, 1999. Comments received after this date will be considered if it is practicable to do so, but the Commission is able to assure consideration only for comments received on or before this date.

In addition to providing opportunity for written (and electronic) comments, public meetings on the issues paper and scoping process will be held as follows:

August 4–5, 1999—Chicago, Illinois, 8:30 am–5 pm, Hyatt Regency McCormick Place, 2233 South Martin Luther King Dr, Chicago, Illinois

September 15–16, 1999—San Francisco, California, 8:30 am–5 pm Radisson Miyako Hotel, 1625 Post Street, San Francisco, California

October 5–6, 1999—Atlanta, Georgia, 8:30 am–5 pm, Crown Plaza Atlanta Powers Ferry, 6345 Power Ferry Road NW, Atlanta, Georgia

November 1–2, 1999—Rockville, Maryland, 8:30 am–5 pm NRC Auditorium, 15545 Rockville Pike, Rockville, Maryland

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (*http://www.nrc.gov*). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (*e-mail: CAG@nrc.gov*).

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Cardile, telephone: (301) 415–6185; e-mail: fpc@nrc.gov, Office of Nuclear Material Safety and Safeguards, USNRC, Washington DC 20555–0001. Specific comments on the public meeting process should be directed to Chip Cameron; e-mail *fxc@nrc.gov*, telephone: (301) 415–1642; Office of the General Counsel, US NRC, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Unlike for air and liquid releases, the Commission currently has no specific regulatory requirements regarding release of solid materials. Even though the NRC does not have requirements in this area, it still receives requests from licensees for release of solid materials which it must evaluate on a case-by-case basis using existing guidance or case-specific criteria. Solid materials include metals, concrete, soils, equipment, furniture, etc., present at licensed nuclear facilities. To provide consistency in its regulatory framework for releases of all materials, the Commission is considering a rulemaking that would set specific requirements for release of solid materials.

The NRC is supplementing its standard rulemaking process by conducting enhanced public participatory activities including facilitated public meetings, before the start of any formal rulemaking process, to solicit early and active public input on major issues associated with release of solid materials. The NRC will also utilize its website to disseminate information and solicit input.

As a first step, the NRC has prepared an issues paper that describes issues and alternatives related to release of solid materials. The intent of this paper is to foster discussion about these issues and alternatives before a rulemaking to set standards would begin. The content of the issues paper is contained in Section III. It is noted in Section III that NRC would evaluate environmental impacts of alternative courses of action in an EIS in any rulemaking conducted. To assist in that process, this notice is also announcing a process for developing the scope of an EIS, i.e., a "scoping process." Specific discussion of the scoping process is contained in Section IV of this notice. The principal issues discussed in the issues paper and in regard to the scoping process are the same and the Commission believes that it is beneficial to seek comment and hold discussions on both at the same time to best utilize and coordinate available expertise and input. The discussions presented in Sections III and IV provide background and topics of discussion that will be the subject of the public meetings.

II. Request for Written and Electronic Comments and Plans for Public Meetings

The NRC is soliciting comments on the items presented in the issues paper in Section III and the scoping process in Section IV. Comments may be submitted either in writing or electronically as indicated under the **ADDRESSES** heading. In addition to providing an opportunity for written comments, the NRC is holding facilitated public meetings at four different geographical locations on the issues discussed in Sections III and IV between August and November 1999 (see the **DATES** heading of this notice for the dates and locations of these meetings). The written public comment period will extend until after the last public meeting is held.

Based on the comments received both in written and electronic form, and at the public meetings, the Commission will decide whether to proceed with development of a proposed rule or take some other regulatory action. If the Commission decides to proceed further with a proposed rulemaking, any proposed rules will be published in the **Federal Register** for public review and comment.

III. Issues Paper on Release of Solid Materials at Licensed Facilities

Introduction

To provide consistency in its regulatory framework for releases of materials, the Commission is considering a rulemaking that would set specific requirements for release of solid materials. This section describes issues and alternatives related to the release of solid materials and is intended to foster discussion about these issues and alternatives before a rulemaking would begin.

Section A of this section describes some general considerations related to rulemaking, potential Commission actions, and the enhanced participatory process. Section B of this section discusses the major issues that would be associated with a rulemaking and also discusses various alternatives for proceeding.

A. Background

A.1 Current NRC Policies

A.1.1 Inconsistency of NRC regulations covering releases from licensed facilities

The NRC has the statutory responsibility for the protection of health and safety related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. A principal method of meeting this responsibility is through the body of regulations codified in Title 10, Chapter I, of the Code of Federal Regulations (10 CFR, Chapter I). The regulations in 10 CFR, Chapter I, have been developed using a rulemaking process that provides the opportunity for public review and comment under the Administrative Procedure Act and includes the analysis of costs and benefits and environmental impacts, and considers factors related to paperwork reduction. Agreement States administer equivalent programs applying equivalent regulations.

The Commission's regulations that set standards for protection of the public against radiation appear in 10 CFR Part 20. These regulations limit the radiation exposure (or "dose") that a member of the public can receive from the operation and decommissioning of an NRC-licensed activity, and also require that doses received are "as low as is reasonably achievable (ALARA)". The NRC has used the criteria on public dose limits and ALARA requirements in Part 20 (Sections 20.1301 and 20.1101, respectively) to establish limits in Table 2 of Appendix B of Part 20 on the amount of radioactivity in gaseous and liquid releases that may be released from a nuclear facility to the environment.

However, unlike the regulations applicable to gaseous and liquid releases from a licensed nuclear facility, there are no current specific criteria in Part 20 governing releases of solid materials by licensees, although there are some regulations [1] that cover the release of certain materials. Therefore, if a licensee requests approval of release of solid material, the NRC must consider the request on a case-by-case basis using existing regulatory guidance, license conditions, NRC Branch Technical Positions, etc.

The Commission recently amended its regulations in Part 20 (Subpart E) to establish criteria for unrestricted use of facility structures and lands at a decommissioned site (July 21, 1997; 62 FR 39058). Subpart E of Part 20 is focused on protection of persons entering and using decommissioned structures and lands at a site after a nuclear facility terminates its NRC license, but does not otherwise address release of solid material.

A.1.2 Solid materials potentially available for release

Solid materials include metals, building concrete, onsite soils, equipment, furniture, etc., that are present at, and/or used in, licensed nuclear facilities during routine operations. Most of this material will have no radioactive contamination, although some materials can have radioactive contamination either on their surfaces or distributed within their volumes. Contamination can be distributed in the volume of materials because: (1) they are relatively porous (e.g., soil) allowing contamination to spread into the material; (2) they become radioactive through activation; or (3) a recycling process (e.g., metal melting) can cause contamination that was previously on the surface of a piece of equipment to become distributed throughout its volume. The amount of contamination that a material has, if any, depends largely on the type of licensee involved and its location in the facility:

(a) For most NRC licensees, solid materials have no contamination because these licensees use sealed sources in which the radioactive material is encapsulated. These include small research and development facilities and industrial use of various

[1] For example, 10 CFR 20.2005, 35.92, and 36.57(e). In addition, 10 CFR 40.51 and 40.13 contain transfer or unimportant quantities provisions, respectively, which are the subject of a separate Commission-directed initiative on Part 40 and are outside the scope of this effort.

devices including gauges, measuring devices, and radiography.

(b) For other licensees (which includes nuclear reactors, manufacturing facilities, larger educational or health care facilities including laboratories, etc.), material generally falls into one of three groups based on its location or use in the facility:

(1) *Clean or unaffected areas of a facility*—The solid material in these areas would likely have no radioactive contamination resulting from licensed activities. These areas could include hospital waiting rooms, university office space in a laboratory, or metal ventilation ducts in the control room of a reactor facility.

(2) *Areas where licensed radioactive material is used or stored*—The material in these areas can become contaminated although the levels may likely be very low, or it may have none, because of contamination control procedures required at facilities licensed by the NRC. This could include material in certain laboratory areas in a university or hospital, or in certain buildings of a reactor facility.

(3) *Material used for radioactive service in the facility, or located in contaminated areas or in areas where activation can occur*—These materials generally have levels of contamination that would not allow them to be candidates for release unless they are decontaminated.

A.1.3 *Current NRC case-by case review of licensee requests for release of solid material*

Even though the NRC does not currently have specific criteria in Part 20 covering release of solid materials, licensees have made, and will likely continue to make, requests for release of solid material when it becomes obsolete or defective or when their facility is decommissioned. For material from clean or unaffected areas, knowledge of site radiological history is an important factor in determining whether the material is contaminated. The NRC evaluates requests for release on a case-by-case basis using either the table of surface contamination criteria in Regulatory Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors," or other case-specific criteria for compliance with Part 20 requirements.

(a) *Regulatory Guide 1.86.* This guide, which was developed by the Atomic Energy Commission in 1974, provides a table of *Acceptable Surface Contamination Levels* for various radionuclides, including natural and enriched uranium, transuranics, and fission products. These surface contamination levels are stated in terms of measurable radioactivity levels (observed disintegrations per minute per 100 square centimeters of surface area), the values of which were based principally on the detection capabilities of readily available instrumentation at the time the guide was developed. The surface contamination levels were not based on the potential dose to an individual that may result from coming in contact with the released materials although such exposure is estimated to be low. Regulatory Guide 1.86 does not contain dose criteria. For some situations, the NRC will incorporate the values in the table in Regulatory Guide 1.86 into the license conditions of a facility.

(b) *Allowance of release if there are no detectable levels of radioactive contamination from licensed activities above background in the material.* Regulatory Guide 1.86 only addresses materials having surface contamination; it does not cover volumetric contamination. For some situations, the NRC allows release of volumetrically contaminated solid material if survey instrumentation does not detect radioactivity levels above background. This does not mean that the material is released without any radioactive contamination present on or in it; instead, it means that the material may be released with very low amounts of contamination that is not detectable with appropriate survey instruments. This method provides inconsistent and generally unsatisfactory licensing guidance because different survey instruments have different levels of detection. This can lead to disagreements and confusion over permissible levels of release and nonuniform levels of protection.

(c) *Use of 10 CFR 20.2002.* Licensees may request specific approval to dispose of materials containing low levels of licensed material in other than a licensed low-level waste disposal site in accordance with requirements in 10 CFR 20.2002. Section 20.2002 requires licensees to describe the material to be released and evaluate the doses that would result. Use of this approach requires case-specific NRC review and evaluation of the situation, which in the past has been used to authorize various releases of contaminated material.

A.2 NRC Actions To Address Inconsistency in Release Standards by Considering Rulemaking on Release of Solid Materials

A.2.1 Commission direction to consider rulemaking

Based on the issues and concerns described in Section A.1, the Commission, on June 30, 1998, directed the staff to consider rulemaking to establish a dose-based standard for release of solid materials so that licensee considerations and NRC review of the disposition of slightly contaminated solid materials are conducted in a consistent manner that protects public health and safety. The Commission also directed the NRC staff to include an opportunity for enhanced public participation, including use of NRC's Internet home page to solicit comments. This issues paper is the first step in soliciting views on major issues in this area.

A.2.2 Potential Alternative Courses of Action

Before conducting a rulemaking, the NRC generally considers alternative courses of action. Two broad alternatives that the NRC could consider are not doing a rulemaking (i.e., continue with the current practice of case-by case reviews) or developing a rulemaking for release of solid materials. If the NRC decided to proceed with rulemaking, it could:

(1) Permit release of solid materials for unrestricted use if the potential doses to the public from unrestricted use of the material were less than a specified level determined during the rulemaking process. Unrestricted use could result in recycle or reuse of the material in consumer products or industrial products, or disposal of the material as waste in landfills. Release of solid materials for unrestricted use is also referred to as "clearance", but for the purposes of this issues paper, the term "release for unrestricted use" is generally used.

(2) Restrict release of solid materials to only certain authorized uses. For example, future use of the material could be restricted to only certain industrial uses where the potential for public exposure is small.

(3) Do not permit either unrestricted or restricted release of solid material that has been in an area where radioactive material has been used or stored, and instead require all such materials to go to a licensed low-level waste (LLW) disposal facility.

In evaluating these alternatives, the NRC would consider potential human health and environmental impacts and economic aspects associated with each alternative.

A.3 Current Policies of International Agencies, Other Federal Agencies, State Governments and Other Standards Setting Bodies Regarding Releases of Solid Materials

In considering rulemaking alternatives, the NRC would consider policies and precedents set by other nations and international agencies, by other Federal agencies, by States, and by other standards setting bodies.

International Efforts. There is considerable effort by other nations and by international agencies, such as the International Atomic Energy Agency (IAEA), to set standards in this area. Consistency with standards set by other nations and international agencies is important because materials can be both imported and exported between the U.S. and other countries and differing standards could create confusion and economic disparities in commerce. The generally accepted term in the international community for release of materials for unrestricted use is "clearance."

Individual countries, including Germany, France, Finland, Sweden, Taiwan, and the United Kingdom, have developed national guidance for clearance of materials. The standards in these guidance documents correspond fairly well. Two major international radiation protection organizations, the IAEA and the Commission of European Communities (CEC) have developed draft standards containing clearance levels for individual radionuclides. The NRC, the Environmental Protection Agency (EPA), and the Department of Energy (DOE) generally provide input and review on behalf of the U.S. in development of IAEA and CEC standards. Both sets of standards are based on a 0.01 millisievert (mSv) per year (1millirem (mrem) per year) annual dose which is broadly accepted as a trivial dose. Documents published by IAEA that document the development of their draft standards include Safety Series 89, "Principles for the Exemption of Radiation Sources and Practices from Regulatory Control," (1998), and IAEA-TECDOC–855, "Clearance Levels for Radionuclides in Solid Materials (Interim Report)."

One intended application of IAEA's proposed clearance levels is related to international trade, for example the import and export of scrap metals.

U.S. Environmental Protection Agency. The EPA, although not a regulator of licensees, is responsible for setting generally applicable environmental standards for radioactive materials under the Atomic Energy Act. The NRC, in regulating its licensees, implements environmental standards that EPA promulgates in the area of radiation protection. In the absence of EPA standards in a particular area, for example in the area of release of solid materials, the NRC has the authority to set radiation protection standards for its licensees. This can cause potential problems with the finality of NRC licensing decisions if EPA later issues standards in a particular area that are different from regulations that NRC has previously issued. Thus, it is important for the NRC to involve EPA closely in developing its standards.

In addition, as noted later in Section B (Issue No.2, under "Factors in decisionmaking"), the EPA has completed studies on environmental impacts of clearance of materials. The NRC and EPA have, and plan to continue to have, coordinated efforts in this area to ensure that effective and consistent release standards are established, while minimizing duplication of effort. In particular, the NRC and EPA, along with other Federal agencies, work together on the Interagency Steering Committee on Radiation Standards to coordinate their efforts on issues associated with establishing criteria for radiation protection. Accordingly, the EPA will not only be an important participant in the NRC rulemaking public meetings, but the NRC also plans to consult extensively with EPA throughout the rulemaking process and has invited EPA to be a member of the NRC working group.

In setting generally applicable environmental standards, EPA sets standards for a wide range of materials, including some which contain naturally occurring radioactive materials that have been enhanced as a result of man-made processes. A material that has been made exempt from regulation (see 40 CFR 261.4(b)(4)) is the ash from burning coal in power plants that has concentrated levels of radioactive materials (e.g., uranium, radium, thorium). Under this exemption, coal ash is allowed to be used in building materials; the radioactive material in the coal ash can result in small radiation doses to the general public as a result of its use. The dose level from use of exempted coal ash could be viewed as a precedent or benchmark for possible NRC release levels.

EPA is currently active in the development of screening guidelines for import into the U.S. of materials cleared in other countries. EPA has been working with the NRC and other Federal and international agencies. The importing of contaminated materials cleared by other countries into the U.S., which does not have in place generally applicable standards for this purpose, raises questions about the regulatory status of these materials after they enter the U.S.

U.S. Department of Energy. The DOE operates a number of nuclear facilities. Although generally not licensed by the NRC, the DOE faces issues concerning the disposition of materials from its facilities similar to those faced by NRC licensees.

In response to these needs, DOE has developed criteria for release of solid materials: These criteria generally endorse the numerical criteria of Regulatory Guide 1.86. The DOE criteria are contained in DOE Order 5400.5, Radiation Protection of the Public and the Environment, dated February 8, 1990 (and revised in 1993) and in the *Draft Handbook for Controlling Release for Reuse or Recycle of Non-Real Property Containing Residual Radioactive Material* (June 1997).

If the NRC issues a regulation containing criteria for release of solid materials, decisions would have to be made by DOE as to whether DOE would in the interest of consistency adopt the standards in the NRC regulation, or if DOE decides to release solid materials would NRC be required to authorize distribution of that material.

State governments. States face the same issues and needs that the NRC does and must also consider issues associated with release of naturally-occurring and accelerator produced materials (NARM). The Conference of Radiation Control Program Directors (CRCPD), an organization of state radiation agencies that develops suggested regulations, has established a committee to look into issues associated with release of solid materials.

Thirty States have entered into agreements with the NRC to assume regulatory authority over byproduct, source, and small quantities of special nuclear material. These "Agreement States" generally use NRC guidance such as that contained in Regulatory Guide 1.86 or similar guidance, in their regulatory programs.

In a related matter, Section 2901(a) of the Energy Policy Act of 1992 (Section 276(a) of the Atomic Energy Act) grants State governments (Agreement and non-Agreement States alike) the authority to regulate the disposal of low-level radioactive waste if the NRC exempts such waste after the enactment of Act. Several States and locales have, both prior to and subsequent to, passage of the Act established prohibitions against the disposal of radioactive material in

landfills. The implications of Sec. 276(a) on NRC's potential alternative courses of action noted in Section A.2 above are unclear and may depend on the ultimate nature of any rulemaking that NRC undertakes.

Other standards setting bodies. Various other organizations are involved in setting standards which can impact decisions related to alternative courses of action for release of solid materials.

One of those organizations is the National Council on Radiation Protection and Measurements (NCRP). The NCRP is a nonprofit corporation chartered by the U.S. Congress to review current significant studies made by other health research bodies, to develop and disseminate information and recommendations about protection against radiation, and to cooperate with national and international organizations with regard to these recommendations. The NCRP has made recommendations in its report NCRP No. 116 regarding acceptable levels of radiation exposure to the public, including levels considered to present trivial health risk.

In addition, various industry groups (e.g., the American National Standards Institute (ANSI)) set standards regarding a variety of areas including equipment design and operation, facility maintenance, and contamination levels in radioactive effluents. NRC must be cognizant of activities in these areas because Public Law 104–113 (passed by Congress in 1995) requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical.

A.4 Previous Commission Efforts to Address Release of Solid Materials

The Commission previously sought to address considerations related to release of solid materials as a part of its issuance of a Below Regulatory Concern (BRC) Policy Statement on July 3, 1990 (55 FR 27522). BRC was an approach proposed by NRC to address a Congressional directive in the Low-Level Radioactive Waste Policy Amendments Act of 1985. The BRC Policy was a general statement of Commission policy and was intended to provide a broad decision framework for formulating rules or making licensing decisions to exempt from regulatory control certain practices involving small quantities of radioactive material. The BRC Policy was envisioned to have applicability in NRC rulemaking and guidance in four principal areas, one of which was setting a standard for release of solid materials for recycle. The Commission decided that a more extensive public involvement process in establishing these areas would be beneficial and hence instituted a moratorium on the BRC Policy in July 1991. Subsequently, in October 1992, the U.S. Congress enacted the Energy Policy Act of 1992 which revoked the BRC Policy Statement.

The NRC's current efforts differ from those associated with the BRC Policy in several ways. Unlike the broad policy-setting approach of the BRC policy, the NRC's current effort is focused on considering establishment of specific requirements for release of solid materials, which protect public health and safety, consistent with the existing framework of requirements in Part 20 for gaseous and liquid releases. As discussed in Section A.2, this would include a full assessment of potential scenarios and pathways for radiation exposure and an evaluation of the environmental impacts and cost-benefit basis of alternative approaches. In addition, the NRC would enhance participation in the rulemaking process through public meetings for interested parties. Any decisions made regarding release of solid materials at this time would be made through rulemaking and not through a policy statement.

A.5 Potential NRC Actions, Enhanced Public Participation and Public Meetings, and Preparation of Issues Paper

Generally, NRC's procedure in rulemaking is the NRC staff development of a proposed rule, Commission consideration, publication of the proposed rule for public comment, consideration of the comments by the NRC staff, preparation of a final rule, Commission review and approval, and publication of the final rule. As directed by the Commission, the NRC staff plans to enhance public participation in this process by conducting public meetings before any rulemaking would begin. The public meetings are planned to elicit informed discussions of options and approaches and the rationale for them. Although these public meetings are not designed to seek "consensus" in the sense that there is agreement on the issues, the public meetings are to be conducted at a very early stage of rulemaking to involve interested parties and the public with the following objectives: (a) to ensure that the relevant issues have been identified; (b) to exchange information on these issues; (c) to identify underlying concerns and areas of disagreement, and (d) where possible, approaches for resolution. The NRC staff also plans to enhance participation by providing website access to this issues paper and the ability to submit comments on the issues paper by e-mail.

If, following this early exchange of ideas (including comments from the public meetings and comments filed by other means such as Internet responses and written comments), the Commission decides to proceed with rulemaking, other rulemaking documents will be prepared. Specifically, the NRC will evaluate the implications of a rule with regard to the National Environmental Policy Act (NEPA). NRC will conduct these evaluations as specified in 10 CFR Part 51, which contains requirements on preparing environmental analyses, including the content of an environmental statement and the public process involved in developing the scope of an environmental statement. In addition, the NRC will prepare a Regulatory Analysis to evaluate costs versus benefits of a rule consistent with Executive Order 12291 and the Commission's regulatory analysis guidelines in NUREG/BR–0058. The NRC will also publish guidance to provide licensees with information on how to demonstrate compliance with the regulation. These documents would be made available on NRC's website.

B. Issues for Discussion

The Commission believes that the issues and alternatives discussed below provide a broad look at matters related to the consistency of its regulations on standards for release of solid materials from nuclear facilities. Therefore, the Commission is soliciting comments and information on these issues before proceeding. These issues, and other relevant and substantial issues identified by interested parties, will serve as the basis of discussion at the public meetings. The discussions at the public meetings will be used by the NRC staff in deciding upon an appropriate course of action.

Issue No. 1—Should the NRC Address Inconsistency in its Release Standards by Considering Rulemaking on Release of Solid Materials?

As discussed in Section A.1.1, NRC generally uses the public dose limits and ALARA requirements in Part 20 to establish limits on releases from nuclear facilities during routine operations and decommissioning. Currently, Part 20 contains specific criteria on the amount of radioactivity in gaseous and liquid releases that may be released from a nuclear facility to the environment. NRC also has requirements in Subpart E of Part 20 on unrestricted use of decommissioned lands and structures. However, NRC currently has no specific requirement in its regulations on limits for release of solid materials.

Alternatives

The NRC has the following two broad options related to the issue of inconsistency of its regulations on release standards and licensee requests for release of solid materials: (1) continue the current practice of handling of licensee requests for release of solid materials on a case-by-case basis; or (2) include requirements in Part 20, as part of a consistent regulatory framework for evaluating releases of all materials, that would allow it to make decisions on licensee requests for release of solid materials that are protective of public health and safety.

(1) No NRC Rulemaking: Continue Current Practice of Handling Licensee Requests for Release on a Case-by-Case Basis

Under this option, no NRC rule would be prepared. Licensees will still continue to make requests for release of solid materials. As discussed in Section A.1.3, in order to comply with the requirements of Part 20, NRC evaluates licensee requests on a case-by case basis using regulatory guidance, branch positions, license conditions, etc. One basis for review has been NRC staff guidance in Regulatory Guide 1.86, which was originally published in June 1974 by the Atomic Energy Commission (AEC). Regulatory Guide 1.86 contains a table of acceptable total and removable surface levels for various radionuclides, including natural and enriched uranium, transuranics, and fission products, which are stated in terms of measurable radioactivity levels, but does not contain specific dose criteria. Regulatory Guide 1.86 has been used to evaluate unrestricted release of solid materials whose surfaces are slightly radioactive; it does not cover material with volumetric contamination. In addition to Regulatory Guide 1.86, Section A.1.3 notes that NRC also uses other case-specific criteria, such as the detection capability of instrumentation, and certain specific rule sections, in its evaluation of requests for release of solid materials.

(2) Develop a Proposed Rule

In this option, the NRC would proceed with rulemaking to supplement its gaseous and liquid release standards in Part 20 by developing dose-based regulations limiting releases of solid material to provide a consistent regulatory framework protective of public health and safety. This would involve conducting a rulemaking under the Administrative Procedure Act, and developing, as regulatory bases, an environmental analysis under NEPA and an analysis of costs and benefits in a Regulatory Analysis. Based on Commission direction discussed in Section A.2.3, a rulemaking would use an enhanced participatory process involving early public input and website access to rulemaking documents.

Specific Items for Discussion

Should the NRC continue with the current practice of making decisions on a case-by-case basis, or should it proceed to develop a proposed rule that would establish generic criteria for release of solid materials? What are the considerations that should go into making this a decision?

(1) Does the current system of NRC case-by-case decisions on release of solid materials, using existing guidance, provide an adequate regulatory framework? Can volumetric contamination in small amounts be released in a manner similar to that done for small amounts of surface contamination on materials that have been released to unrestricted areas under the criteria in Regulatory Guide 1.86? If a rule is not issued, should Regulatory Guide 1.86 be updated with a set of dose-based values?

(2) Should the NRC develop dose-based regulations on release of solid material? Would a rule allow the NRC to better address volumetric contamination in solid materials in an explicit and consistent regulatory manner that meets both licensee needs and public concerns? Would a rule also meet additional specific regulatory needs such as the specific types of material to be covered, restricted vs. unrestricted use, etc?

(3) To what extent would such a rule contribute to maintaining public safety, enhancing the effectiveness and efficiency of the NRC, building public confidence, and reducing unnecessary regulatory burden?

(4) Would issuance of an NRC rule on release of solid material definitively resolve licensee questions regarding finality of NRC release decisions if EPA, which has authority to set generally applicable environmental standards in this area, promulgates a rule at a later date?

(5) Substantial NRC resources would be needed to conduct the complex safety, environmental, and regulatory analyses required to support a rulemaking. Without a regulation, the NRC will have to review the anticipated increase in requests for release of solid materials on a case-by-case basis which could mean less efficient and less consistent reviews. Would potential savings in resources by having a regulation in place offset the resources spent on rulemaking?

Issue No. 2—If NRC Decides to Develop a Proposed Rule, What are the Principal Alternatives for Rulemaking that Should be Considered, and What Factors Should be Used in Making Decisions Between Alternatives?

If the answer to Issue No.1 is to conduct a rulemaking to include requirements in Part 20 on release of solid material, a rulemaking (including the development of technical basis information, evaluation of environmental impacts and cost-benefit analyses, and the public review and comment process) would be conducted to evaluate potential rulemaking alternatives.

Rulemaking Alternatives

Potential alternatives for rulemaking in this area are:

(1) *Permit release of materials for unrestricted use if the potential dose to the public from the material are less than a specified level determined during the rulemaking process*—In this alternative, a licensee could release for unrestricted use ("clearance") material that meets the permissible level in the standards. Potential alternative dose levels resulting from unrestricted use of the material could include doses of 0.1 mSv/yr (10 mrem/yr), 0.01 mSv/yr (1 mrem/yr), 0.001 mSv/yr (0.1 mrem/yr) above background, as well as no dose above background. To provide some perspective on these levels: (a) the dose from natural background to people in the U.S. can vary widely based on the area of the country where people live, lifestyle, and other factors, and averages about 3 mSv/yr (300 mrem/yr) but may vary from 1 to 10 mSv/yr (100 to 1000 mrem/yr); (b) NRC's public dose limit is 1 mSv/yr (100 mrem/yr), (c) the dose from use of recycled coal ash in concrete block as permitted by EPA can be about 3 percent of natural background (about 0.1 mSv/yr (10 mrem/yr)), (d) a person receives 0.1 mSv (10 mrem) on a round-trip coast-to-coast flight, and (e) 0.01 mSv/yr (1 mrem/yr) is a level which the National Council of Radiation Protection and Measurements (NCRP) considers a trivial risk. In addition, a 0.01 mSv/yr (1 mrem/yr) value is also the level being considered for release for unrestricted use (or "clearance") in the European community.

(2) *Restrict release of solid materials to only certain authorized uses* (see more detail in Issue No. 3).

(3) *Do not permit either unrestricted or restricted release of solid material that has been in an area where radioactive material has been used or stored*—In this alternative, all such materials in the facility would be required to go to a licensed LLW disposal facility.

(4) *Other alternative(s)*—Other appropriate alternatives may be determined during the rulemaking process.

(5) *Other decisionmaking factors*, (i.e., non-dose based criteria).

Factors in Decisionmaking

Principal factors in making decisions regarding the alternatives include human health and environmental impacts, cost-benefit considerations, impacts on other industries, resource conservation, the capability to survey the material to assure that it meets permissible levels, existing international, national, and State standards, and other factors raised during the rulemaking process.

Human health and environmental impacts: In assessing potential rulemaking alternatives, NRC would consider a broad range of possible impacts, both radiological and non-radiological. These could include evaluation of radiation dose to individuals from release of solid materials, assessment of collective doses to different population groups from the release, transportation, processing and disposal impacts, impacts on biota, land use impacts, impacts on radiation sensitive industries, and societal impacts. Some of these impacts may be competing. For example, a lower dose criterion would result in less material available for release (and instead sent to a LLW disposal site) which, in turn, would lower the radiation dose impact to the public from exposure to that material. However, the lower dose criterion could cause an increase in other impacts, for example those impacts associated with mining, fabrication, and transport of fresh metal to replace that sent to a LLW disposal site. Because these impacts would take place over different time periods and expose different populations, a precise comparison is difficult. Nevertheless, the decisionmaking process could consider these impacts separately and also consider the net collective impact for these disparate factors.

NRC recently published a draft report for comment on radiological assessments for clearance of equipment and materials from nuclear facilities, NUREG–1640 (2 volumes). The report provides dose factors for both surficial and volumetric radioactivity and compares them with results from Regulatory Guide 1.86 and from EPA values, European Community recommended clearance levels and IAEA draft clearance levels.

Most of the aforementioned policies, guidelines, recommendations and standards are dose based and thus are intended to be protective of public health and safety. In addition to protection of public health and safety, the U.S. Atomic Energy Act, as amended, also charges the NRC with protection of property. Some industries may be adversely affected by materials that are cleared based upon dose based standards because of sensitivity to radiation effects from the cleared material e.g., the film and electronic industries and the metal recycling industry which performs radiation monitoring of metal scrap to detect and protect itself from radioactive sources accidentally mixed with scrap.

As a first step in assessment of impacts, the NRC has issued a draft report for comment that provides a technical basis for determining potential doses to individuals from a wide range of potential scenarios by which members of the public could come in contact with material that had been released for unrestricted use (or "cleared") from licensees ("Radiological Assessment for Clearance of Equipment and Material from Nuclear Facilities", NUREG–1640, February 1999). The report contains an analysis of material flow models based on an evaluation of the recycle/reuse industry in the U.S. and of potential scenarios by which a member of the public could reasonably expect to be exposed. Solid materials that are candidates for release that are evaluated in the report include iron/steel, copper, aluminum, and concrete. The EPA has issued a report similar to NUREG–1640 which is accessible on EPA's website at http://www.epa.gov/radiation/cleanmetals/publications.htm. While some of the analysis and approaches in the EPA report are different from NRC's report, the overall results from the EPA and the NRC reports are similar.

Cost-benefit considerations: Executive Order 12291 contains provisions that require Federal agencies, in their rulemakings, to consider cost-benefit evaluations of alternative courses of action. Consistent with Executive Order 12291, NRC has established guidelines for preparing regulatory analyses of alternative courses of action in support of its rulemaking decisions (NUREG/BR–0058). Benefits would generally derive from the net reduction in environmental impacts discussed above. Costs which could be included in a regulatory analysis could include: (1) the costs of alternative courses of action including surveys at licensed facilities, as well as surveys at non-licensed facilities that may use or receive released solid materials, to verify that permissible release levels have been met; (2) the potential for having to respond to contamination alarms at facilities handling released material; (3) economic impact on recycle/scrap/manufacturing processes; (4) replacement metal production; and (5) alternative options for disposing of the material.

Implementation considerations: A potential concern with implementation of a proposed rule is the capability to measure radioactive contamination corresponding to the very low alternative dose levels discussed above. The ability to measure radioactivity depends on both the amount and type of radioactive material. In particular, a rulemaking alternative that would require survey instrumentation to verify that there is *no* dose above natural background could be extremely difficult, if not impossible, to implement because of the variation in natural background and the limited capability of field survey instruments to detect such low levels.

Other international, national, and State standards: In considering rulemaking alternatives, the NRC would also consider requirements, guidelines, policies and precedents set by international agencies, other Federal agencies, or States. Consistency with standards set by other countries and international agencies is important because materials can be both imported and exported between the U.S. and other countries and differing standards could create confusion and economic disparities in commerce.

Items for Discussion

(A) Human Health and Environmental Impacts

(1) What individual dose level is acceptable regarding release of solid materials from licensed facilities for unrestricted use? Should release of solid materials for unrestricted use be permitted at a dose level (for example, 0.1, 0.01, or 0.001 mSv/yr [10, 1.0, or 0.1 mrem/yr], or no dose, above background (or other dose)) which is established in rulemaking based on a balancing of risks from various alternatives? Or, should release of solid materials not be permitted if they are potentially contaminated from the use of licensed radioactive material?

(2) How should environmental impacts be balanced and what types of impacts should be considered in decisionmaking?

(i) In considering radiological impacts from materials released for unrestricted use in the public sector, what pathways of exposure to people, such as those already considered in NUREG–1640, should be considered? As noted above, NUREG–1640 contains a technical basis for determining potential doses to individuals from a wide range of potential scenarios by which members of the public could come in contact with material that had been released for unrestricted use. The report contains an analysis of material flow models based on an evaluation of the recycle/reuse industry in the U.S. and of potential scenarios by which a member of the public could reasonably be exposed.

(ii) In considering other environmental impacts, what impacts, both radiological and non-radiological, should be considered? Such impacts could include mining of new metals to replace metals that could be potentially released but which are sent to a LLW disposal site, production of metal products, transportation of materials, etc.

(iii) How should net environmental impacts from all the radiological and non-radiological impacts be balanced?

(3) What is the potential for exposures to multiple sources of material released for unrestricted use, and what are ways in which persons could be exposed to multiple sources? How should potential for exposure to multiple sources be considered in setting an acceptable dose level? To what extent is there a potential that a single scrap facility would handle inputs of released solid materials from several different licensed facilities?

(4) What societal impacts should be considered and how should they be factored into the environmental evaluation? For example, material released for unrestricted use from nuclear facilities could result in concern, confusion, or fear if the public either does not clearly understand that the risk is small or does not accept the risk.

(5) How should the impacts upon industries that have special concerns about the presence of radioactivity in materials, e.g., film, electronic, and metal recycling, be considered and factored into decisionmaking?

(B) Cost-benefit Considerations

(1) As noted above, Executive Order 12291 requires Federal Agencies to consider cost-benefit in its consideration of rulemaking alternatives. NRC uses NUREG/BR–0058 as its guideline in analysis of the cost-benefit of regulatory alternatives. In using NUREG/BR–0058:

(i) How should economic factors be incorporated into rulemaking decisions, including costs of survey methods and appropriate instruments to measure very low levels of volumetrically contaminated material, economic risks associated with release of solid materials, costs of decontamination, ALARA issues, etc.

(ii) How should economic impacts be balanced against net environmental impacts?

(2) What are the major economic costs associated with release of solid materials into commerce?

(3) What are the major economic costs associated with landfill disposal of material released for unrestricted use? Would problems be encountered in this material going to a landfill?

(4) What economic risks are associated with release of solid materials for unrestricted use? For example, what are the risks (and associated costs) that materials released from a nuclear facility could be rejected at a melter or scrap yard based on a radiation survey at that point? What means could minimize such economic risks?

(5) What is the potential for buildup of radioactivity in commerce as a result of continued release of solid material for unrestricted use over time? How should such a buildup be estimated? What is the potential that this buildup could contribute significantly to either the net environmental impact, to economic impacts on general commerce, or to public concern?

(C) Implementation Considerations

(1) What is the capability of surveying materials (both for surface and volumetric contamination) at the different alternative dose levels being considered, and what effect would that have on setting a standard? Are these survey capabilities readily available to licensees? Should there also be provisions for survey capability at receiving facilities and what should be the nature of those provisions? What economic impact would the use of different or advanced survey techniques have on the facilities releasing the material and the facilities accepting the material for reuse or recycle? How can surveys be designed to prevent releasing material in excess of permissible levels? Over what volume or mass of material should surveys be performed in assessing compliance with release levels? Should materials of varying concentration levels be combined, and, if so, how?

(2) What different survey methods should be used for assuring that materials from different areas of a facility, and having different potential for contamination, meet the criteria of a dose-based standard? For example, should the survey of solid materials from areas known to be free of contamination rely upon knowledge of facility radiological history and knowledge of plant processes, and, if so, how?

(3) How should criteria for release of solid material be incorporated into NRC's regulations, i.e., should they be expressed as a dose criteria and/or be expressed as concentration values in different media based on specified dose objectives and standard models for exposure?

(D) Other considerations including international, national, and State guidelines

(1) With regard to international, national, and State standards:

(a) How should guidelines on unrestricted release, or "clearance," set by international standards-setting bodies such as the IAEA and International Commission on Radiological Protection (ICRP), as well as those set by other countries, be considered in setting a level for release of material from NRC-licensed facilities in the U.S.? How should efforts by the EPA to set import screening guidelines be considered?

(b) How should guidelines of other U.S. agencies, e.g., DOE and EPA, be considered? To what degree should standards set by NRC be consistent with other EPA standards, such as those for recycled coal ash (see Section A.2.2.3)? With regard to issues of finality of NRC licensing decisions, what potential problems could occur if EPA later issues standards for release of solid materials different from an NRC regulation?

(c) How should recommendations made by U.S. standards setting bodies, such as the National Council on Radiation Protection and Measurements (NCRP), be considered?

(d) How should standards set by U.S. industry groups, such as the American National Standards Institute (ANSI), be considered? Are industry standards currently available, or anticipated during the time frame for this rulemaking, that could be adopted in lieu of or in addition to NRC requirements on release of solid materials?

(e) Should NRC simply adopt the standards in 1(a), 1(b), or 1(c), and their associated health risk level, rather than conduct analyses of its own?

(f) What are the economic and other impacts of having NRC standards different from standards that may be set by international agencies, EPA, or other national bodies?

(g) What compatibility categories, as described in NRC's "Policy Statement on Adequacy and Compatibility of Agreement State Programs," published September 3, 1997 (62 FR 46517), and in NRC's Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs," should be assigned to any rule on release of solid materials? Compatibility refers to the extent to which Agreement State radiation control programs are consistent with NRC's program for the regulation of Atomic Energy Act radioactive materials to ensure that an adequate and coherent nationwide effort is collectively established for regulation of such materials.

(2) Should existing NRC standards, including the public dose limit of 1 mSv/yr (100 mrem/yr) in 10 CFR 20.1301, and Subpart E of Part 20 which contains a dose criterion of 0.25 mSv/yr (25 mrem/yr) for release of decommissioned structures and lands, be considered in setting allowable doses for release of solid material for unrestricted use? A consideration in this question is that there are different circumstances between Subpart E and the issues being discussed in this paper. For example, Subpart E limits the dose from the single release of structures and land at a site to 0.25 mSv/yr (25 mrem/yr). In contrast, unrestricted release of the materials considered in this issues paper could involve periodic releases over the facility lifetime at a dose level to be set in the rulemaking.

Issue No. 3—If NRC Decides to Develop a Proposed Rule Containing Criteria for Release of Solid Materials, Could Some Form of Restrictions on Future Use of Solid Materials be Considered as an Alternative?

As discussed in Section A.2.2, release of solid materials for unrestricted use would allow them to be recycled or reused in consumer products or industrial products, or be disposed of in solid waste landfills. A potential alternative could involve limiting release of solid materials by restricting their future use to some authorized use.

Alternatives

Potential alternatives for restricted use of solid materials could include:

(1) Restrict the first use of solid material to certain authorized uses

In this alternative, the release of radioactive material would be restricted to certain authorized uses to ensure that it is processed into one or more specific products. For example, material could be recycled for use in an industrial product such as steel beams that would be designated for use in a foundation or structural support for a bridge or monument. Because of uncertainties related to controlling potential uses of the material after it leaves a licensee's facility, it may be necessary to require that processing of the material for the first use be done under a specific license issued by the NRC. This alternative might be beneficial for materials contaminated by nuclides having short to moderate half-lives, allowing substantial reduction in contamination due to radioactive decay within the lifetime of the structure in which it is placed. This alternative would probably not be applicable for all materials (e.g., wood products and some metals such as copper). End user certification could be difficult to enforce.

(2) Restrict release of solid material to permitted disposal

This alternative would restrict the release of slightly contaminated solid material from nuclear facilities to disposal at municipal solid waste landfills. Solid material with higher levels of radioactive contamination would continue to be handled as radioactive waste and be disposed of at licensed facilities. Municipal solid waste landfills are issued permits by State regulatory authorities in accordance with 40 CFR 258, "Criteria for Municipal Solid Waste Landfills" as well as other State and local regulations. The rationale for this alternative is that exposure pathways at landfills can be fairly well defined and quantified, and that many of the pathways of potential exposure associated with the recycling of metal into consumer products or industrial products would not be present. Additional restrictions could involve disposal at industrial solid waste facilities rather than at sanitary waste landfills.

Issues associated with this alternative include the fact that additional NRC and/or EPA rulemaking may be required to implement this alternative. For example, the definitions of solid waste and/or byproduct material (or associated regulations) might need to be revisited to allow disposal at solid waste landfills of material having residual radioactivity. Several State and local governments currently have prohibitions against the disposal of radioactive material in landfills which would make this alternative less feasible. An additional issue is the possibility that material could be sent to a landfill under a use restriction, but it could be removed from the landfill and sold as scrap or reused.

Items for Discussion

(1) Should the NRC consider restrictions on future use of solid materials as an alternative to unrestricted use (similar to the license termination rule)?

(2) If so, what types of restricted uses should be considered?

(3) What types of controls could restrict use to assure that the material would not be released for unrestricted use? Would these controls be reasonable? Would it be necessary to license processing of the material for the first use in order to assure protection of public health and safety? For example, if iron/steel were to be restricted to use in bridge support, should the company processing the steel into bridge supports be licensed by the NRC? Or could sufficient restrictions be placed on the processing company to assure that the steel went where it was supposed to without the company having an NRC license?

(4) How long would the use be restricted? What radionuclides, and associated time periods for radioactive decay, would be reasonable to consider as candidates for restricted use? What would happen to the material when it reached the end of its useful restricted life?

(5) If restrictions were placed on future use of materials, would the NRC need to be involved in continued regulation or tracking of the material? Would States need to be involved? Or could a mechanism for institutional control, similar to that used in the license termination rule be used to assure the continued restricted use of materials? Note that Subpart E of 10 CFR Part 20 (Section 20.1403) contains requirements regarding acceptable dose levels for restricted use, allowable institutional controls and financial arrangements, etc.

(6) What type of public involvement should there be in decisions concerning restricted use of materials? Should it be similar to the method used in the license termination rule where licensees are required to seek advice from affected parties when proposing a site for restricted use? Note that Subpart E of 10 CFR Part 20 (Section 20.1403) also contains requirements for licensees to seek advice on from affected parties and also the methods to be used in obtaining that advice. A potential problem in establishing a public involvement process for restricted use of materials is that (unlike license termination of buildings or a site where affected parties

in a community can be fairly readily identified for a restricted site in a community) material leaving the site could be sent for restricted use in different areas and uses. Can a meaningful public involvement process be developed for setting restrictions on future material use in specific licensing cases?

(7) How should considerations and predictions of future public uses of materials and the restrictions on those materials be developed to provide credible approaches for restricted use?

(8) What dose should be permitted for material released for restricted use? Should the same alternative dose levels as for unrestricted use (see Issue No.2) also be considered for restricted use, or should some other value, either higher or lower, be considered? By way of comparison, the allowable dose in Subpart E of Part 20 for restricted use of released lands and structures is the same as for unrestricted use, provided the controls remain effective.

(9) What specific problems are associated with restricting materials to landfill disposal?

Issue No. 4—If NRC Decides to Develop a Proposed Rule, What Materials Should be Covered?

A rule developed by the NRC could cover selected materials (for example, certain metals such as iron and steel) or could be a broad rule encompassing all materials. Any alternatives chosen for consideration would be dependent on information available on the various materials. Currently, the NRC has developed the following technical background information:

(1) An analysis of individual doses resulting from unrestricted release of steel, aluminum, copper, and concrete (draft NUREG–1640, February 1999) has recently been completed. These materials were analyzed because they were considered to represent those most likely to become available and also to represent most of the volume of slightly contaminated material available for release from NRC-licensed facilities into the public sector, other than soil.

(2) Discussions with licensees have indicated that there are large quantities of soil with very low amounts of radioactive contamination that are available for release. Although NUREG–1640 does not include specific analyses for soil, work done previously for the license termination rule provides baseline technical information on individual dose factors and environmental analysis for soil which could be adapted for use for this application. This previous work includes NUREG–1496, "Generic Environmental Impact Statement on Radiological Criteria for License Termination," NUREG/CR–5512, "Residual Radioactive Contamination from Decommissioning," and NUREG–1549, "Decision Methods for Dose Assessment to Comply with Radiological Criteria for License Termination."

(3) The NRC does not have similar analyses completed for other slightly contaminated materials potentially available for release.

Alternatives

Alternative rule approaches could be that the rule would apply to—

(1) only a select group of solid materials, including certain metals (steel, aluminum, copper) as well as concrete and soil.

(2) a wider group of materials to also include other materials under license including sludge, sewage, wood, glass, and others.

(3) a select group of materials (Alternative 1) and conduct rulemaking on other materials in Alternative 2 at a later time.

Specific Items for Discussion

(1) Should the NRC proceed with a rulemaking covering all materials, with the option of conducting further rulemaking at a later time for certain materials if the impact to all affected parties, including the regulators, is too great or the analysis too complicated or time consuming?

(i) Is it appropriate to proceed with certain materials, including steel, aluminum, copper, concrete, and soil, so that rulemaking can be done in a timely manner using the information developed for these materials in NUREG–1640, and associated analyses as described above, as input to the environmental analyses and regulatory analyses? Would experience gained with the rule on steel, aluminum, copper, concrete, and soil be useful in evaluating requirements for release of other materials later?

(ii) Would issuing a rule now for only certain materials noted in Alternative No.1 limit NRC's capability to deal effectively with requests for release that could be made in the future for other materials? Other similar materials, such as sludges, slag, asbestos, etc., could also potentially be the subject of requests for release. To help answer that question, how many and what types of materials are licensees actually requesting release for today or are anticipated over the next decade?

(iii) Should the NRC perform additional analyses at this time of individual doses resulting from other materials potentially available for release to support rulemaking decisions for these materials even if it impacts the schedule for rulemaking for release of steel, aluminum, copper, and concrete?

(2) What other materials would be the candidates for rulemaking? Do analyses for these materials currently exist or are they under development?

(3) If the NRC proceeds with rulemaking limited to certain materials indicated in Alternative 1, how should it handle requests for release of other materials, i.e., should it proceed with a subsequent rulemaking for other materials, and, if so, how and when should it proceed with this later rulemaking? Should the additional materials be released under existing guidelines until the subsequent rule is developed, or should the release of these materials be postponed until a rulemaking is conducted? If the rulemaking establishes dose objectives for release and implements those objectives through tables of values for specific materials, should the dose objective also be used to guide case-specific release of other materials through licensing actions or exemptions?

(4) What would be the associated costs, effective survey methods, and dose impacts of the alternatives?

(5) Should the NRC rulemaking be extended to cover materials that may be released from nuclear facilities operated by the DOE?

IV. Scoping Process for Environmental Impact Statement

As discussed in Section III.A.5 and III.B of this notice, if the Commission decides to proceed with a rulemaking, it will have to consider the effect of its actions on the environment in accordance with the National Environmental Policy Act (NEPA). Section 102(1) of NEPA requires that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in NEPA. It is the intent of NEPA to have Federal agencies incorporate consideration of environmental issues into their decisionmaking processes.

NRC regulations implementing NEPA are contained in 10 CFR Part 51. To fulfill its responsibilities under NEPA, the NRC would prepare an environmental impact statement (EIS) by analyzing alternative courses of action and the impacts and costs associated with those alternatives. In keeping with the requirements of 10 CFR Part 51, an EIS would analyze alternatives for establishing requirements for release of solid

materials. All reasonable alternatives associated with the proposed action would be analyzed to determine their impacts and costs.

The Commission's regulations in 10 CFR 51.26 contain requirements for conducting a scoping process before preparing an EIS, including preparation of a notice of intent in the **Federal Register** regarding the EIS and indication that the scoping process may include holding a scoping meeting. Requirements are contained in 10 CFR 51.27 regarding the content of the notice of intent, in particular that it should describe the proposed action and describe possible alternatives to the extent that information is available. In addition, the notice of intent is to describe the proposed scoping process, including the role of participants, whether written comments will be accepted, and whether a public scoping meeting will be held.

Participants in this scoping process on the environmental impacts of release of solid materials from licensed facilities may attend any of the four public meetings indicated under the **DATES** heading of this notice and provide oral comments on the proposed action and possible alternatives. The Commission will also accept written (and electronic) comments on the proposed action and alternatives from the public, as well as from meeting participants, as indicated under the **DATES** and **ADDRESSES** heading of this notice.

According to 10 CFR 51.29, the scoping process is to address the following topics:

(1) *Define the proposed action.* The NRC is considering codifying radiological criteria for release of solid materials from licensed facilities. Detailed information on the proposed action is described in Section III.A.2 and III.A.5 of this notice.

(2) *Determine EIS scope and significant issues to be analyzed in-depth.* The NRC is considering analyzing the impacts and costs associated with alternative regulatory approaches to establish radiological criteria for release of solid materials from licensed facilities. Information regarding: (a) types, and contamination levels, of solid materials present in licensed facilities potentially available for release is contained in Section III.A.1.2 and Section III.B (Issue No. 4) of this notice; (b) pathways of exposure to solid materials released from licensed facilities is contained in Section III.B (Issue No. 2) of this notice and discussed in detail in the draft NUREG–1640 and in NUREG–1496 as referenced in Section III.B; (c) regulatory alternatives and method of approach for analysis of the alternatives is contained in Section III.A.2.2 and III.B (Issue No. 2) of this notice. Principal factors in making decisions regarding the alternatives are indicated in Section III.B (Issues No. 2, 3, and 4) of this notice.

(3) *Identify and eliminate from detailed study issues which are not significant or which are peripheral or which have been covered by prior environmental review.* The NRC has not yet eliminated any non-significant issues. However, the NRC is considering elimination of the following issues from the scope because they have been analyzed in previous EIS's (NUREG–0586 and NUREG–1496) and included in earlier rulemakings (53 FR 24018, June 28, 1988, and 63 FR 84088, July 21, 1997): (i) planning necessary to conduct decommissioning operations in a safe manner; (ii) assurance that sufficient funds are available to pay for decommissioning; (iii) the time period in which decommissioning should be completed; (iv) radiological criteria for decommissioning of lands and structures; and (v) the fact that consideration is not given to an alternative in which a licensee would abandon material or equipment without some treatment or licensed disposal.

Analysis of the scope of environmental impacts for this effort would be principally intended to provide input to decisionmaking for establishing overall criteria for release of solid materials, and would not involve analysis of site-specific issues which may arise in the licensing process at specific facilities. The extent to which the environmental analysis may be applicable to a site specific NEPA process would be described in a draft EIS and draft rulemaking.

(4) *Identify any environmental assessments or environmental impact statements which are being or which will be prepared that are related but are not part of the scope of the EIS under consideration.*

None are being prepared.

(5) *Identify other environmental review or consultation requirements related to the proposed action.* The NRC has contracted with ICF to provide technical assistance in the environmental analyses. The NRC is also placing contracts to obtain specific technical assistance regarding exposure pathways, collective doses, costs, and the capability of radiation survey instruments to practically and accurately detect radioactive contamination at levels near background.

(6) *Indicate the relationship between the timing of the preparation of environmental analysis and the Commission's tentative planning and decisionmaking schedule.* The schedule for issuance of an EIS has not been developed. The NRC staff will provide to the Commission, early in the year 2000, a report on the results of the public meetings and other public comments on the issues paper and the scoping process and include a schedule for any further rulemaking in this area, including the schedule for preparation of an associated draft EIS.

(7) *Describe the means by which an EIS would be prepared.* If the NRC proceeds with rulemaking in this area, it would prepare a draft EIS in accordance with its regulations in 10 CFR Part 51. Specifically, in accord with 10 CFR Part 51.71, a draft EIS would be prepared using the considerations of the scoping process and would include a preliminary analysis that considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as the environmental, economic, technical and other benefits of the proposed action.

In accordance with 10 CFR 51.29, at the conclusion of the scoping process, a concise summary of the determinations and conclusions reached, including the significant issues identified, will be prepared and a copy sent to each participant in the scoping process.

Dated at Rockville, Maryland, this 22nd day of June 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–16598 Filed 6–29–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–9]

Proposed Amendment of Class E Airspace; Roosevelt Roads NS (Ofstie Field), PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Roosevelt Roads NS (Ofstie Field), PR. A Global Positioning System (GPS) Runway (RWY) 9 Standard Instrument Approach Procedure (SIAP) has been developed for Antonio Rivera Rodriquez Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Antonio Rivera Rodriquez Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before July 30, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–9, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Roosevelt Roads NS (Ofstie Field), PR. A GPS RWY 9 SIAP has been developed for Antonio Rivera Rodriquez Airport. As a result, additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Antonio Rivera Rodriquez Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO PR E5 Roosevelt Roads NS (Ofstie Field), PR [Revised]

Roosevelt Roads NS (Ofstie Field), PR
(Lat. 18°14′53″N, long. 65°37′59″W)
Antonio Rivera Rodriquez Airport, PR
(Lat. 18°08′07″N, long. 65°29′30″W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 12-mile radius of Roosevelt Roads NS (Ofstie Field) Airport and within a 6.5-mile radius of Antonio Rivera Rodriquez Airport; excluding that portion within the San Juan, PR, Class E airspace area and that portion within Restricted Area R–7104.

* * * * *

Issued in College Park, Georgia, on June 16, 1999.

Signed by:

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–16660 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Regulation of the Operation of Motorized Personal Watercraft in the Gulf of the Farallones National Marine Sanctuary

AGENCY: Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Extension of Comment Period.

SUMMARY: On April 23, 1999, NOAA published a proposed rule and notice of availability of a Draft Environmental Assessment (DEA) restricting the use of motorized personal watercraft in the Gulf of the Farallones National Marine Sanctuary (FR Volume 64, Number 78, pages 19945–19952). On May 20, 1999, NOAA published a notice of public meeting and extension of the comment period. On June 9, 1999, NOAA published an extension of the comment period. This notice further extends the comment period.

DATES: Comments on the proposed rule or DEA must be received by July 21, 1999.

ADDRESSES: Comments should be sent to Ed Ueber, Sanctuary Manager, Gulf of the Farallones National Marine Sanctuary, Ft. Mason, Building 201, San Francisco, California 94123; fax: (415) 561–6616; email: ed.ueber@noaa.gov. Comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ed Ueber at (415) 561–6622.

SUPPLEMENTARY INFORMATION: NOAA proposes to amend the regulations governing the Gulf of the Farallones National Marine Sanctuary (Sanctuary) to prohibit the operation of motorized personal watercraft (MPWC) in the nearshore waters of the Sanctuary. Specifically, the operation of MPWC would be prohibited from the mean high-tide line seaward to 1,000 yards (approximately 0.5 nautical mile), including seaward of the Farallone Islands. The proposed rule would ensure that Sanctuary resources and qualities are not adversely impacted and would help avoid conflicts among various users of the Sanctuary.

The original notice of proposed rule, published on May 23, 1999, had a 30 day comment period, which closed on May 24. On May 20, 1999, NOAA published a notice to the **Federal Register** extending the comment period until June 11, 1999. On June 9, 1999, in response to a request to further extend the comment period, NOAA published a notice in the **Federal Register** extending the comment period until July 1, 1999. Due to concerns regarding the adequacy of time for review of all supporting documentation to the proposed rule, this notice further extends the comment period until July 21, 1999.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 25, 1999.

Ted Lillestolen,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 99–16674 Filed 6–29–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–101519–97]

RIN 1545–AV00

Withdrawal of Notice of Federal Tax Lien in Certain Circumstances

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the withdrawal of notices of federal tax liens in certain circumstances. The proposed regulations reflect changes made to section 6323 of the Internal Revenue Code of 1986 by the Taxpayer Bill of Rights 2. The proposed regulations affect all taxpayers seeking withdrawals of notices of federal tax liens.

DATES: Written comments and requests for a public hearing must be received by September 28, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–101519–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to: CC:DOM:CORP:R (REG–101519–97), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regslist.html.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 622–3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the withdrawal of notices of federal tax liens under section 6323 of the Internal Revenue Code (Code). Section 501(a) of the Taxpayer Bill of Rights 2 (TBOR2), Public Law 104–168, 110 Stat. 1452 (1996), amended section 6323 to authorize the Secretary to withdraw a notice of federal tax lien in certain limited circumstances. Section 501(a) also requires the Secretary to notify credit reporting agencies, financial institutions and creditors of the withdrawal upon the written request of the taxpayer. These proposed regulations reflect the amendments made by Section 501(a) of TBOR2.

Explanation of Provisions

Section 501(a) of TBOR2 amended section 6323 of the Code by authorizing the Secretary to withdraw a notice of federal tax lien under certain conditions and providing that upon written request of the taxpayer the Secretary will notify any credit reporting agency and any financial institution or creditor identified by the taxpayer. These proposed regulations implement section 501(a).

The proposed regulations provide that a district director, the director of a service center or the Assistant Commissioner (International) (the relevant person being referred to as "the director") may withdraw a notice of federal tax lien if the director determines that one of the conditions enumerated in paragraph (b) of the regulations exists. The notice of federal tax lien is withdrawn by filing a notice of withdrawal in the office in which the notice of federal tax lien is filed and providing the taxpayer with a copy of the notice. Following the withdrawal of a notice of federal tax lien, chapter 64 of subtitle F, relating to collection, is applied as if the IRS had never filed a notice of federal tax lien. The withdrawal of a notice of federal tax lien does not affect the underlying tax lien. The withdrawal simply relinquishes any lien priority the IRS had obtained under section 6323 of the Code when the IRS filed the notice being withdrawn.

The proposed regulations provide that the director has the authority to withdraw a notice of federal tax lien if one of the following conditions exists: (1) The filing of the notice of federal tax lien was premature or otherwise not in accordance with the administrative procedures of the Secretary; (2) the taxpayer has entered into an agreement under section 6159 to satisfy the liability for which the lien was imposed by means of installment payments, unless the agreement by its terms provides that the notice will not be withdrawn; (3) the withdrawal of notice will facilitate collection of the tax liability for which the lien was imposed; or (4) the withdrawal of notice would be in the best interest of the taxpayer, as determined by the National Taxpayer Advocate, and in the best interest of the United States, as determined by the director.

The fourth ground for withdrawal (i.e., withdrawal based on the best interests of the parties) requires that the withdrawal be in the best interests of both the United States and the taxpayer. Therefore, two distinct determinations must be made before a director may withdraw a notice of federal tax lien based on the best interests of the parties. Under the proposed regulations the director alone will determine whether the withdrawal of a notice of federal tax lien is in the United States' best interest. The National Taxpayer Advocate generally will determine whether the withdrawal of a notice is in the taxpayer's best interest; however, if a taxpayer requests the director to withdraw a notice and has not requested the National Taxpayer Advocate to determine the taxpayer's best interest, a finding by the director that the withdrawal is in the taxpayer's, as well as the United States', best interest will be sufficient to support the withdrawal of notice. The director is not authorized to determine that the withdrawal of a notice is not in the taxpayer's best interest. Only the National Taxpayer Advocate is authorized to make that determination.

The proposed regulations provide that a person may request the withdrawal of a notice of federal tax lien by writing to the director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice is filed. A written request for withdrawal must include: (1) The name, current address, and taxpayer identification number of the person requesting withdrawal of the notice of federal tax lien; (2) a copy of the notice of federal tax lien affecting the property, if available; (3) the grounds upon which the withdrawal of notice of federal tax lien is being requested; (4) a list of the names and addresses of any credit reporting agency and any financial institution or creditor that the taxpayer wishes the director to notify of the withdrawal of notice of federal tax lien; and (5) a request to disclose information relating to the withdrawal to the persons or entities listed.

The director must consider each taxpayer's request for withdrawal of notice of federal tax lien and determine whether any of the conditions authorizing withdrawal exists and whether to issue a withdrawal. The director also may issue a notice of withdrawal based on information received from a source other than the taxpayer.

If the director grants a withdrawal of notice of federal tax lien, the taxpayer may supplement the list of credit reporting agencies and financial institutions or creditors provided with the request for withdrawal. If no list was submitted with the request to withdraw, a list may be submitted after the notice is withdrawn. A request to supplement the list must be sent in writing to the director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice of federal tax lien is filed. The request must contain: (1) The name, current address, and taxpayer identification number of the person requesting the notification; (2) a copy of the notice of withdrawal; (3) the names and addresses of the persons or entities the taxpayer wishes the IRS to contact; and (4) a request to disclose the withdrawal to the persons or entities listed.

The regulations will be effective when the final regulations are published in the **Federal Register** with respect to withdrawals of any notice of federal tax lien occurring after such date regardless of when the notice was filed.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the collection of information in the regulation is exempt pursuant to 5 U.S.C. 601(7)(B), the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regslist.html. All comments will be available for public inspection and copying. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the IRS proposes to amend 26 CFR part 301 as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6323(j)–1 is added to read as follows:

§ 301.6323(j)–1 Withdrawal of notice of federal tax lien in certain circumstances.

(a) *In general.* A district director, the Assistant Commissioner (International), or the director of a service center (collectively the director) may withdraw a notice of federal tax lien filed under this section, if the director determines that any of the conditions in paragraph (b) of this section exist. A notice of federal tax lien is withdrawn by the

director filing a notice of withdrawal in the office in which the notice of federal tax lien is filed. If a notice of withdrawal is filed, chapter 64 of subtitle F, relating to collection, will be applied as if the withdrawn notice had never been filed. A copy of the notice of withdrawal will be provided to the taxpayer. Upon written request by a taxpayer with respect to whom a notice of federal tax lien has been or will be withdrawn, the director will promptly make reasonable efforts to notify any credit reporting agency and any financial institution or creditor identified by the taxpayer of the withdrawal of such notice. The withdrawal of a notice of federal tax lien will not affect the underlying federal tax lien.

(b) *Conditions authorizing withdrawal.* The director may authorize the withdrawal of a notice of federal tax lien upon determining that one of the following conditions exists:

(1) *Premature or not in accordance with administrative procedures.* The filing of the notice of federal tax lien was premature or otherwise not in accordance with the administrative procedures of the Secretary.

(2) *Installment agreement.* The taxpayer has entered into an agreement under section 6159 to satisfy the liability for which the lien was imposed by means of installment payments. If, however, the agreement specifically provides that a notice of federal tax lien will not be withdrawn, the director may not grant a request for withdrawal of that notice of federal tax lien under this paragraph (b)(2).

(3) *Facilitate collection.* The withdrawal of the notice of federal tax lien will facilitate the collection of the tax liability for which the lien was imposed.

(4) *Best interests of the United States and the taxpayer*—(i) *In general.* The taxpayer or the National Taxpayer Advocate has consented to the withdrawal of the notice of federal tax lien, and withdrawal of the notice would be in the best interest of the taxpayer, as determined by the National Taxpayer Advocate, and the United States, as determined by the director.

(ii) *Best interest of the taxpayer.* The National Taxpayer Advocate generally will determine whether the withdrawal of a notice of federal tax lien is in the best interest of the taxpayer. If, however, a taxpayer requests the director to withdraw a notice and has not specifically requested the National Taxpayer Advocate to determine the taxpayer's best interest, a finding by the director that the withdrawal of notice is in the best interest of the taxpayer will be sufficient to support withdrawal.

(5) *Examples.* The following examples illustrate the provisions of this paragraph (b):

Example 1. A is an employee of X Corporation. A notice of federal tax lien has been filed to secure an outstanding tax liability against A. A, who has no assets and no other secured creditors, has agreed to pay the balance of tax due through payroll deductions at a rate higher than the Internal Revenue Service could obtain through a wage levy in order to get the notice of federal tax lien withdrawn. X Corporation has agreed to allow A to enter into a payroll deduction agreement. In this situation, the director may withdraw the notice of federal tax lien to facilitate collection.

Example 2. A owes $1,000 in federal income taxes. A enters into an agreement to pay the outstanding federal income tax liability in installments. The agreement provides that a notice of federal tax lien may be filed if the taxpayer defaults. A timely pays the installments each month and has not defaulted in any way. Eleven months after entering into the installment agreement, the Internal Revenue Service files a notice of federal tax lien. Noting that there has been no default, the taxpayer asks the Internal Revenue Service to withdraw the notice of federal tax lien. In this situation, the director may withdraw the notice of federal tax lien because the taxpayer has entered into an installment agreement that does not prohibit the withdrawal of the notice.

Example 3. A is the owner of a farm machinery dealership against whom a notice of federal tax lien has been filed to secure an outstanding tax liability. A currently is paying the tax liability by an installment agreement that prohibits the withdrawal of the notice of federal tax lien. X Corporation has agreed to provide A with 100 tractors to increase A's inventory if the notice of federal tax lien is withdrawn. A asks the Internal Revenue Service to withdraw the notice of federal tax lien. The director determines that the withdrawal of the notice of federal tax lien is in the best interest of the United States because it would enable A to generate additional tractor sales, and increased sales would enable A to increase the amount of his installment payments as well as reduce the amount of time needed to satisfy the liability. A, who has no other assets or secured creditors, has agreed to modify his installment agreement. If the National Taxpayer Advocate (or the director in lieu of the National Taxpayer Advocate) determines that the withdrawal is in the best interests of the taxpayer, the director may withdraw the notice of federal tax lien because withdrawal is in the best interest of the taxpayer and the United States. Alternatively, the director may withdraw the notice of federal tax lien to facilitate collection.

(c) *Determinations by the director.* The director must determine whether any of the conditions authorizing the withdrawal of a notice of federal tax lien exist if a taxpayer submits a request for withdrawal in accordance with paragraph (d) of this section. The director also may make this determination based on information received from a source other than the taxpayer. If the director determines that conditions authorizing the withdrawal are not present, the director may not authorize the withdrawal. If the director determines conditions for withdrawal are present, the director may (but is not required to) authorize the withdrawal. If the basis for the withdrawal is the best interests of the taxpayer and the Internal Revenue Service, the taxpayer or the National Taxpayer Advocate must consent to the withdrawal.

(d) *Procedures for request for withdrawal*—(1) *Manner.* A request for the withdrawal of a notice of federal tax lien must be made in writing to the director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice of federal tax lien is filed.

(2) *Form.* The written request will include the following information and documents—

(i) Name, current address, and taxpayer identification number of the person requesting the withdrawal of notice of federal tax lien;

(ii) A copy of the notice of federal tax lien affecting the taxpayer's property, if available;

(iii) The grounds upon which the withdrawal of notice of federal tax lien is being requested;

(iv) A list of the names and addresses of any credit reporting agency and any financial institution or creditor that the taxpayer wishes the director to notify of the withdrawal of notice of federal tax lien; and

(v) A request to disclose the withdrawal of notice of federal tax lien to the persons listed in paragraph (d)(2)(iv) of this section.

(e) *Supplemental list of credit agencies, financial institutions, and creditors*—(1) *In general.* If the director grants a withdrawal of notice of federal tax lien, the taxpayer may supplement the list in paragraph (d)(2)(iv) of this section. If no list was provided in the request to withdraw the notice of federal tax lien, the list in paragraph (d)(2)(iv) of this section and the request for notification in paragraph (d)(2)(v) of this section may be submitted after the notice is withdrawn

(2) *Manner.* A request to supplement the list of any credit agencies and any financial institutions or creditors that the taxpayer wishes the director to notify of the withdrawal of notice of federal tax lien must be sent in writing to the director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice of federal tax lien is filed.

(3) *Form.* The request must include the following information and documents—

(i) Name, current address, and taxpayer identification number of the taxpayer requesting the notification of any credit agency or any financial institution or creditor of the withdrawal of notice of federal tax lien;

(ii) A copy of the notice of withdrawal, if available;

(iii) A supplemental list, identified as such, of the names and addresses of any credit reporting agency and any financial institution or creditor that the taxpayer wishes the director to notify of the withdrawal of notice of federal tax lien; and

(iv) A request to disclose the withdrawal of notice of federal tax lien to the persons listed in paragraph (e)(3)(iii) of this section.

(f) *Effective date.* This section is effective on or after the date final regulations are published in the **Federal Register** with respect to a withdrawal of any notice of federal tax lien.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–16164 Filed 6–29–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF EDUCATION

34 CFR Part 694

Office of Postsecondary Education; Gaining Early Awareness and Readiness for Undergraduate Programs; Negotiated Rulemaking Committee

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of negotiated rulemaking on GEAR UP.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to draft proposed regulations to implement chapter 2 of subpart 2 of part A of title IV of the Higher Education Act of 1965 (HEA), "Gaining Early Awareness and Readiness for Undergraduate Programs" (GEAR UP). The committee will be balanced and representative of the significantly affected interests. We request nominations for participants from anyone who believes that his or her organization or group should participate in the negotiated rulemaking process for the development of the GEAR UP proposed regulations.

DATES: We will consider all nominations for membership on the committee received by Friday, July 9, 1999.

ADDRESSES: Please send your nomination to Philip Schulz, U.S. Department of Education, 400 Maryland Avenue, SW, Room 4020, ROB–3, Washington D.C. 20202–5243, or fax to Philip Schulz at (202) 260–5872. You may also email your nominations to: philip_schulz@ed.gov.

FOR FURTHER INFORMATION CONTACT: Philip Schulz, U.S. Department of Education, 400 Maryland Avenue, SW, Room 4020, ROB–3, Washington, DC 20202–5243. Telephone: (202) 708–8429. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Section 492 of the Higher Education Act of 1965, as amended (HEA) requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations.

On March 2, 1999, we published in the **Federal Register** (64 FR 10184) final regulations (applicable only to the fiscal year 1999 competition) to implement GEAR UP. Section 437(d) of the General Education Provisions Act exempts from the rulemaking requirements in the Administrative Procedure Act regulations governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). In order to make awards on a timely basis, we published the regulations for the fiscal year 1999 competition in final under the authority of section 437(d). Further, we determined that, to make grants under the competition before the funds expired, the use of negotiated rulemaking for the fiscal year 1999 competition would be impracticable and contrary to the public interest under section 492(b)(2) of the HEA.

We will develop the regulations that will apply to subsequent competitions for GEAR UP funding by following the negotiated rulemaking procedures in section 492 of the HEA. We intend to select participants for the negotiated rulemaking process from nominees of the organizations or groups that represent the interests significantly affected by the proposed regulations. To the extent possible, we will select from the nominations individuals reflecting the diversity in the industry, representing both large and small participants, as well as individuals serving local areas and national markets, in accordance with section 492(b)(1) of the HEA.

Structure of Committees

The ultimate goal of negotiated rulemaking is to reach a consensus on the proposed regulations through discussion and negotiation among interested and affected parties, including the Department of Education. With this in mind, we will conduct these negotiations within a structure that is designed to meet this goal fairly and efficiently. We expect to keep the committee to somewhere between 15–18 members. We believe this is an appropriate number to allow significantly affected parties to be represented, without making the committee so large as to be unmanageable and potentially unsuccessful. We therefore encourage organizations and groups to work together to nominate someone that would represent a coalition of organizations or groups. The meetings will be open to the public.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C. area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number does not apply.)

Program Authority: 20 U.S.C. 1090a.

Dated: June 25, 1999.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–16656 Filed 6–29–99; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–33–2–9926b; FRL–6368–5]

Approval and Promulgation of Implementation Plans Georgia; Approval of Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 15, 1995, the State of Georgia, through the Environmental Protection Division (EPD), submitted revisions to their State Implementation Plan (SIP) regarding permitting exemptions. EPA is granting final approval to these revisions.

In the Final Rules Section of this **Federal Register**, EPA is approving the Georgia State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule published elsewhere in today's **Federal Register**. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Written comments must be received on or before July 30, 1999.

ADDRESSES: Written comments should be addressed to Scott Martin at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Georgia Department of Natural Resources, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final Rule which is located in the Rules section of this **Federal Register**.

Dated: June 17, 1999.

Winston A. Smith,

Acting Regional Administrator, Region 4.

[FR Doc. 99–16377 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 210–0103b; FRL–6365–2]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Modoc County Air Pollution Control District, Siskiyou County Air Pollution Control District, Tehama County Air Pollution Control District, and Tuolumne County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP). This action is an administrative change which revises the definitions in Modoc County Air Pollution Control District (MCAPCD), Siskiyou County Air Pollution Control District (SCAPCD), Tehama County Air Pollution Control District (TCAPCD), and Tuolumne County Air Pollution Control District (TUCAPCD).

The intended effect of approving this action is to incorporate changes to the definitions for clarity and consistency and to update the Exempt Compound list in TCAPCD definition's rule to be consistent with the revised federal and state VOC definitions. EPA is proposing approval of these revisions to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) under title I of the Clean Air Act (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by July 30, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Modoc County Air Pollution Control District, 202 West 4th Street, Alturas, CA 96101–3915

Siskiyou County Air Pollution Control District, 1855 Placer Street, Ste. 101, Redding, CA 96001–1759

Tehama County Air Pollution Control District, P.O. Box 38 (1750 Walnut St.), Red Bluff, CA 96080–0038

Tuolumne County Air Pollution Control District, 22365 Airport, Columbia, CA 95310

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (Air–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION: This document concerns MCAPCD Rule 1.2, Definitions and 7.1, Definitions (Agricultural Burning); SCAPCD Rule 7.1, Agricultural Burning Definitions; TCAPCD Rule 1:2, Definitions; and TUCAPCD Rules 101, Title; 102, Definitions; and Regulation III, Open Burning, Rule 300, General Definitions. These rules were submitted to EPA on March 26, 1990 (Tuolumne), December 31, 1990 (Modoc and Siskiyou), and May 13, 1991 (Tehama) by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: June 8, 1999.

Nora L. McGee,

Acting Regional Administrator, Region IX.

[FR Doc. 99–16375 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MI73–7281b; FRL–6366–4]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State's request to redesignate the Detroit area, which includes portions of Wayne, Oakland, and Macomb Counties, to attainment for carbon monoxide (CO). The EPA is also proposing to approve the corresponding 175A maintenance plan associated with the redesignation request as a revision to the Michigan State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standard for CO.

In the final rules section of the **Federal Register**, EPA is approving the State's submittal as a direct final rule without prior proposal because EPA views this action as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated, and the direct final rule will become effective. If EPA receives relevant adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: EPA must receive written comments by July 30, 1999.

ADDRESSES: Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Mooney at (312) 886–6043.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. (Please telephone John Mooney at (312) 886-6043 before visiting the Region 5 Office.)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Volatile organic compound.

40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Carbon Monoxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 7, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–16373 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6369–8]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins and Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing an indefinite stay of the compliance dates for portions of the national emission standards for hazardous air pollutants (NESHAP) for Group I Polymers and Resins and Group IV Polymers and Resins. This proposal would stay, indefinitely, the compliance dates for existing affected sources and new affected sources with an initial start-up date on or after March 9, 1999, which are subject to the Group I Polymers and Resins and Group IV Polymers and Resins NESHAP requirements for all emission points except equipment leaks. This proposed stay will remain in effect until the date that the amendments to these rules (which were proposed on March 9, 1999) are promulgated, at which point the EPA will publish new compliance dates for these affected sources. We are proposing this stay of the compliance date for existing affected sources and new affected sources with an initial start up date on or after March 9, 1999, because of the significant amendments to these NESHAP that were proposed on March 9, 1999. It is unlikely that those amendments will be promulgated before the compliance dates for existing sources subject to Group I and Group IV Polymers and Resins regulations (September 5, 1999, and September 12, 1999, respectively).

In the "Rules and Regulations" section of today's **Federal Register**, we are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. We have explained our reasons for this action in the corresponding direct final rule, located in the [illegible] today's **Federal R[illegible]** significant adv[illegible] amendi[illegible] this r[illegible] ision may addr[illegible] v from the remain[illegible] e, we may adopt as final those provisions of the rule that are not subject to a significant adverse comment and withdraw those provisions that did receive adverse comment. For any provisions that are withdrawn, we will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: *Comments:* Written comments must be received by July 30, 1999, unless a hearing is requested by July 12, 1999. If a hearing is requested, written comments must be received by August 16, 1999.

Public Hearing. Anyone requesting a public hearing must contact the EPA by July 12, 1999. If requested, a public hearing will be held in Research Triangle Park, North Carolina, beginning at 10 a.m. on July 14, 1999.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–44 (Group I Polymers and Resins) and/or Docket Number A–92–45 (Group IV Polymers and Resins), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing to present oral testimony should contact Ms. Marguerite Thweatt, Organic Chemicals Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5673 by July 12, 1999.

Docket. Docket numbers A–92–44 and A–92–45, containing information relevant to this proposed rulemaking, are available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460, telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608, electronic mail address rosensteel.bob@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Butyl Rubber, Halobutyl Rubber, Epichlorohydrin Elastomer, Ethylene Propylene Rubber, Hypalon™, Neoprene, Nitrile Butadiene Rubber, Nitrile Butadiene Latex, Polybutadiene Rubber, Styrene-Butadiene Rubber or Latex, Acrylonitrile Butadiene Styrene Resin, Styrene Acrylonitrile Resin, Methyl Methacrylate Acrylonitrile Butadiene Styrene Resin, Methyl Methacrylate Butadiene Styrene Resin, Poly(ethylene terephthalate) Resin, Polystyrene Resin, and Nitrile Resin producers.

This table is not intended to be exhaustive but, rather, provides a guide for readers likely to be interested in the proposed revisions to the regulations affected by this action. To determine whether your facility is affected by this action, you should carefully examine all of the applicability criteria in the promulgated versions of subparts U and JJJ (61 FR 46906 and 61 FR 48208, respectively), as well as in the proposed amendments to the applicability sections (40 CFR 63.480 and 63.1310). If you have any questions regarding the applicability of this proposal to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Access and Filing Addresses

This proposal, its accompanying direct final rule, the promulgated NESHAP (40 CFR part 63, subparts U and JJJ), and other background information are available in Docket Numbers A–92–44 and A–92–45 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). These documents can also be accessed through the EPA web site at: http://www.epa.gov/ttn/oarpg. For further information and general questions regarding the Technology Transfer Network (TTN), call Mr. Hersch Rorex (919) 541–5637 or Mr. Phil Dickerson (919) 541–4814.

Electronic comments and data may be submitted by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Word Perfect 5.1 or 6.1 or ACSII file format. Identify all comments and data in electronic form by the docket numbers A–92–44 and/or A–92–45. No Confidential Business Information (CBI) should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

What Are the Administrative Requirements for this Proposal?

I. Docket

The dockets are organized and complete files of all the information submitted to or otherwise considered by EPA in the development of the final standards. The principal purposes of the docket are to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and to serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A)).

II. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA has determined that this proposal does not meet any of the criteria enumerated above and therefore, does not constitute a "significant regulatory action" under the terms of Executive Order 12866.

III. Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that is determined to be "economically significant" as defined under Executive Order 12866, and concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

IV. Paperwork Reduction Act

For both the Group I and Group IV Polymers and Resins NESHAP, the information collection requirements (ICRs) were submitted to OMB under the Paperwork Reduction Act. At promulgation, OMB had already approved the ICR for the Group IV Polymers and Resins NESHAP and assigned OMB control number 2060–0351. Subsequently, OMB approved the ICR for the Group I Polymers and Resins NESHAP, and on July 15, 1997 (62 FR 37720) assigned OMB control number 2060–0356.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA has amended 40 CFR 9.1 to indicate the ICRs contained in the Group I and IV Polymers and Resins NESHAP.

The amendments to the NESHAP contained in this proposal should have no impact on the information collection burden estimates made previously. Therefore, the ICRs have not been revised.

V. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposal. The EPA has also determined that this proposal will not have a significant adverse economic impact on a substantial number of small businesses, as it only stays the compliance dates for certain sources and imposes no additional regulatory requirements on owners or operators of affected sources. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

VI. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposal does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor does this proposal significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to this proposal.

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal governments, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposal does not create a mandate on State, local, or tribal governments. This proposal does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to these proposed amendments.

VIII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposal notice does not significantly or uniquely affect the communities of Indian tribal governments. Further, this proposal notice, provided herein, does not significantly alter the control standards imposed by subpart U or subpart JJJ for any source, including any that may affect communities of the Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposal notice.

IX. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus

standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

This action does not involve the proposal of any new technical standards. Therefore, NTTAA requirements are not applicable to today's proposal.

List of Subjects in 40 CFR Part 63

Environmental protection, air pollution control, hazardous substances, reporting and recordkeeping requirements.

Dated: June 24, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–16636 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6369–7]

RIN 2060–AD06

Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, amendments.

SUMMARY: On December 27, 1996, the Agency published a rule in the **Federal Register** implementing certain provisions in section 112(g) of the Clean Air Act (Act). After the effective date of that rule, all owners or operators of major sources of hazardous air pollutants (HAP) that are constructed or reconstructed are required to install maximum achievable control technology (MACT) (unless specifically exempted), provided they are located in a State with an approved title V permit program. When no applicable Federal emission limitation has been promulgated under section 112(d) of the Act, the Act requires the permitting authority (generally a State or local agency responsible for the program) to determine a MACT emission limitation on a case-by-case basis. If the permitting authority has not yet established procedures for requiring MACT on constructed or reconstructed major sources by the required date, the rule provides that the EPA Regional Administrator will determine MACT emission limitations on a case-by-case basis for a period of up to one year. This action proposes to amend the rule governing constructed or reconstructed major sources—by providing a longer time period (up to 30 months) during which the EPA Regional Administrator may determine MACT emission limitations on a case-by-case basis—if the permitting authority has not yet established procedures for requiring MACT on constructed or reconstructed major sources. This action is needed in order to ensure that major sources can obtain MACT determinations required for construction or reconstruction in those jurisdictions where permitting authorities require extra time to establish procedures to implement the section 112(g) rule. Because the ability of major sources to obtain permits after June 29, 1999 depends upon the timely issuance of this rule, this amendment is being issued as a direct final rule in the final rules section of this **Federal Register**.

DATES: *Comments.* EPA will accept comments regarding this proposal on or before July 10, 1999. Additionally, a public hearing regarding this proposal will be held if anyone requesting to speak at a public hearing contacts the EPA by July 7, 1999. If a hearing is requested, the hearing will be held on July 14, 1999 beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–91–64 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina on July 14, 1999 beginning at 10 a.m. Persons requesting to speak at or interested in attending a public hearing concerning this proposal should contact Ms. Kathy Kaufman, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0102.

Docket. Docket No. A–91–64, containing the supporting information for the original Regulations Governing Equivalent Emission Limitations by Permit rule is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center (6102), 401 M Street, S.W., Washington, D.C. 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying. An electronic version of this rule is available for download through the EPA web site at: http://www.epa.gov/ttn/oarpg. For further information and general questions regarding the Technology Transfer Network (TTNWEB), call Mr. Hersch Rorex (919) 541–5637 or Mr. Phil Dickerson (919) 541–4814.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Kaufman, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0102.

SUPPLEMENTARY INFORMATION: If EPA does not receive timely adverse comments or a timely hearing request concerning this proposed rule, no further action will be taken concerning this proposal, and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If EPA receives timely adverse comment or a timely hearing request, we will publish a withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. In that event, we will address all public comments in a subsequent final rule based on this proposal. The EPA will not provide further opportunity for public comment on this action. All parties interested in commenting on this amendment must do so at this time. Electronic comments and data may be submitted by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Word Perfect 5.1 or 6.1 or ACSII file format. Identify all comments and data in electronic form by the docket numbers A–91–64. No Confidential Business Information (CBI) should be submitted

through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

This action extends the time period (up to 30 months) during which the EPA Regional Administrator may determine MACT emission limitations on a case-by-case basis, if the permitting authority has not yet established procedures for requiring MACT on constructed or reconstructed major sources. For an additional explanation of the nature of the proposed amendment, the detailed rationale supporting the amendment, and the rule provision, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative Requirements

A. Docket

The docket for this regulatory action is A–91–64, the same docket as the original final rule, and a copy of today's amendment to the final rule will be included in the docket. The principle purposes of the docket are: (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (Section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this document.

B. Paper Reduction Act

The information collection requirements of the previously promulgated rule for Regulations Governing Equivalent Emission Limitations by Permit were submitted to and approved by the Office of Management and Budget. A copy of this Information Collection Request (ICR) document (ICR No. 1658.01) may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2136), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, or by calling (202) 260–2740. Today's change to the final rule does not affect the information collection burden estimates made previously. Therefore, the ICR has not been revised.

C. Analysis Under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act of 1996

Because the regulatory revisions that are the subject of today's notice would delay an existing requirement, this action is not a "significant" regulatory action within the meaning of Executive Order 12866, and does not impose any Federal mandate on State, local and tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. Further, the EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this action under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act of 1996. The regulatory change proposed here is not expected to affect the regulatory burdens on small businesses, and will not have a significant impact on a substantial number of small entities. Therefore, I certify that this action will not have a significant economic impact on a substantional number of small entities.

D. National Technology Transfer and Advancement Act

Under Section 12 of the National Technology Transfer and Advancement Act of 1995, the EPA must consider the use of "voluntary consensus standards," if available and applicable, when implementing policies and programs, unless it would be "inconsistent with applicable law or otherwise impractical." The intent of the National Technology Transfer and Advancement Act is to reduce the costs to the private and public sectors by requiring federal agencies to draw upon any existing, suitable technical standards used in commerce or industry.

A "voluntary consensus standard" is a technical standard developed or adopted by a legitimate standards-developing organization. The Act defines "technical standards" as "performance-based or design-specific technical specifications and related management systems practices." A legitimate standards-developing organization must produce standards by consensus and observe principles of due process, openness, and balance of interests. Examples of organizations that are regarded as legitimate standards-developing organizations include the American Society for Testing and Materials (ASTM), International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), American Petroleum Institute (API), National Fire Protection Association (NFPA) and Society of Automotive Engineers (SAE).

Since today's action does not involve the establishment or modification of technical standards, the requirements of the National Technology Transfer and Advancement Act do not apply.

E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) OMB determines is "economically significant" as defined under Executive Order 12866, and (2) EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These regulatory revisions are not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

F. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. These rule

revisions impose no enforceable duties on these entities. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule changes do not create a mandate on State, local or tribal governments. The rule changes do not impose any additional enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 24, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–16682 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 85 and 86

[AMS–FRL–6369–5]

RIN 2060–A123

Control of Air Pollution from New Motor Vehicles: Proposed Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification of Proposed Rule, Provision of Supplemental Information and Request for Comment.

SUMMARY: EPA published a Notice of Proposed Rulemaking (NPRM) on May 13, 1999, proposing a major program designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, minivans, and sport-utility vehicles (the "Tier 2 program"). This program would provide for cleaner air by significantly reducing vehicle emissions that contribute to increased ambient levels of ozone and particulate matter (PM), as well as other types of pollution. The proposed program combines requirements for cleaner vehicles and requirements for lower levels of sulfur in gasoline. On May 14, 1999, a panel of the Court of Appeals for the District of Columbia Circuit ruled, among other things, that the recently-promulgated national ambient air quality standards (NAAQS) for ozone and PM represented unconstitutional delegations of authority, and remanded the record to EPA for further consideration. This document clarifies that the decision of the panel does not change EPA's proposed requirements for a Tier 2 program and does not impact EPA's proposed determination that the Tier 2 program is a necessary and appropriate regulatory program that would provide cleaner air and greater public health protection. This document also provides additional ozone modeling information that was not included in the Notice of Proposed Rulemaking. EPA welcomes comment on this document.

DATES: *Comments:* We must receive your comments on the May 13, 1999 NPRM and on this document by August 2, 1999.

ADDRESSES: *Comments:* You may send written comments in paper form or by E-mail. Send paper copies of written comments (in duplicate if possible) to Public Docket No. A–97–10 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, S.W., Washington, D.C. 20460. If possible, we also encourage you to send an electronic copy of your comments (in ASCII format) to the docket by e-mail to A-and-R-Docket@epa.gov or on a 3.5 inch diskette accompanying your paper copy. If you wish, you may send your comments by E-mail to the docket at the address listed above without the submission of a paper copy, but a paper copy will ensure the clarity of your comments.

Please also send a separate paper copy to the contact person listed below. If you send comments by E-mail alone, we ask that you send a copy of the E-mail message that contains the comments to the contact person listed below.

EPA's Air Docket is open from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR Part 2.

FOR FURTHER INFORMATION CONTACT: Carol Connell, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214-4349, FAX (734) 214–4816, E-mail connell.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Tier 2 Proposal

On May 13, 1999, EPA published in the **Federal Register** its proposal to reduce emissions from light-duty vehicles (LDVs) and light-duty trucks (LDTs). 64 FR 26004. The proposal would also significantly reduce sulfur content in gasoline. The proposed program would phase in beginning in 2004. The program is projected to result in reductions of approximately 800,000 tons of nitrogen oxides (NO_X) per year by 2007 and 1,200,000 tons by 2010. It would eventually result in reductions of about 70 percent in emissions of NO_X from LDVs and LDTs nationwide by 2020. In addition, the proposed program would reduce the contribution of vehicles to other serious health and environmental problems, including particulate matter, visibility problems, toxic air pollutants, acid rain, and nitrogen loading of estuaries.

EPA proposed the standards for LDVs and LDTs pursuant to its authority under section 202 of the Clean Air Act (CAA or the Act). In particular, section 202(i) of the Act provides specific procedures that EPA must follow to determine whether Tier 2 standards for

LDVs and certain LDTs [1] are appropriate beginning in the 2004 model year. Specifically, we are required to first issue a study regarding "whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required" (the "Tier 2 study"). This study "shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards." It is also to consider (1) The availability of technology to meet more stringent standards, taking cost, lead time, safety, and energy impacts into consideration, and, (2) the need for, and cost effectiveness of, such standards, including consideration of alternative methods of attaining or maintaining the national ambient air quality standards. EPA must then submit the study as a Report to Congress. EPA submitted its Report to Congress on July 31, 1998.

Following the Report to Congress, EPA is required to determine by rulemaking whether: (1) There is a need for further emission reductions; (2) the technology for more stringent emission standards from the affected classes will be available; and (3) such standards are needed and cost-effective, taking into account alternatives. If EPA makes affirmative determinations, then the Agency is to promulgate new, more stringent motor vehicle standards ("Tier 2 standards"). EPA proposed affirmative responses to the three questions above and proposed new standards. EPA also proposed standards for larger light-duty trucks (up to 8500 pounds GVWR) under the general authority of Section 202(a)(1) and under Section 202(a)(3) of the Act, which requires that standards applicable to emissions of hydrocarbons, NO_X, CO and PM from heavy-duty vehicles [2] reflect the greatest degree of emission reduction available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety.

EPA proposed its gasoline sulfur controls pursuant to our authority under section 211(c)(1) of the Clean Air Act. Under section 211(c)(1), EPA may adopt a fuel control if at least one of the following two criteria is met: (1) The emission products of the fuel cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or (2) the emission products of the fuel will significantly impair emissions control systems in general use or which would be in general use in a reasonable time were the fuel control to be adopted.

We proposed to control sulfur levels in gasoline based on both of these criteria. Under the first criterion, we believe that existing sulfur content in gasoline used in Tier 1 and LEV technology vehicles contributes to ozone pollution, air toxics, and PM at levels which can be reasonably expected to endanger public health or welfare. Under the second criterion, we believe that in the absence of gasoline sulfur control, sulfur in fuel that would be used in Tier 2 technology vehicles would significantly impair the emissions control systems expected to be used in such vehicles.

EPA promulgated new NAAQS for ozone and PM_{10} in 1997. 62 FR 38652 (July 18, 1997); 62 FR 38856 (July 18, 1997). In proposing the Tier 2 standards, EPA proposed its determination of air quality need after considering data related to both the new NAAQS for ozone (the "8-hour ozone NAAQS") and the pre-existing ozone NAAQS (the "1-hour ozone NAAQS") as well as both the new PM_{10} NAAQS and the pre-existing PM_{10} NAAQS. Based on the data EPA believes the need for Tier 2 and sulfur control is strongly justified for both the new and pre-existing ozone and PM NAAQS.

B. Court Opinion

On May 14, 1999, a panel of the U.S. Court of Appeals for the District of Columbia Circuit found, by a 2–1 vote, that sections 108 and 109 of the Clean Air Act, as interpreted by EPA, represent unconstitutional delegations of Congressional power. *American Trucking Ass'ns, Inc., et al.*, v. *Environmental Protection Agency*, Nos. 97–1440, 1441 (D.C. Cir. May 14, 1999). The Court remanded the record to EPA. One judge dissented, finding that the majority's opinion "ignores the last half-century of Supreme Court nondelegation jurisprudence." *Id.*, slip op. at 31.

The Court also ruled on other general issues and on issues specific to each NAAQS. The Court upheld EPA's rules on some of these claims, but ruled against the Agency on others. Regarding the 8-hour ozone NAAQS, the Court found that the statute permits EPA to promulgate a revised ozone NAAQS and to designate the attainment status of areas. However, the Court curtailed EPA's ability to require states to comply with the revised ozone NAAQS. Further the Court directed the Agency to determine whether tropospheric ozone has a beneficent effect, and if so, assess ozone's net adverse health effect. The Court also ruled that EPA's use of PM_{10} (rather than, for example, $PM_{10-2.5}$ [3]) as an indicator of coarse particulate matter was arbitrary, in light of the separate NAAQS for $PM_{2.5}$, and vacated the new PM_{10} standard. The Court invited briefing on the appropriate remedy for the $PM_{2.5}$ NAAQS, as well as the status of the previous PM_{10} standard in light of the Court's ruling. In general, the Court did not find fault with the scientific basis for EPA's determinations regarding adverse health effects from ozone or PM.

EPA and the Department of Justice are currently evaluating the options concerning review of the panel's decision.

II. Effect of the Panel Decision on the Tier 2 Rule

EPA has received several questions regarding whether the decision of the panel has any effect on the Tier 2 proposal. As discussed below, EPA believes that, regardless of the eventual outcome of the Court case, the proposed Tier 2 Rule is justified as a necessary and important measure for reducing air pollutants and protecting public health. The proposed regulations continue to conform to the statutory requirements of the Act for the 1-hour ozone standard and the pre-existing PM_{10} NAAQS.

A. Vehicle Standards

1. Proposed Determinations Under Section 202(i)

Under section 202(i), EPA must promulgate new standards for LDVs and LDTs weighing 3750 lbs. or less if EPA determines that: (1) There is a need for further reductions in emissions in order to attain or maintain the national ambient air quality standards; (2) the technology for more stringent emission standards from the affected classes is available; and (3) such standards are needed and cost-effective, taking into account alternative methods of attaining or maintaining the national ambient air quality standards. EPA proposed this finding in the May 13, 1999 NPRM. EPA continues to view its proposed finding appropriate under the CAA after consideration of the D.C. Circuit decision.

a. Air Quality Need

EPA continues to believe that there is a need for further reductions in emissions to attain or maintain the ozone and PM_{10} NAAQS. The NPRM discussed this need criterion in relation

[1] LDTs with a loaded vehicle weight less than or equal to 3750 pounds.

[2] LDTs that have gross vehicle weight ratings above 6000 pounds are considered heavy-duty vehicles under the Act. See section 202(b)(3). For regulatory purposes, we refer to these LDTs as "heavy light-duty trucks," made up of LDT3s and LDT4s.

[3] The Court described PM10–2.5 as the measure of particulate matter with diameter between 2.5 and 10 micrometers.

to both the 8-hour and the 1-hour ozone standards and in relation to both the revised PM_{10} and the pre-existing PM_{10} standards. It is clear from the proposal that further reductions are needed to ensure achievement of the 1-hour ozone and pre-existing PM_{10} NAAQS. As described in the preamble, 72 million people outside of California lived in 36 metropolitan areas and 2 counties designated nonattainment under the 1-hour ozone NAAQS as of August 10, 1998, while 13 million people outside of California lived in 68 counties designated nonattainment under the pre-existing PM_{10} NAAQS. 64 of the counties, with a population of about 8 million people, are not included in current ozone nonattainment areas. Therefore, approximately 80 million people live in areas currently designated nonattainment under one or both of the NAAQS.

Though EPA projects that ozone control programs will reduce the number of these areas in the future, it is clear that, absent Tier 2 controls, nonattainment problems under the 1-hour ozone standard will continue well into the future. In the proposal, EPA projected future ozone levels by applying a "rollback method" to selected areas in the region analyzed by the Ozone Transport Assessment Group (OTAG).[4] We used this method to estimate 2007 design values for both the 8-hour and 1-hour ozone standards. The 1-hour results indicated that eight metropolitan areas and two rural counties with a combined population of approximately 39 million are projected to have design values in excess of the 1-hour ozone NAAQS in 2007, after presuming implementation of controls from the Regional Ozone Transport Rule (ROTR).[5] As indicated in Table 1, these areas would be scattered throughout the OTAG region, including areas in Texas, Louisiana, Indiana and throughout the northeast, indicating that nonattainment of the 1-hour ozone standard would remain a substantial and widespread concern.

TABLE 1.—METROPOLITAN AREAS/RURAL COUNTIES WITH DESIGN VALUES PROJECTED TO EXCEED THE 1-HOUR STANDARD IN 2007 USING ROLLBACK METHOD WITH ROTR CONTROLS BUT WITHOUT TIER 2/SULFUR CONTROLS

Name	Design Value (ppb)	Pop'n.
Iberville County LA	132	31,049
La Porte County IN	131	107,066
Beaumont-Port Arthur, TX MSA	129	361,218
Hartford, CT MSA	125	1,157,585
Houston-Galveston-Brazoria, TX CMSA	175	3,731,029
Longview-Marshall, TX MSA	129	193,801
Memphis, TN–AR–MS MSA[a]	125	1,007,306
New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA:	136	19,549,649
Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA	126	5,893,019
Washington-Baltimore, DC–MD–VA–WV CMSA	126	6,726,395
Total population		38,758,117
Number of metro areas		8
Metro pop.		38,620,002
Number of counties		2
County pop.		138,115

[a] 1-hour ozone NAAQS no longer applies in a portion of the MSA.

The OTAG analysis region did not include California, and therefore EPA does not have comparable projections of future air quality in that state. It is important to note that California has under its authority designed and implemented a vehicle and fuel control program, and therefore EPA did not propose to apply the proposed Tier 2/gasoline sulfur program in California. However, in its proposal EPA noted in qualitative terms the importance of the Tier 2 and sulfur control reductions to California's efforts to reach attainment with the 1-hour ozone standard. Nine areas in California currently designated as nonattainment, and two counties currently designated as being in attainment, with a population of approximately 30 million, have current design values above the 1-hour ozone NAAQS. It appears that some California areas with an attainment deadline of 1999 will not meet that date, and therefore will require additional emission reductions to attain. Attainment of the 1-hour standard in the remaining areas by their various later attainment dates remains the goal of California and EPA, but will be challenging to accomplish. Though this regulation does not directly regulate California vehicles, ozone levels in California are reduced through reductions in emissions from vehicles sold outside California that subsequently enter California temporarily or permanently. According to California, about 7 to 10 percent of all car and light truck travel in California takes place in vehicles originally sold outside of California. In fact, the state of California has recently filed an update to its State Implementation Plan for the South Coast Air Basin that expressly claims that the Tier 2 program will lead to four tons of reduced NO_X emissions per day in the South Coast area in 2010.[6] Furthermore, low gasoline sulfur levels would prevent poisoning of the catalysts of California vehicles that travel outside California and later return to the state.

The 1-hour ozone design values for 2007 presented in Table 1 above were based on an analysis approach called the "rollback method" that combines modeling results for future years with recent measured ozone levels to project future ozone levels. The general concept in this method is to first determine the design value from the monitoring data for a three-year base period, then estimate the percentage reduction between the base year and a future year (the year 2007 is used in Table 1) using the regional ozone modeling system. Finally, the percentage reduction is applied to the ambient design value to project the design value for the future year. A more detailed discussion of this approach appears in the draft RIA.

The rollback approach was applied to both the 1-hour or 8-hour ozone predictions in the Tier 2/gasoline sulfur proposal. EPA has more commonly used the "exceedence method," which estimates future ozone levels from the modeling results more directly. The exceedence approach is more consistent than the rollback method with EPA's guidance to states regarding technical methods used to demonstrate attainment with the existing 1-hour ozone standard. In this method, the predicted ozone concentrations in 2007 are compared to the ozone standard of interest to characterize whether the area is likely to experience an exceedence of the ozone standard in the future. A more complete description of this guidance can be found in "Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS", U.S. EPA (1996), EPA–454/B–95–007, (June 1996).

In light of the recent Court decision, EPA is providing a more thorough presentation of the available ozone modeling data on the need for additional emission reductions to meet the 1-hour ozone standard, to provide additional information for public comment.

In the ROTR, EPA used the exceedence method to determine whether designated 1-hour nonattainment areas would be likely to experience exceedences in 2007, considering the effects of growth and emission control measures. EPA used an exceedence approach to estimate the impacts of controls on 1-hour ozone concentrations because this approach is more consistent with the 1-hour standard than a rollback approach. The form of the 1-hour standard considers the number of exceedences at a monitoring site over a three-year period. Year-to-year variations in meteorological conditions can result in considerable variation in the number of exceedences at a given location across successive three-year periods. Using the exceedence approach based on modeling for specific ozone episodes provides for a consistent set of meteorological conditions over which to evaluate the effects of control strategies on 1-hour exceedences. In moving to an 8-hour standard, EPA changed the form of the standard from an exceedence based approach to an average concentration based approach. Specifically, 8-hour design values are calculated as the 3-year average of the 4th highest 8-hour value in each year at a monitoring site. As a result of this multi-year averaging, the effects of variations in year-to-year meteorological conditions are reduced and thus, 8-hour design values are likely to be more stable over time than 1-hour exceedences. The rollback method, which is based on the average ozone reductions calculated from model predictions, is consistent with the form and temporal stability of 8-hour design values.

Consistent with our guidance on 1-hour attainment demonstrations and with our reliance on the exceedence approach in the ROTR, EPA has now analyzed the air quality modeling results using the exceedence method. The results of this analysis are presented as supplemental information that bears on our proposed finding regarding the need for additional reductions in ozone precursor emissions to help areas attain the NAAQS.

Table 2 shows results of the exceedence method for the 1-hour standard. It lists 17 current nonattainment areas that are projected to experience exceedences of the 1-hour standard in 2007, even after implementation of the ROTR, the National Low Emission Vehicle Program, the 2004 highway diesel engine standards, the Phase II nonroad diesel engine standards, and other federal emission control measures.[7] These results indicate that there are more, and more geographically dispersed, metropolitan areas which need further ozone precursor emission reductions to meet the 1-hour ozone NAAQS, than was indicated by the rollback method as reported in Table 1. The population of these 17 areas exceeds 70 million. Details of this analysis are given in a memo to Air Docket A–97–10, titled "Exceedence Method Analysis of Photochemical Modeling in Support of Tier 2/Sulfur."

TABLE 2.—METROPOLITAN AREAS PROJECTED TO EXPERIENCE EXCEEDENCES OF THE 1-HOUR STANDARD IN 2007 OR 2010, AS APPLICABLE, WITH ROTR CONTROLS BUT WITHOUT TIER 2/SULFUR CONTROLS

[Does not include areas for which the 1-Hour Ozone NAAQS no longer applies.]

Metropolitan area	1990 population
Atlanta, GA MSA	2,959,500
Baton Rouge, LA MSA[a]	528,261
Beaumont-Port Arthur, TX MSA[a]	361,218
Birmingham, AL MSA	839,942
Chicago-Gary-Kenosha, IL-IN-WI CMSA	8,239,820
Cincinnati-Hamilton, OH-KY-IN CMSA[b]	1,817,569
Dallas-Fort Worth, TX CMSA[a]	4,037,282
Hartford, CT MSA	1,157,585
Houston-Galveston-Brazoria, TX CMSA[a]	3,731,029
Los Angeles-Riverside-San Bernardino CA CMSA[a, c]	13,000,000
Louisville, KY-IN MSA	949,012
Milwaukee-Racine, WI CMSA	1,607,183
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA CMSA	19,549,649
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD CMSA	5,893,019
Springfield, MA MSA	587,884
St. Louis, MO-IL MSA	2,492,348

[4] OTAG evaluated a region that included all or part of the easternmost 37 states.

[5] The design value is the calculated ozone level, based on ozone measurements in the area, that is compared to the NAAQS to determine compliance with the standard.

[6] California Air Resources Board, Executive Order G–99–037, May 20, 1999, Attachment A, p. 6–7, 10.

[7] The deadline for submission of state implementation plans under the ROTR was recently stayed by a panel of the Court of Appeals for the D.C. Circuit pending further review. EPA believes that the ROTR is fully consistent with the Clean Air Act and should be upheld. However, it should be noted that in the absence of the controls mandated in the ROTR, the emission reductions from the Tier 2 program would be even more necessary for compliance with the NAAQS.

TABLE 2.—METROPOLITAN AREAS PROJECTED TO EXPERIENCE EXCEEDENCES OF THE 1-HOUR STANDARD IN 2007 OR 2010, AS APPLICABLE, WITH ROTR CONTROLS BUT WITHOUT TIER 2/SULFUR CONTROLS—Continued

[Does not include areas for which the 1-Hour Ozone NAAQS no longer applies.]

Metropolitan area	1990 population
Washington-Baltimore, DC-MD-VA-WV CMSA	6,726,395
Total Population	74,479,686
Number of Areas	17

[a] = These areas are not subject to the ROTR and were modeled accordingly.
[b] = 1-hour ozone NAAQS proposed to no longer apply.
[c] = The attainment date considered for Los Angeles-Riverside-San Bernardino is 2010. For other listed areas, the date considered is 2007. For the former area, the possibility of 2010 exceedences without Tier 2/Sulfur controls is inferred from the inclusion of these reductions in the most recently submitted SIP update. For other areas, the prediction is based on the exceedence method applied to regional ozone modeling results.

Our preliminary analysis indicates that the proposed Tier 2/Sulfur program would reduce the number and severity of ozone exceedences in areas currently designated nonattainment under the existing 1-hour ozone standard. We expect to conduct further analysis of the impact of the Tier 2/sulfur program on exceedences of the current 1-hour ozone standard as part of our analysis for the final rule.

EPA invites comment on the appropriateness of using the exceedence and/or rollback method in this rulemaking for purposes of analyzing future compliance with the 1-hour ozone NAAQS.

As discussed at length in the proposed rule, emissions from LDVs and LDTs will represent a large percentage of emissions of ozone precursors once the ROTR is implemented. To the extent that significant additional reductions in precursors are needed for the areas discussed above to attain or maintain the 1-hour ozone NAAQS, EPA believes that reductions from LDVs and LDTs in particular will be necessary.

The NO_X and sulfur dioxide emissions from LDVs and LDTs also contribute to elevated particulate matter levels as these emissions are transformed by physical and chemical processes in the atmosphere. The resulting particulate matter contributes to current and projected nonattainment with the pre-existing PM_{10} standard. In the NPRM, EPA presented its projection that 33 counties outside of California, with a population of approximately eleven million, and twelve counties in California, with a population of about seven million, would not be in attainment with the pre-existing PM_{10} standard in 2010, absent further emission reductions[8]. These projections were made during the rulemaking that established the revised PM^{10} standard. The following additional information is presented regarding current and projected attainment of the pre-existing PM_{10} standard.

Twenty-one of the 45 counties which EPA projected to be in nonattainment with the pre-existing PM_{10} standard in 2010 are not part of metropolitan areas. In these 21 rural counties, PM_{10} levels are likely to be dominated by natural events (volcanoes, wind-blown dust, or wildfires) or by single large industrial sources of PM_{10}. As such, the PM and PM precursor reductions from the Tier2/Sulfur proposal are less likely to materially affect their attainment and maintenance of the standard, although EPA invites comment on this issue.

Table 3 lists the 24 urban counties projected to be in nonattainment in 2010. For two areas (Lubbock Co. and Spokane Co.) there is specific indication that natural events are responsible for the high PM_{10} levels. Also, while Philadelphia was projected to be in nonattainment in this analysis, additional emission reductions have since occurred there through a source shutdown, which may result in PM_{10} attainment in 2010. The remaining 21 urban counties contain about 15 million people. The reductions in PM and PM precursors resulting from the Tier 2/Sulfur rule would help to reach and maintain the NAAQS in such areas. Of these 21 counties and 15 million people, 17 counties and 9 million people are not included in the projected ozone exceedence areas listed in Table 2 above.

TABLE 3.—COUNTIES, IN METROPOLITAN AREAS ONLY, PROJECTED NOT TO ATTAIN THE PRE-EXISTING PM_{10} STANDARD IN 2010

Name	Population (1990)
Bernalillo Co NM	480,577
Kern Co CA	369,608
Scott Co IA	150,973
Lane Co OR	282,912
Fresno Co CA	667,000
Haris Co TX[a]	2,818,199
Clark Co NV	741,368
Riverside Co CA[a]	1,170,413
San Bernardino Co CA[a]	1,418,380
Lubbock Co TX[b]	222,636
Ouachita Par LA	142,938
Davidson Co TN	510,784

[8] The predictions of 2010 nonattainment under the pre-existing PM_{10} NAAQS were made on the basis of individual counties, not metropolitan areas. The methods used to project PM concentrations in 2010 from 1990 emissions and ambient concentration data introduce several sources of uncertainty. Uncertainties exist regarding emission inventory estimates from human and natural sources, monitoring data, and the models used to account for physical and chemical processes in the atmosphere.

TABLE 3.—COUNTIES, IN METROPOLITAN AREAS ONLY, PROJECTED NOT TO ATTAIN THE PRE-EXISTING PM_{10} STANDARD IN 2010—Continued

Name	Population (1990)
New Haven Co CT[a]	804,219
Cass Co NE	21,318
Philadelphia Co PA[a, c]	1,585,577
Maricopa Co AZ	2,122,101
Utah Co UT	263,590
Pennington Co SD	81,343
Washoe Co NV	254,667
Yolo Co CA	141,000
San Diego Co CA	2,498,016
Santa Cruz Co CA	229,734
Spokane Co WA[d]	361,333
Hancock Co WV	35,233
Total Population	17,373,919
Number of Areas	24
Population of 21 Areas Without Specific Indication of Natural Events or Additional Emission Reduction	15,204,373
Population of 17 Areas Without Specific Indication of Natural Events or Additional Emission Reduction, and Not Listed in Table 2	8,993,162

[a] Counties in areas also projected to exceed the 1-hour ozone standard (listed in Table 2 above).
[b] PM10 levels in excess of the NAAQS in Lubbock Co. TX are considered to be due to fugitive dust from agricultural land. The area is implementing USDA guidelines on control of fugitive dust.
[c] Monitored PM10 levels in excess of the NAAQS in Philadelphia Co. PA are considered to have been due to a lead smelting operation which has ceased operation.
[d] The state of Washington has submitted a Natural Events Action Plan for Spokane Co.

Based on the above, EPA reiterates its proposed finding that there is a need for further reductions in emissions in order to attain or maintain the NAAQS, even when consideration is limited to the one-hour ozone and the pre-existing PM_{10} NAAQS. A total of approximately 83 million people living in 17 metropolitan areas and 17 individual metropolitan counties projected to not be in attainment of either or both of these standards would be helped by Tier 2/Sulfur controls. We invite comment on all the information presented in this section of this notice.

b. Technological Feasibility and Cost-Effectiveness

EPA's NPRM proposed a determination that technology would be available for meeting emission standards more stringent than current levels. Indeed, the NPRM proposed a finding that the standards are fully feasible for LDVs and LDTs. The Court's decision does not concern this issue and therefore does not affect EPA's rationale.

The Court decision also does not change EPA's proposed determination regarding the need for and relative cost-effectiveness of the Tier 2 standards. The Tier 2 program, costing between $1213 and $2134 per ton of NO_X and HC reduced, compares favorably to other possible control programs that might be used to meet the ozone NAAQS. The Tier 2/Gasoline Sulfur proposal made a summary comparison was made to the over 50 technologies identified in the ozone NAAQS revision rulemaking as alternative means for reducing NO_X and VOC emissions to meet the 1-hour and 8-hour NAAQS. 64 FR 26004, 26074. The average cost effectiveness of these technologies varied from hundreds of dollars per ton to tens of thousands of dollars per ton. If all of the technologies identified for the ozone NAAQS analysis costing less than $10,000/ton were implemented nationwide, they would produce NO_X emission reductions of about 2.9 million tons per year, compared to the 2.8 million tons per year for Tier 2 once the program is fully implemented. As summarized in the Tier 2/sulfur NPRM, we found that these additional local emission control measures only brought 2 of the 19 projected 8-hour ozone nonattainment areas into attainment. While not mentioned in the Tier 2/sulfur NPRM, this same analysis showed that these additional local emission control measures only brought 1 of the 9 projected 1-hour ozone nonattainment areas into attainment. Thus, there appears to be a strong need for the Tier 2 and sulfur standards, in order for local areas to achieve, not only the 8-hour ozone NAAQS, but also the 1-hour ozone NAAQS. In addition, as discussed in the NPRM, the cost-effectiveness of the Tier 2 program is within the range of the cost-effectiveness of other mobile source control programs that have already been promulgated. Given the continuing need for further emission reductions to comply with the 1-hour NAAQS discussed above, we believe that the Tier 2/gasoline sulfur control proposal is a cost effective approach for attaining and maintaining the NAAQS.

The magnitude of emission reductions that can be achieved by this program would be difficult to achieve from any other source category. Given the percentage of emissions of ozone precursors that come from LDVs and LDTs and the possible alternative control programs areas may use to meet the ozone standard, it would be difficult to attain and maintain the ozone NAAQS (1-hour or 8-hour) in a cost-effective manner without substantial reductions from LDVs and LDTs.

Moreover, the monetized benefit estimates used for the benefit cost analysis of the Tier 2/gasoline sulfur proposal are not affected by the Court action. 64 FR 26078–79 (May 13, 1999). The estimates of benefits are based on (a) Our estimates of the emission reductions that the rule would produce, (b) our projections of the air quality changes that would result from these emission reductions, (c) the changes in various health and welfare endpoints caused by the air quality changes, and (d) the value of reductions in those health and welfare endpoints. None of these pieces of the benefits analysis are dependent upon the specific level of the NAAQS. Emission reductions and related air quality changes are determined by the requirements of the rule itself. The changes in health and welfare effects are determined solely

from the underlying scientific studies relating effects and endpoint changes. Similarly, the valuation of changes in these end points is derived directly from the scientific literature. None of these factors depends on the specific NAAQS level.

2. Section 202(a)

EPA's proposed vehicle standards for LDTs above 3750 pounds are governed by the general provisions of section 202(a)(1) and (2) and provisions of section 202(a)(3).[9] Under section 202(a)(1), EPA shall promulgate "standards applicable to the emission of air pollutant from any class * * * of new motor vehicles . . ., which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." Under section 202(a)(2), such standards must provide appropriate lead time, "giving appropriate consideration to the cost of compliance within such period." Section 202(a)(3), applicable to heavy-duty vehicles, requires EPA standards to "reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology."

The Court's decision does not address these provisions, and does not change EPA's belief that the proposed Tier 2 standards are lawful and appropriate under these criteria. As noted above and in the proposal, the standards in this proposed rule would reduce emissions that cause or contribute to ozone, particulate matter, air toxics, acid rain, and other air pollution. We believe that the information provided in the NPRM, as well as the information that EPA relied on in setting the NAAQS for ozone and PM, will support a conclusion that these kinds of air pollution can be reasonably anticipated to endanger the public health or welfare.

Based on this and the information presented in the NPRM on the technological feasibility and cost of emissions controls to reduce vehicle emissions, EPA continues to believe that it is appropriate to propose these emissions standards to reduce vehicle emissions of VOCs, NO_X and PM, given that they cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. Specifically with respect to ozone and PM, this is the case even if one only considers reductions needed to achieve or maintain ambient air quality at the levels of the pre-existing NAAQS. Moreover, the Court's opinion does not address EPA's determination that the 1-hour ozone standard fails to protect health with an adequate margin of safety,[10] and further reductions are needed. Further, the discussion above shows that, in the absence of the Tier 2 program, healthful air quality is not achieved even if we look only at the pre-existing NAAQS. Moreover, as discussed above, the Court's opinion does not change EPA's belief that the standards proposed are technologically feasible in the time permitted, giving appropriate consideration to cost. We seek public comment on all aspects of this supplemental notice, including the continuing need for the proposed vehicle emission reductions.

B. Gasoline Sulfur Restrictions

Under section 211(c)(1), EPA may adopt a fuel control where one or more of the following conditions apply: (1) the emission products of the fuel cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or (2) the emission products of the fuel will significantly impair emissions control systems in general use or which would be in general use were the fuel control to be adopted. The Court's decision does not address these provisions and does not change our view that the proposed gasoline sulfur standards are lawful and appropriate under this criterion.

Under the first criterion, we believe that emissions products related to sulfur in gasoline used in Tier 1 and LEV technology vehicles contribute to ozone pollution, air toxics, and PM. The information provided in the NPRM and in this notice, as well as the information that EPA relied on in setting the NAAQS for ozone and PM, support the conclusion that emissions from Tier 1 and LEV technology vehicles contributes to these kinds of air pollution, and that these kinds of air pollution can be reasonably anticipated to endanger the public health or welfare. The information provided in the NPRM indicates that when Tier 1 and LEV technology vehicles are operated on higher-sulfur fuel, emissions which give rise to ozone, air toxics, and PM pollution increase substantially. The sulfur levels proposed in the NPRM would result in substantial reductions in these emissions (as discussed more fully below) and the resulting ozone, air toxics, PM, and other air quality problems.

Based on this and the information presented in the NPRM on the technological feasibility and cost of controls to reduce gasoline sulfur, EPA believes that it is appropriate to propose the gasoline sulfur standards to reduce vehicle emissions of VOCs, NO_X and PM, given that they cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. EPA believes that reductions in gasoline sulfur would provide substantial reductions in these emissions, and would achieve significant reductions soon after implementation, because reducing sulfur in gasoline would immediately reduce emissions from the existing vehicle fleet. Specifically with respect to ozone and PM, this is the case even if one only considers reductions needed to achieve or maintain ambient air quality at the levels of the pre-existing NAAQS. Moreover, the Court's opinion does not question EPA's determination that the 1-hour ozone standard has little or no margin of safety, and further reductions are needed. As required by Section 211(c)(2)(A) prior to regulation under the public health or welfare criterion of Section 211(c)(1), EPA considered all relevant medical and scientific evidence available relating to the emissions impact of sulfur in gasoline, including its impact on emissions of ozone precursors, PM, and air toxics. EPA also considered whether vehicle standards under Section 202 would be technologically and economically feasible. For the reasons discussed above, the Court's opinion does not change our analysis under section 211(c)(2)(A).

Moreover, the Court's decision is not relevant to the second criterion of section 211(c)(1). Under this criterion, EPA is proposing the sulfur standards based on our belief that sulfur in the gasoline that will be used in Tier 2 technology vehicles will significantly impair the emissions control systems expected to be used in such vehicles. The Court's decision does not affect this proposal, as EPA's position on the sulfur sensitivity of Tier 2 emissions control technology is based on a technical analysis of the capability of vehicle emission control technology.

As required by section 211(c)(2)(B) prior to regulation under this criterion of section 211(c)(1), EPA also considered the available scientific and economic data, including an analysis of costs and benefits of emissions control systems that are or will be in general use and require low sulfur fuel, and those that are or will be in general use and do not require low sulfur fuel. As described in Appendix D of the Regulatory Impact Analysis, EPA believes that there are no emissions control systems for gasoline vehicles meeting the proposed Tier 2 standards that would not require low sulfur fuel, and therefore believes that the benefits that would be achieved through implementation of the proposed Tier 2 and gasoline sulfur programs cannot be achieved through the use of emission control technology that is not sulfur-sensitive. The efficiency of catalytic converters used in gasoline-powered vehicles is very sensitive to the level of sulfur in gasoline. As discussed in the Regulatory Impact Analysis supporting the rule, NO_X emissions increase by about 15% in Tier 1 vehicles as gasoline sulfur levels rise from 40 to 330 ppm. LEV technologies are even more sensitive to sulfur, with NO_X increases of 40–130% measured in testing programs. NLEV vehicles are now being sold in the northeastern United States and will be sold in the remainder of the United States by 2001. A substantial portion of the NO_X emission reduction benefits from the gasoline sulfur program would arise immediately as a result of the reductions of emissions in the current fleet in these early years. As described in section II.A.1.b. above, the Court's decision does not affect EPA's analysis of the costs and benefits of the Tier 2 program or the gasoline sulfur program. Moreover, the Court's decision is not relevant to EPA's analysis of whether vehicle emissions control technology that is not sulfur-sensitive will be in general use.

EPA's proposal also proposes that the sulfur standards are feasible in the lead time provided. The Court's decision does not concern this issue and therefore does not disturb EPA's rationale.

III. Public Comment

We seek comments on all aspects of this Supplemental document, including the continuing need for Tier 2 emission standards for vehicles and reducing sulfur in gasoline to attain and maintain the NAAQS. In addition, we have just completed four public hearings around the country on the Tier 2 proposal and continue to welcome written public comments on the Tier 2/Gasoline sulfur proposal until the closing date of August 2, 1999. Please see the **ADDRESSES** section in this document for how and where to send any comments on the Tier 2 Proposal, as well as any comments you may have on the supplemental information provided in today's document.

Dated: June 23, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–16683 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

42 CFR Part 66

RIN 0925–AA16

National Research Service Awards

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to amend the regulations governing National Research Service Awards (NRSA) in order to incorporate changes necessitated by enactment of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reorganization Act of 1992, Public Law 102–321, and the National Institutes of Health Revitalization Act of 1993, Public Law 103–43.

DATES: Comments on the proposed changes must be received on or before August 30, 1999 in order to ensure that NIH will be able to consider the comments in preparing the final rule.

ADDRESSES: Comments should be sent to Jerry Moore, NIH Regulations Officer, National Institutes of Health, 6011 Executive Blvd., Room 601, MSC 7669, Rockville, MD 20892.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, at the address above, or telephone (301) 496–4607 (not a toll-free number). For further information about the National Research Service Awards program contact the Extramural Outreach and Information Resources Office (EOIRO), Office of Extramural Research, 6701 Rockledge Drive, Room 6208, MSC 7910, Bethesda, MD 20892–7910, (301) 435–0714 (not a toll-free number). Information may also be obtained by contacting the EOIRO via its e-mail address (asknih@odrockm1.od.nih.gov) and by browsing the NIH Home Page site on the World Wide Web (http://www.nih.gov).

SUPPLEMENTARY INFORMATION: The ADAMHA Reorganization Act of 1992, Pub. L. 102–321, was enacted on July 10, 1992. That Act transferred the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institute on Drug Abuse (NIDA), and the National Institute of Mental Health (NIMH) to NIH, effective October 1, 1992, and provided for the administration of treatment and service programs under a newly created Substance Abuse and Mental Health Services Administration (SAMHSA). In order to avoid confusion between the ADAMHA Minority Access to Research Careers (MARC) and the NIH MARC program, the name of the ADAMHA program was changed to Career Opportunities in Research Education and Training (COR). Currently, the MARC program is administered by the National Institute of General Medical Sciences (NIGMS) and the COR program is administered by the NIMH. NIH proposes revising paragraph (g) of § 66.102 of the existing regulation to reflect this name change and the current organization locations of the respective programs.

Subsequently, the National Institutes of Health Revitalization Act of 1993, Public Law 103–43, was enacted on June 10, 1993. Provisions of that Act necessitate that NIH make changes in both Subparts A and B of the current regulations governing the NRSA program.

Section 1601 of Public Law 103–43 directs the Secretary of Health and Human Services (HHS) to conduct the NRSA program in a manner that will result in the recruitment of women and individuals from disadvantaged backgrounds (including racial and ethnic minorities) into fields of biomedical or behavioral research and the provision of research training to

[9] The proposed evaporative standards are governed by section 202(a) and 202(k).

[10] The one-hour standard for ozone was set 20 years ago, in 1979, based on the science available at that time. 44 FR 8202 (1979). EPA next reviewed the ozone NAAQS in 1993, in compliance with a court-ordered schedule, and concluded that revision was not appropriate at that time. 58 FR 13008 (1993). EPA recognized that its 1993 decision was based on out-of-date criteria that did not include a large emerging database suggesting the one-hour standard might need revision. Id. at 13013, 13018. In light of the court-ordered deadline EPA determined to complete the review and proceed "as rapidly as possible" with the next review to assess the new science. Id. at 13008, 13015–13016. Even during the course of the 1993 review, EPA's science advisors, the Clean Air Scientific Advisory Committee (CASAC), concluded that the one-hour standard provided "little, if any, margin of safety." 61 FR 65716, 65727 (1996). In addition, several members of the CASAC panel recommended that consideration should be given to a lower 1-hour level of 0.10 ppm to offer some protection against effects for which there was preliminary information at that time of associations with 8-hour exposures to ozone. *Id.* The criteria supporting the 1997 revision of the ozone NAAQS confirmed that the one-hour standard was inadequate to protect public health with an adequate margin of safety. For example, the criteria document stated that there is "strong evidence that ambient exposures to ozone can cause significant exacerbations of pre-existing respiratory disease in the general public at concentrations below 0.12 ppm." U.S. EPA (1996), Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004abcF, p. 7–171.

women and those individuals. The United States House of Representatives report accompanying the NIH Revitalization Act of 1993 suggested that NIH consider the possibility of permitting part-time research training for women to keep them from losing training experience while having child care responsibilities. NIH proposes to revise paragraph (b) of § 66.103 of the current NRSA regulations and add a new paragraph (c) to permit individuals, in cases of disability or pressing family need, part-time research or training. Additionally, paragraph (a) of § 66.103 would be amended by changing the word "application" to read "the award" to reflect the current policy with regard to eligibility requiring that a recipient must be lawfully admitted to the United States for permanent residence at the time of the award rather than at the time of application.

Section 1602 of the NIH Revitalization Act of 1993 substantially modifies the service payback obligation under the NRSA program. Under provisions of the new law, only individuals in the first twelve months of postdoctoral training incur a payback obligation. Additionally, individuals may pay back this obligation by engaging in service for an equal period of health-related research or health-related teaching; or, if individuals receive an NRSA for more than twelve months, each month beyond 12 months will count toward satisfaction of the repayment obligation. NIH proposes to amend § 66.105 by revising paragraphs (a), (b), and (c); revise § 66.110 in its entirety; amend § 66.111 of subpart A by revising paragraph (a)(1), the introductory language of paragraph (b), and paragraph (b)(4); and amend § 66.205 of subpart B by revising paragraphs (a)(1) and (b) to reflect these changes in the payback obligation. Additionally, paragraph (a)(2) would be amended by changing the word "application" to read "the award" in order to reflect the current policy with regard to eligibility requiring that a recipient must be lawfully admitted to the United States for permanent residence at the time of the award rather than at the time of application. Paragraph (b) of § 66.205 would be amended by changing the reference to "§ 66.106(d)" to read "§ 66.106(e)" to correct an error in the current text.

In § 66.112, subpart A, the reference to the regulations pertaining to inventions and patents at 45 CFR parts 6 and 8 would be removed to reflect the rescinding of parts 6 and 8, effective on October 22, 1996 (61 FR 54743); and the references to the regulations pertaining to debarment and suspension at 45 CFR part 76 and the guidelines for research involving recombinant DNA molecules would be amended to comply with **Federal Register** format requirements. The title of § 66.112 would be amended to reflect that policies, as well as regulations, are referenced in that section.

In § 66.207, the reference to the regulations pertaining to the administration of grants at 45 CFR part 74, the reference to the regulations pertaining to debarment and suspension from eligibility for financial assistance at 45 CFR part 76, and the reference to the guidelines for research involving recombinant DNA molecules would be amended to comply with **Federal Register** format requirements. Also, a reference to the regulations to ensure objectivity in PHS-funded research at 42 CFR part 50, subpart F, would be added to reflect their applicability to NRSA research training grants and direct fellowship awards.

Additionally, NIH proposes to revise the Authority section and correct the references to section 472 of the Public Health Service Act and the United States Code [42 U.S.C. 289l–1] in § 66.101, § 66.102(d), § 66.105(b), § 66.106(a)(2), § 66.201, and 66.206(a)(3) to reflect the correct citations.

Finally, § 66.104 would be amended by adding the word "and" immediately following the word "resources" in paragraph (b)(5) to correct an error in the current text.

The purpose of this notice is to invite public comment on the proposed changes to the current NRSA program regulations. The following statements are provided as information for the public.

The Department strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Executive Order 12866

This NPRM was reviewed as required under Executive Order 12866 and was deemed to fall within the scope of the definition of the term "significant regulatory action" contained in section 3(f) of the Order. Consequently, the NPRM was submitted to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) for the pre-publication review required for all regulatory actions deemed as "significant" under the Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they create a significant impact on a substantial number of small entities. The Secretary certifies that the proposed changes to the NRSA program regulations would not have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This NPRM does not contain any information collection requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) numbered program affected by this NPRM is: 93.186 National Research Service Awards-Health Service Research Training.

List of Subjects in 42 CFR Part 66

Grant programs—Health research training

Dated: January 13, 1999.

Harold Varmus,

Director, NIH.

Approved: March 11, 1999.

Donna Shalala,

Secretary.

For the reasons set forth in the preamble, part 66, subparts A and B, of title 42 of the Code of Federal Regulations are proposed to be amended as set forth below.

PART 66—NATIONAL RESEARCH SERVICE AWARDS

Subpart A—Direct Awards

1. The authority citation of part 66 would be revised to read as follows:

Authority: 42 U.S.C. 216, 288.

2. Section 66.101 would be revised to read as follows:

§ 66.101 Applicability.

The regulations in this subpart apply to National Research Service Awards made by the Secretary to individuals for research and training to undertake research, under section 487 of the Public Health Service Act, as amended (42 U.S.C. 288).

3. Section 66.102 would be amended by revising paragraphs (d) and (g) to read as follows:

§ 66.102 Definitions.

* * * * *

(d) *Award* means a National Research Service Award under section 487 of the Act (42 U.S.C. 288).

* * * * *

(g) *Predoctoral Training* means training at the post-baccalaureate level in a program leading to the award of a doctor of philosophy of science, or equivalent degree. For purposes of Awards under the Minority Access to Research Careers programs of the National Institute of General Medical Sciences and the Career Opportunities in Research Education and Training programs of the National Institute of Mental Health, *predoctoral training* also means training in a program leading to the award of a baccalaureate in science or equivalent degree.

* * * * *

4. Section 66.103 would be amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 66.103 Eligibility.

* * * * * *

(a) Be a citizen, noncitizen national of the United States, or lawfully admitted to the United States for permanent residence at the time of the award;

(b) Propose to engage in such research, or training to undertake research, in a program specified in section 487(a)(1)(A) of the Act; and

(c) Propose to engage in such research or training to undertake research on a full-time basis except in cases of disability or pressing family need.

5. Section 66.104 would be amended by adding the word "and" immediately following the word "resources" in paragraph (b)(5). As revised, paragraph (b)(5) would read as follows:

§ 66.104. Application.

* * * * *

(b) * * *

(5) The availability of necessary resources and facilities at the institution where the research or training would be conducted.

6. Section 66.105 would be amended by revising paragraphs (a), (b) introductory text, and (c) to read as follows:

§ 66.105 Requirements.

* * * * * *

(a) For any Award made for an individual's initial twelve months of NRSA postdoctoral research or training, the individual has assured the Secretary, in the form and manner the Secretary may prescribe, that he or she will satisfy the requirements of § 66.110.

(b) If the proposed research or training would take place at an institution other than the National Institutes of Health, the institution has assured the Secretary in the form and manner the Secretary may prescribe. The assurance shall indicate that:

* * * * *

(c) The individual has assured the Secretary, in the form and manner the Secretary may prescribe, that the Award to the individual will not be used to support a residency.

7. Section 66.106 would be amended by revising paragraph (a)(2) introductory text to read as follows:

§ 66.106 Awards.

(a) * * *

(2) Whose proposed research or training would, in the judgment of the Secretary, best promote the purposes of section 487(a)(1)(A) of the Act, taking into consideration among other pertinent factors:

* * * * *

8. Section 66.110 would be revised in its entirety to read as follows:

§ 66.110 Service, payback, and recovery requirements.

(a) Each individual who receives an Award for postdoctoral research or training shall engage in a month of research training, research, or teaching that is health-related (or any combination thereof) for each month of support received, up to a maximum of twelve months. Such period shall be served in accordance with the usual patterns of such employment or training.

(b) In any case in which an individual receives an Award for more than twelve months, the thirteenth month and each subsequent month of performing activities under the Award shall be considered to be activities toward satisfaction of the requirement established in paragraph (a) of this section.

(c) Except as provided in § 66.111, an individual subject to the requirements for service in paragraph (a) of this section must begin to undertake the service on a continuous basis within two years after the expiration or termination of his or her Award.

(d) If the individual fails to undertake or perform the service in accordance with the requirements of this section, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula:

$$A = 0\frac{(t-s)}{(t)}$$

In which

A is the amount the United States is entitled to recover;

0 is the sum of the total amount paid to the individual for the months of postdoctoral support up to a maximum of twelve months;

t is total number of months in the individual's service obligation;

and s is the number of months of the obligation served by him or her in accordance with paragraph (a) or (b) of this section.

(e) Except as provided in § 66.111, the individual shall pay to the United States any amount which it is entitled to recover under paragraph (d) within a three-year period beginning on the date the United States becomes entitled to recover that amount. Interest shall accrue to the United States until any amount due it under paragraph (d) is paid. The rate of interest will be fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date the United States becomes entitled to recovery.

9. Section 66.111 would be amended by revising paragraphs (a) introductory text, (b) introductory text, and (c)(4) to read as follows:

§ 66.111 Suspension, waiver, and cancellation.

(a) The Secretary may extend the period for undertaking service described in § 66.110(c), permit breaks in the continuous service required under § 66.110(c), or extend the period of repayment under § 66.110(e) if the Secretary determines that:

* * * * *

(b) The Secretary may waive, in whole or in part, the obligation of the individual to repay pursuant to § 66.110(d) if the Secretary determines that:

* * * * *

(c) * * *

(4) The extent to which the individual has been engaged in activities encompassed by § 66.110(a) and (b);

* * * * *

10. Section 66.112 would be amended by revising the heading; removing the entry "45 CFR parts 6 and 8", revising the entry "45 CFR part 76", removing the entry "48 FR 24556", and adding the entry "51 FR 16958 (May 7, 1986)" to read as follows:

§ 66.112 Other HHS regulations and policies that apply.

* * * * *

45 CFR part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

51 FR 16958 (May 7, 1986)—NIH Guidelines for Research Involving Recombinant DNA Molecules. [Note: this policy is subject to change, and interested persons should contact the Office of Recombinant DNA Activities, NIH, Suite 323, 6000 Executive Boulevard, MSC 7052, Bethesda, MD 20892–7052, (301) 496–9838 (not a toll-free number) to obtain references to the current version and any amendments.]

Subpart B—Institutional Grants

11. Section 66.201 would be revised to read as follows:

§ 66.201 Applicability.

The regulations in this subpart apply to grants under section 487 of the Public Health Service Act, as amended (42 U.S.C. 288), to public institutions and to nonprofit private institutions to enable those institutions to make National Research Service Awards to individuals for research and training to undertake research, in programs specified in section 487 of the Act.

12. Section 66.205 would be amended by revising paragraphs (a)(1), (a)(2), and (b) to read as follows:

§ 66.205 Requirements.

(a) * * *

(1) For any award made for an individual's initial twelve months of NRSA postdoctoral research training, the individual has assured the Secretary, in the form and manner the Secretary may prescribe, that he or she will satisfy the requirements of § 66.110 of subpart A of this part;

(2) The individual is a citizen or noncitizen national of the United States or has been lawfully admitted to the United States for permanent residence at the time of the award;

* * * * *

(b) No Award shall be made to an individual under such grant which would provide that individual with aggregate support in excess of five years for predoctoral training and three years for postdoctoral training, unless the Secretary for good cause shown as provided in § 66.106(e) of subpart A of this part, waives the application of the limitation with respect to that individual;

* * * * * *

13. Section 66.206 would be amended by revising paragraph (a)(3) introductory text to read as follows:

§ 66.206 Grant awards.

(a) * * *

(3) Whose proposed programs would, in the judgment of the Secretary, best promote the purposes of section 487(a)(1)(B) of the Act, taking into consideration among other pertinent factors:

* * * * *

14. Section 66.207 would be amended by revising the entries for 45 CFR part 74, 45 CFR part 76, and 48 FR 24556; and adding an entry for 42 CFR part 50, subpart F, immediately following the entry "42 CFR part 50, subpart D" and an entry for 51 FR 16958 (May 7, 1986) to read as follows:

§ 66.207 Other HHS regulations and policies that apply.

* * * * *

42 CFR part 50, subpart F—Responsibility of applicants for promoting objectivity in research for which PHS funding is sought.

* * * * *

45 CFR part 74—Uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations; and certain grants and agreements with states, local governments and indian tribal governments.

* * * * *

45 CFR part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants).

* * * * *

51 FR 16958 (May 7, 1986)—NIH Guidelines for Research Involving Recombinant DNA Molecules. [Note: this policy is subject to change, and interested persons should contact the Office of Recombinant DNA Activities, NIH, Suite 323, 6000 Executive Boulevard, MSC 7052, Bethesda, MD 20892–7052, (301) 496–9838 (not a toll-free number) to obtain references to the current version and any amendments.]

[FR Doc. 99–16340 Filed 6–29–99; 8:45 am]

BILLING CODE 4140–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[GSAR Notice 5–420]

RIN 3090–AH01

Acquisition of Leasehold Interests in Real Property; Historic Preference

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration proposes to amend the General Services Administration Acquisition Regulations (GSAR) by revising the provision at 552.270–4, Historic Preference.

DATES: Comments should be submitted on or before August 30, 1999 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, Office of Acquisition Policy, GSA Acquisition Policy Division (MVP), 1800 F Street, NW, Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Nydia M. Coleman, GSA Acquisition Policy Division, (202) 208–0759.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order (EO) 13006, dated May 21, 1996, requires that the Federal Government utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts. Towards that end, the EO establishes that Federal agencies give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists. Based on the requirements of the EO, the GSAR provision has been revised to establish a hierarchy of consideration and to give a price evaluation preference for those considerations.

B. Executive Order 12866

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely implements an existing EO and imposes no new requirements.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 552

Government procurement.

Accordingly, it is proposed that 48 CFR Part 552 be amended as follows:

1. Authority 40 U.S.C. 486(c).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 552.2 Text of Provisions and Clauses

2. Section 552.270–4 is revised to read as follows:

552.270–4 Historic Preference.

As prescribed in section 570.702(b), insert the following provision:

HISTORIC PREFERENCE (—1999)

(a) Preference will be given to offers of space in historic properties following this hierarchy of consideration:

(1) Historic properties within historic districts

(2) Developed and undeveloped sites within historic districts,

(3) Historic properties outside of historic districts.

(b) Historic property means any district, site, building, structure, or object that is included in or eligible for the National Register. Historic District means any business area, industrial area, neighborhood, rural area, or other complex of buildings, structures, sites, objects, and/or landscape features that is included in or eligible for inclusion in the National Register of Historic Places. Historic properties and districts include those determined eligible by GSA or a State Historic Preservation Officer, or designated by any State, local or Indian tribal government under pertinent State, local or tribal law.

(c) The offer for space must meet the terms and conditions of this solicitation. (It is within the discretion of the Contracting Officer to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicition to maintain the historical integrity of the building such as high ceilings, wooden floors, etc.)

(d) Where award will be based on the lowest price technically acceptable source selection process, a 10 percent price evaluation preference, based on the total annual square foot (ANSI/BOMA usable) cost to the Government, will be given to historic properties as follows:

(1) First to suitable historic properties within historic districts,

(2) If no suitable historic property within an historic district is offered, or the 10 percent preference does not result in the lowest acceptable offer, the preference will then be given to suitable developed or undeveloped sites within historic districts.

(3) Finally, if no suitable developed or undeveloped site within an historic district is offered, or the 10 percent preference does not result in the low offer, the preference will then be given to historic properties outside of historic districts.

(e) Where award will be made based on a tradeoff process of source selection which permits tradeoffs among cost or price and non-cost factors, a 10 percent price evaluation preference, based on the total annual square foot (ANSI/BOMA usable) cost to the government, will be given to historic properties as follows:

(1) First to suitable historic properties within historic districts.

(2) If no suitable historic property within an historic district is offered, or is eliminated from the competition, the preference will then be given to suitable developed or undeveloped sites within historic districts.

(3) Finally, if no suitable developed or undeveloped site within an historic district is offered, or is eliminated from the competition, the preference will then be given to historic properties outside of historic districts.

(End of Provision)

Dated: June 23, 1999.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–16503 Filed 6–29–99; 8:45 am]

BILLING CODE 6820–61–M

Notices

Federal Register
Vol. 64, No. 125
Wednesday, June 30, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 32–99]

Foreign-Trade Zone 183—Austin, Texas; Foreign-Trade Subzone 183A—Dell Computer Corporation; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Central Texas, Inc., grantee of FTZ 183, requesting authority to expand Subzone 183A at the computer manufacturing facilities of Dell Computer Corporation (Dell) located in Austin, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 21, 1999.

Subzone 183A was approved on November 16, 1992 (Board Order 607, 57 FR 56902, 12/1/92) and expanded on December 23, 1996 (Board Order 861, 62 FR 1316, 1/9/97) and on July 25, 1997 (Board Order 912, 62 FR 42486, 8/7/97). The subzone currently consists of the following five sites in Austin: Site 1 (55 acres) located in the Braker Center Industrial Park at the intersection of Braker Lane and Metric Boulevard; Site 2 McKalla 2 (124,000 sq. ft.) located at 2500 McHale Court within the Rutland Center Industrial Park and McKalla I (135,000 sq. ft.) located at 10220 McKalla Drive; Site 3 (11 acres) Research 1 (100,685 sq. ft.) located at 8701 Research Boulevard; Site 4 (33 acres, 546,750 sq. ft.) located in Metric Center at 2207 and 2209 Rutland Drive, 9709 Burnet Road and 2106 W. Rundberg; and, Site 5 (4 acres, 61,676 sq. ft.) located in Longhorn Business Park at 2545 Brockton Drive.

The applicant is now requesting authority to expand the subzone to include an additional site: Proposed Site 6 (11 acres, 96,000 sq. ft.) located in the Walnut Creek Corporate Center at 8619 Wall Street and 8701 Wall Street in Austin.

Dell is authorized to manufacture computers and related products under zone procedures within Subzone 183A. This proposal does not request any new manufacturing authority under FTZ procedures in terms of products or components, but the change is designed to help Dell accommodate increased production activity at its Austin facilities.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 30, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 13, 1999).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 1700 Congress, Second Floor, Austin, Texas 78701.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 22, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–16659 Filed 6–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews, requests for revocation in part and deferral of administrative review.

SUMMARY: The Department of Commerce has received request to conduct administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke five antidumping duty orders in part and to defer the initiation of an administrative review for one antidumping duty order.

EFFECTIVE DATE: June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Holly A. Kugs, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Ball Bearings from France, Cylindrical Roller Bearings from Germany, Dynamic Random Access Memory semiconductors ("DRAMs") from the Republic of Korea, Antifriction Bearings and parts thereof from Rumania, and Polyvinyl Alcohol from Taiwan. In addition, the Department received a request to defer for one year the initiation of the May 1, 1998 through April 30, 1999 administrative review of the antidumping duty order on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan with respect to one exporter in accordance with 19 C.F.R. 351.213(c). The Department received no objections to this request from any party cited in 19 C.F.R. 351.213(c)(1)(ii).

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than May 31, 2000. Also in accordance with 19 C.F.R. 351.213(c), we are deferring for one year the initiation of the May 1, 1998 through April 30, 1999 administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan with respect to one exporter.

Antidumping duty proceedings	Period to be reviewed
BRAZIL:	
Certain Malleable Cast Iron Pipe Fittings A–351–505	5/1/98–4/30/99.
Industria de Fundicao Tupy S.A.	
Orange Juice A–351–605	5/1/98–4/30/99.
Citrovita Agro Industrial Ltda.	
JAPAN:	
Electrolytic Manganese Dioxide * A–588–806	4/1/98–3/31/99.
Tosoh Corporation	
* Inadvertently omitted from previous initiation notice.	
Polyvinyl Alcohol A–588–836	5/1/98–4/30/99.
Kuraray Co., Ltd.	
REPUBLIC OF KOREA: DRAMs A–580–812	5/1/98–4/30/99.
LG Semicon Co., Ltd.	
Hyundai Electronics Industries Co.	
G5 Corporation	
Wooyang Industry Co.	
Kim's Marketing	
Jewon Trading	
TAIWAN:	
Certain Welded Carbon Steel Pipe & Tubes A–583–008	5/1/98–4/30/99.
Yieh Hsing Enterprise Co., Ltd.	
Yu Din Steel	
Kao Hsing Chang Iron & Steel Corporation	
Yieh Loong Co., Ltd.	
Far East Machinery Co., Ltd.	
Tai Feng Industries	
An Mau Steel Co., Ltd.	
Polyvinyl Alcohol A–583–824	5/1/98–4/30/99.
Chang Chun Petrochemical Col., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Pure Magnesium A–570–832.	
Taiyuan East-United Mangnesium Company Ltd.	
TURKEY: Certain Welded Carbon Steel Pipe and Tube A–489–501	5/1/98–4/30/99.
The Borusan Group (including Borusan Birlesik Boru Fabrikalari (S.A.)	
Borusan Ihracat Ithalat ve Dagitam A.S.	

	Period class or kind
Anti-Friction Bearings Proceedings and Films	
FRANCE: A–427–801	5/1/98–4/30/99.
SKF France S.A. (including all relevant affiliates)	All.
Societe Nouvelle de Roulements (SNR)	Ball & Cylindrical.
SNFA S.A./Somecat S.p.A. (including all relevant affiliates)	Ball & Cylindrical.
Augusta Un'Azienda Finmeccanica	All.
AVSA S.A.R.L.	Spherical plain.
Wyko Export	Ball & Cylindrical.
GERMANY; A428 801	5/1/98–4/30/99.
FAG Kugelfischer George Schaefer AG (including all relevant affiliates)	Ball & Cylindrical
INA Walzlager Schaeller KG	All.
NTN	Ball
SKF GmbH (including all relevant affiliates)	All
SNR	Ball & Cylindrical.
Torrington Nadellager GmbH	All
Paul Muller GmbH & Co. KG	Ball
Wyko Export of Queen Cross	Ball & Cylindrical.
AVSA S.A.R.L.	Spherical Plain.
Mannesmann Sachs AG	Ball.
MPT Prazisionsteile GmbH Mittweida	Cylindrical.
ITALY: A–475–801	5/1/98–4/30/99.
SKF Industrie S.p.A (including all relevant affiliates)	Ball.
FAG Italia S.p.A. (including all relevant affiliates)	Ball & Cylindrical.
Meter, S.p.A.	Ball.
SNR Roulements	All.
SOMECAT s.P.A/SNFA Bearings Ltd. (U.K.) (including all relevant affiliates)	Ball.
Augusta Un'Azienda Finmeccanica	All.
JAPAN: A–588–804	5/1/98–4/30/99.
Koyo Seiko Co., Ltd	All
Nachi-Fujikoshi Corporation	Ball & Cylindrical.
Nippon Pillow Block Sales Company, Ltd	Ball.
NSK Ltd. (formerly Nippon Seiko K.K	Ball & Cylindrical.

	Period class or kind
NTN Corporation	All.
Asahi Sieko	Ball.
Inoue Jukuuke Kogyo (IJK)	Ball.
Isuzu Motors	All.
Izumoto Sieko (IKS)	Ball.
Nakai Bearing	Ball.
Nankai Seiko	Ball.
Osaka Pump	Ball.
Takeshita Seiko	Ball.
Tottori Yamakai (KYK)	Ball.
Tsubakimoto Precision	Ball.
ROMANIA: A–485–801	5/1/98–4/30/99.
S.C. Koyo Romania S.A.	Ball.
Technoimportexport, S.A. (TIE)	Ball.
SINGAPORE: A–559–801	5/1/98–4/30/99.
NMB Singapore Ltd./Pelmec Industries (Pte.) Ltd.	Ball.
SWEDEN: A–401–801	5/1/98–4/30/99.
SKF Sverige AB	Ball & Cylindrical.
Wyko Export of Queen Cross	Ball & Cylindrical.
THE UNITED KINGDOM: A–412–801	5/1/98–4/30/99.
NSK Bearings Europe Ltd./RHP Bearings Ltd.	Ball & Cylindrical.
Barden Corporation	Ball & Cylindrical.
FAG (U.K.) Limited	Ball & Cylindrical.
SNFA Bearings Limited/Somecat S.P.A. (including all relevant affiliates)	Ball.
SNR Roulements	Ball.
Augusta Un'Azienda Finmeccanica	Ball & Cylindrical.
Countervailing Duty Proceedings	
VENEZUELA: Ferrosilicon, C–307–808	1/1/98–12/31/98.
Ferroatlantica de Venezuela S.A.	
Suspension Agreements	
None..	

Deferral initation of administrative review	Period to be deferred class or kind
JAPAN: Antifriction Bearings (Other than tapered roller bearings) and Parts Thereof, A–588–804	5/1/98–4/30/99.
Muro Corporation	Ball.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section of any administrative review initiated in 1998 (19 C.F.R. 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: June 21, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 99–16658 Filed 6–29–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 99–012. *Applicant:* Texas A&M University, Purchasing Department, Room 337B Zachry Engineering Building, College Station, TX 77843–3122. *Instrument:* Densitometer and Balance. *Manufacturer:* Rubotherm, Germany. *Intended Use:* The instrument is intended to be used to measure corrosive materials such as hydrogen sulfide, polar solvents such as acetylnitrile, asphalts and aggregate materials during experiments conducted with the objective of understanding the strength and durability of asphalt aggregate pavements and fluid properties relevant to deep off-shore oil and gas production. Application accepted by Commissioner of Customs: June 4, 1999.

Docket Number: 99–013. *Applicant:* the University of Texas, M.D. Anderson Cancer Center, 1515 Holcombe Boulevard, Box 173, Houston, TX 77030. *Instrument:* Electron Microscope, Model JEM–1010. *Manufacturer:* JOEL Ltd., Japan. *Intended Use:* The instrument is intended to be used to examine normal and pathologic tissues obtained from human patients and experimental animals, tissue culture cells, viruses, polymers containing biological and chemotherapeutic agents. It will be used for ultrastructure of human and animal tumors. In addition, the instrument will be used to teach graduate students, postdoctoral fellows, visiting scientists and faculty members the techniques of electron microscopy and ultrastructural analysis. *Application accepted by Commissioner of Customs:* June 10, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–16548 Filed 6–29–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–834]

Countervailing Duty Investigation of Live Cattle From Canada; Notice of Alignment With Final Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of alignment with antidumping duty determination.

EFFECTIVE DATE: June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Hoffman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4198.

SUPPLEMENTARY INFORMATION: On May 6, 1999, the petitioner submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. *See* Initiation of Antidumping Duty Investigations: Live Cattle from Canada and Mexico, 63 FR 71886 (December 30, 1998). In accordance with section 705(a)(1) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, we are aligning the final determination in this investigation with the final determination in the antidumping duty investigation of live cattle from Canada.

This notice is in accordance with section 705(a)(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.210(b)(4).

Dated: June 23, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 99–16547 Filed 6–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Area the Public Is Requested To Temporarily Avoid During Coral Reef Restoration Activities in the Florida Keys National Marine Sanctuary (FKNMS)

AGENCY: Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: NOAA requests that users of the FKNMS avoid, from July 6 through September 7, 1999, an area approximately 6.75 acres marked by construction buoys in the vicinity of 24°37′30″ N, 81°24′23″ W, a bank reef located 7 nautical miles (12.9 km) off the southwest tip of Big Pine Key, Florida, During this time, NOAA and authorized contractors will be conducting physical restoration activities of a coral reef where the R/V *Columbus Iselin* grounded of August 10 through 12, 1994. The public is requested to avoid the area during this period due to the presence of heavy construction materials and equipment (e.g., barges and cranes), moorings, surface air supply hoses of divers and increased localized boat traffic. The intent of this notice is to ensure the protection of life and property during these complex activities.

FOR FURTHER INFORMATION CONTACT: Harriet Sopher, Program Manager, Resource Protection Team, Marine Sanctuaries Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland, 20910. Telephone number: 301–713–3145 ext. 109.

Background

On August 10 through 12, 1994, the R/V *Columbus Iselin*, a 155-foot oceanographic research vessel, ran aground on the western portion of Looe Key reef within the FKNMS. The grounding site is a bank reef located 7 nautical miles (12.9 km) off the soutwest tip of Big Pine Key, Florida (24°37′ N, 81°24′ W). The impact of the grounding and the shifting of the vessel created large scars on four of the Looe Key coral spurs. Significant injuries were inflicted to the coral reef colonies, substrate, and other resident marine organisms such as sponges and sea fans. The unconsolidated coral rubble and ship debris have been removed. Storm events, including Hurricane Georges in the Fall of 1998 have caused additional damage to the grounding site.

Section 312 of the National Marine Sanctuaries Act (NMSA 16 U.S.C. 1443) authorizes NOAA to pursue claims for response costs and damages when sanctuary resources are destroyed, lost or injured. Funds recovered under section 312 are used to restore, replace or acquire equivalent sanctuary resources. As part of the restoration process at the site of the R/V *Columbus Iselin* grounding, NOAA and its authorized contractor will be placing three to five ton boulders and tremie concrete to rebuild the physical infrastructure of the damaged coral reef spurs. This activity will occur from July 6 through September 7, 1999.

Because divers, moorings, heavy construction materials and equipment (e.g., barges and crane) and increased localized boat traffic will be present during the restoration activity, NOAA requests the public to avoid an area of approximately 6.75 acres where the restoration activity will occur. The area will be marked by buoys. The buoys will be set about 30′ beyond the barge tie down locations, and create an area 600′ oriented (approximately) E–W by 490′ oriented (approximately) N–S, around the grounding site (24°37′ N, 81°24′ W). The intent is to protect the life and property of construction crews and Sanctuary users while heavy construction materials and equipment (e.g., barges and cranes) are in the area; protect moorings which will be used at the site to stabilize the barge; protect the surface air supply hoses of the divers and SCUBA crew who will be conducting the restoration activities; and to ensure timely and successful completion of the restoration.

The area for which the public is requested to avoid is the minimum area

necessary to moor the barges and includes buffer zones to moor support vessels and provide an extra margin for public safety while completing the restoration activities. The time period for which the public is requested to avoid the restoration site is the expected time necessary to complete the construction activities. If less or more time is needed, NOAA will so notify the public.

During the planning process for this project (Winter of 1999), one-on-one contact was made with local dive operators, a public meeting was held to explain the restoration project and make the public aware of the area it would be requested to temporarily avoid. Additionally, NOAA issued press releases to the local newspapers and radio stations which have covered the restoration planning process and which have provided notice of NOAA's request for the public to avoid the restoration area.

Locations and Boundaries of the Area the Public is Requested To Avoid

The area which the public is requested to avoid is located approximately 7 nautical miles (12.9 kilometers) offshore the southwest tip of Big Pine Key, Florida (24° 37'N, 81° 24'W). The total area is approximately 6.75 acres. The boundary of this area will be marked by construction buoys.

The area is bounded by the following coordinates:

Latitude	*Longitude*
A: 24°32'40.3" N	81°24'30.6" W.
B: 24°32'42.3" N	81°24'24.5" W.
C: 24°32'46.9" N	81°24'26.3" W.
D: 24°32'44.8" N	81°24'32.4" W.

Dates

The public is requested to avoid the area from July 6 through September 7, 1999, or until the construction marker buoys are removed at NOAA's direction if the work is completed prior or later. Public notice of this request also will be provided through local news media, a Notice to Mariners, and posting of placards on bulletin boards in public areas in Big Pine Key and at Bahia Honda State Park.

Dated: June 24, 1999.

Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–16583 Filed 6–29–99; 8:45 am]

BILLING CODE 3510–08–M

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 15 July 1999 at 10.00 a.m. in the Commission's offices at the National Building Museum (Pension Building), Suite 312. Judiciary Square, 441 F Street, NW, Washington, DC, 2001. Items of discussion will include designs for projects affecting the appearance of Washington, DC, including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, June 23, 1999.

Charles H. Atherton,

Secretary.

[FR Doc. 99–16613 Filed 6–29–99; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Air Force Department

Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of 31 March 1999)

The Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of 31 March 1999, include the installation and state where the cost comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
Cost Comparisons					
ANDERSEN	GUAM	SUPPLY AND TRANSPORTATION	384	25–Jun–98	15–May–99
ANDREWS	MD	AIRCRAFT MAINTENANCE AND SUPPLY	815	25–Jul–97	27–Apr–99
ANDREWS	MD	GROUNDS MAINTENANCE	9	17–Dec–98	01–Oct–99
ANDREWS	MD	HEATING SYSTEMS	22	17–Dec–98	01–Oct–99
ANDREWS	MD	MEDICAL FACILITY MAINTENANCE	11	09–Oct–97	30–Apr–99
BARKSDALE	LA	PROTECTIVE COATING	13	14–Dec–98	13–Sep–99
BOLLING	DC	SUPPLY AND TRANSPORTATION	164	01–Dec–98	03–Jan–00
BUCKLEY	CO	AIRFIELD MANAGEMENT	34	22–Mar–95	18–May–99
BUCKLEY	CO	CIVIL ENGINEERING	55	24–Nov–97	01–Apr–99
CARSWELL	TX	BASE OPERATING SUPPORT	52	13–Jun–96	10–Aug–99
CHARLESTON	SC	MILITARY FAMILY HOUSING MAINTENANCE	14	23–Sep–97	29–Jan–99
CHEYENNE MTN	CO	CIVIL ENGINEERING	139	08–May–98	02–Apr–99
CHEYENNE MTN	CO	COMMUNICATION FUNCTIONS	401	08–May–98	02–Jul–99
DOVER	DE	HEATING SYSTEMS	11	07–Jan–99	04–Oct–99
EDWARDS	CA	BASE OPERATING SUPPORT	460	09–Dec–98	08–Nov–00
EDWARDS	CA	TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT.	136	06–Nov–98	31–Aug–99
EGLIN	FL	CIVIL ENGINEERING	200	03–Dec–96	21–Jul–98
EIELSON	AK	HOUSING MANAGEMENT	16	17–Nov–97	25–Apr–99
ELMENDORF	AK	ADMINISTRATIVE TELEPHONE SWITCHBOARD	16	28–Jul–97	24–Feb–99
ELMENDORF	AK	BASE SUPPLY	210	26–Mar–99	07–Sep–99
F E WARREN	WY	BASE COMMUNICATIONS	126	30–Oct–97	16–May–99
FAIRCHILD	WA	HEATING SYSTEMS	15	16–Mar–99	TBD
GENERAL MITCHELL	WI	BASE OPERATING SUPPORT	77	13–Jun–96	20–Apr–98

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
GREATER PITTSBURGH	PA	BASE OPERATING SUPPORT	77	13–Jun–96	15–Sep–99
GRISSOM	IN	BASE OPERATING SUPPORT	133	13–Jun–96	15–Jul–99
HANSCOM AFB	MA	BASE SUPPLY	70	10–Nov–98	27–Aug–99
HANSCOM AFB	MA	CIVIL ENGINEERING	201	09–Dec–98	25–Sep–99
HANSCOM AFB	MA	EDUCATION/TRAINING AND PERSONNEL	14	25–Nov–98	11–Sep–99
HILL AFB	UT	BASE OPERATING SUPPORT	730	30–Sep–98	20–Sep–00
HOLLOMAN AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE	[redacted]	12–May–97	01–May–99
HOMESTEAD	FL	BASE OPERATING SUPPORT	106	13–Jun–96	15–Jan–00
HURLBURT COM FL	FL	BASE SUPPLY	43	15–Jul–98	01–Jan–00
HURLBURT COM FL	FL	COMMUNICATION FUNCTIONS	50	31–Jul–98	24–Sep–99
HURLBURT COM FL	FL	ENVIRONMENTAL	13	23–Sep–97	20–Nov–98
KIRTLAND	NM	BASE COMMUNICATIONS	228	06–Nov–97	26–Apr–99
KIRTLAND	NM	CIVIL ENGINEERING	360	09–Dec–98	22–Jun–99
KIRTLAND	NM	ENVIRONMENTAL	32	24–Nov–98	15–Jun–99
LACKLAND	TX	MULTIPLE SUPPORT FUNCTIONS	1587	26–Jan–99	09–Aug–99
LANGLEY	VA	GENERAL LIBRARY	11	22–Dec–98	05–May–99
LANGLEY	VA	MILITARY FAMILY HOUSING MAINTENANCE	16	24–Nov–97	01–Apr–99
LOS ANGELES	CA	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	85	01–Jul–97	25–Nov–98
LOS ANGELES	CA	HOUSING MANAGEMENT	10	01–Jul–97	24–Aug–98
LOS ANGELES	CA	SERVICES ACTIVITIES	[redacted]	01–Jul–97	02–May–99
MALMSTROM	MT	BASE COMMUNICATIONS	153	06–Oct–97	15–Apr–99
MALMSTROM	MT	FURNISHINGS MANAGEMENT	10	24–Nov–97	05–Jan–99
MALMSTROM	MT	HEATING SYSTEMS	26	24–Nov–97	01–Apr–99
MARCH	CA	BASE OPERATING SUPPORT	195	13–Jun–96	15–Nov–99
MAXWELL	AL	MULTIPLE SUPPORT FUNCTIONS	821	28–Apr–98	22–Mar–99
MCCHORD	WA	HEATING SYSTEMS	11	23–Sep–97	30–Mar–99
MCCHORD	WA	MILITARY FAMILY HOUSING MAINTENANCE	15	23–Sep–97	03–Mar–99
MCGUIRE	NJ	HEATING SYSTEMS	10	22–Oct–98	01–Feb–99
MINN/ST PAUL	MN	BASE OPERATING SUPPORT	83	13–Jun–96	11–Aug–98
MULTIPLE INSTLNS		ADMINISTRATIVE SWITCHBOARD	94	19–Jun–97	15–Nov–99
RAMSTEIN	GERMY				
SEMBACH	GERMY				
SPANGDAHLEM	GERMY				
MILDENHALL	UK				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	141	11–Mar–99	11–Nov–99
GRISSOM	IN				
GENERAL MITCHELL	WI				
MINN/ST PAUL	MN				
NEW ORLEANS NAS	LA				
CARSWELL	TX				
HOMESTEAD	FL				
MARCH	CA				
WESTOVER	MA				
YOUNGSTOWN MUNI.	OH				
WILLOW GROVE	PA				
GREATER PITTSBURGH.	PA				
MULTIPLE INSTLNS		EDUCATION SERVICES	153	07–Jan–99	06–Oct–99
HOWARD	PANMA				
MOODY	GA				
MINOT	ND				
MT HOME	ID				
NELLIS	NV				
SHAW	SC				
WHITEMAN	MO				
LAJES	AZORE				
ELLSWORTH	SD				
SEYMOUR JOHNSON.	NC				
HOLLOMAN AFB	NM				
DYESS	TX				
DAVIS MONTHAN	AZ				
CANNON	NM				
BARKSDALE	LA				

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
KEFLAVIK	ICELD				
LANGLEY	VA				
BEALE	CA				
MULTIPLE INSTLNS		EDUCATION/TRAINING AND PERSONNEL	94	25–Mar–98	15–Apr–99
BUCKLEY	CO				
F E WARREN	WY				
PATRICK	FL				
PETERSON	CO				
FALCON	CO				
VANDENBERG	CA				
MULTIPLE INSTLNS		GENERAL LIBRARY	24	29–Jul–97	20–Jul–98
PETERSON	CO				
PATRICK	FL				
F E WARREN	WY				
MALMSTROM	MT				
VANDENBERG AFB	CA				
MULTIPLE INSTLNS		PRECISION MEASUREMENT EQUIPMENT LABORATORY (PMEL).	1543	24–Sep–98	13–Jul–99
NEW BOSTON	NH	BASE OPERATING SUPPORT	48	03–Dec–97	10–Apr–99
NEW ORLEANS NAS	LA	BASE OPERATING SUPPORT	45	13–Jun–96	10–Aug–99
OFFUTT	NE	BASE OPERATING SUPPORT	1608	30–Sep–98	31–Jan–00
PATRICK	FL	SUPPLY AND TRANSPORTATION	43	14–May–98	01–Jun–00
RAMSTEIN	GERMY	MILITARY FAMILY HOUSING MAINTENANCE	142	19–Jun–97	28–Dec–98
RANDOLPH	TX	INFORMATION MANAGEMENT	26	12–May–98	15–Jan–99
ROBINS	GA	ADMINISTRATIVE TELEPHONE SWITCHBOARD	17	17–Mar–99	23–Dec–99
ROBINS	GA	EDUCATION SERVICES	57	07–Jan–99	30–Sep–99
SCOTT	IL	BASE SUPPLY	102	03–Jun–97	28–Aug–98
SCOTT	IL	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	178	19–Mar–98	16–Aug–99
SCOTT	IL	MEDICAL FACILITY MAINTENANCE	8	09–Jan–98	05–Aug–98
SEMBACH	GERMY	COMMUNICATION FUNCTIONS	48	18–Dec–98	30–Sep–99
SHAW	SC	PROTECTIVE COATING	12	14–Dec–98	10–May–99
TINKER	OK	BASE SUPPLY	150	30–Nov–98	10–Sep–99
TINKER	OK	CIVIL ENGINEERING	567	15–Apr–97	26–Mar–98
TINKER	OK	EDUCATION SERVICES	54	16–Nov–98	07–Sep–99
TINKER	OK	ENVIRONMENTAL	53	24–Nov–98	10–Sep–99
TRAVIS	CA	VEHICLE OPERATIONS AND MAINTENANCE	131	15–Jul–98	01–Sep–99
USAF ACADEMY	CO	BASE OPERATING SUPPORT	108	08–May–98	15–Jun–99
USAF ACADEMY	CO	CIVIL ENGINEERING	497	01–Dec–98	15–Feb–00
USAF ACADEMY	CO	FOOD SERVICES	299	08–May–98	21–Apr–99
USAF ACADEMY	CO	SERVICES ACTIVITIES	86	08–May–98	24–Sep–99
VANDENBERG AFB	CA	TRAINER FABRICATION	12	24–Nov–97	15–Apr–99
WESTOVER	MA	BASE OPERATING SUPPORT	172	13–Jun–96	08–May–98
WILLOW GROVE	PA	BASE OPERATING SUPPORT	52	13–Jun–96	28–Sep–98
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	104	21–Aug–98	21–May–99
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	598	15–Aug–97	25–Sep–98
WRIGHT PATTERSON	OH	COMMUNICATION FUNCTIONS	319	21–Aug–98	21–May–99
WRIGHT PATTERSON	OH	LABORATORY SUPPORT SERVICES	129	21–Aug–98	219May–99
YOUNGSTOWN MUNI	OH	BASE OPERATING SUPPORT	92	13–Jun–96	14–Sep–98
Direct Conversions					
ALTUS	OK	MEDICAL STENOGRAPHY	2	17–Nov–97	01–Jul–98
ANDREWS	MD	SOFTWARE PROGRAMMING	10	18–Jun–97	06–Dec–98
ANDREWS	MD	SOFTWARE PROGRAMMING	12	18–Jun–97	06–Dec–98
ASHEVILLE	NC	COMPUTER SYSTEMS MAINTENANCE	10	17–Feb–99	01–Mar–00
AVIANO	ITALY	WAR RESERVE MATERIEL MAINTENANCE (WRM)	30	16–Aug–96	NA
BARKSDALE	LA	ADMINISTRATIVE SWITCHBOARD	10	04–Aug–98	01–Aug–99
BARKSDALE	LA	GENERAL LIBRARY	5	11–Jun–97	18–Dec–98
BARKSDALE	LA	HOSPITAL SERVICES	3	01–Dec–97	20–Apr–99
CANNON	NM	PROTECTIVE COATING	2	07–Jan–99	09–Aug–99

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
CHARLESTON	SC	HEATING SYSTEMS	9	14–Mar–97	11–Aug–98
DAVIS MONTHAN	AZ	PROTECTIVE COATING	9	24–Jun–98	11–Oct–99
DAVIS MONTHAN	AZ	RAILROAD TRANSPORTATION SERVICES	2	11–Aug–98	11–Oct–99
DYESS	TX	ADMINISTRATIVE TELEPHONE SWITCHBOARD	9	12–Nov–98	30–Oct–99
ELLSWORTH	SD	ADMINISTRATIVE TELEPHONE SWITCHBOARD	10	10–Jul–98	01–Jul–99
ELLSWORTH	SD	ENVIRONMENTAL	7	05–Nov–98	23–Dec–98
ELLSWORTH	SD	GENERAL LIBRARY	7	16–Jul–98	01–Jul–99
ELMENDORF	AK	TRANSIENT AIRCRAFT MAINTENANCE	12	10–Nov–97	18–Feb–99
F E WARREN	WY	BASE COMMUNICATIONS	22	30–Oct–97	16–May–99
F E WARREN	WY	HOUSING MANAGEMENT	8	24–Nov–97	10–Apr–99
HANSCOM AFB	MA	COMMUNICATION FUNCTIONS	78	14–Dec–98	30–Sep–99
KIRTLAND	NM	EDUCATION SERVICES	12	26–Oct–98	15–May–99
KIRTLAND	NM	GENERAL LIBRARY	4	12–Jan–99	28–Sep–99
KIRTLAND	NM	RECREATIONAL SUPPORT	8	12–Jan–99	25–Sep–99
LANGLEY	VA	ADMINISTRATIVE TELEPHONE SWITCHBOARD	18	05–Feb–98	01–Apr–99
LOS ANGELES	CA	PACKING AND CRATING	4	01–Jul–97	12–Mar–99
MACDILL	FL	CIVIL ENGINEERING	310	06–Nov–97	22–Feb–99
MAXWELL	AL	EDUCATION SERVICES	35	31–Jul–98	01–Jul–99
MCCHORD	WA	GENERAL LIBRARY	6	17–Mar–97	12–Nov–97
MCCHORD	WA	GROUNDS MAINTENANCE	9	17–Mar–97	28–Apr–98
MINOT	ND	ADMINISTRATIVE SWITCHBOARD	8	07–Jan–99	23–Aug–99
MULTIPLE INSTLNS		RADAR	106	12–Nov–98	01–Apr–99
CANNON	NM				
SEYMOUR JOHNSON.	NC				
SHAW	SC				
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE	70	27–Aug–98	01–May–99
MT HOME	ID				
LANGLEY	VA				
NELLIS	NV				
CANNON	NM				
SHAW	SC				
NELLIS	NV	COMMUNICATION FUNCTIONS	9	22–Dec–98	19–Aug–99
NELLIS	NV	GENERAL LIBRARY	9	16–Jul–98	02–Apr–99
NORTH FIELD	SC	GROUNDS MAINTENANCE	1	14–Mar–97	03–Mar–98
OFFUTT	NE	COMPUTER OPERATIONS	76	17–Feb–99	01–Mar–00
OFFUTT	NE	DATA AUTOMATION	67	27–Aug–98	07–May–99
OFFUTT	NE	SOFTWARE PROGRAMMING	3	12–Nov–98	26–Apr–99
PATRICK	FL	BASE WEATHER OBSERVING	5	17–Mar–98	01–Jun–99
PATRICK	FL	RANGE MAINTENANCE	63	19–May–98	05–Apr–99
PATRICK	FL	TRANSIENT AIRCRAFT MAINTENANCE	11	10–Sep–97	02–Jun–98
POPE	NC	FURNISHINGS MANAGEMENT	1	07–Oct–98	03–May–99
PORTLAND	OR	ADMINISTRATIVE SWITCHBOARD	2	22–Dec–98	20–Jul–99
RANDOLPH	TX	FLYING TRAINING	26	01–Jun–98	14–May–99
RANDOLPH	TX	FLYING TRAINING	45	20–Jan–98	03–Aug–98
SCOTT	IL	FURNISHINGS MANAGEMENT	5	08–Jul–98	07–Apr–99
SCOTT	IL	GROUNDS MAINTENANCE	1	17–Mar–97	04–Aug–98
SELFRIDGE	MI	BASE OPERATIONS	5	04–Jun–98	15–May–99
SELFRIDGE	MI	COMMUNICATION FUNCTIONS	3	17–Aug–98	03–May–99
SELFRIDGE	MI	FUELS MANAGEMENT	8	01–Jun–98	15–May–99
SELFRIDGE	MI	TRANSIENT AIRCRAFT MAINTENANCE	5	04–Jun–98	15–May–99
SEYMOUR JOHNSON	NC	TRANSIENT AIRCRAFT MAINTENANCE	8	12–Nov–97	15–May–99
SHAW	SC	LIBRARY	7	27–Aug–98	01–Jul–99
TINKER	OK	GRAPHIC ARTS	13	14–Jan–99	16–Aug–99
TRAVIS	CA	FACILITIES SERVICES MAINTENANCE	2	20–Apr–98	16–Dec–98
TRAVIS	CA	HEATING SYSTEMS	5	20–Apr–98	02–Aug–99
USAF ACADEMY	CO	AIRFIELD OPERATIONS AND WEATHER	11	17–Apr–98	12–Apr–99
WHITEMAN	MO	ADMINISTRATIVE SWITCHBOARD	8	22–Dec–98	01–Sep–99
WHITEMAN	MO	GROUNDS MAINTENANCE	5	08–Dec–98	27–May–99
WHITEMAN	MO	HOSPITAL SERVICES	2	17–Apr–98	01–Apr–99

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–16567 Filed 6–29–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Hybrid Plastics, LLC, a company doing business in Fountain Valley, CA, an exclusive license in any right, title, and interest the Air Force has in U.S. Patent Application Serial No. 09/003,083 entitled "METHOD OF FUNCTIONALIZING POLYCYCLIC SILICONES AND THE RESULTING COMPOUNDS" and Patent Application Serial No. 09/003,084 entitled "METHOD OF FUNCTIONALIZING POLYCYLIC SILICONES AND THE COMPOUNDS SO FORMED." Each invention is a joint invention of Joseph D. Lichtenhan and Joseph J. Schwab, Frank J. Feher, and Daravonge Soulivong.

The two licenses described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304 Arlington, VA 22209–2310. Mr. Heald can be reached at 703–588–5091 or by fax at 703–588–8037.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–16629 Filed 6–29–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant R & J Fluidix LLC, a company doing business in Mt. Holly, N.J., an exclusive license in any right, title, and interest the Air Force has in U.S. Patent No. 5,873,500. The invention is a joint invention of Richard W. Homburg and Jay A. Murray both of whom were government employees at the time of the invention. The invention is entitled "FLUID DELIVERY CART" and issued on February 23, 1999.

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304 Arlington, VA 22209–2310. Mr. Heald can be reached at 703–588–5091 or by fax at 703–588–8037.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–16630 Filed 6–29–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Reuse of Naval Air Station Barbers Point, Oahu, HI

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) (1994), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 C.F.R. Parts 1500–1508, hereby announces its decision to dispose of Naval Air Station (NAS) Barbers Point, which is located on the island of Oahu in Honolulu County, Hawaii.

Navy analyzed the impacts of the disposal and reuse of NAS Barbers Point in an Environmental Impact Statement (EIS) as required by NEPA. The EIS analyzed four reuse alternatives and identified the Naval Air Station Barbers Point Community Redevelopment Plan dated March 1997 (Redevelopment Plan), described in the EIS as the State-Preferred Alternative, as the Preferred Alternative. The State of Hawaii is the Local Redevelopment Authority (LRA) for NAS Barbers Point. Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR 176.20(a).

The Preferred Alternative proposed a mix of aviation, residential, educational, community service, light industrial, commercia1, public, park and recreational uses. These include a general aviation and military airport, housing, a vocational training center, a desalinization plant, an automobile race track complex, an international sports center, a festival center, a marine park, a baseball complex, and a field sports complex.

Navy intends to dispose of NAS Barbers Point in a manner that is consistent with the Redevelopment Plan. Navy has determined that a mixed land use will meet the goals of achieving local economicredevelopment, creating new jobs, and providing additional housing, while limiting adverse environmental impacts and ensuring land uses that are compatible with adjacent property. This Record Of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entities and the local zoning authority.

Background

Under the authority of the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. § 2687 note (1994), the 1993 Defense Base Closure and Realignment Commission recommended the closure of Naval Air Station Barbers Point. This recommendation was approved by President Clinton and accepted by the One Hundred Third Congress in 1993. The base is scheduled to close on July 2, 1999.

Nearly all of the property associated with NAS Barbers Point is located on the island of Oahu, about 16 miles west of downtown Honolulu. This property covers 3,723 acres. Additionally, there are three non-contiguous parcels that cover 100 acres: two small areas at Iroquois Point on Pearl Harbor and Kaula Island located 55 miles from the Hawaiian island of Kauai.

Navy controls an additional 110 acres near the main base by way of easements for air operations. These easements impose restrictions on 20 acres of private property near the northwestern edge of the base and on 90 acres of private property near the southwest corner of the base. Navy will transfer its interests in these easements to the underlying property owners.

The 3,723-acre main base property is bounded on the north by the City of Kapolei; on the east by the communities of Ewa Villages, Ewa Gentry and Ewa Marina; on the south by the Pacific Ocean; and on the west by Campbell Industrial Park and Kapolei Business Park. There are three runways at NAS Barbers Point: two parallel 8,330-foot runways (Runway 4L–22R and Runway 4R–22L) in a southwest-northeast alignment and one 8,411-foot crosswind runway (Runway 11–29) in a northwest-southeast alignment. There is a drainage channel on the western edge of the base adjacent to Campbell Industrial Park that runs from north to south. Navy owns the northern and southern parts of the drainage channel, and the Estate of James Campbell owns the middle part of the channel. The Estate also maintains easements on those parts owned by Navy.

The Navy property at Iroquois Point on Pearl Harbor covers two acres located about eight miles west of downtown Honolulu. This property contains a community center and a retail store that are situated in a military family housing area associated with Navy activities at the Pearl Harbor Naval Complex. Kaula Island covers 108 acres and is located about 55 miles southwest of Navy's Pacific Missile Range Facility on the island of Kauai.

The 1995 Defense Base Closure and Realignment Commission modified the 1993 Commission's recommendation by directing Navy to retain certain properties at NAS Barbers Point in support of military family housing requirements on the Island of Oahu. The recommendation of the 1995 Commission was approved by President Clinton and accepted by the One Hundred Fourth Congress in 1995.

Navy will retain the 1,090 housing units on the northern edge of the base and 171 community support facilities throughout the base, including the medical and dental clinic (Building 1829) in the center of the base; the child development center (Building 1965) and the golf course in the northeastern part of the base; White Plains Beach in the southeast corner; Nimitz Beach on the southern edge of the base; the landfill in the western part of the base; the two off-base parcels at Iroquois Point; and Kaula Island. Navy made the remaining property available for use by other Federal agencies.

During the Federal screening process, seven Federal agencies requested interagency transfers of base closure property at NAS Barbers Point. These included the Department of Veterans Affairs, the Federal Aviation Administration (FAA), the United States Postal Service, the Department of the Interior's United States Fish and Wildlife Service, the United States Coast Guard, the National Guard Bureau (Hawaii Army National guard), and the Department of the Army. Navy will transfer about 464 acres at Barbers Point to six of these Federal agencies.

Navy will transfer about six acres in the center of the base to the Department of Veterans Affairs for use in programs that serve veterans on Oahu. These will include employment training classes and outpatient substance abuse treatment. Buildings 34, 37, and 1772 will be used for these programs.

Navy will transfer about 18 acres in the northeast corner of the base to the Federal Aviation Administration. The FAA will continue to operate a navigation aid there that serves Honolulu International Airport and will maintain a radio frequency interference zone around this navigation equipment.

Navy will transfer Building 3 and about one acre in the center of the base to the United States Postal Service. The Postal Service will continue to use this building as a post office.

Navy will transfer four non-contiguous parcels covering about 239 acres at Barbers Point to the United States Fish and Wildlife Service to establish the Barbers Point Unit of the Pearl Harbor National Wildlife Refuge. This refuge will protect Federally listed endangered plant and bird species and migratory birds. These four parcels are located in the eastern, southeastern, southern and southwestern parts of the base.

The eastern parcel, covering 136 acres, contains the akoko shrub (*Chamaesyce skottsbergii var. skottsbergii*), a Federally listed and State-listed endangered plant. The southeastern parcel, covering nine acres, contained Ordy Pond and provides habitat for several species of migratory shorebirds protected under the Migratory Bird Treaty Act of 1918, 16 U.S.C. 703–712 (1994), and the Federally listed and State-listed endangered Hawaiian stilt (Himantopus mexicanus knudseni). The southern parcel, covering 45 acres, contains a coastal salt flat and provides habitat for migratory shorebirds and the endangered Hawaiian stilt. The southwestern parcel, covering 49 acres, contains a Federally listed and State-listed endangered plant, the chaff flower shrub. (*Achyranthes splendens var. rotundata*).

Navy will transfer about 44 acres in the southern part of the base to the United States Coast Guard to permit the Coast Guard to continue operating its Barbers Point Air Station. The Coast Guard operates C–130 Hercules aircraft and HH–65 helicopters that conduct search and rescue operations in the Central Pacific Maritime Region.

Navy will transfer about 149 acres in the north-central part of the base to the Hawaii Army National Guard. The Guard will use this property for operational, maintenance and administrative activities, its Youth Challenge Program, and as a parking apron for its CH–47 helicopters. Navy will also transfer to the Guard an additional seven acres in this area where the fuel storage tanks are currently located. The Guard will use this property as a storage area after the tanks are removed.

The Department of the Army initially requested about 17 acres in the southwestern part of the base to establish a soil and sludge reclamation

facility but subsequently withdrew its request. The remaining 2,130 acres of property at NAS Barbers Point are surplus to the needs of the Federal Government.

This Record of Decision addresses the disposal and reuse of these 2,130 acres, which contain about 209 buildings and structures that were used for aviation operations, training, and related administrative activities. The surplus property's undeveloped areas contain wetlands, an endangered plant, and archaeological resources.

On August 31, 1998, the United States Department of the Interior entered into a Memorandum of Agreement with the State of Hawaii providing that about 623 of the 2,130 surplus acres in various parts of NAS Barbars Point would be conveyed to the State through the Department of the Interior under the authority of the Hawaiian Home Lands Recovery Act (HHLRA), Public Law 104–42, 109 Stat. 357 (1995). This statute authorized the conveyance of excess Federal land to settle claims asserted by the State of Hawaii's Department of Hawaiian Home Lands (DHHL) that certain Hawaiian home lands set aside by Congress in 1921 for homesteading by native Hawaiian had been diverted to Federal uses.

The conveyance process may require the withdrawal of this land from surplus status and an interagency transfer from Navy to Interior for subsequent conveyance by Interior to DHHL. Such an action would not affect Navy's NEPA analysis, because DHHL's proposed uses of this property are the same as those set forth in the Redevelopment Plan. Thus, the environmental impacts described in the EIS would not change.

About 1,452 acres of surplus property will be conveyed by way of various kinds of public benefit conveyances. Navy will assign 702 acres in the center of the base to the State of Hawaii after approval by the United States Department of Transportation for use as an airport. Navy will assign nine acres north of the airfield to the United States Department of Education for subsequent conveyance to the State of Hawaii for use as an aviation training school. Navy will assign 42 acres in the southwest corner of the base to the United States Department of Health and Human Services for subsequent conveyance to the City and County of Honolulu for public health use as a seawater desalinization plant. Navy will assign 13 acres in the northwestern part of the base adjacent to the Navy-retained housing to the United States Department of Education for subsequent conveyance to the State of Hawaii for the continuing use of the Barbers Point Elementary School. Navy will assign 686 acres in various locations throughout the base to the United States Department of the Interior for subsequent conveyance to the State of Hawaii and the City and County of Honolulu for use as parks and recreational areas.

Of the remaining 55 acres, Navy will assign 13 acres in the center of the base to the State of Hawaii after approval of a legally binding agreement between the LRA and homeless assistance providers by the United States Department of Housing and Urban Development for the provision of homeless assistance services. About 42 acres consisting of roads and parts of the drainage channel will be conveyed by negotiated sales.

Navy published a Notice Of Intent in the **Federal Register** on March 26, 1997, announcing that Navy and the Federal Aviation Administration as a cooperating agency would prepare an EIS for the disposal and reuse of NAS Barbers Point. Navy held a public scoping meeting at the Washington Intermediate School in Honolulu on April 16, 1997, and at the base's Paradise West Club on April 17, 1997. The scoping period concluded on June 19, 1997.

Navy distributed the Draft EIS (DEIS) to Federal, State, and local governmental agencies, elected officials, community groups and associations, and interested persons on August 28, 1998, and commenced a 45-day public review and comment period. During this period, Federal, State and local agencies, community groups and associations, and interested persons submitted oral and written comments concerning the DEIS. Navy held public hearings to receive comments on the DEIS at the James Campbell Building in Kapolei on October 5, 1998, and at the Washington Intermediate School in Honolulu on October 7, 1998.

Navy's responses to the public comments were incorporated in the Final EIS (FEIS), which was distributed to the public on February 5, 1999, for a review period that concluded on March 8, 1999. Navy received five letters commenting on the FEIS.

Alternatives.

NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this surplus Federal property. In the FEIS, Navy analyzed the environmental impacts of four reuse alternatives. Navy also evaluated a "No Action" alternative that would leave the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

In a letter to the Department of Defense's Office of Economic Adjustment dated September 28, 1993, the State of Hawaii, acting as the LRA, and the City and County of Honolulu jointly established the Barbers Point Naval Air Station Reuse Committee. In Executive Order No. 94–98 dated December 2, 1994, the Governor of Hawaii, John Waihee, established the Barbers Point Naval Air Station Redevelopment Commission to prepare a redevelopment plan for the base. The Redevelopment Commission solicited expressions of interest in the property and received notices of interest from State, City, and County agencies, private businesses, homeless assistance providers, and nonprofit organizations. After the Redevelopment Commission evaluated these notices of interest, it developed three reuse proposals: a Large Airport Alternative, a Small Airport Alternative, and a "No Airport" Alternative.

In August 1996, the Redevelopment Commission solicited comments concerning the three reuse proposals at four public hearings held in various places on Oahu. In response to these comments, the Redevelopment Commission developed a fourth alternative that adopted parts of the Large and Small Airport Alternatives. During a public hearing on September 17, 1996, the Redevelopment Commission solicited comments concerning this composite alternative. On October 8, 1996, the Commission adopted the composite alternative as its reuse plan and approved the Naval Air Station Barbers Point Community Redevelopment Plan. In a letter to the Redevelopment Commission dated December 23, 1996, Governor Benjamin Cayetano accepted the Redevelopment Commission's recommendations with certain modifications.

On December 11, 1997, the Redevelopment Commission modified the Redevelopment Plan by making additional property available for residential and commercial uses and by changing the use of 65 acres from homeless assistance services to residential purposes. Additionally, the 5.7-acre parcel of land that contains Building 1 was incorporated in the Redevelopment Plan and designated for commercial and residential uses. In a memorandum to the Governor dated December 17, 1997, the Redevelopment Commission submitted Community Redevelopment Plan Amendment 1 and on December 23, 1997, Governor Cayetano approved this amendment by endorsing the memorandum dated December 17, 1997.

On December 10, 1998, the Redevelopment Commission modified the Redevelopment Plan a second time by changing the use of five acres in the center of the base from a public facility to a park and by making minor changes to the proposed roadway system. In a memorandum received by the State of Hawaii on February 5, 1999, the Redevelopment Commission submitted Community Redevelopment Plan Amendment 2 to Governor Cayetano. On March 17, 1999, Governor Cayetano approved this amendment by endorsing the memorandum received on February 5, 1999.

The Redevelopment Plan, identified in the FEIS as the Preferred Alternative, proposed a mix of land uses. The Preferred Alternative would use the runways, hangars, and related maintenance buildings, covering 702 acres, as an airport that would serve civilian general aviation and aviation operations of the Coast Guard and the Hawaii Army National Guard. This Alternative would use 165 acres for residential purposes; 515 acres for light industrial activities; 33 acres for educational and public facilities; 686 acres for parks and recreational activities; and 29 acres for roads, open space, and utilities. It will be necessary to make extensive utility infrastructure and roadway improvements to support the Redevelopment Plan's proposed development of property at Barbers Point.

In the center of the base, the Preferred Alternative proposed to use 702 acres as an airport serving civilian general aviation and aviation operations of the Coast Guard and the Hawaii Army National Guard. The Preferred Alternative would use parts of the two parallel southwest-northeast 8,300-foot runways, *i.e.*, 4,500 feet of runway 4L–22R and 8,000 feet of runway 4R–22L. The 4,500-foot runway would be used for civilian general aviation operations. The 8,000-foot runway would be used for civilian general aviation and military air operations. It would also provide commercial airliners bound for or departing from Honolulu International Airport with an alternate landing site. This Alternative would use 6,000 feet of the northwest-southwest 8,411-foot crosswind runway (runway 11–29) for civilian general aviation and military air operations.

The new airport at Barbers Point would improve the mix of general aviation and commercial aircraft at Honolulu International Airport by diverting some general aviation operations to Barbers Point. By the year 2020, the new airport at Barbers Point would serve about 60 percent (78,000) of the small single-engine and light twin-engine propeller aircraft operations that would otherwise use Honolulu International Airport. It would also serve about 50 percent (27,900) of those kinds of aircraft operations that would otherwise use Dillingham Airfield, a general aviation facility on Oahu's north shore, and 62,700 general aviation training operations that previously used the Auxiliary Landing Field at Ford Island in Pearl Harbor. These diverted operations would amount to about 168,600 general aviation operations in the year 2020 on Oahu.

In the year 2020, the new airport at Barbers Point would accommodate about 203,600 air operations per year. These operations would be composed of the 168,600 general aviation operations diverted from Honolulu, Dillingham and Ford Island; about 13,100 Coast Guard and Hawaii Army National Guard operations; and about 21,900 general aviation operations that would be generated each year by the Redevelopment Plan's proposed aviation training school.

North of the airfield, the Preferred Alternative would use 14 acres for residential purposes, 13 acres for homeless assistance services, six acres for commercial activities, seven acres for recreational activities, and 13 acres for educational facilities. Just south of this area, the Preferred Alternative would dedicate seven acres for use as public facilities such as an aviation training school.

In the northeastern part of the base, the Preferred Alternative would use about 346 acres adjacent to the FAA navigation aid for commercial and recreational activities. This Alternative would build an international sports center here for athletic training programs, competitive events, in-transit athlete services, and related activities. The Preferred Alternative would also build a baseball complex, a field sports complex, and a festival center in this area.

In the southeastern and southern parts of the base, the Preferred Alternative would use about 516 acres for commercial and recreational activities. This Alternative would develop the area along the shoreline to provide a regional park, facilities for launching canoes and boats with related amenities, camping grounds, athletic fields, and open space. The Preferred Alternative would redevelop the inland area north of the regional park as a marine park. It would also establish a heritage park west of the marine park to preserve inland areas that contain significant archaeological resources.

In the southwestern part of the base, the Preferred Alternative would build an automobile race track complex on about 161 acres between the western ends of the crosswind runway, Runway 11–29, and one of the parallel runways, Runway 4R–22L. On 42 acres in the southwest corner of the base, across the drainage channel, this Alternative would build a seawater desalinization plant.

In the northwest corner of the base, the Preferred Alternative proposed to use 138 acres south and west of the Navy-retained housing for residential purposes and 13 acres in the northwestern part of the Navy housing area for continuing use of the Barbers Point Elementary School. This Alternative would build light industrial facilities on 123 acres south and west of this residential area

It would be necessary to make roadway improvements to implement the Redevelopment Plan. These improvements would link the new development to the surrounding communities of Kapolei and Ewa Marina.

Navy analyzed a second "action" alternative, described in the FEIS as the Large Airport Alternative. In the center of the base, the Large Airport Alternative proposed to use 961 acres as an airport that would serve civilian general aviation, the Coast Guard, and the Hawaii Army National Guard. This Alternative would use the entire lengths of the existing parallel and crosswind runways and would support the same volume and kinds of operations as the Preferred Alternative. All three runways would be available as alternative landing sites for commercial airliners.

North of the airfield, the Large Airport Alternative proposed residences, homeless assistance services, commercial facilities, recreational activities, and educational facilities. The locations and configurations would be the same as in the Preferred Alternative.

In the northeastern part of the base, the Large Airport Alternative proposed a mix of residential, commercial, and light industrial uses. This Alternative would provide a residential area outside the perimeter of the FAA navigation aid. It would build light industrial facilities south and west of this residential area. The property west of the residential area adjacent to the FAA navigation aid would also be used for a State correctional facility.

In the southeastern and southern parts of the base, this Alternative proposed to redevelop the area along the shoreline for use as a regional part and beach with camping grounds. Under this Alternative, recreational and athletic

fields would be built north and inland of the shoreline facilities. It would also build a marine park west of the regional park, a heritage park north of the marine park, and an amphitheater north of the regional park and east of the heritage park.

In the southwestern part of the base, between the western ends of the crosswind runway (Runway 11–29) and one of the parallel runways (Runway 4L–22R), the Large Airport Alternative would build an automobile race track complex. On 42 acres in the southwest corner of the base, across the drainage channel, this Alternative would build a seawater desalinization plant.

In the northwest corner of the base, the Large Airport Alternative would use the property adjacent to the Navy-retained housing for residential purposes and would continue to use the Barbers Point Elementary School. This Alternative would build light industrial facilities in the areas south and west of this residential area.

Navy analyzed a third "action" alternative described in the FEIS as the Small Airport Alternative. In the center of the base, the Small Airport Alternative proposed to use 701 acres as an airport that would serve civilian general aviation, the Coast Guard, and the Hawaii Army National Guard. This Alternative would use parts of the two parallel 8,330-foot runways, *i.e.*, 8,000 feet of Runway 4L–22R and 3,700 feet of Runway 4R/22L. The 8,000-foot runway would provide an alternative landing site for commercial airlines. The 3,700-foot runway would be used for civilian general aviation operations. This Alternative would not operate the crosswind runway. It would provide airport facilities to accommodate the same kinds and volume of air operations proposed by the Preferred Alternative and the Large Airport Alternative.

North of the airfield, the Small Airport Alternative proposed residences, homeless assistance services, commercial activities, recreational activities, and educational facilities. The locations and configurations would be the same as in the Preferred Alternative.

In the northeastern part of the base adjacent to the FAA navigation aid, the Small Airport Alternative proposed to build an international sports center, a baseball complex, a field sports complex, a festival center, and fairgrounds.

In the southeastern and southern parts of the base, the Small Airport Alternative would redevelop the area along the shoreline for use as a recreational beach with a picnic area and camping grounds. Under this Alternative, a marine park, a rowing regatta facility, and recreational and athletic fields would be built north and inland of the shoreline facilities. This Alternative would develop the inland area west and northwest of the marine park for use as an amphitheater and as a heritage park. It would build athletic fields north of the marine park, adjacent to the eastern parcel of the Pearl Harbor National Wildlife Refuge's Barbers Point Unit.

In the southwestern part of the base, the Small Airport Alternative proposed to use 10 acres west of the Coast Guard property to train fire fighters. This Alternative would use 42 acres at the southwest corner of the base, across the drainage channel, for a seawater desalinization plant and for light industrial facilities. Unlike the Preferred Alternative, the Small Airport Alternative would not build an automobile race track complex.

In the northwest corner of the base, the Small Airport Alternative proposed to use property adjacent to the Navy-retained housing for residential purposes and to continue using the Barbers Point Elementary School. The areas south and west of this residential area would be used to build light industrial facilities. The area north of the Navy-related landfill could be used for a State correctional facility.

Navy analyzed a fourth "action" alternative described in the FEIS as the "No Airport" Alternative. In the "No Airport" Alternative, the acquiring entity would direct and market the redevelopment of NAS Barbers Point for non-aviation uses. All of the aviation facilities on the surplus property would be modified to serve non-aviation purposes or would be demolished. Thus, it would be necessary for the Coast Guard to move its fixed wing and rotary air operations to another site on the island of Oahu. The Hawaii Army National Guard could operate its helicopters on the property previously occupied by the Coast Guard.

In the center of the base, the "No Airport" Alternative proposed to build recreational facilities. These facilities would include an international sports center and a baseball complex. North of the baseball complex, the "No Airport" Alternative proposed residences, homeless assistance services, commercial facilities, recreational activities, and educational facilities. The locations and configurations would be the same as in the Preferred Alternative.

In the northeastern part of the base, the "No Airport" Alternative would use the property adjacent to the FAA navigation aid for residential and recreational purposes. This Alternative would build residential units, a festival center, fairgrounds, a marine park and an amphitheater in this area.

In the southeastern part of the base, the "No Airport" Alternative proposed parks, commercial and recreational uses. This Alternative would build a rowing regatta facility, a recreational beach, camping grounds and athletic fields. North and inland of the shoreline facilities, this Alternative would build a heritage park and additional athletic fields.

In the southwestern part of the base, the "No Airport" Alternative would use the property for commercial and light industrial activities. These could include an automobile race track complex, an electric power plant, and a State correctional facility. It would build a fire fighter training facility on the same 42-acre parcel in the southwest corner of the base, across the drainage channel, where the Preferred Alternative would build a seawater desalinization plant.

In the western part of the base south of the Navy-retained housing, the "No Airport" Alternative proposed to build recreational facilities. This Alternative also proposed to continue using the Barbers Point Elementary School in the northwestern part of the base.

Environmental Impacts

Navy analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of this surplus Federal property. The FEIS addressed the impacts of the Preferred Alternative, the Large Airport Alternative, the Small Airport Alternative, the "No Airport" Alternative, and the "No Action" Alternative for each alternative's effects on geology, topography and soils, groundwater quality, surface water quality, air quality, noise, visual resources, transportation, biological resources, cultural resources, public health and safety, public services, socioeconomics (including population, employment, income, housing, recreation, and environmental justice), and infrastructure, including potable water, non-potable water, wastewater, drainage, electricity, solid waste, and communications. This Record Of Decision focuses on the impacts that would likely result from implementation of the Redevelopment Plan, identified in the FEIS as the Preferred Alternative.

The Preferred Alternative would not have any significant impact on soils and would not have any impact on local or regional geological resources or topography. The soil at Barbers Point is not susceptible to erosion because it is shallow and highly permeable.

Disturbances to soils such as compaction, rutting, and erosion would be limited to the particular areas that would be redeveloped. These impacts would be temporary and can be minimized during construction by the use of standard soil erosion and sedimentation control measures such as the use of hay bales and silt fences.

The Preferred Alternative would not have any significant impact on the availability or quality of groundwater. The groundwater at NAS Barbers Point is brackish and not suitable for public consumption or irrigation without desalinization. Airport operations and light industrial activities would not affect the groundwater, because operational controls such as containment of chemical and fuel storage areas as well as maintenance activities would be imposed. These controls are specified in existing laws and regulations governing industrial and construction-related runoff.

The Preferred Alternative would not have a significant impact on surface waters. The Pacific Ocean, Ordy Pond, the coastal salt flat, and the seasonal wetland would not be significantly affected by construction activities if standard soil erosion and sedimentation control measures required by existing laws and regulations were implemented.

Stormwater discharge from new light industrial activities, roadways, parking areas, and routine operations and maintenance in developed areas (such as the application of herbicides and pesticides) could have adverse impacts on surface water quality. In accordance with Federal, State, and local laws and regulations, the acquiring entities will implement stormwater management practices to minimize these potential impacts. There could also be significant cumulative impacts on surface water quality arising out of the regional drainage from surrounding communities.

The Preferred Alternative would not have any significant impact on air quality. Compliance with regulatory requirements that control emissions such as the Clean Air Act, 42 U.S.C. § 7401–7671q (1994), and the Hawaii Administrative Rules, Chapter 11–60.1, Air Pollution Control, would prevent significant impacts from stationary sources. Additionally, there would not be any significant regional or local impact on air quality from mobile sources if the roadway improvements described in the FEIS were implemented. Finally, emissions from aircraft operations would be substantially less than when the Naval Air Station was operating.

The Preferred Alternative would not have any significant impact on noise. Exposure to noise from aircraft operations would be substantially less than when the Naval Air Station was operating. This decrease results from the significant reduction in annual jet aircraft operations proposed under the Preferred Alternative. Additionally, aircraft noise levels would not exceed the State of Hawaii's standards for airport operations that affect residential areas.

During reuse there would be an increase in ambient noise levels arising out of the non-aviation activities. These activities, however, must comply with the Hawaii Administrative Rules, Chapter 11–46, Community Noise Control. Moreover, in accordance with Chapter 343 of the Hawaii Revised Statutes (1996), redevelopment projects would be evaluated in either an environmental assessment or an environmental impact statement before development could begin.

The Preferred Alternative would not have any significant impact on visual resources. The development of shoreline parks would increase public access to the coastal area and would not obstruct views of the Pacific Ocean and coastal landmarks from inland areas.

The Preferred Alternative would not have any significant impact on transportation except when special events were held. By the year 2020, this Alternative would generate about 49,1000 average daily trips compared with 27,300 average daily trips that were associated with Navy's use of the property. With the roadway improvements described in the FEIS, this increase in daily traffic could be accommodated. However, traffic generated by events at the automobile race trace complex and at the festival center would have significant impacts even if traffic control measures and parking plans were implemented.

The Preferred Alternative would not have any significant impact on biological resources. Navy held informal consultations with the United States Fish and Wildlife Service and the National Marine Fisheries Service under Section 7 of the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1536 (1994). In a letter dated December 1, 1998, the Fish and Wildlife Service concurred with Navy's determination that the disposal and reuse of NAS Barbers Point is not likely to adversely affect the one Federally listed endangered plant there, the akoko shrub (*Chamaesyce skottsbergii var. skottsbergii*). The Service's concurrence was based upon Navy's assurance that the conveyance of property to the State of Hawaii and the City and County of Honolulu on which the akoko is known to exist will be made through the Department of the Interior. Navy will inform Interior about its responsibility under Section 7 of ESA to consult with the Service regarding the potential effects on the akoko of conveying the property to the State and City and County of Honolulu.

The Preferred Alternative could have construction-related impacts on coastal waters where the Federally listed and State-listed threatened green sea turtle (*Chelonia mydas*) is found. Impacts from surface water runoff generated by construction can be avoided or reduced by the use of stormwater control measures required by existing laws and regulations. In a letter dated November 25, 1998, the National Marine Fisheries Service concurred with Navy's determination that the disposal and reuse of NAS Barbers Point is not likely to adversely affect Federally listed species or critical habitat unless changes or improvements associated with reuse increase the amount of stormwater runoff. Thus, increases in stormwater runoff generated by activities under the Preferred Alternative could require the acquiring entities to build stormwater disposal facilities.

The Preferred Alternative would not have any significant impact on cultural resources. Pursuant to Section 106 of the National Historic Preservation Act of 1966 (NHPA), 16 U.S.C. 470f (1994), Navy conducted a cultural resource assessment and determined that 62 archaeological sites and 64 structures are eligible for listing on the National Register of Historic Places. The archaeological sites and historic structures will be protected by covenants in the deeds conveying the property. These covenants will require prior written approval from the State Historic Preservation Officer (SHPO) before any action may be taken that would affect those properties.

In addition, Hawaii's historic preservation program, set forth in Hawaii Revised Statutes, Chapter 6E, requires a consultative process by State and City agencies with the SHPO similar to that prescribed by Section 106 of the NHPA for Federal agencies. The State Historic Preservation Officer and the Advisory Council on Historic Preservation, in letters dated December 18, 1998 and January 11, 1999, respectively, concurred with Navy's determination that the disposal and reuse of NAS Barbers Point would not have an adverse effect on the archaeological sites and historic structures if the conveyance documents incorporate protective covenants.

The Preferred Alternative would not have any significant impact on public health and safety. Implementation of this Alternative would not have any significant impact on existing environmental contamination at NAS Barbers Point. Navy will inform future property owners about the environmental condition of the property and may, where appropriate, include restrictions, notifications, or covenants in deeds to ensure the protection of human health and the environment in light of the intended use of the property.

In the northwestern part of the base, near Campbell Industrial Park, the Preferred Alternative proposed to build residential units. The operations of the Industrial Park would not pose a significant health and safety risk to residents of this area. However, in the unlikely event of a catastrophic incident at Campbell Industrial Park, such as the release of large quantities of toxic contaminants or flammable material, there could be a significant impact on public health and safety. In a letter to the State of Hawaii's Department of Business, Economic Development and Tourism dated December 20, 1996, the State's Department of Health discouraged planners from locating residential units near Campbell Industrial Park.

The proposed airport operations must conform to Federal Aviation Administration safety standards and design criteria that require adequate safety measures to protect people and property. The proposed air operations would not adversely affect public health and safety.

The Preferred Alternative would not have any significant impact on most public services. Existing police, fire and health care services are sufficient to accommodate the proposed reuse. However, under the Preferred Alternative, the number of elementary school students would nearly double and there would be smaller increases of intermediate and high school students. The acquiring entities can mitigate this significant impact by increasing the capacity of Barbers Point Elementary School; by building an additional elementary school; and by redistricting and reallocating student populations. These measures would also mitigate the cumulative impacts on education arising out of new residential development planned for the nearby Ewa area of Oahu.

The Preferred Alternative would have significant beneficial socioeconomic impacts. The proposed redevelopment would increase employment and provide additional recreational opportunities and housing. The Preferred Alternative would create 3,600 direct jobs and 3,400 indirect jobs that would generate about $197 Million in direct and indirect income. The additional parks and recreational areas would be made available to the public. The proposed residential areas would increase the amount of affordable housing on the island.

The Preferred Alternative would generate a 4,000-person increase in the local population. However, since this increase would represent less than two percent of this area's population, it would not cause any adverse effects.

The Preferred Alternative would not have any significant impact on potable water, non-potable water, wastewater, solid waste, electricity, and communications. Oahu's capacity for these services is adequate to support the Redevelopment Plan.

The Preferred Alternative would not have any significant impact on stormwater drainage. Increases in stormwater runoff could result from the construction of additional impervious surfaces. The acquiring entities can mitigate this impact by building stormwater disposal facilities or a drainage system of pipes that would carry stormwater to the ocean.

Navy analyzed the Redevelopment Plan's proposed regional drainage channel in the FEIS and concluded that additional studies and comments from affected parties would be required to resolve the regional drainage issue. The drainage channel proposed in the Preferred Alternative would redirect off-base stormwater runoff to the base property. This drainage channel has not been formally considered or approved by Navy, the City and County of Honolulu, or affected Ewa landowners. Directing off-base runoff to the base, as proposed in the Preferred Alternative, may restrict certain proposed reuse activities and adversely affect military activities on property retained by Navy. These restrictions could reduce the amount of property designated for residential, commercial, and light industrial purposes. Additionally, if upstream contaminants were carried in the stormwater runoff to Navy-owned property, responsibility for remediation could become an issue. These impacts could be avoided by allowing runoff from the upstream area to follow its natural drainage pattern and flow down to the Ewa Marina area, rather than by redirecting the flow as proposed in the Preferred Alternative.

Executive Order 12898, Federal Actions to address Environmental Justice in Minority Populations and Low-Income Populations, 3 C.F.R. 859 (1995), requires that Navy determine whether any low-income and minority populations will experience disproportionately high and adverse human health or environmental effects from the proposed action. Navy analyzed the impacts on low-income and minority populations pursuant to Executive Order 12898. The FEIS addressed the potential environmental, social, and economic impacts associated with the disposal of NAS Barbers Point and subsequent reuse of the property under the various proposed alternatives. Minority and low-income populations residing within the region will not be disproportionately affected. Indeed, the employment opportunities, housing and public services created by implementing the Preferred Alternative would have beneficial effects.

Navy also analyzed the impacts on children pursuant to Executive order 13045, Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR 198 (1998). Under the Preferred Alternative, the largest concentration of children would be present in the residential and recreational areas. The Preferred Alternative would not impose any disproportionate environmental health or safety risks on children. However, in the unlikely event of a catastrophic incident at Campbell Industrial Park, such as the release of large quantities of toxic contaminants or flammable material, there could be disproportionate health and safety risks to children living in the nearby residential area.

Mitigation

Implementation of Navy's decision to dispose of NAS Barbers Point does not require Navy to implement any mitigation measures. Navy will take certain actions to implement existing agreements and regulations. These actions were treated in the FEIS as agreements or regulatory requirements rather than as mitigation.

The FEIS identified and discussed those actions that will be necessary to mitigate the impacts associated with the reuse and redevelopment of Naval Air Station Barbers Point. The acquiring entities, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

Comments Received on the Final EIS

Navy received comments on the Final EIS from the United States Coast Guard, the State Historic Preservation Officer, the City and County of Honolulu Fire Department, the Barbers Point Naval Air Station Redevelopment Commission,

and one individual. These comments concerned issues already discussed in the FEIS and do not require further clarification.

Regulations Governing the Disposal Decision

Since the proposed action contemplates a disposal under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note (1994), Navy's decision was based upon the environmental analysis in the FEIS and application of the standards set forth in the DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR Part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR Parts 174 and 175.

Section 101–47.303–1 of the FPMR requires that disposals of Federal property benefit the Federal Government and constitute the "highest and best use" of the property. Section 101–47.4909 of the FPMR defines the "highest and best use" as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The "highest and best use" determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historic considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the "highest and best use" of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of the DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth in Part 101–47 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under the DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b)(4) of the DBCRA, may Navy apply disposal procedures other than those in the FPMR.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of the DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 174.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the LRA's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, as reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 175.7(d)(3) of the DoD Rule provides that the LRA's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1994), as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyances (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR Sec. 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyance as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid, are left to the Federal agency's discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion

The LRA's proposed reuse of NAS Barbers Point, reflected in the Redevelopment Plan, is consistent with the prescriptions of the FPMR and Section 174.4 of the DoD Rule. The LRA has determined in its Redevelopment Plan that the property should be used for various purposes including aviation, residential, community, industrial, commercial, public, park and recreational uses. The property's location, physical characteristics, and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed uses.

The Preferred Alternative responds to local economic conditions, promotes rapid economic recovery from the impact of the Naval Air Station's closure, and is consistent with P
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com FR Parts 174 and 175, 59 FR 16,12 (19).

Although the "No Action" Alternative has less potential for causing adverse environmental impacts, this Alternative would not take advantage of the property's location, physical characteristics, and infrastructure or the current uses of adjacent property. Additionally, it would not foster local economic redevelopment of the Barbers Point property.

The acquiring entities, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid

or minimize environmental harm that may result from implementing the Redevelopment Plan.

Accordingly, Navy will dispose of the surplus Federal property at Naval Air Station Barbers Point in a manner that is consistent with the State of Hawaii's Redevelopment Plan for the property.

Dated: June 17, 1999.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy (Conversion And Redevelopment).

Dated: June 25, 1999.

Ralph W. Corey,

CDR, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 99–16691 Filed 6–29–99; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Record of Decision for the Construction and Operation of the Spallation Neutron Source

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE) is issuing this Record of Decision (ROD) regarding DOE's proposal to construct and operate the Spallation Neutron Source (SNS). DOE has decided to proceed with construction and operation of a state-of-the-art Spallation Neutron Source facility at the preferred location, the Oak Ridge National Laboratory, Oak Ridge, Tennessee. This decision is based on the analysis contained in the "Final Environmental Impact Statement for the Construction and Operation of the Spallation Neutron Source" (SNS FEIS, DOE/EIS–0247, April 23, 1999).

ADDRESSES: Requests for copies of the Final EIS and this ROD should be directed to: Mr. David Wilfert, EIS Document Manager, U.S. Department of Energy, Oak Ridge Operations Office, 200 Administration Road, 146/SNS, Oak Ridge, TN 37831. Alternately, Mr. Wilfert may be contacted by telephone at (800) 927–9964, by fax at (423) 576–4542, or by email at NSNSEIS@ornl.gov.

FOR FURTHER INFORMATION CONTACT: For general information on the Spallation Neutron Source, contact: Mr. Jeff Hoy, SNS Program Manager, Office of Basic Energy Sciences (SC–13), Germantown, MD 20874–1290, telephone: (301) 903–4924, fax: (301) 903–9513, or email: Jeff.Hoy@science.doe.gov.

For general information on DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585, telephone: (202) 586–4600, fax: (202) 586–7031.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency (EPA) issued a Notice of Availability for DOE's Final Environmental Impact Statement on the Construction and Operation of the Spallation Neutron Source (Final EIS, DOE/EIS–0247) on April 23, 1999, (64 FR 19999). In the Final EIS, DOE considered the potential environmental impacts of its proposed action, the construction and operation of the SNS at four alternative sites: Oak Ridge National Laboratory (ORNL), Los Alamos National Laboratory (LANL), Argonne National Laboratory (ANL), and Brookhaven National Laboratory (BNL). The Department identified Oak Ridge as its preferred alternative site. DOE also considered a no action alternative under which the SNS would not be built. DOE has considered all of the comments it received during the public comment period. The Final EIS analyzed environmental impacts over the projected life of the facility, both operating at an initial power level of 1 megawatt (MW) and at the maximum potential upgrade power level of 4 MW.

Background

Scientific discoveries and the new technologies derived from neutron scattering research have contributed significantly to the development of new products in the international marketplace, such as: better magnetic materials for information storage media and for electric generators and motors; improved engine parts; better lubricants; strong, but light-weight structural materials; durable plastics; metallic glasses; semiconductors; adhesives; improved detergents; and new drugs. Neutron research and the associated scientific, engineering, and technological advances provide the catalyst for the development of commercial applications and support U.S. economic progress and competitiveness among the industrialized nations of the world. Construction of a next-generation spallation neutron source in the U.S. will provide a competitive edge for the nation in the physical, chemical, materials, biological, and medical sciences.

The U.S. needs a high-flux, short-pulsed neutron source to provide its scientific and industrial research communities with a much more intense source of pulsed neutrons for neutron scattering research than is currently available. The neutron science community has long recognized the need for both high-intensity, pulsed (accelerator-based) neutron sources and continuous (reactor-based) neutron sources. There are approximately 20 major neutron sources worldwide that produce neutron beams for materials research. The Organization for Economic Cooperation and Development (OECD) Neutron Science Working Group has identified a growing disparity between the worldwide need for neutron scattering research and the availability of facilities. The OECD Working Group estimated that as the oldest neutron sources continue to age, only about one-third of the present sources would remain available by 2010. For nearly a decade, the research community has regarded U.S. facilities as inferior to the newer and more extensively upgraded foreign facilities. The current generation of neutron sources in the United States has lower neutron beam intensities, lower operating powers, and less advanced measuring instruments, when compared to the current "state-of-the-science" (currently technologically feasible and desirable). Thus, next-generation neutron sources are needed not only to create new scientific and engineering opportunities, but also to replace out-dated capacity. Access to European and Japanese neutron sources by U.S. researchers and manufacturers is difficult, unreliable, and costly. The logistics of scheduling time and configuring instrumentation to conduct specialized experiments are prohibitive because of the commuting distances to these facilities. In addition, given the proprietary nature of much of the research desired by U.S. industry, its research cannot be carried out at foreign facilities. A 1 MW state-of-the-art facility like SNS would produce pulses five times more intense than the best spallation source in operation today, the ISIS facility in Great Britain.

Alternatives Considered and Evaluated

In the Final EIS, DOE proposed to construct and operate the SNS. DOE evaluated five alternatives for this proposed action:

1. Construct and operate the SNS at ORNL;
2. Construct and operate the SNS at LANL;
3. Construct and operate the SNS at ANL;
4. Construct and operate the SNS at BNL; and
5. No Action Alternative: Do not construct the SNS. The United States would continue to use existing neutron science facilities.

The Preferred Alternative

The Department's preferred alternative is to construct and operate the SNS at ORNL.

Environmental Impacts of Alternatives Evaluated

As demonstrated in the Final EIS, the construction and operation of the SNS is not expected to result in any unacceptable environmental consequences at any of the four candidate sites, though each site does have its own unique adverse environmental aspects. Of the alternative sites, ORNL has the fewest negative impacts. The SNS site at ORNL is adjacent to the Walker Branch Watershed, an environmental research area, and has the potential to degrade some data collection for ongoing atmospheric research by the National Oceanic and Atmospheric Administration/Atmospheric Turbulence and Diffusion Division (NOAA/ATDD) and ecological research by the ORNL Environmental Sciences Division. Some of these long-term environmental monitoring programs are important to our understanding of gradual global changes, like global warming, occurring in the atmosphere. SNS design features are available to mitigate these impacts; therefore, the SNS Project shall work with the research organizations (NOAA/ATDD and the ORNL Environmental Sciences Division) to identify and implement options to reduce or eliminate those negative impacts. This includes, but is not limited to, options identified in the Final EIS, e.g., sizing and location of cooling towers, waste heat recovery to offset the burning of natural gas, or the provision of alternative monitoring capability to the Walker Branch Watershed researchers. By contrast, negative environmental effects associated with the other three candidate sites are not so easily ameliorated. At Los Alamos, drawing cooling water from the sole-source aquifer could adversely impact the area water table; perhaps causing local residents and the White Rock community to increase their water well depth in order to sustain service. Additionally, the electric power supply and distribution system on the mesa would have to be upgraded to accommodate the added SNS load. At Argonne, the limited size of the reservation will make the maximally exposed individual closer to the radiological source term, and it offers fewer opportunities to compensate for the wetlands destroyed during construction of the SNS. At Brookhaven, the permeable soils and shallow sole-source aquifer would require significant and costly design features to mitigate the potential for degradation of the drinking water due to migration of activated soils.

Environmentally Preferable Alternative

The "no action" alternative has the least local adverse environmental impact on the sites analyzed; however, it may have greater long-term negative impact on the environment as a whole by depriving the country of future neutron science-based technology that might reduce other negative environmental impacts, e.g., lost fuel efficiency gains in vehicles, less efficient chemical processes, greater power transmission losses, etc. Neutron scattering science has provided many advanced materials, which make possible or contribute to improved quality of life, including protecting and improving the environment. Specific areas with the most direct value to environmental quality are: (1) Light-weight materials, (2) improved lubricants, (3) high temperature superconductors, and (4) new catalysts. Light-weight materials reduce motor vehicle and aircraft weight, thus reducing fuel requirements and attendant combustion product emissions. Improved lubricants reduce friction losses and wear in machinery, thus reducing the manufacture of replacements, and improving emissions performance during operation. High temperature superconductors allow improved energy efficiency in some devices and offer the possibility for more efficient power transmission, thus reducing energy production demands. Finally, catalysts have played a major role in pollution control devices (such as automobile catalytic converters), and neutron scattering is an important tool used in developing new catalysts. Thus, neutron based technology has historically been a benefit to the environment, and the SNS may well result in fewer environmental impacts than the no action alternative.

Construction and operation at any of the four alternative sites does have its own unique adverse environmental impact at the specific location. Of the action alternatives, the environmentally preferable site for the SNS is the ORNL reservation because it offers relatively minor impacts with comparatively easy and effective mitigation actions which will be addressed in a Mitigation Action Plan (MAP) as discussed later.

Review of the Final EIS

DOE distributed approximately 950 copies (200 full copies and 750 copies of the summary) of the Final EIS to members of Congress; Federal, State, and local government offices; Native American organizations; stakeholders; and public reading rooms. In addition, the document is available on the World Wide Web at the Environment, Safety and Health home page, http://nepa.eh.doe.gov/eis/eis0247/eis0247.html.

The U.S. Department of the Interior provided comments on the Draft EIS that were inadvertently omitted from the Final EIS. Generic concerns focused on protection of ground and surface water, and on continued and expanded project participation in consultation and permitting processes; and site-specific comments were offered for each candidate site. In a subsequent response letter, DOE agreed to address these comments in the selected alternative's MAP.

EPA provided comments on the Final EIS, indicating no objection to DOE proceeding with detailed design and site evaluation. However, EPA states that if these activities produce significant new information or adverse environmental impact, then DOE would prepare a supplemental EIS. EPA also identified groundwater concerns at ANL related to drinking water wells. Lastly, EPA provided comments regarding air quality modeling that would need to be addressed in the next phase of the project regardless of which site was selected.

Decision

DOE will proceed with the proposed action to construct and operate the SNS at the preferred location on the ORNL reservation.

Basis for Decision

. The decision to proceed with construction and operation of the SNS is based on the significant scientific and economic benefits expected to be derived from the facility and the minimal environmental consequences associated with its construction and operation. Selection of the ORNL reservation as the site for the SNS is based on environmental and programmatic factors. First, while the environmental consequences for construction and operation of the SNS are not severe at any of the candidate locations, the ORNL reservation affords the combination of minimal impact and easiest mitigation for those consequences that do occur. A modest amount of wetland (0.23 acres) will be disturbed when constructing the facility access road. However, it is anticipated that the permitting process will not be complicated due to DOE's ability to

implement compensatory action on the ORNL reservation. Periodic degradation of the long-term environmental monitoring program on the Walker Branch Watershed is undesirable, but engineering solutions to reduce or eliminate those impacts are readily available.

Other Decision Factors

In addition to environmental factors, DOE considered the existing infrastructure for neutron science, cost of construction, and community support for the proposed action.

ORNL provides a unique and comprehensive set of scientific research infrastructure that will function in synergy with the SNS facility. The High Flux Isotope Reactor (HFIR) has long been a dominant location for thermal neutron scattering research; and that facility is currently being upgraded to provide cold neutron research capability. The combination of HFIR and SNS will provide the full spectrum of neutron research tools at one laboratory, thus allowing scientists to optimize on-site research during their time in Oak Ridge. ORNL maintains a staff of world-class neutron scattering scientists continuing the base neutron research programs initially developed at the laboratory in the early 1950's. The current cadre of technicians supporting neutron research at the HFIR will provide an experienced pool from which to develop that same capability for the SNS facility as it is brought into operation. In addition, ORNL also provides an important physical plant infrastructure to support the SNS. This includes a large reservation without significant adjoining population centers; ready availability of utilities and services to support facility operation and waste stream handling; and regional availability of a low-cost skilled labor pool for construction and operation of the SNS.

Construction on the ORNL reservation would require the least infrastructure upgrades and only minimal site specific environmental mitigation measures. At Los Alamos, it would be necessary to upgrade electric power supply and water supply/distribution systems to satisfy the incremental SNS needs. At Argonne, the limited space would require immediate restoration of an old Argonne waste burial ground, upgraded facility safety systems to ensure adequate protection to residents located very close to the facility, and extensive surface mitigation actions to address wetlands, floodplains, and a major traffic pattern disruption. At Brookhaven, close proximity of the sole-source aquifer and the highly permeable soil would require design modifications to ensure continuing separation of ground water from activated soil/shielding around large portions of the facility. The construction cost advantage at ORNL, due to lower upgrade and mitigation costs, could be offset to some degree by the possible application of Tennessee state sales and use taxes to the SNS construction project. Thus, based on construction costs, the preferred site at ORNL is at least as attractive as any of the alternative sites.

Tennessee State and local governments, as well as the local community, have expressed broad support for locating the SNS at Oak Ridge. Tennessee is actively demonstrating their support of neutron science activities in Oak Ridge by building a guest user facility, the Joint Institute for Neutron Science, on the ORNL reservation, and has committed to developing a neutron science program at the University of Tennessee in Knoxville.

Project Commitments and Mitigation Measures

The DOE shall use all practicable means to avoid or minimize environmental harm from the construction and operation of the SNS and will document specific steps to achieve this end in a Mitigation Action Plan (MAP). The Department will monitor its progress against the MAP to help ensure that it is properly implemented. Copies of the MAP will be made available in the local public reading rooms for information.

With ORNL having been selected as the site for the SNS, DOE will perform three-season surveys there to confirm the presence/absence of threatened and endangered species and archeological investigations to locate any historically sensitive areas. These studies will be performed before major land disturbance begins. The Department will fully assess any species or areas of concern that it identifies and will act to mitigate any adverse impacts to the extent practicable in compliance with governing regulatory agencies (U.S. Fish and Wildlife Service and the State of Tennessee).

Construction of the SNS on the ORNL reservation will result in damage or destruction of three small [a total of 0.23 acres (0.09 ha)] wetland areas to accommodate the facility access road. As conventional facility design evolves, the amount of impacted wetland shall be held to a minimum. During construction, DOE will comply with the requirements of the appropriate regulatory authority (the U.S. Army Corps of Engineers or the State of Tennessee) with respect to the affected wetlands. The Department will use runoff and siting controls during construction to restrict unnecessary damage to remaining wetland areas.

As changes evolve in facility design or as facility upgrade actions are proposed, the DOE shall revisit requirements of the National Environmental Policy Act (NEPA) to ensure continued compliance by the SNS.

Issued in Washington, D.C. this 18th day of June, 1999.

Bill Richardson,

Secretary of Energy.

[FR Doc. 99–16603 Filed 6–29–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–562–000]

Destin Pipeline Company, L.L.C.; Notice of Request Under Blanket Authorization

June 23, 1999.

Take notice that on June 15, 1999, Destin Pipeline Company, L.L.C. (Destin), P.O. Box 2563, Birmingham, Alabama 35202–2563, tendered for filing in Docket No. CP99–562–000 a request pursuant to sections 157.205, 157.208, and 211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208, and 157.211) for authorization to construct, install and operate a lateral pipeline and appurtenant facilities under Destin's blanket certificate issued in Docket Nos. CP96–657–000 and 001, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

The lateral would accommodate the transportation of natural gas production from a new production platform to be located in Main Pass Block 283 (Main Pass 283 Platform) for connection into Destin's 24-inch lateral line in Main Pass Block 279 (Main Pass 279) for ultimate delivery to downstream pipeline interconnections in southern and central Mississippi.

Specifically, Destin is proposing to construct, install and operate (i) approximately one thousand three hundred fifty (1,350) feet of 12-inch OD lateral pipeline from the Main Press 283 Platform to a subsea tap on Destin's existing 24-inch lateral in Main Pass 279, in Federal Waters, Gulf of Mexico; (ii) one (1) receipt measurement facility located on the Main Pass 283 Platform through which Destin will receive the natural gas produced from the Main Pass 283 Platform; and (iii) one (1) delivery measurement facility located on the Main Pass 283 Platform through which Destin will deliver natural gas to the Main Pass 283 operator for start-up and gas-lift needs.

The estimated cost of the construction and installation of the facilities in $4.6 million. However, out of an abundance of caution and concern for possible cost overruns that may cause the project to exceed the $7.2 million limit for automatic authorization, Destin elected to request authorization, Destin elected to request authorization pursuant to the Commission's prior notice procedures.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–16552 Filed 6–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–342–000]

EL Paso Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

June 23, 1999.

Take notice that on June 18, 1999, EL Paso Natural Gas Company (EL Paso), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A., with an effective date of July 1, 1999:

Fourth Revised Sheet No. 118
Second Revised Sheet No. 314

El Paso states that the tariff sheets are being filed to increase the Billing Determinant for Pemex Gas y Petroquimica Basica to 23,000 dth per day and to revise the related revenue crediting threshold.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file withthe Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16559 Filed 6–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–40–000]

Iroquois Gas Transmission System, L.P., Notice of GRI Refunds

June 23, 1999.

Take notice that on June 18, 1999 Iroquois Gas Transmission System, L.P. (Iroquois), tendered for filing a report of Gas Research Institute (GRI) refunds to Iroquois for the period from January 1, 1998 to December 31, 1998.

Iroquois states that the refund credits have been based on the total refund from GRI to Iroquois of $623,699 and that credits or refunds were given to all eligible firm customers.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16554 Filed 6–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–126–016]

Iroquois Gas Transmission System, L.P.; Notice of Surcharge Report

June 23, 1999.

Take notice that on June 18, 1999, Iroquois Gas Transmission System, L.P. (Iroquois), tendered for filing a surcharge and interest report covering the period from August 31, 1998 to April 30, 1999.

Iroquois states that its surcharge mechanism is in compliance with the Commission's May 24, 1999 letter order in Docket Nos. RP97–126–011 and RP97–126–012.

Iroquois states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties in Docket No. RP97–126.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16555 Filed 6–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–339–000]

Overthrust Pipeline Company; Notice of Tariff Filing

June 23, 1999.

Take notice that on June 17, 1999, Overthrust Pipeline Company (Overthrust), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, to be effective August 1, 1999:

Fifth Revised Sheet No. 36
Fourth Revised Sheet No. 60
Third Revised Sheet No. 61
First Revised Sheet No. 61A
Fifth Revised Sheet No. 78
Fourth Revised Sheet Nos. 78A, 78B, 78C
Third Revised Sheet No. 78D
Original Sheet No. 78E

Overthrust states that the filing is being made in compliance with the Commission's April 2, 1999, Order (the April 2 Order) in Docket No. RM96–1–011, Order No. 587–K.

In the April 2 order, the Commission amended 18 CFR 284.10 governing standards for conducting business practices and electronic communication with interstate natural-gas pipelines. The Commission incorporated by reference, into § 284.10(b)(1)(i)–(v) of its regulations, Version 1.3 of the Gas Industry Standards Board. The regulations incorporated in this filing govern confirmation practices, pipeline internet web sites and revisions to the data sets. The effective date of these standards is August 1, 1999. This tariff filing is tendered as required by the Commission's directives.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16556 Filed 6–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–341–000]

Ozark Gas Transmission, L.L.C.; Notice of Tariff Filing

June 23, 1999.

Take notice that on June 18, 1999, Ozark Gas Transmission, L.L.C. (Ozark L.L.C.), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Effective August 1, 1999
First Revised Sheet No. 70
First Revised Sheet No. 109
Effective June 18, 1999
First Revised Sheet No. 95
First Revised Sheet No. 102
First Revised Sheet No. 104
Original Sheet No. 104A

Ozark L.L.C., asserts that the purpose of this filing is to comply with Order No. 587–K, and to further its compliance with Order Nos. 587–G and 587–H.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16558 Filed 6–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–39–000]

Texas Eastern Transmission Corporation; Notice of Compliance Report

June 23, 1999.

Take notice that on June 15, 1999, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing pursuant to section 9.1 of the General Terms and Conditions of is FERC Tariff, Sixth Revised Volume No. 1, its report of recalculated Operational Segment Capacity Entitlements to become effective November 1, 1999.

Texas Eastern states that the purpose of the filing is to make its report pursuant to Section 9.1 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1 of recalculated November 1, 1999 Operational Segment Capacity Entitlements, along with supporting documentation explaining the basis for changes.

Texas Eastern states that copies of the filing were served on all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before June 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16553 Filed 6–29–99 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–340–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

June 23, 1999.

Take notice that on June 17, 1999, TransColorado Gas Transmission Company (TransColorado), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective August 1, 1999:

Sixth Revised Sheet No. 203
Third Revised Sheet No. 203.01

TransColorado states that the filing is being made in compliance with the Commission's April 2, 1999, Order (the April 2 Order) in Docket No. RM96–1–011, Order No. 587–K.

In the April 2 order, the Commission amended 18 CFR 284.10 governing standards for conducting business practices and electronic communication with interstate natural-gas pipelines. The Commission incorporated by reference, into § 284.10(b)(1)(i)–(v) of its regulations, Version 1.3 of the Gas Industry Standards Board. The regulations incorporated in this filing govern confirmation practices, pipeline internet web sites and revisions to the data sets. This tariff filing is tendered as required by the Commission's directives.

TransColorado states that a copy of this filing has been served upon its customers, the Colorado Public Utilities Commission and New Mexico Public Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16557 Filed 6–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–3371–000]

Kenneth L. Way; Notice of Filing

June 24, 1999.

Take notice that on June 4, 1999, Kenneth L. Way tendered for filing an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Director, Consumers Energy Company
Director, WESCO International, Inc.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 2, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16618 Filed 6–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–170–000, et al.]

Indeck Pleasant Valley, LLC, et al.; Electric Rate and Corporate Regulation Filings

June 22, 1999.

Take notice that the following filings have been made with the Commission:

1. Indeck Pleasant Valley, L.L.C.

[Docket No. EG99–170–000]

Take notice that on June 17, 1999, Indeck Pleasant Valley, L.L.C., tendered for filing with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Indeck Pleasant Valley, L.L.C., is an Illinois limited liability company created for the purpose of constructing and owning and/or operating a gas-fired facility located in McHenry County, Illinois (the Facility).

The Facility will consist of two combustion turbine driven synchronous generators and associated equipment, with the maximum power production capacity approximately 300 MW. The plant will be an "eligible facility" within the meaning of Section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Cook Inlet Energy Supply Limited Partnership

[Docket No. ER96–1410–014]

Take notice that on June 17, 1999, in compliance with the Commission's July 10, 1996, Letter Order approving its market-based rate schedule, Cook Inlet Energy Supply Limited Partnership, (Cook Inlet) tendered for filing a Notification of Change in Status. The Cook Inlet filing describes the generation facilities of new affiliates of Cook Inlet and concludes that Cook Inlet's affiliation with these facilities does not alter the characteristics that the Commission relied upon in approving the market-based pricing for Cook Inlet.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. The Green Power Connection, Inc.

[Docket No. ER97–3888–007]

Take notice that on June 17, 1999, the above-mentioned affiliated power producer and/or public utility filed their quarterly report for the quarter ending March 31, 1999.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Nevada Power Company, Sierra Pacific Power Company, and Nevada Power Company

[Docket No. ER99–3110–000, ER99–34–000 (Not Consolidated)]

Take notice that on June 16, 1999, Nevada Power Company (Nevada Power), tendered for filing, pursuant to Section 205 of the Federal Power Act, a revision to its May 29, 1999 application requesting a change in the transmission service rates under its open-access transmission tariff, FERC First Revised Volume No. 3., and a revision to its pro forma merger transmission tariff in Docket No. ER99–34–000. The revision was made to correct a mathematical error in the Period I cost of capital.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. ISO New England Inc.

[Docket No. ER99–3240–000]

Take notice that on June 15, 1999, as corrected on June 16, 1999, ISO New England Inc. (the ISO), tendered for filing, pursuant to Section 205 of the Federal Power Act, revisions to Appendix 5–C to NEPOOL Market Rule 5 together with a request that the Commission accept the revisions on an expedited basis.

The ISO and the NEPOOL Executive Committee state that copies of these materials were sent to the Participants in the New England Power Pool, non-Participant transmission customers and to the New England state governors and regulatory commissions.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3263–000]

Take notice that on June 16, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Keyspan Energy Trading Services, L.L.C., (Keyspan).

Con Edison states that a copy of this filing has been served by mail upon Keyspan.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3264–000]

Take notice that on June 16, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 117, an agreement to provide transmission and interconnection service to Long Island Power Authority (LIPA). The Supplement provides for a decrease in annual revenues under the Rate Schedule.

Con Edison has requested that this decrease take effect on July 1, 1999.

Con Edison states that a copy of this filing has been served by mail upon LIPA.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER99–3265–000]

Take notice that on June 16, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Merrill Lynch Capital Services, Inc.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER99–3266–000]

Take notice that on June 16, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Associated Electric Cooperative, Inc.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER99–3267–000]

Take notice that on June 16, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Edison Mission Marketing & Trading, Inc. (Edison Mission), for acceptance by the Commission.

The ISO states that this filing has been served on Edison Mission and the California Public Utilities Commission.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. PG&E Generating

[Docket No. ER99–3268–000]

Take notice that on June 16, 1999, PG&E Generating tendered for filing a notice that U.S. Generating Company changed its name to PG&E Generating.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Otter Tail Power Company

[Docket No. ER99–3270–000]

Take notice that on June 17, 1999, Otter Tail Power Company (OTP), tendered for filing a Service Agreement between OTP and Central Minn. Municipal Power Agency. The Service Agreement allows Central Minn. Municipal Power Agency to purchase capacity and/or energy under OTP's Coordination Sales Tariff.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket Nos. ER99–3271–000]

Take notice that on June 16, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Edison Mission Marketing & Trading, Inc. (Edison Mission), for acceptance by the Commission.

The ISO states that this filing has been served on Edison Mission and the California Public Utilities Commission.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3272–000]

Take notice that on June 16, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 58 to add Baltimore Gas and Electric Company to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is June 15, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3273–000]

Take notice that on June 16, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 23 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of June 15, 1999, to Koch Energy Trading, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation

[Docket No. ER99–3274–000]

Take notice that on June 16, 1999, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated May 18, 1999 (the Service Agreement) between DukeSolutions, Inc. (DukeSolutions) and OVEC. In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

OVEC proposes an effective date of May 18, 1999 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to DukeSolutions.

Copies of this filing were served upon Utilities Commission of North Carolina, Public Service Commission of South Carolina and DukeSolutions.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Power Management Co., LLC

[Docket No. ER99–3275–000]

Take notice that on June 16, 1999, Power Management Co., LLC (PMC), petitioned the Commission for acceptance of PMC Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

PMC intends to engage in wholesale electric power and energy purchases and sales as a marketer. PMC is not in the business of generating or transmitting electric power.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER99–3276–000]

Take notice that on June 16, 1999, pursuant to Section 35.15 of the Commission's Regulations, Illinois Power Company submitted for filing notices of termination of the following rate schedules.

Rate schedule No.	Customer	Effective date
52	Clinton County Electric Cooperative	1/1/1973
53	Corn Belt Electric Cooperative	1/1/1973
54	Farmers Mutual Electric	1/1/1973
55	Central Illinois Public Service, Union Electric, Illinois Valley Electric Cooperative	1/1/1973
56	McDonough Power Cooperative	1/1/1973
57	Monroe County Electric Cooperative	1/1/1973
58	Southwestern Electric Cooperative	1/1/1973
59	Tri-County Electric Cooperative	1/1/1973
82	Western Illinois Power Cooperative	5/24/1983
102	Carlyle, Illinois/ Farmer City, Illinois	1/1/1984
115	Mt. Carmel	10/1/1986
Tariff No. 1, Rev. 1, Svc. Agreement No. 4.	Cedar Point Light & Water	3/1/1984 11/15/1981

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Union Electric Company

[Docket No. ER99–3277–000]

Take notice that on June 16, 1999, Union Electric Company (UE), tendered for filing the Second Amendment to the Wholesale Electric Service Agreement between UE and Citizens Electric Corporation (Citizens). UE states that the amendment will allow Citizens and its retail customers to participate in a voluntary curtailment program similar to that applicable to its retail electric service customers in Missouri.

UE has proposed to make the Second Amendment effective on June 17, 1999.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Virginia Electric and Power Company

[Docket No. ER99–3278–000]

Take notice that on June 16, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an agreement for the provision of electric service to CNG Retail Service Corporation (CNG Retail) under its market-based rate schedule accepted for filing by the Commission in Docket No. ER98–3771–000 (Tariff). CNG Retail is an affiliate of Virginia Power by virtue of the proposed merger of their parent companies, Dominion Resources, Inc. and Consolidated Natural Gas Company. Accordingly, under Section 1.3 of the Tariff, Virginia Power may not provide service under the proposed agreement without the prior authorization of the Commission.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. PJM Interconnection, L.L.C.

[Docket No. ER99–3279–000]

Take notice that on June 16, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the Appendix to Attachment K to the PJM Open Access Tariff and Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., to establish opt-out procedures that permit those entities that desire not to have spot market backup for their bilateral transactions to dynamically schedule such transactions.

PJM requests an effective date of August 16, 1999.

Copies of this filing were served upon all PJM Members and the electric regulatory commissions in the PJM control area.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. AES Eastern Energy, L.P.

[Docket No. ER99–3280–000]

Take notice that on June 16, 1999, AES Eastern Energy, L.P., 1001 North 19th Street, Suite 2000, Arlington, VA 22209, tendered for filing a Notice of Succession in Ownership and Operation to certain contracts with New York State Electric & Gas Corporation that were originally entered into by its affiliate, AES NY, L.L.C.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. AES Creative Resources, L.P.

[Docket No. ER99–3281–000]

Take notice that on June 16, 1999, AES Creative Resources, L.P., 1001 North 19th Street, Suite 2000, Arlington, VA 22209, tendered for filing a Notice of Succession in Ownership and Operation to certain contracts with New York State Electric & Gas Corporation that were originally entered into by its affiliate, AES NY, L.L.C.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. ATCO Power Canada Ltd.

[Docket No. ER99–3282–000]

Take notice that on June 14, 1999, ATCO Power Canada Limited, tendered for filing notice of name change from CU Power Canada Limited (CUPCAN) to ATCO Power Canada Ltd., effective April 23, 1999.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Carolina Power & Light Company

[Docket No. ER99–3283–000]

Take notice that on June 17, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Florida Power & Light Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. New Century Services, Inc.

[Docket No. ER99–3284–000]

Take notice that on June 17, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

The Companies request that the Agreement be made effective on January 1, 2000.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. New Century Services, Inc.

[Docket No. ER99–3285–000]

Take notice that June 17, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Reliant Energy Services, Inc.

The Companies request that the Agreement be made effective June 8, 1999.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. New Century Services, Inc.

[Docket No. ER99–3286–000]

Take notice that on June 17, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Reliant Energy Services, Inc.

The Companies request that the Agreement be made effective on June 8, 1999.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Alliant Energy Services Company, Inc.

[Docket No. ER99–3287–000]

Take notice that on June 17, 1999, Alliant Energy Services Company, Inc. (Alliant) on behalf of Interstate Power Company (IPC) and IES Utilities, Inc., tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and IES for the period May 1, 1999 through September 30, 1999. The Agreement was negotiated to provide service under the Alliant Energy Corporation System and Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. California Independent System Operator Corporation

[Docket No. ER99–3289–000]

Take notice that on June 17, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a proposed amendment (Amendment No. 17) to the ISO Tariff. Amendment No. 17 includes proposed changes to the ISO Tariff related to the pro forma Participating Load Agreement submitted with the amendment; changes to clarify the ISO's Outage Coordination Protocol in several respects; a change to expand the options available to Scheduling Coordinators to satisfy financial criteria established by the ISO Tariff; changes to the ISO's Grid Management Charge formula to remove a separate telecommunications charge; changes to the ISO Tariff and the Grid Management Charge to add recovery mechanisms for Western Systems Coordinating Council (WSCC) fines; changes to the allocation of the Regulation Energy Payment Adjustment (REPA) under the ISO Tariff; changes to the ISO Payment Calendar; and changes to the ISO's Dispatch Protocol to conform a provision of the protocol to the ISO's actual practices.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Duquesne Light Company

[Docket No. ER99–3291–000]

Take notice that on June 17, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Duke Energy Corporation (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of June 16, 1999.

Copies of this filing were served upon Customer.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. In the Matter of P. Chrisman Iribe

[Docket No. ID–3131–005]

Take notice that on June 17, 1999, Lake Road Generating Company, L.P., with its principal place of business filed with the Federal Energy Regulatory Commission on behalf of the above named individuals a Notice of Changes with respect to interlocking positions held by such individuals.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. In the Matter of John R. Cooper

[Docket No. ID–3132–004]

Take notice that on June 17, 1999, Pittsfield Generating Company, L.P. with it's principal place of business filed with the Federal Energy Regulatory Commission on behalf of the above named individuals a Notice of Changes with respect to interlocking positions held by such individuals.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Colorado Springs Utilities, Salt River Project Agricultural Improvement and Power District, Western Resources, Inc.

[Docket No. NJ97–9–005, Docket No. NJ98–3–004, Docket No. OA97–312–004]

Take notice that on June 17, 1999, Colorado Springs Utilities filed a report identifying the changes to its organizational charts and job descriptions posted on the OASIS in response to the Commission's April 1, 1999 order. 87 FERC ¶ 61,013 (1999).

Take Notice that on June 16, 1999, Salt River Project Agricultural Improvement and Power District submitted a compliance report confirming that it has completed its design of its Energy Management System.

Take notice that on June 15, 1999, Western Resources, Inc. submitted revised standards of conduct in response to the Commission's May 3, 1999 Order on Standards of Conduct. 87 FERC ¶ 61,141 (1999).

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Salt River Project Agricultural Improvement and Power District

[Docket No. NJ98–3–004]

Take notice that on June 16, 1999, Salt River Project Agricultural Improvement and Power District (SRP), tendered for filing a Compliance Report to the Commission indicating its compliance with the requirements of the Commission's September 18, 1998 Order on Standards of Conduct. The Report describes the measures taken by SRP to provide non-affiliated transmission customers with comparable access to scheduling information on SRP's Energy Management System.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16620 Filed 6–29–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2385–002 New York]

Finch, Pruyn and Company, Inc.; Notice Extending Time To Comment on Draft Environmental Assessment

June 24, 1999.

The Federal Energy Regulatory Commission issued a Draft Environmental Assessment (DEA) on May 7, 1999, considering issuance of a new license for the Glens Falls Hydroelectric Project, located on the Hudson River in Warren and Saratoga Counties, New York, in accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897). In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

In response to a letter filed on June 7, 1999, by the Fish and Wildlife Service, requesting an extension of time to complete its review of the DEA, I am extending the DEA comment period until July 9, 1999.

Copies of the DEA will remain available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Anyone wishing to comment in writing on the DEA must do so no later than July 9, 1999. Comments should be addressed to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix on the first page the caption "Glens Falls Project No. 2385–002" to all comments and letters.

For further information, please contact Charles T. Raabe at (202) 219–2811.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16619 Filed 6–29–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6369–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Oral and Written Purchase Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Oral and Written Purchase Orders, EPA ICR Number 1037.06, OMB Control Number 2030–0007, Expires 12/31/99. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 30, 1999.

ADDRESSES: 401 M Street, SW, Attn 3802R, Washington, DC 20460.

FOR FURTHER INFORMATION OR A COPY CONTACT:

Leigh Pomponio, (202) 564–4536, or e-mail pomponio.leigh@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which seek to provide supplies and services to the EPA under simplified acquisition procedures.

Title: Oral and Written Purchase Orders, (OMB Control No. 2030–0007; EPA ICR No. 1037.06) expiring 12/31/99.

Abstract: When EPA has a requirement for supplies or services and the value of same is under the simplified acquisition threshold, the Agency solicits verbal or written quotes from potential vendors. Vendor responses are voluntary and generally consist of item name, unit cost, delivery terms, company name, small business status, address, phone number, and point of contact. The Agency uses the collected information to make award decisions and obtain needed supplies and services. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden statement: 15 minutes is estimated as time required to complete each response. Vendors must listen to question asked, consult company price list, and respond to inquiry. Vendors are not required to type, sign, or mail anything. An average salary for vendor/salesperson is estimated to be $15.57 an hour. This is based on the rate used in the previous clearance multiplied by a factor of 3% per year to reflect wage increases since 1996. The total number of responses is derived from doubling the total number of purchase orders issued by the Agency in the preceding 12 month period. Because each award is generally preceded by 1–2 solicitations, depending upon dollar value, an average of two information collections per award was estimated. Therefore, total annual burden is summarized as follows: Total Annual Burden Dollars: $3.90 per response × 37,492 responses = $146,219 Total Annual Burdens Hours: 15 minutes per response × 37,492 responses =9373 hours. No capital/start-up costs or operation and maintenance costs are anticipated.

Dated: June 24, 1999.

Lawrence G. Wyborski,

Acting Manager, Policy Service Center, Office of Acquisition Management.

[FR Doc. 99–16679 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6370–1]

Notice of Scientific and Technological Achievement Awards Subcommittee Closed Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An ad hoc Subcommittee of the Science Advisory Board will meet at the U.S. Environmental Protection Agency (EPA), Washington, DC, on July 21–22, 1999. Pursuant to Section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and sections 552(b)(2) and (b)(6) of the Administrative Procedure Act, 5 U.S.C. 552(b)(2) and 552(b)(6), EPA has determined that the meeting will be closed to the public. The purpose of the meeting is to recommend to the Assistant Administrator of the Office of Research and Development (ORD) the recipients of the Agency's 1998 Scientific and Technological Achievement Cash Awards. These awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. In making these recommendations, including the actual cash amount of each award, the Agency requires full and frank advice from the Science Advisory Board. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel issues, where disclosure would constitute an unwarranted invasion of personal privacy, are protected from disclosure by exemptions 2 and 6 of Section 552(b) of the U.S.C. In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Flaak, Team Leader, Committee Operations Staff, Science Advisory Board (1400), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, via telephone: (202) 260–5133 or via e-mail: flaak.robert@epa.gov.

Dated: June 25, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–16680 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34146A; FRL–6089–6]

Organophosphate Pesticide: Sulfotepp; Availability of Revised Risk Assessments and Public Participation on Risk Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, sulfotepp. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34146A, must be received by EPA on or before August 30, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34146A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply To Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on sulfotepp, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies Of This Document Or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established an official record for this action under docket control number OPP–34146A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch (PIRIB) telephone number is (703) 305–5805.

III. How Can I Respond To This Action?

A. How And To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control number OPP–34146A in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. PIRIB is open 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you may mail or deliver your standard computer disk using the addresses in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34146A. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit To The Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

IV. What Action Is EPA Taking In This Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate, sulfotepp. These documents have been developed as part of the pilot public participation process that EPA and the U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the sulfotepp preliminary risk assessments, which where released to the public on September 9, 1998 (63 FR 48213) (FRL–6030–2), through a notice in the **Federal Register**.

As part of the pilot public participation process, EPA and USDA may hold public meetings (called Technical Briefings) to provide interested stakeholders with opportunities to become more informed about revised organophosphate risk assessments. During the Technical Briefings, EPA describes the major points (e.g. risk contributors), use data that were used (e.g. data from USDA's Pesticide Data Program (PDP)), and discusses how public comments impacted the assessment. USDA provides ideas on possible risk management. Stakeholders have an opportunity to ask clarifying questions, and all meeting minutes are placed in the OPP public docket. Technical Briefings may not be held for chemicals that have limited use patterns or low levels of risk concern. Sulfotepp's use pattern is limited to ornamental plants in greenhouses, therefore, no Technical Briefing is planned. In cases where no Technical Briefing is held, the Agency will make a special effort to communicate with interested stakeholders in order to better ensure their understanding of the revised assessments and how they can participate in the organophosphate pilot public participation process. EPA has a good familiarity with the stakeholder groups associated with the use of sulfotepp who may be interested in participating in the risk assessment/risk management process, and will contact them individually to inform them that no Technical Briefing will be held. EPA is willing to meet with stakeholders to discuss the sulfotepp revised risk assessments. Minutes of all meetings will be docketed.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for sulfotepp. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Comments and proposals could address ideas about how to manage occupational or ecological risks on specific sulfotepp use sites across the United States or in a particular geographic region of the country. To address occupational risks, for example, commentors may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commentor's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before August 30, 1999 at the addresses given under the "ADDRESSES" section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 21, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–16541 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30406A; FRL–6084–8]

Novartis; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Novartis Crop Protection Inc., to conditionally register the pesticide products Action Herbicide and Fluthiacet-Methyl Technical containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, PM-23, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–6224; e-mail: miller.joanne@epa.gov

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register** Environmental Sub-Set entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published the **Federal Register** of May 8, 1996 (61 FR 20815)(FRL–5357–1), which announced that Ciba-Geigy Crop Protection Corporation, (now known as Novartis), P.O. Box 18300, Greensboro, NC 27419–8300, had submitted an application to conditionally register the product CGA-248757 Technical (EPA File Symbol 100–INL) containing acetic acid, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H*,3*H*-[1,3,4]thiadiazolo[3,4-alpha]pyridazin-1-ylidene)amino]phenyl]thio]-methyl ester at 98%; an active ingredient not included any previously registered product.

The company subsequently submitted an application to EPA to register the pesticide product Action Herbicide (EPA File Symbol 100–INA) containing the same chemical at 4.75%. However, since the notice of receipt of the application to register the product as required by section 3(c)(4) of FIFRA, as amended did not publish in the **Federal Register**, interested parties may submit written comments within 30 days from the date of publication of this notice for this product only. Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov.

The applications were approved on April 13, 1999 for an end-use product and a technical listed below:

1. Fluthiacet-Methyl Technical (formerly CGA-248757 Technical) for formulation use only into registered end-use herbicides (EPA Registration Number 100–805).

2. Action Herbicide for postemergence control of velvetleaf and certain other broadleaf weeds in soybeans (EPA Registration Number 100–806).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of fluthiacet-methyl, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of fluthiacet-methyl during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on fluthiacet-methyl.

A paper copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 15, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–16387 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–WI–A; FRL–6070–6]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Authorization of Wisconsin's Department of Health and Family Services Lead-Based Paint Activities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval.

SUMMARY: On August 31, 1998, the State of Wisconsin submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). Notice of Wisconsin's application, a solicitation for public comment regarding the application, and background information supporting the application was published in the **Federal Register** of November 4, 1998. Today's notice announces the approval of Wisconsin's application, and the authorization of Wisconsin's Department of Health and Family Services' lead-based paint program to apply in the State of Wisconsin effective January 27, 1999, in lieu of the corresponding Federal program under section 402 of TSCA.

DATES: The lead-based paint activities program approval was granted to the State of Wisconsin on January 27, 1999, and was immediately effective.

FOR FURTHER INFORMATION CONTACT: Marlyse Wiebenga, Environmental Protection Agency, Region V, DT-8J, 77 West Jackson Blvd., Chicago, IL 60604. Telephone: (312) 886–4437, e-mail address: wiebenga.marlyse@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Title IV of TSCA, Lead Exposure Reduction, 15 U.S.C. 2681-2692, and regulations promulgated thereunder, States and Tribes that choose to apply for lead-based paint activities program authorization must submit a complete application to the appropriate Regional EPA office for review. Complete, final applications will be subject to a public comment period, and reviewed by EPA within 180 days of receipt. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement, section 404(b) of TSCA. As determined by EPA's review and assessment, Wisconsin's application successfully demonstrated that the State's lead-based paint activities program achieves the protectiveness and enforcement criteria, as required for Federal authorization. Furthermore, no public comments were received regarding any aspect of Wisconsin's application. A solicitation for public comment regarding the application was published in the **Federal Register** of November 4, 1998 (63 FR 59561) (FRL–6037–6).

II. Federal Overfiling

TSCA section 404(b), makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

III. Withdrawal of Authorization

Pursuant to TSCA section 404(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

IV. Public Record

The official record for this action, as well as the public version, has been established under docket control number PB–402404–WI. Copies of this notice, Wisconsin's Department of Health and Family Service's authorization application, and all supporting material for EPA's authorization decision are available for inspection in the Region V office: Toxics Program Section, Environmental Protection Agency, Region V, 8th floor, 77 West Jackson Blvd., Chicago, IL, from 8:30 a.m. to 5 p.m., Monday through Friday, excluding legal holidays.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 ("Regulatory Planning and Review," 58 FR 51735, October 4, 1993), and Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: March 26, 1999.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 99–16684 Filed 6–29–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 22, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 30, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0095.

Title: Annual Employment Report—Cable Television.

Form Number: FCC 395–A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 2,564.

Estimated Time per Response: 1.83 hours (avg.).

Frequency of Response: Annually.

Total annual burden: 4,683 hours.

Total annual costs: None.

Needs and Uses: The Annual Employment Report (FCC Form 395–A) is a data collection device used to assess and enforce the Commission's EEO requirements. The report identifies employees by gender, race, color, and/or national origin in nine major job categories. Every cable entity with 6 or more full-time employees and all Satellite Master Antenna Television Systems serving 50 or more subscribers and having 6 or more full-time employees must file annually a full FCC Form 395–A. However, cable entities with 5 or fewer full-time employees must only file Sections I, II, and IX of the FCC Form 395–A, and thereafter, need not file again unless its employment increases. In addition, cable entities with 6 or more full-time employees will file a Supplemental Investigation Sheet once every 5 years. The data are used by FCC staff to monitor a cable unit's efforts to afford equal employment opportunity in employment. The data are also used to assess industry trends.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16595 Filed 6–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 99–123]

Canyon Area Residents for the Environment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document denies an Application for Review of a letter ruling of October 9, 1998, by Dale Hatfield, Chief of the Office of Engineering and Technology , which denied the request of Canyon Area Residents for the Environment (CARE) for a blanket prohibition on the siting of communications facilities on Lookout Mountain near Denver, Colorado, and denied CARE's proposal that the Commission adopt stricter limits on public exposure to radiofrequency (RF) radiation.

DATES: Effective June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Cleveland, Office of Engineering and Technology, (202) 418–2422.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, FCC 99–123, adopted May 27, 1999, and released May 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (TW–A306), 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20036.

Summary of the Memorandum Opinion and Order

1. The Commission has before it an Application for Review and related pleadings filed by the Canyon Area Residents for the Environment (CARE) dated November 5, 1998, seeking review of a letter ruling of October 9, 1998, by Dale Hatfield, Chief of the Office of Engineering and Technology (OET Letter), which denied CARE's request for a blanket prohibition on the siting of communications facilities on Lookout Mountain near Denver, Colorado, and denied CARE's proposal that the Commission adopt stricter limits on public exposure to radiofrequency (RF) radiation. CARE's Application for Review was opposed by the Lake Cedar Group (LCG). We deny the Application for Review.

Procedural Issues

2. As an initial matter, we note that CARE's Application for Review and its supplementary filings raise a number of issues that were not before the staff when it considered CARE's earlier filings in the OET Letter. CARE raises for the first time the questions of historical preservation, endangered species, and blanketing interference. Section 1.115(c) of the Commission's Rules states that: "[N]o application for review will be granted if its relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass. 47 CFR 1.115(c). In this case, CARE has not adequately explained why it was unable to raise these matters in a more timely fashion. We cannot allow a party to "sit back and hope that a decision will be in its favor and, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed." *Colorado Radio Corp.* v. *FCC*, 118 F. 2d 24, 26 (D.C. Cir. 1941). Therefore, we are not obligated to consider the new matters raised in CARE's filings. However, we have examined the new matters raised by CARE, and we find that CARE has failed to present any relevant evidence or law demonstrating that we should not have granted the DTV applications.

3. CARE also requests that the Commission seek public comment on its Application for Review. It is not the Commission's practice to solicit additional public comment on rulemaking proceedings that have been concluded and license applications that have been granted, and our rules do not require us to do so. CARE provides no reasons why additional public comment would be beneficial. Since there appears to be little or no benefit to be achieved by seeking additional public comment on the matters raised by CARE, and the present record is adequate for the Commission to decide the matter, CARE's request that we allow public comment on the Application for Review is denied.

Arguments Concerning RF Radiation

4. The results of the Commission studies of the Lookout Mountain have been described in separate reports, dated November 12, 1998, and January 4, 1999, respectively. Non-complying areas were identified as a result of these studies, and recommendations were made for corrective actions to ensure that the Lookout Mountain site was brought into compliance with Commission exposure limits. CARE's claim that it has supplied the information necessary to trigger an Environmental Assessment (EA) of the site, as specified in the Commission's Rules [47 CFR 1.1307(c)], is now moot since the extensive Commission studies and follow-up activities obviate the need for the preparation of an EA.

5. CARE claims that the Commission has violated the National Environmental Policy Act (NEPA) of 1969 (Sections 5 and 6) and that the Commission's guidelines are not sufficiently protective of human health. The Commission adopted new RF exposure guidelines (ET Docket 93–62) following a one-year period for public comment with

hundreds of pages of comments being filed with the Commission from industry, trade associations, citizens and expert federal health and safety agencies. *See Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, 11 FCC Rcd 15123 (1997), 61 FR 41006, August 7, 1996. CARE's collateral attack on the Commission's RF exposure guidelines is not timely and is dismissed.

6. CARE states that the Commission violated its rules implementing NEPA by not requiring a draft EIS and final EIS for licensees on Lookout Mountain. Under the Commission's rules, however, EIS's are only prepared after the Commission reviews the Environmental Assessment (EA) and determines that the proposal "will have a significant effect upon the environment," and such effect cannot be resolved by corrective action. *See* 47 CFR 1.1308, 1.1314–1.1319. In the present situation corrective actions have already been taken to bring the site into compliance prior to even the preparation of an EA. Therefore, there is no longer an environmental issue with respect to potential violation of Commission RF exposure guidelines requiring the preparation of either an EA or EIS.

7. CARE's allegations that alternative sites should be considered as part of an environmental evaluation are untimely, and, in any case, would only be relevant if a determination had been made that a significant environmental effect, such as RF exposure, currently exists at the site. Therefore, there is no need to consider alternative sites because of a potential RF exposure problem. Furthermore, the Commission is not inclined to become involved in application site selection, or local zoning issues as long as federal requirements are met.

8. We find no merit to CARE's claim that area residents' fear of RF radiation and concern over property values are environmental factors that should be considered by the Commission. This claim is untimely.

9. CARE's claim that Lookout Mountain broadcasters should "show cause" (Section 10), under § 312(b) of the Communications Act, as to, "why they should not cease and desist from violating § 1.1310 of the Commission's rules," is, again, a moot point. Since the compliance problems have been remedied by radio licensees, there is no longer a violation, and such an action is unnecessary.

10. CARE's claim that the Commission's actions, "violate the personal, property and constitutional rights of these residents," is untimely, and, in any case, without merit. This claim is based on an allegation that the Commission had failed ("without due process of law") to consider "current relevant and credible scientific evidence" in making its decisions with respect to RF guideline implementation and protection of human health.

11. CARE's claim that the Commission did not follow recommendations of federal health and safety agencies in adopting its new RF exposure guidelines is an improper collateral attack on the Commission's rules and is wholly without merit. On the contrary, letters of support for the Commission's guidelines have been received from senior officials of the U.S. Environmental Protection Agency (EPA), the U.S. Food and Drug Administration (FDA), the National Institute for Occupational Safety and Health (NIOSH) and the Occupational Safety and Health Administration (OSHA). These letters are included in the record of ET Docket 93–62 and were extensively relied upon. EPA has also sent a recent letter to the FCC addressing the situation at Lookout Mountain and reaffirming its support for the Commission's RF guidelines. In addition, the Commission continues to cooperate with these other federal agencies and coordinate activities of mutual interest through an on-going radiofrequency inter-agency working group, chaired by the EPA.

12. CARE again claims that the Commission has not considered scientific information on biological effects in developing its guidelines. The Commission conducted the extensive proceeding in ET Docket 93–62, reviewed comments from the public, industry, expert organizations and federal health and safety agencies to determine which scientifically-based guidelines to adopt for use in evaluating human exposure, and, in fact, considered relevant scientific information on biological effects in adopting its guidelines. It is important to point out that biological "effects" are not the same as biological "hazards." The exposure criteria recommended by both the National Council on Radiation Protection and Measurements (NCRP) and the Institute of Electrical and Electronics Engineers (IEEE), upon which the Commission's guidelines are based, are themselves based on thresholds for known biological effects that are potentially *hazardous*. These existing RF standards and guidelines are designed to protect the public from scientifically established levels for potentially harmful effects linked to exposure to RF fields. In any event, as stated previously, CARE's collateral attack on the Commission's RF guidelines is untimely.

13. CARE claims that the Commission places an unfair burden on citizens for monitoring compliance and cites the situation at Lookout Mountain where Mr. Hislop and Dr. Larson performed their own measurement surveys, the results of which contradicted some of the earlier measurement data obtained there by consultants for LCG. This isolated incident, in which Mr. Hislop and Dr. Larson discovered previously undetected areas of non-compliance, does not prove that it is Commission policy to expect citizens to routinely undertake such tasks. In this case, it is our belief that the under-reporting of field levels at certain locations was unintentional on the part of the broadcast licensees and applicants. In a sworn affidavit, Mr. Robert Weller, of Hammett and Edison, Inc., the engineering consulting firm that advised LCG, has described the problems he experienced with certain instrumentation used for his measurements.

14. If there is evidence of willful misrepresentation by a licensee or applicant to the Commission with respect to RF compliance certification or some other issue, the Commission has the authority to levy forfeitures and/or take other punitive actions including license revocation. We see no basis to conclude that this occurred with respect to the Lookout Mountain site. Those areas which were recently found to be out of compliance with respect to the new exposure guidelines (implemented in October of 1997) were in compliance with the previous guidelines in effect at the time the stations were last required to certify compliance. Furthermore, the measurement problems experienced and sworn to by Mr. Weller do not, without more evidence, support a conclusion that the Lake Cedar Group or other broadcasters intentionally misled the Commission with respect to RF exposure.

15. Finally, CARE alleges that computer modeling alone is not sufficient to guarantee compliance. We fully agree that at complex antenna sites such as Lookout Mountain computer modeling alone may not be sufficient to evaluate compliance. In fact, this is the reason that the Commission has required that actual measurements be made at the site, and that is why the staff twice conducted its own measurement studies. Also, as a condition of the grant of the LCG application, future measurements must be taken to ensure compliance once the new broadcast tower is constructed and operational. In addition, Jefferson County is considering its own monitoring requirements for the area, and we understand and expect that a site coordination committee is being established by the licensees located at Lookout Mountain. Therefore, the implication that the Commission has based, or will base, decisions on "computer modeling alone" is factually inaccurate.

Other New Matters

16. In its Application for Review and supplemental filings, CARE raised additional objections to the LCG tower with respect to blanketing interference, facilities sited within an officially-designated wildlife preserve, siting of a facility listed in the National Register of Historic Places, and claims of effects on an endangered species. CARE's objections are untimely, and, in any case, are without merit. While we are not obligated to do so under § 1.115(c) of the Rules, each of these matters were considered in the Memorandum Opinion and Order.

17. It is our belief that CARE has provided no new evidence that would warrant any further environmental analysis of the Lookout Mountain site with respect to either compliance with the Commission's RF exposure guidelines or electromagnetic interference or a reconsideration of the conclusions expressed in the OET Letter. Furthermore, the new matters raised by CARE do not demonstrate that the OET Letter was in error as a matter of fact or law. Therefore, we deny CARE's Application for Review.

18. *Accordingly, it is ordered*, that pursuant to the authority of Sections 4(i) and (j) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 403, and of the Commission's Rules, 47 CFR 1.115, the Application for Review filed by Canyon Area Residents for the Environment *is denied* and the letter ruling of October 9, 1998, by the Chief of the Office of Engineering Technology *is affirmed*.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16562 Filed 6–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 99–N–7]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the previously approved information collection entitled "Community Support Requirements."

DATES: Interested persons may submit comments on or before August 30, 1999.

ADDRESSES: Address comments and requests for copies of the information collection to Elaine L. Baker, Secretary to the Board, by telephone at 202/408–2837, by electronic mail at bakere@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Amy Maxwell, Program Analyst, Program Assistance Division, Office of Policy, Research and Analysis, by telephone at 202/408–2882, by electronic mail at maxwella@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Federal Housing Finance Board (Finance Board) to promulgate regulations establishing standards of community investment or service that Federal Home Loan Bank (FHLBank) members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). In establishing these community support requirements for FHLBank members, the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901, *et seq.*, and record of lending to first-time homebuyers. 12 U.S.C. 1430(g)(2). Part 936 of the Federal Housing Finance Board's (Finance Board) regulations implements section 10(g) of the Bank Act. *See* 12 CFR part 936. The rule provides uniform community support standards all FHLBank members must meet and review criteria Finance Board staff must apply to determine compliance with section 10(g). More specifically, section 936.2 of the rule implements the statutory community support requirement. 12 CFR 936.2. Section 936.3 establishes community support standards for the two statutory factors—CRA and first-time homebuyer performance—and provides guidance to a respondent on how it may satisfy the standards. 12 CFR 936.3. Sections 936.4 and 936.5 establish the procedures and criteria the Finance Board uses in determining whether FHLBank members satisfy the statutory and regulatory community support requirements. 12 CFR 936.4 and 936.5.

The information collection contained in Form 96–01, the Community Support Statement Form, and sections 936.2 through 936.5 of the rule is necessary to enable and is used by the Finance Board to determine whether FHLBank members satisfy the statutory and regulatory community support requirements. Only FHLBank members that meet these requirements may maintain continued access to long-term FHLBank advances. *See* 12 U.S.C. 1430(g).

The OMB number for the information collection is 3069–003. The OMB clearance for the information collection expires on December 31, 1999.

The likely respondents are institutions that are members of a FHLBank.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 3002, with one response per respondent. The estimate for the average hours per response is one hour. The estimate for the total annual hour burden is 3002 hours (3002 respondents x 1 response per respondent x approximately 1.0 hours).

C. Comment Request

The Finance Board requests written comments on the following: (1) whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

By the Federal Housing Finance Board.

Dated: June 24, 1999.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–16689 Filed 6–29–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 99–N–8]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the previously approved information collection entitled "Affordable Housing Program."

DATES: Interested persons may submit comments on or before August 30, 1999.

ADDRESSES: Address comments and requests for copies of the information collection to Elaine L. Baker, Secretary to the Board, by telephone at 202/408–2837, by electronic mail at bakere@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Janet M. Fronckowiak, Associate Director, Program Assistance Division, Office of Policy, Research and Analysis, by telephone at 202/408–2575 or by electronic mail at fronckowiakj@fhfb.gov, or Melissa L. Allen, Program Analyst, Program Assistance Division, Office of Policy, Research and Analysis by telephone at 202/408–2524 or by electronic mail at allenm@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 10(j) of the Federal Home Loan Bank Act (Bank Act) requires the Federal Housing Finance Board (Finance Board) to promulgate regulations under which the 12 Federal Home Loan Banks (FHLBanks) must establish an Affordable Housing Program (AHP) to make subsidized advances to members engaged in lending for long term, low-and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j). Section 10(j) also establishes the standards and requirements for making subsidized AHP advances to FHLBank members. *Id.* Part 960 of the Finance Board's regulations implements the statutory requirements and authorizes the FHLBanks to make AHP funding decisions. *See* 12 CFR part 960.

The information collection contained in part 960 is necessary to enable and is used by the FHLBanks to determine whether an AHP applicant satisfies the statutory and regulatory requirements to receive subsidized advances or direct subsidies under the AHP. The Finance Board requires and uses the information collection, through examination of the FHLBanks, to ensure that a FHLBank's funding decisions, and the use of the funds awarded, are consistent with statutory and regulatory requirements.

The OMB number for the information collection is 3069–006. The OMB clearance for the information collection expires on December 31, 1999.

The likely respondents include applicants for AHP funding.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 7,462, with 1.33 responses per respondent. The estimate for the average hours per response is 6.5 hours. The estimate for the total annual hour burden is 64,509 hours (7,462 respondents x 1.33 responses per respondent x approximately 6.5 hours per response).

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

By the Federal Housing Finance Board.

Dated: June 24, 1999.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–16690 Filed 6–29–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 14, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Constantine Chimples, Moreland Hills, Ohio; Kathleen Chimples, Moreland Hills, Ohio; George C. Chimples, Moreland Hills, Ohio; Janet J. Chimples, Moreland Hills, Ohio; George Chimples Family LTD Partnership No.2, Parma, Ohio; Janet Chimples Family LTD Partnership No.1, Parma, Ohio; Thomas Chimples, Bentleyville, Ohio; Theresa Chimples, Bentleyville, Ohio; Alexis C. Anzo, Atlanta, Georgia; Christine T. Anzo, Atlanta, Georgia; Jennifer T. Anzo, Atlanta, Georgia; Eugenia Jeannie Hasiotis, Boston, Massachusetts; and Dean Land Company, Parma, Ohio; to acquire voting shares of Commerce Exchange Corporation, Beachwood, Ohio, and thereby indirectly acquire Commerce Exchange Bank, Beachwood, Ohio.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. David Hill, Ellsworth, Iowa; to acquire voting shares of Freedom Holdings, L.C., West Des Moines, Iowa, and thereby indirectly acquire voting shares of Freedom Financial Bank, West Des Moines, Iowa.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Barton J. and Terri R. Gotch, both of South Sioux City, Nebraska; to acquire voting shares of Siouxland National Corporation, South Sioux City, Nebraska, and thereby indirectly acquire voting shares of Siouxland National Bank, South Sioux City, Nebraska.

Board of Governors of the Federal Reserve System, June 24, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16632 Filed 6–29–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 23, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. American Financial Bancorp, Inc., Waterbury, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of American Bank of Connecticut, Waterbury, Connecticut.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Maham Beteiligungsgesellschaft AG, Zurich, Switzerland; to become a bank holding company by acquiring 25 percent of the voting shares of Habib American Bank, New York, New York.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Georgia Community Bancorp, Inc., Reynolds, Georgia; to acquire 100 percent of the voting shares of Bank of Terrell (in organization), Dawson, Georgia, and Commercial State Bank (in organization), Donalsonville, Georgia.

Board of Governors of the Federal Reserve System, June 24, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16631 Filed 6–29–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Fuji Bank, Limited, Tokyo, Japan; to engage *de novo* through its subsidiary, Yasuda Bank and Trust Company (U.S.A.), New York, New York, in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to acquire First Liberty Financial Corp., Macon, Georgia, and thereby indirectly acquire First Community Bank of Vidalia, Vidalia, Georgia, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y; First Liberty Bank, Macon, Georgia, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and in community development activities, pursuant to § 225.28(b)(12)(i) of Regulation Y; OFC Capital Corporation, Roswell, Georgia, and thereby engage in leasing activities, pursuant to § 225.28(b)(3) of Regulation Y; Liberty Mortgage Corporation, Atlanta, Georgia, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; NewSouth Financial Services, Inc., Macon, Georgia, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; and First Freedom Investments, Inc., Macon, Georgia, and thereby engage in securities brokerage activities, pursuant to § 225.28(b)(7)(i) of Regulation Y.

In connection with this proposal, BB&T Corporation has requested permission to exercise an option that would enable BB&T Corporation to acquire up to 19.9 percent of the voting securities of First Liberty Financial Corp., under certain circumstances.

2. Independent Community Bankshares, Inc., Middleburg, Virginia; to acquire Gilkison & Patterson Investment Advisors, Inc., Alexandria, Virginia, and thereby engage in trust company functions, pursuant to § 228.25(b)(5) of Regulation Y, and financial and investment advisory activities, pursuant to § 228.25(b)(6) of Regulation Y.

3. Wachovia Corporation, Winston-Salem, North Carolina; to merge with OFFITBANK Holdings, Inc., New York, New York, and thereby indirectly acquire its subsidiaries, including OFFITBANK, New York, New York, and OFFIBANK Derivatives, Inc., new York, New York, and thereby engage in trust company activities, pursuant to § 225.28(b)(5) of Regulation Y, financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y, providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services, pursuant to §§ 225.28(b)(7) of Regulation Y, extending credit and servicing loans,

pursuant to § 225.28(b)(1) of Regulation Y, providing credit related services, pursuant to § 225.28(b)(2) of Regulation Y; acting as principal in investing and trading activities, pursuant to § 225.28(b)(8)(ii) of Regulation Y; acting as principal in the buying and selling of bullion and related activities, pursuant to § 225.28(b)(8)(iii) of Regulation Y, providing data processing and data transmission services, pursuant to § 225.28(b)(14) of Regulation Y; providing administrative services to open-end and closed-end investment companies for which it acts as investment adviser, pursuant to Board Order, see *Mellon Bank Corporation*, 79 Fed. Res. Bull., 626 (1993); *CommerzBank AG*, 83 Fed. Res. Bull. 679 (1997)), and thereby engage in serving a private investment limited partnership that engage in activities permissible for a bank holding company to engage in, pursuant to Board Order, see *Dresdner Bank AG*, 84 Fed. Res. Bull. 361 (1998)).

Board of Governors of the Federal Reserve System, June 24, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16633 Filed 6–29–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 9810339]

Albertson's Inc., et al., Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Liebeskind or James Fishkin, FTC/S–2105, 601 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2441 or (202) 326–2663.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 22, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Pubic comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comments. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Draft Complaint and Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from Albertson's, Inc. ("Albertson's") and American Stores Company ("American Stores") (collectively "the Proposed Respondents") an Agreement Containing Consent Order ("the proposed consent order"). The Proposed Respondents have also reviewed a draft complaint that the Commission contemplates issuing. The proposed consent order is designed to remedy likely anticompetitive effects arising from Albertson's proposed stock-for-stock acquisition of all of the outstanding securities of American Stores.

II. Description of the Parties and the Proposed Acquisition

Albertson's, a Delaware corporation headquartered in Boise, Idaho, operates approximately 994 supermarkets in 25 Western, Midwestern, and Southern states. Albertson's supermarkets operate primarily under the "Albertson's," "Max Grocery Warehouse," "Seessel's" and "Smitty's" trade names. Albertson's competes with American Stores in California, Nevada and New Mexico. Albertson's operates 177 supermarkets in California, 31 supermarkets in Nevada, and 19 supermarkets in New Mexico. Albertson's total sales for the fiscal year that ended on January 28, 1999, were approximately $16.0 billion. Albertson's is the fourth largest supermarket chain in the United States, based on total sales. After the merger with American Stores, Albertson's will become the second largest supermarket chain in the United States.

American Stores, a Delaware corporation headquartered in Salt Lake City, Utah, operates approximately 802 supermarkets and 773 stand-alone pharmacies in 31 states. American Stores operates supermarkets, including combination supermarket and pharmacies, in 12 Western, Midwestern and Eastern states under the "Lucky." "Lucky Sav-On," "SuperSaver," "Acme Markets," and "Jewel Food Stores" trade names. American Stores operates approximately 411 supermarkets in California, 25 supermarkets in Nevada, and 11 supermarkets in New Mexico. These American Stores supermarkets are all in the company's Lucky Division and operate under the "Lucky," "SuperSaver" and "Lucky Sav-On" trade names. American Stores' total sales for the fiscal year that ended on January 30, 1999, were $19.9 billion. Based on total sales, American Stores is the second largest supermarket chain in the United States.

On August 2, 1999, Albertson's, Abacus Holdings, Inc. ("Abacus"), a wholly owned subsidiary of Albertson's, and American Stores entered into an Agreement and Plan of Merger pursuant to which Abacus will acquire all of the outstanding securities of American Stores. Under the merger agreement, Abacus will convert the American Stores stock into Albertson's stock based on a 0.63 exchange rate. As a result, 100 shares of American Stores stock will be converted to 63 shares of Albertson's stock. The transaction, at the time it was negotiated, had a total value of approximately $11.7 billion, including an equity value of $8.3 billion and debt of $3.4 billion. Today, the acquisition is valued at approximately $13 billion.

III. The Draft Complaint

The draft complaint alleges that the relevant line of commerce (i.e., the product market) is the retail sale of food and grocery items in supermarkets.

Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units ("SKUs")), as well as a deep inventory of those SKUs in a variety of brand names and sizes. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space. Supermarkets in California, Nevada and New Mexico tend to have at least 20,000 square feet and carry at least 20,000 SKUs.

Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets base their food and grocery prices on the prices primarily of food and grocery products sold at nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores such as club stores or limited assortment stores, and do not significantly change their food and grocery prices in response to prices at other types of stores. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, limited assortment stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), club stores military commissaries, and mass merchants, do not effectively constrain most prices at supermarkets. These other stores operate significantly different retail formats and sell far more limited assortments of items. None of these stores offers a supermarket's distinct set of products and services that enable consumers to one-stop shop for food and grocery products.

The draft complaint alleges that the relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition are the areas in an near the following cities and towns: (a) Antioch/Pittsburg, California; (b) Apple Valley/Hesperia/Victorville, California; (c) Atascadero, California; (d) Auburn, California; (e) Greater Bakersfield, California, (f) Claremont/Pomona/Rancho Cucamonga, California; (g) Danville/San Ramon/Dublin/Pleasanton, California; (h) Davis, California; (i) Encinitas, California; (j) Escondido, California; (k) Fallsbrook, California; (l) Grass Valley, California; (m) Grover City/Arroyo Grande, California; (n) Jackson, California; (o) La Mesa/El Cajon, California; (p) Laguna Beach, California; (q) Lancaster/Palmdale, California; (r) Livermore, California; (s) Lompoc, California; (t) Monterey/Seaside/Del Rey Oaks/Pacific Grove, California; (u) Moorpark, California; (v) Morro Bay/Los Osos, California; (w) Murrieta/Temecula, California; (x) Napa, California; (y) Northern Covina, California, an area that includes Azusa, Baldwin Park, Charter Oak, Citrus, Covina, Glendora, La Puenta, Valinda, Vincent, West Covina, and West Puente; (z) Oceanside/Vista/Carlsbad, California; (aa) Oxnard, California; (bb) Palm Springs/Indio, California; (cc) Paso Robles, California; (dd) Petaluma, California; (ee) Poway/North San Diego, California; (ff) Ramona, California; (gg) Redlands, California; (hh) Rialto/Fontana, California; (ii) Riverside/Corona, California; (jj) Greater Sacramento, California, and narrower markets contained therein; (kk) Salinas, California; (ll) San Luis Obispo, California; (mm) Santa Barbara/Goleta, California; (nn) Santa Clarita, California; (oo) Santa Cruz/Capitola, California; (pp) Santa Maria/Orcutt, California; (qq) SantaRosa, California; (rr) Simi Valley, California; (ss) Sonoma/Hot Springs, California; (tt) South Los Angeles County/North Orange County, California; and narrower markets contained therein;[1] (uu) South Orange County, California, and narrower markets contained therein; (vv) Southern Covina California, an area that includes the communities of Diamond Bar, Hacienta Heights, South San Jose Hills, and Walnut; (ww) Thousand Oaks/Newbury Park/Casa Conejo, California; (xx) Torrance, California; (yy) Vacaville, California; (zz) Watsonville/Freedom, California; (aaa) Eastern Albuquerque, New Mexico; (bbb) Las Cruces, New Mexico; (ccc) Roio Rancho/Northwest Albuquerque, New Mexico; (ddd) Santa Fe, New Mexico; and (eee) Greater Las Vegas/Henderson, Nevada, and narrower markets contained therein.

Albertson's and American Stores are actual and direct competitors in all the above listed markets other than Antioch/Pittsburg, Atascadero, Fallbrook, Morro Bay/Los Osos, and Santa Maria/Orcutt. Albertson's is an actual potential competitor against American Stores in and near Antioch/Pittsburg, Atascadero, Fallbrook, and Santa Maria/Orcutt, California. American Stores is an actual potential competitor against Albertson's in Morro Bay/Los Osos, California. But for the acquisition, Albertson's and American Stores would have become direct competitors in and near Antioch/Pittsburg, Atascadero, Fallbrook, Morro Bay/Los Osos, and Santa Maria/Orcutt, California. The acquisition will eliminate that competition.

The draft complaint alleges that the post-merger markets would all be highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or by four-firm concentration ratios.[2] The acquisition would substantially increase concentration in each market. The post-acquisition HHIs in the geographic markets would range from 2,000 to 8,090. Concentration levels in the geographic markets alleged in the draft complaint would not materially different even if club stores and limited assortment stores were included in product market.

The draft complaint further alleges that entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

The draft complaint also alleges that Albertson's proposed acquisitions of all of the outstanding securities of American Stores, if consummated, may substantially lessen competition in the relevant markets in violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by eliminating direct competition between supermarkets owned or controlled by Alberton's and supermarkets owned or controlled by American Stores; by eliminating actual potential competition between supermarkets owned or controlled by Alberton's and supermarkets owned or controlled by American Stores; by increasing the likelihood that Albertons's will unilaterally exercise power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining supermarket firms. Each of these effects increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the geographic

[1] The draft complaint defines "South Los Angeles County/North Orange County" as an area bordered on the north by the Santa Monica and San Joes Hills/Puente Hills/Chino Hills, on the west by Interstate 710 and the Pacific Ocean, on the east by the Santa Ana Mountains, and on the south by the Laguna Hills and El Toro Marine Corps Air Base.

[2] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants.

markets alleged in the proposed complaint.

IV. Terms of the Agreement Containing Consent Order ("the Proposed Consent Order")

The proposed consent order will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, Alberton's and American Stores must divest 144 identified supermarkets and five identified supermarket sites in the relevant markets to five different upfront buyers. The supermarkets and sites that the Proposed Respondents must divest consist of 104 Alberton's supermarkets and three Albertson's sites, and 40 American Stores supermarkets and two American Stores sites. The 104 Alberton's supermarkets consist of 96 stores that operate under the "Alberton's trade name and eight stores that operate under the "Max Grocery Warehouse" trade name. The 40 American Stores supermarkets consist of 36 stores that operate under the "Lucky" trade name, three stores that operate under the "SuperSaver" trade name, and one store that operates under the "Lucky Sav-On" trade name.

In 37 of the 57 geographic markets, the Proposed Respondents will divest either all of the Alberton's supermarkets or all of the American Stores supermarkets to buyers who do not currently operate supermarkets in these markets. In the remaining markets, the Proposed Respondent will divest some combination of Alberton's and American Stores supermarkets or sites or both. Divesting all of one party's assets within a particularly market achieves several important competitive goals that the proposed consent order is designed to achieve. It ensures that the merger will not result in any increase in concentration in that market. The divestiture will result in the same number of players in the market holding the same relative shares of the market as existed before the merger.

However, the Commission is willing to evaluate and, under certain conditions, accept other divestiture packages if and when the parties can satisfy the Commission that the divestiture will eliminate the anticompetitive effects of concern. In order to do so, the Commission will analyze the financial and competitive condition of the proposed divestiture assets and that of the stores the Proposed Respondents intend to retain. In this instance, the Commission has declined to accept divestiture of supermarkets that are not profitable or are declining in sales or profitability, and has acquired that "mix-and-match" divestitures consist solely of competitively viable stores.

In 13 of the markets in which the Proposed Respondents are not divesting either all of the Albertson's or all of the American Stores supermarkets to buyers who do not currently operate supermarkets in these markets, there will be no significant increase in concentration. In the remaining seven markets, although there is nominally an increase in concentration from the combined effect of the merger and divestiture, the proposed increase in concentration is significant in only one market (Bakersfield). In markets where the Proposed Respondents are not divesting either all of the Albertson's or all of the American Stores supermarkets, the proposed divestiture assets consist of more profitable stores, rather than a divestiture of sales volume from unprofitable stores.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. When divestiture is an appropriate remedy for a supermarket merger, the Commission requires the merging parties to find a buyer for the divested stores. A proposed buyer must not itself present competitive problems. For example, the Commission is less likely to approve a buyer that already has a large retail presence in the relevant geographic area than a buyer without such a presence. The Commission is preliminarily satisfied that the purchasers presented by the parties are well qualified to run the divested stores and that divestiture to these purchases poses no separate competitive issues. Public comments may address the suitability of the designated acquirers to acquire the supermarkets at issue.

The five upfront buyers and the number of stores each is acquiring are as follows: 31 stores to Certified Grocers of California; 27 stores and one land site to Raley's; 40 stores and two land sites to Ralphs (a Kroger/Fred Meyer subsidiary); 43 stores and one land site to Stater Bros.; and three stores and one land site to Vons (a Safeway subsidiary). A list of the specific supermarkets that Albertson's and American Stores must divest to each of the upfront buyers is attached at the end of this Analysis to Aid Public Comment. The proposed consent order also requires Certified Grocers, which is acquiring 31 stores, to divest at least 20 of the stores within 90 days from the time the order becomes final. Certified Grocers is a food wholesaler that does not operate many corporate-owned stores. Certified Grocers must seek prior approval from the Commission to divest, within three years of the final order, any supermarkets to any firms not preapproved in the proposed consent order to acquire specific stores. Certified Grocers is made a party to the proposed consent order for relief purposes and is subject to civil penalties if it does not meet its obligations under the order.

The preapproved independent buyers that Certified Grocers plans to sell identified supermarkets to include the following: A.J. Markets, Inc. (d/b/a Amar Ranch); Arden Group (d/b/a Gelsons and Mayfair); Berberian Enterprises (d/b/a Jons Market); Bianchini's Apple Market (d/b/a Apple Market); Ceiland Coast, Inc.; Colonial Shopping Center, a general partnership (d/b/a Young's Market); El Tigre Inc. (d/b/a El Tigre Market); Goodwin & Sons, Inc. (d/b/a Village Market); Hope Mart, Inc. (d/b/a Best Value Grocery Warehouse); K.V. Mart Co. (d/b/a Top Valu and Valu Plus Food Warehouse); Rodd Mart, Inc. (d/b/a Payless Foods); Stump's Apple Markets (d/b/a Apple Market); UKA's Big Saver Food, Inc. (d/b/a Big Saver Foods); Vallarta Foods Enterprises, Inc. (d/b/a Vallarta Super Markets); and Ronald Ziff. The supermarkets that Certified Grocers plans to sell to each preapproved buyer are identified by location in the proposed consent order.

The proposed consent order requires that the divestitures must occur no later than the earlier of (1) 30 to 120 days from when the Commission accepts the agreement for public comment, depending on the business plans of the specific upfront buyer, or (2) four months after the Commission accepts the agreement for public comment.[3] The amount of time required for the divestitures varies with each of the acquirers based on the acquirer's need to convert large numbers of new stores into its operations. The proposed consent order also requires Albertson's to include rescission provisions in its upfront buyer agreements that allow it to rescind the transaction(s) if the Commission, after the comment period, decides to reject any of the upfront buyers. If, at the time the Commission decides to make the proposed consent order final, the Commission notifies Albertson's that any of the upfront buyers to which Albertson's has divested a supermarket or site is not an acceptable acquirer, or that any upfront buyer agreement is not an acceptable

[3] Acceptance of the proposed consent order for public comment terminates the Hart-Scott-Rodino waiting period and enables Albertson's to immediately acquire the American Stores stock.

manner of divestiture, then Albertson's must immediately rescind the transaction in question and divest those assets within three months after the proposed consent order becomes final. At that time, Albertson's must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that any Commission-approved buyer is unable to take or keep possession of any of the supermarkets identified for divestiture, a trustee that the Commission may appoint has the power to divest any additional ancillary assets and effect such arrangements as are necessary to satisfy the requirements of the proposed consent order.

The proposed consent order specifically requires the Proposed Respondents to: (1) Maintain the viability, competitiveness and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair their marketability or viability; (4) maintain the supermarkets consistent with past practices; (5) use best efforts to preserve existing relationships with suppliers, customers and employees; and (6) keep the supermarkets open for business and maintain the inventory of products in each store consistent with past practice. The proposed consent order also contains more specific details relating to maintaining store operations.

The proposed consent order also enables the Commission to appoint an interim auditor trustee to ensure that the parties expeditiously perform their respective responsibilities as required by the agreement, including the asset maintenance provisions. This provision is included in the proposed consent order because such a large number of stores must be divested and because the last of these divestitures may not occur for 120 days. The interim auditor trustee shall serve until the parties have completed all of the required divestitures. The interim auditor trustee does not have any responsibilities relating to the stores being divested to Certified Grocers once such divestitures have been accomplished, even if Certified Grocers later divests 20 or more of these stores to other retail operators.

The proposed consent order also enables the Commission to appoint a trustee to divest any supermarkets or sites identified in the order that Albertson's and American Stores have not divested to satisfy the requirements of the proposed consent order. The proposed consent order also enables the Commission to seek civil penalties against Albertson's for non-compliance with the proposed consent order.

For a period of 10 years from the date the proposed consent order becomes final, the Proposed Respondents are required to provide written notice to the Commission prior to acquiring supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in, Alameda, Amador, Contra Costa, Kern, Los Angeles, Monterey, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Cruz, Solano, Sonoma, Ventura, or Yolo counties in California; Clark County in Nevada; or Bernalillo, Dona Ana, Sandoval, or Santa Fe counties in New Mexico. Proposed Respondents may not complete such an acquisition until they have provided information requested by the Commission. This provision does not restrict the Proposed Respondents from constructing new supermarket facilities on their own; nor does it restrict the Proposed Respondents from leasing facilities not operated as supermarkets within the previous six months.

For a period of 10 years, the proposed consent order also prohibits the Proposed Respondents from entering into or enforcing any agreement that restricts the ability of any person that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after January 1, 1998, to operate a supermarket at that site if such supermarket was formerly owned or operated by the Proposed Respondents in Alameda, Amador, Contra Costa, Kern, Los Angeles, Monterey, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Cruz, Solano, Sonoma, Ventura, or Yolo counties in California; Clark County in Nevada; or Bernalillo, Dona Ana, Sandoval, or Santa Fe counties in New Mexico. In addition, the Proposed Respondents may not remove fixtures or equipment from a store or property owned or leased in these counties that is no longer in operation as a supermarket, except (1) prior to a sale, sublease, assignment, or change in occupancy or (2) to relocate such fixtures or equipment in the ordinary course of business to any other supermarket owned or operated by Proposed Respondents.

The Proposed Respondents are required to provide to the Commission a report of compliance with the proposed consent order within thirty days following the date on which they signed the proposed consent, every thirty days thereafter until the divestitures are completed, and annually for a period of 10 years.

The proposed consent order also has a provision relating to the settlement agreements negotiated by California, Nevada and New Mexico. If a State fails to approve any divestiture that has not been completed, even though the parties are in compliance with the other provisions of the proposed consent order, the time period in which the divestiture must be completed will be extended 60 days, during which the parties must exercise utmost good faith and best efforts to resolves the concerns of that particular State.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 60 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of supermarkets to Certified Grocers, Raley's, Ralphs, Stater, and Vons, and the proposed divestitures by Certified Grocers to the various independent buyers listed above, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

Schedule A—Supermarkets Divested to Certified Grocers

Supermarket in the Apple Valley/Hesperia/Victorville, California Market

1. Albertson's store no. 1609 operating under the "Albertson's" trade name, which is located at 20801 Bear Valley Road, Apple Valley, California 92307 (San Bernardino County).

Supermarket in the Greater Bakersfield California Market

1. American Stores store no. 281 operating under the "Lucky" trade

name, which is located at 4801 White Lane, Bakersfield, California 93309 (Kern County).

Supermarkets in the Claremont/ Pomona/Rancho Cucamonga, California Market

1. Albertson's store no. 1675 operating under the "Albertson's" trade name, which is located at 2340 Foothill Boulevard, Laverne, California 91750 (Los Angeles County);

2. Albertson's store no. 1983 operating under the "Max Grocery Warehouse" trade name, which is located at 1445 East Foothill Boulevard, Upland, California 91785 (San Bernardino County);

3. American Stores store no. 431 operating under the "Lucky" trade name, which is located at 4200 Chino Hills Parkway 400, Chino Hills, California 91709 (San Bernardino County);

4. American Stores store no. 670 operating under the "Lucky" trade name, which is located at 685 West Foothill Boulevard, Upland, California 91786 (San Bernardino County); and

5. American Stores store no. 679 operating under the "Lucky" trade name, which is located at 6351 Haven Avenue, Rancho Cucamonga, California 91737 (San Bernardino County).

Supermarket in the Escondido, California Market

1. American Stores store no. 211 operating under the "Lucky" trade name, which is located at 606 North Escondido Boulevard, Escondido, California 92025 (San Diego County).

Supermarket in the La Mesa/El Cajon, California Market

1. American Stores store no. 565 operating under the "Lucky" trade name, which is located at 7908 El Cajon Boulevard, La Mesa, California 91641 (San Diego County).

Supermarket in the Lancaster/Palmdale, California Market

1. Albertson's store no. 1963 operating under the "Max Grocery Warehouse" trade name, which is located at 1111 West Avenue I, Lancaster, California 93534 (Los Angeles County).

Supermarket in the Murrieta/Temecula, California Market

1. Albertson's store no. 1611 operating under the "Albertson's" trade name, which is located at 29530 Rancho California Road, Temecula, California 92591 (Riverside County).

Supermarket in the Northern Covina, California Market

1. American Stores store no. 620 operating under the "Lucky" trade name, which is located at 1385 North Citrus Avenue, Covina, California 91722 (Los Angeles County);

2. American Stores store no. 873 operating under the "Lucky trade name, which is located at 13925 Amar Road, La Puente, California 90746 (Los Angeles County); and

3. American Stores store no. 884 operating under the "Lucky Sav-On" trade name, which is located at 543 North Azusa, Covina, California 91723 (Los Angeles County).

Supermarkets in the Oxnard, California Market

1. Albertson's store no. 682 operating under the "Albertson's" trade name, which is located at 450 South Ventura Road, Oxnard, California 93030 (Ventura County); and

2. Albertson's store no. 1953 operating under the "Max Grocery Warehouse" trade name, which is located at 2800 Saviers Road, Oxnard, California 93030 (Ventura County).

Supermarket in the Petaluma, California Market

1. Albertson's store no. 720 operating under the "Albertson's" trade name, which is located at 169 North McDowell Boulevard, Petaluma, California 94954 (Sonoma County).

Supermarket in the Rialto/Fontana, California Market

1. Albertson's store no. 1978 operating under the "Max Grocery Warehouse" trade name, which is located at 515 South Riverside Avenue, Rialto, California 92376 (San Bernardino County).

Supermarket in the Riverside/Corona, California Market

1. Albertson's store no. 1613 operating under the "Albertson's" trade name, which is located at 430 McKinley, Corona, California 91719 (Riverside County).

Supermarket in the Santa Barbara/ Goleta, California Market

1. Albertson's store no. 622 operating under the "Albertson's" trade name, which is located at 3305 State Street, Santa Barbara, California 93105 (Santa Barbara County).

Supermarket in the Simi Valley, California Market

1. American store no. 650 operating under the "Lucky" trade name, which is located at 3963 Cochran, Simi Valley, California 93063 (Ventura County).

Supermarkets in the South Los Angeles County/North Orange County, California Market

1. Albertson's store no. 1650 operating under the "Albertson's" trade name, which is located at 1720 East 17th Street, Santa Ana, California 92701 (Orange County);

2. Albertson's store no. 1905 operating under the "Max Grocery Warehouse" trade name, which is located at 4700 Cherry Avenue, Long Beach, California 90807 (Los Angeles County);

3. Albertson's store no. 1906 operating under the "Max Grocery Warehouse" trade name, which is located at 15300 Goldenwest, Westminster, California 92683 (Orange County);

4. Albertson's store no. 1909 operating under the "Max Grocery Warehouse" trade name, which is located at 12120 Carson Street, Hawaiian Gardens, California 90716 (Los Angeles County); and

5. Albertson's store no. 1930 operating under the "Max Grocery Warehouse" trade name, which is located at 12891 Harbor Boulevard, Garden Grove, California 92640 (Orange County).

Supermarket in South Orange County, California Market

1. Albertson's store no. 609 operating under the "Albertson's" trade name, which is located at 602 El Camino Real, San Clemente, California 92672 (Orange County).

Supermarket in the Southern Covina, California Market

1. Albertson's store no. 1666 operating under the "Albertson's" trade name, which is located at 21080 Golden Springs, Walnut, California 91789 (Los Angeles County).

Supermarkets in the Thousand Oaks/ Newbury Park/Casa Conejo, California Market

1. American Stores store no. 286 operating under the "Lucky" trade made, which is located at 740 Moorpark Avenue, Thousand Oaks, California 91360 (Ventura County); and

2. American Stores store no. 674 operating under the "Lucky" trade name, which is located at 2100 Newbury Road, Newbury Park, California 91320 (Ventura County).

Supermarket in the Torrance, California Market

1. American Stores store no. 630 operating under the "Lucky" trade name, which is located at 4848 West 190th Street, Torrance, California 90503 (Los Angeles County).

Schedule B—Supermarkets and Land Site Divested to Raley's

Supermarket and Land Site in the Greater Las Vegas/Henderson, Nevada Market

1. Albertson's store no. 611 operating under the "Albertson's" trade name, which is located at 4015 South Buffalo Drive, Las Vegas, Nevada 89117 (Clark County);

2. Albertson's store no. 614 operating under the "Albertson's" trade name, which is located at 55 South Valle Verde Drive, Henderson, Nevada 89012 (Clark County);

3. Albertson's store no. 634 operating under the "Albertson's" trade name, which is located at 4790 East Flamingo Road, Las Vegas, Nevada 89121 (Clark County);

4. Albertson's store no. 637 operating under the "Albertson's" trade name, which is located at 1570 North Eastern Avenue, Las Vegas, Nevada 89101 (Clark County);

5. Albertson's store no. 686 operating under the "Albertson's" trade name, which is located at 260 East Lake Mead Drive, Henderson, Nevada 89015 (Clark County);

6. Albertson's store no. 1606 operating under the "Albertson's" trade name, which is located at 1421 North Jones Boulevard, Las Vegas, Nevada 89108 (Clark County);

7. Albertson's store no. 1616 operating under the "Albertson's" trade name, which is located at 3160 North Rainbow, Las Vegas, Nevada 89107 (Clark County);

8. Albertson's store no. 1618 operating under the "Albertson's" trade name, which is located at 2271 North Green Valley Parkway, Henderson, Nevada 89014 (Clark County);

9. Albertson's store no. 1621 operating under the "Albertson's" trade name, which is located at 9200 West Sahara Avenue, Las Vegas, Nevada 89117 (Clark County);

10. Albertson's store no. 1628 operating under the "Albertson's" trade name, which is located at 8570 West Lake Mead Boulevard, Las Vegas, Nevada 89128 (Clark County);

11. Albertson's store no. 1638 operating under the "Albertson's" trade name, which is located at 4821 West Craig Road, Las Vegas, Nevada 89129 (Clark County);

12. Albertson's store no. 1642 operating under the "Albertson's" trade name, which is located at 3864 West Sahara Avenue, Las Vegas, Nevada 89102 (Clark County);

13. Albertson's store no. 1659 operating under the "Albertson's" trade name, which is located at 2545 South Eastern Avenue, Las Vegas, Nevada 89109 (Clark County);

14. Albertson's store no. 1660 operating under the "Albertson's" trade name, which is located at 8150 South Eastern Avenue, Las Vegas, Nevada 89123 (Clark County);

15. Albertson's store no. 1664 operating under the "Albertson's" trade name, which is located at 120 South Rainbow, Las Vegas, Nevada 89128 (Clark County);

16. Albertson's store no. 1665 operating under the "Albertson's" trade name, which is located at 1255 South Lamb Boulevard, Las Vegas, Nevada 89104 (Clark County);

17. Albertson's store no. 1678 operating under the "Albertson's" trade name, which is located at 1955 North Nellis Boulevard, Las Vegas, Nevada 89115 (Clark County);

18. Albertson's store no. 1681 operating under the "Albertson's" trade name, which is located at 6150 West Flamingo Road, Las Vegas, Nevada 89103 (Clark County);

19. Albertson's store no. 1684 operating under the "Albertson's" trade name, which is located at 2475 East Tropicana Avenue, Las Vegas, Nevada 89121 (Clark County); and

20. Land Site for Albertson's store no. 633, which is located at the northwest corner of Eastern and Maryland Parkway, Henderson, Nevada 89012 (Clark County).

Supermarkets in the East Albuquerque, New Mexico Market

1. Albertson's store no. 905 operating under the "Albertson's" trade name, which is located at 2200 Juan Tabo Boulevard NE, Albuquerque, New Mexico 87112 (Bernalillo County);

2. Albertson's store no. 906 operating under the "Albertson's" trade name, which is located at 4401 Wyoming Boulevard NE, Albuquerque, New Mexico 87111 (Bernalillo County);

3. Albertson's store no. 912 operating under the "Albertson's" trade name, which is located at 5555 Zuni SE, Albuquerque, New Mexico 87108 (Bernalillo County); and

4. Albertson's store no. 923 operating under the "Albertson's" trade name, which is located at 13150 Central Avenue SE, Albuquerque, New Mexico 87123 (Bernalillo County).

Supermarkets in the Rio Rancho/ Northwest Albuquerque, New Mexico Market

1. Albertson's store no. 915 operating under the "Albertson's" trade name, which is located at 6200 Coors Boulevard NW, Albuquerque, New Mexico 87120 (Bernalillo County); and

2. Albertson's store no. 920 operating under the "Albertson's" trade name, which is located at 1660 Rio Rancho Drive SE, Rio Rancho, New Mexico. 87124 (Sandoval County).

Supermarkets in the Las Cruces, New Mexico Market

1. America Stores store no. 668 operating under the "Lucky" trade name, which is located at 320 Wyatt Drive, Las Cruces, New Mexico 88001 (Dona Ana County); and

2. American Stores store no. 698 operating under the "Lucky" trade name, which is located at 3861 North Main, Las Cruces, New Mexico 88005 (Dona Ana County).

Schedule C—Supermarkets and Land Sites Divested to Ralphs

Supermarket in the Antioch/Pittsburg, California Market

1. American Stores store no. 122 operating under the "SuperSaver" trade name, which is located at 300 Atlantic Avenue, Pittsburg, California 94565 (Contra Costa County).

Supermarket in the Atascadero, California Market

1. American Stores store no. 273 operating under the "Lucky" trade name, which is located at 8665 El Camino Real, Atascadero, California 93422 (San Luis Obispo County).

Supermarket in the Auburn, California Market

1. Albertson's store no. 759 operating under the "Albertson's" trade name, which is located at 2795 Bell Road, Auburn, California 95603 (Placer County).

Supermarket in the Greater Bakersfield, California Market

1. American Stores store no. 280 operating under the "Lucky" trade name, which is located at 1121 Olive Drive, Bakersfield, California 93308 (Kern County).

Supermarkets in the Danville/San Ramon/Dublin/Pleasant, California Market

1. Albertson's store no. 703 operating under the "Albertson's" trade name, which is located at 9100 Alcosta Avenue, San Ramon, California 94568 (Contra Costa County); and

2. Albertson's store no. 733 operating under the "Albertson's" trade name, which is located at 7333 Regional Street, Dublin, California 94568 (Alameda County).

Supermarket in the Davis, California Market

1. Albertson's store no. 725 operating under the "Albertson's" trade name, which is located at 1800 East 8th Street, Davis, California 95616 (Yolo County).

Supermarket in the Grass Valley, California Market

1. American Stores store no. 323 operating under the "Lucky" trade name, which is located at 11867 Sutton Way, Grass Valley, California 95945 (Nevada County).

Supermarket in the Grover/ City/Arroyo Grande, California Market

1. Albertson's store no. 1688 operating under the "Albertson's" trade name, which is located at 829 Oak Park Boulevard, Pismo Beach, California 93449 (San Luis Obispo County).

Supermarket in the Jackson, California Market

1. American Stores store no. 193 operating under the "Lucky" trade name, which is located at 555 Highway 49, Jackson, California 95642 (Amador County).

Supermarket in the Laguna Beach, California Market

1. Albertson's store no. 612 operating under the "Albertson's" trade name, which is located at 700 South Coast Highway, Laguna Beach, California 92651 (Orange County).

Supermarket in the Livermore, California Market

1. Albertson's store no. 763 operating under the "Albertson's" trade name, which is located at 919 East Stanley Boulevard, Livermore, California 94550 (Alameda County).

Supermarket in the Lompoc, California Market

1. American Stores store no. 270 operating under the "Lucky" trade name, which is located at 729 North H Street, Lompoc, California 93436 (Santa Barbara County).

Supermarket in the Monterey/Seaside/ Del Rey Oaks/Pacific Grove, California Market

1. Albertson's store no. 794 operating under the "Albertson's" trade name, which is located at 815 Canyon Del Ray, Monterey, California 93940 (Monterey County).

Land Site in the Morro Bay/Los Osos, California Market

1. Land Site for American Stores store no 592, which is located at the northwest corner of Los Osos Valley Road and Southbay Boulevard, Los Osos, California 93402 (San Luis Obispo County).

Supermarket in the Napa, California Market

1. Albertson's store no. 750 operating under the "Albertson's" trade name, which is located at 3682 Bel Aire Plaza, Napa, California 94558 (Napa County).

Supermarket in the Paso Robles, California Market

1. American Stores store no. 266 operating under the "Lucky" trade name, which is located at 2121 Spring Street, Paso Robles, California 93446 (San Luis Obispo County).

Supermarkets in the Greater Sacramento, California Market

1. Albertson's store no. 702 operating under the "Albertson's" trade name, which is located at 5001 Foothills Boulevard, Roseville, California 95678 (Placer County).

2. Albertson's store no. 761 operating under the "Albertson's" trade name, which is located at 2280 Sunrise Boulevard, Rancho Cordova, California 95670 (Sacramento County).

3. Albertson's store no. 762 operating under the "Albertson's" trade name, which is located at 9522 Greenback Lane, Folsom, California 95630 (Sacramento County).

4. Albertson's store no. 765 operating under the "Albertson's" trade name, which is located at 6737 Watt Avenue, North Highlands, California 95660 (Sacramento County).

5. Albertson's store no. 766 operating under the "Albertson's" trade name, which is located at 3615 Bradshaw Road, Sacramento California 95827 (Sacramento County).

6. Albertson's store no. 769 operating under the "Albertson's" trade name, which is located at 5330 Stockton Boulevard, Sacaramento California 95820 (Sacramento County).

7. Albertson's store no. 770 operating under the "Albertson's" trade name, which is located at 4560 Mack Road, Sacaramento California 95823 (Sacramento County).

8. Albertson's store no. 771 operating under the "Albertson's" trade name, which is located at 4080 Douglas Boulevard, Granite Bay, California 95746 (Placer County).

9. Albertson's store no. 774 operating under the "Albertson's" trade name, which is located at 6124 San Juan, Citrus Heights, California 95610 (Sacramento County).

10. Albertson's store no. 777 operating under the "Albertson's" trade name, which is located at 8122 Gerber Road, Sacramento, California 95828 (Sacramento County).

11. Albertson's store no. 783 operating under the "Albertson's" trade name, which is located at 5025 Marconi Avenue, Carmichael, California 95608 (Sacramento County).

12. Albertson's store no. 788 operating under the "Albertson's" trade name, which is located at 25000 Blue Ravine Road, Folsom, California 95630 (Sacramento County);

13. American Stores no. 179 operating under the "Super Saver" trade name, which is located at 2351 Northgate Boulevard, Sacramento, California 95833 (Sacramento County); and

14. American Stores no. 195 operating under the "Lucky" trade name, which is located at 8539 Elk Grove Boulevard, California 95624 (Sacramento County).

Supermarket in the Salinas, California Market

1. Albertson's store no. 795 operating under the "Albertson's" trade name, which is located at 1030 East Alisal, Salinas, California 93905 (Monterey County).

Supermarket in the San Luis Obispo, California Market

1. American Stores store no. 271 operating under the "Lucky" trade name, which is located at 201 Madonna Road, San Luis Obispo, California 93401 (San Luis Obispo County).

Supermarket in the Santa Cruz/ Capitola, California Market

1. Albertson's store no. 719 operating under the "Albertson's" trade name, which is located at 1710 41st Avenue, Capitola, California 95010 (Santa Cruz County).

Supermarket in the Santa Maria/Orcutt, California Market

1. American Stores store no. 262 operating under the "Lucky" trade name, which is located at 4869 South Bradley, Orcutt, California 93455 (Santa Barbara County).

Supermarkets in the Santa Rosa, California Market

1. Albertson's store no. 760 operating under the "Albertson's" trade name, which is located at 461 Stony Point Road, Santa Rosa, California 95401 (Sonoma County); and

2. American Stores no. 29 operating under the "Lucky" trade name, which is located at 390 Coddingtown Center, Santa Rosa, California 95401 (Sonoma County).

Supermarket in the Sonoma, California Market

1. Albertson's store no. 756 operating under the "Albertson's" trade name, which is located at 201 West Napa Street, Sonoma, California 95476 (Sonoma County).

Supermarket in the Vacaville, California Market

1. American Stores store no. 399 operating under the "Lucky" trade name, which is located at 615 Elmira Road, Vacaville, California 95687 (Solano County).

Supermarket in the Watsonville/ Freedom, California Market

1. Albertson's store no. 786 operating under the "Albertson's" trade name, which is located at 2010 Freedom Boulevard, Freedom, California 95019 (Santa Cruz County).

Supermarket and Land Site in the Santa Fe, New Mexico Market

1. American Stores store no. 688 operating under the "Lucky" trade name, which is located at 2308 Cerrillos Road, Santa Fe, New Mexico 87505 (Sante Fe County); and

2. Land Site for American Stores store no. 701, which is located at the northeast corner of Airport and South Meadows, Santa Fe, New Mexico 87505 (Santa Fe County).

Schedule D—Supermarkets and Land Site Divested to Stater

Supermarket in the Encinitas, California Market

1. Albertson's store no. 613 operating under the "Albertson's" trade name, which is located at 1048 North El Camino Real, Encinitas, California 92024 (San Diego County).

Supermarkets in the Escondido, California Market

1. Albertson's store no. 1672 operating under the "Albertson's" trade name, which is located at 635 North Broadway, Escondido, California 92025 (San Diego County); and

2. American Stores no. 561 operating under the "Lucky" trade name, which is located at 1330 Mission Road, San Marcos, California 92069 (San Diego County).

Land Site for Supermarket in the Fallbrook, California Market

1. Land Site for Albertson's store no. 1692, which is located at Mission and Pepper, Fallbrook, California 92028 (San Diego County).

Supermarkets in the Lancaster/ Palmdale, California Market

1. Albertson's store no. 1619 operating under the "Albertson's" trade name, which is located at 1840 East Avenue J, Lancaster, California 93536 (Los Angeles County);

2. Albertson's store no. 1634 operating under the "Albertson's" trade name, which is located at 37218 47th Street East, Palmdale, California 93550 (Los Angeles County);

3. Albertson's store no. 1670 operating under the "Albertson's" trade name, which is located at 2845 West Avenue L, Lancaster, California 93536 (Los Angeles County); and

4. American Stores store no. 458 operating under the "Lucky" trade name, which is located at 2535 East Avenue South, Palmdale, California 93550 (Los Angeles County).

Supermarkets in the Murrieta/ Temecula, California Market

1. Albertson's store no. 619 operating under the "Albertson's" trade name, which is located at 31813 Highway 79 South, Temecula, California 92592 (Riverside County); and

2. American Stores store no. 504 operating under the "Lucky" trade name, which is located at 25050 Hancock Avenue, Murrieta Hot Springs, California 92563 (Riverside County).

Supermarkets in the Oceanside/Vista/ Carlsbad, California Market

1. Albertson's store no. 1631 operating under the "Albertson's" trade name, which is located at 1451 North Santa Fe Avenue, Vista, California 92083 (San Diego County);

2. Albertson's store no. 1687 operating under the "Albertson's" trade name, which is located at 780 Sycamore Avenue, Vista, California 92083 (San Diego County);

3. American Stores store no. 231 operating under the "SuperSaver" trade name, which is located at 3770 Mission Avenue, Oceanside, California 92054 (San Diego County); and

4. American Stores store no. 298 operating under the "Lucky" trade name, which is located at 2170 Vista Way, Oceanside, California 92054 (San Diego County).

Supermarkets in the Palm Springs/ Indio, California Market

1. Albertson's store no. 683 operating under the "Albertson's" trade name, which is located at 1717 Vista Chino, Palm Springs, California 92262 (Riverside County);

2. Albertson's store no. 1623 operating under the "Albertson's" trade name, which is located at 69255 Ramon Road, Cathedral City, California 92234 (Riverside County); and

3. Albertson's store no. 1627 oiperating under the "Albertson's" trade name, which is located at 78–630 Highway 111, La Quinta, California 92253 (Riverside County).

Supermarkets in the Poway/North San Diego, California Market

1. Albertson's store no. 1644 operating under the "Albertson's" trade name, which is located at 13589 Poway Road, Poway, California 92064 (San Diego County); and

2. American Stores store no. 553 operating under the "Lucky" trade name, which is located at 9909 Carmel Mountain Road, San Diego, California 92129 (San Diego County).

Supermarket in the Ramona, California Market

1. Albertson's store no. 1630 operating under the "Albertson's" trade name, which is located at 1674 Main Street, Ramona, California 92065 (San Diego County).

Supermarket in the Santa Clarita, California Market

1. Albertson's store no. 681 operating under the "Albertson's" trade name, which is located at 26900 Sierra Highway, Santa Clarita, California 91355 (Los Angeles County).

Supermarkets in the South Los Angeles County/North Orange County, California Market

1. Albertson's store no. 607 operating under the "Albertson's" trade name, which is located at 3225 East Chapman Avenue, Orange, California 92669 (Orange County);

2. Albertson's store no. 620 operating under the "Albertsons's"trade name, which is located at 610 South Broookhurst, Anaheim California 92804 (Orange County);

3. Albertson's store no. 627 operating under the "Albertson's" trade name, which is located at 8640 East Alondra Boulevard, Paramount, California 90723 (Los Angeles County);

4. Albertson's store no. 629 operating under the "Albertson's" trade name, which is located at 851 North Harbor Boulevard, La Habra, California 90631 (Orange County);

5. Albertson's store no. 651 operating under the "Albertson's" trade name, which is located at 11815 Artesia Boulevard, Artesia, California 90701 (Los Angeles County);

6. Albertson's store no. 666 operating under the "Albertson's" trade name, which is located at 1131 State College Boulevard, Anaheim, California 92806 (Orange County);

7. Albertson's store no. 1601 operating under the "Albertson's" trade name, which is located at 7814 East Firestone Boulevard, Downey, California 90241 (Los Angeles County);

8. Albertson's store no. 1604 operating under the "Albertson's" trade name, which is located at 1111 East Imperial Highway, Placentia, California 92670 (Orange County);

9. Albertson's store no. 1608 operating under the "Albertson's" trade name, which is located at 10051 Valley View, Cypress, California 90630 (Orange County);

10. Albertson's store no. 1635 operating under the "Albertson's" trade name, which is located at 1040 East Bastanchury Road, Fullerton, California 92635 (Orange County);

11. Albertson's store no. 1641 operating under the "Albertson's" trade name, which is located at 6501 East Spring, Long Beach, California 90808 (Los Angeles County);

12. Albertson's store no. 1648 operating under the "Albertson's" trade name, which is located at 7511 East Orangethorp, Buena Park, California 90621 (Orange County);

13. Albertson's store no. 1652 operating under the "Albertson's" trade name, which is located at 12800 La Mirada Boulevard, La Mirada, California 90638 (Los Angeles County);

14. Albertson's store no. 1656 operating under the "Albertson's" trade name, which is located at 10114 Adams Street, Huntington Beach, California 92646 (Orange County);

15. Albertson's store no. 1668 operating under the "Albertson's" trade name, which is located at 7101 Warner Avenue, Huntington Beach, California 92647 (Orange County);

16. Albertson's store no. 1674 operating under the "Albertson's" trade name, which is located at 11300 Firestone Boulevard, Norwalk, California 90650 (Los Angeles County);

17. American Stores store no. 425 operating under the "Lucky" trade name, which is located at 333 North Euclid Avenue, Fullerton, California 92632 (Orange County);

18. American Stores store no. 442 operating under the "Lucky" trade name, which is located at 17220 South Lakewood Boulevard, Bellflower, California 90706 (Los Angeles County); and

19. American Stores store no. 473 operating under the "Lucky" trade name, which is located at 11750 East Whittier Boulevard, Whittier, California 90601 (Los Angeles County)

Supermarkets in the South Orange County, California Market

1. Albertson's store no. 1673 operating under the "Albertson's" trade name, which is located at 22351 El Toro Road, El Toro, California 92630 (Orange County);

2. Albertson's store no. 1677 operating under the "Albertson's" trade name, which is located at 26892 La Paz Road, Laguna Hills, California, 92653 (Orange County); and

3. American Stores store no. 624 operating under the "Lucky" trade name, which is located at 616 Camino de los Mares, San Clemente, California 92673 (Orange County).

Supermarket in the Southern Covina, California Market

1. Albertson's store no. 1662 operating under the "Albertson's" trade name, which is located at 20677 Amar Road, Walnut, California 91789 (Los Angeles County).

Schedule E—Supermarkets and Land Site Divested to Vons

Supermarket in the Moorpark, California Market

1. American Stores store no. 558 operating under the "Lucky" trade name, which is located at 4241 Tierra Rejada, Moorpark, California 93021 (Ventura County).

Supermarket in the Redlands, California Market

1. Albertson's store no. 1605 operating under the "Albertson's" trade name, which is located at 522 North Orange, Redlands, California 92374 (San Bernardino County).

Land Site for Supermarket in the Rialto/ Fontana, California Market

1. Land Site for Albertson's store no. 628, which is located at Cherry and Baseline, Fontana, California 92336 (San Bernardino County).

Supermarket in the Riverside/Corona, California Market

1. Albertson's store no. 1622 operating under the "Albertson's" trade name, which is located at 1130 West 6th Street, Corona, California 91720 (Riverside County).

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–16572 Filed 6–29–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Public Meeting and Intent To Prepare an Environmental Impact Statement

AGENCY: General Services Administration, National Capital Region; Department of Transportation.

ACTION: Proposed lease acquisition of a new or renovated headquarters for the Department of Transportation in the Central Employment Area (CEA) of Washington, D.C.

SUMMARY: The General Services Administration (GSA) announces its intent to prepare an Environmental Impact Statement (EIS) for the lease acquisition of a new or renovated headquarters for the Department of Transportation (DOT), to be located in the CEA of Washington, D.C. GSA also announces its intent to conduct a public meeting to discuss the proposed action pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as implemented by the Council of Environmental Quality regulations (40 CFR Parts 1500–1508), Section 106 of the National Historic Preservation Act of 1966, as amended, and in accordance with the Environmental Policies and Procedures implemented by GSA.

Background Information

DOT seeks to update its facilities, maximize efficiency, reorganize and consolidate its operations. To this end, Congress has authorized GSA, acting on behalf of DOT, to acquire up to 1.35 million rentable square feet of space under an operating lease for a term not to exceed twenty years. This procurement is designed to establish a competitive process to obtain a new or renovated headquarters for DOT.

The DOT's headquarters operations are currently housed primarily in two leased locations: the Nassif Building at 400 7th Street, SW, Washington, D.C., and the Transpoint Building at 2100 2nd Street, SW, Washington, D.C. In addition, DOT occupies smaller blocks of leased space in other buildings in Washington, D.C. All of these locations are proposed to be consolidated into the new headquarters. DOT also utilizes FOB 10A as the headquarters of the Federal Aviation Administration, but these operations are not proposed as part of this consolidation.

DOT first occupied the Nassif Building under a 20-year lease that commenced on January 2, 1970. A 10-year renewal commenced April 1, 1990 and expires on March 31, 2000.

Transpoint was first occupied in 1973. The current lease expires on May 15, 2003.

Consolidation in a new or renovated headquarters will produce significant operating efficiencies in support of DOT's mission. This procurement is the result of a three-year collaborative effort by the DOT, GSA, the Executive Branch, and Congress.

The lease acquisition for a DOT headquarters complex will be conducted in accordance with all applicable laws and regulations pertaining to GSA's acquisition of lease space.

These laws and regulations include, but are not limited to NEPA, the Competition in Contracting Act, the National Historic Preservation Act, the General Services Acquisition Regulations, and, where applicable, the Federal Acquisition Regulation. The Government plans to conduct this procurement as a negotiated, best value source selection. Under this approach, a panel of Government officials will select the proposal that satisfies all of the Government's minimum requirements as stated in the Solicitation For Offers (SFO), and presents the greatest overall value to the Government, considering price and technical factors stated in the SFO.

Notice of Intent

This Notice of Intent (NOI) initiates the formal environmental review/ scoping process for this proposed action. At this time, a comprehensive EIS is considered to be the appropriate means identifying the potential adverse impacts from this proposed Federal action. A public scoping meeting will be held to assist GSA in determining the significant issues related to this project. The public is encouraged to submit written comments on the potential impacts of the proposed project, means of mitigating those impacts, and project alternatives. The comments and responses received will be considered in preparing the environmental document. The public is encouraged to provide additional comments after the Draft EIS is released. GSA anticipates that the Draft EIS will be released in the Fall of 1999.

Topics for environmental analysis include the short-term impacts of construction; the long-term impacts of site operations and maintenance on land use, historic resources, visual resources, physical-biological resources, public transportation, traffic and parking, public services and utilities, and socio-economic conditions within the project areas; and the cumulative impacts associated with this other future projects in the CEA of the District of Columbia.

The public meeting will be advertised in local and regional newspapers. At the meeting, a short formal presentation will preclude the request for public comments. GSA representatives will be available to receive comments from the public regarding issues of concern. It is important that Federal, regional, state and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EIS. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. A document summarizing the written and oral comments received will be prepared and made publicly available.

An informational packet regarding this project will be available for review at the public meetings or upon request to the GSA contact identified below. The informational packet and other information regarding this project will also be made available on the Internet. Agencies and the general public are encouraged to provide written comments on the scoping issues in addition to, or in lieu of, presenting oral comments at the public meeting. Environmental review/scoping comments should clearly describe specific issues or topics that the community believes the EIS should address.

Time and Location of Meeting

The public meeting will be held: At 7:00 p.m., Wednesday, July 29, 1999 at the General Services Administration, 1st Floor Auditorium (D Street Entrance), 7th & D streets, S.W., Washington, D.C. 20407.

DATES: Written comments regarding environmental review of the proposed DOT headquarters project must be postmarked no later than August 6, 1999, to the following address: General Services Administration, Attn: Mr. John Simeon, Portfolio Development Division (WPC), 7th and D Streets, S.W., Suite 2002, Washington, D.C. 20407.

FOR FURTHER INFORMATION PLEASE CONTACT: Mr. John Simeon, General Services Administration, (202) 260–9586.

Dated: June 25, 1999.

Anthony E. Costa,

Assistant Regional Administrator, Public Buildings Service.

[FR Doc. 99–16669 Filed 6–29–99; 8:45 am]

BILLING CODE 6820–23–M

GENERAL SERVICES ADMINISTRATION

Electronic Posting System

AGENCY: General Services Administration.

ACTION: Notice of public meeting.

SUMMARY: The General Services Administration (GSA) and the Office of Federal Procurement Policy (OFPP) will hold a public meeting to consider adopting the Electronic Posting System (EPS) as the "single point entry" for notice of Federal business opportunities..

DATES: The meeting will be held August 11, 1999, from 9:00 AM–1:00 PM.

ADDRESSES: The meeting will be in the GSA Auditorium, at the GSA Headquarters Building, 1800 F St, NW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Paul Fontaine, ARNet Program Manager, GSA, Paul.Fontaine@gsa.gov, (202) 501–6941, or Julie Basille, OFPP, Julie Basile@OMB.EOP.GOV, (202) 395–4821.

SUPPLEMENTARY INFORMATION: The Electronic Posting System (EPS) is being considered for adoption as the "single point of entry"' for notice of Federal business opportunities. This is based upon a highly successful pilot project wherein EPS was used and later adopted by the General Services Administration (GSA), National Aeronautics and Space Administration (NASA), Department of the Treasury, Department of Transportation and Department of the Air Force. The EPS project team at GSA, and the Office of Federal Procurement Policy (OFPP), are conducting a public forum on EPS for Electronic Commerce vendors entitled "Building the Single Point of Entry". The intended audience is both the technical and marketing staffs of companies, which market Electronic Commerce products, and services for the Federal Government. The two purposes of the meeting are to first, introduce vendors to EPS and second, to solicit input from vendors on what EPS can do to enhance their market within the Federal EC arena.

Dated: June 24, 1999.

Ida M. Ustad,

Deputy Associated Administrator for Acquisition Policy.

[FR Doc. 99–16594 Filed 6–29–99; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Capacity-Building Assistance (CBA) To Strengthen the Prevention of Human Immunodeficiency Virus (HIV) in Racial and Ethnic Minority Populations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice and request for comments.

SUMMARY: In Fiscal Year (FY) 2000, CDC will provide approximately $8.3 million dollars to support racial or ethnic minority non-governmental organizations (NGOs) to carry out capacity-building activities for community-based organizations (CBOs) providing human immunodeficiency virus (HIV) prevention services to racial and ethnic minority individuals whose behaviors place them at risk of acquiring or transmitting HIV and other sexually transmitted diseases (STDs).

The purpose of this announcement is to request comments on this proposed program. After consideration of comments submitted, CDC will publish a program announcement to solicit applications. A more complete description of the goals of this program, the target applicants, availability of funds, program requirements, and evaluation criteria follows.

DATES: The public is invited to submit comments by July 14, 1999.

ADDRESS: Submit comments to: Technical Information and Communications Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mail Stop E49, Atlanta, GA 30333.

FOR FURTHER INFORMATION CONTACT: Technical Information and Communications Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mail Stop E49, Atlanta, GA 30333, Fax (404) 639–2007, E-mail address: *HIVMAIL@CDC.GOV*, Telephone (404) 639–2072.

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this program is to provide financial assistance to national, regional, or local non-governmental minority organizations to develop and implement regionally structured and focused capacity-building assistance that will sustain, improve, and expand HIV prevention services for racial and ethnic minority individuals whose behaviors place them at risk for acquiring or transmitting HIV and other sexually transmitted diseases (STDs).

Capacity-building assistance developed under this program will be provided in two categories, A and B. Category A includes capacity-building assistance in (1) Organizational Infrastructure Assessment and Development, and (2) Intervention Design, Development, Implementation, and Evaluation. Category B includes capacity-building assistance in (1) Community Capacity-Building for HIV Prevention, and (2) HIV Prevention Community Planning Participation.

The priority for capacity-building assistance in Category A is for CBOs that provide HIV prevention services to racial and ethnic minority populations. These CBOs are prioritized as follows: (1) CBOs funded directly by CDC, (2) CBOs not funded by CDC or State or local health departments, and (3) CBOs funded by State or local health departments. The priorities for receiving capacity-building assistance in Category B are (1) CBOs that provide HIV prevention services to racial and ethnic minority populations, and (2) community stakeholders who represent or work with racial and ethnic minority populations heavily affected by the HIV/AIDS epidemic. For the purpose of this program announcement, community stakeholders are individuals, groups, or organizations that have an interest in preventing HIV and are potential or actual agents of change.

This program will serve four regional groups as follows:

Northeast Region: CT, MA, ME, NH, NJ, NY, PA, PR, RI, VT, U.S. Virgin Islands.

Midwest Region: IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, WI.

South Region: AL, AR, D.C., DE, FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV.

West Region: AK, AZ, CA, CO, HI, ID, NV, NM, OR, MT, UT, WA, WY, American Samoa, Commonwealth of Northern Mariana Islands, Federated States of Micronesia, Guam, Republic of Marshall Islands, Palau.

Goals

The goals for this program are as follows:

1. Category A

a. Improve the capacity of CBOs to develop and sustain organizational infrastructures in order to support program services and interventions.

b. Improve the capacity of CBOs to design, develop, implement, and evaluate effective HIV prevention interventions.

2. Category B

a. Improve the capacity of CBOs to increase community awareness, leadership, participation in and support for HIV prevention.

b. Enhance the capacity of community stakeholders to provide leadership and support for HIV prevention.

c. Enhance the capacity of CBOs and community stakeholders to effectively participate in the HIV prevention community planning process.

Eligible Applicants

Eligible applicants for Category A are (1) A national minority organization as a single organization or as the lead organization within a coalition serving one regional group; or (2) a regional minority organization as a single organization or as the lead organization within a coalition serving one regional group; or (3) a local minority organization as the lead organization within a coalition serving one regional group. A coalition can consist of any combination of two or more local, regional, or national minority organizations.

Eligible applicants for Category B are (1) A national minority organization as a single organization or as the lead organization within a coalition serving from one to four regions; or (2) a regional minority organization as a single organization or as the lead organization within a coalition serving one region; or (3) a local minority organization as the lead organization within a coalition serving one region.

Note: Applicants that meet the eligibility requirements for both Categories A and B may apply for both under separate applications.

Applicants must meet the following criteria:

1. Have a currently valid IRS Tax Determination 501(C)3 status certificate.

2. If applying for Category A, have a documented and established 3-year record of service providing organizational capacity-building assistance to CBOs serving racial and ethnic minority populations. If applying for Category B, have a documented and established 3-year record of service providing community capacity-building to CBOs serving a racial and ethnic minority population and to a racial and ethnic minority community or sub-population heavily affected by the HIV/AIDS epidemic. Acceptable documentation includes letters of support, client satisfaction survey summaries, annual reports, and memoranda of agreements.

3. Have a governing body composed of greater than 50 percent racial and ethnic minority members.

4. Have racial and ethnic minority persons serve in greater than 50 percent of key positions in the organization, including management, supervisory, administrative, and service provision positions (for example, executive director, program director, fiscal director, technical assistance provider, trainer, curricula development specialist, or group facilitator).

5. In a coalition, the lead organization, which is the legal applicant, must meet criteria 1–4 above. Other (non-lead) organizations in the coalition must meet criteria 3 and 4.

Availability of Funds

In Category A, up to $5.0 million is expected to be available in FY 2000 to fund four programs. In Category B, up to $3.4 million is expected to be available in FY 2000 to fund four to sixteen programs with awards ranging from $212,000 to $900,000. It is expected that the awards will begin about November 1999, and will be made for a 12-month budget period within a project period of up to five years.

Funding Priorities

In making funding decisions, efforts will be made to (1) ensure capacity-building assistance in both Categories A and B for all four regions identified in the introduction of this announcement; and (2) ensure that funding for capacity-building assistance is distributed in proportion to the HIV/AIDS disease burden for the four major racial and ethnic minority populations by each region or nationally.

Program Requirements

1. Category A

a. Create a regionally-based resource network that includes the applicant's current and proposed staff, researchers, academics, consultants, and other subject matter experts, and may include a coalition and collaborative relationships.

b. Identify capacity-building resources currently available in the region to avoid duplication of effort.

c. Ensure the effective and efficient provision of capacity-building assistance in (1) Organizational Infrastructure Development and Assessment, and (2) Intervention Design, Development, Implementation, and Evaluation. These services are to be provided through the use of the following delivery mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services, and Technology Transfer.

d. Ensure that capacity-building assistance is allocated according to gaps in services and the priority capacity-building assistance needs of CBOs serving highly affected sub-populations.

e. Develop and implement a plan for targeting, engaging, and maintaining long-term capacity-building relationships with CBOs. The plan should include strategies for conducting ongoing needs assessments and developing tailored capacity-building packages to be delivered over the long-term and as appropriate to the identified needs.

f. Develop and implement a system that responds to capacity-building assistance requests. This system must include mechanisms for conducting needs assessments, prioritizing capacity-building assistance requests, linking requests to other capacity-building resources, delivering services, and conducting quality assurance.

g. Develop a standardized system for tracking, assessing, and documenting all capacity-building assistance requests and delivery, with CDC assistance as needed.

h. Participate in a CDC-coordinated capacity-building network.

i. Coordinate program activities with appropriate national, regional, State, and local HIV prevention programs, capacity-building providers, and community planning groups.

j. Evaluate the accomplishment of program objectives and the process and outcomes of capacity-building assistance.

2. Category B

a. Conduct regional community needs and resource assessments around issues related to HIV prevention, leadership development, and community mobilization.

b. Develop a regional plan of action to mobilize community and agency resources to meet priority needs in Community Capacity-Building for HIV Prevention.

c. Develop a regional plan of action to provide capacity-building assistance in HIV Prevention Community Planning Participation.

d. Provide capacity-building assistance to CBOs and community stakeholders in (1) Community Capacity-Building for HIV Prevention, and (2) HIV Prevention Community Planning Participation. These services are to be provided through the use of the following mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services, and Technology Transfer.

e. Develop and implement a plan for targeting, engaging, and maintaining long-term capacity-building relationships with CBOs and community stakeholders. The plan should include strategies for conducting ongoing needs assessments and developing tailored capacity-building packages to be delivered over the long-term and as appropriate to the identified needs.

f. Form a regional (e.g., multi-State) community advisory board that includes CBOs, community representatives, members of the target populations and other community stakeholders to provide input on the overall direction of this program and in assessing the program's communication, linkages, performance, and services to the target population.

g. Ensure that capacity-building assistance is allocated according to priority needs for community capacity-building and community planning participation in highly affected sub-populations.

h. Develop and implement a system that responds to requests for assistance in Community Capacity-Building for HIV Prevention, and HIV Prevention Community Planning Participation. This process must include mechanisms for conducting needs assessments, prioritizing requests, linking requests to the resource network funded under Category A, delivering services, and conducting quality assurance.

i. Develop a standardized system for tracking, assessing, and documenting all capacity-building assistance requests and delivery, with CDC assistance as needed

j. Participate in a CDC-coordinated capacity-building network.

k. Coordinate program activities with appropriate national, regional, State, and local HIV prevention programs, capacity-building providers, and community planning groups.

l. Evaluate the accomplishment of program objectives, and the process and outcomes of capacity-building assistance.

Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Long-term Goals (5 points).
2. Organizational Capacity (35 points).
3. Assessing the Need for Capacity-Building Assistance (10 points).
4. Program Plan (35 points).
5. Program Evaluation Plan (5 points).
6. Communication and Dissemination Plan (5 points).
7. Plan for Acquiring Additional Resources (5 points).
8. Budget and Staffing Breakdown and Justification (not scored).

9. Training and Technical Assistance Plan (not scored).

10. Site visits by CDC staff may be conducted before final funding decisions are made. A fiscal Recipient Capability Assessment (RCA) may be required of some applicants before funds are awarded.

Dated: June 24, 1999.

Thena M. Durham,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 99–16590 Filed 6–29–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Vaccine Program Office (NVPO), of the Centers for Disease Control and Prevention (CDC), Announces the Following Meeting

Name: International Symposium on Combination Vaccines.

Times and Dates: 8:30 a.m.–6 p.m., February 2, 2000. 9 a.m.–6 p.m., February 3, 2000. 8:30 a.m.–5 p.m., February 4, 2000.

Place: Natcher Auditorium, NIH Campus, Bethesda, Maryland.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 500 people.

Purpose: The purpose of the meeting is to fully explore laboratory, clinical, and epidemiologic data integral to developing and licensing new safe and effective combination vaccines.

Matters To Be Discussed: Agenda items will include presentations and discussion regarding: immunogenicity; immune interference; correlates of protection; pre- and post-licensure safety evaluation; combination vaccines vs. simultaneous administration; manufacturing, product testing, and preclinical (animal) evaluation; and overcoming challenges to use of combination vaccines.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Alicia S. Postema, Health Policy Fellow, NVPO, CDC, 1600 Clifton Road, NE, M/S A–11, Atlanta, Georgia 30333, telephone 404/639–4450.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 23, 1999.

Carolyn Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–16589 Filed 6–29–99; 8:45 am]

BILLING CODE 4163–18–P

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Appeal	2,186	1	2	4,372
Estimated Total Annual Burden Hours: 4,372.				

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Attn: ACF Desk Officer.

Dated: June 24, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–16625 Filed 6–29–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[0980–0242]

Submission for OMB Review; Comment Request

Title: Appeal Procedures for Head Start Grantees and Current or Former Delegate Agencies.

OMB No.: 0980–0242.

Description: Section 646 of the Head Start Act requires the Secretary to prescribe procedures insuring that an agency or organization which desires to serve as a delegate agency under the Head Start Act will receive special notice and an opportunity for a timely appeal when an application has been wholly or substantially rejected or when such application has not been acted upon within a period of time deemed reasonable by the Secretary. The rule also describes the actions available prior to the suspension, termination, or reduction of financial assistance or when an application for refunding is denied.

Respondents: State, Local or Tribal Government.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Grants Administration.

OMB No.: 0980–0243.

Description: This part establishes regulations applicable to program administration and grant management for grants under the Head Start Act. The regulations clarify definitions of terms applicable to the administration of the Head Start program. In addition the regulations establish a requirement for grantees to have student accidents insurance and bonding for certain officials. The regulations also require funding recipients to establish written personnel policies, and clarify the limitations on costs of development and administration of Head Start programs.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Appeal	10	1	16	160

Estimated total Annual Burden Hours: 160.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Attn: ACF Desk Officer.

Dated: June 22, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–16626 Filed 6–29–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0240]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extralabel Drug Use in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by July 30, 1999.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm 10235, Washington, DC 20503, Attention: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Extralabel Drug Use in Animals—21 CFR Part 530 (OMB Control No. 0910–0325—Extension)

Description: The Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA) (Pub. L. 103–396), amended the Federal Food, Drug, and Cosmetic Act (the act), to permit licensed veterinarians to prescribe extralabel use in animals of approved human and new animal drugs. Regulations implementing provisions of AMDUCA were codified in 1996 at part 530 (21 CFR part 530). A provision of these regulations, § 530.22(b), permits FDA to establish a safe level for the extralabel use in animals of an approved human or animal drug when the agency determines there is reasonable probability that this extralabel use may present a risk to the public health. The extralabel use in animals of an approved human or animal drug that results in residues exceeding the safe level is considered an unsafe use of the drug.

In conjunction with the establishment of a safe level, FDA may request development of an acceptable residue detection method for an analysis of residues above any safe level established under this part. In some cases, the sponsor may be willing to provide this methodology, while in others, FDA, the sponsor, the U.S. Department of Agriculture (USDA), States, or a consortium of interested parties may negotiate a cooperative arrangement to develop such a methodology. If no acceptable analytical method is developed, the agency would be permitted to prohibit extralabel use of the drug.

In the **Federal Register** of March 1, 1999 (64 FR 10002), the agency requested comments on the proposed collection of information. In response, FDA received one comment, which included several parts with questions. The comments and questions are listed in the following paragraphs with the agency's responses.

The comment asked: "How will FDA determine a safe level?" As stated in the preamble to the final rule, the agency may establish a finite safe level based on all relevant scientific information (61 FR 57732 at 57741, November 7, 1996).

The comment asked: "What will they use?" As stated in the rule, the agency may establish a safe level based on the lowest level that can be measured by a practical analytical method; or establish a safe level based on other appropriate scientific technical or regulatory criteria.

The comment asked: "If data [is] not in the approved information or in [the] general domain, then how will they collect it and who will pay for it?" As stated in the preamble to the final rule (61 FR 57732), the sponsor may be willing to provide the methodology for residue detection in some cases, while in others, FDA, the sponsor, USDA, States, or a consortium of interested parties may negotiate a cooperative arrangement to develop methodology. Conceivably, a third party who might submit such data could include a distributor or group of distributors who wish to make the drug available for extralabel use.

The comment asked: "Will they force [a] company to collect the data to establish a safe level?" FDA has no authority under AMDUCA or its implementing regulations to require a sponsor or any other person to collect data to establish a safe level for extralabel use if the sponsor or other person is not willing to do so. If the agency determines that an extralabel use in animals of a particular human drug or animal drug presents a risk to the public health, or if no required acceptable analytical method has been developed, the agency would be permitted to prohibit extralabel use of the drug.

The comment asked: "How much data will they demand to be collected ?" The nature and extent of data necessary to establish a safe level or to develop an

analytical method will be determined on a case-by-case basis.

The comment asked: "Will this rule apply to old approved drugs or just new approvals ?" This rule applies to the extralabel use in animals of currently approved new animal and human drugs and new approvals of human and new animal drugs.

The comment asked: "Who pays to have the analytical method developed ?" As stated previously, the sponsor may be willing to provide the methodology for assay of residue in some cases, while in others, FDA, the sponsor, USDA, States, or a consortium of interested parties may negotiate a cooperative arrangement to development the methodology. Conceivably, a third party who might submit such data could include a distributor or group of distributors who wish to make a drug available for extralabel use.

The comment asked: "To what extent will it have to be validated and how many tissues will it have to be validated for?" As stated in the preamble to the final rule, methods validation is anticipated to be necessary. The number of tissues for which method validation might be required would be determined on a case-by-case basis.

The comment asked: "If [there are] multiple approvals of [the] same active [ingredient], will they force all manufacturers to do the same work because of a different salt? If not, how will they decide who does the work?" As was stated in the preamble to the final rule, the sponsor may be willing to provide the methodology for residue detection in some case, while in others, FDA, the sponsor, States, USDA, or a consortium of interested parties could negotiate a cooperative arrangement to develop the methodology. The third party could conceivably include a group of drug sponsors who might cooperatively submit data on behalf of all drugs with a particular active drug ingredient.

The comment asked: "What will they do to generic approvals? Force the originator to pay?" FDA does not comtemplate requiring a sponsor or any other person to collect data to establish a safe level for extralabel use if the sponsor or other person is not willing to do so. If the agency determines that an extralabel use in animals of a particular human drug or animal drug presents a risk to the public health, or if no required acceptable analytical method has been developed, the agency would be permitted to prohibit extralabel use of the drug.

The comment asked: "If it is FDA's plan to demand this data for all existing drug[s] that might be used in food animals, please announce your intentions." FDA has no plan to require the submission of data for extralabel use for all existing drugs that might be used in food-producing animals. The respondents may be sponsors of new animal drugs, State(s) or Federal Government or individuals.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
530.22(b)	2	1	2	4,160	8,320

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on agency records and experience, the agency estimates that two methods of intermediate difficulty will be developed per year and each method may take up to two person years to develop.

Dated: June 18, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–16593 Filed 6–29–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier HCFA–R–288]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity of the utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. In particular, a statutory deadline has been missed and public harm may occur, as the result of unnecessary loss of Medicare trust fund dollars.

The Balanced Budget Act of 1997 requires the Secretary to implement up to seven competitive pricing demonstrations. Advisory committees, authorized under the Federal Advisory Committee Act (FACA), have been responsible for recommending the design of the demonstration, the sites for the demonstrations, and the manner in which the demonstrations are to be implemented. As such, this information collection was developed under the direction of the two committees and is intended for the Kansas City competitive pricing demonstration since its design is final.

Congress directed HCFA to implement the competitive pricing demonstration through the use of two FACA-compliant advisory committees composed of health care experts. Consistent with FACA requirements, all advisory committee meetings were open to the public and all affected parties were present and able to provide input. Notice of the five meetings of the Competitive Pricing Advisory Committee (CPAC) and the four meetings of the Kansas City Area

Advisory Committee were published in the **Federal Register**.

Throughout the planning process for this demonstration which began in May 1998, all entities impacted by the demonstration including health plans, providers, employers and beneficiaries have been educated on the types of specific information required in the bid solicitation package. In response, written comments and recommendations have been received from the public on all aspects of the demonstration design and implementation during our Federal Advisory Committee meetings. This information collection package could not be prepared until several specific decisions were made by the advisory committees. These included the formula for determining the government contribution, the standard benefit package upon which plans bid, the county or counties upon which the bid is based, and the service included in the demonstration. Final decisions occurred on May 12, 1999, and, as a result, HCFA could not reasonably comply with the normal clearance procedures. Also, due to the fact that the Kansas City demonstration is scheduled to begin on January 1, 2000, at the direction of the CPAC, HCFA must have the collection approved by July 1, 1999 to allow potential bidders enough time to plan for, and submit their applications.

The Bid Solicitation Package for Kansas City will be used to determine the government's contribution to premiums for Medicare+Choice plans that are participating in the Competitive Pricing Demonstration. HCFA will use the information to determine the higher of the weighted average or median of all submitted bids.

HCFA is requesting OMB review and approval of this collection within 2 days of publication, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below, within 2 days of publication.

During this 180-day period, HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR 1320.

Type of Information Collection Request: New Collection;

Title of Information Collection: Medicare Competitive Pricing Demonstration Bid Solicitation Package for Kansas City;

Form No.: HCFA–R–0288;

Use: This information collection "Medicare Competitive Pricing Demonstration Bid Solicitation Package for Kansas City" will be used to determine the government's contribution to premiums for Medicare+Choice plans that are participating in the Competitive Pricing Demonstration. HCFA will use the information to determine the higher of the weighted average or median of all submitted bids;

Frequency: One time;

Affected Public: Business or other for-profit;

Number of Respondents: 9;

Total Annual Responses: 9;

Total Annual Hours: 360.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designee referenced below within 2 days of publication:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262 Attn: John Burke HCFA–R–0288

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: June 22, 1999.

John P. Burke III.

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–16615 Filed 6–29–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4410–C–04]

FY 1999 Super Notice of Funding Availability (SuperNOFA); Modifications and Clarifications Regarding Funding Under the Fair Housing Initiatives Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: On February 26, 1999, HUD published its Fiscal Year (FY) 1999 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment programs. This notice advises of certain modifications and clarifications to funding provided under the Fair Housing Initiatives Program (FHIP).

DATES: The FHIP application due date of June 30, 1999, is not changed by this notice.

FOR FURTHER INFORMATION CONTACT: For the FHIP, please contact the office or individual listed in the "For Further Information" portion of the section of the individual programs that are part of the SuperNOFA, published on February 26, 1999 at 64 FR 9618.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1999 (64 FR 9618), HUD published its FY 1999 SuperNOFA for HUD's Housing, Community Development, and Empowerment programs. The FY 1999 SuperNOFA announced the availability of approximately $2.4 billion in HUD program funds covering 32 grant programs and program components administered by the following HUD offices: the Office of Community Planning and Development (CPD); the Office of Housing-Federal Housing Administration (FHA); the Office of Public and Indian Housing (PIH); the Office of Policy Development and Research (PD&R); the Office of Fair Housing and Equal Opportunity (FH&EO); and the Office of Lead Hazard Control.

On April 27, 1999 (64 FR 22634), HUD published a notice that extended the application deadlines of two programs (HOPE VI and FHIP) and made certain corrections and clarifications to four programs (FHIP, Lead-Based Hazard Control Program, Section 202 Supportive Housing for the Elderly Program; and Section 811 Supportive Housing for Persons with Disabilities Program).

On May 8, 1999 (64 FR 27120), HUD published a notice that, among other things, extended the deadline for certain programs in the SuperNOFA to accommodate areas that were designated disaster areas as a result of the tornados in early May 1999.

The purpose of this notice is to advise of certain modifications and clarifications to funding under the FHIP Program. These changes do not alter the selection factors of the FHIP NOFA.

These changes only clarify certain FHIP requirements.

Accordingly, in the SuperNOFA for Housing, Community Development, and Empowerment Programs, notice document 99–4476, beginning at 64 FR 9618, in the issue of Friday, February 26, 1999, the following corrections are made to the Fair Housing Initiatives Program (FHIP) section of the SuperNOFA, found at 64 FR 9677–9690.

1. On page 9682, first column, a new paragraph (11) is added to Section IV(A), and existing paragraphs (11), (12), and (13) are redesignated (12), (13), and (14) respectively. New paragraph 11 adds language to assure high quality performance of all grants, contracts, or cooperative agreements resulting from awards made under this NOFA. HUD is implementing a process to consider complaints from the public regarding FHIP funded activities. New paragraph (11) reads as follows:

(11) To assure high quality performance of all grants, contracts, or cooperative agreements resulting from awards made under this NOFA, HUD is implementing a process to consider complaints from the public regarding FHIP-funded activities. If, after notice and consideration of relevant information, HUD concludes that there has been inappropriate conduct, such as a violation of FHIP program requirements, grant, contract or cooperative agreement terms or conditions; or any other applicable statute, regulation or other requirement, HUD will take appropriate action to address its determination. Such action may include: written reprimand; consideration of past performance in ranking future FHIP applications; reimbursement of FHIP funding; and temporary or permanent denial of participation in the FHIP program.

2. On page 9683, in the middle column, paragraph (8) pertaining to "Conflict of Interest and Use of Settlement Funds Certification," is amended by revising paragraph (8)(b) to clarify the disposition of funds received as a result of activities funded in whole or in part by the FHIP program. Paragraph (8)(b) is revised to read as follows:

(b) When you receive funds as the result of enforcement activities funded in whole or in part by the FHIP program, including testing, you shall reimburse the United States for the FHIP-funded activities. To accomplish this, you shall reimburse the United States for the FHIP-funded activities in accordance with procedures set forth in your grant, contract or cooperative agreement.

3. On page 9683, in the middle column, Section IV(C)(1) pertaining to "Additional Requirements for Private Enforcement Initiative" is revised to remove the requirement that applications to provide projections of the number of complaints to be referred to HUD for enforcement purposes, and to make clear that applications already submitted which contain such projections needed not be revised because HUD will not consider such projections when evaluating the application. Paragraph (1) in Section IV(C) is revised to read as follows:

(1) Your proposal must include a description of the enforcement proposals to be referred to HUD to increase enforcement actions. Therefore, you must state what information you intend to collect and analyze, the kind of complaints you anticipate referring to HUD for enforcement purposes and a method for referring such complaints. If applications are submitted with projections of the number of complaints expected to be referred to HUD for enforcement purposes, they need not be revised because HUD will disregard any such projections when evaluating the application. Your application should explain how you plan to structure tests, train investigators, conduct investigations, etc. This description should make clear the safeguards to be used to ensure that complaints referred to HUD for enforcement actions are fully jurisdictional under the Act and supported by credible and legitimate evidence that the Act has been violated.

4. On page 9686, first column, paragraph (1), the Description of Proposed Activities (which is under Rating Factor 3), is revised to remove the requirement that applications contain projections of the number of enforcement proposals to be referred to HUD. All the text under the "Description of Proposed Activities" is removed and replaced with the following language:

How your proposed activities will result in the referral of enforcement proposals to HUD. Specifically, your description should explain how the activities performed during the period of performance of the grant will result in cases being referred to HUD. If applications are submitted with projections of the number of enforcement proposals to be referred to HUD, they need not be revised because HUD will disregard any such projections when evaluating the application. In responding to this factor, describe the methods to be developed or used to identify and refer enforcement proposals to HUD. If your past activities have resulted in successful enforcement proposals being referred to HUD, describe these actions and the outcome of such referrals.

Dated: June 25, 1999.

Susan Forward,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 99–16719 Filed 6–28–99; 9:25 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by July 30, 1999.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Coordinator). Telephone: 404/679–7313; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: David Dell, Telephone: 404/679–7313; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION:

Applicant: Dr. Lawrence H. Herbst, Albert Einstein College of Medicine, Bronx, New York, TE013719–0.

The applicant requests authorization to take (capture, retain for disease trials, and release or euthanize) the endangered green sea turtle, *Chelonia mydas* throughout the species range in Florida for the purpose of enhancement of survival of the species.

Applicant: Michael Gangloff, Auburn University, Auburn, Alabama, TE013722–0.

The applicant requests authorization to take (capture, identify, and release) thirteen species of threatened and endangered freshwater molluscs native to the Coosa River basin in Alabama and Georgia, for the purpose of enhancement of survival of the species.

Applicant: Dr. James A. Carpenter, David Lipscomb University, Nashville, Tennessee, TE013721–0.

The applicant requests authorization to take (capture, mark, and release) the endangered Nashville crayfish, *Orconectes shoupi,* throughout the species range in Tennessee, for the purpose of enhancement of survival of the species.

Dated: June 22, 1999.

Sam D. Hamilton,

Regional Director.

[FR Doc. 99–16576 Filed 6–29–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council (Council), Meeting Announcement

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Council will meet at 1:00 pm, July 7, 1999 to select North American Wetlands Conservation Act (NAWCA) proposals for recommendation to the Migratory Bird Conservation Commission. The meeting is open to the public.

DATES: July 7, 1999, Bismarck, ND—1:00 P.M.

ADDRESSES: The meeting will be held at the Holiday Inn, 605 East Broadway Avenue, Bismarck, ND. The Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia, 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to, and final funding approval by, the Migratory Bird Conservation Commission. Proposals require a minimum of 50 percent non-Federal matching funds.

Dated: June 22, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–16574 Filed 6–29–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310-00-1310 24 1A]

Extension of Currently Approved Information Collection; OMB Approval No. 1004–0162

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Paperwork Reduction Act requires Federal agencies to announce their intentions to request extension of approval for collecting information from individuals. The Bureau of Land Management (BLM) announces its intention to request extension of approval for collecting certain information from entities who (1) submit a Notice of Intent to Conduct Oil and Gas Geophysical Exploration Operations (Form 3150–4) of Federal lands, and (2) summit a Notice of Completion of Oil and Gas Exploration Operations (Form 3150–5), BLM uses the information to determine who is conducting geophysical operations on public lands and to ensure that appropriate measures are taken to protect the environment as required by the National Environmental Policy Act of 1969.

DATES: Comments on the proposed information collection must be received by August 30, 1999 to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (WO–630), Bureau of Land Management, 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240. Comments may be sent via the Internet to: *WoComment@wo.blm.gov.* Please include "Attn: 1004–0162 and your name and address in your Internet address.

Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW, Washington DC 20036.

Comments will be available for public inspection and review at the L Street address during regular business hours, 7:45 a.m. to 4:15 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Gamble, Fluid Minerals Group, (202) 452–0338.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d) BLM is required to provide a 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules and other collection instrument to solicit comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act (MLA) of 1920 (30 U.S.C. 181 *et seq.*), gives the Secretary of the Interior responsibility for oil and gas leasing on approximately 570 million acres of public lands and national forests, and private lands where minerals rights have been retained by the Federal Government. The Act of August 7, 1947 (Mineral Leasing Act of Acquired Lands), authorizes the Secretary to lease lands acquired by the United States (30 U.S.C. 341–359). The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) establishes a public land policy and provides for the management, protection, development, and enhancement of the public lands.

The regulations at 43 CFR Group 3150 establish procedures for conducting oil and gas geophysical exploration operations on public lands when authorization for such operations is required from the BLM. The Notice of Intent to Conduct Oil and Gas Geophysical Exploration Operations (Form 3150–4) and the Notice of Completion of Oil and Gas Exploration Operations (Form 3140–5) were developed in 1990, and the information required from the public remains the same.

BLM needs the information requested on the Notice of Intent to allow it to process applications for geophysical exploration operations on public lands and to manage environmental compliance requirements in accordance with the laws, regulations, and land use plans. BLM uses the information to determine that geophysical operations activities will be conducted in a manner consistent with the regulations, local land use plans, and Environmental Assessments. BLM needs the information requested on the Notice of Completion to determine whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary.

The forms may be submitted in person or by mail to the proper BLM office. The company name, address, and telephone number is needed to identify the person/entity conducting operations. BLM assigns the BLM Case Number to track each specific operation. Where a particular operation requires State approval also, the State Case Number is assigned by the appropriate State agency so that the Bureau may coordinate exploration activity with the State. The legal land description is required to determine where the involved public lands are located.

Based on its experience administering onshore oil and gas geophysical exploration activities, BLM estimates the public reporting burden for completing the Notice of Intent to Conduct Geophysical Exploration Operations (Form 3150–4) is 1 hour, and for completing the Notice of Completion of Oil and Gas Exploration Operations (Form 3150–5) is an average of 20 minutes. The information required is clearly outlined on the form and in the terms and conditions attached. The information is already maintained by the respondents for their own record-keeping purposes and needs only to be transferred or attached to the forms.

BLM estimates the approximately 600 notices of intent and 600 notices of completion will be filed annually, with a total annual burden of 800 hours. Respondents vary from small businesses to major corporations.

Any interested member of the public may request and obtain, without charge, a copy of Form 3150–4 or 3150–5 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.** All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: June 25, 1999.

Carole J. Smith,

Information Clearance Officer.

[FR Doc. 99–16687 Filed 6–29–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1110–00:G9–0179]

Closure of Public Lands; Oregon

AGENCY: Bureau of Land Management.

ACTION: Notice is hereby given that all roads and trails as legally described below are seasonally closed to all uses (including, but not limited to motorized vehicle use, hiking, mountain biking, horseback riding) from March 1 through August 31 annually. In addition, the area legally described below is seasonally closed to shooting from March 1 through August 31 annually.

Legal Description

This closure order applies to all roads and trails located in Township 15 South, Range 11 East, WM, Section 21, South half of the Southeast quarter, Northeast quarter of the Southeast quarter; Section 28, West half of the Northeast quarter. In addition, the area closed to shooting is legally described as Township 15 South, Range 11 East, WM, Section 21, South half of the Southeast quarter; Section 28, North half of the Northeast quarter.

All roads and trails as described above are closed to all uses (motorized vehicle use, hiking, mountain biking, horseback riding) from March 1 through August 31 annually. The area legally described above is closed to shooting from March 1 through August 31 annually. "Shooting", in this closure, is defined as the discharge of firearms. The purpose of this closure is to protect wildlife resources. More specifically, this closure is ordered to reduce negative impacts to a nesting pair of prairie falcons. Prairie falcons are sensitive to human disturbance within the sensitive habitat area surrounding the nest site during the nesting season. Current uses at the site could jeopardize the persistence and nesting success of prairie falcons at this location.

Exemptions to this closure order will apply to administrative personnel for monitoring purposes; other exceptions to this restriction may be made on a case-by-case basis by the authorized officer. This emergency order will be evaluated in the Urban Interface Resource Management Plan. The authority for this closure is 43 CFR 9268.3 (d)(i)(iii,v): Operations—closures.

FOR FURTHER INFORMATION CONTACT: Sarah Cox, Wildlife Biologist, BLM Prineville District, P.O. Box 550, Prineville, Oregon 97754, telephone (541) 416–6725.

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 9268.3 (d)(iv).

Dated: June 15, 1999.

Shaaron Netherton,

Acting Deschutes Area Manager, Prineville District Office.

[FR Doc. 99–16568 Filed 6–29–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–3130–00: GP9–0212; OR 51858]

Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 882.85 acres of lands to surface entry, mining, and mineral leasing. The lands have been eliminated from an exchange proposal.

EFFECTIVE DATE: July 20, 1999.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–952–6170.

SUPPLEMENTARY INFORMATION: Under the authority of section 206 of the Federal Land Policy and Management Act of 1976, as amended by the Federal Land Exchange Facilitation Act of 1988, the following lands have been eliminated from a proposed exchange, named the Northeast Oregon Assembled Land Exchange:

Willamette Meridian

Parcel No. B 203

T. 9 S., R. 42 E.,
Sec. 30 , lot 3, and SW¼NE¼, NE¼SW¼, and W½SE¼;
Sec. 31, W½NE¼ and SE¼NE¼.

Parcel Number B 213

T. 12 S., R. 43 E.,
Sec. 7, SW¼NE¼ and NW¼SE¼.

Parcel Number B 214

T. 12 S., R. 43 E.,
Sec. 7, NE¼NE¼;
Sec. 8, NW¼NW¼.

Parcel Number B 219

T. 12 S., R. 43 E.,
Sec. 24, NE¼SE¼.
T. 12 S., R. 44 E.,
Sec. 19, lot 3 and NE¼SW¼.

Parcel Number B 225

T. 12 S., R. 44 E.,
Sec. 15, E½E½.

Parcel Number B 229

T. 9 S., R. 44 E.,
Sec. 3, SW¼NE¼ and NW¼SE¼.

Parcel Number B 237

T. 8 S., R. 44 E.,
Sec. 8, NE¼SE¼.
The areas described aggregate 882.85 acres in Baker County.

At 8:30 a.m., on July 20, 1999, the above described lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on July 20, 1999, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on July 20, 1999, the above described lands will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on July 20, 1999, the lands will be opened to applications and offers under the mineral leasing laws.

Dated: June 9, 1999.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 99–16105 Filed 6–29–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–942–1430–01; UTU 08463, UTU 53990, UTU 010096, UTU 42889]

Public Land Order No. 7395; Revocation of Public Land Order Nos. 494, 565, 983, and 1011, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes 4 public land orders in their entirety as to the remaining 3,055.62 acres of public and National Forest System lands withdrawn for use by the Atomic Energy Commission. The lands are no longer needed for the purpose for which they were withdrawn and the Department of Energy, formerly the Atomic Energy Commission, has requested that the withdrawals be revoked. This action will return 95.62 acres to Bureau of Land Management administration and open them to surface entry and mining and will return 2,960 acres to National Forest administration and will open them to mining and to such forms of disposition as may by law be made of National Forest System lands. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Brad Groesbeck, BLM Moab Field Office, 82 East Dogwood Drive, Moab, Utah 84532, 435–259–2115.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order Nos. 494 and 565, which withdrew public lands for use by the Atomic Energy Commission, are hereby revoked in their entirety as to the following described lands:

Salt Lake Meridian

T. 37 S., R. 21 E.,
Sec. 3, E½SE¼SE¼;
Sec. 10, SW¼SW¼NW¼, and N½NW¼SW¼.
T. 24 S., R. 25 E.,
Sec. 34.

The areas described aggregate 95.62 acres in Grand and San Juan Counties.

2. Public Land Order Nos. 983 and 1011, which withdrew National Forest System lands for use by the Atomic Energy Commission, are hereby revoked in their entirety as to the following described lands:

Salt Lake Meridian

Manti-La Sal National Forest

T. 36 S., R 10 E.,
Sec. 18, W½;
Sec. 19, W½.
T. 36 S., R. 18 E.,
Secs. 13, 23, and 24;
Sec. 25, N½.
T. 28 S., R. 26 E.,
Sec. 29, S½NE¼.

The areas described aggregate 2,960 acres in San Juan County.

3. At 10 a.m. on July 30, 1999, the lands described in Paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on July 30, 1999, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10 a.m. on July 30, 1999, the lands described in Paragraph 1 and Paragraph 2 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

5. At 10 a.m. on July 30, 1999, the lands described in Paragraph 2 will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: June 11, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–16616 Filed 6–29–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–99–1230–00–AZ11:8372]

Arizona and California: Implementation of Fee Demonstration Program throughout Yuma Field Office, Arizona

AGENCY: Bureau of Land management, Interior.

ACTION: Notice of Implementation of Fee Demonstration Program for recreation sites, recreation areas, concessions leases, and special recreation permits throughout Yuma Field Office administrative area.

SUMMARY: Notice is hereby given that in accordance with the Yuma Field Office Recreation Area Fee Demonstration program Business Plan approved on May 19, 1999, the following recreation sites will be included in the Yuma Field Office Fee Demonstration Pilot Project: Squaw Lake, Senator Wash Reservoir, North and South Shore, Betty's Kitchen Watchable Wildlife and Interpretive area, Oxbow recreation site, Ehrenberg Sandbowl, Hidden Shores concession, Walters Camp concession, Special Recreation Permits, the Imperial Long Term Visitor Area (LTVA), and the La Posa LTVA. A five dollar ($5.00) daily user fee or purchase of a fifty dollar ($50.00) annual recreation permit will be required prior to use of Squaw Lake,

Senator Wash Reservoir, North and South Shore, Betty's Kitchen Watchable Wildlife and Interpretive area, Ehrenberg Sandbowl, and Oxbow recreation sites. Fees for Hidden Shores concession, Walters Camp concession, Special Recreation Permits, the Imperial Long Term Visitor Area (LTVA), and the La Posa LTVA will be collected by on-site staff. Authority for this action is contained in Public Law 104–134 enacted in 1996. A map of the fee demonstration sites and areas is available at the Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365.

EFFECTIVE DATE: June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365, (520) 317–3210.

Dated: June 23, 1999.

Gail Acheson,

Field Manager, Yuma.

[FR Doc. 99–16627 Filed 6–29–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–950–7130–00–9789–P]

Filing of Plats of Survey; Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Nebraska

T. 21 N., R. 57 W., accepted May 17, 1999

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: May 19, 1999.

John P. Lee,

Chief Cadastral Survey Group.

[FR Doc. 99–16617 Filed 6–29–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30355]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona; Correction

AGENCY: Bureau of Land Management.

ACTION: Notice; Correction.

SUMMARY: A notice and subsequent correction concerning a proposed Bureau of Reclamation withdrawal were published on December 3, 1997 and February 28, 1998, respectively. This notice corrects one township and the total acres of the application.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 602–417–9437.

Correction

In the **Federal Register** publication of December 3, 1997, page 63957 (third column), and February 23, 1998, page 9014 (second column) the descriptions for T. 3 N., R. 14 E. are replaced, entirely, with the following:

T. 3 N., R. 14 E.,
Sec. 2, S½SW¼;
Sec. 3, S½S½;
Sec. 4, SW¼NW¼;
Sec. 5, lots 1, 2 and 4;
Sec. 6, lot 1 and SE¼NE¼;
Sec. 9, NE¼;
Sec. 10, N½;
Sec. 11, NW¼NW¼ and W½NE¼NW¼.

The total acreage for the proposed withdrawal, stated in both of the publications cited above, is changed to approximately 9,175 acres.

Dated: June 21, 1999.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 99–16570 Filed 6–29–99; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Arkansas Post National Memorial

AGENCY: National Park Service, DOI.

ACTION: Notice of Intent to prepare a General Management Plan and Environmental Impact Statement for Arkansas Post National Memorial, Arkansas.

SUMMARY: The National Park Service (NPS) will prepare a General Management Plan (GMP) and an associated Environmental Impact Statement (EIS) for Arkansas Post National Memorial, Arkansas, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including newsletters and open houses. The NPS will conduct a series of public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters or other mailings.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters, or requests to be added to the project mailing list should be directed to: Mr. Ed Wood, Superintendent, Arkansas Post National Memorial, 1741 Old Post Road, Gillett, Arkansas 72055. Telephone: 870–548–2207. E-mail: ed__wood@nps.gov

FOR FURTHER INFORMATION CONTACT: Superintendent, Arkansas Post National Memorial, at the address and telephone number above.

SUPPLEMENTARY INFORMATION: Arkansas Post National Memorial is a commemorative unit of the National Park System located in the southeastern quadrant of Arkansas near the confluence of the Arkansas and Mississippi Rivers. The site commemorates a series of events related to the establishment of a French trading post at the Quapaw Indian village of Osotuoy in 1686.

In accordance with NPS park planning policy, the GMP will ensure the Memorial has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for Historic Site will be conducted in accordance with requirements of the NEPA (42 U.S.C. § 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

The National Park Service estimates the draft GMP and draft EIS will be available to the public by the summer of 2000.

Dated: June 21, 1999.

William W. Schenk,

Regional Director.

[FR Doc. 99–16580 Filed 6–29–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–403]

Assessment of the Economic Effects on the United States of China's Accession to the WTO

AGENCY: United States International Trade Commission.

ACTION: Revised completion date.

EFFECTIVE DATE: June 23, 1999.

SUMMARY: On June 16, 1999, the Commission received a letter from the United States Trade Representative (USTR) regarding its report, Assessment of the Economic Effects on the United States of China's Accession to the WTO (Inv. No. 332–403).

The USTR requested that the ITC amplify its report with further quantitative analysis of the effects on the U.S. economy of the full range of market access commitments (e.g., from telecommunications and insurance to elimination of non-tariff measures) that China made in April 1999. The USTR also extended the Commission's date for submitting the report to August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Arona Butcher, Office of Economics (202–205–3301). For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

BACKGROUND: The U.S. International Trade Commission instituted investigation 332–403, Assessment of the Economic Effects on the United States of China's Accession to the WTO, on January 19, 1999 following receipt on December 21, 1998 of a request under sec. 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) from the USTR. Further information on the scope of the investigation is available in the ITC's notice of investigation, dated January 20, 1999, which may be obtained from the ITC Internet server (www.usitc.gov) or by contacting the Office of the Secretary, United States International Trade Commission, 500 E Street SW, Washington, D.C. 20436 or at 202–205–1802.

By order of the Commission.

Issued: June 24, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16676 Filed 6–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921–124 (Review) and 731–TA–546–547 (Review)]

Certain Steel Wire Rope From Japan, Korea, and Mexico

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on certain steel wire rope from Japan, Korea, and Mexico.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on certain steel wire rope from Japan, Korea, and Mexico would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 10, 1999.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 F.R. 19198, April 19, 1999). A record of the Commissioners' votes and the Commission's statement on adequacy are available from the Office of the Secretary and at the Commission's web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO)

and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on September 23, 1999, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on October 14, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 30, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 5, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is October 4, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 25, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before October 25, 1999. On November 22, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 24, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: June 24, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16677 Filed 6–29–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

International Competition Policy Advisory Committee (ICPAC); Notice of Meeting

The International Competition Policy Advisory Committee (the "Advisory Committee") will hold its fifth meeting on July 14, 1999. The Advisory Committee was established by the Department of Justice to provide advice regarding issues relating to international competition policy; specifically, how best to cooperate with foreign authorities to eliminate international anticompetitive cartel agreements, how best to coordinate United States' and foreign antitrust enforcement efforts in the review of multijurisdictional mergers, and how best to address issues that interface international trade and competition policy concerns. The meeting will be held at The Carnegie Endowment for International Peace, Root Conference Room, 1779 Massachusetts Avenue, NW, Washington, DC 20036 and will begin at 10:00 a.m. EST and end at approximately 4:30 p.m. The agenda for the meeting will be as follows:

1. Trade and Competition Policy Interface Issues
2. Multijurisdictional Merger Review
3. Enforcement Cooperation
4. Work Program: Next Steps

Attendance is open to the interested public, limited by the availability of space. Persons needing special assistance, such as sign language interpretation or other special accommodations, should notify the contact person listed below as soon as possible. Members of the public may submit written statements by mail, electronic mail, or facsimile at any time before or after the meeting to the contact person listed below for consideration by the Advisory Committee. All written submissions will be included in the public record of the Advisory Committee. Oral statements from the public will not be solicited or accepted at this meeting. For further information contact: Merit Janow, c/o Marianne Pak, U.S. Department of Justice, Antitrust Division, 601 D Street, NW, Room 10011, Washington, DC 20530, Telephone: (202) 353–9074, Facsimile: (202) 353–9985, Electronic mail:icpac.atr@usdoj.gov.

Merit E. Janow,

Executive Director, International Competition Policy Advisory Committee.

[FR Doc. 99–16675 Filed 6–29–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Public Submissions of Information

This document is a notice for public submissions for the purpose of gathering information regarding a study being conducted by the Department of Labor on the minimum wage, prevailing wage, and non-wage benefits in the apparel and footwear industries, and the established poverty levels, in countries that are major suppliers of apparel and/or footwear to the U.S. market. The Department of Labor is now accepting written information on this subject matter from all interested parties. The Department is not able to provide financial assistance to those preparing written submissions.

For the purposes of the study, the Department of Labor will consider the apparel and/or footwear industries in 35 foreign countries that are major suppliers of footwear and/or apparel to the U.S. market. The 35 major apparel and/or footwear exporting countries or entities are: Bangladesh, Brazil, Cambodia, Canada, China, Colombia, Costa Rica, the Dominican Republic, Egypt, El Salvador, Guatemala, Honduras, Hong Kong, India, Indonesia, Israel, Italy, Jamaica, Macau, Malaysia, Mauritius, Mexico, Nicaragua, Pakistan, Peru, the Philippines, Singapore, South Korea, Spain, Sri Lanka, Taiwan, Thailand, Turkey, United Arab Emirates, and the United Kingdom.

In particular, the Department's Bureau of International Labor Affairs is seeking written submissions and supporting documents providing factual information on the countries enumerated above with respect to the following topics:

1. Current minimum wage, if any, and the prevailing wage in the apparel and footwear industries and the average for all manufacturing.

2. Mandated non-wage benefits or tax credits for workers in the apparel and footwear industries.

3. Measures and methods, such as a market basket of goods, used to determine the basic needs of workers and to establish the poverty level.

4. Methods to measure the purchasing power of wages and benefits and to assess how well the wage/benefit packages meet the basic needs of workers in the apparel and footwear industries.

This notice is a general solicitation of comments from the public. Information provided through public submissions will be considered by the Department of Labor in preparing its report.

DATES: Respondents will be required to provide one (1) copy of their written submission and attachments to the Office of International Economic Affairs by 5:00 p.m., Friday, July 30, 1999.

ADDRESSES: Written submissions and attachments should be addressed to the Office of International Economic Affairs, Bureau of International Labor Affairs, Room S–5325, U.S. Department of Labor, Washington, D.C. 20210, fax: (202) 219–5071.

FOR FURTHER INFORMATION CONTACT: Jorge F. Perez-Lopez, Office of International Economic Affairs, Bureau of International Labor Affairs, Room S–5325, U.S. Department of Labor, Washington, D.C. 20210, telephone: (202) 219–7597 ext. 145; fax (202) 219–5071.

All written materials and attachments submitted pursuant to this request will be made part of the record of review referred to above and will be available for public inspection.

Signed at Washington, D.C. this 21st day of June 1999.

Andrew J. Samet,

Deputy Under Secretary for International Labor Affairs.

[FR Doc. 99–16639 Filed 6–29–99; 8:45 am]

BILLING CODE 4510–28–U

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May and June, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–35,890; Morris Button Co., New York, NY
TA–W–35,995; Mid-Oregon Industries, Bend, OR
TA–W–36,093; The Carbide/Graphite Group, Inc., Calvert City, KY
TA–W–35,779; SGL Carbon Group, St. Marys, PA
TA–W–35,910; Hytek Microsystems, Carson City, NV
TA–W–35,774; Carbide Corp., Irwin, PA
TA–W–35,864 & A; The Timken Co., Canton, OH and Wooster, OH
TA–W–36,202 & A; Thunderbird Mining, Eveleth, MN and Forbes, MN
TA–W–36,168; Dynegy Midstream Services Limited Partnership, Chico, TX
TA–W–36,092; UCAR Carbon Co., Lawrenceburg, TN
TA–W–35,954; SNS, Odessa, TX
TA–W–36,063; Cobre Mining Co., Hanover, NM
TA–W–35,981; Corning, Inc., Greenville, OH
TA–W–35,935; Suckle Corp., Scranton, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–36,029; OPE, Inc., Houston, TX
TA–W–36,242; Radan CIM, Inc., Malvern, PA
TA–W–35,520; Anchor Drilling Fluids USA, Inc., Sidney, MT
TA–W–36,284; Livingston Rebuild Center, Livingston, MT
TA–W–36,240; Consolidated Papers, Inc., Niagara Div., Niagara, WI
TA–W–35,718; H.B. & R, Inc., Dickerson, ND
TA–W–36,290; St. Paul Fire & Marine Insurance Co., Oil and Gas Unit, Arlington, TX
TA–W–35,866; Acutus Gladwin, Blytheville, AR

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–35,918; Rexford Paper Co., Milwaukee, WI
TA–W–36,328; Gulf Publishing Co,, Houston, TX
TA–W–36,248; Armenian American Exploration Co., Rancho Santa Fe, CA
TA–W–36,197; Cooper Industries, Inc., Bussmann Div., Elizabethtown, KY
TA–W–35,819; Gandy Drill Pipe LTD, Midland, TX
TA–W–36,053; Cable Systems International, Phoenix, AZ
TA–W–35,850; Cooper Camerion Valve, Missouri City, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–36,061; D.B. Riley Corp., Erie, PA
TA–W–36,009 & A; Chesapeake Operating Inc., Hays, KS and Oklahoma City, OK
TA–W–36,097; Florsheim Group, Inc., Cape Girardeau, MO

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the

relevant period as required for certification.

TA–W–36,216; Key Four Corners, Roosevelt, UT

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–35,673; Clayton Williams Energy, Inc., Deanville, TX: February 8, 1998.
TA–W–35,909; The O.S. Kelly Co., Springfield, OH: February 26, 1998.
TA–W–35,680; Homestead Industries, Inc., Claremont, NH: February 1, 1998.
TA–W–35,633; Alamac Knit Fabrics, Inc., Lumberton Plant, Lumberton, NC: January 25, 1998.
TA–W–35,795; Robinson Manufacturing Co., Inc., Lineville, AL: February 3, 1998.
TA–W–35,872; B & H Apparel, Inc., Mullins, SC: March 8, 1998.
TA–W–35,800; The Waco Co., Waterbury, CT: February 24, 1998.
TA–W–36,099; Miss Elaine, Inc., St. Genevieve, MO: April 9, 1998.
TA–W–36,074; Karen Anne Manufacturing, Inc., Fall River, MA: April 7, 1998.
TA–W–36,044; G & L Fishing Tool Co., Big Spring, TX: March 22, 1998.
TA–W–36,047; G & A Laydown Service, Inc., Odessa, TX: March 18, 1998.
TA–W–35,980; International Paper, Printing Papers Div., Hudson River Mill, Corinth, NY: March 16, 1998.
TA–W–36,039; Wellpro, Inc., Williston, ND: March 16, 1998.
TA–W–36,043; Construction Service, Inc., Watford City, ND: March 10, 1998.
TA–W–36,110 & A, B, C, D; Russell Corp., Sylacagua, AL, Gwaltney Spinning Plant, Wetumpka, AL, 101 North Street Plant, Columbia, AL, Greenville, AL and Niceville, FL: April 12, 1998.
TA–W–36,036; Erickson Contract Surveying, Sidney, MT: March 22, 1998.
TA–W–35,837; Datiani Fashions LTD, New York, NY: February 18, 1998.
TA–W–35,996; Quicksilver Contracting Co., Bend, OR: March 25, 1998.
TA–W–36,050; Plains Illinois, Inc., Bridgeport, IL: February 7, 1998.
TA–W–35,717; Blue Ridge Screen Printing, Inc., Stuart, VA: February 11, 1998.
TA–W–36,085; D.A.B. Oil Service, Inc., Abilene, TX: March 19, 1998.
TA–W–35,965; Uniroyal Chemical Co., Inc., Painesville, OH: March 22, 1998.
TA–W–35,796; Tom Brown, Inc., Midland, TX: February 16, 1998.
TA–W–36,041 & A; Chase Well Service, Inc., Great Bend, KS and Plainville; KS: March 17, 1998.
TA–W–35,807; Kicks Fashions, Inc., New York, NY: February 23, 1998.
TA–W–35,976; Revere Ware, Clinton, IL: March 19, 1998.
TA–W–35,815; Controlled Recovering, Inc., Hobbs, NM: February 17, 1998.
TA–W–35,783 & A; South Bay Circuits, San Jose, CA and Chandler, AZ: February 23, 1998.
TA–W–35,957 & A, B, C, D and E; The Stroh Brewery Co., Corp. Headquarters, Detroit, MI, Heileman—LaCrosse Plant, LaCrosse, WI, The Blitz Wwinhard Brewing Co., Portland, OR, Longview Brewery, Longview, TX, Winston-Salem Brewery, Winston-Salem, NC and The Rainier Brewing Co., Seattle, WA: March 15, 1998.
TA–W–36, 169; Bernard/Hickox, Inc., Coden, AL: April 4, 1998.
TA–W–35,788; R & B Falcon Drilling, USA, Inc., Inland Barge, Shallowwater Div., Houma, LA: February 19, 1998.
TA–W–36,146; Augusta Sportswear, Metter, GA: April 16, 1998.
TA–W–35,940 & A, B; Sanchez Oil and Gas Corp., Laredo, TX, Houston, TX and Zapata, TX: March 19, 1998.
TA–W–35,867; Exide Electronics, Brunswick Plant Operation, LeLand, NC: February 25, 1998.
TA–W–36,049; Lewis Casing Crews, Inc., Edessa, TX: March 17, 1998.
TA–W–35,742; Florida Canyon Mining, Inc., Imlay, NV: February 11, 1998.
TA–W–35,891; Corinth Acquisition, d.b.a. United Pioneer Co., Corinth, MS: March 9, 1998.
TA–W–36,052; R & D Manufacturing, Inc., Haynesville, LA: March 8, 1998.
TA–W–36,054; N.V.N. Co., Inc., Clifton, NJ: April 1, 1998.
TA–W–36,125; Shields Oil Producers, Inc., Russell, KS: April 5, 1998.
TA–W–36,131; Thorngate, Div. Of Biltwell Co., Farmington, MO: April 20, 1998.
TA–W–35,862; Flex-O-Lite, Inc., Service and Materials Co., Elwood, IN:

"All workers engaged in the production of sewn safety products separated on or after March 1, 1998 are eligible to apply for trade adjustment assistance".

It's further determined that "All workers engaged in employment related to safety cones are denied".

TA–W–35,649; TRW, Inc., Rochester Hills, MI: February 1, 1998.
TA–W–36,045; TMBR/Sharp Drilling, Inc., Midland, TX: March 18, 1998.
TA–W–36,183; Oxford Automotive, Oxford Suspension, Inc., Hamilton, IN: April 21, 1998.
TA–W–35,712; Cyprus Sierrita Corp., Green Valley, AZ: February 9, 1998.
TA–W–36,122 & A; Nashville Textile, Inc., Nashville, GA and Nashville GA Screen Print, Nashville, GA: April 12, 1998.
TA–W–36,164; The Wiser Oil Co., Dallas TX: April 19, 1998.
TA–W–35,938; Day-Timers, Inc., East Texas, PA: March 17, 1998.
TA–W–35,768; Veco Corp., Anchorage, AK: February 19, 1998.
TA–W–35,963; OshKosh B'Gosh, Celina, TN: March 24, 1998.
TA–W–36,024; Lease Equipment Services Co., Inc., Snyder, TX: March 19, 1998.
TA–W–36,027; Quadco, Inc., Anchorage, AK: March 18, 1998.
TA–W–36,016; Parsons Indusries, Parsons Pine Products, Ashland, OR: March 18, 1998.
TA–W–36,057; Clark-Schwebel Corp., Cleveland, GA: March 29, 1998.
TA–W–36,119; Sony Electronics, Inc., Display Systems Manufacturing, San Diego, CA: April 15, 1998.
TA–W–35,860; Timken Latrobe Steel, Latrobe, PA: March 1, 1998.
TA–W–36,055; Russell Corp., Habersham Mills, Habersham Mills, GA: March 1, 1998.
TA–W–36,255; KCS Resources, Inc., d/b/a KCS Mountain Resources, Inc., Worland, WY: February 12, 1998.
TA–W–36,178; Alcoa Memory Products, Inc., Sidney, OH: April 15, 1998.
TA–W–36,228; Buster Brown Apparel, Lebanon, VA: May 4, 1998.
TA–W–36,190; Cole-Haan Manufacturing, Livermore Falls, ME: April 27, 1998.
TA–W–36,291 & A; The Rosel Co., Oklahoma City, OK and Liberal, KS: May 7, 1998.
TA–W–36,174; Cranston Print Works, Universal Engravers Div., Providence, RI: April 15, 1998.
TA–W–36,288; Excel Energy Co., Springfield, IL: May 7, 1998.
TA–W–36,171; Gerber Childrenswear, Inc., Ballenger, TX: April 26, 1998.
TA–W–36,277; Indigo Jean, Lehighton, PA: April 15, 1998.

TA–W–36,545; Camp Sports, Inc., Oneonta, AL: January 15, 1998.
TA–W–35,927; Nemanco, Inc., Oak Grove, LA: March 5, 1998.
TA–W–36,207; Tarket, Inc., Whitehall, PA: April 29, 1998.
TA–W–36,257; Castalia Apparel, Castalia, NC: March 26, 1998.
TA–W–36,239; Newsouth Apparel LLC< Brewton, AL: April 28, 1998.
TA–W–36,179; Wilcox Forging Corp., Mechanicsburg, PA: April 14, 1998.
TA–W–36,058; Jaton Corp., Milpitas, CA: March 30, 1998.
TA–W–35,964; Avery Dennison, Fasson Roll Div., Ranch Cucamonga, CA: March 24, 1998.
TA–W–36,128; F & R Fashions, Jersey City, NJ: April 21, 1998.
TA–W–35,840; Ocean Energy, Inc., Lafayette, LA & operating at the following locations: (A) Denver, CO, (B) Houston, TX, (C) Havre, MT and (D) Oklahoma City, OK: March 1, 1998.
TA–W–35,832; Red's Satellite Service Co., Inc., Abilene, TX: February 24, 1998.
TA–W–36,003; E.I. DuPont de Nemours, Performance Coatings, Rochester, NY:

"All workers engaged in the production of photochemistry for X-ray film separated on or after March 27, 1998.

It was further determined that "All workers engaged in the production of photographic and film and printing plate chemistry are denied".

TA–W–35,907; Grand Fashions, Inc., West New York, NJ: March 2, 1998.
TA–W–35,986; BASF, Bourke Ave. Paint Plant, Detroit, MI: March 25, 1998.
TA–W–35,792; Texaco North American Production, a/k/a Texaco Exploration and Production, Inc. and operating at various locations in the following states: (A) AL, (B), CA, (C) CO, (D) IL, (E) KS, (F) LA, (G) NM, (H) OK, (I) TX (excluding Huston), (J) UT, (K) WY, (L) Texas Worldwide Upstream Headquarters and Texaco Exploration and Production Technology: March 1, 1998.
TA–W–36,094; C.R. Bard, Inc., Medical Div, Covington, GA: April 26, 1998.
TA–W–36,238; H.L. Miller & Son, Inc., Iola, KS: May 3, 1998.
TA–W–36,046; Columbus Energy Corp., Sidney, MT: March 18, 1998.
TA–W–36,153 & A; Croman Corp., Boise Lumber Div., Boise, ID and Logging Div., White City, OR: April 16, 1998.
TA–W–36,048; PGS Onshore Service, Lexington, OK: March 15, 1998.
TA–W–36,022; IEC Electronics Corp., Arab Manufacturing Plant, Arab, AL: March 25, 1998.
TA–W–35,820; Stone Savannah River Pulp & Paper Co., Savannah, GA: February 23, 1998.
TA–W–35,968; Mark Steel Jewelry, Spring City, UT: March 25, 1998.
TA–W–36,162; Otto Shirtmaker, Livingston, TN: April 14, 1998.
TA–W–35,990; Majestic Shapes, Bronx, NY: March, 11, 1998.
TA–W–35,946; Plaid Clothing Co., Knoxville, TN, Somerset, KY and Erlanger, KY: March 16, 1998.
TA–W–36,036; Erickson Contract Surveying, Sidney, MT: March 22, 1998.
TA–W–35,885; Willamette Industries, Inc., Kingsport Paper Mill, Kingsport, TN: March 6, 1998.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May and June, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02997; Mine Service & Supply, Battle Mountain, NV
NAFTA–TAA–03098; The Carbide/ Graphite Group, Inc., Carbide Business Unit, Calvert City, KY
NAFTA–TAA–03113; Dynegy Midstream Service, Limited Partnership, Houston, TX
NAFTA–TAA–03046; Mid-Oregon Industries, Bend, OR
NAFTA–TAA–03145; Consolidated Papers, Inc., Niagara Div., Niagara, WI
NAFTA–TAA–03039; Rexford Paper Co., Milwaukee, WI
NAFTA–TAA–03147; Armenian American Exploration Co., Rancho Santa Fe, CA
NAFTA–TAA–03116; Thorngate Div. Of Biltwell Co., Farmington, MO
NAFTA–TAA–03019; Parsons Industries, Parsons Pine Products, Ashland, OR
NAFTA–TAA–02912; Alamac Knit Fabrics, Inc., Lumberton Plant, Lumberton, NC

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–03088; Barnett Banks, Inc., Tampa, FL
NAFTA–TAA–03160; Livingston Rebuild Center, Livingston, MT
NAFTA–TAA–03195; Acutus Gladwin, Blytheville, AR
NAFTA–TAA–03157; St. Paul Fire & Marine Insurance Co., Oil and Gas Unit, Arlington, TX
NAFTA–TAA–03204; AMP, Inc., Metrology Group, Harrisburg, PA

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–03134; Filko Automotive, A Div. Of Standard Motor Products, Bradenton, FL

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification. Sales or production, or both, of such firm or subdivision did not decreased absolutely.

NAFTA–TAA–03048; D.B. Riley Corp., Erie, PA

The investigation revealed that criteria (2) has not been met. Sales or production, or both, of such firm or subdivision did not decrease absolutely.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03121; The Stanley Works, Stanley Engineered Components, New Britain, CT: April 14, 1998.
NAFTA–TAA–03148; Hamilton Beach—Proctor Silex, Inc. Southern Pines, NC: April 27, 1998.
NAFTA–TAA–03032; Dame Manufacturing, Inc., Greenville, KY and Dundee, KY: March 16, 1998.
NAFTA–TAA–02951; Equistar Chemicals L.P., Port Arthur, TX: February 14, 1998.
NAFTA–TAA–02955; Wady Co. Including Leased Workers of Employment Solutions of California, Inc., Pasadena, CA: February 22, 1998
NAFTA–TAA–03083; C.R. Bard, Inc., Medican Div., Covington, GA: April 5, 1998.
NAFTA–TAA–03075; BASF, Bourke Ave. Paint Plant, Detroit, MI: March 24, 1998.
NAFTA–TAA–03065; E.I. DePont de Nemours, Performance Coatings, Rochester, NY: March 23, 1998.
NAFTA–TAA–03054; Avery Dennison, Fasson Roll Div., Rancho Cucamonga, CA: March 24, 1998.
NAFTA–TAA–03099; Genlyte Thomas Group LLC, Hopkinsville, KY: April 15, 1998.
NAFTA–TAA–03108; IEC Electronics Corp., Arab Manufacturing Plant, Arab, AL: April 8, 1998.
NAFTA–TAA–03056; Quicksilver Contracting Co., Bend, OR: March 26, 1998.
NAFTA–TAA–03183 & A, B, C; Russel Corp., Sylcaugua, AL, Gwaltney Spinning Plant, Wetumpka, AL, 101 North Street Plant, Columbia, AL and Greenvile, AL: May 5, 1998.
NAFTA–TAA–03192; Perfection Pad/Consolidated Contractors, a/k/a New York Pad, Buffalo, NY: May 17, 1998.
NAFTA–TAA–03067; Plaid Clothing Co., Knoxville, TN: March 25, 1998.
NAFTA–TAA–03085; Plaid Clothing Co., Somerset, KY and Erlanger, KY: March 25, 1998.
NAFTA–TAA–03064; Uniroyal Chemical Co., Inc., Painesville, OH: March 22, 1998.
NAFTA–TAA–03110; Sony Electronics, Inc., Display Systems Manufacturing, San Diego, CA: April 15, 1998.
NAFTA–TAA–03118; Varga Brakes, Inc., A Div. of Lucasvarity Automotive, Chesapeake, VA: April 16, 1998.
NAFTA–TAA–03169; Minnesota Mining and Manufacturing (3M), Electronic Products Div. (EPD), Chico, CA; May 12, 1998.
NAFTA–TAA–03095 & A; Nashville Textiles, Inc., Nashville, GA and Nashville GA Screen Print, Nashville, GA: April 14, 1998.
NAFTA–TAA–03016; Day-Timers, Inc., East Texas, Pennsylvania: March 17, 1998.
NAFTA–TAA–02982; Timken Latrobe Steel, Latrobe, PA: March 1, 1998.
NAFTA–TAA–03028; Cascade Corp., Inc., Vancouver, WA: March 22, 1998.
NAFTA–TAA–02927; Kelly Springfield Tire Co., Freeport, IL: February 16, 1998.
NAFTA–TAA–03202; Robertshaw Controls Co., Fort Collins, CO: May 18, 1998.
NAFTA–TAA–03087; Berendsen Fluid Power, Rahway, NJ: April 14, 1998.
NAFTA–TAA–02994; USA Venturcraft Corp., Abilene, TX: March 4, 1998.

I hereby certify that the aforementioned determinations were issued during the months of May and June, 1999. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 17, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–16640 Filed 6–29–99 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,901]

American Cabinetry, Cranbury, N.J.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 22, 1999 in response to a petition filed on behalf of workers at American Cabinetry, Cranbury, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–16642 Filed 6–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Acting Director of OTAA not later than July 12, 1999.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than July 12, 1999.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOI, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 16th day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

Subject firm	Location	Date received at Governor's office	Petition number	Articles produced
Circle DE Lumber (Wkrs)	Klamath Falls, OR	06/02/1999	NAFTA–3,217	Wood chips, wood posts & poles.
Jantzen (Co.)	Portland, OR	06/02/1999	NAFTA–3,218	Swimwear and backpacks.
Warnaco—Warners (Wkrs)	Stratford, CT	06/01/1999	NAFTA–3,219	Ladies undergarments.
Moen—Hoov-R-Line (USWA)	Providence, KY	06/02/1999	NAFTA–3,220	Injection molding plastic plumbing parts.
National Wood Products (Co.)	Glasgow, KY	05/26/1999	NAFTA–3,221	Wood brush blocks.
Modern Machine Works (PACE)	Cudahy, WI	06/01/1999	NAFTA–3,222	Connecting rods & crankshafts.
Motorola (Wkrs)	Phoenix, AZ	06/01/1999	NAFTA–3,223	Semiconductors.
Lincoln Automotive (Co.)	Jonesboro, AR	06/02/1999	NAFTA–3,224	Service jacks, transmission jacks.
Crown Cork and Seal (Wkrs)	Omaha, NE	06/02/1999	NAFTA–3,225	Cans, ends, for cans & decorated plates.
MCM Enterprises (Wkrs)	Crawfordsville, IN	04/21/1999	NAFTA–3,226	Wire products.
Victoreen (IAMAW)	Solon, OH	06/02/1999	NAFTA–3,227	Resistor, Capacitors.
Heel Rite (UNITE)	Wright City, MO	06/03/1999	NAFTA–3,228	Shoe parts (heels & soles).
Sylvia Hat (UNITE)	St. Louis, MO	06/03/1999	NAFTA–3,229	Ladies hats.
Gesco International—C.R. Bard (Co.)	San Antonio, TX	06/03/1999	NAFTA–3,230	Medial devices.
Horn Textile (Co.)	Thusville, OR	06/07/1999	NAFTA–3,231	Narrow fabrics.
May Tag and Label (Co.)	Hillside, NJ	06/04/1999	NAFTA–3,232	Labels, tags, tickets.
Rockwell Automation (Wkrs)	Shelby, NC	06/04/1999	NAFTA–3,233	Ac/dc electric motors.
Alpha Industries (Wkrs)	Knoxville, TN	06/07/1999	NAFTA–3,234	Military flight jackets.
Apache Corporation (Wkrs)	Houston, TX	06/04/1999	NAFTA–3,235	Oil and gas.
Shadowline (Co.)	Mars Hill, MO	05/28/1999	NAFTA–3,236	Women's intimate apparel.
Horner Flooring C (Co.)	Dollar Bay, MI	05/06/1999	NAFTA–3,237	Maple flooring, unfinished strip floor.
Columbus Energy (Wkrs)	Sidney, MT	06/03/1999	NAFTA–3,238	Energy.
Collins and Aikman (Co.)	Homer, MI	05/21/1999	NAFTA–3,239	Automotive interior parts.
D.Q.C. (Wkrs)	Tucson, AZ	06/03/1999	NAFTA–3,240	Cultured marble, bathroom sinks.
Ansell Edmont Protection Products (Wkrs).	Tarboro, NC	06/04/1999	NAFTA–3,241	Gloves.
Woolrich (Co.)	Soperton, GA	06/08/1999	NAFTA–3,242	Shirts, blouses.
Batts (Wkrs)	Zeeland, MI	05/27/1999	NAFTA–3,243	Hanger production.
Midwestco Enterprises (Co.)	Chicago, IL	06/08/1999	NAFTA–3,244	Transformers.
Montana Power (IBEW)	Colstrip, MT	06/07/1999	NAFTA–3,245	Electricity.
Salant—Manhattan Accessories (Wkrs).	Long Island City, NY	06/11/1999	NAFTA–3,246	Men's neckwear.

[FR Doc. 99–16641 Filed 6–29–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 16, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These

schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–99–4, 6 items, 6 temporary items). Paper and electronic records compiled in the implementation of the Air Force Status of Resources and Training System (SORTS), an electronic information system used to collect, store, and report data regarding unit resources and training. Records include SORTS documentation, input documents, worksheets, forms, master data file, electronic backups of the master data file, and hardcopy printouts. Also included are electronic copies of documents created using word processing and form filler software that is used to generate paper copies.

2. Department of the Air Force, Agency-wide (N1–AFU–99–8, 1 item, 1 temporary item). Customs records for personal property brought into or acquired in Turkey by U.S. military and civilian personnel.

3. Department of the Air Force, Agency-wide (N1–AFU–99–9, 3 items, 3 temporary items). Hazardous material authorization forms used to control the issuance of hazardous materials. Included are electronic copies of forms created using word processing and form filler software that is used to generate paper copies.

4. Department of the Army, Agency-wide (N1–AU–99–5, 2 items, 2 temporary items). Records relating to individuals treated and counseled for the Human Immunodeficiency Virus (HIV). Records consist primarily of forms pertaining to counseling and treatment provided by the Army. Also included are electronic copies of documents created using electronic mail and word processing.

5. Department of Defense, Defense Finance and Accounting Service (N1–507–97–1, 398 items, 398 temporary items). Records, including electronic systems and electronic copies of documents created using electronic mail, word processing, and other office automation applications, accumulated by Defense Finance and Accounting Service servicing centers, accountable stations, and other offices. Records pertain primarily to finance and accounting activities, including such matters as cost analysis and budgeting, accounting operations, payments to vendors, procurement, the management of nonappropriated funds, the collection and disbursement of funds, accountability and fund reporting, internal control programs, U.S. Savings Bonds, travel payments, payments to civilian and military personnel, retiree and annuitant pay, foreign military sales, revolving funds, internal audits and inspections, reports of survey, financial property, logistical activities, and the preparation of financial statements. Also included are administrative files pertaining to safety and accident prevention programs.

6. Department of Labor, Employment and Training Administration, (N1–369–98–1, 4 items, 2 temporary items). Weekly reports of payments to Job Corps members and Office of Trade Adjustment case files dealing with the eligibility for assistance of businesses impacted by foreign imports. Files documenting Jobs Corps facility operations, 1964 through 1971, are proposed for permanent retention.

7. Department of the Treasury, Internal Revenue Service (N1–58–98–1, 8 items, 4 temporary items). Reading files and calendars, including electronic copies of calendars. Subject files, reading files, and the recordkeeping copies of the calendars of the Chief Operations Officer are proposed for permanent retention.

8. Tennessee Valley Authority, Communications Office (N1–142–97–24, 2 items, 2 temporary items). Paper and microfilm copies of newspaper clippings concerning TVA provided by a clipping service.

9. Tennessee Valley Authority, Occupational Safety and Health Office (N1–142–98–4, 3 items, 3 temporary items). Material Safety Data Sheets required by the Occupational Safety and Health Administration for employee safety. Sheets are primarily prepared by manufacturers and include data on hazardous materials. Included are electronic copies of documents created using electronic mail and word processing and copies of sheets that have been imaged.

10. Tennessee Valley Authority, Human Resources Office (N1–142–98–13, 1 item, 1 temporary item). Notes, correspondence, vendor contracts, booklets, and questionnaires pertaining to the 360 Degree Feedback Project. Under this project, TVA employees are provided with feedback from peers and supervisors concerning their performance.

11. Tennessee Valley Authority, Administrative Services Office (N1–142–99–6, 2 items, 2 temporary items). Abstracts of Title pertaining to properties TVA has purchased or acquired rights to. Included are electronic copies of documents created using electronic mail and word processing.

12. Tennessee Valley Authority, Office of Nuclear Power (N1–142–99–10, 2 items, 2 temporary items). Work Orders requesting maintenance or operation modifications for nuclear power plants. Records include work instructions, manuals, drawings, procedures and related records. Also included are electronic copies of documents created using electronic mail and word processing.

13. Tennessee Valley Authority, Agency-wide (N1–142–99–11, 2 items, 2 temporary items). Responses and supporting papers relating to selections to fill vacancies that have been challenged. Also included are electronic copies of documents created using electronic mail and word processing that relate to the filling of positions.

Dated: June 24, 1999.

Geraldine Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–16672 Filed 6–29–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Modification OMB No. 3145–0101; Comment Request; Submission to OMB Review

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing efforts to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 64 FR 19831 (April 22, 1999). We did not receive any comments. NSF is forwarding the proposed renewal submission, the comments with our responses, to OMB for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, N.W. Room 10235, Washington, D.C. 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Please include current OMB Control Number 3145–0101 with your comments.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–306–1125 X 2017.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 X 2017; or send email to splimpto@nsf.gov. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Abstract

In 1995 OMB approved both the 1996 and 1998 survey cycles of the NSF Survey of Scientific and Engineering Research Facilities at Colleges and Universities (OMB No. 3145–0101). The survey collects information on the science and engineering (S&E) research facilities at the nation's higher education institutions. The 1999 Facilities Survey will also collect information on S&E research facilities at the nation's higher education institutions. The modifications to the approved 1998 questionnaire will make the data more useful to federal agencies and policymakers. The Federal Government intends to use the aggregate data to review average costs of construction. The Follow-Up Survey responds to a revision to OMB Circular A–21 which requires an adequate internal review and approval process for facility costs when an institution has a new large facility costing at least $25 million. The Follow-Up Survey will collect more specific information on each project fitting OMB's qualifications as determined using data reported in the Facilities Survey.

Proposed Modifications to the OMB-Approved 1999 Survey

- Sample size. We are requesting that the 1999 survey sample be increased from a sample of 365 to a census of 579 to allow for more precise data estimates and more complex analyses such as subgroup analyses.
- Modifications to the 1999 questionnaire wording focused on improving the clarity of the questions and increasing the ease of response. The changes include:
- A check-off box was added above each question allowing institutions who participated in the 1998 cycle of the survey and whose information has not changed to simply mark the check-off box instead of copying repeat information into the grids. The check-off boxes are explained in detail on the main instruction page at the beginning of the questionnaire.
- The instructions provided for each question were condensed and made more precise, in an effort to avoid respondent confusion.
- A statement was added to the instructions reminding respondents that animal research facility space should be included in cost calculations.
- Basic skip patterns were added to Items 4A, 4C, 4E, 6A, and 7A to allow respondents to skip over questions that do not apply to their particular institution.
- In an effort to increase specificity, the columns in Item 3 were renamed and a column was added for "Not Applicable." The column headings read: Suitable Space; Requires Minor Repair/ Renovation; Requires Major Repair/ Renovation; Requires Replacement; and Not Applicable. The definitions of these categories were revised accordingly.
- Items 4C and 4D were reworded to clarify the appropriate inclusion of non-fixed equipment. The wording specifies that non-fixed equipment costs refer to single pieces of non-fixed equipment costing at least $1 million.
- In Items 4B and 6B, a category was added for construction costs equal to or greater than $500,000 for biomedical research facilities.
- A definition of the term "project" was added to the appropriate item glossaries.
- Item 8 was redesigned in an effort to collect more useful data regarding animal research facilities. A question was added in this section asking respondents to rate, as adequate or inadequate, the amount of total animal research NASF available to their institutions. In a new question following the design of Item 3, respondents are asked to rate the current condition of their institution's animal research space. The final question in this section was altered, in the form of a grid, follows the design of Item 4B, requesting the costs and amounts of NASF for animal facility improvements involving repair/ renovation and new construction over $100 million scheduled to begin in FY 1000 or FY 2001. Question 3 of Item 8

from the 1998 questionnaire was dropped from the survey.

There are no modifications to the Follow-Up Survey, because the first cycle of the survey (1998) has not yet been completed.

Use of the information

The information from the Facilities survey will be used by Federal policymakers, planners, and budget analysis in making policy decisions as well as by academic officials, the S&E establishment, and State agencies that fund universities and colleges. The survey will provide updated data on the status of and trends in S&E research facilities to help policymakers with decisions about the health of academic S&E research, funding, regulations, and reporting guidelines. The Follow-Up Survey will collect additional information to supplement the original survey data. The data collected using the Follow-Up Survey is expected to be used to make more exact and, as a result, more valid judgements concerning the reasonableness of facility costs.

Specifically, the Facilities data will be used in:

- A separate report of the findings for Congress;
- A special report for NIH on the Status of Biomedical Research Facilities;
- Other NSF compilations such as National Patterns of R&D Resources and Science and Engineering Indicators;
- Special reports for other Federal agencies on an as-needed basis; and
- A public release file of collected data in aggregate form made available to researchers on the World Wide Web.

Expected Respondents

The sample size for the 1999 survey is planned to be increased to the size of the universe of institutions in the NSF 1997 Survey of Scientific and Engineering Expenditures at Universities and Colleges. This universe is selected to provide nationally representative data for both undergraduate and graduate degree-granting schools. The respondents will have the option to complete the survey on the World Wide Web. Based on experience with similar populations, we expect some forty percent (40%) of the institutions to respond via the Internet. Eligibility for inclusion in the Follow-up Survey is based upon responses to the Facilities Survey. There is no sampling involved in the determination of institutions who will be asked to participate. All qualified institutions will be included in this study. It is estimated that approximately 43 academic institutions will be eligible for the Follow-Up Survey.

Burden on the Public

The average completion time for the survey by academic institutions was reduced from 43 to 24 hours between 1988 and 1998. This decrease reflected continued improvements in the questionnaire, institutional databases, and, more recently, the introduction of the option to complete the survey on disk.

Much of the data noted in the the proposed modification are readily available to the respondents. It is expected that the proposed modifications to the questionnaire will decrease burden hours due to the inclusion of skip patterns on the survey itself, clarification of all instructions to the respondent, and the option to use an Internet-based version of the survey. We expect that the overall response time will be an average of 22 hours.

The Follow-Up Survey will be sent to qualifying institutions, of which there is expected to be approximate 43. The completion time per academic institution is expected to average 1.5 hours

Dated: June 25, 1999.

Suzanne Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 99–16671 Filed 6–29–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewals

The NSF management officials having responsibility for the 26 advisory committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

1. Advisory Committee for Small Business Industrial Innovation (#61)
2. Advisory Committee for Biological Sciences (#1110)
3. Advisory Committee for Education & Human Resources (#1119)
4. Advisory Committee for Polar Programs (#1130)
5. Advisory Panel for Biochemistry & Molecular Structure & Function (#1134)
6. Advisory Panel for Cell Biology (#1136)
7. Advisory Panel for Developmental Mechanisms (#1141)
8. Advisory Panel for Genetics (#1149)
9. Advisory Panel for Neuroscience (#1158)
10. Advisory Panel for Physiology and Ethnology (#1160)
11. Advisory Committee for Engineering (#1170)
12. Alan T. Waterman Award Committee (#1172)
13. Advisory Panel for Biological Infrastructure (#1215)
14. Special Emphasis Panel in Science & Technology Infrastructure (#1373)
15. Earth Sciences Proposal Review Panel (#1569)
16. Advisory Panel for Ecological Studies (#1751)
17. Advisory Panel for Systematic & Population Biology (#1753)
18. Special Emphasis Panel in Biological Sciences (#1754)
19. Advisory Committee for Geosciences (#1755)
20. Special Emphasis Panel in Geosciences (#1756)
21. Advisory Panel for Anthropological & Geographic Sciences (#1757)
22. Advisory Panel for Cognitive, Psychological & Language Sciences (#1758)
23. Advisory Panel for Economics, Decision & Management Sciences (#1759)
24. Advisory Panel for Methods, Cross-Directorate and Science and Society (#1760)
25. Advisory Panel for Social & Political Sciences (#1761)
26. Special Emphasis Panel in Social, Behavioral & Economic Sciences (#1766)

Authority for these Committees will expire on June 30, 2001, unless they are renewed. For more information, please contact Karen York, NSF, at (703) 306–1182.

Dated: June 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–16670 Filed 6–29–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation, et al.; Seabrook Station, Unit 1; Notice of Consideration of Approval of Application Regarding Proposed Corporate Merger and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating License No. NPF–86 for the Seabrook Station, Unit 1 (Seabrook Station), to the extent held by New England Power Company (NEP), one of 11 joint owners of the Seabrook Station. The indirect transfer would be to The National Grid Group plc (National Grid) resulting from the planned merger of National Grid and New England Electric System (NEES), the parent company of NEP.

According to the application by NEP for approval of the indirect transfer, on December 11, 1998, NEES entered into an Agreement and Plan of Merger with National Grid, a holding company incorporated in England and Wales. Upon consummation of the merger, NEES will become a wholly-owned indirect subsidiary of National Grid with NEP remaining a subsidiary of NEES, thereby effecting an indirect transfer of NEP's interest in the Seabrook Station's Facility Operating License. North Atlantic Energy Service Corporation, the sole licensed operator of the facility, would remain as the managing agent for the 11 joint owners of the facility and would continue to have exclusive responsibility for the management, operation and maintenance of the Seabrook Station. The application does not propose a change in the rights, obligations, or interests of the other joint owners of the Seabrook Station. In addition, no physical changes to the Seabrook Station or operational changes are being proposed. No direct transfer of the license will result from the proposed merger.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transfer of control will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments regarding the license transfer application, are discussed below.

By July 20, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Edward Berlin, Esq., and Scott P. Klurfeld, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007–5116, attorneys for New England Power Company; Thomas G. Robinson, Esq., New England Power Company, 25 Research Drive, Westborough, MA 01582, attorney for New England Power Company; Samuel Behrends IV, Esq., Mary A. Murphy, Esq., and Yvonne M. Coviello, Esq., LeBoeuf, Lamb, Greene & MacRae, L.L.P., 1875 Connecticut Avenue, NW, Suite 1200, Washington, DC 20009, attorneys for the National Grid Group plc and NGG Holdings LLC; Paul K. Connolly, Jr., Esq., LeBoeuf, Lamb, Greene & MacRae, L.L.P., 260 Franklin Street, Boston, MA 02110, attorney for NGG Holdings LLC; Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, 107 Selden Street, Berlin, Connecticut, 06037, attorney for North Atlantic Energy Service Corporation; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by July 30, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated March 15, 1999, submitted under cover of a letter dated March 15, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Seabrook Station local public document room located at the Exeter Public Library, Founders Park, Exeter, NH 03833.

Dated at Rockville, Maryland this 21st day of June 1999.

For the Nuclear Regulatory Commission.

John T. Harrison,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–16600 Filed 6–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al. Millstone Nuclear Power Station, Unit 3; Notice of Consideration of Approval of Application Regarding Proposed Corporate Merger and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating License No. NPF–49 for the Millstone Nuclear Power Station, Unit No. 3 (Millstone Unit 3), to the extent held by New England Power Company (NEP), one of 13 joint owners of Millstone Unit 3. The indirect transfer would be to The National Grid Group plc (National Grid) resulting from the planned merger of National Grid and New England Electric System (NEES), the parent company of NEP.

According to the application by NEP for approval of the indirect transfer, on December 11, 1998, NEES entered into an Agreement and Plan of Merger with National Grid, a holding company incorporated in England and Wales. Upon consummation of the merger, NEES will become a wholly-owned indirect subsidiary of National Grid with NEP remaining a subsidiary of NEES, thereby effecting an indirect transfer of NEP's interest in Millstone Unit 3's Facility Operating License. Northeast Utilities, the sole licensed operator of the facility, would remain as the managing agent for the 13 joint owners of the facilitv and would continue to have exclusive responsibility for the management, operation and maintenance of Millstone Unit 3. The application does not propose a change in the rights, obligations, or interests of the other joint owners of Millstone Unit 3. In addition, no physical changes to Millstone Unit 3 or operational changes are being proposed. No direct transfer of the license will result from the proposed merger.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transfer of control will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments regarding the license transfer application, are discussed below.

By July 20, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Edward Berlin, Esq., and Scott P. Klurfeld, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007–5116, attorneys for New England Power Company; Thomas G. Robinson, Esq., New England Power Company, 25 Research Drive, Westborough, MA 01582, attorney for New England Power Company; Samuel Behrends IV, Esq., Mary A. Murphy, Esq., and Yvonne M. Coviello, Esq., LeBoeuf, Lamb, Greene & MacRae, L.L.P., 1875 Connecticut Avenue, NW, Suite 1200, Washington, DC 20009, attorneys for the National Grid Group plc and NGG Holdings LLC; Paul K. Connolly, Jr., Esq., LeBoeuf, Lamb, Greene & MacRae, L.L.P., 260 Franklin Street, Boston, MA 02110, attorney for NGG Holdings LLC; Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, 107 Selden Street, Berlin, Connecticut, 06037, attorney for Northeast Nuclear Energy Company; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by July 30, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated March 15, 1999, submitted under cover of a letter dated March 15, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Millstone Unit 3 local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland this 21st day of June 1999.

For the Nuclear Regulatory Commission.

John A. Nakoski,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–16599 Filed 6–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Issuance of Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–70 and DPR–75 for the Salem Nuclear Generating Station, Unit Nos. 1 and 2, to the extent currently held by Public Service Electric and Gas Company (PSE&G), as a co-owner and the licensed operator of Salem Units 1 and 2. The transfer would be to PSEG Nuclear, LLC. PSE&G currently owns 42.59 percent of each Salem unit. The proposed transfers do not involve any change with respect to the non-operating ownership interests held by Philadelphia Electric Company, Delmarva Power and Light Company, and Atlantic City Electric Company. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by PSE&G, PSEG Nuclear, LLC, would assume title to PSE&G's interest in both units of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of Salem Units 1 and 2. No physical changes to the Salem facility or operational changes are being proposed in the application.

The proposed amendments would replace references to PSE&G in the licenses with references to PSEG Nuclear, LLC, to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By July 20, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Jeffrie J. Keenan, Esquire, Public Service Electric and Gas Company, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038 (tel: 609–339–5429, fax: 609–339–1234, and e-mail: JKeenan@PSEG.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by July 30, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated June 4, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Dated at Rockville, Maryland this 23rd day of June 1999.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–16601 Filed 6–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

Public Service Electric and Gas Company, Hope Creek Generating Station; Notice of Consideration of Approval of Transfer of Facility Operating License and Issuance of Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. NPF–57 for the Hope Creek Generating Station, to the extent currently held by Public Service Electric and Gas Company (PSE&G), as a co-owner and the licensed operator of Hope Creek. The transfer would be to PSEG Nuclear, LLC. PSE&G currently owns 95 percent of Hope Creek. The proposed transfer does not involve any change with respect to the non-operating ownership interest held by Atlantic City Electric Company. The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by PSE&G, PSEG Nuclear, LLC, would assume title to PSE&G's interest in the facility following approval of the proposed license transfer, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of Hope Creek. No physical changes to the Hope Creek facility or operational changes are being proposed in the application.

The proposed amendments would replace references to PSE&G in the license with references to PSEG Nuclear, LLC, to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly,

through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By July 20, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Jeffrie J. Keenan, Esquire, Public Service Electric and Gas Company, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038 (tel: 609–339–5429, fax: 609–339–1234, and e-mail JKeenan@PSEG.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by July 30, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated June 4, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 23rd day of June, 1999.

Richard B. Ennis,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–16602 Filed 6–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensee Qualification for Performing Safety Analyses; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Supplement 1 to Generic Letter (GL) 83–11, Licensee Qualification for Performing Safety Analyses, to all holders of operating licenses for nuclear power reactors. This GL supplement presents criteria that licensees may choose to comply with to verify to the NRC their qualifications to use approved codes and methods for performing safety analyses.

DATES: The GL supplement was issued on June 24, 1999.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Laurence I. Kopp, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, telephone 301–415–2879, e-mail lik@nrc.gov.

SUPPLEMENTARY INFORMATION: In 1995, the Nuclear Regulatory Commission (NRC) prepared a draft of a supplement to Generic Letter 83–11, Licensee Qualification for Performing Safety Analyses, for the purpose of presenting criteria that licensees may choose to comply with to verify to the NRC their qualifications to use approved codes and methods for performing safety analyses. By complying with these criteria, a licensee would eliminate the need to submit a topical report for qualifying their use of a previously approved methodology. A notice of opportunity for public comment including a draft of the supplement were published in the **Federal Register** on October 25, 1995 (60 FR 54712). NRC staff responses to the comments received are presented below under the heading "Discussion of Comments."

The NRC subsequently decided to cancel the issuance of the generic letter supplement primarily because of issues that had arisen at a nuclear power facility (Maine Yankee) regarding the improper application of approved methods. At that time, the NRC concluded that the potential reduction in staff oversight which would result from its issuance was not justified. A notice of cancellation was published in the **Federal Register** on October 30, 1996 (61 FR 56069). The specific issue that arose concerned the licensee's failure to comply with all of the restrictions and conditions stated in the staff's safety evaluation report (SER) for proper application of a loss-of-coolant-accident (LOCA) code.

A review of the lessons learned from Maine Yankee has indicated that the issue involved was adequately addressed in the generic letter supplement as published for public comment on October 25, 1995, because the supplement requires that licensees adhere to all limitations and restrictions in the staff's SER. Further, this supplement to GL 83–11 does not apply to LOCA codes. Therefore, the NRC determined that there would be no reduction in staff oversight and decided to proceed with issuance of the supplement.

The GL supplement is available in the NRC Public Document Room under accession number 9906210103.

Discussion of Comments

Comments were received from 13 licensees, 3 fuel vendors, and 3 industry interest groups, in response to the notice of opportunity for public comment noted above. Following are the staff responses to comments received on the proposed GL 83–11 supplement:

Studsvik of America, Inc.

Comment: Clarify that "safety analysis" includes the physics parameters and codes used to generate them.

Response: Clarification has been made in both the Purpose section and 2.0 Guidelines section.

Comment: For physics codes, approval of code should be separate from the application method.

Response: Section 2.2 has been modified to clarify that in some instances the approval of the code is separate from the application method.

Comment: Clarification of what constitutes NRC approval of a code and/or method would be helpful.

Response: Section 2.1 has been modified to clarify the eligibility of codes and methods for this process.

Comment: Clarify what constitutes a significant code and/or methodology update that must be reviewed by the NRC.

Response: What constitutes a significant code or methodology update that must be reviewed by the NRC is too complex a topic to fully address in a generic manner at this time. However, as mentioned in the **Federal Register** notice (October 25, 1995 (60 FR 54712)), the NRC is also investigating modified procedures for reducing the resource effort for acceptance of new or revised licensee or vendor analysis methods. Therefore, it is anticipated that this topic will be addressed at a future date.

Westinghouse Electric Corporation

Comment: Reemphasize that NRC's experience has shown that a large percentage of all errors or discrepancies discovered in safety analyses can be traced to the user rather than the code itself.

Response: The fact that NRC's experience has shown that many times errors or discrepancies discovered in safety analyses can be traced to the user rather than the code itself is stated in the Description of Circumstances section.

Florida Power & Light Company

Comment: NRC should allow licensees to modify the Core Operating Limit Report (COLR) without specific NRC review so long as the methods and codes have already been approved by the NRC.

Response: The issuance of this supplement would allow this modification as long as the approved methodology is referenced in the technical specifications. The Introduction and Section 2.0 have been modified to address this.

Duke Power Company

Comment: NRC should generically lift restrictions included in topical report SERs that restricted application of the methodology to the plants operated or supported by the licensee of the methodology.

Response: The issuance of this supplement would generically lift these restrictions. However, any other limitations stated in the SERs should be adhered to.

Comment: The introduction should state that the codes are developed by vendors, utilities, national labs, or organizations like EPRI.

Response: The proposed statement has been added to the Introduction.

Comment: The scope of safety analyses should be defined to cover any analytical areas including reload physics design, core thermal-hydraulics, fuel mechanical analysis, transient analysis, dose analysis, setpoint analysis, containment analysis, criticality analysis, statistical methods, and any other analytical area for which topical reports have been approved by the NRC.

Response: The suggested clarification has been incorporated in the Purpose and 2.0 Guidelines sections, with the exception of LOCA analysis codes.

Nuclear Energy Institute

Comment: Recommends deletion of last two items in Section 2.5.

Response: The NRC believes that the two items emphasized are of sufficient significance to be explicitly stated.

Comment: Recommends rewording of Section 2.4 so as not to imply all of the suggested set of benchmark data is required.

Response: The wording in Section 2.4 has been modified to clarify that these are examples of appropriate benchmark data and are not all required.

Commonwealth Edison Company

Comment: Terminology and criteria are open to interpretation. For example, in Section 2.4, what the licensee may think is appropriate justification for an observed deviation in comparison calculations may satisfy one reviewer but not another.

Response: Suggested rewording for benchmark deviations has been added to Section 2.4 to eliminate ambiguity.

Comment: The intent of the term "application procedure" in Section 2.2 could be misinterpreted.

Response: Section 2.2 has been revised for clarification.

Comment: Section 2.4 should be revised to read "Significant, unexpected, or unusual deviations should be * * *"

Response: The suggested rewording has been added to Section 2.4.

Comment: Vendor update implementation in Section 2.5 should be clarified so as not to imply that all changes that vendor makes must be implemented.

Response: Section 2.5 Item (1) has been modified to allow an evaluation of updates to determine if implementation is required.

Electric Power Research Institute

Comment: Questions whether a licensee must base the methodology on a previously approved plant SER or can develop a "new" topical based only on the generic code SER?

Response: By adhering to the guidelines in the supplement, a licensee can perform its own analyses using any approved code or method.

Comment: For clarity, the words "application of the" should be deleted from Section 2.2.

Response: The in-house application procedures should be consistent with the code qualification and approved application of the methodology. Therefore, this has been retained in Section 2.2.

Comment: Training should be performed by either the developer or someone who has been previously qualified.

Response: The proposed wording has been added to Section 2.3.

Comment: "Vendor" analysis should be changed to "analysis of record."

Response: The proposed rewording has been added to Section 2.4.

Comment: An appropriate set of benchmark data should include analysis of events, using higher order codes or published numerical benchmarks.

Response: The proposed wording has been added to Section 2.4.

Comment: In Section 2.4, "Any deviations" should be explained.

Response: A revision has been made to Section 2.4 to more clearly define deviations that must be explained.

Southern Nuclear Operating Company

Concurs with NEI comments.

GPU Nuclear Corporation

Comment: It seems appropriate to identify existing codes and methodologies that have been developed by national labs for the NRC that can be considered NRC approved codes and methods.

Response: The identification of existing codes and methodologies developed by national labs that can be considered as NRC approved codes and methods, even though formal NRC review and approval has never been performed, is beyond the scope of this proposed supplement.

Comment: Suggests that the terms "codes", "methods", and "applications" be clearly defined.

Response: A definition of codes, methods, and applications has been added to the Introduction.

Siemens Power Corporation

Supports the approaches described in the proposed supplement.

Virginia Power

Endorses the proposed supplement.

Pacific Gas and Electric Company

Comment: Concept should not be limited to core analysis.

Response: The specific analytical areas that the GL refers to have been added to the Purpose Section.

Comment: NRC should allow the training requirement to be met by on-the-job training.

Response: A new user can be qualified by on-the-job training as well as by formal classroom instruction. In many cases, user qualification will be accomplished by a combination of both

Yankee Atomic Electric Company (YAEC)

Comment: It is YAEC's understanding that the supplement will only apply to licensees who use another organization's methods and codes, and not to an organization that receives approval for its own codes and methods, and conducts safety analyses using those codes and methods.

Response: YAEC's interpretation is correct.

Comment: Recommends that the supplement also note that other organizations such as utilities and engineering service companies have developed codes and methods.

Response: The example of possible code developers has been modified to include utilities and national labs.

Indiana Michigan Power Company

Comment: Suggests that different versions of previously approved codes should be applicable as long as the calculational methodology is not changed.

Response: Section 2.1 has been modified to clarify code eligibility. What constitutes a significant code or methodology update that must be reviewed by the NRC is too complex a topic to fully address in generic terms at this time. However, as mentioned in the **Federal Register** notice (60 FR 54712; October 25, 1995), the NRC is also investigating modified procedures for reducing the resource effort for acceptance of new or revised licensee or vendor analysis methods. Therefore, it is anticipated that this topic will be addressed at a future date.

Entergy Operations, Incorporated

Comment: The applicability of a particular method to either a specific fuel design or to a core which contains a mixture of fuel types is important. Use of one vendor's hot channel analysis code with another's transient codes may not necessarily yield conservative results and may not be consistent with the NRC-approved reload analysis package. In-house application procedures should have proper controls to preclude such a misapplication, and should be permitted to include the flexibility to perform comparison tests between the different methodologies to show that a conservative assessment can be made.

Response: Section 2.2 has been modified to incorporate this application procedure.

Comment: NRC should consider issuing an inspection procedure concurrently with the supplement so that licensees would know what questions and documentation requests might be needed to support audits.

Response: The NRC will incorporate oversight of this GL supplement into the NRC inspection program following the issuance of this supplement.

Comment: NRC should consider providing licensees the flexibility to conduct its own assessment of a third party reviewer similar to what is currently allowed in NRC Inspection Module 40501.

Response: Issuance of this supplement would eliminate the need to submit a qualification topical report for NRC review and thus eliminate the need for a third party reviewer.

Arizona Public Service (APS)

Comment: The "first licensing application" is interpreted by APS as being the first proposed license amendment or other licensing basis change requiring prior NRC review and approval that was supported by safety analyses performed by the licensee instead of a vendor.

Response: The "first licensing application" may not necessarily be a licensing basis change requiring NRC approval before implementation, but may be a revision to a COLR parameter, for example.

Comment: APS would interpret "eligibility" in Section 2.1 to mean that code packages previously approved in topical reports or license amendments for other plants would be generically approved.

Response: The only codes and methods that are eligible for this process are those that have been generically approved, or those that have been otherwise accepted as part of a plant's licensing basis. Section 2.1 has been modified to clarify this.

Comment: APS suggests that plant specific uncertainties could be used without additional NRC review, even if these uncertainties are less than the generically approved uncertainties.

Response: As a general rule, plant specific uncertainties may be used without additional NRC review provided that they are derived with previously approved methods. However, NRC review is required for modifications to uncertainties that were generically approved to cover uncertainties due to codes and methods, correlations, etc.

Comment: APS states that they would control changes to methodology by design control procedures and that the changes would be subject to 10 CFR 50.59 evaluations, if appropriate.

Response: As stated in Section 2.1, the use of a new methodology or a change to an existing methodology is not applicable to this process. However, as mentioned in the **Federal Register** notice (60 FR 54712; October 25, 1995), the NRC is also investigating modified procedures for reducing the resource effort for acceptance of new or revised licensee or vendor analysis methods. Therefore, it is anticipated that this topic will be addressed at a future date.

Comment: APS considers an appropriate set of benchmark data to include other acknowledged industry standard data or criteria.

Response: The examples of appropriate benchmark data has been expanded to include APS' suggestions.

Comment: APS suggests that Section 2.5 be revised to allow a provision for evaluating vendor updates and implementing those updates, if applicable.

Response: The proposed rewording has been incorporated into Section 2.5.

Centerior Energy

Comment: The guidance should be explicit enough to allow for utilities to reference topical reports submitted by non-NSSS vendors.

Response: Utilities have been added to the example of organizations that develop methods.

Comment: The proposed guidance should be sufficiently flexible to allow substitution of computer codes within an approved analytical methodology.

Response: The Application Procedures have been modified to allow this, but should contain proper controls to preclude misapplications or inappropriate use of an application.

Comment: NRC should maintain a listing of the codes or methods it has approved.

Response: The NRC is currently developing a data base of approved codes as a separate action.

Comment: NRC should define the point at which reapproval of updates is necessary.

Response: What constitutes a significant code or methodology update that must be reviewed by the NRC is too complex a topic to fully address in generic terms at this time. However, as mentioned in the **Federal Register** notice (60 FR 54712; October 25, 1995), the NRC is also investigating modified procedures for reducing the resource effort for acceptance of new or revised licensee or vendor analysis methods. Therefore, it is anticipated that this topic will be addressed at a future date.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 24th day of June, 1999.

James E. Lyons,

Deputy Chief, Events Assessment, Generic Communications and Non-Power Reactors Branch, Division of Regulatory Improvement Programs.

[FR Doc. 99–16597 Filed 6–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982 (47 FR 596 and 47 FR 600), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** final amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

State	Part 71	Part 73
ALABAMA	Col. L. N. Hagan, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36102–1511, (334) 242–4378.	Same.
ALASKA	Doug Dasher, Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, AK 99709–3643, (907) 451–2172.	Same.
ARIZONA	Aubrey V. Godwin, Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040, (602) 255–4845, ext. 222, 24 hours: (602) 223–2212.	Same.
ARKANSAS	David D. Snellings, Jr., Director, Division of Radiation Control and Emergency Management, Arkansas Department of Health, 4815 West Markham Street, Mail Slot #30, Little Rock, AR 72205–3867, (501) 661–2301, 24 hours: (501) 661–2136.	Same.
CALIFORNIA	Sgt. Meg Planka, California Highway Patrol, P.O. Box 942898, Sacramento, CA 94298–0001, (916) 327–3310, 24 hours: (916) 445–2211.	Same.
COLORADO	Captain Allan M. Turner, Hazardous Materials Section, Colorado State Patrol, 700 Kipling Street, Suite 1000, Denver, CO 80215–5865, (303) 239–4546, 24 hours: (303) 239–4501.	Same.
CONNECTICUT	Dr. Edward L. Wilds, Jr., Director, Division of Radiation, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106–5127, (860) 424–3029, 24 hours: (860) 424–3333.	Same.
DELAWARE	Karen L. Johnson, Secretary, Department of Public Safety, P.O. Box 818, Dover, DE 19903, (302) 739–4321, 24 hours: (302) 739–5851.	Same.
FLORIDA	Harlan Keaton, Manager, Bureau of Radiation Control, Environmental Radiation Control, Department of Health, P.O. Box 680069, Orlando, FL 32868–0069, (407) 297–2095.	Same.
GEORGIA	Al Hatcher, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Suite 310, Hapeville, GA 30354, (404) 559–6600.	Same.
HAWAII	Mr. Gary Gill, Deputy Director for Environmental Health, State of Hawaii Department of Health, P.O. Box 3378, Honolulu, HI 96813, (808) 586–4424.	Same.
IDAHO	Captain David C. Rich, Department of Law Enforcement, Idaho State Police, P.O. Box 700, Meridian, ID 83680–0700, (208) 884–7206, 24 hours: (208) 334–2900.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
ILLINOIS	Thomas W. Ortciger, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785–9868, 24 Hours: (217) 785–9900.	Same.
INDIANA	Melvin J. Carraway, Superintendent, Indiana State Police, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232–8248.	Same.
IOWA	Ellen M. Gordon, Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, IA 50319–0113, (515) 281–3231.	Same.
KANSAS	Frank H. Moussa, M.S.A., Technological Hazards Administrator, Department of the Adjutant General, Division of Emergency Management, 2800 SW. Topeka Boulevard, Topeka, KS 66611–1287, (785) 274–1409, 24 hours: (785) 296–3176.	Same.
KENTUCKY	John A. Volpe, Ph.D., Manager, Radiation and Toxic Agents Section, Cabinet for Human Resources, 275 East Main Street, Frankfort, KY 40621–0001, (502) 564–3700.	Same.
LOUISIANA	Major Joseph T. Booth, Louisiana State Police, 7901 Independence Boulevard, P.O. Box 66614 (#21), Baton Rouge, LA 70896–6614, (504) 925–6113.	Same.
MAINE	Chief of the State Police, Maine Dept. of Public Safety, 42 State House Station, Augusta, ME 04333, (207) 624–7000.	Same.
MARYLAND	First Sgt. Wellington Gray, Maryland State Police, Communication Services Division, 1201 Reisterstown Road, Pikesville, MD 21208, (410) 653–4208, 24 hours: (410) 653–4200.	Same.
MASSACHUSETTS	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 174 Portland Street, 5th Floor, Boston, MA 02114, (617) 727–6214.	Same.
MICHIGAN	Captain Stephen D. Madden, Commanding Officer, Special Operations Division, Michigan State Police, 714 S. Harrison Road, East Lansing, MI 48823, (517) 336–6263, 24 hours: (517) 336–6100.	Same.
MINNESOTA	John R. Kerr, Assistant Director, Planning Branch, Division of Emergency Management, Department of Public Safety, 444 Cedar St., Suite 223, St. Paul, MN 55101–6223, (612) 296–0481, 24 hours: (612) 649–5451.	Same.
MISSISSIPPI	James E. Maher, Director, Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296–4501, (601) 352–9100.	Same.
MISSOURI	Jerry B. Uhlmann, Director, Emergency Management Agency, P.O. Box 116, Jefferson City, MO 65102, (573) 526–9101, 24 hours: (573) 751–2748.	Same.
MONTANA	George Eicholtz, Coordinator, Radiological Health Program, Montana DPHHS, Licensure Bureau, P.O. Box 202951, Helena, MT 59620–2951, (406) 444–5246.	Jim Greene, Administrator, Disaster and Emergency Service, P.O. Box 4789, Helena, MT 59604, (406) 841–3911
NEBRASKA	Major Bryan J. Tuma, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509–4907, (402) 479–4950, 24 hours: (402) 471–4545.	Same.
NEVADA	Stanley R. Marshall, Supervisor, Radiological Health Section, Health Division, Department of Human Resources, 1179 Fairview Drive, Suite 102, Carson City, NV 89701–5405, (775) 687–5394 x276, 24 hours: (775) 687–4757.	Same.
NEW HAMPSHIRE	Richard M. Flynn, Commissioner, New Hampshire Dept. of Safety, James H. Hayes Building, 10 Hazen Drive, Concord, NH 03305, (603) 271–2791, (603) 271–3636 (24 hours).	Same.
NEW JERSEY	Kent Tosch, Manager, Bureau of Nuclear Engineering, Department of Environmental Protection, P.O. Box 415, Trenton, NJ 08625–0415, (609) 984–7701.	Same.
NEW MEXICO	Max D. Johnson, Bureau Chief, Technological Hazards Bureau, Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504–1628, (505) 476–9620, 24 hours: (505) 827–9126.	Same.
NEW YORK	Edward F. Jacoby, Jr., Director, State Emergency Management Office, 1220 Washington Avenue, Building 22—Suite 101, Albany, NY 12226–2251, (518) 457–2222.	Same.
NORTH CAROLINA	Line Sgt. Mark Dalton, Hazardous Materials Coordinator, North Carolina Highway Patrol Headquarters, 512 N. Salisbury St., P.O. Box 29590, Raleigh, NC 27626–0590, (919) 733–5282, After hours: (919) 733–3861.	Same.
NORTH DAKOTA	Dana K. Mount, Director, Division of Environmental Engineering, North Dakota Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58506–5520, (701) 328–5188, After hours: (701) 328–2121.	Same.
OHIO	James R. Williams, Chief of Staff, Ohio Emergency Management Agency, 2855 W. Dublin-Granville Road, Columbus, OH 43235–2206, (614) 889–7150.	Same.
OKLAHOMA	Bob A. Ricks, Commissioner, Oklahoma Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136–0145, (405) 425–2001, 24 hours: (405) 425–2424.	Same.
OREGON	David Stewart-Smith, Administrator, Energy Resources Division, Oregon Office of Energy, 625 Marion Street, NE, Salem, OR 97310, (503) 378–6469.	Same.
PENNSYLVANIA	John Bahnweg, Director of Operations and Training, Pennsylvania Emergency Management Agency, P. O. Box 3321, Harrisburg, PA 17105–3321, (717) 651–2001.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
RHODE ISLAND	William A. Maloney, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 222–3500; ext. 150.	Same.
SOUTH CAROLINA	Virgil R. Autry, Director, Division of Radioactive Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 896–4244, Emergency: (803) 253–6488.	Same.
SOUTH DAKOTA	Gary N. Whitney, Director, Division of Emergency Management, 500 E. Capitol Avenue, Pierre, SD 57501–5060, (605) 773–3231.	Same.
TENNESSEE	John D. White, Jr., Director, Emergency Management Agency, 3041 Sidco Drive, Nashville, TN 37204–1504, (615) 741–0001, After hours: (Inside TN) 1–800–262–3300, (Outside TN) 1–800–258–3300.	Same.
TEXAS	Richard A. Ratliff, Chief, Bureau of Radiation Control, Texas Department of Public Health, 1100 West 49th Street, Austin, TX 78756, (512) 834–6688.	Col. Dudley Thomas, Director, Texas Department of Health Safety, Attn: EMS Tech. Hazards, P.O. Box 4087, Austin, TX 78773–0001, (512) 424–2429, (512) 424–2277 (24 hrs)
UTAH	William J. Sinclair, Director, Division of Radiation Control, 168 North 1950 West, P.O. Box 144850, Salt Lake City, UT 84114–4850, (801) 536–4250, After hours: (801) 536–4123.	Same.
VERMONT	Lieutenant Col. John H. Sinclair, Director, Division of State Police, Department of Public Safety, 103 South Main Street, Waterbury, VT 05671–2101, (802) 244–7345.	Same.
VIRGINIA	L. Ralph Jones, Jr., Director, Technological Hazards Division, Department of Emergency Services, Commonwealth of Virginia, 10501 Trade Court, Richmond, VA 23236, (804) 897–6570.	Same.
WASHINGTON	Lieutenant Gail R. Otto, Washington State Patrol, P.O. Box 42600, Olympia, WA 98504–2600, (360) 753–0565, After hours (253) 536–6210 (ext. 0).	Same.
WEST VIRGINIA	Colonel Gary L. Edgell, Superintendent, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309, (304) 746–2111.	Same.
WISCONSIN	Steven D. Sell, Administrator, Wisconsin Division of Emergency Management, P.O. Box 7865, Madison, WI 53707–7865, (608) 242–3232.	Same.
WYOMING	Captain L. S. Gerard, Motor Carrier Officer, Wyoming Highway Patrol, 5300 Bishop Boulevard, P.O. Box 1708, Cheyenne, WY 82003–1708, (307) 777–4317, 24 hours: (307) 777–4321.	Same.
DISTRICT OF COLUMBIA.	Norma J. Stewart, Chief, Bureau of Food, Drug & Radiation Protection, Department of Health, 825 North Capitol St., NE, Room 5125, Washington, DC 20002, (202) 442–5919.	Same.
PUERTO RICO	Hector Russe Martinez, Chairman, Environmental Quality Board, P.O. Box 11488, San Juan, PR 00910, (787) 767–8056 or (787) 767–8181.	Same.
GUAM	Jesus T. Salas, Administrator, Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921, (671) 475–1658/9.	Same.
VIRGIN ISLANDS	Charles Turnbull, Governor, Governor's Office 21–22 Kongens Gade, St. Thomas, Virgin Islands 00802, (809) 774–0001.	Same.
AMERICAN SAMOA	Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633–2304.	Same.
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.	Joaquin A. Tenorio, Ph.D., Secretary, Department of Lands and Natural Resources, Commonwealth of Northern Mariana Islands Government, Saipan, MP 96950, (670) 322–9830 or (670) 322–9834.	Same.

Questions regarding this matter should be directed to Spiros Droggitis, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (Internet Address: SCD@NRC.GOV) or at (301) 415–2367.

Dated at Rockville, Maryland this 21st day of June , 1999.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State Programs.

[FR Doc. 99–16393 Filed 6–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 5, 1999, through June 18, 1999. The last

biweekly notice was published on June 16, 1999 (64 FR 32284).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 30, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: May 26, 1999.

Description of amendments request: The proposed amendment would revise Technical Specification 3.3.1, "Reactor Protective System (RPS) Instrumentation—Operating," to change the RPS reactor coolant flow trip setpoints. The change is intended to reduce spurious reactor trip hazards.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change will change the Reactor Protection System (RPS) reactor coolant flow trip setpoints. The RPS functions to mitigate the consequences of an accident. The changes to the low reactor coolant flow trip setpoints will reduce or eliminate unnecessary challenges to the RPS. Therefore, the proposed change will not involve a significant increase in the probability of an accident previously evaluated.

These changes will result in an increased time delay for the RPS low reactor coolant flow trip. The reanalysis of the affected UFSAR [updated final safety analysis report] Chapter 15 events (UFSAR 15.3.4, Reactor Coolant Pump Shaft Break with Loss of Offsite Power and UFSAR 15.1.5, Steam System Piping Failures Inside and Outside Containment—Modes 1 and 2 Operations), with the increased time delay, shows that the dose consequences for these events remain bounded by the UFSAR analysis. Therefore, this change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change will change the RPS reactor coolant flow trip setpoints. The RPS functions to mitigate the consequences of an accident. The changes to the low reactor coolant flow trip setpoints will reduce or eliminate unnecessary challenges to the RPS. The proposed change only changes the mitigating actions of the RPS, without changing the required function of the RPS. Therefore, the change to the low reactor coolant flow trip setpoints does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change will change the RPS reactor coolant flow trip setpoints. The reanalysis of the affected UFSAR Chapter 15 events (UFSAR 15.3.4, Reactor Coolant Pump Shaft Break with Loss of Offsite Power and UFSAR 15.1.5, Steam System Piping Failures Inside and Outside Containment—Modes 1 and 2 Operations), with the revised reactor coolant flow trip setpoints, shows that the minimum DNBR [departure from nucleate boiling ratio] and SAFDLs [specified acceptable fuel design limits] for these events remain bounded by the UFSAR analysis. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999

NRC Section Chief: Stephen Dembek.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: June 2, 1999.

Description of amendment request: The proposed amendment would relocate Shearon Harris Nuclear Power Plant (HNP) Technical Specification (TS) Section 6.5, "Review and Audit," TS 6.8.2, TS 6.8.3, and TS Section 6.10, "Record Retention," intact from the HNP TS to the Quality Assurance Program Description currently located in the HNP Final Safety Analysis Report Section 17.3. Future changes to the associated relocated TS would be processed in accordance with 10 CFR 50.54(a). The proposed change is consistent with NUREG–1431, Revision 1, "Standard Technical Specifications, Westinghouse Plants," dated April 1995, and with the guidance provided in NRC Administrative Letter 95–06, "Relocation of Technical Specification Administrative Controls related To Quality Assurance," dated December 12, 1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This TS change relocates administrative requirements from HNP TS to the Quality Assurance Program Description (QAPD). The proposed amendment will not introduce any new equipment or require existing equipment to function different from that previously evaluated in the Final Safety Analysis Report (FSAR) or TS.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not introduce any new equipment or require existing equipment to function different from that previously evaluated in the Final Safety Analysis Report (FSAR) or TS. The changes are consistent with NUREG–1431, Revision 1 and the Commission's Final Policy Statement on Technical Specification improvements. The proposed amendment will not create any new accident scenarios, because the change does not introduce any new single failures, adverse equipment or material interactions, or release paths.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

This TS change relocates administrative requirements from HNP TS to the Quality

Assurance Program Description (QAPD). The QAPD will be revised to include the requirements associated with this proposed change. NRC Administrative Letter 95–06 states that administrative requirements for review and audit and the independent safety engineering group may be relocated from TS to the quality assurance program. HNP proposes relocating the associated requirements from TS to the QAPD intact. Future changes to these requirements will be processed in accordance with 10 CFR 50.54(a). This proposed TS change is administrative in nature and does not alter NRC acceptance limits with respect to accident mitigation or accident analysis.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Section Chief: Sheri R. Peterson.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: July 22 and October 22, 1998; May 6, 1999.

Description of amendment request: The amendments would revise the Technical Specifications (TS) to reflect the licensee's planned use of fuel supplied by Westinghouse. The staff has published a Notice of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration Determination on November 3, 1998 (63 FR 69338) covering the July 22 and October 22, 1998, submittals. In the May 6, 1999, submittal the licensee proposed to expand the original amendment request, revising Section 5.6.5 of the Technical Specifications. Section 5.6.5 specifies a list of NRC-approved topical reports that the licensee is required to use to determine reactor core operating limits. The licensee proposed to update this list to show the current approval status of these topical reports.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for the proposed changes conveyed by the May 6, 1999, submittal. The NRC staff has reviewed the licensee's analyses against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

First Standard

No. The proposed changes to Section 5.6.5 will not affect the safety function, and will not involve any change to the design or operation of any plant system or component. The topical reports were previously approved by the NRC staff under separate licensing actions. The use of methodologies in these approved topical reports will ensure that previously evaluated accidents remain bounding. Therefore, no accident probabilities or consequences will be impacted.

Second Standard

No. The proposed changes would not lead to any hardware or operating procedure change. Hence no new equipment failure modes or accidents from those previously evaluated will be created.

Third Standard

No. Margin of safety is associated with confidence in the design and operation of the plant; specifically, the ability of the fission product barriers to perform their design functions during and following an accident. The proposed changes to Section 5.6.5 do not involve any change to plant design, operation, or analysis. Thus the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for the proposed changes to Section 5.6.5. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: April 5, 1999, supplemented May 27, 1999.

Description of amendment request: The proposed amendments would revise the Improved Technical Specifications (TS), Updated Final Safety Analysis Report, and Core Operating Limits Report to incorporate Topical Report (TR) DPC–NE–3005–P, "Thermal-Hydraulic Transient Analysis Methodology." This analysis has been completed for Unit 2 and is ongoing for Units 1 and 3. Therefore, the proposed changes that reflect the TR provisions affect Unit 2 only. Other proposed changes affect all three units. Specifically, (1) a note to TS Surveillance Requirement (SR) 3.4.1.2, "RCS [Reactor Coolant System] Pressure, Temperature, and Flow DNB [Departure from Nucleate Boiling] Limits," would be modified to address application of the delta-T_{cold} limits; (2) TS 3.4.10, "Pressurizer Safety Valves," would be modified to increase the setpoint range of the lift settings for the pressurizer safety valves for the Oconee unit that has been analyzed in accordance with the TR and state that the range is not changed for the other units; (3) a statement to SR 3.4.10.1 would be added that will specify the pressurizer safety valve lift setpoint in order to clarify the difference between the operability setpoint range for a test lift and the range required when the setpoint is reset following the surveillance test; (4) TS 3.7.4, "Atmospheric Dump Valve (ADV) Flow Paths," would be added to address the applicability and required actions related to the ADS valves; (5) TS 3.9.7, "Unborated Water Source Isolation Valves," would be added to require valves that are used to isolate unborated water sources to be secured in the closed position while in Mode 6, incorporate SRs, and provide required actions if one or more of the valves is not secured in the closed position; (6) TS 5.6.5b would be changed to update the Core Operating Limits Report references; and (7) the appropriate Bases would be changed to reflect the above changes, other changes consistent with the revisions to the TR analysis, and the Updated Final Safety Analysis Report revisions that were provided in the submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes to the Technical Specifications, Bases, Updated Final Safety Analysis Report (UFSAR), and Core Operating Limits Report (COLR) incorporate the accident analyses established in Topical Report DPC–NE–3005–P, "UFSAR Chapter 15 Transient Analysis Methodology." On July 30, 1997, Duke submitted Topical Report DPC–NE–3005–P to the NRC for approval. The NRC found DPC–NE–3005–P acceptable, with noted exceptions, in a Safety Evaluation issued on October 1, 1998. To resolve the noted NRC exceptions, Duke submitted Revision 1 of DPC–NE–3005–P to the NRC for review on February 1, 1999. Additional information regarding Revision 1 of DPC–NE–3005–P was submitted on April 19 and May 5, 1999. This LAR is dependent upon the NRC approval of Revision 1 of DPC–NE–3005–P. [This Topical Report was approved by the NRC on May 25, 1999.]

The analyzed events are initiated by the failure of specific plant structures, systems or components. These proposed changes do not impact the condition or performance of those structures, systems or components.

The revised accident analyses in DPC–NE–3005–P demonstrate that the applicable acceptance criteria are met. In addition, the preliminary calculations show that the applicable radiological and environmental acceptance criteria continue to be met.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes do not involve a physical alteration of the plant. No new or different equipment is being installed, and no installed equipment is being operated in a new or different manner. Where setpoints and operating limits have been revised, the revised accident analyses demonstrate that the applicable acceptance criteria are met. As a result, no new failure modes are being introduced.

Based on the above, the proposed changes do not create the possibility of any new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

No. The margin of safety is established through the design of the plant structures, systems and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to a event. The proposed changes do not involve a physical alteration of the plant. No new or different equipment is being installed, and no installed equipment is being operated in a new or different manner. Where setpoints and operating limits have been revised, the revised accident analyses in DPC–NE–3005–P demonstrate that the applicable acceptance criteria are met.

Based on the above, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the preceding evaluation, performed pursuant to 10 CFR 50.92, Duke has concluded that the proposed changes to the Oconee Nuclear Station Technical Specifications, Bases, UFSAR, and O2C18 COLR will not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Conee County Library, 501 West South Broad Street, Walhalla, South Carolina

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: May 24, 1999

Description of amendment request: The proposed amendments would revise the maximum local fuel pin centerline temperature safety limit in Technical Specification 2.1.1.1 from the limit determined using the TACO2 fuel performance computer code to the value determined using a newer TACO3 computer code.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92 (c) requirements to demonstrate that all three standards for no significant hazards consideration are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The use of the revised maximum local fuel pin centerline temperature limit is appropriate since the new limit uses a fuel melt temperature which has been conservatively reduced to account for code uncertainties in calculating fuel centerline temperature. NRC has previously found the use of the TACO3 code by DPC [Duke Power Company] in performing reload licensing to be acceptable. The use of the revised limit for fuel analyzed using an approved code ensures centerline fuel melting is avoided by ensuring the maximum fuel temperature is less than the melting temperature of the fuel. Therefore this change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

Implementation of this amendment will not create the possibility of a new or different kind of accident from any previously evaluated. The use of the revised maximum local fuel pin centerline temperature limit has no affect on accident precursors. Implementation of this amendment will not impact any plant systems that are accident initiators. No other modifications are being proposed in the plant that would result in the creation of a new accident mechanism. Also, no changes are being made to the way the plant is operated; therefore, no new failure mechanisms will be initiated.

Third Standard

The revised maximum local fuel pin centerline temperature limit has been appropriately reduced to account for uncertainties in predicting centerline fuel temperatures. NRC has previously found the use of the TACO3 code by DPC in performing reload licensing to be acceptable. Therefore, implementation of this amendment would not involve a significant reduction in a margin of safety.

Therefore, Duke has concluded that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: May 27, 1999.

Description of amendment request: The proposed changes would relocate the seismic monitoring instrumentation requirements contained in Technical Specification (TS) 3/4.3.3.3 to the Licensing Requirements Manual based on the guidance provided in Generic Letter 95–10, "Relocation of Selected Technical Specifications Requirements

Related to Instrumentation." The Bases section for Specification 3/4.3.3.3 will also be relocated to the LRM. The appropriate Index pages, Table Index page (Unit No. 1 only), TS pages and Bases pages will be revised to reflect the removal of the seismic monitoring instrumentation specification from the TSs. An additional specification page will be added to reflect that Specification Number 3/4.3.3.4 is not used. This additional page will also denote the number of the following page. The Bases section will also be modified to denote that Specification Number 3/4.3.3.4 is not used.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment would relocate Technical Specification (TS) 3/4.3.3.3 titled "Seismic Instrumentation" and the associated Bases section to the Licensing Requirements Manual (LRM) (based on the guidance provided in Generic Letter (GL) 95–10, "Relocation of Selected Technical Specification Requirements Related to Instrumentation"). The proposed amendment would also revise the TS Index and Beaver Valley Power Station (BVPS) Unit No. 1 List of Tables to reflect the relocation of this TS and associated Bases. The relocated Specification will be controlled in accordance with the requirement of 10 CFR 50.59, "Controls, Tests, and Experiments." Additional administrative changes are also included to reflect that Specification Number 3/4.3.3.4 is not used.

The proposed amendment does not involve a significant increase in the probability of an accident previously evaluated because no changes are being made to any accident initiator. No analyzed accident scenario is being changed. The initiating condition and assumptions remain as previously analyzed. The failure of the seismic monitoring instrumentation to detect a seismic event is not an accident initiating event.

The seismic monitoring instrumentation performs no role in mitigating a seismic event or in achieving a safe shutdown condition after a seismic event has occurred. Seismic instrumentation is not assumed to function in the safety analysis. The seismic instrumentation is not associated with a process variable, design feature, or operating restriction that is an initial condition of a Design Basis Accident (DBA) or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier. Seismic instrumentation does not actuate any protective equipment or play any direct role in the mitigation of an accident. The capability of the plant to withstand a seismic event or other design basis accident is determined by the initial design and construction of systems, structures, and components. This instrumentation is used to alert operators to the seismic event and evaluate the plant response.

The proposed revisions to the Index pages, Table Index page (BVPS Unit No. 1 only), Specification pages and Bases pages are administrative in nature and do not affect plant safety.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment does not involve any physical changes to the plant or the modes of plant operation defined in Appendix A of the operating license. The proposed amendment does not involve the addition or modification of plant equipment nor does it alter the design or operation of plant systems. Seismic instrumentation does not actuate any protective equipment or play any direct role in the mitigation of an accident. The capability of the plant to withstand a seismic event or other design basis accident is determined by the design and construction of systems, structures, and components. This instrumentation is used to alert operators to the seismic event and evaluate the plant response.

Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed amendment does not involve revisions to any safety limits or safety system setting that would adversely impact plant safety. The proposed amendment does not affect the ability of systems, structures or components important to ensure the safe shutdown of the facility, or the mitigation and control of accident conditions within the facility. In addition, the proposed amendment does not affect the ability of safety systems to ensure that the facility can be maintained in a shutdown or refueling condition for extended periods of time, or the availability of sufficient instrumentation and control capability for monitoring and maintaining the unit status.

The proposed revisions to the Index pages, Table Index page (BVPS Unit No. 1 only), Specification pages and Bases pages are administrative in nature and do not affect plant safety

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: S. Singh Bajwa.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: May 27, 1999.

Description of amendment request: The proposed amendments would (1) revise the frequency for performing the CHANNEL FUNCTIONAL TEST (CFT) of the manual initiation functional units specified in the Beaver Valley Power Station, Unit Nos. 1 and 2, Engineered Safety Features Actuation System (ESFAS) Instrumentation Technical Specifications (TSs) from monthly, with an accompanying footnote which allows the manual initiation to be tested on a refueling interval, to each refueling interval; (2) Revise footnotes associated with TS ESFAS tables; (3) revise associated TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the frequency notation specified for the channel functional test of the manual initiation functions listed on Table 4.3–2 of TS 3/4.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation." The proposed change revises the current TS requirement for surveillance testing these functions to clarify that testing be performed on a refueling basis. The revision to the surveillance frequency specified in Table 4.3–2 does not physically impact the Instrumentation, its setpoints, or the actual frequency at which the manual initiation functions are tested. The revision eliminates the potential for confusion regarding the testing required for the manual initiation function by deleting Footnote (1) to Table 4.3–2. The proposed change to the Surveillance Requirements of Table 4.3–2 for the manual initiation functions eliminates the need for Footnote (1). Footnote (1) requires testing the manual actuation switches every 18 months and performing a Channel Functional Test on all other circuitry associated with manual safeguards actuation every 31 days. As there is no other circuitry for which a 31 day CFT is applicable, the proposed change simplifies the TS requirement consistent with the current Standard TS for Westinghouse plants. Footnote (1) is consistent with early versions of the Standard Technical Specifications of NUREG–0452; however, later versions of the Standard Technical Specifications and the Improved Standard Technical Specifications of NUREG–1431 simply require testing manual initiation functions on a refueling or 18 month basis. The proposed refueling frequency for testing this instrumentation recognizes that the manual initiation functions can not be tested at power since this would introduce the potential for a significant plant transient.

The deletion of Table 4.3–2 Footnote (1) resulted in renumbering Footnote (2) to (1). In addition, expired Unit 2 Table 4.3–2 Footnote (3) (only applicable to the first refueling outage) was also deleted. In addition, changes to the TS bases are made to further clarify the channel functional test requirements. The reorganization of the Table 4.3–2 footnotes and bases modifications are considered to be editorial changes.

The manual initiation instrumentation will continue to be tested in the same manner as before (every refueling). This test frequency is consistent with the licensing basis for testing this instrumentation described in the Updated Final Safety Analysis Report (UFSAR) and with the testing frequency specified in the standard Westinghouse Plant TS. Therefore, this test frequency is considered adequate to verify instrumentation operability. In addition, failure of a manual initiation function is not an accident initiator. As such, the ESFAS instrumentation will continue to be capable of providing the required safety functions described in the UFSAR. Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

There are no hardware changes associated with this license amendment nor are there any changes in the method by which any safety-related plant system performs its safety function. No new accident scenarios, transient precursors, failure mechanisms or limiting single failures are introduced as a result of these changes. These changes do not introduce any adverse effects or challenges to any safety-related systems. No change is required to any system configurations, plant equipment or analyses. Therefore, these changes will not create the possibility of any new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety depends on the maintenance of specific operating parameters and systems within design requirements. Updating the manual initiation function surveillance interval requirements specified on ESFAS TS Table 4.3–2 and deleting Table 4.3–2 Footnote (1) reflects the standard Westinghouse Plant TS requirements for this Instrumentation and is consistent with the design and operation of the plant as described in the UFSAR. In addition, the proposed change does not reduce the current refueling interval testing performed on this instrumentation. The refueling test frequency specified for this instrumentation is consistent with industry standards and considered adequate to ensure the affected manual initiation functions are maintained operable. The proposed change will improve the clarity of the TS requirement by eliminating the potential for confusion as to when the surveillances are required to be performed. As such, the proposed change continues to ensure that the operation of the affected instrumentation is maintained within its design requirements and that it continues to be capable of providing the required safety functions described in the UFSAR. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: S. Singh Bajwa.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: June 1, 1999.

Description of amendment request: The proposed amendment would revise the surveillance requirements and applicable Bases relevant to inservice inspection requirements for the portions of the once-through steam generator (OTSG) tubes adjacent to the primary cladding region of the upper and lower OTSG tubesheets.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The OTSGs are used to remove heat from the reactor coolant system during normal operation and during accident conditions. The OTSG tubing forms a substantial portion of the reactor coolant pressure boundary. An OTSG tube failure is a breach of the reactor coolant pressure boundary and is a specific accident analyzed in the Arkansas Nuclear One, Unit 1 (ANO–1), Safety Analysis Report (SAR).

The purpose of the periodic surveillance performed on the OTSGs in accordance with ANO–1 Technical Specification (TS) 4.18 is to ensure that the structural integrity of this portion of the reactor coolant system will be maintained. The TS plugging limit of 40% of the nominal tube wall thickness requires tubes to be repaired or removed from service because the tube may become unserviceable prior to the next inspection. Unserviceable is defined in the TS as the condition of a tube if it leaks or contains a defect large enough to affect its structural integrity in the event of an operating basis earthquake, a loss-of-coolant accident, or a steam line or feedwater line break. The proposed TS change allows OTSG tubes with axial T[illegible] tube end cracking] indications [illegible] the cladding region [illegible] interface [illegible]thin joint of t[illegible]en, with ex[illegible], exceeding [illegible] existi[illegible]vall (TW) plugging limit.

Extensive testing and plant experience has illustrated that TEC flaws confined to this area within the OTSG will not result in tube burst or significant tube leakage under MSLB (main steamline break) conditions. Potential leakage from tubes with TEC will be bounded by the MSLB evaluation presented in the SAR. Therefore, allowing TEC flaws in this specific region to remain in service will not alter the conditions assumed in the current ANO–1 accident analysis for OTSG tube failures under postulated accident conditions. In addition, the condition of the OTSG tubes in this region are monitored during regular inspection intervals to assess for evidence of growth. Any growth noted will be addressed through the operational assessment. Therefore, Entergy Operations has determined that the identification, monitoring, assessment, and corrective action programs * * * [associated with the proposed changes] sufficiently support this change request.

Application of the TEC alternate repair criteria will allow leaving tubes with TEC indications found in the defined area of the tubesheets in service while ensuring safe operation by monitoring and assessing the present and future conditions of the tubes. Through the inspection, monitoring, and assessment programs previously mentioned, and the on-line leak detection capabilities available during plant operation, continued safe operation of ANO–1 is reasonably assured.

Therefore, the application of the TEC alternate repair criteria * * * does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The implementation of the TEC alternate repair criteria will not result in any failure mode not previously analyzed. The OTSGs are passive components. The intent of the TS surveillance requirements are being met by these proposed changes in that adequate structural integrity will be maintained. Potential leakage under MSLB conditions will remain bounded by the current SAR analysis. Additionally, the proposed change does not introduce any new modes of plant operation.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The application of an alternate repair criteria for TEC provides adequate assurance with margin that ANO–1 steam generator tubes will retain their structural integrity under normal and accident conditions. The structural requirements of TEC affected tubes have been evaluated satisfactorily and meet or exceed regulatory requirements. The tubing region where TEC occurs is constrained within the tubesheet bore; therefore, there is no additional risk associated with tube rupture. Main steam line break leakage rates for these tubes are reasonably assured to remain within the assumptions of the accident analysis by proper application of the TEC alternate repair criteria program. Because no appreciable impact is evidenced on the tubes structural integrity or its potential leakage rate, the margin to safety remains unaltered.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: June 1, 1999.

Description of amendment request: The amendments would revise the St. Lucie, Units 1 and 2, Technical Specifications (TS), Sections 3.5.2, to allow up to 7 days to restore an inoperable Low Pressure Safety Injection System train to operable status. The amendments would also revise the associated surveillance requirements and TS Bases sections to be consistent with the revisions to TS Section 3.5.2. Minor editorial changes for the specified Recirculation Actuation Signal (RAS) verification test are also included to ensure the terminology used in the specification is consistent with plant design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments for St. Lucie Plant, Units 1 and 2 will extend the action completion/allowed outage time (AOT) for a single inoperable Low Pressure Safety Injection (LPSI) train from 72 hours to 7 days. A LPSI train is designed as a part of each Emergency Core Cooling System (ECCS) subsystem to supplement Safety Injection Tank (SIT) inventory during the early stages of mitigating a Design Basis Accident. As such, components of the LPSI system are not accident initiators, and an extended AOT to restore operability of an inoperable LPSI train would not increase the probability of occurrence of accidents previously analyzed.

The safety analyses for both St. Lucie Units demonstrate that ECCS performance acceptance criteria are satisfied with only one of the two redundant ECCS subsystems operating during the postulated Design Basis Accident. The proposed technical specification revisions involve the AOT for a single inoperable LPSI train, and do not change the conditions assumed for the minimum amount of operating equipment needed for accident mitigation. Therefore, the consequences of an accident previously evaluated will not be significantly increased.

In addition to the preceding evaluation, a Probabilistic Safety Analysis (PSA) was performed to quantitatively assess the risk impact of the proposed amendments. It was concluded from the results of that assessment that the risk contribution of the AOT extension is very small, and that the net impact of the proposed amendment can be risk beneficial.

The editorial corrections proposed for the specified RAS verification test do not alter existing test requirements and have no impact on the accident analyses. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments will not change the physical plant or the modes of plant operation defined in either Facility License. The changes do not involve the addition or modification of equipment nor do they alter the design of plant systems. Therefore, operation of either facility in accordance with its proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The margin of safety associated with the ECCS system is established by acceptance criteria for system performance defined in 10 CFR 50.46. The proposed amendments will not change these acceptance criteria or the operability requirements for equipment that is used to achieve such performance as demonstrated in the plant safety analyses. Moreover, an integrated assessment of the risk impact of extending the AOT for a single inoperable LPSI train has concluded that the risk contribution is very small, LPSI system reliability can potentially be improved, and the net impact of the proposed change can be risk beneficial. The editorial corrections proposed for the specified RAS verification test do not alter existing test requirements and have no impact on the accident analyses. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Sheri R. Peterson.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: May 13, 1999.

Description of amendment request: The proposed amendment would make changes to the TMI–1 Facility Operating License No. DPR–50 Sections 2.a, 2.c.(3), and 2.c.(7) to delete obsolete or outdated portions of the license conditions, and would change the Bases for Technical Specification 3.1.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. Most of the proposed amendment is only administrative; it adds to the Technical Specifications generic references to various documents. These changes have no affect upon the plant design or operation.

The proposed change to the Technical Specification Bases 3.1.1 is the removal of the specified pressurizer code safety valve flow-rate for which no basis could be found and the acceptance of a 3% setpoint drift (as-found) as per the ASME code. The 3% code limit is in accordance with the plant's Inservice Test Program submittal, which was evaluated by the NRC staff for the current 10 year interval and documented under NRC TAC No. M93777. The [c]orrect pressurizer code safety valve flow is provided in the FSAR Table 4.2–8. The proposed change is supported by a revise[d] Startup Accident analysis with the revised safety valve flow-rate at the 3% setpoint drift, which demonstrated that the acceptance criteria for the event were met with considerable margin. The proposed change does not affect the Technical Specification 3.1.1.a, pressurizer code safety valve operable (as-left) requirement of [plus or minus] 1%.

Therefore, operation in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated, because no new failure modes are created by the proposed changes. The administrative changes are cosmetic and have no impact on plant design or operation.

3. Operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. The proposed amendment does not change any operating limits for reactor operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: S. Singh Bajwa.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: May 26, 1999.

Description of amendment request: The proposed amendment would approve changes to the TMI–1 Updated Final Safety Analysis Report (UFSAR) which would allow use of the EPRI (Electric Power Research Institute) Conservative Deterministic Failure Margin (CDFM) methodology for seismic analysis of the portions of the auxiliary steam line located in the Auxiliary, Control and Fuel Handling buildings at TMI–1. The licensee determined that these changes to the UFSAR required prior NRC approval in accordance with 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment, use of CDFM methodology for the analysis of the auxiliary steam system piping, would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The analysis of the auxiliary steam pipe using the CDFM methodology demonstrates that the pipe wall will maintain integrity sufficient to prevent adverse impact on safety related equipment during a safe shutdown earthquake (SSE). The methodology is based on actual earthquake experience data and has been shown to be adequate to demonstrate that piping systems will maintain integrity. The CDFM methodology was developed by experts in the field of seismic analysis and is based on actual earthquake experience and the results of dynamic tests with large seismic accelerations. The methodology provides a conservative mechanism for analytically predicting performance during actual earthquakes, and thus its application would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment, use of CDFM methodology for the analysis of the auxiliary steam system piping, would not create the possibility of a new or different kind of accident from any accident previously evaluateed.

No changes to plant systems, structures or components are proposed and no changes to methods of operation [of the plant] are involved.

3. The proposed amendment, use of CDFM methodology for the analysis of the auxiliary steam system piping, would not involve a significant reduction in a margin of safety.

No changes are proposed to operating limits or safety system settings, or to accident analysis acceptance criteria. The CDFM methodology provides a conservative mechanism for analytically predicting system performance during actual earthquakes. Its application to the auxiliary steam system piping would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: S. Singh Bajwa.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 4, 1999.

Description of amendment request: The amendment revises decay heat removal capability requirements to ensure that at least two active methods of decay heat removal capability will be available during shutdown conditions except when the reactor vessel head is removed and the fuel transfer canal water level is greater than or equal to 23 feet above the reactor vessel flange.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has determined that this Technical Specification Change Request poses no significant hazards as defined by NRC in 10 CFR 50.92. Operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes would remove exceptions for decay heat removal system operability requirements during the time the plant is in a Refueling Shutdown with the RCS loop not filled. The proposed changes effectively add requirements to maintain redundancy in decay heat removal systems.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes would not introduce any new failure modes or modify existing systems.

3. Involve a significant reduction in a margin of safety because the proposed amendment would not involve changes to the safety limits, limiting safety system settings, or operating limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: S. Singh Bajwa.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: April 19, 1999.

Description of amendment request: The proposed amendment would replace the current set of technical specifications for the Millstone Unit 1 plant with a new set of technical specifications for the permanently shutdown status of the plant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, a summary of which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change is consistent with the STS [standard technical specifications]. The relocation of requirements from the MP1 TS [Millstone Unit 1 Technical Specifications] to the licensee controlled documents is consistent with the criteria set forth in 10 CFR 50.36 for the content of Technical Specifications. The removal of definitions, generic LCO [limiting condition for operation] actions and generic surveillance requirements has no impact on facility SSCs [structure, system, and components] or the methods of operation of such SSCs. The deletion of design features and safety limits not applicable to the permanently shutdown and defueled status of MP1 has no impact on the remaining DBA [design-basis accident], the fuel handling accidents in the fuel storage pool. The removal of LCOs and surveillance requirements which are related only to the operation of the nuclear reactor or only to the prevention, diagnosis or mitigation of reactor-related transients or accidents do not affect the applicable DBA previously evaluated. The critical safety functions involving core reactivity control, reactor heat removal, reactor coolant system inventory control and containment integrity are no longer necessary at MP1. The proposed accidents involving damage to the reactor coolant system, main steam lines, reactor core, and the subsequent release of radioactive material are no longer possible at MP1. Fuel pool cooling and makeup related equipment and support equipment (e.g., electrical power systems) are not required to be continuously available since recent analysis demonstrated that there is up to ten days before fuel storage pool boiling to effect repairs, establish alternate sources of make up flow, or establish steady state natural air circulation cooling of the Reactor Building atmosphere and fuel storage pool water in the event of a loss of cooling and makeup flow to the fuel pool. The radioactive decay of the irradiated fuel since shutdown of the reactor in November, 1995 has reduced the consequences of the fuel handling accident to levels well below those previously analyzed. The relevant parameter (water level) associated with the fuel pool provides an initial condition for the fuel handling accident analyses and is included in the PDTS [Permanently Defueled Technical Specifications]. The Reactor Building crane LCOs are retained to preserve the engineered controls which preclude a spent fuel cask drop from occurring over the fuel storage pool. The deletion and modification of provisions of the administrative controls do not directly affect the design of SSCs necessary for safe storage of irradiated fuel or the methods used for handling and storage of such fuel in the fuel pool. The relocation of administrative controls related to quality assurance to the Northeast Utilities Quality Assurance Program is also consistent with the guidance provided in NRC Administrative Letter AL 95–06, "Relocation of Technical Specification Administrative Controls Related to Quality Assurance," dated December 12, 1995. The changes to the administrative controls are administrative in nature and do not affect any accidents applicable to the safe storage of irradiated fuel or the permanently shutdown and defueled condition of the reactor. Therefore, the proposed changes to the MP1 TS do not involve any increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes have no impact on facility SSCs affecting the safe storage of irradiated fuel or on the methods of operation of such SSCs, or handling and storage of such fuel. These changes are consistent with the STS and add to the clarity and ease of use of the proposed PDTS. The removal of Technical Specifications which are related only to the operation of the nuclear reactor or only to the prevention, diagnosis, or mitigation of reactor-related transients or accidents cannot result in different or more adverse failure modes or accidents than previously evaluated because the reactor is permanently shutdown and defueled and MP1 is no longer authorized to operate the plant. The proposed deletion of provisions of the MP1 TS do not affect systems credited in the accident analyses for the fuel handling accident in the fuel storage pool at MP1. The proposed PDTS continue to require proper control and monitoring of safety significant parameters and activities. The proposed restriction on the fuel pool level is fulfilled by normal operating conditions and preserves initial conditions assumed in the analyses of the postulated DBA. Reactor Building crane LCOs are retained from current Technical Specifications to preclude the possibility of a spent fuel cask drop over the fuel storage pool. Therefore, the proposed changes to this section of the MP1 TS would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The deletion of provisions of the MP1 TS, which are not related to the storage of irradiated fuel or which are inconsistent with the scope of the STS, will not affect the analyses of the remaining DBA applicable to MP1. The postulated DBAs involving the reactor are no longer possible due to the permanently shutdown and defueled condition of the reactor. The requirements for SSCs which have been deleted from the MP1 TS are not credited in the existing accident analyses for the remaining applicable postulated accidents and therefore, do not contribute to the margin of safety associated with the accident analysis. Therefore, the proposed changes to this section of the MP1 TS do not involve any reduction in a margin of safety.

Conclusion

NNECO has concluded that the proposed change to the MP1 Technical Specifications does not involve a significant hazards consideration as defined by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: Michael T. Masnik.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: January 25, 1996, as supplemented April 26, 1996, September 12, 1996, March 17, 1997, September 9, 1997, December 30, 1998, and May 19, 1999.

Description of amendment request: The proposed changes extend the allowed outage time for an emergency diesel generator (EDG) system from 7 to 14 days. At FitzPatrick, an EDG system consists of 2 EDGs powering one of two emergency AC power buses. The proposal includes provisions for a Configuration Risk Management Program (CRMP) consistent with the guidance of Regulatory Guide (RG) 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications." The NRC staff had previously published a notice on these topics on March 27, 1996 (61 FR 13532). This revised notice on these topics is required to address revisions made in the licensee's supplemental submittals.

The licensee's January 25, 1996, submittal also proposed two line-item changes to reduce EDG testing at power and to revise AC power requirements for cold shutdown and refueling modes. The two line-item changes have not been affected by the supplemental information provided by the licensee, so the March 27, 1996, proposed finding of no significant hazards considerations remains valid for these items.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the additional changes to the proposed Amendment discussed above, would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Technical Specifications will allow longer Allowed Out of Service Times to perform necessary repair and maintenance on Emergency Diesel Generators while at power. This extended AOT [allowed outage time] will enhance scheduling of preventive maintenance of individual EDGs without significantly increasing the probabilty or consequences of an accident previously evaluated. The risk evaluations for the EDGs determined that the probability of an accident by increasing the AOT for an EDG System from 7 days to 14 days is non-risk-significant.

Increasing the EDG AOT does not involve physical alteration of any plant equipment and does not affect analysis assumptions regarding functioning of required equipment designed to mitigate the consequences of accidents. Further, the severity of postulated accidents and resulting radiological effluent releases will not be affected by the increased AOT for an EDG System.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[The CRMP provides administrative controls to ensure equipment configurations do not result in any significant increase in plant risk. In RG 1.177, the NRC staff established a standard for the content of the CRMP. The licensee's proposal is consistent with that standard, and so does not involve a significant increase in the probability or consequences of an accident previously evaluated.]

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Extending the AOT for an EDG system does not necessitate physical alteration of the plant or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for [the] JAF [FitzPatrick] plant.

[The CRMP provides administrative controls to ensufe equipment configurations do not result in any significant increase in plant risk. These administrative controls do not create any new equipment configurations, or provide for operation of equipment in a new or different manner. Therefore, the CRMP does not create the possibility of a new or different kind of accident from any accident previously evaluated.]

3. Involve a significant reduction in the margin of safety.

As discussed above, a Fitzpatrick evaluation determined that the change in risk associated with extending the AOT for a[n] EDG System is non-risk-significant. In addition, the design provides adequate redundancy for safe shut down during the AOT with an EDG System out of service. This is supported by the LOCA [loss-of-coolant accident] analyses including analyses for long term suppression pool cooling and reactor shutdown cooling.

[The CRMP provides administrative controls to ensure equipment configurations do not result in any significant increase in plant risk. These administrative controls do not create any new equipment configurations, or provide for operation of equipment in a new or different manner. Therefore, the proposed CRMP does not involve a significant reduction in the margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 24, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to correct typographical and editorial errors, and is considered administrative in nature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed editorial and administrative changes involve typographical errors and/or reflect changes that were previously reviewed and approved by the NRC. These changes, therefore, do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

These proposed changes do not involve any potential initiating events that would create the possibility of a new or different kind of accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

These changes are editorial in nature and/or reflect information previously reviewed and approved by the NRC. The proposed changes will make the information in the TS consistent with that already approved by the NRC. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Sacramento Municipal Utility District (the District), Docket No. 50–312, Rancho Seco Nuclear Station, Sacramento County, California

Date of amendment request: April 23, 1999.

Description of amendment request: The proposed amendment would change Permanently Defueled Technical Specification (PDTS) D3/4.1, "Spent Fuel Pool Level," to replace a specific reference to spent fuel pool (SFP) level alarm switches with a generic reference to SFP level instrumentation. This would allow the licensee to replace the old level alarm switches with a new ultrasonic level transmitter.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

PA–193 will not create a significant increase in the probability or consequences of an accident previously evaluated in the SAR [Safety Analysis Report], because the proposed PDTS change is editorial in nature and only changes the type of equipment that is referenced in surveillance specification D4.1.2. The SFP level instrument reference in D4.1.2 is changed from a specific reference (i.e., SFP level alarm switches) to a more generic reference (i.e., SFP level instrumentation). In addition:

1. SFP level monitoring instrumentation is not relied on to mitigate the consequences of the accidents analyzed in the SAR (i.e., Fuel Handling Accident, Loss-Of-Offsite-Power event, Liquid Tank Ruptures, and Decommissioning Accidents),

2. PA–193 does not alter the SFP level monitoring, SFP cooling, or fuel handling functions during the PDM [Permanently Defueled Mode],

3. PA–193 continues to require an 18-month calibration of SFP level instrumentation, and

4. SFP level and alarm indication in the Control Room is maintained with the new SFP level instrumentation. Also, the SFP level alarm setpoints remain unchanged with the new SFP level detection system.

PA–193 will not create the possibility of a new or different type of accident than previously evaluated in the SAR, because SFP level instrumentation does not provide any control function and does not affect any equipment associated with SFP cooling, fuel handling, or inventory control. The proposed wording change to PDTS D4.1.2 accommodates upgrading the SFP level instrumentation without changing the intent of surveillance specification D4.1.2. Also, the new SFP level detection system will (1) maintain the existing SFP level alarm setpoints and Control Room indication features and (2) have no adverse impact on the SFP level monitoring function.

PA–193 will not involve a significant reduction in the margin of safety, because the proposed PDTS change is editorial in nature and necessary and only accommodates replacing an unreliable, antiquated SFP level monitoring system with a new, state-of-the-art, ultrasonic level detection system. The new SFP level detection system will improve the accuracy, reliability, and serviceability of the SFP level monitoring function. The District is maintaining the requirement to perform a[n] SFP level calibration and is only changing the type of equipment that is referenced in D4.1.2 from a specific reference (i.e., SFP level alarm switches) to a more generic reference (i.e., SFP level instrumentation).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Central Library, Government Documents, 828 I Street, Sacramento, California 95814.

Attorney for licensee: Dana Appling, Esq., Sacramento Municipal Utility District, P.O. Box 15830, Sacramento, California 95852–1830.

NRC Section Chief: Michael T. Masnik.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: June 8, 1999 (PCN–495).

Description of amendment requests: The licensee has re-evaluated its small break loss-of-coolant accident (SBLOCA) using ABB Combustion Engineering (ABB–CE) S2M evaluation model. Based on this re-evaluation, the licensee proposes to revise the Technical Specifications (TSs) for the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 to reflect that charging flow is not required to mitigate the effects of the SBLOCA, add a surveillance requirement to verify that each charging pump is operable for boration based on the Inservice Testing Program, increase the maximum as-found lift pressure positive tolerance of main steam safety valves (MSSVs) from +1% to +2% of the lift setting, and list the ABB–CE S2M model as an acceptable method for determining linear heat rate. The licensee will also revise the TS Bases and the Updated Final Safety Analysis Report (UFSAR) to reflect the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The new Small Break Loss Of Coolant Accident (SBLOCA) evaluation model (ABB Combustion Engineering (ABB–CE) S2M SBLOCA evaluation model, CENPD 137 Supplement 2–P–A, "Calculative Methods of the ABB–CE Small Break LOCA Evaluation Model," dated April 1998) more accurately models the heat transfer mechanisms that occur during a SBLOCA. As a result of this modeling improvement, there is no longer a need to credit charging flow during a SBLOCA. The reanalysis, with an as-found tolerance of +2%/−3% of the lift setting on Main Steam Safety Valves (MSSVs) 2(3)–PSV–8401 and 2(3)–PSV–8410 in Table 3.7.1–2, determined that the peak cladding temperature (PCT) that occurs in a SBLOCA is within the acceptance criteria limit of 2200 [degrees] F specified in 10CFR50.46.

This proposed change removes the charging pump Emergency Core Cooling System (ECCS) surveillance requirement from the Technical Specifications (TS) which effectively removes the charging system from the ECCS. This is based on the SBLOCA reanalysis using the new ABB–CE S2M SBLOCA evaluation model. The reanalysis using the new model did not credit charging system flow to the reactor coolant system.

Because this proposed change to remove the charging pump ECCS flow surveillance requirement is based on a reanalysis of the SBLOCA rather than physical changes to the plant or the way it is operated, the probability of the SBLOCA is not affected. The results of the reanalysis demonstrate the consequences of the SBLOCA without charging flow do not exceed the consequences of the limiting LOCA. This is based on the fact that the SBLOCA PCT [peak clad temperature] does not exceed the limiting large break LOCA PCT.

The addition of Surveillance Requirement (SR) 3.1.9.5 to require the charging pump to be tested in accordance with the Inservice Testing (IST) program will ensure that the charging pumps remain capable of performing their emergency boration requirements.

Use of the NRC approved ABB–CE S2M SBLOCA analysis methodology identified in TS 5.7.1.5 for calculating the core operating limits further assures that there is no significant increase in the probability or consequences of any accident.

Therefore, the probability or consequences of any accident previously evaluated are not increased.

(2) Create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

This change does not involve a physical change to the plant, or a change to the way the plant is operated. The as-left tolerance of [plus or minus] 1% on MSSVs 2(3)–PSV–8401 and 2(3)–PSV–8410 in Table 3.7.1–2 is not being changed. The charging system will still be verified capable of meeting its emergency boration requirements.

Use of the NRC approved ABB–CE S2M SBLOCA analysis methodology identified in TS 5.7.1.5 for calculating the core operating limits further assures that there is no increase in the possibility of a new or different kind of accident from any previously evaluated. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

(3) Involve a significant reduction in a margin of safety?

Response: No.

This proposed change to remove the ECCS surveillance requirement for the charging pumps, and increase the as-found tolerance on MSSVs 2(3)–PSV–8401 and 2(3)–PSV–8410, is based on a SBLOCA reanalysis using the new ABB–CE S2M SBLOCA evaluation model. The NRC Safety Evaluation for the ABB–CE S2M evaluation model determined that the new evaluation model contains sufficient conservatism such that an adequate margin of safety exists when the S21VI evaluation model is used. The results of the SBLOCA reanalysis are within the acceptance criteria specified in 10 CFR 50.46.

Testing of the charging pumps per the Inservice Testing Program, combined with the existing Technical Specification 3.1.9—"Boration System—Operating" surveillance requirements ensure that the emergency boration requirements remain met without any reduction in a margin of safety.

Use of the NRC approved S2M ABB–CE SBLOCA analysis methodology identified in TS 5.7.1.5 for calculating the core operating limits further assures that there is no significant reduction in any margin of safety.

Therefore, a significant reduction in margin of safety is not involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 7, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 2.2.1, Reactor Trip System (RTS) Instrumentation Setpoints, and TS 3.3.2, Engineered Safety Features Actuation System (ESFAS) Instrumentation, and the associated Bases, by removing the Total Allowance (TA), Sensor Error (S), and Z terms from the RTS and ESFAS Instrumentation Trip Setpoints Tables. This would replace the five-column methodology with a two-column methodology that consists of the trip setpoint and allowable value columns.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change eliminates the option to evaluate the equation (Z+R+S [is less than or equal to] TA), within 12 hours, from Technical Specification 2.2.1, when the trip setpoint is outside the allowable value limit. The equation established a threshold for submitting a Licensee Event Report. The change does not affect the probability of an accident. The evaluation of the equation is an administrative provision and has no relevance to the initiation of any analyzed event. The consequences of an accident are not affected. The change will not alter assumptions relative to the mitigation of an accident or transient event.

The proposed amendment is a programmatic and administrative change that does not physically alter safety-related systems, nor does it affect the way in which safety-related systems perform their functions. Because the design of the facility and system operating parameters are not being changed, the proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment is a programmatic and administrative change that does not physically alter safety-related systems, nor does it affect the way in which safety-related systems perform their functions. The changes in methods governing normal plant operation are consistent with current safety analysis assumptions. The proposed change eliminates the option to evaluate the equation (described above) within 12 hours, when the trip setpoint is outside the allowable limit. Because the design of the facility and system operating parameters are not being changed, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment is a programmatic and administrative change that provides assurance that plant operations continue to be conducted in a safe manner. As stated above, the proposed amendment does not physically alter safety-related systems, nor does it affect the way in which safety-related systems perform their functions. The proposed change eliminates the option to evaluate the equation (described above) within 12 hours, when the trip setpoint is outside the allowable limit.

The margin of safety is not affected by eliminating an administrative provision in Technical Specifications. The determination for submitting a Licensee Event Report when a trip setpoint is outside the allowable value will be performed with the guidelines of 10CFR50.73. The safety analysis assumptions will still be maintained, thus, no question of safety exists. Because the design of the facility and system operating parameters are not being changed, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority, Docket Nos. 50–260, 50–296, Browns Ferry Nuclear Power Plant, Units 2 and 3. Limestone County, Alabama

Date of amendment request: March 12, 1997 as supplemented by letters dated March 30, 1999, April 23, 1999 and June 18, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications to extend, from 7 days to 14 days, the Allowable Outage Time (AOT) applicable to an inoperable emergency diesel generator.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

No Significant Hazards Consideration Determination

TVA has concluded that operation of BFN in accordance with the proposed change to the TS does not involve a significant hazards consideration. TVA's conclusion is based on it's evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The EDGs are designed as backup AC power sources in the event of loss of off-site

power. The proposed AOT does not change the conditions, operating configurations, or minimum amount of operating equipment assumed in the safety analysis for accident mitigation. No changes are proposed in the manner in which the EDGs provide plant protection or which create new modes of plant operation. In addition, a PSA evaluation concluded that the risk contribution of the AOT extension is non-risk significant. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not introduce any new modes of plant operation or make physical changes to plant systems. Therefore, extension of the allowable AOT for EDGs does not create the possibility of a new or different accident.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

BFN's emergency AC system is designed with-sufficient redundancy such that an EDG may be removed from service for maintenance or testing. The remaining EDGs are capable of carrying sufficient electrical loads to satisfy the UFSAR requirements for accident mitigation or unit safe shutdown.

Increasing the allowable EDG AOT will likely increase EDG unavailability on the average since it expected that the provision would occasionally be used to accommodate unplanned major EDG maintenance. However, a conservative PSA evaluation concluded that the risk contribution of the AOT extension is non-risk significant. For the 12-year EDG PM work activity, it is expected that the proposed TS would actually reduce unavailability since multiple outages would not be necessary to accomplish the maintenance activity.

The proposed change does not impact the redundancy or availability requirements of off-site power supplies or change the ability of the plant to cope with station blackout events. For these reasons, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Athens Public Library, 405 E. South Street, Athens, Alabama.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Drive, ET 10H, Knoxville, Tennessee 37902,

NRC Section Chief: Sheri R. Peterson.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas

Date of amendment request: May 4, 1999, as supplemented by letter dated June 4, 1999.

Brief description of amendments: The proposed license amendments would revise the Technical Specifications for CPSES, Units 1 and 2. Specifically, the changes would revise the surveillance requirements associated with the plant battery and emergency diesel generators, and correct miscellaneous editorial errors that resulted from the issuance of Amendment No. 64. The original application was noticed and published in the **Federal Register** on June 2, 1999 (64 FR 29715). The June 4, 1999, supplement provided proposed additional editorial corrections. The supplemental information is being noticed herein to address the issue of no significant hazards consideration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequence of an accident previously evaluated?

(1) Batteries are used to support mitigation of the consequences of an accident, and are not considered to be an initiator of any previously analyzed accident. The proposed change would not effect the design or performance of the batteries. The allowance to perform the modified performance discharge test in lieu of the service test at any time is permissible since the test's discharge rate envelopes the duty cycle of the service test. Therefore, the allowance for unrestricted substitution of the modified performance discharge test in lieu of the service discharge test does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The diesel generators are used to support mitigation of the consequences of an accident, and are not considered to be an initiator of any previously analyzed accident. The proposed change does not affect the accident analysis assumption that the DG reaches minimum conditions to accept load within 10 seconds. The ability of the DG to maintain steady state operation within 10 seconds is not an accident analysis assumption and is primarily used to identify degradation of governor and voltage regulator performance. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(3) The editorial changes are non-technical and therefore do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

(1) The allowance for unrestricted substitution of the modified performance discharge test in lieu of the service discharge test does not involve any physical alteration to the plant. No new failure mechanisms will be introduced and the change does not affect the ability of the batteries to fulfill their safety-related function. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(2) The separation of the DG start surveillance criteria into those criteria required to be met within 10 seconds, and those criteria required to be met following achievement of steady state conditions, does not involve any physical alteration to the plant. No new failure mechanisms will be introduced and the change does not affect the ability of the DGs to fulfill their safety-related function. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The editorial changes are non-technical and therefore do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

(1) The allowance for unrestricted substitution of the modified performance discharge test in lieu of the service discharge test will not alter any accident analysis assumptions, initial conditions, or results. Consequently, it does not have any effect on the margin of safety. Therefore, this change does not involve a significant reduction in a margin of safety.

(2) The proposed change to delete the requirement to demonstrate that the DG can achieve and maintain steady state operation within 10 seconds is not an accident analysis assumption. The accident analysis assumption that the DG reaches minimum conditions to accept load within 10 seconds is preserved. Consequently, it does not have any effect on the margin of safety. Therefore, this change does not involve a significant reduction in a margin of safety.

(3) The editorial changes are non-technical and therefore do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas

Date of amendment request: May 14, 1999.

Brief description of amendments: The proposed license amendments would change the name of the CPSES licensee from "Texas Utilities Electric Company" to "TXU Electric Company" in the Facility Operating Licenses of CPSES, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequence of an accident previously evaluated?

No. This request involves an administrative change only. The Operating Licenses (OLs) are being changed to reference the new corporate name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed change. Therefore, TU [Texas Utilities] Electric concludes that this request will have no impact on the possibility of any type of accident, whether new, different or previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This request involves an administrative change only. The OLs are being changed to reference the new corporate name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, TU Electric concludes that this request will have no impact on the possibility of any type of accident, whether new, different or previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves an administrative change only. The OLs are being changed to reference the new corporate name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed change will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation. Therefore, this request will not impact margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas

Date of amendment request: May 24, 1999.

Brief description of amendments: The proposed license amendments would remove several cycle-specific parameter limits from the Technical Specifications (TSs) and add parameter limits to the Core Operating Limits Report. In addition, the core safety limit curves would be replaced with safety limits more directly applicable to the fuel and fuel cladding fission product barriers. The affected TSs are: (1) TS 2.0, "Safety Limits (SLs)"; (2) TS 3.3.1, "Reactor Trip System Instrumentation Setpoints"; (3) TS 3.4.1, "RCS pressure temperature and flow from Nucleate Boiling (DNB) Limits"; and (4) TS 5.6.5, "Core Operating Limits Report."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes remove cycle-specific parameter limits from the Technical Specifications, add them to the list of limits contained in the Core Operating Limits Report (COLR), and revise the Administrative Controls section of the Technical Specifications. The proposed changes also insert the original minimum RCS [reactor coolant system] flow limits into the Technical Specifications. The changes do not, by themselves, alter any of the parameter limits. The changes are administrative in nature and have no adverse effect on the probability of an accident or on the consequences of an accident previously evaluated. The removal of parameter limits from the Technical Specifications does not eliminate the requirement to comply with the parameter limits.

The parameter limits in the COLR may be revised without prior NRC approval. However, [Technical] Specification 5.6.5c continues to ensure that the parameter limits are developed using NRC-approved methodologies and that applicable limits of the safety analyses are met. While future changes to the COLR parameter limits could result in event consequences which are either slightly less or slightly more severe than the consequences for the same event using the present parameter limits, the differences would not be significant and would be bounded by the requirement of specification 5.6.5c to meet the applicable limits of the safety analysis.

Based on the above, addition of the minimum RCS flow limit into the Technical Specifications, removal of the parameter limits from the Technical Specifications and the addition of the described limits in the COLR, thus allowing revision of the parameter limits without prior NRC approval, has no significant effect on the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes add the minimum RCS flow limit into the Technical Specifications, remove certain parameter limits from the Technical Specifications and add these limits to the list of limits in the COLR, thus removing the requirement for prior NRC approval of revisions to those parameters. The changes do not add new hardware or change plant operations and therefore cannot initiate an event nor cause an analyzed event to progress differently. Thus, the possibility of a new or different kind of accident is not created.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The margin of safety is the difference between the acceptance criteria and the associated failure values. The proposed changes do not affect the failure values for any parameter. Through the accident analyses, all applicable limits (i.e., relevant event acceptance criteria as described in the NRC-approved analysis methodologies) are shown to be satisfied; therefore, there is no impact on event acceptance criteria. Because neither the failure values nor the acceptance criteria are affected, the proposed change has no effect on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: May 5, 1999.

Description of amendment request: The proposed change modifies the Technical Specifications (TS) to enhance limiting conditions for operation and surveillance requirements relating to the Standby Liquid Control (SLC) system and incorporates certain provisions of NRC's rule on anticipated transients without scram (ATWS) (10CFR50.62). The change involves the use of enriched boron in the SLC system and improves upon other aspects of the TS for this system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes the requirement for standby liquid control (SLC) system operability during refueling and modifies the conditions for allowing the system to be inoperable when shutdown.

This change also permits changing the reactor mode switch to the "Run" or "Startup/Hot Standby" position to test mode switch interlock functions while the SLC system is inoperable. To allow testing of instrumentation associated with the reactor mode switch interlock functions, compensatory measures are provided for assuring that no core alterations are in progress and that all control rods remain fully inserted in core cells containing one or more fuel assemblies. These compensatory measures ensure that no credible mechanisms for an inadvertent criticality are introduced by administratively controlling the required functions of the reactor mode switch interlocks. Control rods are not required to be inserted in empty core cells (i.e., those containing no fuel) because, with one or more cells in this configuration, the overall shutdown margin is actually greater than when all control rods and all fuel assemblies are inserted.

The SLC system is not assumed in the initiation of any previously evaluated events and therefore the proposed change will not significantly increase the probability or consequences of a previously analyzed accident. The SLC system is not assumed to operate in the mitigation of any previously analyzed accidents which are assumed to occur during shutdown or refueling conditions. This change will not result in operation that will significantly increase the probability of initiating an analyzed event. This change will not alter assumptions relative to mitigation of an accident or alter the operation of process variables, structures, systems, or components as described in the final safety analysis report.

VY has determined that the proposed change to increase the standby liquid control system reactivity control capacity using a borated water solution enriched in the boron-10 isotope effectively increases the rate of injection of neutron absorber and does not alter the function of the system, method of operation or dual train configuration. The system response time to an anticipated transient without scram (ATWS) event has been reduced as the increased boron-10 enrichment of the solution provides faster negative reactivity insertion, thus reducing the consequences of the ATWS event. The SLC system is not credited in any of the design basis accident analyses and, as such, is considered to provide only an additional mitigative feature In the event of an accident. The SLC system sodium pentaborate solution concentration and flow rate required by the ATWS rule (10CFR50.62) for reactivity control independent of the control rods are not reduced from the values previously evaluated and presented in the Vermont Yankee Technical Specifications. The addition of enriched boron provides a shutdown margin greater than the previously calculated shutdown reactivity control capacity, and the change does not affect the probability of an ATWS event.

Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change modifies the modes of applicability for the SLC system. Included in this change is allowance to permit changing the reactor mode switch to the "Run" or "Startup/Hot Standby" position to test mode switch interlock functions while the SLC system is inoperable. Precautions are taken when manipulating the mode switch to one of these positions to maintain all control rods fully inserted in core cells containing at least one fuel assembly and to not allow any core alterations. These two provisions eliminate the possibility of introducing any credible mechanisms for inadvertent criticality. The proposed change will not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not eliminate any valid requirements necessary for safe operation.

VY has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change involves a system whose function is to provide an additional (backup) mitigative shutdown capability and no system modifications are made.

The addition of enriched boron does not affect any system or component that could initiate an accident. Thus, no new or different type of accident is created.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

VY has determined that the proposed change does not involve a significant reduction in a margin of safety. The proposed change would remove the backup to the available reactivity control systems when the reactor is in a shutdown or refueling condition. However, this backup is not considered in the margin of safety when determining the required reactivity for shutdown and refueling events. This change will have no impact on any safety analysis assumptions.

Included in this change is allowance to permit changing the reactor mode switch to the "Run" or "Startup/Hot Standby" position to test mode switch interlock functions while the SLC system is inoperable. The margin of safety will not be reduced during such testing of interlock functions with the SLC system inoperable because compensatory measures have been added to ensure that no credible mechanisms for inadvertent criticality exist with the reactor mode switch in other than the "Shutdown" or "Refuel" positions.

The use of enriched boron in the SLC system sodium pentaborate solution actually increases the capability of the SLC system to achieve cold shutdown; thus, no margin of safety is reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: June 3, 1999.

Description of amendment request: The request is to amend the operating license such that the name of the licensee is changed from Washington Public Power Supply System to Energy Northwest. The name of the facility will be changed from WPPS Nuclear Project No. 2 to WNP–2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This request involves an administrative change only. The Operating License (OL) is being changed to reference the new name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed change. Therefore, this request will have no impact on the probability or consequence of any type of accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This request involves an administrative change only. The OL is being changed to reference the new name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, this request will have no impact on the possibility of any new type of accident: new, different, or previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves an administrative change only. The OL is being changed to reference the new name of the licensee.

No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed change will not relax any criteria used to establish safety limits, will not relax any safety system settings, or will not relax the bases for any limiting conditions of operation. Therefore, this request will not impact the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Attorney for licensee: Perry D. Robinson, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 10, 1999.

Description of amendment request: The amendment would revise Technical Specification Table 3.3–4, Functional Unit 7.b., Automatic Switchover to Containment Sump (Refueling Water Storage Tank Level—Low-Low) to reflect the results of calculations that were performed for the associated instrumentation setpoints to consider the density variations due to temperature and boric acid concentration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The protection system performance will remain within the bounds of the previously performed accident analysis. The protection systems will continue to function in a manner consistent with the plant design basis. The proposed changes will not affect any of the analysis assumptions for any of the accidents previously evaluated, since the changes are consistent with the setpoint methodology and ensure adequate margin to the Safety Analysis Limit. The proposed changes will not affect any event initiators nor will the proposed changes affect the ability of any safety related equipment to perform its intended function. There will be no degradation in the performance of nor an increase in the number of challenges imposed on safety related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation capabilities.

Therefore these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no changes in the method by which any safety related plant system performs its safety function. The normal manner of plant operation remains unchanged, and no new equipment is being introduced. The increase in the RWST [refueling water storage tank] Level Low-Low Allowable Value still provides acceptable margin between the nominal Trip Setpoint and Allowable Value while taking into account a temperature and boric acid density correction. The change in Allowable Value does not impact the systems capability to perform an ECCS [emergency core cooling system] switchover from injection to cold leg recirculation since the nominal Trip Setpoint remains the same. The change in Allowable Value also will not affect injection or recirculation of the Containment Spray System.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change in any Safety Analysis Limit. There will be no effect on the manner in which safety limits or Engineered Safety Features Actuation System settings are determined nor will there be any affect on those plant systems necessary to assure the accomplishment of protection functions. Therefore, there will be no impact on any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 11, 1999.

Description of amendment request: The amendment would revise Technical Specification 3.7.1.6, "Steam Generator Atmospheric Relief Valves," and its associated Bases to (1) require four atmospheric relief valves (ARVs) to be operable; (2) eliminate the use of "required" in the action statements; (3) provide action statements to address inoperability of two ARVs and three or more ARVs due to causes other than excessive leakage; and (4) limit the Limiting Condition for Operation (LCO) 3.0.4 exception to one inoperable ARV.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Revising the LCO to require four ARVs to be OPERABLE rather than three; eliminating

"required" from the Actions; adding a new ACTION for three or more ARVs inoperable; and limiting the LCO 3.0.4 exception to one ARV inoperable constitute more restrictive changes from the current Technical Specifications. The proposed changes do not affect initiating mechanisms or mitigation capabilities associated with SGTR (steam generator tube rupture) events analyzed in Chapter 15 of the Updated Safety Analysis Report. The proposed changes impose more stringent requirements to ensure that ARV OPERABILITY is maintained consistent with the safety analysis and licensing basis, and also to address all potential single failure scenarios. Therefore these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

With two ARVs inoperable, the allowed outage time for restoration of all but one ARV to OPERABLE status is changed from 24 hours to 72 hours. The existing specification allows one valve to be inoperable indefinitely and with one required ARV inoperable, the allowed outage time for restoration is seven days. By modifying the LCO to require four ARVs to be OPERABLE, an allowed outage time of 72 hours is more restrictive than the existing specification. Therefore, revising the allowed outage time from 24 hours to 72 hours is acceptable based on a more restrictive allowed outage time from the existing specification and the low probability of an event requiring decay heat removal occurring during the restoration period that would require the ARVs. With respect to Reactor Coolant System cooldown for SGTR accident mitigation, the increase in time is acceptable based on the low probability of a SGTR event occurring during the restoration period and the low probability of a SGTR event in conjunction with the failure of the turbine bypass system (i.e., loss of offsite power). Therefore, this change in allowed outage time does not result in a significant increase in the probability or consequences of previously analyzed accidents.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety related plant system performs its safety function. Revising the LCO to require four ARVs to be OPERABLE rather than three; eliminating "required" from the Actions; adding a new ACTION for three or more ARVs inoperable; and limiting the LCO 3.0.4 exception to one ARV inoperable will not impact the normal method of plant operation. The proposed changes ensure operation of the plant remains consistent with analysis assumptions. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. Based on the above discussion, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any affect on those plant systems necessary to assure the accomplishment of protection functions. The proposed changes ensure operation of the plant consistent with the analysis assumptions. Therefore, there will be no impact on any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notice of Consideration of Issuance of Amendment to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: May 24, 1999.

Description of amendment request: Clarify nonconservative wording of Technical Specification (TS) 3/4,5,1, "Safety Injection Tanks," and revise TS 3/4.5.2, "ECCS Subsystems—Tavg Greater Than or Equal to 325 degrees F," to align their associated surveillance requirements with the intent and design bases requirements intended to be verified.

Date of publication of individual notice in the **Federal Register**: June 10, 1999 (64 FR 31322).

Expiration date of individual notice: June 25, 1999.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: April 12, 1999.

Brief description of amendment: The amendment is a temporary amendment change effective until September 30, 1999, which revises Technical Specification 3.7.8, "Ultimate Heat Sink (UHS)," to permit an 8-hour delay in the UHS temperature restoration period prior to entering the plant shutdown required actions.

Date of issuance: June 4, 1999.

Effective date: June 4, 1999.

Amendment No.: 183.

Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24193).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Commonwealth Edison Company, Docket No. 50–249, Dresden Nuclear Power Station, Unit 3, Grundy County, Illinois

Date of application for amendment: May 5, 1999.

Brief description of amendment: The amendment removes the safety valve function of the Target Rock safety/relief valve from Technical Specifications (TS) Section 3.6.E and moves the reactor coolant system safety valve lift pressure setpoints from TS Section 3.6.E to TS Section 4.6.E.

Date of issuance: June 4, 1999.

Effective date: As of the date of issuance and shall be effective within 30 days from the date of issuance.

Amendment No.: 168.

Facility Operating License No. DPR–25: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 21, 1999 (64 FR 27824).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 4, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: December 7, 1998, as supplemented May 12, 1999.

Brief description of amendment: The amendment revises Technical Specification 4.13A.2.a. to allow a one-time extension of the steam generator (SG) inspection interval. In addition, the amendment would remove the requirement of receiving NRC concurrence on the proposed SG examination program in TS 4.13C.1.

Date of issuance: June 9, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 201.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 10, 1999 (64 FR 6694).

The May 12, 1999, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 29, 1996, as supplemented January 8, 1998.

Brief description of amendment: The proposed changes revise requirements prescribed in Technical Specification Surveillance Requirement 3.3.1.1.8 and allow River Bend to increase the interval between whole core traversing in-core probe to local power range monitor calibrations from 1,000 megawatt days per ton (MWD/T) to 2,000 MWD/T.

Date of issuance: June 11, 1999.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 107.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 23, 1996 (61 FR 55032).

The January 8, 1998, letter provided additional information that did not change the scope of the original application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 11, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 30, 1998.

Brief description of amendment: The amendment revises the definition of quadrant power tilt to clearly allow the use of either the incore detectors or the excore detectors for determining quadrant power tilt.

Date of issuance: June 10, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 197.

Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 10, 1999 (64 FR 6694).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: April 9, 1999.

Brief description of amendment: The proposed amendment modifies the Technical Specifications (TSs) to add Limiting Condition for Operation 3.0.6 and its associated Bases. This change allows equipment that has been removed from service or declared inoperable in compliance with the TS Action statement to be returned to service under administrative controls solely to perform testing required to demonstrate its operability or the operability of other equipment. The proposed change is consistent with TS 3.0.5 as discussed in NUREG–1432, Revision 1, "Standard Technical Specifications for Combustion Engineering Plants." TS 3.0.2 is also modified to reflect that TS 3.0.6 is an exception to TS 3.0.2.

Date of issuance: June 7, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance: June 7, 1999.

Amendment No.: 207.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24196).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana

Date of amendment request: October 1, 1998, as supplemented by letters dated March 25 and May 6, 1999.

Brief description of amendment: The amendment modifies Technical Specification (TS) 3.3.3.7.3 and Surveillance Requirement 4.3.3.7.3 for the broad range gas detection system at Waterford 3. In addition, TS Bases 3/4.3.3.7 has been changed to reflect the new system.

Date of issuance: June 3, 1999.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 151.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 18, 1998 (63 FR 64114).

The March 25 and May 6, 1999, letters provided clarifying information that did not change the scope of the original application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 25, 1999, as supplemented by letter dated April 16, 1999.

Brief description of amendment: The amendment removes certain administrative controls from the Waterford 3 Technical Specifications and instead relies on the requirements of the new Entergy common Quality Assurance Program Manual and the change controls of Title 10 of the *Code of Federal Regulations*, Section 50.54(a).

Date of issuance: June 16, 1999.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 152.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 26, 1999 (64 FR 9192).

The April 16, 1999, letter provided clarifying information that did not change the scope of the original application and expand the initial proposed no significant hazards consideration determination as published in the **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: March 9, 1999.

Brief description of amendment: This amendment modifies the Technical Specifications to increase the inservice inspection interval, and reduces the scope of volumetric and surface examinations for the reactor coolant pump flywheels.

Date of issuance: June 8, 1999.

Effective date: June 8, 1999.

Amendment No.: 232.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24196).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: September 30, 1998.

Brief description of amendment: The amendment corrected the description of the reactor coolant system leakage detection capability of the reactor building atmosphere gaseous radioactivity monitor in the Improved Technical Specification Bases and the Final Safety Analysis Report.

Date of issuance: June 14, 1999.

Effective date: June 14, 1999.

Amendment No.: 179.

Facility Operating License No. DPR–31: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 18, 1998 (63 FR 64116).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal River, Florida 34428.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: December 3, 1996.

Brief description of amendment: The amendment incorporates certain improvements from the Standard Technical Specifications for Babcock and Wilcox plants (NUREG–1430).

Date of issuance: June 15, 1999.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 211.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 18, 1996 (61 FR 66708).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: January 22, 1999.

Brief description of amendment: Revises Technical Specification (TS) Section 4.3, "Fuel Storage," by updating the criticality requirements (k-infinity and U–235 enrichment limits) for storage of fuel assemblies in the spent fuel racks. This change would allow for storage of nuclear fuel assemblies with new designs, including GE–12 with a 10X10 pin array.

Date of issuance: June 8, 1999.

Effective date: June 8, 1999.

Amendment No.: 226.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 24, 1999 (64 FR 9192).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: October 15, 1998, as supplemented on December 21, 1998.

Brief description of amendment: Revise the Technical Specifications (TS) by adding a new TS 3.7.9, "Control Building/Standby Gas Treatment System Instrument Air System," and revises (TS) 3.6.1.3, "Primary Containment Isolation Valves," Condition E.

Date of issuance: June 9, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 227.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 24, 1999 (64FR9193).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: April 19, 1999.

Brief description of amendments: The amendments revise Technical Specification (TS) 3/4.8.1.2, "Electrical Power Systems, Shutdown," and its associated bases to provide a one-time extension of the 18-month surveillance interval for specific surveillance requirements associated with the emergency diesel generators for Units 1 and 2. The surveillances will be performed prior to the first entry into Mode 4 following the current plant shutdown. In addition, for Unit 2 only, a minor administrative change is included to delete a reference to TS 4.0.8, which is no longer applicable. For Unit 1 only, an editorial change is made to add the word "or" to action statement 3.8.1.2.

Date of issuance: June 8, 1999.

Effective date: June 8, 1999, with full implementation within 45 days.

Amendment Nos.: 228 and 211.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 29, 1999 (64 FR 23129).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: May 15, 1998, as supplemented by letters dated September 25, October 13, December 9 (two letters), 1998; January 11, April 1, and April 22, 1999.

Brief description of amendment: This amendment changes Technical Specification (TS) 5.5, "Storage of Unirradiated and Spent Fuel," to reflect a planned modification to increase the storage capacity of the spent fuel pool from 2776 to 4086 fuel assemblies. It also deletes an inappropriate statement and reference within TS 5.5.

Date of issuance: June 17, 1999.

Effective date: This license amendment is effective as of the date of its issuance to be implemented before spent fuel is stored within the new high-density spent fuel rack modules authorized for installation and use by this amendment.

Amendment No.: 167.

Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: November 24, 1998 (63 FR 64973).

The September 25, October 13, December 9 (two letters) 1998, January 11, April 1, and April 22, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia.

Date of application for amendments: January 21, 1999, which superseded application dated July 22, 1998.

Brief description of amendments: The amendments revise the Technical Specifications high radiation trip setpoints for the reactor building and the refueling floor ventilation exhaust monitors.

Date of issuance: June 9, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—216; Unit 2—157.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24200); this supersedes the original notice dated August 26, 1998 (63 FR 45529).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 9, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 30, 1999.

Brief description of amendments: The amendments deleted Technical Specification 3/4.3.3.4, "Meteorological Instrumentation," and its associated Bases. These requirements have already been relocated to the Technical Requirements Manual (TRM). Because the TRM is incorporated within the South Texas Project updated final safety analysis report for the units, changes to the relocated requirements will be controlled by 10 CFR 50.59.

Date of issuance: June 16, 1999.

Effective date: June 16, 1999, to be implemented within 30 days.

Amendment Nos.: Unit 1—111; Unit 2—98.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24201).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: February 16, 1999.

Brief Description of amendments: The amendments revise Technical Specifications (TS) Sections 3.6, 3.9, and 3.16 and the associated Bases for those sections for Units 1 and 2. The changes consolidate the auxiliary feedwater cross-connect requirements by relocating the electrical power requirements from Section 3.16 to Section 3.6. The TS are also clarified with regard to permitting simultaneous entry into certain conditions of operation on Units 1 and 2.

Date of issuance: June 7, 1999.

Effective date: June 7, 1999.

Amendment Nos.: 220 and 220.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24203).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Notice of Issuance of Amendment to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By July 30, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: June 10, 1999.

Brief description of amendments: The amendments revised the Technical Specifications TS 3.7.9, "Control Room Area Ventilation System (CRAVS)," to establish actions to be taken for an inoperable control room ventilation system due to a degraded control room pressure boundary. This revision approves a one-time-only action for two CRAVS trains inoperable due to a degraded control room boundary in Modes 1, 2, 3, and 4, that is to be completed within 24 hours. The applicable TS Bases have been revised to document the TS changes and to provide supporting information.

Date of issuance: June 11, 1999.

Effective date: As of the date of issuance and shall be implemented upon receipt.

Amendment Nos.: Unit 1—185; Unit 2—167.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

The Commission's related evaluation and the amendment, finding of emergency circumstances, consultation with the State of North Carolina, and final no significant hazards consideration determination are contained in a Safety Evaluation dated June 11, 1999.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

Dated at Rockville, Maryland, this 23rd day of June 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–16489 Filed 6–29–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1999, shall be at the rate of 27 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1999, 35.8 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 64.2 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.

Dated: June 21, 1999.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 99–16569 Filed 6–29–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23883]

Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940

June 23, 1999.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June, 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 0506, 450 Fifth Street, NW, Washington, DC 20549–0506.

Pinnacle Fund [File No. 811–4188]

SUMMARY: Applicant seeks an order declaring that it has ceased to be an investment company. On March 9, 1998, applicant transferred all of its assets to Fountain Square Pinnacle Fund, a series of Fountain Square Funds, in exchange for shares of the acquiring fund based on net asset value. Approximately $46,000 in expenses were incurred in connection with the reorganization and were paid by Fifth Third Bank, investment adviser to certain portfolios of Fountain Square Funds and a control affiliate of applicant's investment adviser.

Filing Dates: The application was filed on February 16, 1999, and amended on June 1, 1999.

Applicant's Address: 36 South Pennsylvania Street, Suite 610, Indianapolis, Indiana 46204.

The Crabbe Huson Funds [File No. 811–7427]

The Crabbe Huson Special Fund, Inc. [File No. 811–5302]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On October 19, 1998, The Crabbe Huson Funds transferred all of the assets of (a) six of its series, Crabbe Huson Real Estate Investment Fund, Crabbe Huson Oregon Tax-Free Fund, Crabbe Huson Income Fund, Crabbe Huson Equity Fund, Crabbe Huson Small Cap Fund, and Crabbe Huson Asset Allocation Fund to corresponding series of Colonial Trust III based on net asset value; and (b) its two remaining series, Crabbe Huson U.S. Government Income Fund and Crabbe Huson U.S. Government Money Market Fund to corresponding series of Colonial Trust II based on net asset value. On December 22, 1998, The Crabbe Huson Special Fund, Inc. transferred all of its assets to the Crabbe Huson Special Fund series of Colonial Trust III based on net asset value. Expenses of approximately $1,112,235 were incurred in connection with the reorganizations and were paid by Liberty Financial Companies, Inc., the parent company of applicant's investment adviser, or its affiliates.

Filing Date: Each application was filed on May 25, 1999.

Applicants' Address: 121 SW Morrison, Suite 1400, Portland, Oregon 97204.

Templeton American Trust, Inc. [File No. 811–6204]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 15, 1999, applicant transferred its assets to the Franklin Equity Fund ("Equity Fund") based on net asset value. Expenses of approximately $60,000 were incurred in connection with the reorganization and were paid equally by the Equity Fund, applicant, and their respective advisers.

Filing Date: The application was filed on May 26, 1999.

Applicant's Address: 500 East Broward Boulevard, Ft. Lauderdale, Florida 33394–3091.

Morgan Stanley Dean Witter Capital Appreciation Fund [File No. 811–7333]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 15, 1999, applicant transferred its assets and liabilities to Morgan Stanley Dean Witter American Value Fund based on net asset value. Expenses of approximately $182,000 were incurred in connection with the reorganization and were paid by applicant.

Filing Date: The application was filed on May 25, 1999.

Applicant's Address: Two World Trade Center, New York, New York 10048.

Neuberger & Berman Municipal Securities Trust [File No. 811–5107]

Neuberger & Berman Municipal Money Fund [File No. 811–4102]

Neuberger & Berman Ultra Short Bond Fund [File No. 811–4812]

Neuberger & Berman Limited Maturity Bond Fund [File No. 811–4560]

Neuberger & Berman Cash Reserves [File No. 811–5467]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On July 2, 1993, applicants transferred all of their assets and liabilities to corresponding series of Neuberger & Berman Income Funds based on net asset value per share. Each applicant bore its expenses related to the reorganization which amounted to approximately $28,000 for Neuberger & Berman Municipal Securities Trust, $30,000 for Neuberger & Berman Municipal Money Fund, $40,000 for Neuberger & Berman Ultra Short Bond Fund and Neuberger & Berman Limited Maturity Bond Fund, respectively, and $50,000 for Neuberger & Berman Cash Reserves.

Filing Dates: The applications were filed on June 19, 1998, and were amended on May 28, 1999.

Applicants' Address: 605 Third Avenue, New York, New York 10158–0180.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16578 Filed 6–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41546; File No. SR–Amex–99–15]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing of Amendment No. 2, by the American Stock Exchange LLC Relating to the Listing and Trading of Notes and Warrants on the 10 Uncommon Values Index of Lehman Brothers Inc.

June 22, 1999.

I. Introduction

On April 19, 1999, the American Stock Exchange LLC ("Exchange" or "Amex"), submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the listing and trading of notes and warrants on the 10 Uncommon Values Index of Lehman Brothers Inc. ("Lehman"). The Exchange filed Amendment No. 1[3] to the proposed rule change on May 17, 1999. The proposed rule change, as amended, was published for comment in the **Federal Register** on June 1, 1999.[4] The Commission received no comments on the proposal. On June 21, 1999, the Exchange submitted Amendment No. 2 to the proposed rule change.[5] This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange proposes to trade stock index warrants, pursuant to Section 106, and index term notes, pursuant to Section 107, of the *Amex Company Guide* based upon Lehman's 10 Uncommon Values® Index, an index consisting of ten actively traded equity securities ("Index"). The Warrants (as hereinafter defined) and Notes (as hereinafter defined) will be cash-settled. The Index will be equal-dollar weighted with respect to the ten component stocks and, under Amex rules, is considered a narrow-based stock index. The issuer of the Warrants and Notes will be Lehman Brothers Holdings Inc. ("LB Holdings").

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Scott Van Hatten, Amex to Richard Strasser, Division of Market Regulation ("Division"), Commission, dated May 14, 1999 ("Amendment No. 1"). Amendment No. 1 clarifies that the Notes (as hereinafter defined) will be principal protected if held to maturity or if called by the issuer. Amendment No. 1 also provides three sample calculations of payment amounts that investors holding Notes may receive.

[4] *See* Securities Exchange Act Release No. 41436 (May 21, 1999), 64 FR 29367.

[5] Letter from Scott Van Hatten, Amex to Nancy Sanow, Division, Commission, dated June 21, 1999 ("Amendment No. 2"). Amendment No. 2 clarifies that the Index will be defined as a Stock Index Industry Group, commonly referred to as a narrow-based index, under Amex Rule 900C(b)(1) and that LB Holdings satisfies the net worth and earnings requirements set forth in Sections 106 and 107 of the *Amex Company Guide*. The Exchange also represents that if the Index is comprised of foreign securities or American Depository Receipts ("ADRs"), at any time during the term of the proposed Warrants, that: (i) Are not subject to comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, those foreign securities or ADRs will not, in the aggregate, represent more than 20% of the weight of the Index, unless the index is otherwise approved for warrant or option trading. Lastly, Amendment No. 2 clarifies the procedures for valuing foreign securities.

A. Index Design and Stock Selection Criteria

The securities comprising the Index will be selected annually by the Investment Policy Committee ("Committee") of Lehman's Equity Research group, a division of Lehman, and announced on or about July 1 of each year. The Committee will select ten securities that it believes will outperform the stock market during the succeeding twelve months. To determine the ten selections each year, various Lehman's Equity Research analysts appear before the firm's Investment Policy Committee to present their proposed equity selections to be included in the Index for the next twelve months. The Committee analyzes and screens each proposal after which the list of stocks is reviewed to determine those stocks that offer the best potential to outperform the market. The Committee then selects those stocks that it believes will be the best ten stocks for the next twelve months' 10 Uncommon Values Index. Immediately thereafter, on or about July 1 of each year, the ten securities to be included in the Index for a twelve month period are announced. Each subsequent year's 10 Uncommon Value stocks ("New Components") will replace the preceding year's 10 Uncommon Value stocks ("Old Components") in their entirety in the Index.[6] The New Components will be added to the Index on or about July 1 ("Announcement Date") of each year, and the Old Components will be removed from the Index on the last business day immediately preceding the Announcement Date ("Closing Date").

Consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading of the Notes and Warrants, providing guidance on member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines. Lastly, as with other structured products, the Exchange will closely monitor activity in the Notes and Warrants to identify and deter any potential improper trading activity in the Notes and Warrants.

1. Description of the Index Notes

Under Section 107 of the *Amex Company Guide*, the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[7] The Amex now proposes to list for trading under Section 107 of the *Amex Company Guide*, indexed term notes ("Notes") whose value in whole or in part will be based on the Index.

The Notes will be debt securities and will conform to the listing guidelines under Section 107A of the *Amex Company Guide*. Consistent with Section 107A of the *Amex Company Guide*, the Notes will provide for a maturity of not less than one nor more than ten years from the date of issue. LB Holdings anticipates that the Notes will provide for a maturity of five years. The price of each Note may be par or less than par, in which case the Notes will accrue original issue discount. The Notes may or may not provide for periodic coupon payments (at a fixed rate).

Beginning on a specified date ("Conversion Date"), holders have the right to tender the Notes in exchange for the cash equivalent ("Exchange Amount") of the current component securities in the Index in proportion equal to their weighting in the Index, according to the following formula:

$(Par/Strike \times Index_f)$

Where:

$Index_f$: Closing Price of the Index on the earlier of Conversion Date or Maturity

$Index_i$: Initial Index Value (*i.e.*, 100)

Strike: Specified % of $Index_i$ (anticipated by LB Holdings to be 125%)

Investors in the Notes may receive varying payment amounts depending upon whether the notes are held to maturity, called by the issuer prior to maturity, or redeemed by the investor prior to maturity. Below are examples of calculations of payment amounts that investors holding the Notes may receive.[8]

To determine payment amounts given each of the three separate events, a Par Value (Issue Price) of $1000, Strike of 125, and Initial Value of the Index of 100 are assumed. The maturity of the Notes is assumed to be five years and the issuer may not call the Notes prior to three years after their issuance (*i.e.*, the Notes will have a non-call life of three years).

1. The investor holds the Notes until maturity. At maturity, the investor will receive the greater of:

Par ($1000), and

(Par/Strike × Final Index Value)

[6] The Committee may select an Old Component to be a New Component, but the Old Component would be reevaluated and would have to satisfy the eligibility standards for index components outlined *infra* in Section 11.C.

[7] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[8] *See* Amendment No. 1, *supra* n. 3.

2. The investor converts the Notes prior to maturity. Investors may convert their Notes at any time after the one-month anniversary of the issue date in exchange for cash. The amount the investor would receive in the event of ealry conversion is determined by the following formula:

(Par/Strike × Current Index Value)

3. The issuer has the right to call the notes at any point beginning three years after the trade date by publishing such call with 30-days notice to investors. If the issuer calls the notes, the investor will receive the greater of Par and the Exchange Amount.

Example 1: Assume an Index value equal to 150 (*i.e.*, greater than the initial Index value of 100). Payment to investors under the above three events would be as follows:

1. Greater of [$1000 and ($1000/125×150)]=$1,200
2. ($1000/125×150)=$1,200
3. ($1,000/125×150)=$1,200

Example 2: Assuming an Index value of 90 (*i.e.*, less than the initial index value of 100). Payment to investors under the above three events would be as follows:

1. Greater of [$1,000 and ($1,000/125×90)]=$1,000
2. ($1,000/125×90)=$720
3. The Note may or may not be called by the issuer in this case. If the Note is called, payment would equal Par ($1,000).

Beginning on a specified date the issuer may or may not have the right to call all of the Notes at a call price equal to the issue prices of the Notes plus accrued original issue discount, if any, to the call date. If the market value of the basket of component securities on the last trading before the issuer sends its call notice is equal to or greater than the call price, the issue will deliver to holders the Exchange Amount instead. If the issuer notifies holders it will be calling the Notes for the Exchange Amount, a holder may still exercise its exchange right on any day prior to the call date. If the Notes have not been exchanged or called prior to maturity, they will be paid in cash at maturity in an amount equal to par plus accrued interest, if any.

LB Holdings, the issuer of the Notes, satisfies the criteria of Section 107 of the *Amex Company Guide*. Specifically, LB Holdings has assets in excess of $100 million and stockholders' equity of at least $10 million and satisfies the earnings criteria set forth in Section 101 of the *Amex Company Guide*. If LB Holdings is unable to satisfy the minimum earnings requirements of Section 101 prior to issuance of the proposed warranties and notes, the Exchange generally will require LB Holdings to have the following: (i) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million.

2. Exchange Rules Applicable to the Index Notes

Because the Notes are linked to a basket of equity securities, the Amex's existing equity floor trading rules and standard equity trading hours (9:30 a.m. to 4:00 p.m. Eastern Time) will apply to the trading of the Notes. Pursuant to Exchange Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to effecting a transaction in the Notes. Further, the Notes will be subject to the equity margin rules of the Exchange.[9]

B. Description of Index Warrants

Under Section 106 of the *Amex Company Guide*, the Exchange may approve for listing and trading index warrants. The Amex proposes to list for trading, under Section 106 of the *Amex Company Guide*, index warrants ("Warrants") whose value in whole or in part will be based upon the Index. The Warrants will conform to the listing guidelines under Section 106 of the *Amex Company Guide*. Specifically, the Warrants will have a term of between one and five years from date of issuance (LB Holdings anticipates a term of three years), a minimum public distribution of 1,000,000 Warrants together with a minimum of 400 public Warrantholders, and an aggregate market value of $4,000,000. The Warrant will be cash-settled in U.S. dollars. Further, pursuant to Section 106(e), the Exchange expects that the terms of the Warrants for which 25% or more of the value of the Index is represented by securities that are traded primarily in the United States must provide that opening prices of the stocks traded primarily in the United States which comprise the Index will be used to determine: (i) The final settlement value (*i.e.*, the settlement value for Warrants that are exercised at expiration), and (ii) the settlement value for such Warrants that are exercised on either of the two business days preceding the day on which the final settlement value is to be determined. Under Section 106(f) the Warrants must include in their terms provisions specifying: (i) The time by which all exercise notices must be submitted, and (ii) that all unexercised Warrants that are in the money will be automatically exercised on their expiration date or on or promptly following the date on which such Warrants are delisted by the Exchange (if the Warrant have not been listed on another organized securities market in the United States).

Under Section 106(g), at any time during the term of the Warrants, if the Index is comprised of foreign securities or ADRs that: (i) Are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, those foreign securities or ADRs shall not, in the aggregate, represent more than 20% of the weight of the Index, the Index is otherwise approved for warrant or option trading.

Under Section 106(h), the Exchange expects that the issuer of the Warrants either will make arrangements with transfer agents to advise the Exchange immediately of any change in the number of Warrants outstanding due to the early exercise of the Warrants or will provide this information themselves. If 25% or more of the value of the Index is represented by securities traded primarily in the United States, such notice shall be filed with the Member Firm Regulation Division of the Exchange no later than 4:30 p.m. New York City time, on the date when the settlement value for such Warrants is determined. Such notice shall be filed in such form and manner as may be prescribed by the Exchange from time to time.

1. Expiration and Settlement of Index Warrants

The Warrants will be direct obligations of their issuer, LB Holdings, subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). LB Holdings anticipates that the Warrants will be American style. Upon exercise, or at the Warrant's expiration date (if not exercised prior to such date), the holder of a Warrant structured as a "put" will receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated index level (*i.e.*, the put strike). Conversely, holders of a Warrant structured as a "call" will, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated index level (*i.e.*, the call strike). If "out-of-the-money" at the time of expiration, then the Warrants will expire worthless. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to the specific risks associated with the Warrants.

2. Exchange Rules Applicable to Index Warrants

The listing and trading of Warrants on the Index will comply in all respects with Exchange Rules 1100 through 1110 for the trading of stock index and currency warrants. These rules cover issues such as exercise and position limits and reporting requirements. Surveillance procedures currently used to monitor trading in each of the Exchange's other index warrants will also be used to monitor trading in the Warrants. The Index will deemed to be a Stock Index Industry Group (defined below) under Exchange Rule 900C(b)(1). The Exchange expects that the review required by Exchange Rule 1107(b)(ii) will result in a position limit of 9,000,000 Warrants.

C. Eligibility Standards for Index Components

Components stocks of the Index will be required to meet the following criteria: (1) A minimum market value of at least $75 million, except that the lowest weighted components security in the Index may have a market value of $50 million; (2) trading volume in each of the last six months of not less than 1,000,000 shares, except that the lowest weighted component security in the Index may have a trading volume of 500,000 shares or more in each of the last six months; (3) 90% of the weight of the Index and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; (4) all component stocks will either by listed on the Amex, the New York Stock Exchange ("NYSE"), or traded through the facilities of the Nasdaq Stock Market ("Nasdaq") and reported National Market System securities ("Nasdaq/NMS securities"); and (5) if the Index is comprised of foreign securities or ADRs, at any time during the term of the Warrants, that: (i) Are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, those foreign securities or ADRs will not, in the aggregate, represent more than 20% of the weight of the Index, unless such index is otherwise approved for warrant or option trading.

D. Index Calculation

The Index will be calculated using an "equal-dollar weighting" methodology designed to ensure that each of the component securities is represented in an approximately "equal" dollar amount in the Index. To create the Index, a portfolio of equity securities will be established by the LB Holdings representing an investment of $10,000 in each component security (rounded to the nearest whole share). The value of the Index will equal the current market value of the sum of the assigned number of shares of each of the component securities divided by the current Index divisor. The Index divisor will initially be set to provide a benchmark value of 100.00 at the close of trading on the day proceeding the establishment of the Index.

Lehman will serve as calculation agent ("Calculation Agent") for the Notes and Warrants. As Calculation Agent for the Notes, Lehman will determine the amount investors receive at the stated maturity of the Notes or on their earlier redemption of repurchase by LB Holdings. As calculation Agent for the Warrants, Lehman will determine the amount investors receive on exercise of the Warrants by determining the cash settlement amount.

The Exchange will calculate the value of the Index and, similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The number of shares of each component stock in the Index will remain fixed between Announcement Dates except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. The number of shares of each component stock may also be adjusted, if necessary in the event of a merger, consolidation, dissolution or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of a foreign issuer or the imposition of certain foreign taxes on shareholders of a foreign issuer. Shares of a component stock may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component stock into another class of security, the termination of a depositary receipt program or the spin-off of a subsidiary. If the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act[10] Specifically, the Commission finds that the listing and trading of Warrants and Notes on the Index will promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with a portion of the equity markets[11] and promote efficiency, competition and capital formation.[12]

Nevertheless, the trading of Warrants and Notes on the Index raised several concerns related to the design and maintenance of the Index, customer protections, surveillance and market impact. The Commission believes, however, for the reasons discussed below, that the Amex has adequately addressed these concerns.

A. Design and Maintenance of the Index

The Commission finds that it is appropriate and consistent with the Act for the Amex to consider the Index as a stock index industry group ("Stock Index Industry Group") under Rule 900C(b)(1) (*i.e.*, a "narrow-based" stock index) for purposes of margin requirements for the Notes and Warrants as well as for other purposes under the Exchange's rules. The Index will be composed of ten actively traded common stocks that will be listed on the Amex or NYSE or through the facilities

[9] *See* Exchange Rule 462.

[10] 15 U.S.C. 78f(b)(5).

[11] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult for a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighted by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[12] *See* 15 U.S.C. 78c(f).

of Nasdaq and reported as Nasdaq/NMS securities.

The Commission notes that the Amex has implemented several safeguards in connection with the listing and trading of the Warrants and Notes that will serve to ensure that the Index's component securities are relatively highly capitalized and actively traded. In this regard, the Amex represents that the Index and its component stocks will meet the criteria of Sections 106 and 107 of the *Amex Company Guide* and the generic criteria for the component securities of a Stock Index Industry Group prior to trading.

The Commission further notes that the issuer, LB Holdings, satisfies the net worth and earnings requirements set forth in Sections 106 and 107 of the *Amex Company Guide*. Specifically, for purposes of the proposed Warrants and with respect to Section 106, LB Holdings satisfies subparagraph (a), governing the size and earnings requirements of the Warrant's issuer. Pursuant to paragraph (a) of Section 106, LB Holdings possesses a minimum tangible net worth in excess of $250,000,000, and otherwise substantially exceeds the earnings requirements set forth in Section 101(A) of the *Amex Company Guide*.[13] In the event that the issuer's minimum tangible net worth changes prior to the issuance of the Warrants, or, in the alternative, prior to the Exchange's listing of the Warrants, LB Holdings will be required to have: (i) A minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Section 101(A), and (ii) not to have issued warrants where the original issue price of all of its index and currency warrant offerings (combined with index and currency offerings of its affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of its net worth.

Moreover, the Commission notes that the Exchange has represented that the Warrants will conform to the listing guidelines under Section 106 of the *Amex Company Guide*. Specifically, the Warrants will have a term of between one and five years from the date of their issuance, a minimum public distribution of 1,000,000 Warrants together with a minimum of 400 public Warrantholders, and an aggregate market value of $4,000,000. The Warrants will be cash-settled in U.S. dollars. Further, pursuant to Section 106(e), the Exchange expects that the terms of the Warrants for which 25% or more of the value of the Index is represented by securities that are traded primarily in the United States must provide that opening prices of the stocks traded primarily in the United States that comprise the Index will be used to determine: (i) The final settlement value (*i.e.*, the settlement value for Warrants that are exercised at expiration), and (ii) the settlement value for such Warrants that are exercised on either of the two business days preceding the day on which the final settlement value is to be determined. Under Section 106(f), all Warrants will be required to include in their terms provisions specifying: (i) The time by which all exercise notices must be submitted, (ii) that all unexercised Warrants that are in the money will be automatically exercised on their expiration date or on or promptly following the date on which such Warrants are delisted by the Exchange (if the Warrants have not been listed on another organized securities market in the United States).

With respect to the listing of the Notes, the Commission also notes that LB Holdings satisfies the requirements of Section 107 of the *Amex Company Guide*. Specifically, LB Holdings has assets in excess of $100 million and stockholders' equity of at least $10 million and satisfies the earnings criteria set forth in Section 101 of the *Amex Company Guide*. Should LB Holdings be unable to satisfy the minimum earnings requirements of Section 101 prior to issuance of the proposed Warrants and Notes, the Exchange generally will require LB Holdings to have the following: (i) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million.

In addition, the Exchange has indicated that the Index's component stocks must meet the following criteria: (1) A minimum market value of at least $75 million, except that the lowest weighted component security in the Index may have a market value of $50 million; (2) trading volume in each of the last six months of not less than 1,000,000 shares, except that the lowest weighted component security in the Index may have a trading volume of 500,000 shares or more in each of the last six months; (3) 90% of the weight of the Index and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; (4) all component stocks will either be listed on the Amex, the New York Stock Exchange NYSE, or traded through the facilities of the Nasdaq and reported as Nasdaq/NMS securities; and (5) if the Index is comprised of foreign securities or ADRs, at any time during the term of the Warrants, that: (i) Are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, those foreign securities or ADRs will not, in the aggregate, represent more than 20% of the weight of the index, unless such Index is otherwise approved for Warrant or option trading.

The Commission notes that the Index will be calculated using "equal-dollar" weighting methodology designed to ensure that each component security is represented in an approximately "equal" dollar amount in the Index. Although the Index will not be rebalanced quarterly,[14] the Commission notes that the component securities are replaced entirely each year. In the unusual situation where a component stock is carried over to the following year's Index, that security most again meet the eligibility criteria for component stocks.

B. Customer Protection

The Commission notes that the rules and procedures of the Exchange adequately address the special concerns relating to the trading of Warrants and Notes on the Index. Specifically, the applicable suitability, account approval, disclosure and compliance requirements of the Amex listing standards governing warrants and notes satisfactorily address potential concerns. Moreover, the Amex plans to distribute a circular to its membership calling attention to specific risks associated with Warrants and Notes on the Index. Further, pursuant to sections 106 and 107 of the *Amex Company Guide*, only those issuers capable of meeting the Amex's issuer standards are be eligible to issue Warrants and Notes. These standards, among other things, help to ensure that the issuer is sufficiently creditworthy to be able to meet its obligations at the expiration of the Warrants and Notes.

C. Surveillance

In evaluating new derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the exchange sponsoring the derivative instrument has the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. It is for this reason that the Commission requires that there be a comprehensive surveillance agreement in place between an exchange listing or trading a derivative product and the primary exchanges trading the stocks underlying the derivative instrument to enable regulators to monitor and surveil trading in the derivative product and its underlying stocks.[15] Such agreements facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. In this regard, the Commission notes that the Exchange and the other markets for the stocks underlying the Index—the NYSE and the NASDR (the self-regulatory organization that oversees Nasdaq)—are members of the Intermarket Surveillance Group, which provides for the sharing of all necessary surveillance information among members.

In addition, the Exchange has represented that if any foreign securities or ADRs represented in the Index are not subject to a comprehensive surveillance agreement, those foreign securities or ADRs will not, in the aggregate, represent more than 20% of the weight of the Index.

The Commission notes that certain concerns are raised when a broker-dealer, such as Lehman, is involved in the development, maintenance, and calculation of a stock index that underlies an exchange-traded derivative product. In this case, not only is LB Holdings the issuer of the Notes and Warrants, but also its affiliate, Lehman, will develop the Index, replace component stocks annually, and serve as Calculation Agent. For several reasons, however, the Commission believes that the Exchange has adequately addressed these concerns with respect to Warrants and Notes on the Index.

First, Lehman has established informational barriers around the Lehman personnel who have access to information regarding changes and adjustments to the Index.[16] The Commission believes that these barriers will help prevent the improper use of material non-public information concerning the Index and strengthen the proposal by maintaining the integrity of changes made to the Index. Second, Lehman currently has in place internal review procedures to monitor trading activity in Index component securities, particularly prior to the announcement of New Component Stocks. Finally, the Exchange's existing surveillance procedures will apply to the Warrants and Notes on the Index and should provide the Exchange with adequate information to detect and deter trading abuses.

With respect to Lehman's serving as Calculation Agent, the Commission indicates that the prospectuses for the Notes and Warrants will inform investors of the formulas used to calculate the payout on the conversion, redemption, repurchase, maturity of the Notes, or on the exercise of the Warrants. Moreover, the Exchange has represented that Lehman or the Exchange will, upon request, provide investors with the values used in the formula to determine payout amounts.[17] Finally, the Commission notes that the Exchange is responsible for monitoring and surveilling trading in the Index and component stocks to detect and deter trading abuses, including at the time of the derivative instrument's stated maturity. In sum, the Commission believes that the procedures discussed above will help to ensure that Lehman does not unfairly use any information regarding the Index that it obtained through its role in developing and maintaining the Index or does not unfairly administer calculating the Index.

For the reasons discussed above, the Commission finds good cause to approve the proposed rule change and Amendment Nos. 1 and 2 thereto prior to the thirtieth day after the date of publication of notice of their filing in the **Federal Register**. Specifically, Amendment No. 2 clarifies (i) the method by which foreign components will be valued; (ii) that LB Holdings, the issuer, satisfies all the net worth and earnings requirements set forth in Section 106 and 107 of the *Amex Company Guide;* (iii) that the Warrants will conform to the listing guidelines of Section 106 of the *Amex Company Guide*; and (iv) the procedures by which component securities will be replaced or supplemented in the event of a merger, consolidation, spin-off, termination of an ADR program, or conversion into another class of securities.[18] Amendment No. 2 also states that the Index will not be rebalanced on a quarterly basis. The Commission believes that completely reconstituting the Index each year results in an annual rebalancing and that quarterly rebalancing is not practicable or in the public interest given the nature of the Index. The Commission received no comments on the proposed rule change as originally published and believes that no new regulatory issues are presented in Amendment No. 2.

Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2)[19] of the Act, to find good cause exists to approve the proposed rule change and Amendment Nos. 1 and 2 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Security, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

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[13] The earnings requirements set forth in Section 101A of the *Amex Company Guide* require that the issuer have pre-tax income of least $750,000 in its last fiscal year, or in two of its last three fiscal years.

[14] *See* Commentary .02(b) to Amex Rule 901(C), which requires that, for the Amex to list options on Stock Index Industry Groups under Rule 19b–4(e) under the Act, 17 CFR 240.19b–4(e) an equal-dollar weighted index must be rebalanced quarterly.

[15] The Commission believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance agreement. A comprehensive surveillance agreement should provide its parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a comprehensive surveillance agreement stipulate that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity and customer identity. *See* Securities Exchange Act Release No. 31529 (Nov. 27, 1992), 57 FR 57248 (Dec. 3, 1992).

[16] Details of the Lehman informational barriers have been submitted to the Commission under separate cover. *See* Letter from John R. Wickman, Equity Derivatives Managing Director, Lehman, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 18, 1999.

[17] Telephone conversation between Nancy J. Sanow, Senior Special Counsel, Division, Commission and Scott Van Hatten, Amex, on June 22, 1999.

[18] The Exchange will adhere to the following procedures: (i) In the event of a merger or consolidation (whether between component stocks or between one component stock and one non-component stock), the original component stock will be replaced by the new security; (ii) in the event of a conversion into another class of security, the original component stock will be replaced by the new security; (iii) in the event of a spin-off of a subsidiary, both the subsidiary issue and the original parent security will be included in the Index; and (iv) should a depositary receipt program be terminated, for any reason, after an ADR had already been included in the Index, the underlying foreign stock will be included in the Index. No attempt will be made to find a replacement stock or to otherwise compensate for a stock which is extinguished due to a bankruptcy or similar circumstances.

[19] 15 U.S.C. 78s(b)(2).

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submission should refer to File No. SR–Amex–99–15 and should be submitted by July 21, 1999.

For the foregoing reasons, the Commission finds that the Amex's proposal to list and trade Warrants and Notes on the Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–99–15), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16645 Filed 6–29–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41550; File No. SR–MBSCC–99–4]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying MBSCC's Schedule of Charges Relating To the Electronic Pool Notification Service

June 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice if hereby given that on April 30, 1999, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission"), the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies the schedule of charges relating to MBSCC's Electronic Pool Notification ("EPN") service.

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add new fees for dial-up circuits and modems relating to MBSCC's EPN service. EPN participants currently are required to own the circuits and modems necessary for dial-up connectivity to EPN. Participant ownership of circuits and modems at EPN data centers makes installation, service, and deinstallation cumbersome because circuit providers and modem vendors typically require the participant to become involved in the process. The proposed rule change will allow MBSCC to own the dial-up circuits and modems at EPN data centers which MBSCC believes will streamline the process of installation, service, and deinstallation.

The new fees will offset the cost of MBSCC ownership of the dial-up circuits and modems. The new dial-up circuit wage fee will be $30.00 per month (per circuit to MetroTech and Water Street) and the new dial-up modem usage fee will be $30.00 per month (per circuit to MetroTech and Water Street) and the new dial-up modem usage fee will be $15.00 per month (per modem at MetroTech and Water Street). These fees are in addition to the existing monthly access fees that cover port charges for dial-up connectivity to the EPN data centers.

EPN participants that currently own dial-up modems and circuits will not be affected by the new fees. Participants with new dial-up connectivity to EPN will not be required to purchase circuits or modems for the EPN data centers but will be charged the new fees.

The proposed rule change also makes a conforming change to the statement in the EPN schedule of charges that "telecommunication circuit charges from Sector (or vendor of choice) will apply." The word "will" is changed to "may" because EPN participants will not receive circuit charges from vendors when MBSCC owns the circuit.

The proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among MBSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[4] of the Act and pursuant to Rule 19b–4(f)(2)[5] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by MBSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–94–4 and should be submitted by July 21, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McMcFarland,

Deputy Secretary.

[FR Doc. 99–16577 Filed 6–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41549; File No. SR–NYSE–99–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material

June 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 under the Act,[2] notice is hereby given that on May 17, 1999, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 23, 1999, the Exchange filed with the commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise Exchange Rule 451, "Transmission of Proxy Material" and Exchange Rule 465, "Transmission of Interim Reports and Other Material" (collectively, the "Rules"), and section 402.10 of the Exchange's Listed Company Manual. In particular, the Exchange seeks to amend the guidelines in the Rules that govern the reimbursement of NYSE member organizations for out-of-pocket expenses incurred in processing and delivering proxy materials (Exchange Rule 451) and other issuer materials (Exchange Rule 465) to security holders whose securities are held in street name.[4] These reimbursement guidelines, which are currently effective through August 31, 1999, comprise the "Pilot Fee Structure."[5] The Exchange also proposes to define the term "nominee" for purposes of determining the nominee coordination fee.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In its recent order extending the effectiveness of the Pilot Fee Structure, the Commission requested that the Exchange "carefully review the Pilot Fee Structure and make changes where necessary to develop an improved fee structure."[6] Pursuant to the Commission's request, the Exchange now proposes to revise the rates of reimbursement in the Pilot Fee Structure. The Exchange also proposes to extend the effectiveness of the Pilot Fee Structure from August 31, 1999, through August 31, 2001.

Substantively, the proposed rule change would amend the Exchange's Rules regarding reimbursement of NYSE member organizations for the expenses incurred in connection with proxy solicitations and other mailings by:

- Reducing the suggested rate of reimbursement from $0.50 to $0.45 for each set of proxy materials (*i.e.*, proxy statement, form of proxy, and annual report when mailed as a unit).
- Reducing from $20 to $18 the suggested per-nominee compensation of intermediaries that coordinate the proxy and mailing activities of multiple nominees ("nominee coordination fee").
- Limiting the universe of "nominees" in respect of whom the $18 nominee coordination fee is payable to "any entity whose name and participant account number both appear on a listing that accompanies and is referred to in an omnibus proxy that a registered clearing agency supplies to the issuer." This change would exclude from reimbursement "secondary" nominees, that is, nominees in respect of whom issuers have no direct interface.

Each of these proposals is designed to reduce the fees that NYSE member organizations are permitted to recover in connection with the transmission of proxy and other materials to security holders whose securities are held in street name. The Exchange believes that the proposed changes will create substantial savings for NYSE issuers.

The Exchange further believes that a reduction in the level of reimbursed fees is appropriate given the findings of the Exchange-sponsored audit that examined NYSE member firm reimbursements for the 1998 proxy season (1998 Audit"). The results of the 1998 Audit convinced the Exchange that the level of reimbursement has been too

[1] 17 CFR 200.30–3(a)(12).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[3] Amendment No. 1 removed from the proposed rule change the provision that would have permitted the householding of proxy and other materials through implied consent. At the request of the Commission, the Exchange will include the householding through implied consent proposal in a separate rule filing. Amendment No. 1 also clarified certain text discussing the proposed definition of nominee. *See* Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated June 22, 1999 ("Amendment No. 1").

[4] The ownership of shares in street name means that a shareholder, or "beneficial owner," has purchased shares through a broker-dealer or bank, also known as a "nominee." In contrast to direct ownership, where the shares are directly registered in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository such as The Depository Trust Company.

[5] The Pilot Fee Structure originally was approved by the Commission on March 14, 1997. *See* Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997). The Exchange has extended the effectiveness of the Pilot Fee Structure on several occasions, most recently through August 31, 1999. *See* Securities Exchange Act Release No. 41177 (Mar. 16, 1999), 64 FR 14294 (Mar. 24, 1999) ("Order Extending Pilot Fee Structure").

[6] *See* Order Extending Pilot Fee Structure, *supra* note 5.

high in recent years. The Exchange shared the results of the 1998 Audit with Commission staff, who expressed similar concerns. The Exchange has represented that the proposed changes are intended to reduce NYSE member firm reimbursements to a more appropriate level.

As for the proposed definition of "nominee," the Exchange believes that it is only nominees that are participants in The Depository Trust Company ("DTC") and that directly interface with issuers that should be counted for purposes of calculating the nominee coordination fee. The Exchange contends that coordination of distributions to second-tier nominees is performed by those participants, rather than by the coordinating intermediary that is known to the issuer. The Exchange reports that issuers have been billed $20 for activities relating to second-tier nominees, without knowing their identity or having the ability to verify their performance of "nominee" functions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act [7] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed changes were developed by the Exchange's Proxy Fee Working Committee, a group that the Exchange selected as representative of the parties interested in the proxy process. The proposal represents a consensus of a majority of that group. The Exchange has not otherwise solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. The Commission staff solicits specific comment on whether the Exchange rules should define the term "nominee," and if so, whether the Exchange's proposed definition is appropriate. In this regard, it should be noted that the Commission's shareholder communications rules refer to banks,[8] brokers,[9] and dealers,[10] but do not define the term "nominee." Although the rates of reimbursement included in the Pilot Fee Structure apply only to fees charged by NYSE member organizations, banks customarily charge the same rates.[11] The Exchange's proposed definition of "nominee" likely would have a more significant impact on bank nominees than broker-dealer nominees because it is common for banks that are "top-tier" direct participants in a clearing agency to hold and clear securities for multiple lower-tier "respondent banks" [12] that are not direct participants in a clearing agency. Although the Exchange has represented that it believes that most top-tier banks (*i.e.*, DTC participants) coordinates materials for lower-tier banks, the Commission staff is concerned that some top-tier clearing banks may not coordinate distributions of shareholder materials for lower-tier respondent banks; rather, the respondent banks may communicate directly with issuers about distribution of materials or hire an agent who coordinates material distribution on behalf of many respondent banks.

The Commission's rules clearly state that companies must reimburse not only the top-tier banks but the respondent banks as well for reasonable expenses incurred in mailing materials to beneficial owners.[13] In view of this requirement, should companies be required to pay the nominee coordination fee included in the Pilot Fee Structure for coordination activities relating to lower-tier respondent banks? Additional comment is solicited on whether the Exchange should define the term "coordinate" in its rules providing for a nominee coordination fee. If so, how should the term be defined? If the coordinating activities to be performed by banks and brokers-dealers to qualify for the nominee coordination fee were adequately defined by the NYSE rules, could the terms "bank," "broker," and "dealer," as used in the Commission's rules, replace the term "nominees" in the NYSE rules?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–21 and should be submitted by August 30, 1999.

[7] 15 U.S.C. 78f(b)(5).

[8] Rule 14b–2(a)(1) under the Act defines the term "bank" as a bank, association, or other entity that exercises fiduciary powers. *See* 17 CFR 240.14b–2(a)(1).

[9] *See* 17 CFR 240.14b–1.

[10] *Id.*

[11] Rule 14b–2(c)(3) under the Act states that reimbursement rates charged by banks that are no greater than those permitted to be charged by brokers or dealers shall be deemed to be reasonable. *See* 17 CFR 240.14b–2(c)(3).

[12] Rule 14a–1(k) under the Act defines "respondent bank" for purposes of the shareholder communications rules as any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers. *See* 17 CFR 240.14a–1(k).

[13] 17 CFR 240.14a–13(a)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16644 Filed 6–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41548; File No. SR–NYSE–99–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., to Increase the Examination Development Fee for the General Securities Representative Examination (Series 7)

June 22, 1999:

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 1999, the New York Stock Exchange, Incorporated ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the NYSE under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase from $40 to $90 the examination development fee for the General Securities Representative Examination ("Series 7 Exam"). The fee will be charged to members and member organizations for each person who applies to take the Series 7 Exam.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The initial exam development fee of $10 was adopted in 1986 and was intended to offset in part the costs of providing qualification examination programs by the Exchange. Prior to 1986 the Exchange received no fees to cover such expenses. In 1990, the fee was increased from $10 to $40.

The Exchange proposes to increase the fee to $90 to offset, in part, the costs of qualification examination and other sales practice related services provided by the Exchange. These costs include industry meetings, manpower, supplies, overhead, and other expenses associated with developing and maintaining the examination as well as costs to maintain the Exchange's Sales Practice Review Program including, but not limited to, field examinations. The development fee increase would also be used for the implementation of enhancements to the Series 7 Exam program which will ensure that the examination continues to reflect sound psychometric principles as well as employs up-to-date technology.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(4) of the Act,[4] which requires the rules of an exchange to provide for the equitable allocation of reasonable dues fees, and other charges among the members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believe that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and subparagraph (f)(2) of Rule 19b–4 thereunder,[6] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furthermore of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–NYSE–99–28, and should be submitted by July 21, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16646 Filed 6–29–99; 8:45 am]

BILLING CODE 8010–01–M

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41553; File No. SR–PHLX–98–23]

Self-Regulatory Organizations: Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2 and 4 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change Relating to By-Law Article XI, § 11–1—Appeals; Article XII, § 12–4—Application; and Article XV, § 15–3—Disposition of Proceeds of Sale of Membership

June 23, 1999.

I. Introduction

On August 18, 1998, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the Board of Governors ("Board") to review the validity and amount of claims asserted against a membership and to hear appeals from adverse Admissions Committee decisions.[3]

On September 16, 1998, the proposed rule change, which included Amendment No. 1, was published for comment in the **Federal Register**.[4] No comments were received on the proposal. The PHLX submitted Amendment No. 2 to the proposed rule change on October 22, 1998,[5] Amendment No. 3 on May 25, 1999,[6] and Amendment No. 4 on June 22, 1999.[7] This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment No. 3.

II. Description of the Proposal

The PHLX has proposed a By-Law amendment to Article XV, § 15–3, Disposition of Proceeds of Sale of Membership, to permit the Board, rather than the Arbitration Committee or a panel thereof, to determine the validity and amount of claims asserted against a membership pursuant to the specified order of claims enumerated in Section 15–3 of the By-Laws. This proposed By-Law amendment, as recommended by the Arbitration and Executive Committees of the Board, seeks to conform the By-Law with procedures adopted by other registered national securities exchanges[8] and provides for Board oversight of seat proceeds disposition.

The Board will make its decision after an advisory committee consisting of three governors, of whom at least two are non-industry governors, examines the claims asserted against the membership and gives an advisory opinion to the Board.[9] The advisory committee will examine the validity of claims based on the written submission of the claimants and respondents.[10] Claimants and respondents may, however, request an oral argument before the advisory committee.[11] The Board will determine the payment of claims based upon the written record before the advisory committee.[12]

Additionally, the Exchange proposes to amend Article XI, § 11–1, Appeals, and Article XII, § 12–4, Application, to provide that an adverse Admissions Committee decision be appealed to the Board. These proposed amendments seek to conform the By-Laws with procedures adopted by other exchanges wherein appeals are taken to the Board or heard by a panel of the Board subject to ratification, such as CBOE Rule 19.5 and American Stock Exchange LLC "AMEX"), Constitution, Article IV, § 1(g). Thus, the proposal creates a right of appeal from Admissions Committee decisions.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[14] because it removes impediments to and perfects the mechanism of a free and open market and a national market system protects investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Because the Board is vested with all of the powers necessary for the management of the business and affairs of the Exchange and the regulation of the business conduct of members of the Exchange,[15] the Commission believes that the Board, rather than the Arbitration Committee or a panel thereof, is the most appropriate venue for making decisions regarding the disposition of seat proceeds. In addition, the Commission notes that the Board's oversight of the disposition of proceeds is similar to the rules adopted by certain other self-regulatory organizations ("SROs").[16]

The Commission also finds that the proposal is consistent with the requirements of Section 6(b)(7)[17] in that the Board's oversight of Admissions Committee decisions provides a fair procedure for appealing decisions denying membership to any person seeking membership therein. By providing the opportunity to appeal adverse decisions, the proposal ensures that applicants have an additional opportunity to be heard. The Commission also notes that the Board's oversight of Admissions Committee decisions is similar to the rules adopted by certain other SROs.[18]

The Commission finds Amendment No. 3 consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act, because it removes impediments to and perfects the mechanism of a free and open market and a national market system. Amendment No. 3 ensures that the advisory committee reviewing the validity of claims and giving an advisory opinion to the Board is balanced with the appointment of two non-industry governors to the committee.

The Commission finds good cause to approve Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. Specifically, Amendment No. 3, merely clarifies the administrative procedures for reviewing the validity of claims asserted against the membership, thus, adding greater transparency to the review process. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[19] to approve Amendment No. 3 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the exchange. All submissions should refer to File No. SR–PHLX–98–23 and should be submitted by July 21, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–PHLX–98–23), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16643 Filed 6–29–99; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposal was originally submitted on June 24, 1998, however, the PHLX failed to include the circulars as required by Form 19b–4. *See* Form 19b–4, 3 Fed. Sec. L. (CCH) ¶ 33,351. The Exchange subsequently submitted Amendment No. 1 that included the circulars and made technical changes to the proposed rule language. Letter from Murray L. Ross, Vice President and Secretary, PHLX, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated August 17, 1998 ("Amendment No. 1"). In addition, the PHLX agreed to additional technical changes to accurately reflect the differences between the proposed rule language and the PHLX's current rule language. Telephone conversation between Murray L. Ross, Vice President and Secretary, PHLX and Karl Varner, Attorney, Division, Commission, on September 1, 1998.

[4] Securities and Exchange Act Release No. 40420 (Sept. 9, 1998), 63 FR 49627.

[5] In Amendment No. 2, the Exchange agreed to additional technical changes to accurately reflect the differences between the proposed rule language and the PHLX's current rule language and to grant an extension of time for Commission action on the proposed rule change. Letters from Murray L. Ross, Vice President and Secretary, PHLX, to Karl Varner, Special Counsel, Division, Commission, dated October 21, 1998 (collectively "Amendment No. 2"). The Act does not require notice and comment for technical amendments.

[6] In Amendment No. 3, the Exchange clarified that an advisory committee of three governors, of whom at least two will be non-industry governors, will examine the validity of claims asserted against the membership and give an advisory opinion to the Board of Governors. Letter from Murray L. Ross, Vice President and Secretary, PHLX, to Karl Varner, Special Counsel, Division, Commission, dated May 24, 1999 ("Amendment No. 3").

[7] In Amendment No. 4, the Exchange agreed to additional technical changes to accurately reflect the differences between the proposed rule language and the PHLX's current rule language. Letter from Murray L. Ross, Vice President and Secretary, PHLX, to Karl Varner, Special Counsel, Division, Commission, dated June 21, 1999 ("Amendment No. 4"). The Act does not require notice and comment for technical amendments.

[8] *See* Chicago Board Options Exchange ("CBOE") Rule 3.15 and New York Stock Exchange, Inc. ("NYSE"), Constitution, Article II, Sec. 11.

[9] *See* Amendment No. 3, *Supra Note* 6.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] PHLX Article IV, § 4–4(a).

[16] *See* CBOE Rule 3.15 and NYSE, Constitution, Article II, Sec. 11.

[17] 15 U.S.C. 78f(b)(7).

[18] *See* CBOE Rule 19.5 and AMEX, Constitution, Article IV, § 1(g).

[19] 15 U.S.C. 78(f)(5) and 78s(b).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3 (a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3193]

State of Alabama

Jefferson County and the contiguous counties of Bibb, Blount, Saint Clair, Shelby, Tuscaloosa, and Walker in the State of Alabama constitute a disaster area as a result of damages caused by flash flooding that occurred on June 14, 1999. Applications for loans for physical damages may be filed until the close of business on August 20, 1999 and for economic injury until the close of business on March 21, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 319306 for physical damage and 9D1200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 21, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–16609 Filed 6–29–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3185]

State of Colorado; Amendment #2

In accordance with a notice received from the Federal Emergency Management Agency dated June 17, 1999, the above-numbered Declaration is hereby amended to expand the incident type for this disaster to include landslides and mudslides, in addition to severe storms and flooding, beginning on April 29 and continuing through May 19, 1999.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 15, 1999, and for economic injury the deadline is February 17, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 18, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–16610 Filed 6–29–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3192]

State of Illinois

Coles County and the contiguous counties of Clark, Cumberland, Douglas, Edgar, Moultrie and Shelby in the State of Illinois constitute a disaster area as a result of damages caused by severe storms and flooding that occurred on June 1, 1999. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on August 16, 1999 and for economic injury until the close of business on March 17, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437

	Percent
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 319206 for physical damage and 9D1100 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 17, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–16611 Filed 6–29–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5½ percent for the July–September quarter of FY 99.

Arnold S. Rosenthal,

Acting Deputy Associate Administrator for Financial Assistance.

[FR Doc. 99–16606 Filed 6–29–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Washington, DC District Advisory Council, Public Meeting

The U.S. Small Business Administration Washington, DC District Advisory Council, located in the metropolitan area of Washington, DC, will hold a public meeting from 9 a.m. to 11 a.m., Wednesday, June 30, 1999, at Creative Associates, Inc., 5301 Wisconsin Avenue, NW, Suite 700, Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Anita L. Irving, Public Information Officer, U.S. Small Business Administration, 1110 Vermont Avenue, N.W., Suite 900 (P.O. Box 34500), Washington, DC 20043–4500; telephone 202–606–4000, ext. 275.

Andrew A. Rivera,

Deputy Director of External Affairs.

[FR Doc. 99–16608 Filed 6–29–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Wisconsin State Advisory Council

Public Hearing

The U.S. Small Business Administration Wisconsin State Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12 p.m. to 1 p.m. July 17, 1999 at Metro Milwaukee Area Chamber (MMAC) Association of Commerce Building; 756 North Milwaukee Street, Fourth Floor, Milwaukee, Wisconsin to discuss such matters as may be presented by members, staff of the U. S. Small Business Administration, or others present.

For further information, write or call Yolanda Lassiter, U.S. Small Business Administration, 310 West Wisconsin Avenue Milwaukee, Wisconsin 53203; Fax (414) 297–3928.

Andrew A. Rivera,

Deputy Director of External Affairs.

[FR Doc. 99–16607 Filed 6–29–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of the notices. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Disability Evaluation Study–0960–NEW

The Social Security Administration is sponsoring the Disability Evaluation Study (DES); a national disability study of the civilian non-institutionalized population of working-age adults aged 18–69. The DES will provide a key source of data for disability program and policy goals of critical interest to SSA, Congress, and others. SSA will collect information from individuals, aged 18 to 69 years, and their medical providers. SSA will use the information to:

- Estimate and project the size of the potential pool of eligible persons, that is, severely impaired working age individuals who, but for work or other reasons, meet SSA's definition of disability;
- Determine what enables individuals with severe impairments to work;
- Construct self-reported disability measures to be included on national surveys to monitor future program changes and changes in the pool of eligible persons;
- Examine relationships between disability and retirement for older workers;
- Evaluate ways to improve the current disability decision process, such as use of additional objective performance measures.

Following is a listing of the information that will be collected and the burden imposed on the public:

Title of collection	Number of respondents	Frequency of response	Average burden hours per response	Estimated annual burden hours
Pilot Study				
Focus groups, cognitive laboratory studies, and pretest	100	1	2.00	200
In-person canvassing for area probability sample	11,795	1	0.08	944

Title of collection	Number of respondents	Frequency of response	Average burden hours per response	Estimated annual burden hours
Initial Screening	11,882	1	0.50	5,941
Follow-up Screening, Comprehensive Survey Interview, Forms for obtaining informed consent, release of medical records, and release of SSA records	1,800	1	1.50	2,700
Medical Examination	1,000	1	2.00	2,000
Provide Medical Records	2,000	1	0.50	1,000
Total (Pilot)				12,785
Main Study				
In-person canvassing for area probability sample	55,405	1	0.08	4,432
Initial Screening	56,031	1	0.50	28,016
Follow-up Screening, Comprehensive Survey Interview, Forms for obtaining informed consent, release of medical records, and release of SSA records	10,000	1	1.50	15,000
Medical Examination	5,500	1	2.00	11,000
Provide Medical Records	11,000	1	0.50	5,500
Total (Main)				63,948
Total (Overall)				76,733

2. Application for Supplemental Security Income–0960–0444

The information collected on the SSA–8001 is used by the Social Security Administration to determine whether applicants for SSI benefits meet all statutory and regulatory requirements for eligibility and, if so, the amount of benefits payable. The respondents are applicants for SSI benefits.

Number of Respondents: 1,011,046.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 252,762 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

(OMB Address)

Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

Dated: June 24, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–16571 Filed 6–29–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 3067]

United States International Telecommunications Advisory Committee (ITAC) Development Sector (ITAC–D); Notice of Meeting

The Department of State announces meetings under the International Telecommunications Advisory Committee (ITAC), of Study Groups 1 and 2 of the Telecommunications Development Sector (ITAC–D). All meetings will be held at the Department of State, 2201 C Street, NW, Washington, DC 20520.

The meetings will be held on Thursdays during the months of July and August. ITAC–D will meet from 10:00 a.m. to noon on July 8, Room 1207 (short notice is regretted), July 22, Room 5951, July 29, Room 1207 and August 5, 1999, Room 1207. These meetings are to complete preparations for the August 30–September 10, 1999, ITU–D Study Group Meeting.

The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues. The purpose of this meeting is to develop U.S. positions for the upcoming ITU–D meetings. The meeting agenda will include international telecommunications and information issues. The purpose of this meeting is to develop U.S. positions for the upcoming ITU-D meetings. The meeting agenda will include preparation for planned ITU–D meetings of Study Group 1 (Telecommunications and Development Strategies and Policies) and Study Group 2 (Development, Harmonization, Management and Maintenance of Telecommunication Networks and Services, including Spectrum Management). Questions regarding the agenda or ITAC–D Sector activities in general may be directed to Doreen McGirr, Department of State (202) 647–0201, fax number (202) 647–7407.

Persons intending to attend the meeting should send a fax to (202) 647–7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following photo IDs will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or a U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: June 24, 1999.

Doreen F. McGirr,

Director of Development Sector, U.S. Department of State.

[FR Doc. 99–16793 Filed 6–28–99; 2:37 pm]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 3078]

Universal Postal Union Congress; Notice of Briefing

AGENCY: Department of State.

ACTION: Notice of Briefing.

The Department of State will host a briefing on July 9, 1999, regarding the next Congress of the Universal Postal Union (UPU). The Congress will convene in Beijing, China, from August 23 through September 16, 1999.

The briefing will be held on Friday, July 9, 1999, from 2:00 p.m. until approximately 4:00 p.m., in Room 1912 of the Department of State, 2201 "C" Street, NW, Washington, DC. The briefing will be open to the public up to the capacity of the meeting room.

The briefing will provide information on major issues to be considered at the forthcoming UPU Congress and on significant policies and positions that the U.S. delegation expects to support. The briefing will be chaired by Ambassador E. Michael Southwick of the Department of State.

Entry to the Department of State building is controlled and will be facilitated by advance arrangements. In order to arrange admittance, persons desiring to attend the briefing should, no later than noon on July 7, 1999, notify the Office of Technical Specialized Agencies, Bureau of International Organization Affairs, Department of State, preferably by fax, providing the name of the meeting and the individual's name, Social Security number, date of birth, professional affiliation, address and telephone number. The fax number to use is (202) 647–8902. Voice telephone is (202) 647–1044. This request applies to both government and non-government individuals.

All attendees must use the Department of State "diplomatic" entrance at 22nd and "C" Streets, N.W. One of the following means of identification will be required for admittance: any U.S. driver's license with photo, a passport, or any U.S. Government agency identification card.

Questions concerning the briefing may be directed to Ms. Tina Wilson at (202) 647–1526.

Dated: June 24, 1999.

S. Ahmed Meer,

Director, Office of Technical Specialized Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 99–16655 Filed 6–29–99; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Office of Transportation Policy and Federal Aviation Administration, Civil Aero Medical Institute; Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT and Federal Aviation Administration.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation, DOT, intentions to request an extension for and revision to a currently approved information collection.

DATES: Comments on this notice must be received by no later than August 30, 1999.

ADDRESSES: Four (4) copies of any comments should be sent to the Safety and Health Division (P–140), Office of Transportation Policy, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Clarke, Office of the Secretary, Office of Transportation Policy Development (P–100), Department of Transportation, at the address above. Telephone: (202) 366–2916.

SUPPLEMENTARY INFORMATION:

Title: Infant Travel Survey.

OMB Control Number: 2105–0536.

Expiration Date: June 30, 1999.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Children 2 years of age and younger are exempt from the FAA requirement that they be restrained in a seat during transport airplane takeoffs and landings. In February 1997, the White House Commission on Aviation Safety and Security recommended that this exemption be eliminated, requiring instead that those children be placed in a separate aircraft seat equipped with an approved Child Restraint System (CRS). In May 1995, in response to Section 522 of the Federal Aviation Administration Authorization Act of 1994. Pub. L. 103–305, the FAA published a report on CRS use in transport category aircraft. A subsequent reanalysis of this issue conducted by staff in the OST Policy Office has yielded different conclusions, because certain of the assumptions used in the FAA study were deemed untenable.

FAA issued an ANPRM in April 2, 1998 (the comment period closed June 28), seeking technical comments about what types of CRS could/should be used in transport category aircraft. Responses to those questions provide needed technical information relative to implementation of CRS aboard transport airplanes, but economic questions related to the issue were not included in that Notice. This deficiency resulted in little information, on which to assess the validity of the assumptions used in its analysis, being received from the traveling public by the FAA. Accordingly, there is a need to gauge the impact that requiring use of CRS would have on travelers accompanied by infants and small children, 2 years of age and less. Information needs to be obtained about the types of trips (length, purpose, mode of travel) on which such children accompany adults; the prevalence of actual CRS use, relative to air travel by infants and small children; the factors that determine whether CRS are being used for such children; and what types of changes to these travel events would result from requiring the use of CRS.

Respondents: This is a relatively small-scale, one-time survey that is not conducive to electronic collection techniques. Face-to-face interviews, conducted in the departure waiting lounges at hub airports, will be obtained with randomly-selected adults accompanied by infants and small children in actual air-travel status. The interview will conform to a scripted set of questions prepared for the interviewer, and the answer form will be partially machine-coded for ease of data reduction by the research team. This survey will target individual or paired adults (typically parents) travelling with infants and small children.

Average Annual Burden per Respondent: 5 minutes.

Estimated Total Annual Burden on Respondents: 74.7 hours.

The information collection is available for inspection at the Safety and Health Division (P–140), Room 10309, Office of Transportation Policy, DOT.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 25, 1999.

Robert M. Clarke,

Safety and Health Team Leader, Office of Transportation Policy Development.

[FR Doc. 99–16624 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 1999–5220]

Information Collection by Agency Under Review by the Office of Management and Budget (OMB)

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the information Collection Reports (ICRs) abstracted below to OMB for review and comments. Our ICRs describe the information that we seek to collect from the public. Review and comment by OMB ensure that we impose on the public the lightest burden of paperwork compatible with our performance of duties.

DATES: Please submit comments on or before July 30, 1999.

ADDRESSES: Please send comment to both (1) the Docket Management Facility (DMS) of the U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Streets S.W., Washington, DC 20590–0001, and (2) the Office of Information and Regulatory Affairs (OIRA) of OMB, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer of the USCG.

Copies of the complete ICRs are available for inspection and copying in public docket USCG–1999–5220 of the DMS between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–SII–2). Headquarters of the U.S. Coast Guard , room 6106, 2100 Second Street SW, Washington, DC, also between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this document, call Barbara Davis, Office of Information Management of the Coast Guard at 202–267–2326. For questions on this docket, call Dorothy Walker, Chief of Dockets of the DMS, at 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published [64 FR 13463 (March 18, 1999)] the 60-day notice required by OMB. The request elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, whether to DMS or to OIRA, must contain the OMB Control Numbers of all ICRs addressed by the comments. Comments to DMS must contain the docket-number of the request, USCG 1999–5220. Comments to OIRA are best assured of having there full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

Title: Firefighing Equipment, Structural Fire Protection Materials, Lifesaving Equipment, and Marine Sanitation Devices.

OMB Control Number: 2115–0141.

Type of Request: Extension of currently approved collection.

Affected Public: Manufacturers of safety equipment and material.

Forms(s): N/A.

Abstract: The information in this report is necessary to ensure compliance with our rules governing specific types of safety equipment and materials installed on commercial vessels and pleasure craft. Manufactures must submit drawings, specifications, and laboratory test reports to the Coast Guard before it gives any approval.

Annual Estimated Burden Hours: The estimated burden is 7,220 hours annually.

Title: Plan Review for Facilities with Vapor Control System (VCSs).

OMB Control Number: 2115–0581.

Type of Request: Extension of currently approved collection.

Affected Public: Marine facilities with VCSs and VCS-certifying entities.

Form(s): N/A.

Abstract: The information in this report is necessary to ensure compliance with our rules for the design of a facility's VCS. It is also necessary so we can determine the qualifications of a certifying entity.

Annual Estimated Burden Hours: The estimated burden is 1,390 hours annually.

Title: Electrical Engineering Regulations—46 CFR Subchapter J.

OMB Control Number: 2115–0115.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of vessels, and shipbuilders.

Form(s): N/A.

Abstract: The information in this report is necessary to ensure compliance with our electrical-engineering rules for the design and construction of U.S.-flag commercial vessels.

Annual Estimated Burden Hours: The estimated burden is 478 hours annually.

Title: Application and Permit to Handle Hazardous Materials.

OMB Control Number: 2115–0013.

Type of Request: Extension of currently approved collection.

Affected Public: Shipping agents, and operators of terminals that handle hazardous materials.

Form(s): CG–4260.

Abstract: The information in this form CG–4260 allows the U.S. Coast Guard to determine whether following safe p and ha lin hazar

Annual Estimated Burden Hours: The esti s 395 hours annually.

Title: Application Manual and Amendments for Facilities Transferring Oil and Hazardous Materials in Bulk.

OMB Control Number: 2115–0078.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of facilities.

Form(s): N/A.

Abstract: The information in this report is necessary to ensure compliance with our rules for facilities transferring oil and hazardous materials in bulk.

Annual Estimated Burden Hours: The estimated burden is 22,632 hours annually.

Title: Operational Measures to Reduce Oil Spills from Existing Tank Vessels Without Double Hulls.

OMB Control Number: 2115–0629.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of tank vessels.

Form(s): N/A.

Annual Estimated Burden Hours: The estimated burden is 24,355 hours annually.

Issued in Washington, D.C., on June 15, 1999.

S.A. Richardson,

Acting Director of Information and Technology.

[FR Doc. 99–16664 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Tulsa International Airport, Tulsa, OK

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announced its determination that the noise exposure maps submitted by the Tulsa Airports Improvement Trust for Tulsa International Airport under the provisions of Title 49 U.S.C., Chapter 475 (hereinafter referred to as "Title 49") and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Tulsa International Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before December 13, 1999.

EFFECTIVE DATES: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is June 16, 1999. The public comment period ends August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Tim Tandy, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193–0630, (817) 222–5635. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Tulsa International Airport are in compliance with applicable requirements of Part 150, effective June 16, 1999. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before December 13, 1999. This notice also announces the availability of this program for public review and comment.

Under Title 49, an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Tulsa Airports Improvement Trust submitted to the FAA on May 26, 1999 noise exposure maps, descriptions and other documentation which were produced during Tulsa International Airport FAR Part 150 Study, May 26, 1999. It was requested that the FAA review this material as the noise exposure maps, as described in Title 49, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Title 49.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Tulsa Airports Improvement Trust. The specific maps under consideration are Figure G1, Future Noise Exposure Map, 2002 with Existing Land Use, Page G.5 and Figure G2, Existing Noise Exposure Map, 1995 with Existing Land Use, Page G.6 in the submission.

The FAA has determined that these maps for Tulsa International Airport are in compliance with applicable requirements. This determination is effective on June 16, 1999. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Title 49. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Tulsa International Airport, also effective on June 16, 1999. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further view will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 13, 1999.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non compatible land uses and preventing the introduction of additional non compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise capability program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137

Tulsa Airport Authority Tulsa International Airport Terminal, 7777 E. Apache, Room A–217; Tulsa, Oklahoma 74158.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, June 16, 1999.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 99–16661 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Sullivan County, New York

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Sullivan County, New York.

FOR FURTHER INFORMATION CONTACT: John Brizzell, Regional Director, 44 Hawley Street, Binghamton, NY 13901, Telephone: (607) 721–8116;

or

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518)431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to improve NYS Route 17 in Sullivan County, New York. The proposed improvement would involve the construction of a new controlled access freeway in the Town of Liberty near the hamlet of Parksville for a distance of about 4.6 kilometers. The project objective is to reduce accident potential by constructing a controlled access freeway, built to interstate standards, with a full interchange serving the community of Parksville.

Alternatives under consideration include: 1. Do Nothing and 2. Controlled access freeway, built to interstate standards, with a full interchange serving the community of Parksville. Three different alignments, 2A, 2B and 2D, are being considered for further study under the controlled access freeway alternative. Alternative 2A constructs a new freeway on an alignment south of the existing NYS Route 17. Alternative 2B constructs a new freeway generally following the alignment of existing NYS Route 17. Alternative 2D constructs a new freeway on a split alignment, i.e. westbound freeway lanes on existing NYS Route 17 alignment and eastbound freeway lanes on new alignment to the south. For each of the controlled access freeway alternatives there are five options for the full interchange serving the community of Parksville. Option 1, Split interchange: A "half-diamond" ramp would be at each end of the project. The east end of the project would have a westbound ramp and an eastbound on ramp. The west end of the project would have a eastbound off ramp and a westbound on ramp. Option 2, Direct-connector ramps at each end of the project: This option allows the same vehicle movements as option 1 but without impeded traffic flows. Option 3, Full interchange (full-diamond) at east end of project: This option permits all four vehicle movements at one location in the east end of the project. Option 4, Full interchange (full-diamond) at west end of project: This option permits all four vehicle movements at one location in the west end of the project. Option 5, Full interchange (full-diamond) near the midpoint of the project: This option permits all four vehicle movements at the location near the midpoint of the project. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Public informational meetings were held on June 26, 1998, September 3, 1998 and December 16, 1998 in the Town of Liberty. After the September meeting a steering committee was formed to address and resolve community issues that could influence development of the project. The committee, which consists of 27 members, met on November 16, 1998 and December 16, 1998. Additional public informational and steering committee meetings are planned and will continue as needed. In addition, a public hearing will be held. Public notice will be given of the time and place of meetings and hearings. The draft EIS will be available for public and agency review and comment. No formal NEPA scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestion are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.295, Highway May 21, 1999 Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on: June 21, 1999.

Douglas P. Conlan,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 99–16614 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Federal Highway Administration

[Docket No. RSPA–98–3579 (PDA–20(RF))]

Application by Association of Waste Hazardous Materials Transporters for a Preemption Determination as to Cleveland, Ohio Requirements for Transportation of Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA) and Federal Highway Administration (FHWA), DOT.

ACTION: Public notice reopening comment period.

SUMMARY: RSPA and FHWA are reopening the comment period on the application by the Association of Waste Hazardous Materials Transporters (AWHMT) for an administrative determination whether Federal hazardous materials transportation law preempts certain requirements of the City of Cleveland, Ohio, concerning the transportation of explosives and other hazardous materials within the City. AWHMT has asked RSPA and FHWA to defer consideration of several of the requirements challenged in AWHMT's original application because the City is

considering amending those requirements. In addition, AWHMT wishes RSPA and FHWA to consider requirements not challenged in its original application concerning the minimum distances that must be maintained between vehicles transporting explosives or other hazardous materials. Interested parties may comment on all the City's requirements for which AWHMT seeks a preemption determination, including the City's separation distance requirements.

DATES: Further comments received on or before August 16, 1999, and rebuttal comments received on or before September 28, 1999, will be considered before an administrative ruling is issued jointly by RSPA's Associate Administrator for Hazardous Materials Safety and FHWA's Administrator. Rebuttal comments may discuss only those issues raised by comments received during the reopened initial comment period and may not discuss new issues.

ADDRESSES: AWHMT's original application, its request to modify and amend that application, and all comments and other documents submitted in this proceeding may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All documents filed in this proceeding are also available on-line through the home page of DOT's Docket Management System at <http://dms.dot.gov>.

Comments should be submitted to the Dockets Office at the above address. Three copies of each written comment should be submitted. You may also submit comments electronically. To do so, long on to the Dockets Management System at <http://dms.dot.gov>. Click on "Help & Information" to obtain instructions for filing a comment electronically.

Each comment should refer to the Docket Number set forth above. A copy of each comment must also be sent to (1) Mr. Michael Carney, Chairman, Association of Waste Hazardous Materials Transporters, 2200 Mill Road, Alexandria, VA 22314, and (2) Mr. Cornell P. Carter, Director of Law, City of Cleveland, City Hall—Room 106, 601 Lakeside Avenue, Cleveland, OH 44114–1077. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Messrs. Carney and Carter at the addresses specified in the **Federal Register**.")

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued by DOT, are available through the home page of RSPA's Office of the Chief Counsel, at <http://rspa-atty.dot.gov>. A paper copy of this list and index will be provided at no cost upon request to Mr. Hilder, at the address and telephone number in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), or Judith A. Rutledge, Office of the Chief Counsel, Federal Highway Administration (Tel. No. 202–366–0864), U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

AWHMT has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts certain requirements of the City of Cleveland (City) applicable to the transportation of explosives and other hazardous materials in and through the City. In its application, AWHMT challenged requirements of the City concerning the transportation of:

—Hazardous materials in an amount for which a placard is required by the HMR, in Chapter 394 of the City's Consolidated Ordinances (City Code) for a permit, permit fees, proof of insurance, and routing and time restrictions.

—Explosives in any amount, in Chapter 387 of the City Code for a permit, permit fees, proof of insurance, routing and prenotification of shipments, vehicle inspections, the number of fire extinguishers, and the City's unmodified requirement for a police escort to accompany shipments of more than 250 lbs. of explosives.

The text of AWHMT's application was published in the **Federal Register** on September 17, 1998, and interested parties were invited to submit comments. 63 FR 49804. After RSPA and FHWA initially denied requests by the Public Utilities Commission of Ohio (PUCO) and the City for a 60-day extension of the time to submit comments, comments were submitted by the City, AWHMT, PUCO and the following additional parties: Association of American Railroads, Hazardous Materials Advisory Council, Institute of Makers of Explosives, National Paint & Coatings Association, Ohio Environmental Service Industries, and Roadway Express.

Following receipt of these comments, RSPA and FHWA realized that the two periods for submitting comments had been inadvertently shortened, from 45 days to 30 days, in the notice published in the **Federal Register**. (In the text of the notice submitted to the **Federal Register**, RSPA and FHWA had specified 45 days for the initial and rebuttal comment periods.) Based on that error and the City's statements of its attempts to resolve many of the issues informally with AWHMT, RSPA and FHWA held a telephone conference with representatives of AWHMT and the City on December 14, 1998. In a December 28, 1998 letter, RSPA confirmed that, over the next two months, AWHMT and the City would explore informal resolution of the issues raised in AWHMT's application and advise RSPA and FHWA of the results of these efforts.

II. Request To Modify Application

In further correspondence and a conference telephone call on April 8, 1999, AWHMT and the City advised RSPA and FHWA that the City's Law Department was proposing changes to the City Code that would resolve many of the issues raised in AWHMT's application. In its April 15, 1999 letter (set forth in Appendix A), AWHMT asked to modify and amend its application. It asked RSPA and FHWA to consider at this time only the requirements on which AWHMT had not been able to reach an understanding with the City, including requirements not challenged in its original application concerning the minimum distances that must be maintained between vehicles transporting explosives or other hazardous materials. AWHMT also asked RSPA and FHWA to defer consideration of sections in the City Code that the City is proposing to amend. AWHMT's request and the City's response in an April 30, 1999 letter to RSPA and FHWA (set forth in Appendix B) are summarized below.

A. Requirements To Be Addressed by RSPA and FHWA

In its letter, AWHMT requested that RSPA and FHWA determine whether Federal hazardous materials transportation law preempts the following requirements:

—City Code § 394.06(b) prohibiting the transportation of hazardous materials in the "downtown area" of the City between 7 a.m. and 6 p.m. except Saturdays and Sundays, unless the Fire Chief grants an exception pursuant to § 394.08(e) on a showing that "delivery or pickup of the hazardous material * * * can be practicably made only during [the prohibited] time period" and transportation of this material is in "the public interest";

—City Code § 387.07(d) and the provision in the Application for the Transportation of Explosives (Application) requiring the carrier to specify the route to be taken within the City and providing that the Director of Public Safety (or his representative) shall designate the route to be taken within the City;

—the Application's provision that the carrier must notify the Fire Department "24 hours in advance of all deliveries" of explosives within the City;

—the Application's provision that a police escort is required if more than 250 lbs. of explosives are transported within the City; and

—City Code §§ 387.08(b) and 394.07(b) requiring a vehicle transporting explosives or other hazardous materials to maintain a certain distance from any other vehicle transporting explosives or other hazardous materials, *i.e.*, 500 feet between vehicles transporting explosives and 300 feet between vehicles transporting other hazardous materials.

AWHMT acknowledged that it had not challenged §§ 387.08(b) and 394.07(b) in its original application and asked permission to amend its application to include these requirements. AWHMT contends that these separation distance requirements "hinder the safe operation of vehicles, are impossible to comply with at the distances required, and are a misuse of federal placarding requirements." AWHMT stated that it would submit a new, separate application for a preemption determination with respect to the City's separation distance requirements if the City objected to consideration of these requirements in this proceeding.

In response, the City stated that it is willing to continue to discuss with AWHMT the first four requirements summarized above, but a resolution is not likely. The City objected to DOT's consideration of the separation distance requirements in City Code §§ 387.08(b) and 394.07(b) on the grounds that (1) AWHMT has not shown that it, or its members, are "directly affected" by these requirements, as specified in 49 U.S.C. 5125(d)(1); (2) AWHMT waived its right to challenge these requirements by failing to include them in its original application; and (3) all issues in AWHMT's amended application should be "the subject of a notice in the **Federal Register**" and "subject to comments by interested parties."

Inasmuch as the discussions between AWHMT and the City have better focused the issues to be addressed in this proceeding, RSPA and FHWA believe it is appropriate to allow interested parties the opportunity to submit additional comments on all the requirements challenged in AWHMT's original application that are currently at issues between AWHMT and the City. Because it is appropriate to reopen the comment period with respect to all issues relating to four requirements challenged in AWHMT's original application, it is logical to allow interested parties to also submit comments in this proceeding on the City's separation distance requirements in City Code §§ 387.08(b) and 394.07(b)—rather than consider these requirements in a separate proceeding. The City's separation distance requirements appear to apply to the driver of any vehicle transporting explosives or other hazardous materials within the City of Cleveland, including drivers employed by the companies whose affidavits were submitted with AWHMT's original application. Each of these companies stated that their vehicles pick up, deliver, or otherwise transport hazardous materials within the City.

B. Requirements To Be Deferred

In their letters, AWHMT and the City agree that RSPA and FHWA should defer consideration of the following sections in the City Code which AWHMT had challenged in its original application, but which the City is proposing to amend:

—394.08, 387.02(g), 387.04, and 387.07 concerning annual permits;

—394.16 and 387.04(b) concerning fees for permits;

—394.08 and 387.09 concerning proof of insurance;

—387.08(a) concerning vehicle inspections; and

—387.08(a) concerning fire extinguishers.

The City stated that, pending action on the proposals to amend the City Code, the City's Division of Fire will continue to refrain from enforcing "the hazardous materials and explosive transportation permit and fee requirements under Sections 394.08, 394.16, 387.04 and 387.07," but that it would not agree to withhold enforcement of the other provisions of the City's Codified Ordinances that are listed on page two of [AWHMT's] April 15, 1999 correspondence, namely, permit and insurance requirements for the use and storage of explosives, vehicle inspections (except for annual inspections which the City does not conduct), and the maintenance of at least one fire extinguisher in good working condition.

RSPA and FHWA agree with AWHMT and the City that it is preferable to defer consideration of requirements that are being proposed to be revised, when those revisions (if adopted) may resolve the concerns raised in AWHMT's application. Accordingly, RSPA and FHWA are not inviting further comments on the requirements listed above, which will not be addressed further in this proceeding unless and until AWHMT or the City advises that they have been unable to resolve these parts of AWHMT's original application.

C. Effect of Revision of Routing Requirements

Finally, AWHMT asked FHWA for an opinion with respect to the requirements in City Code § 394.06(a) and (d) providing that hazardous materials may be transported on "City streets [only by] the safest and most direct route and the shortest distance from an interstate highway to the point of origin or destination, *as determined by the Fire Chief or his designee.*" AWHMT noted that this restriction was created prior to November 14, 1994 and, therefore, is not subject to the condition in 49 U.S.C. 5125(c)(1) that a highway routing designation or limitation must comply with FHWA's regulations in 49 CFR 397.71. RSPA and FHWA understand that the City will consider deleting from §§ 394.06(a) and (d) the language underlined above, but that, according to AWHMT, "The City is not willing to make any change to its routing requirements if the change would subject the City to the requirements of 49 CFR 397.71."

The City's letter did not address AWHMT's request FHWA's opinion as to whether the deletion of the phrase "as determined by the Fire Chief or his designee" from §§ 387.08(b) and 394.07(b) would constitute the establishment of a highway routing designation, limitation, or requirement after November 14, 1994. FHWA intends to respond to AWHMT's request separately from this preemption proceeding.

III. Reopening of Comment Period

For the reasons stated above, the period for public comments on AWHMT's application, as amended by its April 15, 1999 letter, is being reopened. Comments may be submitted through August 16, 1999 and may

discuss all issues relating to the City's requirements referred to in Part II.A., above, currently challenged by AWHMT, including issues raised in comments previously submitted. Rebuttal comments may be submitted through September 28, 1999 and may discuss only those issues raised in comments submitted during the reopened initial comment period; rebuttal comments may not raise new issues.

All comments should be limited to whether 49 U.S.C. 5125 preempts the City's requirements referred to in Part II.A., above. Comments should set forth in detail the manner in which these requirements are applied and enforced, and should specifically address the preemption criteria discussed in Part II of the September 17, 1998 public notice.

Persons intending to comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.211–107.211 and 397.201–397.211.

Issued in Washington, DC, on June 17, 1999.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Appendix A

April 15, 1999.

Kenneth R. Wykle,
Administrator, Federal Highway Administration, HOA–1, 400 Seventh St., SW., Washington, DC 20590.
Mr. Alan I. Roberts,
Associate Administrator, DHM–1, Research and Special Programs Administration, 400 Seventh St., SW., Washington, DC 20590.

Re: PDA–20 (RF)

Dear Messrs. Wykle and Roberts: On behalf of the Association of Waste Hazardous Materials Transporters (AWHMT), I am writing to modify and amend the Association's request that certain requirements imposed by the City of Cleveland, OH (City) on motor carriers engaged in the transportation of hazardous materials be preempted.

The AWHMT represents companies that transport, by truck and rail, waste hazardous materials, including industrial, radioactive and hazardous wastes, in North America. The Association is a not-for-profit organization that promotes professionalism and performance standards that minimize risks to the environment, public health and safety; develops educational programs to expand public awareness about the industry; and contributes to the development of effective laws and regulations governing the industry.

Background

Under the auspices of RSPA's and FHWA's Office of General Counsel (OGC) and with agreement of the City's Department of Law (Department) and the AWHMT, discussions were initiated in the fall of 1998 to voluntarily resolve issues in dispute in the matter of PDA–20(RF) short of a determination of preemption. These discussions have been productive in a number of areas. They have also helped to clarify areas where the parties have agreed that no acceptable compromise is likely. While we do not want at this time to cut off discussions in areas where progress appears to be forthcoming, we are no longer willing to delay RSPA's consideration of issues we have mutually agreed will not be resolved short of a preemption determination. Consequently, we are requesting that certain provisions challenged in our petition be held in abeyance, that the remaining provisions be addressed forthwith, and that our petition be amended to address another critical issue that regrettably was not identified in our original petition.

Provisions To Be Held in Abeyance

The Department has offered to recommend to the Mayor and the City Council that the City voluntarily amend its Code to address several of the provisions challenged in our petition in a manner that is consistent with Federal hazardous materials transportation law (FHMTL). The Department has also agreed to withhold enforcement of these provisions pending final action to amend the Code. Despite the good faith efforts of the Department to reach a voluntary settlement of these matters, the Department cannot bind the Mayor or the City Council to any agreements reached. Consequently, at this time, we are requesting that the following provisions challenged in our application of preemption be held in abeyance:

- Code § 394.16 and § 387.04(b) concerning fees
- Code § 394.08 and § 387.09 concerning proof of insurance
- Code § 387.08(a) concerning vehicle inspections
- Code § 387.08(a) concerning fire extinguishers
- Code § 394.08, § 387.02(g), § 387.04 and § 387.07 concerning annual permits

Following final action by the City and review by AWHMT of its amended Code, we will notify the Department and your offices of our intent to withdraw our objection or to ask that DOT reinstitute its preemption review of any remaining challenged provisions.

Provisions To Be Resolved Through Preemption Determination

The AWHMT and the Department have been unable to reach a common understanding about the preemptive affect of FHMTL on the following provisions and requirements:

- Code § 394.06(b) concerning the time-of-day and day-of-week restrictions on the transportation by motor carrier of placarded hazardous materials within the "downtown area" of the City.
- Code § 387.07(d) and Application for the Transportation of Explosives concerning the requirement that no explosive, as defined by the City, be transported within the City without the carrier prefiling a route and unless the route is approved by the City.
- Application for the Transportation of Explosives concerning 24-hour prenotification of all explosives deliveries.
- Application for the Transportation of Explosives concerning police escort for every shipment of more than 250 pounds of any explosive(s) if transported on City streets.

We continue to believe that these provisions and requirements will impermissibly delay the transportation of hazardous materials and are thus inconsistent and preempted by FHMTL. We ask that DOT refer to all prior filings for our justification as to why these provisions should be determined to be preempted.

We are mindful of DOT's statutory obligation to issue determinations of preemption within six months. AWHMT's application was filed and accepted by DOT in March 1998, but not even published in the **Federal Register** for six months. While we agreed to temporarily halt review during the last four months, we are anxious that a speedy determination of preemption be reached insasmuch as the City has not and will not suspend enforcement of these challenged provisions.

Petition To Amend AWHMT's Application for a Determination of Preemption

We regret that in our March 2, 1998 filing we did not ask DOT to review Code § 394.07(b) and § 387.08(b) concerning separation distance requirements between vehicles transporting hazardous materials.[1] We request permission to amend our application for a determination of preemption in the matter of PDA–20(RF) to incorporate review of these requirements. We understand that the City may object to this request. If such objection is made, we intend to submit a new application for a determination of preemption.

Code § 394.07(B) provides that vehicles transporting placarded hazardous materials must maintain a separation distance for all other placarded vehicles of at least 300 feet, and Code 387.08(b) provides that if the vehicle is transporting explosives, the separation distance from any other vehicle transporting explosives must be 500 feet. This explosives separation requirements is not even conditioned on a requirement that the vehicle be placarded. Some exceptions are provided for the Code § 394.07(b) requirement, but none are provided under Code § 387.08(b). We believe these requirements hinder the safe operation of vehicles, are impossible to comply with at the distances required, and are a misuse of federal placarding requirements.

Placarded vehicles have little control over traffic conditions they encounter. There is no federal requirement that standardizes the placement of placards on vehicles. The placards can be anywhere on the sides and ends of vehicles. There is no federal minimum distance visibility standard. However at 300 feet the visual signature of a placard, if it can be seen given intervening traffic, would be minuscule. The visibility problem is exacerbated at 500 feet where the distances is larger and the driver is supposed to be able to discern no only that a placard exists but that it is specific placard.[2] It goes without saying that the duty to identify vehicles containing explosive materials for which a placard is not required is impossible. The purpose of a placard is to communicate risk in the event of an incident. It is not intended for traffic control as envisioned by the City's Code. We believe this requirement will divide the attending of the very drivers the City should want to stay focused on the road. Instead, these drivers are going to be tasked to scan vehicles in all directions of travel,/3/ including around corners, within the City—an area already, by the city definition, congested—at all times of day, in all weather, to determine if placards exist. For these reasons, we do not believe these requirements can or should be complied with, or that they can be enforced in other than an arbitrary and capricious way.[4]

If these requirements are allowed to stand, they present a training nightmare. Assuring that all motor carriers of hazardous materials that entertain any possibility of engaging in transportation in Cleveland will have knowledge of these requirements, which is dubious, that motor carrier will have to modify its training programs to include information about the City's separation requirements. Then the motor carrier will have to hope that the driver remains aware of these requirements. Then the motor carrier will have to hope that the driver remains aware of these requirements during any forthcoming trip within the City, which given the uniqueness of the requirements is unlikely, especially for the occasional driver to the City. It almost begs for the carrier to provide a separate refresher training notice to the driver each time a shipment may go in the vicinity of the City. It cannot be the intent of Congress that the training requirements of drivers operating in interstate commerce be dictated by the whims of local jurisdictions.

The City has, during the course of our discussions, made clear it intents to enforce these requirements. However, it has not explained what special circumstances exist in the City to justify this extraordinary requirement, nor has it disclosed the scientific analysis that underpins the 300 feet/500 feet separation instead of for example some other distance requirement. The burden of asserting and demonstrating a supportable safety justification for these requirements should be placed squarely on the City.

The issue of separation distances has been considered in other preemption proceedings. Irrespective of DOT's interpretations in these prior proceedings, the type of separation requirement at issue here can be distinguished from these other proceedings.

- First, the City's requirements is not a following distance requirement. It contemplates a duty on drivers of vehicles transporting placarded hazardous materials in addition to maintain adequate following distance from the vehicles ahead, to be aware of the respective distances of other such hazmat vehicles within a circumference of hundreds of feet. Only once, in 1981, did DOT deal with a separation distance requirements similar to that contemplated by the City Code.[5]
- Second, the preemption provisions of the FHMTL have been amended twice by Congress since DOT last considered the issue of non-federal separation or following distance requirements. Both times, the preemption provisions of the FHMTL were strengthened. Not only did the Congress reaffirm its intent "to preclude a multiplicity of * * * local regulations and the potential for varying * * * regulations in the areas of hazardous materials transportation", but declared that "greater uniformity" was "necessary and desirable" in order to "promote * * * safety" in commerce.[6]
- Third, the FHMTL charges DOT, not localities, with duty to "prescribe regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce."[7] DOT has accomplished this objective through the hazardous materials regulations (HMR). Recently, FHWA recognized the fundamental importance of the HMR when it proposed to update the term "compatible/compatibility", as a condition to qualify states to receive motor carrier safety assistance, to reflect RSPA's new requirement that transporters of hazardous materials comply with the HMR during all intrastate operations.[8] With this mandate, RSPA has "questioned 'the advisability of encouraging a driver to constantly direct his attention away from the proximity of his vehicle' and how * * * distance requirements promote [ ] safety."[9] Given its mandate, it would be absurd for DOT to sanction a non-federal requirement it admits compromises safety.
- Fourth, § 397.3 cannot save the City's requirements. Section 397.3 existed before the above referenced amendments were made to the FHMTL during this decade. This section of regulation simply has not kept pace with congressional intent, and it cannot take precedence over federal law and the congressional mandate to achieve safety through greater uniformity.[10]

Section 397.3 is so dated that it does not even demand that the non-federal operating rules have a safety nexus. Since the purpose of the HMR is to ensure the safe transportation of hazardous material, or in the case of the federal motor carrier safety regulations (FMCSR), the safe operation of commercial motor vehicles, it is little wonder that any number of non-safety-based local requirements that could interfere or unreasonably burden hazardous materials transportation would not be at "variance with specific regulations of [DOT]".[11] However, in fact DOT has considered and has issued a hazardous materials vehicle separation requirement. Section 397.9 provides that vehicles transporting division 1.1, 1.2, or 1.3 materials must not be parked within 300 feet of certain structures or activities, and exceptions are provided. The Code § 387.08(b) requirement for a 500-foot separation distance for vehicles transporting explosives applies while the vehicle is moving and while the vehicle is parked. As noted above, no exceptions are provided for the City's rule. Using the logic employed by the Ninth Circuit in the matter of *Chlorine Institute, Inc.* v. *Califor. Hwy. Patrol* concerning state-imposed escort requirements, we assert that DOT's determination to regulate only the distance between parked vehicles transporting specified types of explosives shows that DOT has demonstrated its intent not to require such separation distances for vehicles transporting other hazardous materials. The court went on to preempt this state requirement as interfering with Federal uniformity in an unsafe and burdensome manner.[12] If a court is willing to apply this principle to a state requirement, there can be no doubt of its applicability to a local requirement. Any non-federal requirement that uniquely applies to the transportation of hazardous materials and applies differently or in addition to the FHMTL or HMR or applicable FMCSR must be subject to scrutiny under DOT's preemption standards and not be protected under the guise of local vehicle operating requirements.

- Fifth, absent some compelling local circumstance that we are unaware of, DOT would set an untenable precedent if it allow these requirements to stand after acknowledging that safety is compromised. Such a determination would allow for the possibility that the Nation's other 30,000 jurisdictions would impose unique separation distance requirements without restraint.

We recommend that DOT find the City's separation requirements be preempted under the "dual compliance" standard as they conflict with federal requirements as outlined in the attached affidavit or with 49

[1] City of Cleveland Code requirements are attached.

[2] See attached affidavit of Karla Moore, Tri-State Motor Transit, Co., Inc., page 2.

[3] Drivers could only hope to make this identification through rear view mirrors for vehicles to the rear. These mirrors are not intended or adjusted to identify vehicles 300 feet/500 feet to the rear.

[4] See affidavit of Karla Moore that explains for detail the consequences of such separation distance requirements.

[5] IR–3, 46 *FR* 18923 (March 26, 1981).

[6] S. Rept. 1192, 93rd Cong. 2d Sess., 1974, page 37; and P.L. 101–615, Section 2(5).

[7] 49 U.S.C. 5103(b).

[8] 64 *FR* 11414 (March 9, 1999). In receiving grant assistance under this program, states are required to certify that any local requirements affecting the transportation of hazardous materials by motor carrier are also consistent with the HMR.

[9] 55 *FR* 39744, citing IR–3, *FR* 18918 (March 26, 1981).

[10] Speed limits, detours and other traffic management requirements that apply to all trucks are not in dispute.

[11] *Ibid.*

[12] *Chlorine Institute, Inc.* v. *Calif. Hwy. Patrol*, Civ. S–92–396 (E.D. Cal., September 16, 1992), aff'd. 29 F.3d 495 (9th Cir. 1994).

CFR 397.9 as noted above.[13] If DOT concludes that these provisions do not rise to the level of a conflict, we request that DOT find these requirements preempted under its authority to preempt non-federal requirements that pose "an obstacle to accomplishing and carrying out" the law.[14]

Request for Technical Assistance

With no prejudice to all parties, we request an opinion from FHWA as to whether the City's routing designations and restrictions will be compromised if the City either strikes the phrase "as determined by the Fire Chief, or his designee" currently appearing in Code § 394.06(a) and (d) of if the City otherwise clarifies that this phrase does not require some type of route prenotification.[15] We understand that the City's intra-city route designations and restrictions were in place prior to November 14, 1994, and as such are grandfathered from the requirement to be consistent with the federal highway routing standards set forth at 49 CFR 397.71. The City is not willing to make any change to its routing requirements if the change would subject the City to the requirements of 49 CFR 397.71.

Conclusion

We are willing to hold in abeyance certain issues raised in our petition for a determination of preemption pending the outcome of efforts by the City to reform its Code in a manner consistent with the FHMTL. At the same time, we are asking for expeditious review of matters the City and we acknowledge will not be resolved by further discussion. Finally, we request that our petition for preemption be amended to include a review of requirements for vehicle separation distances.

Certification

I certify that a copy of this comment has been sent to Mr. Sylvester Summers at the address specified in the **Federal Register**.

Respectfully Submitted,

Cynthia Hilton,

Executive Director.

Attachments

1. Cleveland Code § 387.08(b).
2. Cleveland Code § 394.07(b).
3. Affidavit of Tri-State Motor Transit.

[Attachments not reproduced, available from RSPA]

Appendix B

April 30, 1999.

Kenneth R. Wykle,

Administrator, Federal Highway Administration, HOA–1, 400 Seventh St., SW, Washington, DC 20590.

Alan I. Roberts,

Associate Administrator, DHM–1, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590.

Re: *City of Cleveland's Response to the Association of Waste Hazardous Materials Transporter's (AWHMT) Request to Amend Petition No. PDA–20 (RF) and to Hold Certain Provisions in Petition in Abeyance*

Dear Messrs. Wykle and Roberts: The City of Cleveland hereby submits this response to AWHMT's letter dated April 15, 1999, requesting permission to amend petition no. PDA–20(RF) and to hold certain provisions in abeyance pending the outcome of negotiations between the parties.

A. Background/Provisions To Be Resolved Through Preemption Determination

The City agrees with AWHMT's characterization of the discussions which have taken place between the parties, and the progress which has been made with regard to settling certain provisions of PDA–20(RF). The City intends to continue discussions with AWHMT regarding those issues which AWHMT has requested be held in abeyance.

Moreover, the City understands that AWHMT has requested that the Department of Transportation and the Federal Highway Administration move forward to decide the four (4) provisions of the City of Cleveland's Codified Ordinances and the current Explosives Permit application listed on page two of the April 15, 1999 letter, to wit, Section 394.06(b) time-of-day and day-of-week restrictions, Section 387.07(d) prenotification and approval of route for explosives transportation, and the explosives transportation application requirements for 24 hour prenotification and police escort. To the extent practical, the City is willing to continue to discuss these issues with AWHMT, but is doubtful resolution is likely.

B. Provisions To Be Held in Abeyance

For the record, the City would like to clarify a representation that AWHMT makes concerning the City's agreement to withhold enforcement of certain provisions of its Codified Ordinances which AWHMT has challenged but has asked RSPA hold in abeyance. In our discussions with AWHMT, the City has acknowledged that the Division of Fire, since the filing of PDA–20(RF), has refrained from enforcing the hazardous materials and explosives transportation permit and fee requirements under Sections 394.08, 394.16, 387.04 and 387.07, and the Division of Fire has indicated it will continue to withhold enforcement of these provisions even though it is not required by law to do so.

The City, however, did not represent to AWHMT that it would also withhold enforcement of the other provisions of the City's Codified Ordinances that are listed on page two of the April 15, 1999 correspondence, namely, permit and insurance requirements for the use and storage of explosives, vehicle inspections (except for annual inspections which the City does not conduct), and the maintenance of at least one fire extinguisher in good working condition. I have brought this to the attention of Cynthia Hilton and explained that I would clarify the City's position in this letter, and I believe she is in agreement with the above explanation.

C. Petition To Amend AWHMT's Application for Determination of Preemption

The City objects to AWHMT request for permission to amend its application for a determination of preemption to include a challenge to City of Cleveland Codified Ordinances 394.07(b) and 387.08(b), which require vehicles transporting hazardous materials to maintain a 300 or 500 foot separation distance from other vehicles containing hazardous materials. The basis for the City's objections are set forth below:

(1) *AWHMT Has Not Established That It Is Directly Affected by the City's Requirement.*

Federal law provides that a person "directly affected" by a requirement of a political subdivision, may apply for a preemption determination under 49 U.S.C. 5125 (49 USCA 5125(d)(1); 49 CFR 107.201(a)(1)). The City maintains that AWHMT has not established in its filing of April 15, 1999, that it is directly affected by the City's minimum distance requirement. Therefore, it does not have standing to request a preemption determination on the minimum distance requirement.

AWHMT has attached the affidavit of a representative of TriState Motor Transit Co. (hereinafter referred to as "Affiant") ostensibly to establish standing to amend PDA–20 (RF) to include the challenge to the City's minimum distance requirement. This affidavit includes numerous hypothetical situations which might occur in the worst case scenario if the City were to enforce the minimum distance provision in an unreasonable and arbitrary fashion. The affidavit, however, contains no *factual* evidence which supports a determination that the Affiant is directly affected. Affiant states, in fact, that TriState provides virtually no service to the City of Cleveland, and further admits that "TSMT has never been cited for violating these separation requirements". AWHMT attached no other evidence that its members have been directly affected by the City's minimum distance requirement. Therefore, AWHMT has failed to establish that it has standing to bring this request for a preemption determination, and its request should be denied.

(2) *AWHMT Has Waived Its Right To Include a Challenge to the City's Minimum Distance Requirement.*

AWHMT has waived its right to challenge the City's minimum distance requirement for the reason that it neglected to include this issue in its original petition. Support for this proposition can be found at 49 CFR 107.23 which establishes the requirements for an application for a preemption determination. The regulations implicitly contemplate that preemption applications must be comprehensive and complete when filed (see 107.203(b) (2) and (3). The regulations make no provision for amending or revising the preemption petition after it is filed. From a policy perspective, amending a petition to allow amendments while a proceeding is pending discourages a political subdivision from engaging in negotiations since the issues in controversy are constantly subject to change. For these reasons, AWHMT's request to amend the petition should be denied.

(3) *The Entire Amended Petition Should Be Subject to the Publication and Commentary Requirements of 40 CFR 107.203(d) and 107.205.*

Without waiving its objection to AWHMT's request to amend its petition, the City requests that in the event RSPA grants AWHMT's request to amend, the entire amended petition, including the new challenge to the minimum distance requirement as well as the challenges to the other provisions of the City's ordinances contained in the original petition filed in March of 1998, be the subject of a notice in the **Federal Register** and the subject to comments by interested parties, including the City of Cleveland, pursuant to 49 CFR 107.205. Opening up the entire petition to comments would allow a newly interested party to comment to all issues, not just the minimum distance requirement. Moreover, it would allow the City of Cleveland the opportunity to supplement its comments already submitted with affidavits, which it was not able to do previously because of time constraints.

This concludes the City of Cleveland's response to AWHMT's submission dated April 15, 1999. We appreciate this opportunity to comment. I hereby certify that a copy of this letter was sent to Cynthia Hilton, on behalf of the Applicant, the Association of Waste Hazardous Materials Transporters.

Very truly yours,

Joyce M. Dodrill,

Assistant Director of Law.

[FR Doc. 99–16623 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–60–M

[13] 49 U.S.C. 5125(a)(1)

[14] 49 U.S.C. 5125(a)(2).

[15] This issue is separate and apart from the prenotification of explosive routes currently required by Code § 387.387.07(d).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Innovative Programs To Increase Booster Seat and Seat Belt Use Among Children

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of availability—discretionary cooperative agreements.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to demonstrate and evaluate innovative programs designed to increase booster seat use among children, ages 4 to 8, who have outgrown their child safety seats but do not fit into adult seat belts, and to increase seat belt use among older children, ages 8 through 15.

DATES: Applications must be received at the office designated below before 2:00 p.m. (EST), on August 30, 1999.

ADDRESSES: Applications must be submitted to the DOT/National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Debra J. Crites, 400 7th Street S.W., Room 5301, Washington, D.C., 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program Number DTNH22–99–H–05138.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Debra J. Crites, Office of Contracts and Procurement at (202) 366–9547, or by e-mail at *dcrites@nhtsa.dot.gov*. Programmatic questions relating to this cooperative agreement program should be directed to Lori A. Miller, Contracting Officer's Technical Representative (COTR), Occupant Protection Division (NTS–12), NHTSA, 400 7th Street, S.W., Washington, D.C., 20590, by e-mail at *lmiller@nhtsa.dot.gov*, or by phone at (202) 366–9835. Interested applicants are advised that no separate application package exists beyond the content of this announcement.

SUPPLEMENTARY INFORMATION:

Background

Traffic crashes are the leading cause of death to American children of every age from 5 through15 years old. Restraint use and proper restraint use decreases as children get older. While restraint use for infants is 85 percent, restraint use for children ages 5 through 15 decreases to 64 percent. NHTSA's 1997 Fatal Analysis Reporting System shows that 52.6 percent of fatally injured 4 through 7 year-old passenger vehicle occupants were totally unrestrained and 65.7 percent of fatally injured 8 through 15 year-olds were unrestrained.

Studies also reveal that of the 4 to 8 year-olds who are restrained, most are in safety belts, not booster seats. In addition, a NHTSA observational study showed that, of the children who had outgrown their child seat, at about age 4 and 40 pounds, only 6 percent were in booster seats. Because of their size, children do not fit properly into adult seat belts until they are approximately eight years old and between 60 and 80 pounds. Booster seats help prevent injuries by helping to position lap and shoulder belts properly across the pelvis and shoulder. Booster seats also may help make safety belts more comfortable for children, decreasing the likelihood that children will place the shoulder belt under their arm, put it behind their back, or remove the safety belt altogether.

Despite targeted program and marketing efforts, many parents and caregivers of 4 through 15 year-olds continue to let children ride unrestrained or in inappropriate restraints or seating positions. Research studies, focus group testing, and low usage rates suggest that many parents, even those who have secured younger children in child safety seats, do not know what a booster seat is. Therefore, parents move their children, when they have outgrown their child safety seat, into safety belts or leave them totally unrestrained. Many 8 to 12 year-olds continue to ride unrestrained and in the front seat, even in airbag-equipped vehicles.

Low usage rates and lack of booster seat use may in part be attributed to gaps in child passenger safety laws and seat belt laws which often leave children ages 4 through 15 unprotected. Under most states' provisions, a 10 year-old can ride legally in the back seat unrestrained because laws only apply to front seat occupants. Many states fail to address the issue of children as passengers in the cargo area of pickup trucks. Other gaps, such as exemptions for out-of-state vehicles and overcrowded vehicles (car pooling from school) and exemptions if the driver is not the child's legal guardian, make it even more difficult to reduce injuries.

Programs Addressing Older Child Passengers

The Standardized Child Passenger Safety Training Program, developed by NHTSA in 1997, a program aimed at increasing booster seat and seat belt use among children, is currently being delivered nationwide. This technical training program provides child passenger safety professionals essential information and skills necessary to educate the public and to participate in child safety seat clinics. The program includes hands-on installations and educational information regarding all child restraints, including booster seats and seat belts. To date, over 2,500 technicians across the country have been certified. New classes are available on a regular basis.

The National SAFE KIDS Campaign, in partnership with NHTSA, developed and implemented a grassroots program known as Give Kids a Boost. This program offers educational information regarding booster seats, and in some cases, issues booster seats to parents with age-appropriate children. The delivery system was coordinated through health clinics. When families visit the clinics to receive immunizations and booster shots for their children, parents are provided with the information or the booster seats necessary to protect the children as passengers in a motor vehicle.

Programs addressing the older child passenger have been developed by

national and local organizations across the country. For example, the National Peer Helpers Association (NPHA) and the National Federation of State High School Associations (NFHS), with assistance from NHTSA, successfully piloted a cross-age mentoring program in four states. Research has shown that peer education is a particularly effective tool for communicating traffic safety messages to youth. In this nontraditional program, high school student leaders send prevention messages to junior high school and middle high school students, as well as their own peers. The prevention messages include: avoiding alcohol, tobacco and other drugs; not riding with a driver who has been drinking alcohol, or using other drugs; and always wearing safety belts.

Many other new and innovative approaches exist to increase booster seat use and seat belt use among children. To make an impact on the occupant protection problem, it is necessary to identify both innovative and effective strategies and make this information available to those interested in increasing the use of and the proper use of child restraints and/or seat belts.

Purpose and Objectives

The purpose of this cooperative agreement program is to support the development, implementation, and evaluation of up to six (6) projects designed to reduce injuries and fatalities among children ages 4 though 15, due to failure to use booster seats or seat belts. Projects may include increasing booster seat use among children, ages 4 to 8, who have outgrown their child safety seat but do not yet fit into an adult seat belt, and/or innovative approaches to increase seat belt use among older children, ages 8 through 15.

Specific objectives for this cooperative agreement program are as follows:

1. Identify communities that demonstrate the potential for successful implementation and evaluation of innovative approaches to increase booster seat use among children, ages 4 to 8, who have outgrown their child safety seat but do not yet fit into an adult seat belt, and/or innovative approaches to increase seat belt use among older children, ages 8 through 15.

2. Use community data to define the problem, as appropriate. These data are to extend beyond police crash reports, to the extent possible.

3. Actively engage the community to define the problem and potential solutions to the problem. The community may include, but should not be limited to, parents, caregivers, children, law enforcement officials, legislators, traffic safety officials, and health care and injury prevention professionals. The grantee shall develop strategies for ensuring community involvement in the process.

4. Implement a program to increase the use of booster seats among children ages 4 to 8 and/or seat belts among children ages 8 through 15. The intervention should be creative, based on data and citizen input, and comprehensive in nature. The intervention should be designed to allow for easy implementation and replication.

5. Evaluate the effectiveness of the intervention. The evaluation plan should include process and outcome measures. The evaluation may include, but should not be limited to, the following: what works, what does not work, how to engage partners, methods of overcoming barriers or challenges, and ways to turn challenges into opportunities.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement and to coordinate activities between the Grantee and NHTSA.

2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.

3. Serve as a liaison between NHTSA Headquarters, Regional Offices, and others (Federal, state and local) interested in increasing restraint use and the activities of the grantee.

4. Review and provide comments on program content, materials, and evaluation activities.

5. Stimulate the transfer of information among grant recipients and others engaged in child and youth occupant protection activities.

Period of Support

Up to six (6) cooperative agreements will be awarded for an initial project period of twelve (12) months. Contingent on the availability of funds and satisfactory performance, each cooperative agreement may be extended for an additional twelve (12) months. A total of approximately $500,000 is available for all awarded cooperative agreements for up to a two (2) year period. It is anticipated that individual award amounts, based on demonstrated need, may range between $50,000 and $100,000. Given the amount of funds available for this effort, applicants are strongly encouraged to seek other funding opportunities to supplement the Federal funds. Preference may be given to applicants with cost sharing proposals. At the discretion of the government, funds may be obligated fully at the time of award of the cooperative agreement or incrementally over the period of the cooperative agreement.

Eligibility Requirements

Applications may be submitted by public and private, nonprofit and not-for-profit organizations, and governments and their agencies or a consortium of the above. Thus, universities, colleges, research institutions, hospitals, other public and private (non- or not-for-profit) organizations, and State and local governments are eligible to apply. Interested applicants are advised that no fee or profit will be allowed under this cooperative agreement program. Preference may be given to applicants that have proposed cost-sharing strategies and/or other proposed funding sources in addition to those in this announcement.

Application Procedure

Each applicant must submit one (1) original and two (2) copies of the application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Debra J. Crites, 400 7th Street S.W., Room 5301, Washington, D.C. 20590. Applications must include a completed Application for Federal Assistance (Standard Form 424—Revised 4/88). An additional three (3) copies will facilitate the review process, but are not required.

Only complete packages postmarked on or before 2:00 p.m. (EST) on August 30, 1999, will be considered. No facsimile transmissions will be accepted. Applications must be typed on one side of the page only and a reference to NHTSA Cooperative Agreement Number DTNH22–99–H–05138 must be included. Unnecessarily elaborate applications beyond what is sufficient to present a complete and effective response to this invitation are not desired. Please direct questions regarding the application process to Debra J. Crites, at (202) 366–9547, or by e-mail *dcrites@nhtsa.dot.gov*. Programmatic questions should be directed to Lori A. Miller, by e-mail at *lmiller@nhtsa.dot.gov* or by phone at (202) 366–9835.

Application Contents

1. The application package must be submitted with OMB Standard Form 424, (REV. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the assurances signed (SF 424B). The OMB Standard Forms (SF) 424, SF 424 A, and SF 424 B may be downloaded directly from the OMB Internet web site *www.whitehouse.gov/WH/EOP/OMB/grants/*. While the Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs (detail labor, including labor categories, level of effort, and rate; direct materials, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontractors/subgrants, with similar detail, if known; and overhead), as well as any costs the applicant proposes to contribute or obtain from other sources in support of the projects in the innovative project plan. The estimated budget should be separated and proposed on the basis of a twelve (12) month effort with submission of a second twelve (12) month effort to cover the possible continuation for an additional year.

2. Funding sources other than the funds being provided through this cooperative agreement are encouraged. Since activities may be performed with a variety of financial resources, applicants need to fully identify all project costs and their funding sources in the proposed budget. The proposed budget must identify all funding sources in sufficient detail to demonstrate that the overall objectives of the project will be met.

3. Program Narrative Statement: In no more than 20 pages, the program narrative statement must fully describe the scope of the project, detailing the activities and costs for which funding is being requested. Also, applications for this program must include the following information in the program narrative statement:

a. A table of contents including page number references.

b. A description of the community in which the grantee proposes to implement a program to increase booster seat use among children ages 4 to 8 and/or to increase seat belt use for children in the age group 8 through 15. For the purpose of this program, a community includes a city, town or county, small metropolitan area or a group of cities, towns or counties in a particular region. It should be large enough so that the program can have a demonstrable effect on booster seat and/or seat belt usage among the applicable age group. The description of the community should include, at a minimum, community demographics including population of children and youth, the community's child and/or youth restraint use problem, data sources available, existing traffic safety programs, occupant protection programs and community resources.

c. A description of the program's goals and how the grantee plans to establish a booster seat and/or youth occupant protection program in the proposed site. How will the grantee solicit the assistance of and seek partnerships with local organizations, such as law enforcement agencies and other safety and health groups? How will children, parents and/or youth become part of the process of problem identification and proposed solutions?

d. An implementation plan including a description of the interventions or specific activities proposed to achieve the objectives of the program. What actions will be undertaken to increase booster seat use and/or seat belt use? How will parents, children, youth, teachers, etc., be involved with these activities? What groups are needed to ensure program success? To what degree has the buy-in of these groups been secured? How will the interventions be delivered? How will delivery be monitored? What are the expected results of the intervention?

e. A description of the process and outcome evaluation plan including the types of data that will be collected and all data collection procedures. A description of the data analysis procedures that will be conducted should be included.

f. A staffing plan that describes how the project will be managed, both at the grantee-level and at the community level. The application shall identify the proposed project manager and other personnel considered critical to the successful accomplishment of this project, including a brief description of their qualifications and respective organizational responsibilities. The roles and responsibilities of the grantee, the community and any others included in the application package shall be specified. The proposed level of effort in performing the various activities shall also be identified.

g. A detailed explanation of time schedules, milestones, and product deliverables, including quarterly reports and draft and final reports. (See Terms and Conditions of Award section of this announcement.)

4. Commitment and Support: A complete set of letters (form letters are not acceptable) from major partners, organizations, and groups proposed for involvement with this project shall detail what each partner is willing to do over the course of the project period. A written endorsement/support for the project from the State Highway Safety Agency shall also be included.

Evaluation Criteria and Review Process

1. Each application package will be reviewed initially to confirm that the applicant is an eligible recipient, and has complied with the Application Procedures section of this announcement. Each complete application from an eligible recipient will then be evaluated by an Evaluation Committee. The applications will be evaluated using the following criteria:

a. *Program Concept and Innovation* (30 percent).

The extent to which the applicant is knowledgeable about child passenger safety and/or youth occupant protection programs. The extent to which the applicant clearly identifies and explains creative approaches to address booster seat use and/or youth occupant protection. If building on an existing approach or program, what are the innovative, new, or creative features that make this project different from what has been tried in the past?

Has the applicant identified potential barriers associated with developing and implementing the new, creative approach? Has the applicant offered solutions for addressing the barriers? Has the applicant involved child and/or youth organizations, traditional traffic safety partners, and new non-traditional highway safety partners in the project? Has the applicant involved media outreach efforts? Has the applicant demonstrated how the project is adaptable to other jurisdictions at a reasonable cost? Has the applicant obtained written endorsement/support from the State Highway Safety Agency to insure coordination with the State's overall Highway Safety Plan?

b. *Goals, Objectives, and Work Plan* (30 percent).

The extent to which the applicant's goals are clearly articulated and the objectives are time-phased, specific, action-oriented, measurable, and achievable. The extent to which the work plan will achieve an outcome-oriented result that will increase booster seat use among 4 to 8 year-olds and/or seat belt use among the 8 through 15 year old age group. The work plan must

address what the applicant proposes to develop and implement; how this will be accomplished; and must include the major tasks/milestones necessary to complete the project. This involves identification of, and solutions to, potential technical problems and critical issues related to successful completion of the project. This also involves the extent to which the applicant has demonstrated an understanding of the proposed community, including the community's demographics, traffic safety problem, and resources (including data). Data sources must include local data sets and should (to the degree possible) extend beyond police crash reports to include booster seat and seat belt use, non-use, and injury data. The work plan will be evaluated with respect to its feasibility, realism, and ability to achieve desired outcomes.

c. *Project Management and Staffing* (20 percent).

The extent to which the proposed staff are clearly described, appropriately assigned, and have adequate skills and experience. The extent to which the applicant has the capacity and facilities to design, implement, and evaluate the proposed project. The extent to which the applicant has provided details regarding the level of effort and allocation of time for each staff position. The applicant must furnish an organizational chart and resume of each proposed staff member. Is the applicant's staffing plan reasonable for accomplishing the objectives of the project within the time frame set forth in the announcement? Has the applicant's financial budget provided sufficient detail to allow NHTSA to determine that the estimated costs are reasonable and necessary to perform the proposed effort? Has financial or in-kind commitment of resources by the applicant's organization or other supporting organizations to support the project been clearly identified?

d. *Evaluation Plan* (20 percent).

The extent to which the evaluation plan clearly articulates the project's potential to make a significant impact on increasing booster seat use among 4 to 8 year-olds and/or seat belt use among older children, and on decreasing motor vehicle fatalities and injuries. The extent to which the evaluation plan will measure the effectiveness of the innovative, creative project. The extent to which the evaluation plan will synthesize, summarize, and report results which are useable and decision-oriented. Has the applicant described the proposed evaluation design and the methods for measuring the outcomes of the proposed interventions (countermeasures)? Are there sufficient data sources and is access ensured from appropriate owners or collectors of data to collect and appropriately analyze quantitative and qualitative data to measure the effectiveness of the innovative project?

2. Depending upon the results of the evaluation process, NHTSA may suggest revisions to applications as a condition of further consideration to ensure the most efficient and effective performance consistent with the objectives of increased booster seat use, and increased seat belt use among older children.

Special Award Selection Factors

While not a requirement of this announcement, applicants are strongly urged to seek funds from other Federal, state, local, and private sources to augment those available under this announcement. For those applications that are evaluated as meritorious for consideration for award, preference may be given to those that have proposed cost-sharing strategies and/or other proposed funding sources in addition to those in this announcement.

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirement for Drug Free Work Place (Grants).

2. Reporting Requirements and Deliverables:

a. Quarterly Progress Reports must include a summary of the previous quarter's activities and accomplishments, as well as the proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter shall be included in the report. Any problems and issues that may arise and need the attention of the Contracting Officer's Technical Representative (COTR) or Contracting Officer (CO) shall be clearly identified in the quarterly report in a specific, identified section. The grantee shall supply the progress report to the COTR every ninety (90) days, following date of award.

b. Initial and Subsequent Meetings with COTR: The grantee shall meet with the COTR and appropriate NHTSA staff in Washington, D.C. at NHTSA's offices or as part of a COTR site visit to discuss and refine the development, implementation, and evaluation of the project. The grantee will prepare a 20 to 30 minute presentation describing the project and must be prepared to answer questions from the COTR and others present at the briefing. After this initial meeting with the COTR, the grantee shall meet at least once a year with the COTR in Washington, D.C. at NHTSA's offices to discuss the project's progress and results. These meetings will be a minimum of 4 hours in length.

c. Revised Implementation and Evaluation Plan: The grantee will submit a revised program implementation and evaluation plan incorporating verbal and written comments from the COTR. This revised plan is due no more than one (1) month from date of the initial meeting with the COTR.

d. Draft Final Report: The grantee will prepare a Draft Final Report that includes a description of the innovative project, intervention strategies, program implementation, evaluation methodology, and findings from the program evaluation. With regard to technology transfer, it is important to know what worked and what did not work, under what circumstances, and what can be done to enhance replication in similar communities and what can be done to avoid potential problems for future replication of the project. The grantee will submit Draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

e. Final Report: The grantee will revise the Draft Final Report to reflect the COTR's comments. The revised final report will be delivered to the COTR along with the following:

The print materials shall be provided to NHTSA in both camera ready and appropriate media formats (disk, CD-rom) with graphics and printing specifications to guide NHTSA's printing office and any outside organization implementing the program. Printing Specifications follow:

• Digital artwork for printing shall be provided to NHTSA on diskette (100MG Zip disk or 1GB Jaz disk). Files should be in current desktop design and publication programs, for example, Adobe Illustrator, Adobe Photoshop, Adobe Pagemaker, Macromedia Freehand, QuarkXPress. The grantee shall provide all supporting files and fonts (both screen and printers) needed for successful output, black and white laser separations of all pages, disk directory(s) with printing specifications provided to the Government Printing Office (GPO) on GPO Form 952 to guide NHTSA's printing office, GPO, and any outside organizations assisting with program production. The grantee shall confer with the COTR to verify all media format and language.

• Additionally, the program materials shall be submitted in the following format for placement on NHTSA's . website on the world wide web;

—Cooperative agreement number
—Original application format, for example, *pm5; *.doc; *.ppt; etc
—HTML level 3.2 or later
—A PDF file for viewing with Adobe Acrobat

All HTML deliverables must be delivered on either a standard 3.5" floppy disk or on a Windows 95 compatible formatted Iomega zip disk and labeled with the following information:

—Cooperative Agreement Number
—Grantee's name and phone number
—Names of relevant files
—Application program and version used to create the file(s).

If the files exceed the capacity of a high density floppy, a Windows 95 compatible formatted Iomega zip disk is acceptable.

Graphics must be saved in Graphic Interchange Format (GIF) or Joint Photographic Expert Group (JPEG). Graphics should be prepared in the smallest size possible, without reducing the usefulness or the readability of the figure on the screen. Use GIF for solid color or black and white images, such as bar charts, maps, or diagrams. Use JPEG (highest resolution and lowest compression) for photographic images having a wider range of color or grey-scale tones. When in doubt, try both formats and use the one that gives the best image quality for the smallest file size. Graphic files can be embedded in the body of the text or linked form the body text in their own files: the latter is preferable when a figure needs to be viewed full screen (640 X 480 pixels) to be readable.

Tabular data must be displayed in HTML table format.

List data must be displayed in HTML list format.

Pre-formatted text is not acceptable.

Currently, frames are not acceptable.

JAVA, if used, must not affect the readability or usefulness of the document, only enhance it.

Table background colors may be used, but must not be relied upon (for example, a white document background with a table with colored background may look nice with white text, but the colored background doesn't show up on the user's browser the text shall be white against white and unreadable.)

All HTML documents must be saved in PC format and tested on a PC before delivery.

f. Final project briefing to NHTSA and a presentation to a national meeting: The grantee will deliver a briefing in Washington, D.C. at NHTSA's offices to the COTR and appropriate NHTSA staff to review the project implementation, evaluation, and results. This presentation shall last no less than 30 minutes and the grantee shall be prepared to answer questions from the briefing's attendees.

In consultation with the COTR, the grantee will select a national meeting to deliver a presentation of the project and it effectiveness.

g. An electronic Microsoft PowerPoint (97) presentation that NHTSA staff shall be able to use to brief senior staff or traffic safety partners at various meetings and conference.

3. During the effective performance period of the cooperative agreements awarded as a result of this announcement, the agreement as applicable to the grantee, shall be subject to the NHTSA's General Provisions for Assistance Agreement, dated July 1995.

Issued on: June 22, 1999.

R.E. Engle,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 99–16356 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33754]

Michigan Southern Railroad Company, Inc.—Acquisition Exemption—Branch & St. Joseph Counties Rail Users Association, Inc.

Michigan Southern Railroad Company, Inc. (MSRR), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire (by purchase) 24.34 miles of rail line owned by the Branch & St. Joseph Counties Rail Users Association, Inc. (RUA), between milepost 382.5 at or near Coldwater, MI, and milepost 406.84 at or near Sturgis, MI. Wabash & Western Railway Co., an affiliate of MSRR, will continue to operate the line of railroad under the name Michigan Southern Railroad.[1]

The transaction is scheduled to be consummated on or before July 20, 1999.[2]

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33754, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., REA, CROSS & AUCHINCLOSS, Suite 570, 1707 L Street, NW, Washington, DC 20036, and Daniel A. LaKemper, Esq., General Counsel, Pioneer RailCorp, 1318 South Johanson Road, Peoria, IL 61607–1130.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV."

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: June 24, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16652 Filed 6–29–99; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Southwestern Michigan Railroad Company, Inc.—Acquisition and Operation Exemption—Branch & St. Joseph Counties Rail Users Association, Inc.*, Finance Docket No. 31525 (ICC served Dec. 14, 1990); *Michigan Southern Railroad Company, Inc.—Operation Exemption—Branch & St. Joseph Counties Rail Users Association, Inc.*, Finance Docket No. 31779 (ICC served Dec 14, 1990); and *Wabash & Western Railway Co.—Lease and Operation Exemption—Morris Leasing Co., Ltd., and Michigan Southern Railroad, Inc.*, STB Finance Docket No. 33306 (STB served (Dec. 24, 1996).

MSRR certifies that its annual revenue will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed $5 million.

[2] In a filing in a separate proceeding (STB Finance Docket No. 33760), MSRR reported that it was attempting to purchase the line between Coldwater and Sturgis through exercise of an option it asserts it has. In that proceeding, RUA disputes MSRR's right to exercise an option to purchase this line and observes that any authority MSRR obtains in this proceeding (STB Finance Docket No. 33754) under 49 CFR 1150.41 is permissive only. RUA is correct that the exemption in this proceeding is permissive only and does not give MSRR the legal right to purchase the line in the absence of an agreement between the parties or a court order to that effect.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33766]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company

Illinois Central Railroad Company (IC) has agreed to grant limited overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over IC's rail line

between a point near milepost AO 37.5 near Joliet, IL, and a point near milepost AO 10.7 at Glenn Yard in Chicago, IL, a distance of approximately 26.8 miles.

The transaction was scheduled to be consummated on or soon after June 18, 1999.

The purpose of the trackage rights is to permit BNSF to interchange cars with IC and Canadian National Railway Company.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33766, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, 3017 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV."

Decided: June 23, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16654 Filed 6–29–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33760]

The Indiana Northeastern Railroad Company—Operation Exemption—Branch and St. Joseph Counties Rail Users Association, Inc., in Branch County, MI

The Indiana Northeastern Railroad Company (INR), a Class III rail carrier, and the Branch and St. Joseph Counties Rail Users Association, Inc. (RUA) have filed a notice of exemption under 49 CFR 1150.41 for INR to operate approximately 10.4 miles of rail line owned by the RUA, from milepost 376.56 east of Quincy, MI, to milepost 386.96 west of Coldwater, in Branch County, MI. INR states that its annual revenue will not exceed those that would qualify it as a Class III rail carrier.

The transaction was scheduled to be consummated on June 8, 1999, the effective date of the exemption.[1]

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. FD 33760, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Carl M. Miller, MILLER LAW OFFICE, 618 Professional Park Drive, P.O. Box 332, New Haven, IN 46774 [Attorney for INR], and Andrew J. Van Doren, BIRINGER, HUTCHINSON, VAN DOREN, LILLIS & BAPPERT, P.C., Century Bank and Trust Bldg., 100 West Chicago Street, Coldwater, MI 49036–1897 [Attorney for RUA].

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 24, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16653 Filed 6–29–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 17, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 30, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1032.
Form Number: IRS Form 8689.
Type of Review: Extension.
Title: Allocation of Individual Income Tax to the Virgin Islands.
Description: Form 8689 is used by U.S. citizens or residents as an attachment to Form 1040 when they have Virgin Islands source income. The data is used by IRS to verify the amount claimed on Form 1040 for taxes paid to the Virgin Islands.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 800.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 2 hr., 44 min.
Learning about the law or the form: 19 min.
Preparing the form: 1 hr., 1 min.
Copying, assembling, and sending the form to the IRS: 20 min.
Frequency of Response: On occasion, Annually.
Estimated Total Reporting/Recordkeeping Burden: 3,512 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–16563 Filed 6–29–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 19, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 30, 1999 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0163.
Form Number: ATF F 5210.5 (3068).
Type of Review: Extension.
Title: Manufacturer of Tobacco Products Monthly Report.
Description: ATF F 5210.5 (3068) documents a tobacco products manufacturer's accounting of cigars and cigarettes. The form describes the tobacco products manufactured, articles produced, received, disposed of an statistical classes of large cigars. ATF examines and verifies entries on these reports so as to identify unusual activities, errors and omissions.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 108.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: Monthly.
Estimated Total Recordkeeping Burden: 1,296 hours.
OMB Number: 1512–0200.
Form Number: ATF F 5110.31.
Type of Review: Extension.
Title: Application and Permit To Ship Puerto Rican Spirits to the United States Without Payment of Tax.
Description: ATF F 5119.31 is used to allow a person to ship spirits in bulk into the U.S. The form identifies the person in Puerto Rico from where shipments are to be made, the person in the U.S. receiving the spirits, amounts of spirits to be shipped, and the bond of the U.S. person to cover taxes on such spirits.
Respondent: Business or other for-profit.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Respondent: 45 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 450 hours.
OMB Number: 1512–0372.
Recordkeeping Requirement ID Number: ATF F REC 5400/2.
Type of Review: Extension.
Title: RECORDS AND SUPPORTING DATA: Daily Summaries, Records of Production, Storage, and Disposition, and Supporting Data by Licensed Explosives Manufacturers, and Manufacturers.
Description: These records, prepared by explosives manufacturers and explosive manufacturers (Limited) provide ATF with the ability to trace explosives used in crime.
Respondent: Business or other for-profit.
Estimated Number of Recordkeepers: 1,053.
Estimated Burden Hours Per Recordkeeper: 45 minutes.
Frequency of Response: Weekly.
Estimated Total Recordkeeping Burden: 68,835 hours.
OMB Number: 1512–0467.
Form Number: ATF F 5000.24.
Type of Review: Extension.
Title: Excise Tax Return—Alcohol and Tobacco.
Description: Businesses report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on ATF F 5000.24. ATF needs this form to identify the taxpayer and to determine the amount and type of taxes due the amount of payments made.
Respondent: Business or other for-profit.
Estimated Number of Respondents: 2,800.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Other (semi-monthly).
Estimated Total Reporting Burden: 35,280 hours.
OMB Number: 1512–0497.
Form Number: ATF F 5000.25.
Type of Review: Extension.
Title: Excise Tax Return—Alcohol and Tobacco (Puerto Rico).
Description: Businesses in Puerto Rico report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on ATF Form 5000.25. ATF needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 30.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Other (semi-monthly).
Estimated Total Reporting Burden: 130 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–16564 Filed 6–29–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 21, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 30, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0795.
Form Number: IRS Form 8233.
Type of Review: Revision.
Title: Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.
Description: Compensation paid to a nonresident alien (NRA) individual for independent personal services (self-employment) is generally subject to 30% withholding or graduated rates. However, compensation may be exempt from withholding because of a U.S. tax treaty or personal exemption amount. Form.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 480,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 59 min.
Learning about the law or the form: 28 min.
Preparing and sending the form to the IRS: 1 hr., 11 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1,257,600 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571,

[1] On June 8, 1999, Michigan Southern Railroad Company and Michigan Southern Railroad Company, Inc. filed a petition to reject, stay, and/or revoke the exemption. The request for stay was received too late to be considered before the exemption went into effect. While the proposed transaction does not appear to fit the "change of operator" category, it nonetheless qualifies for filing as an "operation exemption." The petition for rejection and/or revocation will be considered by the Board in a separate decision.

1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–16565 Filed 6–29–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 21, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 30, 1999 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0060.
Form Number: Customs Form 1300.
Type of Review: Extension.
Title: Masters Oath on Entry of Vessel in Foreign Trade.
Description: This form is submitted by Masters of vessels upon arriving into the United States. Customs needs this information to record information pertaining to payment of tonnage fees and to obligate the Master to the truth of the manifest.
Respondents: Not-for-profit institutions.
Estimated Number of Respondents: 12,000.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 21,991 hours.

OMB Number: 1515–0071.
Form Number: Customs Form 26.
Type of Review: Extension.
Title: Report of Diversion.
Description: Customs uses CF 26 to track vessels traveling coastwise from U.S. ports to other U.S. ports when a change occurs in scheduled itineraries. This is required for enforcement of the Jones Act (46 U.S.C. App. 883) and for continuity of vessel manifest information and permits to proceed actions.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government.
Estimated Number of Respondents: 1,400.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 233 hours.

OMB Number: 1515–0138.
Form Number: None.
Type of Review: Extension.
Title: Permit to Transfer Containers to a Container Station.
Description: This information collection is needed in order for a container station operator to receive a permit to transfer a container or containers to a container station, he/she must furnish a list of names, addresses, etc., of the persons employed by them upon demand by Customs.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 60.
Estimated Burden Hours Per Recordkeeper: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 400 hours.

OMB Number: 1515–0181.
Form Number: None.
Type of Review: Extension.
Title: Line Release Regulations.
Description: Line release was developed to release and track high volume and repetitive shipments using bar code technology and PCS. An application is submitted to Customs by the filer and a common commodity classification code (C4) is assigned to the application.
Respondents: Not-for-profit institutions, Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 257.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 6,425 hours.

OMB Number: 1515–0186.
Form Number: None.
Type of Review: Extension.
Title: Air Waybill.
Description: An Air Waybill is used in lieu of a Customs form to report arrival of freight and transportation in-bond of freight to the port of destination.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 60.
Estimated Burden Hours Per Recordkeeper: 2 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1,030 hours.
Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Room 3.2.C, Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–16566 Filed 6–29–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Renewal of the Treasury Borrowing Committee of the Bond Market Association

ACTION: Notice of renewal.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92–463; 5 U.S.C. App. 2), with the concurrence of the General Services Administration, the Secretary of the Treasury has determined that renewal of the Treasury Borrowing Advisory Committee of The Bond Market Association (the "Committee") is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Treasury by law.

EFFECTIVE DATE: July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Malvey, Associated Director, Office of Market Finance (202) 622–2630.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide informed advice as representatives of the financial community to the Secretary of the Treasury and Treasury staff, upon the Secretary of the Treasury's request, in carrying out Treasury responsibilities for federal financing and public debt management.

The Committee meets to consider special items on which its advice is sought pertaining to immediate Treasury funding requirements and pertaining to longer term approaches to manage the national debt in a cost-effective manner. The Committee usually meets immediately before the Treasury announces each mid-calendar quarter funding operation, although special meetings also may be held.

Membership consists of 20–25 individuals who are experts in the government securities market and who are involved in senior positions in debt markets as institutional investors, investment advisors, or as dealers in government securities.

The Designated Federal Official for the Advisory Committee is the Director of the Office of Market Finance, reporting through the Under Secretary for Domestic Finance. The Treasury Department will file copies of the Committee's renewal charter with appropriate committees in Congress.

Dated: 6/23/99.

Gary Gensler,

Under Secretary for Domestic Finance.

[FR Doc. 99–16678 Filed 6–29–99; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Treasures of the Last Empire; Importation for Exhibition

AGENCY: United States Information Agency.

SUBJECT: Culturally significant objects imported for exhibition determinations.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Treasures of the Last Empire," imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects on board the Queen Mary, Long Beach, California, from on or about July 25, 1999, to on or about April 25, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lorie J. Nierenberg, Assistant General Counsel, 202/619–6084, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: June 25, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–16720 Filed 6–29–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0003]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement for a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility for burial benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 30, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0003" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Burial Benefits, VA Form 21–530.
OMB Control Number: 2900–0003.
Type of Review: Reinstatement, without change, for a previously approved collection for which approval has expired.
Abstract: The form is used to apply for burial benefits, including transportation expenses. The information is used by VBA to determine if the deceased veteran had appropriate service and/or disability and that the applicant has made payment for burial or has contracted to make appropriate payment.
Affected Public: Individuals or households and Business or other for-profit.
Estimated Annual Burden: 100,000 hours.
Estimated Average Burden Per Respondent: 20 minutes.
Frequency of Response: One time for most beneficiaries.
Estimated Number of Respondents: 300,000.

By direction of the Secretary.

Dated: January 19, 1999.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–16647 Filed 6–29–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0055]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of

1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information to determine an unremarried surviving spouse of a veteran eligibility for VA home loan benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 30, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0055" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Determination of Loan Guaranty Eligibility—Unremarried Surviving Spouses, VA Form 26–1817.

OMB Control Number: 2900–0055.

Type of Review: Extension of a currently approved collection.

Abstract: A completed VA Form 26–1817 constitutes a formal request by an unremarried surviving spouse of a veteran for a certificate of eligibility for home loan benefits. The information is used to determine the applicant's basic eligibility for the benefit.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 3,000.

By direction of the Secretary.

Dated: January 17, 1999.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 99–16648 Filed 6–29–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 30, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0216."

SUPPLEMENTARY INFORMATION:

Title: Application for Reimbursement from Accrued Amounts Due a Deceased Beneficiary, VA Form 21–601.

OMB Control Number: 2900–0216.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used to file a claim for accrued benefits available at the time of a veteran's death. The information is used by VA to determine the appropriate claimant eligible for accrued benefits. Without the information provided on VA Form 21–601, it would not be possible for VA to obtain the information needed to make a determination and reimburse a claimant.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 6, 1998 at page 60047.

Affected Public: Individuals or households—Business or other for-profit.

Estimated Annual Burden: 1,875 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time for most beneficiaries.

Estimated Number of Respondents: 3,750.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0216" in any correspondence.

By direction of the Secretary.

Dated: February 3, 1999.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–16649 Filed 6–29–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0427]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 30, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0427."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Former POW Medical History, VA Form 10–0048.

OMB Control Number: 2900–0427.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information is obtained from former POWs to assess the medical care needs of these veterans. The information will be used to determine the present and future needs of POWs in the areas of disability compensation, health care and rehabilitation.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 22, 1998 at page 56702.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 50 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0427" in any correspondence.

By direction of the Secretary.

Dated: February 3, 1999.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–16650 Filed 6–29–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Charter Renewals

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Department of Veterans Affairs has renewed the following four charters:

Medical Research Service Merit Review Committee

Research and Development Cooperative Studies Evaluation Committee

Rehabilitation Research and Development Service Scientific Merit Review Board

Scientific Review and Evaluation Board for Health Services Research and Development Service

The charters have been renewed for a 2-year period beginning June 7, 1999, through June 7, 2001.

By direction of the Secretary.

Dated: June 15, 1999.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–16651 Filed 6–29–99; 8:45 am]

BILLING CODE 8320–01–[illegible]

Corrections

Federal Register
Vol. 64, No. 125
Wednesday, June 30, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[FRL 6308-6]

RIN 2060-AE29

Phase 2 Emission Standards for New Nonroad Spark-Ignition Nonhandheld Engines At or Below 19 Kilowatts

Correction

In rule document 99–6175, beginning on page 15208, in the issue of Tuesday, March 30, 1999, make the following correction:

§ 90.706 [Corrected]

On page 15247, in the second column, in § 90.706 (b)(7), the equation is corrected to read as set forth below:

$$N = \left[\frac{(t_{95} * \sigma)}{(x - FEL)}\right]^2 + 1$$

[FR Doc. C9–6175 Filed 6–29–99; 8:45 am]
BILLING CODE 1505–01–D

FEDERAL TRADE COMMISSION

16 CFR Part 4

Miscellaneous Rules: Disclosure Requests

Correction

In rule document 99–15187 beginning on page 32179 in the issue of Wednesday, June 16, 1999, make the following correction(s):

§ 4.11 [Corrected]

On page 32180, in the first column, in § 4.11(e)(1), in the ninth line from the end, "more" should read "made".

[FR Doc. C9–15187 Filed 6–29–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-22]

Modification of Class E Airspace; Juneau, WI

Correction

In rule document 99–15850, appearing on page 33192, in the issue of Tuesday, June 22, 1999, make the following correction:

§ 71.1 [Corrected]

On page 33192, in the third column, under the heading **AGL WI E5 Juneau, WI [Revised]**, in the second line, "long. 88°42′N12″ W.)" should read "long. 88°42′12″ W.)".

[FR Doc. C9–15850 Filed 6–29–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-34]

Proposed Modification of Class E Airspace; Escanaba, MI

Correction

In proposed rule document 99–14855, beginning on page 31526, in the issue of Friday, June 11, 1999, make the following correction:

§ 71.1 [Corrected]

On page 31527, in the first column, under the heading **AGL MI E2 Escanaba, MI [Revised]**, remove lines three and four.

[FR Doc. C9–14855 Filed 6–29–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Butte and Yuba Counties, California

Correction

In notice document 99–15201, beginning on page 32298, in the issue of Wednesday, June 16, 1999, make the following correction:

On page 32298, in the third column, in the **SUPPLEMENTARY INFORMATION:** section, in the tenth line, after"70" add "south of Marysville, located in Yuba County, to the existing freeway on State Route 70".

[FR Doc. C9–15201 Filed 06–29–99; 8:45 am]
BILLING CODE 1505–01–D

federal register

Wednesday
June 30, 1999

Part II

Department of Health and Human Services

Health Care Financing Administration

Office of Inspector General

42 CFR Part 409 et al.

Medicare Program; Prospective Payment System for Hospital Outpatient Services; Correction; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Office of Inspector General

42 CFR Parts 409, 410, 411, 412, 413, 419, 489, 498, and 1003

[HCFA–1005–CN]

RIN 0938–A156

Medicare Program; Prospective Payment System for Hospital Outpatient Services; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects technical and typographic errors that appeared in the proposed rule published in the **Federal Register** on September 8, 1998 entitled "Medicare Program; Prospective Payment System for Hospital Outpatient Services.

FOR FURTHER INFORMATION CONTACT:

Janet Wellham, (410) 786–4510 (for general information).

Kitty Ahern, (410) 786–4515 (for information related to the classification of services into ambulatory payment classification (APC) groups).

Suzanne Letsch (410) 786–4558 (for information related to volume control measures and updates).

Janet Samen (410) 789–9161 (for information on the application of APCs to community health centers).

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 98–23383 of September 8, 1998 (63 FR 47551), we published a proposed rule that reflected a number of technical errors, resulting in inconsistencies between the proposed policies and the associated numerical values. Specifically, the numerical values in the proposed rule reflected incorrect data and data programming. This document sets forth corrected numerical values.

The problems in the data and data programming are a direct result of the frequent modifications to our databases during the initial development of the model prospective payment system and the changes we made during the development of the proposed rule to reflect the final legislative provision enacted on August 5, 1997 in the Balanced Budget Act of 1997 (BBA 1997), Public Law 105–33. We have corrected our databases and our data programming, and this document corrects the numerical values published in the September 8, 1998 proposed rule. Correcting the data errors does not mean that the proposed policies themselves need to be revised. Correcting the data changes the impacts of the proposed policies to a very limited extent, but this document does not revise any of the policies reflected in the September 8, 1998 proposed rule.

Accordingly, we have recalculated the current payment, total services (total units) and corrected relative weights, proposed payment rates, national unadjusted coinsurance, minimum unadjusted coinsurance, and service-mix index that were published on September 8, 1998.

The service-mix indices previously published in the proposed rule are significantly different from the service-mix index published in this correction notice (in Addendum I) because the ambulatory payment classification (APC) relative weights used to calculate the service mix published in the proposed rule were scaled using a factor "for a high-level clinic visit for cardiovascular services (that is, APC 91356) rather than a mid-level clinic visit for cardiovascular services, identified as APC 91336." In addition, the service-mix index published in this correction notice incorporates the discount policy applied to multiple surgeries. However, the relative differences among hospitals did not change substantially between the proposed and corrected service-mix indices.

These data corrections required that we also correct our simulations of current payment, costs, and total units, leading to slight differences from the September 8, 1998 published version. Fully modeling proposed payment after accounting for data corrections, we calculated a new calendar year (CY) 1996 conversion factor of $46.87, which is slightly higher than the published CY 1996 conversion factor of $46.32. In addition to the data corrections mentioned above, we also made a correction in the computation of the conversion factor to appropriately account for wage index adjustments in proposed payments. The adjusted CY 1999 conversion factor is $51.42.

Corrected simulations of costs and total units impacted the results of the regression analyses that we use in conjunction with payment simulations to determine whether the payment system should include adjustments for specific classes of hospitals. However, the results do not change our conclusion hat no adjustments be proposed at this time.

These corrections require revisions to the impact tables and they also affect entries contained in Addendum A, Addendum B, Addendum C, Addendum D, and Addendum G. Addendum J, Addendum K, and Addendum L are revised to reflect the correct version of the wage index. Because of the many corrections to these "materials, we are reprinting portions of the impact analysis and the entire impact tables and agenda, below, in this notice.

The September 8, 1998 proposed rule also contained other technical and typographic errors. Errors related to the incorrect assignment of status indicators to certain CPT codes listed in Addendum B are corrected and reflected in the revised Addendum B printed in full below.

In FR Doc. 98–23383 of September 8, 1998, make the following corrections to the preamble, regulations text and addenda:

Correction of Errors in the Preamble

1. On pages 47564 through 47565, the table titled "Packaged Services by Revenue Center" is corrected to read as follows:

PACKAGED SERVICES BY REVENUE CENTER

SURGERY	
250	PHARMACY
251	GENERIC
252	NONGENERIC
257	NONPRESCRIPTION DRUGS
258	IV SOLUTIONS
259	OTHER PHARMACY
270	M&S SUPPLIES
271	NONSTERILE SUPPLIES
272	STERILE SUPPLIES
276	INTRAOCULAR LENS
279	OTHER M&S SUPPLIES
370	ANESTHESIA
379	OTHER ANESTHESIA
380	BLOOD, GENERAL CLASS
381	PACKED RED CELLS
382	WHOLE BLOOD
383	PLASMA
384	PLATELETS
385	LEUCOCYTES
386	OTHER COMPONENTS
387	OTHER DERIVATIVES
389	OTHER BLOOD
390	BLOOD STORAGE AND PROCESSING
391	BLOOD ADMINISTRATION
399	OTHER BLOOD PROC/STORAGE
700	CAST ROOM
709	OTHER CAST ROOM
710	RECOVERY ROOM
719	OTHER RECOVERY ROOM
720	LABOR ROOM
721	LABOR
723	CIRCUMCISION
762	OBSERVATION ROOM
810	ORGAN ACQUISITION
819	OTHER ORGAN ACQUISITION
890	OTHER DONOR BANK
891	BONE
892	ORGAN
893	SKIN
899	OTHER DONOR BANK, OTHER
MEDICAL VISIT	
250	PHARMACY
251	GENERIC
252	NONGENERIC
257	NONPRESCRIPTION DRUGS
258	IV SOLUTIONS
259	OTHER PHARMACY
270	M&S SUPPLIES
271	NONSTERILE SUPPLIES
272	STERILE SUPPLIES
279	OTHER M&S SUPPLIES
380	BLOOD, GENERAL CLASS
381	PACKED RED CELLS
382	WHOLE BLOOD
383	PLASMA
384	PLATELETS
385	LEUCOCYTES
386	OTHER COMPONENTS
387	OTHER DERIVATIVES
389	OTHER BLOOD
390	BLOOD STORAGE AND PROCESSING
391	BLOOD ADMINISTRATION
399	OTHER BLOOD PROC/STORAGE
700	CAST ROOM
709	OTHER CAST ROOM
762	OBSERVATION ROOM
OTHER DIAGNOSTIC (BLENDED SERVICES)	
254	PHARMACY INCIDENT TO OTHER DIAGNOSTIC
372	ANESTHESIA INCIDENT TO OTHER DIAGNOSTIC
380	BLOOD, GENERAL CLASS
381	PACKED RED CELLS
382	WHOLE BLOOD
383	PLASMA
384	PLATELETS
385	LEUCOCYTES
386	OTHER COMPONENTS
397	OTHER DERIVATIVES
389	OTHER BLOOD
390	BLOOD STORAGE AND PROCESSING
391	BLOOD ADMINISTRATION
399	OTHER BLOOD PROC/STORAGE
622	SUPPLIES INCIDENT TO OTHER DIAGNOSTIC
710	RECOVERY ROOM
719	OTHER RECOVERY ROOM
762	OBSERVATION ROOM
RADIOLOGY	
255	PHARMACY INCIDENT TO RADIOLOGY
371	ANESTHESIA INCIDENT TO RADIOLOGY
380	BLOOD, GENERAL CLASS
381	PACKED RED CELLS
382	WHOLE BLOOD

PACKAGED SERVICES BY REVENUE CENTER—Continued

383	PLASMA
384	PLATELETS
385	LEUCOCYTES
386	OTHER COMPONENTS
387	OTHER DERIVATIVES
389	OTHER BLOOD
390	BLOOD STORAGE AND PROCESSING
391	BLOOD ADMINISTRATION
399	OTHER BLOOD PROC/STORAGE
621	SUPPLIES INCIDENT TO RADIOLOGY
710	RECOVERY ROOM
719	OTHER RECOVERY ROOM
762	OBSERVATION ROOM
ALL OTHER APC GROUPS	
250	PHARMACY
251	GENERIC
252	NONGENERIC
257	NONPRESCRIPTION DRUGS
258	IV SOLUTIONS
259	OTHER PHARMACY
270	M&S SUPPLIES
271	NONSTERILE SUPPLIES
272	STERILE SUPPLIES
279	OTHER M&S SUPPLIES
380	BLOOD, GENERAL CLASS
381	PACKED RED CELLS
382	WHOLE BLOOD
383	PLASMA
384	PLATELETS
385	LEUCOCYTES
386	OTHER COMPONENTS
387	OTHER DERIVATIVES
389	OTHER BLOOD
390	BLOOD STORAGE AND PROCESSING
391	BLOOD ADMINISTRATION
399	OTHER BLOOD PROC/STORAGE
762	OBSERVATION ROOM

2. On page 47568, column two, line 16, the figure "$208.25" is corrected to read "$206.71".

3. On page 47572, column one, last paragraph, the date and **Federal Register** citation are corrected to read as follows: August 29, 1997 (62 FR 45984).

4. On page 47573, column three, line nine, "$46.32" is corrected to read "$46.87".

5. On page 47573, column three, line 12, "1.0939" is corrected to read "1.097".

6. On page 47573, column three, line 24, the text beginning with the sentence "In estimating the update factor, HCFA's Office of the Actuary assumed * * *" through the phrase ending "Medicare absorbing this impact" in line 44 is removed.

7. On page 47573, column three, line 46, "$50.67" is corrected to read "$51.42".

8. On page 47574, column two, in section 2(a)(ii), line four, "29.2" is corrected to read "13.0".

9. On page 47576, column two, line 26, "1999" is corrected to read "1998".

10. On page 47576, column two, line 28, the **Federal Register** title, date, and citation are corrected to read as follows: "Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates (BPD–878–FC) published in the **Federal Register** on August 29, 1997 (62 FR 45995)".

11. On page 47577, column one, paragraph two, line 39, "1996" is corrected to read "1998".

12. On page 47577, column two, last paragraph, line nine, "$105" is corrected to read "$120".

13. On page 47578, column two, second full paragraph, line four, the following new sentence is added to read as follows: "The edits referred to in this section were not used in the development of the weights or the impact analysis described in this proposed rule."

14. On page 47580, column one, First line, the words "level 1" are added after the words "hospitals with" and before the word "trauma".

15. On page 47580, column one, line two, the sentence beginning "These costs were * * *" is removed and is replaced with the following: "These costs were 200 percent or more higher than the average cost per unit for all hospitals."

16. On page 47580, column one, last paragraph, line one, "83" is corrected to read "96".

17. On page 47580, column one, last paragraph, line three, "51" is corrected to read "46".

18. On page 47580, column one, last paragraph, line six, "32" is corrected to read "50".

19. On page 47580, column two, line five, "5,419" is corrected to read "5,335".

20. On page 47580, column two, second full paragraph, line 14, the words "level 1" are added before the words "trauma unit".

21. On page 47580, column two, last paragraph, line four, the sentence beginning "We also calculated * * *" is removed and is replaced with the following: "This service mix is "discounted" to reflect the reduced weight for additional surgical procedures performed at the same time, which is consistent with the proposed payment system."

22. On page 47580, column two, last paragraph, line 10, the sentence beginning "The national average * * *" is removed and is replaced with the following: "The national average service mix discounted for multiple procedures is 2.05."

23. On page 47580, column two, last paragraph, last line, remove text from the sentence beginning "The differences between * * *" through line seven in column three.

24. On page 47580, column three, first full paragraph, line 13, "0.68" is corrected to read "0.76".

25. On page 47580, column three, first full paragraph, line 17, "6.8 percent" is corrected to read "7.6 percent".

26. On page 47580, column three, paragraph two, line 25, "7.5 percent" is corrected to read "8.9 percent".

27. On page 47580, column three, the third full paragraph through page 47581, column one, line 10, is removed and is replaced with the following: "While the regression analysis shows less than a proportional relationship between the service mix and the cost per unit, the difference is relatively small. The coefficient of service mix ranged from 0.76 to 0.92 over the regression models we examined. We will continue to monitor the method of basing payments on median APC costs to ascertain whether it is representative of both high-weighted and low-weighted procedures."

28. On page 47581, column one, first full paragraph, line nine, "0.51 to 0.68" is corrected to read "0.40 to 0.58."

29. On page 47581, column one, first full paragraph, lines 10 to 11, "50 and 70 percent." is corrected to read "40 and 60 percent."

30. On page 47581, column one, first full paragraph, line 29, the sentence beginning "The explanatory regression * * *" is removed.

31. On page 47581, column two, first full paragraph, line 10, the word "not" is added before "significant".

32. On page 47581, column two, first full paragraph, line 13, "4.5 percent [calculated $(e^{DSHP*0.11}-1)*100$]" is corrected read "1.6 percent [calculated $(e^{DSHP*0.04}-1)*100$]".

33. On page 47581, column two, first full paragraph, line 16, the text beginning with "Teaching intensity * * *" through line 21 ending with "services." is removed and is replaced with the following: "The extremely small percentage difference in costs reflects the lack of significance observed for the disproportionate share variable. In most regression specifications, the teaching intensity variables were positive, significant ($p<0.05$), but small in magnitude."

34. On page 47581, column two, last paragraph, line five, the text beginning with "We determined * * *" through line 23 in column three, is removed and is replaced with the following: "The results of our threshold analysis of disproportionate share percentage reflected the lack of significance observed above. We could not identify a threshold at which hospitals with a disproportionate share of low-income patients evidenced higher standardized costs. The connection between disproportionate share and volume warrants further analysis. However, at this time, we cannot identify a threshold and, therefore, did not calculate a new disproportionate share variable. Positive and significant effects for the teaching variable do not occur for hospitals whose ratio of residents to inpatient and outpatient days is less than 0.28. We used these results to estimate a new ratio of residents to inpatient and outpatient "days" based on a 0.28 threshold. We subtracted this threshold from the original variable to create a new teaching variable. Subtracting The threshold removes the effect of values that are not significantly related to cost per unit and eliminates the sudden increase (notch effect) in the teaching variable at the threshold level. The new variable suggests that a hospital with a ratio of residents to inpatient and outpatient utilization 0.07 higher than the 0.28 threshold is approximately 1 percent more costly [calculated $((1+IME)^{0.14}-1)*100$]."

35. On page 47581, column three, first full paragraph, line eight, "8 percent" is corrected to read "12 percent".

36. On page 47581, column three, first full paragraph, line nine, "other" is added before "urban".

37. On page 47581, column three, second full paragraph, line two, "(long-term care, children's, and psychiatric)" is corrected to read "(long-term care and children's)".

38. On page 47581, column three, second full paragraph, line six, "Cancer, children's and long-term care" is removed and is replaced with "These".

39. On pages 47581 through 47582 and continued on page 47585, through line five of the first full paragraph in column two, the text in the section titled "Estimated Payments" is removed and is replaced with the following:

The appropriateness of potential payment adjustments must be based on both cost effects estimated by regression analysis and other factors including simulated payment impacts. We simulated the impact of the proposed system on hospitals by calculating the percentage difference between payments made under current law and payments under the proposed system (column 3). Section X. contains a more complete table that considers the impact of proposed payments on additional classes of hospitals, including TEFRA and cancer hospitals. Although Column 3 represents the net effect of the new PPS on hospitals, we though it was necessary to show the impacts on hospitals of simply changing the payment system without including the effects of the overall reduced payment to hospitals because the PPS system is not budget neutral to current payment. To reiterate, the conversion factor is set by summing Medicare payments under the current system and beneficiary copayment under the new system and dividing by the sum of the relative weights. Beneficiary copayments under the new system will reduce overall payments to most hospitals because 20 percent of the median group charges is less than 20 percent of actual charges. Therefore, we simulated the impacts as though the conversion factor were set as if the system were to be budget neutral. Column 4 demonstrates the distributional impacts resulting from implementing the new system after eliminating the overall reduction in payment most hospitals will experience due to the effect of the methodology used to set the conversion factor. We believe the column 4 percentage differences are what we should examine since any adjustment we would consider should correct for inequities caused by moving to a PPS (not the legislated reduction in total payment). Therefore, we based our decision about adjustments on these percentage differences rather than percentages combining the PPS and the overall reduction in coinsurance amounts required by law. We also estimated payment-to-cost ratios associated with the new payment methods and the percent change in total Medicare payments. All simulations used a labor share of 60 percent. The table below shows the results of two simulations. The first contains only the wage index adjustment to the APC rates. The second also includes the threshold adjustment for teaching intensity discussed above.

Based on our analyses, we are not proposing to make adjustments to the outpatient payment rates for disproportionate share patient percentage and teaching intensity and rural location for the following reasons.

1. Estimated effects of disproportionate share patient percentage on costs were small and most often not statistically significant.

2. After removing the copay effect, most teaching hospitals gain under the proposed system payments relative to current law. Although teaching hospitals with a large number of residents relative to outpatient and inpatient utilization demonstrate slightly higher costs, targeting these hospitals with a small adjustment does not greatly improve their payment

impacts. These impacts should also be evaluated in terms of the overall effect on Medicare payments because on average, outpatient services account for 10 percent of hospitals' Medicare payments. For example, the associated reduction of total Medicare payments for major teaching hospitals would be about 1 percent.

3. With the teaching adjustment we considered, estimated overall payment reductions for rural hospitals would be 7.9 percent under the proposed system, rather than 7.4 percent. These hospitals also receive a greater percent of their Medicare income (14.7 percent) from providing outpatient services. Similarly, payment reductions for low-volume rural hospitals would be 17.8 percent of current payments, rather than 17.4 percent, and these hospitals also earn a greater percentage of their Medicare income (18.4 percent) from providing outpatient services. Because of these potential shifts in payments, any adjustment should be based on stronger analytic results then those found with the current data.

4. We also believe the issue of payment adjustments should be reexamined using data from initial years of the implemented system because current cost calculations and relationships among key factors and costs probably are affected by variation in coding patterns.

5. HCFA is working towards standardizing payment across all sites of service. Fewer adjustments to the outpatient PPS would allow HCFA to move ahead more quickly with this approach.

6. We believe that we should monitor the impact of basing APC weight calculations on the median rather than the geometric mean because better correlation between costs and service mix would impact the size of adjustments.

Although the payment simulations show potentially large percentage losses and low payment-to-cost ratios for low-volume hospitals, we are not proposing an adjustment for volume. The low-volume hospitals get a much greater percent of their Medicare income from the provision of outpatient services than the average, and total Medicare payments would drop by 3.2 percent for rural low-volume hospitals and 1.7 percent for urban low-volume hospitals. Low-volume hospitals have higher than average standardized unit costs, which may be attributable to economies of scale, undercoding, or cost allocations to the outpatient departments that are not volume related. However, an adjustment to the rates based on volume alone might reward inefficiency and create adverse incentives such as a reduction in services in order to increase payment rates.

We are particularly concerned about the potential impact of the outpatient PPS on low-volume rural hospitals that are sole community hospitals or Medicare-dependent hospitals.

39a. On page 47585, column two, first full paragraph, line six, the sentence beginning "Approximately 60 percent * * * is removed.

39b. On page 47585, the text in column three, first full paragraph, through the third full paragraph is removed and replaced with the following:

We also are not proposing adjustments for cancer or TEFRA hospitals at this time. We believe that claims from cancer and TEFRA hospitals have been undercoded, due to the lack of payment incentives for proper coding of these services under the current system. Further analysis will be conducted to determine if current coding practices explain the negative impact. If we determine that cancer hospitals would be unduly harmed because of the new outpatient PPS, we will consider whether an adjustment or perhaps a transition period is needed to moderate the impact. By statute, any adjustment would have to be budget neutral.

We do not believe that this action will restrict beneficiary access because other hospitals provide many of the same services provided at TEFRA hospitals. In addition, rehabilitation and long-term care hospitals are less dependent than other hospitals on Medicare outpatient revenues.

We are not proposing adjustments for any eye and ear hospitals because payment simulations demonstrated an increase in payments under the proposed PPS. We also are not proposing an adjustment for trauma hospitals because these hospitals did not demonstrate significantly higher costs and only lose a modest percentage of their total Medicare payments, 0.8 percent, compared to all hospitals. We will assess the need for additional adjustments and make any appropriate changes as data become available under the new system."

40. On pages 47583 through 47584, the table "Changes for 1999 Outpatient Prospective Payment System" is retitled "Changes for Outpatient Prospective Payment Systems" and is corrected to read as follows:

CHANGES FOR OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

			No teaching adjustment				Teaching adjustment			
	Number of hospitals	Outpatient percent	Percent change in Medicare outpatient payments	Copay Effect removed	Standardized payment to cost ratio	Percent change is total Medicare payments	Percent change in Medicare outpatient payments	Copay Effect removed	Standardized payment to cost ratio	Percent change in total Medicare payments
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
ALL HOSPITALS	5,335	9.9	−5.7	0.0	1.0000	−0.6	−5.7	0.0	1.0000	−0.6
NON-TEFRA HOSPITALS	4,818	10.0	−5.7	0.0	1.0001	−0.6	−5.7	0.0	1.0001	−0.6
NON-TEFRA HOSPITALS										
GEOGRAPHIC LOCATION:										
URBAN HOSPITALS	2,643	9.3	−5.3	0.4	1.0053	−0.5	−5.2	0.5	1.0065	−0.5
LARGE URBAN AREAS	1,492	9.1	−6.6	−0.9	0.9890	−0.6	−6.3	−0.6	0.9928	−0.6
OTHER URBAN AREAS	1,151	9.6	−3.5	2.4	1.0287	−0.3	−3.7	2.1	1.0262	−0.4
RURAL HOSPITALS	2,173	14.7	−7.4	−1.8	0.9784	−1.1	−7.9	−2.3	0.9734	−1.2
VOLUME (URBAN):										
0–4,999 UNITS	357	12.2	−13.6	−8.3	0.8493	−1.7	−13.9	−8.7	0.8458	−1.7
5,000–10, 999 UNITS	502	9.6	−6.6	−0.9	0.9577	−0.6	−7.0	−1.3	0.9535	−0.7
11,000–20,999 UNITS	597	9.0	−5.7	0.0	0.9839	−0.5	−6.1	−0.4	0.9802	−0.5
21,000–42,999 UNITS	756	8.8	−4.2	1.6	1.0202	−0.4	−4.4	1.4	1.0180	−0.4
43,000 OR MORE UNITS	431	9.7	−5.7	0.0	1.0133	−0.6	−5.1	0.7	1.0201	−0.5

CHANGES FOR OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

	Number of hospitals	Outpatient percent	No teaching adjustment				Teaching adjustment			
			Percent change in Medicare outpatient payments	Copay Effect removed	Standardized payment to cost ratio	Percent change is total Medicare payments	Percent change in Medicare outpatient payments	Copay Effect removed	Standardized payment to cost ratio	Percent change in total Medicare payments
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
VOLUME (RURAL):										
0–4,999 UNITS	1,047	18.4	−17.4	−12.4	0.8216	−3.2	−17.8	−12.8	0.8170	−3.3
5,000–10,999 UNITS	601	15.3	−10.1	−4.6	0.9384	−1.5	−10.6	−5.2	0.9332	−1.6
11,000– 20,999 UNITS	333	13.7	−6.5	−0.8	0.9962	−0.9	−7.0	−1.4	0.9910	−1.0
21,000– 42,999 UNITS	170	13.5	−3.2	2.7	1.0435	−0.4	−3.7	2.2	1.0376	−0.5
43,000 OR MORE UNITS	22	13.3	−2.6	+3.3	1.0674	−0.3	−2.6	3.3	1.0677	−0.3
TEACHING STATUS:										
NON-TEACHING	3,814	11.2	−5.1	0.7	1.0029	−0.6	−5.6	0.1	0.9973	−0.6
FEWER THAN 100 RESIDENTS	758	9.1	−4.4	1.4	1.0256	−0.4	−4.9	0.9	1.0204	−0.4
100 OR MORE RESIDENTS	245	9.2	−10.6	−5.2	0.9414	−1.0	−7.9	−2.3	0.9697	−0.7
DISPROPORTIONATE SHARE PATIENT RATIO:										
0	17	20.3	−20.0	−15.1	0.7376	−4.1	−20.0	−15.1	0.7377	−4.1
0.001–0.099	904	10.3	−6.6	−0.9	0.9860	−0.7	−6.9	−1.2	0.9825	−0.7
0.100–0.159	1,008	10.9	−3.7	2.2	1.0307	−0.4	−4.1	1.7	1.0261	−0.4
0.160–0.229	971	10.2	−4.8	1.0	1.0143	−0.5	−4.9	0.9	1.0132	−0.5
0.230–0.349	956	9.6	−6.2	−0.5	0.9977	−0.6	−6.0	−0.3	1.0001	−0.6
0.350 AND GREATER	962	9.2	−8.4	−2.9	0.9579	−0.8	−7.5	−1.9	0.9675	−0.7

Note: Urban and rural breakouts in this table are based on MSA status/location only.

41. On page 47596, in the table titled "Estimated Annual Burden", column one, line two, "419.42(b) and (d)" is corrected to read "419.42(b) and (c)".

42. On page 47596, in the table titled "Estimated Annual Burden", column one, line three, "419.42(f)" is corrected to read "419.42(e)".

42a. On page 47597, column one, first full paragraph, line 14, "$300" is corrected to read "$600".

42b. On page 47597, column two, the table is corrected to read as follows:

Fiscal year	Impact ($ millions)
1998	−940
1999	−1640
2000	−1320
2001	−1070
2002	−990
2003	−700

42c. On page 47597, column two, line five of text, "6.9" is corrected to read "10.9".

43. On pages 47597 through 47598, entire section F. is removed and replaced with the following:

F. Quantitative Impact Analysis of the Proposed Policy Changes Under the Prospective Payment System for Operating Costs and Capital Costs

Basis and Methodology of Estimates

The data used in developing quantitative analyses presented below are taken from the CY 1996 cost and charge data and the most current provider-specific file that is used for payment purposes. Our analysis has several qualifications. First, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using CY 1996 cost and charge data, we simulated payments using the current and proposed payment methodologies. We used both single and multiple bills to calculate current and proposed Medicare and beneficiary hospital outpatient payment amounts. Both current and proposed payment estimates include operating and capital costs. We excluded Kaiser, New York Health and Hospital Corporation, and all-inclusive providers because reported charges on their cost reports are not actual charges. Cost-to-charge ratios for these hospitals are not comparable to all other hospitals. The exempted Maryland hospitals were also excluded from the simulations; however, we included the 10 cancer hospitals that will be paid under the proposed system.

We also trimmed outlier hospitals from the impact analysis because we had indications that hospitals with extreme unit costs would not allow us to access the impacts among the various classes of hospitals accurately. First, we identified all the outlier hospitals by using an edit of three standard deviations from the mean of the logged unit costs. Trimming the data in this manner ensures that only the hospitals with extremely high and low costs are eliminated from the impacts. In doing this, we removed 96 hospitals of which 50 hospitals had extremely low unit costs and 46 hospitals had extremely high unit costs. We conducted a thorough analysis of these hospitals to ensure that we did not remove any particular type of hospital (for example, teaching hospitals) that would further harm the integrity of the data. We speculate many of these hospitals are not coding accurately, and we will continue to perform further analysis in this area after implementation of the new APC system.

After removing the 54 exempted Maryland hospitals, the all-inclusive rate hospitals, the outlier hospitals, and hospitals for which we could not identify payment variables, we included 5,335 hospitals in our analysis. The impact analysis focuses on this set of hospitals. The table below demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The first column represents the number of hospitals in each category. The second column is the hospitals' Medicate outpatient payments as a percentage of the hospitals' total Medicare payment. The third column shows the percentage change in Medicare outpatient payments comparing the current and proposed payment systems. The fourth column shows the change in *total* Medicare payments, resulting from implementing the PPS for outpatient services.

The top row of the table shows the overall impact on the 5,335 hospitals included in the analysis. We included as much of the data as possible to the extent that we were able to capture all the provider information necessary to determine payment. Further, our estimates include the same set of services for both current and proposed APC payments so that we could determine the impact as accurately as possible. Since payment under the proposed APC system can only be determined if bills are accurately coded, the data upon which the impacts were developed do not reflect all CY 1996 hospital outpatient services, but only those that were coded using valid HCPCS.

The second row identifies the hospitals in our analysis with the exception of psychiatric, long-term care, children, and rehabilitation hospitals, which account for 4,818 hospitals.

The next four rows of the table contain hospitals categorized according to their geographic location (all urban, which is further divided into large urban and other urban, or rural). There are 2,643 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,492 hospitals located in large urban areas (populations over 1 million), and 1,151 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,173 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The next category includes the volume of outpatient services, also shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an indirect medical education (IME) adjustment), receive disproportionate share hospital (DSH) payments, or some combination of these two adjustments. There are 3,814 non-teaching hospitals in our analysis, 758 teaching hospitals with fewer than 100 residents, and 245 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status. The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither. The next five rows examine the impacts of the proposed changes on rural hospitals by special payment groups (rural referral centers (RRCs), sole community hospitals/essential access community hospitals (SCHs/EACHs), Medicare dependent hospitals (MDHs), and SCHs and RRCs), as well as rural hospitals not receiving a special payment designation. The RRCs (168), SCH/EACHs (626), MDHs (365), and SCH and RRCs (55) shown here were not reclassified for purposes of the standardized amount.

The next grouping is based on type of ownership. These data are taken primarily from the FY 1995 Medicare cost report files, if available (otherwise, FY 1994 data are used).

The next groupings are the specialty hospitals. The first set includes the categorizations of eye and ear hospitals and trauma hospitals (hospitals having a level one trauma center) and cancer hospitals. The final groupings are the TEFRA hospitals, specifically rehabilitation, psychiatric, long-term care, and children hospitals.

43a. On page 47598, the text in section G. Beginning in column two, first full paragraph, through page 47599, column three, line 16, is removed and replaced with the following:

G. Estimated Impact of the New APC System

Column 3 compares our estimate of payments, incorporating statutory and policy changes reflected in this proposed rule for CY 1996, to our estimate of payments in CY 1996 under the current payment system. Percent differences between current and proposed payment reflect the combined impact of a proportionally equal reduction in payments due to the calculation of the conversion factor and distributional differences attributable to variation in cost and charge structures among hospitals. The methodology described in section 1833(t)(3)(C) of the Act outlining the calculation of the conversion factor reduces payment to hospitals overall by 5.7 percent relative to current law. As noted, section 1833(t)(3)(C) of the Act requires us to set the conversion factor so that total 1999 payments to hospitals under the proposed PPS system equal Medicare payment amounts as calculated under the current payment system plus beneficiary copayments as calculated under the proposed system (20 percent of the APC median charge or, at minimum, 20 percent of the APC rate). The 5.7 percent loss implies that the difference between the median and charges higher than the median was proportionally larger than the difference between the median and charges lower than the median. Because this reduction is incorporated into the conversion factor, the 5.7 percent is distributed among hospitals proportional to their total payments. After removing the effect of the conversion factor calculation on total payments, the remaining percent differences demonstrate the redistribution of payments among hospitals and can be attributed to variation in both costs and charge structures. Variation in costs among hospitals results in differences between current and proposed Medicare payments, and variation in charge structures results in differences between current and proposed beneficiary copayment.

Redistributions may also occur as a result of current payment methods. Total Medicare outpatient payments are less than reported total costs because (in addition to the 5.8 and 10 percent reductions for operating and capital costs) the blended payment methods applicable to many surgical and diagnostic services often result in payments that are less than reported costs. Other services such as medical visits, chemotherapy services, and non-ASC approved surgeries are paid based on hospital costs. The new system redistributes the current total Medicare payments, based in part on cost-based payments and in part on blended payment amounts, across all services. Hospitals, in the aggregate, will receive proportionately less for services that are currently paid based on costs and more for services that had been paid under blended payment methods.

The impact on TEFRA hospitals is shown separately at the end of the table; however, these hospitals were not included in determining the impact on any of the other categories (for example, geographic location, bed size, volume, etc.). These hospitals demonstrated a very low service mix, but an average unit cost that approximates the national average. We believe that billing practices may account for this phenomenon. Some TEFRA hospitals appear to undercode HCPCS and units. This may be because correct coding is not required for payment or because they bill an all-inclusive rate. Undercoding or billing an all-inclusive rate could account for their low-volume, low-service mix, and average cost per unit. We expect that once these hospitals begin to code HCPCS according to the new payment system, new payments will better reflect current payments.

In general, differences among hospital classifications for short-term acute care

hospitals were relatively small. This is, payments under the proposed outpatient system were within a few percentage points of payments made under current law. The following discussion highlights some of the variation in payments among hospital classifications.

Based on comparing current and proposed payment estimates, minor teaching hospitals lose 4.4 percent, while major teaching hospitals experience a reduction of 10.6 percent. Non-teaching hospitals experience a decrease of 5.1 percent. However, major teaching hospitals gain less of their total Medicare income (9.2 percent) from outpatient services than the national average (10 percent). This results in a 1 percent loss in their total Medicare income.

Hospitals with a high percentage of low-income patients (disproportionate share patient percentage greater than or equal to 0.35) appear to experience payment reductions of 8.4 percent relative to current law. These hospitals have lower than average volume, and like major teaching hospitals, they receive a smaller than average percent of their Medicare income from outpatient services.

Rural hospitals would lose about 7.4 percent, large urban hospitals would lose about 6.6 percent, and other urban hospitals would lose 3.5 under the new system. Rural hospitals get a greater percentage of their Medicare income (14.7 percent) from outpatient services compared to the national average of 10 percent.

Low-volume hospitals appear to lose a large percentage of their payments under the new payment system (17.4 percent for rural and 13.6 percent for urban hospitals with less than 5,000 units of service). We believe several factors are contributing to this outcome, including undercoding, lack of economies of scale, and underpayment due to the reliance on the median instead of the geometric mean in the calculation of APC weights. The majority of these hospitals (about 75 percent) are rural. For these small hospitals, some of the higher standardized unit costs could be attributed to economies of scale. These low-volume rural hospitals also receive a greater percentage of their Medicare income (18.4 percent) from outpatient services than the average.

43b. On page 47599, the table titled: Estimated Impact of a Transition Policy on Medicare Outpatient Payment for Medicare-Dependent and Sole Community Hospitals," is corrected to read as follows:

ESTIMATED IMPACT OF A TRANSITION POLICY ON MEDICARE OUTPATIENT PAYMENTS FOR MEDICARE-DEPENDENT AND SOLE COMMUNITY HOSPITALS

[In percent]

	Year 1	Year 2	Year 3	Year 4
MDH	−2.8	−5.6	−8.5	−11.3
SCH	−3.2	−6.4	−9.7	−12.9
SCH/RRC	−1.9	−3.8	−5.8	−7.7

43c. On page 47599, the text in section G. beginning in column two, line seven from the bottom through page 47600, is corrected to read as follows:

As noted above, rural hospitals lose a larger percent of their payments than urban hospitals. Among the census divisions, rural New England hospitals experience the largest negative payment impact of 12.2 percent. This could be attributed to higher nonlabor costs in New England.

Urban census division breakouts reveal that Middle Atlantic urban hospitals have the largest negative payment impact of 9.7 percent.

Hospitals located in Puerto Rico gain because of the change in the beneficiary copayment. Previously these hospitals received 20 percent of their charges from the beneficiary, whereas under the new PPS they would receive 20 percent of the APC median charge or, at minimum, they would receive 20 percent of the payment rate. Hospitals in Puerto Rico gain under the new proposed system because 20 percent of their charges are lower than 20 percent of the APC median charges or 20 percent of the rates

Among special categories of rural hospitals, MDHs and SCHs/EACHs would experience decreases of 11.3 and 12.9 percent, respectively, Some of this decrease may be attributed to the impact on low-volume rural hospitals.

Cancer hospitals experience a 32.4 percent loss. Several factors may contribute to this loss. Undercoding could be a factor contributing to the percentage loss. In addition, the current requirements for batch billing of services such as chemotherapy and radiation therapy and the fact that we used only single procedure bills to calculate group weights may also have contributed to the impact on these hospitals. Further analysis will be conducted to determine if current coding practices explain the negative impact. We will be verifying the accuracy of the rates for these types of procedures. Specifically, the APC weights were calculated using single bill procedures. Using single bill procedures to compute a weight for services that are not typically billed as a single procedure could result in rates that are not accurate for these services. We will verify the accuracy of the rates for these types of procedures by analyzing the costs from the multiple bills. If further analysis reveals that cancer hospitals would be unduly harmed because of the new outpatient PPS, we will consider whether an adjustment or perhaps a transition period is needed to moderate the impact. By statute, any adjustment would have to be budget neutral. Until further analysis can be conducted, we are not proposing an adjustment for cancer hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

44. On pages 47601 through 47604, the table titled "Changes for Outpatient Prospective Payment System" is re-titled "Impact of Outpatient Prospective Payment System" and corrected to read as follows:

IMPACT OF OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

	Number of hospitals (1)	Outpatient percent (2)	Percent change in Medicare outpatient payments (3)	Percent change in total Medicare payments (4)
ALL HOSPITALS	5,335	9.9	−5.7	−0.6
NON-TEFRA HOSPITALS	4,819	10.0	−5.7	−0.6
NON-TEFRA HOSPITALS				
GEOGRAPHIC LOCATION:				
URBAN HOSPITALS	2,643	9.3	−5.3	−0.5
LARGE URBAN AREAS	1,492	9.1	−6.6	−0.6
OTHER URBAN AREAS	1,151	9.6	−3.5	−0.3
RURAL HOSPITALS	2,173	14.7	−7.4	−1.1
BED SIZE (URBAN):				
0–99 BEDS	646	15.4	−7.3	−1.1
100–199 BEDS	910	10.4	−4.2	−0.4
200–299 BEDS	531	9.2	−3.8	−0.3
300–499 BEDS	418	8.6	−4.8	−0.4
500 OR MORE BEDS	138	8.3	−9.7	−0.8
BED SIZE (RURAL):				
0–49 BEDS	1,138	19.6	−13.8	−2.7
50–99 BEDS	641	15.5	−8.4	−1.3
100–149 BEDS	229	13.5	−6.0	−0.8
150–199 BEDS	91	13.0	−4.3	−0.6
200 OR MORE BEDS	74	11.4	−2.9	−0.3
VOLUME (URBAN):				
0–4,999 UNITS	357	12.2	−13.6	−1.7
5,000–10,999 UNITS	502	9.6	−6.6	−0.6
11,000–20,999 UNITS	597	9.0	−5.7	−0.5
21,000–42,999 UNITS	756	8.8	−4.2	−0.4
43,000 OR MORE UNITS	431	9.7	−5.7	−0.6
VOLUME (RURAL):				
0–4,999 UNITS	1,047	18.4	−17.4	−3.2
5,000–10,999 UNITS	601	15.3	−10.1	−1.5
11,000–20,999 UNITS	333	13.7	−6.5	−0.9
21,000–42,999 UNITS	170	13.5	−3.2	−0.4
43,000 OR MORE UNITS	22	13.3	−2.6	−0.3
URBAN BY CENSUS DIV.:				
NEW ENGLAND	148	10.8	−3.2	−0.3
MIDDLE ATLANTIC	391	8.3	−9.7	−0.8
SOUTH ATLANTIC	393	8.6	−5.8	−0.5
EAST NORTH CENTRAL	446	10.6	−4.3	−0.5
EAST SOUTH CENTRAL	158	7.9	−1.8	−0.1
WEST NORTH CENTRAL	187	9.5	−6.5	−0.6
WEST SOUTH CENTRAL	337	9.7	−7.4	−0.7
MOUNTAIN	120	10.3	−2.2	−0.2
PACIFIC	428	9.3	−1.8	−0.2
PUERTO RICO	35	6.6	8.5	0.6
RURAL BY CENSUS DIV.:				
NEW ENGLAND	56	16.9	−12.2	−2.1
MIDDLE ATLANTIC	81	13.5	0.2	0.0
SOUTH ATLANTIC	282	11.8	−7.7	−0.9
EAST NORTH CENTRAL	287	15.8	−6.1	−1.0
EAST SOUTH CENTRAL	266	11.2	−6.5	−0.7
WEST NORTH CENTRAL	516	19.6	−10.9	−2.1
WEST SOUTH CENTRAL	339	14.2	−10.6	−1.5
MOUNTAIN	207	16.7	−8.3	−1.4
PACIFIC	137	16.4	−3.4	−0.6
PUERTO RICO	2	6.6	28.5	1.9
TEACHING STATUS:				
NON-TEACHING	3,814	11.2	−5.1	−0.6
FEWER THAN 100 RESIDENTS	758	9.1	−4.4	−0.4
100 OR MORE RESIDENTS	245	9.2	−10.6	−1.0
DISPROPORTIONATE SHARE PATIENT RATIO:				
0	17	20.3	−20.0	−4.1
0.001–0.099	904	10.3	−6.6	−0.7
0.100–0.159	1,008	10.9	−3.7	−0.4
0.160–0.229	971	10.2	−4.8	−0.5
0.230–0.349	956	9.6	−6.2	−0.6
0.350 AND GREATER	962	9.2	−8.4	−0.8

IMPACT OF OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

	Number of hospitals (1)	Outpatient percent (2)	Percent change in Medicare outpatient payments (3)	Percent change in total Medicare payments (4)
URBAN TEACHING AND DSH:				
BOTH TEACHING AND DSH	944	9.0	−6.6	−0.6
TEACHING AND NO DSH	2	19.8	−31.0	−6.1
NO TEACHING AND DSH	1,688	5.6	−3.7	−0.4
NO TEACHING AND NO DSH	9	30.4	7.2	2.2
RURAL HOSPITAL TYPES:				
NONSPECIAL STATUS HOSPITALS	944	15.0	−6.8	−1.0
RRC	168	12.4	−2.3	−0.3
SCH/EACH	626	16.4	−12.9	−2.1
MDH	365	18.2	−11.3	−2.1
SCHM/EACH AND RRC	55	13.7	−7.7	−1.1
TYPE OF OWNERSHIP:				
VOLUNTARY	2,839	9.9	−5.6	−0.6
PROPRIETARY	671	7.9	−4.7	−0.4
GOVERNMENT	1,308	12.3	−7.4	−0.9
SPECIALTY HOSPITALS:				
EYE AND EAR	10	31.1	10.4	3.2
TRAUMA	157	9.1	−8.4	−0.8
CANCER	10	22.0	−32.4	−7.1
TEFRA HOSPITALS:				
REHABILITATION	138	3.7	−11.1	−0.4
PSYCHIATRIC	278	10.7	−0.5	−0.1
LONG-TERM CARE	63	3.7	−19.6	−0.7
CHILDREN'S	38	9.4	−23.9	−2.2

Note: Urban and rural breakouts in this table are based on MSA status/location only.

Correction to the Regulations Text

§ 419.32 [Corrected]

45. On page 47613, in the regulations text, in column one, in paragraph (b)(1), in the second line, "paragraph (c)(2)" is corrected to read "paragraph (b)(2)"; and in paragraph (b)(2), in the fourth line, "paragraph (c)(1)" is corrected to read "paragraph (b)(1)".

Corrections to the Addenda

46. On pages 47615 through 47620, Addendum A is corrected to read as follows:

ADDENDUM A.—LIST OF PROPOSED HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSES WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
9020	Partial Hospitalizaiton	P	4.02	$206.71	$46.78	$41.34
0031	Dental procedures	S	1.37	$70.45	$14.09	$14.09
0061	Level I Chemotherapeutic agents	X	1.15	$59.13	$37.52	$11.83
0062	Level II Chemotherapeutic agents	X	1.78	$91.53	$36.61	$18.31
0063	Level III Chemotherapeutic agents	X	2.94	$151.17	$110.97	$30.24
0064	Level IV Chemotherapeutic agents	X	4.15	$213.39	$138.99	$42.68
0069	Neuropsychological Testing	X	4.06	$208.77	$46.10	$41.75
0090	Monitoring psychiatric drugs	X	0.85	$43.71	$12.20	$8.74
1 0091	Brief Individual Psychotherapy	S	1.09	$56.05	$14.01	$11.21
2 0092	Extended Individual Psychotherapy	S	1.63	$83.81	$21.47	$16.76
0093	Family Psychotherapy	S	1.56	$80.22	$20.11	$16.04
0094	Group Psychotherapy	S	1.31	$67.36	$19.89	$13.47
0121	Level I needle biopsy/aspiration	T	0.63	$32.39	$21.02	$6.48
0122	Level II needle biopsy/aspiration	T	4.59	$236.02	$113.00	$47.20
0131	Level I incision & drainage	T	1.93	$99.24	$36.61	$19.85
0132	Level II incision & drainage	T	5.63	$289.49	$132.89	$57.90
0137	Nail procedures	T	0.60	$30.85	$9.27	$6.17
0141	Level I Destruction of lesion	T	0.52	$26.74	$9.49	$5.35
0142	Level II Destruction of lesion	T	2.94	$151.17	$54.24	$30.24
0151	Level I debridement/destruction	T	1.63	$83.81	$33.22	$16.76
0152	Level II debridement/destruction	T	10.07	$517.80	$251.54	$103.56
0161	Level I excision/biopsy	T	3.43	$176.37	$75.71	$35.27
0162	Level II excision/biopsy	T	5.59	$287.44	$125.66	$57.49
0163	Level III excision/biopsy	T	10.48	$538.88	$260.80	$107.78
0181	Level I skin repair	T	2.17	$111.58	$44.07	$22.32
0182	Level II skin repair	T	4.11	$211.34	$92.43	$42.27
0183	Level III skin repair	T	11.04	$567.68	$283.18	$113.54

ADDENDUM A.—LIST OF PROPOSED HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSES WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
0184	Level IV skin repair	T	14.85	$765.59	$397.99	$152.72
0197	Incision/excision breast	T	11.94	$613.95	$306.26	$122.79
0198	Breast reconstruction/mastectomy	T	18.63	$957.95	$523.42	$191.59
0200	Arthrocentesis & Ligament/Tendon Injection.	T	1.76	$90.50	$39.10	$18.10
0207	Closed treatment fracture finger/toe/trunk	T	1.70	$87.41	$32.32	$17.48
0209	Closed treatment fracture/dislocation/except finger/toe/trunk.	T	1.94	$99.75	$37.74	$19.95
0210	Bone/joint manipulation under anesthesia	T	10.06	$517.29	$279.34	$103.46
0216	Open/percutaneous treatment fracture or dislocation.	T	20.09	$1,033.03	$524.09	$206.61
0217	Arthroplasty	T	20.54	$1,056.17	$530.42	$211.23
0218	Arthroplasty with prosthesis	T	27.80	$1,429.48	$720.71	$285.90
0226	Maxillofacial prostheses	T	1.56	$80.22	$21.92	$16.04
0231	Level I skull and facial bone procedures	T	11.31	$581.56	$286.79	$116.31
0232	Level II skull and facial bone procedures	T	23.82	$1,224.82	$636.87	$244.96
0251	Level I musculoskeletal procedures	T	13.88	$713.71	$365.89	$142.74
0252	Level II Musculoskeletal Procedures	T	19.24	$989.32	$512.34	$197.86
0253	Level III Musculoskeletal Procedures	T	25.74	$1,323.55	$684.55	$264.71
0254	Level IV Musculoskeletal Procedures	T	32.70	$1,681.43	$902.96	$336.29
0261	Level I Hand Musculoskeletal Procedures	T	10.41	$535.29	$258.00	$107.06
0262	Level II Hand Musculoskeletal Procedures	T	18.07	$929.16	$475.96	$185.83
0271	Level I Foot Musculoskeletal Procedures	T	14.12	$726.05	$365.44	$145.21
0272	Level II Foot Musculoskeletal Procedures	T	16.11	$828.38	$411.09	$165.68
0276	Bunion Procedures	T	19.00	$976.98	$495.39	$195.40
0280	Diagnostic Arthroscopy	T	22.15	$1,138.95	$581.72	$227.79
0281	Level I Surgical Arthroscopy	T	22.37	$1,150.27	$589.18	$230.05
0282	Level II Surgical Arthroscopy	T	23.65	$1,216.08	$609.97	$243.22
0286	Arthroscopically-Aided Procedures	T	27.69	$1,423.82	$791.90	$284.76
0311	Level I ENT Procedures	T	1.41	$72.50	$20.57	$14.50
0312	Level II ENT Procedures	T	7.07	$363.54	$170.86	$72.71
0313	Level III ENT Procedures	T	15.46	$794.95	$407.70	$158.99
0314	Level IV ENT Procedures	T	25.15	$1,293.21	$687.72	$258.64
5 0317	Implantation of Cochlear Device	T				
0318	Nasal Cauterization/Packing	T	2.07	$106.44	$38.87	$21.29
0319	Tonsil/Adenoid Procedures	T	16.20	$833.00	$463.53	$166.60
0320	Thoracentesis/Lavage Procedures	T	3.09	$158.89	$80.91	$31.78
0331	Level I Endoscopy Upper Airway	T	0.57	$29.31	$14.01	$5.86
0332	Level II Endoscopy Upper Airway	T	9.67	$497.23	$242.72	$99.45
0333	Level III Endoscopy Upper Airway	T	16.81	$864.37	$461.04	$172.87
0336	Endoscopy Lower Airway	T	7.24	$372.28	$195.49	$74.46
0339	Injection of Sclerosing Solution	T	1.96	$50.39	$19.66	$10.08
0341	Level I Needle and Catheter Placement	T	0.09	$4.63	$2.49	$0.93
0342	Level II Needle and Catheter Placement	T	2.61	$134.21	$68.70	$26.84
0343	Level III Needle and Catheter Placement	T	8.76	$450.44	$240.24	$90.09
0346	Placement Transvenous Caths/Cutdown	T	4.63	$238.07	$121.59	$47.61
0347	Injection Procedures for Interventional Radiology.	T	2.57	$132.15	$62.38	$26.43
0360	Removal/Revision, Pacemaker/Vascular Device.	T	6.04	$310.58	$138.54	$62.12
0367	Vascular Ligation	T	17.02	$875.17	$441.15	$175.03
0368	Vascular Repair/Fistula Construction	T	22.59	$1,161.58	$647.49	$232.32
0369	Blood and Blood Product Exchange	T	6.33	$325.49	$155.49	$65.10
0396	Lymph Node Excisions	T	12.98	$667.43	$334.48	$133.49
0397	Thyroid/Lymphadenectomy Procedures	T	19.12	$983.15	$542.17	$196.63
0406	Esophageal Dilation without Endoscopy	T	4.17	$214.42	$106.67	$42.88
0407	Esophagoscopy	T	6.89	$354.26	$189.39	$70.86
0417	Diagnostic Upper GI Endoscopy	T	6.35	$326.52	$179.22	$65.30
0418	Therapeutic Upper GI Endoscopy	T	7.44	$382.56	$213.57	$76.51
0419	Small Intestine Endoscopy	T	6.83	$351.20	$164.06	$70.24
0426	Diagnostic Lower GI Endoscopy	T	6.74	$346.57	$185.32	$69.31
0427	Therapeutic Lower GI Endoscopy	T	8.08	$415.99	$222.84	$83.20
0437	Therapeutic Anoscopy	T	6.54	$336.29	$173.79	$67.26
0446	Diagnostic Sigmoidoscopy	T	2.54	$130.61	$64.95	$26.12
0447	Therapeutic Proctosigmoidoscopy	T	7.06	$363.03	$191.87	$72.61
0448	Therapeutic Flexible Sigmoidoscopy	T	5.28	$271.50	$139.22	$54.30
0449	Complex GI Endoscopy	T	7.63	$392.33	$213.57	$78.47
0451	Level I Anal/Rectal Procedures	T	2.42	$124.44	$53.56	$24.89
0452	Level II Anal/Rectal Procedures	T	4.52	$232.42	$103.06	$46.48
0453	Level III Anal/Rectal Procedures	T	16.26	$836.09	$440.47	$167.22
0456	Endoscopic Retrograde Cholangio-Pancreatography (ERCP).	T	9.61	$494.15	$249.05	$98.83
0458	Percutaneous Biliary Endoscopic Procedures.	T	6.81	$350.17	$181.70	$70.03
0459	Peritoneal and Abdominal Procedures	T	17.85	$917.85	$497.88	$183.57
0466	Hernia/Hydrocele Procedures	T	20.67	$1,062.85	$556.64	$212.57
0470	Tube Procedures	T	2.19	$112.61	$54.92	$22.52
0521	Level I Cystourethroscopy and other Genitourinary Procedures.	T	4.89	$251.44	$110.06	$50.29

ADDENDUM A.—LIST OF PROPOSED HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSES WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	[7] National unadjusted coinsurance	Minimum unadjusted coinsurance
522	Level II Cystourethroscopy and other Genitourinary Procedures.	T	10.15	$521.91	$259.45	$104.38
523	Level III Cystourethroscopy and other Genitourinary Procedures.	T	16.35	$840.72	$438.89	$168.14
524	Level IV Cystourethroscopy and other Genitourinary Procedures.	T	27.20	$1,398.62	$824.90	$279.72
527	Lithotripsy	T	43.48	$2,235.74	$1,372.95	$447.15
529	Simple Urinary Studies and Procedures	T	2.33	$119.81	$59.66	$23.96
530	Genitourinary Procedures	T	2.46	$126.49	$53.34	$25.30
531	Level I Urethral Procedures	T	18.59	$955.90	$531.55	$191.18
532	Level II Urethral Procedures	T	23.02	$1,183.69	$588.50	$236.74
536	Circumcision	T	12.89	$662.80	$321.60	$132.56
537	Penile Procedures	T	28.65	$1,473.18	$872.36	$294.64
538	Insertion of Penile Prosthesis	T	48.41	$2,489.24	$1,563.47	$497.85
540	Testes/Epididymis Procedures	T	16.54	$850.49	$449.51	$170.10
547	Prostate Biopsy	T	4.39	$225.73	$125.20	$45.15
550	Surgical Hysteroscopy	T	16.46	$846.37	$445.22	$169.27
551	Level I Laparoscopy	T	24.61	$1,265.45	$701.73	$253.09
552	Level II Laparoscopy	T	37.09	$1,907.17	$1,053.84	$381.43
561	Level I Female Reproductive Procedures	T	1.46	$75.07	$24.41	$15.01
562	Level II Female Reproductive Procedures	T	12.30	$632.47	$325.44	$126.49
563	Level III Female Reproductive Procedures	T	16.50	$848.43	$461.72	$169.69
567	D & C	T	13.18	$677.72	$360.70	$135.54
568	Infertility Procedures	T	2.79	$143.46	$55.60	$28.69
576	Pregnancy and Neonatal Care Procedures	T	1.17	$60.16	$32.77	$12.03
580	Vaginal Delivery	T	4.31	$221.62	$44.32	$44.32
586	Therapeutic Abortion	T	11.98	$616.01	$409.29	$123.20
587	Spontaneous Abortion	T	12.96	$666.40	$347.14	$133.28
600	Spinal Tap	T	2.41	$123.92	$61.47	$24.78
601	Level I Nervous System Injections	T	3.00	$154.26	$74.13	$30.85
602	Level II Nervous System Injections	T	3.19	$164.03	$87.01	$32.81
616	Implantation of Neurostimulator Electrodes	T	11.85	$609.33	$329.06	$121.87
617	Revision/Removal Neurological Device	T	11.31	$581.56	$280.01	$116.31
618	Implantation of Neurological Device	T	24.78	$1,274.19	$808.18	$254.84
631	Level I Nerve Procedures	T	12.70	$653.03	$329.06	$130.61
632	Level II Nerve Procedures	T	16.48	$847.40	$453.58	$169.48
648	Laser Retinal Procedures	T	3.76	$193.34	$93.56	$38.67
649	Laser Eye Procedures except Retinal	T	4.37	$224.71	$111.64	$44.94
651	Level I Anterior Segment Eye Procedures	T	6.85	$352.23	$171.99	$70.45
652	Level II Anterior Segment Eye Procedures	T	16.35	$840.72	$433.92	$168.14
667	Cataract Procedures	T	20.35	$1,046.40	$538.11	$209.28
668	Cataract Procedures with IOL Insert	T	22.02	$1,132.27	$617.21	$226.45
670	Corneal Transplant	T	30.78	$1,582.71	$885.92	$316.54
675	Posterior Segment Eye Procedures	T	5.87	$301.84	$138.54	$60.37
677	Strabismus/Muscle Procedures	T	16.11	$828.38	$428.95	$165.68
681	Level I Eye Procedures	T	1.65	$84.84	$30.51	$16.97
682	Level II Eye Procedures	T	3.41	$175.34	$90.68	$35.07
683	Level III Eye Procedures	T	9.56	$491.58	$252.44	$98.32
684	Level IV Eye Procedures	T	13.26	$681.83	$341.94	$136.37
690	Vitrectomy	T	30.39	$1,562.65	$845.69	$312.53
700	Plain Film	X	0.80	$41.14	$22.37	$8.23
705	Miscellaneous Radiological Procedures	X	1.43	$73.53	$39.10	$14.71
710	Computerized Axial Tomography	S	4.98	$256.07	$173.12	$51.21
716	Fluoroscopy	X	1.39	$71.47	$40.00	$14.29
720	Magnetic Resonance Angiography	S	6.37	$327.55	$204.98	$65.51
726	Magnetic Resonance Imaging	S	7.91	$406.73	$256.06	$81.35
728	Myelography	S	3.50	$179.97	$91.98	$35.99
730	Arthography	S	2.30	$118.27	$65.77	$23.65
736	Digestive Radiology	S	1.85	$95.13	$53.79	$19.03
737	Diagnostic Urography	S	2.69	$138.32	$81.81	$27.66
738	Therapeutic Radiologic Procedures	S	3.74	$192.31	$104.86	$38.46
739	Diagnostic Angiography and Venography	S	5.33	$274.07	$150.74	$54.81
746	Mammography	S	0.69	$35.48	$19.44	$7.10
747	Diagnostic Ultrasound Except Vascular	S	1.65	$84.84	$54.47	$16.97
749	Guidance under Ultrasound	X	2.22	$114.15	$70.06	$22.83
750	Therapeutic Radiation Treatment Planning	X	0.96	$49.36	$25.99	$9.87
751	Level I Therapeutic Radiation Treatment Preparation.	X	1.15	$59.13	$33.22	$11.83
752	Level II Therapeutic Radiation Treatment Preparation.	X	3.48	$178.94	$86.56	$35.79
757	Radiation Therapy	S	2.26	$116.21	$52.43	$23.24
758	Hyperthermic Therapies	S	5.08	$261.21	$137.18	$52.24
759	Brachytherapy and Complex Radioelement Applications.	S	7.98	$410.33	$157.97	$82.07
780	PET Scans	S	14.89	$765.64	$419.46	$153.13
761	Standard Non-Imaging Nuclear Medicine	S	1.80	$92.56	$54.01	$18.51
762	Complex Non-Imaging Nuclear Medicine	S	2.02	$103.87	$55.82	$20.77
771	Standard Planar Nuclear Medicine	S	3.81	$195.91	$117.29	$39.18

ADDENDUM A.—LIST OF PROPOSED HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSES WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	[7] National unadjusted coinsurance	Minimum unadjusted coinsurance
772	Complex Planar Nuclear Medicine	S	4.26	$219.05	$128.37	$43.81
781	Standard SPECT Nuclear Medicine	S	5.43	$279.21	$155.04	$55.84
782	Complex SPECT Nuclear Medicine	S	9.00	$462.78	$267.13	$92.56
791	Standard Therapeutic Nuclear Medicine	S	14.74	$757.93	$539.91	$151.59
792	Complex Therapeutic Nuclear Medicine	S	4.81	$247.33	$143.06	$49.47
801	Immunology Tests	X	0.13	$6.68	$1.62	$1.34
801	Level I Pathology	X	0.22	$11.31	$6.78	$2.26
802	Level II Pathology	X	0.39	$20.05	$11.75	$4.01
803	Level III Pathology	X	0.69	$35.48	$20.34	$7.10
900	Critical Care	S	7.54	$387.71	$145.09	$77.54
901	Level I Immunization	X	0.07	$3.60	$2.49	$0.72
902	Level II Immunization	X	1.31	$67.36	$38.19	$13.47
903	Level III Immunization	X	1.00	$51.42	$24.86	$10.28
906	Infusion Therapy except Chemotherapy	X	1.93	$99.24	$57.18	$19.85
907	Intramuscular Injections	X	0.74	$38.05	$11.53	$7.61
[3] 91111	Low Level Clinic Visits	Well care and administrative	1.24	$63.76	$15.14	$12.75
91118	Low Level Clinic Visits	Skin and breast diseases	0.83	$42.68	$9.27	$8.54
91124	Low Level Clinic Visits	Musculoskeletal diseases	0.87	$44.74	$9.49	$8.95
91131	Low Level Clinic Visits	Ear, nose, mouth and throat diseases	0.81	$41.65	$9.04	$8.33
91133	Low Level Clinic Visits	Respiratory system diseases	0.83	$42.68	$8.59	$8.54
91136	Low Level Clinic Visits	Cardiovascular system diseases	0.87	$44.74	$8.95	$8.95
91141	Low Level Clinic Visits	Digestive system diseases	0.96	$49.36	$10.40	$9.87
91153	Low Level Clinic Visits	Kidney, urinary tract and male genital diseases.	0.91	$46.79	$9.49	$9.36
91156	Low Level Clinic Visits	Female genital system diseases	0.93	$47.82	$9.56	$9.56
91157	Low Level Clinic Visits	Pregnancy and neonatal care	1.37	$70.45	$17.85	$14.09
91163	Low Level Clinic Visits	Nervous system diseases	0.98	$50.39	$10.17	$10.08
91168	Low Level Clinic Visits	Eye diseases	0.96	$49.36	$10.40	$9.87
91172	Low Level Clinic Visits	Trauma and poisoning	1.06	$54.51	$14.24	$10.90
91178	Low Level Clinic Visits	Major signs, symptoms and findings	1.52	$78.16	$21.47	$15.63
91182	Low Level Clinic Visits	Endocrine, nutritional and metabolic diseases.	0.87	$44.74	$9.04	$8.95
91186	Low Level Clinic Visits	Immunologic and hematologic diseases	1.07	$55.02	$11.53	$11.00
91188	Low Level Clinic Visits	Malignancy	0.72	$37.02	$8.14	$7.40
[1] 91191	Low Level Clinic Visits	Psychiatric disorders	1.09	$56.05	$14.01	$11.21
91197	Low Level Clinic Visits	Infectious disease	1.02	$52.45	$11.53	$10.49
[4] 91199	Low Level Clinic Visits	Unknown cause of mortality	1.41	$72.50	$24.86	$14.50
[3] 91311	Mid Level Clinic Visits	Well care and administrative	1.24	$63.76	$15.14	$12.75
91318	Mid Level Clinic Visits	Skin and breast diseases	0.98	$50.39	$10.08	$10.08
91324	Mid Level Clinic Visits	Musculoskeletal diseases	0.96	$49.36	$9.87	$9.87
91331	Mid Level Clinic Visits	Ear, nose, mouth and throat diseases	0.94	$48.33	$9.67	$9.67
91333	Mid Level Clinic Visits	Respiratory system diseases	0.93	$47.82	$9.56	$9.56
91336	Mid Level Clinic Visits	Cardiovascular system diseases	1.00	$51.42	$10.28	$10.28
91341	Mid Level Clinic Visits	Digestive system diseases	1.00	$51.42	$10.28	$10.28
91353	Mid Level Clinic Visits	Kidney, urinary tract and male genital diseases.	1.00	$51.42	$10.28	$10.28
91356	Mid Level Clinic Visits	Female genital system diseases	1.04	$53.48	$10.70	$10.70
91357	Mid Level Clinic Visits	Pregnancy and neonatal care	1.33	$68.39	$13.68	$13.68
91363	Mid Level Clinic Visits	Nervous system diseases	1.04	$53.48	$10.70	$10.70
91368	Mid Level Clinic Visits	Eye diseases	0.85	$43.71	$8.74	$8.74
91372	Mid Level Clinic Visits	Trauma and poisoning	1.06	$54.51	$10.90	$10.90
91378	Mid Level Clinic Visits	Major signs, symptoms and findings	1.13	$58.10	$11.62	$11.62
91382	Mid Level Clinic Visits	Endocrine, nutritional and metabolic diseases.	1.00	$51.42	$10.28	$10.28
91386	Mid Level Clinic Visits	Immunologic and hematologic diseases	1.04	$53.48	$10.70	$10.70
91388	Mid Level Clinic Visits	Malignancy	0.83	$42.68	$8.54	$8.54
[1] 91391	Mid Level Clinic Visits	Psychiatric disorders	1.09	$56.05	$14.01	$11.21
91397	Mid Level Clinic Visits	Infectious disease	1.04	$53.48	$10.70	$10.70
[4] 91399	Mid Level Clinic Visits	Unknown cause of mortality	1.41	$72.50	$24.86	$14.50
[3] 91511	High Level Clinic Visits	Well care and administrative	1.24	$63.76	$15.14	$12.75
91518	High Level Clinic Visits	Skin and breast diseases	1.72	$88.44	$19.21	$17.69
91524	High Level Clinic Visits	Musculoskeletal diseases	1.46	$75.07	$15.37	$15.01
91531	High Level Clinic Visits	Ear, nose, mouth and throat diseases	1.35	$69.42	$14.24	$13.88
91533	High Level Clinic Visits	Respiratory system diseases	1.44	$74.04	$14.81	$14.81
91536	High Level Clinic Visits	Cardiovascular system diseases	1.46	$75.07	$15.37	$15.01
91541	High Level Clinic Visits	Digestive system diseases	1.54	$79.19	$15.84	$15.84
91553	High Level Clinic Visits	Kidney, urinary tract and male genital diseases.	1.44	$74.04	$14.81	$14.81
91556	High Level Clinic Visits	Female genital system diseases	1.44	$74.04	$15.14	$14.81
91557	High Level Clinic Visits	Pregnancy and neonatal care	1.76	$90.50	$22.83	$18.10
91563	High Level Clinic Visits	Nervous system diseases	1.50	$77.13	$16.05	$15.43
91568	High Level Clinic Visits	Eye diseases	1.33	$68.39	$13.79	$13.68
91572	High Level Clinic Visits	Trauma and poisoning	1.72	$88.44	$22.15	$17.69
91578	High Level Clinic Visits	Major signs, symptoms and findings	1.89	$97.18	$29.15	$19.44
91582	High Level Clinic Visits	Endocrine, nutritional and metabolic diseases.	1.46	$75.07	$15.14	$15.01
91586	High Level Clinic Visits	Immunologic and hematologic diseases	1.76	$90.50		
91588	High Level Clinic Visits	Malignancy	1.19	$61.19		

ADDENDUM A.—LIST OF PROPOSED HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSES WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS—Continued

APC	Group title		Status indicator	Relative weight	Payment rate	[7] National unadjusted coinsurance	Minimum unadjusted coinsurance
[2] 91591	High Level Clinic Visits	Psychiatric disorders	V	1.63	$83.81	$21.47	$16.76
91597	High Level Clinic Visits	Infectious disease	V	1.76	$90.50	$19.66	$18.10
[4] 91599	High Level Clinic Visits	Unknown cause of mortality	V	1.41	$72.50	$24.86	$14.50
919	Electroconvulsive Therapy		S	3.09	$158.89	$80.00	$31.78
920	Biofeedback and other Training		S	1.17	$60.16	$29.61	$12.03
[5] 921	Diabetes Education		S				
926	Dialysis for other than ESRD patients		S	4.22	$216.99	$69.83	$43.40
928	Alimentary Tests		X	2.91	$149.63	$79.78	$29.93
930	Minor Eye Examinations		X	1.04	$53.48	$22.83	$10.70
931	Level I Eye Tests		X	0.74	$38.05	$21.47	$7.61
932	Level II Eye Tests		X	2.41	$123.92	$63.73	$24.78
936	Fitting of Vision Aids		X	0.48	$24.68	$9.49	$4.94
940	Otorhinolaryngologic Function Tests		X	3.13	$160.94	$52.21	$32.19
941	Level I Audiometry		X	0.74	$38.05	$13.33	$7.61
942	Level II Audiometry		X	1.46	$75.07	$22.15	$15.01
947	Resuscitation and Cardioversion		S	4.11	$211.34	$106.22	$42.27
948	Cardiac Rehabilitation		X	0.81	$41.65	$16.95	$8.33
946	Cardiovascular Stress Test		X	1.43	$73.53	$61.92	$14.71
950	Electrocardiogram (ECG)		X	0.35	$18.00	$15.82	$3.60
[3] 95111	Low Level ER Visits	Well care and administrative	V	1.24	$63.76	$15.14	$12.75
95118	Low Level ER Visits	Skin and breast diseases	V	1.17	$60.16	$19.21	$12.03
95124	Low Level ER Visits	Musculoskeletal diseases	V	1.17	$60.16	$20.11	$12.03
95131	Low Level ER Visits	Ear, nose, mouth and throat diseases	V	1.11	$57.08	$17.63	$11.42
95133	Low Level ER Visits	Respiratory system diseases	V	1.15	$59.13	$18.53	$11.83
95136	Low Level ER Visits	Cardiovascular system diseases	V	1.26	$64.79	$19.89	$12.96
95141	Low Level ER Visits	Digestive system diseases	V	1.30	$66.85	$21.02	$13.37
95153	Low Level ER Visits	Kidney, urinary tract and male genital disorders.	V	1.43	$73.53	$24.86	$14.71
95156	Low Level ER Visits	Female genital system diseases	V	1.41	$72.50	$23.96	$14.50
95157	Low Level ER Visits	Pregnancy and neonatal care	V	1.46	$75.07	$24.63	$15.01
95163	Low Level ER Visits	Nervous system diseases	V	1.30	$66.85	$22.60	$13.37
95165	Low Level ER Visits	Eye diseases	V	1.20	$61.70	$20.79	$12.34
95172	Low Level ER Visits	Trauma and poisoning	V	1.28	$65.82	$22.15	$13.16
95178	Low Level ER Visits	Major signs, symptoms and findings	V	1.94	$99.75	$36.39	$19.95
95182	Low Level ER Visits	Endocrine, nutritional and metabolic disorders.	V	1.50	$77.13	$24.63	$15.43
95190	Low Level ER Visits	Immunologic and hematologic diseases	V	1.46	$75.07	$26.89	$15.01
95188	Low Level ER Visits	Malignancy	V	1.57	$80.73	$27.35	$16.15
[1] 95191	Low Level ER Visits	Psychiatric Disorders	V	1.09	$56.05	$14.01	$11.21
95197	Low Level ER Visits	Infectious disease	V	1.24	$63.76	$20.57	$12.75
[4] 95199	Low Level ER Visits	Unknown cause of mortality	V	1.41	$72.50	$24.86	$14.50
[3] 95311	Mid Level ER Visits	Well care and administrative	V	1.24	$63.76	$15.14	$12.75
95318	Mid Level ER Visits	Skin and breast diseases	V	1.89	$97.18	$34.80	$19.44
95324	Mid Level ER Visits	Musculoskeletal diseases	V	1.78	$91.53	$32.32	$18.31
95331	Mid Level ER Visits	Ear, nose, mouth and throat diseases	V	1.80	$92.56	$31.64	$18.51
95333	Mid Level ER Visits	Respiratory system diseases	V	1.91	$98.21	$33.67	$19.64
95336	Mid Level ER Visits	Cardiovascular system diseases	V	2.02	$103.87	$36.16	$20.77
95341	Mid Level ER Visits	Digestive system diseases	V	2.02	$103.87	$36.61	$20.77
95353	Mid Level ER Visits	Kidney, urinary tract and male genital diseases.	V	2.06	$105.93	$38.65	$21.19
95356	Mid Level ER Visits	Female genital system diseases	V	2.06	$105.93	$36.84	$21.19
95357	Mid Level ER Visits	Pregnancy and neonatal care	V	2.10	$107.98	$40.68	$21.60
95363	Mid Level ER Visits	Nervous system diseases	V	1.89	$97.18	$35.03	$19.44
95368	Mid Level ER Visits	Eye diseases	V	1.67	$85.87	$33.00	$17.17
95372	Mid Level ER Visits	Trauma and poisoning	V	2.02	$103.87	$39.10	$20.77
95378	Mid Level ER Visits	Major signs, symptoms and findings	V	3.07	$157.86	$58.76	$31.57
95382	Mid Level ER Visits	Endocrine, nutritional and metabolic disorders.	V	2.30	$118.27	$43.84	$23.65
95386	Mid Level ER Visits	Immunologic and hematologic diseases	V	2.48	$127.52	$49.27	$25.50
95388	Mid Level ER Visits	Malignancy	V	2.17	$111.58	$42.26	$22.32
95391	Mid Level ER Visits	Psychiatric Disorders	V	2.02	$103.87	$35.93	$20.77
95397	Mid Level ER Visits	Infectious disease	V	1.99	$102.33	$36.61	$20.47
[4] 95399	Mid Level ER Visits	Unknown cause of mortality	V	1.41	$72.50	$24.86	$14.50
[3] 95511	High Level ER Visits	Well care and administrative	V	1.24	$63.76	$15.14	$12.75
95518	High Level ER Visits	Skin and breast diseases	V	2.59	$133.18	$46.78	$26.64
95524	High Level ER Visits	Musculoskeletal diseases	V	2.46	$126.49	$41.36	$25.30
95531	High Level ER Visits	Ear, nose, mouth and throat diseases	V	2.57	$132.15	$44.07	$26.43
95533	High Level ER Visits	Respiratory system diseases	V	3.13	$160.94	$54.69	$32.19
95536	High Level ER Visits	Cardiovascular system diseases	V	3.13	$160.94	$54.69	$32.19
95541	High Level ER Visits	Digestive system diseases	V	2.89	$148.60	$54.69	$29.72
95553	High Level ER Visits	Kidney, urinary tract and male genital disorders.	V	2.87	$147.58	$54.69	$29.52
95556	High Level ER Visits	Female genital system diseases	V	2.70	$138.83	$51.08	$27.77
95557	High Level ER Visits	Pregnancy and neonatal care	V	2.89	$148.60	$54.92	$29.72
95563	High Level ER Visits	Nervous system diseases	V	2.74	$140.89	$52.43	$28.18
95568	High Level ER Visits	Eye diseases	V	2.33	$119.81	$40.23	$23.96
95572	High Level ER Visits	Trauma and poisoning	V	2.72	$139.86	$50.17	$27.97
95578	High Level ER Visits	Major signs, symptoms and findings	V	6.83	$351.20	$148.48	$70.24

ADDENDUM A.—LIST OF PROPOSED HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSES WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS—Continued

APC	Group title		Status indicator	Relative weight	Payment rate	[7] National unadjusted coinsurance	Minimum unadjusted coinsurance
95592	High Level ER Visits	Endocrine, nutritional and metabolic disorders.	V	3.26	$167.63	$64.86	$33.53
95586	High Level ER Visits	Immunologic and hematologic diseases	V	3.89	$200.02	$81.81	$40.00
95588	High Level ER Visits	Malignancy	V	3.63	$186.65	$68.48	$37.33
95591	High Level ER Visits	Psychiatric Disorders	V	3.48	$178.94	$62.60	$35.79
95597	High Level ER Visits	Infectious disease	V	2.78	$142.95	$53.11	$28.59
[4] 95599	High Level ER Visits	Unknown cause of mortality	V	1.41	$72.50	$24.86	$14.50
956	Continuous ECG and Blood Pressure Monitoring.		X	1.09	$56.05	$54.47	$11.21
957	Echocardiography		S	4.04	$207.74	$114.13	$41.55
952	Diagnostic Cardiac Catheterization		S	23.74	$1,220.71	$705.57	$244.14
960	Cardiac Electrophysiologic Tests/Procedures.		S	4.80	$246.82	$143.74	$49.36
965	Electronic Analysis of Pacemakers/other Devices.		X	0.39	$20.05	$12.43	$4.01
967	Non-Invasive Vascular Studies		X	1.70	$87.41	$57.40	$17.48
968	Vascular Ultrasound		X	2.39	$122.89	$79.55	$24.58
969	Hyperbaric Oxygen		S	2.65	$136.26	$141.70	$27.25
971	Level I Pulmonary Tests		X	0.98	$50.39	$26.44	$10.08
972	Level II Pulmonary Tests		X	1.00	$51.42	$29.38	$10.28
973	Level III Pulmonary Tests		S	1.81	$93.07	$55.82	$18.61
976	Pulmonary Therapy		S	0.44	$22.62	$14.69	$4.53
977	Allergy Tests		X	0.56	$28.80	$11.30	$5.76
978	Allergy Injections		X	0.30	$15.43	$3.39	$3.09
979	Extended EEG Studies and Sleep Studies		S	10.15	$521.91	$287.25	$104.38
980	Electroencephalogram		S	2.15	$110.55	$57.86	$22.11
981	Level I Nerve and Muscle Tests		X	1.22	$62.73	$34.35	$12.55
982	Level II Nerve and Muscle Tests		X	1.37	$70.45	$38.42	$14.09
987	Subcutaneous or Intramuscular Chemotherapy.		S	2.09	$107.47	$65.09	$21.49
988	Chemotherapy except by Extended Infusion.		S	4.02	$206.71	$110.29	$41.34
989	Chemotherapy by Extended Infusion		S	1.91	$98.21	$44.52	$19.64
990	Photochemotherapy		S	0.43	$22.11	$8.14	$4.42
997	Manipulation Therapy		S	0.69	$35.48	$7.46	$7.10
999	Therapeutic Phlebotomy		X	0.43	$22.11	$11.07	$4.42

Notes:
[1] Median costs APCs 091, 91191, 91391, 95191 computed together because there is no differences in facility resources.
[2] Median costs APCs 092 and 91591 computed together because there is no differences in facility resources.
[3] Median costs for all claims in combined visit levels for MDC 11; one rate is paid for multiple levels.
[4] Median costs for all claims in combined visit levels for MDC 99; one rate is paid for multiple levels.
[5] APCs 317 and 921 have anomalous weights. Refer to preamble for discussion.
[6] This APC reflects the per-diem payment for patients recieving services under a partial hospitalization program.
[7] The national unadjusted coinsurance amount is subtracted from the proposed payment rate to determine the amount Medicare pays.

47. On pages 47621 through 47761, Addendum B is corrected to read as follows:

ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
00100	N	Anesth, skin surgery					
00102	N	Anesth, repair of cleft lip					
00103	N	Anesth, blepharoplasty					
00104	N	Anesth for electroshock					
00120	N	Anesthesia for ear surgery					
00124	N	Anesthesia for ear exam					
00126	N	Anesth, tympanotomy					
00140	N	Anesth, procedures on eye					
00142	N	Anesthesia for lens surgery					
00144	N	Anesth, corneal transplant					
00145	N	Anesth, vitrectomy					
00147	N	Anesth, iridectomy					
00148	N	Anesthesia for eye exam					
00160	N	Anesth, nose, sinus surgery					
00162	N	Anesth, nose, sinus surgery					
00164	N	Anesth, biopsy of nose					
00170	N	Anesth, procedure on mouth					
00172	N	Anesth, cleft palate repair					
00174	C	Anesth, pharyngeal surgery					
00176	C	Anesth, pharyngeal surgery					

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[2] This code was valid in 1996 and therefore was available for use in calculating weights. However, it has since been terminated and will not be paid upon implementation
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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
00190	N	Anesth, facial bone surgery					
00192	C	Anesth, facial bone surgery					
00210	N	Anesth, open head surgery					
00212	N	Anesth, skull drainage					
00214	C	Anesth, skull drainage					
00215	C	Anesth, skull fracture					
00216	N	Anesth, head vessel surgery					
00218	N	Anesth, special head surgery					
00220	N	Anesth, spinal fluid shunt					
00222	N	Anesth, head nerve surgery					
00300	N	Anesth, skin surgery, neck					
00320	N	Anesth, neck organ surgery					
00322	N	Anesth, biopsy of thyroid					
00350	N	Anesth, neck vessel surgery					
00352	N	Anesth, neck vessel surgery					
00400	N	Anesth, chest skin surgery					
00402	N	Anesth, surgery of breast					
00404	C	Anesth, surgery of breast					
00406	C	Anesth, surgery of breast					
00410	N	Anesth, correct heart rhythm					
00420	N	Anesth, skin surgery, back					
00450	N	Anesth, surgery of shoulder					
00452	C	Anesth, surgery of shoulder					
00454	N	Anesth, collar bone biopsy					
00470	N	Anesth, removal of rib					
00472	N	Anesth, chest wall repair					
00474	C	Anesth, surgery of rib(s)					
00500	N	Anesth, esophageal surgery					
00520	N	Anesth, chest procedure					
00522	N	Anesth, chest lining biopsy					
00524	C	Anesth, chest drainage					
00528	N	Anesth, chest partition view					
00530	C	Anesth, pacemaker insertion					
00532	N	Anesth, vascular access					
00534	N	Anesth, cardioverter/defib					
00540	C	Anesth, chest surgery					
00542	C	Anesth, release of lung					
00544	C	Anesth, chest lining removal					
00546	C	Anesth, lung,chest wall surg					
00548	N	Anesth, trachea,bronchi surg					
00560	C	Anesth, open heart surgery					
00562	C	Anesth, open heart surgery					
00580	C	Anesth,heart/lung transplant					
00600	N	Anesth, spine, cord surgery					
00604	C	Anesth, surgery of vertebra					
00620	N	Anesth, spine, cord surgery					
00622	C	Anesth, removal of nerves					
00630	N	Anesth, spine, cord surgery					
00632	C	Anesth, removal of nerves					
00634	C	Anesth for chemonucleolysis					
00670	C	Anesth, spine, cord surgery					
00700	N	Anesth, abdominal wall surg					
00702	N	Anesth, for liver biopsy					
00730	N	Anesth, abdominal wall surg					
00740	N	Anesth, gi visualization					
00750	N	Anesth, repair of hernia					
00752	N	Anesth, repair of hernia					
00754	N	Anesth, repair of hernia					
00756	N	Anesth, repair of hernia					
00770	N	Anesth, blood vessel repair					
00790	N	Anesth, surg upper abdomen					
00792	C	Anesth, part liver removal					
00794	C	Anesth, pancreas removal					
00796	C	Anesth, for liver transplant					
00800	N	Anesth, abdominal wall surg					
00802	C	Anesth, fat layer removal					
00810	N	Anesth, intestine endoscopy					
00820	N	Anesth, abdominal wall surg					
00830	N	Anesth, repair of hernia					
00832	N	Anesth, repair of hernia					
00840	N	Anesth, surg lower abdomen					
00842	N	Anesth, amniocentesis					
00844	C	Anesth, pelvis surgery					
00846	C	Anesth, hysterectomy					
00848	C	Anesth, pelvic organ surg					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
00850	C	Anesth, cesarean section					
00855	C	Anesth, hysterectomy					
00857	C	Analgesia, labor & c-section					
00860	N	Anesth, surgery of abdomen					
00862	N	Anesth, kidney, ureter surg					
00864	C	Anesth, removal of bladder					
00865	C	Anesth, removal of prostate					
00866	C	Anesth, removal of adrenal					
00868	C	Anesth, kidney transplant					
00870	N	Anesth, bladder stone surg					
00872	N	Anesth,kidney stone destruct					
00873	N	Anesth,kidney stone destruct					
00880	N	Anesth, abdomen vessel surg					
00882	C	Anesth, major vein ligation					
00884	C	Anesth, major vein revision					
00900	N	Anesth, perineal procedure					
00902	N	Anesth, anorectal surgery					
00904	C	Anesth, perineal surgery					
00906	N	Anesth, removal of vulva					
00908	C	Anesth, removal of prostate					
00910	N	Anesth, bladder surgery					
00912	N	Anesth, bladder tumor surg					
00914	N	Anesth, removal of prostate					
00916	N	Anesth, bleeding control					
00918	N	Anesth, stone removal					
00920	N	Anesth, genitalia surgery					
00922	N	Anesth, sperm duct surgery					
00924	N	Anesth, testis exploration					
00926	N	Anesth, removal of testis					
00928	C	Anesth, removal of testis					
00930	N	Anesth, testis suspension					
00932	C	Anesth, amputation of penis					
00934	C	Anesth, penis, nodes removal					
00936	C	Anesth, penis, nodes removal					
00938	N	Anesth, insert penis device					
00940	N	Anesth, vaginal procedures					
00942	N	Anesth, surgery on vagina					
00944	C	Anesth, vaginal hysterectomy					
00946	N	Anesth, vaginal delivery					
00948	N	Anesth, repair of cervix					
00950	N	Anesth, vaginal endoscopy					
00952	N	Anesth, uterine endoscopy					
00955	C	Analgesia, vaginal delivery					
01000	N	Anesth, skin surgery, pelvis					
01110	N	Anesth, skin surgery, pelvis					
01120	N	Anesth, pelvis surgery					
01130	N	Anesth, body cast procedure					
01140	C	Anesth, amputation at pelvis					
01150	C	Anesth, pelvic tumor surgery					
01160	N	Anesth, pelvis procedure					
01170	N	Anesth, pelvis surgery					
01180	N	Anesth, pelvis nerve removal					
01190	C	Anesth, pelvis nerve removal					
01200	N	Anesth, hip joint procedure					
01202	N	Anesth, arthroscopy of hip					
01210	N	Anesth, hip joint surgery					
01212	C	Anesth, hip disarticulation					
01214	C	Anesth, replacement of hip					
01220	N	Anesth, procedure on femur					
01230	N	Anesth, surgery of femur					
01232	C	Anesth, amputation of femur					
01234	C	Anesth, radical femur surg					
01240	N	Anesth, upper leg skin surg					
01250	N	Anesth, upper leg surgery					
01260	N	Anesth, upper leg veins surg					
01270	N	Anesth, thigh arteries surg					
01272	C	Anesth, femoral artery surg					
01274	C	Anesth, femoral embolectomy					
01300	N	Anesth, skin surgery, knee					
01320	N	Anesth, knee area surgery					
01340	N	Anesth, knee area procedure					
01360	N	Anesth, knee area surgery					
01380	N	Anesth, knee joint procedure					
01382	N	Anesth, knee arthroscopy					
01390	N	Anesth, knee area procedure					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
01392	N	Anesth, knee area surgery					
01400	N	Anesth, knee joint surgery					
01402	C	Anesth, replacement of knee					
01404	C	Anesth, amputation at knee					
01420	N	Anesth, knee joint casting					
01430	N	Anesth, knee veins surgery					
01432	N	Anesth, knee vessel surg					
01440	N	Anesth, knee arteries surg					
01442	C	Anesth, knee artery surg					
01444	C	Anesth, knee artery repair					
01460	N	Anesth, lower leg skin surg					
01462	N	Anesth, lower leg procedure					
01464	N	Anesth, ankle arthroscopy					
01470	N	Anesth, lower leg surgery					
01472	N	Anesth, achilles tendon surg					
01474	N	Anesth, lower leg surgery					
01480	N	Anesth, lower leg bone surg					
01482	N	Anesth, radical leg surgery					
01484	N	Anesth, lower leg revision					
01486	C	Anesth, ankle replacement					
01490	N	Anesth, lower leg casting					
01500	N	Anesth, leg arteries surg					
01502	C	Anesth, lowerleg embolectomy					
01520	N	Anesth, lower leg vein surg					
01522	N	Anesth, lower leg vein surg					
01600	N	Anesth, shoulder skin surg					
01610	N	Anesth, surgery of shoulder					
01620	N	Anesth, shoulder procedure					
01622	N	Anesth, shoulder arthroscopy					
01630	N	Anesth, surgery of shoulder					
01632	C	Anesth, surgery of shoulder					
01634	C	Anesth, shoulder joint amput					
01636	C	Anesth, forequarter amput					
01638	C	Anesth, shoulder replacement					
01650	N	Anesth, shoulder artery surg					
01652	C	Anesth, shoulder vessel surg					
01654	C	Anesth, shoulder vessel surg					
01656	C	Anesth, arm-leg vessel surg					
01670	N	Anesth, shoulder vein surg					
01680	N	Anesth, shoulder casting					
01682	N	Anesth, airplane cast					
01700	N	Anesth, elbow area skin surg					
01710	N	Anesth, elbow area surgery					
01712	N	Anesth, upperarm tendon surg					
01714	N	Anesth, upperarm tendon surg					
01716	N	Anesth, biceps tendon repair					
01730	N	Anesth, upperarm procedure					
01732	N	Anesth, elbow arthroscopy					
01740	N	Anesth, upper arm surgery					
01742	N	Anesth, humerus surgery					
01744	N	Anesth, humerus repair					
01756	C	Anesth, radical humerus surg					
01758	N	Anesth, humeral lesion surg					
01760	N	Anesth, elbow replacement					
01770	N	Anesth, upperarm artery surg					
01772	C	Anesth, upperarm embolectomy					
01780	N	Anesth, upper arm vein surg					
01782	C	Anesth, upperarm vein repair					
01784	N	Anesth, av fistula repair					
01800	N	Anesth, lower arm skin surg					
01810	N	Anesth, lower arm surgery					
01820	N	Anesth, lower arm procedure					
01830	N	Anesth, lower arm surgery					
01832	N	Anesth, wrist replacement					
01840	N	Anesth, lowerarm artery surg					
01842	C	Anesth, lowerarm embolectomy					
01844	N	Anesth, vascular shunt surg					
01850	N	Anesth, lower arm vein surg					
01852	C	Anesth, lowerarm vein repair					
01860	N	Anesth, lower arm casting					
01900	N	Anesth, uterus/tube inject					
01902	C	Anesth, burr holes, skull					
01904	C	Anesth, skull x-ray inject					
01906	N	Anesth, lumbar myelography					
01908	N	Anesth, cervical myelography					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
01910	N	Anesth, skull myelography					
01912	N	Anesth, lumbar discography					
01914	N	Anesth, cervical discography					
01916	C	Anesth, head arteriogram					
01918	C	Anesth, limb arteriogram					
01920	N	Anesth, catheterize heart					
01921	C	Anesth, vessel surgery					
01922	N	Anesth, cat or MRI scan					
01990	C	Support for organ donor					
01995	N	Regional anesthesia, limb					
01996	N	Manage daily drug therapy					
01999	N	Unlisted anesth procedure					
10040	T	Acne surgery of skin abscess	131	1.93	$99.24	$36.61	$19.85
10060	T	Drainage of skin abscess	131	1.93	$99.24	$36.61	$19.85
10061	T	Drainage of skin abscess	131	1.93	$99.24	$36.61	$19.85
10080	T	Drainage of pilonidal cyst	131	1.93	$99.24	$36.61	$19.85
10081	T	Drainage of pilonidal cyst	131	1.93	$99.24	$36.61	$19.85
10120	T	Remove foreign body	131	1.93	$99.24	$36.61	$19.85
10121	T	Remove foreign body	163	10.48	$538.88	$260.80	$107.78
10140	T	Drainage of hematoma/fluid	131	1.93	$99.24	$36.61	$19.85
10160	T	Puncture drainage of lesion	131	1.93	$99.24	$36.61	$19.85
10180	T	Complex drainage, wound	131	1.93	$99.24	$36.61	$19.85
11000	T	Debride infected skin	151	1.63	$83.81	$33.22	$16.76
11001	T	Debride infect skin add-on	151	1.63	$83.81	$33.22	$16.76
11010	T	Debride skin, fx	163	10.48	$538.88	$260.80	$107.78
11011	T	Debride skin/muscle, fx	163	10.48	$538.88	$260.80	$107.78
11012	T	Debride skin/muscle/bone, fx	163	10.48	$538.88	$260.80	$107.78
11040	T	Debride skin partial	151	1.63	$83.81	$33.22	$16.76
11041	T	Debride skin full	151	1.63	$83.81	$33.22	$16.76
11042	T	Debride skin/tissue	151	1.63	$83.81	$33.22	$16.76
11043	T	Debride tissue/muscle	162	5.59	$287.44	$125.66	$57.49
11044	T	Debride tissue/muscle/bone	162	5.59	$287.44	$125.66	$57.49
[2] 11050	T	Trim skin lesion	151	1.63	$83.81	$33.22	$16.76
[2] 11051	T	Trim 2 to 4 skin lesions	151	1.63	$83.81	$33.22	$16.76
[2] 11052	T	Trim over 4 skin lesions	151	1.63	$83.81	$33.22	$16.76
11055	T	Trim skin lesion	151	1.63	$83.81	$33.22	$16.76
11056	T	Trim 2 to 4 skin lesions	151	1.63	$83.81	$33.22	$16.76
11057	T	Trim over 4 skin lesions	151	1.63	$83.81	$33.22	$16.76
11100	T	Biopsy of skin lesion	161	3.43	$176.37	$75.71	$35.27
11101	T	Biopsy, skin add-on	161	3.43	$176.37	$75.71	$35.27
11200	T	Removal of skin tags	151	1.63	$83.81	$33.22	$16.76
11201	T	Remove skin tags add-on	151	1.63	$83.81	$33.22	$16.76
11300	T	Shave skin lesion	151	1.63	$83.81	$33.22	$16.76
11301	T	Shave skin lesion	151	1.63	$83.81	$33.22	$16.76
11302	T	Shave skin lesion	151	1.63	$83.81	$33.22	$16.76
11303	T	Shave skin lesion	151	1.63	$83.81	$33.22	$16.76
11305	T	Shave skin lesion	151	1.63	$83.81	$33.22	$16.76
11306	T	Shave skin lesion	151	1.63	$83.81	$33.22	$16.76
11307	T	Shave skin lesion	151	1.63	$83.81	$33.22	$16.76
11308	T	Shave skin lesion	151	1.63	$83.81	$33.22	$16.76
11310	T	Shave skin lesion	151	1.63	$83.81	$33.22	$16.76
11311	T	Shave skin lesion	151	1.63	$83.81	$33.22	$16.76
11312	T	Shave skin lesion	151	1.63	$83.81	$33.22	$16.76
11313	T	Shave skin lesion	151	1.63	$83.81	$33.22	$16.76
11400	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11401	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11402	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11403	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11404	T	Removal of skin lesion	162	5.59	$287.44	$125.66	$57.49
11406	T	Removal of skin lesion	163	10.48	$538.88	$260.80	$107.78
11420	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11421	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11422	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11423	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11424	T	Removal of skin lesion	162	5.59	$287.44	$125.66	$57.49
11426	T	Removal of skin lesion	163	10.48	$538.88	$260.80	$107.78
11440	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11441	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11442	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11443	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11444	T	Removal of skin lesion	162	5.59	$287.44	$125.66	$57.49
11446	T	Removal of skin lesion	163	10.48	$538.88	$260.80	$107.78
11450	T	Removal, sweat gland lesion	163	10.48	$538.88	$260.80	$107.78
11451	T	Removal, sweat gland lesion	163	10.48	$538.88	$260.80	$107.78
11462	T	Removal, sweat gland lesion	163	10.48	$538.88	$260.80	$107.78

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
11463	T	Removal, sweat gland lesion	163	10.48	$538.88	$260.80	$107.78
11470	T	Removal, sweat gland lesion	163	10.48	$538.88	$260.80	$107.78
11471	T	Removal, sweat gland lesion	163	10.48	$538.88	$260.80	$107.78
11600	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11601	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11602	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11603	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11604	T	Removal of skin lesion	162	5.59	$287.44	$125.66	$57.49
11606	T	Removal of skin lesion	163	10.48	$538.88	$260.80	$107.78
11620	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11621	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11622	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11623	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11624	T	Removal of skin lesion	163	10.48	$538.88	$260.80	$107.78
11626	T	Removal of skin lesion	163	10.48	$538.88	$260.80	$107.78
11640	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11641	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11642	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11643	T	Removal of skin lesion	161	3.43	$176.37	$75.71	$35.27
11644	T	Removal of skin lesion	163	10.48	$538.88	$260.80	$107.78
11646	T	Removal of skin lesion	163	10.48	$538.88	$260.80	$107.78
[2] 11700	T	Scraping of 1-5 nails	137	0.60	$30.85	$9.27	$6.17
[2] 11701	T	Scraping of additional nails	137	0.60	$30.85	$9.27	$6.17
[2] 11710	T	Scraping of 1-5 nails	137	0.60	$30.85	$9.27	$6.17
[2] 11711	T	Scraping of additional nails	137	0.60	$30.85	$9.27	$6.17
11719	T	Trim nail(s)	137	0.60	$30.85	$9.27	$6.17
11720	T	Debride nail, 1-5	137	0.60	$30.85	$9.27	$6.17
11721	T	Debride nail, 6 or more	137	0.60	$30.85	$9.27	$6.17
11730	T	Removal of nail plate	151	1.63	$83.81	$33.22	$16.76
[2] 11731	T	Removal of second nail plate	151	1.63	$83.81	$33.22	$16.76
11732	T	Remove additional nail plate	151	1.63	$83.81	$33.22	$16.76
11740	T	Drain blood from under nail	137	0.60	$30.85	$9.27	$6.17
11750	T	Removal of nail bed	161	3.43	$176.37	$75.71	$35.27
11752	T	Remove nail bed/finger tip	163	10.48	$538.88	$260.80	$107.78
11755	T	Biopsy, nail unit	137	0.60	$30.85	$9.27	$6.17
11760	T	Reconstruction of nail bed	181	2.17	$111.58	$44.07	$22.32
11762	T	Reconstruction of nail bed	181	2.17	$111.58	$44.07	$22.32
11765	T	Excision of nail fold, toe	151	1.63	$83.81	$33.22	$16.76
11770	T	Removal of pilonidal lesion	162	5.59	$287.44	$125.66	$57.49
11771	T	Removal of pilonidal lesion	163	10.48	$538.88	$260.80	$107.78
11772	T	Removal of pilonidal lesion	163	10.48	$538.88	$260.80	$107.78
11900	T	Injection into skin lesions	151	1.63	$83.81	$33.22	$16.76
11901	T	Added skin lesions injection	151	1.63	$83.81	$33.22	$16.76
11920	T	Correct skin color defects	181	2.17	$111.58	$44.07	$22.32
11921	T	Correct skin color defects	181	2.17	$111.58	$44.07	$22.32
11922	T	Correct skin color defects	181	2.17	$111.58	$44.07	$22.32
11950	T	Therapy for contour defects	181	2.17	$111.58	$44.07	$22.32
11951	T	Therapy for contour defects	181	2.17	$111.58	$44.07	$22.32
11952	T	Therapy for contour defects	181	2.17	$111.58	$44.07	$22.32
11954	T	Therapy for contour defects	181	2.17	$111.58	$44.07	$22.32
11960	T	Insert tissue expander(s)	183	11.04	$567.68	$283.18	$113.54
11970	T	Replace tissue expander	183	11.04	$567.68	$283.18	$113.54
11971	T	Remove tissue expander(s)	163	10.48	$538.88	$260.80	$107.78
11975	E	Insert contraceptive cap					
11976	T	Removal of contraceptive cap	131	1.93	$99.24	$36.61	$19.85
11977	E	Removal/reinsert contra cap					
12001	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12002	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12004	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12005	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12006	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12007	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12011	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12013	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12014	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12015	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12016	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12017	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12018	T	Repair superficial wound(s)	181	2.17	$111.58	$44.07	$22.32
12020	T	Closure of split wound	181	2.17	$111.58	$44.07	$22.32
12021	T	Closure of split wound	181	2.17	$111.58	$44.07	$22.32
12031	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12032	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12034	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12035	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
12036	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12037	T	Layer closure of wound(s)	183	11.04	$567.68	$283.18	$113.54
12041	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12042	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12044	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12045	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12046	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12047	T	Layer closure of wound(s)	183	11.04	$567.68	$283.18	$113.54
12051	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12052	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12053	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12054	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12055	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12056	T	Layer closure of wound(s)	181	2.17	$111.58	$44.07	$22.32
12057	T	Layer closure of wound(s)	183	11.04	$567.68	$283.18	$113.54
13100	T	Repair of wound or lesion	182	4.11	$211.34	$92.43	$42.27
13101	T	Repair of wound or lesion	182	4.11	$211.34	$92.43	$42.27
13120	T	Repair of wound or lesion	182	4.11	$211.34	$92.43	$42.27
13121	T	Repair of wound or lesion	182	4.11	$211.34	$92.43	$42.27
13131	T	Repair of wound or lesion	182	4.11	$211.34	$92.43	$42.27
13132	T	Repair of wound or lesion	182	4.11	$211.34	$92.43	$42.27
13150	T	Repair of wound or lesion	182	4.11	$211.34	$92.43	$42.27
13151	T	Repair of wound or lesion	182	4.11	$211.34	$92.43	$42.27
13152	T	Repair of wound or lesion	182	4.11	$211.34	$92.43	$42.27
13160	T	Late closure of wound	182	4.11	$211.34	$92.43	$42.27
13300	T	Repair of wound or lesion	182	4.11	$211.34	$92.43	$42.27
14000	T	Skin tissue rearrangement	183	11.04	$567.68	$283.18	$113.54
14001	T	Skin tissue rearrangement	183	11.04	$567.68	$283.18	$113.54
14020	T	Skin tissue rearrangement	183	11.04	$567.68	$283.18	$113.54
14021	T	Skin tissue rearrangement	183	11.04	$567.68	$283.18	$113.54
14040	T	Skin tissue rearrangement	183	11.04	$567.68	$283.18	$113.54
14041	T	Skin tissue rearrangement	183	11.04	$567.68	$283.18	$113.54
14060	T	Skin tissue rearrangement	183	11.04	$567.68	$283.18	$113.54
14061	T	Skin tissue rearrangement	183	11.04	$567.68	$283.18	$113.54
14300	T	Skin tissue rearrangement	183	11.04	$567.68	$283.18	$113.54
14350	T	Skin tissue rearrangement	183	11.04	$567.68	$283.18	$113.54
15000	T	Skin graft	183	11.04	$567.68	$283.18	$113.54
15050	T	Skin pinch graft	183	11.04	$567.68	$283.18	$113.54
15100	T	Skin split graft	183	11.04	$567.68	$283.18	$113.54
15101	T	Skin split graft add-on	183	11.04	$567.68	$283.18	$113.54
15120	T	Skin split graft	183	11.04	$567.68	$283.18	$113.54
15121	T	Skin split graft add-on	183	11.04	$567.68	$283.18	$113.54
15200	T	Skin full graft	183	11.04	$567.68	$283.18	$113.54
15201	T	Skin full graft add-on	183	11.04	$567.68	$283.18	$113.54
15220	T	Skin full graft	183	11.04	$567.68	$283.18	$113.54
15221	T	Skin full graft add-on	183	11.04	$567.68	$283.18	$113.54
15240	T	Skin full graft	183	11.04	$567.68	$283.18	$113.54
15241	T	Skin full graft add-on	183	11.04	$567.68	$283.18	$113.54
15260	T	Skin full graft	183	11.04	$567.68	$283.18	$113.54
15261	T	Skin full graft add-on	183	11.04	$567.68	$283.18	$113.54
15350	T	Skin homograft	183	11.04	$567.68	$283.18	$113.54
15400	T	Skin heterograft	183	11.04	$567.68	$283.18	$113.54
15570	T	Form skin pedicle flap	183	11.04	$567.68	$283.18	$113.54
15572	T	Form skin pedicle flap	183	11.04	$567.68	$283.18	$113.54
15574	T	Form skin pedicle flap	183	11.04	$567.68	$283.18	$113.54
15576	T	Form skin pedicle flap	183	11.04	$567.68	$283.18	$113.54
15580	T	Attach skin pedicle graft	183	11.04	$567.68	$283.18	$113.54
15600	T	Skin graft	183	11.04	$567.68	$283.18	$113.54
15610	T	Skin graft	183	11.04	$567.68	$283.18	$113.54
15620	T	Skin graft	183	11.04	$567.68	$283.18	$113.54
15625	T	Skin graft	183	11.04	$567.68	$283.18	$113.54
15630	T	Skin graft	183	11.04	$567.68	$283.18	$113.54
15650	T	Transfer skin pedicle flap	183	11.04	$567.68	$283.18	$113.54
15732	T	Muscle-skin graft, head/neck	184	14.85	$763.59	$397.99	$152.72
15734	T	Muscle-skin graft, trunk	184	14.85	$763.59	$397.99	$152.72
15736	T	Muscle-skin graft, arm	184	14.85	$763.59	$397.99	$152.72
15738	T	Muscle-skin graft, leg	184	14.85	$763.59	$397.99	$152.72
15740	T	Island pedicle flap graft	184	14.85	$763.59	$397.99	$152.72
15750	T	Neurovascular pedicle graft	184	14.85	$763.59	$397.99	$152.72
[2] 15755	C	Microvascular flap graft					
15756	C	Free muscle flap, microvasc					
15757	C	Free skin flap, microvasc					
15758	C	Free fascial flap, microvasc					
15760	T	Composite skin graft	184	14.85	$763.59	$397.99	$152.72
15770	T	Derma-fat-fascia graft	184	14.85	$763.59	$397.99	$152.72

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
15775	T	Hair transplant punch grafts	183	11.04	$567.68	$283.18	$113.54
15776	T	Hair transplant punch grafts	183	11.04	$567.68	$283.18	$113.54
15780	T	Abrasion treatment of skin	163	10.48	$538.88	$260.80	$107.78
15781	T	Abrasion treatment of skin	163	10.48	$538.88	$260.80	$107.78
15782	T	Abrasion treatment of skin	163	10.48	$538.88	$260.80	$107.78
15783	T	Abrasion treatment of skin	151	1.63	$83.81	$33.22	$16.76
15786	T	Abrasion, lesion, single	151	1.63	$83.81	$33.22	$16.76
15787	T	Abrasion, lesions, add-on	151	1.63	$83.81	$33.22	$16.76
15788	T	Chemical peel, face, epiderm	151	1.63	$83.81	$33.22	$16.76
15789	T	Chemical peel, face, dermal	151	1.63	$83.81	$33.22	$16.76
15792	T	Chemical peel, nonfacial	151	1.63	$83.81	$33.22	$16.76
15793	T	Chemical peel, nonfacial	151	1.63	$83.81	$33.22	$16.76
15810	T	Salabrasion	151	1.63	$83.81	$33.22	$16.76
15811	T	Salabrasion	163	10.48	$538.88	$260.80	$107.78
15819	T	Plastic surgery, neck	183	11.04	$567.68	$283.18	$113.54
15820	T	Revision of lower eyelid	183	11.04	$567.68	$283.18	$113.54
15821	T	Revision of lower eyelid	183	11.04	$567.68	$283.18	$113.54
15822	T	Revision of upper eyelid	183	11.04	$567.68	$283.18	$113.54
15823	T	Revision of upper eyelid	183	11.04	$567.68	$283.18	$113.54
15824	T	Removal of forehead wrinkles	184	14.85	$763.59	$397.99	$152.72
15825	T	Removal of neck wrinkles	183	11.04	$567.68	$283.18	$113.54
15826	T	Removal of brow wrinkles	184	14.85	$763.59	$397.99	$152.72
15828	T	Removal of face wrinkles	184	14.85	$763.59	$397.99	$152.72
15829	T	Removal of skin wrinkles	183	11.04	$567.68	$283.18	$113.54
15831	T	Excise excessive skin tissue	184	14.85	$763.59	$397.99	$152.72
15832	T	Excise excessive skin tissue	184	14.85	$763.59	$397.99	$152.72
15833	T	Excise excessive skin tissue	184	14.85	$763.59	$397.99	$152.72
15834	T	Excise excessive skin tissue	184	14.85	$763.59	$397.99	$152.72
15835	T	Excise excessive skin tissue	183	11.04	$567.68	$283.18	$113.54
15836	T	Excise excessive skin tissue	184	14.85	$763.59	$397.99	$152.72
15837	T	Excise excessive skin tissue	184	14.85	$763.59	$397.99	$152.72
15838	T	Excise excessive skin tissue	163	10.48	$538.88	$260.80	$107.78
15839	T	Excise excessive skin tissue	184	14.85	$763.59	$397.99	$152.72
15840	T	Graft for face nerve palsy	184	14.85	$763.59	$397.99	$152.72
15841	T	Graft for face nerve palsy	184	14.85	$763.59	$397.99	$152.72
15842	T	Graft for face nerve palsy	184	14.85	$763.59	$397.99	$152.72
15845	T	Skin and muscle repair, face	184	14.85	$763.59	$397.99	$152.72
15850	T	Removal of sutures	151	1.63	$83.81	$33.22	$16.76
15851	T	Removal of sutures	151	1.63	$83.81	$33.22	$16.76
15852	T	Dressing change,not for burn	151	1.63	$83.81	$33.22	$16.76
15860	N	Test for blood flow in graft					
15876	T	Suction assisted lipectomy	184	14.85	$763.59	$397.99	$152.72
15877	T	Suction assisted lipectomy	184	14.85	$763.59	$397.99	$152.72
15878	T	Suction assisted lipectomy	184	14.85	$763.59	$397.99	$152.72
15879	T	Suction assisted lipectomy	184	14.85	$763.59	$397.99	$152.72
15920	T	Removal of tail bone ulcer	163	10.48	$538.88	$260.80	$107.78
15922	T	Removal of tail bone ulcer	184	14.85	$763.59	$397.99	$152.72
15931	T	Remove sacrum pressure sore	163	10.48	$538.88	$260.80	$107.78
15933	T	Remove sacrum pressure sore	163	10.48	$538.88	$260.80	$107.78
15934	T	Remove sacrum pressure sore	184	14.85	$763.59	$397.99	$152.72
15935	T	Remove sacrum pressure sore	184	14.85	$763.59	$397.99	$152.72
15936	T	Remove sacrum pressure sore	184	14.85	$763.59	$397.99	$152.72
15937	T	Remove sacrum pressure sore	184	14.85	$763.59	$397.99	$152.72
15940	T	Removal of pressure sore	163	10.48	$538.88	$260.80	$107.78
15941	T	Removal of pressure sore	163	10.48	$538.88	$260.80	$107.78
15944	T	Removal of pressure sore	184	14.85	$763.59	$397.99	$152.72
15945	T	Removal of pressure sore	184	14.85	$763.59	$397.99	$152.72
15946	T	Removal of pressure sore	184	14.85	$763.59	$397.99	$152.72
15950	T	Remove thigh pressure sore	163	10.48	$538.88	$260.80	$107.78
15951	T	Remove thigh pressure sore	163	10.48	$538.88	$260.80	$107.78
15952	T	Remove thigh pressure sore	184	14.85	$763.59	$397.99	$152.72
15953	T	Remove thigh pressure sore	184	14.85	$763.59	$397.99	$152.72
15956	T	Remove thigh pressure sore	184	14.85	$763.59	$397.99	$152.72
15958	T	Remove thigh pressure sore	184	14.85	$763.59	$397.99	$152.72
15999	T	Removal of pressure sore	163	10.48	$538.88	$260.80	$107.78
16000	T	Initial treatment of burn(s)	151	1.63	$83.81	$33.22	$16.76
16010	T	Treatment of burn(s)	152	10.07	$517.80	$251.54	$103.56
16015	T	Treatment of burn(s)	152	10.07	$517.80	$251.54	$103.56
16020	T	Treatment of burn(s)	151	1.63	$83.81	$33.22	$16.76
16025	T	Treatment of burn(s)	151	1.63	$83.81	$33.22	$16.76
16030	T	Treatment of burn(s)	151	1.63	$83.81	$33.22	$16.76
16035	T	Incision of burn scab	162	5.59	$287.44	$125.66	$57.49
[2] 16040	T	Burn wound excision	162	5.59	$287.44	$125.66	$57.49
[2] 16041	T	Burn wound excision	162	5.59	$287.44	$125.66	$57.49
[2] 16042	T	Burn wound excision	162	5.59	$287.44	$125.66	$57.49

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
17000	T	Destroy benign/premal lesion	141	0.52	$26.74	$9.49	$5.35
[2] 17001	T	Destruction of add'l lesions	141	0.52	$26.74	$9.49	$5.35
[2] 17002	T	Destruction of add'l lesions	141	0.52	$26.74	$9.49	$5.35
17003	T	Destroy 2-14 lesions	141	0.52	$26.74	$9.49	$5.35
17004	T	Destroy 15 & more lesions	142	2.94	$151.17	$54.24	$30.24
[2] 17100	T	Destruction of skin lesion	141	0.52	$26.74	$9.49	$5.35
[2] 17101	T	Destruction of 2nd lesion	141	0.52	$26.74	$9.49	$5.35
[2] 17102	T	Destruction of add'l lesions	141	0.52	$26.74	$9.49	$5.35
[2] 17104	T	Destruction of skin lesions	142	2.94	$151.17	$54.24	$30.24
[2] 17105	T	Destruction of skin lesions	142	2.94	$151.17	$54.24	$30.24
17106	T	Destruction of skin lesions	141	0.52	$26.74	$9.49	$5.35
17107	T	Destruction of skin lesions	142	2.94	$151.17	$54.24	$30.24
17108	T	Destruction of skin lesions	142	2.94	$151.17	$54.24	$30.24
17110	T	Destruct lesion, 1-14	141	0.52	$26.74	$9.49	$5.35
17111	T	Destruct lesion, 15 or more	142	2.94	$151.17	$54.24	$30.24
[2] 17200	T	Electrocautery of skin tags	151	1.63	$83.81	$33.22	$16.76
[2] 17201	T	Electrocautery added lesions	151	1.63	$83.81	$33.22	$16.76
17250	T	Chemical cautery, tissue	151	1.63	$83.81	$33.22	$16.76
17260	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17261	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17262	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17263	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17264	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17266	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17270	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17271	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17272	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17273	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17274	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17276	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17280	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17281	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17282	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17283	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17284	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17286	T	Destruction of skin lesions	151	1.63	$83.81	$33.22	$16.76
17304	T	Chemosurgery of skin lesion	162	5.59	$287.44	$125.66	$57.49
17305	T	2nd stage chemosurgery	162	5.59	$287.44	$125.66	$57.49
17306	T	3rd stage chemosurgery	162	5.59	$287.44	$125.66	$57.49
17307	T	Followup skin lesion therapy	162	5.59	$287.44	$125.66	$57.49
17310	T	Extensive skin chemosurgery	162	5.59	$287.44	$125.66	$57.49
17340	T	Cryotherapy of skin	151	1.63	$83.81	$33.22	$16.76
17360	T	Skin peel therapy	151	1.63	$83.81	$33.22	$16.76
17380	T	Hair removal by electrolysis	151	1.63	$83.81	$33.22	$16.76
17999	T	Skin tissue procedure	121	0.63	$32.39	$21.02	$5.45
19000	T	Drainage of breast lesion	121	0.63	$32.39	$21.02	$5.45
19001	T	Drain breast lesion add-on	121	0.63	$32.39	$21.02	$5.45
19020	T	Incision of breast lesion	132	5.63	$289.49	$132.89	$57.90
19030	T	Injection for breast x-ray	347	2.57	$132.15	$52.38	$26.43
19100	T	Biopsy of breast	122	4.59	$236.02	$113.00	$47.20
19101	T	Biopsy of breast	197	11.94	$613.95	$308.26	$122.79
19110	T	Nipple exploration	197	11.94	$613.95	$308.26	$122.79
19112	T	Excise breast duct fistula	197	11.94	$613.95	$308.26	$122.79
19120	T	Removal of breast lesion	197	11.94	$613.95	$308.26	$122.79
19125	T	Excision, breast lesion	197	11.94	$613.95	$308.26	$122.79
19126	T	Excision,add'l breast lesion	197	11.94	$613.95	$308.26	$122.79
19140	T	Removal of breast tissue	197	11.94	$613.95	$308.26	$122.79
19160	T	Removal of breast tissue	198	18.63	$957.95	$523.42	$191.59
19162	T	Remove breast tissue, nodes	198	18.63	$957.95	$523.42	$191.59
19180	T	Removal of breast	198	18.63	$957.95	$523.42	$191.59
19182	T	Removal of breast	198	18.63	$957.95	$523.42	$191.59
19200	C	Removal of breast					
19220	C	Removal of breast					
19240	C	Removal of breast					
19260	C	Removal of chest wall lesion					
19271	C	Revision of chest wall					
19272	C	Extensive chest wall surgery					
19290	T	Place needle wire, breast	197	11.94	$613.95	$308.26	$122.79
19291	T	Place needle wire, breast	197	11.94	$613.95	$308.26	$122.79
19316	T	Suspension of breast	198	18.63	$957.95	$523.42	$191.59
19318	T	Reduction of large breast	198	18.63	$957.95	$523.42	$191.59
19324	T	Enlarge breast	198	18.63	$957.95	$523.42	$191.59
19325	T	Enlarge breast with implant	198	18.63	$957.95	$523.42	$191.59
19328	T	Removal of breast implant	198	18.63	$957.95	$523.42	$191.59
19330	T	Removal of implant material	198	18.63	$957.95	$523.42	$191.59

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
19340	T	Immediate breast prosthesis	198	18.63	$957.95	$523.42	$191.59
19342	T	Delayed breast prosthesis	198	18.63	$957.95	$523.42	$191.59
19350	T	Breast reconstruction	198	18.63	$957.95	$523.42	$191.59
19355	T	Correct inverted nipple(s)	198	18.63	$957.95	$523.42	$191.59
19357	T	Breast reconstruction	198	18.63	$957.95	$523.42	$191.59
19361	C	Breast reconstruction					
19364	C	Breast reconstruction					
19366	T	Breast reconstruction	198	18.63	$957.95	$523.42	$191.59
19367	C	Breast reconstruction					
19368	C	Breast reconstruction					
19369	C	Breast reconstruction					
19370	T	Surgery of breast capsule	198	18.63	$957.95	$523.42	$191.59
19371	T	Removal of breast capsule	198	18.63	$957.95	$523.42	$191.59
19380	T	Revise breast reconstruction	198	18.63	$957.95	$523.42	$191.59
19396	T	Design custom breast implant	197	11.94	$613.95	$308.26	$122.79
19499	T	Breast surgery procedure	197	11.94	$613.95	$308.26	$122.79
20000	T	Incision of abscess	131	1.93	$99.24	$36.61	$19.85
20005	T	Incision of deep abscess	251	13.88	$713.71	$365.89	$142.74
20100	C	Explore wound, neck					
20101	C	Explore wound, chest					
20102	C	Explore wound, abdomen					
20103	C	Explore wound, extremity					
20150	C	Excise epiphyseal bar					
20200	T	Muscle biopsy	162	5.59	$287.44	$125.66	$57.49
20205	T	Deep muscle biopsy	162	5.59	$287.44	$125.66	$57.49
20206	T	Needle biopsy, muscle	122	4.59	$236.02	$113.00	$47.20
20220	T	Bone biopsy, trocar/needle	162	5.59	$287.44	$125.66	$57.49
20225	T	Bone biopsy, trocar/needle	162	5.59	$287.44	$125.66	$57.49
20240	T	Bone biopsy, excisional	163	10.48	$538.88	$260.80	$107.78
20245	T	Bone biopsy, excisional	163	10.48	$538.88	$260.80	$107.78
20250	T	Open bone biopsy	251	13.88	$713.71	$365.89	$142.74
20251	T	Open bone biopsy	251	13.88	$713.71	$365.89	$142.74
20500	T	Injection of sinus tract	181	2.17	$111.58	$44.07	$22.32
20501	T	Inject sinus tract for x-ray	347	2.57	$132.15	$62.38	$26.43
20520	T	Removal of foreign body	161	3.43	$176.37	$75.71	$35.27
20525	T	Removal of foreign body	163	10.48	$538.88	$260.80	$107.78
20550	T	Inj tendon/ligament/cyst	200	1.76	$90.50	$39.10	$18.10
20600	T	Drain/inject joint/bursa	200	1.76	$90.50	$39.10	$18.10
20605	T	Drain/inject joint/bursa	200	1.76	$90.50	$39.10	$18.10
20610	T	Drain/inject joint/bursa	200	1.76	$90.50	$39.10	$18.10
20615	T	Treatment of bone cyst	121	0.63	$32.39	$21.02	$6.48
20650	T	Insert and remove bone pin	251	13.88	$713.71	$365.89	$142.74
20660	C	Apply,remove fixation device					
20661	C	Application of head brace					
20662	C	Application of pelvis brace					
20663	C	Application of thigh brace					
20664	C	Halo brace application					
20665	N	Removal of fixation device					
20670	T	Removal of support implant	162	5.59	$287.44	$125.66	$57.49
20680	T	Removal of support implant	163	10.48	$538.88	$260.80	$107.78
20690	T	Apply bone fixation device	252	19.24	$989.32	$512.34	$197.86
20692	T	Apply bone fixation device	252	19.24	$989.32	$512.34	$197.86
20693	T	Adjust bone fixation device	251	13.88	$713.71	$365.89	$142.74
20694	T	Remove bone fixation device	251	13.88	$713.71	$365.89	$142.74
20802	C	Replantation, arm, complete					
20805	C	Replant forearm, complete					
20808	C	Replantation, hand, complete					
20816	C	Replantation digit, complete					
20822	C	Replantation digit, complete					
20824	C	Replantation thumb, complete					
20827	C	Replantation thumb, complete					
20838	C	Replantation, foot, complete					
20900	T	Removal of bone for graft	252	19.24	$989.32	$512.34	$197.86
20902	T	Removal of bone for graft	252	19.24	$989.32	$512.34	$197.86
20910	T	Remove cartilage for graft	183	11.04	$567.68	$283.18	$113.54
20912	T	Remove cartilage for graft	183	11.04	$567.68	$283.18	$113.54
20920	T	Removal of fascia for graft	183	11.04	$567.68	$283.18	$113.54
20922	T	Removal of fascia for graft	183	11.04	$567.68	$283.18	$113.54
20924	T	Removal of tendon for graft	252	19.24	$989.32	$512.34	$197.86
20926	T	Removal of tissue for graft	183	11.04	$567.68	$283.18	$113.54
20930	C	Spinal bone allograft					
20931	C	Spinal bone allograft					
20936	C	Spinal bone autograft					
20937	C	Spinal bone autograft					
20938	C	Spinal bone autograft					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
20950	T	Record fluid pressure,muscle	132	5.63	$289.49	$132.89	$57.90
20955	C	Fibula bone graft, microvasc					
20956	C	Iliac bone graft, microvasc					
20957	C	Mt bone graft, microvasc					
[2]20960	C	Microvascular rib graft					
20962	C	Other bone graft, microvasc					
20969	C	Bone/skin graft, microvasc					
20970	C	Bone/skin graft, iliac crest					
[2]20971	C	Bone-skin graft, rib					
20972	C	Bone-skin graft, metatarsal					
20973	C	Bone-skin graft, great toe					
20974	A	Electrical bone stimulation					
20975	T	Electrical bone stimulation	251	13.88	$713.71	$365.89	$142.74
20999	N	Musculoskeletal surgery					
21010	T	Incision of jaw joint	232	23.82	$1,224.82	$636.87	$244.96
21015	T	Resection of facial tumor	231	11.31	$581.56	$286.79	$116.31
21025	T	Excision of bone, lower jaw	231	11.31	$581.56	$286.79	$116.31
21026	T	Excision of facial bone(s)	231	11.31	$581.56	$286.79	$116.31
21029	T	Contour of face bone lesion	231	11.31	$581.56	$286.79	$116.31
21030	T	Removal of face bone lesion	231	11.31	$581.56	$286.79	$116.31
21031	T	Remove exostosis, mandible	231	11.31	$581.56	$286.79	$116.31
21032	T	Remove exostosis, maxilla	231	11.31	$581.56	$286.79	$116.31
21034	T	Removal of face bone lesion	232	23.82	$1,224.82	$636.87	$244.96
21040	T	Removal of jaw bone lesion	231	11.31	$581.56	$286.79	$116.31
21041	T	Removal of jaw bone lesion	231	11.31	$581.56	$286.79	$116.31
21044	T	Removal of jaw bone lesion	232	23.82	$1,224.82	$636.87	$244.96
21045	C	Extensive jaw surgery					
21050	T	Removal of jaw joint	232	23.82	$1,224.82	$636.87	$244.96
21060	T	Remove jaw joint cartilage	232	23.82	$1,224.82	$636.87	$244.96
21070	T	Remove coronoid process	232	23.82	$1,224.82	$636.87	$244.96
21076	T	Prepare face/oral prosthesis	226	1.56	$80.22	$21.92	$16.04
21077	T	Prepare face/oral prosthesis	226	1.56	$80.22	$21.92	$16.04
21079	T	Prepare face/oral prosthesis	226	1.56	$80.22	$21.92	$16.04
21080	T	Prepare face/oral prosthesis	226	1.56	$80.22	$21.92	$16.04
21081	T	Prepare face/oral prosthesis	226	1.56	$80.22	$21.92	$16.04
21082	T	Prepare face/oral prosthesis	226	1.56	$80.22	$21.92	$16.04
21083	T	Prepare face/oral prosthesis	226	1.56	$80.22	$21.92	$16.04
21084	T	Prepare face/oral prosthesis	226	1.56	$80.22	$21.92	$16.04
21085	N	Prepare face/oral prosthesis					
21086	T	Prepare face/oral prosthesis	226	1.56	$80.22	$21.92	$16.04
21087	T	Prepare face/oral prosthesis	226	1.56	$80.22	$21.92	$16.04
21088	T	Prepare face/oral prosthesis	226	1.56	$80.22	$21.92	$16.04
21089	T	Prepare face/oral prosthesis	226	1.56	$80.22	$21.92	$16.04
21100	T	Maxillofacial fixation	231	11.31	$581.56	$286.79	$116.31
21110	T	Interdental fixation	231	11.31	$581.56	$286.79	$116.31
21116	T	Injection, jaw joint x-ray	347	2.57	$132.15	$62.38	$26.43
21120	T	Reconstruction of chin	231	11.31	$581.56	$286.79	$116.31
21121	T	Reconstruction of chin	232	23.82	$1,224.82	$636.87	$244.96
21122	T	Reconstruction of chin	232	23.82	$1,224.82	$636.87	$244.96
21123	T	Reconstruction of chin	232	23.82	$1,224.82	$636.87	$244.96
21125	T	Augmentation lower jaw bone	231	11.31	$581.56	$286.79	$116.31
21127	T	Augmentation lower jaw bone	232	23.82	$1,224.82	$636.87	$244.96
21137	C	Reduction of forehead					
21138	C	Reduction of forehead					
21139	C	Reduction of forehead					
21141	C	Reconstruct midface, lefort					
21142	C	Reconstruct midface, lefort					
21143	C	Reconstruct midface, lefort					
21145	C	Reconstruct midface, lefort					
21146	C	Reconstruct midface, lefort					
21147	C	Reconstruct midface, lefort					
21150	C	Reconstruct midface, lefort					
21151	C	Reconstruct midface, lefort					
21154	C	Reconstruct midface, lefort					
21155	C	Reconstruct midface, lefort					
21159	C	Reconstruct midface, lefort					
21160	C	Reconstruct midface, lefort					
21172	C	Reconstruct orbit/forehead					
21175	C	Reconstruct orbit/forehead					
21179	C	Reconstruct entire forehead					
21180	C	Reconstruct entire forehead					
21181	T	Contour cranial bone lesion	232	23.82	$1,224.82	$636.87	$244.96
21182	C	Reconstruct cranial bone					
21183	C	Reconstruct cranial bone					
21184	C	Reconstruct cranial bone					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
21188	C	Reconstruction of midface					
21193	C	Reconstruct lower jaw bone					
21194	C	Reconstruct lower jaw bone					
21195	C	Reconstruct lower jaw bone					
21196	C	Reconstruct lower jaw bone					
21198	C	Reconstruct lower jaw bone					
21206	T	Reconstruct upper jaw bone	232	23.82	$1,224.82	$636.87	$244.96
21208	T	Augmentation of facial bones	232	23.82	$1,224.82	$636.87	$244.96
21209	T	Reduction of facial bones	232	23.82	$1,224.82	$636.87	$244.96
21210	T	Face bone graft	232	23.82	$1,224.82	$636.87	$244.96
21215	T	Lower jaw bone graft	232	23.82	$1,224.82	$636.87	$244.96
21230	T	Rib cartilage graft	232	23.82	$1,224.82	$636.87	$244.96
21235	T	Ear cartilage graft	232	23.82	$1,224.82	$636.87	$244.96
21240	T	Reconstruction of jaw joint	232	23.82	$1,224.82	$636.87	$244.96
21242	T	Reconstruction of jaw joint	232	23.82	$1,224.82	$636.87	$244.96
21243	T	Reconstruction of jaw joint	218	27.80	$1,429.48	$720.71	$285.90
21244	T	Reconstruction of lower jaw	232	23.82	$1,224.82	$636.87	$244.96
21245	T	Reconstruction of jaw	232	23.82	$1,224.82	$636.87	$244.96
21246	T	Reconstruction of jaw	232	23.82	$1,224.82	$636.87	$244.96
21247	C	Reconstruct lower jaw bone					
21248	T	Reconstruction of jaw	232	23.82	$1,224.82	$636.87	$244.96
21249	T	Reconstruction of jaw	232	23.82	$1,224.82	$636.87	$244.96
21255	C	Reconstruct lower jaw bone					
21256	C	Reconstruction of orbit					
21260	T	Revise eye sockets	232	23.82	$1,224.82	$636.87	$244.96
21261	C	Revise eye sockets					
21263	C	Revise eye sockets					
21267	T	Revise eye sockets	232	23.82	$1,224.82	$636.87	$244.96
21268	C	Revise eye sockets					
21270	T	Augmentation cheek bone	232	23.82	$1,224.82	$636.87	$244.96
21275	T	Revision orbitofacial bones	232	23.82	$1,224.82	$636.87	$244.96
21280	T	Revision of eyelid	231	11.31	$581.56	$286.79	$116.31
21282	T	Revision of eyelid	231	11.31	$581.56	$286.79	$116.31
21295	T	Revision of jaw muscle/bone	231	11.31	$581.56	$286.79	$116.31
21296	T	Revision of jaw muscle/bone	231	11.31	$581.56	$286.79	$116.31
21299	T	Cranio/maxillofacial surgery	231	11.31	$581.56	$286.79	$116.31
21300	T	Treatment of skull fracture	231	11.31	$581.56	$286.79	$116.31
21310	T	Treatment of nose fracture	231	11.31	$581.56	$286.79	$116.31
21315	T	Treatment of nose fracture	231	11.31	$581.56	$286.79	$116.31
21320	T	Treatment of nose fracture	231	11.31	$581.56	$286.79	$116.31
21325	T	Repair of nose fracture	231	11.31	$581.56	$286.79	$116.31
21330	T	Repair of nose fracture	232	23.82	$1,224.82	$636.87	$244.96
21335	T	Repair of nose fracture	232	23.82	$1,224.82	$636.87	$244.96
21336	T	Repair nasal septal fracture	216	20.09	$1,033.03	$524.09	$206.61
21337	T	Repair nasal septal fracture	231	11.31	$581.56	$286.79	$116.31
21338	T	Repair nasoethmoid fracture	232	23.82	$1,224.82	$636.87	$244.96
21339	T	Repair nasoethmoid fracture	232	23.82	$1,224.82	$636.87	$244.96
21340	T	Repair of nose fracture	232	23.82	$1,224.82	$636.87	$244.96
21343	T	Repair of sinus fracture	232	23.82	$1,224.82	$636.87	$244.96
21344	C	Repair of sinus fracture					
21345	T	Repair of nose/jaw fracture	232	23.82	$1,224.82	$636.87	$244.96
21346	C	Repair of nose/jaw fracture					
21347	C	Repair of nose/jaw fracture					
21348	C	Repair of nose/jaw fracture					
21355	T	Repair cheek bone fracture	231	11.31	$581.56	$286.79	$116.31
21356	C	Repair cheek bone fracture					
21360	C	Repair cheek bone fracture					
21365	C	Repair cheek bone fracture					
21366	C	Repair cheek bone fracture					
21385	C	Repair eye socket fracture					
21386	C	Repair eye socket fracture					
21387	C	Repair eye socket fracture					
21390	C	Repair eye socket fracture					
21395	C	Repair eye socket fracture					
21400	T	Treat eye socket fracture	231	11.31	$581.56	$286.79	$116.31
21401	T	Repair eye socket fracture	231	11.31	$581.56	$286.79	$116.31
21406	C	Repair eye socket fracture					
21407	C	Repair eye socket fracture					
21408	C	Repair eye socket fracture					
21421	T	Treat mouth roof fracture	232	23.82	$1,224.82	$636.87	$244.96
21422	C	Repair mouth roof fracture					
21423	C	Repair mouth roof fracture					
21431	C	Treat craniofacial fracture					
21432	C	Repair craniofacial fracture					
21433	C	Repair craniofacial fracture					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
21435	C	Repair craniofacial fracture					
21436	C	Repair craniofacial fracture					
21440	T	Repair dental ridge fracture	231	11.31	$581.56	$286.79	$116.31
21445	T	Repair dental ridge fracture	232	23.82	$1,224.82	$636.87	$244.96
21450	T	Treat lower jaw fracture	232	23.82	$1,224.82	$636.87	$244.96
21451	T	Treat lower jaw fracture	231	11.31	$581.56	$286.79	$116.31
21452	T	Treat lower jaw fracture	232	23.82	$1,224.82	$636.87	$244.96
21453	T	Treat lower jaw fracture	232	23.82	$1,224.82	$636.87	$244.96
21454	T	Treat lower jaw fracture	232	23.82	$1,224.82	$636.87	$244.96
21461	T	Repair lower jaw fracture	232	23.82	$1,224.82	$636.87	$244.96
21462	T	Repair lower jaw fracture	232	23.82	$1,224.82	$636.87	$244.96
21465	T	Repair lower jaw fracture	232	23.82	$1,224.82	$636.87	$244.96
21470	C	Repair lower jaw fracture					
21480	T	Reset dislocated jaw	231	11.31	$581.56	$286.79	$116.31
21485	T	Reset dislocated jaw	231	11.31	$581.56	$286.79	$116.31
21490	T	Repair dislocated jaw	232	23.82	$1,224.82	$636.87	$244.96
21493	T	Treat hyoid bone fracture	231	11.31	$581.56	$286.79	$116.31
21494	T	Repair hyoid bone fracture	231	11.31	$581.56	$286.79	$116.31
21495	C	Repair hyoid bone fracture					
21497	T	Interdental wiring	231	11.31	$581.56	$286.79	$116.31
21499	T	Head surgery procedure	231	11.31	$581.56	$286.79	$116.31
21501	T	Drain neck/chest lesion	132	5.63	$289.49	$132.89	$57.90
21502	T	Drain chest lesion	252	19.24	$989.32	$512.34	$197.86
21510	C	Drainage of bone lesion					
21550	T	Biopsy of neck/chest	161	3.43	$176.37	$75.71	$35.27
21555	T	Remove lesion neck/chest	163	10.48	$538.88	$260.80	$107.78
21556	T	Remove lesion neck/chest	163	10.48	$538.88	$260.80	$107.78
21557	C	Remove tumor, neck or chest					
21600	T	Partial removal of rib	252	19.24	$989.32	$512.34	$197.86
21610	T	Partial removal of rib	252	19.24	$989.32	$512.34	$197.86
21615	C	Removal of rib					
21616	C	Removal of rib and nerves					
21620	C	Partial removal of sternum					
21627	C	Sternal debridement					
21630	C	Extensive sternum surgery					
21632	C	Extensive sternum surgery					
21700	T	Revision of neck muscle	132	5.63	$289.49	$132.89	$57.90
21705	C	Revision of neck muscle/rib					
21720	T	Revision of neck muscle	132	5.63	$289.49	$132.89	$57.90
21725	T	Revision of neck muscle	132	5.63	$289.49	$132.89	$57.90
21740	C	Reconstruction of sternum					
21750	C	Repair of sternum separation					
21800	T	Treatment of rib fracture	207	1.70	$87.41	$32.32	$17.48
21805	T	Treatment of rib fracture	216	20.09	$1,033.03	$524.09	$206.61
21810	C	Treatment of rib fracture(s)					
21820	T	Treat sternum fracture	207	1.70	$87.41	$32.32	$17.48
21825	C	Repair sternum fracture					
21899	T	Neck/chest surgery procedure	207	1.70	$87.41	$32.32	$17.48
21920	T	Biopsy soft tissue of back	161	3.43	$176.37	$75.71	$35.27
21925	T	Biopsy soft tissue of back	163	10.48	$538.88	$260.80	$107.78
21930	T	Remove lesion, back or flank	163	10.48	$538.88	$260.80	$107.78
21935	T	Remove tumor of back	163	10.48	$538.88	$260.80	$107.78
22100	C	Remove part of neck vertebra					
22101	C	Remove part, thorax vertebra					
22102	C	Remove part, lumbar vertebra					
22103	C	Remove extra spine segment					
22110	C	Remove part of neck vertebra					
22112	C	Remove part, thorax vertebra					
22114	C	Remove part, lumbar vertebra					
22116	C	Remove extra spine segment					
22210	C	Revision of neck spine					
22212	C	Revision of thorax spine					
22214	C	Revision of lumbar spine					
22216	C	Revise, extra spine segment					
22220	C	Revision of neck spine					
22222	C	Revision of thorax spine					
22224	C	Revision of lumbar spine					
22226	C	Revise, extra spine segment					
22305	T	Treat spine process fracture	207	1.70	$87.41	$32.32	$17.48
22310	T	Treat spine fracture	207	1.70	$87.41	$32.32	$17.48
22315	T	Treat spine fracture	207	1.70	$87.41	$32.32	$17.48
22325	C	Repair of spine fracture					
22326	C	Repair neck spine fracture					
22327	C	Repair thorax spine fracture					
22328	C	Repair each add spine fx					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
22505	T	Manipulation of spine	210	10.06	$517.29	$279.34	$103.46
22548	C	Neck spine fusion					
22554	C	Neck spine fusion					
22556	C	Thorax spine fusion					
22558	C	Lumbar spine fusion					
22585	C	Additional spinal fusion					
22590	C	Spine & skull spinal fusion					
22595	C	Neck spinal fusion					
22600	C	Neck spine fusion					
22610	C	Thorax spine fusion					
22612	C	Lumbar spine fusion					
22614	C	Spine fusion, extra segment					
22630	C	Lumbar spine fusion					
22632	C	Spine fusion, extra segment					
22800	C	Fusion of spine					
22802	C	Fusion of spine					
22804	C	Fusion of spine					
22808	C	Fusion of spine					
22810	C	Fusion of spine					
22812	C	Fusion of spine					
22818	C	Kyphectomy, 1-2 segments					
22819	C	Kyphectomy, 3 & more segment					
22830	C	Exploration of spinal fusion					
22840	C	Insert spine fixation device					
22841	C	Insert spine fixation device					
22842	C	Insert spine fixation device					
22843	C	Insert spine fixation device					
22844	C	Insert spine fixation device					
22845	C	Insert spine fixation device					
22846	C	Insert spine fixation device					
22847	C	Insert spine fixation device					
22848	C	Insert pelvic fixationdevice					
22849	C	Reinsert spinal fixation					
22850	C	Remove spine fixation device					
22851	C	Apply spine prosth device					
22852	C	Remove spine fixation device					
22855	C	Remove spine fixation device					
22899	T	Spine surgery procedure	207	1.70	$87.41	$32.32	$17.48
22900	T	Remove abdominal wall lesion	163	10.48	$538.88	$260.80	$107.78
22999	T	Abdomen surgery procedure	163	10.48	$538.88	$260.80	$107.78
23000	T	Removal of calcium deposits	162	5.59	$287.44	$125.66	$57.49
23020	T	Release shoulder joint	253	25.74	$1,323.55	$684.55	$264.71
23030	T	Drain shoulder lesion	132	5.63	$289.49	$132.89	$57.90
23031	T	Drain shoulder bursa	132	5.63	$289.49	$132.89	$57.90
23035	C	Drain shoulder bone lesion					
23040	T	Exploratory shoulder surgery	252	19.24	$989.32	$512.34	$197.86
23044	T	Exploratory shoulder surgery	252	19.24	$989.32	$512.34	$197.86
23065	T	Biopsy shoulder tissues	161	3.43	$176.37	$75.71	$35.27
23066	T	Biopsy shoulder tissues	163	10.48	$538.88	$260.80	$107.78
23075	T	Removal of shoulder lesion	162	5.59	$287.44	$125.66	$57.49
23078	T	Removal of shoulder lesion	163	10.48	$538.88	$260.80	$107.78
23077	T	Remove tumor of shoulder	163	10.48	$538.88	$260.80	$107.78
23100	T	Biopsy of shoulder joint	251	13.88	$713.71	$365.89	$142.74
23101	T	Shoulder joint surgery	252	19.24	$989.32	$512.34	$197.86
23105	T	Remove shoulder joint lining	252	19.24	$989.32	$512.34	$197.86
23106	T	Incision of collarbone joint	252	19.24	$989.32	$512.34	$197.86
23107	T	Explore,treat shoulder joint	252	19.24	$989.32	$512.34	$197.86
23120	T	Partial removal, collar bone	253	25.74	$1,323.55	$684.55	$264.71
23125	C	Removal of collarbone					
23130	T	Partial removal,shoulderbone	253	25.74	$1,323.55	$684.55	$264.71
23140	T	Removal of bone lesion	251	13.88	$713.71	$365.89	$142.74
23145	T	Removal of bone lesion	252	19.24	$989.32	$512.34	$197.86
23146	T	Removal of bone lesion	252	19.24	$989.32	$512.34	$197.86
23150	T	Removal of humerus lesion	252	19.24	$989.32	$512.34	$197.86
23155	T	Removal of humerus lesion	252	19.24	$989.32	$512.34	$197.86
23156	T	Removal of humerus lesion	252	19.24	$989.32	$512.34	$197.86
23170	T	Remove collarbone lesion	252	19.24	$989.32	$512.34	$197.86
23172	T	Remove shoulder blade lesion	252	19.24	$989.32	$512.34	$197.86
23174	T	Remove humerus lesion	252	19.24	$989.32	$512.34	$197.86
23180	T	Remove collar bone lesion	252	19.24	$989.32	$512.34	$197.86
23182	T	Remove shoulder blade lesion	252	19.24	$989.32	$512.34	$197.86
23184	T	Remove humerus lesion	252	19.24	$989.32	$512.34	$197.86
23190	T	Partial removal of scapula	252	19.24	$989.32	$512.34	$197.86
23195	C	Removal of head of humerus					
23200	C	Removal of collar bone					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
23210	C	Removal of shoulderblade					
23220	C	Partial removal of humerus					
23221	C	Partial removal of humerus					
23222	C	Partial removal of humerus					
23330	T	Remove shoulder foreign body	163	10.48	$538.88	$260.80	$107.78
23331	T	Remove shoulder foreign body	163	10.48	$538.88	$260.80	$107.78
23332	C	Remove shoulder foreign body					
23350	T	Injection for shoulder x-ray	347	2.57	$132.15	$62.38	$26.43
23395	C	Muscle transfer,shoulder/arm					
23397	C	Muscle transfers					
23400	C	Fixation of shoulder blade					
23405	T	Incision of tendon & muscle	252	19.24	$989.32	$512.34	$197.86
23406	T	Incise tendon(s) & muscle(s)	252	19.24	$989.32	$512.34	$197.86
23410	T	Repair of tendon(s)	254	32.70	$1,681.43	$922.98	$336.29
23412	T	Repair of tendon(s)	254	32.70	$1,681.43	$922.98	$336.29
23415	T	Release of shoulder ligament	253	25.74	$1,323.55	$684.55	$264.71
23420	T	Repair of shoulder	254	32.70	$1,681.43	$922.98	$336.29
23430	T	Repair biceps tendon	254	32.70	$1,681.43	$922.98	$336.29
23440	C	Removal/transplant tendon					
23450	T	Repair shoulder capsule	254	32.70	$1,681.43	$922.98	$336.29
23455	T	Repair shoulder capsule	254	32.70	$1,681.43	$922.98	$336.29
23460	T	Repair shoulder capsule	254	32.70	$1,681.43	$922.98	$336.29
23462	T	Repair shoulder capsule	254	32.70	$1,681.43	$922.98	$336.29
23465	T	Repair shoulder capsule	254	32.70	$1,681.43	$922.98	$336.29
23466	T	Repair shoulder capsule	254	32.70	$1,681.43	$922.98	$336.29
23470	C	Reconstruct shoulder joint					
23472	C	Reconstruct shoulder joint					
23480	T	Revision of collarbone	253	25.74	$1,323.55	$684.55	$264.71
23485	T	Revision of collar bone	253	25.74	$1,323.55	$684.55	$264.71
23490	T	Reinforce clavicle	253	25.74	$1,323.55	$684.55	$264.71
23491	T	Reinforce shoulder bones	253	25.74	$1,323.55	$684.55	$264.71
23500	T	Treat clavicle fracture	207	1.70	$87.41	$32.32	$17.48
23505	T	Treat clavicle fracture	207	1.70	$87.41	$32.32	$17.48
23515	T	Repair clavicle fracture	216	20.09	$1,033.03	$524.09	$206.61
23520	T	Treat clavicle dislocation	207	1.70	$87.41	$32.32	$17.48
23525	T	Treat clavicle dislocation	207	1.70	$87.41	$32.32	$17.48
23530	T	Repair clavicle dislocation	216	20.09	$1,033.03	$524.09	$206.61
23532	T	Repair clavicle dislocation	216	20.09	$1,033.03	$524.09	$206.61
23540	T	Treat clavicle dislocation	207	1.70	$87.41	$32.32	$17.48
23545	T	Treat clavicle dislocation	207	1.70	$87.41	$32.32	$17.48
23550	T	Repair clavicle dislocation	216	20.09	$1,033.03	$524.09	$206.61
23552	T	Repair clavicle dislocation	216	20.09	$1,033.03	$524.09	$206.61
23570	T	Treat shoulderblade fracture	207	1.70	$87.41	$32.32	$17.48
23575	T	Treat shoulderblade fracture	207	1.70	$87.41	$32.32	$17.48
23585	T	Repair scapula fracture	216	20.09	$1,033.03	$524.09	$206.61
23600	T	Treat humerus fracture	209	1.94	$99.75	$37.74	$19.95
23605	T	Treat humerus fracture	209	1.94	$99.75	$37.74	$19.95
23615	T	Repair humerus fracture	216	20.09	$1,033.03	$524.09	$206.61
23616	T	Repair humerus fracture	216	20.09	$1,033.03	$524.09	$206.61
23620	T	Treat humerus fracture	209	1.94	$99.75	$37.74	$19.95
23625	T	Treat humerus fracture	209	1.94	$99.75	$37.74	$19.95
23630	T	Repair humerus fracture	216	20.09	$1,033.03	$524.09	$206.61
23650	T	Treat shoulder dislocation	207	1.70	$87.41	$32.32	$17.48
23655	T	Treat shoulder dislocation	210	10.06	$517.29	$279.34	$103.46
23660	T	Repair shoulder dislocation	216	20.09	$1,033.03	$524.09	$206.61
23665	T	Treat dislocation/fracture	209	1.94	$99.75	$37.74	$19.95
23670	T	Repair dislocation/fracture	216	20.09	$1,033.03	$524.09	$206.61
23675	T	Treat dislocation/fracture	209	1.94	$99.75	$37.74	$19.95
23680	T	Repair dislocation/fracture	216	20.09	$1,033.03	$524.09	$206.61
23700	T	Fixation of shoulder	210	10.06	$517.29	$279.34	$103.46
23800	T	Fusion of shoulder joint	253	25.74	$1,323.55	$684.55	$264.71
23802	T	Fusion of shoulder joint	253	25.74	$1,323.55	$684.55	$264.71
23900	C	Amputation of arm & girdle					
23920	C	Amputation at shoulder joint					
23921	T	Amputation follow-up surgery	183	11.04	$567.68	$283.18	$113.54
23929	T	Shoulder surgery procedure	207	1.70	$87.41	$32.32	$17.48
23930	T	Drainage of arm lesion	132	5.63	$289.49	$132.89	$57.90
23931	T	Drainage of arm bursa	132	5.63	$289.49	$132.89	$57.90
23935	T	Drain arm/elbow bone lesion	251	13.88	$713.71	$365.89	$142.74
24000	T	Exploratory elbow surgery	252	19.24	$989.32	$512.34	$197.86
24006	T	Release elbow joint	252	19.24	$989.32	$512.34	$197.86
24065	T	Biopsy arm/elbow soft tissue	161	3.43	$176.37	$75.71	$35.27
24066	T	Biopsy arm/elbow soft tissue	163	10.48	$538.88	$260.80	$107.78
24075	T	Remove arm/elbow lesion	162	5.59	$287.44	$125.66	$57.49
24076	T	Remove arm/elbow lesion	163	10.48	$538.88	$260.80	$107.78

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

[2] This code was valid in 1996 and therefore was available for use in calculating weights. However, it has since been terminated and will not be paid upon implementation

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
24077	T	Remove tumor of arm/elbow	163	10.48	$538.88	$260.80	$107.78
24100	T	Biopsy elbow joint lining	251	13.88	$713.71	$365.89	$142.74
24101	T	Explore/treat elbow joint	252	19.24	$989.32	$512.34	$197.86
24102	T	Remove elbow joint lining	252	19.24	$989.32	$512.34	$197.86
24105	T	Removal of elbow bursa	251	13.88	$713.71	$365.89	$142.74
24110	T	Remove humerus lesion	251	13.88	$713.71	$365.89	$142.74
24115	T	Remove/graft bone lesion	252	19.24	$989.32	$512.34	$197.86
24116	T	Remove/graft bone lesion	252	19.24	$989.32	$512.34	$197.86
24120	T	Remove elbow lesion	251	13.88	$713.71	$365.89	$142.74
24125	T	Remove/graft bone lesion	252	19.24	$989.32	$512.34	$197.86
24126	T	Remove/graft bone lesion	252	19.24	$989.32	$512.34	$197.86
24130	T	Removal of head of radius	252	19.24	$989.32	$512.34	$197.86
24134	T	Removal of arm bone lesion	252	19.24	$989.32	$512.34	$197.86
24136	T	Remove radius bone lesion	252	19.24	$989.32	$512.34	$197.86
24138	T	Remove elbow bone lesion	252	19.24	$989.32	$512.34	$197.86
24140	T	Partial removal of arm bone	252	19.24	$989.32	$512.34	$197.86
24145	T	Partial removal of radius	252	19.24	$989.32	$512.34	$197.86
24147	T	Partial removal of elbow	252	19.24	$989.32	$512.34	$197.86
24149	C	Radical resection of elbow					
24150	C	Extensive humerus surgery					
24151	C	Extensive humerus surgery					
24152	C	Extensive radius surgery					
24153	C	Extensive radius surgery					
24155	T	Removal of elbow joint	253	25.74	$1,323.55	$684.55	$264.71
24160	T	Remove elbow joint implant	252	19.24	$989.32	$512.34	$197.86
24164	T	Remove radius head implant	252	19.24	$989.32	$512.34	$197.86
24200	T	Removal of arm foreign body	161	3.43	$176.37	$75.71	$35.27
24201	T	Removal of arm foreign body	163	10.48	$538.88	$260.80	$107.78
24220	T	Injection for elbow x-ray	347	2.57	$132.15	$62.38	$26.43
24301	T	Muscle/tendon transfer	252	19.24	$989.32	$512.34	$197.86
24305	T	Arm tendon lengthening	252	19.24	$989.32	$512.34	$197.86
24310	T	Revision of arm tendon	251	13.88	$713.71	$365.89	$142.74
24320	T	Repair of arm tendon	253	25.74	$1,323.55	$684.55	$264.71
24330	T	Revision of arm muscles	253	25.74	$1,323.55	$684.55	$264.71
24331	T	Revision of arm muscles	253	25.74	$1,323.55	$684.55	$264.71
24340	T	Repair of biceps tendon	253	25.74	$1,323.55	$684.55	$264.71
24341	T	Repair tendon/muscle arm	253	25.74	$1,323.55	$684.55	$264.71
24342	T	Repair of ruptured tendon	253	25.74	$1,323.55	$684.55	$264.71
24350	T	Repair of tennis elbow	252	19.24	$989.32	$512.34	$197.86
24351	T	Repair of tennis elbow	252	19.24	$989.32	$512.34	$197.86
24352	T	Repair of tennis elbow	252	19.24	$989.32	$512.34	$197.86
24354	T	Repair of tennis elbow	252	19.24	$989.32	$512.34	$197.86
24356	T	Revision of tennis elbow	252	19.24	$989.32	$512.34	$197.86
24360	T	Reconstruct elbow joint	217	20.54	$1,056.17	$530.42	$211.23
24361	T	Reconstruct elbow joint	218	27.80	$1,429.48	$720.71	$285.90
24362	T	Reconstruct elbow joint	218	27.80	$1,429.48	$720.71	$285.90
24363	T	Replace elbow joint	218	27.80	$1,429.48	$720.71	$285.90
24365	T	Reconstruct head of radius	217	20.54	$1,056.17	$530.42	$211.23
24366	T	Reconstruct head of radius	218	27.80	$1,429.48	$720.71	$285.90
24400	T	Revision of humerus	252	19.24	$989.32	$512.34	$197.86
24410	T	Revision of humerus	252	19.24	$989.32	$512.34	$197.86
24420	T	Revision of humerus	253	25.74	$1,323.55	$684.55	$264.71
24430	T	Repair of humerus	253	25.74	$1,323.55	$684.55	$264.71
24435	T	Repair humerus with graft	253	25.74	$1,323.55	$684.55	$264.71
24470	T	Revision of elbow joint	253	25.74	$1,323.55	$684.55	$264.71
24495	T	Decompression of forearm	252	19.24	$989.32	$512.34	$197.86
24498	T	Reinforce humerus	253	25.74	$1,323.55	$684.55	$264.71
24500	T	Treat humerus fracture	209	1.94	$99.75	$37.74	$19.95
24505	T	Treat humerus fracture	209	1.94	$99.75	$37.74	$19.95
24515	T	Repair humerus fracture	216	20.09	$1,033.03	$524.09	$206.61
24516	T	Repair humerus fracture	216	20.09	$1,033.03	$524.09	$206.61
24530	T	Treat humerus fracture	209	1.94	$99.75	$37.74	$19.95
24535	T	Treat humerus fracture	209	1.94	$99.75	$37.74	$19.95
24536	T	Treat humerus fracture	216	20.09	$1,033.03	$524.09	$206.61
24545	T	Repair humerus fracture	216	20.09	$1,033.03	$524.09	$206.61
24546	T	Repair humerus fracture	216	20.09	$1,033.03	$524.09	$206.61
24560	T	Treat humerus fracture	209	1.94	$99.75	$37.74	$19.95
24565	T	Treat humerus fracture	209	1.94	$99.75	$37.74	$19.95
24566	T	Treat humerus fracture	216	20.09	$1,033.03	$524.09	$206.61
24575	T	Repair humerus fracture	216	20.09	$1,033.03	$524.09	$206.61
24576	T	Treat humerus fracture	209	1.94	$99.75	$37.74	$19.95
24577	T	Treat humerus fracture	209	1.94	$99.75	$37.74	$19.95
24579	T	Repair humerus fracture	216	20.09	$1,033.03	$524.09	$206.61
24582	T	Treat humerus fracture	216	20.09	$1,033.03	$524.09	$206.61
24586	T	Repair elbow fracture	216	20.09	$1,033.03	$524.09	$206.61

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
24587	T	Repair elbow fracture	216	20.09	$1,033.03	$524.09	$206.61
24600	T	Treat elbow dislocation	209	1.94	$99.75	$37.74	$19.95
24605	T	Treat elbow dislocation	210	10.06	$517.29	$279.34	$103.46
24615	T	Repair elbow dislocation	216	20.09	$1,033.03	$524.09	$206.61
24620	T	Treat elbow fracture	209	1.94	$99.75	$37.74	$19.95
24635	T	Repair elbow fracture	216	20.09	$1,033.03	$524.09	$206.61
24640	T	Treat elbow dislocation	209	1.94	$99.75	$37.74	$19.95
24650	T	Treat radius fracture	209	1.94	$99.75	$37.74	$19.95
24655	T	Treat radius fracture	209	1.94	$99.75	$37.74	$19.95
24665	T	Repair radius fracture	216	20.09	$1,033.03	$524.09	$206.61
24666	T	Repair radius fracture	216	20.09	$1,033.03	$524.09	$206.61
24670	T	Treatment of ulna fracture	209	1.94	$99.75	$37.74	$19.95
24675	T	Treatment of ulna fracture	209	1.94	$99.75	$37.74	$19.95
24685	T	Repair ulna fracture	216	20.09	$1,033.03	$524.09	$206.61
24800	T	Fusion of elbow joint	253	25.74	$1,323.55	$684.55	$264.71
24802	T	Fusion/graft of elbow joint	253	25.74	$1,323.55	$684.55	$264.71
24900	C	Amputation of upper arm					
24920	C	Amputation of upper arm					
24925	T	Amputation follow-up surgery	251	13.88	$713.71	$365.89	$142.74
24930	C	Amputation follow-up surgery					
24931	C	Amputate upper arm & implant					
24935	C	Revision of amputation					
24940	C	Revision of upper arm					
24999	T	Upper arm/elbow surgery	209	1.94	$99.75	$37.74	$19.95
25000	T	Incision of tendon sheath	251	13.88	$713.71	$365.89	$142.74
25020	T	Decompression of forearm	251	13.88	$713.71	$365.89	$142.74
25023	T	Decompression of forearm	252	19.24	$989.32	$512.34	$197.86
25028	T	Drainage of forearm lesion	251	13.88	$713.71	$365.89	$142.74
25031	T	Drainage of forearm bursa	251	13.88	$713.71	$365.89	$142.74
25035	T	Treat forearm bone lesion	251	13.88	$713.71	$365.89	$142.74
25040	T	Explore/treat wrist joint	252	19.24	$989.32	$512.34	$197.86
25065	T	Biopsy forearm soft tissues	161	3.43	$176.37	$75.71	$35.27
25066	T	Biopsy forearm soft tissues	163	10.48	$538.88	$260.80	$107.78
25075	T	Removal of forearm lesion	162	5.59	$287.44	$125.66	$57.49
25076	T	Removal of forearm lesion	163	10.48	$538.88	$260.80	$107.78
25077	T	Remove tumor, forearm/wrist	163	10.48	$538.88	$260.80	$107.78
25085	T	Incision of wrist capsule	251	13.88	$713.71	$365.89	$142.74
25100	T	Biopsy of wrist joint	251	13.88	$713.71	$365.89	$142.74
25101	T	Explore/treat wrist joint	252	19.24	$989.32	$512.34	$197.86
25105	T	Remove wrist joint lining	252	19.24	$989.32	$512.34	$197.86
25107	T	Remove wrist joint cartilage	252	19.24	$989.32	$512.34	$197.86
25110	T	Remove wrist tendon lesion	251	13.88	$713.71	$365.89	$142.74
25111	T	Remove wrist tendon lesion	261	10.41	$535.29	$259.00	$107.06
25112	T	Reremove wrist tendon lesion	261	10.41	$535.29	$259.00	$107.06
25115	T	Remove wrist/forearm lesion	251	13.88	$713.71	$365.89	$142.74
25116	T	Remove wrist/forearm lesion	251	13.88	$713.71	$365.89	$142.74
25118	T	Excise wrist tendon sheath	252	19.24	$989.32	$512.34	$197.86
25119	T	Partial removal of ulna	252	19.24	$989.32	$512.34	$197.86
25120	T	Removal of forearm lesion	252	19.24	$989.32	$512.34	$197.86
25125	T	Remove/graft forearm lesion	252	19.24	$989.32	$512.34	$197.86
25126	T	Remove/graft forearm lesion	252	19.24	$989.32	$512.34	$197.86
25130	T	Removal of wrist lesion	252	19.24	$989.32	$512.34	$197.86
25135	T	Remove & graft wrist lesion	252	19.24	$989.32	$512.34	$197.86
25136	T	Remove & graft wrist lesion	252	19.24	$989.32	$512.34	$197.86
25145	T	Remove forearm bone lesion	252	19.24	$989.32	$512.34	$197.86
25150	T	Partial removal of ulna	252	19.24	$989.32	$512.34	$197.86
25151	T	Partial removal of radius	252	19.24	$989.32	$512.34	$197.86
25170	C	Extensive forearm surgery					
25210	T	Removal of wrist bone	262	18.07	$929.16	$475.96	$185.83
25215	T	Removal of wrist bones	262	18.07	$929.16	$475.96	$185.83
25230	T	Partial removal of radius	252	19.24	$989.32	$512.34	$197.86
25240	T	Partial removal of ulna	252	19.24	$989.32	$512.34	$197.86
25246	T	Injection for wrist x-ray	347	2.57	$132.15	$62.38	$26.43
25248	T	Remove forearm foreign body	251	13.88	$713.71	$365.89	$142.74
25250	T	Removal of wrist prosthesis	252	19.24	$989.32	$512.34	$197.86
25251	T	Removal of wrist prosthesis	252	19.24	$989.32	$512.34	$197.86
25260	T	Repair forearm tendon/muscle	252	19.24	$989.32	$512.34	$197.86
25263	T	Repair forearm tendon/muscle	252	19.24	$989.32	$512.34	$197.86
25265	T	Repair forearm tendon/muscle	252	19.24	$989.32	$512.34	$197.86
25270	T	Repair forearm tendon/muscle	252	19.24	$989.32	$512.34	$197.86
25272	T	Repair forearm tendon/muscle	252	19.24	$989.32	$512.34	$197.86
25274	T	Repair forearm tendon/muscle	252	19.24	$989.32	$512.34	$197.86
25280	T	Revise wrist/forearm tendon	252	19.24	$989.32	$512.34	$197.86
25290	T	Incise wrist/forearm tendon	252	19.24	$989.32	$512.34	$197.86
25295	T	Release wrist/forearm tendon	251	13.88	$713.71	$365.89	$142.74

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
25300	T	Fusion of tendons at wrist	252	19.24	$989.32	$512.34	$197.86
25301	T	Fusion of tendons at wrist	252	19.24	$989.32	$512.34	$197.86
25310	T	Transplant forearm tendon	253	25.74	$1,323.55	$684.55	$264.71
25312	T	Transplant forearm tendon	253	25.74	$1,323.55	$684.55	$264.71
25315	T	Revise palsy hand tendon(s)	253	25.74	$1,323.55	$684.55	$264.71
25316	T	Revise palsy hand tendon(s)	253	25.74	$1,323.55	$684.55	$264.71
25320	T	Repair/revise wrist joint	253	25.74	$1,323.55	$684.55	$264.71
[2]25330	T	Revise wrist joint	217	20.54	$1,056.17	$530.42	$211.23
[2]25331	T	Revise wrist joint	217	20.54	$1,056.17	$530.42	$211.23
25332	T	Revise wrist joint	217	20.54	$1,056.17	$530.42	$211.23
25335	T	Realignment of hand	253	25.74	$1,323.55	$684.55	$264.71
25337	T	Reconstruct ulna/radioulnar	253	25.74	$1,323.55	$684.55	$264.71
25350	T	Revision of radius	253	25.74	$1,323.55	$684.55	$264.71
25355	T	Revision of radius	253	25.74	$1,323.55	$684.55	$264.71
25360	T	Revision of ulna	252	19.24	$989.32	$512.34	$197.86
25365	T	Revise radius & ulna	252	19.24	$989.32	$512.34	$197.86
25370	T	Revise radius or ulna	253	25.74	$1,323.55	$684.55	$264.71
25375	T	Revise radius & ulna	253	25.74	$1,323.55	$684.55	$264.71
25390	C	Shorten radius/ulna					
25391	C	Lengthen radius/ulna					
25392	C	Shorten radius & ulna					
25393	C	Lengthen radius & ulna					
25400	T	Repair radius or ulna	252	19.24	$989.32	$512.34	$197.86
25405	C	Repair/graft radius or ulna					
25415	T	Repair radius & ulna	252	19.24	$989.32	$512.34	$197.86
25420	C	Repair/graft radius & ulna					
25425	T	Repair/graft radius or ulna	253	25.74	$1,323.55	$684.55	$264.71
25426	T	Repair/graft radius & ulna	253	25.74	$1,323.55	$684.55	$264.71
25440	T	Repair/graft wrist bone	253	25.74	$1,323.55	$684.55	$264.71
25441	T	Reconstruct wrist joint	218	27.80	$1,429.48	$720.71	$285.90
25442	T	Reconstruct wrist joint	218	27.80	$1,429.48	$720.71	$285.90
25443	T	Reconstruct wrist joint	218	27.80	$1,429.48	$720.71	$285.90
25444	T	Reconstruct wrist joint	218	27.80	$1,429.48	$720.71	$285.90
25445	T	Reconstruct wrist joint	218	27.80	$1,429.48	$720.71	$285.90
25446	T	Wrist replacement	218	27.80	$1,429.48	$720.71	$285.90
25447	T	Repair wrist joint(s)	217	20.54	$1,056.17	$530.42	$211.23
25449	T	Remove wrist joint implant	217	20.54	$1,056.17	$530.42	$211.23
25450	T	Revision of wrist joint	253	25.74	$1,323.55	$684.55	$264.71
25455	T	Revision of wrist joint	253	25.74	$1,323.55	$684.55	$264.71
25490	T	Reinforce radius	253	25.74	$1,323.55	$684.55	$264.71
25491	T	Reinforce ulna	253	25.74	$1,323.55	$684.55	$264.71
25492	T	Reinforce radius and ulna	253	25.74	$1,323.55	$684.55	$264.71
25500	T	Treat fracture of radius	209	1.94	$99.75	$37.74	$19.95
25505	T	Treat fracture of radius	209	1.94	$99.75	$37.74	$19.95
25515	T	Repair fracture of radius	216	20.09	$1,033.03	$524.09	$206.61
25520	T	Repair fracture of radius	209	1.94	$99.75	$37.74	$19.95
25525	T	Repair fracture of radius	216	20.09	$1,033.03	$524.09	$206.61
25526	T	Repair fracture of radius	216	20.09	$1,033.03	$524.09	$206.61
25530	T	Treat fracture of ulna	209	1.94	$99.75	$37.74	$19.95
25535	T	Treat fracture of ulna	209	1.94	$99.75	$37.74	$19.95
25545	T	Repair fracture of ulna	216	20.09	$1,033.03	$524.09	$206.61
25560	T	Treat fracture radius & ulna	209	1.94	$99.75	$37.74	$19.95
25565	T	Treat fracture radius & ulna	209	1.94	$99.75	$37.74	$19.95
25574	T	Treat fracture radius & ulna	216	20.09	$1,033.03	$524.09	$206.61
25575	T	Repair fracture radius/ulna	216	20.09	$1,033.03	$524.09	$206.61
25600	T	Treat fracture radius/ulna	209	1.94	$99.75	$37.74	$19.95
25605	T	Treat fracture radius/ulna	209	1.94	$99.75	$37.74	$19.95
25611	T	Repair fracture radius/ulna	216	20.09	$1,033.03	$524.09	$206.61
25620	T	Repair fracture radius/ulna	216	20.09	$1,033.03	$524.09	$206.61
25622	T	Treat wrist bone fracture	209	1.94	$99.75	$37.74	$19.95
25624	T	Treat wrist bone fracture	209	1.94	$99.75	$37.74	$19.95
25628	T	Repair wrist bone fracture	216	20.09	$1,033.03	$524.09	$206.61
25630	T	Treat wrist bone fracture	209	1.94	$99.75	$37.74	$19.95
25635	T	Treat wrist bone fracture	209	1.94	$99.75	$37.74	$19.95
25645	T	Repair wrist bone fracture	216	20.09	$1,033.03	$524.09	$206.61
25650	T	Repair wrist bone fracture	209	1.94	$99.75	$37.74	$19.95
25660	T	Treat wrist dislocation	209	1.94	$99.75	$37.74	$19.95
25670	T	Repair wrist dislocation	216	20.09	$1,033.03	$524.09	$206.61
25675	T	Treat wrist dislocation	209	1.94	$99.75	$37.74	$19.95
25676	T	Repair wrist dislocation	216	20.09	$1,033.03	$524.09	$206.61
25680	T	Treat wrist fracture	209	1.94	$99.75	$37.74	$19.95
25685	T	Repair wrist fracture	216	20.09	$1,033.03	$524.09	$206.61
25690	T	Treat wrist dislocation	209	1.94	$99.75	$37.74	$19.95
25695	T	Repair wrist dislocation	216	20.09	$1,033.03	$524.09	$206.61
25800	T	Fusion of wrist joint	253	25.74	$1,323.55	$684.55	$264.71

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
25805	T	Fusion/graft of wrist joint	253	25.74	$1,323.55	$684.55	$264.71
25810	T	Fusion/graft of wrist joint	253	25.74	$1,323.55	$684.55	$264.71
25820	T	Fusion of hand bones	261	10.41	$535.28	$259.00	$107.06
25825	T	Fusion hand bones with graft	262	18.07	$929.16	$475.96	$185.83
25830	T	Fusion radioulnar jnt/ulna	253	25.74	$1,323.55	$684.55	$264.71
25900	C	Amputation of forearm					
25905	C	Amputation of forearm					
25907	T	Amputation follow-up surgery	251	13.88	$713.71	$365.89	$142.74
25909	C	Amputation follow-up surgery					
25915	C	Amputation of forearm					
25920	C	Amputate hand at wrist					
25922	T	Amputate hand at wrist	251	13.88	$713.71	$365.89	$142.74
25924	C	Amputation follow-up surgery					
25927	C	Amputation of hand					
25929	T	Amputation follow-up surgery	183	11.04	$567.68	$283.18	$113.54
25931	C	Amputation follow-up surgery					
25999	T	Forearm or wrist surgery	206	1.94	$99.75	$37.74	$19.95
26010	T	Drainage of finger abscess	131	1.93	$99.24	$36.61	$19.85
26011	T	Drainage of finger abscess	131	1.93	$99.24	$36.61	$19.85
26020	T	Drain hand tendon sheath	261	10.41	$535.28	$259.00	$107.06
26025	T	Drainage of palm bursa	261	10.41	$535.28	$259.00	$107.06
26030	T	Drainage of palm bursa(s)	261	10.41	$535.28	$259.00	$107.06
26034	T	Treat hand bone lesion	261	10.41	$535.28	$259.00	$107.06
26035	T	Decompress fingers/hand	261	10.41	$535.28	$259.00	$107.06
26037	T	Decompress fingers/hand	261	10.41	$535.28	$259.00	$107.06
26040	T	Release palm contracture	262	18.07	$929.16	$475.96	$185.83
26045	T	Release palm contracture	262	18.07	$929.16	$475.96	$185.83
26055	T	Incise finger tendon sheath	261	10.41	$535.28	$259.00	$107.06
26060	T	Incision of finger tendon	261	10.41	$535.28	$259.00	$107.06
26070	T	Explore/treat hand joint	261	10.41	$535.28	$259.00	$107.06
26075	T	Explore/treat finger joint	261	10.41	$535.28	$259.00	$107.06
26080	T	Explore/treat finger joint	261	10.41	$535.28	$259.00	$107.06
26100	T	Biopsy hand joint lining	261	10.41	$535.28	$259.00	$107.06
26105	T	Biopsy finger joint lining	261	10.41	$535.28	$259.00	$107.06
26110	T	Biopsy finger joint lining	261	10.41	$535.28	$259.00	$107.06
26115	T	Removal of hand lesion	163	10.48	$536.86	$260.80	$107.78
26116	T	Removal of hand lesion	163	10.48	$536.86	$260.80	$107.78
26117	T	Remove tumor, hand/finger	163	10.48	$536.86	$260.80	$107.78
26121	T	Release palm contracture	262	18.07	$929.16	$475.96	$185.83
26123	T	Release palm contracture	262	18.07	$929.16	$475.96	$185.83
26125	T	Release palm contracture	262	18.07	$929.16	$475.96	$185.83
26130	T	Remove wrist joint lining	261	10.41	$535.28	$259.00	$107.06
26135	T	Revise finger joint, each	262	18.07	$929.16	$475.96	$185.83
26140	T	Revise finger joint, each	261	10.41	$535.28	$259.00	$107.06
26145	T	Tendon excision, palm/finger	261	10.41	$535.28	$259.00	$107.06
26160	T	Remove tendon sheath lesion	261	10.41	$535.28	$259.00	$107.06
26170	T	Removal of palm tendon, each	261	10.41	$535.28	$259.00	$107.06
26180	T	Removal of finger tendon	261	10.41	$535.28	$259.00	$107.06
26185	T	Remove finger bone	261	10.41	$535.28	$259.00	$107.06
26200	T	Remove hand bone lesion	261	10.41	$535.28	$259.00	$107.06
26205	T	Remove/graft bone lesion	262	18.07	$929.16	$475.96	$185.83
26210	T	Removal of finger lesion	261	10.41	$535.28	$259.00	$107.06
26215	T	Remove/graft finger lesion	261	10.41	$535.28	$259.00	$107.06
26230	T	Partial removal of hand bone	261	10.41	$535.28	$259.00	$107.06
26235	T	Partial removal, finger bone	261	10.41	$535.28	$259.00	$107.06
26236	T	Partial removal, finger bone	261	10.41	$535.28	$259.00	$107.06
26250	T	Extensive hand surgery	261	10.41	$535.28	$259.00	$107.06
26255	T	Extensive hand surgery	262	18.07	$929.16	$475.96	$185.83
26260	T	Extensive finger surgery	261	10.41	$535.28	$259.00	$107.06
26261	T	Extensive finger surgery	261	10.41	$535.28	$259.00	$107.06
26262	T	Partial removal of finger	261	10.41	$535.28	$259.00	$107.06
26320	T	Removal of implant from hand	163	10.48	$536.86	$260.80	$107.78
26350	T	Repair finger/hand tendon	262	18.07	$929.16	$475.96	$185.83
26352	T	Repair/graft hand tendon	262	18.07	$929.16	$475.96	$185.83
26356	T	Repair finger/hand tendon	262	18.07	$929.16	$475.96	$185.83
26357	T	Repair finger/hand tendon	262	18.07	$929.16	$475.96	$185.83
26358	T	Repair/graft hand tendon	262	18.07	$929.16	$475.96	$185.83
26370	T	Repair finger/hand tendon	262	18.07	$929.16	$475.96	$185.83
26372	T	Repair/graft hand tendon	262	18.07	$929.16	$475.96	$185.83
26373	T	Repair finger/hand tendon	262	18.07	$929.16	$475.96	$185.83
26390	T	Revise hand/finger tendon	262	18.07	$929.16	$475.96	$185.83
26392	T	Repair/graft hand tendon	262	18.07	$929.16	$475.96	$185.83
26410	T	Repair hand tendon	261	10.41	$535.28	$259.00	$107.06
26412	T	Repair/graft hand tendon	262	18.07	$929.16	$475.96	$185.83
26415	T	Excision, hand/finger tendon	262	18.07	$929.16	$475.96	$185.83

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

[2] This code was valid in 1996 and therefore was available for use in calculating weights. However, it has since been terminated and will not be paid upon implementation

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
26416	T	Graft hand or finger tendon	262	18.07	$929.16	$475.96	$185.83
26418	T	Repair finger tendon	261	10.41	$535.28	$259.00	$107.06
26420	T	Repair/graft finger tendon	262	18.07	$929.16	$475.96	$185.83
26426	T	Repair finger/hand tendon	262	18.07	$929.16	$475.96	$185.83
26428	T	Repair/graft finger tendon	262	18.07	$929.16	$475.96	$185.83
26432	T	Repair finger tendon	261	10.41	$535.28	$259.00	$107.06
26433	T	Repair finger tendon	261	10.41	$535.28	$259.00	$107.06
26434	T	Repair/graft finger tendon	262	18.07	$929.16	$475.96	$185.83
26437	T	Realignment of tendons	261	10.41	$535.28	$259.00	$107.06
26440	T	Release palm/finger tendon	261	10.41	$535.28	$259.00	$107.06
26442	T	Release palm & finger tendon	262	18.07	$929.16	$475.96	$185.83
26445	T	Release hand/finger tendon	261	10.41	$535.28	$259.00	$107.06
26449	T	Release forearm/hand tendon	262	18.07	$929.16	$475.96	$185.83
26450	T	Incision of palm tendon	261	10.41	$535.28	$259.00	$107.06
26455	T	Incision of finger tendon	261	10.41	$535.28	$259.00	$107.06
26460	T	Incise hand/finger tendon	261	10.41	$535.28	$259.00	$107.06
26471	T	Fusion of finger tendons	261	10.41	$535.28	$259.00	$107.06
26474	T	Fusion of finger tendons	261	10.41	$535.28	$259.00	$107.06
26476	T	Tendon lengthening	261	10.41	$535.28	$259.00	$107.06
26477	T	Tendon shortening	261	10.41	$535.28	$259.00	$107.06
26478	T	Lengthening of hand tendon	261	10.41	$535.28	$259.00	$107.06
26479	T	Shortening of hand tendon	261	10.41	$535.28	$259.00	$107.06
26480	T	Transplant hand tendon	262	18.07	$929.16	$475.96	$185.83
26483	T	Transplant/graft hand tendon	262	18.07	$929.16	$475.96	$185.83
26485	T	Transplant palm tendon	262	18.07	$929.16	$475.96	$185.83
26489	T	Transplant/graft palm tendon	262	18.07	$929.16	$475.96	$185.83
26490	T	Revise thumb tendon	262	18.07	$929.16	$475.96	$185.83
26492	T	Tendon transfer with graft	262	18.07	$929.16	$475.96	$185.83
26494	T	Hand tendon/muscle transfer	262	18.07	$929.16	$475.96	$185.83
26496	T	Revise thumb tendon	262	18.07	$929.16	$475.96	$185.83
26497	T	Finger tendon transfer	262	18.07	$929.16	$475.96	$185.83
26498	T	Finger tendon transfer	262	18.07	$929.16	$475.96	$185.83
26499	T	Revision of finger	262	18.07	$929.16	$475.96	$185.83
26500	T	Hand tendon reconstruction	261	10.41	$535.28	$259.00	$107.06
26502	T	Hand tendon reconstruction	262	18.07	$929.16	$475.96	$185.83
26504	T	Hand tendon reconstruction	262	18.07	$929.16	$475.96	$185.83
26508	T	Release thumb contracture	261	10.41	$535.28	$259.00	$107.06
26510	T	Thumb tendon transfer	262	18.07	$929.16	$475.96	$185.83
26516	T	Fusion of knuckle joint	262	18.07	$929.16	$475.96	$185.83
26517	T	Fusion of knuckle joints	262	18.07	$929.16	$475.96	$185.83
26518	T	Fusion of knuckle joints	262	18.07	$929.16	$475.96	$185.83
26520	T	Release knuckle contracture	261	10.41	$535.28	$259.00	$107.06
26525	T	Release finger contracture	261	10.41	$535.28	$259.00	$107.06
26530	T	Revise knuckle joint	217	20.54	$1,056.17	$530.42	$211.23
26531	T	Revise knuckle with implant	218	27.80	$1,429.48	$720.71	$285.90
26535	T	Revise finger joint	217	20.54	$1,056.17	$530.42	$211.23
26536	T	Revise/implant finger joint	218	27.80	$1,429.48	$720.71	$285.90
26540	T	Repair hand joint	261	10.41	$535.28	$259.00	$107.06
26541	T	Repair hand joint with graft	262	18.07	$929.16	$475.96	$185.83
26542	T	Repair hand joint with graft	261	10.41	$535.28	$259.00	$107.06
26545	T	Reconstruct finger joint	262	18.07	$929.16	$475.96	$185.83
26546	T	Repair non-union hand	262	18.07	$929.16	$475.96	$185.83
26548	T	Reconstruct finger joint	262	18.07	$929.16	$475.96	$185.83
26550	T	Construct thumb replacement	262	18.07	$929.16	$475.96	$185.83
26551	C	Great toe-hand transfer					
[2] 26552	C	Construct thumb replacement					
26553	C	Single toe-hand transfer					
26554	C	Double toe-hand transfer					
26555	T	Positional change of finger	262	18.07	$929.16	$475.96	$185.83
26556	C	Toe joint transfer					
[2] 26557	C	Construct finger replacement					
[2] 26558	C	Added finger surgery					
[2] 26559	C	Added finger surgery					
26560	T	Repair of web finger	261	10.41	$535.28	$259.00	$107.06
26561	T	Repair of web finger	262	18.07	$929.16	$475.96	$185.83
26562	T	Repair of web finger	262	18.07	$929.16	$475.96	$185.83
26565	T	Correct metacarpal flaw	262	18.07	$929.16	$475.96	$185.83
26567	T	Correct finger deformity	262	18.07	$929.16	$475.96	$185.83
26568	T	Lengthen metacarpal/finger	262	18.07	$929.16	$475.96	$185.83
26580	T	Repair hand deformity	262	18.07	$929.16	$475.96	$185.83
26585	T	Repair finger deformity	262	18.07	$929.16	$475.96	$185.83
26587	T	Reconstruct extra finger	261	10.41	$535.28	$259.00	$107.06
26590	T	Repair finger deformity	262	18.07	$929.16	$475.96	$185.83
26591	T	Repair muscles of hand	262	18.07	$929.16	$475.96	$185.83
26593	T	Release muscles of hand	261	10.41	$535.28	$259.00	$107.06

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020

[2] This code was valid in 1996 and therefore was available for use in calculating weights. However, it has since been terminated and will not be paid upon implementation.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
26596	T	Excision constricting tissue	262	18.07	$929.16	$475.96	$185.83
26597	T	Release of scar contracture	262	18.07	$929.16	$475.96	$185.83
26600	T	Treat metacarpal fracture	209	1.94	$99.75	$37.74	$19.95
26605	T	Treat metacarpal fracture	209	1.94	$99.75	$37.74	$19.95
26607	T	Treat metacarpal fracture	209	1.94	$99.75	$37.74	$19.95
26608	T	Treat metacarpal fracture	216	20.09	$1,033.03	$524.09	$206.61
26615	T	Repair metacarpal fracture	216	20.09	$1,033.03	$524.09	$206.61
26641	T	Treat thumb dislocation	209	1.94	$99.75	$37.74	$19.95
26645	T	Treat thumb fracture	209	1.94	$99.75	$37.74	$19.95
26650	T	Repair thumb fracture	216	20.09	$1,033.03	$524.09	$206.61
26665	T	Repair thumb fracture	216	20.09	$1,033.03	$524.09	$206.61
26670	T	Treat hand dislocation	209	1.94	$99.75	$37.74	$19.95
26675	T	Treat hand dislocation	210	10.06	$517.29	$279.34	$103.46
26676	T	Pin hand dislocation	216	20.09	$1,033.03	$524.09	$206.61
26685	T	Repair hand dislocation	216	20.09	$1,033.03	$524.09	$206.61
26686	T	Repair hand dislocation	216	20.09	$1,033.03	$524.09	$206.61
26700	T	Treat knuckle dislocation	207	1.70	$87.41	$32.32	$17.48
26705	T	Treat knuckle dislocation	210	10.06	$517.29	$279.34	$103.46
26706	T	Pin knuckle dislocation	209	1.94	$99.75	$37.74	$19.95
26715	T	Repair knuckle dislocation	216	20.09	$1,033.03	$524.09	$206.61
26720	T	Treat finger fracture, each	207	1.70	$87.41	$32.32	$17.48
26725	T	Treat finger fracture, each	207	1.70	$87.41	$32.32	$17.48
26727	T	Treat finger fracture, each	216	20.09	$1,033.03	$524.09	$206.61
26735	T	Repair finger fracture, each	216	20.09	$1,033.03	$524.09	$206.61
26740	T	Treat finger fracture, each	207	1.70	$87.41	$32.32	$17.48
26742	T	Treat finger fracture, each	209	1.94	$99.75	$37.74	$19.95
26746	T	Repair finger fracture, each	216	20.09	$1,033.03	$524.09	$206.61
26750	T	Treat finger fracture, each	207	1.70	$87.41	$32.32	$17.48
26755	T	Treat finger fracture, each	207	1.70	$87.41	$32.32	$17.48
26756	T	Pin finger fracture, each	216	20.09	$1,033.03	$524.09	$206.61
26765	T	Repair finger fracture, each	216	20.09	$1,033.03	$524.09	$206.61
26770	T	Treat finger dislocation	207	1.70	$87.41	$32.32	$17.48
26775	T	Treat finger dislocation	210	10.06	$517.29	$279.34	$103.46
26776	T	Pin finger dislocation	216	20.09	$1,033.03	$524.09	$206.61
26785	T	Repair finger dislocation	216	20.09	$1,033.03	$524.09	$206.61
26820	T	Thumb fusion with graft	262	18.07	$929.16	$475.96	$185.83
26841	T	Fusion of thumb	262	18.07	$929.16	$475.96	$185.83
26842	T	Thumb fusion with graft	262	18.07	$929.16	$475.96	$185.83
26843	T	Fusion of hand joint	262	18.07	$929.16	$475.96	$185.83
26844	T	Fusion/graft of hand joint	262	18.07	$929.16	$475.96	$185.83
26850	T	Fusion of knuckle	262	18.07	$929.16	$475.96	$185.83
26852	T	Fusion of knuckle with graft	262	18.07	$929.16	$475.96	$185.83
26860	T	Fusion of finger joint	262	18.07	$929.16	$475.96	$185.83
26861	T	Fusion of finger joint,added	262	18.07	$929.16	$475.96	$185.83
26862	T	Fusion/graft of finger joint	262	18.07	$929.16	$475.96	$185.83
26863	T	Fuse/graft added joint	262	18.07	$929.16	$475.96	$185.83
26910	T	Amputate metacarpal bone	262	18.07	$929.16	$475.96	$185.83
26951	T	Amputation of finger/thumb	261	10.41	$535.28	$259.00	$107.06
26952	T	Amputation of finger/thumb	261	10.41	$535.28	$259.00	$107.06
26989	T	Hand/finger surgery	207	1.70	$87.41	$32.32	$17.48
26990	T	Drainage of pelvis lesion	251	13.88	$713.71	$365.89	$142.74
26991	T	Drainage of pelvis bursa	251	13.88	$713.71	$365.89	$142.74
26992	C	Drainage of bone lesion					
27000	T	Incision of hip tendon	251	13.88	$713.71	$365.89	$142.74
27001	T	Incision of hip tendon	252	19.24	$989.32	$512.34	$197.86
27003	T	Incision of hip tendon	252	19.24	$989.32	$512.34	$197.86
27005	C	Incision of hip tendon					
27006	C	Incision of hip tendons					
27025	C	Incision of hip/thigh fascia					
27030	C	Drainage of hip joint					
27033	T	Exploration of hip joint	253	25.74	$1,323.55	$684.55	$264.71
27035	C	Denervation of hip joint					
27036	C	Excision of hip joint/muscle					
27040	T	Biopsy of soft tissues	162	5.59	$287.44	$125.66	$57.49
27041	T	Biopsy of soft tissues	163	10.48	$536.88	$260.80	$107.78
27047	T	Remove hip/pelvis lesion	163	10.48	$536.88	$260.80	$107.78
27048	T	Remove hip/pelvis lesion	163	10.48	$536.88	$260.80	$107.78
27049	T	Remove tumor, hip/pelvis	163	10.48	$536.88	$260.80	$107.78
27050	T	Biopsy of sacroiliac joint	251	13.88	$713.71	$365.89	$142.74
27052	T	Biopsy of hip joint	251	13.88	$713.71	$365.89	$142.74
27054	C	Removal of hip joint lining					
27060	T	Removal of ischial bursa	251	13.88	$713.71	$365.89	$142.74
27062	T	Remove femur lesion/bursa	251	13.88	$713.71	$365.89	$142.74
27065	T	Removal of hip bone lesion	251	13.88	$713.71	$365.89	$142.74
27066	T	Removal of hip bone lesion	252	19.24	$989.32	$512.34	$197.86

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[2] This code was valid in 1996 and therefore was available for use in calculating weights. However, it has since been terminated and will not be paid upon implementation.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
27067	T	Remove/graft hip bone lesion	252	19.24	$989.32	$512.34	$197.86
27070	C	Partial removal of hip bone					
27071	C	Partial removal of hip bone					
27075	C	Extensive hip surgery					
27076	C	Extensive hip surgery					
27077	C	Extensive hip surgery					
27078	C	Extensive hip surgery					
27079	C	Extensive hip surgery					
27080	T	Removal of tail bone	252	19.24	$989.32	$512.34	$197.86
27086	T	Remove hip foreign body	251	13.88	$713.71	$365.89	$142.74
27087	T	Remove hip foreign body	251	13.88	$713.71	$365.89	$142.74
27090	C	Removal of hip prosthesis					
27091	C	Removal of hip prosthesis					
27093	T	Injection for hip x-ray	347	2.57	$132.15	$62.38	$26.43
27095	T	Injection for hip x-ray	347	2.57	$132.15	$62.38	$26.43
27097	T	Revision of hip tendon	252	19.24	$989.32	$512.34	$197.86
27098	T	Transfer tendon to pelvis	252	19.24	$989.32	$512.34	$197.86
27100	T	Transfer of abdominal muscle	253	25.74	$1,323.55	$684.55	$264.71
27105	T	Transfer of spinal muscle	253	25.74	$1,323.55	$684.55	$264.71
27110	T	Transfer of iliopsoas muscle	253	25.74	$1,323.55	$684.55	$264.71
27111	T	Transfer of iliopsoas muscle	253	25.74	$1,323.55	$684.55	$264.71
27120	C	Reconstruction of hip socket					
27122	C	Reconstruction of hip socket					
27125	C	Partial hip replacement					
27130	C	Total hip replacement					
27132	C	Total hip replacement					
27134	C	Revise hip joint replacement					
27137	C	Revise hip joint replacement					
27138	C	Revise hip joint replacement					
27140	C	Transplant of femur ridge					
27146	C	Incision of hip bone					
27147	C	Revision of hip bone					
27151	C	Incision of hip bones					
27156	C	Revision of hip bones					
27158	C	Revision of pelvis					
27161	C	Incision of neck of femur					
27165	C	Incision/fixation of femur					
27170	C	Repair/graft femur head/neck					
27175	C	Treat slipped epiphysis					
27176	C	Treat slipped epiphysis					
27177	C	Repair slipped epiphysis					
27178	C	Repair slipped epiphysis					
27179	C	Revise head/neck of femur					
27181	C	Repair slipped epiphysis					
27185	C	Revision of femur epiphysis					
27187	C	Reinforce hip bones					
27193	T	Treat pelvic ring fracture	209	1.94	$99.75	$37.74	$19.95
27194	T	Treat pelvic ring fracture	210	10.06	$517.29	$279.34	$103.46
27200	T	Treat tail bone fracture	207	1.70	$87.41	$32.32	$17.48
27202	T	Repair tail bone fracture	216	20.00	$1,033.03	$524.09	$206.61
27215	C	Pelvic fracture(s) treatment					
27216	C	Treat pelvic ring fracture					
27217	C	Treat pelvic ring fracture					
27218	C	Treat pelvic ring fracture					
27220	T	Treat hip socket fracture	209	1.94	$99.75	$37.74	$19.95
27222	C	Treat hip socket fracture					
27226	C	Treat hip wall fracture					
27227	C	Treat hip fracture(s)					
27228	C	Treat hip fracture(s)					
27230	T	Treat fracture of thigh	209	1.94	$99.75	$37.74	$19.95
27232	C	Treat fracture of thigh					
27235	C	Repair of thigh fracture					
27236	C	Repair of thigh fracture					
27238	T	Treatment of thigh fracture	209	1.94	$99.75	$37.74	$19.95
27240	C	Treatment of thigh fracture					
27244	C	Repair of thigh fracture					
27245	C	Repair of thigh fracture					
27246	T	Treatment of thigh fracture	209	1.94	$99.75	$37.74	$19.95
27248	C	Repair of thigh fracture					
27250	T	Treat hip dislocation	209	1.94	$99.75	$37.74	$19.95
27252	T	Treat hip dislocation	210	10.06	$517.29	$279.34	$103.46
27253	C	Repair of hip dislocation					
27254	C	Repair of hip dislocation					
27256	T	Treatment of hip dislocation	209	1.94	$99.75	$37.74	$19.95
27257	T	Treatment of hip dislocation	210	10.06	$517.29	$279.34	$103.46

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
27258	C	Repair of hip dislocation					
27259	C	Repair of hip dislocation					
27265	T	Treatment of hip dislocation	209	1.94	$99.75	$37.74	$19.95
27266	T	Treatment of hip dislocation	217	20.54	$1,056.17	$530.42	$211.23
27275	T	Manipulation of hip joint	210	10.06	$517.29	$279.34	$103.46
27280	C	Fusion of sacroiliac joint					
27282	C	Fusion of pubic bones					
27284	C	Fusion of hip joint					
27286	C	Fusion of hip joint					
27290	C	Amputation of leg at hip					
27295	C	Amputation of leg at hip					
27299	T	Pelvis/hip joint surgery	207	1.70	$87.41	$32.32	$17.48
27301	T	Drain thigh/knee lesion	132	5.63	$289.49	$132.89	$57.90
27303	C	Drainage of bone lesion					
27305	T	Incise thigh tendon & fascia	251	13.88	$713.71	$365.89	$142.74
27306	T	Incision of thigh tendon	251	13.88	$713.71	$365.89	$142.74
27307	T	Incision of thigh tendons	251	13.88	$713.71	$365.89	$142.74
27310	T	Exploration of knee joint	252	19.24	$989.32	$512.34	$197.86
27315	T	Partial removal, thigh nerve	631	12.70	$653.03	$329.06	$130.61
27320	T	Partial removal, thigh nerve	631	12.70	$653.03	$329.06	$130.61
27323	T	Biopsy thigh soft tissues	162	5.59	$287.44	$125.66	$57.49
27324	T	Biopsy thigh soft tissues	163	10.48	$538.88	$260.80	$107.78
27327	T	Removal of thigh lesion	163	10.48	$538.88	$260.80	$107.78
27328	T	Removal of thigh lesion	163	10.48	$538.88	$260.80	$107.78
27329	T	Remove tumor, thigh/knee	163	10.48	$538.88	$260.80	$107.78
27330	T	Biopsy knee joint lining	252	19.24	$989.32	$512.34	$197.86
27331	T	Explore/treat knee joint	252	19.24	$989.32	$512.34	$197.86
27332	T	Removal of knee cartilage	252	19.24	$989.32	$512.34	$197.86
27333	T	Removal of knee cartilage	252	19.24	$989.32	$512.34	$197.86
27334	T	Remove knee joint lining	252	19.24	$989.32	$512.34	$197.86
27335	T	Remove knee joint lining	252	19.24	$989.32	$512.34	$197.86
27340	T	Removal of kneecap bursa	251	13.88	$713.71	$365.89	$142.74
27345	T	Removal of knee cyst	251	13.88	$713.71	$365.89	$142.74
27350	T	Removal of kneecap	252	19.24	$989.32	$512.34	$197.86
27355	T	Remove femur lesion	252	19.24	$989.32	$512.34	$197.86
27356	T	Remove femur lesion/graft	252	19.24	$989.32	$512.34	$197.86
27357	T	Remove femur lesion/graft	252	19.24	$989.32	$512.34	$197.86
27358	T	Remove femur lesion/fixation	252	19.24	$989.32	$512.34	$197.86
27360	T	Partial removal leg bone(s)	252	19.24	$989.32	$512.34	$197.86
27365	C	Extensive leg surgery					
27370	T	Injection for knee x-ray	347	2.57	$132.15	$62.38	$26.43
27372	T	Removal of foreign body	163	10.48	$538.88	$260.80	$107.78
27380	T	Repair of kneecap tendon	251	13.88	$713.71	$365.89	$142.74
27381	T	Repair/graft kneecap tendon	251	13.88	$713.71	$365.89	$142.74
27385	T	Repair of thigh muscle	251	13.88	$713.71	$365.89	$142.74
27386	T	Repair/graft of thigh muscle	251	13.88	$713.71	$365.89	$142.74
27390	T	Incision of thigh tendon	251	13.88	$713.71	$365.89	$142.74
27391	T	Incision of thigh tendons	251	13.88	$713.71	$365.89	$142.74
27392	T	Incision of thigh tendons	251	13.88	$713.71	$365.89	$142.74
27393	T	Lengthening of thigh tendon	252	19.24	$989.32	$512.34	$197.86
27394	T	Lengthening of thigh tendons	252	19.24	$989.32	$512.34	$197.86
27395	T	Lengthening of thigh tendons	253	25.74	$1,323.55	$684.55	$264.71
27396	T	Transplant of thigh tendon	252	19.24	$989.32	$512.34	$197.86
27397	T	Transplants of thigh tendons	253	25.74	$1,323.55	$684.55	$264.71
27400	T	Revise thigh muscles/tendons	253	25.74	$1,323.55	$684.55	$264.71
27403	T	Repair of knee cartilage	252	19.24	$989.32	$512.34	$197.86
27405	T	Repair of knee ligament	253	25.74	$1,323.55	$684.55	$264.71
27407	T	Repair of knee ligament	253	25.74	$1,323.55	$684.55	$264.71
27409	T	Repair of knee ligaments	253	25.74	$1,323.55	$684.55	$264.71
27418	T	Repair degenerated kneecap	253	25.74	$1,323.55	$684.55	$264.71
27420	T	Revision of unstable kneecap	253	25.74	$1,323.55	$684.55	$264.71
27422	T	Revision of unstable kneecap	253	25.74	$1,323.55	$684.55	$264.71
27424	T	Revision/removal of kneecap	253	25.74	$1,323.55	$684.55	$264.71
27425	T	Lateral retinacular release	252	19.24	$989.32	$512.34	$197.86
27427	T	Reconstruction, knee	254	32.70	$1,681.43	$922.98	$336.29
27428	T	Reconstruction, knee	254	32.70	$1,681.43	$922.98	$336.29
27429	T	Reconstruction, knee	254	32.70	$1,681.43	$922.98	$336.29
27430	T	Revision of thigh muscles	253	25.74	$1,323.55	$684.55	$264.71
27435	T	Incision of knee joint	253	25.74	$1,323.55	$684.55	$264.71
27437	T	Revise kneecap	217	20.54	$1,056.17	$530.42	$211.23
27438	T	Revise kneecap with implant	218	27.80	$1,429.48	$720.71	$285.90
27440	T	Revision of knee joint	217	20.54	$1,056.17	$530.42	$211.23
27441	T	Revision of knee joint	217	20.54	$1,056.17	$530.42	$211.23
27442	T	Revision of knee joint	217	20.54	$1,056.17	$530.42	$211.23
27443	T	Revision of knee joint	217	20.54	$1,056.17	$530.42	$211.23

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
27445	C	Revision of knee joint					
27446	C	Revision of knee joint					
27447	C	Total knee replacement					
27448	C	Incision of thigh					
27450	C	Incision of thigh					
27454	C	Realignment of thigh bone					
27455	C	Realignment of knee					
27457	C	Realignment of knee					
27465	C	Shortening of thigh bone					
27466	C	Lengthening of thigh bone					
27468	C	Shorten/lengthen thighs					
27470	C	Repair of thigh					
27472	C	Repair/graft of thigh					
27475	C	Surgery to stop leg growth					
27477	C	Surgery to stop leg growth					
27479	C	Surgery to stop leg growth					
27485	C	Surgery to stop leg growth					
27486	C	Revise knee joint replace					
27487	C	Revise knee joint replace					
27488	C	Removal of knee prosthesis					
27495	C	Reinforce thigh					
27496	T	Decompression of thigh/knee	251	13.88	$713.71	$365.89	$142.74
27497	T	Decompression of thigh/knee	251	13.88	$713.71	$365.89	$142.74
27498	T	Decompression of thigh/knee	251	13.88	$713.71	$365.89	$142.74
27499	T	Decompression of thigh/knee	251	13.88	$713.71	$365.89	$142.74
27500	T	Treatment of thigh fracture	209	1.94	$99.75	$37.74	$19.95
27501	T	Treatment of thigh fracture	209	1.94	$99.75	$37.74	$19.95
27502	T	Treatment of thigh fracture	209	1.94	$99.75	$37.74	$19.95
27503	T	Treatment of thigh fracture	209	1.94	$99.75	$37.74	$19.95
27506	C	Repair of thigh fracture					
27507	C	Treatment of thigh fracture					
27508	T	Treatment of thigh fracture	209	1.94	$99.75	$37.74	$19.95
27509	T	Treatment of thigh fracture	216	20.09	$1,033.03	$524.09	$206.61
27510	T	Treatment of thigh fracture	209	1.94	$99.75	$37.74	$19.95
27511	C	Treatment of thigh fracture					
27513	C	Treatment of thigh fracture					
27514	C	Repair of thigh fracture					
27516	T	Repair of thigh growth plate	209	1.94	$99.75	$37.74	$19.95
27517	T	Repair of thigh growth plate	209	1.94	$99.75	$37.74	$19.95
27519	C	Repair of thigh growth plate					
27520	T	Treat kneecap fracture	209	1.94	$99.75	$37.74	$19.95
27524	C	Repair of kneecap fracture					
27530	T	Treatment of knee fracture	209	1.94	$99.75	$37.74	$19.95
27532	T	Treatment of knee fracture	209	1.94	$99.75	$37.74	$19.95
27535	C	Treatment of knee fracture					
27536	C	Repair of knee fracture					
27538	T	Treat knee fracture(s)	209	1.94	$99.75	$37.74	$19.95
27540	C	Repair of knee fracture					
27550	T	Treat knee dislocation	209	1.94	$99.75	$37.74	$19.95
27552	T	Treat knee dislocation	210	10.06	$517.29	$279.34	$103.46
27556	T	Repair of knee dislocation	216	20.09	$1,033.03	$524.09	$206.61
27557	C	Repair of knee dislocation					
27558	C	Repair of knee dislocation					
27560	T	Treat kneecap dislocation	209	1.94	$99.75	$37.74	$19.95
27562	T	Treat kneecap dislocation	210	10.06	$517.29	$279.34	$103.46
27566	T	Repair kneecap dislocation	216	20.09	$1,033.03	$524.09	$206.61
27570	T	Fixation of knee joint	210	10.06	$517.29	$279.34	$103.46
27580	C	Fusion of knee					
27590	C	Amputate leg at thigh					
27591	C	Amputate leg at thigh					
27592	C	Amputate leg at thigh					
27594	T	Amputation follow-up surgery	251	13.88	$713.71	$365.89	$142.74
27596	C	Amputation follow-up surgery					
27598	C	Amputate lower leg at knee					
27599	T	Leg surgery procedure	209	1.94	$99.75	$37.74	$19.95
27600	T	Decompression of lower leg	251	13.88	$713.71	$365.89	$142.74
27601	T	Decompression of lower leg	251	13.88	$713.71	$365.89	$142.74
27602	T	Decompression of lower leg	251	13.88	$713.71	$365.89	$142.74
27603	T	Drain lower leg lesion	132	5.63	$289.49	$132.89	$57.90
27604	T	Drain lower leg bursa	251	13.88	$713.71	$365.89	$142.74
27605	T	Incision of achilles tendon	271	14.12	$726.05	$365.44	$145.21
27606	T	Incision of achilles tendon	251	13.88	$713.71	$365.89	$142.74
27607	T	Treat lower leg bone lesion	251	13.88	$713.71	$365.89	$142.74
27610	T	Explore/treat ankle joint	252	19.24	$989.32	$512.34	$197.86
27612	T	Exploration of ankle joint	252	19.24	$989.32	$512.34	$197.86

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
27613	T	Biopsy lower leg soft tissue	161	3.43	$176.37	$75.71	$35.27
27614	T	Biopsy lower leg soft tissue	163	10.48	$538.88	$260.80	$107.78
27615	T	Remove tumor, lower leg	216	20.09	$1,033.03	$524.09	$206.61
27618	T	Remove lower leg lesion	163	10.48	$538.88	$260.80	$107.78
27619	T	Remove lower leg lesion	163	10.48	$538.88	$260.80	$107.78
27620	T	Explore, treat ankle joint	252	19.24	$989.32	$512.34	$197.86
27625	T	Remove ankle joint lining	252	19.24	$989.32	$512.34	$197.86
27626	T	Remove ankle joint lining	252	19.24	$989.32	$512.34	$197.86
27630	T	Removal of tendon lesion	251	13.88	$713.71	$365.89	$142.74
27635	T	Remove lower leg bone lesion	252	19.24	$989.32	$512.34	$197.86
27637	T	Remove/graft leg bone lesion	252	19.24	$989.32	$512.34	$197.86
27638	T	Remove/graft leg bone lesion	252	19.24	$989.32	$512.34	$197.86
27640	T	Partial removal of tibia	253	25.74	$1,323.55	$684.55	$264.71
27641	T	Partial removal of fibula	252	19.24	$989.32	$512.34	$197.86
27645	C	Extensive lower leg surgery					
27646	C	Extensive lower leg surgery					
27647	T	Extensive ankle/heel surgery	253	25.74	$1,323.55	$684.55	$264.71
27648	T	Injection for ankle x-ray	347	2.57	$132.15	$62.38	$26.43
27650	T	Repair achilles tendon	253	25.74	$1,323.55	$684.55	$264.71
27652	T	Repair/graft achilles tendon	253	25.74	$1,323.55	$684.55	$264.71
27654	T	Repair of achilles tendon	253	25.74	$1,323.55	$684.55	$264.71
27656	T	Repair leg fascia defect	251	13.88	$713.71	$365.89	$142.74
27658	T	Repair of leg tendon, each	251	13.88	$713.71	$365.89	$142.74
27659	T	Repair of leg tendon, each	251	13.88	$713.71	$365.89	$142.74
27664	T	Repair of leg tendon, each	251	13.88	$713.71	$365.89	$142.74
27665	T	Repair of leg tendon, each	252	19.24	$989.32	$512.34	$197.86
27675	T	Repair lower leg tendons	251	13.88	$713.71	$365.89	$142.74
27676	T	Repair lower leg tendons	252	19.24	$989.32	$512.34	$197.86
27680	T	Release of lower leg tendon	252	19.24	$989.32	$512.34	$197.86
27681	T	Release of lower leg tendons	252	19.24	$989.32	$512.34	$197.86
27685	T	Revision of lower leg tendon	252	19.24	$989.32	$512.34	$197.86
27686	T	Revise lower leg tendons	252	19.24	$989.32	$512.34	$197.86
27687	T	Revision of calf tendon	252	19.24	$989.32	$512.34	$197.86
27690	T	Revise lower leg tendon	253	25.74	$1,323.55	$684.55	$264.71
27691	T	Revise lower leg tendon	253	25.74	$1,323.55	$684.55	$264.71
27692	T	Revise additional leg tendon	253	25.74	$1,323.55	$684.55	$264.71
27695	T	Repair of ankle ligament	252	19.24	$989.32	$512.34	$197.86
27696	T	Repair of ankle ligaments	252	19.24	$989.32	$512.34	$197.86
27698	T	Repair of ankle ligament	252	19.24	$989.32	$512.34	$197.86
27700	T	Revision of ankle joint	217	20.54	$1,056.17	$530.42	$211.23
27702	C	Reconstruct ankle joint					
27703	C	Reconstruction, ankle joint					
27704	T	Removal of ankle implant	251	13.88	$713.71	$365.89	$142.74
27705	T	Incision of tibia	253	25.74	$1,323.55	$684.55	$264.71
27707	T	Incision of fibula	251	13.88	$713.71	$365.89	$142.74
27709	T	Incision of tibia & fibula	252	19.24	$989.32	$512.34	$197.86
27712	C	Realignment of lower leg					
27715	C	Revision of lower leg					
27720	C	Repair of tibia					
27722	C	Repair/graft of tibia					
27724	C	Repair/graft of tibia					
27725	C	Repair of lower leg					
27727	C	Repair of lower leg					
27730	T	Repair of tibia epiphysis	252	19.24	$989.32	$512.34	$197.86
27732	T	Repair of fibula epiphysis	252	19.24	$989.32	$512.34	$197.86
27734	T	Repair lower leg epiphyses	252	19.24	$989.32	$512.34	$197.86
27740	T	Repair of leg epiphyses	252	19.24	$989.32	$512.34	$197.86
27742	T	Repair of leg epiphyses	253	25.74	$1,323.55	$684.55	$264.71
27745	T	Reinforce tibia	253	25.74	$1,323.55	$684.55	$264.71
27750	T	Treatment of tibia fracture	209	1.94	$99.75	$37.74	$19.95
27752	T	Treatment of tibia fracture	209	1.94	$99.75	$37.74	$19.95
27756	T	Repair of tibia fracture	216	20.09	$1,033.03	$524.09	$206.61
27758	T	Repair of tibia fracture	216	20.09	$1,033.03	$524.09	$206.61
27759	T	Repair of tibia fracture	216	20.09	$1,033.03	$524.09	$206.61
27760	T	Treatment of ankle fracture	209	1.94	$99.75	$37.74	$19.95
27762	T	Treatment of ankle fracture	209	1.94	$99.75	$37.74	$19.95
27766	T	Repair of ankle fracture	216	20.09	$1,033.03	$524.09	$206.61
27780	T	Treatment of fibula fracture	209	1.94	$99.75	$37.74	$19.95
27781	T	Treatment of fibula fracture	209	1.94	$99.75	$37.74	$19.95
27784	T	Repair of fibula fracture	216	20.09	$1,033.03	$524.09	$206.61
27786	T	Treatment of ankle fracture	209	1.94	$99.75	$37.74	$19.95
27788	T	Treatment of ankle fracture	209	1.94	$99.75	$37.74	$19.95
27792	T	Repair of ankle fracture	216	20.09	$1,033.03	$524.09	$206.61
27808	T	Treatment of ankle fracture	209	1.94	$99.75	$37.74	$19.95
27810	T	Treatment of ankle fracture	209	1.94	$99.75	$37.74	$19.95

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

[2] This code was valid in 1996 and therefore was available for use in calculating weights. However, it has since been terminated and will not be paid upon implementation.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
27814	T	Repair of ankle fracture	216	20.09	$1,033.03	$524.09	$206.61
27816	T	Treatment of ankle fracture	209	1.94	$99.75	$37.74	$19.95
27818	T	Treatment of ankle fracture	209	1.94	$99.75	$37.74	$19.95
27822	T	Repair of ankle fracture	216	20.09	$1,033.03	$524.09	$206.61
27823	T	Repair of ankle fracture	216	20.09	$1,033.03	$524.09	$206.61
27824	T	Treat lower leg fracture	209	1.94	$99.75	$37.74	$19.95
27825	T	Treat lower leg fracture	209	1.94	$99.75	$37.74	$19.95
27826	T	Treat lower leg fracture	216	20.09	$1,033.03	$524.09	$206.61
27827	T	Treat lower leg fracture	216	20.09	$1,033.03	$524.09	$206.61
27828	T	Treat lower leg fracture	216	20.09	$1,033.03	$524.09	$206.61
27829	T	Treat lower leg joint	216	20.09	$1,033.03	$524.09	$206.61
27830	T	Treat lower leg dislocation	209	1.94	$99.75	$37.74	$19.95
27831	T	Treat lower leg dislocation	210	10.06	$517.29	$279.34	$103.46
27832	T	Repair lower leg dislocation	216	20.09	$1,033.03	$524.09	$206.61
27840	T	Treat ankle dislocation	209	1.94	$99.75	$37.74	$19.95
27842	T	Treat ankle dislocation	210	10.06	$517.29	$279.34	$103.46
27846	T	Repair ankle dislocation	216	20.09	$1,033.03	$524.09	$206.61
27848	T	Repair ankle dislocation	216	20.09	$1,033.03	$524.09	$206.61
27860	T	Fixation of ankle joint	210	10.06	$517.29	$279.34	$103.46
27870	T	Fusion of ankle joint	253	25.74	$1,323.55	$684.55	$264.71
27871	T	Fusion of tibiofibular joint	253	25.74	$1,323.55	$684.55	$264.71
27880	C	Amputation of lower leg					
27881	C	Amputation of lower leg					
27882	C	Amputation of lower leg					
27884	T	Amputation follow-up surgery	251	13.88	$713.71	$365.89	$142.74
27886	C	Amputation follow-up surgery					
27888	C	Amputation of foot at ankle					
27889	T	Amputation of foot at ankle	252	19.24	$989.32	$512.34	$197.86
27892	T	Decompression of leg	251	13.88	$713.71	$365.89	$142.74
27893	T	Decompression of leg	251	13.88	$713.71	$365.89	$142.74
27894	T	Decompression of leg	251	13.88	$713.71	$365.89	$142.74
27899	T	Leg/ankle surgery procedure	209	1.94	$99.75	$37.74	$19.95
28001	T	Drainage of bursa of foot	132	5.63	$289.49	$132.89	$57.90
28002	T	Treatment of foot infection	251	13.88	$713.71	$365.89	$142.74
28003	T	Treatment of foot infection	251	13.88	$713.71	$365.89	$142.74
28005	T	Treat foot bone lesion	271	14.12	$726.05	$365.44	$145.21
28008	T	Incision of foot fascia	271	14.12	$726.05	$365.44	$145.21
28010	T	Incision of toe tendon	271	14.12	$726.05	$365.44	$145.21
28011	T	Incision of toe tendons	271	14.12	$726.05	$365.44	$145.21
28020	T	Exploration of a foot joint	271	14.12	$726.05	$365.44	$145.21
28022	T	Exploration of a foot joint	271	14.12	$726.05	$365.44	$145.21
28024	T	Exploration of a toe joint	271	14.12	$726.05	$365.44	$145.21
28030	T	Removal of foot nerve	631	12.70	$653.03	$329.06	$130.61
28035	T	Decompression of tibia nerve	631	12.70	$653.03	$329.06	$130.61
28043	T	Excision of foot lesion	162	5.59	$287.44	$125.66	$57.49
28045	T	Excision of foot lesion	271	14.12	$726.05	$365.44	$145.21
28046	T	Resection of tumor, foot	271	14.12	$726.05	$365.44	$145.21
28050	T	Biopsy of foot joint lining	271	14.12	$726.05	$365.44	$145.21
28052	T	Biopsy of foot joint lining	271	14.12	$726.05	$365.44	$145.21
28054	T	Biopsy of toe joint lining	271	14.12	$726.05	$365.44	$145.21
28060	T	Partial removal foot fascia	272	16.11	$828.38	$411.09	$165.68
28062	T	Removal of foot fascia	272	16.11	$828.38	$411.09	$165.68
28070	T	Removal of foot joint lining	272	16.11	$828.38	$411.09	$165.68
28072	T	Removal of foot joint lining	272	16.11	$828.38	$411.09	$165.68
28080	T	Removal of foot lesion	271	14.12	$726.05	$365.44	$145.21
28086	T	Excise foot tendon sheath	271	14.12	$726.05	$365.44	$145.21
28088	T	Excise foot tendon sheath	271	14.12	$726.05	$365.44	$145.21
28090	T	Removal of foot lesion	271	14.12	$726.05	$365.44	$145.21
28092	T	Removal of toe lesions	271	14.12	$726.05	$365.44	$145.21
28100	T	Removal of ankle/heel lesion	271	14.12	$726.05	$365.44	$145.21
28102	T	Remove/graft foot lesion	272	16.11	$828.38	$411.09	$165.68
28103	T	Remove/graft foot lesion	272	16.11	$828.38	$411.09	$165.68
28104	T	Removal of foot lesion	271	14.12	$726.05	$365.44	$145.21
28106	T	Remove/graft foot lesion	272	16.11	$828.38	$411.09	$165.68
28107	T	Remove/graft foot lesion	272	16.11	$828.38	$411.09	$165.68
28108	T	Removal of toe lesions	271	14.12	$726.05	$365.44	$145.21
28110	T	Part removal of metatarsal	276	19.00	$976.98	$495.39	$195.40
28111	T	Part removal of metatarsal	271	14.12	$726.05	$365.44	$145.21
28112	T	Part removal of metatarsal	271	14.12	$726.05	$365.44	$145.21
28113	T	Part removal of metatarsal	271	14.12	$726.05	$365.44	$145.21
28114	T	Removal of metatarsal heads	271	14.12	$726.05	$365.44	$145.21
28116	T	Revision of foot	271	14.12	$726.05	$365.44	$145.21
28118	T	Removal of heel bone	271	14.12	$726.05	$365.44	$145.21
28119	T	Removal of heel spur	271	14.12	$726.05	$365.44	$145.21
28120	T	Part removal of ankle/heel	271	14.12	$726.05	$365.44	$145.21

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
28122	T	Partial removal of foot bone	271	14.12	$726.05	$365.44	$145.21
28124	T	Partial removal of toe	271	14.12	$726.05	$365.44	$145.21
28126	T	Partial removal of toe	271	14.12	$726.05	$365.44	$145.21
28130	T	Removal of ankle bone	271	14.12	$726.05	$365.44	$145.21
28140	T	Removal of metatarsal	271	14.12	$726.05	$365.44	$145.21
28150	T	Removal of toe	271	14.12	$726.05	$365.44	$145.21
28153	T	Partial removal of toe	271	14.12	$726.05	$365.44	$145.21
28160	T	Partial removal of toe	271	14.12	$726.05	$365.44	$145.21
28171	T	Extensive foot surgery	271	14.12	$726.05	$365.44	$145.21
28173	T	Extensive foot surgery	271	14.12	$726.05	$365.44	$145.21
28175	T	Extensive foot surgery	271	14.12	$726.05	$365.44	$145.21
28190	T	Removal of foot foreign body	161	3.43	$176.37	$75.71	$35.27
28192	T	Removal of foot foreign body	163	10.48	$538.88	$260.80	$107.78
28193	T	Removal of foot foreign body	163	10.48	$538.88	$260.80	$107.78
28200	T	Repair of foot tendon	271	14.12	$726.05	$365.44	$145.21
28202	T	Repair/graft of foot tendon	272	16.11	$828.38	$411.09	$165.68
28208	T	Repair of foot tendon	271	14.12	$726.05	$365.44	$145.21
28210	T	Repair/graft of foot tendon	271	14.12	$726.05	$365.44	$145.21
28220	T	Release of foot tendon	271	14.12	$726.05	$365.44	$145.21
28222	T	Release of foot tendons	271	14.12	$726.05	$365.44	$145.21
28225	T	Release of foot tendon	271	14.12	$726.05	$365.44	$145.21
28226	T	Release of foot tendons	271	14.12	$726.05	$365.44	$145.21
28230	T	Incision of foot tendon(s)	271	14.12	$726.05	$365.44	$145.21
28232	T	Incision of toe tendon	271	14.12	$726.05	$365.44	$145.21
28234	T	Incision of foot tendon	271	14.12	$726.05	$365.44	$145.21
28238	T	Revision of foot tendon	272	16.11	$828.38	$411.09	$165.68
28240	T	Release of big toe	271	14.12	$726.05	$365.44	$145.21
28250	T	Revision of foot fascia	272	16.11	$828.38	$411.09	$165.68
28260	T	Release of midfoot joint	272	16.11	$828.38	$411.09	$165.68
28261	T	Revision of foot tendon	272	16.11	$828.38	$411.09	$165.68
28262	T	Revision of foot and ankle	272	16.11	$828.38	$411.09	$165.68
28264	T	Release of midfoot joint	272	16.11	$828.38	$411.09	$165.68
28270	T	Release of foot contracture	271	14.12	$726.05	$365.44	$145.21
28272	T	Release of toe joint, each	271	14.12	$726.05	$365.44	$145.21
28280	T	Fusion of toes	271	14.12	$726.05	$365.44	$145.21
28285	T	Repair of hammertoe	271	14.12	$726.05	$365.44	$145.21
28286	T	Repair of hammertoe	271	14.12	$726.05	$365.44	$145.21
28288	T	Partial removal of foot bone	272	16.11	$828.38	$411.09	$165.68
28290	T	Correction of bunion	276	19.00	$976.98	$495.39	$195.40
28292	T	Correction of bunion	276	19.00	$976.98	$495.39	$195.40
28293	T	Correction of bunion	276	19.00	$976.98	$495.39	$195.40
28294	T	Correction of bunion	276	19.00	$976.98	$495.39	$195.40
28296	T	Correction of bunion	276	19.00	$976.98	$495.39	$195.40
28297	T	Correction of bunion	276	19.00	$976.98	$495.39	$195.40
28298	T	Correction of bunion	276	19.00	$976.98	$495.39	$195.40
28299	T	Correction of bunion	276	19.00	$976.98	$495.39	$195.40
28300	T	Incision of heel bone	272	16.11	$828.38	$411.09	$165.68
28302	T	Incision of ankle bone	272	16.11	$828.38	$411.09	$165.68
28304	T	Incision of midfoot bones	272	16.11	$828.38	$411.09	$165.68
28305	T	Incise/graft midfoot bones	272	16.11	$828.38	$411.09	$165.68
28306	T	Incision of metatarsal	272	16.11	$828.38	$411.09	$165.68
28307	T	Incision of metatarsal	272	16.11	$828.38	$411.09	$165.68
28308	T	Incision of metatarsal	272	16.11	$828.38	$411.09	$165.68
28309	T	Incision of metatarsals	272	16.11	$828.38	$411.09	$165.68
28310	T	Revision of big toe	271	14.12	$726.05	$365.44	$145.21
28312	T	Revision of toe	271	14.12	$726.05	$365.44	$145.21
28313	T	Repair deformity of toe	271	14.12	$726.05	$365.44	$145.21
28315	T	Removal of sesamoid bone	271	14.12	$726.05	$365.44	$145.21
28320	T	Repair of foot bones	272	16.11	$828.38	$411.09	$165.68
28322	T	Repair of metatarsals	272	16.11	$828.38	$411.09	$165.68
28340	T	Resect enlarged toe tissue	271	14.12	$726.05	$365.44	$145.21
28341	T	Resect enlarged toe	271	14.12	$726.05	$365.44	$145.21
28344	T	Repair extra toe(s)	272	16.11	$828.38	$411.09	$165.68
28345	T	Repair webbed toe(s)	272	16.11	$828.38	$411.09	$165.68
28360	T	Reconstruct cleft foot	272	16.11	$828.38	$411.09	$165.68
28400	T	Treatment of heel fracture	209	1.94	$99.75	$37.74	$19.95
28405	T	Treatment of heel fracture	209	1.94	$99.75	$37.74	$19.95
28406	T	Treatment of heel fracture	216	20.09	$1,033.03	$524.09	$206.61
28415	T	Repair of heel fracture	216	20.09	$1,033.03	$524.09	$206.61
28420	T	Repair/graft heel fracture	216	20.09	$1,033.03	$524.09	$206.61
28430	T	Treatment of ankle fracture	209	1.94	$99.75	$37.74	$19.95
28435	T	Treatment of ankle fracture	209	1.94	$99.75	$37.74	$19.95
28436	T	Treatment of ankle fracture	216	20.09	$1,033.03	$524.09	$206.61
28445	T	Repair of ankle fracture	216	20.09	$1,033.03	$524.09	$206.61
28450	T	Treat midfoot fracture, each	209	1.94	$99.75	$37.74	$19.95

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
28455	T	Treat midfoot fracture, each	209	1.94	$99.75	$37.74	$19.95
28456	T	Repair midfoot fracture	216	20.09	$1,033.03	$524.09	$206.61
28466	T	Repair midfoot fracture,each	216	20.09	$1,033.03	$524.09	$206.61
28470	T	Treat metatarsal fracture	209	1.94	$99.75	$37.74	$19.95
28475	T	Treat metatarsal fracture	209	1.94	$99.75	$37.74	$19.95
28476	T	Repair metatarsal fracture	216	20.09	$1,033.03	$524.09	$206.61
28485	T	Repair metatarsal fracture	216	20.09	$1,033.03	$524.09	$206.61
28490	T	Treat big toe fracture	207	1.70	$87.41	$32.32	$17.48
28495	T	Treat big toe fracture	207	1.70	$87.41	$32.32	$17.48
28496	T	Repair big toe fracture	216	20.09	$1,033.03	$524.09	$206.61
28505	T	Repair big toe fracture	216	20.09	$1,033.03	$524.09	$206.61
28510	T	Treatment of toe fracture	207	1.70	$87.41	$32.32	$17.48
28515	T	Treatment of toe fracture	207	1.70	$87.41	$32.32	$17.48
28525	T	Repair of toe fracture	216	20.09	$1,033.03	$524.09	$206.61
28530	T	Treat sesamoid bone fracture	209	1.94	$99.75	$37.74	$19.95
28531	T	Treat sesamoid bone fracture	216	20.09	$1,033.03	$524.09	$206.61
28540	T	Treat foot dislocation	209	1.94	$99.75	$37.74	$19.95
28545	T	Treat foot dislocation	210	10.06	$517.29	$279.34	$103.46
28546	T	Treat foot dislocation	216	20.09	$1,033.03	$524.09	$206.61
28555	T	Repair foot dislocation	216	20.09	$1,033.03	$524.09	$206.61
28570	T	Treat foot dislocation	209	1.94	$99.75	$37.74	$19.95
28575	T	Treat foot dislocation	210	10.06	$517.29	$279.34	$103.46
28576	T	Treat foot dislocation	216	20.09	$1,033.03	$524.09	$206.61
28585	T	Repair foot dislocation	216	20.09	$1,033.03	$524.09	$206.61
28600	T	Treat foot dislocation	209	1.94	$99.75	$37.74	$19.95
28605	T	Treat foot dislocation	210	10.06	$517.29	$279.34	$103.46
28606	T	Treat foot dislocation	216	20.09	$1,033.03	$524.09	$206.61
28615	T	Repair foot dislocation	216	20.09	$1,033.03	$524.09	$206.61
28630	T	Treat toe dislocation	207	1.70	$87.41	$32.32	$17.48
28635	T	Treat toe dislocation	210	10.06	$517.29	$279.34	$103.46
28636	T	Treat toe dislocation	216	20.09	$1,033.03	$524.09	$206.61
28645	T	Repair toe dislocation	216	20.09	$1,033.03	$524.09	$206.61
28660	T	Treat toe dislocation	207	1.70	$87.41	$32.32	$17.48
28665	T	Treat toe dislocation	210	10.06	$517.29	$279.34	$103.46
28666	T	Treat toe dislocation	216	20.09	$1,033.03	$524.09	$206.61
28675	T	Repair of toe dislocation	216	20.09	$1,033.03	$524.09	$206.61
28705	T	Fusion of foot bones	272	16.11	$828.38	$411.09	$165.68
28715	T	Fusion of foot bones	272	16.11	$828.38	$411.09	$165.68
28725	T	Fusion of foot bones	272	16.11	$828.38	$411.09	$165.68
28730	T	Fusion of foot bones	272	16.11	$828.38	$411.09	$165.68
28735	T	Fusion of foot bones	272	16.11	$828.38	$411.09	$165.68
28737	T	Revision of foot bones	271	14.12	$726.05	$365.44	$145.21
28740	T	Fusion of foot bones	272	16.11	$828.38	$411.09	$165.68
28750	T	Fusion of big toe joint	271	14.12	$726.05	$365.44	$145.21
28755	T	Fusion of big toe joint	271	14.12	$726.05	$365.44	$145.21
28760	T	Fusion of big toe joint	272	16.11	$828.38	$411.09	$165.68
28800	C	Amputation of midfoot					
28805	C	Amputation thru metatarsal					
28810	T	Amputation toe & metatarsal	271	14.12	$726.05	$365.44	$145.21
28820	T	Amputation of toe	271	14.12	$726.05	$365.44	$145.21
28825	T	Partial amputation of toe	271	14.12	$726.05	$365.44	$145.21
28899	T	Foot/toes surgery procedure	207	1.70	$87.41	$32.32	$17.48
29000	N	Application of body cast					
29010	N	Application of body cast					
29015	N	Application of body cast					
29020	N	Application of body cast					
29025	N	Application of body cast					
29035	N	Application of body cast					
29040	N	Application of body cast					
29044	N	Application of body cast					
29046	N	Application of body cast					
29049	N	Application of figure eight					
29055	N	Application of shoulder cast					
29058	N	Application of shoulder cast					
29065	N	Application of long arm cast					
29075	N	Application of forearm cast					
29085	N	Apply hand/wrist cast					
29105	N	Apply long arm splint					
29125	N	Apply forearm splint					
29126	N	Apply forearm splint					
29130	N	Application of finger splint					
29131	N	Application of finger splint					
29200	N	Strapping of chest					
29220	N	Strapping of low back					
29240	N	Strapping of shoulder					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
29260	N	Strapping of elbow or wrist					
29280	N	Strapping of hand or finger					
29305	N	Application of hip cast					
29325	N	Application of hip casts					
29345	N	Application of long leg cast					
29355	N	Application of long leg cast					
29358	N	Apply long leg cast brace					
29365	N	Application of long leg cast					
29405	N	Apply short leg cast					
29425	N	Apply short leg cast					
29435	N	Apply short leg cast					
29440	N	Addition of walker to cast					
29445	N	Apply rigid leg cast					
29450	N	Application of leg cast					
29505	N	Application long leg splint					
29515	N	Application lower leg splint					
29520	N	Strapping of hip					
29530	N	Strapping of knee					
29540	N	Strapping of ankle					
29550	N	Strapping of toes					
29580	N	Application of paste boot					
29590	N	Application of foot splint					
29700	N	Removal/revision of cast					
29705	N	Removal/revision of cast					
29710	N	Removal/revision of cast					
29715	N	Removal/revision of cast					
29720	N	Repair of body cast					
29730	N	Windowing of cast					
29740	N	Wedging of cast					
29750	N	Wedging of clubfoot cast					
29799	N	Casting/strapping procedure					
29800	T	Jaw arthroscopy/surgery	280	22.15	$1,138.95	$581.72	$227.79
29804	T	Jaw arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29815	T	Shoulder arthroscopy	280	22.15	$1,138.95	$581.72	$227.79
29819	T	Shoulder arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29820	T	Shoulder arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29821	T	Shoulder arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29822	T	Shoulder arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29823	T	Shoulder arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29825	T	Shoulder arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29826	T	Shoulder arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29830	T	Elbow arthroscopy	280	22.15	$1,138.95	$581.72	$227.79
29834	T	Elbow arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29835	T	Elbow arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29836	T	Elbow arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29837	T	Elbow arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29838	T	Elbow arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29840	T	Wrist arthroscopy	280	22.15	$1,138.95	$581.72	$227.79
29843	T	Wrist arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29844	T	Wrist arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29845	T	Wrist arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29846	T	Wrist arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29847	T	Wrist arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29848	T	Wrist endoscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29850	T	Knee arthroscopy/surgery	286	27.69	$1,423.82	$791.90	$284.76
29851	T	Knee arthroscopy/surgery	286	27.69	$1,423.82	$791.90	$284.76
29855	T	Tibial arthroscopy/surgery	286	27.69	$1,423.82	$791.90	$284.76
29856	T	Tibial arthroscopy/surgery	286	27.69	$1,423.82	$791.90	$284.76
29860	T	Hip arthroscopy, dx	281	22.37	$1,150.27	$589.18	$230.05
29861	T	Hip arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29862	T	Hip arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29863	T	Hip arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29870	T	Knee arthroscopy, diagnostic	280	22.15	$1,138.95	$581.72	$227.79
29871	T	Knee arthroscopy/drainage	282	23.65	$1,216.08	$609.97	$243.22
29874	T	Knee arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29875	T	Knee arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29876	T	Knee arthroscopy/surgery	282	23.65	$1,216.08	$609.97	$243.22
29877	T	Knee arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29879	T	Knee arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29880	T	Knee arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29881	T	Knee arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29882	T	Knee arthroscopy/surgery	282	23.65	$1,216.08	$609.97	$243.22
29883	T	Knee arthroscopy/surgery	282	23.65	$1,216.08	$609.97	$243.22
29884	T	Knee arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29885	T	Knee arthroscopy/surgery	282	23.65	$1,216.08	$609.97	$243.22

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
29886	T	Knee arthroscopy/surgery	061	22.37	$1,150.27	$589.18	$230.05
29887	T	Knee arthroscopy/surgery	062	23.65	$1,216.08	$609.97	$243.22
29888	T	Knee arthroscopy/surgery	205	27.69	$1,423.82	$791.90	$284.76
29889	T	Knee arthroscopy/surgery	206	27.69	$1,423.82	$791.90	$284.76
29891	T	Ankle arthroscopy/surgery	282	23.65	$1,216.08	$609.97	$243.22
29892	T	Ankle arthroscopy/surgery	205	27.69	$1,423.82	$791.90	$284.76
29893	T	Scope, plantar fasciotomy	271	14.12	$726.05	$365.44	$145.21
29894	T	Ankle arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29895	T	Ankle arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29897	T	Ankle arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29898	T	Ankle arthroscopy/surgery	281	22.37	$1,150.27	$589.18	$230.05
29909	T	Arthroscopy of joint	280	22.15	$1,138.95	$581.72	$227.79
30000	T	Drainage of nose lesion	311	1.41	$72.50	$20.57	$14.50
30020	T	Drainage of nose lesion	311	1.41	$72.50	$20.57	$14.50
30100	T	Intranasal biopsy	311	1.41	$72.50	$20.57	$14.50
30110	T	Removal of nose polyp(s)	311	1.41	$72.50	$20.57	$14.50
30115	T	Removal of nose polyp(s)	313	15.46	$794.95	$407.70	$158.99
30117	T	Removal of intranasal lesion	311	1.41	$72.50	$20.57	$14.50
30118	T	Removal of intranasal lesion	313	15.46	$794.95	$407.70	$158.99
30120	T	Revision of nose	313	15.46	$794.95	$407.70	$158.99
30124	T	Removal of nose lesion	311	1.41	$72.50	$20.57	$14.50
30125	T	Removal of nose lesion	313	15.46	$794.95	$407.70	$158.99
30130	T	Removal of turbinate bones	313	15.46	$794.95	$407.70	$158.99
30140	T	Removal of turbinate bones	313	15.46	$794.95	$407.70	$158.99
30150	T	Partial removal of nose	313	15.46	$794.95	$407.70	$158.99
30160	T	Removal of nose	313	15.46	$794.95	$407.70	$158.99
30200	T	Injection treatment of nose	347	2.57	$132.15	$62.38	$26.43
30210	T	Nasal sinus therapy	311	1.41	$72.50	$20.57	$14.50
30220	T	Insert nasal septal button	311	1.41	$72.50	$20.57	$14.50
30300	T	Remove nasal foreign body	311	1.41	$72.50	$20.57	$14.50
30310	T	Remove nasal foreign body	313	15.46	$794.95	$407.70	$158.99
30320	T	Remove nasal foreign body	313	15.46	$794.95	$407.70	$158.99
30400	T	Reconstruction of nose	314	25.15	$1,293.21	$687.72	$258.64
30410	T	Reconstruction of nose	314	25.15	$1,293.21	$687.72	$258.64
30420	T	Reconstruction of nose	314	25.15	$1,293.21	$687.72	$258.64
30430	T	Revision of nose	313	15.46	$794.95	$407.70	$158.99
30435	T	Revision of nose	314	25.15	$1,293.21	$687.72	$258.64
30450	T	Revision of nose	313	15.46	$794.95	$407.70	$158.99
30460	T	Revision of nose	314	25.15	$1,293.21	$687.72	$258.64
30462	T	Revision of nose	314	25.15	$1,293.21	$687.72	$258.64
30520	T	Repair of nasal septum	313	15.46	$794.95	$407.70	$158.99
30540	T	Repair nasal defect	313	15.46	$794.95	$407.70	$158.99
30545	T	Repair nasal defect	314	25.15	$1,293.21	$687.72	$258.64
30560	T	Release of nasal adhesions	311	1.41	$72.50	$20.57	$14.50
30580	T	Repair upper jaw fistula	313	15.46	$794.95	$407.70	$158.99
30600	T	Repair mouth/nose fistula	313	15.46	$794.95	$407.70	$158.99
30620	T	Intranasal reconstruction	313	15.46	$794.95	$407.70	$158.99
30630	T	Repair nasal septum defect	313	15.46	$794.95	$407.70	$158.99
30801	T	Cauterization inner nose	312	7.07	$363.54	$170.86	$72.71
30802	T	Cauterization inner nose	312	7.07	$363.54	$170.86	$72.71
30901	T	Control of nosebleed	318	2.07	$106.44	$38.87	$21.29
30903	T	Control of nosebleed	318	2.07	$106.44	$38.87	$21.29
30905	T	Control of nosebleed	318	2.07	$106.44	$38.87	$21.29
30906	T	Repeat control of nosebleed	318	2.07	$106.44	$38.87	$21.29
30915	T	Ligation nasal sinus artery	367	17.02	$875.17	$441.15	$175.03
30920	T	Ligation upper jaw artery	367	17.02	$875.17	$441.15	$175.03
30930	T	Therapy fracture of nose	312	7.07	$363.54	$170.86	$72.71
30999	T	Nasal surgery procedure	318	2.07	$106.44	$38.87	$21.29
31000	T	Irrigation maxillary sinus	311	1.41	$72.50	$20.57	$14.50
31002	T	Irrigation sphenoid sinus	311	1.41	$72.50	$20.57	$14.50
31020	T	Exploration maxillary sinus	313	15.46	$794.95	$407.70	$158.99
31030	T	Exploration maxillary sinus	313	15.46	$794.95	$407.70	$158.99
31032	T	Explore sinus,remove polyps	313	15.46	$794.95	$407.70	$158.99
31040	T	Exploration behind upper jaw	314	25.15	$1,293.21	$687.72	$258.64
31050	T	Exploration sphenoid sinus	313	15.46	$794.95	$407.70	$158.99
31051	T	Sphenoid sinus surgery	313	15.46	$794.95	$407.70	$158.99
31070	T	Exploration of frontal sinus	313	15.46	$794.95	$407.70	$158.99
31075	T	Exploration of frontal sinus	314	25.15	$1,293.21	$687.72	$258.64
31080	T	Removal of frontal sinus	314	25.15	$1,293.21	$687.72	$258.64
31081	T	Removal of frontal sinus	314	25.15	$1,293.21	$687.72	$258.64
31084	T	Removal of frontal sinus	314	25.15	$1,293.21	$687.72	$258.64
31085	T	Removal of frontal sinus	314	25.15	$1,293.21	$687.72	$258.64
31086	T	Removal of frontal sinus	314	25.15	$1,293.21	$687.72	$258.64
31087	T	Removal of frontal sinus	314	25.15	$1,293.21	$687.72	$258.64
31090	T	Exploration of sinuses	314	25.15	$1,293.21	$687.72	$258.64

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
31200	T	Removal of ethmoid sinus	313	15.46	$794.95	$407.70	$158.99
31201	T	Removal of ethmoid sinus	314	25.15	$1,293.21	$687.72	$258.64
31205	T	Removal of ethmoid sinus	314	25.15	$1,293.21	$687.72	$258.64
31225	C	Removal of upper jaw					
31230	C	Removal of upper jaw					
31231	T	Nasal endoscopy, dx	331	0.57	$29.31	$14.01	$5.86
31233	T	Nasal/sinus endoscopy, dx	332	9.67	$497.23	$242.72	$99.45
31235	T	Nasal/sinus endoscopy, dx	332	9.67	$497.23	$242.72	$99.45
31237	T	Nasal/sinus endoscopy, surg	332	9.67	$497.23	$242.72	$99.45
31238	T	Nasal/sinus endoscopy, surg	332	9.67	$497.23	$242.72	$99.45
31239	T	Nasal/sinus endoscopy, surg	333	16.81	$864.37	$461.04	$172.87
31240	T	Nasal/sinus endoscopy, surg	332	9.67	$497.23	$242.72	$99.45
31254	T	Revision of ethmoid sinus	333	16.81	$864.37	$461.04	$172.87
31255	T	Removal of ethmoid sinus	333	16.81	$864.37	$461.04	$172.87
31256	T	Exploration maxillary sinus	333	16.81	$864.37	$461.04	$172.87
31267	T	Endoscopy, maxillary sinus	333	16.81	$864.37	$461.04	$172.87
31276	T	Sinus surgical endoscopy	333	16.81	$864.37	$461.04	$172.87
31287	T	Nasal/sinus endoscopy, surg	333	16.81	$864.37	$461.04	$172.87
31288	T	Nasal/sinus endoscopy, surg	333	16.81	$864.37	$461.04	$172.87
31290	C	Nasal/sinus endoscopy, surg					
31291	C	Nasal/sinus endoscopy, surg					
31292	C	Nasal/sinus endoscopy, surg					
31293	C	Nasal/sinus endoscopy, surg					
31294	C	Nasal/sinus endoscopy, surg					
31299	T	Sinus surgery procedure	331	0.57	$29.31	$14.01	$5.86
31300	T	Removal of larynx lesion	314	25.15	$1,293.21	$687.72	$258.64
31320	T	Diagnostic incision larynx	313	15.46	$794.95	$407.70	$158.99
31360	C	Removal of larynx					
31365	C	Removal of larynx					
31367	C	Partial removal of larynx					
31368	C	Partial removal of larynx					
31370	C	Partial removal of larynx					
31375	C	Partial removal of larynx					
31380	C	Partial removal of larynx					
31382	C	Partial removal of larynx					
31390	C	Removal of larynx & pharynx					
31395	C	Reconstruct larynx & pharynx					
31400	T	Revision of larynx	314	25.15	$1,293.21	$687.72	$258.64
31420	T	Removal of epiglottis	314	25.15	$1,293.21	$687.72	$258.64
31500	B	Insert emergency airway	947	4.11	$211.34	$106.22	$42.27
31502	T	Change of windpipe airway	470	2.19	$112.61	$54.92	$22.52
31505	T	Diagnostic laryngoscopy	331	0.57	$29.31	$14.01	$5.86
31510	T	Laryngoscopy with biopsy	332	9.67	$497.23	$242.72	$99.45
31511	T	Remove foreign body, larynx	332	9.67	$497.23	$242.72	$99.45
31512	T	Removal of larynx lesion	332	9.67	$497.23	$242.72	$99.45
31513	T	Injection into vocal cord	332	9.67	$497.23	$242.72	$99.45
31515	T	Laryngoscopy for aspiration	332	9.67	$497.23	$242.72	$99.45
31520	T	Diagnostic laryngoscopy	332	9.67	$497.23	$242.72	$99.45
31525	T	Diagnostic laryngoscopy	332	9.67	$497.23	$242.72	$99.45
31526	T	Diagnostic laryngoscopy	332	9.67	$497.23	$242.72	$99.45
31527	T	Laryngoscopy for treatment	333	16.81	$864.37	$461.04	$172.87
31528	T	Laryngoscopy and dilatation	332	9.67	$497.23	$242.72	$99.45
31529	T	Laryngoscopy and dilatation	332	9.67	$497.23	$242.72	$99.45
31530	T	Operative laryngoscopy	333	16.81	$864.37	$461.04	$172.87
31531	T	Operative laryngoscopy	333	16.81	$864.37	$461.04	$172.87
31535	T	Operative laryngoscopy	333	16.81	$864.37	$461.04	$172.87
31536	T	Operative laryngoscopy	333	16.81	$864.37	$461.04	$172.87
31540	T	Operative laryngoscopy	333	16.81	$864.37	$461.04	$172.87
31541	T	Operative laryngoscopy	333	16.81	$864.37	$461.04	$172.87
31560	T	Operative laryngoscopy	333	16.81	$864.37	$461.04	$172.87
31561	T	Operative laryngoscopy	333	16.81	$864.37	$461.04	$172.87
31570	T	Laryngoscopy with injection	333	16.81	$864.37	$461.04	$172.87
31571	T	Laryngoscopy with injection	333	16.81	$864.37	$461.04	$172.87
31575	T	Diagnostic laryngoscopy	331	0.57	$29.31	$14.01	$5.86
31576	T	Laryngoscopy with biopsy	332	9.67	$497.23	$242.72	$99.45
31577	T	Remove foreign body, larynx	332	9.67	$497.23	$242.72	$99.45
31578	T	Removal of larynx lesion	332	9.67	$497.23	$242.72	$99.45
31579	T	Diagnostic laryngoscopy	331	0.57	$29.31	$14.01	$5.86
31580	C	Revision of larynx					
31582	C	Revision of larynx					
31584	C	Repair of larynx fracture					
31585	T	Repair of larynx fracture	207	1.70	$87.41	$32.32	$17.48
31586	T	Repair of larynx fracture	205	1.94	$99.75	$37.74	$19.95
31587	C	Revision of larynx					
31588	T	Revision of larynx	314	25.15	$1,293.21	$687.72	$258.64

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
31590	T	Reinnervate larynx	314	25.15	$1,293.21	$687.72	$258.64
31595	T	Larynx nerve surgery	313	15.46	$794.95	$407.70	$158.99
31599	T	Larynx surgery procedure	207	1.70	$87.41	$32.32	$17.48
31600	C	Incision of windpipe					
31601	C	Incision of windpipe					
31603	T	Incision of windpipe	311	1.41	$72.50	$20.57	$14.50
31605	T	Incision of windpipe	311	1.41	$72.50	$20.57	$14.50
31610	C	Incision of windpipe					
31611	T	Surgery/speech prosthesis	313	15.46	$794.95	$407.70	$158.99
31612	T	Puncture/clear windpipe	312	7.07	$363.54	$170.86	$72.71
31613	T	Repair windpipe opening	313	15.46	$794.95	$407.70	$158.99
31614	T	Repair windpipe opening	313	15.46	$794.95	$407.70	$158.99
31615	T	Visualization of windpipe	336	7.24	$372.28	$195.49	$74.46
31622	T	Dx bronchoscope/wash	336	7.24	$372.28	$195.49	$74.46
31625	T	Bronchoscopy with biopsy	336	7.24	$372.28	$195.49	$74.46
31628	T	Bronchoscopy with biopsy	336	7.24	$372.28	$195.49	$74.46
31629	T	Bronchoscopy with biopsy	336	7.24	$372.28	$195.49	$74.46
31630	T	Bronchoscopy with repair	336	7.24	$372.28	$195.49	$74.46
31631	T	Bronchoscopy with dilation	336	7.24	$372.28	$195.49	$74.46
31635	T	Remove foreign body, airway	336	7.24	$372.28	$195.49	$74.46
31640	T	Bronchoscopy & remove lesion	336	7.24	$372.28	$195.49	$74.46
31641	T	Bronchoscopy, treat blockage	336	7.24	$372.28	$195.49	$74.46
31645	T	Bronchoscopy, clear airways	336	7.24	$372.28	$195.49	$74.46
31646	T	Bronchoscopy,reclear airways	336	7.24	$372.28	$195.49	$74.46
31656	T	Bronchoscopy,inject for xray	336	7.24	$372.28	$195.49	$74.46
31700	T	Insertion of airway catheter	332	9.67	$497.23	$242.72	$99.45
31708	T	Instill airway contrast dye	347	2.57	$132.15	$52.38	$26.43
31710	T	Insertion of airway catheter	347	2.57	$132.15	$52.38	$26.43
31715	T	Injection for bronchus x-ray	347	2.57	$132.15	$52.38	$26.43
31717	T	Bronchial brush biopsy	332	9.67	$497.23	$242.72	$99.45
31720	T	Clearance of airways	332	9.67	$497.23	$242.72	$99.45
31725	C	Clearance of airways					
31730	T	Intro windpipe wire/tube	332	9.67	$497.23	$242.72	$99.45
31750	T	Repair of windpipe	314	25.15	$1,293.21	$687.72	$258.64
31755	T	Repair of windpipe	314	25.15	$1,293.21	$687.72	$258.64
31760	C	Repair of windpipe					
31766	C	Reconstruction of windpipe					
31770	C	Repair/graft of bronchus					
31775	C	Reconstruct bronchus					
31780	C	Reconstruct windpipe					
31781	C	Reconstruct windpipe					
31785	C	Remove windpipe lesion					
31786	C	Remove windpipe lesion					
31800	C	Repair of windpipe injury					
31805	C	Repair of windpipe injury					
31820	T	Closure of windpipe lesion	313	15.46	$794.95	$407.70	$158.99
31825	T	Repair of windpipe defect	313	15.46	$794.95	$407.70	$158.99
31830	T	Revise windpipe scar	313	15.46	$794.95	$407.70	$158.99
31899	T	Airways surgical procedure	336	7.24	$372.28	$195.49	$74.46
32000	T	Drainage of chest	320	3.09	$158.89	$80.91	$31.78
32002	T	Treatment of collapsed lung	320	3.09	$158.89	$80.91	$31.78
32005	C	Treat lung lining chemically					
32020	T	Insertion of chest tube	320	3.09	$158.89	$80.91	$31.78
32035	C	Exploration of chest					
32036	C	Exploration of chest					
32095	C	Biopsy through chest wall					
32100	C	Exploration/biopsy of chest					
32110	C	Explore/repair chest					
32120	C	Re-exploration of chest					
32124	C	Explore chest,free adhesions					
32140	C	Removal of lung lesion(s)					
32141	C	Remove/treat lung lesions					
32150	C	Removal of lung lesion(s)					
32151	C	Remove lung foreign body					
32160	C	Open chest heart massage					
32200	C	Open drainage, lung lesion					
32201	C	Percut drainage, lung lesion					
32215	C	Treat chest lining					
32220	C	Release of lung					
32225	C	Partial release of lung					
32310	C	Removal of chest lining					
32320	C	Free/remove chest lining					
32400	T	Needle biopsy chest lining	122	4.59	$236.02	$113.00	$47.20
32402	C	Open biopsy chest lining					
32405	T	Biopsy, lung or mediastinum	122	4.59	$236.02	$113.00	$47.20

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
32420	T	Puncture/clear lung	320	3.09	$158.89		
32440	C	Removal of lung					
32442	C	Sleeve pneumonectomy					
32445	C	Removal of lung					
32480	C	Partial removal of lung					
32482	C	Bilobectomy					
32484	C	Segmentectomy					
32486	C	Sleeve lobectomy					
32488	C	Completion pneumonectomy					
32491	C	Lung volume reduction					
32500	C	Partial removal of lung					
32501	C	Repair bronchus (add-on)					
32520	C	Remove lung & revise chest					
32522	C	Remove lung & revise chest					
32525	C	Remove lung & revise chest					
32540	C	Removal of lung lesion					
32601	C	Thoracoscopy, diagnostic					
32602	C	Thoracoscopy, diagnostic					
32603	C	Thoracoscopy, diagnostic					
32604	C	Thoracoscopy, diagnostic					
32605	C	Thoracoscopy, diagnostic					
32606	C	Thoracoscopy, diagnostic					
32650	C	Thoracoscopy, surgical					
32651	C	Thoracoscopy, surgical					
32652	C	Thoracoscopy, surgical					
32653	C	Thoracoscopy, surgical					
32654	C	Thoracoscopy, surgical					
32655	C	Thoracoscopy, surgical					
32656	C	Thoracoscopy, surgical					
32657	C	Thoracoscopy, surgical					
32658	C	Thoracoscopy, surgical					
32659	C	Thoracoscopy, surgical					
32660	C	Thoracoscopy, surgical					
32661	C	Thoracoscopy, surgical					
32662	C	Thoracoscopy, surgical					
32663	C	Thoracoscopy, surgical					
32664	C	Thoracoscopy, surgical					
32665	C	Thoracoscopy, surgical					
32900	C	Repair lung hernia					
32810	C	Close chest after drainage					
32815	C	Close bronchial fistula					
32820	C	Reconstruct injured chest					
32850	C	Donor pneumonectomy					
32851	C	Lung transplant, single					
32852	C	Lung transplant w/bypass					
32853	C	Lung transplant, double					
32854	C	Lung transplant w/bypass					
32900	C	Removal of rib(s)					
32905	C	Revise & repair chest wall					
32906	C	Revise & repair chest wall					
32940	C	Revision of lung					
32960	T	Therapeutic pneumothorax	320	3.09	$158.89	$80.91	$31.78
32999	T	Chest surgery procedure	320	3.09	$158.89	$80.91	$31.78
33010	T	Drainage of heart sac	320	3.09	$158.89	$80.91	$31.78
33011	T	Repeat drainage of heart sac	320	3.09	$158.89	$80.91	$31.78
33015	C	Incision of heart sac					
33020	C	Incision of heart sac					
33025	C	Incision of heart sac					
33030	C	Partial removal of heart sac					
33031	C	Partial removal of heart sac					
33050	C	Removal of heart sac lesion					
33120	C	Removal of heart lesion					
33130	C	Removal of heart lesion					
33200	C	Insertion of heart pacemaker					
33201	C	Insertion of heart pacemaker					
33206	C	Insertion of heart pacemaker					
33207	C	Insertion of heart pacemaker					
33208	C	Insertion of heart pacemaker					
33210	C	Insertion of heart electrode					
33211	C	Insertion of heart electrode					
33212	C	Insertion of pulse generator					
33213	C	Insertion of pulse generator					
33214	C	Upgrade of pacemaker system					
33216	C	Revision implanted electrode					
33217	C	Insert/revise electrode					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
33218	C	Repair pacemaker electrodes					
33220	C	Repair pacemaker electrode					
33222	T	Pacemaker aicd pocket	360	6.04	$310.58	$138.54	$62.12
33223	T	Pacemaker aicd pocket	360	6.04	$310.58	$138.54	$62.12
33233	C	Removal of pacemaker system					
33234	C	Removal of pacemaker system					
33235	C	Removal pacemaker electrode					
33236	C	Remove electrode/thoracotomy					
33237	C	Remove electrode/thoracotomy					
33238	C	Remove electrode/thoracotomy					
33240	C	Insert/replace pulse gener					
33241	C	Remove pulse generator only					
33242	C	Repair pulse generator/leads					
33243	C	Remove generator/thoracotomy					
33244	C	Remove generator					
33245	C	Implant heart defibrillator					
33246	C	Implant heart defibrillator					
33247	C	Insert/replace leads					
33249	C	Insert/replace leads/gener					
33250	C	Ablate heart dysrhythm focus					
33251	C	Ablate heart dysrhythm focus					
33253	C	Reconstruct atria					
33261	C	Ablate heart dysrhythm focus					
33300	C	Repair of heart wound					
33305	C	Repair of heart wound					
33310	C	Exploratory heart surgery					
33315	C	Exploratory heart surgery					
33320	C	Repair major blood vessel(s)					
33321	C	Repair major vessel					
33322	C	Repair major blood vessel(s)					
33330	C	Insert major vessel graft					
33332	C	Insert major vessel graft					
33335	C	Insert major vessel graft					
33400	C	Repair of aortic valve					
33401	C	Valvuloplasty, open					
33403	C	Valvuloplasty, w/cp bypass					
33404	C	Prepare heart-aorta conduit					
33405	C	Replacement of aortic valve					
33406	C	Replacement, aortic valve					
33411	C	Replacement of aortic valve					
33412	C	Replacement of aortic valve					
33413	C	Replacement, aortic valve					
33414	C	Repair, aortic valve					
33415	C	Revision, subvalvular tissue					
33416	C	Revise ventricle muscle					
33417	C	Repair of aortic valve					
33420	C	Revision of mitral valve					
33422	C	Revision of mitral valve					
33425	C	Repair of mitral valve					
33426	C	Repair of mitral valve					
33427	C	Repair of mitral valve					
33430	C	Replacement of mitral valve					
33460	C	Revision of tricuspid valve					
33463	C	Valvuloplasty, tricuspid					
33464	C	Valvuloplasty, tricuspid					
33465	C	Replace tricuspid valve					
33468	C	Revision of tricuspid valve					
33470	C	Revision of pulmonary valve					
33471	C	Valvotomy, pulmonary valve					
33472	C	Revision of pulmonary valve					
33474	C	Revision of pulmonary valve					
33475	C	Replacement, pulmonary valve					
33476	C	Revision of heart chamber					
33478	C	Revision of heart chamber					
33496	C	Repair, prosth valve clot					
33500	C	Repair heart vessel fistula					
33501	C	Repair heart vessel fistula					
33502	C	Coronary artery correction					
33503	C	Coronary artery graft					
33504	C	Coronary artery graft					
33505	C	Repair artery w/tunnel					
33506	C	Repair artery, translocation					
33510	C	CABG, vein, single					
33511	C	CABG, vein, two					
33512	C	CABG, vein, three					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
33513	C	CABG, vein, four					
33514	C	CABG, vein, five					
33516	C	CABG, vein, six+					
33517	C	CABG, artery-vein, single					
33518	C	CABG, artery-vein, two					
33519	C	CABG, artery-vein, three					
33521	C	CABG, artery-vein, four					
33522	C	CABG, artery-vein, five					
33523	C	CABG, artery-vein, six+					
33530	C	Coronary artery, bypass/reop					
33533	C	CABG, arterial, single					
33534	C	CABG, arterial, two					
33535	C	CABG, arterial, three					
33536	C	CABG, arterial, four+					
33542	C	Removal of heart lesion					
33545	C	Repair of heart damage					
33572	C	Open coronary endarterectomy					
33600	C	Closure of valve					
33602	C	Closure of valve					
33606	C	Anastomosis/artery-aorta					
33608	C	Repair anomaly w/conduit					
33610	C	Repair by enlargement					
33611	C	Repair double ventricle					
33612	C	Repair double ventricle					
33615	C	Repair (simple fontan)					
33617	C	Repair by modified fontan					
33619	C	Repair single ventricle					
33641	C	Repair heart septum defect					
33645	C	Revision of heart veins					
33647	C	Repair heart septum defects					
33660	C	Repair of heart defects					
33665	C	Repair of heart defects					
33670	C	Repair of heart chambers					
33681	C	Repair heart septum defect					
33684	C	Repair heart septum defect					
33688	C	Repair heart septum defect					
33690	C	Reinforce pulmonary artery					
33692	C	Repair of heart defects					
33694	C	Repair of heart defects					
33697	C	Repair of heart defects					
33702	C	Repair of heart defects					
33710	C	Repair of heart defects					
33720	C	Repair of heart defect					
33722	C	Repair of heart defect					
33730	C	Repair heart-vein defect(s)					
33732	C	Repair heart-vein defect					
33735	C	Revision of heart chamber					
33736	C	Revision of heart chamber					
33737	C	Revision of heart chamber					
33750	C	Major vessel shunt					
33755	C	Major vessel shunt					
33762	C	Major vessel shunt					
33764	C	Major vessel shunt & graft					
33766	C	Major vessel shunt					
33767	C	Major vessel shunt					
33770	C	Repair great vessels defect					
33771	C	Repair great vessels defect					
33774	C	Repair great vessels defect					
33775	C	Repair great vessels defect					
33776	C	Repair great vessels defect					
33777	C	Repair great vessels defect					
33778	C	Repair great vessels defect					
33779	C	Repair great vessels defect					
33780	C	Repair great vessels defect					
33781	C	Repair great vessels defect					
33786	C	Repair arterial trunk					
33788	C	Revision of pulmonary artery					
33800	C	Aortic suspension					
33802	C	Repair vessel defect					
33803	C	Repair vessel defect					
33813	C	Repair septal defect					
33814	C	Repair septal defect					
33820	C	Revise major vessel					
33822	C	Revise major vessel					
33824	C	Revise major vessel					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
33840	C	Remove aorta constriction					
33845	C	Remove aorta constriction					
33851	C	Remove aorta constriction					
33852	C	Repair septal defect					
33853	C	Repair septal defect					
33860	C	Ascending aorta graft					
33861	C	Ascending aorta graft					
33863	C	Ascending aorta graft					
33870	C	Transverse aortic arch graft					
33875	C	Thoracic aorta graft					
33877	C	Thoracoabdominal graft					
33910	C	Remove lung artery emboli					
33915	C	Remove lung artery emboli					
33916	C	Surgery of great vessel					
33917	C	Repair pulmonary artery					
33918	C	Repair pulmonary atresia					
33919	C	Repair pulmonary atresia					
33920	C	Repair pulmonary atresia					
33922	C	Transect pulmonary artery					
33924	C	Remove pulmonary shunt					
33930	C	Removal of donor heart/lung					
33935	C	Transplantation, heart/lung					
33940	C	Removal of donor heart					
33945	C	Transplantation of heart					
33960	C	External circulation assist					
33961	C	External circulation assist					
33970	C	Aortic circulation assist					
33971	C	Aortic circulation assist					
33973	C	Insert balloon device					
33974	C	Remove intra-aortic balloon					
33975	C	Implant ventricular device					
33976	C	Implant ventricular device					
33977	C	Remove ventricular device					
33978	C	Remove ventricular device					
33999	T	Cardiac surgery procedure	320	3.09	$158.89	$80.91	$31.78
34001	C	Removal of artery clot					
34051	C	Removal of artery clot					
34101	C	Removal of artery clot					
34111	C	Removal of arm artery clot					
34151	C	Removal of artery clot					
34201	C	Removal of artery clot					
34203	C	Removal of leg artery clot					
34401	C	Removal of vein clot					
34421	C	Removal of vein clot					
34451	C	Removal of vein clot					
34471	C	Removal of vein clot					
34490	C	Removal of vein clot					
34501	C	Repair valve, femoral vein					
34502	C	Reconstruct, vena cava					
34510	C	Transposition of vein valve					
34520	C	Cross-over vein graft					
34530	C	Leg vein fusion					
35001	C	Repair defect of artery					
35002	C	Repair artery rupture, neck					
35005	C	Repair defect of artery					
35011	C	Repair defect of artery					
35013	C	Repair artery rupture, arm					
35021	C	Repair defect of artery					
35022	C	Repair artery rupture, chest					
35045	C	Repair defect of arm artery					
35081	C	Repair defect of artery					
35082	C	Repair artery rupture, aorta					
35091	C	Repair defect of artery					
35092	C	Repair artery rupture, aorta					
35102	C	Repair defect of artery					
35103	C	Repair artery rupture, groin					
35111	C	Repair defect of artery					
35112	C	Repair artery rupture,spleen					
35121	C	Repair defect of artery					
35122	C	Repair artery rupture, belly					
35131	C	Repair defect of artery					
35132	C	Repair artery rupture, groin					
35141	C	Repair defect of artery					
35142	C	Repair artery rupture, thigh					
35151	C	Repair defect of artery					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
35152	C	Repair artery rupture, knee					
35161	C	Repair defect of artery					
35162	C	Repair artery rupture					
35180	C	Repair blood vessel lesion					
35182	C	Repair blood vessel lesion					
35184	C	Repair blood vessel lesion					
35188	T	Repair blood vessel lesion	368	22.59	$1,161.58	$647.49	$232.32
35189	C	Repair blood vessel lesion					
35190	C	Repair blood vessel lesion					
35201	C	Repair blood vessel lesion					
35206	C	Repair blood vessel lesion					
35207	T	Repair blood vessel lesion	368	22.59	$1,161.58	$647.49	$232.32
35211	C	Repair blood vessel lesion					
35216	C	Repair blood vessel lesion					
35221	C	Repair blood vessel lesion					
35226	C	Repair blood vessel lesion					
35231	C	Repair blood vessel lesion					
35236	C	Repair blood vessel lesion					
35241	C	Repair blood vessel lesion					
35246	C	Repair blood vessel lesion					
35251	C	Repair blood vessel lesion					
35256	C	Repair blood vessel lesion					
35261	C	Repair blood vessel lesion					
35266	C	Repair blood vessel lesion					
35271	C	Repair blood vessel lesion					
35276	C	Repair blood vessel lesion					
35281	C	Repair blood vessel lesion					
35286	C	Repair blood vessel lesion					
35301	C	Rechanneling of artery					
35311	C	Rechanneling of artery					
35321	C	Rechanneling of artery					
35331	C	Rechanneling of artery					
35341	C	Rechanneling of artery					
35351	C	Rechanneling of artery					
35355	C	Rechanneling of artery					
35361	C	Rechanneling of artery					
35363	C	Rechanneling of artery					
35371	C	Rechanneling of artery					
35372	C	Rechanneling of artery					
35381	C	Rechanneling of artery					
35390	C	Reoperation, carotid add-on					
35400	C	Angioscopy					
35450	C	Repair arterial blockage					
35452	C	Repair arterial blockage					
35454	C	Repair arterial blockage					
35456	C	Repair arterial blockage					
35458	C	Repair arterial blockage					
35459	C	Repair arterial blockage					
35460	C	Repair venous blockage					
35470	C	Repair arterial blockage					
35471	C	Repair arterial blockage					
35472	C	Repair arterial blockage					
35473	C	Repair arterial blockage					
35474	C	Repair arterial blockage					
35475	C	Repair arterial blockage					
35476	C	Repair venous blockage					
35480	C	Atherectomy, open					
35481	C	Atherectomy, open					
35482	C	Atherectomy, open					
35483	C	Atherectomy, open					
35484	C	Atherectomy, open					
35485	C	Atherectomy, open					
35490	C	Atherectomy, percutaneous					
35491	C	Atherectomy, percutaneous					
35492	C	Atherectomy, percutaneous					
35493	C	Atherectomy, percutaneous					
35494	C	Atherectomy, percutaneous					
35495	C	Atherectomy, percutaneous					
35501	C	Artery bypass graft					
35506	C	Artery bypass graft					
35507	C	Artery bypass graft					
35508	C	Artery bypass graft					
35509	C	Artery bypass graft					
35511	C	Artery bypass graft					
35515	C	Artery bypass graft					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
35516	C	Artery bypass graft					
35518	C	Artery bypass graft					
35521	C	Artery bypass graft					
35526	C	Artery bypass graft					
35531	C	Artery bypass graft					
35533	C	Artery bypass graft					
35536	C	Artery bypass graft					
35541	C	Artery bypass graft					
35546	C	Artery bypass graft					
35548	C	Artery bypass graft					
35549	C	Artery bypass graft					
35551	C	Artery bypass graft					
35556	C	Artery bypass graft					
35558	C	Artery bypass graft					
35560	C	Artery bypass graft					
35563	C	Artery bypass graft					
35565	C	Artery bypass graft					
35566	C	Artery bypass graft					
35571	C	Artery bypass graft					
35582	C	Vein bypass graft					
35583	C	Vein bypass graft					
35585	C	Vein bypass graft					
35587	C	Vein bypass graft					
35601	C	Artery bypass graft					
35606	C	Artery bypass graft					
35612	C	Artery bypass graft					
35616	C	Artery bypass graft					
35621	C	Artery bypass graft					
35623	C	Bypass graft, not vein					
35626	C	Artery bypass graft					
35631	C	Artery bypass graft					
35636	C	Artery bypass graft					
35641	C	Artery bypass graft					
35642	C	Artery bypass graft					
35645	C	Artery bypass graft					
35646	C	Artery bypass graft					
35650	C	Artery bypass graft					
35651	C	Artery bypass graft					
35654	C	Artery bypass graft					
35656	C	Artery bypass graft					
35661	C	Artery bypass graft					
35663	C	Artery bypass graft					
35665	C	Artery bypass graft					
35666	C	Artery bypass graft					
35671	C	Artery bypass graft					
35681	C	Composite bypass graft					
35691	C	Arterial transposition					
35693	C	Arterial transposition					
35694	C	Arterial transposition					
35695	C	Arterial transposition					
35700	C	Reoperation, bypass graft					
35701	C	Exploration, carotid artery					
35721	C	Exploration, femoral artery					
35741	C	Exploration popliteal artery					
35761	C	Exploration of artery/vein					
35800	C	Explore neck vessels					
35820	C	Explore chest vessels					
35840	C	Explore abdominal vessels					
35860	C	Explore limb vessels					
35870	C	Repair vessel graft defect					
35875	T	Removal of clot in graft	368	22.59	$1,161.58	$647.49	$232.32
35876	T	Removal of clot in graft	368	22.59	$1,161.58	$647.49	$232.32
35901	C	Excision, graft, neck					
35903	C	Excision, graft, extremity					
35905	C	Excision, graft, thorax					
35907	C	Excision, graft, abdomen					
D6000	N	Place needle in vein					
36005	T	Injection, venography	347	2.57	$132.15	$62.38	$26.43
36010	T	Place catheter in vein	342	2.61	$134.21	$68.70	$26.84
36011	T	Place catheter in vein	342	2.61	$134.21	$68.70	$26.84
36012	T	Place catheter in vein	342	2.61	$134.21	$68.70	$26.84
36013	T	Place catheter in artery	342	2.61	$134.21	$68.70	$26.84
36014	T	Place catheter in artery	342	2.61	$134.21	$68.70	$26.84
36015	T	Place catheter in artery	342	2.61	$134.21	$68.70	$26.84
36100	T	Establish access to artery	342	2.61	$134.21	$68.70	$26.84

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

[2] This code was valid in 1996 and therefore was available for use in calculating weights. However, it has since been terminated and will not be paid upon implementation.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
36120	T	Establish access to artery	342	2.61	$134.21	$68.70	$26.84
36140	T	Establish access to artery	342	2.61	$134.21	$68.70	$26.84
36145	N	Artery to vein shunt					
36160	T	Establish access to aorta	342	2.61	$134.21	$68.70	$26.84
36200	T	Place catheter in aorta	342	2.61	$134.21	$68.70	$26.84
36215	T	Place catheter in artery	343	8.76	$450.44	$240.24	$90.09
36216	T	Place catheter in artery	343	8.76	$450.44	$240.24	$90.09
36217	T	Place catheter in artery	343	8.76	$450.44	$240.24	$90.09
36218	T	Place catheter in artery	343	8.76	$450.44	$240.24	$90.09
36245	T	Place catheter in artery	343	8.76	$450.44	$240.24	$90.09
36246	T	Place catheter in artery	343	8.76	$450.44	$240.24	$90.09
36247	T	Place catheter in artery	343	8.76	$450.44	$240.24	$90.09
36248	T	Place catheter in artery	343	8.76	$450.44	$240.24	$90.09
36260	T	Insertion of infusion pump	868	22.59	$1,161.58	$647.49	$232.32
36261	T	Revision of infusion pump	360	6.04	$310.58	$138.54	$62.12
36262	T	Removal of infusion pump	360	6.04	$310.58	$138.54	$62.12
36299	T	Vessel injection procedure	360	6.04	$310.58	$138.54	$62.12
36400	N	Drawing blood					
36405	N	Drawing blood					
36406	N	Drawing blood					
36410	T	Drawing blood	341	0.09	$4.63	$2.49	$0.93
36415	E	Drawing blood					
36420	T	Establish access to vein	341	0.09	$4.63	$2.49	$0.93
36425	T	Establish access to vein	341	0.09	$4.63	$2.49	$0.93
36430	T	Blood transfusion service	369	6.33	$325.49	$155.49	$65.10
36440	T	Blood transfusion service	369	6.33	$325.49	$155.49	$65.10
36450	T	Exchange transfusion service	369	6.33	$325.49	$155.49	$65.10
36455	T	Exchange transfusion service	369	6.33	$325.49	$155.49	$65.10
36460	T	Transfusion service, fetal	369	6.33	$325.49	$155.49	$65.10
36468	T	Injection(s); spider veins	339	0.98	$50.39	$19.66	$10.08
36469	T	Injection(s); spider veins	339	0.98	$50.39	$19.66	$10.08
36470	T	Injection therapy of vein	339	0.98	$50.39	$19.66	$10.08
36471	T	Injection therapy of veins	339	0.98	$50.39	$19.66	$10.08
36481	T	Insertion of catheter, vein	343	8.76	$450.44	$240.24	$90.09
36488	T	Insertion of catheter, vein	346	4.63	$238.07	$121.59	$47.61
36489	T	Insertion of catheter, vein	346	4.63	$238.07	$121.59	$47.61
36490	T	Insertion of catheter, vein	346	4.63	$238.07	$121.59	$47.61
36491	T	Insertion of catheter, vein	346	4.63	$238.07	$121.59	$47.61
36493	T	Repositioning of cvc	346	4.63	$238.07	$121.59	$47.61
36500	T	Insertion of catheter, vein	342	2.61	$134.21	$68.70	$26.84
36510	C	Insertion of catheter, vein					
36520	T	Plasma and/or cell exchange	369	6.33	$325.49	$155.49	$65.10
36522	T	Photopheresis	369	6.33	$325.49	$155.49	$65.10
36530	T	Insertion of infusion pump	868	22.59	$1,161.58	$647.49	$232.32
36531	T	Revision of infusion pump	360	6.04	$310.58	$138.54	$62.12
36532	T	Removal of infusion pump	360	6.04	$310.58	$138.54	$62.12
36533	T	Insertion of access port	868	22.59	$1,161.58	$647.49	$232.32
36534	T	Revision of access port	360	6.04	$310.58	$138.54	$62.12
36535	T	Removal of access port	360	6.04	$310.58	$138.54	$62.12
36600	N	Withdrawal of arterial blood					
36620	T	Insertion catheter, artery	342	2.61	$134.21	$68.70	$26.84
36625	T	Insertion catheter, artery	342	2.61	$134.21	$68.70	$26.84
36640	T	Insertion catheter, artery	346	4.63	$238.07	$121.59	$47.61
36660	C	Insertion catheter, artery					
36680	X	Insert needle, bone cavity	300	1.93	$99.24	$57.18	$19.85
36800	T	Insertion of cannula	868	22.59	$1,161.58	$647.49	$232.32
36810	T	Insertion of cannula	868	22.59	$1,161.58	$647.49	$232.32
36815	T	Insertion of cannula	868	22.59	$1,161.58	$647.49	$232.32
36821	T	Artery-vein fusion	868	22.59	$1,161.58	$647.49	$232.32
36822	C	Insertion of cannula(s)					
36825	T	Artery-vein graft	368	22.59	$1,161.58	$647.49	$232.32
36830	T	Artery-vein graft	368	22.59	$1,161.58	$647.49	$232.32
36832	T	Av fistula revision	368	22.59	$1,161.58	$647.49	$232.32
36834	C	Repair A-V aneurysm					
36835	T	Artery to vein shunt	368	22.59	$1,161.58	$647.49	$232.32
36860	T	External cannula declotting	368	22.59	$1,161.58	$647.49	$232.32
36861	T	Cannula declotting	368	22.59	$1,161.58	$647.49	$232.32
37140	C	Revision of circulation					
37145	C	Revision of circulation					
37160	C	Revision of circulation					
37180	C	Revision of circulation					
37181	C	Splice spleen/kidney veins					
37195	C	Thrombolytic therapy, stroke					
37200	C	Transcatheter biopsy					
37201	C	Transcatheter therapy infuse					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
37202	C	Transcatheter therapy infuse					
37203	T	Transcatheter retrieval	360	6.04	$310.58	$138.54	$62.12
37204	C	Transcatheter occlusion					
37205	C	Transcatheter stent					
37206	C	Transcatheter stent add-on					
37207	C	Transcatheter stent					
37208	C	Transcatheter stent add-on					
37209	C	Exchange arterial catheter					
37250	C	Intravascular us					
37251	C	Intravascular us					
37565	C	Ligation of neck vein					
37600	C	Ligation of neck artery					
37605	C	Ligation of neck artery					
37606	C	Ligation of neck artery					
37607	T	Ligation of fistula	368	22.59	$1,161.58	$647.49	$232.32
37609	T	Temporal artery procedure	162	5.59	$287.44	$125.66	$57.49
37615	C	Ligation of neck artery					
37616	C	Ligation of chest artery					
37617	C	Ligation of abdomen artery					
37618	T	Ligation of extremity artery	367	17.02	$875.17	$441.15	$175.03
37620	C	Revision of major vein					
37650	T	Revision of major vein	367	17.02	$875.17	$441.15	$175.03
37660	C	Revision of major vein					
37700	T	Revise leg vein	367	17.02	$875.17	$441.15	$175.03
37720	T	Removal of leg vein	367	17.02	$875.17	$441.15	$175.03
37730	T	Removal of leg veins	367	17.02	$875.17	$441.15	$175.03
37735	T	Removal of leg veins/lesion	367	17.02	$875.17	$441.15	$175.03
37760	T	Revision of leg veins	367	17.02	$875.17	$441.15	$175.03
37780	T	Revision of leg vein	367	17.02	$875.17	$441.15	$175.03
37785	T	Revise secondary varicosity	367	17.02	$875.17	$441.15	$175.03
37788	C	Revascularization, penis					
37790	T	Penile venous occlusion	537	28.65	$1,473.18	$872.36	$294.64
37799	T	Vascular surgery procedure	162	5.59	$287.44	$125.66	$57.49
38100	C	Removal of spleen, total					
38101	C	Removal of spleen, partial					
38102	C	Removal of spleen, total					
38115	C	Repair of ruptured spleen					
38200	T	Injection for spleen x-ray	347	2.57	$132.15	$62.38	$26.43
38230	T	Bone marrow collection	369	6.33	$325.49	$155.49	$65.10
38231	T	Stem cell collection	369	6.33	$325.49	$155.49	$65.10
38240	C	Bone marrow/stem transpiant					
38241	C	Bone marrow/stem transplant					
38300	T	Drainage lymph node lesion	132	5.63	$289.49	$132.89	$57.90
38305	T	Drainage lymph node lesion	132	5.63	$289.49	$132.89	$57.90
38308	T	Incision of lymph channels	396	12.98	$667.43	$334.48	$133.49
38380	C	Thoracic duct procedure					
38381	C	Thoracic duct procedure					
38382	C	Thoracic duct procedure					
38500	T	Biopsy/removal,lymph node(s)	396	12.98	$667.43	$334.48	$133.49
38505	T	Needle biopsy, lymph node(s)	122	4.59	$236.02	$113.00	$47.20
38510	T	Biopsy/removal,lymph node(s)	396	12.98	$667.43	$334.48	$133.49
38520	T	Biopsy/removal,lymph node(s)	396	12.98	$667.43	$334.48	$133.49
38525	T	Biopsy/removal,lymph node(s)	396	12.98	$667.43	$334.48	$133.49
38530	T	Biopsy/removal,lymph node(s)	396	12.98	$667.43	$334.48	$133.49
38542	T	Explore deep node(s), neck	397	19.12	$983.15	$542.17	$196.63
38550	T	Removal neck/armpit lesion	396	12.98	$667.43	$334.48	$133.49
38555	T	Removal neck/armpit lesion	397	19.12	$983.15	$542.17	$196.63
38562	C	Removal, pelvic lymph nodes					
38564	C	Removal, abdomen lymph nodes					
38700	C	Removal of lymph nodes, neck					
38720	C	Removal of lymph nodes, neck					
38724	C	Removal of lymph nodes, neck					
38740	T	Remove armpit lymph nodes	397	19.12	$983.15	$542.17	$196.63
38745	T	Remove armpits lymph nodes	397	19.12	$983.15	$542.17	$196.63
38746	C	Remove thoracic lymph nodes					
38747	C	Remove abdominal lymph nodes					
38760	T	Remove groin lymph nodes	397	19.12	$983.15	$542.17	$196.63
38765	C	Remove groin lymph nodes					
38770	C	Remove pelvis lymph nodes					
38780	C	Remove abdomen lymph nodes					
38790	T	Injection for lymphatic xray	347	2.57	$132.15	$62.38	$26.43
38794	T	Access thoracic lymph duct	342	2.61	$134.21	$68.70	$26.84
38999	T	Blood/lymph system procedure	132	5.63	$289.49	$132.89	$57.90
39000	C	Exploration of chest					
39010	C	Exploration of chest					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
39200	C	Removal chest lesion					
39220	C	Removal chest lesion					
39400	C	Visualization of chest					
39499	C	Chest procedure					
39501	C	Repair diaphragm laceration					
39502	C	Repair paraesophageal hernia					
39503	C	Repair of diaphragm hernia					
39520	C	Repair of diaphragm hernia					
39530	C	Repair of diaphragm hernia					
39531	C	Repair of diaphragm hernia					
39540	C	Repair of diaphragm hernia					
39541	C	Repair of diaphragm hernia					
39545	C	Revision of diaphragm					
39599	C	Diaphragm surgery procedure					
40490	T	Biopsy of lip	311	1.41	$72.50	$20.57	$14.50
40500	T	Partial excision of lip	313	15.46	$794.95	$407.70	$158.99
40510	T	Partial excision of lip	313	15.46	$794.95	$407.70	$158.99
40520	T	Partial excision of lip	313	15.46	$794.95	$407.70	$158.99
40525	T	Reconstruct lip with flap	313	15.46	$794.95	$407.70	$158.99
40527	T	Reconstruct lip with flap	313	15.46	$794.95	$407.70	$158.99
40530	T	Partial removal of lip	313	15.46	$794.95	$407.70	$158.99
40650	T	Repair lip	313	15.46	$794.95	$407.70	$158.99
40652	T	Repair lip	313	15.46	$794.95	$407.70	$158.99
40654	T	Repair lip	313	15.46	$794.95	$407.70	$158.99
40700	T	Repair cleft lip/nasal	314	25.15	$1,293.21	$687.72	$258.64
40701	T	Repair cleft lip/nasal	314	25.15	$1,293.21	$687.72	$258.64
40702	T	Repair cleft lip/nasal	314	25.15	$1,293.21	$687.72	$258.64
40720	T	Repair cleft lip/nasal	314	25.15	$1,293.21	$687.72	$258.64
40761	T	Repair cleft lip/nasal	314	25.15	$1,293.21	$687.72	$258.64
40799	T	Lip surgery procedure	311	1.41	$72.50	$20.57	$14.50
40800	T	Drainage of mouth lesion	311	1.41	$72.50	$20.57	$14.50
40801	T	Drainage of mouth lesion	311	1.41	$72.50	$20.57	$14.50
40804	T	Removal foreign body, mouth	311	1.41	$72.50	$20.57	$14.50
40805	T	Removal foreign body, mouth	311	1.41	$72.50	$20.57	$14.50
40806	T	Incision of lip fold	311	1.41	$72.50	$20.57	$14.50
40808	T	Biopsy of mouth lesion	311	1.41	$72.50	$20.57	$14.50
40810	T	Excision of mouth lesion	311	1.41	$72.50	$20.57	$14.50
40812	T	Excise/repair mouth lesion	313	15.46	$794.95	$407.70	$158.99
40814	T	Excise/repair mouth lesion	313	15.46	$794.95	$407.70	$158.99
40816	T	Excision of mouth lesion	313	15.46	$794.95	$407.70	$158.99
40818	T	Excise oral mucosa for graft	313	15.46	$794.95	$407.70	$158.99
40819	T	Excise lip or cheek fold	311	1.41	$72.50	$20.57	$14.50
40820	T	Treatment of mouth lesion	312	7.07	$363.54	$170.86	$72.71
40830	T	Repair mouth laceration	312	7.07	$363.54	$170.86	$72.71
40831	T	Repair mouth laceration	313	15.46	$794.95	$407.70	$158.99
40840	T	Reconstruction of mouth	313	15.46	$794.95	$407.70	$158.99
40842	T	Reconstruction of mouth	314	25.15	$1,293.21	$687.72	$258.64
40843	T	Reconstruction of mouth	314	25.15	$1,293.21	$687.72	$258.64
40844	T	Reconstruction of mouth	314	25.15	$1,293.21	$687.72	$258.64
40845	T	Reconstruction of mouth	311	1.41	$72.50	$20.57	$14.50
40899	T	Mouth surgery procedure	311	1.41	$72.50	$20.57	$14.50
41000	T	Drainage of mouth lesion	311	1.41	$72.50	$20.57	$14.50
41005	T	Drainage of mouth lesion	313	15.46	$794.95	$407.70	$158.99
41006	T	Drainage of mouth lesion	313	15.46	$794.95	$407.70	$158.99
41007	T	Drainage of mouth lesion	313	15.46	$794.95	$407.70	$158.99
41008	T	Drainage of mouth lesion	313	15.46	$794.95	$407.70	$158.99
41009	T	Drainage of mouth lesion	313	15.46	$794.95	$407.70	$158.99
41010	T	Incision of tongue fold	313	15.46	$794.95	$407.70	$158.99
41015	T	Drainage of mouth lesion	313	15.46	$794.95	$407.70	$158.99
41016	T	Drainage of mouth lesion	313	15.46	$794.95	$407.70	$158.99
41017	T	Drainage of mouth lesion	313	15.46	$794.95	$407.70	$158.99
41018	T	Drainage of mouth lesion	311	1.41	$72.50	$20.57	$14.50
41100	T	Biopsy of tongue	311	1.41	$72.50	$20.57	$14.50
41105	T	Biopsy of tongue	311	1.41	$72.50	$20.57	$14.50
41108	T	Biopsy of floor of mouth	311	1.41	$72.50	$20.57	$14.50
41110	T	Excision of tongue lesion	313	15.46	$794.95	$407.70	$158.99
41112	T	Excision of tongue lesion	313	15.46	$794.95	$407.70	$158.99
41113	T	Excision of tongue lesion	313	15.46	$794.95	$407.70	$158.99
41114	T	Excision of tongue lesion	311	1.41	$72.50	$20.57	$14.50
41115	T	Excision of tongue fold	313	15.46	$794.95	$407.70	$158.99
41116	T	Excision of mouth lesion	313	15.46	$794.95	$407.70	$158.99
41120	T	Partial removal of tongue					
41130	C	Partial removal of tongue					
41135	C	Tongue and neck surgery					
41140	C	Removal of tongue					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
41145	C	Tongue removal; neck surgery					
41150	C	Tongue, mouth, jaw surgery					
41153	C	Tongue, mouth, neck surgery					
41155	C	Tongue, jaw, & neck surgery					
41250	T	Repair tongue laceration	312	7.07	$363.54	$170.86	$72.71
41251	T	Repair tongue laceration	312	7.07	$363.54	$170.86	$72.71
41252	T	Repair tongue laceration	312	7.07	$363.54	$170.86	$72.71
41500	T	Fixation of tongue	312	7.07	$363.54	$170.86	$72.71
41510	T	Tongue to lip surgery	312	7.07	$363.54	$170.86	$72.71
41520	T	Reconstruction, tongue fold	313	15.46	$794.95	$407.70	$158.99
41599	T	Tongue and mouth surgery	311	1.41	$72.50	$20.57	$14.50
41800	T	Drainage of gum lesion	312	7.07	$363.54	$170.86	$72.71
41805	T	Removal foreign body, gum	311	1.41	$72.50	$20.57	$14.50
41806	T	Removal foreign body,jawbone	311	1.41	$72.50	$20.57	$14.50
41820	T	Excision, gum, each quadrant	311	1.41	$72.50	$20.57	$14.50
41821	T	Excision of gum flap	311	1.41	$72.50	$20.57	$14.50
41822	T	Excision of gum lesion	231	11.31	$581.56	$286.79	$116.31
41823	T	Excision of gum lesion	231	11.31	$581.56	$286.79	$116.31
41825	T	Excision of gum lesion	311	1.41	$72.50	$20.57	$14.50
41826	T	Excision of gum lesion	311	1.41	$72.50	$20.57	$14.50
41827	T	Excision of gum lesion	313	15.46	$794.95	$407.70	$158.99
41828	T	Excision of gum lesion	311	1.41	$72.50	$20.57	$14.50
41830	T	Removal of gum tissue	311	1.41	$72.50	$20.57	$14.50
41850	T	Treatment of gum lesion	311	1.41	$72.50	$20.57	$14.50
41870	T	Gum graft	311	1.41	$72.50	$20.57	$14.50
41872	T	Repair gum	311	1.41	$72.50	$20.57	$14.50
41874	T	Repair tooth socket	311	1.41	$72.50	$20.57	$14.50
41899	T	Dental surgery procedure	311	1.41	$72.50	$20.57	$14.50
42000	T	Drainage mouth roof lesion	311	1.41	$72.50	$20.57	$14.50
42100	T	Biopsy roof of mouth	311	1.41	$72.50	$20.57	$14.50
42104	T	Excision lesion, mouth roof	311	1.41	$72.50	$20.57	$14.50
42106	T	Excision lesion, mouth roof	313	15.46	$794.95	$407.70	$158.99
42107	T	Excision lesion, mouth roof	313	15.46	$794.95	$407.70	$158.99
42120	T	Remove palate/lesion	311	1.41	$72.50	$20.57	$14.50
42140	T	Excision of uvula					
42145	C	Repair, palate,pharynx/uvula					
42160	T	Treatment mouth roof lesion	311	1.41	$72.50	$20.57	$14.50
42180	T	Repair palate	313	15.46	$794.95	$407.70	$158.99
42182	T	Repair palate	313	15.46	$794.95	$407.70	$158.99
42200	T	Reconstruct cleft palate	313	15.46	$794.95	$407.70	$158.99
42205	T	Reconstruct cleft palate	313	15.46	$794.95	$407.70	$158.99
42210	T	Reconstruct cleft palate	314	25.15	$1,293.21	$687.72	$258.64
42215	T	Reconstruct cleft palate	313	15.46	$794.95	$407.70	$158.99
42220	T	Reconstruct cleft palate	313	15.46	$794.95	$407.70	$158.99
42225	T	Reconstruct cleft palate	314	25.15	$1,293.21	$687.72	$258.64
42226	T	Lengthening of palate	314	25.15	$1,293.21	$687.72	$258.64
42227	T	Lengthening of palate	314	25.15	$1,293.21	$687.72	$258.64
42235	T	Repair palate	313	15.46	$794.95	$407.70	$158.99
42260	T	Repair nose to lip fistula	313	15.46	$794.95	$407.70	$158.99
42280	T	Preparation, palate mold	311	1.41	$72.50	$20.57	$14.50
42281	T	Insertion, palate prosthesis	311	1.41	$72.50	$20.57	$14.50
42299	T	Palate/uvula surgery	311	1.41	$72.50	$20.57	$14.50
42300	T	Drainage of salivary gland	312	7.07	$363.54	$170.86	$72.71
42305	T	Drainage of salivary gland	312	7.07	$363.54	$170.86	$72.71
42310	T	Drainage of salivary gland	312	7.07	$363.54	$170.86	$72.71
42320	T	Drainage of salivary gland	312	7.07	$363.54	$170.86	$72.71
42325	T	Create salivary cyst drain	313	15.46	$794.95	$407.70	$158.99
42326	T	Create salivary cyst drain	313	15.46	$794.95	$407.70	$158.99
42330	T	Removal of salivary stone	311	1.41	$72.50	$20.57	$14.50
42335	T	Removal of salivary stone	311	1.41	$72.50	$20.57	$14.50
42340	T	Removal of salivary stone	313	15.46	$794.95	$407.70	$158.99
42400	T	Biopsy of salivary gland	122	4.59	$236.02	$113.00	$47.20
42405	T	Biopsy of salivary gland	312	7.07	$363.54	$170.86	$72.71
42408	T	Excision of salivary cyst	313	15.46	$794.95	$407.70	$158.99
42409	T	Drainage of salivary cyst	313	15.46	$794.95	$407.70	$158.99
42410	T	Excise parotid gland/lesion	313	15.46	$794.95	$407.70	$158.99
42415	T	Excise parotid gland/lesion	314	25.15	$1,293.21	$687.72	$258.64
42420	T	Excise parotid gland/lesion	314	25.15	$1,293.21	$687.72	$258.64
42425	T	Excise parotid gland/lesion	314	25.15	$1,293.21	$687.72	$258.64
42426	C	Excise parotid gland/lesion					
42440	T	Excision submaxillary gland	313	15.46	$794.95	$407.70	$158.99
42450	T	Excision sublingual gland	313	15.46	$794.95	$407.70	$158.99
42500	T	Repair salivary duct	313	15.46	$794.95	$407.70	$158.99
42505	T	Repair salivary duct	313	15.46	$794.95	$407.70	$158.99
42507	T	Parotid duct diversion	313	15.46	$794.95	$407.70	$158.99

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
42508	T	Parotid duct diversion	313	15.46	$794.95	$407.70	$158.99
42509	T	Parotid duct diversion	314	25.15	$1,293.21	$687.72	$258.64
42510	T	Parotid duct diversion	313	15.46	$794.95	$407.70	$158.99
42550	T	Injection for salivary x-ray	347	2.57	$132.15	$52.38	$26.43
42600	T	Closure of salivary fistula	313	15.46	$794.95	$407.70	$158.99
42650	T	Dilation of salivary duct	311	1.41	$72.50	$20.57	$14.50
42660	T	Dilation of salivary duct	311	1.41	$72.50	$20.57	$14.50
42665	T	Ligation of salivary duct	311	1.41	$72.50	$20.57	$14.50
42699	T	Salivary surgery procedure	311	1.41	$72.50	$20.57	$14.50
42700	T	Drainage of tonsil abscess	312	7.07	$363.54	$170.86	$72.71
42720	T	Drainage of throat abscess	312	7.07	$363.54	$170.86	$72.71
42725	T	Drainage of throat abscess	313	15.46	$794.95	$407.70	$158.99
42800	T	Biopsy of throat	312	7.07	$363.54	$170.86	$72.71
42802	T	Biopsy of throat	312	7.07	$363.54	$170.86	$72.71
42804	T	Biopsy of upper nose/throat	312	7.07	$363.54	$170.86	$72.71
42806	T	Biopsy of upper nose/throat	312	7.07	$363.54	$170.86	$72.71
42808	T	Excise pharynx lesion	151	1.63	$83.81	$33.22	$16.76
42809	T	Remove pharynx foreign body	313	15.46	$794.95	$407.70	$158.99
42810	T	Excision of neck cyst	313	15.46	$794.95	$407.70	$158.99
42815	T	Excision of neck cyst	319	16.20	$833.00	$463.53	$166.60
42820	T	Remove tonsils and adenoids	319	16.20	$833.00	$463.53	$166.60
42821	T	Remove tonsils and adenoids	319	16.20	$833.00	$463.53	$166.60
42825	T	Removal of tonsils	319	16.20	$833.00	$463.53	$166.60
42826	T	Removal of tonsils	319	16.20	$833.00	$463.53	$166.60
42830	T	Removal of adenoids	319	16.20	$833.00	$463.53	$166.60
42831	T	Removal of adenoids	319	16.20	$833.00	$463.53	$166.60
42835	T	Removal of adenoids	319	16.20	$833.00	$463.53	$166.60
42836	T	Removal of adenoids	314	25.15	$1,293.21	$687.72	$258.64
42842	T	Extensive surgery of throat	314	25.15	$1,293.21	$687.72	$258.64
42844	T	Extensive surgery of throat					
42845	C	Extensive surgery of throat					
42860	T	Excision of tonsil tags	319	16.20	$833.00	$463.53	$166.60
42870	T	Excision of lingual tonsil	319	16.20	$833.00	$463.53	$166.60
[2]42880	C	Excise nose/throat lesion					
42890	T	Partial removal of pharynx	314	25.15	$1,293.21	$687.72	$258.64
42892	T	Revision of pharyngeal walls	314	25.15	$1,293.21	$687.72	$258.64
42894	C	Revision of pharyngeal walls					
42900	T	Repair throat wound	313	15.46	$794.95	$407.70	$158.99
42950	T	Reconstruction of throat	313	15.46	$794.95	$407.70	$158.99
42953	C	Repair throat, esophagus					
42955	T	Surgical opening of throat	313	15.46	$794.95	$407.70	$158.99
42960	T	Control throat bleeding	318	2.07	$106.44	$38.87	$21.29
42961	C	Control throat bleeding					
42962	T	Control throat bleeding	313	15.46	$794.95	$407.70	$158.99
42970	T	Control nose/throat bleeding	318	2.07	$106.44	$38.87	$21.29
42971	C	Control nose/throat bleeding					
42972	T	Control nose/throat bleeding	313	15.46	$794.95	$407.70	$158.99
42999	T	Throat surgery procedure	318	2.07	$106.44	$38.87	$21.29
43020	T	Incision of esophagus	313	15.46	$794.95	$407.70	$158.99
43030	T	Throat muscle surgery	313	15.46	$794.95	$407.70	$158.99
43045	C	Incision of esophagus					
43100	C	Excision of esophagus lesion					
43101	C	Excision of esophagus lesion					
43107	C	Removal of esophagus					
43108	C	Removal of esophagus					
43112	C	Removal of esophagus					
43113	C	Removal of esophagus					
43116	C	Partial removal of esophagus					
43117	C	Partial removal of esophagus					
43118	C	Partial removal of esophagus					
43121	C	Partial removal of esophagus					
43122	C	Partial removal of esophagus					
43123	C	Partial removal of esophagus					
43124	C	Removal of esophagus					
43130	C	Removal of esophagus pouch					
43135	C	Removal of esophagus pouch					
43200	T	Esophagus endoscopy	417	6.35	$326.52	$179.22	$65.30
43202	T	Esophagus endoscopy, biopsy	417	6.35	$326.52	$179.22	$65.30
43204	T	Esophagus endoscopy & inject	407	5.89	$354.28	$189.39	$70.86
43205	T	Esophagus endoscopy/ligation	407	5.89	$354.28	$189.39	$70.86
43215	T	Esophagus endoscopy	407	5.89	$354.28	$189.39	$70.86
43216	T	Esophagus endoscopy/lesion	407	5.89	$354.28	$189.39	$70.86
43217	T	Esophagus endoscopy	407	5.89	$354.28	$189.39	$70.86
43219	T	Esophagus endoscopy	449	7.63	$392.33	$213.57	$78.47
43220	T	Esophagus endoscopy,dilation	407	5.89	$354.28	$189.39	$70.86

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
43226	T	Esophagus endoscopy,dilation	407	6.89	$354.28	$189.39	$70.86
43227	T	Esophagus endoscopy, repair	407	6.89	$354.28	$189.39	$70.86
43228	T	Esophagus endoscopy,ablation	449	7.63	$392.33	$213.57	$78.47
43234	T	Upper GI endoscopy, exam	417	6.35	$326.52	$179.22	$65.30
43235	T	Upper gi endoscopy,diagnosis	417	6.35	$326.52	$179.22	$65.30
43239	T	Upper GI endoscopy, biopsy	417	6.35	$326.52	$179.22	$65.30
43241	T	Upper GI endoscopy with tube	418	7.44	$382.56	$213.57	$76.51
43243	T	Upper GI endoscopy & inject.	418	7.44	$382.56	$213.57	$76.51
43244	T	Upper GI endoscopy/ligation	418	7.44	$382.56	$213.57	$76.51
43245	T	Operative upper GI endoscopy	418	7.44	$382.56	$213.57	$76.51
43246	T	Place gastrostomy tube	418	7.44	$382.56	$213.57	$76.51
43247	T	Operative upper GI endoscopy	418	7.44	$382.56	$213.57	$76.51
43248	T	Upper GI endoscopy/guidewire	418	7.44	$382.56	$213.57	$76.51
43249	T	Esophagus endoscopy,dilation	418	7.44	$382.56	$213.57	$76.51
43250	T	Upper GI endoscopy/tumor	418	7.44	$382.56	$213.57	$76.51
43251	T	Operative upper GI endoscopy	418	7.44	$382.56	$213.57	$76.51
43255	T	Operative upper GI endoscopy	418	7.44	$382.56	$213.57	$76.51
43258	T	Operative upper GI endoscopy	449	7.63	$392.33	$213.57	$78.47
43259	T	Endoscopic ultrasound exam	449	7.63	$392.33	$213.57	$78.47
43260	T	Endoscopy,bile duct/pancreas	456	9.61	$494.15	$249.05	$98.83
43261	T	Endoscopy,bile duct/pancreas	456	9.61	$494.15	$249.05	$98.83
43262	T	Endoscopy,bile duct/pancreas	456	9.61	$494.15	$249.05	$98.83
43263	T	Endoscopy,bile duct/pancreas	456	9.61	$494.15	$249.05	$98.83
43264	T	Endoscopy,bile duct/pancreas	456	9.61	$494.15	$249.05	$98.83
43265	T	Endoscopy,bile duct/pancreas	456	9.61	$494.15	$249.05	$98.83
43267	T	Endoscopy,bile duct/pancreas	456	9.61	$494.15	$249.05	$98.83
43268	T	Endoscopy,bile duct/pancreas	456	9.61	$494.15	$249.05	$98.83
43269	T	Endoscopy,bile duct/pancreas	456	9.61	$494.15	$249.05	$98.83
43271	T	Endoscopy,bile duct/pancreas	456	9.61	$494.15	$249.05	$98.83
43272	T	Endoscopy,bile duct/pancreas	449	7.63	$392.33	$213.57	$78.47
43300	C	Repair of esophagus					
43305	C	Repair esophagus and fistula					
43310	C	Repair of esophagus					
43312	C	Repair esophagus and fistula					
43320	C	Fuse esophagus & stomach					
43324	C	Revise esophagus & stomach					
43325	C	Revise esophagus & stomach					
43326	C	Revise esophagus & stomach					
43330	C	Repair of esophagus					
43331	C	Repair of esophagus					
43340	C	Fuse esophagus & intestine					
43341	C	Fuse esophagus & intestine					
43350	C	Surgical opening, esophagus					
43351	C	Surgical opening, esophagus					
43352	C	Surgical opening, esophagus					
43360	C	Gastrointestinal repair					
43361	C	Gastrointestinal repair					
43400	C	Ligate esophagus veins					
43401	C	Esophagus surgery for veins					
43405	C	Ligate/staple esophagus					
43410	C	Repair esophagus wound					
43415	C	Repair esophagus wound					
43420	C	Repair esophagus opening					
43425	C	Repair esophagus opening					
43450	T	Dilate esophagus	406	4.17	$214.42	$106.67	$42.88
43453	T	Dilate esophagus	406	4.17	$214.42	$106.67	$42.88
43456	T	Dilate esophagus	406	4.17	$214.42	$106.67	$42.88
43458	T	Dilation of esophagus	406	4.17	$214.42	$106.67	$42.88
43460	C	Pressure treatment esophagus					
43496	C	Free jejunum flap, microvasc					
43499	T	Esophagus surgery procedure	406	4.17	$214.42	$106.67	$42.88
43500	C	Surgical opening of stomach					
43501	C	Surgical repair of stomach					
43502	C	Surgical repair of stomach					
43510	C	Surgical opening of stomach					
43520	C	Incision of pyloric muscle					
43600	T	Biopsy of stomach	417	6.35	$326.52	$179.22	$65.30
43605	C	Biopsy of stomach					
43610	C	Excision of stomach lesion					
43611	C	Excision of stomach lesion					
43620	C	Removal of stomach					
43621	C	Removal of stomach					
43622	C	Removal of stomach					
43631	C	Removal of stomach, partial					
43632	C	Removal of stomach, partial					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
43633	C	Removal stomach, partial					
43634	C	Removal stomach, partial					
43635	C	Partial removal of stomach					
43638	C	Partial removal of stomach					
43639	C	Removal stomach, partial					
43640	C	Vagotomy & pylorus repair					
43641	C	Vagotomy & pylorus repair					
43750	T	Place gastrostomy tube	418	7.44	$382.56	$213.57	$76.51
43760	T	Change gastrostomy tube	470	2.19	$112.61	$54.92	$22.52
43761	T	Reposition gastrostomy tube	470	2.19	$112.61	$54.92	$22.52
43800	C	Reconstruction of pylorus					
43810	C	Fusion of stomach and bowel					
43820	C	Fusion of stomach and bowel					
43825	C	Fusion of stomach and bowel					
43830	C	Place gastrostomy tube					
43831	C	Place gastrostomy tube					
43832	C	Place gastrostomy tube					
43840	C	Repair of stomach lesion					
43842	C	Gastroplasty for obesity					
43843	C	Gastroplasty for obesity					
43846	C	Gastric bypass for obesity					
43847	C	Gastric bypass for obesity					
43848	C	Revision gastroplasty					
43850	C	Revise stomach-bowel fusion					
43855	C	Revise stomach-bowel fusion					
43860	C	Revise stomach-bowel fusion					
43865	C	Revise stomach-bowel fusion					
43870	T	Repair stomach opening	182	4.11	$211.34	$92.43	$42.27
43880	C	Repair stomach-bowel fistula					
43999	T	Stomach surgery procedure	470	2.19	$112.61	$54.92	$22.52
44005	C	Freeing of bowel adhesion					
44010	C	Incision of small bowel					
44015	C	Insert needle catheter, bowel					
44020	C	Exploration of small bowel					
44021	C	Decompress small bowel					
44025	C	Incision of large bowel					
44050	C	Reduce bowel obstruction					
44055	C	Correct malrotation of bowel					
44100	T	Biopsy of bowel	417	6.35	$326.52	$179.22	$65.30
44110	C	Excision of bowel lesion(s)					
44111	C	Excision of bowel lesion(s)					
44120	C	Removal of small intestine					
44121	C	Removal of small intestine					
44125	C	Removal of small intestine					
44130	C	Bowel to bowel fusion					
44139	C	Mobilization of colon					
44140	C	Partial removal of colon					
44141	C	Partial removal of colon					
44143	C	Partial removal of colon					
44144	C	Partial removal of colon					
44145	C	Partial removal of colon					
44146	C	Partial removal of colon					
44147	C	Partial removal of colon					
44150	C	Removal of colon					
44151	C	Removal of colon/ileostomy					
44152	C	Removal of colon/ileostomy					
44153	C	Removal of colon/ileostomy					
44155	C	Removal of colon					
44156	C	Removal of colon/ileostomy					
44160	C	Removal of colon					
44300	C	Open bowel to skin					
44310	C	Ileostomy/jejunostomy					
44312	T	Revision of ileostomy	183	11.04	$567.68	$283.18	$113.54
44314	C	Revision of ileostomy					
44316	C	Devise bowel pouch					
44320	C	Colostomy					
44322	C	Colostomy with biopsies					
44340	T	Revision of colostomy	183	11.04	$567.68	$283.18	$113.54
44345	C	Revision of colostomy					
44346	C	Revision of colostomy					
44360	T	Small bowel endoscopy	419	6.83	$351.20	$164.08	$70.24
44361	T	Small bowel endoscopy,biopsy	419	6.83	$351.20	$164.08	$70.24
44363	T	Small bowel endoscopy	419	6.83	$351.20	$164.08	$70.24
44364	T	Small bowel endoscopy	419	6.83	$351.20	$164.08	$70.24
44365	T	Small bowel endoscopy	419	6.83	$351.20	$164.08	$70.24

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
44366	T	Small bowel endoscopy	419	6.83	$351.20	$164.08	$70.24
44369	T	Small bowel endoscopy	449	7.63	$392.33	$213.57	$78.47
44372	T	Small bowel endoscopy	419	6.83	$351.20	$164.08	$70.24
44373	T	Small bowel endoscopy	419	6.83	$351.20	$164.08	$70.24
44376	T	Small bowel endoscopy	419	6.83	$351.20	$164.08	$70.24
44377	T	Small bowel endoscopy	419	6.83	$351.20	$164.08	$70.24
44378	T	Small bowel endoscopy	419	6.83	$351.20	$164.08	$70.24
44380	T	Small bowel endoscopy	426	6.74	$346.57	$185.32	$69.31
44382	T	Small bowel endoscopy	426	6.74	$346.57	$185.32	$69.31
44385	T	Endoscopy of bowel pouch	426	6.74	$346.57	$185.32	$69.31
44386	T	Endoscopy,bowel pouch, biopsy	426	6.74	$346.57	$185.32	$69.31
44388	T	Colon endoscopy	426	6.74	$346.57	$185.32	$69.31
44389	T	Colonoscopy with biopsy	426	6.74	$346.57	$185.32	$69.31
44390	T	Colonoscopy for foreign body	427	8.09	$415.99	$222.84	$83.20
44391	T	Colonoscopy for bleeding	427	8.09	$415.99	$222.84	$83.20
44392	T	Colonoscopy & polypectomy	427	8.09	$415.99	$222.84	$83.20
44393	T	Colonoscopy, lesion removal	449	7.63	$392.33	$213.57	$78.47
44394	T	Colonoscopy w/snare	427	8.09	$415.99	$222.84	$83.20
44500	C	Intro, gastrointestinal tube					
44602	C	Suture, small intestine					
44603	C	Suture, small intestine					
44604	C	Suture, large intestine					
44605	C	Repair of bowel lesion					
44615	C	Intestinal stricturoplasty					
44620	C	Repair bowel opening					
44625	C	Repair bowel opening					
44626	C	Repair bowel opening					
44640	C	Repair bowel-skin fistula					
44650	C	Repair bowel fistula					
44660	C	Repair bowel-bladder fistula					
44661	C	Repair bowel-bladder fistula					
44680	C	Surgical revision, intestine					
44700	C	Suspend bowel w/prosthesis					
44799	T	Intestine surgery procedure	419	6.83	$351.20	$164.08	$70.24
44800	C	Excision of bowel pouch					
44820	C	Excision of mesentery lesion					
44850	C	Repair of mesentery					
44899	C	Bowel surgery procedure					
44900	C	Drain, app abscess, open					
44901	C	Drain, app abscess, perc					
44950	C	Appendectomy					
44955	C	Appendectomy add-on					
44960	C	Appendectomy					
45000	T	Drainage of pelvic abscess	452	4.52	$232.42	$103.06	$46.48
45005	T	Drainage of rectal abscess	452	4.52	$232.42	$103.06	$46.48
45020	T	Drainage of rectal abscess	452	4.52	$232.42	$103.06	$46.48
45100	T	Biopsy of rectum	452	4.52	$232.42	$103.06	$46.48
45108	T	Removal of anorectal lesion	453	16.26	$836.09	$440.47	$167.22
45110	C	Removal of rectum					
45111	C	Partial removal of rectum					
45112	C	Removal of rectum					
45113	C	Partial proctectomy					
45114	C	Partial removal of rectum					
45116	C	Partial removal of rectum					
45119	C	Remove, rectum w/reservoir					
45120	C	Removal of rectum					
45121	C	Removal of rectum and colon					
45123	C	Partial proctectomy					
45130	C	Excision of rectal prolapse					
45135	C	Excision of rectal prolapse					
45150	T	Excision of rectal stricture	453	16.26	$836.09	$440.47	$167.22
45160	T	Excision of rectal lesion	453	16.26	$836.09	$440.47	$167.22
45170	T	Excision of rectal lesion	453	16.26	$836.09	$440.47	$167.22
45190	T	Destruction, rectal tumor	453	16.26	$836.09	$440.47	$167.22
45300	T	Proctosigmoidoscopy	446	2.54	$130.61	$64.86	$26.12
45303	T	Proctosigmoidoscopy	447	7.06	$363.03	$191.87	$72.61
45305	T	Proctosigmoidoscopy; biopsy	446	2.54	$130.61	$64.86	$26.12
45307	T	Proctosigmoidoscopy	447	7.06	$363.03	$191.87	$72.61
45308	T	Proctosigmoidoscopy	447	7.06	$363.03	$191.87	$72.61
45309	T	Proctosigmoidoscopy	447	7.06	$363.03	$191.87	$72.61
45315	T	Proctosigmoidoscopy	447	7.06	$363.03	$191.87	$72.61
45317	T	Proctosigmoidoscopy	447	7.06	$363.03	$191.87	$72.61
45320	T	Proctosigmoidoscopy	447	7.06	$363.03	$191.87	$72.61
45321	T	Proctosigmoidoscopy	447	7.06	$363.03	$191.87	$72.61
45330	T	Sigmoidoscopy, diagnostic	446	2.54	$130.61	$64.86	$26.12

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
45331	T	Sigmoidoscopy and biopsy	446	2.54	$130.61	$64.86	$26.12
45332	T	Sigmoidoscopy	448	5.28	$271.50	$139.22	$54.30
45333	T	Sigmoidoscopy & polypectomy	448	5.28	$271.50	$139.22	$54.30
45334	T	Sigmoidoscopy for bleeding	448	5.28	$271.50	$139.22	$54.30
45337	T	Sigmoidoscopy, decompression	448	5.28	$271.50	$139.22	$54.30
45338	T	Sigmoidoscopy	448	5.28	$271.50	$139.22	$54.30
45339	T	Sigmoidoscopy	449	7.63	$392.33	$213.57	$78.47
45355	T	Surgical colonoscopy	427	8.09	$415.99	$222.84	$83.20
45378	T	Diagnostic colonoscopy	426	6.74	$346.57	$185.32	$69.31
45379	T	Colonoscopy	427	8.09	$415.99	$222.84	$83.20
45380	T	Colonoscopy and biopsy	426	6.74	$346.57	$185.32	$69.31
45382	T	Colonoscopy,control bleeding	427	8.09	$415.99	$222.84	$83.20
45383	T	Colonoscopy, lesion removal	449	7.63	$392.33	$213.57	$78.47
45384	T	Colonoscopy	427	8.09	$415.99	$222.84	$83.20
45385	T	Colonoscopy, lesion removal	427	8.09	$415.99	$222.84	$83.20
45500	T	Repair of rectum	453	16.26	$836.09	$440.47	$167.22
45505	T	Repair of rectum	453	16.26	$836.09	$440.47	$167.22
45520	T	Treatment of rectal prolapse	309	0.98	$50.39	$19.66	$10.08
45540	C	Correct rectal prolapse					
45541	C	Correct rectal prolapse					
45550	C	Repair rectum;remove sigmoid					
45560	T	Repair of rectocele	453	16.26	$836.09	$440.47	$167.22
45562	C	Exploration/repair of rectum					
45563	C	Exploration/repair of rectum					
45800	C	Repair rectumbladder fistula					
45805	C	Repair fistula; colostomy					
45820	C	Repair rectourethral fistula					
45825	C	Repair fistula; colostomy					
45900	T	Reduction of rectal prolapse	452	4.52	$232.42	$103.06	$46.48
45905	T	Dilation of anal sphincter	452	4.52	$232.42	$103.06	$46.48
45910	T	Dilation of rectal narrowing	452	4.52	$232.42	$103.06	$46.48
45915	T	Remove rectal obstruction	452	4.52	$232.42	$103.06	$46.48
45999	T	Rectum surgery procedure	452	4.52	$232.42	$103.06	$46.48
46030	T	Removal of rectal marker	452	4.52	$232.42	$103.06	$46.48
46040	T	Incision of rectal abscess	452	4.52	$232.42	$103.06	$46.48
46045	T	Incision of rectal abscess	453	16.26	$836.09	$440.47	$167.22
46050	T	Incision of anal abscess	452	4.52	$232.42	$103.06	$46.48
46060	T	Incision of rectal abscess	453	16.26	$836.09	$440.47	$167.22
46070	T	Incision of anal septum	451	2.42	$124.44	$53.56	$24.89
46080	T	Incision of anal sphincter	452	4.52	$232.42	$103.06	$46.48
46083	T	Incise external hemorrhoid	451	2.42	$124.44	$53.56	$24.89
46200	T	Removal of anal fissure	453	16.26	$836.09	$440.47	$167.22
46210	T	Removal of anal crypt	452	4.52	$232.42	$103.06	$46.48
46211	T	Removal of anal crypts	453	16.26	$836.09	$440.47	$167.22
46220	T	Removal of anal tab	451	2.42	$124.44	$53.56	$24.89
46221	T	Ligation of hemorrhoid(s)	451	2.42	$124.44	$53.56	$24.89
46230	T	Removal of anal tabs	451	2.42	$124.44	$53.56	$24.89
46250	T	Hemorrhoidectomy	453	16.26	$836.09	$440.47	$167.22
46255	T	Hemorrhoidectomy	453	16.26	$836.09	$440.47	$167.22
46257	T	Remove hemorrhoids & fissure	453	16.26	$836.09	$440.47	$167.22
46258	T	Remove hemorrhoids & fistula	453	16.26	$836.09	$440.47	$167.22
46260	T	Hemorrhoidectomy	453	16.26	$836.09	$440.47	$167.22
46261	T	Remove hemorrhoids & fissure	453	16.26	$836.09	$440.47	$167.22
46262	T	Remove hemorrhoids & fistula	453	16.26	$836.09	$440.47	$167.22
46270	T	Removal of anal fistula	453	16.26	$836.09	$440.47	$167.22
46275	T	Removal of anal fistula	453	16.26	$836.09	$440.47	$167.22
46280	T	Removal of anal fistula	453	16.26	$836.09	$440.47	$167.22
46285	T	Removal of anal fistula	453	16.26	$836.09	$440.47	$167.22
46288	T	Repair anal fistula	453	16.26	$836.09	$440.47	$167.22
46320	T	Removal of hemorrhoid clot	451	2.42	$124.44	$53.56	$24.89
46500	T	Injection into hemorrhoids	451	2.42	$124.44	$53.56	$24.89
46600	N	Diagnostic anoscopy					
46604	N	Anoscopy and dilation					
46606	T	Anoscopy and biopsy	437	6.54	$336.29	$173.79	$67.26
46608	T	Anoscopy;remove foreign body	437	6.54	$336.29	$173.79	$67.26
46610	T	Anoscopy; remove lesion	437	6.54	$336.29	$173.79	$67.26
46611	T	Anoscopy	437	6.54	$336.29	$173.79	$67.26
46612	T	Anoscopy; remove lesions	437	6.54	$336.29	$173.79	$67.26
46614	T	Anoscopy; control bleeding	437	6.54	$336.29	$173.79	$67.26
46615	T	Anoscopy	453	16.26	$836.09	$440.47	$167.22
46700	T	Repair of anal stricture					
46705	C	Repair of anal stricture					
46715	C	Repair of anovaginal fistula					
46716	C	Repair of anovaginal fistula					
46730	C	Construction of absent anus					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
46735	C	Construction of absent anus					
46740	C	Construction of absent anus					
46742	C	Repair, imperforated anus					
46744	C	Repair, cloacal anomaly					
46746	C	Repair, cloacal anomaly					
46748	C	Repair, cloacal anomaly					
46750	T	Repair of anal sphincter	453	16.26	$836.09	$440.47	$167.22
46751	C	Repair of anal sphincter					
46753	T	Reconstruction of anus	453	16.26	$836.09	$440.47	$167.22
46754	T	Removal of suture from anus	452	4.52	$232.42	$103.06	$46.48
46760	T	Repair of anal sphincter	453	16.26	$836.09	$440.47	$167.22
46761	T	Repair of anal sphincter	453	16.26	$836.09	$440.47	$167.22
46762	T	Implant artificial sphincter	453	16.26	$836.09	$440.47	$167.22
46900	T	Destruction, anal lesion(s)	152	10.07	$517.80	$251.54	$103.56
46910	T	Destruction, anal lesion(s)	152	10.07	$517.80	$251.54	$103.56
46916	T	Cryosurgery, anal lesion(s)	152	10.07	$517.80	$251.54	$103.56
46917	T	Laser surgery,anal lesion(s)	152	10.07	$517.80	$251.54	$103.56
46922	T	Excision of anal lesion(s)	152	10.07	$517.80	$251.54	$103.56
46924	T	Destruction, anal lesion(s)	152	10.07	$517.80	$251.54	$103.56
46934	T	Destruction of hemorrhoids	451	2.42	$124.44	$53.56	$24.89
46935	T	Destruction of hemorrhoids	451	2.42	$124.44	$53.56	$24.89
46936	T	Destruction of hemorrhoids	451	2.42	$124.44	$53.56	$24.89
46937	T	Cryotherapy of rectal lesion	453	16.26	$836.09	$440.47	$167.22
46938	T	Cryotherapy of rectal lesion	453	16.26	$836.09	$440.47	$167.22
46940	T	Treatment of anal fissure	451	2.42	$124.44	$53.56	$24.89
46942	T	Treatment of anal fissure	451	2.42	$124.44	$53.56	$24.89
46945	T	Ligation of hemorrhoids	451	2.42	$124.44	$53.56	$24.89
46946	T	Ligation of hemorrhoids	451	2.42	$124.44	$53.56	$24.89
46999	T	Anus surgery procedure	452	4.52	$232.42	$103.06	$46.48
47000	T	Needle biopsy of liver	122	4.59	$236.02	$113.00	$47.20
47001	C	Needle biopsy, liver add-on					
47010	C	Open drainage, liver lesion					
47011	C	Percut drain, liver lesion					
47015	C	Inject/aspirate liver cyst					
47100	C	Wedge biopsy of liver					
47120	C	Partial removal of liver					
47122	C	Extensive removal of liver					
47125	C	Partial removal of liver					
47130	C	Partial removal of liver					
47133	C	Removal of donor liver					
47134	C	Partial removal, donor liver					
47135	C	Transplantation of liver					
47136	C	Transplantation of liver					
47300	C	Surgery for liver lesion					
47350	C	Repair liver wound					
47360	C	Repair liver wound					
47361	C	Repair liver wound					
47362	C	Repair liver wound					
47399	T	Liver surgery procedure	122	4.59	$236.02	$113.00	$47.20
47400	C	Incision of liver duct					
47420	C	Incision of bile duct					
47425	C	Incision of bile duct					
47460	C	Incise bile duct sphincter					
47480	C	Incision of gallbladder					
47490	C	Incision of gallbladder					
47500	T	Injection for liver x-rays	347	2.57	$132.15	$62.38	$26.43
47505	T	Injection for liver x-rays	347	2.57	$132.15	$62.38	$26.43
47510	T	Insert catheter, bile duct	458	6.81	$350.17	$181.70	$70.03
47511	T	Insert bile duct drain	458	6.81	$350.17	$181.70	$70.03
47525	T	Change bile duct catheter	470	2.19	$112.61	$54.92	$22.52
47530	T	Revise, reinsert bile tube	470	2.19	$112.61	$54.92	$22.52
47550	C	Bile duct endoscopy add-on					
47552	T	Biliary endoscopy, thru skin	458	6.81	$350.17	$181.70	$70.03
47553	T	Biliary endoscopy, thru skin	458	6.81	$350.17	$181.70	$70.03
47554	T	Biliary endoscopy, thru skin	458	6.81	$350.17	$181.70	$70.03
47555	T	Biliary endoscopy, thru skin	458	6.81	$350.17	$181.70	$70.03
47556	T	Biliary endoscopy, thru skin	458	6.81	$350.17	$181.70	$70.03
47600	C	Removal of gallbladder					
47605	C	Removal of gallbladder					
47610	C	Removal of gallbladder					
47612	C	Removal of gallbladder					
47620	C	Removal of gallbladder					
47630	T	Remove bile duct stone	458	6.81	$350.17	$181.70	$70.03
47700	C	Exploration of bile ducts					
47701	C	Bile duct revision					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
47711	C	Excision of bile duct tumor					
47712	C	Excision of bile duct tumor					
47715	C	Excision of bile duct cyst					
47716	C	Fusion of bile duct cyst					
47720	C	Fuse gallbladder & bowel					
47721	C	Fuse upper gi structures					
47740	C	Fuse gallbladder & bowel					
47741	C	Fuse gallbladder & bowel					
47760	C	Fuse bile ducts and bowel					
47765	C	Fuse liver ducts & bowel					
47780	C	Fuse bile ducts and bowel					
47785	C	Fuse bile ducts and bowel					
47800	C	Reconstruction of bile ducts					
47801	C	Placement, bile duct support					
47802	C	Fuse liver duct & intestine					
47900	C	Suture bile duct injury					
47999	T	Bile tract surgery procedure	470	2.19	$112.61	$54.92	$22.52
48000	C	Drainage of abdomen					
48001	C	Placement of drain, pancreas					
48005	C	Resect/debride pancreas					
48020	C	Removal of pancreatic stone					
48100	C	Biopsy of pancreas					
48102	T	Needle biopsy, pancreas	122	4.59	$236.02	$113.00	$47.20
48120	C	Removal of pancreas lesion					
48140	C	Partial removal of pancreas					
48145	C	Partial removal of pancreas					
48146	C	Pancreatectomy					
48148	C	Removal of pancreatic duct					
48150	C	Partial removal of pancreas					
48152	C	Pancreatectomy					
48153	C	Pancreatectomy					
48154	C	Pancreatectomy					
48155	C	Removal of pancreas					
48160	E	Pancreas removal, transplant					
48180	C	Fuse pancreas and bowel					
48400	C	Injection, intraop add-on					
48500	C	Surgery of pancreas cyst					
48510	C	Drain pancreatic pseudocyst					
48511	C	Drain pancreatic pseudocyst					
48520	C	Fuse pancreas cyst and bowel					
48540	C	Fuse pancreas cyst and bowel					
48545	C	Pancreatorrhaphy					
48547	C	Duodenal exclusion					
48550	E	Donor pancreatectomy					
48554	E	Transplantallograft pancreas					
48556	C	Removal, allograft pancreas					
48999	T	Pancreas surgery procedure	122	4.59	$236.02	$113.00	$47.20
49000	C	Exploration of abdomen					
49002	C	Reopening of abdomen					
49010	C	Exploration behind abdomen					
49020	C	Drain abdominal abscess					
49021	C	Drain abdominal abscess					
49040	C	Open drainage abdom abscess					
49041	C	Percut drain abdom abscess					
49060	C	Open drain retroper abscess					
49061	C	Percutdrain retroper abscess					
49062	C	Drain to peritoneal cavity	320	3.09	$158.89	$80.91	$31.78
49080	T	Puncture, peritoneal cavity	320	3.09	$158.89	$80.91	$31.78
49081	T	Removal of abdominal fluid	459	17.85	$917.85	$497.88	$183.57
49085	T	Remove abdomen foreign body	122	4.59	$236.02	$113.00	$47.20
49180	T	Biopsy, abdominal mass					
49200	C	Removal of abdominal lesion					
49201	C	Removal of abdominal lesion					
49215	C	Excise sacral spine tumor					
49220	C	Multiple surgery, abdomen					
49250	T	Excision of umbilicus	459	17.85	$917.85	$497.88	$183.57
49255	C	Removal of omentum					
49400	T	Air injection into abdomen	347	2.57	$132.15	$62.38	$26.43
49420	T	Insert abdominal drain	459	17.85	$917.85	$497.88	$183.57
49421	T	Insert abdominal drain	459	17.85	$917.85	$497.88	$183.57
49422	T	Remove perm cannula/catheter	470	2.19	$112.61	$54.92	$22.52
49421	T	Exchange drainage cath	459	17.85	$917.85	$497.88	$183.57
49424	T	Assess cyst, contrast inj	347	2.57	$132.15	$62.38	$26.43
49425	C	Insert abdomen-venous drain					
49426	T	Revise abdomen-venous shunt	459	17.85	$917.85	$497.88	$183.57

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
49427	T	Injection, abdominal shunt	347	2.57	$132.15	$62.38	$26.43
49428	C	Ligation of shunt					
49429	T	Removal of shunt	470	2.19	$112.61	$54.92	$22.52
49495	T	Repair inguinal hernia, init	466	20.67	$1,062.85	$556.64	$212.57
49496	T	Repair inguinal hernia, init	466	20.67	$1,062.85	$556.64	$212.57
49500	T	Repair inguinal hernia	466	20.67	$1,062.85	$556.64	$212.57
49501	T	Repair inguinal hernia, init	466	20.67	$1,062.85	$556.64	$212.57
49505	T	Repair inguinal hernia	466	20.67	$1,062.85	$556.64	$212.57
49507	T	Repair, inguinal hernia	466	20.67	$1,062.85	$556.64	$212.57
49520	T	Rerepair inguinal hernia	466	20.67	$1,062.85	$556.64	$212.57
49521	T	Repair inguinal hernia, rec	466	20.67	$1,062.85	$556.64	$212.57
49525	T	Repair inguinal hernia	466	20.67	$1,062.85	$556.64	$212.57
49540	T	Repair lumbar hernia	466	20.67	$1,062.85	$556.64	$212.57
49550	T	Repair femoral hernia	466	20.67	$1,062.85	$556.64	$212.57
49553	T	Repair femoral hernia, init	466	20.67	$1,062.85	$556.64	$212.57
49555	T	Repair femoral hernia	466	20.67	$1,062.85	$556.64	$212.57
49557	T	Repair femoral hernia, recur	466	20.67	$1,062.85	$556.64	$212.57
49560	T	Repair abdominal hernia	466	20.67	$1,062.85	$556.64	$212.57
49561	T	Repair incisional hernia	466	20.67	$1,062.85	$556.64	$212.57
49565	T	Rerepair abdominal hernia	466	20.67	$1,062.85	$556.64	$212.57
49566	T	Repair incisional hernia	466	20.67	$1,062.85	$556.64	$212.57
49568	T	Hernia repair w/mesh	466	20.67	$1,062.85	$556.64	$212.57
49570	T	Repair epigastric hernia	466	20.67	$1,062.85	$556.64	$212.57
49572	T	Repair, epigastric hernia	466	20.67	$1,062.85	$556.64	$212.57
49580	T	Repair umbilical hernia	466	20.67	$1,062.85	$556.64	$212.57
49582	T	Repair umbilical hernia	466	20.67	$1,062.85	$556.64	$212.57
49585	T	Repair umbilical hernia	466	20.67	$1,062.85	$556.64	$212.57
49587	T	Repair umbilical hernia	466	20.67	$1,062.85	$556.64	$212.57
49590	T	Repair abdominal hernia	466	20.67	$1,062.85	$556.64	$212.57
49600	T	Repair umbilical lesion	466	20.67	$1,062.85	$556.64	$212.57
49605	C	Repair umbilical lesion					
49606	C	Repair umbilical lesion					
49610	C	Repair umbilical lesion					
49611	C	Repair umbilical lesion					
49900	C	Repair of abdominal wall					
49905	C	Omental flap					
49906	C	Free omental flap, microvasc					
49999	T	Abdomen surgery procedure	470	2.19	$112.61	$54.92	$22.52
50010	C	Exploration of kidney					
50020	C	Open drain renal abscess					
50021	C	Percut drain renal abscess					
50040	C	Drainage of kidney					
50045	C	Exploration of kidney					
50060	C	Removal of kidney stone					
50065	C	Incision of kidney					
50070	C	Incision of kidney					
50075	C	Removal of kidney stone					
50080	C	Removal of kidney stone					
50081	C	Removal of kidney stone					
50100	C	Revise kidney blood vessels					
50120	C	Exploration of kidney					
50125	C	Explore and drain kidney					
50130	C	Removal of kidney stone					
50135	C	Exploration of kidney					
50200	T	Biopsy of kidney	122	4.59	$236.02	$113.00	$47.20
50205	C	Biopsy of kidney					
50220	C	Removal of kidney					
50225	C	Removal of kidney					
50230	C	Removal of kidney					
50234	C	Removal of kidney & ureter					
50236	C	Removal of kidney & ureter					
50240	C	Partial removal of kidney					
50280	C	Removal of kidney lesion					
50290	C	Removal of kidney lesion					
50300	C	Removal of donor kidney					
50320	C	Removal of donor kidney					
50340	C	Removal of kidney					
50360	C	Transplantation of kidney					
50365	C	Transplantation of kidney					
50370	C	Remove transplanted kidney					
50380	C	Reimplantation of kidney					
50390	T	Drainage of kidney lesion	122	4.59	$236.02	$113.00	$47.20
50392	T	Insert kidney drain	347	2.57	$132.15	$62.38	$26.43
50393	T	Insert ureteral tube	347	2.57	$132.15	$62.38	$26.43
50394	T	Injection for kidney x-ray	347	2.57	$132.15	$62.38	$26.43

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
50395	T	Create passage to kidney	347	2.57	$132.15	$62.38	$26.43
50396	T	Measure kidney pressure	529	2.33	$119.81	$59.66	$23.96
50398	T	Change kidney tube	521	4.89	$251.44	$110.06	$50.29
50400	C	Revision of kidney/ureter					
50405	C	Revision of kidney/ureter					
50500	C	Repair of kidney wound					
50520	C	Close kidney-skin fistula					
50525	C	Repair renal-abdomen fistula					
50526	C	Repair renal-abdomen fistula					
50540	C	Revision of horseshoe kidney					
50551	T	Kidney endoscopy	522	10.15	$521.91	$259.45	$104.38
50553	T	Kidney endoscopy	522	10.15	$521.91	$259.45	$104.38
50555	T	Kidney endoscopy & biopsy	522	10.15	$521.91	$259.45	$104.38
50557	T	Kidney endoscopy & treatment	522	10.15	$521.91	$259.45	$104.38
50559	T	Renal endoscopy; radiotracer	522	10.15	$521.91	$259.45	$104.38
50561	T	Kidney endoscopy & treatment	522	10.15	$521.91	$259.45	$104.38
50570	C	Kidney endoscopy					
50572	C	Kidney endoscopy					
50574	C	Kidney endoscopy & biopsy					
50575	C	Kidney endoscopy					
50576	C	Kidney endoscopy & treatment					
50578	C	Renal endoscopy; radiotracer					
50580	C	Kidney endoscopy & treatment					
50590	T	Fragmenting of kidney stone	527	43.48	$2,235.74	$1,372.95	$447.15
50600	C	Exploration of ureter					
50605	C	Insert ureteral support					
50610	C	Removal of ureter stone					
50620	C	Removal of ureter stone					
50630	C	Removal of ureter stone					
50650	C	Removal of ureter					
50660	C	Removal of ureter					
50684	T	Injection for ureter x-ray	347	2.57	$132.15	$62.38	$26.43
50686	T	Measure ureter pressure	529	2.33	$119.81	$59.66	$23.96
50688	T	Change of ureter tube	470	2.19	$112.61	$54.92	$22.52
50690	T	Injection for ureter x-ray	347	2.57	$132.15	$62.38	$26.43
50700	C	Revision of ureter					
50715	C	Release of ureter					
50722	C	Release of ureter					
50725	C	Release/revise ureter					
50727	C	Revise ureter					
50728	C	Revise ureter					
50740	C	Fusion of ureter & kidney					
50750	C	Fusion of ureter & kidney					
50760	C	Fusion of ureters					
50770	C	Splicing of ureters					
50780	C	Reimplant ureter in bladder					
50782	C	Reimplant ureter in bladder					
50783	C	Reimplant ureter in bladder					
50785	C	Reimplant ureter in bladder					
50800	C	Implant ureter in bowel					
50810	C	Fusion of ureter & bowel					
50815	C	Urine shunt to bowel					
50820	C	Construct bowel bladder					
50825	C	Construct bowel bladder					
50830	C	Revise urine flow					
50840	C	Replace ureter by bowel					
50845	C	Appendico-vesicostomy					
50860	C	Transplant ureter to skin					
50900	C	Repair of ureter					
50920	C	Closure ureter/skin fistula					
50930	C	Closure ureter/bowel fistula					
50940	C	Release of ureter					
50951	T	Endoscopy of ureter	523	16.35	$840.72	$438.89	$168.14
50953	T	Endoscopy of ureter	523	16.35	$840.72	$438.89	$168.14
50955	T	Ureter endoscopy & biopsy	523	16.35	$840.72	$438.89	$168.14
50957	T	Ureter endoscopy & treatment	523	16.35	$840.72	$438.89	$168.14
50959	T	Ureter endoscopy & tracer	523	16.35	$840.72	$438.89	$168.14
50961	T	Ureter endoscopy & treatment	523	16.35	$840.72	$438.89	$168.14
50970	C	Ureter endoscopy					
50972	C	Ureter endoscopy & catheter					
50974	C	Ureter endoscopy & biopsy					
50976	C	Ureter endoscopy & treatment					
50978	C	Ureter endoscopy & tracer					
50980	C	Ureter endoscopy & treatment					
51000	T	Drainage of bladder	530	2.46	$126.49	$53.34	$25.30

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
51005	T	Drainage of bladder	530	2.46	$126.49	$53.34	$25.30
51010	T	Drainage of bladder	530	2.46	$126.49	$53.34	$25.30
51020	T	Incise & treat bladder	523	16.35	$840.72	$438.89	$168.14
51030	T	Incise & treat bladder	523	16.35	$840.72	$438.89	$168.14
51040	T	Incise & drain bladder	523	16.35	$840.72	$438.89	$168.14
51045	T	Incise bladder, drain ureter	523	16.35	$840.72	$438.89	$168.14
51050	T	Removal of bladder stone	523	16.35	$840.72	$438.89	$168.14
51060	C	Removal of ureter stone					
51065	T	Removal of ureter stone	523	16.35	$840.72	$438.89	$168.14
51080	T	Drainage of bladder abscess	132	5.63	$289.49	$132.89	$57.90
51500	T	Removal of bladder cyst	486	20.67	$1,062.85	$556.64	$212.57
51520	T	Removal of bladder lesion	523	16.35	$840.72	$438.89	$168.14
51525	C	Removal of bladder lesion					
51530	C	Removal of bladder lesion					
51535	C	Repair of ureter lesion					
51550	C	Partial removal of bladder					
51555	C	Partial removal of bladder					
51565	C	Revise bladder & ureter(s)					
51570	C	Removal of bladder					
51575	C	Removal of bladder & nodes					
51580	C	Remove bladder; revise tract					
51585	C	Removal of bladder & nodes					
51590	C	Remove bladder; revise tract					
51595	C	Remove bladder; revise tract					
51596	C	Remove bladder, create pouch					
51597	C	Removal of pelvic structures					
51600	T	Injection for bladder x-ray	347	2.57	$132.15	$62.38	$26.43
51605	T	Preparation for bladder x-ray	347	2.57	$132.15	$62.38	$26.43
51610	T	Injection for bladder x-ray	347	2.57	$132.15	$62.38	$26.43
51700	T	Irrigation of bladder	530	2.46	$126.49	$53.34	$25.30
51705	T	Change of bladder tube	470	2.19	$112.61	$54.92	$22.52
51710	T	Change of bladder tube	470	2.19	$112.61	$54.92	$22.52
51715	T	Endoscopic injection/implant	531	18.59	$955.90	$531.55	$191.18
51720	T	Treatment of bladder lesion	530	2.46	$126.49	$53.34	$25.30
51725	T	Simple cystometrogram	529	2.33	$119.81	$59.66	$23.96
51726	T	Complex cystometrogram	529	2.33	$119.81	$59.66	$23.96
51736	T	Urine flow measurement	529	2.33	$119.81	$59.66	$23.96
51741	T	Electro-uroflowmetry, first	529	2.33	$119.81	$59.66	$23.96
51772	T	Urethra pressure profile	529	2.33	$119.81	$59.66	$23.96
51784	T	Anal/urinary muscle study	529	2.33	$119.81	$59.66	$23.96
51785	T	Anal/urinary muscle study	529	2.33	$119.81	$59.66	$23.96
51792	T	Urinary reflex study	529	2.33	$119.81	$59.66	$23.96
51795	T	Urine voiding pressure study	529	2.33	$119.81	$59.66	$23.96
51797	T	Intraabdominal pressure test	529	2.33	$119.81	$59.66	$23.96
51800	C	Revision of bladder/urethra					
51820	C	Revision of urinary tract					
51840	C	Attach bladder/urethra					
51841	C	Attach bladder/urethra					
51845	C	Repair bladder neck					
51860	C	Repair of bladder wound					
51865	C	Repair of bladder wound					
51880	T	Repair of bladder opening	523	16.35	$840.72	$438.89	$168.14
51900	C	Repair bladder/vagina lesion					
51920	C	Close bladder-uterus fistula					
51925	C	Hysterectomy/bladder repair					
51940	C	Correction of bladder defect					
51960	C	Revision of bladder & bowel					
51980	C	Construct bladder opening					
52000	T	Cystoscopy	521	4.89	$251.44	$110.06	$50.29
52005	T	Cystoscopy & ureter catheter	522	10.15	$521.91	$259.45	$104.38
52007	T	Cystoscopy and biopsy	522	10.15	$521.91	$259.45	$104.38
52010	T	Cystoscopy & duct catheter	522	10.15	$521.91	$259.45	$104.38
52204	T	Cystoscopy	522	10.15	$521.91	$259.45	$104.38
52214	T	Cystoscopy and treatment	522	10.15	$521.91	$259.45	$104.38
52224	T	Cystoscopy and treatment	522	10.15	$521.91	$259.45	$104.38
52234	T	Cystoscopy and treatment	523	16.35	$840.72	$438.89	$168.14
52235	T	Cystoscopy and treatment	523	16.35	$840.72	$438.89	$168.14
52240	T	Cystoscopy and treatment	523	16.35	$840.72	$438.89	$168.14
52250	T	Cystoscopy & radiotracer	523	16.35	$840.72	$438.89	$168.14
52260	T	Cystoscopy & treatment	522	10.15	$521.91	$259.45	$104.38
52265	T	Cystoscopy & treatment	521	4.89	$251.44	$110.06	$50.29
52270	T	Cystoscopy & revise urethra	522	10.15	$521.91	$259.45	$104.38
52275	T	Cystoscopy & revise urethra	522	10.15	$521.91	$259.45	$104.38
52276	T	Cystoscopy and treatment	522	10.15	$521.91	$259.45	$104.38
52277	T	Cystoscopy and treatment	523	16.35	$840.72	$438.89	$168.14

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
52281	T	Cystoscopy and treatment	522	10.15	$521.91	$259.45	$104.38
52282	T	Cystoscopy, implant stent	523	16.35	$840.72	$438.89	$168.14
52283	T	Cystoscopy and treatment	522	10.15	$521.91	$259.45	$104.38
52285	T	Cystoscopy and treatment	522	10.15	$521.91	$259.45	$104.38
52290	T	Cystoscopy and treatment	522	10.15	$521.91	$259.45	$104.38
52300	T	Cystoscopy and treatment	522	10.15	$521.91	$259.45	$104.38
52301	T	Cystoscopy and treatment	522	10.15	$521.91	$259.45	$104.38
52305	T	Cystoscopy and treatment	522	10.15	$521.91	$259.45	$104.38
52310	T	Cystoscopy and treatment	522	10.15	$521.91	$259.45	$104.38
52315	T	Cystoscopy and treatment	522	10.15	$521.91	$259.45	$104.38
52317	T	Remove bladder stone	523	16.35	$840.72	$438.89	$168.14
52318	T	Remove bladder stone	523	16.35	$840.72	$438.89	$168.14
52320	T	Cystoscopy and treatment	523	16.35	$840.72	$438.89	$168.14
52325	T	Cystoscopy, stone removal	523	16.35	$840.72	$438.89	$168.14
52327	T	Cystoscopy, inject material	522	10.15	$521.91	$259.45	$104.38
52330	T	Cystoscopy and treatment	523	16.35	$840.72	$438.89	$168.14
52332	T	Cystoscopy and treatment	523	16.35	$840.72	$438.89	$168.14
52334	T	Create passage to kidney	523	16.35	$840.72	$438.89	$168.14
52335	T	Endoscopy of urinary tract	523	16.35	$840.72	$438.89	$168.14
52336	T	Cystoscopy, stone removal	523	16.35	$840.72	$438.89	$168.14
52337	T	Cystoscopy, stone removal	524	27.20	$1,398.62	$824.90	$279.72
52338	T	Cystoscopy and treatment	523	16.35	$840.72	$438.89	$168.14
52339	T	Cystoscopy and treatment	523	16.35	$840.72	$438.89	$168.14
52340	T	Cystoscopy and treatment	523	16.35	$840.72	$438.89	$168.14
52450	T	Incision of prostate	523	16.35	$840.72	$438.89	$168.14
52500	T	Revision of bladder neck	523	16.35	$840.72	$438.89	$168.14
52510	T	Dilation prostatic urethra	522	10.15	$521.91	$259.45	$104.38
52601	T	Prostatectomy (TURP)	524	27.20	$1,398.62	$824.90	$279.72
52606	T	Control postop bleeding	523	16.35	$840.72	$438.89	$168.14
52612	T	Prostatectomy, first stage	524	27.20	$1,398.62	$824.90	$279.72
52614	T	Prostatectomy, second stage	524	27.20	$1,398.62	$824.90	$279.72
52620	T	Remove residual prostate	524	27.20	$1,398.62	$824.90	$279.72
52630	T	Remove prostate regrowth	524	27.20	$1,398.62	$824.90	$279.72
52640	T	Relieve bladder contracture	523	16.35	$840.72	$438.89	$168.14
52647	T	Laser surgery of prostate	524	27.20	$1,398.62	$824.90	$279.72
52648	T	Laser surgery of prostate	524	27.20	$1,398.62	$824.90	$279.72
52700	T	Drainage of prostate abscess	523	16.35	$840.72	$438.89	$168.14
53000	T	Incision of urethra	531	18.59	$955.90	$531.55	$191.18
53010	T	Incision of urethra	531	18.59	$955.90	$531.55	$191.18
53020	T	Incision of urethra	531	18.59	$955.90	$531.55	$191.18
53025	T	Incision of urethra	531	18.59	$955.90	$531.55	$191.18
53040	T	Drainage of urethra abscess	531	18.59	$955.90	$531.55	$191.18
53060	T	Drainage of urethra abscess	531	18.59	$955.90	$531.55	$191.18
53080	T	Drainage of urinary leakage	531	18.59	$955.90	$531.55	$191.18
53085	C	Drainage of urinary leakage					
53200	T	Biopsy of urethra	531	18.59	$955.90	$531.55	$191.18
53210	T	Removal of urethra	532	23.02	$1,183.69	$588.50	$236.74
53215	T	Removal of urethra	532	23.02	$1,183.69	$588.50	$236.74
53220	T	Treatment of urethra lesion	532	23.02	$1,183.69	$588.50	$236.74
53230	T	Removal of urethra lesion	532	23.02	$1,183.69	$588.50	$236.74
53235	T	Removal of urethra lesion	532	23.02	$1,183.69	$588.50	$236.74
53240	T	Surgery for urethra pouch	532	23.02	$1,183.69	$588.50	$236.74
53250	T	Removal of urethra gland	531	18.59	$955.90	$531.55	$191.18
53260	T	Treatment of urethra lesion	531	18.59	$955.90	$531.55	$191.18
53265	T	Treatment of urethra lesion	531	18.59	$955.90	$531.55	$191.18
53270	T	Removal of urethra gland	531	18.59	$955.90	$531.55	$191.18
53275	T	Repair of urethra defect	531	18.59	$955.90	$531.55	$191.18
53400	T	Revise urethra, 1st stage	532	23.02	$1,183.69	$588.50	$236.74
53405	T	Revise urethra, 2nd stage	532	23.02	$1,183.69	$588.50	$236.74
53410	T	Reconstruction of urethra	532	23.02	$1,183.69	$588.50	$236.74
53415	C	Reconstruction of urethra					
53420	T	Reconstruct urethra, stage 1	532	23.02	$1,183.69	$588.50	$236.74
53425	T	Reconstruct urethra, stage 2	532	23.02	$1,183.69	$588.50	$236.74
53430	T	Reconstruction of urethra	532	23.02	$1,183.69	$588.50	$236.74
53440	T	Correct bladder function	538	48.41	$2,489.24	$1,563.47	$497.85
53442	T	Remove perineal prosthesis	531	18.59	$955.90	$531.55	$191.18
53443	C	Reconstruction of urethra					
53445	T	Correct urine flow control	538	48.41	$2,489.24	$1,563.47	$497.85
53447	T	Remove artificial sphincter	532	23.02	$1,183.69	$588.50	$236.74
53449	T	Correct artificial sphincter	532	23.02	$1,183.69	$588.50	$236.74
53450	T	Revision of urethra	532	23.02	$1,183.69	$588.50	$236.74
53460	T	Revision of urethra	532	23.02	$1,183.69	$588.50	$236.74
53502	T	Repair of urethra injury	531	18.59	$955.90	$531.55	$191.18
53505	T	Repair of urethra injury	531	18.59	$955.90	$531.55	$191.18
53510	T	Repair of urethra injury	531	18.59	$955.90	$531.55	$191.18

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
53515	T	Repair of urethra injury	532	23.02	$1,183.69	$588.50	$236.74
53520	T	Repair of urethra defect	532	23.02	$1,183.69	$588.50	$236.74
53600	T	Dilate urethra stricture	530	2.46	$126.49	$53.34	$25.30
53601	T	Dilate urethra stricture	530	2.46	$126.49	$53.34	$25.30
53605	T	Dilate urethra stricture	522	10.15	$521.91	$259.45	$104.38
53620	T	Dilate urethra stricture	530	2.46	$126.49	$53.34	$25.30
53621	T	Dilate urethra stricture	530	2.46	$126.49	$53.34	$25.30
[2] 53640	T	Relieve bladder retention	530	2.46	$126.49	$53.34	$25.30
53660	T	Dilation of urethra	530	2.46	$126.49	$53.34	$25.30
53661	T	Dilation of urethra	530	2.46	$126.49	$53.34	$25.30
53665	T	Dilation of urethra	531	18.59	$955.90	$531.55	$191.18
53670	N	Insert urinary catheter					
53675	T	Insert urinary catheter	530	2.46	$126.49	$53.34	$25.30
53850	T	Prostatic microwave thermotx	524	27.20	$1,398.62	$824.90	$279.72
53852	T	Prostatic rf thermotx	524	27.20	$1,398.62	$824.90	$279.72
53899	T	Urology surgery procedure	530	2.46	$126.49	$53.34	$25.30
54000	T	Slitting of prepuce	531	18.59	$955.90	$531.55	$191.18
54001	T	Slitting of prepuce	531	18.59	$955.90	$531.55	$191.18
54015	T	Drain penis lesion	132	5.63	$289.49	$132.89	$57.90
54050	T	Destruction, penis lesion(s)	152	10.07	$517.80	$251.54	$103.56
54055	T	Destruction, penis lesion(s)	152	10.07	$517.80	$251.54	$103.56
54056	T	Cryosurgery, penis lesion(s)	152	10.07	$517.80	$251.54	$103.56
54057	T	Laser surg, penis lesion(s)	152	10.07	$517.80	$251.54	$103.56
54060	T	Excision of penis lesion(s)	152	10.07	$517.80	$251.54	$103.56
54065	T	Destruction, penis lesion(s)	152	10.07	$517.80	$251.54	$103.56
54100	T	Biopsy of penis	162	5.59	$287.44	$125.66	$57.49
54105	T	Biopsy of penis	162	5.59	$287.44	$125.66	$57.49
54110	T	Treatment of penis lesion	537	28.65	$1,473.18	$872.36	$294.64
54111	T	Treat penis lesion, graft	537	28.65	$1,473.18	$872.36	$294.64
54112	T	Treat penis lesion, graft	537	28.65	$1,473.18	$872.36	$294.64
54115	T	Treatment of penis lesion	132	5.63	$289.49	$132.89	$57.90
54120	T	Partial removal of penis	537	28.65	$1,473.18	$872.36	$294.64
54125	C	Removal of penis					
54130	C	Remove penis & nodes					
54135	C	Remove penis & nodes					
54150	T	Circumcision	536	12.89	$662.80	$321.60	$132.56
54152	T	Circumcision	536	12.89	$662.80	$321.60	$132.56
54160	T	Circumcision	536	12.89	$662.80	$321.60	$132.56
54161	T	Circumcision	536	12.89	$662.80	$321.60	$132.56
54200	T	Treatment of penis lesion	530	2.46	$126.49	$53.34	$25.30
54205	T	Treatment of penis lesion	537	28.65	$1,473.18	$872.36	$294.64
54220	T	Treatment of penis lesion	530	2.46	$126.49	$53.34	$25.30
54230	T	Prepare penis study	347	2.57	$132.15	$62.38	$26.43
54231	T	Dynamic cavernosometry	530	2.46	$126.49	$53.34	$25.30
54235	T	Penile injection	530	2.46	$126.49	$53.34	$25.30
54240	T	Penis study	529	2.33	$119.81	$59.66	$23.96
54250	T	Penis study	[illegible]	2.33	$119.81	$59.66	$23.96
54300	T	Revision of penis	537	28.65	$1,473.18	$872.36	$294.64
54304	T	Revision of penis	537	28.65	$1,473.18	$872.36	$294.64
54308	T	Reconstruction of urethra	537	28.65	$1,473.18	$872.36	$294.64
54312	T	Reconstruction of urethra	537	28.65	$1,473.18	$872.36	$294.64
54316	T	Reconstruction of urethra	537	28.65	$1,473.18	$872.36	$294.64
54318	T	Reconstruction of urethra	537	28.65	$1,473.18	$872.36	$294.64
54322	T	Reconstruction of urethra	537	28.65	$1,473.18	$872.36	$294.64
54324	T	Reconstruction of urethra	537	28.65	$1,473.18	$872.36	$294.64
54326	T	Reconstruction of urethra	537	28.65	$1,473.18	$872.36	$294.64
54328	T	Revise penis, urethra	537	28.65	$1,473.18	$872.36	$294.64
54332	C	Revise penis, urethra					
54336	C	Revise penis, urethra					
54340	T	Secondary urethral surgery	537	28.65	$1,473.18	$872.36	$294.64
54344	T	Secondary urethral surgery	537	28.65	$1,473.18	$872.36	$294.64
54348	T	Secondary urethral surgery	537	28.65	$1,473.18	$872.36	$294.64
54352	T	Reconstruct urethra, penis	537	28.65	$1,473.18	$872.36	$294.64
54360	T	Penis plastic surgery	537	28.65	$1,473.18	$872.36	$294.64
54380	T	Repair penis	537	28.65	$1,473.18	$872.36	$294.64
54385	T	Repair penis	537	28.65	$1,473.18	$872.36	$294.64
54390	C	Repair penis and bladder					
54400	T	Insert semi-rigid prosthesis	536	48.41	$2,489.24	$1,563.47	$497.85
54401	T	Insert self-contd prosthesis	538	48.41	$2,489.24	$1,563.47	$497.85
54402	T	Remove penis prosthesis	537	28.65	$1,473.18	$872.36	$294.64
54405	T	Insert multi-comp prosthesis	538	48.41	$2,489.24	$1,563.47	$497.85
54407	T	Remove multi-comp prosthesis	537	28.65	$1,473.18	$872.36	$294.64
54409	T	Revise penis prosthesis	537	28.65	$1,473.18	$872.36	$294.64
54420	T	Revision of penis	537	28.65	$1,473.18	$872.36	$294.64
54430	C	Revision of penis					

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
54435	T	Revision of penis	537	28.65	$1,473.18	$872.36	$294.64
54440	T	Repair of penis	537	28.65	$1,473.18	$872.36	$294.64
54450	T	Preputial stretching	530	2.46	$126.49	$53.34	$25.30
54500	T	Biopsy of testis	122	4.59	$236.02	$113.00	$47.20
54505	T	Biopsy of testis	546	16.54	$850.49	$449.51	$170.10
54510	T	Removal of testis lesion	546	16.54	$850.49	$449.51	$170.10
54520	T	Removal of testis	546	16.54	$850.49	$449.51	$170.10
54530	T	Removal of testis	546	16.54	$850.49	$449.51	$170.10
54535	C	Extensive testis surgery					
54550	T	Exploration for testis	546	16.54	$850.49	$449.51	$170.10
54560	C	Exploration for testis					
54600	T	Reduce testis torsion	546	16.54	$850.49	$449.51	$170.10
54620	T	Suspension of testis	546	16.54	$850.49	$449.51	$170.10
54640	T	Suspension of testis	546	16.54	$850.49	$449.51	$170.10
54650	C	Orchiopexy (Fowler-Stephens)					
54660	T	Revision of testis	546	16.54	$850.49	$449.51	$170.10
54670	T	Repair testis injury	546	16.54	$850.49	$449.51	$170.10
54680	T	Relocation of testis(es)	546	16.54	$850.49	$449.51	$170.10
54700	T	Drainage of scrotum	546	16.54	$850.49	$449.51	$170.10
54800	T	Biopsy of epididymis	122	4.59	$236.02	$113.00	$47.20
54820	T	Exploration of epididymis	546	16.54	$850.49	$449.51	$170.10
54830	T	Remove epididymis lesion	546	16.54	$850.49	$449.51	$170.10
54840	T	Remove epididymis lesion	546	16.54	$850.49	$449.51	$170.10
54860	T	Removal of epididymis	546	16.54	$850.49	$449.51	$170.10
54861	T	Removal of epididymis	546	16.54	$850.49	$449.51	$170.10
54900	T	Fusion of spermatic ducts	546	16.54	$850.49	$449.51	$170.10
54901	T	Fusion of spermatic ducts	546	16.54	$850.49	$449.51	$170.10
55000	T	Drainage of hydrocele	121	0.63	$32.39	$21.02	$6.48
55040	T	Removal of hydrocele	466	20.67	$1,062.85	$556.64	$212.57
55041	T	Removal of hydroceles	466	20.67	$1,062.85	$556.64	$212.57
55060	T	Repair of hydrocele	546	16.54	$850.49	$449.51	$170.10
55100	T	Drainage of scrotum abscess	132	5.63	$289.49	$132.89	$57.90
55110	T	Explore scrotum	546	16.54	$850.49	$449.51	$170.10
55120	T	Removal of scrotum lesion	546	16.54	$850.49	$449.51	$170.10
55150	T	Removal of scrotum	546	16.54	$850.49	$449.51	$170.10
55175	T	Revision of scrotum	546	16.54	$850.49	$449.51	$170.10
55180	T	Revision of scrotum	546	16.54	$850.49	$449.51	$170.10
55200	T	Incision of sperm duct	546	16.54	$850.49	$449.51	$170.10
55250	T	Removal of sperm duct(s)	546	16.54	$850.49	$449.51	$170.10
55300	T	Preparation,sperm duct x-ray	347	2.57	$132.15	$62.38	$26.43
55400	T	Repair of sperm duct	546	16.54	$850.49	$449.51	$170.10
55450	T	Ligation of sperm duct	546	16.54	$850.49	$449.51	$170.10
55500	T	Removal of hydrocele	546	16.54	$850.49	$449.51	$170.10
55520	T	Removal of sperm cord lesion	546	16.54	$850.49	$449.51	$170.10
55530	T	Revise spermatic cord veins	546	16.54	$850.49	$449.51	$170.10
55535	T	Revise spermatic cord veins	546	16.54	$850.49	$449.51	$170.10
55540	T	Revise hernia & sperm veins	546	16.54	$850.49	$449.51	$170.10
55600	C	Incise sperm duct pouch					
55605	C	Incise sperm duct pouch					
55650	C	Remove sperm duct pouch					
55680	T	Remove sperm pouch lesion	546	16.54	$850.49	$449.51	$170.10
55700	T	Biopsy of prostate	547	4.39	$225.73	$125.20	$45.15
55705	T	Biopsy of prostate	547	4.39	$225.73	$125.20	$45.15
55720	T	Drainage of prostate abscess	523	16.35	$840.72	$438.89	$168.14
55725	T	Drainage of prostate abscess	523	16.35	$840.72	$438.89	$168.14
55801	C	Removal of prostate					
55810	C	Extensive prostate surgery					
55812	C	Extensive prostate surgery					
55815	C	Extensive prostate surgery					
55821	C	Removal of prostate					
55831	C	Removal of prostate					
55840	C	Extensive prostate surgery					
55842	C	Extensive prostate surgery					
55845	C	Extensive prostate surgery					
55859	T	Percut/needle insert, pros	523	16.35	$840.72	$438.89	$168.14
55860	C	Surgical exposure, prostate					
55862	C	Extensive prostate surgery					
55865	C	Extensive prostate surgery					
55870	T	Electroejaculation	568	2.79	$143.46	$55.60	$28.69
55899	T	Genital surgery procedure	530	2.46	$126.49	$53.34	$25.30
55970	E	Sex transformation, M to F					
55980	E	Sex transformation, F to M					
56300	T	Laparoscopy; diagnostic	551	24.61	$1,265.45	$701.73	$253.09
56301	T	Laparoscopy; tubal cautery	551	24.61	$1,265.45	$701.73	$253.09
56302	T	Laparoscopy; tubal block	551	24.61	$1,265.45	$701.73	$253.09

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
56303	T	Laparoscopy; excise lesions	551	24.61	$1,265.45	$701.73	$253.09
56304	T	Laparoscopy; lysis	551	24.61	$1,265.45	$701.73	$253.09
56305	T	Laparoscopy; biopsy	551	24.61	$1,265.45	$701.73	$253.09
56306	T	Laparoscopy; aspiration	551	24.61	$1,265.45	$701.73	$253.09
56307	T	Laparoscopy; remove adnexa	552	37.09	$1,907.17	$1,053.84	$381.43
56308	C	Laparoscopy; hysterectomy					
56309	T	Laparoscopy; remove myoma	552	37.09	$1,907.17	$1,053.84	$381.43
56310	C	Laparoscopic enterolysis					
56311	T	Laparoscopic lymph node biop	552	37.09	$1,907.17	$1,053.84	$381.43
56312	T	Laparoscopic lymphadenectomy	552	37.09	$1,907.17	$1,053.84	$381.43
56313	T	Laparoscopic lymphadenectomy	552	37.09	$1,907.17	$1,053.84	$381.43
56314	C	Lapar; drain lymphocele					
56315	C	Laparoscopic appendectomy					
56316	T	Laparoscopic hernia repair	552	37.09	$1,907.17	$1,053.84	$381.43
56317	T	Laparoscopic hernia repair	552	37.09	$1,907.17	$1,053.84	$381.43
56318	T	Laparoscopic orchiectomy	552	37.09	$1,907.17	$1,053.84	$381.43
56320	T	Laparoscopy, spermatic veins	552	37.09	$1,907.17	$1,053.84	$381.43
56322	C	Laparoscopy, vagus nerves					
56323	C	Laparoscopy, vagus nerves					
56324	C	Laparoscopy, cholecystoenter					
56340	C	Laparoscopic cholecystectomy					
56341	C	Laparoscopic cholecystectomy					
56342	C	Laparoscopic cholecystectomy					
56343	T	Laparoscopic salpingostomy	552	37.09	$1,907.17	$1,053.84	$381.43
56344	T	Laparoscopic fimbrioplasty	552	37.09	$1,907.17	$1,053.84	$381.43
56345	C	Laparoscopic splenectomy					
56346	T	Laparoscopic gastrostomy	551	24.61	$1,265.45	$701.73	$253.09
56347	C	Laparoscopic jejunostomy					
56348	C	Laparo; resect intestine					
56349	C	Laparoscopy; fundoplasty					
56350	T	Hysteroscopy; diagnostic	562	12.30	$632.47	$325.44	$126.49
56351	T	Hysteroscopy; biopsy	550	16.46	$846.37	$445.22	$169.27
56352	T	Hysteroscopy; lysis	550	16.46	$846.37	$445.22	$169.27
56353	T	Hysteroscopy; resect septum	550	16.46	$846.37	$445.22	$169.27
56354	T	Hysteroscopy; remove myoma	550	16.46	$846.37	$445.22	$169.27
56355	T	Hysteroscopy; remove impact	550	16.46	$846.37	$445.22	$169.27
56356	T	Hysteroscopy; ablation	550	16.46	$846.37	$445.22	$169.27
[2] 56360	T	Peritoneoscopy	551	24.61	$1,265.45	$701.73	$253.09
[2] 56361	T	Peritoneoscopy w/biopsy	551	24.61	$1,265.45	$701.73	$253.09
56362	T	Laparoscopy w/cholangio	552	37.09	$1,907.17	$1,053.84	$381.43
56363	T	Laparoscopy w/biopsy	552	37.09	$1,907.17	$1,053.84	$381.43
56399	T	Laparoscopy procedure	562	12.30	$632.47	$325.44	$126.49
56405	T	I & D of vulva/perineum	561	1.46	$75.07	$24.41	$15.01
56420	T	Drainage of gland abscess	561	1.46	$75.07	$24.41	$15.01
56440	T	Surgery for vulva lesion	562	12.30	$632.47	$325.44	$126.49
56441	T	Lysis of labial lesion(s)	561	1.46	$75.07	$24.41	$15.01
56501	T	Destruction, vulva lesion(s)	152	10.07	$517.80	$251.54	$103.56
56515	T	Destruction, vulva lesion(s)	152	10.07	$517.80	$251.54	$103.56
56605	T	Biopsy of vulva/perineum	161	3.43	$176.37	$75.71	$35.27
56606	T	Biopsy of vulva/perineum	161	3.43	$176.37	$75.71	$35.27
56620	T	Partial removal of vulva	560	16.50	$848.43	$461.72	$169.69
56625	T	Complete removal of vulva	563	16.50	$848.43	$461.72	$169.69
56630	C	Extensive vulva surgery					
56631	C	Extensive vulva surgery					
56632	C	Extensive vulva surgery					
56633	C	Extensive vulva surgery					
56634	C	Extensive vulva surgery					
56637	C	Extensive vulva surgery					
56640	C	Extensive vulva surgery					
56700	T	Partial removal of hymen	562	12.30	$632.47	$325.44	$126.49
56720	T	Incision of hymen	562	12.30	$632.47	$325.44	$126.49
56740	T	Remove vagina gland lesion	562	12.30	$632.47	$325.44	$126.49
56800	T	Repair of vagina	562	12.30	$632.47	$325.44	$126.49
56805	C	Repair clitoris					
56810	T	Repair of perineum	562	12.30	$632.47	$325.44	$126.49
57000	T	Exploration of vagina	562	12.30	$632.47	$325.44	$126.49
57010	T	Drainage of pelvic abscess	562	12.30	$632.47	$325.44	$126.49
57020	T	Drainage of pelvic fluid	562	12.30	$632.47	$325.44	$126.49
57061	T	Destruction vagina lesion(s)	561	1.46	$75.07	$24.41	$15.01
57065	T	Destruction vagina lesion(s)	562	12.30	$632.47	$325.44	$126.49
57100	T	Biopsy of vagina	561	1.46	$75.07	$24.41	$15.01
57105	T	Biopsy of vagina	562	12.30	$632.47	$325.44	$126.49
[2] 57108	C	Partial removal of vagina					
57110	C	Remove vagina wall, complete					
57120	C	Closure of vagina					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
57130	T	Remove vagina lesion	562	12.30	$632.47	$325.44	$126.49
57135	T	Remove vagina lesion	562	12.30	$632.47	$325.44	$126.49
57150	T	Treat vagina infection	561	1.46	$75.07	$24.41	$15.01
57160	T	Insertion of pessary/device	561	1.46	$75.07	$24.41	$15.01
57170	T	Fitting of diaphragm/cap	561	1.46	$75.07	$24.41	$15.01
57180	T	Treat vaginal bleeding	561	1.46	$75.07	$24.41	$15.01
57200	T	Repair of vagina	562	12.30	$632.47	$325.44	$126.49
57210	T	Repair vagina/perineum	562	12.30	$632.47	$325.44	$126.49
57220	T	Revision of urethra	563	16.50	$848.43	$461.72	$169.69
57230	T	Repair of urethral lesion	562	12.30	$632.47	$325.44	$126.49
57240	T	Repair bladder & vagina	563	16.50	$848.43	$461.72	$169.69
57250	T	Repair rectum & vagina	563	16.50	$848.43	$461.72	$169.69
57260	T	Repair of vagina	563	16.50	$848.43	$461.72	$169.69
57265	T	Extensive repair of vagina	563	16.50	$848.43	$461.72	$169.69
57268	T	Repair of bowel bulge	563	16.50	$848.43	$461.72	$169.69
57270	C	Repair of bowel pouch					
57280	C	Suspension of vagina					
57282	C	Repair of vaginal prolapse					
57284	T	Repair paravaginal defect	563	16.50	$848.43	$461.72	$169.69
57288	T	Repair bladder defect	563	16.50	$848.43	$461.72	$169.69
57289	T	Repair bladder & vagina	563	16.50	$848.43	$461.72	$169.69
57291	T	Construction of vagina	563	16.50	$848.43	$461.72	$169.69
57292	C	Construct vagina with graft					
57300	T	Repair rectum-vagina fistula	563	16.50	$848.43	$461.72	$169.69
57305	C	Repair rectum-vagina fistula					
57307	C	Fistula repair & colostomy					
57308	C	Fistula repair, transperine					
57310	C	Repair urethrovaginal lesion					
57311	C	Repair urethrovaginal lesion					
57320	C	Repair bladder-vagina lesion					
57330	C	Repair bladder-vagina lesion					
57335	C	Repair vagina					
57400	T	Dilation of vagina	562	12.30	$632.47	$325.44	$126.49
57410	T	Pelvic examination	562	12.30	$632.47	$325.44	$126.49
57415	T	Removal vaginal foreign body	562	12.30	$632.47	$325.44	$126.49
57452	T	Examination of vagina	561	1.46	$75.07	$24.41	$15.01
57454	T	Vagina examination & biopsy	561	1.46	$75.07	$24.41	$15.01
57460	T	Cervix excision	562	12.30	$632.47	$325.44	$126.49
57500	T	Biopsy of cervix	561	1.46	$75.07	$24.41	$15.01
57505	T	Endocervical curettage	561	1.46	$75.07	$24.41	$15.01
57510	T	Cauterization of cervix	561	1.46	$75.07	$24.41	$15.01
57511	T	Cryocautery of cervix	561	1.46	$75.07	$24.41	$15.01
57513	T	Laser surgery of cervix	561	1.46	$75.07	$24.41	$15.01
57520	T	Conization of cervix	563	16.50	$848.43	$461.72	$169.69
57522	T	Conization of cervix	563	16.50	$848.43	$461.72	$169.69
57530	T	Removal of cervix	560	16.50	$848.43	$461.72	$169.69
57531	C	Removal of cervix, radical					
57540	C	Removal of residual cervix					
57545	C	Remove cervix, repair pelvis					
57550	T	Removal of residual cervix	563	16.50	$848.43	$461.72	$169.69
57555	T	Remove cervix, repair vagina	563	16.50	$848.43	$461.72	$169.69
57556	T	Remove cervix, repair bowel	563	16.50	$848.43	$461.72	$169.69
57700	T	Revision of cervix	562	12.30	$632.47	$325.44	$126.49
57720	T	Revision of cervix	562	12.30	$632.47	$325.44	$126.49
57800	T	Dilation of cervical canal	561	1.46	$75.07	$24.41	$15.01
57820	T	D&c of residual cervix	567	13.18	$677.72	$360.70	$135.54
58100	T	Biopsy of uterus lining	561	1.46	$75.07	$24.41	$15.01
58120	T	Dilation and curettage (D&C)	567	13.18	$677.72	$360.70	$135.54
58140	C	Removal of uterus lesion					
58145	T	Removal of uterus lesion	563	16.50	$848.43	$461.72	$169.69
58150	C	Total hysterectomy					
58152	C	Total hysterectomy					
58180	C	Partial hysterectomy					
58200	C	Extensive hysterectomy					
58210	C	Extensive hysterectomy					
58240	C	Removal of pelvis contents					
58260	C	Vaginal hysterectomy					
58262	C	Vaginal hysterectomy					
58263	C	Vaginal hysterectomy					
58267	C	Hysterectomy & vagina repair					
58270	C	Hysterectomy & vagina repair					
58275	C	Hysterectomy, revise vagina					
58280	C	Hysterectomy, revise vagina					
58285	C	Extensive hysterectomy					
58300	E	Insert intrauterine device					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
58301	T	Remove intrauterine device	561	1.46	$75.07	$24.41	$15.01
58321	T	Artificial insemination	568	2.79	$143.46	$55.60	$28.69
58322	T	Artificial insemination	568	2.79	$143.46	$55.60	$28.69
58323	T	Sperm washing	568	2.79	$143.46	$55.60	$28.69
58340	T	Catheter for hysterography	347	2.57	$132.15	$62.38	$26.43
58345	T	Reopen fallopian tube	562	12.30	$632.47	$325.44	$126.49
58350	T	Reopen fallopian tube	562	12.30	$632.47	$325.44	$126.49
58400	C	Suspension of uterus					
58410	C	Suspension of uterus					
58520	C	Repair of ruptured uterus					
58540	C	Revision of uterus					
58600	C	Division of fallopian tube					
58605	C	Division of fallopian tube					
58611	C	Ligate oviduct(s) add-on					
58615	C	Occlude fallopian tube(s)					
58700	C	Removal of fallopian tube					
58720	C	Removal of ovary/tube(s)					
58740	C	Revise fallopian tube(s)					
58750	C	Repair oviduct					
58752	C	Revise ovarian tube(s)					
58760	C	Remove tubal obstruction					
58770	C	Create new tubal opening					
58800	T	Drainage of ovarian cyst(s)	563	16.50	$848.43	$461.72	$169.69
58805	C	Drainage of ovarian cyst(s)					
58820	T	Open drain ovary abscess	563	16.50	$848.43	$461.72	$169.69
58822	C	Percut drain ovary abscess					
58823	C	Percut drain pelvic abscess					
58825	C	Transposition, ovary(s)					
58900	C	Biopsy of ovary(s)					
58920	C	Partial removal of ovary(s)					
58925	C	Removal of ovarian cyst(s)					
58940	C	Removal of ovary(s)					
58943	C	Removal of ovary(s)					
58950	C	Resect ovarian malignancy					
58951	C	Resect ovarian malignancy					
58952	C	Resect ovarian malignancy					
58960	C	Exploration of abdomen					
58970	T	Retrieval of oocyte	562	12.30	$632.47	$325.44	$126.49
58974	T	Transfer of embryo	568	2.79	$143.46	$55.60	$28.69
58976	T	Transfer of embryo	568	2.79	$143.46	$55.60	$28.69
58999	T	Genital surgery procedure	161	3.43	$176.37	$75.71	$35.27
59000	T	Amniocentesis	578	1.17	$60.16	$32.77	$12.03
59012	T	Fetal cord puncture,prenatal	578	1.17	$60.16	$32.77	$12.03
59015	T	Chorion biopsy	578	1.17	$60.16	$32.77	$12.03
59020	T	Fetal contract stress test	578	1.17	$60.16	$32.77	$12.03
59025	T	Fetal non-stress test	578	1.17	$60.16	$32.77	$12.03
59030	T	Fetal scalp blood sample	578	1.17	$60.16	$32.77	$12.03
59050	T	Fetal monitor w/report	578	1.17	$60.16	$32.77	$12.03
59051	N	Fetal monitor/interpret only					
59100	C	Remove uterus lesion					
59120	C	Treat ectopic pregnancy					
59121	C	Treat ectopic pregnancy					
59130	C	Treat ectopic pregnancy					
59135	C	Treat ectopic pregnancy					
59136	C	Treat ectopic pregnancy					
59140	C	Treat ectopic pregnancy					
59150	C	Treat ectopic pregnancy					
59151	C	Treat ectopic pregnancy					
59160	T	D&C after delivery	567	13.18	$677.72	$360.70	$135.54
59200	T	Insert cervical dilator	561	1.46	$75.07	$24.41	$15.01
59300	T	Episiotomy or vaginal repair	562	12.30	$632.47	$325.44	$126.49
59320	T	Revision of cervix	562	12.30	$632.47	$325.44	$126.49
59325	C	Revision of cervix					
59350	C	Repair of uterus					
59400	E	Obstetrical care					
59409	T	Obstetrical care	580	4.31	$221.62	$44.32	$44.32
59410	E	Obstetrical care					
59412	T	Antepartum manipulation	580	4.31	$221.62	$44.32	$44.32
59414	T	Deliver placenta	580	4.31	$221.62	$44.32	$44.32
59425	E	Antepartum care only					
59426	E	Antepartum care only					
59430	E	Care after delivery					
59510	E	Cesarean delivery					
59514	C	Cesarean delivery only					
59515	E	Cesarean delivery					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
59525	C	Remove uterus after cesarean					
59610	E	Vbac delivery					
59612	T	Vbac delivery only	580	4.31	$221.62	$44.32	$44.32
59614	E	Vbac care after delivery					
59618	E	Attempted vbac delivery					
59620	C	Attempted vbac delivery only					
59622	E	Attempted vbac after care					
59812	T	Treatment of miscarriage	587	12.96	$666.40	$347.14	$133.28
59820	T	Care of miscarriage	587	12.96	$666.40	$347.14	$133.28
59821	T	Treatment of miscarriage	587	12.96	$666.40	$347.14	$33.28
59830	C	Treat uterus infection					
59840	T	Abortion	586	11.98	$616.01	$409.29	$123.20
59841	T	Abortion	586	11.98	$616.01	$409.29	$123.20
59850	C	Abortion					
59851	C	Abortion					
59852	C	Abortion					
59855	C	Abortion					
59856	C	Abortion					
59857	C	Abortion					
59866	C	Abortion					
59870	T	Evacuate mole of uterus	587	12.96	$666.40	$347.14	$133.28
59871	T	Remove cerclage suture	562	12.30	$632.47	$325.44	$126.49
59899	T	Maternity care procedure	578	1.17	$60.16	$32.77	$12.03
60000	T	Drain thyroid/tongue cyst	312	7.07	$363.54	$170.86	$72.71
60001	T	Aspirate/inject thyriod cyst	121	0.63	$32.39	$21.02	$6.48
60100	T	Biopsy of thyroid	122	4.59	$236.02	$113.00	$47.20
60200	T	Remove thyroid lesion	397	19.12	$983.15	$542.17	$196.63
60210	T	Partial excision thyroid	397	19.12	$983.15	$542.17	$196.63
60212	C	Partial thyroid excision					
60220	T	Partial removal of thyroid	397	19.12	$983.15	$542.17	$196.63
60225	T	Partial removal of thyroid	397	19.12	$983.15	$542.17	$196.63
60240	T	Removal of thyroid	397	19.12	$983.15	$542.17	$196.63
60252	C	Removal of thyroid					
60254	C	Extensive thyroid surgery					
60260	C	Repeat thyroid surgery					
60270	C	Removal of thyroid					
60271	C	Removal of thyroid					
60280	T	Remove thyroid duct lesion	397	19.12	$983.15	$542.17	$196.63
60281	T	Remove thyroid duct lesion	397	19.12	$983.15	$542.17	$196.63
60500	C	Explore parathyroid glands					
60502	C	Re-explore parathyroids					
60505	C	Explore parathyroid glands					
60512	C	Autotransplant, parathyroid					
60520	C	Removal of thymus gland					
60521	C	Removal thymus gland					
60522	C	Removal of thymus gland					
60540	C	Explore adrenal gland					
60545	C	Explore adrenal gland					
60600	C	Remove carotid body lesion					
60605	C	Remove carotid body lesion					
60699	T	Endocrine surgery procedure	121	0.63	$32.39	$21.02	$6.48
61000	T	Remove cranial cavity fluid	602	3.19	$164.03	$87.01	$32.81
61001	T	Remove cranial cavity fluid	602	3.19	$164.03	$87.01	$32.81
61020	T	Remove brain cavity fluid	602	3.19	$164.03	$87.01	$32.81
61026	T	Injection into brain canal	602	3.19	$164.03	$87.01	$32.81
61050	T	Remove brain canal fluid	602	3.19	$164.03	$87.01	$32.81
61055	T	Injection into brain canal	602	3.19	$164.03	$87.01	$32.81
61070	T	Brain canal shunt procedure	602	3.19	$164.03	$87.01	$32.81
61105	C	Twist drill hole					
[2] 61106	C	Drill skull for exam/surgery					
61107	C	Drill skull for implantation					
61108	C	Drill skull for drainage					
61120	C	Burr hole for puncture					
[2] 61130	C	Pierce skull, exam/surgery					
61140	C	Pierce skull for biopsy					
61150	C	Pierce skull for drainage					
61151	C	Pierce skull for drainage					
61154	C	Pierce skull, remove clot					
61156	C	Pierce skull for drainage					
61210	C	Pierce skull; implant device					
61215	T	Insert brain-fluid device	618	24.78	$1,274.19	$808.18	$254.84
61250	C	Pierce skull & explore					
61253	C	Pierce skull & explore					
61304	C	Open skull for exploration					
61305	C	Open skull for exploration					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
61312	C	Open skull for drainage					
61313	C	Open skull for drainage					
61314	C	Open skull for drainage					
61315	C	Open skull for drainage					
61320	C	Open skull for drainage					
61321	C	Open skull for drainage					
61330	C	Decompress eye socket					
61332	C	Explore/biopsy eye socket					
61333	C	Explore orbit; remove lesion					
61334	C	Explore orbit; remove object					
61340	C	Relieve cranial pressure					
61343	C	Incise skull,pressure relief					
61345	C	Relieve cranial pressure					
61440	C	Incise skull for surgery					
61450	C	Incise skull for surgery					
61455	C	Incise skull for brain wound					
61460	C	Incise skull for surgery					
61470	C	Incise skull for surgery					
61480	C	Incise skull for surgery					
61490	C	Incise skull for surgery					
61500	C	Removal of skull lesion					
61501	C	Remove infected skull bone					
61510	C	Removal of brain lesion					
61512	C	Remove brain lining lesion					
61514	C	Removal of brain abscess					
61516	C	Removal of brain lesion					
61518	C	Removal of brain lesion					
61519	C	Remove brain lining lesion					
61520	C	Removal of brain lesion					
61521	C	Removal of brain lesion					
61522	C	Removal of brain abscess					
61524	C	Removal of brain lesion					
61526	C	Removal of brain lesion					
61530	C	Removal of brain lesion					
61531	C	Implant brain electrodes					
61533	C	Implant brain electrodes					
61534	C	Removal of brain lesion					
61535	C	Remove brain electrodes					
61536	C	Removal of brain lesion					
61538	C	Removal of brain tissue					
61539	C	Removal of brain tissue					
61541	C	Incision of brain tissue					
61542	C	Removal of brain tissue					
61543	C	Removal of brain tissue					
61544	C	Remove & treat brain lesion					
61545	C	Excision of brain tumor					
61546	C	Removal of pituitary gland					
61548	C	Removal of pituitary gland					
61550	C	Release of skull seams					
61552	C	Release of skull seams					
61556	C	Incise skull/sutures					
61557	C	Incise skull/sutures					
61558	C	Excision of skull/sutures					
61559	C	Excision of skull/sutures					
61563	C	Excision of skull tumor					
61564	C	Excision of skull tumor					
61570	C	Remove brain foreign body					
61571	C	Incise skull for brain wound					
61575	C	Skull base/brainstem surgery					
61576	C	Skull base/brainstem surgery					
61580	C	Craniofacial approach, skull					
61581	C	Craniofacial approach, skull					
61582	C	Craniofacial approach, skull					
61583	C	Craniofacial approach, skull					
61584	C	Orbitocranial approach/skull					
61585	C	Orbitocranial approach/skull					
61586	C	Resect nasopharynx, skull					
61590	C	Infratemporal approach/skull					
61591	C	Infratemporal approach/skull					
61592	C	Orbitocranial approach/skull					
61595	C	Transtemporal approach/skull					
61596	C	Transcochlear approach/skull					
61597	C	Transcondylar approach/skull					
61598	C	Transpetrosal approach/skull					
61600	C	Resect/excise cranial lesion					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
61601	C	Resect/excise cranial lesion					
61605	C	Resect/excise cranial lesion					
61606	C	Resect/excise cranial lesion					
61607	C	Resect/excise cranial lesion					
61608	C	Resect/excise cranial lesion					
61609	C	Transect, artery, sinus					
61610	C	Transect, artery, sinus					
61611	C	Transect, artery, sinus					
61612	C	Transect, artery, sinus					
61613	C	Remove aneurysm, sinus					
61615	C	Resect/excise lesion, skull					
61616	C	Resect/excise lesion, skull					
61618	C	Repair dura					
61619	C	Repair dura					
61624	C	Occlusion/embolization cath					
61626	C	Occlusion/embolization cath					
61680	C	Intracranial vessel surgery					
61682	C	Intracranial vessel surgery					
61684	C	Intracranial vessel surgery					
61686	C	Intracranial vessel surgery					
61690	C	Intracranial vessel surgery					
61692	C	Intracranial vessel surgery					
61700	C	Inner skull vessel surgery					
61702	C	Inner skull vessel surgery					
61703	C	Clamp neck artery					
61705	C	Revise circulation to head					
61708	C	Revise circulation to head					
61710	C	Revise circulation to head					
61711	C	Fusion of skull arteries					
[2] 61712	C	Skull or spine microsurgery					
61720	C	Incise skull/brain surgery					
61735	C	Incise skull/brain surgery					
61750	C	Incise skull; brain biopsy					
61751	C	Brain biopsy with cat scan					
61760	C	Implant brain electrodes					
61770	C	Incise skull for treatment					
61790	T	Treat trigeminal nerve	631	12.70	$653.03	$329.06	$130.61
61791	C	Treat trigeminal tract					
61793	S	Focus radiation beam	757	2.26	$116.21	$52.43	$23.24
61795	C	Brain surgery using computer					
61850	C	Implant neuroelectrodes					
61855	C	Implant neuroelectrodes					
61860	C	Implant neuroelectrodes					
61865	C	Implant neuroelectrodes					
61870	C	Implant neuroelectrodes					
61875	C	Implant neuroelectrodes					
61880	C	Revise/remove neuroelectrode					
61885	T	Implant neuroreceiver	618	24.78	$1,274.19	$808.18	$254.84
61888	C	Revise/remove neuroreceiver					
62000	C	Repair of skull fracture					
62005	C	Repair of skull fracture					
62010	C	Treatment of head injury					
62100	C	Repair brain fluid leakage					
62115	C	Reduction of skull defect					
62116	C	Reduction of skull defect					
62117	C	Reduction of skull defect					
62120	C	Repair skull cavity lesion					
62121	C	Incise skull repair					
62140	C	Repair of skull defect					
62141	C	Repair of skull defect					
62142	C	Remove skull plate/flap					
62143	C	Replace skull plate/flap					
62145	C	Repair of skull & brain					
62146	C	Repair of skull with graft					
62147	C	Repair of skull with graft					
62160	C	Establish brain cavity shunt					
62190	C	Establish brain cavity shunt					
62192	C	Establish brain cavity shunt					
62194	T	Replace/irrigate catheter	602	3.19	$164.03	$87.01	$32.81
62200	C	Establish brain cavity shunt					
62201	C	Establish brain cavity shunt					
62220	C	Establish brain cavity shunt					
62223	C	Establish brain cavity shunt					
62225	T	Replace/irrigate catheter	602	3.19	$164.03	$87.01	$32.81
62230	T	Replace/revise brain shunt	617	11.31	$581.56	$280.01	$116.31

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
62256	C	Remove brain cavity shunt					
62258	C	Replace brain cavity shunt					
62268	T	Drain spinal cord cyst	602	3.19	$164.03	$87.01	$32.81
62269	T	Needle biopsy spinal cord	122	4.59	$236.02	$113.00	$47.20
62270	T	Spinal fluid tap, diagnostic	600	2.41	$123.92	$61.47	$24.78
62272	T	Drain spinal fluid	600	2.41	$123.92	$61.47	$24.78
62273	T	Treat lumbar spine lesion	602	3.19	$164.03	$87.01	$32.81
62274	T	Inject spinal anesthetic	602	3.19	$164.03	$87.01	$32.81
62275	T	Inject spinal anesthetic	602	3.19	$164.03	$87.01	$32.81
62276	T	Inject spinal anesthetic	602	3.19	$164.03	$87.01	$32.81
62277	T	Inject spinal anesthetic	602	3.19	$164.03	$87.01	$32.81
62278	T	Inject spinal anesthetic	602	3.19	$164.03	$87.01	$32.81
62279	T	Inject spinal anesthetic	602	3.19	$164.03	$87.01	$32.81
62280	T	Treat spinal cord lesion	602	3.19	$164.03	$87.01	$32.81
62281	T	Treat spinal cord lesion	602	3.19	$164.03	$87.01	$32.81
62282	T	Treat spinal canal lesion	602	3.19	$164.03	$87.01	$32.81
62284	T	Injection for myelogram	347	2.57	$132.15	$62.38	$26.43
62287	T	Percutaneous diskectomy	631	12.70	$653.03	$329.06	$130.61
62288	T	Injection into spinal canal	602	3.19	$164.03	$87.01	$32.81
62289	T	Injection into spinal canal	602	3.19	$164.03	$87.01	$32.81
62290	T	Inject for spine disk x-ray	347	2.57	$132.15	$62.38	$26.43
62291	T	Inject for spine disk x-ray	347	2.57	$132.15	$62.38	$26.43
62292	T	Injection into disk lesion	602	3.19	$164.03	$87.01	$32.81
62294	T	Injection into spinal artery	602	3.19	$164.03	$87.01	$32.81
62298	T	Injection into spinal canal	602	3.19	$164.03	$87.01	$32.81
62350	T	Implant spinal catheter	617	11.31	$581.56	$280.01	$116.31
62351	C	Implant spinal catheter					
62355	T	Remove spinal canal catheter	617	11.31	$581.56	$280.01	$116.31
62360	T	Insert spine infusion device	618	24.78	$1,274.19	$808.18	$254.84
62361	T	Implant spine infusion pump	618	24.78	$1,274.19	$808.18	$254.84
62362	T	Implant spine infusion pump	618	24.78	$1,274.19	$808.18	$254.84
62365	T	Remove spine infusion device	617	11.31	$581.56	$280.01	$116.31
62367	X	Analyze spine infusion pump	966	0.39	$20.05	$12.43	$4.01
62368	X	Analyze spine infusion pump	966	0.39	$20.05	$12.43	$4.01
63001	C	Removal of spinal lamina					
63003	C	Removal of spinal lamina					
63005	C	Removal of spinal lamina					
63011	C	Removal of spinal lamina					
63012	C	Removal of spinal lamina					
63015	C	Removal of spinal lamina					
63016	C	Removal of spinal lamina					
63017	C	Removal of spinal lamina					
63020	C	Neck spine disk surgery					
63030	C	Low back disk surgery					
63035	C	Spinal disk surgery add-on					
63040	C	Neck spine disk surgery					
63042	C	Low back disk surgery					
63045	C	Removal of spinal lamina					
63046	C	Removal of spinal lamina					
63047	C	Removal of spinal lamina					
63048	C	Remove spinal lamina add-on					
63055	C	Decompress spinal cord					
63056	C	Decompress spinal cord					
63057	C	Decompress spine cord add-on					
63064	C	Decompress spinal cord					
63066	C	Decompress spine cord add-on					
63075	C	Neck spine disk surgery					
63076	C	Neck spine disk surgery					
63077	C	Spine disk surgery, thorax					
63078	C	Spine disk surgery, thorax					
63081	C	Removal of vertebral body					
63082	C	Remove vertebral body add-on					
63085	C	Removal of vertebral body					
63086	C	Remove vertebral body add-on					
63087	C	Removal of vertebral body					
63088	C	Remove vertebral body add-on					
63090	C	Removal of vertebral body					
63091	C	Remove vertebral body add-on					
63170	C	Incise spinal cord tract(s)					
63172	C	Drainage of spinal cyst					
63173	C	Drainage of spinal cyst					
63180	C	Revise spinal cord ligaments					
63182	C	Revise spinal cord ligaments					
63185	C	Incise spinal column/nerves					
63190	C	Incise spinal column/nerves					

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

[2] This code was valid in 1996 and therefore was available for use in calculating weights. However, it has since been terminated and will not be paid upon implementation.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
63191	C	Incise spinal column/nerves					
63194	C	Incise spinal column & cord					
63195	C	Incise spinal column & cord					
63196	C	Incise spinal column & cord					
63197	C	Incise spinal column & cord					
63198	C	Incise spinal column & cord					
63199	C	Incise spinal column & cord					
63200	C	Release of spinal cord					
63250	C	Revise spinal cord vessels					
63251	C	Revise spinal cord vessels					
63252	C	Revise spinal cord vessels					
63265	C	Excise intraspinal lesion					
63266	C	Excise intraspinal lesion					
63267	C	Excise intraspinal lesion					
63268	C	Excise intraspinal lesion					
63270	C	Excise intraspinal lesion					
63271	C	Excise intraspinal lesion					
63272	C	Excise intraspinal lesion					
63273	C	Excise intraspinal lesion					
63275	C	Biopsy/excise spinal tumor					
63276	C	Biopsy/excise spinal tumor					
63277	C	Biopsy/excise spinal tumor					
63278	C	Biopsy/excise spinal tumor					
63280	C	Biopsy/excise spinal tumor					
63281	C	Biopsy/excise spinal tumor					
63282	C	Biopsy/excise spinal tumor					
63283	C	Biopsy/excise spinal tumor					
63285	C	Biopsy/excise spinal tumor					
63286	C	Biopsy/excise spinal tumor					
63287	C	Biopsy/excise spinal tumor					
63290	C	Biopsy/excise spinal tumor					
63300	C	Removal of vertebral body					
63301	C	Removal of vertebral body					
63302	C	Removal of vertebral body					
63303	C	Removal of vertebral body					
63304	C	Removal of vertebral body					
63305	C	Removal of vertebral body					
63306	C	Removal of vertebral body					
63307	C	Removal of vertebral body					
63308	C	Remove vertebral body add-on					
63600	T	Remove spinal cord lesion	631	12.70	$653.03	$329.06	$130.61
63610	T	Stimulation of spinal cord	631	12.70	$653.03	$329.06	$130.61
63615	T	Remove lesion of spinal cord	631	12.70	$653.03	$329.06	$130.61
63650	T	Implant neuroelectrodes	616	11.85	$609.33	$329.06	$121.87
63655	C	Implant neuroelectrodes					
63660	T	Revise/remove neuroelectrode	617	11.31	$581.56	$280.01	$116.31
63685	T	Implant neuroreceiver	618	24.78	$1,274.19	$808.18	$254.84
63688	T	Revise/remove neuroreceiver	617	11.31	$581.56	$280.01	$116.31
[2] 63690	X	Analysis of neuroreceiver	[redacted]	0.39	$20.05	$12.43	$4.01
[2] 63691	X	Analysis of neuroreceiver	966	0.39	$20.05	$12.43	$4.01
63700	C	Repair of spinal herniation					
63702	C	Repair of spinal herniation					
63704	C	Repair of spinal herniation					
63706	C	Repair of spinal herniation					
63707	C	Repair spinal fluid leakage					
63709	C	Repair spinal fluid leakage					
63710	C	Graft repair of spine defect					
63740	C	Install spinal shunt					
63741	C	Install spinal shunt					
63744	T	Revision of spinal shunt	617	11.31	$581.56	$280.01	$116.31
63746	T	Removal of spinal shunt	617	11.31	$581.56	$280.01	$116.31
64400	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64402	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64405	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64408	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64410	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64412	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64413	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64415	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64417	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64418	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64420	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64421	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64425	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64430	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85

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[2] This code was valid in 1996 and therefore was available for use in calculating weights. However, it has since been terminated and will not be paid upon implementation

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
64435	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64440	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64441	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64442	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64443	T	Inject, nerve block add-on	601	3.00	$154.26	$74.13	$30.85
64445	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64450	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64505	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64508	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64510	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64520	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64530	T	Injection for nerve block	601	3.00	$154.26	$74.13	$30.85
64550	A	Apply neurostimulator					
64553	T	Implant neuroelectrodes	616	11.85	$609.33	$329.06	$121.87
64555	T	Implant neuroelectrodes	616	11.85	$609.33	$329.06	$121.87
64560	T	Implant neuroelectrodes	616	11.85	$609.33	$329.06	$121.87
64565	T	Implant neuroelectrodes	616	11.85	$609.33	$329.06	$121.87
64573	T	Implant neuroelectrodes	616	11.85	$609.33	$329.06	$121.87
64575	T	Implant neuroelectrodes	616	11.85	$609.33	$329.06	$121.87
64577	T	Implant neuroelectrodes	616	11.85	$609.33	$329.06	$121.87
64580	T	Implant neuroelectrodes	616	11.85	$609.33	$329.06	$121.87
64585	T	Revise/remove neuroelectrode	617	11.31	$581.56	$280.01	$116.31
64590	T	Implant neuroreceiver	618	24.78	$1,274.19	$608.18	$254.84
64595	T	Revise/remove neuroreceiver	617	11.31	$581.56	$280.01	$116.31
64600	T	Injection treatment of nerve	601	3.00	$154.26	$74.13	$30.85
64605	T	Injection treatment of nerve	601	3.00	$154.26	$74.13	$30.85
64610	T	Injection treatment of nerve	601	3.00	$154.26	$74.13	$30.85
64612	T	Destroy nerve, face muscle	601	3.00	$154.26	$74.13	$30.85
64613	T	Destroy nerve, spine muscle	601	3.00	$154.26	$74.13	$30.85
64620	T	Injection treatment of nerve	601	3.00	$154.26	$74.13	$30.85
64622	T	Injection treatment of nerve	601	3.00	$154.26	$74.13	$30.85
64623	T	Inject, tx of nerve add-on	601	3.00	$154.26	$74.13	$30.85
64630	T	Injection treatment of nerve	601	3.00	$154.26	$74.13	$30.85
64640	T	Injection treatment of nerve	601	3.00	$154.26	$74.13	$30.85
64680	T	Injection treatment of nerve	601	3.00	$154.26	$74.13	$30.85
64702	T	Revise finger/toe nerve	631	12.70	$653.03	$329.06	$130.61
64704	T	Revise hand/foot nerve	631	12.70	$653.03	$329.06	$130.61
64708	T	Revise arm/leg nerve	631	12.70	$653.03	$329.06	$130.61
64712	T	Revision of sciatic nerve	631	12.70	$653.03	$329.06	$130.61
64713	T	Revision of arm nerve(s)	631	12.70	$653.03	$329.06	$130.61
64714	T	Revise low back nerve(s)	631	12.70	$653.03	$329.06	$130.61
64716	T	Revision of cranial nerve	631	12.70	$653.03	$329.06	$130.61
64718	T	Revise ulnar nerve at elbow	631	12.70	$653.03	$329.06	$130.61
64719	T	Revise ulnar nerve at wrist	631	12.70	$653.03	$329.06	$130.61
64721	T	Carpal tunnel surgery	631	12.70	$653.03	$329.06	$130.61
64722	T	Relieve pressure on nerve(s)	631	12.70	$653.03	$329.06	$130.61
64725	T	Release foot/toe nerve	631	12.70	$653.03	$329.06	$130.61
64727	T	Internal nerve revision	631	12.70	$653.03	$329.06	$130.61
64732	T	Incision of brow nerve	631	12.70	$653.03	$329.06	$130.61
64734	T	Incision of cheek nerve	631	12.70	$653.03	$329.06	$130.61
64736	T	Incision of chin nerve	631	12.70	$653.03	$329.06	$130.61
64738	T	Incision of jaw nerve	631	12.70	$653.03	$329.06	$130.61
64740	T	Incision of tongue nerve	631	12.70	$653.03	$329.06	$130.61
64742	T	Incision of facial nerve	631	12.70	$653.03	$329.06	$130.61
64744	T	Incise nerve, back of head	631	12.70	$653.03	$329.06	$130.61
64746	T	Incise diaphragm nerve	631	12.70	$653.03	$329.06	$130.61
64752	C	Incision of vagus nerve					
64755	C	Incision of stomach nerves					
64760	C	Incision of vagus nerve					
64761	T	Incision of pelvis nerve	631	12.70	$653.03	$329.06	$130.61
64763	C	Incise hip/thigh nerve					
64766	C	Incise hip/thigh nerve					
64771	T	Sever cranial nerve	631	12.70	$653.03	$329.06	$130.61
64772	T	Incision of spinal nerve	631	12.70	$653.03	$329.06	$130.61
64774	T	Remove skin nerve lesion	631	12.70	$653.03	$329.06	$130.61
64776	T	Remove digit nerve lesion	631	12.70	$653.03	$329.06	$130.61
64779	T	Digit nerve surgery add-on	631	12.70	$653.03	$329.06	$130.61
64782	T	Remove limb nerve lesion	631	12.70	$653.03	$329.06	$130.61
64783	T	Limb nerve surgery add-on	631	12.70	$653.03	$329.06	$130.61
64784	T	Remove nerve lesion	631	12.70	$653.03	$329.06	$130.61
64786	T	Remove sciatic nerve lesion	632	16.48	$847.40	$453.58	$169.48
64787	T	Implant nerve end	631	12.70	$653.03	$329.06	$130.61
64788	T	Remove skin nerve lesion	631	12.70	$653.03	$329.06	$130.61
64790	T	Removal of nerve lesion	631	12.70	$653.03	$329.06	$130.61
64792	T	Removal of nerve lesion	632	16.48	$847.40	$453.58	$169.48

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
64795	T	Biopsy of nerve	631	12.70	$653.03	$329.06	$130.61
64802	C	Remove sympathetic nerves					
64804	C	Remove sympathetic nerves					
64809	C	Remove sympathetic nerves					
64818	C	Remove sympathetic nerves					
64820	C	Remove sympathetic nerves					
[2] 64830	T	Microrepair of nerve	631	12.70	$653.03	$329.06	$130.61
64831	T	Repair of digit nerve	632	16.48	$847.40	$453.58	$169.48
64832	T	Repair nerve add-on	632	16.48	$847.40	$453.58	$169.48
64834	T	Repair of hand or foot nerve	632	16.48	$847.40	$453.58	$169.48
64835	T	Repair of hand or foot nerve	632	16.48	$847.40	$453.58	$169.48
64836	T	Repair of hand or foot nerve	632	16.48	$847.40	$453.58	$169.48
64837	T	Repair nerve add-on	632	16.48	$847.40	$453.58	$169.48
64840	T	Repair of leg nerve	632	16.48	$847.40	$453.58	$169.48
64856	T	Repair/transpose nerve	632	16.48	$847.40	$453.58	$169.48
64857	T	Repair arm/leg nerve	632	16.48	$847.40	$453.58	$169.48
64858	T	Repair sciatic nerve	632	16.48	$847.40	$453.58	$169.48
64859	T	Nerve surgery	632	16.48	$847.40	$453.58	$169.48
64861	T	Repair of arm nerves	632	16.48	$847.40	$453.58	$169.48
64862	T	Repair of low back nerves	632	16.48	$847.40	$453.58	$169.48
64864	T	Repair of facial nerve	632	16.48	$847.40	$453.58	$169.48
64865	T	Repair of facial nerve	632	16.48	$847.40	$453.58	$169.48
64866	C	Fusion of facial/other nerve					
64868	C	Fusion of facial/other nerve					
64870	T	Fusion of facial/other nerve	632	16.48	$847.40	$453.58	$169.48
64872	T	Subsequent repair of nerve	632	16.48	$847.40	$453.58	$169.48
64874	T	Repair & revise nerve add-on	632	16.48	$847.40	$453.58	$169.48
64876	T	Repair nerve; shorten bone	632	16.48	$847.40	$453.58	$169.48
64885	T	Nerve graft, head or neck	632	16.48	$847.40	$453.58	$169.48
64886	T	Nerve graft, head or neck	632	16.48	$847.40	$453.58	$169.48
64890	T	Nerve graft, hand or foot	632	16.48	$847.40	$453.58	$169.48
64891	T	Nerve graft, hand or foot	632	16.48	$847.40	$453.58	$169.48
64892	T	Nerve graft, arm or leg	632	16.48	$847.40	$453.58	$169.48
64893	T	Nerve graft, arm or leg	632	16.48	$847.40	$453.58	$169.48
64895	T	Nerve graft, hand or foot	632	16.48	$847.40		
64896	T	Nerve graft, hand or foot	632	16.48	$847.4		
64897	T	Nerve graft, arm or leg	632	16.4	$8		
64898	T	Nerve graft, arm or leg	632	16.			
64901	T	Nerve graft add-on	632	16		$453.58	$169.48
64902	T	Nerve graft add-on	632			$453.58	$169.48
64905	T	Nerve pedicle transfer	632			$453.58	$169.48
64907	T	Nerve pedicle transfer	632	16.48		$453.58	$169.48
64999	T	Nervous system surgery	601	3.00	$154.26	$74.13	$30.85
65091	T	Revise eye	664	13.26	$681.83	$341.94	$136.37
65093	T	Revise eye with implant	664	13.26	$681.83	$341.94	$136.37
65101	T	Removal of eye	664	13.26	$681.83	$341.94	$136.37
65103	T	Remove eye/insert implant	664	13.26	$681.83	$341.94	$136.37
65105	T	Remove eye/attach implant	664	13.26	$681.83	$341.94	$136.37
65110	C	Removal of eye					
65112	C	Remove eye, revise socket					
65114	C	Remove eye, revise socket					
65125	T	Revise ocular implant	661	1.65	$84.84	$30.51	$16.97
65130	T	Insert ocular implant	664	13.26	$681.83	$341.94	$136.37
65135	T	Insert ocular implant	664	13.26	$681.83	$341.94	$136.37
65140	T	Attach ocular implant	664	13.26	$681.83	$341.94	$136.37
65150	T	Revise ocular implant	664	13.26	$681.83	$341.94	$136.37
65155	T	Reinsert ocular implant	664	13.26	$681.83	$341.94	$136.37
65175	T	Removal of ocular implant	663	9.58	$491.58	$252.44	$96.32
65205	T	Remove foreign body from eye	661	1.65	$84.84	$30.51	$16.97
65210	T	Remove foreign body from eye	661	1.65	$84.84	$30.51	$16.97
65220	T	Remove foreign body from eye	661	1.65	$84.84	$30.51	$16.97
65222	T	Remove foreign body from eye	661	1.65	$84.84	$30.51	$16.97
65235	T	Remove foreign body from eye	652	16.35	$840.72	$433.92	$168.14
65260	T	Remove foreign body from eye	676	5.87	$301.84	$138.54	$60.37
65265	T	Remove foreign body from eye	676	5.87	$301.84	$138.54	$60.37
65270	T	Repair of eye wound	183	11.04	$567.68	$283.18	$113.54
65272	T	Repair of eye wound	651	6.85	$352.23	$171.99	$70.45
65273	C	Repair of eye wound					
65275	T	Repair of eye wound	651	6.85	$352.23	$171.99	$70.45
65280	T	Repair of eye wound	652	16.35	$840.72	$433.92	$168.14
65285	T	Repair of eye wound	652	16.35	$840.72	$433.92	$168.14
65286	T	Repair of eye wound	651	6.85	$352.23	$171.99	$70.45
65290	T	Repair of eye socket wound	677	16.11	$828.38	$428.95	$165.68
65400	T	Removal of eye lesion	652	16.35	$840.72	$433.92	$168.14
65410	T	Biopsy of cornea	663	9.58	$491.58	$252.44	$96.32

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
65420	T	Removal of eye lesion	651	6.85	$352.23	$171.99	$70.45
65426	T	Removal of eye lesion	652	16.35	$840.72	$433.92	$168.14
65430	T	Corneal smear	681	1.65	$84.84	$30.51	$16.97
65435	T	Curette/treat cornea	681	1.65	$84.84	$30.51	$16.97
65436	T	Curette/treat cornea	651	6.85	$352.23	$171.99	$70.45
65450	T	Treatment of corneal lesion	651	6.85	$352.23	$171.99	$70.45
65600	T	Revision of cornea	681	1.65	$84.84	$30.51	$16.97
65710	T	Corneal transplant	670	30.78	$1,582.71	$885.92	$316.54
65730	T	Corneal transplant	670	30.78	$1,582.71	$885.92	$316.54
65750	T	Corneal transplant	670	30.78	$1,582.71	$885.92	$316.54
65755	T	Corneal transplant	670	30.78	$1,582.71	$885.92	$316.54
65760	E	Revision of cornea					
65765	E	Revision of cornea					
65767	E	Corneal tissue transplant					
65770	T	Revise cornea with implant	652	16.35	$840.72	$433.92	$168.14
65771	E	Radial keratotomy					
65772	T	Correction of astigmatism	651	6.85	$352.23	$171.99	$70.45
65775	T	Correction of astigmatism	652	16.35	$840.72	$433.92	$168.14
65800	T	Drainage of eye	683	9.56	$491.58	$252.44	$98.32
65805	T	Drainage of eye	683	9.56	$491.58	$252.44	$98.32
65810	T	Drainage of eye	651	6.85	$352.23	$171.99	$70.45
65815	T	Drainage of eye	651	6.85	$352.23	$171.99	$70.45
65820	T	Relieve inner eye pressure	651	6.85	$352.23	$171.99	$70.45
65850	T	Incision of eye	652	16.35	$840.72	$433.92	$168.14
65855	T	Laser surgery of eye	649	4.37	$224.71	$111.64	$44.94
65860	T	Incise inner eye adhesions	649	4.37	$224.71	$111.64	$44.94
65865	T	Incise inner eye adhesions	652	16.35	$840.72	$433.92	$168.14
65870	T	Incise inner eye adhesions	652	16.35	$840.72	$433.92	$168.14
65875	T	Incise inner eye adhesions	652	16.35	$840.72	$433.92	$168.14
65880	T	Incise inner eye adhesions	652	16.35	$840.72	$433.92	$168.14
65900	T	Remove eye lesion	652	16.35	$840.72	$433.92	$168.14
65920	T	Remove implant from eye	652	16.35	$840.72	$433.92	$168.14
65930	T	Remove blood clot from eye	652	16.35	$840.72	$433.92	$168.14
66020	T	Injection treatment of eye	683	9.56	$491.58	$252.44	$98.32
66030	T	Injection treatment of eye	683	9.56	$491.58	$252.44	$98.32
66130	T	Remove eye lesion	651	6.85	$352.23	$171.99	$70.45
66150	T	Glaucoma surgery	652	16.35	$840.72	$433.92	$168.14
66155	T	Glaucoma surgery	652	16.35	$840.72	$433.92	$168.14
66160	T	Glaucoma surgery	652	16.35	$840.72	$433.92	$168.14
66165	T	Glaucoma surgery	652	16.35	$840.72	$433.92	$168.14
66170	T	Glaucoma surgery	652	16.35	$840.72	$433.92	$168.14
66172	T	Incision of eye	652	16.35	$840.72	$433.92	$168.14
66180	T	Implant eye shunt	652	16.35	$840.72	$433.92	$168.14
66185	T	Revise eye shunt	652	16.35	$840.72	$433.92	$168.14
66220	T	Repair eye lesion	670	5.87	$301.84	$138.54	$60.37
66225	T	Repair/graft eye lesion	652	16.35	$840.72	$433.92	$168.14
66250	T	Follow-up surgery of eye	652	16.35	$840.72	$433.92	$168.14
66500	T	Incision of iris	651	6.85	$352.23	$171.99	$70.45
66505	T	Incision of iris	651	6.85	$352.23	$171.99	$70.45
66600	T	Remove iris and lesion	651	6.85	$352.23	$171.99	$70.45
66605	T	Removal of iris	652	16.35	$840.72	$433.92	$168.14
66625	T	Removal of iris	651	6.85	$352.23	$171.99	$70.45
66630	T	Removal of iris	651	6.85	$352.23	$171.99	$70.45
66635	T	Removal of iris	652	16.35	$840.72	$433.92	$168.14
66680	T	Repair iris & ciliary body	652	16.35	$840.72	$433.92	$168.14
66682	T	Repair iris and ciliary body	652	16.35	$840.72	$433.92	$168.14
66700	T	Destruction, ciliary body	651	6.85	$352.23	$171.99	$70.45
66710	T	Destruction, ciliary body	651	6.85	$352.23	$171.99	$70.45
66720	T	Destruction, ciliary body	651	6.85	$352.23	$171.99	$70.45
66740	T	Destruction, ciliary body	652	16.35	$840.72	$433.92	$168.14
66761	T	Revision of iris	649	4.37	$224.71	$111.64	$44.94
66762	T	Revision of iris	649	4.37	$224.71	$111.64	$44.94
66770	T	Removal of inner eye lesion	649	4.37	$224.71	$111.64	$44.94
66820	T	Incision, secondary cataract	651	6.85	$352.23	$171.99	$70.45
66821	T	After cataract laser surgery	649	4.37	$224.71	$111.64	$44.94
66825	T	Reposition intraocular lens	651	6.85	$352.23	$171.99	$70.45
66830	T	Removal of lens lesion	652	16.35	$840.72	$433.92	$168.14
66840	T	Removal of lens material	667	20.35	$1,046.40	$538.11	$209.28
66850	T	Removal of lens material	667	20.35	$1,046.40	$538.11	$209.28
66852	T	Removal of lens material	667	20.35	$1,046.40	$538.11	$209.28
66920	T	Extraction of lens	667	20.35	$1,046.40	$538.11	$209.28
66930	T	Extraction of lens	667	20.35	$1,046.40	$538.11	$209.28
66940	T	Extraction of lens	667	20.35	$1,046.40	$538.11	$209.28
66983	T	Remove cataract, insert lens	668	22.02	$1,132.27	$617.21	$226.45
66984	T	Remove cataract, insert lens	668	22.02	$1,132.27	$617.21	$226.45

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
66985	T	Insert lens prosthesis	668	22.02	$1,132.27	$617.21	$226.45
66986	T	Exchange lens prosthesis	668	22.02	$1,132.27	$617.21	$226.45
66999	T	Eye surgery procedure	649	4.37	$224.71	$111.64	$44.94
67005	T	Partial removal of eye fluid	676	5.87	$301.84	$138.54	$60.37
67010	T	Partial removal of eye fluid	676	5.87	$301.84	$138.54	$60.37
67015	T	Release of eye fluid	676	5.87	$301.84	$138.54	$60.37
67025	T	Replace eye fluid	683	9.56	$491.58	$252.44	$98.32
67027	T	Implant eye drug system	690	30.39	$1,562.65	$845.69	$312.53
67028	T	Injection eye drug	682	3.41	$175.34	$80.68	$35.07
67030	T	Incise inner eye strands	676	5.87	$301.84	$138.54	$60.37
67031	T	Laser surgery, eye strands	649	4.37	$224.71	$111.64	$44.94
67036	T	Removal of inner eye fluid	690	30.39	$1,562.65	$845.69	$312.53
67038	T	Strip retinal membrane	690	30.39	$1,562.65	$845.69	$312.53
67039	T	Laser treatment of retina	690	30.39	$1,562.65	$845.69	$312.53
67040	T	Laser treatment of retina	690	30.39	$1,562.65	$845.69	$312.53
67101	T	Repair, detached retina	676	5.87	$301.84	$138.54	$60.37
67105	T	Repair, detached retina	648	3.76	$193.34	$93.56	$38.67
67107	T	Repair detached retina	690	30.39	$1,562.65	$845.69	$312.53
67108	T	Repair detached retina	690	30.39	$1,562.65	$845.69	$312.53
67110	T	Repair detached retina	676	5.87	$301.84	$138.54	$60.37
67112	T	Re-repair detached retina	690	30.39	$1,562.65	$845.69	$312.53
67115	T	Release, encircling material	676	5.87	$301.84	$138.54	$60.37
67120	T	Remove eye implant material	676	5.87	$301.84	$138.54	$60.37
67121	T	Remove eye implant material	676	5.87	$301.84	$138.54	$60.37
67141	T	Treatment of retina	676	5.87	$301.84	$138.54	$60.37
67145	T	Treatment of retina	648	3.76	$193.34	$93.56	$38.67
67208	T	Treatment of retinal lesion	676	5.87	$301.84	$138.54	$60.37
67210	T	Treatment of retinal lesion	648	3.76	$193.34	$93.56	$38.67
67218	T	Treatment of retinal lesion	676	5.87	$301.84	$138.54	$60.37
67227	T	Treatment of retinal lesion	676	5.87	$301.84	$138.54	$60.37
67228	T	Treatment of retinal lesion	648	3.76	$193.34	$93.56	$38.67
67250	T	Reinforce eye wall	664	13.26	$681.83	$341.94	$136.37
67255	T	Reinforce/graft eye wall	664	13.26	$681.83	$341.94	$136.37
67299	T	Eye surgery procedure	649	4.37	$224.71	$111.64	$44.94
67311	T	Revise eye muscle	677	16.11	$828.38	$428.95	$165.68
67312	T	Revise two eye muscles	677	16.11	$828.38	$428.95	$165.68
67314	T	Revise eye muscle	677	16.11	$828.38	$428.95	$165.68
67316	T	Revise two eye muscles	677	16.11	$828.38	$428.95	$165.68
67318	T	Revise eye muscle(s)	677	16.11	$828.38	$428.95	$165.68
67320	T	Revise eye muscle(s) add-on	677	16.11	$828.38	$428.95	$165.68
67331	T	Eye surgery follow-up add-on	677	16.11	$828.38	$428.95	$165.68
67332	T	Rerevise eye muscles add-on	677	16.11	$828.38	$428.95	$165.68
67334	T	Revise eye muscle w/suture	677	16.11	$828.38	$428.95	$165.68
67335	T	Eye suture during surgery	677	16.11	$828.38	$428.95	$165.68
67340	T	Revise eye muscle add-on	677	16.11	$828.38	$428.95	$165.68
67343	T	Release eye tissue	677	16.11	$828.38	$428.95	$165.68
67345	T	Destroy nerve of eye muscle	681	1.65	$84.84	$30.51	$16.97
67350	T	Biopsy eye muscle	162	5.59	$287.44	$125.66	$57.49
67399	T	Eye muscle surgery procedure	162	5.59	$287.44	$125.66	$57.49
67400	T	Explore/biopsy eye socket	664	13.26	$681.83	$341.94	$136.37
67405	T	Explore/drain eye socket	664	13.26	$681.83	$341.94	$136.37
67412	T	Explore/treat eye socket	664	13.26	$681.83	$341.94	$136.37
67413	T	Explore/treat eye socket	664	13.26	$681.83	$341.94	$136.37
67414	C	Explore/decompress eye socke					
67415	T	Aspiration orbital contents	122	4.59	$236.02	$113.00	$47.20
67420	T	Explore/treat eye socket	232	23.82	$1,224.82	$636.87	$244.96
67430	T	Explore/treat eye socket	232	23.82	$1,224.82	$636.87	$244.96
67440	T	Explore/drain eye socket	232	23.82	$1,224.82	$636.87	$244.96
67445	C	Explore/decompress eye socke					
67450	T	Explore/biopsy eye socket	232	23.82	$1,224.82	$636.87	$244.96
67500	T	Inject/treat eye socket	681	1.65	$84.84	$30.51	$16.97
67505	T	Inject/treat eye socket	681	1.65	$84.84	$30.51	$16.97
67515	T	Inject/treat eye socket	681	1.65	$84.84	$30.51	$16.97
67550	T	Insert eye socket implant	664	13.26	$681.83	$341.94	$136.37
67560	T	Revise eye socket implant	664	13.26	$681.83	$341.94	$136.37
67570	C	Decompress optic nerve					
67599	T	Orbit surgery procedure	681	1.65	$84.84	$30.51	$16.97
67700	T	Drainage of eyelid abscess	682	3.41	$175.34	$80.68	$35.07
67710	T	Incision of eyelid	682	3.41	$175.34	$80.68	$35.07
67715	T	Incision of eyelid fold	683	9.56	$491.58	$252.44	$98.32
67800	T	Remove eyelid lesion	682	3.41	$175.34	$80.68	$35.07
67801	T	Remove eyelid lesions	682	3.41	$175.34	$80.68	$35.07
67805	T	Remove eyelid lesions	682	3.41	$175.34	$80.68	$35.07
67808	T	Remove eyelid lesion(s)	664	13.26	$681.83	$341.94	$136.37
67810	T	Biopsy of eyelid	682	3.41	$175.34	$80.68	$35.07

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
67820	T	Revise eyelashes	682	3.41	$175.34	$60.68	$35.07
67825	T	Revise eyelashes	682	3.41	$175.34	$60.68	$35.07
67830	T	Revise eyelashes	683	9.56	$491.58	$252.44	$98.32
67835	T	Revise eyelashes	684	13.26	$681.83	$341.94	$136.37
67840	T	Remove eyelid lesion	682	3.41	$175.34	$60.68	$35.07
67850	T	Treat eyelid lesion	682	3.41	$175.34	$60.68	$35.07
67875	T	Closure of eyelid by suture	682	3.41	$175.34	$60.68	$35.07
67880	T	Revision of eyelid	683	9.56	$491.58	$252.44	$98.32
67882	T	Revision of eyelid	684	13.26	$681.83	$341.94	$136.37
67900	T	Repair brow defect	684	13.26	$681.83	$341.94	$136.37
67901	T	Repair eyelid defect	684	13.26	$681.83	$341.94	$136.37
67902	T	Repair eyelid defect	684	13.26	$681.83	$341.94	$136.37
67903	T	Repair eyelid defect	684	13.26	$681.83	$341.94	$136.37
67904	T	Repair eyelid defect	684	13.26	$681.83	$341.94	$136.37
67906	T	Repair eyelid defect	684	13.26	$681.83	$341.94	$136.37
67908	T	Repair eyelid defect	684	13.26	$681.83	$341.94	$136.37
67909	T	Revise eyelid defect	684	13.26	$681.83	$341.94	$136.37
67911	T	Revise eyelid defect	684	13.26	$681.83	$341.94	$136.37
67914	T	Repair eyelid defect	684	13.26	$681.83	$341.94	$136.37
67915	T	Repair eyelid defect	682	3.41	$175.34	$60.68	$35.07
67916	T	Repair eyelid defect	684	13.26	$681.83	$341.94	$136.37
67917	T	Repair eyelid defect	684	13.26	$681.83	$341.94	$136.37
67921	T	Repair eyelid defect	684	13.26	$681.83	$341.94	$136.37
67922	T	Repair eyelid defect	682	3.41	$175.34	$60.68	$35.07
67923	T	Repair eyelid defect	684	13.26	$681.83	$341.94	$136.37
67924	T	Repair eyelid defect	684	13.26	$681.83	$341.94	$136.37
67930	T	Repair eyelid wound	682	3.41	$175.34	$60.68	$35.07
67935	T	Repair eyelid wound	683	9.56	$491.58	$252.44	$98.32
67938	T	Remove eyelid foreign body	682	3.41	$175.34	$60.68	$35.07
67950	T	Revision of eyelid	684	13.26	$681.83	$341.94	$136.37
67961	T	Revision of eyelid	684	13.26	$681.83	$341.94	$136.37
67966	T	Revision of eyelid	684	13.26	$681.83	$341.94	$136.37
67971	T	Reconstruction of eyelid	684	13.26	$681.83	$341.94	$136.37
67973	T	Reconstruction of eyelid	684	13.26	$681.83	$341.94	$136.37
67974	T	Reconstruction of eyelid	684	13.26	$681.83	$341.94	$136.37
67975	T	Reconstruction of eyelid	684	13.26	$681.83	$341.94	$136.37
67999	T	Revision of eyelid	682	3.41	$175.34	$60.68	$35.07
68020	T	Incise/drain eyelid lining	682	3.41	$175.34	$60.68	$35.07
68040	T	Treatment of eyelid lesions	682	3.41	$175.34	$60.68	$35.07
68100	T	Biopsy of eyelid lining	162	5.59	$287.44	$125.66	$57.49
68110	T	Remove eyelid lining lesion	162	5.59	$287.44	$125.66	$57.49
68115	T	Remove eyelid lining lesion	162	5.59	$287.44	$125.66	$57.49
68130	T	Remove eyelid lining lesion	652	16.35	$840.72	$433.92	$168.14
68135	T	Remove eyelid lining lesion	162	5.59	$287.44	$125.66	$57.49
68200	T	Treat eyelid by injection	651	1.65	$84.84	$30.51	$16.97
68320	T	Revise/graft eyelid lining	684	13.26	$681.83	$341.94	$136.37
68325	T	Revise/graft eyelid lining	684	13.26	$681.83	$341.94	$136.37
68326	T	Revise/graft eyelid lining	684	13.26	$681.83	$341.94	$136.37
68328	T	Revise/graft eyelid lining	684	13.26	$681.83	$341.94	$136.37
68330	T	Revise eyelid lining	652	16.35	$840.72	$433.92	$168.14
68335	T	Revise/graft eyelid lining	684	13.26	$681.83	$341.94	$136.37
68340	T	Separate eyelid adhesions	684	13.26	$681.83	$341.94	$136.37
68360	T	Revise eyelid lining	652	16.35	$840.72	$433.92	$168.14
68362	T	Revise eyelid lining	652	16.35	$840.72	$433.92	$168.14
68399	T	Eyelid lining surgery	162	5.59	$287.44	$125.66	$57.49
68400	T	Incise/drain tear gland	682	3.41	$175.34	$60.68	$35.07
68420	T	Incise/drain tear sac	682	3.41	$175.34	$60.68	$35.07
68440	T	Incise tear duct opening	682	3.41	$175.34	$60.68	$35.07
68500	T	Removal of tear gland	684	13.26	$681.83	$341.94	$136.37
68505	T	Partial removal tear gland	684	13.26	$681.83	$341.94	$136.37
68510	T	Biopsy of tear gland	683	9.56	$491.58	$252.44	$98.32
68520	T	Removal of tear sac	684	13.26	$681.83	$341.94	$136.37
68525	T	Biopsy of tear sac	683	9.56	$491.58	$252.44	$98.32
68530	T	Clearance of tear duct	682	3.41	$175.34	$60.68	$35.07
68540	T	Remove tear gland lesion	684	13.26	$681.83	$341.94	$136.37
68550	T	Remove tear gland lesion	684	13.26	$681.83	$341.94	$136.37
68700	T	Repair tear ducts	684	13.26	$681.83	$341.94	$136.37
68705	T	Revise tear duct opening	682	3.41	$175.34	$60.68	$35.07
68720	T	Create tear sac drain	684	13.26	$681.83	$341.94	$136.37
68745	T	Create tear duct drain	684	13.26	$681.83	$341.94	$136.37
68750	T	Create tear duct drain	684	13.26	$681.83	$341.94	$136.37
68760	T	Close tear duct opening	682	3.41	$175.34	$60.68	$35.07
68761	T	Close tear duct opening	651	1.65	$84.84	$30.51	$16.97
68770	T	Close tear system fistula	684	13.26	$681.83	$341.94	$136.37
[2] 68800	T	Dilate tear duct opening(s)	682	3.41	$175.34	$60.68	$35.07

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
68801	T	Dilate tear duct opening	682	3.41	$175.34	$60.68	$35.07
68810	T	Probe nasolacrimal duct	683	9.56	$491.58	$252.44	$98.32
68811	T	Probe nasolacrimal duct	684	13.26	$681.83	$341.94	$136.37
68815	T	Probe nasolacrimal duct	684	13.26	$681.83	$341.94	$136.37
[2] 68820	T	Explore tear duct system	683	9.56	$491.58	$252.44	$98.32
[2] 68825	T	Explore tear duct system	683	9.56	$491.58	$252.44	$98.32
[2] 68830	T	Reopen tear duct channel	683	9.56	$491.58	$252.44	$98.32
68840	T	Explore/irrigate tear ducts	682	3.41	$175.34	$60.68	$35.07
68850	T	Injection for tear sac x-ray	347	2.57	$132.15	$62.36	$26.43
68899	T	Tear duct system surgery	651	1.65	$84.84	$30.51	$16.97
69000	T	Drain external ear lesion	131	1.93	$99.24	$36.61	$19.85
69005	T	Drain external ear lesion	131	1.93	$99.24	$36.61	$19.85
69020	T	Drain outer ear canal lesion	131	1.93	$99.24	$36.61	$19.85
69090	E	Pierce earlobes					
69100	T	Biopsy of external ear	161	3.43	$176.37	$75.71	$35.27
69105	T	Biopsy of external ear canal	161	3.43	$176.37	$75.71	$35.27
69110	T	Partial removal external ear	163	10.48	$538.88	$260.80	$107.78
69120	T	Removal of external ear	313	15.46	$794.95	$407.70	$158.99
69140	T	Remove ear canal lesion(s)	313	15.46	$794.95	$407.70	$158.99
69145	T	Remove ear canal lesion(s)	163	10.48	$538.88	$260.80	$107.78
69150	T	Extensive ear canal surgery	314	25.15	$1,293.21	$687.72	$258.64
69155	C	Extensive ear/neck surgery					
69200	T	Clear outer ear canal	311	1.41	$72.50	$20.57	$14.50
69205	T	Clear outer ear canal	163	10.48	$538.88	$260.80	$107.78
69210	T	Remove impacted ear wax	311	1.41	$72.50	$20.57	$14.50
69220	T	Clean out mastoid cavity	151	1.63	$83.81	$33.22	$16.76
69222	T	Clean out mastoid cavity	311	1.41	$72.50	$20.57	$14.50
69300	T	Revise external ear	313	15.46	$794.95	$407.70	$158.99
69310	T	Rebuild outer ear canal	314	25.15	$1,293.21	$687.72	$258.64
69320	T	Rebuild outer ear canal	314	25.15	$1,293.21	$687.72	$258.64
69399	T	Outer ear surgery procedure	311	1.41	$72.50	$20.57	$14.50
69400	T	Inflate middle ear canal	311	1.41	$72.50	$20.57	$14.50
69401	N	Inflate middle ear canal					
69405	T	Catheterize middle ear canal	311	1.41	$72.50	$20.57	$14.50
69410	T	Inset middle ear baffle	311	1.41	$72.50	$20.57	$14.50
69420	T	Incision of eardrum	311	1.41	$72.50	$20.57	$14.50
69421	T	Incision of eardrum	312	7.07	$363.54	$170.86	$72.71
69424	T	Remove ventilating tube	311	1.41	$72.50	$20.57	$14.50
69433	T	Create eardrum opening	312	7.07	$363.54	$170.86	$72.71
69436	T	Create eardrum opening	312	7.07	$363.54	$170.86	$72.71
69440	T	Exploration of middle ear	313	15.46	$794.95	$407.70	$158.99
69450	T	Eardrum revision	313	15.46	$794.95	$407.70	$158.99
69501	T	Mastoidectomy	314	25.15	$1,293.21	$687.72	$258.64
69502	T	Mastoidectomy	314	25.15	$1,293.21	$687.72	$258.64
69505	T	Remove mastoid structures	314	25.15	$1,293.21	$687.72	$258.64
69511	T	Extensive mastoid surgery	314	25.15	$1,293.21	$687.72	$258.64
69530	T	Extensive mastoid surgery	314	25.15	$1,293.21	$687.72	$258.64
69535	C	Remove part of temporal bone					
69540	T	Remove ear lesion	311	1.41	$72.50	$20.57	$14.50
69550	T	Remove ear lesion	314	25.15	$1,293.21	$687.72	$258.64
69552	T	Remove ear lesion	314	25.15	$1,293.21	$687.72	$258.64
69554	C	Remove ear lesion					
69601	T	Mastoid surgery revision	314	25.15	$1,293.21	$687.72	$258.64
69602	T	Mastoid surgery revision	314	25.15	$1,293.21	$687.72	$258.64
69603	T	Mastoid surgery revision	314	25.15	$1,293.21	$687.72	$258.64
69604	T	Mastoid surgery revision	314	25.15	$1,293.21	$687.72	$258.64
69605	T	Mastoid surgery revision	314	25.15	$1,293.21	$687.72	$258.64
69610	T	Repair of eardrum	311	1.41	$72.50	$20.57	$14.50
69620	T	Repair of eardrum	313	15.46	$794.95	$407.70	$158.99
69631	T	Repair eardrum structures	314	25.15	$1,293.21	$687.72	$258.64
69632	T	Rebuild eardrum structures	314	25.15	$1,293.21	$687.72	$258.64
69633	T	Rebuild eardrum structures	314	25.15	$1,293.21	$687.72	$258.64
69635	T	Repair eardrum structures	314	25.15	$1,293.21	$687.72	$258.64
69636	T	Rebuild eardrum structures	314	25.15	$1,293.21	$687.72	$258.64
69637	T	Rebuild eardrum structures	314	25.15	$1,293.21	$687.72	$258.64
69641	T	Revise middle ear & mastoid	314	25.15	$1,293.21	$687.72	$258.64
69642	T	Revise middle ear & mastoid	314	25.15	$1,293.21	$687.72	$258.64
69643	T	Revise middle ear & mastoid	314	25.15	$1,293.21	$687.72	$258.64
69644	T	Revise middle ear & mastoid	314	25.15	$1,293.21	$687.72	$258.64
69645	T	Revise middle ear & mastoid	314	25.15	$1,293.21	$687.72	$258.64
69646	T	Revise middle ear & mastoid	314	25.15	$1,293.21	$687.72	$258.64
69650	T	Release middle ear bone	314	25.15	$1,293.21	$687.72	$258.64
69660	T	Revise middle ear bone	314	25.15	$1,293.21	$687.72	$258.64
69661	T	Revise middle ear bone	314	25.15	$1,293.21	$687.72	$258.64
69662	T	Revise middle ear bone	314	25.15	$1,293.21	$687.72	$258.64

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

[2] This code was valid in 1996 and therefore was available for use in calculating weights. However, it has since been terminated and will not be paid upon implementation.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
69666	T	Repair middle ear structures	314	25.15	$1,293.21	$687.72	$258.64
69667	T	Repair middle ear structures	314	25.15	$1,293.21	$687.72	$258.64
69670	T	Remove mastoid air cells	314	25.15	$1,293.21	$687.72	$258.64
69676	T	Remove middle ear nerve	314	25.15	$1,293.21	$687.72	$258.64
69700	T	Close mastoid fistula	314	25.15	$1,293.21	$687.72	$258.64
69710	E	Implant/replace hearing aid					
69711	T	Remove/repair hearing aid	314	25.15	$1,293.21	$687.72	$258.64
69720	T	Release facial nerve	314	25.15	$1,293.21	$687.72	$258.64
69725	T	Release facial nerve	314	25.15	$1,293.21	$687.72	$258.64
69740	T	Repair facial nerve	314	25.15	$1,293.21	$687.72	$258.64
69745	T	Repair facial nerve	314	25.15	$1,293.21	$687.72	$258.64
69799	T	Middle ear surgery procedure	311	1.41	$72.50	$20.57	$14.50
69801	T	Incise inner ear	314	25.15	$1,293.21	$687.72	$258.64
69802	T	Incise inner ear	314	25.15	$1,293.21	$687.72	$258.64
69805	T	Explore inner ear	314	25.15	$1,293.21	$687.72	$258.64
69806	T	Explore inner ear	314	25.15	$1,293.21	$687.72	$258.64
69820	T	Establish inner ear window	314	25.15	$1,293.21	$687.72	$258.64
69840	T	Revise inner ear window	314	25.15	$1,293.21	$687.72	$258.64
69905	T	Remove inner ear	314	25.15	$1,293.21	$687.72	$258.64
69910	T	Remove inner ear & mastoid	314	25.15	$1,293.21	$687.72	$258.64
69915	T	Incise inner ear nerve	314	25.15	$1,293.21	$687.72	$258.64
69930	T	Implant cochlear device	317				
69949	T	Inner ear surgery procedure	314	25.15	$1,293.21	$687.72	$258.64
69950	C	Incise inner ear nerve					
69955	C	Release facial nerve					
69960	C	Release inner ear canal					
69970	C	Remove inner ear lesion					
69979	C	Temporal bone surgery					
70010	S	Contrast x-ray of brain	728	3.50	$179.97	$91.98	$35.99
70015	S	Contrast x-ray of brain	728	3.50	$179.97	$91.98	$35.99
70030	X	X-ray eye for foreign body	700	0.80	$41.14	$22.37	$8.23
70100	X	X-ray exam of jaw	700	0.80	$41.14	$22.37	$8.23
70110	X	X-ray exam of jaw	700	0.80	$41.14	$22.37	$8.23
70120	X	X-ray exam of mastoids	700	0.80	$41.14	$22.37	$8.23
70130	X	X-ray exam of mastoids	700	0.80	$41.14	$22.37	$8.23
70134	X	X-ray exam of middle ear	700	0.80	$41.14	$22.37	$8.23
70140	X	X-ray exam of facial bones	700	0.80	$41.14	$22.37	$8.23
70150	X	X-ray exam of facial bones	700	0.80	$41.14	$22.37	$8.23
70160	X	X-ray exam of nasal bones	700	0.80	$41.14	$22.37	$8.23
70170	X	X-ray exam of tear duct	706	1.43	$73.53	$39.10	$14.71
70190	X	X-ray exam of eye sockets	700	0.80	$41.14	$22.37	$8.23
70200	X	X-ray exam of eye sockets	700	0.80	$41.14	$22.37	$8.23
70210	X	X-ray exam of sinuses	700	0.80	$41.14	$22.37	$8.23
70220	X	X-ray exam of sinuses	700	0.80	$41.14	$22.37	$8.23
70240	X	X-ray exam pituitary saddle	700	0.80	$41.14	$22.37	$8.23
70250	X	X-ray exam of skull	700	0.80	$41.14	$22.37	$8.23
70260	X	X-ray exam of skull	700	0.80	$41.14	$22.37	$8.23
70300	X	X-ray exam of teeth	700	0.80	$41.14	$22.37	$8.23
70310	X	X-ray exam of teeth	700	0.80	$41.14	$22.37	$8.23
70320	X	Full mouth x-ray of teeth	700	0.80	$41.14	$22.37	$8.23
70328	X	X-ray exam of jaw joint	700	0.80	$41.14	$22.37	$8.23
70330	X	X-ray exam of jaw joints	700	0.80	$41.14	$22.37	$8.23
70332	S	X-ray exam of jaw joint	730	2.30	$118.27	$65.77	$23.65
70336	S	Magnetic image jaw joint	726	7.91	$406.73	$256.06	$81.35
70350	X	X-ray head for orthodontia	700	0.80	$41.14	$22.37	$8.23
70355	X	Panoramic x-ray of jaws	700	0.80	$41.14	$22.37	$8.23
70360	X	X-ray exam of neck	700	0.80	$41.14	$22.37	$8.23
70370	X	Throat x-ray & fluoroscopy	716	1.39	$71.47	$40.00	$14.29
70371	X	Speech evaluation, complex	716	1.39	$71.47	$40.00	$14.29
70373	X	Contrast x-ray of larynx	706	1.43	$73.53	$39.10	$14.71
70380	X	X-ray exam of salivary gland	700	0.80	$41.14	$22.37	$8.23
70390	X	X-ray exam of salivary duct	706	1.43	$73.53	$39.10	$14.71
70450	S	CAT scan of head or brain	710	4.98	$256.07	$173.12	$51.21
70460	S	Contrast CAT scan of head	710	4.98	$256.07	$173.12	$51.21
70470	S	Contrast CAT scans of head	710	4.98	$256.07	$173.12	$51.21
70480	S	CAT scan of skull	710	4.98	$256.07	$173.12	$51.21
70481	S	Contrast CAT scan of skull	710	4.98	$256.07	$173.12	$51.21
70482	S	Contrast CAT scans of skull	710	4.98	$256.07	$173.12	$51.21
70485	S	CAT scan of face, jaw	710	4.98	$256.07	$173.12	$51.21
70487	S	Contrast CAT scan, face/jaw	710	4.98	$256.07	$173.12	$51.21
70488	S	Contrast CAT scans face/jaw	710	4.98	$256.07	$173.12	$51.21
70490	S	CAT scan of neck tissue	710	4.98	$256.07	$173.12	$51.21
70491	S	Contrast CAT of neck tissue	710	4.98	$256.07	$173.12	$51.21
70492	S	Contrast CAT of neck tissue	710	4.98	$256.07	$173.12	$51.21
70540	S	Magnetic image, face, neck	726	7.91	$406.73	$256.06	$81.35

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[2] This code was valid in 1998 and therefore was available for use in calculating weights. However, it has since been terminated and will not be paid upon implementation.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
70541	S	Magnetic image, head (MRA)	720	6.37	$327.55	$204.98	$65.51
70551	S	Magnetic image, brain (MRI)	726	7.91	$406.73	$256.06	$81.35
70552	S	Magnetic image, brain (MRI)	726	7.91	$406.73	$256.06	$81.35
70553	S	Magnetic image, brain	726	7.91	$406.73	$256.06	$81.35
71010	X	Chest x-ray	700	0.80	$41.14	$22.37	$8.23
71015	X	X-ray exam of chest	700	0.80	$41.14	$22.37	$8.23
71020	X	Chest x-ray	700	0.80	$41.14	$22.37	$8.23
71021	X	Chest x-ray	700	0.80	$41.14	$22.37	$8.23
71022	X	Chest x-ray	700	0.80	$41.14	$22.37	$8.23
71023	X	Chest x-ray and fluoroscopy	716	1.39	$71.47	$40.00	$14.29
71030	X	Chest x-ray	700	0.80	$41.14	$22.37	$8.23
71034	X	Chest x-ray & fluoroscopy	716	1.39	$71.47	$40.00	$14.29
71035	X	Chest x-ray	700	0.80	$41.14	$22.37	$8.23
71036	X	X-ray guidance for biopsy	716	1.39	$71.47	$40.00	$14.29
[2]71038	X	X-ray guidance for biopsy	716	1.39	$71.47	$40.00	$14.29
71040	X	Contrast x-ray of bronchi	706	1.43	$73.53	$39.10	$14.71
71060	X	Contrast x-ray of bronchi	706	1.43	$73.53	$39.10	$14.71
71090	X	X-ray & pacemaker insertion	716	1.39	$71.47	$40.00	$14.29
71100	X	X-ray exam of ribs	700	0.80	$41.14	$22.37	$8.23
71101	X	X-ray exam of ribs, chest	700	0.80	$41.14	$22.37	$8.23
71110	X	X-ray exam of ribs	700	0.80	$41.14	$22.37	$8.23
71111	X	X-ray exam of ribs, chest	700	0.80	$41.14	$22.37	$8.23
71120	X	X-ray exam of breastbone	700	0.80	$41.14	$22.37	$8.23
71130	X	X-ray exam of breastbone	700	0.80	$41.14	$22.37	$8.23
71250	S	Cat scan of chest	710	4.98	$256.07	$173.12	$51.21
71260	S	Contrast CAT scan of chest	710	4.98	$256.07	$173.12	$51.21
71270	S	Contrast CAT scans of chest	710	4.98	$256.07	$173.12	$51.21
71550	S	Magnetic image, chest	726	7.91	$406.73	$256.06	$81.35
71555	E	Magnetic imaging/chest (MRA)					
72010	X	X-ray exam of spine	700	0.80	$41.14	$22.37	$8.23
72020	X	X-ray exam of spine	700	0.80	$41.14	$22.37	$8.23
72040	X	X-ray exam of neck spine	700	0.80	$41.14	$22.37	$8.23
72050	X	X-ray exam of neck spine	700	0.80	$41.14	$22.37	$8.23
72052	X	X-ray exam of neck spine	700	0.80	$41.14	$22.37	$8.23
72069	X	X-ray exam of trunk spine	700	0.80	$41.14	$22.37	$8.23
72070	X	X-ray exam of thorax spine	700	0.80	$41.14	$22.37	$8.23
72072	X	X-ray exam of thoracic spine	700	0.80	$41.14	$22.37	$8.23
72074	X	X-ray exam of thoracic spine	700	0.80	$41.14	$22.37	$8.23
72080	X	X-ray exam of trunk spine	700	0.80	$41.14	$22.37	$8.23
72090	X	X-ray exam of trunk spine	700	0.80	$41.14	$22.37	$8.23
72100	X	X-ray exam of lower spine	700	0.80	$41.14	$22.37	$8.23
72110	X	X-ray exam of lower spine	700	0.80	$41.14	$22.37	$8.23
72114	X	X-ray exam of lower spine	700	0.80	$41.14	$22.37	$8.23
72120	X	X-ray exam of lower spine	700	0.80	$41.14	$22.37	$8.23
72125	S	CAT scan of neck spine	710	4.98	$256.07	$173.12	$51.21
72126	S	Contrast CAT scan of neck	710	4.98	$256.07	$173.12	$51.21
72127	S	Contrast CAT scans of neck	710	4.98	$256.07	$173.12	$51.21
72128	S	CAT scan of thorax spine	710	4.98	$256.07	$173.12	$51.21
72129	S	Contrast CAT scan of thorax	710	4.98	$256.07	$173.12	$51.21
72130	S	Contrast CAT scans of thorax	710	4.98	$256.07	$173.12	$51.21
72131	S	CAT scan of lower spine	710	4.98	$256.07	$173.12	$51.21
72132	S	Contrast CAT of lower spine	710	4.98	$256.07	$173.12	$51.21
72133	S	Contrast CAT scans,low spine	710	4.98	$256.07	$173.12	$51.21
72141	S	Magnetic image, neck spine	726	7.91	$406.73	$256.06	$81.35
72142	S	Magnetic image, neck spine	726	7.91	$406.73	$256.06	$81.35
72146	S	Magnetic image, chest spine	726	7.91	$406.73	$256.06	$81.35
72147	S	Magnetic image, chest spine	726	7.91	$406.73	$256.06	$81.35
72148	S	Magnetic image, lumbar spine	726	7.91	$406.73	$256.06	$81.35
72149	S	Magnetic image, lumbar spine	726	7.91	$406.73	$256.06	$81.35
72156	S	Magnetic image, neck spine	726	7.91	$406.73	$256.06	$81.35
72157	S	Magnetic image, chest spine	726	7.91	$406.73	$256.06	$81.35
72158	S	Magnetic image, lumbar spine	726	7.91	$406.73	$256.06	$81.35
72159	E	Magnetic imaging/spine (MRA)					
72170	X	X-ray exam of pelvis	700	0.80	$41.14	$22.37	$8.23
72190	X	X-ray exam of pelvis	700	0.80	$41.14	$22.37	$8.23
72192	S	CAT scan of pelvis	710	4.98	$256.07	$173.12	$51.21
72193	S	Contrast CAT scan of pelvis	710	4.98	$256.07	$173.12	$51.21
72194	S	Contrast CAT scans of pelvis	710	4.98	$256.07	$173.12	$51.21
72196	S	Magnetic image, pelvis	726	7.91	$406.73	$256.06	$81.35
72198	E	Magnetic imaging/pelvis(MRA)					
72200	X	X-ray exam sacroiliac joints	700	0.80	$41.14	$22.37	$8.23
72202	X	X-ray exam sacroiliac joints	700	0.80	$41.14	$22.37	$8.23
72220	X	X-ray exam of tailbone	700	0.80	$41.14	$22.37	$8.23
72240	S	Contrast x-ray of neck spine	728	3.50	$179.97	$91.98	$35.99
72255	S	Contrast x-ray thorax spine	728	3.50	$179.97	$91.98	$35.99

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[2] This code was valid in 1996 and therefore was available for use in calculating weights. However, it has since been terminated and will not be paid upon implementation

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
72265	S	Contrast x-ray lower spine	728	3.50	$179.97	$91.98	$35.99
72270	S	Contrast x-ray of spine	728	3.50	$179.97	$91.98	$35.99
72285	S	X-ray of neck spine disk	728	3.50	$179.97	$91.98	$35.99
72295	S	X-ray of lower spine disk	728	3.50	$179.97	$91.98	$35.99
73000	X	X-ray exam of collarbone	700	0.80	$41.14	$22.37	$8.23
73010	X	X-ray exam of shoulder blade	700	0.80	$41.14	$22.37	$8.23
73020	X	X-ray exam of shoulder	700	0.80	$41.14	$22.37	$8.23
73030	X	X-ray exam of shoulder	700	0.80	$41.14	$22.37	$8.23
73040	S	Contrast x-ray of shoulder	730	2.30	$118.27	$65.77	$23.65
73050	X	X-ray exam of shoulders	700	0.80	$41.14	$22.37	$8.23
73060	X	X-ray exam of humerus	700	0.80	$41.14	$22.37	$8.23
73070	X	X-ray exam of elbow	700	0.80	$41.14	$22.37	$8.23
73080	X	X-ray exam of elbow	700	0.80	$41.14	$22.37	$8.23
73085	S	Contrast x-ray of elbow	730	2.30	$118.27	$65.77	$23.65
73090	X	X-ray exam of forearm	700	0.80	$41.14	$22.37	$8.23
73092	X	X-ray exam of arm, infant	700	0.80	$41.14	$22.37	$8.23
73100	X	X-ray exam of wrist	700	0.80	$41.14	$22.37	$8.23
73110	X	X-ray exam of wrist	700	0.80	$41.14	$22.37	$8.23
73115	S	Contrast x-ray of wrist	730	2.30	$118.27	$65.77	$23.65
73120	X	X-ray exam of hand	700	0.80	$41.14	$22.37	$8.23
73130	X	X-ray exam of hand	700	0.80	$41.14	$22.37	$8.23
73140	X	X-ray exam of finger(s)	700	0.80	$41.14	$22.37	$8.23
73200	E	CAT scan of arm	710	4.98	$256.07	$173.12	$51.21
73201	S	Contrast CAT scan of arm	710	4.98	$256.07	$173.12	$51.21
73202	S	Contrast CAT scans of arm	710	4.98	$256.07	$173.12	$51.21
73220	S	Magnetic image, arm, hand	726	7.91	$406.73	$256.06	$81.35
73221	S	Magnetic image, joint of arm	726	7.91	$406.73	$256.06	$81.35
73225	E	Magnetic imaging/upper (MRA)					
73500	X	X-ray exam of hip	700	0.80	$41.14	$22.37	$8.23
73510	X	X-ray exam of hip	700	0.80	$41.14	$22.37	$8.23
73520	X	X-ray exam of hips	700	0.80	$41.14	$22.37	$8.23
73525	S	Contrast x-ray of hip	730	2.30	$118.27	$65.77	$23.65
73530	X	X-ray exam of hip	700	0.80	$41.14	$22.37	$8.23
73540	X	X-ray exam of pelvis & hips	700	0.80	$41.14	$22.37	$8.23
73550	X	X-ray exam of thigh	700	0.80	$41.14	$22.37	$8.23
73560	X	X-ray exam of knee, 1 or 2	700	0.80	$41.14	$22.37	$8.23
73562	X	X-ray exam of knee, 3	700	0.80	$41.14	$22.37	$8.23
73564	X	X-ray exam of knee, 4+	700	0.80	$41.14	$22.37	$8.23
73565	X	X-ray exam of knee	700	0.80	$41.14	$22.37	$8.23
73580	S	Contrast x-ray of knee joint	730	2.30	$118.27	$65.77	$23.65
73590	X	X-ray exam of lower leg	700	0.80	$41.14	$22.37	$8.23
73592	X	X-ray exam of leg, infant	700	0.80	$41.14	$22.37	$8.23
73600	X	X-ray exam of ankle	700	0.80	$41.14	$22.37	$8.23
73610	X	X-ray exam of ankle	700	0.80	$41.14	$22.37	$8.23
73615	S	Contrast x-ray of ankle	730	2.30	$118.27	$65.77	$23.65
73620	X	X-ray exam of foot	700	0.80	$41.14	$22.37	$8.23
73630	X	X-ray exam of foot	700	0.80	$41.14	$22.37	$8.23
73650	X	X-ray exam of heel	700	0.80	$41.14	$22.37	$8.23
73660	X	X-ray exam of toe(s)	700	0.80	$41.14	$22.37	$8.23
73700	S	CAT scan of leg	710	4.98	$256.07	$173.12	$51.21
73701	S	Contrast CAT scan of leg	710	4.98	$256.07	$173.12	$51.21
73702	S	Contrast CAT scans of leg	710	4.98	$256.07	$173.12	$51.21
73720	S	Magnetic image, leg, foot	726	7.91	$406.73	$256.06	$81.35
73721	S	Magnetic image, joint of leg	726	7.91	$406.73	$256.06	$81.35
73725	E	Magnetic imaging/lower (MRA)					
74000	X	X-ray exam of abdomen	700	0.80	$41.14	$22.37	$8.23
74010	X	X-ray exam of abdomen	700	0.80	$41.14	$22.37	$8.23
74020	X	X-ray exam of abdomen	700	0.80	$41.14	$22.37	$8.23
74022	X	X-ray exam series, abdomen	700	0.80	$41.14	$22.37	$8.23
74150	S	CAT scan of abdomen	710	4.98	$256.07	$173.12	$51.21
74160	S	Contrast CAT scan of abdomen	710	4.98	$256.07	$173.12	$51.21
74170	S	Contrast CAT scans, abdomen	710	4.98	$256.07	$173.12	$51.21
74181	S	Magnetic image,abdomen (MRI)	726	7.91	$406.73	$256.06	$81.35
74185	E	Magnetic image/abdomen (MRA)					
74190	X	X-ray exam of peritoneum	706	1.43	$73.53	$39.10	$14.71
74210	S	Contrast xray exam of throat	736	1.85	$95.13	$53.79	$19.03
74220	S	Contrast xray exam,esophagus	736	1.85	$95.13	$53.79	$19.03
74230	S	Cinema xray throat/esophagus	736	1.85	$95.13	$53.79	$19.03
74235	S	Remove esophagus obstruction	738	3.74	$192.31	$104.86	$38.46
74240	S	X-ray exam upper GI tract	736	1.85	$95.13	$53.79	$19.03
74241	S	X-ray exam upper GI tract	736	1.85	$95.13	$53.79	$19.03
74245	S	X-ray exam upper GI tract	736	1.85	$95.13	$53.79	$19.03
74246	S	Contrast xray upper GI tract	736	1.85	$95.13	$53.79	$19.03
74247	S	Contrast xray upper GI tract	736	1.85	$95.13	$53.79	$19.03
74249	S	Contrast xray upper GI tract	736	1.85	$95.13	$53.79	$19.03

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
74250	S	X-ray exam of small bowel	736	1.85	$95.13	$53.79	$19.03
74251	S	X-ray exam of small bowel	736	1.85	$95.13	$53.79	$19.03
74260	S	X-ray exam of small bowel	736	1.85	$95.13	$53.79	$19.03
74270	S	Contrast x-ray exam of colon	736	1.85	$95.13	$53.79	$19.03
74280	S	Contrast x-ray exam of colon	736	1.85	$95.13	$53.79	$19.03
74283	S	Contrast x-ray exam of colon	736	1.85	$95.13	$53.79	$19.03
74290	S	Contrast x-ray, gallbladder	736	1.85	$95.13	$53.79	$19.03
74291	S	Contrast x-rays, gallbladder	736	1.85	$95.13	$53.79	$19.03
74300	C	X-ray bile ducts, pancreas					
74301	C	X-rays at surgery add-on					
74305	X	X-ray bile ducts, pancreas	706	1.43	$73.53	$39.10	$14.71
74320	X	Contrast x-ray of bile ducts	706	1.43	$73.53	$39.10	$14.71
74327	S	X-ray for bile stone removal	738	3.74	$192.31	$104.86	$38.46
74328	X	X-ray for bile duct endoscopy	706	1.43	$73.53	$39.10	$14.71
74329	X	X-ray for pancreas endoscopy	706	1.43	$73.53	$39.10	$14.71
74330	X	X-ray, bile/pancreas endoscopy	706	1.43	$73.53	$39.10	$14.71
74340	X	X-ray guide for GI tube	716	1.39	$71.47	$40.00	$14.29
74350	X	X-ray guide, stomach tube	706	1.43	$73.53	$39.10	$14.71
74355	X	X-ray guide, intestinal tube	706	1.43	$73.53	$39.10	$14.71
74360	S	X-ray guide, GI dilation	738	3.74	$192.31	$104.86	$38.46
74363	S	X-ray, bile duct dilation	738	3.74	$192.31	$104.86	$38.46
74400	S	Contrast x-ray urinary tract	737	2.69	$138.32	$81.81	$27.66
[2] 74405	S	Contrast x-ray urinary tract	737	2.69	$138.32	$81.81	$27.66
74410	S	Contrast x-ray urinary tract	737	2.69	$138.32	$81.81	$27.66
74415	S	Contrast x-ray urinary tract	737	2.69	$138.32	$81.81	$27.66
74420	S	Contrast x-ray urinary tract	737	2.69	$138.32	$81.81	$27.66
74425	S	Contrast x-ray urinary tract	737	2.69	$138.32	$81.81	$27.66
74430	S	Contrast x-ray of bladder	737	2.69	$138.32	$81.81	$27.66
74440	S	X-ray exam male genital tract	737	2.69	$138.32	$81.81	$27.66
74445	S	X-ray exam of penis	737	2.69	$138.32	$81.81	$27.66
74450	S	X-ray exam urethra/bladder	737	2.69	$138.32	$81.81	$27.66
74455	S	X-ray exam urethra/bladder	737	2.69	$138.32	$81.81	$27.66
74470	X	X-ray exam of kidney lesion	706	1.43	$73.53	$39.10	$14.71
74475	S	X-ray control catheter insert	738	3.74	$192.31	$104.86	$38.46
74480	S	X-ray control catheter insert	738	3.74	$192.31	$104.86	$38.46
74485	S	X-ray guide, GU dilation	738	3.74	$192.31	$104.86	$38.46
74710	X	X-ray measurement of pelvis	700	0.80	$41.14	$22.37	$8.23
74740	X	X-ray female genital tract	706	1.43	$73.53	$39.10	$14.71
74742	X	X-ray fallopian tube	706	1.43	$73.53	$39.10	$14.71
74775	S	X-ray exam of perineum	737	2.69	$138.32	$81.81	$27.66
75552	S	Magnetic image, myocardium	726	7.91	$406.73	$256.06	$81.35
75553	S	Magnetic image, myocardium	726	7.91	$406.73	$256.06	$81.35
75554	S	Cardiac MRI/function	726	7.91	$406.73	$256.06	$81.35
75555	S	Cardiac MRI/limited study	726	7.91	$406.73	$256.06	$81.35
75556	E	Cardiac MRI/flow mapping					
75600	S	Contrast x-ray exam of aorta	739	5.33	$274.07	$150.74	$54.81
75605	S	Contrast x-ray exam of aorta	739	5.33	$274.07	$150.74	$54.81
75625	S	Contrast x-ray exam of aorta	739	5.33	$274.07	$150.74	$54.81
75630	S	X-ray aorta, leg arteries	739	5.33	$274.07	$150.74	$54.81
75650	S	Artery x-rays, head & neck	739	5.33	$274.07	$150.74	$54.81
75658	S	X-ray exam of arm arteries	739	5.33	$274.07	$150.74	$54.81
75660	S	Artery x-rays, head & neck	739	5.33	$274.07	$150.74	$54.81
75662	S	Artery x-rays, head & neck	739	5.33	$274.07	$150.74	$54.81
75665	S	Artery x-rays, head & neck	739	5.33	$274.07	$150.74	$54.81
75671	S	Artery x-rays, head & neck	739	5.33	$274.07	$150.74	$54.81
75676	S	Artery x-rays, neck	739	5.33	$274.07	$150.74	$54.81
75680	S	Artery x-rays, neck	739	5.33	$274.07	$150.74	$54.81
75685	S	Artery x-rays, spine	739	5.33	$274.07	$150.74	$54.81
75705	S	Artery x-rays, spine	739	5.33	$274.07	$150.74	$54.81
75710	S	Artery x-rays, arm/leg	739	5.33	$274.07	$150.74	$54.81
75716	S	Artery x-rays, arms/legs	739	5.33	$274.07	$150.74	$54.81
75722	S	Artery x-rays, kidney	739	5.33	$274.07	$150.74	$54.81
75724	S	Artery x-rays, kidneys	739	5.33	$274.07	$150.74	$54.81
75726	S	Artery x-rays, abdomen	739	5.33	$274.07	$150.74	$54.81
75731	S	Artery x-rays, adrenal gland	739	5.33	$274.07	$150.74	$54.81
75733	S	Artery x-rays,adrenal glands	739	5.33	$274.07	$150.74	$54.81
75736	S	Artery x-rays, pelvis	739	5.33	$274.07	$150.74	$54.81
75741	S	Artery x-rays, lung	739	5.33	$274.07	$150.74	$54.81
75743	S	Artery x-rays, lungs	739	5.33	$274.07	$150.74	$54.81
75746	S	Artery x-rays, lung	739	5.33	$274.07	$150.74	$54.81
75756	S	Artery x-rays, chest	739	5.33	$274.07	$150.74	$54.81
75774	S	Artery x-ray, each vessel	739	5.33	$274.07	$150.74	$54.81
75790	S	Visualize A-V shunt	739	5.33	$274.07	$150.74	$54.81
75801	X	Lymph vessel x-ray, arm/leg	706	1.43	$73.53	$39.10	$14.71
75803	X	Lymph vessel x-ray, arms/legs	706	1.43	$73.53	$39.10	$14.71

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
75805	X	Lymph vessel x-ray, trunk	706	1.43	$73.53	$39.10	$14.71
75807	X	Lymph vessel x-ray, trunk	706	1.43	$73.53	$39.10	$14.71
75809	X	Nonvascular shunt, x-ray	706	1.43	$73.53	$39.10	$14.71
75810	S	Vein x-ray, spleen/liver	739	5.33	$274.07	$150.74	$54.81
75820	S	Vein x-ray, arm/leg	739	5.33	$274.07	$150.74	$54.81
75822	S	Vein x-ray, arms/legs	739	5.33	$274.07	$150.74	$54.81
75825	S	Vein x-ray, trunk	739	5.33	$274.07	$150.74	$54.81
75827	S	Vein x-ray, chest	739	5.33	$274.07	$150.74	$54.81
75831	S	Vein x-ray, kidney	739	5.33	$274.07	$150.74	$54.81
75833	S	Vein x-ray, kidneys	739	5.33	$274.07	$150.74	$54.81
75840	S	Vein x-ray, adrenal gland	739	5.33	$274.07	$150.74	$54.81
75842	S	Vein x-ray, adrenal glands	739	5.33	$274.07	$150.74	$54.81
75860	S	Vein x-ray, neck	739	5.33	$274.07	$150.74	$54.81
75870	S	Vein x-ray, skull	739	5.33	$274.07	$150.74	$54.81
75872	S	Vein x-ray, skull	739	5.33	$274.07	$150.74	$54.81
75880	S	Vein x-ray, eye socket	739	5.33	$274.07	$150.74	$54.81
75885	S	Vein x-ray, liver	739	5.33	$274.07	$150.74	$54.81
75887	S	Vein x-ray, liver	739	5.33	$274.07	$150.74	$54.81
75889	S	Vein x-ray, liver	739	5.33	$274.07	$150.74	$54.81
75891	S	Vein x-ray, liver	739	5.33	$274.07	$150.74	$54.81
75893	N	Venous sampling by catheter					
75894	C	X-rays, transcatheter therapy					
75896	C	X-rays, transcatheter therapy					
75898	X	Follow-up angiogram	706	1.43	$73.53	$39.10	$14.71
75900	C	Arterial catheter exchange					
75940	C	X-ray placement, vein filter					
75945	C	Intravascular us					
75946	C	Intravascular us add-on					
75960	C	Transcatheter intro, stent					
75961	C	Retrieval, broken catheter					
75962	C	Repair arterial blockage					
75964	C	Repair artery blockage, each					
75966	C	Repair arterial blockage					
75968	C	Repair artery blockage, each					
75970	C	Vascular biopsy					
75978	C	Repair venous blockage					
75980	S	Contrast xray exam bile duct	738	3.74	$192.31	$104.86	$38.46
75982	S	Contrast xray exam bile duct	738	3.74	$192.31	$104.86	$38.46
75984	S	X-ray control catheter change	738	3.74	$192.31	$104.86	$38.46
75989	X	Abscess drainage under x-ray	716	1.39	$71.47	$40.00	$14.29
75992	C	Atherectomy, x-ray exam					
75993	C	Atherectomy, x-ray exam					
75994	C	Atherectomy, x-ray exam					
75995	C	Atherectomy, x-ray exam					
75996	C	Atherectomy, x-ray exam					
76000	X	Fluoroscope examination	716	1.39	$71.47	$40.00	$14.29
76001	X	Fluoroscope exam, extensive	716	1.39	$71.47	$40.00	$14.29
76003	X	Needle localization by x-ray	716	1.39	$71.47	$40.00	$14.29
76010	X	X-ray, nose to rectum	700	0.80	$41.14	$22.37	$8.23
76020	X	X-rays for bone age	700	0.80	$41.14	$22.37	$8.23
76040	X	X-rays, bone evaluation	700	0.80	$41.14	$22.37	$8.23
76061	X	X-rays, bone survey	700	0.80	$41.14	$22.37	$8.23
76062	X	X-rays, bone survey	700	0.80	$41.14	$22.37	$8.23
76065	X	X-rays, bone evaluation	700	0.80	$41.14	$22.37	$8.23
76066	X	Joint(s) survey, single film	700	0.80	$41.14	$22.37	$8.23
76070	E	CT scan, bone density study					
76075	X	Dual energy x-ray study	706	1.43	$73.53	$39.10	$14.71
76076	X	Dual energy x-ray study	700	0.80	$41.14	$22.37	$8.23
76078	X	Photodensitometry	700	0.80	$41.14	$22.37	$8.23
76080	X	X-ray exam of fistula	706	1.43	$73.53	$39.10	$14.71
76086	X	X-ray of mammary duct	706	1.43	$73.53	$39.10	$14.71
76088	X	X-ray of mammary ducts	706	1.43	$73.53	$39.10	$14.71
76090	S	Mammogram, one breast	746	0.69	$35.48	$19.44	$7.10
76091	S	Mammogram, both breasts	746	0.69	$35.48	$19.44	$7.10
76092	A	Mammogram, screening					
76093	S	Magnetic image, breast	726	7.91	$406.73	$256.06	$81.35
76094	S	Magnetic image, both breasts	726	7.91	$406.73	$256.06	$81.35
76095	X	Stereotactic breast biopsy	706	1.43	$73.53	$39.10	$14.71
76096	X	X-ray of needle wire, breast	706	1.43	$73.53	$39.10	$14.71
76098	X	X-ray exam, breast specimen	700	0.80	$41.14	$22.37	$8.23
76100	X	X-ray exam of body section	700	0.80	$41.14	$22.37	$8.23
76101	X	Complex body section x-ray	706	1.43	$73.53	$39.10	$14.71
76102	X	Complex body section x-rays	706	1.43	$73.53	$39.10	$14.71
76120	X	Cinematic x-rays	700	0.80	$41.14	$22.37	$8.23
76125	X	Cinematic x-rays add-on	700	0.80	$41.14	$22.37	$8.23

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
76140	E	X-ray consultation					
76150	X	X-ray exam, dry process	700	0.80	$41.14	$22.37	$8.23
76350	N	Special x-ray contrast study					
76355	S	CAT scan for localization	710	4.98	$256.07	$173.12	$51.21
76360	S	CAT scan for needle biopsy	710	4.98	$256.07	$173.12	$51.21
76365	S	CAT scan for cyst aspiration	710	4.98	$256.07	$173.12	$51.21
76370	S	CAT scan for therapy guide	710	4.98	$256.07	$173.12	$51.21
76375	S	3d/holograph reconstr add-on	710	4.98	$256.07	$173.12	$51.21
76380	S	CAT scan follow-up study	710	4.98	$256.07	$173.12	$51.21
76390	S	Mr spectroscopy	726	7.91	$406.73	$256.06	$81.35
76400	S	Magnetic image, bone marrow	726	7.91	$406.73	$256.06	$81.35
76499	X	Radiographic procedure	700	0.80	$41.14	$22.37	$8.23
76506	S	Echo exam of head	747	1.65	$84.84	$54.47	$16.97
76511	S	Echo exam of eye	747	1.65	$84.84	$54.47	$16.97
76512	S	Echo exam of eye	747	1.65	$84.84	$54.47	$16.97
76513	S	Echo exam of eye, water bath	747	1.65	$84.84	$54.47	$16.97
76516	S	Echo exam of eye	747	1.65	$84.84	$54.47	$16.97
76519	S	Echo exam of eye	747	1.65	$84.84	$54.47	$16.97
76529	S	Echo exam of eye	747	1.65	$84.84	$54.47	$16.97
76536	S	Echo exam of head and neck	747	1.65	$84.84	$54.47	$16.97
76604	S	Echo exam of chest	747	1.65	$84.84	$54.47	$16.97
76645	S	Echo exam of breast	747	1.65	$84.84	$54.47	$16.97
76700	S	Echo exam of abdomen	747	1.65	$84.84	$54.47	$16.97
76705	S	Echo exam of abdomen	747	1.65	$84.84	$54.47	$16.97
76770	S	Echo exam abdomen back wall	747	1.65	$84.84	$54.47	$16.97
76775	S	Echo exam abdomen back wall	747	1.65	$84.84	$54.47	$16.97
76776	S	Echo exam kidney transplant	747	1.65	$84.84	$54.47	$16.97
76800	S	Echo exam spinal canal	747	1.65	$84.84	$54.47	$16.97
76805	S	Echo exam of pregnant uterus	747	1.65	$84.84	$54.47	$16.97
76810	S	Echo exam of pregnant uterus	747	1.65	$84.84	$54.47	$16.97
76815	S	Echo exam of pregnant uterus	747	1.65	$84.84	$54.47	$16.97
76816	S	Echo exam followup or repeat	747	1.65	$84.84	$54.47	$16.97
76818	S	Fetal biophysical profile	747	1.65	$84.84	$54.47	$16.97
76825	S	Echo exam of fetal heart	957	4.04	$207.74	$114.13	$41.55
76826	S	Echo exam of fetal heart	957	4.04	$207.74	$114.13	$41.55
76827	S	Echo exam of fetal heart	957	4.04	$207.74	$114.13	$41.55
76828	S	Echo exam of fetal heart	957	4.04	$207.74	$114.13	$41.55
76830	S	Echo exam, transvaginal	747	1.65	$84.84	$54.47	$16.97
76831	S	Echo exam, uterus	747	1.65	$84.84	$54.47	$16.97
76856	S	Echo exam of pelvis	747	1.65	$84.84	$54.47	$16.97
76857	S	Echo exam of pelvis	747	1.65	$84.84	$54.47	$16.97
76870	S	Echo exam of scrotum	747	1.65	$84.84	$54.47	$16.97
76872	S	Echo exam, transrectal	747	1.65	$84.84	$54.47	$16.97
76880	S	Echo exam of extremity	747	1.65	$84.84	$54.47	$16.97
76885	S	Echo exam, infant hips	747	1.65	$84.84	$54.47	$16.97
76886	S	Echo exam, infant hips	747	1.65	$84.84	$54.47	$16.97
76930	X	Echo guide for heart sac tap	749	2.22	$114.15	$70.06	$22.83
76932	X	Echo guide for heart biopsy	749	2.22	$114.15	$70.06	$22.83
76934	X	Echo guide for chest tap	749	2.22	$114.15	$70.06	$22.83
76936	X	Echo guide for artery repair	749	2.22	$114.15	$70.06	$22.83
76938	X	Echo exam for drainage	749	2.22	$114.15	$70.06	$22.83
76941	X	Echo guide for transfusion	749	2.22	$114.15	$70.06	$22.83
76942	X	Echo guide for biopsy	749	2.22	$114.15	$70.06	$22.83
76945	X	Echo guide, villus sampling	749	2.22	$114.15	$70.06	$22.83
76946	X	Echo guide for amniocentesis	749	2.22	$114.15	$70.06	$22.83
76948	X	Echo guide, ova aspiration	749	2.22	$114.15	$70.06	$22.83
76950	X	Echo guidance radiotherapy	749	2.22	$114.15	$70.06	$22.83
76960	X	Echo guidance radiotherapy	749	2.22	$114.15	$70.06	$22.83
76965	X	Echo guidance radiotherapy	749	2.22	$114.15	$70.06	$22.83
76970	S	Ultrasound exam follow-up	747	1.65	$84.84	$54.47	$16.97
76975	S	GI endoscopic ultrasound	747	1.65	$84.84	$54.47	$16.97
76986	S	Echo exam of surgery	747	1.65	$84.84	$54.47	$16.97
76999	S	Echo examination procedure	747	1.65	$84.84	$54.47	$16.97
77261	X	Radiation therapy planning	750	0.96	$49.30	$25.99	$9.67
77262	X	Radiation therapy planning	750	0.96	$49.30	$25.99	$9.67
77263	X	Radiation therapy planning	750	0.96	$49.30	$25.99	$9.67
77280	X	Set radiation therapy field	752	3.48	$178.94	$86.56	$35.79
77285	X	Set radiation therapy field	752	3.48	$178.94	$86.56	$35.79
77290	X	Set radiation therapy field	752	3.48	$178.94	$86.56	$35.79
77295	X	Set radiation therapy field	752	3.48	$178.94	$86.56	$35.79
77299	X	Radiation therapy planning	751	1.15	$59.13	$33.22	$11.83
77300	X	Radiation therapy dose plan	751	1.15	$59.13	$33.22	$11.83
77305	X	Radiation therapy dose plan	751	1.15	$59.13	$33.22	$11.83
77310	X	Radiation therapy dose plan	751	1.15	$59.13	$33.22	$11.83
77315	X	Radiation therapy dose plan	751	1.15	$59.13	$33.22	$11.83

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
77321	X	Radiation therapy port plan	751	1.15	$59.13	$33.22	$11.83
77326	X	Radiation therapy dose plan	751	1.15	$59.13	$33.22	$11.83
77327	X	Radiation therapy dose plan	751	1.15	$59.13	$33.22	$11.83
77328	X	Radiation therapy dose plan	751	1.15	$59.13	$33.22	$11.83
77331	X	Special radiation dosimetry	751	1.15	$59.13	$33.22	$11.83
77332	X	Radiation treatment aid(s)	751	1.15	$59.13	$33.22	$11.83
77333	X	Radiation treatment aid(s)	751	1.15	$59.13	$33.22	$11.83
77334	X	Radiation treatment aid(s)	751	1.15	$59.13	$33.22	$11.83
77336	X	Radiation physics consult	750	0.96	$49.36	$25.99	$9.87
77370	X	Radiation physics consult	750	0.96	$49.36	$25.99	$9.87
77399	X	External radiation dosimetry	750	0.96	$49.36	$25.99	$9.87
77401	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77402	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77403	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77404	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77406	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77407	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77408	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77409	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77411	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77412	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77413	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77414	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77416	S	Radiation treatment delivery	757	2.26	$116.21	$52.43	$23.24
77417	X	Radiology port film(s)	700	0.80	$41.14	$22.37	$8.23
77419	E	Weekly radiation therapy					
77420	E	Weekly radiation therapy					
77425	E	Weekly radiation therapy					
77430	E	Weekly radiation therapy					
77431	X	Radiation therapy management	750	0.96	$49.36	$25.99	$9.87
77432	X	Stereotactic radiation trmt	750	0.96	$49.36	$25.99	$9.87
77470	S	Special radiation treatment	757	2.26	$116.21	$52.43	$23.24
77499	N	Radiation therapy management					
77600	S	Hyperthermia treatment	758	5.08	$261.21	$137.18	$52.24
77605	S	Hyperthermia treatment	758	5.08	$261.21	$137.18	$52.24
77610	S	Hyperthermia treatment	758	5.08	$261.21	$137.18	$52.24
77615	S	Hyperthermia treatment	758	5.08	$261.21	$137.18	$52.24
77620	S	Hyperthermia treatment	758	5.08	$261.21	$137.18	$52.24
77750	S	Infuse radioactive materials	759	7.98	$410.33	$157.97	$82.07
77761	S	Radioelement application	759	7.98	$410.33	$157.97	$82.07
77762	S	Radioelement application	759	7.98	$410.33	$157.97	$82.07
77763	S	Radioelement application	759	7.98	$410.33	$157.97	$82.07
77776	S	Radioelement application	759	7.98	$410.33	$157.97	$82.07
77777	S	Radioelement application	759	7.98	$410.33	$157.97	$82.07
77778	S	Radioelement application	759	7.98	$410.33	$157.97	$82.07
77781	S	High intensity brachytherapy	759	7.98	$410.33	$157.97	$82.07
77782	S	High intensity brachytherapy	759	7.98	$410.33	$157.97	$82.07
77783	S	High intensity brachytherapy	759	7.98	$410.33	$157.97	$82.07
77784	S	High intensity brachytherapy	759	7.98	$410.33	$157.97	$82.07
77789	S	Radioelement application	759	7.98	$410.33	$157.97	$82.07
77790	N	Radioelement handling					
77799	S	Radium/radioisotope therapy	759	7.98	$410.33	$157.97	$82.07
78000	S	Thyroid, single uptake	761	1.80	$92.56	$54.01	$18.51
78001	S	Thyroid, multiple uptakes	762	2.02	$103.87	$55.82	$20.77
78003	S	Thyroid suppress/stimul	762	2.02	$103.87	$55.82	$20.77
78006	S	Thyroid,imaging with uptake	771	3.81	$195.91	$117.29	$39.18
78007	S	Thyroid, image, mult uptakes	772	4.26	$219.05	$128.37	$43.81
78010	S	Thyroid imaging	771	3.81	$195.91	$117.29	$39.18
78011	S	Thyroid imaging with flow	771	3.81	$195.91	$117.29	$39.18
78015	S	Thyroid met imaging	771	3.81	$195.91	$117.29	$39.18
78016	S	Thyroid met imaging/studies	772	4.26	$219.05	$128.37	$43.81
[2] 78017	S	Thyroid met imaging, mult	772	4.26	$219.05	$128.37	$43.81
78018	S	Thyroid, met imaging, body	772	4.26	$219.05	$128.37	$43.81
78070	S	Parathyroid nuclear imaging	772	4.26	$219.05	$128.37	$43.81
78075	S	Adrenal nuclear imaging	772	4.26	$219.05	$128.37	$43.81
78099	S	Endocrine nuclear procedure	761	1.80	$92.56	$54.01	$18.51
78102	S	Bone marrow imaging, ltd	771	3.81	$195.91	$117.29	$39.18
78103	S	Bone marrow imaging, mult	771	3.81	$195.91	$117.29	$39.18
78104	S	Bone marrow imaging, body	771	3.81	$195.91	$117.29	$39.18
78110	S	Plasma volume, single	761	1.80	$92.56	$54.01	$18.51
78111	S	Plasma volume, multiple	761	1.80	$92.56	$54.01	$18.51
78120	S	Red cell mass, single	761	1.80	$92.56	$54.01	$18.51
78121	S	Red cell mass, multiple	762	2.02	$103.87	$55.82	$20.77
78122	S	Blood volume	762	2.02	$103.87	$55.82	$20.77
78130	S	Red cell survival study	762	2.02	$103.87	$55.82	$20.77

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
78135	S	Red cell survival kinetics	762	2.02	$103.87	$55.82	$20.77
78140	S	Red cell sequestration	762	2.02	$103.87	$55.82	$20.77
78160	S	Plasma iron turnover	762	2.02	$103.87	$55.82	$20.77
78162	S	Iron absorption exam	762	2.02	$103.87	$55.82	$20.77
78170	S	Red cell iron utilization	762	2.02	$103.87	$55.82	$20.77
78172	S	Total body iron estimation	762	2.02	$103.87	$55.82	$20.77
78185	S	Spleen imaging	771	3.81	$195.91	$117.29	$39.18
78190	S	Platelet survival, kinetics	762	2.02	$103.87	$55.82	$20.77
78191	S	Platelet survival	762	2.02	$103.87	$55.82	$20.77
78195	S	Lymph system imaging	772	4.26	$219.05	$128.37	$43.81
78199	S	Blood/lymph nuclear exam	761	1.80	$92.56	$54.01	$18.51
78201	S	Liver imaging	771	3.81	$195.91	$117.29	$39.18
78202	S	Liver imaging with flow	771	3.81	$195.91	$117.29	$39.18
78205	S	Liver imaging (3D)	781	5.43	$279.21	$155.04	$55.84
78215	S	Liver and spleen imaging	771	3.81	$195.91	$117.29	$39.18
78216	S	Liver & spleen image, flow	771	3.81	$195.91	$117.29	$39.18
78220	S	Liver function study	772	4.26	$219.05	$128.37	$43.81
78223	S	Hepatobiliary imaging	772	4.26	$219.05	$128.37	$43.81
78230	S	Salivary gland imaging	771	3.81	$195.91	$117.29	$39.18
78231	S	Serial salivary imaging	771	3.81	$195.91	$117.29	$39.18
78232	S	Salivary gland function exam	772	4.26	$219.05	$128.37	$43.81
78258	S	Esophageal motility study	772	4.26	$219.05	$128.37	$43.81
78261	S	Gastric mucosa imaging	771	3.81	$195.91	$117.29	$39.18
78262	S	Gastroesophageal reflux exam	772	4.26	$219.05	$128.37	$43.81
78264	S	Gastric emptying study	772	4.26	$219.05	$128.37	$43.81
78270	S	Vit B-12 absorption exam	761	1.80	$92.56	$54.01	$18.51
78271	S	Vit B-12 absorp exam, IF	761	1.80	$92.56	$54.01	$18.51
78272	S	Vit B-12 absorp, combined	761	1.80	$92.56	$54.01	$18.51
78278	S	Acute GI blood loss imaging	772	4.26	$219.05	$128.37	$43.81
78282	S	GI protein loss exam	761	1.80	$92.56	$54.01	$18.51
78290	S	Meckel's divert exam	771	3.81	$195.91	$117.29	$39.18
78291	S	Leveen/shunt patency exam	772	4.26	$219.05	$128.37	$43.81
78299	S	GI nuclear procedure	761	1.80	$92.56	$54.01	$18.51
78300	S	Bone imaging, limited area	771	3.81	$195.91	$117.29	$39.18
78305	S	Bone imaging, multiple areas	771	3.81	$195.91	$117.29	$39.18
78306	S	Bone imaging, whole body	771	3.81	$195.91	$117.29	$39.18
78315	S	Bone imaging, 3 phase	772	4.26	$219.05	$128.37	$43.81
78320	S	Bone imaging (3D)	781	5.43	$279.21	$155.04	$55.84
78350	X	Bone mineral, single photon	700	0.80	$41.14	$22.37	$8.23
78351	E	Bone mineral, dual photon					
78399	S	Musculoskeletal nuclear exam	771	3.81	$195.91	$117.29	$39.18
78414	S	Non-imaging heart function	762	2.02	$103.87	$55.82	$20.77
78428	S	Cardiac shunt imaging	771	3.81	$195.91	$117.29	$39.18
78445	S	Vascular flow imaging	771	3.81	$195.91	$117.29	$39.18
78455	S	Venous thrombosis study	762	2.02	$103.87	$55.82	$20.77
78457	S	Venous thrombosis imaging	771	3.81	$195.91	$117.29	$39.18
78458	S	Ven thrombosis images, bilat	771	3.81	$195.91	$117.29	$39.18
78459	S	Heart muscle imaging (PET)	760	14.89	$765.64	$419.46	$153.13
78460	S	Heart muscle blood single	771	3.81	$195.91	$117.29	$39.18
78461	S	Heart muscle blood multiple	772	4.26	$219.05	$128.37	$43.81
78464	S	Heart image (3D) single	781	5.43	$279.21	$155.04	$55.84
78465	S	Heart image (3D) multiple	782	9.00	$462.78	$267.13	$92.56
78466	S	Heart infarct image	771	3.81	$195.91	$117.29	$39.18
78468	S	Heart infarct image, EF	772	4.26	$219.05	$128.37	$43.81
78469	S	Heart infarct image (3D)	781	5.43	$279.21	$155.04	$55.84
78472	S	Gated heart, planar single	772	4.26	$219.05	$128.37	$43.81
78473	S	Gated heart, multiple	772	4.26	$219.05	$128.37	$43.81
78478	S	Heart wall motion add-on	771	3.81	$195.91	$117.29	$39.18
78480	S	Heart function add-on	771	3.81	$195.91	$117.29	$39.18
78481	S	Heart first pass single	771	3.81	$195.91	$117.29	$39.18
78483	S	Heart first pass multiple	772	4.26	$219.05	$128.37	$43.81
78491	E	Heart image (pet) single					
78492	E	Heart image (pet) multiple					
78499	S	Cardiovascular nuclear exam	762	2.02	$103.87	$55.82	$20.77
78580	S	Lung perfusion imaging	771	3.81	$195.91	$117.29	$39.18
78584	S	Lung V/Q image single breath	772	4.26	$219.05	$128.37	$43.81
78585	S	Lung V/Q imaging	772	4.26	$219.05	$128.37	$43.81
78586	S	Aerosol lung image, single	771	3.81	$195.91	$117.29	$39.18
78587	S	Aerosol lung image, multiple	771	3.81	$195.91	$117.29	$39.18
78591	S	Vent image, 1 breath, 1 proj	771	3.81	$195.91	$117.29	$39.18
78593	S	Vent image, 1 proj, gas	771	3.81	$195.91	$117.29	$39.18
78594	S	Vent image, mult proj, gas	772	4.26	$219.05	$128.37	$43.81
78596	S	Lung differential function	772	4.26	$219.05	$128.37	$43.81
78599	S	Respiratory nuclear exam	771	3.81	$195.91	$117.29	$39.18
78600	S	Brain imaging, ltd static	771	3.81	$195.91	$117.29	$39.18

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
78601	S	Brain ltd imaging & flow	771	3.81	$195.91	$117.29	$39.18
78605	S	Brain imaging, complete	771	3.81	$195.91	$117.29	$39.18
78606	S	Brain imaging comp & flow	772	4.26	$219.05	$128.37	$43.81
78607	S	Brain imaging (3D)	781	5.43	$279.21	$155.04	$55.84
78608	S	Brain imaging (PET)	760	14.89	$765.64	$419.46	$153.13
78609	S	Brain imaging (PET)	760	14.89	$765.64	$419.46	$153.13
78610	S	Brain flow imaging only	771	3.81	$195.91	$117.29	$39.18
78615	S	Cerebral blood flow imaging	772	4.26	$219.05	$128.37	$43.81
78630	S	Cerebrospinal fluid scan	772	4.26	$219.05	$128.37	$43.81
78635	S	CSF ventriculography	772	4.26	$219.05	$128.37	$43.81
78645	S	CSF shunt evaluation	772	4.26	$219.05	$128.37	$43.81
78647	S	Cerebrospinal fluid scan	781	5.43	$279.21	$155.04	$55.84
78650	S	CSF leakage imaging	772	4.26	$219.05	$128.37	$43.81
78660	S	Nuclear exam of tear flow	771	3.81	$195.91	$117.29	$39.18
78699	S	Nervous system nuclear exam	771	3.81	$195.91	$117.29	$39.18
78700	S	Kidney imaging, static	771	3.81	$195.91	$117.29	$39.18
78701	S	Kidney imaging with flow	771	3.81	$195.91	$117.29	$39.18
78704	S	Imaging renogram	771	3.81	$195.91	$117.29	$39.18
78707	S	Kidney flow & function image	771	3.81	$195.91	$117.29	$39.18
78708	S	Kidney flow & function image	772	4.26	$219.05	$128.37	$43.81
78709	S	Kidney flow & function image	772	4.26	$219.05	$128.37	$43.81
78710	S	Kidney imaging (3D)	781	5.43	$279.21	$155.04	$55.84
78715	S	Renal vascular flow exam	771	3.81	$195.91	$117.29	$39.18
78725	S	Kidney function study	761	1.80	$92.56	$54.01	$18.51
78730	S	Urinary bladder retention	771	3.81	$195.91	$117.29	$39.18
78740	S	Ureteral reflux study	772	4.26	$219.05	$128.37	$43.81
78750	S	Testicular imaging	771	3.81	$195.91	$117.29	$39.18
78761	S	Testicular imaging & flow	771	3.81	$195.91	$117.29	$39.18
78799	S	Genitourinary nuclear exam	771	3.81	$195.91	$117.29	$39.18
78800	S	Tumor imaging, limited area	772	4.26	$219.05	$128.37	$43.81
78801	S	Tumor imaging, mult areas	772	4.26	$219.05	$128.37	$43.81
78802	S	Tumor imaging, whole body	772	4.26	$219.05	$128.37	$43.81
78803	S	Tumor imaging (3D)	782	9.00	$462.78	$267.13	$92.56
78805	S	Abscess imaging, ltd area	772	4.26	$219.05	$128.37	$43.81
78806	S	Abscess imaging, whole body	772	4.26	$219.05	$128.37	$43.81
78807	S	Nuclear localization/abscess	782	9.00	$462.78	$267.13	$92.56
78810	S	Tumor imaging (PET)	760	14.89	$765.64	$419.46	$153.13
78890	N	Nuclear medicine data proc					
78891	N	Nuclear med data proc					
78990	N	Provide diag radionuclide(s)					
78999	S	Nuclear diagnostic exam	761	1.80	$92.56	$54.01	$18.51
79000	S	Intial hyperthyroid therapy	792	4.81	$247.33	$143.06	$49.47
79001	S	Repeat hyperthyroid therapy	791	14.74	$757.93	$539.91	$151.59
79020	S	Thyroid ablation	792	4.81	$247.33	$143.06	$49.47
79030	S	Thyroid ablation, carcinoma	792	4.81	$247.33	$143.06	$49.47
79035	S	Thyroid metastatic therapy	792	4.81	$247.33	$143.06	$49.47
79100	S	Hematopoetic nuclear therapy	791	14.74	$757.93	$539.91	$151.59
79200	S	Intracavitary nuc treatment	792	4.81	$247.33	$143.06	$49.47
79300	S	Interstitial nuclear therapy	791	14.74	$757.93	$539.91	$151.59
79400	S	Nonhemato nuclear therapy	791	14.74	$757.93	$539.91	$151.59
79420	S	Intravascular nuc therapy	791	14.74	$757.93	$539.91	$151.59
79440	S	Nuclear joint therapy	791	14.74	$757.93	$539.91	$151.59
79900	N	Provide ther radiopharm(s)					
79999	S	Nuclear medicine therapy	791	14.74	$757.93	$539.91	$151.59
80048	A	Metabolic panel, basic					
80050	A	General health panel					
80051	A	Electrolyte panel					
80054	A	Comprehen metabolic panel					
80055	A	Obstetric panel					
80058	A	Hepatic function panel					
80059	A	Hepatitis panel					
80061	A	Lipid panel					
80072	A	Arthritis panel					
80090	A	Torch antibody panel					
80091	A	Thyroid panel					
80092	A	Thyroid panel w/TSH					
80100	A	Drug screen					
80101	A	Drug screen					
80102	A	Drug confirmation					
80103	N	Drug analysis, tissue prep					
80150	A	Assay of amikacin					
80152	A	Assay of amitriptyline					
80154	A	Assay of benzodiazepines					
80156	A	Assay carbamazepine					
80158	A	Assay of cyclosporine					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
80160	A	Assay of desipramine					
80162	A	Assay for digoxin					
80164	A	Assay, dipropylacetic acid					
80166	A	Assay of doxepin					
80168	A	Assay of ethosuximide					
80170	A	Gentamicin					
80172	A	Assay for gold					
80174	A	Assay of imipramine					
80176	A	Assay for lidocaine					
80178	A	Assay for lithium					
80182	A	Assay for nortriptyline					
80184	A	Assay for phenobarbital					
80185	A	Assay for phenytoin					
80186	A	Assay for phenytoin, free					
80188	A	Assay for primidone					
80190	A	Assay for procainamide					
80192	A	Assay for procainamide					
80194	A	Assay for quinidine					
80196	A	Assay for salicylate					
80197	A	Assay for tacrolimus					
80198	A	Assay for theophylline					
80200	A	Assay for tobramycin					
80201	A	Assay for topiramate					
80202	A	Assay for vancomycin					
80299	A	Quantitative assay, drug					
80400	A	Acth stimulation panel					
80402	A	Acth stimulation panel					
80406	A	Acth stimulation panel					
80408	A	Aldosterone suppression eval					
80410	A	Calcitonin stimul panel					
80412	A	CRH stimulation panel					
80414	A	Testosterone response					
80415	A	Estradiol response panel					
80416	A	Renin stimulation panel					
80417	A	Renin stimulation panel					
80418	A	Pituitary evaluation panel					
80420	A	Dexamethasone panel					
80422	A	Glucagon tolerance panel					
80424	A	Glucagon tolerance panel					
80428	A	Gonadotropin hormone panel					
80428	A	Growth hormone panel					
80430	A	Growth hormone panel					
80432	A	Insulin suppression panel					
80434	A	Insulin tolerance panel					
80435	A	Insulin tolerance panel					
80436	A	Metyrapone panel					
80438	A	TRH stimulation panel					
80439	A	TRH stimulation panel					
80440	A	TRH stimulation panel					
80500	X	Lab pathology consultation	862	0.39	$20.05	$11.75	$4.01
80502	X	Lab pathology consultation	862	0.39	$20.05	$11.75	$4.01
81000	A	Urinalysis, nonauto, w/scope					
81001	A	Urinalysis, auto, w/scope					
81002	A	Urinalysis nonauto w/o scope					
81003	A	Urinalysis, auto, w/o scope					
81005	A	Urinalysis					
81007	A	Urine screen for bacteria					
81015	A	Microscopic exam of urine					
81020	A	Urinalysis, glass test					
81025	A	Urine pregnancy test					
81050	A	Urinalysis, volume measure					
81099	A	Urinalysis test procedure					
82000	A	Assay blood acetaldehyde					
82003	A	Assay acetaminophen					
82009	A	Test for acetone/ketones					
82010	A	Acetone assay					
82013	A	Acetylcholinesterase assay					
82024	A	ACTH					
82030	A	ADP & AMP					
82040	A	Assay serum albumin					
82042	A	Assay urine albumin					
82043	A	Microalbumin, quantitative					
82044	A	Microalbumin, semiquant					
82055	A	Assay ethanol					
82075	A	Assay breath ethanol					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
82085	A	Assay of aldolase					
82088	A	Aldosterone					
82101	A	Assay of urine alkaloids					
82103	A	Alpha-1-antitrypsin, total					
82104	A	Alpha-1-antitrypsin, pheno					
82105	A	Alpha-fetoprotein, serum					
82106	A	Alpha-fetoprotein; amniotic					
82108	A	Assay, aluminum					
82120	A	Amino acids, mult qual					
[2] 82130	A	Amino acids analysis					
82131	A	Amino acids, single quant					
82135	A	Assay, aminolevulinic acid					
82140	A	Assay of ammonia					
82143	A	Amniotic fluid scan					
82145	A	Assay of amphetamines					
82150	A	Assay of amylase					
82154	A	Androstanediol glucuronide					
82157	A	Assay of androstenedione					
82160	A	Androsterone assay					
82163	A	Assay of angiotensin II					
82164	A	Angiotensin I enzyme test					
82172	A	Apolipoprotein					
82175	A	Assay of arsenic					
82180	A	Assay of ascorbic acid					
82190	A	Atomic absorption					
82205	A	Assay of barbiturates					
82232	A	Beta-2 protein					
82239	A	Bile acids, total					
82240	A	Bile acids, cholylglycine					
[1] 82250	A	Assay bilirubin					
82251	A	Assay bilirubin					
82252	A	Fecal bilirubin test					
82270	A	Test feces for blood					
82273	A	Test for blood, other source					
82286	A	Assay of bradykinin					
82300	A	Assay cadmium					
82306	A	Assay of vitamin D					
82307	A	Assay of vitamin D					
82308	A	Assay of calcitonin					
82310	A	Assay calcium					
82330	A	Assay calcium					
82331	A	Calcium infusion test					
82340	A	Assay calcium in urine					
82355	A	Calculus (stone) analysis					
82360	A	Calculus (stone) assay					
82365	A	Calculus (stone) assay					
82370	A	X-ray assay,calculus (stone)					
82374	A	Assay blood carbon dioxide					
82375	A	Assay blood carbon monoxide					
82376	A	Test for carbon monoxide					
82378	A	Carcinoembryonic antigen					
82380	A	Assay carotene					
82382	A	Assay urine catecholamines					
82383	A	Assay blood catecholamines					
82384	A	Assay three catecholamines					
82387	A	Cathepsin-D					
82390	A	Assay ceruloplasmin					
82397	A	Chemiluminescent assay					
82415	A	Assay chloramphenicol					
82435	A	Assay blood chloride					
82436	A	Assay urine chloride					
82438	A	Assay other fluid chlorides					
82441	A	Test for chlorohydrocarbons					
82465	A	Assay serum cholesterol					
82480	A	Assay serum cholinesterase					
82482	A	Assay rbc cholinesterase					
82485	A	Assay chondroitin sulfate					
82486	A	Gas/liquid chromatography					
82487	A	Paper chromatography					
82488	A	Paper chromatography					
82489	A	Thin layer chromatography					
82491	A	Chromotography, quantitative					
82495	A	Assay chromium					
82507	A	Assay citrate					
82520	A	Assay for cocaine					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
82523	A	Collagen crosslinks					
82525	A	Assay copper					
82528	A	Assay corticosterone					
82530	A	Cortisol, free					
82533	A	Total cortisol					
82540	A	Assay creatine					
82550	A	Assay CK (CPK)					
82552	A	Assay CPK in blood					
82553	A	Creatine, MB fraction					
82554	A	Creatine, isoforms					
82565	A	Assay creatinine					
82570	A	Assay urine creatinine					
82575	A	Creatinine clearance test					
82585	A	Assay cryofibrinogen					
82595	A	Assay cryoglobulin					
82600	A	Assay cyanide					
82607	A	Vitamin B-12					
82608	A	B-12 binding capacity					
82615	A	Test for urine cystines					
82626	A	Dehydroepiandrosterone					
82627	A	Dehydroepiandrosterone					
82633	A	Desoxycorticosterone					
82634	A	Deoxycortisol					
82638	A	Assay dibucaine number					
82646	A	Assay of dihydrocodeinone					
82649	A	Assay of dihydromorphinone					
82651	A	Dihydrotestosterone assay					
82652	A	Assay, dihydroxyvitamin D					
82654	A	Assay of dimethadione					
82664	A	Electrophoretic test					
82666	A	Epiandrosterone assay					
82668	A	Erythropoietin					
82670	A	Estradiol					
82671	A	Estrogens assay					
82672	A	Estrogen assay					
82677	A	Estriol					
82679	A	Estrone					
82690	A	Ethchlorvynol					
82693	A	Ethylene glycol					
82696	A	Etiocholanolone					
82705	A	Fats/lipids,feces,qualitativ					
82710	A	Fats/lipids,feces,quantitati					
82715	A	Fecal fat assay					
82725	A	Assay blood fatty acids					
82728	A	Assay ferritin					
82735	A	Assay fluoride					
82742	A	Assay of flurazepam					
82746	A	Blood folic acid serum					
82747	A	Folic acid, RBC					
82757	A	Assay semen fructose					
82759	A	RBC galactokinase assay					
82760	A	Assay galactose					
82775	A	Assay galactose transferase					
82776	A	Galactose transferase test					
82784	A	Assay gammaglobulin IgM					
82785	A	Assay, gammaglobulin IgE					
82787	A	IgG1, 2, 3 and 4					
82800	A	Blood pH					
82803	A	Blood gases: pH, pO2 & pCO2					
82805	A	Blood gases W/02 saturation					
82810	A	Blood gases, O2 sat only					
82820	A	Hemoglobin-oxygen affinity					
82926	A	Assay gastric acid					
82928	A	Assay gastric acid					
82938	A	Gastrin test					
82941	A	Assay of gastrin					
82943	A	Assay of glucagon					
82946	A	Glucagon tolerance test					
82947	A	Assay quantitative, glucose					
82948	A	Reagent strip/blood glucose					
82950	A	Glucose test					
82951	A	Glucose tolerance test (GTT)					
82952	A	GTT-added samples					
82953	A	Glucose-tolbutamide test					
82955	A	Assay G6PD enzyme					

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CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
82960	A	Test for G6PD enzyme					
82962	A	Glucose blood test					
82963	A	Glucosidase assay					
82965	A	Assay GDH enzyme					
82975	A	Assay glutamine					
82977	A	Assay of GGT					
82978	A	Glutathione assay					
82979	A	Assay RBC glutathione enzyme					
82980	A	Assay of glutethimide					
82985	A	Glycated protein					
83001	A	Gonadotropin (FSH)					
83002	A	Gonadotropin (LH)					
83003	A	Assay growth hormone (HGH)					
83008	A	Assay guanosine					
83010	A	Quant assay haptoglobin					
83012	A	Assay haptoglobins					
83015	A	Heavy metal screen					
83018	A	Quantitative screen, metals					
[2] 83019	A	Breath isotope test					
83020	A	Hemoglobin electrophoresis					
83026	A	Hemoglobin, copper sulfate					
83030	A	Fetal hemoglobin assay					
83033	A	Fetal fecal hemoglobin assay					
83036	A	Glycated hemoglobin test					
83045	A	Blood methemoglobin test					
83050	A	Blood methemoglobin assay					
83051	A	Assay plasma hemoglobin					
83055	A	Blood sulfhemoglobin test					
83060	A	Blood sulfhemoglobin assay					
83065	A	Hemoglobin heat assay					
83068	A	Hemoglobin stability screen					
83069	A	Assay urine hemoglobin					
83070	A	Qualt assay hemosiderin					
83071	A	Quant assay of hemosiderin					
83088	A	Assay histamine					
83150	A	Assay for HVA					
83491	A	Assay of corticosteroids					
83497	A	Assay 5-HIAA					
83498	A	Assay of progesterone					
83499	A	Assay of progesterone					
83500	A	Assay free hydroxyproline					
83505	A	Assay total hydroxyproline					
83516	A	Immunoassay, non antibody					
83518	A	Immunoassay, dipstick					
83519	A	Immunoassay nonantibody					
83520	A	Immunoassay, RIA					
83525	A	Assay of insulin					
83527	A	Assay of insulin					
83528	A	Assay intrinsic factor					
83540	A	Assay iron					
83550	A	Iron binding test					
83570	A	Assay IDH enzyme					
83582	A	Assay ketogenic steroids					
83586	A	Assay 17-(17-KS)ketosteroids					
83593	A	Fractionation ketosteroids					
83605	A	Lactic acid assay					
83615	A	Lactate (LD) (LDH) enzyme					
83625	A	Assay LDH enzymes					
83632	A	Placental lactogen					
83633	A	Test urine for lactose					
83634	A	Assay urine for lactose					
83655	A	Assay for lead					
83661	A	Assay L/S ratio					
83662	A	L/S ratio, foam stability					
83670	A	Assay LAP enzyme					
83690	A	Assay lipase					
83715	A	Assay blood lipoproteins					
[2] 83717	A	Assay blood lipoproteins					
83718	A	Blood lipoprotein assay					
83719	A	Blood lipoprotein assay					
83721	A	Blood lipoprotein assay					
83727	A	LRH hormone assay					
83735	A	Assay magnesium					
83775	A	Assay of md enzyme					
83785	A	Assay of manganese					

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CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
83805	A	Assay of meprobamate					
83825	A	Assay mercury					
83835	A	Assay metanephrines					
83840	A	Assay methadone					
83857	A	Assay methemalbumin					
83858	A	Assay methsuximide					
83864	A	Mucopolysaccharides					
83866	A	Mucopolysaccharides screen					
83872	A	Assay synovial fluid mucin					
83873	A	Assay, CSF protein					
83874	A	Myoglobin					
83883	A	Nephelometry, not specified					
83885	A	Assay for nickel					
83887	A	Assay nicotine					
83890	A	Molecule isolate					
83892	A	Molecular diagnostics					
83894	A	Molecule gel electrophor					
83896	A	Molecular diagnostics					
83898	A	Molecule nucleic amp					
83902	A	Molecular diagnostics					
83912	A	Genetic examination					
83915	A	Assay nucleotidase					
83916	A	Oligoclonal bands					
83918	A	Assay organic acids quant					
83925	A	Opiates					
83930	A	Assay blood osmolality					
83935	A	Assay urine osmolality					
83937	A	Assay for osteocalcin					
83945	A	Assay oxalate					
83970	A	Assay of parathormone					
83986	A	Assay body fluid acidity					
83992	A	Assay for phencyclidine					
84022	A	Assay of phenothiazine					
84030	A	Assay blood PKU					
84035	A	Assay phenylketones					
84060	A	Assay acid phosphatase					
84061	A	Phosphatase, forensic exam					
84066	A	Assay prostate phosphatase					
84075	A	Assay alkaline phosphatase					
84078	A	Assay alkaline phosphatase					
84080	A	Assay alkaline phosphatases					
84081	A	Amniotic fluid enzyme test					
84085	A	Assay RBC PG6D enzyme					
84087	A	Assay phosphohexose enzymes					
84100	A	Assay phosphorus					
84105	A	Assay urine phosphorus					
84106	A	Test for porphobilinogen					
84110	A	Assay porphobilinogen					
84119	A	Test urine for porphyrins					
84120	A	Assay urine porphyrins					
84126	A	Assay feces porphyrins					
84127	A	Porphyrins, feces					
84132	A	Assay serum potassium					
84133	A	Assay urine potassium					
84134	A	Prealbumin					
84135	A	Assay pregnanediol					
84138	A	Assay pregnanetriol					
84140	A	Assay for pregnenolone					
84143	A	Assay/17-hydroxypregnenolone					
84144	A	Assay progesterone					
84146	A	Assay for prolactin					
84150	A	Assay of prostaglandin					
84153	A	Psa total					
84155	A	Assay protein					
84160	A	Assay serum protein					
84165	A	Assay serum proteins					
84181	A	Western blot test					
84182	A	Protein, western blot test					
84202	A	Assay RBC protoporphyrin					
84203	A	Test RBC protoporphyrin					
84206	A	Assay of proinsulin					
84207	A	Assay vitamin B-6					
84210	A	Assay pyruvate					
84220	A	Assay pyruvate kinase					
84228	A	Assay quinine					

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CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
84230	A	Assay estrogen					
84234	A	Assay progesterone					
84235	A	Assay endocrine hormone					
84238	A	Assay non-endocrine receptor					
84244	A	Assay of renin					
84252	A	Assay vitamin B-2					
84255	A	Assay selenium					
84260	A	Assay serotonin					
84270	A	Sex hormone globulin (SHBG)					
84275	A	Assay sialic acid					
84285	A	Assay silica					
84295	A	Assay serum sodium					
84300	A	Assay urine sodium					
84305	A	Somatomedin					
84307	A	Somatostatin					
84311	A	Spectrophotometry					
84315	A	Body fluid specific gravity					
84375	A	Chromatogram assay, sugars					
84392	A	Assay urine sulfate					
84402	A	Testosterone					
84403	A	Assay total testosterone					
84425	A	Assay vitamin B-1					
84430	A	Assay thiocyanate					
84432	A	Thyroglobulin					
84436	A	Assay, total thyroxine					
84437	A	Assay neonatal thyroxine					
84439	A	Assay, free thyroxine					
84442	A	Thyroid activity (TBG) assay					
84443	A	Assay thyroid stim hormone					
84445	A	Thyroid immunoglobulins TSI					
84446	A	Assay vitamin E					
84449	A	Assay for transcortin					
84450	A	Transferase (AST) (SGOT)					
84460	A	Alanine amino (ALT) (SGPT)					
84466	A	Transferrin					
84478	A	Assay triglycerides					
84479	A	Assay thyroid (t-3 or t-4)					
84480	A	Assay triiodothyronine (t-3)					
84481	A	Free assay (FT-3)					
84482	A	T3 reverse					
84484	A	Troponin, quant					
84485	A	Assay duodenal fluid trypsin					
84488	A	Test feces for trypsin					
84490	A	Assay feces for trypsin					
84510	A	Assay tyrosine					
84512	A	Troponin, qual					
84520	A	Assay urea nitrogen					
84525	A	Urea nitrogen semi-quant					
84540	A	Assay urine urea-N					
84545	A	Urea-N clearance test					
84550	A	Assay blood uric acid					
84560	A	Assay urine uric acid					
84577	A	Assay feces urobilinogen					
84578	A	Test urine urobilinogen					
84580	A	Assay urine urobilinogen					
84583	A	Assay urine urobilinogen					
84585	A	Assay urine VMA					
84586	A	VIP assay					
84588	A	Assay vasopressin					
84590	A	Assay vitamin-A					
84597	A	Assay vitamin-K					
84600	A	Assay for volatiles					
84620	A	Xylose tolerance test					
84630	A	Assay zinc					
84681	A	Assay C-peptide					
84702	A	Chorionic gonadotropin test					
84703	A	Chorionic gonadotropin assay					
84830	A	Ovulation tests					
84999	A	Clinical chemistry test					
85002	A	Bleeding time test					
85007	A	Differential WBC count					
85008	A	Nondifferential WBC count					
85009	A	Differential WBC count					
85013	A	Hematocrit					
85014	A	Hematocrit					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
85018	A	Hemoglobin					
85021	A	Automated hemogram					
85022	A	Automated hemogram					
85023	A	Automated hemogram					
85024	A	Automated hemogram					
85025	A	Automated hemogram					
85027	A	Automated hemogram					
* 85029	A	Automated hemogram					
* 85030	A	Automated hemogram					
85031	A	Manual hemogram,complete cbc					
85041	A	Red blood cell (RBC) count					
85044	A	Reticulocyte count					
85045	A	Reticulocyte count					
85048	A	White blood cell (WBC) count					
85060	X	Blood smear interpretation	[2]	0.39	$20.05	$11.75	$4.01
85095	S	Bone marrow aspiration	121	0.63	$32.39	$21.02	$8.46
85097	X	Bone marrow interpretation	[2]	0.39	$20.05	$11.75	$4.01
85102	S	Bone marrow biopsy	121	0.63	$32.39	$21.02	$8.46
85130	A	Chromogenic substrate assay					
85170	A	Blood clot retraction					
85175	A	Blood clot lysis time					
85210	A	Blood clot factor II test					
85220	A	Blood clot factor V test					
85230	A	Blood clot factor VII test					
85240	A	Blood clot factor VIII test					
85244	A	Blood clot factor VIII test					
85245	A	Blood clot factor VIII test					
85246	A	Blood clot factor VIII test					
85247	A	Blood clot factor VIII test					
85250	A	Blood clot factor IX test					
85260	A	Blood clot factor X test					
85270	A	Blood clot factor XI test					
85280	A	Blood clot factor XII test					
85290	A	Blood clot factor XIII test					
85291	A	Blood clot factor XIII test					
85292	A	Blood clot factor assay					
85293	A	Blood clot factor assay					
85300	A	Antithrombin III test					
85301	A	Antithrombin III test					
85302	A	Blood clot inhibitor antigen					
85303	A	Blood clot inhibitor test					
85305	A	Blood clot inhibitor assay					
85306	A	Blood clot inhibitor test					
85335	A	Factor inhibitor test					
85337	A	Thrombomodulin					
85345	A	Coagulation time					
85347	A	Coagulation time					
85348	A	Coagulation time					
85360	A	Euglobulin lysis					
85362	A	Fibrin degradation products					
85366	A	Fibrinogen test					
85370	A	Fibrinogen test					
85378	A	Fibrin degradation					
85379	A	Fibrin degradation					
85384	A	Fibrinogen					
85385	A	Fibrinogen					
85390	A	Fibrinolysins screen					
85400	A	Fibrinolytic plasmin					
85410	A	Fibrinolytic antiplasmin					
85415	A	Fibrinolytic plasminogen					
85420	A	Fibrinolytic plasminogen					
85421	A	Fibrinolytic plasminogen					
85441	A	Heinz bodies; direct					
85445	A	Heinz bodies; induced					
85460	A	Hemoglobin, fetal					
85461	A	Hemoglobin, fetal					
85475	A	Hemolysin					
85520	A	Heparin assay					
85525	A	Heparin					
85530	A	Heparin-protamine tolerance					
85535	A	Iron stain, blood cells					
85540	A	Wbc alkaline phosphatase					
85547	A	RBC mechanical fragility					
85549	A	Muramidase					
85555	A	RBC osmotic fragility					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
85557	A	RBC osmotic fragility					
85576	A	Blood platelet aggregation					
85595	A	Blood platelet estimation					
85590	A	Platelet manual count					
85595	A	Platelet count, automated					
85597	A	Platelet neutralization					
85610	A	Prothrombin time					
85611	A	Prothrombin test					
85612	A	Viper venom prothrombin time					
85613	A	Russell viper venom, diluted					
85635	A	Reptilase test					
85651	A	Rbc sed rate, nonauto					
85652	A	Rbc sed rate, auto					
85660	A	RBC sickle cell test					
85670	A	Thrombin time, plasma					
85675	A	Thrombin time, titer					
85705	A	Thromboplastin inhibition					
85730	A	Thromboplastin time, partial					
85732	A	Thromboplastin time, partial					
85810	A	Blood viscosity examination					
85998	A	Hematology procedure					
86000	A	Agglutinins; febrile					
86003	A	Allergen specific IgE					
86005	A	Allergen specific IgE					
86021	A	WBC antibody identification					
86022	A	Platelet antibodies					
86023	A	Immunoglobulin assay					
86038	A	Antinuclear antibodies					
86039	A	Antinuclear antibodies (ANA)					
86060	A	Antistreptolysin O titer					
86063	A	Antistreptolysin O screen					
86077	X	Physician blood bank service		0.39	$20.05	$11.75	$4.01
86078	X	Physician blood bank service	882	0.39	$20.05	$11.75	$4.01
86079	X	Physician blood bank service	882	0.39	$20.05	$11.75	$4.01
86140	A	C-reactive protein					
86147	A	Cardiolipin antibody					
86148	A	Phospholipid antibody					
86155	A	Chemotaxis assay					
86156	A	Cold agglutinin screen					
86157	A	Cold agglutinin, titer					
86160	A	Complement, antigen					
86161	A	Complement/function activity					
86162	A	Complement, total (CH50)					
86171	A	Complement fixation, each					
86185	A	Counterimmunoelectrophoresis					
86215	A	Deoxyribonuclease, antibody					
86225	A	DNA antibody					
86226	A	DNA antibody, single strand					
86235	A	Nuclear antigen antibody					
86243	A	Fc receptor					
86255	A	Fluorescent antibody; screen					
86256	A	Fluorescent antibody; titer					
86277	A	Growth hormone antibody					
86280	A	Hemagglutination inhibition					
86308	A	Heterophile antibodies					
86309	A	Heterophile antibodies					
86310	A	Heterophile antibodies					
86316	A	Immunoassay, tumor antigen					
86317	A	Immunoassay, infectious agent					
86318	A	Immunoassay, infectious agent					
86320	A	Serum immunoelectrophoresis					
86325	A	Other immunoelectrophoresis					
86327	A	Immunoelectrophoresis assay					
86329	A	Immunodiffusion					
86331	A	Immunodiffusion ouchterlony					
86332	A	Immune complex assay					
86334	A	Immunofixation procedure					
86337	A	Insulin antibodies					
86340	A	Intrinsic factor antibody					
86341	A	Islet cell antibody					
86343	A	Leukocyte histamine release					
86344	A	Leukocyte phagocytosis					
86353	A	Lymphocyte transformation					
86359	A	T cells, total count					
86360	A	T cell absolute count/ratio					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
86361	A	T cell absolute count					
86376	A	Microsomal antibody					
86378	A	Migration inhibitory factor					
86382	A	Neutralization test, viral					
86384	A	Nitroblue tetrazolium dye					
86403	A	Particle agglutination test					
86406	A	Particle agglutination test					
86430	A	Rheumatoid factor test					
86431	A	Rheumatoid factor, quant					
86485	X	Skin test, candida	861	0.13	$3.66	$3.62	$1.34
86490	X	Coccidioidomycosis skin test	861	0.13	$3.66	$3.62	$1.34
86510	X	Histoplasmosis skin test	861	0.13	$3.66	$3.62	$1.34
86580	X	TB intradermal test	861	0.13	$3.66	$3.62	$1.34
86585	X	TB tine test	861	0.13	$3.66	$3.62	$1.34
86586	X	Skin test, unlisted	861	0.13	$3.66	$3.62	$1.34
86588	A	Streptococcus, direct screen					
86590	A	Streptokinase, antibody					
86592	A	Blood serology, qualitative					
86593	A	Blood serology, quantitative					
86602	A	Antinomyces antibody					
86603	A	Adenovirus, antibody					
86606	A	Aspergillus antibody					
86609	A	Bacterium, antibody					
86612	A	Blastomyces, antibody					
86615	A	Bordetella antibody					
86617	A	Lyme disease antibody					
86618	A	Lyme disease antibody					
86619	A	Borrelia antibody					
86622	A	Brucella, antibody					
86625	A	Campylobacter, antibody					
86628	A	Candida, antibody					
86631	A	Chlamydia, antibody					
86632	A	Chlamydia, IgM, antibody					
86635	A	Coccidioides, antibody					
86638	A	Q fever antibody					
86641	A	Cryptococcus antibody					
86644	A	CMV antibody					
86645	A	CMV antibody, IgM					
86648	A	Diphtheria antibody					
86651	A	Encephalitis antibody					
86652	A	Encephalitis antibody					
* 86653	A	Encephalitis, antibody					
86654	A	Encephalitis, antibody					
86658	A	Enterovirus, antibody					
86663	A	Epstein-barr antibody					
86664	A	Epstein-barr antibody					
86665	A	Epstein-barr, antibody					
86668	A	Francisella tularensis					
86671	A	Fungus, antibody					
86674	A	Giardia lamblia					
86677	A	Helicobacter pylori					
86682	A	Helminth, antibody					
86684	A	Hemophilus influenza					
86687	A	HTLV I					
86688	A	HTLV-II					
86689	A	HTLV/HIV confirmatory test					
86692	A	Hepatitis, delta agent					
86694	A	Herpes simplex test					
86695	A	Herpes simplex test					
86698	A	Histoplasma					
86701	A	HIV-1					
86702	A	HIV-2					
86703	A	HIV-1/HIV-2, single assay					
86704	A	Hep b core ab test, igg & m					
86705	A	Hep b core ab test, igm					
86706	A	Hepatitis b surface ab test					
86707	A	Hepatitis be ab test					
86708	A	Hep a ab test, igg & m					
86709	A	Hep a ab test, igm					
86710	A	Influenza virus					
86713	A	Legionella					
86717	A	Leishmania					
86720	A	Leptospira					
86723	A	Listeria monocytogenes					
86727	A	Lymph choriomeningitis					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
86729	A	Lympho venereum					
86732	A	Mucormycosis					
86735	A	Mumps					
86738	A	Mycoplasma					
86741	A	Neisseria meningitidis					
86744	A	Nocardia					
86747	A	Parvovirus					
86750	A	Malaria					
86753	A	Protozoa, not elsewhere					
86756	A	Respiratory virus					
86759	A	Rotavirus					
86762	A	Rubella					
86765	A	Rubeola					
86768	A	Salmonella					
86771	A	Shigella					
86774	A	Tetanus					
86777	A	Toxoplasma					
86778	A	Toxoplasma, IgM					
86781	A	Treponema pallidum confirm					
86784	A	Trichinella					
86787	A	Varicella-zoster					
86790	A	Virus, not specified					
86793	A	Yersinia					
86800	A	Thyroglobulin antibody					
86803	A	Hepatitis c ab test					
86804	A	Hep c ab test, confirm					
86805	A	Lymphocytotoxicity assay					
86806	A	Lymphocytotoxicity assay					
86807	A	Cytotoxic antibody screening					
86808	A	Cytotoxic antibody screening					
86812	A	HLA typing, A, B, or C					
86813	A	HLA typing, A, B, or C					
86816	A	HLA typing, DR/DQ					
86817	A	HLA typing, DR/DQ					
86821	A	Lymphocyte culture, mixed					
86822	A	Lymphocyte culture, primed					
86849	A	Immunology procedure					
86850	A	RBC antibody screen					
86860	A	RBC antibody elution					
86870	A	RBC antibody identification					
86880	A	Coombs test					
86885	A	Coombs test					
86886	A	Coombs test					
86890	A	Autologous blood process					
86891	A	Autologous blood, op salvage					
86900	A	Blood typing, ABO					
86901	A	Blood typing, Rh (D)					
86903	A	Blood typing, antigen screen					
86904	A	Blood typing, patient serum					
86905	A	Blood typing, RBC antigens					
86906	A	Blood typing, Rh phenotype					
86910	E	Blood typing, paternity test					
86911	E	Blood typing, antigen system					
86915	A	Bone marrow					
86920	A	Compatibility test					
86921	A	Compatibility test					
86922	A	Compatibility test					
86927	A	Plasma, fresh frozen					
86930	A	Frozen blood prep					
86931	A	Frozen blood thaw					
86932	A	Frozen blood, freeze/thaw					
86940	A	Hemolysins/agglutinins auto					
86941	A	Hemolysins/agglutinins					
86945	A	Blood product/irradiation					
86950	A	Leukacyte transfusion					
86965	A	Pooling blood platelets					
86970	A	RBC pretreatment					
86971	A	RBC pretreatment					
86972	A	RBC pretreatment					
86975	A	RBC pretreatment, serum					
86976	A	RBC pretreatment, serum					
86977	A	RBC pretreatment, serum					
86978	A	RBC pretreatment, serum					
86985	A	Split blood or products					
86999	A	Transfusion procedure					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
87001	A	Small animal inoculation					
87003	A	Small animal inoculation					
87015	A	Specimen concentration					
87040	A	Blood culture for bacteria					
87045	A	Stool culture for bacteria					
87060	A	Nose/throat culture,bacteria					
87070	A	Culture specimen, bacteria					
87072	A	Culture of specimen by kit					
87075	A	Culture specimen, bacteria					
87076	A	Bacteria identification					
87081	A	Bacteria culture screen					
87082	A	Culture of specimen by kit					
87083	A	Culture of specimen by kit					
87084	A	Culture of specimen by kit					
87085	A	Culture of specimen by kit					
87086	A	Urine culture, colony count					
87087	A	Urine bacteria culture					
87088	A	Urine bacteria culture					
87101	A	Skin fungus culture					
87102	A	Fungus isolation culture					
87103	A	Blood fungus culture					
87106	A	Fungus identification					
87109	A	Mycoplasma culture					
87110	A	Culture, chlamydia					
87116	A	Mycobacteria culture					
87117	A	Mycobacteria culture					
87118	A	Mycobacteria identification					
87140	A	Culture typing, fluorescent					
87143	A	Culture typing, GLC method					
87145	A	Culture typing, phage method					
87147	A	Culture typing, serologic					
87151	A	Culture typing, serologic					
87155	A	Culture typing, precipitin					
87158	A	Culture typing, added method					
87163	A	Special microbiology culture					
87164	A	Dark field examination					
87166	A	Dark field examination					
87174	A	Endotoxin, bacterial					
87175	A	Assay, endotoxin, bacterial					
87176	A	Endotoxin, bacterial					
87177	A	Ova and parasites smears					
87181	A	Antibiotic sensitivity, each					
87184	A	Antibiotic sensitivity, each					
87186	A	Antibiotic sensitivity, MIC					
87187	A	Antibiotic sensitivity, MBC					
87188	A	Antibiotic sensitivity, each					
87190	A	TB antibiotic sensitivity					
87192	A	Antibiotic sensitivity, each					
87197	A	Bactericidal level, serum					
87205	A	Smear, stain & interpret					
87206	A	Smear, stain & interpret					
87207	A	Smear, stain & interpret					
87208	A	Smear, stain & interpret					
87210	A	Smear, stain & interpret					
87211	A	Smear, stain & interpret					
87220	A	Tissue exam for fungi					
87230	A	Assay, toxin or antitoxin					
87250	A	Virus inoculation for test					
87252	A	Virus inoculation for test					
87253	A	Virus inoculation for test					
87260	A	Adenovirus ag, dfa					
87265	A	Pertussis ag, dfa					
87270	A	Chylmd trach ag, dfa					
87272	A	Cryptosporidum ag, dfa					
87274	A	Herpes simplex ag, dfa					
87276	A	Influenza ag, dfa					
87278	A	Legion pneumo ag, dfa					
87280	A	Resp syncytial ag, dfa					
87285	A	Trepon pallidum ag, dfa					
87290	A	Varicella ag, dfa					
87299	A	Ag detection nos, dfa					
87301	A	Adenovirus ag, eia					
87320	A	Chylmd trach ag, eia					
87324	A	Clostridium ag, eia					
87328	A	Cryptospor ag, eia					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
87332	A	Cytomegalovirus ag, eia					
87335	A	E coli 0157 ag, eia					
87340	A	Hepatitis b surface ag, eia					
87350	A	Hepatitis b ag, eia					
87380	A	Hepatitis delta ag, eia					
87385	A	Histoplasma capsul ag, eia					
87390	A	Hiv-1 ag, eia					
87391	A	Hiv-2 ag, eia					
87420	A	Resp syncytial ag, eia					
87425	A	Rotavirus ag, eia					
87430	A	Strep a ag, eia					
87449	A	Ag detect nos, eia, mult					
87450	A	Ag detect nos, eia, single					
87470	A	Bartonella, dna, dir probe					
87471	A	Bartonella, dna, amp probe					
87472	A	Bartonella, dna, quant					
87475	A	Lyme dis, dna, dir probe					
87476	A	Lyme dis, dna, amp probe					
87477	A	Lyme dis, dna, quant					
87480	A	Candida, dna, dir probe					
87481	A	Candida, dna, amp probe					
87482	A	Candida, dna, quant					
87485	A	Chylmd pneum, dna, dir probe					
87486	A	Chylmd pneum, dna, amp probe					
87487	A	Chylmd pneum, dna, quant					
87490	A	Chylmd trach, dna, dir probe					
87491	A	Chylmd trach, dna, amp probe					
87492	A	Chylmd trach, dna, quant					
87495	A	Cytomeg, dna, dir probe					
87496	A	Cytomeg, dna, amp probe					
87497	A	Cytomeg, dna, quant					
87510	A	Gardner vag, dna, dir probe					
87511	A	Gardner vag, dna, amp probe					
87512	A	Gardner vag, dna, quant					
87515	A	Hepatitis b, dna, dir probe					
87516	A	Hepatitis b, dna, amp probe					
87517	A	Hepatitis b, dna, quant					
87520	A	Hepatitis c, rna, dir probe					
87521	A	Hepatitis c, rna, amp probe					
87522	A	Hepatitis c, rna, quant					
87525	A	Hepatitis g, dna, dir probe					
87526	A	Hepatitis g, dna, amp probe					
87527	A	Hepatitis g, dna, quant					
87528	A	Hsv, dna, dir probe					
87529	A	Hsv, dna, amp probe					
87530	A	Hsv, dna, quant					
87531	A	Hhv-6, dna, dir probe					
87532	A	Hhv-6, dna, amp probe					
87533	A	Hhv-6, dna, quant					
87534	A	Hiv-1, dna, dir probe					
87535	A	Hiv-1, dna, amp probe					
87536	A	Hiv-1, dna, quant					
87537	A	Hiv-2, dna, dir probe					
87538	A	Hiv-2, dna, amp probe					
87539	A	Hiv-2, dna, quant					
87540	A	Legion pneumo, dna, dir prob					
87541	A	Legion pneumo, dna, amp prob					
87542	A	Legion pneumo, dna, quant					
87550	A	Mycobacteria, dna, dir probe					
87551	A	Mycobacteria, dna, amp probe					
87552	A	Mycobacteria, dna, quant					
87555	A	M.tuberculo, dna, dir probe					
87556	A	M.tuberculo, dna, amp probe					
87557	A	M.tuberculo, dna, quant					
87560	A	M.avium-intra, dna, dir prob					
87561	A	M.avium-intra, dna, amp prob					
87562	A	M.avium-intra, dna, quant					
87580	A	M.pneumon, dna, dir probe					
87581	A	M.pneumon, dna, amp probe					
87582	A	M.pneumon, dna, quant					
87590	A	N.gonorrhoeae, dna, dir prob					
87591	A	N.gonorrhoeae, dna, amp prob					
87592	A	N.gonorrhoeae, dna, quant					
87620	A	Hpv, dna, dir probe					
87621	A	Hpv, dna, amp probe					

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CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
87622	A	Hpv, dna, quant					
87650	A	Strep a, dna, dir probe					
87651	A	Strep a, dna, amp probe					
87652	A	Strep a, dna, quant					
87797	A	Detect agent nos, dna, dir					
87798	A	Detect agent nos, dna, amp					
87799	A	Detect agent nos, dna, quant					
87810	A	Chylmd trach assay w/optic					
87850	A	N. gonorrhoeae assay w/optic					
87880	A	Strep a assay w/optic					
87899	A	Agent nos assay w/optic					
87999	A	Microbiology procedure					
88000	E	Autopsy (necropsy), gross					
88005	E	Autopsy (necropsy), gross					
88007	E	Autopsy (necropsy), gross					
88012	E	Autopsy (necropsy), gross					
88014	E	Autopsy (necropsy), gross					
88016	E	Autopsy (necropsy), gross					
88020	E	Autopsy (necropsy), complete					
88025	E	Autopsy (necropsy), complete					
88027	E	Autopsy (necropsy), complete					
88028	E	Autopsy (necropsy), complete					
88029	E	Autopsy (necropsy), complete					
88036	E	Limited autopsy					
88037	E	Limited autopsy					
88040	E	Forensic autopsy (necropsy)					
88045	E	Coroner's autopsy (necropsy)					
88099	E	Necropsy (autopsy) procedure					
88104	X	Cytopathology, fluids	882	0.39	$20.05	$11.75	$4.01
88106	X	Cytopathology, fluids	882	0.39	$20.05	$11.75	$4.01
88107	X	Cytopathology, fluids	882	0.39	$20.05	$11.75	$4.01
88108	X	Cytopath, concentrate tech	882	0.39	$20.05	$11.75	$4.01
88125	X	Forensic cytopathology	881	0.22	$11.31	$6.78	$2.26
88130	A	Sex chromatin identification					
88140	A	Sex chromatin identification					
88141	N	Cytpath c/vag interpret					
88142	A	Cytpath c/vag t/layer					
88150	A	Cytpath c/vag manual					
88152	A	Cytpath c/vag auto redo					
88155	A	Cytpath c/vag index add-on					
[2] 88156	A	Cytopath cerv/vag tbs					
[2] 88158	A	Cytopath cerv/vag tbs auto					
88160	X	Cytopath smear, other source	882	0.39	$20.05	$11.75	$4.01
88161	X	Cytopath smear, other source	882	0.39	$20.05	$11.75	$4.01
88162	X	Cytopath smear, other source	882	0.39	$20.05	$11.75	$4.01
88170	S	Fine needle aspiration	121	0.63	$32.39	$21.02	$6.48
88171	S	Fine needle aspiration	121	0.63	$32.39	$21.02	$6.48
88172	X	Evaluation of smear	882	0.39	$20.05	$11.75	$4.01
88173	X	Interpretation of smear	882	0.39	$20.05	$11.75	$4.01
88180	X	Cell marker study	882	0.39	$20.05	$11.75	$4.01
88182	X	Cell marker study	882	0.39	$20.05	$11.75	$4.01
88199	X	Cytopathology procedure	881	0.22	$11.31	$6.78	$2.26
88230	A	Tissue culture, lymphocyte					
88233	A	Tissue culture, skin/biopsy					
88235	A	Tissue culture, placenta					
88237	A	Tissue culture, bone marrow					
88239	A	Tissue culture, tumor					
88245	A	Chromosome analysis, 20-25					
88248	A	Chromosome analysis, 50-100					
[2] 88250	A	Chromosome analysis					
[2] 88260	A	Chromosome analysis: 5 cells					
88261	A	Chromosome analysis, 5					
88262	A	Chromosome analysis, 15-20					
88263	A	Chromosome analysis, 45					
88267	A	Chromosome analysis: placenta					
88269	A	Chromosome analysis: amniotic					
88280	A	Chromosome karyotype study					
88283	A	Chromosome banding study					
88285	A	Chromosome count: additional					
88289	A	Chromosome study: additional					
88299	A	Cytogenetic study					
88300	X	Surg path, gross	881	0.22	$11.31	$6.78	$2.26
88302	X	Tissue exam by pathologist	882	0.39	$20.05	$11.75	$4.01
88304	X	Tissue exam by pathologist	882	0.39	$20.05	$11.75	$4.01
88305	X	Tissue exam by pathologist	882	0.39	$20.05	$11.75	$4.01

[1] This APC assignment will not apply to services furnished under a partial hospitalization program. Instead, services furnished as part of a partial hospitalization program are paid on a per-diem basis via APC 020.

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
88307	X	Tissue exam by pathologist	883	0.69	$35.46	$20.34	$7.10
88309	X	Tissue exam by pathologist	883	0.69	$35.46	$20.34	$7.10
88311	X	Decalcify tissue	881	0.22	$11.31	$6.78	$2.26
88312	X	Special stains	882	0.39	$20.05	$11.75	$4.01
88313	X	Special stains	881	0.22	$11.31	$6.78	$2.26
88314	X	Histochemical stain	882	0.39	$20.05	$11.75	$4.01
88318	X	Chemical histochemistry	882	0.39	$20.05	$11.75	$4.01
88319	X	Enzyme histochemistry	882	0.39	$20.05	$11.75	$4.01
88321	X	Microslide consultation	882	0.39	$20.05	$11.75	$4.01
88323	X	Microslide consultation	882	0.39	$20.05	$11.75	$4.01
88325	X	Comprehensive review of data	882	0.39	$20.05	$11.75	$4.01
88329	X	Pathology consult in surgery	882	0.39	$20.05	$11.75	$4.01
88331	X	Pathology consult in surgery	882	0.39	$20.05	$11.75	$4.01
88332	X	Pathology consult in surgery	882	0.39	$20.05	$11.75	$4.01
88342	X	Immunocytochemistry	882	0.39	$20.05	$11.75	$4.01
88346	X	Immunofluorescent study	882	0.39	$20.05	$11.75	$4.01
88347	X	Immunofluorescent study	882	0.39	$20.05	$11.75	$4.01
88348	X	Electron microscopy	883	0.69	$35.46	$20.34	$7.10
88349	X	Scanning electron microscopy	883	0.69	$35.46	$20.34	$7.10
88355	X	Analysis, skeletal muscle	883	0.69	$35.46	$20.34	$7.10
88356	X	Analysis, nerve	883	0.69	$35.46	$20.34	$7.10
88358	X	Analysis, tumor	883	0.69	$35.46	$20.34	$7.10
88362	X	Nerve teasing preparations	883	0.69	$35.46	$20.34	$7.10
88365	X	Tissue hybridization	883	0.69	$35.46	$20.34	$7.10
88371	A	Protein, western blot tissue					
88372	A	Protein analysis w/probe					
88399	X	Surgical pathology procedure	881	0.22	$11.31	$6.78	$2.26
89050	A	Body fluid cell count					
89051	A	Body fluid cell count					
89060	A	Exam,synovial fluid crystals					
89100	X	Sample intestinal contents	928	2.91	$149.63	$79.78	$29.93
89105	X	Sample intestinal contents	928	2.91	$149.63	$79.78	$29.93
89125	A	Specimen fat stain					
89130	X	Sample stomach contents	928	2.91	$149.63	$79.78	$29.93
89132	X	Sample stomach contents	928	2.91	$149.63	$79.78	$29.93
89135	X	Sample stomach contents	928	2.91	$149.63	$79.78	$29.93
89136	X	Sample stomach contents	928	2.91	$149.63	$79.78	$29.93
89140	X	Sample stomach contents	928	2.91	$149.63	$79.78	$29.93
89141	X	Sample stomach contents	928	2.91	$149.63	$79.78	$29.93
89160	A	Exam feces for meat fibers					
89190	A	Nasal smear for eosinophils					
89250	A	Fertilization of oocyte					
89251	A	Culture oocyte w/embryos					
89252	A	Assist oocyte fertilization					
89253	A	Embryo hatching					
89254	A	Oocyte identification					
89255	A	Prepare embryo for transfer					
89256	A	Prepare cryopreserved embryo					
89257	A	Sperm identification					
89258	A	Cryopreservation, embryo					
89259	A	Cryopreservation, sperm					
89260	A	Sperm isolation, simple					
89261	A	Sperm isolation, complex					
89300	A	Semen analysis					
89310	A	Semen analysis					
89320	A	Semen analysis					
89325	A	Sperm antibody test					
89329	A	Sperm evaluation test					
89330	A	Evaluation, cervical mucus					
89350	X	Sputum specimen collection	881	0.22	$11.31	$6.78	$2.26
89355	A	Exam feces for starch					
89360	X	Collect sweat for test	881	0.22	$11.31	$6.78	$2.26
89365	A	Water load test					
89399	X	Pathology lab procedure	881	0.22	$11.31	$6.78	$2.26
90700	X	Dtap vaccine, im	901	0.07	$3.60	$2.49	$0.72
90701	X	Dtp vaccine, im	901	0.07	$3.60	$2.49	$0.72
90702	X	Dt vaccine, im	901	0.07	$3.60	$2.49	$0.72
90703	X	Tetanus vaccine, im	901	0.07	$3.60	$2.49	$0.72
90704	X	Mumps vaccine, sc	901	0.07	$3.60	$2.49	$0.72
90705	X	Measles vaccine, sc	901	0.07	$3.60	$2.49	$0.72
90706	X	Rubella vaccine, sc	901	0.07	$3.60	$2.49	$0.72
90707	X	Mmr vaccine, sc	902	1.31	$67.36	$38.19	$13.47
90708	X	Measles-rubella vaccine sc	901	0.07	$3.60	$2.49	$0.72
90709	X	Rubella & mumps vaccine sc	901	0.07	$3.60	$2.49	$0.72
90710	X	Mmrv vaccine, sc	901	0.07	$3.60	$2.49	$0.72

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
[2] 90711	X	Combined vaccine	901	0.07	$3.60	$2.49	$0.72
90712	X	Oral poliovirus vaccine	902	1.31	$67.36	$38.19	$13.47
90713	X	Poliovirus, ipv, sc	902	1.31	$67.36	$38.19	$13.47
[2] 90714	X	Typhoid immunization	901	0.07	$3.60	$2.49	$0.72
90716	X	Chicken pox vaccine, sc	902	1.31	$67.36	$38.19	$13.47
90717	X	Yellow fever vaccine, sc	902	1.31	$67.36	$38.19	$13.47
90718	X	Td vaccine, im	901	0.07	$3.60	$2.49	$0.72
90719	X	Diphtheria vaccine, im	901	0.07	$3.60	$2.49	$0.72
90720	X	Dtp/hib vaccine, im	902	1.31	$67.36	$38.19	$13.47
90721	X	Dtap/hib vaccine, im	903	1.00	$51.42	$24.86	$10.28
[2] 90724	X	Influenza immunization	901	0.07	$3.60	$2.49	$0.72
90725	X	Cholera vaccine, injectable	901	0.07	$3.60	$2.49	$0.72
[2] 90726	X	Rabies immunization	903	1.00	$51.42	$24.86	$10.28
90727	X	Plague vaccine, im	903	1.00	$51.42	$24.86	$10.28
[2] 90728	X	BCG immunization	903	1.00	$51.42	$24.86	$10.28
[2] 90730	X	Hepatitis A vaccine	901	0.07	$3.60	$2.49	$0.72
90732	X	Pneumococcal vaccine, adult	901	0.07	$3.60	$2.49	$0.72
90733	X	Meningococcal vaccine, sc	902	1.31	$67.36	$38.19	$13.47
90735	X	Encephalitis vaccine, sc	903	1.00	$51.42	$24.86	$10.28
[2] 90737	X	Influenza B immunization	902	1.31	$67.36	$38.19	$13.47
[2] 90741	X	Passive immunization, ISG	902	1.31	$67.36	$38.19	$13.47
[2] 90742	X	Special passive immunization	903	1.00	$51.42	$24.86	$10.28
90744	X	Hepb vaccine, ped/adol, im	902	1.31	$67.36	$38.19	$13.47
90745	X	Hepb vaccine, adol/risk, im	902	1.31	$67.36	$38.19	$13.47
90746	X	Hepb vaccine, adult, im	902	1.31	$67.36	$38.19	$13.47
90747	X	Hepb vaccine, ill pat, im	902	1.31	$67.36	$38.19	$13.47
90748	X	Hepb/hib vaccine, im	901	0.07	$3.60	$2.49	$0.72
90749	X	Vaccine toxoid	901	0.07	$3.60	$2.49	$0.72
90780	X	IV infusion therapy, 1 hour	906	1.93	$99.24	$57.18	$19.85
90781	X	IV infusion, additional hour	906	1.93	$99.24	$57.18	$19.85
90782	X	Injection (SC)/(IM)	907	0.74	$38.05	$11.53	$7.61
90783	X	Injection (IA)	907	0.74	$38.05	$11.53	$7.61
90784	X	Injection (IV)	907	0.74	$38.05	$11.53	$7.61
90788	X	Injection of antibiotic	907	0.74	$38.05	$11.53	$7.61
90799	X	Therapeutic/diag injection	907	0.74	$38.05	$11.53	$7.61
[1] 90801	S	Psy dx interview	092	1.63	$83.81	$21.47	$16.76
90802	E	Intac psy dx interview	092	1.63	$83.81	$21.47	$16.76
90804	S	Psytx, office (20-30)	091	1.09	$56.05	$14.01	$11.21
90805	S	Psytx, office (20-30) w/e&m	091	1.09	$56.05	$14.01	$11.21
90806	S	Psytx, office (45-50)	092	1.63	$83.81	$21.47	$16.76
90807	S	Psytx, office (45-50) w/e&m	092	1.63	$83.81	$21.47	$16.76
90808	S	Psytx, office (75-80)	092	1.63	$83.81	$21.47	$16.76
90809	S	Psytx, office (75-80) w/e&m	092	1.63	$83.81	$21.47	$16.76
90810	S	Intac psytx, office (20-30)	091	1.09	$56.05	$14.01	$11.21
90811	S	Intac psytx, off 20-30 w/e&m	091	1.09	$56.05	$14.01	$11.21
90812	S	Intac psytx, office (45-50)	092	1.63	$83.81	$21.47	$16.76
90813	S	Intac psytx, off 45-50 w/e&m	092	1.63	$83.81	$21.47	$16.76
90814	S	Intac psytx, office (75-80)	092	1.63	$83.81	$21.47	$16.76
90815	S	Intac psytx, off 75-80 w/e&m	092	1.63	$83.81	$21.47	$16.76
90816	S	Psytx, hosp (20-30)	091	1.09	$56.05	$14.01	$11.21
90817	S	Psytx, hosp (20-30) w/e&m	091	1.09	$56.05	$14.01	$11.21
90818	S	Psytx, hosp (45-50)	092	1.63	$83.81	$21.47	$16.76
90819	S	Psytx, hosp (45-50) w/e&m	092	1.63	$83.81	$21.47	$16.76
[1] [2] 90820	S	Diagnostic interview	092	1.63	$83.81	$21.47	$16.76
90821	S	Psytx, hosp (75-80)	092	1.63	$83.81	$21.47	$16.76
90822	S	Psytx, hosp (75-80) w/e&m	092	1.63	$83.81	$21.47	$16.76
90823	S	Intac psytx, hosp (20-30)	091	1.09	$56.05	$14.01	$11.21
90824	S	Intac psytx, hsp 20-30 w/e&m	091	1.09	$56.05	$14.01	$11.21
90826	S	Intac psytx, hosp (45-50)	092	1.63	$83.81	$21.47	$16.76
90827	S	Intac psytx, hsp 45-50 w/e&m	092	1.63	$83.81	$21.47	$16.76
90828	S	Intac psytx, hosp (75-80)	092	1.63	$83.81	$21.47	$16.76
90829	S	Intac psytx, hsp 75-80 w/e&m	092	1.63	$83.81	$21.47	$16.76
[1] [2] 90835	S	Special interview	092	1.63	$83.81	$21.47	$16.76
[1] [2] 90842	S	Psychotherapy, 75-80 min.	091	1.09	$56.05	$14.01	$11.21
[1] [2] 90843	S	Psychotherapy, 20-30 min.	092	1.63	$83.81	$21.47	$16.76
[1] [2] 90844	S	Psychotherapy, 45-50 min.	092	1.63	$83.81	$21.47	$16.76
[1] 90845	S	Psychoanalysis	093	1.56	$80.22	$20.11	$16.04
90846	S	Family psytx w/o patient	093	1.56	$80.22	$20.11	$16.04
90847	S	Family psytx w/patient	094	1.31	$67.36	$19.89	$13.47
[1] 90849	S	Multiple family group psytx	094	1.31	$67.36	$19.89	$13.47
[1] 90853	S	Group psychotherapy	092	1.63	$83.81	$21.47	$16.76
[1] [2] 90855	S	Individual psychotherapy	094	1.31	$67.36	$19.89	$13.47
[1] 90857	S	Intac group psytx	090	0.85	$43.71	$12.20	$8.74
[1] 90862	X	Medication management	092	1.63	$83.81	$21.47	$16.76
90865	S	Narcosynthesis					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
90870	S	Electroconvulsive therapy	913	8.09	$158.89	$80.00	$31.78
90871	S	Electroconvulsive therapy	913	8.09	$158.89	$80.00	$31.78
90875	E	Psychophysiological therapy					
90876	E	Psychophysiological therapy					
[1] 90880	S	Hypnotherapy	092	1.63	$83.81	$21.47	$16.76
90882	E	Environmental manipulation					
90885	N	Psy evaluation of records					
90887	N	Consultation with family					
90889	N	Preparation of report					
[1] 90899	S	Psychiatric service/therapy	091	1.09	$56.05	$14.01	$11.21
[2] 90900	S	Biofeedback, electromyogram	920	1.17	$60.16	$29.61	$12.03
90901	S	Biofeedback, any method	920	1.17	$60.16	$29.61	$12.03
[2] 90902	S	Biofeedback, nerve impulse	920	1.17	$60.16	$29.61	$12.03
[2] 90904	S	Biofeedback, blood pressure	920	1.17	$60.16	$29.61	$12.03
[2] 90906	S	Biofeedback, blood flow	920	1.17	$60.16	$29.61	$12.03
[2] 90908	S	Biofeedback, brain waves	920	1.17	$60.16	$29.61	$12.03
[2] 90910	S	Biofeedback, oculogram	920	1.17	$60.16	$29.61	$12.03
90911	S	Biofeedback peri/uro/rectal	920	1.17	$60.16	$29.61	$12.03
[2] 90915	S	Biofeedback, unspecified	920	1.17	$60.16	$29.61	$12.03
90918	A	ESRD related services, month					
90919	A	ESRD related services, month					
90920	A	ESRD related services, month					
90921	A	ESRD related services, month					
90922	A	ESRD related services, day					
90923	A	Esrd related services, day					
90924	A	Esrd related services, day					
90925	A	Esrd related services, day					
90935	S	Hemodialysis, one evaluation	925	4.22	$216.99	$69.83	$43.40
90937	S	Hemodialysis, repeated eval.	926	4.22	$216.99	$69.83	$43.40
90945	S	Dialysis, one evaluation	926	4.22	$216.99	$69.83	$43.40
90947	S	Dialysis, repeated eval.	925	4.22	$216.99	$69.83	$43.40
90989	E	Dialysis training/complete					
90993	N	Dialysis training/incomplete					
90997	S	Hemoperfusion	926	4.22	$216.99	$69.83	$43.40
90999	S	Dialysis procedure	926	4.22	$216.99	$69.83	$43.40
91000	X	Esophageal intubation	921	2.91	$149.63	$79.78	$29.93
91010	X	Esophagus motility study	929	2.91	$149.63	$79.78	$29.93
91011	X	Esophagus motility study	928	2.91	$149.63	$79.78	$29.93
91012	X	Esophagus motility study	928	2.91	$149.63	$79.78	$29.93
91020	X	Gastric motility	928	2.91	$149.63	$79.78	$29.93
91030	X	Acid perfusion of esophagus	928	2.91	$149.63	$79.78	$29.93
91032	X	Esophagus, acid reflux test	929	2.91	$149.63	$79.78	$29.93
91033	X	Prolonged acid reflux test	928	2.91	$149.63	$79.78	$29.93
91052	X	Gastric analysis test	928	2.91	$149.63	$79.78	$29.93
91055	X	Gastric intubation for smear	928	2.91	$149.63	$79.78	$29.93
91060	X	Gastric saline load test	928	2.91	$149.63	$79.78	$29.93
91065	X	Breath hydrogen test	928	2.91	$149.63	$79.78	$29.93
91100	X	Pass intestine bleeding tube	928	2.91	$149.63	$79.78	$29.93
91105	X	Gastric intubation treatment	928	2.91	$149.63	$79.78	$29.93
91122	N	Anal pressure record					
91299	X	Gastroenterology procedure	928	2.91	$149.63	$79.78	$29.93
92002	V	Eye exam, new patient	913				
92004	V	Eye exam, new patient	915				
92012	V	Eye exam established pt	913				
92014	V	Eye exam & treatment	915				
92015	E	Refraction					
92018	S	New eye exam & treatment	676	5.87	$301.84	$138.54	$60.37
92019	S	Eye exam & treatment	676	5.87	$301.84	$138.54	$60.37
92020	N	Special eye evaluation					
92060	X	Special eye evaluation	930	1.04	$53.48	$22.83	$10.70
92065	X	Orthoptic/pleoptic training	930	1.04	$53.48	$22.83	$10.70
92070	N	Fitting of contact lens					
92081	X	Visual field examination(s)	930	1.04	$53.48	$22.83	$10.70
92082	X	Visual field examination(s)	930	1.04	$53.48	$22.83	$10.70
92083	X	Visual field examination(s)	930	1.04	$53.48	$22.83	$10.70
92100	N	Serial tonometry exam(s)					
92120	X	Tonography & eye evaluation	931	0.74	$38.05	$21.47	$7.61
92130	X	Water provocation tonography	931	0.74	$38.05	$21.47	$7.61
92140	X	Glaucoma provocative tests	930	1.04	$53.48	$22.83	$10.70
92225	N	Special eye exam, initial					
92226	N	Special eye exam, subsequent					
92230	X	Eye exam with photos	931	0.74	$38.05	$21.47	$7.61
92235	X	Eye exam with photos	932	2.41	$123.92	$63.73	$24.78
92240	X	Icg angiography	931	0.74	$38.05	$21.47	$7.61
92250	X	Eye exam with photos	931	0.74	$38.05	$21.47	$7.61

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
92260	N	Ophthalmoscopy/dynamometry					
92265	X	Eye muscle evaluation	932	2.41	$123.92	$63.73	$24.78
92270	X	Electro-oculography	932	2.41	$123.92	$63.73	$24.78
92275	X	Electroretinography	981	1.22	$62.73	$34.35	$12.55
92283	X	Color vision examination	930	1.04	$53.48	$22.83	$10.70
92284	X	Dark adaptation eye exam	930	1.04	$53.48	$22.83	$10.70
92285	X	Eye photography	930	1.04	$53.48	$22.83	$10.70
92286	X	Internal eye photography	932	2.41	$123.92	$63.73	$24.78
92287	X	Internal eye photography	932	2.41	$123.92	$63.73	$24.78
92310	E	Contact lens fitting					
92311	X	Contact lens fitting	936	0.48	$24.68	$9.49	$4.94
92312	X	Contact lens fitting	936	0.48	$24.68	$9.49	$4.94
92313	X	Contact lens fitting	936	0.48	$24.68	$9.49	$4.94
92314	E	Prescription of contact lens					
92315	X	Prescription of contact lens	936	0.48	$24.68	$9.49	$4.94
92316	X	Prescription of contact lens	936	0.48	$24.68	$9.49	$4.94
92317	X	Prescription of contact lens	936	0.48	$24.68	$9.49	$4.94
92325	X	Modification of contact lens	936	0.48	$24.68	$9.49	$4.94
92326	X	Replacement of contact lens	936	0.48	$24.68	$9.49	$4.94
92330	X	Fitting of artificial eye	936	0.48	$24.68	$9.49	$4.94
92335	N	Fitting of artificial eye					
92340	E	Fitting of spectacles					
92341	E	Fitting of spectacles					
92342	E	Fitting of spectacles					
92352	X	Special spectacles fitting	936	0.48	$24.68	$9.49	$4.94
92353	X	Special spectacles fitting	936	0.48	$24.68	$9.49	$4.94
92354	X	Special spectacles fitting	936	0.48	$24.68	$9.49	$4.94
92355	X	Special spectacles fitting	936	0.48	$24.68	$9.49	$4.94
92358	X	Eye prosthesis service	936	0.48	$24.68	$9.49	$4.94
92370	E	Repair & adjust spectacles					
92371	X	Repair & adjust spectacles	936	0.48	$24.68	$9.49	$4.94
92390	E	Supply of spectacles					
92391	E	Supply of contact lenses					
92392	E	Supply of low vision aids					
92393	E	Supply of artificial eye					
92395	E	Supply of spectacles					
92396	E	Supply of contact lenses					
92499	K	Eye service or procedure	931	0.74	$38.05	$21.47	$7.61
92502	S	Ear and throat examination	311	1.41	$72.50	$20.57	$14.50
92504	N	Ear microscopy examination					
92506	A	Speech & hearing evaluation					
92507	A	Speech/hearing therapy					
92508	A	Speech/hearing therapy					
92510	A	Rehab for ear implant					
92511	S	Nasopharyngoscopy	331	0.57	$29.31	$14.01	$5.86
92512	X	Nasal function studies	940	3.13	$160.94	$52.21	$32.19
92516	X	Facial nerve function test	940	3.13	$160.94	$52.21	$32.19
92520	X	Laryngeal function studies	940	3.13	$160.94	$52.21	$32.19
92525	A	Oral function evaluation					
92526	A	Oral function therapy					
92531	N	Spontaneous nystagmus study					
92532	N	Positional nystagmus study					
92533	N	Caloric vestibular test					
92534	N	Optokinetic nystagmus					
92541	X	Spontaneous nystagmus test	940	3.13	$160.94	$52.21	$32.19
92542	X	Positional nystagmus test	940	3.13	$160.94	$52.21	$32.19
92543	X	Caloric vestibular test	940	3.13	$160.94	$52.21	$32.19
92544	X	Optokinetic nystagmus test	940	3.13	$160.94	$52.21	$32.19
92545	X	Oscillating tracking test	940	3.13	$160.94	$52.21	$32.19
92546	X	Sinusoidal rotational test	940	3.13	$160.94	$52.21	$32.19
92547	X	Supplemental electrical test	940	3.13	$160.94	$52.21	$32.19
92548	X	Posturography	940	3.13	$160.94	$52.21	$32.19
92551	E	Pure tone hearing test, air					
92552	X	Pure tone audiometry, air	941	0.74	$38.05	$13.33	$7.61
92553	X	Audiometry, air & bone	941	0.74	$38.05	$13.33	$7.61
92555	X	Speech threshold audiometry	941	0.74	$38.05	$13.33	$7.61
92556	X	Speech audiometry, complete	942	1.46	$75.07	$22.15	$15.01
92557	X	Comprehensive hearing test					
92559	E	Group audiometric testing					
92560	E	Bekesy audiometry, screen	942	1.46	$75.07	$22.15	$15.01
92561	X	Bekesy audiometry, diagnosis	942	1.46	$75.07	$22.15	$15.01
92562	X	Loudness balance test	942	1.46	$75.07	$22.15	$15.01
92563	X	Tone decay hearing test	942	1.46	$75.07	$22.15	$15.01
92564	X	Sisi hearing test	942	1.46	$75.07	$22.15	$15.01
92565	X	Stenger test, pure tone	942	1.46	$75.07	$22.15	$15.01

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
92567	X	Tympanometry	941	0.74	$36.05	$13.33	$7.61
92568	X	Acoustic reflex testing	942	1.46	$75.07	$22.15	$15.01
92569	X	Acoustic reflex decay test	942	1.46	$75.07	$22.15	$15.01
92571	X	Filtered speech hearing test	942	1.46	$75.07	$22.15	$15.01
92572	X	Staggered spondaic word test	942	1.46	$75.07	$22.15	$15.01
92573	X	Lombard test	942	1.46	$75.07	$22.15	$15.01
92575	X	Sensorineural acuity test	942	1.46	$75.07	$22.15	$15.01
92576	X	Synthetic sentence test	942	1.46	$75.07	$22.15	$15.01
92577	X	Stenger test, speech	942	1.46	$75.07	$22.15	$15.01
92579	X	Visual audiometry (vra)	942	1.46	$75.07	$22.15	$15.01
92582	X	Conditioning play audiometry	942	1.46	$75.07	$22.15	$15.01
92583	X	Select picture audiometry	942	1.46	$75.07	$22.15	$15.01
92584	X	Electrocochleography	940	3.13	$160.94	$52.21	$32.19
92585	X	Auditory evoked potential	943	1.37	$70.45	$18.42	$14.09
92587	X	Evoked auditory test	940	3.13	$160.94	$52.21	$32.19
92588	X	Evoked auditory test	940	3.13	$160.94	$52.21	$32.19
92589	X	Auditory function test(s)	942	1.46	$75.07	$22.15	$15.01
92590	E	Hearing aid exam, one ear					
92591	E	Hearing aid exam, both ears					
92592	E	Hearing aid check, one ear					
92593	E	Hearing aid check, both ears					
92594	E	Electro hearing aid test,one					
92595	E	Electro hearingaid test,both					
92596	X	Ear protector evaluation	942	1.46	$75.07	$22.15	$15.01
92597	A	Oral speech device eval					
92598	A	Modify oral speech device					
92599	X	ENT procedure/service	941	0.74	$36.05	$13.33	$7.61
92950	S	Heart/lung resuscitation(CPR	947	4.11	$211.34	$106.22	$42.27
92953	S	Temporary external pacing	947	4.11	$211.34	$106.22	$42.27
92960	S	Heart electroconversion	947	4.11	$211.34	$106.22	$42.27
92970	C	Cardioassist, internal					
92971	C	Cardioassist, external					
92975	C	Dissolve clot, heart vessel					
92977	C	Dissolve clot, heart vessel					
92978	C	Intravas us, heart add-on					
92979	C	Intravas us, heart (add-on)					
92980	C	Insert intracoronary stent					
92981	E	Insert intracoronary stent					
92982	C	Coronary artery dilation					
92984	C	Coronary artery dilation					
92986	C	Revision of aortic valve					
92987	C	Revision of mitral valve					
92990	C	Revision of pulmonary valve					
92992	C	Revision of heart chamber					
92993	C	Revision of heart chamber					
92995	C	Coronary atherectomy					
92996	C	Coronary atherectomy add-on					
92997	C	Pul art balloon repair, perc					
92998	C	Pul art balloon repair, perc					
93000	N	Electrocardiogram, complete					
93005	X	Electrocardiogram, tracing	950	0.35	$18.00	$15.82	$3.60
93010	N	Electrocardiogram report					
93012	X	Transmission of ecg	950	1.09	$56.05	$54.47	$11.21
93014	N	Report on transmitted ecg					
93015	N	Cardiovascular stress test					
93016	N	Cardiovascular stress test					
93017	X	Cardiovascular stress test	949	1.43	$73.53	$61.92	$14.71
93018	N	Cardiovascular stress test					
93024	X	Cardiac drug stress test	949	1.43	$73.53	$61.92	$14.71
93040	N	Rhythm ECG with report					
93041	X	Rhythm ECG, tracing	950	0.35	$18.00	$15.82	$3.60
93042	N	Rhythm ECG, report					
93224	X	ECG monitor/report, 24 hrs	956	1.09	$56.05	$54.47	$11.21
93225	X	ECG monitor/record, 24 hrs	956	1.09	$56.05	$54.47	$11.21
93226	X	ECG monitor/report, 24 hrs	956	1.09	$56.05	$54.47	$11.21
93227	N	ECG monitor/review, 24 hrs					
93230	X	ECG monitor/report, 24 hrs	956	1.09	$56.05	$54.47	$11.21
93231	X	Ecg monitor/record, 24 hrs	956	1.09	$56.05	$54.47	$11.21
93232	X	ECG monitor/report, 24 hrs	956	1.09	$56.05	$54.47	$11.21
93233	N	ECG monitor/review, 24 hrs					
93235	X	ECG monitor/report, 24 hrs	956	1.09	$56.05	$54.47	$11.21
93236	X	ECG monitor/report, 24 hrs	956	1.09	$56.05	$54.47	$11.21
93237	N	ECG monitor/review, 24 hrs					
93268	X	ECG record/review	956	1.09	$56.05	$54.47	$11.21
93270	X	ECG recording	956	1.09	$56.05	$54.47	$11.21

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
93271	X	Ecg/monitoring and anaylysis	956	1.09	$56.05	$54.47	$11.21
93272	N	Ecg/review, interpret only					
93278	X	ECG/signal-averaged	956	1.09	$56.05	$54.47	$11.21
93303	S	Echo transthoracic	957	4.04	$207.74	$114.13	$41.55
93304	S	Echo transthoracic	957	4.04	$207.74	$114.13	$41.55
93307	S	Echo exam of heart	957	4.04	$207.74	$114.13	$41.55
93308	S	Echo exam of heart	957	4.04	$207.74	$114.13	$41.55
93312	S	Echo transesophageal	957	4.04	$207.74	$114.13	$41.55
93313	S	Echo transesophageal	957	4.04	$207.74	$114.13	$41.55
93314	N	Echo transesophageal					
93315	S	Echo transesophageal	957	4.04	$207.74	$114.13	$41.55
93316	S	Echo transesophageal	957	4.04	$207.74	$114.13	$41.55
93317	N	Echo transesophageal					
93320	S	Doppler echo exam, heart	957	4.04	$207.74	$114.13	$41.55
93321	S	Doppler echo exam, heart	957	4.04	$207.74	$114.13	$41.55
93325	S	Doppler color flow add-on	957	4.04	$207.74	$114.13	$41.55
93350	S	Echo transthoracic	957	4.04	$207.74	$114.13	$41.55
93501	S	Right heart catheterization	954	23.74	$1,220.71	$705.57	$244.14
93503	S	Insert/place heart catheter	954	23.74	$1,220.71	$705.57	$244.14
93505	S	Biopsy of heart lining	954	23.74	$1,220.71	$705.57	$244.14
93508	S	Cath placement, angiography	343	8.76	$450.44	$240.24	$90.09
93510	S	Left heart catheterization	958	23.74	$1,220.71	$705.57	$244.14
93511	S	Left heart catheterization	958	23.74	$1,220.71	$705.57	$244.14
93514	S	Left heart catheterization	958	23.74	$1,220.71	$705.57	$244.14
93524	S	Left heart catheterization	958	23.74	$1,220.71	$705.57	$244.14
93526	S	Rt & Lt heart catheters	958	23.74	$1,220.71	$705.57	$244.14
93527	S	Rt & Lt heart catheters	958	23.74	$1,220.71	$705.57	$244.14
93528	S	Rt & Lt heart catheters	958	23.74	$1,220.71	$705.57	$244.14
93529	S	Rt, Lt heart catheterization	958	23.74	$1,220.71	$705.57	$244.14
93530	S	Rt heart cath, congenital	958	23.74	$1,220.71	$705.57	$244.14
93531	S	R & I heart cath, congenital	958	23.74	$1,220.71	$705.57	$244.14
93532	S	R & I heart cath, congenital	958	23.74	$1,220.71	$705.57	$244.14
93533	S	R & I heart cath, congenital	958	23.74	$1,220.71	$705.57	$244.14
93536	S	Insert circulation assi	958	23.74	$1,220.71	$705.57	$244.14
93539	N	Injection, cardiac cath					
93540	N	Injection, cardiac cath					
93541	N	Injection for lung angiogram					
93542	N	Injection for heart x-rays					
93543	N	Injection for heart x-rays					
93544	N	Injection for aortography					
93545	N	Injection for coronary x-rays					
93555	N	Imaging, cardiac cath					
93556	N	Imaging, cardiac cath					
93561	N	Cardiac output measurement					
93562	N	Cardiac output measurement					
93600	S	Bundle of His recording	960	4.80	$246.82	$143.74	$49.36
93602	S	Intra-atrial recording	960	4.80	$246.82	$143.74	$49.36
93603	S	Right ventricular recording	960	4.80	$246.82	$143.74	$49.36
93607	S	Right ventricular recording	960	4.80	$246.82	$143.74	$49.36
93609	S	Mapping of tachycardia	960	4.80	$246.82	$143.74	$49.36
93610	S	Intra-atrial pacing	960	4.80	$246.82	$143.74	$49.36
93612	S	Intraventricular pacing	960	4.80	$246.82	$143.74	$49.36
93615	S	Esophageal recording	960	4.80	$246.82	$143.74	$49.36
93616	S	Esophageal recording	960	4.80	$246.82	$143.74	$49.36
93618	S	Heart rhythm pacing	960	4.80	$246.82	$143.74	$49.36
93619	S	Electrophysiology evaluation	960	4.80	$246.82	$143.74	$49.36
93620	S	Electrophysiology evaluation	960	4.80	$246.82	$143.74	$49.36
93621	S	Electrophysiology evaluation	960	4.80	$246.82	$143.74	$49.36
93622	S	Electrophysiology evaluation	960	4.80	$246.82	$143.74	$49.36
93623	S	Stimulation, pacing heart	960	4.80	$246.82	$143.74	$49.36
93624	S	Electrophysiologic study	960	4.80	$246.82	$143.74	$49.36
93631	S	Heart pacing, mapping	960	4.80	$246.82	$143.74	$49.36
93640	S	Evaluation heart device	960	4.80	$246.82	$143.74	$49.36
93641	S	Electrophysiology evaluation	960	4.80	$246.82	$143.74	$49.36
93642	S	Electrophysiology evaluation	960	4.80	$246.82	$143.74	$49.36
93650	S	Ablate heart dysrhythm focus	960	4.80	$246.82	$143.74	$49.36
93651	S	Ablate heart dysrhythm focus	960	4.80	$246.82	$143.74	$49.36
93652	S	Ablate heart dysrhythm focus	960	4.80	$246.82	$143.74	$49.36
93660	S	Tilt table evaluation	960	4.80	$246.82		
93720	X	Total body plethysmography	967	1.70	$87.41		
93721	X	Plethysmography tracing	967	1.70	$87.41		
93722	N	Plethysmography report					
93724	S	Analyze pacemaker system	960	4.80		14[illegible]	
93731	X	Analyze pacemaker system	966	0[illegible]		$12.43	$4.01
93732	X	Analyze pacemaker system	966	0[illegible]		$12.43	$4.01

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
93733	X	Telephone analysis, pacemaker	966	0.39	$20.05	$12.43	$4.01
93734	X	Analyze pacemaker system	966	0.39	$20.05	$12.43	$4.01
93735	X	Analyze pacemaker system	966	0.39	$20.05	$12.43	$4.01
93736	X	Telephone analysis, pacemaker	966	0.39	$20.05	$12.43	$4.01
93737	X	Analyze cardio/defibrillator	966	0.39	$20.05	$12.43	$4.01
93738	X	Analyze cardio/defibrillator	966	0.39	$20.05	$12.43	$4.01
93740	X	Temperature gradient studies	966	0.39	$20.05	$12.43	$4.01
93760	E	Cephalic thermogram	957	1.70	$87.41	$57.40	$17.48
93762	E	Peripheral thermogram					
93770	N	Measure venous pressure					
93784	E	Ambulatory BP monitoring					
93786	E	Ambulatory BP recording					
93788	E	Ambulatory BP analysis					
93790	E	Review/report BP recording					
93797	X	Cardiac rehab	948	0.81	$41.65	$16.95	$8.33
93798	X	Cardiac rehab/monitor	948	0.81	$41.65	$16.95	$8.33
93799	X	Cardiovascular procedure	957	1.70	$87.41	$57.40	$17.48
93875	X	Extracranial study	966	2.39	$122.89	$79.55	$24.58
93880	X	Extracranial study	966	2.39	$122.89	$79.55	$24.58
93882	X	Extracranial study	966	2.39	$122.89	$79.55	$24.58
93886	X	Intracranial study	966	2.39	$122.89	$79.55	$24.58
93888	X	Intracranial study	966	2.39	$122.89	$79.55	$24.58
93922	X	Extremity study	967	1.70	$87.41	$57.40	$17.48
93923	X	Extremity study	967	1.70	$87.41	$57.40	$17.48
93924	X	Extremity study	967	1.70	$87.41	$57.40	$17.48
93925	X	Lower extremity study	966	2.39	$122.89	$79.55	$24.58
93926	X	Lower extremity study	966	2.39	$122.89	$79.55	$24.58
93930	X	Upper extremity study	966	2.39	$122.89	$79.55	$24.58
93931	X	Upper extremity study	966	2.39	$122.89	$79.55	$24.58
93965	X	Extremity study	967	1.70	$87.41	$57.40	$17.48
93970	X	Extremity study	966	2.39	$122.89	$79.55	$24.58
93971	X	Extremity study	966	2.39	$122.89	$79.55	$24.58
93975	X	Vascular study	966	2.39	$122.89	$79.55	$24.58
93976	X	Vascular study	966	2.39	$122.89	$79.55	$24.58
93978	X	Vascular study	966	2.39	$122.89	$79.55	$24.58
93979	X	Vascular study	966	2.39	$122.89	$79.55	$24.58
93980	X	Penile vascular study	966	2.39	$122.89	$79.55	$24.58
93981	X	Penile vascular study	966	2.39	$122.89	$79.55	$24.58
93990	X	Doppler flow testing	966	2.39	$122.89	$79.55	$24.58
94010	X	Breathing capacity test	966	2.39	$122.89	$79.55	$24.58
94060	X	Evaluation of wheezing	971	0.98	$50.39	$26.44	$10.08
94070	E	Evaluation of wheezing	971	0.98	$50.39	$26.44	$10.08
94150	N	Vital capacity test	973	1.81	$93.07	$55.82	$18.61
[2] 94160	X	Vital capacity screening					
94200	X	Lung function test (MBC/MVV)	971	0.98	$50.39	$26.44	$10.08
94240	X	Residual lung capacity	971	0.98	$50.39	$26.44	$10.08
94250	X	Expired gas collection	972	1.00	$51.42	$29.38	$10.28
94260	X	Thoracic gas volume	971	0.98	$50.39	$26.44	$10.08
94350	X	Lung nitrogen washout curve	971	0.98	$50.39	$26.44	$10.08
94360	X	Measure airflow resistance	972	1.00	$51.42	$29.38	$10.28
94370	X	Breath airway closing volume	971	0.98	$50.39	$26.44	$10.08
94375	X	Respiratory flow volume loop	972	1.00	$51.42	$29.38	$10.28
94400	X	CO2 breathing response curve	971	0.98	$50.39	$26.44	$10.08
94450	X	Hypoxia response curve	971	0.98	$50.39	$26.44	$10.08
94620	S	Pulmonary stress test/simple	971	0.98	$50.39	$26.44	$10.08
94640	S	Airway inhalation treatment	973	1.81	$93.07	$55.82	$18.61
94642	S	Aerosol inhalation treatment	976	0.44	$22.62	$14.69	$4.53
94650	S	Pressure breathing (IPPB)	976	0.44	$22.62	$14.69	$4.53
94651	S	Pressure breathing (IPPB)	976	0.44	$22.62	$14.69	$4.53
94652	C	Pressure breathing (IPPB)	976	0.44	$22.62	$14.69	$4.53
94656	C	Initial ventilator mgmt					
94657	S	Cont. ventilator					
94660	S	Pos airway pressure, CPAP	976	0.44	$22.62	$14.69	$4.53
94662	S	Neg pressure ventilation, cnp	976	0.44	$22.62	$14.69	$4.53
94664	E	Aerosol or vapor inhalations	976	0.44	$22.62	$14.69	$4.53
94665	S	Aerosol or vapor inhalations	976	0.44	$22.62	$14.69	$4.53
94667	S	Chest wall manipulation	976	0.44	$22.62	$14.69	$4.53
94668	E	Chest wall manipulation	976	0.44	$22.62	$14.69	$4.53
94680	X	Exhaled air analysis: O2	972	1.00	$51.42	$29.38	$10.28
94681	X	Exhaled air analysis: O2, CO2	972	1.00	$51.42	$29.38	$10.28
94690	X	Exhaled air analysis	972	1.00	$51.42	$29.38	$10.28
94720	X	Monoxide diffusing capacity	972	1.00	$51.42	$29.38	$10.28
94725	X	Membrane diffusion capacity	972	1.00	$51.42	$29.38	$10.28
94750	S	Pulmonary compliance study	973	1.81	$93.07	$55.82	$18.61
94760	N	Measure blood oxygen level					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
94761	N	Measure blood oxygen level					
94762	X	Measure blood oxygen level	971	0.98	$50.39	$26.44	$10.08
94770	X	Exhaled carbon dioxide test	971	0.98	$50.39	$26.44	$10.08
94772	S	Breath recording, infant	973	1.81	$93.07	$55.82	$18.61
94799	X	Pulmonary service/procedure	971	0.98	$50.39	$26.44	$10.08
95004	X	Allergy skin tests	977	0.56	$28.80	$11.30	$5.76
95010	X	Sensitivity skin tests	977	0.56	$28.80	$11.30	$5.76
95015	X	Sensitivity skin tests	977	0.56	$28.80	$11.30	$5.76
95024	X	Allergy skin tests	977	0.56	$28.80	$11.30	$5.76
95027	X	Skin end point titration	977	0.56	$28.80	$11.30	$5.76
95028	X	Allergy skin tests	977	0.56	$28.80	$11.30	$5.76
95044	X	Allergy patch tests	977	0.56	$28.80	$11.30	$5.76
95052	X	Photo patch test	977	0.56	$28.80	$11.30	$5.76
95056	X	Photosensitivity tests	977	0.56	$28.80	$11.30	$5.76
95060	X	Eye allergy tests	977	0.56	$28.80	$11.30	$5.76
95065	X	Nose allergy test	977	0.56	$28.80	$11.30	$5.76
95070	S	Bronchial allergy tests	973	1.81	$93.07	$55.82	$18.61
95071	S	Bronchial allergy tests	973	1.81	$93.07	$55.82	$18.61
95075	X	Ingestion challenge test	928	2.91	$149.63	$79.78	$29.93
95078	X	Provocative testing	977	0.56	$28.80	$11.30	$5.76
95115	X	Immunotherapy, one injection	978	0.30	$15.43	$3.39	$3.09
95117	X	Immunotherapy injections	978	0.30	$15.43	$3.39	$3.09
95120	E	Immunotherapy, one injection					
95125	E	Immunotherapy, many antigens					
95130	E	Immunotherapy, insect venom					
95131	E	Immunotherapy, insect venoms					
95132	E	Immunotherapy, insect venoms					
95133	E	Immunotherapy, insect venoms					
95134	E	Immunotherapy, insect venoms					
95144	X	Antigen therapy services	978	0.30	$15.43	$3.39	$3.09
95145	X	Antigen therapy services	978	0.30	$15.43	$3.39	$3.09
95146	X	Antigen therapy services	978	0.30	$15.43	$3.39	$3.09
95147	X	Antigen therapy services	978	0.30	$15.43	$3.39	$3.09
95148	X	Antigen therapy services	978	0.30	$15.43	$3.39	$3.09
95149	X	Antigen therapy services	901	0.07	$3.60	$2.49	$0.72
95165	X	Antigen therapy services	978	0.30	$15.43	$3.39	$3.09
95170	X	Antigen therapy services	901	0.07	$3.60	$2.49	$0.72
95180	X	Rapid desensitization	977	0.56	$28.80	$11.30	$5.76
95199	X	Allergy immunology services	977	0.56	$28.80	$11.30	$5.76
95805	S	Multiple sleep latency test	979	10.15	$521.91	$287.25	$104.38
95806	S	Sleep study, unattended	979	10.15	$521.91	$287.25	$104.38
95807	S	Sleep study, attended	979	10.15	$521.91	$287.25	$104.38
95808	S	Polysomnography, 1-3	979	10.15	$521.91	$287.25	$104.38
95810	S	Polysomnography, 4 or more	979	10.15	$521.91	$287.25	$104.38
95811	S	Polysomnography w/cpap	979	10.15	$521.91	$287.25	$104.38
95812	S	Electroencephalogram (EEG)	979	10.15	$521.91	$287.25	$104.38
95813	S	Electroencephalogram (EEG)	979	10.15	$521.91	$287.25	$104.38
95816	S	Electroencephalogram (EEG)	980	2.15	$110.55	$57.86	$22.11
95819	S	Electroencephalogram (EEG)	980	2.15	$110.55	$57.86	$22.11
95822	S	Sleep electroencephalogram	980	2.15	$110.55	$57.86	$22.11
95824	S	Electroencephalography	980	2.15	$110.55	$57.86	$22.11
95827	E	Night electroencephalogram	979	10.15	$521.91	$287.25	$104.38
95829	S	Surgery electrocorticogram	980	2.15	$110.55	$57.86	$22.11
95830	N	Insert electrodes for EEG					
95831	N	Limb muscle testing, manual					
95832	N	Hand muscle testing, manual					
95833	N	Body muscle testing, manual					
95834	N	Body muscle testing, manual					
95851	N	Range of motion measurements					
95852	N	Range of motion measurements					
95857	X	Tensilon test	981	1.22	$62.73	$34.35	$12.55
95858	X	Tensilon test & myogram	982	1.37	$70.45	$38.42	$14.09
95860	X	Muscle test, one limb	982	1.37	$70.45	$38.42	$14.09
95861	X	Muscle test, two limbs	982	1.37	$70.45	$38.42	$14.09
95863	X	Muscle test, 3 limbs	982	1.37	$70.45	$38.42	$14.09
95864	X	Muscle test, 4 limbs	982	1.37	$70.45	$38.42	$14.09
95867	X	Muscle test, head or neck	981	1.22	$62.73	$34.35	$12.55
95868	X	Muscle test, head or neck	982	1.37	$70.45	$38.42	$14.09
95869	X	Muscle test, thor paraspinal	981	1.22	$62.73	$34.35	$12.55
95870	X	Muscle test, non-paraspinal	981	1.22	$62.73	$34.35	$12.55
95872	X	Muscle test, one fiber	982	1.37	$70.45	$38.42	$14.09
95875	X	Limb exercise test	982	1.37	$70.45	$38.42	$14.09
95900	X	Motor nerve conduction test	981	1.22	$62.73	$34.35	$12.55
95903	X	Motor nerve conduction test	982	1.37	$70.45	$38.42	$14.09
95904	X	Sense nerve conduction test	982	1.37	$70.45	$38.42	$14.09

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
95920	C	Intraop nerve test add-on					
95921	X	Autonomic nervous func test	981	1.22	$62.73	$34.35	$12.55
95922	X	Autonomic nervous func test	981	1.22	$62.73	$34.35	$12.55
95923	X	Autonomic nervous func test	981	1.22	$62.73	$34.35	$12.55
95925	X	Somatosensory testing	982	1.37	$70.45	$38.42	$14.09
95926	X	Somatosensory testing	981	1.22	$62.73	$34.35	$12.55
95927	X	Somatosensory testing	981	1.22	$62.73	$34.35	$12.55
95930	X	Visual evoked potential test	981	1.22	$62.73	$34.35	$12.55
95933	X	Blink reflex test	981	1.22	$62.73	$34.35	$12.55
95934	X	'h' reflex test	981	1.22	$62.73	$34.35	$12.55
95936	X	'h' reflex test	981	1.22	$62.73	$34.35	$12.55
95937	X	Neuromuscular junction test	981	1.22	$62.73	$34.35	$12.55
95950	X	Ambulatory eeg monitoring	981	1.22	$62.73	$34.35	$12.55
95951	S	EEG monitoring/videorecord	979	10.15	$521.91	$287.25	$104.38
95953	S	EEG monitoring/computer	979	10.15	$521.91	$287.25	$104.38
95954	S	EEG monitoring/giving drugs	979	10.15	$521.91	$287.25	$104.38
95955	S	EEG during surgery	980	2.15	$110.55	$57.86	$22.11
95956	N	EEG monitoring/cable/radio					
95957	N	EEG digital analysis					
95958	S	EEG monitoring/function test	979	10.15	$521.91	$287.25	$104.38
95961	C	Electrode stimulation, brain					
95962	C	Electrode stimulation, brain					
95999	N	Neurological procedure					
[1] 96100	X	Psychological testing	089	4.06	$208.77	$46.10	$41.75
96105	X	Assessment of aphasia	089	4.06	$208.77	$46.10	$41.75
96110	X	Developmental test, lim	089	4.06	$208.77	$46.10	$41.75
96111	X	Developmental test, extend	089	4.06	$208.77	$46.10	$41.75
[1] 96115	X	Neurobehavior status exam	089	4.06	$208.77	$46.10	$41.75
[1] 96117	X	Neuropsych test battery	089	4.06	$208.77	$46.10	$41.75
96400	S	Chemotherapy, (SC)/(IM)	987	2.09	$107.47	$65.09	$21.49
96405	S	Intralesional chemo admin	987	2.09	$107.47	$65.09	$21.49
96406	S	Intralesional chemo admin	987	2.09	$107.47	$65.09	$21.49
96408	S	Chemotherapy, push technique	988	4.02	$206.71	$110.29	$41.34
96410	S	Chemotherapy,infusion method	988	4.02	$206.71	$110.29	$41.34
96412	S	Chemotx infuse method add-on	988	4.02	$206.71	$110.29	$41.34
96414	S	Chemotx infuse method add-on	988	4.02	$206.71	$110.29	$41.34
96420	S	Chemotherapy, push technique	989	1.91	$98.21	$44.52	$19.64
96422	S	Chemotherapy,infusion method	988	4.02	$206.71	$110.29	$41.34
96423	S	Chemotx infuse method add-on	988	4.02	$206.71	$110.29	$41.34
96425	S	Chemotherapy,infusion method	988	4.02	$206.71	$110.29	$41.34
96440	S	Chemotherapy, intracavitary	989	1.91	$98.21	$44.52	$19.64
96445	S	Chemotherapy, intracavitary	989	1.91	$98.21	$44.52	$19.64
96450	S	Chemotherapy, into CNS	989	1.91	$98.21	$44.52	$19.64
96520	S	Pump refilling, maintenance					
96530	S	Pump refilling, maintenance					
96542	S	Chemotherapy injection	989	1.91	$98.21	$44.52	$19.64
96545	S	Provide chemotherapy agent					
96549	S	Chemotherapy, unspecified	987	2.09	$107.47	$65.09	$21.49
96900	S	Ultraviolet light therapy	990	0.43	$22.11	$8.14	$4.42
96902	N	Trichogram					
96910	S	Photochemotherapy with UV-B	990	0.43	$22.11	$8.14	$4.42
96912	S	Photochemotherapy with UV-A	990	0.43	$22.11	$8.14	$4.42
96913	S	Photochemotherapy, UV-A or B	990	0.43	$22.11	$8.14	$4.42
96999	S	Dermatological procedure	990	0.43	$22.11	$8.14	$4.42
97001	A	Pt evaluation					
97002	A	Pt re-evaluation					
97003	A	Ot evaluation					
97004	A	Ot re-evaluation					
97010	A	Hot or cold packs therapy					
97012	A	Mechanical traction therapy					
97014	A	Electric stimulation therapy					
97016	A	Vasopneumatic device therapy					
97018	A	Paraffin bath therapy					
97020	A	Microwave therapy					
97022	A	Whirlpool therapy					
97024	A	Diathermy treatment					
97026	A	Infrared therapy					
97028	A	Ultraviolet therapy					
97032	A	Electrical stimulation					
97033	A	Electric current therapy					
97034	A	Contrast bath therapy					
97035	A	Ultrasound therapy					
97036	A	Hydrotherapy					
97039	A	Physical therapy treatment					
97110	A	Therapeutic exercises					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
97112	A	Neuromuscular reeducation					
97113	A	Aquatic therapy/exercises					
97116	A	Gait training therapy					
[2] 97122	A	Manual traction therapy					
97124	A	Massage therapy					
97139	A	Physical medicine procedure					
97150	A	Group therapeutic procedures					
[2] 97250	B	Myofascial release	997	0.69	$35.48	$7.46	$7.10
[2] 97260	S	Regional manipulation	997	0.69	$35.48	$7.46	$7.10
[2] 97261	S	Supplemental manipulations	997	0.69	$35.48	$7.46	$7.10
[2] 97265	A	Joint mobilization					
97504	A	Orthotic training					
97520	A	Prosthetic training					
[1] 97530	A	Therapeutic activities					
97535	A	Self care mngment training					
[1] 97537	A	Community/work reintegration					
97542	A	Wheelchair mngement training					
97545	A	Work hardening					
97546	A	Work hardening add-on					
97703	A	Prosthetic checkout					
97750	A	Physical performance test					
[1] 97770	A	Cognitive skills development					
97780	E	Acupuncture w/o stim					
97781	E	Acupuncture w/stim					
97799	A	Physical medicine procedure					
98925	S	Osteopathic manipulation	997	0.69	$35.48	$7.46	$7.10
98926	S	Osteopathic manipulation	997	0.69	$35.48	$7.46	$7.10
98927	S	Osteopathic manipulation	997	0.69	$35.48	$7.46	$7.10
98928	S	Osteopathic manipulation	997	0.69	$35.48	$7.46	$7.10
98929	S	Osteopathic manipulation	997	0.69	$35.48	$7.46	$7.10
98940	S	Chiropractic manipulation	997	0.69	$35.48	$7.46	$7.10
98941	S	Chiropractic manipulation	997	0.69	$35.48	$7.46	$7.10
98942	S	Chiropractic manipulation	997	0.69	$35.48	$7.46	$7.10
98943	E	Chiropractic manipulation					
99000	E	Specimen handling					
99001	N	Specimen handling					
99002	E	Device handling					
99024	N	Post-op follow-up visit					
99025	N	Initial surgical evaluation					
99050	E	Medical services after hrs					
99052	E	Medical services at night					
99054	E	Medical services, unusual hrs					
99056	E	Non-office medical services					
99058	E	Office emergency care					
99070	E	Special supplies					
99071	E	Patient education materials					
99075	E	Medical testimony					
99078	S	Group health education	994				
99080	E	Special reports or forms					
99082	E	Unusual physician travel					
99090	E	Computer data analysis					
99100	N	Special anesthesia service					
99116	N	Anesthesia with hypothermia					
99135	N	Special anesthesia procedure					
99140	N	Emergency anesthesia					
99141	N	Sedation, iv/im or inhalant					
99142	N	Sedation, oral/rectal/nasal					
99175	N	Induction of vomiting					
99183	S	Hyperbaric oxygen therapy	9999	2.65	$136.26	$141.70	$27.25
99185	N	Regional hypothermia					
99186	N	Total body hypothermia					
99190	C	Special pump services					
99191	C	Special pump services					
99192	C	Special pump services					
99195	K	Phlebotomy	999	0.43	$22.11	$11.07	$4.42
99199	N	Special service or report					
99201	V	Office/outpatient visit, new	911				
99202	V	Office/outpatient visit, new	911				
99203	V	Office/outpatient visit, new	913				
99204	V	Office/outpatient visit, new	915				
99205	V	Office/outpatient visit, new	915				
99211	V	Office/outpatient visit, est	911				
99212	V	Office/outpatient visit, est	911				
99213	V	Office/outpatient visit, est	913				
99214	V	Office/outpatient visit, est	915				

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
99215	V	Office/outpatient visit, est	915				
99217	N	Observation care discharge					
99218	N	Observation care					
99219	N	Observation care					
99220	N	Observation care					
99221	E	Initial hospital care					
99222	E	Initial hospital care					
99223	E	Initial hospital care					
99231	E	Subsequent hospital care					
99232	E	Subsequent hospital care					
99233	E	Subsequent hospital care					
99234	C	Observ/hosp same date					
99235	C	Observ/hosp same date					
99236	C	Observ/hosp same date					
99238	E	Hospital discharge day					
99239	E	Hospital discharge day					
99241	V	Office consultation					
99242	V	Office consultation	911				
99243	V	Office consultation	911				
99244	V	Office consultation	913				
99245	V	Office consultation	915				
99251	C	Initial inpatient consult	915				
99252	C	Initial inpatient consult					
99253	C	Initial inpatient consult					
99254	C	Initial inpatient consult					
99255	C	Initial inpatient consult					
99261	C	Follow-up inpatient consult					
99262	C	Follow-up inpatient consult					
99263	C	Follow-up inpatient consult					
99271	V	Confirmatory consultation					
99272	V	Confirmatory consultation	911				
99273	V	Confirmatory consultation	911				
99274	V	Confirmatory consultation	913				
99275	V	Confirmatory consultation	915				
99281	V	Emergency dept visit	915				
99282	V	Emergency dept visit	951				
99283	V	Emergency dept visit	951				
99284	V	Emergency dept visit	953				
99285	V	Emergency dept visit	955				
99288	E	Direct advanced life support	955				
99291	S	Critical care, first hour	900	7.54	$387.71	$145.09	$77.54
99292	N	Critical care, addt'l 30 min					
99295	C	Neonatal critical care					
99296	C	Neonatal critical care					
99297	C	Neonatal critical care					
99301	E	Nursing facility care					
99302	E	Nursing facility care					
99303	E	Nursing facility care					
99311	E	Nursing facility care, subseq					
99312	E	Nursing facility care, subseq					
99313	E	Nursing facility care, subseq					
99315	E	Nursing fac discharge day					
99316	E	Nursing fac discharge day					
99321	E	Rest home visit, new patient					
99322	E	Rest home visit, new patient					
99323	E	Rest home visit, new patient					
99331	E	Rest home visit, estab pat					
99332	E	Rest home visit, estab pat					
99333	E	Rest home visit, estab pat					
99341	E	Home visit, new patient					
99342	E	Home visit, new patient					
99343	E	Home visit, new patient					
99344	E	Home visit, new patient					
99345	E	Home visit, new patient					
99347	E	Home visit, estab patient					
99348	E	Home visit, estab patient					
99349	E	Home visit, estab patient					
99350	E	Home visit, estab patient					
99354	N	Prolonged service, office					
99355	N	Prolonged service, office					
99356	C	Prolonged service, inpatient					
99357	C	Prolonged service, inpatient					
99358	N	Prolonged serv, w/o contact					
99359	N	Prolonged serv, w/o contact					
99360	E	Physician standby services					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
99361	E	Physician/team conference					
99362	E	Physician/team conference					
99371	E	Physician phone consultation					
99372	E	Physician phone consultation					
99373	E	Physician phone consultation					
99374	E	Home health care supervision					
99375	E	Home health care supervision					
99377	E	Hospice care supervision					
99378	E	Hospice care supervision					
99379	E	Nursing fac care supervision					
99380	E	Nursing fac care supervision					
99381	E	Preventive visit, new, infant					
99382	E	Preventive visit, new, age 1-4					
99383	E	Preventive visit, new, age 5-11					
99384	E	Preventive visit, new, 12-17					
99385	E	Preventive visit, new, 18-39					
99386	E	Preventive visit, new, 40-64					
99387	E	Preventive visit, new, 65 & over					
99391	E	Preventive visit, est, infant					
99392	E	Preventive visit, est, age 1-4					
99393	E	Preventive visit, est, age 5-11					
99394	E	Preventive visit, est, 12-17					
99395	E	Preventive visit, est, 18-39					
99396	E	Preventive visit, est, 40-64					
99397	E	Preventive visit, est, 65 & over					
99401	E	Preventive counseling, indiv					
99402	E	Preventive counseling, indiv					
99403	E	Preventive counseling, indiv					
99404	E	Preventive counseling, indiv					
99411	E	Preventive counseling, group					
99412	E	Preventive counseling, group					
99420	E	Health risk assessment test					
99429	E	Unlisted preventive service					
99431	N	Initial care, normal newborn					
99432	N	Newborn care not in hospital					
99433	C	Normal newborn care,hospital					
99435	E	Hospital NB discharge day					
99436	N	Attendance, birth					
99440	S	Newborn resuscitation	947	4.11	$211.34	$106.22	$42.27
99450	E	Life/disability evaluation					
99455	E	Disability examination					
99456	E	Disability examination					
99499	E	Unlisted E/M service					
A0021	E	Outside state ambulance serv					
A0030	A	Air ambulance service					
A0040	A	Helicopter ambulance service					
A0050	A	Water amb service emergency					
A0080	E	Noninterest escort in non er					
A0090	E	Interest escort in non er					
A0100	E	Nonemergency transport taxi					
A0110	E	Nonemergency transport bus					
A0120	E	Noner transport mini-bus					
A0130	E	Noner transport wheelch van					
A0140	E	Nonemergency transport air					
A0160	E	Noner transport case worker					
A0170	E	Noner transport parking fees					
A0180	E	Noner transport lodgng recip					
A0190	E	Noner transport meals recip					
A0200	E	Noner transport lodgng escrt					
A0210	E	Noner transport meals escort					
A0225	A	Neonatal emergency transport					
A0300	A	Ambulance basic non-emer all					
A0302	A	Ambulance basic emergeny all					
A0304	A	Amb adv non-er no serv all					
A0306	A	Amb adv non-er spec serv all					
A0308	A	Amb adv er no spec serv all					
A0310	A	Amb adv er spec serv all					
A0320	A	Amb basic non-er + supplies					
A0322	A	Amb basic emerg + supplies					
A0324	A	Adv non-er serv sep mileage					
A0326	A	Adv non-er no serv sep mile					
A0328	A	Adv er no serv sep mileage					
A0330	A	Adv er spec serv sep mile					
A0340	A	Amb basic non-er + mileage					
A0342	A	Ambul basic emer + mileage					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
A0344	A	Amb adv non-er no serv +mile					
A0346	A	Amb adv non-er serv + mile					
A0348	A	Adv emer no spec serv + mile					
A0350	A	Adv emer spec serv + mileage					
A0360	A	Basic non-er sep mile & supp					
A0362	A	Basic emer sep mile & supply					
A0364	A	Adv non-er no serv sep mi&su					
A0366	A	Adv non-er serv sep mil&supp					
A0368	A	Adv er no serv sep mile&supp					
A0370	A	Adv er spec serv sep mi&supp					
A0380	A	Basic life support mileage					
A0382	A	Basic support routine supplS					
A0384	A	Bls defibrillation supplies					
A0390	A	Advanced life support mileag					
A0392	A	Als defibrillation supplies					
A0394	A	Als IV drug therapy supplies					
A0396	A	Als esophageal intub supplS					
A0398	A	Als routine disposble supplS					
A0420	A	Ambulance waiting 1/2 hr					
A0422	A	Ambulance 02 life sustaining					
A0424	A	Extra ambulance attendant					
A0888	E	Noncovered ambulance mileage					
A0999	A	Unlisted ambulance service					
A4206	A	1 CC sterile syringe & needle					
A4207	A	2 CC sterile syringe & needle					
A4208	A	3 CC sterile syringe & needle					
A4209	A	5+ CC sterile syringe & needle					
A4210	E	Nonneedle injection device					
A4211	A	Supp for self-adm injections					
A4212	A	Non coring needle or stylet					
A4213	A	20+ CC syringe only					
A4214	A	30 CC sterile water/saline					
A4215	A	Sterile needle					
A4220	A	Infusion pump refill kit					
A4221	A	Maint drug infus cath per wk					
A4222	A	Drug infusion pump supplies					
A4230	E	Infus insulin pump non needl					
A4231	E	Infusion insulin pump needle					
A4232	E	Syringe w/needle insulin 3cc					
A4244	A	Alcohol or peroxide per pint					
A4245	A	Alcohol wipes per box					
A4246	A	Betadine/phisohex solution					
A4247	A	Betadine/iodine swabs/wipes					
A4250	E	Urine reagent strips/tablets					
A4253	A	Blood glucose/reagent strips					
A4254	A	Battery for glucose monitor					
A4255	A	Glucose monitor platforms					
A4256	A	Calibrator solution/chips					
A4258	A	Lancet device each					
A4259	A	Lancets per box					
A4260	E	Levonorgestrel implant					
A4262	N	Temporary tear duct plug					
A4263	A	Permanent tear duct plug					
A4265	A	Paraffin					
A4270	A	Disposable endoscope sheath					
A4300	A	Cath impl vasc access portal					
A4301	A	Implantable access syst perc					
A4305	A	Drug delivery system <=50 ML					
A4306	A	Drug delivery system <=5 ML					
A4310	A	Insert tray w/o bag/cath					
A4311	A	Catheter w/o bag 2-way latex					
A4312	A	Cath w/o bag 2-way silicone					
A4313	A	Catheter w/bag 3-way					
A4314	A	Cath w/drainage 2-way latex					
A4315	A	Cath w/drainage 2-way silcne					
A4316	A	Cath w/drainage 3-way					
A4320	A	Irrigation tray					
A4321	A	Cath therapeutic irrig agent					
A4322	A	Irrigation syringe					
A4323	A	Saline irrigation solution					
A4326	A	Male external catheter					
A4327	A	Fem urinary collect dev cup					
A4328	A	Fem urinary collect pouch					
A4329	A	External catheter start set					
A4330	A	Stool collection pouch					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
A4335	A	Incontinence supply					
A4338	A	Indwelling catheter latex					
A4340	A	Indwelling catheter special					
A4344	A	Cath indw foley 2 way silicn					
A4346	A	Cath indw foley 3 way					
A4347	A	Male external catheter					
A4351	A	Straight tip urine catheter					
A4352	A	Coude tip urinary catheter					
A4353	A	Intermittent urinary cath					
A4354	A	Cath insertion tray w/bag					
A4355	A	Bladder irrigation tubing					
A4356	A	Ext ureth clmp or compr dvc					
A4357	A	Bedside drainage bag					
A4358	A	Urinary leg bag					
A4359	A	Urinary suspensory w/o leg b					
A4361	A	Ostomy face plate					
A4362	A	Solid skin barrier					
A4363	A	Liquid skin barrier					
A4364	A	Ostomy/cath adhesive					
A4365	A	Ostomy adhesive remover wipe					
A4367	A	Ostomy belt					
A4368	A	Ostomy filter					
A4397	A	Irrigation supply sleeve					
A4398	A	Ostomy irrigation bag					
A4399	A	Ostomy irrig cone/cath w brs					
A4400	A	Ostomy irrigation set					
A4402	A	Lubricant per ounce					
A4404	A	Ostomy ring each					
A4421	A	Ostomy supply misc					
A4454	A	Tape all types all sizes					
A4455	A	Adhesive remover per ounce					
A4460	A	Elastic compression bandage					
A4462	A	Abdmnl drssng holder/binder					
A4465	A	Non-elastic extremity binder					
A4470	A	Gravlee jet washer					
A4480	A	Vabra aspirator					
A4481	A	Tracheostoma filter					
A4490	E	Above knee surgical stocking					
A4495	E	Thigh length surg stocking					
A4500	E	Below knee surgical stocking					
A4510	E	Full length surg stocking					
A4550	E	Surgical trays					
A4554	E	Disposable underpads					
A4556	A	Electrodes					
A4557	A	Lead wires					
A4558	A	Conductive paste or gel					
A4560	A	Pessary					
A4565	A	Slings					
A4570	A	Splint					
A4572	A	Rib belt					
A4575	E	Hyperbaric o2 chamber disps					
A4580	A	Cast supplies (plaster)					
A4590	A	Special casting material					
A4595	A	TENS suppl 2 lead per month					
A4611	A	Heavy duty battery					
A4612	A	Battery cables					
A4613	A	Battery charger					
A4615	A	Cannula nasal					
A4616	A	Tubing (oxygen) per foot					
A4617	A	Mouth piece					
A4618	A	Breathing circuits					
A4619	A	Face tent					
A4620	A	Variable concentration mask					
A4621	A	Tracheotomy mask or collar					
A4622	A	Tracheostomy or laringectomy					
A4623	A	Tracheostomy inner cannula					
A4624	A	Tracheal suction tube					
A4625	A	Trach care kit for new trach					
A4626	A	Tracheostomy cleaning brush					
A4627	E	Spacer bag/reservoir					
A4628	A	Oropharyngeal suction cath					
A4629	A	Tracheostomy care kit					
A4630	A	Repl bat t.e.n.s. own by pt					
A4631	A	Wheelchair battery					
A4635	A	Underarm crutch pad					

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CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
A4636	A	Handgrip for cane etc					
A4637	A	Repl tip cane/crutch/walker					
A4640	A	Alternating pressure pad					
A4641	N	Diagnostic imaging agent					
A4642	N	Saturnomab pendetide per dose					
A4643	N	High dose contrast MRI					
A4644	N	Contrast 100-199 MGs iodine					
A4645	N	Contrast 200-299 MGs iodine					
A4646	N	Contrast 300-399 MGs iodine					
A4647	N	Supp- paramagnetic contr mat					
A4649	A	Surgical supplies					
A4650	A	Supp esrd centrifuge					
A4655	A	Esrd syringe/needle					
A4660	A	Esrd blood pressure device					
A4663	A	Esrd blood pressure cuff					
A4670	E	Auto blood pressure monitor					
A4690	A	Activated carbon filters					
A4706	A	Dialyzers					
A4707	A	Standard dialysate solution					
A4705	A	Bicarb dialysate solution					
A4712	A	Sterile water					
A4714	A	Treated water for dialysis					
A4730	A	Fistula cannulation set dial					
A4735	N	Local/topical anesthetics					
A4740	N	Esrd shunt accessory					
A4750	A	Arterial or venous tubing					
A4755	A	Arterial and venous tubing					
A4760	A	Standard testing solution					
A4765	A	Dialysate concentrate					
A4770	A	Blood testing supplies					
A4771	A	Blood clotting time tube					
A4772	N	Dextrostick/glucose strips					
A4773	N	Hemostix					
A4774	A	Ammonia test paper					
A4780	A	Esrd sterilizing agent					
A4790	N	Esrd cleansing agents					
A4800	A	Heparin/antidote dialysis					
A4820	A	Supplies hemodialysis kit					
A4850	A	Rubber tipped hemostats					
A4860	A	Disposable catheter caps					
A4870	A	Plumbing/electrical work					
A4890	A	Water storage tanks					
A4895	A	Contracts/repair/maintenance					
A4900	A	Capd supply kit					
A4901	A	Ccpd supply kit					
A4905	A	Ipd supply kit					
A4910	A	Esrd nonmedical supplies :					
A4912	A	Gomco drain bottle					
A4913	A	Esrd supply					
A4914	A	Preparation kit					
A4918	A	Venous pressure clamp					
A4919	A	Supp dialysis dialyzer holde					
A4920	A	Harvard pressure clamp					
A4921	A	Measuring cylinder					
A4927	A	Gloves					
A5051	A	Pouch clsd w barr attached					
A5052	A	Clsd ostomy pouch w/o barr					
A5053	A	Clsd ostomy pouch faceplate					
A5054	A	Clsd ostomy pouch w/flange					
A5055	A	Stoma cap					
A5061	A	Pouch drainable w barrier at					
A5062	A	Drnble ostomy pouch w/o barr					
A5063	A	Drain ostomy pouch w/flange					
A5064	E	Drain ostomy pouch w/fcplte					
A5065	E	Drain ostomy pouch on fcplte					
A5071	A	Urinary pouch w/barrier					
A5072	A	Urinary pouch w/o barrier					
A5073	A	Urinary pouch on barr w/flng					
A5074	E	Urinary pouch w/faceplate					
A5075	E	Urinary pouch on faceplate					
A5081	A	Continent stoma plug					
A5082	A	Continent stoma catheter					
A5093	A	Ostomy accessory convex inse					
A5102	A	Bedside drain btl w/wo tube					
A5105	A	Urinary suspensory					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
A5112	A	Urinary leg bag					
A5113	A	Latex leg strap					
A5114	A	Foam/fabric leg strap					
A5119	A	Skin barrier wipes box pr 50					
A5121	A	Solid skin barrier 6x6					
A5122	A	Solid skin barrier 8x8					
A5123	A	Skin barrier with flange					
A5126	A	Adhesive disc/foam pad					
A5131	A	Appliance cleaner					
A5149	A	Incontinence/ostomy supply					
A5500	A	Diab shoe for density insert					
A5501	A	Diabetic custom molded shoe					
A5502	A	Diabetic shoe density insert					
A5503	A	Diabetic shoe w/roller/rockr					
A5504	A	Diabetic shoe with wedge					
A5505	A	Diab shoe w/metatarsal bar					
A5506	A	Diabetic shoe w/off set heel					
A5507	A	Modification diabetic shoe					
A6020	A	Collagen wound dressing					
A6025	E	Silicone gel sheet, each					
A6154	A	Wound pouch each					
A6196	A	Alginate dressing <=16 sq in					
A6197	A	Alginate drsg >16 <=48 sq in					
A6198	A	alginate dressing > 48 sq in					
A6199	A	Alginate drsg wound filler					
A6203	A	Composite drsg <= 16 sq in					
A6204	A	Composite drsg >16<=48 sq in					
A6205	A	Composite drsg > 48 sq in					
A6206	A	Contact layer <= 16 sq in					
A6207	A	Contact layer >16<= 48 sq in					
A6208	A	Contact layer > 48 sq in					
A6209	A	Foam drsg <=16 sq in w/o bdr					
A6210	A	Foam drg >16<=48 sq in w/o b					
A6211	A	Foam drg > 48 sq in w/o brdr					
A6212	A	Foam drg <=16 sq in w/border					
A6213	A	Foam drg >16<=48 sq in w/bdr					
A6214	A	Foam drg > 48 sq in w/border					
A6215	A	Foam dressing wound filler					
A6216	A	Non-sterile gauze<=16 sq in					
A6217	A	Non-sterile gauze >16<=48 sq					
A6218	A	Non-sterile gauze > 48 sq in					
A6219	A	Gauze <= 16 sq in w/border					
A6220	A	Gauze >16 <=48 sq in w/bordr					
A6221	A	Gauze > 48 sq in w/border					
A6222	A	Gauze <=16 in no w/sal w/o b					
A6223	A	Gauze >16<=48 no w/sal w/o b					
A6224	A	Gauze > 48 in no w/sal w/o b					
A6228	A	Gauze <= 16 sq in water/sal					
A6229	A	Gauze >16<=48 sq in watr/sal					
A6230	A	Gauze > 48 sq in water/salne					
A6234	A	Hydrocolld drg <=16 w/o bdr					
A6235	A	Hydrocolld drg >16<=48 w/o b					
A6236	A	Hydrocolld drg > 48 in w/o b					
A6237	A	Hydrocolld drg <=16 in w/bdr					
A6238	A	Hydrocolld drg >16<=48 w/bdr					
A6239	A	Hydrocolld drg > 48 in w/bdr					
A6240	A	Hydrocolld drg filler paste					
A6241	A	Hydrocolloid drg filler dry					
A6242	A	Hydrogel drg <=16 in w/o bdr					
A6243	A	Hydrogel drg >16<=48 w/o bdr					
A6244	A	Hydrogel drg >48 in w/o bdr					
A6245	A	Hydrogel drg <= 16 in w/bdr					
A6246	A	Hydrogel drg >16<=48 in w/b					
A6247	A	Hydrogel drg > 48 sq in w/b					
A6248	A	Hydrogel drsg gel filler					
A6250	A	Skin seal protect moisturizr					
A6251	A	Absorpt drg <=16 sq in w/o b					
A6252	A	Absorpt drg >16 <=48 w/o bdr					
A6253	A	Absorpt drg > 48 sq in w/o b					
A6254	A	Absorpt drg <=16 sq in w/bdr					
A6255	A	Absorpt drg >16<=48 in w/bdr					
A6256	A	Absorpt drg > 48 sq in w/bdr					
A6257	A	Transparent film <= 16 sq in					
A6258	A	Transparent film >16<=48 in					
A6259	A	Transparent film > 48 sq in					

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CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
A6260	A	Wound cleanser any type/size					
A6261	A	Wound filler gel/paste /oz					
A6262	A	Wound filler dry form / gram					
A6263	A	Non-sterile elastic gauze/yd					
A6264	A	Non-sterile no elastic gauze					
A6265	A	Tape per 18 sq inches					
A6266	A	Impreg gauze no h20/sal/yard					
A6402	A	Sterile gauze <= 16 sq in					
A6403	A	Sterile gauze >16 <= 48 sq in					
A6404	A	Sterile gauze > 48 sq in					
A6405	A	Sterile elastic gauze /yd					
A6406	A	Sterile non-elastic gauze/yd					
A9150	E	Misc/exper non-prescript dru					
A9160	E	Podiatrist non-covered servi					
A9170	E	Chiropractor non-covered ser					
A9190	E	Misc/expe personal comfort i					
A9270	E	Non-covered item or service					
A9300	E	Exercise equipment					
A9500	N	Technetium TC 99m sestamibi					
A9502	N	Technetium TC99M tetrofosmin					
A9503	N	Technetium TC 99m medronate					
A9505	N	Thallous chloride TL 201/mci					
A9600	N	Strontium-89 chloride					
B4034	A	Enter feed supkit syr by day					
B4035	A	Enteral feed supp pump per d					
B4036	A	Enteral feed sup kit grav by					
B4081	A	Enteral ng tubing w/ stylet					
B4082	A	Enteral ng tubing w/o stylet					
B4083	A	Enteral stomach tube levine					
B4084	A	Gastrostomy/jejunostomy tubi					
B4085	A	Gastrostomy tube w/ring each					
B4150	A	Enteral formulae category i					
B4151	A	Enteral formulae category i-					
B4152	A	Enteral formulae category ii					
B4153	A	Enteral formulae category ii					
B4154	A	Enteral formulae category IV					
B4155	A	Enteral formulae category v					
B4156	A	Enteral formulae category vi					
B4164	A	Parenteral 50% dextrose solu					
B4168	A	Parenteral sol amino acid 3.					
B4172	A	Parenteral sol amino acid 5.					
B4176	A	Parenteral sol amino acid 7-					
B4178	A	Parenteral sol amino acid >					
B4180	A	Parenteral sol carb > 50%					
B4184	A	Parenteral sol lipids 10%					
B4186	A	Parenteral sol lipids 20%					
B4189	A	Parenteral sol amino acid &					
B4193	A	Parenteral sol 52-73 gm prot					
B4197	A	Parenteral sol 74-100 gm pro					
B4199	A	Parenteral sol > 100gm prote					
B4216	A	Parenteral nutrition additiv					
B4220	A	Parenteral supply kit premix					
B4222	A	Parenteral supply kit homemi					
B4224	A	Parenteral administration ki					
B5000	A	Parenteral sol renal-amirosy					
B5100	A	Parenteral sol hepatic-fream					
B5200	A	Parenteral sol stres-bmch c					
B9000	A	Enter infusion pump w/o alrm					
B9002	A	Enteral infusion pump w/ ala					
B9004	A	Parenteral infus pump portab					
B9006	A	Parenteral infus pump statio					
B9998	A	Enteral supp not otherwise c					
B9999	A	Parenteral supp not othrws c					
D0120	E	Periodic oral evaluation					
D0140	E	Limit oral eval problm focus					
D0150	S	Comprehensve oral evaluation	031	1.37	$70.45	$14.09	$14.09
D0160	E	Extensv oral eval prob focus					
D0210	E	Intraor complete film series					
D0220	E	Intraoral periapical first f					
D0230	E	Intraoral periapical ea add					
D0240	S	Intraoral occlusal film	031	1.37	$70.45	$14.09	$14.09
D0250	S	Extraoral first film	031	1.37	$70.45	$14.09	$14.09
D0260	S	Extraoral ea additional film	031	1.37	$70.45	$14.09	$14.09
D0270	S	Dental bitewing single film	031	1.37	$70.45	$14.09	$14.09
D0272	E	Dental bitewings two films					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
D0274	S	Dental bitewings four films	031	1.37	$70.45	$14.09	$14.09
D0290	E	Dental film skull/facial bon					
D0310	E	Dental sialography					
D0320	E	Dental tmj arthrogram incl i					
D0321	E	Dental other tmj films					
D0322	E	Dental tomographic survey					
D0330	E	Dental panoramic film					
D0340	E	Dental cephalometric film					
D0415	E	Bacteriologic study					
D0425	E	Caries susceptibility test					
D0460	S	Pulp vitality test	031	1.37	$70.45	$14.09	$14.09
D0470	E	Diagnostic casts					
D0471	S	Diagnostic photographs	031	1.37	$70.45	$14.09	$14.09
D0501	S	Histopathologic examinations	031	1.37	$70.45	$14.09	$14.09
D0502	S	Other oral pathology procedu	031	1.37	$70.45	$14.09	$14.09
D0999	S	Unspecified diagnostic proce	031	1.37	$70.45	$14.09	$14.09
D1110	E	Dental prophylaxis adult					
D1120	E	Dental prophylaxis child					
D1201	E	Topical fluor w prophy child					
D1203	E	Topical fluor w/o prophy chi					
D1204	E	Topical fluor w/o prophy adu					
D1205	E	Topical fluoride w/ prophy a					
D1310	E	Nutri counsel-control caries					
D1320	E	Tobacco counseling					
D1330	E	Oral hygiene instruction					
D1351	E	Dental sealant per tooth					
D1510	S	Space maintainer fxd unilat	031	1.37	$70.45	$14.09	$14.09
D1515	S	Fixed bilat space maintainer	031	1.37	$70.45	$14.09	$14.09
D1520	S	Remove unilat space maintain	031	1.37	$70.45	$14.09	$14.09
D1525	S	Remove bilat space maintain	031	1.37	$70.45	$14.09	$14.09
D1550	S	Recement space maintainer					
D2110	E	Amalgam one surface primary					
D2120	E	Amalgam two surfaces primary					
D2130	E	Amalgam three surfaces prima					
D2131	E	Amalgam four/more surf prima					
D2140	E	Amalgam one surface permanen					
D2150	E	Amalgam two surfaces permane					
D2160	E	Amalgam three surfaces perma					
D2161	E	Amalgam 4 or > surfaces perm					
D2210	E	Silcate cement per restorat					
D2330	E	Resin one surface-anterior					
D2331	E	Resin two surfaces-anterior					
D2332	E	Resin three surfaces-anterio					
D2335	E	Resin 4/> surf or w incis an					
D2336	E	Composite resin crown					
D2380	E	Resin one surf poster primar					
D2381	E	Resin two surf poster primar					
D2382	E	Resin three/more surf post p					
D2385	E	Resin one surf poster perman					
D2386	E	Resin two surf poster perman					
D2387	E	Resin three/more surf post p					
D2410	E	Dental gold foil one surface					
D2420	E	Dental gold foil two surface					
D2430	E	Dental gold foil three surfa					
D2510	E	Dental inlay metallic 1 surf					
D2520	E	Dental inlay metallic 2 surf					
D2530	E	Dental inlay metl 3/more sur					
D2543	E	Dental onlay metallic 3 surf					
D2544	E	Dental onlay metl 4/more sur					
D2610	E	Inlay porcelain/ceramic 1 su					
D2620	E	Inlay porcelain/ceramic 2 su					
D2630	E	Dental onlay porc 3/more sur					
D2642	E	Dental onlay porcelin 2 surf					
D2643	E	Dental onlay porcelin 3 surf					
D2644	E	Dental onlay porc 4/more sur					
D2650	E	Inlay composite/resin one su					
D2651	E	Inlay composite/resin two su					
D2652	E	Dental inlay resin 3/mre sur					
D2662	E	Dental onlay resin 2 surface					
D2663	E	Dental onlay resin 3 surface					
D2664	E	Dental onlay resin 4/mre sur					
D2710	E	Crown resin laboratory					
D2720	E	Crown resin w/ high noble me					
D2721	E	Crown resin w/ base metal					
D2722	E	Crown resin w/ noble metal					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
D2740	E	Crown porcelain/ceramic subs					
D2750	E	Crown porcelain w/ h noble m					
D2751	E	Crown porcelain fused base m					
D2752	E	Crown porcelain w/ noble met					
D2790	E	Crown full cast high noble m					
D2791	E	Crown full cast base metal					
D2792	E	Crown full cast noble metal					
D2810	E	Crown 3/4 cast metallic					
D2910	E	Dental recement inlay					
D2920	E	Dental recement crown					
D2930	E	Prefab stnlss steel crwn pri					
D2931	E	Prefab stnlss steel crown pe					
D2932	E	Prefabricated resin crown					
D2933	E	Prefab stainless steel crown					
D2940	E	Dental sedative filling					
D2950	E	Core build-up incl any pins					
D2951	E	Tooth pin retention					
D2952	E	Post and core cast + crown					
D2954	E	Prefab post/core + crown					
D2955	E	Post removal					
D2960	E	Laminate labial veneer					
D2961	E	Lab labial veneer resin					
D2962	E	Lab labial veneer porcelain					
D2970	S	Temporary- fractured tooth					
D2980	E	Crown repair	031	1.37	$70.45	$14.09	$14.09
D2999	S	Dental unspec restorative pr	031	1.37	$70.45	$14.09	$14.09
D3110	E	Pulp cap direct					
D3120	E	Pulp cap indirect					
D3220	E	Therapeutic pulpotomy					
D3230	E	Pulpal therapy anterior prim					
D3240	E	Pulpal therapy posterior pri					
D3310	E	Anterior					
D3320	E	Root canal therapy 2 canals					
D3330	E	Root canal therapy 3 canals					
D3346	E	Retreat root canal anterior					
D3347	E	Retreat root canal bicuspid					
D3348	E	Retreat root canal molar					
D3351	E	Apexification/recalc initial					
D3352	E	Apexification/recalc interim					
D3353	E	Apexification/recalc final					
D3410	E	Apicoect/perirad surg anter					
D3421	E	Root surgery bicuspid					
D3425	E	Root surgery molar					
D3426	E	Root surgery ea add root					
D3430	E	Retrograde filling					
D3450	E	Root amputation					
D3460	S	Endodontic endosseous implan	031	1.37	$70.45	$14.09	$14.09
D3470	E	Intentional replantation					
D3910	E	Isolation- tooth w rubb dam					
D3920	E	Tooth splitting					
D3950	E	Canal prep/fitting of dowel					
D3960	E	Bleaching of discolored toot					
D3999	S	Endodontic procedure	031	1.37	$70.45	$14.09	$14.09
D4210	E	Gingivectomy/plasty per quad					
D4211	E	Gingivectomy/plasty per toot					
D4220	E	Gingival curettage per quadr					
D4240	E	Gingival flap proc w/ planin					
D4249	E	Crown lengthen hard tissue					
D4250	S	Mucogingival surg per quadra	031	1.37	$70.45	$14.09	$14.09
D4260	S	Osseous surgery per quadrant	031	1.37	$70.45	$14.09	$14.09
D4263	E	Bone replce graft first site	031	1.37	$70.45	$14.09	$14.09
D4264	S	Bone replce graft each add	031	1.37	$70.45	$14.09	$14.09
D4266	E	Guided tiss regen resorble					
D4267	E	Guided tiss regen nonresorb					
D4270	S	Pedicle soft tissue graft pr	031	1.37	$70.45	$14.09	$14.09
D4271	S	Free soft tissue graft proc	031	1.37	$70.45	$14.09	$14.09
D4273	E	Subepithelial tissue graft	031	1.37	$70.45	$14.09	$14.09
D4274	E	Distal/proximal wedge proc					
D4320	E	Provision splint intracoronal					
D4321	E	Provisional splint extracoro					
D4341	E	Periodontal scaling & root					
D4355	S	Full mouth debridement	031	1.37	$70.45	$14.09	$14.09
D4381	S	Localized chemo delivery	031	1.37	$70.45	$14.09	$14.09
D4910	E	Periodontal maint procedures					
D4920	E	Unscheduled dressing change					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
D4999	E	Unspecified periodontal proc					
D5110	E	Dentures complete maxillary					
D5120	E	Dentures complete mandible					
D5130	E	Dentures immediat maxillary					
D5140	E	Dentures immediat mandible					
D5211	E	Dentures maxill part resin					
D5212	E	Dentures mand part resin					
D5213	E	Dentures maxill part metal					
D5214	E	Dentures mandibl part metal					
D5281	E	Removable partial denture					
D5410	E	Dentures adjust cmplt maxil					
D5411	E	Dentures adjust cmplt mand					
D5421	E	Dentures adjust part maxill					
D5422	E	Dentures adjust part mandibl					
D5510	E	Dentur repr broken compl bas					
D5520	E	Replace denture teeth complt					
D5610	E	Dentures repair resin base					
D5620	E	Rep part denture cast frame					
D5630	E	Rep partial denture clasp					
D5640	E	Replace part denture teeth					
D5650	E	Add tooth to partial denture					
D5660	E	Add clasp to partial denture					
D5710	E	Dentures rebase cmplt maxil					
D5711	E	Dentures rebase cmplt mand					
D5720	E	Dentures rebase part maxill					
D5721	E	Dentures rebase part mandbl					
D5730	E	Denture rein cmplt maxil ch					
D5731	E	Denture rein cmplt mand chr					
D5740	E	Denture rein part maxil chr					
D5741	E	Denture rein part mand chr					
D5750	E	Denture rein cmplt max lab					
D5751	E	Denture rein cmplt mand lab					
D5760	E	Denture rein part maxil lab					
D5761	E	Denture rein part mand lab					
D5810	E	Denture interm cmplt maxill					
D5811	E	Denture interm cmplt mandbl					
D5820	E	Denture interm part maxill					
D5821	E	Denture interm part mandbl					
D5850	E	Denture tiss conditn maxill					
D5851	E	Denture tiss conditn mandbl					
D5860	E	Overdenture complete					
D5861	E	Overdenture partial					
D5862	E	Precision attachment					
D5899	E	Removable prosthodontic proc					
D5911	S	Facial moulage sectional	031	1.37	$70.45	$14.09	$14.09
D5912	S	Facial moulage complete	031	1.37	$70.45	$14.09	$14.09
D5913	E	Nasal prosthesis					
D5914	E	Auricular prosthesis					
D5915	E	Orbital prosthesis					
D5916	E	Ocular prosthesis					
D5919	E	Facial prosthesis					
D5922	E	Nasal septal prosthesis					
D5923	E	Ocular prosthesis interim					
D5924	E	Cranial prosthesis					
D5925	E	Facial augmentation implant					
D5926	E	Replacement nasal prosthesis					
D5927	E	Auricular replacement					
D5928	E	Orbital replacement					
D5929	E	Facial replacement					
D5931	E	Surgical obturator					
D5932	E	Postsurgical obturator					
D5933	E	Refitting of obturator					
D5934	E	Mandibular flange prosthesis					
D5935	E	Mandibular denture prosth					
D5936	E	Temp obturator prosthesis					
D5937	E	Trismus appliance					
D5951	E	Feeding aid					
D5952	E	Pediatric speech aid					
D5953	E	Adult speech aid					
D5954	E	Superimposed prosthesis					
D5955	E	Palatal lift prosthesis					
D5958	E	Intraoral con def inter plt					
D5959	E	Intraoral con def mod palat					
D5960	E	Modify speech aid prosthesis					
D5982	E	Surgical stent					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
D5983	S	Radiation applicator	031	1.37	$70.45	$14.09	$14.09
D5984	S	Radiation shield	031	1.37	$70.45	$14.09	$14.09
D5985	S	Radiation cone locator	031	1.37	$70.45	$14.09	$14.09
D5986	E	Fluoride applicator					
D5987	E	Commissure splint					
D5988	E	Surgical splint	031	1.37	$70.45	$14.09	$14.09
D5999	E	Maxillofacial prosthesis					
D6010	E	Odontics endosteal implant					
D6020	E	Odontics abutment placement					
D6040	E	Odontics eposteal implant					
D6050	E	Odontics transosteal implnt					
D6055	E	Implant connecting bar					
D6080	E	Implant maintenance					
D6090	E	Repair implant					
D6095	E	Odontics repr abutment					
D6100	E	Removal of implant					
D6199	E	Implant procedure					
D6210	E	Prosthodont high noble metal					
D6211	E	Bridge base metal cast					
D6212	E	Bridge noble metal cast					
D6240	E	Bridge porcelain high noble					
D6241	E	Bridge porcelain base metal					
D6242	E	Bridge porcelain nobel metal					
D6250	E	Bridge resin w/high noble					
D6251	E	Bridge resin base metal					
D6252	E	Bridge resin w/noble metal					
D6520	E	Dental retainer two surfaces					
D6530	E	Retainer metallic 3+ surface					
D6543	E	Dental retainr onlay 3 surf					
D6544	E	Dental retainr onlay 4/more					
D6545	E	Dental retainr cast metl					
D6720	E	Retain crown resin w hi nble					
D6721	E	Crown resin w/base metal					
D6722	E	Crown resin w/noble metal					
D6750	E	Crown porcelain high noble					
D6751	E	Crown porcelain base metal					
D6752	E	Crown porcelain noble metal					
D6780	E	Crown 3/4 high noble metal					
D6790	E	Crown full high noble metal					
D6791	E	Crown full base metal cast					
D6792	E	Crown full noble metal cast					
D6920	S	Dental connector bar	031	1.37	$70.45	$14.09	$14.09
D6930	E	Dental recement bridge					
D6940	E	Stress breaker					
D6950	E	Precision attachment					
D6970	E	Post & core plus retainer					
D6971	E	Cast post bridge retainer					
D6972	E	Prefab post & core plus reta					
D6973	E	Core build up for retainer					
D6975	E	Coping metal					
D6980	E	Bridge repair					
D6999	E	Fixed prosthodontic proc					
D7110	S	Oral surgery single tooth	031	1.37	$70.45	$14.09	$14.09
D7120	S	Each add tooth extraction	031	1.37	$70.45	$14.09	$14.09
D7130	S	Tooth root removal	031	1.37	$70.45	$14.09	$14.09
D7210	S	Rem imp tooth w mucoper flp	031	1.37	$70.45	$14.09	$14.09
D7220	S	Impact tooth remov soft tiss	031	1.37	$70.45	$14.09	$14.09
D7230	S	Impact tooth remov part bony	031	1.37	$70.45	$14.09	$14.09
D7240	S	Impact tooth remov comp bony	031	1.37	$70.45	$14.09	$14.09
D7241	S	Impact tooth rem bony w/comp	031	1.37	$70.45	$14.09	$14.09
D7250	S	Tooth root removal	031	1.37	$70.45	$14.09	$14.09
D7260	S	Oral antral fistula closure	031	1.37	$70.45	$14.09	$14.09
D7270	E	Tooth reimplantation					
D7272	E	Tooth transplantation					
D7280	E	Exposure impact tooth orthod					
D7281	E	Exposure tooth aid eruption					
D7285	E	Biopsy of oral tissue hard					
D7286	E	Biopsy of oral tissue soft					
D7290	E	Repositioning of teeth					
D7291	S	Transseptal fiberotomy	031	1.37	$70.45	$14.09	$14.09
D7310	E	Alveoplasty w/ extraction					
D7320	E	Alveoplasty w/o extraction					
D7340	E	Vestibuloplasty ridge extens					
D7350	E	Vestibuloplasty exten graft					
D7410	E	Rad exc lesion up to 1.25 cm					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
D7420	E	Lesion > 1.25 cm					
D7430	E	Exc benign tumor to 1.25 cm					
D7431	E	Benign tumor exc > 1.25 cm					
D7440	E	Malig tumor exc to 1.25 cm					
D7441	E	Malig tumor > 1.25 cm					
D7450	E	Rem odontogen cyst to 1.25cm					
D7451	E	Rem odontogen cyst > 1.25 cm					
D7460	E	Rem nonodonto cyst to 1.25cm					
D7461	E	Rem nonodonto cyst > 1.25 cm					
D7465	E	Lesion destruction					
D7470	E	Rem exostosis maxilla/mandib					
D7480	E	Partial ostectomy					
D7490	E	Mandible resection					
D7510	E	I&d absc intraoral soft tiss					
D7520	E	I&d abscess extraoral					
D7530	E	Removal fb skin/areolar tiss					
D7540	E	Removal of fb reaction					
D7550	E	Removal of sloughed off bone					
D7560	E	Maxillary sinusotomy					
D7610	E	Maxilla open reduct simple					
D7620	E	Clsd reduct simpl maxilla fx					
D7630	E	Open red simpl mandible fx					
D7640	E	Clsd red simpl mandible fx					
D7650	E	Open red simp malar/zygom fx					
D7660	E	Clsd red simp malar/zygom fx					
D7670	E	Open red simple alveolus fx					
D7680	E	Reduct simple facial bone fx					
D7710	E	Maxilla open reduct compound					
D7720	E	Clsd reduct compd maxilla fx					
D7730	E	Open reduct compd mandble fx					
D7740	E	Clsd reduct compd mandble fx					
D7750	E	Open red comp malar/zygma fx					
D7760	E	Clsd red comp malar/zygma fx					
D7770	E	Open reduc compd alveolus fx					
D7780	E	Reduct compnd facial bone fx					
D7810	E	Tmj open reduct-dislocation					
D7820	E	Closed tmp manipulation					
D7830	E	Tmj manipulation under anest					
D7840	E	Removal of tmj condyle					
D7850	E	Tmj meniscectomy					
D7852	E	Tmj repair of joint disc					
D7854	E	Tmj excisn of joint membrane					
D7856	E	Tmj cutting of a muscle					
D7858	E	Tmj reconstruction					
D7860	E	Tmj cutting into joint					
D7865	E	Tmj reshaping components					
D7870	E	Tmj aspiration joint fluid					
D7872	E	Tmj diagnostic arthroscopy					
D7873	E	Tmj arthroscopy lysis adhesn					
D7874	E	Tmj arthroscopy disc reposit					
D7875	E	Tmj arthroscopy synovectomy					
D7876	E	Tmj arthroscopy discectomy					
D7877	E	Tmj arthroscopy debridement					
D7880	E	Occlusal orthotic appliance					
D7899	E	Tmj unspecified therapy					
D7910	E	Dent sutur recent wnd to 5cm					
D7911	E	Dental suture wound to 5 cm					
D7912	E	Suture complicate wnd > 5 cm					
D7920	E	Dental skin graft					
D7940	S	Reshaping bone orthognathic	031	1.37	$70.45	$14.09	$14.09
D7941	E	Bone cutting ramus closed					
D7942	E	Bone cutting ramus open					
D7943	E	Cutting ramus open w/graft					
D7944	E	Bone cutting segmented					
D7945	E	Bone cutting body mandible					
D7946	E	Reconstruction maxilla total					
D7947	E	Reconstruct maxilla segment					
D7948	E	Reconstruct midface no graft					
D7949	E	Reconstruct midface w/graft					
D7950	E	Mandible graft					
D7955	E	Repair maxillofacial defects					
D7960	E	Frenulectomy/frenulotomy					
D7970	E	Excision hyperplastic tissue					
D7971	E	Excision pericoronal gingiva					
D7980	E	Sialolithotomy					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
D7961	E	Excision of salivary gland					
D7962	E	Sialodochoplasty					
D7963	E	Closure of salivary fistula					
D7990	E	Emergency tracheotomy					
D7991	E	Dental coronoidectomy					
D7995	E	Synthetic graft facial bones					
D7996	E	Implant mandible for augment					
D7999	E	Oral surgery procedure					
D8010	E	Limited dental tx primary					
D8020	E	Limited dental tx transition					
D8030	E	Limited dental tx adolescent					
D8040	E	Limited dental tx adult					
D8050	E	Intercep dental tx primary					
D8060	E	Intercep dental tx transitn					
D8070	E	Compre dental tx transition					
D8080	E	Compre dental tx adolescent					
D8090	E	Compre dental tx adult					
D8210	E	Orthodontic rem appliance tx					
D8220	E	Fixed appliance therapy habt					
D8660	E	Preorthodontic tx visit					
D8670	E	Periodic orthodontic tx visit					
D8680	E	Orthodontic retention					
D8690	E	Orthodontic treatment					
D8999	E	Orthodontic procedure					
D9110	N	Tx dental pain minor proc					
D9210	E	Dent anesthesia w/o surgery					
D9211	E	Regional block anesthesia					
D9212	E	Trigeminal block anesthesia					
D9215	E	Local anesthesia					
D9220	E	General anesthesia					
D9221	E	General anesthesia ea ad 15m					
D9230	N	Analgesia					
D9240	E	Intravenous sedation					
D9310	E	Dental consultation					
D9410	E	Dental house call					
D9420	E	Hospital call					
D9430	E	Office visit during hours					
D9440	E	Office visit after hours					
D9610	E	Dent therapeutic drug inject					
D9630	S	Other drugs/medicaments					
D9910	E	Dent appl desensitizing med	031	1.37	$70.45	$14.09	$14.09
D9920	E	Behavior management					
D9930	S	Treatment of complications	031	1.37	$70.45	$14.09	$14.09
D9940	S	Dental occlusal guard	031	1.37	$70.45	$14.09	$14.09
D9941	E	Fabrication athletic guard					
D9950	S	Occlusion analysis	031	1.37	$70.45	$14.09	$14.09
D9951	S	Limited occlusal adjustment	031	1.37	$70.45	$14.09	$14.09
D9952	S	Complete occlusal adjustment	031	1.37	$70.45	$14.09	$14.09
D9970	E	Enamel microabrasion					
D9999	E	Adjunctive procedure					
E0100	A	Cane adjust/fixed with tip					
E0105	A	Cane adjust/fixed quad/3 pro					
E0110	A	Crutch forearm pair					
E0111	A	Crutch forearm each					
E0112	A	Crutch underarm pair wood					
E0113	A	Crutch underarm each wood					
E0114	A	Crutch underarm pair no wood					
E0116	A	Crutch underarm each no wood					
E0130	A	Walker rigid adjust/fixed ht					
E0135	A	Walker folding adjust/fixed					
E0141	A	Rigid walker wheeled wo seat					
E0142	A	Walker rigid wheeled with se					
E0143	A	Walker folding wheeled w/o s					
E0145	A	Walker whled seat/crutch att					
E0146	A	Folding walker wheels w seat					
E0147	A	Walker variable wheel resist					
E0153	A	Forearm crutch platform atta					
E0154	A	Walker platform attachment					
E0155	A	Walker rigd pick-up/wheel at					
E0156	A	Walker seat attachment					
E0157	A	Walker crutch attachment					
E0158	A	Walker leg extensions					
E0159	A	Brake for wheeled walker					
E0160	A	Sitz type bath or equipment					
E0161	A	Sitz bath/equipment w/faucet					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
E0162	A	Sitz bath chair					
E0163	A	Commode chair stationry fxd					
E0164	A	Commode chair mobile fixed a					
E0165	A	Commode chair stationry det					
E0166	A	Commode chair mobile detach					
E0167	A	Commode chair pail or pan					
E0175	A	Commode chair foot rest					
E0176	A	Air pressre pad/cushion nonp					
E0177	A	Water press pad/cushion nonp					
E0178	A	Gel pressre pad/cushion nonp					
E0179	A	Dry pressre pad/cushion nonp					
E0180	A	Press pad alternating w pump					
E0181	A	Press pad alternating w/ pum					
E0182	A	Pressure pad alternating pum					
E0184	A	Dry pressure mattress					
E0185	A	Gel pressure mattress pad					
E0186	A	Air pressure mattress					
E0187	A	Water pressure mattress					
E0188	E	Synthetic sheepskin pad					
E0189	E	Lambswool sheepskin pad					
E0191	A	Protector heel or elbow					
E0192	A	Pad wheelchr low press/poslt					
E0193	A	Powered air flotation bed					
E0194	A	Air fluidized bed					
E0196	A	Gel pressure mattress					
E0197	A	Air pressure pad for mattres					
E0198	A	Water pressure pad for mattr					
E0199	A	Dry pressure pad for mattres					
E0200	A	Heat lamp without stand					
E0202	A	Phototherapy light w/ photom					
E0205	A	Heat lamp with stand					
E0210	A	Electric heat pad standard					
E0215	A	Electric heat pad moist					
E0217	A	Water circ heat pad w pump					
E0218	A	Water circ cold pad w pump					
E0220	A	Hot water bottle					
E0225	A	Hydrocollator unit					
E0230	A	Ice cap or collar					
E0235	A	Paraffin bath unit portable					
E0236	A	Pump for water circulating p					
E0238	A	Heat pad non-electric moist					
E0239	A	Hydrocollator unit portable					
E0241	E	Bath tub wall rail					
E0242	E	Bath tub rail floor					
E0243	E	Toilet rail					
E0244	E	Toilet seat raised					
E0245	E	Tub stool or bench					
E0246	A	Transfer tub rail attachment					
E0249	A	Pad water circulating heat u					
E0250	A	Hosp bed fixed ht w/ mattres					
E0251	A	Hosp bed fixd ht w/o mattres					
E0255	A	Hospital bed var ht w/ mattr					
E0256	A	Hospital bed var ht w/o matt					
E0260	A	Hosp bed semi-electr w/ matt					
E0261	A	Hosp bed semi-electr w/o mat					
E0265	A	Hosp bed total electr w/ mat					
E0266	A	Hosp bed total elec w/o matt					
E0270	A	Hospital bed institutional t					
E0271	A	Mattress innerspring					
E0272	A	Mattress foam rubber					
E0273	A	Bed board					
E0274	A	Over-bed table					
E0275	A	Bed pan standard					
E0276	A	Bed pan fracture					
E0277	A	Powered pres-redu air mattrs					
E0280	A	Bed cradle					
E0290	A	Hosp bed fx ht w/o rails w/m					
E0291	A	Hosp bed fx ht w/o rail w/o					
E0292	A	Hosp bed var ht w/o rail w/o					
E0293	A	Hosp bed var ht w/o rail w/					
E0294	A	Hosp bed semi-elect w/ mattr					
E0295	A	Hosp bed semi-elect w/o matt					
E0296	A	Hosp bed total elect w/ matt					
E0297	A	Hosp bed total elect w/o mat					
E0305	A	Rails bed side half length					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
E0310	A	Rails bed side full length					
E0315	A	Bed accessory brd/tbl/supprt					
E0325	A	Urinal male jug-type					
E0326	A	Urinal female jug-type					
E0350	A	Control unit bowel system					
E0352	A	Disposable pack w/bowel syst					
E0370	A	Air elevator for heel					
E0371	A	Nonpower mattress overlay					
E0372	A	Powered air mattress overlay					
E0373	A	Nonpowered pressure mattress					
E0424	A	Stationary compressed gas 02					
E0425	A	Gas system stationary compre					
E0430	A	Oxygen system gas portable					
E0431	A	Portable gaseous 02					
E0434	A	Portable liquid 02					
E0435	A	Oxygen system liquid portabl					
E0439	A	Stationary liquid 02					
E0440	A	Oxygen system liquid station					
E0441	A	Oxygen contents gas per/unit					
E0442	A	Oxygen contents liq per/unit					
E0443	A	Port 02 contents gas/unit					
E0444	A	Port 02 contents liq/unit					
E0450	A	Volume vent stationary/porta					
E0452	A	Intermit assis device w cpap					
E0453	A	Ventilator 12 hrs/less per d					
E0455	A	Oxygen tent excl croup/ped t					
E0457	A	Chest shell					
E0459	A	Chest wrap					
E0460	A	Neg press vent portabl/statn					
E0462	A	Rocking bed w/ or w/o side r					
E0480	A	Percussor elect/pneum home m					
E0500	A	Ippb all types					
E0550	A	Humidif extens supple w ippb					
E0555	A	Humidifier for use w/ regula					
E0560	A	Humidifier supplemental w/ i					
E0565	A	Compressor air power source					
E0570	A	Nebulizer with compression					
E0575	A	Nebulizer ultrasonic					
E0580	A	Nebulizer for use w/ regulat					
E0585	A	Nebulizer w/ compressor & he					
E0600	A	Suction pump portab hom modl					
E0601	A	Cont airway pressure device					
E0605	A	Vaporizer room type					
E0606	A	Drainage board postural					
E0607	A	Blood glucose monitor home					
E0608	A	Apnea monitor					
E0609	A	Blood gluc mon w/special fea					
E0610	A	Pacemaker monitr audible/vis					
E0615	A	Pacemaker monitr digital/vis					
E0621	A	Patient lift sling or seat					
E0625	A	Patient lift bathroom or toi					
E0627	A	Seat lift incorp lift-chair					
E0628	A	Seat lift for pt furn-electr					
E0629	A	Seat lift for pt furn-non-el					
E0630	A	Patient lift hydraulic					
E0635	A	Patient lift electric					
E0650	A	Pneuma compresor non-segment					
E0651	A	Pneum compressor segmental					
E0652	A	Pneum compres w/cal pressure					
E0655	A	Pneumatic appliance half arm					
E0660	A	Pneumatic appliance full leg					
E0665	A	Pneumatic appliance full arm					
E0666	A	Pneumatic appliance half leg					
E0667	A	Seg pneumatic appl full leg					
E0668	A	Seg pneumatic appl full arm					
E0669	A	Seg pneumatic appli half leg					
E0671	A	Pressure pneum appl full leg					
E0672	A	Pressure pneum appl full arm					
E0673	A	Pressure pneum appl half leg					
E0690	A	Ultraviolet cabinet					
E0700	A	Safety equipment					
E0710	A	Restraints any type					
E0720	A	Tens two lead					
E0730	A	Tens four lead					
E0731	A	Conductive garment for tens/					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
E0740	A	Incontinence treatment systm					
E0744	A	Neuromuscular stim for scoli					
E0745	A	Neuromuscular stim for shock					
E0746	A	Electromyograph biofeedback					
E0747	A	Elec osteogen stim not spine					
E0748	A	Elec osteogen stim spinal					
E0749	A	Elec osteogen stim implanted					
E0751	A	Pulse generator or receiver					
E0753	A	Neurostimulator electrodes					
E0755	A	Electronic salivary reflex s					
E0760	A	Osteogen ultrasound stimltor					
E0775	A	Iv pole					
E0781	A	External ambulatory infus pu					
E0782	A	Non-programble infusion pump					
E0783	A	Programmable infusion pump					
E0784	A	Ext amb infusn pump insulin					
E0791	A	Parenteral infusion pump sta					
E0840	A	Tract frame attach headboard					
E0850	A	Traction stand free standing					
E0855	A	Cervical traction equipment					
E0860	A	Tract equip cervical tract					
E0870	A	Tract frame attach footboard					
E0880	A	Trac stand free stand extrem					
E0890	A	Traction frame attach pelvic					
E0900	A	Trac stand free stand pelvic					
E0910	A	Trapeze bar attached to bed					
E0920	A	Fracture frame attached to b					
E0930	A	Fracture frame free standing					
E0935	A	Exercise device passive moti					
E0940	A	Trapeze bar free standing					
E0941	A	Gravity assisted traction de					
E0942	A	Cervical head harness/halter					
E0943	A	Cervical pillow					
E0944	A	Pelvic belt/harness/boot					
E0945	A	Belt/harness extremity					
E0946	A	Fracture frame dual w cross					
E0947	A	Fracture frame attachmnts pe					
E0948	A	Fracture frame attachmnts ce					
E0950	A	Tray					
E0951	A	Loop heel					
E0952	A	Loop toe					
E0953	A	Pneumatic tire					
E0954	A	Wheelchair semi-pneumatic ca					
E0958	A	Whlchr att- conv 1 arm drive					
E0959	A	Amputee adapter					
E0961	A	Wheelchair brake extension					
E0962	A	Wheelchair 1 inch cushion					
E0963	A	Wheelchair 2 inch cushion					
E0964	A	Wheelchair 3 inch cushion					
E0965	A	Wheelchair 4 inch cushion					
E0966	A	Wheelchair head rest extensi					
E0967	A	Wheelchair hand rims					
E0968	A	Wheelchair commode seat					
E0969	A	Wheelchair narrowing device					
E0970	A	Wheelchair no. 2 footplates					
E0971	A	Wheelchair anti-tipping devi					
E0972	A	Transfer board or device					
E0973	A	Wheelchair adjustabl height					
E0974	A	Wheelchair grade-aid					
E0975	A	Wheelchair reinforced seat u					
E0976	A	Wheelchair reinforced back u					
E0977	A	Wheelchair wedge cushion					
E0978	A	Wheelchair belt w/airplane b					
E0979	A	Wheelchair belt with velcro					
E0980	A	Wheelchair safety vest					
E0990	A	Whellchair elevating leg res					
E0991	A	Wheelchair upholstry seat					
E0992	A	Wheelchair solid seat insert					
E0993	A	Wheelchair back upholstery					
E0994	A	Wheelchair arm rest					
E0995	A	Wheelchair calf rest					
E0996	A	Wheelchair tire solid					
E0997	A	Wheelchair caster w/ a fork					
E0998	A	Wheelchair caster w/o a fork					
E0999	A	Wheelchr pneumatic tire w/wh					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
E1000	A	Wheelchair tire pneumatic ca					
E1001	A	Wheelchair wheel					
E1031	A	Rollabout chair with casters					
E1050	A	Whelchr fxd full length arms					
E1060	A	Wheelchair detachable arms					
E1065	A	Wheelchair power attachment					
E1066	A	Wheelchair battery charger					
E1069	A	Wheelchair deep cycle batter					
E1070	A	Wheelchair detachable foot r					
E1083	A	Hemi-wheelchair fixed arms					
E1084	A	Hemi-wheelchair detachable a					
E1085	A	Hemi-wheelchair fixed arms					
E1086	A	Hemi-wheelchair detachable a					
E1087	A	Wheelchair lightwt fixed arm					
E1088	A	Wheelchair lightweight det a					
E1089	A	Wheelchair lightwt fixed arm					
E1090	A	Wheelchair lightweight det a					
E1091	A	Wheelchair youth					
E1092	A	Wheelchair wide w/ leg rests					
E1093	A	Wheelchair wide w/ foot rest					
E1100	A	Whchr s-recl fxd arm leg res					
E1110	A	Wheelchair semi-recl detach					
E1130	A	Whlchr stand fxd arm ft rest					
E1140	A	Wheelchair standard detach a					
E1150	A	Wheelchair standard w/ leg r					
E1160	A	Wheelchair fixed arms					
E1170	A	Whlchr ampu fxd arm leg rest					
E1171	A	Wheelchair amputee w/o leg r					
E1172	A	Wheelchair amputee detach ar					
E1180	A	Wheelchair amputee w/ foot r					
E1190	A	Wheelchair amputee w/ leg re					
E1195	A	Wheelchair amputee heavy dut					
E1200	A	Wheelchair amputee fixed arm					
E1210	A	Whlchr moto ful arm leg rest					
E1211	A	Wheelchair motorized w/ det					
E1212	A	Wheelchair motorized w full					
E1213	A	Wheelchair motorized w/ det					
E1220	A	Whlchr special size/constrc					
E1221	A	Wheelchair spec size w foot					
E1222	A	Wheelchair spec size w/ leg					
E1223	A	Wheelchair spec size w foot					
E1224	A	Wheelchair spec size w/ leg					
E1225	A	Wheelchair spec sz semi-recl					
E1226	A	Wheelchair spec sz full-recl					
E1227	A	Wheelchair spec sz spec ht a					
E1228	A	Wheelchair spec sz spec ht b					
E1230	A	Power operated vehicle					
E1240	A	Whchr litwt det arm leg rest					
E1250	A	Wheelchair lightwt fixed arm					
E1260	A	Wheelchair lightwt foot rest					
E1270	A	Wheelchair lightweight leg r					
E1280	A	Whchr h-duty det arm leg res					
E1285	A	Wheelchair heavy duty fixed					
E1290	A	Wheelchair hvy duty detach a					
E1295	A	Wheelchair heavy duty fixed					
E1296	A	Wheelchair special seat heig					
E1297	A	Wheelchair special seat dept					
E1298	A	Wheelchair spec seat depth/w					
E1300	A	Whirlpool portable					
E1310	A	Whirlpool non-portable					
E1340	A	Repair for DME, per 15 min					
E1353	A	Oxygen supplies regulator					
E1355	A	Oxygen supplies stand/rack					
E1372	A	Oxy suppl heater for nebuliz					
E1375	A	Oxygen suppl nebulizer porta					
E1377	A	Oxygen concentrator to 244 c					
E1378	A	Oxygen concentrator to 488 c					
E1379	A	Oxygen concentrator to 732 c					
E1380	A	Oxygen concentrator to D976 c					
E1381	A	Oxygen concentrat to 1220 cu					
E1382	A	Oxygen concentrat to 1464 cu					
E1383	A	Oxygen concentrat to 1708 cu					
E1384	A	Oxygen concentrat to 1952 cu					
E1385	A	Oxygen concentrator > 1952 c					
E1399	A	Durable medical equipment mi					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
E1400	A	Oxygen concentrator < 2 lite					
E1401	A	Oxygen concentrator 2-3 lite					
E1402	A	Oxygen concentrator 3-4 lite					
E1403	A	Oxygen concentrator 4-5 lite					
E1404	A	Oxygen concentrator > 5 lite					
E1405	A	O2/water vapor enrich w/heat					
E1406	A	O2/water vapor enrich w/o he					
E1510	A	Kidney dialysate delivry sys					
E1520	A	Heparin infusion pump for di					
E1530	A	Air bubble detector for dial					
E1540	A	Pressure alarm for dialysis					
E1550	A	Bath conductivity meter					
E1560	A	Blood leak detector for dial					
E1570	A	Adjustable chair for esrd pt					
E1575	A	Transducer protector/fluid b					
E1580	A	Unipuncture control system					
E1590	A	Hemodialysis machine					
E1592	A	Auto interm peritoneal dialy					
E1594	A	Cycler dialysis machine					
E1600	A	Deliv/install equip for dial					
E1610	A	Reverse osmosis water purifi					
E1615	A	Deionizer water purification					
E1620	A	Blood pump for dialysis					
E1625	A	Water softening system					
E1630	A	Reciprocating peritoneal dia					
E1632	A	Wearable artificial kidney					
E1635	A	Compact travel hemodialyzer					
E1636	A	Sorbent cartridges for dialy					
E1640	A	Replacement components for d					
E1699	A	Dialysis equipment unspecifi					
E1700	A	Jaw motion rehab system					
E1701	A	Repl cushions for jaw motion					
E1702	A	Repl measr scales jaw motion					
E1800	A	Adjust elbow ext/flex device					
E1805	A	Adjust wrist ext/flex device					
E1810	A	Adjust knee ext/flex device					
E1815	A	Adjust ankle ext/flex device					
E1820	A	Soft interface material					
E1825	A	Adjust finger ext/flex devc					
E1830	A	Adjust toe ext/flex device					
G0001	A	Drawing blood for specimen					
G0002	N	Temporary urinary catheter					
G0004	X	ECG transm phys review & int	956	1.09	$56.05	$54.47	$11.21
G0005	X	ECG 24 hour recording	956	1.09	$56.05	$54.47	$11.21
G0006	X	ECG transmission & analysis	956	1.09	$56.05	$54.47	$11.21
G0007	N	ECG phy review & interpret					
G0008	X	Admin influenza virus vac	901	0.07	$3.60	$2.49	$0.72
G0009	X	Admin pneumococcal vaccine	901	0.07	$3.60	$2.49	$0.72
G0010	X	Admin hepatitis b vaccine	902	1.31	$67.36	$36.19	$13.47
G0015	X	Post symptom ECG tracing	956	1.09	$56.05	$54.47	$11.21
G0016	N	Post symptom ECG md review					
G0025	X	Collagen skin test kit	861	0.22	$11.31	$6.78	$2.26
G0026	A	Fecal leukocyte examination					
G0027	A	Semen analysis					
G0030	S	PET imaging prev PET single	760	14.89	$765.64	$419.46	$153.13
G0031	S	PET imaging prev PET multple	760	14.89	$765.64	$419.46	$153.13
G0032	S	PET follow SPECT 78464 singl	760	14.89	$765.64	$419.46	$153.13
G0033	S	PET follow SPECT 78464 mult	760	14.89	$765.64	$419.46	$153.13
G0034	S	PET follow SPECT 78465 singl	760	14.89	$765.64	$419.46	$153.13
G0035	S	PET follow SPECT 78465 mult	760	14.89	$765.64	$419.46	$153.13
G0036	S	PET follow cornry angio sing	760	14.89	$765.64	$419.46	$153.13
G0037	S	PET follow cornry angio mult	760	14.89	$765.64	$419.46	$153.13
G0038	S	PET follow myocard perf sing	760	14.89	$765.64	$419.46	$153.13
G0039	S	PET follow myocard perf mult	760	14.89	$765.64	$419.46	$153.13
G0040	S	PET follow stress echo singl	760	14.89	$765.64	$419.46	$153.13
G0041	S	PET follow stress echo mult	760	14.89	$765.64	$419.46	$153.13
G0042	S	PET follow ventriculogm sing	760	14.89	$765.64	$419.46	$153.13
G0043	S	PET follow ventriculogm mult	760	14.89	$765.64	$419.46	$153.13
G0044	S	PET following rest ECG singl	760	14.89	$765.64	$419.46	$153.13
G0045	S	PET following rest ECG mult	760	14.89	$765.64	$419.46	$153.13
G0046	S	PET follow stress ECG singl	760	14.89	$765.64	$419.46	$153.13
G0047	S	PET follow stress ECG mult	760	14.89	$765.64	$419.46	$153.13
G0050	S	Residual urine by ultrasound	747	1.65	$84.84	$54.47	$16.97
G0101	V	CA screen;pelvic/breast exam	913				
G0104	S	CA screen;flexi sigmoidscope	446	2.54	$130.61	$84.86	$26.12

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
G0105	S	Colorectal scrn; hi risk ind	426	6.74	$346.57	$185.32	$69.91
G0106	S	Colon CA screen;barium enema	736	1.85	$95.13	$53.79	$19.03
G0107	A	CA screen; fecal blood test					
G0110	A	Nett pulm-rehab educ; ind					
G0111	A	Nett pulm-rehab educ; group					
G0112	A	Nett;nutrition guid, initial					
G0113	A	Nett;nutrition guid,subseqnt					
G0114	A	Nett; psychosocial consult					
G0115	A	Nett; psychological testing					
G0116	A	Nett; psychosocial counsel					
G0120	S	Colon ca scrn; barium enema					
G0121	E	Colon ca scrn not hi rsk ind	736	1.85	$95.13	$53.79	$19.03
G0122	E	Colon ca scrn; barium enema					
J0120	N	Tetracyclin injection					
J0150	N	Injection adenosine 6 MG					
J0170	N	Adrenalin epinephrin inject					
J0190	N	Inj biperiden lactate/5 mg					
J0205	N	Alglucerase injection					
J0207	N	Amifostine					
J0210	N	Methyldopate hcl injection					
J0256	N	Alpha 1 proteinase inhibitor					
J0270	E	Alprostadil for injection					
J0280	N	Aminophyllin 250 MG inj					
J0290	N	Ampicillin 500 MG inj					
J0295	N	Ampicillin sodium per 1.5 gm					
J0300	N	Amobarbital 125 MG inj					
J0330	N	Succinycholine chloride inj					
J0340	N	Nandrolon phenpropionate inj					
J0350	N	Injection anistreplase 30 u					
J0360	N	Hydralazine hcl injection					
J0380	N	Inj metaraminol bitartrate					
J0390	N	Chloroquine injection					
J0400	N	Inj trimethaphan camsylate					
J0460	N	Atropine sulfate injection					
J0470	N	Dimecaprol injection					
J0475	N	Baclofen 10 MG injection					
J0500	N	Dicyclomine injection					
J0510	N	Benzquinamide injection					
J0515	N	Inj benztropine mesylate					
J0520	N	Bethanechol chloride inject					
J0530	N	Penicillin g benzathine inj					
J0540	N	Penicillin g benzathine inj					
J0550	N	Penicillin g benzathine inj					
J0560	N	Penicillin g benzathine inj					
J0570	N	Penicillin g benzathine inj					
J0580	N	Penicillin g benzathine inj					
J0585	N	Botulinum toxin a per unit					
J0590	N	Ethylnorepinephrine hcl inj					
J0600	N	Edetate calcium disodium inj					
J0610	N	Calcium gluconate injection					
J0620	N	Calcium glycer & lact/10 ML					
J0630	N	Calcitonin salmon injection					
J0635	N	Calcitriol injection					
J0640	E	Leucovorin calcium injection					
J0670	N	Inj mepivacaine HCL/10 ml	V01	4.15	$213.39	$138.99	$42.68
J0690	N	Cefazolin sodium injection					
J0694	N	Cefoxitin sodium injection					
J0695	N	Cefonocid sodium injection					
J0696	N	Ceftriaxone sodium injection					
J0697	N	Sterile cefuroxime injection					
J0698	N	Cefotaxime sodium injection					
J0702	N	Betamethasone acet&sod phosp					
J0704	N	Betamethasone sod phosp/4 MG					
J0710	N	Cephapirin sodium injection					
J0713	N	Inj ceftazidime per 500 mg					
J0715	N	Ceftizoxime sodium/500 MG					
J0720	N	Chloramphenicol sodium injec					
J0725	N	Chorionic gonadotropin/1000u					
J0730	N	Chlorpheniramin maleate inj					
J0735	N	Clonidine hydrochloride					
J0740	N	Cidofovir injection					
J0743	N	Cilastatin sodium injection					
J0745	N	Inj codeine phosphate /30 MG					
J0760	N	Colchicine injection					
J0770	N	Colistimethate sodium inj					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
J0780	N	Prochlorperazine injection					
J0800	N	Corticotropin injection					
J0810	N	Cortisone injection					
J0835	N	Inj cosyntropin per 0.25 MG					
J0850	N	Cytomegalovirus imm IV /vial					
J0895	N	Deferoxamine mesylate inj					
J0900	N	Testosterone enanthate inj					
J0945	N	Brompheniramine maleate inj					
J0970	N	Estradiol valerate injection					
J1000	N	Depo-estradiol cypionate inj					
J1020	N	Methylprednisolone 20 MG inj					
J1030	N	Methylprednisolone 40 MG inj					
J1040	N	Methylprednisolone 80 MG inj					
J1050	N	Medroxyprogesterone inj					
J1055	E	Medroxyprogester acetate inj					
J1060	N	Testosterone cypionate 1 ML					
J1070	N	Testosterone cypionat 100 MG					
J1080	N	Testosterone cypionat 200 MG					
J1090	N	Testosterone cypionate 50 MG					
J1095	N	Inj dexamethasone acetate					
J1100	N	Dexamethosone sodium phos					
J1110	N	Inj dihydroergotamine mesylt					
J1120	N	Acetazolamid sodium injectio					
J1160	N	Digoxin injection					
J1165	N	Phenytoin sodium injection					
J1170	N	Hydromorphone injection					
J1180	N	Dyphylline injection					
J1190	N	Dexrazoxane HCl injection					
J1200	N	Diphenhydramine hcl injectio					
J1205	N	Chlorothiazide sodium inj					
J1212	N	Dimethyl sulfoxide 50% 50 ML					
J1230	N	Methadone injection					
J1240	N	Dimenhydrinate injection					
J1245	N	Dipyridamole injection					
J1250	N	Inj dobutamine HCL/250 mg					
J1320	N	Amitriptyline injection					
J1325	N	Epoprostenol injection					
J1330	N	Ergonovine maleate injection					
J1362	N	Erythromycin glucep/250 MG					
J1364	N	Erythro lactobionate/500 MG					
J1380	N	Estradiol valerate 10 MG inj					
J1390	N	Estradiol valerate 20 MG inj					
J1410	N	Inj estrogen conjugate 25 MG					
J1435	N	Injection estrone per 1 MG					
J1436	N	Etidronate disodium inj					
J1440	N	grastim 300 mcg injeciton					
J1441	N	Filgrastim 480 mcg injection					
J1455	N	Foscarnet sodium injection					
J1460	N	Gamma globulin 1 CC inj					
J1470	N	Gamma globulin 2 CC inj					
J1480	N	Gamma globulin 3 CC inj					
J1490	N	Gamma globulin 4 CC inj					
J1500	N	Gamma globulin 5 CC inj					
J1510	N	Gamma globulin 6 CC inj					
J1520	N	Gamma globulin 7 CC inj					
J1530	N	Gamma globulin 8 CC inj					
J1540	N	Gamma globulin 9 CC inj					
J1550	N	Gamma globulin 10 CC inj					
J1560	N	Gamma globulin > 10 CC inj					
J1561	N	Immune globulin 500 mg					
J1562	N	Immune globulin 5 gms					
J1565	N	RSV-ivig					
J1570	N	Ganciclovir sodium injection					
J1580	N	Garamycin gentamicin inj					
J1600	N	Gold sodium thiomaleate inj					
J1610	N	Glucagon hydrochloride/1 MG					
J1620	N	Gonadorelin hydroch/ 100 mcg					
J1626	N	Granisetron HCl injection					
J1630	N	Haloperidol injection					
J1631	N	Haloperidol decanoate inj					
J1642	N	Inj heparin sodium per 10 u					
J1644	N	Inj heparin sodium per 1000u					
J1645	N	Dalteparin sodium					
J1650	N	Inj enoxaparin sodium 30 mg					
J1670	N	Tetanus immune globulin inj					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
J1690	N	Prednisolone tebutate inj					
J1700	N	Hydrocortisone acetate inj					
J1710	N	Hydrocortisone sodium ph inj					
J1720	N	Hydrocortisone sodium succ i					
J1730	N	Diazoxide injection					
J1739	N	Hydroxyprogesterone cap 125					
J1741	N	Hydroxyprogesterone cap 250					
J1742	N	Ibutilide fumarate injection					
J1760	N	Iron dextran 2 CC inj					
J1770	N	Iron dextran 5 CC inj					
J1780	N	Iron dextran 10 CC inj					
J1785	N	Injection imiglucerase /unit					
J1790	N	Droperidol injection					
J1800	N	Propranolol injection					
J1810	N	Droperidol/fentanyl inj					
J1820	N	Insulin injection					
J1825	N	Interferon beta-1a					
J1830	N	Interferon beta-1b / .25 MG					
J1840	N	Kanamycin sulfate 500 MG inj					
J1850	N	Kanamycin sulfate 75 MG inj					
J1885	N	Ketorolac tromethamine inj					
J1890	N	Cephalothin sodium injection					
J1910	N	Kutapressin injection					
J1930	N	Propiomazine injection					
J1940	N	Furosemide injection					
J1950	X	Leuprolide acetate /3.75 MG	064	4.15	$213.39	$136.96	$42.68
J1955	N	Inj levocarnitine per 1 gm					
J1960	N	Levorphanol tartrate inj					
J1970	N	Methotrimeprazine injection					
J1980	N	Hyoscyamine sulfate inj					
J1990	N	Chlordiazepoxide injection					
J2000	N	Lidocaine injection					
J2010	N	Lincomycin injection					
J2060	N	Lorazepam injection					
J2150	N	Mannitol injection					
J2175	N	Meperidine hydrochl /100 MG					
J2180	N	Meperidine/promethazine inj					
J2210	N	Methylergonovin maleate inj					
J2240	N	Metocurine iodide injection					
J2250	N	Inj midazolam hydrochloride					
J2260	N	Inj milrinone lactate / 5 ML					
J2270	N	Morphine sulfate injection					
J2275	N	Morphine sulfate injection					
J2300	N	Inj nalbuphine hydrochloride					
J2310	N	Inj naloxone hydrochloride					
J2320	N	Nandrolone decanoate 50 MG					
J2321	N	Nandrolone decanoate 100 MG					
J2322	N	Nandrolone decanoate 200 MG					
J2330	N	Thiothixene injection					
J2350	N	Niacinamide/niacin injection					
J2360	N	Orphenadrine injection					
J2370	N	Phenylephrine hcl injection					
J2400	N	Chloroprocaine hcl injection					
J2405	N	Ondansetron hcl injection					
J2410	N	Oxymorphone hcl injection					
J2430	N	Pamidronate disodium /30 MG					
J2440	N	Papaverin hcl injection					
J2460	N	Oxytetracycline injection					
J2480	N	Hydrochlorides of opium inj					
J2510	N	Penicillin g procaine inj					
J2512	N	Inj pentagastrin per 2 ML					
J2515	N	Pentobarbital sodium inj					
J2540	N	Penicillin g potassium inj					
J2545	A	Pentamidine isethionte/300mg					
J2550	N	Promethazine hcl injection					
J2560	N	Phenobarbital sodium inj					
J2590	N	Oxytocin injection					
J2597	N	Inj desmopressin acetate					
J2640	N	Prednisolone sodium ph inj					
J2650	N	Prednisolone acetate inj					
J2670	N	Totazoline hcl injection					
J2675	N	Inj progesterone per 50 MG					
J2680	N	Fluphenazine decanoate 25 MG					
J2690	N	Procainamide hcl injection					
J2700	N	Oxacillin sodium injeciton					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
J2710	N	Neostigmine methylsilfte inj					
J2720	N	Inj protamine sulfate/10 MG					
J2725	N	Inj protirelin per 250 mcg					
J2730	N	Pralidoxime chloride inj					
J2760	N	Phentolaine mesylate inj					
J2765	N	Metoclopramide hcl injection					
J2790	N	Rho d immune globulin inj					
J2800	N	Methocarbamol injection					
J2810	N	Inj theophylline per 40 MG					
J2820	N	Sargramostim injection					
J2860	N	Secobarbital sodium inj					
J2910	N	Aurothioglucose injeciton					
J2912	N	Sodium chloride injection					
J2920	N	Methylprednisolone injection					
J2930	N	Methylprednisolone injection					
J2950	N	Promazine hcl injeciton					
J2970	N	Methicillin sodium injection					
J2995	N	Inj streptokinase /250000 IU					
J2996	N	Alteplase recombinant inj					
J3000	N	Streptomycin injection					
J3010	N	Fentanyl citrate injeciton					
J3030	N	Sumatriptan succinate / 6 MG					
J3070	N	Pentazocine hcl injeciton					
J3080	N	Chlorprothixene injection					
J3105	N	Terbutaline sulfate inj					
J3120	N	Testosterone enanthate inj					
J3130	N	Testosterone enanthate inj					
J3140	N	Testosterone suspension inj					
J3150	N	Testosteron propionate inj					
J3230	N	Chlorpromazine hcl injection					
J3240	N	Thyrotropin injection					
J3250	N	Trimethobenzamide hcl inj					
J3260	N	Tobramycin sulfate injection					
J3265	N	Injection torsemide 10 mg/ml					
J3270	N	Imipramine hcl injection					
J3280	N	Thiethylperazine maleate inj					
J3301	N	Triamcinolone acetonide inj					
J3302	N	Triamcinolone diacetate inj					
J3303	N	Triamcinolone hexacetonl inj					
J3305	N	Inj trimetrexate glucoronate					
J3310	N	Perphenazine injeciton					
J3320	N	Spectinomycn di-hcl inj					
J3350	N	Urea injection					
J3360	N	Diazepam injection					
J3364	N	Urokinase 5000 IU injection					
J3365	N	Urokinase 250,000 IU inj					
J3370	N	Vancomycin hcl injeciton					
J3390	N	Methoxamine injection					
J3400	N	Triflupromazine hcl inj					
J3410	N	Hydroxyzine hcl injeciton					
J3420	N	Vitamin b12 injection					
J3430	N	Vitamin k phytonadione inj					
J3450	N	Mephentermine sulfate inj					
J3470	N	Hyaluronidase injection					
J3475	N	Inj magnesium sulfate					
J3480	N	Inj potassium chloride					
J3490	N	Drugs unclassified injection					
J3520	E	Edetate disodium per 150 mg					
J3530	N	Nasal vaccine inhalation					
J3535	E	Metered dose inhaler drug					
J3570	E	Laetrile amygdalin vit B17					
J7030	N	Normal saline solution infus					
J7040	N	Normal saline solution infus					
J7042	N	5% dextrose/normal saline					
J7050	N	Normal saline solution infus					
J7051	N	Sterile saline/water					
J7060	N	5% dextrose/water					
J7070	N	D5w infusion					
J7100	N	Dextran 40 infusion					
J7110	N	Dextran 75 infusion					
J7120	N	Ringers lactate infusion					
J7130	N	Hypertonic saline solution					
J7190	N	Factor viii					
J7191	N	Factor VIII (porcine)					
J7192	N	Factor viii recombinant					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
J7194	N	Factor ix complex					
J7196	N	Othr hemophilia clot factors					
J7197	N	Antithrombin iii injection					
J7300	E	Intraut copper contraceptive					
J7310	N	Ganciclovir long act implant					
J7500	N	Azathiop po tab 50mg 100s ea					
J7501	N	Azathioprine parenteral					
J7503	N	Cyclosporine parenteral					
J7504	N	Lymphocyte immune globulin					
J7505	N	Monoclonal antibodies					
J7506	N	Prednisone oral					
J7507	N	Tacrolimus oral per 1 MG					
J7508	N	Tacrolimus oral per 5 MG					
J7509	N	Methylprednisolone oral					
J7510	N	Prednisolone oral per 5 mg					
J7599	N	Immunosuppressive drug noc					
J7610	A	Acetylcysteine 10% injection					
J7615	A	Acetylcysteine 20% injection					
J7620	A	Albuterol sulfate .083%/ml					
J7625	A	Albuterol sulfate .5% inj					
J7627	A	Bitolterolmesylate inhal sol					
J7630	A	Cromolyn sodium injeciton					
J7640	A	Epinephrine injection					
J7645	A	Ipratropium bromide .02%/ml					
J7650	A	Isoetharine hcl .1% inj					
J7651	A	Isoetharine hcl .125% inj					
J7652	A	Isoetharine hcl .167% inj					
J7653	A	Isoetharine hcl .2%/ inj					
J7654	A	Isoetharine hcl .25% inj					
J7655	A	Isoetharine hcl 1% inj					
J7660	A	Isoproterenol hcl .5% inj					
J7665	A	Isoproterenol hcl 1% inj					
J7670	A	Metaproterenol sulfate .4%					
J7672	A	Metaproterenol sulfate .6%					
J7675	A	Metaproterenol sulfate 5%					
J7699	A	Inhalation solution for DME					
J7799	A	Non-inhalation drug for DME					
J8499	E	Oral prescrip drug non chemo					
J8530	N	Cyclophosphamide oral 25 MG					
J8560	N	Etoposide oral 50 MG					
J8600	N	Melphalan oral 2 MG					
J8610	X	Methotrexate oral 2.5 MG	061	1.15	$59.13	$37.52	$11.83
J8999	X	Oral prescription drug chemo	061	1.15	$59.13	$37.52	$11.83
J9000	X	Doxorubic hcl 10 MG vl chemo	062	1.78	$91.53	$36.61	$18.31
[2] J9010	X	Doxorubicin hcl 50 MG inj	063	2.94	$151.17	$110.97	$30.24
J9015	X	Aldesleukin/single use vial	061	1.15	$59.13	$37.52	$11.83
J9020	X	Asparaginase injection	062	1.78	$91.53	$36.61	$18.31
J9031	X	Bcg live intravesical vac	063	2.94	$151.17	$110.97	$30.24
J9040	X	Bleomycin sulfate injection	063	2.94	$151.17	$110.97	$30.24
J9045	X	Carboplatin injection	063	2.94	$151.17	$110.97	$30.24
J9050	X	Carmus bischl nitro inj	063	2.94	$151.17	$110.97	$30.24
J9060	X	Cisplatin 10 MG injection	062	1.78	$91.53	$36.61	$18.31
J9062	X	Cisplatin 50 MG injection	063	2.94	$151.17	$110.97	$30.24
J9065	X	Inj cladribine per 1 MG	062	1.78	$91.53	$36.61	$18.31
J9070	X	Cyclophosphamide 100 MG inj	061	1.15	$59.13	$37.52	$11.83
J9080	X	Cyclophosphamide 200 MG inj	061	1.15	$59.13	$37.52	$11.83
J9090	X	Cyclophosphamide 500 MG inj	061	1.15	$59.13	$37.52	$11.83
J9091	X	Cyclophosphamide 1.0 grm inj	062	1.78	$91.53	$36.61	$18.31
J9092	X	Cyclophosphamide 2.0 grm inj	062	1.78	$91.53	$36.61	$18.31
J9093	X	Cyclophosphamide lyophilized	061	1.15	$59.13	$37.52	$11.83
J9094	X	Cyclophosphamide lyophilized	061	1.15	$59.13	$37.52	$11.83
J9095	X	Cyclophosphamide lyophilized	061	1.15	$59.13	$37.52	$11.83
J9096	X	Cyclophosphamide lyophilized	062	1.78	$91.53	$36.61	$18.31
J9097	X	Cyclophosphamide lyophilized	062	1.78	$91.53	$36.61	$18.31
J9100	X	Cytarabine hcl 100 MG inj	061	1.15	$59.13	$37.52	$11.83
J9110	X	Cytarabine hcl 500 MG inj	061	1.15	$59.13	$37.52	$11.83
J9120	X	Dactinomycin actinomycin d	061	1.15	$59.13	$37.52	$11.83
J9130	X	Dacarbazine 10 MG inj	061	1.15	$59.13	$37.52	$11.83
J9140	X	Dacarbazine 200 MG inj	061	1.15	$59.13	$37.52	$11.83
J9150	X	Daunorubicin	062	1.78	$91.53	$36.61	$18.31
J9165	X	Diethylstilbestrol injection	061	1.15	$59.13	$37.52	$11.83
J9170	X	Docetaxel	061	1.15	$59.13	$37.52	$11.83
J9181	X	Etoposide 10 MG inj	061	1.15	$59.13	$37.52	$11.83
J9182	X	Etoposide 100 MG inj	063	2.94	$151.17	$110.97	$30.24
J9185	X	Fludarabine phosphate inj	063	2.94	$151.17	$110.97	$30.24

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
J9190	X	Fluorouracil injection	061	1.15	$59.13	$37.52	$11.83
J9200	X	Floxuridine injection	063	2.94	$151.17	$110.97	$30.24
J9201	X	Gemcitabine HCl	061	1.15	$59.13	$37.52	$11.83
J9202	X	Goserelin acetate implant	063	2.94	$151.17	$110.97	$30.24
J9206	X	Irinotecan injection	061	1.15	$59.13	$37.52	$11.83
J9208	X	Ifosfomide injection	063	2.94	$151.17	$110.97	$30.24
J9209	X	Mesna injection	063	2.94	$151.17	$110.97	$30.24
J9211	X	Idarubicin hcl injeciton	062	1.78	$91.53	$36.61	$18.31
J9213	X	Interferon alfa-2a inj	062	1.78	$91.53	$36.61	$18.31
J9214	X	Interferon alfa-2b inj	061	1.15	$59.13	$37.52	$11.83
J9215	X	Interferon alfa-n3 inj	061	1.15	$59.13	$37.52	$11.83
J9216	X	Interferon gamma 1-b inj	063	2.94	$151.17	$110.97	$30.24
J9217	X	Leuprolide acetate suspnsion	064	4.15	$213.39	$138.99	$42.68
J9218	X	Leuprolide acetate injeciton	061	1.15	$59.13	$37.52	$11.83
J9230	X	Mechlorethamine hcl inj	061	1.15	$59.13	$37.52	$11.83
J9245	X	Inj melphalan hydrochl 50 MG	064	4.15	$213.39	$138.99	$42.68
J9250	X	Methotrexate sodium inj	061	1.15	$59.13	$37.52	$11.83
J9260	X	Methotrexate sodium inj	061	1.15	$59.13	$37.52	$11.83
J9265	X	Paclitaxel injection	062	1.78	$91.53	$36.61	$18.31
J9266	X	Pegaspargase/singl dose vial	061	1.15	$59.13	$37.52	$11.83
J9268	X	Pentostatin injection	062	1.78	$91.53	$36.61	$18.31
J9270	X	Plicamycin (mithramycin) inj	063	2.94	$151.17	$110.97	$30.24
J9280	X	Mitomycin 5 MG inj	063	2.94	$151.17	$110.97	$30.24
J9290	X	Mitomycin 20 MG inj	064	4.15	$213.39	$138.99	$42.68
J9291	X	Mitomycin 40 MG inj	064	4.15	$213.39	$138.99	$42.68
J9293	X	Mitoxantrone hydrochl / 5 MG	064	4.15	$213.39	$138.99	$42.68
J9320	X	Streptozocin injection	063	2.94	$151.17	$110.97	$30.24
J9340	X	Thiotepa injection	063	2.94	$151.17	$110.97	$30.24
J9350	X	Topotecan	061	1.15	$59.13	$37.52	$11.83
J9360	X	Vinblastine sulfate inj	061	1.15	$59.13	$37.52	$11.83
J9370	X	Vincristine sulfate 1 MG inj	062	1.78	$91.53	$36.61	$18.31
J9375	X	Vincristine sulfate 2 MG inj	063	2.94	$151.17	$110.97	$30.24
J9380	X	Vincristine sulfate 5 MG inj	063	2.94	$151.17	$110.97	$30.24
J9390	X	Vinorelbine tartrate/10 mg	061	1.15	$59.13	$37.52	$11.83
J9600	X	Porfimer sodium	061	1.15	$59.13	$37.52	$11.83
J9999	X	Chemotherapy drug	061	1.15	$59.13	$37.52	$11.83
K0001	A	Standard wheelchair					
K0002	A	Stnd hemi (low seat) whlchr					
K0003	A	Lightweight wheelchair					
K0004	A	High strength ltwt whlchr					
K0005	A	Ultralightweight wheelchair					
K0006	A	Heavy duty wheelchair					
K0007	A	Extra heavy duty wheelchair					
K0008	A	Cstm manual wheelchair/base					
K0009	A	Other manual wheelchair/base					
K0010	A	Stnd wt frame power whlchr					
K0011	A	Stnd wt pwr whlchr w control					
K0012	A	Ltwt portbl power whlchr					
K0013	A	Custom power whlchr base					
K0014	A	Other power whlchr base					
K0015	A	Detach non-adjus hght armrst					
K0016	A	Detach adjust armrst cmplete					
K0017	A	Detach adjust armrest base					
K0018	A	Detach adjust armrst upper					
K0019	A	Arm pad each					
K0020	A	Fixed adjust armrest pair					
K0021	A	Anti-tipping device each					
K0022	A	Reinforced back upholstery					
K0023	A	Planr back insrt foam w/strp					
K0024	A	Plnr back insrt foam w/hrdwr					
K0025	A	Hook-on headrest extension					
K0026	A	Back upholst lgtwt whlchr					
K0027	A	Back upholst other whlchr					
K0028	A	Fully reclining back					
K0029	A	Reinforced seat upholstery					
K0030	A	Solid plnr seat sngl dnsfoam					
K0031	A	Safety belt/pelvic strap					
K0032	A	Seat uphols lgtwt whlchr					
K0033	A	Seat upholstery other whlchr					
K0034	A	Heel loop each					
K0035	A	Heel loop with ankle strap					
K0036	A	Toe loop each					
K0037	A	High mount flip-up footrest					
K0038	A	Leg strap each					
K0039	A	Leg strap h style each					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
K0040	A	Adjustable angle footplate					
K0041	A	Large size footplate each					
K0042	A	Standard size footplate each					
K0043	A	Ftrst lower extension tube					
K0044	A	Ftrst upper hanger bracket					
K0045	A	Footrest complete assembly					
K0046	A	Elevat legrst low extension					
K0047	A	Elevat legrst up hangr brack					
K0048	A	Elevate legrest complete					
K0049	A	Calf pad each					
K0050	A	Ratchet assembly					
K0051	A	Cam relese assem ftrst/lgrst					
K0052	A	Swingaway detach footrest					
K0053	A	Elevate footrest articulate					
K0054	A	Seat wdth 10-12/15/17/20 wc					
K0055	A	Seat dpth 15/17/18 ltwt wc					
K0056	A	Seat ht <17 or >=21 ltwt wc					
K0057	A	Seat wdth 19/20 hvy dty wc					
K0058	A	Seat dpth 17/18 power wc					
K0059	A	Plastic coated handrim each					
K0060	A	Steel handrim each					
K0061	A	Aluminum handrim each					
K0062	A	Handrim 8-10 vert/obliq proj					
K0063	A	Hndrm 12-16 vert/obliq proj					
K0064	A	Zero pressure tube flat free					
K0065	A	Spoke protectors					
K0066	A	Solid tire any size each					
K0067	A	Pneumatic tire any size each					
K0068	A	Pneumatic tire tube each					
K0069	A	Rear whl complete solid tire					
K0070	A	Rear whl compl pneum tire					
K0071	A	Front castr compl pneum tire					
K0072	A	Frnt cstr cmpl sem-pneum tir					
K0073	A	Caster pin lock each					
K0074	A	Pneumatic caster tire each					
K0075	A	Semi-pneumatic caster tire					
K0076	A	Solid caster tire each					
K0077	A	Front caster assem complete					
K0078	A	Pneumatic caster tire tube					
K0079	A	Wheel lock extension pair					
K0080	A	Anti-rollback device pair					
K0081	A	Wheel lock assembly complete					
K0082	A	22 nf deep cycl acid battery					
K0083	A	22 nf gel cell battery each					
K0084	A	Grp 24 deep cycl acid battry					
K0085	A	Group 24 gel cell battery					
K0086	A	U-1 lead acid battery each					
K0087	A	U-1 gel cell battery each					
K0088	A	Battry chrgr acid/gel cell					
K0089	A	Battery charger dual mode					
K0090	A	Rear tire power wheelchair					
K0091	A	Rear tire tube power whlchr					
K0092	A	Rear assem cmplt powr whlchr					
K0093	A	Rear zero pressure tire tube					
K0094	A	Wheel tire for power base					
K0095	A	Wheel tire tube each base					
K0096	A	Wheel assem powr base complt					
K0097	A	Wheel zero presure tire tube					
K0098	A	Drive belt power wheelchair					
K0099	A	Front caster power wheelchair					
K0100	A	Amputee adapter pair					
K0101	A	One-arm drive attachment					
K0102	A	Crutch and cane holder					
K0103	A	Transfer board < 25"					
K0104	A	Cylinder tank carrier					
K0105	A	Iv hanger					
K0106	A	Arm trough each					
K0107	A	Wheelchair tray					
K0108	A	Other accessories					
K0109	A	Customize whlchr base frame					
K0112	A	Trunk vest supprt innr frame					
K0113	A	Trunk vest suprt w/o inr frm					
K0114	A	Whlchr back suprt inr frame					
K0115	A	Back module orthotic system					
K0116	A	Back & seat modul orthot sys					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
K0119	N	Azathioprine oral tab 50 MG					
K0120	N	Azathioprine prentrl 100 MG					
K0121	N	Cyclosporine oral 25 MG					
K0122	N	Cyclosporine prentrl 250 MG					
K0123	N	Imun/antitymocyt glob 250 MG					
K0137	A	Skin barrier liquid per oz					
K0138	A	Skin barrier paste per oz					
K0139	A	Skin barrier powder per oz					
K0168	A	Disposable nebulizer set					
K0169	A	Disposable nebulizer small					
K0170	A	Non disposable nebulizer set					
K0171	A	Filtered nebulizer set					
K0172	A	Disposable nebulizer unfill					
K0173	A	Disposable nebulizer prefill					
K0174	A	Reservoir bottle w nebulizer					
K0175	A	Disposable corrugated tubing					
K0176	A	Non dispos corrugated tubing					
K0177	A	Water collec dev w nebulizer					
K0178	A	Disposbl filter w compressor					
K0179	A	Non-dispos filter w/compress					
K0180	A	Aerosol mask with nebulizer					
K0181	A	Dome & mouthpiece w/ nebuliz					
K0182	A	Water distilled w/ nebulizer					
K0183	A	Nasal application device					
K0184	A	Nasal pillows/seals pair					
K0185	A	Pos airway pressure headgear					
K0186	A	Pos airway prssure chinstrap					
K0187	A	Pos airway pressure tubing					
K0188	A	Pos airway pressure filter					
K0189	A	Filter nondisposable w PAP					
K0190	A	Disposable canister w/pump					
K0191	A	Non-disposbl canister w/pump					
K0192	A	Tubing used w/ suction pump					
K0193	A	Airway pressure dev/w hmdfer					
K0194	A	Assist device w/humidifier					
K0195	A	Elevating whlchair leg rests					
K0268	A	Humidifier nonheated w PAP					
K0269	A	Aerosol compressor cpap dev					
K0270	A	Ultrasonic generator w nebul					
K0277	A	Skin barrier solid 4x4 equiv					
K0278	A	Skin barrier with flange					
K0279	A	Skin barrier extended wear					
K0280	A	Extension drainage tubing					
K0281	A	Lubricant catheter insertion					
K0283	A	Saline solution dispenser					
K0284	A	External infusion pump reuse					
K0400	A	Skin support attachment each					
K0401	A	Diabetic deluxe shoe					
K0407	A	Urinary cath skin attachment					
K0408	A	Urinary cath leg strap					
K0409	A	Sterile H2O irrigation solut					
K0410	A	Male ext cath w/adh coating					
K0411	A	Male ext cath w/adh strip					
K0412	N	Mycophenolate mofetil 25o mg					
K0415	N	RX antiemetic drg, oral NOS					
K0416	N	Rx antiemetic drg,rectal NOS					
K0417	A	Mech infus pump sht trm drug					
K0418	N	Oral cyclosporin					
K0419	A	Drainable plstic pch w fcplt					
K0420	A	Drainable rubber pch w fcplt					
K0421	A	drainable plstic pch w/o fp					
K0422	A	Drainable rubber pch w/o fp					
K0423	A	Urinary plstic pouch w fcplt					
K0424	A	Urinary rubber pouch w fcplt					
K0425	A	Urinary plstic pouch w/o fp					
K0426	A	Urinary hvy plstc pch w/o fp					
K0427	A	Urinary rubber pouch w/o fp					
K0428	A	Ostomy facepit/silicone ring					
K0429	A	Skin barrier solid ext wear					
K0430	A	Skin barrier w flang ex wear					
K0431	A	Closed pouch w st wear bar					
K0432	A	Drainable pch w ex wear bar					
K0433	A	Drainable pch w st wear bar					
K0434	A	Drainable pch ex wear convex					
K0435	A	Urinary pouch w ex wear bar					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
K0436	A	Urinary pouch w st wear bar					
K0437	A	Urine pch w ex wear bar conv					
K0438	A	Ostomy pouch liq deodorant					
K0439	A	Ostomy pouch solid deodorant					
K0440	A	Nasal prosthesis					
K0441	A	Midfacial prosthesis					
K0442	A	Orbital prosthesis					
K0443	A	Upper facial prosthesis					
K0444	A	Hemi-facial prosthesis					
K0445	A	Auricular prosthesis					
K0446	A	Partial facial prosthesis					
K0447	A	Nasal septal prosthesis					
K0448	A	Unspec maxillofacial prosth					
K0449	A	Repair maxillofacial prosth					
K0450	A	Liq adhes for facial prosth					
K0451	A	Adhesive remover wipes					
K0452	A	Wheelchair bearings					
[2] K0453	N	Amphotericin B					
K0455	A	Pump uninterrupted infusion					
K0501	A	Aerosol compressor for svneb					
K0503	A	Acetylcysteine inh sol u d					
K0504	A	Albuterol inh sol con					
K0505	A	Albuterol inh sol u d					
K0506	A	Atropine inh sol con					
K0507	A	Atropine inh sol u d					
K0508	A	Bitolterol mes inh sol con					
K0509	A	Bitolterol mes inh sol u d					
K0511	A	Cromolyn sodium inh sol u d					
K0512	A	Dexamethasone inh sol con					
K0513	A	Dexamethasone inh sol u d					
K0514	A	Dornase alpha inh sol u d					
K0515	A	Glycopyrrolate inh sol con					
K0516	A	Glycopyrrolate inh sol u d					
K0518	A	Ipratropium brom inh sol u d					
K0519	A	Isoetharine HCl inh sol con					
K0520	A	Isoetharine HCl inh sol u d					
K0521	A	IsoproterenolHCl inh sol con					
K0522	A	IsoproterenolHCl inh sol u d					
K0523	A	Metaproterenol inh sol con					
K0524	A	Metaproterenol inh sol u d					
K0525	A	Terbutaline SO4 inh sol con					
K0526	A	Terbutaline SO4 inh sol u d					
K0527	A	Triamcinolone inh sol con					
K0528	A	Triamcinolone inh sol u d					
K0529	A	Sterile H20 or nss w lv neb					
K0530	A	Nebulizer not used w oxygen					
L0100	A	Cerv craniosten helmet mold					
L0110	A	Cerv craniostenosis hel non-					
L0120	A	Cerv flexible non-adjustable					
L0130	A	Flex thermoplastic collar mo					
L0140	A	Cervical semi-rigid adjustab					
L0150	A	Cerv semi-rig adj molded chn					
L0160	A	Cerv semi-rig wire occ/mand					
L0170	A	Cervical collar molded to pt					
L0172	A	Cerv col thermplas foam 2 pi					
L0174	A	Cerv col foam 2 piece w thor					
L0180	A	Cer post col occ/man sup adj					
L0190	A	Cerv collar supp adj cerv ba					
L0200	A	Cerv col supp adj bar & thor					
L0210	A	Thoracic rib belt					
L0220	A	Thor rib belt custom fabrica					
L0300	A	TLSO flex surgical support					
L0310	A	Tlso flexible custom fabrica					
L0315	A	Tlso flex elas rigid post pa					
L0317	A	Tlso flex hypext elas post p					
L0320	A	Tlso a-p contrl w apron frnt					
L0330	A	Tlso ant-pos-lateral control					
L0340	A	Tlso a-p-l-rotary with apron					
L0350	A	Tlso flex compress jacket cu					
L0360	A	Tlso flex compress jacket mo					
L0370	A	Tlso a-p-l-rotary hyperexten					
L0380	A	Tlso a-p-l-rot w/ pos extens					
L0390	A	Tlso a-p-l control molded					
L0400	A	Tlso-a-p-l w interface mater					
L0410	A	Tlso a-p-l two piece constr					

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CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
L0420	A	Tlso a-p-l 2 piece w interfa					
L0430	A	Tlso a-p-l w interface custm					
L0440	A	Tlso a-p-l overlap frnt cust					
L0500	A	Lso flex surgical support					
L0510	A	Lso flexible custom fabricat					
L0515	A	Lso flex elas w/ rig post pa					
L0520	A	Lso a-p-l control with apron					
L0530	A	Lso ant-pos control w apron					
L0540	A	Lso lumbar flexion a-p-l					
L0550	A	Lso a-p-l control molded					
L0560	A	Lso a-p-l w interface					
L0565	A	Lso a-p-l control custom					
L0600	A	Sacroiliac flex surg support					
L0610	A	Sacroiliac flexible custm fa					
L0620	A	Sacroiliac semi-rig w apron					
L0700	A	Ctlso a-p-l control molded					
L0710	A	Ctlso a-p-l control w/ inter					
L0810	A	Halo cervical into jckt vest					
L0820	A	Halo cervical into body jack					
L0830	A	Halo cerv into milwaukee typ					
L0860	A	Magnetic resonanc image comp					
L0900	A	Torso/ptosis support					
L0910	A	Torso & ptosis supp custm fa					
L0920	A	Torso/pendulous abd support					
L0930	A	Pendulous abdomen supp custm					
L0940	A	Torso/postsurgical support					
L0950	A	Post surg support custom fab					
L0960	A	Post surgical support pads					
L0970	A	Tlso corset front					
L0972	A	Lso corset front					
L0974	A	Tlso full corset					
L0976	A	Lso full corset					
L0978	A	Axillary crutch extension					
L0980	A	Peroneal straps pair					
L0982	A	Stocking supp grips set of f					
L0984	A	Protective body sock each					
L0999	A	Add to spinal orthosis NOS					
L1000	A	Ctlso milwauke initial model					
L1010	A	Ctlso axilla sling					
L1020	A	Kyphosis pad					
L1025	A	Kyphosis pad floating					
L1030	A	Lumbar bolster pad					
L1040	A	Lumbar or lumbar rib pad					
L1050	A	Sternal pad					
L1060	A	Thoracic pad					
L1070	A	Trapezius sling					
L1080	A	Outrigger					
L1085	A	Outrigger bil w/ vert extens					
L1090	A	Lumbar sling					
L1100	A	Ring flange plastic/leather					
L1110	A	Ring flange plas/leather mol					
L1120	A	Covers for upright each					
L1200	A	Furnsh initial orthosis only					
L1210	A	Lateral thoracic extension					
L1220	A	Anterior thoracic extension					
L1230	A	Milwaukee type superstructur					
L1240	A	Lumbar derotation pad					
L1250	A	Anterior asis pad					
L1260	A	Anterior thoracic derotation					
L1270	A	Abdominal pad					
L1280	A	Rib gusset (elastic) each					
L1290	A	Lateral trochanteric pad					
L1300	A	Body jacket mold to patient					
L1310	A	Post-operative body jacket					
L1499	A	Spinal orthosis NOS					
L1500	A	Thkao mobility frame					
L1510	A	Thkao standing frame					
L1520	A	Thkao swivel walker					
L1600	A	Abduct hip flex frejka w cvr					
L1610	A	Abduct hip flex frejka covr					
L1620	A	Abduct hip flex pavlik harne					
L1630	A	Abduct control hip semi-flex					
L1640	A	Pelv band/spread bar thigh c					
L1650	A	HO abduction hip adjustable					
L1660	A	HO abduction static plastic					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
L1680	A	Pelvic & hip control thigh c					
L1685	A	Post-op hip abduct custom fa					
L1686	A	HO post-op hip abduction					
L1700	A	Leg perthes orth toronto typ					
L1710	A	Legg perthes orth newington					
L1720	A	Legg perthes orthosis trilat					
L1730	A	Legg perthes orth scottish r					
L1750	A	Legg perthes sling					
L1755	A	Legg perthes patten bottom t					
L1900	A	Knee orthoses elas w stays					
L1810	A	Ko elastic with joints					
L1815	A	Elastic with condylar pads					
L1820	A	Ko elas w/ condyle pads & jo					
L1825	A	Ko elastic knee cap					
L1830	A	Ko immobilizer canvas longit					
L1832	A	Ko adj jnt pos rigid support					
L1834	A	Ko w/0 joint rigid molded to					
L1840	A	Ko derot ant cruciate custom					
L1843	A	Ko single upright custom fit					
L1844	A	Ko w/adj jt rot cntrl molded					
L1845	A	Ko w/ adj flex/ext rotat cus					
L1846	A	Ko w adj flex/ext rotat mold					
L1850	A	Ko swedish type					
L1855	A	Ko plas doub upright jnt moi					
L1858	A	Ko polycentric pneumatic pad					
L1860	A	Ko supracondylar socket mold					
L1870	A	Ko doub upright lacers molde					
L1880	A	Ko doub upright cuffs/lacers					
L1885	A	Knee upright w/resistance					
L1900	A	Afo sprng wir drsflx calf bd					
L1902	A	Afo ankle gauntlet					
L1904	A	Afo molded ankle gauntlet					
L1906	A	Afo multiligamentus ankle su					
L1910	A	Afo sing bar clasp attach sh					
L1920	A	Afo sing upright w/ adjust s					
L1930	A	Afo plastic					
L1940	A	Afo molded to patient plasti					
L1945	A	Afo molded plas rig ant tib					
L1950	A	Afo spiral molded to pt plas					
L1960	A	Afo pos solid ank plastic mo					
L1970	A	Afo plastic molded w/ankle j					
L1980	A	Afo sing solid stirrup calf					
L1990	A	Afo doub solid stirrup calf					
L2000	A	Kafo sing fre stirr thi/calf					
L2010	A	Kafo sng solid stirrup w/o j					
L2020	A	Kafo dbl solid stirrup band/					
L2030	A	Kafo dbl solid stirrup w/o j					
L2035	A	KAFO plastic pediatric size					
L2036	A	Kafo plas doub free knee moi					
L2037	A	Kafo plas sing free knee moi					
L2038	A	Kafo w/o joint multi-axis an					
L2039	A	KAFO, plstic, medlat rotat con					
L2040	A	Hkafo torsion bil rot straps					
L2050	A	Hkafo torsion cable hip pelv					
L2060	A	Hkafo torsion ball bearing j					
L2070	A	Hkafo torsion unilat rot str					
L2080	A	Hkafo unilat torsion cable					
L2090	A	Hkafo unilat torsion ball br					
L2102	A	Afo tibial fx cast plstr moi					
L2104	A	Afo tib fx cast synthetic mo					
L2106	A	Afo tib fx cast plaster mold					
L2108	A	Afo tib fx cast molded to pt					
L2112	A	Afo tibial fracture soft					
L2114	A	Afo tib fx semi-rigid					
L2116	A	Afo tibial fracture rigid					
L2122	A	Kafo fem fx cast plaster moi					
L2124	A	Kafo fem fx cast synthet moi					
L2126	A	Kafo fem fx cast thermoplas					
L2128	A	Kafo fem fx cast molded to p					
L2132	A	Kafo femoral fx cast soft					
L2134	A	Kafo fem fx cast semi-rigid					
L2136	A	Kafo femoral fx cast rigid					
L2160	A	Plas shoe insert w ank joint					
L2162	A	Drop lock knee					
L2164	A	Limited motion knee joint					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY I PC INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relat.. weight	rate	National adjusted coinsurance	Minimum unadjusted coinsurance
L2186	A	Adj motion knee jnt lerman t					
L2188	A	Quadrilateral brim					
L2190	A	Waist belt					
L2192	A	Pelvic band & belt thigh fla					
L2200	A	Limited ankle motion ea jnt					
L2210	A	Dorsiflexion assist each joi					
L2220	A	Dorsi & plantar flex ass/res					
L2230	A	Split flat caliper stirr & p					
L2240	A	Round caliper and plate atta					
L2250	A	Foot plate molded stirrup at					
L2260	A	Reinforced solid stirrup					
L2265	A	Long tongue stirrup					
L2270	A	Varus/valgus strap padded/li					
L2275	A	Plastic mod low ext pad/line					
L2280	A	Molded inner boot					
L2300	A	Abduction bar jointed adjust					
L2310	A	Abduction bar-straight					
L2320	A	Non-molded lacer					
L2330	A	Lacer molded to patient mode					
L2335	A	Anterior swing band					
L2340	A	Pre-tibial shell molded to p					
L2350	A	Prosthetic type socket molde					
L2360	A	Extended steel shank					
L2370	A	Patten bottom					
L2375	A	Torsion ank & half solid sti					
L2380	A	Torsion straight knee joint					
L2385	A	Straight knee joint heavy du					
L2390	A	Offset knee joint each					
L2395	A	Offset knee joint heavy duty					
L2397	A	Suspension sleeve lower ext					
L2405	A	Knee joint drop lock ea jnt					
L2415	A	Knee joint cam lock each joi					
L2425	A	Knee disc/dial lock/adj flex					
L2430	A	Knee jnt ratchet lock ea jnt					
L2435	A	Knee joint polycentric joint					
L2492	A	Knee lift loop drop lock rin					
L2500	A	Thi/glut/ischia wgt bearing					
L2510	A	Th/wght bear quad-lat brim m					
L2520	A	Th/wght bear quad-lat brim c					
L2525	A	Th/wght bear nar m-l brim mo					
L2526	A	Th/wght bear nar m-l brim cu					
L2530	A	Thigh/wght bear lacer non-mo					
L2540	A	Thigh/wght bear lacer molded					
L2550	A	Thigh/wght bear high roll cu					
L2570	A	Hip clevis type 2 posit jnt					
L2580	A	Pelvic control pelvic sling					
L2600	A	Hip clevis/thrust bearing fr					
L2610	A	Hip clevis/thrust bearing lo					
L2620	A	Pelvic control hip heavy dut					
L2622	A	Hip joint adjustable flexion					
L2624	A	Hip adj flex ext abduct cont					
L2627	A	Plastic mold recipro hip & c					
L2628	A	Metal frame recipro hip & ca					
L2630	A	Pelvic control band & belt u					
L2640	A	Pelvic control band & belt b					
L2650	A	Pelv & thor control gluteal					
L2660	A	Thoracic control thoracic ba					
L2670	A	Thorac cont paraspinal uprig					
L2680	A	Thorac cont lat support upri					
L2750	A	Plating chrome/nickel pr bar					
L2755	A	Carbon graphite lamination					
L2760	A	Extension per extension per					
L2770	A	Low ext orthosis per bar/jnt					
L2780	A	Non-corrosive finish					
L2785	A	Drop lock retainer each					
L2795	A	Knee control full kneecap					
L2800	A	Knee cap medial or lateral p					
L2810	A	Knee control condylar pad					
L2820	A	Soft interface below knee se					
L2830	A	Soft interface above knee se					
L2840	A	Tibial length sock fx or equ					
L2850	A	Femoral lgth sock fx or equa					
L2860	A	Torsion mechanism knee/ankle					
L2999	A	Lower extremity orthosis NOS					
L3000	A	Ft insert ucb berkeley shell					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
L3001	A	Foot insert remov molded spe					
L3002	A	Foot insert plastazote or eq					
L3003	A	Foot insert silicone gel eac					
L3010	A	Foot longitudinal arch suppo					
L3020	A	Foot longitud/metatarsal sup					
L3030	A	Foot arch support remov prem					
L3040	A	Ft arch suprt premold longit					
L3050	A	Foot arch supp premold metat					
L3060	A	Foot arch supp longitud/meta					
L3070	A	Arch suprt att to sho longit					
L3080	A	Arch supp att to shoe metata					
L3090	A	Arch supp att to shoe long/m					
L3100	A	Hallus-valgus nght dynamic s					
L3140	A	Abduction rotation bar shoe					
L3150	A	Abduct rotation bar w/o shoe					
L3160	A	Shoe styled positioning dev					
L3170	A	Foot plastic heel stabilizer					
L3201	A	Oxford w supinat/pronat inf					
L3202	A	Oxford w/ supinat/pronator c					
L3203	A	Oxford w/ supinator/pronator					
L3204	A	Hightop w/ supp/pronator inf					
L3206	A	Hightop w/ supp/pronator chi					
L3207	A	Hightop w/ supp/pronator jun					
L3208	A	Surgical boot each infant					
L3209	A	Surgical boot each child					
L3211	A	Surgical boot each junior					
L3212	A	Benesch boot pair infant					
L3213	A	Benesch boot pair child					
L3214	A	Benesch boot pair junior					
L3215	A	Orthopedic ftwear ladies oxf					
L3216	A	Orthoped ladies shoes dpth i					
L3217	A	Ladies shoes hightop depth i					
L3218	A	Ladies surgical boot each					
L3219	A	Orthopedic mens shoes oxford					
L3221	A	Orthopedic mens shoes dpth i					
L3222	A	Mens shoes hightop depth inl					
L3223	A	Mens surgical boot each					
L3224	A	Woman's shoe oxford brace					
L3225	A	Man's shoe oxford brace					
L3230	A	Custom shoes depth inlay					
L3250	A	Custom mold shoe remov prost					
L3251	A	Shoe molded to pt silicone s					
L3252	A	Shoe molded plastazote cust					
L3253	A	Shoe molded plastazote cust					
L3254	A	Orth foot non-stndard size/w					
L3255	A	Orth foot non-standard size/					
L3257	A	Orth foot add charge split s					
L3260	A	Ambulatory surgical boot eac					
L3265	A	Plastazote sandal each					
L3300	A	Sho lift taper to metatarsal					
L3310	A	Shoe lift elev heel/sole neo					
L3320	A	Shoe lift elev heel/sole cor					
L3330	A	Lifts elevation metal extens					
L3332	A	Shoe lifts tapered to one-ha					
L3334	A	Shoe lifts elevation heel /i					
L3340	A	Shoe wedge sach					
L3350	A	Shoe heel wedge					
L3360	A	Shoe sole wedge outside sole					
L3370	A	Shoe sole wedge between sole					
L3380	A	Shoe clubfoot wedge					
L3390	A	Shoe outflare wedge					
L3400	A	Shoe metatarsal bar wedge ro					
L3410	A	Shoe metatarsal bar between					
L3420	A	Full sole/heel wedge btween					
L3430	A	Sho heel count plast reinfor					
L3440	A	Heel leather reinforced					
L3450	A	Shoe heel sach cushion type					
L3455	A	Shoe heel new leather standa					
L3460	A	Shoe heel new rubber standar					
L3465	A	Shoe heel thomas with wedge					
L3470	A	Shoe heel thomas extend to b					
L3480	A	Shoe heel pad & depress for					
L3485	A	Shoe heel pad removable for					
L3500	A	Ortho shoe add leather insol					
L3510	A	Orthopedic shoe add rub insl					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
L3520	A	O shoe add felt w leath insl					
L3530	A	Ortho shoe add half sole					
L3540	A	Ortho shoe add full sole					
L3550	A	O shoe add standard toe tap					
L3560	A	O shoe add horseshoe toe tap					
L3570	A	O shoe add instep extension					
L3580	A	O shoe add instep velcro clo					
L3590	A	O shoe convert to sof counte					
L3595	A	Ortho shoe add march bar					
L3600	A	Trans shoe calip plate exist					
L3610	A	Trans shoe caliper plate new					
L3620	A	Trans shoe solid stirrup exi					
L3630	A	Trans shoe solid stirrup new					
L3640	A	Shoe dennis browne splint bo					
L3649	A	Orthopedic shoe modifica NOS					
L3650	A	Shlder fig 8 abduct restrain					
L3660	A	Abduct restrainer canvas&web					
L3670	A	Acromio/clavicular canvas&we					
L3700	A	Elbow orthoses elas w stays					
L3710	A	Elbow elastic with metal joi					
L3720	A	Forearm/arm cuffs free motio					
L3730	A	Forearm/arm cuffs ext/flex a					
L3740	A	Cuffs adj lock w/ active con					
L3800	A	Whfo short opponen no attach					
L3805	A	Whfo long opponens no attach					
L3810	A	Whfo thumb abduction bar					
L3815	A	Whfo second m.p. abduction a					
L3820	A	Whfo ip ext asst w/ mp ext s					
L3825	A	Whfo m.p. extension stop					
L3830	A	Whfo m.p. extension assist					
L3835	A	Whfo m.p. spring extension a					
L3840	A	Whfo spring swivel thumb					
L3845	A	Whfo thumb ip ext ass w/ mp					
L3850	A	Action wrist w/ dorsiflex as					
L3855	A	Whfo adj m.p. flexion contro					
L3860	A	Whfo adj m.p. flex ctrl & i.					
L3890	A	Torsion mechanism wrist/elbo					
L3900	A	Hinge extension/flex wrist/f					
L3901	A	Hinge ext/flex wrist finger					
L3902	A	Whfo ext power compress gas					
L3904	A	Whfo electric custom fitted					
L3906	A	Wrist gauntlet molded to pt					
L3907	A	Whfo wrst gauntlt thmb spica					
L3908	A	Wrist cock-up non-molded					
L3910	A	Whfo swanson design					
L3912	A	Flex glove w/elastic finger					
L3914	A	WHO wrist extension cock-up					
L3916	A	Whfo wrist extens w/ outrigg					
L3918	A	HFO knuckle bender					
L3920	A	Knuckle bender with outrigge					
L3922	A	Knuckle bend 2 seg to flex j					
L3924	A	Oppenheimer					
L3926	A	Thomas suspension					
L3928	A	Finger extension w/ clock sp					
L3930	A	Finger extension with wrist					
L3932	A	Safety pin spring wire					
L3934	A	Safety pin modified					
L3936	A	Palmer					
L3938	A	Dorsal wrist					
L3940	A	Dorsal wrist w/ outrigger at					
L3942	A	Reverse knuckle bender					
L3944	A	Reverse knuckle bend w/ outr					
L3946	A	HFO composite elastic					
L3948	A	Finger knuckle bender					
L3950	A	Oppenheimer w/ knuckle bend					
L3952	A	Oppenheimer w/ rev knuckle 2					
L3954	A	Spreading hand					
L3956	A	Add joint upper ext orthosis					
L3960	A	Sewho airplan desig abdu pos					
L3962	A	Sewho erbs palsey design abd					
L3963	A	Molded w/ articulating elbow					
L3964	A	Seo mobile arm sup att to wc					
L3965	A	Arm supp att to wc rancho ty					
L3966	A	Mobile arm supports reclinin					
L3968	A	Friction dampening arm supp					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
L3969	A	Monoexpension arm/hand supp					
L3970	A	Elevat proximal arm support					
L3972	A	Offset/lat rocker arm w/ ela					
L3974	A	Mobile arm support supinator					
L3980	A	Upp ext fx orthosis humeral					
L3982	A	Upper ext fx orthosis rad/ul					
L3984	A	Upper ext fx orthosis wrist					
L3985	A	Forearm hand fx orth w/ wr h					
L3988	A	Humeral rad/ulna wrist fx or					
L3995	A	Sock fracture or equal each					
L3999	A	Upper limb orthosis NOS					
L4000	A	Repl girdle milwaukee orth					
L4010	A	Replace trilateral socket br					
L4020	A	Replace quadlat socket brim					
L4030	A	Replace socket brim cust fit					
L4040	A	Replace molded thigh lacer					
L4045	A	Replace non-molded thigh lac					
L4050	A	Replace molded calf lacer					
L4055	A	Replace non-molded calf lace					
L4060	A	Replace high roll cuff					
L4070	A	Replace prox & dist upright					
L4080	A	Repl met band kafo-afo prox					
L4090	A	Repl met band kafo-afo calf/					
L4100	A	Repl leath cuff kafo prox th					
L4110	A	Repl leath cuff kafo-afo cal					
L4130	A	Replace pretibial shell					
L4205	A	Ortho dvc repair per 15 min					
L4210	A	Orth dev repair/repl minor p					
[2] L4310	A	Mult-podus/eq orth prep mgmt					
[2] L4320	A	Low ext mgmt sys ft pos afo					
L4350	A	Pneumatic ankle cntrl splint					
L4360	A	Pneumatic walking splint					
L4370	A	Pneumatic full leg splint					
L4380	A	Pneumatic knee splint					
[2] L4390	A	Replace multi-podus splint					
L4392	A	Replace ankle contrac splint					
L4394	A	Replace foot drop splint					
L4396	A	Ankle contracture splint					
L4398	A	Foot drop splint recumbent					
L5000	A	Sho insert w arch toe filler					
L5010	A	Mold socket ank hgt w/ toe f					
L5020	A	Tibial tubercle hgt w/ toe f					
L5050	A	Ank symes mold sckt sach ft					
L5060	A	Symes met fr leath socket ar					
L5100	A	Molded socket shin sach foot					
L5105	A	Plast socket jts/thgh lacer					
L5150	A	Mold sckt ext knee shin sach					
L5160	A	Mold socket bent knee shin s					
L5200	A	Kne sing axis fric shin sach					
L5210	A	No knee/ankle joints w/ ft b					
L5220	A	No knee joint with artic ali					
L5230	A	Fem focal defic constant fri					
L5250	A	Hip canad sing axi cons fric					
L5270	A	Tilt table locking hip sing					
L5280	A	Hemipelvect canad sing axis					
L5300	A	Bk sach soft cover & finish					
L5310	A	Knee disart sach soft cv/fin					
L5320	A	Ak open end sach soft cv/fin					
L5330	A	Hip canadian sach sft cv/fin					
L5340	A	Hemipelvectomy canad cv/fin					
L5400	A	Postop dress & 1 cast chg bk					
L5410	A	Postop dsg bk ea add cast ch					
L5420	A	Postop dsg & 1 cast chg ak/d					
L5430	A	Postop dsg ak ea add cast ch					
L5450	A	Postop app non-wgt bear dsg					
L5460	A	Postop app non-wgt bear dsg					
L5500	A	Init bk ptb plaster direct					
L5505	A	Init ak ischal plstr direct					
L5510	A	Prep BK ptb plaster molded					
L5520	A	Perp BK ptb thermopls direct					
L5530	A	Prep BK ptb thermopls molded					
L5535	A	Prep BK ptb open end socket					
L5540	A	Prep BK ptb laminated socket					
L5560	A	Prep.AK ischial plast molded					
L5570	A	Prep AK ischial direct form					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
L5580	A	Prep AK ischial thermo mold					
L5585	A	Prep AK ischial open end					
L5590	A	Prep AK ischial laminated					
L5595	A	Hip disartic sach thermopls					
L5600	A	Hip disart sach laminat mold					
L5610	A	Above knee hydracadence					
L5611	A	Ak 4 bar link w/fric swing					
L5613	A	Ak 4 bar ling w/hydraul swig					
L5614	A	4-bar link above knee w/swng					
L5616	A	Ak univ multiplex sys frict					
L5617	A	AK/BK self-aligning unit ea					
L5618	A	Test socket symes					
L5620	A	Test socket below knee					
L5622	A	Test socket knee disarticula					
L5624	A	Test socket above knee					
L5626	A	Test socket hip disarticulat					
L5628	A	Test socket hemipelvectomy					
L5629	A	Below knee acrylic socket					
L5630	A	Syme typ expandabl wall sckt					
L5631	A	Ak/knee disartic acrylic soc					
L5632	A	Symes type ptb brim design s					
L5634	A	Symes type poster opening so					
L5636	A	Symes type medial opening so					
L5637	A	Below knee total contact					
L5638	A	Below knee leather socket					
L5639	A	Below knee wood socket					
L5640	A	Knee disarticulat leather so					
L5642	A	Above knee leather socket					
L5643	A	Hip flex inner socket ext fr					
L5644	A	Above knee wood socket					
L5645	A	Ak flexibl inner socket ext					
L5646	A	Below knee air cushion socke					
L5647	A	Below knee suction socket					
L5648	A	Above knee air cushion socke					
L5649	A	Isch containmt/narrow m-l so					
L5650	A	Tot contact ak/knee disart s					
L5651	A	Ak flex inner socket ext fra					
L5652	A	Suction susp ak/knee disart					
L5653	A	Knee disart expand wall sock					
L5654	A	Socket insert symes					
L5655	A	Socket insert below knee					
L5656	A	Socket insert knee articulat					
L5658	A	Socket insert above knee					
L5660	A	Sock insrt syme silicone gel					
L5661	A	Multi-durometer symes					
L5662	A	Socket insert bk silicone ge					
L5663	A	Sock knee disartic silicone					
L5664	A	Socket insert ak silicone ge					
L5665	A	Multi-durometer below knee					
L5666	A	Below knee cuff suspension					
L5667	A	Socket insert w lock lower					
L5668	A	Socket insert w/o lock lower					
L5669	A	Below knee socket w/o lock					
L5670	A	Bk molded supracondylar susp					
L5672	A	Bk removable medial brim sus					
L5674	A	Bk latex sleeve suspension/e					
L5675	A	Bk latex sleeve susp/eq hvy					
L5676	A	Bk knee joints single axis p					
L5677	A	Bk knee joints polycentric p					
L5678	A	Bk joint covers pair					
L5680	A	Bk thigh lacer non-molded					
L5682	A	Bk thigh lacer glut/ischia m					
L5684	A	Bk fork strap					
L5686	A	Bk back check					
L5688	A	Bk waist belt webbing					
L5690	A	Bk waist belt padded and lin					
L5692	A	Ak pelvic control belt light					
L5694	A	Ak pelvic control belt pad/l					
L5695	A	Ak sleeve susp neoprene/equa					
L5696	A	Ak/knee disartic pelvic join					
L5697	A	Ak/knee disartic pelvic band					
L5698	A	Ak/knee disartic silesian ba					
L5699	A	Shoulder harness					
L5700	A	Replace socket below knee					
L5701	A	Replace socket above knee					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
L5702	A	Replace socket hip					
L5704	A	Custom shape covr below knee					
L5705	A	Custm shape cover above knee					
L5706	A	Custm shape cvr knee disart					
L5707	A	Custm shape cover hip disart					
L5710	A	Kne-shin exo sng axi mnl loc					
L5711	A	Knee-shin exo mnl lock ultra					
L5712	A	Knee-shin exo frict swg & st					
L5714	A	Knee-shin exo variable frict					
L5716	A	Knee-shin exo mech stance ph					
L5718	A	Knee-shin exo frct swg & sta					
L5722	A	Knee-shin pneum swg frct exo					
L5724	A	Knee-shin exo fluid swing ph					
L5726	A	Knee-shin ext jnts fld swg e					
L5728	A	Knee-shin fluid swg & stance					
L5780	A	Knee-shin pneum/hydra pneum					
L5785	A	Exoskeletal bk ultralt mater					
L5790	A	Exoskeletal ak ultra-light m					
L5795	A	Exoskel hip ultra-light mate					
L5810	A	Endoskel knee-shin mnl lock					
L5811	A	Endo knee-shin mnl lck ultra					
L5812	A	Endo knee-shin frct swg & st					
L5814	A	Endo knee-shin hydral swg ph					
L5816	A	Endo knee-shin polyc mch sta					
L5818	A	Endo knee-shin frct swg & st					
L5822	A	Endo knee-shin pneum swg frc					
L5824	A	Endo knee-shin fluid swing p					
L5826	A	Miniature knee joint					
L5828	A	Endo knee-shin fluid swg/sta					
L5830	A	Endo knee-shin pneum/swg pha					
L5840	A	Multi-axial knee/shin system					
L5845	A	Knee-shin sys stance flexion					
L5846	A	Knee-shin sys microprocessor					
L5850	A	Endo ak/hip knee extens assi					
L5855	A	Mech hip extension assist					
L5910	A	Endo below knee alignable sy					
L5920	A	Endo ak/hip alignable system					
L5925	A	Above knee manual lock					
L5930	A	High activity knee frame					
L5940	A	Endo bk ultra-light material					
L5950	A	Endo ak ultra-light material					
L5960	A	Endo hip ultra-light materia					
L5962	A	Below knee flex cover system					
L5964	A	Above knee flex cover system					
L5968	A	Hip flexible cover system					
L5970	A	Foot external keel sach foot					
L5972	A	Flexible keel foot					
L5974	A	Foot single axis ankle/foot					
L5976	A	Energy storing foot					
L5978	A	Ft prosth multiaxial ankl/ft					
L5979	A	Multi-axial ankle/ft prosth					
L5980	A	Flex foot system					
L5981	A	Flex-walk sys low ext prosth					
L5982	A	Exoskeletal axial rotation u					
L5984	A	Endoskeletal axial rotation					
L5985	A	Lwr ext dynamic prosth pylon					
L5986	A	Multi-axial rotation unit					
L5987	A	Shank ft w vert load pylon					
L5999	A	Lowr extremity prosthes NOS					
L6000	A	Par hand robin-aids thum rem					
L6010	A	Hand robin-aids little/ring					
L6020	A	Part hand robin-aids no fing					
L6050	A	Wrst MLd sck flx hng tri pad					
L6055	A	Wrst mold sock w/exp interfa					
L6100	A	Elb mold sock flex hinge pad					
L6110	A	Elbow mold sock suspension t					
L6120	A	Elbow mold doub split soc ste					
L6130	A	Elbow stump activated lock h					
L6200	A	Elbow mold outsid lock hinge					
L6205	A	Elbow molded w/ expand inter					
L6250	A	Elbow inter loc elbow forarm					
L6300	A	Shlder disart int lock elbow					
L6310	A	Shoulder passive restor comp					
L6320	A	Shoulder passive restor cap					
L6350	A	Thoracic intern lock elbow					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
L6360	A	Thoracic passive restor comp					
L6370	A	Thoracic passive restor cap					
L6380	A	Postop dsg cast chg wrst/elb					
L6382	A	Postop dsg cast chg elb dis/					
L6384	A	Postop dsg cast chg shlder/t					
L6386	A	Postop ea cast chg & realign					
L6388	A	Postop applicat rigid dsg on					
L6400	A	Below elbow prosth tiss shap					
L6450	A	Elb disart prosth tiss shap					
L6500	A	Above elbow prosth tiss shap					
L6550	A	Shldr disar prosth tiss shap					
L6570	A	Scap thorac prosth tiss shap					
L6580	A	Wrist/elbow bowden cable mol					
L6582	A	Wrist/elbow bowden cbl dir f					
L6584	A	Elbow fair lead cable molded					
L6586	A	Elbow fair lead cable dir fo					
L6588	A	Shdr fair lead cable molded					
L6590	A	Shdr fair lead cable direct					
L6600	A	Polycentric hinge pair					
L6605	A	Single pivot hinge pair					
L6610	A	Flexible metal hinge pair					
L6615	A	Disconnect locking wrist uni					
L6616	A	Disconnect insert locking wr					
L6620	A	Flexion-friction wrist unit					
L6623	A	Spring-ass rot wrst w/ latch					
L6625	A	Rotation wrst w/ cable lock					
L6628	A	Quick disconn hook adapter o					
L6629	A	Lamination collar w/ couplin					
L6630	A	Stainless steel any wrist					
L6632	A	Latex suspension sleeve each					
L6635	A	Lift assist for elbow					
L6637	A	Nudge control elbow lock					
L6640	A	Shoulder abduction joint pai					
L6641	A	Excursion amplifier pulley t					
L6642	A	Excursion amplifier lever ty					
L6645	A	Shoulder flexion-abduction j					
L6650	A	Shoulder universal joint					
L6655	A	Standard control cable extra					
L6660	A	Heavy duty control cable					
L6665	A	Teflon or equal cable lining					
L6670	A	Hook to hand cable adapter					
L6672	A	Harness chest/shlder saddle					
L6675	A	Harness figure of 8 sing con					
L6676	A	Harness figure of 8 dual con					
L6680	A	Test sock wrist disart/bel e					
L6682	A	Test sock elbw disart/above					
L6684	A	Test socket shldr disart/tho					
L6686	A	Suction socket					
L6687	A	Frame typ socket bel elbow/w					
L6688	A	Frame typ sock above elb/dis					
L6689	A	Frame typ socket shoulder di					
L6690	A	Frame typ sock interscap-tho					
L6691	A	Removable insert each					
L6692	A	Silicone gel insert or equal					
L6700	A	Terminal device model #3					
L6705	A	Terminal device model #5					
L6710	A	Terminal device model #5x					
L6715	A	Terminal device model #5xa					
L6720	A	Terminal device model #6					
L6725	A	Terminal device model #7					
L6730	A	Terminal device model #7lo					
L6735	A	Terminal device model #8					
L6740	A	Terminal device model #8x					
L6745	A	Terminal device model #88x					
L6750	A	Terminal device model #10p					
L6755	A	Terminal device model #10x					
L6765	A	Terminal device model #12p					
L6770	A	Terminal device model #99x					
L6775	A	Terminal device model #555					
L6780	A	Terminal device model #ss555					
L6790	A	Hooks-accu hook or equal					
L6795	A	Hooks-2 load or equal					
L6800	A	Hooks-aprl vc or equal					
L6805	A	Modifier wrist flexion unit					
L6806	A	Trs grip vc or equal					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
L6807	A	Term device grip1/2 or equal					
L6809	A	Term device infant or child					
L6809	A	Trs super sport passive					
L6810	A	Pincher tool otto bock or eq					
L6825	A	Hands dorrance vo					
L6830	A	Hand apri vc					
L6835	A	Hand sierra vo					
L6840	A	Hand becker imperial					
L6845	A	Hand becker lock grip					
L6850	A	Term dvc-hand becker plylite					
L6855	A	Hand robin-aids vo					
L6860	A	Hand robin-aids vo soft					
L6865	A	Hand passive hand					
L6867	A	Hand detroit infant hand					
L6868	A	Passive inf hand steeper/hos					
L6870	A	Hand child mitt					
L6872	A	Hand nyu child hand					
L6873	A	Hand mech.inf steeper or equ					
L6875	A	Hand bock vc					
L6880	A	Hand bock vo					
L6890	A	Production glove					
L6895	A	Custom glove					
L6900	A	Hand restorat thumb/1 finger					
L6905	A	Hand restoration multiple fi					
L6910	A	Hand restoration no fingers					
L6915	A	Hand restoration replacmnt g					
L6920	A	Wrist disarticul switch ctrl					
L6925	A	Wrist disart myoelectronic c					
L6930	A	Below elbow switch control					
L6935	A	Below elbow myoelectronic ct					
L6940	A	Elbow disarticulation switch					
L6945	A	Elbow disart myoelectronic c					
L6950	A	Above elbow switch control					
L6955	A	Above elbow myoelectronic ct					
L6960	A	Shldr disartic switch contro					
L6965	A	Shldr disartic myoelectronic					
L6970	A	Interscapular-thor switch ct					
L6975	A	Interscap-thor myoelectronic					
L7010	A	Hand otto back steeper/eq sw					
L7015	A	Hand sys teknik village swit					
L7020	A	Electronic greifer switch ct					
L7025	A	Electron hand myoelectronic					
L7030	A	Hand sys teknik vill myoelec					
L7035	A	Electron greifer myoelectro					
L7040	A	Prehensile actuator hosmer s					
L7045	A	Electron hook child michigan					
L7170	A	Electronic elbow hosmer swit					
L7180	A	Electronic elbow utah myoele					
L7185	A	Electron elbow adolescent sw					
L7186	A	Electron elbow child switch					
L7190	A	Elbow adolescent myoelectron					
L7191	A	Elbow child myoelectronic ct					
L7260	A	Electron wrist rotator otto					
L7261	A	Electron wrist rotator utah					
L7266	A	Servo control steeper or equ					
L7272	A	Analogue control unb or equa					
L7274	A	Proportional ctl 12 volt uta					
L7360	A	Six volt bat otto bock/eq ea					
L7362	A	Battery chrgr six volt otto					
L7364	A	Twelve volt battery utah/equ					
L7366	A	Battery chrgr 12 volt utah/e					
L7499	A	Upper extremity prosthes NOS					
L7500	A	Prosthetic dvc repair hourly					
L7510	A	Prosthetic device repair rep					
L7520	A	Repair prosthesis per 15 min					
L7900	A	Vacuum erection system					
L8000	A	Mastectomy bra					
L8010	A	Mastectomy sleeve					
L8020	A	Mastectomy form					
L8030	A	Breast prosthesis silicone/e					
L8039	A	Breast prosthesis NOS					
L8100	A	Compression stocking BK18-30					
L8110	A	Compression stocking BK30-40					
L8120	A	Compression stocking BK40-50					
L8130	A	Gc stocking thighlngth 18-30					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
L8140	A	Gc stocking thighlngth 30-40					
L8150	A	Gc stocking thighlngth 40-50					
L8160	A	Gc stocking full lngth 18-30					
L8170	A	Gc stocking full lngth 30-40					
L8180	A	Gc stocking full lngth 40-50					
L8190	A	Gc stocking waistlngth 18-30					
L8200	A	Gc stocking waistlngth 40-50					
L8210	A	Gc stocking custom made					
L8220	A	Gc stocking lymphedema					
L8230	A	Gc stocking garter belt					
L8239	A	G compression stocking NOS					
L8300	A	Truss single w/ standard pad					
L8310	A	Truss double w/ standard pad					
L8320	A	Truss addition to std pad wa					
L8330	A	Truss add to std pad scrotal					
L8400	A	Sheath below knee					
L8410	A	Sheath above knee					
L8415	A	Sheath upper limb					
L8417	A	Pros sheath/sock w gel cushn					
L8420	A	Prosthetic sock multi ply BK					
L8430	A	Prosthetic sock multi ply AK					
L8435	A	Pros sock multi ply upper lm					
L8440	A	Shrinker below knee					
L8460	A	Shrinker above knee					
L8465	A	Shrinker upper limb					
L8470	A	Pros sock single ply BK					
L8480	A	Pros sock single ply AK					
L8485	A	Pros sock single ply upper l					
L8490	A	Air seal suction reten systm					
L8499	A	Unlisted misc prosthetic ser					
L8500	A	Artificial larynx					
L8501	A	Tracheostomy speaking valve					
L8600	A	Implant breast silicone/eq					
L8603	A	Collagen imp urinary 2.5 CC					
L8610	A	Ocular implant					
L8612	A	Aqueous shunt prosthesis					
L8613	A	Ossicular implant					
L8614	A	Cochlear device/system					
L8619	A	Replace cochlear processor					
L8630	A	Metacarpophalangeal implant					
L8641	A	Metatarsal joint implant					
L8642	A	Hallux implant					
L8658	A	Interphalangeal joint impint					
L8670	A	Vascular graft, synthetic					
L8699	A	Prosthetic implant NOS					
M0064	X	Visit for drug monitoring	090	0.85	$43.71	$12.20	$8.74
M0075	E	Cellular therapy					
M0076	E	Prolotherapy					
M0100	E	Intragastric hypothermia					
[2] M0101	E	Foot care hygienic/pm					
M0300	E	IV chelationtherapy					
M0301	E	Fabric wrapping of aneurysm					
M0302	E	Assessment of cardiac output					
P2028	A	Cephalin floculation test					
P2029	A	Congo red blood test					
P2031	E	Hair analysis					
P2033	A	Blood thymol turbidity					
P2038	A	Blood mucoprotein					
P3000	A	Screen pap by tech w md supv					
P3001	A	Screening pap smear by phys					
P7001	E	Culture bacterial urine					
P9010	N	Whole blood for transfusion					
P9011	N	Blood split unit					
P9012	N	Cryoprecipitate each unit					
P9013	N	Unit/s blood fibrinogen					
[2] P9014	N	Gamma globulin 1 ML					
[2] P9015	N	Rh immune globulin 1 ML					
P9016	N	Leukocyte poor blood, unit					
P9017	N	One donor fresh frozn plasma					
P9018	N	Plasma protein fract, unit					
P9019	N	Platelet concentrate unit					
P9020	N	Plaelet rich plasma unit					
P9021	N	Red blood cells unit					
P9022	N	Washed red blood cells unit					
P9603	N	One-way allow prorated miles					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
P9604	N	One-way allow prorated trip					
[2] P9610	E	Urine specimen collect singl					
P9615	E	Urine specimen collect mult					
Q0034	X	Admin of influenza vaccine	901	0.07	$3.60	$2.49	$0.72
Q0035	X	Cardiokymography	950	0.35	$18.00	$15.82	$3.60
Q0068	S	Extracorpeal plasmapheresis	369	6.33	$325.49	$155.49	$65.10
Q0081	X	Infusion ther other than che	965	1.93	$99.24	$57.18	$19.85
Q0083	S	Chemo by other than infusion	987	2.09	$107.47	$65.09	$21.49
Q0084	S	Chemotherapy by infusion	969	1.91	$98.21	$44.52	$19.64
Q0085	S	Chemo by both infusion and o	969	1.91	$98.21	$44.52	$19.64
Q0086	A	Physical therapy evaluation/					
Q0091	S	Obtaining screen pap smear	561	1.46	$75.07	$24.41	$15.01
Q0092	N	Set up port xray equipment					
Q0111	A	Wet mounts/ w preparations					
Q0112	N	Potassium hydroxide preps					
Q0113	A	Pinworm examinations					
Q0114	N	Fern test					
Q0115	N	Post-coital mucous exam					
Q0132	A	Dispensing fee DME neb drug					
Q0136	N	Non esrd epoetin alpha inj					
Q0144	E	Azithromycin dihydrate, oral					
Q0156	N	Human albumin 5%					
Q0157	N	Human albumin 25%					
Q9920	N	Epoetin with hct <= 20					
Q9921	A	Epoetin with hct = 21					
Q9922	N	Epoetin with hct = 22					
Q9923	A	Epoetin with hct = 23					
Q9924	N	Epoetin with hct = 24					
Q9925	A	Epoetin with hct = 25					
Q9926	A	Epoetin with hct = 26					
Q9927	N	Epoetin with hct = 27					
Q9928	A	Epoetin with hct = 28					
Q9929	N	Epoetin with hct = 29					
Q9930	N	Epoetin with hct = 30					
Q9931	A	Epoetin with hct = 31					
Q9932	A	Epoetin with hct = 32					
Q9933	A	Epoetin with hct = 33					
Q9934	A	Epoetin with hct = 34					
Q9935	A	Epoetin with hct = 35					
Q9936	A	Epoetin with hct = 36					
Q9937	A	Epoetin with hct = 37					
Q9938	A	Epoetin with hct = 38					
Q9939	A	Epoetin with hct = 39					
Q9940	A	Epoetin with hct >= 40					
R0070	N	Transport portable x-ray					
R0075	N	Transport port x-ray multipl					
R0076	N	Transport portable EKG					
V2020	A	Vision svcs frames purchases					
V2025	E	Eyeglasses delux frames					
V2100	A	Lens spher single plano 4.00					
V2101	A	Single visn sphere 4.12-7.00					
V2102	A	Singl visn sphere 7.12-20.00					
V2103	A	Spherocylindr 4.00d/12-2.00d					
V2104	A	Spherocylindr 4.00d/2.12-4d					
V2105	A	Spherocylinder 4.00d/4.25-6d					
V2106	A	Spherocylinder 4.00d/>6.00d					
V2107	A	Spherocylinder 4.25d/12-2d					
V2108	A	Spherocylinder 4.25d/2.12-4d					
V2109	A	Spherocylinder 4.25d/4.25-6d					
V2110	A	Spherocylinder 4.25d/over 6d					
V2111	A	Spherocylindr 7.25d/.25-2.25					
V2112	A	Spherocylindr 7.25d/2.25-4d					
V2113	A	Spherocylindr 7.25d/4.25-6d					
V2114	A	Spherocylinder over 12.00d					
V2115	A	Lens lenticular bifocal					
V2116	A	Nonaspheric lens bifocal					
V2117	A	Aspheric lens bifocal					
V2118	A	Lens aniseikonic single					
V2199	A	Lens single vision not oth c					
V2200	A	Lens spher bifoc plano 4.00d					
V2201	A	Lens sphere bifocal 4.12-7.0					
V2202	A	Lens sphere bifocal 7.12-20.					
V2203	A	Lens sphcyl bifocal 4.00d/.1					
V2204	A	Lens sphcy bifocal 4.00d/2.1					
V2205	A	Lens sphcy bifocal 4.00d/4.2					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
V2206	A	Lens sphcy bifocal 4.00d/ove					
V2207	A	Lens sphcy bifocal 4.25-7d/.					
V2208	A	Lens sphcy bifocal 4.25-7/2.					
V2209	A	Lens sphcy bifocal 4.25-7/4.					
V2210	A	Lens sphcy bifocal 4.25-7/ov					
V2211	A	Lens sphcy bifo 7.25-12/.25-					
V2212	A	Lens sphcyl bifo 7.25-12/2.2					
V2213	A	Lens sphcyl bifo 7.25-12/4.2					
V2214	A	Lens sphcyl bifocal over 12.					
V2215	A	Lens lenticular bifocal					
V2216	A	Lens lenticular nonaspheric					
V2217	A	Lens lenticular aspheric bif					
V2218	A	Lens aniseikonic bifocal					
V2219	A	Lens bifocal seg width over					
V2220	A	Lens bifocal add over 3.25d					
V2299	A	Lens bifocal speciality					
V2300	A	Lens sphere trifocal 4.00d					
V2301	A	Lens sphere trifocal 4.12-7.					
V2302	A	Lens sphere trifocal 7.12-20					
V2303	A	Lens sphcy trifocal 4.0/.12-					
V2304	A	Lens sphcy trifocal 4.0/2.25					
V2305	A	Lens sphcy trifocal 4.0/4.25					
V2306	A	Lens sphcyl trifocal 4.00/>6					
V2307	A	Lens sphcy trifocal 4.25-7/.					
V2308	A	Lens sphc trifocal 4.25-7/2.					
V2309	A	Lens sphc trifocal 4.25-7/4.					
V2310	A	Lens sphc trifocal 4.25-7/>6					
V2311	A	Lens sphc trifo 7.25-12/.25-					
V2312	A	Lens sphc trifo 7.25-12/2.25					
V2313	A	Lens sphc trifo 7.25-12/4.25					
V2314	A	Lens sphcyl trifocal over 12					
V2315	A	Lens lenticular trifocal					
V2316	A	Lens lenticular nonaspheric					
V2317	A	Lens lenticular aspheric tri					
V2318	A	Lens aniseikonic trifocal					
V2319	A	Lens trifocal seg width > 28					
V2320	A	Lens trifocal add over 3.25d					
V2399	A	Lens trifocal speciality					
V2410	A	Lens variab asphericity sing					
V2430	A	Lens variable asphericity bi					
V2499	A	Variable asphericity lens					
V2500	A	Contact lens pmma spherical					
V2501	A	Cntct lens pmma-toric/prism					
V2502	A	Contact lens pmma bifocal					
V2503	A	Cntct lens pmma color vision					
V2510	A	Cntct gas permeable spherici					
V2511	A	Cntct toric prism ballast					
V2512	A	Cntct lens gas permbl bifocl					
V2513	A	Contact lens extended wear					
V2520	A	Contact lens hydrophilic					
V2521	A	Cntct lens hydrophilic toric					
V2522	A	Cntct lens hydrophil bifocl					
V2523	A	Cntct lens hydrophil extend					
V2530	A	Contact lens gas impermeable					
V2531	A	Contact lens gas permeable					
V2599	A	Contact lens/es other type					
V2600	A	Hand held low vision aids					
V2610	A	Single lens spectacle mount					
V2615	A	Telescop/othr compound lens					
V2623	A	Plastic eye prosth custom					
V2624	A	Polishing artifical eye					
V2625	A	Enlargemnt of eye prosthesis					
V2626	A	Reduction of eye prosthesis					
V2627	A	Scleral cover shell					
V2628	A	Fabrication & fitting					
V2629	A	Prosthetic eye other type					
V2630	N	Anter chamber intraocul lens					
V2631	N	Iris support intraoclr lens					
V2632	N	Post chmbr intraocular lens					
V2700	A	Balance lens					
V2710	A	Glass/plastic slab off prism					
V2715	A	Prism lens/es					
V2718	A	Fresnell prism press-on lens					
V2730	A	Special base curve					
V2740	A	Rose tint plastic					

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ADDENDUM B.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD status indicator	Description	Proposed APC	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
V2741	A	Non-rose tint plastic					
V2742	A	Rose tint glass					
V2743	A	Non-rose tint glass					
V2744	A	Tint photochromatic lens/es					
V2750	A	Anti-reflective coating					
V2755	A	UV lens/es					
V2760	A	Scratch resistant coating					
V2770	A	Occluder lens/es					
V2780	A	Oversize lens/es					
V2781	A	Progressive lens per lens					
V2785	N	Corneal tissue processing					
V2799	A	Miscellaneous vision service					
V5008	E	Hearing screening					
V5010	E	Assessment for hearing aid					
V5011	E	Hearing aid fitting/checking					
V5014	E	Hearing aid repair/modifying					
V5020	E	Conformity evaluation					
V5030	E	Body-worn hearing aid air					
V5040	E	Body-worn hearing aid bone					
V5050	E	Body-worn hearing aid in ear					
V5060	E	Behind ear hearing aid					
V5070	E	Glasses air conduction					
V5080	E	Glasses bone conduction					
V5090	E	Hearing aid dispensing fee					
V5100	E	Body-worn bilat hearing aid					
V5110	E	Hearing aid dispensing fee					
V5120	E	Body-worn binaur hearing aid					
V5130	E	In ear binaural hearing aid					
V5140	E	Behind ear binaur hearing ai					
V5150	E	Glasses binaural hearing aid					
V5160	E	Dispensing fee binaural					
V5170	E	Within ear cros hearing aid					
V5180	E	Behind ear cros hearing aid					
V5190	E	Glasses cros hearing aid					
V5200	E	Cros hearing aid dispens fee					
V5210	E	In ear bicros hearing aid					
V5220	E	Behind ear bicros hearing ai					
V5230	E	Glasses bicros hearing aid					
V5240	E	Dispensing fee bicros					
V5299	A	Hearing service					
V5336	E	Repair communication device					
V5362	N	Speech screening					
V5363	A	Language screening					
V5364	A	Dysphagia screening					

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48. On pages 47761 through 47833, Addendum C is corrected to read as follows:

ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
031		DENTAL PROCEDURES	S	1.37	$70.45	$14.09	$14.09
031	D0150	Comprehensve oral evaluation.					
031	D0340	Intraoral occlusal film.					
031	D0250	Extraoral first film.					
031	D0260	Extraoral ea additional film.					
031	D0270	Dental bitewing single film.					
031	D0272	Dental bitewings two films.					
031	D0274	Dental bitewings four films.					
031	D0460	Pulp vitality test.					
031	D0471	Diagnostic photographs.					
031	D0501	Histopathologic examinations.					
031	D0502	Other oral pathology procedu.					
031	D0999	Unspecified diagnostic proce.					
031	D1510	Space maintainer fxd unilat.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
031	D1515	Fixed bilat space maintainer.					
031	D1520	Remove unilat space maintain.					
031	D1525	Remove bilat space maintain.					
031	D1550	Recement space maintainer.					
031	D2970	Temporary- fractured tooth.					
031	D2999	Dental unspec restorative pr.					
031	D3460	Endodontic endosseous implan.					
031	D3999	Endodontic procedure.					
031	D4255	Mucogingival surg per quadra.					
031	D4260	Osseous surgery per quadrant.					
031	D4263	Bone replce graft first site.					
031	D4264	Bone replce graft each add.					
031	D4270	Pedicle soft tissue graft pr.					
031	D4271	Free soft tissue graft proc.					
031	D4273	Subepithelial tissue graft.					
031	D4355	Full mouth debridement.					
031	D4381	Localized chemo delivery.					
031	D5911	Facial moulage sectional.					
031	D5912	Facial moulage complete.					
031	D5983	Radiation applicator.					
031	D5984	Radiation shield.					
031	D5985	Radiation cone locator.					
031	D5987	Commissure splint.					
031	D6920	Dental connector bar.					
031	D7110	Oral surgery single tooth.					
031	D7120	Each add tooth extraction.					
031	D7130	Tooth root removal.					
031	D7210	Rem imp tooth w mucoper flp.					
031	D7220	Impact tooth remov soft tiss.					
031	D7230	Impact tooth remov part bony.					
031	D7240	Impact tooth remov comp bony.					
031	D7241	Impact tooth rem bony w/comp.					
031	D7250	Tooth root removal.					
031	D7260	Oral antral fistula closure.					
031	D7291	Transseptal fiberotomy.					
031	D7940	Reshaping bone orthognathic.					
031	D9610	Other drugs/medicaments.					
031	D9930	Treatment of complications.					
031	D9940	Dental occlusal guard.					
031	D9950	Occlusion analysis.					
031	D9951	Limited occlusal adjustment.					
031	D9952	Complete occlusal adjustment.					
061		LEVEL I CHEMOTHERAPEUTIC AGENTS	X	1.15	$59.13	$37.52	$11.83
061	J8610	Methotrexate oral 2.5 MG.					
061	J8999	Oral prescription drug chemo.					
061	J9015	Aldesleukin/single use vial.					
061	J9070	Cyclophosphamide 100 MG inj.					
061	J9080	Cyclophosphamide 200 MG inj.					
061	J9090	Cyclophosphamide 500 MG inj.					
061	J9093	Cyclophosphamide lyophilized.					
061	J9094	Cyclophosphamide lyophilized.					
061	J9095	Cyclophosphamide lyophilized.					
061	J9100	Cytarabine hcl 100 MG inj.					
061	J9110	Cytarabine hcl 500 MG inj.					
061	J9120	Dactinomycin actinomycin d.					
061	J9130	Dacarbazine 10 MG inj.					
061	J9140	Dacarbazine 200 MG inj.					
061	J9165	Diethylstilbestrol injection.					
061	J9170	Docetaxel.					
061	J9181	Etoposide 10 MG inj.					
061	J9190	Fluorouracil injection.					
061	J9201	Gemcitabine HCl.					
061	J9206	Irinotecan injection.					
061	J9214	Interferon alfa-2b inj.					
061	J9215	Interferon alfa-n3 inj.					
061	J9218	Leuprolide acetate injeciton.					
061	J9230	Mechlorethamine hcl inj.					
061	J9250	Methotrexate sodium inj.					
061	J9260	Methotrexate sodium inj.					
061	J9266	Pegaspargase/singl dose vial.					
061	J9350	Topotecan.					
061	J9360	Vinblastine sulfate inj.					
061	J9390	Vinorelbine tartrate/10 mg.					
061	J9600	Porfimer sodium.					
061	J9999	Chemotherapy drug.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
062		LEVEL II CHEMOTHERAPEUTIC AGENTS	X	1.78	$91.53	$36.61	$18.31
062	J9000	Doxorubic hcl 10 MG vl chemo.					
062	J9020	Asparaginase injection.					
062	J9060	Cisplatin 10 MG injeciton.					
062	J9065	Inj cladribine per 1 MG.					
062	J9091	Cyclophosphamide 1.0 grm inj.					
062	J9092	Cyclophosphamide 2.0 grm inj.					
062	J9096	Cyclophosphamide lyophilized.					
062	J9097	Cyclophosphamide lyophilized.					
062	J9150	Daunorubicin.					
062	J9211	Idarubicin hcl injeciton.					
062	J9213	Interferon alfa-2a inj.					
062	J9265	Paclitaxel injection.					
062	J9268	Pentostatin injection.					
062	J9370	Vincristine sulfate 1 MG inj.					
063		LEVEL III CHEMOTHERAPEUTIC AGENTS	X	2.94	$151.17	$110.97	$30.24
[2] 063	J9010	Doxorubicin hcl 50 MG inj.					
063	J9031	Bcg live intravesical vac.					
063	J9040	Bleomycin sulfate injection.					
063	J9045	Carboplatin injection.					
063	J9050	Carmus bischl nitro inj.					
063	J9062	Cisplatin 50 MG injeciton.					
063	J9182	Etoposide 100 MG inj.					
063	J9185	Fludarabine phosphate inj.					
063	J9200	Floxuridine injection.					
063	J9202	Goserelin acetate implant.					
063	J9208	Ifosfomide injection.					
063	J9209	Mesna injection.					
063	J9216	Interferon gamma 1-b inj.					
063	J9270	Plicamycin (mithramycin) inj.					
063	J9280	Mitomycin 5 MG inj.					
063	J9320	Streptozocin injection.					
063	J9340	Thiotepa injection.					
063	J9375	Vincristine sulfate 2 MG inj.					
063	J9380	Vincristine sulfate 5 MG inj.					
064		LEVEL IV CHEMOTHERAPEUTIC AGENTS	X	4.15	$213.39	$138.99	$42.68
064	J0640	Leucovorin calcium injection.					
064	J1950	Leuprolide acetate /3.75 MG.					
064	J9217	Leuprolide acetate suspnsion.					
064	J9245	Inj melphalan hydrochl 50 MG.					
064	J9290	Mitomycin 20 MG inj.					
064	J9291	Mitomycin 40 MG inj.					
064	J9293	Mitoxantrone hydrochl / 5 MG.					
089		NEUROPSYCHOLOGICAL TESTING	X	4.06	$208.77	$46.10	$41.75
[1] 089	96100	Psychological testing.					
089	96105	Assessment of aphasia.					
089	96110	Developmental test, lim.					
089	96111	Developmental test, extend.					
[1] 089	96115	Neurobehavior status exam.					
[1] 089	96117	Neuropsych test battery.					
090		MONITORING PSYCHIATRIC DRUGS	X	0.85	$43.71	$12.20	$8.74
[1] 090	90862	Medication management.					
090	M0064	Visit for drug monitoring.					
091		BRIEF INDIVIDUAL PSYCHOTHERAPY	S	1.09	$56.05	$14.01	$11.21
091	90804	Psytx, office (20-30).					
091	90805	Psytx, office (20-30) w/e&m.					
091	90810	Intac psytx, office (20-30).					
091	90811	Intac psytx, off 20-30 w/e&m.					
091	90816	Psytx, hosp (20-30).					
091	90817	Psytx, hosp (20-30) w/e&m.					
091	90823	Intac psytx, hosp (20-30).					
091	90824	Intac psytx, hsp 20-30 w/e&m.					
[1] [2] 091	90843	Psychotherapy, 20-30 min.					
[1] 091	90899	Psychiatric service/therapy.					
092		EXTENDED INDIVIDUAL PSYCHOTHERAPY	S	1.63	$83.81	$21.47	$16.76
[1] 092	90801	Psy dx interview.					
092	90802	Intac psy dx interview.					
092	90806	Psytx, office (45-50).					
092	90807	Psytx, office (45-50) w/e&m.					
092	90808	Psytx, office (75-80).					
092	90809	Psytx, office (75-80) w/e&m.					
092	90812	Intac psytx, office (45-50).					
092	90813	Intac psytx, off 45-50 w/e&m.					
092	90814	Intac psytx, office (75-80).					
092	90815	Intac psytx, off 75-80 w/e&m.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
092	90818	Psytx, hosp (45-50).					
092	90819	Psytx, hosp (45-50) w/e&m.					
[1] [2] 092	90820	Diagnostic interview.					
092	90821	Psytx, hosp (75-80).					
092	90822	Psytx, hosp (75-80) w/e&m.					
092	90826	Intac psytx, hosp (45-50).					
092	90827	Intac psytx, hsp 45-50 w/e&m.					
092	90828	Intac psytx, hosp (75-80).					
092	90829	Intac psytx, hsp 75-80 w/e&m.					
[1] [2] 092	90835	Special interview.					
[1] [2] 092	90842	Psychotherapy, 75-80 min.					
[1] [2] 092	90844	Psychotherapy, 45-50 min.					
[1] 092	90845	Psychoanalysis.					
[1] [2] 092	90855	Individual psychotherapy.					
092	90885	Narcosynthesis.					
[1] 092	90880	Hypnotherapy.					
093		FAMILY PSYCHOTHERAPY	S	1.56	$80.22	$20.11	$16.04
[1] 093	90846	Family psytx w/o patient.					
[1] 093	90847	Family psytx w/patient.					
094		GROUP PSYCHOTHERAPY	S	1.31	$67.36	$19.89	$13.47
[1] 094	90845	Multiple family group psytx.					
[1] 094	90853	Group psychotherapy.					
[1] 094	90857	Intac group psytx.					
121		LEVEL I NEEDLE BIOPSY/ASPIRATION	T	0.63	$32.39	$21.02	$6.48
121	17999	Skin tissue procedure.					
121	19000	Drainage of breast lesion.					
121	19001	Drain breast lesion add-on.					
121	20615	Treatment of bone cyst.					
121	55000	Drainage of hydrocele.					
121	60001	Aspirate/inject thyriod cyst.					
121	60699	Endocrine surgery procedure.					
121	85095	Bone marrow aspiration.					
121	85102	Bone marrow biopsy.					
121	88170	Fine needle aspiration.					
121	88171	Fine needle aspiration.					
122		LEVEL II NEEDLE BIOPSY/ASPIRATION	T	4.59	$236.02	$113.00	$47.20
122	19100	Biopsy of breast.					
122	20206	Needle biopsy, muscle.					
122	32400	Needle biopsy chest lining.					
122	32405	Biopsy, lung or mediastinum.					
122	38505	Needle biopsy, lymph node(s).					
122	42400	Biopsy of salivary gland.					
122	47000	Needle biopsy of liver.					
122	47399	Liver surgery procedure.					
122	48102	Needle biopsy, pancreas.					
122	48999	Pancreas surgery procedure.					
122	49180	Biopsy, abdominal mass.					
122	50200	Biopsy of kidney.					
122	50390	Drainage of kidney lesion.					
122	54500	Biopsy of testis.					
122	54800	Biopsy of epididymis.					
122	60100	Biopsy of thyroid.					
122	62269	Needle biopsy spinal cord.					
122	67415	Aspiration orbital contents.					
131		LEVEL I INCISION & DRAINAGE	T	1.93	$99.24	$36.61	$19.85
131	10040	Acne surgery of skin abscess.					
131	10060	Drainage of skin abscess.					
131	10061	Drainage of skin abscess.					
131	10080	Drainage of pilonidal cyst.					
131	10081	Drainage of pilonidal cyst.					
131	10120	Remove foreign body.					
131	10140	Drainage of hematoma/fluid.					
131	10160	Puncture drainage of lesion.					
131	10180	Complex drainage, wound.					
131	11976	Removal of contraceptive cap.					
131	20000	Incision of abscess.					
131	26010	Drainage of finger abscess.					
131	26011	Drainage of finger abscess.					
131	69000	Drain external ear lesion.					
131	69005	Drain external ear lesion.					
131	69020	Drain outer ear canal lesion.					
132		LEVEL II INCISION & DRAINAGE	T	5.63	$289.49	$132.89	$57.90
132	19020	Incision of breast lesion.					
132	20950	Record fluid pressure,muscle.					
132	21501	Drain neck/chest lesion.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
132	21700	Revision of neck muscle.					
132	21720	Revision of neck muscle.					
132	21725	Revision of neck muscle.					
132	23030	Drain shoulder lesion.					
132	23031	Drain shoulder bursa.					
132	23930	Drainage of arm lesion.					
132	23931	Drainage of arm bursa.					
132	27301	Drain thigh/knee lesion.					
132	27603	Drain lower leg lesion.					
132	28001	Drainage of bursa of foot.					
132	38300	Drainage lymph node lesion.					
132	38305	Drainage lymph node lesion.					
132	38999	Blood/lymph system procedure.					
132	51080	Drainage of bladder abscess.					
132	54015	Drain penis lesion.					
132	54115	Treatment of penis lesion.					
132	55100	Drainage of scrotum abscess.					
137	NAIL PROCEDURES		T	0.60	$30.85	$9.27	$6.17
[2] 137	11700	Scraping of 1-5 nails.					
[2] 137	11701	Scraping of additional nails.					
[2] 137	11710	Scraping of 1-5 nails.					
[2] 137	11711	Scraping of additional nails.					
137	11719	Trim nail(s).					
137	11720	Debride nail, 1-5.					
137	11721	Debride nail, 6 or more.					
137	11740	Drain blood from under nail.					
137	11755	Biopsy, nail unit.					
141	LEVEL I DESTRUCTION OF LESION		T	0.52	$26.74	$9.49	$5.35
141	17000	Destroy benign/premal lesion.					
[2] 141	17001	Destruction of add'l lesions.					
[2] 141	17002	Destruction of add'l lesions.					
141	17003	Destroy 2-14 lesions.					
[2] 141	17100	Destruction of skin lesion.					
[2] 141	17101	Destruction of 2nd lesion.					
[2] 141	17102	Destruction of add'l lesions.					
141	17106	Destruction of skin lesions.					
141	17110	Destruct lesion, 1-14.					
142	LEVEL II DESTRUCTION OF LESION		T	2.94	$151.17	$54.24	$30.24
142	17004	Destroy 15 & more lesions.					
[2] 142	17104	Destruction of skin lesions.					
[2] 142	17105	Destruction of skin lesions.					
142	17107	Destruction of skin lesions.					
142	17108	Destruction of skin lesions.					
142	17111	Destruct lesion, 15 or more.					
151	LEVEL I DEBRIDEMENT/DESTRUCTION		T	1.63	$83.81	$33.22	$16.76
151	11000	Debride infected skin.					
151	11001	Debride infect skin add-on.					
151	11040	Debride skin partial.					
151	11041	Debride skin full.					
151	11042	Debride skin/tissue.					
[2] 151	11050	Trim skin lesion.					
[2] 151	11051	Trim 2 to 4 skin lesions.					
[2] 151	11052	Trim over 4 skin lesions.					
151	11055	Trim skin lesion.					
151	11056	Trim 2 to 4 skin lesions.					
151	11057	Trim over 4 skin lesions.					
151	11200	Removal of skin tags.					
151	11201	Remove skin tags add-on.					
151	11300	Shave skin lesion.					
151	11301	Shave skin lesion.					
151	11302	Shave skin lesion.					
151	11303	Shave skin lesion.					
151	11305	Shave skin lesion.					
151	11306	Shave skin lesion.					
151	11307	Shave skin lesion.					
151	11308	Shave skin lesion.					
151	11310	Shave skin lesion.					
151	11311	Shave skin lesion.					
151	11312	Shave skin lesion.					
151	11313	Shave skin lesion.					
• 151	11730	Removal of nail plate.					
[2] 151	11731	Removal of second nail plate.					
151	11732	Remove additional nail plate.					
151	11765	Excision of nail fold, toe.					
151	11900	Injection into skin lesions.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
151	11901	Added skin lesions injection.					
151	15783	Abrasion treatment of skin.					
151	15786	Abrasion, lesion, single.					
151	15787	Abrasion, lesions, add-on.					
151	15788	Chemical peel, face, epiderm.					
151	15789	Chemical peel, face, dermal.					
151	15792	Chemical peel, nonfacial.					
151	15793	Chemical peel, nonfacial.					
151	15810	Salabrasion.					
151	15850	Removal of sutures.					
151	15851	Removal of sutures.					
151	15852	Dressing change,not for burn.					
151	16000	Initial treatment of burn(s).					
151	16020	Treatment of burn(s).					
151	16025	Treatment of burn(s).					
151	16030	Treatment of burn(s).					
[2] 151	17200	Electrocautery of skin tags.					
[2] 151	17201	Electrocautery added lesions.					
151	17250	Chemical cautery, tissue.					
151	17260	Destruction of skin lesions.					
151	17261	Destruction of skin lesions.					
• 151	17262	Destruction of skin lesions.					
151	17263	Destruction of skin lesions.					
151	17264	Destruction of skin lesions.					
151	17266	Destruction of skin lesions.					
151	17270	Destruction of skin lesions.					
151	17271	Destruction of skin lesions.					
151	17272	Destruction of skin lesions.					
151	17273	Destruction of skin lesions.					
151	17274	Destruction of skin lesions.					
151	17276	Destruction of skin lesions.					
151	17280	Destruction of skin lesions.					
151	17281	Destruction of skin lesions.					
151	17282	Destruction of skin lesions.					
151	17283	Destruction of skin lesions.					
151	17284	Destruction of skin lesions.					
151	17286	Destruction of skin lesions.					
151	17340	Cryotherapy of skin.					
151	17360	Skin peel therapy.					
151	17380	Hair removal by electrolysis.					
151	42809	Remove pharynx foreign body.					
151	69220	Clean out mastoid cavity.					
152	LEVEL II DEBRIDEMENT/DESTRUCTION		T	10.07	$517.80	$251.54	$103.56
152	16010	Treatment of burn(s).					
152	16015	Treatment of burn(s).					
152	46900	Destruction, anal lesion(s).					
152	46910	Destruction, anal lesion(s).					
152	46916	Cryosurgery, anal lesion(s).					
152	46917	Laser surgery, anal lesion(s).					
152	46922	Excision of anal lesion(s).					
152	46924	Destruction, anal lesion(s).					
152	54050	Destruction, penis lesion(s).					
152	54055	Destruction, penis lesion(s).					
152	54056	Cryosurgery, penis lesion(s).					
152	54057	Laser surg, penis lesion(s).					
152	54060	Excision of penis lesion(s).					
152	54065	Destruction, penis lesion(s).					
152	56501	Destruction, vulva lesion(s).					
152	56515	Destruction, vulva lesion(s).					
161	LEVEL I EXCISION/BIOPSY		T	3.43	$176.37	$75.71	$35.27
161	11100	Biopsy of skin lesion.					
161	11101	Biopsy, skin add-on.					
161	11400	Removal of skin lesion.					
161	11401	Removal of skin lesion.					
161	11402	Removal of skin lesion.					
161	11403	Removal of skin lesion.					
161	11420	Removal of skin lesion.					
161	11421	Removal of skin lesion.					
161	11422	Removal of skin lesion.					
161	11423	Removal of skin lesion.					
161	11440	Removal of skin lesion.					
161	11441	Removal of skin lesion.					
161	11442	Removal of skin lesion.					
161	11443	Removal of skin lesion.					
161	11600	Removal of skin lesion.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
161	11601	Removal of skin lesion.					
161	11602	Removal of skin lesion.					
161	11603	Removal of skin lesion.					
161	11620	Removal of skin lesion.					
161	11621	Removal of skin lesion.					
161	11622	Removal of skin lesion.					
161	11623	Removal of skin lesion.					
161	11640	Removal of skin lesion.					
161	11641	Removal of skin lesion.					
161	11642	Removal of skin lesion.					
161	11643	Removal of skin lesion.					
161	11750	Removal of nail bed.					
161	20520	Removal of foreign body.					
161	21550	Biopsy of neck/chest.					
161	21920	Biopsy soft tissue of back.					
161	23065	Biopsy shoulder tissues.					
161	24065	Biopsy arm/elbow soft tissue.					
161	24200	Removal of arm foreign body.					
161	25065	Biopsy forearm soft tissues.					
161	27613	Biopsy lower leg soft tissue.					
161	28190	Removal of foot foreign body.					
161	56605	Biopsy of vulva/perineum.					
161	56606	Biopsy of vulva/perineum.					
161	58999	Genital surgery procedure.					
161	69100	Biopsy of external ear.					
161	69105	Biopsy of external ear canal.					
162	LEVEL II EXCISION/BIOPSY		T	5.59	$287.44	$125.66	$57.49
162	11043	Debride tissue/muscle.					
162	11044	Debride tissue/muscle/bone.					
162	11404	Removal of skin lesion.					
162	11424	Removal of skin lesion.					
162	11444	Removal of skin lesion.					
162	11604	Removal of skin lesion.					
162	11770	Removal of pilonidal lesion.					
162	16035	Incision of burn scab.					
[2] 162	16040	Burn wound excision.					
[2] 162	16041	Burn wound excision.					
[2] 162	16042	Burn wound excision.					
162	17304	Chemosurgery of skin lesion.					
162	17305	2nd stage chemosurgery.					
162	17306	3rd stage chemosurgery.					
162	17307	Followup skin lesion therapy.					
162	17310	Extensive skin chemosurgery.					
162	20200	Muscle biopsy.					
162	20205	Deep muscle biopsy.					
162	20220	Bone biopsy, trocar/needle.					
162	20225	Bone biopsy, trocar/needle.					
162	20670	Removal of support implant.					
162	23000	Removal of calcium deposits.					
162	23075	Removal of shoulder lesion.					
162	24075	Remove arm/elbow lesion.					
162	25075	Removal of forearm lesion.					
162	27040	Biopsy of soft tissues.					
162	27323	Biopsy thigh soft tissues.					
162	28043	Excision of foot lesion.					
162	37609	Temporal artery procedure.					
162	37799	Vascular surgery procedure.					
162	54100	Biopsy of penis.					
162	54105	Biopsy of penis.					
162	67350	Biopsy eye muscle.					
162	67399	Eye muscle surgery procedure.					
162	68100	Biopsy of eyelid lining.					
162	68110	Remove eyelid lining lesion.					
162	68115	Remove eyelid lining lesion.					
162	68135	Remove eyelid lining lesion.					
162	68345	Eyelid lining surgery.					
163	LEVEL III EXCISION/BIOPSY		T	10.48	$538.88	$260.80	$107.78
163	10121	Remove foreign body.					
163	11010	Debride skin, fx.					
163	11011	Debride skin/muscle, fx.					
163	11012	Debride skin/muscle/bone, fx.					
163	11406	Removal of skin lesion.					
163	11426	Removal of skin lesion.					
163	11446	Removal of skin lesion.					
163	11450	Removal, sweat gland lesion.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
163	11451	Removal, sweat gland lesion.					
163	11462	Removal, sweat gland lesion.					
163	11463	Removal, sweat gland lesion.					
163	11470	Removal, sweat gland lesion.					
163	11471	Removal, sweat gland lesion.					
163	11606	Removal of skin lesion.					
163	11624	Removal of skin lesion.					
163	11626	Removal of skin lesion.					
163	11644	Removal of skin lesion.					
163	11646	Removal of skin lesion.					
163	11752	Remove nail bed/finger tip.					
163	11771	Removal of pilonidal lesion.					
163	11772	Removal of pilonidal lesion.					
163	11971	Remove tissue expander(s).					
163	15780	Abrasion treatment of skin.					
163	15781	Abrasion treatment of skin.					
163	15782	Abrasion treatment of skin.					
163	15811	Salabrasion.					
163	15836	Excise excessive skin tissue.					
163	15920	Removal of tail bone ulcer.					
163	15931	Remove sacrum pressure sore.					
163	15933	Remove sacrum pressure sore.					
163	15940	Removal of pressure sore.					
163	15941	Removal of pressure sore.					
163	15950	Remove thigh pressure sore.					
163	15951	Remove thigh pressure sore.					
163	15999	Removal of pressure sore.					
163	20240	Bone biopsy, excisional.					
163	20245	Bone biopsy, excisional.					
163	20525	Removal of foreign body.					
163	20680	Removal of support implant.					
163	21555	Remove lesion neck/chest.					
163	21556	Remove lesion neck/chest.					
163	21925	Biopsy soft tissue of back.					
163	21930	Remove lesion, back or flank.					
163	21935	Remove tumor of back.					
163	22900	Remove abdominal wall lesion.					
163	22999	Abdomen surgery procedure.					
163	23066	Biopsy shoulder tissues.					
163	23076	Removal of shoulder lesion.					
163	23077	Remove tumor of shoulder.					
163	23330	Remove shoulder foreign body.					
163	23331	Remove shoulder foreign body.					
163	24066	Biopsy arm/elbow soft tissue.					
163	24076	Remove arm/elbow lesion.					
163	24077	Remove tumor of arm/elbow.					
163	24201	Removal of arm foreign body.					
163	25066	Biopsy forearm soft tissues.					
163	25076	Removal of forearm lesion.					
163	25077	Remove tumor, forearm/wrist.					
163	26115	Removal of hand lesion.					
163	26116	Removal of hand lesion.					
163	26117	Remove tumor, hand/finger.					
163	26320	Removal of implant from hand.					
163	27041	Biopsy of soft tissues.					
163	27047	Remove hip/pelvis lesion.					
163	27048	Remove hip/pelvis lesion.					
163	27049	Remove tumor, hip/pelvis.					
163	27324	Biopsy thigh soft tissues.					
163	27327	Removal of thigh lesion.					
163	27328	Removal of thigh lesion.					
163	27329	Remove tumor, thigh/knee.					
163	27372	Removal of foreign body.					
163	27614	Biopsy lower leg soft tissue.					
163	27618	Remove lower leg lesion.					
163	27619	Remove lower leg lesion.					
163	28192	Removal of foot foreign body.					
163	28193	Removal of foot foreign body.					
163	69110	Partial removal external ear.					
163	69145	Remove ear canal lesion(s).					
163	69205	Clear outer ear canal.					
181	LEVEL I SKIN REPAIR		T	2.17	$111.58	$44.07	$22.32
181	11760	Reconstruction of nail bed.					
181	11762	Reconstruction of nail bed.					
181	11920	Correct skin color defects.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
181	11921	Correct skin color defects.					
181	11922	Correct skin color defects.					
181	11950	Therapy for contour defects.					
181	11951	Therapy for contour defects.					
181	11952	Therapy for contour defects.					
181	11954	Therapy for contour defects.					
181	12001	Repair superficial wound(s).					
181	12002	Repair superficial wound(s).					
181	12004	Repair superficial wound(s).					
181	12005	Repair superficial wound(s).					
181	12006	Repair superficial wound(s).					
181	12007	Repair superficial wound(s).					
181	12011	Repair superficial wound(s).					
181	12013	Repair superficial wound(s).					
181	12014	Repair superficial wound(s).					
181	12015	Repair superficial wound(s).					
181	12016	Repair superficial wound(s).					
181	12017	Repair superficial wound(s).					
181	12018	Repair superficial wound(s).					
181	12020	Closure of split wound.					
181	12021	Closure of split wound.					
181	12031	Layer closure of wound(s).					
181	12032	Layer closure of wound(s).					
181	12034	Layer closure of wound(s).					
181	12035	Layer closure of wound(s).					
181	12036	Layer closure of wound(s).					
181	12041	Layer closure of wound(s).					
181	12042	Layer closure of wound(s).					
181	12044	Layer closure of wound(s).					
181	12045	Layer closure of wound(s).					
181	12046	Layer closure of wound(s).					
181	12051	Layer closure of wound(s).					
181	12052	Layer closure of wound(s).					
181	12053	Layer closure of wound(s).					
181	12054	Layer closure of wound(s).					
181	12055	Layer closure of wound(s).					
181	12056	Layer closure of wound(s).					
181	20500	Injection of sinus tract.					
182	LEVEL II SKIN REPAIR		T	4.11	$211.34	$92.43	$42.27
182	13100	Repair of wound or lesion.					
182	13101	Repair of wound or lesion.					
182	13120	Repair of wound or lesion.					
182	13121	Repair of wound or lesion.					
182	13131	Repair of wound or lesion.					
182	13132	Repair of wound or lesion.					
182	13150	Repair of wound or lesion.					
182	13151	Repair of wound or lesion.					
182	13152	Repair of wound or lesion.					
182	13160	Late closure of wound.					
182	13300	Repair of wound or lesion.					
182	43870	Repair stomach opening.					
183	LEVEL III SKIN REPAIR		T	11.04	$567.68	$283.18	$113.54
183	11960	Insert tissue expander(s).					
183	11970	Replace tissue expander.					
183	12037	Layer closure of wound(s).					
183	12047	Layer closure of wound(s).					
183	12057	Layer closure of wound(s).					
183	14000	Skin tissue rearrangement.					
183	14001	Skin tissue rearrangement.					
183	14020	Skin tissue rearrangement.					
183	14021	Skin tissue rearrangement.					
183	14040	Skin tissue rearrangement.					
183	14041	Skin tissue rearrangement.					
183	14060	Skin tissue rearrangement.					
183	14061	Skin tissue rearrangement.					
183	14300	Skin tissue rearrangement.					
183	14350	Skin tissue rearrangement.					
183	15000	Skin graft.					
183	15050	Skin pinch graft.					
183	15100	Skin split graft.					
183	15101	Skin split graft add-on.					
183	15120	Skin split graft.					
183	15121	Skin split graft add-on.					
183	15200	Skin full graft.					
183	15201	Skin full graft add-on.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
183	15220	Skin full graft.					
183	15221	Skin full graft add-on.					
183	15240	Skin full graft.					
183	15241	Skin full graft add-on.					
183	15260	Skin full graft.					
183	15261	Skin full graft add-on.					
183	15350	Skin homograft.					
183	15400	Skin heterograft.					
183	15570	Form skin pedicle flap.					
183	15572	Form skin pedicle flap.					
183	15574	Form skin pedicle flap.					
183	15576	Form skin pedicle flap.					
183	15580	Attach skin pedicle graft.					
183	15600	Skin graft.					
183	15610	Skin graft.					
183	15620	Skin graft.					
183	15625	Skin graft.					
183	15630	Skin graft.					
183	15650	Transfer skin pedicle flap.					
183	15775	Hair transplant punch grafts.					
183	15776	Hair transplant punch grafts.					
183	15819	Plastic surgery, neck.					
183	15820	Revision of lower eyelid.					
183	15821	Revision of lower eyelid.					
183	15822	Revision of upper eyelid.					
183	15823	Revision of upper eyelid.					
183	15825	Removal of neck wrinkles.					
183	15829	Removal of skin wrinkles.					
183	15835	Excise excessive skin tissue.					
183	20910	Remove cartilage for graft.					
183	20912	Remove cartilage for graft.					
183	20920	Removal of fascia for graft.					
183	20922	Removal of fascia for graft.					
183	20926	Removal of tissue for graft.					
183	23921	Amputation follow-up surgery.					
183	25929	Amputation follow-up surgery.					
183	44312	Revision of ileostomy.					
183	44340	Revision of colostomy.					
183	65270	Repair of eye wound.					
184	LEVEL IV SKIN REPAIR		T	14.85	$763.59	$397.99	$152.72
184	15732	Muscle-skin graft, head/neck.					
184	15734	Muscle-skin graft, trunk.					
184	15736	Muscle-skin graft, arm.					
184	15738	Muscle-skin graft, leg.					
184	15740	Island pedicle flap graft.					
184	15750	Neurovascular pedicle graft.					
184	15760	Composite skin graft.					
184	15770	Derma-fat-fascia graft.					
184	15824	Removal of forehead wrinkles.					
184	15826	Removal of brow wrinkles.					
184	15828	Removal of face wrinkles.					
184	15831	Excise excessive skin tissue.					
184	15832	Excise excessive skin tissue.					
184	15833	Excise excessive skin tissue.					
184	15834	Excise excessive skin tissue.					
184	15836	Excise excessive skin tissue.					
184	15837	Excise excessive skin tissue.					
184	15839	Excise excessive skin tissue.					
184	15840	Graft for face nerve palsy.					
184	15841	Graft for face nerve palsy.					
184	15842	Graft for face nerve palsy.					
184	15845	Skin and muscle repair, face.					
184	15876	Suction assisted lipectomy.					
184	15877	Suction assisted lipectomy					
184	15878	Suction assisted lipectomy.					
184	15879	Suction assisted lipectomy.					
184	15922	Removal of tail bone ulcer.					
184	15934	Remove sacrum pressure sore.					
184	15935	Remove sacrum pressure sore.					
184	15936	Remove sacrum pressure sore.					
184	15937	Remove sacrum pressure sore.					
184	15944	Removal of pressure sore.					
184	15945	Removal of pressure sore.					
184	15946	Removal of pressure sore.					
184	15952	Remove thigh pressure sore.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
184	15953	Remove thigh pressure sore.					
184	15956	Remove thigh pressure sore.					
184	15958	Remove thigh pressure sore.					
197		INCISION/EXCISION BREAST	T	11.94	$613.95	$308.26	$122.79
197	19101	Biopsy of breast.					
197	19110	Nipple exploration.					
197	19112	Excise breast duct fistula.					
197	19120	Removal of breast lesion.					
197	19125	Excision, breast lesion.					
197	19126	Excision,addl breast lesion.					
197	19140	Removal of breast tissue.					
197	19290	Place needle wire, breast.					
197	19291	Place needle wire, breast.					
197	19396	Design custom breast implant.					
197	19499	Breast surgery procedure.					
198		BREAST RECONSTRUCTION/MASTECTOMY	T	18.63	$957.95	$523.42	$191.59
198	19160	Removal of breast tissue.					
198	19162	Remove breast tissue, nodes.					
198	19180	Removal of breast.					
198	19182	Removal of breast.					
198	19316	Suspension of breast.					
198	19318	Reduction of large breast.					
198	19324	Enlarge breast.					
198	19325	Enlarge breast with implant.					
198	19328	Removal of breast implant.					
198	19330	Removal of implant material.					
198	19340	Immediate breast prosthesis.					
198	19342	Delayed breast prosthesis.					
198	19350	Breast reconstruction.					
198	19355	Correct inverted nipple(s).					
198	19357	Breast reconstruction.					
198	19366	Breast reconstruction.					
198	19370	Surgery of breast capsule.					
198	19371	Removal of breast capsule.					
198	19380	Revise breast reconstruction.					
200		ARTHROCENTESIS & LIGAMENT/TENDON INJECTION	T	1.76	$90.50	$39.10	$18.10
200	20550	Inj tendon/ligament/cyst.					
200	20600	Drain/inject joint/bursa.					
200	20605	Drain/inject joint/bursa.					
200	20610	Drain/inject joint/bursa.					
207		CLOSED TREATMENT FRACTURE FINGER/TOE/TRUNK	T	1.70	$87.41	$32.32	$17.48
207	21800	Treatment of rib fracture.					
207	21820	Treat sternum fracture.					
207	21899	Neck/chest surgery procedure.					
207	22305	Treat spine process fracture.					
207	22310	Treat spine fracture.					
207	22315	Treat spine fracture.					
207	22899	Spine surgery procedure.					
207	23500	Treat clavicle fracture.					
207	23505	Treat clavicle fracture.					
207	23520	Treat clavicle dislocation.					
207	23525	Treat clavicle dislocation.					
207	23540	Treat clavicle dislocation.					
207	23545	Treat clavicle dislocation.					
207	23570	Treat shoulderblade fracture.					
207	23575	Treat shoulderblade fracture.					
207	23650	Treat shoulder dislocation.					
207	23929	Shoulder surgery procedure.					
207	26700	Treat knuckle dislocation.					
207	26720	Treat finger fracture, each.					
207	26725	Treat finger fracture, each.					
207	26740	Treat finger fracture, each.					
207	26750	Treat finger fracture, each.					
207	26755	Treat finger fracture, each.					
207	26770	Treat finger dislocation.					
207	26989	Hand/finger surgery.					
207	27200	Treat tail bone fracture.					
207	27299	Pelvis/hip joint surgery.					
207	28490	Treat big toe fracture.					
207	28495	Treat big toe fracture.					
207	28510	Treatment of toe fracture.					
207	28515	Treatment of toe fracture.					
207	28630	Treat toe dislocation.					
207	28660	Treat toe dislocation.					
207	28899	Foot/toes surgery procedure.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
207	31585	Repair of larynx fracture.					
207	31599	Larynx surgery procedure.					
209		CLOSED TREATMENT FRACTURE/DISLOCATION/EXCEPT FINGER/TOE/TRUNK	T	1.94	$99.75	$37.74	$19.95
209	23600	Treat humerus fracture.					
209	23605	Treat humerus fracture.					
209	23620	Treat humerus fracture.					
209	23625	Treat humerus fracture.					
209	23665	Treat dislocation/fracture.					
209	23675	Treat dislocation/fracture.					
209	24500	Treat humerus fracture.					
209	24505	Treat humerus fracture.					
209	24530	Treat humerus fracture.					
209	24535	Treat humerus fracture.					
209	24560	Treat humerus fracture.					
209	24565	Treat humerus fracture.					
209	24576	Treat humerus fracture.					
209	24577	Treat humerus fracture.					
209	24600	Treat elbow dislocation.					
209	24620	Treat elbow fracture.					
209	24640	Treat elbow dislocation.					
209	24650	Treat radius fracture.					
209	24655	Treat radius fracture.					
209	24670	Treatment of ulna fracture.					
209	24675	Treatment of ulna fracture.					
209	24999	Upper arm/elbow surgery.					
209	25500	Treat fracture of radius.					
209	25505	Treat fracture of radius.					
209	25520	Repair fracture of radius.					
209	25530	Treat fracture of ulna.					
209	25535	Treat fracture of ulna.					
209	25560	Treat fracture radius & ulna.					
209	25565	Treat fracture radius & ulna.					
209	25600	Treat fracture radius/ulna.					
209	25605	Treat fracture radius/ulna.					
209	25622	Treat wrist bone fracture.					
209	25624	Treat wrist bone fracture.					
209	25630	Treat wrist bone fracture.					
209	25635	Treat wrist bone fracture.					
209	25650	Repair wrist bone fracture.					
209	25660	Treat wrist dislocation.					
209	25675	Treat wrist dislocation.					
209	25680	Treat wrist fracture.					
209	25690	Treat wrist dislocation.					
209	25999	Forearm or wrist surgery.					
209	26600	Treat metacarpal fracture.					
209	26605	Treat metacarpal fracture.					
209	26607	Treat metacarpal fracture.					
209	26641	Treat thumb dislocation.					
209	26645	Treat thumb fracture.					
209	26670	Treat hand dislocation.					
209	26706	Pin knuckle dislocation.					
209	26742	Treat finger fracture, each.					
209	27193	Treat pelvic ring fracture.					
209	27220	Treat hip socket fracture.					
209	27230	Treat fracture of thigh.					
209	27238	Treatment of thigh fracture.					
209	27246	Treatment of thigh fracture.					
209	27250	Treat hip dislocation.					
209	27256	Treatment of hip dislocation.					
209	27265	Treatment of hip dislocation.					
209	27500	Treatment of thigh fracture.					
209	27501	Treatment of thigh fracture.					
209	27502	Treatment of thigh fracture.					
209	27503	Treatment of thigh fracture.					
209	27508	Treatment of thigh fracture.					
209	27510	Treatment of thigh fracture.					
209	27516	Repair of thigh growth plate.					
209	27517	Repair of thigh growth plate.					
209	27520	Treat kneecap fracture.					
209	27530	Treatment of knee fracture.					
209	27532	Treatment of knee fracture.					
209	27538	Treat knee fracture(s).					
209	27550	Treat knee dislocation.					
209	27560	Treat kneecap dislocation.					
209	27599	Leg surgery procedure.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
209	27750	Treatment of tibia fracture.					
209	27752	Treatment of tibia fracture.					
209	27760	Treatment of ankle fracture.					
209	27762	Treatment of ankle fracture.					
209	27780	Treatment of fibula fracture.					
209	27781	Treatment of fibula fracture.					
209	27786	Treatment of ankle fracture.					
209	27788	Treatment of ankle fracture.					
209	27808	Treatment of ankle fracture.					
209	27810	Treatment of ankle fracture.					
209	27816	Treatment of ankle fracture.					
209	27818	Treatment of ankle fracture.					
209	27824	Treat lower leg fracture.					
209	27825	Treat lower leg fracture.					
209	27830	Treat lower leg dislocation.					
209	27840	Treat ankle dislocation.					
209	27899	Leg/ankle surgery procedure.					
209	28400	Treatment of heel fracture.					
209	28405	Treatment of heel fracture.					
209	28430	Treatment of ankle fracture.					
209	28435	Treatment of ankle fracture.					
209	28450	Treat midfoot fracture, each.					
209	28455	Treat midfoot fracture, each.					
209	28470	Treat metatarsal fracture.					
209	28475	Treat metatarsal fracture.					
209	28530	Treat sesamoid bone fracture.					
209	28540	Treat foot dislocation.					
209	28570	Treat foot dislocation.					
209	28600	Treat foot dislocation.					
209	31586	Repair of larynx fracture.					
210	BONE/JOINT MANIPULATION UNDER ANESTHESIA		T	10.06	$517.29	$279.34	$103.46
210	22505	Manipulation of spine.					
210	23655	Treat shoulder dislocation.					
210	23700	Fixation of shoulder.					
210	24605	Treat elbow dislocation.					
210	26675	Treat hand dislocation.					
210	26705	Treat knuckle dislocation.					
210	26775	Treat finger dislocation.					
210	27194	Treat pelvic ring fracture.					
210	27252	Treat hip dislocation.					
210	27257	Treatment of hip dislocation.					
210	27275	Manipulation of hip joint.					
210	27552	Treat knee dislocation.					
210	27562	Treat kneecap dislocation.					
210	27570	Fixation of knee joint.					
210	27831	Treat lower leg dislocation.					
210	27842	Treat ankle dislocation.					
210	27860	Fixation of ankle joint.					
210	28545	Treat foot dislocation.					
210	28575	Treat foot dislocation.					
210	28605	Treat foot dislocation.					
210	28615	Treat toe dislocation.					
210	28665	Treat toe dislocation.					
216	OPEN/PERCUTANEOUS TREATMENT FRACTURE OR DISLOCATION		T	20.09	$1,033.03	$524.09	$206.61
216	21336	Repair nasal septal fracture.					
216	21805	Treatment of rib fracture.					
216	23515	Repair clavicle fracture.					
216	23530	Repair clavicle dislocation.					
216	23532	Repair clavicle dislocation.					
216	23550	Repair clavicle dislocation.					
216	23552	Repair clavicle dislocation.					
216	23585	Repair scapula fracture.					
216	23615	Repair humerus fracture.					
216	23616	Repair humerus fracture.					
216	23630	Repair humerus fracture.					
216	23650	Repair shoulder dislocation.					
216	23670	Repair dislocation/fracture.					
216	23680	Repair dislocation/fracture.					
216	24515	Repair humerus fracture.					
216	24516	Repair humerus fracture.					
216	24538	Treat humerus fracture.					
216	24545	Repair humerus fracture.					
216	24546	Repair humerus fracture.					
216	24566	Treat humerus fracture.					
216	24575	Repair humerus fracture.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
216	24579	Repair humerus fracture.					
216	24582	Treat humerus fracture.					
216	24586	Repair elbow fracture.					
216	24587	Repair elbow fracture.					
216	24615	Repair elbow dislocation.					
216	24635	Repair elbow fracture.					
216	24665	Repair radius fracture.					
216	24666	Repair radius fracture.					
216	24685	Repair ulna fracture.					
216	25515	Repair fracture of radius.					
216	25525	Repair fracture of radius.					
216	25526	Repair fracture of radius.					
216	25545	Repair fracture of ulna.					
216	25574	Treat fracture radius & ulna.					
216	25575	Repair fracture radius/ulna.					
216	25611	Repair fracture radius/ulna.					
216	25620	Repair fracture radius/ulna.					
216	25628	Repair wrist bone fracture.					
216	25645	Repair wrist bone fracture.					
216	25670	Repair wrist dislocation.					
216	25676	Repair wrist dislocation.					
216	25685	Repair wrist fracture.					
216	25695	Repair wrist dislocation.					
216	26606	Treat metacarpal fracture.					
216	26615	Repair metacarpal fracture.					
216	26650	Repair thumb fracture.					
216	26655	Repair thumb fracture.					
216	26676	Pin hand dislocation.					
216	26685	Repair hand dislocation.					
216	26686	Repair hand dislocation.					
216	26715	Repair knuckle dislocation.					
216	26727	Treat finger fracture, each.					
216	26735	Repair finger fracture, each.					
216	26746	Repair finger fracture, each.					
216	26756	Pin finger fracture, each.					
216	26765	Repair finger fracture, each.					
216	26776	Pin finger dislocation.					
216	26785	Repair finger dislocation.					
216	27202	Repair tail bone fracture.					
216	27509	Treatment of thigh fracture.					
216	27556	Repair of knee dislocation.					
216	27566	Repair kneecap dislocation.					
216	27615	Remove tumor, lower leg.					
216	27756	Repair of tibia fracture.					
216	27758	Repair of tibia fracture.					
216	27759	Repair of tibia fracture.					
216	27766	Repair of ankle fracture.					
216	27784	Repair of fibula fracture.					
216	27792	Repair of ankle fracture.					
216	27814	Repair of ankle fracture.					
216	27822	Repair of ankle fracture.					
216	27823	Repair of ankle fracture.					
216	27826	Treat lower leg fracture.					
216	27827	Treat lower leg fracture.					
216	27828	Treat lower leg fracture.					
216	27829	Treat lower leg joint.					
216	27832	Repair lower leg dislocation.					
216	27845	Repair ankle dislocation.					
216	27848	Repair ankle dislocation.					
216	28406	Treatment of heel fracture.					
216	28415	Repair of heel fracture.					
216	28420	Repair/graft heel fracture.					
216	28436	Treatment of ankle fracture.					
216	28445	Repair of ankle fracture.					
216	28456	Repair midfoot fracture.					
216	28465	Repair midfoot fracture,each.					
216	28476	Repair metatarsal fracture.					
216	28485	Repair metatarsal fracture.					
216	28496	Repair big toe fracture.					
216	28505	Repair big toe fracture.					
216	28525	Repair of toe fracture.					
216	28531	Treat sesamoid bone fracture.					
216	28546	Treat foot dislocation.					
216	28555	Repair foot dislocation.					
216	28576	Treat foot dislocation.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
216	28585	Repair foot dislocation.					
216	28606	Treat foot dislocation.					
216	28615	Repair foot dislocation.					
216	28636	Treat toe dislocation.					
216	28645	Repair toe dislocation.					
216	28666	Treat toe dislocation.					
216	28675	Repair of toe dislocation.					
217	ARTHROPLASTY		T	20.54	$1,056.17	$530.42	$211.23
217	24360	Reconstruct elbow joint.					
217	24365	Reconstruct head of radius.					
[2]217	25330	Revise wrist joint.					
[2]217	25331	Revise wrist joint.					
217	25332	Revise wrist joint.					
217	25447	Repair wrist joint(s).					
217	25449	Remove wrist joint implant.					
217	26530	Revise knuckle joint.					
217	26535	Revise finger joint.					
217	27266	Treatment of hip dislocation.					
217	27437	Revise kneecap.					
217	27440	Revision of knee joint.					
217	27441	Revision of knee joint.					
217	27442	Revision of knee joint.					
217	27443	Revision of knee joint.					
217	27700	Revision of ankle joint.					
218	ARTHROPLASTY WITH PROSTHESIS		T	27.80	$1,429.48	$720.71	$285.90
218	21243	Reconstruction of jaw joint.					
218	24361	Reconstruct elbow joint.					
218	24362	Reconstruct elbow joint.					
218	24363	Replace elbow joint.					
218	24366	Reconstruct head of radius.					
218	25441	Reconstruct wrist joint.					
218	25442	Reconstruct wrist joint.					
218	25443	Reconstruct wrist joint.					
218	25444	Reconstruct wrist joint.					
218	25445	Reconstruct wrist joint.					
218	25446	Wrist replacement.					
218	26531	Revise knuckle with implant.					
218	26536	Revise/implant finger joint.					
218	27438	Revise kneecap with implant.					
226	MAXILLOFACIAL PROSTHESES		T	1.56	$80.22	$21.92	$16.04
226	21076	Prepare face/oral prosthesis.					
226	21077	Prepare face/oral prosthesis.					
226	21079	Prepare face/oral prosthesis.					
226	21080	Prepare face/oral prosthesis.					
226	21081	Prepare face/oral prosthesis.					
226	21082	Prepare face/oral prosthesis.					
226	21083	Prepare face/oral prosthesis.					
226	21084	Prepare face/oral prosthesis.					
226	21086	Prepare face/oral prosthesis.					
226	21087	Prepare face/oral prosthesis.					
226	21088	Prepare face/oral prosthesis.					
226	21089	Prepare face/oral prosthesis.					
231	LEVEL I SKULL AND FACIAL BONE PROCEDURES		T	11.31	$581.56	$286.79	$116.31
231	21015	Resection of facial tumor.					
231	21025	Excision of bone, lower jaw.					
231	21026	Excision of facial bone(s).					
231	21029	Contour of face bone lesion.					
231	21030	Removal of face bone lesion.					
231	21031	Remove exostosis, mandible.					
231	21032	Remove exostosis, maxilla.					
231	21040	Removal of jaw bone lesion.					
231	21041	Removal of jaw bone lesion.					
231	21100	Maxillofacial fixation.					
231	21110	Interdental fixation.					
231	21120	Reconstruction of chin.					
231	21125	Augmentation lower jaw bone.					
231	21280	Revision of eyelid.					
231	21282	Revision of eyelid.					
231	21295	Revision of jaw muscle/bone.					
231	21296	Revision of jaw muscle/bone.					
231	21299	Cranio/maxillofacial surgery.					
231	21300	Treatment of skull fracture.					
231	21310	Treatment of nose fracture.					
231	21315	Treatment of nose fracture.					
231	21320	Treatment of nose fracture.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
231	21325	Repair of nose fracture.					
231	21337	Repair nasal septal fracture.					
231	21355	Repair cheek bone fracture.					
231	21400	Treat eye socket fracture.					
231	21401	Repair eye socket fracture.					
231	21440	Repair dental ridge fracture.					
231	21451	Treat lower jaw fracture.					
231	21480	Reset dislocated jaw.					
231	21485	Reset dislocated jaw.					
231	21493	Treat hyoid bone fracture.					
231	21494	Repair hyoid bone fracture.					
231	21497	Interdental wiring.					
231	21499	Head surgery procedure.					
231	41822	Excision of gum lesion.					
231	41823	Excision of gum lesion.					
232	LEVEL II SKULL AND FACIAL BONE PROCEDURES		T	23.82	$1,224.82	$636.87	$244.96
232	21010	Incision of jaw joint.					
232	21034	Removal of face bone lesion.					
232	21044	Removal of jaw bone lesion.					
232	21050	Removal of jaw joint.					
232	21060	Remove jaw joint cartilage.					
232	21070	Remove coronoid process.					
232	21121	Reconstruction of chin.					
232	21122	Reconstruction of chin.					
232	21123	Reconstruction of chin.					
232	21127	Augmentation lower jaw bone.					
232	21181	Contour cranial bone lesion.					
232	21206	Reconstruct upper jaw bone.					
232	21208	Augmentation of facial bones.					
232	21209	Reduction of facial bones.					
232	21210	Face bone graft.					
232	21215	Lower jaw bone graft.					
232	21230	Rib cartilage graft.					
232	21235	Ear cartilage graft.					
232	21240	Reconstruction of jaw joint.					
232	21242	Reconstruction of jaw joint.					
232	21244	Reconstruction of lower jaw.					
232	21245	Reconstruction of jaw.					
232	21246	Reconstruction of jaw.					
232	21248	Reconstruction of jaw.					
232	21249	Reconstruction of jaw.					
232	21260	Revise eye sockets.					
232	21267	Revise eye sockets.					
232	21270	Augmentation cheek bone.					
232	21275	Revision orbitofacial bones.					
232	21330	Repair of nose fracture.					
232	21335	Repair of nose fracture.					
232	21338	Repair nasoethmoid fracture.					
232	21339	Repair nasoethmoid fracture.					
232	21340	Repair of nose fracture.					
232	21343	Repair of sinus fracture.					
232	21345	Repair of nose/jaw fracture.					
232	21421	Treat mouth roof fracture.					
232	21445	Repair dental ridge fracture.					
232	21450	Treat lower jaw fracture.					
232	21452	Treat lower jaw fracture.					
232	21453	Treat lower jaw fracture.					
232	21454	Treat lower jaw fracture.					
232	21461	Repair lower jaw fracture.					
232	21462	Repair lower jaw fracture.					
232	21465	Repair lower jaw fracture.					
232	21490	Repair dislocated jaw.					
232	67420	Explore/treat eye socket.					
232	67430	Explore/treat eye socket.					
232	67440	Explore/drain eye socket.					
232	67450	Explore/biopsy eye socket.					
251	LEVEL I MUSCULOSKELETAL PROCEDURES		T	13.88	$713.71	$365.89	$142.74
251	20005	Incision of deep abscess.					
251	20250	Open bone biopsy.					
251	20251	Open bone biopsy.					
251	20650	Insert and remove bone pin.					
251	20693	Adjust bone fixation device.					
251	20694	Remove bone fixation device.					
251	20975	Electrical bone stimulation.					
251	23100	Biopsy of shoulder joint.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
251	23140	Removal of bone lesion.					
251	23935	Drain arm/elbow bone lesion.					
251	24100	Biopsy elbow joint lining.					
251	24105	Removal of elbow bursa.					
251	24110	Remove humerus lesion.					
251	24120	Remove elbow lesion.					
251	24310	Revision of arm tendon.					
251	24925	Amputation follow-up surgery.					
251	25000	Incision of tendon sheath.					
251	25020	Decompression of forearm.					
251	25028	Drainage of forearm lesion.					
251	25031	Drainage of forearm bursa.					
251	25035	Treat forearm bone lesion.					
251	25085	Incision of wrist capsule.					
251	25100	Biopsy of wrist joint.					
251	25110	Remove wrist tendon lesion.					
251	25115	Remove wrist/forearm lesion.					
251	25116	Remove wrist/forearm lesion.					
251	25248	Remove forearm foreign body.					
251	25295	Release wrist/forearm tendon.					
251	25907	Amputation follow-up surgery.					
251	25922	Amputate hand at wrist.					
251	26990	Drainage of pelvis lesion.					
251	26991	Drainage of pelvis bursa.					
251	27000	Incision of hip tendon.					
251	27050	Biopsy of sacroiliac joint.					
251	27052	Biopsy of hip joint.					
251	27060	Removal of ischial bursa.					
251	27062	Remove femur lesion/bursa.					
251	27065	Removal of hip bone lesion.					
251	27086	Remove hip foreign body.					
251	27087	Remove hip foreign body.					
251	27305	Incise thigh tendon & fascia.					
251	27306	Incision of thigh tendon.					
251	27307	Incision of thigh tendons.					
251	27340	Removal of kneecap bursa.					
251	27345	Removal of knee cyst.					
251	27380	Repair of kneecap tendon.					
251	27381	Repair/graft kneecap tendon.					
251	27385	Repair of thigh muscle.					
251	27386	Repair/graft of thigh muscle.					
251	27390	Incision of thigh tendon.					
251	27391	Incision of thigh tendons.					
251	27392	Incision of thigh tendons.					
251	27496	Decompression of thigh/knee.					
251	27497	Decompression of thigh/knee.					
251	27498	Decompression of thigh/knee.					
251	27499	Decompression of thigh/knee.					
251	27594	Amputation follow-up surgery.					
251	27600	Decompression of lower leg.					
251	27601	Decompression of lower leg.					
251	27602	Decompression of lower leg.					
251	27604	Drain lower leg bursa.					
251	27606	Incision of achilles tendon.					
251	27607	Treat lower leg bone lesion.					
251	27630	Removal of tendon lesion.					
251	27656	Repair leg fascia defect.					
251	27658	Repair of leg tendon, each.					
251	27659	Repair of leg tendon, each.					
251	27664	Repair of leg tendon, each.					
251	27675	Repair lower leg tendons.					
251	27704	Removal of ankle implant.					
251	27707	Incision of fibula.					
251	27884	Amputation follow-up surgery.					
251	27892	Decompression of leg.					
251	27893	Decompression of leg.					
251	27894	Decompression of leg					
251	28002	Treatment of foot infection.					
251	28003	Treatment of foot infection.					
252	LEVEL II MUSCULOSKELETAL PROCEDURES		T	19.24	$989.32	$512.34	$197.86
252	20690	Apply bone fixation device.					
252	20692	Apply bone fixation device.					
252	20900	Removal of bone for graft.					
252	20902	Removal of bone for graft.					
252	20924	Removal of tendon for graft.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
252	21502	Drain chest lesion.					
252	21600	Partial removal of rib.					
252	21610	Partial removal of rib.					
252	23040	Exploratory shoulder surgery.					
252	23044	Exploratory shoulder surgery.					
252	23101	Shoulder joint surgery.					
252	23105	Remove shoulder joint lining.					
252	23106	Incision of collarbone joint.					
252	23107	Explore,treat shoulder joint.					
252	23145	Removal of bone lesion.					
252	23146	Removal of bone lesion.					
252	23150	Removal of humerus lesion.					
252	23155	Removal of humerus lesion.					
252	23156	Removal of humerus lesion.					
252	23170	Remove collarbone lesion.					
252	23172	Remove shoulder blade lesion.					
252	23174	Remove humerus lesion.					
252	23180	Remove collar bone lesion.					
252	23182	Remove shoulder blade lesion.					
252	23184	Remove humerus lesion.					
252	23190	Partial removal of scapula.					
252	23405	Incision of tendon & muscle.					
252	23406	Incise tendon(s) & muscle(s).					
252	24000	Exploratory elbow surgery.					
252	24006	Release elbow joint.					
252	24101	Explore/treat elbow joint.					
252	24102	Remove elbow joint lining.					
252	24115	Remove/graft bone lesion.					
252	24116	Remove/graft bone lesion.					
252	24125	Remove/graft bone lesion.					
252	24126	Remove/graft bone lesion.					
252	24130	Removal of head of radius.					
252	24134	Removal of arm bone lesion.					
252	24136	Remove radius bone lesion.					
252	24138	Remove elbow bone lesion.					
252	24140	Partial removal of arm bone.					
252	24145	Partial removal of radius.					
252	24147	Partial removal of elbow.					
252	24160	Remove elbow joint implant.					
252	24164	Remove radius head implant.					
252	24301	Muscle/tendon transfer.					
252	24305	Arm tendon lengthening.					
252	24350	Repair of tennis elbow.					
252	24351	Repair of tennis elbow.					
252	24352	Repair of tennis elbow.					
252	24354	Repair of tennis elbow.					
252	24356	Revision of tennis elbow.					
252	24400	Revision of humerus.					
252	24410	Revision of humerus.					
252	24495	Decompression of forearm.					
252	25023	Decompression of forearm.					
252	25040	Explore/treat wrist joint.					
252	25101	Explore/treat wrist joint.					
252	25105	Remove wrist joint lining.					
252	25107	Remove wrist joint cartilage.					
252	25118	Excise wrist tendon sheath.					
252	25119	Partial removal of ulna.					
252	25120	Removal of forearm lesion.					
252	25125	Remove/graft forearm lesion.					
252	25126	Remove/graft forearm lesion.					
252	25130	Removal of wrist lesion.					
252	25135	Remove & graft wrist lesion.					
252	25136	Remove & graft wrist lesion.					
252	25145	Remove forearm bone lesion.					
252	25150	Partial removal of ulna.					
252	25151	Partial removal of radius.					
252	25230	Partial removal of radius.					
252	25240	Partial removal of ulna.					
252	25250	Removal of wrist prosthesis.					
252	25251	Removal of wrist prosthesis.					
252	25260	Repair forearm tendon/muscle.					
252	25263	Repair forearm tendon/muscle.					
252	25265	Repair forearm tendon/muscle.					
252	25270	Repair forearm tendon/muscle.					
252	25272	Repair forearm tendon/muscle.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
252	25274	Repair forearm tendon/muscle.					
252	25280	Revise wrist/forearm tendon.					
252	25290	Incise wrist/forearm tendon.					
252	25300	Fusion of tendons at wrist.					
252	25301	Fusion of tendons at wrist.					
252	25360	Revision of ulna.					
252	25365	Revise radius & ulna.					
252	25400	Repair radius or ulna.					
252	25415	Repair radius & ulna.					
252	27001	Incision of hip tendon.					
252	27003	Incision of hip tendon.					
252	27066	Removal of hip bone lesion.					
252	27067	Remove/graft hip bone lesion.					
252	27080	Removal of tail bone.					
252	27097	Revision of hip tendon.					
252	27098	Transfer tendon to pelvis.					
252	27310	Exploration of knee joint.					
252	27330	Biopsy knee joint lining.					
252	27331	Explore/treat knee joint.					
252	27332	Removal of knee cartilage.					
252	27333	Removal of knee cartilage.					
252	27334	Remove knee joint lining.					
252	27335	Remove knee joint lining.					
252	27350	Removal of kneecap.					
252	27355	Remove femur lesion.					
252	27356	Remove femur lesion/graft.					
252	27357	Remove femur lesion/graft.					
252	27358	Remove femur lesion/fixation.					
252	27360	Partial removal leg bone(s).					
252	27393	Lengthening of thigh tendon.					
252	27394	Lengthening of thigh tendons.					
252	27396	Transplant of thigh tendon.					
252	27403	Repair of knee cartilage.					
252	27425	Lateral retinacular release.					
252	27610	Explore/treat ankle joint.					
252	27612	Exploration of ankle joint.					
252	27620	Explore, treat ankle joint.					
252	27625	Remove ankle joint lining.					
252	27626	Remove ankle joint lining.					
252	27635	Remove lower leg bone lesion.					
252	27637	Remove/graft leg bone lesion.					
252	27638	Remove/graft leg bone lesion.					
252	27641	Partial removal of fibula.					
252	27665	Repair of leg tendon, each.					
252	27676	Repair lower leg tendons.					
252	27680	Release of lower leg tendon.					
252	27681	Release of lower leg tendons.					
252	27685	Revision of lower leg tendon.					
252	27686	Revise lower leg tendons.					
252	27687	Revision of calf tendon.					
252	27695	Repair of ankle ligament.					
252	27696	Repair of ankle ligaments.					
252	27698	Repair of ankle ligament.					
252	27709	Incision of tibia & fibula.					
252	27730	Repair of tibia epiphysis.					
252	27732	Repair of fibula epiphysis.					
252	27734	Repair lower leg epiphyses.					
252	27740	Repair of leg epiphyses.					
252	27889	Amputation of foot at ankle.					
253	LEVEL III	MUSCULOSKELETAL PROCEDURES	T	25.74	$1,323.55	$684.55	$264.71
253	23020	Release shoulder joint.					
253	23120	Partial removal, collar bone.					
253	23130	Partial removal,shoulderbone.					
253	23415	Release of shoulder ligament.					
253	23480	Revision of collarbone.					
253	23485	Revision of collar bone.					
253	23490	Reinforce clavicle.					
253	23491	Reinforce shoulder bones.					
253	23800	Fusion of shoulder joint.					
253	23802	Fusion of shoulder joint.					
253	24155	Removal of elbow joint.					
253	24320	Repair of arm tendon.					
253	24330	Revision of arm muscles.					
253	24331	Revision of arm muscles.					
253	24340	Repair of biceps tendon.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
253	24341	Repair tendon/muscle arm.					
253	24342	Repair of ruptured tendon.					
253	24420	Revision of humerus.					
253	24430	Repair of humerus.					
253	24435	Repair humerus with graft.					
253	24470	Revision of elbow joint.					
253	24498	Reinforce humerus.					
253	24800	Fusion of elbow joint.					
253	24802	Fusion/graft of elbow joint.					
253	25310	Transplant forearm tendon.					
253	25312	Transplant forearm tendon.					
253	25315	Revise palsy hand tendon(s).					
253	25316	Revise palsy hand tendon(s).					
253	25320	Repair/revise wrist joint.					
253	25335	Realignment of hand.					
253	25337	Reconstruct ulna/radioulnar.					
253	25350	Revision of radius.					
253	25355	Revision of radius.					
253	25370	Revise radius or ulna.					
253	25375	Revise radius & ulna.					
253	25425	Repair/graft radius or ulna.					
253	25426	Repair/graft radius & ulna.					
253	25440	Repair/graft wrist bone.					
253	25450	Revision of wrist joint.					
253	25455	Revision of wrist joint.					
253	25490	Reinforce radius.					
253	25491	Reinforce ulna.					
253	25492	Reinforce radius and ulna.					
253	25800	Fusion of wrist joint.					
253	25805	Fusion/graft of wrist joint.					
253	25810	Fusion/graft of wrist joint.					
253	25830	Fusion radioulnar jnt/ulna.					
253	27033	Exploration of hip joint.					
253	27100	Transfer of abdominal muscle.					
253	27105	Transfer of spinal muscle.					
253	27110	Transfer of iliopsoas muscle.					
253	27111	Transfer of iliopsoas muscle.					
253	27395	Lengthening of thigh tendons.					
253	27397	Transplants of thigh tendons.					
253	27400	Revise thigh muscles/tendons.					
253	27405	Repair of knee ligament.					
253	27407	Repair of knee ligament.					
253	27409	Repair of knee ligaments.					
253	27418	Repair degenerated kneecap.					
253	27420	Revision of unstable kneecap.					
253	27422	Revision of unstable kneecap.					
253	27424	Revision/removal of kneecap.					
253	27430	Revision of thigh muscles.					
253	27435	Incision of knee joint.					
253	27640	Partial removal of tibia.					
253	27647	Extensive ankle/heel surgery.					
253	27650	Repair achilles tendon.					
253	27652	Repair/graft achilles tendon.					
253	27654	Repair of achilles tendon.					
253	27690	Revise lower leg tendon.					
253	27691	Revise lower leg tendon.					
253	27692	Revise additional leg tendon.					
253	27705	Incision of tibia.					
253	27742	Repair of leg epiphyses.					
253	27745	Reinforce tibia.					
253	27870	Fusion of ankle joint.					
253	27871	Fusion of tibiofibular joint.					
254	LEVEL IV	MUSCULOSKELETAL PROCEDURES	T	32.70	$1,681.43	$922.98	$336.29
254	23410	Repair of tendon(s).					
254	23412	Repair of tendon(s).					
254	23420	Repair of shoulder.					
254	23430	Repair biceps tendon.					
254	23450	Repair shoulder capsule.					
254	23455	Repair shoulder capsule.					
254	23460	Repair shoulder capsule.					
254	23462	Repair shoulder capsule.					
254	23465	Repair shoulder capsule.					
254	23466	Repair shoulder capsule.					
254	27427	Reconstruction, knee.					
254	27428	Reconstruction, knee.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
254	27429	Reconstruction, knee.					
261	LEVEL I HAND MUSCULOSKELETAL PROCEDURES		T	10.41	$535.28	$259.00	$107.06
261	25111	Remove wrist tendon lesion.					
261	25112	Reremove wrist tendon lesion.					
261	25820	Fusion of hand bones.					
261	26020	Drain hand tendon sheath.					
261	26025	Drainage of palm bursa.					
261	26030	Drainage of palm bursa(s).					
261	26034	Treat hand bone lesion.					
261	26035	Decompress fingers/hand.					
261	26037	Decompress fingers/hand.					
261	26055	Incise finger tendon sheath.					
261	26060	Incision of finger tendon.					
261	26070	Explore/treat hand joint.					
261	26075	Explore/treat finger joint.					
261	26080	Explore/treat finger joint.					
261	26100	Biopsy hand joint lining.					
261	26105	Biopsy finger joint lining.					
261	26110	Biopsy finger joint lining.					
261	26130	Remove wrist joint lining.					
261	26140	Revise finger joint, each.					
261	26145	Tendon excision, palm/finger.					
261	26160	Remove tendon sheath lesion.					
261	26170	Removal of palm tendon, each.					
261	26180	Removal of finger tendon.					
261	26185	Remove finger bone.					
261	26200	Remove hand bone lesion.					
261	26210	Removal of finger lesion.					
261	26215	Remove/graft finger lesion.					
261	26230	Partial removal of hand bone.					
261	26235	Partial removal, finger bone.					
261	26236	Partial removal, finger bone.					
261	26250	Extensive hand surgery.					
261	26260	Extensive finger surgery.					
261	26261	Extensive finger surgery.					
261	26262	Partial removal of finger.					
261	26410	Repair hand tendon.					
261	26418	Repair finger tendon.					
261	26432	Repair finger tendon.					
261	26433	Repair finger tendon.					
261	26437	Realignment of tendons.					
261	26440	Release palm/finger tendon.					
261	26445	Release hand/finger tendon.					
261	26450	Incision of palm tendon.					
261	26455	Incision of finger tendon.					
261	26460	Incise hand/finger tendon.					
261	26471	Fusion of finger tendons.					
261	26474	Fusion of finger tendons.					
261	26476	Tendon lengthening.					
261	26477	Tendon shortening.					
261	26478	Lengthening of hand tendon.					
261	26479	Shortening of hand tendon.					
261	26500	Hand tendon reconstruction.					
261	26508	Release thumb contracture.					
261	26520	Release knuckle contracture.					
261	26525	Release finger contracture.					
261	26540	Repair hand joint.					
261	26542	Repair hand joint with graft.					
261	26560	Repair of web finger.					
261	26587	Reconstruct extra finger.					
261	26593	Release muscles of hand.					
261	26951	Amputation of finger/thumb.					
261	26952	Amputation of finger/thumb.					
262	LEVEL II HAND MUSCULOSKELETAL PROCEDURES		T	18.07	$929.16	$475.96	$185.83
262	25210	Removal of wrist bone.					
262	25215	Removal of wrist bones.					
262	25825	Fusion hand bones with graft.					
262	26040	Release palm contracture.					
262	26045	Release palm contracture.					
262	26121	Release palm contracture.					
262	26123	Release palm contracture.					
262	26125	Release palm contracture.					
262	26135	Revise finger joint, each.					
262	26205	Remove/graft bone lesion.					
262	26255	Extensive hand surgery.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
262	26350	Repair finger/hand tendon.					
262	26352	Repair/graft hand tendon.					
262	26356	Repair finger/hand tendon.					
262	26357	Repair finger/hand tendon.					
262	26358	Repair/graft hand tendon.					
262	26370	Repair finger/hand tendon.					
262	26372	Repair/graft hand tendon.					
262	26373	Repair finger/hand tendon.					
262	26390	Revise hand/finger tendon.					
262	26392	Repair/graft hand tendon.					
262	26412	Repair/graft hand tendon.					
262	26415	Excision, hand/finger tendon.					
262	26416	Graft hand or finger tendon.					
262	26420	Repair/graft finger tendon.					
262	26426	Repair finger/hand tendon.					
262	26428	Repair/graft finger tendon.					
262	26434	Repair/graft finger tendon.					
262	26442	Release palm & finger tendon.					
262	26449	Release forearm/hand tendon.					
262	26480	Transplant hand tendon.					
262	26483	Transplant/graft hand tendon.					
262	26485	Transplant palm tendon.					
262	26489	Transplant/graft palm tendon.					
262	26490	Revise thumb tendon.					
262	26492	Tendon transfer with graft.					
262	26494	Hand tendon/muscle transfer.					
262	26496	Revise thumb tendon.					
262	26497	Finger tendon transfer.					
262	26498	Finger tendon transfer.					
262	26499	Revision of finger.					
262	26502	Hand tendon reconstruction.					
262	26504	Hand tendon reconstruction.					
262	26510	Thumb tendon transfer.					
262	26516	Fusion of knuckle joint.					
262	26517	Fusion of knuckle joints.					
262	26518	Fusion of knuckle joints.					
262	26541	Repair hand joint with graft..					
262	26545	Reconstruct finger joint.					
262	26548	Repair non-union hand.					
262	26548	Reconstruct finger joint.					
262	26550	Construct thumb replacement.					
262	26555	Positional change of finger.					
262	26561	Repair of web finger.					
262	26562	Repair of web finger.					
262	26565	Correct metacarpal flaw.					
262	26567	Correct finger deformity.					
262	26568	Lengthen metacarpal/finger.					
262	26580	Repair hand deformity.					
262	26585	Repair finger deformity.					
262	26590	Repair finger deformity.					
262	26591	Repair muscles of hand.					
262	26596	Excision constricting tissue.					
262	26597	Release of scar contracture.					
262	26820	Thumb fusion with graft.					
262	26841	Fusion of thumb.					
262	26842	Thumb fusion with graft.					
262	26843	Fusion of hand joint.					
262	26844	Fusion/graft of hand joint.					
262	26850	Fusion of knuckle.					
262	26852	Fusion of knuckle with graft.					
262	26860	Fusion of finger joint.					
262	26861	Fusion of finger joint,added.					
262	26862	Fusion/graft of finger joint.					
262	26863	Fuse/graft added joint.					
262	26910	Amputate metacarpal bone.					
271	LEVEL I FOOT MUSCULOSKELETAL PROCEDURES		T	14.12	$726.05	$365.44	$145.21
271	27505	Incision of achilles tendon.					
271	28005	Treat foot bone lesion.					
271	28008	Incision of foot fascia.					
271	28010	Incision of toe tendon.					
271	28011	Incision of toe tendons.					
271	28020	Exploration of a foot joint.					
271	28022	Exploration of a foot joint.					
271	28024	Exploration of a toe joint.					
271	28045	Excision of foot lesion.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
271	28046	Resection of tumor, foot.					
271	28050	Biopsy of foot joint lining.					
271	28052	Biopsy of foot joint lining.					
271	28054	Biopsy of toe joint lining.					
271	28080	Removal of foot lesion.					
271	28086	Excise foot tendon sheath.					
271	28088	Excise foot tendon sheath.					
271	28090	Removal of foot lesion.					
271	28092	Removal of toe lesions.					
271	28100	Removal of ankle/heel lesion.					
271	28104	Removal of foot lesion.					
271	28108	Removal of toe lesions.					
271	28111	Part removal of metatarsal.					
271	28112	Part removal of metatarsal.					
271	28113	Part removal of metatarsal.					
271	28114	Removal of metatarsal heads.					
271	28116	Revision of foot.					
271	28118	Removal of heel bone.					
271	28119	Removal of heel spur.					
271	28120	Part removal of ankle/heel.					
271	28122	Partial removal of foot bone.					
271	28124	Partial removal of toe.					
271	28126	Partial removal of toe.					
271	28130	Removal of ankle bone.					
271	28140	Removal of metatarsal.					
271	28150	Removal of toe.					
271	28153	Partial removal of toe.					
271	28160	Partial removal of toe.					
271	28171	Extensive foot surgery.					
271	28173	Extensive foot surgery.					
271	28175	Extensive foot surgery.					
271	28200	Repair of foot tendon.					
271	28208	Repair of foot tendon.					
271	28210	Repair/graft of foot tendon.					
271	28220	Release of foot tendon.					
271	28222	Release of foot tendons.					
271	28225	Release of foot tendon.					
271	28226	Release of foot tendons.					
271	28230	Incision of foot tendon(s).					
271	28232	Incision of toe tendon.					
271	28234	Incision of foot tendon.					
271	28240	Release of big toe.					
271	28270	Release of foot contracture.					
271	28272	Release of toe joint, each.					
271	28280	Fusion of toes.					
271	28285	Repair of hammertoe.					
271	28286	Repair of hammertoe.					
271	28310	Revision of big toe.					
271	28312	Revision of toe.					
271	28313	Repair deformity of toe.					
271	28315	Removal of sesamoid bone.					
271	28340	Resect enlarged toe tissue.					
271	28341	Resect enlarged toe.					
271	28737	Revision of foot bones.					
271	28750	Fusion of big toe joint.					
271	28755	Fusion of big toe joint.					
271	28810	Amputation toe & metatarsal.					
271	28820	Amputation of toe.					
271	28825	Partial amputation of toe.					
271	29893	Scope, plantar fasciotomy.					
272		LEVEL II FOOT MUSCULOSKELETAL PROCEDURES	T	16.11	$828.38	$411.09	$165.68
272	28060	Partial removal foot fascia.					
272	28062	Removal of foot fascia.					
272	28070	Removal of foot joint lining.					
272	28072	Removal of foot joint lining.					
272	28102	Remove/graft foot lesion.					
272	28103	Remove/graft foot lesion.					
272	28106	Remove/graft foot lesion.					
272	28107	Remove/graft foot lesion.					
272	28202	Repair/graft of foot tendon.					
272	28230	Revision of foot tendon.					
272	28250	Revision of foot fascia.					
272	28260	Release of midfoot joint.					
272	28261	Revision of foot tendon.					
272	28262	Revision of foot and ankle.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
272	28264	Release of midfoot joint.					
272	28288	Partial removal of foot bone.					
272	28300	Incision of heel bone.					
272	28302	Incision of ankle bone.					
272	28304	Incision of midfoot bones.					
272	28305	Incise/graft midfoot bones.					
272	28306	Incision of metatarsal.					
272	28307	Incision of metatarsal.					
272	28308	Incision of metatarsal.					
272	28309	Incision of metatarsals.					
272	28320	Repair of foot bones.					
272	28322	Repair of metatarsals.					
272	28344	Repair extra toe(s).					
272	28345	Repair webbed toe(s).					
272	28360	Reconstruct cleft foot.					
272	28705	Fusion of foot bones.					
272	28715	Fusion of foot bones.					
272	28725	Fusion of foot bones.					
272	28730	Fusion of foot bones.					
272	28735	Fusion of foot bones.					
272	28740	Fusion of foot bones.					
272	28760	Fusion of big toe joint.					
276		BUNION PROCEDURES	T	19.00	$976.98	$495.39	$195.40
276	28110	Part removal of metatarsal.					
276	28290	Correction of bunion.					
276	28292	Correction of bunion.					
276	28293	Correction of bunion.					
276	28294	Correction of bunion.					
276	28296	Correction of bunion.					
276	28297	Correction of bunion.					
276	28298	Correction of bunion.					
276	28299	Correction of bunion.					
280		DIAGNOSTIC ARTHROSCOPY	T	22.15	$1,138.95	$581.72	$227.79
280	29800	Jaw arthroscopy/surgery.					
280	29815	Shoulder arthroscopy.					
280	29830	Elbow arthroscopy.					
280	29840	Wrist arthroscopy.					
280	29870	Knee arthroscopy, diagnostic.					
280	29909	Arthroscopy of joint.					
281		LEVEL I SURGICAL ARTHROSCOPY	T	22.37	$1,150.27	$589.18	$230.05
281	29804	Jaw arthroscopy/surgery.					
281	29819	Shoulder arthroscopy/surgery.					
281	29820	Shoulder arthroscopy/surgery.					
281	29821	Shoulder arthroscopy/surgery.					
281	29822	Shoulder arthroscopy/surgery.					
281	29823	Shoulder arthroscopy/surgery.					
281	29825	Shoulder arthroscopy/surgery.					
281	29826	Shoulder arthroscopy/surgery.					
281	29834	Elbow arthroscopy/surgery.					
281	29835	Elbow arthroscopy/surgery.					
281	29836	Elbow arthroscopy/surgery.					
281	29837	Elbow arthroscopy/surgery.					
281	29838	Elbow arthroscopy/surgery.					
281	29843	Wrist arthroscopy/surgery.					
281	29844	Wrist arthroscopy/surgery.					
281	29845	Wrist arthroscopy/surgery.					
281	29846	Wrist arthroscopy/surgery.					
281	29847	Wrist arthroscopy/surgery.					
281	29848	Wrist endoscopy/surgery.					
281	29860	Hip arthroscopy, dx.					
281	29861	Hip arthroscopy/surgery.					
281	29862	Hip arthroscopy/surgery.					
281	29863	Hip arthroscopy/surgery.					
281	29874	Knee arthroscopy/surgery.					
281	29875	Knee arthroscopy/surgery.					
281	29877	Knee arthroscopy/surgery.					
281	29879	Knee arthroscopy/surgery.					
281	29880	Knee arthroscopy/surgery.					
281	29881	Knee arthroscopy/surgery.					
281	29884	Knee arthroscopy/surgery.					
281	29886	Knee arthroscopy/surgery.					
281	29894	Ankle arthroscopy/surgery.					
281	29895	Ankle arthroscopy/surgery.					
281	29897	Ankle arthroscopy/surgery.					
281	29898	Ankle arthroscopy/surgery.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
282	LEVEL II SURGICAL ARTHROSCOPY		T	23.65	$1,216.08	$609.97	$243.22
282	29871	Knee arthroscopy/drainage.					
282	29876	Knee arthroscopy/surgery.					
282	29882	Knee arthroscopy/surgery.					
282	29883	Knee arthroscopy/surgery.					
282	29885	Knee arthroscopy/surgery.					
282	29887	Knee arthroscopy/surgery.					
282	29891	Ankle arthroscopy/surgery.					
286	ARTHROSCOPICALLY-AIDED PROCEDURES		T	27.69	$1,423.82	$791.90	$284.76
286	29850	Knee arthroscopy/surgery.					
286	29851	Knee arthroscopy/surgery.					
286	29855	Tibial arthroscopy/surgery.					
286	29856	Tibial arthroscopy/surgery.					
286	29888	Knee arthroscopy/surgery.					
286	29889	Knee arthroscopy/surgery.					
286	29892	Ankle arthroscopy/surgery.					
311	LEVEL I ENT PROCEDURES		T	1.41	$72.50	$20.57	$14.50
311	30000	Drainage of nose lesion.					
311	30020	Drainage of nose lesion.					
311	30100	Intranasal biopsy.					
311	30110	Removal of nose polyp(s).					
311	30117	Removal of intranasal lesion.					
311	30124	Removal of nose lesion.					
311	30210	Nasal sinus therapy.					
311	30220	Insert nasal septal button.					
311	30300	Remove nasal foreign body.					
311	30560	Release of nasal adhesions.					
311	31000	Irrigation maxillary sinus.					
311	31002	Irrigation sphenoid sinus.					
311	31603	Incision of windpipe.					
311	31605	Incision of windpipe.					
311	40490	Biopsy of lip.					
311	40799	Lip surgery procedure.					
311	40800	Drainage of mouth lesion.					
311	40801	Drainage of mouth lesion.					
311	40804	Removal foreign body, mouth.					
311	40805	Removal foreign body, mouth.					
311	40806	Incision of lip fold.					
311	40808	Biopsy of mouth lesion.					
311	40810	Excision of mouth lesion.					
311	40812	Excise/repair mouth lesion.					
311	40820	Treatment of mouth lesion.					
311	40899	Mouth surgery procedure.					
311	41000	Drainage of mouth lesion.					
311	41005	Drainage of mouth lesion.					
311	41100	Biopsy of tongue.					
311	41105	Biopsy of tongue.					
311	41108	Biopsy of floor of mouth.					
311	41110	Excision of tongue lesion.					
311	41115	Excision of tongue fold.					
311	41599	Tongue and mouth surgery.					
311	41805	Removal foreign body, gum.					
311	41806	Removal foreign body,jawbone.					
311	41820	Excision, gum, each quadrant.					
311	41821	Excision of gum flap.					
311	41825	Excision of gum lesion.					
311	41826	Excision of gum lesion.					
311	41828	Excision of gum lesion.					
311	41830	Removal of gum tissue.					
311	41850	Treatment of gum lesion.					
311	41870	Gum graft.					
311	41872	Repair gum.					
311	41874	Repair tooth socket.					
311	41899	Dental surgery procedure.					
311	42000	Drainage mouth roof lesion.					
311	42100	Biopsy roof of mouth.					
311	42104	Excision lesion, mouth roof.					
311	42106	Excision lesion, mouth roof.					
311	42140	Excision of uvula.					
311	42160	Treatment mouth roof lesion.					
311	42280	Preparation, palate mold.					
311	42281	Insertion, palate prosthesis.					
311	42299	Palate/uvula surgery.					
311	42330	Removal of salivary stone.					
311	42335	Removal of salivary stone.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
311	42650	Dilation of salivary duct.					
311	42660	Dilation of salivary duct.					
311	42665	Ligation of salivary duct.					
311	42699	Salivary surgery procedure.					
311	69200	Clear outer ear canal.					
311	69210	Remove impacted ear wax.					
311	69222	Clean out mastoid cavity.					
311	69399	Outer ear surgery procedure.					
311	69400	Inflate middle ear canal.					
311	69405	Catheterize middle ear canal.					
311	69410	Inset middle ear baffle.					
311	69420	Incision of eardrum.					
311	69424	Remove ventilating tube.					
311	69540	Remove ear lesion.					
311	69610	Repair of eardrum.					
311	69799	Middle ear surgery procedure.					
311	92502	Ear and throat examination.					
312	LEVEL II ENT PROCEDURES		T	7.07	$363.54	$170.86	$72.71
312	30801	Cauterization inner nose.					
312	30802	Cauterization inner nose.					
312	30930	Therapy fracture of nose.					
312	31612	Puncture/clear windpipe.					
312	40830	Repair mouth laceration.					
312	40831	Repair mouth laceration.					
312	41250	Repair tongue laceration.					
312	41251	Repair tongue laceration.					
312	41252	Repair tongue laceration.					
312	41500	Fixation of tongue.					
312	41510	Tongue to lip surgery.					
312	41800	Drainage of gum lesion.					
312	42300	Drainage of salivary gland.					
312	42305	Drainage of salivary gland.					
312	42310	Drainage of salivary gland.					
312	42320	Drainage of salivary gland.					
312	42405	Biopsy of salivary gland.					
312	42700	Drainage of tonsil abscess.					
312	42720	Drainage of throat abscess.					
312	42800	Biopsy of throat.					
312	42802	Biopsy of throat.					
312	42804	Biopsy of upper nose/throat.					
312	42806	Biopsy of upper nose/throat.					
312	42808	Excise pharynx lesion.					
312	60000	Drain thyroid/tongue cyst.					
312	69421	Incision of eardrum.					
312	69433	Create eardrum opening.					
312	69436	Create eardrum opening.					
313	LEVEL III ENT PROCEDURES		T	15.46	$794.95	$407.70	$158.99
313	30115	Removal of nose polyp(s).					
313	30118	Removal of intranasal lesion.					
313	30120	Revision of nose.					
313	30125	Removal of nose lesion.					
313	30130	Removal of turbinate bones.					
313	30140	Removal of turbinate bones.					
313	30150	Partial removal of nose.					
313	30160	Removal of nose.					
313	30310	Remove nasal foreign body.					
313	30320	Remove nasal foreign body.					
313	30430	Revision of nose.					
313	30520	Repair of nasal septum.					
313	30540	Repair nasal defect.					
313	30550	Repair upper jaw fistula.					
313	30600	Repair mouth/nose fistula.					
313	30620	Intranasal reconstruction.					
313	30630	Repair nasal septum defect.					
313	31020	Exploration maxillary sinus.					
313	31030	Exploration maxillary sinus.					
313	31032	Explore sinus, remove polyps.					
313	31050	Exploration sphenoid sinus.					
313	31051	Sphenoid sinus surgery.					
313	31070	Exploration of frontal sinus.					
313	31200	Removal of ethmoid sinus.					
313	31320	Diagnostic incision larynx.					
313	31595	Larynx nerve surgery.					
313	31611	Surgery/speech prosthesis.					
313	31613	Repair windpipe opening.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
313	31614	Repair windpipe opening.					
313	31820	Closure of windpipe lesion.					
313	31825	Repair of windpipe defect.					
313	31830	Revise windpipe scar.					
313	40500	Partial excision of lip.					
313	40510	Partial excision of lip.					
313	40520	Partial excision of lip.					
313	40525	Reconstruct lip with flap.					
313	40527	Reconstruct lip with flap.					
313	40530	Partial removal of lip.					
313	40650	Repair lip.					
313	40652	Repair lip.					
313	40654	Repair lip.					
313	40814	Excise/repair mouth lesion.					
313	40816	Excision of mouth lesion.					
313	40818	Excise oral mucosa for graft.					
313	40819	Excise lip or cheek fold.					
313	40840	Reconstruction of mouth.					
313	40842	Reconstruction of mouth.					
313	41006	Drainage of mouth lesion.					
313	41007	Drainage of mouth lesion.					
313	41008	Drainage of mouth lesion.					
313	41009	Drainage of mouth lesion.					
313	41010	Incision of tongue fold.					
313	41015	Drainage of mouth lesion.					
313	41016	Drainage of mouth lesion.					
313	41017	Drainage of mouth lesion.					
313	41018	Drainage of mouth lesion.					
313	41112	Excision of tongue lesion.					
313	41113	Excision of tongue lesion.					
313	41114	Excision of tongue lesion.					
313	41116	Excision of mouth lesion.					
313	41120	Partial removal of tongue.					
313	41520	Reconstruction, tongue fold.					
313	41827	Excision of gum lesion.					
313	42107	Excision lesion, mouth roof.					
313	42120	Remove palate/lesion.					
313	42180	Repair palate.					
313	42182	Repair palate.					
313	42200	Reconstruct cleft palate.					
313	42205	Reconstruct cleft palate.					
313	42215	Reconstruct cleft palate.					
313	42220	Reconstruct cleft palate.					
313	42235	Repair palate.					
313	42260	Repair nose to lip fistula.					
313	42325	Create salivary cyst drain.					
313	42326	Create salivary cyst drain.					
313	42340	Removal of salivary stone.					
313	42408	Excision of salivary cyst.					
313	42409	Drainage of salivary cyst.					
313	42410	Excise parotid gland/lesion.					
313	42440	Excision submaxillary gland.					
313	42450	Excision sublingual gland.					
313	42500	Repair salivary duct.					
313	42505	Repair salivary duct.					
313	42507	Parotid duct diversion.					
313	42508	Parotid duct diversion.					
313	42510	Parotid duct diversion.					
313	42600	Closure of salivary fistula.					
313	42725	Drainage of throat abscess.					
313	42810	Excision of neck cyst.					
313	42815	Excision of neck cyst.					
313	[illegible]	Repair throat wound.					
313	42950	Reconstruction of throat.					
313	42955	Surgical opening of throat.					
313	42962	Control throat bleeding.					
313	42972	Control nose/throat bleeding.					
313	43020	Incision of esophagus.					
313	43030	Throat muscle surgery.					
313	69120	Removal of external ear.					
313	69140	Remove ear canal lesion(s).					
313	[illegible]	Revise external ear.					
313	69440	Exploration of middle ear.					
313	[illegible]	Eardrum revision.					
313	[illegible]	Repair of eardrum.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
314	LEVEL IV ENT PROCEDURES		T	25.15	$1,293.21	$687.72	$258.64
314	30400	Reconstruction of nose.					
314	30410	Reconstruction of nose.					
314	30420	Reconstruction of nose.					
314	30435	Revision of nose.					
314	30450	Revision of nose.					
314	30460	Revision of nose.					
314	30462	Revision of nose.					
314	30545	Repair nasal defect.					
314	31040	Exploration behind upper jaw.					
314	31075	Exploration of frontal sinus.					
314	31080	Removal of frontal sinus.					
314	31081	Removal of frontal sinus.					
314	31084	Removal of frontal sinus.					
314	31085	Removal of frontal sinus.					
314	31086	Removal of frontal sinus.					
314	31087	Removal of frontal sinus.					
314	31090	Exploration of sinuses.					
314	31201	Removal of ethmoid sinus.					
314	31205	Removal of ethmoid sinus.					
314	31300	Removal of larynx lesion.					
314	31400	Revision of larynx.					
314	31420	Removal of epiglottis.					
314	31588	Revision of larynx.					
314	31590	Reinnervate larynx.					
314	31750	Repair of windpipe.					
314	31755	Repair of windpipe.					
314	40700	Repair cleft lip/nasal.					
314	40701	Repair cleft lip/nasal.					
314	40702	Repair cleft lip/nasal.					
314	40720	Repair cleft lip/nasal.					
314	40761	Repair cleft lip/nasal.					
314	40843	Reconstruction of mouth.					
314	40844	Reconstruction of mouth.					
314	40845	Reconstruction of mouth.					
314	42210	Reconstruct cleft palate.					
314	42225	Reconstruct cleft palate.					
314	42226	Lengthening of palate.					
314	42227	Lengthening of palate.					
314	42415	Excise parotid gland/lesion.					
314	42420	Excise parotid gland/lesion.					
314	42425	Excise parotid gland/lesion.					
314	42509	Parotid duct diversion.					
314	42842	Extensive surgery of throat.					
314	42844	Extensive surgery of throat.					
314	42890	Partial removal of pharynx.					
314	42892	Revision of pharyngeal walls.					
314	69150	Extensive ear canal surgery.					
314	69310	Rebuild outer ear canal.					
314	69320	Rebuild outer ear canal.					
314	69501	Mastoidectomy.					
314	69502	Mastoidectomy.					
314	69505	Remove mastoid structures.					
314	69511	Extensive mastoid surgery.					
314	69530	Extensive mastoid surgery.					
314	69550	Remove ear lesion.					
314	69552	Remove ear lesion.					
314	69601	Mastoid surgery revision.					
314	[illegible]	Mastoid surgery revision.					
314	69603	Mastoid surgery revision.					
314	[illegible]	Mastoid surgery revision.					
314	69605	Mastoid surgery revision.					
314	69631	Repair eardrum structures.					
314	[illegible]	Rebuild eardrum structures.					
314	69633	Rebuild eardrum structures.					
314	69635	Repair eardrum structures.					
314	[illegible]	Rebuild eardrum structures.					
314	69637	Rebuild eardrum structures.					
314	69641	Revise middle ear & mastoid.					
314	69642	Revise middle ear & mastoid.					
314	69643	Revise middle ear & mastoid.					
314	69644	Revise middle ear & mastoid.					
314	[illegible]	Revise middle ear & mastoid.					
314	69646	Revise middle ear & mastoid.					
314	[illegible]	Release middle ear bone.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
314	69660	Revise middle ear bone.					
314	69661	Revise middle ear bone.					
314	69662	Revise middle ear bone.					
314	69666	Repair middle ear structures.					
314	69667	Repair middle ear structures.					
314	69670	Remove mastoid air cells.					
314	69676	Remove middle ear nerve.					
314	69700	Close mastoid fistula.					
314	69711	Remove/repair hearing aid.					
314	69720	Release facial nerve.					
314	69725	Release facial nerve.					
314	69740	Repair facial nerve.					
314	69745	Repair facial nerve.					
314	69801	Incise inner ear.					
314	69802	Incise inner ear.					
314	69805	Explore inner ear.					
314	69806	Explore inner ear.					
314	69820	Establish inner ear window.					
314	69840	Revise inner ear window.					
314	69905	Remove inner ear.					
314	69910	Remove inner ear & mastoid.					
314	69915	Incise inner ear nerve.					
314	69949	Inner ear surgery procedure.					
317	IMPLANTATION OF COCHLEAR DEVICE		T				
317	69930	Implant cochlear device.					
318	NASAL CAUTERIZATION/PACKING		T	2.07	$106.44	$38.87	$21.29
318	30901	Control of nosebleed.					
318	30903	Control of nosebleed.					
318	30905	Control of nosebleed.					
318	30906	Repeat control of nosebleed.					
318	30999	Nasal surgery procedure.					
318	42960	Control throat bleeding.					
318	42970	Control nose/throat bleeding.					
318	42999	Throat surgery procedure.					
319	TONSIL/ADENOID PROCEDURES		T	16.20	$833.00	$463.53	$166.60
319	42820	Remove tonsils and adenoids.					
319	42821	Remove tonsils and adenoids.					
319	42825	Removal of tonsils.					
319	42826	Removal of tonsils.					
319	42830	Removal of adenoids.					
319	42831	Removal of adenoids.					
319	42835	Removal of adenoids.					
319	42836	Removal of adenoids.					
319	42860	Excision of tonsil tags.					
319	42870	Excision of lingual tonsil.					
320	THORACENTESIS/LAVAGE PROCEDURES		T	3.09	$158.89	$80.91	$31.78
320	32000	Drainage of chest.					
320	32002	Treatment of collapsed lung.					
320	32020	Insertion of chest tube.					
320	32420	Puncture/clear lung.					
320	32960	Therapeutic pneumothorax.					
320	32999	Chest surgery procedure.					
320	33010	Drainage of heart sac.					
320	33011	Repeat drainage of heart sac.					
320	33999	Cardiac surgery procedure.					
320	49080	Puncture, peritoneal cavity.					
320	49081	Removal of abdominal fluid.					
331	LEVEL I ENDOSCOPY UPPER AIRWAY		T	0.57	$29.31	$14.01	$5.86
331	31231	Nasal endoscopy, dx.					
331	31299	Sinus surgery procedure.					
331	31505	Diagnostic laryngoscopy.					
331	31575	Diagnostic laryngoscopy.					
331	31579	Diagnostic laryngoscopy.					
331	92511	Nasopharyngoscopy.					
332	LEVEL II ENDOSCOPY UPPER AIRWAY		T	9.67	$497.23	$242.72	$99.45
332	31233	Nasal/sinus endoscopy, dx.					
332	31235	Nasal/sinus endoscopy, dx.					
332	31237	Nasal/sinus endoscopy, surg.					
332	31238	Nasal/sinus endoscopy, surg.					
332	31240	Nasal/sinus endoscopy, surg.					
332	31510	Laryngoscopy with biopsy.					
332	31511	Remove foreign body, larynx.					
332	31512	Removal of larynx lesion.					
332	31513	Injection into vocal cord.					
332	31515	Laryngoscopy for aspiration.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
332	31520	Diagnostic laryngoscopy.					
332	31525	Diagnostic laryngoscopy.					
332	31526	Diagnostic laryngoscopy.					
332	31528	Laryngoscopy and dilatation.					
332	31529	Laryngoscopy and dilatation.					
332	31576	Laryngoscopy with biopsy.					
332	31577	Remove foreign body, larynx.					
332	31578	Removal of larynx lesion.					
332	31700	Insertion of airway catheter.					
332	31717	Bronchial brush biopsy.					
332	31720	Clearance of airways.					
332	31730	Intro windpipe wire/tube.					
333	LEVEL III ENDOSCOPY UPPER AIRWAY		T	16.81	$864.37	$461.04	$172.87
333	31239	Nasal/sinus endoscopy, surg.					
333	31254	Revision of ethmoid sinus.					
333	31255	Removal of ethmoid sinus.					
333	31256	Exploration maxillary sinus.					
333	31267	Endoscopy, maxillary sinus.					
333	31276	Sinus surgical endoscopy.					
333	31287	Nasal/sinus endoscopy, surg.					
333	31288	Nasal/sinus endoscopy, surg.					
333	31527	Laryngoscopy for treatment.					
333	31530	Operative laryngoscopy.					
333	31531	Operative laryngoscopy.					
333	31535	Operative laryngoscopy.					
333	31536	Operative laryngoscopy.					
333	31540	Operative laryngoscopy.					
333	31541	Operative laryngoscopy.					
333	31560	Operative laryngoscopy.					
333	31561	Operative laryngoscopy.					
333	31570	Laryngoscopy with injection.					
333	31571	Laryngoscopy with injection.					
336	ENDOSCOPY LOWER AIRWAY		T	7.24	$372.28	$195.49	$74.46
336	31615	Visualization of windpipe.					
336	31622	Dx bronchoscope/wash.					
336	31625	Bronchoscopy with biopsy.					
336	31628	Bronchoscopy with biopsy.					
336	31629	Bronchoscopy with biopsy.					
336	31630	Bronchoscopy with repair.					
336	31631	Bronchoscopy with dilation.					
336	31635	Remove foreign body, airway.					
336	31640	Bronchoscopy & remove lesion.					
336	31641	Bronchoscopy, treat blockage.					
336	31645	Bronchoscopy, clear airways.					
336	31646	Bronchoscopy,reclear airways.					
336	31656	Bronchoscopy,inject for xray.					
336	31899	Airways surgical procedure.					
339	INJECTION OF SCLEROSING SOLUTION		T	0.98	$50.39	$19.66	$10.08
339	36468	Injection(s); spider veins.					
339	36469	Injection(s); spider veins.					
339	36470	Injection therapy of vein.					
339	36471	Injection therapy of veins.					
339	45520	Treatment of rectal prolapse.					
341	LEVEL I NEEDLE AND CATHETER PLACEMENT		T	0.09	$4.63	$2.49	$0.93
341	36410	Drawing blood.					
341	36420	Establish access to vein.					
341	36425	Establish access to vein.					
342	LEVEL II NEEDLE AND CATHETER PLACEMENT		T	2.61	$134.21	$68.70	$26.84
342	36010	Place catheter in vein.					
342	36011	Place catheter in vein.					
342	36012	Place catheter in vein.					
342	36013	Place catheter in artery.					
342	36014	Place catheter in artery.					
342	36015	Place catheter in artery.					
342	36100	Establish access to artery.					
342	36120	Establish access to artery.					
342	36140	Establish access to artery.					
342	36160	Establish access to aorta.					
342	36200	Place catheter in aorta.					
342	36500	Insertion of catheter, vein.					
342	36620	Insertion catheter, artery.					
342	36625	Insertion catheter, artery.					
342	38794	Access thoracic lymph duct.					
343	LEVEL III NEEDLE AND CATHETER PLACEMENT		T	8.76	$450.44	$240.24	$90.09
343	36215	Place catheter in artery.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
343	36216	Place catheter in artery.					
343	36217	Place catheter in artery.					
343	36218	Place catheter in artery.					
343	36245	Place catheter in artery.					
343	36246	Place catheter in artery.					
343	36247	Place catheter in artery.					
343	36248	Place catheter in artery.					
343	36481	Insertion of catheter, vein.					
343	93508	Cath placement, angiography.					
346	PLACEMENT TRANSVENOUS CATHS/CUTDOWN		T	4.63	$238.07	$121.59	$47.61
346	36488	Insertion of catheter, vein.					
346	36489	Insertion of catheter, vein.					
346	36490	Insertion of catheter, vein.					
346	36491	Insertion of catheter, vein.					
346	36493	Repositioning of cvc.					
346	36640	Insertion catheter, artery.					
347	INJECTION PROCEDURES FOR INTERVENTIONAL RADIOLOGY		T	2.57	$132.15	$62.38	$26.43
347	19030	Injection for breast x-ray.					
347	20501	Inject sinus tract for x-ray.					
347	21116	Injection, jaw joint x-ray.					
347	23350	Injection for shoulder x-ray.					
347	24220	Injection for elbow x-ray.					
347	25246	Injection for wrist x-ray.					
347	27093	Injection for hip x-ray.					
347	27095	Injection for hip x-ray.					
347	27370	Injection for knee x-ray.					
347	27648	Injection for ankle x-ray.					
347	30200	Injection treatment of nose.					
347	31708	Instill airway contrast dye.					
347	31710	Insertion of airway catheter.					
347	31715	Injection for bronchus x-ray.					
347	36005	Injection, venography.					
347	38200	Injection for spleen x-ray.					
347	38790	Injection for lymphatic x-ray.					
347	42550	Injection for salivary x-ray.					
347	47500	Injection for liver x-rays.					
347	47505	Injection for liver x-rays.					
347	49400	Air injection into abdomen.					
347	49424	Assess cyst, contrast inj.					
347	49427	Injection, abdominal shunt.					
347	50392	Insert kidney drain.					
347	50393	Insert ureteral tube.					
347	50394	Injection for kidney x-ray.					
347	50395	Create passage to kidney.					
347	50684	Injection for ureter x-ray.					
347	50690	Injection for ureter x-ray.					
347	51600	Injection for bladder x-ray.					
347	51605	Preparation for bladder xray.					
347	51610	Injection for bladder x-ray.					
347	54230	Prepare penis study.					
347	55300	Preparation,sperm duct x-ray.					
347	58340	Catheter for hysterography.					
347	62284	Injection for myelogram.					
347	62290	Inject for spine disk x-ray.					
347	62291	Inject for spine disk x-ray.					
347	68850	Injection for tear sac x-ray.					
360	REMOVAL/REVISION, PACEMAKER/VASCULAR DEVICE		T	6.04	$310.58	$138.54	$62.12
360	33222	Pacemaker aicd pocket.					
360	33223	Pacemaker aicd pocket.					
360	36251	Revision of infusion pump.					
360	36262	Removal of infusion pump.					
360	36299	Vessel injection procedure.					
360	36531	Revision of infusion pump.					
360	36532	Removal of infusion pump.					
360	36534	Revision of access port.					
360	36535	Removal of access port.					
360	37203	Transcatheter retrieval.					
367	VASCULAR LIGATION		T	17.02	$875.17	$441.15	$175.03
367	30915	Ligation nasal sinus artery.					
367	30920	Ligation upper jaw artery.					
367	37618	Ligation of extremity artery.					
367	37650	Revision of major vein.					
367	37700	Revise leg vein.					
367	37720	Removal of leg vein.					
367	37730	Removal of leg veins.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
367	37735	Removal of leg veins/lesion.					
367	37760	Revision of leg veins.					
367	37780	Revision of leg vein.					
367	37785	Revise secondary varicosity.					
368	VASCULAR REPAIR/FISTULA CONSTRUCTION		T	22.59	$1,161.58	$647.49	$232.32
368	35188	Repair blood vessel lesion.					
368	35207	Repair blood vessel lesion.					
368	35875	Removal of clot in graft.					
368	35876	Removal of clot in graft.					
368	36260	Insertion of infusion pump.					
368	36530	Insertion of infusion pump.					
368	36533	Insertion of access port.					
368	36600	Insertion of cannula.					
368	36810	Insertion of cannula.					
368	36815	Insertion of cannula.					
368	36821	Artery-vein fusion.					
368	36825	Artery-vein graft.					
368	36830	Artery-vein graft.					
368	36832	Av fistula revision.					
368	36835	Artery to vein shunt.					
368	36860	External cannula declotting.					
368	36861	Cannula declotting.					
368	37607	Ligation of fistula.					
369	BLOOD AND BLOOD PRODUCT EXCHANGE		T	6.33	$325.49	$155.49	$65.10
369	36430	Blood transfusion service.					
369	36440	Blood transfusion service.					
369	36450	Exchange transfusion service.					
369	36455	Exchange transfusion service.					
369	36460	Transfusion service, fetal.					
369	36520	Plasma and/or cell exchange.					
369	36522	Photopheresis.					
369	38230	Bone marrow collection.					
369	38231	Stem cell collection.					
369	Q0068	Extracorpeal plasmapheresis.					
396	LYMPH NODE EXCISIONS		T	12.98	$667.43	$334.48	$133.49
396	38308	Incision of lymph channels.					
396	38500	Biopsy/removal,lymph node(s).					
396	38510	Biopsy/removal,lymph node(s).					
396	38520	Biopsy/removal,lymph node(s).					
396	38525	Biopsy/removal,lymph node(s).					
396	38530	Biopsy/removal,lymph node(s).					
396	38550	Removal neck/armpit lesion.					
397	THYROID/LYMPHADENECTOMY PROCEDURES		T	19.12	$983.15	$542.17	$196.63
397	38542	Explore deep node(s), neck.					
397	38555	Removal neck/armpit lesion.					
397	38740	Remove armpit lymph nodes.					
397	38745	Remove armpits lymph nodes.					
397	38760	Remove groin lymph nodes.					
397	60200	Remove thyroid lesion.					
397	60210	Partial excision thyroid.					
397	60220	Partial removal of thyroid.					
397	60225	Partial removal of thyroid.					
397	60240	Removal of thyroid.					
397	60260	Remove thyroid duct lesion.					
397	60281	Remove thyroid duct lesion.					
406	ESOPHAGEAL DILATION WITHOUT ENDOSCOPY		T	4.17	$214.42	$106.67	$42.88
406	43450	Dilate esophagus.					
406	43453	Dilate esophagus.					
406	43456	Dilate esophagus.					
406	43458	Dilation of esophagus.					
406	43499	Esophagus surgery procedure.					
407	ESOPHAGOSCOPY		T	6.89	$354.28	$189.39	$70.86
407	43204	Esophagus endoscopy & inject.					
407	43205	Esophagus endoscopy/ligation.					
407	43215	Esophagus endoscopy.					
407	43216	Esophagus endoscopy/lesion.					
407	43217	Esophagus endoscopy.					
407	43220	Esophagus endoscopy, dilation.					
407	43226	Esophagus endoscopy, dilation.					
407	43227	Esophagus endoscopy, repair.					
417	DIAGNOSTIC UPPER GI ENDOSCOPY		T	6.35	$326.52	$179.22	$65.30
417	43200	Esophagus endoscopy.					
417	43202	Esophagus endoscopy, biopsy.					
417	43234	Upper GI endoscopy, exam.					
417	43235	Upper gi endoscopy, diagnosis.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
417	43239	Upper GI endoscopy, biopsy.					
417	43600	Biopsy of stomach.					
417	44100	Biopsy of bowel.					
418		THERAPEUTIC UPPER GI ENDOSCOPY	T	7.44	$382.56	$213.57	$76.51
418	43241	Upper GI endoscopy with tube.					
418	43243	Upper GI endoscopy & inject.					
418	43244	Upper GI endoscopy/ligation.					
418	43245	Operative upper GI endoscopy.					
418	43246	Place gastrostomy tube.					
418	43247	Operative upper GI endoscopy.					
418	43248	Upper GI endoscopy/guidewire.					
418	43249	Esophagus endoscopy,dilation.					
418	43250	Upper GI endoscopy/tumor.					
418	43251	Operative upper GI endoscopy.					
418	43255	Operative upper GI endoscopy.					
418	43750	Place gastrostomy tube.					
419		SMALL INTESTINE ENDOSCOPY	T	6.83	$351.20	$164.08	$70.24
419	44360	Small bowel endoscopy.					
419	44361	Small bowel endoscopy,biopsy.					
419	44363	Small bowel endoscopy.					
419	44364	Small bowel endoscopy.					
419	44365	Small bowel endoscopy.					
419	44366	Small bowel endoscopy.					
419	44372	Small bowel endoscopy.					
419	44373	Small bowel endoscopy.					
419	44376	Small bowel endoscopy.					
419	44377	Small bowel endoscopy.					
419	44378	Small bowel endoscopy.					
419	44799	Intestine surgery procedure.					
426		DIAGNOSTIC LOWER GI ENDOSCOPY	T	6.74	$346.57	$185.32	$69.31
426	44380	Small bowel endoscopy.					
426	44382	Small bowel endoscopy.					
426	44385	Endoscopy of bowel pouch.					
426	44386	Endoscopy, bowel pouch, biopsy.					
426	44388	Colon endoscopy.					
426	44389	Colonoscopy with biopsy.					
426	45378	Diagnostic colonoscopy.					
426	45380	Colonoscopy and biopsy.					
426	G0105	Colorectal scrn; hi risk ind.					
427		THERAPEUTIC LOWER GI ENDOSCOPY	T	8.09	$415.99	$222.84	$83.20
427	44390	Colonoscopy for foreign body.					
427	44391	Colonoscopy for bleeding.					
427	44392	Colonoscopy & polypectomy.					
427	44394	Colonoscopy w/snare.					
427	45355	Surgical colonoscopy.					
427	45379	Colonoscopy.					
427	45382	Colonoscopy,control bleeding.					
427	45384	Colonoscopy.					
427	45385	Colonoscopy, lesion removal.					
437		THERAPEUTIC ANOSCOPY	T	6.54	$336.29	$173.79	$67.26
437	46606	Anoscopy and biopsy.					
437	46608	Anoscopy; remove foreign body.					
437	46610	Anoscopy; remove lesion.					
437	46611	Anoscopy.					
437	46612	Anoscopy, remove lesions.					
437	46614	Anoscopy; control bleeding.					
437	46615	Anoscopy.					
446		DIAGNOSTIC SIGMOIDOSCOPY	T	2.54	$130.61	$64.86	$26.12
446	45300	Proctosigmoidoscopy.					
446	45305	Proctosigmoidoscopy; biopsy.					
446	45330	Sigmoidoscopy, diagnostic.					
446	45331	Sigmoidoscopy and biopsy.					
446	G0104	CA screen; flexi sigmoidscope.					
447		THERAPEUTIC PROCTOSIGMOIDOSCOPY	T	7.06	$363.03	$191.87	$72.61
447	45303	Proctosigmoidoscopy.					
447	45307	Proctosigmoidoscopy.					
447	45308	Proctosigmoidoscopy.					
447	45309	Proctosigmoidoscopy.					
447	45315	Proctosigmoidoscopy.					
447	45317	Proctosigmoidoscopy.					
447	45320	Proctosigmoidoscopy.					
447	45321	Proctosigmoidoscopy.					
448		THERAPEUTIC FLEXIBLE SIGMOIDOSCOPY	T	5.28	$271.50	$139.22	$54.30
448	45332	Sigmoidoscopy.					
448	45333	Sigmoidoscopy & polypectomy.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
448	45334	Sigmoidoscopy for bleeding.					
448	45337	Sigmoidoscopy, decompression.					
448	45338	Sigmoidoscopy.					
449		COMPLEX GI ENDOSCOPY	T	7.63	$392.33	$213.57	$78.47
449	43219	Esophagus endoscopy.					
449	43226	Esophagus endoscopy, ablation.					
449	43258	Operative upper GI endoscopy.					
449	43259	Endoscopic ultrasound exam.					
449	43272	Endoscopy, bile duct/pancreas.					
449	44369	Small bowel endoscopy.					
449	44390	Colonoscopy, lesion removal.					
449	45339	Sigmoidoscopy.					
449	45380	Colonoscopy, lesion removal.					
451		LEVEL I ANAL/RECTAL PROCEDURES	T	2.42	$124.44	$53.56	$24.89
451	46070	Incision of anal septum.					
451	46083	Incise external hemorrhoid.					
451	46220	Removal of anal tab.					
451	46221	Ligation of hemorrhoid(s).					
451	46230	Removal of anal tabs.					
451	46320	Removal of hemorrhoid clot.					
451	46500	Injection into hemorrhoids.					
451	46934	Destruction of hemorrhoids.					
451	46935	Destruction of hemorrhoids.					
451	46936	Destruction of hemorrhoids.					
451	46940	Treatment of anal fissure.					
451	46942	Treatment of anal fissure.					
451	46945	Ligation of hemorrhoids.					
451	46946	Ligation of hemorrhoids.					
452		LEVEL II ANAL/RECTAL PROCEDURES	T	4.52	$232.42	$103.06	$46.48
452	45000	Drainage of pelvic abscess.					
452	45005	Drainage of rectal abscess.					
452	45020	Drainage of rectal abscess.					
452	45100	Biopsy of rectum.					
452	45900	Reduction of rectal prolapse.					
452	45905	Dilation of anal sphincter.					
452	45910	Dilation of rectal narrowing.					
452	45915	Remove rectal obstruction.					
452	45999	Rectum surgery procedure.					
452	46030	Removal of rectal marker.					
452	46040	Incision of rectal abscess.					
452	46050	Incision of anal abscess.					
452	46080	Incision of anal sphincter.					
452	46210	Removal of anal crypt.					
452	46754	Removal of suture from anus.					
452	46999	Anus surgery procedure.					
453		LEVEL III ANAL/RECTAL PROCEDURES	T	16.26	$836.09	$440.47	$167.22
453	45108	Removal of anorectal lesion.					
453	45150	Excision of rectal stricture.					
453	45160	Excision of rectal lesion.					
453	45170	Excision of rectal lesion.					
453	45190	Destruction, rectal tumor.					
453	45500	Repair of rectum.					
453	45505	Repair of rectum.					
453	45560	Repair of rectocele.					
453	46045	Incision of rectal abscess.					
453	46060	Incision of rectal abscess.					
453	46200	Removal of anal fissure.					
453	46211	Removal of anal crypts.					
453	46250	Hemorrhoidectomy.					
453	46255	Hemorrhoidectomy.					
453	46257	Remove hemorrhoids & fissure.					
453	46258	Remove hemorrhoids & fistula.					
453	46260	Hemorrhoidectomy.					
453	46261	Remove hemorrhoids & fissure.					
453	46262	Remove hemorrhoids & fistula.					
453	46270	Removal of anal fistula.					
453	46275	Removal of anal fistula.					
453	46280	Removal of anal fistula.					
453	46285	Removal of anal fistula.					
453	46288	Repair anal fistula.					
453	46700	Repair of anal stricture.					
453	46750	Repair of anal sphincter.					
453	46753	Reconstruction of anus.					
453	46760	Repair of anal sphincter.					
453	46761	Repair of anal sphincter.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
453	46762	Implant artificial sphincter.					
453	46937	Cryotherapy of rectal lesion.					
453	46938	Cryotherapy of rectal lesion.					
456		ENDOSCOPIC RETROGRADE CHOLANGIO-PANCREATOGRAPHY (ERCP)	T	9.61	$494.15	$249.05	$98.83
456	43260	Endoscopy, bile duct/pancreas.					
456	43261	Endoscopy, bile duct/pancreas.					
456	43262	Endoscopy, bile duct/pancreas.					
456	43263	Endoscopy, bile duct/pancreas.					
456	43264	Endoscopy, bile duct/pancreas.					
456	43265	Endoscopy, bile duct/pancreas.					
456	43267	Endoscopy, bile duct/pancreas.					
456	43268	Endoscopy, bile duct/pancreas.					
456	43269	Endoscopy, bile duct/pancreas.					
456	43271	Endoscopy, bile duct/pancreas.					
458		PERCUTANEOUS BILIARY ENDOSCOPIC PROCEDURES	T	6.81	$350.17	$181.70	$70.03
458	47510	Insert catheter, bile duct.					
458	47511	Insert bile duct drain.					
458	47552	Biliary endoscopy, thru skin.					
458	47553	Biliary endoscopy, thru skin.					
458	47554	Biliary endoscopy, thru skin.					
458	47555	Biliary endoscopy, thru skin.					
458	47556	Biliary endoscopy, thru skin.					
458	47630	Remove bile duct stone.					
459		PERITONEAL AND ABDOMINAL PROCEDURES	T	17.85	$917.85	$497.88	$183.57
459	49085	Remove abdomen foreign body.					
459	49250	Excision of umbilicus.					
459	49420	Insert abdominal drain.					
459	49421	Insert abdominal drain.					
459	49423	Exchange drainage cath.					
459	49426	Revise abdomen-venous shunt.					
466		HERNIA/HYDROCELE PROCEDURES	T	20.67	$1,062.85	$556.64	$212.57
466	49495	Repair inguinal hernia, init.					
466	49496	Repair inguinal hernia, init.					
466	49500	Repair inguinal hernia.					
466	49501	Repair inguinal hernia, init.					
466	49505	Repair inguinal hernia.					
466	49507	Repair, inguinal hernia.					
466	49520	Rerepair inguinal hernia.					
466	49521	Repair inguinal hernia, rec.					
466	49525	Repair inguinal hernia.					
466	49540	Repair lumbar hernia.					
466	49550	Repair femoral hernia.					
466	49553	Repair femoral hernia, init.					
466	49555	Repair femoral hernia.					
466	49557	Repair femoral hernia, recur.					
466	49560	Repair abdominal hernia.					
466	49561	Repair incisional hernia.					
466	49565	Rerepair abdominal hernia.					
466	49566	Repair incisional hernia.					
466	49568	Hernia repair w/mesh.					
466	49570	Repair epigastric hernia.					
466	49572	Repair, epigastric hernia.					
466	49580	Repair umbilical hernia.					
466	49582	Repair umbilical hernia.					
466	49585	Repair umbilical hernia.					
466	49587	Repair umbilical hernia.					
466	49590	Repair abdominal hernia.					
466	49600	Repair umbilical lesion.					
466	51500	Removal of bladder cyst.					
466	55040	Removal of hydrocele.					
466	55041	Removal of hydroceles.					
470		TUBE PROCEDURES	T	2.19	$112.61	$54.92	$22.52
470	31502	Change of windpipe airway.					
470	43760	Change gastrostomy tube.					
470	43761	Reposition gastrostomy tube.					
470	43999	Stomach surgery procedure.					
470	47525	Change bile duct catheter.					
470	47530	Revise, reinsert bile tube.					
470	47999	Bile tract surgery procedure.					
470	49422	Remove perm cannula/catheter.					
470	49429	Removal of shunt.					
470	49999	Abdomen surgery procedure.					
470	50688	Change of ureter tube.					
470	51705	Change of bladder tube.					
470	51710	Change of bladder tube.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
521		LEVEL I CYSTOURETHROSCOPY AND OTHER GENITOURINARY PROCEDURES	T	4.89	$251.44	$110.06	$50.29
521	50398	Change kidney tube.					
521	52000	Cystoscopy.					
521	52265	Cystoscopy & treatment.					
522		LEVEL II CYSTOURETHROSCOPY AND OTHER GENITOURINARY PROCEDURES	T	10.15	$521.91	$259.45	$104.38
522	50551	Kidney endoscopy.					
522	50553	Kidney endoscopy.					
522	50555	Kidney endoscopy & biopsy.					
522	50557	Kidney endoscopy & treatment.					
522	50559	Renal endoscopy; radiotracer.					
522	50561	Kidney endoscopy & treatment.					
522	52005	Cystoscopy & ureter catheter.					
522	52007	Cystoscopy and biopsy.					
522	52010	Cystoscopy & duct catheter.					
522	52204	Cystoscopy.					
522	52214	Cystoscopy and treatment.					
522	52224	Cystoscopy and treatment.					
522	52260	Cystoscopy & treatment.					
522	52270	Cystoscopy & revise urethra.					
522	52275	Cystoscopy & revise urethra.					
522	52276	Cystoscopy and treatment.					
522	52281	Cystoscopy and treatment.					
522	52283	Cystoscopy and treatment.					
522	52285	Cystoscopy and treatment.					
522	52290	Cystoscopy and treatment.					
522	52300	Cystoscopy and treatment.					
522	52301	Cystoscopy and treatment.					
522	52305	Cystoscopy and treatment.					
522	52310	Cystoscopy and treatment.					
522	52315	Cystoscopy and treatment.					
522	52327	Cystoscopy, inject material.					
522	52510	Dilation prostatic urethra.					
522	53605	Dilate urethra stricture.					
523		LEVEL III CYSTOURETHROSCOPY AND OTHER GENITOURINARY PROCEDURES	T	16.35	$840.72	$438.89	$168.14
523	50951	Endoscopy of ureter.					
523	50953	Endoscopy of ureter.					
523	50955	Ureter endoscopy & biopsy.					
523	50957	Ureter endoscopy & treatment.					
523	50959	Ureter endoscopy & tracer.					
523	50961	Ureter endoscopy & treatment.					
523	51020	Incise & treat bladder.					
523	51030	Incise & treat bladder.					
523	51040	Incise & drain bladder.					
523	51045	Incise bladder, drain ureter.					
523	51050	Removal of bladder stone.					
523	51065	Removal of ureter stone.					
523	51520	Removal of bladder lesion.					
523	51880	Repair of bladder opening.					
523	52234	Cystoscopy and treatment.					
523	52235	Cystoscopy and treatment.					
523	52240	Cystoscopy and treatment.					
523	52250	Cystoscopy & radiotracer.					
523	52277	Cystoscopy and treatment.					
523	52282	Cystoscopy, implant stent.					
523	52317	Remove bladder stone.					
523	52318	Remove bladder stone.					
523	52320	Cystoscopy and treatment.					
523	52325	Cystoscopy, stone removal.					
523	52330	Cystoscopy and treatment.					
523	52332	Cystoscopy and treatment.					
523	52334	Create passage to kidney.					
523	52335	Endoscopy of urinary tract.					
523	52336	Cystoscopy, stone removal.					
523	52338	Cystoscopy and treatment.					
523	52339	Cystoscopy and treatment.					
523	52340	Cystoscopy and treatment.					
523	52450	Incision of prostate.					
523	52500	Revision of bladder neck.					
523	52606	Control postop bleeding.					
523	52640	Relieve bladder contracture.					
523	52700	Drainage of prostate abscess.					
523	55720	Drainage of prostate abscess.					
523	55725	Drainage of prostate abscess.					
523	55859	Percut/needle insert, pros.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
524		LEVEL IV CYSTOURETHROSCOPY AND OTHER GENITOURINARY PROCEDURES	T	27.20	$1,398.62	$824.90	$279.72
524	52337	Cystoscopy, stone removal.					
524	52601	Prostatectomy (TURP).					
524	52612	Prostatectomy, first stage.					
524	52614	Prostatectomy, second stage.					
524	52620	Remove residual prostate.					
524	52630	Remove prostate regrowth.					
524	52647	Laser surgery of prostate.					
524	52648	Laser surgery of prostate.					
524	53850	Prostatic microwave thermotx.					
524	53852	Prostatic rf thermotx.					
527		LITHOTRIPSY	T	43.48	$2,235.74	$1,372.95	$447.15
527	50590	Fragmenting of kidney stone.					
529		SIMPLE URINARY STUDIES AND PROCEDURES	T	2.33	$119.81	$59.66	$23.96
529	50396	Measure kidney pressure.					
529	50600	Measure ureter pressure.					
529	51725	Simple cystometrogram.					
529	51726	Complex cystometrogram.					
529	51736	Urine flow measurement.					
529	51741	Electro-uroflowmetry, first.					
529	51772	Urethra pressure profile.					
529	51784	Anal/urinary muscle study.					
529	51785	Anal/urinary muscle study.					
529	51792	Urinary reflex study.					
529	51795	Urine voiding pressure study.					
529	51797	Intraabdominal pressure test.					
529	54240	Penis study.					
529	54250	Penis study.					
530		GENITOURINARY PROCEDURES	T	2.46	$126.49	$53.34	$25.30
530	51000	Drainage of bladder.					
530	51005	Drainage of bladder.					
530	51010	Drainage of bladder.					
530	51700	Irrigation of bladder.					
530	51720	Treatment of bladder lesion.					
530	53600	Dilate urethra stricture.					
530	53601	Dilate urethra stricture.					
530	53620	Dilate urethra stricture.					
530	53621	Dilate urethra stricture.					
[2] 530	53640	Relieve bladder retention.					
530	53660	Dilation of urethra.					
530	53661	Dilation of urethra.					
530	53675	Insert urinary catheter.					
530	53899	Urology surgery procedure.					
530	54200	Treatment of penis lesion.					
530	54220	Treatment of penis lesion.					
530	54231	Dynamic cavernosometry.					
530	54235	Penile injection.					
530	54450	Preputial stretching.					
530	55899	Genital surgery procedure.					
531		LEVEL I URETHRAL PROCEDURES	T	18.59	$955.90	$531.55	$191.18
531	51715	Endoscopic injection/implant.					
531	53000	Incision of urethra.					
531	53010	Incision of urethra.					
531	53020	Incision of urethra.					
531	53025	Incision of urethra.					
531	53040	Drainage of urethra abscess.					
531	53060	Drainage of urethra abscess.					
531	53080	Drainage of urinary leakage.					
531	53200	Biopsy of urethra.					
531	53250	Removal of urethra gland.					
531	53260	Treatment of urethra lesion.					
531	53265	Treatment of urethra lesion.					
531	53270	Removal of urethra gland.					
531	53275	Repair of urethra defect.					
531	53442	Remove perineal prosthesis.					
531	53502	Repair of urethra injury.					
531	53505	Repair of urethra injury.					
531	53510	Repair of urethra injury.					
531	53665	Dilation of urethra.					
531	54000	Slitting of prepuce.					
531	54001	Slitting of prepuce.					
532		LEVEL II URETHRAL PROCEDURES	T	23.02	$1,183.69	$588.50	$236.74
532	53210	Removal of urethra.					
532	53215	Removal of urethra.					
532	53220	Treatment of urethra lesion.					
532	53230	Removal of urethra lesion.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
532	53235	Removal of urethra lesion.					
532	53240	Surgery for urethra pouch.					
532	53400	Revise urethra, 1st stage.					
532	53405	Revise urethra, 2nd stage.					
532	53410	Reconstruction of urethra.					
532	53420	Reconstruct urethra, stage 1.					
532	53425	Reconstruct urethra, stage 2.					
532	53430	Reconstruction of urethra.					
532	53447	Remove artificial sphincter.					
532	53449	Correct artificial sphincter.					
532	53450	Revision of urethra.					
532	53460	Revision of urethra.					
532	53515	Repair of urethra injury.					
532	53520	Repair of urethra defect.					
536		CIRCUMCISION	T	12.89	$662.80	$321.60	$132.56
536	54150	Circumcision.					
536	54152	Circumcision.					
536	54160	Circumcision.					
536	54161	Circumcision.					
537		PENILE PROCEDURES	T	28.65	$1,473.18	$872.36	$294.64
537	37790	Penile venous occlusion.					
537	54110	Treatment of penis lesion.					
537	54111	Treat penis lesion, graft.					
537	54112	Treat penis lesion, graft.					
537	54120	Partial removal of penis.					
537	54205	Treatment of penis lesion.					
537	54300	Revision of penis.					
537	54304	Revision of penis.					
537	54308	Reconstruction of urethra.					
537	54312	Reconstruction of urethra.					
537	54316	Reconstruction of urethra.					
537	54318	Reconstruction of urethra.					
537	54322	Reconstruction of urethra.					
537	54324	Reconstruction of urethra.					
537	54326	Reconstruction of urethra.					
537	54328	Revise penis, urethra.					
537	54340	Secondary urethral surgery.					
537	54344	Secondary urethral surgery.					
537	54348	Secondary urethral surgery.					
537	54352	Reconstruct urethra, penis.					
537	54360	Penis plastic surgery.					
537	54380	Repair penis.					
537	54385	Repair penis.					
537	54402	Remove penis prosthesis.					
537	54407	Remove multi-comp prosthesis.					
537	54409	Revise penis prosthesis.					
537	54420	Revision of penis.					
537	54435	Revision of penis.					
537	54440	Repair of penis.					
538		INSERTION OF PENILE PROSTHESIS	T	48.41	$2,489.24	$1,563.47	$497.85
538	53440	Correct bladder function.					
538	53445	Correct urine flow control.					
538	54400	Insert semi-rigid prosthesis.					
538	54401	Insert self-contd prosthesis.					
538	54405	Insert multi-comp prosthesis.					
546		TESTES/EPIDIDYMIS PROCEDURES	T	16.54	$850.49	$449.51	$170.10
546	54505	Biopsy of testis.					
546	54510	Removal of testis lesion.					
546	54520	Removal of testis.					
546	54530	Removal of testis.					
546	54550	Exploration for testis.					
546	54600	Reduce testis torsion.					
546	54620	Suspension of testis.					
546	54640	Suspension of testis.					
546	54660	Revision of testis.					
546	54670	Repair testis injury.					
546	54680	Relocation of testis(es).					
546	54700	Drainage of scrotum.					
546	54820	Exploration of epididymis.					
546	54830	Remove epididymis lesion.					
546	54840	Remove epididymis lesion.					
546	54860	Removal of epididymis.					
546	54861	Removal of epididymis.					
546	54900	Fusion of spermatic ducts.					
546	54901	Fusion of spermatic ducts.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
546	55060	Repair of hydrocele.					
546	55110	Explore scrotum.					
546	55120	Removal of scrotum lesion.					
546	55150	Removal of scrotum.					
546	55175	Revision of scrotum.					
546	55180	Revision of scrotum.					
546	55200	Incision of sperm duct.					
546	55250	Removal of sperm duct(s).					
546	55400	Repair of sperm duct.					
546	55450	Ligation of sperm duct.					
546	55500	Removal of hydrocele.					
546	55520	Removal of sperm cord lesion.					
546	55530	Revise spermatic cord veins.					
546	55535	Revise spermatic cord veins.					
546	55540	Revise hernia & sperm veins.					
546	55680	Remove sperm pouch lesion.					
547	PROSTATE BIOPSY		T	4.39	$225.73	$125.20	$45.15
547	55700	Biopsy of prostate.					
547	55705	Biopsy of prostate.					
550	SURGICAL HYSTEROSCOPY		T	16.46	$846.37	$445.22	$169.27
550	56351	Hysteroscopy; biopsy.					
550	56352	Hysteroscopy; lysis.					
550	56353	Hysteroscopy; resect septum.					
550	56354	Hysteroscopy; remove myoma.					
550	56355	Hysteroscopy; remove impact.					
550	56356	Hysteroscopy; ablation.					
551	LEVEL I LAPAROSCOPY		T	24.61	$1,265.45	$701.73	$253.09
551	56300	Laparoscopy; diagnostic.					
551	56301	Laparoscopy; tubal cautery.					
551	56302	Laparoscopy; tubal block.					
551	56303	Laparoscopy; excise lesions.					
551	56304	Laparoscopy; lysis.					
551	56305	Laparoscopy; biopsy.					
551	56306	Laparoscopy; aspiration.					
551	56346	Laparoscopic gastrostomy.					
[2] 551	56360	Peritoneoscopy.					
[2] 551	56361	Peritoneoscopy w/biopsy.					
552	LEVEL II LAPAROSCOPY		T	37.09	$1,907.17	$1,053.84	$381.43
552	56307	Laparoscopy; remove adnexa.					
552	56309	Laparoscopy; remove myoma.					
552	56311	Laparoscopic lymph node biop.					
552	56312	Laparoscopic lymphadenectomy.					
552	56313	Laparoscopic lymphadenectomy.					
552	56316	Laparoscopic hernia repair.					
552	56317	Laparoscopic hernia repair.					
552	56318	Laparoscopic orchiectomy.					
552	56320	Laparoscopy, spermatic veins.					
552	56343	Laparoscopic salpingostomy.					
552	56344	Laparoscopic fimbrioplasty.					
552	56362	Laparoscopy w/cholangio.					
552	56363	Laparoscopy w/biopsy.					
561	LEVEL I FEMALE REPRODUCTIVE PROCEDURES		T	1.46	$75.07	$24.41	$15.01
561	56405	I & D of vulva/perineum.					
561	56420	Drainage of gland abscess.					
561	56441	Lysis of labial lesion(s).					
561	57061	Destruction vagina lesion(s).					
561	57100	Biopsy of vagina.					
561	57150	Treat vagina infection.					
561	57160	Insertion of pessary/device.					
561	57170	Fitting of diaphragm/cap.					
561	57180	Treat vaginal bleeding.					
561	57452	Examination of vagina.					
561	57454	Vagina examination & biopsy.					
561	57500	Biopsy of cervix.					
561	57505	Endocervical curettage.					
561	57510	Cauterization of cervix.					
561	57511	Cryocautery of cervix.					
561	57513	Laser surgery of cervix.					
561	57800	Dilation of cervical canal.					
561	58100	Biopsy of uterus lining.					
561	58301	Remove intrauterine device.					
561	59200	Insert cervical dilator.					
561	Q0091	Obtaining screen pap smear.					
562	LEVEL II FEMALE REPRODUCTIVE PROCEDURES		T	12.30	$632.47	$325.44	$126.49
562	56350	Hysteroscopy; diagnostic.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
562	56399	Laparoscopy procedure.					
562	56440	Surgery for vulva lesion.					
562	56700	Partial removal of hymen.					
562	56720	Incision of hymen.					
562	56740	Remove vagina gland lesion.					
562	56800	Repair of vagina.					
562	56810	Repair of perineum.					
562	57000	Exploration of vagina.					
562	57010	Drainage of pelvic abscess.					
562	57020	Drainage of pelvic fluid.					
562	57065	Destruction vagina lesion(s).					
562	57105	Biopsy of vagina.					
562	57130	Remove vagina lesion.					
562	57135	Remove vagina lesion.					
562	57200	Repair of vagina.					
562	57210	Repair vagina/perineum.					
562	57230	Repair of urethral lesion.					
562	57400	Dilation of vagina.					
562	57410	Pelvic examination.					
562	57415	Removal vaginal foreign body.					
562	57460	Cervix excision.					
562	57700	Revision of cervix.					
562	57720	Revision of cervix.					
562	58345	Reopen fallopian tube.					
562	58350	Reopen fallopian tube.					
562	58970	Retrieval of oocyte.					
562	59300	Episiotomy or vaginal repair.					
562	59320	Revision of cervix.					
562	59871	Remove cerclage suture.					
563	LEVEL III FEMALE REPRODUCTIVE PROCEDURES		T	16.50	$848.43	$461.72	$169.69
563	56620	Partial removal of vulva.					
563	56625	Complete removal of vulva.					
563	57220	Revision of urethra.					
563	57240	Repair bladder & vagina.					
563	57250	Repair rectum & vagina.					
563	57260	Repair of vagina.					
563	57265	Extensive repair of vagina.					
563	57268	Repair of bowel bulge.					
563	57284	Repair paravaginal defect.					
563	57288	Repair bladder defect.					
563	57289	Repair bladder & vagina.					
563	57291	Construction of vagina.					
563	57300	Repair rectum-vagina fistula.					
563	57520	Conization of cervix.					
563	57522	Conization of cervix.					
563	57530	Removal of cervix.					
563	57550	Removal of residual cervix.					
563	57555	Remove cervix, repair vagina.					
563	57556	Remove cervix, repair bowel.					
563	58145	Removal of uterus lesion.					
563	58800	Drainage of ovarian cyst(s).					
563	58820	Open drain ovary abscess.					
567	D & C		T	13.18	$677.72	$360.70	$135.54
567	57820	D&c of residual cervix.					
567	58120	Dilation and curettage (D&C).					
567	59160	D&C after delivery.					
568	INFERTILITY PROCEDURES		T	2.79	$143.46	$55.60	$28.69
568	55870	Electroejaculation.					
568	58321	Artificial insemination.					
568	58322	Artificial insemination.					
568	58323	Sperm washing.					
568	58974	Transfer of embryo.					
568	58976	Transfer of embryo.					
578	PREGNANCY AND NEONATAL CARE PROCEDURES		T	1.17	$60.16	$32.77	$12.03
578	59000	Amniocentesis.					
578	59012	Fetal cord puncture, prenatal.					
578	59015	Chorion biopsy.					
578	59020	Fetal contract stress test.					
578	59025	Fetal non-stress test.					
578	59030	Fetal scalp blood sample.					
578	59050	Fetal monitor w/report.					
578	59899	Maternity care procedure.					
580	VAGINAL DELIVERY		T	4.31	$221.62	$44.32	$44.32
580	59409	Obstetrical care.					
580	59412	Antepartum manipulation.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
580	59414	Deliver placenta.					
580	59612	Vbac delivery only.					
586		THERAPEUTIC ABORTION	T	11.98	$616.01	$409.29	$123.20
586	59840	Abortion.					
586	59841	Abortion.					
587		SPONTANEOUS ABORTION	T	12.96	$666.40	$347.14	$133.28
587	59812	Treatment of miscarriage.					
587	59820	Care of miscarriage.					
587	59821	Treatment of miscarriage.					
587	59870	Evacuate mole of uterus.					
600		SPINAL TAP	T	2.41	$123.92	$61.47	$24.78
600	62270	Spinal fluid tap, diagnostic.					
600	62272	Drain spinal fluid.					
601		LEVEL I NERVOUS SYSTEM INJECTIONS	T	3.00	$154.26	$74.13	$30.85
601	64400	Injection for nerve block.					
601	64402	Injection for nerve block.					
601	64405	Injection for nerve block.					
601	64408	Injection for nerve block.					
601	64410	Injection for nerve block.					
601	64412	Injection for nerve block.					
601	64413	Injection for nerve block.					
601	64415	Injection for nerve block.					
601	64417	Injection for nerve block.					
601	64418	Injection for nerve block.					
601	64420	Injection for nerve block.					
601	64421	Injection for nerve block.					
601	64425	Injection for nerve block.					
601	64430	Injection for nerve block.					
601	64435	Injection for nerve block.					
601	64440	Injection for nerve block.					
601	64441	Injection for nerve block.					
601	64442	Injection for nerve block.					
601	64443	Inject, nerve block add-on.					
601	64445	Injection for nerve block.					
601	64450	Injection for nerve block.					
601	64505	Injection for nerve block.					
601	64508	Injection for nerve block.					
601	64510	Injection for nerve block.					
601	64520	Injection for nerve block.					
601	64530	Injection for nerve block.					
601	64600	Injection treatment of nerve.					
601	64605	Injection treatment of nerve.					
601	64610	Injection treatment of nerve.					
601	64612	Destroy nerve, face muscle.					
601	64613	Destroy nerve, spine muscle.					
601	64620	Injection treatment of nerve.					
601	64622	Injection treatment of nerve.					
601	64623	Inject, tx of nerve add-on.					
601	64630	Injection treatment of nerve.					
601	64640	Injection treatment of nerve.					
601	64650	Injection treatment of nerve.					
601	64999	Nervous system surgery.					
602		LEVEL II NERVOUS SYSTEM INJECTIONS	T	3.19	$164.03	$87.01	$32.81
602	61000	Remove cranial cavity fluid.					
602	61001	Remove cranial cavity fluid.					
602	61020	Remove brain cavity fluid.					
602	61026	Injection into brain canal.					
602	61050	Remove brain canal fluid.					
602	61055	Injection into brain canal.					
602	61070	Brain canal shunt procedure.					
602	62194	Replace/irrigate catheter.					
602	62225	Replace/irrigate catheter.					
602	62268	Drain spinal cord cyst.					
602	62273	Treat lumbar spine lesion.					
602	62274	Inject spinal anesthetic.					
602	62275	Inject spinal anesthetic.					
602	62276	Inject spinal anesthetic.					
602	62277	Inject spinal anesthetic.					
602	62278	Inject spinal anesthetic.					
602	62279	Inject spinal anesthetic.					
602	62280	Treat spinal cord lesion.					
602	62281	Treat spinal cord lesion.					
602	62282	Treat spinal canal lesion.					
602	62284	Injection into spinal canal.					
602	62291	Injection into spinal canal.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
602	62292	Injection into disk lesion.					
602	62294	Injection into spinal artery.					
602	62298	Injection into spinal canal.					
616		IMPLANTATION OF NEUROSTIMULATOR ELECTRODES	T	11.85	$609.33	$329.06	$121.87
616	53650	Implant neuroelectrodes.					
616	64553	Implant neuroelectrodes.					
616	64555	Implant neuroelectrodes.					
616	64560	Implant neuroelectrodes.					
616	64565	Implant neuroelectrodes.					
616	64573	Implant neuroelectrodes.					
616	64575	Implant neuroelectrodes.					
616	64577	Implant neuroelectrodes.					
616	64580	Implant neuroelectrodes.					
617		REVISION/REMOVAL NEUROLOGICAL DEVICE	T	11.31	$581.56	$280.01	$116.31
617	62230	Replace/revise brain shunt.					
617	62350	Implant spinal catheter.					
617	62355	Remove spinal canal catheter.					
617	62365	Remove spine infusion device.					
617	63660	Revise/remove neuroelectrode.					
617	63688	Revise/remove neuroreceiver.					
617	63744	Revision of spinal shunt.					
617	63746	Removal of spinal shunt.					
617	64585	Revise/remove neuroelectrode.					
617	64595	Revise/remove neuroreceiver.					
618		IMPLANTATION OF NEUROLOGICAL DEVICE	T	24.78	$1,274.19	$808.18	$254.84
618	61215	Insert brain-fluid device.					
618	61885	Implant neuroreceiver.					
618	62360	Insert spine infusion device.					
618	62361	Implant spine infusion pump.					
618	62362	Implant spine infusion pump.					
618	63685	Implant neuroreceiver.					
618	64590	Implant neuroreceiver.					
631		LEVEL I NERVE PROCEDURES	T	12.70	$653.03	$329.06	$130.61
631	27315	Partial removal, thigh nerve.					
631	27320	Partial removal, thigh nerve.					
631	28030	Removal of foot nerve.					
631	28035	Decompression of tibia nerve.					
631	61790	Treat trigeminal nerve.					
631	62287	Percutaneous diskectomy.					
631	63600	Remove spinal cord lesion.					
631	63610	Stimulation of spinal cord.					
631	63615	Remove lesion of spinal cord.					
631	64702	Revise finger/toe nerve.					
631	64704	Revise hand/foot nerve.					
631	64708	Revise arm/leg nerve.					
631	64712	Revision of sciatic nerve.					
631	64713	Revision of arm nerve(s).					
631	64714	Revise low back nerve(s).					
631	64716	Revision of cranial nerve.					
631	64718	Revise ulnar nerve at elbow.					
631	64719	Revise ulnar nerve at wrist.					
631	64721	Carpal tunnel surgery.					
631	64722	Relieve pressure on nerve(s).					
631	64726	Release foot/toe nerve.					
631	64727	Internal nerve revision.					
631	64732	Incision of brow nerve.					
631	64734	Incision of cheek nerve.					
631	64736	Incision of chin nerve.					
631	64738	Incision of jaw nerve.					
631	64740	Incision of tongue nerve.					
631	64742	Incision of facial nerve.					
631	64744	Incise nerve, back of head.					
631	64746	Incise diaphragm nerve.					
631	64761	Incision of pelvis nerve.					
631	64771	Sever cranial nerve.					
631	64772	Incision of spinal nerve.					
631	64774	Remove skin nerve lesion.					
631	64776	Remove digit nerve lesion.					
631	64778	Digit nerve surgery add-on.					
631	64782	Remove limb nerve lesion.					
631	64783	Limb nerve surgery add-on.					
631	64784	Remove nerve lesion.					
631	64787	Implant nerve end.					
631	64788	Remove skin nerve lesion.					
631	64790	Removal of nerve lesion.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
[1]631	64795	Biopsy of nerve.					
[2]631	64830	Microrepair of nerve.					
632	LEVEL II NERVE PROCEDURES		T	16.48	$847.40	$453.58	$169.48
632	64786	Remove sciatic nerve lesion.					
632	64792	Removal of nerve lesion.					
632	64831	Repair of digit nerve.					
632	64832	Repair nerve add-on.					
632	64834	Repair of hand or foot nerve.					
632	64835	Repair of hand or foot nerve.					
632	64836	Repair of hand or foot nerve.					
632	64837	Repair nerve add-on.					
632	64840	Repair of leg nerve.					
632	64856	Repair/transpose nerve.					
632	64857	Repair arm/leg nerve.					
632	64858	Repair sciatic nerve.					
632	64859	Nerve surgery.					
632	64861	Repair of arm nerves.					
632	64862	Repair of low back nerves.					
632	64864	Repair of facial nerve.					
632	64865	Repair of facial nerve.					
632	64870	Fusion of facial/other nerve.					
632	64872	Subsequent repair of nerve.					
632	64874	Repair & revise nerve add-on.					
632	64876	Repair nerve; shorten bone.					
632	64885	Nerve graft, head or neck.					
632	64886	Nerve graft, head or neck.					
632	64890	Nerve graft, hand or foot.					
632	64891	Nerve graft, hand or foot.					
632	64892	Nerve graft, arm or leg.					
632	64893	Nerve graft, arm or leg.					
632	64895	Nerve graft, hand or foot.					
632	64896	Nerve graft, hand or foot.					
632	64897	Nerve graft, arm or leg.					
632	64898	Nerve graft, arm or leg.					
632	64901	Nerve graft add-on.					
632	64902	Nerve graft add-on.					
632	64905	Nerve pedicle transfer.					
632	64907	Nerve pedicle transfer.					
648	LASER RETINAL PROCEDURES		T	3.76	$193.34	$93.56	$38.67
648	67105	Repair, detached retina.					
648	67145	Treatment of retina.					
648	67210	Treatment of retinal lesion.					
648	67228	Treatment of retinal lesion.					
649	LASER EYE PROCEDURES EXCEPT RETINAL		T	4.37	$224.71	$111.64	$44.94
649	65855	Laser surgery of eye.					
649	65860	Incise inner eye adhesions.					
649	66761	Revision of iris.					
649	66762	Revision of iris.					
649	66770	Removal of inner eye lesion.					
649	66821	After cataract laser surgery.					
649	66999	Eye surgery procedure.					
649	67031	Laser surgery, eye strands.					
649	67299	Eye surgery procedure.					
651	LEVEL I ANTERIOR SEGMENT EYE PROCEDURES		T	6.85	$352.23	$171.99	$70.45
651	65272	Repair of eye wound.					
651	65275	Repair of eye wound.					
651	65286	Repair of eye wound.					
651	65420	Removal of eye lesion.					
651	65436	Curette/treat cornea.					
651	65450	Treatment of corneal lesion.					
651	65772	Correction of astigmatism.					
651	65810	Drainage of eye.					
651	65815	Drainage of eye.					
651	65820	Relieve inner eye pressure.					
651	66130	Remove eye lesion.					
651	66500	Incision of iris.					
651	66505	Incision of iris.					
651	66600	Remove iris and lesion.					
651	66625	Removal of iris.					
651	66630	Removal of iris.					
651	66700	Destruction, ciliary body.					
651	66710	Destruction, ciliary body.					
651	66720	Destruction, ciliary body.					
651	66820	Incision, secondary cataract.					
651	66825	Reposition intraocular lens.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
652	LEVEL II ANTERIOR SEGMENT EYE PROCEDURES		T	16.35	$840.72	$433.92	$168.14
652	65235	Remove foreign body from eye.					
652	65280	Repair of eye wound.					
652	65285	Repair of eye wound.					
652	65400	Removal of eye lesion.					
652	65426	Removal of eye lesion.					
652	65770	Revise cornea with implant.					
652	65775	Correction of astigmatism.					
652	65850	Incision of eye.					
652	65865	Incise inner eye adhesions.					
652	65870	Incise inner eye adhesions.					
652	65875	Incise inner eye adhesions.					
652	65880	Incise inner eye adhesions.					
652	65900	Remove eye lesion.					
652	65920	Remove implant from eye.					
652	65930	Remove blood clot from eye.					
652	66150	Glaucoma surgery.					
652	66155	Glaucoma surgery.					
652	66160	Glaucoma surgery.					
652	66165	Glaucoma surgery.					
652	66170	Glaucoma surgery.					
652	66172	Incision of eye.					
652	66180	Implant eye shunt.					
652	66185	Revise eye shunt.					
652	66225	Repair/graft eye lesion.					
652	66250	Follow-up surgery of eye.					
652	66605	Removal of iris.					
652	66635	Removal of iris.					
652	66680	Repair iris & ciliary body.					
652	66682	Repair iris and ciliary body.					
652	66740	Destruction, ciliary body.					
652	66830	Removal of lens lesion.					
652	68130	Remove eyelid lining lesion.					
652	68135	Revise eyelid lining.					
652	68360	Revise eyelid lining.					
652	68362	Revise eyelid lining.					
667	CATARACT PROCEDURES		T	20.35	$1,046.40	$538.11	$209.28
667	66840	Removal of lens material.					
667	66850	Removal of lens material.					
667	66852	Removal of lens material.					
667	66920	Extraction of lens.					
667	66930	Extraction of lens.					
667	66940	Extraction of lens.					
668	CATARACT PROCEDURES WITH IOL INSERT		T	22.02	$1,132.27	$617.21	$226.45
668	66983	Remove cataract, insert lens.					
668	66984	Remove cataract, insert lens.					
668	66985	Insert lens prosthesis.					
668	66986	Exchange lens prosthesis.					
670	CORNEAL TRANSPLANT		T	30.78	$1,582.71	$885.92	$316.54
670	65710	Corneal transplant.					
670	65730	Corneal transplant.					
670	65750	Corneal transplant.					
670	65755	Corneal transplant.					
676	POSTERIOR SEGMENT EYE PROCEDURES		T	5.87	$301.84	$138.54	$60.37
676	65260	Remove foreign body from eye.					
676	65265	Remove foreign body from eye.					
676	66220	Repair eye lesion.					
676	67005	Partial removal of eye fluid.					
676	67010	Partial removal of eye fluid.					
676	67015	Release of eye fluid.					
676	67030	Incise inner eye strands.					
676	67101	Repair, detached retina.					
676	67110	Repair detached retina.					
676	67115	Release, encircling material.					
676	67120	Remove eye implant material.					
676	67121	Remove eye implant material.					
676	67141	Treatment of retina.					
676	67208	Treatment of retinal lesion.					
676	67218	Treatment of retinal lesion.					
676	67227	Treatment of retinal lesion.					
676	92018	New eye exam & treatment.					
676	92019	Eye exam & treatment.					
677	STRABISMUS/MUSCLE PROCEDURES		T	16.11	$828.38	$428.95	$165.68
677	65290	Repair of eye socket wound.					
677	67311	Revise eye muscle.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
677	67312	Revise two eye muscles.					
677	67314	Revise eye muscle.					
677	67316	Revise two eye muscles.					
677	67318	Revise eye muscle(s).					
677	67320	Revise eye muscle(s) add-on.					
677	67331	Eye surgery follow-up add-on.					
677	67332	Rerevise eye muscles add-on.					
677	67334	Revise eye muscle w/suture.					
677	67335	Eye suture during surgery.					
677	67340	Revise eye muscle add-on.					
677	67343	Release eye tissue.					
681	LEVEL I EYE PROCEDURES		T	1.65	$84.84	$30.51	$16.97
681	65125	Revise ocular implant.					
681	65205	Remove foreign body from eye.					
681	65210	Remove foreign body from eye.					
681	65220	Remove foreign body from eye.					
681	65222	Remove foreign body from eye.					
681	65430	Corneal smear.					
681	65435	Curette/treat cornea.					
681	65600	Revision of cornea.					
681	67345	Destroy nerve of eye muscle.					
681	67500	Inject/treat eye socket.					
681	67505	Inject/treat eye socket.					
681	67515	Inject/treat eye socket.					
681	67599	Orbit surgery procedure.					
681	68200	Treat eyelid by injection.					
681	68761	Close tear duct opening.					
681	68899	Tear duct system surgery.					
682	LEVEL II EYE PROCEDURES		T	3.41	$175.34	$80.66	$35.07
682	67028	Injection eye drug.					
682	67700	Drainage of eyelid abscess.					
682	67710	Incision of eyelid.					
682	67800	Remove eyelid lesion.					
682	67801	Remove eyelid lesions.					
682	67805	Remove eyelid lesions.					
682	67810	Biopsy of eyelid.					
682	67820	Revise eyelashes.					
682	67825	Revise eyelashes.					
682	67840	Remove eyelid lesion.					
682	67850	Treat eyelid lesion.					
682	67875	Closure of eyelid by suture.					
682	67915	Repair eyelid defect.					
682	67922	Repair eyelid defect.					
682	67930	Repair eyelid wound.					
682	67938	Remove eyelid foreign body.					
682	67999	Revision of eyelid.					
682	68020	Incise/drain eyelid lining.					
682	68040	Treatment of eyelid lesions.					
682	68400	Incise/drain tear gland.					
682	68420	Incise/drain tear sac.					
682	68440	Incise tear duct opening.					
682	68530	Clearance of tear duct.					
682	68705	Revise tear duct opening.					
682	68750	Close tear duct opening.					
[2] 682	68800	Dilate tear duct opening(s).					
682	68801	Dilate tear duct opening.					
682	68840	Explore/irrigate tear ducts.					
683	LEVEL III EYE PROCEDURES		T	9.56	$491.58	$252.44	$98.32
683	65175	Removal of ocular implant.					
683	65410	Biopsy of cornea.					
683	65600	Drainage of eye.					
683	65605	Drainage of eye.					
683	66020	Injection treatment of eye.					
683	66030	Injection treatment of eye.					
683	67025	Replace eye fluid.					
683	67715	Incision of eyelid fold.					
683	67830	Revise eyelashes.					
683	67860	Revision of eyelid.					
683	67935	Repair eyelid wound.					
683	68510	Biopsy of tear gland.					
683	68525	Biopsy of tear sac.					
683	68810	Probe nasolacrimal duct.					
[2] 683	68820	Explore tear duct system.					
[2] 683	68825	Explore tear duct system.					
[2] 683	68830	Reopen tear duct channel.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
684	LEVEL IV EYE PROCEDURES		T	13.26	$681.83	$341.94	$136.37
684	65091	Revise eye.					
684	65093	Revise eye with implant.					
684	65101	Removal of eye.					
684	65103	Remove eye/insert implant.					
684	65105	Remove eye/attach implant.					
684	65130	Insert ocular implant.					
684	65135	Insert ocular implant.					
684	65140	Attach ocular implant.					
684	65150	Revise ocular implant.					
684	65155	Reinsert ocular implant.					
684	67250	Reinforce eye wall.					
684	67255	Reinforce/graft eye wall.					
684	67400	Explore/biopsy eye socket.					
684	67405	Explore/drain eye socket.					
684	67412	Explore/treat eye socket.					
684	67413	Explore/treat eye socket.					
684	67550	Insert eye socket implant.					
684	67560	Revise eye socket implant.					
684	67808	Remove eyelid lesion(s).					
684	67835	Revise eyelashes.					
684	67882	Revision of eyelid.					
684	67900	Repair brow defect.					
684	67901	Repair eyelid defect.					
684	67902	Repair eyelid defect.					
684	67903	Repair eyelid defect.					
684	67904	Repair eyelid defect.					
684	67906	Repair eyelid defect.					
684	67908	Repair eyelid defect.					
684	67909	Revise eyelid defect.					
684	67911	Revise eyelid defect.					
684	67914	Repair eyelid defect.					
684	67916	Repair eyelid defect.					
684	67917	Repair eyelid defect.					
684	67921	Repair eyelid defect.					
684	67923	Repair eyelid defect.					
684	67924	Repair eyelid defect.					
684	67950	Revision of eyelid.					
684	67961	Revision of eyelid.					
684	67966	Revision of eyelid.					
684	67971	Reconstruction of eyelid.					
684	67973	Reconstruction of eyelid.					
684	67974	Reconstruction of eyelid.					
684	67975	Reconstruction of eyelid.					
684	68320	Revise/graft eyelid lining.					
684	68325	Revise/graft eyelid lining.					
684	68326	Revise/graft eyelid lining.					
684	68328	Revise/graft eyelid lining.					
684	68335	Revise/graft eyelid lining.					
684	68340	Separate eyelid adhesions.					
684	68500	Removal of tear gland.					
684	68505	Partial removal tear gland.					
684	68520	Removal of tear sac.					
684	68540	Remove tear gland lesion.					
684	68550	Remove tear gland lesion.					
684	68700	Repair tear ducts.					
684	68720	Create tear sac drain.					
684	68745	Create tear duct drain.					
684	68750	Create tear duct drain.					
684	68770	Close tear system fistula.					
684	68811	Probe nasolacrimal duct.					
684	68815	Probe nasolacrimal duct.					
690	VITRECTOMY		T	30.39	$1,562.65	$845.69	$312.53
690	67027	Implant eye drug system.					
690	67036	Removal of inner eye fluid.					
690	67038	Strip retinal membrane.					
690	67039	Laser treatment of retina.					
690	67040	Laser treatment of retina.					
690	67107	Repair detached retina.					
690	67108	Repair detached retina.					
690	67112	Re-repair detached retina.					
700	PLAIN FILM		X	0.80	$41.14	$22.37	$8.23
700	70030	X-ray eye for foreign body.					
700	70100	X-ray exam of jaw.					
700	70110	X-ray exam of jaw.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
700	70120	X-ray exam of mastoids.					
700	70130	X-ray exam of mastoids.					
700	70134	X-ray exam of middle ear.					
700	70140	X-ray exam of facial bones.					
700	70150	X-ray exam of facial bones.					
700	70160	X-ray exam of nasal bones.					
700	70190	X-ray exam of eye sockets.					
700	70200	X-ray exam of eye sockets.					
700	70210	X-ray exam of sinuses.					
700	70220	X-ray exam of sinuses.					
700	70240	X-ray exam pituitary saddle.					
700	70250	X-ray exam of skull.					
700	70260	X-ray exam of skull.					
700	70300	X-ray exam of teeth.					
700	70310	X-ray exam of teeth.					
700	70320	Full mouth x-ray of teeth.					
700	70328	X-ray exam of jaw joint.					
700	70330	X-ray exam of jaw joints.					
700	70350	X-ray head for orthodontia.					
700	70355	Panoramic x-ray of jaws.					
700	70360	X-ray exam of neck.					
700	70380	X-ray exam of salivary gland.					
700	71010	Chest x-ray.					
700	71015	X-ray exam of chest.					
700	71020	Chest x-ray.					
700	71021	Chest x-ray.					
700	71022	Chest x-ray.					
700	71030	Chest x-ray.					
700	71035	Chest x-ray.					
700	71100	X-ray exam of ribs.					
700	71101	X-ray exam of ribs, chest.					
700	71110	X-ray exam of ribs.					
700	71111	X-ray exam of ribs, chest.					
700	71120	X-ray exam of breastbone.					
700	71130	X-ray exam of breastbone.					
700	72010	X-ray exam of spine.					
700	72020	X-ray exam of spine.					
700	72040	X-ray exam of neck spine.					
700	72050	X-ray exam of neck spine.					
700	72052	X-ray exam of neck spine.					
700	72069	X-ray exam of trunk spine.					
700	72070	X-ray exam of thorax spine.					
700	72072	X-ray exam of thoracic spine.					
700	72074	X-ray exam of thoracic spine.					
700	72050	X-ray exam of trunk spine.					
700	72090	X-ray exam of trunk spine.					
700	72100	X-ray exam of lower spine.					
700	72110	X-ray exam of lower spine.					
700	72114	X-ray exam of lower spine.					
700	72120	X-ray exam of lower spine.					
700	72170	X-ray exam of pelvis.					
700	72190	X-ray exam of pelvis.					
700	72200	X-ray exam sacroiliac joints.					
700	72202	X-ray exam sacroiliac joints.					
700	72220	X-ray exam of tailbone.					
700	73000	X-ray exam of collarbone.					
700	73010	X-ray exam of shoulder blade.					
700	73020	X-ray exam of shoulder.					
700	73030	X-ray exam of shoulder.					
700	73050	X-ray exam of shoulders.					
700	73060	X-ray exam of humerus.					
700	73070	X-ray exam of elbow.					
700	73080	X-ray exam of elbow.					
700	73090	X-ray exam of forearm.					
700	73092	X-ray exam of arm, infant.					
700	73100	X-ray exam of wrist.					
700	73110	X-ray exam of wrist.					
700	73120	X-ray exam of hand.					
700	73130	X-ray exam of hand.					
700	73140	X-ray exam of finger(s).					
700	73500	X-ray exam of hip.					
700	73510	X-ray exam of hip.					
700	73520	X-ray exam of hips.					
700	73530	X-ray exam of hip.					
700	73540	X-ray exam of pelvis & hips.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
700	73550	X-ray exam of thigh.					
700	73560	X-ray exam of knee, 1 or 2.					
700	73562	X-ray exam of knee, 3.					
700	73564	X-ray exam of knee, 4+.					
700	73565	X-ray exam of knee.					
700	73590	X-ray exam of lower leg.					
700	73592	X-ray exam of leg, infant.					
700	73600	X-ray exam of ankle.					
700	73610	X-ray exam of ankle.					
700	73620	X-ray exam of foot.					
700	73630	X-ray exam of foot.					
700	73650	X-ray exam of heel.					
700	73660	X-ray exam of toe(s).					
700	74000	X-ray exam of abdomen.					
700	74010	X-ray exam of abdomen.					
700	74020	X-ray exam of abdomen.					
700	74022	X-ray exam series, abdomen.					
700	74710	X-ray measurement of pelvis.					
700	76010	X-ray, nose to rectum.					
700	76020	X-rays for bone age.					
700	76040	X-rays, bone evaluation.					
700	76061	X-rays, bone survey.					
700	76062	X-rays, bone survey.					
700	76065	X-rays, bone evaluation.					
700	76066	Joint(s) survey, single film.					
700	76076	Dual energy x-ray study.					
700	76078	Photodensitometry.					
700	76090	X-ray exam, breast specimen.					
700	76100	X-ray exam of body section.					
700	76120	Cinematic x-rays.					
700	76125	Cinematic x-rays add-on.					
700	76150	X-ray exam, dry process.					
700	76499	Radiographic procedure.					
700	77417	Radiology port film(s).					
700	78350	Bone mineral, single photon.					
705	MISCELLANEOUS RADIOLOGICAL PROCEDURES		X	1.43	$73.53	$39.10	$14.71
706	70170	X-ray exam of tear duct.					
706	70373	Contrast x-ray of larynx.					
706	70390	X-ray exam of salivary duct.					
706	71040	Contrast x-ray of bronchi.					
706	71060	Contrast x-ray of bronchi.					
706	74190	X-ray exam of peritoneum.					
706	74305	X-ray bile ducts, pancreas.					
706	74320	Contrast x-ray of bile ducts.					
706	74328	X-ray for bile duct endoscopy.					
706	74329	X-ray for pancreas endoscopy.					
706	74330	X-ray, bile/pancreas endoscopy.					
706	74350	X-ray guide, stomach tube.					
706	74355	X-ray guide, intestinal tube.					
706	74470	X-ray exam of kidney lesion.					
706	74740	X-ray female genital tract.					
706	74742	X-ray fallopian tube.					
706	75801	Lymph vessel x-ray, arm/leg.					
706	75803	Lymph vessel x-ray,arms/legs.					
706	75805	Lymph vessel x-ray, trunk.					
706	75807	Lymph vessel x-ray, trunk.					
706	75809	Nonvascular shunt, x-ray.					
706	75896	Follow-up angiogram.					
706	76075	Dual energy x-ray study.					
706	76080	X-ray exam of fistula.					
706	76086	X-ray of mammary duct.					
706	76088	X-ray of mammary ducts.					
706	76095	Stereotactic breast biopsy.					
706	76096	X-ray of needle wire, breast.					
706	76101	Complex body section x-ray.					
706	76102	Complex body section x-rays.					
710	COMPUTERIZED AXIAL TOMOGRAPHY		S	4.98	$256.07	$173.12	$51.21
710	70450	CAT scan of head or brain.					
710	70460	Contrast CAT scan of head.					
710	70470	Contrast CAT scans of head.					
710	70480	CAT scan of skull.					
710	70481	Contrast CAT scan of skull.					
710	70482	Contrast CAT scans of skull.					
710	70486	CAT scan of face, jaw.					
710	70487	Contrast CAT scan, face/jaw.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
710	70488	Contrast CAT scans face/jaw.					
710	70490	CAT scan of neck tissue.					
710	70491	Contrast CAT of neck tissue.					
710	70492	Contrast CAT of neck tissue.					
710	71250	Cat scan of chest.					
710	71260	Contrast CAT scan of chest.					
710	71270	Contrast CAT scans of chest.					
710	72125	CAT scan of neck spine.					
710	72126	Contrast CAT scan of neck.					
710	72127	Contrast CAT scans of neck.					
710	72128	CAT scan of thorax spine.					
710	72129	Contrast CAT scan of thorax.					
710	72130	Contrast CAT scans of thorax.					
710	72131	CAT scan of lower spine.					
710	72132	Contrast CAT of lower spine.					
710	72133	Contrast CAT scans,low spine.					
710	72192	CAT scan of pelvis.					
710	72193	Contrast CAT scan of pelvis.					
710	72194	Contrast CAT scans of pelvis.					
710	73200	CAT scan of arm.					
710	73201	Contrast CAT scan of arm.					
710	73202	Contrast CAT scans of arm.					
710	73700	CAT scan of leg.					
710	73701	Contrast CAT scan of leg.					
710	73702	Contrast CAT scans of leg.					
710	74150	CAT scan of abdomen.					
710	74160	Contrast CAT scan of abdomen.					
710	74170	Contrast CAT scans, abdomen.					
710	76355	CAT scan for localization.					
710	76360	CAT scan for needle biopsy.					
710	76365	CAT scan for cyst aspiration.					
710	76370	CAT scan for therapy guide.					
710	76375	3d/holograph reconstr add-on.					
710	76380	CAT scan follow-up study.					
716	FLUOROSCOPY		X	1.39	$71.47	$40.00	$14.29
716	70370	Throat x-ray & fluoroscopy.					
716	70371	Speech evaluation, complex.					
716	71023	Chest x-ray and fluoroscopy.					
716	71034	Chest x-ray & fluoroscopy.					
716	71036	X-ray guidance for biopsy.					
[2]716	71038	X-ray guidance for biopsy.					
716	71090	X-ray & pacemaker insertion.					
716	74340	X-ray guide for GI tube.					
716	75989	Abscess drainage under x-ray.					
716	76000	Fluoroscope examination.					
716	76001	Fluoroscope exam, extensive.					
716	76003	Needle localization by x-ray.					
720	MAGNETIC RESONANCE ANGIOGRAPHY		S	6.37	$327.55	$204.98	$65.51
720	70541	Magnetic image, head (MRA).					
726	MAGNETIC RESONANCE IMAGING		S	7.91	$406.73	$256.06	$81.35
726	70336	Magnetic image jaw joint.					
726	70540	Magnetic image, face, neck.					
726	70551	Magnetic image, brain (MRI).					
726	70552	Magnetic image, brain (MRI).					
726	70553	Magnetic image, brain.					
726	71550	Magnetic image, chest.					
726	72141	Magnetic image, neck spine.					
726	72142	Magnetic image, neck spine.					
726	72146	Magnetic image, chest spine.					
726	72147	Magnetic image, chest spine.					
726	72148	Magnetic image, lumbar spine.					
726	72149	Magnetic image, lumbar spine.					
726	72156	Magnetic image, neck spine.					
726	72157	Magnetic image, chest spine.					
726	72158	Magnetic image, lumbar spine.					
726	72196	Magnetic image, pelvis.					
726	73220	Magnetic image, arm, hand.					
726	73221	Magnetic image, joint of arm.					
726	73720	Magnetic image, leg, foot.					
726	73721	Magnetic image, joint of leg.					
726	74181	Magnetic image, abdomen (MRI).					
726	75552	Magnetic image, myocardium.					
726	75553	Magnetic image, myocardium.					
726	75554	Cardiac MRI/function.					
726	75555	Cardiac MRI/limited study.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
726	76093	Magnetic image, breast.					
726	76094	Magnetic image, both breasts.					
726	76390	Mr spectroscopy.					
726	76400	Magnetic image, bone marrow.					
728	MYELOGRAPHY		S	3.50	$179.97	$91.98	$35.99
728	70010	Contrast x-ray of brain.					
728	70015	Contrast x-ray of brain.					
728	72240	Contrast x-ray of neck spine.					
728	72255	Contrast x-ray thorax spine.					
728	72265	Contrast x-ray lower spine.					
728	72270	Contrast x-ray of spine.					
728	72285	X-ray of neck spine disk.					
728	72295	X-ray of lower spine disk.					
730	ARTHOGRAPHY		S	2.30	$118.27	$65.77	$23.65
730	70332	X-ray exam of jaw joint.					
730	73040	Contrast x-ray of shoulder.					
730	73085	Contrast x-ray of elbow.					
730	73115	Contrast x-ray of wrist.					
730	73525	Contrast x-ray of hip.					
730	73580	Contrast x-ray of knee joint.					
730	73615	Contrast x-ray of ankle.					
736	DIGESTIVE RADIOLOGY		S	1.85	$95.13	$53.79	$19.03
736	74210	Contrast xray exam of throat.					
736	74220	Contrast xray exam, esophagus.					
736	74230	Cinema xray throat/esophagus.					
736	74240	X-ray exam upper GI tract.					
736	74241	X-ray exam upper GI tract.					
736	74245	X-ray exam upper GI tract.					
736	74246	Contrast x-ray upper GI tract.					
736	74247	Contrast x-ray upper GI tract.					
736	74249	Contrast x-ray upper GI tract.					
736	74250	X-ray exam of small bowel.					
736	74251	X-ray exam of small bowel.					
736	74260	X-ray exam of small bowel.					
736	74270	Contrast x-ray exam of colon.					
736	74280	Contrast x-ray exam of colon.					
736	74283	Contrast x-ray exam of colon.					
736	74290	Contrast x-ray, gallbladder.					
736	74291	Contrast x-rays, gallbladder.					
736	G0106	Colon CA screen; barium enema.					
736	G0120	Colon ca scrn: barium enema.					
737	DIAGNOSTIC UROGRAPHY		S	2.69	$138.32	$81.81	$27.66
737	74400	Contrast x-ray urinary tract.					
[2]737	74405	Contrast x-ray urinary tract.					
737	74410	Contrast x-ray urinary tract.					
737	74415	Contrast x-ray urinary tract.					
737	74420	Contrast x-ray urinary tract.					
737	74425	Contrast x-ray urinary tract.					
737	74430	Contrast x-ray of bladder.					
737	74440	X-ray exam male genital tract.					
737	74445	X-ray exam of penis.					
737	74450	X-ray exam urethra/bladder.					
737	74455	X-ray exam urethra/bladder.					
737	74775	X-ray exam of perineum.					
738	THERAPEUTIC RADIOLOGIC PROCEDURES		S	3.74	$192.31	$104.86	$38.46
738	74235	Remove esophagus obstruction.					
738	74327	X-ray for bile stone removal.					
738	74360	X-ray guide, GI dilation.					
738	74363	X-ray, bile duct dilation.					
738	74475	X-ray control catheter insert.					
738	74480	X-ray control catheter insert.					
738	74485	X-ray guide, GU dilation.					
738	75980	Contrast x-ray exam bile duct.					
738	75982	Contrast x-ray exam bile duct.					
738	75984	X-ray control catheter change.					
739	DIAGNOSTIC ANGIOGRAPHY AND VENOGRAPHY		S	5.33	$274.07	$150.74	$54.81
739	75600	Contrast x-ray exam of aorta.					
739	75605	Contrast x-ray exam of aorta.					
739	75625	Contrast x-ray exam of aorta.					
739	75630	X-ray aorta, leg arteries.					
739	75650	Artery x-rays, head & neck.					
739	75658	X-ray exam of arm arteries.					
739	75660	Artery x-rays, head & neck.					
739	75662	Artery x-rays, head & neck.					
739	75665	Artery x-rays, head & neck.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
739	75671	Artery x-rays, head & neck.					
739	75676	Artery x-rays, neck.					
739	75680	Artery x-rays, neck.					
739	75685	Artery x-rays, spine.					
739	75705	Artery x-rays, spine.					
739	75710	Artery x-rays, arm/leg.					
739	75716	Artery x-rays, arms/legs.					
739	75722	Artery x-rays, kidney.					
739	75724	Artery x-rays, kidneys.					
739	75726	Artery x-rays, abdomen.					
739	75731	Artery x-rays, adrenal gland.					
739	75733	Artery x-rays, adrenal glands.					
739	75736	Artery x-rays, pelvis.					
739	75741	Artery x-rays, lung.					
739	75743	Artery x-rays, lungs.					
739	75746	Artery x-rays, lung.					
739	75756	Artery x-rays, chest.					
739	75774	Artery x-ray, each vessel.					
739	75790	Visualize A-V shunt.					
739	75810	Vein x-ray, spleen/liver.					
739	75820	Vein x-ray, arm/leg.					
739	75822	Vein x-ray, arms/legs.					
739	75825	Vein x-ray, trunk.					
739	75827	Vein x-ray, chest.					
739	75831	Vein x-ray, kidney.					
739	75833	Vein x-ray, kidneys.					
739	75840	Vein x-ray, adrenal gland.					
739	75842	Vein x-ray, adrenal glands.					
739	75860	Vein x-ray, neck.					
739	75870	Vein x-ray, skull.					
739	75872	Vein x-ray, skull.					
739	75880	Vein x-ray, eye socket.					
739	75885	Vein x-ray, liver.					
739	75887	Vein x-ray, liver.					
739	75889	Vein x-ray, liver.					
739	75891	Vein x-ray, liver.					
746	MAMMOGRAPHY		S	0.69	$35.48	$19.44	$7.10
746	76090	Mammogram, one breast.					
746	76091	Mammogram, both breasts.					
747	DIAGNOSTIC ULTRASOUND EXCEPT VASCULAR		S	1.65	$84.84	$54.47	$16.97
747	76506	Echo exam of head.					
747	76511	Echo exam of eye.					
747	76512	Echo exam of eye.					
747	76513	Echo exam of eye, water bath.					
747	76516	Echo exam of eye.					
747	76519	Echo exam of eye.					
747	76529	Echo exam of eye.					
747	76536	Echo exam of head and neck.					
747	76604	Echo exam of chest.					
747	76645	Echo exam of breast.					
747	76700	Echo exam of abdomen.					
747	76705	Echo exam of abdomen.					
747	76770	Echo exam abdomen back wall.					
747	76775	Echo exam abdomen back wall.					
747	76778	Echo exam kidney transplant.					
747	76800	Echo exam spinal canal.					
747	76805	Echo exam of pregnant uterus.					
747	76810	Echo exam of pregnant uterus.					
747	76815	Echo exam of pregnant uterus.					
747	76816	Echo exam followup or repeat.					
747	76818	Fetal biophysical profile.					
747	76830	Echo exam, transvaginal.					
747	76831	Echo exam, uterus.					
747	76856	Echo exam of pelvis.					
747	76857	Echo exam of pelvis.					
747	76870	Echo exam of scrotum.					
747	76872	Echo exam, transrectal.					
747	76880	Echo exam of extremity.					
747	76885	Echo exam, infant hips.					
747	76886	Echo exam, infant hips.					
747	76970	Ultrasound exam follow-up.					
747	76975	GI endoscopic ultrasound.					
747	76986	Echo exam at surgery.					
747	76999	Echo examination procedure.					
747	G0050	Residual urine by ultrasound.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
749	GUIDANCE UNDER ULTRASOUND		X	2.22	$114.15	$70.06	$22.83
749	76930	Echo guide for heart sac tap.					
749	76932	Echo guide for heart biopsy.					
749	76934	Echo guide for chest tap.					
749	76936	Echo guide for artery repair.					
749	76938	Echo exam for drainage.					
749	76941	Echo guide for transfusion.					
749	76942	Echo guide for biopsy.					
749	76945	Echo guide, villus sampling.					
749	76946	Echo guide for amniocentesis.					
749	76948	Echo guide, ova aspiration.					
749	76950	Echo guidance radiotherapy.					
749	76960	Echo guidance radiotherapy.					
749	76965	Echo guidance radiotherapy.					
750	THERAPEUTIC RADIATION TREATMENT PLANNING		X	0.96	$49.36	$25.99	$9.87
750	77261	Radiation therapy planning.					
750	77262	Radiation therapy planning.					
750	77263	Radiation therapy planning.					
750	77336	Radiation physics consult.					
750	77370	Radiation physics consult.					
750	77399	External radiation dosimetry.					
750	77431	Radiation therapy management.					
750	77432	Stereotactic radiation trmt.					
751	LEVEL I THERAPEUTIC RADIATION TREATMENT PREPARATION		X	1.15	$59.13	$33.22	$11.83
751	77299	Radiation therapy planning.					
751	77300	Radiation therapy dose plan.					
751	77305	Radiation therapy dose plan.					
751	77310	Radiation therapy dose plan.					
751	77315	Radiation therapy dose plan.					
751	77321	Radiation therapy port plan.					
751	77326	Radiation therapy dose plan.					
751	77327	Radiation therapy dose plan.					
751	77328	Radiation therapy dose plan.					
751	77331	Special radiation dosimetry.					
751	77332	Radiation treatment aid(s).					
751	77333	Radiation treatment aid(s).					
751	77334	Radiation treatment aid(s).					
752	LEVEL II THERAPEUTIC RADIATION TREATMENT PREPARATION		X	3.48	$178.94	$86.56	$35.79
752	77280	Set radiation therapy field.					
752	77285	Set radiation therapy field.					
752	77290	Set radiation therapy field.					
752	77295	Set radiation therapy field.					
757	RADIATION THERAPY		S	2.26	$116.21	$52.43	$23.24
757	61793	Focus radiation beam.					
757	77401	Radiation treatment delivery.					
757	77402	Radiation treatment delivery.					
757	77403	Radiation treatment delivery.					
757	77404	Radiation treatment delivery.					
757	77406	Radiation treatment delivery.					
757	77407	Radiation treatment delivery.					
757	77408	Radiation treatment delivery.					
757	77409	Radiation treatment delivery.					
757	77411	Radiation treatment delivery.					
757	77412	Radiation treatment delivery.					
757	77413	Radiation treatment delivery.					
757	77414	Radiation treatment delivery.					
757	77416	Radiation treatment delivery.					
757	77470	Special radiation treatment.					
758	HYPERTHERMIC THERAPIES		S	5.08	$261.21	$137.18	$52.24
758	77600	Hyperthermia treatment.					
758	77605	Hyperthermia treatment.					
758	77610	Hyperthermia treatment.					
758	77615	Hyperthermia treatment.					
758	77620	Hyperthermia treatment.					
759	BRACHYTHERAPY AND COMPLEX RADIOELEMENT APPLICATIONS		S	7.98	$410.33	$157.97	$82.07
759	77750	Infuse radioactive materials.					
759	77761	Radioelement application.					
759	77762	Radioelement application.					
759	77763	Radioelement application.					
759	77776	Radioelement application.					
759	77777	Radioelement application.					
759	77778	Radioelement application.					
759	77781	High intensity brachytherapy.					
759	77782	High intensity brachytherapy.					
759	77783	High intensity brachytherapy.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
758	77784	High intensity brachytherapy.					
759	77789	Radioelement application.					
759	77799	Radium/radioisotope therapy.					
760	PET SCANS						
760	78459	Heart muscle imaging (PET).	S	14.89	$765.64	$419.46	$153.13
760	78606	Brain imaging (PET).					
760	78609	Brain imaging (PET).					
760	78810	Tumor imaging (PET).					
760	G0030	PET imaging prev PET single.					
760	G0031	PET imaging prev PET multple.					
760	G0032	PET follow SPECT 78464 singl.					
760	G0033	PET follow SPECT 78464 mult.					
760	G0034	PET follow SPECT 78465 singl.					
760	G0035	PET follow SPECT 78465 mult.					
760	G0036	PET follow comry angio sing.					
760	G0037	PET follow comry angio mult.					
760	G0038	PET follow myocard perf sing.					
760	G0039	PET follow myocard perf mult.					
760	G0040	PET follow stress echo singl.					
760	G0041	PET follow stress echo mult.					
760	G0042	PET follow ventriculogm sing.					
760	G0043	PET follow ventriculogm mult.					
760	G0044	PET following rest ECG singl.					
760	G0045	PET following rest ECG mult.					
760	G0046	PET follow stress ECG singl.					
760	G0047	PET follow stress ECG mult.					
761	STANDARD NON-IMAGING NUCLEAR MEDICINE		S	1.80	$92.56	$54.01	$18.51
761	78000	Thyroid, single uptake.					
761	78099	Endocrine nuclear procedure.					
761	78110	Plasma volume, single.					
761	78111	Plasma volume, multiple.					
761	78120	Red cell mass, single.					
761	78199	Blood/lymph nuclear exam.					
761	78270	Vit B-12 absorption exam.					
761	78271	Vit B-12 absorp exam, IF.					
761	78272	Vit B-12 absorp, combined.					
761	78282	GI protein loss exam.					
761	78299	GI nuclear procedure.					
761	78725	Kidney function study.					
761	78999	Nuclear diagnostic exam.					
762	COMPLEX NON-IMAGING NUCLEAR MEDICINE		S	2.02	$103.87	$55.82	$20.77
762	78001	Thyroid, multiple uptakes.					
762	78003	Thyroid suppress/stimul.					
762	78121	Red cell mass, multiple.					
762	78122	Blood volume.					
762	78130	Red cell survival study.					
762	78135	Red cell survival kinetics.					
762	78140	Red cell sequestration.					
762	78160	Plasma iron turnover.					
762	78162	Iron absorption exam.					
762	78170	Red cell iron utilization.					
762	78172	Total body iron estimation.					
762	78190	Platelet survival, kinetics.					
762	78191	Platelet survival.					
762	78414	Non-imaging heart function.					
762	78455	Venous thrombosis study.					
762	78499	Cardiovascular nuclear exam.					
771	STANDARD PLANAR NUCLEAR MEDICINE		S	3.81	$195.91	$117.29	$39.18
771	78006	Thyroid,imaging with uptake.					
771	78010	Thyroid imaging.					
771	78011	Thyroid imaging with flow.					
771	78015	Thyroid met imaging.					
771	78102	Bone marrow imaging, ltd.					
771	78103	Bone marrow imaging, mult.					
771	78104	Bone marrow imaging, body.					
771	78185	Spleen imaging.					
771	78201	Liver imaging.					
771	78202	Liver imaging with flow.					
771	78215	Liver and spleen imaging.					
771	78216	Liver & spleen image, flow.					
771	78230	Salivary gland imaging.					
771	78231	Serial salivary imaging.					
771	78261	Gastric mucosa imaging.					
771	78290	Meckels divert exam.					
771	78300	Bone imaging, limited area.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
771	78305	Bone imaging, multiple areas.					
771	78306	Bone imaging, whole body.					
771	78399	Musculoskeletal nuclear exam.					
771	78428	Cardiac shunt imaging.					
771	78445	Vascular flow imaging.					
771	78457	Venous thrombosis imaging.					
771	78458	Ven thrombosis images, bilat.					
771	78460	Heart muscle blood single.					
771	78466	Heart infarct image.					
771	78478	Heart wall motion add-on.					
771	78480	Heart function add-on.					
771	78481	Heart first pass single.					
771	78580	Lung perfusion imaging.					
771	78586	Aerosol lung image, single.					
771	78587	Aerosol lung image, multiple.					
771	78591	Vent image, 1 breath, 1 proj.					
771	78593	Vent image, 1 proj, gas.					
771	78599	Respiratory nuclear exam.					
771	78600	Brain imaging, ltd static.					
771	78601	Brain ltd imaging & flow.					
771	78605	Brain imaging, complete.					
771	78610	Brain flow imaging only.					
771	78660	Nuclear exam of tear flow.					
771	78699	Nervous system nuclear exam.					
771	78700	Kidney imaging, static.					
771	78701	Kidney imaging with flow.					
771	78704	Imaging renogram.					
771	78707	Kidney flow & function image.					
771	78715	Renal vascular flow exam.					
771	78730	Urinary bladder retention.					
771	78760	Testicular imaging.					
771	78761	Testicular imaging & flow.					
771	78799	Genitourinary nuclear exam.					
772	COMPLEX PLANAR NUCLEAR MEDICINE		S	4.26	$219.05	$128.37	$43.81
772	78007	Thyroid, image, mult uptakes.					
772	78016	Thyroid met imaging/studies.					
[2] 772	78017	Thyroid met imaging, mult.					
772	78018	Thyroid, met imaging, body.					
772	78070	Parathyroid nuclear imaging.					
772	78075	Adrenal nuclear imaging.					
772	78195	Lymph system imaging.					
772	78220	Liver function study.					
772	78223	Hepatobiliary imaging.					
772	78232	Salivary gland function exam.					
772	78258	Esophageal motility study.					
772	78262	Gastroesophageal reflux exam.					
772	78264	Gastric emptying study.					
772	78278	Acute GI blood loss imaging.					
772	78291	Leveen/shunt patency exam.					
772	78315	Bone imaging, 3 phase.					
772	78461	Heart muscle blood multiple.					
772	78468	Heart infarct image, EF.					
772	78472	Gated heart, planar single.					
772	78473	Gated heart, multiple.					
772	78483	Heart first pass multiple.					
772	78584	Lung V/Q image single breath.					
772	78585	Lung V/Q imaging.					
772	78594	Vent image, mult proj, gas.					
772	78596	Lung differential function.					
772	78606	Brain imaging comp & flow.					
772	78615	Cerebral blood flow imaging.					
772	78630	Cerebrospinal fluid scan.					
772	78635	CSF ventriculography.					
772	78645	CSF shunt evaluation.					
772	78650	CSF leakage imaging.					
772	78708	Kidney flow & function image.					
772	78709	Kidney flow & function image.					
772	78740	Ureteral reflux study.					
772	78800	Tumor imaging, limited area.					
772	78801	Tumor imaging, mult areas.					
772	78802	Tumor imaging, whole body.					
772	78805	Abscess imaging, ltd area.					
772	78806	Abscess imaging, whole body.					
781	STANDARD SPECT NUCLEAR MEDICINE		S	5.43	$279.21	$155.04	$55.84
781	78205	Liver imaging (3D).					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
781	78320	Bone imaging (3D).					
781	78464	Heart image (3D) single.					
781	78469	Heart infarct image (3D).					
781	78607	Brain imaging (3D).					
781	78647	Cerebrospinal fluid scan.					
781	78710	Kidney imaging (3D).					
782	COMPLEX SPECT NUCLEAR MEDICINE		S	9.00	$462.78	$267.13	$92.56
782	78465	Heart image (3D) multiple.					
782	78803	Tumor imaging (3D).					
782	78807	Nuclear localization/abscess.					
791	STANDARD THERAPEUTIC NUCLEAR MEDICINE		S	14.74	$757.93	$539.91	$151.59
791	79001	Repeat hyperthyroid therapy.					
791	79100	Hematopoetic nuclear therapy.					
791	79300	Interstitial nuclear therapy.					
791	79400	Nonhemato nuclear therapy.					
791	79420	Intravascular nuc therapy.					
791	79440	Nuclear joint therapy.					
791	79999	Nuclear medicine therapy.					
792	COMPLEX THERAPEUTIC NUCLEAR MEDICINE		S	4.81	$247.33	$143.06	$49.47
792	79000	Intial hyperthyroid therapy.					
792	79020	Thyroid ablation.					
792	79030	Thyroid ablation, carcinoma.					
792	79035	Thyroid metastatic therapy.					
792	79200	Intracavitary nuc treatment.					
861	IMMUNOLOGY TESTS		X	0.13	$6.68	$3.62	$1.34
861	86485	Skin test, candida.					
861	86490	Coccidioidomycosis skin test.					
861	86510	Histoplasmosis skin test.					
861	86580	TB intradermal test.					
861	86585	TB tine test.					
861	86586	Skin test, unlisted.					
881	LEVEL I PATHOLOGY		X	0.22	$11.31	$6.78	$2.26
881	88125	Forensic cytopathology.					
881	88199	Cytopathology procedure.					
881	88300	Surg path, gross.					
881	88311	Decalcify tissue.					
881	88313	Special stains.					
881	88399	Surgical pathology procedure.					
881	89350	Sputum specimen collection.					
881	89360	Collect sweat for test.					
881	89399	Pathology lab procedure.					
881	G0025	Collagen skin test kit.					
882	LEVEL II PATHOLOGY		X	0.39	$20.05	$11.75	$4.01
882	80500	Lab pathology consultation.					
882	80502	Lab pathology consultation.					
882	85060	Blood smear interpretation.					
882	85097	Bone marrow interpretation.					
882	86077	Physician blood bank service.					
882	86078	Physician blood bank service.					
882	86079	Physician blood bank service.					
882	88104	Cytopathology, fluids.					
882	88106	Cytopathology, fluids.					
882	88107	Cytopathology, fluids.					
882	88108	Cytopath, concentrate tech.					
882	88160	Cytopath smear, other source.					
882	88161	Cytopath smear, other source.					
882	88162	Cytopath smear, other source.					
882	88172	Evaluation of smear.					
882	88173	Interpretation of smear.					
882	88180	Cell marker study.					
882	88182	Cell marker study.					
882	88302	Tissue exam by pathologist.					
882	88304	Tissue exam by pathologist.					
882	88305	Tissue exam by pathologist.					
882	88312	Special stains.					
882	88314	Histochemical stain.					
882	88318	Chemical histochemistry.					
882	88319	Enzyme histochemistry.					
882	88321	Microslide consultation.					
882	88323	Microslide consultation.					
882	88325	Comprehensive review of data.					
882	88329	Pathology consult in surgery.					
882	88331	Pathology consult in surgery.					
882	88332	Pathology consult in surgery.					
882	88342	Immunocytochemistry.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
882	88346	Immunofluorescent study.					
882	88347	Immunofluorescent study.					
883	LEVEL III PATHOLOGY		X	0.69	$35.48	$20.34	$7.10
883	88307	Tissue exam by pathologist.					
883	88309	Tissue exam by pathologist.					
883	88348	Electron microscopy.					
883	88349	Scanning electron microscopy.					
883	88355	Analysis, skeletal muscle.					
883	88356	Analysis, nerve.					
883	88358	Analysis, tumor.					
883	88362	Nerve teasing preparations.					
883	88365	Tissue hybridization.					
900	CRITICAL CARE		S	7.54	$387.71	$145.09	$77.54
900	99291	Critical care, first hour.					
901	LEVEL I IMMUNIZATION		X	0.07	$3.60	$2.49	$0.72
901	90700	Dtap vaccine, im.					
901	90701	Dtp vaccine, im.					
901	90702	Dt vaccine, im.					
901	90703	Tetanus vaccine, im.					
901	90704	Mumps vaccine, sc.					
901	90705	Measles vaccine, sc.					
901	90706	Rubella vaccine, sc.					
901	90708	Measles-rubella vaccine sc.					
901	90709	Rubella & mumps vaccine sc.					
901	90710	Mmrv vaccine, sc.					
[2] 901	90711	Combined vaccine.					
[2] 901	90714	Typhoid immunization.					
901	90718	Td vaccine, im.					
901	90719	Diphtheria vaccine, im.					
[2] 901	90724	Influenza immunization.					
901	90725	Cholera vaccine, injectable.					
[2] 901	90730	Hepatitis A vaccine.					
901	90732	Pneumococcal vaccine, adult.					
901	90748	Hepb/hib vaccine, im.					
901	90749	Vaccine toxoid.					
901	95145	Antigen therapy services.					
901	95170	Antigen therapy services.					
901	G0008	Admin influenza virus vac.					
901	G0009	Admin pneumococcal vaccine.					
901	Q0034	Admin of influenza vaccine.					
902	LEVEL II IMMUNIZATION		X	1.31	$67.36	$38.19	$13.47
902	90707	Mmr vaccine, sc.					
902	90712	Oral poliovirus vaccine.					
902	90713	Poliovirus, ipv, sc.					
902	90716	Chicken pox vaccine, sc.					
902	90717	Yellow fever vaccine, sc.					
902	90720	Dtp/hib vaccine, im.					
902	90733	Meningococcal vaccine, sc.					
[2] 902	90737	Influenza B immunization.					
[2] 902	90741	Passive immunization, ISG.					
902	90744	Hepb vaccine, ped/adol, im.					
902	90745	Hepb vaccine, adol/risk, im.					
902	90746	Hepb vaccine, adult, im.					
902	90747	Hepb vaccine, ill pat, im.					
902	G0010	Admin hepatitis b vaccine.					
903	LEVEL III IMMUNIZATION		X	1.00	$51.42	$24.86	$10.28
903	90721	Dtap/hib vaccine, im.					
[2] 903	90726	Rabies immunization.					
903	90727	Plague vaccine, im.					
[2] 903	90728	BCG immunization.					
903	90735	Encephalitis vaccine, sc.					
[2] 903	90742	Special passive immunization.					
906	INFUSION THERAPY EXCEPT CHEMOTHERAPY		X	1.93	$99.24	$57.18	$19.85
906	36680	Insert needle, bone cavity.					
906	90780	IV infusion therapy, 1 hour.					
906	90781	IV infusion, additional hour.					
906	Q0081	Infusion ther other than che.					
907	INTRAMUSCULAR INJECTIONS		X	0.74	$38.05	$11.53	$7.61
907	90782	Injection (SC)/(IM).					
907	90783	Injection (IA).					
907	90784	Injection (IV).					
907	90788	Injection of antibiotic.					
907	90799	Therapeutic/diag injection.					
919	ELECTROCONVULSIVE THERAPY		S	3.09	$158.89	$80.00	$31.78
919	90870	Electroconvulsive therapy.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
919	90871	Electroconvulsive therapy.					
920		BIOFEEDBACK AND OTHER TRAINING	S	1.17	$60.16	$29.61	$12.03
[2]920	90900	Biofeedback, electromyogram.					
920	90901	Biofeedback, any method.					
[2]920	90902	Biofeedback, nerve impulse.					
[2]920	90904	Biofeedback, blood pressure.					
[2]920	90906	Biofeedback, blood flow.					
[2]920	90908	Biofeedback, brain waves.					
[2]920	90910	Biofeedback, oculogram.					
920	90911	Biofeedback peri/uro/rectal.					
[2]920	90915	Biofeedback, unspecified.					
921		DIABETES EDUCATION	S				
921	99078	Group health education.					
926		DIALYSIS FOR OTHER THAN ESRD PATIENTS	S	4.22	$216.99	$69.83	$43.40
926	90935	Hemodialysis, one evaluation.					
926	90937	Hemodialysis, repeated eval..					
926	90945	Dialysis, one evaluation.					
926	90947	Dialysis, repeated eval..					
926	90997	Hemoperfusion.					
926	90999	Dialysis procedure.					
928		ALIMENTARY TESTS	X	2.91	$149.63	$79.78	$29.93
928	89100	Sample intestinal contents.					
928	89105	Sample intestinal contents.					
928	89130	Sample stomach contents.					
928	89132	Sample stomach contents.					
928	89135	Sample stomach contents.					
928	89136	Sample stomach contents.					
928	89140	Sample stomach contents.					
928	89141	Sample stomach contents.					
928	91000	Esophageal intubation.					
928	91010	Esophagus motility study.					
928	91011	Esophagus motility study.					
928	91012	Esophagus motility study.					
928	91020	Gastric motility.					
928	91030	Acid perfusion of esophagus.					
928	91032	Esophagus, acid reflux test.					
928	91033	Prolonged acid reflux test.					
928	91052	Gastric analysis test.					
928	91055	Gastric intubation for smear.					
928	91060	Gastric saline load test.					
928	91065	Breath hydrogen test.					
928	91100	Pass intestine bleeding tube.					
928	91105	Gastric intubation treatment.					
928	91299	Gastroenterology procedure.					
928	95075	Ingestion challenge test.					
930		MINOR EYE EXAMINATIONS	X	1.04	$53.48	$22.83	$10.70
930	92060	Special eye evaluation.					
930	92065	Orthoptic/pleoptic training.					
930	92081	Visual field examination(s).					
930	92082	Visual field examination(s).					
930	92083	Visual field examination(s).					
930	92140	Glaucoma provocative tests.					
930	92283	Color vision examination.					
930	92284	Dark adaptation eye exam.					
930	92285	Eye photography.					
931		LEVEL I EYE TESTS	X	0.74	$38.05	$21.47	$7.61
931	92120	Tonography & eye evaluation.					
931	92130	Water provocation tonography.					
931	92230	Eye exam with photos.					
931	92240	Icg angiography.					
931	92250	Eye exam with photos.					
931	92499	Eye service or procedure.					
932		LEVEL II EYE TESTS	X	2.41	$123.92	$63.73	$24.78
932	92235	Eye exam with photos.					
932	92265	Eye muscle evaluation.					
932	92270	Electro-oculography.					
932	92286	Internal eye photography.					
932	92287	Internal eye photography.					
936		FITTING OF VISION AIDS	X	0.48	$24.68	$9.49	$4.94
936	92311	Contact lens fitting.					
936	92312	Contact lens fitting.					
936	92313	Contact lens fitting.					
936	92315	Prescription of contact lens.					
936	92316	Prescription of contact lens.					
936	92317	Prescription of contact lens.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
936	92325	Modification of contact lens.					
936	92326	Replacement of contact lens.					
936	92330	Fitting of artificial eye.					
936	92352	Special spectacles fitting.					
936	92353	Special spectacles fitting.					
936	92354	Special spectacles fitting.					
936	92355	Special spectacles fitting.					
936	92358	Eye prosthesis service.					
936	92371	Repair & adjust spectacles.					
940		OTORHINOLARYNGOLOGIC FUNCTION TESTS	X	3.13	$160.94	$52.21	$32.19
940	92512	Nasal function studies.					
940	92516	Facial nerve function test.					
940	92520	Laryngeal function studies.					
940	92541	Spontaneous nystagmus test.					
940	92542	Positional nystagmus test.					
940	92543	Caloric vestibular test.					
940	92544	Optokinetic nystagmus test.					
940	92545	Oscillating tracking test.					
940	92546	Sinusoidal rotational test.					
940	92547	Supplemental electrical test.					
940	92548	Posturography.					
940	92584	Electrocochleography.					
940	92587	Evoked auditory test.					
940	92588	Evoked auditory test.					
941		LEVEL I AUDIOMETRY	X	0.74	$38.05	$13.33	$7.61
941	92552	Pure tone audiometry, air.					
941	92553	Audiometry, air & bone.					
941	92555	Speech threshold audiometry.					
941	92556	Speech audiometry, complete.					
941	92567	Tympanometry.					
941	92599	ENT procedure/service.					
942		LEVEL II AUDIOMETRY	X	1.46	$75.07	$22.15	$15.01
942	92557	Comprehensive hearing test.					
942	92561	Bekesy audiometry, diagnosis.					
942	92562	Loudness balance test.					
942	92563	Tone decay hearing test.					
942	92564	Sisi hearing test.					
942	92565	Stenger test, pure tone.					
942	92567	Acoustic reflex testing.					
942	92569	Acoustic reflex decay test.					
942	92571	Filtered speech hearing test.					
942	92572	Staggered spondaic word test.					
942	92573	Lombard test.					
942	92575	Sensorineural acuity test.					
942	92576	Synthetic sentence test.					
942	92577	Stenger test, speech.					
942	92579	Visual audiometry (vra).					
942	92582	Conditioning play audiometry.					
942	92583	Select picture audiometry.					
942	92589	Auditory function test(s).					
942	92596	Ear protector evaluation.					
947		RESUSCITATION AND CARDIOVERSION	S	4.11	$211.34	$106.22	$42.27
947	31500	Insert emergency airway.					
947	92950	Heart/lung resuscitation(CPR.					
947	92953	Temporary external pacing.					
947	92960	Heart electroconversion.					
947	99440	Newborn resuscitation.					
948		CARDIAC REHABILITATION	X	0.81	$41.65	$16.95	$8.33
948	93797	Cardiac rehab.					
948	93798	Cardiac rehab/monitor.					
949		CARDIOVASCULAR STRESS TEST	X	1.43	$73.53	$61.92	$14.71
949	93017	Cardiovascular stress test.					
949	93024	Cardiac drug stress test.					
950		ELECTROCARDIOGRAM (ECG)	X	0.35	$18.00	$15.82	$3.60
950	93005	Electrocardiogram, tracing.					
950	93041	Rhythm ECG, tracing.					
950	Q0035	Cardiokymography.					
955		CONTINUOUS ECG AND BLOOD PRESSURE MONITORING	X	1.09	$56.05	$54.47	$11.21
955	93012	Transmission of ecg.					
956	93224	ECG monitor/report, 24 hrs.					
956	93225	ECG monitor/record, 24 hrs.					
956	93226	ECG monitor/report, 24 hrs.					
956	93230	ECG monitor/report, 24 hrs.					
956	93231	ECG monitor/record, 24 hrs.					
956	93232	ECG monitor/report, 24 hrs.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
956	93235	ECG monitor/report, 24 hrs.					
956	93236	ECG monitor/report, 24 hrs.					
956	93268	ECG record/review.					
956	93270	ECG recording.					
956	93271	ECG/monitoring and anaylysis.					
956	93278	ECG/signal-averaged.					
956	G0004	ECG transm phys review & int.					
956	G0005	ECG 24 hour recording.					
956	G0006	ECG transmission & analysis.					
956	G0015	Post symptom ECG tracing.					
957	ECHOCARDIOGRAPHY		S	4.04	$207.74	$114.13	$41.55
957	76825	Echo exam of fetal heart.					
957	76826	Echo exam of fetal heart.					
957	76827	Echo exam of fetal heart.					
957	76828	Echo exam of fetal heart.					
957	93303	Echo transthoracic.					
957	93304	Echo transthoracic.					
957	93307	Echo exam of heart.					
957	93308	Echo exam of heart.					
957	93312	Echo transesophageal.					
957	93313	Echo transesophageal.					
957	93315	Echo transesophageal.					
957	93316	Echo transesophageal.					
957	93320	Doppler echo exam, heart.					
957	93321	Doppler echo exam, heart.					
957	93325	Doppler color flow add-on.					
957	93350	Echo transthoracic.					
958	DIAGNOSTIC CARDIAC CATHETERIZATION		S	23.74	$1,220.71	$705.57	$244.14
958	93501	Right heart catheterization.					
958	93503	Insert/place heart catheter.					
958	93505	Biopsy of heart lining.					
958	93510	Left heart catheterization.					
958	93511	Left heart catheterization.					
958	93514	Left heart catheterization.					
958	93524	Left heart catheterization.					
958	93526	Rt & Lt heart catheters.					
958	93527	Rt & Lt heart catheters.					
958	93528	Rt & Lt heart catheters.					
958	93529	Rt, Lt heart catheterization.					
958	93530	Rt heart cath, congenital.					
958	93531	R & l heart cath, congenital.					
958	93532	R & l heart cath, congenital.					
958	93533	R & l heart cath, congenital.					
958	93536	Insert circulation assi.					
960	CARDIAC ELECTROPHYSIOLOGIC TESTS/PROCEDURES		S	4.80	$246.82	$143.74	$49.36
960	93600	Bundle of His recording.					
960	93602	Intra-atrial recording.					
960	93603	Right ventricular recording.					
960	93607	Right ventricular recording.					
960	93609	Mapping of tachycardia.					
960	93610	Intra-atrial pacing.					
960	93612	Intraventricular pacing.					
960	93615	Esophageal recording.					
960	93616	Esophageal recording.					
960	93618	Heart rhythm pacing.					
960	93619	Electrophysiology evaluation.					
960	93620	Electrophysiology evaluation.					
960	93621	Electrophysiology evaluation.					
960	93622	Electrophysiology evaluation.					
960	93623	Stimulation, pacing heart.					
960	93624	Electrophysiologic study.					
960	93631	Heart pacing, mapping.					
960	93640	Evaluation heart device.					
960	93641	Electrophysiology evaluation.					
960	93642	Electrophysiology evaluation.					
960	93650	Ablate heart dysrhythm focus.					
960	93651	Ablate heart dysrhythm focus.					
960	93652	Ablate heart dysrhythm focus.					
960	93660	Tilt table evaluation.					
960	93724	Analyze pacemaker system.					
966	ELECTRONIC ANALYSIS OF PACEMAKERS/OTHER DEVICES		X	0.39	$20.05	$12.43	$4.01
966	62367	Analyze spine infusion pump.					
966	62368	Analyze spine infusion pump.					
[2] 966	63690	Analysis of neuroreceiver.					
[2] 966	63691	Analysis of neuroreceiver.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
966	93731	Analyze pacemaker system.					
966	93732	Analyze pacemaker system.					
966	93733	Telephone analysis, pacemaker.					
966	93734	Analyze pacemaker system.					
966	93735	Analyze pacemaker system.					
966	93736	Telephone analysis, pacemaker.					
966	93737	Analyze cardio/defibrillator.					
966	93738	Analyze cardio/defibrillator.					
967	NON-INVASIVE VASCULAR STUDIES		X	1.70	$87.41	$57.40	$17.48
967	93720	Total body plethysmography.					
967	93721	Plethysmography tracing.					
967	93740	Temperature gradient studies.					
967	93799	Cardiovascular procedure.					
967	93922	Extremity study.					
967	93923	Extremity study.					
967	93924	Extremity study.					
967	93965	Extremity study.					
968	VASCULAR ULTRASOUND		X	2.39	$122.89	$79.55	$24.58
968	93875	Extracranial study.					
968	93880	Extracranial study.					
968	93882	Extracranial study.					
968	93886	Intracranial study.					
968	93888	Intracranial study.					
968	93925	Lower extremity study.					
968	93926	Lower extremity study.					
968	93930	Upper extremity study.					
968	93931	Upper extremity study.					
968	93970	Extremity study.					
968	93971	Extremity study.					
968	93975	Vascular study.					
968	93976	Vascular study.					
968	93978	Vascular study.					
968	93979	Vascular study.					
968	93980	Penile vascular study.					
968	93981	Penile vascular study.					
968	93990	Doppler flow testing.					
969	HYPERBARIC OXYGEN		S	2.65	$136.26	$141.70	$27.25
969	99183	Hyperbaric oxygen therapy.					
971	LEVEL I PULMONARY TESTS		X	0.98	$50.39	$26.44	$10.08
971	94010	Breathing capacity test.					
971	94060	Evaluation of wheezing.					
[2] 971	94160	Vital capacity screening.					
971	94200	Lung function test (MBC/MVV).					
971	94250	Expired gas collection.					
971	94260	Thoracic gas volume.					
971	94360	Measure airflow resistance.					
971	94375	Respiratory flow volume loop.					
971	94400	CO2 breathing response curve.					
971	94450	Hypoxia response curve.					
971	94762	Measure blood oxygen level.					
971	94770	Exhaled carbon dioxide test.					
971	94799	Pulmonary service/procedure.					
972	LEVEL II PULMONARY TESTS		X	1.00	$51.42	$29.38	$10.28
972	94240	Residual lung capacity.					
972	94350	Lung nitrogen washout curve.					
972	94370	Breath airway closing volume.					
972	94680	Exhaled air analysis: O2.					
972	94681	Exhaled air analysis: O2,CO2.					
972	94690	Exhaled air analysis.					
972	94720	Monoxide diffusing capacity.					
972	94725	Membrane diffusion capacity.					
973	LEVEL III PULMONARY TESTS		S	1.81	$93.07	$55.82	$18.61
973	94070	Evaluation of wheezing.					
973	94620	Pulmonary stress test/simple.					
973	94750	Pulmonary compliance study.					
973	94772	Breath recording, infant.					
973	95070	Bronchial allergy tests.					
973	95071	Bronchial allergy tests.					
976	PULMONARY THERAPY		S	0.44	$22.62	$14.69	$4.53
976	94640	Airway inhalation treatment.					
976	94642	Aerosol inhalation treatment.					
976	94650	Pressure breathing (IPPB).					
976	94651	Pressure breathing (IPPB).					
976	94657	Cont. ventilator.					
976	94660	Pos airway pressure, CPAP.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
976	94662	Neg pressure ventilation, cnp.					
976	94664	Aerosol or vapor inhalations.					
976	94665	Aerosol or vapor inhalations.					
976	94667	Chest wall manipulation.					
976	94668	Chest wall manipulation.					
977	ALLERGY TESTS		X	0.56	$28.80	$11.30	$5.76
977	95004	Allergy skin tests.					
977	95010	Sensitivity skin tests.					
977	95015	Sensitivity skin tests.					
977	95024	Allergy skin tests.					
977	95027	Skin end point titration.					
977	95028	Allergy skin tests.					
977	95044	Allergy patch tests.					
977	95052	Photo patch test.					
977	95056	Photosensitivity tests.					
977	95060	Eye allergy tests.					
977	95065	Nose allergy test.					
977	95070	Provocative testing.					
977	95180	Rapid desensitization.					
977	95199	Allergy immunology services.					
978	ALLERGY INJECTIONS		X	0.30	$15.43	$3.39	$3.09
978	95115	Immunotherapy, one injection.					
978	95117	Immunotherapy injections.					
978	95144	Antigen therapy services.					
978	95145	Antigen therapy services.					
978	95146	Antigen therapy services.					
978	95147	Antigen therapy services.					
978	95148	Antigen therapy services.					
978	95165	Antigen therapy services.					
979	EXTENDED EEG STUDIES AND SLEEP STUDIES		S	10.15	$521.91	$287.25	$104.38
979	95805	Multiple sleep latency test.					
979	95806	Sleep study, unattended.					
979	95807	Sleep study, attended.					
979	95808	Polysomnography, 1-3.					
979	95810	Polysomnography, 4 or more.					
979	95811	Polysomnography w/cpap.					
979	95812	Electroencephalogram (EEG).					
979	95813	Electroencephalogram (EEG).					
979	95827	Night electroencephalogram.					
979	95951	EEG monitoring/videorecord.					
979	95953	EEG monitoring/computer.					
979	95954	EEG monitoring/giving drugs.					
979	95958	EEG monitoring/function test.					
980	ELECTROENCEPHALOGRAM		S	2.15	$110.55	$57.86	$22.11
980	95816	Electroencephalogram (EEG).					
980	95819	Electroencephalogram (EEG).					
980	95822	Sleep electroencephalogram.					
980	95824	Electroencephalography.					
980	95829	Surgery electrocorticogram.					
980	95955	EEG during surgery.					
981	LEVEL I NERVE AND MUSCLE TESTS		X	1.22	$62.73	$34.35	$12.55
981	92275	Electroretinography.					
981	95857	Tensilon test.					
981	95867	Muscle test, head or neck.					
981	95869	Muscle test, thor paraspinal.					
981	95870	Muscle test, non-paraspinal.					
981	95900	Motor nerve conduction test.					
981	95921	Autonomic nervous func test.					
981	95922	Autonomic nervous func test.					
981	95923	Autonomic nervous func test.					
981	95926	Somatosensory testing.					
981	95927	Somatosensory testing.					
981	95930	Visual evoked potential test.					
981	95933	Blink reflex test.					
981	95934	'h' reflex test.					
981	95936	'h' reflex test.					
981	95937	Neuromuscular junction test.					
981	95950	Ambulatory eeg monitoring.					
982	LEVEL II NERVE AND MUSCLE TESTS		X	1.37	$70.45	$38.42	$14.09
982	92585	Auditory evoked potential.					
982	95858	Tensilon test & myogram.					
982	95860	Muscle test, one limb.					
982	95861	Muscle test, two limbs.					
982	95863	Muscle test, 3 limbs.					
982	95864	Muscle test, 4 limbs.					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT HCPCS	Description	Status indicator	Relative weight	Proposed payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
982	95868	Muscle test, head or neck.					
982	95872	Muscle test, one fiber.					
982	95875	Limb exercise test.					
982	95903	Motor nerve conduction test.					
982	95904	Sense nerve conduction test.					
982	95925	Somatosensory testing.					
987	SUBCUTANEOUS OR INTRAMUSCULAR CHEMOTHERAPY		S	2.09	$107.47	$65.09	$21.49
987	96400	Chemotherapy, (SC)/(IM).					
987	96405	Intralesional chemo admin.					
987	96406	Intralesional chemo admin.					
987	96549	Chemotherapy, unspecified.					
987	Q0083	Chemo by other than infusion.					
988	CHEMOTHERAPY EXCEPT BY EXTENDED INFUSION		S	4.02	$206.71	$110.29	$41.34
988	96408	Chemotherapy, push technique.					
988	96410	Chemotherapy, infusion method.					
988	96412	Chemotx infuse method add-on.					
988	96420	Chemotherapy, push technique.					
988	96422	Chemotherapy, infusion method.					
988	96423	Chemotx infuse method add-on.					
989	CHEMOTHERAPY BY EXTENDED INFUSION		S	1.91	$98.21	$44.52	$19.64
989	96414	Chemotx infuse method add-on.					
989	96425	Chemotherapy, infusion method.					
989	96440	Chemotherapy, intracavitary.					
989	96445	Chemotherapy, intracavitary.					
989	96450	Chemotherapy, into CNS.					
989	96542	Chemotherapy injection.					
989	Q0084	Chemotherapy by infusion.					
989	Q0085	Chemo by both infusion and o.					
990	PHOTOCHEMOTHERAPY		S	0.43	$22.11	$8.14	$4.42
990	96900	Ultraviolet light therapy.					
990	96910	Photochemotherapy with UV-B.					
990	96912	Photochemotherapy with UV-A.					
990	96913	Photochemotherapy, UV-A or B.					
990	96999	Dermatological procedure.					
997	MANIPULATION THERAPY		S	0.69	$35.48	$7.46	$7.10
[2] 997	97250	Myofascial release.					
[2] 997	97260	Regional manipulation.					
[2] 997	97261	Supplemental manipulations.					
997	98925	Osteopathic manipulation.					
997	98926	Osteopathic manipulation.					
997	98927	Osteopathic manipulation.					
997	98928	Osteopathic manipulation.					
997	98929	Osteopathic manipulation.					
997	98940	Chiropractic manipulation.					
997	98941	Chiropractic manipulation.					
997	98942	Chiropractic manipulation.					
999	THERAPEUTIC PHLEBOTOMY		X	0.43	$22.11	$11.07	$4.42
999	99195	Phlebotomy.					

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49. On page 47834, Addendum D is corrected to read as follows:

ADDENDUM D.—SUMMARY OF MEDICAL APCS

APC	Code	Description
911 Low Level Clinic Visits		
	99201	Office/outpatient visit, new
	99202	Office/outpatient visit, new
	99211	Office/outpatient visit, est
	99212	Office/outpatient visit, est
	99241	Office consultation
	99242	Office consultation
	99271	Confirmatory consultation
	99272	Confirmatory consultation
913 Mid Level Clinic Visits		
	92002	Eye exam, new patient
	92012	Eye exam established pt
	99203	Office/outpatient visit, new

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ADDENDUM D.—SUMMARY OF MEDICAL APCs—Continued

APC	Code	Description
	99213	Office/outpatient visit, est
	99243	Office consultation
	99273	Confirmatory consultation
	G0101	Cancer Screening Exam, Women
915 High Level Clinic Visits		
	92004	Eye exam, new patient
	92014	Eye exam & treatment
	99204	Office/outpatient visit, new
	99205	Office/outpatient visit, new
	99214	Office/outpatient visit, est
	99215	Office/outpatient visit, est
	99244	Office consultation
	99245	Office consultation
	99274	Confirmatory consultation
	99275	Confirmatory consultation
951 Low Level Emergency Visits		
	99281	Emergency dept visit
	99282	Emergency dept visit
953 Mid Level Emergency Visits		
	99283	Emergency dept visit
955 High Level Emergency Visits		
	99284	Emergency dept visit
	99285	Emergency dept visit

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50. On pages 47996 through 48005, Addendum G is corrected to read as follows:

ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES

CPT[1] HCPCS[2]	HOPD status indicator	Description
00174	C	Anesth, pharyngeal surgery
00176	C	Anesth, pharyngeal surgery
00192	C	Anesth, facial bone surgery
00214	C	Anesth, skull drainage
00215	C	Anesth, skull fracture
00404	C	Anesth, surgery of breast
00406	C	Anesth, surgery of breast
00452	C	Anesth, surgery of shoulder
00474	C	Anesth, surgery of rib(s)
00524	C	Anesth, chest drainage
00530	C	Anesth, pacemaker insertion
00540	C	Anesth, chest surgery
00542	C	Anesth, release of lung
00544	C	Anesth, chest lining removal
00546	C	Anesth, lung, chest wall surg
00560	C	Anesth, open heart surgery
00562	C	Anesth, open heart surgery
00580	C	Anesth, heart/lung transplant
00604	C	Anesth, surgery of vertebra
00622	C	Anesth, removal of nerves
00632	C	Anesth, removal of nerves
00634	C	Anesth for chemonucleolysis
00670	C	Anesth, spine, cord surgery
00792	C	Anesth, part liver removal
00794	C	Anesth, pancreas removal
00796	C	Anesth, for liver transplant
00802	C	Anesth, fat layer removal
00844	C	Anesth, pelvis surgery
00846	C	Anesth, hysterectomy
00848	C	Anesth, pelvic organ surg
00850	C	Anesth, cesarean section
00855	C	Anesth, hysterectomy
00857	C	Analgesia, labor & c-section
00864	C	Anesth, removal of bladder
00865	C	Anesth, removal of prostate
00866	C	Anesth, removal of adrenal
00868	C	Anesth, kidney transplant
00882	C	Anesth, major vein ligation
00884	C	Anesth, major vein revision
00904	C	Anesth, perineal surgery
00908	C	Anesth, removal of prostate
00928	C	Anesth, removal of testis

ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
00932	C	Anesth, amputation of penis
00934	C	Anesth, penis, nodes removal
00936	C	Anesth, penis, nodes removal
00944	C	Anesth, vaginal hysterectomy
00955	C	Analgesia, vaginal delivery
01140	C	Anesth, amputation at pelvis
01150	C	Anesth, pelvic tumor surgery
01190	C	Anesth, pelvis nerve removal
01212	C	Anesth, hip disarticulation
01214	C	Anesth, replacement of hip
01232	C	Anesth, amputation of femur
01234	C	Anesth, radical femur surg
01272	C	Anesth, femoral artery surg
01274	C	Anesth, femoral embolectomy
01402	C	Anesth, replacement of knee
01404	C	Anesth, amputation at knee
01442	C	Anesth, knee artery surg
01444	C	Anesth, knee artery repair
01486	C	Anesth, ankle replacement
01502	C	Anesth, lowerleg embolectomy
01632	C	Anesth, surgery of shoulder
01634	C	Anesth, shoulder joint amput
01636	C	Anesth, forequarter amput
01638	C	Anesth, shoulder replacement
01652	C	Anesth, shoulder vessel surg
01654	C	Anesth, shoulder vessel surg
01656	C	Anesth, arm-leg vessel surg
01756	C	Anesth, radical humerus surg
01772	C	Anesth, upperarm embolectomy
01782	C	Anesth, upperarm vein repair
01842	C	Anesth, lowerarm embolectomy
01852	C	Anesth, lowerarm vein repair
01902	C	Anesth, burr holes, skull
01904	C	Anesth, skull x-ray inject
01916	C	Anesth, head arteriogram
01918	C	Anesth, limb arteriogram
01921	C	Anesth, vessel surgery
01990	C	Support for organ donor
15755	C	Microvascular flap graft
15756	C	Free muscle flap, microvasc

ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
15757	C	Free skin flap, microvasc
15758	C	Free fascial flap, microvasc
19200	C	Removal of breast
19220	C	Removal of breast
19240	C	Removal of breast
19260	C	Removal of chest wall lesion
19271	C	Revision of chest wall
19272	C	Extensive chest wall surgery
19361	C	Breast reconstruction
19364	C	Breast reconstruction
19367	C	Breast reconstruction
19368	C	Breast reconstruction
19369	C	Breast reconstruction
20100	C	Explore wound, neck
20101	C	Explore wound, chest
20102	C	Explore wound, abdomen
20103	C	Explore wound, extremity
20150	C	Excise epiphyseal bar
20660	C	Apply,remove fixation device
20661	C	Application of head brace
20662	C	Application of pelvis brace
20663	C	Application of thigh brace
20664	C	Halo brace application
20802	C	Replantation, arm, complete
20805	C	Replant forearm, complete
20808	C	Replantation, hand, complete
20816	C	Replantation digit, complete
20822	C	Replantation digit, complete
20824	C	Replantation thumb, complete
20827	C	Replantation thumb, complete
20838	C	Replantation, foot, complete
20930	C	Spinal bone allograft
20931	C	Spinal bone allograft
20936	C	Spinal bone autograft
20937	C	Spinal bone autograft
20938	C	Spinal bone autograft
20955	C	Fibula bone graft, microvasc
20956	C	Iliac bone graft, microvasc
20957	C	Mt bone graft, microvasc
20960	C	Microvascular rib graft
20962	C	Other bone graft, microvasc
20969	C	Bone/skin graft, microvasc

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ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
20970	C	Bone/skin graft, iliac crest
20971	C	Bone-skin graft, rib
20972	C	Bone-skin graft, metatarsal
20973	C	Bone-skin graft, great toe
21045	C	Extensive jaw surgery
21137	C	Reduction of forehead
21138	C	Reduction of forehead
21139	C	Reduction of forehead
21141	C	Reconstruct midface, lefort
21142	C	Reconstruct midface, lefort
21143	C	Reconstruct midface, lefort
21145	C	Reconstruct midface, lefort
21146	C	Reconstruct midface, lefort
21147	C	Reconstruct midface, lefort
21150	C	Reconstruct midface, lefort
21151	C	Reconstruct midface, lefort
21154	C	Reconstruct midface, lefort
21155	C	Reconstruct midface, lefort
21159	C	Reconstruct midface, lefort
21160	C	Reconstruct midface, lefort
21172	C	Reconstruct orbit/forehead
21175	C	Reconstruct orbit/forehead
21179	C	Reconstruct entire forehead
21180	C	Reconstruct entire forehead
21182	C	Reconstruct cranial bone
21183	C	Reconstruct cranial bone
21184	C	Reconstruct cranial bone
21188	C	Reconstruction of midface
21193	C	Reconstruct lower jaw bone
21194	C	Reconstruct lower jaw bone
21195	C	Reconstruct lower jaw bone
21196	C	Reconstruct lower jaw bone
21198	C	Reconstruct lower jaw bone
21247	C	Reconstruct lower jaw bone
21255	C	Reconstruct lower jaw bone
21256	C	Reconstruction of orbit
21261	C	Revise eye sockets
21263	C	Revise eye sockets
21268	C	Revise eye sockets
21344	C	Repair of sinus fracture
21346	C	Repair of nose/jaw fracture
21347	C	Repair of nose/jaw fracture
21348	C	Repair of nose/jaw fracture
21356	C	Repair cheek bone fracture
21360	C	Repair cheek bone fracture
21365	C	Repair cheek bone fracture
21366	C	Repair cheek bone fracture
21385	C	Repair eye socket fracture
21386	C	Repair eye socket fracture
21387	C	Repair eye socket fracture
21390	C	Repair eye socket fracture
21395	C	Repair eye socket fracture
21406	C	Repair eye socket fracture
21407	C	Repair eye socket fracture
21408	C	Repair eye socket fracture
21422	C	Repair mouth roof fracture
21423	C	Repair mouth roof fracture
21431	C	Treat craniofacial fracture
21432	C	Repair craniofacial fracture
21433	C	Repair craniofacial fracture
21435	C	Repair craniofacial fracture
21436	C	Repair craniofacial fracture
21470	C	Repair lower jaw fracture
21495	C	Repair hyoid bone fracture
21510	C	Drainage of bone lesion
21557	C	Remove tumor, neck or chest
21615	C	Removal of rib
21616	C	Removal of rib and nerves
21620	C	Partial removal of sternum
21627	C	Sternal debridement
21630	C	Extensive sternum surgery
21632	C	Extensive sternum surgery
21705	C	Revision of neck muscle/rib

ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
21740	C	Reconstruction of sternum
21750	C	Repair of sternum separation
21810	C	Treatment of rib fracture(s)
21825	C	Repair sternum fracture
22100	C	Remove part of neck vertebra
22101	C	Remove part, thorax vertebra
22102	C	Remove part, lumbar vertebra
22103	C	Remove extra spine segment
22110	C	Remove part of neck vertebra
22112	C	Remove part, thorax vertebra
22114	C	Remove part, lumbar vertebra
22116	C	Remove extra spine segment
22210	C	Revision of neck spine
22212	C	Revision of thorax spine
22214	C	Revision of lumbar spine
22218	C	Revise, extra spine segment
22220	C	Revision of neck spine
22222	C	Revision of thorax spine
22224	C	Revision of lumbar spine
22226	C	Revise, extra spine segment
22325	C	Repair of spine fracture
22326	C	Repair neck spine fracture
22327	C	Repair thorax spine fracture
22328	C	Repair each add spine fx
22548	C	Neck spine fusion
22554	C	Neck spine fusion
22556	C	Thorax spine fusion
22558	C	Lumbar spine fusion
22585	C	Additional spinal fusion
22590	C	Spine & skull spinal fusion
22595	C	Neck spinal fusion
22600	C	Neck spine fusion
22610	C	Thorax spine fusion
22612	C	Lumbar spine fusion
22614	C	Spine fusion, extra segment
22630	C	Lumbar spine fusion
22632	C	Spine fusion, extra segment
22800	C	Fusion of spine
22802	C	Fusion of spine
22804	C	Fusion of spine
22808	C	Fusion of spine
22810	C	Fusion of spine
22812	C	Fusion of spine
22818	C	Kyphectomy, 1-2 segments
22819	C	Kyphectomy, 3 & more segment
22830	C	Exploration of spinal fusion
22840	C	Insert spine fixation device
22841	C	Insert spine fixation device
22842	C	Insert spine fixation device
22843	C	Insert spine fixation device
22844	C	Insert spine fixation device
22845	C	Insert spine fixation device
22846	C	Insert spine fixation device
22847	C	Insert spine fixation device
22848	C	Insert pelvic fixationdevice
22849	C	Reinsert spinal fixation
22850	C	Remove spine fixation device
22851	C	Apply spine prosth device
22852	C	Remove spine fixation device
22855	C	Remove spine fixation device
23035	C	Drain shoulder bone lesion
23125	C	Removal of collarbone
23135	C	Removal of head of humerus
23200	C	Removal of collar bone
23210	C	Removal of shoulderblade
23220	C	Partial removal of humerus
23221	C	Partial removal of humerus
23222	C	Partial removal of humerus
23332	C	Remove shoulder foreign body
23395	C	Muscle transfer, shoulder/arm
23397	C	Muscle transfers
23400	C	Fixation of shoulder blade

ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
23440	C	Removal/transplant tendon
23470	C	Reconstruct shoulder joint
23472	C	Reconstruct shoulder joint
23900	C	Amputation of arm & girdle
23920	C	Amputation at shoulder joint
24149	C	Radical resection of elbow
24150	C	Extensive humerus surgery
24151	C	Extensive humerus surgery
24152	C	Extensive radius surgery
24153	C	Extensive radius surgery
24900	C	Amputation of upper arm
24920	C	Amputation of upper arm
24930	C	Amputation follow-up surgery
24931	C	Amputate upper arm & implant
24935	C	Revision of amputation
24940	C	Revision of upper arm
25170	C	Extensive forearm surgery
25390	C	Shorten radius/ulna
25391	C	Lengthen radius/ulna
25392	C	Shorten radius & ulna
25393	C	Lengthen radius & ulna
25405	C	Repair/graft radius or ulna
25420	C	Repair/graft radius & ulna
25900	C	Amputation of forearm
25905	C	Amputation of forearm
25909	C	Amputation follow-up surgery
25915	C	Amputation of forearm
25920	C	Amputate hand at wrist
25924	C	Amputation follow-up surgery
25927	C	Amputation of hand
25931	C	Amputation follow-up surgery
26551	C	Great toe-hand transfer
26552	C	Construct thumb replacement
26553	C	Single toe-hand transfer
26554	C	Double toe-hand transfer
26556	C	Toe joint transfer
26557	C	Construct finger replacement
26558	C	Added finger surgery
26559	C	Added finger surgery
26992	C	Drainage of bone lesion
27005	C	Incision of hip tendon
27006	C	Incision of hip tendons
27025	C	Incision of hip/thigh fascia
27030	C	Drainage of hip joint
27035	C	Denervation of hip joint
27036	C	Excision of hip joint/muscle
27054	C	Removal of hip joint lining
27070	C	Partial removal of hip bone
27071	C	Partial removal of hip bone
27075	C	Extensive hip surgery
27076	C	Extensive hip surgery
27077	C	Extensive hip surgery
27078	C	Extensive hip surgery
27079	C	Extensive hip surgery
27090	C	Removal of hip prosthesis
27091	C	Removal of hip prosthesis
27120	C	Reconstruction of hip socket
27122	C	Reconstruction of hip socket
27125	C	Partial hip replacement
27130	C	Total hip replacement
27132	C	Total hip replacement
27134	C	Revise hip joint replacement
27137	C	Revise hip joint replacement
27138	C	Revise hip joint replacement
27140	C	Transplant of femur ridge
27146	C	Incision of hip bone
27147	C	Revision of hip bone
27151	C	Incision of hip bones
27156	C	Revision of hip bones
27158	C	Revision of pelvis
27161	C	Incision of neck of femur
27165	C	Incision/fixation of femur
27170	C	Repair/graft femur head/neck

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ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
27175	C	Treat slipped epiphysis
27176	C	Treat slipped epiphysis
27177	C	Repair slipped epiphysis
27178	C	Repair slipped epiphysis
27179	C	Revise head/neck of femur
27181	C	Repair slipped epiphysis
27185	C	Revision of femur epiphysis
27187	C	Reinforce hip bones
27215	C	Pelvic fracture(s) treatment
27216	C	Treat pelvic ring fracture
27217	C	Treat pelvic ring fracture
27218	C	Treat pelvic ring fracture
27222	C	Treat hip socket fracture
27226	C	Treat hip wall fracture
27227	C	Treat hip fracture(s)
27228	C	Treat hip fracture(s)
27232	C	Treat fracture of thigh
27235	C	Repair of thigh fracture
27236	C	Repair of thigh fracture
27240	C	Treatment of thigh fracture
27244	C	Repair of thigh fracture
27245	C	Repair of thigh fracture
27248	C	Repair of thigh fracture
27253	C	Repair of hip dislocation
27254	C	Repair of hip dislocation
27258	C	Repair of hip dislocation
27259	C	Repair of hip dislocation
27260	C	Fusion of sacroiliac joint
27282	C	Fusion of pubic bones
27284	C	Fusion of hip joint
27286	C	Fusion of hip joint
27290	C	Amputation of leg at hip
27295	C	Amputation of leg at hip
27303	C	Drainage of bone lesion
27365	C	Extensive leg surgery
27445	C	Revision of knee joint
27446	C	Revision of knee joint
27447	C	Total knee replacement
27448	C	Incision of thigh
27450	C	Incision of thigh
27454	C	Realignment of thigh bone
27455	C	Realignment of knee
27457	C	Realignment of knee
27465	C	Shortening of thigh bone
27466	C	Lengthening of thigh bone
27468	C	Shorten/lengthen thighs
27470	C	Repair of thigh
27472	C	Repair/graft of thigh
27475	C	Surgery to stop leg growth
27477	C	Surgery to stop leg growth
27479	C	Surgery to stop leg growth
27485	C	Surgery to stop leg growth
27486	C	Revise knee joint replace
27487	C	Revise knee joint replace
27488	C	Removal of knee prosthesis
27495	C	Reinforce thigh
27506	C	Repair of thigh fracture
27507	C	Treatment of thigh fracture
27511	C	Treatment of thigh fracture
27513	C	Treatment of thigh fracture
27514	C	Repair of thigh fracture
27519	C	Repair of thigh growth plate
27524	C	Repair of kneecap fracture
27535	C	Treatment of knee fracture
27536	C	Repair of knee fracture
27540	C	Repair of knee fracture
27557	C	Repair of knee dislocation
27558	C	Repair of knee dislocation
27580	C	Fusion of knee
27590	C	Amputate leg at thigh
27591	C	Amputate leg at thigh
27592	C	Amputate leg at thigh
27596	C	Amputation follow-up surgery
27598	C	Amputate lower leg at knee
27645	C	Extensive lower leg surgery
27646	C	Extensive lower leg surgery
27702	C	Reconstruct ankle joint
27703	C	Reconstruction, ankle joint
27712	C	Realignment of lower leg
27715	C	Revision of lower leg
27720	C	Repair of tibia
27722	C	Repair/graft of tibia
27724	C	Repair/graft of tibia
27725	C	Repair of lower leg
27727	C	Repair of lower leg
27880	C	Amputation of lower leg
27881	C	Amputation of lower leg
27882	C	Amputation of lower leg
27886	C	Amputation follow-up surgery
27888	C	Amputation of foot at ankle
28800	C	Amputation of midfoot
28805	C	Amputation thru metatarsal
31225	C	Removal of upper jaw
31230	C	Removal of upper jaw
31290	C	Nasal/sinus endoscopy, surg
31291	C	Nasal/sinus endoscopy, surg
31292	C	Nasal/sinus endoscopy, surg
31293	C	Nasal/sinus endoscopy, surg
31294	C	Nasal/sinus endoscopy, surg
31360	C	Removal of larynx
31365	C	Removal of larynx
31367	C	Partial removal of larynx
31368	C	Partial removal of larynx
31370	C	Partial removal of larynx
31375	C	Partial removal of larynx
31380	C	Partial removal of larynx
31382	C	Partial removal of larynx
31390	C	Removal of larynx & pharynx
31395	C	Reconstruct larynx & pharynx
31580	C	Revision of larynx
31582	C	Revision of larynx
31584	C	Repair of larynx fracture
31587	C	Revision of larynx
31600	C	Incision of windpipe
31601	C	Incision of windpipe
31610	C	Incision of windpipe
31725	C	Clearance of airways
31760	C	Repair of windpipe
31766	C	Reconstruction of windpipe
31770	C	Repair/graft of bronchus
31775	C	Reconstruct bronchus
31780	C	Reconstruct windpipe
31781	C	Reconstruct windpipe
31785	C	Remove windpipe lesion
31786	C	Remove windpipe lesion
31800	C	Repair of windpipe injury
31805	C	Repair of windpipe injury
32005	C	Treat lung lining chemically
32035	C	Exploration of chest
32036	C	Exploration of chest
32095	C	Biopsy through chest wall
32100	C	Exploration/biopsy of chest
32110	C	Explore/repair chest
32120	C	Re-exploration of chest
32124	C	Explore chest,free adhesions
32140	C	Removal of lung lesion(s)
32141	C	Remove/treat lung lesions
32150	C	Removal of lung lesion(s)
32151	C	Remove lung foreign body
32160	C	Open chest heart massage
32200	C	Open drainage, lung lesion
32201	C	Percut drainage, lung lesion
32215	C	Treat chest lining
32220	C	Release of lung
32225	C	Partial release of lung
32310	C	Removal of chest lining
32320	C	Free/remove chest lining
32402	C	Open biopsy chest lining
32440	C	Removal of lung
32442	C	Sleeve pneumonectomy
32445	C	Removal of lung
32480	C	Partial removal of lung
32482	C	Bilobectomy
32484	C	Segmentectomy
32486	C	Sleeve lobectomy
32488	C	Completion pneumonectomy
32491	C	Lung volume reduction
32500	C	Partial removal of lung
32501	C	Repair bronchus (add-on)
32520	C	Remove lung & revise chest
32522	C	Remove lung & revise chest
32525	C	Remove lung & revise chest
32540	C	Removal of lung lesion
32601	C	Thoracoscopy, diagnostic
32602	C	Thoracoscopy, diagnostic
32603	C	Thoracoscopy, diagnostic
32604	C	Thoracoscopy, diagnostic
32605	C	Thoracoscopy, diagnostic
32606	C	Thoracoscopy, diagnostic
32650	C	Thoracoscopy, surgical
32651	C	Thoracoscopy, surgical
32652	C	Thoracoscopy, surgical
32653	C	Thoracoscopy, surgical
32654	C	Thoracoscopy, surgical
32655	C	Thoracoscopy, surgical
32656	C	Thoracoscopy, surgical
32657	C	Thoracoscopy, surgical
32658	C	Thoracoscopy, surgical
32659	C	Thoracoscopy, surgical
32660	C	Thoracoscopy, surgical
32661	C	Thoracoscopy, surgical
32662	C	Thoracoscopy, surgical
32663	C	Thoracoscopy, surgical
32664	C	Thoracoscopy, surgical
32665	C	Thoracoscopy, surgical
32800	C	Repair lung hernia
32810	C	Close chest after drainage
32815	C	Close bronchial fistula
32820	C	Reconstruct injured chest
32850	C	Donor pneumonectomy
32851	C	Lung transplant, single
32852	C	Lung transplant w/bypass
32853	C	Lung transplant, double
32854	C	Lung transplant w/bypass
32900	C	Removal of rib(s)
32905	C	Revise & repair chest wall
32906	C	Revise & repair chest wall
32940	C	Revision of lung
33015	C	Incision of heart sac
33020	C	Incision of heart sac
33025	C	Incision of heart sac
33030	C	Partial removal of heart sac
33031	C	Partial removal of heart sac
33050	C	Removal of heart sac lesion
33120	C	Removal of heart lesion
33130	C	Removal of heart lesion
33200	C	Insertion of heart pacemaker
33201	C	Insertion of heart pacemaker
33206	C	Insertion of heart pacemaker
33207	C	Insertion of heart pacemaker
33208	C	Insertion of heart pacemaker
33210	C	Insertion of heart electrode
33211	C	Insertion of heart electrode
33212	C	Insertion of pulse generator
33213	C	Insertion of pulse generator
33214	C	Upgrade of pacemaker system
33216	C	Revision implanted electrode
33217	C	Insert/revise electrode
33218	C	Repair pacemaker electrodes
33220	C	Repair pacemaker electrode
33233	C	Removal of pacemaker system
33234	C	Removal of pacemaker system
33235	C	Removal pacemaker electrode
33236	C	Remove electrode/thoracotomy
33237	C	Remove electrode/thoracotomy
33238	C	Remove electrode/thoracotomy
33240	C	Insert/replace pulse gener
33241	C	Remove pulse generator only
33242	C	Repair pulse generator/leads
33243	C	Remove generator/thoracotomy
33244	C	Remove generator
33245	C	Implant heart defibrillator
33246	C	Implant heart defibrillator
33247	C	Insert/replace leads
33249	C	Insert/replace leads/gener
33250	C	Ablate heart dysrhythm focus
33251	C	Ablate heart dysrhythm focus
33253	C	Reconstruct atria
33261	C	Ablate heart dysrhythm focus
33300	C	Repair of heart wound
33305	C	Repair of heart wound
33310	C	Exploratory heart surgery
33315	C	Exploratory heart surgery
33320	C	Repair major blood vessel(s)
33321	C	Repair major vessel
33322	C	Repair major blood vessel(s)
33330	C	Insert major vessel graft
33332	C	Insert major vessel graft
33335	C	Insert major vessel graft
33400	C	Repair of aortic valve
33401	C	Valvuloplasty, open
33403	C	Valvuloplasty, w/cp bypass
33404	C	Prepare heart-aorta conduit
33405	C	Replacement of aortic valve
33406	C	Replacement, aortic valve
33411	C	Replacement of aortic valve
33412	C	Replacement of aortic valve
33413	C	Replacement, aortic valve
33414	C	Repair, aortic valve
33415	C	Revision, subvalvular tissue
33416	C	Revise ventricle muscle
33417	C	Repair of aortic valve
33420	C	Revision of mitral valve
33422	C	Revision of mitral valve
33425	C	Repair of mitral valve
33426	C	Repair of mitral valve
33427	C	Repair of mitral valve
33430	C	Replacement of mitral valve
33460	C	Revision of tricuspid valve
33463	C	Valvuloplasty, tricuspid
33464	C	Valvuloplasty, tricuspid
33465	C	Replace tricuspid valve
33468	C	Revision of tricuspid valve
33470	C	Revision of pulmonary valve
33471	C	Valvotomy, pulmonary valve
33472	C	Revision of pulmonary valve
33474	C	Revision of pulmonary valve
33475	C	Replacement, pulmonary valve
33476	C	Revision of heart chamber
33478	C	Revision of heart chamber
33496	C	Repair, prosth valve clot
33500	C	Repair heart vessel fistula
33501	C	Repair heart vessel fistula
33502	C	Coronary artery correction
33503	C	Coronary artery graft

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ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
33504	C	Coronary artery graft
33505	C	Repair artery w/tunnel
33508	C	Repair artery, translocation
33510	C	CABG, vein, single
33511	C	CABG, vein, two
33512	C	CABG, vein, three
33513	C	CABG, vein, four
33514	C	CABG, vein, five
33516	C	CABG, vein, six+
33517	C	CABG, artery-vein, single
33518	C	CABG, artery-vein, two
33519	C	CABG, artery-vein, three
33521	C	CABG, artery-vein, four
33522	C	CABG, artery-vein, five
33523	C	CABG, artery-vein, six+
33530	C	Coronary artery, bypass/reop
33533	C	CABG, arterial, single
33534	C	CABG, arterial, two
33535	C	CABG, arterial, three
33536	C	CABG, arterial, four+
33542	C	Removal of heart lesion
33545	C	Repair of heart damage
33572	C	Open coronary endarterectomy
33600	C	Closure of valve
33602	C	Closure of valve
33606	C	Anastomosis/artery-aorta
33608	C	Repair anomaly w/conduit
33610	C	Repair by enlargement
33611	C	Repair double ventricle
33612	C	Repair double ventricle
33615	C	Repair (simple fontan)
33617	C	Repair by modified fontan
33619	C	Repair single ventricle
33641	C	Repair heart septum defect
33645	C	Revision of heart veins
33647	C	Repair heart septum defects
33660	C	Repair of heart defects
33665	C	Repair of heart defects
33670	C	Repair of heart chambers
33681	C	Repair heart septum defect
33684	C	Repair heart septum defect
33688	C	Repair heart septum defect
33690	C	Reinforce pulmonary artery
33692	C	Repair of heart defects
33694	C	Repair of heart defects
33697	C	Repair of heart defects
33702	C	Repair of heart defects
33710	C	Repair of heart defects
33720	C	Repair of heart defect
33722	C	Repair of heart defect
33730	C	Repair heart-vein defects(s)
33732	C	Repair heart-vein defect
33735	C	Revision of heart chamber
33736	C	Revision of heart chamber
33737	C	Revision of heart chamber
33750	C	Major vessel shunt
33755	C	Major vessel shunt
33762	C	Major vessel shunt
33764	C	Major vessel shunt & graft
33765	C	Major vessel shunt
33767	C	Major vessel shunt
33770	C	Repair great vessels defect
33771	C	Repair great vessels defect
33774	C	Repair great vessels defect
33775	C	Repair great vessels defect
33776	C	Repair great vessels defect
33777	C	Repair great vessels defect
33778	C	Repair great vessels defect
33779	C	Repair great vessels defect
33780	C	Repair great vessels defect
33781	C	Repair great vessels defect
33786	C	Repair arterial trunk
33788	C	Revision of pulmonary artery
33800	C	Aortic suspension
33802	C	Repair vessel defect
33803	C	Repair vessel defect
33813	C	Repair septal defect
33814	C	Repair septal defect
33820	C	Revise major vessel
33822	C	Revise major vessel
33824	C	Revise major vessel
33840	C	Remove aorta constriction
33845	C	Remove aorta constriction
33851	C	Remove aorta constriction
33852	C	Repair septal defect
33853	C	Repair septal defect
33860	C	Ascending aorta graft
33861	C	Ascending aorta graft
33863	C	Ascending aorta graft
33870	C	Transverse aortic arch graft
33875	C	Thoracic aorta graft
33877	C	Thoracoabdominal graft
33910	C	Remove lung artery emboli
33915	C	Remove lung artery emboli
33916	C	Surgery of great vessel
33917	C	Repair pulmonary artery
33918	C	Repair pulmonary atresia
33919	C	Repair pulmonary atresia
33920	C	Repair pulmonary atresia
33922	C	Transect pulmonary artery
33924	C	Remove pulmonary shunt
33930	C	Removal of donor heart/lung
33935	C	Transplantation, heart/lung
33940	C	Removal of donor heart
33945	C	Transplantation of heart
33960	C	External circulation assist
33961	C	External circulation assist
33970	C	Aortic circulation assist
33971	C	Aortic circulation assist
33973	C	Insert balloon device
33974	C	Remove intra-aortic balloon
33975	C	Implant ventricular device
33976	C	Implant ventricular device
33977	C	Remove ventricular device
33978	C	Remove ventricular device
34001	C	Removal of artery clot
34051	C	Removal of artery clot
34101	C	Removal of artery clot
34111	C	Removal of arm artery clot
34151	C	Removal of artery clot
34201	C	Removal of artery clot
34203	C	Removal of leg artery clot
34401	C	Removal of vein clot
34421	C	Removal of vein clot
34451	C	Removal of vein clot
34471	C	Removal of vein clot
34490	C	Removal of vein clot
34501	C	Repair valve, femoral vein
34502	C	Reconstruct, vena cava
34510	C	Transposition of vein valve
34520	C	Cross-over vein graft
34530	C	Leg vein fusion
35001	C	Repair defect of artery
35002	C	Repair artery rupture, neck
35005	C	Repair defect of artery
35011	C	Repair defect of artery
35013	C	Repair artery rupture, arm
35021	C	Repair defect of artery
35022	C	Repair artery rupture, chest
35045	C	Repair defect of arm artery
35081	C	Repair defect of artery
35082	C	Repair artery rupture, aorta
35091	C	Repair defect of artery
35092	C	Repair artery rupture, aorta
35102	C	Repair defect of artery

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ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
35103	C	Repair artery rupture, groin
35111	C	Repair defect of artery
35112	C	Repair artery rupture, spleen
35121	C	Repair defect of artery
35122	C	Repair artery rupture, belly
35131	C	Repair defect of artery
35132	C	Repair artery rupture, groin
35141	C	Repair defect of artery
35142	C	Repair artery rupture, thigh
35151	C	Repair defect of artery
35152	C	Repair artery rupture, knee
35161	C	Repair defect of artery
35162	C	Repair artery rupture
35180	C	Repair blood vessel lesion
35182	C	Repair blood vessel lesion
35184	C	Repair blood vessel lesion
35189	C	Repair blood vessel lesion
35190	C	Repair blood vessel lesion
35201	C	Repair blood vessel lesion
35206	C	Repair blood vessel lesion
35211	C	Repair blood vessel lesion
35216	C	Repair blood vessel lesion
35221	C	Repair blood vessel lesion
35226	C	Repair blood vessel lesion
35231	C	Repair blood vessel lesion
35236	C	Repair blood vessel lesion
35241	C	Repair blood vessel lesion
35246	C	Repair blood vessel lesion
35251	C	Repair blood vessel lesion
35256	C	Repair blood vessel lesion
35261	C	Repair blood vessel lesion
35266	C	Repair blood vessel lesion
35271	C	Repair blood vessel lesion
35276	C	Repair blood vessel lesion
35281	C	Repair blood vessel lesion
35286	C	Repair blood vessel lesion
35301	C	Rechanneling of artery
35311	C	Rechanneling of artery
35321	C	Rechanneling of artery
35331	C	Rechanneling of artery
35341	C	Rechanneling of artery
35351	C	Rechanneling of artery
35355	C	Rechanneling of artery
35361	C	Rechanneling of artery
35363	C	Rechanneling of artery
35371	C	Rechanneling of artery
35372	C	Rechanneling of artery
35381	C	Rechanneling of artery
35390	C	Reoperation, carotid add-on
35400	C	Angioscopy
35450	C	Repair arterial blockage
35452	C	Repair arterial blockage
35454	C	Repair arterial blockage
35456	C	Repair arterial blockage
35458	C	Repair arterial blockage
35459	C	Repair arterial blockage
35460	C	Repair venous blockage
35470	C	Repair arterial blockage
35471	C	Repair arterial blockage
35472	C	Repair arterial blockage
35473	C	Repair arterial blockage
35474	C	Repair arterial blockage
35475	C	Repair arterial blockage
35476	C	Repair venous blockage
35480	C	Atherectomy, open
35481	C	Atherectomy, open
35482	C	Atherectomy, open
35483	C	Atherectomy, open
35484	C	Atherectomy, open
35485	C	Atherectomy, open
35490	C	Atherectomy, percutaneous
35491	C	Atherectomy, percutaneous
35492	C	Atherectomy, percutaneous

ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
35493	C	Atherectomy, percutaneous
35494	C	Atherectomy, percutaneous
35495	C	Atherectomy, percutaneous
35501	C	Artery bypass graft
35506	C	Artery bypass graft
35507	C	Artery bypass graft
35508	C	Artery bypass graft
35509	C	Artery bypass graft
35511	C	Artery bypass graft
35515	C	Artery bypass graft
35516	C	Artery bypass graft
35518	C	Artery bypass graft
35521	C	Artery bypass graft
35526	C	Artery bypass graft
35531	C	Artery bypass graft
35533	C	Artery bypass graft
35536	C	Artery bypass graft
35541	C	Artery bypass graft
35546	C	Artery bypass graft
35548	C	Artery bypass graft
35549	C	Artery bypass graft
35551	C	Artery bypass graft
35556	C	Artery bypass graft
35558	C	Artery bypass graft
35560	C	Artery bypass graft
35563	C	Artery bypass graft
35565	C	Artery bypass graft
35566	C	Artery bypass graft
35571	C	Artery bypass graft
35582	C	Vein bypass graft
35583	C	Vein bypass graft
35585	C	Vein bypass graft
35587	C	Vein bypass graft
35601	C	Artery bypass graft
35606	C	Artery bypass graft
35612	C	Artery bypass graft
35616	C	Artery bypass graft
35621	C	Artery bypass graft
35623	C	Bypass graft, not vein
35626	C	Artery bypass graft
35631	C	Artery bypass graft
35636	C	Artery bypass graft
35641	C	Artery bypass graft
35642	C	Artery bypass graft
35645	C	Artery bypass graft
35646	C	Artery bypass graft
35650	C	Artery bypass graft
35651	C	Artery bypass graft
35654	C	Artery bypass graft
35656	C	Artery bypass graft
35661	C	Artery bypass graft
35663	C	Artery bypass graft
35665	C	Artery bypass graft
35666	C	Artery bypass graft
35671	C	Artery bypass graft
35681	C	Composite bypass graft
35691	C	Arterial transposition
35693	C	Arterial transposition
35694	C	Arterial transposition
35695	C	Arterial transposition
35700	C	Reoperation, bypass graft
35701	C	Exploration, carotid artery
35721	C	Exploration, femoral artery
35741	C	Exploration popliteal artery
35761	C	Exploration of artery/vein
35800	C	Explore neck vessels
35820	C	Explore chest vessels
35840	C	Explore abdominal vessels
35860	C	Explore limb vessels
35870	C	Repair vessel graft defect
35901	C	Excision, graft, neck
35903	C	Excision, graft, extremity
35905	C	Excision, graft, thorax

ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
35907	C	Excision, graft, abdomen
36510	C	Insertion of catheter, vein
36660	C	Insertion catheter, artery
36822	C	Insertion of cannula(s)
36834	C	Repair A-V aneurysm
37140	C	Revision of circulation
37145	C	Revision of circulation
37160	C	Revision of circulation
37180	C	Revision of circulation
37181	C	Splice spleen/kidney veins
37195	C	Thrombolytic therapy, stroke
37200	C	Transcatheter biopsy
37201	C	Transcatheter therapy infuse
37202	C	Transcatheter therapy infuse
37204	C	Transcatheter occlusion
37205	C	Transcatheter stent
37206	C	Transcatheter stent add-on
37207	C	Transcatheter stent
37208	C	Transcatheter stent add-on
37209	C	Exchange arterial catheter
37250	C	Intravascular us
37251	C	Intravascular us
37565	C	Ligation of neck vein
37600	C	Ligation of neck artery
37605	C	Ligation of neck artery
37606	C	Ligation of neck artery
37615	C	Ligation of neck artery
37616	C	Ligation of chest artery
37617	C	Ligation of abdomen artery
37620	C	Revision of major vein
37660	C	Revision of major vein
37788	C	Revascularization, penis
38100	C	Removal of spleen, total
38101	C	Removal of spleen, partial
38102	C	Removal of spleen, total
38115	C	Repair of ruptured spleen
38240	C	Bone marrow/stem transplant
38241	C	Bone marrow/stem transplant
38380	C	Thoracic duct procedure
38381	C	Thoracic duct procedure
38382	C	Thoracic duct procedure
38562	C	Removal, pelvic lymph nodes
38564	C	Removal, abdomen lymph nodes
38700	C	Removal of lymph nodes, neck
38720	C	Removal of lymph nodes, neck
38724	C	Removal of lymph nodes, neck
38746	C	Remove thoracic lymph nodes
38747	C	Remove abdominal lymph nodes
38765	C	Remove groin lymph nodes
38770	C	Remove pelvis lymph nodes
38780	C	Remove abdomen lymph nodes
39000	C	Exploration of chest
39010	C	Exploration of chest
39200	C	Removal chest lesion
39220	C	Removal chest lesion
39400	C	Visualization of chest
39499	C	Chest procedure
39501	C	Repair diaphragm laceration
39502	C	Repair paraesophageal hernia
39503	C	Repair of diaphragm hernia
39520	C	Repair of diaphragm hernia
39530	C	Repair of diaphragm hernia
39531	C	Repair of diaphragm hernia
39540	C	Repair of diaphragm hernia
39541	C	Repair of diaphragm hernia
39545	C	Revision of diaphragm
39599	C	Diaphragm surgery procedure

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ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
41130	C	Partial removal of tongue
41135	C	Tongue and neck surgery
41140	C	Removal of tongue
41145	C	Tongue removal; neck surgery
41150	C	Tongue, mouth, jaw surgery
41153	C	Tongue, mouth, neck surgery
41155	C	Tongue, jaw, & neck surgery
42145	C	Repair, palate, pharynx/uvula
42426	C	Excise parotid gland/lesion
42845	C	Extensive surgery of throat
42880	C	Excise nose/throat lesion
42894	C	Revision of pharyngeal walls
42953	C	Repair throat, esophagus
42961	C	Control throat bleeding
42971	C	Control nose/throat bleeding
43045	C	Incision of esophagus
43100	C	Excision of esophagus lesion
43101	C	Excision of esophagus lesion
43107	C	Removal of esophagus
43108	C	Removal of esophagus
43112	C	Removal of esophagus
43113	C	Removal of esophagus
43116	C	Partial removal of esophagus
43117	C	Partial removal of esophagus
43118	C	Partial removal of esophagus
43121	C	Partial removal of esophagus
43122	C	Partial removal of esophagus
43123	C	Partial removal of esophagus
43124	C	Removal of esophagus
43130	C	Removal of esophagus pouch
43135	C	Removal of esophagus pouch
43300	C	Repair of esophagus
43305	C	Repair esophagus and fistula
43310	C	Repair of esophagus
43312	C	Repair esophagus and fistula
43320	C	Fuse esophagus & stomach
43324	C	Revise esophagus & stomach
43325	C	Revise esophagus & stomach
43326	C	Revise esophagus & stomach
43330	C	Repair of esophagus
43331	C	Repair of esophagus
43340	C	Fuse esophagus & intestine
43341	C	Fuse esophagus & intestine
43350	C	Surgical opening, esophagus
43351	C	Surgical opening, esophagus
43352	C	Surgical opening, esophagus
43360	C	Gastrointestinal repair
43361	C	Gastrointestinal repair
43400	C	Ligate esophagus veins
43401	C	Esophagus surgery for veins
43405	C	Ligate/staple esophagus
43410	C	Repair esophagus wound
43415	C	Repair esophagus wound
43420	C	Repair esophagus opening
43425	C	Repair esophagus opening
43460	C	Pressure treatment esophagus
43496	C	Free jejunum flap, microvasc
43500	C	Surgical opening of stomach
43501	C	Surgical repair of stomach
43502	C	Surgical repair of stomach
43510	C	Surgical opening of stomach
43520	C	Incision of pyloric muscle
43605	C	Biopsy of stomach
43610	C	Excision of stomach lesion
43611	C	Excision of stomach lesion
43620	C	Removal of stomach
43621	C	Removal of stomach
43622	C	Removal of stomach
43631	C	Removal of stomach, partial
43632	C	Removal stomach, partial
43633	C	Removal stomach, partial
43634	C	Removal stomach, partial
43635	C	Partial removal of stomach

ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
43638	C	Partial removal of stomach
43639	C	Removal stomach, partial
43640	C	Vagotomy & pylorus repair
43641	C	Vagotomy & pylorus repair
43500	C	Reconstruction of pylorus
43810	C	Fusion of stomach and bowel
43820	C	Fusion of stomach and bowel
43825	C	Fusion of stomach and bowel
43830	C	Place gastrostomy tube
43831	C	Place gastrostomy tube
43832	C	Place gastrostomy tube
43840	C	Repair of stomach lesion
43842	C	Gastroplasty for obesity
43843	C	Gastroplasty for obesity
43846	C	Gastric bypass for obesity
43847	C	Gastric bypass for obesity
43848	C	Revision gastroplasty
43850	C	Revise stomach-bowel fusion
43855	C	Revise stomach-bowel fusion
43860	C	Revise stomach-bowel fusion
43865	C	Revise stomach-bowel fusion
43880	C	Repair stomach-bowel fistula
44005	C	Freeing of bowel adhesion
44010	C	Incision of small bowel
44015	C	Insert needle catheter, bowel
44020	C	Exploration of small bowel
44021	C	Decompress small bowel
44025	C	Incision of large bowel
44050	C	Reduce bowel obstruction
44055	C	Correct malrotation of bowel
44110	C	Excision of bowel lesion(s)
44111	C	Excision of bowel lesion(s)
44120	C	Removal of small intestine
44121	C	Removal of small intestine
44125	C	Removal of small intestine
44130	C	Bowel to bowel fusion
44139	C	Mobilization of colon
44140	C	Partial removal of colon
44141	C	Partial removal of colon
44143	C	Partial removal of colon
44144	C	Partial removal of colon
44145	C	Partial removal of colon
44146	C	Partial removal of colon
44147	C	Partial removal of colon
44150	C	Removal of colon
44151	C	Removal of colon/ileostomy
44152	C	Removal of colon/ileostomy
44153	C	Removal of colon/ileostomy
44155	C	Removal of colon
44156	C	Removal of colon/ileostomy
44160	C	Removal of colon
44300	C	Open bowel to skin
44310	C	Ileostomy/jejunostomy
44314	C	Revision of ileostomy
44316	C	Devise bowel pouch
44320	C	Colostomy
44322	C	Colostomy with biopsies
44345	C	Revision of colostomy
44346	C	Revision of colostomy
44500	C	Intro, gastrointestinal tube
44602	C	Suture, small intestine
44603	C	Suture, small intestine
44604	C	Suture, large intestine
44605	C	Repair of bowel lesion
44615	C	Intestinal stricturoplasty
44620	C	Repair bowel opening
44625	C	Repair bowel opening
44626	C	Repair bowel opening
44640	C	Repair bowel-skin fistula
44650	C	Repair bowel fistula
44660	C	Repair bowel-bladder fistula
44661	C	Repair bowel-bladder fistula
44680	C	Surgical revision, intestine

ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
44700	C	Suspend bowel w/prosthesis
44800	C	Excision of bowel pouch
44820	C	Excision of mesentery lesion
44850	C	Repair of mesentery
44899	C	Bowel surgery procedure
44900	C	Drain, app abscess, open
44901	C	Drain, app abscess, perc
44950	C	Appendectomy
44955	C	Appendectomy add-on
44960	C	Appendectomy
45110	C	Removal of rectum
45111	C	Partial removal of rectum
45112	C	Removal of rectum
45113	C	Partial proctectomy
45114	C	Partial removal of rectum
45116	C	Partial removal of rectum
45119	C	Remove, rectum w/reservoir
45120	C	Removal of rectum
45121	C	Removal of rectum and colon
45123	C	Partial proctectomy
45130	C	Excision of rectal prolapse
45135	C	Excision of rectal prolapse
45540	C	Correct rectal prolapse
45541	C	Correct rectal prolapse
45550	C	Repair rectum;remove sigmoid
45562	C	Exploration/repair of rectum
45563	C	Exploration/repair of rectum
45800	C	Repair rectumbladder fistula
45805	C	Repair fistula; colostomy
45820	C	Repair rectourethral fistula
45825	C	Repair fistula; colostomy
46705	C	Repair of anal stricture
46715	C	Repair of anovaginal fistula
46716	C	Repair of anovaginal fistula
46730	C	Construction of absent anus
46735	C	Construction of absent anus
46740	C	Construction of absent anus
46742	C	Repair, imperforated anus
46744	C	Repair, cloacal anomaly
46746	C	Repair, cloacal anomaly
46748	C	Repair, cloacal anomaly
46751	C	Repair of anal sphincter
47001	C	Needle biopsy, liver add-on
47010	C	Open drainage, liver lesion
47011	C	Percut drain, liver lesion
47015	C	Inject/aspirate liver cyst
47100	C	Wedge biopsy of liver
47120	C	Partial removal of liver
47122	C	Extensive removal of liver
47125	C	Partial removal of liver
47130	C	Partial removal of liver
47133	C	Removal of donor liver
47134	C	Partial removal, donor liver
47135	C	Transplantation of liver
47136	C	Transplantation of liver
47300	C	Surgery for liver lesion
47350	C	Repair liver wound
47360	C	Repair liver wound
47361	C	Repair liver wound
47362	C	Repair liver wound
47400	C	Incision of liver duct
47420	C	Incision of bile duct
47425	C	Incision of bile duct
47460	C	Incise bile duct sphincter
47480	C	Incision of gallbladder
47490	C	Incision of gallbladder
47550	C	Bile duct endoscopy add-on
47600	C	Removal of gallbladder
47605	C	Removal of gallbladder
47610	C	Removal of gallbladder
47612	C	Removal of gallbladder
47620	C	Removal of gallbladder
47700	C	Exploration of bile ducts

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ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
47701	C	Bile duct revision
47711	C	Excision of bile duct tumor
47712	C	Excision of bile duct tumor
47715	C	Excision of bile duct cyst
47716	C	Fusion of bile duct cyst
47720	C	Fuse gallbladder & bowel
47721	C	Fuse upper gi structures
47740	C	Fuse gallbladder & bowel
47741	C	Fuse gallbladder & bowel
47760	C	Fuse bile ducts and bowel
47765	C	Fuse liver ducts & bowel
47780	C	Fuse bile ducts and bowel
47785	C	Fuse bile ducts and bowel
47800	C	Reconstruction of bile ducts
47801	C	Placement, bile duct support
47802	C	Fuse liver duct & intestine
47900	C	Suture bile duct injury
48000	C	Drainage of abdomen
48001	C	Placement of drain, pancreas
48005	C	Resect/debride pancreas
48020	C	Removal of pancreatic stone
48100	C	Biopsy of pancreas
48120	C	Removal of pancreas lesion
48140	C	Partial removal of pancreas
48145	C	Partial removal of pancreas
48146	C	Pancreatectomy
48148	C	Removal of pancreatic duct
48150	C	Partial removal of pancreas
48152	C	Pancreatectomy
48153	C	Pancreatectomy
48154	C	Pancreatectomy
48155	C	Removal of pancreas
48180	C	Fuse pancreas and bowel
48400	C	Injection, intraop add-on
48500	C	Surgery of pancreas cyst
48510	C	Drain pancreatic pseudocyst
48511	C	Drain pancreatic pseudocyst
48520	C	Fuse pancreas cyst and bowel
48540	C	Fuse pancreas cyst and bowel
48545	C	Pancreatorrhaphy
48547	C	Duodenal exclusion
48556	C	Removal, allograft pancreas
49000	C	Exploration of abdomen
49002	C	Reopening of abdomen
49010	C	Exploration behind abdomen
49020	C	Drain abdominal abscess
49021	C	Drain abdominal abscess
49040	C	Open drainage abdom ab-scess
49041	C	Percut drain abdom abscess
49060	C	Open drain retroper abscess
49061	C	Percutdrain retroper abscess
49062	C	Drain to peritoneal cavity
49200	C	Removal of abdominal lesion
49201	C	Removal of abdominal lesion
49215	C	Excise sacral spine tumor
49220	C	Multiple surgery, abdomen
49255	C	Removal of omentum
49425	C	Insert abdomen-venous drain
49428	C	Ligation of shunt
49605	C	Repair umbilical lesion
49606	C	Repair umbilical lesion
49610	C	Repair umbilical lesion
49611	C	Repair umbilical lesion
49900	C	Repair of abdominal wall
49905	C	Omental flap
49906	C	Free omental flap, microvasc
50010	C	Exploration of kidney
50020	C	Open drain renal abscess
50021	C	Percut drain renal abscess
50040	C	Drainage of kidney
50045	C	Exploration of kidney
50060	C	Removal of kidney stone
50065	C	Incision of kidney
50070	C	Incision of kidney
50075	C	Removal of kidney stone
50080	C	Removal of kidney stone
50081	C	Removal of kidney stone
50100	C	Revise kidney blood vessels
50120	C	Exploration of kidney
50125	C	Explore and drain kidney
50130	C	Removal of kidney stone
50135	C	Exploration of kidney
50205	C	Biopsy of kidney
50220	C	Removal of kidney
50225	C	Removal of kidney
50230	C	Removal of kidney
50234	C	Removal of kidney & ureter
50236	C	Removal of kidney & ureter
50240	C	Partial removal of kidney
50290	C	Removal of kidney lesion
50290	C	Removal of kidney lesion
50300	C	Removal of donor kidney
50320	C	Removal of donor kidney
50340	C	Removal of kidney
50360	C	Transplantation of kidney
50365	C	Transplantation of kidney
50370	C	Remove transplanted kidney
50380	C	Reimplantation of kidney
50400	C	Revision of kidney/ureter
50405	C	Revision of kidney/ureter
50500	C	Repair of kidney wound
50520	C	Close kidney-skin fistula
50525	C	Repair renal-abdomen fistula
50526	C	Repair renal-abdomen fistula
50540	C	Revision of horseshoe kidney
50570	C	Kidney endoscopy
50572	C	Kidney endoscopy
50574	C	Kidney endoscopy & biopsy
50575	C	Kidney endoscopy
50576	C	Kidney endoscopy & treatment
50578	C	Renal endoscopy; radiotracer
50580	C	Kidney endoscopy & treatment
50600	C	Exploration of ureter
50605	C	Insert ureteral support
50610	C	Removal of ureter stone
50620	C	Removal of ureter stone
50630	C	Removal of ureter stone
50650	C	Removal of ureter
50660	C	Removal of ureter
50700	C	Revision of ureter
50715	C	Release of ureter
50722	C	Release of ureter
50725	C	Release/revise ureter
50727	C	Revise ureter
50728	C	Revise ureter
50740	C	Fusion of ureter & kidney
50750	C	Fusion of ureter & kidney
50760	C	Fusion of ureters
50770	C	Splicing of ureters
50780	C	Reimplant ureter in bladder
50782	C	Reimplant ureter in bladder
50783	C	Reimplant ureter in bladder
50785	C	Reimplant ureter in bladder
50800	C	Implant ureter in bowel
50810	C	Fusion of ureter & bowel
50815	C	Urine shunt to bowel
50820	C	Construct bowel bladder
50825	C	Construct bowel bladder
50830	C	Revise urine flow
50840	C	Replace ureter by bowel
50845	C	Appendico-vesicostomy
50860	C	Transplant ureter to skin
50900	C	Repair of ureter
50920	C	Closure ureter/skin fistula
50930	C	Closure ureter/bowel fistula
50940	C	Release of ureter
50970	C	Ureter endoscopy
50972	C	Ureter endoscopy & catheter
50974	C	Ureter endoscopy & biopsy
50976	C	Ureter endoscopy & treatment
50978	C	Ureter endoscopy & tracer
50980	C	Ureter endoscopy & treatment
51060	C	Removal of ureter stone
51525	C	Removal of bladder lesion
51530	C	Removal of bladder lesion
51535	C	Repair of ureter lesion
51550	C	Partial removal of bladder
51555	C	Partial removal of bladder
51565	C	Revise bladder & ureter(s)
51570	C	Removal of bladder
51575	C	Removal of bladder & nodes
51580	C	Remove bladder; revise tract
51585	C	Removal of bladder & nodes
51590	C	Remove bladder; revise tract
51595	C	Remove bladder; revise tract
51596	C	Remove bladder, create pouch
51597	C	Removal of pelvic structures
51800	C	Revision of bladder/urethra
51820	C	Revision of urinary tract
51840	C	Attach bladder/urethra
51841	C	Attach bladder/urethra
51845	C	Repair bladder neck
51860	C	Repair of bladder wound
51865	C	Repair of bladder wound
51900	C	Repair bladder/vagina lesion
51920	C	Close bladder-uterus fistula
51925	C	Hysterectomy/bladder repair
51940	C	Correction of bladder defect
51960	C	Revision of bladder & bowel
51980	C	Construct bladder opening
53085	C	Drainage of urinary leakage
53415	C	Reconstruction of urethra
53443	C	Reconstruction of urethra
54125	C	Removal of penis
54130	C	Remove penis & nodes
54135	C	Remove penis & nodes
54332	C	Revise penis, urethra
54336	C	Revise penis, urethra
54390	C	Repair penis and bladder
54430	C	Revision of penis
54535	C	Extensive testis surgery
54560	C	Exploration for testis
54650	C	Orchiopexy (Fowler-Stephens)
55600	C	Incise sperm duct pouch
55605	C	Incise sperm duct pouch
55650	C	Remove sperm duct pouch
55801	C	Removal of prostate
55810	C	Extensive prostate surgery
55812	C	Extensive prostate surgery
55815	C	Extensive prostate surgery
55821	C	Removal of prostate
55831	C	Removal of prostate
55840	C	Extensive prostate surgery
55842	C	Extensive prostate surgery
55845	C	Extensive prostate surgery
55860	C	Surgical exposure, prostate
55862	C	Extensive prostate surgery
55865	C	Extensive prostate surgery
56308	C	Laparoscopy; hysterectomy
56310	C	Laparoscopic enterolysis
56314	C	Lapar; drain lymphocele
56315	C	Laparoscopic appendectomy
56322	C	Laparoscopy, vagus nerves
56323	C	Laparoscopy, vagus nerves
56324	C	Laparoscopy, cholecystoenter
56340	C	Laparoscopic cholecystectomy
56341	C	Laparoscopic cholecystectomy

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ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
56342	C	Laparoscopic cholecystectomy
56345	C	Laparoscopic splenectomy
56347	C	Laparoscopic jejunostomy
56348	C	Laparo; resect intestine
56349	C	Laparoscopy; fundoplasty
56630	C	Extensive vulva surgery
56631	C	Extensive vulva surgery
56632	C	Extensive vulva surgery
56633	C	Extensive vulva surgery
56634	C	Extensive vulva surgery
56637	C	Extensive vulva surgery
56640	C	Extensive vulva surgery
56805	C	Repair clitoris
57108	C	Partial removal of vagina
57110	C	Remove vagina wall, complete
57120	C	Closure of vagina
57270	C	Repair of bowel pouch
57280	C	Suspension of vagina
57282	C	Repair of vaginal prolapse
57292	C	Construct vagina with graft
57305	C	Repair rectum-vagina fistula
57307	C	Fistula repair & colostomy
57308	C	Fistula repair, transperine
57310	C	Repair urethrovaginal lesion
57311	C	Repair urethrovaginal lesion
57320	C	Repair bladder-vagina lesion
57330	C	Repair bladder-vagina lesion
57335	C	Repair vagina
57531	C	Removal of cervix, radical
57540	C	Removal of residual cervix
57545	C	Remove cervix, repair pelvis
58140	C	Removal of uterus lesion
58150	C	Total hysterectomy
58152	C	Total hysterectomy
58180	C	Partial hysterectomy
58200	C	Extensive hysterectomy
58210	C	Extensive hysterectomy
58240	C	Removal of pelvis contents
58260	C	Vaginal hysterectomy
58262	C	Vaginal hysterectomy
58263	C	Vaginal hysterectomy
58267	C	Hysterectomy & vagina repair
58270	C	Hysterectomy & vagina repair
58275	C	Hysterectomy, revise vagina
58280	C	Hysterectomy, revise vagina
58285	C	Extensive hysterectomy
58400	C	Suspension of uterus
58410	C	Suspension of uterus
58520	C	Repair of ruptured uterus
58540	C	Revision of uterus
58600	C	Division of fallopian tube
58605	C	Division of fallopian tube
58611	C	Ligate oviduct(s) add-on
58615	C	Occlude fallopian tube(s)
58700	C	Removal of fallopian tube
58720	C	Removal of ovary/tube(s)
58740	C	Revise fallopian tube(s)
58750	C	Repair oviduct
58752	C	Revise ovarian tube(s)
58760	C	Remove tubal obstruction
58770	C	Create new tubal opening
58805	C	Drainage of ovarian cyst(s)
58822	C	Percut drain ovary abscess
58823	C	Percut drain pelvic abscess
58825	C	Transposition, ovary(s)
58900	C	Biopsy of ovary(s)
58920	C	Partial removal of ovary(s)
58925	C	Removal of ovarian cyst(s)
58940	C	Removal of ovary(s)
58943	C	Removal of ovary(s)
58950	C	Resect ovarian malignancy
58951	C	Resect ovarian malignancy
58952	C	Resect ovarian malignancy
59100	C	Remove uterus lesion
59120	C	Treat ectopic pregnancy
59121	C	Treat ectopic pregnancy
59130	C	Treat ectopic pregnancy
59135	C	Treat ectopic pregnancy
59136	C	Treat ectopic pregnancy
59140	C	Treat ectopic pregnancy
59150	C	Treat ectopic pregnancy
59151	C	Treat ectopic pregnancy
59325	C	Revision of cervix
59350	C	Repair of uterus
59514	C	Cesarean delivery only
59525	C	Remove uterus after cesarean
59620	C	Attempted vbac delivery only
59830	C	Treat uterus infection
59850	C	Abortion
59851	C	Abortion
59852	C	Abortion
59855	C	Abortion
59856	C	Abortion
59857	C	Abortion
59866	C	Abortion
60212	C	Partial thyroid excision
60252	C	Removal of thyroid
60254	C	Extensive thyroid surgery
60260	C	Repeat thyroid surgery
60270	C	Removal of thyroid
60271	C	Removal of thyroid
60500	C	Explore parathyroid glands
60502	C	Re-explore parathyroids
60505	C	Explore parathyroid glands
60512	C	Autotransplant, parathyroid
60520	C	Removal of thymus gland
60521	C	Removal thymus gland
60522	C	Removal of thymus gland
60540	C	Explore adrenal gland
60545	C	Explore adrenal gland
60600	C	Remove carotid body lesion
60605	C	Remove carotid body lesion
61105	C	Twist drill hole
61106	C	Drill skull for exam/surgery
61107	C	Drill skull for implantation
61108	C	Drill skull for drainage
61120	C	Burr hole for puncture
61130	C	Pierce skull, exam/surgery
61140	C	Pierce skull for biopsy
61150	C	Pierce skull for drainage
61151	C	Pierce skull for drainage
61154	C	Pierce skull, remove clot
61156	C	Pierce skull for drainage
61210	C	Pierce skull; implant device
61250	C	Pierce skull & explore
61253	C	Pierce skull & explore
61304	C	Open skull for exploration
61305	C	Open skull for exploration
61312	C	Open skull for drainage
61313	C	Open skull for drainage
61314	C	Open skull for drainage
61315	C	Open skull for drainage
61320	C	Open skull for drainage
61321	C	Open skull for drainage
61330	C	Decompress eye socket
61332	C	Explore/biopsy eye socket
61333	C	Explore orbit; remove lesion
61334	C	Explore orbit; remove object
61340	C	Relieve cranial pressure
61343	C	Incise skull, pressure relief
61345	C	Relieve cranial pressure
61440	C	Incise skull for surgery
61450	C	Incise skull for surgery
61458	C	Incise skull for brain wound
61460	C	Incise skull for surgery
61470	C	Incise skull for surgery
61480	C	Incise skull for surgery
61490	C	Incise skull for surgery
61500	C	Removal of skull lesion
61501	C	Remove infected skull bone
61510	C	Removal of brain lesion
61512	C	Remove brain lining lesion
61514	C	Removal of brain abscess
61516	C	Removal of brain lesion
61518	C	Removal of brain lesion
61519	C	Remove brain lining lesion
61520	C	Removal of brain lesion
61521	C	Removal of brain lesion
61522	C	Removal of brain abscess
61524	C	Removal of brain lesion
61526	C	Removal of brain lesion
61530	C	Removal of brain lesion
61531	C	Implant brain electrodes
61533	C	Implant brain electrodes
61534	C	Removal of brain lesion
61535	C	Remove brain electrodes
61536	C	Removal of brain lesion
61538	C	Removal of brain tissue
61539	C	Removal of brain tissue
61541	C	Incision of brain tissue
61542	C	Removal of brain tissue
61543	C	Removal of brain tissue
61544	C	Remove & treat brain lesion
61545	C	Excision of brain tumor
61546	C	Removal of pituitary gland
61548	C	Removal of pituitary gland
61550	C	Release of skull seams
61552	C	Release of skull seams
61556	C	Incise skull/sutures
61557	C	Incise skull/sutures
61558	C	Excision of skull/sutures
61559	C	Excision of skull/sutures
61563	C	Excision of skull tumor
61564	C	Excision of skull tumor
61570	C	Remove brain foreign body
61571	C	Incise skull for brain wound
61575	C	Skull base/brainstem surgery
61576	C	Skull base/brainstem surgery
61580	C	Craniofacial approach, skull
61581	C	Craniofacial approach, skull
61582	C	Craniofacial approach, skull
61583	C	Craniofacial approach, skull
61584	C	Orbitocranial approach/skull
61585	C	Orbitocranial approach/skull
61586	C	Resect nasopharynx, skull
61590	C	Infratemporal approach/skull
61591	C	Infratemporal approach/skull
61592	C	Orbitocranial approach/skull
61595	C	Transtemporal approach/skull
61596	C	Transcochlear approach/skull
61597	C	Transcondylar approach/skull
61598	C	Transpetrosal approach/skull
61600	C	Resect/excise cranial lesion
61601	C	Resect/excise cranial lesion
61605	C	Resect/excise cranial lesion
61606	C	Resect/excise cranial lesion
61607	C	Resect/excise cranial lesion
61608	C	Resect/excise cranial lesion
61609	C	Transect, artery, sinus
61610	C	Transect, artery, sinus
61611	C	Transect, artery, sinus
61612	C	Transect, artery, sinus
61613	C	Remove aneurysm, sinus
61615	C	Resect/excise lesion, skull
61616	C	Resect/excise lesion, skull
61618	C	Repair dura
61619	C	Repair dura
61624	C	Occlusion/embolization cath

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ADDENDUM G.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT[1] HCPCS[2]	HOPD status indicator	Description
61626	C	Occlusion/embolization cath
61580	C	Intracranial vessel surgery
61582	C	Intracranial vessel surgery
61684	C	Intracranial vessel surgery
61584	C	Intracranial vessel surgery
61690	C	Intracranial vessel surgery
61692	C	Intracranial vessel surgery
61700	C	Inner skull vessel surgery
61702	C	Inner skull vessel surgery
61703	C	Clamp neck artery
61705	C	Revise circulation to head
61708	C	Revise circulation to head
61710	C	Revise circulation to head
61711	C	Fusion of skull arteries
61712	C	Skull or spine microsurgery
61720	C	Incise skull/brain surgery
61735	C	Incise skull/brain surgery
61750	C	Incise skull; brain biopsy
61751	C	Brain biopsy with cat scan
61760	C	Implant brain electrodes
61770	C	Incise skull for treatment
61791	C	Treat trigeminal tract
61795	C	Brain surgery using computer
61850	C	Implant neuroelectrodes
61855	C	Implant neuroelectrodes
61860	C	Implant neuroelectrodes
61865	C	Implant neuroelectrodes
61870	C	Implant neuroelectrodes
61875	C	Implant neuroelectrodes
61880	C	Revise/remove neuroelectrode
61888	C	Revise/remove neuroreceiver
62000	C	Repair of skull fracture
62005	C	Repair of skull fracture
62010	C	Treatment of head injury
62100	C	Repair brain fluid leakage
62115	C	Reduction of skull defect
62116	C	Reduction of skull defect
62117	C	Reduction of skull defect
62120	C	Repair skull cavity lesion
62121	C	Incise skull repair
62140	C	Repair of skull defect
62141	C	Repair of skull defect
62142	C	Remove skull plate/flap
62143	C	Replace skull plate/flap
62145	C	Repair of skull & brain
62146	C	Repair of skull with graft
62147	C	Repair of skull with graft
62180	C	Establish brain cavity shunt
62190	C	Establish brain cavity shunt
62192	C	Establish brain cavity shunt
62200	C	Establish brain cavity shunt
62201	C	Establish brain cavity shunt
62220	C	Establish brain cavity shunt
62223	C	Establish brain cavity shunt
62256	C	Remove brain cavity shunt
62258	C	Replace brain cavity shunt
62351	C	Implant spinal catheter
63001	C	Removal of spinal lamina
63003	C	Removal of spinal lamina
63005	C	Removal of spinal lamina
63011	C	Removal of spinal lamina
63012	C	Removal of spinal lamina
63015	C	Removal of spinal lamina
63016	C	Removal of spinal lamina
63017	C	Removal of spinal lamina
63020	C	Neck spine disk surgery
63030	C	Low back disk surgery
63035	C	Spinal disk surgery add-on
63040	C	Neck spine disk surgery
63042	C	Low back disk surgery
63045	C	Removal of spinal lamina
63046	C	Removal of spinal lamina
63047	C	Removal of spinal lamina
63048	C	Remove spinal lamina add-on
63055	C	Decompress spinal cord
63056	C	Decompress spinal cord
63057	C	Decompress spine cord add-on
63064	C	Decompress spinal cord
63066	C	Decompress spine cord add-on
63075	C	Neck spine disk surgery
63076	C	Neck spine disk surgery
63077	C	Spine disk surgery, thorax
63078	C	Spine disk surgery, thorax
63081	C	Removal of vertebral body
63082	C	Remove vertebral body add-on
63085	C	Removal of vertebral body
63086	C	Remove vertebral body add-on
63087	C	Removal of vertebral body
63088	C	Remove vertebral body add-on
63090	C	Removal of vertebral body
63091	C	Remove vertebral body add-on
63170	C	Incise spinal cord tract(s)
63172	C	Drainage of spinal cyst
63173	C	Drainage of spinal cyst
63180	C	Revise spinal cord ligaments
63182	C	Revise spinal cord ligaments
63185	C	Incise spinal column/nerves
63190	C	Incise spinal column/nerves
63191	C	Incise spinal column/nerves
63194	C	Incise spinal column & cord
63195	C	Incise spinal column & cord
63196	C	Incise spinal column & cord
63197	C	Incise spinal column & cord
63198	C	Incise spinal column & cord
63199	C	Incise spinal column & cord
63200	C	Release of spinal cord
63250	C	Revise spinal cord vessels
63251	C	Revise spinal cord vessels
63252	C	Revise spinal cord vessels
63265	C	Excise intraspinal lesion
63266	C	Excise intraspinal lesion
63267	C	Excise intraspinal lesion
63268	C	Excise intraspinal lesion
63270	C	Excise intraspinal lesion
63271	C	Excise intraspinal lesion
63272	C	Excise intraspinal lesion
63273	C	Excise intraspinal lesion
63275	C	Biopsy/excise spinal tumor
63276	C	Biopsy/excise spinal tumor
63277	C	Biopsy/excise spinal tumor
63278	C	Biopsy/excise spinal tumor
63280	C	Biopsy/excise spinal tumor
63281	C	Biopsy/excise spinal tumor
63282	C	Biopsy/excise spinal tumor
63283	C	Biopsy/excise spinal tumor
63285	C	Biopsy/excise spinal tumor
63286	C	Biopsy/excise spinal tumor
63287	C	Biopsy/excise spinal tumor
63290	C	Biopsy/excise spinal tumor
63300	C	Removal of vertebral body
63301	C	Removal of vertebral body
63302	C	Removal of vertebral body
63303	C	Removal of vertebral body
63304	C	Removal of vertebral body
63305	C	Removal of vertebral body
63306	C	Removal of vertebral body
63307	C	Removal of vertebral body
63308	C	Remove vertebral body add-on
63655	C	Implant neuroelectrodes
64700	C	Repair of spinal herniation
64702	C	Repair of spinal herniation
64704	C	Repair of spinal herniation
64706	C	Repair of spinal herniation
64707	C	Repair spinal fluid leakage
64709	C	Repair spinal fluid leakage
64710	C	Graft repair of spine defect
64740	C	Install spinal shunt
64741	C	Install spinal shunt
64752	C	Incision of vagus nerve
64755	C	Incision of stomach nerves
64760	C	Incision of vagus nerve
64763	C	Incise hip/thigh nerve
64766	C	Incise hip/thigh nerve
64802	C	Remove sympathetic nerves
64804	C	Remove sympathetic nerves
64809	C	Remove sympathetic nerves
64818	C	Remove sympathetic nerves
64820	C	Remove sympathetic nerves
64866	C	Fusion of facial/other nerve
64868	C	Fusion of facial/other nerve
65110	C	Removal of eye
65112	C	Remove eye, revise socket
65114	C	Remove eye, revise socket
65273	C	Repair of eye wound
67414	C	Explore/decompress eye socke
67445	C	Explore/decompress eye socke
67570	C	Decompress optic nerve
69155	C	Extensive ear/neck surgery
69535	C	Remove part of temporal bone
69554	C	Remove ear lesion
69950	C	Incise inner ear nerve
69955	C	Release facial nerve
69960	C	Release inner ear canal
69970	C	Remove inner ear lesion
69979	C	Temporal bone surgery
74300	C	X-ray bile ducts, pancreas
74301	C	X-rays at surgery add-on
75894	C	X-rays, transcatheter therapy
75896	C	X-rays, transcatheter therapy
75900	C	Arterial catheter exchange
75940	C	X-ray placement, vein filter
75945	C	Intravascular us
75946	C	Intravascular us add-on
75960	C	Transcatheter intro, stent
75961	C	Retrieval, broken catheter
75962	C	Repair arterial blockage
75964	C	Repair artery blockage, each
75966	C	Repair arterial blockage
75968	C	Repair artery blockage, each
75970	C	Vascular biopsy
75978	C	Repair venous blockage
75992	C	Atherectomy, x-ray exam
75993	C	Atherectomy, x-ray exam
75994	C	Atherectomy, x-ray exam
75995	C	Atherectomy, x-ray exam
75996	C	Atherectomy, x-ray exam
92970	C	Cardioassist, internal
92971	C	Cardioassist, external
92975	C	Dissolve clot, heart vessel
92977	C	Dissolve clot, heart vessel
92978	C	Intravas us, heart add-on
92979	C	Intravas us, heart (add-on)
92980	C	Insert intracoronary stent
92981	C	Insert intracoronary stent
92982	C	Coronary artery dilation
92984	C	Coronary artery dilation
92986	C	Revision of aortic valve
92987	C	Revision of mitral valve
92990	C	Revision of pulmonary valve
92992	C	Revision of heart chamber
92993	C	Revision of heart chamber
92995	C	Coronary atherectomy
92996	C	Coronary atherectomy add-on
92997	C	Pul art balloon repair, perc
92998	C	Pul art balloon repair, perc
94652	C	Pressure breathing (IPPB)
94656	C	Initial ventilator mgmt
95920	C	Intraop nerve test add-on
95961	C	Electrode stimulation, brain
95962	C	Electrode stimulation, brain
99190	C	Special pump services
99191	C	Special pump services
99192	C	Special pump services
99234	C	Observ/hosp same date
99235	C	Observ/hosp same date
99236	C	Observ/hosp same date
99251	C	Initial inpatient consult
99252	C	Initial inpatient consult
99253	C	Initial inpatient consult
99254	C	Initial inpatient consult
99255	C	Initial inpatient consult
99261	C	Follow-up inpatient consult
99262	C	Follow-up inpatient consult
99263	C	Follow-up inpatient consult
99295	C	Neonatal critical care
99296	C	Neonatal critical care
99297	C	Neonatal critical care
99356	C	Prolonged service, inpatient
99357	C	Prolonged service, inpatient
99431	C	Normal newborn care,hospital

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51. On pages 48005 through 48030, Addendum I is corrected to read as follows:

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL

Hospital	SMI
10001	2.87
10004	1.70
10005	2.04
10006	2.81
10007	1.56
10008	1.77
10009	1.47
10010	2.30
10011	2.42
10012	2.01
10015	2.11
10016	2.49
10018	6.17
10019	2.24
10021	1.64
10022	1.86
10023	2.47
10024	2.75
10025	2.02
10027	1.00
10029	2.98
10031	1.85
10032	1.27
10033	1.47
10034	2.41
10035	2.82
10036	2.42
10038	4.13
10039	2.05
10040	2.42
10043	2.17
10044	2.03
10045	1.82
10046	2.00
10047	1.55
10049	2.86
10050	1.79
10051	1.49
10052	1.48
10053	1.88
10054	1.79
10055	2.63
10056	2.61
10058	1.16
10059	1.76
10061	2.48
10062	1.64
10064	3.07
10065	2.25
10066	1.32
10068	1.35
10069	2.15
10072	2.44
10073	2.43
10078	2.31
10079	2.33
10080	1.05
10081	2.33
10083	2.10
10084	3.82
10087	2.56
10089	2.42
10090	2.33
10091	1.55
10092	2.36
10094	2.36
10095	1.36
10097	1.92
10098	1.68
10099	1.89
10100	2.58
10101	2.26
10102	1.23
10103	2.19
10104	2.47
10108	1.82
10109	2.17
10110	1.14
10112	1.73
10113	2.55
10114	2.24
10115	1.40
10117	1.19
10118	2.43
10119	2.05
10120	1.91
10123	2.90
10124	3.20
10125	1.38
10126	2.00
10127	3.04
10128	1.28
10129	1.76
10130	1.59
10131	2.58
10134	1.44
10137	1.41
10138	1.21
10139	2.54
10143	1.80
10144	2.52
10145	1.51
10146	2.79
10148	1.83
10149	2.67
10150	1.99
10152	2.08
10155	1.50
13025	1.76
13027	1.08
13028	0.89
13300	1.38
14000	1.26
14002	1.20
20001	2.64
20002	1.99
20004	1.80
20005	1.03
20006	1.87
20007	0.84
20008	2.08
20009	1.03
20010	0.53
20011	0.99
20012	3.12
20013	1.76
20014	1.70
20017	3.05
20024	1.78
20025	1.00
24001	1.40
30001	2.48
30002	2.35
30003	1.98
30004	0.83
30006	2.66
30007	2.48
30009	1.32
30010	2.44
30011	3.35
30012	1.86
30014	2.80
30016	1.75
30017	2.70
30018	2.90
30019	2.27
30022	1.64
30023	2.67
30024	3.42
30025	1.66
30027	1.62
30030	2.79
30033	2.36
30034	1.24
30035	2.92
30036	2.27

Note: The national average service mix discounted for multiple procedures is 2.05

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
30037	3.90
30038	3.06
30040	1.83
30041	1.23
30043	2.41
30044	1.97
30047	1.57
30049	0.75
30054	0.84
30055	2.33
30059	2.44
30060	2.14
30061	1.90
30062	2.33
30064	2.43
30065	2.75
30067	1.56
30068	2.35
30069	2.80
30080	2.53
30083	2.40
30085	2.32
30086	2.18
30087	3.31
30088	2.05
30089	2.52
30092	2.52
30093	1.60
30094	1.96
30095	2.95
33025	1.61
33026	1.81
33028	1.49
34004	1.34
34008	1.57
34009	1.31
34010	1.31
34013	1.33
34015	1.31
34019	1.28
40001	2.26
40002	2.09
40003	1.80
40004	3.63
40005	1.89
40007	3.84
40008	1.26
40010	2.98
40011	1.94
40014	2.54
40015	1.65
40016	1.93
40017	2.35
40018	2.70
40019	2.29
40020	2.73
40021	2.97
40022	2.23
40024	1.68
40025	1.72
40026	2.41
40027	2.93
40028	2.00
40029	3.25
40030	1.26
40032	0.91
40035	1.12
40036	2.94
40037	1.85
40039	2.44
40040	1.27
40041	3.11
40042	2.04
40044	1.28
40045	1.60
40047	1.71

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
40048	2.33
40050	2.67
40051	2.02
40053	1.59
40054	2.96
40055	2.47
40058	2.12
40060	1.33
40062	2.30
40064	1.40
40066	3.24
40067	1.18
40069	2.76
40070	1.70
40071	2.52
40072	2.19
40074	2.70
40075	1.63
40076	1.70
40077	1.63
40078	2.58
40080	1.69
40081	0.93
40082	1.71
40084	2.89
40085	1.83
40088	2.99
40090	1.25
40091	1.63
40093	1.19
40100	2.21
40105	1.22
40106	1.95
40107	1.50
40109	1.91
40114	4.32
40116	2.81
40118	2.62
40119	2.76
40124	2.31
40126	1.82
40132	0.96
43026	1.42
43027	0.87
43028	1.19
43029	1.76
43031	0.82
43032	2.80
43300	1.51
44004	1.29
44005	1.32
44006	1.38
44010	1.52
44011	1.69
44012	1.32
50002	1.89
50006	2.28
50007	2.11
50009	2.75
50013	2.93
50014	2.65
50015	2.21
50016	2.00
50017	4.45
50018	2.36
50021	2.13
50022	2.57
50024	2.06
50025	2.08
50026	2.05
50028	2.32
50029	2.13
50030	1.75
50032	2.91
50033	2.05
50036	2.55

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
50038	1.39
50039	2.62
50042	3.00
50043	2.66
50045	3.04
50046	2.17
50047	2.86
50051	1.45
50054	1.57
50055	1.71
50056	3.32
50057	3.01
50058	2.70
50060	1.93
50061	4.86
50063	2.56
50065	2.34
50066	2.25
50067	1.80
50068	2.45
50069	2.55
50077	2.72
50078	2.45
50079	2.02
50080	1.68
50081	1.10
50082	2.59
50084	2.23
50088	1.30
50089	1.99
50090	2.38
50091	2.33
50092	1.71
50093	3.45
50095	3.59
50096	2.44
50097	3.49
50099	2.11
50100	2.37
50101	2.56
50102	1.86
50103	2.79
50104	2.16
50107	2.48
50108	2.48
50109	2.25
50110	3.14
50111	4.66
50112	2.51
50113	1.26
50114	2.19
50115	1.87
50116	2.62
50117	2.82
50118	2.37
50121	2.97
50122	2.74
50124	2.34
50125	2.92
50126	2.67
50127	1.96
50128	2.19
50129	2.61
50131	2.34
50132	2.44
50133	1.99
50135	1.34
50136	2.46
50144	2.21
50145	2.53
50146	1.30
50148	2.21
50149	2.20
50150	2.29
50152	2.15
50153	2.32

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
50155	2.05
50158	3.24
50159	1.34
50167	1.30
50168	3.18
50169	2.48
50170	2.63
50172	1.71
50173	2.59
50174	3.12
50175	3.10
50177	1.80
50179	2.45
50180	2.09
50183	1.22
50186	1.67
50188	3.47
50189	2.28
50191	2.39
50192	1.45
50193	1.68
50194	2.48
50195	2.14
50196	2.11
50197	2.49
50204	3.00
50205	2.12
50207	3.11
50208	2.02
50211	2.50
50213	1.26
50214	2.16
50215	2.83
50217	2.07
50219	1.77
50222	2.39
50224	2.49
50225	2.08
50226	2.63
50228	1.13
50230	2.69
50231	3.45
50232	2.78
50233	2.70
50234	1.56
50235	2.48
50236	2.04
50238	2.03
50239	2.50
50240	2.55
50241	2.21
50242	2.13
50243	1.94
50245	1.15
50248	1.39
50251	2.10
50253	1.33
50254	2.98
50256	1.36
50257	1.66
50260	1.32
50261	1.98
50262	2.09
50264	2.13
50267	2.56
50270	2.48
50272	1.77
50274	1.44
50276	1.18
50277	2.32
50278	2.44
50279	1.81
50280	2.50
50281	3.59
50282	2.19
50283	1.12

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
50286	0.95
50289	2.46
50290	2.28
50291	1.60
50292	1.37
50293	1.30
50295	2.45
50296	2.25
50298	2.00
50299	2.87
50300	2.80
50301	2.81
50302	2.65
50305	1.97
50307	3.51
50308	2.19
50309	2.76
50310	2.76
50312	2.34
50313	2.89
50315	1.13
50317	1.79
50320	1.18
50324	2.91
50325	1.66
50327	2.26
50328	2.48
50329	1.65
50331	1.93
50333	1.02
50334	3.18
50335	1.25
50336	2.31
50337	1.66
50342	2.71
50343	3.02
50348	1.58
50349	1.14
50350	2.08
50351	3.05
50352	1.73
50353	2.37
50355	1.01
50357	2.29
50359	3.22
50360	3.01
50366	1.90
50367	1.81
50369	2.21
50377	0.87
50378	2.01
50379	1.42
50380	3.09
50382	2.50
50385	2.10
50388	0.92
50390	2.47
50391	1.88
50392	1.28
50393	2.75
50394	3.09
50396	3.93
50397	1.31
50401	2.18
50404	1.43
50406	1.38
50407	2.72
50410	0.95
50414	2.49
50417	2.79
50418	1.26
50419	2.46
50420	1.85
50421	2.33
50423	2.09
50424	2.77

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
50426	2.46
50427	0.76
50430	1.39
50431	3.59
50432	2.32
50433	1.44
50434	1.36
50435	2.34
50436	1.48
50438	[illegible]
50440	1.46
50441	2.01
50443	1.47
50444	2.14
50446	1.32
50447	1.58
50448	2.94
50449	3.19
50454	1.62
50455	3.08
50456	[illegible]
50457	2.05
50459	2.34
50464	2.94
50468	1.50
50469	1.60
50470	2.00
50471	2.87
50476	2.46
50477	4.20
50478	1.52
50481	2.61
50482	1.02
50483	3.02
50485	2.90
50486	[illegible]
50488	[illegible]
50491	[illegible]
50492	2.24
50494	3.06
50496	2.35
50497	[illegible]
50498	[illegible]
50502	3.39
50503	3.27
50506	2.28
50516	3.02
50517	2.24
50522	2.30
50523	2.05
50526	2.36
50528	2.01
50531	3.13
50534	2.28
50535	2.67
50537	2.62
50539	[illegible]
50542	1.93
50543	2.53
50545	[illegible]
50546	0.93
50547	1.07
50548	0.78
50549	2.47
50550	2.23
50551	[illegible]
50552	1.24
50557	2.14
50559	2.43
50560	1.94
50564	2.41
50565	1.80
50566	1.51
50567	2.22
50568	2.50
50569	2.37

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
50570	3.06
50571	3.05
50573	2.27
50577	4.04
50579	2.31
50580	2.21
50581	2.22
50582	2.97
50584	1.93
50585	2.47
50586	2.74
50588	2.48
50589	2.89
50590	3.11
50591	2.47
50592	2.82
50593	2.00
50594	2.75
50597	2.74
50598	2.46
50599	1.45
50601	2.48
50603	1.64
50607	1.59
50608	1.68
50613	0.69
50615	2.53
50616	2.40
50618	1.29
50624	2.73
50625	2.47
50633	2.48
50636	2.91
50638	1.48
50641	2.02
50644	2.56
50650	1.41
50661	1.30
50662	1.02
50663	2.15
50666	1.06
50667	1.07
50668	1.03
50676	0.87
50678	2.02
50680	1.50
50682	1.18
50684	2.01
50685	2.37
50686	1.62
50687	2.32
50693	2.05
50694	2.01
50695	1.64
50696	3.01
50697	4.28
50698	2.19
50700	2.33
50701	1.92
50702	0.89
50704	1.87
50709	2.69
52031	1.05
53026	1.72
53027	1.00
53028	1.05
53029	1.33
53030	1.05
53031	1.08
53032	0.98
53033	1.30
53034	1.63
53035	1.40
53036	1.24
53037	1.25
53300	1.41

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
53301	1.98
53302	1.59
53304	1.24
53305	0.98
54001	1.31
54003	1.76
54012	1.35
54032	1.31
54053	1.43
54055	1.09
54060	1.31
54064	1.09
54065	1.31
54069	1.31
54074	1.31
54075	1.31
54078	1.65
54087	1.30
54091	1.57
54093	1.51
54095	1.31
54096	1.33
54097	1.34
54098	1.31
54099	1.32
54104	1.50
54105	1.31
54106	1.32
54108	1.22
54110	1.31
54111	1.31
54113	1.31
54116	1.33
54119	1.31
54122	1.16
54123	1.34
54125	1.60
54130	1.31
54131	1.63
54133	0.88
54139	1.20
60001	2.91
60003	2.83
60004	1.55
60006	2.08
60007	1.50
60008	2.08
60009	2.23
60010	2.35
60011	1.26
60012	1.83
60013	1.79
60014	2.41
60015	1.70
60016	2.01
60018	2.17
60020	1.96
60022	1.73
60023	2.50
60024	1.52
60027	2.15
60028	2.48
60029	1.17
60030	2.74
60031	2.20
60032	2.73
60033	1.65
60034	1.97
60036	1.85
60037	1.43
60038	1.39
60041	1.00
60042	1.58
60043	1.34
60044	2.09
60046	2.82

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
60047	0.89
60049	2.70
60050	1.95
60052	1.66
60053	1.68
60054	2.42
60056	1.27
60057	2.07
60058	1.27
60060	1.31
60062	1.48
60063	0.77
60064	3.00
60065	2.24
60068	1.24
60070	1.33
60071	2.09
60073	1.27
60075	2.56
60076	1.84
60085	1.11
60088	1.55
60090	1.55
60096	2.20
60100	2.02
60103	4.08
60104	2.29
62009	0.81
62011	2.20
63027	1.45
63030	1.82
63301	1.57
64007	1.31
64009	1.09
64012	1.26
64016	1.41
70001	2.72
70002	2.47
70003	2.00
70004	2.24
70005	1.71
70006	2.31
70007	2.73
70008	1.95
70009	2.65
70010	2.41
70011	2.06
70012	2.13
70015	2.17
70016	2.03
70017	2.24
70018	2.16
70019	2.80
70020	2.10
70021	2.56
70022	2.37
70024	2.24
70025	2.75
70026	2.05
70027	2.14
70028	2.17
70029	2.29
70030	2.44
70031	2.07
70033	1.93
70035	2.35
70036	1.96
70039	1.06
72003	1.04
72004	0.79
74000	1.25
74007	1.31
74008	1.53
80001	2.94
80002	2.15
80003	2.63

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
80004	2.42
80005	2.70
80006	2.31
80007	2.07
83300	3.40
84002	1.43
90001	3.34
90002	1.80
90003	1.70
90004	2.38
90006	2.41
90007	1.18
90008	2.36
90010	1.96
90011	2.42
90015	0.65
93025	1.03
93300	1.98
94004	1.10
100001	1.48
100002	2.47
100004	1.78
100006	2.29
100007	2.82
100008	3.02
100009	2.29
100010	2.56
100012	2.75
100014	2.53
100015	2.49
100017	2.55
100018	1.83
100019	3.21
100020	2.87
100022	1.37
100023	2.44
100024	2.88
100025	2.21
100026	2.63
100027	1.37
100028	2.73
100029	2.42
100030	2.91
100032	1.98
100034	2.35
100035	2.31
100038	2.22
100039	2.68
100040	2.85
100043	2.28
100044	2.35
100045	2.20
100046	2.21
100047	1.91
100048	1.58
100049	2.46
100050	2.15
100051	2.51
100052	3.58
100053	2.46
100054	2.02
100055	2.20
100056	3.26
100057	2.88
100060	2.36
100061	2.52
100062	2.43
100063	2.19
100067	2.29
100068	2.00
100069	2.45
100070	2.40
100071	2.15
100072	2.29
100073	1.88
100075	2.01

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
100076	2.37
100077	3.09
100078	1.05
100079	1.68
100080	2.30
100081	1.76
100082	2.14
100084	1.98
100085	2.15
100086	2.33
100087	3.40
100088	3.10
100090	2.72
100098	1.47
100099	2.72
100102	2.00
100103	1.20
100105	2.83
100106	2.64
100107	2.48
100108	2.05
100109	2.66
100110	2.13
100112	0.99
100113	2.67
100114	2.37
100117	2.94
100118	1.88
100121	2.58
100122	2.60
100124	1.82
100125	2.35
100126	2.07
100127	2.70
100128	2.41
100129	3.11
100130	2.11
100131	2.89
100132	2.24
100134	1.52
100135	3.73
100137	2.25
100138	1.19
100139	1.41
100140	2.43
100142	1.88
100144	2.72
100145	2.11
100146	1.91
100147	1.77
100150	2.52
100151	3.45
100154	3.18
100156	2.31
100157	3.23
100159	1.44
100160	1.89
100161	2.14
100162	2.11
100165	2.07
100166	2.27
100167	3.78
100168	2.45
100169	2.54
100170	2.65
100172	2.26
100173	2.85
100174	2.00
100175	1.89
100176	1.87
100177	2.79
100179	3.41
100181	4.01
100183	2.58
100187	2.35
100189	2.51

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
100191	2.40
100199	2.93
100200	3.81
100203	2.11
100204	2.40
100206	2.36
100208	2.03
100209	2.53
100210	2.25
100211	1.90
100212	2.25
100213	1.83
100217	3.37
100220	2.88
100221	2.29
100222	1.41
100223	2.22
100224	2.20
100225	2.50
100226	1.62
100228	2.06
100229	1.80
100230	1.78
100231	2.12
100232	2.49
100234	1.92
100235	2.09
100236	2.00
100237	2.59
100238	2.97
100239	2.43
100240	4.60
100241	2.37
100242	2.68
100243	1.87
100244	2.34
100246	2.81
100248	1.80
100249	2.23
100252	2.30
100253	2.46
100254	2.05
100255	2.16
100256	2.07
100258	2.31
100259	2.62
100260	3.34
100262	3.13
100263	2.32
100264	1.95
100265	2.18
100266	2.60
100267	2.57
100268	2.27
100269	2.58
100270	1.01
100271	1.78
100275	2.20
100276	2.85
100277	0.95
100279	1.98
100280	1.80
100281	2.14
100282	1.60
102005	0.97
102006	1.00
102009	0.91
102013	3.31
103026	1.43
103027	1.40
103028	1.43
103030	0.91
103031	1.29
103032	1.78
103034	1.17
103300	8.70

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
103301	2.40
104002	0.57
104008	1.36
104015	1.31
104017	1.31
104018	1.32
104024	1.52
104029	1.31
104034	1.31
104036	1.33
104037	1.31
104038	1.43
104040	1.28
104045	1.43
104046	1.32
104054	1.34
104057	1.30
104060	1.33
110001	2.49
110002	1.69
110003	2.51
110004	2.40
110005	2.24
110006	3.00
110007	2.42
110008	2.22
110009	1.12
110010	2.73
110011	2.22
110013	1.39
110014	1.57
110015	1.62
110016	2.92
110017	1.24
110018	2.17
110020	2.99
110023	2.32
110024	3.45
110025	2.66
110026	1.66
110027	1.50
110028	2.54
110029	1.98
110030	2.84
110031	1.36
110032	2.54
110033	2.76
110034	1.35
110035	2.61
110037	1.54
110038	2.10
110039	2.72
110040	1.90
110041	2.00
110042	2.27
110043	3.05
110044	2.46
110045	2.26
110046	2.07
110048	1.44
110049	1.26
110050	1.62
110051	1.80
110052	1.00
110054	2.03
110056	1.25
110059	2.26
110061	1.19
110062	0.89
110063	1.62
110064	1.87
110065	1.08
110066	2.35
110069	2.46
110070	1.69
110071	1.22

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
110072	1.44
110073	2.05
110074	2.58
110075	2.22
110076	2.61
110078	2.61
110079	1.15
110080	1.91
110082	3.13
110083	2.93
110086	1.89
110087	2.56
110088	0.89
110089	2.16
110091	2.89
110092	1.60
110093	1.40
110094	0.94
110095	2.83
110096	1.35
110097	1.24
110098	1.64
110100	1.23
110101	1.49
110103	1.22
110104	2.04
110105	2.37
110107	1.94
110108	0.79
110109	1.48
110111	1.70
110112	1.38
110113	1.35
110114	1.60
110115	2.37
110118	0.74
110120	1.08
110121	4.41
110122	2.62
110124	2.05
110125	3.01
110127	1.48
110128	2.26
110129	2.64
110130	1.69
110132	1.92
110134	1.16
110135	4.19
110140	2.22
110141	1.13
110142	1.42
110143	2.84
110144	1.82
110146	1.73
110149	1.52
110150	2.35
110152	1.73
110153	1.88
110155	1.29
110156	1.45
110161	3.12
110163	3.02
110164	2.27
110165	2.58
110166	2.36
110168	2.64
110169	6.44
110171	2.04
110172	3.19
110174	1.74
110176	2.56
110177	2.52
110178	7.50
110179	2.12
110181	1.11
110183	2.23

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
110184	2.04
110185	1.36
110186	3.11
110187	2.20
110188	2.72
110189	1.74
110190	1.62
110191	3.24
110192	2.27
110193	2.89
110194	1.37
110195	1.06
110198	2.85
110200	4.09
110201	2.16
110203	1.30
110205	1.62
110207	1.20
110208	1.51
110209	1.32
112000	1.03
112003	1.55
112004	0.80
113026	1.20
113027	1.41
113300	2.09
114000	1.31
114003	1.31
114008	1.31
114010	1.60
114015	1.31
114016	1.31
114017	1.33
114020	1.31
114022	1.31
114023	1.42
114024	1.34
114025	1.35
114030	1.44
114031	1.31
114032	1.32
114033	1.30
114034	1.30
120001	2.73
120002	2.74
120003	1.92
120004	2.04
120005	3.07
120006	2.08
120007	3.04
120009	1.13
120010	2.52
120012	1.30
120014	2.80
120018	0.71
120019	2.43
120022	1.25
120024	0.80
120025	0.78
120026	2.05
120027	1.83
123025	1.46
123300	1.55
124001	1.31
130001	1.53
130002	2.87
130003	2.91
130005	3.26
130006	1.88
130007	3.34
130008	1.84
130009	2.31
130010	0.87
130011	2.35
130012	1.55
130013	2.53

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
130014	3.05
130015	1.13
130016	1.96
130017	1.83
130018	2.05
130019	1.76
130021	1.04
130022	2.25
130024	2.67
130025	1.81
130026	3.37
130027	1.54
130028	2.15
130029	1.95
130030	0.84
130031	2.21
130034	1.50
130035	1.89
130036	3.68
130037	1.67
130043	1.57
130044	1.53
130045	1.51
130048	1.22
130049	2.37
130054	0.60
130056	0.73
130060	2.53
130061	1.44
133025	1.42
134002	1.31
134009	1.36
140001	2.07
140002	2.23
140003	1.57
140005	1.34
140007	2.46
140008	2.40
140010	2.28
140011	1.68
140012	2.14
140013	2.56
140014	2.22
140015	2.68
140016	1.86
140018	1.75
140019	1.56
140024	1.72
140025	1.42
140026	2.32
140027	1.85
140029	1.98
140030	2.68
140031	1.58
140032	2.80
140033	2.48
140034	2.22
140035	1.61
140036	2.46
140037	1.51
140038	1.53
140040	2.19
140041	1.99
140042	1.54
140043	2.63
140045	1.53
140046	2.29
140047	1.34
140048	2.09
140049	1.91
140051	2.45
140052	2.55
140053	2.92
140054	2.35
140055	1.52
140058	2.12

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
140059	2.32
140061	1.59
140062	2.05
140063	2.09
140064	3.62
140065	2.29
140066	2.02
140067	2.43
140068	1.68
140069	1.76
140070	1.87
140074	1.20
140075	2.27
140077	1.56
140079	2.30
140080	2.01
140081	1.61
140082	1.82
140083	1.36
140084	2.86
140086	1.95
140087	2.22
140088	1.53
140089	2.66
140090	2.45
140091	4.81
140093	2.54
140094	2.15
140095	1.75
140097	1.31
140100	2.67
140101	1.88
140102	1.91
140103	1.54
140105	2.53
140107	1.64
140108	2.71
140109	1.61
140110	2.14
140112	1.78
140113	2.28
140114	2.31
140115	1.78
140116	2.45
140117	2.57
140118	2.62
140119	2.46
140120	2.27
140121	2.34
140122	2.29
140125	2.03
140127	4.03
140128	1.69
140129	1.93
140130	2.34
140132	2.79
140133	2.04
140135	2.48
140137	1.68
140138	1.91
140139	1.66
140140	1.68
140141	2.11
140143	2.27
140144	1.53
140145	1.91
140146	1.89
140147	2.23
140148	2.69
140150	1.51
140151	1.28
140152	1.66
140155	2.27
140158	1.63
140160	3.01
140161	2.34

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
140162	2.26
140164	2.67
140165	2.12
140166	1.79
140167	2.44
140168	1.86
140170	1.49
140171	1.29
140172	1.48
140173	1.21
140174	2.00
140176	2.53
140177	1.95
140179	2.43
140180	1.88
140181	1.81
140182	1.74
140184	1.80
140185	2.35
140186	2.04
140187	2.01
140188	1.25
140189	2.04
140190	1.71
140191	1.93
140193	2.35
140197	1.79
140199	1.71
140200	1.91
140202	2.35
140203	2.36
140205	3.84
140206	1.04
140207	2.69
140208	2.26
140209	2.56
140210	2.02
140211	2.32
140212	1.18
140213	1.36
140215	1.27
140217	2.16
140218	1.82
140220	1.84
140223	2.62
140224	2.14
140228	2.13
140230	1.09
140231	2.27
140233	2.45
140234	2.29
140236	1.27
140239	2.53
140240	1.97
140242	2.56
140245	1.73
140246	1.65
140250	1.90
140251	2.78
140252	1.97
140253	3.18
140258	2.20
140271	1.96
140275	2.32
140276	2.23
140280	1.36
140281	2.44
140285	2.00
140286	2.05
140288	1.95
140289	2.20
140290	3.07
140291	2.46
140292	2.27
140294	2.59
140297	1.53

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
140300	1.19
142006	0.92
142009	4.17
143025	1.17
143026	1.24
143027	1.30
144005	1.38
144019	0.89
144026	1.31
144029	1.09
144030	1.37
144031	1.21
144035	1.31
144036	1.31
150001	1.96
150002	2.05
150003	2.20
150004	2.00
150005	2.22
150006	2.64
150007	2.24
150008	2.28
150009	2.61
150011	1.81
150012	2.54
150013	1.99
150014	2.02
150015	2.54
150018	2.76
150019	2.03
150020	2.50
150022	2.46
150023	2.43
150024	1.25
150026	2.55
150027	1.64
150029	3.50
150030	2.38
150031	1.59
150033	2.22
150034	2.56
150036	1.82
150037	2.45
150038	1.62
150039	1.99
150042	2.61
150043	1.77
150044	2.22
150045	1.61
150046	2.49
150047	1.78
150049	1.43
150050	1.64
150051	2.00
150052	2.23
150053	1.90
150054	1.55
150057	2.05
150058	2.74
150059	2.27
150060	1.58
150061	1.85
150062	2.07
150063	1.43
150064	1.90
150065	2.26
150066	1.37
150067	2.01
150069	2.47
150070	1.79
150071	1.48
150072	1.97
150073	1.83
150074	2.23
150075	1.94
150076	1.96

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
150078	1.76
150079	1.62
150084	3.13
150089	2.37
150090	1.74
150091	1.80
150092	1.46
150094	2.06
150095	2.20
150096	2.05
150097	2.00
150098	1.65
150099	2.33
150101	1.89
150102	1.61
150103	1.25
150104	1.91
150105	1.89
150106	1.78
150109	3.04
150110	1.51
150111	1.58
150112	2.38
150114	1.54
150115	2.66
150122	1.98
150123	1.16
150124	1.65
150125	2.13
150126	2.50
150127	1.15
150128	2.44
150129	1.93
150130	1.33
150132	2.49
150133	2.13
150134	1.68
150136	2.41
152007	0.58
152009	0.50
153025	1.67
153027	2.54
153029	1.25
153030	1.65
154009	1.49
154011	1.63
154013	1.41
154014	1.30
154026	1.41
154028	1.21
154031	1.38
154032	1.56
154035	1.35
154036	1.32
154037	1.43
154038	1.47
154042	1.44
160001	3.07
160002	2.01
160003	1.86
160005	2.09
160007	1.11
160008	2.11
160009	1.94
160012	1.52
160013	2.85
160014	1.68
160016	2.75
160018	1.50
160020	1.59
160021	2.33
160023	1.66
160024	2.57
160026	1.81
160027	1.84
160028	2.31

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
160029	3.20
160030	3.22
160031	1.61
160032	2.21
160033	2.76
160034	2.04
160035	0.99
160036	1.97
160037	1.95
160039	1.57
160040	3.33
160041	1.46
160043	1.59
160044	2.22
160045	2.62
160046	2.10
160047	2.24
160048	1.62
160049	1.03
160050	2.38
160051	1.73
160052	1.77
160054	1.83
160055	2.01
160056	1.61
160057	2.60
160058	1.56
160060	1.79
160061	2.05
160062	1.56
160063	1.78
160064	2.89
160065	1.92
160066	2.25
160067	2.30
160069	3.06
160070	1.57
160072	2.16
160073	1.27
160074	1.49
160075	1.74
160076	2.40
160077	1.75
160079	3.18
160080	2.54
160081	1.81
160082	3.05
160083	2.70
160085	1.47
160086	1.29
160088	1.55
160089	2.63
160090	1.56
160091	1.64
160092	1.79
160093	1.35
160094	2.74
160095	1.10
160097	2.05
160098	1.49
160099	1.74
160101	1.12
160102	2.60
160103	1.26
160104	1.96
160106	2.86
160107	1.46
160108	2.22
160109	1.59
160110	2.09
160111	1.60
160112	3.03
160113	1.29
160114	2.53
160115	2.31
160116	1.94

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
160117	2.69
160118	1.74
160120	0.91
160122	2.22
160124	2.12
160126	1.72
160129	2.78
160130	1.44
160131	1.59
160134	1.11
160135	1.71
160138	1.29
160140	1.62
160142	1.33
160143	1.84
160145	1.63
160146	2.66
160147	1.64
160151	1.37
160152	1.42
160153	2.57
164002	2.09
170001	3.10
170004	1.53
170006	1.97
170008	2.10
170009	2.13
170010	2.63
170012	2.93
170013	3.30
170014	1.84
170015	2.32
170016	2.49
170017	2.45
170018	1.60
170019	3.08
170020	3.38
170022	2.37
170023	5.05
170024	2.18
170025	1.96
170026	2.92
170027	3.06
170030	1.50
170031	1.88
170032	1.53
170033	2.49
170034	1.77
170035	1.44
170036	0.97
170037	2.84
170038	0.99
170039	1.58
170040	2.29
170041	1.34
170043	1.11
170044	1.52
170045	1.67
170049	2.82
170051	0.97
170052	1.48
170053	0.98
170054	1.59
170055	1.66
170056	0.98
170057	1.53
170058	4.02
170060	2.32
170061	2.01
170063	1.24
170064	1.47
170066	1.12
170067	2.05
170068	3.20
170070	2.12
170072	1.23

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
170073	1.28
170074	2.04
170075	1.02
170076	1.87
170077	1.94
170079	1.38
170080	1.48
170081	1.30
170082	1.90
170084	1.68
170085	1.61
170086	3.15
170088	1.42
170089	1.21
170090	1.24
170092	1.28
170093	1.47
170094	1.87
170095	2.66
170097	1.78
170098	2.43
170099	2.05
170100	0.74
170101	1.38
170102	1.65
170103	4.11
170104	3.30
170105	1.98
170106	1.13
170109	1.90
170110	1.61
170112	1.38
170113	2.22
170114	2.28
170115	1.73
170116	2.67
170117	0.88
170119	1.35
170120	3.00
170122	2.51
170123	3.32
170124	1.94
170126	1.13
170128	1.84
170131	1.83
170133	3.36
170134	1.67
170137	2.62
170139	0.66
170142	2.84
170143	2.81
170144	2.74
170145	2.12
170146	2.79
170147	1.36
170148	2.40
170150	3.13
170151	1.82
170152	1.35
170160	1.38
170164	1.63
170166	1.34
170168	1.13
170171	1.33
170175	4.10
170176	2.39
170182	3.25
172004	0.74
173025	1.24
173026	1.14
173027	1.93
173028	1.30
174003	1.39
174006	0.83
174012	1.31
174014	1.63

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
174016	1.42
174018	1.32
180001	2.14
180004	1.75
180005	2.13
180006	1.14
180007	2.57
180009	2.62
180010	2.50
180011	2.15
180012	2.43
180013	2.50
180014	2.91
180015	1.71
180016	2.19
180017	2.33
180018	2.49
180019	2.80
180021	1.77
180023	1.79
180024	1.97
180025	2.16
180026	1.90
180027	2.73
180030	1.32
180031	1.47
180032	1.24
180033	1.72
180034	1.83
180035	2.38
180036	2.52
180037	2.40
180038	2.07
180040	3.16
180041	2.19
180042	1.81
180043	1.33
180044	2.31
180045	2.37
180046	2.15
180047	1.57
180048	2.13
180049	2.97
180051	2.73
180054	2.10
180055	1.84
180056	2.22
180058	1.35
180059	1.43
180060	0.79
180063	1.36
180064	2.15
180065	1.29
180066	2.34
180067	2.38
180070	1.70
180072	1.61
180075	1.70
180078	2.06
180079	1.62
180080	3.07
180087	2.76
180088	3.19
180092	2.05
180093	2.56
180094	1.48
180095	1.79
180099	1.62
180101	1.63
180102	2.50
180103	2.74
180104	2.27
180105	1.53
180106	1.44
180108	1.39
180115	1.53

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
180116	2.27
180117	2.17
180118	1.48
180120	1.47
180121	2.30
180122	1.58
180123	2.48
180124	2.94
180126	1.39
180127	2.61
180128	1.87
180129	1.29
180130	2.61
180132	2.46
180133	2.23
180134	1.80
180136	4.00
180137	1.72
180138	1.98
180139	1.43
180140	1.17
183026	0.99
183027	1.09
183028	1.28
184000	1.58
184002	0.78
184007	1.31
184008	2.67
184009	1.35
184015	0.84
190003	1.93
190004	2.30
190007	1.77
190013	1.76
190014	2.37
190015	2.21
190017	2.01
190018	2.04
190019	2.01
190020	2.33
190025	1.90
190026	2.13
190027	1.96
190029	1.89
190033	1.10
190034	1.95
190035	3.11
190036	2.52
190037	0.98
190039	1.93
190040	2.27
190041	2.45
190043	1.08
190044	1.95
190045	2.08
190046	1.76
190048	1.93
190049	2.50
190050	1.87
190053	1.45
190054	2.16
190059	1.65
190060	2.74
190064	3.53
190065	2.15
190071	1.38
190077	0.83
190078	2.94
190079	2.02
190081	1.06
190083	1.40
190086	2.59
190088	2.25
190089	1.67
190090	1.64
190092	1.81

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
190095	1.86
190098	1.45
190099	1.34
190102	2.88
190103	0.93
190106	1.61
190109	1.89
190110	1.41
190111	3.17
190112	2.61
190113	2.92
190114	1.72
190115	4.31
190116	2.10
190118	1.69
190120	1.45
190124	2.27
190125	2.02
190128	1.98
190130	1.69
190131	1.33
190133	1.48
190134	1.13
190135	2.31
190136	0.99
190138	6.32
190140	1.71
190142	1.01
190144	2.45
190145	1.46
190146	1.83
190147	1.72
190148	1.12
190149	1.62
190151	1.77
190155	1.37
190156	0.93
190158	2.29
190160	2.59
190162	1.60
190164	2.97
190167	1.86
190170	0.92
190173	1.95
190175	2.30
190176	1.55
190177	2.38
190178	1.19
190182	2.06
190184	1.21
190185	2.55
190186	1.13
190189	0.81
190190	1.37
190191	2.04
190196	2.35
190197	2.41
190200	2.51
190201	2.07
190202	1.79
190203	2.56
190204	2.25
190205	2.38
190206	1.85
190207	2.90
190208	1.03
190218	2.28
190231	4.22
192004	1.24
192005	1.34
192006	1.68
192008	1.32
192016	3.42
193027	1.59
193028	1.51
193034	1.19

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
193038	1.34
193041	0.77
193044	2.33
193300	1.34
194014	1.31
194019	1.32
194022	1.09
194023	1.26
194024	1.39
194031	1.39
194044	1.30
194058	1.31
200001	2.58
200002	2.11
200003	1.73
200006	1.31
200007	1.58
200008	1.99
200009	2.10
200012	1.59
200013	1.91
200015	2.04
200016	1.77
200017	2.54
200018	1.96
200019	2.07
200020	2.09
200021	2.31
200023	0.98
200024	2.28
200025	2.33
200026	1.72
200027	1.64
200028	1.76
200031	1.76
200032	1.84
200033	2.02
200034	2.48
200037	1.82
200038	2.22
200039	2.30
200040	2.69
200041	2.24
200043	1.20
200050	2.60
200051	2.45
200052	1.70
200055	1.38
200062	1.35
200063	2.32
200066	1.94
204005	1.45
204006	1.30
204007	0.66
213027	.41
213028	3.88
214000	1.30
214003	1.30
214015	1.09
214017	1.35
220001	2.08
220003	2.07
220004	2.17
220006	2.14
220008	2.00
220010	2.51
220011	1.51
220015	2.08
220016	2.06
220017	1.98
220019	2.21
220020	1.72
220021	2.02
220023	1.93
220024	2.16
220025	1.66

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
220028	1.90
220029	2.03
220030	1.43
220031	1.69
220033	2.00
220035	2.24
220038	2.00
220041	2.17
220042	2.00
220046	2.55
220049	2.27
220050	2.08
220051	2.36
220052	1.99
220053	1.93
220055	2.41
220057	2.17
220058	1.95
220060	2.24
220062	1.56
220063	2.06
220064	1.81
220065	1.84
220066	2.41
220067	2.28
220068	1.19
220070	1.90
220071	1.75
220073	1.91
220074	1.97
220075	2.55
220076	1.89
220077	1.97
220079	1.86
220080	1.99
220081	1.87
220082	2.17
220083	1.84
220084	2.44
220086	1.81
220088	1.99
220089	2.00
220090	1.93
220092	2.05
220094	1.85
220095	1.81
220098	2.14
220100	1.87
220101	2.12
220104	1.34
220105	2.03
220106	2.07
220107	2.22
220108	2.01
220111	2.23
220116	1.65
220119	1.83
220123	1.80
220126	2.22
220128	1.87
220135	2.09
220162	1.54
220163	1.49
220171	1.51
222000	1.46
222002	0.96
222006	1.18
222008	0.91
222024	2.77
222026	0.89
222027	0.98
222029	1.19
222035	1.15
222043	0.89
222044	1.63
222045	4.98

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
223026	1.28
223027	1.35
223028	1.60
223029	1.09
223030	1.67
223302	1.88
224007	1.45
224013	1.55
224018	1.40
224021	1.29
224022	2.16
224023	2.45
224029	1.30
224034	1.41
224035	1.37
230001	1.86
230002	2.82
230003	1.83
230004	2.55
230005	2.21
230006	2.01
230007	2.65
230012	1.06
230013	2.04
230015	2.08
230017	2.61
230019	2.88
230020	3.03
230021	2.71
230022	2.48
230024	2.64
230027	1.89
230029	2.40
230030	2.65
230031	2.42
230032	3.13
230034	2.04
230035	2.09
230036	2.40
230037	2.23
230038	2.72
230040	2.46
230041	2.39
230042	1.93
230046	1.88
230047	2.86
230053	1.35
230054	2.40
230055	1.96
230056	1.74
230058	2.52
230059	2.92
230060	2.26
230062	1.67
230063	2.10
230065	2.52
230066	2.45
230068	2.61
230069	1.91
230070	3.08
230071	1.75
230072	2.17
230075	2.53
230076	4.12
230077	3.10
230078	2.03
230080	3.05
230081	2.32
230082	1.93
230085	3.46
230086	1.74
230087	2.10
230089	2.32
230092	2.54
230093	2.75
230095	2.54

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
230096	2.19
230097	2.92
230099	2.08
230100	1.63
230101	2.07
230103	2.02
230104	2.33
230105	3.26
230106	1.92
230107	1.32
230108	2.20
230110	2.43
230111	1.65
230113	1.30
230114	6.78
230115	1.73
230116	1.53
230117	2.37
230118	2.01
230119	2.04
230120	2.55
230121	2.38
230122	3.08
230124	2.14
230125	1.74
230128	3.16
230129	2.41
230130	2.71
230132	2.19
230133	2.34
230134	2.25
230135	2.53
230137	2.29
230141	2.25
230142	2.32
230143	2.41
230144	2.34
230145	2.29
230146	1.96
230147	1.81
230149	1.53
230151	1.96
230153	2.02
230154	1.40
230155	1.56
230156	2.14
230157	2.56
230159	2.60
230162	1.02
230165	2.96
230167	2.68
230169	2.53
230171	1.46
230172	1.73
230174	2.08
230175	1.29
230176	2.75
230178	1.77
230180	1.93
230184	4.93
230186	1.78
230188	2.23
230189	1.32
230190	1.19
230191	1.96
230193	2.13
230194	1.12
230195	2.63
230197	3.23
230199	2.08
230201	2.40
230204	2.62
230205	2.36
230207	2.08
230208	2.25
230211	0.92

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
230212	1.94
230213	1.32
230216	1.91
230217	2.45
230219	2.39
230221	2.12
230222	2.46
230223	2.71
230227	2.45
230230	2.74
230232	1.07
230235	2.06
230236	2.56
230239	2.22
230241	2.32
230244	2.38
230253	2.24
230254	2.45
230257	4.97
230259	2.62
230264	2.86
230269	2.63
230270	3.10
230273	1.84
230275	2.24
230276	1.21
230278	1.76
230279	1.35
230280	2.02
233025	1.25
233026	1.06
233027	1.20
233300	3.11
234006	1.37
234011	1.34
234021	1.09
234030	2.61
240001	3.00
240002	2.77
240004	1.26
240005	1.28
240006	2.65
240007	2.69
240008	2.77
240009	1.46
240010	3.32
240011	2.39
240013	2.37
240014	2.42
240016	2.88
240017	3.49
240018	3.00
240019	2.66
240020	2.02
240021	1.89
240022	2.19
240023	2.28
240025	1.95
240027	2.58
240028	2.10
240029	2.69
240030	2.93
240031	2.12
240036	2.25
240037	1.80
240038	2.90
240040	2.37
240041	2.44
240043	3.09
240044	2.40
240045	1.84
240047	2.92
240048	3.42
240049	1.82
240050	2.90
240051	1.90

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
240052	2.04
240053	2.93
240056	2.93
240057	2.22
240058	1.40
240059	3.22
240061	4.29
240063	2.50
240064	2.83
240065	1.64
240066	3.84
240069	3.35
240071	2.27
240072	2.60
240073	1.57
240075	2.27
240076	2.59
240077	2.36
240078	3.37
240079	1.84
240080	1.91
240082	1.77
240083	2.22
240084	2.68
240085	1.45
240086	2.13
240087	2.13
240088	1.83
240089	1.22
240090	3.11
240093	2.50
240094	1.51
240096	1.45
240097	5.89
240098	2.02
240099	1.71
240100	2.66
240101	2.00
240102	1.58
240103	1.80
240104	2.59
240105	1.27
240106	1.37
240107	1.65
240108	2.35
240109	1.83
240110	2.25
240111	2.24
240112	1.89
240114	1.77
240115	2.91
240116	1.60
240117	1.21
240119	1.18
240121	2.15
240122	1.34
240123	2.15
240124	2.17
240125	1.73
240127	1.60
240128	2.46
240129	2.03
240130	2.83
240132	2.62
240133	3.09
240135	0.79
240137	3.34
240138	1.34
240139	2.00
240141	2.37
240142	1.76
240143	1.48
240144	2.59
240145	1.51
240146	2.00
240148	1.75

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
240150	1.14
240152	2.44
240153	1.78
240154	1.43
240155	2.44
240157	2.23
240160	2.45
240161	1.78
240162	2.04
240163	1.81
240166	3.39
240169	2.32
240170	1.78
240171	2.78
240172	1.84
240173	2.46
240179	1.69
240184	1.73
240187	3.17
240193	2.03
240200	0.89
240207	2.57
240210	2.57
240211	0.95
242004	1.50
243300	1.31
243302	5.75
250001	2.19
250002	1.48
250003	1.01
250004	2.14
250005	0.90
250006	2.02
250007	1.83
250008	1.07
250009	2.75
250010	1.53
250012	1.37
250015	2.17
250017	1.30
250018	0.62
250019	2.13
250020	1.32
250021	0.78
250023	0.67
250024	0.90
250025	1.89
250027	1.65
250029	1.56
250030	1.04
250031	2.41
250032	1.96
250033	1.61
250034	3.37
250035	1.68
250036	1.76
250037	1.43
250038	1.30
250039	1.02
250040	2.33
250042	2.15
250043	1.74
250044	1.82
250045	1.71
250048	2.91
250049	1.35
250050	2.03
250051	1.16
250057	2.24
250058	2.47
250059	1.78
250060	0.97
250061	1.52
250063	1.31
250065	1.35
250066	1.07

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
250067	1.34
250068	1.43
250069	3.24
250071	1.12
250072	2.22
250076	0.66
250077	1.33
250078	2.40
250079	1.17
250081	3.07
250082	2.61
250083	1.25
250084	2.71
250085	1.31
250088	1.89
250089	1.57
250093	1.81
250094	3.47
250095	1.95
250096	1.82
250097	1.96
250098	1.24
250099	2.80
250100	2.62
250101	1.06
250102	2.62
250104	3.07
250105	1.30
250107	1.15
250109	1.19
250112	1.19
250117	1.37
250119	1.59
250120	2.08
250122	2.53
250123	2.87
250124	1.28
250125	2.08
250126	1.19
250128	1.63
250131	1.57
250134	0.91
250136	2.70
250138	3.12
250141	2.85
250145	1.26
250146	1.23
250148	2.11
250149	1.22
253025	1.78
254001	1.32
260001	2.22
260002	2.23
260003	1.52
260004	1.43
260005	2.38
260006	2.06
260007	2.52
260008	1.08
260009	2.43
260011	2.21
260012	1.45
260013	1.95
260014	2.34
260015	2.15
260017	2.67
260018	1.11
260019	1.63
260020	2.17
260021	2.00
260022	2.25
260023	2.29
260024	1.52
260025	3.21
260027	2.35
260029	2.02

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
260030	1.21
260031	2.38
260032	2.31
260034	1.31
260035	1.46
260036	1.79
260039	1.52
260040	2.36
260042	2.08
260044	1.84
260047	2.09
260048	1.87
260050	2.38
260052	2.07
260053	1.65
260054	2.14
260055	1.65
260057	1.64
260059	2.22
260061	2.44
260062	2.33
260063	2.01
260064	2.31
260065	2.34
260066	1.93
260067	1.18
260068	2.74
260070	1.36
260073	1.72
260074	1.67
260077	2.44
260078	2.50
260079	1.54
260080	1.95
260081	2.05
260082	1.49
260085	2.58
260086	1.73
260091	2.81
260094	2.31
260095	2.09
260096	2.94
260097	2.94
260100	1.81
260102	1.05
260103	1.83
260104	2.19
260105	2.45
260107	3.26
260108	2.24
260109	1.90
260110	2.14
260113	2.22
260115	1.63
260116	2.21
260119	2.50
260120	2.07
260122	1.92
260123	1.29
260127	1.79
260128	1.31
260129	2.04
260131	1.92
260134	2.23
260137	2.83
260138	2.22
260141	1.89
260142	2.46
260143	1.27
260147	1.70
260148	1.26
260158	1.63
260159	2.15
260160	1.64
260162	2.65
260163	1.78

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
260164	1.66
260166	2.19
260172	1.86
260173	1.23
260175	2.64
260176	2.50
260177	3.17
260178	3.40
260179	2.25
260180	2.10
260183	2.52
260186	2.55
260188	2.19
260189	0.89
260190	2.45
260191	2.55
260193	2.25
260195	2.05
260197	2.16
260198	2.48
260200	1.87
262001	1.06
262011	0.81
263025	1.40
263026	2.48
263300	2.06
263301	1.47
263302	1.74
264005	1.09
264007	1.07
264008	1.09
264010	0.89
264013	1.32
264016	2.84
264017	1.50
264021	1.31
264024	1.31
264025	1.03
264026	1.33
270002	2.30
270003	2.42
270004	2.99
270006	0.57
270007	1.05
270009	1.55
270011	2.44
270012	3.15
270013	2.49
270014	2.85
270016	1.06
270017	1.94
270019	1.17
270021	1.95
270023	2.70
270024	1.00
270026	1.72
270027	1.31
270028	2.26
270029	1.80
270032	2.54
270033	0.94
270035	1.59
270036	1.21
270039	1.81
270040	1.80
270041	1.49
270044	2.51
270046	1.19
270048	1.93
270049	1.78
270050	1.92
270051	2.52
270052	1.09
270053	0.99
270057	2.21
270058	1.58

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
270059	0.64
270060	0.97
270063	1.11
270068	2.08
270072	0.62
270073	1.13
270079	1.45
270080	1.92
270081	1.03
270082	0.96
270083	1.27
270084	1.53
280001	1.87
280005	2.46
280009	3.31
280010	1.00
280011	1.45
280012	1.98
280013	1.90
280014	1.72
280015	1.98
280017	1.89
280018	1.69
280020	2.20
280021	2.58
280022	1.17
280023	2.68
280024	1.49
280025	1.11
280026	1.45
280028	2.22
280029	1.36
280030	2.09
280031	1.38
280032	2.87
280033	1.58
280034	[illegible]
280035	1.60
280037	1.27
280038	2.06
280039	2.08
280040	2.88
280041	1.31
280042	1.18
280043	1.85
280045	1.83
280046	1.52
280047	2.11
280048	1.56
280049	1.40
280050	2.04
280051	2.51
280052	2.47
280054	1.88
280055	1.71
280056	1.41
280057	2.35
280058	1.81
280060	2.10
280061	3.34
280062	1.89
280064	2.35
280065	2.32
280066	1.63
280068	1.39
280070	1.93
280073	1.72
280074	1.51
280075	2.66
280076	1.76
280077	2.47
280079	1.13
280080	1.48
280081	2.37
280082	1.49
280083	1.73

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
280084	1.67
280085	2.28
280088	2.91
280089	1.83
280090	1.18
280091	2.26
280092	1.58
[illegible]0094	1.76
280097	1.48
280098	1.04
280101	1.06
280102	1.49
280104	1.86
280105	2.44
280106	2.10
280107	1.98
280108	3.67
280109	1.21
280110	2.48
280111	1.90
280114	1.42
280115	2.11
280117	2.21
280118	1.72
283301	1.81
284007	2.57
290001	2.08
290002	0.73
290003	2.66
290005	2.98
290006	1.79
290007	1.41
290008	2.63
290009	2.00
290010	2.06
290011	1.05
290012	2.32
290013	0.90
290014	1.98
290015	1.35
290016	2.02
290019	2.27
290020	0.90
290021	2.21
290022	2.62
290027	1.16
290032	2.00
290038	1.59
292002	0.95
293027	1.20
294003	1.33
294004	1.32
294005	1.48
300001	2.49
300003	1.71
300005	2.35
300006	1.52
300007	2.44
300008	2.45
300009	1.98
300010	1.69
300011	2.13
300013	1.55
300014	2.25
300015	2.41
300016	1.86
300017	1.86
300018	2.31
300019	2.10
300021	1.85
300022	2.17
300023	2.01
300024	2.07
300028	1.60
300029	2.69
300033	1.51

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
303026	1.74
303027	1.41
304000	0.79
304001	0.15
304003	1.31
310001	2.12
310002	1.95
310005	2.21
310006	2.54
310008	2.74
310009	2.32
310010	1.94
310011	2.77
310013	2.10
310015	2.12
310016	2.26
310017	2.52
310018	2.00
310019	2.37
310020	2.19
310021	2.07
310022	2.26
310024	2.26
310025	2.20
310026	1.99
310027	2.07
310028	1.95
310029	3.34
310031	2.06
310032	2.11
310034	2.51
310036	1.71
310037	2.22
310039	2.60
310041	2.21
310042	2.41
310043	2.06
310044	2.07
310045	2.46
310047	2.44
310048	2.36
310050	1.75
310051	2.59
310052	1.99
310054	2.18
310056	1.80
310057	2.31
310058	1.19
310060	2.81
310061	2.27
310063	2.25
310064	2.23
310067	2.45
310069	2.50
310070	2.28
310072	2.60
310073	1.84
310074	1.39
310076	2.17
310077	2.45
310078	1.89
310081	2.28
310083	1.46
310084	2.00
310086	2.18
310088	1.73
310090	2.19
310091	2.53
310092	2.22
310093	1.92
310096	2.50
310105	1.36
310111	1.95
310112	2.22
310113	2.25
310115	1.86

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
310116	2.33
310118	2.24
310120	1.58
312014	0.98
313025	1.34
313027	1.42
313029	1.53
313030	1.15
314010	1.42
314011	1.32
314012	1.70
314021	1.45
314022	1.30
320001	1.41
320002	1.71
320003	2.33
320004	2.32
320005	2.82
320006	2.64
320009	2.35
320011	1.66
320012	2.37
320013	2.07
320014	1.76
320016	2.76
320017	1.93
320018	2.60
320019	1.14
320021	1.66
320022	2.97
320023	1.26
320030	1.81
320031	1.20
320032	1.34
320033	2.12
320035	1.12
320037	2.03
320038	2.52
320046	2.05
320048	1.44
320063	2.18
320065	2.14
320067	1.20
320068	2.13
320069	1.80
320074	2.06
320079	2.13
322002	2.00
322003	0.74
323027	1.44
323028	1.66
323029	1.20
324003	1.32
324004	1.31
324007	1.46
324008	1.46
330001	2.00
330002	2.17
330003	2.16
330004	2.21
330005	2.18
330006	2.13
330007	2.13
[illegible]0008	2.17
330010	2.00
330011	1.61
330012	2.04
330013	2.44
330014	1.85
330016	1.78
330023	2.34
330024	2.20
330025	1.76
330027	0.83
330028	1.77
330029	1.46

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
330030	2.34
330033	1.55
330034	1.02
330036	2.14
330037	2.37
330038	1.73
330039	1.11
330041	2.91
330043	1.81
330044	2.16
330045	2.61
330046	1.89
330047	2.17
330048	2.66
330049	2.29
330053	1.74
330055	2.33
330056	1.81
330057	2.21
330058	1.99
330059	2.00
330061	2.62
330062	1.41
330064	2.24
330065	2.30
330066	1.93
330067	2.38
330072	1.82
330073	1.85
330074	2.73
330075	1.93
330078	2.18
330079	1.95
330084	2.11
330085	1.69
330086	1.82
330088	1.57
330090	2.19
330091	2.13
330092	1.18
330094	1.99
330095	2.31
330096	2.18
330097	1.68
330100	4.58
330101	2.26
330102	2.67
330103	2.51
330104	1.94
330106	2.48
330107	2.31
330108	2.12
330111	1.83
330114	0.86
330115	2.27
330116	1.85
330118	2.36
330119	2.54
330121	1.27
330122	2.50
330125	1.75
330126	2.15
330132	1.38
330133	2.64
330135	2.26
330136	1.16
330140	2.29
330141	2.22
330144	2.28
330148	1.67
330151	1.94
330152	2.34
330153	2.07
330154	2.03
330157	1.84
330158	2.38

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
330159	2.19
330160	1.92
330161	1.25
330162	3.67
330163	2.40
330164	1.79
330166	1.95
330167	3.04
330171	2.39
330175	1.90
330177	1.82
330179	1.18
330180	1.79
330181	2.08
330182	3.55
330183	1.79
330184	2.21
330185	1.65
330186	0.39
330188	2.38
330189	6.34
330191	2.03
330193	2.41
330194	1.88
330197	1.95
330198	2.21
330203	3.62
330205	1.98
330208	2.27
330209	2.09
330211	1.91
330212	2.23
330213	1.64
330214	2.26
330215	2.38
330218	1.68
330219	1.74
330221	1.98
330222	2.46
330223	1.85
330224	2.43
330225	2.13
330226	2.16
330229	1.99
330230	2.20
330232	1.94
330235	2.65
330236	1.88
330238	2.18
330239	2.06
330241	2.01
330242	2.15
330245	2.11
330246	2.37
330249	1.92
330250	2.16
330252	1.09
330254	2.00
330258	1.41
330259	2.14
330261	2.09
330263	2.52
330264	2.19
330265	1.58
330267	2.03
330268	1.43
330270	1.79
330273	2.36
330275	1.82
330276	1.74
330277	2.17
330279	2.54
330285	1.92
[illegible]0286	2.18
330290	0.97
	1.82

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
330293	1.54
330304	2.53
330306	1.70
330307	2.33
330308	2.67
330314	2.43
330316	2.96
330327	1.61
330331	2.10
330332	3.12
330333	2.90
330336	1.88
330338	2.46
330339	1.90
330340	2.38
330350	2.04
330353	2.62
330354	1.65
330357	1.88
330359	0.93
330372	2.66
330381	1.89
330386	1.90
330389	1.66
330390	1.31
330393	2.43
330394	2.31
330395	2.16
330397	1.38
330398	2.74
330399	1.25
332012	1.27
332022	1.06
333025	1.16
333027	1.18
333028	0.83
333300	1.97
334002	1.31
334023	1.63
334027	1.35
334048	1.90
334049	1.27
334055	1.34
340001	1.74
340002	3.11
340003	2.06
340004	2.45
340005	2.06
340006	1.74
340007	1.78
340008	2.04
340010	2.74
340011	1.74
340012	2.11
340013	1.76
340014	1.42
340015	2.74
340016	2.80
340017	2.49
340018	2.19
340019	1.62
340020	1.91
340021	2.46
340022	1.83
340023	1.80
340024	2.03
340025	2.51
340027	2.77
340028	2.20
340030	2.05
340031	1.83
340032	2.25
340035	2.11
340036	1.62
340037	1.65
340038	2.85

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
340039	2.43
340040	2.67
340041	1.79
340042	1.96
340044	1.63
340045	1.18
340047	2.12
340049	6.30
340050	2.19
340051	2.47
340052	1.73
340053	2.81
340054	2.34
340055	1.87
340060	2.11
340061	1.79
340063	1.37
340064	2.00
340065	1.85
340067	2.31
340068	2.28
340069	2.13
340070	2.45
340071	1.89
340072	2.14
340073	2.93
340075	2.03
340080	1.60
340084	1.63
340085	2.13
340087	1.89
340088	2.90
340089	1.50
340090	1.88
340091	2.67
340093	1.77
340094	3.18
340096	2.26
340097	2.41
340098	2.29
340099	1.96
340101	2.33
340104	1.55
340105	3.43
340106	1.67
340107	2.88
340109	3.18
340111	2.00
340112	1.70
340113	2.24
340114	1.84
340115	2.33
340116	2.54
340119	2.20
340120	1.81
340121	2.07
340123	2.04
340124	1.85
340125	3.31
340126	2.36
340127	1.80
340129	2.35
340130	2.31
340131	2.43
340132	1.87
340133	1.45
340141	2.50
340142	1.97
340143	2.56
340144	2.69
340145	2.30
340146	1.82
340147	2.77
340148	3.86
340151	2.31
340153	3.73

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
340155	2.22
340158	2.63
340159	1.46
340160	2.30
340162	1.70
340164	1.88
340166	2.00
340171	2.59
342012	0.90
343025	1.53
344005	1.31
344006	1.31
344010	1.47
344011	1.43
344014	0.71
344015	1.31
344016	1.09
344019	1.31
350001	1.12
350002	3.45
350003	2.22
350004	3.44
350005	1.99
350006	1.93
350007	2.58
350008	1.70
350009	2.96
350010	2.90
350011	2.85
350012	2.14
350013	1.84
350014	1.86
350015	3.03
350016	1.06
350017	2.50
350018	2.51
350019	3.11
350020	1.39
350021	2.41
350023	1.92
350024	1.91
350025	1.12
350027	1.38
350029	1.36
350030	2.63
350033	1.95
350034	1.96
350035	0.81
350038	2.94
350039	1.96
350041	1.45
350042	3.18
350043	2.85
350044	1.65
350047	1.92
350049	2.09
350050	1.45
350051	1.67
350053	1.27
350055	1.18
350056	1.89
350058	1.67
350060	0.77
350061	2.48
360001	2.64
360002	2.29
360003	1.85
360006	2.89
360007	1.80
360008	2.13
360009	2.29
360010	2.65
360011	1.92
360012	2.66
360013	2.14
360014	2.53

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
360016	1.81
360017	3.33
360018	2.33
360019	1.98
360020	2.08
360021	5.43
360024	2.14
360025	1.91
360026	1.75
360027	2.33
360028	3.86
360029	2.40
360030	2.23
360031	1.96
360032	2.43
360034	1.83
360035	1.99
360036	2.27
360037	2.14
360039	2.10
360040	2.00
360041	2.04
360042	2.06
360044	2.15
360045	1.77
360046	2.26
360047	1.50
360048	2.09
360049	2.55
360050	1.48
360051	2.75
360052	2.24
360054	2.54
360055	2.36
360056	2.33
360057	1.64
360058	2.00
360059	1.56
360062	2.57
360063	1.65
360064	2.42
360065	2.08
360066	2.38
360067	1.63
360068	2.26
360069	1.71
360070	1.90
360071	2.19
360072	2.20
360074	2.05
360075	2.04
360076	2.47
360077	2.20
360078	2.40
360079	2.59
360080	2.08
360081	2.19
360082	2.65
360083	2.23
360084	2.31
360085	2.57
360086	2.40
360087	2.16
360088	1.91
360089	2.00
360090	3.18
360091	2.21
360092	1.73
360093	2.81
360094	1.82
360095	2.56
360096	2.20
360098	2.80
360099	2.12
360100	2.42
360101	2.92

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
360102	2.51
360103	1.96
360106	1.58
360107	2.01
360108	1.64
360109	2.24
360112	2.44
360113	2.40
360114	1.97
360115	1.97
360116	1.68
360118	2.05
360121	2.65
360123	2.13
360125	1.64
360126	1.77
360127	2.13
360128	1.63
360129	1.65
360130	1.88
360131	2.14
360132	2.30
360133	2.40
360134	2.32
360136	1.52
360137	2.10
360140	1.69
360141	2.57
360142	1.91
360143	2.16
360144	2.43
360145	2.33
360147	2.16
360148	1.98
360149	2.50
360150	2.91
360151	2.57
360152	2.41
360153	1.78
360154	1.51
360155	2.43
360156	2.12
360159	2.11
360161	2.22
360162	2.00
360163	2.68
360164	1.58
360165	1.72
360166	1.56
360170	1.92
360172	2.63
360174	2.39
360175	2.41
360176	1.68
360177	1.47
360178	2.36
360179	2.17
360180	2.46
360184	1.43
360185	1.74
360186	1.49
360187	2.34
360188	1.73
360189	2.21
360192	2.11
360193	2.29
360194	2.06
360195	2.55
360197	1.83
360200	1.69
360203	2.33
360204	1.85
360210	2.48
360211	2.08
360212	2.15
360213	1.96

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
360218	2.25
360230	2.64
360231	1.39
360234	1.96
360236	2.29
360239	2.44
360241	1.12
360242	1.60
360244	1.31
360245	1.34
362004	2.12
362007	0.46
362014	6.82
362015	1.36
363300	1.79
363303	2.00
363305	1.79
363306	1.23
364003	1.44
364017	1.22
364026	1.35
364029	1.39
364038	1.63
370001	2.91
370002	2.47
370004	2.61
370005	1.38
370006	2.35
370007	1.70
370008	2.57
370011	1.83
370012	1.32
370013	2.58
370014	2.48
370015	1.80
370016	2.30
370017	1.70
370018	2.92
370019	2.26
370020	2.07
370021	1.30
370022	2.66
370023	2.24
370025	2.32
370026	2.80
370028	2.84
370029	2.17
370030	1.94
370032	3.38
370033	2.36
370034	2.42
370035	1.77
370036	0.72
370037	3.59
370038	1.46
370039	1.82
370040	2.84
370041	1.57
370042	1.32
370043	1.07
370045	1.52
370046	1.86
370047	2.19
370048	1.83
370049	2.76
370051	1.23
370054	2.15
370056	2.68
370057	1.86
370059	0.96
370060	2.06
370063	1.47
370064	1.48
370065	2.33
370071	1.48
370072	1.27

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
370076	2.23
370077	1.87
370078	3.26
370079	1.68
370080	1.82
370082	1.22
370083	2.29
370084	1.49
370085	1.70
370086	2.07
370089	2.06
370091	2.79
370092	2.14
370093	3.92
370094	2.86
370095	1.34
370097	1.94
370099	1.98
370100	1.24
370103	1.55
370105	2.79
370106	3.64
370108	1.53
370112	1.50
370113	1.90
370114	2.83
370121	2.39
370122	0.92
370123	2.24
370125	1.87
370126	1.24
370131	1.18
370133	1.80
370138	2.26
370139	1.64
370140	1.76
370141	1.68
370146	1.52
370148	2.10
370149	2.65
370153	2.37
370154	2.41
370156	2.29
370158	1.44
370159	2.14
370163	1.19
370165	1.28
370166	1.79
370169	1.91
370176	1.99
370177	1.48
370178	2.01
370179	1.40
370183	1.38
370186	2.40
370190	2.72
370192	2.64
372004	0.74
373025	1.44
373026	1.05
374003	1.43
374006	1.09
374008	1.62
374012	1.25
374018	1.30
374020	1.38
380001	2.56
380002	3.62
380003	3.00
380004	3.26
380005	4.66
380006	2.69
380007	2.88
380008	1.60
380009	2.04
380010	1.71

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
380011	2.19
380013	1.52
380014	2.51
380017	3.48
380018	2.29
380019	1.71
380020	3.29
380021	2.50
380022	2.52
380023	2.25
380025	2.54
380026	2.19
380027	1.81
380029	2.00
380031	1.56
380033	2.83
380035	2.69
380036	2.23
380037	2.24
380038	2.80
380039	1.87
380040	2.03
380042	1.73
380047	3.41
380048	2.03
380050	2.26
380051	2.84
380052	2.34
380056	1.38
380060	2.26
380061	2.53
380062	0.85
380063	1.64
380064	1.85
380065	1.72
380066	2.76
380068	1.29
380069	1.67
380070	1.83
380071	3.16
380072	1.67
380075	2.82
380078	1.79
380081	0.94
380082	2.43
380083	2.28
380084	1.97
380087	2.29
380088	1.95
380089	2.67
380090	2.69
390001	2.28
390002	2.31
390003	1.68
390004	2.37
390005	2.13
390006	1.56
390007	3.01
390008	1.88
390009	2.27
390010	2.46
390011	2.35
390012	2.52
390013	2.64
390015	1.83
390016	2.19
390017	2.05
390018	2.64
390019	2.13
390022	2.62
390023	1.66
390024	2.86
390025	1.01
390026	1.87
390028	2.81
390029	2.48

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
390030	2.03
390031	2.04
390032	2.24
390035	2.44
390036	2.41
390037	2.41
390039	2.16
390040	1.67
390041	2.43
390042	2.15
390043	2.81
390044	2.47
390045	2.07
390046	1.82
390047	2.37
390048	2.18
390049	2.55
390051	2.39
390052	2.37
390054	1.88
390055	2.50
390056	1.93
390057	2.26
390058	2.88
390060	1.55
390061	2.09
390062	2.64
390063	3.18
390065	2.18
390066	1.97
390067	2.36
390068	1.71
390069	2.07
390070	2.99
390071	2.38
390072	2.07
390073	2.34
390074	2.49
390075	2.39
390076	2.35
390078	2.72
390079	2.76
390080	2.27
390083	1.70
390084	1.63
390086	2.12
390088	1.82
390090	2.61
390091	2.07
390093	1.88
390095	2.17
390096	2.12
390097	2.24
390100	2.36
390101	1.57
390102	2.62
390103	1.99
390104	1.86
390106	1.90
390107	2.35
390108	2.27
390109	1.45
390110	2.02
390111	1.83
390112	2.15
390113	2.24
390114	2.04
390115	2.23
390116	2.11
390118	2.53
390119	2.35
390121	2.40
390122	2.01
390123	2.78
390125	2.16
390127	2.39

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
390128	2.69
390130	2.00
390131	2.36
390132	1.94
390133	2.42
390135	2.00
390136	3.53
390137	2.30
390138	2.02
390139	2.41
390142	1.82
390145	2.23
390146	2.08
390147	2.32
390150	1.87
390151	2.28
390152	2.31
390153	1.89
390154	2.53
390155	1.33
390156	2.31
390157	2.37
390158	2.27
390160	2.65
390161	2.45
390162	2.22
390163	2.32
390164	2.01
390166	1.65
390167	2.15
390168	2.09
390169	2.95
390173	1.97
390174	2.26
390176	2.00
390178	2.45
390179	2.23
390180	2.28
390181	2.25
390183	2.37
390184	1.62
390185	2.69
390189	2.17
390191	2.94
390192	1.97
390193	2.44
390194	2.11
390195	2.67
390196	2.10
390197	2.87
390198	1.52
390199	1.66
390200	1.45
390201	2.13
390203	2.45
390204	2.30
390205	2.28
390206	1.93
390209	1.92
390211	2.50
390213	1.01
390215	2.33
390217	2.12
390219	1.77
390222	2.63
390224	1.59
390225	2.14
390226	2.14
390228	2.10
390231	2.05
390233	1.89
390235	1.76
390236	2.00
390237	2.10
390238	2.27
390242	2.31

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
390244	0.99
390245	1.98
390246	2.30
390247	1.06
390249	1.03
390256	1.74
390258	2.34
390260	3.40
390262	2.54
390263	1.55
390265	1.46
390266	2.94
390267	2.51
390268	2.47
390270	2.41
390277	1.09
390279	2.19
392024	1.54
392025	1.67
392026	1.05
393025	1.10
393026	1.57
393027	1.76
393031	1.45
393032	1.06
393035	0.85
393037	1.35
393038	1.63
393039	1.00
393040	3.14
393042	1.68
393043	0.99
393301	1.76
393302	1.48
394006	1.31
394007	1.38
394008	2.75
394020	1.14
394023	1.34
394034	1.22
394041	1.09
400001	1.56
400002	3.46
400003	1.44
400004	1.88
400005	1.64
400006	2.37
400007	1.13
400009	1.77
400011	2.23
400012	1.03
400013	1.35
400014	4.33
400016	3.06
400017	1.95
400018	1.33
400019	3.06
400021	1.89
400022	1.78
400027	0.85
400028	1.51
400029	1.06
400032	1.10
400094	1.07
400098	1.33
400102	1.90
400106	1.48
400109	1.91
400111	1.29
400113	1.98
400114	1.37
400115	1.11
400117	2.09
400118	1.61
400120	2.23
400122	0.93

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
400123	3.45
400124	8.61
404002	2.33
410001	2.10
410004	1.90
410005	2.63
410006	2.14
410007	2.36
410008	2.45
410009	2.76
410010	1.74
410011	2.21
410012	2.51
410013	2.44
413025	1.43
414000	1.92
420002	2.45
420004	1.85
420005	2.31
420006	1.21
420007	2.47
420009	2.69
420010	2.32
420011	1.69
420014	1.38
420015	2.30
420016	1.68
420018	1.86
420019	2.11
420020	2.41
420023	2.81
420026	3.52
420027	2.14
420030	2.06
420031	1.34
420033	1.82
420036	2.49
420037	1.69
420038	1.69
420039	1.85
420042	1.78
420043	2.04
420048	2.19
420049	2.64
420051	2.34
420053	2.21
420054	1.65
420055	1.77
420056	2.63
420057	1.70
420059	1.53
420061	1.79
420062	2.16
420064	1.55
420065	2.64
420066	1.91
420067	3.06
420068	2.80
420069	1.57
420070	2.37
420071	2.47
420072	1.30
420073	2.50
420074	1.11
420075	1.79
420078	2.50
420079	1.75
420080	2.41
420081	0.87
420082	2.27
420083	3.31
420085	2.03
420086	2.36
420087	2.53
420088	2.47
420089	2.60

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
420091	2.75
423025	2.50
423026	1.63
424006	1.31
424007	1.20
424009	1.29
424010	1.40
430004	1.89
430005	2.74
430007	2.48
430008	2.62
430010	2.27
430011	3.02
430012	3.46
430013	2.95
430014	2.66
430015	2.99
430016	2.57
430018	1.57
430022	1.16
430023	1.43
430024	1.04
430026	1.20
430027	3.75
430028	2.35
430029	1.91
430031	1.67
430033	1.68
430034	1.40
430036	1.94
430037	2.47
430038	2.48
430040	2.01
430041	1.67
430043	2.11
430044	1.45
430047	1.89
430048	2.07
430049	1.31
430051	1.01
430054	1.79
430056	1.30
430057	1.62
430060	[illegible]
430062	1.70
430064	1.93
430065	1.32
430066	1.16
430073	1.57
430076	1.02
430077	2.99
430079	1.01
430087	1.14
434004	1.52
440001	2.05
440002	3.46
440003	2.67
440006	2.96
440007	1.14
440008	2.07
440009	2.91
440010	1.65
440011	2.26
440012	1.81
440014	1.62
440015	2.82
440016	1.92
440017	2.44
440018	1.54
440019	2.38
440020	1.95
440022	1.48
440023	1.54
440024	2.81
440025	2.13
440026	0.99

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
440029	2.89
440030	2.65
440031	2.25
440032	1.48
440033	1.82
440034	2.53
440035	2.40
440039	2.02
440040	1.54
440041	1.67
440046	2.35
440047	1.66
440048	2.88
440049	2.45
440050	2.22
440051	1.56
440052	1.54
440053	2.74
440054	1.97
440056	1.73
440057	1.88
440058	2.80
440059	2.36
440060	1.53
440061	1.87
440063	2.54
440064	1.66
440065	2.27
440067	2.61
440068	2.32
440070	1.68
440071	2.37
440072	2.63
440073	2.55
440078	1.59
440081	1.92
440082	2.63
440083	1.62
440084	1.41
440090	1.47
440091	2.83
440100	1.70
440102	1.92
440103	2.37
440104	2.39
440105	5.91
440109	1.94
440110	1.93
440111	1.26
440114	1.86
440115	1.85
440120	3.10
440125	2.59
440130	2.76
440131	2.59
440132	2.11
440133	2.76
440135	2.10
440137	2.03
440141	1.08
440142	1.41
440143	1.54
440144	3.51
440145	1.31
440147	6.45
440148	2.30
440149	1.44
440150	3.11
440151	1.85
440152	1.54
440153	1.95
440156	2.88
440157	1.64
440159	2.22
440161	3.36
440162	1.30

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
440166	2.53
440168	2.06
440173	3.78
440174	1.91
440175	2.45
440176	2.77
440178	2.12
440180	1.62
440181	1.87
440182	2.10
440183	3.04
440184	2.78
440185	2.30
440186	2.08
440187	1.86
440189	3.14
440192	1.68
440193	2.95
440194	1.92
440197	2.70
440200	1.92
440203	1.79
440205	1.34
440206	1.91
442007	0.98
443025	1.66
443026	1.44
443029	2.87
444003	1.07
444004	1.32
444006	1.27
444010	1.20
444017	1.31
450002	2.26
450004	1.66
450005	1.97
450007	2.83
450008	1.73
450010	2.35
450011	2.73
450014	1.64
450015	1.21
450016	2.92
450018	1.48
450020	2.07
450021	1.73
450023	2.65
450024	1.46
450025	2.71
450028	2.11
450029	1.95
450031	2.08
450032	1.52
450033	1.92
450034	2.15
450035	2.37
450037	2.25
450039	1.07
450040	1.90
450042	2.14
450044	2.21
450046	2.65
450047	2.20
450050	1.26
450051	1.77
450052	1.46
450053	2.23
450054	3.01
450055	1.70
450056	3.09
450058	3.08
450059	2.53
450063	0.92
450064	2.79
450065	1.59
450068	1.97

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
450072	2.22
450073	1.42
450076	1.67
450078	1.11
450079	2.56
450080	2.84
450081	1.87
450082	1.57
450083	3.18
450085	1.71
450087	1.84
450090	2.26
450092	1.78
450094	2.42
450096	1.75
450097	2.99
450098	1.12
450099	1.97
450101	2.43
450102	3.08
450104	2.70
450107	1.99
450108	1.31
450109	1.54
450111	2.41
450112	2.57
450113	2.56
450118	3.04
450119	2.38
450121	2.47
450123	1.71
450124	2.02
450126	1.69
450128	1.91
450130	3.22
450131	1.77
450132	2.15
450133	2.21
450135	2.15
450137	2.08
450140	1.34
450142	1.99
450143	1.70
450144	1.63
450145	1.26
450146	0.98
450147	1.84
450148	2.15
450149	1.90
450150	1.58
450151	1.52
450152	2.19
450153	2.25
450154	1.66
450155	1.57
450157	1.30
450160	1.78
450162	1.98
450163	1.61
450164	1.25
450165	1.71
450166	0.89
450169	1.16
450170	1.46
450176	2.20
450177	2.12
450178	1.40
450181	1.33
450184	2.79
450185	1.43
450187	2.03
450188	1.72
450190	2.71
450191	2.51
450192	1.65
450193	3.61

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
450194	2.17
450196	2.52
450200	2.33
450201	2.06
450203	1.84
450209	1.76
450210	1.63
450211	2.19
450214	2.43
450217	1.05
450219	2.22
450221	1.20
450222	2.22
450224	1.90
450229	2.52
450231	2.65
450234	1.39
450235	1.93
450236	2.48
450237	1.78
450239	1.35
450241	1.31
450243	1.41
450246	1.43
450249	1.22
450250	1.22
450253	2.38
450258	1.08
450259	2.05
450264	0.91
450269	1.24
450270	1.46
450271	1.30
450272	2.76
450276	1.36
450278	1.34
450280	1.76
450283	1.29
450286	1.18
450288	1.59
450289	1.04
450292	1.74
450293	1.60
450295	2.13
450299	2.26
450303	1.03
450305	3.30
450307	1.00
450309	1.49
450315	2.47
450320	1.79
450321	1.16
450322	1.06
450324	2.35
450327	0.95
450330	1.67
450334	1.07
450337	1.39
450340	2.47
450341	1.87
450346	1.98
450347	2.27
450348	1.14
450351	3.89
450352	2.17
450353	1.66
450355	1.15
450358	2.48
450362	2.40
450368	1.44
450370	4.40
450371	2.02
450372	2.61
450373	1.32
450374	0.95
450376	2.22

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
450378	1.66
450379	2.29
450381	1.67
450388	2.66
450389	2.00
450393	1.84
450395	1.50
450399	1.00
450400	1.73
450403	1.71
450411	1.61
450417	1.75
450418	1.83
450419	1.49
450423	2.32
450424	2.41
450429	0.88
450431	[illegible]
450438	2.68
450446	1.32
450447	2.77
450451	2.08
450457	2.85
450460	1.72
450462	2.03
450464	1.46
450465	3.04
450467	1.47
450469	2.64
450473	1.17
450475	2.22
450484	2.18
450488	1.84
450489	1.13
450497	1.79
450498	2.12
450508	1.87
450514	2.09
450517	1.31
450518	2.10
450523	2.59
450530	2.37
450534	1.17
450535	2.21
450537	1.87
450538	1.64
450539	2.33
450544	1.93
450545	3.48
450547	1.52
450550	1.97
450551	2.22
450558	1.97
450559	1.22
450561	2.18
450563	2.44
450565	2.10
450570	1.46
450571	2.45
450573	1.52
450574	0.84
450575	1.17
450578	1.02
450580	2.14
450583	1.10
450584	1.71
450586	1.56
450587	1.86
450591	2.51
450596	2.29
450597	1.60
450603	1.05
450604	2.39
450605	1.92
450609	1.06
450610	2.47

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
450614	1.50
450615	1.98
450617	2.12
450620	1.38
450623	1.81
450626	1.13
450628	1.17
450630	2.17
450631	2.20
450632	0.78
450633	2.27
450634	2.37
450638	2.97
450639	2.27
450641	1.70
450643	2.16
450644	2.47
450646	2.32
450647	2.94
450648	1.75
450649	1.37
450651	2.04
450652	1.21
450653	2.35
450654	1.19
450656	2.51
450658	1.93
450659	2.36
450661	2.98
450662	1.63
450665	1.61
450666	1.81
450668	2.66
450669	2.18
450670	2.34
450672	2.64
450673	1.22
450674	2.94
450675	2.10
450677	2.23
450678	2.58
450683	2.18
450684	1.93
450686	2.16
450688	1.96
450690	1.50
450691	1.76
450694	2.35
450696	9.87
450697	1.90
450698	0.94
450700	1.36
450702	2.25
450703	1.20
450704	2.16
450705	1.61
450706	2.12
450709	2.77
450711	2.40
450712	1.34
450713	2.35
450715	1.59
450716	2.51
450717	1.98
450718	2.23
450723	1.80
450724	3.48
450725	1.70
450727	1.85
450728	1.09
450730	2.03
450733	2.29
450735	0.59
450742	2.15
450743	2.75
450746	1.34

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
450747	2.56
450749	1.11
450750	1.40
450751	2.18
450754	1.69
450755	1.71
450757	1.08
450758	2.03
450760	2.45
450761	1.18
450763	1.70
450766	5.27
450769	1.08
450770	1.35
450774	4.58
450775	2.11
450776	1.34
450777	1.52
450779	1.89
450780	5.46
450788	1.72
450795	0.93
450797	8.56
450801	2.42
450802	2.75
450803	1.22
450804	5.75
450809	2.15
452013	0.93
452019	1.81
452022	1.41
452033	0.93
452036	0.74
452038	1.26
452039	0.96
452043	1.02
453025	1.17
453028	0.84
453029	1.13
453031	1.57
453033	0.88
453034	1.09
453035	1.98
453036	2.77
453037	1.31
453038	1.26
453040	1.19
453041	1.14
453042	1.06
453044	1.79
453047	1.21
453048	1.06
453052	1.51
453053	1.38
453054	1.51
453056	1.47
453057	1.33
453059	0.80
453065	3.10
453300	1.21
453302	1.60
453304	1.53
453305	1.02
454012	1.31
454018	1.31
454026	1.47
454028	1.31
454029	1.95
454030	1.31
454032	1.18
454037	1.32
454038	1.31
454042	1.30
454043	1.31
454045	1.34
454050	1.31

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
454056	1.63
454057	1.36
454063	1.20
454064	1.32
454065	1.36
454066	1.32
454069	1.70
454072	1.31
454073	1.57
454089	1.35
460001	2.75
460003	2.99
460004	2.40
460005	2.35
460006	3.47
460007	2.73
460008	2.45
460009	2.52
460010	2.34
460011	2.11
460013	2.58
460014	1.33
460015	2.71
460016	1.42
460017	3.03
460018	1.58
460019	2.12
460020	1.83
460021	2.11
460022	1.27
460023	2.88
460024	1.09
460025	0.83
460026	1.91
460027	1.49
460029	1.75
460030	1.87
460032	1.72
460033	1.59
460035	1.17
460036	2.03
460037	1.91
460039	1.53
460041	2.64
460042	2.59
460044	2.05
460046	9.51
460047	1.74
460049	0.11
460050	2.03
463025	1.64
463301	2.17
464003	1.31
464010	1.25
470001	1.93
470003	2.50
470004	1.49
470005	2.09
470006	2.45
470008	1.83
470010	1.87
470011	2.21
470012	2.75
470015	1.83
470018	2.05
470020	1.15
470023	2.39
470024	2.06
474001	0.86
480001	1.58
480002	2.11
490001	1.56
490002	1.62
490004	2.19
490005	2.42
490006	2.01

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
490007	2.39
490009	1.81
490011	2.62
490012	1.52
490013	2.55
490014	1.79
490015	2.92
490017	2.63
490018	2.78
490019	2.15
490020	2.57
490022	2.29
490023	2.27
490024	2.28
490027	1.89
490030	2.58
490031	1.86
490032	1.67
490033	1.73
490035	2.10
490037	2.37
490038	2.27
490040	2.89
490041	2.95
490042	2.46
490043	1.96
490044	2.22
490045	2.14
490046	2.85
490047	1.45
490048	2.34
490050	2.65
490052	2.31
490053	2.76
490054	1.45
490057	2.40
490059	3.04
490060	2.36
490063	3.55
490066	2.47
490067	2.62
490069	1.40
490071	2.92
490073	3.67
490074	3.72
490075	2.54
490077	2.50
490079	2.06
490084	2.18
490085	1.89
490088	2.53
490089	1.56
490090	2.33
490091	2.37
490092	2.19
490093	2.28
490094	1.60
490095	2.11
490097	1.97
490098	2.04
490099	1.12
490100	3.24
490101	2.39
490107	2.90
490110	3.18
490111	2.23
490112	2.39
490113	2.42
490114	1.63
490115	2.12
490116	1.97
490117	1.31
490118	2.42
490119	2.43
490120	2.37
490122	2.68

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
490123	2.23
490124	1.89
490126	2.27
490127	1.57
490130	2.03
490131	1.68
492001	0.79
493025	1.24
493026	0.92
493027	2.34
493028	1.39
493301	1.94
494001	1.31
494011	1.09
494018	1.34
494020	1.31
494022	1.30
494023	1.28
494025	1.17
494026	1.32
494028	1.31
500001	2.51
500002	2.10
500004	5.38
500005	2.14
500007	3.03
500006	1.60
500011	2.13
500012	2.76
500014	2.57
500015	2.03
500019	2.49
500021	2.22
500023	2.13
500024	3.90
500025	3.10
500026	2.20
500027	2.86
500029	1.05
500030	2.59
500031	5.08
500033	2.66
500036	2.56
500037	1.71
500039	2.90
500041	2.29
500042	3.14
500043	1.85
500044	2.56
500045	2.38
500048	1.65
500049	3.17
500050	2.47
500051	2.62
500053	2.42
500054	2.27
500055	1.86
500057	2.65
500058	2.50
500059	2.45
500060	2.25
500061	1.15
500062	0.99
500064	1.29
500065	2.66
500068	1.09
500069	1.25
500071	3.04
500072	2.25
500073	1.39
500074	2.39
500077	2.29
500079	1.61
500080	1.14
500084	2.32
500085	1.66

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
500085	2.05
500088	2.78
500089	1.93
500090	0.71
500092	1.77
500094	0.83
500096	1.79
500097	1.33
500098	1.45
500101	1.17
500102	1.74
500104	2.07
500106	0.71
500107	1.77
500108	2.64
500110	2.79
500118	2.52
500119	1.78
500122	2.31
500123	3.38
500124	2.21
500125	1.40
500129	2.04
500132	1.48
500138	1.08
500139	2.56
500141	3.07
500145	2.18
502002	3.69
503300	2.70
504002	1.43
510001	2.11
510002	2.26
510004	1.10
510005	1.47
510006	2.66
510007	2.10
510008	2.40
510012	1.99
510013	1.57
510015	1.15
510016	1.15
510018	1.65
510020	1.23
510022	2.33
510023	1.92
510024	3.05
510026	1.48
510027	1.61
510028	1.46
510029	2.51
510030	2.23
510031	3.05
510033	2.05
510038	1.64
510039	2.31
510043	0.96
510046	2.03
510047	2.56
510048	1.45
510050	2.19
510053	1.54
510055	2.17
510058	2.37
510059	8.02
510060	1.66
510063	1.20
510065	1.24
510066	2.03
510067	2.36
510068	2.25
510070	3.03
510071	2.10
510072	1.56
510077	2.09
510081	1.31

Note: The national average service mix discounted for multiple procedures is 2.05.

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
510082	1.70
510084	1.44
510085	1.78
510086	1.15
513026	1.19
513027	1.33
513028	1.63
513030	1.49
514001	1.44
514007	5.99
514008	1.86
520002	2.56
520003	2.35
520004	2.57
520006	2.22
520007	1.57
520008	2.29
520009	2.07
520010	2.33
520011	2.95
520013	1.97
520014	2.25
520015	2.51
520016	1.83
520017	2.02
520018	2.11
520019	2.23
520021	2.57
520024	1.96
520025	1.95
520026	2.28
520028	3.23
520029	1.34
520030	3.15
520031	3.82
520032	1.84
520033	2.11
520034	2.43
520035	2.87
520037	2.62
520038	3.13
520039	1.77
520040	2.01
520041	1.95
520042	1.95
520044	3.00
520045	2.24
520047	2.03
520048	2.34
520049	2.90
520053	1.70
520054	1.58
520057	2.90
520058	2.71
520059	2.73
520060	1.66

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
520062	2.38
520063	2.99
520064	1.79
520066	2.95
520068	1.68
520069	1.98
520070	2.35
520071	2.40
520074	1.57
520075	2.44
520076	2.50
520077	1.14
520078	1.91
520082	2.79
520083	1.70
520087	1.22
520088	2.40
520089	3.23
520090	1.99
520091	3.56
520092	1.99
520094	1.92
520095	2.55
520096	2.31
520097	2.23
520098	1.46
520100	2.48
520101	1.53
520102	2.46
520103	2.51
520107	1.83
520109	1.99
520110	1.71
520111	2.05
520112	3.22
520113	2.58
520114	2.06
520115	1.98
520116	2.48
520117	1.79
520118	1.11
520120	1.08
520121	1.72
520122	1.44
520123	1.81
520124	1.88
520130	2.49
520131	2.06
520132	2.46
520134	1.58
520135	1.84
520136	2.30
520138	2.32
520139	2.50
520140	2.42
520141	2.11

ADDENDUM I.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
520142	1.24
520144	2.14
520145	1.48
520146	2.23
520148	1.82
520149	1.13
520151	2.45
520152	2.03
520153	1.50
520154	2.23
520156	3.09
520157	1.54
520160	2.62
520161	2.22
520170	2.85
520171	1.82
520173	2.67
520177	2.29
520178	2.28
523025	1.44
523300	2.56
524000	1.41
524003	1.23
524017	0.45
524034	1.27
524035	1.26
524038	1.57
530002	2.18
530003	1.37
530004	1.80
530005	1.67
530006	2.14
530008	2.36
530009	1.94
530010	2.28
530011	2.08
530012	2.20
530014	2.54
530015	2.19
530016	1.93
530017	1.93
530018	2.15
530019	1.56
530022	2.04
530023	1.51
530025	2.00
530026	1.48
530027	1.60
530029	0.99
530031	0.96
530032	2.14

Note: The national average service mix discounted for multiple procedures is 2.05.

52. On pages 48030 through 48035, Addendum J is corrected to read as follows:

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS

Urban code/Urban area (constituent counties)	Wage index
0040 Abilene, TX	0.8287
Taylor, TX	
0060 Aguadilla, PR[2]	0.4188
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9728
Portage, OH	
Summit, OH	
0120 Albany, GA	0.7914

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8480
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9329

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8269
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	1.0086
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9137

[1] Large Urban Area
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 1998.

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
Blair, PA	
0320 Amarillo, TX	0.9425
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2998
Anchorage, AK	
0440 Ann Arbor, MI	1.1785
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8266
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8296
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR[2]	0.4218
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9072
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9087
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA[1]	0.9823
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic-Cape May, NJ	1.0724
Atlantic, NJ	
Cape May, NJ	
0600 Augusta-Aiken, GA-SC	0.9333
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX[1]	0.9133
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	1.0014
Kern, CA	
0720 Baltimore, MD[1]	0.9689
Anne Arundel, MD	
Baltimore, MD	
BaltimoreCity, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Anne's, MD	
0733 Bangor, ME	0.9478
Penobscot, ME	

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
0743 Barnstable-Yarmouth, MA	1.4291
Barnstable, MA	
0760 Baton Rouge, LA	0.8382
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8593
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1221
Whatcom, WA	
0870 Benton Harbor, MI[2]	0.8923
Berrien, MI	
0875 Bergen-Passaic, NJ[1]	1.1570
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9783
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8415
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8914
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9005
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7859
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.9128
Monroe, IN	
1040 Bloomington-Normal, IL	0.8733
McLean, IL	
1080 Boise City, ID	0.8887
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH[1]	1.1498
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	1.0015
Boulder, CO	
1145 Brazoria, TX	0.9129
Brazoria, TX	
1150 Bremerton, WA	1.0999
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8740
Cameron, TX	
1260 Bryan-College Station, TX	0.8571
Brazos, TX	
1280 Buffalo-Niagara Falls, NY[1]	0.9272
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0142
Chittenden, VT	
Franklin, VT	
Grandlsle, VT	
1310 Caguas, PR	0.4508
Caguas, PR	

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8961
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9013
Natrona, WY	
1360 Cedar Rapids, IA	0.8529
Linn, IA	
1400 Champaign-Urbana, IL	0.8824
Champaign, IL	
1440 Charleston-North Charleston, SC	0.8807
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9142
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC[1]	0.9710
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	0.9051
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.8658
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY[2]	0.8247
Laramie, WY	
1600 Chicago, IL[1]	1.0860
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0429
Butte, CA	
1640 Cincinnati, OH-KY-IN[1]	0.9521
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.7852
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH[1]	0.9804
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	

[1] Large Urban Area
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 1998.

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9316
ElPaso, CO	
1740 Columbia, MO	0.9001
Boone, MO	
1760 Columbia, SC	0.9192
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL	0.8288
Russell, AL	
Chattahoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH[1]	0.9793
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8945
Nueces, TX	
San Patricio, TX	
1900 Cumberland, MD-WV	0.8822
Allegany, MD	
Mineral, WV	
1920 Dallas, TX[1]	0.9674
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8146
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA-IL	0.8405
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9279
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL[2]	0.8838
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8286
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.7915
Macon, IL	
2080 Denver, CO[1]	1.0386
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8837
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI[1]	1.0840
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
2180 Dothan, AL	0.8070
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9303
Kent, DE	
2200 Dubuque, IA	0.8088
Dubuque, IA	
2240 Duluth-Superior, MN-WI	0.9779
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0632
Dutchess, NY	
2290 Eau Claire, WI	0.8764
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	1.0123
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9081
Elkhart, IN	
2335 Elmira, NY[2]	0.8401
Chemung, NY	
2340 Enid, OK	0.7962
Garfield, OK	
2360 Erie, PA	0.8862
Erie, PA	
2400 Eugene-Springfield, OR	1.1659
Lane, OR	
2440 Evansville-Henderson, IN-KY	0.8641
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND-MN	0.8837
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8734
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7461
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	0.9115
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1171
Genesee, MI	
2650 Florence, AL	0.7716
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8711
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0248
Larimer, CO	
2680 Ft. Lauderdale, FL[1]	1.0487
Broward, FL	
2700 Fort Myers-Cape Coral, FL[2]	0.8550
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0257
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.7769
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL[2]	0.8838
Okaloosa, FL	
2760 Fort Wayne, IN	0.8901
Adams, IN	
Allen, IN	
DeKalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX[1]	0.9997
Hood, TX	

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0607
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8815
Etowah, AL	
2900 Gainesville, FL	0.9616
Alachua, FL	
2920 Galveston-Texas City, TX	1.0564
Galveston, TX	
2960 Gary, IN	0.9270
Lake, IN	
Porter, IN	
2975 Glens Falls, NY[2]	0.8401
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8443
Wayne, NC	
2985 Grand Forks, ND-MN	0.8815
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9491
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI[1]	1.0147
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.9306
Cascade, MT	
3060 Greeley, CO	1.0097
Weld, CO	
3080 Green Bay, WI	0.9585
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC[1]	0.9351
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9064
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9059
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9681
Washington, MD	
3200 Hamilton-Middletown, OH	0.8767
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	1.0187
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT[1 2]	1.2617
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7192
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8285
Alexander, NC	

[1] Large Urban Area
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 1998.

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1817
Honolulu, HI	
3350 Houma, LA	0.7854
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX[1]	0.9855
Chambers, TX	
FortBend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV-KY-OH	0.9160
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8485
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN[1]	0.9646
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9413
Johnson, IA	
3520 Jackson, MI	0.9052
Jackson, MI	
3560 Jackson, MS	0.7790
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8522
Madison, TN	
Chester, TN	
3600 Jacksonville, FL[1]	0.8969
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC[2]	0.7939
Onslow, NC	
3610 Jamestown, NY[2]	0.8401
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.8824
Rock, WI	
3640 Jersey City, NJ	1.1412
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA	0.9114
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA[2]	0.8421
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7443
Craighead, AR	
3710 Joplin, MO	0.7541

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0668
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.8653
Kankakee, IL	
3760 Kansas City, KS-MO[1]	0.9564
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9196
Kenosha, WI	
3810 Killeen-Temple, TX	1.0252
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8831
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8416
Howard, IN	
Tipton, IN	
3870 LaCrosse, WI-MN	0.8749
Houston, MN	
LaCrosse, WI	
3880 Lafayette, LA	0.8227
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9174
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7776
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL[2]	0.8505
Polk, FL	
4000 Lancaster, PA	0.9481
Lancaster, PA	
4040 Lansing-East Lansing, MI	1.0088
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX[2]	0.7404
Webb, TX	
4100 Las Cruces, NM	0.8658
Dona Ana, NM	
4120 Las Vegas, NV-AZ[1]	1.0592
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.9000
Douglas, KS	
4200 Lawton, OK	0.9045
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9536
Androscoggin, ME	
4280 Lexington, KY	0.8416
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9185
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9231
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8490
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8613
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA[1]	1.2268
Los Angeles, CA	
4520 Louisville, KY-IN	0.9507
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8400
Lubbock, TX	
4640 Lynchburg, VA	0.8228
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9227
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0055
Dane, WI	
4800 Mansfield, OH	0.8879
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4475
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8371
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0354
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL[2]	0.9539
Brevard, Fl	
4920 Memphis, TN-AR-MS[1]	0.9589
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	1.0947
Merced, CA	
5000 Miami, FL[1]	0.9859
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ[1]	1.0875
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	

[1] Large Urban Area
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 1998.

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
5080 Milwaukee-Waukesha, WI[1]	0.9819
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN-WI[1]	1.0733
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5160 Mobile, AL	0.8455
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0377
Stanislaus, CA	
5190 Monmouth-Ocean, NJ[1]	1.0934
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8414
Ouachita, LA	
5240 Montgomery, AL	0.7813
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9173
Delaware, IN	
5330 Myrtle Beach, SC	0.8072
Horry, SC	
5345 Naples, FL	1.0109
Collier, FL	
5360 Nashville, TN[1]	0.9182
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
RutherfordTN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY[1]	1.3807
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT[1]	1.2619
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT[2]	1.2617
New London, CT	
5560 New Orleans, LA[1]	0.9566
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY[1]	1.4449
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
5640 Newark, NJ[1]	1.1111
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.1283
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA-NC[1]	0.8316
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA[1]	1.5158
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9032
Marion, FL	
5800 Odessa-Midland, TX	0.8660
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK[1]	0.8481
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0901
Thurston, WA	
5920 Omaha, NE-IA	0.9421
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA[1]	1.1532
Orange, CA	
5960 Orlando, FL[1]	0.9397
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY[2]	0.7772
Daviess, KY	
6015 Panama City, FL[2]	0.8838
Bay, FL	
6020 Parkersburg-Marietta, WV-OH (West Virginia Hospitals)[2]	0.8046
Washington, OH	
Wood, WV	
6020 Parkersburg-Marietta, WV-OH (Ohio Hospitals)[2]	0.8434
Washington, OH	
Wood, WV	
6080 Pensacola, FL[2]	0.8838
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8571
Peoria, IL	
Tazewell, IL	
Woodford, IL	

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
6160 Philadelphia, PA-NJ[1]	1.1398
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ[1]	0.9606
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7826
Jefferson, AR	
6280 Pittsburgh, PA[1]	0.9725
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0960
Berkshire, MA	
6340 Pocatello, ID	0.9586
Bannock, ID	
6360 Ponce, PR	0.4589
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9627
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR-WA[1]	1.1344
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI[1]	1.1049
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	1.0073
Utah, UT	
6560 Pueblo, CO	0.8450
Pueblo, CO	
6580 Punta Gorda, FL[2]	0.8838
Charlotte, FL	
6600 Racine, WI	0.8934
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC[2]	0.9818
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8345
Pennington, SD	
6680 Reading, PA	0.9516
Berks, PA	
6690 Redding, CA	1.1790
Shasta, CA	
6720 Reno, NV	1.0768
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA[2]	1.0221

[1] Large Urban Area
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ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9152
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
NewKent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA[1]	1.1145
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8402
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.0502
Olmsted, MN	
6840 Rochester, NY[1]	0.9524
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9081
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9029
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA[1]	1.2202
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9564
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9544
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9366
Andrew, MO	
Buchanan, MO	
7040 St. Louis, MO-IL[1]	0.9130
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR[2]	0.9976
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4513
Monterey, CA	
7160 Salt Lake City-Ogden, UT[1]	0.9862
Davis, UT	
Salt Lake, UT	

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
Weber, UT	
7200 San Angelo, TX	0.7780
Tom Green, TX	
7240 San Antonio, TX[1]	0.8499
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA[1]	1.2225
San Diego, CA	
7360 San Francisco, CA[1]	1.4091
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA[1]	1.4332
Santa Clara, CA	
7440 San Juan-Bayamon, PR[1]	0.4625
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1374
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0688
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.4187
Santa Cruz, CA	
7490 Santa Fe, NM	1.0332
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2267
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9757
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9538
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8539
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA[1]	1.1375
Island, WA	

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8783
Mercer, PA	
7620 Sheboygan, WI[2]	0.8471
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8499
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9381
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.8031
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8712
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9880
St. Joseph, IN	
7840 Spokane, WA	1.0486
Spokane, WA	
7880 Springfield, IL	0.8713
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8036
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA[2]	1.0718
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9635
Centre, PA	
8080 Steubenville-Weirton, OH-WV	0.8645
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.1518
San Joaquin, CA	
8140 Sumter, SC[2]	0.7921
Sumter, SC	
8160 Syracuse, NY	0.9480
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1016
Pierce, WA	
8240 Tallahassee, FL[2]	0.8555
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL[1]	0.9196
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8614
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8699
Miller, AR	
Bowie, TX	
8400 Toledo, OH	1.0140
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9438
Shawnee, KS	
8480 Trenton, NJ	1.0380
Mercer, NJ	
8520 Tucson, AZ	0.9180
Pima, AZ	

[1] Large Urban Area
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 1998.

ADDENDUM J.—WAGE INDEX FOR URBAN AREAS—Continued

Urban code/Urban area (constituent counties)	Wage index
8560 Tulsa, OK	0.8074
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8187
Tuscaloosa, AL	
8640 Tyler, TX	0.9567
Smith, TX	
8680 Utica-Rome, NY[2]	0.8401
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3528
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.0544
Ventura, CA	
8750 Victoria, TX	0.8474
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0110
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA[2]	0.9977
Tulare, CA	
8800 Waco, TX	0.7696
McLennan, TX	
8840 Washington, DC-MD-VA-WV[1]	1.0911
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpeper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8643
Black Hawk, IA	
8940 Wausau, WI	1.0545
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	1.0309
Palm Beach, FL	
9000 Wheeling, WV-OH (West Virginia Hospitals)[1]	0.7966
Belmont, OH	
Marshall, WV	
Ohio, WV	
9000 Wheeling, WV-OH (Ohio Hospitals)[2]	0.8434
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9403
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7646
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8548
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.1538
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9322
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA[2]	1.0221
Yakima, WA	
9270 Yolo, CA	1.1431
Yolo, CA	
9280 York, PA	0.9415
York, PA	
9320 Youngstown-Warren, OH	0.9937
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0324
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9732
Yuma, AZ	

[1] Large Urban Area

[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 1998.

53. On pages 48035 through 48036, Addendum K is corrected to read as follows:

ADDENDUM K.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7260
Alaska	1.2302
Arizona	0.7989
Arkansas	0.6995
California	0.9977
Colorado	0.8129
Connecticut	1.2617
Delaware	0.8925
Florida	0.8838
Georgia	0.7761
Hawaii	1.0229
Idaho	0.8221
Illinois	0.7644
Indiana	0.8161
Iowa	0.7391
Kansas	0.7203
Kentucky	0.7772
Louisiana	0.7383
Maine	0.8468
Maryland	0.8617
Massachusetts	1.0718
Michigan	0.8923
Minnesota	0.8180
Mississippi	0.6911
Missouri	0.7207
Montana	0.8302
Nebraska	0.7401
Nevada	0.8914
New Hampshire	0.9724
New Jersey[1]	
New Mexico	0.8110

ADDENDUM K.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
New York	0.8401
North Carolina	0.7939
North Dakota	0.7360
Ohio	0.8434
Oklahoma	0.7072
Oregon	0.9976
Pennsylvania	0.8421
Puerto Rico	0.3939
Rhode Island[1]	
South Carolina	0.7921
South Dakota	0.6983
Tennessee	0.7353
Texas	0.7404
Utah	0.8926
Vermont	0.9314
Virginia	0.7782
Washington	1.0221
West Virginia	0.7966
Wisconsin	0.8471
Wyoming	0.8247

[1] All counties within state are classified as urban.

54. On page 48036, Addendum L is corrected to read as follows:

ADDENDUM L.—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index
Abilene, TX	0.8287
Albuquerque, NM	0.9329
Alexandria, LA	0.8269
Amarillo, TX	0.9277
Anchorage, AK	1.2998
Asheville, NC	0.9072
Athens, GA	0.9087
Atlanta, GA	0.9823
Austin-San Marcos, TX	0.9133
Bangor, ME	0.9478
Barnstable-Yarmouth, MA	1.3827
Baton Rouge, LA	0.8382
Benton Harbor, MI	0.8923
Bergen-Passaic, NJ	1.1570
Billings, MT	0.9609
Birmingham, AL	0.9005
Bismarck, ND	0.7859
Boise City, ID	0.8887
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1498
Caguas, PR	0.4508
Casper, WY	0.9013
Champaign-Urbana, IL	0.8706
Charlotte-Gastonia-Rock Hill, NC-SC	0.9710
Charlottesville, VA	0.8885
Chattanooga, TN-GA	0.8658
Chicago, IL	1.0759
Cincinnati, OH-KY-IN	0.9521
Cleveland-Lorain-Elyria, OH	0.9804
Columbia, MO	0.8759
Columbus, OH	0.9793

ADDENDUM L.—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index
Dallas, TX	0.9674
Davenport-Moline-Rock Island, IA-IL	0.8405
Denver, CO	1.0386
Des Moines, IA	0.8837
Detroit, MI	1.0840
Duluth-Superior, MN-WI	0.9779
Dutchess County, NY	1.0364
Eugene-Springfield, OR	1.1659
Fargo-Moorhead, ND-MN	0.8729
Fayetteville, NC	0.8491
Flint, MI	1.1171
Florence, AL	0.7716
Florence, SC	0.8711
Ft. Lauderdale, FL	1.0487
Fort Pierce-Port St. Lucie, FL	1.0008
Fort Walton Beach, FL	0.8653
Forth Worth-Arlington, TX	0.9997
Gadsden, AL	0.8815
Gainesville, FL	0.9616
Gary, IN	0.9114
Grand Forks, ND-MN	0.8815
Grand Junction, CO	0.9491
Great Falls, MT	0.9306
Greeley, CO	0.9791
Green Bay, WI	0.9585
Greensboro-Winston-Salem-High Point, NC	0.9351
Harrisburg-Lebanon-Carlisle, PA	1.0076
Hartford, CT	1.2373
Honolulu, HI	1.1817
Houma, LA	0.7854
Houston, TX	0.9855
Huntington-Ashland, WV-KY-OH	0.9160
Huntsville, AL	0.8485
Indianapolis, IN	0.9848
Iowa City, IA	0.9208
Jackson, MS	0.7790
Johnson City-Kingsport-Bristol, TN-VA	0.9114
Jonesboro, AR	0.7443
Joplin, MO	0.7541
Kalamazoo-Battlecreek, MI	1.0668
Kansas City, KS-MO	0.9564
Knoxville, TN	0.8831
Lafayette, LA	0.8227
Lafayette, IN	0.9174
Lansing-East Lansing, MI	1.0088
Las Cruces, NM	0.8658
Las Vegas, NV-AZ	1.0592
Lexington, KY	0.8416
Lima, OH	0.9185
Lincoln, NE	0.9035
Little Rock-North Little Rock, AR	0.8490
Longview-Marshall, TX	0.8509
Los Angeles-Long Beach, CA	1.2268
Louisville, KY-IN	0.9507
Macon, GA	0.9227
Madison, WI	1.0055
Mansfield, OH	0.8639
Medford-Ashland, OR	1.0354
Memphis, TN-AR-MS	0.8589
Milwaukee-Waukesha, WI	0.9819
Minneapolis-St. Paul, MN-WI	1.0733
Monroe, LA	0.8414
Montgomery, AL	0.7813
Nashville, TN	0.9182
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2619
New London-Norwich, CT	1.2258
New Orleans, LA	0.9566
New York, NY	1.4449
Newark, NJ	1.1111
Newburgh, NY-PA	1.1283
Oakland, CA	1.5158
Odessa-Midland, TX	0.8516
Oklahoma City, OK	0.8481
Omaha, NE-IA	0.9421
Orange County, CA	1.1532
Peoria-Pekin, IL	0.8571
Philadelphia, PA-NJ	1.1398
Pittsburgh, PA	0.9583
Pocatello, ID	0.9000
Portland, ME	0.9627
Portland-Vancouver, OR-WA	1.1344
Provo-Orem, UT	1.0073
Raleigh-Durham-Chapel Hill, NC	0.9818
Rapid City, SD	0.8345
Rochester, MN	1.0502
Rockford, IL	0.9081
Sacramento, CA	1.2202
Saginaw-Bay City-Midland, MI	0.9564
St. Cloud, MN	0.9544
St. Louis, MO-IL	0.9130
Salinas, CA	1.4299
Salt Lake City-Ogden, UT	0.9862
San Diego, CA	1.2225
San Francisco, CA	1.4091
Santa Fe, NM	1.0007
Santa Rosa, CA	1.2146
Seattle-Bellevue-Everett, WA	1.1375
Sherman-Denison, TX	0.8324
Sioux City, IA-NE	0.8031
Sioux Falls, SD	0.8607
South Bend, IN	0.9880
Spokane, WA	1.0311
Springfield, IL	0.8610
Springfield, MO	0.8036
Stockton-Lodi, CA	1.1518
Syracuse, NY	0.9480
Tampa-St. Petersburg-Clearwater, FL	0.9196
Texarkana, AR-Texarkana, TX	0.8699
Topeka, KS	0.9310
Tucson, AZ	0.9180
Tulsa, OK	0.8074
Tyler, TX	0.9421
Vallejo-Fairfield-Napa, CA	1.3528
Washington, DC-MD-VA-WV	1.0911
Waterloo-Cedar Falls, IA	0.8643
Wausau, WI	0.9845
Wichita, KS	0.9157
Wichita Falls, TX	0.7646
Rural Florida	0.8836
Rural Louisiana	0.7383
Rural Minnesota	0.8180
Rural Missouri	0.7207
Rural New Hampshire	0.9724
Rural New Mexico	0.8110
Rural North Carolina	0.7939
Rural Oregon	0.9976
Rural Washington	1.0221
Rural West Virginia	0.7966
Rural Wyoming	0.8247

(Catalog of Federal Domestic Assistance 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 22, 1999.

Kerry Weems,

Acting Deputy Assistant, Secretary for Information Resources Management.

[FR Doc. 99–16550 Filed 6–29–99; 8:45 am]

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federal register

Wednesday
June 30, 1999

Part III

Department of the Interior

National Park Service

36 CFR Part 51
Concession Contracts; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024–AC72

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations on concession contracts to comply with the requirements of Title IV of the National Parks Omnibus Management Act of 1998 (the "1998 Act"), which provides new legislative authorities, policies and requirements for the solicitation, award and administration of National Park Service concession contracts.

DATES: We will accept written comments, suggestions or objections on or before August 30, 1999.

ADDRESSES: Written comments should be sent to the Concessions Program Manager, National Park Service, 1849 "C" Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 "C" Street, NW, Washington, DC 20240 (202/565–1219).

SUPPLEMENTARY INFORMATION: The 1998 Act has established a new statutory framework for the solicitation, award and administration of National Park Service concession contracts.

Concession contracts are the form of governmental authorization used to permit private businesses ("concessioners") to provide visitor services in areas of the national park system. Visitor services include lodging, food service, merchandising, transportation, outfitting and guiding, and similar activities.

The National Park Service has been awarding and administering concession contracts in various forms since its establishment in 1916. In 1965, Congress formally established by the Concession Policies Act of 1965 (the "1965 Act") a number of policies and procedures regarding concession contracts. 36 CFR part 51 as it presently exists implemented the 1965 law. On November 13, 1998, the Congress substantially revised these policies and procedures by passage of the 1998 Act.

General Content

The proposed rule has two major purposes. The first is to set forth procedures as to how concession contracts are to be solicited and awarded by the National Park Service under the 1998 Act. With certain limited exceptions, the 1998 Act requires competitive awards of concession contracts. In some circumstances, an existing satisfactory concessioner may have a right to match the terms of a competing proposal for a new concession contract.

Second, unlike the existing 36 CFR part 51, the proposed rule sets forth in detail the nature of the compensatory interest in capital improvements a concessioner may construct on park lands under the terms of a concession contract. This interest, called a "leasehold surrender interest," is described at length in the 1998 Act. It is our intention to establish appropriate contract terms and conditions for leasehold surrender interests by this rule so as to assure that the requirements of the 1998 Act are strictly followed. Accordingly, the leasehold surrender interest subpart of the proposed rule is lengthy. However, concession contracts will be proportionately shorter as they will refer to the regulations with respect to leasehold surrender terms and conditions.

The proposed rule also contains a number of other provisions implementing the policies and procedures of the 1998 Act.

Subpart Content

Subpart A

Authority and Purpose. Subpart A of the rule describes the authority for the rule, its scope, and the scope of concession contracts in general. It also describes the statutory policies that underlie concession contracts.

Subpart B

General Definitions. Subpart B provides a number of definitions of terms that are used throughout the rule. Readers should refer to these definitions whenever a defined term is used in the text of the rule.

Subpart C

Solicitation, Selection and Award procedures. Subpart C describes general procedures for competitive solicitation, selection and award of concession contracts in compliance with the 1998 Act. Except as described in subpart D, we must award all concession contracts on a competitive basis. As part of the competitive process, however, we will give great emphasis to the responsiveness of concession contract proposals to the objectives of protecting, conserving, and preserving resources of park areas, including, but not limited to, the conduct of environmentally enhancing operational programs.

Among other matters, prospectuses must set forth specific environmentally enhancing operational objectives and challenge offerors to propose means to meet or exceed these objectives. It is our intention to "green" both government and concessioner operations in park areas so as to make them a nationwide model and example. The Secretary, the National Park Service and current concessioners are already actively pursuing the "greening" program, focussing on such activities as recycling, waste minimization, environmentally preferable procurement ("green procurement"), and hazardous waste response capabilities.

The following chart summarizes the process set forth in Subpart C for evaluating proposals in compliance with the 1998 Act to select the best proposal.

SUMMARY OF PROCESS FOR EVALUATING PROPOSALS

Evaluate the proposals for:	Select the one proposal that:	If two or more are substantially equal:
1. Responsiveness to the prospectus (§ 51.14).	Is responsive to the prospectus	Continue with all responsive proposals. (Reject any that are not responsive) (§ 51.14).
2. The four principal factors (§ 51.20(a)–(d)).	Is assessed as the best overall proposal	Continue with all substantially equal proposals. (Reject any that are unacceptable under any of these factors) (§ 51.24).
3. Program for environmental enhancement (§ 51.20(a) subfactor).	Provides the "most substantial, comprehensive and effective program for environmental enhancement". Unless Another proposal provides, through higher than minimum franchise fees, substantively greater benefits for the preservation of the resource	Continue with all substantially equal proposals.

SUMMARY OF PROCESS FOR EVALUATING PROPOSALS—Continued

Evaluate the proposals for:	Select the one proposal that:	If two or more are substantially equal:
	Then Select that other proposal	
4. The fifth principal factor (§ 51.20(e)).	Is assessed as the best proposal with respect to this factor.	Continue with all substantially equal proposals.
5. Secondary factors (§ 51.22)	Is assessed as best proposal with respect to the secondary factor.	Continue with all substantially equal proposals.
6. Additional selection factors described in the prospectus (if any)(§ 51.23b).	Meets the selection factors better than any other remaining proposal.	Request "best and final" proposals from all remaining offerors. Repeat evaluation for all "best and final" proposals (§ 51.23a).

Subpart D

Non-Competitive Award of Concession Contracts. Subpart D describes the three limited situations in which we may make non-competitive awards of concession contracts. In certain circumstances we may extend a concession contract for up to three years on a non-competitive basis, we may award a temporary contract for a term of no more than three years on a non-competitive basis, and, we may award a concession contract on a non-competitive basis in extraordinary circumstances if certain findings are made and special procedures followed.

Subpart E

Right of Preference. Subpart E describes the right of preference to a new concession contract that may be obtained by certain existing satisfactory concessioners. Only satisfactory outfitter and guide concessioners or satisfactory concessioners annually grossing under $500,000 are eligible for the preference. If a concessioner is eligible for the preference, it must submit a responsive offer pursuant to the prospectus issued for the new contract. If the concessioner does so, it is entitled under specified conditions to match the terms of a better proposal for the concession contract.

Subpart F

Leasehold Surrender Interest. Subpart F first defines a number of terms necessary to understand the leasehold surrender provisions of the rule. You should refer to these definitions whenever the defined terms are used in the text of the rule. Subpart F then sets forth the terms and conditions of leasehold surrender interests which you may obtain under a concession contract. Generally, a leasehold surrender interest constitutes a right of a concessioner to receive payment for capital improvements a concessioner makes on park area lands. As stated above, the terms and conditions of leasehold surrender interests are very detailed as we intend that these terms and conditions will be incorporated by reference into concession contracts, making concession contracts proportionately shorter.

Subpart G

Possessory Interest. Subpart G sets forth transition procedures with respect to the form of compensatory interest ("possessory interest") obtained by concessioners under certain concession contracts entered into under the 1965 Act and concession contracts to be entered into under the 1998 Act. In general terms, a 1965 Act concessioner may either receive full compensation for existing possessory interest as described in the applicable contract or convert the possessory interest to a leasehold surrender interest if it seeks and is awarded a new concession contract.

Subpart H

Concession Contract Provisions. Subpart H describes in general the terms of certain concession contract provisions that reflect the policies and procedures of the 1998 Act.

Subpart I

Assignment or Encumbrance of Concession Contracts. Subpart I sets forth the standards and procedures applicable to our approval of assignments of concession contracts and encumbrance of concessioner assets.

Subpart J

Information and Access to Information. Subpart J describes the types of records a concessioner must retain for the purposes of our concession contract administration, the access rights of the government to the records, and the types of concessioner information that we make available to the public.

Subpart K

The Effect of the 1998 Act's Repeal of the 1965 Act. Subpart K describes the effect of the 1998 Act's repeal of the 1965 Act by the 1998 Act. In this connection, section 415 of the 1998 Act repealed the 1965 Act but states that the repeal does not affect the validity of any concession contract or permit entered into under the 1965 Act. However, Section 415 also states that the 1998 Act will apply to existing contracts or permits to the extent that the provisions of the 1998 Act are not inconsistent with the terms and conditions of the existing concession contract or permit.

Questions have arisen in this regard as to the possible continuation of the right of preference in renewal previously provided to existing satisfactory concessioners by section 5 of the 1965 Act. It is our position, subject to consideration of public comments on this matter, that the 1998 Act repealed this right of preference in renewal as the right was statutory in nature, not contractual. However, the proposed rule also states that we will provide an existing satisfactory concessioner a right of preference as otherwise described in the proposed regulations if a particular concession contract or permit in effect as of November 13, 1998, is determined to have provided a preference in renewal as a matter of contract right. We particularly request public comment on this matter.

Subpart L

Information Collection. Subpart L sets forth information collection requirements of the rule.

Drafting Information

The primary authors of this rule are Lars A. Hanslin, Special Assistant to the Director, National Park Service, and Wendelin M. Mann, Concession Program, National Park Service.

Compliance With Laws, Executive Orders and Departmental Policy

Regulatory Planning and Review (E.O. 12866)

This rule is a significant rule and has been reviewed by the Office of Management and Budget review under Executive Order 12866.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary effect of the proposed rule is to establish policies and procedures for the solicitation, award and administration of National Park Service concession contracts required by the 1998 Act.

Regulatory Flexibility Act

The purpose of this rule is to describe policies and procedures for the solicitation, award and administration of National Park Service concession contracts in accordance with the 1998 Act. The Department of the Interior is analyzing what, if any, economic effects this rule will have on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As of the promulgation of this rule, there are only approximately 630 National Park Service concession contracts and permits. It is likely that upon implementation of this rule and related authorities, this number will decrease, perhaps to as few as 350, as alternative authorities for providing visitor services in areas of the National Park System are now available. Consistent with the Regulatory Flexibility Act, the Department of the Interior will publish in the **Federal Register** its initial regulatory flexibility analysis and invite public comment on this analysis.

Unfunded Mandates Reform Act

The National Park Service has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, tribal governments or private entities. As stated above, the rule imposes no costs on any entity except for application expenses for businesses that seek to be awarded a National Park Service concession contract. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings. (E.O. 12630)

In accordance with Executive Order 12360, the rule does not have significant takings implications. The rule has no effect on private property. A takings implications assessment is not required.

Federalism

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no requirements on any governmental entity other than the National Park Service.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule requires an information collection from ten or more parties so a submission under the Paperwork Reduction Act is required. The information collection for submission of offers in response to concession prospectuses is covered by OMB Approval No. 1024–1025, effective through December 31, 1999. An information collection for proposed sales of concession operations was previously covered by OMB Approval No 1024–0126, which expired January 31, 1996. An OMB form 83–I has been submitted to OMB for approval.

This information is solicited to assist in the administration of National Park Service concession contracts. The general public is not required to provide information by this rule. The public reporting burden relates only to persons or entities applying to become National Park Service concessioners. The National Park Service estimates that approximately 20 large and 80 small authorizations will expire each year. On average, the National Park Service receives approximately 4 offers for each large authorization and 2 for each small authorization. Estimated time to prepare a large offer is 60 working days (480 burden hours), and 30 working days (240 burden hours) for a small offer. The National Park Service estimates the average cost per hour at $40, resulting in an annual cost of $3,072,000. Likewise, the National Park Service receives approximately 20 requests to sell or transfer concession authorizations each year. The National Park Service estimates that approximately 80 hours are required to prepare an application, and only 1 application is submitted per transaction. Based on an average cost of $40 per hour, the annual cost would be $64,000. The total of these estimated annual costs is $3,136,000.

Comments on the information collection aspect of this rule should be directed to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments should also be directed to the Information Collection Officer, National Park Service, 1849 C Street, NW, Washington, DC 20240. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

National Environmental Policy Act

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act is not required. The rule will not increase public use of park areas, introduce noncompatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

Clarity of this Rule

Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more but shorter sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule?" What else could be done to make the rule easier to understand?

Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240.

List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks.

In consideration of the forgoing, 36 CFR Part 51 is proposed to be revised to read as follows:

PART 51—CONCESSION CONTRACTS

Subpart A—Authority and Purpose

Sec.
51.1 What does this part cover?
51.2 What is the policy underlying concession contracts?

Subpart B—General Definitions

51.3 How are terms defined in this part?

Subpart C—Solicitation, Selection and Award Procedures

51.4 How will the Director invite the general public to apply for the award of a concession contract?
51.5 What information will the prospectus include?
51.6 Will a concession contract be developed for a particular potential offeror?
51.7 How will information be provided to a potential offeror after the prospectus is issued?
51.8 Where will the Director publish the notice of availability of the prospectus?
51.9 How do I get a copy of the prospectus?
51.10 How long will I have to submit my proposal?
51.11 May the Director amend, extend, or terminate a prospectus or solicitation?
51.12 Do I have any rights if the Director amends, extends or terminates a prospectus or solicitation?
51.13 Are there any other procedures that I must follow or that apply to the solicitation or to the selection of the best proposal?
51.14 When will the Director determine if proposals are responsive?
51.15 What is a "responsive proposal"?
51.16 What happens if no responsive proposals are submitted?
51.17 May I clarify, amend or supplement my responsive proposal after it is submitted?
51.18 How will the Director select an offeror for award of the concession contract?
51.19 How will the Director select the best proposal?
51.20 What are the five principal selection factors?
51.21 How will the Director apply the five selection factors and select the best proposal?
51.22 When will the Director apply secondary factors?
51.23 How will the Director select the best proposal if two or more proposals are assessed as equal after the Director has applied the principal and secondary factors?
51.24 What happens if a proposal is rated "unacceptable" under any of the first four principal selection factors or if the offeror is not a qualified person?
51.25 Must the Director award the concession contract that is set forth in the prospectus?
51.26 Does this part limit the authority of the Director?
51.27 When must the selected offeror execute the concession contract?
51.28 After the selected offeror executes the concession contract, when may the Director execute the concession contract?

Subpart D—Non-Competitive Award of Concession Contracts

51.29 May the Director extend an existing concession contract without a public solicitation?
51.30 May the Director award a temporary concession contract without a public solicitation?
51.31 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Subpart E—Right of Preference

51.32 Does the existence of a preferred offeror and a possible right of preference limit the authority of the Director to establish the terms of a concession contract?
51.33 What three conditions must be met before the Director determines that a prior concessioner is a preferred offeror?
51.34 How will the Director determine that a concession contract is a qualified concession contract?
51.35 How will the Director determine that a concession contract is an "outfitter and guide concession contract"?
51.36 What are some examples of outfitter and guide concession contracts?
51.37 What facts and circumstances will the Director take into account when determining if a concession contract is an outfitter and guide concession contract?
51.38 What are some circumstances that will indicate that outfitter and guide operations are conducted in the backcountry?
51.39 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?
51.40 Are there exceptions to this compensable interest prohibition?
51.41 Who will make the determination that a concession contract is an outfitter and guide contract?
51.42 How will the Director determine if a prior concessioner was satisfactory for purposes of this part?
51.43 Will a prior concessioner that has operated for less than 50% of the term of a concession contract be considered a satisfactory operator?
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Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391)

Subpart A—Authority and Purpose

§ 51.1 What does this part cover?

(a) This part covers the solicitation, award, and administration of concession contracts. The Director solicits, awards and administers concession contracts on behalf of the Secretary of the Interior under the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, and particularly, Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391). The purpose of concession contracts is to authorize concessioners to provide visitor services in park areas. All concession contracts are to be consistent with the requirements of this part.

(b) The Director may award concession contracts only under this authority. The Director may not authorize the conduct of visitor services by any means other than a concession contract except as otherwise may be authorized by law. For example, the Director may issue limited commercial use authorizations under section 418 of the 1998 Act. Or, the Director may enter into agreements with non-profit organizations for the sale of interpretive materials and/or the conduct of interpretive programs for a fee or charge to visitors. In addition, the Director may, as part of an interpretive program agreement otherwise authorized by law, authorize the non-profit organization to provide other incidental visitor services necessary and appropriate for the conduct of the interpretive program.

§ 51.2 What is the policy underlying concessions contracts?

It is the policy of the Congress and the Secretary of the Interior that visitor services in park areas may be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair park values and resources. Development of visitor services in park areas will be limited to locations that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. It is also the policy of the Congress and the Secretary of the Interior that development of visitor services in park areas must be limited to those as are necessary and appropriate for public use and enjoyment of the park area in which they are located.

Subpart B—General Definitions

§ 51.3 How are terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

The *1965 Act* means Public Law 89–249, commonly known as the National Park Service Concessions Policy Act of 1965.

A *1965 Act concession contract* is a concession contract or permit entered into under the authority of the 1965 Act.

The *1998 Act* means Title IV of Public Law 105–391.

The *award* of a concession contract is the establishment of a legally binding concession contract. It occurs only when the Director and a selected offeror both fully execute a concession contract.

A *concession contract* (or *contract*), unless otherwise indicated in this part, means a binding written agreement between the Director and a concessioner under which the concessioner is authorized and/or required to provide certain visitor services within a park area under specified terms and conditions. Concession contracts are not contracts within the meaning of 41 U.S.C. 602 *et seq.* and are not service or procurement contracts within the meaning of statutes, regulations or policies that apply to federal service contracts or other types of federal procurement actions.

A *concessioner* is an individual, corporation, or other legally recognized form of business organization that holds a concession contract.

Director means the Director of the National Park Service or an authorized representative of the Director, except where a particular official is specifically identified in this part.

A *franchise fee* is the consideration paid to the Director by a concessioner for the privileges granted by a concession contract.

Offeror means an individual, corporation, or other legally recognized form of business organization that submits a proposal for a concession contract.

A *park area* means a unit of the national park system.

Possessory interest means a compensable interest in real property improvements as defined by the 1965 Act obtained by a prior concessioner under a possessory interest concession contract. Possessory interest does not include any interest in personal property even though a prior concession contract may have provided a compensable interest in personal property described as a "possessory interest."

A *possessory interest concession contract* means a 1965 Act concession contract that provided the prior concessioner a possessory interest.

A *preferred offeror* is a prior concessioner that the Director has determined is eligible to exercise a right of preference to the award of a concession contract in accordance with this part if the preferred offeror submits a responsive proposal under a prospectus.

A *prior concession contract* is the concession contract that is or was in effect before the effective date of a new concession contract.

A *prior concessioner* is a concessioner under a prior concession contract.

A *qualified person* is an individual, corporation or other legally recognized form of business organization that the Director determines is qualified to be a concessioner. To be a qualified person, an individual, corporation or other legally recognized form of business organization must have the experience and financial ability to satisfactorily carry out the terms of a concession contract. This experience and ability includes, but is not limited to, the ability to protect and preserve the resources of the park area and the ability to provide satisfactory visitor services at reasonable rates to the public.

A *right of preference* is the right of a preferred offeror, if it submits a responsive proposal, to match in accordance with the requirements of this part the terms and conditions of a competing responsive proposal that the Director has determined to be the best proposal for a concession contract. A right of preference does not provide a preferred offeror any rights of any nature to establish or negotiate the terms and conditions of a concession contract to which a right of preference may apply.

Visitor services means accommodations, facilities and services necessary and appropriate for public use and enjoyment of a park area provided to visitors to the area by a person (other than the Director) for a fee or charge. The fee or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services. Visitor services may include, but are not limited to, lodging, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services may include campgrounds not operated by the Director. Visitor services include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

Subpart C—Solicitation, Selection and Award Procedures

§ 51.4 How will the Director invite the general public to apply for the award of a concession contract?

The Director must award all concession contracts, except as otherwise expressly provided in this part, through a public solicitation process. The public solicitation process begins with the issuance of a prospectus. The prospectus will describe the terms and conditions of a concession contract to be awarded and will invite the general public to submit proposals for the contract.

§ 51.5 What information will the prospectus include?

The prospectus must include the following information:

(a) The minimum requirements of the concession contract. The minimum requirements of the concession contract, include, but are not limited to the following:

(1) The minimum franchise fee or fees, and, other forms of minimum consideration, if any, that the concessioner must pay;

(2) The minimum required visitor services that the concessioner must provide and any other visitor services that the concessioner may be authorized but not required to provide;

(3) The minimum capital investment that the concessioner must make;

(4) The minimum required measures that the concessioner must take to ensure the protection, conservation, and preservation of the resources of the park area. Such minimum requirements will include specific actions and programs

for the protection and enhancement of the environment as appropriate in furtherance of these purposes; and

(5) Any other minimum requirements that the new contract may specify.

(b) The terms and conditions of a prior concession contract, if any, relating to the visitor services to be provided, including all fees and other forms of compensation provided to the Director under a prior contract;

(c) A description of facilities and services, if any, that the Director may provide to the concessioner under the terms of the concession contract, including, but not limited to, public access, utilities and buildings;

(d) An estimate of the amount of any compensation due a prior concessioner from a new concessioner under the terms of a prior concession contract;

(e) A statement identifying each principal selection factor for proposals, including sub-factors, if any, and secondary factors, if any, and the weight and relative importance of the principal and any secondary factors in the selection decision;

(f) Any additional information available to the Director that the Director determines is necessary to allow for the submission of competitive proposals; and

(g) Identification of a preferred offeror for the concession contract, if any, and, if a preferred offeror exists, a description of a right of preference to the award of the concession contract.

§ 51.6 Will a concession contract be developed for a particular potential offeror?

The terms and conditions of a concession contract must represent the requirements of the Director and must not be developed to accommodate the capabilities or limitations of any potential offeror.

§ 51.7 How will information be provided to a potential offeror after the prospectus is issued?

Material information directly related to the prospectus and the concession contract (except that which is otherwise publicly available) that the Director provides to any potential offeror prior to the submission of proposals must be made available to all persons who have requested a copy of the prospectus.

§ 51.8 Where will the Director publish the notice of availability of the prospectus?

The Director will publish a notice of the availability of the prospectus at least once in the Commerce Business Daily or in a similar publication if the Commerce Business Daily ceases to be published. The Director may also publish notices, if determined appropriate by the Director, in local or national newspapers or trade magazines.

§ 51.9 How do I get a copy of the prospectus?

The Director will make the prospectus available upon request to all interested persons. The Director may charge a reasonable fee for a prospectus, not to exceed printing and mailing costs.

§ 51.10 How long will I have to submit my proposal?

The Director will allow an appropriate period of time for submission of proposals that is not less than sixty days unless the Director determines that a shorter time period is appropriate in the circumstances of a particular solicitation.

§ 51.11 May the Director amend, extend, or terminate a prospectus or solicitation?

The Director may amend a prospectus and/or extend the submission date prior to the date of submission of proposals. The Director may terminate a solicitation at any time prior to award of the concession contract.

§ 51.12 Do I have any rights if the Director amends, extends or terminates a prospectus or solicitation?

No offeror or other person will obtain compensable or other legal rights as a result of a canceled or resolicited solicitation for a concession contract.

§ 51.13 Are there any other procedures that I must follow or that apply to the solicitation or to the selection of the best proposal?

The Director may specify, in a prospectus, additional solicitation and/or selection procedures consistent with the requirements of this part in the interests of enhancing competition. Such additional procedures may include, but are not limited to, issuance of a two-phased prospectus—a qualifications phase and a proposal phase, and, use of a lottery system to select proposals where two or more proposals are deemed to be of equal merit. The Director will include simplified solicitation and/or information requirements in a prospectus for a concession contract that the Director considers is likely to be awarded to a sole proprietorship.

§ 51.14 When will the Director determine if proposals are responsive?

After the due date for submission of proposals as stated in a prospectus, the Director may make a preliminary review of the proposals submitted to determine which of them, if any, are responsive to the terms of the prospectus. The Director will not further consider proposals that the Director determines to be non-responsive.

§ 51.15 What is a "responsive proposal"?

A "responsive proposal" means a timely submitted proposal in which the offeror agrees to all of the minimum requirements of the concession contract and the prospectus and provides all mandatory information specified in the prospectus.

§ 51.16 What happens if no responsive proposals are submitted?

If no responsive proposals are submitted, the Director may cancel the prospectus, establish new contract requirements and reissue a modified prospectus, or, cancel the solicitation.

§ 51.17 May I clarify, amend or supplement my responsive proposal after it is submitted?

The Director may request from any offeror who has submitted a responsive proposal written clarification of its proposal. However, an offeror may not substantively amend or supplement a responsive proposal after the submission date unless the Director provides all offerors that submitted responsive proposals a similar opportunity to amend or supplement their proposals.

§ 51.18 How will the Director select an offeror for award of the concession contract?

The Director, subject to applicable conditions of this part, will select for award of the concession contract the offeror that the Director determines submitted the best proposal pursuant to the prospectus, The "best proposal" is the responsive proposal that the Director, through the following procedures, determines will result in the highest level of performance and benefit to the government, including, but not limited to, protection and enhancement of the resources of the park area, under the concession contract of all of the responsive proposals submitted.

§ 51.19 How will the Director select the best proposal?

The Director will apply to responsive proposals the five principal selection factors in § 51.20, taking into account any subfactors and secondary factors described in the prospectus, and select the best proposal in the manner set forth in that section.

§ 51.20 What are the five principal selection factors?

The five principal selection factors are:

(a) The responsiveness of the proposal to the objective, as described in the prospectus, of protecting, conserving, and preserving resources of the park area. A subfactor under this principal factor shall be how the offeror proposes to conduct its concession operations in an environmentally enhancing manner through, among other programs and activities, energy conservation, waste reduction, and recycling;

(b) The responsiveness of the proposal to the objective, as described in the prospectus, of providing necessary, appropriate and quality visitor services at reasonable rates;

(c) The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract;

(d) The financial capability of the offeror to carry out its proposal; and

(e) The amount of the proposed franchise fee and/or other forms of financial consideration to the Director. However, consideration of higher revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates. The Director must establish the minimum franchise fee stated in the prospectus in accordance with these objectives. The Director may consider a proposed franchise fee higher than the established minimum if the Director determines that the proposed higher franchise fee is consistent with these objectives.

§ 51.21 How will the Director apply the five selection factors and select the best proposal?

(a) Except as indicated in paragraph (b) of this section, the first four principal selection factors will have equal weight and relative importance in the selection. The Director will assess proposals under these four principal selection factors as "unacceptable," "fair," "good," or "excellent" on the basis of a narrative explanation, discussing subfactors when applicable. The Director will then determine the best proposal taking into account the assessments under each of the first four selection factors and the narrative explanation as to the reasons for each assessment.

(b) If two or more proposals are assessed as substantially equal with respect to qualifying as the best proposal after the Director applies the first four principal selection factors, the Director will select as the best proposal the proposal that the Director determines credibly offers the most substantial, comprehensive and effective program for environmental enhancement, unless the Director determines that another substantially equal proposal provides, through an offer of a higher than the minimum franchise fee, substantially greater benefits for the preservation of the resources of the park area. In this case, the Director will select as the best proposal that proposal that provides the higher franchise fee and will dedicate the higher portion of the franchise fee for expenditure only on park resource protection programs.

(c) If the Director determines that none of the otherwise substantially equal proposals credibly offers to provide a more substantial, comprehensive and effective program for environmental enhancement, the Director will evaluate the applicable proposals under the fifth principal selection factor to determine the best proposal, subject to the limitations stated in such factor.

§ 51.22 When will the Director apply secondary factors?

If the Director, even after applying the fifth principal selection factor, assesses two or more proposals as substantially equal with respect to qualifying as the best proposal, the Director will apply any secondary selection factors described in the prospectus to select the best proposal. The secondary factors may include, to the extent otherwise permissible by law, the extent to which a proposal calls for the employment of Indians (including Native Alaskans) and involvement of businesses owned by Indians, Indian tribes, or Native Alaskans in operations under the concession contract.

§ 51.23 How will the Director select the best proposal if two or more proposals are assessed as substantially equal after the Director has applied the principal and secondary factors?

(a) If, after the Director has applied the principal and any secondary selection factors, the Director still assesses two or more proposals as substantially equal with respect to qualifying as the best proposal, and if the prospectus does not identify an additional selection procedure, the Director will require the submission of "best and final" proposals from the offerors that submitted the substantially equal assessed proposals. Based on the "best and final" proposals, the Director will select for award of the concession contract the offeror that submitted the best final proposal as determined by the Director. In making this determination, the Director will take into account the principal selection factors, including any subfactors, any secondary factors, and the purposes, policies and objectives of this part.

(b) If, after the Director has applied the principal and any secondary selection factors, the Director still assesses two or more proposals as substantially equal with respect to qualifying as the best proposal, and if the prospectus does identify an additional selection procedure, the Director will follow the specified procedure.

§ 51.24 What happens if a proposal is rated "unacceptable" under any of the first four principal selection factors or if the offeror is not a qualified person?

The Director must reject any proposal received, including a proposal from a preferred offeror and regardless of the franchise fee offered, if the Director determines the proposal to be "unacceptable" under any of the first four principal selection factors. The Director must reject any proposal received, including a proposal from a preferred offeror and regardless of the franchise fee offered, if the Director determines that the offeror is not a qualified person as defined in this part.

§ 51.25 Must the Director award the concession contract that is set forth in the prospectus?

(a) Except for incorporating into the concession contract appropriate elements of the best proposal, the Director must not award a concession contract which materially amends or does not incorporate the terms and conditions of the concession contract as set forth in the prospectus, unless the Director determines that:

(1) The modification is necessary for the protection of visitors or the resources and values of the park area; and

(2) The modification does not provide a financial benefit to the selected offeror.

(b) If the Director wishes to make material modifications that are of financial benefit to the offeror, the Director must cancel and resolicit the concession contract under this part with the modified terms and conditions.

§ 51.26 Does this part limit the authority of the Director?

Nothing in this part may be construed as limiting the authority of the Director at any time to determine whether to solicit or award a concession contract, to terminate a solicitation, or to terminate a concession contract in accordance with its terms.

§ 51.27 When must the selected offeror execute the concession contract?

The selected offeror must execute the concession contract promptly after selection of the best proposal and within the time period established by the Director. If the selected offeror fails to execute the concession contract in this period, the Director may select another responsive proposal or may cancel the selection and resolicit the concession contract.

§ 51.28 After the selected offeror executes the concession contract, when may the Director execute the concession contract?

Before awarding a concession contract with anticipated annual gross receipts in excess of $5,000,000 or of more than 10 years in duration, including, but not limited to, such contracts awarded non-competitively by the Director pursuant to subpart D of this part, the Director must submit the concession contract to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Director must not award any such concession contract until sixty days after such submission. Award of these contracts may not be made without the Director's written approval. The Director may not delegate this approval except to a Deputy Director or an Associate Director.

Subpart D—Non-Competitive Award of Concession Contracts

§ 51.29 May the Director extend an existing concession contract without a public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively an extension of an existing concession contract to the existing concessioner for additional terms not to exceed three years in the aggregate. The Director may award such an extension only if the Director determines that the extension is necessary to avoid interruption of visitor services. Before awarding such a contract extension, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services.

§ 51.30 May the Director award a temporary concession contract without a public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively a temporary concession contract for terms not to exceed three years in the aggregate to any qualified person if the Director determines that this award is necessary to avoid interruption of visitor services. Before awarding a temporary contract, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. The holder of a temporary concession contract will not obtain the rights of a preferred offeror as described in this part or otherwise obtain a possible right of preference to a concession contract which replaces a temporary contract unless the Director determines both that relevant circumstances legally require the recognition of a preferred offeror under the terms of the 1998 Act, and, that the holder of the temporary contract otherwise meets the preferred offeror requirements of this part.

§ 51.31 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award a concession contract non-competitively to any qualified person if the Director determines both that such an award is otherwise consistent with the requirements of this part and that extraordinary circumstances exist under which compelling and equitable considerations require the award of the concession contract to a particular qualified person in the public interest. The Director must publish a notice of his intention to award a concession contract under these circumstances and the reasons for the proposed award in the **Federal Register** at least 30 days before the concession contract is awarded. In addition, the Director also must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives at least 30 days before the contract is awarded. The Director must personally approve of any such notifications or award.

Subpart E—Right of Preference

§ 51.32 Does the existence of a preferred offeror and a possible right of preference limit the authority of the Director to establish the terms of a concession contract?

The existence of a preferred offeror and a possible right of preference does not limit the authority of the Director to establish, in accordance with this part, the terms and conditions of a concession contract, including but not limited to, terms and conditions that modify the terms and conditions of a prior concession contract.

§ 51.33 What three conditions must be met before the Director determines that a prior concessioner is a preferred offeror?

A prior concessioner is a preferred offeror if the Director determines that the following three conditions are met:

(a) The applicable new concession contract provides only for the continuation of the visitor services authorized or required under a prior concession contract. The visitor services to be continued under the new contract may be expanded or diminished in scope but may not materially differ in nature and type from those authorized or required under the prior concession contract;

(b) The applicable prior concession contract is a qualified concession contract, determined under this subpart; and

(c) The applicable prior concessioner was a satisfactory concessioner during the term of its prior concession contract, determined under this subpart.

§ 51.34 How will the Director determine that a concession contract is a qualified concession contract?

A prior concession contract is a qualified concession contract if the Director determines either that:

(a) The new concession contract that is to replace the prior concession contract is estimated to result in, as determined by the Director, gross annual receipts of less than $500,000 in the first calendar year of its term; or

(b) The prior concession contract was an outfitter and guide concession contract and the new concession contract that is to replace the prior contract is an outfitter and guide concession contract.

§ 51.35 How will the Director determine that a concession contract is an "outfitter and guide concession contract"?

The Director will determine that a concession contract is an "outfitter and guide concession contract" if the Director determines both that:

(a) The concession contract solely authorizes or requires (except for park area access purposes) the conduct of specialized outdoor recreation guide services in the backcountry of a park area; and

(b) The conduct of operations under the concession contract requires employment of specially trained and experienced guides to accompany park visitors who otherwise may not have the skills and equipment to engage in the activity and to provide a safe and enjoyable experience for these visitors.

§ 51.36 What are some examples of outfitter and guide concession contracts?

Examples of outfitter and guide concession contracts may include, but are not limited to, concession contracts which solely authorize or require the conduct of guided river running, hunting (where otherwise lawful in a park area), fishing, horseback, camping, and mountaineering activities in the backcountry of a park area.

§ 51.37 What facts and circumstances will the Director take into account when determining if a concession contract is an outfitter and guide concession contract?

In determining whether a concession contract is an outfitter and guide contract, the Director will take into account the terms and related facts and circumstances of the concession contract and the actual operations conducted by the prior concessioner under a prior contract. The Director will also take into account the physical and geographic features of the applicable park area. If a prior concessioner provided visitor services beyond the scope of the outfitter and guide services authorized or required by its prior concession contract, the Director will determine that the concessioner's prior concession contract is not an outfitter and guide concession contract. The only exception to this determination is if the Director concludes that the additional visitor services were negligible in nature.

§ 51.38 What are some circumstances that will indicate that outfitter and guide operations are conducted in the backcountry?

Circumstances which indicate that outfitter and guide operations are conducted in the backcountry of a park area typically include, but are not limited to, the fact that:

(a) The operations occur in areas remote from roads and developed areas;

(b) The operations are conducted within a designated natural area of a park area;

(c) The operations occur in areas which are inaccessible by motorized vehicle;

(d) The operations occur in areas where search and rescue support is not readily available; or

(e) All or a substantial portion of the operations occur in designated or proposed wilderness areas.

§ 51.39 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?

The Director will not find that a concession contract is an outfitter and guide contract if the contract grants any compensable interest in real property improvements on lands owned by the United States within a park area.

§ 51.40 Are there exceptions to this compensable interest prohibition?

Two exceptions to this compensable interest prohibition exist:

(a) The prohibition will not apply to real property improvements lawfully constructed by a concessioner with the written approval of the Director in accordance with the express terms of a 1965 Act concession contract; and

(b) The prohibition will not apply to real property improvements constructed and owned in fee simple by a concessioner or owned in fee simple by a concessioner's predecessor before the land on which they were constructed was included within the boundaries of the applicable park area.

§ 51.41 Who will make the determination that a concession contract is an outfitter and guide contract?

Only the Director personally, or a Deputy or Associate Director authorized by the Director, will make the determination that a concession contract is or is not an outfitter and guide contract as described in this section.

§ 51.42 How will the Director determine if a prior concessioner was satisfactory for purposes of this part?

(a) To be a satisfactory concessioner for the purposes of this part, the Director must determine that a prior concessioner operated satisfactorily on an overall basis during the term of a prior concession contract, including extensions of the contract. The Director will base this determination on annual evaluations made by the Director during the term of the applicable prior concession contract and other relevant facts and circumstances,

(b) Among other considerations, the Director will determine that a concessioner did not operate satisfactorily during the term of the prior contract if an annual evaluation of a prior concessioner was less than satisfactory for any year of operation under a prior contract, and, any additional annual evaluation was also less than satisfactory. In addition, the Director will determine that a concessioner did not operate satisfactorily during the term of the prior contract if the prior concessioner's annual evaluation in either of the last two years of the term of the prior contract was less than satisfactory.

§ 51.43 Will a prior concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?

The Director will determine that a prior concessioner has not operated satisfactorily on an overall basis during the term of a prior contract if that concessioner has or will have operated under a prior concession contract for less than two years under a concession contract with a term of ten years or less than four years under a concession contract with a term of more than ten years. For purposes of this section, a new concessioner's first day of operation under an assigned concession contract will be the day the Director approves the assignment pursuant to this part. If the Director determines that the assignment was compelled by circumstances beyond the control of the assigning concessioner, the Director may make an exception to this requirement.

§ 51.44 May the Director determine that a prior concessioner has not operated satisfactorily after a prospectus is issued?

If circumstances warrant, the Director may determine that a prior concessioner has not operated satisfactorily on an overall basis during the term of a prior contract after a prospectus for a new contract has been issued. In this event, the prospectus must be amended or canceled and reissued without recognition of a preferred offeror or a possible right of preference to the concession contract.

§ 51.45 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?

Nothing in this part will limit the right of the Director to terminate a concession contract pursuant to its terms at any time for unsatisfactory performance or otherwise. If a concession contract is terminated for unsatisfactory performance or other breach, Director will not determine the terminated concessioner, even if otherwise qualified, to be a preferred offeror. The fact that the Director may not have terminated a prior concession contract for unsatisfactory performance or other breach will not limit the authority of the Director to determine that a prior concessioner did not operate satisfactorily during the term of a prior concession contract.

§ 51.46 May the Director grant a right of preference except in accordance with this part?

The Director may not grant a concessioner or any other person a right of preference or any other form of

entitlement of any nature to a new concession contract, except in accordance with this part. The right of preference described by this part is a statutory right. The Director will not include in concession contracts as a matter of contract right a preference or other form of entitlement of any nature to a new concession contract.

§ 51.47 How will I know if a preferred offeror exists?

If the Director has determined that a preferred offeror exists under the requirements of this subpart, the Director will identify the preferred offeror in the applicable prospectus and describe the preferred offeror's possible right of preference.

§ 51.48 What solicitation, selection and award procedures apply when a preferred offeror exists?

The solicitation, selection and award procedures described in this part will apply to the solicitation, selection and award of proposals for concession contracts for which a preferred offeror exists, except as modified by this subpart.

§ 51.49 What must a preferred offeror do before he or she may exercise a right of preference?

A preferred offeror must submit a responsive proposal pursuant to the terms of an applicable prospectus if the preferred offeror wishes to exercise a right of preference.

§ 51.50 What happens if the preferred offeror does not submit a responsive proposal?

If the preferred offeror fails to submit a responsive proposal, the preferred offeror may not exercise a right of preference. The concession contract will be awarded to the offeror submitting the best responsive proposal.

§ 51.51 What is the process if the Director determines that the best responsive proposal was not submitted by the preferred offeror?

If the Director determines that a proposal other than the proposal of a preferred offeror is the best proposal submitted, and if a preferred offeror submitted a responsive proposal, then the Director must permit the preferred offeror to amend its proposal. The amended proposal must meet the better terms and conditions of the best proposal as determined by the Director. If the preferred offeror duly amends its proposal within the time period allowed by the Director, and the Director determines that the amended proposal is at least equal to the best proposal, and the Director determines that the preferred offeror is a qualified person as defined in this part with respect to carrying out the terms and conditions of its amended proposal, then the Director must select the preferred offeror for award of the contract upon the amended terms and conditions.

§ 51.52 What if the preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal or is not a qualified person to carry out the terms of the amended proposal?

If a preferred offeror does not amend its proposal to meet the terms and conditions of the best proposal within the time period allowed by the Director, the Director will award the contract to the offeror submitting the best proposal. Additionally, if the Director finds that the preferred offeror is not a qualified person with respect to carrying out the terms and conditions of its amended proposal, the Director will award the contract to the offeror submitting the best proposal.

§ 51.53 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?

If a selected preferred offeror fails to execute the concession contract in the time period specified by the Director, the Director either will select for award of the concession contract the offeror that submitted the best proposal, or will resolicit the concession contract without recognition of a preferred offeror or a possible right of preference.

§ 51.54 What happens to a possible right of preference if the Director receives no responsive proposals?

If the Director receives no responsive proposals to a prospectus for a concession contract for which a preferred offeror exists, the Director may resolicit the concession contract. No preferred offeror will be recognized and no possible right of preference will apply to the resolicited concession contract unless the contract is resolicited upon terms and conditions that are materially more favorable to offerors than those contained in the original contract.

§ 51.55 How do I appeal a decision of the Director that a prior concessioner is not a preferred offeror?

(a) If the Director determines that a prior concessioner is not a preferred offeror, the prior concessioner may appeal this determination to the Director. This appeal must be received by the Director in writing no later than thirty days after the date of the determination. Where applicable, the Director will give notice of this appeal to all potential offerors that requested a prospectus. A prior concessioner that made an appeal must submit a responsive proposal in response to a prospectus if its appeal is pending as of the date of submission for proposals as set forth in the prospectus. If the prior concessioner fails to submit a timely responsive proposal, the Director must consider the appeal moot as no right of preference would apply to the concession contract under this part.

(b) The Director must consider this appeal personally or must authorize a Deputy or Associate Director to consider the appeal. However, the deciding official considering the appeal may not be the official who made the disputed determination. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal, other written information available, and the requirements of this part. The written decision on the appeal must be issued before the Director selects the best proposal submitted under the prospectus. If the appeal results in a prior concessioner being determined as a preferred offeror, then the prior concessioner will have a possible right of preference to the contract as described in and subject to the conditions of this part including, but not limited to, the obligation to submit a responsive proposal.

(c) A prior concessioner will not have exhausted its administrative remedies with respect to the failure of the Director to determine it to be a preferred offeror until such time as the Director issues a written decision in response to an appeal submitted pursuant to this section.

Subpart F—Leasehold Surrender Interest

§ 51.56 What special terms must I know to understand leasehold surrender interest?

To understand leasehold surrender interest, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

A *capital improvement* is a structure, fixture, or non-removable equipment provided by a concessioner under the terms of a concession contract that is permanently affixed to the land so as to be part of the realty. Except as otherwise may be specified in this part, a capital improvement does not include any interest in land. Additionally, except as otherwise may be specified in this part, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, trailers, or other objects not permanently affixed to the real estate regardless of the size of such objects. Concession contracts may further describe, consistent with the limitations of this part and the 1998 Act, the nature and type of specific capital improvements in which a concessioner may obtain a leasehold surrender interest.

Construction cost of a capital improvement means the total of the eligible direct and indirect costs necessary for constructing or installing the capital improvement as determined by the Director, other than ineligible costs, that are included in the concessioner's basis in the capital improvement for federal income tax purposes.

Consumer Price Index means the national "Consumer Price Index—All Urban Consumers" published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

Depreciation means the loss of value in a capital improvement from physical deterioration and/or functional obsolescence as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

Eligible direct costs means the sum of all costs (in amounts no higher than those prevailing in the locality of the project), of the construction contractor that both are necessary for the construction or installation of the capital improvement as determined by the Director and are typically elements of a construction contract or fixture installation contract. Eligible direct costs may include, but are not limited to, the costs of material, labor, contractor's (and subcontractors') profit and overhead, and the construction contractor's job supervision. Eligible direct costs also may include performance bonds and insurance for worker's compensation, fire, liability, and unemployment. Additionally, eligible direct costs may include the costs of building permits, equipment used in construction, security during construction, contractor's shack and temporary fencing, material storage facilities, installing power lines and utilities.

Eligible indirect costs means the sum of all other costs (in amounts no higher than those prevailing in locality of the project) necessary for the construction or installation of a capital improvement as determined by the Director. Eligible indirect costs may include, but are not limited to, design services (schematic design, design development, construction documents and cost estimating) and environmental and other studies if required by the Director. Eligible indirect costs may also include the cost of carrying the investment in the capital improvement until its substantial completion (as determined by the Director); the cost of insuring the capital improvement until the date of its substantial completion (as determined by the Director); and direct, on-site construction inspection expenses incurred by the concessioner.

Fixtures and *non-removable equipment* means manufactured items of personal property of independent form and utility necessary for the basic functioning of a capital improvement that are permanently installed in or on land or a capital improvement so as to become part of the real estate (e.g., heating, air conditioning and ventilation equipment, tubs, street lamps, fire protection systems, etc.). Fixtures and non-removable equipment do not include equipment that can be disconnected and relocated without substantial damage to a structure (e.g. computer printers, portable heating units, table lamps, chandeliers, televisions, trade fixtures, trade telephones, vacuum cleaners, etc.). Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, foundations, electric wiring, water and gas piping, wallpaper, paint, etc.). Except as otherwise indicated, the term "fixture" as used elsewhere in this part includes the term "non-removable equipment."

Ineligible costs are direct and indirect costs that may be associated with the construction or installation of a capital improvement but are not approved by the Director. Ineligible costs also include all administrative, overhead and other costs of the concessioner (other than direct, on-site construction inspection expenses). Ineligible costs further include any otherwise eligible costs that are not included in the concessioner's basis in the capital improvements for federal income tax purposes.

Leasehold surrender interest solely means a right to payment in accordance with this part for related capital improvements that a concessioner makes within a park area on lands owned by the United States if the related capital improvements are made both pursuant to this part and under the terms and conditions of an applicable concession contract. The existence of a leasehold surrender interest does not give the concessioner, or any other person, any right to conduct business in a park area, to occupy or utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

Leasehold surrender interest concession contract means a concession contract that provides for leasehold surrender interest in capital improvements.

Leasehold surrender interest value means the amount of compensation a concessioner is entitled to be paid for a leasehold surrender interest in accordance with this part. Unless otherwise provided by the terms of a leasehold surrender interest concession contract, leasehold surrender interest value generally is an amount equal to:

(1) The approved initial construction cost of the related capital improvement,

(2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the completion of the construction or installation of the related capital improvement to the date of payment of the leasehold surrender interest value,

(3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of the applicable leasehold surrender interest concession contract.

Major rehabilitation means a planned, comprehensive rehabilitation of an existing structure:

(1) The Director determines is completed within eighteen months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and

(2) The construction cost of which exceeds the pre-rehabilitation value of the structure. Major rehabilitation does not include expenses resulting from routine maintenance and repair.

Pre-rehabilitation value of a structure means the replacement cost of the structure less depreciation.

Real property improvements means real property other than land, including, but not limited to, capital improvements.

Related capital improvement or *related fixture* means a capital improvement in which a concessioner has or seeks to obtain a leasehold surrender interest.

Replacement cost means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure,

using modern materials and current standards, design and layout.

Structure means a building, dock, or similar edifice, excluding fixtures, permanently affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping and plantings are not a structure or part of a structure. Interior furnishings not attached to the structure so as to be part of the real estate are not part of the structure.

§ 51.57 How do I obtain a leasehold surrender interest?

Leasehold surrender interest concession contracts will contain appropriate leasehold surrender interest terms and conditions consistent with this part. A concessioner may obtain a leasehold surrender interest in capital improvements only if the concessioner complies both with the requirements of this part and the terms and conditions of an applicable leasehold surrender interest concession contract.

§ 51.58 If a concessioner does not comply with the requirements of this part or the terms and conditions of a leasehold surrender interest concession contract, what happens?

If a concessioner does not comply with the leasehold surrender interest requirements of this part or the applicable terms and conditions of a leasehold surrender interest concession contract, the concessioner will not obtain a leasehold surrender interest or any compensable interest in capital improvements. Any capital improvements so constructed or installed by the concessioner will be the property of the United States without a right of compensation in any person.

§ 51.59 Why may the Director authorize the construction or installation of a capital improvement?

The Director may only authorize or require a concessioner to construct capital improvements on park lands for the conduct by the concessioner of necessary and appropriate visitor services as determined by the Director, including, the construction of capital improvements necessary for support of the concessioner's visitor services.

§ 51.60 What must a concessioner do before beginning to construct or install a capital improvement in which the concessioner seeks a leasehold surrender interest?

Before beginning to construct or to install any capital improvement in which the concessioner seeks to obtain a leasehold surrender interest, the concessioner must obtain written approval from the Director in accordance with the terms of its leasehold surrender interest concession contract. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this part. Among other matters, the Director must not approve the construction or installation of a capital improvement to the extent that the Director considers that the estimate of total construction cost is unreasonable or if the Director finds that the estimate of total construction cost contains ineligible costs. The requirements of this section also apply to any change orders to a capital improvement project previously approved by the Director and to any proposed addition to the capital improvement made after completion of its initial construction.

§ 51.61 What must a concessioner do after substantial completion of the capital improvement?

Upon substantial completion of the construction or installation of a capital improvement, or an addition to an existing capital improvement, in which the concessioner seeks a leasehold surrender interest, the concessioner must provide the Director a detailed financial report. The detailed financial report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The financial report must document and any requested certification must state:

(a) That all the elements of the construction cost were incurred by the concessioner;

(b) That all such elements are eligible under the definition of construction cost as defined in § 51.56; and

(c) That all such elements are included in the concessioner's basis in the capital improvement for purposes of its federal income tax returns.

§ 51.62 How will the Director determine the construction cost for purposes of leasehold surrender interest value?

After receiving the detailed financial report (and certification, if requested), from the concessioner, the Director will review the report, certification and other information as appropriate. The Director will then determine in writing the construction cost that is to be recognized as the construction cost of the capital improvement for purposes of leasehold surrender interest value, and where applicable, identify any ineligible costs. If the Director's determination differs from the concessioner's report, the Director will state the reasons for the differences.

§ 51.63 May the concessioner appeal the Director's determination of construction cost?

If the concessioner disagrees with the Director's determination of construction cost, the concessioner may appeal the determination to an official designated by the Director. The appeal must be in writing and made within thirty days of receipt of the initial determination. The designated official will review the concessioner's written appeal and the record of the matter and make a final determination as to the proper construction cost in accordance with this part. Such determination will be the final administrative determination of the construction cost of capital improvements for purposes of this part or otherwise. If no timely appeal is made, the Director's initial determination will be the final determination of the construction cost of a capital improvement. The Director may at any time review a construction cost determination if the Director has reason to believe that it was based on false, misleading or incomplete information.

§ 51.64 What actions may or must the concessioner take with respect to a leasehold surrender interest?

The concessioner:

(a) May encumber a leasehold surrender interest in accordance with this part, but only for the purposes specified in this part;

(b) Where applicable, must transfer or relinquish in accordance with this part its leasehold surrender interest in connection with any assignment, termination or expiration of the concession contract; and

(c) May waive, relinquish or agree to an alternative value for a leasehold surrender interest.

§ 51.65 Will leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?

A leasehold surrender interest may not be extinguished by the expiration or termination of a concession contract and a leasehold surrender interest may not be taken for public use except on payment of just compensation as described in this part or in an applicable leasehold surrender interest concession contract. Payment of leasehold surrender interest value pursuant to this part or the terms of an applicable leasehold surrender interest concession contract will constitute the payment of just compensation for a leasehold surrender interest within the meaning of this part and for all other purposes.

§ 51.66 How will a new concession contract awarded to a prior concessioner treat a leasehold surrender interest obtained under a prior concession contract?

When a prior concessioner under a leasehold surrender interest concession contract seeks and is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the concessioner's leasehold surrender interest value (established as of the date of expiration or termination of its prior concession contract) in the related capital improvements will be continued as the initial value (instead of initial construction cost) of the concessioner's leasehold surrender interest under the terms of the new concession contract. No compensation will be due the concessioner for its leasehold surrender interest or otherwise in these circumstances except as provided by the new concession contract.

§ 51.67 How is a prior concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?

When a prior concessioner does not seek or is not awarded a new concession contract after expiration or termination of a leasehold surrender interest concession contract, the prior concessioner will be entitled to be paid its leasehold surrender interest value as defined in this part or in an applicable concession contract. The prior concessioner will not be required to transfer or otherwise relinquish its leasehold surrender interest until such time as the prior concessioner is paid the leasehold surrender interest value. The date for payment of the leasehold surrender interest value will be no later than twelve months after the date of expiration or termination of the leasehold surrender contract if the payment is to be made by a new concessioner and no later than twenty-four months after the date of expiration or termination if the payment is to be made by the Director. In such circumstances, the depreciation of the related capital improvements will be established as of the date of the expiration or termination of the concession contract for leasehold surrender interest value purposes. However, the Consumer Price Index adjustment to the leasehold surrender interest will continue until the date of payment of the leasehold surrender interest value.

§ 51.68 When a new concessioner pays a prior concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?

A new concessioner that pays a prior concessioner for a leasehold surrender interest will have a leasehold surrender interest in the related capital improvements on a unit by unit basis under the terms of a new leasehold surrender interest contract. Instead of initial construction cost, the initial value of such leasehold surrender interest will be the leasehold surrender interest value that the new concessioner was required to pay the prior concessioner.

§ 51.69 What is the process to determine the leasehold surrender interest value when a new concessioner is to pay a prior concessioner for a leasehold surrender interest?

Leasehold surrender interest concession contracts must contain provisions that describe the process by which a prior concessioner and a new concessioner resolve a dispute over the prior concessioner's leasehold surrender interest value and/or provisions that describe a process by which the prior concessioner and the Director determine the prior concessioner's leasehold surrender interest value. For purposes of this part, the Director's prior determinations of construction cost in accordance with this part are final and not subject to arbitration. The deduction for depreciation of the related capital improvements will be subject to arbitration. The arbitration process will be similar to the appraiser panel procedure described in this part for resolving a dispute between the Director and a concessioner as to the valuation of possessory interest. Except for values established as a result of an appraiser panel process, a new concessioner must not agree with a prior concessioner as to the prior concessioner's leasehold surrender interest value in the aggregate or on a unit by unit basis without the prior written approval of the Director. The Director's approval ensures that the leasehold surrender interest value is consistent with the terms and conditions of the prior concession contract. A new concessioner must permit the Director to assist it in the resolution of a dispute over a prior concessioner's leasehold surrender interest value to the extent requested by the Director.

§ 51.70 May the concessioner gain additional leasehold surrender interest by adding to a structure in which the concessioner has a leasehold surrender interest?

A concessioner that adds, with the approval of the Director, a new structure (e.g., a new wing to an existing building or an extension of an existing road or sidewalk, etc.) to an existing structure in which the concessioner has a leasehold surrender interest will increase its leasehold surrender interest in the related structure, effective as of the date of completion of the new structure, by the construction cost of the new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost of the addition as of the completion of the addition as determined by the Director. Approvals for additions to structures are subject to the same requirements and conditions applicable to new construction as described in this part. If the advance approval required by this section is not obtained by the concessioner, no increase in a concessioner's leasehold surrender interest will be recognized.

§ 51.71 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?

A concessioner that replaces an existing fixture in which the concessioner has a leasehold surrender interest with a like kind fixture will not increase its leasehold surrender interest as a result of the replacement. If the replacement fixture is not of like kind but is a substantial upgrade of the replaced fixture with respect to utility and function, and, if the construction cost of this replacement fixture exceeds the initial construction cost of the fixture to be replaced, all as determined by the Director, an increase to the concessioner's leasehold surrender interest will result. This increase will be the amount of the difference between the initial construction cost of the replaced fixture as determined by the Director and the construction cost of the

upgraded replacement fixture as determined by the Director. Approvals for replacement of fixtures are subject to the same requirements and conditions applicable to new construction or installation of a fixture as described in this part. In addition, where applicable, a concessioner must document to the satisfaction of the Director that a replacement fixture is upgraded within the meaning of this section and the initial constriction cost of the fixture to be replaced and the construction cost of the upgraded fixture. If the advance approval for a fixture replacement required by this section is not obtained by the concessioner, no increase in a concessioner's leasehold surrender interest will be recognized.

§ 51.72 Will a concessioner who undertakes a major rehabilitation of an existing structure in which the concessioner has a leasehold surrender interest increase its leasehold surrender interest?

A concessioner who undertakes with the prior written approval of the Director a major rehabilitation of an existing structure in which the concessioner has a leasehold surrender interest will obtain additional leasehold surrender interest in the structure. This additional leasehold surrender interest will be established by adding the construction cost of the major rehabilitation as determined by the Director to the initial construction cost of the related structure, effective as of the date of completion of the major rehabilitation. Approval for a proposed major rehabilitation is subject to the same requirements and conditions as for new construction or installation of capital improvements as described in this part.

§ 51.73 Under what conditions will the Director authorize a concessioner to obtain a leasehold surrender interest in an existing capital improvement in which no leasehold surrender interest exists?

The Director may not authorize a concessioner to obtain a leasehold surrender interest in existing fixtures in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government building assigned by the Director to the concessioner). The Director may not authorize a concessioner to obtain a leasehold surrender interest in an existing structure in which there is no leasehold surrender interest, unless the concessioner undertakes a major rehabilitation of the structure approved in advance by the Director. If such an approved major rehabilitation is completed, the concessioner will have a leasehold surrender interest in the related structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation as determined by the Director. Depreciation for purposes of leasehold surrender interest value will apply to the entirety of the related structure.

§ 51.74 Will a concessioner receive new or additional leasehold surrender interest as a result of a rehabilitation that does not qualify as a major rehabilitation?

Rehabilitation projects that do not qualify as major rehabilitations are considered as repair and maintenance of existing structures for which no new or additional leasehold surrender interest may be obtained.

§ 51.75 Is a concessioner required to maintain capital improvements, and if so, will the concessioner obtain a leasehold surrender interest in such repair and maintenance?

A concession contract must require the concessioner to maintain in good condition through a comprehensive repair and maintenance program all of the concessioner's personal property used in the performance of the concession contract and all land, real property improvements, including capital improvements, and government personal property assigned to the concessioner by a concession contract. A concessioner will not obtain initial or additional leasehold surrender interest as a result of repair and maintenance. Concession contracts may contain provisions that require specified minimum levels of expenditures for repair and maintenance of personal property and real property improvements utilized by a concessioner. Concession contracts may also contain provisions that require establishment of repair and maintenance reserves by a concessioner dedicated to the repair and maintenance of personal property and real property improvements.

Subpart G—Possessory Interest

§ 51.76 If a prior concessioner is not awarded a new concession contract, how will a prior concessioner that has a possessory interest receive compensation for its possessory interest?

A prior concessioner that has possessory interest in real property improvements pursuant to the terms of a 1965 Act concession contract, will, if the prior concessioner does not seek or is not awarded a new concession contract upon termination or expiration of its possessory interest concession contract, be entitled to receive compensation for its possessory interest in the amount and manner as described by the possessory interest contract and be entitled to receive all other compensation that the possessory interest contract may provide.

§ 51.77 If a prior concessioner is awarded a new concession contract, what happens to the concessioner's possessory interest?

In the event a prior concessioner seeks and is awarded a new concession contract replacing a possessory interest concession contract, the prior concessioner will obtain a leasehold surrender interest in its existing possessory interest real property improvements under the terms of the new concession contract. This prior concessioner will carry over as the initial value of such leasehold surrender interest (instead of initial construction cost) an amount equal to the value of its possessory interest in real property improvements as of the expiration or other termination of its possessory interest contract as determined by the Director on a unit by unit basis. This leasehold surrender interest will apply to the concessioner's possessory interest real property improvements even if the real property improvements are not capital improvements as defined in this part. In the event that a prior concessioner had a possessory interest in only a portion of a related structure, depreciation of the related structure for purposes of leasehold surrender interest value will apply only to the portion of the structure to which the possessory interest applied.

§ 51.78 What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?

Unless other procedures are agreed to by the prior concessioner and the Director, in the event that a prior concessioner under a possessory interest concession contract is awarded a new concession contract and there is a dispute between the prior concessioner and the Director as to the value of such possessory interest in the aggregate or on a unit by unit basis, a panel of three licensed appraisers will establish the value or values. One of the appraisers will be selected by the concessioner, one of the appraisers will be selected by the Director, and the third appraiser will be selected by the initial two appraisers. The expenses of the third appraiser and other associated common costs of the proceeding will be borne equally by the concessioner and the Director. The panel may request presentations by the concessioner and the Director as to their positions on possessory interest value. The panel must conduct these presentations informally without adjudicative procedures. The determination of values made by the panel will be binding on the concessioner and the Director. Judicial review of the panel's decision may be pursued by the concessioner or the Director only in the event of allegations of fraud, misconduct or misrepresentation.

§ 51.79 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

If a new concessioner is awarded a leasehold surrender interest concession contract and is required to pay a prior concessioner for possessory interest in real property improvements, then the new concessioner will have a leasehold surrender interest in the real property improvements under the terms of its new concession contract. The initial value of the leasehold surrender interest (instead of initial construction cost) will be an amount equal to the lower of the value of the possessory interest as of the termination or expiration of the possessory interest concession contract or the amount of money the new concessioner in fact paid the prior concessioner for its possessory interest in real property improvements. The Director will allocate this initial leasehold surrender interest value on a unit by unit basis for purposes of the new contract. This leasehold surrender interest will apply even if the related possessory interest real property improvements are not capital improvements as defined in this part. In the event the a new concessioner obtains a leasehold surrender interest in only a portion of a related structure as a result of the acquisition of a possessory interest from a prior concessioner depreciation of the related structure for purposes of leasehold surrender interest value will apply only to the portion of the structure to which the possessory interest applied.

§ 51.80 What happens if there is a dispute between the new concessioner and a prior concessioner as to the value of the possessory interest?

In the event of a dispute between a new concessioner and a prior concessioner as to the value of a prior concessioner's possessory interest, the dispute will be resolved under the procedures contained in the possessory interest concession contract. A new concessioner shall not agree in the aggregate or on a unit by unit basis on the value or values of a prior concessioner's possessory interest without the prior written approval of the Director unless the value or values was determined through a binding value determination process required by the possessory interest contract. The Director's written approval is to ensure that the value or values are consistent with the terms and conditions of the possessory interest concession contract. If a new concessioner and a prior concessioner engage in a process to resolve a dispute as to the value of the prior concessioner's possessory interest, the new concessioner must allow the Director to assist the new concessioner in resolving the dispute to the extent requested by the Director.

Subpart H—Concession Contract Provisions

§ 51.81 What is the term or length of a concession contract?

The term of a concession contract must be as short as is prudent taking into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate. Concession contracts will generally be for a term of ten years or less. In no event will a concession contract have a term of more than twenty years. Except for the non-competitive extensions authorized by this part, the Director may not extend concession contracts.

§ 51.82 When may a concession contract be terminated by the Director?

Concession contracts will contain appropriate provisions for suspension of operations under a concession contract and termination of a concession contract by the Director for default, including, but not limited to unsatisfactory performance, or when necessary to achieve the purposes of this part. The purposes of this part include, but are not limited to, the purposes of protecting, conserving, and preserving park area resources and providing necessary and appropriate visitor services in a park area.

§ 51.83 May the Director split or combine concession contracts?

The Director must not segment or otherwise split visitor services authorized or required under a single concession contract into separate concession contracts if such action would result in a concession contract with anticipated annual gross receipts of less than $500,000. The Director must not segment or otherwise split visitor services authorized or required under a single concession contract into separate concession contracts if such action would result in the establishment of an outfitter and guide concession contract. The Director may combine the visitor services authorized or required by two or more existing concession contracts into a single concession contract and may modify the type, nature and scope of the visitor services provided under a concession contract.

§ 51.84 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?

The Director must not include in a concession contract, amend a concession contract to include, or otherwise grant a concessioner a preferential right to provide new or additional visitor services in terms of a concession contract or otherwise. For purposes of this section [illegible] means a right of a concessioner [illegible] preference (in the nature of a right of first refusal or otherwise) to provide new or additional visitor services in a park area beyond those already provided by the concessioner under the terms of a concession contract. A concessioner, including, but not limited to, a preferred offeror, that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and adjusted by the Director from time to time in furtherance of the purposes of this part.

§ 51.85 Will a concession contract provide a concessioner an exclusive right to provide visitor services?

Concession contracts will not provide in any manner an exclusive right to provide certain or all types of visitor services in a park area. The Director may limit the number of concession contracts to be awarded for the conduct of visitor services in a particular park area in furtherance of the purposes described in this part.

§ 51.86 Is there a special rule for transportation service contracts?

Notwithstanding any other provision of law, a service contract (not a concession contract) entered into by the Director solely for the provision of park area transportation services will have a term of no more than 10 years. The term of the service contract must include a base term of 5 years and may allow for annual extensions for an additional five-year period if approved by the Director.

§ 51.87 Where will the Director deposit franchise fees and how will the Director use franchise fees?

All franchise fees and other monetary consideration (excluding reimbursements made by a concessioner for services rendered by the Director to the concessioner on a reimbursable basis) required to be paid to the Director pursuant to a concession contract, including, but not limited to, 1965 Act concession contracts, will be deposited in a special account in the Treasury of the United States. Twenty percent of the funds so deposited will be available for use by the Director, without further appropriation, to support authorized activities throughout all park areas. Eighty percent of the funds will be available for expenditure by the Director without further appropriation for use at the park area where the funds were generated to support visitor services, visitor support activities conducted by the Director, and high priority and urgently needed resource management programs and operations.

§ 51.88 Will franchise fees be subject to renegotiation?

Only concession contracts with a term of more than five years will contain a provision that provides for the adjustment of the contract's established franchise fee. This adjustment will only occur if the Director determines that extraordinary, unanticipated changes occurred after the effective date of the contract which have or will significantly effect the probable value of the privileges granted by the contract. The concession contract will provide for binding arbitration if the Director and a concessioner cannot agree upon an appropriate adjustment to the franchise fee.

§ 51.89 May the Director waive payment of franchise fee or other payments?

The Director may not waive the concessioner's payment of a franchise fee or other payments or consideration required by a concession contract.

§ 51.90 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?

If the Director awards more than one outfitter and guide concession contract that authorizes or requires the concessioners to provide the same or similar visitor services at the same approximate location or utilizing the same resource within a single park area, the Director will establish franchise fees for these concession contracts that are comparable, but not necessarily the same. In establishing these franchise fees, the Director will take into account, as appropriate, variations in the nature and type of visitor services authorized by particular concession contracts, including, but not limited to, length of the visitor experience, type of equipment utilized, relative expense levels, and other relevant factors. The terms and conditions of an existing concession contract will not be subject to modification or open to renegotiation by the Director because of the award of a new concession contract at the same approximate location or utilizing the same resource.

§ 51.91 May the Director include "special account" provisions in concession contracts?

The Director shall not include in concession contracts "special account" provisions, that is, contract provisions which require or authorize a concessioner to undertake with a specified percentage of the concessioner's gross receipts the construction of capital improvements on park lands. The construction of all such capital improvements by the concessioner shall be undertaken pursuant to the leasehold surrender interest provisions of this part. Concession contracts may contain provisions which require the concessioner to set aside a percentage of gross receipts in a maintenance reserve to be used for the purpose of maintenance and repair of capital improvements in which the concessioner has a leasehold surrender interest. No additional leasehold surrender interest value shall be obtained as a result of the expenditure of funds from a maintenance reserve. Whether or not a concession contract contains maintenance reserve provisions, all concession contracts shall contain provisions which require the concessioner to maintain and repair all capital improvements in the park area in a manner satisfactory to the Director, including, but not limited to, capital improvements in which the concessioner has a leasehold surrender interest, utilized by the concessioner in the conduct of its operations in a manner satisfactory to the Director.

§ 51.92 Handcrafts. [Reserved]

Subpart I—Assignment or Encumbrance of Concession Contracts

§ 51.93 What special terms must I know to understand this Part?

To understand this subpart specifically and this part in general you must refer to these definitions, applicable in the singular or plural, whenever the terms are used in this part.

A *controlling interest* in a concession contract means an interest, beneficial or otherwise, that permits the exercise of managerial authority over a concessioner's performance under the terms of the concession contract and/or decisions regarding the rights and liabilities of the concessioner.

A *controlling interest* in a concessioner means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities that permits either the exercise of managerial authority over the actions and operations of the concessioner. A "controlling interest" in a concessioner also means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities that permits the election of a majority of the Board of Directors of the concessioner. The term "controlling interest" in a concessioner, in the instance of a partnership, limited partnership, joint venture, other business organization or individual entrepreneurship, means ownership or beneficial ownership of the assets of the concessioner that permits the exercise of managerial authority over the actions and operations of the concessioner.

Rights to operate and/or manage under a concession contract means any arrangement where the concessioner of record under a concession contract employs or contracts with a third party to operate and/or manage the performance of a concession contract (or any portion thereof). The payments to the third party, whether a percentage of revenues or otherwise, is not relevant. This does not apply to arrangements with an individual employee.

Subconcessioner means a third party that has been granted by a concessioner, with the approval of the Director, rights to operate and/or manage the performance of a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise. Concession contracts may prohibit subconcessioners or limit the circumstances in which rights to operate and/or manage may be granted by a concessioner.

§ 51.94 What assignments require the approval of the Director?

The concessioner may not assign, sell, convey, grant, contract for, or otherwise transfer (these transactions are collectively referred to as "assignments" for purposes of this part), without the prior written approval of the Director, any of the following:

(a) Any concession contract;

(b) Any rights to operate and/or manage the performance of a concession contract;

(c) Any revenues generated by a concession contract;

(d) Any controlling interest in a concessioner;

(e) Any controlling interest in a concession contract; or

(f) Any leasehold surrender interest or possessory interest obtained under a concession contract.

§ 51.95 What encumbrances require the approval of the Director?

The concessioner may not encumber, pledge, mortgage or otherwise provide as a security interest for any purpose (such transactions collectively referred to as "encumbrances" for purposes of this part), without the prior written approval of the Director, any of the following:

(a) Any concession contract;

(b) Any rights to operate and/or manage performance under a concession contract;

(c) Any revenues generated by a concession contract;

(d) Any controlling interest in a concessioner;

(e) Any controlling interest in a concession contract;

(f) Any tangible personal property used in the performance of the concession contract within the park area; or

(g) Any leasehold surrender interest or possessory interest provided by a concession contract.

§ 51.96 Does the concessioner have an unconditional right to receive the Director's approval for an assignment or encumbrance?

Approval of a assignment or encumbrance by the Director is not a matter of right to a concessioner. In addition to the required determinations described in this part, the following limitations apply to approvals of assignments and encumbrances:

(a) The Director may only approve an encumbrance if the sole purpose of the encumbrance is either to finance the construction of capital improvements under the applicable concession contract in the applicable park area or to finance the purchase of the applicable concession contract. An encumbrance may not be made for any other purpose, including, but not limited to, providing collateral for other debt of a concessioner, the parent of a concessioner, or an entity related to a concessioner;

(b) The Director may not approve an encumbrance that purports to provide the creditor or assignee any rights beyond those provided by the applicable concession contract, including, but not limited to, any rights to conduct business in a park area except in strict accordance with the terms and conditions of the applicable concession contract;

(c) The Director may not approve an encumbrance that purports to permit a creditor or assignee of a creditor, in the event of default or otherwise, to begin operations under the applicable concession contract before the Director determines whether the proposed operator is a qualified person as defined in this part; and

(d) The Director will not approve an assignment or encumbrance if the transaction purports to assign or encumber assets that are not owned by the concessioner or park area entrance, user day, or similar use allocations made by the Director.

§ 51.97 What happens if an assignment or encumbrance is completed without the approval of the Director?

Assignments or encumbrances completed without the prior written approval of the Director will be considered as null and void and a material breach of the applicable concession contract which may result in termination of the contract for cause. No person will obtain any valid or enforceable rights in a concessioner, concession contract, rights to operate or manage under a concession contract as a subconcessioner or otherwise, revenues generated by a concession contract, or leasehold surrender interest or possessory interest, if acquired in violation of these requirements.

§ 51.98 What happens if there is a default on an encumbrance approved by the Director?

In the event of default on an encumbrance approved by the Director in accordance with this part, the creditor, or an assignee of the creditor, may succeed to the interests of the concessioner only to the extent provided by the approved encumbrance.

§ 51.99 How does the concessioner get the Director's approval before making an assignment or encumbrance?

Before completing any assignment or encumbrance which may be considered to be the type of transaction described in this part, including, but not limited to, the assignment or encumbrance of what may possibly be a controlling interest in a concessioner or a concession contract, the concessioner must request in writing approval of the transaction by the Director. The Director will provide an application form for this purpose.

§ 51.100 What information will the Director require in the application?

The application for the Director's approval of an assignment or encumbrance will require that the following information be provided in such detail as the Director may specify:

(a) All instruments proposed to implement the transaction;

(b) An opinion of counsel to the effect that the proposed transaction is lawful under all applicable federal and state laws;

(c) A narrative description of the proposed transaction, and, where applicable, the transferee's plans for conducting the operation;

(d) A statement as to the existence and nature of any litigation relating to the proposed transaction;

(e) A description of the management qualifications, financial background, and financing and operational plans of any proposed transferee;

(f) A descriptive statement as to whether and in what manner the proposed transaction constitutes the assignment or encumbrance of a controlling interest as described in this subpart;

(g) A detailed description of all financial aspects of the proposed transaction;

(h) Prospective financial statements (proformas) that have been examined by an independent accounting firm;

(i) A schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. This includes capital improvements on a unit by unit basis, tangible personal property individually or aggregated into groups of like items, and intangible assets individually itemized. In addition the applicant must provide a description of the basis for all allocations and ownership of all assets;

(j) A statement from the transferee that if the assigning concessioner does not submit to the Director its final financial statement within sixty days after the closing date of the assignment, the transferee will do so within one hundred and twenty days after the closing date of the assignment;

(k) A statement and narrative explanation as to why the proposed assignment or encumbrance is not prohibited under the limitations contained in this part; and

(l) Such other information as the Director may require.

§ 51.101 May the Director waive any of these documentation requirements?

The Director may waive portions of these documentation requirements in circumstances where particular documents are considered unnecessary.

§ 51.102 What are standard proformas?

Concessioners are encouraged to submit standard prospective financial statements (proformas) pursuant to this part. A "standard proforma" is one that:

(a) Provides projections, including revenues and expenses, that are consistent with the concessioner's past operating history. If projections that are not consistent with the concessioner's past history are used, the proforma must be accompanied by a narrative that describes why differing expectations are achievable and realistic;

(b) Assumes that any loan related to an assignment or encumbrance will be paid in full by the expiration of the concession contract. If the proforma assumes that a loan related to an assignment or encumbrance will not be paid in full by the expiration of the concession contract, a narrative description as to why the loan extends beyond the term of the contract must be provided. The description must include, but is not limited to, identification of the loan's collateral after expiration of the concession contract;

(c) Assumes amortization of any intangible assets assigned or encumbered as a result of the transaction over the remaining term of the concession contract. If a proforma that assumes otherwise is submitted, a narrative description as to why such extended amortization period is consistent with a reasonable opportunity for profit over the remaining term of the concession contract must be provided; and

(d) Shows, for the remaining term of the concession contract, Internal Rates of Return (IRR), and, where applicable, Returns on Gross, Returns on Equity, and Returns on Assets, consistent with common industry median expectations as reflected, where applicable, in guidelines developed by the Director. If a proforma not showing such returns is submitted, it must be accompanied by a narrative description that describes in detail how the returns shown are consistent with a reasonable opportunity for profit over the remaining term of the concession contract.

§ 51.103 If the concessioner submits a non-standard proforma, is the Director more likely to disapprove the transaction?

The submission of a non-standard proforma or proformas is more likely to result in disapproval of a transaction by the Director as demonstrating that the transaction is inconsistent with the criteria for approval of assignments and encumbrances as described in this part.

§ 51.104 If the transaction includes more that one concession contract, how must required information be provided?

In circumstances of an assignment or encumbrance that includes more than one concession contract, the concessioner must provide the information described in this subpart on a contract by contract basis.

Process To Receive the Director's Approval of Assignments and Encumbrances

§ 51.105 In what circumstances will the Director not approve an assignment or encumbrance?

The Director will not approve an assignment or encumbrance described in this part if the Director determines that it is prohibited by any of the limitations set forth in this part. The Director also will not approve an assignment or encumbrance described in this part if the Director determines that:

(a) The transaction would result in the acquisition (directly, or indirectly in the event of foreclosure under an encumbrance) by a person the Director determines is not a qualified person or otherwise may not be able to satisfactorily perform the terms and conditions of the applicable concession contract;

(b) The transaction would have an adverse impact on the protection, conservation or preservation of park resources;

(c) The transaction would have an adverse impact on the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; or

(d) The terms of the transaction are likely, directly or indirectly, to reduce an existing or a new concessioner's opportunity to earn a reasonable profit over the remaining term of the applicable concession contract, to adversely affect the quality of facilities and services pursuant to the contract, or to result in a need for increased rates and charges to the public to maintain the quality of concession facilities and services.

§ 51.106 What information will the Director consider when deciding to approve a transaction?

In deciding whether to approve an assignment or encumbrance, the Director will consider the proformas and all other information submitted by the concessioner as required by this part.

§ 51.107 Does the Director's approval of a assignment or encumbrance include any representations of any nature?

In approving an assignment or encumbrance, the Director has no duty to inform a transferee of any information the Director may have relating to the concession contract, the park area, or other matters relevant to the concession contract. In addition, in approving an assignment or encumbrance, the Director makes no representations of any nature to any person about any matter, including, but not limited to, the value or potential profitability of any concession contract or assets of a concessioner.

§ 51.108 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?

The Director may not amend or extend a concession contract for the purpose of facilitating an assignment or encumbrance. The Director may not make commitments regarding rates to the public, contract extensions, concession contract terms and conditions, or any other matter, for the purpose of facilitating an assignment or encumbrance.

§ 51.109 May the Director open to renegotiation or modify the terms of a concession contract as a condition of the approval of a transaction?

The Director may not open to renegotiation or modify the terms and conditions of a concession contract as a condition of the approval of an assignment or encumbrance. The exception is if the Director determines that renegotiation or modification is required to avoid an adverse impact on the protection, conservation or preservation of the resources of a park area or an adverse impact on the provision of necessary and appropriate visitor services at reasonable rates and charges.

§ 51.110 May the Director charge a fee for the review a proposed transaction?

The Director may charge a reasonable fee for the review of a proposed assignment or encumbrance. The fee may not exceed the actual cost to the Director of reviewing the proposed transaction.

Subpart J—Information and Access to Information

§ 51.111 What records must the concessioner keep and what access does the Director have to records?

A concessioner (and any subconcessioners) must keep any records that the Director may require for the term of the concession contract and for five years after the termination or expiration of the concession contract to enable the Director to determine that all terms of the concession contract are or were faithfully performed. The Director and any duly authorized representative of the Director must, for the purpose of audit and examination, have access to all pertinent records, books, documents, and papers, of the concessioner and any parent or affiliate of the concessioner.

§ 51.112 What access to concessioner records will the Comptroller General have?

The Comptroller General or any duly authorized representative of the Comptroller General must, until the expiration of five calendar years after the close of the business year of each concessioner (or subconcessioner), have access to and the right to examine all pertinent books, papers, documents and records of the concessioner and subconcessioner (and parents and affiliates).

§ 51.113 What information will the Director make publicly available about the concessioner and the concession contract?

The Director will make publicly available the following information contained in annual financial statements submitted to the Director by the concessioner: Gross receipts broken out by department; net income or loss before taxes; franchise fees and building use fees; merchandise inventories; and depreciable fixed assets and net depreciable fixed assets, broken out by leasehold surrender interest or possessory interest, as applicable, and personal property. The Director will also make publicly available other information provided by a concessioner to the Director to the extent permitted by law. Notwithstanding this section, the Director will not make publicly available any information relating to a particular concession contract in effect as of [the effective date of the final rule] if the Director determines that such exercise would constitute a material breach of the concession contract.

§ 51.114 When will the Director make proposals and evaluation documents publicly available?

The Director will not make publicly available proposals submitted in response to a prospectus, information contained in such proposals and documents generated by the Director evaluating such proposals, until the date that the new concession contract solicited by the prospectus is awarded. At that time, the Director will make such information and documents available to the extent required by law.

Subpart K—The Effect of the 1998 Act's Repeal of the 1965 Act

§ 51.115 Did the 1998 Act repeal the 1965 Act?

Section 415 of the 1998 Act repealed the 1965 Act and related laws as of November 13, 1998. This repeal did not affect the validity of any 1965 Act concession contract. The provisions of the 1998 Act, however, apply to all 1965 Act concession contracts except to the extent that such provisions are inconsistent with the terms and conditions of a 1965 Act concession contract.

§ 51.116 What is the effect of the 1998 Act's repeal of the 1965 Act's renewal preference?

(a) Section 5 of the 1965 Act granted all existing satisfactory concessioners a preference in the renewal (termed a "renewal preference" for purposes of this section) of its concession contract or permit as a statutory right. The repeal of the 1965 Act by the 1998 Act repealed this statutory renewal preference as of November 13, 1998. Standard 1965 Act concession contracts awarded by the Director did not provide a renewal preference as a matter of a contract right. However, if a concessioner holds a 1965 Act concession contract in effect as of November 13, 1998, and the concessioner considers that the particular terms and conditions of its 1965 Act concession contract grant the concessioner, as a matter of contract right, a renewal preference, the concessioner may appeal this position to the Director. Such appeal must be in writing and be received by the Director no later than thirty days after the issuance of a prospectus for a concession contract under this part for which the concessioner asserts a renewal preference. The concessioner submitting such an appeal, if its appeal is still pending as of the date for submission for proposals pursuant to an applicable prospectus, must submit a responsive proposal pursuant to the prospectus. If the concessioner fails to submit a responsive proposal, the Director must consider the concessioner's appeal moot and no renewal preference will apply to the new concession contract. Where applicable, the Director will give notice of this appeal to all potential offerors that requested a prospectus.

(b) The Director may delegate consideration of such appeals only to a Deputy or Associate Director. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal and other available information. The written decision on the appeal must be issued before the Director selects the best proposal received pursuant to the applicable prospectus. If the appeal results in the appealing concessioner being determined as having a renewal preference under a 1965 Act contract, and the appealing concessioner does or did submit a responsive proposal, the concessioner will be entitled to exercise a right of preference to the concession contract as otherwise described in and subject to the otherwise applicable conditions of this part, including, but not limited to, the requirement to submit a responsive offer under an applicable prospectus. No person will be considered as having exhausted administrative remedies with respect to assertion of the existence of a renewal preference under a 1965 Act concession contract until the Director makes an appeal decision in accordance with this section. Any renewal preference the Director may determine to exist pursuant to this section will apply only to the award of the first concession contract that replaces a 1965 Act concession contract.

§ 51.117 What renewal preference exceptions are made for Glacier Bay cruise ships?

Notwithstanding the provisions of the 1998 Act which repealed the statutory renewal preference provided by the 1965 Act, the Director, in awarding future Glacier Bay cruise ship concession contracts covering cruise ship entries for which a renewal preference existed prior to the passage of the 1998 Act, must provide for such cruise ship entries a right of preference as described in this part even though such cruise ship concession contracts are not outfitter and guide contracts and may result in annual gross receipts in excess of $500,000. The final date of expiration of any Glacier Bay cruise ship concession contract awarded under this special authority will be December 31, 2009.

Subpart L—Information Collection

§ 51.118 Have information collection procedures been followed?

(a) The information collection for submission of offers in response to concession prospectuses contained in this part have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0125, effective through December 31, 1999. An information collection for proposed sales of concession operations was previously covered by OMB Approval

No. 1024–0126, which expired January 31, 1996. An OMB form 83–I has been prepared but has not yet been approved by OMB. Response is required to obtain a concession contract in accordance with the 1998 Act.

(1) As required by 5 CFR 1320.8(d)(1), the National Park Service is soliciting public comments as to:

(i) Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(ii) The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(iii) The quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

(2) A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(b) The public reporting burden for the collection of information for the purpose of preparing a proposal in response to a contract solicitation is estimated to average 480 hours per proposal for large authorizations and 240 hours per proposal for small authorizations. The public reporting burden for the collection of information for the purpose of requesting approval of a sale or transfer of a concession operation is estimated to be 80 hours. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240; and to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: June 23, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–16490 Filed 6–29–99; 8:45 am]

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federal register

Wednesday
June 30, 1999

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Special Research Grants Program, Citrus Tristeza Research; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Special Research Grants Program, Citrus Tristeza Research

AGENCY: Cooperative State Research, Education, and Extension Service, Department of Agriculture.

ACTION: Notice of request for proposals and request for input.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) announces the availability of grant funds and requests proposals for the Special Research Grants Program, Citrus Tristeza Research for fiscal year (FY) 1999. The purpose of this program is to support research that focuses on problems caused by Citrus Tristeza Virus (CTV) and the Brown Citrus Aphid. National research priority areas include: (1) Characterization and detection of CTV strains; (2) biology and control of the brown citrus aphid; (3) host plant resistance; (4) epidemiology and crop loss assessment; and (5) development of cross-protecting CTV strains. The amount available for support of this program in FY 1999 is approximately $467,800.

This Request for Proposals (RFP) sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a Citrus Tristeza Research grant.

By this notice, CSREES additionally solicits stakeholder input from any interested party regarding the FY 1999 Special Research Grants Program, Citrus Tristeza Research, for use in the development of the next request for proposals for this program.

DATES: PROPOSALS MUST BE RECEIVED ON OR BEFORE July 30, 1999. (See PART IV—SUBMISSION OF A PROPOSAL below for information on where to submit an application.) Proposals received after July 30, 1999 will not be considered for funding. Comments regarding this request for proposals are requested within 6 months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: To obtain a copy of this RFP and application materials, please contact the Proposal Services Unit; Office of Extramural Programs; USDA/CSREES; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245; telephone: (202) 401–5048. In your request, please indicate that you are requesting forms for the Special Research Grants Program, Citrus Tristeza Research.

Written stakeholder comments should be submitted by first-class mail to: Policy and Program Liaison Staff; Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA–CSREES; STOP 2299; 1400 Independence Avenue, SW; Washington, DC 20250–2299; or via e-mail to RFP–OEP@reeusda.gov. In your comments, please indicate that you are commenting on the FY 1999 Special Research Grants Program, Citrus Tristeza Research.

FOR FURTHER INFORMATION CONTACT: Dr. Robin Huettel, Cooperative State Research, Education, and Extension Service; US Department of Agriculture; STOP 2220; 1400 Independence Avenue, SW; Washington, DC 20250–2220; telephone (202) 401–5804; Internet: rhuettel@reeusda.gov.

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- C. Use of Funds; Changes
- D. Applicable Federal Statutes and Regulations
- E. Confidential Aspects of Proposals and Awards
- F. Regulatory Information

Stakeholder Input

CSREES is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(c)(2). This section requires the Secretary to solicit and consider input on a current request for proposals from persons who conduct or use agricultural research, education, or extension for use in formulating the next request for proposals for an agricultural research program funded on a competitive basis.

In your comments, please include the name of the program and the fiscal year request for proposals to which you are responding. Comments are requested within six months from the issuance of the request for proposals. Comments received after that date will be considered to the extent practicable.

Part I—General Information

A. Legislative Authority

The authority for this program is contained in section (c)(1)(A) of the Competitive, Special, and Facilities Research Grant Act, section 2 of Pub. L. 89–106, as amended (7 U.S.C. 450i(c)(1)(A)).

In accordance with the statutory authority, the Secretary may make grants for the purpose of conducting research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States.

B. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service and any other officer or employee of the Department to whom the authority involved may be delegated.

(2) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative* means the president, director, or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Department* or *USDA* means the United States Department of Agriculture.

(6) *Grantee* means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(7) *Peer review panel* means a group of experts qualified by training and

experience in particular fields to give expert advice on the scientific and technical merit of grant applications in such fields, and who evaluate eligible proposals submitted to this program in their personal and professional area(s) of expertise.

(8) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(9) *Project* means the particular activity within the scope of the program supported by a grant award.

(10) *Principal Investigator* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(11) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(12) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

C. Eligibility

Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Although an applicant may be eligible based on its status as one of these entities, other factors may exclude an applicant from receiving Federal assistance under this program (e.g., debarment or suspension, a determination of non-responsibility based on submitted organizational management information).

Part II—Program Description

A. Purpose and Scope of the Program

Proposals are invited for competitive grant awards under the Special Research Grants Program, Citrus Tristeza Research for fiscal year (FY) 1999. The purpose of this grant program is to support research that focuses on problems caused by Citrus Tristeza Virus and the brown citrus aphid. This research should aim to facilitate promising breakthroughs in this important area of the food and agricultural sciences.

Citrus Tristeza Virus (CTV) is a pathogen of citrus vectored by several aphid species. This disease has been found in all the citrus producing regions of the United States and is of world-wide importance. The virus strain complex can cause a variety of symptoms, from mild to severe, depending upon the host and its environment. Recently, in Florida, a new aphid vector, the Brown Citrus Aphid was introduced. This vector is capable of transmitting a severe stem-pitting form of the virus. The Brown Citrus Aphid also occurs in Central America and the Caribbean Basin and thus poses a threat to citrus in other citrus producing areas in the United States (e.g., Louisiana, Texas, Arizona, and California).

The research priority areas that have been identified include (1) characterization and detection of CTV strains; (2) biology and control of the Brown Citrus Aphid; (3) host plant resistance; (4) epidemiology and crop loss assessment; and (5) development of cross-protecting CTV strains.

B. Available Funds and Award Limitations

Funds will be awarded on a competitive basis to support research projects that focus on solving problems caused by the CTV and brown citrus aphids. The total amount of funds available in FY 1999 for support of this program is approximately $467,800. Each proposal submitted in FY 1999 shall request funding for a period not to exceed one year. Funding for additional years will depend upon the availability of funds and progress toward objectives. FY 1999 awardees would need to recompete in future years for additional funding.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials will be made available to interested entities upon request. These materials include information about the purpose of the program, how the program will be conducted, and the required contents of a proposal, as well as the forms needed to prepare and submit grant applications under the program. To obtain program application materials, please contact the Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting application materials for the Special Research Grants Program, Citrus Tristeza Research. Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 1999 Special Research Grants Program, Citrus Tristeza Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

B. Content of a Proposal

(1) General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8½″ x 11″) white paper, one inch margins, typed or word processed using no type smaller than 12 point font regardless of whether it is single or double spaced. Use an easily readable font face (e.g., Geneva, Helvetica, CG Times). Once accepted for review, your proposal will be read by at least three expert reviewers. Thus it is to your advantage to ensure that your proposal is not difficult to read.

(b) Each page of the proposal, including the Project Summary, budget pages, required forms, and appendices, should be numbered sequentially in the upper right-hand corner.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 9 copies (10 total) must be submitted in one package, along with 20 copies of the Project Summary as a separate attachment.

(2) Cover Page

Complete Form CSREES–661, Application for Funding, in its entirety. This form is to be utilized as the Cover Page. Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately.

(a) In Block 6, complete the title of the project. The project title must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of" or "research on" should not be used.

(b) Blocks 7 and 8 should be completed to read "Special Research Grants Program, Citrus Tristeza Research."

(c) In Block 13, the Type of Award Request is "new."

(d) In Block 14., note the total amount of Federal dollars being requested.

(e) In Block 15, designate Principal Investigators (PIs). Be advised that the

designation of excessive numbers of co-PIs creates problems during final review and award processing. Listing multiple co-PIs beyond those required for genuine collaboration is therefore discouraged. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(f) Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box "03" should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI#1 in Block 15.a.

(g) In Block 22 list the names or acronyms of all other public or private sponsors including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program manager as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided.

(h) The original copy of the Application for Funding form must contain the pen-and-ink signatures of the PI(s) and authorized organizational representative for the applicant organization. Note that by signing the Application for Funding form, the applicant is providing the required certifications set forth in 7 CFR Part 3017, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The three certification forms are included in this application package for informational purposes only. It is not necessary to sign and submit the forms to USDA as part of the proposal.

(3) Table of Contents

For consistency and ease in locating information, each proposal must contain a detailed Table of Contents just after the Cover Page. The Table of Contents should include page numbers for each component of the proposal. Page numbers, shown in the upper right-hand corner, should begin with the first page of the Project Summary.

(4) Project Summary

The proposal must contain a Project Summary of 250 words or less on a separate page. The summary must be self-contained and describe the overall goals and relevance of the project. The summary should also contain a listing of the major organizations participating in the project. The Project Summary should immediately follow the Table of Contents. In addition to the summary, this page must include the title of the project, the name of the applicant organization, the authorized organizational representative, and the PI(s), followed by the summary.

(5) Project Narrative

Note: The Project Narrative shall not exceed 10 pages. This maximum has been established to ensure fair and equitable competition. Reviewers are instructed that they need to read only the first 10 pages of the Project Narrative and to ignore information on additional pages. The Project Narrative should contain the following items:

(a) Objectives—Clear, concise, complete, and logically arranged statement(s) of the specific aims of the proposed effort must be included in all proposals.

(b) Procedures—The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to a description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out; techniques to be employed, including their feasibility; kinds of results expected; means by which data will be analyzed or interpreted; pitfalls which might be encountered; and limitations to proposed procedures.

(c) Justification—This section should include in-depth information on the magnitude of the problem and its relevance to ongoing food and agricultural research programs; the importance of starting the work during the current fiscal year, and reasons for having the work performed by the proposing institution.

(d) Cooperation and Institutional Units Involved—Cooperative and multi-State applications are encouraged. Identify each institutional unit contributing to the project. Identify each State in a multiple-State proposal and designate the lead State. When appropriate, the project should be coordinated with the efforts of other State and/or national programs. Clearly define the roles and responsibilities of each institutional unit of the project team, if applicable.

If it will be necessary to enter into formal consulting or collaborative arrangements with other individuals or organizations, such arrangements should be fully explained and justified. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements also should be explained and justified in this section. A proposed statement of work, budget, and budget narrative for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (e.g., requests for outside laboratory analyses) are excluded from this requirement. If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR part 3019, USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, when applicable, required clauses from 7 CFR 3019.40 through 3019.48 ("Procurement Standards") and Appendix A ("Contract Provisions") should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension.

(e) Literature Review—A summary of pertinent publications with emphasis on their relationship to the effort being proposed should be provided and should include all important and recent publications from other institutions, as well as those from the applicant institution. The citations themselves should be accurate, complete, and written in an acceptable journal format.

(f) Current Work—Current unpublished institutional activities to date in the program area under which the proposal is being submitted should be described.

(g) Facilities and Equipment—All facilities which are available for use or assignment to the project during the requested period of support should be reported and described briefly. Any potentially hazardous materials, procedures, situations, or activities, whether or not directly related to a particular phase of the effort, must be explained fully, along with an outline of precautions to be exercised. Examples include work with toxic chemicals and experiments that may put human subjects or animals at risk.

All items of major instrumentation available for use or assignment to the proposed project should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the project to a successful conclusion should be listed, including dollar amounts and, if funds are requested for their acquisition, justified.

(h) Project Timetable—The proposal should outline all important phases as a function of time, year by year, for the entire project, including periods beyond the grant funding period.

(6) Key Personnel

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

(a) An estimate of the time commitment involved; and

(b) vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings. A chronological list of the most representative publications during the past five (5) years must be provided for each professional project member for whom a vitae appears. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(7) Conflict-of-Interest List

A separate Conflict-of Interest List form (Form CSREES-1233) must be submitted for each investigator for whom a curriculum vitae is required. This form is necessary to assist program staff in excluding from proposal review those individuals who have conflicts-of-interest with the project personnel in the grant proposal. The Program Manager must be informed of additional conflicts-of-interest that arise after the proposal has been submitted.

(8) Budget

Each proposal must contain a detailed budget for up to 12 months. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants must also include a budget narrative to explain and justify their budgets. The following guidelines should be used in developing the proposal budget(s):

(1) Salaries and Wages—Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution and with the applicable OMB Cost Principles. Administrative and clerical salaries are normally classified as indirect costs. (See Item 9. below.) However, if requested under A.2.e., they must be fully justified.

(2) Fringe Benefits—Funds may be requested for fringe benefit costs if the usual accounting practices of your institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project. See, e.g., OMB Circular No. A–21, Cost Principles for Educational Institutions, for further guidance in this area.

(3) Nonexpendable Equipment—Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. (However, institutions may establish lower limits.) As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost in the budget narrative. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change.

Note: For projects awarded under the authority of subsection (c)(1)(A) of the Competitive, Special, and Facilities Research Grant Act, no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(4) Materials and Supplies—The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs in the budget narrative.

(5) Travel—The type and extent of travel and its relationship to project objectives should be described briefly and justified. If travel is proposed, provide the purpose, the destination, method of travel, number of persons traveling, number of days, and estimated cost for each trip. If details of a trip are not known at the time of proposal submission, provide a basis for determining the amount requested. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR 3015.205(b)(4) for further guidance.

(6) Publication Costs/Page Charges—Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

(7) Computer (ADPE) Costs—Reimbursement for the costs of using specialized facilities (such as a university or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

(8) All Other Direct Costs—Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified in the budget narrative. This applies to revised budgets as well, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, charges for consulting services, telephone, facsimile, e-mail, shipping costs, and fees for necessary laboratory analyses. You are encouraged to consult the "Instructions for Completing Form CSREES–55, Budget," of the Application Kit for detailed guidance relating to this budget category.

(9) Indirect Costs—The recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14 percent of total Federal funds awarded. This limitation also applies to any sub-awardee or subcontractor, and should be reflected in the sub-recipient budget.

(10) Cost-sharing—Cost-sharing is encouraged; however, cost-sharing is not required nor will it be a direct factor in the awarding of any grant.

(9) Current and Pending Support

All proposals must list any other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The application material includes Form CSREES–663, Current and Pending Support, which should be used for listing current and pending support. Note that the project being proposed should be included in the pending section of the form.

(10) Assurance Statement(s) (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurance, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will include the following:

(a) Recombinant DNA or RNA Research. As stated in 7 CFR 3015.205(b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, the application must so indicate by checking the "yes" box in Block 19 of Form CSREES–661 and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

(b) Animal Care. Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1996, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary in 9 CFR parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals or activities, you must check the "yes" box in Block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

(c) Protection of Human Subjects. Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. 93–348, as amended, and implementing regulations established by the Department under 7 CFR part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the "yes" box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

(11) Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In most cases, based on previously funded projects, the preparation of environmental data is not usually required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, NEPA Exclusions Form, must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be the last page of the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity. This will be the case if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect. However, this rarely occurs.

(12) Applicant Peer Review Requirements

Subsection (c)(5) of the Competitive, Special, and Facilities Research Grant Act (7 U.S.C. § 450i(c)), as amended by section 212 of the Agricultural Research, Extension, and Education Reform Act of 1998 ("1998 Act"), Pub. L. 105–185, requires applicants to conduct a scientific peer review of a proposed research project in accordance with regulations promulgated by the Secretary prior to the Secretary making a grant award under this authority. Regulations implementing this requirement currently are the subject of a proposed rule making (64 FR 14348, March 24, 1999). The statute requires promulgation of a final rule prior to award of a grant under this program. The proposed rule would impose the following requirements for scientific peer review by applicants of proposed research projects:

1. Credible and independent. Review arranged by the grantee must provide for a credible and independent assessment of the proposed project. A credible review is one that provides an appraisal of technical quality and relevance sufficient for an organizational representative to make an informed judgment as to whether the proposal is appropriate for submission for Federal support. To provide for an independent review, such review may include USDA employees, but should not be conducted solely by USDA employees.

2. Notice of completion and retention of records. A notice of completion of the review shall be conveyed in writing to CSREES either as part of the submitted proposal or prior to the issuance of an award, at the option of CSREES. The written notice constitutes certification by the applicant that a review in

compliance with these regulations has occurred. Applicants are not required to submit results of the review to CSREES; however, proper documentation of the review process and results should be retained by the applicant.

3. Renewal and supplemental grants. Review by the grantee is not automatically required for renewal or supplemental grants as defined in 7 CFR 3400.6. A subsequent grant award will require a new review if, according to CSREES, either the funded project has changed significantly, other scientific discoveries have affected the project, or the need for the project has changed. Note that a new review is necessary when applying for another standard or continuation grant after expiration of the grant term.

4. Scientific Peer Review. Scientific peer review is an evaluation of a proposed project for technical quality and relevance to regional or national goals performed by experts with the scientific knowledge and technical skills to conduct the proposed research work. Peer reviewers may be selected from an applicant organization or from outside the organization, but shall not include principal or co-principal investigators, collaborators or others involved in the preparation of the application under review.

Because of the nature of the rule making process, these requirements are subject to change based upon the comments received. Applicants whose proposals are recommended for funding must comply with the review requirements as promulgated in the final rule as a condition precedent to receiving an award under this RFP.

Part IV—Submission of a Proposal

A. What To Submit

An original and nine copies of the complete proposal must be submitted. Each copy of the proposal must be stapled in the upper left-hand corner. DO NOT BIND. In addition, submit 20 copies of the proposal's Project Summary. All copies of the proposal and Project Summary must be submitted in one package.

B. Where and When To Submit

Proposals must be received on or before July 30, 1999. Proposals that are hand-delivered, delivered by courier, or sent via overnight delivery services must be sent or delivered to: Special Research Grants Program, Citrus Tristeza Research; c/o Proposal Services Unit; Office of Extramural Programs; USDA/CSREES; Room 303, Aerospace Center; 901 D Street, SW; Washington, DC 20024; Telephone: (202)401–5048.

Note: Applicants are strongly encouraged to submit their completed proposals via overnight mail or delivery services to ensure timely receipt by the USDA.

Proposals sent via the U.S. Postal Service must be sent to the following address: Special Research Grants Program, Citrus Tristeza Research; c/o Proposal Services Unit; Office of Extramural Programs; USDA/CSREES; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245; Telephone: (202) 401–5048.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and by e-mail, therefore applicants are encouraged to provide e-mail addresses, where designated, on the Form CSREES–661. The acknowledgment will contain an identifying proposal number. Once your proposal has been assigned a proposal number, please cite that number in future correspondence.

Part V—Selection Process and Evaluation Criteria

A. Selection Process

Applicants should submit fully developed proposals that meet all the requirements set forth in this RFP.

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure it meets the requirements as set forth in this RFP. Proposals not meeting the requirements as set forth in this RFP will not be considered for funding. However, USDA retains the right to conduct discussions with applicants to resolve technical and/or budget issues as it deems necessary. Second, each proposal that meets the requirements will be technically evaluated by a peer review panel.

The individual peer panel members will be selected from among those recognized as specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals being reviewed. The individual reviews of the panel members will be used to determine which proposals should be recommended to the Administrator (or his designee) for final funding decisions.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual, potential, and/or the appearance of conflicts of interest among reviewers. Evaluations will be confidential to USDA staff members, peer reviewers, and the principal investigator(s), to the extent permitted by law.

B. Evaluation Criteria

The evaluation of proposals will be based on the following criteria, weighted relative to each other as noted in the parentheses following each criteria listed.

(1) Overall scientific and technical quality of the proposal(15 points);

(2) Scientific and technical quality of the approach (10 points);

(3) Relevance and importance of proposed research to solution of specific areas of inquiry, and application of expected results for States in which the grantee resides and will perform the work (30 points);

(4) Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment (40 points);

(5) The appropriateness of the level of funding requested (5 points).

Part VI—Supplementary Information

A. Access To Review Information

Copies of summary reviews will be sent to the applicant principle investigator automatically, as soon as possible after the review process has been completed. The identity of the individual peer reviewers will not be provided.

B. Grant Awards

(1) General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 15 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015, 3016, and 3019 of 7 CFR).

(2) Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the preaward process.

(3) Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

(b) Title of project;

(c) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(d) Identifying grant number assigned by the Department;

(e) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(f) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(g) Legal authority(ies) under which the grant is awarded;

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(i) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without additional support at a future date.

C. Use of Funds; Changes

(1) Delegation of Fiscal Responsibility

The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Changes in Project Plans

(a) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the CSREES Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the CSREES ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

D. Applicable Federal Statutes and Regulations

This program is subject to the administrative provisions for the Special Research Grants Program found in 7 CFR Part 3400, which set forth procedures to be followed when submitting grant proposals, the processes regarding the awarding of grants, and regulations relating to the post-award administration of such grants. However, where there are differences between this RFP and the administrative provisions, this RFP shall take precedence to the extent that the administrative provisions authorize such deviations.

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., this 24 day of June 1999.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

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Part V

Office of Management and Budget

Department of Commerce

Bureau of the Census

Procedures for Participating in the Census Bureau Reconciliation and the OMB Appeal Processes for the Development of the Census 2000 Address List; Notice

OFFICE OF MANAGEMENT AND BUDGET

DEPARTMENT OF COMMERCE

Bureau of the Census

Procedures for Participating in the Census Bureau Reconciliation and the OMB Appeal Processes for the Development of the Census 2000 Address List

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget, and Bureau of the Census, U.S. Department of Commerce.

ACTION: Final notice.

SUMMARY: As part of their implementation of the Census Address List Improvement Act of 1994 (Pub. L. 103–430), the Office of Management and Budget (OMB) and the Bureau of the Census (Bureau) requested in a March 27, 1998, **Federal Register** Notice (63 FR 14978–14981) public comment on proposed processes for developing the address list information that will be used in conducting the 2000 Decennial Census of Population and Housing (Census 2000). In that Notice, the Bureau proposed a Reconciliation process that would seek to resolve disagreements between the Bureau and participating local or tribal governments, or their designated representatives, regarding specific addresses or groups of addresses. For any disagreements that could not be resolved, OMB proposed an Appeal process that would be available to local and tribal governments, or their designated representatives, that wish to appeal the decisions made by the Bureau with respect to their suggestions for the Census 2000 address list. No public comments were received in response to the March 1998 Notice.

This Notice provides information about the final procedures and schedule for the timely completion of the Local Update of Census Addresses (LUCA) program (Exhibit 1) and the Appeal process for the development of the Census 2000 address list. This Notice also announces the establishment of the Census Address List Appeals Office outside the Department of Commerce. This temporary Federal office, rather than a consortium of Federal agencies as originally proposed in the March 1998 Notice, will administer the Appeal process described in Exhibit 2.

ADDRESSES: Any correspondence about the final Reconciliation procedures should be sent to: John H. Thompson, Associate Director for Decennial Census, Bureau of the Census, Washington, DC 20233. Any correspondence about the final Appeal procedures should be sent to: Katherine K. Wallman, Chief Statistician, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Electronic Availability and Addresses: This **Federal Register** Notice is available electronically from the OMB web site: http://www.whitehouse.gov/OMB/fedreg/index.html. **Federal Register** Notices also are available electronically from the U.S. Government Printing Office web site: <<http://www.access.gpo.gov/su_docs/aces/aces140.html>> Questions about accessing the **Federal Register** online via GPO Access may be directed to telephone (202) 512–1530 or toll free at (888) 293–6498; to fax (202) 512–1262; or to e-mail <<gpoaccess@gpo.gov>>.

FOR FURTHER INFORMATION CONTACT: For information about the Bureau's Reconciliation process, contact Robert W. Marx, Chief, Geography Division, Bureau of the Census, Washington, DC 20233; telephone: (301) 457–2131; fax (301) 457–4710. For information about the Appeal process, contact Dr. Philip N. Fulton, Director, Census Address List Appeals Office, 1730 K Street, NW, Suite 418, Washington, DC 20006; telephone (202) 208–4613.

SUPPLEMENTARY INFORMATION:

The Census Address List Improvement Act of 1994

The Census Address List Improvement Act of 1994 (Pub. L. 103–430) changed the Bureau's decennial census address list development procedures. The intent of the Act is threefold: (1) to improve the overall completeness and locational accuracy of the Bureau's housing unit address information; (2) to ensure a complete Census 2000; and (3) to resolve disagreements that local and tribal governments have concerning the completeness and locational accuracy of the Bureau's housing unit address information for their jurisdictions prior to taking Census 2000. (The term "housing unit," as used in this Notice, conforms with the definition of this term adopted for Census 2000, as follows: "A house, an apartment, a mobile home or trailer, a group of rooms or a single room occupied as a separate living quarters or, if vacant, intended for occupancy as a separate living quarters. Separate living quarters are those in which the occupants live separately from any other individuals in this building and which have direct access from outside the building or through a common hall. For vacant units, the criteria of separateness and direct access are applied to the intended occupants whenever possible. If that information cannot be obtained, the criteria are applied to the previous occupants.")

The Act changed the Bureau's procedures in three significant ways: First, to develop the Census address list for the most numerous type of addresses (city-style, used for mail delivery), Section 4 requires that the United States Postal Service (Postal Service) provide to the Bureau the address information it collects and updates to operate its mail delivery service. Second, to increase the role of local and tribal governments in the development of the Bureau's list of housing unit addresses, Section 2 requires that the Bureau develop a process under which it will provide to participating governments their respective portions of the Bureau's housing unit address list and then receive, review, and respond to suggestions regarding needed additions and corrections. Third, to ensure that participating governments have a means to appeal the Bureau's determinations, Section 3 requires that the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA), acting through the Chief Statistician and in consultation with the Bureau, develop an Appeal process to resolve any disagreements that may remain after participating governments receive the Bureau's Detailed Feedback/Final Determination materials.

On March 27, 1998, OMB and the Bureau requested comment on proposed address list procedures (63 FR 14978–14981). No comments were received on the proposals. This Notice issues final procedures, which reflect changes resulting from subsequent experience and further consideration of the issues. This Notice also announces the establishment of the Census Address List Appeals Office outside the Department of Commerce to administer the Appeal process described in Exhibit 2.

The Bureau's Address List Review Processes

As part of implementing the Census Address List Improvement Act of 1994, the Bureau developed specific components of an address list review process, known as the Local Update of Census Addresses (LUCA) program. The Bureau is using the LUCA program to help develop the housing unit address information that it needs to conduct Census 2000. The Bureau made the LUCA program available to all local and tribal governments (or their designated representatives) in areas for which it develops a housing unit address list in advance of Census 2000. In early 1998, the Bureau mailed letters and related information inviting local and tribal governments to participate. For the 17,540 governments that have chosen to participate (as of March 26, 1999), the LUCA program provides an opportunity for them to review the Bureau-compiled housing unit address list for their respective jurisdictions.

During the past year, the Bureau reviewed the LUCA process originally proposed in the March 1998 Notice in light of experience in the Census 2000 Dress Rehearsal and other factors. This review of the Dress Rehearsal experiences provided information about how the LUCA process might work in areas with different types of mail delivery and address numbering systems, and how the Bureau could most effectively use these different types of addresses and delivery systems in its various Census 2000 enumeration methodologies. Based on experience to date, the Bureau identified several operations that required modification of the LUCA Review, Detailed Feedback, Reconciliation, and Final Determination processes originally proposed. These modifications are described below.

(1) The Bureau decided that the LUCA Review process for areas that use predominantly house-number and street-name (city-style) addresses for mail delivery should be separate from the LUCA Review process for areas that use predominantly other types of addresses, such as rural route, post office box number, or general delivery addresses for mail delivery. The Bureau made this decision based on the procedural complexity, and resulting participant confusion, of trying to implement review procedures for both types of areas simultaneously. In addition, the time required for the creation of the Census 2000 address list for the two types of areas precluded simultaneous review without seriously delaying the review process for the vast majority of addresses.

(2) Based on the experience gained during the Census 2000 Dress Rehearsal, as indicated in item (1) above, the Bureau determined that it should implement the LUCA program using two different procedures, depending on the Census 2000 enumeration methodology planned for specific census blocks. These differing enumeration methodologies frequently do not conform to the boundaries of individual jurisdictions (the enumeration methodologies are determined on a census block-by-census block basis). Approximately 2,560 of the 17,540 local and tribal governments in the United States that chose to participate in the LUCA program as of March 26, 1999, will need to use two different review procedures for their territory. The two distinct LUCA procedures for Census 2000—LUCA 1998 and LUCA 1999—will operate on separate schedules. Both procedures are described in more detail below.

(3) The Bureau realized that it is not be possible to provide a separate review process for areas in which the Census 2000 address list will not be compiled in advance of Census 2000 (List/Enumerate and Remote Alaska areas). The Bureau made this decision because it will not have any address list to provide to local or tribal governments in these areas before Census 2000. As of March 26, 1999, there were 669 functioning governments that are completely in this category and an additional 546 governments that are partially in this category that also contain territory eligible for either the LUCA 1998 or LUCA 1999 program (or both). Thus, approximately 1,200 governments will be affected by this situation.

(4) The Bureau learned that neither participants nor Bureau staff could make determinations about the accuracy of individual housing unit addresses in areas where the Census 2000 address list uses descriptive addresses plus map spot location annotations on the accompanying maps, in contrast to participant records that use other forms of housing unit identification, such as tax lot numbers or E–911 emergency service addresses. For these areas, the Bureau has decided that the most effective review process would be for the governments to review only the count (total number) of housing unit addresses in each census block. The Bureau will continue to provide the detailed Census 2000 address list and related maps to participating governments, solely as a reference. (See LUCA 1999 below.)

(5) The Bureau determined, after two thorough and detailed operational reviews, that it could not complete the full range of operations related to all components of the Census 2000 address list development process, incorporate LUCA responses from participants, complete the required field checks of differences, process those results, and provide the Final Determination materials on the schedule originally outlined in the March 1998 Notice. This analysis resulted in the revised, but more realistic, schedule for the operational steps described below. In light of the simpler (or streamlined) LUCA 1999 review process, the Bureau decided to limit the address list review period for participants in LUCA 1999 to 42 calendar days rather than the 3 months allocated for participants in LUCA 1998. This change is necessary to ensure that participant suggestions and the subsequent review activities can be completed in time to meet the questionnaire printing and address labeling schedule for Census 2000. To streamline the process for LUCA 1998 areas, where the review began much earlier, the Bureau determined that it would eliminate a very time-constrained review burden on local and tribal participants (a separate process formerly called Detailed Feedback) and include that Detailed Feedback information with the Final Determination materials. Thus, the Bureau will routinely recheck all differences between participant suggestions and its initial field check, rather than only the limited set of differences disputed by participants.

During 1998, the Bureau worked on developing the Census 2000 address list in cooperation with the Postal Service and through various field operations. As governments notified the Bureau of their desire to participate in one or both of the LUCA programs, the Bureau generated and delivered appropriate address lists and other review materials, along with procedural information to help participants understand and complete the review process. The review materials provide each participating local and tribal government (or their designated representative) information documenting the number of housing unit addresses in each census block within the jurisdiction, a list of the individual housing unit addresses recorded in the Census 2000 address list for each of these census blocks, a copy of the Bureau maps that display the streets and census block numbers within and near the jurisdiction, and other related materials.

The list used for questionnaire address labeling and delivery will reflect additions, deletions, and corrections to housing unit addresses that were suggested by LUCA participants once those addresses are confirmed by the field check component of the Reconciliation process or mandated by the Appeal process. Inclusion of an address on the Census 2000 address list at this stage does not mean that a housing unit will be found at the time of Census 2000, that any inhabitants will be found at the address, or that the address will be included in the final Census 2000 data summaries. The census-taking process, including the update/leave operation (in LUCA 1999 areas), rural update/enumerate, and the nonresponse follow-up and

other coverage improvement operations (in both LUCA 1998 and LUCA 1999 areas), will determine the final inclusion status of each address; i.e., whether or not there is actually a housing unit at the address as of April 1, 2000, and the number of people, if any, residing at each address existing on that date.

LUCA 1998

The LUCA 1998 program is for jurisdictions or portions of jurisdictions in which the Postal Service uses house-number and street-name (city-style) addresses for most mail delivery. There were more than 9,000 local and tribal governments participating in LUCA 1998 as of March 26, 1999. These governments include more than 90 percent of the housing unit addresses eligible for review during LUCA 1998. Most performed their review of the appropriate portion of the Census 2000 address list and related Bureau maps during late 1998 and early 1999. Under the LUCA 1998 procedures, they provided to the Bureau specific, detailed housing unit address suggestions, including corrections, additions, deletions, and address location changes.

Although most housing units in LUCA 1998 areas use city-style addresses for mail delivery, there may be a few housing units with other types of addresses or other types of mail delivery, such as rural route and box number. The Bureau issued its standards for city-style addresses in a November 27, 1995, **Federal Register** Notice (60 FR 58326—58329). These standards describe the components of acceptable city-style addresses, including apartment designations for each housing unit in a multi-unit building, current 5-digit ZIP Codes, and distinction between residential and commercial addresses.

In Census 2000, the Bureau will use the mail-out/mail-back methodology to enumerate most housing units and their occupants in areas eligible for LUCA 1998. (The Bureau may enumerate some housing units in areas eligible for LUCA 1998 using other methodologies, based on operational determinations made during various Census 2000 preparatory activities.) To ensure a uniformly complete Census 2000 address list in areas eligible for LUCA 1998, to ensure that each housing unit address in these areas is assigned to the correct census block regardless of whether a local or tribal government agreed to review its portion of the Census 2000 address list (or equivalent computer-readable file), and to ensure that all locatable housing unit addresses in these areas are included on the Census 2000 address list, temporary Bureau staff will update and verify the existence and census block location of every housing unit address that exists in early 1999 as part of a field check operation called block canvassing. This field check will cover approximately 94 million housing units and will be conducted in three waves, each lasting approximately 6 weeks. The first wave began in mid-January 1999, and the third wave was completed in late May 1999.

Each government that notified the Bureau by November 28, 1998, of its intent to participate in LUCA 1998 had 3 months during which to conduct its Census 2000 housing unit address list and related Bureau map review once it received its review materials. Under this review schedule, the Bureau received most of the completed LUCA 1998 review materials by March 15, 1999. (An exception to the March 15, 1999, receipt date was made only when the Bureau did not deliver review materials in a timely fashion to participants who entered the program by November 28, 1998. For approximately 600 of these governments, the Bureau determined that its Census 2000 address list would not be suitable for review until after completion of its field check operation.) Governments that entered the LUCA 1998 program after November 28, 1998, were not allowed 3 months for their review. Since they, also, were required to return their completed LUCA 1998 review materials on a schedule that ensured receipt by the Bureau by no later than March 15, 1999, the time allowed for their review was determined by the date they notified the Bureau of their intent to participate. Governments participating in LUCA 1998 were notified that the Bureau would not accept any LUCA 1998 address additions, deletions, or corrections after March 15, 1999, except as noted above. Adhering to this deadline will ensure that the Bureau can complete all subsequent LUCA and other Census 2000 address list development steps in a timely manner.

Reconciliation Process

The Bureau will provide timely, written, Detailed Feedback/Final Determination materials to each local or tribal government that returned address additions, deletions, and/or corrections during the LUCA 1998 review phase. The Bureau will provide these materials after the following two processes have been completed. First, all participant-suggested address additions, deletions, and/or corrections will be reviewed and evaluated against the results of the early 1999 field check (block canvassing). To perform this evaluation, the Bureau will computer-match each participant-suggested addition, deletion, and correction to the addresses Bureau staff observed during the early 1999 field check. Second, for all participant-suggested addresses not accepted by the Bureau based on the initial field check (block canvassing), the Bureau will send staff into the field to conduct a second on-site check (Reconciliation) to determine which housing units actually exist at the time of this second field check and to ensure that each is assigned to the correct census block in the evolving Census 2000 address list. (The Bureau's procedure for the LUCA 1998 Reconciliation process follows as Exhibit 1A.) The goal of the LUCA 1998 Reconciliation process is to ensure accurate information when participating governments have identified specific addresses or groups of addresses that they believe are missing, incorrect, and/or not properly located, and to reach concurrence between the Bureau and each participating government regarding those addresses. This concurrence relates both to the existence and to the census block location of each such address.

Using the wave approach to the field check operation in all mail-out/mail-back areas during the period from mid-January to late May 1999 means that the Reconciliation process will begin in June 1999 for the first LUCA 1998 governments, and some LUCA 1998 governments will begin to receive their Detailed Feedback/Final Determination materials in August 1999. All participating LUCA 1998 governments will have received their Detailed Feedback/Final Determination materials by November 1999.

The Detailed Feedback/Final Determination materials will tell each participating government which of its additions, deletions, and/or corrections the Bureau found and which it did not find. These materials will include: (1) a Detailed Feedback/Final Determination Processing Report containing tallies of recommendations submitted by the participating government and tallies of actions taken by the Bureau for that government; (2) a Detailed Feedback/Final Determination list covering the specific address additions, deletions, and/or corrections submitted by the participant; (3) updated information documenting the number of housing unit addresses in each census block within the jurisdiction; (4) an updated list of all individual housing unit addresses in every census block within the jurisdiction, as recorded in the evolving Census 2000 address list; and (5) a copy of the updated Bureau maps covering the jurisdiction.

The second on-site check (Reconciliation), described above, will conclude with delivery by the Bureau of written Detailed Feedback/Final Determination materials regarding the existence and the census block location of each disputed address. For each participating government, the Bureau's LUCA 1998 program for Census 2000 will be officially completed at the time the Bureau provides its Detailed Feedback/Final Determination materials.

Appeal Process

If, at the end of the Detailed Feedback/Final Determination processes, a participating government still disagrees with the Bureau's Final Determination regarding the existence or location of a specific address or group of addresses, the participating government may seek a formal review of the Bureau's Final Determination through the Appeal process described in Exhibit 2A of this Notice.

Only those local or tribal governments that participated in the LUCA 1998 review program and completed a review of the Detailed Feedback/Final Determination materials are eligible to file an Appeal. Appeals must be filed within 30 calendar days after receiving the Detailed Feedback/Final Determination materials. Appeals filed after the deadline will be denied.

To file an Appeal, each eligible government must provide the specific address(es) it believes to be missing or misrepresented, including for each address, the Census 2000 block number and the LUCA tracking number, as provided by the Bureau in the Detailed Feedback/Final Determination materials. Eligible governments may appeal only those addresses they submitted as additions or corrections as part of the LUCA review process that they still believe to be incorrectly represented on the Census 2000 address list when they receive their Detailed Feedback/Final Determination materials; they may not appeal other addresses that were not submitted previously as additions or corrections.

An eligible LUCA 1998 government may appeal to the Census Address List Appeals Office and must submit a duplicate copy of any additional evidence it provides at that time to the Bureau's Regional Census Center responsible for the jurisdiction. (After notification from the Appeals Office to the Bureau, the Bureau will have 15 calendar days to submit the evidence it has compiled concerning the Census 2000 address list for the area served by the appealing government to the Census Address List Appeals Office.) The Appeal process will be concluded by January 14, 2000.

Postal Service Updates

To ensure further that the Census 2000 address list is uniformly complete in all areas eligible to participate in LUCA 1998, the Bureau will use address information provided by the Postal Service in two separate operations. First, it will use address information provided in computer-readable format during the last quarter of 1999 to update the Census 2000 address list with addresses added after the Detailed Feedback/Final Determination process. Second, it will pay the Postal Service to have Postal Service letter carriers check the completeness of the Census 2000 address list in early 2000 in an operation called the Postal Service Address Validation Check. The Postal Service also will be responsible for delivering a Census 2000 questionnaire to each housing unit address on the resulting address list in March 2000 (the mail-out process). The occupants of each housing unit will be asked to complete the questionnaire and return it by mail (the mail-back process).

New Construction Program

The Bureau has developed a New Construction Program to ensure that addresses resulting from new construction that occurs between the completion of the Postal Service Address Validation Check and Census Day are included in Census 2000. All new construction addresses identified as a result of this program will be matched against the Census 2000 address list. Submissions that duplicate addresses that are already included in the Census 2000 address list will be removed. Enumerators will visit each remaining address during the Census 2000 Coverage Improvement Follow-up Operation and complete a questionnaire for each housing unit that exists at each new address as of Census Day. (The term "new construction" refers to housing units that have been built and occupied between January 2000 and Census Day, or to housing units being built, for which basic construction has been completed, closing the structure from the elements, but not occupied.)

The Bureau will offer the New Construction Program to all entities eligible to participate in LUCA 1998 (mainly the area in which the Postal Service uses house-number and street-name addresses for most mail delivery) regardless of whether they participated. In the remaining areas, the Bureau has developed enhanced procedures (update/leave, rural update/enumerate, and list/enumerate) to identify new construction.

New Construction Program participants that also participated in the LUCA 1998 program may not submit any addresses that they disputed during the LUCA program with the exception of those that were not found to exist during the LUCA program but have since completed basic construction, closing the structure from the elements.

The Bureau will provide copies of the Census 2000 address list and related maps as of late 1999 to New Construction Program participants. The Census 2000 address list provided will show only Basic Street Addresses (BSA) and will not contain individual housing unit addresses within multi-unit structures, but it will contain the number of housing units within a BSA.

New Construction Program participants must submit new addresses on a Census Bureau "add" worksheet (or in a computer-readable format specified by the Census Bureau). The worksheet will require participants to provide the census block number for each new address. If the new BSA address includes two or more housing units, then the full address for each housing unit, including the internal designation (apartment or unit number), must be submitted individually on the "add" worksheet (or in computer-readable format). If an existing multi-unit BSA has been remodeled or renovated to change the number of housing units at that BSA, then all of the housing units at that BSA must be supplied on the "add" worksheet (or in computer-readable format) with the full address for each housing unit, including the internal designation (apartment or unit number) of each. Additionally, the participants must draw the location of every new street along which new housing units are located, and label each with its street name, on the Bureau maps.

LUCA 1999

The LUCA 1999 program is for those jurisdictions and portions of jurisdictions in which the Postal Service uses rural route, post office box number, or general delivery addresses for most mail delivery, although these areas may include some housing units with city-style addresses. There were approximately 10,800 local and tribal governments participating in the LUCA 1999 program as of March 26, 1999. These governments include more than 60 percent of the housing unit addresses and/or location descriptions (addresses) eligible for review in LUCA 1999. They will perform their review of the

appropriate portion of the Census 2000 address list and related Bureau maps during January through mid-June 1999. In LUCA 1999 areas, participants may respond only by identifying those census blocks on the Census 2000 Block Housing Unit Summary List that appear to have too few or too many housing unit addresses and/or location descriptions in the Census 2000 address list (disputed blocks). Since the LUCA 1999 process is one of reviewing only housing unit address counts, the Bureau will not accept individual specific housing unit address additions and/or corrections from LUCA 1999 participants.

In Census 2000, the Bureau will use the update/leave methodology to enumerate most housing units and their occupants in areas eligible for LUCA 1999. (The Bureau may enumerate some housing units in areas eligible for LUCA 1999 using other methodologies, based on operational determinations made during various Census 2000 preparatory activities.) To ensure a uniformly complete Census 2000 address list in areas eligible for LUCA 1999, to ensure that each address is assigned to the correct census block regardless of whether a local or tribal government agreed to review its portion of the Census 2000 address list, and to ensure that all locatable addresses in these areas are included on the Census 2000 address list, temporary Bureau employees will verify the completeness and locational accuracy of each address on the list as they deliver a Census 2000 questionnaire to it in March 2000 (update/leave methodology). At that time, they will add to the Census 2000 address list any additional addresses they find, and make other needed corrections to the Census 2000 address list and related Bureau maps.

Each address in the portions of the Census 2000 address list covering areas eligible for LUCA 1999 will include a map spot number that is linked to a specific (approximate) housing unit location on the maps that the Bureau provides to governments participating in LUCA 1999. These "other addresses" on the Census 2000 address list will provide the most recent address available for each housing unit. The Bureau completed housing unit address listing activities to prepare the Census 2000 address list for these areas in early 1999. Because of the extensive area this address listing activity covered, the Bureau implemented this operation in three waves. This resulted in three waves of delivery for the review materials to governments participating in LUCA 1999. The Bureau began providing review materials to governments participating in LUCA 1999 in January 1999, and most remaining LUCA 1999 review materials were provided by the end of May 1999.

Each jurisdiction or portion of a jurisdiction with predominantly non-city-style addresses conducted its review of the address counts in its portion of the Census 2000 address list and related Bureau maps, from January through May 1999. Each government that notified the Bureau by March 12, 1999, of its intent to participate in LUCA 1999 had 42 calendar days to conduct its review once it received the materials. This review schedule ensured receipt by the Bureau of most of the completed LUCA 1999 review materials by May 12, 1999. (An exception to the May 12, 1999, receipt date was made only if the Bureau did not deliver review materials by March 31, 1999, to participants who entered the LUCA program by March 12, 1999; these participants still were allowed the full 42 calendar days for their review process.) Governments that entered the LUCA 1999 program after March 12, 1999, were not allowed 42 calendar days for their review. Since they, also, were required to return their completed LUCA 1999 review materials on a schedule that ensured receipt by the Bureau by no later than May 12, 1999, the time allowed for their review was determined by the date they notified the Bureau of their intent to participate. Governments participating in LUCA 1999 were notified that the Bureau would not accept any LUCA 1999 disputed address counts after May 12, 1999, except as noted above. Adhering to this deadline ensured that the Bureau could complete all subsequent LUCA and other Census 2000 address list development steps in a timely manner.

The review period was shortened from 3 months to 42 calendar days for the following three reasons: First, the total number of addresses for most of these jurisdictions is much smaller than for most LUCA 1998 jurisdictions. Second, the process of reviewing only counts of housing unit addresses in census blocks is a much simpler process than the detailed housing unit address reviews for LUCA 1998. Third, the Bureau plans to relist (Reconciliation process) all housing unit addresses and/or location descriptions in census blocks for which participants identify housing unit address count discrepancies (disputed blocks).

Reconciliation Process

After receiving from each participating local and tribal government the completed Census 2000 Block Housing Unit Summary List that identifies census blocks with housing unit address count discrepancies, the Bureau will update its maps with participant-supplied corrections and send staff into the field to recompile the Census 2000 address list in each disputed census block (Reconciliation process). Bureau staff will verify the existence and location of every housing unit in each disputed block, ensure that there is a complete address and/or location description for each, and enter a map spot for each on the Bureau maps for the disputed blocks. During this relisting (Reconciliation), they will determine which housing units actually exist at the time of this second field check and ensure that the address for each is assigned to the correct census block in the evolving Census 2000 address list. (The Bureau's procedure for the LUCA 1999 Reconciliation process follows as Exhibit 1B.) The goal of the LUCA 1999 Reconciliation process is to resolve disagreements regarding specific disputed housing unit address and/or location description counts, and to reach concurrence between the Bureau and each participating government regarding those housing unit address and/or location description counts in each census block.

The Bureau intends to complete all housing unit relisting (Reconciliation) field work for each jurisdiction within 21 calendar days, plus an additional 30 calendar days to process the results and produce the Detailed Feedback/Final Determination materials. The relisting (Reconciliation) process will conclude with delivery by the Bureau of written Detailed Feedback/Final Determination materials regarding the number of housing unit addresses and/or location descriptions in each disputed census block.

The Bureau will provide timely, written, Detailed Feedback/Final Determination materials to each government that returns a Census 2000 Block Housing Unit Summary List (or equivalent computer-readable file) with housing unit address and/or location description count corrections during the LUCA 1999 review phase. The Bureau will provide these materials after participant-disputed blocks have been relisted (the Reconciliation process) and the resulting housing unit address and/or location description information have/has been added to the evolving Census 2000 address list.

The wave approach to the housing unit relisting operation in LUCA 1999 areas will result in three waves of delivery for the Detailed Feedback/Final Determination materials to governments participating in LUCA 1999. These materials will include: (1) a report covering the specific disputed census blocks identified by the participant and updated with information documenting the final number of addresses in each census block within the jurisdiction; (2) an updated list of all individual addresses for every housing unit in the disputed census blocks within the jurisdiction, as recorded in the evolving Census 2000 address list; and (3) a copy of updated Bureau maps covering the jurisdiction.

According to the LUCA 1999 timetable, the relisting (Reconciliation) process began in May 1999 for the first LUCA 1999 governments, and some LUCA 1999 governments will begin to receive their Detailed Feedback/Final Determination materials in June 1999. All participating LUCA 1999 governments will have received their Detailed Feedback/Final Determination materials by October 1999. For each participating government, the Bureau's LUCA 1999 program for Census 2000 will be officially completed at the time the Bureau provides its Detailed Feedback/Final Determination materials.

Appeal Process

If, at the end of the Detailed Feedback/Final Determination process, a participating government still disagrees with the Bureau's Final Determination regarding the number of housing unit addresses in one or more specific census blocks, the participating government may seek a formal review through the Appeal process described in Exhibit 2B of this Notice.

Only those local or tribal governments that participated in the LUCA 1999 review program, submitted their annotated Census 2000 Block Housing Unit Summary List with count discrepancies, and completed a review of the Detailed Feedback/Final Determination materials are eligible to file an Appeal. The Appeal may be filed only after the eligible government receives the Detailed Feedback/Final Determination materials from the Bureau, and the Appeal must be filed within 30 calendar days after that date. Appeals filed after the deadline will be denied.

An eligible government may Appeal the Detailed Feedback/Final Determination address count. To do so, each eligible government must provide the following two items of information for each specific address it believes is missing from the Census 2000 address list: (1) the specific address(es) or location description(s) of the housing unit(s) the participant believes to be missing, including for each address, the Census 2000 block number, and (2) the specific location of each "missing" address by adding a "map spot" in relation to the other map spots and an accompanying map spot number on the map that the Bureau provided with the Detailed Feedback/Final Determination materials. Eligible governments may not appeal address counts for other blocks included in their initial review that they did not dispute previously.

An eligible LUCA 1999 government may appeal to the Census Address List Appeals Office, and must submit a duplicate copy of its additional evidence to the Bureau's Regional Census Center responsible for the jurisdiction. (After notification from the Appeals Office to the Bureau, the Bureau will have 15 calendar days to submit its evidence concerning the appealing government to the Census Address List Appeals Office.) The Appeal process will be concluded by January 14, 2000.

Donald R. Arbuckle,

Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Kenneth Prewitt,

Director, Bureau of the Census, Department of Commerce.

Exhibit 1—Census Bureau's Procedures for the Reconciliation Process

This exhibit describes the Reconciliation component of the Local Update of Census Addresses (LUCA) program. The goal of the Reconciliation process is to ensure accurate information when participating governments have identified specific addresses that they believe are missing, incorrect, or not properly located (in LUCA 1998 areas) or specific census blocks in which they dispute the counts of housing units (LUCA 1999 areas), and to reach concurrence between the Bureau of the Census (Bureau) and the participating government. This concurrence relates both to the existence and to the census block location of such housing unit addresses and housing unit counts.

A. Reconciliation Process for LUCA 1998 Areas—Areas in Which the Bureau Will Use the Mail-out/Mail-back Enumeration Methodology for Most Housing Units

This section provides information on how local and tribal governments that returned their annotated review materials participate in the Reconciliation process for LUCA 1998 areas.

1. What Governments Are Eligible for the Reconciliation Process in LUCA 1998?

Local and tribal governments that participate in the Bureau's 1998 Local Update of Census Addresses (LUCA 1998) program are eligible for the Reconciliation process if they returned review materials with specific address additions, deletions, or corrections. A second on-site check (Reconciliation) of all disputed addresses will be conducted by the Bureau for differences identified by the participating local or tribal government (or its designated representative).

2. What Is the Deadline for Submitting Materials for LUCA 1998 Reconciliation?

Participating local or tribal governments are eligible for the Reconciliation process if the Bureau was in receipt of their annotated review materials by the date specified by the Bureau. Eligibility for Reconciliation was determined by the date the annotated materials were postmarked or received by an overnight delivery service. The term "receipt," as used herein, shall be defined as the date the Bureau transmits the Detailed Feedback/Final Determination materials to the participating government plus 3 calendar days.

3. What Must a Participating Government Submit To Be Eligible for LUCA 1998 Reconciliation?

Participating governments must provide the annotated Census 2000 address list (or equivalent computer-readable file) from their review process showing the address(es) that they wish to dispute. The participating government must use Bureau procedures to identify addresses that: (a) the participating government believes exist but are not included on the Census 2000 address list; (b) the participating government believes do not exist but are included on the Census 2000 address list; (c) the participating government believes exist but are not correct as included on the Census 2000 address list; (d) the participating government believes exist but are not residential addresses as indicated on the Census 2000 address list, or (e) the participating government believes exist but are not located within its jurisdiction as indicated on the Census 2000 address list. The annotated Census 2000 address list (or equivalent computer-readable file) also must provide the specific missing, corrected, or deleted addresses and their Census 2000 block numbers.

4. Where Must a Participating Government Submit Its LUCA 1998 Review Materials?

Completed review materials must be submitted to the Bureau's Regional Census Center for the region in which the participating government is located. The Bureau will provide detailed procedures when it transmits the review materials to each participating government.

5. What Is the Bureau's Reconciliation Process for LUCA 1998 Areas?

The Bureau will attempt to computer-match all participant-suggested address additions, deletions, and/or corrections against the results of the early 1999 field check (block canvassing). For each address that does not match the results of the early 1999 field check, the Bureau will send staff into the field to conduct a second on-site check (the Reconciliation process) to determine which housing units actually exist at the time of this second field check and to ensure that each address is assigned to the correct census block in the evolving Census 2000 address list. Following this second field check, the participating government will be notified, in writing, of the Bureau's Detailed Feedback/Final Determination and the basis for it. The Census 2000 address list will be updated with additions, deletions, and corrections resulting from the LUCA review. The participating government also will be informed of its right to file an Appeal, notified of the procedure for when and where to file that Appeal, and what the Appeal must include, and may proceed to the Appeal stage if it is not satisfied with the resolution provided by the Bureau during the Reconciliation phase.

In conducting the Census 2000 enumeration, the Bureau will include all addresses added to, and/or corrected in, the Census 2000 address list as a result of the second field check (Reconciliation) and/or Appeal processes, using the same procedures it will use for all other addresses on the list. Inclusion of an address in the list does not mean that a housing unit will in fact be found to exist, that any inhabitants will actually be found at the address, or that the housing unit will be included in the final Census 2000 data summaries. The census-taking process will determine the inclusion status of the address—whether or not it actually is a housing unit, and the population total at that address.

6. How Much Time Is Allowed for the Completion of the LUCA 1998 Reconciliation Process?

The Census Bureau expects to begin the second field check (Reconciliation) process in June 1999 and complete the process in August 1999. Thus, it should begin providing Detailed Feedback/Final Determination materials in July 1999. All participating governments will be notified in writing of the Bureau's Detailed Feedback/Final Determination by no later than October 1999. From the date a participating government receives the Bureau's Detailed Feedback/Final Determination materials, it will have 30 calendar days in which it may file an Appeal regarding any or all of the address corrections not accepted by the Bureau (see Exhibit 2A for the Appeal process).

B. Reconciliation Process for LUCA 1999 Areas—Areas in Which the Bureau Will Use the Update/Leave Enumeration Methodology for Most Housing Units

This section provides information on how local and tribal governments that returned their annotated review materials participate in the Reconciliation process for LUCA 1999 areas.

1. What Governments Are Eligible for the Reconciliation Process in LUCA 1999?

Local and tribal governments that participate in the Bureau's 1999 Local Update of Census Addresses (LUCA 1999) program are eligible for the Reconciliation process if they returned their Census 2000 Block Housing Unit Summary List (or equivalent computer-readable file) and they disputed the housing unit address and/or location description count for one or more census blocks. Relisting (Reconciliation) of census blocks with disputed housing unit address counts will be conducted by the Bureau for blocks identified by the participating local or tribal government (or its designated representative).

2. What Is the Deadline for Submitting Materials for LUCA 1999 Reconciliation?

Each participating local or tribal government must submit its annotated Census 2000 Block Housing Unit Summary List within 42 calendar days after the receipt of the LUCA 1999 review materials from the Bureau to be eligible for the Reconciliation process. Eligibility for Reconciliation will be determined by the date the annotated materials are postmarked or received by an overnight delivery service. The Census 2000 Block Housing Unit Summary List identifying disputed census blocks must be in the form of a paper listing or a computer file, as requested by the participating government for the initial review. The term "receipt," as used herein, shall be defined as the date the Bureau transmits the Detailed Feedback/Final Determination materials to the participating government plus 3 calendar days. The participating government may transmit documents via Express mail or overnight delivery service, and must keep an accurate record of the date it transmits these materials.

3. What Must a Participating Government Submit To Be Eligible for LUCA 1999 Reconciliation?

Participating governments that wish to dispute the count of housing unit addresses for a specified census block must provide the annotated Census 2000 Block Housing Unit Summary List (or equivalent computer-readable file) for which the Census 2000 housing unit address and/or location description count is being disputed.

4. Where Must a Participating Government Submit Its LUCA 1999 Review Materials?

Completed review materials must be submitted to the Bureau's Regional Census Center for the region in which the participating government is located. The Bureau will provide detailed procedures when it transmits the review materials to each participating government.

5. What Is the Bureau's Reconciliation Process for LUCA 1999 Areas?

The Bureau will review the materials submitted by the participating government and prepare the detailed maps and address listings needed to perform a relisting (second field check) in each census block with a disputed housing unit address and/or location description count. Addresses and/or location descriptions for housing units will be added to, deleted from, and/or corrected in the evolving Census 2000 address list.

Following this relisting, the participating government will be notified, in writing, of the Bureau's Detailed Feedback/Final Determination for each disputed block. At this time, the participating government also will be informed of its right to file an Appeal, notified of the procedure for when and where to file that Appeal, and what the Appeal must include, and may proceed to the Appeal stage if it is not satisfied with the resolution provided by the Bureau during the Reconciliation phase.

In conducting the Census 2000 enumeration, the Bureau will include all housing unit addresses and/or location descriptions added to and/or corrected in the evolving Census 2000 address list as a result of the relisting (Reconciliation) and/or Appeal processes, using the same procedures it will use for all other addresses on the list. Inclusion of a housing unit address and/or location description in the list does not mean that a housing unit will in fact be found to exist, that any inhabitants will actually be found at the address, or that the housing unit will be included in the final Census 2000 data summaries. The census-taking process will determine the inclusion status of the address—whether or not it actually is a housing unit, and the population total at that address.

6. How Much Time Is Allowed for the Completion of the LUCA 1999 Reconciliation Process?

The Census Bureau is using 21 calendar days as its standard for completing the relisting (Reconciliation) field check for a jurisdiction, plus an additional 30 calendar days to process the results and produce the Detailed Feedback/Final Determination materials. The standard should be achievable for all jurisdictions except those with a large number of blocks with disputed counts. The relisting (Reconciliation) operation will be completed and a participating government will be notified in writing of the Bureau's Detailed Feedback/Final Determination by August 1999. From the date a participating government is in receipt of the Bureau's Detailed Feedback/Final Determination materials, it will have 30 calendar days in which it may file an Appeal regarding any or all of the housing unit address corrections not accepted by the Bureau (see Exhibit 2B for the Appeal process).

Exhibit 2—OIRA Administrator's Procedure for the Appeal Process

This exhibit describes the procedures for the OIRA Administrator's Appeal process. Following receipt of the Census Bureau's (the Bureau) Detailed Feedback/Final Determination materials from the Reconciliation process, the participating local or tribal government, or its designated agent, may file an Appeal if it disagrees with the Bureau's Final Determination. The Appeal process will be based solely on a review of written documentation provided by the participating government and the Bureau.

A. Appeal Process for LUCA 1998 Areas B Areas in Which the Bureau Will Use the Mail-Out/Mail-Back Enumeration Methodology for Most Housing Units

This section provides information on how local and tribal governments that participated in LUCA 1998 can formally Appeal decisions provided in the Bureau's Detailed Feedback/Final Determination materials to the Census Address List Appeals Office.

1. What LUCA 1998 Governments Are Eligible To File an Appeal?

All local and tribal governments that participated in the Reconciliation process and have received their Detailed Feedback/Final Determination materials are eligible to file an Appeal.

2. What Is the Deadline for an Eligible Government To File an Appeal?

An Appeal must be filed by the eligible government within 30 calendar days after that government's receipt of the Bureau's Detailed Feedback/Final Determination materials from the Reconciliation process (see 5, below, regarding what documentation the participating government must file within 30 days). "Receipt" as used herein shall be defined as the date the Bureau transmits the Detailed Feedback/Final Determination materials to the eligible government plus 3 calendar days. The eligible government may transmit materials via Express mail or overnight delivery service, and must keep an accurate record of the date it transmits these materials. All Appeals filed after the deadline will be denied as untimely.

3. Who Will Review the Appeal?

The Appeal process will be administered by the Census Address List Appeals Office (Appeals Office), a temporary Federal office established outside the Department of Commerce. The Appeals Office will be directed by a senior executive on detail from a Federal agency that is not part of the Department of Commerce. The Office will be staffed by Appeal Officers who may be Federal employees on detail from other agencies outside the Department of Commerce, temporary Federal employees, or contractors. The Appeal Officers will be trained in the procedures for processing an Appeal and in the examination and analysis of address list information, locations of addresses and housing units, and supporting materials. For additional information on the review and decision process, see 8 below.

4. What Types of Final Determinations May Be Appealed?

An Appeal may be filed only with respect to addresses for which the eligible government had previously sought Bureau review during the LUCA 1998 Reconciliation process, which is described in Exhibit 1A of this Notice. Further, the eligible government may appeal only those Reconciliation determinations made by the Bureau that pertain to:

a. Addresses that the eligible government believes exist but are not included on the Census 2000 address list; and

b. Addresses that the eligible government believes exist but are not correct as included on the Census 2000 address list.

5. What Documentation Must an Eligible Government File with an Appeal?

The Appeal process will be based solely on a review of written documentation provided by the eligible government and the Bureau. Each Appeal submitted to the Appeals Office must be printed or typed. The Appeal documentation must include:

a. The name of the eligible government.

b. The name, mailing address, telephone number, fax number, and electronic mail address (if any), of that government's contact person.

c. The following information:

(1) A separate list of the addresses that the eligible government believes exist but are not *included* on the Census 2000 address list; for each address, identify the Census 2000 block number, the LUCA tracking number, the participant action code, and the Bureau's action code as provided by the Bureau in its Detailed Feedback/Final Determination materials; and

(2) A separate list of the addresses that the eligible government believes exist but are not *correct* as included on the Census 2000 address list; for each address, identify the Census 2000 block number, the LUCA tracking number, the participant action code, and the Bureau action code as provided by the Bureau in its Detailed Feedback/Final Determination materials.

d. An annotated copy of the Bureau's Detailed Feedback/Final Determination materials from the second on-site check (Reconciliation), with the portion(s) marked that specifically pertain(s) to the lists in item 5c above.

e. A written explanation that gives the eligible government's specific recommendations for how the address(es) and location(s) being appealed should appear on the Census 2000 address list.

f. A written statement that outlines the eligible government's position for why the Appeals Office should adopt its recommendations. The statement must specifically respond to the explanation that accompanied the Bureau's Detailed Feedback/Final Determination materials. This specific response to the Bureau's explanation is a critical part of the Appeal process; an Appeal is likely to be more persuasive to the extent that it provides a more pointed and evidence-based response to the Bureau's explanation, and is likely to be less persuasive to the extent that it provides a general and unfocused response.

g. For each housing unit address or group of addresses, or each location description of a housing unit being appealed, a reference to the location in the supporting documentation where the Appeal Officer can find specific evidence supporting the eligible government's position with respect to that housing unit address, or group of addresses, or location description, believed missing or incorrect.

h. Any other supporting documentary evidence for the position taken by the eligible government in its Appeal.

Two types of supporting evidence are recommended below. The first specifically reflects the validity of any address or map reference sources, and the second describes other useful sources of supporting evidence. The eligible government may submit any documentation it deems relevant in support of its Appeal.

a. Evidence supporting the quality of address or map reference sources.

(1) The date of the address source.

(2) How often the address source is updated.

(3) The methods used to update the source.

(4) Quality assurance procedure(s) that are used in maintaining the address source.

(5) How the address source is used by the eligible government and/or by the originator of the source.

b. Other useful supporting evidence.

(1) On-site inspection and/or interview of residents and/or neighbors.

(2) Issuance of recent occupancy permit for unit. (Building permits are not acceptable as they do not ensure that the units have been built and/or are occupied.)

(3) Provision of utilities (electricity, gas, sewer, water, telephone, etc.) to the residence. The utility record should show that this is not service to a commercial unit, or an additional service to an existing residence (such as a second telephone line).

(4) Provision of other governmental services (housing assistance, welfare, etc.) to residents of the unit.

(5) Aerial photography and/or standard photography.

(6) Land use maps.

(7) Local 911 emergency lists, if they distinguish residential from commercial units.

(8) Tax assessment records, if they distinguish residential from commercial units.

All Appeal documentation must be filed with the Appeals Office within 30 calendar days after the Bureau transmits its Detailed Feedback/Final Determination materials to the eligible government. At the same time, the eligible government must send a duplicate copy of all Appeal documentation to the Bureau's Regional Census Center responsible for the jurisdiction. The eligible government may not submit any materials to the Appeals Office after the 30-day period has lapsed.

6. Where Must Eligible Governments File an Appeal?

Appeals must be sent to: Dr. Philip N. Fulton, Director, Census Address List Appeals Office, 1730 K Street, NW, Suite 418, Washington, DC 20006; telephone (202) 208–4613. At the same time, a duplicate copy of all Appeal documentation must be filed with the Bureau's Regional Census Center responsible for the jurisdiction.

Upon receipt of an Appeal, the Appeals Office will send a written confirmation to the eligible government that its Appeal has been received. The Appeals Office also will notify the Bureau, in writing, that the Appeal has been filed.

7. What Written Documentation and Supporting Evidence May Be Submitted by the Bureau During the Appeal Process?

The Bureau does not need to respond to the Appeal or to provide any materials in support of its Reconciliation determination. Upon receipt of notification that an Appeal has been filed, the Bureau will have 15 calendar days in which it may (if the Bureau so chooses):

a. Submit to the Appeals Office written documentation briefly summarizing its position as well as any supporting evidence concerning the appealed addresses, or

b. Submit to the Appeals Office a written acceptance statement agreeing to the recommendation(s) in the Appeal.

If the Bureau submits any written documentation to the Appeals Office to support its position, the Bureau at the same time must send a copy of its submission to the eligible government. The Bureau may not submit any materials to the Appeals Office after the 15-day period has lapsed.

8. What Is the Appeal Review and Final Decision Process?

An Appeal Officer will review the Bureau's Detailed Feedback/Final Determination and the written documentation and supporting evidence submitted by the eligible government and the Bureau. No testimony or oral argument will be received by the Appeal Officer. Appeal Officers will apply the following principles in conducting their review:

a. The Appeal Officer shall consider the quality of the map or address reference source as the basis for determining the validity of an address (or group of addresses) and its (their) location(s).

b. For any address for which the Appeal Officer determines that the quality of the supporting evidence submitted by both parties is of equal weight, the Appeal Officer shall decide in favor of the eligible government.

At the conclusion of reviewing an appealed address (or group of addresses), the Appeal Officer will prepare a draft written determination. The draft written determination will be reviewed by a higher level official in the Appeals Office. The Director of the Appeals Office (or his designee) will then issue a final written determination to both the eligible government and the Bureau. The final written determination will include a brief explanation of the Appeals Office's decision, and will specify how the appealed address(es) or its (their) location(s) should appear on the Census 2000 address list. Each final written determination shall become part of the administrative record of the Appeal process.

The Appeals Office's decision is final. In conducting the Census 2000 enumeration, the Bureau will include all addresses added to, or corrected in, the Census 2000 address list as a result of the Appeal process, according to the same procedures used for all other addresses on the list. Inclusion of an address on the list does not mean that a housing unit or its inhabitants are actually at the address, or that the address will be included in the final Census 2000 data summaries. The census-taking process will determine the inclusion status of the address—whether or not it is actually a housing unit—and the final population and housing unit status for each address.

9. When Will the Appeal Process Be Completed?

Appeal reviews shall be completed and written determinations issued to the concerned parties as soon as possible, and in any event no later than January 14, 2000.

B. Appeal Process for LUCA 1999 Areas—Areas in Which the Bureau Will Use the Update/Leave Enumeration Methodology for Most Housing Units

This section provides information on how local and tribal governments that participated in LUCA 1999 can formally Appeal decisions provided in the Bureau's Detailed Feedback/Final Determination materials to the Census Address List Appeals Office.

1. What LUCA 1999 Governments Are Eligible To File an Appeal?

Local and tribal governments that notified the Bureau about the need to reconsider the count of all housing unit addresses in disputed blocks and have received their Detailed Feedback/Final Determination materials are eligible to file an Appeal.

2. What Is the Deadline for an Eligible Government To File an Appeal?

An Appeal must be filed by the eligible government within 30 calendar days after that government's receipt of the Bureau's Detailed Feedback/Final Determination materials (see 5, below, regarding what the eligible government must file within 30 days). "Receipt" as used herein shall be defined as the date the Bureau transmits the Detailed Feedback/Final Determination materials to the participating government plus 3 calendar days. The eligible government may transmit materials via Express mail or overnight delivery service and must keep an accurate record of the date it transmits these materials. All Appeals filed after the deadline will be denied as untimely.

3. Who Will Review the Appeal?

The Appeal process will be administered by the Census Address List Appeals Office (Appeals Office), a temporary Federal office established outside the Department of Commerce. The Appeals Office will be directed by a senior executive on detail from a Federal agency that is not a part of the Department of Commerce. The Office will be staffed by Appeal Officers who may be Federal employees on detail from other agencies outside the Department of Commerce, temporary Federal employees, or contractors. The Appeal Officers will be trained in the procedures for processing an Appeal and in the examination and analysis of address list information, locations of addresses and housing units, and supporting materials. For additional information on the review and decision process, see 8 below.

4. What Types of Final Determinations May Be Appealed?

An Appeal may be filed only with respect to the count of housing unit addresses in one or more specific census blocks for which the eligible government had previously sought Bureau review during the LUCA 1999 Reconciliation process, which is described in Exhibit 1B of this notice.

5. What Documentation Must the Eligible Government File With an Appeal?

The Appeal process will be based solely on a review of written documentation provided by the eligible government and the Bureau. Each Appeal submitted to the Appeals Office must be printed or typed. The Appeal documentation must include:

a. The name of the eligible government.

b. The name, mailing address, telephone number, fax number, and electronic mail address (if any) of that government's contact person.

c. The following information for each specific address being appealed:

(1) The specific address or location description of the housing unit the eligible government believes is missing; for each address, identify the Census 2000 block number; and

(2) The specific location of the missing address by adding a "map spot" in relation to the other map spots and an accompanying map spot number on the map that the Bureau provided with its Detailed Feedback/Final Determination materials.

d. An annotated copy of the Bureau's Detailed Feedback/Final Determination materials from the Reconciliation process, with those portions marked that specifically pertain to the information in item 5c above.

e. A written explanation that gives the eligible government's specific recommendations for how the address(es) and location(s) being appealed should appear on the Census 2000 address list.

f. A written statement that outlines the eligible government's position for why the Appeals Office should adopt its recommendations. The statement must specifically respond to the explanation that accompanied the Bureau's Detailed Feedback/Final Determination materials. This specific response to the Bureau's explanation is a critical part of the appeal process; an appeal is likely to be more persuasive to the extent that it provides a more pointed and evidence-based response to the Bureau's explanation, and is likely to be less persuasive to the extent that it provides a general and unfocused response.

g. For each housing unit address or group of addresses, or each location description of a housing unit being appealed, a reference to the location in the supporting documentation where the Appeal Officer can find specific evidence supporting the eligible government's position with respect to that housing unit address, or group of addresses, or location description, believed missing or incorrect.

h. Any other supporting documentary evidence for the position taken by the eligible government in its Appeal.

Two types of supporting evidence are recommended below. The first specifically reflects the validity of any address or map reference sources, and the second describes other useful sources of supporting evidence. The eligible government may submit any documentation it deems relevant in support of its Appeal.

a. Evidence supporting the quality of address or map reference sources.

(1) The date of the address source.

(2) How often the address source is updated.

(3) The methods used to update the source.

(4) Quality assurance procedure(s) that are used in maintaining the address source.

(5) How the address source is used by the eligible government and/or by the originator of the source.

b. Other useful supporting evidence.

(1) On-site inspection and/or interview of residents and/or neighbors.

(2) Issuance of recent occupancy permit for unit. (Building permits are not acceptable as they do not ensure that the units have been built and/or are occupied.)

(3) Provision of utilities (electricity, gas, sewer, water, telephone, etc.) to the residence. The utility record should show that this is not service to a commercial unit, or an additional service to an existing residence (such as a second telephone line).

(4) Provision of other governmental services (housing assistance, welfare, etc.) to residents of the unit.

(5) Aerial photography and/or standard photography.

(6) Land use maps.

(7) Local 911 emergency lists, if they distinguish residential from commercial units.

(8) Tax assessment records if they distinguish residential from commercial units.

All Appeal documentation must be filed with the Appeals Office within 30 calendar days after the Bureau transmits its Detailed Feedback/Final Determination materials to the eligible government. At the same time, the eligible government must send a duplicate copy of all Appeal documentation to the Bureau's Regional Census Center responsible for the jurisdiction. The eligible government may not submit any materials to the Appeals Office after the 30-day period has lapsed.

6. Where Must Eligible Governments File an Appeal?

Appeals must be sent to: Dr. Philip N. Fulton, Director, Census Address List Appeals Office, 1730 K Street, NW—Suite 418, Washington, DC 20006; telephone (202) 208–4613. At the same time, a duplicate copy of all Appeal documentation must be sent to the Bureau's Regional Census Center responsible for the jurisdiction.

Upon receipt of an Appeal, the Appeals Office will send a written confirmation to the eligible government that its Appeal has been received. The Appeals Office also will notify the Bureau, in writing, that the Appeal has been filed.

7. What Written Documentation and Supporting Evidence May Be Submitted by the Bureau During the Appeal Process?

The Bureau does not need to respond to the Appeal or to provide any materials in support of its Reconciliation determination. Upon receipt of notification that an Appeal has been filed, the Bureau will have 15 calendar days in which it may (if the Bureau so chooses):

a. Submit to the Appeals Office written documentation briefly summarizing its position as well as any supporting evidence concerning the appealed addresses, or

b. Submit to the Appeals Office a written statement agreeing to the recommendation(s) in the Appeal.

If the Bureau submits any written documentation to the Appeals Office to support its position, the Bureau at the same time must send a copy of its submission to the eligible government. The Bureau may not submit any materials to the Appeals Office after the 15-day period has lapsed.

8. What is the Appeal Review and Final Decision Process?

An Appeal Officer will review the Bureau's Detailed Feedback/Final Determination and the written documentation and supporting evidence submitted by the eligible government and the Bureau. No testimony or oral argument will be received by the Appeal Officer. Appeal Officers will apply the following principles in conducting their review:

a. The Appeal Officer shall consider the quality of the map or address reference source as the basis for determining the validity of an address (or group of addresses) and its (their) location(s).

b. For any address for which the Appeal Officer determines that the quality of the supporting evidence submitted by both parties is of equal weight, the Appeal Officer shall decide in favor of the eligible government.

At the conclusion of reviewing an appealed address (or group of addresses), the Appeal Officer will prepare a draft written determination. The draft written determination will be reviewed by a higher level official in the Appeals Office. The Director of the Appeals Office (or his designee) will then issue a final written determination to both the eligible government and the Bureau. The final written determination will include a brief explanation of the Appeals Office's decision, and will specify how the appealed address(es) or its (their) location(s) should appear on the Census 2000 address list. Each final written determination shall become part of the administrative record of the Appeal process.

The Appeals Office's decision is final. In conducting the Census 2000 enumeration, the Bureau will include all addresses added to, or corrected in, the Census 2000 address list as a result of the Appeal process, according to the same procedures used for all other addresses on the list. Inclusion of an address on the list does not mean that a housing unit or its inhabitants are actually at the address, or that the address will be included in the final Census 2000 data summaries. The census-taking process will determine the inclusion status of the address—whether or not it is actually a housing unit—and the final population and housing unit status for each address.

9. When Will the Appeal Process be Completed?

Appeal reviews shall be completed and written determinations issued to the concerned parties as soon as possible, and in any event no later than January 14, 2000.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 435/P.L. 106–36
Miscellaneous Trade and Technical Corrections Act of 1999 (June 25, 1999; 113 Stat. 127)
Last List June 17, 1999

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LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
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INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Gwen Henderson. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

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700–789	(869–034–00155–6)	41.00	July 1, 1998
790–End	(869–034–00156–4)	22.00	July 1, 1998
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
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18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–034–00158–1)	37.00	July 1, 1998
102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–034–00160–2)	13.00	July 1, 1998
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
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1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			

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Title	Stock Number	Price	Revision Date
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	18.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	29.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	29.00	Oct. 1, 1998
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166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
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47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
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70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
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29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
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200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
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1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
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Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

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Title	Stock Number	Price	Revision Date

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 to March 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5]No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

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Yearly subscription	27.00		
Federal Register Index:			
Yearly subscription	25.00		
CFR Index and Finding Aids	46.00		1998

CHANGES JANUARY 4, 1999 THROUGH APRIL 30, 1999

TITLE 1—GENERAL PROVISIONS

No amendments to 1 CFR have been published in the FEDERAL REGISTER since January 1, 1998.

TITLE 2—[RESERVED]

There is no regulatory text to this title.

TITLE 3—THE PRESIDENT

Chapter II—Executive Office of the President (Parts 100—199)

100.1 Revised 12881

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7178 17077
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7180 17939
7181 18317
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7183 19017
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11348 *See* EO 13111 2793
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11987 Revoked by EO 13112 6183
12163 Amended by EO 13118 16595
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12293 Amended by EO 13118 16595
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12543 *See* Notice of Dec. 30, 1998 383
12544 *See* Notice of Dec. 30, 1998 383
12599 Amended by EO 13118 16595
12703 Amended by EO 13118 16595
12852 Amended by EO 13114 10099
12884 Amended by EO 13118 16595
12947 *See* Notice of Jan. 20, 1999 3393
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12981 Amended by EO 13117 16391
13035 Amended by EO 13113 7489
13059 *See* Notice of Mar. 10, 1999 12239
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13110 2419
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TITLE 3 Administrative Orders—Con.

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No. 99–13 of Feb. 4, 1999 6781
No. 99–14 of Feb. 16, 1999 9263
No. 99–15 of Feb. 26, 1999 11319
No. 99–16 of Mar. 4, 1999 13495
No. 99–18 of Mar. 25, 1999 16337
No. 99–19 of Mar. 31, 1999 17081
No. 99–20 of Mar. 31, 1999 17083
No. 99–21 of Apr. 8, 1999 18551

TITLE 4—ACCOUNTS

Chapter I—General Accounting Office (Parts 1—99)

27.1 Revised; interim 15125
28.3 Amended; interim 15125

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

316.201 (b) revised 15286
351.503 Revised 16800
351.505 Revised 16800
532.201—532.285 (Subpart B) Regulation at 61 FR 47661 confirmed 9905
Regulations at 61 FR 49649 and 62 FR 66973 confirmed 9906
Regulation at 62 FR 51759 confirmed 17941
Regulation at 63 FR 6471 confrimed 17942
532.501—532.513 (Subpart E) Appendix A amended 15916
550.101—550.187 (Subpart A) Authority citation revised 4519
550.103 Amended; interim 4519
550.111 (f) revised; (h) added; interim 4520
550.181 Revised; interim 4520
550.182 (b) through (f) redesignated as (c) through (g); new (b) added; (a) and new (d) revised; interim 4520
550.184 (e) revised; interim 4520
550.185 (a) revised; interim 4521
550.186 (b) revised; interim 4521
550.901—550.907 (Subpart I) Appendix A amended 1502
831 Authority citation revised 15287
831.201 (g)(3), (4) and (5) redesignated as (g)(4), (5) and (6); new (g)(3) and (i) added; new (g)(5) revised; interim 15288
837.101 (a)(2) revised; interim 15288
837.102 Amended; interim 15288
842 Authority citation revised 15288
842.104 (g) added; interim 15289
842.107 (c) revised; interim 15289
842.108 Added; interim 15289
846 Authority citation revised 15289
846.201 (d)(1) revised; interim 15289
870 Authority citation revised 15289, 16602, 22544
870.101 Amended; interim 16602
870.302 (a)(3) revised; interim 15289
870.401 (b)(1) and (d) revised; interim 22544
870.402 (d)(1) table and (e)(1) table, (f)(1) and (g) revised; interim 22544
870.506 (e)(2) amended; interim 16602
870.801 (a) introductory text revised; (d) and (e) redesignated as (e) and (f); new (d) added; interim 16602
870.802 (a) amended; (i) added; interim 16602
870.901 (i) added; interim 16602
890 Authority citation revised 15289
890.102 (c)(8) revised; interim 15289
890.501 Regulation at 63 FR 45934 confirmed 15633

Chapter II—Merit Systems Protection Board (Parts 1200—1299)

1200.10 (a)(9) and (b)(9) removed; (a)(10) and (b)(10) redesignated as (a)(9) and (b)(9); (b)(8) revised 15916

Chapter XIV—Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

2411.8 Revised 18799

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2634.304 (f)(3)(iii) amended 2422
2634.904 (b) amended 2422
2635.207 (b)(7) note amended 2422

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2635.601 Amended 13064
2635.602 Amended 13064
2635.603 (d) revised 13064
2635.604 (a) amended 13064
2635.605 (a) and (b) amended 13064
2635.606 (a) amended 13064
2635.902 (o) and (z) amended; (q) revised 2422
2636.303 (a) introductory text revised; (a)(4) amended 2422
2641 Appendix B amended 5710

Proposed Rules:

300 14842
532 20221
731 4336
1620 13924
1650 13725
1651 6818

TITLE 6—[RESERVED]

There is no regulatory text to this title.

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

1.1—1.23 (Subpart A) Authority citation revised 3395
1.1—1.23 (Subpart A) Appendix A amended 3395
3.10 Amended 11755
6.20—6.36 (Subpart) Appendixes 1, 2 and 3 revised 17502

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

51.882 (i)(1)(ii) amended 14576
51.884 (i)(1)(i) amended 14576
51.885 (h)(1)(i) amended 14576
51.888 (a)(2) amended 14577
59 Technical correction 3340

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

246.2 Amended 13322
246.4 (a)(14)(v) through (x) redesignated as (a)(14)(vi) through (xi); new (a)(14)(v) added 13322
246.12 (f)(2)(xviii), (3) and (k) revised; (f)(2)(xix) and (xx) redesignated as (f)(2)(xxiii) and (xxiv); new (f)(2)(xix), new (xx), (xxi) and (xxii) added 13322
246.15 (b) amended 13324
246.18 (a)(1) and (b)(1) revised; (a)(3) amended 13324
254 Effective date confirmation 17085
254.5 (b) amended 1098
271.2 Amended 23171
278.1 (o) removed; (k)(2) amended; (k)(2), (l)(1)(iii), (iv), (v) and (p) through (t) redesignated as (k)(7), (l)(1)(v), (vi), (vii) and (o) through (s); (a), (b)(3), (j), new (l)(1)(vi), (m) introductory text and new (o) revised; new (k)(2), (3) through (6), new (l)(1)(iii) and new (iv) added; new (q) amended 23171
278.6 (a) and (n) revised; (b)(1), (2)(i), (c) and (i)(1)(v) amended; (e)(1)(iii), (3)(vi) and (8) added 23172
278.8 (a) revised 23174
279.3 (a)(2) revised 23174
279.7 (a) amended 23174
279.10 (a) amended; (d) revised 23174

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301.45 Regulation at 63 FR 38280 confirmed 4286
301.45–3 Regulation at 63 FR 38280 confirmed 4286
301.50–3 (c) amended; (d) removed; interim 387
Regulation at 64 FR 387 confirmed 15918
301.75–4 (a) revised; interim 4780
319.56–2 (h) revised 2994
353.1 Amended 1105
353.7 (a)(4), (b)(4) and (c)(4) amended 1105
353.8 Added 1105
360.200 (a) and (c) amended 12883
361.6 (a)(1) amended 12884

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TITLE 7

Chapter VII—Farm Service Agency, Department of Agriculture (Parts 700—799)

723.113 (f) added 15295
723.114 (f) added 15295
723.115 (f) added 15295
723.116 (f) added 15295
723.117 (f) added 15295
760.1—760.34 (Subpart) Authority citation revised 17942
761 Added; interim 6496
762 Added 7378
782.2 Amended 12885
782.12 (a) introductory text revised; (a)(6) through (9) redesignated as (a)(8) through (11); new (a)(6) and (7) added 12885

Chapter VIII—Grain Inspection, Packers and Stockyard Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

800.71 (a) amended 6783
Regulation at 63 FR 35504 confirmed 19022
800.86 (c)(2) Table 4 revised 6783
801.6 Regulation at 63 FR 34554 confirmed 731
801.7 Regulation at 63 FR 35505 confirmed 19022
868.91 Revised 7058

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.306 Regulation at 63 FR 62922 confirmed 15636
905.350 Regulation at 63 FR 51518 confirmed 3814
916.350 (a)(3), (4)(i), (ii), (iv) Tables 1 and 2, (8)(i) and (d) revised 19031
916.356 (a)(1) introductory text, (iv) Table 1, (4) introductory text and (6) introductory text revised; (a)(1)(i) Table 1 removed 19031
917.442 (a)(3), (4)(ii), (iv) Tables 1 and 2, (9)(i) and (d) revised 19033
917.459 (a)(1) introductory text, (iv) Table 1, (3) introductory text, (5) introductory text and (6) introductory text revised; (a)(1)(i) Table 1 removed; (a)(4) introductory text added 19033
930 Marketing percentages 392
932.159 Revised; interim 4288
(a) revised; (f) removed; (d) and (e) redesignated as (e) and (f); new (d) added 9268
Regulation at 64 FR 4288 confirmed 23011
932.160 Removed; interim 4288
Regulation at 64 FR 4288 confirmed 23011
932.230 Revised 14813
944.106 Regulation at 63 FR 62923 confirmed 15636
956.15 Added 4933
956.16 Added 4933
956.20 (a) amended 4933
956.60 Added 4933
956.62 Revised 4933
956.64 Revised 4934
956.70 Undesignated center heading added 4934
981.472 (a) revised 18802
982 Marketing percentages 2425
982.246 Regulation at 64 FR 2425 confirmed 23011
985 Marketing percentages 2802
989 Marketing percentages 10922
989.212 Regulation at 63 FR 56785 confirmed 2428
989.213 Regulation at 63 FR 56785 confirmed 2428
993.347 Revised 3623
Revised; interim 9056

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1065.2 (a) suspended in part 4959
1079.7 (b) corrected; CFR correction 19034

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Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1216 Added 20105
1260.141 (a) revised 3815

Chapter XIII—Northeast Dairy Compact Commission (Parts 1300—1399)

1361.11 (a) and (b) revised; interim 18324
1381.4 (a) revised 11756

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1434 Added 10924
1437 Heading revised; interim 17272
1437.2 (f) and (g) revised; (h) added; interim 17272
1437.3 Amended; interim 17272
1437.4 (a) revised; interim 17272
1439 Authority citation revised 13498
1439.1—1439.12 (Subpart) Revised 13498
1439.101—1439.104 (Subpart) Removed 13499
1439.201—1439.202 (Subpart) Removed 13499
1439.301—1439.302 (Subpart) Removed 13499
1439.401—1439.403 (Subpart) Removed 13499
1439.501—1439.504 (Subpart) Removed 13499
1439.601—1439.602 (Subpart) Removed 13499
1439.701—1439.702 (Subpart) Removed 13499
1439.800—1439.810 (Subpart) Removed 13499
1439.101—1439.108 (Subpart) Added 13500
1464.13 (f) added 15295
1464.14 (f) added 15296
1464.15 (f) amended 15296
1464.16 (f) added 15296
1464.17 (f) added 15296
1469 Added 10930
1464.101 (b) amended 2803
1477 Added 18554

Chapter XV—Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

1530 Revised 7062

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

1703 Authority citation revised 14356
1703.100—1703.112 (Subpart D) Revised 14357
1703.120—1703.129 (Subpart E) Added 14360
1703.130—1703.137 (Subpart F) Added 14366
1703.140—1703.147 (Subpart G) Added 14369
1703.300—1703.313 Redesignated as Subpart H 14356
1728 Bulletin 14813
1753 Authority citation revised 16604
1753.1 (a) revised 16604
1753.2 Amended 16604
1753.3 (a) amended 16604
1753.5 (b)(1) revised; (b)(2) redesignated as (b)(3); new (b)(2) added 16604
1753.6 (a) revised; (e) added 16605
1753.7 (c) and (e) revised 16605
1753.8 (a)(1), (11)(i), (ii) introductory text, (iii) introductory text and (12)(i) revised; (a)(11)(iv) added 16605
1753.11 (a)(3), (b) and (d) revised 16605
1753.15 (a)(2) through (5) redesignated as (a)(3) through (6); (a)(1), new (5)(i) and (ii) revised; new (a)(2) added 16605
1753.16 (b)(1) through (4) revised 16606
1753.17 (b)(1)(ii)(D) amended; (b)(1)(ii)(E) added; (c)(1)(i)(C) and (2)(i)(A) revised 16606
1753.18 Added 16606
1753.25 (a), (c) and (d) revised 16606
1753.26 (a) through (d) redesignated as (b) through (e); new (a) added; new (b)(1) revised 16606

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TITLE 7 Chapter XVII—Con.

1753.30 (b), (c)(2) and (3) revised 16606
1753.36 (g) revised 16607
1753.37 (c) revised 16607
1753.38 (a)(1)(i), (v), (2)(i), (v), (b)(1), (3), (5), (e)(2) and (3) amended 16607
1753.39 (a), (e)(1), (2), (f) introductory text, (1)(ii)(A), (iii), (iv) and (g) revised; (e)(3) removed; (h) added 16608
1753.46 (c)(2) and (3) revised 16608
1753.47 (c) revised 16609
1753.48 (a)(4) and (b)(1) revised 16609
1753.49 (b), (c)(2) and (3) revised 16609
1753.50 Removed 16610
1753.58 (b), (c)(2) and (5) revised 16610
1753.68 (b)(2)(i) through (v), (4)(i), (ii), (c)(2) and (d)(3) revised 16611
1753.76 (a) revised 16611
1753.77 Revised 16612
1753.80 (b) revised 16612
1753 Appendixes A through F removed 16612
1755.26 Added 6500
1755.27 Added 6500
1755.28 Added 6500
1755.29 Added 6500
1755.30 Added 6501
1755.93 Removed 6501
1755.217 Removed 6501
1755.525 Removed 6501
1788 Revised 2

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1951.914 Heading and (b) introductory text revised; (h) added; interim 19865
1951.951 Amended; interim 393
1951.952 Amended; interim 394
1951.953 (b) revised; interim 394
1951.954 (a)(1), (5), (7), (b)(2), (4) and (5) revised; interim 394
1980.1 Revised 7402
1980.6 (a) and (b) amended 7402
1980.11 Amended 7402
1980.13 (b) introductory text amended; (b)(4) introductory text revised 7402
1980.20 (a) introductory text amended 7402
1980.21 Revised 7402
1980.22 (a) revised; (b) introductory text and (3) amended 7402
1980.46 Removed 7402
1980.60 Heading, (a) introductory text, (1), (6), (7), (9) through (12), (b) and (c) amended 7402
1980.61 (a)(2) and (c) removed; (a)(3) and (d) through (h) redesignated as (a)(2) and (c) through (g); heading, (a)(1), new (2), (b)(1), (3), (4), new (c) and new (d) amended 7402
1980.61 (f) and (g) amended 7403
1980.62 Amended 7403
1980.63 (a) amended 7403
1980.64 (a) and (b) amended 7403
1980.65 Amended 7403
1980.66 Amended 7403
1980.67 (a) and (b) amended 7403
1980.68 Amended 7403
1980.83 Regulation at 56 FR 8259 confirmed 7378
(a) amended 7403
1980.84 Heading, (b)(1)(iv), (v) and (4) amended 7403
1980.100 Regulation at 56 FR 8260 confirmed 7378
1980.1—1980.100 (Subpart A) Regulations at 56 FR 8261 and 8263 confirmed 7378
Appendixes D through L removed 7403
1980.101 Regulation at 56 FR 8264 confirmed 7378
1980.110 Regulation at 56 FR 8264 confirmed 7378
1980.113 Regulation at 56 FR 8264 confirmed 7378
1980.115 Regulation at 56 FR 8264 confirmed 7378
1980.122 Regulation at 56 FR 8264 confirmed 7378
1980.124 Regulation at 56 FR 8264 confirmed 7378
1980.125 Regulation at 56 FR 8264 confirmed 7378
1980.145 Regulation at 56 FR 8264 confirmed 7378
1980.175 Regulation at 56 FR 8264 confirmed 7378

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1980.200 Regulation at 56 FR 8264 confirmed 7378
1980.101—1980.200 (Subpart B) Regulations at 56 FR 8265, 8266 and 8271 confirmed 7378
1980.340 Regulation at 56 FR 8271 confirmed 7378
1980.354 Regulation at 56 FR 8271 confirmed 7378
1980.424 Regulation at 56 FR 8271 confirmed 7378
1980.451 Regulation at 56 FR 8271 confirmed 7378
1980.452 Regulation at 56 FR 8271 confirmed 7378
1980.628 Regulation at 56 FR 8271 confirmed 7378
1980.646 Regulation at 56 FR 8271 confirmed 7378
1980.648 Regulation at 56 FR 8271 confirmed 7378
1980.853 Regulation at 56 FR 8271 confirmed 7378

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3.23 Heading revised; (b)(4)(i) amended; interim 8487
3.42 (d) and (f) revised; interim 8487
3.43 (b)(4)(v), (vi) and (c)(2) revised; (c)(3) added 13666
103.5a (a)(3) added 17944
103.12 (a)(5) revised; interim 8487
208.1 Revised; interim 8487
208.2 (a), (b)(1)(ii) and (3) revised; interim 8487

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208.4 (a) introductory text and (b)(2) revised; interim 8488
(b)(2) corrected 13881
208.5 (b)(1) introductory text revised; interim 8488
208.11 (b)(2) revised; interim 8488
208.12 (a) revised; interim 8488
208.13 (c)(1) revised; interim 8488
208.16 (c) and (d) redesignated as (d) and (e); heading, (a), (b) introductory text and new (d) and (e) revised; new (c) and (f) added; interim 8488
208.17 Revised; interim 8489
208.18 Redesignated as 208.19; new 208.18 added; interim 8490
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208.19 Redesignated as 208.20; new 208.19 redesignated from 208.18; interim 8490
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208.20 Redesignated as 208.21; new 208.20 redesignated from 208.19; interim 8490
208.21 Redesignated as 208.22; new 208.21 redesignated from 208.20; interim 8490
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208.22 Redesignated as 208.23; new 208.22 redesignated from 208.21; interim 8490
208.23 Redesignated from 208.22; interim 8490
208.30 (b), (d), (e), (f)(1), (2) and (3) revised; interim 8492
208.31 Added; interim 8493
(e) and (g) corrected 13881
212.1 (b) revised; interim 7990
212.15 (c) introductory text, (e) and (g)(4)(i) revised; (c)(3) added; interim 23177
235.1 (d)(4) revised; interim 8494
235.3 (b)(4) introductory text and (i)(D) revised; interim 8494
235.6 (a)(1)(ii), (iii) and (2)(i) revised; interim 8494
235.8 (b)(4) added; interim 8494
238.1 (b)(2)(i) and (c)(1) revised; (f)(3) added; interim 8494
240.1 (a) revised; interim 8495
241.8 (d) revised; interim 8495
241.11 (d)(1) revised; interim 8495
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244.10 Heading, (a), (b), (d)(2), (f)(2)(iii) and (4)(ii) amended; interim 4782
244.12 (a) amended; interim 4782
244.15 (a) amended; interim 4782
244.18 (b) amended; interim 4782
253.1 (f) revised; interim 8495
274a.2 (b)(1)(vi)(B) and (C) revised; interim 6189
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312.2 (b)(1) and (2) amended 7993
499.1 Table amended 7993
507 Added; interim 8496

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1.1 Suspended in part 15920
3.6 Regulation at 63 FR 37482 confirmed 19253
3.111 Suspended 15920
50.1 Regulation at 63 FR 72122 eff. 2–1–99 3340
52 Added; interim 2549
52.4 Revised 13065
77.1—77.6 (Subpart A) Regulation at 63 FR 72122 eff. 2–1–99 3340
77.1 Regulation at 63 FR 72122 eff. 2–1–99 3340
77.3 Regulation at 63 FR 72122 eff. 2–1–99 3340
77.6 Regulation at 63 FR 72122 eff. 2–1–99 3340
77.7 Regulation at 63 FR 72122 eff. 2–1–99 3340
77.8—77.18 (Subpart B) Regulation at 63 FR 72122 eff. 2–1–99 3340
78.1 Amended 15298
78.41 Regulation at 63 FR 44545 confirmed 395
Regulation at 63 FR 53781 confirmed 15298
78.43 Regulation at 63 FR 44777 confirmed 5

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91.1 Regulation at 63 FR 72129 eff. 2–1–99 3340
91.7 Regulation at 63 FR 72129 eff. 2–1–99 3340
93.303 (d) amended 23179
93.403 (e) amended 23179
93.503 (e) amended 23179
98.303 (d) amended 23179

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317.2 (l) introductory text revised 744
318.17 Revised 744
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320 Authority citation revised 745
320.1 (b)(4) removed 745
320.4 Amended 745
381 Authority citation revised 745
381.1 (b) amended 745
381.125 (b) introductory text amended 746
381.150 Revised 746
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2.1006 (a) corrected 15920
10 Authority citation revised 15641
10.1 Revised 15641
10.2 (d) revised 15641
10.5 Amended 15641
10.10 (d) introductory text revised 15641
10.12 (a) and (c) revised 15642
10.20 Revised 15642
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10.23 (a) revised 15642
10.25 (a) and (c) revised 15643
10.27 (c) revised 15643
10.28 (n) revised 15643
10.31 Revised 15643
10.32 Revised 15644
10.33 Revised 15644
10.34 (a) revised 15645
10.35 Revised 15645
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11.7 Amended 15645
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25.27 (b) revised 15648
25.31 (a), (b) and (c) revised 15648
25.33 (a) and (b) revised 15649
25.35 (b) revised 15649
25.37 (b) revised 15649
25 Appendix A revised 15649
40 Appendix A amended 17510
50.54 (a)(3) revised; (a)(4) added 9034
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50.55a (h) revised 17946
55.8 (c)(4) revised 19878
55.40 Added 19878
55.49 Revised 19878
72.82 (e) removed 17512
73.55 (g)(4) revised 14818

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73 Appendix C amended 14818
95 Heading revised 15649
95.5 Amended 15649
95.8 (b) revised 15650
95.9 Revised 15650
95.11 Revised 15650
95.15 (a) revised 15650
95.17 (a) introductory text and (1) revised 15650
95.19 Revised 15650
95.20 Revised 15651
95.21 Revised 15651
95.25 Heading, (a) introductory text, (2), (b), (c)(2), (f), (g), (h), (i), (j)(1), (6) and (7) revised 15651
95.27 Revised 15651
95.29 (a), (c)(2) and (4) revised 15652
95.33 (f) revised 15652
95.34 Added 15652
95.36 (a), (c) and (d) revised 15652
95.37 (c)(1)(iv) removed; (c)(1)(i) and (h)(2) revised 15652
95.39 (b)(3) and (c)(2) revised 15652
95.45 (a) revised 15653
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600.27 (b)(2)(i)(B) amended 4029

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3.6 (c) revised 10199
3 Appendix A amended 10199
Regulation at 62 FR 68067 confirmed 19037

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208 Authority citation revised 10199
208 Appendix A amended 10199
Appendixes A and B amended 10200
Regulation at 62 FR 68067 confirmed; Appendix E amended 19037
Appendix E amended 19038
213 Supplement I amended 16613, 16614
220 OTC margin stock lists 8711
225 Appendix A amended 10203
Regulation at 62 FR 68068 confirmed 19037

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226 Supplement I amended 16616, 16617
229.19 (g) redesignated as (g)(1); new (g)(1) heading and (2) added 14577
229.40 Existing text designated as (a); (a) heading and (b) added 14577

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303.164 (b) revised 20142
325.3 (b)(2) revised 10200
325 Appendix A amended 10200
Regulation at 62 FR 68068 confirmed; Appendix C amended 19038
330.3 (h) revised 15656
330.5 Heading, (b)(1), (4) heading and (i) revised 15656
330.9 (b) revised 15656
330.10 (a) and (e) revised 15657
330.14 (a) revised 15657

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404 Revised 14374
405 Removed 14381

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561.13 Removed 6503
561.47 Removed 6503
561.48 Removed 6503
563 Authority citation revised 2809
563.134 Removed 2809
563.140—563.146 (Subpart E) Revised 2809
563b.3 (g)(2) amended 2810
567.1 Amended 10200
567.2 (a)(2)(ii) revised 10201
567.6 (a)(1)(vi) revised 10201
567.8 Revised 10201

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611.310—611.340 (Subpart C) Regulation at 63 FR 64843 eff. 2-11-99 6784
611.330 Regulation at 63 FR 64843 eff. 2-11-99 6784
611.340 Regulation at 63 FR 64843 eff. 2-11-99 6784
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620.5 (i)(1) amended (effective date pending) 16618

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701.25 Added 19443
745 Authority citation revised 19687
745.4 Revised; interim 19687
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745 Appendix amended; interim 19687, 19688
790.2 (b)(6)(ii) revised 17086

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904.9 (f)(2) revised 5930
935 Authority citation revised 16621
935.1 Amended 16621
935.9 (a) revised; (b) heading, (c) heading and (e) heading amended 16621
935.11 (b) revised 16621
935.15 (b) revised; interim 16791
960 Interpretation 12079
960.5 (b)(10)(ii) revised 23015
960.6 (b)(4)(iv)(D) and (F)(*8*) revised 23015
960.7 Corrected 2550
960.9 Introductory text revised 23016

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145 SFAR No. 36 amended 960
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201.1 (b) amended 3212
204.2 (k)(2) revised 12085
212.10 (a) and (f)(1) amended 3213
255.12 Revised 15129
257 Added 12851
258 Added 12860
399 Authority citation revised 12852
399.88 Removed 12852

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401 Authority citation revised 19613
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413 Revised 19614
415 Revised 19616
417 Added 19624

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734.2 (b)(1) and (4) amended 13339
734.4 (b) revised 13339
738 Authority citation revised 17970
738.2 (d)(2)(i)(A) amended; interim 17970
738 Supplement No. 1 amended; interim 17970
740 Authority citation revised 2430, 17970

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740.2 (a)(5) amended 13339
740.7 (d)(4) redesignated as (d)(5); new (d)(4) and (5)(v)(A)(*8*) note added; new (d)(5)(iii), (v) introductory text and (A) introductory amended; new (d)(5)(v)(B) revised; interim 2430
740.14 (e)(1)(iii) amended; interim 17973
742 Authority citation revised 2430, 17970
742.12 (b)(3)(i)(C) and (iv)(B) revised; interim 2431
742.14 Revised 13339
742.15 Second (b)(6)(v) redesignated as (b)(6)(vi) 3214
742.17 Added; interim 17973
742 Supplement No. 4 amended 3214
743.1 (b) amended 3214
744 Authority citation revised 1121
744.10 Revised 14605
744.13 Added; interim 1121
744.14 Added; interim 1122
744 Supplement No. 4 amended 14606
748 Authority citation revised 2430, 17970
748.9 (b)(2)(i)(*1*) removed; (b)(2)(i)(*2*) and (*3*) redesignated as (b)(2)(i)(A) and (B); interim 2431
(a) introductory text revised; interim 17973
748.10 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added; new (b)(4) introductory text revised; interim 2431
748.14 Added; interim 17973
748 Supplement No. 6 added; interim 17974
752.3 (a)(8) removed; (a)(9), (10) and (11) redesignated (a)(8), (9) and (10) 13339
762 Authority citation revised 17970
772 Authority citation revised 1121, 5932
Amended; interim 1122, 5932
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774 Authority citation revised 5932, 17970
Supplement No. 1, Category 1 (ECCN 1B115, 1C111, 1C118, 1E001 and 1E101) amended; interim 5932
Supplement No. 1, Category 0 (ECCN 0A982, 0D001 and 0E001) amended 10854
Supplement No. 1, Category 1 (ECCN 1A002, 1A005, 1C001, 1D390, 1D993, 1E994 and 1E001) amended 10854
Supplement No. 1, Category 2 (ECCN 2B001, 2B003, 2B004, 2B005, 2B104, 2B996 and 23003) amended 10855
Supplement No. 1, Category 3 (ECCN 3A001, 3A002, 3B001 and 3C002) amended 10857
Supplement No. 1, Category 4 (ECCN 4A003, 4D001 and 4E001) amended 10860
Supplement No. 1, Category 5 (ECCN 5A991, 5D001 and 5E001) amended 10861
Supplement No. 1, Category 6 (ECCN 6A001, 6A003, 6A005, 6A007, 6A008, 6D001, 6D003, 6E001 and 6E002) amended
Supplement No. 1, Category 7 (ECCN 7D003) amended 10867
Supplement No. 1, Category 8 (ECCN 8A002, 8A992, 8D001 and 8E001) amended 10867
Supplement No. 1, Category 9 (ECCN 9A018) 10869
Supplement No. 1, Category 4 (ECCN 4D001, 4E001) corrected 12745
Supplement No. 1, Category 9 (ECCN 9A004) amended 13340
Supplement No. 1, Category 0 (ECCN 0A984, 0A985 and 0A987) amended; interim 17975

Chapter VIII—Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

806.15 (1) amended 10389

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

902.1 (b) table amended (OMB numbers) 14, 3627, 4036, 14054

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4.8 (b)(4) and (6) revised.....3012
4.11 (a)(1)(i)(A), (B), (iii)(A), (2)(i)(A), (B) and (ii)(A) revised; (a)(1)(i)(E) and (iii)(D) redesignated as (a)(1)(i)(F) and (iii)(E); new (a)(1)(i)(E), new (iii)(D) and (h) added.....3013
4.13 (c) and (i)(1) amended.....3014
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700 Announcement.....19700
701 Announcement.....19700
702 Announcement.....19700
703 Announcement.....19700

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1615.64 (d) introductory text revised.....2832
1616.2 Introductory text, (m) introductory text, (1) and (3) revised.....2841
1616.65 (d) introductory text revised.....2833

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5 Fee schedules.....19711
31 Fee schedules.....19711

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270.8f-1 Revised.....19471
274.218 Revised.....19471
275.203A-6 Added; eff. 5-3-99.....15683
279.1 Form ADV amended; eff. 12-31-99.....15683

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1b Authority citation revised.....17097
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1b.21 Added.....17097
284.10 (b)(1)(i) through (v) revised.....17278
343.2 (c) revised.....17097
343.4 (a) revised.....17097
385.206 (b) and (c) redesignated as (f) and (j); new (b), new (c), (d), (e), (g), (h) and (i) added; new (f) revised.....17097
385.213 (c)(4) and (5) added.....17099
385.218 Added.....17099
385.604 (d)(2) revised; (d)(3) and (g) removed; (d)(4), (5) and (6) redesignated as (d)(3), (4) and (5).....17099
385.605 (a)(4) and (e)(2) revised; (f) removed.....17099
385.606 (d) redesignated as (d)(1); (d)(2) and (1) added.....17099

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

10.62 (a) amended.....16347
10.62b (c)(1) introductory text and (ii)(C) revised.....16347
12 Authority citation amended.....17531
12.104g (b) table amended.....17531
122.13 Amended.....18566
178.2 (b) table amended (OMB numbers).....16347, 16639
192 Authority citation revised.....16639
192.1 Amended.....16639
192.2 (a) amended; (b), (c) and (d) revised.....16639

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404.1574 (b)(2), (3) and (4) revised.....18570
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416.974 (b)(2), (3) and (4) revised.....18570
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652.1 (a) revised; (h) amended; interim.....18761
652.3 (d) revised; interim.....18762
652.5 Revised; interim.....18762
652.6 Removed; interim.....18762

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652.7 Removed; interim 18762
652.8 (j)(1) and (5) amended; interim 18762
652.200—652.216 (Subpart C) Added; interim 18762
660 Added; interim 18693
661 Added; interim 18694
662 Added; interim 18701
663 Added; interim 18704
664 Added; interim 18713
665 Added; interim 18717
666 Added; interim 18719
667 Added; interim 18722
668 Added; interim 18736
669 Added; interim 18746
670 Added; interim 18750
671 Added; interim 18760

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

5.83 (c)(1) revised 23184
26.1 (c) corrected 16348
26.31—26.50 (Subpart B) Appendix B corrected 16348
74.3045 (c)(1) introductory text revised 23186
184.1148 Added 19894
184.1150 Added 19895
201.63 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.64 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.66 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.319 Regulation at 64 FR 13292 eff. date corrected to 5–16–99 18571
201 Regulation at 64 FR 13292 eff. date corrected to 5–16–99 18571
312 Effective date confirmation 19269
330.1 Regulation at 64 FR 13294 eff. date corrected to 5–16–99 18571
331.30 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
341.74 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
341.76 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
341.80 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
346.50 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
355.50 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
358.650 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
369.9 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
369.20 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
369.21 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
510.600 (c)(1) table and (2) table amended 15683, 18571, 23187
520.260 (b) amended 15684
520.600 (l) revised 18571
520.1615 Added 18573
520.1807 Added 23018
520.2184 (b) amended 15684
520.2220a (a)(2) amended 18572
520.2220b (a) removed; (b), (d) and (e) redesignated as (a), (b) and (d); new (a) and new (d)(2) revised 15684
522.690 (b) amended 15685
522.723 (c) amended 15684
522.800 (b) amended 15684
522.1660 (b) and (d)(2)(iii) amended 23187
522.2478 (c) redesignated as (d); new (d)(1)(ii) revised 18573
556.513 Added 23019
556.739 Revised 18574
558.76 (d)(3)(xxi) added 18574
558.140 (a) amended 15684
558.363 (d)(2)(iii) added 18574
(d)(2)(iv) added 20164
556.366 (c) table amended 18574, 20164
558.485 (a)(17) removed 15684
558.530 (d)(5)(xxv) added 18575
(d)(5)(xxvi) added 20164

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558.635 (b)(2) amended 15684
701.3 Regulation at 64 FR 13297 eff. date corrected to 5–16–99 18571
874.5350 (c) revised 18329
874.5370 (c) revised 18329
882.5860 (c) revised 18329
890.5275 (c) revised 18331
890.5300 (c) revised 18331
890.5860 (c) revised 18331
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50.7 (d) added 19714
51 Authority citation revised 19714
51.72 (b) revised; (c) added 19714
51.80 Revised 19714
51.83 Amended 19715
51.84 Amended 19715
51.89 Revised 19715
121.1 Amended 17533
121.9 (a) revised 17533
123.4 (a) revised 17533
123.15 (b) revised 17533
123.17 (a) revised 17534
124.13 (e) revised 17534
126.5 Revised 17534
171.32 (j)(1), (2) and (5) amended 18808

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201.03 Revised 17535
201.23 (c) amended 17535
201.31 (f) and (g) amended 17535
201.32 (b) and (c) amended 17535
201.51 (c)(4) amended 17535
201.52 (a)(2)(iii)(C), (4)(iii) introductory text and (B) amended 17535
201.67 (a)(5)(ii) amended 17535

Chapter V—United States Information Agency (Parts 500—599)

514.21 (f) revised 17976
514.32 Added 17976
514.80 (Subpart G) Removed 17976

Chapter VI—United States Arms Control and Disarmament Agency (Parts 600—699)

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TITLE 23—HIGHWAYS

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1327.5 Regulation at 62 FR 63657 confirmed; (a)(1)(ii) and (c)(2) amended; (c)(3) redesignated as (c)(4); new (c)(3) added 19271
1327.6 Regulation at 62 FR 63657 confirmed 19271
(a) through (f) revised; (g) and (h) redesignated as (h) and (i); new (g) added 19272
1327.7 Added 19273

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TITLE 24—HOUSING AND URBAN DEVELOPMENT

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100.305 Added 16329
100.306 Added 16330
100.307 Added 16330
100.308 Added 16330

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103.10 Revised; interim 18540
103.15 Revised; interim 18540
103.20 Revised; interim 18540
103.25 Revised; interim 18540
103.30 Revised; interim 18540
103.35 Added; interim....18540
103.40 Revised; interim 18540
103.42 Removed; interim....18540
103.45 Redesignated as 103.201; interim 18540
103.50 Redesignated as 103.202; interim 18540
103.55 Redesignated as 103.203; interim 18540
103.201 Redesignated from 103.45; interim....18540
103.202 Redesignated from 103.50; interim....18540
103.203 Redesignated from 103.55; interim....18540
103.202 (b) revised; interim 18541
103.204 Added; interim 18541

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203.14 Regulation at 64 FR 14574 withdrawn 19895
203.18 Regulation at 64 FR 14574 withdrawn 19895
203.200 Regulation at 64 FR 14574 withdrawn 19895
203.201 Regulation at 64 FR 14574 withdrawn 19895
203.202 Regulation at 64 FR 14574 withdrawn 19895
203.203 Regulation at 64 FR 14574 withdrawn 19895
203.204 Regulation at 64 FR 14574 withdrawn 19895
203.205 Regulation at 64 FR 14574 withdrawn 19895
203.206 Regulation at 64 FR 14574 withdrawn 19895
203.207 Regulation at 64 FR 14574 withdrawn 19895
203.208 Regulation at 64 FR 14574 withdrawn 19895
203.209 Regulation at 64 FR 14574 withdrawn 19895
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61 Authority citation revised....19898
61.4 (s) revised 19898
291 Added....17543

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1 Authority citation amended....., 23189
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1.170A–6 (c)(5) Example 2 amended....23189
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1.170A–12 (b)(2), (c), (e)(2) and (3) amended 23228
1.170A–12T Added 23189
1.367(a)–3 (a) and (d)(3) Example 6 corrected 15687
1.367(b)–4 (b)(5)(i) and (ii) Example corrected 15687

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1.642(c)–6 Heading, (d) and (f) revised; (e) redesignated as 1.642(c)–6A(e); new (e) added 23190
1.642(c)–6T Added 23190
1.642(c)–6A Undesignated center heading revised 23199
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(e)(6) introductory text amended....23229
1.664–2 (c) amended 23229
1.664–4 (a)(1) and (f) revised; (d) removed; (e) heading, (1) through (5), (6) heading, introductory text and Table U(1) redesignated as 1.664–4A(e) heading, (1) through (5), (6) heading, introductory text and Table U(1); (d) through (e)(5), new (6) heading and introductory text added 23199
1.664–4T Added 23200
1.664–4A Undesignated center heading revised 23209
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(b)(2)(i) introductory text corrected 15687
1.6038B–2 (j)(1)(ii) corrected 15686
1.7520 (c)(1) heading, (2) heading, introductory text and (d) revised; (b)(2) and (c)(2)(iii) amended 23210
1.7520–1 (a)(2), (3) and (c)(1) amended 23229
1.7520–1T Added 23210
7 Technical correction 15687
20 Authority citation amended 23210
20.2031–0 Revised....23211
20.2031–7 Heading, (c) through (d)(5), (6) heading, introductory text and (e) revised; (d)(6) Tables S and 80CNSMT transferred to 20.2031–7A 23212
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20.2031–7A Undesignated center heading revised 23211
20.2031–7A Heading revised; (e) added 23211
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25 Authority citation amended 23223
25.2512–0 Revised....23223
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25.2512–5A Undesignated center heading revised 23226
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54 Technical correction....15873
301 Authority citation amended 17285
301.6104(d)–2 Added....17285
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602 Technical correction 15687
Technical correction 15873
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TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

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178.22 (a)(3) and (b) amended 17291
178.25 Amended 17291
178.35 Amended 17291
178.41 (b) and (c) amended 17291
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178.124 (i) amended 17291
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178.126 Amended 17291
178.127 Amended 17291
178.130 (e) amended 17291
178.144 (i)(4) amended 17291

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0.29—0.29j (Subpart E–4) Added **36847**
0.29e (a)(1) corrected **40788**
0.39c Removed; interim **62938**
0.96 (f) and (s) removed; (g) through (v) redesignated as (f) through (t) 4295
0.100 (b) amended 4295
0.115 Revised **51519**
0.116 Amended **51519**
0.132 (b), (c) and (d) revised; (e) removed 6526
2.1—2.67 Designated as Subpart A; heading added; interim **39176**
2.20 Amended; interim **39176**
2.62 Redesignated as 2.68 (Subpart B); new 2.62 redesignated from 2.63; interim **39176**
(c) added; interim 5613
2.63 Redesignated as 2.62; new 2.63 redesignated from 2.64; interim **39176**
2.64 Redesignated as 2.63; new 2.64 redesignated from 2.65; interim **39176**
2.65 Redesignated as 2.64; new 2.65 redesignated from 2.66; interim **39176**
2.66 Redesignated as 2.65; new 2.66 redesignated from 2.67; interim **39176**
2.67 Redesignated as 2.66; interim **39176**
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2.70—2.89 (Subpart C) Added; interim **39176**
2.71 (b) revised; interim 5613
2.75 (a) revised; interim 5613
2.76 (c) and (d) redesignated as (d) and (e); new (c) added; interim 5613
2.77 (a) and (e) amended; (c) revised; interim 5614
2.78 (d) amended; interim 5614
2.80 (f) table revised; interim **57061**
(f) table amended; interim 5613
(g) heading and (6) revised; interim 5614
2.87 Revised; interim 5613
2.89 Amended; interim 5614
16.2 (b)(9) corrected **51401**
16.3 (a) corrected; CFR correction **51300**
(a) corrected **51401**
16.8 (c) corrected **51401**
16.11 (b)(7) correctly revised **36295**
(e), (g), (i)(1) and (3) corrected **51401**
16.40 (a), (b)(1) and (2) corrected **51401**
16.41 (a) and (b) corrected; CFR correction **51300**
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Corrected; CFR correction 23019
16.42 (b) and (c) heading corrected **51401**
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16.54 (c)(4) corrected **51401**
16.80 (c) and (d) added 17977
16.96 (p) and (q) added **65062**
16 Appendix I corrected **51401**
23 Policy clarification **71752**
25 Added **58307**
27 Added; interim **62938**
31 Heading and authority citation revised 19676
31.1—31.403 (Subpart A) Redesignated as Subpart A 19676
31.1—31.3 (Subpart A) Designation removed 19676
31.1 Amended 19676
31.100—31.103 (Subpart B) Designation removed 19676
31.200—31.203 (Subpart C) Designation removed 19676
31.200 Amended 19676
31.300—31.304 (Subpart D) Designation removed 19676
31.300 Amended 19676
31.400—31.403 (Subpart E) Designation removed 19676
31.500—31.503 (Subpart B) Added 19676
33 Heading and authority citation revised **50761**
33.1—33.80 Designated as Subpart A **50761**
33.1—33.3 (Subpart A) Designation removed **50761**
33.1 Amended **50761**
33.3 Amended **50761**
33.10—33.12 (Subpart B) Designation removed **50761**
33.20—33.23 (Subpart C) Designation removed **50761**

NOTE: **Boldface page numbers indicate 1998 changes.**

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TITLE 28 Chapter I—Con.

33.30—33.32 (Subpart D) Designation removed 50761
33.40—33.41 (Subpart E) Designation removed 50761
33.40 Amended 50761
33.50—33.52 (Subpart F) Designation removed 50761
33.60—33.61 (Subpart G) Designation removed 50761
33.70—33.71 (Subpart H) Designation removed 50761
33.80 (Subpart I) Designation removed 50761
33.100—33.103 (Subpart B) Added 50761
36.407 Revised 64837, 64838
68 Heading revised; interim 7073
68.1 Revised; interim 7073
68.2 Revised; interim 7073
68.3 Revised; interim 7074
68.6 Revised; interim 7074
68.7 Revised; interim 7074
68.9 Revised; interim 7075
68.10 Revised; interim 7075
68.14 Revised; interim 7075
68.22 Revised; interim 7076
68.23 Revised; interim 7076
68.24 Revised; interim 7077
68.27 Revised; interim 7077
68.33 Revised; interim 7077
68.38 Revised; interim 7078
68.42 Revised; interim 7079
68.52 Revised; interim 7079
68.53 Revised; interim 7081
68.54 Revised; interim 7082
68.55 Added; interim 7082
68.56 Added; interim 7083
68.57 Added; interim 7083
68.58 Added; interim 7083
70.24 Reinstated in part; CFR correction 19898
70.25 Reinstated in part; CFR correction 19898
77 Revised; interim 19275
79.4 (c)(3) and (4) redesignated as (c)(4) and (5); (c)(1), (2), new (4) and new (5) revised; new (c)(3) added 13690
79.5 (c) added 13690
79.21 (d) amended 13691
79.27 Heading, (a) and (b) revised; (c) redesignated as (e); new (c) and (d) added 13691
79.31 (e) and (f) revised; (h) amended 13691
79.36 (a) amended; (d)(1)(ii) revised; (e) added 13691
79.37 Heading, (a) and (b) revised; (c) and (d) added 13692
79.51 (j)(3) and (4) revised; (j)(5) added; concluding text amended 13692
79.55 (d)(1)(i) and (ii) revised 13692
79 Appendix A revised 13692
92 Heading and authority citation revised 50146
92.1—92.6 Designated as Subpart A 50146
92.7—92.13 (Subpart B) Added 50146

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

500.1 (d) revised 55775
503 Revised 55775
504 Removed 17270
524.12 (c) revised 9429
545.26 (e) revised 67560
551.22 Regulation at 59 FR 62968 confirmed 9430
551.23 Regulation at 59 FR 62968 confirmed 9430
551.24 Regulation at 59 FR 62968 confirmed 9430
551.90 (Subpart I) Revised 55774
571.71—571.72 (Subpart H) Added; interim 69387

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16 68217
23 38765
25 43893
..... 7562, 10262
31 55069
65 17128
90 20090
302 ..... 1082, 11821
506 20126
511 9431
540 20126
551 65502
541 9432
549 10094
552 9431

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

44 Added 70261

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70a Redesignated as part 71 56741
71 Redesignated from part 70a and revised 56741
96 Revised 14539
99 Added 14541

Chapter IV—Office of Labor-Management Standards, Department of Labor (Parts 400—499)

406.10 OMB number 46588
408.13 OMB number 46588

Chapter X—National Mediation Board (Parts 1200—1299)

1208 Authority citation revised 44394
1208.2 Revised 44394
1208.6 Revised 44395

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1601.74 Footnote 4 correctly added; CFR correction 23019

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1910 Meeting 39029
Authority citation corrected 62
Technical correction 22552
1910.1—1910.8 (Subpart A) Authority citation revised 13908
1910.6 (b)(1), (e)(50), (q) introductory text and (4) revised; (e)(51) through (70) and (q)(5) through (q)(32) redesignated as (e)(53) through (72) and (q)(6) through (33); new (e)(51), new (52) and new (q)(5) added 13908
1910.16 (a)(2)(x) and (b)(2)(xiv) added; (b)(2)(xii) and (xiii)(D) amended 66270
1910.94—1910.98 (Subpart G) Authority citation revised 13909
1910.94 (d) removed 13909
1910.101—1910.120 (Subpart H) Authority citation revised 13909
1910.108 Removed 13909
1910.122—1910.126 Undesignated center heading and sections added 13909
1910.141—1910.147 (Subpart J) Authority citation revised 66038
1910.146 (c)(5)(i)(E), (ii)(C), (F), (H), (7)(iii), (e)(3), (k)(1), (2) and (3)(i) revised; (d)(3)(ii) through (v) redesignated as (d)(3)(iii) through (vi); new (d)(3)(ii), (5)(iv), (v), (vi) and (l) added 66038
Note amended; Appendix F added 66039
1910.176—1910.184 (Subpart N) Authority citation revised 66270
1910.178 (l) revised; Appendix A added 66270
1910.1052(d)(3), (j)(9)(i)(A), (B) and (n)(2) revised; (j)(10) through (14) added 50729
Second (g) correctly removed; CFR correction 13700
1915 Meeting 39029
Authority citation revised 66274
Technical correction 22552
1915.120 Added 66274
1917 Technical correction 22552
1917.1 (a)(2)(xii) and (xiii)(D) amended; (a)(2)(xiv) added 66274
1918 Authority citation revised 66274
Technical correction 22552
1918.1 (b)(8) and (9)(iv) amended; (b)(10) added 66274
1926 Meeting 39029
Technical correction 22552
1926.5 Table amended (OMB numbers) 18810
1926.600—1926.606 (Subpart O) Authority citation revised 66274
1926.602 (d) added 66274
1952.354 (b) revised 53281
1952.355 (b) amended 53281

Chapter XX—Occupational Safety and Health Review Commission (Parts 2200—2499)

2200.120 (Subpart H) Added; eff. 2-19-99 through 2-22-00 8246

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TITLE 29

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2520.102–3 (u) revised; interim 48375
2590 Authority citation revised 57556
2590.711 Revised; interim 57556

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2704 Authority citation revised 63175
2704.100 Revised 63175
2704.102 Revised 63175
2704.104 (b) through (e) revised; (f) and (g) removed 63175
2704.105 Revised 63176
2704.106 Revised 63176
2704.107 (a) revised 63176
2704.108 Revised 63176
2704.201—2704.206 (Supart B) Revised 63176
2704.305 Revised 63177
2704.307 Revised 63177
2704.308 (c) revised 63178

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4007.11 (a)(1) and (2)(ii) amended; (c)(1) revised 68685
4011 Appendix A amended 38306
Appendix B amended 63179
4022 Appendix amended 63179
4022.7 (b)(1) revised; (d) added 38306
4041A.43 (b)(1) amended 38306
4044.52 (b) introductory text revised 38306
4044.54 Amended 38306
4044 Appendix B amended 38083, 43623, 49286, 55334, 63409, 68999
Appendix B corrected 58101
Appendix D amended 63180
Appendix B amended 2570, 7084, 12746, 18576
4050.2 Amended 38306
4050.5 (a)(2) amended 38306
4050 Appendix A amended 38306
4281.13 (a) introductory text amended; (b) removed; (a)(1) through (5) redesignated as (a) through (e) 38307
4281.14 Heading and (a) amended 38307
4281.15 Removed 38307

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5 17442
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56 40800
57 40800
77 40800
215 15276
578 71405
579 71405
1625 19952
1910 15402
1915 41755
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1917 15402
1918 15402
1926 43452
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2510 ..... 50542, 64667
..... 3463, 15143
2520 ..... 48376, 58335, 68370
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2560 ..... 48390, 58335
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4007 22589
4022 ..... 57228, 57229
4044 ..... 57228, 57229
4050 57229

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

21 Removed 47119
24 Removed 47119
48 Authority citation revised 53759
48.2 (a)(1) introductory text amended; (a)(1)(ii) removed; (a)(1)(iii) redesignated as (a)(1)(ii); (a)(2) and (b) revised 53759
48.3 (a) introductory text amended 53759
48.5 (d) revised 53760
48.6 Heading, (a), (b) introductory text and (7) revised; (b)(8) and (9) redesignated as (b)(12) and (13); new (b)(8), (9), (10), (11), (c), (d) and (e) added 53760
48.8 (c) revised 53760
48.22 (a)(1) introductory text amended 53759
(a)(1)(ii) removed; (a)(1)(iii) redesignated as (a)(1)(ii); (a)(2) and (b) revised 53760
48.23 (a) introductory text amended 53759
48.25 (d) revised 53760
48.28 Heading, (a), (b) introductory text, (5) and (7) revised; (b)(8) redesignated as (b)(12); new (b)(8), (9), (10), (11), (c), (d) and (e) added 53760
48.28 (c) revised 53761
75.161 Revised; eff. 10–6–99 53761
75.506 (d) revised 47119
75.1909 (c)(5) correctly revised; CFR correction 50993
77 Authority citation revised 58613
77.107–1 Revised; eff. 10–6–99 53761
77.1709 Removed 53761
77.1713 (d)(3) and (4) revised; (d)(5) added 58613

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

203.50—203.91 (Subpart B) Heading amended 57249
203.50 (a) amended 57249
203.84 (b) introductory text amended; (b)(7) and (c) revised 57249
250.101 (e) Table 1 amended 37068
250.204 (b)(1)(vii) amended 9065
250.413 (c) amended 9065
250.604 Amended 9065
250.806 (a)(3) revised 37068
250.900 (b) amended 9065
250.901 (b)(3)(iv) amended 9065
250.911 (b)(4)(ii) amended 9065
250.1000 (c) revised 43880
250.1001 Amended 43881
250.1007 Heading and (a) introductory text revised; (a)(2) amended 43881
250.1009 (b)(2) revised 9065
250.1403 Revised 9065
250.1404 (d) added 42711
(b) revised 9066
250.1406 (b) revised 9066
253 Added (OMB numbers pending) 42711

Workshop 43624
253.15 (f) corrected 48578
256.52 (b) revised; (c) and (h)(2) amended 9066
256.56 (a)(1) amended 9066
256.70 Amended 9066
256.73 (a) and (b) amended 9066
256.76 (a)(3) amended 9066
256.77 (d)(3) amended 13343
270.6 Amended 9066
270.7 Amended 9066
282.28 (a) amended 9066

Chapter VI—Bureau of Mines, Department of the Interior (Parts 600—699)

602 Removed; interim 40178
Regulation at 63 FR 40178 confirmed 66762

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

707.5 Amended 7482
707.10 Revised 7482
874.10 Added 7482
874.17 Added 7483
901.10 Revised 20165
901.15 Table amended 35807, 66987
901.20 Revised 20166
902.15 Table amended 8514
902.16 (b)(8) revised 8514
904.10 Revised 20166
904.15 Table amended 49429, 65067
904.16 Removed 20166
904.20 Revised 20166
913.10 Revised 20166
913.15 Table amended 6200
913.16 Removed 6201
913.20 Revised 20166
913.25 (b) table amended 3419
914.10 Revised 20166
914.15 Table amended 39729, 51829
Table amended 12896
914.16 (n), (p) and (gg) removed 51829
914.17 Added 12896
914.20 Revised 20166
915.10 Revised 20166
915.20 Revised 20167
916.10 Revised 20167
916.20 Revised 20167
917.15 Table amended 40827, 41427
917.16 (b) removed 40827

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TITLE 30 Chapter VII—Con.

(n) added 41427
917.17 (a) removed 40827
Corrected 47091
917.30 Added 53257
918.10 Revised 20167
918.15 Table corrected 38881
918.20 Revised 20167
920.15 Table amended 17980
920.16 (a) removed 17980
924.10 (b) removed 43320
924.15 Table amended 43321
924.16 (a) and (e) removed; (f) through (n) added 43321
925.10 Revised 20167
925.20 Revised 20167
926.10 (a) revised 3610
926.15 Table amended 3610, 3615
926.16 (f) through (j) removed; (k) added 3610
(l) added 3615
926.21 Added 3610
926.30 Revised 40794
934.15 Table amended 49434
Table amended 1130, 12900
934.16 (y) and (z) removed 49434
(aa) and (bb) removed 1130
935.15 Table amended 51833, 66989
Table amended 17981
936.10 Revised 20167
936.15 Table amended 42579
Table amended 3423
936.20 Revised 20168
938.15 Table amended 14619
938.16 (cccc) through (ffff) added 14619
938.25 Table amended 14619
943.10 Revised 20168
943.20 Revised 20168
943.25 Table amended 65070
944.15 Table amended 63611
944.16 (f) removed 63611
Correctly removed 66989
944.25 Table amended 8517
948.15 Table amended 37777
Table amended 6217
948.16 (nnn) and (ooo) revised; (ppp) removed 37777
(www) through (hhhh) added 6217

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46 59258
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70 47123
71 47123
72 ..... 37796, 41755, 55811
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75 ..... 37796, 38066, 41755, 47120, 47122, 55811
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77 45973
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204 ..... 3360, 13734, 19739
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227 6586
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778 70580
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842 70580
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846 70580
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874 ..... 40871, 46951
901 45192
902 42774
904 ..... 41506, 48661
913 ..... 63628, 63630, 68218
914 ..... 6150, 14412
915 ..... 55025, 59627
917 45430
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920 50176

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924 44192
926 66079
931 ..... 66772, 66774
934 50177
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935 53618
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936 ..... 55979, 65149
938 ..... 40237, 45199, 45973, 51324, 59259
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943 53003
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944 36868
946 ..... 71047, 71049
948 ..... 39790, 68221
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950 ..... 40384, 70080

TITLE 31—MONEY AND FINANCE: TREASURY

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

103 Technical correction 37777
103.22 Revised 50156

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

208 Revised 51502
210 Revised 17487
225 Revised 4763
285 Regulation at 62 FR 34179 confirmed 46140
Authority citation revised 67756, 72094
285.1 Regulation at 62 FR 36210 confirmed; (a) amended; (g), (m), (n) and (o) revised; (j)(5) added 46145
285.3 Added 72094
285.4 Added 44988
Regulation at 63 FR 44988 confirmed 71204
285.11 (g)(2) revised 22908
285.12 (a) amended; (b), (c)(3), (d)(4), (f), (g), (h) and (j) revised; (c)(4), (d)(5)(iii) and (6) added 22908
285.13 Added 67756
317 Authority citation revised 38041, 64550
317.0 Revised 38041
317.1 (d) revised 38041
Revised; interim 64550
317.2 Revised; interim 64550
317.3 (a) introductory text revised; (b) and (c) amended; interim 64550
317.6 (b) revised; interim 64550
317.8 Appendix amended 38041
Appendix amended; interim 64550
317.9 (b)(2) removed; (b)(1) redesignated as (b); new (b) table amended 38041
321 Authority citation revised 38042
321.0 (a) and (b) revised 38042
321.1 (o) revised 38042
321.3 (c) revised 38042
321.6 Revised 38042
321.7 (a) and (g) revised 38042
321.9 (a) revised 38042
321.12 Revised 38042
321.25 (b)(2) removed; (b)(1) redesignated as (b); new (b) table amended 38042
321 Appendix amended 38042, 38043
330 Authority citation revised 38044
330.1 (f) revised 38044
330.5 (a) revised 38044
330.6 (a) revised 38044
330.7 Revised 38044
330.8 Revised 38044
330.9 (b)(2) removed; (b)(1) redesignated as (b); new (b) table amended 38044
330.10 Revised 38044
351.1 Revised; interim 64551
351.5 Revised; interim 64551
353 Authority citation revised 64551
353.6 (b)(4) amended; interim 64551
353.13 (c)(3) amended; interim 64551
353.21 (a) revised; interim 64551
353.27 Revised; interim 64551
356.2 Amended 3634
356.20 (b) revised 3634
356.21 (a) amended 3634
356.23 Revised 3634
356 Appendix B and Exhibit A amended 3634
357 Determination 35807, 50159
357.22 (a) introductory text revised 6527
357 Appendix B amended 69191
359 Added 38044
359.2 (e)(1)(i) through (v) revised 45946
359.3 (b)(1) revised 45947
360 Added 38049

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TITLE 31 Chapter II—Con.

370 Authority citation revised **64552**
Heading revised; interim **64552**
370.0—370.1 (Subpart A) Revised; interim **64552**
370.20—370.25 (Subpart C) Heading revised; interim **64553**
370.30—370.31 (Subpart D) Redesignated as 370.60—370.61 (Subpart F); interim **64553**
370.30—370.38 (Subpart D) Added; interim **64553**
370.50—370.57 (Subpart E) Added; interim **64554**

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

501.803 Correctly revised **35809**
501.807 Revised 5614
515.560 Corrected **35808**
538 Added **35810**
539 Added 8716
560 Authority citation revised **62941**
560.201 Revised 20170
560.204 Revised 20170
560.205 Revised 20170
560.206 Revised 20170
560.207 Revised 20170
560.208 Revised 20171
560.210 (c) and (d) revised 20171
560.301 Revised 20171
560.306 Revised 20171
560.308 Revised 20171
560.315 Heading, (a) introductory text, (b) introductory text and (1) revised 20171
560.318 Removed 20171
560.319 Revised 20171
560.403 Added 20172
560.410 Revised 20172
560.411 Removed 20172
560.412 Revised 20172
560.414 Revised 20172
560.416 Added 20172
560.417 Added 20172
560.418 Added 20173
560.419 Added 20173
560.420 Added 20173
560.501 (d) and (e) added 20173
560.505 Revised 20173
560.506 Revised 20174
560.509 (a)(1) revised 20174
560.511 Added 20174
560.515 (a) revised; (d) removed 20174
560.516 (a)(3), (4) and (b) revised 20174
560.523 Revised 20175
560.525 Corrected **35808**
560.529 Added 20175
560.603 Revised **62941**
560 Appendix added 20175
575 Authority citation revised **62942**
575.522 (a)(2) and (3) amended; (a)(4) added **62942**
585 Authority citation revised **59884**
585.528 Heading revised; (d) added **59884**
586 Added **54576**

Chapter VII—Federal Law Enforcement Training Center, Department of the Treasury (Parts 700--799)

700 Revised **39730**

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1 ..... **71050**
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100 4063
103 ..... **37085**
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212 ..... **54426**
285 ..... **41688, 44991**

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

41 Removed **56081**
83 Removed **43624**
84 Removed **43624**
199.2 (b) amended **59232**
(b) amended 7087, 11768
199.4 (g)(48) revised **59232**
(e)(20) and (i) added 7087
(g)(70) and (71) removed 11769
199.6 (a)(11) removed; (a)(12) redesignated as (a)(11) **48445**
(a)(8), (c)(1) and (2) revised; (b)(1)(iii) removed; (f) and (g) redesignated as (a)(14) and (15); (a)(12), (13) and new (f) added 11769
199.8 (b)(3)(iii), (iv) and (v) revised **59232**
199.9 (m) added **48445**
199.14 (a)(1) introductory text, (i)(C)(*6*)(*iv*), (ii)(C)(*10*) and (iii)(D)(*1*) amended; (a)(1)(ii)(C)(*2*), (*3*), (*4*), (iii)(B), (D)(*5*), (E)(*1*)(*i*)(*A*), (*B*), (*ii*)(*A*), (*B*), (G)(*3*) introductory text, (d)(3)(iv) and (h) introductory text revised; (a)(1)(ii)(D)(*5*) through (*8*) redesignated as (a)(1)(ii)(D)(*6*) through (*9*); new (a)(1)(ii)(D)(*5*) and (h)(1)(iii)(D) added **48446**
(h)(1)(i)(D) added **56082**
199.15 (b)(4)(iii)(B), (c)(2), (d)(2)(iii), (e)(3)(i) and (ii) revised **48447**
199.17 (o)(2) and (3) revised; (o)(4) and (5) redesignated as (o)(5) and (6); new (o)(4) added 13913
199.18 (d)(3)(v) introductory text revised **48448**
204.4 (c)(1)(vii) thorugh (ix) corrected **36992**
204.6 (a)(1), (4) and (b)(1)(v) corrected **36992**
204.8 Corrected **36992**
216 Revised **56821**
234.1 Amended **49003**
234.7 (e) amended **49003**
234.13 (e) amended **49003**
234.14 Amended **49003**
234.17 (b)(3)(i), (ii), (c)(1)(ii), (2), (3)(i), (ii), (4)(i) and (ii) amended **49003**
235 Added 6218
270.2 (c) through (k) redesignated as (e) through (m); new (c) and (d) added; interim **68194**
270.6 (b)(2) amended; (b)(3) and (4) added; interim **68195**
270.8 Amended **68195**
270.11 Revised **68195**
270 Appendix A amended **68195**
286 Revised **65420**
286.4 (d)(3)(ii)(B) correctly designated **67724**
286.24 (f)(2) corrected **67724**
290.4 Amended 1130
290.5 (a) amended 1130
290.6 (a)(1)(i), (2) introductory text, (3) introductory text, (iii) and (b)(2)(iii) amended; (a)(3)(vii) removed; (a)(3)(viii) redesignated as (vii) 1130
290.7 (b), (d), (e)(1), (3), (f)(4), (5)(i)(D), (ii) introductory text and (iv) amended 1131
290 Appendixes A and B amended 1131
311 Revised 22785
311.7 (c)(7) removed **59718**
318 Heading revised **60212**
318.1 (b)(1), (c) and (d) amended **60212**
318.2 Amended **60212, 60213**
318.3 (a) through (d) amended **60212**
(d) footnote 1 amended **60213**
318.4 (a) amended **60212**
(d) amended **60213**
318.5 (a) amended **60212**
318.6 (a) amended **60212**
(b) amended **60213**
318.8 (b) amended **60213**
318.9 (a), (b) introductory text, (1) and (4) amended **60212**
318.10 Amended **60212**
318.11 (a), (b), (d) introductory text and (3)(i) amended **60212**

Chapter V—Department of the Army (Parts 400—699)

556 Removed 14620
588 Removed 37069
655 Revised 53810

Chapter VI—Department of the Navy (Parts 700—799)

706.2 Tables One and Three amended **44785**
Table Four amended 2571
Tables One and Five amended 2572
Table Five amended 2573
Tables Four and Five amended 3424

Chapter VII—Department of the Air Force (Parts 800—1099)

812 Removed 17101
863 Removed 17545
888g Removed **68685**

Chapter XIX—Central Intelligence Agency (Parts 1900—1999)

1903 Revised **44786**

Proposed Rules:

44 ..... **45975**

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TITLE 33—NAVIGATION AND NAVIGABLE WATERS

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682.603 (d) introductory text, (e) introductory text, (f)(1)(ii)(B) and (3)(ii)(A) amended; (f)(1)(i) redesignated as (f)(1)(i)(A); (f)(1)(i)(B) added 18981
682.604 (a)(3), (b)(1), (2)(i), (c)(2)(i), (ii) introductory text, (B), (3), (d)(1)(ii)(A), (4), (f)(1), (g)(1)(i), (2)(vi), (h)(1) and (3) amended; (d)(1)(ii)(B) added 18981
682 Appendixes B and D amended 18982
685 Appendix A revised 39010
694 Added 10187

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700—799)

702 Added 57573

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Proposed Rules:

303 43866
304 37466
361 55292
600—699 (Ch. VI) 59922, 71206
668 37714
674 49798
682 49798

TITLE 35—PANAMA CANAL

Proposed Rules:

117 56589

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

7.87 Added 19483
61 Revised 11742

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

200.7 (a) revised 53811
200.8 Revised 53812
(a) corrected 60049
212.13 Added; interim 7304
223.118 Revised 411
242 Meetings 46394
242.1—242.9 (Subpart A) Revised 1286
242.10—242.20 (Subpart B) Revised 1289
242.22—242.24 (Subpart C) Revised 1293
242.25 (k)(9)(ii) table, (10)(ii) table and (23)(iii) table amended; eff. 7-1-98 through 6-30-99 46150
(k)(26)(iii) table amended; eff. 7-1-98 through 6-30-99 46151
242.26 Revised 1302
242.27 Revised 1311
251.51 Amended 65964
251.54 Revised 65964
251.56 (a) and (d)(2) revised 65967
251.57 (a) revised; (h) removed; (i) redesignated as (h) 65967
251.59 Revised 65967
251.60 (g) removed; (h), (i) and (j) redesignated as (g), (h) and (i); (a)(2), (b), (e), (f) and new (g), (h) and (i) revised 65968
251.61 (c) revised 65968
251.64 (a) amended 65968
251.65 Revised 65968

Chapter III—Corps of Engineers, Department of the Army (Parts 300—399)

327.30 Appendixes A and C amended; eff. 8-17-98 35828

Chapter VIII—Advisory Council on Historic Preservation (Parts 800—899)

811 Revised 54355

Chapter X—Presidio Trust (Parts 1000—1099)

1007 Added 71774
1008 Added 71779
1009 Added 71784

Chapter XI—Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

1152 Removed 70342
1191.2 Revised 64837, 64838
1192.31 (c) revised 51697, 51702
1192.153 (c) revised; (d) added 51698, 51702
1192.157 (b) revised 51698, 51702
1192.159 Revised 51698, 51702
1192.161 Added 51700, 51702
1192 Figures 1 and 2 added 51701, 51702
Appendix A amended 51702, 51702

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1202 Revised 70342
1220.40 Amended 35829
1220.54 Amended 35829
1222.20 (b)(3) amended 35829
1228.26 Amended 35829
1228.46 Amended 35829
1228.50 Amended 35829
1228.54 Amended 35829
1228.60 Amended 35829
1228.74 Amended 35829
1228.78 Amended 35829

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1228.92 Amended 35829
1228.94 Amended 35829
1228.104 Amended 35829
1228.124 Amended 35829
1228.152 Amended 35829
1228.154 Amended 35829
1228.156 Amended 35829
1228.190 Amended 35829
1228.222 (a)(3) amended 35829
1228.224 Amended 35829
1230.7 Amended 35829
1230.50 Amended 35830
1234.10 (a) amended 35830
1238.2 Amended 35830
1254.1 (d) revised 19901
1254.2 (a) revised 19901
1254.6 Revised 19901
1254.8 (b) and (c) amended 19901
1254.10 Revised 19901
1254.12 (a) revised 19901
1254.14 (b) revised 19901
1254.16 (d) and (e) revised 19901
1254.20 (a) revised 19901
(b), (c) and (d) revised; interim 19901
1254.24 (d) added 19902
1254.26 (a) through (d), (e) introductory text, (2), (3), (g), (h) introductory text, (2)(i), (ii), (5) and (6) revised 19902
1254.27 Heading, (a) and (c)(3) revised 19903
1254.70 (a) revised 19903
1254.71 (g) removed; (e) and (f) redesignated as (f) and (g); heading, (a), (b), (c) heading, (1), (2), (d)(1) and new (g) revised; new (e) added 19903
1254.90 Revised 19904
1254.92 (a) and (b) revised; (d)(3) and (4) added 19904
1254.94 (a)(1), (2), (3), (d)(3), (4), (k) and (l) added; (d) introductory text, (1) and (i) revised 19905
1254.96 (a)(1), (2) and (3) removed; (a)(4) and (5) redesignated as (a)(1) and (2) 19905
1254.98 (a) revised 19905
1254.100 (b), (c) and (g) revised 19905
1254.102 (e) added 19906

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2 17293
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13 68666
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1228 ..... 4818, 23504, 23510
1254 42776
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TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1.14 Regulation at 63 FR 29617 confirmed 66041
1.16 (a) through (d) and (f) through (j) revised 39733, 67579
Regulation at 63 FR 39733 eff. date delayed to 10–10–98 52610
1.17 (a)(1) through (5), (b), (c), (d), (l), (m), (r) and (s) revised 39733, 67580
Regulation at 63 FR 39733 eff. date delayed to 10–10–98 52610
1.18 Revised 39733, 67580

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Regulation at 63 FR 39733 eff. date delayed to 10–10–98 52610
1.20 (d) through (g) revised 39733, 67580
Regulation at 63 FR 39733 eff. date delayed to 10–10–98 52610
1.21 (a)(6)(ii) revised 39734, 67580
Regulation at 63 FR 39733 eff. date delayed to 10–10–98 52610
1.53 Regulation at 63 FR 5734 confirmed 36185
1.412 Regulation at 63 FR 29617 confirmed 66041
1.416 Regulation at 63 FR 29617 confirmed 66041
1.419 Regulation at 63 FR 29617 confirmed 66041
1.431 Regulation at 63 FR 29618 confirmed 66041
1.432 Regulation at 63 FR 29618 confirmed 66041
1.435 Regulation at 63 FR 29618 confirmed 66041
1.445 Regulation at 63 FR 29619 confirmed 66041
1.451 Regulation at 63 FR 29619 confirmed 66041
1.461 Regulation at 63 FR 29619 confirmed 66041
1.465 Regulation at 63 FR 29619 confirmed 66041
1.471 Regulation at 63 FR 29619 confirmed 66041
1.480 Regulation at 63 FR 29619 confirmed 66041
1.481 Regulation at 63 FR 29619 confirmed 66041
1.484 Regulation at 63 FR 29619 confirmed 66041
1.485 Regulation at 63 FR 29620 confirmed 66041
1.492 (a) through (d) revised 39734, 67580
(a)(5) corrected 46892
Regulation at 63 FR 39733 eff. date delayed to 10–10–98 52610
1.494 Regulation at 63 FR 29620 confirmed 66041
1.495 Regulation at 63 FR 29620 confirmed 66041
1.655 (a) revised; interim 12901
1.801—1.825 (Subpart G) Appendix B removed 48448
2.76 (a), (g) and (h) revised 48097
2.85 (e) revised 48097
2.87 (c) revised 48097
2.101 (d)(1) revised 48097
2.102 (d) revised 48097
2.111 (b) and (c)(1) revised 48097
2.117 (a) and (b) revised 48097
2.119 (d) revised 48097
2.120 (e) and (h) redesignated as (e)(1) and (h)(1); (e)(2) and (h)(2) added; (a), new (e)(1), (g)(1) and new (h)(1) revised 48098
(a) revised 52159
2.121 (a)(1), (c) and (d) revised 48099
2.122 (b)(1), (d)(1) and (2) revised 48099
2.123 (b) and (f) revised 48099
2.125 (c) revised 48099
2.127 (a), (b), (d), (e)(1) and (f) revised 48099
(a) revised 52159
2.134 (a) revised 48100
2.146 (e)(1) revised 48100
3 Heading revised 52159
3.41 Revised 48100, 52159

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201.5 (b)(2)(ii) and (iii)(A) revised; interim 59236
(b)(2)(iii)(A) amended 66042
201.17 (h)(2)(iv) amended 39738
201.22 (e)(1) revised 66042
201.33 (d)(1) revised 12902
201.38 Added; interim 59234
201.39 Added; interim 71787
202.12 (c)(1) amended 12902
251.2 (b) through (g) redesignated as (c) through (h); new (b) added; new (c) revised 65556
251.58 (c) amended 65556
251.60 Amended 65556
251.61 (a) revised 65556
251.62 (a) amended 65557
253.3 Added 49836
253.5 (c)(1), (2) and (3) revised 66042
255.5 Revised 6223
255.6 Added 6223
255.7 Added 6223
255.8 Added 6223
256.2 (a)(1) and (c) amended 39739

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251 70080
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285 71249

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

3.256 Revised; interim 53595
3.311 (b)(2)(xxi) and (xxii) amended; (b)(2)(xx)(iii) and (xxiv) added 50994
3.358 Heading and (a) revised 45006
Heading and (a) revised 1131
3.361 Added 45006
Removed 1132
3.362 Added 45007
Removed 1132
3.363 Added 45007
Removed 1132
3.800 Introductory text added 45007
Introductory text removed 1132
3.811 Heading, (a) heading and authority citation revised; (d) redesignated as (e); new (d) added 62943
4.104 Amended 37779
17.55 Introductory text amended; (h) removed; (i), (j) and (k) redesignated as (h), (i) and (j) 39515
17.56 Redesignated as 17.57; new 17.56 added 39515
17.57 Redesignated from 17.56 39515
17.84 Removed 48102
17.96 Introductory text amended; (a) authority citation removed; authority citation added 37780
17.101 Redesignated as 17.102; new 17.101 redesignated from 17.102 and revised 22678
17.102 Redesignated as 17.101; new 17.102 redesignated from 17.101 22678
Introductory text and (h)(3) amended; (h) heading revised; (h)(1), (2), (4), (5) and (6) removed 22683
17.128 Revised 39515
17.270—17.278 Undesignated center heading and sections added 48102
20.609 (c)(4) added 2138
20.1400—20.1411 (Subpart O) Added 2139
20.1405 (a) revised; interim 7091
21.3023 Heading, (c) introductory text and (1) revised; (c)(3) amended; OMB number 45718
21.3045 (h) revised 67778
21.3131 (a) revised 67778
21.3300 (c) amended 67779
21.3333 (a) and (b)(1) amended 67779
21.4000—21.4279 (Subpart D) Authority citation revised 35831
21.4008 Amended; eff. 7–31–98 35831
21.4133 Removed; eff. 7–31–98 35831
21.4134 Removed; eff. 7–31–98 35831
21.4135 (f), (j)(1), (k) heading and (1) revised; (j) introductory text and (k) introductory text added; eff. 7–31–98 35831
21.4146 (e) amended; eff. 7–31–98 35831
21.4152 (b)(2) amended; eff. 7–31–98 35831
21.4202 (a) and (b) removed; eff. 7–31–98 35831
21.4207 Removed; eff. 7–31–98 35831
21.4208 Removed; eff. 7–31–98 35831
21.4210 Added; eff. 7–31–98 35831
21.4211 Added; eff. 7–31–98 35833
21.4212 Added; eff. 7–31–98 35834
21.4213 Added; eff. 7–31–98 35834
21.4214 Added; eff. 7–31–98 35834
21.4215 Added; eff. 7–31–98 35836
21.4216 Added; eff. 7–31–98 35836
21.5001—21.5296 (Subpart G) Authority citation revised 35836
21.5130 (b) and (c) removed; (d) through (g) redesignated as (b) through (e); eff. 7–31–98 35836
21.5200 Introductory text amended; (h) removed; (i) revised; (j) redesignated as (h); new (j) through (o) added; eff. 7–31–98 35836
21.7000—21.7320 (Subpart K) Authority citation revised 35837
21.7042 Heading, (d)(2) and (3) revised; (d)(4) and authority citation added; OMB number 45718
21.7133 Revised; eff. 7–31–98 35837
21.7135 (i) introductory text, (1), (2), (j)(1) and (k)(1) amended; eff. 7–31–98 35837
21.7158 Heading, (b)(2) and authority citation revised; eff. 7–31–98 35837

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21.7500—21.7807 (Subpart L) Authority citation revised 35837, 45718
21.7540 (c) and (d) authority citation revised; OMB number 45718
21.7624 (b) amended; eff. 7–31–98 35837
21.7633 Revised; eff. 7–31–98 35837
21.7635 (e) introductory text, (1), (2), (f)(1) and (g)(1) amended; eff. 7–31–98 35837
21.7658 Heading, (b) heading and (2) revised; (b)(1) introductory text, (i) and (ii) amended; eff. 7–31–98 35837
36.4306a (a)(3), (4) and (5) revised; (a)(6) and (7) added; OMB number 19910
36.4337 (a) revised 19910

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1 48455
2 48455
3 58336
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17 ..... 37299, 54756, 58677, 60227
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TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

6.4 Revised 57912
20 IMM amended; incorporation by reference; interim 37252, 40181, 41427, 44789, 66043
IMM stayed in part; incorporation by reference 38478
IMM amended; incorporation by reference 40181, 41427
IMM amended; incorporation by reference 2856, 9916, 10219, 19040, 20179
111 DMM amended; incorporation by reference 37254, 37967, 38084, 38310, 39239, 40828, 55475, 56567, 57598, 71374
DMM amended; incorporation by reference 39, 2141, 6802, 10951, 12074, 14389, 16816, 17102
233 Authority citation revised 52159
233.2 (b)(2) amended 52159
241.4 Revised 46656
491 Revised 67403
501.29 Added 53812
775—778 (Subchapter K) Heading revised 45719
775 Heading and authority citation revised 45719
775.1 Revised 45719
775.3 Revised 45719
775.4 (a) and (b) redesignated as 775.5 and 775.6; new 775.4 added 45719
775.5 Redesignated as 775.8; new 775.5 redesignated from 775.4(a) and revised 45719
775.6 Redesignated as 775.9; new 775.6 redesignated from 775.4(b) 45719
Revised 45720
775.7 Redesignated as 775.10 45719
Added 45721
775.8 Redesignated as 775.11 45719
775.9 Redesignated as 775.12 45719
(a)(1), (4), (b)(2), (3) introductory text and (i) revised; (b)(1) amended 45721
775.10 Redesignated as 775.13 45719
(a)(4) added 45722
775.11 Redesignated as 775.14 45719
(a)(1) amended; (b)(2)(ii), (c)(2), (4), (5) introductory text, (iv) and (d)(1) revised 45722
775.13 (a)(4) revised 45722
775.14 (b) revised 45722
777 Transfered to subchapter K 45722
778 Transfered to subchapter K 45722
952.4 Revised 66050
952.8 (a) amended 66050
952.14 Revised 66050
952.15 (c) amended 66050
953.2 Revised 66050
953.8 Revised 66050
953.9 (a)(3) amended 66050
954.4 Revised 66050
954.11 Revised 66050
954.12 (c) amended 66050
955.1 (b)(1) and (d)(5) revised 66050
955.18 Amended 66050
955.29 Amended 66050
956.3 (c) revised 66051
956.13 (a) revised 66051
957.1 Amended 66051
957.2 Amended 66051
957.3 (a) and (g) revised; (b) and (f) amended; 66051
957.4 (a), (c) and (d) amended 66051

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957.5 Amended 66051
957.7 Amended 66051
957.8 Amended 66051
957.9 Amended 66051
957.10 Amended 66051
957.13 (a) revised; (b) introductory text and (3) amended 66051
957.14 (e) amended 66051
957.15 (f) and (h) amended 66051
957.16 (e) amended 66051
957.18 (a) amended 66051
957.19 (a) and (b) amended 66051
957.20 (a) amended 66051
957.23 Amended 66051
957.26 Amended 66051
957.27 Amended 66051
958.3 (a) amended 66052
958.4 Amended 66052
958.13 Amended 66052
959.3 Revised 66052
959.5 (a) amended 66052
959.6 Amended 66052
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959.8 Amended 66052
959.9 Amended 66052
959.10 (a) amended 66052
959.11 (a), (b) and (d) amended 66052
959.13 Revised 66052
959.14 Amended 66052
959.16 (b)(6) and (8) amended 66052
959.17 (e) amended 66052
959.20 (a) amended 66052
959.21 (a) and (b) amended 66052
959.22 (a) and (b) amended 66052
959.23 (a) and (c) amended 66052
959.24 Amended 66052
959.27 Amended 66052
959.30 Amended 66052
960.22 Amended 66052
961.3 (g) revised 66053
961.4 (a) amended 66053
962.2 (j) revised 66053
962.22 (b) amended 66053
963 Heading revised 66053
963.3 (a) amended 66053
963.7 Revised 66053
963.8 (c) amended 66053
963.22 Amended 66053
964.3 (a) amended 66053
964.4 Amended 66053
964.22 Amended 66053
965.2 Amended 66053
965.3 Amended 66053
965.8 (b) revised 66053
965.14 Amended 66053
966.3 (i) amended 66053
966.4 (b) amended 66053

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.61—3001.69c (Subpart C) Appendix A amended 39030
Appendix A amended 1392
Appendix A corrected 4493, 4494

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TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

Chapter I Product categories final listing 48792
1.25 (e)(1) revised 67780
9.1 Table amended (OMB numbers) 39739, 40657, 44132, 48815, 48831, 50326, 53995, 56995, 69463, 69515, 71374
Table amended (OMB numbers) 3028, 7047
50 Appendix L amended 19719
51.121 Added 57491
(e)(4) introductory text and (f)(2)(ii) revised 71225
51.122 Added 57496
51.322 (a)(1) and (2) revised 7462
51.323 (a)(2) removed; (a)(1), (3) and (b) revised 7463
51 Appendixes M and P corrected; CFR correction 5188
52 State implementation plan determinations ... 39515, 49434, 63986, 69557, 69559
Comment period extension 58637
State implementation plan determinations 754
52.50 (c)(72) added 49006
Redesignated as 52.69; new 52.50 added 70672
(c) table amended 9918
52.69 Redesignated from 52.50; heading and (a) revised 70672
52.70 (c)(28) added 63986

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52.76 Existing text designated as (a); (b) added 50764
52.120 (c)(67)(i)(C) added 13353
(c)(92) added 19918
52.123 (h) added 41350
52.124 (c) added 41350
52.127 Added 41350
52.128 Added 41350
Appendix A corrected 43449
52.170 Redesignated as 52.200; new 52.170 added 56827
52.200 Redesignated from 52.170; heading and (a) revised 56827
52.220 (c)(247)(i)(A)(*2*) added 39751
(c)(239)(i)(E)(*4*) added 40829
(c)(194)(i)(G) added 40831
(c)(244)(i)(A)(*2*) added 42721
(c)(187)(i)(C)(*2*) added 42723
(c)(241)(i)(A)(*3*) added 42726
(c)(188)(i)(C)(*2*) added 43629
(c)(197)(i)(C)(*2*), (225)(i)(A)(*3*) and (231)(i)(B)(*3*) added 43884
(c)(242)(i)(A)(*1*), (248)(i)(A)(*2*), (B)(*1*) and (254)(i)(A)(*2*) added 43887
(c)(240)(i)(A)(*5*) and (244)(i)(C) added 44135
(c)(29)(vi)(B) and (164)(i)(C)(*3*) added 44398
(c)(207)(i)(C)(*6*), (241)(i)(C) and (244)(i)(D) added 44790
(c)(169) added 46662
(c)(199)(i)(E)(*1*) added 46891
(c)(184)(i)(C)(*2*) and (254)(i)(F) added 47182
(c)(256) added 51835
(c)(255)(i)(A)(*2*) added 60216
(c)(231)(i)(B)(*4*), (248)(i)(C), (254)(i)(A)(*3*), (C)(*2*) and (255) added 63414
(c)(225)(i)(F) added 66760
(c)(187)(i)(B)(*2*) and (256)(i)(B)(*1*) added 67422
(c)(194)(i)(H), (248)(i)(A)(*3*), (B)(*2*) and (257) added 67787
(c)(24)(vii)(E), (52)(i)(C), (67)(iii)(C), (75)(iii), (101)(ii)(F) and (140)(ii)(B) added 70350
(c)(254)(i)(G)(*1*) added 72197
(c)(254)(i)(E) added 72200
(c)(6)(xv)(A) and (254)(i)(H)(*1*) added 1521
(c)(127)(vii)(E), (187)(i)(C)(*3*) and (215)(i)(A)(*5*) added 2144
(c)(254)(i)(A)(*4*) added 2575
(c)(198)(i)(J)(*3*) added 2577
(c)(232)(i)(A)(*2*) added 3216
(c)(182)(i)(B)(*6*) and (199)(i)(A)(*8*) added 3852
(c)(254)(i)(B)(*1*) added 6226
(c)(245)(i)(C)(*1*) added 6228
(c)(6)(xvi) and (31)(xviii)(E) added 6230
(c)(230)(i)(D)(*1*) and (255)(i)(A)(*4*) added 6806
(c)(47)(i)(C), (65)(iii) and (137)(vii)(D) added; (c)(65) introductory text revised 11772
(c)(24)(vii)(E), (52)(i)(C), (67)(iii)(C), (75)(iii), (101)(ii)(F) and (140)(ii)(B) added 12257
(c)(187)(i)(B)(*3*), (D), (199)(i)(D)(*3*), (244)(i)(E) and (256)(i)(D) added 13353
(c)(254)(i)(D)(*3*), (255)(i)(C) and (260)(i)(A) added 13517
(c)(21)(vi)(B) correctly added; CFR correction 13916
(c)(249)(i)(A)(*2*) added 14393
(c)(254)(i)(C) and (D) added 14626
(c)(256)(D)(i)(D) added 15132
(c)(207)(i)(C)(*7*) added 15926
(c)(183)(i)(B)(*4*), (248)(i)(D) and (254)(i)(I) added 19280
(c)(205) introductory text, (i) introductory text, (B)(*2*), (207)(i)(B)(*5*), (E)(*2*), (i)(F) through (I), (210)(i)(F), (G), (H), (215)(i)(E), (220)(i)(D), (221)(i)(B), (224)(i)(B)(*2*), (231)(i)(C) and (259) added 19919
52.222 (a)(5) added 50766
(a)(4) and (b)(2) added 50769
52.320 (c)(83) added 6234
52.348 Existing text designated as (a); (b) added 38089
(c) added 11782
52.349 Added 11782
Existing text designated as (a); (b) added 17105
52.369 Added 12013
(c) added 12023
52.370 (c)(78) added 12013
(c)(77) added 12018
(c)(75) and (76) added 12023
52.374 Revised 58643
Table revised 12003, 12013
52.376 (a) and (b) revised; (d) added 53286

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(a) and (d) revised; (e) and (f) added **58643**
(a) and (d) revised; (e) and (f) removed 12003
(a) and (d) revised; (e) and (f) added 12014
52.385 Table amended 12024
52.420 Redesignated as 52.465; new 52.420 added **67410**
(c) table amended 8725, 12087
Regulation at 64 FR 18815 withdrawn 18815
52.465 Redesignated from 52.420; heading and (a) revised **67410**
52.470 Redesignated as 52.515; new 52.470 added **67417**
52.473 Existing text designated as (a); (b) added **36585**
(c) added 9277
Regulation at 64 FR 9277 withdrawn 17982
52.474 (c) added **36858**
52.515 Redesignated from 52.470; heading and (a) revised **67417**
52.520 (c)(95) added **56573**
(c)(101) added 994
52.569 Added 20188
52.570 (c)(49) added **45176**
Regulation at 63 FR 45176 withdrawn **52983**
(c)(49) added 13350
(c)(45) added 17555
(c)(41) added 20188
52.582 (c) added 4570
52.676 Added 12263
52.719 (a) revised **47434**
52.720 (c)(144) added 2581
(c)(145) added 2584
(c)(146) added 7790
(c)(147) added 8523
(c)(148) added 13348
52.725 (f) added **47434**
52.726 (s) added; eff. 8–31–98 ..... **35844**
(u) and (v) added 759
(m) removed 8523
(t) added 18818
52.770 (c)(123) added; eff. 8–31–98 ..... **35839**
52.777 (t) added **40044**
52.820 Redesignated as 52.824; new 52.820 added 7094
(d) table amended 12090, 13345
(c) table amended 17550
52.824 Redesignated from 52.820; heading and (a) revised 7094
52.870 Redesignated as 52.874 7097
Added 7098
52.874 Redesignated from 52.870; heading and (a) revised 7097
52.920 (c)(89) added **39741**
(c)(87) added **39743**
(c)(91) added **46898**
(c)(92) added **67591**
(c)(88) added 417
(c)(93) added 12751
52.938 Added **40046**
52.970 (c)(77) added **47431**
Redesignated as 52.999; new 52.970 added **63183**
(c) table amended 415
52.999 Redesignated from 52.970; heading and (a) revised **63183**
52.1020 (c)(39) added **42728**
Regulation at 63 FR 42727 withdrawn **53596**
52.1031 Table amended **42728**
52.1070 (c)(130) added **45399**
(c)(131) and (132) added **46663**
(c)(133), (134) and (135) added **47179**
Regulation at 63 FR 45399 withdrawn **54355**
(c)(140) added **59722**
(c)(136) added **67784**
(c)(130) added **70669**
(c)(141) added 3855
52.1072 (d) added **47179**
52.1073 (e) added **47179**
52.1075 (f) added **36858**
52.1076 Heading revised; existing text designated as (a); (b) added **67782**
52.1174 (q) removed **40371**
(q) added 7793
52.1220 (c)(46) added **54587**
(c)(47) added 5939
52.1320 (c)(106) added **36854**
(c)(107) added **38756**
(c)(108) added **45727**
(c)(109) added **65560**
(c)(111) added **67594**
(c)(110) added **70667**
(c)(112) added 15690
52.1340 Added 3859
52.1420 Redesignated as 52.1426; new 52.1420 added 7094
52.1426 Redesignated from 52.1420; heading and (a) revised 7094
52.1520 (c)(53) and (58) added **67407**
52.1570 (c)(64) added **55953**
(c)(65) added **62954**
Regulation at 63 FR 55953 withdrawn **69193**

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(c)(66) added 14833
52.1580 (b) revised **45401**
(b) removed 19916
52.1581 Added **45401**
Removed 19916
52.1582 (e) added **45402**
(f) added **45404**
(d)(1) amended; (d)(3) and (4) revised; (g) added 19916
52.1605 Table amended **62954**
Table amended 14834
52.1620 Redesignated as 52.1640; new 52.1620 added **37495**
(d) table amended **48109**
52.1623 Added **48109**
52.1640 Redesignated from 52.1620; heading and (a) revised 37495
52.1670 (c)(94) added **46659**
52.1679 Table amended **65559**
52.1770 (c)(96) added **72193**
52.1820 (c)(30) added **45727**
52.1835 Added **45727**
52.1870 (c)(118) added 13073
52.1881 (a)(4) and (8) revised; (a)(13) added 13073
52.1885 (a)(8) added **36587**
(a)(9) added **37258**
(a)(10) added **44400**
(a)(11) added 19289
52.1970 (c)(126) added **39747**
(c)(127) added 12759
52.2020 (c)(135) added **47436**
(c)(134) added **54052**
(c)(136) added **59887**
(c)(137) added **66758**
(c)(138) added 18823
52.2026 (a)(1), (3), (4), (5), (b)(2), (3), (4), (6), (11), (12) and (13) removed **46667**
(a)(2) amended **46668**
Introductory text revised; (b)(1), (5), (7) through (10) and (14) removed **49441**
Regulation at 63 FR 49441 withdrawn **56086**
52.2036 (k) added 18821
52.2059 (b) added **47436**
52.2070 (c)(50) revised **67600**
52.2084 (a)(2) removed **67600**
Corrected 926
52.2086 (d) added **67600**
52.2120 (c) table amended **67586**
(e) added **70022**
52.2170 (c)(17) added **55807**
52.2220 (c)(162) added **54055**
(c)(163) added **70664**
(c)(164) added **72195**
(c)(165) added 19283
52.2270 (c)(111) added; eff. 8–31–98 ..... **35841**
(c)(114) added **56085**
Regulation at 63 FR 35841 eff. 11–4–98 ..... **59471**
(c)(113) added **62947**
(c)(105) added 3847
(c)(112) added 4298
(c)(117) added 12762
(c)(120) added 19913
52.2308 (g) added 19286
52.2309 (e) added **62947**
52.2310 Removed 19913
52.2320 (c)(40) added **43627**
(c)(39) added 3224
(c)(41) added 14623
52.2420 (c)(128) added 3427
(c)(131) and (132) added 22792
52.2425 (d) added **36858**
52.2450 (f) added 22792
52.2470 (c)(78) added **64188**
(c)(79) added 17547
58.31 (a) revised 3034
58.34 (a) revised 3034
58.41 (b) revised 3035
58 Appendix D amended 3030, 3035, 10391
Appendixes E and G amended 3036
59 Added **48815**
59.104 (a)(2) corrected **64761**
59.201—59.214 (Subpart C) Added **48831**
59.202 Corrected **52319**
59.204 (c)(1) corrected **52319**
59.208 (e)(1) corrected; (j) correctly designated **52319**
59.400—59.413 (Subpart D) Added **48877**
59.400—59.413 (Subpart D) Appendix D corrected **55175**
60 Authority delegation notices **50162, 50163, 70675**
Interpretation **53288**
Authority citation revised 7463
Authority citation delegation 14393
60.4 (c) table amended **45727**
(c) table corrected **49382, 56707**
60.7 (a) introductory text and (c) introductory text revised; (a)(2) removed; (f) amended; (f)(1), (2) and (3) added 7463

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60.8 (d) revised 7463
60.13 (h) amended 7463
60.19 (b) revised 7463
60.33c (a)(2) amended; (d) and (e) added 9261
60.35c (a) and (b) added 9262
60.40a (b) revised 49453
60.41a Amended 49453
60.44a (a) introductory text and (c) introductory text revised; (d) added 49453
60.45 (g) introductory text revised 7463
60.46a (i) added 49454
60.47a (c) revised; (k) and (l) added 49454
60.49a (i) amended; (j) added 49454
(i) revised 7463
60.40b (h) and (i) added 49454
60.44b (a) introductory text, (b) introductory text, (c), and (e) introductory text revised; (l) added 49454
60.48b (b) revised 49455
60.49b (v) added 49455
(d), (e), (h) introductory text, (i), (j), (k)(2), (3), (m) introductory text, (n) introductory text, (1), (2), (q) introductory text, (2), (3), (r) and (s) revised 7464
60.48c (c), (d), (e) introductory text, (2), (3) and (11) revised; (j) added 7465
60.59a (e), (f) and (g) revised 7465
60.107 (a), (c) introductory text, (d) and (e) revised 7465
60.108 (e) revised 7466
60.271 (h) and (j) revised 10109
60.272 (a)(3)(iii) revised 10109
60.273 (b) revised; (d) added 10110
60.274 (b), (c), (f) and (g) revised 10110
60.276 (d) added 10110
60.270a—60.276a (Subpart AAa) Heading revised 10110
60.271a Amended 10110
60.273a (d) added 10111
60.274a (b), (c), (f) and (g) revised 10111
60.276a (g) added 10111
60.293 (c)(4), (5), (d)(3) introductory text and (3)(iii) revised 7466
60.403 (f) revised 7466
60.502 (e)(3) and (4) revised 7466
60.531 Amended 7466
60.533 (l)(1)(ii) revised 64874
60.536 (f)(3) revised 7466
60.538 (e) revised 64874
60.564 (h) introductory text revised 11541
60.714 (a) revised 7467
60.717 (c) and (d) introductory text revised 7467
60.751 Amended 9262
60.759 (a)(3)(iii) amended 9262
61 Authority delegation notice 70675
Technical correction 7793
61.04 (a) amended; (b)(WW)(ii), (iii) and (vii) revised; (b)(WW)(viii) removed; (c) redesignated as (c)(8); (c) introductory text and (10) added 66059
(b) introductory text revised 7467
61.139 (i)(1)(ii) and (j)(3) removed; (i)(1)(iv) and (v) redesignated as (i)(1)(ii) and (iv); new (i)(1)(ii), (j)(2) introductory text and (iv) revised 7467
61.142 (b)(6) revised 7467
61.144 (b)(8) revised 7467
61.147 (b)(8) revised 7467
61.163 (c)(3) revised 7467
61.204 Heading, introductory text, (c) and (d) revised; (e) added 5579
61.205 Heading, (a) and (b) added 5579
61.207 Revised 5579
62.02 (a) revised; (g) added 63201
62.13 Added 63201
(a) amended 66061
62.100 (b)(3) and (c)(3) added 54058
(b)(4) and (c)(4) added 63990
62.103 Undesignated center heading and section added 54058
62.104 Undesignated center heading and section added 63990
62.1350—62.1352 Unesignated center heading and sections added 40373
62.2600 (b)(5) and (c)(4) added 63416
62.2607 Undesignated center heading and section added 63416
62.3330—62.3332 Undesignated center heading and sections added 64632
62.4350 (b)(2) and (c)(4) added 19293

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62.4355 Undesignated center heading and section added 19293
62.4845 (b)(4) and (c)(3) added 68397
62.4975 Undesignated center heading and section added 68397
62.5110—62.5112 Undesignated center heading and sections added 19922
62.5860—62.5862 Undesignated center heading and sections added 40052
62.5870—62.5872 Undesignated center heading and sections added 43083
62.6350 (b)(3) added 45727
62.6600—62.6602 (Subpart BB) Added 36861
62.8103 Undesignated center heading and section added 41429
(c) added 6237
62.8870—62.8872 Undesignated center heading and sections added 42238
62.9100 (b)(3) and (c)(3) added 59890
(b)(4) added 13519
62.9150 Undesignated center heading and section added 59890
62.9160 Undesignated center heading and section added 13519
62.9630—62.9632 Undesignated center heading and sections added 13077
62.10100 (b)(3) and (c)(3) amended 40048
62.10150 Undesignated center heading and section added 40049
62.10626 Undesignated center heading and section added 70026
62.10627 Undesignated center heading and section added 70026
62.10628 Undesignated center heading and section added 70027
62.11610 Added 47437
(d) correctly removed 54058
62.14102 (a) corrected 17219
62.14109 (j) corrected 17219
62.14100—62.14109 (Subpart FFF) Added 63202
Table 6 corrected 17219
63 Authority delegation notices 64632, 70675
Clarification 5188
Technical correction 7793
Authority delegation notices 19922
63.8 (g)(5) amended 7468
63.9 (b)(4)(iv) removed 7468
63.10 (b)(2)(vii)(A), (B) and (C) added; (e)(3)(i)(C) removed 7468
63.14 (b)(19) and (c)(3) added 50326
(b) introductory text revised; (b)(20) and (e) added 53996
(d)(1) revised 4300
(f) added 17562
63.51 Amended 18827
63.99 (a)(3) added 38480
(a)(3) revised 63993
(a)(47) added 66061
(a)(5)(ii) introductory text and (A) introductory text revised; (a)(5)(ii)(A)(*1*)(*i*) and (B)(*1*)(*i*) amended; (a)(5)(ii)(D) added 4300
(a)(5)(ii)(E) added 12766
(a)(47)(i) table revised 19721
63.100 (g)(4) revised; (h)(3) and (i)(5) amended 20191
63.111 Amended 67792
63.116 (c)(3)(iii)(B) revised 20191
63.129 (a)(4)(ii) revised 20191
63.133 (h) amended 20191
63.134 (b)(2)(ii)(B) amended 20191
63.139 (d)(4) introductory text revised 20192
63.145 (h) introductory text and (2) revised 67793
(c)(2) revised; (d)(6) amended; (i) introductory text added 20192
63.146 (b)(8) introductory text revised; (b)(8)(i) introductory text amended 20192
63.147 (b)(4) and (5) revised 20192
63.148 (b)(3) and (c) introductory text revised; (c)(4)(ii) amended 20192
63.150 (g)(5), (h)(5), (j)(2)(ii)(B) and (m)(5)(i) revised; (j)(2) amended 20192
63.151 (j)(3) revised 20195
63.152 (c)(2)(ii)(C) and (d)(1) revised 20195
63.110—63.152 (Subpart G) Appendix amended 67793
Appendix amended 20195
63.160 (a) revised 20198
63.163 (b)(1) amended 20198
63.164 (h) amended 20198
63.173 (j) introductory text amended 20198

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63.181 (b)(7) introductory text and (g)(3) introductory text revised 20198
63.360 (g)(1), (2) and (3) revised; (g)(4), (5) and (6) added **66994**
63.404 Introductory text and (b) revised; (c) and (d) added **39519**
63.440 (d)(3)(ii) introductory text and (B) revised **71389**
63.441 Amended 17563
63.443 (b)(1) revised 17563
63.445 (a)(2) and (b) revised 17563
63.446 (i) correctly revised **42239**
(g) revised **49459**
(b), (d)(1) and (e)(3) revised 17563
63.447 (d)(1) correctly revised **42239**
(e)(2), (g)(1)(ii) and (2) revised 17563
63.450 (b) revised 17563
63.455 (b), (k)(6)(ii) and (l) revised 17563
63.457 (b)(5) introductory text, (ii)(C), (E)(7), (6), (c)(2), (3) introductory text, (4)(i), (f)(1), (h) and (m)(1)(ii) revised; (c)(3)(ii) redesignated as (c)(3)(iii); new (c)(3)(ii) added 17564
63.440—63.458 (Subpart S) Table 1 amended 17564
63.460 (c) and (d) revised; (g) added **68400**
63.470 Removed **68400**
63.481 (d)(1)(ii) and (iii) revised; (d)(1)(iv) added 11542
63.482 (b) amended 11542
63.485 (a) revised; (v) added 11542
63.487 (b)(2) revised 11542
63.488 (a)(2) revised 11542
63.490 (e) introductory text revised; (e)(3) added 11542
63.491 (b)(4) introductory text revised; (b)(5) added 11542
63.495 (b)(3) revised; (e) added 11543
63.503 (a) introductory text, (2), (3), (c) introductory text, (2), (5)(i), (ii), (d)(5), (e)(3)(ii), (5), (g)(1), (2)(ii)(A), (iii)(B)(*1*), (2), (3), (5), (7)(ii)(A), (h)(1) introductory text, (3), (5), (6)(ii) introductory text, (7)(ii) introductory text, (i) introductory text, (1) introductory text, (iii), (2), (3), (5) introductory text, (i), (j)(2) introductory text, (ii)(B), (D), (E), (iv), (v), (k) introductory text, (4) introductory text, (m)(1)(i), (ii), (iii), (2)(i), (ii), (3)(i), (ii), (iii), (4)(ii) and (5)(i) through (iv) revised 11543
63.505 (e)(1)(ii) revised 11547
63.506 (e)(4)(ii)(H)(*1*) revised 11547
63.541 (c) added 4572
63.542 Amended **45011**
63.543 (g) revised **45011**
63.544 (g) redesignated as (h); new (g) added **45011**
63.546 (a) revised **45011**
(a) revised 4572
63.547 (b) revised **45011**
63.548 (e) introductory text revised; (k) added **45011**
63.640 (k)(2)(vii), (n)(1), (3), (6) and (o)(2) revised; (n)(8), (9) and (r) added **44140**
63.641 Amended **44141**
63.644 (a) amended **44141**
63.645 (f)(4) amended; (f)(5) revised **44141**
63.648 (e) revised **44141**
63.654 (a) and (h)(6) amended; (d)(1), (f) introductory text and (1)(i)(A) revised; (f)(6) added **44141**
63.640—63.679 (Subpart CC) Appendix amended **44142, 44143**
63.703 (c)(4)(i), (ii) and (iii) revised 17464
63.741 (f) and (i) amended; (j) revised **46532**
63.742 Amended **46533**
63.744 (b)(3) amended; (c)(5) added; Table 1 revised **46533**
63.745 (c)(1) through (4) and (g)(2)(v) revised **46533**
63.746 (b)(4)(ii)(C) added **46533**
63.750 (b)(2) and (i)(2)(iv) amended **46534**
63.751 (b)(6)(iv) redesignated as (b)(6)(v); (b)(6)(iii)(D), (c)(2) and (d) revised; new (b)(6)(iv) revised **46534**
63.752 (c)(2) introductory text, (d)(2), (3) and (e)(7) revised **46534**
63.753 (c)(1)(vi) and (d)(1)(vii) revised **46535**
63.801 Amended **71380**
63.803 (c)(1), (d), (f), (i), (j) and (l)(6) revised **71380**

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63.800—63.808 (Subpart J) Table 2 revised **71381**
Tables 4 and 5 revised **71382**
Table 6 revised **71383**
63.1250—63.1261 (Subpart GGG) Added **50326**
63.1290—63.1309 (Subpart III) Added **53996**
63.1311 (d)(1)(ii), (iii) and (4) revised; (d)(1)(iv) added 11547
63.1312 (b) amended 11547
63.1314 (b)(3) added 11547
63.1315 (a) introductory text revised; (a)(18) and (e) added 11547
63.1316 Heading, (b)(1)(i), (2)(i) and (ii) revised; (b)(1)(v) and (2)(v) added 11548
63.1321 (d) added 11549
63.1322 (b)(2) revised 11549
63.1323 (a)(2) revised 11549
63.1325 (e) introductory text revised; (e)(3) added 11549
63.1326 (b)(4) introductory text revised; (b)(5) added 11549
63.1330 (d) and (e) added 11549
63.1332 (a)(2), (3) introductory text, (c) introductory text, (3), (d)(5), (e)(3)(ii), (5), (g)(1), (2)(ii)(A), (7)(ii)(A), (h)(1) introductory text, (6)(ii) introductory text, (7)(ii) introductory text, (i)(1) introductory text, (iii), (2), (3), (5) introductory text, (i), (j)(2) introductory text, (ii)(B), (iv), (v), (k) introductory text, (4) introductory text and (l) introductory text revised 11549
63.1335 (e)(4)(ii)(L)(*1*) revised 11553
63 Appendix A amended **46535**
Appendix C amended **67794**
68 Delagation request **55954**
68.3 Amended 979
68.10 (d)(1) revised 979
68.42 (b)(3) revised; (b)(4) through (10) redesignated as (b)(5) through (11); new (b)(4) added 979
68.79 (a) revised 979
68.150 (e) added 979
68.151 Added 979
68.152 Added 980
68.160 (b)(1), (7) and (12) revised; (b)(14) through (18) added 980
68.165 (b) revised 980
68.170 (b) revised 980
68.175 (b) revised 980
68.180 (b) revised 980
69 Authority citation revised **49465**
69.51 (Subpart E) Added **49465**
70.5 (c) reinstated in part; CFR correction **64869**
70 Appendix A amended **40054, 50773**
Appendix A amended 8526
71.2 Amended 8262
71.3 (e) added 8262
71.4 (a) introductory text, (b), (f), (h) and (i) introductory text revised; (j) amended 8262
71.8 (a) and (d) revised 8263
71.9 (p) added 8263
71.11 (l)(7) added 8263
72.2 Amended **57498, 68404**
73.10 (b)(1) and (2) amended; (b) Table 2 and (3) revised; (c) and (d) removed **51714**
73.11 Removed **51765**
73.12 (b) removed **51765**
73.13 (b) removed **51765**
73.16 Removed **51765**
73.19 (a)(5) revised; (b) removed **51765**
73.21 (a), (b) and (c)(1) table amended; (a) table added; (c)(2) revised **51765**
73.27 (a)(3) removed; (a)(2), (b)(2) through (5) and (c)(2) through (5) revised **51765**
73.34 (c)(4) amended **68404**
73.50 (b)(2) redesignated as (b)(3); (b)(2) added **68404**
73.70 (b) revised **51766**
75.1 (a) revised **57498**
75.2 (a) revised; (c) added **57499**
75.4 (a) introductory text revised **57499**
75.6 (f) added **57499**
75.11 (d)(2) amended; (d)(3) added **57499**
75.12 Heading revised; (d) redesignated as (e); new (d) added **57499**
75.13 (d) added **57499**
75.17 Introductory text added **57499**
75.19 Added **57500**
75.20 (h) added **57506**
75.24 (d) revised **57506**
75.70—75.75 (Subpart H) Added **57507**
Appendix A amended **57512**
Appendixes C, D and F amended **57513**

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79.57 (e)(2)(iii)(C) and (v)(B) removed; (e)(2)(iv)(B) and (vi)(B) revised 63792
79.62 (d)(1)(ii)(B) revised 63793
79.66 (e)(5)(iii)(B) amended 63793
80 Technical correction 54753
80.29 (a)(1) introductory text revised 49465
80.46 (f)(3) and (g)(9) revised 63793
80.70 (m) amended 43049
(k) revised 52104
(n) added 10371
81 Attainment status determinations 64415
81.305 Amended 37279, 39751
81.306 Amended 11782
81.307 Amended 53287, 58644
Amended 12004, 12014
81.310 Amended 995
81.311 Amended 17555
81.313 Amended 59731
Amended 12264
81.315 Amended 39435
81.318 Amended 39436, 44145
Corrected 42489
81.323 Amended 39436
81.326 Amended 3859
81.333 Amended 39436
81.336 Amended 39437
Amended 13074
81.345 Amended 3225
82 Determination 42728
82.1 Revised 41642
82.2 Removed 41642
82.3 Amended 41642
Regulation at 63 FR 41642 withdrawn in part 53290
82.4 (d) and (e) revised; (f) through (k) and (l) through (s) redesignated as (g) through (l) and (n) through (u); (d), (e), new (j) and (t) revised; (f), (m), (l)(4), (t)(3) and (u)(3) added 41642
Regulation at 63 FR 41642 withdrawn in part 53290
(t)(2) table revised 1096
82.9 Heading, (a) and (c) revised; (g) added 41643
Regulation at 63 FR 41643 withdrawn in part 53290
82.12 (a)(3) added 41645
Regulation at 63 FR 41643 withdrawn in part 53290
82.13 (f)(2)(xvii), (g)(1)(xvii), (4)(xiv), (xv), (w), (x) and (z) added; (f)(3)(v) removed; (f)(3)(vi) through (xiii), second (g)(3), and (w) redesignated as (f)(3)(v) through (xii), (g)(4) and (y); (b), (f)(1)(iv), (2) introductory text, (xiv), new (3)(xi), (xii), (xiii), (g)(1)(vii), (xvi), (2), first (3), (h)(8), (i) introductory text, (m), (u) and (v) revised; 41646
Regulation at 63 FR 41646 withdrawn in part 53290
82.1—82.13 (Subpart A) Appendix C revised 41648
Appendixes J and K added 41651
Regulations at 63 FR 41648 and 41651 withdrawn in part 53290
82.170—82.184 (Subpart G) Appendix E added; interim 3865
Appendix F added; interim 3868
Appendix G amended 10378
Appendix H added 22996
86 Heading revised 56995
86.1 (b)(2) table amended; (b)(5) added 70694
86.094–21 (i) removed 70694
86.095–35 (i) revised 70694
86.098–17 (b)(2) through (i) and (j) revised 70694
86.099–17 Added 70694
86.099–30 Added 70697
86.884–8 (c)(4) table amended 56995
(c)(4) table corrected 63967
89 Heading revised 56995
Nomenclature change 56996
89.1 (a) and (b)(4) revised; (b)(3) amended; (b)(5) added 56996
89.2 Amended 56996
89.3 Amended 56997
89.4 Removed 56997
89.6 (b)(1) introductory text amended; (b)(1) table revised 56997
89.101–96 Redesignated as 89.101 56995
89.101 Redesignated from 89.101–96 56995
89.102–96 Redesignated as 89.102 56995
89.102 Redesignated from 89.102–96 56995
Heading and (a) revised; (c) through (h) added 56997
89.103–96 Redesignated as 89.103 56995

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89.103 Redesignated from 89.103–96 56995
89.104–96 Redesignated as 89.104 56995
89.104 Redesignated from 89.104–96 56995
(a), (b) and (c) revised 56998
89.105–96 Redesignated as 89.105 56995
89.105 Redesignated from 89.105–96 56995
89.106–96 Redesignated as 89.106 56995
89.106 Redesignated from 89.106–96 56995
89.107–96 Redesignated as 89.107 56995
89.107 Redesignated from 89.101–97 56995
89.108–96 Redesignated as 89.108 56995
89.108 Redesignated from 89.108–96 56995
89.109–96 Redesignated as 89.109 56995
89.109 Redesignated from 89.109–96 56995
Revised 56999
89.110–96 Redesignated as 89.110 56995
89.110 Redesignated from 89.110–96 56995
(b)(9) and (10) amended; (b)(11) and (12) added 57000
89.111–96 Redesignated as 89.111 56995
89.111 Redesignated from 89.111–96 56995
89.112–96 Redesignated as 89.112 56995
89.112 Redesignated from 89.112–96 56995
(a), (b) and (d) revised; (e) and (f) added 57000
89.113–96 Redesignated as 89.113 56995
89.113 Redesignated from 89.113–96 56995
(b) revised; (c) added 57003
89.114–96 Redesignated as 89.114 56995
89.114 Redesignated from 89.114–96 56995
Heading, (a) and (b) heading revised 57003
89.115–96 Redesignated as 89.115 56995
89.115 Redesignated from 89.115–96 56995
89.116–96 Redesignated as 89.116 56995
89.116 Redesignated from 89.116–96 56995
(e) added 57003
89.117–96 Redesignated as 89.117 56995
89.117 Redesignated from 89.117–96 56995
(a) revised; (d) added 57003
89.118–96 Redesignated as 89.118 56995
89.118 Redesignated from 89.118–96 56995
Heading revised; introductory text and (e) added 57003
89.119–96 Redesignated as 89.119 56995
89.119 Redesignated from 89.119–96 56995
(d) revised 57004
89.120–96 Redesignated as 89.120 56995
89.120 Redesignated from 89.120–96 56995
(c) revised; (e) added 57004
89.121–96 Redesignated as 89.121 56995
89.121 Redesignated from 89.121–96 56995
89.122–96 Redesignated as 89.122 56995
89.122 Redesignated from 89.122–96 56995
89.123–96 Redesignated as 89.123 56995
89.123 Redesignated from 89.123–96 56995
89.124–96 Redesignated as 89.124 56995
89.124 Redesignated from 89.124–96 56995
(a)(3) added 57005
89.125–96 Redesignated as 89.125 56995
89.125 Redesignated from 89.125–96 56995
(b) revised 57005
89.126–96 Redesignated as 89.126 56995
89.126 Redesignated from 89.126–96 56995

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(c) revised 57005
89.127–96 Redesignated as 89.127 56995
89.127 Redesignated from 89.127–96 56995
89.128–96 Redesignated as 89.128 56995
89.128 Redesignated from 89.128–96 56995
89.129–96 Redesignated as 89.129 56995
89.129 Redesignated from 89.129–96 56995
89.130 Added 57005
89.201–96 Redesignated as 89.201 56995
89.201 Redesignated from 89.201–96 56995
89.202–96 Redesignated as 89.202 56995
89.202 Redesignated from 89.202–96 56995
89.203–96 Redesignated as 89.203 56995
89.203 Redesignated from 89.203–96 56995
Revised 57006
89.204–96 Redesignated as 89.204 56995
89.204 Redesignated from 89.204–96 56995
Revised 57007
89.205–96 Redesignated as 89.205 56995
89.205 Redesignated from 89.205–96 56995
Revised 57008
89.206–96 Redesignated as 89.206 56995
89.206 Redesignated from 89.206–96 56995
Revised 57008
89.207–96 Redesignated as 89.207 56995
89.207 Redesignated from 89.207–96 56995
Revised 57008
89.208–96 Redesignated as 89.208 56995
89.208 Redesignated from 89.208–96 56995
Revised 57009
89.209–96 Redesignated as 89.209 56995
89.209 Redesignated from 89.209–96 56995
(a) revised 57009
89.210–96 Redesignated as 89.210 56995
89.210 Redesignated from 89.210–96 56995
(b) and (c) revised 57009
89.211–96 Redesignated as 89.211 56995
89.211 Redesignated from 89.211–96 56995
(a) and (c) revised 57009
89.212–96 Redesignated as 89.212 56995
89.212 Redesignated from 89.212–96 56995
Revised 57010
89.301–96 Redesignated as 89.301 56995
89.301 Redesignated from 89.301–96 56995
89.302–96 Redesignated as 89.302 56995
89.302 Redesignated from 89.302–96 56995
Revised 57010
89.303–96 Redesignated as 89.303 56995
89.303 Redesignated from 89.303–96 56995
89.304–96 Redesignated as 89.304 56995
89.304 Redesignated from 89.304–96 56995
(c) revised 57010
89.305–96 Redesignated as 89.305 56995
89.305 Redesignated from 89.305–96 56995
89.306–96 Redesignated as 89.306 56995
89.306 Redesignated from 89.306–96 56995
89.307–96 Redesignated as 89.307 56995
89.307 Redesignated from 89.307–96 56995
(b)(7) and (8) revised 57010
89.308–96 Redesignated as 89.308 56995
89.308 Redesignated from 89.308–96 56995
(b) revised 57010
89.309–96 Redesignated as 89.309 56995
89.309 Redesignated from 89.309–96 56995

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(a)(3) removed; (a)(4)(iii), (5)(i)(C) and (D) revised 57010
89.310–96 Redesignated as 89.310 56995
89.310 Redesignated from 89.310–96 56995
(a)(1) and (c) revised 57010
89.311–96 Redesignated as 89.311 56995
89.311 Redesignated from 89.311–96 56995
89.312–96 Redesignated as 89.312 56995
89.312 Redesignated from 89.312–96 56995
(b)(2) removed; (c)(2), (d) and (f) revised; (g) added 57010
89.313–96 Redesignated as 89.313 56995
89.313 Redesignated from 89.313–96 56995
89.314–96 Redesignated as 89.314 56995
89.314 Redesignated from 89.314–96 56995
(a) and (b) revised 57011
89.315–96 Redesignated as 89.315 56995
89.315 Redesignated from 89.315–96 56995
89.316–96 Redesignated as 89.316 56995
89.316 Redesignated from 89.316–96 56995
(b) removed 57011
89.317–96 Redesignated as 89.317 56995
89.317 Redesignated from 89.317–96 56995
(g), (h) and (k) revised 57011
89.318–96 Redesignated as 89.318 56995
89.318 Redesignated from 89.318–96 56995
(c)(2) heading, (i) and (iv) revised 57011
(c)(2)(iv)(B) corrected 58101
89.319–96 Redesignated as 89.319 56995
89.319 Redesignated from 89.319–96 56995
(b)(1), (2), (c), (d) heading, introductory text, (2) and (6) revised 57011
89.320–96 Redesignated as 89.320 56995
89.320 Redesignated from 89.320–96 56995
(c) revised 57012
89.321–96 Redesignated as 89.321 56995
89.321 Redesignated from 89.321–96 56995
(c) revised 57012
89.322–96 Redesignated as 89.322 56995
89.322 Redesignated from 89.322–96 56995
(a) revised 57012
89.323–96 Redesignated as 89.323 56995
89.323 Redesignated from 89.323–96 56995
89.324–96 Redesignated as 89.324 56995
89.324 Redesignated from 89.324–96 56995
Revised 57013
89.325–96 Redesignated as 89.325 56995
89.325 Redesignated from 89.325–96 56995
89.326–96 Redesignated as 89.326 56995
89.326 Redesignated from 89.326–96 56995
89.327–96 Redesignated as 89.327 56995
89.327 Redesignated from 89.327–96 56995
89.328–96 Redesignated as 89.328 56995
89.328 Redesignated from 89.328–96 56995
(b)(1) and (2) revised 57013
89.329–96 Redesignated as 89.329 56995
89.329 Redesignated from 89.329–96 56995
89.330–96 Redesignated as 89.330 56995
89.330 Redesignated from 89.330–96 56995
(b)(2) revised; (b)(3) added 57013
89.331–96 Redesignated as 89.331 56995
89.331 Redesignated from 89.331–96 56995
89.301—89.331 (Subpart D) Appendix A amended 57013
89.401–96 Redesignated as 89.401 56995

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89.401 Redesignated from 89.401–96 56995
(b) revised 57015
89.402–96 Redesignated as 89.402 56995
89.402 Redesignated from 89.402–96 56995
Revised 57015
89.403–96 Redesignated as 89.403 56995
89.403 Redesignated from 89.403–96 56995
89.404–96 Redesignated as 89.404 56995
89.404 Redesignated from 89.404–96 56995
(b) revised; (e) removed 57015
89.405–96 Redesignated as 89.405 56995
89.405 Redesignated from 89.405–96 56995
(d), (e) and (f) revised 57015
89.406–96 Redesignated as 89.406 56995
89.406 Redesignated from 89.406–96 56995
(b) and (c)(1) revised 57015
89.407–96 Redesignated as 89.407 56996
89.407 Redesignated from 89.407–96 56996
(a), (c) and (d)(2) revised 57015
89.408–96 Redesignated as 89.408 56996
89.408 Redesignated from 89.408–96 56996
(e) revised 57016
89.409–96 Redesignated as 89.409 56996
89.409 Redesignated from 89.409–96 56996
89.410–96 Redesignated as 89.410 56996
89.410 Redesignated from 89.410–96 56996
(a), (b) and (c) revised 57016
89.411–96 Redesignated as 89.411 56996
89.411 Redesignated from 89.411–96 56996
(d)(5) and (e)(5) revised 57016
89.412–96 Redesignated as 89.412 56996
89.412 Redesignated from 89.412–96 56996
(c)(3) revised; (g)(1) removed 57016
89.413–96 Redesignated as 89.413 56996
89.413 Redesignated from 89.413–96 56996
(d) revised; (e) removed 57016
89.414–96 Redesignated as 89.414 56996
89.414 Redesignated from 89.414–96 56996
(a) revised 57017
89.415–96 Redesignated as 89.415 56996
89.415 Redesignated from 89.415–96 56996
Revised 57017
89.416–96 Redesignated as 89.416 56996
89.416 Redesignated from 89.416–96 56996
89.417–96 Redesignated as 89.417 56996
89.417 Redesignated from 89.417–96 56996
89.418–96 Redesignated as 89.418 56996
89.418 Redesignated from 89.418–96 56996
(b), (c), (d), (e) table, (f) introductory text, (1) and (g) revised 57017
89.419–96 Redesignated as 89.419 56996
89.419 Redesignated from 89.419–96 56996
89.420–96 Redesignated as 89.420 56996
89.420 Redesignated from 89.420–96 56996
(a) introductory text revised 57018
89.421–96 Redesignated as 89.421 56996
89.421 Redesignated from 89.421–96 56996
89.422–96 Redesignated as 89.422 56996
89.422 Redesignated from 89.422–96 56996
(d)(3) table amended 57016
89.423–96 Redesignated as 89.423 56996
89.423 Redesignated from 89.423–96 56996
Removed 57018
89.424–96 Redesignated as 89.424 56996

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89.424 Redesignated from 89.424–96 56996
(a), (d)(6) and (e) revised; (d)(3) amended 57018
89.425–96 Redesignated as 89.425 56996
89.425 Redesignated from 89.425–96 56996
Removed 57019
89.401—89.425 (Subpart E) Appendix B revised 57019
89.501–96 Redesignated as 89.501 56996
89.501 Redesignated from 89.501–96 56996
89.502–96 Redesignated as 89.502 56996
89.502 Redesignated from 89.502–96 56996
89.503–96 Redesignated as 89.503 56996
89.503 Redesignated from 89.503–96 56996
89.504–96 Redesignated as 89.504 56996
89.504 Redesignated from 89.504–96 56996
89.505–96 Redesignated as 89.505 56996
89.505 Redesignated from 89.505–96 56996
(e) revised 57020
89.506–96 Redesignated as 89.506 56996
89.506 Redesignated from 89.506–96 56996
(g) revised 57020
89.507–96 Redesignated as 89.507 56996
89.507 Redesignated from 89.507–96 56996
89.508–96 Redesignated as 89.508 56996
89.508 Redesignated from 89.508–96 56996
89.509–96 Redesignated as 89.509 56996
89.509 Redesignated from 89.509–96 56996
(a) and (b) revised 57020
89.510–96 Redesignated as 89.510 56996
89.510 Redesignated from 89.510–96 56996
89.511–96 Redesignated as 89.511 56996
89.511 Redesignated from 89.511–96 56996
89.512–96 Redesignated as 89.512 56996
89.512 Redesignated from 89.512–96 56996
(b) revised 57020
89.513–96 Redesignated as 89.513 56996
89.513 Redesignated from 89.513–96 56996
(e)(2) revised 57020
89.514–96 Redesignated as 89.514 56996
89.514 Redesignated from 89.514–96 56996
89.515–96 Redesignated as 89.515 56996
89.515 Redesignated from 89.515–96 56996
89.516–96 Redesignated as 89.516 56996
89.516 Redesignated from 89.516–96 56996
89.601–96 Redesignated as 89.601 56996
89.601 Redesignated from 89.601–96 56996
89.602–96 Redesignated as 89.602 56996
89.602 Redesignated from 89.602–96 56996
Amended 57020
89.603–96 Redesignated as 89.603 56996
89.603 Redesignated from 89.603–96 56996
(d) revised 57021
89.604–96 Redesignated as 89.604 56996
89.604 Redesignated from 89.604–96 56996
(c)(4) and (d) revised 57021
89.605–96 Redesignated as 89.605 56996
89.605 Redesignated from 89.605–96 56996
(a)(2)(i), (3)(vi) and (c) revised 57021
89.606–96 Redesignated as 89.606 56996
89.606 Redesignated from 89.606–96 56996
89.607–96 Redesignated as 89.607 56996

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89.607 Redesignated from 89.607–96 56996
89.608–96 Redesignated as 89.608 56996
89.608 Redesignated from 89.608–96 56996
89.609–96 Redesignated as 89.609 56996
89.609 Redesignated from 89.609–96 56996
(d) revised 57021
89.610–96 Redesignated as 89.610 56996
89.610 Redesignated from 89.610–96 56996
(b)(1) revised 57021
89.611–96 Redesignated as 89.611 56996
89.611 Redesignated from 89.611–96 56996
(g) revised 57022
89.612–96 Redesignated as 89.612 56996
89.612 Redesignated from 89.612–96 56996
89.613–96 Redesignated as 89.613 56996
89.613 Redesignated from 89.613–96 56996
89.903 (b) revised 57022
89.905 (f) revised 57022
89.906 (a)(3) introductory text, (iii)(D) and (b) revised 57022
89.911 Revised 57022
89.1003 (a)(3), (5), (6), (b)(4) and (7) revised 57022
89.1007 (c) revised 57023
90.1 (b)(5)(iv) amended; (b)(6) and (d) added; (c) revised 15235
90.3 Amended 15235
90.103 (a) introductory text, (3) and (5) revised; (a)(6), (7) and (8) added 15236
90.104 Introductory text and (d) through (h) added 15237
90.105 Revised 15238
90.106 (a) revised; (b)(3) added 15238
90.107 (d)(5), (9) and (10) amended; (d)(11) added 15238
90.108 (c) and (d) added 15238
90.113 Heading revised; (a) amended 15239
90.114 (c)(9) and (10) amended; (c)(11) and (f) added 15239
90.116 (d)(6) and (7) revised; (d)(8), (9) and (10) added 15239
90.117 (a) revised 15239
90.118 Heading revised; (e) added 15239
90.120 (c) added 15239
90.122 (a) amended; (d)(4) added 15239
90.201—90.211 (Subpart C) Added 15239
90.207 (a) corrected 16526
90.301 (a) revised; (d) added 15243
90.302 Revised 15243
90.308 (c) revised 15243
90.329 (c) added 15243
90.401 (c) and (d) added 15244
90.404 (b) amended 15244
90.409 (a)(3) revised 15244
90.410 (b) revised 15244
90.427 (a) revised 15244
90.503 (f)(3) and (4) revised 15244
90.509 (b) revised 15244
90.510 (b) revised 15244
90.512 (b) revised 15245
90.612 (g) revised 15245
90.701—90.713 (Subpart H) Added 15245
90.801—90.807 (Subpart I) Heading revised 15251
90.801 Existing text designated as (a); (b) through (g) added 15251
90.802 Introductory text amended 15251
90.803 (c) revised 15251
90.805 (a) revised 15251
90.808 Added 15251
90.905 (f) revised 15252
90.906 (a) introductory text and (3) introductory text revised 15252
90.909 (c) revised 15252
90.911 Revised 15252
90.1003 (a)(2), (4)(i), (b)(4) and (5) revised; (a)(4)(iii) and (iv) redesignated as (a)(4)(iv) and (v); new (a)(4)(iii) and (b)(6) added 15252
90.1103 (a) and (b) revised 15253
90.1104 (e) added 15253
90.1201—90.1207 (Subpart M) Added 15254
93.129 Added 13483
96 Added 57514
96.42 (f) amended 71225
123.1 (a) and (c) revised 45122
123.2 Revised 45122

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123.22 (f) removed; (g) redesignated as (f) 45122
123.24 (d)(8) removed 45122
123.25 (a) introductory text and (37) revised 45122
123.26 (e)(5) revised 45122
123.42 Introductory text revised 45122
123.44 (d)(1), (2), (e) and (j) revised 45122
123.45 (e) removed 45123
123.62 (b)(3) and (c) revised 45123
123.63 (a) introductory text and (4) revised 45123
123.64 (a) introductory text and (b)(1) revised 45123
136 Technical correction 13053
136.3 (e) corrected 38756
Table 1C corrected; CFR correction 44146
(a) introductory text and (b) introductory text revised; Table 1F and (b)(40) added 50423
(b)(41) added; (e) Table II amended 4978
(a) introductory text corrected 10393
141 Authority citation revised 43846, 44526
141.2 Amended 69463, 69515
141.4 (a) revised 43846
141.12 Revised 69463
141.21 (f)(3) revised; (f)(5), (6)(i), (ii) and (8) amended 47107
Regulation at 63 FR 47107 withdrawn 72200
141.23 (a)(4)(iii), (k)(1) table, (2), (3)(i), (ii) introductory text revised 47107
Regulation at 63 FR 47107 withdrawn 72200
141.24 (e), (f)(14)(ii), (17)(i)(A), (B), (ii)(A), (h)(10)(ii), (13) introductory text, (i), (19)(i)(A) and (B) introductory text revised 47110
Regulation at 63 FR 47110 withdrawn 72200
141.30 (d) and (f) amended; (h) added 69464
141.32 (a) heading, (1)(iii) introductory text and (c) amended; (a)(1)(iii)(E) and (e)(76) through (81) added 69464
(e)(10) revised 69515
141.40 (g) and (n)(11) introductory text revised; (n)(11) table amended 47112
Regulation at 63 FR 47112 withdrawn 72200
(l) amended 1498
141.50—141.54 (Subpart F) Heading revised 69465
141.52 Table amended 69515
141.53 Added 69465
141.54 Added 69465
141.60—141.65 (Subpart G) Heading revised 69465
141.64 Added 69465
141.65 Added 69465
141.70 (d) added 69516
141.71 (b)(6) revised 69516
141.73 (a)(3) added; (d) revised 69516
141.74 (a) introductory text and (2) amended; (a)(1) table revised 47113
Regulation at 63 FR 47113 withdrawn 72200
141.89 (a)(1)(i) and (ii)(B) amended 47113
Regulation at 63 FR 47113 withdrawn 72200
141.130—141.135 (Subpart L) Added 69466
141.151—141.155 (Subpart O) Added (OMB numbers pending) 44526
141.153 (d)(4)(v)(C) amended 69516
141.154 (e) added 69475
141.170—141.175 (Subpart P) Added 69516
142 Authority citation revised 44535
142.10 (d) revised 43846
(b)(6)(vii) added 44535
142.14 (d)(12) through (16) added 69475
(a)(3), (4)(i) and (ii) introductory text revised; (a)(7) added 69519
142.15 (c)(5) added 69520
142.16 (f) added 44535
(h) added 69475
(b)(1) redesignated as (b)(1)(i); (b)(1)(ii), (3) and (g) added 69520
142.20 Revised 43847
142.40—142.46 (Subpart E) Heading revised 43847
142.42 (c) revised 43847
142.50 Revised 43847
142.53 (c)(1) revised 43848
142.55 (b) revised; (c) removed 43848

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142.56 Revised **43848**
142.72 Introductory text revised **44535**
142.78 (b) revised **44536, 71374**
142.201—142.208 (Subpart J) Removed **48077**
142.301—142.313 (Subpart K) Added **43848**
143.4 (b) table revised **47113**
Regulation at 63 FR 47113 withdrawn **72200**
147.2555 Added 14803
148.18 (i) added **42184**
Regulation at 63 FR 35149 eff. date corrected to 11–4–98 ..... **42581**
159.159 (a) introductory text revised **41193**
180 Authority citation revised 19492
180.2 (a) revised **57066**
180.103 (a) table amended **57072**
180.106 (a) table amended **57072**
180.110 (a) table amended **57072**
(b) revised 13103
180.114 Revised **57072**
180.115 Removed **57066**
180.118 Removed **57066**
180.121 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) **57073**
180.142 (a)(11) revised 11799
180.145 (a)(1) table amended **57073**
Regulation at 63 FR 57073 withdrawn in part 4311
180.148 Removed **57066**
180.158 Removed **57066**
180.159 Removed **57066**
180.162 Removed **57066**
180.170 Removed **57073**
180.171 Removed **57066**
180.173 (a) table revised **57073**
180.175 (b) table amended **53817**
(b) table amended 11792
180.176 Existing text designated as (a); (b) added **54369**
180.178 Revised **57073**
180.181 Existing text designated as (a); (a) heading added; table revised **57073**
180.183 (a) table amended **57073**
180.188 Removed **57073**
180.198 Heading and table revised **57073**
180.200 (a)(1) revised **57073**
(b) table amended 13096
180.204 Added **70030**
180.205 (b) table amended **54360**
180.206 (a) table amended **57074**
180.207 Existing text designated as (a); (a) heading added; (a) table amended **57074**
180.209 (a) table amended **57074**
180.211 Existing text designated as (a); (a) heading added; (a) table amended **57074**
180.213 (a)(1) table revised **57074**
180.214 Existing text designated as (a); (a) heading added; (a) table amended **57074**
180.215 Existing text designated as (a)(1) and (2); (a) heading added; (a)(1) table amended **57074**
180.217 Existing text designated as (a) and revised **57074**
180.219 Removed **57066**
180.220 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) **57075**
180.222 (a) table amended **57075**
180.227 (a) heading and (1) designation added; (b) and (c) redesignated as (a)(2) and (3); new (a)(1) and (2) amended; new (a)(3) revised 789
(a)(1) table corrected 10234
180.229 Existing text designated as (a); (a) heading added; (a) table amended **57075**
180.231 Existing text designated as (a); (a) heading added **57075**
180.235 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) **57075**
180.239 Table amended **57066**
180.242 (a)(1) table amended **57075**
(b) table amended **66996**
180.254 (a) table amended **57075**
180.258 (a) heading added; (a) table amended; (b) redesignated as (c); new (c) heading added **57075**
180.261 (a) heading added; (a) table amended; (b) redesignated as (c); new (c) heading added **57075**
180.262 (a) heading added; (a) table amended; (b) redesignated as (c); new (c) heading added **57075**

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180.263 Table amended **57066**
Table corrected 3428
180.284 Revised **45182**
(b) table amended **67799**
180.292 Existing designated as (a); (a)(2) and (3) redesignated from 185.4850 and 186.4850; (d) added 425
180.293 (b) amended **42249**
180.296 Revised 19492
180.297 Existing text designated as (a); (a) heading added; (a) table amended **57075**
180.298 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) **57075**
180.301 (b) amended 11801
180.306 Removed **57066**
180.314 Table amended **57075**
180.317 Heading and (a) introductory text revised; (b) redesignated as (c); (a) heading and new (b) added **49487**
(b) table amended 6532
180.319 Table amended **57066**
Revised **57076**
180.320 Removed **57076**
180.321 Removed **57066**
180.325 Table amended **57066**
180.326 Removed **57066**
180.330 (a) table amended **57076**
180.341 Existing text designated as (a); (a) heading added; (a) table amended **57076**
180.346 Existing text designated as (a); (a) heading added; (a) table amended **57076**
180.347 Removed **57066**
180.349 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) **57076**
180.350 (a) heading added; (a) table amended; (b) removed **57076**
180.353 (b) table revised **49472**
180.356 (b) table amended 14101
180.357 Removed **57066**
180.358 Removed **57076**
180.361 (b) table amended 13088
180.364 (a)(1) designation and (2) added **54066**
(a)(1) table amended; (a)(3) added 18367
180.366 Removed **57076**
180.368 (b) table amended **48594, 66437**
(b) table amended 11789
180.370 Existing text designated as (a); (a) heading added; (a) table amended **57076**
180.374 Removed **57077**
180.377 (a)(2) revised 19057
180.381 (b) amended 18372
180.384 Existing text designated as (a); (b) added **51847**
(a) table corrected 19494
180.385 Existing text designated as (a); (a) heading added; (a) table amended **57077**
180.386 Removed **57077**
180.387 Removed **57077**
180.395 (b) table amended **65073**
180.410 (a) heading added; (a) table amended; (b) redesignated as (c); new (c) heading added **57077**
(a) table corrected 5191
180.412 (a) table and (c) table amended **54073**
180.414 (b) amended **54362**
(b) table amended 18359
180.416 Existing text designated as (a); (a) heading added; (a) table amended **57077**
(a) table corrected 5191
180.417 (b) amended **45406**
180.418 (a)(1) table amended **48579**
180.431 (b) table amended 14104, 17567
180.434 (b) table amended 3002, 13105
(a) table amended 13086
180.435 (a) existing text designated as (a)(1); (a)(2) added **45414**
180.438 (b) table amended 4590
180.442 (b) table amended **37286, 53820, 69205**
(b) table amended 22802
180.443 (b) table amended **37295, 38483, 49479, 66999**
180.446 (a) heading added; (b) and (c) redesignated as (a)(1) and (2); (a)(1) table amended 19050
180.448 (b) table amended **54599**
(a) revised **55547**
180.449 (b) table amended **42248, 53837**
(b) table amended 16850
180.452 (b) table amended **66458**
180.459 (a) heading added; (b) table transferred to (a) table **44152**
(a) table amended **66449**

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180.462 (a) table amended; (b) removed **53844**
180.463 Existing text designated as (a)(1); (b) added 6548
(a)(2) redesignated from 180.1860 6549
Heading revised; (a)(1) table amended 14632
180.466 (b) revised **48116**
(b) table amended 3009
180.472 (a) table and (d) table amended **49852**
(b) amended **53829, 66447**
(a) table and (b) table corrected **66459**
(b) table amended 3044, 14106
(b) table corrected 18360
180.474 (b)(1) table and (2) table amended **39034**
(b)(1) amended **53815**
(b)(1) table amended **66456**
(a)(1) designation and (2) added 1138
180.480 (b) table amended 4584
(a)(1) revised 7801
(b) table amended 15306
180.482 (b) table amended **52174, 65087, 70035**
(b) table amended 3431, 6542, 13094
(a) introductory text revised; (a) table amended 16856
(a) table amended 18346
180.484 (a) heading amended; (a) existing text designated as (a)(1); (a)(2) and (d) heading added **42256**
180.485 Revised **53835**
180.489 Revised **48607**
Revised 22805
180.493 (a) revised **54593**
(b) amended 18369
180.494 (b) revised **53301**
180.495 (a) revised **43637**
180.499 (b) amended 16843
180.503 (b) table amended **66464**
(e) added 6539
180.507 (a)(1) designation and (2) added **55540**
(b) table amended **65084**
(b) table amended 4577, 14112
(a)(1) introductory text and table amended; (a)(2) redesignated as (a)(3) 13105
180.509 (b) table amended **48124**
180.510 Revised 10233
(a) table amended 18339
180.511 (b) table amended **41727**
180.515 (a) table amended **42246**
Revised **52180**
(b) revised **65078**
180.516 (a) revised **53826**
(b) table amended 19489
180.517 (a) introductory text revised; (a) table amended **38495**
180.527 Amended **50791**
180.532 (b) revised 18346
180.533 (a) table amended **48615**
180.534 Added **36372**
Removed 10233
180.535 Added **41734**
Revised **52169**
(b) amended 22799
180.536 Added **71026**
180.537 Amended **50784**
180.548 Added **69199**
180.549 Added 4308
180.550 Added 14639
180.551 Added 18357
180.1001 (d) table amended **43088, 53294**
(c) table and (e) table amended **48113, 51840**
(b)(1) revised; (b)(6) and (9) removed; (b)(7), (8) and (10) redesignated as (b)(6), (7) and (8); (d) table amended **57066**
(b)(1) amended **69208**
(b)(1) amended 44
(c) table and (e) table amended 10570
180.1010 Removed **57067**
180.1018 Removed **57067**
180.1020 (b) table amended **35846**
180.1030 Removed **57067**
180.1031 Removed **57067**
180.1034 Removed **57067**
180.1055 Removed **57067**
180.1059 Removed **57067**
180.1061 Removed **57067**
180.1079 Removed **57067**
180.1081 Removed **57067**
180.1085 Removed **57067**
180.1102 Revised 16860
180.1156 Revised 7804
Corrected 14099
180.1164 (d) added **67001**
180.1165 Added **39521**
180.1178 Added 8526
180.1183 Revised 13080
180.1187 Amended **51303**
180.1193 Added **43085**
180.1198 Added **37288**
180.1200 Added **38498**
180.1201 Added **49469**
180.1202 Added **48597**
180.1205 Added 22796
180.1860 Redsignated in part as 180.463(a)(2); removed 6549
185 Authority citation revised 19493
185.1650 Removed **57067**
185.2250 Removed 19493
186.2275 Table corrected 19494
185.3385 (a) table redesignated in part as 180.484 (a)(1) table **42257**
185.3600 Removed **57067**
185.4250 Removed **57067**
185.4300 Removed **57067**
185.4800 Removed **57067**
185.4850 Redesignated as 180.292(a)(2) 425
185.5000 Correctly revised; CFR correction 3045
185.5375 Removed **48607**
186.450 Removed **57067**
186.850 Removed **57067**
186.1650 Removed **57067**
186.2275 (a) table amended **51848**
186.2325 Removed **57077**
186.2450 Removed **57067**
186.3000 Removed **57077**
186.4850 Redesignated as 180.292(a)(2) 425
239 Added **57040**
239.13 (a), (b), (c), (f) and (g)(3) revised 4315
257 State municipal solid waste permit program determinations 19494
257.5 Amended **57044**
258.2 Amended **57044**
260.10 Amended **65937**
261 Identification and listing of hazardous waste solvents **64372**
261.3 (a)(2)(iv)(C) and (c)(2)(ii)(B) revised; (c)(2)(ii)(E) added **42184**
Regulation at 63 FR 42184 eff. date in part corrected to 12–8–98 ..... **54355**
261.4 (a)(12) revised; (a)(18) and (19) added **42184**
Regulation at 63 FR 42184 eff. date corrected to 12–8–98 ..... **54355**
(g) added **65937**
(b)(15) added 6814
261.5 (j) revised **37782**
261.6 (a)(3)(iv)(C) amended; (a)(3)(v) removed **42185**
Regulation at 63 FR 42185 eff. date in part corrected to 12–8–98 ..... **54355**
261.31 (a) table amended **42185**
261.32 Table amended **42185**
261 Appendix VII amended **42186**
Appendix IX amended 3872, 4594, 9443, 16647
262.34 (a)(1)(i) and (ii) revised 3388
264.1 (j) added **65938**
264.73 (b)(17) added **65938**
264.90 (e) and (f) added **56733**
264.101 (d) added **65938**
264.110 (c) added **56733**
264.112 (b)(8) and (c)(2)(iv) added **56733**
264.118 (b)(4) and (d)(2)(iv) added **56733**
264.140 (d) added **56733**
264.552 (a) revised **65939**
264.553 (a) revised **65939**
264.554 Added **65939**
264.1031 Amended 3389
264.1080 (f) and (g) added **49392**
(f)(2)(ii)(B)(*1*) revised **53847**
264.1080 (b)(5) revised 3389
264.1083 (a)(1)(i), (ii), (b)(1)(i) and (ii) added 3389
264.1084 (h)(3) revised 3389
264.1086 (e)(6) added 3389
265.1 (b) amended **65940**
265.90 (f) added **56734**
265.110 (c) and (d) added **56734**
265.112 (b)(8) and (d)(1)(iv) added **56734**
265.118 (c)(4), (5) and (d)(1)(iii) added **56734**
265.121 Added **56734**
265.140 (d) added **56734**
265.1080 (f) and (g) added **49399**
(f)(2)(ii)(B)(*1*) revised **53847**
(b)(5) revised 3390
265.1084 (a)(1)(i), (ii), (3)(ii)(D), (b)(1)(i), (ii) and (3)(ii)(D) added; (a)(3)(ii)(B), (iii) introductory text, (b)(3)(ii)(B) and (iii) introductory text revised 3390
265.1085 (h)(3) revised 3391
265.1087 (e)(6) added 3391
266 Authority citation revised **42186**
266.80 Revised **71229**
266.100 (b)(3) revised **42186**
Regulation at 63 FR 42186 eff. date corrected to 12–8–98 ..... **54355**
268.2 (c) revised **65940**

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268.33 Regulation at 63 FR 35149 eff. date corrected to 11–4–98 42581
268.34 (b) through (e) redesignated as (c) through (f); new (b) added 48127
268.35 Added 42186
268.39 (c) revised 51264
268.40 Table amended 42187, 51265
Regulation at 63 FR 24625 and 35149 withdrawn; regulation at 63 FR 28641 eff. date corrected to 11–4–98 42582
(i) added 46334
(g) and table amended; (i) added 47415
268.48 Regulation at 63 FR 24626 withdrawn; regulation at 63 FR 28739 eff. date corrected to 11–4–98 42582
(a) table amended 47417
268.50 (g) added 65940
270.1 (c) introductory text revised; (c)(7) added 56735
270.2 Amended 65941
270.11 (d) revised 65941
270.14 (a) amended 56735
270.28 Added 56735
270.42 Appendix I amended 65941
270.68 Added 65941
270.73 (a) revised 65941
270.79—270.230 (Subpart H) Added 65941
271 State hazardous waste management program authorizations 36587, 44152, 44795, 49852, 50528, 50531, 52180, 56086, 56830, 56834, 57353, 57605, 57912, 67800
State hazardous waste management program authorizations 4596, 9278, 10111, 19925
271.1 (j) Tables 1 and 2 amended 42188, 51267
Regulation at 63 FR 35150 eff. date corrected to 11–4–98 42582
(j) Table 1 amended 47418, 65947
271.16 (e) added 56735
271.21 (h) added 65947
272 State hazardous waste management program authorizations 2144
273.6 Amended 71229
279.10 (i) revised 37782
279.74 (b) revised 37782
281 Underground storage tank program authorizations 51528, 63793
282.78 Added 38500
282 Appendix A amended 38500
300 Appendix B amended ..... 36862, 37069, 37782, 40188, 48449, 49860, 51530, 51853, 53848, 57608, 71597—71599
Appendix B amended 2948, 6814, 11802, 15926, 16351
302.4 Table amended 42189, 69168
302.6 (b)(1)(i) and (ii) revised; (b)(1)(iii) added 42189
(c)(2) revised 13114
355.40 (a)(2)(vi)(B) revised 13115
370.20 Revised 7047
372 Clarification 52183
Policy statement 20198
406.22 Correctly revised; CFR correction 64417
430.01 (i) corrected; (p) correctly revised 42239
430.24 (b)(4)(i) and (d) corrected; (b)(4)(ii)(A) correctly revised 42239
430.25 (b) table corrected 42239
430.26 Introductory text corrected; (a)(2) introductory text correctly revised 42239
430.27 Introductory text and (a)(2) correctly revised 42239
430.56 Introductory text corrected 42239
(a)(1) table, (2)(ii) table and (3)(ii) corrected 42240
430.57 (a)(2)(ii) and (3)(ii) introductory text correctly revised 42240
439 Authority citation revised 50424
Technical correction 13053
439.0—439.2 Undesignated center heading revised 50424
439.0 Revised 50424
439.1 Revised 50425
439.3 Added 50425
439.4 Added 50425
Corrected 10393
439.10 Revised 50426
439.11 Revised 50426
439.12 Revised 50426
439.13 Revised 50426
439.14 Revised 50426
Table corrected 10392
439.15 Revised 50427
Table corrected 10392, 10393
439.16 Revised 50428

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Table corrected 10393
439.17 Revised 50429
Table corrected 10393
439.20 Revised 50430
439.21 Revised 50430
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439.23 Revised 50430
439.24 Revised 50431
439.25 Revised 50431
439.26 Revised 50431
Table corrected 10393
439.27 Revised 50431
439.30 Revised 50431
439.31 Revised 50431
439.32 Revised 50431
439.33 Revised 50432
439.34 Revised 50432
Table corrected 10393
439.35 Revised 50433
Table corrected 10393
439.36 Revised 50434
Table corrected 10393
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Table corrected 10393
439.40 Revised 50435
439.41 Revised 50435
439.42 Revised 50435
439.43 Revised 50436
439.44 Revised 50436
439.45 Revised 50436
439.46 Revised 50436
439.47 Revised 50436
439.50 Revised 50436
439.51 Revised 50436
439.52 Revised 50436
439.53 Revised 50437
439.54 Removed 50437
439.55 Removed 50437
439.56 Removed 50437
439.57 Removed 50437
439 Appendix A added 50437
Appendix A corrected 10393
455 Tables 2 and 3 amended 39443
501.1 (b) and (d) revised; (m) added 45123
501.2 Amended 45124
501.12 (b), (d), (f)(1) introductory text, (iv), (v) and (2) revised; (f)(3) removed 45124
501.14 (a), (b)(1)(i), (2), (3) and (c) revised 45124
501.15 (a), (b) introductory text, (10)(i), (13), (14), (d) introductory text, (1) and (4) through (8) revised; new (d)(1)(i)(B) stayed 45125
501.17 (a)(3)(i), (ii), (iii) and (b)(1) revised 45127
501.21 Revised 45127
501.32 (a) revised 45127
710.33 (b) revised; (c) added 71600
710.39 Revised 45953
721.176 (a)(2)(i) amd (ii) revised 45955
721.305 Added 44574
721.435 Added 44574
721.450 Added 44574
721.526 Removed 48129
721.528 Removed 48129
721.555 Added 65709
721.558 Added 44575
721.567 Removed 48129
721.630 Added 44575
721.637 Removed 48129
721.658 Removed 48129
721.723 Removed 64876
721.987 Added 44575
721.988 Added 44575
721.1525 Removed 64876
721.1580 Added 44575
721.1710 Added 44575
721.1734 Added 44576
721.1737 Removed 64876
721.1740 Removed 64876
721.1790 Revised 45955
721.2077 Added 65710
721.2078 Added 44576
721.2079 Added 44576
721.2081 Added 44576
721.2082 Removed 48129
721.2083 Added 44576
721.2480 Added 44577
721.2485 Added 44577
721.2532 Added 44577
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721.2580 Added 44577
721.2585 Added 44577
721.3031 Added 44578
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721.4097 Added 44578
721.4098 Added 44578
721.5290 Added 44578
721.5356 Added 44579
721.5360 Added 44579
721.5460 Added 65710
721.5548 Added 44579
721.5560 Added 44579
721.5725 Removed 48129
721.5740 (a) and (b)(1) revised 45956
721.5775 Added 44579
721.5965 Added 44580

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721.6175 Added 44580
721.6176 Added 44580
721.6197 Removed 48129
721.6498 Added 44580
721.7285 Added 44581
721.7286 Added 44581
721.7360 Removed 64876
721.7785 Added 44581
721.8153 Added 44581
721.8450 (a)(2)(i) and (ii) revised 45956
721.8660 Added 44581
721.9490 Added 44581
721.9516 Added 44581
721.9517 Added 44581
721.9595 Added 44581
721.9661 Added 44581
721.9663 Added 44581
721.9685 Added 44581
721.9719 Added 44581
(a)(2)(i) corrected 62956
721.9800 (a)(2)(i) revised 45956
721.9969 Added 44581
721.9973 Added 44581
745.223 Amended 46674
Regulation at 63 FR 46674 confirmed 55547
745.225 (b)(4) added 46674
Regulation at 63 FR 46674 confirmed 55547
745.226 (a)(6) added 46674
Regulation at 63 FR 46674 confirmed 55547
745.238 Added 46674
Regulation at 63 FR 46674 confirmed 55547
745.330 Revised 41432
763 Waiver 57251

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55 41991
58 ..... 67818, 3056
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409 Comment period reopening 65560
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488 Authority citation revised 3763
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488.402 (f)(5) revised 13353
488.408 (d)(1)(iv), (e)(1)(iv) and (2)(ii) revised 13360
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488.438 (a) introductory text, (1) and (2) redesignated as (a)(1) introductory text, (i) and (ii); new (a)(2) added; (c) and (d) revised 13360
488.440 (a), (b) introductory text, (c), (d), (e) introductory text, and (f)(1), (g), (h) revised 13361
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32 Authority citation revised....71764
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78.47–50 Regulation at 61 FR 25288 confirmed 52813
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78.47–63 Regulation at 61 FR 25288 confirmed 52813
78.47–65 Regulation at 61 FR 25288 confirmed 52813
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78.49–1 (Subpart 78.49) Regulation at 61 FR 25288 confirmed 52813
78.87–1—78.87–20 (Subpart 78.87) Regulation at 61 FR 25288 confirmed 52813
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90.27–1 (Subpart 90.27) Regulation at 61 FR 25288 confirmed 52813
91.15–1 Regulation at 61 FR 25289 confirmed 52813
91.20–20 Regulation at 61 FR 25289 confirmed 52813
91.25–15 Regulation at 61 FR 25289 confirmed 52813
94 Regulation at 61 FR 25289 confirmed 52813
96.06–1 (Subpart 90.06) Regulation at 61 FR 25289 confirmed 52813
97.13–1 Regulation at 61 FR 25289 confirmed 52813
97.13–5 Regulation at 61 FR 25289 confirmed 52813
97.13–10 Regulation at 61 FR 25289 confirmed 52813
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97.14–1—97.14–20 (Subpart 97.14) Regulation at 61 FR 25289 confirmed 52813
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97.39–1 (Supbart 97.39) Regulation at 61 FR 25289 confirmed 52813
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107 Authority citation revised 52813
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107.231 Regulation at 61 FR 25290 confirmed 52813
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107.239 Regulation at 61 FR 25290 confirmed 52813
107.243 Regulation at 61 FR 25290 confirmed 52813
107.305 Regulation at 61 FR 25290 confirmed 52813
(cc) revised; eff. 11–2–98 52814
108.101 Regulation at 61 FR 25290 confirmed 52813
108.103 Regulation at 61 FR 25291 confirmed 52813
108.105 Regulation at 61 FR 25291 confirmed 52813
108.500—108.597 (Subpart E) Regulation at 61 FR 25291 confirmed 52813
108.500 (a) and (b) revised; eff. 11–2–98 52814

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108.540 (h)(3) and (4) revised; eff. 11–2–98 52814
108.565 (a)(3) revised; eff. 11–2–98 52814
108.570 (c)(1) amended; eff. 11–2–98 52814
108.575 Table amended; eff. 11–2–98 52814
108.580 (b)(3)(i) and (c)(2)(i) revised; eff. 11–2–98 52814
108.645 Regulation at 61 FR 25298 confirmed 52813
(a)(1)(ii), (2) and (b)(2) revised; eff. 11–2–98 52815
108.646 Regulation at 61 FR 25298 confirmed 52813
(c) revised; eff. 11–2–98 52815
108.647 Regulation at 61 FR 25298 confirmed 52813
108.649 Regulation at 61 FR 25298 confirmed 52813
(b), (c), (e)(1) and (g) revised; eff. 11–2–98 52815
108.650 Regulation at 61 FR 25299 confirmed 52813
108.655 Regulation at 61 FR 25298 confirmed 52813
108.901 (Subpart J) Regulation at 61 FR 25298 confirmed 52813
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109.207 Regulation at 61 FR 25298 confirmed 52813
109.208 Regulation at 61 FR 25298 confirmed 52813
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(a)(2)(vi), (ix), (b), (c)(2), (d)(5), (7), (f)(2)(vii), (g)(7)(v)(G) and (h)(1)(iv) revised; eff. 11–2–98 52815
109.215 Regulation at 61 FR 25301 confirmed 52813
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109.301 Regulation at 61 FR 25301 confirmed 52813
(d)(2) and (g)(4) revised; eff. 11–2–98 52816
109.305 Regulation at 61 FR 25302 confirmed 52813
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109.320 Regulation at 61 FR 25302 confirmed 52813
109.321 Regulation at 61 FR 25302 confirmed 52813
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109.425 Regulation at 61 FR 25303 confirmed 52813
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109.433 Regulation at 61 FR 25303 confirmed 52813
109.501 Regulation at 61 FR 25303 confirmed 52813
109.503 (Subpart E) Regulation at 61 FR 25303 confirmed 52813
109.505 Regulation at 61 FR 25303 confirmed 52813
125.160 Regulation at 61 FR 25303 confirmed 52813
133 Regulation at 61 FR 25304 confirmed 52813
133.70 (a)(3)(ii), (b)(4), (c)(3) and (4) revised; eff. 11–2–98 52816
133.130 (a)(2) revised; eff. 11–2–98 52816
133.150 (c)(6) revised; eff. 11–2–98 52816
133.160 (a) revised; eff. 11–2–98 52816
167.05–25 Regulation at 61 FR 25311 confirmed 52813
167.05–35 Regulation at 61 FR 25311 confirmed 52813
167.15–28 Regulation at 61 FR 25311 confirmed 52813
167.35–1 Regulation at 61 FR 25311 confirmed 52813
167.35–2 Regulation at 61 FR 25311 confirmed 52813
167.35–3 Regulation at 61 FR 25311 confirmed 52813

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167.35–5 Regulation at 61 FR 25311 confirmed 52813
167.35–10 Regulation at 61 FR 25311 confirmed 52813
167.35–15 Regulation at 61 FR 25311 confirmed 52813
167.35–20 Regulation at 61 FR 25311 confirmed 52813
167.35–25 Regulation at 61 FR 25311 confirmed 52813
167.35–30 Regulation at 61 FR 25311 confirmed 52813
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167.65–1 Regulation at 61 FR 25311 confirmed 52813
167.65–55 Regulation at 61 FR 25311 confirmed 52813
168.05–5 Regulation at 61 FR 25312 confirmed 52813
Amended; eff. 11–2–98 52816
168.10–1 Regulation at 61 FR 25312 confirmed 52813
168.10–5 Regulation at 61 FR 25312 confirmed 52813
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192 Regulation at 61 FR 25312 confirmed 52813
195.06–1 (Subpart 195.06) Regulation at 61 FR 25312 confirmed 52813
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196.13–5 Regulation at 61 FR 25313 confirmed 52813
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196.15–25 Regulation at 61 FR 25313 confirmed 52813
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196.37–49 Regulation at 61 FR 25313 confirmed 52813
196.39–1 (Subpart 196.39) Regulation at 61 FR 25313 confirmed 52813

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196.90–1—196.90–10 (Subpart 196.90) Regulation at 61 FR 25313 confirmed 52813
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199.03 (b)(9) and (10) revised; eff. 11–2–98 52816
199.10 Revised; eff. 11–2–98 52817
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199.70 (b)(2)(ii) removed; (a)(2) and (c)(3) revised; eff. 11–2–98 52818
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199.80 (b)(4) revised; eff. 11–2–98 52818
199.100 (f) revised; eff. 11–2–98 52819
199.110 (f)(4) amended; eff. 11–2–98 52819
199.140 (a)(1) revised; eff. 11–2–98 52819
199.153 (f) revised; (h)(1), (2) and (i) amended; eff. 11–2–98 52819
199.175 (b)(21)(i)(B) revised; eff. 11–2–98 52819
199.176 (a)(1)(ii), (2) and (b)(2) revised; eff. 11–2–98 52819
199.180 (a)(2)(vi), (ix), (d)(11) and (f)(2)(i) revised; eff. 11–2–98 52819
199.190 (d)(2) and (g)(4) revised; eff. 11–2–98 52819
199.610 (a) revised; eff. 11–2–98 52819
199.620 (a) table and (e) revised; (k)(2)(1) redesignated as (l); (o) and (p) added; eff. 11–2–98 52820
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199.630 (a) table, (c), (d)(2), (f) introductory text, (2)(iv) and (g) revised; (l) and (m) added; eff. 11–2–98 52821
Table corrected 56067
(a) table amended 63798
199.640 (h)(2) revised; (i)(2) table amended; eff. 11–2–98 52821

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

351 Authority citation amended 55039
351.1 Authority citation removed 55039
351.2 (a) revised; authority citation removed 55039

Chapter III—Saint Lawrence Seaway Development Corporation (Great Lakes Pilotage), Department of Transportation (Parts 400—499)

401 Annual review findings 68697

Chapter IV—Federal Maritime Commission (Parts 500—599)

502 Authority citation revised 7807
502.1 Amended 7807
502.2 (c) and (d) amended; (e) added 7807
502.11 Heading revised; (a) and (b) heading removed; (b)(1) through (7) redesignated as (a) through (g) 7807
502.12 Amended 7807
502.21 (c) heading revised 7807
502.23 Revised 7807
502.24 (b) revised 7807
502.26 Revised 7807
502.27 (a)(1) amended 7807
502.21—502.31 (Subpart B) Exhibit No. 1 amended 7807
502.42 Revised 7807
502.51 Revised 7808
502.56 Amended 7808
502.61 (d) amended 7808
502.62 (g) redesignated as (h); new (g) added; new (h) revised 7808
502.63 Heading revised; (a) removed; (b) through (e) redesignated as (a) through (d) 7808
502.64 (a) and (d) amended 7808
502.67 Added 7808
502.71 Amended 7808
502.75 (a) revised 7808
502.61—502.76 (Subpart E) Exhibit 1 amended 7808
502.91 (d) amended 7808
502.92 Removed 7808
502.91—502.95 (Subpart F) Exhibit 1 removed 7808
502.94 (c) amended 7808
502.102 Revised 7808
502.104 Amended 7809
502.105 Revised 7809
502.111 Revised 7809
501.112 Heading revised; (c)(2) amended 7809
502.113 Revised 7809

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502.114 Heading and (a) revised; (b) amended 7809
502.116 Revised 7809
502.118 (b)(2) revised 7809
502.119 (a) and (b) revised 7809
502.133 Revised 7809
502.143 Amended 7810
502.144 Heading revised; existing text designated as (a); new (a) amended; (b) added 7810
502.146 (a) and (c) revised 7810
502.147 (a) amended; (b) revised 7810
502.201 (a), (d) heading and (f) heading revised 7810
502.221 (f) revised 7810
502.223 Revised 7810
502.225 Revised 7810
502.227 Heading revised; (a)(4), (5) and (6) redesignated as (a)(5), (6) and (7); new (a)(4) and (e) added; (d) amended 7810
502.253 Revised 7810
502.254 (a) amended; (c)(1)(i) revised 7811
502.271 (Subpart Q) Revised 7811
502.301 (b) removed; (c) and (d) redesignated as (b) and (c) 7812
502.302 (b) removed; (c) redesignated as (b) 7812
502.305 Revised 7812
502.301—502.305 (Subpart S) Exhibit 1 amended 7812
502.321 Revised 7812
502.401 (b) amended; (d) removed; (e) redesignated as (d) 7812
502.501 (d)(2)(vi) and (e)(3) added; (f)(2) and (g) amended 7812
502.502 (d)(3) amended 7812
502.503 (j)(2) amended 7812
502.601 Revised 7812
502.602 (h) revised; (i) amended 7812
502.603 (c) amended 7812
502.604 (b) amended 7812
502.604 (g) amended 7813
502.605 (a) revised; (c) amended 7813
503 Authority citation revised **53308**
503.21—503.24 (Subpart C) Revised **53308**
503.31—503.34 (Subpart D) Revised **53310**
510—540 (Subchapter B) Heading revised 11171
510 Waiver **64876**
Revised 11171
514 Waiver **64876**
Removed; interim 11206
515 Added 11171
515.11 Regulation at 64 FR 11173 confirmed; (a)(3) corrected 23020
520 Added 11225
520.2 Amended 23022
525 Added 9283
530 Added; interim 11206
535 Redesignated from 572; authority citation revised 11240
535.101 Revised 11241
535.102 Amended 11241
535.103 (h) added 11241
535.104 (u) removed; (v) through (kk) redesignated as (u) through (jj); (f), (g), (j), (m), (q) and new (cc) and (dd) revised 11241
535.201 (a)(5), (6), (7) and (b) revised 11241
535.202 (d) and (e) revised; (f) and (g) removed 11241
535.301 (a) and (c) revised; (d) and (e) removed; (f) redesignated as (d) 11241
535.307 (b) revised 11242
535.309 (a)(2) revised 11242
535.310 (a) revised 11242
535.402 (a), (b) introductory text, (d) and (e) revised; (f) and (g) removed 11242
535.403 Revised 11242
535.404 Revised 11242
535.405 (a) through (e) revised; (f) and (g) removed 11243
535.501 (a) revised 11243
535.502 (a)(1), (3), (4), (5), (b)(1) and (2) revised 11243
535.503 Existing text designated as (a); (b) added 11243
535.706 (c)(1) revised 11243
535.801—535.802 (Subpart H) Heading revised 11243
535.801 (a), (b)(1), (d) and (e) revised; (f)(1) and (2) amended; (j) and (k) redesignated as (i) and (j) 11243
535.802 Revised 11244
545 Redesignated from 571 7813
545.1 (a) revised 7813
(a) corrected 9922
550—565 (Subchapter C) Heading revised 8008

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550 Redesignated from 585; authority citation revised 8008
550 Note added 8009
550.102 Added 8009
550.103 (a) and (b) revised 8009
550.201 (a) revised 8009
550.202 (b) introductory text and (8) revised 8009
550.301 Introductory text and (d) revised 8009
550.601 (c) revised 8009
550.602 Revised 8009
551 Redesignated from 586; authority citation revised; note added 8009
551.3 Removed 8009
555 Redesignated from 588; authority citation revised; note added 8010
555.1 Revised 8010
555.2 (a), (c) and (d) revised 8010
555.4 (a) and (c) revised 8010
555.8 (a)(2) revised 8010
560 Redesignated from 587; authority citation revised 8009
560.1 (a) revised 8009
560.2 (c) revised 8010
560.5 (a) introductory text amended 8010
560.7 (b)(3)(i) revised 8010
565 Added 8010
565.10 Heading correctly revised 10395
571 Redesignated as 545 7813
572 Redesignated as 535 11240
582 Waiver **64876**
583 Removed 11171
585 Redesignated as 550 8008
586 Redesignated as 551 8009
587 Redesignated as 560 8009
588 Redesignated as 555 8010

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175 15709
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TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

0 Order 14834
0.21 (j) added 5950
0.41 (g) removed; (h) through (o) redesignated as (g) through (n) 5950
0.121 (b) revised **68918**
0.241 (g) added 4995
0.251 (g) removed; (h) and (i) redesignated as (g) and (h) 5950
0.291 (i) added 4995
0.304 Added 5950
0.401 (b)(3) added **68919**
0.408 Revised (OMB numbers) **52618**
(b) table revised (OMB numbers) **68919**
0.453 (g)(1) removed; (h) introductory text and (1) revised **68919**
0.457 (d)(1)(ii) revised; eff. 10–25–99 22561
0.482 Revised **68919**
0.491 Revised **68919**
0.601 (b) amended 2149
0.605 (e) amended 2150
1 Nomenclature change **54077**
Order **63612**

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Authority citation revised 67429, 71036
1.4 (f) amended 68919, 70047
1.41 Amended 68919
1.45 Introductory text amended; (a), (b) and (c) revised 68919
1.49 (e) amended 68920
1.50 Revised 68920
1.51 (f), (g) and (h) added 68920
1.52 Amended 68920
1.83 (b) amended 68920
1.84 Removed 68920
1.85 Revised 68920
1.106 (o) added 68920
1.115 Regulation at 63 FR 41446 eff. 10–5–98 52983
1.419 (e) revised 56091
1.720 Regulation at 63 FR 41446 eff. 10–5–98 52983
1.721 Regulation at 63 FR 41446 eff. 10–5–98 52983
1.724 Regulation at 63 FR 41446 eff. 10–5–98 52983
1.726 Regulation at 63 FR 41447 eff. 10–5–98 52983
1.727 Regulation at 63 FR 41447 eff. 10–5–98 52983
1.729 Regulation at 63 FR 41447 eff. 10–5–98 52983
1.730 Regulation at 63 FR 41448 eff. 10–5–98 52983
1.733 Regulation at 63 FR 41449 eff. 10–5–98 52983
1.767 (a)(5), (6), (7) and (e) revised; (a)(8) and (9) added 19061
1.821 Revised 68920
1.823 Removed 68920
1.825 Removed 68920
1.901 Revised 68921
1.902 Added 68921
1.903 Added 68921
1.907 Added 68921
1.911 Revised 68922
1.912 Removed 68922
1.913 Revised 68922
1.914 Removed 68923
1.915 Added 68923
1.916 Removed 68923
1.917 Added 68923
1.918 Removed 68923
1.919 Added 68923
1.921 Removed 68924
1.922 Removed 68924
1.923 Revised 68924
1.924 Revised 68924
1.925 Revised 68926
1.926 Revised 68927
1.927 Added 68927
1.929 Added 68927
1.931 Revised 68928
1.933 Revised 68929
1.934 Revised 68930
1.935 Added 68931
1.937 Added 68931
1.939 Added 68931
1.945 Added 68932
1.946 Added 68933
1.947 Added 68933
1.948 Added 68933
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1.951 Revised 68934
1.952 Removed 68934
1.953 Removed 68934
1.955 Revised 68934
1.956 Added 68935
1.957 Added 68935
1.958 Removed 68935
1.959 Removed 68935
1.961 Removed 68935
1.962 Removed 68935
1.971 Removed 68935
1.972 Removed 68935
1.973 Removed 68935
1.981 Revised 68935
1.1102 Revised 68935
1.1111 (b) amended; (c) added 68941
1.1152 Revised 68941
1.1306 Note 1 amended 19061
1.1307 (b)(1) Table 1 amended (OMB number pending) 65099
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1.2003 Amended 68942
1.2107 (e) added 68942
1.2111 (a) amended 68942
1.4000 Revised (effective date pending) 67429
Revised 71036
2 Nomenclature change 54077
Authority citation revised 58650
Order 63798
Rule confirmation 69562
2.103 Revised 58650
2.106 Table amended 2587, 2591
Table corrected 6138
2.960 Added 4995
2.962 Added 4996
2.1033 (b)(11) revised; eff. 10–25–99 22561
5 Revised 64202
11 Order 5950
13.5 Revised 68942

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13.9 (d), (e) and (f) redesignated as (e), (f) and (g); (b), (c) and new (f) introductory text revised; new (d) added 68942
13.13 (d), (e) and (f) removed; 68942
13.17 (b), (c) and (d) revised 68943
15.3 (v) revised; (dd) added; eff. 10–25–99 22561
15.37 (f) revised; (h) added; eff. 10–25–99 22561
15.101 (a) revised 4997
15.121 Revised; eff. 10–25–99 22561
20 Nomenclature change 54077
21.2 Amended 65100
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21.11 (f) and (g) redesignated as (e) and (f); heading, (a), (d) and new (e) revised 65100
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21.27 (d) added (OMB number pending) 65101
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21.30 (a)(4) revised 65101
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21.31 (e)(6)(iv) revised 65101
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21.42 (b)(3) revised; (c)(8) added (OMB number pending) 6510
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21.101 (a) Footnote 2 revised 65101
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.118 (c) revised 65101
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21.201 Revised (OMB number pending) 65101
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21.304 Revised (OMB number pending) 65102
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21.900 Revised (OMB number pending) 65102
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21.901 (a), (b), (d) and Note 1 revised; (g) added (OMB number pending) 65102
Regulation at 63 FR 65102 eff. date corrected to 2-8-99 4054
21.902 Heading, (b)(3), (4), (5)(i), (f)(1) and (2) revised; (b)(7) and (l) added 65102
Regulation at 63 FR 65102 eff. date corrected to 2-8-99 4054
21.903 (a) and (b)(1) revised; (d) added (OMB number pending) 65103
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21.904 Revised 65103
Regulation at 63 FR 65103 eff. date corrected to 2-8-99 4054
21.905 (b) revised; (d) added (OMB number pending) 65104
Regulation at 63 FR 65104 eff. date corrected to 2-8-99 4054
21.906 (a) and (d) revised (OMB number pending) 65104
Regulation at 63 FR 65104 eff. date corrected to 2-8-99 4054
21.907 Removed 65104
Regulation at 63 FR 65104 eff. date corrected to 2-8-99 4054
21.908 (b) redesignated as (a); heading and new (a) revised; (c), (d) and (e) removed; new (b) through (e) added 65104
Regulation at 63 FR 65104 eff. date corrected to 2-8-99 4054
21.909 Revised (OMB number pending) 65105
Regulation at 63 FR 65105 eff. date corrected to 2-8-99 4054
21.910 Heading, introductory text, (a) and (b) introductory text revised; (d) added 65109
Regulation at 63 FR 65109 eff. date corrected to 2-8-99 4054
21.913 Revised (OMB number pending) 65109
Regulation at 63 FR 65109 eff. date corrected to 2-8-99 4054
21.925 (b) revised 65112
Regulation at 63 FR 65112 eff. date corrected to 2-8-99 4054
21.938 (b) introductory text, (c)(4), (e) and (f) revised 65112
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21.940 Added (OMB number pending) 65112
Second 21.940 correctly redesignated as 21.949 4055

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21.949 Correctly redesignated from second 21.940 4055
22.99 Amended 68943
22.101 Removed 68943
22.103 Removed 68943
22.105 Removed 68943
22.106 Removed 68943
22.108 Removed 68943
22.115 Removed 68943
22.117 Removed 68943
22.119 Removed 68943
22.120 Removed 68943
22.121 Removed 68943
22.122 Removed 68943
22.123 Removed 68943
22.124 Removed 68943
22.125 Removed 68943
22.127 Removed 68943
22.128 Removed 68943
22.129 Removed 68943
22.130 Removed 68943
22.131 (b) introductory text, (1), (c) introductory text, (1) and (2) revised; (d)(3) removed 68943
22.132 Removed 68943
22.135 Removed 68943
22.137 Removed 68943
22.139 Removed 68943
22.142 Removed 68943
22.144 Removed 68943
22.145 Removed 68943
22.150 (d) introductory text amended 68944
22.163 Removed 68944
22.165 (b) and (e) revised 68944
22.213 Removed 68944
22.221 (b) revised 68944
22.315 Removed 68944
22.317 Amended 68944
22.323 (d) revised 68944
22.352 (c)(6) revised 68944
22.369 Removed 68944
22.411 (d)(1) revised 68944
22.413 (b)(1) revised 68944
22.415 (b)(1) revised 68944
22.417 (b)(1) revised 68944
22.503 (k) revised 68945
22.507 (c) revised 68945
22.529 (a) and (b) introductory text amended; (b)(1), (3) introductory text, (i) and (iii) revised 68945
22.531 (c) revised 68945
22.539 Introductory text revised 68945
22.577 (b) amended; (d) revised 68945
22.625 (b)(1) revised 68946
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22.657 (a), (d), (e)(1) and (f) revised 68947
22.659 (b)(1) and (c)(1) revised 68947
22.709 Introductory text, (b) introductory text, (1) and (2) revised (effective date pending in part) 68948
22.803 Introductory text, (a) introductory text, (b) introductory text, (1) and (2) revised (effective date pending in part) 68948
22.821 Removed 68948
22.859 Introductory text and table revised 68948
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22.875 (d)(7) removed (effective date pending in part) 68951
22.907 (b) revised 68951
22.911 (b) amended 68951
22.929 Revised (effective date pending in part) 68951
22.935 (a) amended 68951
22.936 (a) amended 68951
22.941 (b) amended; (c) revised 68951
22.944 Removed 68951
22.946 Introductory text and (b) removed; (a) introductory text revised; (a)(1) redesignated as (b) 68951
22.947 (b) introductory text amended 68951
22.953 (a) and (b) revised; (c) added 68951
22.966 Removed 68952
24 Order 63612
24.2 (b) amended 68952
24.5 Amended 68952
24.11 (a) revised 68952
24.18 Removed 68952
24.202 Introductory text amended 68952
24.307 Revised 68952
24.405 Removed 68952
24.406 Removed 68952
24.409 Removed 68952
24.411 Removed 68952
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24.444 Removed 68953
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24.806 Removed 68953
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24.811 Removed 68953
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24.825 Removed 68953
24.826 Removed 68953
24.827 Removed 68953
24.828 Removed 68953
24.829 Removed 68953
24.832 Removed 68953
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24.844 Removed 68953
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26.4 Amended 56577, 68953
26.11 (a) revised 68953
26.56 Added 71041
26.104 (e) revised 68953
26.203 Revised 56578
26.204 Removed 56578
26.205 Revised 56578
26.206 Revised 56578
26.207 Revised 56578, 68954
26.208 Revised 56578
26.209 (b)(2) revised 68954
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26.318 Removed 68954
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27.317 Removed 68955
27.319 Removed 68955
27.320 Removed 68955
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27.324 Removed 68955
27.325 Removed 68955
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36.601 Amended 64651
41 Removed 13916
42.10 Added 19725
42.11 Undesignated center heading revised 19725
42.11 (a) revised 19725
43.61 (c) revised 19061
51.5 Amended 23241
51.321 (c) and (f) revised; (h) and (i) added 23241
51.323 (b), (c), (h) and (i) revised; (k) added 23242

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63.11 Heading, (a), (c)(1), (2), (e)(1) and (2) revised; (b) and (f) amended; note removed....19062
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63.12 (c)(2) amended; (c)(5) redesignated as (c)(4); (a), (b), (c)(1), new (c)(4) and (d) revised....19063
63.14 (a) amended; (b) introductory text revised....19063
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63.21 Heading and (a) revised; (i) and (j) added....19065
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73.3597 (c)(1)(iii) added....70050
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87.33 Removed **68957**
87.35 Revised **68957**
87.37 (a) introductory text revised **68957**
87.45 Revised **68957**
87.51 (a) removed **68957**
87.79 Removed **68957**
87.137 (d) removed **68957**
87.187 (bb) and (cc) revised **68957**
87.215 (d) amended (effective date pending) **68957**
87.239 Revised **68957**
87.301 (b) revised **68957**
87.307 (d) introductory text revised **68958**
87.321 Revised **68958**
87.323 (b) amended **68958**
87.347 (b)(1), (2), (3) and (c) revised (effective date pending) **68958**
87.419 (b) revised **68958**
87.421 (b) revised **68958**
87.423 Revised **68958**
87.447 Introductory text revised **68958**
87.473 (a) removed; (b) and (c) redesignated as (a) and (b) **68958**
87.475 (a) amended **68958**
87.481 (a) introductory text and (4) revised **68958**
87.527 (b) revised **68958**
90 Authority citation revised **58651**
Waiver 6253
90.5 (b), (i)(1) and (m) revised **68958**
90.7 Amended **68958**
90.20 (c)(3) table amended; (d)(77) added **58651**
(f)(4) revised 10397
90.22 Revised **68958**
90.35 (c)(61)(iv) revised **68959**
(d)(7) added 10397
90.103 (c)(22) revised 10397
90.111 Revised **68963**
90.113 Removed **68963**
90.117 Removed **68963**
90.119 Revised **68963**
90.123 Removed **68963**
90.125 Removed **68963**
90.127 Revised **68963**
90.129 Introductory text revised; (c) and (e) removed **68963**
90.131 Removed **68963**
90.135 Revised **68963**
90.137 (a) introductory text revised **68963**
90.139 Removed **68963**
90.141 Removed **68964**
90.143 Removed **68964**
90.145 Removed **68964**
90.147 Removed **68964**
90.149 (a) revised; (b) removed **68964**
90.151 Removed **68964**
90.153 Removed **68964**
90.155 (d) revised **68964**
90.157 Revised **68964**
90.159 (a), (b) introductory text, (c), (d) and note revised **68964**
90.160 Removed **68965**
90.161 Removed **68965**
90.162 Removed **68965**
90.163 Removed **68965**
90.164 Removed **68965**
90.165 Introductory text, (b) introductory text, (1), (c) introductory text and (1) revised; (d)(3) removed **68965**
90.166 Removed **68965**
90.167 Revised **68965**
90.175 Introductory text, (b), (e) and (f) revised **68965**
(i)(5) revised 10397
90.177 Removed **68965**
90.187 (a) revised **68965**
90.203 (a) introductory text revised; (l) added **64208**
90.205 (l) revised **58651**
90.237 (b) removed **68965**
90.241 (c)(7) revised **68965**
90.248 Added **64208**
90.259 Revised **64209**
90.273 (c) revised **68965**
90.303 Revised **68965**
90.350 Revised **68965**
90.365 (a)(1), (b) and (d)(2) revised; (d)(1)(ii) removed; (d)(1)(iii) redesignated as (d)(1)(ii) **68966**
90.437 (c) revised; (d) removed **68966**
90.477 (a) introductory text and (d)(3) revised **68966**
90.501 Revised **68967**
90.521—90.551 (Subpart R) Added **58651**
90.523 Regulation at 63 FR 58651 eff. 1–20–98 3048
90.527 Regulation at 63 FR 58652 eff. 1–20–98 3048

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90.545 Regulation at 63 FR 58656 eff. 1–20–98 3048
90.551 Regulation at 63 FR 58658 eff. 1–20–98 3048
90.601 Revised 68967
90.605 Revised 68967
90.607 (b)(1) and (c)(1) revised; (d) removed 68967
90.609 (a) removed 68967
90.611 Removed 68967
90.619 (d)(5) amended 68968
90.621 Table 1 amended; (b)(3), (e)(5) and (f)(1) revised 68968
90.625 (a) amended (effective date pending) 68969
90.629 (c) amended 68969
90.631 (d) amended; (f) revised 68969
90.633 (c) and (d) revised 10397
90.635 Table 1 revised 68969
90.645 (g) and (h) amended 68970
90.651 Revised 68970
(c) revised 10397
90.655 Amended 68970
90.657 Removed 68970
90.658 (a) revised 68970
90.659 Removed 68970
90.683 (a)(4) revised; (a)(5) removed (effective date pending) 68970
90.687 Amended 68970
90.693 (b) and (c) revised 68970
90.701 (a) revised 68971
90.705 Revised 68971
90.711 (a) introductory text revised; (a)(5) removed 68971
90.733 (h)(2) revised 68971
90.737 (d) and (e) revised 68971
90.741 Revised 68971
90.751 Revised 68973
90.753 (d) and (e) revised 68973
90.755 Removed 68973
90.763 (b)(4) revised (effective date pending) 68973
90.767 (c) revised 68973
90.769 (c) revised 68973
90.911 (b)(1) amended 68973
90.1013 Revised 68973
90.1019 (d) removed; (e) redesignated as (d); heading, (a), (b), (c) and new (d) revised 68973
90.1023 (b) introductory text revised 68974
95 Nomenclature change 54077
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95.1—95.7 Undesignated center heading removed 68974
95.5 Revised 68974
95.7 (b) amended 68974
95.21—95.61 Undesignated center heading removed 68974
95.71—95.89 Undesignated center heading removed 68974
95.101—95.143 Undesignated center heading removed 68974
95.171—95.181 Undesignated center heading removed 68974
95.21 Revised 68974
95.23 (b) revised; (d) removed 68974
95.25 (a) introductory text, (d)(2)(i) and (f) revised; (c) removed 68974
95.29 (a), (b), (e) introductory text and (2) revised; (c) and (d) removed 68974
95.31 Removed 68975
95.33 (b) removed 68975
95.35 Removed 68975
95.37 Removed 68975
95.39 Removed 68975
95.41 Removed 68975
95.42 Removed 68975
95.43 Removed 68975
95.45 Revised 68975
95.47 Removed 68975
95.49 Removed 68975
95.51 Revised 68975
95.53 Removed 68975
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95.71 Removed 68975
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95.83 Removed 68975
95.85 Removed 68975
95.87 Removed 68975
95.89 Removed 68975
95.101 (a) revised 68975
95.103 Revised 68975
95.105 Revised 68975
95.107 Removed 68975
95.109 Removed 68975
95.111 Removed 68975
95.113 Removed 68975
95.115 Amended 68975
95.117 Revised 68975
95.119 (a) introductory text, (b) and (d) revised 68975

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95.121 Removed 68975
95.123 Removed 68975
95.125 Removed 68975
95.127 Removed 68975
95.129 Revised 68975
95.131 Removed 68975
95.133 Removed 68975
95.135 (b) removed; (d) revised 68976
95.137 Removed 68976
95.139 (b) removed; (c) redesignated as (b) 68976
95.171 Revised 68976
95.173 Removed 68976
95.175 Removed 68976
95.177 Removed 68976
95.179 (a) introductory text, (b) introductory text and (1) revised; (f) removed 68976
95.181 (f) revised; (i) and (j) removed 68976
95.183 Added 68976
95.1—95.181 (Subpart A) Appendix A amended; Appendix B removed 68976
95.192 (b) and (c) removed 68976
95.217 (b) revised 68976
95.225 Revised 68976
95.419 (b) revised 68976
95.428 Revised 68976
95.801 Revised 68977
95.811 (a) revised; (b) amended 68977
95.815 Revised 68977
95.816 (c)(2)(ii) revised 68977
95.817 Removed 68977
95.819 (c) amended 68977
95.821 Removed 68977
95.833 (b) introductory text amended 68977
95.839 Removed 68977
95.840 Removed 68977
95.841 Removed 68977
97 Nomenclature change 54077
97.3 Amended 68977
97.5 (a) introductory text, (b), (c) and (d) revised; (e) added 68977
97.7 Revised 68978
97.9 Revised 68978
97.13 (a) revised; (b) and (c)(2) amended 68978
97.15 Revised 68978
97.17 Revised 68978
97.19 (a), (b), (c) and (d)(1) revised 68978
97.21 Revised 68979
97.23 Revised 68979
97.25 Revised 68979
97.27 Heading and (a) introductory text revised 68979
97.29 Revised 68979
97.107 Revised 68979
97.119 (g) revised 68980
97.201 (a) revised 68980
97.203 (a) revised 68980
97.205 (f) and (h) removed 68980
97.207 (g) introductory text, (h) and (i) revised 68980
97.301 (a) introductory text and (b) introductory text revised 68980
97.505 (a)(10) revised 68980
97.509 (i) revised 68980
97.519 (b) introductory text, (1), (2) and (3) revised 68981
100 Authority citation revised 5956
100.5 Added 5956
101 Rule confirmation 69562
101.1 (a) and (b) redesignated as (b) and (c); new (a) added 68981
101.3 Amended 68981
101.5 (a) and (c) removed; (b) revised 68981
101.9 Removed 68981
101.11 Removed 68981
101.13 Removed 68981
101.15 Removed 68981
101.19 Removed 68981
101.21 (a), (c) and (d) removed; (b), (e) and (g) revised 68981
101.23 Revised 68981
101.25 Removed 68981
101.27 Removed 68981
101.29 Removed 68981
101.31 (a), (c), (d) removed; (b) and (e) redesignated as (a) and (b); heading and new (a)(1)(i), (2), (3) introductory text, (vii), (6) and (b)(1)(v) revised; new (b)(1)(vi) and (3) amended 68981
101.33 Removed 68982
101.35 Removed 68982
101.37 Removed 68982
101.39 Removed 68982
101.41 Removed 68982
101.43 Removed 68982
101.45 (b) introductory text, (d), (f) introductory text, (1), (2) and (4) revised; (h) removed 68982
101.47 Removed 68982
101.51 (a)(3) revised 68982
101.53 Removed 68982

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101.55 (b) removed 68982
101.56 (a)(2)(ii) amended; (a)(3) removed 68982
101.57 Removed 68982
101.59 Removed 68982
101.61 Revised (effective date pending) 68982
101.63 (b), (d) and (e) revised 68983
101.65 Revised 68983
101.103 (d)(1) amended 68983
101.105 (c)(3) introductory text amended 68983
101.121 Removed 68983
101.123 Removed 68983
101.127 Removed 68983
101.129 (b) removed 68983
101.205 (a) and (c) revised 68983
101.305 (a), (b), (c) and (d)(1) revised 68983
101.413 (a) introductory text revised 68983
101.503 Amended 68983
101.701 (c) revised (effective date pending) 68983
101.705 Revised 68984
101.815 (a)(2) and (b) revised 68984
101.817 (a) introductory text revised 68984
101.1009 (a)(1)(iii) and (b) revised 68984
101.1015 Removed 68984
101.1017 (a), (b)(2) and (c)(2) revised 68984
101.1106 Removed 68984

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TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular No. 97-08 58586
Small entity compliance guide 58608, 70306
Federal Acquisition Circular No. 97-10 70264
Federal Acquisition Circular No. 97-11 10530
Small entity compliance guide 10552
1.106 Table amended (OMB numbers); interim 58588
Table amended (OMB numbers) 58602, 70292
Table amended (OMB numbers) 10532, 10549
2.101 Amended; interim 58591
4.203 Revised; interim 58588
4.500—4.502 (Subpart 4.5) Revised; interim 58592
4.603 (b) revised 10532
4.900—4.905 (Subpart 4.9) Revised; interim 58589

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5.101 (a)(2)(ii) revised; (a)(2)(iv) amended; interim 58592
5.102 (a)(2) and (7) revised; interim 58592
5.202 (a)(13) revised; (a)(14) removed; (a)(15) redesignated as (a)(14); interim 58592
(a)(2) through (12) and (14) amended; interim 58593
5.203 (b) revised; interim 58592
Introductory text, (a) introductory text, (c), (d), (e) and (g) amended; interim 58593
5.205 (d)(2) amended; interim 58593
5.207 (c)(2)(xi), (e)(3) and (h) amended; interim 58593
(d) revised; interim 70266
(c)(2)(xviii) added; (d) revised; interim 10536
5.301 (b)(7) revised; interim 58593
5.503 (a)(2) revised; interim 58593
6.205 Added; interim 70267
6.302-3 (a)(2)(iii) revised 58594
(a)(2) introductory text, (i) and (ii) amended 58602
6.302-5 (b)(6) added; interim 70267
7.105 (b)(1) amended; interim 70267
8.404 (a) amended; interim 70267
(a) revised; interim 10536
9.104-3 (b) amended; interim 70267
11.703 (a) revised 10538
12.301 (b)(2) amended; interim 70267
12.303 (b)(1) amended; interim 10536
12.503 (b)(3) revised 10532
13.003 (c) removed; (d) through (i) redesignated as (c) through (h); new (f) and new (h)(3) revised; interim 58593
(b)(2) redesignated as (b)(3); new (b)(2) added; interim 70267
13.005 (a)(9) added; interim 70267
13.102 (a) introductory text revised; interim 58593
13.104 (b) amended; interim 58593
13.105 (a)(1) revised; interim 58593
13.106-1 (c)(1)(ii) and (f) revised; interim 58593
13.106-2 (b)(3) introductory text revised; interim 58593
13.106-3 (e) added; interim 58589
(c) revised; interim 58593
13.201 (d) amended 10539
13.301 (b) amended 10539
13.302-1 (e) revised 10540
13.307 (b)(1) amended; interim 58593
14.201-6 (b)(2) removed; interim 58589
(k) removed 10532
14.205-1 (a) amended; interim 58594
14.206 Removed; interim 70267
14.400 Amended; interim 58594
14.405 (d)(2) amended; (e) removed; (f) redesignated as (e) 10532
14.407-4 (a) amended 58602
14.502 (b)(5) redesignated as (b)(6); new (b)(5) added; interim 70267
15.209 (d) removed; interim 58589
15.403-1 (c)(4) revised 10545
15.404-1 (a)(7) amended 58602
15.408 (g) revised 58596
15.503 (a)(2) revised; interim 70267
16.504 (a) introductory text and (1) amended; (a)(4)(ii) revised 70282
16.505 (a)(6)(viii) redesignated as (a)(6)(ix); new (a)(6)(viii) added 10540
19.000 (a)(3) and (8) revised; interim 70268
(a)(8) and (9) amended; (a)(10) added; interim 10536
19.001 Amended; interim 70268, 71723
Amended; interim 10536
19.102 (f)(4) amended 58602
(g) amended 70292
(g) redesignated as (h); new (g) added; interim 10536
19.201 (b) amended 56738
(a) and (c) amended; (d)(4), (6), (7)(ii), (8) and (9) revised; interim 70268
19.202 Amended; interim 70268
19.202-2 Introductory text revised; (a) amended; interim 70268
19.202-4 Introductory text revised; interim 70268
19.202-5 (a) and (b) revised; interim 70268
19.202-6 Introductory text removed; (a) revised; interim 70268
19.301—19.306 (Subpart 19.3) Heading revised; interim 70268
19.301 (d) amended; interim 70268
19.306 (b) amended 56735
Redesignated as 19.307; new 19.306 added; interim 70269

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19.307 Redesignated from 19.306; heading and (a) revised; interim 70269
19.402 (c)(1) revised; interim 70269
19.501 (a) and (b) amended; (c) through (g) redesignated as (d) through (h); new (c) added; new (d) and new (h) revised; interim 70269
19.502–1 Revised; interim 70270
19.502–2 Heading revised; (a), (c) and (d) amended; interim 70270
(a) amended; interim 10536
19.502–4 (a) amended; interim 70270
19.502–5 (b), (c) and (g) amended; interim 70270
(e) amended 70292
19.503 Heading revised; (a), (b), (c) introductory text and (d) amended; interim 70270
19.507 Heading revised; (a) amended; interim 70270
19.701—19.708 (Subpart 19.7) Heading revised; interim 70270
19.702 Introductory text and (b)(4) revised; interim 70270
19.703 (a) introductory text and (1) revised; (b) amended; interim 70270
(b) revised; interim 71723
19.704 (a)(1), (2), (3), (6), (8), (9) and (11) revised; (b) amended; interim 70271
19.705–2 (d) amended; interim 70271
19.705–4 (b), (c), (d)(1) and (6) amended; (d)(5) revised; interim 70271
19.705–6 (a) and (b) revised; interim 70271
19.705–7 (a) and (f) introductory text revised; (d) amended; interim 70272
19.706 (b) and (c) revised; interim 70272
19.708 Heading revised; (a) introductory text, (c)(1), (2) and (3) amended; (b) revised; interim 70272
19.800 (d) added; interim 70272
19.803 (c) amended; interim 70272
19.804–2 (a)(12) revised; interim 70272
19.901—19.905 (Subpart 19.9) Added; interim 10536
19.1004 Amended 58602
19.1006 (b)(1) amended; interim 70272
19.1102 (b) revised; interim 70272
19.1202–2 (b)(1) revised; interim 70272
19.1202–4 (c) added; interim 71723
19.1301—19.1308 (Subpart 19.13) Added; interim 70272
22.800 Amended 70283
22.801 Revised 70283
22.802 (a) and (b) amended 70283
(b) and (c) amended 70285
22.803 (b) amended; (d) revised 70283
(a)(1), (2) and (b) amended 70285
22.804–1 Revised 70284
22.804–2 (b) amended 70284
22.805 (a)(4) through (8) redesignated as (a)(5) through (9); (a) introductory text, (1), (2), (3) and new (5) introductory text, (ii), (v) and (6) through (9) revised; new (a)(4) added; (b) amended 70284
22.806 Revised 70284
22.807 (a)(1), (b)(1), (3) and (6) amended; (a)(2), (b)(5), (c) and (d) introductory text revised; (d)(2) removed 70284
(a) introductory text, (b)(2), (3) and (4) amended 70285
22.808 Amended 70285
22.809 Introductory text, (a) and (d) amended 70285
Introductory text, (c) and (d) amended 70285
22.810 (a), (c) and (e) revised; (b) and (f) amended; (g) removed; (h) redesignated as (g) 70285
22.1200 Amended 10546
22.1201 Amended 10546
22.1202 Amended 10546
22.1203–1 (b)(1) amended 10546
22.1400—22.1408 (Subpart 22.14) Regulation at 63 FR 34074 confirmed 58599
22.1400 Regulation at 63 FR 34074 confirmed 58599
22.1401 Regulation at 63 FR 34074 confirmed 58599
22.1402 Regulation at 63 FR 34074 confirmed 58599
22.1403 Regulation at 63 FR 34074 confirmed 58599
22.1404 Regulation at 63 FR 34074 confirmed 58599
22.1405 Regulation at 63 FR 34074 confirmed 58599
22.1406 Regulation at 63 FR 34074 confirmed 58599

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22.1407 Regulation at 63 FR 34074 confirmed 58599
22.1408 Regulation at 63 FR 34074 confirmed 58599
24.202 (c) added 58594
25.402 (b) amended 10549
26.103 (a), (b) and (e) amended 10532
26.104 (a) amended; interim 70274
27.404 (d)(2) and (e)(3) amended 10532
27.409 (g) amended 10532
31.001 Amended 58596
31.201–5 Amended 58596
31.201–6 (j)(1) through (6) revised 58597
31.205–1 (d) revised 10547
31.205–5 Removed 58599
31.205–6 Regulation at 63 FR 9067 confirmed; (k) heading and (p)(2)(ii) revised; (p)(2)(iv) added 70287
(p) introductory text amended; (p)(2)(ii)(A), (B) and (C) redesignated as (p)(2)(ii)(A)(*1*), (*2*) and (*3*); new (p)(2)(ii)(A) introductory text and (B) added 10548
31.205–34 (a) introductory text and (b) revised; (c) removed 10547
31.205–47 (b) introductory text and (e)(3) revised; (c) redesignated as (c)(1); (c)(2) added 58600
31.1103 (a) amended; interim 58594
32.703–3 Revised 58601
32.705–1 (b) revised 58603
32.805 (a) revised 10533
32.905 (a) introductory text revised 58602
32.908 (a)(3) and (c)(3) added 58602
(a)(3) and (c)(3) amended 70292
32.1100—32.1110 (Subpart 32.11) Revised 10540
33.104 (e) amended 58603
33.201 Amended 58594
33.204 Amended 58595
33.207 (a) revised 58595
33.214 (a)(3) and (4) amended; (a)(5) removed; (b) revised; (f) and (g) added 58595
36.601–4 (a)(4) amended 58603
37.106 (b) revised 58601
37.602–3 Amended 70292
41.103 (a)(2) and (3) amended 58603
41.201 (e) amended 10533
42.203 Amended 70292
44.302 Revised 70288
44.303 Introductory text revised 70288
46.202–4 Revised 70289
46.311 Revised 70289
46.402 (e) and (g) removed; (f) and (h) redesignated as (e) and (f); new (e) amended 70290
48.104–3 Regulation at 63 FR 34079 confirmed 70291
52.204–3 Revised; interim 58589
52.204–5 Revised 10533
52.211–16 Introductory text revised 10538
52.212–3 Amended; interim 58590, 70274
Amended 70285
Amended 10533
52.212–4 Amended 10542
52.212–5 Regulation at 63 FR 34075 confirmed 58599
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52.213–4 Regulation at 63 FR 34075 confirmed 58599
Amended 10542
52.214–2 Removed; interim 58590
52.214–17 Removed 10533
52.214–21 Amended; introductory text revised 10533
52.215–4 Removed; interim 58590
52.215–15 Revised 58598
52.219–1 Amended; interim 70274
Amended 10533
52.219–2 Introductory text amended; interim 70274
52.219–3 Added; interim 70274
52.219–4 Added; interim 70275
52.219–5 Added; interim 10537
52.219–8 Revised; interim 70275
Amended; interim 71723
Amended; interim 3196, 10549
52.219–9 Amended; interim 70276
Amended 70293
52.219–10 Amended; interim 70277
52.219–16 Amended; interim 70277
52.219–21 Amended 10533
52.219–22 Introductory text amended; interim 70277
52.219–25 Amended; interim 71723
52.222–21 Revised 70285
52.222–22 Amended; introductory text revised 70286
52.222–23 Amended; heading and introductory text revised 70286

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52.222–24 Revised **70286**
52.222–25 Introductory text revised **70286**
52.222–26 Amended; introductory text revised **70286**
52.222–27 Amended; introductory text revised **70286**
52.222–28 Removed **70286**
52.222–29 Revised **70286**
52.222–36 Regulation at 63 FR 34075 confirmed **58599**
52.222–37 Amended **70293**
52.222–50 Amended 10546
52.226–1 Amended; interim **70277**
Amended 10533
52.227–15 Revised 10533
52.228–8 Amended; introductory text revised 10534
52.228–9 Revised 10534
52.232–12 Amended; introductory text revised 10534
52.232–33 Revised 10542
52.232–34 Revised 10543
52.232–35 Added 10544
52.232–36 Added 10544
52.232–37 Added 10544
52.232–38 Added 10544
52.233–1 Amended **58595**
52.241–1 Revised 10534
52.244–6 Amended **58603**
52.246–11 Revised **70289**
52.247–48 Revised **70292**
53.219 (a) revised; (b) amended; interim **70277**
53.228 (h) and (i) revised **58603**
(a), (b), (c), (e), (j) and (m) revised **70293**
(n) revised 10549
53.301–24 Revised **70293**
53.301–25 Revised **70296**
53.301–25A Revised **70298**
53.301–28 Revised **70300**
53.301–273 Revised **58603**
53.301–274 Revised **58605**
53.301–275 Revised **70302**
53.301–294 Revised; interim **70277**
53.301–295 Revised; interim **70280**
53.301–1416 Revised **70304**
53.301–1418 Revised 10549

Chapter 2—Department of Defense (Parts 200—299)

201.402 (1) introductory text and (i) revised; (3)(iii) amended 8727
203.570 Revised 14398
203.570–5 Revised 14398
204.101 (a)(i) revised **69006**
204.670–2 (c) revised 2595
204.804–1 Amended 2596
206.302–4 Revised **67803**
208.405–2 Revised 2596
208.7204 (a) revised 2596
208.7305 (a)(3) revised 2596
209.104–1 Regulation at 63 FR 14837 confirmed **64427**
209.104–70 Regulation at 63 FR 14837 confirmed **64427**
209.405–2 Regulation at 63 FR 14837 confirmed **64427**
209.409 Regulation at 63 FR 14837 confirmed **64427**
211.201 (b) amended; (d) introductory text revised 8727
211.273–2 (b) revised 14399
211.273–3 Revised 14399
212.301 (f)(ii) amended; (f)(v) added; interim 8728
212.503 (c)(ii) amended **55040**
213 Regulation at 63 FR 33587 confirmed **64427**
Revised 2596
215 Revised **55041**
215.304 Revised; interim **64428**
215.404–4 (b)(1) introductory text, (c)(2) introductory text, (A) and (B) revised **63799**
215.404–72 Revised **63799**
215.404–75 Redesignated as 215.404–76; new 215.404–75 added **63800**
215.404–76 Redesignated from 215.404–75 ..... **63800**
216.203–4 (a) introductory text amended; (a)(i) and (b)(i) revised 2597
217.401 Revised; interim **64429**
217.500 Added 14400
217.7103–3 (b) revised **55052**
(b) correctly revised **56290**
217.7103–4 Revised **55052**
217.7302 (b) revised 2597
217.7404–3 (a) introductory text and (1) revised **67803**
217.7404–5 (b) revised **67804**
217.7406 (b) amended **55052**
217.7504 (a)(2) revised 2598
219.001 Revised; interim **64429**
219.201 (c) and (d) redesignated as (d) and (e); new (d)(9)(A) revised 2598

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219.702 Regulation at 63 FR 14640 confirmed **64427**
219.708 (c)(1) revised; (c)(2) removed; interim **64429**
219.800 Regulation at 63 FR 33587 confirmed **64427**
219.804–2 Regulation at 63 FR 33587 confirmed **64427**
219.804–3 Regulation at 63 FR 33587 confirmed **64427**
219.805 Regulation at 63 FR 33588 confirmed **64427**
219.805–2 Regulation at 63 FR 33588 confirmed **64427**
219.806 Regulation at 63 FR 33588 confirmed **64427**
219.808 Regulation at 63 FR 33588 confirmed **64427**
219.808–1 Regulation at 63 FR 33588 confirmed **64427**
219.811 Regulation at 63 FR 33588 confirmed **64427**
219.811–1 Regulation at 63 FR 33588 confirmed **64427**
219.811–2 Regulation at 63 FR 33588 confirmed **64427**
219.811–3 Regulation at 63 FR 33588 confirmed **64427**
219.812 Regulation at 63 FR 33588 confirmed **64427**
219.1203—219.1204 (Subpart 219.12) Added; interim **64429**
223.570–4 (b) revised 2598
223.7000—223.7002 (Subpart 223.70) Removed **67804**
225.105 (5)(ii)(B) revised 2598
225.408 (a)(ii) and (iv) amended 8730
225.770–3 (a) revised 2598
225.771 Added; interim 8728
225.771–1 Added; interim 8728
225.771–2 Added; interim 8728
225.771–3 Added; interim 8728
225.771–4 Added; interim 8728
225.872–3 (g) amended **55052**
225.872–6 (c) introductory text amended **55052**
225.7002–2 (k) added; interim 2599
225.7005 Regulation at 63 FR 43888 confirmed **64427**
225.7007–4 Regulation at 63 FR 43888 confirmed **64427**
225.7010–3 Regulation at 63 FR 43888 confirmed **64427**
225.7016–1 Regulation at 63 FR 43888 confirmed **64427**
225.7016–2 Regulation at 63 FR 43888 confirmed **64427**
225.7016–3 Regulation at 63 FR 43888 confirmed **64427**
225.7019–1 Regulation at 63 FR 43888 confirmed **64427**
225.7019–3 Regulation at 63 FR 43888 confirmed **64427**
225.7022–1 Regulation at 63 FR 43888 confirmed **64427**
225.7022–2 Regulation at 63 FR 43888 confirmed **64427**
225.7022–3 Regulation at 63 FR 43888 confirmed **64427**
225.7303–2 (c) introductory text amended 8729
226.7007 (b) revised; interim **64429**
227.7203–10 (a)(1) amended **55052**
228.370 (f) revised **69006**
230 Heading revised 8727
230.7002 (b) amended **55052**
230.7004–1 Heading and (a) amended **55052**
230.7103 Amended **55052**
231.205–6 Regulation at 63 FR 63036 confirmed **64427**
231.205–18 Revised 8729
231.205–70 Regulation at 63 FR 7309 confirmed **64427**
(f) added 18828
232.501 Revised 8731
232.501–1 (a)(iii) removed 8731
232.501–2 Amended 8731
232.502–1–71 Removed 8731
232.502–4–70 (b) removed; (c) redesignated as (b) 8731
232.905 (f)(6) revised **69007**
232.1101—232.1103 (Subpart 232.11) Removed 18829
235.006 Revised; interim 18830
235.006–70 Added; interim 18830
235.015–71 Removed **69007**
235.7000—235.7003–4 (Subpart 235.70) Regulation at 63 FR 34605 confirmed **64427**
237.7302 Amended 2598
236.102 Regulation at 63 FR 11538 confirmed **64427**
236.274 Regulation at 63 FR 11538 confirmed **64427**
236.570 Regulation at 63 FR 11538 confirmed **64427**
236.601 (1)(ii) amended **69008**
236.602–1 (a)(1)(6)(C) revised; interim **64430**
237.106 Revised **67805**

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237.270 Correctly removed; CFR correction **54078**
237.270–1 Correctly removed; CFR correction **54078**
237.270–2 Correctly removed; CFR correction **54078**
237.270–3 Correctly removed; CFR correction **54078**
237.270–4 Correctly removed; CFR correction **54078**
237.7204 Amended **55052**
242.203 (a)(ii)(P) and (Q) amended; (a)(i)(R) removed 2598
242.771 Revised; interim 8729
242.771–1 Revised; interim 8729
242.771–2 Revised; interim 8729
242.771–3 Revised; interim 8729
242.7205 (b)(4)(iv) amended **55052**
246.370 (b)(1) revised 2598
247.271–3 (b)(1) and (2)(iv)(B) revised 2598
247.572–2 (f)(3)(i) amended; (f)(3)(ii) revised **55052**
247.573 (a), (b) and (c) revised 2598
252.203–7001 Amended; heading revised 14398
252.209–7001 Regulation at 63 FR 14837 confirmed **64427**
252.209.7004 Regulation at 63 FR 14837 confirmed **64427**
252.211–7005 Revised 14399
252.212–7001 Amended; interim **64430**
252.215–7000 Introductory text amended **55052**
252.215–7002 Amended; introductory text revised **55052**
252.217–7027 Amended **55052**
252.219–7005 Amended **55052**
Removed; interim **64430**
252.219–7009 Regulation at 63 FR 33588 confirmed **64427**
252.219–7010 Regulation at 63 FR 33588 confirmed **64427**
252.219–7011 Regulation at 63 FR 33588 confirmed **64427**
252.223–7005 Removed **67804**
252.225–7007 Amended 8730
252.225–7012 Amended; interim 2599
252.225–7016 Regulation at 63 FR 43889 confirmed **64427**
252.225–7017 Added; interim 8728
252.225–7021 Amended 8730
252.225–7029 Regulation at 63 FR 43889 confirmed **64427**
252.228–7006 Amended **69006**
252.232–7003 Removed 8731
252.232–7004 Introductory text revised 8731
252.232–7009 Removed 18829
252.236–7010 Regulation at 63 FR 11544 confirmed **64427**
252.236–7012 Regulation at 63 FR 11544 confirmed **64427**
252.243–7000 Amended **55052**
253 Note removed **69007**
Amended 8727
253.204–70 (b)(6)(i) introductory text amended **55052**
(b)(5)(ii)(A), (B)(*1*), (13)(i)(A), (B) introductory text, (C), (E), (G), (iv)(I), (14)(iii), (iv), (d)(5)(vi), (e)(1), (2) and (3) amended **60217**
Regulation at 63 FR 33589 confirmed **64427**
(d)(5)(iv)(A)(*2*) amended 2598
253.204–71 Regulation at 63 FR 33589 confirmed **64427**
(a)(3) introductory text, (g)(2)(ii)(C) and (i)(1) revised 2598
253.213 (e) redesignated as (f); heading and new (f) introductory text and (1) revised 2599
253.213–70 (e) amended 2600
253.215–70 (a), (b)(4), (c)(12) and (14) revised; (b)(7) removed; (b)(8) and (9) redesignated as (b)(7) and (8); (c)(15) and (16) amended **55052**
(b)(4) amended **63800**
Chapter 2 Appendix I amended; interim **64430**
Appendix G amended **71231**
Appendix B amended 8726

Chapter 5—General Services Administration (Parts 500—599)

511.204 (c) revised; interim 4789
516.505 (a) revised; interim 4789
542.302 (b)(5) revised; interim 4789
552.216–73 Amended; interim 4789
552.219–72 Revised 15306
552.219–73 Revised 15306
552.219–74 Revised 15307
552.238–72 Amended; interim 4789
552.238–76 Amended; interim 4789
552.243–72 Amended; interim 4789

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Chapter 7—Agency for International Development (Parts 700—799)

701.105 (a) amended; (c) revised 16648
703.104–5 Revised 16648
703.104–10.1 Added 16648
705.502 Added 5006
706.501 Amended 5006
709.503 Amended 5006
709.507–2 (c) revised 5006
715.303–70—715.370–2 Designated as Subpart 715.3 16648
715.303–70 Redesignated from 715.604–70; (b)(3) revised 16648
715.305 Added 16648
715.370 Added 16649
715.370–1 Redesignated from 715.613–70 16648
Corrected 19217
715.370–2 Redesignated from 715.613–71 16648
715.413–2 (Subpart 715.4) Removed 16648
715.502 Redesignated as 715.602 16648
715.504 Redesignated as 715.604 16648
715.506 Removed 16648
715.506–1 Removed 16648
715.602—715.604 Designated as Subpart 715.6 16648
715.602 Redesignated from 715.502 16648
(b) and (c) revised 16649
715.604 Redesignated as 715.304; new 715.604 redesignated from 715.504 16648
Heading and (a) revised; (c) added 16649
715.604–70 Redesignated as 715.303–70 16648
715.613–71 Redesignated as 715.370–2 16648
716.406 Added 5007
722.805–70 (Subpart 722.8) Revised 5007
(e) corrected 18481
731.205–6 (b) added; (d) removed 5008
731.205–71 Added 16649
731.371 (b)(1) revised 5008
732.402 (e)(1) revised 5008
732.406–73 Existing text designated as (a); (b) added 5008
(b) corrected 18481
745 Added 5008
747 Added 5008
752.204–2 Amended 5008
752.209–71 Introductory text revised 5008
752.216–70 Added 5008
752.231–71 Added 16649
752.245–71 Amended 5009
752.247–70 Added 5009
752.7003 Amended 5009
752.7005 Added 5010
(b)(2)(iv) corrected 18481
752.7018 Revised 5010
752.7019 Revised 5011

Chapter 8—Department of Veterans Affairs (Parts 800—899)

801.000 Amended **69217**
801.101 (a) amended **69217**
801.102 Redesignated as 801.103 ..... **69217**
801.103 Redesignated as 801.104; new 801.103 redesignated from 801.102 and amended **69217**
801.104 Redesignated from 801.103; (a) amended **69217**
801.301–70 (b)(2) amended **69217**
801.303 Heading revised **69217**
801.601—801.690–6 (Subpart 801.6) Heading revised **69217**
801.602–3 (a)(2) and (b)(2) amended **69217**
801.603–71 (b) amended; (c), (d) and (e) removed **69217**
801.670–1 Amended **69217**
801.670–2 (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2) **69217**
801.670–3 (a) amended **69217**
801.670–4 (a)(1), (2), (b)(1), (2) and (c) amended **69217**
801.670–5 (a)(3) through (6), (8), (9) and (b) amended **69218**
801.680 (c) and (d) amended **69218**
801.690–3 (c) introductory text, (1) and (2) amended **69218**
801.690–4 (c)(1)(i) amended; (c)(3)(ii) revised **69218**
801.690–6 (b) amended **69218**
803.101–3 (b) amended **69218**
803.405 Redesignated from 803.409 ..... **69218**
803.409 Redesignated as 803.405 ..... **69218**
803.7000 Introductory text amended **69218**
805.205 Amended **69218**
806.302–3 Amended **69218**

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806.302–5 (a), (b), (c) introductory text, (1), (2), (4), (5) and (6) amended; (c)(3) revised 69218
806.304 (a)(1)(i) and (2)(i) amended 69218
806.501 (b) amended 69218
806.570 Heading revised; introductory text amended 69218
808.001 (a)(4) amended 69219
808.401 Amended 69219
808.404–1 (a) and (b) amended 69219
808.404–3 Amended 69219
814.201 (a) amended 69219
814.304–4 Amended 69219
814.403 Amended 69219
814.404–1 (b) amended 69219
814.404–70 Amended 69219
814.406 Redesignated as 814.407 69219
814.406–3 (a), (b) and (c) amended 69219
814.406–4 (a), (b) and (c) amended 69219
814.407 Redesignated as 814.408; new 814.407 redesignated from 814.406 69219
814.407–70 Redesignated as 814.408–70 69219
814.407–71 Redesignated as 814.408–71 69219
814.408 Redesignated as 814.409; new 814.408 redesignated from 814.407 69219
814.408–70 Redesignated from 814.407–70 69219
814.408–71 Redesignated from 814.407–71 69219
814.409 Redesignated from 814.408 69219
817.102 Redesignated as 817.105 69219
817.102–1 Redesignated as 817.105–1 69219
817.105 Redesignated from 817.105 69219
817.105–1 Redesignated from 817.105–1; (b)(2) and (c) amended 69219
819 Authority citation revised 69219
819.201 (a), (b) and (d) amended 69219
819.202–5 (c) introductory text, (g) and (h) amended; (c)(6) removed; (c)(7) through (12) redesignated as (c)(6) through (11) 69219
819.202–70 Introductory text, (a), (c), (j) and (k) amended 69220
819.502–2 (b) removed; (c) and (d) redesignated as (b) and (c) 69220
819.502–3 Revised 69220
819.602–3 (a) through (d) amended 69220
819.801 (b) and (d) amended 69220
819.804 Amended; heading revised 69220
819.806 Redesignated from 819.806–3 and heading revised 69220
819.806–3 Redesignated as 819.806 69220
819.807–70 Amended; heading revised 69220
819.7004 Amended 69220
822.478 (a), (b) and (c) amended 69220
825 Authority citation revised 69220
825.102–70 (b) and (c) amended 69220
825.105 Amended 69220
825.202–70 (b) and (c) amended 69220
825.203 Amended 69220
825.302–70 Amended 69220
825.701 Removed 69220
825.703 Amended 69220
825.870 Amended 69220
825.901 Redesignated from 825.902; heading revised; existing text designated as (a) and amended; (b) added 69220
825.902 Redesignated as 825.901 69220
825.904 Removed 69221
828.106–6 Amended 69221
828.7100 (a) and (c) amended 69221
828.7101 (b) amended 69221
828.7102 (a) introductory text, (1) and (b) introductory text amended 69221
831 Authority citation revised 69221
831.7001–4 (a) and (b)(2) amended 69221
831.7001–5 (b) amended 69221
832 Authority citation revised 69221
832.502–2 Amended 69221
832.805–70 (b) amended 69221
833.104 (a)(1), (2), (b) and (c) amended 69221
833.212 (a) and (b)(4) amended 69221
836.208 Amended 69221
836.209 Amended 69221
836.602–2 (a) and (b) amended 69221
838.606–72 Amended 69221
837.203—873.271–4 (Subpart 837.2) Heading revised 69221
837.203 Revised 69221

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837.270 (a) introductory text, (1), (3), (c) and (d) amended; (e) revised 69221
837.271 Removed 69222
837.271–1 Removed 69222
837.271–2 Removed 69222
837.271–3 Removed 69222
837.271–4 Removed 69222
837.403 Amended 69222
837.7001 Amended 69222
837.7002 Amended 69222
837.7003 (a), (b) introductory text, (5), (c) and (d) amended; (e) revised 69222
842 Authority citation revised 69222
842.102 (b) amended 69222
842.202 Amended 69222
842.705 (b) amended 69222
842.801–70 Amended 69222
842.1203 Amended 69222
846.408–70 (b) introductory text amended 69222
846.408–71 (a) amended 69222
846.471 (a) and (b) amended 69222
847 Authority citation revised 69222
847.303–1 (b) amended 69222
847.305–70 Amended 69222
849 Authority citation revised 69222
849.106 Amended 69222
849.107 Amended 69223
849.111–70 Amended 69223
849.111–72 (c) amended 69223
852.203–71 Amended 69223
852.211–70 (d) amended 69223
852.216–70 (a) amended 69223
852.222–70 Amended 69223
852.236–88 Introductory text, (a) and (b) amended 69223
852.236–89 Amended 69223
852.247–70 Amended 69223
852.270–3 Heading revised 69223
852.271–73 Amended 69223
853 Authority citation revised 69223
853.107 Amended 69223
870 Authority citation revised 69223
870.114–3 Introductory text amended 69223
870.114–4 Amended 69223
870.115 (a) amended 69223
871.102 (a) amended 69223

Chapter 9—Department of Energy (Parts 900—999)

903.104–3 Added 56851
909.104–3 Added 16651
913.507 Removed 12876
915 Revised 56851
915.404–4–71–5 (d), (f) and (h) revised 12227
915.404–4–72 (a) introductory text revised 12229
916.504—916.505 Designated as Subpart 916.5 and heading added 56860
919.602–1 (a)(2) amended 56860
919.805–2 Revised 56860
922.7101 Revised 12876
935.016 Removed 56860
935.016–1 Removed 56860
935.016–2 Removed 56860
935.016–8 Removed 56860
970.0902 Added 16651
970.15404–4—970.15407–2–3 (Subpart 970.15) Revised 56861
970.1504–4 Revised 12229
970.1504–4–1 Revised 12229
970.1504–4–2 Revised 12229
970.1504–4–3 Revised 12230
970.1504–4–4 Revised 12231
970.1504–4–5 Revised 12231
970.1504–4–6 Revised 12233
970.1504–4–7 Revised 12233
970.1504–4–8 Revised 12233
970.1504–4–9 Added 12234
970.1504–4–10 Added 12234
970.1504–4–11 Added 12234
970.2274–1 (a) introductory text and (d) amended; (a)(1), (2) and (3) removed; (b) and (c) revised 12876
970.3102–1 (c) amended 56867
970.3102–15 (b)(1) and (2) amended 56867
970.5202 Revised 56867
970.5204–9 Amended 56867
970.5204–15 Amended 56867
970.5204–22 Amended 56867
970.5204–44 Amended 56867
970.5204–54 Amended 56867
Revised 12335
970.5204–59 Revised 12876
970.5204–76 Amended 56867
970.5204–86 Added 12336
970.5204–87 Added 12336
970.5204–88 Added 12337
970.5204–89 Added 16651

Chapter 12—Department of Transportation (Parts 1200—1299)

1201.103 Removed 2436
1201.201–1 (d) removed 2436
1201.301 (a)(2) and (b) added 2436

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1205.9000 (Subpart 1205.90) Revised 2436
1206.9000 (Subpart 1206.90) Revised 2436
1211.204–90 Revised 2437
1213.106—1213.106–190 (Subpart 1203.1) Revised....2437
1213.302—1213.302–590 (Subpart 1213.3) Added 2437
1215 Revised 2437
1237.104 Revised....2438
1237.104–90 Revised 2438
1237.104–91 Revised 2438
1237.9000 (Subpart 1237.90) Revised 2438
1252.211–71 Amended....2439
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1252.237–92 Revised 2440
1252.237–93 Revised 2440
1252.237–94 Revised 2440
1252.237–95 Revised 2440
1252.237–96 Revised 2440
1252.237–97 Revised 2440
1252.237–98 Revised 2440
1252.237–99 Revised 2440
1252 Appendix redesignated from 1253 appendix in part; new appendix revised 2442
1253.215 Removed....2441
1253.215–270 Removed....2441
1253.3 Appendix redesignated in part as 1253 appendix 2442

Chapter 13—Department of Commerce (Parts 1300—1399)

1333.101 Added....16652
1333.102 Added....16652
1333.103 Revised 16652

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1509.170–1 Amended....20202
1509.170–2 Revised 20203
1509.170–3 Revised 20203
1509.170–4 Revised 20203
1509.170–5 Added....20203
1509.170–6 Added....20204
1509.170–7 Added....20204
1509.170–8 Added....20204
1516.405 (b) amended....3876
1533.103 Revised 17110
1552.209–76 Added 20204
1552.216–75 Revised 3876
1552.233–70 Added 17110
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TITLE 49—TRANSPORTATION

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1.46 (ppp) added 59475
(ppp) correctly designated 3876
(qqq) added 7814
1.48 (ll) added 7814
1.49 (kk) added 57610
(ll) added 7814
1.66 (bb) added 2150
23 Heading and authority citation revised 5126
23.1—23.7 (Subpart A) Removed 5126
23.41—23.55 (Subpart C) Removed 5126
23.61—23.69 (Subpart D) Removed 5126
23.73—23.87 (Subpart E) Removed 5126
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23.93 (a) introductory text amended 5126
23.95 (a)(1), (f)(1), (2) and (g)(1) amended; (f)(5) removed 5126
23.97 Amended 5126
23.111 Removed 5126
24.2 Amended 7131
24.102 (k) amended 7132
24.103 (c) amended 7132
24.105 (c) amended 7132
24.202 Amended 7132
24.203 (a)(4) redesignated as (a)(5); new (a)(4) added; (b) amended 7132
24.204 (a) amended 7132
24.205 (c)(2)(ii)(B) amended 7132
24.208 Redesignated as 24.209; new 24.208 added 7132

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24.209 Redesignated from 24.208 7132
24.301 Introductory text amended 7132
24.303 (a) amended 7132
24.304 Introductory text amended 7132
24.306 (a)(6) and (c) amended 7132
24.307 (a) amended 7132
24.401 (c)(4)(ii) amended 7132
24.403 (a) and (b) amended 7132
24.404 (c)(2) amended 7132
24 Appendix A amended 7132
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40.29 (e)(1) table and (f)(1) table amended 65129

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107.503 (a)(3) amended 52846
107.606 (a)(5) amended 52847
171.2 (d)(1) amended 10752
171.5 (a)(3) amended 9925
171.7 (a)(3) table amended 52847, 57930
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171.8 Amended 52847
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171.11 (d)(4)(ii) revised 57930
(d)(14) amended 10753
171.12 (b)(17) amended 10753
171.12a (b)(16) amended 10753
171.14 (c)(1) revised 52847
(b) table and (d)(2) amended; (d) introductory text and (1) revised; (d)(3) added 10753
172.101 (c)(11) introductory text, (f) and table amended 52847
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172.102 (c)(1) amended 52849
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172.203 (m)(1) amended 52849
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172.313 (d) added 10776
172.400 (b) amended 10776
172.400a (a)(7) amended 52849
(d) removed 10776
172.405 (c) added 10776
172.407 (c)(4) revised 10776
172.431 Removed 10776
172.504 Table amended 52849
(e) Table 2 amended; (f)(10) revised 10776
172.553 Removed 10776
173.1 (d) amended 10776
173.2a (b) table amended 10776
173.6 (c)(2) amended 52849
173.25 Heading and (b) revised 10776
173.28 (c)(2) revised; (c)(5) added 10776
173.29 (b)(2)(iv)(B) revised 10776
173.32b (b)(1) and (2) amended 10776
173.32c (j) revised 10777
173.33 (a)(3) amended 52849
173.34 (e)(18)(i) table amended 52849
(e) table amended 10777
173.35 Heading and (b) revised 10777
173.56 (b)(2)(i) and (3)(i) amended 10777
173.58 (a) introductory text amended 52849
173.59 Amended 10777
173.62 (c) table amended 52849
173.121 (b)(1)(ii) revised 10777
173.159 (g)(2) amended 10777
173.162 Revised 10777
173.164 (a)(1), (2) and (3) revised; (a)(4) added 10777
(c) introductory text amended 10778
173.166 (a), (b) introductory text, (2), (3)(ii), (c) and (f) amended 10778
173.196 (a)(1)(iii) amended 10778
173.220 Revised 10778
173.221 Revised 10779
173.222 Revised 10779
173.224 (c)(3) introductory text amended 10779
173.225 (b) table amended 10779
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173.243 (e)(2) amended; (e)(3) added 10780
173.247 (a) amended 52849
173.301 (i) revised 10780
173.306 (d) removed; (f)(4) and (5) added 10781
173.403 Amended 52849
173.416 (f) amended 52849
173.422 (b)(1) amended 52849
173.425 Table 7 amended 52849

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173.427 (a)(3) amended **52849**
173.433 (g) table amended **52849**
173.461 (a) introductory text and (b) amended **52850**
174.81 (f) table amended; (g)(3)(vi) added 10781
174.680 Revised 10781
175.630 (a) amended 10781
175.700 (b) amended **52850**
176.76 (i) added 10781
176.83 (a)(1), (3) and (8) revised; (a)(10) added 10781
176.83 (g)(3) table amended 10782
176.600 Heading, (a) and (c) revised 10782
176.704 (e)(1) and (f) table amended **52850**
177 Response to petitions **58323**
177.835 (g) introductory text amended **52850**
177.841 (e)(1) amended; (e)(3) revised 10782
177.842 (a) amended **52850**
177.843 (c) amended **52850**
177.848 (f) table amended; (g)(3)(vi) added 10782
177.854 Introductory text removed **52850**
178.270–3 (e) amended 10782
178.338 Heading amended **52850**
178.509 (b)(1) amended 10782
178.703 (b)(6)(ii) revised 10782
178.813 (b) amended 10782
179 Authority citation revised **52850**
179.2 (a)(2) revised **52850**
179.3 (a) revised **52850**
179.4 (a) amended; (b) revised **52850**
179.5 (a) and (b) revised **52850**
179.100—179.103–5 (Subpart C) Heading revised **52850**
180.352 Heading, (b)(1), (2), (3) introductory text, (c) heading and introductory text revised; (d) and (e) redesignated as (e) and (f); new (d) added 10782
180.403 Introductory text amended **52850**
180.417 (a)(3)(ii) amended **52850**
180.509 (c)(3)(ii) amended **52851**
180.515 (b) amended **52851**
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195.132 Revised 15935
195.205 Added 15935
195.242 (c) and (d) added 15935
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195.302 (b)(4) added; (a) amended; (c) introductory text revised **59479**
195.303 Redesignated as 195.304; new 195.303 added **59480**
195.304 Redesignated as 195.305; new 195.304 redesignated from 195.303 ..... **59480**
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195.405 Added 15936
195.406 (a)(4) amended **59480**
195.416 (j) added 15936
195.428 Heading revised; (c) and (d) added 15936
195.432 Revised 15936
195 Appendix B added **59480**
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Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

213.57 (g)(4) corrected **54078**
213.345 (d) corrected **54078**
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219.5 Amended; interim **71791**
219.201 (a)(1) introductory text, (2) and (4) revised; interim **71791**
225.19 (c) amended; interim **71791**
225 Appendix B amended; interim **71791**
268 Added; interim **54606**
268.3 (b) through (f) revised; interim 7134
268.13 Revised; interim 7134

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

360 Added 7137
381 Added; interim **67608**
383.7 Removed; interim **67612**
385 Appendix B amended **62959**
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531.5 (b)(13) added 12092
533.5 (a) Table IV revised; (f) added 16862
538.5 (b) added **66068**
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538.7 Added **66069**
544.5 (a) revised **70053**
544 Appendixes A, B and C revised **70053**
555 Heading and authority citation revised 2861
555.1 Revised 2861
555.2 Existing text designated as (a); (b) added 2861
555.3 Revised 2861
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555.5 Heading, (b) introductory text and (5) amended; (a) and (b)(7) revised 2861
555.6 Heading, (a) introductory text, (1)(v), (2)(iv), (b)(5), (c)(5) and (d)(4) amended; (b) introductory text, (1), (2) introductory text, (i), (iii), (4), (c) introductory text, (1), (2) introductory text, (iv), (d) introductory text, (1) introductory text, (ii), (iv) and (v) revised 2861
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555.7 (b), (c), (d) introductory text and (e) amended 2861
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555.8 (e) and (f)(1) amended 2861
555.10 (a) amended 2862
567 Authority citation revised 6816
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567.4 (g)(5)(iii) added 6817
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571.105 Amended; interim 9449
571.108 Amended **63801**
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571 Figure 6 revised **71395**
572.31 (a)(1), (3) and (4) revised; (b) removed **53851**
572.34 (b) revised **53851**
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653.45 (d) added **67613**
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Chapter VIII—National Transportation Safety Board (Parts 800—899)

800.2 Introductory text and (b) through (j) revised; (k) added **71605**
(b), (d) and (j) corrected 5621
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1180.1 (f) corrected; (g) and (h) reinstated; CFR correction 10234
1180.2 Introductory text through (d)(2) reinstated; CFR correction 10234
1312.1 (c) amended 5195
1312.6 (c) revised 5195
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1420.1 Revised 13921
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2.2 (a), (c), (d) and (e) revised 52633
10.21 (b) revised 52633
13.5 Revised 52634
14 Authority citation revised 23025
14.3 Revised 52634
14.4 Amended 23025
14.94 Heading and (a) revised; (e) added 23025
15.4 Added 52634
15.21 (c) revised 52634
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17 Petition finding 67613, 67618
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17.8 Added 52635
17.11 (h) table amended 52837, 57619, 64799, 69021, 70062
(h) table amended 5981, 15704, 17124, 19308
17.12 (h) table amended 53615, 54956, 54970, 54994, 59244
(h) table amended 13120
17.22 (a)(1) introductory text and (b)(1) introductory text revised; (a)(1)(ix) and (b)(1)(iv) removed 52635
17.32 (a)(1)(ix) and (b)(1)(iv) removed; (a)(1) introductory text and (b)(1)(i) revised 52635
17.44 (v) correctly added; CFR correction 63421
(v) redesignated as (w); (x) added 17124
17.62 (a)(3)(iii) removed; (a) introductory text and (4) revised 52635
17.72 (a) introductory text and (4) revised; (a)(3)(iii) removed 52636
17.84 (g) revised 52837
17.108 (a)(7) and figure revised 55556
18.30 (i)(1) introductory text revised 1539
18.121—18.129 (Subpart J) Revised; eff. 1-28-99 through 1-30-00 4334
20.21 (j)(2) revised 54019
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22.24 (a) introductory text revised 52638
22.25 (a) introductory text revised 52638
23.15 (c) introductory text revised and (g) added 52638
23.23 (f) table amended 58327, 63214
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25.12 Amended; heading revised 14150
36 Authority citation revised 14151
36.1 Heading and (b) revised; (c) added 14151
36.2 Amended; heading revised 14151
36.33 Heading revised; (a) amended 14151
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216.120—216.128 (Subpart K) Added; eff. 3-1-99 through 12-31-03 9930
216.161—216.166 (Subpart O) Added (temporary) **66076**
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630.25 Heading, (a)(1) and (c) added; (d) introductory text revised 4059
630.26 Redesignated as 630.27; new 630.26 added 12906
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648.55 (a) revised; (b) amended; (c) through (g) and (h) redesignated as (d) through (h) and (j); new (d)(12) redesignated as (d)(21); new (c), new (d)(12), (13) through (20) and (i) added 14839
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679.32 (a)(1) revised; (a)(2), (3) and (e) suspended; (a)(4) and (g) added; interim; eff. in part 1–21–99 through 7–20–99 3882
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List of CFR Sections Affected

May 1999

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May 1999

Title 1–16
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Title 28–41
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through May 28, 1999

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LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
17–27—as of April 1
28–41—as of July 1
42–50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (63 FR for 1998 64 FR for 1999) and the page number. Example: 24727 in bold cite as 63 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

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There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

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A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Gwen Henderson. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
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200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
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11	(869–038–0002–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
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300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
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13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
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1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
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17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–034–00052–5)	13.00	Apr. 1, 1998
19 Parts:			
1–140	(869–034–00053–3)	34.00	Apr. 1, 1998
141–199	(869–034–00054–1)	33.00	Apr. 1, 1998
200–End	(869–034–00055–0)	15.00	Apr. 1, 1998
20 Parts:			
1–399	(869–0348–00056–8)	29.00	Apr. 1, 1998
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–034–00060–6)	27.00	Apr. 1, 1998
170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
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300–499	(869–034–00063–1)	50.00	Apr. 1, 1998
500–599	(869–034–00064–9)	28.00	Apr. 1, 1998
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1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
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1–299	(869–034–00068–1)	41.00	Apr. 1, 1998
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25	(869–034–00076–2)	42.00	Apr. 1, 1998
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§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
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§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998

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40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
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900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
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1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–034–00115–7)	51.00	July 1, 1998
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	[4] July 1, 1998
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800–End	(869–034–00119–0)	27.00	July 1, 1998
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125–199	(869–034–00121–1)	38.00	July 1, 1998
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300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
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200–299	(869–034–00128–9)	21.00	July 1, 1998
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40 Parts:			
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50–51	(869–034–00135–1)	24.00	July 1, 1998
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87–135	(869–034–00146–7)	47.00	July 1, 1998
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430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
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1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
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1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
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41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
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100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 to March 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5]No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

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LSA (List of CFR Sections Affected):		
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Federal Register Index:		
Yearly subscription	25.00	
CFR Index and Finding Aids	46.00	1998

CHANGES JANUARY 4, 1999 THROUGH MAY 28, 1999

TITLE 1—GENERAL PROVISIONS

No amendments to 1 CFR have been published in the FEDERAL REGISTER since January 1, 1999.

TITLE 2—[RESERVED]

There is no regulatory text to this title.

TITLE 3—THE PRESIDENT

Chapter II—Executive Office of the President (Parts 100—199)

100.1 Revised 12881

Presidential Documents

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7162 2989
7163 2991
7164 5583
7165 5585
7166 6181
7167 6777
7168 10101
7169 10381
7170 10383
7171 10385
7172 11373
7173 12879
7174 14353
7175 14807
7176 15123
7177 17075
7178 17077
7179 17499
7180 17939
7181 18317
7182 18321
7183 19017
7184 19439
7185 19681
7186 19683
7187 22777
7188 23005
7189 24275
7190 24277
7191 24279
7192 24281
7193 25189
7194 25191
7195 25797
7196 27437
7197 27439
7198 28083
7199 28709
7200 28711

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June 14, 1839 Revoked in part by PLO 7385 19386
July 2, 1910 Revoked in part by PLO 7388 23856
Nov. 14, 1917 Revoked in part by PLO 7391 28211
Mar. 30, 1922 Revoked in part by PLO 7390 28211
11223 Amended by EO 13118 16595
11269 Amended by EO 13118 16595
11348 *See* EO 13111 2793
11958 Amended by EO 13118 16595
11987 Revoked by EO 13112 6183
12163 Amended by EO 13118 16595
12170 *See* Notice of Mar. 10, 1999 12239
12188 Amended by EO 13118 16595
12260 Amended by EO 13118 16595
12293 Amended by EO 13118 16595
12301 Amended by EO 13118 16595
12543 *See* Notice of Dec. 30, 1998 383
12544 *See* Notice of Dec. 30, 1998 383
12599 Amended by EO 13118 16595
12703 Amended by EO 13118 16595
12808 *See* Notice of May 27, 1999 29205
12810 *See* Notice of May 27, 1999 29205
12831 *See* Notice of May 27, 1999 29205
12846 *See* Notice of May 27, 1999 29205
12852 Amended by EO 13114 10099
12884 Amended by EO 13118 16595
12934 *See* Notice of May 27, 1999 29205
12947 *See* Notice of Jan. 20, 1999 3393
12957 *See* Notice of Mar. 10, 1999 12239
12959 *See* Notice of Mar. 10, 1999 12239
12981 Amended by EO 13117 16391
13035 Amended by EO 13113 7489
13047 *See* Notice of May 18, 1999 27443
13059 *See* Notice of Mar. 10, 1999 12239

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13088 Amended by EO 13121 24021
See Notice of May 27, 1999 29205
13099 *See* Notice of Jan. 20, 1999 3393
13110 2419
13111 2793
13112 6183
13113 7489
13114 10099
13115 15283
13116 16333
13117 16591
13118 16595
13119 18797
13120 23007
13121 24021
13122 29201

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Mar. 23, 1999 14809
Amended by EO 13118 16595
Mar. 31, 1999 17079

Notices:

Dec. 30, 1998 383
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No. 96-7 of Dec. 27, 1995 *See* Notice of May 27, 1999 29205
No. 99-9 of Dec. 24, 1998 983
No. 99-10 of Jan. 25, 1999 5925
No. 99-11 of Jan. 28, 1999 6773
No. 99-12 of Feb. 3, 1999 6779
No. 99-13 of Feb. 4, 1999 6781
No. 99-14 of Feb. 16, 1999 9263
No. 99-15 of Feb. 26, 1999 11319
No. 99-16 of Mar. 4, 1999 13495
No. 99-18 of Mar. 25, 1999 16337
No. 99-19 of Mar. 31, 1999 17081
No. 99-20 of Mar. 31, 1999 17083
No. 99-21 of Apr. 8, 1999 18551
No. 99-22 of Apr. 29, 1999 24501
No. 99-23 of May 18, 1999 28085
No. 99-24 of May 18, 1999 28087

TITLE 4—ACCOUNTS

Chapter I—General Accounting Office (Parts 1—99)

27.1 Revised; interim 15125
28.3 Amended; interim 15125

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

300.705 (a) revised 28713
316.201 (b) revised 15286
330 Authority citation revised 24504
330.1201—330.1204 (Subpart L) Added 24504
351.503 Revised 16800
(c)(3) and (e) correctly revised 23531
351.505 Revised 16800
532.201—532.285 (Subpart B) Regulation at 61 FR 47661 confirmed 9905
Regulations at 61 FR 49649 and 62 FR 66973 confirmed 9906
Regulation at 62 FR 51759 confirmed 17941
Regulation at 63 FR 6471 confrimed 17942
Appendix A amended; interim 23532
532.501—532.513 (Subpart E) Appendix A amended 15916
550.101—550.187 (Subpart A) Authority citation revised 4519
550.103 Amended; interim 4519
550.111 (f) revised; (h) added; interim 4520
550.181 Revised; interim 4520
550.182 (b) through (f) redesignated as (c) through (g); new (b) added; (a) and new (d) revised; interim 4520
550.184 (e) revised; interim 4520
550.185 (a) revised; interim 4521
550.186 (b) revised; interim 4521
550.901—550.907 (Subpart I) Appendix A amended 1502
831 Authority citation revised 15287
831.201 (g)(3), (4) and (5) redesignated as (g)(4), (5) and (6); new (g)(3) and (i) added; new (g)(5) revised; interim 15288

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837.101 (a)(2) revised; interim 15288
837.102 Amended; interim 15288
842 Authority citation revised 15288
842.104 (g) added; interim 15289
842.107 (c) revised; interim 15289
842.108 Added; interim 15289
846 Authority citation revised 15289
846.201 (d)(1) revised; interim 15289
870 Authority citation revised 15289, 16602, 22544
870.101 Amended; interim 16602
870.302 (a)(3) revised; interim 15289
870.401 (b)(1) and (d) revised; interim 22544
870.402 (d)(1) table and (e)(1) table, (f)(1) and (g) revised; interim 22544
870.506 (e)(2) amended; interim 16602
870.801 (a) introductory text revised; (d) and (e) redesignated as (e) and (f); new (d) added; interim 16602
870.802 (a) amended; (i) added; interim 16602
870.901 (i) added; interim 16602
890 Authority citation revised 15289
890.102 (c)(8) revised; interim 15289
890.501 Regulation at 63 FR 45934 confirmed 15633
950.102 Regulation at 64 FR 65637 confirmed 27169

Chapter II—Merit Systems Protection Board (Parts 1200—1299)

1200.10 (a)(9) and (b)(9) removed; (a)(10) and (b)(10) redesignated as (a)(9) and (b)(9); (b)(8) revised 15916
1201.22 (b)(1) revised 27899
1201.111 (c)(1) designation and (2) added 27900
1201.115 (b) and (c) revised 27900

Chapter XIV—Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

2411.8 Revised 18799

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2604.103 Amended 28090
2604.201—2604.202 (Subpart B) Heading revised 28090
2604.201 Heading revised; (a)(1) designation and (2) added; new (a)(1), (b) and (c) amended; (b)(4) redesignated as (b)(5); new (b)(4) added 28090
2604.202 (a) amended 28090
2604.301 (a) amended; (e) added 28090
2604.302 (b) heading and (c) revised; (b) amended 28090
2604.303 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added 28091
2604.305 (a)(1) designation and (2) added; new (a)(1) amended 28091
2604.402 (b) amended 28091
2604.501 (b)(1)(i) and (3) amended 28091
2604.601—2604.602 (Subpart F) Revised 28091
2634.304 (f)(3)(iii) amended 2422
2634.904 (b) amended 2422
2635.207 (b)(7) note amended 2422
2635.601 Amended 13064
2635.602 Amended 13064
2635.603 (d) revised 13064
2635.604 (a) amended 13064
2635.605 (a) and (b) amended 13064
2635.606 (a) amended 13064
2635.902 (o) and (z) amended; (q) revised 2422
2636.303 (a) introductory text revised; (a)(4) amended 2422
2641 Appendix B amended 5710

Proposed Rules:

300 14842
532 20221
731 4336
1620 13924
1650 13725
1651 6818
2634 25849

TITLE 6—[RESERVED]

There is no regulatory text to this title.

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TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

1.1—1.23 (Subpart A) Authority citation revised 3395
1.1—1.23 (Subpart A) Appendix A amended 3395
3.10 Amended 11755
6.20—6.36 (Subpart) Appendixes 1, 2 and 3 revised 17502

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

28.909 (b) revised 28884
28.911 (a) amended 28884
51.882 (i)(1)(ii) amended 14576
51.884 (i)(1)(i) amended 14576
51.885 (h)(1)(i) amended 14576
51.888 (a)(2) amended 14577
59 Technical correction 3340

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

246.2 Amended 13322
246.4 (a)(14)(v) through (x) redesignated as (a)(14)(vi) through (xi); new (a)(14)(v) added 13322
246.12 (f)(2)(xviii), (3) and (k) revised; (f)(2)(xix) and (xx) redesignated as (f)(2)(xxiii) and (xxiv); new (f)(2)(xix), new (xx), (xxi) and (xxii) added 13322
246.15 (b) amended 13324
246.18 (a)(1) and (b)(1) revised; (a)(3) amended 13324
254 Effective date confirmation 17085
254.5 (b) amended 1098
271.2 Amended 23171
278.1 (o) removed; (k)(2) amended; (k)(2), (l)(1)(iii), (iv), (v) and (p) through (t) redesignated as (k)(7), (l)(1)(v), (vi), (vii) and (o) through (s); (a), (b)(3), (j), new (l)(1)(vi), (m) introductory text and new (o) revised; new (k)(2), (3) through (6), new (l)(1)(iii) and new (iv) added; new (q) amended 23171
278.6 (a) and (n) revised; (b)(1), (2)(i), (c) and (i)(1)(v) amended; (e)(1)(iii), (3)(vi) and (8) added 23172
278.8 (a) revised 23174
279.3 (a)(2) revised 23174
279.7 (a) amended 23174
279.10 (a) amended; (d) revised 23174

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301.45 Regulation at 63 FR 38280 confirmed 4286
301.45–3 Regulation at 63 FR 38280 confirmed 4286
301.50–3 (c) amended; (d) removed; interim 387
Regulation at 64 FR 387 confirmed 15918
301.51–3 (c) amended; interim 28715
301.75–4 (a) revised; interim 4780
301.81–3 (e) amended; interim 27658
301.81—301.81–10 (Subpart) Appendix amended; interim 27659
301.89–1 Amended 23752
301.89–3 (e) and (f) revised 23752
301.89–4 Revised 23754
301.89–6 (b) amended; (d) removed; (e) redesignated as (d) 23754
301.89–12 (b) removed 23754
301.89–13 (f) removed 23754
319.56–2 (h) revised 2994
353.1 Amended 1105
353.7 (a)(4), (b)(4) and (c)(4) amended 1105
353.8 Added 1105
354.2 Table amended 25800
360.200 (a) and (c) amended 12883
361.6 (a)(1) amended 12884

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

457.138 Amended; introductory text revised 24932
Amended 24933

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Chapter VII—Farm Service Agency, Department of Agriculture (Parts 700—799)

723.113 (f) added 15295
723.114 (f) added 15295
723.115 (f) added 15295
723.116 (f) added 15295
723.117 (f) added 15295
760.1—760.34 (Subpart) Authority citation revised 17942
761 Added; interim 6496
762 Added 7378
782.2 Amended 12885
782.12 (a) introductory text revised; (a)(6) through (9) redesignated as (a)(8) through (11); new (a)(6) and (7) added 12885

Chapter VIII—Grain Inspection, Packers and Stockyard Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

800.71 (a) amended 6783
Regulation at 63 FR 35504 confirmed 19022
800.86 (c)(2) Table 4 revised 6783
801.6 Regulation at 63 FR 34554 confirmed 731
801.7 Regulation at 63 FR 35505 confirmed 19022
868.91 Revised 7058

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.306 Regulation at 63 FR 62922 confirmed 15636
905.350 Regulation at 63 FR 51518 confirmed 3814
915.235 Revised 26273
916.350 (a)(3), (4)(i), (ii), (iv) Tables 1 and 2, (8)(i) and (d) revised 19031
916.356 (a)(1) introductory text, (iv) Table 1, (4) introductory text and (6) introductory text revised; (a)(1)(i) Table 1 removed 19031
917.442 (a)(3), (4)(ii), (iv) Tables 1 and 2, (9)(i) and (d) revised 19033
917.459 (a)(1) introductory text, (iv) Table 1, (3) introductory text, (5) introductory text and (6) introductory text revised; (a)(1)(i) Table 1 removed; (a)(4) introductory text added 19033
929.69 (d) amended; interim 24025
930 Marketing percentages 392
932.159 Revised; interim 4288
(a) revised; (f) removed; (d) and (e) redesignated as (e) and (f); new (d) added 9268
Regulation at 64 FR 4288 confirmed 23011
932.160 Removed; interim 4288
Regulation at 64 FR 4288 confirmed 23011
932.230 Revised 14813
944.106 Regulation at 63 FR 62923 confirmed 15636
956.15 Added 4933
956.16 Added 4933
956.20 (a) amended 4933
956.60 Added 4933
956.62 Revised 4933
956.64 Revised 4934
956.70 Undesignated center heading added 4934
979.180 Amended 23759
979.304 Amended; (b)(4), (c)(4) and (e)(3) revised; (e)(4) removed; (e)(5) redesignated as (e)(4) 23759
981.472 (a) revised 18802
982 Marketing percentages 2425
982.246 Regulation at 64 FR 2425 confirmed 23011
985 Marketing percentages 2802
989 Marketing percentages 10922
989.212 Regulation at 63 FR 56785 confirmed 2428
989.213 Regulation at 63 FR 56785 confirmed 2428
989.347 Regulation at 64 FR 9056 confirmed 25422
993 Undersized regulation 23763
993.347 Revised 3623
Revised; interim 9056

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TITLE 7

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1065.2 (a) suspended in part 4959
1079.7 (b) corrected; CFR correction 19034
(b) introductory text amended 25194

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1216 Added 20105
1260.141 (a) revised 3815

Chapter XIII—Northeast Dairy Compact Commission (Parts 1300—1399)

1307.4 Redesignated as 1307.5; new 1307.4 added 23538
1307.5 Redesignated from 1307.4 23538
1308.1 Introductory text revised 23538
1308.2 Added 23538
1361.11 (a) and (b) revised; interim 18324
1381.4 (a) revised 11756

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1430.500—1430.509 (Subpart D) Added 24934
1434 Added 10924
1437 Heading revised; interim 17272
1437.2 (f) and (g) revised; (h) added; interim 17272
1437.3 Amended; interim 17272
1437.4 (a) revised; interim 17272
1439 Authority citation revised 13498
1439.1—1439.12 (Subpart) Revised 13498
1439.101—1439.104 (Subpart) Removed 13499
1439.201—1439.202 (Subpart) Removed 13499
1439.301—1439.302 (Subpart) Removed 13499
1439.401—1439.403 (Subpart) Removed 13499
1439.501—1439.504 (Subpart) Removed 13499
1439.601—1439.602 (Subpart) Removed 13499
1439.701—1439.702 (Subpart) Removed 13499
1439.800—1439.810 (Subpart) Removed 13499
1439.101—1439.108 (Subpart) Added 13500
1464.13 (f) added 15295
1464.14 (f) added 15296
1464.15 (f) amended 15296
1464.16 (f) added 15296
1464.17 (f) added 15296
1469 Added 10930
1464.101 (b) amended 2803
1477 Added 18554

Chapter XV—Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

1530 Revised 7062

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

1703 Authority citation revised 14356
1703.100—1703.112 (Subpart D) Revised 14357
1703.103 (a)(3) corrected 25422
1703.105 (c) and (e)(6) corrected 25422
1703.108 (a) corrected 25422
1703.120—1703.129 (Subpart E) Added 14360
1703.123 (a)(13) and (14) corrected 25422
(a)(5) revised 25423
1703.125 (b)(9) added; (i)(1) through (7) revised; (i)(8) through (11) removed 25423
1703.126 (a) corrected 25422
1703.127 (c)(1) and (3) corrected 25422
1703.130—1703.137 (Subpart F) Added 14366
1703.134 (l) corrected 25422

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(g)(1) through (7) revised; (g)(8) through (11) removed 25423
1703.140—1703.147 (Subpart G) Added 14369
1703.140 Introductory text amended 25423
1703.141 (i) amended 25423
1703.142 (a) and (b)(4) revised; (b)(5) added 25423
1703.144 (c)(4), (d)(2), (3), (f)(2) and (4) corrected 25422
(g)(1) through (7) revised; (g)(8), (9) and (10) removed 25423
1703.145 (b) corrected 25422
1703.300—1703.313 Redesignated as Subpart H 14356
1728 Bulletin 14813
1753 Authority citation revised 16604
1753.1 (a) revised 16604
1753.2 Amended 16604
1753.3 (a) amended 16604
1753.5 (b)(1) revised; (b)(2) redesignated as (b)(3); new (b)(2) added 16604
1753.6 (a) revised; (e) added 16605
1753.7 (c) and (e) revised 16605
1753.8 (a)(1), (11)(i), (ii) introductory text, (iii) introductory text and (12)(i) revised; (a)(11)(iv) added 16605
1753.11 (a)(3), (b) and (d) revised 16605
1753.15 (a)(2) through (5) redesignated as (a)(3) through (6); (a)(1), new (5)(i) and (ii) revised; new (a)(2) added 16605
1753.16 (b)(1) through (4) revised 16606
1753.17 (b)(1)(ii)(D) amended; (b)(1)(ii)(E) added; (c)(1)(i)(C) and (2)(i)(A) revised 16606
1753.18 Added 16606
1753.25 (a), (c) and (d) revised 16606
1753.26 (a) through (d) redesignated as (b) through (e); new (a) added; new (b)(1) revised 16606
1753.30 (b), (c)(2) and (3) revised 16606
1753.36 (g) revised 16607
1753.37 (c) revised 16607
1753.38 (a)(1)(i), (v), (2)(i), (v), (b)(1), (3), (5), (e)(2) and (3) amended 16607
1753.39 (a), (e)(1), (2), (f) introductory text, (1)(ii)(A), (iii), (iv) and (g) revised; (e)(3) removed; (h) added 16608
1753.46 (c)(2) and (3) revised 16608
1753.47 (c) revised 16609
1753.48 (a)(4) and (b)(1) revised 16609
1753.49 (b), (c)(2) and (3) revised 16609
1753.50 Removed 16610
1753.58 (b), (c)(2) and (5) revised 16610
1753.68 (b)(2)(i) through (v), (4)(i), (ii), (c)(2) and (d)(3) revised 16611
1753.76 (a) revised 16611
1753.77 Revised 16612
1753.80 (b) revised 16612
1753 Appendixes A through F removed 16612
1755.26 Added 6500
1755.27 Added 6500
1755.28 Added 6500
1755.29 Added 6500
1755.30 Added 6501
1755.93 Removed 6501
1755.217 Removed 6501
1755.525 Removed 6501
1788 Revised 2

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1940 Authority citation revised 24480
1940.579 Revised 24480
1944.153 Amended 24480
1944.157 (a)(1) and (3) revised 24480
1944.160 Added 24480
1944.164 (b) revised; (d) introductory text and (1)(i) amended 24480
1944.169 (a)(1) revised 24480
1944.170 Heading, introductory text, (a) and (b) revised; (c) redesignated as (f); new (c), (d) and (e) added; new (f)(5)(i), (ii)(B) and (C) amended; new (f)(7) removed 24480
1944.151—1944.200 (Subpart D) Exhibits A and A-1 amended 24482

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TITLE 7 Chapter XVIII—Con.

1951.914 Heading and (b) introductory text revised; (h) added; interim 19865
1951.951 Amended; interim 393
1951.952 Amended; interim 394
1951.953 (b) revised; interim 394
1951.954 (a)(1), (5), (7), (b)(2), (4) and (5) revised; interim 394
1980.1 Revised 7402
1980.6 (a) and (b) amended 7402
1980.11 Amended 7402
1980.13 (b) introductory text amended; (b)(4) introductory text revised 7402
1980.20 (a) introductory text amended 7402
1980.21 Revised 7402
1980.22 (a) revised; (b) introductory text and (3) amended 7402
1980.46 Removed 7402
1980.60 Heading, (a) introductory text, (1), (6), (7), (9) through (12), (b) and (c) amended 7402
1980.61 (a)(2) and (c) removed; (a)(3) and (d) through (h) redesignated as (a)(2) and (c) through (g); heading, (a)(1), new (2), (b)(1), (3), (4), new (c) and new (d) amended 7402
1980.61 (f) and (g) amended 7403
1980.62 Amended 7403
1980.63 (a) amended 7403
1980.64 (a) and (b) amended 7403
1980.65 Amended 7403
1980.66 Amended 7403
1980.67 (a) and (b) amended 7403
1980.68 Amended 7403
1980.83 Regulation at 56 FR 8259 confirmed 7378
(a) amended 7403
1980.84 Heading, (b)(1)(iv), (v) and (4) amended 7403
1980.100 Regulation at 56 FR 8260 confirmed 7378
1980.1—1980.100 (Subpart A) Regulations at 56 FR 8261 and 8263 confirmed 7378
Appendixes D through L removed 7403
1980.101 Regulation at 56 FR 8264 confirmed 7378
1980.110 Regulation at 56 FR 8264 confirmed 7378
1980.113 Regulation at 56 FR 8264 confirmed 7378
1980.115 Regulation at 56 FR 8264 confirmed 7378
1980.122 Regulation at 56 FR 8264 confirmed 7378
1980.124 Regulation at 56 FR 8264 confirmed 7378
1980.125 Regulation at 56 FR 8264 confirmed 7378
1980.145 Regulation at 56 FR 8264 confirmed 7378
1980.175 Regulation at 56 FR 8264 confirmed 7378
1980.200 Regulation at 56 FR 8264 confirmed 7378
1980.101—1980.200 (Subpart B) Regulations at 56 FR 8265, 8266 and 8271 confirmed 7378
1980.340 Regulation at 56 FR 8271 confirmed 7378
1980.354 Regulation at 56 FR 8271 confirmed 7378
1980.424 Regulation at 56 FR 8271 confirmed 7378
1980.451 Regulation at 56 FR 8271 confirmed 7378
1980.452 Regulation at 56 FR 8271 confirmed 7378
1980.628 Regulation at 56 FR 8271 confirmed 7378
1980.646 Regulation at 56 FR 8271 confirmed 7378
1980.648 Regulation at 56 FR 8271 confirmed 7378
1980.801 (b) amended 28336
1980.802 Amended 28336
1980.805 Amended 28336
1980.813 (a)(2), (b)(1) and (2) removed; (a)(3), (b)(3) and (4) redesignated as (a)(2), (b)(1) and (2); (a) introductory text and new (2)(i) amended 28336
1980.814 (d) removed; (e) through (h) redesignated as (d) through (g) 28336
1980.844 Revised 28336
1980.853 Regulation at 56 FR 8271 confirmed 7378

Chapter XXXV—Rural Housing Service, Department of Agriculture (Parts 3500—3599)

3575 Added 28337

Proposed Rules:

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28 15937
29 25462
47 4342
274 ..... 8733, 28763
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735 28938
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981 430
993 3660
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701.3 Regulation at 64 FR 13297 eff. date corrected to 5–16–99 18571
740.19 Added; eff. 5–22–00 27693
800 Effective date confirmation 26657

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807 Effective date confirmation 26657
809 Effective date confirmation 26657
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874.5350 (c) revised 18329
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882.5860 (c) revised 18329
890.5275 (c) revised 18331
890.5300 (c) revised 18331
890.5860 (c) revised 18331
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TITLE 22—FOREIGN RELATIONS

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41.2 (j) revised 28916
41.114 Removed 28916
42.72 (e)(4) amended 28916
50 Authority citation revised 19714
50.7 (d) added 19714
51 Authority citation revised 19714
51.72 (b) revised; (c) added 19714
51.80 Revised 19714
51.83 Amended 19715
51.84 Amended 19715
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121.9 (a) revised 17533
123.4 (a) revised 17533
123.15 (b) revised 17533
123.17 (a) revised 17534
124.13 (e) revised 17534
126.5 Revised 17534
171.20—171.26 (Subpart C) Revised 25430
171.32 (j)(1), (2) and (5) amended 18808

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201.03 Revised 17535
201.23 (c) amended 17535
201.31 (f) and (g) amended 17535
201.32 (b) and (c) amended 17535
201.51 (c)(4) amended 17535
201.52 (a)(2)(iii)(C), (4)(iii) introductory text and (B) amended 17535
201.67 (a)(5)(ii) amended 17535

Chapter V—United States Information Agency (Parts 500—599)

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514.32 Added 17976
514.80 (Subpart G) Removed 17976

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1327.3 Regulation at 62 FR 63657 confirmed 19271
1327.5 Regulation at 62 FR 63657 confirmed; (a)(1)(ii) and (c)(2) amended; (c)(3) redesignated as (c)(4); new (c)(3) added 19271
1327.6 Regulation at 62 FR 63657 confirmed 19271
(a) through (f) revised; (g) and (h) redesignated as (h) and (i); new (g) added 19272
1327.7 Added 19273

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5.501 Removed 25731
5.508 (b)(1), (2), (h)(2) and (3) revised 25731
5.510 (b) revised 25731
5.512 (a) revised; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 25731
5.514 (b), (c)(1), (e)(1) and (f)(1) revised 25731
5.516 (c) introductory text revised 25732
5.518 (a), (b)(3) and (5) revised 25732
5.526 Revised 25732

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

100.304 Revised 16329
100.305 Added 16329
100.306 Added 16330
100.307 Added 16330
100.308 Added 16330
103.10 Revised; interim 18540
103.15 Revised; interim 18540
103.20 Revised; interim 18540
103.25 Revised; interim 18540
103.30 Revised; interim 18540
103.35 Added; interim 18540
103.40 Revised; interim 18540
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103.45 Redesignated as 103.201; interim 18540
103.50 Redesignated as 103.202; interim 18540
103.55 Redesignated as 103.203; interim 18540
103.201 Redesignated from 103.45; interim 18540
103.202 Redesignated from 103.50; interim 18540
103.203 Redesignated from 103.55; interim 18540
103.202 (b) revised; interim 18541
103.204 Added; interim 18541

Chapter II—Office of Assistant Secretary for Housing–Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

203.14 Regulation at 64 FR 14574 withdrawn 19895
203.18 Regulation at 64 FR 14574 withdrawn 19895
203.200 Regulation at 64 FR 14574 withdrawn 19895
203.201 Regulation at 64 FR 14574 withdrawn 19895
203.202 Regulation at 64 FR 14574 withdrawn 19895
203.203 Regulation at 64 FR 14574 withdrawn 19895
203.204 Regulation at 64 FR 14574 withdrawn 19895
203.205 Regulation at 64 FR 14574 withdrawn 19895
203.206 Regulation at 64 FR 14574 withdrawn 19895
203.207 Regulation at 64 FR 14574 withdrawn 19895
203.208 Regulation at 64 FR 14574 withdrawn 19895
203.209 Regulation at 64 FR 14574 withdrawn 19895
234.1 Regulation at 64 FR 14574 withdrawn 19895
248.101 Amended; interim 26339
248.141 (c)(3) amended; interim 26339
248.147 (e)(1) amended; interim 26339
248.165 (a) revised; (i) amended; interim 26339
248.173 (m)(2) revised; interim 26339
248.201 Amended; interim 26339

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

791 Heading revised; interim 26339
791.101 Revised; interim 26339
791.102 Amended; interim 26339

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791.401—791.407 (Subpart C) Removed; interim 26339
791.401 Amended; interim 26639
791.402 (c)(1) designation and (2) removed; (d) revised; interim 26339
791.403 (a) and (b)(1)(i) revised; interim 26340
791.404 (c) revised; interim 26340
792 Heading revised; nomenclature change; interim 26340
792.101 Revised; interim 26340
792.102 (a) and (b) amended; interim 26340
792.103 Amended; interim 26340
792.202 (a)(1) and (2) amended; interim 26340

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

903 Forum 22550
982 Heading revised; nomenclature change; interim 26340
982.1 Heading, (a)(1), (2), (4) and (b)(2) revised; (a)(3) and (b)(1) amended; interim 26340
982.2 (a) amended; interim 26340
982.4 (a)(2), (4) and (b) amended; interim 26340
(b) amended; interim 26341
982.51 (a) revised; interim 26341
982.53 (b) and (c) revised; (d) added; interim 26341
982.54 (d)(1), (2), (14), (15) revised; (d)(16) removed; (d)(17) through (22) redesignated as (d)(16) through (21); (d)(27) added; interim 26341
982.101 (a) and (b)(2)(i) revised; interim 26342
982.103 (a) revised; (c) added; interim 26342
982.151 (a)(1) and (2) amended; (b) revised; interim 26342
982.152 (a)(1), (b)(1) and (c) revised; interim 26342
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982.162 (a)(3) revised; interim 26342
982.201 (a), (d)(1), (2) and (e) amended; (b) and (f)(2) revised; interim 26342
982.202 (b)(1) removed; (b)(2), (3) and (4) redesignated as (b)(1), (2) and (3); new (b)(3) introductory text and (d) revised; interim 26343
982.203 (b)(1) amended; interim 26343
982.204 (b)(4) revised; (b)(5) amended; (f) added; interim 26343
982.205 (a) removed; (b) and (c) redesignated as (a) and (b); new (a)(2), (b)(1) and (3) amended; interim 26343
982.206 (b)(2) revised; (c)(1) designation and (2) removed; interim 26343
982.207 Revised; interim 26343
982.301 (b)(1) amended; (b)(2), (5) and (6) revised; interim 26344
982.302 Revised; interim 26344
982.303 Amended; heading revised; (c) amended; interim 26344
982.305 Heading, (a)(3), (4) and (b) revised; (a) introductory text, (d) and (e) amended; (a)(5) removed; interim 26344
982.306 (a), (b) introductory text and (c) introductory text amended; (c)(3) revised; (c)(5) and (6) redesignated as (c)(6) and (7); new (c)(5) added; interim 26344
982.307 Heading and (a) revised; interim 26345
982.308 Revised; interim 26345
982.309 Revised; interim 26345
982.310 (a)(1) and (d)(1)(iv) revised; (d)(2) amended; (e)(3) removed; interim 26345
982.352 (b)(1) revised; interim 26345
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982.354 Removed; interim 26346
982.355 (b), (c)(1) and (6) revised; (c)(4), (8), (d)(1) and (6) amended; interim 26346
982.401 (a)(4) revised; interim 26346
982.402 (a)(3) amended; (c) revised; interim 26346

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982.403 Heading and (c) introductory text revised; (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2); (a)(1), (b)(2) and (4) amended; interim 26347
982.405 Heading and (a) revised; (f) added; interim 26347
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982.502 Redesignated as 982.506; new 982.502 added; interim 26348
982.503 Redesignated as 982.507; new 982.503 added; interim 26348
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982.510 Redesignated as 982.520; new 982.510 redesignated from 982.513; interim 26348
982.511 Redesignated as 982.509; interim 26348
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982.513 Redesignated as 982.510; interim 26348
982.516 (d)(2) revised; (e) amended; (f) added; interim 26349
982.518 Redesignated from 982.507; interim 26348
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982.554 (c)(4) amended; (c)(5) revised; interim 26350
982.555 (b)(4) amended; interim 26350
982.602 Revised; interim 26350
982.604 Revised; interim 26350
982.608 Heading and (a) revised; interim 26350
982.613 Heading and (c) revised; (b)(2) amended; interim 26351
982.617 Heading and (c) revised; (b)(2) amended; interim 26351
982.619 (b)(1) and (4) amended; interim 26351
982.623 Revised; interim 26351

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TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

61 Authority citation revised 19898
61.4 (s) revised 19898
291 Added 17543

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1—299 (Ch. I) 18585
20 24296
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1 Authority citation amended.....23189, 26851
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1.451–1 (g) added.....26851
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1.467–0 Added.....26851
1.467–1 Added.....26852
1.467–2 Added.....26859
1.467–3 Added.....26860
1.467–4 Added.....26863
1.467–5 Added.....26865
1.467–7 Added.....26867
1.467–8 Added.....26875
1.467–9 Added.....26875
1.642(c)–6 Heading, (d) and (f) revised; (e) redesignated as 1.642(c)–6A(e); new (e) added.....23190
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1.6038B–2 (j)(1)(ii) corrected.....15686
1.7520 (c)(1) heading, (2) heading, introductory text and (d) revised; (b)(2) and (c)(2)(iii) amended.....22210
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20 Authority citation amended.....23210
20.2031–0 Revised.....23211
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25 Authority citation amended.....23223
25.2512–0 Revised.....23223
25.2512–5 Heading, (c), (d) and (e) revised.....23224
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25.2512–5A Heading revised; (e) added.....23226
25.7520–1 (b)(2) and (c)(2)(iii) amended; (c)(1) heading, (2) heading and (d) revised.....23227
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25.7520–3 (b)(2)(v) Example 5 and (4) Example revised.....23228
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0.29—0.29j (Subpart E–4) Added **36847**
0.29e (a)(1) corrected **40788**
0.39c Removed; interim **62938**
0.96 (f) and (s) removed; (g) through (v) redesignated as (f) through (t) 4295
0.100 (b) amended 4295
0.115 Revised **51519**
0.116 Amended **51519**
0.132 (b), (c) and (d) revised; (e) removed 6526
2.1—2.67 Designated as Subpart A; heading added; interim **39176**
2.20 Amended; interim **39176**
2.62 Redesignated as 2.68 (Subpart B); new 2.62 redesignated from 2.63; interim **39176**
(c) added; interim 5613
2.63 Redesignated as 2.62; new 2.63 redesignated from 2.64; interim **39176**
2.64 Redesignated as 2.63; new 2.64 redesignated from 2.65; interim **39176**
2.65 Redesignated as 2.64; new 2.65 redesignated from 2.66; interim **39176**
2.66 Redesignated as 2.65; new 2.66 redesignated from 2.67; interim **39176**
2.67 Redesignated as 2.66; interim **39176**
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2.70—2.89 (Subpart C) Added; interim **39176**
2.71 (b) revised; interim 5613
2.75 (a) revised; interim 5613
2.76 (c) and (d) redesignated as (d) and (e); new (c) added; interim 5613
2.77 (a) and (e) amended; (c) revised; interim 5614
2.78 (d) amended; interim 5614
2.80 (f) table revised; interim **57061**
(f) table amended; interim 5613
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16.2 (b)(9) corrected **51401**
16.3 (a) corrected; CFR correction **51300**
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16.8 (c) corrected **51401**
16.11 (b)(7) correctly revised **36295**
(e), (g), (i)(1) and (3) corrected **51401**
16.40 (a), (b)(1) and (2) corrected **51401**
16.41 (a) and (b) corrected; CFR correction **51300**
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16.42 (b) and (c) heading corrected **51401**
16.50 (a) corrected **51401**
16.54 (c)(4) corrected **51401**
16.80 (c) and (d) added 17977
16.96 (p) and (q) added **65062**
16 Appendix I corrected **51401**
23 Policy clarification **71752**
25 Added **58307**
27 Added; interim **62938**
31 Heading and authority citation revised 19676
31.1—31.403 (Subpart A) Redesignated as Subpart A 19676
31.1—31.3 (Subpart A) Designation removed 19676
31.1 Amended 19676
31.100—31.103 (Subpart B) Designation removed 19676
31.200—31.203 (Subpart C) Designation removed 19676
31.200 Amended 19676
31.300—31.304 (Subpart D) Designation removed 19676
31.300 Amended 19676
31.400—31.403 (Subpart E) Designation removed 19676
31.500—31.503 (Subpart B) Added 19676
33 Heading and authority citation revised **50761**
33.1—33.80 Designated as Subpart A **50761**
33.1—33.3 (Subpart A) Designation removed **50761**
33.1 Amended **50761**
33.3 Amended **50761**
33.10—33.12 (Subpart B) Designation removed **50761**
33.20—33.23 (Subpart C) Designation removed **50761**

NOTE: **Boldface page numbers indicate 1998 changes.**

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33.30—33.32 (Subpart D) Designation removed 50761
33.40—33.41 (Subpart E) Designation removed 50761
33.40 Amended 50761
33.50—33.52 (Subpart F) Designation removed 50761
33.60—33.61 (Subpart G) Designation removed 50761
33.70—33.71 (Subpart H) Designation removed 50761
33.80 (Subpart I) Designation removed 50761
33.100—33.103 (Subpart B) Added 50761
36.407 Revised 64837, 64838
68 Heading revised; interim 7073
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68.2 Revised; interim 7073
68.3 Revised; interim 7074
68.6 Revised; interim 7074
68.7 Revised; interim 7074
68.9 Revised; interim 7075
68.10 Revised; interim 7075
68.14 Revised; interim 7075
68.22 Revised; interim 7076
68.23 Revised; interim 7076
68.24 Revised; interim 7077
68.27 Revised; interim 7077
68.33 Revised; interim 7077
68.38 Revised; interim 7078
68.42 Revised; interim 7079
68.52 Revised; interim 7079
68.53 Revised; interim 7081
68.54 Revised; interim 7082
68.55 Added; interim 7082
68.56 Added; interim 7083
68.57 Added; interim 7083
68.58 Added; interim 7083
70.24 Reinstated in part; CFR correction 19898
70.25 Reinstated in part; CFR correction 19898
77 Revised; interim 19275
79.4 (c)(3) and (4) redesignated as (c)(4) and (5); (c)(1), (2), new (4) and new (5) revised; new (c)(3) added 13690
79.5 (c) added 13690
79.21 (d) amended 13691
79.27 Heading, (a) and (b) revised; (c) redesignated as (e); new (c) and (d) added 13691
79.31 (e) and (f) revised; (h) amended 13691
79.36 (a) amended; (d)(1)(ii) revised; (e) added 13691
79.37 Heading, (a) and (b) revised; (c) and (d) added 13692
79.51 (j)(3) and (4) revised; (j)(5) added; concluding text amended 13692
79.55 (d)(1)(i) and (ii) revised 13692
79 Appendix A revised 13692
92 Heading and authority citation revised 50146
92.1—92.6 Designated as Subpart A 50146
92.7—92.13 (Subpart B) Added 50146

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

500.1 (d) revised 55775
503 Revised 55775
504 Removed 17270
524.12 (c) revised 9429
540.51 (b)(3) amended 25795
545.26 (e) revised 67560
551.22 Regulation at 59 FR 62968 confirmed 9430
551.23 Regulation at 59 FR 62968 confirmed 9430
551.24 Regulation at 59 FR 62968 confirmed 9430
551.90 (Subpart I) Revised 55774
571.71—571.72 (Subpart H) Added; interim 69387

Proposed Rules:

0 24972
16 68217
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20 24972
23 38765
25 43893
..... 7562, 10262
31 55069
32 28123
50 24972
65 17128
81 28422
90 20090
302 ..... 1082, 11821, 24547
506 20126
511 9431
540 ..... 20126, 27166
551 65502
541 9432
549 10094

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551 24468
552 9431

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

44 Added 70261
70a Redesignated as part 71 56741
71 Redesignated from part 70a and revised 56741
96 Revised 14539
99 Added 14541

Chapter IV—Office of Labor-Management Standards, Department of Labor (Parts 400—499)

406.10 OMB number 46888
408.13 OMB number 46888

Chapter X—National Mediation Board (Parts 1200—1299)

1208 Authority citation revised 44394
1208.2 Revised 44394
1208.6 Revised 44395

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1601.74 Footnote 4 correctly added; CFR correction 23019
1603 Regulation at 62 FR 17543 confirmed 28742
1603.107 (d) amended 28744
1650 Authority citation revised 28917
1650.101 Amended 28917
1650.201 Added 28917
1650.301 Amended 28917
1650.401 (Subpart D) Added 28917

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1910 Meeting 39029
Technical correction 22552
1910.1—1910.8 (Subpart A) Authority citation revised 13908
1910.6 (b)(1), (e)(50), (q) introductory text and (4) revised; (e)(51) through (70) and (q)(5) through (q)(32) redesignated as (e)(53) through (72) and (q)(6) through (33); new (e)(51), new (52) and new (q)(5) added 13908
1910.16 (a)(2)(x) and (b)(2)(xiv) added; (b)(2)(xii) and (xiii)(D) amended 66270
1910.94—1910.98 (Subpart G) Authority citation revised 13909
1910.94 (d) removed 13909
1910.101—1910.120 (Subpart H) Authority citation revised 13909
1910.108 Removed 13909
1910.122—1910.126 Undesignated center heading and sections added 13909
1910.141—1910.147 (Subpart J) Authority citation revised 66038
Authority citation corrected 204
1910.146 (c)(5)(i)(E), (ii)(C), (F), (H), (7)(iii), (e)(3), (k)(1), (2) and (3)(i) revised; (d)(3)(ii) through (v) redesignated as (d)(3)(iii) through (vi); new (d)(3)(ii), (5)(iv), (v), (vi) and (l) added 66038
Note amended; Appendix F added 66039
1910.176—1910.184 (Subpart N) Authority citation revised 66270
1910.178 (l) revised; Appendix A added 66270
1910.1052(d)(3), (j)(9)(i)(A), (B) and (n)(2) revised; (j)(10) through (14) added 50729
Second (g) correctly removed; CFR correction 13700
1915 Meeting 39029
Authority citation revised 66274
Technical correction 22552
1915.120 Added 66274
1917 Technical correction 22552
1917.1 (a)(2)(xii) and (xiii)(D) amended; (a)(2)(xiv) added 66274
1918 Authority citation revised 66274
Technical correction 22552
1918.1 (b)(8) and (9)(iv) amended; (b)(10) added 66274
1926 Meeting 39029
Technical correction 22552
1926.5 Table amended (OMB numbers) 18810

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TITLE 29 Chapter XVII—Con.

1926.600—1926.606 (Subpart O) Authority citation revised 66274
1926.602 (d) added 66274
1952.354 (b) revised 53281
1952.355 (b) amended 53281

Chapter XX—Occupational Safety and Health Review Commission (Parts 2200—2499)

2200.120 (Subpart H) Added; eff. 2–19–99 through 2–22–00 8246

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2520.102–3 (u) revised; interim 48375
2590 Authority citation revised 57556
2590.711 Revised; interim 57556

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2704 Authority citation revised 63175
2704.100 Revised 63175
2704.102 Revised 63175
2704.104 (b) through (e) revised; (f) and (g) removed 63175
2704.105 Revised 63176
2704.106 Revised 63176
2704.107 (a) revised 63176
2704.108 Revised 63176
2704.201—2704.206 (Supart B) Revised 63176
2704.305 Revised 63177
2704.307 Revised 63177
2704.308 (c) revised 63178

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4007.11 (a)(1) and (2)(ii) amended; (c)(1) revised 68685
4011 Appendix A amended 38306
Appendix B amended 63179
4022 Appendix amended 63179
4022.7 (b)(1) revised; (d) added 38306
4041A.43 (b)(1) amended 38306
4044.52 (b) introductory text revised 38306
4044.54 Amended 38306
4044 Appendix B amended 38083, 43623, 49286, 55334, 63409, 68999
Appendix B corrected 58101
Appendix D amended 63180
Appendix B amended 2570, 7084, 12746, 18576, 26288
4050.2 Amended 38306
4050.5 (a)(2) amended 38306
4050 Appendix A amended 38306
4281.13 (a) introductory text amended; (b) removed; (a)(1) through (5) redesignated as (a) through (e) 38307
4281.14 Heading and (a) amended 38307
4281.15 Removed 38307

Proposed Rules:

1 17442
5 17442
35 71714
56 40800
57 40800
77 40800
215 15276
578 71405
579 71405
1625 19952
1910 ..... 15402, 27941
1915 41755
..... 15402
1917 15402
1918 15402
1926 43452
..... 15402, 26713
2500—2599 (Ch. XXV) 29186
2510 ..... 50542, 64667
..... 3463, 15143
2520 ..... 48376, 58335, 68370
..... 4506
2560 ..... 48390, 58335
..... 65
2700 24547
4007 22589
4022 ..... 57228, 57229
4044 ..... 57228, 57229
4050 57229

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

21 Removed 47119
24 Removed 47119

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48 Authority citation revised 53759
48.2 (a)(1) introductory text amended; (a)(1)(ii) removed; (a)(1)(iii) redesignated as (a)(1)(ii); (a)(2) and (b) revised 53759
48.3 (a) introductory text amended 53759
48.5 (d) revised 53760
48.6 Heading, (a), (b) introductory text and (7) revised; (b)(8) and (9) redesignated as (b)(12) and (13); new (b)(8), new (9), (10), (11), (c), (d) and (e) added 53760
48.8 (c) revised 53760
48.22 (a)(1) introductory text amended 53759
(a)(1)(ii) removed; (a)(1)(iii) redesignated as (a)(1)(ii); (a)(2) and (b) revised 53760
48.23 (a) introductory text amended 53759
48.25 (d) revised 53760
48.26 Heading, (a), (b) introductory text, (5) and (7) revised; (b)(8) redesignated as (b)(12); new (b)(8), (9), (10), (11), (c), (d) and (e) added 53760
48.28 (c) revised 53761
75.161 Revised; eff. 10–6–99 53761
75.506 (d) revised 47119
75.1909 (c)(5) correctly revised; CFR correction 50993
77 Authority citation revised 58613
77.107–1 Revised; eff. 10–6–99 53761
77.1709 Removed 53761
77.1713 (d)(3) and (4) revised; (d)(5) added 58613

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

203.50—203.91 (Subpart B) Heading amended 57249
203.50 (a) amended 57249
203.84 (b) introductory text amended; (b)(7) and (c) revised 57249
208 Authority citation revised 26251
208.2 Amended 26251
208.16 Revised 26251
241.20 Removed 26251
241.50—241.80 (Subpart B) Revised 26251
243 Revised 26254
250.101 (e) Table 1 amended 37068
250.204 (b)(1)(vii) amended 9065
250.413 (c) amended 9065
250.604 Amended 9065
250.806 (a)(3) revised 37068
250.900 (b) amended 9065
250.901 (b)(3)(iv) amended 9065
250.911 (b)(4)(ii) amended 9065
250.1000 (c) revised 43880
250.1001 Amended 43881
250.1007 Heading and (a) introductory text revised; (a)(2) amended 43881
250.1009 (b)(2) revised 9065
250.1403 Revised 9065
250.1404 (d) added 42711
(b) revised 9066
250.1406 (b) revised 9066
253 Added (OMB numbers pending) 42711
Workshop 43624
253.15 (f) corrected 48578
256.52 (b) revised; (c) and (h)(2) amended 9066
256.56 (a)(1) amended 9066
256.70 Amended 9066
256.73 (a) and (b) amended 9066
256.76 (a)(3) amended 9066
256.77 (d)(3) amended 13343
270.6 Amended 9066
270.7 Amended 9066
282.28 (a) amended 9066
290 Revised 26257

Chapter VI—Bureau of Mines, Department of the Interior (Parts 600—699)

602 Removed; interim 40178
Regulation at 63 FR 40178 confirmed 66762

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

707.5 Amended 7482
707.10 Revised 7482
874.10 Added 7482
874.17 Added 7483
901.10 Revised 20165
901.15 Table amended 35807, 66987
901.20 Revised 20166
902.15 Table amended 8514
902.16 (b)(8) revised 8514
904.10 Revised 20166

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TITLE 30 Chapter VII—Con.

904.15 Table amended **49429, 65067**
904.16 Removed 20166
904.20 Revised 20166
913.10 Revised 20166
913.15 Table amended 6200
913.16 Removed 6201
913.20 Revised 20166
913.25 (b) table amended 3419
914 Clarification 28362
914.10 Revised 20166
914.15 Table amended **39729, 51829**
Table amended 12896
914.16 (n), (p) and (gg) removed **51829**
914.17 Added 12896
914.20 Revised 20166
915.10 Revised 20166
915.20 Revised 20167
916.10 Revised 20167
916.20 Revised 20167
917.15 Table amended **40827, 41427**
917.16 (b) removed **40827**
(n) added **41427**
917.17 (a) removed **40827**
Corrected **47091**
917.30 Added **53257**
918.10 Revised 20167
918.15 Table corrected **38881**
918.20 Revised 20167
920.15 Table amended 17980
920.16 (a) removed 17980
924.10 (b) removed **43320**
924.15 Table amended **43321**
924.16 (a) and (e) removed; (f) through (n) added **43321**
925.10 Revised 20167
925.20 Revised 20167
926.10 (a) revised 3610
926.15 Table amended 3610, 3615
926.16 (f) through (j) removed; (k) added 3610
(l) added 3615
926.21 Added 3610
926.30 Revised **40794**
934.15 Table amended **49434**
Table amended 1130, 12900
934.16 (y) and (z) removed **49434**
(aa) and (bb) removed 1130
935.15 Table amended **51833, 66989**
Table amended 17981
936.10 Revised 20167
936.15 Table amended **42579**
Table amended 3423
936.20 Revised 20168
938.15 Table amended 14619
938.16 (cccc) through (ffff) added 14619
938.25 Table amended 14619
943.10 Revised 20168
943.15 Table amended 23542
943.20 Revised 20168
943.25 Table amended **65070**
944.15 Table amended **63611**
944.16 (f) removed **63611**
Correctly removed **66989**
944.25 Table amended 8517
946.15 Table amended 23545
946.16 (a) revised 23545
948.15 Table amended **37777**
Table amended 6217, 26295
948.16 (nnn) and (ooo) revised; (ppp) removed **37777**
(www) through (hhhh) added 6217
(iiii) added 26295

Proposed Rules:

26 ..... **47120**
29 ..... **47120**
46 ..... **59258**
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48 18498
56 ..... **45973**
..... 15144
57 ..... **45973, 47120, 58104**
..... 7144, 14200, 15144
70 ..... **47123**
71 ..... **47123**
72 ..... **37796, 41755, 55811**
..... 7144, 22592
75 ..... **37796, 38066, 41755, 47120, 47122, 55811**
..... 7144, 22592
77 ..... **45973**
..... 15144
90 ..... **47123**
120 15144
204 ..... 3360, 13734, 19739
206 ..... **36868, 38355, 40073**
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208 ..... 1930, 3262
227 6586
241 ..... 1930, 3262
242 ..... 1930, 3262
243 ..... 1930, 3262
250 ..... 1930, 3262, 7837, 13535, 19318, 23029
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290 ..... 1930, 3262
700 ..... 8464, 18585
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..... 8763, 15322, 23811
707 ..... **40871, 46951**
724 ..... **70580**
..... 8763, 15322, 23811
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746 ..... 8464, 18585
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773 ..... **70580**
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902 ..... **42774**
904 ..... **41506, 48661**
913 ..... **63628, 63630, 68218**
914 ..... 6150, 14412, 27484
915 ..... **55025, 59627**
917 ..... **45430**
..... 816, 3670, 4604
920 ..... **50176**
924 ..... **44192**
926 ..... **66079**
931 ..... **66772, 66774**
934 ..... **50177**
..... 18586
935 ..... **53618**
..... 6005, 18857
936 ..... **55979, 65149**
938 ..... **40237, 45199, 45973, 51324, 59259**
..... 12269
943 ..... **53003**
..... 7145
944 ..... **36868**
946 ..... **71047, 71049**
948 ..... **39790, 68221**
..... 19327, 28771
950 ..... **40384, 70080**

TITLE 31—MONEY AND FINANCE: TREASURY

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

108 Technical correction **37777**
103.22 Revised **50156**

NOTE: Boldface page numbers indicate 1998 changes.

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Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

205.4—205.18 Appendix A revised 24243
208 Revised **51502**
210 Revised 17487
225 Revised 4763
285 Regulation at 62 FR 34179 confirmed **46140**
Authority citation revised **67756, 72094**
285.1 Regulation at 62 FR 36210 confirmed; (a) amended; (g), (m), (n) and (o) revised; (j)(5) added **46145**
285.3 Added **72094**
285.4 Added **44988**
Regulation at 63 FR 44988 confirmed **71204**
285.11 (g)(2) revised **22908**
285.12 (a) amended; (b), (c)(3), (d)(4), (f), (g), (h) and (j) revised; (c)(4), (d)(5)(iii) and (6) added **22908**
285.13 Added **67756**
317 Authority citation revised **38041, 64550**
317.0 Revised **38041**
317.1 (d) revised **38041**
Revised; interim **64550**
317.2 Revised; interim **64550**
317.3 (a) introductory text revised; (b) and (c) amended; interim **64550**
317.6 (b) revised; interim **64550**
317.8 Appendix amended **38041**
Appendix amended; interim **64550**
317.9 (b)(2) removed; (b)(1) redesignated as (b); new (b) table amended **38041**
321 Authority citation revised **38042**
321.0 (a) and (b) revised **38042**
321.1 (c) revised **38042**
321.3 (c) revised **38042**
321.6 Revised **38042**
321.7 (a) and (g) revised **38042**
321.9 (a) revised **38042**
321.12 Revised **38042**
321.25 (b)(2) removed; (b)(1) redesignated as (b); new (b) table amended **38042**
321 Appendix amended **38042, 38043**
330 Authority citation revised **38044**
330.1 (f) revised **38044**

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TITLE 31 Chapter II—Con.

330.5 (a) revised 38044
330.6 (a) revised 38044
330.7 Revised 38044
330.8 Revised 38044
330.9 (b)(2) removed; (b)(1) redesignated as (b); new (b) table amended 38044
330.10 Revised 38044
351.1 Revised; interim 64551
351.5 Revised; interim 64551
353 Authority citation revised 64551
353.6 (b)(4) amended; interim 64551
353.13 (c)(3) amended; interim 64551
353.21 (a) revised; interim 64551
353.27 Revised; interim 64551
356.2 Amended 3634
356.20 (b) revised 3634
356.21 (a) amended 3634
356.23 Revised 3634
356 Appendix B and Exhibit A amended 3634
357 Determination 35807, 50159
357.22 (a) introductory text revised 6527
357 Appendix B amended 69191
359 Added 38044
359.2 (e)(1)(i) through (v) revised 45946
359.3 (b)(1) revised 45947
360 Added 38049
370 Authority citation revised 64552
Heading revised; interim 64552
370.0—370.1 (Subpart A) Revised; interim 64552
370.20—370.25 (Subpart C) Heading revised; interim 64553
370.30—370.31 (Subpart D) Redesignated as 370.60—370.61 (Subpart F); interim 64553
370.30—370.38 (Subpart D) Added; interim 64553
370.50—370.57 (Subpart E) Added; interim 64554

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

501.803 Correctly revised 35809
501.807 Revised 5614
515.206 Heading revised; (a) through (d) redesignated as (a)(1) through (4); (a) heading and new (b) added; new (a)(3) and new (4) amended 25812
515.302 (b) redesignated as (c); new (b) added 25812
515.407 Amended 25812
515.415 (b) and (c) amended 25812
515.416 Removed 25812
515.417 Removed 25812
515.418 (b) amended 25812
515.419 Removed 25812
515.420 Added 25812
515.518 Removed 25813
515.521 Removed; new 515.521 redesignated from 515.567 25813
515.522 Redesignated from 515.568 25813
515.523 (b)(3) amended 25813
515.525 (b) amended 25813
515.527 Existing text designated as (a)(1); (a)(2) added 25813
515.533 Heading, (a) introductory text, (1) and (d) revised; (e), (f) and note added 25813
515.540 Redesignated as 515.569 25813
515.545 (b) amended; (c) added 25813
515.546 Redesignated from 515.558 25813
515.550 Redesignated from 515.571 and revised 25813
515.551 (a)(3) amended 25813
515.556 Removed 25813
515.558 Redesignated as 515.546; new 515.558 redesignated from 515.562 25813
515.559 (b)(2) and note added 25814
515.560 Corrected 35808
Revised 25814
515.561 Added 25815
515.562 Redesignated as 515.558 25813
Added 25815
515.563 Removed 25813
Added 25815
515.564 Removed 25813
Added 25815
515.565 Removed 25813
Added 25815
515.566 Redesignated as 515.572 25813
Added 25815
515.567 Redesignated as 515.521 25813
Added 25815
515.568 Redesignated as 515.522 25813
515.569 Removed; new 515.569 redesignated from 515.540 25813
Revised 25818
515.570 Added 25818
515.571 Redesignated as 515.550 25813
Added 25815
515.572 Redesignated as 515.573; new 515.572 redesignated from 515.566 25813

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Amended; heading and (c)(4)(i) revised; (c)(4)(ii), (d)(2), (e)(2)(ii)(A), (D) and (3)(iii) introductory text amended 25819
515.573 Removed 25813
Redesignated from 515.572 25813
515.574 (a) introductory text revised 25819
515.575 Added 25819
515.576 Added 25820
538 Added 35810
539 Added 8716
560 Authority citation revised 62941
560.201 Revised 20170
560.204 Revised 20170
560.205 Revised 20170
560.206 Revised 20170
560.207 Revised 20170
560.208 Revised 20171
560.210 (c) and (d) revised 20171
560.301 Revised 20171
560.306 Revised 20171
560.308 Revised 20171
560.315 Heading, (a) introductory text, (b) introductory text and (1) revised 20171
560.318 Removed 20171
560.319 Revised 20171
560.403 Added 20172
560.410 Revised 20172
560.411 Removed 20172
560.412 Revised 20172
560.414 Revised 20172
560.416 Added 20172
560.417 Added 20172
560.418 Added 20173
560.419 Added 20173
560.420 Added 20173
560.501 (d) and (e) added 20173
560.505 Revised 20173
560.506 Revised 20174
560.509 (a)(1) revised 20174
560.511 Added 20174
560.515 (a) revised; (d) removed 20174
560.516 (a)(3), (4) and (b) revised 20174
560.523 Revised 20175
560.525 Corrected 35808
560.529 Added 20175
560.603 Revised 62941
560 Appendix added 20175
575 Authority citation revised 62942
575.522 (a)(2) and (3) amended; (a)(4) added 62942
585 Authority citation revised 59884
585.528 Heading revised; (d) added 59884
586 Added 54576

Chapter VII—Federal Law Enforcement Training Center, Department of the Treasury (Parts 700--799)

700 Revised 39730

Proposed Rules:

1 71050
..... 1152, 24454
100 4063
103 37085
200—399 (Ch. II) 1149
212 54426
285 ..... 41688, 44991

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

41 Removed 56081
83 Removed 43624
84 Removed 43624
199.2 (b) amended 59232
(b) amended 7087, 11768
199.4 (g)(48) revised 59232
(e)(20) and (i) added 7087
(g)(70) and (71) removed 11769
199.6 (a)(11) removed; (a)(12) redesignated as (a)(11) 48445
(a)(8), (c)(1) and (2) revised; (b)(1)(iii) removed; (f) and (g) redesignated as (a)(14) and (15); (a)(12), (13) and new (f) added 11769
199.8 (b)(3)(iii), (iv) and (v) revised 59232
199.9 (m) added 48445
199.14 (a)(1) introductory text, (i)(C)(*6*)(*iv*), (ii)(C)(*10*) and (iii)(D)(*1*) amended; (a)(1)(ii)(C)(*2*), (*3*), (*4*), (iii)(B), (D)(*5*), (E)(*1*)(*i*)(*A*), (*B*), (*ii*)(*A*), (*B*), (G)(*3*) introductory text, (d)(3)(iv) and (h) introductory text revised; (a)(1)(ii)(D)(*5*) through (*8*) redesignated as (a)(1)(ii)(D)(*6*) through (*9*); new (a)(1)(ii)(D)(*5*) and (h)(1)(iii)(D) added 48446

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TITLE 32 Chapter I—Con.

(h)(1)(i)(D) added **56082**
199.15 (b)(4)(iii)(B), (c)(2), (d)(2)(iii), (e)(3)(i) and (ii) revised **48447**
199.17 (o)(2) and (3) revised; (o)(4) and (5) redesignated as (o)(5) and (6); new (o)(4) added 13913
199.18 (d)(3)(v) introductory text revised **48448**
204.4 (c)(1)(vii) thorugh (ix) corrected **36992**
204.6 (a)(1), (4) and (b)(1)(v) corrected **36992**
204.8 Corrected **36992**
216 Revised **56821**
234.1 Amended **49003**
234.7 (e) amended **49003**
234.13 (e) amended **49003**
234.14 Amended **49003**
234.17 (b)(3)(i), (ii), (c)(1)(ii), (2), (3)(i), (ii), (4)(i) and (ii) amended **49003**
235 Added 6218
270.2 (c) through (k) redesignated as (e) through (m); new (c) and (d) added; interim **68194**
270.6 (b)(2) amended; (b)(3) and (4) added; interim **68195**
270.8 Amended **68195**
270.11 Revised **68195**
270 Appendix A amended **68195**
286 Revised **65420**
286.4 (d)(3)(ii)(B) correctly designated **67724**
286.24 (f)(2) corrected **67724**
290.4 Amended 1130
290.5 (a) amended 1130
290.6 (a)(1)(i), (2) introductory text, (3) introductory text, (iii) and (b)(2)(iii) amended; (a)(3)(vii) removed; (a)(3)(viii) redesignated as (vii) 1130
290.7 (b), (d), (e)(1), (3), (f)(4), (5)(i)(D), (ii) introductory text and (iv) amended 1131
290 Appendixes A and B amended 1131
Appendix B corrected 25405
311 Revised 22785
311.6 (c)(2) correctly designated 27694
311.7 (c)(7) removed **59718**
318 Heading revised **60212**
318.1 (b)(1), (c) and (d) amended **60212**
318.2 Amended **60212, 60213**
318.3 (a) through (d) amended **60212**
(d) footnote 1 amended **60213**
318.4 (a) amended **60212**
(d) amended **60213**
318.5 (a) amended **60212**
318.6 (a) amended **60212**
(b) amended **60213**
318.8 (b) amended **60213**
318.9 (a), (b) introductory text, (1) and (4) amended **60212**
318.10 Amended **60212**
318.11 (a), (b), (d) introductory text and (3)(i) amended **60212**

Chapter V—Department of the Army (Parts 400—699)

556 Removed 14620
588 Removed 37069
655 Revised **53810**

Chapter VI—Department of the Navy (Parts 700—799)

706.2 Tables One and Three amended **44785**
Table Four amended 2571, 25435, **25438**
Tables One and Five amended 2572
Table Five amended ... 2573, 25433, 25434
Tables Four and Five amended 3424, 25821
Table One amended 25436, 25820

Chapter VII—Department of the Air Force (Parts 800—1099)

812 Removed 17101
863 Removed 17545
888g Removed **68685**

Chapter XIX—Central Intelligence Agency (Parts 1900—1999)

1903 Revised **44786**
1903.4 (a)(3)(ii) correctly designated 27041

Proposed Rules:

44 ..... **45975**
199 ..... **36651**
287 27663
299 ..... **52208**
581 ..... **51575**
655 ..... **37296**
775 9286

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TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

20 Revised; interim 28062
33—55 (Subchapter B) Heading amended 6528
55 Added 6528
62 Implementation date 10104
66.05-100 (a) removed; (b) through (j) redesignated as (a) through (i); new (i) revised **55947**
91 SFAR No. 84 corrected 23395
100 Temporary regulations list **45171, 70015**
Regulation at 63 FR 33032 eff. date delayed to 1-2-00 ..... **71754**
Temporary regulations list 16348
100.35-T05-010 Added (temporary) 13914
100.35-T05-012 Added (temporary) 14384
100.35-T05-013 Added (temporary) 14383
100.35-T05-045 Added (temporary) **36850**
100.35-T05-47 Added (temporary) **36851**
100.35-T05-063 Added (temporary) **40653**
100.35-T05-093 Added (temporary) **59233**
100.35-T05-100 Added (temporary) **69000**
100.35-T05-106 Added (temporary) **71220**
100.35T-07-008 Added (temporary) **36182**
Revised (temporary) **50161**
100.35T-07-016 Added (temporary) 16813
100.35T-07-017 Added (temporary) 16814
100.35T-07-024 Added (temporary) 22553
100.35T-07-049 Added (temporary) **43322**
100.35T-07-059 Added (temporary) **53587**
100.35T07-068 Added (temporary) 63612
100.35T-07-075 Added (temporary) **67401**
100.35-T08-040 Added (temporary) **38752**
100.35-T08-051 Added (temporary) **49004**
100.35-T08-054 Added (temporary) **47426**
100.35-T08-058 Added (temporary) **48579**
100.35-T08-060 Added (temporary) **50160**
100.01—100.50 (Subpart A) Regulation at 61 FR 33032 eff. date delayed to 1-2-00 ..... **71754**
100.01 Regulation at 61 FR 33032 eff. date delayed to 1-2-00 ..... **71754**
100.05 Regulation at 61 FR 33032 eff. date delayed to 1-2-00 ..... **71754**
100.15 Regulation at 61 FR 33032 eff. date delayed to 1-2-00 ..... **71754**
100.17 Regulation at 61 FR 33032 eff. date delayed to 1-2-00 ..... **71754**
100.18 Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.19 Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.25 Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.30 Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.35 Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.100—100.1306 (Subpart B) Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.100 Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.101 Implementation (temporary) 27694
100.104 Revised 19717
(c)(7) corrected 23395
100.109 Added **37492**
100.114 Implementation (temporary) **45395**
100.116 Added **37249**
100.120 Added 8000
100.121 Added 28101
100.122 Added 28099
100.201 Implementation (temporary) **36182, 36183**
Removed **70654**
100.501 Implementation (temporary) **36849**
100.505 (b) revised **39236**

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TITLE 33 Chapter I—Con.

100.509 (a)(1), (b)(2) introductory text and (c) revised; Table 1 added **42580**
100.511 Implementation (temporary) 13914, 19715
100.710 Revised **41719**
(c) correctly designated 22674
100.734 Added 3841
100.801 Table 1 revised **70654**
100.1101 Implementation (temporary) **38308**
100.1102 Table 1 amended **37491**
110.157 (b)(11) added; eff. 10–6–98 to 12–8–98 ..... **55028**
110.186 (b) revised 20177
110.188 (b)(9) through (12) added 22554
117 Temporary drawbridge operation regulations **37251, 39029, 40654, 40655, 41720, 43080, 45395, 47174, 49287, 53281, 54353, 63180, 64628, 64868, 68685, 69193, 70018, 71754**
Temporary drawbridge operation regulations 35, 3424, 4786, 5717, 6220, 7788, 8000, 13514, 16641, 17101, 18576, 20177, 23545, 24944, 25438, 26295, 27179, 27694
117.5–T–08–077 Added (temporary) **72190**
117.5–T–08–079 Added (temporary) 406
117.253 (a) suspended; (c) added; eff. 3–11–98 through 11–23–98 ..... **45397**
(a) suspended; (c) added; eff. 12–4–98 through 1–31–99 ..... **69192**
117.261 (u), (v) and (w) revised **60214**
117.265 Removed 10105
117.268 Added **67402**
117.287 (a–1) suspended; (a–3) added; eff. 3–5–99 through 5–31–99 16350
117.393 (c) suspended; (e) added; eff. 12–3–98 to 2–1–99 1517
117.434 Redesignated from 117.435 8722
117.435 Redesignated as 117.434; new 117.435 redesignated from 117.436 8722
117.436 Redesignated as 117.435; new 117.436 added 8722
117.451 (b) suspended; (f) added (temporary) **57251**
117.459 Revised **40654**
117.465 (g) added; eff. 10–5–98 through 11–6–98 ..... **47428**
(g) added (temporary) **51302**
(a) revised **55031**
117.467 (b) suspended; (c) added; eff. 7–6–98 through 11–10–98 ..... **35821**
(b) suspended; (c) added; eff. 12–14–98 through 3–20–99 ..... **69557**
117.478 (c) suspended; (d) added; eff. 3–8–99 through 8–31–99 9271
117.599 (a) designation and (b) removed **69001**
Revised 28745
117.619 Revised **70662**
117.645 Removed 9272
117.675 (c) added; interim 6221
117.683 Redesignated as 117.682; new 117.683 redesignated from 117.684 ..... **49822**
117.684 Redesignated as 117.683; 117.684 added **49822**
117.685 Revised **49822**
117.721 Added **43323**
117.733 (k) added; eff. 10–19–98 through 5–14–99 ..... **54354**
117.739 (h) revised; (j) and (k) redesignated as (k) and (j); new (k) amended 4788
117.797 (b) revised 28103
117.822 Revised **37251**
117.955 (a) revised; interim **55030**
Regulation at 63 FR 55030 confirmed 406
117.991 Removed **47427**
117.993 (b) revised 28103
117.997 (a) through (h) redesignated as (b) through (i); new (a) added **55948**
117.1097 Revised **49288**
117.T408 Added (temporary) **64188**
120 Regulation at 61 FR 37652 confirmed **53590**
120.100 Heading revised **53590**
120.110 Amended **53590**
120.200 Revised **53590**
120.210 Revised **53590**
120.220 Revised **53590**
120.300 Revised **53590**
120.303 Added **53591**
120.305 Revised **53591**
120.307 Revised **53591**
120.309 Revised **53591**
128 Regulation at 61 FR 37654 confirmed **53590**
128.100 Heading revised **53591**
128.110 Revised **53591**

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128.200 Revised **53591**
128.210 Revised **53592**
128.220 Revised **53592**
128.300 Revised **53592**
128.305 Redesignated as 128.307; new 128.305 added **53592**
128.307 Redesignated as 128.309; redesignated from 128.305; new 128.307 revised **53592**
128.309 Redesignated as 128.311; new 128.309 redesignated from 128.307 ..... **53592**
Revised **53593**
128.311 Redesignated from 128.309 ..... **53592**
Heading revised **53593**
151.1500—151.1506 (Subpart C) Heading revised; interim 26682
151.1504 Amended; interim 26682
151.2000—151.2050 (Subpart D) Added; interim 26682
155 Authority citation revised **71763**
Meeting 18576
155.140 (b) introductory text amended **71763**
155.230 Revised; interim; eff. in part 12–11–00 ..... **71763**
155.710 (e) introductory text, (1), (2) and (3) revised **35826**
155.715 Added **35826**
160.207 (d) and (e) revised **44117**
165 Temporary regulations list **45171, 70015**
Authority citation revised **71770**
Authority citation revised 12749
Technical correction 15399, 17439
Temporary regulations list 16348
165.T01–001 Added (temporary) 7090
165.T01–002 Added (temporary) 4053
165.T01–004 Added (temporary) 8723
165.T01–008 Added (temporary) 9067
165.T01–015 Added (temporary) 11772
Correctly designated 14306
165.T01–018 Added (temporary) 16643
165.T01–034 Added (temporary) 24287
165.T01–048 Added (temporary) 26296
165.T01–053 Added (temporary) 27696
165.T01–080 Added (temporary) **40656**
165.T01–082 Added (temporary) **39238**
165.T01–083 Added (temporary) **39237**
165.T01–102 Added (temporary) **42234**
165.T01–113 Added (temporary) **45949**
165.T01–114 Added (temporary) **46178**
165.T01–115 Added (temporary) **45177**
165.T01–123 Added (temporary) **45948**
165.T01–130 Added (temporary) **46889**
165.T01–131 Added (temporary) **46890**
165.T01–140 Added (temporary) **55533**
165.T01–144 Added (temporary) **49823**
165.T01–157 Added (temporary) **59720**
165.T01–CGD1–038 Added (temporary) 27918
165.T01–CGD1–039 Added (temporary) 27699
165.T01–CGD1–040 Added (temporary) 27919
165.T01–CGD1–047 Added (temporary) 27697
165.T01–CGD1–171 Added (temporary **68686**
165.T01–CGD1–183 Added (temporary) 2432
Added (temporary) 5936
165.T01–184 Added (temporary) 4054
165.T05–009 Added (temporary) 13915
165.T05–084 Added (temporary) **55029**
165.T07–013 Heading and (a) revised (temporary) **38477**
165.T07–023 Added (temporary) **46176**
165.T07–053 Added (temporary) **47429**
165.T07–065 Added (temporary) **56083**
165.T08–024 Added (temporary) **36852**
165.T08–038 Added (Temporary) **37493**
165.T08–047 Added (temporary) **46891**
165.T11–061 Added (temporary) 8002
165.T11–062 Added (temporary) 18815
165.T11–089 Added (temporary) **46653**
165.T17–003 Added (temporary) **45950**
(b) corrected **53593**
165.T17–SEAK–001 Added (temporary) 16642
165.100 Added **71770**
(d)(1)(iii) revised; interim 12749
165.163 Added 24946
165.164 Added 24948
165.165 Revised 18579
165.514 Added **58636**
165.810 (e) and (f) revised 18813
165.906 Added 8006
165.1115 Added **38754**
165.1116 Added **38308**
Correctly designated **46889**
165.1310 Added; interim **52609**
187.301—187.331 (Subpart D) Regulation at 60 FR 20315 eff. date delayed to 10–24–99 19039

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

320.1 (a)(2) amended; eff. 8–6–99 11714

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TITLE 33 Chapter II—Con.

323.2 (d)(1) introductory text and (iii) amended; (d)(2)(iii) added 25123
326.3 (e)(1)(v) added; eff. 8-6-99 11714
331 Added; eff. 8-6-99 11714
334.155 Added **68140**
334.200 Heading, (b)(2), (3) and (c) revised; (a)(1) amended 18581

Chapter IV—Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

402.100 Corrected **36992**
402.210 Corrected **36992**
402.211 Corrected **36992**
402.320 Corrected **36992**
402.428 Corrected **36992**

Proposed Rules:

1—199 (Ch. I) **36384, 64937** 20236
1—124 2868
55 ..... **51878**
100 ..... **36197, 46206, 50179, 63426, 65636** ...66, 4812, 4814, 17587, 20236, 24979, 24980
110 ..... **37297, 39651** 3888, 3889, 14414, 15322, 27487
117 ..... **43126, 45978, 45980, 48453, 50821, 57963, 58676, 60226, 64022** 1155, 3464, 6290, 8033, 12795, 12797, 17134, 22593, 26349, 26350, 28125, 28126
126 ..... **57964** 1770
154 17222
155 13734
162 14414
165 ..... **39256, 40583, 42304, 47455, 54639, 70707, 72219** 6006, 7147, 8764, 9107, 14414, 23570, 24982, 24983, 24985, 24987, 28128
167 12139
173 4816
175 15709
177 15709
179 15709
181 ..... **63638** 15709
183 15709

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

74 OMB circular applicability **36144**
80 OMB circular applicability **36144**

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

200.8 (c)(1) revised; (c)(3)(ii)(B)(*3*) added **54997**
200.28 (a)(2)(iii) removed **54997**
200.63 Revised **54997**

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

300 Revised 12418
Technical correction 24862
303.1 (a) amended 12535
303.4 Authority citation revised 12535
303.5 (a)(1)(vi) amended; (a)(3) and authority citation revised 12535
303.6 Amended 12535
303.10 Revised 12535
303.12 (d)(11) amended 12535
303.19 Revised 12535
303.100 (d)(2) revised 12535
303.140 (b) amended 12535
303.145 (c) heading revised; (c)(1) amended 12536
303.344 (d)(1)(ii) amended; (h)(1) revised 12536
303.403 (b)(2) and (3) amended; (b)(4) revised 12536
303.510 Revised 12536
303.511 Revised 12536
303.512 Revised 12536
303.520 (d) added; authority citation revised 12536

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

600.2 Amended **40622**
600.9 (b)(2)(ii) amended **40622**

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600.40 (a)(1)(iv)(A) and (B) amended; (a)(1)(iv)(C) removed **40622**
600.41 (a)(1)(ii)(F) and (G) amended; (a)(1)(ii)(H) and (e)(3) removed **40623**
600.55 (a)(5)(i)(A) amended **40623**
648 Authority citation revised 13486
648.1 Authority citation revised 13486
Amended 13487
648.2 Authority citation revised 13486
648.3 Authority citation revised 13486
648.4 Authority citation revised 13487
648.5 Authority citation revised 13487
648.6 Authority citation revised 13487
648.7 Authority citation revised 13487
648.8 Authority citation revised 13487
648.9 Authority citation revised 13487
648.20 (b)(7) amended; authority citation revised 13487
648.30 Authority citation revised 13487
648.31 Authority citation revised 13487
648.32 Authority citation revised 13487
648.33 Authority citation revised 13486
648.40 (a)(8)(iii) and (iv) revised; authority citation revised 13487
648.41 Authority citation revised 13487
648.50 Authority citation revised 13487
648.51 (b) amended; authority citation revised 13487
648.52 Existing text designated as (a) and amended; (b) added; authority citation revised 13487
648.60 Authority citation revised 13487
648.61 Authority citation revised 13487
648.62 Authority citation revised 13487
648.63 Authority citation revised 13487
648.64 Authority citation revised 13487
648.65 Authority citation revised 13487
648.66 Authority citation revised 13487
648.70 Authority citation revised 13487
650 Authority citation revised 3198
650.1 Authority citation revised; (a) authority citation removed 3198
(a) amended 3199
650.2 Authority citation revised; (a) amended; (d)(1)(iv) revised 3199
650.3 Authority citation revised 3198
650.4 Amended 3199
650.5 Authority citation revised 3199
650.10 Authority citation revised 3198
650.20 Authority citation revised; (c) amended 3199
650.30 Amended; authority citation revised 3199
650.31 Authority citation revised 3198
650.32 Authority citation revised 3199
650.33 Authority citation revised 3199
650.34 Authority citation revised 3199
650.35 Authority citation revised 3198
650.36 Authority citation revised 3199
650.37 Authority citation revised 3199
650.40 Authority citation revised 3199
650.41 Authority citation revised; (a) amended 3199
650.42 Authority citation revised 3199
650.43 Authority citation revised 3199
650.44 Authority citation revised 3199
655.1 (d) amended; (e) removed; (f) redesignated as (e) 7739

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TITLE 34 Chapter VI—Con.

655.3 (c)(5) and (6) amended; (c)(7) removed 7739
655.4 (a) and (b) amended 7739
655.10 Amended 7739
655.30 Revised 7739
656.1 (a), (b) and (d) revised 7739
656.3 Revised 7739
656.5 (b) introductory text and (5) amended 7739
656.30 (a)(5) and (6) amended; (a)(7) and (8) added 7739
658.1 Revised 7739
658.2 (c) redesignated as (d); new (c) added 7739
658.10 (a), (b)(1) and (c) revised 7740
658.11 Revised 7740
658.41 (a) and (b) revised; (d) added 7740
660.1 (b), (e) and (f) amended; (g), (h) and (i) added 7740
660.10 (b)(1) amended; (h), (i) and (j) added 7740
662 Revised **46361**
663 Revised **46363**
664 Revised **46366**
668.1 (c)(3), (7) and (11) removed; (c)(4), (5), (6), (8), (9), (10) and (12) redesignated as (c)(3) through (8) and (10); new (c)(9) added **40623**
668.2 (b) amended **40623**
668.8 (d)(3) amended **40623**
668.13 (a)(4)(i) introductory text and (d)(2)(i) amended **40623**
668.14 (b)(4)(ii) removed; (b)(4)(iii) through (vi) redesignated as (b)(4)(ii) through (v); new (b)(4)(ii), (7), (15), (17) and (23) amended; (b)(8), (11) and (16) revised **40623**
668.16 (e)(2)(i) and (j)(1) amended; (m)(1) introductory text, (i) and authority citation revised **40624**
668.17 Heading, (h) and (i) revised **56759**
668.19 (a)(3)(iv), (v) and (vi) amended **40624**
668.20 (c) introductory text and (d)(2) revised **40624**
668.21 (a)(1) amended **40624**
668.22 (c)(2)(ii) revised; (f)(1)(ii), (2)(i), (g)(2)(ii)(B), (3)(ii) and (h)(1) introductory text, (iv), (v), (vi), (2)(ii) through (v) and (i) amended; **40624**
668.25 (c)(4) introductory text and (ii) amended **40624**
668.26 (b)(4), (6), (c)(2), (d)(2) introductory text, (3) introductory text and (i) amended **40624**
668.32 (c)(1) and (k)(5) amended **40624**
668.42 (b) introductory text revised **40625**
668.43 (c)(6) amended **40625**
668.46 (a)(1), (2)(ii), (5)(i) and (ii) amended **40625**
668.48 Note amended **40625**
668.49 (a)(1)(iii) and (b) amended; (a)(1)(vi) added; (d) revised **40625**
668.51 (a) amended **40625**
668.54 (a)(2)(i) amended **40625**
668.55 (c) introductory text, (1), (2) and (d)(2) amended **40625**
668.58 (a)(1)(i), (2)(ii)(A) and (iii) revised; (a)(1)(ii), (iii), (c), (d)(1) and (2) amended; (a)(1)(iv) added **40625**
668.59 (b)(1), (c) introductory text and (1)(ii) amended; (d)(1) revised **40625**
668.60 (b) introductory text, (1)(i)(A), (B), (D), (iii) and (d) amended; (b)(1)(i)(C), (ii) and (e)(2) revised **40625**
668.61 (a)(2)(ii)(B) and (b) amended; (b) redesignated as (b)(1); (b)(2) added **40626**
668.81 (e) removed **40626**
668.83 (c)(2)(i)(B), (iii)(D) and (d)(1)(iii) amended **40626**
668.94 (a) introductory text and (5) amended **40626**
668.130 (a) and (b) amended **40626**
668.131 Amended **40626**
668.132 (a)(2) and (b) amended **40626**
668.133 (a) introductory text and (1)(i) amended **40626**
668.134 (a) introductory text, (1), (3), (b)(1) and (2) amended **40626**
668.136 (a) and (b) introductory text amended **40626**
668.137 (a) and (b) amended **40626**
668.138 (a) and (b) revised **40626**
668.139 (b) and (d) revised **40626**
668.166 (a)(1) amended **40626**
668.167 (a)(3) revised **40626**
668.171 OMB number **40348**

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668.172 (c)(5)(ii) amended; OMB number **40348**
668.173 (b) revised **40348**
668.174 OMB number **40348**
(c)(3)(i), (ii), (iii), (iv) introductory text and (B) amended **40349**
668.175 OMB number **40348**
(f), (2)(i), (3)(i), (ii), (g)(1)(i)(A) and (ii) amended **40349**
668 Appendix G amended **40349**
669.3 Revised 7741
674.19 (b)(5) correctly removed; CFR correction **55948**
675.26 (d) revised **52855**
682.100 (a)(2) and (4) amended 18974
(b)(2)(i)(C) and (iii) amended 18975
682.101 (b) and (c) amended 18975
682.102 (e)(1), (2) and (4) amended 18975
682.103 (a), (c) and (d) amended 18975
682.200 (a)(1), (2), (3) and (b) amended 18975
682.201 (a)(5)(i) designation and (ii) removed; (a)(5)(A) and (B) redesignated as (a)(5)(i) and (ii); (a)(3), (4)(i), (ii)(A) and new (a)(5)(ii) amended 18975
(a)(6), (b)(1)(iii), (iv), (c)(1)(i), (ii) and (iii)(C) amended 18976
682.202 (h) added 18976
682.204 (a)(1) through (4), (b)(2), (d) introductory text, (3), (e), (f)(2)(i)(C), (4)(ii), (h) and (j) amended; (b) introductory text revised; (c)(1) designation and (2) added 18976
682.205 (a)(2)(xiii) amended 18976
682.206 (e)(2) amended 18976
682.207 (a)(1), (b)(1)(i)(B), (ii)(A), (C), (v)(B)(*1*), (*2*), (c) introductory text and (d)(2)(i)(C) amended; (b)(1)(v)(B)(*3*) added 18976
682.208 (b)(1)(iii), (c)(2), (e)(1) and (3) amended 18976
682.209 (a)(1), (2)(i), (ii), (3)(i)(A), (ii)(B), (C), (4)(ii), (iii), (6)(iii), (viii)(C), (ix), (7)(ii), (e)(2)(i), (f)(2)(i), (h)(3) and (5)(ii) amended; (a)(6)(vii) and (viii)(A) revised; (h)(2)(i) through (v) redesignated as (h)(2)(ii) through (vi); (a)(2)(iv), (v), (3)(i)(C) and new (h)(2)(i) added 18977
682.210 (a)(8), (10), (b)(3), (5), (7) introductory text, (s)(1) and (2) amended 18977
682.211 (f)(4) and (g) removed; (f)(5) through (9) and (h) through (j) redesignated as (f)(4) through (8) and (g) through (i); (a)(2), (3), (d), (e) and new (f)(4), (8), (g), (h)(2), (3)(i), (ii), (iii), (i)(1) and (4) amended 18977
682.215 (e)(2)(i) amended 18978
682.300 (b)(2)(ii) introductory text, (B), (vi) and (vii) amended; (b)(2)(viii) added 18978
682.301 (b)(1) and (2) amended 18978
682.302 (d)(1)(v) and (vii) amended; (d)(2) redesignated as (d)(3); new (d)(2) added 18978
682.305 (a)(3) revised 18978
682.400 (a) and (b)(1)(ii) amended 18978
682.401 (b)(1), (2) introductory text, (ii)(A), (B), (C), (iii), (5)(ii), (6)(i)(C) and (10)(v) amended; (b)(4)(v) added; (b)(10)(iv) and (15) through (28) revised 18978
682.402 (a)(2), (b)(1), (d)(6)(ii)(G), (e)(6)(v), (10)(ii)(D)(*2*), (E), (11), (f)(1), (3), (5)(i), (ii), (g)(2)(iv)(A), (h)(1)(i), (ii), (2)(iii), (v), (i)(3)(ii) and (m)(2) amended; first (e)(13) removed; (h)(2)(i), (3)(iii) and (m)(1) revised 18979
682.403 (a)(2)(iii)(D) and (f) amended; (d) revised 18980
682.404 (a)(3)(i), (d)(1) and (g)(2)(ii) amended 18980
682.405 (b)(1) introductory text, (iv) and (3) amended 18980
682.406 (a)(9) amended; (a)(12) revised 18980
682.408 (a) amended 18980
682.409 (a) amended 18980
682.410 (a)(1)(vi), (b)(5)(i)(E), (ii), (6)(ii)(A), (vi)(A)(*2*), (*3*), (B)(*2*), (viii)(A), (B), (ix)(A), (B), (C), (xii), (7)(ii) and (iv)(B) amended; (b)(6)(vi)(A)(*4*) added; (b)(6)(vii)(B) revised; (b)(6)(xi) removed 18980
682.411 (b)(1), (d)(1), (3)(i), (ii), (4)(iv)(B) and (g) amended 18981

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682.413 (c)(1)(vi) and (2) amended 18981
682.415 (b)(1)(iv), (3), (5)(i), (6)(i), (9), (c)(4) and (7)(ii) amended 18981
682.505 (d) amended 18981
682.507 (a)(2) amended 18981
682.511 (a)(2) and (b)(2) amended 18981
682.512 (b)(1)(ii) amended 18981
682.603 (d) introductory text, (e) introductory text, (f)(1)(ii)(B) and (3)(ii)(A) amended; (f)(1)(i) redesignated as (f)(1)(i)(A); (f)(1)(i)(B) added 18981
682.604 (a)(3), (b)(1), (2)(i), (c)(2)(i), (ii) introductory text, (B), (3), (d)(1)(ii)(A), (4), (f)(1), (g)(1)(i), (2)(vi), (h)(1) and (3) amended; (d)(1)(ii)(B) added 18981
682 Appendixes B and D amended 18982
685.209 (a)(2)(i), (4), (5) and (9) amended 29183
685 Appendix A revised 39010
Appendix A removed 29183
694 Added 10187

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700—799)

702 Added 57573

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TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

7.87 Added 19483
61 Revised 11742
62 Revised 25717

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

200.7 (a) revised 53811
200.8 Revised 53812
(a) corrected 60049
212.13 Added; interim 7304
223.118 Revised 411
242 Meetings 46394
242.1—242.9 (Subpart A) Revised 1286
242.10—242.20 (Subpart B) Revised 1289
242.22—242.24 (Subpart C) Revised 1293
242.25 (k)(9)(ii) table, (10)(ii) table and (23)(iii) table amended; eff. 7-1-98 through 6-30-99 46150
(k)(26)(iii) table amended; eff. 7-1-98 through 6-30-99 46151
242.26 Revised 1302
242.27 Revised 1311
251.51 Amended 65964
251.54 Revised 65964
251.56 (a) and (d)(2) revised 65967
251.57 (a) revised; (h) removed; (i) redesignated as (h) 65967
251.59 Revised 65967
251.60 (g) removed; (h), (i) and (j) redesignated as (g), (h) and (i); (a)(2), (b), (e), (f) and new (g), (h) and (i) revised 65968
251.61 (c) revised 65968
251.64 (a) amended 65968
251.65 Revised 65968
254.4 (g) revised 25822
254.13 (b) revised 25822
254.14 (b)(6) revised 25822

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Chapter III—Corps of Engineers, Department of the Army (Parts 300—399)

327.30 Appendixes A and C amended; eff. 8-17-98 35828

Chapter VIII—Advisory Council on Historic Preservation (Parts 800—899)

800 Revised 27071
811 Revised 54355

Chapter X—Presidio Trust (Parts 1000—1099)

1007 Added 71774
1008 Added 71779
1009 Added 71784

Chapter XI—Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

1152 Removed 70342
1191.2 Revised 64837, 64838
1192.31 (c) revised 51697, 51702
1192.153 (c) revised; (d) added 51698, 51702
1192.157 (b) revised 51698, 51702
1192.159 Revised 51698, 51702
1192.161 Added 51700, 51702
1192 Figures 1 and 2 added 51701, 51702
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Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1202 Revised 70342
1220.40 Amended 35829
1220.54 Amended 35829
1222.20 (b)(3) amended 35829
1228.26 Amended 35829
1228.46 Amended 35829
1228.50 Amended 35829
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1228.222 (a)(3) amended 35829
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1234.10 (a) amended 35830
1238.2 Amended 35830
1254.1 (d) revised 19901
1254.2 (a) revised 19901
1254.6 Revised 19901
1254.8 (b) and (c) amended 19901
1254.10 Revised 19901
1254.12 (a) revised 19901
1254.14 (b) revised 19901
1254.16 (d) and (e) revised 19901
1254.20 (a) revised 19901
(b), (c) and (d) revised; interim 19901
1254.24 (d) added 19902
1254.26 (a) through (d), (e) introductory text, (2), (3), (g), (h) introductory text, (2)(i), (ii), (5) and (6) revised 19902
1254.27 Heading, (a) and (c)(3) revised 19903
1254.70 (a) revised 19903
1254.71 (g) removed; (e) and (f) redesignated as (f) and (g); heading, (a), (b), (c) heading, (1), (2), (d)(1) and new (g) revised; new (e) added 19903
1254.90 Revised 19904
1254.92 (a) and (b) revised; (d)(3) and (4) added 19904
1254.94 (a)(1), (2), (3), (d)(3), (4), (k) and (l) added; (d) introductory text, (1) and (i) revised 19905
1254.96 (a)(1), (2) and (3) removed; (a)(4) and (5) redesignated as (a)(1) and (2) 19905
1254.98 (a) revised 19905
1254.100 (b), (c) and (g) revised 19905
1254.102 (e) added 19906

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TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

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1.14 Regulation at 63 FR 29617 confirmed 66041
1.16 (a) through (d) and (f) through (j) revised 39733, 67579
Regulation at 63 FR 39733 eff. date delayed to 10–10–98 52610
1.17 (a)(1) through (5), (b), (c), (d), (l), (m), (r) and (s) revised 39733, 67580
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1.18 Revised 39733, 67580
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1.20 (d) through (g) revised 39733, 67580
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1.21 (a)(6)(ii) revised 39734, 67580
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1.53 Regulation at 63 FR 5734 confirmed 36185
1.412 Regulation at 63 FR 29617 confirmed 66041
1.416 Regulation at 63 FR 29617 confirmed 66041
1.419 Regulation at 63 FR 29617 confirmed 66041
1.431 Regulation at 63 FR 29618 confirmed 66041
1.432 Regulation at 63 FR 29618 confirmed 66041
1.435 Regulation at 63 FR 29618 confirmed 66041
1.445 Regulation at 63 FR 29619 confirmed 66041
1.451 Regulation at 63 FR 29619 confirmed 66041
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1.480 Regulation at 63 FR 29619 confirmed 66041
1.481 Regulation at 63 FR 29619 confirmed 66041
1.484 Regulation at 63 FR 29619 confirmed 66041
1.485 Regulation at 63 FR 29620 confirmed 66041
1.492 (a) through (d) revised 39734, 67580
(a)(5) corrected 46892
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1.494 Regulation at 63 FR 29620 confirmed 66041
1.495 Regulation at 63 FR 29620 confirmed 66041
1.655 (a) revised; interim 12901
1.801—1.825 (Subpart G) Appendix B removed 48448
2.76 (a), (g) and (h) revised 48097
2.85 (e) revised 48097
2.87 (c) revised 48097
2.101 (d)(1) revised 48097
2.102 (d) revised 48097
2.111 (b) and (c)(1) revised 48097
2.117 (a) and (b) revised 48097
2.119 (d) revised 48097
2.120 (e) and (h) redesignated as (e)(1) and (h)(1); (e)(2) and (h)(2) added; (a), new (e)(1), (g)(1) and new (h)(1) revised 48098
(a) revised 52159
2.121 (a)(1), (c) and (d) revised 48099
2.122 (b)(1), (d)(1) and (2) revised 48099
2.123 (b) and (f) revised 48099
2.125 (c) revised 48099
2.127 (a), (b), (d), (e)(1) and (f) revised 48099
(a) revised 52159
2.134 (a) revised 48100
2.146 (e)(1) revised 48100
3 Heading revised 52159
3.41 Revised 48100, 52159

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201.5 (b)(2)(ii) and (iii)(A) revised; interim 59236
(b)(2)(iii)(A) amended 66042
201.17 (h)(2)(iv) amended 39738
201.22 (e)(1) revised 66042
201.33 (d)(1) revised 12902
201.38 Added; interim 59234
201.39 Added; interim 71787
202.12 (c)(1) amended 12902
251.2 (b) through (g) redesignated as (c) through (h); new (b) added; new (c) revised 65556
251.54 Revised 25201
251.58 (c) amended 65556
251.60 Amended 65556
251.61 (a) revised 65556
251.62 (a) amended 65557
253.3 Added 49836
253.5 (c)(1), (2) and (3) revised 66042
255.5 Revised 6223
255.6 Added 6223
255.7 Added 6223
255.8 Added 6223
256.2 (a)(1) and (c) amended 39739

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TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

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3.256 Revised; interim 53595
3.311 (b)(2)(xxi) and (xxii) amended; (b)(2)(xxiii) and (xxiv) added 50994
3.358 Heading and (a) revised 45006
Heading and (a) revised 1131
3.361 Added 45006
Removed 1132
3.362 Added 45007
Removed 1132
3.363 Added 45007
Removed 1132
3.800 Introductory text added 45007
Introductory text removed 1132
3.811 Heading, (a) heading and authority citation revised; (d) redesignated as (e); new (d) added 62943
4.85 Revised 25206
4.86 Revised 25209
4.86a Removed 25209
4.87 Revised 25210
4.87a Revised 25210
4.87b Removed 25210
4.104 Amended 37779
17.55 Introductory text amended; (h) removed; (i), (j) and (k) redesignated as (h), (i) and (j) 39515
17.56 Redesignated as 17.57; new 17.56 added 39515
17.57 Redesignated from 17.56 39515
17.84 Removed 48102
17.96 Introductory text amended; (a) authority citation removed; authority citation added 37780
17.101 Redesignated as 17.102; new 17.101 redesignated from 17.102 and revised 22678
17.102 Redesignated as 17.101; new 17.102 redesignated from 17.101 22678
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17.128 Revised 39515

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17.270—17.278 Undesignated center heading and sections added **48102**
20.609 (c)(4) added 2138
20.1400—20.1411 (Subpart O) Added 2139
20.1405 (a) revised; interim 7091
21.1029 Added 23770
21.1030 Revised 23771
21.1031 Revised 23771
21.1032 Revised 23771
21.3021 (m) amended 23771
21.3023 Heading, (c) introductory text and (1) revised; (c)(3) amended; authority citation added; OMB number **45718**
21.3030 Revised 23772
21.3031 Removed 23772
21.3032 Removed 23772
21.3045 (h) revised **67778**
21.3131 (a) revised **67778**
21.3300 (c) amended **67779**
21.3333 (a) and (b)(1) amended **67779**
21.4001—21.4279 (Subpart D) Authority citation revised **35831**
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21.4008 Amended; eff. 7–31–98 ..... **35831**
21.4131 Introductory text, (a) and (d) revised 23772
21.4133 Removed; eff. 7–31–98 ..... **35831**
21.4134 Removed; eff. 7–31–98 ..... **35831**
21.4135 (f), (j)(1), (k) heading and (1) revised; (j) introductory text and (k) introductory text added; eff. 7–31–98 ..... **35831**
21.4146 (e) amended; eff. 7–31–98 ..... **35831**
21.4152 (b)(2) amended; eff. 7–31–98 ..... **35831**
21.4202 (a) and (b) removed; eff. 7–31–98 ..... **35831**
21.4207 Removed; eff. 7–31–98 ..... **35831**
21.4208 Removed; eff. 7–31–98 ..... **35831**
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21.4214 Added; eff. 7–31–98 ..... **35834**
21.4215 Added; eff. 7–31–98 ..... **35836**
21.4216 Added; eff. 7–31–98 ..... **35836**
21.5001—21.5296 (Subpart G) Authority citation revised **35836**
21.5030 (c)(1), (2) and (3) redesignated as (c)(2), (3) and (4); heading, (c) introductory text and new (3) revised; new (c)(1) added 23772
21.5130 (b) and (c) removed; (d) through (g) redesignated as (b) through (e); eff. 7–31–98 ..... **35836**
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21.5200 Introductory text amended; (h) removed; (i) revised; (j) redesignated as (h); new (j) through (o) added; eff. 7–31–98 ..... **35836**
21.5730 Revised 23772
21.5732 Removed 23772
21.7000—21.7320 (Subpart K) Authority citation revised **35837**
21.7020 Introductory text revised 23772
21.7030 Revised 23773
21.7032 Heading and (a) revised; (b) through (e) removed; (f) redesignated as (b) 23773
21.7042 Heading, (d)(2) and (3) revised; (d)(4) and authority citation added; OMB number **45718**
21.7051 (a)(1) amended 23773
21.7131 Introductory text and (a) revised; (d) and (e)(2)(i) introductory text removed; (e)(1)(iii) amended; (e)(2)(i)(A), (B) and (C) redesignated as (e)(2)(i), (ii) and (iii) 23773
21.7133 Revised; eff. 7–31–98 ..... **35837**
21.7135 (i) introductory text, (1), (2), (j)(1) and (k)(1) amended; eff. 7–31–98 ..... **35837**
21.7158 Heading, (b)(2) and authority citation revised; eff. 7–31–98 ..... **35837**
21.7500—21.7807 (Subpart L) Authority citation revised **35837, 45718**
Authority citation revised 23773
21.7500—21.7807 (Subpart L) Authority citation revised 26297
21.7520 Introductory text revised 23773
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21.7540 (c) and (d) authority citation revised; OMB number **45718**
21.7624 (b) amended; eff. 7–31–98 ..... **35837**
21.7631 Introductory text and (a) revised; (d) removed; (e) through (h) redesignated as (d) through (g) 23773
21.7633 Revised; eff. 7–31–98 ..... **35837**
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21.7658 Heading, (b) heading and (2) revised; (b)(1) introductory text, (i) and (ii) amended; eff. 7–31–98 ..... **35837**
36.4306a (a)(3), (4) and (5) revised; (a)(6) and (7) added; OMB number 19910
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36.4337 (a) revised 19910
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TITLE 39—POSTAL SERVICE

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6.4 Revised **57912**
20 IMM amended; incorporation by reference; interim **37252, 40181, 41427, 44789, 66043**
IMM stayed in part; incorporation by reference **38478**
IMM amended; incorporation by reference **40181, 41427**
IMM amended; incorporation by reference 2856, 9916, 10219, 19040, 20179
111 DMM amended; incorporation by reference **37254, 37967, 38084, 38310, 39239, 40828, 55475, 56567, 57598, 71374**
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233 Authority citation revised **52159**
233.2 (b)(2) amended **52159**
241.4 Revised **46656**
491 Revised **67403**
501.29 Added **53812**
775—778 (Subchapter K) Heading revised **45719**
775 Heading and authority citation revised **45719**
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952.8 (a) amended **66050**
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952.15 (c) amended **66050**
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953.9 (a)(3) amended **66050**
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956.3 (c) revised **66051**
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957.2 Amended 66051
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959.9 Amended 66052
959.10 (a) amended 66052
959.11 (a), (b) and (d) amended 66052
959.13 Revised 66052
959.14 Amended 66052
959.16 (b)(6) and (8) amended 66052
959.17 (e) amended 66052
959.20 (a) amended 66052
959.21 (a) and (b) amended 66052
959.22 (a) and (b) amended 66052
959.23 (a) and (c) amended 66052
959.24 Amended 66052
959.27 Amended 66052
959.30 Amended 66052
960.22 Amended 66052
961.3 (g) revised 66053
961.4 (a) amended 66053
962.2 (j) revised 66053
962.22 (b) amended 66053
963 Heading revised 66053
963.3 (a) amended 66053
963.7 Revised 66053
963.8 (c) amended 66053
963.22 Amended 66053
964.3 (a) amended 66053
964.4 Amended 66053
964.22 Amended 66053
965.2 Amended 66053
965.3 Amended 66053
965.8 (b) revised 66053
965.14 Amended 66053
966.3 (i) amended 66053
966.4 (b) amended 66053

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.61—3001.69c (Subpart C) Appendix A amended 39030
Appendix A amended 1392
Appendix A corrected 4493, 4494

Proposed Rules:

20 ..... 65153, 67017
111 ..... 45440, 46719, 57970
..... 11402, 28130
501 46728
502 ..... 46719, 46728
3001 ..... 46732, 47456, 71251

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

Chapter I Product categories final listing 48792
1.25 (e)(1) revised 67780
9.1 Table amended (OMB numbers) 39739, 40657, 44132, 48815, 48831, 50326, 53995, 56995, 69463, 69515, 71374
Table amended (OMB numbers) 3028, 7047, 23919, 25134, 27458
Introductory text revised; table amended (OMB numbers) 27920
35.251 Added 23736
35.252 Added 23737
50 Appendix L amended 19719
51.121 Added 57491
(e)(4) introductory text and (f)(2)(ii) revised 71225
(e)(2), (3)(iii) and (g)(2)(ii) revised 26305
51.122 Added 57496
51.322 (a)(1) and (2) revised 7462
51.323 (a)(2) removed; (a)(1), (3) and (b) revised 7463
51 Appendixes M and P corrected; CFR correction 5188
52 State implementation plan determinations ... 39515, 49434, 63986, 69557, 69559

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Comment period extension 58637
State implementation plan determinations 754
52.34 Added; eff. 7-26-99 28318
52.50 (c)(72) added 49006
Redesignated as 52.69; new 52.50 added 70672
(c) table amended 9918
52.69 Redesignated from 52.50; heading and (a) revised 70672
52.70 (c)(28) added 63986
52.76 Existing text designated as (a); (b) added 50764
52.120 (c)(67)(i)(C) added 13353
(c)(92) added 19918
52.123 (h) added 41350
52.124 (c) added 41350
52.127 Added 41350
52.128 Added 41350
Appendix A corrected 43449
52.170 Redesignated as 52.200; new 52.170 added 56827
52.200 Redesignated from 52.170; heading and (a) revised 56827
52.220 (c)(247)(i)(A)(*2*) added 39751
(c)(239)(i)(E)(*4*) added 40829
(c)(194)(i)(G) added 40831
(c)(244)(i)(A)(*2*) added 42721
(c)(187)(i)(C)(*2*) added 42723
(c)(241)(i)(A)(*3*) added 42726
(c)(188)(i)(C)(*2*) added 43629
(c)(197)(i)(C)(*2*), (225)(i)(A)(*3*) and (231)(i)(B)(*3*) added 43884
(c)(242)(i)(A)(*1*), (248)(i)(A)(*2*), (B)(*1*) and (254)(i)(A)(*2*) added 43887
(c)(240)(i)(A)(*5*) and (244)(i)(C) added 44135
(c)(29)(vi)(B) and (164)(i)(C)(*3*) added 44398
(c)(207)(i)(C)(*6*), (241)(i)(C) and (244)(i)(D) added 44790
(c)(169) added 46662
(c)(199)(i)(E)(*1*) added 46891
(c)(184)(i)(C)(*2*) and (254)(i)(F) added 47182
(c)(256) added 51835
(c)(255)(i)(A)(*2*) added 60216
(c)(231)(i)(B)(*4*), (248)(i)(C), (254)(i)(A)(*3*), (C)(*2*) and (255) added 63414
(c)(225)(i)(F) added 66760
(c)(187)(i)(B)(*2*) and (256)(i)(B)(*1*) added 67422
(c)(194)(i)(H), (248)(i)(A)(*3*), (B)(*2*) and (257) added 67787
(c)(24)(vii)(E), (52)(i)(C), (67)(iii)(C), (75)(iii), (101)(ii)(F) and (140)(ii)(B) added 70350
(c)(254)(i)(G)(*1*) added 72197
(c)(254)(i)(E) added 72200
(c)(6)(xv)(A) and (254)(i)(H)(*1*) added 1521
(c)(127)(vii)(E), (187)(i)(C)(*3*) and (215)(i)(A)(*5*) added 2144
(c)(254)(i)(A)(*4*) added 2575
(c)(198)(i)(J)(*3*) added 2577
(c)(232)(i)(A)(*2*) added 3216
(c)(182)(i)(B)(*6*) and (199)(i)(A)(*8*) added 3852
(c)(254)(i)(B)(*1*) added 6226
(c)(245)(i)(C)(*1*) added 6228
(c)(6)(xvi) and (31)(xviii)(E) added 6230
(c)(230)(i)(D)(*1*) and (255)(i)(A)(*4*) added 6806
(c)(47)(i)(C), (65)(iii) and (137)(vii)(D) added; (c)(65) introductory text revised 11772
(c)(24)(vii)(E), (52)(i)(C), (67)(iii)(C), (75)(iii), (101)(ii)(F) and (140)(ii)(B) added 12257
(c)(187)(i)(B)(*3*), (D), (199)(i)(D)(*3*), (244)(i)(E) and (256)(i)(D) added 13353
(c)(254)(i)(D)(*3*), (255)(i)(C) and (260)(i)(A) added 13517
(c)(21)(vi)(B) correctly added; CFR correction 13916
(c)(249)(i)(A)(*2*) added 14393
(c)(254)(i)(C) and (D) added 14626
(c)(256)(D)(i)(D) added 15132
(c)(207)(i)(C)(*7*) added 15926
(c)(183)(i)(B)(*4*), (248)(i)(D) and (254)(i)(I) added 19280
(c)(205) introductory text, (i) introductory text, (B)(*2*), (207)(i)(B)(*5*), (E)(*2*), (i)(F) through (I), (210)(i)(F), (G), (H), (215)(i)(E), (220)(i)(D), (221)(i)(B), (224)(i)(B)(*2*), (231)(i)(C) and (259) added 19919
(c)(189)(i)(A)(*7*), (239)(i)(B), (248)(i)(B)(*3*) and (254)(i)(D)(*2*) added; eff. 7-6-99 23777
(b)(3)(ii) and (c)(6)(xv)(B) added; eff. 7-12-99 25825
(c)(31)(vi)(D), (36)(i)(B), (184)(i)(B)(*7*) and (217)(i)(C) added; eff. 7-12-99 25831

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(c)(177)(i)(F), (179)(i)(F), (182)(i)(F)(*2*), (197)(i)(D)(*2*), (199)(i)(D)(*4*), (246)(i)(A)(*2*), (254)(i)(J), (255)(i)(D) and (256)(i)(C)(*2*) added; eff. 7–19–99 26879
52.222 (a)(5) added **50766**
(a)(4) and (b)(2) added **50769**
52.320 (c)(83) added 6234
52.348 Existing text designated as (a); (b) added **38089**
(c) added 11782
52.349 Added 11782
Existing text designated as (a); (b) added 17105
52.369 Added 12013
(c) added 12023
52.370 (c)(78) added 12013
(c)(77) added 12018
(c)(75) and (76) added 12023
52.374 Revised **58643**
Table revised 12003, 12013
52.376 (a) and (b) revised; (d) added **53286**
(a) and (d) revised; (e) and (f) added **58643**
(a) and (d) revised; (e) and (f) removed 12003
(a) and (d) revised; (e) and (f) added 12014
52.385 Table amended 12024
52.420 Redesignated as 52.465; new 52.420 added **67410**
(c) table amended 8725, 12087
Regulation at 64 FR 18815 withdrawn 18815
52.465 Redesignated from 52.420; heading and (a) revised **67410**
52.470 Redesignated as 52.515; new 52.470 added **67417**
52.473 Existing text designated as (a); (b) added **36585**
(c) added 9277
Regulation at 64 FR 9277 withdrawn 17982
52.474 (c) added **36858**
52.515 Redesignated from 52.470; heading and (a) revised **67417**
52.520 (c)(95) added **56573**
(c)(101) added 994
52.569 Added 20188
52.570 (c)(49) added **45176**
Regulation at 63 FR 45176 withdrawn **52983**
(c)(49) added 13350
(c)(45) added 17555
(c)(41) added 20188
Redesignated as 52.590; new 52.570 added 27701
52.582 (c) added 4570
52.590 Redesignated from 52.570; heading and (a) revised 27701
52.676 Added 12263
52.719 (a) revised **47434**
52.720 (c)(144) added 2581
(c)(145) added 2584
(c)(146) added 7790
(c)(147) added 8523
(c)(148) added 13348
52.725 (f) added **47434**
52.726 (s) added; eff. 8–31–98 ..... **35844**
(u) and (v) added 759
(m) removed 8523
(t) added 18818
52.770 (c)(123) added; eff. 8–31–98 ..... **35839**
52.777 (t) added **40044**
52.820 Redesignated as 52.824; new 52.820 added 7094
(d) table amended 12090, 13345
(c) table amended 17550
(c) table amended; eff. 7–12–99 25827
52.824 Redesignated from 52.820; heading and (a) revised 7094
52.869 Added 28761
52.870 Redesignated as 52.874 7097
Added 7098
52.874 Redesignated from 52.870; heading and (a) revised 7097
52.920 (c)(89) added **39741**
(c)(87) added **39743**
(c)(91) added **46898**
(c)(92) added **67591**
(c)(88) added 417
(c)(93) added 12751
Redesignated as 52.929; new 52.920 added 28750
52.929 Redesignated from 52.920; heading and (a) revised 28750
52.938 Added **40046**
52.970 (c)(77) added **47431**
Redesignated as 52.999; new 52.970 added **63183**
(c) table amended 415
52.999 Redesignated from 52.970; heading and (a) revised **63183**
52.1020 (c)(39) added **42728**
Regulation at 63 FR 42727 withdrawn **53596**
(c)(49) added; eff. 7–13–99 26310
52.1031 Table amended **42728**

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Table amended; eff. 7–13–99 26310
52.1070 (c)(130) added **45399**
(c)(131) and (132) added **46663**
(c)(133), (134) and (135) added **47179**
Regulation at 63 FR 45399 withdrawn **54355**
(c)(140) added **59722**
(c)(136) added **67784**
(c)(130) added **70669**
(c)(141) added 3855
52.1072 (d) added **47179**
52.1073 (e) added **47179**
52.1075 (f) added **36858**
52.1076 Heading revised; existing text designated as (a); (b) added **67782**
52.1174 (q) removed **40371**
(q) added 7793
52.1220 (c)(46) added **54587**
(c)(47) added 5939
(c)(48) added; eff. 7–19–99 26883
52.1319 Added 28757
52.1320 (c)(106) added **36854**
(c)(107) added **38756**
(c)(108) added **45727**
(c)(109) added **65560**
(c)(111) added **67594**
(c)(110) added **70667**
(c)(112) added 15690
52.1340 Added 3859
52.1420 Redesignated as 52.1426; new 52.1420 added 7094
52.1426 Redesignated from 52.1420; heading and (a) revised 7094
52.1470 (c)(36) and (37) added 25213
52.1520 (c)(53) and (58) added **67407**
52.1570 (c)(64) added **55953**
(c)(65) added **62954**
Regulation at 63 FR 55953 withdrawn **69193**
(c)(66) added 14833
52.1580 (b) revised **45401**
(b) removed 19916
52.1581 Added **45401**
Removed 19916
52.1582 (e) added **45402**
(f) added **45404**
(d)(1) amended; (d)(3) and (4) revised; (g) added 19916
52.1605 Table amended **62954**
Table amended 14834
52.1620 Redesignated as 52.1640; new 52.1620 added **37495**
(c) table amended **48109**
52.1623 Added **48109**
52.1640 Redesignated from 52.1620; heading and (a) revised **37495**
52.1670 (c)(94) added **46659**
52.1679 Table amended **65559**
52.1770 (c)(96) added **72193**
Redesignated as 52.1783; new 52.1770 added 27467
52.1783 Redesignated from 52.1770; heading and (a) revised 27467
52.1820 (c)(30) added **45727**
52.1835 Added **45727**
52.1870 (c)(118) added 13073
Regulation at 63 FR 13073 withdrawn 24949
52.1881 (a)(4) and (8) revised; (a)(13) added 13073
Regulation at 63 FR 13073 withdrawn 24949
52.1885 (a)(8) added **36587**
(a)(9) added **37258**
(a)(10) added **44400**
(a)(11) added 19289
52.1970 (c)(126) added **39747**
(c)(127) added 12759
52.2020 (c)(135) added **47436**
(c)(134) added **54052**
(c)(136) added **59887**
(c)(137) added **66758**
(c)(138) added 18823
52.2026 (a)(1), (3), (4), (5), (b)(2), (3), (4), (6), (11), (12) and (13) removed **46667**
(a)(2) amended **46668**
Introductory text revised; (b)(1), (5), (7) through (10) and (14) removed **49441**
Regulation at 63 FR 49441 withdrawn **56086**
52.2036 (k) added 18821
52.2059 (b) added **47436**
52.2070 (c)(50) revised **67600**
52.2084 (a)(2) removed **67600**
Corrected 926
52.2086 (d) added **67600**
52.2120 (c) table amended **67586**
(e) added **70022**
52.2170 (c)(17) added **55807**
52.2220 (c)(162) added **54055**
(c)(163) added **70664**
(c)(164) added **72195**
(c)(165) added 19283
52.2270 (c)(111) added; eff. 8–31–98 ..... **35841**
(c)(114) added **56085**

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Regulation at 63 FR 35841 eff. 11–4–98 ..... **59471**
(c)(113) added **62947**
(c)(105) added 3847
(c)(112) added 4298
(c)(117) added 12762
(c)(120) added 19913
52.2308 (g) added 19286
52.2309 (e) added **62947**
52.2310 Removed 19913
52.2320 (c)(40) added **43627**
(c)(39) added 3224
(c)(41) added 14623
Regulation at 64 FR 14623 withdrawn 25214
52.2420 (c)(128) added 3427
(c)(131) and (132) added 22792
52.2425 (d) added **36858**
52.2450 (f) added 22792
52.2470 (c)(78) added **64188**
(c)(79) added 17547
52.2570 (c)(98) added 28747
52.2581 (a), (b) and (c) removed; (d) and (e) added 28748
52.2620 (c)(27) added; eff. 7–19–99 27181
52 Appendix F added; eff. 7–26–99 28323
58.31 (a) revised 3034
58.34 (a) revised 3034
58.41 (b) revised 3035
58 Appendix D amended 3030, 3035, 10391
Appendixes E and G amended 3036
59 Added **48815**
59.104 (a)(2) corrected **64761**
59.201—59.214 (Subpart C) Added **48831**
59.202 Corrected **52319**
59.204 (c)(1) corrected **52319**
59.208 (e)(1) corrected; (j) correctly designated **52319**
59.400—59.413 (Subpart D) Added **48877**
59.400—59.413 (Subpart D) Appendix D corrected **55175**
60 Authority delegation notices **50162, 50163, 70675**
Interpretation **53288**
Authority citation revised 7463
Authority citation delegation 14393
60.4 (c) table amended **45727**
(c) table corrected **49382, 56707**
60.7 (a) introductory text and (c) introductory text revised; (a)(2) removed; (f) amended; (f)(1), (2) and (3) added 7463
60.8 (d) revised 7463
60.13 (h) amended 7463
60.19 (b) revised 7463
60.33c (a)(2) amended; (d) and (e) added 9261
60.35c (a) and (b) added 9262
60.40a (b) revised **49453**
60.41a Amended **49453**
60.44a (a) introductory text and (c) introductory text revised; (d) added **49453**
60.45 (g) introductory text revised 7463
60.46a (i) added **49454**
60.47a (c) revised; (k) and (l) added **49454**
60.49a (i) amended; (j) added **49454**
(i) revised 7463
60.40b (h) and (i) added **49454**
60.44b (a) introductory text, (b) introductory text, (c), and (e) introductory text revised; (l) added **49454**
60.48b (b) revised **49455**
60.49b (v) added **49455**
(d), (e), (h) introductory text, (i), (j), (k)(2), (3), (m) introductory text, (n) introductory text, (1), (2), (q) introductory text, (2), (3), (r) and (s) revised 7464
60.48c (c), (d), (e) introductory text, (2), (3) and (11) revised; (j) added 7465
60.59a (e), (f) and (g) revised 7465
60.107 (a), (c) introductory text, (d) and (e) revised 7465
60.108 (e) revised 7466
60.271 (h) and (j) revised 10109
60.272 (a)(3)(iii) revised 10109
60.273 (b) revised; (d) added 10110
60.274 (b), (c), (f) and (g) revised 10110
60.276 (d) added 10110
60.270a—60.276a (Subpart AAa) Heading revised 10110
60.271a Amended 10110
60.273a (d) added 10111
60.274a (b), (c), (f) and (g) revised 10111
60.276a (g) added 10111

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60.293 (c)(4), (5), (d)(3) introductory text and (3)(iii) revised 7466
60.403 (f) revised 7466
60.502 (e)(3) and (4) revised 7466
60.531 Amended 7466
60.533 (l)(1)(ii) revised **64874**
60.536 (f)(3) revised 7466
60.538 (e) revised **64874**
60.564 (h) introductory text revised 11541
60.714 (a) revised 7467
60.717 (c) and (d) introductory text revised 7467
60.751 Amended 9262
60.759 (a)(3)(iii) amended 9262
60 Appendix A amended; eff. 7–13–99 26490
61 Authority delegation notice **70675**
Technical correction 7793
61.04 (a) amended; (b)(WW)(ii), (iii) and (vii) revised; (b)(WW)(viii) removed; (c) redesignated as (c)(8); (c) introductory text and (10) added **66059**
(b) introductory text revised 7467
(b)(C), (c)(10) table and note revised 24291
61.139 (i)(1)(ii) and (j)(3) removed; (i)(1)(iv) and (v) redesignated as (i)(1)(ii) and (iv); new (i)(1)(ii), (j)(2) introductory text and (iv) revised 7467
61.142 (b)(6) revised 7467
61.144 (b)(8) revised 7467
61.147 (b)(8) revised 7467
61.163 (c)(3) revised 7467
61.204 Heading, introductory text, (c) and (d) revised; (e) added 5579
61.205 Heading, (a) and (b) added 5579
61.207 Revised 5579
62.02 (a) revised; (g) added **63201**
62.13 Added **63201**
(a) amended **66061**
62.100 (b)(3) and (c)(3) added **54058**
(b)(4) and (c)(4) added **63990**
62.103 Undesignated center heading and section added **54058**
62.104 Undesignated center heading and section added **63990**
62.1350—62.1352 Unesignated center heading and sections added **40373**
62.2600 (b)(5) and (c)(4) added **63416**
62.2607 Undesignated center heading and section added **63416**
62.3330—62.3332 Undesignated center heading and sections added **64632**
62.4350 (b)(2) and (c)(4) added 19293
62.4355 Undesignated center heading and section added 19293
62.4845 (b)(4) and (c)(3) added **68397**
62.4975 Undesignated center heading and section added **68397**
62.5110—62.5112 Undesignated center heading and sections added 19922
62.5860—62.5862 Undesignated center heading and sections added **40052**
62.5870—62.5872 Undesignated center heading and sections added **43083**
62.6350 (b)(3) added **45727**
62.6600—62.6602 (Subpart BB) Added **36861**
62.8103 Undesignated center heading and section added **41429**
(c) added 6237
62.8610—62.8612 Undesignated center heading and sections added; eff. 7–12–99 25834
62.8870—62.8872 Undesignated center heading and sections added **42238**
62.9100 (b)(3) and (c)(3) added **59890**
(b)(4) added 13519
62.9150 Undesignated center heading and section added **59890**
62.9160 Undesignated center heading and section added 13519
62.9630—62.9632 Undesignated center heading and sections added 13077
62.10100 (b)(3) and (c)(3) amended **40048**
62.10150 Undesignated center heading and section added **40049**
62.10626 Undesignated center heading and section added **70026**
62.10627 Undesignated center heading and section added **70026**
62.10628 Undesignated center heading and section added **70027**
62.11610 Added **47437**

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(d) correctly removed **54058**
62.14102 (a) corrected 17219
62.14109 (j) corrected 17219
62.14100—62.14109 (Subpart FFF) Added **63202**
Table 6 corrected 17219
63 Authority delegation notices **64632, 70675**
Clarification 5188
Technical correction 7793
Authority delegation notices 19922
63.8 (g)(5) amended 7468
63.9 (b)(4)(iv) removed 7468
63.10 (b)(2)(vii)(A), (B) and (C) added; (e)(3)(i)(C) removed 7468
63.14 (b)(19) and (c)(3) added **50326**
(b) introductory text revised; (b)(20) and (e) added **53996**
(d)(1) revised 4300
(f) added 17562
63.51 Amended 18827, 26314
Regulation at 64 FR 18827 withdrawn 26311
63.99 (a)(3) added **38480**
(a)(3) revised **63993**
(a)(47) added **66061**
(a)(5)(ii) introductory text and (A) introductory text revised; (a)(5)(ii)(A)(*1*)(*i*) and (B)(*1*)(*i*) amended; (a)(5)(ii)(D) added 4300
(a)(5)(ii)(E) added 12766
(a)(47)(i) table revised 19721
(a)(2) added 24291
63.100 (g)(4) revised; (h)(3) and (i)(5) amended 20191
63.111 Amended **67792**
63.116 (c)(3)(iii)(B) revised 20191
63.129 (a)(4)(ii) revised 20191
63.133 (h) amended 20191
63.134 (b)(2)(ii)(B) amended 20191
63.139 (d)(4) introductory text revised 20192
63.145 (h) introductory text and (2) revised **67793**
(c)(2) revised; (d)(6) amended; (i) introductory text added 20192
63.146 (b)(8) introductory text revised; (b)(8)(i) introductory text amended 20192
63.147 (b)(4) and (5) revised 20192
63.148 (b)(3) and (c) introductory text revised; (c)(4)(ii) amended 20192
63.150 (g)(5), (h)(5), (j)(2)(ii)(B) and (m)(5)(i) revised; (j)(2) amended 20192
63.151 (j)(3) revised 20195
63.152 (c)(2)(ii)(C) and (d)(1) revised 20195
63.110—63.152 (Subpart G) Appendix amended **67793**
Appendix amended 20195
63.160 (a) revised 20198
63.163 (b)(1) amended 20198
63.164 (h) amended 20198
63.173 (j) introductory text amended 20198
63.181 (b)(7) introductory text and (g)(3) introductory text revised 20198
63.360 (g)(1), (2) and (3) revised; (g)(4), (5) and (6) added **66994**
63.404 Introductory text and (b) revised; (c) and (d) added **39519**
63.440 (d)(3)(ii) introductory text and (B) revised **71389**
63.441 Amended 17563
63.443 (b)(1) revised 17563
63.445 (a)(2) and (b) revised 17563
63.446 (i) correctly revised **42239**
(g) revised **49459**
(b), (d)(1) and (e)(3) revised 17563
63.447 (d)(1) correctly revised **42239**
(e)(2), (g)(1)(ii) and (2) revised 17563
63.450 (b) revised 17563
63.455 (b), (k)(6)(ii) and (l) revised 17563
63.457 (b)(5) introductory text, (ii)(C), (E)(7), (6), (c)(2), (3) introductory text, (4)(i), (f)(1), (h) and (m)(1)(ii) revised; (c)(3)(ii) redesignated as (c)(3)(iii); new (c)(3)(ii) added 17564
63.440—63.458 (Subpart S) Table 1 amended 17564
63.460 (c) and (d) revised; (g) added **68400**
63.470 Removed **68400**
63.481 (d)(1)(ii) and (iii) revised; (d)(1)(iv) added 11542
63.482 (b) amended 11542
63.485 (a) revised; (v) added 11542
Regulation at 64 FR 11542 withdrawn 24511
63.487 (b)(2) revised 11542
63.488 (a)(2) revised 11542

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63.490 (e) introductory text revised; (e)(3) added 11542
63.491 (b)(4) introductory text revised; (b)(5) added 11542
63.495 (b)(3) revised; (e) added 11543
63.503 (a) introductory text, (2), (3), (c) introductory text, (2), (5)(i), (ii), (d)(5), (e)(3)(ii), (5), (g)(1), (2)(ii)(A), (iii)(B)(*1*), (*2*), (3), (5), (7)(ii)(A), (h)(1) introductory text, (3), (5), (6)(ii) introductory text, (7)(ii) introductory text, (i) introductory text, (1) introductory text, (iii), (2), (3), (5) introductory text, (i), (j)(2) introductory text, (ii)(B), (D), (E), (iv), (v), (k) introductory text, (4) introductory text, (m)(1)(i), (ii), (iii), (2)(i), (ii), (3)(i), (ii), (iii), (4)(ii) and (5)(i) through (iv) revised 11543
63.505 (e)(1)(ii) revised 11547
63.506 (e)(4)(ii)(H)(*1*) revised 11547
63.541 (c) added 4572
63.542 Amended **45011**
63.543 (g) revised **45011**
63.544 (g) redesignated as (h); new (g) added **45011**
63.546 (a) revised **45011**
(a) revised 4572
63.547 (b) revised **45011**
63.548 (e) introductory text revised; (k) added **45011**
63.640 (k)(2)(vii), (n)(1), (3), (6) and (o)(2) revised; (n)(8), (9) and (r) added **44140**
63.641 Amended **44141**
63.644 (a) amended **44141**
63.645 (f)(4) amended; (f)(5) revised **44141**
63.648 (e) revised **44141**
63.654 (a) and (h)(6) amended; (d)(1), (f) introductory text and (1)(i)(A) revised; (f)(6) added **44141**
63.640—63.679 (Subpart CC) Appendix amended **44142, 44143**
63.703 (c)(4)(i), (ii) and (iii) revised 17464
63.741 (f) and (i) amended; (j) revised **46532**
63.742 Amended **46533**
63.744 (b)(3) amended; (c)(5) added; Table 1 revised **46533**
63.745 (c)(1) through (4) and (g)(2)(v) revised **46533**
63.746 (b)(4)(ii)(C) added **46533**
63.750 (b)(2) and (i)(2)(iv) amended **46534**
63.751 (b)(6)(iv) redesignated as (b)(6)(v); (b)(6)(iii)(D), (c)(2) and (d) revised; new (b)(6)(iv) revised **46534**
63.752 (c)(2) introductory text, (d)(2), (3) and (e)(7) revised **46534**
63.753 (c)(1)(vi) and (d)(1)(vii) revised **46535**
63.801 Amended **71380**
63.803 (c)(1), (d), (f), (i), (j) and (l)(6) revised **71380**
63.800—63.808 (Subpart J) Table 2 revised **71381**
Tables 4 and 5 revised **71382**
Table 6 revised **71383**
63.1250—63.1261 (Subpart GGG) Added **50326**
63.1290—63.1309 (Subpart III) Added **53996**
63.1311 (d)(1)(ii), (iii) and (4) revised; (d)(1)(iv) added 11547
63.1312 (b) amended 11547
63.1314 (b)(3) added 11547
63.1315 (a) introductory text revised; (a)(18) and (e) added 11547
63.1316 Heading, (b)(1)(i), (2)(i) and (ii) revised; (b)(1)(v) and (2)(v) added 11548
63.1321 (d) added 11549
63.1322 (b)(2) revised 11549
63.1323 (a)(2) revised 11549
63.1325 (e) introductory text revised; (e)(3) added 11549
63.1326 (b)(4) introductory text revised; (b)(5) added 11549
63.1330 (d) and (e) added 11549
63.1332 (a)(2), (3) introductory text, (c) introductory text, (3), (d)(5), (e)(3)(ii), (5), (g)(1), (2)(ii)(A), (7)(ii)(A), (h)(1) introductory text, (6)(ii) introductory text, (7)(ii) introductory text, (i)(1) introductory text, (iii), (2), (3), (5) introductory text, (i), (j)(2) introductory text, (ii)(B), (iv), (v), (k) introductory text, (4) introductory text and (l) introductory text revised 11549
63.1335 (e)(4)(ii)(L)(*1*) revised 11553

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63.1650—63.1661 (Subpart XXX) Added 27458
63 Appendix A amended **46535**
Appendix C amended **67794**
68 Delagation request **55954**
68.2 (c) added 29170
68.3 Amended 979
68.10 (d)(1) revised 979
68.25 (e) revised; (f), (g) and (h) redesignated as (g), (h) and (i); new (f) added 28700
68.42 (b)(3) revised; (b)(4) through (10) redesignated as (b)(5) through (11); new (b)(4) added 979
68.79 (a) revised 979
68.150 (e) added 979
68.151 Added 979
68.152 Added 980
68.160 (b)(1), (7) and (12) revised; (b)(14) through (18) added 980
68.165 (b) revised 980
68.170 (b) revised 980
68.175 (b) revised 980
68.180 (b) revised 980
69 Authority citation revised **49465**
69.51 (Subpart E) Added **49465**
70.5 (c) reinstated in part; CFR correction **64869**
70 Appendix A amended **40054, 50773**
Appendix A amended 8526
Appendix A amended; eff. 7–6–99 23779
71.2 Amended 8262
71.3 (e) added 8262
71.4 (a) introductory text, (b), (f), (h) and (i) introductory text revised; (j) amended 8262
71.8 (a) and (d) revised 8263
71.9 (p) added 8263
71.11 (l)(7) added 8263
72.2 Amended **57498, 68404**
Amended 25842, 28586
72.3 Amended 28588
72.6 (b)(1) amended 28588
72.40 (a)(1) amended 25842
72.90 (c)(3) revised 28588
73.10 (b)(1) and (2) amended; (b) Table 2 and (3) revised; (c) and (d) removed **51714**
73.11 Removed **51765**
73.12 (b) removed **51765**
73.13 (b) removed **51765**
73.16 Removed **51765**
73.19 (a)(5) revised; (b) removed **51765**
73.21 (a), (b) and (c)(1) table amended; (a) table added; (c)(2) revised **51765**
73.27 (a)(3) removed; (a)(2), (b)(2) through (5) and (c)(2) through (5) revised **51765**
73.34 (c)(4) amended **68404**
73.35 (a)(2) revised; (b)(3) added 25842
73.50 (b)(2) redesignated as (b)(3); (b)(2) added **68404**
73.70 (b) revised **51766**
75 Authority citation revised 28588
75.1 (a) revised **57498**
75.2 (a) revised; (c) added **57499**
75.4 (a) introductory text revised **57499**
(a) introductory text, (d) introductory text and (g) introductory text amended; (d)(1) and (i) revised 28588
75.5 (b), (d) and (f)(2) revised 28589
75.6 (f) added **57499**
(a)(13), (31), (38), (39), (b), (c), (e)(1) and (2) revised; (a)(40) redesignated as (a)(41); new (a)(40) and (f)(3) added 28589
75.7 Removed 28589
75.8 Removed 28589
75.10 (d)(3) and (f) revised 28590
75.11 (d)(2) amended; (d)(3) added **57499**
(a), (b), (d)(1), (2), (e) introductory text, (1), (2), (3) introductory text, (ii) and (iv) revised; (e)(4) removed 28590
75.12 Heading revised; (d) redesignated as (e); new (d) added **57499**
(a) amended; (b) through (e) redesignated as (c) through (f); new (b) added; new (c) revised 28591
75.13 (d) added **57499**
(a) and (c) revised 28591
75.16 (b)(2)(ii)(B), (D), (d)(2) and (e)(1) revised; (e)(2) and (3) removed; (e)(4) and (5) redesignated as (e)(2) and (3); new (e)(3) amended; new (e)(4) added 28591
75.17 Introductory text added **57499**
(a)(2)(i)(C) revised 28592
75.19 Added **57500**
Amended 28592
75.20 (h) added **57506**

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(c)(3) removed; (c)(4) through (8) redesignated as (c)(3), (4), (8), (9) and (10); heading, (a) introductory text, (1), (3), (4) introductory text, (i), (ii), (iii), (5)(i), (b), (c) heading, introductory text, (1) introductory text, (i), (ii), (iii), new (3), new (4) introductory text, new (8) introductory text, new (i), new (10) introductory text, (d) heading, (1), (2), (g) heading, introductory text, (1) introductory text, (i), (2), (4), (5) and (h)(2) revised; new (c)(5), new (6), new (7), (g)(6) and (7) added 28592
75.21 (a)(2), (4), (5), (6) and (e) revised; (a)(7) and (8) redesignated as (a)(9) and (10); new (a)(7) and (8) added 28599
75.22 (a) introductory text amended; (a)(2), (4), (b)(4) and (c)(1) introductory text revised 28600
75.24 (d) revised **57506**
Heading and (d) revised 28600
75.30 (a)(3), (4) and (d) revised; (a)(5) and (6) added; (b) amended 28600
75.31 Revised 28601
75.32 (a) introductory text revised; (a)(3) amended 28602
75.33 Heading, (a), (b)(3) and (c) revised; (b)(4) added 28602
75.34 (a)(3) revised 28604
75.35 (a) and (b) revised; (d) added 28604
75.36 Heading, (a), (b) and (d) revised 28604
75.37 Added 28604
75.48 (a)(3)(ii), (iii), (iv), (viii), (ix) and (xi) revised 28605
75.50 Removed 28605
75.51 Removed 28605
75.52 Removed 28605
75.53 (a) and (b) revised 28605
75.54 (a) introductory text and (1) revised; (g) added 28608
75.55 Introductory text added; (b)(1)(i), (xi), (2)(vii) and (e) revised; (f) removed 28608
75.56 Introductory text, (a)(5)(vii), (viii) and (ix) added; (d) removed 28608
75.57 Added 28609
75.58 Added 28612
75.59 Added 28614
75.60 (a), (b)(1) and (2) revised; (b)(3) through (6) added 28620
75.61 (a) introductory text, (1) introductory text and (b) revised; (a)(1)(iv) added; (a)(6)(ii) amended 28620
75.62 Heading, (a) and (c) revised 28621
75.63 Revised 28621
75.64 Revised 28622
75.65 Revised 28623
75.66 (e) introductory text amended; (i) redesignated as (l); (a) and new (l) revised; new (i), (j) and (k) added 28623
75.70—75.75 (Subpart H) Added **57507**
75.70 (e), (f) introductory text and (1)(iv) revised; (g)(6) added 28623
75.71 (b) and (d)(2) revised 28624
75.73 Added 28624
75.74 (c)(3) through (10) redesignated as (c)(4) through (11); (b)(2), (c)(1), (2) and new (4) through (7) revised; new (c)(3) added 28627
75 Appendix A amended 57512
Appendixes C, D and F amended **57513**
Appendix A amended 28631, 28637, 28638, 28643
Appendix B amended 28644, 28645
Appendixes C and D amended 28652
Appendix D amended 28663
Appnedix E amended 28665
Appendixes E and F amended 28666
Appendix F amended 28667, 28668
Appendixes F and G amended 28671
Appendix H amended; Appendix J added 28672
79.57 (e)(2)(iii)(C) and (v)(B) removed; (e)(2)(iv)(B) and (vi)(B) revised **63792**
79.62 (d)(1)(ii)(B) revised **63793**
79.66 (e)(5)(iii)(B) amended **63793**
80 Technical correction **54753**
80.29 (a)(1) introductory text revised **49465**
80.46 (f)(3) and (g)(9) revised **63793**
80.70 (m) amended **43049**
(k) revised **52104**

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(n) added 10371
81 Attainment status determinations 64415
81.305 Amended 37279, 39751
81.306 Amended 11782
81.307 Amended 53287, 58644
Amended 12004, 12014
81.310 Amended 995
81.311 Amended 17555
81.313 Amended 59731
Amended 12264
81.315 Amended 39435
81.318 Amended 39436, 44145
Corrected 42489
81.323 Amended 39436
81.326 Amended 3859
81.333 Amended 39436
81.336 Amended 39437
Amended 13074
81.336 Regulation at 63 FR 13074 withdrawn 24949
81.345 Amended 3225
82 Determination 42728
82.1 Revised 41642
82.2 Removed 41642
82.3 Amended 41642
Regulation at 63 FR 41642 withdrawn in part 53290
82.4 (f) through (k) and (l) through (s) redesignated as (g) through (l) and (n) through (u); (d), (e), new (j) and (t) revised; (f), (m), (l)(4), (t)(3) and (u)(3) added 41642
Regulation at 63 FR 41642 withdrawn in part 53290
(t)(2) table revised 1096
82.9 Heading, (a) and (c) revised; (g) added 41643
Regulation at 63 FR 41643 withdrawn in part 53290
82.12 (a)(3) added 41645
Regulation at 63 FR 41643 withdrawn in part 53290
82.13 (f)(2)(xvii), (g)(1)(xvii), (4)(xiv), (xv), (w), (x) and (z) added; (f)(3)(v) removed; (f)(3)(vi) through (xiii), second (g)(3), and (w) redesignated as (f)(3)(v) through (xii), (g)(4) and (y); (b), (f)(1)(iv), (2) introductory text, (xiv), new (3)(xi), (xii), (xiii), (g)(1)(vii), (xvi), (2), first (3), (h)(8), (i) introductory text, (m), (u) and (v) revised; 41646
Regulation at 63 FR 41646 withdrawn in part 53290
82.1—82.13 (Subpart A) Appendix C revised 41648
Appendixes J and K added 41651
Regulations at 63 FR 41648 and 41651 withdrawn in part 53290
82.170—82.184 (Subpart G) Appendix E added; interim 3865
Appendix F added; interim 3868
Appendix G amended 10378
Appendix H added 22996
85.501 Revised 23919
85.1501 (c) added 23919
85.1505 (a)(3)(i)(B), (ii)(B) and (iii) revised 23919
85.1510 (a)(3) revised 23919
85.1512 (a)(1)(iii) revised 23919
85.1701 (c) added 23919
85.1902 (b) revised 23919
85.2101 Revised 23919
85.2102 (a)(13)(ii) revised 23919
85.2208 (a)(1) revised 23919
86 Heading revised 56995
86.1 (b)(2) table amended; (b)(5) added 70694
(b)(1) table, (2) table, (3) table and (5) table amended 23920
86.001–1 Added 23920
86.094–21 (i) removed 70694
86.095–35 (i) revised 70694
86.098–17 (b)(2) through (i) and (j) revised 70694
86.099–17 Added 70694
86.099–30 Added 70697
86.101 (d) added 23921
86.106–96 (a)(1) revised 23921
86.113–94 (a)(3), (b)(5), (c)(3), (d)(1), (3), (e)(4) and (f)(3) revised 23921
86.127–00 Introductory text and (h) revised 23921
86.128–79 (g)(2) revised 23921
86.129–00 (a) table amended; (d)(1)(iv) revised 23921
86.132–96 (e)(2)(ii) revised 23922
86.601–84 (b) added 23922
86.701–94 Revised 23922
86.884–8 (c)(4) table amended 56995
(c)(4) table corrected 63967
86.902–01 Added 23922
86.907–01 Added 23922
86.908–01 Added 23922
86.1001–84 (b) added 23922

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86.1101–87 Revised 23922
86.1401 Revised 23922
86.1501 Revised 23923
86.1502–84 Amended 23923
86.1503–84 Revised 23923
86.1601 (d) added 23923
86.1701–99 (e) added 23923
86.1717–01 Added 23923
86.1721–01 Added 23923
86.1724–01 Added 23924
86.1725–01 Added 23924
86.1726–01 Added 23924
86.1728–01 Added 23924
86.1734–01 Added 23924
86.1735–01 Added 23924
86.1772–99 (b)(1) revised 23924
86.1776–99 (b)(1) revised 23925
86.1801–01—86.1853–01 (Subpart S) Added 23925
88.301–93 (c) added 23973
89 Heading revised 56995
Nomenclature change 56996
89.1 (a) and (b)(4) revised; (b)(3) amended; (b)(5) added 56996
89.2 Amended 56996
89.3 Amended 56997
89.4 Removed 56997
89.6 (b)(1) introductory text amended; (b)(1) table revised 56997
89.101–96 Redesignated as 89.101 56995
89.101 Redesignated from 89.101–96 56995
89.102–96 Redesignated as 89.102 56995
89.102 Redesignated from 89.102–96 56995
Heading and (a) revised; (c) through (h) added 56997
89.103–96 Redesignated as 89.103 56995
89.103 Redesignated from 89.103–96 56995
89.104–96 Redesignated as 89.104 56995
89.104 Redesignated from 89.104–96 56995
(a), (b) and (c) revised 56998
89.105–96 Redesignated as 89.105 56995
89.105 Redesignated from 89.105–96 56995
89.106–96 Redesignated as 89.106 56995
89.106 Redesignated from 89.106–96 56995
89.107–96 Redesignated as 89.107 56995
89.107 Redesignated from 89.101–97 56995
89.108–96 Redesignated as 89.108 56995
89.108 Redesignated from 89.108–96 56995
89.109–96 Redesignated as 89.109 56995
89.109 Redesignated from 89.109–96 56995
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89.110–96 Redesignated as 89.110 56995
89.110 Redesignated from 89.110–96 56995
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89.111–96 Redesignated as 89.111 56995
89.111 Redesignated from 89.111–96 56995
89.112–96 Redesignated as 89.112 56995
89.112 Redesignated from 89.112–96 56995
(a), (b) and (d) revised; (e) and (f) added 57000
89.113–96 Redesignated as 89.113 56995
89.113 Redesignated from 89.113–96 56995
(b) revised; (c) added 57003
89.114–96 Redesignated as 89.114 56995
89.114 Redesignated from 89.114–96 56995
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89.115–96 Redesignated as 89.115 56995
89.115 Redesignated from 89.115–96 56995
89.116–96 Redesignated as 89.116 56995
89.116 Redesignated from 89.116–96 56995
(e) added 57003
89.117–96 Redesignated as 89.117 56995
89.117 Redesignated from 89.117–96 56995
(a) revised; (d) added 57003

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89.119 Redesignated from 89.119–96 ..... **56995**
(d) revised **57004**
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89.120 Redesignated from 89.120–96 ..... **56995**
(c) revised; (e) added **57004**
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89.121 Redesignated from 89.121–96 ..... **56995**
89.122–96 Redesignated as 89.122 ..... **56995**
89.122 Redesignated from 89.122–96 ..... **56995**
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89.123 Redesignated from 89.123–96 ..... **56995**
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89.129–96 Redesignated as 89.129 ..... **56995**
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89.202–96 Redesignated as 89.202 ..... **56995**
89.202 Redesignated from 89.202–96 ..... **56995**
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89.203 Redesignated from 89.203–96 ..... **56995**
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89.204–96 Redesignated as 89.204 ..... **56995**
89.204 Redesignated from 89.204–96 ..... **56995**
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89.205–96 Redesignated as 89.205 ..... **56995**
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89.303 Redesignated from 89.303–96 ..... **56995**
89.304–96 Redesignated as 89.304 ..... **56995**
89.304 Redesignated from 89.304–96 ..... **56995**
(d) revised **57010**
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89.305 Redesignated from 89.305–96 ..... **56995**
89.306–96 Redesignated as 89.306 ..... **56995**
89.306 Redesignated from 89.306–96 ..... **56995**
89.307–96 Redesignated as 89.307 ..... **56995**
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89.311 Redesignated from 89.311–96 ..... **56995**
89.312–96 Redesignated as 89.312 ..... **56995**
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89.313–96 Redesignated as 89.313 ..... **56995**
89.313 Redesignated from 89.313–96 ..... **56995**
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89.314 Redesignated from 89.314–96 ..... **56995**
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(b) removed **57011**
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89.317 Redesignated from 89.317–96 ..... **56995**
(g), (h) and (k) revised **57011**
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89.318 Redesignated from 89.318–96 ..... **56995**
(c)(2) heading, (i) and (iv) revised **57011**
(c)(2)(iv)(B) corrected **58101**
89.319–96 Redesignated as 89.319 ..... **56995**
89.319 Redesignated from 89.319–96 ..... **56995**
(b)(1), (2), (c), (d) heading, introductory text, (2) and (6) revised **57011**
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89.321–96 Redesignated as 89.321 ..... **56995**
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89.324 Redesignated from 89.324–96 56995
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89.325 Redesignated from 89.325–96 56995
89.326–96 Redesignated as 89.326 56995
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89.327–96 Redesignated as 89.327 56995
89.327 Redesignated from 89.327–96 56995
89.328–96 Redesignated as 89.328 56995
89.328 Redesignated from 89.328–96 56995
(b)(1) and (2) revised 57013
89.329–96 Redesignated as 89.329 56995
89.329 Redesignated from 89.329–96 56995
89.330–96 Redesignated as 89.330 56995
89.330 Redesignated from 89.330–96 56995
(b)(2) revised; (b)(3) added 57013
89.331–96 Redesignated as 89.331 56995
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89.401–96 Redesignated as 89.401 56995
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(b) revised 57015
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89.403 Redesignated from 89.403–96 56995
89.404–96 Redesignated as 89.404 56995
89.404 Redesignated from 89.404–96 56995
(b) revised; (e) removed 57015
89.405–96 Redesignated as 89.405 56995
89.405 Redesignated from 89.405–96 56995
(d), (e) and (f) revised 57015
89.406–96 Redesignated as 89.406 56995
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(b) and (c)(1) revised 57015
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89.407 Redesignated from 89.407–96 56996
(a), (c) and (d)(2) revised 57015
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89.408 Redesignated from 89.408–96 56996
(e) revised 57016
89.409–96 Redesignated as 89.409 56996
89.409 Redesignated from 89.409–96 56996
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89.412–96 Redesignated as 89.412 56996
89.412 Redesignated from 89.412–96 56996
(c)(3) revised; (g)(1) removed 57016
89.413–96 Redesignated as 89.413 56996
89.413 Redesignated from 89.413–96 56996
(d) revised; (e) removed 57016
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89.417 Redesignated from 89.417–96 56996
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(b), (c), (d), (e) table, (f) introductory text, (1) and (g) revised 57017
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89.419 Redesignated from 89.419–96 56996
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(a) introductory text revised 57018
89.421–96 Redesignated as 89.421 56996
89.421 Redesignated from 89.421–96 56996
89.422–96 Redesignated as 89.422 56996
89.422 Redesignated from 89.422–96 56996
(d)(3) table amended 57016
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89.423 Redesignated from 89.423–96 56996
Removed 57018
89.424–96 Redesignated as 89.424 56996
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(a), (d)(6) and (e) revised; (d)(3) amended 57018
89.425–96 Redesignated as 89.425 56996
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89.401—89.425 (Subpart E) Appendix B revised 57019
89.501–96 Redesignated as 89.501 56996
89.501 Redesignated from 89.501–96 56996
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89.510–96 Redesignated as 89.510 56996
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89.601 Redesignated from 89.601–96 56996
89.602–96 Redesignated as 89.602 56996
89.602 Redesignated from 89.602–96 56996
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89.603–96 Redesignated as 89.603 56996
89.603 Redesignated from 89.603–96 56996
(d) revised 57021
89.604–96 Redesignated as 89.604 56996
89.604 Redesignated from 89.604–96 56996
(c)(4) and (d) revised 57021
89.605–96 Redesignated as 89.605 56996
89.605 Redesignated from 89.605–96 56996
(a)(2)(i), (3)(vi) and (c) revised 57021
89.606–96 Redesignated as 89.606 56996
89.606 Redesignated from 89.606–96 56996
89.607–96 Redesignated as 89.607 56996
89.607 Redesignated from 89.607–96 56996
89.608–96 Redesignated as 89.608 56996
89.608 Redesignated from 89.608–96 56996
89.609–96 Redesignated as 89.609 56996
89.609 Redesignated from 89.609–96 56996
(d) revised 57021
89.610–96 Redesignated as 89.610 56996
89.610 Redesignated from 89.610–96 56996
(b)(1) revised 57021
89.611–96 Redesignated as 89.611 56996
89.611 Redesignated from 89.611–96 56996
(g) revised 57022
89.612–96 Redesignated as 89.612 56996
89.612 Redesignated from 89.612–96 56996
89.613–96 Redesignated as 89.613 56996
89.613 Redesignated from 89.613–96 56996
89.903 (b) revised 57022
89.905 (f) revised 57022
89.906 (a)(3) introductory text, (iii)(D) and (b) revised 57022
89.911 Revised 57022
89.1003 (a)(3), (5), (6), (b)(4) and (7) revised 57022
89.1007 (c) revised 57023
90.1 (b)(5)(iv) amended; (b)(6) and (d) added; (c) revised 15235
90.3 Amended 15235
90.103 (a) introductory text, (3) and (5) revised; (a)(6), (7) and (8) added 15236
90.104 Introductory text and (d) through (h) added 15237
90.105 Revised 15238
90.106 (a) revised; (b)(3) added 15238
90.107 (d)(5), (9) and (10) amended; (d)(11) added 15238
90.108 (c) and (d) added 15238
90.113 Heading revised; (a) amended 15239
90.114 (c)(9) and (10) amended; (c)(11) and (f) added 15239
90.116 (d)(6) and (7) revised; (d)(8), (9) and (10) added 15239
90.117 (a) revised 15239
90.118 Heading revised; (e) added 15239
90.120 (c) added 15239
90.122 (a) amended; (d)(4) added 15239
90.201—90.211 (Subpart C) Added 15239
90.207 (a) corrected 16526
90.301 (a) revised; (d) added 15243
90.302 Revised 15243
90.308 (c) revised 15243
90.329 (c) added 15243

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90.401 (c) and (d) added 15244
90.404 (b) amended 15244
90.409 (a)(3) revised 15244
90.410 (b) revised 15244
90.427 (a) revised 15244
90.503 (f)(3) and (4) revised 15244
90.509 (b) revised 15244
90.510 (b) revised 15244
90.512 (b) revised 15245
90.612 (g) revised 15245
90.701—90.713 (Subpart H) Added 15245
90.801—90.807 (Subpart I) Heading revised 15251
90.801 Existing text designated as (a); (b) through (g) added 15251
90.802 Introductory text amended 15251
90.803 (c) revised 15251
90.805 (a) revised 15251
90.808 Added 15251
90.905 (f) revised 15252
90.906 (a) introductory text and (3) introductory text revised 15252
90.909 (c) revised 15252
90.911 Revised 15252
90.1003 (a)(2), (4)(i), (b)(4) and (5) revised; (a)(4)(iii) and (iv) redesignated as (a)(4)(iv) and (v); new (a)(4)(iii) and (b)(6) added 15252
90.1103 (a) and (b) revised 15253
90.1104 (e) added 15253
90.1201—90.1207 (Subpart M) Added 15254
93.129 Added 13483
96 Added 57514
96.42 (f) amended 71225
123.1 (a) and (c) revised 45122
123.2 Revised 45122
123.22 (f) removed; (g) redesignated as (f) 45122
123.24 (d)(8) removed 45122
123.25 (a) introductory text and (37) revised 45122
123.26 (e)(5) revised 45122
123.42 Introductory text revised 45122
123.44 (d)(1), (2), (e) and (j) revised 45122
123.45 (e) removed 45123
123.62 (b)(3) and (c) revised 45123
123.63 (a) introductory text and (4) revised 45123
123.64 (a) introductory text and (b)(1) revised 45123
136 Technical correction 13053
136.3 (e) corrected 38756
Table 1C corrected; CFR correction 44146
(a) introductory text and (b) introductory text revised; Table 1F and (b)(40) added 50423
(b)(41) added; (e) Table II amended 4978
(a) introductory text corrected 10393
(a) table amended 26327
141 Authority citation revised 43846, 44526
141.2 Amended 69463, 69515
141.4 (a) revised 43846
141.12 Revised 69463
141.21 (f)(3) revised; (f)(5), (6)(i), (ii) and (8) amended 47107
Regulation at 63 FR 47107 withdrawn 72200
141.23 (a)(4)(iii), (k)(1) table, (2), (3)(i), (ii) introductory text revised 47107
Regulation at 63 FR 47107 withdrawn 72200
141.24 (e), (f)(14)(ii), (17)(i)(A), (B), (ii)(A), (h)(10)(ii), (13) introductory text, (i), (19)(i)(A) and (B) introductory text revised 47110
Regulation at 63 FR 47110 withdrawn 72200
141.30 (d) and (f) amended; (h) added 69464
141.32 (a) heading, (1)(iii) introductory text and (c) amended; (a)(1)(iii)(E) and (e)(76) through (81) added 69464
(e)(10) revised 69515
141.40 (g) and (n)(11) introductory text revised; (n)(11) table amended 47112
Regulation at 63 FR 47112 withdrawn 72200
(l) amended 1498
141.50—141.54 (Subpart F) Heading revised 69465
141.52 Table amended 69515
141.53 Added 69465
141.54 Added 69465
141.60—141.65 (Subpart G) Heading revised 69465
141.64 Added 69465

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141.65 Added 69465
141.70 (d) added 69516
141.71 (b)(6) revised 69516
141.73 (a)(3) added; (d) revised 69516
141.74 (a) introductory text and (2) amended; (a)(1) table revised 47113
Regulation at 63 FR 47113 withdrawn 72200
141.89 (a)(1)(i) and (ii)(B) amended 47113
Regulation at 63 FR 47113 withdrawn 72200
141.130—141.135 (Subpart L) Added 69466
141.151—141.155 (Subpart O) Added (OMB numbers pending) 44526
141.153 (d)(4)(v)(C) amended 69516
141.154 (e) added 69475
141.170—141.175 (Subpart P) Added 69516
142 Authority citation revised 44535
142.10 (d) revised 43846
(b)(6)(vii) added 44535
142.14 (d)(12) through (16) added 69475
(a)(3), (4)(i) and (ii) introductory text revised; (a)(7) added 69519
142.15 (c)(5) added 69520
142.16 (f) added 44535
(h) added 69475
(b)(1) redesignated as (b)(1)(i); (b)(1)(ii), (3) and (g) added 69520
142.20 Revised 43847
142.40—142.46 (Subpart E) Heading revised 43847
142.42 (c) revised 43847
142.50 Revised 43847
142.53 (c)(1) revised 43848
142.55 (b) revised; (c) removed 43848
142.56 Revised 43848
142.72 Introductory text revised 44535
142.78 (b) revised 44536, 71374
142.201—142.208 (Subpart J) Removed 48077
142.301—142.313 (Subpart K) Added 43848
143.4 (b) table revised 47113
Regulation at 63 FR 47113 withdrawn 72200
147.2555 Added 14803
148.18 (i) added 42184
Regulation at 63 FR 35149 eff. date corrected to 11-4-98 42581
159.159 (a) introductory text revised 41193
180 Authority citation revised 19492
180.2 (a) revised 57066
180.33 Revised 28386
180.103 (a) table amended 57072
180.106 (a) table amended 57072
180.110 (a) table amended 57072
(b) revised 13103
180.114 Revised 57072
180.115 Removed 57066
180.118 Removed 57066
180.121 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) 57073
180.142 (a)(11) revised 11799
180.145 (a)(1) table amended 57073
Regulation at 63 FR 57073 withdrawn in part 4311
180.148 Removed 57066
180.158 Removed 57066
180.159 Removed 57066
180.162 Removed 57066
180.170 Removed 57073
180.171 Removed 57066
180.173 (a) table revised 57073
180.175 (b) table amended 53817
(b) table amended 11792
180.176 Existing text designated as (a); (b) added 54369
180.178 Revised 57073
180.181 Existing text designated as (a); (a) heading added; table revised 57073
180.183 (a) table amended 57073
180.188 Removed 57073
180.190 Revised 25848
180.198 Heading and table revised 57073
180.200 (a)(1) revised 57073
(b) table amended 13096
180.204 Added 70030
180.205 (b) table amended 54360
180.206 (a) table amended 57074
180.207 Existing text designated as (a); (a) heading added; (a) table amended 57074
180.209 (a) table amended 57074
(b) table amended 28927
180.211 Existing text designated as (a); (a) heading added; (a) table amended 57074
180.213 (a)(1) table revised 57074

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180.214 Existing text designated as (a); (a) heading added; (a) table amended 57074
180.215 Existing text designated as (a)(1) and (2); (a) heading added; (a)(1) table amended 57074
180.217 Existing text designated as (a) and revised 57074
180.219 Removed 57066
180.220 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) 57075
180.222 (a) table amended 57075
180.227 (a) heading and (1) designation added; (b) and (c) redesignated as (a)(2) and (3); new (a)(1) and (2) amended; new (a)(3) revised 789
(a)(1) table corrected 10234
180.229 Existing text designated as (a); (a) heading added; (a) table amended 57075
180.231 Existing text designated as (a); (a) heading added 57075
180.235 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) 57075
180.239 Table amended 57066
180.242 (a)(1) table amended 57075
(b) table amended 66996
180.254 (a) table amended 57075
180.258 (a) heading added; (a) table amended; (b) redesignated as (c); new (c) heading added 57075
180.261 (a) heading added; (a) table amended; (b) redesignated as (c); new (c) heading added 57075
180.262 (a) heading added; (a) table amended; (b) redesignated as (c); new (c) heading added 57075
180.263 Table amended 57066
Table corrected 3428
180.284 Revised 45182
(b) table amended 67799
180.292 Existing designated as (a); (a)(2) and (3) redesignated from 185.4850 and 186.4850; (d) added 425
180.293 (b) amended 42249
180.296 Revised 19492
180.297 Existing text designated as (a); (a) heading added; (a) table amended 57075
180.298 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) 57075
180.301 (b) amended 11801
180.306 Removed 57066
180.314 Table amended 57075
180.317 Heading and (a) introductory text revised; (b) redesignated as (c); (a) heading and new (b) added 49487
(b) table amended 6532
180.319 Table amended 57066
Revised 57076
180.320 Removed 57076
180.321 Removed 57066
180.325 Table amended 57066
180.326 Removed 57066
180.330 (a) table amended 57076
180.341 Existing text designated as (a); (a) heading added; (a) table amended 57076
180.346 Existing text designated as (a); (a) heading added; (a) table amended 57076
180.347 Removed 57066
180.349 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) 57076
180.350 (a) heading added; (a) table amended; (b) removed 57076
180.353 (b) table revised 49472
180.356 (b) table amended 14101
180.357 Removed 57066
180.358 Removed 57076
180.361 (b) table amended 13088
180.364 (a)(1) designation and (2) added 54066
(a)(1) table amended; (a)(3) added 18367
180.366 Removed 57076
180.368 (b) table amended 48594, 66437
(b) table amended 11789
180.370 Existing text designated as (a); (a) heading added; (a) table amended 57076
180.374 Removed 57077
180.377 (a)(2) revised 19057
180.381 (b) amended 18372
180.384 Existing text designated as (a); (b) added 51847

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(a) table corrected 19494
180.385 Existing text designated as (a); (a) heading added; (a) table amended 57077
180.386 Removed 57077
180.387 Removed 57077
180.395 (b) table amended 65073
180.410 (a) heading added; (a) table amended; (b) redesignated as (c); new (c) heading added 57077
(a) table corrected 5191
180.412 (a) table and (c) table amended 54073
180.414 (b) amended 54362
(b) table amended 18359
180.416 Existing text designated as (a); (a) heading added; (a) table amended 57077
(a) table corrected 5191
180.417 (b) amended 45406
180.418 (a)(1) table amended 48579
180.425 (b) table amended 28377
180.431 (b) table amended 14104, 17567
180.434 (b) table amended 3002, 13105
(a) table amended 13086
180.435 (a) existing text designated as (a)(1); (a)(2) added 45414
180.438 (b) table amended 4590
180.442 (b) table amended 37286, 53820, 59205
(b) table amended 22802
180.443 (b) table amended 37295, 38483, 49479, 66999
(b) table amended 24295
180.446 (a) heading added; (b) and (c) redesignated as (a)(1) and (2); (a)(1) table amended 19050
180.448 (b) table amended 54599
(a) revised 55547
180.449 (b) table amended 42248, 53837
(b) table amended 16850
180.452 (b) table amended 66458
180.459 (a) heading added; (b) table transferred to (a) table 44152
(a) table amended 66449
180.462 (a) table amended; (b) removed 53844
180.463 Existing text designated as (a)(1); (b) added 6548
(a)(2) redesignated from 180.1860 6549
Heading revised; (a)(1) table amended 14632
180.466 (b) revised 48116
(b) table amended 3009
180.472 (a) table and (d) table amended 49852
(b) amended 53829, 66447
(a) table and (b) table corrected 66459
(b) table amended 3044, 14106
(b) table corrected 18360
180.474 (b)(1) table and (2) table amended 39034
(b)(1) amended 53815
(b)(1) table amended 66456
(a)(1) designation and (2) added 1138
(b) table amended 28384
180.479 Revised 25448
180.480 (b) table amended 4584
(a)(1) revised 7801
(b) table amended 15306
180.482 (b) table amended 52174, 65087, 70035
(b) table amended 3431, 6542, 13094
(a) introductory text revised; (a) table amended 16856
(a) table amended 18346
180.484 (a) heading amended; (a) existing text designated as (a)(1); (a)(2) and (d) heading added 42256
180.485 Revised 53835
180.489 Revised 48607
Revised 22805
180.493 (a) revised 54593
(b) amended 18369
(a) and (d) revised 25455
180.494 (b) revised 53301
180.495 (a) revised 43637
(a) amended 28370
180.499 (b) amended 16843
180.503 (b) table amended 66464
(e) added 6539
180.505 (a) revised 27200
180.507 (a)(1) designation and (2) added 55540
(b) table amended 65084
(b) table amended 4577, 14112, 25451
(a)(1) introductory text and table amended; (a)(2) redesignated as (a)(3) 13105
180.509 (b) table amended 48124
180.510 Revised 10233
(a) table amended 18339
180.511 (b) table amended 41727
180.515 (a) table amended 42246
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(b) revised 65078
180.516 (a) revised 53826
(b) table amended 19489
180.517 (a) introductory text revised; (a) table amended 38495
180.527 Amended 50791
180.532 (b) revised 18346
180.533 (a) table amended 48615
180.534 Added 36372
Removed 10233
180.535 Added 41734
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(b) amended 22799
180.536 Added 71026
180.537 Amended 50784
180.548 Added 69199
180.549 Added 4308
180.550 Added 14639
180.551 Added 18357
180.552 Added 27192
180.553 Added 28924
180.1001 (d) table amended 43088, 53294
(c) table and (e) table amended 48113, 51840
(b)(1) revised; (b)(6) and (9) removed; (b)(7), (8) and (10) redesignated as (b)(6), (7) and (8); (d) table amended 57066
(b)(1) amended 69208
(b)(1) amended 44
(c) table and (e) table amended 10570, 27185
180.1010 Removed 57067
180.1018 Removed 57067
180.1020 (b) table amended 35846
180.1030 Removed 57067
180.1031 Removed 57067
180.1034 Removed 57067
180.1055 Removed 57067
180.1059 Removed 57067
180.1061 Removed 57067
180.1079 Removed 57067
180.1081 Removed 57067
180.1085 Removed 57067
180.1102 Revised 16860
180.1156 Revised 7804
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180.1164 (d) added 67001
180.1165 Added 39521
180.1178 Added 8526
180.1183 Revised 13080
180.1187 Amended 51303
180.1193 Added 43085
180.1198 Added 37288
180.1200 Added 38498
180.1201 Added 49469
180.1202 Added 48597
180.1205 Added 22796
180.1206 Added 28374
180.1860 Redsignated in part as 180.463(a)(2); removed 6549
185 Authority citation revised 19493
185.1650 Removed 57067
185.2250 Removed 19493
186.2275 Table corrected 19494
185.3385 (a) table redesignated in part as 180.484 (a)(1) table 42257
185.3600 Removed 57067
185.4250 Removed 57067
185.4300 Removed 57067
185.4800 Removed 57067
185.4850 Redesignated as 180.292(a)(2) 425
185.5000 Correctly revised; CFR correction 3045
185.5375 Removed 48607
186.450 Removed 57067
186.850 Removed 57067
186.1650 Removed 57067
186.2275 (a) table amended 51848
186.2325 Removed 57077
186.2450 Removed 57067
186.3000 Removed 57077
186.4850 Redesignated as 180.292(a)(2) 425
232.2 Amended 25123
239 Added 57040
239.13 (a), (b), (c), (f) and (g)(3) revised 4315
257 State municipal solid waste permit program determinations 19494
257.5 Amended 57044
258.2 Amended 57044
260.10 Amended 65937
260.11 (a)(11) revised; (a)(16) added 26327
261 Identification and listing of hazardous waste solvents 64372
261.2 (c)(3) and (e)(1)(iii) revised; (c)(4) table amended 25413
261.3 (a)(2)(iv)(C) and (c)(2)(ii)(B) revised; (c)(2)(ii)(E) added 42184
Regulation at 63 FR 42184 eff. date in part corrected to 12–8–98 54355
261.4 (a)(12) revised; (a)(18) and (19) added 42184
Regulation at 63 FR 42184 eff. date corrected to 12–8–98 54355
(g) added 65937
(b)(15) added 6814

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First (a)(16) redesignated as (a)(17); (a)(17) introductory text, (v), (b)(7)(iii) introductory text and (A) revised 25414
261.5 (j) revised 37782
261.6 (a)(3)(iv)(C) amended; (a)(3)(v) removed 42185
Regulation at 63 FR 42185 eff. date in part corrected to 12–8–98 54355
261.31 (a) table amended 42185
261.32 Table amended 42185
261 Appendix VII amended 42186
Appendix IX amended 3872, 4594, 9443, 16647
262.34 (a)(1)(i) and (ii) revised 3388
(d)(4) revised 25414
264.1 (j) added 65938
264.73 (b)(17) added 65938
264.90 (e) and (f) added 56733
264.101 (d) added 65938
264.110 (c) added 56733
264.112 (b)(8) and (c)(2)(iv) added 56733
264.118 (b)(4) and (d)(2)(iv) added 56733
264.140 (d) added 56733
264.552 (a) revised 65939
264.553 (a) revised 65939
264.554 Added 65939
264.1031 Amended 3389
264.1080 (f) and (g) added 49392
(f)(2)(ii)(B)(*1*) revised 53847
264.1080 (b)(5) revised 3389
264.1083 (a)(1)(i), (ii), (b)(1)(i) and (ii) added 3389
264.1084 (h)(3) revised 3389
264.1086 (e)(6) added 3389
265.1 (b) amended 65940
265.90 (f) added 56734
265.110 (c) and (d) added 56734
265.112 (b)(8) and (d)(1)(iv) added 56734
265.118 (c)(4), (5) and (d)(1)(iii) added 56734
265.121 Added 56734
265.140 (d) added 56734
265.1080 (f) and (g) added 49399
(f)(2)(ii)(B)(*1*) revised 53847
(b)(5) revised 3390
265.1084 (a)(1)(i), (ii), (3)(ii)(D), (b)(1)(i), (ii) and (3)(ii)(D) added; (a)(3)(ii)(B), (iii) introductory text, (b)(3)(ii)(B) and (iii) introductory text revised 3390
265.1085 (h)(3) revised 3391
265.1087 (e)(6) added 3391
266 Authority citation revised 42186
266.80 Revised 71229
266.100 (b)(3) revised 42186
Regulation at 63 FR 42186 eff. date corrected to 12–8–98 54355
268.2 (c) revised 65940
(h) and (k) revised 25414
268.7 (a)(4) table and (b)(3)(ii) table amended; (b)(4)(iv) revised 25414
268.9 (d)(2) introductory text and (i) revised 25415
268.33 Regulation at 63 FR 35149 eff. date corrected to 11–4–98 42581
268.34 (b) through (e) redesignated as (c) through (f); new (b) added 48127
268.35 Added 42186
268.39 (c) revised 51264
268.40 Table amended 42187, 51265
Regulation at 63 FR 24625 and 35149 withdrawn; regulation at 63 FR 28641 eff. date corrected to 11–4–98 42582
(i) added 46334
(g) and table amended; (i) added 47415
First (i) redesignated as (j); (i) revised; table amended 25415
268.44 (o) table amended 28391
268.48 Regulation at 63 FR 24626 withdrawn; regulation at 63 FR 28739 eff. date corrected to 11–4–98 42582
(a) table amended 47417
Table amended 25417
268.49 (c)(3) revised 25417
268.50 (g) added 65940
270.1 (c) introductory text revised; (c)(7) added 56735
270.2 Amended 65941
270.11 (d) revised 65941
270.14 (a) amended 56735
270.28 Added 56735
270.42 Appendix I amended 65941
270.68 Added 65941
270.73 (a) revised 65941
270.79—270.230 (Subpart H) Added 65941
271 State hazardous waste management program authorizations 36587, 44152, 44795, 49852, 50528, 50531, 52180, 56086, 56830, 56834, 57353, 57605, 57912, 67800
State hazardous waste management program authorizations 4596, 9278, 10111, 19925, 23780
271.1 (j) Tables 1 and 2 amended 42188, 51267
Regulation at 63 FR 35150 eff. date corrected to 11–4–98 42582
(j) Table 1 amended 47418, 65947
271.16 (e) added 56735
271.21 (h) added 65947
272 State hazardous waste management program authorizations 2144
273.6 Amended 71229
279.10 (i) revised 37782
279.74 (b) revised 37782
281 Underground storage tank program authorizations 51528, 53793
282.78 Added 38500
282.92 Added; eff. 7–27–99 28929
282 Appendix A amended 38500
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300 Appendix B amended ..... 36862, 37069, 37782, 40188, 48449, 49860, 51530, 51853, 53848, 57608, 71597—71599
Appendix B amended 2948, 6814, 11802, 15926, 16351, 24956, 26883
302.4 Table amended 42189, 69168
302.6 (b)(1)(i) and (ii) revised; (b)(1)(iii) added 42189
(c)(2) revised 13114
355.40 (a)(2)(vi)(B) revised 13115
370.20 Revised 7047
372 Clarification 52183
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406.22 Correctly revised; CFR correction 64417
430.01 (i) corrected; (p) correctly revised 42239
430.24 (b)(4)(i) and (d) corrected; (b)(4)(ii)(A) correctly revised 42239
430.25 (b) table corrected 42239
430.26 Introductory text corrected; (a)(2) introductory text correctly revised 42239
430.27 Introductory text and (a)(2) correctly revised 42239
430.56 Introductory text corrected 42239
(a)(1) table, (2)(ii) table and (3)(ii) corrected 42240
430.57 (a)(2)(ii) and (3)(ii) introductory text correctly revised 42240
439 Authority citation revised 50424
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439.0—439.2 Undesignated center heading revised 50424
439.0 Revised 50424
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439.53 Removed 50437
439.54 Removed 50437
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439.56 Removed 50437
439.57 Removed 50437
439 Appendix A added 50437
Appendix A corrected 10393
455 Tables 2 and 3 amended 39443
501.1 (b) and (d) revised; (m) added 45123
501.2 Amended 45124
501.12 (b), (d), (f)(1) introductory text, (iv), (v) and (2) revised; (f)(3) removed 45124
501.14 (a), (b)(1)(i), (2), (3) and (c) revised 45124
501.15 (a), (b) introductory text, (10)(i), (13), (14), (d) introductory text, (1) and (4) through (8) revised; new (d)(1)(i)(B) stayed 45125
501.17 (a)(3)(i), (ii), (iii) and (b)(1) revised 45127
501.21 Revised 45127
501.32 (a) revised 45127
600.002–85 (a)(15) revised 23973
600.005–81 Introductory text revised 23973
600.006–89 (c)(1) and (f) revised 23973
600.007–80 (a), (b)(3), (4) and (e)(1) revised 23973
600.008–01 Added 23973
600.010–86 (a) introductory text and (c)(1)(i) revised 23975
600.111–93 (g)(2) revised 23975
600.113–93 (d) revised 23975
600.207–93 (a)(3)(iii) revised 23975
600.313–01 Added 23975
600.314–01 Added 23975
600.507–86 (a) introductory text revised 23976
600.512–01 Added 23976
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710.39 Revised 45953
721.176 (a)(2)(i) amd (ii) revised 45955
721.305 Added 44574
721.435 Added 44574
721.450 Added 44574
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721.2082 Removed 48129
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721.5460 Added 65710
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721.5560 Added 44579
721.5725 Removed 48129
721.5740 (a) and (b)(1) revised 45956
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(a)(2)(i) corrected 62956
721.9800 (a)(2)(i) revised 45956
721.9969 Added 44581
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745.223 Amended 46674
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745.225 (b)(4) added 46674
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745.226 (a)(6) added 46674
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745.238 Added 46674
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745.330 Revised 41432
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60–741 Appendix C amended **59659**
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101–43.600—101–43.603 (Subpart 101–43.6) Removed **41433**
101–43.4801 (d) revised; (e) amended **40058**
(c) removed; (d) and (e) redesignated as (c) and (d); new (c) table amended **41433**
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101–47.103–4 Removed 5615
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101–47.204–1 (a) amended; (b) and (c) revised 5616
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101–47.308–5 Removed 5617
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301–11.30 Revised **66475**
301–11.31 Added **66475**
301–12.1 Revised **66475**
Chapter 301 Appendix A revised **66475**
Appendix A amended 6549, 16352
Appendix A correctly revised 6550
Appendix A corrected 18581, 18582
Appendix A amended 28778, 28879

Chapter 302—Relocation Allowances (Parts 302–1—302–99)

302–1.4 (b) revised; (m) added 29163
302–1.5 (a), (b)(1)(iii) and (c) amended 29163
302–1.12 (e)(1), (5) and (6) amended 29163
302–1.13 (b)(3) and (d)(1)(iv)(A) amended 29163
302–1.105 (a) amended 29163
302–1.228 (c) amended 29163
302–5 Authority citation revised 29163
302–5.4 (a) amended 29163
302–5.17 Amended 29163
302–6 Authority citation revised 29163
302–6.1 (a) and (g)(1)(ii) amended 29163
302–8 Authority citation revised 29163
302–8.5 (b)(2) amended 29163
302–10.174 Amended 29163
302–11 Authority citation revised 29164
302–11.8 (e)(4)(i) amended 29164
302–11.10 (c) amended 29164
302–11.11 Amended 29164
302–11 Appendixes A through D amended 17106
Appendix B corrected 18659
302–15 Revised 29164

Chapter 303—Payment of Expenses Connected with the Death of Certain Employees (Parts 303–1—303–2)

303–1 Removed 2434
303–2 Removed 2434
303–70 Added 2434

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TITLE 41

Proposed Rules:

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101–35 66102
101–38 6589
101–42 68136
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101–44 42310
101–47 42792
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300–80 6589
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TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

50.401 Revised 66062
50.402 Revised 66062
50.403 Amended 66062
50.404 (a) introductory text revised; (b) amended 66062
50.405 Amended 66063
50.406 (a), (c), (d) and (g) revised; (e) amended 66063
68a Added 58312

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

400.200 Corrected 52611
Amended 68690
402 Added 68690
403 Technical correction 52610
405 Technical correction 52614
Techincal correction 25456
405.400—405.455 (Subpart D) Added 58901
405.517 Revised 58905
405.520 Added 58905
409 Comment period reopening 65560
409.10 (a)(1) through (6) amended; (a)(8) added 3648
409.20 (a) introductory text and (1) through (6) amended; (a)(8) added 3648
410 Technical correction 52610
Comment period reopening 65560
410.1 (a) amended 58905
410.32 (d)(7) correctly designated 53307
(a)(3) amended 58906
410.40 Revised 3648
410.41 Added 3649
410.59 Added 58906
410.60 Revised 58906
410.61 Heading and (a) through (d) revised 58907
410.62 Heading and (a)(3) revised; (d) added 58907
410.74 Added 58907
(c)(1) and (2) corrected 25457
410.75 Added 58908
(b) corrected 25457
410.76 Added 58908
410.77 Added 58909
410.78 Added 58909
410.150 (b)(15) and (16) added 58910
410.152 (a)(1)(v) revised 58910
411 Technical correction 52610
Comment period reopening 65560
412 Technical correction 52614
Hospital wage data revisions 64191
Notice 9378
413 Technical correction 52614
Comment period reopening 65560
Techincal correction 25456
413.125 Existing text designated as (a); (b) added 58910
413.333 Corrected 53307
414.1 Amended 58910
414.20—414.62 Designated as Subpart B and heading added 58910
414.22 Introductory text revised; (b)(5) added 58910
414.32 Heading and (b) revised 58911
(a)(6) correctly added 25457
414.34 Heading revised; (a)(2)(iii) added 58911
414.52 Heading and introductory text revised; (d) added 58911
414.56 Revised 58911
414.65 Added 58911
415 Techincal correction 25456
415.110 Revised 58912
417.600 Reinstated 52611
417.602 Reinstated 52611
417.604 Reinstated 52611
417.605 Reinstated 52611
417.606 Reinstated 52611
417.608 Reinstated 52611
417.609 Reinstated 52611
417.610 Reinstated 52611
417.612 Reinstated 52611
417.614 Reinstated 52611
417.616 Reinstated 52611
417.617 Reinstated 52611
417.618 Reinstated 52611
417.620 Reinstated 52611
417.622 Reinstated 52611
417.624 Reinstated 52611
417.626 Reinstated 52611
417.630 Reinstated 52611
417.632 Reinstated 52611
417.634 Reinstated 52611
417.636 Reinstated 52611
417.638 Reinstated 52611
417.800 Corrected 52611
422.50—422.80 (Subpart B) Heading corrected 52611

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TITLE 42 Chapter IV—Con.

422.50 (a) introductory text and (1) corrected 52611
422.54 (d)(2)(i) corrected 52611
422.56 (d) corrected 52612
422.60 (a)(1), (b)(1), (c)(1) and (e)(4)(i) corrected; (f) correctly added 52612
(e)(4)(i) corrected 54526
(a)(1) revised 7980
422.62 (b) introductory text, (c), (d) heading, (1) and (2) introductory text corrected 52612
422.66 (f) correctly added 52612
422.74 (b)(3) corrected 52612
422.80 (c)(3), (d), (e)(1)(iv), (3)(i) and (f) corrected 52612
422.110 (c) corrected 52612
(c) revised 7980
422.111 (d) revised 7980
422.112 Correctly revised 52612
Revised 7980
422.202 Revised 7981
422.204 (c) revised 7982
422.250 (b) correctly revised 52612
422.268 (b) corrected 52613
422.308 (b) correctly designated as (b)(1); (b)(2) correctly added 52613
422.310 (c)(4) corrected 52614
422.502 (a)(2), (3)(i) and (4) corrected; (m) correctly designated as (l)(4) 52614
(h)(1) revised 7982
422.550 (b)(1) corrected 52614
422.608 Heading corrected 52614
422.612 (a)(1), (b) heading and introductory text corrected 52614
422.616 (a) corrected 52614
422.620 (a) corrected 52614
422.622 (c)(1)(i) corrected 52614
422.752 (a)(6) corrected 52614
424 Comment period reopening 65560
Techincal correction 25456
424.20 Corrected 53307
424.24 (a)(2) correctly revised 53307
(c) introductory text, (1)(ii), (iii), (3)(i), (ii), (4), (f)(2) and (3) revised 58912
424.124 (c)(2) amended 3649
440.160 Revised 64198
441.151 (b) and (c) revised; (d) added 64198
483 Comment period reopening 65560
483.20 (b)(2) introductory text revised 53307
484.11 Added; interim 3763
484.18 (c) revised 3784
484.20 Added; interim 3763
484.55 Added 3784
485.705 Revised 58912
(c)(8) correctly revised; (c)(10)(i), (ii) and (iii) corrected 25457
485.711 (b)(3) revised 58913
488 Authority citation revised 3763
488.68 Added; interim 3763
488.402 (f)(5) revised 13353
488.408 (d)(1)(iv), (e)(1)(iv) and (2)(ii) revised 13360
488.430 (a) revised 13360
488.432 Heading, (a)(2), (b) and (c) revised 13360
488.434 (a)(2)(iii), (v) and (vi) revised 13360
488.438 (a) introductory text, (1) and (2) redesignated as (a)(1) introductory text, (i) and (ii); new (a)(2) added; (c) and (d) revised 13360
488.440 (a), (b) introductory text, (c), (d), (e) introductory text, and (f)(1), (g), (h) revised 13361
448.442 (a) heading revised; (b) through (f) redesignated as (c) through (g); new (b) added 13361
488.454 (a) introductory text revised; (d) redesignated as (e); new (d) added 13361
489 Comment period reopening 65560
493.1202 Heading amended 55034
493.1203 Heading amended 55034
493.1443 (b)(3)(ii) introductory text and (C) amended 55034
498.3 (a) revised 24957

Chapter V—Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

1001.102 (b)(4) revised 57918
1001.2001 (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added 57918

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5 58679
36 ..... 14560, 28778
51c 58679
63 58336
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405 ..... 3474, 14666, 24550
409 63429
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410 63429
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416 ..... 52663, 63430
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TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

4.350 (b), (c)(3) and (6) revised 13363
4.352 (b)(2) amended 13363
4.901—4.909 (Subpart J) Added 26259

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

2200.0-7 (b) revised; eff. 11-2-98 52617
2210 Removed; eff. 11-2-98 52617
2240 Removed; eff. 11-2-98 52617
2250 Removed; eff. 11-2-98 52617
2270 Removed; eff. 11-2-98 52617
3100 Authority citation revised 52952
3100.4 Added; eff. 11-2-98 52952
3150 Authority citation revised 52952
3152.6 (b) revised 52952
3160 Authority citation revised 52952
3162.8 Removed; eff. 11-2-98 52952
3180 Authority citation revised 52952
3181.2 Amended; eff. 11-2-98 52953
3195 Regulation at 63 FR 40178 confirmed 66762
3200 Authority citation revised 52953
3255.13 Added; eff. 11-2-98 52953
3255.14 Added; eff. 11-2-98 52953
3255.15 Added; eff. 11-2-98 52953
3500 Authority citation revised 52953
3500.5 Revised; eff. 11-2-98 52953
3500.5-1 Added; eff. 11-2-98 52953
3500.5-2 Added; eff. 11-2-98 52953
3510 Authority citation revised 52954
3514.5 Revised; eff. 11-2-98 52954
3520 Authority citation revised 52954
3524.5 Revised; eff. 11-2-98 52954
3530 Authority citation revised 52954
3534.5 Revised; eff. 11-2-98 52954
3540 Authority citation revised 52954
3544.5 Revised; eff. 11-2-98 52954
3550 Authority citation revised 52954
3554.5 Revised; eff. 11-2-98 52954
3580 Authority citation revised 52954
3585.5-9 Revised; eff. 11-2-98 52954
3590 Authority citation revised 52954
3590.1 Removed; eff. 11-2-98 52954
3600 Authority citation added 52954
3600.0-8 Added; eff. 11-2-98 52954
3602.2 (a) amended; eff. 11-2-98 52954
3800 Authority citation revised 52954
3802.6 Revised; eff. 11-2-98 52954
3860 Authority citation revised 52955
3862.9 Added; eff. 11-2-98 52955
4300 Revised 55550

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4 ..... 1930, 3262
39 67834
428 64154
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3100 ..... **66776, 66840**
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3110 14666
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3130 ..... **66776, 66840**
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3150 14666
3160 ..... **66776, 66840**
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3170 14666
3180 14666
3110 ..... **66840**
3120 ..... **66840**
3130 2166
3140 ..... **66840**
3150 ..... **66840**
3160 2166
3170 ..... **66840**
3180 ..... **66840**
3400 12142
3420 12142
3800 ..... 6422, 9960

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

61.9 Revised 13116
62 Appendix A amended 27709
64.6 Table amended ... **54370, 54372, 55957, 59236, 63797, 70036, 70038**
Table amended ... 4979, 7505, 9919, 24513, 24958
65.4 Flood elevation determinations **54374, 54377, 55035, 58316, 58319, 64418, 64419, 67002, 67004**
Flood elevation determinations 1522, 3045, 7107, 7109, 7506, 11379, 11381, 11383, 11385, 17568, 17569, 24515, 24516, 26690, 26693, 28932, 28934
67.11 Flood elevation determinations **54378, 55038, 58322, 64421, 67005**
Flood elevation determinations 1523, 3045, 3047, 7110, 11386, 11388, 17571, 24518, 26695, 28936
77 Removed 28106
80 Removed 28106
81 Removed 28106
82 Removed 28106
83 Removed 28106
152 Removed 28106
206.47 Added 19498
206.200 (b) revised; interim **64425**
206.201 (i) and (j) revised; interim **64425**
206.202 Revised; interim **64425**
206.207 Reinstated; CFR correction **71026**
206.228 (a)(2)(i) revised; interim **64426**
207 Removed 28106
220 Removed 28106
221 Removed 28106
222 Removed 28106
301 Removed 28106
303 Removed 28106
306 Removed 28106
308 Removed 28106
320 Removed 28106
324 Removed 28106
328 Removed 28106
333 Removed 28106
336 Removed 28106
354 Revised; interim **69003**

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59 24256
61 ..... 3909, 24256
62 ..... **63431, 63432**
67 ..... **54427, 55072, 58338, 64441, 67026**
..... 1573, 3056, 11403, 11409, 17598, 24551, 26715, 28963
77 ..... 8048, 10181
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TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Service (Parts 1—199)

60.12 (a) amended 9922
144.101 Revised; interim **57558**
144.102 (b) revised; interim **57558**
146.101 (a) revised; (b)(2), (3) and (4) redesignated as (b)(3), (4) and (5); new (b)(2) added; interim **57559**
146.130 Added; interim **57559**
148.101 Revised; interim **57561**
148.102 (a) heading, (2) and (b) revised; interim **57562**
148.170 (Subpart C) Added; interim **57562**

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

260 Added 17878
261 Added 17884
262 Added 17890
263 Added 17893
264 Added 17896
265 Added 17900
276 Added; interim **57926**
283 Added 18493

Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

301.1 Amended; interim 6247
302 Nomenclature change; interim 6247
302.12 (a)(1)(i) removed; (a)(1)(ii) and (iii) redesignated as (a)(1)(i) and (ii); interim 6247
302.31 (a)(2), (b) and (c) amended; (a)(3) removed; interim 6247
302.32 Revised; interim 6247
302.34 Amended; interim 6248
302.35 (c)(1), (2) and (4) amended; (c)(5) and (d) added; interim 6248
302.50 Revised; interim 6248
302.51 Revised; interim 6248
302.52 (b)(5) amended; interim 6249
302.54 (a)(1) amended; interim 6249
302.57 Removed; interim 6249
302.70 (a) introductory text, (d)(1) and (2) amended; interim 6249
(a)(5)(iii) introductory text and (B) revised; (a)(5)(iii)(C) added 11809
302.75 (b)(4) amended; interim 6249
302.80 (a) amended; interim 6249
303 Nomenclature change; interim 6249
303.3 (b)(1) amended; interim 6249
303.5 (d)(1) and (e)(3) revised; (d)(2) and (e)(1) amended; interim 6249
(g) revised 11809
303.7 (a)(1), (b)(2), (3), (6), (c)(4), (7)(iii), (iv) and (v) amended; (d)(3) revised; interim 6250
303.8 Revised; interim 6250
303.11 (b)(1) revised; (b)(2) removed; (b)(3) and (4) redesignated as (b)(2) and (3); (b)(3)(iv) added 11817
(b)(5) through (12) redesignated as (b)(4) through (11); (b)(2), (4), (5), new (b)(4), new (9), new (10), (c) and (d) revised; new (b)(12) added; 11818
303.15 (a)(1)(i), (ii), (2), (b) introductory text, (2) and (c)(1) amended; interim 6250
303.20 (b)(3) amended; interim 6250
303.21 Removed; interim 6250
303.30 (b) removed; (c) redesignated as (b); new (b) amended; interim 6250
303.31 (c) introductory text amended; (c)(1) and (2) removed; interim 6250
303.70 (c)(1), (2), (d)(1) and (2) amended; interim 6250
(e)(1)(i), (ii), (2)(i), (3) and (4)(i) amended; (e)(1)(iii) added; interim 6251
303.71 (b), (f) and (g) amended; interim 6251
303.72 (i) amended; interim 6249
(a)(1), (2), (h)(1), (3) and (4) amended; interim 6251
303.80 Removed; interim 6251

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TITLE 45 Chapter III—Con.

303.100 (a)(9), (c)(2), (d)(1)(iv), (v), (2), (e), (g) removed; (a)(10), (c)(3), (d)(1)(i), (ii), (iii), (f), (h) redesignated as (a)(9), (c)(2), (d)(2), (3), (4), (e), (f); heading, (a)(1), (b)(1), (2)(i), (c) introductory text, (1) introductory text and new (e)(1) introductory text, (i), (ii), (vi), (vii), (viii) and (2) amended; (d) introductory text, (1), new (e)(1)(ix) and (3) revised; (d)(5) added; interim 6251
(i) redesignated as (g); new (g) amended; interim 6252
303.101 (a) revised; (c)(4) and (5) removed; (c)(6) redesignated as (c)(4); (b)(1) and new (c)(4) amended; interim 6252
303.102 (g)(1)(i), (ii), (iii) removed; (c), (d), (e), (g)(1) introductory text and (iv) redesignated as (d), (e), (c), (g)(1)(i) and (ii); new (d)(1) designation and (2) removed; (a)(1) and new (d), (g)(1)(i) and (ii) amended; interim 6252
303.103 Removed; interim 6252
303.105 Removed; interim 6252
303.109 Added 15136
304 Nomenclature change; interim 6252
304.12 (a) amended; interim 6252
304.20 (b)(1)(viii)(C) and (ix)(D) removed; (b)(1)(viii)(D) and (ix)(D) redesignated as (b)(1)(viii)(C) and (ix)(D); (b)(1)(ix)(C) and (3)(iv) amended; interim 6252
(b)(2)(vi), (vii) and (viii) revised 11810
304.21 (a) introductory text amended; interim 6252
304.26 Revised; interim 6252
304.29 Amended; interim 6253
304.40 (a)(2) and (b)(2) amended; interim 6253
305 Removed; interim 6253

Chapter XII—Corporation for National and Community Service (Parts 1200—1299)

1201 Authority citation revised 64199
1201.2 (b) and (c) added 64199
1207 Redesignated as Part 2551 14115
1208 Redesignated as Part 2552 14126
1209 Redesignated as Part 2553 14135
1224 Redesignated as part 2508 19294

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1309 Added 5945
1309.10 OMB number pending 5946
1309.40 OMB number pending 5949
1309.41 OMB number pending 5949

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1606 Revised 64643
1611 Appendix A revised 17108
Appendix A corrected 18372
1623 Revised 64648
1625 Removed 64646

Chapter XXV—Corporation for National and Community Service (Parts 2500—2599)

2500 Removed 66063
2501 Removed 66063
2502 Removed 66063
2503 Removed 66063
2504 Removed 66063
2505 Removed 66063
2506 Removed 66063
Added; interim 4316
2508 Redesignated from part 1224 and revised 19294
2551 Redesignated from Part 1207 and revised 14115
2552 Redesignated from Part 1208 and revised 14126
2553 Redesignated from Part 1209 and revised 14135

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5 14668
60 71255
61 ..... 58341, 71819
92 10412
95 10412
400 1159

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401 1159
1224 10872
1302 14202
1309 6013
1628 56591
1635 56594
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1641 5728
2505 25260
2506 10872
2522 17302
2525 17302
2526 17302
2527 17302
2528 17302
2529 17302

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.03–15 (h)(3) revised 4984
1.03–45 Revised 4984
2.10–1 Regulation at 62 FR 19232 confirmed 59474
2.10–5 Regulation at 62 FR 19232 confirmed; (c)(2) revised 59474
2.10–25 Regulation at 62 FR 19232 confirmed; amended 59474
2.10–101 Regulation at 62 FR 19232 confirmed 59474
5.1—5.5 (Subpart A) Heading revised; interim 28075
5.1 Removed; interim 28075
5.3 Amended; interim 28075
5.11 Removed; interim 28075
5.13 Removed; interim 28075
5.23 Removed; interim 28075
5.25 Removed; interim 28075
5.33 Amended; interim 28075
5.35 Amended; interim 28075
5.53 Removed; interim 28075
5.55 Heading and (a) amended; interim 28075
5.63 Removed; interim 28075
5.105 (a) amended; interim 28075
5.107 Revised; interim 28075
5.305 Revised; interim 28075
5.501 Revised; interim 28075
5.503 Removed; interim 28075
5.505 Removed; interim 28075
5.507 Removed; interim 28075
5.509 Removed; interim 28075
5.511 Removed; interim 28075
5.513 Removed; interim 28075
5.515 Removed; interim 28075
5.517 Removed; interim 28075
5.519 Removed; interim 28075
5.523 Removed; interim 28075
5.525 Removed; interim 28075
5.527 Removed; interim 28075
5.529 Removed; interim 28075
5.531 Removed; interim 28075
5.533 Removed; interim 28075
5.535 Removed; interim 28075
5.537 Removed; interim 28075
5.539 Removed; interim 28075
5.541 Removed; interim 28075
5.543 Removed; interim 28075
5.545 Removed; interim 28075
5.547 Removed; interim 28075
5.549 Removed; interim 28075
5.551 Removed; interim 28075
5.553 Removed; interim 28075
5.555 Removed; interim 28075
5.557 Removed; interim 28075
5.559 Removed; interim 28075
5.561 Removed; interim 28075
5.563 Removed; interim 28075
5.565 Removed; interim 28075
5.567 (a) revised; interim 28075
5.571 Removed; interim 28075
5.573 Removed; interim 28075
5.577 Removed; interim 28075
5.601—5.607 (Subpart I) Removed; interim 28075
5.701 Revised; interim 28075
5.703 Removed; interim 28075
5.705 Removed; interim 28075
5.709 Removed; interim 28075
5.711 Removed; interim 28075
10.302 (a) introductory text revised; (c) and (d) amended; (e), (f) and (g) added 4984
10.303 (e) revised 4984
15.1050 Added 57255
16 Technical correction 25405
16.500 Revised 22559
28.130 (d) amended; eff. 11–2–98 52813
30.01–5 Regulation at 61 FR 25286 confirmed 52813
30.01–6 Regulation at 61 FR 25286 confirmed 52813
31.01–1 Regulation at 61 FR 25286 confirmed 52813
31.05–1 Regulation at 61 FR 25286 confirmed 52813
31.36–1 (Subpart 31.36) Regulation at 61 FR 25286 confirmed 52813

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TITLE 46 Chapter I—Con.

32 Authority citation revised.....71764
Meeting.....18576
32.15–15 (a) and (d) revised; (e) and (f) added; interim; eff. 12–11–00.....71764
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1.729 Regulation at 63 FR 41447 eff. 10–5–98 52983
1.730 Regulation at 63 FR 41448 eff. 10–5–98 52983
1.733 Regulation at 63 FR 41449 eff. 10–5–98 52983
1.767 (a)(5), (6), (7) and (e) revised; (a)(8) and (9) added 19061
1.821 Revised 68920
1.823 Removed 68920
1.825 Removed 68920
1.901 Revised 68921
1.902 Added 68921
1.903 Added 68921
1.907 Added 68921

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1.911 Revised 68922
1.912 Removed 68922
1.913 Revised 68922
1.914 Removed 68923
1.915 Added 68923
1.916 Removed 68923
1.917 Added 68923
1.918 Removed 68923
1.919 Added 68923
1.921 Removed 68924
1.922 Removed 68924
1.923 Revised 68924
1.924 Revised 68924
1.925 Revised 68926
1.926 Revised 68927
1.927 Added 68927
1.929 Added 68927
1.931 Revised 68928
1.933 Revised 68929
1.934 Revised 68930
1.935 Added 68931
1.937 Added 68931
1.939 Added 68931
1.945 Added 68932
1.946 Added 68933
1.947 Added 68933
1.948 Added 68933
1.949 Added 68934
1.951 Revised 68934
1.952 Removed 68934
1.953 Removed 68934
1.955 Revised 68934
1.956 Added 68935
1.957 Added 68935
1.958 Removed 68935
1.959 Removed 68935
1.961 Removed 68935
1.962 Removed 68935
1.971 Removed 68935
1.972 Removed 68935
1.973 Removed 68935
1.981 Revised 68935
1.1102 Revised 68935
1.1111 (b) amended; (c) added 68941
1.1152 Revised 68941
1.1306 Note 1 amended 19061
1.1307 (b)(1) Table 1 amended (OMB number pending) 65099
Regulation at 63 FR 65099 eff. date corrected to 2-8-99 4054
1.2003 Amended 68942
1.2107 (e) added 68942
1.2111 (a) amended 68942
1.4000 Revised (effective date pending) 67429
Revised 71036
2 Nomenclature change 54077
Authority citation revised 58650
Order 63798
Rule confirmation 69562
2.103 Revised 58650
2.106 Table amended 2587, 2591
Table corrected 6138
2.960 Added 4995
2.962 Added 4996
2.1033 (b)(11) revised; eff. 10–25–99 22561
5 Revised 64202
11 Order 5950
13.5 Revised 68942
13.9 (d), (e) and (f) redesignated as (e), (f) and (g); (b), (c) and new (f) introductory text revised; new (d) added 68942
13.13 (d), (e) and (f) removed; 68942
13.17 (b), (c) and (d) revised 68943
15.3 (v) revised; (dd) added; eff. 10–25–99 22561
15.37 (f) revised; (h) added; eff. 10–25–99 22561
15.101 (a) revised 4997
15.121 Revised; eff. 10–25–99 22561
17.23 Revised 27474
20 Nomenclature change 54077
20.9 (b) introductory text and (1) revised 26887
21.2 Amended 65100
Regulation at 63 FR 65100 eff. date corrected to 2-8-99 4054
21.11 (f) and (g) redesignated as (e) and (f); heading, (a), (d) and new (e) revised 65100
Regulation at 63 FR 65100 eff. date corrected to 2-8-99 4054
21.27 (d) added (OMB number pending) 65101
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.30 (a)(4) revised 65101
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.31 (e)(6)(iv) revised 65101
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.42 (b)(3) revised; (c)(8) added (OMB number pending) 6510
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.101 (a) Footnote 2 revised 65101
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.118 (c) revised 65101

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Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.201 Revised (OMB number pending) 65101
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.304 Revised (OMB number pending) 65102
Regulation at 63 FR 65102 eff. date corrected to 2-8-99 4054
21.900 Revised (OMB number pending) 65102
Regulation at 63 FR 65102 eff. date corrected to 2-8-99 4054
21.901 (a), (b), (d) and Note 1 revised; (g) added (OMB number pending) 65102
Regulation at 63 FR 65102 eff. date corrected to 2-8-99 4054
21.902 Heading, (b)(3), (4), (5)(i), (f)(1) and (2) revised; (b)(7) and (l) added 65102
Regulation at 63 FR 65102 eff. date corrected to 2-8-99 4054
21.903 (a) and (b)(1) revised; (d) added (OMB number pending) 65103
Regulation at 63 FR 65103 eff. date corrected to 2-8-99 4054
21.904 Revised 65103
Regulation at 63 FR 65103 eff. date corrected to 2-8-99 4054
21.905 (b) revised; (d) added (OMB number pending) 65104
Regulation at 63 FR 65104 eff. date corrected to 2-8-99 4054
21.906 (a) and (d) revised (OMB number pending) 65104
Regulation at 63 FR 65104 eff. date corrected to 2-8-99 4054
21.907 Removed 65104
Regulation at 63 FR 65104 eff. date corrected to 2-8-99 4054
21.908 (b) redesignated as (a); heading and new (a) revised; (c), (d) and (e) removed; new (b) through (e) added 65104
Regulation at 63 FR 65104 eff. date corrected to 2-8-99 4054
21.909 Revised (OMB number pending) 65105
Regulation at 63 FR 65105 eff. date corrected to 2-8-99 4054
21.910 Heading, introductory text, (a) and (b) introductory text revised; (d) added 65109
Regulation at 63 FR 65109 eff. date corrected to 2-8-99 4054
21.913 Revised (OMB number pending) 65109
Regulation at 63 FR 65109 eff. date corrected to 2-8-99 4054
21.925 (b) revised 65112
Regulation at 63 FR 65112 eff. date corrected to 2-8-99 4054
21.938 (b) introductory text, (c)(4), (e) and (f) revised 65112
Regulation at 63 FR 65112 eff. date corrected to 2-8-99 4054
21.940 Added (OMB number pending) 65112
Second 21.940 correctly redesignated as 21.949 4055
21.949 Correctly redesignated from second 21.940 4055
22.99 Amended 68943
22.101 Removed 68943
22.103 Removed 68943
22.105 Removed 68943
22.106 Removed 68943
22.108 Removed 68943
22.115 Removed 68943
22.117 Removed 68943
22.119 Removed 68943
22.120 Removed 68943
22.121 Removed 68943
22.122 Removed 68943
22.123 Removed 68943
22.124 Removed 68943
22.125 Removed 68943
22.127 Removed 68943
22.128 Removed 68943
22.129 Removed 68943
22.130 Removed 68943
22.131 (b) introductory text, (1), (c) introductory text, (1) and (2) revised; (d)(3) removed 68943
22.132 Removed 68943
22.135 Removed 68943
22.137 Removed 68943
22.139 Removed 68943
22.142 Removed 68943
22.144 Removed 68943
22.145 Removed 68943
22.150 (d) introductory text amended 68944
22.163 Removed 68944
22.165 (b) and (e) revised 68944
22.213 Removed 68944
22.221 (b) revised 68944
22.315 Removed 68944
22.317 Amended 68944

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22.323 (d) revised 68944
22.352 (c)(6) revised 68944
22.369 Removed 68944
22.411 (d)(1) revised 68944
22.413 (b)(1) revised 68944
22.415 (b)(1) revised 68944
22.417 (b)(1) revised 68944
22.503 (k) revised 68945
22.507 (c) revised 68945
22.529 (a) and (b) introductory text amended; (b)(1), (3) introductory text, (i) and (iii) revised 68945
22.531 (c) revised 68945
22.539 Introductory text revised 68945
22.577 (b) amended; (d) revised 68945
22.625 (b)(1) revised 68946
22.627 (b)(1)(i) and (2) revised 68946
22.657 (a), (d), (e)(1) and (f) revised 68947
22.659 (b)(1) and (c)(1) revised 68947
22.709 Introductory text, (b) introductory text, (1) and (2) revised (effective date pending in part) 68948
22.803 Introductory text, (a) introductory text, (b) introductory text, (1) and (2) revised (effective date pending in part) 68948
22.821 Removed 68948
22.859 Introductory text and table revised 68948
22.873 (a) and (b) revised 68950
22.875 (d)(7) removed (effective date pending in part) 68951
22.907 (b) revised 68951
22.911 (b) amended 68951
22.929 Revised (effective date pending in part) 68951
22.935 (a) amended 68951
22.936 (a) amended 68951
22.941 (b) amended; (c) revised 68951
22.944 Removed 68951
22.946 Introductory text and (b) removed; (a) introductory text revised; (a)(1) redesignated as (b) 68951
22.947 (b) introductory text amended 68951
22.953 (a) and (b) revised; (c) added 68951
22.966 Removed 68952
24 Order 63612
24.2 (b) amended 68952
24.5 Amended 68952
24.11 (a) revised 68952
24.18 Removed 68952
24.202 Introductory text amended 68952
24.203 (b) amended 26890
24.307 Revised 68952
24.405 Removed 68952
24.406 Removed 68952
24.409 Removed 68952
24.411 Removed 68952
24.413 Removed 68952
24.419 Removed 68952
24.420 Removed 68952
24.421 Removed 68952
24.422 Removed 68953
24.423 Removed 68953
24.425 Removed 68953
24.426 Removed 68953
24.427 Removed 68953
24.428 Removed 68953
24.429 Removed 68953
24.432 Removed 68953
24.439 Removed 68953
24.443 Removed 68953
24.444 Removed 68953
24.714 (b)(1) revised 68953
24.803 Removed 68953
24.805 Removed 68953
24.806 Removed 68953
24.809 Removed 68953
24.811 Removed 68953
24.813 Removed 68953
24.819 Removed 68953
24.820 Removed 68953
24.821 Removed 68953
24.822 Removed 68953
24.823 Removed 68953
24.825 Removed 68953
24.826 Removed 68953
24.827 Removed 68953
24.828 Removed 68953
24.829 Removed 68953
24.832 Removed 68953
24.839 (a), (b) and (c) removed; (d) and (e) redesignated as (a) and (b) 68953
24.844 Removed 68953
25 Orders 14394
25.200 Added 4997
25.202 (a)(1) table revised 2591
(a)(1) corrected 6565
26.2 (b) amended 68953
26.4 Amended 56577, 68953
26.11 (a) revised 68953
26.56 Added 71041

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26.104 (e) revised 68953
26.203 Revised 56578
26.204 Removed 56578
26.205 Revised 56578
26.206 Revised 56578
26.207 Revised 56578, 68954
26.208 Revised 56578
26.209 (b)(2) revised 68954
26.210 Revised 56578
26.303 Removed 68954
26.304 Removed 68954
26.305 Removed 68954
26.306 Removed 68954
26.307 (a) revised 56578
Removed 68954
26.309 Removed 71041
26.310 Removed 68954
26.311 Removed 68954
26.312 Removed 68954
26.313 Removed 56578
Removed 68954
26.314 Removed 68954
26.315 Removed 68954
26.316 Removed 68954
26.317 Revised 56578
Removed 68954
26.318 Removed 68954
26.319 Removed 68954
26.320 Revised 56578
Removed 68954
26.322 Removed 68954
26.323 (a) revised 68954
26.324 Removed 68954
26.325 Removed 68954
26.326 Removed 68954
27.3 (b) amended 68954
27.4 Amended 68954
27.11 (a) revised 68954
27.15 (b)(1) revised 68954
27.59 Removed 68954
27.61 Removed 68954
27.62 Removed 68954
27.207 Removed 68954
27.301 Removed 68954
27.303 Removed 68954
27.304 Removed 68954
27.306 Removed 68954
27.307 Removed 68954
27.310 Removed 68955
27.311 Removed 68955
27.312 Removed 68955
27.313 Removed 68955
27.314 Removed 68955
27.315 Removed 68955
27.316 Removed 68955
27.317 Removed 68955
27.319 Removed 68955
27.320 Removed 68955
27.322 Removed 68955
27.324 Removed 68955
27.325 Removed 68955
36 Order 63993
36.601 Amended 64651
41 Removed 13916
42.10 Added 19725
42.11 Undesignated center heading revised 19725
42.11 (a) revised 19725
43.61 (c) revised 19061
51.5 Amended 23241
51.321 (c) and (f) revised; (h) and (i) added 23241
51.323 (b), (c), (h) and (i) revised; (k) added 23242
51.325 (a)(1) and (2) revised; (a)(3) added (effective date pending) 14148
52.19 (a) revised 63617
52.21 (c) and (q) revised 68203
52.27 Revised 68203
52.31 (a), (b) and (e) revised 68204
(a) revised 22563
54 Order 63993
Guidelines 68208
54.5 Amended 70571
54.504 (b)(1), (2)(vii), (3) and (c) amended; (b)(4) revised 70572
54.505 (b)(3) and (c) amended 70572
54.507 (e), (f), (g) introductory text and (1) amended; (c), (g)(2)(i) and (iv) revised 70572
(b) revised 22810
54.509 (b) amended; (c) revised 70572
54.511 (c)(3) amended 70572
(d) revised 22810
54.515 (a) and (b) revised; (c) and (d) removed 67009
54.516 (b) amended 70572
54.603 (a)(1) through (5) amended 70572
54.604 (c) amended 70572
(d) revised 2594, 22810
54.605 (e) amended 70572
54.609 (b) amended 70572
54.619 (b) and (d) amended 70572
54.623 (c), (e) and (f) amended 70572
(b) and (c) revised 2594
54.625 (a) amended 70572
54.701 Revised 70572
54.702 Added 70573
54.703 Revised (effective date pending in part) 70573

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54.704 Added 70574
54.705 Revised 70574
54.706 Added 70575
54.708 Added 70576
54.709 (a)(2) amended; (a)(3) revised 70576
54.711 (a) and (b) revised 67009
(b) amended 70576
54.715 Revised 70576
54.717 Added 70576
54.719—54.725 (Subpart I) Added 70577
54.719 Added 70577
54.721 Added (effective date pending) 70578
54.722 Added 70578
54.723 Added 70578
54.724 Added 70578
61 Orders 14394
63 Authority citation revised 19061
63.09 Added 19062
63.10 (a) introductory text and (c)(5) amended; (a)(4) revised 19062
63.11 Heading, (a), (c)(1), (2), (e)(1) and (2) revised; (b) and (f) amended; note removed 19062
Corrected 22903
63.12 (c)(2) amended; (c)(5) redesignated as (c)(4); (a), (b), (c)(1), new (c)(4) and (d) revised 19063
63.14 (a) amended; (b) introductory text revised 19063
63.15 Removed 19063
63.16 Added 19063
63.17 (b)(4) revised 19064
63.18 (e), (g), (h) and (i) revised; (j) and (k) redesignated as (o) and (p); (j) through (n) added 19064
63.20 (b) and (c) revised; (d) amended 19065
63.21 Heading and (a) revised; (i) and (j) added 19065
63.22 Added 19065
63.23 Added 19066
63.24 Added 19066
64 Order 54379
Petitions 4999
64.604 (c)(4)(iii)(1) revised 67010
64.702—64.710 (Subpart G) Heading amended (effective date pending) 14148
64.702 (b), (c) and (d)(2) amended; (effective date pending) 14148
64.1002 Amended 19067
64.1100 Revised (effective date pending in part) 7759
Regulation at 64 FR 7759 eff. date corrected to 8-27-99 9219
64.1150 Revised 7760
Regulation at 64 FR 7760 eff. date corrected to 8-27-99 9219
64.1160 Added 7760
Regulation at 64 FR 7760 eff. date corrected to 8-27-99 9219
64.1170 Added (effective date pending) 7761
64.1180 Added (effective date pending) 7761
64.1190 Added 7762
Regulation at 64 FR 7762 eff. date corrected to 8-27-99 9219
64.1300 (c) revised; (d) removed 13719
68.160 Added 4997
68.162 Added 4998
68.300 (c) added 3048
69 Order 63993
69.152 (h) added 16358
69.153 (c) introductory text, (2), (d)(1) introductory text, (ii), (2) introductory text, (ii) and (e) revised 55335
69.600 Removed 70578
69.603 (c), (d) and (e) removed 70578
69.613 Removed 70578
69.614 Removed 70578
69.615 Removed 70578
69.616 (e) added 67010
Removed 70578
69.617 Removed 70578
69.618 Removed 70578
69.619 Removed 70578
69.620 Removed 70578
69.621 Removed 70578
69.622 Removed 70578
69.623 Removed 70578
73 Actions on petitions 54380, 71389
Order 65710
Actions on petitions 3650, 9923, 14397
Application for review 27710
73.202 (b) table amended ..... 52984, 54379, 54600, 55807—55809, 55958, 55959, 57609, 57610, 59238, 59239, 62956, 62957, 63617—63619, 64877, 67430
(b) table amended ..... 995, 2858, 3874, 3875, 5718—5720, 7813, 8725, 9923, 12903, 13720—13723, 17109, 19067, 19300, 22564—22567, 23022, 23243, 23244, 24522, 26697

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73.316 (c) revised 70047
73.606 (b) table amended 12767
73.622 (b) amended 4326
(e) revised 4327
73.623 (f) redesignated as (g); new (f) added 4327
73.624 (g) added 69216
(b) revised 4327
(c) introductory text corrected; CFR correction 26327
73.686 (d) added 7127
73.1030 (a) revised 70048
73.1125 Regulation at 63 FR 49497 eff. 10-30-98 56578
73.1675 (a) revised 70049
73.3500 Existing text designated as (a); (b) added 70049
73.3517 (e) added 19501
73.3526 Regulation at 63 FR 49497 eff. 10-30-98 56578
(e)(11)(iii) revised 70049
Regulation at 63 FR 70049 eff. 12-31-98 71789
73.3527 Regulation at 63 FR 49499 eff. 10-30-98 56578
73.3534 Revised 70049
73.3535 Removed 70049
73.3550 Revised 71603
73.3571 (a)(1) and (f) revised 19501
73.3573 (a)(1) and (e) revised 19502
73.3597 (c)(1)(iii) added 70050
73.3598 Revised 70050
73.3599 Removed 70050
73.3613 (b)(7) added 70050
73.3615 (a) introductory text, (1), (3)(i)(A), (c), (d) introductory text, (e) and (f) revised; (a)(2) amended 70050
Regulation at 63 FR 70050 eff. in part 12-31-98 71789
73.5002 (c) and (d) revised 24526
73.5006 (b) and (c) revised 24526
73.5007 Revised 24526
73.5008 (b) and (c) revised 24527
73.5009 Revised 24527
74 Rule confirmation 69562
74.406 (d)(1) revised 4327
74.725 Added 70578
74.783 (e) revised 71604
74.901 Amended 65113
Regulation at 63 FR 65113 eff. date corrected to 2-8-99 4054
74.902 (f) through (j) redesignated as (g) through (k); (c), (d) and (e) revised; new (f) added (OMB number pending) 65113
74.903 (a)(1), (2), (3), (b) introductory text, (1), (2), (4), (5), (c) and (d) revised; (a)(6) added; (e) and (f) removed 65114
Regulation at 63 FR 65114 eff. date corrected to 2-8-99 4054
74.911 (a)(1) revised; (d) added (OMB number pending) 65115
Regulation at 63 FR 65115 eff. date corrected to 2-8-99 4054
74.912 Added 65115
Regulation at 63 FR 65115 eff. date corrected to 2-8-99 4054
Revised 24527
74.931 (d), (e), (f) through (k) redesignated as (b), (c) and (e) through (j); new (b) and new (c) revised; new (d) added (OMB number pending) 65116
Regulation at 63 FR 65116 eff. date corrected to 2-8-99 4054
74.935 (a) and (b) revised 65117
Regulation at 63 FR 65117 eff. date corrected to 2-8-99 4054
74.936 Revised (OMB number pending) 65117
Regulation at 63 FR 65117 eff. date corrected to 2-8-99 4054
74.937 (a) amended; (b) revised 65118
Regulation at 63 FR 65118 eff. date corrected to 2-8-99 4054
74.938 Revised 65119
Regulation at 63 FR 65119 eff. date corrected to 2-8-99 4054
74.939 Revised (OMB number pending) 65119
Regulation at 63 FR 65119 eff. date corrected to 2-8-99 4054
74.940 Added (OMB number pending) 65124
Second 74.940 correctly redesignated as 74.949 4055
74.949 Correctly redesignated from second 74.940 4055
74.950 Removed 65124
Regulation at 63 FR 65124 eff. date corrected to 2-8-99 4054
74.951 (b) revised (OMB number pending) 65124
Regulation at 63 FR 65124 eff. date corrected to 2-8-99 4054
74.952 Revised 65124
Regulation at 63 FR 65124 eff. date corrected to 2-8-99 4054
74.961 (a) revised 65124

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74.965 Revised (OMB number pending) **65125**
Regulation at 63 FR 65125 eff. date corrected to 2-8-99 4054
74.982 (b) revised; (g) added **65125**
Regulation at 63 FR 65125 eff. date corrected to 2-8-99 4054
74.985 Revised (OMB number pending) **65125**
Regulation at 63 FR 65125 eff. date corrected to 2-8-99 4054
74.986 (a) introductory text revised; (a)(8) added **65127**
Regulation at 63 FR 65127 eff. date corrected to 2-8-99 4054
74.1233 (a)(1), (b) and (d)(1) revised 19502
74 Index amended **65127**
Regulation at 63 FR 65127 eff. date corrected to 2-8-99 4054
76 Order 5950
Authority citation and heading revised 6569
Authority citation revised 28108
76.6 Added 6569
76.7 Revised 6569
76.8 Revised 6569
76.9 Revised 6569
76.10 Revised 6569
76.61 (a)(3), (4) and (b) revised; (a)(5) added 6572
76.403 Revised (effective date pending) 28108
76.615 Introductory text and (a) revised 28109
76.914 (c) revised 6572
76.1003 Regulation at 63 FR 45739 eff. 12-23-98 2595
Revised 6572
76.1302 Revised 6574
76.1513 Heading, (a) and (d) through (h) revised; (i) through (u) removed 6575
78 Rule confirmation **69562**
79.1 (b), (d)(3), (7), (8), (9) and (e)(3) revised; (d)(13) and (e)(10) added **55962**
80.3 (k) revised **68955**
80.19 Removed **68955**
80.21 (a), (b) and (f) removed; (c), (d) and (e) redesignated as (a), (b) and (c); introductory text and new (c) revised (effective date pending) **68955**
80.23 Removed **68955**
80.25 (a) and (b) revised **68955**
80.29 Removed **68955**
80.31 Revised **68955**
80.33 (b) introductory text and (c) introductory text revised (effective date pending) **68955**
80.45 Revised **68955**
80.49 Revised **68955**
80.51 (a) removed **68955**
80.53 Revised (effective date pending) **68956**
80.56 Removed **68956**
80.57 (b)(6) revised; (c)(6) amended **68956**
80.59 (c) revised **68956**
80.371 (c)(1)(i) table amended 26887
80.383 (a) table amended 53313
80.469 (c) revised (effective date pending) **68956**
80.511 (c) revised (effective date pending) **68956**
80.513 (c)(1) amended (effective date pending) **68956**
80.514 Introductory text revised **68956**
80.553 Introductory text revised **68956**
80.605 (a) and (c)(9) revised; (d) amended (effective date pending) **68956**
80.751 Revised 26887
80.773 (c) added 26887
87.5 Amended 27474
87.17 Revised **68957**
87.21 Removed **68957**
87.23 Removed **68957**
87.25 Introductory text removed; (b) revised **68957**
87.27 (a) and (b) revised **68957**
87.31 Removed **68957**
87.33 Removed **68957**
87.35 Revised **68957**
87.37 (a) introductory text revised **68957**
87.45 Revised **68957**
87.51 (a) removed **68957**
87.79 Removed **68957**
87.131 Amended 27474
87.133 (a) table amended 27475
87.137 (d) removed **68957**
(a) table amended 27475
87.139 (a) introductory text and (j) revised 27475
87.171 Amended 27475
87.173 (b) table amended 27475

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87.187 (bb) and (cc) revised **68957**
(y) introductory text and (4) introductory text revised 27475
87.215 (d) amended (effective date pending) **68957**
87.219 Added 27475
87.239 Revised **68957**
87.261 (e) and (f) added 27476
87.301 (b) revised **68957**
87.307 (d) introductory text revised **68958**
87.321 Revised **68958**
87.323 (b) amended **68958**
87.347 (b)(1), (2), (3) and (c) revised (effective date pending) **68958**
87.419 (b) revised **68958**
Revised 27476
87.421 (b) revised **68958**
87.423 Revised **68958**
87.447 Introductory text revised **68958**
87.473 (a) removed; (b) and (c) redesignated as (a) and (b) **68958**
87.475 (a) amended **68958**
(e) added 27476
87.481 (a) introductory text and (4) revised **68958**
87.525—87.529 (Subpart S) Heading revised 27476
87.525 Revised 27476
87.527 (b) revised **68958**
(b) and (c) revised 27476
87.529 Amended 27476
90 Authority citation revised **58651**
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90.5 (b), (i)(1) and (m) revised **68958**
90.7 Amended **68958**
90.20 (c)(3) table amended; (d)(77) added **58651**
(f)(4) revised 10397
90.22 Revised **68958**
90.35 (c)(61)(iv) revised **68959**
(d)(7) added 10397
90.103 (c)(22) revised 10397
90.111 Revised **68963**
90.113 Removed **68963**
90.117 Removed **68963**
90.119 Revised **68963**
90.123 Removed **68963**
90.125 Removed **68963**
90.127 Revised **68963**
90.129 Introductory text revised; (c) and (e) removed **68963**
90.131 Removed **68963**
90.135 Revised **68963**
90.137 (a) introductory text revised **68963**
90.139 Removed **68963**
90.141 Removed **68964**
90.143 Removed **68964**
90.145 Removed **68964**
90.147 Removed **68964**
90.149 (a) revised; (b) removed **68964**
90.151 Removed **68964**
90.153 Removed **68964**
90.155 (d) revised **68964**
90.157 Revised **68964**
90.159 (a), (b) introductory text, (c), (d) and note revised **68964**
90.160 Removed **68965**
90.161 Removed **68965**
90.162 Removed **68965**
90.163 Removed **68965**
90.164 Removed **68965**
90.165 Introductory text, (b) introductory text, (1), (c) introductory text and (1) revised; (d)(3) removed **68965**
90.166 Removed **68965**
90.167 Revised **68965**
90.175 Introductory text, (b), (e) and (f) revised **68965**
(i)(5) revised 10397
90.177 Removed **68965**
90.187 (a) revised **68965**
90.203 (a) introductory text revised; (l) added **64208**
90.205 (i) revised **58651**
90.237 (b) removed **68965**
90.241 (c)(7) revised **68965**
90.248 Added **64208**
90.259 Revised **64209**
90.273 (c) revised **68965**
90.303 Revised **68965**
90.350 Revised **68965**
90.365 (a)(1), (b) and (d)(2) revised; (d)(1)(ii) removed; (d)(1)(iii) redesignated as (d)(1)(ii) **68966**
90.437 (c) revised; (d) removed **68966**
90.477 (a) introductory text and (d)(3) revised **68966**
90.501 Revised **68967**
90.521—90.551 (Subpart R) Added **58651**
90.523 Regulation at 63 FR 58651 eff. 1-20-98 3048
90.527 Regulation at 63 FR 58652 eff. 1-20-98 3048
90.545 Regulation at 63 FR 58656 eff. 1-20-98 3048

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90.551 Regulation at 63 FR 58658 eff. 1-20-98 3048
90.601 Revised 68967
90.605 Revised 68967
90.607 (b)(1) and (c)(1) revised; (d) removed 68967
90.609 (a) removed 68967
90.611 Removed 68967
90.619 (d)(5) amended 68968
90.621 Table 1 amended; (b)(3), (e)(5) and (f)(1) revised 68968
90.625 (a) amended (effective date pending) 68969
90.629 (c) amended 68969
90.631 (d) amended; (f) revised 68969
90.633 (c) and (d) revised 10397
90.635 Table 1 revised 68969
90.645 (g) and (h) amended 68970
90.651 Revised 68970
(c) revised 10397
90.655 Amended 68970
90.657 Removed 68970
90.658 (a) revised 68970
90.659 Removed 68970
90.683 (a)(4) revised; (a)(5) removed (effective date pending) 68970
90.687 Amended 68970
90.693 (b) and (c) revised 68970
90.701 (a) revised 68971
90.705 Revised 68971
90.711 (a) introductory text revised; (a)(5) removed 68971
90.733 (h)(2) revised 68971
90.737 (d) and (e) revised 68971
90.741 Revised 68971
90.751 Revised 68973
90.753 (d) and (e) revised 68973
90.755 Removed 68973
90.763 (b)(4) revised (effective date pending) 68973
90.767 (c) revised 68973
90.769 (c) revised 68973
90.911 (b)(1) amended 68973
90.1013 Revised 68973
90.1019 (d) removed; (e) redesignated as (d); heading, (a), (b), (c) and new (d) revised 68973
90.1023 (b) introductory text revised 68974
95 Nomenclature change 54077
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95.1—95.7 Undesignated center heading removed 68974
95.5 Revised 68974
95.7 (b) amended 68974
95.21—95.61 Undesignated center heading removed 68974
95.71—95.89 Undesignated center heading removed 68974
95.101—95.143 Undesignated center heading removed 68974
95.171—95.181 Undesignated center heading removed 68974
95.21 Revised 68974
95.23 (b) revised; (d) removed 68974
95.25 (a) introductory text, (d)(2)(i) and (f) revised; (c) removed 68974
95.29 (a), (b), (e) introductory text and (2) revised; (c) and (d) removed 68974
95.31 Removed 68975
95.33 (b) removed 68975
95.35 Removed 68975
95.37 Removed 68975
95.39 Removed 68975
95.41 Removed 68975
95.42 Removed 68975
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95.45 Revised 68975
95.47 Removed 68975
95.49 Removed 68975
95.51 Revised 68975
95.53 Removed 68975
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95.87 Removed 68975
95.89 Removed 68975
95.101 (a) revised 68975
95.103 Revised 68975
95.105 Revised 68975
95.107 Removed 68975
95.109 Removed 68975
95.111 Removed 68975
95.113 Removed 68975
95.115 Amended 68975
95.117 Revised 68975
95.119 (a) introductory text, (b) and (d) revised 68975
95.121 Removed 68975
95.123 Removed 68975

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95.125 Removed 68975
95.127 Removed 68975
95.129 Revised 68975
95.131 Removed 68975
95.133 Removed 68975
95.135 (b) removed; (d) revised 68976
95.137 Removed 68976
95.139 (b) removed; (c) redesignated as (b) 68976
95.171 Revised 68976
95.173 Removed 68976
95.175 Removed 68976
95.177 Removed 68976
95.179 (a) introductory text, (b) introductory text and (1) revised; (f) removed 68976
95.181 (f) revised; (i) and (j) removed 68976
95.183 Added 68976
95.1—95.181 (Subpart A) Appendix A amended; Appendix B removed 68976
95.192 (b) and (c) removed 68976
95.217 (b) revised 68976
95.225 Revised 68976
95.419 (b) revised 68976
95.428 Revised 68976
95.801 Revised 68977
95.811 (a) revised; (b) amended 68977
95.815 Revised 68977
95.816 (c)(2)(ii) revised 68977
95.817 Removed 68977
95.819 (c) amended 68977
95.821 Removed 68977
95.833 (b) introductory text amended 68977
95.839 Removed 68977
95.840 Removed 68977
95.841 Removed 68977
97 Nomenclature change 54077
97.3 Amended 68977
97.5 (a) introductory text, (b), (c) and (d) revised; (e) added 68977
97.7 Revised 68978
97.9 Revised 68978
97.13 (a) revised; (b) and (c)(2) amended 68978
97.15 Revised 68978
97.17 Revised 68978
97.19 (a), (b), (c) and (d)(1) revised 68978
97.21 Revised 68979
97.23 Revised 68979
97.25 Revised 68979
97.27 Heading and (a) introductory text revised 68979
97.29 Revised 68979
97.107 Revised 68979
97.119 (g) revised 68980
97.201 (a) revised 68980
97.203 (a) revised 68980
97.205 (f) and (h) removed 68980
97.207 (g) introductory text, (h) and (i) revised 68980
97.301 (a) introductory text and (b) introductory text revised 68980
97.505 (a)(10) revised 68980
97.509 (i) revised 68980
97.519 (b) introductory text, (1), (2) and (3) revised 68981
100 Authority citation revised 5956
100.5 Added 5956
101 Rule confirmation 69562
101.1 (a) and (b) redesignated as (b) and (c); new (a) added 68981
101.3 Amended 68981
101.5 (a) and (c) removed; (b) revised 68981
101.9 Removed 68981
101.11 Removed 68981
101.13 Removed 68981
101.15 Removed 68981
101.19 Removed 68981
101.21 (a), (c) and (d) removed; (b), (e) and (g) revised 68981
101.23 Revised 68981
101.25 Removed 68981
101.27 Removed 68981
101.29 Removed 68981
101.31 (a), (c), (d) removed; (b) and (e) redesignated as (a) and (b); heading and new (a)(1)(i), (2), (3) introductory text, (vii), (6) and (b)(1)(v) revised; new (b)(1)(vi) and (3) amended 68981
101.33 Removed 68982
101.35 Removed 68982
101.37 Removed 68982
101.39 Removed 68982
101.41 Removed 68982
101.43 Removed 68982
101.45 (b) introductory text, (d), (f) introductory text, (1), (2) and (4) revised; (h) removed 68982
101.47 Removed 68982
101.51 (a)(3) revised 68982
101.53 Removed 68982
101.55 (b) removed 68982

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101.56 (a)(2)(ii) amended; (a)(3) removed 68982
101.57 Removed 68982
101.59 Removed 68982
101.61 Revised (effective date pending) 68982
101.63 (b), (d) and (e) revised 68983
101.65 Revised 68983
101.103 (d)(1) amended 68983
101.105 (c)(3) introductory text amended 68983
101.121 Removed 68983
101.123 Removed 68983
101.127 Removed 68983
101.129 (b) removed 68983
101.205 (a) and (c) revised 68983
101.305 (a), (b), (c) and (d)(1) revised 68983
101.413 (a) introductory text revised 68983
101.503 Amended 68983
101.701 (c) revised (effective date pending) 68983
101.705 Revised 68984
101.815 (a)(2) and (b) revised 68984
101.817 (a) introductory text revised 68984
101.1009 (a)(1)(iii) and (b) revised 68984
101.1015 Removed 68984
101.1017 (a), (b)(2) and (c)(2) revised 68984
101.1106 Removed 68984

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TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular No. 97-08 58586
Small entity compliance guide 58608, 70306
Federal Acquisition Circular No. 97-10 70264
Federal Acquisition Circular No. 97-11 10530
Small entity compliance guide 10552
1.106 Table amended (OMB numbers); interim 58588

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Table amended (OMB numbers) 58602, 70292
Table amended (OMB numbers) 10532, 10549
2.101 Amended; interim 58591
4.203 Revised; interim 58588
4.500—4.502 (Subpart 4.5) Revised; interim 58592
4.603 (b) revised 10532
4.900—4.905 (Subpart 4.9) Revised; interim 58589
5.101 (a)(2)(ii) revised; (a)(2)(iv) amended; interim 58592
5.102 (a)(2) and (7) revised; interim 58592
5.202 (a)(13) revised; (a)(14) removed; (a)(15) redesignated as (a)(14); interim 58592
(a)(2) through (12) and (14) amended; interim 58593
5.203 (b) revised; interim 58592
Introductory text, (a) introductory text, (c), (d), (e) and (g) amended; interim 58593
5.205 (d)(2) amended; interim 58593
5.207 (c)(2)(xi), (e)(3) and (h) amended; interim 58593
(d) revised; interim 70266
(c)(2)(xviii) added; (d) revised; interim 10536
5.301 (b)(7) revised; interim 58593
5.503 (a)(2) revised; interim 58593
6.205 Added; interim 70267
6.302–3 (a)(2)(iii) revised 58594
(a)(2) introductory text, (i) and (ii) amended 58602
6.302–5 (b)(6) added; interim 70267
7.105 (b)(1) amended; interim 70267
8.404 (a) amended; interim 70267
(a) revised; interim 10536
9.104–3 (b) amended; interim 70267
11.703 (a) revised 10538
12.301 (b)(2) amended; interim 70267
12.303 (b)(1) amended; interim 10536
12.503 (b)(5) revised 10532
13.003 (c) removed; (d) through (i) redesignated as (c) through (h); new (f) and new (h)(3) revised; interim 58593
(b)(2) redesignated as (b)(3); new (b)(2) added; interim 70267
13.005 (a)(9) added; interim 70267
13.102 (a) introductory text revised; interim 58593
13.104 (b) amended; interim 58593
13.105 (a)(1) revised; interim 58593
13.106–1 (c)(1)(ii) and (f) revised; interim 58593
13.106–2 (b)(3) introductory text revised; interim 58593
13.106–3 (e) added; interim 58589
(c) revised; interim 58593
13.201 (d) amended 10539
13.301 (b) amended 10539
13.302–1 (e) revised 10540
13.307 (b)(1) amended; interim 58593
14.201–6 (b)(2) removed; interim 58589
(k) removed 10532
14.205–1 (a) amended; interim 58594
14.206 Removed; interim 70267
14.400 Amended; interim 58594
14.405 (d)(2) amended; (e) removed; (f) redesignated as (e) 10532
14.407–4 (a) amended 58602
14.502 (b)(5) redesignated as (b)(6); new (b)(5) added; interim 70267
15.209 (d) removed; interim 58589
15.403–1 (c)(4) revised 10545
15.404–1 (a)(7) amended 58602
15.408 (g) revised 58596
15.503 (a)(2) revised; interim 70267
16.504 (a) introductory text and (1) amended; (a)(4)(ii) revised 70282
16.505 (a)(6)(viii) redesignated as (a)(6)(ix); new (a)(6)(viii) added 10540
19.000 (a)(3) and (8) revised; interim 70268
(a)(8) and (9) amended; (a)(10) added; interim 10536
19.001 Amended; interim 70268, 71723
Amended; interim 10536
19.102 (f)(4) amended 58602
(g) amended 70292
(g) redesignated as (h); new (g) added; interim 10536
19.201 (b) amended 56738
(a) and (c) amended; (d)(4), (6), (7)(ii), (8) and (9) revised; interim 70268
19.202 Amended; interim 70268
19.202–2 Introductory text revised; (a) amended; interim 70268
19.202–4 Introductory text revised; interim 70268
19.202–5 (a) and (b) revised; interim 70268

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19.202–6 Introductory text removed; (a) revised; interim 70268
19.301—19.306 (Subpart 19.3) Heading revised; interim 70268
19.301 (d) amended; interim 70268
19.306 (b) amended 56738
Redesignated as 19.307; new 19.306 added; interim 70269
19.307 Redesignated from 19.306; heading and (a) revised; interim 70269
19.402 (c)(1) revised; interim 70269
19.501 (a) and (b) amended; (c) through (g) redesignated as (d) through (h); new (c) added; new (d) and new (h) revised; interim 70269
19.502–1 Revised; interim 70270
19.502–2 Heading revised; (a), (c) and (d) amended; interim 70270
(a) amended; interim 10536
19.502–4 (a) amended; interim 70270
19.502–5 (b), (c) and (g) amended; interim 70270
(e) amended 70292
19.503 Heading revised; (a), (b), (c) introductory text and (d) amended; interim 70270
19.506 Heading, (a) and (c) revised; (b) amended; interim 70270
19.507 Heading revised; (a) amended; interim 70270
19.701—19.708 (Subpart 19.7) Heading revised; interim 70270
19.702 Introductory text and (b)(4) revised; interim 70270
19.703 (a) introductory text and (1) revised; (b) amended; interim 70270
(b) revised; interim 71723
19.704 (a)(1), (2), (3), (6), (8), (9) and (11) revised; (b) amended; interim 70271
19.705–2 (d) amended; interim 70271
19.705–4 (b), (c), (d)(1) and (6) amended; (d)(5) revised; interim 70271
19.705–6 (a) and (b) revised; interim 70271
19.705–7 (f) introductory text revised; (a) and (d) amended; interim 70272
19.706 (b) and (c) revised; interim 70272
19.708 Heading and (b) revised; (a) introductory text, (c)(1), (2) and (3) amended; (b) revised; interim 70272
19.800 (d) added; interim 70272
19.803 (c) amended; interim 70272
19.804–2 (a)(12) revised; interim 70272
19.901—19.905 (Subpart 19.9) Added; interim 10536
19.1004 Amended 58602
19.1006 (b)(1) amended; interim 70272
19.1102 (b) revised; interim 70272
19.1202–2 (b)(1) revised; interim 70272
19.1202–4 (c) added; interim 71723
19.1301—19.1308 (Subpart 19.13) Added; interim 70272
22.800 Amended 70283
22.801 Revised 70283
22.802 (a) and (b) amended 70283
(b) and (c) amended 70285
22.803 (b) amended; (d) revised 70283
(a)(1), (2) and (b) amended 70285
22.804–1 Revised 70284
22.804–2 (b) amended 70284
22.805 (a)(4) through (8) redesignated as (a)(5) through (9); (a) introductory text, (1), (2), (3) and new (5) introductory text, (ii), (v) and (6) through (9) revised; new (a)(4) added; (b) amended 70284
22.806 Revised 70284
22.807 (a)(1), (b)(1), (3) and (6) amended; (a)(2), (b)(5), (c) and (d) introductory text revised; (d)(2) removed 70284
(a) introductory text, (b)(2), (3) and (4) amended 70285
22.808 Amended 70285
22.809 Introductory text, (a) and (d) amended 70285
Introductory text, (c) and (d) amended 70285
22.810 (a), (c) and (e) revised; (b) and (f) amended; (g) removed; (h) redesignated as (g) 70285
22.1200 Amended 10546
22.1201 Amended 10546
22.1202 Amended 10546
22.1203–1 (b)(1) amended 10546
22.1400—22.1408 (Subpart 22.14) Regulation at 63 FR 34074 confirmed 58599
22.1400 Regulation at 63 FR 34074 confirmed 58599
22.1401 Regulation at 63 FR 34074 confirmed 58599
22.1402 Regulation at 63 FR 34074 confirmed 58599
22.1403 Regulation at 63 FR 34074 confirmed 58599
22.1404 Regulation at 63 FR 34074 confirmed 58599
22.1405 Regulation at 63 FR 34074 confirmed 58599
22.1406 Regulation at 63 FR 34074 confirmed 58599
22.1407 Regulation at 63 FR 34074 confirmed 58599
22.1408 Regulation at 63 FR 34074 confirmed 58599
24.202 (c) added 58594
25.402 (b) amended 10549
26.103 (a), (b) and (e) amended 10532
26.104 (a) amended; interim 70274
27.404 (d)(2) and (e)(3) amended 10532
27.409 (g) amended 10532
31.001 Amended 58596
31.201–5 Amended 58596
31.205–1 (d) revised 10547
31.205–5 Removed 58599
31.205–6 (j)(1) through (6) revised 58597
Regulation at 63 FR 9067 confirmed; (k) heading and (p)(2)(ii) revised; (p)(2)(iv) added 70287
(p) introductory text amended; (p)(2)(ii)(A), (B) and (C) redesignated as (p)(2)(ii)(A)(*1*), (*2*) and (*3*); new (p)(2)(ii)(A) introductory text and (B) added 10548
31.205–34 (a) introductory text and (b) revised; (c) removed 10547
31.205–47 (b) introductory text and (e)(3) revised; (c) redesignated as (c)(1); (c)(2) added 58600
31.1103 (a) amended; interim 58594
32.703–3 Revised 58601
32.705–1 (b) revised 58603
32.805 (a) revised 10533
32.905 (a) introductory text revised 58602
32.908 (a)(3) and (c)(3) added 58602
(a)(3) and (c)(3) amended 70292
32.1100—32.1110 (Subpart 32.11) Revised 10540

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33.104 (e) amended 58603
33.201 Amended 58594
33.204 Amended 58595
33.207 (a) revised 58595
33.214 (a)(3) and (4) amended; (a)(5) removed; (b) revised; (f) and (g) added 58595
36.601–4 (a)(4) amended 58603
37.106 (b) revised 58601
37.602–3 Amended 70292
41.103 (a)(2) and (3) amended 58603
41.201 (e) amended 10533
42.203 Amended 70292
44.302 Revised 70288
44.303 Introductory text revised 70288
46.202–4 Revised 70289
46.311 Revised 70289
46.402 (e) and (g) removed; (f) and (h) redesignated as (e) and (f); new (e) amended 70290
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52.214–21 Amended; introductory text revised 10533
52.215–4 Removed; interim 58590
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52.219–2 Introductory text amended; interim 70274
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52.219–8 Revised; interim 70275
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52.219–16 Amended; interim....70277
52.219–21 Amended....10533
52.219–22 Introductory text amended; interim....70277
52.219–25 Amended; interim....71723
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52.232–38 Added....10544
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52.247–48 Revised....70292
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211.273–2 (b) revised....14399
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213.302–5 Revised....24528
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219.708 (c)(1) revised; (c)(2) removed; interim....64429
219.800 Regulation at 63 FR 33587 confirmed....64427
219.804–2 Regulation at 63 FR 33587 confirmed....64427
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225.872–3 (g) amended....55052
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225.7016–2 Regulation at 63 FR 43888 confirmed....64427
225.7016–3 Regulation at 63 FR 43888 confirmed....64427
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225.7019–3 Regulation at 63 FR 43888 confirmed....64427
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230.7103 Amended....55052
231.205–6 Regulation at 63 FR 63036 confirmed....64427
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232.905 (f)(6) revised 69007
232.1101—232.1103 (Subpart 232.11) Removed 18829
235.006 Revised; interim 18830
235.006–70 Added; interim 18830
235.015–71 Removed 69007
235.7000—235.7003–4 (Subpart 235.70) Regulation at 63 FR 34605 confirmed 64427
236.102 Regulation at 63 FR 11538 confirmed 64427
236.274 Regulation at 63 FR 11538 confirmed 64427
236.570 Regulation at 63 FR 11538 confirmed 64427
236.601 (1)(ii) amended 69008
236.602–1 (a)(i)(6)(C) revised; interim 64430
237.106 Revised 67805
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237.270 Correctly removed; CFR correction 54078
237.270–1 Correctly removed; CFR correction 54078
237.270–2 Correctly removed; CFR correction 54078
237.270–3 Correctly removed; CFR correction 54078
237.270–4 Correctly removed; CFR correction 54078
237.7204 Amended 55052
237.7302 Amended 2598
242.203 (a)(ii)(P) and (Q) amended; (a)(i)(R) removed 2598
242.771 Revised; interim 8729
242.771–1 Revised; interim 8729
242.771–2 Revised; interim 8729
242.771–3 Revised; interim 8729
242.7205 (b)(4)(iv) amended 55052
246.370 (b)(1) revised 2598
247.271–3 (b)(1) and (2)(iv)(B) revised 2598
247.572–2 (f)(3)(i) amended; (f)(3)(ii) revised 55052
247.573 (a), (b) and (c) revised 2598
252.203–7001 Amended; heading revised 14398
252.209–7001 Regulation at 63 FR 14837 confirmed 64427
252.209.7004 Regulation at 63 FR 14837 confirmed 64427
252.211–7005 Revised 14399
(b) corrected 28875
252.212–7001 Amended; interim 64430
252.215–7000 Introductory text amended 55052
252.215–7002 Amended; introductory text revised 55052
252.217–7027 Amended 55052
252.219–7005 Amended 55052
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252.219–7009 Regulation at 63 FR 33588 confirmed 64427
252.219–7010 Regulation at 63 FR 33588 confirmed 64427
252.219–7011 Regulation at 63 FR 33588 confirmed 64427
252.223–7005 Removed 67804
252.225–7007 Amended 8730
252.225–7012 Amended; interim 2599
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252.225–7016 Regulation at 63 FR 43889 confirmed 64427
252.225–7017 Added; interim 8728
252.225–7021 Amended 8730
252.225–7029 Regulation at 63 FR 43889 confirmed 64427
252.225–7043 Regulation at 63 FR 31937 confirmed 24530
252.228–7006 Amended 69006
252.232–7003 Removed 8731
252.232–7004 Introductory text revised 8731
252.232–7009 Removed 18829
252.236–7010 Regulation at 63 FR 11544 confirmed 64427
252.236–7012 Regulation at 63 FR 11544 confirmed 64427
252.243–7000 Amended 55052
253 Note amended 69007
Note amended 8727, 28109
253.204–70 (b)(6)(i) introductory text amended 55052
(b)(5)(ii)(A), (B)(*1*), (13)(i)(A), (B) introductory text, (C), (E), (G), (iv)(I), (14)(iii), (iv), (d)(5)(vi), (e)(1), (2) and (3) amended 60217
Regulation at 63 FR 33589 confirmed 64427
(d)(5)(iv)(A)(*2*) amended 2598
253.204–71 Regulation at 63 FR 33589 confirmed 64427
(a)(3) introductory text, (g)(2)(ii)(C) and (i)(1) revised 2598
253.213 (e) redesignated as (f); heading and new (f) introductory text and (1) revised 2599
253.213–70 (e) amended 2600
253.215–70 (a), (b)(4), (c)(12) and (14) revised; (b)(7) removed; (b)(8) and (9) redesignated as (b)(7) and (8); (c)(15) and (16) amended 55052
(b)(4) amended 63800
Chapter 2 Appendix I amended; interim 64430
Appendix G amended 71231
Appendix B amended 8726

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511.204 (c) revised; interim 4789
516.505 (a) revised; interim 4789
542.302 (b)(5) revised; interim 4789
552.216–73 Amended; interim 4789
552.219–72 Revised 15306
552.219–73 Revised 15306
552.219–74 Revised 15307
552.238–72 Amended; interim 4789
552.238–76 Amended; interim 4789
552.243–72 Amended; interim 4789

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701.105 (a) amended; (c) revised 16648
703.104–5 Revised 16648
703.104–10.1 Added 16648
705.502 Added 5006
706.501 Amended 5006
709.503 Amended 5006
709.507–2 (c) revised 5006
715.303–70—715.370–2 Designated as Subpart 715.3 16648
715.303–70 Redesignated from 715.604–70; (b)(3) revised 16648
715.305 Added 16648
(c) corrected 25405
715.370 Added 16649
715.370–1 Redesignated from 715.613–70 16648
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715.370–2 Redesignated from 715.613–71 16648
715.413–2 (Subpart 715.4) Removed 16648
715.502 Redesignated as 715.602 16648
715.504 Redesignated as 715.604 16648
715.506 Removed 16648
715.506–1 Removed 16648
715.602—715.604 Designated as Subpart 715.6 16648
715.602 Redesignated from 715.502 16648
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715.604 Redesignated as 715.304; new 715.604 redesignated from 715.504 16648
Heading and (a) revised; (c) added 16649
715.604–70 Redesignated as 715.303–70 16648
715.605 Removed 16648
715.613–71 Redesignated as 715.370–2 16648
716.406 Added 5007
722.805–70 (Subpart 722.8) Revised 5007
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731.205–6 (b) added; (d) removed 5008
731.205–71 Added 16649
731.371 (b)(1) revised 5008
732.402 (e)(1) revised 5008
732.406–73 Existing text designated as (a); (b) added 5008
(b) corrected 18481
745 Added 5008
747 Added 5008
752.204–2 Amended 5008
752.209–71 Introductory text revised 5008
752.216–70 Added 5008
752.231–71 Added 16649
752.245–71 Amended 5009
752.247–70 Added 5009
752.7003 Amended 5009
752.7005 Added 5010
(b)(2)(iv) corrected 18481
752.7018 Revised 5010
752.7019 Revised 5011

Chapter 8—Department of Veterans Affairs (Parts 800—899)

801.000 Amended 69217
801.101 (a) amended 69217
801.102 Redesignated as 801.103 69217
801.103 Redesignated as 801.104; new 801.103 redesignated from 801.102 and amended 69217
801.104 Redesignated from 801.103; (a) amended 69217
801.301–70 (b)(2) amended 69217
801.303 Heading revised 69217
801.601—801.690–6 (Subpart 801.6) Heading revised 69217

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801.602–3 (a)(2) and (b)(2) amended 69217
801.603–71 (b) amended; (c), (d) and (e) removed 69217
801.670–1 Amended 69217
801.670–2 (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2) 69217
801.670–3 (a) amended 69217
801.670–4 (a)(1), (2), (b)(1), (2) and (c) amended 69217
801.670–5 (a)(3) through (6), (8), (9) and (b) amended 69218
801.680 (c) and (d) amended 69218
801.690–3 (c) introductory text, (1) and (2) amended 69218
801.690–4 (c)(1)(i) amended; (c)(3)(ii) revised 69218
801.690–6 (b) amended 69218
803.101–3 (b) amended 69218
803.405 Redesignated from 803.409 69218
803.409 Redesignated as 803.405 69218
803.7000 Introductory text amended 69218
805.205 Amended 69218
806.302–3 Amended 69218
806.302–5 (a), (b), (c) introductory text, (1), (2), (4), (5) and (6) amended; (c)(3) revised 69218
806.304 (a)(1)(i) and (2)(i) amended 69218
806.501 (b) amended 69218
806.570 Heading revised; introductory text amended 69218
808.001 (a)(4) amended 69219
808.401 Amended 69219
808.404–1 (a) and (b) amended 69219
808.404–3 Amended 69219
814.201 (a) amended 69219
814.304–4 Amended 69219
814.403 Amended 69219
814.404–1 (b) amended 69219
814.404–70 Amended 69219
814.406 Redesignated as 814.407 69219
814.406–3 Redesignated as 814.407–3 69219
814.406–4 Redesignated as 814.409–4 69219
814.407 Redesignated as 814.408; new 814.407 redesignated from 814.406 69219
814.407–3 Redesignated from 814.406–3; (a), (b) and (c) amended 69219
814.407–70 Redesignated as 814.408–70 69219
814.407–71 Redesignated as 814.408–71 69219
814.408 Redesignated as 814.409; new 814.408 redesignated from 814.407 69219
814.408–70 Redesignated from 814.407–70 69219
814.408–71 Redesignated from 814.407–71 69219
814.409 Redesignated from 814.408 69219
814.409–4 (a), (b) and (c) amended 69219
817.102 Redesignated as 817.105 69219
817.102–1 Redesignated as 817.105–1 69219
817.105 Redesignated from 817.105 69219
817.105–1 Redesignated from 817.105–1; (b)(2) and (c) amended 69219
819 Authority citation revised 69219
819.201 (a), (b) and (d) amended 69219
819.202–5 (c) introductory text, (g) and (h) amended; (c)(6) removed; (c)(7) through (12) redesignated as (c)(6) through (11) 69219
819.202–70 Introductory text, (a), (c), (j) and (k) amended 69220
819.502–2 (b) removed; (c) and (d) redesignated as (b) and (c) 69220
819.502–3 Revised 69220
819.602–3 (a) through (d) amended 69220
819.800 Redesignated from 819.801; (b) and (d) amended 69220
819.801 Redesignated as 819.800 69220
819.804 Amended; heading revised 69220
819.806 Redesignated from 819.806–3 and heading revised 69220
819.806–2 Redesignated as 819.807 69220
819.806–3 Redesignated as 819.806 69220
819.807 Redesignated as 819.806–2 69220
819.807–70 Amended; heading revised 69220
819.7004 Amended 69220

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822.478 (a), (b) and (c) amended 69220
825 Authority citation revised 69220
825.102–70 (b) and (c) amended 69220
825.105 Amended 69220
825.202–70 (b) and (c) amended 69220
825.203 Amended 69220
825.302–70 Amended 69220
825.701 Removed 69220
825.703 Amended 69220
825.870 Amended 69220
825.901 Redesignated from 825.902; heading revised; existing text designated as (a) and amended; (b) added 69220
825.902 Redesignated as 825.901 69220
825.904 Removed 69221
828.106–6 Amended 69221
828.7100 (a) and (c) amended 69221
828.7101 (b) amended 69221
828.7102 (a) introductory text, (1) and (b) introductory text amended 69221
831 Authority citation revised 69221
831.7001–4 (a) and (b)(2) amended 69221
831.7001–5 (b) amended 69221
832 Authority citation revised 69221
832.502–2 Amended 69221
832.805–70 (b) amended 69221
833.104 (a)(1), (2), (b) and (c) amended 69221
833.212 (a) and (b)(4) amended 69221
836.208 Amended 69221
836.209 Amended 69221
836.602–2 (a) and (b) amended 69221
838.606–72 Amended 69221
837.203—873.271–4 (Subpart 837.2) Heading revised 69221
837.203 Revised 69221
837.270 (a) introductory text, (1), (3), (c) and (d) amended; (e) revised 69221
837.271 Removed 69222
837.271–1 Removed 69222
837.271–2 Removed 69222
837.271–3 Removed 69222
837.271–4 Removed 69222
837.403 Amended 69222
837.7001 Amended 69222
837.7002 Amended 69222
837.7003 (a), (b) introductory text, (5), (c) and (d) amended; (e) revised 69222
842 Authority citation revised 69222
842.102 (b) amended 69222
842.202 Amended 69222
842.705 (b) amended 69222
842.801–70 Amended 69222
842.1203 Amended 69222
846.408–70 (b) introductory text amended 69222
846.408–71 (a) amended 69222
846.471 (a) and (b) amended 69222
847 Authority citation revised 69222
847.303–1 (b) amended 69222
847.305–70 Amended 69222
849 Authority citation revised 69222
849.106 Amended 69222
849.107 Amended 69223
849.111–70 Amended 69223
849.111–72 (c) amended 69223
852.203–71 Amended 69223
852.211–70 (d) amended 69223
852.216–70 (a) amended 69223
852.222–70 Amended 69223
852.236–88 Introductory text, (a) and (b) amended 69223
852.236–89 Amended 69223
852.247–70 Amended 69223
852.270–3 Heading revised 69223
852.271–73 Amended 69223
853 Authority citation revised 69223
853.107 Amended 69223
870 Authority citation revised 69223
870.114–3 Introductory text amended 69223
870.114–4 Amended 69223
870.115 (a) amended 69223
871.102 (a) amended 69223

Chapter 9—Department of Energy (Parts 900—999)

903.104–3 Added 56851
909.104–3 Added 16651
913.507 Removed 12876
915 Revised 56851
915.404–4–71–5 (d), (f) and (h) revised 12227
915.404–4–72 (a) introductory text revised 12229
916.504—916.505 Designated as Subpart 916.5 and heading added 56860
919.602–1 (a)(2) amended 56860
919.805–2 Revised 56860
922.7101 Revised 12876
935.016 Removed 56860
935.016–1 Removed 56860
935.016–2 Removed 56860
935.016–8 Removed 56860
970.0902 Added 16651

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970.15404-4—970.15407-2-3 (Subpart 970.15) Revised **56861**
970.1504-4 Revised 12229
970.1504-4-1 Revised 12229
970.1504-4-2 Revised 12229
970.1504-4-3 Revised 12230
970.1504-4-4 Revised 12231
970.1504-4-5 Revised 12231
970.1504-4-6 Revised 12233
970.1504-4-7 Revised 12233
970.1504-4-8 Revised 12233
970.1504-4-9 Added 12234
970.1504-4-10 Added 12234
970.1504-4-11 Added 12234
970.2274-1 (a) introductory text and (d) amended; (a)(1), (2) and (3) removed; (b) and (c) revised 12876
970.3102-1 (c) amended **56867**
970.3102-15 (b)(1) and (2) amended **56867**
970.5202 Revised **56867**
970.5204-9 Amended **56867**
970.5204-15 Amended **56867**
970.5204-22 Amended **56867**
970.5204-44 Amended **56867**
970.5204-54 Amended **56867**
Revised 12335
970.5204-59 Revised 12876
970.5204-76 Amended **56867**
970.5204-86 Added 12336
970.5204-87 Added 12336
970.5204-88 Added 12337
970.5204-89 Added 16651

Chapter 12—Department of Transportation (Parts 1200—1299)

1201.103 Removed 2436
1201.201-1 (d) removed 2436
1201.301 (a)(2) and (b) added 2436
1205.9000 (Subpart 1205.90) Revised 2436
1206.9000 (Subpart 1206.90) Revised 2436
1211.204-90 (Subpart 1211.2) Revised 2437
1213.106—1213.106-190 (Subpart 1213.1) Revised 2437
1213.302—1213.302-590 (Subpart 1213.3) Added 2437
1215 Revised 2437
1237.104 Revised 2438
1237.104-90 Revised 2438
1237.104-91 Revised 2438
1237.9000 (Subpart 1237.90) Revised 2438
1252.211-71 Amended 2439
1252.215-70 Amended 2439
1252.216-71 Amended 2439
1252.216-72 Amended 2439
1252.216-73 Amended 2439
1252.211-90 Added 2439
1252.213-90 Revised 2439
1252.220-90 Revised 2439
1252.228-90 Revised 2439
1252.237-90 Revised 2439
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1252.237-94 Revised 2440
1252.237-95 Revised 2440
1252.237-96 Revised 2440
1252.237-97 Revised 2440
1252.237-98 Revised 2440
1252.237-99 Revised 2440
1252 Appendix redesignated from 1253 appendix in part; new appendix revised 2442
1253.215 Removed 2441
1253.215-270 Removed 2441
1253.3 Appendix redesignated in part as 1253 appendix 2442

Chapter 13—Department of Commerce (Parts 1300—1399)

1333.101 Added 16652
1333.102 Added 16652
1333.103 Revised 16653

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1509.170-1 Amended 20202
1509.170-2 Revised 20203
1509.170-3 Revised 20203
1509.170-4 Revised 20203
1509.170-5 Added 20203
1509.170-6 Added 20204
1509.170-7 Added 20204
1509.170-8 Added 20204
1516.405 (b) amended 3876
1533.103 Revised 17110
1552.209-76 Added 20204
1552.216-75 Revised 3876
1552.233-70 Added 17110
1552.242-70 Amended 3876

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Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

1609.7101—1609.7101-2 (Subpart 1609.71) Added **55337**
1632.170 (a) and (b)(1) revised **55338**
1652.232-70 Amended **55339**
1652.232-71 Amended **55339**
1652.244-70 Amended **55339**
1652.370 Table amended **55339**

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1802.101 Amended 19926
1804.203 Added 1528
1804.805 (a) revised 5620
1804.805-70 (b)(2) amended 5620
1804.904 (Subpart 1804.9) Added 1528
1804.7102 (a) amended 19926
1804.7301 Revised 14640
1806.501 (3) revised 10571
1807.105 (a)(2) added 14641
1807.7203 Revised 5620
1808.002-70 Revised 5620
1812.301 Revised 19926
1813.003 (h) redesignated as (g) 5620
1815.304 Heading revised; (c) added 25214
1815.304-70 (b)(2) revised 25215
1815.403-170 Revised 10573
1815.404-470 (c)(5) revised 25215
1816.203-4 (d)(2) amended 5620
1816.405-274 (f) revised 25215
1817.7300—1817.7302 (Subpart 1873.73) Added **56091**
1819.201 Heading and (a) revised; (f)(1) added 25215
1819.202-170 Amended 25215
1819.302 (Subpart 1819.3) Heading revised 5620
1819.506 Heading revised 5620
1819.705-2—1819.708-70 (Subpart 1819.7) Heading revised 5620
1819.705-470 Amended 25215
1819.708 Heading revised 5621
1819.708-70 Revised 25215
1819.7201 Revised 10571
1819.7205 (b) revised; (c) and (d) removed 10571
1819.7206 Revised 10571
1819.7209 (a)(1) and (b) revised 10571
1819.7210 (c) revised; (d) removed 10572
1819.7214 (i) removed; (e), (g) and (h) revised 10572
1819.7215 (b) revised 10572
1819.7216 (a)(2), (3) and (b) revised 10572
1819.7217 (c) revised 10572
1819.7219 (a) revised 10572
1822.101-1 (e) added 14148
1822.103-5 Added 14149
1827.301 Amended **63209**
1827.406-70 (c) revised 5621
1832.908 Revised 5621
1832.970 Removed 5621
1832.1110 (Subpart 1832.11) Added 18373
1833.104 (c)(2) revised 5621
1834.003 (a) revised **56093**
1834.7001—1834.7004 (Subpart 1834.70) Removed **56093**
1835.016 (a)(iii) added 14641
1836.213-70 Redesignated as 1836.213-370 5621
1836.213-370 Redesignated from 1836.213-70 5621
1842.270 (f) revised 19928
1842.302 (Subpart 1842.3) Added 10574
1842.7401—1842.7402 (Subpart 1842.74) Added 10574
1844.201-1 (a)(iii) revised 5621
1852.103 (b)(i) amended 19926
1852.217-71 Added **56093**
1852.217-72 Added **56093**
1852.219-73 Amended 25215
1852.219-75 Amended 25216
1852.219-77 Amended 10572
1852.219-79 (b) introductory text, (e) and (f) revised 10572
1852.227-70 Amended **63209**
1852.234-70 Removed **56094**
1852.234-71 Removed **56094**
1852.235-70 Introductory text amended 5621
1852.242-74 Added 10574
1852.242-75 Added 10575
1852.242-76 Added 10575
1852.242-77 Added 10575
1853.208-70 Heading and (c) revised 5621
1853.271 Added 19926
1871.101—1871.104 (Subpart 1871.1) Revised 19926
1871.204 Revised **71604**
(a), (d) and (f) revised; (h) added 19927

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TITLE 48 Chapter 18—Con.

1871.401–1 (b)(3) revised; (b)(5) added 19927
1871.401–2 Heading revised; (b)(5) added 19927
1871.401–3 Heading revised; (a)(4) added 19927
1871.401–4 (a)(5) added 19928
1871.401–5 (b) revised 19928
1871.401–6 (a)(2) amended 71604
(a)(2) correctly revised; (a)(3) correctly added; CFR correction 1529
1871.405 Removed 19928
1871.505 Revised 19928
1871.602 Amended 19928
1871.603 (b) and (c) redesignated as (d) and (e); new (b) and new (c) added 19928
1872.102 (a)(1) revised 14641

Chapter 53—Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)

5315 Removed 995
5316 Removed 67600
5350 Removed 71390

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1 26264
8 57568
11 ..... 63778, 68344
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14 4248
15 4248
16 24472
17 3618
23 26264
28 71710
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32 6758
36 71710
42 57568
44 71710
45 23982
46 57878
47 7736
48 24472
49 71710
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837 60256
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1205 52666
1206 52666
1211 52666
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1252 52666
1253 52666
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1515 71415
1526 67845
1537 3060
1552 ..... 67845, 71415
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1833 17603
1842 63654
1845 26721
1852 63654
26721
2000—2099 (Ch. 20) 67726

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1.46 (ppp) added 59475
(ppp) correctly designated 3876
(qqq) added 7814
1.48 (ll) added 7814
1.49 (kk) added 57610
(ll) added 7814
1.66 (bb) added 2150
(cc) added 24958
23 Heading and authority citation revised 5126
23.1—23.7 (Subpart A) Removed 5126
23.41—23.55 (Subpart C) Removed 5126
23.61—23.69 (Subpart D) Removed 5126
23.73—23.87 (Subpart E) Removed 5126
23.89 Amended 5126
23.93 (a) introductory text amended 5126
23.95 (a)(1), (f)(1), (2) and (g)(1) amended; (f)(5) removed 5126
23.97 Amended 5126
23.111 Removed 5126
24.2 Amended 7131
24.102 (k) amended 7132
24.103 (c) amended 7132
24.105 (c) amended 7132
24.202 Amended 7132
24.203 (a)(4) redesignated as (a)(5); new (a)(4) added; (b) amended 7132
24.204 (a) amended 7132
24.205 (c)(2)(ii)(B) amended 7132
24.208 Redesignated as 24.209; new 24.208 added 7132
24.209 Redesignated from 24.208 7132
24.301 Introductory text amended 7132
24.303 (a) amended 7132
24.304 Introductory text amended 7132
24.306 (a)(6) and (c) amended 7132
24.307 (a) amended 7132
24.401 (c)(4)(ii) amended 7132
24.403 (a) and (b) amended 7132
24.404 (c)(2) amended 7132
24 Appendix A amended 7132
26 Added 5126
37.15 Revised 64837, 64838
40.29 (e)(1) table and (f)(1) table amended 65129

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

107.503 (a)(3) amended 52846
107.606 (a)(5) amended 52847
171.2 (d)(1) amended 10752
171.5 (a)(3) amended 9925
Removed 28046
171.7 (a)(3) table amended 52847, 57930
(a)(3) table amended 10752, 10753, 28046
171.8 Amended 52847
Amended 10753, 28046
171.11 (d)(4)(ii) revised 57930
(d)(14) amended 10753
171.12 (b)(17) amended 10753
171.12a (b)(16) amended 10753
171.14 (c)(1) revised 52847
(b) table and (d)(2) amended; (d) introductory text and (1) revised; (d)(3) added 10753
172.101 (c)(11) introductory text, (f) and table amended 52847

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Table amended **52849**
(b) introductory text revised; (b)(4) and (5) redesignated as (b)(5) and (6); new (b)(4) added; (g) table amended 10753
Table amended 10754, 10772
Table and Appendix B amended 10773
Appendix B amended 10774, 10775
172.102 (c)(1) amended **52849**
(c)(1), (2), (3) and (5) amended 10775
172.203 (m)(1) amended **52849**
(k) introductory text and (1) amended 10775
(k)(3) removed; (k)(4) redesignated as (k)(3) 10776
172.313 (d) added 10776
172.400 (b) amended 10776
172.400a (a)(7) amended **52849**
(d) removed 10776
172.405 (c) added 10776
172.407 (c)(4) revised 10776
172.431 Removed 10776
172.504 Table amended **52849**
(e) Table 2 amended; (f)(10) revised 10776
172.553 Removed 10776
173.1 (d) amended 10776
173.2a (b) table amended 10776
173.6 (c)(2) amended **52849**
173.25 Heading and (b) revised 10776
173.28 (c)(2) revised; (c)(5) added 10776
173.29 (b)(2)(iv)(B) revised 10776
173.32b (b)(1) and (2) amended 10776
173.32c (j) revised 10777
173.33 (a)(3) amended **52849**
173.34 (e)(18)(i) table amended **52849**
(e) table amended 10777
173.35 Heading and (b) revised 10777
173.56 (b)(2)(i) and (3)(i) amended 10777
173.58 (a) introductory text amended **52849**
173.59 Amended 10777
173.62 (c) table amended **52849**
173.121 (b)(1)(ii) revised 10777
173.159 (g)(2) amended 10777
173.162 Revised 10777
173.164 (a)(1), (2) and (3) revised; (a)(4) added 10777
(c) introductory text amended 10778
173.166 (a), (b) introductory text, (2), (3)(ii), (c) and (f) amended 10778
173.196 (a)(1)(iii) amended 10778
173.220 Revised 10778
173.221 Revised 10779
173.222 Revised 10779
173.224 (c)(3) introductory text amended 10779
173.225 (b) table amended 10779
(b) table and (c)(2) amended 10780
173.243 (e)(2) amended; (e)(3) added 10780
173.247 (a) amended **52849**
173.301 (i) revised 10780
173.306 (d) removed; (f)(4) and (5) added 10781
173.315 (k) and (n) revised; (p) added 28046
173.403 Amended **52849**
173.416 (f) amended **52849**
173.422 (b)(1) amended **52849**
173.425 Table 7 amended **52849**
173.427 (a)(3) amended **52849**
173.433 (g) table amended **52849**
173.461 (a) introductory text and (b) amended **52850**
174.81 (f) table amended; (g)(3)(vi) added 10781
174.680 Revised 10781
175.630 (a) amended 10781
175.700 (b) amended **52850**
176.76 (i) added 10781
176.83 (a)(1), (3) and (8) revised; (a)(10) added 10781
176.83 (g)(3) table amended 10782
176.600 Heading, (a) and (c) revised 10782
176.704 (e)(1) and (f) table amended **52850**
177 Response to petitions **58323**
177.834 (i)(3) revised; (i)(5) removed 28048
177.835 (g) introductory text amended **52850**
177.840 (l) through (u) added 28048
177.841 (e)(1) amended; (e)(3) revised 10782
177.842 (a) amended **52850**
177.843 (c) amended **52850**
177.848 (f) table amended; (g)(3)(vi) added 10782
177.854 Introductory text removed **52850**
178.270–3 (e) amended 10782
178.337–1 (g) added 28049

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178.337–8 Revised 28049
178.337–9 (b)(7) redesignated as (b)(8); (b)(6), new (8) and (c) revised; new (b)(7) added 28050
178.337–11 Revised 28050
178.338 Heading amended **52850**
178.509 (b)(1) amended 10782
178.703 (b)(6)(ii) revised 10782
178.813 (b) amended 10782
179 Authority citation revised **52850**
179.2 (a)(2) revised **52850**
179.3 (a) revised **52850**
179.4 (a) amended; (b) revised **52850**
179.5 (a) and (b) revised **52850**
179.100—179.103–5 (Subpart C) Heading revised **52850**
180.352 Heading, (b)(1), (2), (3) introductory text, (c) heading and introductory text revised; (d) and (e) redesignated as (e) and (f); new (d) added 10782
180.403 Introductory text amended **52850**
Amended 28050
180.405 (m) and (n) added 28051
180.407 (h)(4) through (8) redesignated as (h)(5) through (9); (h)(1)(iii) and new (4) added 28051
180.416 Added 28051
180.417 (a)(3)(ii) amended **52850**
(a)(1) revised 28052
180.509 (c)(3)(ii) amended **52851**
180.515 (b) amended **52851**
180 Appendixes A and B added 28052
195 Response to petitions **63210**
195.1 (c) revised 15934
195.3 (b)(7) and (c)(6) added; (c) introductory text, (2) and (3)(v) revised 15934
195.132 Revised 15935
195.205 Added 15935
195.242 (c) and (d) added 15935
195.264 Revised 15935
195.302 (b)(4) added; (a) amended; (c) introductory text revised **59479**
195.303 Redesignated as 195.304; new 195.303 added **59480**
195.304 Redesignated as 195.305; new 195.304 redesignated from 195.303 ..... **59480**
195.305 Redesignated from 195.304 ..... **59480**
195.307 Added 15936
195.405 Added 15936
195.406 (a)(4) amended **59480**
195.416 (j) added 15936
195.428 Heading revised; (c) and (d) added 15936
195.432 Revised 15936
195 Appendix B added **59480**
Appendix B corrected 6815
199 Announcement **58324**

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

213.57 (g)(4) corrected **54078**
213.345 (d) corrected **54078**
216 Authority citation revised 25659
216.1 (a) revised 25659
216.3 (b) amended 25659
216.5 (c) amended 25659
216.11—216.17 (Subpart B) Nomenclature change 25659
216.13 (a) amended 25659
216.14 Added 25659
216.17 (a) amended 25659
219 Determination **71789**
219.5 Amended; interim **71791**
219.201 (a)(1) introductory text, (2) and (4) revised; interim **71791**
223 Authority citation revised 25659
223.8 Added 25659
225.19 (c) amended; interim **71791**
225 Appendix B amended; interim **71791**
229 Authority citation revised 25659
229.3 (a) revised; (c), (d) and (e) added 25659
231 Authority citation revised 25660
231.0 (a) revised; (c), (d) and (e) redesignated as (d), (e) and (f); new (c) added 25660
232 Authority citation revised 25660
232.0 (a) revised; (c), (d) and (e) redesignated as (d), (e) and (f); new (c) added 25660
238 Added 25660
268 Added; interim **54606**
268.3 (b) through (f) revised; interim 7134
268.13 Revised; interim 7134

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

360 Added 7137
381 Added; interim **67608**

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TITLE 49 Chapter III—Con.

383.7 Removed; interim 67612
385 Appendix B amended 62959
393.13 Added 15605
395 Deadline extension 71791

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

531 Authority citation revised 27203
531.5 (b)(13) added 12092
531.6 (b) added 27203
533.5 (a) Table IV revised; (f) added 16862
538.5 (b) added 66068
538.6 Revised 66069
538.7 Added 66069
541 Appendixes A, A–I, A–II and B revised 28112
544.5 (a) revised 70053
544 Appendixes A, B and C revised 70053
555 Heading and authority citation revised 2861
555.1 Revised 2861
555.2 Existing text designated as (a); (b) added 2861
555.3 Revised 2861
555.4 Amended 2861
555.5 Heading, (b) introductory text and (5) amended; (a) and (b)(7) revised 2861
555.6 Heading, (a) introductory text, (1)(v), (2)(iv), (b)(5), (c)(5) and (d)(4) amended; (b) introductory text, (1), (2) introductory text, (i), (iii), (4), (c) introductory text, (1), (2) introductory text, (iv), (d) introductory text, (1) introductory text, (ii), (iv) and (v) revised 2861
Corrected 5866
555.7 (b), (c), (d) introductory text and (e) amended 2861
Heading and (a) revised 2862
555.8 (e) and (f)(1) amended 2861
555.10 (a) amended 2862
567 Authority citation revised 6816
Technical correction 9445
567.4 (g)(5)(iii) added 6817
571 Policy statement 59482
Authority citation revised 10815
Interpretation 16358
Clarification 20209
571.105 Amended; interim 9449
571.108 Amended 63801
571.208 Amended 53851, 71394
Amended 2448, 7140, 10815, 11733
571.209 Amended 27206
571.213 Regulations at 62 FR 18724 and 30466 confirmed 52629
Amended; eff. 3–30–99 52630
Amended 10815
571.216 Amended 22578
571.221 Amended; eff. 5–5–00 59740
571.225 Added 10823
571.304 Amended 66765
571 Figure 6 revised 71395
572.31 (a)(1), (3) and (4) revised; (b) removed 53851
572.34 (b) revised 53851
575 Clarification 20209
575.2 (c) amended 27924
575.6 (a)(1), (d)(1)(i), (ii) and (2) revised 27924
575.104 (c)(1), (d)(1)(i) and (iii) revised 27925
575.105 Revised 11733
580 Authority citation revised 52632
580.16 Regulation at 62 FR 47765 confirmed 52632
580.17 Regulation at 62 FR 47765 confirmed; (a)(3) revised 52632
581 Authority citation revised 2862
581.4 Amended 2862
581.5 (c)(1) revised 16360
581.8 Added 2862
596 Added 10847

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

639 Authority citation revised 68366
639.1 Revised 68366
639.3 Revised 68367
639.5 Revised 68367
639.13 (a) revised 68367
653.7 Amended 426
653.45 (d) added 67613
654.7 Amended 426
654.33 (d) added 67613

Chapter VIII—National Transportation Safety Board (Parts 800—899)

800.2 Introductory text and (b) through (j) revised; (k) added 71605
(b), (d) and (j) corrected 5621

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800.24 (j) added 71606
800.25 Heading and introductory text revised 71606
800.26 Revised 71606
800.28 Added 71606
800 Appendix amended 71606
831.3 Revised 71606
831.11 (a)(2) revised 71606
835 Authority citation revised 71607
835.1 Revised 71607
835.2 Revised 71607
Corrected 5622
835.3 (c) through (f) added 71607
(c) corrected 5622
835.4 (a) revised 71607
835.5 Heading, (a), (c) and (d) revised 71607
835.6 Revised 71607
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835.8 Revised 71608
835.9 Revised 71608
835.10 Added 71608
835.11 Added 71608

Chapter X—Surface Transportation Board, Department of Transportation (Parts 1000—1399)

1002.1 (b), (c), (d), (e)(1) and (f)(6) table revised 5192
1002.2 (f) revised 5192
1146 Added 71401
1147 Added 71402
1180.1 (f) corrected; (g) and (h) reinstated; CFR correction 10234
1180.2 Introductory text through (d)(2) reinstated; CFR correction 10234
1312.1 (c) amended 5195
1312.6 (c) revised 5195
1312.17 Removed 5195

Chapter XI—Bureau of Transportation Statistics, Department of Transportation (Parts 1400—1499)

1420 Authority citation revised 13921
1420.1 Revised 13921
1420.2 (a) amended; (b)(4) revised 13921
1420.2 (b)(5) and (c) amended 13922
1420.8 Added 13922
1420.9 Added 13922
1420.10 Added 13923
1420.6 Added 13923

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INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Gwen Henderson. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

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[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 to March 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5]No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

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916.356 (a)(1) introductory text, (iv) Table 1, (4) introductory text and (6) introductory text revised; (a)(1)(i) Table 1 removed 19031
917.442 (a)(3), (4)(ii), (iv) Tables 1 and 2, (9)(i) and (d) revised 19033
917.459 (a)(1) introductory text, (iv) Table 1, (3) introductory text, (5) introductory text and (6) introductory text revised; (a)(1)(i) Table 1 removed; (a)(4) introductory text added 19033
923.322 (e) revised; interim 33743
929.69 (d) amended; interim 24025
Regulation at 64 FR 24025 confirmed 34707
930 Marketing percentages 392
930.158 (b)(2) and (3) revised; interim 30219
932.159 Revised; interim 4288
(a) revised; (f) removed; (d) and (e) redesignated as (e) and (f); new (d) added 9268
Regulation at 64 FR 4288 confirmed 23011
Regulation at 64 FR 9265 confirmed; (a) and (d) revised 33009
932.160 Removed; interim 4288
Regulation at 64 FR 4288 confirmed 23011
932.230 Revised 14813
944.106 Regulation at 63 FR 62923 confirmed 15636
947.120 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
947.123 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
947.125 Added; interim; eff. 7–1–99 through 6–30–99 34117
947.130 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
947.132 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
947.133 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
947.134 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
947.180 Undesignated center heading added; interim; eff. 7–1–99 through 6–30–99 34117
947.340 Suspended; interim; eff. 7–1–99 through 6–30–00 34117
956.15 Added 4933
956.16 Added 4933
956.20 (a) amended 4933
956.60 Added 4933
956.62 Revised 4933
956.64 Revised 4934
956.70 Undesignated center heading added 4934
979.180 Amended 23759
979.304 Amended; (b)(4), (c)(4) and (e)(3) revised; (e)(4) removed; (e)(5) redesignated as (e)(4) 23759
981.472 (a) revised 18802
982 Marketing percentages 2425
982.246 Regulation at 64 FR 2425 confirmed 23011
985 Marketing percentages 2802
989 Marketing percentages 10922
989.212 Regulation at 63 FR 56785 confirmed 2428
989.213 Regulation at 63 FR 56785 confirmed 2428
989.252 Marketing percentages 30236
989.347 Regulation at 64 FR 9056 confirmed 25422
993 Undersized regulation 23763
993.347 Revised 3623
Revised; interim 9056

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1065.2 (a) suspended in part 4959
1079.7 (b) corrected; CFR correction 19034
(b) introductory text amended 25194

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Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1205.510 (b)(2) and (3)(ii) table revised 30238
1216 Added 20105
1260.141 (a) revised 3815

Chapter XIII—Northeast Dairy Compact Commission (Parts 1300—1399)

1301.13 (e) revised 34514
1307.4 Redesignated as 1307.5; new 1307.4 added 23538
1307.5 Redesignated from 1307.4 23538
1308.1 Introductory text revised 23538
1308.2 Added 23538
1361.11 (a) and (b) revised; interim 18324
1381.4 (a) revised 11756

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1430.500—1430.509 (Subpart D) Added 24934
1434 Added 10924
1437 Heading revised; interim 17272
1437.2 (f) and (g) revised; (h) added; interim 17272
1437.3 Amended; interim 17272
1437.4 (a) revised; interim 17272
1439 Authority citation revised 13498
1439.1—1439.12 (Subpart) Revised 13498
1439.101—1439.104 (Subpart) Removed 13499
1439.201—1439.202 (Subpart) Removed 13499
1439.301—1439.302 (Subpart) Removed 13499
1439.401—1439.403 (Subpart) Removed 13499
1439.501—1439.504 (Subpart) Removed 13499
1439.601—1439.602 (Subpart) Removed 13499
1439.701—1439.702 (Subpart) Removed 13499
1439.800—1439.810 (Subpart) Removed 13499
1439.101—1439.108 (Subpart) Added 13500
1464.13 (f) added 15295
1464.14 (f) added 15296
1464.15 (f) amended 15296
1464.16 (f) added 15296
1464.17 (f) added 15296
1469 Added 10930
1464.101 (b) amended 2803
1477 Added 18554

Chapter XV—Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

1530 Revised 7062

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

1703 Authority citation revised 14356
1703.100—1703.112 (Subpart D) Revised 14357
1703.103 (a)(3) corrected 25422
1703.105 (c) and (e)(6) corrected 25422
1703.108 (a) corrected 25422
1703.120—1703.129 (Subpart E) Added 14360
1703.123 (a)(13) and (14) corrected 25422
(a)(5) revised 25423
1703.125 (b)(9) added; (i)(1) through (7) revised; (i)(8) through (11) removed 25423
1703.126 (a) corrected 25422
1703.127 (c)(1) and (3) corrected 25422
1703.130—1703.137 (Subpart F) Added 14366
1703.134 (l) corrected 25422
(g)(1) through (7) revised; (g)(8) through (11) removed 25423
1703.140—1703.147 (Subpart G) Added 14369
1703.140 Introductory text amended 25423
1703.141 (i) amended 25423
1703.142 (a) and (b)(4) revised; (b)(5) added 25423

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1703.144 (c)(4), (d)(2), (3), (f)(2) and (4) corrected 25422
(g)(1) through (7) revised; (g)(8), (9) and (10) removed 25423
1703.145 (b) corrected 25422
1703.300—1703.313 Redesignated as Subpart H 14356
1710 Authority citation revised 33178
1710.106 (a)(1)(i) and (2)(i) revised; (a)(3) removed; (a)(4), (5) and (6) redesignated as (a)(3), (4) and (5) 33178
1710.250 (f) amended 33178
1728 Bulletin 14813
1753 Authority citation revised 16604
1753.1 (a) revised 16604
1753.2 Amended 16604
1753.3 (a) amended 16604
1753.5 (b)(1) revised; (b)(2) redesignated as (b)(3); new (b)(2) added 16604
1753.6 (a) revised; (e) added 16605
1753.7 (c) and (e) revised 16605
1753.8 (a)(1), (11)(i), (ii) introductory text, (iii) introductory text and (12)(i) revised; (a)(11)(iv) added 16605
1753.11 (a)(3), (b) and (d) revised 16605
1753.15 (a)(2) through (5) redesignated as (a)(3) through (6); (a)(1), new (5)(i) and (ii) revised; new (a)(2) added 16605
1753.16 (b)(1) through (4) revised 16606
1753.17 (b)(1)(ii)(D) amended; (b)(1)(ii)(E) added; (c)(1)(i)(C) and (2)(i)(A) revised 16606
1753.18 Added 16606
1753.25 (a), (c) and (d) revised 16606
1753.26 (a) through (d) redesignated as (b) through (e); new (a) added; new (b)(1) revised 16606
1753.30 (b), (c)(2) and (3) revised 16606
1753.36 (g) revised 16607
1753.37 (c) revised 16607
1753.38 (a)(1)(i), (v), (2)(i), (v), (b)(1), (3), (5), (e)(2) and (3) amended 16607
1753.39 (a), (e)(1), (2), (f) introductory text, (1)(ii)(A), (iii), (iv) and (g) revised; (e)(3) removed; (h) added 16608
1753.46 (c)(2) and (3) revised 16608
1753.47 (c) revised 16609
1753.48 (a)(4) and (b)(1) revised 16609
1753.49 (b), (c)(2) and (3) revised 16609
1753.50 Removed 16610
1753.58 (b), (c)(2) and (5) revised 16610
1753.68 (b)(2)(i) through (v), (4)(i), (ii), (c)(2) and (d)(3) revised 16611
1753.76 (a) revised 16611
1753.77 Revised 16612
1753.80 (b) revised 16612
1753 Appendixes A through F removed 16612
1755.26 Added 6500
1755.27 Added 6500
1755.28 Added 6500
1755.29 Added 6500
1755.30 Added 6501
1755.93 Removed 6501
1755.217 Removed 6501
1755.525 Removed 6501
1780.7 (h) removed 29946
1780.10 (b)(2) revised 29946
1780.35 (c) revised 29946
1780.39 (e)(2) and (f) introductory text revised 29946
1780.45 (a)(2) revised 29946
1780.48 (b) introductory text revised 29946
1780.49 (c)(4) and (d) revised 29946
1780.55 Revised 29946
1780.57 (o) added 29946
1780.94 (j)(3) revised 29947
1788 Revised 2

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1940 Authority citation revised 24480
1940.560 Regulation at 63 FR 39458 confirmed 32371
1940.579 Revised 24480
1944.153 Amended 24480
1944.157 (a)(1) and (3) revised 24480
1944.160 Added 24480

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1944.164 (b) revised; (d) introductory text and (1)(i) amended 24480
1944.169 (a)(1) revised 24480
1944.170 Heading, introductory text, (a) and (b) revised; (c) redesignated as (f); new (c), (d) and (e) added; new (f)(5)(i), (ii)(B) and (C) amended; new (f)(7) removed 24480
1944.151—1944.200 (Subpart D) Exhibits A and A-1 amended 24482
1951.914 Heading and (b) introductory text revised; (h) added; interim 19865
1951.951 Amended; interim 393
1951.952 Amended; interim 394
1951.953 (b) revised; interim 394
1951.954 (a)(1), (5), (7), (b)(2), (4) and (5) revised; interim 394
1980.1 Revised 7402
1980.6 (a) and (b) amended 7402
1980.11 Amended 7402
1980.13 (b) introductory text amended; (b)(4) introductory text revised 7402
1980.20 (a) introductory text amended 7402
1980.21 Revised 7402
1980.22 (a) revised; (b) introductory text and (3) amended 7402
1980.46 Removed 7402
1980.60 Heading, (a) introductory text, (1), (6), (7), (9) through (12), (b) and (c) amended 7402
1980.61 (a)(2) and (c) removed; (a)(3) and (d) through (h) redesignated as (a)(2) and (c) through (g); heading, (a)(1), new (2), (b)(1), (3), (4), new (c) and new (d) amended 7402
1980.61 (f) and (g) amended 7403
1980.62 Amended 7403
1980.63 (a) amended 7403
1980.64 (a) and (b) amended 7403
1980.65 Amended 7403
1980.66 Amended 7403
1980.67 (a) and (b) amended 7403
1980.68 Amended 7403
1980.83 Regulation at 56 FR 8259 confirmed 7378
(a) amended 7403
1980.84 Heading, (b)(1)(iv), (v) and (4) amended 7403
1980.100 Regulation at 56 FR 8260 confirmed 7378
1980.1—1980.100 (Subpart A) Regulations at 56 FR 8261 and 8263 confirmed 7378
Appendixes D through L removed 7403
1980.101 Regulation at 56 FR 8264 confirmed 7378
1980.110 Regulation at 56 FR 8264 confirmed 7378
1980.113 Regulation at 56 FR 8264 confirmed 7378
1980.115 Regulation at 56 FR 8264 confirmed 7378
1980.122 Regulation at 56 FR 8264 confirmed 7378
1980.124 Regulation at 56 FR 8264 confirmed 7378
1980.125 Regulation at 56 FR 8264 confirmed 7378
1980.145 Regulation at 56 FR 8264 confirmed 7378
1980.175 Regulation at 56 FR 8264 confirmed 7378
1980.200 Regulation at 56 FR 8264 confirmed 7378
1980.101—1980.200 (Subpart B) Regulations at 56 FR 8265, 8266 and 8271 confirmed 7378
1980.340 Regulation at 56 FR 8271 confirmed 7378
1980.354 Regulation at 56 FR 8271 confirmed 7378
1980.424 Regulation at 56 FR 8271 confirmed 7378
1980.451 Regulation at 56 FR 8271 confirmed 7378
1980.452 Regulation at 56 FR 8271 confirmed 7378
1980.628 Regulation at 56 FR 8271 confirmed 7378
1980.646 Regulation at 56 FR 8271 confirmed 7378
1980.648 Regulation at 56 FR 8271 confirmed 7378
1980.801 (b) amended 28336
1980.802 Amended 28336
1980.805 Amended 28336
1980.813 (a)(2), (b)(1) and (2) removed; (a)(3), (b)(3) and (4) redesignated as (a)(2), (b)(1) and (2); (a) introductory text and new (2)(i) amended 28336

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1980.814 (d) removed; (e) through (h) redesignated as (d) through (g) 28336
1980.844 Revised 28336
1980.853 Regulation at 56 FR 8271 confirmed 7378
2003 Authority citation revised 32388
2003.18 (b)(5)(i) amended 32388

Chapter XXXIV—Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400—3499)

3400 Authority citation revised 34103
3400.1 Revised 34103
3400.7 (c) revised 34103
3400.20—3400.22 (Subpart C) Added 34104
3400.23 (Subpart D) Added 34104

Chapter XXXV—Rural Housing Service, Department of Agriculture (Parts 3500—3599)

3565 Regulation at 63 FR 39458 confirmed 32371
3565.5 (b) revised 32371
3565.6 Revised 32371
3565.8 Revised 32371
3565.9 (e) removed; (f) redesignated as (e) 32372
3565.13 Revised 32372
3565.52 Introductory text amended 32372
3565.53 (a) revised; (b) amended 32372
3565.103 (d)(9) added 32372
3565.303 (d)(8) amended 32372
3565.351 (a) amended 32372
3570.51—3570.100 (Subpart B) Revised 32388
3575 Added 28337

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TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—599)

3.1 (b)(12) revised; interim 25766
3.23 Heading revised; (b)(4)(i) amended; interim 8487
3.42 (d) and (f) revised; interim 8487
3.43 (b)(4)(v), (vi) and (c)(2) revised; (c)(3) added 13666
103.1 (g)(3)(ii) amended; interim 27875
103.5a (a)(3) added 17944
103.7 (b)(1) table amended; interim 27875
103.12 (a)(5) revised; interim 8487
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208.5 (b)(1) introductory text revised; interim 8488
208.11 (b)(2) revised; interim 8488
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208.14 Heading revised; (f) added; interim 27875
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208.21 Redesignated as 208.22; new 208.21 redesignated from 208.20; interim 8490
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50.55a (h) revised 17946
(h)(1) and (2) corrected 23763
55.8 (c)(4) revised 19878
55.40 Added 19878
55.49 Revised 19878
72.1 Revised 33182
72.2 (e) removed; (f) redesignated as (e); new (f) added 33183
72.4 Revised 33183
72.44 (d)(3) revised 33183
72.75 (d)(2) revised; (d)(3) through (7) added 33183
72.82 (e) removed 17512
72.122 (h)(4) and (i) revised 33184
72.124 (b) revised 33184
72.140 (d) revised 33184
72.216 (c) revised 33184
73.55 (g)(4) revised 14818
(g)(4)(i) introductory text, (A), (B) and (ii) correctly designated 17947
73 Appendix C amended 14818
95 Heading revised 15649
95.5 Amended 15649
95.8 (b) revised 15650
95.9 Revised 15650
95.11 Revised 15650
95.15 (a) revised 15650
95.17 (a) introductory text and (1) revised 15650
95.19 Revised 15650
95.20 Revised 15651
95.21 Revised 15651
95.25 Heading, (a) introductory text, (2), (b), (c)(2), (f), (g), (h), (i), (j)(1), (6) and (7) revised 15651
95.27 Revised 15651
95.29 (a), (c)(2) and (4) revised 15652
95.33 (f) revised 15652
95.34 Added 15652
95.36 (a), (c) and (d) revised 15652
95.37 (c)(1)(iv) removed; (c)(1)(i) and (h)(2) revised 15652
95.39 (b)(3) and (c)(2) revised 15652
95.45 (a) revised 15653
95.47 Revised 15653
95.53 Revised 15653
95.57 Revised 15653
170.2 (r) added 31469
170.3 Amended 31469
170.5 Revised 31469
170.11 (a)(11) removed; (a)(12) added 31469
170.12 Revised 31469
170.20 Revised 31470
170.21 Amended 31470
170.31 Revised 31471
171 Heading revised 31475
171.9 Revised 31475
171.13 Revised 31475
171.15 Revised 31475
171.16 Revised 31476
171.17 Revised 31480
171.19 Revised 31480

Chapter II—Department of Energy (Parts 200—699)

490 Authority citation revised 27174
490.2 Amended 26829
490.701—490.708 (Subpart H) Added 27174
600.27 (b)(2)(i)(B) amended 4029

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708 Revised 12870

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50 ..... 57, 432, 3790, 3791, 5623, 9035, 12117, 22580, 24531, 31737
51 ..... 8640, 9219, 9884, 24092, 24531
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60 ..... 8640, 9219, 24092, 24531
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9034.2 (b) revised; (c) introductory text amended; and (8) added (effective date pending) 32397
9034.3 (c) amended (effective date pending) 32397

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TITLE 12—BANKS AND BANKING

Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

3.6 (c) revised 10199
3 Appendix A amended 10199
Regulation at 62 FR 68067 confirmed 19037
4.31 Regulation at 63 FR 62929 confirmed; (b)(3) amended 29216
4.32 Regulation at 63 FR 62929 confirmed; (b)(1)(vii) revised 29216
4.34 (a), (c) introductory text, (1) and (2) amended 29216
4.36 Regulation at 63 FR 62929 confirmed; (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added; new (c) heading revised 29216
4.37 Regulation at 63 FR 62929 confirmed 29216
(a)(1) revised; (a)(2)(i) and (ii) amended 29217
4.38 Regulation at 63 FR 62929 confirmed 29216
4.39 Regulation at 63 FR 62929 confirmed 29216
4.40 Regulation at 63 FR 62929 confirmed 29216
4.31—4.40 (Subpart C) Appendix A amended 29217

Chapter II—Federal Reserve System (Parts 200—299)

208 Authority citation revised 10199
208 Appendix A amended 10199
Appendixes A and B amended 10200
Regulation at 62 FR 68067 confirmed; Appendix E amended 19037
Appendix E amended 19038
213 Supplement I amended 16613, 16614
220 OTC margin stock lists 8711
225 Appendix A amended 10203
Regulation at 62 FR 68068 confirmed 19037
Appendix E amended 19038
226 Supplement I amended 16616, 16617
229.19 (g) redesignated as (g)(1); new (g)(1) heading and (2) added 14577
229.40 Existing text designated as (a); (a) heading and (b) added 14577

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303.164 (b) revised 20142
325.3 (b)(2) revised 10200
325 Appendix A amended 10200
Regulation at 62 FR 68068 confirmed; Appendix C amended 19038
330.3 (h) revised 15656
330.5 Heading, (b)(1), (4) heading and (1) revised 15656
330.9 (b) revised 15656

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TITLE 12 Chapter III—Con.

330.10 (a) and (e) revised 15657
330.14 (a) revised 15657
331 Added; interim 30875

Chapter IV—Export-Import Bank of the United States (Parts 400—499)

404 Revised 14374
405 Removed 14381

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561.13 Removed 6503
561.47 Removed 6503
561.48 Removed 6503
563 Authority citation revised 2809
563.134 Removed 2809
563.140—563.146 (Subpart E) Revised 2809
563b.3 (g)(2) amended 2810
567.1 Amended 10200
567.2 (a)(2)(ii) revised 10201
567.6 (a)(1)(vi) revised 10201
567.8 Revised 10201

Chapter VI—Farm Credit Administration (Parts 600—699)

611.310—611.340 (Subpart C) Regulation at 63 FR 64843 eff. 2–11–99 6784
611.330 Regulation at 63 FR 64843 eff. 2–11–99 6784
611.340 Regulation at 63 FR 64843 eff. 2–11–99 6784
611.400 (c) and (d)(3) revised (effective date pending) 16618
Regulation at 64 FR 16618 eff. 5–11–99 25423
611.505 Regulation at 63 FR 64844 eff. 2–11–99 6784
611.1122 Regulation at 63 FR 64844 eff. 2–11–99 6784
614 Authority citation revised 34517
614.4232 Introductory text amended; (c) revised (effective date pending) 34517
614.4325 (a)(3) amended (effective date pending) 34517
614.4350—614.4360 (Subpart J) Heading revised (effective date pending) 34517
614.4350 (a) and (c) revised (effective date pending) 34517
614.4351 Amended (effective date pending) 34517
614.4352 (a), (b)(1), and (2) amended (effective date pending) 34517
614.4353 Amended (effective date pending) 34517
614.4354 Amended (effective date pending) 34517
614.4355 (a) heading and (b) heading amended (effective date pending) 34517
614.4356 Redesignated as 614.4357; new 614.4356 added (effective date pending) 34517
614.4357 Redesignated as 614.4358; new 614.4357 redesignated from 614.4356 (effective date pending) 34517
614.4358 Redesignated as 614.4359; new 614.4358 redesignated from 614.4357; (a) introductory text, (1), (3) and (b) introductory text amended; (b)(5) redesignated as (b)(6); new (b)(5) added (effective date pending) 34517
614.4359 Redesignated as 614.4360; new 614.4359 redesignated from 614.4358; (a) introductory text, (a)(1)(iii), (b), (c), and Table 1 amended (effective date pending) 34517
614.4360 Redesignated as 614.4361; new 614.4360 redesignated from 614.4359; heading, (a), (b), (c), and (d) amended; (d) redesignated as (e); new (d) added (effective date pending) 34517
614.4361 Redesignated from 614.4360 (effective date pending) 34517
(a) and (b) amended 34518
614.4710 Introductory text, (a)(2), and (3) amended (effective date pending) 34518
615.5131 Revised (effective date pending) 28895
615.5133 Revised (effective date pending) 28895
615.5134 (b) revised (effective date pending) 28896
615.5140 Revised (effective date pending) 28896

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615.5141 Redesignated as 615.5142; new 615.5141 added (effective date pending) 28899
615.5142 Redesignated as 615.5143; new 615.5142 redesignated from 615.5141 and revised (effective date pending) 28899
615.5143 Redesignated as 615.5144; new 615.5143 redesignated from 615.5142 and revised (effective date pending) 28899
615.5144 Redesignated from 615.5143 (effective date pending) 28899
615.5174 Revised 28899
616 Added (effective date pending) 34518
618.8050—618.8060 (Subpart C) Removed (effective date pending) 34519
618.8440 (b)(6) amended (effective date pending) 34519
620.5 (i)(1) amended (effective date pending) 16618
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621.7 (a)(2)(iii) amended (effective date pending) 34519

Chapter VII—National Credit Union Administration (Parts 700—799)

701.14 (b)(3) introductory text and (c)(2) revised; (b)(4) added; (d)(1) amended 28717
701.20 Removed 28719
701.21 (c)(7)(ii)(C) Revised 5929
Regulation at 63 FR 51799 confirmed 28729
701.25 Added 19443
701.30 Removed 28718
703.20 (c) amended 33187
707.4 Regulation at 63 FR 71574 confirmed 33010
707.5 Regulation at 63 FR 71574 confirmed 33010
707.8 Regulation at 63 FR 71574 confirmed 33010
707.9 Regulation at 63 FR 71575 confirmed 33010
707 Regulation at 63 FR 71575 confirmed 33010
708a.4 (b) amended 28735
708a.5 (c) amended 28735
708a.9 (b) revised 28735
712.2 Heading revised; (a) and (c) amended; (d) and (e) added 33187
712.3 (a) and (b) amended; (c) revised 33187
712.5 (p) added 33187
712.6 (b) revised; interim 33188
713 Added 28720
722.3 Regulation at 63 FR 51799 confirmed 28729
723 Regulation at 63 FR 51799 confirmed; revised 28729
741.201 (a) and (b) amended 28721
741.203 Regulation at 63 FR 51802 confirmed 28729
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745 Authority citation revised 19687
745.4 Revised; interim 19687
745.88 Revised; interim 19687
745 Appendix amended; interim 19687, 19688
790.2 (b)(6)(ii) revised 17086

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902.6 Removed 30883
903 Added 30883
904.9 (f)(2) revised 5930
935 Authority citation revised 16621
935.1 Amended 16621
935.9 (a) revised; (b) heading, (c) heading and (e) heading amended 16621
935.11 (b) revised 16621
935.15 (b) revised; interim 16791
960 Interpretation 12079
960.1 Amended; interim 24027
960.3 (b)(4) revised; interim 24027
960.5 (b)(10)(ii) revised 23015
(b)(2)(ii)(B) amended; interim 24027
960.6 (b)(4)(iv)(D) and (F)(3) revised 23015
(b)(4)(iv)(D) and (F)(1) revised; interim 24028
960.7 Corrected 2550
960.9 Introductory text revised 23016

Chapter XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1701—1799)

1730 Added; interim 34969

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115.31 (a)(2) revised 18324
120.10 Amended 2117
120.111 Amended 2117
120.131 Revised 2117
(a) corrected 27445
120.414 Undesignated center heading and section redesignated from 120.430; undesignated center heading revised 6509
120.420 Undesignated center heading and section revised 6507
120.421 Added 6508
120.422 Added 6508
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120.428 Added 6509
120.430 Section and undesignated center heading redesignated as 120.414 6509
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120.453 (a) and (b) revised; (c) removed 6510
120.801 (a) amended; (c)(3) revised 2118
120.802 Amended 2118
120.845 Revised 26274
120.862 (b)(3) amended; (b)(7) revised 2118
120.870 (a)(1) revised; (c) added 2118
120.883 Revised 2118
120.884 (e) removed 2118
120.910 Revised 2118
120.920 Revised 2118
120.921 (d) and (e) redesignated as (e) and (f); new (d) added; new (e) and new (f) revised 2118
120.971 (a)(2) amended; (a)(3) and (d)(2) revised 2119
120.972 Redesignated as 120.973; new 120.973 added 2119
120.973 Redesignated from 120.972 2119
121 Authority citation revised 26280
121.201 Table amended 26280
123.3 (a)(4) amended 13667

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11 Technical correction 7066
13 Policy statement 19443
14 Authority citation revised 32935
14.02 (a) revised 32935
14.03 (a) and (f) revised 32935
14.05 (b), (c), and (e) revised 32935
14.11 (c) revised 32935
14.20 (a) and (c) revised 32936
14.21 Revised 32936
14.22 (b) revised 32936
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14.26 (a) revised 32936
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17 Added 32936
21 Design standards availability 13501
23 Special FAA conditions 6510
25 Special FAA conditions 3201, 14818, 25800, 27175, 27445
25.145 (c)(3) concluding text designated as (d); (c) introductory text and new (d) revised 6164
(d) corrected 10740
27 Special FAA conditions 27447
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34.1 Amended 5558
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34.31 (d) and (e)(3) revised 5559
34.60 (c) revised 5559
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73.32 23769
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91 Technical correction 7066
Interpretation 15912
SFAR No. 84 corrected 23395
91.1 (a) revised; (c) added 1079
91.11 Heading revised 1079
91.701—91.715 (Subpart H) Heading revised 1079
91.701 Revised 1079
91.702 Added 1079
91 SFAR No. 84 added 15121
93 SFAR No. 50–2 amended 5154
93.51 Revised 14976
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93.305 Regulation at 61 FR 69330 eff. date delayed to 1–31–00 5154
93.307 Regulation at 61 FR 69330 eff. date delayed to 1–31–00 5154
93 Appendix A removed 14978
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121 SFAR No. 36 amended 960
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SFAR No. 50–2 amended 5154
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121.580 Added 1080
125 Heading revised 1080
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125.1 (a) revised; (d) added 1080
125.204 Added 1080
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135 SFAR No. 36 amended 960
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SFAR No. 50–2 amended 5154
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135.120 Added 1080
135.144 Added 1080
145 SFAR No. 36 amended 960
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Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

201.1 (b) amended 3212
204.2 (k)(2) revised 12085
212.10 (a) and (f)(1) amended 3213
255.12 Revised 15129
257 Added 12851
258 Added 12860
399 Authority citation revised 12852
399.88 Removed 12852

Chapter III—Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)

401 Authority citation revised 19613
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417 Added 19624
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1214.900—1214.912 (Subpart 1214.9) Removed; interim 19886
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TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter I—Bureau of the Census, Department of Commerce (Parts 30—199)

30.80 (d) revised 24943

Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

734 Authority citation revised 27140
734.2 (b)(1) and (4) amended 13339
734.4 (b) revised 13339
734.5 (a) revised; interim 27141
736 Authority citation revised 27141
736.2 (b)(7)(i) revised; interim 27141
738 Authority citation revised 17970, 27141
738.2 (d)(2)(i)(A) amended; interim 17970, 27141
738 Supplement No. 1 amended; interim 17970
Supplement No. 1 amended 28908

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TITLE 15 Chapter VII—Con.

740 Authority citation revised 2430, 17970, 27141, 28908
740.2 (a)(5) amended 13339
740.7 (d)(4) redesignated as (d)(5); new (d)(4) and (5)(v)(A)(*8*) note added; new (d)(5)(iii), (v) introductory text and (A) introductory amended; new (d)(5)(v)(B) revised; interim 2430
Amended 28908
740.11 Heading and introductory text revised; (c) added; interim 27141
740.14 (e)(1)(iii) amended; interim 17973
740 Supplement No. 1 amended 28908
742 Authority citation revised 2430, 17970, 27141
742.2 (a) introductory text revised; interim 27142
Amended 28909
742.8 (a)(4)(ii) amended; interim 27142
742.9 (a)(3)(ii) amended; interim 27142
742.10 (a)(4)(ii) amended; interim 27142
742.12 (b)(3)(i)(C) and (iv)(B) revised; interim 2431
742.14 Revised 13339
742.15 Second (b)(6)(v) redesignated as (b)(6)(vi) 3214
742.17 Added; interim 17973
742.18 Added; interim 27142
742 Supplement No. 4 amended 3214
Supplement No. 2 amended; interim 27143
743.1 (b) amended 3214
744 Authority citation revised 1121
744.10 Revised 14605
744.13 Added; interim 1121
744.14 Added; interim 1122
744 Supplement No. 4 amended 14606, 28910
745 Added; interim 27143
745.1 (b)(3) amended 28909
745 Supplement No. 3 amended 28909
746 Authority citation revised 24018
746.2 (b)(4)(iii) added 25808
746.9 Revised 24019
748 Authority citation revised 2430, 17970
748.8 (q) added; interim 27146
748.9 (b)(2)(i)(*1*) removed; (b)(2)(i)(*2*) and (*3*) redesignated as (b)(2)(i)(A) and (B); interim 2431
(a) introductory text revised; interim 17973
748.10 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added; new (b)(4) introductory text revised; interim 2431
748.14 Added; interim 17973
748 Supplement No. 6 added; interim 17974
Supplement No. 2 amended; interim 27146
752.3 (a)(8) removed; (a)(9), (10) and (11) redesignated (a)(8), (9) and (10) 13339
758 Authority citation revised 27141
758.3 (h)(2) amended; interim 27146
762 Authority citation revised 17970
772 Authority citation revised 1121, 5932
Amended; interim 1122, 5932
Amended 13339, 27146
774 Authority citation revised 5932, 17970, 27141
Supplement No. 1, Category 1 (ECCN 1B115, 1C111, 1C118, 1E001 and 1E101) amended; interim 5932
Supplement No. 1, Category 0 (ECCN 0A982, 0D001 and 0E001) amended 10854
Supplement No. 1, Category 1 (ECCN 1A002, 1A005, 1C001, 1D390, 1D993, 1E994 and 1E001) amended 10854
Supplement No. 1, Category 2 (ECCN 2B001, 2B003, 2B004, 2B005, 2B104, 2B996 and 23003) amended 10855
Supplement No. 1, Category 3 (ECCN 3A001, 3A002, 3B001 and 3C002) amended 10857
Supplement No. 1, Category 4 (ECCN 4A003, 4D001 and 4E001) amended 10860
Supplement No. 1, Category 5 (ECCN 5A991, 5D001 and 5E001) amended 10861
Supplement No. 1, Category 6 (ECCN 6A001, 6A003, 6A005, 6A007, 6A008, 6D001, 6D003, 6E001 and 6E002) amended
Supplement No. 1, Category 7 (ECCN 7D003) amended 10867
Supplement No. 1, Category 8 (ECCN 8A002, 8A992, 8D001 and 8E001) amended 10867
Supplement No. 1, Category 9 (ECCN 9A018) 10869
Supplement No. 1, Category 4 (ECCN 4D001, 4E001) corrected 12745
Supplement No. 1, Category 9 (ECCN 9A004) amended 13340
Supplement No. 1, Category 0 (ECCN 0A984, 0A985 and 0A987) amended; interim 17975
Supplement No. 1, Category 1 (ECCN 1C350) amended; interim 27146
Supplement No. 1, Category 1 (ECCN 1C351) amended; interim 27148
Supplement No. 1, Category 1 (ECCN 1C355) amended; interim 27149
Supplement No. 1, Category 1 (ECCN 1E001) amended; interim 27150
Supplement No. 1 corrected 27854
Supplement No. 1, Category 1 (ECCN 1E001) amended 28909
Supplement No. 1, Category 1 (ECCN 1C350) corrected 30103

Chapter VIII—Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

806.15 (1) amended 10389

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

902.1 (b) table amended (OMB numbers) 14, 3627, 4036, 14054, 29133

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30 7412
505 2454
922 .....19945, 27484, 30929, 35102

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TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

4.1 (b)(1) introductory text, (iii) and (5)(vii) amended 14830
4.8 (b)(4) and (6) revised 3012
4.11 (a)(1)(i)(A), (B), (iii)(A), (2)(i)(A), (B) and (ii)(A) revised; (a)(1)(i)(E) and (iii)(D) redesignated as (a)(1)(i)(F) and (iii)(E); new (a)(1)(i)(E), new (iii)(D) and (h) added 3013
(c) and (d) amended; (e) revised 32180
(d)(1) corrected 35256
4.13 (c) and (i)(1) amended 3014
23.0 Amended 33194
239 Announcement 19700
245 Removed 30902
305.9 (a) revised 7785
305 Appendix H corrected 926
Appendix F revised 32403
700 Announcement 19700
701 Announcement 19700
702 Announcement 19700
703 Announcement 19700
901.3 Introductory text and (d) amended 34533
901.4 (b) revised 34533

Chapter II—Consumer Product Safety Commission (Parts 1000—1799)

1615 Authority citation revised 34535
1615.1 Introductory text, (o) introductory text, (1) and (3) revised 2838
(c)(1) amended 34533
(o)(10) and (11) added; eff. 6–28–00 34535
1615.2 (a), (b), and (c) amended 34533
1615.4 Footnotes 2, 3, and 4 redesignated as footnotes 3, 4, and 5; eff. 6–28–00 34536
1615.64 (d) introductory text revised 2832
(a)(1) and (b) amended 34533
1616 Authority citation revised 34536

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TITLE 16 Chapter II—Con.

1616.2 Introductory text, (m) introductory text, (1) and (3) revised 2841
(m)(10) and (11) added; eff. 6–28–00 34536
1616.5 Footnotes 2 through 6 redesignated as footnotes 3 through 7; eff. 6–28–00 34538
1616.65 (d) introductory text revised 2833
1700.14 (a)(29) added; eff. 6–19–00 32803

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23 30448
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256 ..... 13369, 18081
259 19729
308 61
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453 24250
1213 ..... 3456, 10245, 14158
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1513 ..... 3456, 10245, 14158
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1616 ..... 2867, 10963, 13126, 34597
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1631 13132
1632 13137

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TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

1 Fee schedules 19711
1.31 (b), (c) and (d) revised 28742
1.61 Removed 24046
5 Fee schedules 19711, 30384
5 Appendix A revised 29217
Appendix E added 29224
10.1 (d) revised 30903
10.68 (a)(2) amended 30903
10.92 (b)(1) revised 30903
10.101 (a)(5)(iii) revised 30903
10.102 (e)(1) amended 30903
10.106 (b)(3) amended 30903
10 Appendix A amended 30903
17.00 (b)(1) introductory text revised; (b)(1) designation, (2) and (c) removed; (b)(1)(i) and (ii) redesignated as (b)(1) and (2); (b)(3) added 24046
18.01 Revised 24046
30 Technical correction 30103
30.5 Introductory text and (e) added; (a) revised 28914
30.6 Revised 28914
31 Fee schedules 19711
60.41c Corrected; CFR correction 24049
150.1 (d) introductory text, (2), (e)(2) and (5) revised 24046
150.2 Revised 24047
150.4 Revised 24047
150.5 Added 24048

Chapter II—Securities and Exchange Commission (Parts 200—399)

200.30–5 (e)(2) revised 34540
202.3 (b)(2) revised 19451
230.485 (f)(1) designation and (2) removed 27894
230.486 (f)(1) designation and (2) removed 27894
230.487 (d)(1) designation and (2) removed 27894
230.495 (e)(1) designation and (2) removed 27894
230.497 (k)(2)(ii) amended 27894
232.10 (b) revised 27894
232.11 Amended 27894
232.101 (a)(1)(iv) and (c)(11) amended 19471
(a)(1)(iii) note revised; (b)(7) removed 27894
232.102 (e) revised 27894
232.104 Added 27895
232.105 Added 27895
232.106 Added 27895
232.301 Revised 27898
232.302 (a) revised 27895
232.303 (a)(3) revised 27895
232.304 Heading, (a) and (b) revised; (c) amended 27895
232.305 Existing text designated as (a); (b) added 27896
232.306 (b) revised 27896
232.307 Existing text designated as (a); (b) added 27896
232.310 Revised 27896
239.14 Form N–2 amended 27897
239.15 Form N–1 amended 27897
239.15A Form N–1A amended 27897
239.16 Form S–6 amended 27896
239.17a Form N–3 amended 27897
239.17b Form N–4 amended 27897
239.24 Form N–5 amended 27897
240.3a12–8 (a)(1)(xviii) and (xix) amended; (a)(1)(xx) added 29553
Corrected 31493
240.14a–101 Amended 27896
240.15b1–1 (c) revised 25147
240.15b3–1 (c) revised 25147
240.15b6–1 Revised 25147
240.15Ba2–2 (d) revised 25148
240.15Bc3–1 Revised 25148
240.15Ca1–1 (c) revised 25148
240.15Cc1–1 Revised 25148
249.501a Form BDW revised 25149
270 Compliance date extension 24488
270.8b–23 (a) revised 27896
270.8b–32 (c) revised 27896
270.8f–1 Revised 19471
274.5 Form N–5 amended 27897
274.11 Form N–1 amended 27897
274.11a–1 Form N–2 amended 27897
274.11b Form N–3 amended 27897
274.11c Form N–4 amended 27897
274.11A Form N–1A amended 27897
274.101 Form N–SAR amended 27896
274.218 Revised 19471
275.203A–6 Added; eff. 5–3–99 15683
279.1 Form ADV amended; eff. 12–31–99 15683

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1b Authority citation revised.....17097
1b.1 (d) added.....17097
1b.21 Added.....17097
2.1 (a)(1)(viii)(A) through (I) removed.....26603
2.55 (a) and (b)(1)(ii) revised; (b)(4)(i) and (d) removed; (b)(4)(ii) redesignated as (b)(4).....26603
2.69 Removed.....26603
2.102 Removed.....26603
2 Appendix A added.....26603
37.5 (c) redesignated as (f); new (c), (d), and (e) added.....34124
37.6 Heading, (a) introductory text, (4), (5), and (e)(3)(ii) revised; (a)(6) added.....34124
37.8 Added.....34124
153.8 (a)(7) revised.....26604
153.21 (b) revised.....26604
157.6 (a) and (b) heading revised; (b)(6) added; (b)(7) amended.....26604
157.8 Revised.....26605
157.9 Amended.....26605
157.10 Revised.....26605
157.14 (a) amended; (a)(6–a) and (14)(i) through (iv) revised; (a)(6–b), (6–c), (6–d), (12) and (14)(vii) through (xiii) removed.....26605
157.16 (c)(1) revised.....26605
157.17 (a) and (b) amended.....26606
157.18 Introductory text, (f)(2) and (3) amended.....26606
157.20 (c) introductory text and (d) introductory text amended; (c)(2), (d)(1) and (f) removed; (c)(3), (4), (d)(2), (3) and (g) redesignated as (c)(2), (3), (d)(1), (2) and (f); (b) and new (d)(2) revised.....26606
157.21 Removed.....26606
157.102 (a)(1) amended; (b)(1)(v) revised.....26606
157.103 (j) amended.....26606
157.201 (a) amended.....26606
157.202 (b)(2)(i), (ii)(A), (B), (D), (E), (F), (4) through (7), (10) and (12) revised; (b)(13), (14) removed.....26606
157.203 (b) and (c) amended.....26607
157.204 (d)(2), (4), (5) and (e) removed; (d)(3) redesignated as (d)(2).....26607
157.205 (c) removed; (d) through (i) redesignated as (c) through (h); (a) introductory text, (b) introductory text and new (c) revised; (a)(2), (b)(5), (6) and new (d), (e)(2), (f) and (g) amended.....26607
157.206 (b), (c), (e) and (h) removed; (d), (f) and (g) redesignated as (b), (c) and (d); new (b) introductory text added; new (b)(1), (5) and (6) revised; new (b)(3)(i), (ii) and (iii) amended.....26607
157.207 (b) and (c) revised; (f) removed; (g) and (h) redesignated as (f) and (g).....26607
157.208 Heading, (e) introductory text, (2) and (f)(2) revised; (c)(6), (8) and (4) through (7) removed; (c)(7), (9), (10), (11), (e)(8) and (9) redesignated as (c)(6), (7), (8), (9), (e)(4) and (5); (a), (b), new (c)(9), (d) and (g) amended.....26608
157.209 Added.....26608
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157.211 (a), (b)(1) through (5), (c)(1), (2) and (3) revised; (c)(4) added; (d) removed.....26608
157.212 Removed.....26609
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157.215 (a) introductory text and (b)(1)(iii) revised.....26609
157.216 (a) introductory text amended; (a)(1), (2), (b), (c)(1), (3), (d)(1), (2) and (4) revised; (c)(5) and (d)(5) added.....26609
157.217 (a) and (b)(2) revised.....26609
157.218 (a) revised.....26609
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284.221 (d)(1), (f)(3) and (h)(3) amended; (d)(3) removed; (f)(4) revised.....26610
284.262 Revised.....26610
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343.2 (c) revised.....17097
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375.307 (a)(2), (8), (9), (17), (18), (b)(4), (5), (c), (e)(3) and (7) removed; (a)(3), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (d), (e)(4), (5) and (6) redesignated as (a)(2) through (9), (11), (12), (13), (c), (e)(3), (4) and (5); (e), (f) and (g) redesignated as (d), (e) and (f); (a)(1) and new (2), (3), (4) and (e)(3) revised; new (a)(10) added.....26611
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380.4 (a)(28) amended.....26611
380.12 Added.....26611
380.13 Added.....26617
380.14 Added.....26618
380.15 Added.....26619
380 Appendix A revised.....26619
385.206 (b) and (c) redesignated as (f) and (j); new (b), new (c), (d), (e), (g), (h) and (i) added; new (f) revised.....17097
385.213 (c)(4) and (5) added.....17099
385.218 Added.....17099
385.604 (d)(2) revised; (d)(3) and (g) removed; (d)(4), (5) and (6) redesignated as (d)(3), (4) and (5).....17099
385.605 (a)(4) and (e)(2) revised; (f) removed.....17099
385.606 (d) redesignated as (d)(1); (d)(2) and (l) added.....17099
385.2001 (b)(3) revised.....26621
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10.62 (a) amended.....16347
10.62b (c)(1) introductory text and (ii)(C) revised.....16347
12 Authority citation amended.....17531
12.104g (b) table amended.....17531
122.13 Amended.....18566
178.2 (b) table amended (OMB numbers).....16347, 16639
192 Authority citation revised.....16639
192.1 Amended.....16639
192.2 (a) amended; (b), (c) and (d) revised.....16639

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404.1220 (a) revised.....33016
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404.1574 (b)(2), (3) and (4) revised.....18570
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416.200 Revised.....31972
416.203 (b) revised.....31972
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416.420 (b)(1), (2) and (3) revised.....31973
416.421 (a) and (b) amended.....31973
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416.502 Amended 31974
416.520 (a) amended; (b)(1), (4), (c) introductory text, (1) and (d) revised 31974
416.974 (b)(2), (3) and (4) revised 18570
(b)(4) table corrected 22903
416.1160 (b)(2)(i) revised; (b)(2)(ii) and (iii) redesignated as (b)(2)(iii) and (iv); new (b)(2)(ii) added 31974
416.1163 (e)(1) revised 31974
416.1165 (f) revised 31974
416.1166 (d) revised 31975
416.1245 (b)(1), (2)(v) and (5) revised 31975
416.1335 Amended 31975
416.1801 Amended 31975
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422.112 (b) revised 33016

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652.1 (a) revised; (h) amended; interim 18761
652.3 (d) revised; interim 18762
652.5 Revised; interim 18762
652.6 Removed; interim 18762
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652.8 (j)(1) and (5) amended; interim 18762
652.200—652.216 (Subpart C) Added; interim 18762
654 (Subpart E) Authority citation revised 34965
654.403 (a)(1) and (3) amended 34965
655.100 (a)(1) amended 34966
655.101 (c) introductory text, (1), (2), and (3) amended 34966
655.106 (e) revised 34966
660 Added; interim 18693
661 Added; interim 18694
662 Added; interim 18701
663 Added; interim 18704
664 Added; interim 18713
665 Added; interim 18717
666 Added; interim 18719
667 Added; interim 18722
668 Added; interim 18736
669 Added; interim 18746
670 Added; interim 18750
671 Added; interim 18760

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2 Effective date confirmation 26657
3 Effective date confirmation 26657
5 Effective date confirmation 26657
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5.83 (c)(1) revised 23184
10 Effective date confirmation 26657
12 Effective date confirmation 26657
16 Effective date confirmation 26657
20 Effective date confirmation 26657
25 Effective date confirmation 26657
26.1 (c) corrected 16348
26.31—26.50 (Subpart B) Appendix B corrected 16348
50 Effective date confirmation 26657
54 Effective date confirmation 26657
56 Effective date confirmation 26657
58 Effective date confirmation 26657
60 Effective date confirmation 26657
70 Effective date confirmation 26657
71 Effective date confirmation 26657
74.3045 (c)(1) introductory text revised 23186
74.3602 (b)(4) redsignated as (b)(5); new (b)(4) added 32805
101 Workshop 34125
172.883 Added 29958
173.310 (c) table amended 29226
173.325 (b)(1) revised 26841
175.105 (c)(5) table amended 29554
176.170 (a)(5) table amended 27915
177.1211 Added 28098
177.1520 (c) table amended 27916
177.1585 (a) and (c)(1) revised 27178
178 Technical correction 27854
178.2010 (b) table amended 24944, 25429, 26282, 30386
178.3295 Table amended 26843
178.3297 (e) table amended 26842
184.1148 Added 19894
184.1150 Added 19895
184.1250 Added 28361
200 Effective date confirmation 26657
201 Effective date confirmation 26657
201.63 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571

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201.64 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.66 Regulation at 64 FR 13286 eff. date corrected to 5–16–99 18571
201.319 Regulation at 64 FR 13292 eff. date corrected to 5–16–99 18571
201 Regulation at 64 FR 13292 eff. date corrected to 5–16–99 18571
202 Effective date confirmation 26657
206 Effective date confirmation 26657
207 Effective date confirmation 26657
210 Effective date confirmation 26657
211 Effective date confirmation 26657
299 Effective date confirmation 26657
300 Effective date confirmation 26657
310 Effective date confirmation 26657
310.545 (a)(29) and (d)(31) added; (d) introductory text revised; eff. 5–21–01 27687
312 Effective date confirmation 19269, 26657
314 Effective date confirmation 26657
315 Added 26667
316 Effective date confirmation 26657
320 Effective date confirmation 26657
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331.30 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
333 Effective date confirmation 26657
341.74 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
341.76 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
341.80 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
346.50 Regulation at 64 FR 13295 eff. date corrected to 5–16–99 18571
352 Added; eff. 5–21–01 27687
355.50 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
358.650 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
369 Effective date confirmation 26657
369.9 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
369.20 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
369.21 Regulation at 64 FR 13296 eff. date corrected to 5–16–99 18571
510 Effective date confirmation 26657
510.600 (c)(1) table and (2) table amended 15683, 18571, 23187
514 Effective date confirmation 26657
520 Effective date confirmation 26657
520.260 (b) amended 15684
520.309 (a) revised; (c) redesignated as (d); new (d)(1) and (2) revised 32181
520.534 (d) heading amended 30387
520.600 (i) revised 18571
520.1484 Revised 31497
520.1615 Added 18573
520.1807 Added 23018
520.2184 (b) amended 15684
520.2220a (a)(2) amended 18572
520.2220b (a) removed; (b), (d) and (e) redesignated as (a), (b) and (d); new (a) and new (d)(2) revised 15684
522 Effective date confirmation 26657
522.690 (b) amended 15685
522.723 (c) amended 15684
522.800 (b) amended 15684
522.1192 (d)(2)(ii) amended 26671
522.1193 (d)(2) amended 26671
522.1660 (b) and (d)(2)(iii) amended 23187
(d)(2)(iii) revised 26670
522.2100 (a)(1), (b)(1), (c)(1), (d)(1) and (e)(1) amended 27916

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522.2478 (c) redesignated as (d); new (d)(1)(ii) revised 18573
524 Effective date confirmation 26657
529 Effective date confirmation 26657
556.344 (b)(2)(ii) added 26671
556.430 Revised 31498
556.490 Revised 26672
556.513 Added 23019
556.640 Revised 26672
556.739 Revised 18574
558.76 (d)(3)(xxi) added 18574
558.78 (d)(3)(xii) revised 26844
558.128 (d)(1) table amended 23539
558.140 (a) amended 15684
558.258 (c)(1)(i) introductory text amended 26844
558.363 (d)(2)(iii) added 18574
(d)(2)(iv) added 20164
556.366 (c) table amended 18574, 20164
558.485 (a)(17) removed 15684
558.530 (d)(5)(xxv) added 18575
(d)(5)(xxvi) added 20164
558.575 (a) revised; (c) redesignated as (d); (d)(7) added 26672
558.635 (b)(2) amended 15684
601 Authority citation revised 26668
601.33 Redesignated as 601.28 26668
601.28 Redesignated from 601.33 26668
601.30—601.35 (Subpart D) Revised 26668
640.80 (a) amended; (b) revised 26286
640.81 (c) and (e) amended; (f) revised 26286
640.82 (a) heading, (c) heading, (d) and (e) revised 26286
640.84 (a) introductory text and (b) removed; (a)(1) through (4) redesignated as (a) through (d); introductory text, new (a) and new (d) revised 26286
640.90 (a) amended; (b) revised 26286
640.91 (b)(2) and (f) revised; (c) and (e) amended 26286
640.92 (a) heading, (c) heading, (d) and (e) revised 26286
640.94 (a) revised 26286
640.100 (a) amended; (b) and (c) revised 26287
640.101 (b) amended; (e)(3), (4) and (f) removed 26287
640.102 (e) amended 26287
640.103 (b) revised 26287
640.104 (b)(2), (3), (c)(1) and (2) revised 26287
700.35 Added; eff. 5-21-01 27693
701.3 Regulation at 64 FR 13297 eff. date corrected to 5-16-99 18571
740.19 Added; eff. 5-22-00 27693
800 Effective date confirmation 26657
801 Effective date confirmation 26657
807 Effective date confirmation 26657
809 Effective date confirmation 26657
812 Effective date confirmation 26657
860 Effective date confirmation 26657
874.5350 (c) revised 18329
874.5370 (c) revised 18329
882.5860 (c) revised 18329
890.5275 (c) revised 18331
890.5300 (c) revised 18331
890.5860 (c) revised 18331
900.2 (yy) added 32407
900.4 (a)(4) amended; (c)(3)(ii), (5) introductory text, (i), (ii), and (6)(ii) revised 32407
900.12 (b)(5) and (e)(5)(vii)(A) revised 18333
(c)(2), (f)(3), and (j)(2) revised 32408

Proposed Rules:

1 ..... 15944, 32442
5 34608
101 ..... 15948, 17295
111 32830
206 34608
207 26330
250 34608
310 17985
314 34608
600 34608
601 34608
607 26330
640 26344
807 26330
884 ..... 24967, 31164
900 32443
1020 23811
1308 ..... 17298, 17299, 24094, 25405

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TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

41.2 (j) revised 28916
41.114 Removed 28916
42.72 (e)(4) amended 28916
50 Authority citation revised 19714
50.7 (d) added 19714
51 Authority citation revised 19714
51.72 (b) revised; (c) added 19714
51.80 Revised 19714
51.83 Amended 19715
51.84 Amended 19715
51.89 Revised 19715
121.1 Amended 17533
121.9 (a) revised 17533
123.4 (a) revised 17533
123.15 (b) revised 17533
123.17 (a) revised 17534
124.13 (e) revised 17534
126.5 Revised 17534
171.20—171.26 (Subpart C) Revised 25430
171.32 (j)(1), (2) and (5) amended 18808

Chapter II—Agency for International Development, International Development Cooperation Agency (Parts 200—299)

Chapter II Heading revised 15685
201.03 Revised 17535
201.23 (c) amended 17535
201.31 (f) and (g) amended 17535
201.32 (b) and (c) amended 17535
201.51 (c)(4) amended 17535
201.52 (a)(2)(iii)(C), (4)(iii) introductory text and (B) amended 17535
201.67 (a)(5)(ii) amended 17535

Chapter V—United States Information Agency (Parts 500—599)

514 Policy statement 34982
514.21 (f) revised 17976
514.32 Added 17976
514.80 (Subpart G) Removed 17976

Chapter VI—United States Arms Control and Disarmament Agency (Parts 600—699)

Chapter VI Removed 15686

Chapter VII—Overseas Private Investment Corporation (Parts 700—799)

Chapter VII Heading revised 32806

Proposed Rules:

22 28946
514 17988

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

180 Added 29750
655.601 Regulation at 61 FR 29626 confirmed; (c) and (d) revised; (e) removed 33753

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1327.3 Regulation at 62 FR 63657 confirmed 19271
1327.5 Regulation at 62 FR 63657 confirmed; (a)(1)(ii) and (c)(2) amended; (c)(3) redesignated as (c)(4); new (c)(3) added 19271
1327.6 Regulation at 62 FR 63657 confirmed 19271
(a) through (f) revised; (g) and (h) redesignated as (h) and (i); new (g) added 19272
1327.7 Added 19273

Proposed Rules:

655 33802
668 30263
777 16870

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.501 Removed 25731
5.508 (b)(1), (2), (h)(2) and (3) revised 25731

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TITLE 24 Subtitle A—Con.

5.510 (b) revised 25731
5.512 (a) revised; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 25731
5.514 (b), (c)(1), (e)(1) and (f)(1) revised 25731
5.516 (c) introductory text revised 25732
5.518 (a), (b)(3) and (5) revised 25732
5.526 Revised 25732
5.801 (c) revised 33755

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

100.304 Revised 16329
100.305 Added 16329
100.306 Added 16330
100.307 Added 16330
100.308 Added 16330
103.10 Revised; interim 18540
103.15 Revised; interim 18540
103.20 Revised; interim 18540
103.25 Revised; interim 18540
103.30 Revised; interim 18540
103.35 Added; interim 18540
103.40 Revised; interim 18540
103.42 Removed; interim 18540
103.45 Redesignated as 103.201; interim 18540
103.50 Redesignated as 103.202; interim 18540
103.55 Redesignated as 103.203; interim 18540
103.201 Redesignated from 103.45; interim 18540
103.202 Redesignated from 103.50; interim 18540
103.203 Redesignated from 103.55; interim 18540
103.202 (b) revised; interim 18541
103.204 Added; interim 18541

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

203.10 Added 29765
(e) revised 34984
203.14 Regulation at 64 FR 14574 withdrawn 19895
203.18 Regulation at 64 FR 14574 withdrawn 19895
203.200 Regulation at 64 FR 14574 withdrawn 19895
203.201 Regulation at 64 FR 14574 withdrawn 19895
203.202 Regulation at 64 FR 14574 withdrawn 19895
203.203 Regulation at 64 FR 14574 withdrawn 19895
203.204 Regulation at 64 FR 14574 withdrawn 19895
203.205 Regulation at 64 FR 14574 withdrawn 19895
203.206 Regulation at 64 FR 14574 withdrawn 19895
203.207 Regulation at 64 FR 14574 withdrawn 19895
203.208 Regulation at 64 FR 14574 withdrawn 19895
203.209 Regulation at 64 FR 14574 withdrawn 19895
234.1 Regulation at 64 FR 14574 withdrawn 19895
248.101 Amended; interim 26339
248.141 (c)(3) amended; interim 26339
248.147 (e)(1) amended; interim 26339
248.165 (a) revised; (i) amended; interim 26339
248.173 (m)(2) revised; interim 26339
248.201 Amended; interim 26339

Chapter III—Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

320.5 (a) amended; (e) and (f) revised; (g) added 34106
320.13 Revised 34107

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

791 Heading revised; interim 26339
791.101 Revised; interim 26339
791.102 Amended; interim 26339
791.401—791.407 (Subpart C) Removed; interim 26339
791.401 Amended; interim 26639

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791.402 (c)(1) designation and (2) removed; (d) revised; interim 26339
791.403 (a) and (b)(1)(i) revised; interim 26340
791.404 (c) revised; interim 26340
792 Heading revised; nomenclature change; interim 26340
792.101 Revised; interim 26340
792.102 (a) and (b) amended; interim 26340
792.103 Amended; interim 26340
792.202 (a)(1) and (2) amended; interim 26340

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

903 Forum 22550
968.110 (a) revised 33637
968.120 Revised 33637
982 Heading revised; nomenclature change; interim 26340
982.1 Heading, (a)(1), (2), (4) and (b)(2) revised; (a)(3) and (b)(1) amended; interim 26340
982.2 (a) amended; interim 26340
982.4 (a)(2), (4) and (b) amended; interim 26340
(b) amended; interim 26341
982.51 (a) revised; interim 26341
982.53 (b) and (c) revised; (d) added; interim 26341
982.54 (d)(1), (2), (14), (15) revised; (d)(16) removed; (d)(17) through (22) redesignated as (d)(16) through (21); (d)(27) added; interim 26341
982.101 (a) and (b)(2)(i) revised; interim 26342
982.103 (a) revised; (c) added; interim 26342
982.151 (a)(1) and (2) amended; (b) revised; interim 26342
982.152 (a)(1), (b)(1) and (c) revised; interim 26342
982.154 Revised; interim 26642
982.155 (a) introductory text revised; interim 26342
982.157 (b)(1) revised; (c) added; interim 26342
982.162 (a)(3) revised; interim 26342
982.201 (a), (d)(1), (2) and (e) amended; (b) and (f)(2) revised; interim 26342
982.202 (b)(1) removed; (b)(2), (3) and (4) redesignated as (b)(1), (2) and (3); new (b)(3) introductory text and (d) revised; interim 26343
982.203 (b)(1) amended; interim 26343
982.204 (b)(4) revised; (b)(5) amended; (f) added; interim 26343
982.205 (a) removed; (b) and (c) redesignated as (a) and (b); new (a)(2), (b)(1) and (3) amended; interim 26343
982.206 (b)(2) revised; (c)(1) designation and (2) removed; interim 26343
982.207 Revised; interim 26343
982.301 (b)(1) amended; (b)(2), (5) and (6) revised; interim 26344
982.302 Revised; interim 26344
982.303 Amended; heading revised; (c) amended; interim 26344
982.305 Heading, (a)(3), (4) and (b) revised; (a) introductory text, (d) and (e) amended; (a)(5) removed; interim 26344
982.306 (a), (b) introductory text and (c) introductory text amended; (c)(3) revised; (c)(5) and (6) redesignated as (c)(6) and (7); new (c)(5) added; interim 26344
982.307 Heading and (a) revised; interim 26345
982.308 Revised; interim 26345
982.309 Revised; interim 26345
982.310 (a)(1) and (d)(1)(iv) revised; (d)(2) amended; (e)(3) removed; interim 26345
982.352 (b)(1) revised; interim 26345
982.353 (b), (c)(2) and (d) revised; (f) amended; interim 26346
982.354 Removed; interim 26346
982.355 (b), (c)(1) and (6) revised; (c)(4), (8), (d)(1) and (6) amended; interim 26346
982.401 (a)(4) revised; interim 26346
982.402 (a)(3) amended; (c) revised; interim 26346

TITLE 24 Chapter IX—Con.

982.403 Heading and (c) introductory text revised; (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2); (a)(1), (b)(2) and (4) amended; interim 26347
982.405 Heading and (a) revised; (f) added; interim 26347
982.451 (b)(5) revised; interim 26347
982.452 (b)(1) amended; interim 26347
982.453 (a)(5) amended; interim 26347
982.454 Amended; interim 26347
982.455 Revised; interim 26347
982.456 (b) revised; interim 26347
982.457 Removed; interim 26347
982.501 Revised; interim 26347
982.502 Redesignated as 982.506; new 982.502 added; interim 26348
982.503 Redesignated as 982.507; new 982.503 added; interim 26348
982.504 Removed; interim 26347
Added; interim 26349
982.505 Removed; interim 26347
Added; interim 26349
982.506 Removed; interim 26347
Redesignated from 982.502; interim 26348
982.507 Redesignated as 982.518; new 982.507 redesignated from 982.503; interim 26348
982.508 Removed; interim 26347
Added; interim 26349
982.509 Redesignated as 982.519; new 982.509 redesignated from 982.511; interim 26348
Heading revised; interim 26349
982.510 Redesignated as 982.520; new 982.510 redesignated from 982.513; interim 26348
982.511 Redesignated as 982.509; interim 26348
982.512 Removed; interim 26347
982.513 Redesignated as 982.510; interim 26348
982.516 (d)(2) revised; (e) amended; (f) added; interim 26349
982.518 Redesignated from 982.507; interim 26348
982.519 Redesignated from 982.509; interim 26348
982.520 Redesignated from 982.510; interim 26348
982.521 Added; interim 26350
982.551 (b)(2) and (3) amended; interim 26350
982.552 (a)(2) amended; (b) and (c) revised; (d) and (e) removed; (f) redesignated as (d); interim 26350
982.554 (c)(4) amended; (c)(5) revised; interim 26350
982.555 (b)(4) amended; interim 26350
982.602 Revised; interim 26350
982.604 Revised; interim 26350
982.608 Heading and (a) revised; interim 26350
982.613 Heading and (c) revised; (b)(2) amended; interim 26351
982.617 Heading and (c) revised; (b)(2) amended; interim 26351
982.619 (b)(1) and (4) amended; interim 26351
982.623 Revised; interim 26351

Proposed Rules:

0—99 (Ch. IX) 24546
5 23460
200 23480
203 23480
234 23480
245 32782
761 25736
888 24866
900—999 (Ch. IX) 20232, 20234, 26923, 30450
902 33348
960 ..... 23460, 33640
964 33644
966 23460
968 23484
982 23488
984 23460
990 ..... 17301, 30451

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

61 Authority citation revised 19898
61.4 (s) revised 19898
291 Added 17543

Proposed Rules:

1—299 (Ch. I) 18585
20 ..... 24296, 34173

151 ..... 17574, 30929
500—599 (Ch. III) 22888

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Authority citation amended 23189, 26851
1.61–8 (b) amended 26851
1.79–1 (d)(7) revised 29790
1.79–3 (d)(2) revised; (e) and (f) redesignated as (f) and (g); new (e) added 29790
1.170–14 (h)(4) amended 23228
1.170A–6 (c)(5) Example 2 amended 23189
(c)(5) Examples 1, 2 and 3 amended 23228
(c)(5) Examples 2 and 3 corrected 33196
1.170A–12 (b)(2), (c), (e)(2) and (3) amended 23228
1.170A–12T Added 23189
(b)(2) corrected 33195
1.367(a)–3 (a) and (d)(3) Example 6 corrected 15687
1.367(b)–4 (b)(5)(i) and (ii) Example corrected 15687
1.451–1 (g) added 26851
1.461–1 (a)(1) amended; (a)(2)(iii)(E) added 26851
1.461–4 (d)(3)(ii)(A) designation, heading and (B) added; (d)(7) introductory text amended 26851
1.467–0 Added 26851
1.467–1 Added 26852
1.467–2 Added 26859
1.467–3 Added 26860
1.467–4 Added 26863
1.467–5 Added 26865
1.467–7 Added 26867
1.467–8 Added 26875
1.467–9 Added 26875
1.642(c)–6 Heading, (d) and (f) revised; (e) redesignated as 1.642(c)–6A(e); new (e) added 23190
1.642(c)–6T Added 23190
1.642(c)–6A Undesignated center heading revised 23199
1.642(c)–6A (e) redesignated from 1.642(c)–6(e) 23190
Heading, (e) heading, (2)(ii), (3), (4) and (5) introductory text revised; (e)(1) and (5) Table S amended 23199
(e)(2)(i) amended 23228
(e)(2)(i) corrected 33196
1.664–1 (a)(5)(ii)(*b*)(*1*) and (iv) introductory text amended 23228
(e)(6) introductory text amended 23229
1.664–2 (c) amended 23229
1.664–4 (a)(1) and (f) revised; (d) removed; (e) heading, (1) through (5), (6) heading, introductory text and Table U(1) redesignated as 1.664–4A(e) heading, (1) through (5), (6) heading, introductory text and Table U(1); (d) through (e)(5), new (6) heading and introductory text added 23199
1.664–4T Added 23200
1.664–4A Undesignated center heading revised 23209
1.664–4A (e) heading, (1) through (5), (6) heading, introductory text, Table U(1) redesignated from 1.664–4(e) heading, (1) through (5), (6) heading, introductory text and Table U(1) 23199
Heading, (d)(6) introductory text, (e) heading, (3), (4), (5) and (6) heading revised; (d)(4) and (e)(1) and (6) introductory text amended; (d)(6) Table D removed 23209
1.904–4 (c)(1) and (2)(i)(A) amended 32181
1.6038B–1 (b)(1)(i), (3) introductory text, (c) and (g) corrected 15686
(b)(2)(i) introductory text corrected 15687
1.6038B–2 (j)(1)(ii) corrected 15686
1.7520 (c)(1) heading, (2) heading, introductory text and (d) revised; (b)(2) and (c)(2)(iii) amended 23210
1.7520–1 (a)(2), (3) and (c)(1) amended 23229
1.7520–1T Added 23210
(c)(2) heading and (iii) corrected 33195
7 Technical correction 15687

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TITLE 26 Chapter I—Con.

20 Authority citation amended 23210
20.2031–0 Revised 23211
20.2031–7 Heading, (c) through (d)(5), (6) heading, introductory text and (e) revised; (d)(6) Tables S and 80CNSMT transferred to 20.2031–7A 23212
20.2031–7T Added 23212
(c) table and (d)(7) table corrected 33195
20.2031–7A Undesignated center heading revised 23211
20.2031–7A Heading revised; (e) added 23211
(e)(4) Tables S and 80CNSMT transferred from 20.2031–7 and amended 23212
(e)(4) corrected 33195
20.2032–1 (f)(1) and (2)(iv) Examples 1, 2 and 3 amended 23229
20.2055–2 (f)(4) revised 23222
(f)(2)(iv) Example 3 corrected 33196
20.2056A–4 (c)(4)(ii)(B) and (d) Example 4 amended 23229
(c)(4)(ii)(B) corrected 33196
20.7520–1 (b)(2) and (c)(2)(iii) amended; (c)(1) heading, (2) heading, introductory text and (d) revised 23222
20.7520–1T Added 23223
(c)(2) heading corrected 33195
25 Authority citation amended 23223
25.2512–0 Revised 23223
25.2512–5 Heading, (c), (d) and (e) revised 23224
25.2512–5T Added 23224
25.2512–5A Undesignated center heading revised 23226
25.2512–5A Heading revised; (e) added 23226
25.7520–1 (b)(2) and (c)(2)(iii) amended; (c)(1) heading, (2) heading and (d) revised 23227
(c)(1) corrected 33196
25.7520–1T Added 23227
(c)(2) heading corrected 33195
25.7520–3 (b)(2)(v) Example 5 and (4) Example revised 23228
31 Authority citaiton amended 32408
31.3121(v)(2)–1 (b)(5) Examples 10 and 11 and (g)(5) Example 8 corrected 15687
31.6302–1 (f)(4) revised 32409
31.6302–1T Removed 32409
54 Technical correction 15873
301 Authority citation amended 17285
301.6104(d)–2 Added 17285
301.6104(d)–3 Added 17285
301.6104(d)–4 Added 17288
301.6104(d)–5 Added 17289
602 Technical correction 15687
Technical correction 15873
602.101 (a) amended; (b) removed; (c) redesignated as (b) 15688
(b) table amended (OMB numbers) 17290

Proposed Rules:

1 ..... 16372, 23245, 23554, 23811, 24096, 25222, 26348, 26924, 27221, 27730, 27936, 31770, 32209, 32305
20 ..... 23245, 23811
25 ..... 23245, 23811, 33235
31 23811
40 23811
49 22819
54 15873
301 ..... 16640, 19217, 31529, 35102
602 15873

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

178.11 Amended 17291
178.22 (a)(3) and (b) amended 17291
178.25 Amended 17291
178.35 Amended 17291
178.41 (b) and (c) amended 17291
178.45 Amended 17291
178.47 Amended 17291
178.48 Amended 17291
178.52 Amended 17291
178.53 Amended 17291
178.54 Amended 17291
178.56 (b) amended 17291
178.57 (a) amended 17291
178.60 Amended 17291
178.71 Amended 17291
178.72 Amended 17291
178.73 Amended 17291
178.74 Amended 17291

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178.76 Amended 17291
178.78 Amended 17291
178.95 Amended 17291
178.111 (b)(1) and (c) amended 17291
178.115 (a) amended 17291
178.122 (c) amended 17291
178.123 (c) amended 17291
178.124 (i) amended 17291
178.125 (h) amended 17291
178.126 Amended 17291
178.127 Amended 17291
178.130 (e) amended 17291
178.144 (i)(4) amended 17291

Proposed Rules:

4 ..... 17588, 33448
5 17588
7 17588
9 24308
178 33450
179 33450

CHANGES JULY 1, 1998 THROUGH JUNE 30, 1999

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

0.29—0.29j (Subpart E–4) Added **36847**
0.29e (a)(1) corrected **40788**
0.39c Removed; interim **62938**
0.96 (f) and (s) removed; (g) through (v) redesignated as (f) through (t) 4295
0.100 (b) amended 4295
0.115 Revised **51519**
0.116 Amended **51519**
0.132 (b), (c) and (d) revised; (e) removed 6526
2.1—2.67 Designated as Subpart A; heading added; interim **39176**
2.20 Amended; interim **39176**
2.62 Redesignated as 2.68 (Subpart B); new 2.62 redesignated from 2.63; interim **39176**
(c) added; interim 5613
2.63 Redesignated as 2.62; new 2.63 redesignated from 2.64; interim **39176**
2.64 Redesignated as 2.63; new 2.64 redesignated from 2.65; interim **39176**
2.65 Redesignated as 2.64; new 2.65 redesignated from 2.66; interim **39176**
2.66 Redesignated as 2.65; new 2.66 redesignated from 2.67; interim **39176**
2.67 Redesignated as 2.66; interim **39176**
2.68 (Subpart B) Redesignated from 2.62; interim **39176**
2.70—2.89 (Subpart C) Added; interim **39176**
2.71 (b) revised; interim 5613
2.75 (a) revised; interim 5613
2.76 (c) and (d) redesignated as (d) and (e); new (c) added; interim 5613
2.77 (a) and (e) amended; (c) revised; interim 5614
2.78 (d) amended; interim 5614
2.80 (f) table revised; interim **57061**
(f) table amended; interim 5613
(g) heading and (6) revised; interim 5614
2.87 Revised; interim 5613
2.89 Amended; interim 5614
16.2 (b)(9) corrected **51401**
16.3 (a) corrected; CFR correction **51300**
(a) corrected **51401**
16.8 (c) corrected **51401**
16.11 (b)(7) correctly revised **36295**
(e), (g), (i)(1) and (3) corrected **51401**
16.40 (a), (b)(1) and (2) corrected **51401**
16.41 (a) and (b) corrected; CFR correction **51300**
(a) and (d) corrected **51401**
Corrected; CFR correction 23019
16.42 (b) and (c) heading corrected **51401**
16.50 (a) corrected **51401**
16.54 (c)(4) corrected **51401**
16.80 (c) and (d) added 17977
16.96 (p) and (q) added **65062**
16 Appendix I corrected **51401**
23 Policy clarification **71752**
25 Added **58307**
27 Added; interim **62938**
31 Heading and authority citation revised 19676
31.1—31.403 (Subpart A) Redesignated as Subpart A 19676
31.1—31.3 (Subpart A) Designation removed 19676
31.1 Amended 19676
31.100—31.103 (Subpart B) Designation removed 19676
31.200—31.203 (Subpart C) Designation removed 19676
31.200 Amended 19676
31.300—31.304 (Subpart D) Designation removed 19676
31.300 Amended 19676
31.400—31.403 (Subpart E) Designation removed 19676
31.500—31.503 (Subpart B) Added 19676
33 Heading and authority citation revised **50761**
33.1—33.80 Designated as Subpart A **50761**
33.1—33.3 (Subpart A) Designation removed **50761**
33.1 Amended **50761**
33.3 Amended **50761**
33.10—33.12 (Subpart B) Designation removed **50761**
33.20—33.23 (Subpart C) Designation removed **50761**

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TITLE 28 Chapter I—Con.

33.30—33.32 (Subpart D) Designation removed **50761**
33.40—33.41 (Subpart E) Designation removed **50761**
33.40 Amended **50761**
33.50—33.52 (Subpart F) Designation removed **50761**
33.60—33.61 (Subpart G) Designation removed **50761**
33.70—33.71 (Subpart H) Designation removed **50761**
33.80 (Subpart I) Designation removed **50761**
33.100—33.103 (Subpart B) Added **50761**
36.407 Revised **64837, 64838**
68 Heading revised; interim 7073
68.1 Revised; interim 7073
68.2 Revised; interim 7073
68.3 Revised; interim 7074
68.6 Revised; interim 7074
68.7 Revised; interim 7074
68.9 Revised; interim 7075
68.10 Revised; interim 7075
68.14 Revised; interim 7075
68.18 Revised; interim 7076
68.22 Revised; interim 7076
68.23 Revised; interim 7076
68.24 Revised; interim 7077
68.27 Revised; interim 7077
68.33 Revised; interim 7077
68.38 Revised; interim 7078
68.42 Revised; interim 7079
68.52 Revised; interim 7079
68.53 Revised; interim 7081
68.54 Revised; interim 7082
68.55 Added; interim 7082
68.56 Added; interim 7083
68.57 Added; interim 7083
68.58 Added; interim 7083
70.24 Reinstated in part; CFR correction 19898
70.25 Reinstated in part; CFR correction 19898
77 Revised; interim 19275
79.4 (c)(3) and (4) redesignated as (c)(4) and (5); (c)(1), (2), new (4) and new (5) revised; new (c)(3) added 13690
79.5 (c) added 13690
79.21 (d) amended 13691
79.27 Heading, (a) and (b) revised; (c) redesignated as (e); new (c) and (d) added 13691
79.31 (e) and (f) revised; (h) amended 13691
79.36 (a) amended; (d)(1)(ii) revised; (e) added 13691
79.37 Heading, (a) and (b) revised; (c) and (d) added 13692
79.51 (j)(3) and (4) revised; (j)(5) added; concluding text amended 13692
79.55 (d)(1)(i) and (ii) revised 13692
79 Appendix A revised 13692
92 Heading and authority citation revised **50146**
Regulation at 63 FR 50146 confirmed 32806
92.1—92.6 Designated as Subpart A **50146**
Regulation at 63 FR 50146 confirmed 32806
92.5 (b)(7) amended; interim 33018
92.7—92.13 (Subpart B) Added **50146**
Regulation at 63 Fr 50146 confirmed 32806

Chapter III—Federal Prison Industries, Inc., Department of Justice (Parts 300—399)

345.11 (g) added; eff. 7–15–99 32169
345.35 (a) revised; eff. 7–15–99 32169
345.42 (d) added; eff. 7–15–99 32170

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

500.1 (d) revised **55775**
503 Revised **55775**
504 Removed 17270
524.12 (c) revised 9429
540.11 Amended; eff. 7–15–99 32171
540.12 (d) revised; eff. 7–15–99 32171
540.21 (b) amended; eff. 7–15–99 32171
540.51 (b)(3) amended 25795
545.26 (e) revised **67560**
551.22 Regulation at 59 FR 62968 confirmed 9430
551.23 Regulation at 59 FR 62968 confirmed 9430
551.24 Regulation at 59 FR 62968 confirmed 9430
551.90 (Subpart I) Revised **55774**
571.71—571.72 (Subpart H) Added; interim **69387**

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65 17128
81 28422
90 20090
302 ..... 1082, 11821, 24547
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511 9431
540 ..... 20126, 27166
543 32172
551 ..... **65502**
541 9432
549 10094
551 24468
552 9431

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

44 Added **70261**
70a Redesignated as part 71 ..... **56741**
71 Redesignated from part 70a and revised **56741**
96 Revised 14539
99 Added 14541

Chapter IV—Office of Labor-Management Standards, Department of Labor (Parts 400—499)

406.10 OMB number **46888**
408.13 OMB number **46888**

Chapter X—National Mediation Board (Parts 1200—1299)

1208 Authority citation revised **44394**
1208.2 Revised **44394**
1208.6 Revised **44395**

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1601.74 Footnote 4 correctly added; CFR correction 23019
1608 Regulation at 62 FR 17543 confirmed 28742
1603.107 (d) amended 28744
1650 Authority citation revised 28917
1650.101 Amended 28917
1650.201 Added 28917
1650.301 Amended 28917
1650.401 (Subpart D) Added 28917

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1910 Meeting **39029**
Technical correction 22552
1910.1—1910.8 (Subpart A) Authority citation revised 13908
1910.6 (b)(1), (e)(50), (q) introductory text and (4) revised; (e)(51) through (70) and (q)(5) through (q)(32) redesignated as (e)(53) through (72) and (q)(6) through (33); new (e)(51), new (52) and new (q)(5) added 13908
1910.16 (a)(2)(x) and (b)(2)(xiv) added; (b)(2)(xii) and (xiii)(D) amended **66270**
1910.94—1910.98 (Subpart G) Authority citation revised 13909
1910.94 (d) removed 13909
1910.101—1910.120 (Subpart H) Authority citation revised 13909
1910.108 Removed 13909
1910.122—1910.126 Undesignated center heading and sections added 13909
1910.141—1910.147 (Subpart J) Authority citation revised **66038**
Authority citation corrected 204
1910.146 (c)(5)(i)(E), (ii)(C), (F), (H), (7)(iii), (e)(3), (k)(1), (2) and (3)(i) revised; (d)(3)(ii) through (v) redesignated as (d)(3)(iii) through (vi); new (d)(3)(ii), (5)(iv), (v), (vi) and (l) added **66038**
Note amended; Appendix F added **66039**
1910.176—1910.184 (Subpart N) Authority citation revised **66270**
1910.178 (l) revised; Appendix A added **66270**

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TITLE 29 Chapter XVII—Con.

1910.1052 (d)(3), (j)(9)(i)(A), (B) and (n)(2) revised; (j)(10) through (14) added 50729
Second (g) correctly removed; CFR correction 13700
1915 Meeting 39029
Authority citation revised 66274
Technical correction 22552
1915.120 Added 66274
1917 Technical correction 22552
1917.1 (a)(2)(xii) and (xiii)(D) amended; (a)(2)(xiv) added 66274
1918 Authority citation revised 66274
Technical correction 22552
1918.1 (b)(8) and (9)(iv) amended; (b)(10) added 66274
1926 Meeting 39029
Technical correction 22552
1926.5 Table amended (OMB numbers) 18810
1926.600—1926.606 (Subpart O) Authority citation revised 66274
1926.602 (d) added 66274
1952.354 (b) revised 53281
1952.355 (b) amended 53281

Chapter XX—Occupational Safety and Health Review Commission (Parts 2200—2499)

2200.120 (Subpart H) Added; eff. 2–19–99 through 2–22–00 8246

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2509.99–1 Added 33000
2520.102–3 (u) revised; interim 48375
2590 Authority citation revised 57556
2590.711 Revised; interim 57556

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2704 Authority citation revised 63175
2704.100 Revised 63175
2704.102 Revised 63175
2704.104 (b) through (e) revised; (f) and (g) removed 63175
2704.105 Revised 63176
2704.106 (b) revised 63176
Corrected 31895
2704.107 (a) revised 63176
2704.108 Revised 63176
2704.201—2704.206 (Supart B) Revised 63176
2704.305 Revised 63177
2704.307 Revised 63177
2704.308 (c) revised 63178

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4007.11 (a)(1) and (2)(ii) amended; (c)(1) revised 68685
4011 Appendix A amended 38306
Appendix B amended 63179
4022 Appendix amended 63179
4022.7 (b)(1) revised; (d) added 38306
4041A.43 (b)(1) amended 38306
4044.52 (b) introductory text revised 38306
4044.54 Amended 38306
4044 Appendix B amended 38083, 43623, 49286, 55334, 63409, 68999
Appendix B corrected 58101
Appendix D amended 63180
Appendix B amended 2570, 7084, 12746, 18576, 26288, 31976
Appendix B corrected 32103
4050.2 Amended 38306
4050.5 (a)(2) amended 38306
4050 Appendix A amended 38306
4281.13 (a) introductory text amended; (b) removed; (a)(1) through (5) redesignated as (a) through (e) 38307
4281.14 Heading and (a) amended 38307
4281.15 Removed 38307

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5 17442
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57 40800
77 40800
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1625 19952
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4022 ..... 57228, 57229
4044 ..... 57228, 57229
4050 57229

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

21 Removed 47119
24 Removed 47119
48 Authority citation revised 53759
48.2 (a)(1) introductory text amended; (a)(1)(ii) removed; (a)(1)(iii) redesignated as (a)(1)(ii); (a)(2) and (b) revised 53759
48.3 (a) introductory text amended 53759
48.5 (d) revised 53760
48.6 Heading, (a), (b) introductory text and (7) revised; (b)(8) and (9) redesignated as (b)(12) and (13); new (b)(8), new (9), (10), (11), (c), (d) and (e) added 53760
48.8 (c) revised 53760
48.22 (a)(1) introductory text amended 53759
(a)(1)(ii) removed; (a)(1)(iii) redesignated as (a)(1)(ii); (a)(2) and (b) revised 53760
48.23 (a) introductory text amended 53759
48.25 (d) revised 53760
48.26 Heading, (a), (b) introductory text, (5) and (7) revised; (b)(8) redesignated as (b)(12); new (b)(8), (9), (10), (11), (c), (d) and (e) added 53760
48.28 (c) revised 53761
75.161 Revised; eff. 10–6–99 53761
75.506 (d) revised 47119
75.1909 (c)(5) correctly revised; CFR correction 50993
77 Authority citation revised 58613
77.107–1 Revised; eff. 10–6–99 53761
77.1709 Removed 53761
77.1713 (d)(3) and (4) revised; (d)(5) added 58613

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

203.50—203.91 (Subpart B) Heading amended 57249
203.50 (a) amended 57249
203.84 (b) introductory text amended; (b)(7) and (c) revised 57249
208 Authority citation revised 26251
208.2 Amended 26251
208.16 Revised 26251
241.20 Removed 26251
241.50—241.80 (Subpart B) Revised 26251
243 Revised 26254
250.101 (e) Table 1 amended 37068
250.204 (b)(1)(vii) amended 9065
250.413 (c) amended 9065
250.604 Amended 9065
250.806 (a)(3) revised 37068
250.900 (b) amended 9065
250.901 (b)(3)(iv) amended 9065
250.911 (b)(4)(ii) amended 9065
250.1000 (c) revised 43880
250.1001 Amended 43881
250.1007 Heading and (a) introductory text revised; (a)(2) amended 43881
250.1009 (b)(2) revised 9065
250.1403 Revised 9065
250.1404 (d) added 42711
(b) revised 9066
250.1406 (b) revised 9066
253 Added (OMB numbers pending) 42711
Workshop 43624
253.15 (f) corrected 48578
256.52 (b) revised; (c) and (h)(2) amended 9066
256.56 (a)(1) amended 9066
256.70 Amended 9066
256.73 (a) and (b) amended 9066
256.76 (a)(3) amended 9066
256.77 (d)(3) amended 13343
270.6 Amended 9066
270.7 Amended 9066
282.28 (a) amended 9066

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TITLE 30 Chapter II—Con.
290 Revised 26257

Chapter VI—Bureau of Mines, Department of the Interior (Parts 600—699)

602 Removed; interim **40178**
Regulation at 63 FR 40178 confirmed **66762**

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

707.5 Amended 7482
707.10 Revised 7482
874.10 Added 7482
874.17 Added 7483
901.10 Revised 20165
901.15 Table amended **35807, 66987**
901.20 Revised 20166
902.15 Table amended 8514
902.16 (b)(8) revised 8514
904.10 Revised 20166
904.15 Table amended **49429, 65067**
904.16 Removed 20166
904.20 Revised 20166
913.10 Revised 20166
913.15 Table amended 6200
913.16 Removed 6201
913.20 Revised 20166
913.25 (b) table amended 3419
914 Clarification 28362
914.10 Revised 20166
914.15 Table amended **39729, 51829**
Table amended 12896, 31693
914.16 (n), (p) and (gg) removed **51829**
(h) removed 31693
914.17 Added 12896
914.20 Revised 20166
915.10 Revised 20166
915.20 Revised 20167
916.10 Revised 20167
916.20 Revised 20167
917.15 Table amended **40827, 41427**
917.16 (b) removed **40827**
(n) added **41427**
917.17 (a) removed **40827**
Corrected **47091**
917.30 Added **53257**
918.10 Revised 20167
918.15 Table corrected **38881**
918.20 Revised 20167
920.15 Table amended 17980
920.16 (a) removed 17980
924.10 (b) removed **43320**
924.15 Table amended **43321**
924.16 (a) and (e) removed; (f) through (n) added **43321**
925.10 Revised 20167
925.20 Revised 20167
926.10 (a) revised 3610
926.15 Table amended 3610, 3615
926.16 (f) through (j) removed; (k) added 3610
(l) added 3615
926.21 Added 3610
926.30 Revised **40794**
934.15 Table amended **49434**
Table amended 1130, 12900
934.16 (y) and (z) removed **49434**
(aa) and (bb) removed 1130
935.15 Table amended **51833, 66989**
Table amended 17981
936.10 Revised 20167
936.15 Table amended **42579**
Table amended 3423
936.20 Revised 20168
938.15 Table amended 14619, 30388
938.16 (cccc) through (ffff) added 14619
(cccc) through (ffff) removed 30388
938.25 Table amended 14619
943.10 Revised 20168
943.15 Table amended 23542
943.20 Revised 20168
943.25 Table amended **65070**
944.15 Table amended **63611**
944.16 (f) removed **63611**
Correctly removed **66989**
944.25 Table amended 8517
946.15 Table amended 23545
946.16 (a) revised 23545
948.15 Table amended **37777**
Table amended 6217, 26295
948.16 (nnn) and (ooo) revised; (ppp) removed **37777**
(www) through (hhhh) added 6217
(iiii) added 26295

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48 18498
56 ..... **45973**
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57 ..... **45973, 47120, 58104**

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904 ..... **41506, 48661**
913 ..... **63628, 63630, 68218**
914 ..... 6150, 14412, 27484
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917 ..... **45430**
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924 ..... **44192**
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946 ..... **71047, 71049**
948 ..... **39790, 68221**
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950 ..... **40384, 70080**

TITLE 31—MONEY AND FINANCE: TREASURY

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

103 Technical correction 37777
103.22 Revised 50156

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

205.4—205.18 Appendix A revised 24243
208 Revised **51502**
210 Revised 17487
225 Revised 4763
285 Regulation at 62 FR 34179 confirmed **46140**
Authority citation revised **67756, 72094**
285.1 Regulation at 62 FR 36210 confirmed; (a) amended; (g), (m), (n) and (o) revised; (j)(5) added **46145**
285.3 Added **72094**
285.4 Added; interim **44988**
Regulation at 63 FR 44988 confirmed **71204**
285.11 (g)(2) revised 22908
285.12 Heading, (b), (c)(3), (d)(4), (f), (g), (h) and (j) revised; (c)(4), (d)(5)(iii) and (6) added; (a) amended 22908
285.13 Added **67756**
317 Authority citation revised **38041, 64550**

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TITLE 31 Chapter II—Con.

317.0 Revised 38041
317.1 (d) revised 38041
Revised 64550
317.2 Revised 64550
317.3 (a) introductory text revised; (b) and (c) amended 64550
317.6 (b) revised 64550
317.8 Appendix amended 38041
Appendix amended 64550
317.9 (b)(2) removed; (b)(1) redesignated as (b); new (b) table amended 38041
321 Authority citation revised 38042
321.0 (a) and (b) revised 38042
321.1 (o) revised 38042
321.3 (c) revised 38042
321.6 Revised 38042
321.7 (a) and (g) revised 38042
321.9 (a) revised 38042
321.12 Revised 38042
321.25 (b)(2) removed; (b)(1) redesignated as (b); new (b) table amended 38042
321 Appendix amended 38042, 38043
330 Authority citation revised 38044
330.1 (f) revised 38044
330.5 (a) revised 38044
330.6 (a) revised 38044
330.7 Revised 38044
330.8 Revised 38044
330.9 (b)(2) removed; (b)(1) redesignated as (b); new (b) table amended 38044
330.10 Revised 38044
351.1 Revised 64551
351.5 Revised 64551
353 Authority citation revised 64551
353.6 (b)(4) amended 64551
353.13 (c)(3) amended 64551
353.21 (a) revised 64551
353.27 Revised 64551
356.2 Amended 3634
356.20 (b) revised 3634
356.21 (a) amended 3634
356.23 Revised 3634
356 Appendix B and Exhibit A amended 3634
357 Determination 35807, 50159
357.22 (a) introductory text revised 6527
357 Appendix B amended 69191
359 Added 38044
359.2 (e)(1)(i) through (v) revised 45946
359.3 (b)(1) revised 45947
360 Added 38049
370 Authority citation revised 64552
Heading revised 64552
370.0—370.1 (Subpart A) Revised 64552
370.20—370.25 (Subpart C) Heading revised 64553
370.30—370.31 (Subpart D) Redesignated as 370.60—370.61 (Subpart F) 64553
370.30—370.38 (Subpart D) Added 64553
370.50—370.57 (Subpart E) Added 64554

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

501.803 Correctly revised 35809
501.807 Revised 5614
515.206 Heading revised; (a) through (d) redesignated as (a)(1) through (4); (a) heading and new (b) added; new (a)(3) and new (4) amended 25812
515.302 (b) redesignated as (c); new (b) added 25812
515.407 Amended 25812
515.415 (b) and (c) amended 25812
515.416 Removed 25812
515.417 Removed 25812
515.418 (b) amended 25812
515.419 Removed 25812
515.420 Added 25812
515.518 Removed 25813
515.521 Removed; new 515.521 redesignated from 515.567 25813
515.522 Redesignated from 515.568 25813
515.523 (b)(3) amended 25813
515.525 (b) amended 25813
515.527 Existing text designated as (a)(1); (a)(2) added 25813
515.533 Heading, (a) introductory text, (1) and (d) revised; (e), (f) and note added 25813
515.540 Redesignated as 515.569 25813
515.545 (b) amended; (c) added 25813
515.546 Redesignated from 515.558 25813
515.550 Redesignated from 515.571 and revised 25813
515.551 (a)(3) amended 25813
515.556 Removed 25813
515.558 Redesignated as 515.546; new 515.558 redesignated from 515.562 25813

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515.559 (b)(2) and note added 25814
515.560 Corrected 35808
Revised 25814
515.561 Added 25815
515.562 Redesignated as 515.558 25813
Added 25815
515.563 Removed 25813
Added 25815
515.564 Removed 25813
Added 25815
515.565 Removed 25813
Added 25815
515.566 Redesignated as 515.572 25813
Added 25815
515.567 Redesignated as 515.521 25813
Added 25815
515.568 Redesignated as 515.522 25813
515.569 Removed; new 515.569 redesignated from 515.540 25813
Revised 25818
515.570 Added 25818
515.571 Redesignated as 515.550 25813
Added 25815
515.572 Redesignated as 515.573; new 515.572 redesignated from 515.566 25813
Amended; heading and (c)(4)(i) revised; (c)(4)(ii), (d)(2), (e)(2)(ii)(A), (D) and (3)(iii) introductory text amended 25819
515.573 Removed 25813
Redesignated from 515.572 25813
515.574 (a) introductory text revised 25819
515.575 Added 25819
515.576 Added 25820
538 Added 35810
539 Added 8716
560 Authority citation revised 62941
560.201 Revised 20170
560.204 Revised 20170
560.205 Revised 20170
560.206 Revised 20170
560.207 Revised 20170
560.208 Revised 20171
560.210 (c) and (d) revised 20171
560.301 Revised 20171
560.306 Revised 20171
560.308 Revised 20171
560.315 Heading, (a) introductory text, (b) introductory text and (1) revised 20171
560.318 Removed 20171
560.319 Revised 20171
560.403 Added 20172
560.406 Revised 20172
560.410 Revised 20172
560.411 Removed 20172
560.412 Revised 20172
560.414 Revised 20172
560.416 Added 20172
560.417 Added 20172
560.418 Added 20173
560.419 Added 20173
560.420 Added 20173
560.501 (d) and (e) added 20173
560.505 Revised 20173
560.506 Revised 20174
560.509 (a)(1) revised 20174
560.511 Added 20174
560.515 (a) revised; (d) removed 20174
560.516 (a)(3), (4) and (b) revised 20174
560.523 Revised 20175
560.525 Corrected 35808
560.529 Added 20175
560.603 Revised 62941
560 Appendix added 20175
575 Authority citation revised 62942
575.522 Heading revised; (a)(2) and (3) amended; (a)(4) added 62942
585 Authority citation revised 59884
585.528 Heading revised; (d) added 59884
586 Added 54576
Chapter V Appendix A amended 34986, 34987, 34992
Appendix A amended; Appendix B removed; Appendix C redesignated as Appendix B 34991

Chapter VII—Federal Law Enforcement Training Center, Department of the Treasury (Parts 700--799)

700 Revised 39730

Proposed Rules:

1 71050
..... 1152, 24454
10 31994
100 4063
103 37085
200—399 (Ch. II) 1149
212 54426
285 ..... 41688, 44991

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TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

41 Removed **56081**
83 Removed **43624**
84 Removed **43624**
171 Added 29228
199.2 (b) amended **59232**
(b) amended 7087, 11768
199.4 (g)(48) revised **59232**
(e)(20) and (i) added 7087
(g)(70) and (71) removed 11769
199.6 (a)(11) removed; (a)(12) redesignated as (a)(11) **48445**
(a)(8), (c)(1) and (2) revised; (b)(1)(iii) removed; (f) and (g) redesignated as (a)(14) and (15); (a)(12), (13) and new (f) added 11769
199.8 (b)(3)(iii), (iv) and (v) revised **59232**
199.9 (m) added **48445**
199.14 (a)(1) introductory text, (i)(C)(*6*)(*iv*), (ii)(C)(*10*) and (iii)(D)(*1*) amended; (a)(1)(ii)(C)(*2*), (*3*), (*4*), (iii)(B), (D)(*5*), (E)(*1*)(*i*)(*A*), (*B*), (*ii*)(*A*), (*B*), (G)(*3*) introductory text, (d)(3)(iv) and (h) introductory text revised; (a)(1)(ii)(D)(*5*) through (*8*) redesignated as (a)(1)(ii)(D)(*6*) through (*9*); new (a)(1)(ii)(D)(*5*) and (h)(1)(iii)(D) added **48446**
(h)(1)(i)(D) added **56082**
199.15 (b)(4)(iii)(B), (c)(2), (d)(2)(iii), (e)(3)(i) and (ii) revised **48447**
199.17 (o)(2) and (3) revised; (o)(4) and (5) redesignated as (o)(5) and (6); new (o)(4) added 13913
199.18 (d)(3)(v) introductory text revised **48448**
204.4 (c)(1)(vii) thorugh (ix) corrected **36992**
204.6 (a)(1), (4) and (b)(1)(v) corrected **36992**
204.8 Corrected **36992**
216 Revised **56821**
234.1 Amended **49003**
234.7 (e) amended **49003**
234.13 (e) amended **49003**
234.14 Amended **49003**
234.17 (b)(3)(i), (ii), (c)(1)(ii), (2), (3)(i), (ii), (4)(i) and (ii) amended **49003**
235 Added 6218
270.2 (c) through (k) redesignated as (e) through (m); new (c) and (d) added; interim **68194**
270.6 (b)(2) amended; (b)(3) and (4) added; interim **68195**
270.8 Amended **68195**
270.11 Revised **68195**
270 Appendix A amended **68195**
286 Revised **65420**
286.4 (d)(3)(ii)(B) correctly designated **67724**
286.24 (f)(2) corrected **67724**
290.4 Amended 1130
290.5 (a) amended 1130
290.6 (a)(1)(i), (2) introductory text, (3) introductory text, (iii) and (b)(2)(iii) amended; (a)(3)(vii) removed; (a)(3)(viii) redesignated as (vii) 1130
290.7 (b), (d), (e)(1), (3), (f)(4), (5)(i)(D), (ii) introductory text and (iv) amended 1131
290 Appendixes A and B amended 1131
Appendix B corrected 25405
311 Revised 22785
311.6 (c)(2) correctly designated 27694
311.7 (c)(7) removed **59718**
318 Heading revised **60212**
318.1 (b)(1), (c) and (d) amended **60212**
318.2 Amended **60212, 60213**
318.3 (a) through (d) amended **60212**
(d) footnote 1 amended **60213**
318.4 (a) amended **60212**
(d) amended **60213**
318.5 (a) amended **60212**
318.6 (a) amended **60212**
(b) amended **60213**
318.8 (b) amended **60213**
318.9 (a), (b) introductory text, (1) and (4) amended **60212**
318.10 Amended **60212**
318.11 (a), (b), (d) introductory text and (3)(i) amended **60212**

Chapter V—Department of the Army (Parts 400—699)

556 Removed 14620
588 Removed **37069**

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655 Revised **53810**

Chapter VI—Department of the Navy (Parts 700—799)

706.2 Tables One and Three amended **44785**
Table Four amended 2571, 25435
Tables One and Five amended 2572, 25436
Table Five amended 2573, 25433, 25434
Tables Four and Five amended 3424, 25437, 25438, 25821
Table One amended 25820
Corrected 31037

Chapter VII—Department of the Air Force (Parts 800—1099)

812 Removed 17101
863 Removed 17545
881 Revised 33400
888g Removed **68685**

Chapter XIX—Central Intelligence Agency (Parts 1900—1999)

1903 Revised **44786**
1903.4 (a)(3)(ii) correctly designated 27041

Proposed Rules:

44 ..... **45975**
199 ..... **36651**
..... 32451
287 27663
299 ..... **52208**
581 ..... **51875**
655 ..... **37296**
775 9286
884 29252

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

3.35–1 (b) revised 34711
4.02 Table amended 34712
20 Revised; interim 28062
20.204 Table corrected 34540
20.304 (e)(1) correctly revised 34541
33—55 (Subchapter B) Heading amended 6528
40.1 Amended 34712
55 Added 6528
62 Implementation date 10104
66.05–100 (a) removed; (b) through (j) redesignated as (a) through (i); new (i) revised **55947**
84.24 Redesignated from 84.27 34712
84.27 Redesignated as 84.24 34712
96.340 (d) revised 34712
100 Temporary regulations list **45171, 70015**
Regulation at 63 FR 33032 eff. date delayed to 1–2–00 ..... **71754**
Temporary regulations list 16348
100.35–T05–010 Added (temporary) 13914
100.35–T05–012 Added (temporary) 14384
100.35–T05–013 Added (temporary) 14383
100.35–T05–037 Added (temporary) 31978
100.35–T05–038 Added (temporary) 30389
100.35–T05–045 Added (temporary) **36850**
100.35–T05–47 Added (temporary) **36851**
100.35–T05–063 Added (temporary) **40653**
100.35–T05–093 Added (temporary) **59233**
100.35–T05–100 Added (temporary) **69000**
100.35–T05–106 Added (temporary) **71220**
100.35T–07–008 Added (temporary) **36182**
Revised (temporary) **50161**
100.35T–07–016 Added (temporary) 16813
100.35T–07–017 Added (temporary) 16814
100.35T–07–024 Added (temporary) 22553
100.35T–07–036 Added (temporary) 34541
100.35T–07–037 Added (temporary) 33402
100.35T–07–049 Added (temporary) **43322**
100.35T–07–059 Added (temporary) **53587**
100.35T07–068 Added (temporary) **63612**

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TITLE 33 Chapter I—Con.

100.35T-07-075 Added (temporary) **67401**
100.35-T08-036 Added (temporary) 31979
100.35-T08-037 Added (temporary) 31981
100.35-T08-038 Added (temporary) 31980
100.35-T08-040 Added (temporary) **38752**
100.35-T08-041 Added (temporary) 32409
Added (temporary) 34542
100.35-T08-051 Added (temporary) **49004**
100.35-T08-054 Added (temporary) **47426**
100.35-T08-058 Added (temporary) **48579**
100.35-T08-060 Added (temporary) **50160**
100.01—100.50 (Subpart A) Regulation at 61 FR 33032 eff. date delayed to 1-2-00 ..... **71754**
100.01 Regulation at 61 FR 33032 eff. date delayed to 1-2-00 ..... **71754**
100.05 Regulation at 61 FR 33032 eff. date delayed to 1-2-00 ..... **71754**
100.15 Regulation at 61 FR 33032 eff. date delayed to 1-2-00 ..... **71754**
100.17 Regulation at 61 FR 33032 eff. date delayed to 1-2-00 ..... **71754**
100.18 Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.19 Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.25 Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.30 Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.35 Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.100—100.1306 (Subpart B) Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.100 Regulation at 61 FR 33033 eff. date delayed to 1-2-00 ..... **71754**
100.101 Implementation (temporary) 27694
100.104 Revised 19717
(c)(7) corrected 23395
100.109 Added **37492**
100.114 Implementation (temporary) **45395**
Revised 34544
100.116 Added **37249**
100.120 Added **8000**
100.121 Added 28101
100.122 Added 28099
100.201 Implementation (temporary) **36182, 36183**
Removed **70654**
100.501 Implementation (temporary) **36849**
100.505 (b) revised **39236**
100.507 Implementation (temporary) 30390
100.509 (a)(1), (b)(2) introductory text and (c) revised; Table 1 added **42580**
100.511 Implementation (temporary) 13914, 19715
100.515 Implementation (temporary) 30390
100.710 Revised **41719**
(c) correctly designated 22674
100.734 Added 3841
100.801 Table 1 revised **70654**
100.1101 Implementation (temporary) **38308**
100.1102 Table 1 amended **37491**
110.157 (b)(11) added; eff. 10-6-98 to 12-8-98 ..... **55028**
110.186 (b) revised 20177
110.188 (b)(9) through (12) added 22554
110.231 Revised; interim 29558
117 Temporary drawbridge operation regulations **37251, 39029, 40654, 40655, 41720, 43080, 45395, 47174, 49287, 53281, 54353, 63180, 64628, 64868, 68685, 69193, 70018, 71754**
Temporary drawbridge operation regulations 35, 3424, 4786, 5717, 6220, 7788, 8000, 13514, 16641, 17101, 18576, 20177, 23545, 24944, 25438, 26295, 27179, 27694, 29559, 29561, 33403, 33404, 34992
117.5-T-08-077 Added (temporary) **72190**
117.5-T-08-079 Added (temporary) 406
117.147 (a) and (b) amended 34712
117.169 (b) amended 34712
117.191 (b) amended 34712
117.253 (a) suspended; (c) added; eff. 3-11-98 through 11-23-98 ..... **45397**
(a) suspended; (c) added; eff. 12-4-98 through 1-31-99 ..... **69192**
117.261 (u), (v) and (w) revised **60214**

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117.265 Removed 10105
117.268 Added **67402**
117.285 (b) revised; eff. 7-8-99 30391
117.287 (a-1) suspended; (a-3) added; eff. 3-5-99 through 5-31-99 16350
117.301 Added (temporary) 29559
117.393 (c) suspended; (e) added; eff. 12-3-98 to 2-1-99 1517
(b)(6) amended 34712
117.434 Redesignated from 117.435 8722
117.435 Redesignated as 117.434; new 117.435 redesignated from 117.436 8722
117.436 Redesignated as 117.435; new 117.436 added 8722
117.451 (b) suspended; (f) added (temporary) **57251**
117.459 Revised **40654**
117.465 (g) added; eff. 10-5-98 through 11-6-98 ..... **47428**
(g) added (temporary) 51302
(a) revised 55031
117.467 (b) suspended; (c) added; eff. 7-6-98 through 11-10-98 ..... **35821**
(b) suspended; (c) added; eff. 12-14-98 through 3-20-99 ..... **69557**
117.478 (c) suspended; (d) added; eff. 3-8-99 through 8-31-99 9271
117.599 (a) designation and (b) removed **69001**
Revised 28745
117.619 Revised **70662**
117.645 Removed 9272
117.675 (c) added; interim 6221
Regulation at 64 FR 6221 confirmed 31982
117.683 Redesignated as 117.682; new 117.683 redesignated from 117.684 ..... **49822**
117.684 Redesignated as 117.683; 117.684 added **49822**
117.685 Revised **49822**
117.721 Added **43323**
117.733 (k) added; eff. 10-19-98 through 5-14-99 ..... **54354**
117.739 (h) revised; (j) and (k) redesignated as (k) and (j); new (k) amended 4788
117.773 (c) amended 34712
117.785 (b) amended 34712
117.791 (c) amended 34712
117.797 (b) revised 28103
117.821 (a)(7) redesignated as (a)(6) 34712
117.822 Revised **37251**
117.847 (b) amended 34712
117.851 (d) amended 34712
117.853 Amended 34712
117.855 (c) introductory text amended 34712
117.955 (a) revised; interim **55030**
Regulation at 63 FR 55030 confirmed 406
117.991 Removed **47427**
117.993 (b) revised 28103
117.997 (a) through (h) redesignated as (b) through (i); new (a) added **55948**
117.1097 Revised **49288**
117.1848 Added (temporary) 29561
117.T408 Added (temporary) **64188**
117 Appendix A amended 34712
120 Regulation at 61 FR 37652 confirmed **53590**
120.100 Heading revised **53590**
120.110 Amended **53590**
120.200 Revised **53590**
120.210 Revised **53590**
120.220 Revised **53590**
120.300 Revised **53590**
120.303 Added **53591**
120.305 Revised **53591**
120.307 Revised **53591**
120.309 Revised **53591**
127.003 (b) amended 34714
127.1501 (a) amended 34714
128 Regulation at 61 FR 37654 confirmed **53590**
128.100 Heading revised **53591**
128.110 Revised **53591**
128.200 Revised **53591**
128.210 Revised **53592**
128.220 Revised **53592**
128.300 Revised **53592**
128.305 Redesignated as 128.307; new 128.305 added **53592**
128.307 Redesignated as 128.309; redesignated from 128.305; new 128.307 revised **53592**
128.309 Redesignated as 128.311; new 128.309 redesignated from 128.307 ..... **53592**
Revised **53593**
128.311 Redesignated from 128.309 ..... **53592**
Heading revised **53593**
138.40 (a) amended 34714
151.04 (d) revised 34714
151.1500—151.1506 (Subpart C) Heading revised; interim 26682

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151.1504 Amended; interim 26682
151.2000—151.2050 (Subpart D) Added; interim 26682
154 Appendixes A and B amended 34715
155 Authority citation revised **71763**
Meeting 18576
155.140 (b) introductory text amended **71763**
155.230 Revised; interim; eff. in part 12–11–00 ..... **71763**
155.710 (e) introductory text, (1), (2) and (3) revised **35826**
155.715 Added **35826**
159.201 Amended 34715
160 Authority citation revised 33412
160.203 Amended 34715
160.207 (d) and (e) revised **44117**
160.301—160.317 (Subpart D) Added; interim; eff. 7–23–99 through 3–31–00 33412
162.240 (b) revised; interim 29557
(b) corrected 32103
164.72 (b)(3) redesignated as (b)(2) 34715
165 Temporary regulations list **45171, 70015**
Authority citation revised **71770**
Authority citation revised 12749, 34715
Technical correction 15399, 17439
Temporary regulations list 16348
165.T01–001 Added (temporary) 7090
165.T01–002 Added (temporary) 4053
165.T01–004 Added (temporary) 8723
165.T01–008 Added (temporary) 9067
165.T01–015 Added (temporary) 11772
Correctly designated 14306
165.T01–018 Added (temporary) 16643
165.T01–034 Added (temporary) 24287
165.T01–042 Added (temporary) 33197
165.T01–048 Added (temporary) 26296
165.T01–053 Added (temporary) 27696
165.T01–055 Added (temporary) 30243
165.T01–056 Added (temporary) 32183
165.T01–057 Added (temporary) 31985
165.T01–062 Added (temporary) 30244
165.T01–071 Added (temporary) 32184
165.T01–078 Added (temporary) 32187
165.T01–080 Added (temporary) **40656**
165.T01–082 Added (temporary) **39238**
165.T01–083 Added (temporary) **39237**
Added (temporary) 34993
165.T01–102 Added (temporary) **42234**
165.T01–113 Added (temporary) **45949**
165.T01–114 Added (temporary) **46178**
165.T01–115 Added (temporary) **46177**
165.T01–123 Added (temporary) **45948**
165.T01–130 Added (temporary) **46889**
165.T01–131 Added (temporary) **46890**
165.T01–140 Added (temporary) **55533**
165.T01–144 Added (temporary) **49823**
165.T01–157 Added (temporary) **59720**
165.T01–184 Added (temporary) 4054
165.T01–CGD1–038 Added (temporary) 27918
165.T01–CGD1–039 Added (temporary) 27699
165.T01–CGD1–040 Added (temporary) 27919
165.T01–CGD1–047 Added (temporary) 27697
165.T01–CGD1–061 Added (temporary) 34553
165.T01–CGD1–072 Added (temporary) 34557
165.T01–CGD1–074 Added (temporary) 34556
165.T01–CGD1–081 Added (temporary) 34554
165.T01–CGD1–092 Added (temporary) 34995
Added (temporary) 34997
165.T01–CGD1–171 Added (temporary **68686**
165.T01–CGD1–183 Added (temporary) 2432
Added (temporary) 5936
165.T05–009 Added (temporary) 13915
165.T05–085 Added (temporary) **55029**
165.T07–013 Heading and (a) revised (temporary) **38477**
165.T07–023 Added (temporary) **46176**
165.T07–053 Added (temporary) **47429**
165.T07–065 Added (temporary) **56083**
165.T08–024 Added (temporary) **36852**
165.T08–038 Added (Temporary) **37493**
165.T08–047 Added (temporary) **46891**
165.T11–061 Added (temporary) 8002
165.T11–062 Added (temporary) 18815
165.T11–064 Added (temporary) 29563
165.T11–089 Added (temporary) **46653**
165.T14–011 Added (temporary) 32185
165.T17–003 Added (temporary) **45950**
(b) corrected **53593**
165.T17–SEAK–001 Added (temporary) 16642
165.100 Added **71770**
(d)(1)(iii) revised; interim 12749
(e) added 34715
165.162 Added; eff. 7–15–99 31984
165.163 Added 24946

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165.164 Added 24948
165.165 Revised 18579
(c) correctly designated 34313
165.170 Heading revised 34715
165.514 Added **58636**
165.810 (e) and (f) revised 18813
165.905 Heading revised 34715
165.906 Added 8006
165.1115 Added **38754**
165.1116 Added **38308**
Correctly designated **46889**
165.1310 Added; interim **52609**
165.1705 Redesignated as 110.231; interim 29558
167.150 Heading revised 34715
167.151 Heading revised 34715
167.152 Heading revised 34715
167.153 Heading revised 34715
167.154 Heading revised 34715
167.155 Heading revised 34715
167.200 Heading revised 34715
167.201 Heading revised 34715
167.202 Heading revised 34715
167.203 Heading revised 34715
167.350 Heading revised 34715
169 Added; interim 29234
Technical correction 31037
174.14 Amended 34715
174.19 (e) amended 34715
174.106 Amended 34715
175.120 (a) designation removed 34716
175.125 (a) designation removed 34716
175.128 (a) designation removed 34716
179.03 Amended 34716
181.15 (a)(2)(ii) amended 34716
181.21 (a) designation and (b) removed 34716
183.23 Amended 34716
183.35 (b)(1) amended 34716
183.37 Heading revised; (a) amended 34716
183.43 Section heading revised 34716
183.101 Amended 34716
183.110 Amended 34716
183.201 (a) revised 34716
183.205 (c) amended 34716
183.220 (b)(1) amended 34716
183.235 Introductory text amended 34716
183.301 (a) revised 34716
183.335 Introductory text and (a) amended 34716
183.401 (a) revised 34716
183.440 (b) amended 34716
183.501 (a) revised 34716
183.514 (b) introductory text amended 34716
183.530 (c) amended 34716
183.550 (h) amended 34716
183.584 Introductory text amended 34716
183.588 (f) amended 34716
183.601 Revised 34716
183.620 Note amended 34716
183.701 Revised 34716
187.301—187.331 (Subpart D) Regulation at 60 FR 20315 eff. date delayed to 10–24–99 19039

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

320.1 (a)(2) amended; eff. 8–6–99 11714
323.2 (d)(1) introductory text and (iii) amended; (d)(2)(iii) added 25123
326.3 (e)(1)(v) added; eff. 8–6–99 11714
331 Added; eff. 8–6–99 11714
334.155 Added **68140**
334.200 Heading, (b)(2), (3) and (c) revised; (a)(1) amended 18581

Chapter IV—Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

402.100 Corrected **36992**
402.210 Corrected **36992**
402.211 Corrected **36992**
402.320 Corrected **36992**
402.428 Corrected **36992**

Proposed Rules:

1—199 (Ch. I) **36384, 64937** 20236
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117 ..... **43126, 45978, 45980, 48453, 50821, 57963, 58676, 60226, 64022** 1155, 3464, 6290, 8033, 12795, 12797, 17134, 22593, 26349, 26350, 28125, 28126, 34548

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154.....17222
155.....13734, 31994
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165.....39256, 40583, 42304, 47455, 54639, 70707, 72219
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167.....12139, 32451
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TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

5b.11 (b) introductory text and (c)(1) introductory text revised.....31066
74 OMB circular applicability.....36144
80 OMB circular applicability.....36144

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

200.8 (c)(1) revised; (c)(3)(ii)(B)(*3*) added.....54997
200.28 (a)(2)(iii) removed.....54997
200.63 Revised.....54997

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

300 Revised.....12418
Technical correction.....24862
300 Appendix B correctly revised.....34049
303.1 (a) amended.....12535
303.4 Authority citation revised.....12535
303.5 (a)(1)(vi) amended; (a)(3) and authority citation revised.....12535
303.6 Amended.....12535
303.10 Revised.....12535
303.12 (d)(11) amended.....12535
303.19 Revised.....12535
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62 Revised 25717

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212.13 Added; interim 7304
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1254.12 (a) revised 19901
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1254.16 (d) and (e) revised 19901
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1254.24 (d) added 19902
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1254.27 Heading, (a) and (c)(3) revised 19903
1254.70 (a) revised 19903
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1.17 (a)(1) through (5), (b), (c), (d), (l), (m), (r) and (s) revised 39733, 67580
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1.20 (d) through (g) revised 39733, 67580
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1.21 (a)(6)(ii) revised 39734, 67580
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1.53 Regulation at 63 FR 5734 confirmed 36185
1.412 Regulation at 63 FR 29617 confirmed 66041
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1.465 Regulation at 63 FR 29619 confirmed 66041
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1.480 Regulation at 63 FR 29619 confirmed 66041
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1.484 Regulation at 63 FR 29619 confirmed 66041
1.485 Regulation at 63 FR 29620 confirmed 66041
1.492 (a) through (d) revised 39734, 67580
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1.494 Regulation at 63 FR 29620 confirmed 66041
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1.655 (a) revised; interim 12901
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2.85 (e) revised 48097
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2.121 (a)(1), (c) and (d) revised 48099
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201.3 Added 29520
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(b)(2)(iii)(A) amended 66042

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201.17 (h)(2)(iv) amended 39738
201.18 (e)(1) and (3) amended 29521
201.19 (e)(7)(ii)(D) and (f)(7)(iii)(D) amended 29521
201.22 (e)(1) revised 66042
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201.38 Added; interim 59234
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202.3 (b)(4)(ii)(B), (5)(v)(B), (6)(i)(E), (7)(ii)(C), (8)(vii) and (c)(2) amended 29522
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251.54 Revised 25201
251.58 (c) amended 65556
251.60 Amended 65556
251.61 (a) revised 65556
251.62 (a) amended 65557
253.3 Added 49836
253.5 (c)(1), (2) and (3) revised 66042
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TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

Chapter I Nomenclature change 30244
3.20 (b) amended 30392
3.55 (a)(3) and (4) redesignated as (a)(4) and (6); new (a)(3) and (5) added 30245
3.256 Revised; interim 53595
3.304 (f) revised 32808
3.311 (b)(2)(xxi) and (xxii) amended; (b)(2)(xxiii) and (xxiv) added 50994
3.358 Heading and (a) revised 45006
Heading and (a) revised 1131
3.361 Added 45006
Removed 1132
3.362 Added 45007
Removed 1132
3.363 Added 45007
Removed 1132
3.381 Revised 30393
3.382 Removed 30393
3.551 (i) amended 32807
3.800 Introductory text added 45007
Introductory text removed 1132
3.811 Heading, (a) heading and authority citation revised; (d) redesignated as (e); new (d) added 62943
4.71a Regulation at 64 FR 20439 confirmed 32410
4.85 Revised 25206
4.86 Revised 25209
4.86a Removed 25209
4.87 Revised 25210
4.87a Revised 25210
4.87b Removed 25210
4.104 Amended 37779
4.149 Removed 30393
17.55 Introductory text amended; (h) removed; (i), (j) and (k) redesignated as (h), (i) and (j) 39515
17.56 Redesignated as 17.57; new 17.56 added 39515
17.57 Redesignated from 17.56 39515
17.84 Removed 48102
17.96 Introductory text amended; (a) authority citation removed; authority citation added 37780

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17.101 Redesignated as 17.102; new 17.101 redesignated from 17.102 and revised 22678
17.102 Redesignated as 17.101; new 17.102 redesignated from 17.101 22678
Introductory text and (h)(3) amended; (h) heading revised; (h)(1), (2), (4), (5) and (6) removed 22683
17.128 Revised **39515**
17.270—17.278 Undesignated center heading and sections added **48102**
20.609 (c)(4) added 2138
20.1400—20.1411 (Subpart O) Added 2139
20.1405 (a) revised; interim 7091
21.1029 Added 23770
21.1030 Revised 23771
21.1031 Revised 23771
21.1032 Revised 23771
21.3021 (m) amended 23771
21.3023 Heading, (c) introductory text and (1) revised; (c)(3) amended; authority citation added; OMB number **45718**
21.3030 Revised 23772
21.3031 Removed 23772
21.3032 Removed 23772
21.3045 (h) revised **67778**
21.3131 (a) revised **67778**
21.3300 (c) amended **67779**
21.3333 (a) and (b)(1) amended **67779**
21.4001—21.4279 (Subpart D) Authority citation revised **35831**
Authority citation revised 23772
21.4008 Amended; eff. 7–31–98 ..... **35831**
21.4131 Introductory text, (a) and (d) revised 23772
21.4133 Removed; eff. 7–31–98 ..... **35831**
21.4134 Removed; eff. 7–31–98 ..... **35831**
21.4135 (f), (j)(1), (k) heading and (1) revised; (j) introductory text and (k) introductory text added; eff. 7–31–98 ..... **35831**
21.4146 (e) amended; eff. 7–31–98 ..... **35831**
21.4152 (b)(2) amended; eff. 7–31–98 ..... **35831**
21.4202 (a) and (b) removed; eff. 7–31–98 ..... **35831**
21.4207 Removed; eff. 7–31–98 ..... **35831**
21.4208 Removed; eff. 7–31–98 ..... **35831**
21.4210 Added; eff. 7–31–98 ..... **35831**
21.4211 Added; eff. 7–31–98 ..... **35833**
21.4212 Added; eff. 7–31–98 ..... **35834**
21.4213 Added; eff. 7–31–98 ..... **35834**
21.4214 Added; eff. 7–31–98 ..... **35834**
21.4215 Added; eff. 7–31–98 ..... **35836**
21.4216 Added; eff. 7–31–98 ..... **35836**
21.5001—21.5296 (Subpart G) Authority citation revised **35836**
21.5030 (c)(1), (2) and (3) redesignated as (c)(2), (3) and (4); heading, (c) introductory text and new (3) revised; new (c)(1) added 23772
21.5130 (b) and (c) removed; (d) through (g) redesignated as (b) through (e); eff. 7–31–98 ..... **35836**
(a) amended 23772
21.5200 Introductory text amended; (h) removed; (i) revised; (j) redesignated as (h); new (j) through (o) added; eff. 7–31–98 ..... **35836**
21.5730 Revised 23772
21.5732 Removed 23772
21.7000—21.7320 (Subpart K) Authority citation revised **35837**
21.7020 Introductory text revised 23772
21.7030 Revised 23773
21.7032 Heading and (a) revised; (b) through (e) removed; (f) redesignated as (b) 23773
21.7042 Heading, (d)(2) and (3) revised; (d)(4) and authority citation added; OMB number **45718**
21.7051 (a)(1) amended 23773
21.7131 Introductory text and (a) revised; (d) and (e)(2)(i) introductory text removed; (e)(1)(iii) amended; (e)(2)(i)(A), (B) and (C) redesignated as (e)(2)(i), (ii) and (iii) 23773
21.7133 Revised; eff. 7–31–98 ..... **35837**
21.7135 (i) introductory text, (1), (2), (j)(1) and (k)(1) amended; eff. 7–31–98 ..... **35837**
21.7136 (b), (c)(1), (2) and (3) revised 31694
21.7137 (a) revised; (c)(2) introductory text, (i) through (iv) amended 31694
21.7158 Heading, (b)(2) and authority citation revised; eff. 7–31–98 ..... **35837**

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21.7500—21.7807 (Subpart L) Authority citation revised **35837, 45718**
Authority citation revised 23773
21.7500—21.7807 (Subpart L) Authority citation revised 26297
21.7520 Introductory text revised 23773
21.7530 Revised 23773
21.7532 Removed 23773
21.7540 (c) and (d) authority citation revised; OMB number **45718**
21.7624 (b) amended; eff. 7–31–98 ..... **35837**
21.7631 Introductory text and (a) revised; (d) removed; (e) through (h) redesignated as (d) through (g) 23773
21.7633 Revised; eff. 7–31–98 ..... **35837**
21.7635 (e) introductory text, (1), (2), (f)(1) and (g)(1) amended; eff. 7–31–98 ..... **35837**
21.7636 (a)(1), (2)(i) and (3) revised 26298
21.7658 Heading, (b) heading and (2) revised; (b)(1) introductory text, (i) and (ii) amended; eff. 7–31–98 ..... **35837**
36.4306a (a)(3), (4) and (5) revised; (a)(6) and (7) added; OMB number 19910
Regulation at 64 FR 19910 eff. date corrected to 6–7–99; (a)(6) correctly revised 28362
36.4337 (a) revised 19910
Regulation at 64 FR 19910 eff. date corrected to 6–7–99 28362

Proposed Rules:

1 ..... **48455**
2 ..... **48455**
3 ..... **58336**
4 25246
14 ..... **59495**
17 ..... **37299, 54756, 58677, 60227**
..... 23812, 27733
21 ..... **63253**
51 ..... **60227**

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

6.4 Revised 57912
20 IMM amended; incorporation by reference; interim **37252, 40181, 41427, 44789, 66043**
IMM stayed in part; incorporation by reference **38478**
IMM amended; incorporation by reference **40181, 41427**
IMM amended; incorporation by reference 2856, 9916, 10219, 19040, 20179
111 DMM amended; incorporation by reference **37254, 37967, 38084, 38310, 39239, 40828, 55475, 56567, 57598, 71374**
DMM amended; incorporation by reference 39, 2141, 6802, 10951, 12074, 14389, 16816, 17102, 31123
233 Authority citation revised **52159**
233.2 (b)(2) amended **52159**
241.4 Revised **46656**
491 Revised **67403**
501.29 Added **53812**
775—778 (Subchapter K) Heading revised **45719**
775 Heading and authority citation revised **45719**
775.1 Revised **45719**
775.3 Revised **45719**
775.4 (a) and (b) redesignated as 775.5 and 775.6; new 775.4 added **45719**
775.5 Redesignated as 775.8; new 775.5 redesignated from 775.4(a) and revised **45719**
775.6 Redesignated as 775.9; new 775.6 redesignated from 775.4(b) **45719**
Revised **45720**
775.7 Redesignated as 775.10 ..... **45719**
Added **45721**
775.8 Redesignated as 775.11 ..... **45719**
775.9 Redesignated as 775.12 ..... **45719**
(a)(1), (4), (b)(2), (3) introductory text and (i) revised; (b)(1) amended **45721**
775.10 Redesignated as 775.13 ..... **45719**
(a)(4) added **45722**
775.11 Redesignated as 775.14 ..... **45719**
(a)(1) amended; (b)(2)(ii), (c)(2), (4), (5) introductory text, (iv) and (d)(1) revised **45722**
775.13 (a)(4) revised **45722**
775.14 (b) revised **45722**
777 Transfered to subchapter K **45722**

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778 Transfered to subchapter K **45722**
952.4 Revised **66050**
952.8 (a) amended **66050**
952.14 Revised **66050**
952.15 (c) amended **66050**
953.2 Revised **66050**
953.8 Revised **66050**
953.9 (a)(3) amended **66050**
954.4 Revised **66050**
954.11 Revised **66050**
954.12 (c) amended **66050**
955.1 (b)(1) and (d)(5) revised **66050**
955.18 Amended **66050**
955.29 Amended **66050**
956.3 (c) revised **66051**
956.13 (a) revised **66051**
957.1 Amended **66051**
957.2 Amended **66051**
957.3 (a) and (g) revised; (b) and (f) amended; **66051**
957.4 (a), (c) and (d) amended **66051**
957.5 Amended **66051**
957.7 Amended **66051**
957.8 Amended **66051**
957.9 Amended **66051**
957.10 Amended **66051**
957.13 (a) revised; (b) introductory text and (3) amended **66051**
957.14 (e) amended **66051**
957.15 (f) and (h) amended **66051**
957.16 (e) amended **66051**
957.18 (a) amended **66051**
957.19 (a) and (b) amended **66051**
957.20 (a) amended **66051**
957.23 Amended **66051**
957.26 Amended **66051**
957.27 Amended **66051**
958.3 (a) amended **66052**
958.4 Amended **66052**
958.13 Amended **66052**
959.3 Revised **66052**
959.5 (a) amended **66052**
959.6 Amended **66052**
959.7 Amended **66052**
959.8 Amended **66052**
959.9 Amended **66052**
959.10 (a) amended **66052**
959.11 (a), (b) and (d) amended **66052**
959.13 Revised **66052**
959.14 Amended **66052**
959.16 (b)(6) and (8) amended **66052**
959.17 (e) amended **66052**
959.20 (a) amended **66052**
959.21 (a) and (b) amended **66052**
959.22 (a) and (b) amended **66052**
959.23 (a) and (c) amended **66052**
959.24 Amended **66052**
959.27 Amended **66052**
959.30 Amended **66052**
960.22 Amended **66052**
961.3 (g) revised **66053**
961.4 (a) amended **66053**
962.2 (j) revised **66053**
962.22 (b) amended **66053**
963 Heading revised **66053**
963.3 (a) amended **66053**
963.7 Revised **66053**
963.8 (c) amended **66053**
963.22 Amended **66053**
964.3 (a) amended **66053**
964.4 Amended **66053**
964.22 Amended **66053**
965.2 Amended **66053**
965.3 Amended **66053**
965.8 (b) revised **66053**
965.14 Amended **66053**
966.3 (i) amended **66053**
966.4 (b) amended **66053**

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.61—3001.69c (Subpart C) Appendix A amended **39030**
Appendix A amended 1392
Appendix A corrected 4493, 4494

Proposed Rules:

20 ..... **65153, 67017**
111 ..... **45440, 46719, 57970** 11402, 28130
265 30929
501 ..... **46728**
502 ..... **46719, 46728**
3001 ..... **46732, 47456, 71251**

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

Chapter I Product categories final listing **48792**
1.25 (e)(1) revised **67780**
9.1 Table amended (OMB numbers) **39739, 40657, 44132, 48815, 48831, 50326, 53995, 56995, 69463, 69515, 71376**
Table amended (OMB numbers) 3028, 7047, 23919, 25134, 27458, 29503, 31375, 31708, 33589

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Introductory text revised; table amended (OMB numbers) 27920
Table corrected 35002
35.251 Added 23736
35.252 Added 23737
50 Appendix L amended 19719
51.121 Added **57491**
(e)(4) introductory text and (f)(2)(ii) revised **71225**
(e)(2), (3)(iii) and (g)(2)(ii) revised 26305
51.122 Added **57496**
51.322 (a)(1) and (2) revised 7462
51.323 (a)(2) removed; (a)(1), (3) and (b) revised 7463
51 Appendixes M and P corrected; CFR correction 5188
52 State implementation plan determinations **39515, 49434, 63986, 69557, 69559**
Comment period extension **58637**
State implementation plan determinations 754, 29570, 33200
52.34 Added; eff. 7–26–99 28318
(l) added; eff. 7–26–99 33961
52.50 (c)(72) added **49006**
Redesignated as 52.69; new 52.50 added **70672**
(c) table amended 9918
(a) table amended; eff. 8–3–99 29961
52.69 Redesignated from 52.50; heading and (a) revised **70672**
52.70 (c)(28) added **63986**
52.76 Existing text designated as (a); (b) added **50764**
52.120 (c)(67)(i)(C) added 13353
(c)(92) added 19918
(c)(93) added; eff. 7–29–99 34732
52.123 (h) added **41350**
52.124 (c) added **41350**
52.127 Added **41350**
Removed; eff. 7–29–99 34732
52.128 Added **41350**
Appendix A corrected **43449**
52.170 Redesignated as 52.200; new 52.170 added **56827**
52.200 Redesignated from 52.170; heading and (a) revised **56827**
52.220 (c)(247)(i)(A)(*2*) added **39751**
(c)(239)(i)(E)(*4*) added **40829**
(c)(194)(i)(G) added **40831**
(c)(244)(i)(A)(*2*) added **42721**
(c)(187)(i)(C)(*2*) added **42723**
(c)(241)(i)(A)(*3*) added **42726**
(c)(188)(i)(C)(*2*) added **43629**
(c)(197)(i)(C)(*2*), (225)(i)(A)(*3*) and (231)(i)(B)(*3*) added **43884**
(c)(242)(i)(A), (248)(i)(A)(*2*), (B) and (254)(i)(A)(*2*) added **43887**
(c)(240)(i)(A)(*5*) and (244)(i)(C) added **44135**
(c)(29)(vi)(B) and (164)(i)(C)(*3*) added **44398**
(c)(207)(i)(C)(*6*), (241)(i)(C) and (244)(i)(D) added **44794**
(c)(169) added **46662**
(c)(199)(i)(E) added **46894**
(c)(184)(i)(C)(*2*) and (254)(i)(F) added **47182**
(c)(256) added **51835**
(c)(255)(i)(A)(*2*) added **60216**
(c)(231)(i)(B)(*4*), (248)(i)(C), (254)(i)(A)(*3*), (C)(*2*) and (255) added **63414**
(c)(225)(i)(F) added **66760**
(c)(187)(i)(B)(*2*) and (256)(i)(B) added **67422**
(c)(194)(i)(H), (248)(i)(A)(*3*), (B)(*2*) and (257) added **67787**
(c)(24)(vii)(E), (52)(i)(C), (67)(iii)(C), (75)(iii), (101)(ii)(F) and (140)(ii)(B) added **70350**
(c)(254)(i)(G) added **72197**
(c)(254)(i)(E) added **72200**
(c)(6)(xv) and (254)(i)(H) added 1521
(c)(127)(vii)(E), (187)(i)(C)(*3*) and (215)(i)(A)(*6*) added 2144
(c)(254)(i)(A)(*4*) added 2575
(c)(198)(i)(J)(*3*) added 2577
(c)(232)(i)(A)(*2*) added 3216
(c)(182)(i)(B)(*6*) and (199)(i)(A)(*8*) added 3852
(c)(254)(i)(B) and (255)(i)(B) added 6226
(c)(245)(i)(C) added 6228
(c)(6)(xvi) and (31)(xviii)(E) added 6231
(c)(230)(i)(D) and (255)(i)(A)(*4*) added 6806
(c)(47)(i)(C), (65)(iii) and (137)(vii)(D) added; (c)(65) introductory text revised 11774
(c)(24)(vii)(E), (52)(i)(C), (67)(iii)(C), (75)(iii), (101)(ii)(F) and (140)(ii)(B) revised 12257

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(c)(187)(i)(B)(*3*), (D), (199)(i)(D)(*3*), (244)(i)(E) and (256)(i)(D) added 13353
(c)(254)(i)(D)(*3*), (255)(i)(C) and (260) added 13517
(c)(21)(vi)(B) correctly added; CFR correction 13916
(c)(249)(i)(A)(*2*) added 14393
(c)(254)(i)(C) and (D) added 14626
(c)(256)(i)(D) added 15132
(c)(207)(i)(C)(*7*), (249), (254)(i)(C)(*3*), (255)(i)(A)(*3*), (256)(i)(C) and (258) added 15926
(c)(183)(i)(B)(*4*); (248)(i)(D) and (254)(i)(I) added 19280
(c)(205) introductory text, (i) introductory text, (B)(*2*), (207)(i)(B)(*5*), (E)(*2*), (i)(F) through (I), (210)(i)(F), (G), (H), (215)(i)(E), (220)(i)(D), (221)(i)(B), (224)(i)(B)(*2*), (231)(i)(C) and (259) added 19919
(c)(189)(i)(A)(*7*), (239)(i)(B), (248)(i)(B)(*3*) and (254)(i)(D)(*2*) added; eff. 7–6–99 23777
(b)(3)(ii) and (c)(6)(xv)(B) added; eff. 7–12–99 25825
(c)(31)(vi)(D), (36)(i)(B), (184)(i)(B)(*7*) and (217)(i)(C) added; eff. 7–12–99 25831
(c)(177)(i)(F), (179)(i)(F), (182)(i)(F)(*2*), (197)(i)(D)(*2*), (199)(i)(D)(*4*), (246)(i)(A)(*2*), (254)(i)(J), (255)(i)(D) and (256)(i)(C)(*2*) added; eff. 7–19–99 26880
(c)(164)(i)(B)(*2*), (179)(i)(E)(*2*), (182)(i)(F), (186)(i)(E), (199)(i)(D)(*5*), (224)(i)(C)(*2*) and (239)(i)(D) introductory text added; eff. 8–2–99 29793
(c)(182)(i)(A)(*5*), (i)(G), (189)(i)(C)(*2*) and (194)(i)(C)(*3*) added; eff. 7–8–99 30398
(c)(256)(i)(D) redesignated as (c)(256)(i)(E) 30399
(c)(242) introductory text, (i) introductory text, and (B) added; eff. 7–21–99 33021
Regulation at 64 FR 23777 withdrawn 34126
(c)(255)(i)(E), (261), and (262) added; eff. 8–27–99 34560
(c)(199)(i)(D)(*5*) correctly designated 35002
(c)(179)(i)(G), (182)(i)(F)(*3*), (G)(*2*) and (184)(i)(F) added; eff. 8–30–99 35007
52.222 (a)(5) added **50766**
(a)(4) and (b)(2) added **50769**
52.320 (c)(83) added 6234
(c)(87) added; eff. 8–16–99 32422
52.348 Existing text designated as (a); (b) added **38089**
(c) added 11782
52.349 Added 11782
Existing text designated as (a); (b) added 17105
52.369 Added 12013
(c) added 12023
52.370 (c)(78) added 12013
(c)(77) added 12018
(c)(75) and (76) added 12023
52.374 Table revised **58643**
Table revised 12003, 12013
52.376 (a) and (b) revised; (d) added **53286**
(a) and (d) revised; (e) and (f) added **58643**
(a) and (d) revised; (e) and (f) removed 12003
(a) and (d) revised; (e) and (f) added 12014
52.385 Table amended 12024
52.420 Redesignated as 52.465; new 52.420 added **67410**
(c) table amended 8725, 12087, 32189
Regulation at 64 FR 8725 withdrawn 18815
52.424 (d) added 32189
52.465 Redesignated from 52.420; heading and (a) revised **67410**
52.470 Redesignated as 52.515; new 52.470 added **67417**
(c) table amended; eff. 8–10–99 31500
52.473 Existing text designated as (a); (b) added **36585**
(c) added 9277
Regulation at 64 FR 9277 withdrawn 17982
(a) revised; eff. 8–10–99 31501
52.474 (c) added **36858**
52.515 Redesignated from 52.470; heading and (a) revised **67417**
52.520 (c)(95) added **56573**
(c)(101) added 994
52.520 Redesignated 52.536; new 52.520 added; eff. 8–16–99 32348

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52.536 Redesignated from 52.520; heading and (a) revised; eff. 8–16–99 32348
(c)(100) added; eff. 8–16–99 32354
52.569 Added 20188
52.570 (c)(49) added **45176**
Regulation at 63 FR 45176 withdrawn **52983**
(c)(49) added 13350
(c)(45) added 17555
(c)(41) added 20188
Redesignated as 52.590; new 52.570 added 27701
(c) table amended; eff. 8–30–99 35004
52.582 (c) added 4570
52.590 Redesignated from 52.570; heading and (a) revised 27701
52.676 Added 12263
52.719 (a) revised **47434**
52.720 (c)(144) added 2581
(c)(145) added 2584
(c)(146) added 7790
(c)(147) added 8523
(c)(148) added 13348
52.725 (f) added **47434**
52.726 (s) added; eff. 8–31–98 ..... **35844**
(u) and (v) added 759
(m) removed 8523
(t) added 18818
52.770 (c)(123) added; eff. 8–31–98 ..... **35839**
(c)(149) added; eff. 8–17–99 32812
52.777 (t) added **40044**
52.820 Redesignated as 52.824; new 52.820 added 7094
(d) table amended 12090, 13345
(c) table amended 17550
(c) table amended; eff. 7–12–99 25827
52.824 Redesignated from 52.820; heading and (a) revised 7094
52.869 Added 28761
Corrected 32809
52.870 Redesignated as 52.875 7097
Added 7098
52.874 Redesignated from 52.875; heading and (a) revised 7097
52.920 (c)(89) added **39741**
(c)(87) added **39743**
(c)(91) added **46898**
(c)(92) added **67591**
(c)(88) added 417
(c)(93) added 12751
Redesignated as 52.939; new 52.920 added 28750
52.938 Added **40046**
52.939 Redesignated from 52.920; heading and (a) revised 28750
52.970 (c)(77) added **47431**
Redesignated as 52.999; new 52.970 added **63183**
(c) table amended 415
52.999 Redesignated from 52.970; heading and (a) revised **63183**
52.1020 (c)(39) added **42728**
Regulation at 63 FR 42727 withdrawn **53596**
(c)(49) added; eff. 7–13–99 26310
Regulation at 64 FR 26310 withdrawn 34557
52.1031 Table amended **42728**
Table amended; eff. 7–13–99 26310
Regulation at 64 FR 26310 withdrawn 34557
52.1070 (c)(130) added **45399**
(c)(131) and (132) added **46663**
(c)(133), (134) and (135) added **47179**
Regulation at 63 FR 45399 withdrawn **54355**
(c)(140) added **59722**
(c)(136) added **67784**
(c)(130) added **70669**
(c)(141) added 3855
(c)(142) added; eff. 8–16–99 32417
(c)(143) added; eff. 7–22–99 33200
52.1072 (d) added **47179**
(e) added; eff. 7–22–99 33200
52.1073 (e) added **47179**
52.1075 (f) added **36858**
52.1076 Heading revised; existing text designated as (a); (b) added **67782**
52.1120 (c)(118) added; eff. 8–2–99 29569
52.1167 Table amended; eff. 8–2–99 29569
52.1170 (c)(111) added; eff. 8–30–99 35023
52.1174 (q) removed **40371**
(q) added 7793
52.1179 Added; eff. 8–30–99 35023
52.1220 (c)(46) added **54587**
(c)(47) added 5939
(c)(48) added; eff. 7–19–99 26883
52.1270 (b) revised 35009
52.1319 Added 28757
Corrected 32810
52.1320 (c)(106) added **36854**
(c)(107) added **38756**
(c)(108) added **45727**
(c)(109) added **65560**

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(c)(111) added **67594**
(c)(110) added **70667**
(c)(112) added 15690
(b) revised 35009
52.1320 Redesignated as 52.1322; new 52.1320 added 34719
52.1322 Redesignated from 52.1320; heading and (a) revised 34719
52.1340 Added 3859
52.1420 Redesignated as 52.1426; new 52.1420 added 7094
52.1426 Redesignated from 52.1420; heading and (a) revised 7094
52.1470 (c)(36) and (37) added 25213
(c)(38) added; eff. 7–2–99 29580
52.1520 (c)(53) and (58) added **67407**
52.1570 (c)(64) added **55953**
(c)(65) added **62954**
Regulation at 63 FR 55953 withdrawn **69193**
(c)(66) added 14833
52.1580 (b) revised **45401**
(b) removed 19916
52.1581 Added **45401**
Removed 19916
52.1582 (e) added **45402**
(f) added **45404**
(d)(1) amended; (d)(3) and (4) revised; (g) added 19916
52.1605 Table amended **62954**
Table amended 14834
52.1620 Redesignated as 52.1640; new 52.1620 added **37495**
(c) table amended **48109**
(e) table amended; eff. 8–2–99 29228
52.1623 Added **48109**
52.1640 Redesignated from 52.1620; heading and (a) revised **37495**
52.1670 (c)(94) added **46659**
52.1679 Table amended **65559**
52.1770 (c)(96) added **72193**
Redesignated as 52.1783; new 52.1770 added 27467
52.1783 Redesignated from 52.1770; heading and (a) revised 27467
52.1820 (c)(30) added **45727**
52.1835 Added **45727**
52.1870 (c)(118) added 13073
Regulation at 63 FR 13073 withdrawn 24949
(c)(119) and (120) added; eff. 8–9–99 30396
52.1881 (a)(4) and (8) revised; (a)(13) added 13073
Regulation at 63 FR 13073 withdrawn 24949
52.1885 (a)(8) added **36587**
(a)(9) added **37258**
(a)(10) added **44400**
(a)(11) added 19289
52.1970 (c)(126) added **39747**
(c)(127) added 12759
Regulation at 63 FR 39747 eff. date corrected to 6–21–99 33021
52.2020 (c)(135) added **47436**
(c)(134) added **54052**
(c)(136) added **59887**
(c)(137) added **66758**
(c)(138) added 18823
(c)(139) added; eff. 8–2–99 32414
52.2026 (a)(1), (3), (4), (5), (b)(2), (3), (4), (6), (11), (12) and (13) removed **46667**
(a)(2) amended **46668**
Introductory text revised; (b)(1), (5), (7) through (10) and (14) removed **49441**
Regulation at 63 FR 49441 withdrawn **56086**
Introductory text revised; (b)(1), (5), (7) through (10) and (14) removed; eff. 7–8–99 30406
Introductory text, (a) and (b) removed; eff. 8–2–99 32414
52.2036 (k) added 18821
(l) added; eff. 8–16–99 32425
52.2059 (b) added **47436**
52.2070 (c)(50) revised **67600**
(c)(54) added; eff. 8–2–99 29566
(c)(55) added; eff. 8–2–99 29570
52.2081 Table amended; eff. 8–2–99 ..... 29566, 29570
52.2084 (a)(2) removed **67600**
Corrected 926
52.2086 (d) added **67600**
52.2120 (c) table amended **67586**
(e) added **70022**
52.2170 (c)(17) added **55807**
52.2220 (c)(162) added **54055**
(c)(163) added **70664**
(c)(164) added **72195**
(c)(165) added 19283
Redesignated as 52.2239; new 52.2220 added 35009

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52.2270 (c)(111) added; eff. 8–31–98 ..... **35841**
(c)(114) added **56085**
Regulation at 63 FR 35841 eff. 11–4–98 ..... **59471**
(c)(113) added **62947**
(c)(105) added 3847
(c)(112) added 4298
(c)(117) added 12762
(c)(120) added 19913
(c)(116) added; eff. 8–2–99 29796
52.2308 (g) added 19286
52.2309 (e) added **62947**
52.2310 Removed 19913
52.2320 (c)(40) added **43627**
(c)(39) added 3224
(c)(41) added 14623
Regulation at 64 FR 14623 withdrawn 25214
52.2420 (c)(128) added 3427
(c)(131) and (132) added 22792
52.2425 (d) added **36858**
52.2450 (f) added 22792
52.2470 (c)(78) added **64188**
(c)(79) added 17547
52.2570 (c)(98) added 28747
52.2581 (a), (b) and (c) removed; (d) and (e) added 28748
52.2620 (c)(27) added; eff. 7–19–99 27181
52 Appendix F added; eff. 7–26–99 28323
58.31 (a) revised 3034
58.34 (a) revised 3034
58.41 (b) revised 3035
58 Appendix D amended 3030, 3035, 10391
Appendixes E and G amended 3036
59 Added **48815**
59.104 (a)(2) corrected **64761**
59.201—59.214 (Subpart C) Added **48831**
59.202 Corrected **52319**
59.204 (c)(1) corrected **52319**
59.208 (e)(1) corrected; (j) correctly designated **52319**
59.400—59.413 (Subpart D) Added **48877**
59.401 Corrected 35001
59.402 (a), (c)(1), (3) through (8), (15) corrected; (c)(13) correctly revised; (c)(16) and (17) correctly added 35001
59.403 (c) corrected 35001
59.404 (a)(1) and (b) corrected; (a)(4) correctly revised 35001
59.405 (a)(3)(i) and (ii) correctly revised 35001
59.407 (b)(5), (c)(2) and (3) correctly revised 35001
59.408 (b) corrected; (d)(5), (e)(2) and (3) correctly revised 35001
59.409 Corrected 35001
59.400—59.413 (Subpart D) Appendix D corrected **55175**
Table 1 corrected 32104, 35002
60 Authority delegation notices **50162, 50163, 70675**
Interpretation **53288**
Authority citation revised 7463
Authority citation delegation 14393
60.4 (c) table amended **45727**
(c) table corrected **49382, 56707**
60.7 (a) introductory text and (c) introductory text revised; (a)(2) removed; (f) amended; (f)(1), (2) and (3) added 7463
60.8 (d) revised 7463
60.13 (h) amended 7463
60.19 (b) revised 7463
60.33c (a)(2) amended; (d) and (e) added 9261
60.35c (a) and (b) added 9262
60.40a (b) revised **49453**
60.41a Amended **49453**
60.44a (a) introductory text and (c) introductory text revised; (d) added **49453**
60.45 (g) introductory text revised 7463
60.46a (i) added **49454**
60.47a (c) revised; (k) and (l) added **49454**
60.49a (i) amended; (j) added **49454**
(i) revised 7463
60.40b (h) and (i) added **49454**
60.44b (a) introductory text, (b) introductory text, (c), and (e) introductory text revised; (l) added **49454**
60.48b (b) revised **49455**
60.49b (v) added **49455**
(d), (e), (h) introductory text, (i), (j), (k)(2), (3), (m) introductory text, (n) introductory text, (1), (2), (q) introductory text, (2), (3), (r) and (s) revised 7464

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60.48c (c), (d), (e) introductory text, (2), (3) and (11) revised; (j) added 7465
60.59a (e), (f) and (g) revised 7465
60.107 (a), (c) introductory text, (d) and (e) revised 7465
60.108 (e) revised 7466
60.271 (h) and (j) revised 10109
60.272 (a)(3)(iii) revised 10109
60.273 (b) revised; (d) added 10110
60.274 (b), (c), (f) and (g) revised 10110
60.276 (d) added 10110
60.270a—60.276a (Subpart AAa) Heading revised 10110
60.271a Amended 10110
60.273a (d) added 10111
60.274a (b), (c), (f) and (g) revised 10111
60.276a (g) added 10111
60.293 (c)(4), (5), (d)(3) introductory text and (3)(iii) revised 7466
60.403 (f) revised 7466
60.502 (e)(3) and (4) revised 7466
60.531 Amended 7466
60.533 (l)(1)(ii) revised **64874**
60.536 (f)(3) revised 7466
60.538 (e) revised **64874**
60.564 (h) introductory text revised 11541
60.714 (a) revised 7467
60.717 (c) and (d) introductory text revised 7467
60.751 Amended 9262
60.759 (a)(3)(iii) amended 9262
60 Appendix A amended; eff. 7–13–99 26490
61 Authority delegation notice **70675**
Technical correction 7793
61.04 (a) amended; (b)(WW)(ii), (iii) and (vii) revised; (b)(WW)(viii) removed; (c) redesignated as (c)(8); (c) introductory text and (10) added **66059**
(b) introductory text revised 7467
(b)(C), (c)(10) table and note revised 24291
61.139 (i)(1)(ii) and (j)(3) removed; (i)(1)(iv) and (v) redesignated as (i)(1)(ii) and (iv); new (i)(1)(ii), (j)(2) introductory text and (iv) revised 7467
61.142 (b)(6) revised 7467
61.144 (b)(8) revised 7467
61.147 (b)(8) revised 7467
61.163 (c)(3) revised 7467
61.204 Heading, introductory text, (c) and (d) revised; (e) added 5579
61.205 Heading, (a) and (b) added 5579
61.207 Revised 5579
62.02 (a) revised; (g) added **63201**
62.13 Added **63201**
(a) amended **66061**
62.100 (b)(3) and (c)(3) added **54058**
(b)(4) and (c)(4) added **63990**
62.103 Undesignated center heading and section added **54058**
62.104 Undesignated center heading and section added **63990**
62.1350—62.1352 Unesignated center heading and sections added **40373**
62.2350 (b)(6) and (c)(4) added; eff. 8–3–99 29964
62.2360 Undesignated center heading and section added; eff. 8–3–99 29964
62.2600 (b)(5) and (c)(4) added **63416**
62.2607 Undesignated center heading and section added **63416**
62.3330—62.3332 Undesignated center heading and sections added **64632**
62.3914 Undesignated center heading and section added; eff. 8–16–99 32427
62.4350 (b)(2) and (c)(4) added 19293
62.4355 Undesignated center heading and section added 19293
62.4620 (b)(4) revised; (b)(5), (c)(5) and (6) added; eff. 8–16–99 32433
62.4633 Undesignated center heading and section added; eff. 8–16–99 32433
62.4634 Undesignated center heading and section added; eff. 8–16–99 32433
62.4845 (b)(4) and (c)(3) added **68397**
62.4975 Undesignated center heading and section added **68397**
62.5110—62.5112 Undesignated center heading and sections added 19922
62.5860—62.5862 Undesignated center heading and sections added **40052**

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62.5870—62.5872 Undesignated center heading and sections added **43083**
62.6350 (b)(3) added **45727**
62.6600—62.6602 (Subpart BB) Added **36861**
62.8103 Undesignated center heading and section added **41429**
(c) added 6237
62.8610—62.8612 Undesignated center heading and sections added; eff. 7–12–99 25834
62.8870—62.8872 Undesignated center heading and sections added **42238**
62.9100 (b)(3) and (c)(3) added **59890**
(b)(4) added 13519
62.9150 Undesignated center heading and section added **59890**
62.9160 Undesignated center heading and section added 13519
62.9630—62.9632 Undesignated center heading and sections added 13077
62.10100 (b)(3) and (c)(3) amended **40048**
62.10150 Undesignated center heading and section added **40049**
62.10350—62.10352 (Subpart QQ) Added; eff. 8–2–99 29799
62.10626 Undesignated center heading and section added **70026**
62.10627 Undesignated center heading and section added **70026**
62.10628 Undesignated center heading and section added **70027**
62.10850 (b)(3) added; eff. 8–16–99 32430
62.10880 Undesignated center heading and section added; eff. 8–16–99 32430
62.11610 Added **47437**
(d) correctly removed **54058**
62.14102 (a) corrected 17219
62.14109 (j) corrected 17219
62.14100—62.14109 (Subpart FFF) Added **63202**
Table 6 corrected 17219
63 Authority delegation notices **64632, 70675**
Clarification 5188
Technical correction 7793
Authority delegation notices 19922
63.8 (g)(5) amended 7468
63.9 (b)(4)(iv) removed 7468
63.10 (b)(2)(vii)(A), (B) and (C) added; (e)(3)(i)(C) removed 7468
63.13 (a) amended 66061
63.14 (b)(19) and (c)(3) added **50326**
(b) introductory text revised; (b)(20) and (e) added **53996**
(d)(1) revised 4300
(f) added 17562
(g) and (h) added 31375
63.42 (b) revised; eff. 8–30–99 35032
63.51 Amended 18827, 26314
Regulation at 64 FR 18827 withdrawn 26311
63.99 (a)(3) added **38480**
(a)(3) revised **63993**
(a)(47) added **66061**
(a)(5)(ii) introductory text and (A) introductory text revised; (a)(5)(ii)(A)(*1*)(*i*) and (B)(*1*)(*i*) amended; (a)(5)(ii)(D) added 4300
(a)(5)(ii)(E) added 12766
(a)(47)(i) table revised 19721
(a)(2) added 24291
(a)(3) amended; eff. 8–27–99 34563
63.100 (g)(4) revised; (h)(3) and (i)(5) amended 20191
63.111 Amended **67792**
63.116 (c)(3)(iii)(B) revised 20191
63.129 (a)(4)(ii) revised 20191
63.133 (h) amended 20191
63.134 (b)(2)(ii)(B) amended 20191
63.139 (d)(4) introductory text revised 20192
63.145 (h) introductory text and (2) revised **67793**
(c)(2) revised; (d)(6) amended; (i) introductory text added 20192
63.146 (b)(8) introductory text revised; (b)(8)(i) introductory text amended 20192
63.147 (b)(4) and (5) revised 20192
63.148 (b)(3) and (c) introductory text revised; (c)(4)(ii) amended 20192
63.150 (g)(5), (h)(5), (j)(2)(ii)(B) and (m)(5)(i) revised; (j)(2) amended 20192
63.151 (j)(3) revised 20195
63.152 (c)(2)(ii)(C) and (d)(1) revised 20195
63.110—63.152 (Subpart G) Appendix amended **67793**
Appendix amended 20195
63.160 (a) revised 20198

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63.163 (b)(1) amended 20198
63.164 (h) amended 20198
63.173 (j) introductory text amended 20198
63.181 (b)(7) introductory text and (g)(3) introductory text revised 20198
63.360 (g)(1), (2) and (3) revised; (g)(4), (5) and (6) added **66994**
63.404 Introductory text and (b) revised; (c) and (d) added **39519**
63.440 (d)(3)(ii) introductory text and (B) revised **71389**
63.441 Amended 17563
63.443 (b)(1) revised 17563
63.445 (a)(2) and (b) revised 17563
63.446 (i) correctly revised **42239**
(g) revised **49459**
(b), (d)(1) and (e)(3) revised 17563
63.447 (d)(1) correctly revised **42239**
(e)(2), (g)(1)(ii) and (2) revised 17563
63.450 (b) revised 17563
63.455 (b), (k)(6)(ii) and (l) revised 17563
63.457 (b)(5) introductory text, (ii)(C), (E)(7), (6), (c)(2), (3) introductory text, (4)(i), (f)(1), (h) and (m)(1)(ii) revised; (c)(3)(ii) redesignated as (c)(3)(iii); new (c)(3)(ii) added 17564
63.440—63.458 (Subpart S) Table 1 amended 17564
63.460 (c) and (d) revised; (g) added **68400**
63.470 Removed **68400**
63.481 (d)(1)(ii) and (iii) revised; (d)(1)(iv) added 11542
(b), (c) and (d)(6) revised; eff. 8–30–99 35028
63.482 (b) amended 11542
63.485 (a) revised; (v) added 11542
Regulation at 64 FR 11542 withdrawn 24511
63.487 (b)(2) revised 11542
63.488 (a)(2) revised 11542
63.490 (e) introductory text revised; (e)(3) added 11542
63.491 (b)(4) introductory text revised; (b)(5) added 11542
63.495 (b)(3) revised; (e) added 11543
63.503 (a) introductory text, (2), (3), (c) introductory text, (2), (5)(i), (ii), (d)(5), (e)(3)(ii), (5), (g)(1), (2)(ii)(A), (iii)(B)(*1*), (2), (3), (5), (7)(ii)(A), (h)(1) introductory text, (3), (5), (6)(ii) introductory text, (7)(ii) introductory text, (i) introductory text, (1) introductory text, (iii), (2), (3), (5) introductory text, (i), (j)(2) introductory text, (ii)(B), (D), (E), (iv), (v), (k) introductory text, (4) introductory text, (m)(1)(i), (ii), (iii), (2)(i), (ii), (3)(i), (ii), (iii), (4)(ii) and (5)(i) through (iv) revised 11543
63.505 (e)(1)(ii) revised 11547
63.506 (e)(4)(ii)(H)(*1*) revised 11547
63.541 (c) added 4572
63.542 Amended **45011**
63.543 (g) revised **45011**
63.544 (g) redesignated as (h); new (g) added **45011**
63.546 (a) revised **45011**
(a) revised 4572
63.547 (b) revised **45011**
63.548 (e) introductory text revised; (k) added **45011**
63.600—63.610 (Subpart AA) Added 31376
63.620—63.631 (Subpart BB) Added 31382
63.640 (k)(2)(vii), (n)(1), (3), (6) and (o)(2) revised; (n)(8), (9) and (r) added **44140**
63.641 Amended **44141**
63.644 (a) amended **44141**
63.645 (f)(4) amended; (f)(5) revised **44141**
63.648 (e) revised **44141**
63.654 (a) and (h)(6) amended; (d)(1), (f) introductory text and (1)(i)(A) revised; (f)(6) added **44141**
63.640—63.679 (Subpart CC) Appendix amended **44142, 44143**
63.703 (c)(4)(i), (ii) and (iii) revised 17464
63.741 (f) and (i) amended; (j) revised **46532**
63.742 Amended **46533**
63.744 (b)(3) amended; (c)(5) added; Table 1 revised **46533**
63.745 (c)(1) through (4) and (g)(2)(v) revised **46533**
63.746 (b)(4)(ii)(C) added **46533**
63.750 (b)(2) and (i)(2)(iv) amended **46534**

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63.751 (b)(6)(iv) redesignated as (b)(6)(v); (b)(6)(iii)(D), (c)(2) and (d) revised; new (b)(6)(iv) revised **46534**
63.752 (c)(2) introductory text, (d)(2), (3) and (e)(7) revised **46534**
63.753 (c)(1)(vi) and (d)(1)(vii) revised **46535**
63.760—63.779 (Subpart HH) Added 32628
63.801 Amended **71380**
63.803 (c)(1), (d), (f), (i), (j) and (l)(6) revised **71380**
63.800—63.808 (Subpart J) Table 2 revised **71381**
Tables 4 and 5 revised **71382**
Table 6 revised **71383**
63.980—63.999 (Subpart SS) Added 34866
63.1000—63.1018 (Subpart TT) Added 34886
63.1019—63.1039 (Subpart UU) Added 34899
63.1060—63.1066 (Subpart WW) Added 34918
63.1100—63.1113 (Subpart YY) Added 34921
63.1155—63.1174 (Subpart CCC) Added 33218
63.1175—63.1196 (Subpart DDD) Added 29503
63.1250—63.1261 (Subpart GGG) Added **50326**
63.1270—63.1289 (Subpart HHH) Added 32647
63.1290—63.1309 (Subpart III) Added **53996**
63.1311 (d)(1)(ii), (iii) and (4) revised; (d)(1)(iv) added 11547
(b) and (d)(6) revised; eff. 8–9–99 30409
(b) and (c) revised; eff. 8–30–99 ..... **55728**
63.1312 (b) amended 11547
63.1314 (b)(3) added 11547
63.1315 (a) introductory text revised; (a)(18) and (e) added 11547
63.1316 Heading, (b)(1)(i), (2)(i) and (ii) revised; (b)(1)(v) and (2)(v) added 11548
63.1321 (d) added 11549
63.1322 (b)(2) revised 11549
63.1323 (a)(2) revised 11549
63.1325 (e) introductory text revised; (e)(3) added 11549
63.1326 (b)(4) introductory text revised; (b)(5) added 11549
63.1330 (d) and (e) added 11549
63.1332 (a)(2), (3) introductory text, (c) introductory text, (3), (d)(5), (e)(3)(ii), (5), (g)(1), (2)(ii)(A), (7)(ii)(A), (h)(1) introductory text, (6)(ii) introductory text, (7)(ii) introductory text, (i)(1) introductory text, (iii), (2), (3), (5) introductory text, (i), (j)(2) introductory text, (ii)(B), (iv), (v), (k) introductory text, (4) introductory text and (l) introductory text revised 11549
63.1335 (e)(4)(ii)(L)(*1*) revised 11553
63.1310—63.1335 (Subpart JJJ) Tables 3 and 5 revised 11553
63.1340—63.1358 (Subpart LLL) Added 31925
63.1360—63.1369 (Subpart MMM) Added 33589
63.1380—63.1387 (Subpart NNN) Added 31708
63.1420—63.1439 (Subpart PPP) Added 29439
63.1427 (e)(2) Equation 11 corrected 31895
63.1541—63.1550 (Subpart TTT) Added 30204
63.1650—63.1661 (Subpart XXX) Added 27458
63 Appendix A amended **46535**
Appendix C amended **67794**
Appendix A amended 31718
68 Delagation request **55954**
68.2 (c) added 29170
68.3 Amended 979
68.10 (d)(1) revised 979
68.25 (e) revised; (f), (g) and (h) redesignated as (g), (h) and (i); new (f) added 28700
68.42 (b)(3) revised; (b)(4) through (10) redesignated as (b)(5) through (11); new (b)(4) added 979
68.79 (a) revised 979
68.150 (e) added 979
68.151 Added 979
68.152 Added 980
68.160 (b)(1), (7) and (12) revised; (b)(14) through (18) added 980
68.165 (b) revised 980
68.170 (b) revised 980
68.175 (b) revised 980

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68.180 (b) revised 980
69 Authority citation revised **49465**
69.51 (Subpart E) Added **49465**
(c) revised 34133
70.5 (c) reinstated in part; CFR correction **64869**
70 Appendix A amended **40057, 50773**
Appendix A amended 8526
Appendix A amended; eff. 7–6–99 23779
Appendix A amended; eff. 8–16–99 32436
71.2 Amended 8262
71.3 (e) added 8262
71.4 (a) introductory text, (b), (f), (h) and (i) introductory text revised; (j) amended 8262
71.8 (a) and (d) revised 8263
71.9 (p) added 8263
71.11 (l)(7) added 8263
72.2 Amended **57498, 68404**
Amended 25842, 28586
72.3 Amended 28588
72.6 (b)(1) amended 28588
72.40 (a)(1) amended 25842
72.90 (c)(3) revised 28588
73.10 (b)(1) and (2) amended; (b) Table 2 and (3) revised; (c) and (d) removed **51714**
73.11 Removed **51765**
73.12 (b) removed **51765**
73.13 (b) removed **51765**
73.16 Removed **51765**
73.19 (a)(5) revised; (b) removed **51765**
73.21 (a), (b) and (c)(1) table amended; (a) table added; (c)(2) revised **51765**
73.27 (a)(3) removed; (a)(2), (b)(2) through (5) and (c)(2) through (5) revised **51765**
73.34 (c)(4) amended **68404**
73.35 (a)(2) revised; (b)(3) added 25842
73.50 (b)(2) redesignated as (b)(3); (b)(2) added **68404**
73.70 (b) revised **51766**
75 Authority citation revised 28588
75.1 (a) revised **57498**
75.2 (a) revised; (c) added **57499**
75.4 (a) introductory text revised **57499**
(a) introductory text, (d) introductory text and (g) introductory text amended; (d)(1) and (i) revised 28588
75.5 (b), (d) and (f)(2) revised 28589
75.6 (f) added **57499**
(a)(13), (31), (38), (39), (b), (c), (e)(1) and (2) revised; (a)(40) redesignated as (a)(41); new (a)(40) and (f)(3) added 28589
75.7 Removed 28589
75.8 Removed 28589
75.10 (d)(3) and (f) revised 28590
75.11 (d)(2) amended; (d)(3) added **57499**
(a), (b), (d)(1), (2), (e) introductory text, (1), (2), (3) introductory text, (ii) and (iv) revised; (e)(4) removed 28590
75.12 Heading revised; (d) redesignated as (e); new (d) added **57499**
(a) amended; (b) through (e) redesignated as (c) through (f); new (b) added; new (c) revised 28591
75.13 (d) added **57499**
(a) and (c) revised 28591
75.16 (b)(2)(ii)(B), (D), (d)(2) and (e)(1) revised; (e)(2) and (3) removed; (e)(4) and (5) redesignated as (e)(2) and (3); new (e)(3) amended; new (e)(4) added 28591
75.17 Introductory text added **57499**
(a)(2)(i)(C) revised 28592
75.19 Added **57500**
Amended 28592
75.20 (h) added **57506**
(c)(3) removed; (c)(4) through (8) redesignated as (c)(3), (4), (8), (9) and (10); heading, (a) introductory text, (1), (3), (4) introductory text, (i), (ii), (iii), (5)(i), (b), (c) heading, introductory text, (1) introductory text, (i), (ii), (iii), new (3), new (4) introductory text, new (8) introductory text, new (i), new (10) introductory text, (d) heading, (1), (2), (g) heading, introductory text, (1) introductory text, (i), (2), (4), (5) and (h)(2) revised; new (c)(5), new (6), new (7), (g)(6) and (7) added 28592
75.21 (a)(2), (4), (5), (6) and (e) revised; (a)(7) and (8) redesignated as (a)(9) and (10); new (a)(7) and (8) added 28599

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75.22 (a) introductory text amended; (a)(2), (4), (b)(4) and (c)(1) introductory text revised 28600
75.24 (d) revised **57506**
Heading and (d) revised 28600
75.30 (a)(3), (4) and (d) revised; (a)(5) and (6) added; (b) amended 28600
75.31 Revised 28601
75.32 (a) introductory text revised; (a)(3) amended 28602
75.33 Heading, (a), (b)(3) and (c) revised; (b)(4) added 28602
75.34 (a)(3) revised 28604
75.35 (a) and (b) revised; (d) added 28604
75.36 Heading, (a), (b) and (d) revised 28604
75.37 Added 28604
75.48 (a)(3)(ii), (iii), (iv), (viii), (ix) and (xi) revised 28605
75.50 Removed 28605
75.51 Removed 28605
75.52 Removed 28605
75.53 (a) and (b) revised 28605
75.54 (a) introductory text and (1) revised; (g) added 28608
75.56 Introductory text added; (b)(1)(i), (xi), (2)(vii) and (e) revised; (f) removed 28608
75.56 Introductory text, (a)(5)(vii), (viii) and (ix) added; (d) removed 28608
75.57 Added 28609
75.58 Added 28612
75.59 Added 28614
75.60 (a), (b)(1) and (2) revised; (b)(3) through (6) added 28620
75.61 (a) introductory text, (1) introductory text and (b) revised; (a)(1)(iv) added; (a)(6)(ii) amended 28620
75.62 Heading, (a) and (c) revised 28621
75.63 Revised 28621
75.64 Revised 28622
75.65 Revised 28623
75.66 (e) introductory text amended; (i) redesignated as (l); (a) and new (l) revised; new (i), (j) and (k) added 28623
75.70—75.75 (Subpart H) Added **57507**
75.70 (e), (f) introductory text and (1)(iv) revised; (g)(6) added 28623
75.71 (b) and (d)(2) revised 28624
75.73 Added 28624
75.74 (c)(3) through (10) redesignated as (c)(4) through (11); (b)(2), (c)(1), (2) and new (4) through (7) revised; new (c)(3) added 28627
75 Appendix A amended 57512
Appendixes C, D and F amended **57513**
Appendix A amended 28631, 28637, 28638, 28643
Appendix B amended 28644, 28645
Appendixes C and D amended 28652
Appendix D amended 28663
Appnedix E amended 28665
Appendixes E and F amended 28666
Appendix F amended 28667, 28668
Appendixes F and G amended 28671
Appendix H amended; Appendix J added 28672
79.57 (e)(2)(iii)(C) and (v)(B) removed; (e)(2)(iv)(B) and (vi)(B) revised **63792**
79.62 (d)(1)(ii)(B) revised **63793**
79.66 (e)(5)(iii)(B) amended **63793**
80 Technical correction **54753**
80.29 (a)(1) introductory text revised **49465**
80.46 (f)(3) and (g)(9) revised **63793**
80.70 (m) amended **43049**
(k) revised **52104**
(n) added 10371
80.93 (d) added; eff. 7–26–99 30910
80.101 (f)(4) and (g)(1)(ii) revised; eff. 7–26–99 30910
81 Attainment status determinations **64415**
81.305 Amended **37279, 39751**
81.306 Amended 11782
81.307 Amended **53287, 58644**
Amended 12004, 12014
81.310 Amended 995
81.311 Amended 17555
81.313 Amended **59731**
Amended 12264
81.315 Amended **39435**
81.318 Amended **39436, 44145**
Corrected **42489**
81.320 Amended 30915
81.322 Amended 30915
81.323 Amended **39436**
Amended 30915

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Amended; eff. 8-30-99 35023
81.326 Amended 3859
81.330 Amended 30916
81.333 Amended **39436**
81.336 Amended **39437**
Amended 13074
Regulation at 63 FR 13074 withdrawn 24949
81.340 Amended 30916
81.343 Amended 30917
81.345 Amended 3225
81.350 Amended 30917
82 Determination **42728**
Acceptability notice 30410
82.1 Revised **41642**
82.2 Removed **41642**
82.3 Amended **41642**
Regulation at 63 FR 41642 withdrawn in part **53290**
82.4 (f) through (k) and (l) through (s) redesignated as (g) through (l) and (n) through (u); (d), (e), new (j) and (t) revised; (f), (m), (l)(4), (t)(3) and (u)(3) added **41642**
Regulation at 63 FR 41642 withdrawn in part **53290**
(t)(2) table revised 1096
82.7 Revised 29245
82.9 Heading, (a) and (c) revised; (g) added **41643**
Regulation at 63 FR 41643 withdrawn in part **53290**
82.12 (a)(3) added **41645**
Regulation at 63 FR 41643 withdrawn in part **53290**
82.13 (f)(2)(xvii), (g)(1)(xvii), (4)(xiv), (xv), (w), (x) and (z) added; (f)(3)(v) removed; (f)(3)(vi) through (xiii), second (g)(3), and (w) redesignated as (f)(3)(v) through (xii), (g)(4) and (y); (b), (f)(1)(iv), (2) introductory text, (xiv), new (3)(xi), (xii), (xiii), (g)(1)(vii), (xvi), (2), first (3), (h)(8), (i) introductory text, (m), (u) and (v) revised; **41646**
Regulation at 63 FR 41646 withdrawn in part **53290**
82.1—82.13 (Subpart A) Appendix C revised **41648**
Appendixes J and K added **41651**
Regulations at 63 FR 41648 and 41651 withdrawn in part **53290**
82.170—82.184 (Subpart G) Appendix E added; interim 3865
Appendix F added; interim 3868
Appendix G amended 10378
Appendix H added 22996
85 Availability notice 30415
85.501 Revised 23919
85.1501 (c) added 23919
85.1505 (a)(3)(i)(B), (ii)(B) and (iii) revised 23919
85.1510 (a)(3) revised 23919
85.1512 (a)(1)(iii) revised 23919
85.1701 (c) added 23919
85.1902 (b) revised 23919
85.2101 Revised 23919
85.2102 (a)(13)(ii) revised 23919
85.2208 (a)(1) revised 23919
86 Heading revised **56995**
86.1 (b)(2) table amended; (b)(5) added **70694**
(b)(1) table, (2) table, (3) table and (5) table amended 23920
86.001-1 Added 23920
86.094-21 (i) removed **70694**
86.095-35 (i) revised **70694**
86.098-17 (b)(2) through (i) and (j) revised **70694**
86.099-17 Added **70694**
86.099-30 Added **70697**
86.101 (d) added 23921
86.106-96 (a)(1) revised 23921
86.113-94 (a)(3), (b)(5), (c)(3), (d)(1), (3), (e)(4) and (f)(3) revised 23921
86.127-00 Introductory text and (h) revised 23921
86.128-79 (g)(2) revised 23921
86.129-00 (a) table amended; (d)(1)(iv) revised 23921
86.132-96 (e)(2)(ii) revised 23922
86.601-84 (b) added 23922
86.701-94 Revised 23922
86.884-8 (c)(4) table revised **56995**
(c)(4) table correctly revised **63967**
86.902-01 Added 23922
86.907-01 Added 23922
86.908-01 Added 23922
86.1001-84 (b) added 23922
86.1101-87 Revised 23922
86.1401 Revised 23922
86.1501-94 Revised 23923
86.1502-84 Revised 23923
86.1503-84 Revised 23923
86.1601 (d) added 23923
86.1701-99 (e) added 23923
86.1717-01 Added 23923

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86.1721-01 Added 23923
86.1724-01 Added 23924
86.1725-01 Added 23924
86.1728-01 Added 23924
86.1735-01 Added 23924
86.1772-99 (b)(1) revised 23924
86.1776-99 (b)(1) revised 23925
86.1801-01—86.1853-01 (Subpart S) Added 23925
88.301-93 (c) added 23973
89 Heading revised **56995**
Nomenclature change **56996**
89.1 (a) and (b)(4) revised; (b)(3) amended; (b)(5) added **56996**
89.2 Amended **56996**
89.3 Amended **56997**
89.4 Removed **56997**
89.6 (b)(1) introductory text amended; (b)(1) table revised **56997**
89.101-96 Redesignated as 89.101 ..... **56995**
89.101 Redesignated from 89.101-96 ..... **56995**
89.102-96 Redesignated as 89.102 ..... **56995**
89.102 Redesignated from 89.102-96 ..... **56995**
Heading and (a) revised; (c) through (h) added **56997**
89.103-96 Redesignated as 89.103 ..... **56995**
89.103 Redesignated from 89.103-96 ..... **56995**
89.104-96 Redesignated as 89.104 ..... **56995**
89.104 Redesignated from 89.104-96 ..... **56995**
(a), (b) and (c) revised **56998**
89.105-96 Redesignated as 89.105 ..... **56995**
89.105 Redesignated from 89.105-96 ..... **56995**
89.106-96 Redesignated as 89.106 ..... **56995**
89.106 Redesignated from 89.106-96 ..... **56995**
89.107-96 Redesignated as 89.107 ..... **56995**
89.107 Redesignated from 89.101-97 ..... **56995**
89.108-96 Redesignated as 89.108 ..... **56995**
89.108 Redesignated from 89.108-96 ..... **56995**
89.109-96 Redesignated as 89.109 ..... **56995**
89.109 Redesignated from 89.109-96 ..... **56995**
Revised **56999**
89.110-96 Redesignated as 89.110 ..... **56995**
89.110 Redesignated from 89.110-96 ..... **56995**
(b)(9) and (10) amended; (b)(11) and (12) added **57000**
89.111-96 Redesignated as 89.111 ..... **56995**
89.111 Redesignated from 89.111-96 ..... **56995**
89.112-96 Redesignated as 89.112 ..... **56995**
89.112 Redesignated from 89.112-96 ..... **56995**
(a), (b) and (d) revised; (e) and (f) added **57000**
89.113-96 Redesignated as 89.113 ..... **56995**
89.113 Redesignated from 89.113-96 ..... **56995**
(b) revised; (c) added **57003**
89.114-96 Redesignated as 89.114 ..... **56995**
89.114 Redesignated from 89.114-96 ..... **56995**
Heading, (a) and (b) heading revised **57003**
89.115-96 Redesignated as 89.115 ..... **56995**
89.115 Redesignated from 89.115-96 ..... **56995**
89.116-96 Redesignated as 89.116 ..... **56995**
89.116 Redesignated from 89.116-96 ..... **56995**
(e) added **57003**
89.117-96 Redesignated as 89.117 ..... **56995**
89.117 Redesignated from 89.117-96 ..... **56995**
(a) revised; (d) added **57003**
89.118-96 Redesignated as 89.118 ..... **56995**
89.118 Redesignated from 89.118-96 ..... **56995**
Heading revised; introductory text and (e) added **57003**
89.119-96 Redesignated as 89.119 ..... **56995**
89.119 Redesignated from 89.119-96 ..... **56995**

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(d) revised 57004
89.120–96 Redesignated as 89.120 56995
89.120 Redesignated from 89.120–96 56995
(c) revised; (e) added 57004
89.121–96 Redesignated as 89.121 56995
89.121 Redesignated from 89.121–96 56995
89.122–96 Redesignated as 89.122 56995
89.122 Redesignated from 89.122–96 56995
89.123–96 Redesignated as 89.123 56995
89.123 Redesignated from 89.123–96 56995
89.124–96 Redesignated as 89.124 56995
89.124 Redesignated from 89.124–96 56995
(a)(3) added 57005
89.125–96 Redesignated as 89.125 56995
89.125 Redesignated from 89.125–96 56995
(b) revised 57005
89.126–96 Redesignated as 89.126 56995
89.126 Redesignated from 89.126–96 56995
(c) revised 57005
89.127–96 Redesignated as 89.127 56995
89.127 Redesignated from 89.127–96 56995
89.128–96 Redesignated as 89.128 56995
89.128 Redesignated from 89.128–96 56995
89.129–96 Redesignated as 89.129 56995
89.129 Redesignated from 89.129–96 56995
89.130 Added 57005
89.201–96 Redesignated as 89.201 56995
89.201 Redesignated from 89.201–96 56995
89.202–96 Redesignated as 89.202 56995
89.202 Redesignated from 89.202–96 56995
89.203–96 Redesignated as 89.203 56995
89.203 Redesignated from 89.203–96 56995
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89.204–96 Redesignated as 89.204 56995
89.204 Redesignated from 89.204–96 56995
Revised 57007
89.205–96 Redesignated as 89.205 56995
89.205 Redesignated from 89.205–96 56995
Revised 57008
89.206–96 Redesignated as 89.206 56995
89.206 Redesignated from 89.206–96 56995
Revised 57008
89.207–96 Redesignated as 89.207 56995
89.207 Redesignated from 89.207–96 56995
Revised 57008
89.208–96 Redesignated as 89.208 56995
89.208 Redesignated from 89.208–96 56995
Revised 57009
89.209–96 Redesignated as 89.209 56995
89.209 Redesignated from 89.209–96 56995
(a) revised 57009
89.210–96 Redesignated as 89.210 56995
89.210 Redesignated from 89.210–96 56995
(b) and (c) revised 57009
89.211–96 Redesignated as 89.211 56995
89.211 Redesignated from 89.211–96 56995
(a) and (c) revised 57009
89.212–96 Redesignated as 89.212 56995
89.212 Redesignated from 89.212–96 56995
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89.301–96 Redesignated as 89.301 56995
89.301 Redesignated from 89.301–96 56995
89.302–96 Redesignated as 89.302 56995
89.302 Redesignated from 89.302–96 56995

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89.303–96 Redesignated as 89.303 56995
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89.304–96 Redesignated as 89.304 56995
89.304 Redesignated from 89.304–96 56995
(c) revised 57010
89.305–96 Redesignated as 89.305 56995
89.305 Redesignated from 89.305–96 56995
89.306–96 Redesignated as 89.306 56995
89.306 Redesignated from 89.306–96 56995
89.307–96 Redesignated as 89.307 56995
89.307 Redesignated from 89.307–96 56995
(b)(7) and (8) revised 57010
89.308–96 Redesignated as 89.308 56995
89.308 Redesignated from 89.308–96 56995
(b) revised 57010
89.309–96 Redesignated as 89.309 56995
89.309 Redesignated from 89.309–96 56995
(a)(3) removed; (a)(4)(iii), (5)(i)(C) and (D) revised 57010
89.310–96 Redesignated as 89.310 56995
89.310 Redesignated from 89.310–96 56995
(a)(1) and (c) revised 57010
89.311–96 Redesignated as 89.311 56995
89.311 Redesignated from 89.311–96 56995
89.312–96 Redesignated as 89.312 56995
89.312 Redesignated from 89.312–96 56995
(b)(2) removed; (c)(2), (d) and (f) revised; (g) added 57010
89.313–96 Redesignated as 89.313 56995
89.313 Redesignated from 89.313–96 56995
89.314–96 Redesignated as 89.314 56995
89.314 Redesignated from 89.314–96 56995
(a) and (b) revised 57011
89.315–96 Redesignated as 89.315 56995
89.315 Redesignated from 89.315–96 56995
89.316–96 Redesignated as 89.316 56995
89.316 Redesignated from 89.316–96 56995
(b) removed 57011
89.317–96 Redesignated as 89.317 56995
89.317 Redesignated from 89.317–96 56995
(g), (h) and (k) revised 57011
89.318–96 Redesignated as 89.318 56995
89.318 Redesignated from 89.318–96 56995
(c)(2) heading, (i) and (iv) revised 57011
(c)(2)(iv)(B) corrected 58101
89.319–96 Redesignated as 89.319 56995
89.319 Redesignated from 89.319–96 56995
(b)(1), (2), (c), (d) heading, introductory text, (2) and (6) revised 57011
89.320–96 Redesignated as 89.320 56995
89.320 Redesignated from 89.320–96 56995
(c) revised 57012
89.321–96 Redesignated as 89.321 56995
89.321 Redesignated from 89.321–96 56995
(c) revised 57012
89.322–96 Redesignated as 89.322 56995
89.322 Redesignated from 89.322–96 56995
(a) revised 57012
89.323–96 Redesignated as 89.323 56995
89.323 Redesignated from 89.323–96 56995
89.324–96 Redesignated as 89.324 56995
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89.325–96 Redesignated as 89.325 56995
89.325 Redesignated from 89.325–96 56995
89.326–96 Redesignated as 89.326 56995
89.326 Redesignated from 89.326–96 56995
89.327–96 Redesignated as 89.327 56995
89.327 Redesignated from 89.327–96 56995
89.328–96 Redesignated as 89.328 56995
89.328 Redesignated from 89.328–96 56995
(b)(1) and (2) revised 57013
89.329–96 Redesignated as 89.329 56995
89.329 Redesignated from 89.329–96 56995
89.330–96 Redesignated as 89.330 56995
89.330 Redesignated from 89.330–96 56995
(b)(2) revised; (b)(3) added 57013
89.331–96 Redesignated as 89.331 56995
89.331 Redesignated from 89.331–96 56995
89.301—89.331 (Subpart D) Appendix A amended 57013
89.401–96 Redesignated as 89.401 56995
89.401 Redesignated from 89.401–96 56995
(b) revised 57015
89.402–96 Redesignated as 89.402 56995
89.402 Redesignated from 89.402–96 56995
Revised 57015
89.403–96 Redesignated as 89.403 56995
89.403 Redesignated from 89.403–96 56995
89.404–96 Redesignated as 89.404 56995
89.404 Redesignated from 89.404–96 56995
(b) revised; (e) removed 57015
89.405–96 Redesignated as 89.405 56995
89.405 Redesignated from 89.405–96 56995
(d), (e) and (f) revised 57015
89.406–96 Redesignated as 89.406 56995
89.406 Redesignated from 89.406–96 56995
(b) and (c)(1) revised 57015
89.407–96 Redesignated as 89.407 56996
89.407 Redesignated from 89.407–96 56996
(a), (c) and (d)(2) revised 57015
89.408–96 Redesignated as 89.408 56996
89.408 Redesignated from 89.408–96 56996
(e) revised 57016
89.409–96 Redesignated as 89.409 56996
89.409 Redesignated from 89.409–96 56996
89.410–96 Redesignated as 89.410 56996
89.410 Redesignated from 89.410–96 56996
(a), (b) and (c) revised 57016
89.411–96 Redesignated as 89.411 56996
89.411 Redesignated from 89.411–96 56996
(d)(5) and (e)(5) revised 57016
89.412–96 Redesignated as 89.412 56996
89.412 Redesignated from 89.412–96 56996
(c)(3) revised; (g)(1) removed 57016
89.413–96 Redesignated as 89.413 56996
89.413 Redesignated from 89.413–96 56996
(d) revised; (e) removed 57016
89.414–96 Redesignated as 89.414 56996
89.414 Redesignated from 89.414–96 56996
(a) revised 57017
89.415–96 Redesignated as 89.415 56996
89.415 Redesignated from 89.415–96 56996
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89.416–96 Redesignated as 89.416 56996
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89.417 Redesignated from 89.417–96 56996
89.418–96 Redesignated as 89.418 56996
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89.905 (f) revised **57022**
89.906 (a)(3) introductory text, (iii)(D) and (b) revised **57022**
89.911 Revised **57022**
89.1003 (a)(3), (5), (6), (b)(4) and (7) revised **57022**
89.1007 (c) revised **57023**
90.1 (b)(5)(iv) amended; (b)(6) and (d) added; (c) revised 15235
90.3 Amended 15235
90.103 (a) introductory text, (3) and (5) revised; (a)(6), (7) and (8) added 15236
90.104 Introductory text and (d) through (h) added 15237
90.105 Revised 15238
90.106 (a) revised; (b)(3) added 15238
90.107 (d)(5), (9) and (10) amended; (d)(11) added 15238
90.108 (c) and (d) added 15238
90.113 Heading revised; (a) amended 15239
90.114 (c)(9) and (10) amended; (c)(11) and (f) added 15239
90.116 (d)(6) and (7) revised; (d)(8), (9) and (10) added 15239
90.117 (a) revised 15239
90.118 Heading revised; (e) added 15239
90.120 (c) added 15239
90.122 (a) amended; (d)(4) added 15239
90.201—90.211 (Subpart C) Added 15239
90.207 (a) corrected 16526
90.301 (a) revised; (d) added 15243
90.302 Revised 15243
90.308 (c) revised 15243
90.329 (c) added 15243
90.401 (c) and (d) added 15244
90.404 (b) amended 15244
90.409 (a)(3) revised 15244
90.410 (b) revised 15244
90.427 (a) revised 15244
90.503 (f)(3) and (4) revised 15244
90.509 (b) revised 15244
90.510 (b) revised 15244

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90.512 (b) revised 15245
90.612 (g) revised 15245
90.701—90.713 (Subpart H) Added 15245
90.706 (b)(7) corrected 34313, 35256
90.801—90.807 (Subpart I) Heading revised 15251
90.801 Existing text designated as (a); (b) through (g) added 15251
90.802 Introductory text amended 15251
90.803 (c) revised 15251
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90.905 (f) revised 15252
90.906 (a) introductory text and (3) introductory text revised 15252
90.909 (c) revised 15252
90.911 Revised 15252
90.1003 (a)(2), (4)(i), (b)(4) and (5) revised; (a)(4)(iii) and (iv) redesignated as (a)(4)(iv) and (v); new (a)(4)(iii) and (b)(6) added 15252
90.1103 (a) and (b) revised 15253
90.1104 (e) added 15253
90.1201—90.1207 (Subpart M) Added 15254
93.129 Added 13483
96 Added **57514**
96.42 (f) amended **71225**
123.1 (a) and (c) revised **45122**
123.2 Revised **45122**
123.22 (f) removed; (g) redesignated as (f) **45122**
123.24 (d)(8) removed **45122**
123.25 (a) introductory text and (37) revised **45122**
123.26 (e)(5) revised **45122**
123.42 Introductory text revised **45122**
123.44 (d)(1), (2), (e) and (j) revised **45122**
123.45 (e) removed **45123**
123.62 (b)(3) and (c) revised **45123**
123.63 (a) introductory text and (4) revised **45123**
123.64 (a) introductory text and (b)(1) revised **45123**
136 Technical correction 13053
136.3 (e) corrected **38756**
Table 1C corrected; CFR correction **44146**
(a) introductory text and (b) introductory text revised; Table 1F and (b)(40) added **50423**
(b)(41) added; (e) Table II amended 4978
(a) introductory text corrected 10392
(a) table amended 26327
(a) table amended; eff. 7–8–99 30433
(b)(40) added; eff. 7–8–99 30434
141 Authority citation revised **43846, 44526**
141.2 Amended **69463, 69515**
141.4 (a) revised **43846**
141.12 Revised **69463**
141.21 (f)(3) revised; (f)(5), (6)(i), (ii) and (8) amended **47107**
Regulation at 63 FR 47107 withdrawn **72200**
141.23 (a)(4)(iii), (k)(1) table, (2), (3)(i), (ii) introductory text revised **47107**
Regulation at 63 FR 47107 withdrawn **72200**
141.24 (e), (f)(14)(ii), (17)(i)(A), (B), (ii)(A), (h)(10)(ii), (13) introductory text, (i), (19)(i)(A) and (B) introductory text revised **47110**
Regulation at 63 FR 47110 withdrawn **72200**
141.30 (d) and (f) amended; (h) added **69464**
141.32 (a) heading, (1)(iii) introductory text and (c) amended; (a)(1)(iii)(E) and (e)(76) through (81) added **69464**
(e)(10) revised **69515**
141.40 (g) and (n)(11) introductory text revised; (n)(11) table amended **47112**
Regulation at 63 FR 47112 withdrawn **72200**
(l) amended 1498
141.50—141.54 (Subpart F) Heading revised **69465**
141.52 Table amended **69515**
141.53 Added **69465**
141.54 Added **69465**
141.60—141.65 (Subpart G) Heading revised **69465**
141.64 Added **69465**
141.65 Added **69465**
141.70 (d) added **69516**
141.71 (b)(6) revised **69516**

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141.73 (a)(3) added; (d) revised **69516**
141.74 (a) introductory text and (2) amended; (a)(1) table revised **47113**
Regulation at 63 FR 47113 withdrawn **72200**
141.89 (a)(1)(i) and (ii)(B) amended **47113**
Regulation at 63 FR 47113 withdrawn **72200**
141.130—141.135 (Subpart L) Added **69466**
141.151—141.155 (Subpart O) Added (OMB numbers pending) **44526**
141.153 (d)(4)(v)(C) amended **69516**
(f) corrected 34733
141.154 (e) added **69475**
(d) corrected 34733
141.151—141.155 (Subpart O) Appendixes A and B corrected 34733
141.170—141.175 (Subpart P) Added **69516**
142 Authority citation revised **44535**
142.10 (d) revised **43846**
(b)(6)(vii) added **44535**
142.14 (d)(12) through (16) added **69475**
(a)(3), (4)(i) and (ii) introductory text revised; (a)(7) added **69519**
142.15 (c)(5) added **69520**
142.16 (f) added **44535**
(h) added **69475**
(b)(1) redesignated as (b)(1)(i); (b)(1)(ii), (3) and (g) added **69520**
(f)(2) and (3) corrected 34733
142.20 Revised **43847**
142.40—142.46 (Subpart E) Heading revised **43847**
142.42 (c) revised **43847**
142.50 Revised **43847**
142.53 (c)(1) revised **43848**
142.55 (b) revised; (c) removed **43848**
142.56 Revised **43848**
142.72 Introductory text revised **44535**
142.78 (b) revised **44536, 71376**
142.201—142.208 (Subpart J) Removed **48077**
142.301—142.313 (Subpart K) Added **43848**
143.4 (b) table revised **47113**
Regulation at 63 FR 47113 withdrawn **72200**
147.2555 Added 14803
148.18 (i) added **42184**
Regulation at 63 FR 35149 eff. date corrected to 11–4–98 ..... **42581**
159.159 (a) introductory text revised **41193**
180 Authority citation revised 19492
180.2 (a) revised **57066**
180.33 Revised 28386
180.103 (a) table amended **57072**
180.106 (a) table amended **57072**
180.110 (a) table amended **57072**
(b) revised 13103
180.114 Revised **57072**
180.115 Removed **57066**
180.118 Removed **57066**
180.121 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) **57073**
180.142 (a)(11) revised 11799
180.145 (a)(1) table amended **57073**
Regulation at 63 FR 57073 withdrawn in part 4311
180.148 Removed **57066**
180.158 Removed **57066**
180.159 Removed **57066**
180.162 Removed **57066**
180.170 Removed **57073**
180.171 Removed **57066**
180.173 (a) table revised **57073**
180.175 (b) table amended **53817**
(b) table amended 11792
180.176 Existing text designated as (a); (b) added **54369**
180.178 Revised **57073**
180.181 Existing text designated as (a); (a) heading added; table revised **57073**
180.183 (a) table amended **57073**
180.188 Removed **57073**
180.190 Revised 25848
180.198 Heading and table revised **57073**
180.200 (a)(1) revised **57073**
(b) table amended 13096
180.205 (b) table amended **54360**
(b) table amended 35070
180.206 (a) table amended **57074**
180.207 Existing text designated as (a); (a) heading added; (a) table amended **57074**
180.209 (a) table amended **57074**
(b) table amended 28927

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180.211 Existing text designated as (a); (a) heading added; (a) table amended **57074**
180.213 (a)(1) table revised **57074**
180.214 Existing text designated as (a); (a) heading added; (a) table amended **57074**
180.215 Existing text designated as (a)(1) and (2); (a) heading added; (a)(1) table amended **57074**
180.217 Existing text designated as (a) and revised **57074**
180.219 Removed **57066**
180.220 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) **57075**
180.222 (a) table amended **57075**
180.224 Removed 31505
180.227 (a) heading and (1) designation added; (b) and (c) redesignated as (a)(2) and (3); new (a)(1) and (2) amended; new (a)(3) revised 789
(a)(1) table corrected 10234
180.229 Revised **57075**
180.231 Existing text designated as (a); (a) heading added **57075**
180.235 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) **57075**
180.239 Amended **57066**
180.242 (a)(1) table amended **57075**
(b) table amended **66996**
180.254 (a) table amended **57075**
180.258 (a) heading added; (a) table amended; (b) redesignated as (c); new (c) heading added **57075**
180.261 (a) heading added; (a) table amended; (b) redesignated as (c); new (c) heading added **57075**
180.262 (a) heading added; (a) table amended; (b) redesignated as (c); new (c) heading added **57075**
180.263 Table amended **57066**
Table corrected 3428
180.284 Revised **45182**
(b) table amended **67799**
180.292 Existing designated as (a); (a)(2) and (3) redesignated from 185.4850 and 186.4850; (d) added 425
180.293 (b) amended **42249**
180.296 Revised 19492
180.297 Existing text designated as (a); (a) heading added; (a) table amended **57075**
180.298 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) **57075**
180.301 (b) amended 11801
180.306 Removed **57066**
180.314 Table amended **57075**
180.317 Heading and (a) introductory text revised; (b) redesignated as (c); new (c) introductory text revised; (a) heading and new (b) added **49486**
(b) table amended 6532
180.319 Table amended **57066**
Revised **57076**
180.320 Removed **57076**
180.321 Removed **57066**
180.325 Table amended **57066**
180.326 Removed **57066**
180.330 (a) table amended **57076**
180.341 Existing text designated as (a); (a) heading added; (a) table amended **57076**
180.346 Existing text designated as (a); (a) heading added; (a) table amended **57076**
180.347 Removed **57066**
180.349 (a) heading and (1) designation added; (a)(1) table amended; (b) redesignated as (a)(2) **57076**
180.350 (a) heading added; (a) table amended; (b) removed **57076**
180.353 (b) table revised **49472**
180.356 (b) table amended 14101
180.357 Removed **57066**
180.358 Removed **57076**
180.361 (b) table amended 13088
180.364 (a)(1) designation and (2) added **54066**
(a)(1) table amended; (a)(3) added 18367
180.366 Removed **57076**
180.368 (b) table amended **48594, 66437**
(b) table amended 11789
180.370 Existing text designated as (a); (a) heading added; (a) table amended **57076**

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180.374 Removed 57077
180.377 (a)(2) revised 19057
180.381 (b) amended 18372
180.384 Existing text designated as (a); (b) added 51847
(a) table corrected 19494
180.385 Existing text designated as (a); (a) heading added; (a) table amended 57077
180.386 Removed 57077
180.387 Removed 57077
180.395 (b) table amended 65073
180.399 (a) heading, (1) designation, table and (c) heading added; (b) redesignated as (a)(2) 29598
180.410 (a) heading added; (a) table amended; (b) redesignated as (c); new (c) heading added 57077
(a) table corrected 5191
180.412 (a) table and (c) table amended 54073
(a) table amended 32196
180.414 (b) amended 54362
(b) table amended 18359
180.416 Existing text designated as (a); (a) heading added; (a) table amended 57077
(a) table corrected 5191
180.417 (b) amended 45406
180.418 (a)(1) table amended 48579
180.425 (b) table amended 28377
180.431 (b) table amended 14104, 17567
180.434 (b) table amended 3002, 13105
(a) table amended 13086
180.435 (a) existing text designated as (a)(1); (a)(2) added 45414
180.436 (a)(1) table and (2) table amended; (a)(3) and (4) redesignated as (a)(2) and (3) 35067
180.438 (b) table amended 4590
180.442 (b) table amended 37286, 53820, 69205
(b) table amended 22801
(a) introductory text revised; (a) table amended 35058
180.443 (b) table amended 37295, 38483, 49479, 66999
(b) table amended 24295
180.446 (a) heading added; (b) and (c) redesignated as (a)(1) and (2); (a)(1) table amended 19050
180.448 (b) table amended 54599
(a) revised 55547
180.449 (b) table amended 42248, 53837
(b) table amended 16850
180.452 (b) table amended 66458
180.459 (a) heading added; (b) table transferred to (a) table 44152
(a) table amended 66449
180.462 (a) table amended; (b) removed 53844
180.463 Existing text designated as (a)(1); (b) added 6548
(a)(2) redesignated from 186.1860 6549
Heading revised; (a)(1) table amended 14632
180.466 (b) revised 48116
(b) table amended 3009
180.472 (a) table and (d) table amended 49852
(b) amended 53829, 66447
(a) table and (b) table corrected 66459
(b) table amended 3044, 14106
(b) table corrected 18360
180.474 (b)(1) table and (2) table amended 39034
(b)(1) amended 53815
(b)(1) table amended 66456
(a)(1) designation and (2) added 1138
(b) table amended 28384
180.475 Revised 29589
180.479 Revised 25448
180.480 (b) table amended 4584
(a)(1) revised 7801
(b) table amended 15306
180.482 (b) table amended 52174, 65087, 70035
(b) table amended 3431, 6542, 13094
(a) introductory text revised; (a) table amended 16856
(a) table amended 18346
180.484 (a) heading amended; (a) existing text designated as (a)(1); (a)(2) and (d) heading added 42256
(a)(1) redesignated in part from 185.3385 42257
180.485 Revised 53835
180.488 Revised 35049
180.489 Revised 48607
Revised 22805
Table amended 31511
180.493 (a) revised 54593
(b) amended 18369
(a) and (d) revised 25455

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180.494 (b) revised 53301
180.495 (a) revised 43637
(a) amended 28370
180.499 (b) amended 16843
180.502 (a) table amended 31129
180.503 (b) table amended 66464
(e) added 6539
180.505 (a) revised 27200
180.507 (a)(1) designation and (2) added 55540
(b) table amended 65084
(b) table amended 4577, 14112, 25451
(a)(1) introductory text and table amended; (a)(2) redesignated as (a)(3) 13112
180.509 (b) table amended 48124
180.510 Revised 10233
(a) table amended 18339
180.511 (b) table amended 41727
180.515 (a) table amended 42246
Revised 52180
(b) revised 65078
180.516 (a) revised 53826
(b) table amended 19489, 35042
(a) table amended 35072
180.517 (a) introductory text revised; (a) table amended 38495
180.527 Amended 50791
180.532 (b) revised 18351
(b) table amended 35037
180.533 (a) table amended 48615
180.534 Added 36372
Removed 10233
180.535 Added 41734
Revised 52169
(b) amended 22799
180.536 Added 71026
180.537 Amended 50784
180.548 Added 69199
180.549 Added 4308
180.550 Added 14639
180.551 Added 18357
180.552 Added 27192
180.553 Added 28924
180.554 Added 31136
180.1001 (d) table amended 43088, 53294
(c) table and (e) table amended 48113, 51840
(b)(1) revised; (b)(6) and (9) removed; (b)(7), (8) and (10) redesignated as (b)(6), (7) and (8); (d) table amended 57066
(b)(1) amended 69208
(b)(1) amended 44
(c) table and (e) table amended 10570, 27185
180.1010 Removed 57067
180.1016 (a) revised 31505
180.1018 Removed 57067
180.1020 (b) table amended 35846
180.1030 Removed 57067
180.1031 Removed 57067
180.1034 Removed 57067
180.1042 Removed 31505
180.1055 Removed 57067
180.1059 Removed 57067
180.1061 Removed 57067
180.1079 Removed 57067
180.1081 Removed 57067
180.1085 Removed 57067
180.1098 Revised 31505
180.1099 Removed 31505
180.1102 Revised 16860
180.1156 Revised 7804
Corrected 14099
180.1157 Added 31505
180.1158 Added 31505
180.1164 (d) added 67001
180.1165 Added 39521
180.1178 Added 8529
180.1183 Revised 13080
180.1187 Amended 51303
180.1193 Added 43085
180.1197 Revised 33025
180.1198 Added 37288
180.1200 Added 38498
180.1201 Added 49469
180.1202 Added 48597
180.1204 Added 70030
180.1205 Added 22796
180.1206 Added 28374
Amended 35051
185 Authority citation revised 19493
185.1650 Removed 57067
186.1860 Redesignated in part as 180.463(a)(2); removed 6549
185.2250 Removed 19493
186.2275 Table corrected 19494
185.3385 (a) table redesignated in part as 180.484 (a)(1) table 42257
185.3600 Removed 57067
185.3750 Removed 29598
185.4250 Removed 57067
185.4300 Removed 57067
185.4800 Removed 57067
185.4850 Redesignated as 180.292(a)(2) 425
185.5000 Correctly revised; CFR correction 3045
185.5375 Removed 48607
186.450 Removed 57067
186.850 Removed 57067

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186.1650 Removed **57067**
186.2275 (a) table amended **51848**
186.2325 Removed **57077**
186.2450 Removed **57067**
186.3000 Removed **57077**
186.3750 Removed 29598
186.4850 Redesignated as 180.292(a)(2) 425
232.2 Amended 25123
239 Added **57040**
Adequacy notice 30434
239.13 (a), (b), (c), (f) and (g)(3) revised 4315
244 Removed; eff. 8–16–99 32441
257 State municipal solid waste permit program determinations 19494
257.5 Amended **57044**
258.2 Amended **57044**
260.10 Amended **65937**
260.11 (a)(11) revised; (a)(16) added 26327
261 Identification and listing of hazardous waste solvents **64372**
261.2 (c)(3) and (e)(1)(iii) revised; (c)(4) table amended 25413
261.3 (a)(2)(iv)(C) and (c)(2)(ii)(B) revised; (c)(2)(ii)(E) added **42184**
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261.4 (a)(12) revised; (a)(18) and (19) added **42184**
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(g) added **65937**
(b)(15) added 6814
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261.5 (j) revised **37782**
261.6 (a)(3)(iv)(C) amended; (a)(3)(v) removed **42185**
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261.31 (a) table amended **42185**
261.32 Table amended **42185**
261 Appendix VII amended **42186**
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262.34 (a)(1)(i) and (ii) revised 3388
(d)(4) revised 25414
264.1 (j) added **65938**
264.73 (b)(17) added **65938**
264.90 (e) and (f) added **56733**
264.101 (d) added **65938**
264.110 (c) added **56733**
264.112 (b)(8) and (c)(2)(iv) added **56733**
264.118 (b)(4) and (d)(2)(iv) added **56733**
264.140 (d) added **56733**
264.552 (a) revised **65939**
264.553 (a) revised **65939**
264.554 Added **65939**
264.1031 Amended 3389
264.1080 (f) and (g) added **49392**
(f)(2)(ii)(B)(*1*) revised **53847**
264.1080 (b)(5) revised 3389
264.1083 (a)(1)(i), (ii), (b)(1)(i) and (ii) added 3389
264.1084 (h)(3) revised 3389
264.1086 (e)(6) added 3389
265.1 (b) amended **65940**
265.90 (f) added **56734**
265.110 (c) and (d) added **56734**
265.112 (b)(8) and (d)(1)(iv) added **56734**
265.118 (c)(4), (5) and (d)(1)(iii) added **56734**
265.121 Added **56734**
265.140 (d) added **56734**
265.1080 (f) and (g) added **49399**
(f)(2)(ii)(B)(*1*) revised **53847**
(b)(5) revised 3390
265.1084 (a)(1)(i), (ii), (3)(ii)(D), (b)(1)(i), (ii) and (3)(ii)(D) added; (a)(3)(ii)(B), (iii) introductory text, (b)(3)(ii)(B) and (iii) introductory text revised 3390
265.1085 (h)(3) revised 3391
265.1087 (e)(6) added 3391
266 Authority citation revised **42186**
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268.2 (c) revised **65940**
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268.7 (a)(4) table and (b)(3)(ii) table amended; (b)(4)(iv) revised 25414
268.9 (d)(2) introductory text and (i) revised 25415
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268.34 (b) through (e) redesignated as (c) through (f); new (b) added **48127**
268.35 Added **42186**
268.39 (c) revised **51264**
268.40 Table amended **42187, 51265**
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(i) added **46334**
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268.48 Regulation at 63 FR 24626 withdrawn; regulation at 63 FR 28739 eff. date corrected to 11–4–98 ..... **42582**
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(a) table amended 25417
268.49 (c)(3) revised 25417
268.50 (g) added **65940**
270.1 (c) introductory text revised; (c)(7) added **56735**
270.2 Amended **65941**
270.11 (d) revised **65941**
270.14 (a) amended **56735**
270.28 Added **56735**
270.42 Appendix I amended **65941**
270.68 Added **65941**
270.73 (a) revised **65941**
270.79—270.230 (Subpart H) Added **65941**
271 State hazardous waste management program authorizations **36587, 44152, 44795, 49852, 50528, 50531, 52180, 56086, 56830, 56834, 57353, 57605, 67800**
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271.1 (j) Tables 1 and 2 amended **42188, 47418, 51267**
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(j) Table 1 amended **65947**
271.16 (e) added **56735**
271.21 (h) added **65947**
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272.651 Revised; eff. 8–24–99 34136
272 Appendix A amended; eff. 8–24–99 34137
273.6 Amended **71230**
279.10 (i) revised **37782**
279.74 (b) revised **37782**
281 Underground storage tank program authorizations **51528, 63793**
282.78 Added **38500**
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282 Appendix A amended **38500**
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302.4 Table amended **42189, 69168**
302.6 (b)(1)(i) and (ii) revised; (b)(1)(iii) added **42189**
(c)(2) revised 13114
355.40 (a)(2)(vi)(B) revised 13115
370.20 Revised 7047
372 Clarification **52183**
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430.01 (i) corrected; (p) correctly revised **42239**
430.24 (b)(4)(i) and (d) corrected; (b)(4)(ii)(A) correctly revised **42239**
430.25 (b) table corrected **42239**
430.26 Introductory text corrected; (a)(2) introductory text correctly revised **42239**
430.27 Introductory text and (a)(2) correctly revised **42239**
430.56 Introductory text corrected **42239**
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439 Authority citation revised **50424**
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439.0—439.2 Undesignated center heading revised **50424**
439.0 Revised **50424**
439.1 Revised **50425**
439.3 Added **50425**
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439.10 Revised **50426**
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439.52 Revised **50436**
439.53 Removed **50437**
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439.55 Removed **50437**
439.56 Removed **50437**
439.57 Removed **50437**
439 Appendix A added **50437**
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455 Tables 2 and 3 amended **39443**
501.1 (b) and (d) revised; (m) added **45123**
501.2 Amended **45124**
501.12 (b), (d), (f)(1) introductory text, (iv), (v) and (2) revised; (f)(3) removed **45124**
501.14 (a), (b)(1)(i), (2), (3) and (c) revised **45124**
501.15 (a), (b) introductory text, (10)(i), (13), (14), (d) introductory text, (1) and (4) through (8) revised; new (d)(1)(i)(B) stayed **45125**
501.17 (a)(3)(i), (ii), (iii) and (b)(1) revised **45127**
501.21 Revised **45127**
501.32 (a) revised **45127**
600.002–85 (a)(15) revised 23973
600.005–81 Introductory text revised 23973
600.006–89 (c)(1) and (f) revised 23973
600.007–80 (a), (b)(3), (4) and (e)(1) revised 23973
600.008–01 Added 23973
600.010–86 (a) introductory text and (c)(1)(i) revised 23975
600.111–93 (g)(2) revised 23975
600.113–93 (d) revised 23975
600.207–93 (a)(3)(iii) revised 23975
600.313–01 Added 23975
600.314–01 Added 23975
600.507–86 (a) introductory text revised 23976
600.512–01 Added 23976
710.33 (b) revised; (c) added **71600**
710.39 Revised **45953**
721.305 Added **44574**
721.435 Added **44574**
721.450 Added **44574**
721.526 Removed **48129**
721.528 Removed **48129**
721.555 Added **65709**
721.558 Added **44575**
721.567 Removed **48129**
721.630 Added **44575**
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721.658 Removed **48129**
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721.987 Added **44575**
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721.1734 Added **44576**
721.1737 Removed **64876**
721.1740 Removed **64876**
721.1765 (a)(2)(i) and (ii) revised **45955**
721.1790 Revised **45955**

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721.2077 Added **65710**
721.2078 Added **44576**
721.2079 Added **44576**
721.2081 Added **44576**
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721.2083 Added **44576**
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721.5460 Added **65710**
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721.5725 Removed **48129**
721.5740 (a) and (b)(1) revised **45956**
721.5775 Added **44579**
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721.6175 Added **44580**
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721.7360 Removed **64876**
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721.8153 Added **44581**
721.8450 (a)(2)(i) and (ii) revised **45956**
721.8660 Added **44581**
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721.9663 Added **44582**
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721.9719 Added **44583**
(a)(2)(i) corrected **62956**
721.9800 (a)(2)(i) revised **45956**
721.9969 Added **44583**
721.9973 Added **44583**
723.50 (e)(1) amended; (n) revised 31989
745.223 Amended **46674**
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Amended 31097
745.225 (b)(4) added **46674**
Regulation at 63 FR 46674 withdrawn **55547**
745.226 (a)(6) added **46674**
Regulation at 63 FR 46674 withdrawn **55547**
(a)(6), (e)(3), (f)(6) and (7) added 31098
745.238 Added **46674**
Regulation at 63 FR 46674 withdrawn **55547**
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745.330 Revised; interim **41432**
761.1 (b)(3) amended 33759
761.2 (a)(3) amended 33759
761.3 Amended 33759
761.19 (b) amended 33759
761.20 (c)(2)(ii) amended 33760
761.30 (a)(1)(xii)(J), (i)(1)(iii)(D), (4), (5) and (p)(1) amended; (j)(3) removed 33760
761.40 (b) amended; (l) revised 33760
761.50 (b)(3)(i) introductory text, (B), (ii) introductory text, and (b)(8) amended 33760
761.60 (a)(3)(i) and (b)(6)(iv) removed; (b)(6)(ii) introductory text and (A) through (D) redesignated as (b)(6)(ii)(A) introductory text and (*1*) through (*4*); (b)(1)(i)(B), (3)(i)(c), (5)(i)(B), (C)(*2*), (D), (ii)(A) introductory text, (*1*), (iii)(A) and new (6)(ii)(A)(*3*) amended; (b)(4) and new (6)(ii)(A) introductory text; new (b)(6)(ii)(B), new (C) and (8) added 33760
761.61 (a)(3)(ii), (5)(ii)(B)(*1*), (*2*) and (c)(1) amended; (a)(5)(i)(A) introductory text, (B)(*2*)(*i*) and (v)(A) revised 33761
761.62 (b)(1)(ii), (4)(i), (6), and (c) amended 33761
761.72 (a)(7) revised; (c)(3) amended 33761
761.79 (a)(5), (c)(2) introductory text, (5)(i), (iv), (6)(i), (ii), (h)(1), (2), and (3) amended 33761
761.247 Heading, (a)(3), (b)(2)(ii)(B)(2), (c) introductory text, (5)(iii), and (d) amended 33762
761.250 (a)(2) amended 33762

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761.347 (c)(3)(i)(C) amended 33762
763 Waiver **57251**
799.9346 Heading, (d), (e)(1)(ii)(B), (iv)(A), (v)(E), (v)(F), (12) and (15)(i)(D) revised; (f)(3)(ii)(D) and (E) added 35077
799.9380 (e)(4)(i)(D), (9) and (f)(3)(vi) revised 35078
799.9420 (d)(5)(ii)(C), (D), (iii)(G), (7)(iv), (9)(ii), (iii)(D)(*5*), (10)(ii) and (iv) revised; (d)(9)(iii)(F)(*8*), (e)(3)(i)(B)(*4*), (*5*) and (4)(ii)(J) added; (d)(9)(iii)(A)(*13*), (iii)(E)(*6*), (G)(*1*), (*2*), (*4*), (*6*) and (10)(i)(D) removed; (d)(9)(iii)(G)(*3*) and (*5*) redesignated as (d)(9)(iii)(G)(*1*) and (*2*) 35078
799.9510 (e)(2)(i)(A)(*3*) introductory text, (ii)(A) and (f)(3) introductory text revised 35079
799.9538 (e)(2)(ii)(B)(*3*) revised 35079
799.9539 (e)(2)(ii)(A), (3)(iii), (f)(2)(ii) and (3) introductory text revised 35079
799.9620 (e)(3)(ii) revised 35080

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TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

60–30 Regulation at 45 FR 86251 withdrawn in part **59642**
60–250 Regulation at 45 FR 86259 withdrawn; revised **59642**
60–741 Appendix C amended **59659**
60–999 Reporting and record-keeping requirements 15691

Chapter 101—Federal Property Management Regulations (Parts 101–1—101–99)

101–11 Regulation at 61 FR 41001 eff. date extended to 12–31–99 2858
101–20.105–3 Revised **35846**
101–25.500 (Subpart 101–25.5) Revised 34734
101–31.200 (Subpart 101–25.2) Revised 34734
101–35 Authority citation revised 32197
101–35.700—101–35.725 (Subpart 101–35.7) Added 32198
101–37.1100—101–37.1109 (Subpart 101–37.11) Revised **43638**
101–38.105 (g) removed; (h) and (i) redesignated as (g) and (h) 34734
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101–43.600—101–43.603 (Subpart 101–43.6) Removed **41433**
101–43.4801 (d) revised; (e) amended **40058**
(c) removed; (d) and (e) redesignated as (c) and (d); new (c) table amended **41433**
Regulation at 63 FR 40058 withdrawn **65710**
101–44.400—101–44.403 (Subpart 101–44.4) Revised **56090**
101–47 Authority citation revised 31732
101–47.103–4 Removed 5615
101–47.203–5 (b) and (c) revised 5615
101–47.204–1 (a) amended; (b) and (c) revised 5616
101–47.303–2 (e), (f) and (g) revised 5616
101–47.303–4 (c) revised; (d) added 31732
101–47.308–5 Removed 5617
101–47.308–6 Revised 5617
101–47.308–9 Heading, (a) through (g), (j) and (k) revised 5618
101–47.4905 Amended 5619
101–47.4906 Amended 5619
101–49.001–5 Introductory text revised 13701
101–42—101–49 (Subchapter H Appendix) Temporary Reg. H–29 eff. date extended to 1–15–00 1139

Chapter 105—General Services Administration (Parts 105–1—105–999)

105–60 Revised **56839**

Chapter 300—General (Parts 300–1—300–70)

300–2.22 Table revised 2433
300–3.1 Amended **66674**
Amended 2434
300–80 Added 28881

Chapter 301—Travel Allowances (Parts 301–1—301–99)

301–3 Removed **63419**
301–10.107 Revised 29162
301–10.131—301–10.143 Undesignated center heading and sections added **63419**
301–10.303 Amended **47438**
Table amended 15630
301–11 Authority citation revised 32813
301–11.18 Table revised **66675**
301–11.27 Revised **66675**
301–11.30 Revised **66675**
301–11.31 Added **66675**
301–11.501—301–11.540 (Subpart E) Added; interim 32813
301–11.601—301–11.640 (Subpart F) Added; interim 32815
301–12.1 Revised **66675**
Chapter 301 Appendix A revised **66675**
Appendix A amended 6549, 16352, 28878, 28879
Appendix A correctly revised 6550

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Appendix A corrected 18581, 18582

Chapter 302—Relocation Allowances (Parts 302–1—302–99)

302–1.4 (b) revised; (m) added 29163
302–1.5 (a), (b)(1)(iii) and (c) amended 29163
302–1.12 (e)(1), (5) and (6) amended 29163
302–1.13 (b)(3) and (d)(1)(iv)(A) amended 29163
302–1.105 (a) amended 29163
302–1.228 (c) amended 29163
302–5 Authority citation revised 29163
302–5.4 (a) amended 29163
302–5.17 Amended 29163
302–6 Authority citation revised 29163
302–6.1 (a) and (g)(1)(ii) amended 29163
302–8 Authority citation revised 29163
302–8.5 (b)(2) amended 29163
302–10.174 Amended 29163
302–11 Authority citation revised 29164
302–11.8 (e)(4)(i) amended 29164
302–11.10 (c) amended 29164
302–11.11 Amended 29164
302–11 Appendixes A through D amended 17106
Appendix B corrected 18659
302–15 Revised 29164

Chapter 303—Payment of Expenses Connected with the Death of Certain Employees (Parts 303–1—303–2)

303–1 Removed 2434
303–2 Removed 2434
303–70 Added 2434

Proposed Rules:

101–25 6589
101–31 6589
101–35 ..... **66102**
101–38 6589
101–42 ..... **68136**
101–43 ..... **68136, 71686**
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TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

50.401 Revised 66062
50.402 Revised 66062
50.403 Amended 66062
50.404 (a) introductory text revised; (b) amended 66062
50.405 Amended 66063
50.406 (a), (c), (d) and (g) revised; (e) amended 66063
68a Added 58312

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

400.200 Corrected 52611
Amended 68690
402 Added 68690
403 Technical correction 52610
405 Technical correction 52614
Techincal correction 25456
405.400—405.455 (Subpart D) Added 58901
405.517 Revised 58905
405.520 Added 58905
409 Comment period reopening 65560
409.10 (a)(1) through (6) amended; (a)(8) added 3648
409.20 (a) introductory text and (1) through (6) amended; (a)(8) added 3648
410 Technical correction 52610
Comment period reopening 65560
410.1 (a) amended 58905
410.32 (d)(7) correctly designated 53307
(a)(3) amended 58906
410.40 Revised 3648
410.41 Added 3649
410.59 Added 58906
410.60 Revised 58906
410.61 Heading and (a) through (d) revised 58907
410.62 Heading and (a)(3) revised; (d) added 58907
410.74 Added 58907
(c)(1) and (2) corrected 25457
410.75 Added 58908
(b) corrected 25457
410.76 Added 58908
410.77 Added 58909
410.78 Added 58909
410.150 (b)(15) and (16) added 58910
410.152 (a)(1)(v) revised 58910
411 Technical correction 52610
Comment period reopening 65560
412 Technical correction 52614
Hospital wage data revisions 64191
Notice 9378
413 Technical correction 52614
Comment period reopening 65560
Techincal correction 25456
413.125 Existing text designated as (a); (b) added 58910
413.333 Corrected 53307
414.1 Amended 58910
414.20—414.62 Designated as Subpart B and heading added 58910
414.22 Introductory text revised; (b)(5) added 58910
414.32 Heading and (b) revised 58911
(a)(6) correctly added 25457
414.34 Heading revised; (a)(2)(iii) added 58911
414.52 Heading and introductory text revised; (d) added 58911
414.56 Revised 58911
414.65 Added 58911
415 Techincal correction 25456
415.110 Revised 58912
416.180—416.200 (Subpart F) Added 32205
417.600 Reinstated 52611
417.602 Reinstated 52611
417.604 Reinstated 52611
417.605 Reinstated 52611
417.606 Reinstated 52611
417.608 Reinstated 52611
417.609 Reinstated 52611
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417.612 Reinstated 52611
417.614 Reinstated 52611
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417.617 Reinstated 52611
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417.624 Reinstated 52611
417.626 Reinstated 52611
417.630 Reinstated 52611
417.632 Reinstated 52611
417.634 Reinstated 52611
417.636 Reinstated 52611
417.638 Reinstated 52611
417.800 Corrected 52611

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TITLE 42 Chapter IV—Con.

422.50—422.80 (Subpart B) Heading corrected 52611
422.50 (a) introductory text and (1) corrected 52611
422.54 (d)(2)(i) corrected 52611
422.56 (d) corrected 52612
422.60 (a)(1), (b)(1), (c)(1) and (e)(4)(i) corrected; (f) correctly added 52612
(e)(4)(i) corrected 54526
(a)(1) revised 7980
422.62 (b) introductory text, (c), (d) heading, (1) and (2) introductory text corrected 52612
422.66 (f) correctly added 52612
422.74 (b)(3) corrected 52612
422.80 (c)(3), (d), (e)(1)(iv), (3)(i) and (f) corrected 52612
422.110 (c) corrected 52612
(c) revised 7980
422.111 (d) revised 7980
422.112 Correctly revised 52612
Revised 7980
422.202 Revised 7981
422.204 (c) revised 7982
422.250 (b) correctly revised 52612
422.268 (b) corrected 52613
422.308 (b) correctly designated as (b)(1); (b)(2) correctly added 52613
422.310 (c)(4) corrected 52614
422.502 (a)(2), (3)(i) and (4) corrected; (m) correctly designated as (l)(4) 52614
(h)(1) revised 7982
422.550 (b)(1) corrected 52614
422.608 Heading corrected 52614
422.612 (a)(1), (b) heading and introductory text corrected 52614
422.616 (a) corrected 52614
422.620 (a) corrected 52614
422.622 (c)(1)(1) corrected 52614
422.752 (a)(6) corrected 52614
424 Comment period reopening 65560
Techincal correction 25456
424.20 Corrected 53307
424.24 (a)(2) correctly revised 53307
(c) introductory text, (1)(ii), (iii), (3)(i), (ii), (4), (f)(2) and (3) revised 58912
424.124 (c)(2) amended 3649
440.160 Revised 64198
441.151 (b) and (c) revised; (d) added 64198
483 Comment period reopening 65560
483.20 (b)(2) introductory text revised 53307
484.11 Added; interim 3763
484.18 (c) revised 3784
484.20 Added; interim 3763
484.55 Added 3784
485.705 Revised 58912
(c)(8) correctly revised; (c)(10)(i), (ii) and (iii) corrected 25457
485.711 (b)(3) revised 58913
488 Authority citation revised 3763
488.68 Added; interim 3763
488.402 (f)(5) revised 13353
488.408 (d)(1)(iv), (e)(1)(iv) and (2)(ii) revised 13360
488.430 (a) revised 13360
488.432 Heading, (a)(2), (b) and (c) revised 13360
488.434 (a)(2)(iii), (v) and (vi) revised 13360
488.438 (a) introductory text, (1) and (2) redesignated as (a)(1) introductory text, (i) and (ii); new (a)(2) added; (c) and (d) revised 13360
488.440 (a), (b) introductory text, (c), (d), (e) introductory text, and (f)(1), (g), (h) revised 13361
448.442 (a) heading revised; (b) through (f) redesignated as (c) through (g); new (b) added 13361
488.454 (a) introductory text revised; (d) redesignated as (e); new (d) added 13361
489 Comment period reopening 65560
493.1202 Heading amended 55034
493.1203 Heading amended 55034
493.1443 (b)(3)(ii) introductory text and (C) amended 55034
498.3 (a) revised 24957

Chapter V—Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

1001.102 (b)(4) revised 57918
1001.2001 (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added 57918

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TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

4.350 (b), (c)(3) and (6) revised 13363
4.352 (b)(2) amended 13363
4.901—4.909 (Subpart J) Added 26259

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

2200.0-7 (b) revised; eff. 11-2-98 52617
2210 Removed; eff. 11-2-98 52617
2240 Removed; eff. 11-2-98 52617
2250 Removed; eff. 11-2-98 52617
2270 Removed; eff. 11-2-98 52617
3100 Authority citation revised 52952
3100.4 Added; eff. 11-2-98 52952
3150 Authority citation revised 52952
3152.6 (b) revised 52952
3160 Authority citation revised 52952
3162.8 Removed; eff. 11-2-98 52952
3180 Authority citation revised 52952
3181.2 Amended; eff. 11-2-98 52953
3195 Regulation at 63 FR 40178 confirmed 66762
3200 Authority citation revised 52953
3255.13 Added; eff. 11-2-98 52953
3255.14 Added; eff. 11-2-98 52953
3255.15 Added; eff. 11-2-98 52953
3500 Authority citation revised 52953
3500.5 Revised; eff. 11-2-98 52953
3500.5-1 Added; eff. 11-2-98 52953
3500.5-2 Added; eff. 11-2-98 52953
3510 Authority citation revised 52954
3514.5 Revised; eff. 11-2-98 52954
3520 Authority citation revised 52954
3524.5 Revised; eff. 11-2-98 52954
3530 Authority citation revised 52954
3534.5 Revised; eff. 11-2-98 52954
3540 Authority citation revised 52954
3544.5 Revised; eff. 11-2-98 52954
3550 Authority citation revised 52954
3554.5 Revised; eff. 11-2-98 52954
3580 Authority citation revised 52954
3585.5-9 Revised; eff. 11-2-98 52954
3590 Authority citation revised 52954
3590.1 Removed; eff. 11-2-98 52954
3600 Authority citation added 52954
3600.0-8 Added; eff. 11-2-98 52954
3602.2 (a) amended; eff. 11-2-98 52954
3800 Authority citation revised 52954
3802.6 Revised; eff. 11-2-98 52954
3860 Authority citation revised 52955
3862.9 Added; eff. 11-2-98 52955
4300 Revised 55550

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TITLE 43

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4 ..... 1930, 3262
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3420 12142
3800 ..... 6422, 9960

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

15 Revised 31137
61.9 Revised 13116
62 Appendix A amended 27709
64.6 Table amended ... **54370, 54372, 55957, 59236, 63797, 70036, 70038**
Table amended ... 4979, 7505, 9919, 24513, **24958**
65.4 Flood elevation determinations **54374, 54377, 55035, 58316, 58319, 64418, 64419, 67002, 67004**
Flood elevation determinations 1522, 3045, 7107, 7109, 7506, 11379, 11381, 11383, 11385, 17568, 17569, 24515, 24516, 26690, 26693, 28932, 28934, 32817
67.11 Flood elevation determinations **54378, 55038, 58322, 64421, 67005**
Flood elevation determinations 1523, 3045, 3047, 7110, 11386, 11388, 17571, 24518, 26695, 28936, **32818**
77 Removed 28106
80 Removed 28106
81 Removed 28106
82 Removed 28106
83 Removed 28106
152 Removed 28106
206.47 Added 19498
206.200 (b) revised; interim **64425**
206.201 (i) and (j) revised; interim **64425**
206.202 Revised; interim **64425**
206.207 Reinstated; CFR correction **71026**
206.228 (a)(2)(i) revised; interim **64426**
207 Removed 28106
220 Removed 28106
221 Removed 28106
222 Removed 28106
301 Removed 28106
303 Removed 28106
306 Removed 28106
308 Removed 28106
320 Removed 28106
324 Removed 28106
328 Removed 28106
333 Removed 28106
336 Removed 28106
354 Revised; interim **69003**

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59 24256
61 ..... 3909, 24256
62 ..... **63431, 63432**
67 ..... **54427, 55072, 58338, 64441, 67026**
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TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Service (Parts 1—199)

60.12 (a) amended 9922
144.101 Revised; interim **57558**
144.102 (b) revised; interim **57558**
146.101 (a) revised; (b)(2), (3) and (4) redesignated as (b)(3), (4) and (5); new (b)(2) added; interim **57559**
146.130 Added; interim **57559**
148.101 Revised; interim **57561**
148.102 (a) heading, (2) and (b) revised; interim **57562**
148.170 (Subpart C) Added; interim **57562**

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

260 Added 17878
261 Added 17884
262 Added 17890
263 Added 17893
264 Added 17896
265 Added 17900
276 Added; interim **57926**
283 Added 18493

Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

301.1 Amended; interim 6247
302 Nomenclature change; interim 6247
302.12 (a)(1)(i) removed; (a)(1)(ii) and (iii) redesignated as (a)(1)(i) and (ii); interim 6247
302.31 (a)(2), (b) and (c) amended; (a)(3) removed; interim 6247
302.32 Revised; interim 6247
302.34 Amended; interim 6248
302.35 (c)(1), (2) and (4) amended; (c)(5) and (d) added; interim 6248
302.50 Revised; interim 6248
302.51 Revised; interim 6248
302.52 (b)(5) amended; interim 6249
302.54 (a)(1) amended; interim 6249
302.57 Removed; interim 6249
302.70 (a) introductory text, (d)(1) and (2) amended; interim 6249
(a)(5)(iii) introductory text and (B) revised; (a)(5)(iii)(C) added 11809
302.75 (b)(4) amended; interim 6249
302.80 (a) amended; interim 6249
303 Nomenclature change; interim 6249
303.3 (b)(1) amended; interim 6249
303.5 (d)(1) and (e)(3) revised; (d)(2) and (e)(1) amended; interim 6249
(g) revised 11809
303.7 (a)(1), (b)(2), (3), (6), (c)(4), (7)(iii), (iv) and (v) amended; (d)(3) revised; interim 6250
303.8 Revised; interim 6250
303.11 (b)(1) revised; (b)(2) removed; (b)(3) and (4) redesignated as (b)(2) and (3); (b)(3)(iv) added 11817
(b)(5) through (12) redesignated as (b)(4) through (11); (b)(2), (4), (5), new (b)(4), new (9), new (10), (c) and (d) revised; new (b)(12) added; 11818
303.15 (a)(1)(i), (ii), (2), (b) introductory text, (2) and (c)(1) amended; interim 6250
303.20 (b)(3) amended; interim 6250
303.21 Removed; interim 6250
303.30 (b) removed; (c) redesignated as (b); new (b) amended; interim 6250
303.31 (c) introductory text amended; (c)(1) and (2) removed; interim 6250
303.70 (c)(1), (2), (d)(1) and (2) amended; interim 6250

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TITLE 45 Chapter III—Con.

(e)(1)(i), (ii), (2)(i), (3) and (4)(i) amended; (e)(1)(iii) added; interim 6251
303.71 (b), (f) and (g) amended; interim 6251
303.72 (i) amended; interim 6249
(a)(1), (2), (h)(1), (3) and (4) amended; interim 6251
303.80 Removed; interim 6251
303.100 (a)(9), (c)(2), (d)(1)(iv), (v), (2), (e), (g) removed; (a)(10), (c)(3), (d)(1)(i), (ii), (iii), (f), (h) redesignated as (a)(9), (c)(2), (d)(2), (3), (4), (e), (f); heading, (a)(1), (b)(1), (2)(i), (c) introductory text, (1) introductory text and new (e)(1) introductory text, (i), (ii), (vi), (vii), (viii) and (2) amended; (d) introductory text, (1), new (e)(1)(ix) and (3) revised; (d)(5) added; interim 6251
(i) redesignated as (g); new (g) amended; interim 6252
303.101 (a) revised; (c)(4) and (5) removed; (c)(6) redesignated as (c)(4); (b)(1) and new (c)(4) amended; interim 6252
303.102 (g)(1)(i), (ii), (iii) removed; (c), (d), (e), (g)(1) introductory text and (iv) redesignated as (d), (e), (c), (g)(1)(i) and (ii); new (d)(1) designation and (2) removed; (a)(1) and new (d), (g)(1)(i) and (ii) amended; interim 6252
303.103 Removed; interim 6252
303.105 Removed; interim 6252
303.109 Added 15136
304 Nomenclature change; interim 6252
304.12 (a) amended; interim 6252
304.20 (b)(1)(viii)(C) and (ix)(D) removed; (b)(1)(viii)(D) and (ix)(D) redesignated as (b)(1)(viii)(C) and (ix)(D); (b)(1)(ix)(C) and (3)(iv) amended; interim 6252
(b)(2)(vi), (vii) and (viii) revised 11810
304.21 (a) introductory text amended; interim 6252
304.26 Revised; interim 6252
304.29 Amended; interim 6253
304.40 (a)(2) and (b)(2) amended; interim 6253
305 Removed; interim 6253

Chapter XII—Corporation for National and Community Service (Parts 1200—1299)

1201 Authority citation revised 64199
1201.2 (b) and (c) added 64199
1207 Redesignated as Part 2551 14115
1208 Redesignated as Part 2552 14126
1209 Redesignated as Part 2553 14135
1224 Redesignated as part 2508 19294

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1309 Added 5945
1309.10 OMB number pending 5946
1309.40 OMB number pending 5949
1309.41 OMB number pending 5949

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1606 Revised 64643
1611 Appendix A revised 17108
Appendix A corrected 18372
1623 Revised 64648
1625 Removed 64646

Chapter XXV—Corporation for National and Community Service (Parts 2500—2599)

2500 Removed 66063
2501 Removed 66063
2502 Removed 66063
2503 Removed 66063
2504 Removed 66063
2505 Removed 66063
2506 Removed 66063
Added; interim 4316
2508 Redesignated from part 1224 and revised 19294
2551 Redesignated from Part 1207 and revised 14115
2552 Redesignated from Part 1208 and revised 14126
2553 Redesignated from Part 1209 and revised 14135

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TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.03–15 (h)(3) revised 4984
1.03–45 Revised 4984
2.10–1 Regulation at 62 FR 19232 confirmed 59474
2.10–5 Regulation at 62 FR 19232 confirmed; (c)(2) revised 59474
2.10–25 Regulation at 62 FR 19232 confirmed; amended 59474
2.10–101 Regulation at 62 FR 19232 confirmed 59474
5.1—5.5 (Subpart A) Heading revised; interim 28075
5.1 Removed; interim 28075
5.3 Amended; interim 28075
5.11 Removed; interim 28075
5.13 Removed; interim 28075
5.23 Removed; interim 28075
5.25 Removed; interim 28075
5.33 Amended; interim 28075
5.35 Amended; interim 28075
5.53 Removed; interim 28075
5.55 Heading and (a) amended; interim 28075
5.63 Removed; interim 28075
5.105 (a) amended; interim 28075
5.107 Revised; interim 28075
5.305 Revised; interim 28075
5.501 Revised; interim 28075
5.503 Removed; interim 28075
5.505 Removed; interim 28075
5.507 Removed; interim 28075
5.509 Removed; interim 28075
5.511 Removed; interim 28075
5.513 Removed; interim 28075
5.515 Removed; interim 28075
5.517 Removed; interim 28075
5.519 Removed; interim 28075
5.523 Removed; interim 28075
5.525 Removed; interim 28075
5.527 Removed; interim 28075
5.529 Removed; interim 28075
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5.703 Removed; interim 28075
5.705 Removed; interim 28075
5.709 Removed; interim 28075
5.711 Removed; interim 28075
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10.302 (a) introductory text revised; (c) and (d) amended; (e), (f) and (g) added 4984
10.303 (e) revised 4984
15.1050 Added 57255
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16.500 Revised 22559
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108.540 (h)(3) and (4) revised; eff. 11–2–98....52814
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108.570 (c)(1) amended; eff. 11–2–98 52814
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108.580 (b)(3)(i) and (c)(2)(i) revised; eff. 11–2–98 52814
108.645 Regulation at 61 FR 25298 confirmed 52813
(a)(1)(ii), (2) and (b)(2) revised; eff. 11–2–98 52815
108.646 Regulation at 61 FR 25298 confirmed 52813
(c) revised; eff. 11–2–98 52815
108.647 Regulation at 61 FR 25298 confirmed 52813
108.649 Regulation at 61 FR 25298 confirmed 52813
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108.650 Regulation at 61 FR 25299 confirmed 52813
108.655 Regulation at 61 FR 25298 confirmed 52813
108.901 (Subpart J) Regulation at 61 FR 25298 confirmed 52813
(b) introductory text, (6) introductory text, (ix), (x), (7) introductory text and (c) introductory text; eff. 11–2–98 52815
109.207 Regulation at 61 FR 25298 confirmed 52813
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133.70 (a)(3)(ii), (b)(4), (c)(3) and (4) revised; eff. 11–2–98 52816
133.130 (a)(2) revised; eff. 11–2–98 52816
133.150 (c)(6) revised; eff. 11–2–98 52816
133.160 (a) revised; eff. 11–2–98 52816
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167.05–35 Regulation at 61 FR 25311 confirmed 52813
167.15–28 Regulation at 61 FR 25311 confirmed 52813
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199.03 (b)(9) and (10) revised; eff. 11–2–98 52816
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199.70 (b)(2)(ii) removed; (a)(2) and (c)(3) revised; eff. 11–2–98 52818
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199.100 (f) revised; eff. 11–2–98 52819
199.110 (f)(4) amended; eff. 11–2–98 52819
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199.153 (f) revised; (h)(1), (2) and (i) amended; eff. 11–2–98 52819
199.175 (b)(21)(i)(B) revised; eff. 11–2–98 52819
199.176 (a)(1)(ii), (2) and (b)(2) revised; eff. 11–2–98 52819
199.180 (a)(2)(vi), (ix), (d)(11) and (f)(2)(i) revised; eff. 11–2–98 52819
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199.610 (a) revised; eff. 11–2–98 52819
199.620 (a) table and (e) revised; (k)(2)(1) redesignated as (l); (o) and (p) added; eff. 11–2–98 52820
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199.630 (a) table, (c), (d)(2), (f) introductory text, (2)(iv) and (g) revised; (l) and (m) added; eff. 11–2–98 52821
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351 Authority citation amended 55039
351.1 Authority citation removed 55039
351.2 (a) revised; authority citation removed 55039

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Chapter IV—Federal Maritime Commission (Parts 500—599)

500 Redesignated as part 508 23546
501.2 (d) revised 23546
502 Authority citation revised 7807
502.1 Amended 7807
502.2 (c) and (d) amended; (e) added 7807
502.11 Heading revised; (a) and (b) heading removed; (b)(1) through (7) redesignated as (a) through (g) 7807
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502.21 (c) heading revised 7807
502.23 Revised 7807
502.24 (b) revised 7807
502.26 Revised 7807
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(c) corrected 23551
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502.67 Added 7808
502.71 Amended 7808
502.75 (a) revised 7808
502.61—502.76 (Subpart E) Exhibit 1 amended 7808
502.91 (d) amended 7808
502.92 Removed 7808
502.91—502.95 (Subpart F) Exhibit 1 removed 7808
502.94 (c) amended 7808

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502.113 Revised 7809
502.114 Heading and (a) revised; (b) amended 7809
502.116 Revised 7809
502.118 (b)(2) revised 7809
502.119 (a) and (b) revised 7809
502.133 Revised 7809
502.143 Amended 7810
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502.221 (f) revised 7810
502.223 Revised 7810
502.225 Revised 7810
502.227 Heading revised; (a)(4), (5) and (6) redesignated as (a)(5), (6) and (7); new (a)(4) and (e) added; (d) amended 7810
502.253 Revised 7810
502.254 (a) amended; (c)(1)(i) revised 7811
502.271 (Subpart Q) Revised 7811
502.301 (b) removed; (c) and (d) redesignated as (b) and (c) 7812
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502.301—502.305 (Subpart S) Exhibit 1 amended 7812
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503.23 (a)(3) removed; (a)(4) and (5) redesignated as (a)(3) and (4); new (a)(3) and (b) revised 23547
503.24 (b)(5)(iii) and (10) revised; (b)(11) and (12) added 23547
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503.57 (a) introductory text, (1), (c), (e) and (i) revised; (j) added 23548
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507.170 (b) amended; (c) revised 23551
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510—540 (Subchapter B) Heading revised 11171

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510 Waiver **64876**
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515 Added 11171
515.11 Regulation at 64 FR 11173 confirmed; (a)(3) corrected 23020
520 Added 11225
520.2 Amended 23022
525 Added 9283
530 Added; interim 11206
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530.3 (m) revised 23792
530.8 (c) revised; (e) added 23793
530.10 (d)(1) revised 23793
530.12 Second (c) and (d) through (g) redesignated as (d) and (e) through (h); (c) and new (d) through new (h) revised 23793
530.13 Revised 23793
530 Appendix A amended 23793
535 Redesignated from 572; authority citation revised 11240
535.101 Revised 11241
535.102 Amended 11241
535.103 (h) added 11241
535.104 (u) removed; (v) through (kk) redesignated as (u) through (jj); (f), (g), (j), (m), (q) and new (cc) and (dd) revised 11241
535.201 (a)(5), (6), (7) and (b) revised 11241
535.202 (d) and (e) revised; (f) and (g) removed 11241
535.301 (a) and (c) revised; (d) and (e) removed; (f) redesignated as (d) 11241
535.301 Heading corrected 23794
535.307 (b) revised 11242
535.309 (a)(2) revised 11242
535.310 (a) revised 11242
535.402 (a), (b) introductory text, (d) and (e) revised; (f) and (g) removed 11242
535.403 Revised 11242
535.404 Revised 11242
535.405 (a) through (e) revised; (f) and (g) removed 11243
535.501 (a) revised 11243
535.502 (a)(1), (3), (4), (5), (b)(1) and (2) revised 11243
535.503 Existing text designated as (a); (b) added 11243
535.706 (c)(1) revised 11243
535.801—535.802 (Subpart H) Heading revised 11243
535.801 (a), (b)(1), (d) and (e) revised; (f)(1) and (2) amended; (j) and (k) redesignated as (i) and (j) 11243
535.802 Revised 11244
535 Appendixes A and B corrected 23794
540 Heading and authority citation revised 23551
545 Redesignated from 571 7813
545.1 (a) revised 7813
(a) corrected 9922
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550 Redesignated from 585; authority citation revised 8008
550 Note added 8009
550.102 Added 8009
550.103 (a) and (b) revised 8009
550.201 (a) revised 8009
550.202 (b) introductory text and (3) revised 8009
550.301 Introductory text and (d) revised 8009
550.601 (c) revised 8009
550.602 Revised 8009
551 Redesignated from 586; authority citation revised; note added 8009
551.2 Removed 30248
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555 Redesignated from 588; authority citation revised; note added 8010
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560 Redesignated from 587; authority citation revised 8009
560.1 (a) revised 8009
560.2 (c) revised 8010
560.5 (a) introductory text amended 8010
560.7 (b)(3)(i) revised 8010
565 Added 8010
565.10 Heading correctly revised 10395
571 Redesignated as 545 7813
572 Redesignated as 535 11240

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582 Waiver **64876**
Removed 23551
583 Removed 11171
585 Redesignated as 550 8008
586 Redesignated as 551 8009
587 Redesignated as 560 8009
588 Redesignated as 555 8010

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565 ..... **67030**
571 ..... **66512**
572 ..... **69034**
583 ..... **70710**
585 ..... **67030**
586 ..... **67030**
587 ..... **67030**
588 ..... **67030**

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

0 Order 14834
0.21 (j) added 5950
0.41 (g) removed; (h) through (o) redesignated as (g) through (n) 5950
0.121 (b) revised **68918**
0.241 (g) added 4995
0.251 (g) removed; (h) and (i) redesignated as (g) and (h) 5950
0.291 (i) added 4995
0.304 Added 5950
0.401 (b)(3) added **68919**
0.408 Revised (OMB numbers) **52618**
(b) table amended (OMB numbers) **68919**
0.453 (g)(1) removed; (h) introductory text and (1) revised **68919**
Introductory text, (g) introductory text and (h) introductory text revised 28936
(o) added (effective date pending) 28936
0.455 (f) revised (effective date pending) 28937
0.457 (d)(1)(ii) revised; eff. 10–25–99 22561
(d)(1)(vi) added (effective date pending) 34740
0.467 (a)(1) table and (2) revised 31139
0.482 Revised **68919**
0.491 Revised **68919**
0.601 (b) amended 2149
0.605 (e) amended 2150
1 Nomenclature change **54077**
Order **63612**
Authority citation revised **67429, 71036**
Waiver 26884
1.4 (f) amended **68919, 70047**
(f) revised 27201
1.41 Amended **68919**
1.45 Introductory text amended; (a), (b) and (c) revised **68919**
1.49 (e) amended **68920**
1.50 Revised **68920**
1.51 (f), (g) and (h) added **68920**

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1.52 Amended **68920**
1.83 (b) amended **68920**
1.84 Removed **68920**
1.85 Revised **68920**
1.106 (o) added **68920**
1.115 Regulation at 63 FR 41446 eff. 10–5–98 ..... **52983**
1.419 (e) revised **56091**
1.720 Regulation at 63 FR 41446 eff. 10–5–98 ..... **52983**
1.721 Regulation at 63 FR 41446 eff. 10–5–98 ..... **52983**
1.724 Regulation at 63 FR 41446 eff. 10–5–98 ..... **52983**
1.726 Regulation at 63 FR 41447 eff. 10–5–98 ..... **52983**
1.727 Regulation at 63 FR 41447 eff. 10–5–98 ..... **52983**
1.729 Regulation at 63 FR 41447 eff. 10–5–98 ..... **52983**
1.730 Regulation at 63 FR 41448 eff. 10–5–98 ..... **52983**
1.733 Regulation at 63 FR 41449 eff. 10–5–98 ..... **52983**
1.767 (a)(5), (6), (7) and (e) revised; (a)(8) and (9) added 19061
1.821 Revised **68920**
1.823 Removed **68920**
1.825 Removed **68920**
1.901 Revised **68921**
1.902 Added **68921**
1.903 Added **68921**
1.907 Added **68921**
1.911 Revised **68922**
1.912 Removed **68922**
1.913 Revised **68922**
1.914 Removed **68923**
1.915 Added **68923**
1.916 Removed **68923**
1.917 Added **68923**
1.918 Removed **68923**
1.919 Added **68923**
1.921 Removed **68924**
1.922 Removed **68924**
1.923 Revised **68924**
1.924 Revised **68924**
1.925 Revised **68926**
1.926 Revised **68927**
1.927 Added **68927**
1.929 Added **68927**
1.931 Revised **68928**
1.933 Revised **68929**
1.934 Revised **68930**
1.935 Added **68931**
1.937 Added **68931**
1.939 Added **68931**
1.945 Added **68932**
1.946 Added **68933**
1.947 Added **68933**
1.948 Added **68933**
1.949 Added **68934**
1.951 Revised **68934**
1.952 Removed **68934**
1.953 Removed **68934**
1.955 Revised **68934**
1.956 Added **68935**
1.957 Added **68935**
1.958 Removed **68935**
1.959 Removed **68935**
1.961 Removed **68935**
1.962 Removed **68935**
1.971 Removed **68935**
1.972 Removed **68935**
1.973 Removed **68935**
1.981 Revised **68935**
1.1102 Revised **68935**
1.1111 (b) amended; (c) added **68941**
1.1152 Revised **68941**
1.1306 Note 1 amended 19061
1.1307 (b)(1) Table 1 amended (OMB number pending) **65099**
Regulation at 63 FR 65099 eff. date corrected to 2-8-99 4054
1.2003 Amended **68942**
1.2107 (e) added **68942**
1.2111 (a) amended **68942**
1.4000 Revised (effective date pending) **67429**
Revised **71036**
2 Nomenclature change **54077**
Authority citation revised **58650**
Order **63798**
Rule confirmation **69562**
2.103 Revised **58650**
2.106 Table amended 2587, 2591
Table corrected 6138
2.960 Added 4995
2.962 Added 4996
2.1033 (b)(11) revised; eff. 10–25–99 22561
5 Revised **64202**
11 Order 5950
13.5 Revised **68942**
13.9 (d), (e) and (f) redesignated as (e), (f) and (g); (b), (c) and new (f) introductory text revised; new (d) added **68942**
13.13 (d), (e) and (f) removed; **68942**
13.17 (b), (c) and (d) revised **68943**
15.3 (v) revised; (dd) added; eff. 10–25–99 22561
15.37 (f) revised; (h) added; eff. 10–25–99 22561

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15.101 (a) revised 4997
15.121 Revised; eff. 10–25–99 22561
17.23 Revised 27474
20 Nomenclature change **54077**
20.9 (b) introductory text and (1) revised 26887
21.2 Amended **65100**
Regulation at 63 FR 65100 eff. date corrected to 2-8-99 4054
21.11 (f) and (g) redesignated as (e) and (f); heading, (a), (d) and new (e) revised **65100**
Regulation at 63 FR 65100 eff. date corrected to 2-8-99 4054
21.27 (d) added (OMB number pending) **65101**
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.30 (a)(4) revised **65101**
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.31 (e)(6)(iv) revised **65101**
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.42 (b)(3) revised; (c)(8) added (OMB number pending) **6510**
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.101 (a) Footnote 2 revised **65101**
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.118 (c) revised **65101**
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.201 Revised (OMB number pending) **65101**
Regulation at 63 FR 65101 eff. date corrected to 2-8-99 4054
21.304 Revised (OMB number pending) **65102**
Regulation at 63 FR 65102 eff. date corrected to 2-8-99 4054
21.900 Revised (OMB number pending) **65102**
Regulation at 63 FR 65102 eff. date corrected to 2-8-99 4054
21.901 (a), (b), (d) and Note 1 revised; (g) added (OMB number pending) **65102**
Regulation at 63 FR 65102 eff. date corrected to 2-8-99 4054
21.902 Heading, (b)(3), (4), (5)(i), (f)(1) and (2) revised; (b)(7) and (l) added **65102**
Regulation at 63 FR 65102 eff. date corrected to 2-8-99 4054
21.903 (a) and (b)(1) revised; (d) added (OMB number pending) **65103**
Regulation at 63 FR 65103 eff. date corrected to 2-8-99 4054
21.904 Revised **65103**
Regulation at 63 FR 65103 eff. date corrected to 2-8-99 4054
21.905 (b) revised; (d) added (OMB number pending) **65104**
Regulation at 63 FR 65104 eff. date corrected to 2-8-99 4054
21.906 (a) and (d) revised (OMB number pending) **65104**
Regulation at 63 FR 65104 eff. date corrected to 2-8-99 4054
21.907 Removed **65104**
Regulation at 63 FR 65104 eff. date corrected to 2-8-99 4054
21.908 (b) redesignated as (a); heading and new (a) revised; (c), (d) and (e) removed; new (b) through (e) added **65104**
Regulation at 63 FR 65104 eff. date corrected to 2-8-99 4054
21.909 Revised (OMB number pending) **65105**
Regulation at 63 FR 65105 eff. date corrected to 2-8-99 4054
21.910 Heading, introductory text, (a) and (b) introductory text revised; (d) added **65109**
Regulation at 63 FR 65109 eff. date corrected to 2-8-99 4054
21.913 Revised (OMB number pending) **65109**
Regulation at 63 FR 65109 eff. date corrected to 2-8-99 4054
21.925 (b) revised **65112**
Regulation at 63 FR 65112 eff. date corrected to 2-8-99 4054
21.938 (b) introductory text, (c)(4), (e) and (f) revised **65112**
Regulation at 63 FR 65112 eff. date corrected to 2-8-99 4054
21.940 Added (OMB number pending) **65112**
Second 21.940 correctly redesignated as 21.949 4055
21.949 Correctly redesignated from second 21.940 4055
22.99 Amended **68943**
22.101 Removed **68943**
22.103 Removed **68943**
22.105 Removed **68943**
22.106 Removed **68943**

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22.108 Removed **68943**
22.115 Removed **68943**
22.117 Removed **68943**
22.119 Removed **68943**
22.120 Removed **68943**
22.121 Removed **68943**
22.122 Removed **68943**
22.123 Removed **68943**
22.124 Removed **68943**
22.125 Removed **68943**
22.127 Removed **68943**
22.128 Removed **68943**
22.129 Removed **68943**
22.130 Removed **68943**
22.131 (b) introductory text, (1), (c) introductory text, (1) and (2) revised; (d)(3) removed **68943**
22.132 Removed **68943**
22.135 Removed **68943**
22.137 Removed **68943**
22.139 Removed **68943**
22.142 Removed **68943**
22.144 Removed **68943**
22.145 Removed **68943**
22.150 (d) introductory text amended **68944**
22.163 Removed **68944**
22.165 (b) and (e) revised **68944**
22.213 Removed **68944**
Added 33781
22.215 (a) revised 33781
22.217 (a) revised; (b)(4) added 33781
22.219 Removed 33781
22.221 (b) revised **68944**
(b) and (c) revised 33781
22.223 (b)(1)(i), (ii) and (2) amended; (b)(4) and (e) added 33781
22.225 (a)(1), (b)(1), and (e) revised 33782
22.315 Removed **68944**
22.317 Amended **68944**
22.323 (d) revised **68944**
22.352 (c)(6) revised **68944**
22.369 Removed **68944**
22.411 (d)(1) revised **68944**
22.413 (b)(1) revised **68944**
22.415 (b)(1) revised **68944**
22.417 (b)(1) revised **68944**
22.503 (k) revised **68945**
(b)(2), (3), (h), (i), (k)(1) and (2) amended 33782
22.507 (c) revised **68945**
(c) amended 33784
22.509 (c) removed 33784
22.513 Added 33784
22.529 (a) and (b) introductory text amended; (b)(1), (3) introductory text, (i) and (iii) revised **68945**
22.531 (c) revised **68945**
(f) amended 33784
22.539 Introductory text revised **68945**
22.577 (b) amended; (d) revised **68945**
22.625 (b)(1) revised **68946**
22.627 (b)(1)(i) and (2) revised **68946**
22.657 (a), (d), (e)(1) and (f) revised **68947**
22.659 (b)(1) and (c)(1) revised **68947**
22.709 Introductory text, (b) introductory text, (1) and (2) revised (effective date pending in part) **68948**
22.803 Introductory text, (a) introductory text, (b) introductory text, (1) and (2) revised (effective date pending in part) **68948**
22.821 Removed **68948**
22.859 Introductory text and table revised **68948**
22.873 (a) and (b) revised **68950**
22.875 (d)(7) removed (effective date pending in part) **68951**
22.907 (b) revised **68951**
22.911 (b) amended **68951**
22.921 Added (OMB number pending) 34568
22.929 Revised (effective date pending in part) **68951**
22.935 (a) amended **68951**
22.936 (a) amended **68951**
22.941 (b) amended; (c) revised **68951**
22.944 Removed **68951**
22.946 Introductory text and (b) removed; (a) introductory text revised; (a)(1) redesignated as (b) **68951**
22.947 (b) introductory text amended **68951**
22.953 (a) and (b) revised; (c) added **68951**
22.966 Removed **68952**
24 Order 63612
24.2 (b) amended **68952**
24.5 Amended **68952**
24.11 (a) revised **68952**
24.18 Removed **68952**
24.202 Introductory text amended **68952**
24.203 (b) amended 26890

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24.307 Revised **68952**
24.405 Removed **68952**
24.406 Removed **68952**
24.409 Removed **68952**
24.411 Removed **68952**
24.413 Removed **68952**
24.419 Removed **68952**
24.420 Removed **68952**
24.421 Removed **68952**
24.422 Removed **68953**
24.423 Removed **68953**
24.425 Removed **68953**
24.426 Removed **68953**
24.427 Removed **68953**
24.428 Removed **68953**
24.429 Removed **68953**
24.432 Removed **68953**
24.439 Removed **68953**
24.443 Removed **68953**
24.444 Removed **68953**
24.714 (b)(1) revised **68953**
24.803 Removed **68953**
24.805 Removed **68953**
24.806 Removed **68953**
24.809 Removed **68953**
24.811 Removed **68953**
24.813 Removed **68953**
24.819 Removed **68953**
24.820 Removed **68953**
24.821 Removed **68953**
24.822 Removed **68953**
24.823 Removed **68953**
24.825 Removed **68953**
24.826 Removed **68953**
24.827 Removed **68953**
24.828 Removed **68953**
24.829 Removed **68953**
24.832 Removed **68953**
24.839 (a), (b) and (c) removed; (d) and (e) redesignated as (a) and (b) **68953**
24.844 Removed **68953**
25 Orders 14394
25.200 Added 4997
25.202 (a)(1) table revised 2591
(a)(1) corrected 6565
26.2 (b) amended **68953**
26.4 Amended **56577, 68953**
26.11 (a) revised **68953**
26.56 Added **71041**
26.104 (e) revised **68953**
26.203 Revised **56578**
26.204 Removed **56578**
26.205 Revised **56578**
26.206 Revised **56578**
26.207 Revised **56578, 68954**
26.208 Revised **56578**
26.209 (b)(2) revised **68954**
26.210 Revised **56578**
26.303 Removed **68954**
26.304 Removed **68954**
26.305 Removed **68954**
26.306 Removed **68954**
26.307 (a) revised **56578**
Removed **68954**
26.309 Removed **71041**
26.310 Removed **68954**
26.311 Removed **68954**
26.312 Removed **68954**
26.313 Removed **56578**
Removed **68954**
26.314 Removed **68954**
26.315 Removed **68954**
26.316 Removed **68954**
26.317 Revised **56578**
Removed **68954**
26.318 Removed **68954**
26.319 Removed **68954**
26.320 Revised **56578**
Removed **68954**
26.322 Removed **68954**
26.323 (a) revised **68954**
26.324 Removed **68954**
26.325 Removed **68954**
26.326 Removed **68954**
27.3 (b) amended **68954**
27.4 Amended **68954**
27.11 (a) revised **68954**
27.15 (b)(1) revised **68954**
27.59 Removed **68954**
27.61 Removed **68954**
27.62 Removed **68954**
27.207 Removed **68954**
27.301 Removed **68954**
27.303 Removed **68954**
27.304 Removed **68954**
27.306 Removed **68954**
27.307 Removed **68954**
27.310 Removed **68955**
27.311 Removed **68955**
27.312 Removed **68955**
27.313 Removed **68955**
27.314 Removed **68955**
27.315 Removed **68955**
27.316 Removed **68955**
27.317 Removed **68955**
27.319 Removed **68955**
27.320 Removed **68955**
27.322 Removed **68955**
27.324 Removed **68955**
27.325 Removed **68955**
36 Order 63993

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36.601 Amended **64651**
(c) amended 30924
41 Removed 13916
42.10 Added 19725
42.11 Undesignated center heading revised 19725
42.11 (a) revised 19725
43.51 (a), (b), and (e) amended; (f) and (g) added (effective date pending) 34740
43.61 (c) revised 19061
51.5 Amended 23241
51.321 (c) and (f) revised; (h) and (i) added 23241
Regulation at 64 FR 23241 eff. 5-13-99 29598
Regulation at 64 FR 23241 eff. date corrected to 6-1-99 34138
51.323 (b), (c), (h) and (i) revised; (k) added 23242
Regulation at 64 FR 23242 eff. 5-13-99 29598
Regulation at 64 FR 23242 eff. date corrected to 6-1-99 34138
51.325 (a)(1) and (2) revised; (a)(3) added (effective date pending) 14148
51.507 (f) stayed 32207
52.19 (a) revised **63617**
52.21 (c) and (q) revised **68203**
52.27 Revised **68203**
52.31 (a), (b) and (e) revised **68204**
(a) revised 22563
54 Order **63993**
Guidelines **68208**
54.5 Amended **70571**
54.504 (b)(1), (2)(vii), (3) and (c) amended; (b)(4) revised **70572**
54.505 (b)(3) and (c) amended **70572**
54.507 (e), (f), (g) introductory text and (1) amended; (c), (g)(2)(i) and (iv) revised **70572**
(b) revised 22810
(a)(1) revised 30442
(g)(1)(iii) Note added 33788
54.509 (b) amended; (c) revised **70572**
54.511 (c)(3) amended **70572**
(d) revised 22810
54.515 (a) and (b) revised; (c) and (d) removed **67009**
54.516 (b) amended **70572**
54.603 (a)(1) through (5) amended **70572**
54.604 (c) amended **70572**
(d) revised 2594, 22810
54.605 (e) amended **70572**
54.609 (b) amended **70572**
54.619 (b) and (d) amended **70572**
54.623 (c), (e) and (f) amended **70572**
(b) and (c) revised 2594
(a) revised 30442
54.625 (a) amended **70572**
54.701 Revised **70572**
54.702 Added **70573**
54.703 Revised (effective date pending in part) **70573**
54.704 Added **70574**
54.705 Revised **70574**
54.706 Added **70575**
54.708 Added **70576**
54.709 (a)(2) amended; (a)(3) revised **70576**
54.711 (a) and (b) revised **67009**
(b) amended **70576**
54.715 Revised **70576**
54.717 Added **70576**
54.719—54.725 (Subpart I) Added **70577**
54.719 Added **70577**
54.721 Added (effective date pending) **70578**
54.722 Added **70578**
54.723 Added **70578**
54.724 Added **70578**
54.725 Added **70578**
Revised 33788
61 Orders 14394
63 Authority citation revised 19061
63.09 Added 19062
63.10 (a) introductory text and (c)(5) amended; (a)(4) revised 19062
63.11 Heading, (a), (c)(1), (2), (e)(1) and (2) revised; (b) and (f) amended; note removed 19062
Corrected 22903
63.12 (c)(2) amended; (c)(5) redesignated as (c)(4); (a), (b), (c)(1), new (c)(4) and (d) revised 19063
63.14 (a) amended; (b) introductory text revised 19063
(a) and (c) revised; (d) removed (effective date pending) 34741
63.15 Removed 19063
63.16 Added 19063
(a) revised (effective date pending) 34741
63.17 (b)(4) revised 19064

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63.18 (e), (g), (h) and (i) revised; (j) and (k) redesignated as (o) and (p); (j) through (n) added 19064
63.20 (b) and (c) revised; (d) amended 19065
63.21 Heading and (a) revised; (i) and (j) added 19065
63.22 Added 19065
(e) revised (effective date pending) 34741
63.23 Added 19066
(d) revised (effective date pending) 34741
63.24 Added 19066
64 Order **54379**
Petitions 4999
64.604 (c)(4)(iii)(I) revised **67010**
64.702—64.710 (Subpart G) Heading amended (effective date pending) 14148
64.702 (b), (c) and (d)(2) amended; (effective date pending) 14148
64.1001 (b) through (g) revised; (h) through (l) removed (effective date pending) 34742
64.1002 Amended 19067
Removed (effective date pending) 34742
64.1100 Revised (effective date pending in part) 7759
Regulation at 64 FR 7759 eff. date corrected to 8-27-99 9219
64.1150 Revised 7760
Regulation at 64 FR 7760 eff. date corrected to 8-27-99 9219
64.1160 Added 7760
Regulation at 64 FR 7760 eff. date corrected to 8-27-99 9219
64.1170 Added (effective date pending) 7761
64.1180 Added (effective date pending) 7761
64.1190 Added 7762
Regulation at 64 FR 7762 eff. date corrected to 8-27-99 9219
64.1300 (c) revised; (d) removed 13719
64.2000 Added (effective date pending) 34497
64.2001 Revised (effective date pending) 34497
68.160 Added 4997
68.162 Added 4998
68.300 (c) added 3048
69 Order **63993**
69.152 (h) added 16358
69.153 (c) introductory text, (2), (d)(1) introductory text, (ii), (2) introductory text, (ii) and (e) revised **55335**
69.600 Removed **70578**
69.603 (c), (d) and (e) removed **70578**
69.613 Removed **70578**
69.614 Removed **70578**
69.615 Removed **70578**
69.616 (e) added **67010**
Removed **70578**
69.617 Removed **70578**
69.618 Removed **70578**
69.619 Removed **70578**
69.620 Removed **70578**
69.621 Removed **70578**
69.622 Removed **70578**
69.623 Removed **70578**
73 Actions on petitions **54380, 71389**
Order **65710**
Actions on petitions 3650, 9923, 14397
Application for review 27710, 32441
73.202 (b) table amended ..... **52984, 54379, 54600, 55807—55809, 55958, 55959, 57609, 57610, 59238, 59239, 62956, 62957, 63617—63619, 64877, 67430**
(b) table amended ..... 995, 2858, 3874, 3875, 5718—5720, 7813, 8725, 9923, 12903, 13720—13723, 17109, 19067, 19300, 22564—22567, 23022, 23243, 23244, 24522, 26697, 29977—29980, 31140—31143, 31511, 32821—32824, 33224, 33225, 34743
73.316 (c) revised **70047**
73.606 (b) table amended 12767
73.622 (b) amended 4326
(e) revised 4327
73.623 (f) redesignated as (g); new (f) added 4327
73.624 (g) added **69216**
(b) revised 4327
(c) introductory text corrected; CFR correction 26327
73.686 (d) added 7127
73.1030 (a) revised **70048**
73.1125 Regulation at 63 FR 49497 eff. 10-30-98 ..... **56578**
73.1675 (a) revised **70049**
73.3500 Existing text designated as (a); (b) added **70049**
73.3517 (e) added 19501
73.3526 Regulation at 63 FR 49497 eff. 10-30-98 ..... **56578**
(e)(11)(iii) revised **70049**

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Regulation at 63 FR 70049 eff. 12–31–98 ..... **71789**
73.3527 Regulation at 63 FR 49499 eff. 10–30–98 ..... **56578**
73.3534 Revised **70049**
73.3535 Removed **70049**
73.3550 Revised **71603**
73.3571 (a)(1) and (f) revised 19501
73.3573 (a)(1) and (e) revised 19502
73.3597 (c)(1)(iii) added **70050**
73.3598 Revised **70050**
73.3599 Removed **70050**
73.3613 (b)(7) added **70050**
73.3615 (a) introductory text, (1), (3)(1)(A), (c), (d) introductory text, (e) and (f) revised; (a)(2) amended **70050**
Regulation at 63 FR 70050 eff. in part 12–31–98 ..... **71789**
73.5002 (c) and (d) revised 24526
73.5006 (b) and (c) revised 24526
73.5007 Revised 24526
73.5008 (b) and (c) revised 24527
73.5009 Revised 24527
74 Rule confirmation **69562**
74.406 (d)(1) revised 4327
74.725 Added **70578**
74.783 (e) revised **71604**
74.901 Amended **65113**
Regulation at 63 FR 65113 eff. date corrected to 2-8-99 4054
74.902 (f) through (j) redesignated as (g) through (k); (c), (d) and (e) revised; new (f) added (OMB number pending) **65113**
74.903 (a)(1), (2), (3), (b) introductory text, (1), (2), (4), (5), (c) and (d) revised; (a)(6) added; (e) and (f) removed **65114**
Regulation at 63 FR 65114 eff. date corrected to 2-8-99 4054
74.911 (a)(1) revised; (d) added (OMB number pending) **65115**
Regulation at 63 FR 65115 eff. date corrected to 2-8-99 4054
74.912 Added **65115**
Regulation at 63 FR 65115 eff. date corrected to 2-8-99 4054
Revised 24527
74.931 (d), (e), (f) through (k) redesignated as (b), (c) and (e) through (j); new (b) and new (c) revised; new (d) added (OMB number pending) **65116**
Regulation at 63 FR 65116 eff. date corrected to 2-8-99 4054
74.935 (a) and (b) revised **65117**
Regulation at 63 FR 65117 eff. date corrected to 2-8-99 4054
74.936 Revised (OMB number pending) **65117**
Regulation at 63 FR 65117 eff. date corrected to 2-8-99 4054
74.937 (a) amended; (b) revised **65118**
Regulation at 63 FR 65118 eff. date corrected to 2-8-99 4054
74.938 Revised **65119**
Regulation at 63 FR 65119 eff. date corrected to 2-8-99 4054
74.939 Revised (OMB number pending) **65119**
Regulation at 63 FR 65119 eff. date corrected to 2-8-99 4054
74.940 Added (OMB number pending) **65124**
Second 74.940 correctly redesignated as 74.949 4055
74.949 Correctly redesignated from second 74.940 4055
74.950 Removed **65124**
Regulation at 63 FR 65124 eff. date corrected to 2-8-99 4054
74.951 (b) revised (OMB number pending) **65124**
Regulation at 63 FR 65124 eff. date corrected to 2-8-99 4054
74.952 Revised **65124**
Regulation at 63 FR 65124 eff. date corrected to 2-8-99 4054
74.961 (a) revised **65124**
Regulation at 63 FR 65124 eff. date corrected to 2-8-99 4054
74.965 Revised (OMB number pending) **65125**
Regulation at 63 FR 65125 eff. date corrected to 2-8-99 4054
74.982 (b) revised; (g) added **65125**
Regulation at 63 FR 65125 eff. date corrected to 2-8-99 4054
74.985 Revised (OMB number pending) **65125**
Regulation at 63 FR 65125 eff. date corrected to 2-8-99 4054
74.986 (a) introductory text revised; (a)(8) added **65127**
Regulation at 63 FR 65127 eff. date corrected to 2-8-99 4054
74.1233 (a)(1), (b) and (d)(1) revised 19502
74 Index amended **65127**
Regulation at 63 FR 65127 eff. date corrected to 2-8-99 4054

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76 Order 5950
Authority citation and heading revised 6569
Authority citation revised 28108
76.6 Added 6569
76.7 Revised 6569
76.8 Revised 6569
76.9 Revised 6569
76.10 Revised 6569
76.55 (e)(1) through (6) revised 33796
76.59 (b) and (c) revised 33796
76.61 (a)(3), (4) and (b) revised; (a)(5) added 6572
76.403 Revised (effective date pending) 28108
76.615 Introductory text and (a) revised 28109
76.914 (c) revised 6572
76.1003 Regulation at 63 FR 45739 eff. 12–23–98 2595
Revised 6572
76.1204 (f) added 29600
76.1302 Revised 6574
76.1513 Heading, (a) and (d) through (h) revised; (i) through (u) removed 6575
78 Rule confirmation **69562**
79.1 (b), (d)(3), (7), (8), (9) and (e)(3) revised; (d)(13) and (e)(10) added **55962**
(e)(3) revised 33424
80.3 (k) revised **68955**
80.19 Removed **68955**
80.21 (a), (b) and (f) removed; (c), (d) and (e) redesignated as (a), (b) and (c); introductory text and new (c) revised (effective date pending) **68955**
80.23 Removed **68955**
80.25 (a) and (b) revised **68955**
80.29 Removed **68955**
80.31 Revised **68955**
80.33 (b) introductory text and (c) introductory text revised (effective date pending) **68955**
80.45 Revised **68955**
80.49 Revised **68955**
80.51 (a) removed **68955**
80.53 Revised (effective date pending) **68956**
80.56 Removed **68956**
80.57 (b)(6) revised; (c)(6) amended **68956**
80.59 (c) revised **68956**
80.371 (c)(1)(i) table amended 26887
80.383 (a) table amended **53313**
80.469 (c) revised (effective date pending) **68956**
80.511 (c) revised (effective date pending) **68956**
80.513 (c)(1) amended (effective date pending) **68956**
80.514 Introductory text revised **68956**
80.553 Introductory text revised **68956**
80.605 (a) and (c)(9) revised; (d) amended (effective date pending) **68956**
80.751 Revised 26887
80.773 (c) added 26887
87.5 Amended 27474
87.17 Revised **68957**
87.21 Removed **68957**
87.23 Removed **68957**
87.25 Introductory text removed; (b) revised **68957**
87.27 (a) and (b) revised **68957**
87.31 Removed **68957**
87.33 Removed **68957**
87.35 Revised **68957**
87.37 (a) introductory text revised **68957**
87.45 Revised **68957**
87.51 (a) removed **68957**
87.79 Removed **68957**
87.131 Amended 27474
87.133 (a) table amended 27475
87.137 (d) removed **68957**
(a) table amended 27475
87.139 (a) introductory text and (j) revised 27475
87.171 Amended 27475
87.173 (b) table amended 27475
87.187 (bb) and (cc) revised **68957**
(y) introductory text and (4) introductory text revised 27475
87.215 (d) amended (effective date pending) **68957**
87.219 Added 27475
87.239 Revised **68957**
87.261 (e) and (f) added 27476
87.301 (b) revised **68957**
87.307 (d) introductory text revised **68958**
87.321 Revised **68958**
87.323 (b) amended **68958**
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87.419 (b) revised **68958**
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87.421 (b) revised 68958
87.423 Revised 68958
87.447 Introductory text revised 68958
87.473 (a) removed; (b) and (c) redesignated as (a) and (b) 68958
87.475 (a) amended 68958
(e) added 27476
87.481 (a) introductory text and (4) revised 68958
87.525—87.529 (Subpart S) Heading revised 27476
87.525 Revised 27476
87.527 (b) revised 68958
(b) and (c) revised 27476
87.529 Amended 27476
90 Authority citation revised 58651
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90.5 (b), (i)(1) and (m) revised 68958
90.7 Amended 68958
90.20 (c)(3) table amended; (d)(77) added 58651
(f)(4) revised 10397
90.22 Revised 68958
90.35 (c)(61)(iv) revised 68959
(d)(7) added 10397
90.103 (c)(22) revised 10397
90.111 Revised 68963
90.113 Removed 68963
90.117 Removed 68963
90.119 Revised 68963
90.123 Removed 68963
90.125 Removed 68963
90.127 Revised 68963
90.129 Introductory text revised; (c) and (e) removed 68963
90.131 Removed 68963
90.135 Revised 68963
90.137 (a) introductory text revised 68963
90.139 Removed 68963
90.141 Removed 68964
90.143 Removed 68964
90.145 Removed 68964
90.147 Removed 68964
90.149 (a) revised; (b) removed 68964
90.151 Removed 68964
90.153 Removed 68964
90.155 (d) revised 68964
90.157 Revised 68964
90.159 (a), (b) introductory text, (c), (d) and note revised 68964
90.160 Removed 68965
90.161 Removed 68965
90.162 Removed 68965
90.163 Removed 68965
90.164 Removed 68965
90.165 Introductory text, (b) introductory text, (1), (c) introductory text and (1) revised; (d)(3) removed 68965
90.166 Removed 68965
90.167 Revised 68965
90.175 Introductory text, (b), (e) and (f) revised 68965
(i)(5) revised 10397
(f) revised 33784
90.177 Removed 68965
90.187 (a) revised 68965
90.203 (a) introductory text revised; (l) added 64208
90.205 (i) revised 58651
90.237 (b) removed 68965
90.241 (c)(7) revised 68965
90.248 Added 64208
90.259 Revised 64209
90.273 (c) revised 68965
90.303 Revised 68965
90.350 Revised 68965
90.365 (a)(1), (b) and (d)(2) revised; (d)(1)(ii) removed; (d)(1)(iii) redesignated as (d)(1)(ii) 68966
90.437 (c) revised; (d) removed 68966
90.477 (a) introductory text and (d)(3) revised 68966
90.501 Revised 68967
90.521—90.551 (Subpart R) Added 58651
90.523 Regulation at 63 FR 58651 eff. 1–20–98 3048
90.527 Regulation at 63 FR 58652 eff. 1–20–98 3048
90.545 Regulation at 63 FR 58656 eff. 1–20–98 3048
90.551 Regulation at 63 FR 58658 eff. 1–20–98 3048
90.601 Revised 68967
90.605 Revised 68967
90.607 (b)(1) and (c)(1) revised; (d) removed 68967
90.609 (a) removed 68967
90.611 Removed 68967
90.619 (d)(5) amended 68968
90.621 Table 1 amended; (b)(3), (e)(5) and (f)(1) revised 68968
90.625 (a) amended (effective date pending) 68969
90.629 (c) amended 68969
90.631 (d) amended; (f) revised 68969
90.633 (c) and (d) revised 10397
90.635 Table 1 revised 68969

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90.645 (g) and (h) amended 68970
90.651 Revised 68970
(c) revised 10397
90.655 Amended 68970
90.657 Removed 68970
90.658 (a) revised 68970
90.659 Removed 68970
90.683 (a)(4) revised; (a)(5) removed (effective date pending) 68970
90.687 Amended 68970
90.693 (b) and (c) revised 68970
90.701 (a) revised 68971
90.705 Revised 68971
90.711 (a) introductory text revised; (a)(5) removed 68971
90.733 (h)(2) revised 68971
90.737 (d) and (e) revised 68971
90.741 Revised 68971
90.751 Revised 68973
90.753 (d) and (e) revised 68973
90.755 Removed 68973
90.763 (b)(4) revised (effective date pending) 68973
90.767 (c) revised 68973
90.769 (c) revised 68973
90.911 (b)(1) amended 68973
90.1013 Revised 68973
90.1019 (d) removed; (e) redesignated as (d); heading, (a), (b), (c) and new (d) revised 68973
90.1023 (b) introductory text revised 68974
95 Nomenclature change 54077
Actions on petitions 14639
95.1—95.7 Undesignated center heading removed 68974
95.5 Revised 68974
95.7 (b) amended 68974
95.21—95.61 Undesignated center heading removed 68974
95.71—95.89 Undesignated center heading removed 68974
95.101—95.143 Undesignated center heading removed 68974
95.171—95.181 Undesignated center heading removed 68974
95.21 Revised 68974
95.23 (b) revised; (d) removed 68974
95.25 (a) introductory text, (d)(2)(i) and (f) revised; (c) removed 68974
95.29 (a), (b), (e) introductory text and (2) revised; (c) and (d) removed 68974
95.31 Removed 68975
95.33 (b) removed 68975
95.35 Removed 68975
95.37 Removed 68975
95.39 Removed 68975
95.41 Removed 68975
95.42 Removed 68975
95.43 Removed 68975
95.45 Revised 68975
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95.51 Revised 68975
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95.83 Removed 68975
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95.87 Removed 68975
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95.101 (a) revised 68975
95.103 Revised 68975
95.105 Revised 68975
95.107 Removed 68975
95.109 Removed 68975
95.111 Removed 68975
95.113 Removed 68975
95.115 Amended 68975
95.117 Revised 68975
95.119 (a) introductory text, (b) and (d) revised 68975
95.121 Removed 68975
95.123 Removed 68975
95.125 Removed 68975
95.127 Removed 68975
95.129 Revised 68975
95.131 Removed 68975
95.133 Removed 68975
95.135 (b) removed; (d) revised 68976
95.137 Removed 68976
95.139 (b) removed; (c) redesignated as (b) 68976
95.171 Revised 68976
95.173 Removed 68976
95.175 Removed 68976
95.177 Removed 68976
95.179 (a) introductory text, (b) introductory text and (1) revised; (f) removed 68976
95.181 (f) revised; (i) and (j) removed 68976

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95.183 Added 68976
95.1—95.181 (Subpart A) Appendix A amended; Appendix B removed 68976
95.192 (b) and (c) removed 68976
95.217 (b) revised 68976
95.225 Revised 68976
95.419 (b) revised 68976
95.428 Revised 68976
95.801 Revised 68977
95.811 (a) revised; (b) amended 68977
95.815 Revised 68977
95.816 (c)(2)(ii) revised 68977
95.817 Removed 68977
95.819 (c) amended 68977
95.821 Removed 68977
95.833 (b) introductory text amended 68977
95.839 Removed 68977
95.840 Removed 68977
95.841 Removed 68977
97 Nomenclature change 54077
97.3 Amended 68977
97.5 (a) introductory text, (b), (c) and (d) revised; (e) added 68977
97.7 Revised 68978
97.9 Revised 68978
97.13 (a) revised; (b) and (c)(2) amended 68978
97.15 Revised 68978
97.17 Revised 68978
97.19 (a), (b), (c) and (d)(1) revised 68978
97.21 Revised 68979
97.23 Revised 68979
97.25 Revised 68979
97.27 Heading and (a) introductory text revised 68979
97.29 Revised 68979
97.107 Revised 68979
97.119 (g) revised 68980
97.201 (a) revised 68980
97.203 (a) revised 68980
97.205 (f) and (h) removed 68980
97.207 (g) introductory text, (h) and (i) revised 68980
97.301 (a) introductory text and (b) introductory text revised 68980
97.505 (a)(10) revised 68980
97.509 (i) revised 68980
97.519 (b) introductory text, (1), (2) and (3) revised 68981
100 Authority citation revised 5956
100.5 Added 5956
101 Rule confirmation 69562
101.1 (a) and (b) redesignated as (b) and (c); new (a) added 68981
101.3 Amended 68981
101.5 (a) and (c) removed; (b) revised 68981
101.9 Removed 68981
101.11 Removed 68981
101.13 Removed 68981
101.15 Removed 68981
101.19 Removed 68981
101.21 (a), (c) and (d) removed; (b), (e) and (g) revised 68981
101.23 Revised 68981
101.25 Removed 68981
101.27 Removed 68981
101.29 Removed 68981
101.31 (a), (c), (d) removed; (b) and (e) redesignated as (a) and (b); heading and new (a)(1)(i), (2), (3) introductory text, (vii), (6) and (b)(1)(v) revised; new (b)(1)(vi) and (3) amended 68981
101.33 Removed 68982
101.35 Removed 68982
101.37 Removed 68982
101.39 Removed 68982
101.41 Removed 68982
101.43 Removed 68982
101.45 (b) introductory text, (d), (f) introductory text, (1), (2) and (4) revised; (h) removed 68982
101.47 Removed 68982
101.51 (a)(3) revised 68982
101.53 Removed 68982
101.55 (b) removed 68982
101.56 (a)(2)(ii) amended; (a)(3) removed 68982
101.57 Removed 68982
101.59 Removed 68982
101.61 Revised (effective date pending) 68982
101.63 (b), (d) and (e) revised 68983
101.65 Revised 68983
101.103 (d)(1) amended 68983
101.105 (c)(3) introductory text amended 68983
101.121 Removed 68983
101.123 Removed 68983
101.127 Removed 68983
101.129 (b) removed 68983
101.205 (a) and (c) revised 68983
101.305 (a), (b), (c) and (d)(1) revised 68983

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101.413 (a) introductory text revised 68983
101.503 Amended 68983
101.701 (c) revised (effective date pending) 68983
101.705 Revised 68984
101.815 (a)(2) and (b) revised 68984
101.817 (a) introductory text revised 68984
101.1009 (a)(1)(iii) and (b) revised 68984
101.1015 Removed 68984
101.1017 (a), (b)(2) and (c)(2) revised 68984
101.1106 Removed 68984

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TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular No. 97-08 58586
Small entity compliance guide 58608, 70306
Federal Acquisition Circular No. 97-10 70264
Federal Acquisition Circular No. 97-11 10530
Small entity compliance guide 10552, 32749
Federal Acquisition Circular No. 97-12 32740
1.106 Table amended (OMB numbers); interim 58588
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Table amended (OMB numbers) 10532, 10549, 32748
Regulation at 63 FR 58588 confirmed 32741
2.101 Amended; interim 58591
4.203 Revised; interim 58588
Regulation at 63 FR 58588 confirmed 32741

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4.500—4.502 (Subpart 4.5) Revised; interim **58592**
4.603 (b) revised 10532
4.900—4.905 (Subpart 4.9) Revised; interim **58589**
Regulation at 63 FR 58589 confirmed 32741
5.101 (a)(2)(ii) revised; (a)(2)(iv) amended; interim **58592**
5.102 (a)(2) and (7) revised; interim **58592**
5.202 (a)(13) revised; (a)(14) removed; (a)(15) redesignated as (a)(14); interim **58592**
(a)(2) through (12) and (14) amended; interim **58593**
5.203 (b) revised; interim **58592**
Introductory text, (a) introductory text, (c), (d), (e) and (g) amended; interim **58593**
5.205 (d)(2) amended; interim **58593**
5.207 (c)(2)(xi), (e)(3) and (h) amended; interim **58593**
(d) revised; interim **70266**
(c)(2)(xviii) added; (d) revised; interim 10536
5.301 (b)(7) revised; interim **58593**
5.503 (a)(2) revised; interim **58593**
6.205 Added; interim **70267**
6.302–3 (a)(2)(iii) revised **58594**
(a)(2) introductory text, (i) and (ii) amended **58602**
6.302–5 (b)(6) added; interim **70267**
7.105 (b)(1) amended; interim **70267**
8.404 (a) amended; interim **70267**
(a) revised; interim 10536
9.104–3 (b) amended; interim **70267**
9.505 (b)(1) amended 32748
11.104 Redesignated as 11.105; new 11.104 added 32742
11.105 Redesignated as 11.106; new 11.105 redesignated from 11.104; introductory text and (a) amended 32742
11.106 Redesignated from 11.105 32742
11.107 Added 32742
11.703 (a) revised 10538
12.102 (d)(3) and (4) amended; (d)(5) added; interim 32743
12.301 (b)(2) amended; interim **70267**
(b)(3) revised 32748
12.303 (b)(1) amended; interim 10536
12.503 (b)(5) revised 10532
13.003 (c) removed; (d) through (i) redesignated as (c) through (h); new (f) and new (h)(3) revised; interim **58593**
(b)(2) redesignated as (b)(3); new (b)(2) added; interim **70267**
13.005 (a)(9) added; interim **70267**
13.102 (a) introductory text revised; interim **58593**
13.104 (b) amended; interim **58593**
13.105 (a)(1) revised; interim **58593**
13.106–1 (c)(1)(ii) and (f) revised; interim **58593**
13.106–2 (b)(3) introductory text revised; interim **58593**
13.106–3 (e) added; interim **58589**
(c) revised; interim **58593**
Regulation at 63 FR 58589 confirmed 32741
13.201 (d) amended 10539
13.301 (b) amended 10539
13.302–1 (e) revised 10540
13.307 (b)(1) amended; interim **58593**
14.201–6 (b)(2) removed; interim **58589**
(k) removed 10532
Regulation at 63 FR 58589 confirmed 32741
14.205–1 (a) amended; interim **58594**
14.206 Removed; interim **70267**
14.400 Amended; interim **58594**
14.405 (d)(2) amended; (e) removed; (f) redesignated as (e) 10532
14.407–4 (a) amended **58602**
14.502 (b)(5) redesignated as (b)(6); new (b)(5) added; interim **70267**
15.209 (d) removed; interim **58589**
Regulation at 63 FR 58589 confirmed 32741
15.403–1 (c)(4) revised 10545
15.404–1 (a)(7) amended **58602**
15.408 (g) revised **58596**
15.503 (a)(2) revised; interim **70267**
16.504 (a) introductory text and (1) amended; (a)(4)(ii) revised **70282**
16.505 (a)(6)(viii) redesignated as (a)(6)(ix); new (a)(6)(viii) added 10540
(b)(1) revised; (b)(2), (3), and (4) redesignated as (4), (5), and (6); new (b)(2) and (3) added; (b)(4)(i) and (ii) revised 32746
19.000 (a)(3) and (8) revised; interim **70268**

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(a)(8) and (9) amended; (a)(10) added; interim 10536
19.001 Amended; interim **70268**, 71723
Amended; interim 10536
19.101 (g)(2) amended; interim 32743
19.102 (f)(4) amended **58602**
(g) amended **70292**
(g) redesignated as (h); new (g) added; interim 10536
19.201 (b) amended **56738**
(a) and (c) amended; (d)(4), (6), (7)(ii), (8) and (9) revised; interim **70268**
19.202 Amended; interim **70268**
19.202–2 Introductory text revised; (a) amended; interim **70268**
19.202–4 Introductory text revised; interim **70268**
19.202–5 (a) and (b) revised; interim **70268**
19.202–6 Introductory text removed; (a) revised; interim **70268**
19.301—19.306 (Subpart 19.3) Heading revised; interim **70268**
19.301 (d) amended; interim **70268**
19.302 (a) revised; interim 32743
19.306 (b) amended **56738**
Redesignated as 19.307; new 19.306 added; interim **70269**
19.307 Redesignated from 19.306; heading and (a) revised; interim **70269**
19.402 (c)(1) revised; interim **70269**
19.501 (a) and (b) amended; (c) through (g) redesignated as (d) through (h); new (c) added; new (d) and new (h) revised; interim **70269**
19.502–1 Revised; interim **70270**
19.502–2 Heading revised; (a), (c) and (d) amended; interim **70270**
(a) amended; interim 10536
19.502–4 (a) amended; interim **70270**
19.502–5 (b), (c) and (g) amended; interim **70270**
(e) amended **70292**
19.503 Heading revised; (a), (b), (c) introductory text and (d) amended; interim **70270**
19.506 Heading, (a) and (c) revised; (b) amended; interim **70270**
19.507 Heading revised; (a) amended; interim **70270**
19.701—19.708 (Subpart 19.7) Heading revised; interim **70270**
19.702 Introductory text and (b)(4) revised; interim **70270**
19.703 (a) introductory text and (1) revised; (b) amended; interim **70270**
(b) revised; interim **71723**
19.704 (a)(1), (2), (3), (6), (8), (9) and (11) revised; (b) amended; interim **70271**
19.705–2 (d) amended; interim **70271**
19.705–4 (b), (c), (d)(1) and (6) amended; (d)(5) revised; interim **70271**
19.705–6 (a) and (b) revised; interim **70271**
19.705–7 (f) introductory text revised; (a) and (d) amended; interim **70272**
19.706 (b) and (c) revised; interim **70272**
19.708 Heading and (b) revised; (a) introductory text, (c)(1), (2) and (3) amended; (b) revised; interim **70272**
19.800 (d) added; interim **70272**
(d) redesignated as (e); new (d) and (f) added; interim 32743
19.802 Amended; interim 32744
19.803 (c) amended; interim **70272**
(c) revised 32748
19.804–2 (a)(12) revised; interim **70272**
(a)(5), (8), (9), (12), (13), and (14) revised; (a)(15) redesignated as (a)(16); new (a)(15) added; interim 32744
19.804–3 (a) revised; (c) and (d) added; interim 32744
19.804–4 Revised; interim 32744
19.804–5 Added; interim 32744
19.804–6 Added; interim 32744
19.805–1 (a)(2) amended; (b)(2) and (d) revised; interim 32744
19.805–2 (a) removed; (b) through (e) redesignated as (a) through (d); new (a) and new (d) amended 32745
19.806 (c) amended; interim 32745
(a) revised 32748
19.808–2 Revised; interim 32745
19.809 Revised; interim 32745
19.810 (a) and (b) amended; interim 32745
19.811–1 (c) introductory text revised; (d) added; interim 32745

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19.811–2 (a) introductory text amended; interim 32745
19.812 (d) revised; interim 32745
19.901—19.905 (Subpart 19.9) Added; interim 10536
19.1004 Amended **58602**
19.1006 (b)(1) amended; interim **70272**
19.1102 (b) revised; interim **70272**
19.1202–2 (b)(1) revised; interim **70272**
19.1202–4 (c) added; interim **71723**
19.1301—19.1308 (Subpart 19.13) Added; interim **70272**
22.609 Revised 32748
22.800 Amended **70283**
22.801 Revised **70283**
22.802 (a) and (b) amended **70283**
(b) and (c) amended **70285**
22.803 (b) amended; (d) revised **70283**
(a)(1), (2) and (b) amended **70285**
22.804–1 Revised **70284**
22.804–2 (b) amended **70284**
22.805 (a)(4) through (8) redesignated as (a)(5) through (9); (a) introductory text, (1), (2), (3) and new (5) introductory text, (ii), (v) and (6) through (9) revised; new (a)(4) added; (b) amended **70284**
22.806 Revised **70284**
22.807 (a)(1), (b)(1), (3) and (6) amended; (a)(2), (b)(5), (c) and (d) introductory text revised; (d)(2) removed **70284**
(a) introductory text, (b)(2), (3) and (4) amended **70285**
22.808 Amended **70285**
22.809 Introductory text, (a) and (d) amended **70285**
Introductory text, (c) and (d) amended **70285**
22.810 (a), (c) and (e) revised; (b) and (f) amended; (g) removed; (h) redesignated as (g) **70285**
22.1200 Amended 10546
22.1201 Amended 10546
22.1202 Amended 10546
22.1203–1 (b)(1) amended 10546
22.1400—22.1408 (Subpart 22.14) Regulation at 63 FR 34074 confirmed **58599**
22.1400 Regulation at 63 FR 34074 confirmed **58599**
22.1401 Regulation at 63 FR 34074 confirmed **58599**
22.1402 Regulation at 63 FR 34074 confirmed **58599**
22.1403 Regulation at 63 FR 34074 confirmed **58599**
22.1404 Regulation at 63 FR 34074 confirmed **58599**
22.1405 Regulation at 63 FR 34074 confirmed **58599**
22.1406 Regulation at 63 FR 34074 confirmed **58599**
22.1407 Regulation at 63 FR 34074 confirmed **58599**
22.1408 Regulation at 63 FR 34074 confirmed **58599**
24.202 (c) added **58594**
25.402 (b) amended 10549
26.103 (a), (b) and (e) amended 10532
26.104 (a) amended; interim **70274**
27.404 (d)(2) and (e)(3) amended 10532
27.409 (g) amended 10532
31.001 Amended **58596**
31.201–5 Amended **58596**
31.205–1 (d) revised 10547
31.205–5 Removed **58599**
31.205–6 (j)(1) through (6) revised **58597**
Regulation at 63 FR 9067 confirmed; (k) heading and (p)(2)(ii) revised; (p)(2)(iv) added **70287**
(p) introductory text amended; (p)(2)(ii)(A), (B) and (C) redesignated as (p)(2)(ii)(A)(*1*), (*2*) and (*3*); new (p)(2)(ii)(A) introductory text and (B) added 10548
(o)(6) amended 32748
31.205–34 (a) introductory text and (b) revised; (c) removed 10547
31.205–47 (b) introductory text and (e)(3) revised; (c) redesignated as (c)(1); (c)(2) added **58600**
31.1103 (a) amended; interim **58594**
32.703–3 Revised **58601**
32.705–1 (b) revised **58603**
32.805 (a) revised 10533
32.905 (a) introductory text revised **58602**
32.908 (a)(3) and (c)(3) added **58602**
(a)(3) and (c)(3) amended **70292**
32.1100—32.1110 (Subpart 32.11) Revised 10540
33.104 (e) amended **58603**

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33.201 Amended **58594**
33.204 Amended **58595**
33.207 (a) revised **58595**
33.214 (a)(3) and (4) amended; (a)(5) removed; (b) revised; (f) and (g) added **58595**
36.601–4 (a)(4) amended **58603**
(a)(4) amended 32747
37.106 (b) revised **58601**
37.602–1 (a) amended 32742
37.602–3 Amended **70292**
39.101 Existing paragraph redesignated (b); (a) added 32748
41.103 (a)(2) and (3) amended **58603**
41.201 (e) amended 10533
42.203 Amended **70292**
Amended 32748
44.302 Revised **70288**
44.303 Introductory text revised **70288**
46.202–4 Revised **70289**
46.311 Revised **70289**
46.402 (e) and (g) removed; (f) and (h) redesignated as (e) and (f); new (e) amended **70290**
48.104–3 Regulation at 63 FR 34079 confirmed **70291**
52.204–3 Revised; interim **58589**
Regulation at 63 FR 58589 confirmed 32741
52.204–5 Revised 10533
Corrected 30103
52.204–6 Amended 32749
52.211–6 Added 32742
52.211–16 Introductory text revised 10538
52.212–1 Amended 32749
52.212–3 Amended; interim **58590, 70274**
Amended **70285**
Amended 10533, 32749
Regulation at 63 FR 58590 confirmed 32741
52.212–4 Amended 10542
52.212–5 Regulation at 63 FR 34075 confirmed **58599**
Amended **58603, 70292**
Amended; interim **70274**
Amended; interim 10537
Amended 10542
52.213–4 Regulation at 63 FR 34075 confirmed **58599**
Amended 10542
Amended 32749
52.214–2 Removed; interim **58590**
Regulation at 63 FR 58590 confirmed 32741
52.214–17 Removed 10533
52.214–21 Amended; introductory text revised 10533
52.215–2 Amended 32749
52.215–4 Removed; interim **58590**
Regulation at 63 FR 58590 confirmed 32741
52.215–15 Revised **58598**
52.219–1 Amended; interim **70274**
Amended 10533, 32749
52.219–2 Introductory text amended; interim **70274**
52.219–3 Added; interim **70274**
52.219–4 Added; interim **70275**
52.219–5 Added; interim 10537
52.219–8 Revised; interim **70275**
Amended; interim **71723**
Amended; interim 3196, 10549
Amended 32749
52.219–9 Amended; interim **70276**
Amended **70293**
52.219–10 Amended; interim **70277**
52.219–14 Introductory text revised 32749
52.219–16 Amended; interim **70277**
52.219–18 Amended; interim 32745
52.219–21 Amended 10533
52.219–22 Introductory text amended; interim **70277**
Amended 32749
52.219–25 Amended; interim **71723**
52.222–21 Revised **70285**
52.222–22 Amended; introductory text revised **70286**
52.222–23 Amended; heading and introductory text revised **70286**
52.222–24 Revised **70286**
52.222–25 Introductory text revised **70286**
52.222–26 Amended; introductory text revised **70286**
52.222–27 Amended; introductory text revised **70286**
52.222–28 Removed **70286**
52.222–29 Revised **70286**
52.222–36 Regulation at 63 FR 34075 confirmed **58599**
52.222–37 Amended **70293**
52.222–50 Amended 10546
52.226–1 Amended; interim **70277**
Amended 10533
52.227–15 Revised 10533
52.228–8 Amended; introductory text revised 10534
52.228–9 Revised 10534

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52.232–12 Amended; introductory text revised 10534
52.232–33 Revised 10542
52.232–34 Revised 10543
52.232–35 Added 10544
52.232–36 Added 10544
52.232–37 Added 10544
52.232–38 Added 10544
52.233–1 Amended **58595**
52.241–1 Revised 10534
52.244–6 Amended **58603**
52.246–11 Revised **70289**
52.247–48 Revised **70292**
53.214 (c) amended 32749
53.215–1 (c) amended 32749
53.219 (a) revised; (b) amended; interim **70277**
53.228 (h) and (i) revised **58603**
(a), (b), (c), (e), (j) and (m) revised **70293**
(n) revised 10549
53.301–24 Revised **70293**
53.301–25 Revised **70296**
53.301–25A Revised **70298**
53.301–28 Revised **70300**
53.301–273 Revised **58603**
53.301–274 Revised **58605**
53.301–275 Revised **70302**
53.301–294 Revised; interim **70277**
53.301–295 Revised; interim **70280**
53.301–1416 Revised **70304**
53.301–1418 Revised 10549

Chapter 2—Department of Defense (Parts 200—299)

201.402 (1) introductory text and (i) revised; (3)(iii) amended 8727
203.570 Revised 14398
203.570–2 Revised 14398
203.570–5 Revised 14398
204.101 (a)(i) revised **69006**
204.670–2 (c) revised 2595
204.804–1 Amended 2596
206.302–4 Revised **67803**
207.471 Added 31732
208.405–2 Revised 2596
208.7204 (a) revised 2596
208.7305 (a)(3) revised 2596
209.104–1 Regulation at 63 FR 14837 confirmed **64427**
209.104–70 Regulation at 63 FR 14837 confirmed **64427**
209.405–2 Regulation at 63 FR 14837 confirmed **64427**
209.409 Regulation at 63 FR 14837 confirmed **64427**
209.471 Added 31733
211.201 (b) amended; (d) introductory text revised 8727
211.273–2 (b) revised 14399
211.273–3 Revised 14399
212.301 (f)(ii) amended; (f)(v) added; interim 8728
212.503 (c)(ii) amended **55040**
213 Regulation at 63 FR 33587 confirmed **64427**
Revised 2596
213.302–5 Revised 24528
215 Revised **55041**
215.304 Revised; interim **64428**
215.404–4 (b)(1) introductory text, (c)(2) introductory text, (A) and (B) revised **63799**
215.404–72 Revised **63799**
215.404–75 Redesignated as 215.404–76; new 215.404–75 added **63800**
215.404–76 Redesignated from 215.404–75 ..... **63800**
216.203–4 (a) introductory text amended; (a)(i) and (b)(i) revised 2597
217.401 Revised; interim **64429**
217.500 Added 14400
217.7103–3 (b) revised **55052**
(b) correctly revised **56290**
217.7103–4 Revised **55052**
217.7302 (b) revised 2597
217.7404–3 (a) introductory text and (1) revised **67803**
217.7404–5 (b) revised **67804**
217.7406 (b) amended **55052**
217.7504 (a)(2) revised 2598
219.001 Revised; interim **64429**
219.201 (c) and (d) redesignated as (d) and (e); new (d)(9)(A) revised 2598
219.702 Regulation at 63 FR 14640 confirmed **64427**
219.708 (c)(1) revised; (c)(2) removed; interim **64429**
219.800 Regulation at 63 FR 33587 confirmed **64427**
219.804–2 Regulation at 63 FR 33587 confirmed **64427**
219.804–3 Regulation at 63 FR 33587 confirmed **64427**
219.805 Regulation at 63 FR 33588 confirmed **64427**

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219.805–2 Regulation at 63 FR 33588 confirmed **64427**
219.806 Regulation at 63 FR 33588 confirmed **64427**
219.808 Regulation at 63 FR 33588 confirmed **64427**
219.808–1 Regulation at 63 FR 33588 confirmed **64427**
219.811 Regulation at 63 FR 33588 confirmed **64427**
219.811–1 Regulation at 63 FR 33588 confirmed **64427**
219.811–2 Regulation at 63 FR 33588 confirmed **64427**
219.811–3 Regulation at 63 FR 33588 confirmed **64427**
219.812 Regulation at 63 FR 33588 confirmed **64427**
219.1203—219.1204 (Subpart 219.12) Added; interim **64429**
222.101–3 Revised 28109
222.101–3–70 (b) introductory text revised 28109
223.570–4 (b) revised 2598
223.7000—223.7002 (Subpart 223.70) Removed **67804**
225.74 Regulation at 63 FR 31937 confirmed 24530
225.105 (5)(ii)(B) revised 2598
225.408 (a)(ii) and (iv) amended 8730
225.770–3 (a) revised 2598
225.771 Added; interim 8728
225.771–1 Added; interim 8728
225.771–2 Added; interim 8728
225.771–3 Added; interim 8728
225.771–4 Added; interim 8728
225.872–3 (g) amended **55052**
225.872–6 (c) introductory text amended **55052**
225.7002–2 (k) added; interim 2599
(j) revised; (k) removed 24529
225.7005 Regulation at 63 FR 43888 confirmed **64427**
225.7007–4 Regulation at 63 FR 43888 confirmed **64427**
225.7010–3 Regulation at 63 FR 43888 confirmed **64427**
225.7016–1 Regulation at 63 FR 43888 confirmed **64427**
225.7016–2 Regulation at 63 FR 43888 confirmed **64427**
225.7016–3 Regulation at 63 FR 43888 confirmed **64427**
225.7019–1 Regulation at 63 FR 43888 confirmed **64427**
225.7019–3 Regulation at 63 FR 43888 confirmed **64427**
225.7022–1 Regulation at 63 FR 43888 confirmed **64427**
225.7022–2 Regulation at 63 FR 43888 confirmed **64427**
225.7022–3 Regulation at 63 FR 43888 confirmed **64427**
225.7303–2 (c) introductory text amended 8729
226.7007 (b) revised; interim **64429**
227.7203–10 (a)(1) amended **55052**
228.370 (f) revised **69006**
230 Heading revised 8727
230.7002 (b) amended **55052**
230.7004–1 Heading and (a) amended **55052**
230.7103 Amended **55052**
231.205–6 Regulation at 63 FR 63036 confirmed **64427**
231.205–18 Revised 8729
231.205–70 Regulation at 63 FR 7309 confirmed **64427**
(f) added 18828
232.501 Revised 8731
232.501–1 (a)(iii) removed 8731
232.501–2 Amended 8731
232.502–1–71 Removed 8731
232.502–4–70 (b) removed; (c) redesignated as (b) 8731
232.703–3 Added 28110
232.905 (f)(6) revised **69007**
232.1101—232.1103 (Subpart 232.11) Removed 18829
235.006 Revised; interim 18830
235.006–70 Added; interim 18830
235.015–71 Removed **69007**
235.7000—235.7003–4 (Subpart 235.70) Regulation at 63 FR 34605 confirmed **64427**
236.102 Regulation at 63 FR 11538 confirmed **64427**
236.274 Regulation at 63 FR 11538 confirmed **64427**
236.570 Regulation at 63 FR 11538 confirmed **64427**
236.601 (1)(ii) amended **69008**
236.602–1 (a)(i)(6)(C) revised; interim **64430**
237.106 Revised **67805**
Revised 28110
237.270 Correctly removed; CFR correction **54078**
237.270–1 Correctly removed; CFR correction **54078**

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237.270–2 Correctly removed; CFR correction **54078**
237.270–3 Correctly removed; CFR correction **54078**
237.270–4 Correctly removed; CFR correction **54078**
237.7204 Amended **55052**
237.7302 Amended 2598
242.203 (a)(ii)(P) and (Q) amended; (a)(i)(R) removed 2598
242.771 Revised; interim 8729
242.771–1 Revised; interim 8729
242.771–2 Revised; interim 8729
242.771–3 Revised; interim 8729
242.7205 (b)(4)(iv) amended **55052**
246.370 (b)(1) revised 2598
247.271–3 (b)(1) and (2)(iv)(B) revised 2598
247.572–2 (f)(3)(i) amended; (f)(3)(ii) revised **55052**
247.573 (a), (b) and (c) revised 2598
252.203–7001 Amended; heading revised 14398
252.209–7001 Regulation at 63 FR 14837 confirmed **64427**
252.209.7004 Regulation at 63 FR 14837 confirmed **64427**
252.211–7005 Revised 14399
(b) corrected 28875
252.212–7001 Amended; interim **64430**
252.215–7000 Introductory text amended **55052**
252.215–7002 Amended; introductory text revised **55052**
252.217–7027 Amended **55052**
252.219–7005 Amended **55052**
Removed; interim **64430**
252.219–7009 Regulation at 63 FR 33588 confirmed **64427**
252.219–7010 Regulation at 63 FR 33588 confirmed **64427**
252.219–7011 Regulation at 63 FR 33588 confirmed **64427**
252.223–7005 Removed **67804**
252.225–7007 Amended 8730
252.225–7012 Amended; interim 2599
Amended 24529
252.225–7016 Regulation at 63 FR 43889 confirmed **64427**
252.225–7017 Added; interim 8728
252.225–7021 Amended 8730
252.225–7029 Regulation at 63 FR 43889 confirmed **64427**
252.225–7043 Regulation at 63 FR 31937 confirmed 24530
252.228–7006 Amended **69006**
252.232–7003 Removed 8731
252.232–7004 Introductory text revised 8731
252.232–7009 Removed 18829
252.236–7010 Regulation at 63 FR 11544 confirmed **64427**
252.236–7012 Regulation at 63 FR 11544 confirmed **64427**
252.243–7000 Amended **55052**
253 Note amended **69007**
Note amended 8727, 28109
253.204–70 (b)(6)(i) introductory text amended **55052**
(b)(5)(ii)(A), (B)(*1*), (13)(i)(A), (B) introductory text, (C), (E), (G), (iv)(I), (14)(iii), (iv), (d)(5)(vi), (e)(1), (2) and (3) amended **60217**
Regulation at 63 FR 33589 confirmed **64427**
(d)(5)(iv)(A)(*2*) amended 2598
253.204–71 Regulation at 63 FR 33589 confirmed **64427**
(a)(3) introductory text, (g)(2)(ii)(C) and (i)(1) revised 2598
253.213 (e) redesignated as (f); heading and new (f) introductory text and (1) revised 2599
253.213–70 (e) amended 2600
253.215–70 (a), (b)(4), (c)(12) and (14) revised; (b)(7) removed; (b)(8) and (9) redesignated as (b)(7) and (8); (c)(15) and (16) amended **55052**
(b)(4) amended **63800**
Chapter 2 Appendix I amended; interim **64430**
Appendix G amended **71231**
Appendix B amended 8726

Chapter 5—General Services Administration (Parts 500—599)

511.204 (c) revised; interim 4789
516.505 (a) revised; interim 4789
542.302 (b)(5) revised; interim 4789
552.216–73 Amended; interim 4789
552.219–72 Revised 15306
552.219–73 Revised 15306
552.219–74 Revised 15307
552.238–72 Amended; interim 4789
552.238–76 Amended; interim 4789
552.243–72 Amended; interim 4789

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Chapter 7—Agency for International Development (Parts 700—799)

701.105 (a) amended; (c) revised 16648
703.104–5 Revised 16648
703.104–10.1 Added 16648
705.502 Added 5006
706.501 Amended 5006
709.503 Amended 5006
709.507–2 (c) revised 5006
715.303–70—715.370–2 Designated as Subpart 715.3 16648
715.303–70 Redesignated from 715.604–70; (b)(3) revised 16648
715.305 Added 16648
(c) corrected 25405
715.370 Added 16649
715.370–1 Redesignated from 715.613–70 16648
Corrected 19217
715.370–2 Redesignated from 715.613–71 16648
715.413–2 (Subpart 715.4) Removed 16648
715.502 Redesignated as 715.602 16648
715.504 Redesignated as 715.604 16648
715.506 Removed 16648
715.506–1 Removed 16648
715.602—715.604 Designated as Subpart 715.6 16648
715.602 Redesignated from 715.502 16648
(b) and (c) revised 16649
(b) correctly designated 25405
715.604 Redesignated as 715.304; new 715.604 redesignated from 715.504 16648
Heading and (a) revised; (c) added 16649
715.604–70 Redesignated as 715.303–70 16648
715.605 Removed 16648
715.613–71 Redesignated as 715.370–2 16648
716.406 Added 5007
722.805–70 (Subpart 722.8) Revised 5007
(e) corrected 18481
731.205–6 (b) added; (d) removed 5008
731.205–71 Added 16649
731.371 (b)(1) revised 5008
732.402 (e)(1) revised 5008
732.406–73 Existing text designated as (a); (b) added 5008
(b) corrected 18481
745 Added 5008
747 Added 5008
752.204–2 Amended 5008
752.209–71 Introductory text revised 5008
752.216–70 Added 5008
752.231–71 Added 16649
752.245–71 Amended 5009
752.247–70 Added 5009
752.7003 Amended 5009
752.7005 Added 5010
(b)(2)(iv) corrected 18481
752.7018 Revised 5010
752.7019 Revised 5011

Chapter 8—Department of Veterans Affairs (Parts 800—899)

801.000 Amended **69217**
801.101 (a) amended **69217**
801.102 Redesignated as 801.103 ..... **69217**
801.103 Redesignated as 801.104; new 801.103 redesignated from 801.102 and amended **69217**
801.104 Redesignated from 801.103; (a) amended **69217**
801.301–70 (b)(2) amended **69217**
801.303 Heading revised **69217**
801.601—801.690–6 (Subpart 801.6) Heading revised **69217**
801.602–3 (a)(2) and (b)(2) amended **69217**
801.603–71 (b) amended; (c), (d) and (e) removed **69217**
801.670–1 Amended **69217**
801.670–2 (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2) **69217**
801.670–3 (a) amended **69217**
801.670–4 (a)(1), (2), (b)(1), (2) and (c) amended **69217**
801.670–5 (a)(3) through (6), (8), (9) and (b) amended **69218**
801.680 (c) and (d) amended **69218**
801.690–3 (c) introductory text, (1) and (2) amended **69218**
801.690–4 (c)(1)(i) amended; (c)(3)(ii) revised **69218**
801.690–6 (b) amended **69218**
803.101–3 (b) amended **69218**
(c) removed 30442
803.405 Redesignated from 803.409 ..... **69218**
803.409 Redesignated as 803.405 ..... **69218**

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803.7000 Introductory text amended 69218
805.205 Amended 69218
806.302–3 Amended 69218
806.302–5 (a), (b), (c) introductory text, (1), (2), (4), (5) and (6) amended; (c)(3) revised 69218
806.304 (a)(1)(i) and (2)(i) amended 69218
806.501 (b) amended 69218
806.570 Heading revised; introductory text amended 69218
808.001 (a)(4) amended 69219
808.401 Amended 69219
808.404–1 (a) and (b) amended 69219
808.404–3 Amended 69219
814.201 (a) amended 69219
814.304–4 Amended 69219
814.403 Amended 69219
814.404–1 (b) amended 69219
814.404–70 Amended 69219
814.406 Redesignated as 814.407 69219
814.406–3 Redesignated as 814.407–3 69219
814.406–4 Redesignated as 814.409–4 69219
814.407 Redesignated as 814.408; new 814.407 redesignated from 814.406 69219
814.407–3 Redesignated from 814.406–3; (a), (b) and (c) amended 69219
814.407–70 Redesignated as 814.408–70 69219
814.407–71 Redesignated as 814.408–71 69219
814.408 Redesignated as 814.409; new 814.408 redesignated from 814.407 69219
814.408–70 Redesignated from 814.407–70 69219
814.408–71 Redesignated from 814.407–71 69219
814.409 Redesignated from 814.408 69219
814.409–4 (a), (b) and (c) amended 69219
817.102 Redesignated as 817.105 69219
817.102–1 Redesignated as 817.105–1 69219
817.105 Redesignated from 817.105 69219
817.105–1 Redesignated from 817.105–1; (b)(2) and (c) amended 69219
819 Authority citation revised 69219
819.201 (a), (b) and (d) amended 69219
819.202–5 (c) introductory text, (g) and (h) amended; (c)(6) removed; (c)(7) through (12) redesignated as (c)(6) through (11) 69219
819.202–70 Introductory text, (a), (c), (j) and (k) amended 69220
819.502–2 (b) removed; (c) and (d) redesignated as (b) and (c) 69220
819.502–3 Revised 69220
819.602–3 (a) through (d) amended 69220
819.800 Redesignated from 819.801; (b) and (d) amended 69220
819.801 Redesignated as 819.800 69220
819.804 Amended; heading revised 69220
819.806 Redesignated from 819.806–3 and heading revised 69220
819.806–2 Redesignated as 819.807 69220
819.806–3 Redesignated as 819.806 69220
819.807 Redesignated as 819.806–2 69220
819.807–70 Amended; heading revised 69220
819.7004 Amended 69220
822.478 (a), (b) and (c) amended 69220
825 Authority citation revised 69220
825.102–70 (b) and (c) amended 69220
825.105 Amended 69220
825.202–70 (b) and (c) amended 69220
825.203 Amended 69220
825.302–70 Amended 69220
825.701 Removed 69220
825.703 Amended 69220
825.870 Amended 69220
825.901 Redesignated from 825.902; heading revised; existing text designated as (a) and amended; (b) added 69220
825.902 Redesignated as 825.901 69220
825.904 Removed 69221
828.106–6 Amended 69221
828.7100 (a) and (c) amended 69221
828.7101 (b) amended 69221
828.7102 (a) introductory text, (1) and (b) introductory text amended 69221
831 Authority citation revised 69221

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831.7001–4 (a) and (b)(2) amended 69221
831.7001–5 (b) amended 69221
832 Authority citation revised 69221
832.502–2 Amended 69221
832.805–70 (b) amended 69221
833.104 (a)(1), (2), (b) and (c) amended 69221
833.212 (a) and (b)(4) amended 69221
836.208 Amended 69221
836.209 Amended 69221
836.602–2 (a) and (b) amended 69221
838.606–72 Amended 69221
837.203—873.271–4 (Subpart 837.2) Heading revised 69221
837.203 Revised 69221
837.270 (a) introductory text, (1), (3), (c) and (d) amended; (e) revised 69221
837.271 Removed 69222
837.271–1 Removed 69222
837.271–2 Removed 69222
837.271–3 Removed 69222
837.271–4 Removed 69222
837.403 Amended 69222
837.7001 Amended 69222
837.7002 Amended 69222
837.7003 (a), (b) introductory text, (5), (c) and (d) amended; (e) revised 69222
842 Authority citation revised 69222
842.102 (b) amended 69222
842.202 Amended 69222
842.705 (b) amended 69222
842.801–70 Amended 69222
842.1203 Amended 69222
846.408–70 (b) introductory text amended 69222
846.408–71 (a) amended 69222
846.471 (a) and (b) amended 69222
847 Authority citation revised 69222
847.303–1 (b) amended 69222
847.305–70 Amended 69222
849 Authority citation revised 69222
849.106 Amended 69222
849.107 Amended 69223
849.111–70 Amended 69223
849.111–72 (c) amended 69223
852.203–70 Removed 30443
852.203–71 Amended 69223
852.211–70 (d) amended 69223
852.216–70 (a) amended 69223
852.222–70 Amended 69223
852.236–88 Introductory text, (a) and (b) amended 69223
852.236–89 Amended 69223
852.247–70 Amended 69223
852.270–3 Heading revised 69223
852.271–73 Amended 69223
853 Authority citation revised 69223
853.107 Amended 69223
870 Authority citation revised 69223
870.114–3 Introductory text amended 69223
870.114–4 Amended 69223
870.115 (a) amended 69223
871.102 (a) amended 69223

Chapter 9—Department of Energy (Parts 900—999)

903.104–3 Added 56851
909.104–3 Added 16651
913.507 Removed 12876
915 Revised 56851
915.404–4–71–5 (d), (f) and (h) revised 12227
915.404–4–72 (a) introductory text revised 12229
916.504—916.505 Designated as Subpart 916.5 and heading added 56860
919.602–1 (a)(2) amended 56860
919.805–2 Revised 56860
922.7101 Revised 12876
935.016 Removed 56860
935.016–1 Removed 56860
935.016–2 Removed 56860
935.016–8 Removed 56860
970.0902 Added 16651
970.15404–4—970.15407–2–3 (Subpart 970.15) Revised 56861
970.1504–4 Revised 12229
970.1504–4–1 Revised 12229
970.1504–4–2 Revised 12229
970.1504–4–3 Revised 12230
970.1504–4–4 Revised 12231
970.1504–4–5 Revised 12231
970.1504–4–6 Revised 12233
970.1504–4–7 Revised 12233
970.1504–4–8 Revised 12233
970.1504–4–9 Added 12234
970.1504–4–10 Added 12234
970.1504–4–11 Added 12234
970.2274–1 (a) introductory text and (d) amended; (a)(1), (2) and (3) removed; (b) and (c) revised 12876
970.3102–1 (c) amended 56867
970.3102–15 (b)(1) and (2) amended 56867
970.5202 Revised 56867
970.5204–9 Amended 56867

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970.5204–15 Amended **56867**
970.5204–22 Amended **56867**
970.5204–44 Amended **56867**
970.5204–54 Amended **56867**
Revised 12335
970.5204–59 Revised 12876
970.5204–76 Amended **56867**
970.5204–86 Added 12336
970.5204–87 Added 12336
970.5204–88 Added 12337
970.5204–89 Added 16651

Chapter 12—Department of Transportation (Parts 1200—1299)

1201.103 Removed 2436
1201.201–1 (d) removed 2436
1201.301 (a)(2) and (b) added 2436
1205.9000 (Subpart 1205.90) Revised 2436
1206.9000 (Subpart 1206.90) Revised 2436
1211.204–90 (Subpart 1211.2) Revised 2437
1213.106—1213.106–190 (Subpart 1213.1) Revised 2437
1213.302—1213.302–590 (Subpart 1213.3) Added 2437
1215 Revised 2437
1237.104 Revised 2438
1237.104–90 Revised 2438
1237.104–91 Revised 2438
1237.9000 (Subpart 1237.90) Revised 2438
1252.211–71 Amended 2439
1252.215–70 Amended 2439
1252.216–71 Amended 2439
1252.216–72 Amended 2439
1252.216–73 Amended 2439
1252.211–90 Added 2439
1252.213–90 Revised 2439
1252.220–90 Revised 2439
1252.228–90 Revised 2439
1252.237–90 Revised 2439
1252.237–91 Revised 2440
1252.237–92 Revised 2440
1252.237–93 Revised 2440
1252.237–94 Revised 2440
1252.237–95 Revised 2440
1252.237–96 Revised 2440
1252.237–97 Revised 2440
1252.237–98 Revised 2440
1252.237–99 Revised 2440
1252 Appendix redesignated from 1253 appendix in part; new appendix revised 2442
1253.215 Removed 2441
1253.215–270 Removed 2441
1253.3 Appendix redesignated in part as 1253 appendix 2442

Chapter 13—Department of Commerce (Parts 1300—1399)

1333.101 Added 16652
1333.102 Added 16652
1333.103 Revised 16653
1352.219–1 Removed 35080

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1509.170–1 Amended 20202
1509.170–2 Revised 20203
1509.170–3 Revised 20203
1509.170–4 Revised 20203
1509.170–5 Added 20203
1509.170–6 Added 20204
1509.170–7 Added 20204
1509.170–8 Added 20204
1516.405 (b) amended 3876
1533.103 Revised 17110
1537.110 (g) added 30444
1552.209–76 Added 20204
1552.216–75 Revised 3876
1552.233–70 Added 17110
1552.237–76 Added 30444
1552.242–70 Amended 3876

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

1609.7101—1609.7101–2 (Subpart 1609.71) Added **55337**
1632.170 (a) and (b)(1) revised **55338**
1652.232–70 Amended **55339**
1652.232–71 Amended **55339**
1652.244–70 Amended **55339**
1652.370 Table amended **55339**

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1802.101 Amended 19926
1804.203 Added 1528
1804.805 (a) revised 5620
1804.805–70 (b)(2) amended 5620
1804.904 (Subpart 1804.9) Added 1528
1804.7102 (a) amended 19926
1804.7301 Revised 14640

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1806.501 (3) revised 10571
1807.105 (a)(2) added 14641
1807.7203 Revised 5620
1808.002–70 Revised 5620
1812.301 Revised 19926
1813.003 (h) redesignated as (g) 5620
1815.304 Heading revised; (c) added 25214
1815.304–70 (b)(2) revised 25215
1815.403–170 Revised 10573
1815.404–470 (c)(5) revised 25215
1816.203–4 (d)(2) amended 5620
1816.405–274 (f) revised 25215
1817.7300—1817.7302 (Subpart 1873.73) Added **56091**
1819.201 Heading and (a) revised; (f)(1) added 25215
1819.202–170 Amended 25215
1819.302 (Subpart 1819.3) Heading revised 5620
1819.506 Heading revised 5620
1819.705–2—1819.708–70 (Subpart 1819.7) Heading revised 5620
1819.705–470 Amended 25215
1819.708 Heading revised 5621
1819.708–70 Revised 25215
1819.7201 Revised 10571
1819.7205 (b) revised; (c) and (d) removed 10571
1819.7206 Revised 10571
1819.7209 (a)(1) and (b) revised 10571
1819.7210 (c) revised; (d) removed 10572
1819.7214 (i) removed; (e), (g) and (h) revised 10572
1819.7215 (b) revised 10572
1819.7216 (a)(2), (3) and (b) revised 10572
1819.7217 (c) revised 10572
1819.7219 (a) revised 10572
1822.101–1 (e) added 14148
1822.103–5 Added 14149
1827.301 Amended **63209**
1827.406–70 (c) revised 5621
1832.908 Revised 5621
1832.970 Removed 5621
1832.1110 (Subpart 1832.11) Added 18373
1833.104 (c)(2) revised 5621
1834.003 (a) revised **56093**
1834.7001—1834.7004 (Subpart 1834.70) Removed **56093**
1835.016 (a)(iii) added 14641
1836.213–70 Redesignated as 1836.213–370 5621
1836.213–370 Redesignated from 1836.213–70 5621
1842.270 (f) revised 19928
1842.302 (Subpart 1842.3) Added 10574
1842.7401—1842.7402 (Subpart 1842.74) Added 10574
1844.201–1 (a)(iii) revised 5621
1852.103 (b)(i) amended 19926
1852.217–71 Added **56093**
1852.217–72 Added **56093**
1852.219–73 Amended 25215
1852.219–75 Amended 25216
1852.219–77 Amended 10572
1852.219–79 (b) introductory text, (e) and (f) revised 10572
1852.227–70 Amended **63209**
1852.234–70 Removed **56094**
1852.234–71 Removed **56094**
1852.235–70 Introductory text amended 5621
1852.242–74 Added 10574
1852.242–75 Added 10575
1852.242–76 Added 10575
1852.242–77 Added 10575
1853.208–70 Heading and (c) revised 5621
1853.271 Added 19926
1871.101—1871.104 (Subpart 1871.1) Revised 19926
1871.204 Revised **71604**
(a), (d) and (f) revised; (h) added 19927
1871.401–1 (b)(3) revised; (b)(5) added 19927
1871.401–2 Heading revised; (b)(5) added 19927
1871.401–3 Heading revised; (a)(4) added 19927
1871.401–4 (a)(5) added 19928
1871.401–5 (b) revised 19928
1871.401–6 (a)(2) amended **71604**
(a)(2) correctly revised; (a)(3) correctly added; CFR correction 1529
1871.405 Removed 19928
1871.505 Revised 19928
1871.602 Amended 19928
1871.603 (b) and (c) redesignated as (d) and (e); new (b) and new (c) added 19928
1872.102 (a)(1) revised 14641

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Chapter 53—Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)

5315 Removed 995
5316 Removed 67600
5350 Removed 71390

Proposed Rules:

1 26264
8 57568
11 ..... 63778, 68344
12 26264
14 4248
15 4248
16 24472
17 3618
23 26264
28 71710
31 ..... 3380, 4760, 27654, 28330
32 6758
36 71710
42 57568
44 71710
45 23982
46 57878
47 7736
48 24472
49 71710
52 ..... 63778, 68344, 71710, 71711, 3618, 3786, 4248, 6758, 7736, 23982, 24472, 26264, 32738
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812 ..... 60256, 29981
813 29981
829 4607
837 60256
852 ..... 60256, 29981
853 29981
873 60256
909 60268
970 ..... 60268, 64024, 14206
1201 52666
1205 52666
1206 52666
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1215 52666
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1252 52666
1253 52666
1503 71415
1515 71415
1526 67845
1537 3060
1552 ..... 67845, 71415, 3060
1815 30468
1833 17603
1842 63654
1845 26721
1852 ..... 63654, 26721
2000—2099 (Ch. 20) 67726

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1.46 (ppp) added 59475
(ppp) correctly designated 3876
(qqq) added 7814
(rrr) added 29601
1.48 (ll) added 7814
1.49 (kk) added 57610
(ll) added 7814
1.66 (bb) added 2150
(cc) added 24958
23 Heading and authority citation revised 5126
23.1—23.7 (Subpart A) Removed 5126
23.41—23.55 (Subpart C) Removed 5126
23.61—23.69 (Subpart D) Removed 5126
23.73—23.87 (Subpart E) Removed 5126
23.89 Amended 5126
23.93 (a) introductory text amended 5126
23.95 (a)(1), (f)(1), (2) and (g)(1) amended; (f)(5) removed 5126
(f)(2) and (3) removed 34570
23.97 Amended 5126
23.111 Removed 5126
24.2 Amended 7131
24.102 (k) amended 7132
24.103 (c) amended 7132
24.105 (c) amended 7132
24.202 Amended 7132
24.203 (a)(4) redesignated as (a)(5); new (a)(4) added; (b) amended 7132
24.204 (a) amended 7132
24.205 (c)(2)(ii)(B) amended 7132
24.208 Redesignated as 24.209; new 24.208 added 7132
24.209 Redesignated from 24.208 7132
24.301 Introductory text amended 7132
24.303 (a) amended 7132
24.304 Introductory text amended 7132
24.306 (a)(6) and (c) amended 7132
24.307 (a) amended 7132
24.401 (c)(4)(ii) amended 7132
24.403 (a) and (b) amended 7132
24.404 (c)(2) amended 7132
24 Appendix A amended 7132
26 Added 5126
Authority citation revised 34570
26.5 Amended 34570
26.21 (a)(2) revised; (b)(1) amended 34570
26.45 (c)(5) amended 34570
26.67 (a)(2)(i) revised; (a)(2)(ii) redesignated as (a)(2)(iii); new (a)(2)(ii) added 34570
37.15 Revised 64837, 64838
40.29 (e)(1) table and (f)(1) table amended 65129
80 Added 29750

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

107.503 (a)(3) amended 52846
107.606 (a)(5) amended 52847
171.2 (d)(1) amended 10752
171.5 (a)(3) amended 9925
Removed 28046
171.7 (a)(3) table amended 52847, 57930
(a)(3) table amended 10752, 10753, 28046
171.8 Amended 52847
Amended 10753, 28046
171.11 (d)(4)(ii) revised 57930
(d)(14) amended 10753
171.12 (b)(17) amended 10753
171.12a (b)(16) amended 10753
171.14 (c)(1) revised 52847
(b) table and (d)(2) amended; (d) introductory text and (1) revised; (d)(3) added 10753

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172.101 (c)(11) introductory text, (f) and table amended **52847**
Table amended **52849**
(b) introductory text revised; (b)(4) and (5) redesignated as (b)(5) and (6); new (b)(4) added; (g) table amended 10753
Table amended 10754, 10772
Table and Appendix B amended 10773
Appendix B amended 10774, 10775
172.102 (c)(1) amended **52849**
(c)(1), (2), (3) and (5) amended 10775
172.203 (m)(1) amended **52849**
(k) introductory text and (1) amended 10775
(k)(3) removed; (k)(4) redesignated as (k)(3) 10776
172.313 (d) added 10776
172.400 (b) amended 10776
172.400a (a)(7) amended **52849**
(d) removed 10776
172.405 (c) added 10776
172.407 (c)(4) revised 10776
172.431 Removed 10776
172.504 Table amended **52849**
(e) Table 2 amended; (f)(10) revised 10776
172.553 Removed 10776
173.1 (d) amended 10776
173.2a (b) table amended 10776
173.6 (c)(2) amended **52849**
173.25 Heading and (b) revised 10776
173.28 (c)(2) revised; (c)(5) added 10776
173.29 (b)(2)(iv)(B) revised 10776
173.32b (b)(1) and (2) amended 10776
173.32c (j) revised 10777
173.33 (a)(3) amended **52849**
173.34 (e)(18)(i) table amended **52849**
(e) table amended 10777
173.35 Heading and (b) revised 10777
173.56 (b)(2)(i) and (3)(i) amended 10777
173.58 (a) introductory text amended **52849**
173.59 Amended 10777
173.62 (c) table amended **52849**
173.121 (b)(1)(ii) revised 10777
173.159 (g)(2) amended 10777
173.162 Revised 10777
173.164 (a)(1), (2) and (3) revised; (a)(4) added 10777
(c) introductory text amended 10778
173.166 (a), (b) introductory text, (2), (3)(ii), (c) and (f) amended 10778
173.196 (a)(1)(iii) amended 10778
173.220 Revised 10778
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173.222 Revised 10779
173.224 (c)(3) introductory text amended 10779
173.225 (b) table amended 10779
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173.243 (e)(2) amended; (e)(3) added 10780
173.247 (a) amended **52849**
173.301 (i) revised 10780
173.306 (d) removed; (f)(4) and (5) added 10781
173.315 (k) and (n) revised; (p) added 28046
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173.422 (b)(1) amended **52849**
173.425 Table 7 amended **52849**
173.427 (a)(3) amended **52849**
173.433 (g) table amended **52849**
173.461 (a) introductory text and (b) amended **52850**
174.81 (f) table amended; (g)(3)(vi) added 10781
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176.83 (a)(1), (3) and (8) revised; (a)(10) added 10781
176.83 (g)(3) table amended 10782
176.600 Heading, (a) and (c) revised 10782
176.704 (e)(1) and (f) table amended **52850**
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177.835 (g) introductory text amended **52850**
177.840 (l) through (u) added 28048
177.841 (e)(1) amended; (e)(3) revised 10782
177.842 (a) amended **52850**
177.843 (c) amended **52850**
177.848 (f) table amended; (g)(3)(vi) added 10782
177.854 Introductory text removed **52850**
178.270–3 (e) amended 10782
178.337–1 (g) added 28049

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178.337–8 Revised 28049
178.337–9 (b)(7) redesignated as (b)(8); (b)(6), new (8) and (c) revised; new (b)(7) added 28050
178.337–11 Revised 28050
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180.352 Heading, (b)(1), (2), (3) introductory text, (c) heading and introductory text revised; (d) and (e) redesignated as (e) and (f); new (d) added 10782
180.403 Introductory text amended **52850**
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180.405 (m) and (n) added 28051
180.407 (h)(4) through (8) redesignated as (h)(5) through (9); (h)(1)(iii) and new (4) added 28051
180.416 Added 28051
180.417 (a)(3)(ii) amended **52850**
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180.515 (b) amended **52851**
180 Appendixes A and B added 28052
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195.205 Added 15935
195.242 (c) and (d) added 15935
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225 Appendix B amended; interim **71791**
229 Authority citation revised 25659
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231 Authority citation revised 25660
231.0 (a) revised; (c), (d) and (e) redesignated as (d), (e) and (f); new (c) added 25660
232 Authority citation revised 25660
232.0 (a) revised; (c), (d) and (e) redesignated as (d), (e) and (f); new (c) added 25660
238 Added 25660
261 Added 29753
268 Added; interim **54606**
268.3 (b) through (f) revised; interim 7134
268.13 Revised; interim 7134

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544 Appendixes A, B and C revised 70053
555 Heading and authority citation revised 2861
555.1 Revised 2861
555.2 Existing text designated as (a); (b) added 2861
555.3 Revised 2861
555.4 Amended 2861
555.5 Heading, (b) introductory text and (5) amended; (a) and (b)(7) revised 2861
555.6 Heading, (a) introductory text, (1)(v), (2)(iv), (b)(5), (c)(5) and (d)(4) amended; (b) introductory text, (1), (2) introductory text, (i), (iii), (4), (c) introductory text, (1), (2) introductory text, (iv), (d) introductory text, (1) introductory text, (ii), (iv) and (v) revised 2861
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571.225 Added 10823
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1312.6 (c) revised 5195
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